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BEFORE THE DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

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4 In Re:

5 DOUGLAS SCHAFFER,

6 An Attorney-at-law,

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Bar No. 8652 - Public No. 00#00031

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TRANSCRIPT OF PROCEEDINGS

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A hearing was held in the above-captioned matter beginning at the hour of 9:00 a.m. on the 17th day of July, 2000, at 2101 Fourth Avenue, Baker Room, Seattle, Washington, before Hearing Officer Lawrence R. Mills.

Reported By: Mark E. King, CSR, RPR

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The parties were present and represented as follows:

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For The Bar: WASHINGTON STATE BAR ASSOCIATION
Office of Disciplinary Counsel
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BY: DONALD H. MULLINS, ESQUIRE
Also Present: Douglas Schafer
Cynthia Jacques

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1 Seattle, Washington, Monday, July 17, 2000

2 9:00 a.m.

3 -- oo 0 oo --

4 THE HEARING OFFICER: All right.

5 Let's go on the record. Good morning. My name
6 is Larry Mills. I'm the Hearing Officer in this
7 proceeding.

8 This is a disciplinary hearing in the matter
9 of Douglas A. Schafer, WSBA No. 8652. This is
10 under Public No. 00031. This is a public hearing
11 and anyone from the public can be in attendance.

12 Often when I'm Hearing Officer I kind of go
13 around the room and find out who's here. I will
14 not do that today but I would like counsel for
15 anyone who will be speaking on the record today
16 to enter their appearances now. We'll start with
17 the Bar Association.

18 MS. GRAY: I am Disciplinary
19 Counsel, Christine Gray. Seated to my left is
20 legal assistant Cynthia Jacques; J-a-c-q-u-e-s.
21 I do not expect her to be speaking at the
22 hearing. And seated over to her left is
23 Disciplinary Counsel Marsha Matsumoto;
24 M-a-t-s-u-m-o-t-o. I do not expect her to be
25 speaking at this hearing either, although that is
6 1 possible.

2 THE HEARING OFFICER: All right,
3 thank you. And for Mr. Schafer?

4 MR. NEWMAN: Mr. Mills, my name is
5 Shawn Newman and I represent Mr. Schafer. With
6 me is Mr. Schafer, who will be speaking today,
7 Mr. Don Mullins, who may be speaking. All three
8 of us are here on behalf of Mr. Schafer.

9 THE HEARING OFFICER: All right.
10 Let me also indicate for the record that these
11 proceedings are being reported by Mark King,
12 court reporter, and we have in the room, here,
13 representatives of TVW, and I would like to
14 address the TVW request to, what I understand is
15 to videotape the entire hearing.

16 I would like to address that now and perhaps
17 first get comments from counsel on whether there
18 are any objections or conditions that the Hearing
19 Officer should place on the videotaping. I'll
20 hear from both sides; Chris Gray?

21 MS. GRAY: Mr. Mills, we addressed
22 the issue of videotaping in our letter of last
23 Thursday and in our telephone conference on
24 Friday morning.

25 As the Association indicated in the letter
7 1 and at that telephone conference, there are some
2 concerns that the presence of television cameras
3 might affect the witnesses or the other
4 participants in the proceedings. However, the
5 decision as to whether or not to allow television
6 cameras is up to your sound discretion and I
7 really don't have anything to add to the comments
8 that were previously made.

9 THE HEARING OFFICER: All right.
10 Mr. Newman?

11 MR. NEWMAN: Just briefly,
12 obviously, this is an open hearing. I think it's

13 an issue which has garnered a great deal of
14 public interest. As you well know, the L.A.
15 Times and other major news organizations have
16 covered this case, and we believe it would serve
17 the best interests of the Bar Association and the
18 public to have this hearing televised.

19 THE HEARING OFFICER: All right.
20 The Hearing Officer has no independent objection
21 to the videotaping of this hearing, but the
22 Hearing Officer wishes to state on the record
23 that the Hearing Officer has the authority to
24 restrict videotaping and to regulate it.

25 This is under Rule for Lawyer Discipline
8 1 4.2(c), which allows the Hearing Officer to make
2 any ruling which appears necessary and
3 appropriate to ensure a fair and orderly
4 proceeding.

5 My only concern here in this proceeding with
6 the videotaping is if the videotaping seems to me
7 to be causing witnesses to be either intimidated
8 or to be inclined to, for want of a better
9 phrase, play to the camera rather than simply
10 give facts, which is what they are here to do.

11 So, I'm going to permit the videotaping of
12 this hearing basically in its entirety to go
13 forward. However, I want to indicate that if any
14 witness appearing has an objection to being
15 videotaped I will hear that objection at the
16 time, and I would ask counsel to advise their
17 witnesses that if there is some objection they
18 need to call it to my attention.

19 I am not saying they will have veto power
20 over whether they are videotaped or not, but I
21 want to give each witness the option of calling
22 it to my attention, recognizing that that in
23 itself may cause some disruption.

24 I also want to indicate that if there is for
25 any reason some disruption or impairment of the
9 1 dignity of these proceedings by the presence of
2 the cameras I wouldn't hesitate to exclude them
3 later, but for now we will proceed with the
4 videotaping of the hearing, and if the video
5 cameras are not on they can certainly be on now.
6 I assumed that they were on already.

7 Let me also just go over some ground rules
8 for this hearing. First of all, the purpose of
9 this hearing is to present evidence relating to
10 Count One of the formal complaint, which is the
11 only count left.

12 The Bar has dismissed two other counts that
13 were originally alleged in the formal complaint.
14 The purpose of the hearing is to make a factual
15 record for me as Hearing Officer and for me to
16 eventually enter findings of fact as to what
17 actually happened, my legal conclusions based on
18 those facts, and make a recommendation for
19 sanction, if any, at the end.

20 To that end, I have asked counsel in
21 previous telephone conversations to provide to me
22 by the conclusion of the hearing, and I would
23 like them by the closing arguments in this
24 hearing, to provide proposed findings of fact,

10 25 conclusions of law, and a recommendation to the
1 disciplinary board for me to review during the
2 closing argument so I will have that in front of
3 me when I'm hearing closing arguments.
4 Counsel is well aware that this hearing is
5 scheduled for up to six days. I'm not suggesting
6 it needs to go that long if we can be more
7 efficient about presenting testimony, but I'm
8 raising this at this point to give you time to
9 get your proposed findings, conclusions and
10 recommendation together by the closing arguments.
11 We'll proceed basically as a normal hearing
12 or trial. We'll commence this morning with
13 opening statements from each side. There have
14 been numerous telephone hearings on this case so
15 I feel well versed in the basic background of
16 this.
17 So, I would suggest that the opening
18 statements not be in the form of closing
19 arguments but really just triggering for me or
20 keying for me on what the evidence will show and
21 what is likely to be in the hearing.
22 Then we will proceed. The Bar Association
23 has the burden of proof in this proceeding by a
24 clear preponderance of the evidence, so the Bar
25 Association will proceed with its case first, and
11 1 Mr. Schafer will be entitled to cross examine
2 witnesses.
3 And then Mr. Schafer will be entitled to
4 present his case with the Bar Association to
5 cross examine his witnesses, and then we will
6 conclude with the rebuttal from the Bar
7 Association with any additional testimony.
8 Finally, we will close with closing
9 arguments, which may be as late as next Monday,
10 if we use all six days.
11 I'm concerned a little bit with multiple
12 counsel, particularly for Mr. Schafer. I would
13 just indicate it's my preference and I think the
14 way it should proceed is for each witness only
15 one counsel would do the questioning. That would
16 probably be the case anyway, but I just want to
17 make sure you're clear on that.
18 Also, if there are exhibits that have not
19 been stipulated to I would ask that counsel show
20 the exhibit to opposing counsel before I look at
21 it, don't just put it in a notebook for me, just
22 in case there's some objection.
23 I'm hopeful that we can stipulate or counsel
24 can stipulate to most of the exhibits without the
25 necessity of having argument about them or to
12 1 have a substantial amount of testimony laying the
2 foundation. If the exhibit is going to be
3 admitted, then let's just go to the heart of it
4 and have the witness testify about what the
5 witness knows about it.
6 If there's some question about that, you can
7 make your record any way you want to, I'm just
8 trying to simplify that.
9 Excuse me, Mr. Schafer?
10 MR. SCHAFFER: Could you just
11 clarify one thing on the record, and that is, as

12 you know I'm not a trial lawyer and I was last
13 exposed to the rules of evidence about 23 years
14 ago. As I read the Rules for Lawyer Discipline,
15 it says emphatically that the rules of evidence
16 do not govern these proceedings but reasonable
17 people like me is the test, would a reasonable
18 person consider the evidence to have probative
19 value.

20 And I just, you know, hope that throughout
21 these proceedings you don't lapse into your
22 career long training and that of others and begin
23 to discuss things as laying a foundation and
24 whatnot that to me are foreign jargon.

13 1 THE HEARING OFFICER: No, I don't
2 intend to do that. In fact, my most recent
3 background in the practice of law is as an
4 arbitrator, and in arbitration the main rule of
5 evidence is let everything in and then sort it
6 out later.

7 MR. SCHAFER: Thank you.

8 THE HEARING OFFICER: So, if
9 anything, the presumption would be that the
10 evidence would come in.

11 And I'm sensitive, Mr. Schafer, particularly
12 to letting you make whatever factual record you
13 want to make. So, you don't have to worry about
14 my being unduly restrictive on that.

15 Also, a couple of other things, the schedule
16 for today, this hearing is scheduled to go from
17 nine to five daily. If it appears in mid week we
18 need more time or there is some problem with time
19 we can adjust the schedule within limits, but my
20 understanding is the Bar office is only open
21 between eight and five, so we're somewhat
22 constrained in our hearing time.

23 My preference, and I will give breaks on
24 demand, basically. If someone needs a break just
25 raise your hand or just call it to my attention
14 1 and we'll take a break, but my preference is to
2 have long mornings and short afternoons.

3 So, I would intend to -- we'll have a
4 midmorning break but maybe not till 10:45 or
5 something like that and go all the way to one
6 o'clock and have a one hour lunch break from one
7 to two. I find it's more efficient and people
8 can eat faster when they are not in the lunch
9 hour rush, and then resume at two and go to five
10 with an afternoon break.

11 That would be my intent, just so you know so
12 you can call your offices or whatever you need to
13 do. I'm sorry for the long speech. Are there
14 any further preliminary matters we need to
15 address?

16 MR. MULLINS: I have one. Again,
17 my name is Don Mullins. I'm in the middle of
18 another ongoing piece of litigation, so I will be
19 here for segments and not be here for segments
20 this week, and I ask leave of you to do so if I'm
21 not disruptive in being here and not being here.

22 THE HEARING OFFICER: That doesn't
23 cause a problem for me. So, when you're here,
you're here.

24 MR. MULLINS: All right. Thank
25 you.

15 1 MR. NEWMAN: Your Honor, I have
2 two points.

3 THE HEARING OFFICER: If you will
4 just call me Mr. Hearing Examiner or Mr. Mills,
5 whatever you want, but not Your Honor.

6 MR. NEWMAN: Okay. Two points;
7 Mr. Schafer subpoenaed from the Bar Association
8 paperwork he had provided to them at the
9 beginning of this whole epic, and the Bar
10 Association based on our knowledge has not fully
11 responded to that subpoena.

12 Our purpose in bringing this to your
13 attention now is that the exhibits we would like
14 to use are those exhibits that were already
15 provided to the Bar Association. So, I want to
16 bring that to your attention.

17 MR. SCHAFFER: Four and a half
18 years ago.

19 MR. NEWMAN: Four and a half years
20 ago it was provided to the Bar. So, we would
21 like to get some closure on whether the Bar
22 intends to provide those documents or not.

23 MS. GRAY: May I interrupt for one
24 moment and inquire? I mailed by overnight mail
25 last Thursday a response to Mr. Schafer's
16 1 subpoena to the Bar Association for documents as
2 well as an objection, indicating that there was
3 one single-page document that we were withholding
4 that was responsive to the subpoena.

5 And my inquiry is: Did Mr. Schafer receive
6 on Friday by overnight mail those documents that
7 were produced?

8 MR. SCHAFFER: I received 79 pages,
9 but as I had said in our last hearing, four and a
10 half years ago I provided you one full set that
11 the CJC had reproduced in multiple sets of what
12 was a briefcase full of documents that I had
13 hoped that you would seriously consider then and,
14 you know, maybe that stack still remains
15 untouched somewhere.

16 But that is the body of documentation that I
17 had obtained from public sources that caused me
18 to conclude that Judge Anderson had robbed the
19 hospital of over a million dollars, and I thought
20 it was -- you know, those are the documents that
21 I hoped to be able to walk through during this
22 proceeding and you have probably the most
23 complete, pristine set, is my assumption.

24 MS. GRAY: Mr. Mills, I reviewed
25 the documents responsive to the subpoena. In
17 1 response to Mr. Schafer's belief that there are
2 documents that have not been produced that he
3 provided to us, I will double-check our records
4 and see if we have such records that can be
5 produced. We can only produce what we have and I
6 will do so today.

7 THE HEARING OFFICER: All right.
8 It would be my order that the relevant documents
9 be produced if you have them. If you don't, then
10 I think that's a matter between you and Mr.

11 Schafer and his counsel to work out perhaps in a
12 break, to discuss that to determine what the Bar
13 Association does and does not have.

14 And if you need to bring it to my attention
15 again, Mr. Newman or Mr. Schafer, I would
16 appreciate it if you could identify with
17 precision exactly what you feel has not been
18 turned over. In the first instance, give the Bar
19 Association a chance to locate that before I have
20 to rule on that.

21 MR. NEWMAN: Following up on Ms.
22 Gray's point about withholding the document that
23 Mr. Schafer provided to the Bar Association four
24 and a half years ago, we are going to strongly
25 object to any documents that Mr. Schafer provided
18 1 to the Bar.

2 MS. GRAY: Mr. Newman is incorrect
3 that we were withholding anything that
4 Mr. Schafer provided to the Bar. Our objection
5 was with regard to a document that a third-party
6 provided to the Bar, not Mr. Schafer.

7 THE HEARING OFFICER: Was there a
8 request for third-party documents provided to the
9 Bar?

10 MR. NEWMAN: At the present time
11 the only directive was for all the material
12 Mr. Schafer provided.

13 MR. SCHAFFER: No, there were two.
14 There was a request that they produce all the
15 documentation that I had submitted to them in
16 connection with these grievances against these,
17 what, four lawyers, five lawyers, and then also a
18 request for all documents and other records
19 received by the Bar office from or on behalf of
20 the named lawyers.

21 And they have objected, I believe, just
22 to -- was it just to responses by the lawyers
23 whose grievances were never made public?

24 MS. GRAY: Our objection is on
25 file, Mr. Mills, and I think it should speak for
19 1 itself as to precise language as to what our
2 objection was.

3 THE HEARING OFFICER: My
4 inclination right now would be to take, to put
5 this aside, hold it in abeyance and allow counsel
6 to discuss this further off the record during a
7 break to see if it can be worked out.

8 If there is a legal issue for me to rule on,
9 then we can bring it to my attention later, if
10 that's acceptable to you, Mr. Newman. You are
11 raising this now.

12 MR. NEWMAN: We would certainly
13 welcome the opportunity to sort out what
14 documents are being withheld and which aren't and
15 bring that back to you in a more cogent manner.

16 THE HEARING OFFICER: I'm not sure
17 I understand the issue right now so I can't make
18 a really cogent ruling.

19 MR. NEWMAN: I do have one other
20 point.

21 THE HEARING OFFICER: Sure.

22 MR. NEWMAN: We have a number of

23 demonstrative exhibits which we intend to use
24 both in opening and throughout the hearing, and
25 those are such things as excerpts from the Rules
20 1 of Professional Conduct, things you could take
2 judicial notice of, some excerpts from, for
3 example, Count One, so you have in front of you
4 exactly what the allegation is.
5 So, we intend to use those. I doubt if
6 there is any serious objection to those
7 documents, we have about ten of those, but I
8 intend to use those as part of the opening.
9 MS. GRAY: Mr. Mills, I would note
10 that Mr. Newman has not offered to let me review
11 any of those documents so I have not had an
12 opportunity to see or read any of them, and I
13 think it would be appropriate that I have the
14 opportunity to do so before he uses them in
15 opening.
16 THE HEARING OFFICER: Any
17 objection to showing them?
18 MR. NEWMAN: Well, I can walk
19 through them right now, if you would like. We
20 can take a short break and I could walk through
21 them and show you what I intend to use.
22 We have copies of what we intend to use here
23 and I will hand those to her, and you will see
24 that all they are is excerpts from rules which
25 are germane to this case, excerpts from
21 1 applicable case law that will help focus,
2 hopefully, focus your attention to what we
3 believe are the issues.
4 THE HEARING OFFICER: The Hearing
5 Officer certainly has no objection to seeing
6 demonstrative evidence and demonstrative exhibits
7 as part of the opening statement. I just want to
8 make sure that counsel seems to have some concern
9 about maybe information coming in that would not
10 necessarily be admissible or appropriate.
11 Why don't we just pause for a moment. Well,
12 let's go off the record for just a moment to
13 allow counsel to review these materials.
14 (Off the record.)
15 THE HEARING OFFICER: Let's go
16 back on the record. Counsel, I believe, has
17 completed a review of the eight and a half by
18 eleven pages that summarize the demonstrative
19 evidence and wishes to make a statement on the
20 record.
21 MS. GRAY: Actually, Mr. Mills, I
22 wanted to make a statement on the record about
23 Mr. Schafer's inquiry about what is evidence to
24 be considered in this proceeding.
25 It is the Association's position that any
22 1 evidentiary material that has previously been
2 submitted to the Hearing Officer in the form of
3 declaration or otherwise is not admitted into
4 evidence in these proceedings for the purpose of
5 this record without it being offered and
6 received.
7 Now, it is clear that all the legal argument
8 that has been previously made by both parties in
9 this matter can and should be considered by the

10 Hearing Officer in reaching legal conclusions,
11 but I wish to point out that it is the
12 Association's position that, for example,
13 Mr. Schafer submitted two declarations last week
14 about his testimony, about his interaction with a
15 CJC person and with a judge.

16 Those declarations have not been admitted
17 into evidence in this proceeding and that
18 information would not be evidence, factual
19 evidence in this proceeding unless Mr. Schafer
20 testifies to it and is subject to cross
21 examination regarding it, or the declaration
22 itself is admitted as an exhibit in these
23 proceedings.

24 And I wish to clarify that because I think
25 it's important for any appeal that the factual
23 1 evidence admitted in this proceeding be a matter
2 of clear record.

3 MR. SCHAFFER: Mr. Mills, if I
4 could just respond, the things that I submitted
5 were sworn to under penalty of perjury and that
6 is considered under law the equivalent of
7 in-person testimony, I believe.

8 Certainly, I'm going to be subject to cross
9 examination, I assume, in this proceeding. I
10 guess I just don't really understand the ceremony
11 of having to readmit everything that has already
12 been admitted going back to the deposition
13 transcript of Dr. Williams and everything that
14 has transpired in the last nine months or more.

15 THE HEARING OFFICER: My concern
16 is to make sure that the factual record is clear,
17 and it seems to me that even if you have filed
18 declarations under oath with me in connection
19 with other motions or whatnot, without a
20 stipulation from the Bar Association that that
21 constitutes evidence in this hearing that it
22 should not be. I guess I'm saying I'm agreeing
23 with Ms. Gray's characterization.

24 With that said, I'm hopeful that if -- when
25 it's your testimony, when it's your declaration
24 1 you can testify as to those facts, and I would
2 hope that you will do so.

3 But as to other declarations, those are all
4 subject to possible stipulation with the Bar
5 Association. So, if there's something in the
6 record in the form of declaration that you would
7 like to have admitted in evidence at this hearing
8 I would suggest that's another subject to discuss
9 off the record and then enter a stipulation in
10 the record.

11 Then it's very clear. There's no confusion
12 about what I'm permitted to consider as fact and
13 what I'm not permitted to consider as fact.

14 Obviously, I've read a lot of law and that
15 is going to stick with me, and I'm sure there
16 will be additional, there is additional briefing
17 for me to read on that.

18 I think we were trying to get approval, if
19 you will, of the demonstrative exhibits.

20 MS. GRAY: Mr. Mills, I have
21 reviewed them all very quickly. They are all,

22 they all relate to statutes, rules or other legal
23 authority.

24 I haven't had a chance to check the accuracy
25 of the quotations but I don't have an objection
26 1 to their use during opening, as long as they
2 aren't being admitted as exhibits without giving
3 me the opportunity to check their accuracy.

4 THE HEARING OFFICER: I'm sure
5 that will be fine. Is that all right with you,
6 Mr. Newman?

7 MR. NEWMAN: That's fine, thank
8 you.

9 THE HEARING OFFICER: Are there
10 any other preliminary matters before we begin?

11 MS. GRAY: Mr. Mills, it is
12 unclear to me whether or not any of the people in
13 the hearing room are potential witnesses in this
14 case. None of them are witnesses, except for
15 Mr. Schafer, who the Association intends to call.

16 I would respectfully ask the Hearing Officer
17 to inquire whether any of these people have been
18 notified that they are likely to be witnesses in
19 this case so that we can determine whether or not
20 we want to make a motion to exclude.

21 THE HEARING OFFICER: That's an
22 excellent suggestion. Is anyone in the room
23 intending to testify in these proceedings or has
24 been subpoenaed to testify in these proceedings?

25 MR. DIVIS: I haven't been
26 1 subpoenaed, and if the hearing rules allow for
2 public input I would like to make an input.

3 THE REPORTER: Could I have a
4 speaker identification, please?

5 THE HEARING OFFICER: Yes, I was
6 going to ask him.

7 MR. DIVIS: My name is Steve
8 Divis; D-i-v-i-s.

9 THE HEARING OFFICER: Okay.

10 MS. GRAY: Does Mr. Divis, is it
11 the respondent's intent to call Mr. Divis in
12 these proceedings?

13 MR. SCHAFER: No, that's not been
14 my intent at this point.

15 MS. GRAY: Mr. Divis is not an
16 Association's witness so I do not have a motion
17 to exclude.

18 THE HEARING OFFICER: All right,
19 Mr. Divis, you may remain in the room, and in
20 answer to your question there isn't provision for
21 just statements to be made from the general
22 public in this proceeding. This is a fact
23 finding hearing.

24 MR. DIVIS: I understand.

25 THE HEARING OFFICER: So, the only
27 1 people who can speak are counsel and the
2 witnesses who are testifying. So, you can
3 certainly be here and hear everything but you may
4 not make a public statement.

5 MR. DIVIS: Okay. I'll stay as
6 long as I can last.

7 THE HEARING OFFICER: Is there
8 anyone in the room who's is a witness or intends

9 to be a witness in this proceeding?
10 (No audible response.)
11 THE HEARING OFFICER: Does that
12 satisfy counsel?
13 MS. GRAY: Yes, thank you.
14 THE HEARING OFFICER: We may need
15 to make this inquiry again at various junctures,
16 and if counsel is concerned would you please
17 remind me to do that? I may forget or just
18 proceed without doing that.

19 All right. I think we are ready to proceed
20 with opening statements, is that correct? Is
21 there anything further?

22 MR. NEWMAN: We're ready to
23 proceed.

24 THE HEARING OFFICER: All right.
25 Ms. Gray, whenever you are ready you may proceed.

28 1 MS. GRAY: Thank you, Mr. Mills.
2 Mr. Mills, this is a case about a
3 self-appointment and vigilante justice. Of
4 course, vigilante justice is a contradiction in
5 terms.

6 The evidence will show that in 1996
7 respondent, Douglas A. Schafer, betrayed his
8 former client, William Hamilton, by disclosing
9 information Mr. Hamilton had given to him.

10 He disclosed this information not only to
11 criminal authorities and to disciplinary
12 authorities, and to numerous persons outside the
13 government, he also disclosed it to the press.

14 It is true that the respondent's disclosures
15 resulted in the Supreme Court's removal of a
16 Judge, Grant Anderson, from the bench, and that
17 is a laudable result.

18 Our system of justice requires that judges
19 be disciplined for their misconduct. Our system
20 of justice requires that judges follow the law
21 and follow the ethical rules.

22 Nonetheless, the evidence will show that in
23 exposing Grant Anderson's misconduct respondent
24 gave little or no consideration to protecting the
25 interests of his former client, William Hamilton,
28 1 or to the ethical rules that apply to lawyers.

2 Our system of justice also requires that our
3 lawyers follow the law and the ethical rules.

4 Most of the facts in this case will not be
5 disputed. The evidence will show that in 1992
6 respondent was representing Bill Hamilton in
7 forming a corporation that would purchase a
8 bowling alley.

9 The bowling alley was named Pacific Lanes,
10 and that bowling alley was going to be purchased
11 from the Estate of Charles C. Hoffman.

12 Now, in explaining to the respondent what he
13 needed and why, Bill Hamilton told the respondent
14 that he needed the corporation formed quickly,
15 that he was getting a good deal from the lawyer
16 for the estate, and that that lawyer for the
17 estate was about to become a judge, and he also
18 indicated that the lawyer had been milking the
19 estate for a number of years.

20 That lawyer, who was representing the estate

21 back in 1992, was Grant L. Anderson.

22 Now, after Bill Hamilton told the respondent
23 these things the respondent formed the
24 corporation and the corporation bought the
25 bowling alley. The respondent took his fee from
30 1 Mr. Hamilton.

2 In 1992 the respondent took no action to
3 investigate, no action to report any activity of
4 Mr. Hamilton or Mr. Anderson.

5 The evidence will show that in 1993 Grant
6 Anderson became a judge in Pierce County. In
7 1993 the respondent took no action to investigate
8 or to report any activity of Mr. Hamilton or
9 Mr. Anderson.

10 In 1994 the respondent took no action to
11 investigate or report.

12 The respondent did not take any action until
13 1995. At that point in time the respondent began
14 appearing before then Judge Grant Anderson.

15 At that time the respondent was representing
16 a client, Donald Barovic, in Mr. Barovic's
17 dispute with his two sisters over their parents'
18 estate.

19 Now, in 1995, after Judge Anderson made
20 rulings that the respondent did not like, only
21 then did he investigate or report activities
22 related to the sale of that bowling alley,
23 Pacific Lanes.

24 The evidence will show that in December,
25 1995 through February of 1996 the respondent made
31 1 numerous efforts to find out more about his
2 former client's bowling alley purchase.

3 The evidence will also show that during that
4 time period Mr. Hamilton repeatedly instructed
5 the respondent not to pursue the matter and he
6 instructed the respondent not to disclose
7 attorney/client information from respondent's
8 1992 representation of Mr. Hamilton.

9 This evidence will include evidence about a
10 February 1st, 1996 meeting in which Philip Sloan,
11 who was representing Mr. Hamilton, and
12 Mr. Hamilton, both met with Mr. Schafer, who was
13 very agitated at the time.

14 At that meeting Mr. Sloan told Mr. Schafer
15 that Mr. Schafer must not, and that under the
16 ethics rules he could not disclose information
17 about Mr. Hamilton's bowling alley purchase.

18 Disregarding these instructions and his
19 client's wishes and disregarding the requirements
20 of the ethics rules, the respondent made numerous
21 disclosures over the course of February, 1996
22 through April, 1996.

23 He disclosed to the Pierce County
24 prosecutors, he disclosed to federal law
25 enforcement investigators, the FBI and the IRS,
32 1 he disclosed to the Commission on Judicial
2 Conduct, which has authority to discipline
3 judges, he disclosed to the Washington State Bar
4 Association, which has authority to discipline
5 lawyers, he disclosed to the numerous attorneys
6 who were involved in the Barovic case; that is
7 the case in which Doug Schafer was appearing

8 before Grant Anderson in 1995 and 1996, and he
9 disclosed to the Tacoma News-Tribune and to the
10 Seattle Post-Intelligencer and to the Seattle
11 Times.

12 The evidence will show that in making all of
13 these disclosures the respondent revealed
14 information about what his client told him in
15 1992 about the sale of the bowling alley.

16 Now, although much of the evidence will not
17 be in dispute, some of the evidence in this case
18 will be disputed. The parties will undoubtedly
19 dispute the nature of the respondent's motives in
20 taking the actions that he did in December of
21 1995 through April of 1996.

22 As the evidence is presented the Association
23 asks the Hearing Officer to carefully consider
24 the following questions in listening to the
25 evidence.

33 1 For each disclosure that the respondent made
2 was he trying to accomplish one of the accepted
3 purposes for disclosure set forth in RPC 1.6?

4 Was he trying to prevent Mr. Hamilton from
5 committing a crime?

6 Was he trying to defend himself against any
7 criminal or civil claim concerning his
8 representation of Mr. Hamilton?

9 Was he trying to disclose to a judicial
10 tribunal improper actions taken by Mr. Hamilton
11 as a fiduciary?

12 And ask as you listen to the evidence for
13 each disclosure the respondent made; was it
14 reasonably necessary for the respondent to
15 disclose Mr. Hamilton's confidences and secrets,
16 and for each disclosure the respondent made could
17 he have taken steps, reasonably taken steps to
18 minimize the extent of the disclosure of
19 Mr. Hamilton's confidences and secrets?

20 The Association respectfully submits that
21 based on all the evidence the Hearing Officer
22 will hear that at the conclusion the Hearing
23 Officer should conclude by a clear preponderance
24 of the evidence that the respondent violated the
25 rule of confidentiality in RPC 1.6 about his

34 1 client's purchase of the bowling alley by
2 disclosing information about that purchase, and
3 he also violated the oath that he took when he
4 became a lawyer. Thank you.

5 THE HEARING OFFICER: Thank you.
6 All right. Mr. Newman, are you making opening
7 statements?

8 MR. NEWMAN: Yes. Thank you, Your
9 Honor. About 210 years ago a statesman named
10 Edmund Burke, an Irishman sitting in the English
11 Parliament, said: "Something has happened upon
12 which it is difficult to speak and impossible to
13 be silent."

14 Doug Schafer learned that he had been used
15 by a client, Bill Hamilton, who, acting in
16 concert with then attorney and later Judge Grant
17 Anderson, was ripping off an estate.

18 As Anderson and his co-conspirators gouged
19 and plundered the estate through self-dealing,

20 sweetheart deals and dubious commissions, the
21 beneficiary, a public hospital district located
22 in the small, remote town of Ilwaco, Washington,
23 and its patients suffered to the tune of 1.5
24 million dollars.

35 1 Mr. Schafer was faced with a moral dilemma.
2 He could remain silent or he could speak out.
3 Believing that his client and the judge were
4 involved in an ongoing crime and fraud, he
5 reported his findings to public law enforcement
6 authorities, including the Bar Association and
7 the Commission on Judicial Conduct.

8 Through his perseverance, he further
9 contacted the Pierce County Prosecutor, the
10 Attorney General's Office, but nothing wrong was
11 found or they refused to act.

12 Again, Mr. Schafer, through sheer tenacity,
13 proved that Judge Grant Anderson was indeed a
14 dishonest and corrupt judge, prone to taking
15 gifts, whether it be a Cadillac or whatever, from
16 close friends such as Mr. Hamilton, who used the
17 corporate entity established by Mr. Schafer.

18 The historic result as we know was that
19 Judge Anderson was removed from the bench by the
20 Supreme Court for a "pattern of dishonest
21 behavior."

22 Now, Ms. Gray makes a great deal over the
23 number of years that have passed since the
24 original meeting between Mr. Schafer and
25 Mr. Hamilton.

36 1 Well it's been well over two years since
2 Mr. Hamilton filed his Bar complaint against Mr.
3 Schafer. That was filed in July of '96.

4 Now, the Bar Association has chosen to pay
5 back Mr. Schafer by persecuting him.

6 The Bar argues that Mr. Schafer violated his
7 professional duty of confidentiality. Those
8 behind this public lynching seek to seek out,
9 send a message to idealistic lawyers who embrace
10 justice, ethics and accountability.

11 That message is quite simple. If you learn
12 about judicial corruption and hope to keep your
13 license, keep your mouth shut.

14 Ironically, as Ms. Gray stated in her
15 opening statement, Mr. Schafer's -- the result
16 was laudable. In fact, the Bar Association's own
17 Director of Lawyer Discipline and Chief
18 Disciplinary Counsel publicly stated in the press
19 that: "We recognize that Mr. Schafer's move to
20 bring this forward was beneficial to society. We
21 also believe it violated the Rules of
22 Professional Conduct."

23 But those rules are not sacrosanct. Ms.
24 Gray wants you to believe that the
25 attorney/client privilege, that there's no
exception that would apply to this case.

37 1 Those rules provide that the purpose of this
2 unique hearing is to "determine whether a
3 lawyer's conduct should have an impact upon his
4 or her license to practice law."

5 Again, the purpose of this hearing is to
6 determine whether a lawyer's conduct should have

7 an impact upon his or her license to practice
8 law.

9 You ask yourself this question: Should
10 reporting a corrupt judge who is stealing from an
11 estate have an impact upon Mr. Schafer's license
12 to practice law?

13 We intend to prove that the rules and the
14 public policy behind them are broad enough to
15 protect the Mr. Schafers of the world and any
16 other honest attorney who chooses to do the right
17 thing.

18 Now, let me introduce Mr. Schafer for
19 purposes of the record. Personally, he's a 50
20 year old Seattle native; three sons, very active
21 in his community, volunteer ski patrol, served as
22 director of the American Red Cross Tacoma-Pierce
23 County Chapter, Director of the Kiwanis Club in
24 Tacoma, President and other leadership positions
25 with the Mountaineers Tacoma branch, worked on a
38 1 citizens advisory group for local schools, helps
2 coach youth athletics.

3 Professionally, he graduated in 1978 with
4 honors from the University of Puget Sound Law
5 School, earning various awards.

6 As he's been a Washington lawyer for nearly
7 22 years, he practiced in medium to large firms
8 in Tacoma and Seattle for eleven years,
9 emphasizing non-litigation practice, specifically
10 business, corporate securities, that sort of
11 thing.

12 The past eleven years he has maintained a
13 solo practice in Tacoma representing small
14 businesses, credit unions and individuals in tax
15 and other regulatory matters.

16 He has been very active in the local law
17 community as past president of the Tacoma Estate
18 Planning Council, member and periodic speaker at
19 Tacoma Tax Round Table, former adjunct professor
20 at UPS Law School teaching trusts and estates,
21 and more importantly, Your Honor, he has no
22 disciplinary history whatsoever, period.

23 The Count, what's left of the Bar's case is
24 Count One, and I have blown this up, here. It
25 might be more -- maybe I should put that over
39 1 there.

2 THE HEARING OFFICER: Can counsel
3 see this?

4 MS. GRAY: I can now.

5 MR. NEWMAN: What's left of the
6 Bar's complaint against Mr. Schafer is Count One.
7 As you pointed out, and as Ms. Gray concedes,
8 Count Two and Three were dismissed.

9 I would like to note when the Bar
10 Association decided to act on Mr., act against
11 Mr. Schafer, after waiting nearly two and a half
12 years, was at a time when Mr. Schafer was
13 actively seeking the legislature's help in
14 removing Judge Anderson.

15 So, Counts Two and Three are out, but what's
16 left is Count One, and as you know, it states:
17 "Respondent's conduct on one or more occasions in
18 revealing confidences or secrets relating to his

19 representation of Mr. Hamilton violated RPC
20 1.6(a) and subjects him to discipline pursuant to
21 RLD 1.1(i), and said conduct violated
22 respondent's oath lawyer in violation of 1.1(c)."

23 Now, this raises a number of issues. First,
24 you ask yourself; what are the purposes of these
25 Rules of Professional Conduct?

40 1 Go to the preamble, which provides some
2 insight, here. The preamble of the Rules of
3 Professional Conduct states that: "Lawyers as
4 guardians of the law play a vital role in the
5 preservation of society. The fulfillment of this
6 role requires an understanding by lawyers of the
7 relationship with and function in our legal
8 system."

9 The point I want to make here, Your Honor,
10 is lawyers are guardians of the law. They don't
11 sell their conscience or should not sell their
12 conscience to a client.

13 When a client tells a lawyer that is working
14 in cahoots with a corrupt judge or someone who
15 will be a corrupt judge, and later learns of an
16 ongoing crime or fraud, that lawyer has an
17 obligation as guardian of the law to report that.

18 In fulfilling -- I should say the preamble
19 goes on to say: "In fulfilling professional
20 responsibilities a lawyer necessarily assumes
21 various roles that require the performance of
22 many difficult tasks."

23 What's important here, Your Honor, is that
24 the preamble says: "Not every situation which a
25 lawyer may encounter can be foreseen, but
41 1 fundamental ethical principles are always present
2 as guidelines. Within the framework of these
3 principles a lawyer must with courage and
4 foresight be able and ready to shape the body of
5 law to the ever changing relationships of
6 society. "

7 Now, as Ms. Gray and Mr. Schafer have
8 already pointed out, this is a unique proceeding.
9 This proceeding is described as sui generis, a
10 unique proceeding that's not civil or criminal.

11 MS. GRAY: Mr. Mills, I would like
12 to interpose an objection to the argument as
13 being legal argument, appropriate for closing but
14 not a summary of what the evidence is going to
15 show in this proceeding.

16 THE HEARING OFFICER: Well, that
17 will be overruled. I think counsel is trying to
18 give me a context for looking at the evidence and
19 I don't treat it as closing argument at this
20 point. You may proceed.

21 MR. NEWMAN: Thank you, Your
22 Honor.

23 The guidelines governing this hearing are
24 set forth in Rule 4.11. As we have talked about,
25 they are not civil or criminal, they are intended
42 1 to determine whether a lawyer's conduct, again,
2 should have an impact upon his license to
3 practice law.

4 And I want to emphasize that again, that the
5 whole focus of this is whether or not

6 Mr. Schafer's belief that he needed to report an
7 unethical judge, a corrupt judge -- and the fact
8 that that has, as Ms. Gray points out, a
9 beneficial effect or a laudable result, whether
10 that should have an effect on his license to
11 practice law.

12 Obviously, the Bar Association has the
13 burden of proof by a clear preponderance of the
14 evidence, and you may admit any probative
15 evidence that you deem fit.

16 Now, the terminology is interesting here,
17 and I'm bringing this up because our evidence
18 will show that, will raise the issue of what is a
19 professional relationship?

20 When a client comes to you as an attorney
21 with a scheme that results, that you later learn
22 that you have been used, that you have been used
23 to perpetuate a crime or fraud, especially in
24 this case -- I don't know how more egregious you
25 can get -- where you have a situation where

43 1 Mr. Hamilton, in cahoots with Mr. Anderson,
2 proceeds to rip off a small public hospital
3 district in rural Washington, and after the
4 hospital finally got its money they were able to
5 buy fetal monitors and basic equipment for those
6 people, I can't even envision a more graphic
7 abuse of power as well as an ongoing fraud or
8 crime.

9 The point here, Your Honor, is that when we
10 talk about a professional relationship, that
11 exists only if the client is coming to you for
12 professional advice, not if the client is coming
13 to you to perpetuate a crime, to use you as an
14 attorney as a vehicle to perpetuate a crime.

15 And what happened here is that Mr. Hamilton
16 had Mr. Schafer set up this corporate entity as a
17 quick fix because Mr. Anderson, then an attorney,
18 was milking the estate, and Mr. Hamilton was
19 going to get a great deal on this bowling alley.
20 It was only later that Mr. Schafer learned the
21 extent of this ongoing crime of fraud.

22 Now, I do want to point out that Rule 1.6,
23 which is the key rule the Bar Association is
24 proceeding under, I think it's important to
25 understand what it says and the exemptions
44 1 thereunder.

2 Rule 1.6 talks about "that a lawyer shall
3 not reveal confidences or secrets," and you ask
4 yourself: What is a confidence or secret?

5 If Mr. Hamilton, let's say, went around
6 boasting that his friend, his long-time friend
7 Mr. Anderson was milking an estate, that he was
8 going to get a great deal on this bowling alley,
9 is that a confidence or secret?

10 Furthermore, you go on and look at the fact
11 that a lawyer may reveal a confidence or secret
12 if it's necessary to prevent the client from
13 committing a crime.

14 It is our position and the evidence will
15 show that Mr. Schafer was used by Mr. Hamilton to
16 perpetuate an ongoing crime or fraud;
17 specifically, ripping off an estate whose

18 beneficiary, the hospital, lost approximately 1.5
19 million dollars.

20 Now, Ms. Gray makes a great deal about Mr.
21 Schafer could have done certain things to protect
22 his clients, et cetera. Now, remember, the
23 client, Mr. Hamilton, and the evidence will show
24 this, through Mr. Sloan, basically threatened to
25 sue Mr. Schafer. He said: "If you say anything
45 1 you're going to get sued. If you mention this at
2 all you will be sued."

3 So, Mr. Schafer determines that his
4 conscience tells him he has to report this
5 corrupt judge. He looks at the law, recognizes
6 that there are a number of protections for
7 lawyers reporting on other lawyers and reporting
8 judicial misconduct and reporting good faith
9 communications of what is reasonably believed to
10 be a crime, what's reasonably believed to be a
11 crime.

12 And that's what Mr. Schafer did. He
13 contacted the Attorney General's Office, he
14 contacted the Bar Association, he contacted the
15 CJC, all with the belief that they would do
16 something, that they would take out this corrupt
17 judge, that they would protect him for reporting
18 what we all agree was a laudable end, which was
19 taking off the bench a recognized, undisputed
20 corrupt judge.

21 Now, what's interesting is when other states
22 have addressed similar cases, similar issues like
23 this, the courts in those states have found, and
24 in fact, the Bar has argued in the case of Sloan
25 versus State Bar that the attorney in this case,
46 1 Mr. Sloan, had an independent duty to disclose
2 the fraud because the attorney here had been used
3 as an instrument in the fraudulent transaction.
4 This was a Nevada case.

5 And that's exactly what happened here. Mr.
6 Schafer learned, and he will testify that when
7 the transaction occurred in 1992 he was not
8 completely cognizant of -- he knew that there was
9 hokey, some funny things going on when the client
10 tells him the other attorney is milking the
11 estate, the other attorney is giving him a great
12 deal.

13 He does set up the corporate entity. That
14 corporate entity, by the way, was the source by
15 which Judge Anderson got the Cadillac, right, as
16 the kickback.

17 So, Mr. Schafer learns later on when he does
18 have a case before this Judge Anderson -- now, as
19 you know from the pleading and Mr. Schafer will
20 testify he does not appear in court a lot, he's
21 not a trial attorney.

22 And what happened when he had this case
23 before Judge Anderson, obviously he remembered.
24 He goes: "Well, gee, Judge Anderson, I remember
25 that guy. I remember my client several years ago
47 1 telling me that this guy was milking an estate,
2 was giving him a great deal."

3 And obviously that raised questions in
4 Mr. Schafer's mind, because representing his

5 client, he wanted to make sure that the judge was
6 honest, was a fair judge.

7 Through his research, as we know, he
8 determined that he was not, was not fair, was not
9 honest.

10 And in fact, the Supreme Court, as is
11 undisputed, the Supreme Court found that: "Judge
12 Anderson's continued participation in the sale of
13 this bowling alley business, his deliberate
14 failure to disclose payments on his public
15 disclosure filings, and his attempt to
16 misrepresent the car loan payments as a gift
17 clearly exhibit a pattern of dishonest behavior
18 unbecoming of a judge."

19 The court went on -- the news release, I
20 should say, from the CJC, from the Commission on
21 Judicial Conduct, stated that: "Judge Anderson
22 violated the Code of Judicial Conduct by engaging
23 in a pattern of dishonesty and deception over the
24 past decade," over the past decade.

48

25 I think Ms. Gray wants you to buy into the
1 argument that Mr. Schafer had to know right then
2 and there in 1992 that there was a crime being
3 committed right then and there.

4 But sometimes you don't know that. Criminal
5 lawyers know that in a racketeering situation it
6 takes a number of predicate events to constitute
7 a RICO case, and that's exactly what the CJC was
8 referring to when they talked about a pattern of
9 dishonesty and deception over the past decade.

10 And again, Mr. Barrie Althoff, Director of
11 Lawyer Discipline and Chief Disciplinary Counsel
12 for this Bar Association said: "We recognize
13 that Mr. Schafer's move to bring this forward was
14 a benefit to society. We also believe it
15 violated the Rules of Professional Conduct."

16 Your Honor, this in our opinion boils down
17 to payback. I think it is important to
18 understand that the attorney for Judge Anderson
19 was a former Chief Counsel for the Bar
20 Association.

21 I think it's important to understand that
22 each of the witnesses identified by the Bar
23 Association have had contact with that
24 individual.

49

25 I think it is payback, I think it is a
1 classic SLAPP suit, a strategic lawsuit against
2 public participation, to send a message to
3 attorneys who have the gumption, the guts, the
4 ethics, to blow the whistle on a corrupt judge,
5 who risks running afoul of the good-old-boy
6 system, and that message again is that if you
7 dare speak out you will be slapped down.

8 Now, Mr. Schafer unfortunately is an oddity
9 in our society. He is an honest lawyer. He
10 exemplifies the highest ideals of our profession
11 by acting as a prudent guardian of the law.
12 That's what the preamble wants attorneys to be;
13 the guardians of the law, not hired guns that
14 sell their conscience to the highest bidder.

15 As two legal commentators noted,
16 "Ordinarily, ordinary human beings, including

17 lawyers, and Mr. Schafer in particular, should
18 not be put in a position of risking their
19 livelihood or their careers by doing the right
20 thing."

21 Exceptions to the professional duty of
22 confidentiality should be broad enough to permit
23 the lawyer to take action necessary to prevent
24 serious and unusually irreparable harm in
25 situations when failure to do so is clearly
50 1 condemned by ordinary morality.

2 I just have a new more comments. This case
3 should have been dismissed long ago. This case
4 should never have been brought to a hearing. By
5 attempting to persecute Mr. Schafer the Bar
6 Association has put itself on trial. It hopes to
7 redeem itself, its failure to act against
8 Mr. Anderson when Mr. Schafer brought the
9 attention -- brought the information to the Bar's
10 attention long ago. It hopes to redeem itself by
11 killing the messenger.

12 Neither the legal profession nor society as
13 a whole should tolerate a regime in which lawyers
14 may be used by clients as a means of carrying out
15 a crime or fraud.

16 An attorney's duty to a client can never
17 outweigh his or her responsibility to see that
18 our system of justice functions smoothly.

19 As one judge stated: "We must return to the
20 original principle that as officers of the court,
21 attorneys are servants of the law, rather than
22 servants of the highest bidder. We must
23 rediscover the old values of our profession. The
24 integrity of our justice system depends upon it."
25 Thank you.

51 1 THE HEARING OFFICER: Thank you
2 very much. I was reluctant to interrupt your
3 opening statement, but I have noticed we have a
4 photographer here.

5 Before you arrived, sir, we had some
6 discussion about photography in the hearing room
7 and unfortunately you weren't here to hear it.

8 I am quite concerned about the potential
9 disruption of the hearing, not so much your
10 taking my picture, but the witnesses', and I
11 would request that anyone taking pictures --
12 you're not using a flash, that's fine -- but if
13 you could be back in the public area I think that
14 would be appropriate. It is a public hearing but
15 you need to be back where the public is.

16 MR. HALEY: Behind the Bar?

17 THE HEARING OFFICER: Behind the
18 bar, actually back in the rows of spectators.

19 MR. HALEY: Why back there?

20 THE HEARING OFFICER: Because of
21 the disruption, not because you don't have a
22 right to be here.

23 MR. HALEY: Sure.

24 THE HEARING OFFICER: Thank you.

25 THE REPORTER: Could we identify
52 1 this gentleman?

2 THE HEARING OFFICER: Yes, we
3 might as well identify him.

4 MR. HALEY: Peter Haley. I'm a
5 photographer for the News-Tribune.

6 THE HEARING OFFICER: Thank you.
7 Ms. Gray, did you have something further or was
8 that what you were going to call to my attention?

9 MS. GRAY: That was what I was
10 going to call to your attention.

11 THE HEARING OFFICER: Would
12 counsel like a break before we start testimony or
13 are you ready to proceed?

14 MR. NEWMAN: Your Honor, maybe a
15 short break.

16 MS. GRAY: I would like a
17 five-minute break.

18 THE HEARING OFFICER: Let's have a
19 very short break and then we'll begin the
20 testimony. Thank you. We're off the record.

21 (Brief recess taken.)

22 THE HEARING OFFICER: Let's go
23 back on the record.

24 During the break the Hearing Officer
25 observed interviewing taking place within the
53 1 hearing room and flash photography and the like.

2 It's the Hearing Officer's view that this is
3 a formal hearing procedure and any interviews
4 with the press, flash photography and that sort
5 of thing should be conducted outside the hearing
6 room.

7 I don't have any objection to those
8 occurring, I just want to preserve the dignity of
9 these proceedings, and I find this is a
10 distraction to the Hearing Officer, and I'm sure
11 it's a distraction to others. So I would request
12 at this point that anyone here from the press
13 observe those guidelines.

14 This is not unusual. I think it's
15 consistent with the guidelines that the courts
16 use, and I realize that this proceeding, as
17 counsel indicated, is sui generis, which just
18 means one of a kind. But I think that the same
19 rules should apply by analogy, so I would
20 request -- I don't have any problem giving
21 interviews or getting interviews, but I would
22 request that those occur outside the room. Thank
23 you.

24 Mr. Haley?

25 MR. HALEY: Yes. I certainly will
54 1 honor that, although it's uncommon. When court
2 is out of session interviewing within the
3 courtroom when it's out of session is common.
4 So, that's what I assumed would apply here.

5 THE HEARING OFFICER: You're
6 right. I understand that. You don't know when
7 I'm ready to come back in and this kind of thing.
8 I would just prefer it be outside the room.
9 Perhaps, Ms. Gray, do you know if there are rooms
10 available for interviewing or this sort of thing?

11 MS. GRAY: I don't know the extent
12 to which they are free, but there are two rooms
13 out by the reception area with doors on them that
14 are often available during the course of the day.
15 They are not prescheduled for use.

16 There is also a small area without a door
17 that is outside of the door to the hearing
18 officer's left that is a non-hallway and often
19 available area where an interview could take
20 place.

21 THE HEARING OFFICER: All right.
22 I would appreciate your cooperation, whoever this
23 affects, in observing those or using those areas.
24 And again, it's not my desire to restrict access
25 to information, I simply want to make sure that
55 1 decorum is preserved in the hearing room.

2 All right. I think we are ready to proceed
3 with the testimony. Ms. Gray, you may call your
4 first witness.

5 MS. GRAY: Mr. Mills, the
6 Association calls the respondent, Douglas
7 Schafer.

8 THE HEARING OFFICER: Mr. Schafer,
9 would you come up here, please. I need to
10 administer the oath.

11 Would you please raise your right hand.

12 AND THEREUPON,

13 DOUGLAS SCHAFFER,
14 called as a witness on behalf of the Bar Association
15 herein, after having been first duly sworn, was
16 examined and testified as follows:

17 THE HEARING OFFICER: Be seated.

18 DIRECT EXAMINATION

19 Q. (By Ms. Gray) Mr. Schafer, in the early 1980's
20 did you work for a law firm by the name of
21 Johnson, Lane and Gallagher?

22 A. Yes.

23 Q. And during the time that you worked for Johnson,
24 Lane and Gallagher did you work on projects for
25 Western Community Bank?

56 1 A. Yes.

2 Q. And was William Hamilton a principal in Western
3 Community Bank at the time?

4 A. He was CEO of the bank at the time.

5 Q. And was he one of the firm's main contacts in
6 doing legal work for Western Community Bank?

7 A. Yes, I would say he was.

8 Q. In the late --

9 THE HEARING OFFICER: Mr. Schafer,
10 pardon me, could you speak up just a little bit?
11 I'm having a little difficulty. Thank you.

12 MS. GRAY: Mr. Schafer, I don't
13 believe that the microphone gives amplification
14 to help the Hearing Officer here. So, if you
15 would make sure that the Hearing Officer can hear
16 your testimony?

17 THE HEARING OFFICER: That would
18 be good.

19 THE WITNESS: Okay.

20 Q. (By Ms. Gray) In the later 1980s, Mr. Schafer,
21 did you work for the law firm of Graham and Dunn?

22 A. Yes, I did.

23 Q. And in working for the law firm of Graham and
24 Dunn did you do work for Union Bank?

25 A. No, I don't think I did.

57 1 Q. Did you do work for Key Corporation?

2 A. No, I don't think I -- no, I left Graham and Dunn

3 before Key Corp. acquired Western Community, if
4 that's what you're referring to, as I recall.

5 The answer is no, to the best of my
6 recollection.

7 Q. When you worked for Graham and Dunn did you do
8 any work for any business entities in which
9 Mr. Hamilton was involved?

10 A. You know, I'm not recalling right now whether we
11 continued to do work during that period for
12 Western Community Bank, but I think we probably
13 did.

14 Q. In 1990, were you on your own as a solo
15 practitioner?

16 A. Yes.

17 Q. And in 1990, were you involved in the formation
18 of Sound Banking?

19 A. Yes. Sound Banking Company, which is a --

20 Q. And what was Mr. Hamilton's relation to Sound
21 Banking at that time?

22 A. He was one of several, what we call, organizers.

23 Q. And was he one of your principal contacts
24 regarding your work for Sound Banking?

25 A. Yes, he was. He became CEO and Chairman of the
58 1 Board of Sound Banking Company.

2 Q. While you were a solo practitioner in the early
3 1990s did you make a will for Mr. Hamilton?

4 A. I believe I drafted wills for he and his wife.

5 Q. And did you also draft trust instruments for him?

6 A. I believe I drafted one trust instrument for he
7 and his wife.

8 Q. And in 1991, did you represent Mr. Hamilton in a
9 major proxy contest against the board of a
10 publicly traded bank?

11 A. He and four or five other gentlemen formed a,
12 what is known under the securities law as a
13 group, and I represented the group, that's
14 correct.

15 Q. In the 1980s and early 1990s your relationship
16 with Mr. Hamilton was a business relationship; is
17 that correct?

18 A. Yes.

19 Q. Did you have a social non-business relationship
20 with Mr. Hamilton during this time?

21 A. No.

22 Q. Were you personal friends?

23 A. No. Well, only as a client who I had known for
24 years.

25 Q. I would like now to direct your attention to your
59 1 1992 interactions with Mr. Hamilton regarding the
2 sale of Pacific Lanes Bowling Alley. I would
3 like to direct your attention to August 12th of
4 1992. Did Mr. Hamilton telephone you on that
5 day?

6 A. Sitting here right now I could not say with, you
7 know, under oath certainty that he did, but you
8 have my notes, you have my written statements,
9 everything that I have, you know, put down in
10 writing is down in writing and signed under
11 penalty of perjury.

12 If you want to give me, you know, if you
13 want to read that back to me, you know,
14 certainly, it was true when I signed it, but

15 sitting here from memory I'm not going to try to
16 recite the sworn statement that I made February
17 16, that I provided to your office, 1996, I guess
18 it was.

19 Q. So your answer, Mr. Schafer, is that you don't
20 recall?

21 A. If you're going to be asking me repeated detail
22 you're going to get a lot of don't recall answers
23 of events that were eight years ago.

24 MS. GRAY: Mr. Mills, I would ask
25 the Hearing Officer to instruct the witness not
60 1 to argue with me but simply to answer the
2 question.

3 THE HEARING OFFICER: Well, it
4 will go faster if you would simply answer the
5 question, but I understand the witness'
6 difficulty in remembering specific dates.
7 Perhaps we can pass this and just talk about the
8 events in relation to other events as opposed to
9 specific dates.

10 THE WITNESS: Yeah, I don't want
11 to appear evasive, I'm not trying to be
12 argumentative, but it's all in black and white
13 and you have had it for years, so, you know, why
14 don't we just pull it out and look at it.

15 THE HEARING OFFICER: Ms. Gray is
16 entitled to test your recollection, so if you
17 don't recall the precise date just say that and
18 we can proceed. Thank you.

19 Q. (By Ms. Gray) Mr. Schafer, if you don't recall
20 something, if you say so, I can choose to refresh
21 your recollection with materials that we have.

22 With regard to August, 1992, do you recall
23 that you spoke to Mr. Hamilton?

24 A. Yes, I do.

25 Q. And do you recall that Mr. Hamilton approached
61 1 you about forming a corporation for him?

2 A. Yes, he did.

3 Q. And do you recall that the reason why he wanted
4 the corporation formed was to purchase Pacific
5 Lanes, a bowling alley?

6 A. Yes, I do.

7 Q. Did Mr. Hamilton inform you in August of 1992
8 that the bowling alley was being purchased from
9 an estate?

10 A. My recollection is that he said he was buying it
11 from a lawyer friend who had been milking an
12 estate for four years. The friend was becoming a
13 judge, there was no time for an appraisal, he was
14 going to give him a good deal and Bill said, I'll
15 pay him back later.

16 MS. GRAY: Mr. Mills, would you
17 mind if I asked the court reporter to just read
18 back that answer so I'm sure I heard all of it.

19 THE HEARING OFFICER: Certainly.

20 (Whereupon, the Court Reporter read
21 back the previous answer.)

22 Q. (By Ms. Gray) Did Mr. Hamilton also tell you in
23 August of 1992 that he would repay Mr. Anderson
24 down the road by making Anderson a corporate
25 secretary or something like that?

62 1 A. I believe you are reading from my sworn statement

2 of February of 1996, and I stand by that
3 statement, yes.
4 Q. Assuming that I'm not reading from the statement,
5 is your answer still yes?
6 A. It's hard for me right now to recall a statement
7 that was made eight years ago, but I believe it
8 was correct.
9 Q. And when Mr. Hamilton told you that, did you
10 respond to him that you didn't want to hear about
11 it?
12 A. I thought about it for a minute and then I did
13 make the comment that I just don't want to hear
14 about this. It doesn't sound, didn't sound quite
15 right. I don't recall my exact words, but it
16 was, you know, a clear message to him that I
17 didn't want to be involved in it, I didn't want
18 any part of it.
19 Q. And is it correct that you didn't make further
20 inquiry of Mr. Hamilton about that?
21 A. Yes, I think that's correct.
22 Q. And is it correct that you didn't advise
23 Mr. Hamilton not to buy the bowling alley from
24 Mr. Anderson's estate?

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25 A. I advised him by the tone of my comment that it
1 didn't sound proper to me, and he understood well
2 enough from my comment to know what I thought
3 about it. Obviously, I'm convinced of that.

4 MS. GRAY: I object and ask that
5 the answer be stricken with regard to what
6 Mr. Hamilton knew.

7 THE HEARING OFFICER: It will be
8 stricken as far as what Mr. Hamilton was thinking
9 about at the time, but the rest of the answer
10 stands.

11 Q. (By Ms. Gray) Did you tell Mr. Hamilton in words
12 not to proceed with the purchase of the bowling
13 alley, that it might subject him to either
14 criminal or civil liability?

15 A. No, because there would be no civil or criminal
16 liability to simply buying a bowling alley. The
17 question was, you know, was he involved in a
18 fraudulent deal and was he making a kickback to
19 do that. But I prepared the corporate papers
20 that had a paragraph in the initial meeting
21 minutes of the initial directors that said the
22 corporation is authorized to buy Pacific Lanes
23 and so --

24 MS. GRAY: Mr. Mills, I object to
25 the answer as being non-responsive. My question
1 was only about his words to Mr. Hamilton and
2 Mr. Schafer's answer is going way beyond the
3 question.

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4 MR. NEWMAN: Your Honor, if I can,
5 he is trying to answer the question, here. She
6 asked a fairly open-ended question, and he's
7 answered it. I think, Mr. Schafer, he is the one
8 who at this hearing is on trial. He should be
9 entitled to explain what interaction he had with
10 Mr. Hamilton. The fact that Ms. Gray does not
11 like that answer doesn't preclude Mr. Schafer
12 from answering the question asked.

13 THE WITNESS: I'm just trying to

14 be truthful and forthright and open as I have
15 always been.

16 THE HEARING OFFICER: All right.
17 Let me just try to put some structure on this.
18 I'm certainly not going to restrict you in
19 explaining your answers, but in the first
20 instance you need to respond directly to the
21 question asked.

22 You don't need to explain the entire
23 situation in response to one question.

24 THE WITNESS: It becomes
25 misleading if you just give little bits.

65 1 THE HEARING OFFICER: You'll have
2 an opportunity to do that. However, either by
3 further questioning, Ms. Gray is asking a
4 sequence of questions, she'll bring out
5 additional facts and also your counsel can ask
6 questions.

7 I think it will go a lot easier if we have
8 direct answers to specific questions in terms of
9 my understanding of the facts as opposed to kind
10 of going off and volunteering additional
11 information. So, I would just hope that we could
12 focus in on the question being asked and give a
13 responsive answer and, yes, I'm not going to cut
14 you off if your answer is responsive.

15 THE WITNESS: Thank you.

16 MS. GRAY: Mr. Mills, I also would
17 like to raise as a procedural matter that it
18 appears that both Mr. Schafer and Mr. Newman are
19 making objections, legal objections regarding the
20 Hearing Officer, and I think in terms of
21 procedure it makes sense that either one or the
22 other of them address the legal arguments and the
23 legal objections.

24 THE HEARING OFFICER: I'm
25 understanding Mr. Newman is making the legal
66 1 arguments. Mr. Schafer is stating things as
2 answers, but Mr. Newman is the one in control of
3 that.

4 Q. (By Ms. Gray) After Mr. Hamilton advised you of
5 the information that you have just testified
6 about, you went ahead and formed the corporation;
7 is that correct?

8 A. That's correct.

9 Q. And you --

10 A. Well, when I say formed, I prepared the papers.
11 His signature was necessary to sign, you know, to
12 sign them and then, you know, it's actually
13 formed by the secretary of state's office when
14 they approve the filing.

15 Q. And after Mr. Hamilton made these statements to
16 you in 1992 that you have already testified
17 about, you were paid by Mr. Hamilton for making
18 those corporate papers?

19 A. I believe it was \$300, yes.

20 Q. Now, in 1992, is it correct that you told no one
21 about the information that was imparted to you by
22 Mr. Hamilton?

23 A. That's correct.

24 Q. And the reason that you told no one in 1992 was
25 because you did not have sufficient evidence to

1 conclude at that time that Mr. Hamilton was
2 committing a fraud; is that correct?

3 A. I told no one because I had no reason to tell
4 anyone.

5 Q. And that's because at the time you did not
6 conclude that Mr. Hamilton was committing a
7 fraud; is that correct?

8 A. I suspected that he was engaged in improper
9 conduct, but I had not, I did not have proof of
10 that.

11 Q. And isn't it correct that in 1992 you believed
12 that Mr. Hamilton's statements to you were,
13 quote, not that conclusive of fraud so as to
14 warrant any action on your part?

15 A. As I said, I had continuing suspicion right up
16 until I went to -- began my investigation in
17 December, '95, that he probably had made Judge
18 Anderson the corporate secretary and was probably
19 paying him a monthly retainer or something of
20 that nature. That's what I continually was
21 suspecting up until I went to the secretary of
22 state's office and found that he was not named as
23 a corporate secretary in December of '95.

24 Q. I would like to repeat my last question. Is it
25 true in 1992 that you believed that

1 Mr. Hamilton's statements were not that
2 conclusive of fraud so as to warrant any action
3 on your part in 1992?

4 A. Your question is suggesting that if I appear to
5 believe that someone is engaged in a fraud that I
6 have a duty to report it, and I don't perceive I
7 have such a duty, so it's a misleading question.

8 MS. GRAY: Mr. Mills, I object to
9 Mr. Schafer arguing with me and to making an
10 objection and to not answering the question.

11 THE HEARING OFFICER: I think the
12 question is clear and there's probably a clear
13 answer one way or the other, so would you answer
14 the question?

15 THE WITNESS: Would you rephrase
16 the question, then?

17 THE HEARING OFFICER: Counsel?

18 Q. (By Ms. Gray) Mr. Schafer, in 1992, is it correct
19 that you believed that what Mr. Hamilton had told
20 you was not that conclusive of fraud so as to
21 warrant any action on your part in 1992?

22 A. His comment was not conclusive of fraud, period.

23 Q. And it wasn't enough conclusive of fraud to
24 warrant action on your part in 1992; is that
25 correct?

1 A. Your words, your phraseology "that warrant
2 action" implies that there's a need to
3 affirmatively act when somebody perceives that
4 someone is engaged in inappropriate conduct.

5 MS. GRAY: Again, Mr. Mills, I
6 object to Mr. Schafer making objections to my
7 question rather than responding to the question.

8 THE HEARING OFFICER: The witness
9 is entitled to a clear question and the
10 questioner is entitled to a clear answer and we
11 have to strive for that.

12 I understand, I think there's a problem

13 understanding the question and what it means --
14 THE WITNESS: To me it's not a
15 factual question, it's a question of duty or a
16 question of obligation, and I don't see it as an
17 appropriate question.

18 MS. GRAY: Mr. Mills, it's our --

19 THE HEARING OFFICER: I think
20 that's the answer you're going to get.

21 MS. GRAY: Mr. Mills, it's our
22 position that the question is appropriate as to
23 Mr. Schafer's state of mind. I am going to hand
24 to Mr. Newman the Exhibit A-162 for
25 identification only. I'm going to hand to
70 1 Mr. Schafer Exhibit A-162 for identification
2 only.

3 Q. (By Ms. Gray) Mr. Schafer, in an Email on January
4 8th of this year did you write that,
5 "Mr. Hamilton's August, 1992 comments were not
6 that conclusive of fraud, but just enough to make
7 me wish not to get involved in or know any more
8 about the underlying transaction."

9 A. Which line are you on? I'm trying to --

10 Q. I'm on page 1, the second paragraph, where it
11 begins --

12 A. Second paragraph under reply?

13 Q. Where it begins, "Mary, the answer is."

14 A. "Mary, the answer is that Hamilton's 8/92
15 comments were not that conclusive of fraud, but
16 just enough to make me wish not to get involved
17 in or know any more about the underlying
18 transaction. He had come to me only to form the
19 corporation anyway, not to document the purchase
20 transaction."

21 Q. Mr. Schafer, my question is, did you write that
22 in January of this year?

23 A. I believe so, yes, and that was on my web site.

24 MS. GRAY: There's no pending
25 question, Mr. Mills. I would ask that that be
71 1 stricken.

2 THE HEARING OFFICER: I'll strike
3 it.

4 THE WITNESS: Do you want the web
5 site address?

6 THE HEARING OFFICER: No, no. The
7 witness should wait for a question.

8 THE WITNESS: Okay.

9 Q. (By Ms. Gray) Mr. Schafer, is it correct that in
10 January of 1993 Grant Anderson was appointed to
11 the Superior Court of the Pierce County bench?

12 A. That's what I've read in his disciplinary file.

13 Q. In 1993 did you tell anyone about the information
14 that had been imparted to you in August of 1992
15 by William Hamilton, your client?

16 A. Not that I recall.

17 Q. In 1994 did you tell anyone about information
18 that had been imparted to you in August, 1992 by
19 your client, Mr. Hamilton?

20 A. Presuming you're referring to his comments about
21 the good deal on the bowling alley and his intent
22 to pay him back, the answer is no, assuming
23 that's what you are referring to.

24 Q. Did you tell anyone in 1994 about any information

25 that Mr. Hamilton imparted to you in 1992?
72 1 A. I probably did, because he's somebody that, you
2 know, was someone I had dealt with for years.
3 Q. Mr. Schafer, is it correct that the final sale of
4 the bowling alley occurred at the end of 1993?
5 A. I was not at all involved in the bowling alley
6 sale, so I have no personal knowledge. I have
7 read his disciplinary file and the exhibits in
8 that. You know, I assume your office claims to
9 have looked at that, too, so...
10 MS. GRAY: Mr. Mills, I ask that
11 the latter part of the answer be stricken as to
12 what our office does or doesn't claim. It is not
13 responsive to the question.
14 THE HEARING OFFICER: I'll strike
15 it.
16 Q. (By Ms. Gray) Did there come a time when you
17 obtained information about when the bowling alley
18 sale was final?
19 A. There came a time.
20 Q. Approximately when did you learn when the bowling
21 alley sale was final?
22 A. I think it was January 18th of '98 when the
23 exhibit book for Judge Anderson's hearing was
24 provided to me.
73 25 Q. And at that time you learned that the sale of the
1 bowling alley was final in late 1993; is that
2 correct?
3 A. I believe the exhibits reflected it as December
4 4th of '93, but the parties seemed to take the
5 position that it was effectively either September
6 1st or January 1st, '94, depending on what
7 they -- or '93, depending on what suited their
8 objectives. It was really kind of a gray area.
9 There were closing papers of December 4 of '92 in
10 the exhibit book.
11 Q. Did there come a time when you learned when a
12 final payment was made by Mr. William Hamilton on
13 a Cadillac owned by then Judge Grant Anderson?
14 A. I think that was stated in the statement of
15 charges the CJC released against Judge Anderson
16 on August 4th, 1997.
17 Q. So, you believe that you learned about the timing
18 of that final payment in 1997, is that your
19 testimony?
20 A. Are you referring to the \$8,000 roughly final
21 payment made by Bill Hamilton's corporation to
22 pay off the Cadillac that Grant Anderson owned,
23 is that what you're --
24 Q. Yes.
74 25 A. Yeah. It was not public, and I had no
1 information on it until the CJC released it. I
2 think they had it in their statement of charges,
3 I could be mistaken.
4 Q. And you learned in 1997 that the final Cadillac
5 payment was made in May of 1995; is that correct?
6 A. That's my recollection, yeah.
7 Q. I would now like to direct your attention to the
8 litigation regarding the estate of Barovic,
9 B-A-R-O-V-I-C.
10 Is it correct that you began representing a
11 client by the name of Donald Barovic in 1995?

12 A. That's correct.
13 Q. When in 1995 did you begin representing Donald
14 Barovic?
15 A. I believe it was July 9th of '95.
16 Q. And who was the judge who was the presiding judge
17 in that litigation in July of 1995?
18 A. I don't know if presiding is the right term, but
19 the assigned judge was Grant L. Anderson.
20 Q. And is it correct that when you reviewed Judge
21 Anderson's ruling in the Barovic matter that he
22 had made prior to July of 1995, that you were
23 unhappy with those rulings?
24 A. My client was very unhappy with those rulings. I
25 thought that they reflected a misapplication of

75

1 the law.
2 Q. And is it correct that you were unhappy with
3 Judge Anderson's ruling in the Barovic case that
4 took place between July and November of 1995?
5 A. I appeared before him July 21st of '95, and he
6 made a ruling a week later. I began looking into
7 the Hoffman Estate file. I next appeared --
8 MS. GRAY: I object as
9 non-responsive.
10 THE WITNESS: I next appeared
11 before him --
12 THE HEARING OFFICER: Excuse me.
13 THE WITNESS: -- in December of
14 '95.

15 THE HEARING OFFICER: Excuse me,
16 there's an objection pending. I need to hear the
17 question so I know whether it's being responsive.
18 Could you -- the court reporter read back the
19 question.

20 (Whereupon, the Court Reporter read
21 back the last question.)

22 THE HEARING OFFICER: All right.
23 Could you answer that question directly?

24 THE WITNESS: Could it be made
25 more specific? I don't know what ruling she is
referring to.

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1 THE HEARING OFFICER: That's fair.

2 Q. (By Ms. Gray) Mr. Schafer, did Judge Anderson
3 make any rulings between July and November, 1995
4 that you were unhappy with?

5 A. July 21st of 1995 was the first time I appeared
6 in front of him, the first ruling that seems
7 within the scope of your question. My
8 recollection is that I filed papers requesting a
9 continuance on a forthcoming partition action and
10 that he denied the request for a continuance.
11 So, I was unhappy that he denied the request for
12 a continuance.

13 Q. Were there any other rulings between July and
14 November of 1995 that Judge Anderson made that
15 you were unhappy with?

16 A. December 15th of 1995.

17 Q. My question was limited to November of 1995,
18 between July and November?

19 A. No, is the answer.

20 Q. I would like now to direct your attention to
21 December 15th, 1995 did Judge Anderson make a
22 ruling in the morning of December 15th, 1995 on
23

24 the Barovic case?
25 A. That's correct.

77 1 Q. And what did he rule?
2 A. I don't recall the detail. You have in your
3 exhibit book a copy of his order, and I think it
4 was Shawn Hicks, co-counsel. There were three of
5 us representing Don Barovic in that matter and
6 Shawn Hicks, I believe, filed a motion for either
7 reconsideration or to challenge a will that had
8 been admitted, and Judge Anderson denied that
9 petition to challenge the will. And then the
10 opposing counsel requested attorney's fees and
11 Judge Anderson awarded a thousand dollars
12 attorney's fees.
13 Q. And he awarded the attorney's fees against your
14 client, Donald Barovic; is that correct?
15 A. That's correct.

16 MS. GRAY: Your Honor, I don't
17 believe there's any objection to Exhibit A-1.
18 THE HEARING OFFICER: Is that in
19 the Exhibit book?
20 MS. GRAY: It is in the Exhibit
21 book.
22 THE HEARING OFFICER: Is there any
23 objection to that --
24 MR. NEWMAN: In an effort to help
25 the Hearing Officer, we have stipulated to all of
78 1 these exhibits.
2 THE HEARING OFFICER: Oh, thank
3 you. All right. All the exhibits in the Exhibit
4 book thus far which include Exhibits A-1 through
5 A-11 are admitted.
6 (Exhibits A-1 through A-11 were
7 received into evidence.)
8 MS. GRAY: Thank you, Your Honor.
9 MR. NEWMAN: Your Honor, I have up
10 to A-10. What is A-11?
11 THE HEARING OFFICER: A-11 --
12 THE WITNESS: There's a copy over
13 there.
14 THE HEARING OFFICER: -- is a
15 stipulation.
16 THE WITNESS: It's the Anderson
17 opinion, removal opinion.
18 THE HEARING OFFICER: Is there any
19 objection to Exhibit A-11?
20 MR. NEWMAN: No.
21 THE HEARING OFFICER: All right.
22 All those Exhibits are admitted. You may proceed
23 with the questioning on Exhibit A-1.
24 Q. (By Ms. Gray) Mr. Schafer, is Exhibit A-1 a
25 photocopy of Judge Anderson's ruling of December
79 1 15th, 1995?
2 A. It sure looks like it to me.
3 Q. How did you learn of the ruling?
4 A. I was physically present, you know, in the
5 hearing.
6 Q. Were you unhappy with his ruling?
7 A. Yes, I would say that.
8 Q. Were you angry at his ruling?
9 A. No.
10 Q. Later that day did you go to the court and check

11 out the court file regarding the Hoffman Estate,
12 the estate connected to Pacific Lanes Bowling
13 Alley?

14 A. Yes. I had looked at it on July 28th, and I
15 wanted to begin looking at it more thoroughly.

16 MS. GRAY: I object to the answer
17 other than to the extent it responds, yes, and
18 ask that the remainder be stricken as
19 non-responsive.

20 THE WITNESS: But you are trying
21 affirmatively to mislead everybody, and I just am
22 not one that does that, Christine.

23 THE HEARING OFFICER: Mr. Schafer,
24 just a moment, please. I would like to hear from
25 your counsel.

80 1 MR. NEWMAN: Well, Your Honor, you
2 know, the rules under 4.11 talk about rules of
3 evidence are going, you know, aren't going to
4 apply to this hearing. What Ms. Gray is trying
5 to make this into is a Federal case where she's
6 not allowing Mr. Schafer, whose career is on the
7 line, to explain his answer. I think the
8 question she's just asked deserved a detailed
9 answer which he was just about ready to give and
10 then she stops him mid-way. I think he's
11 entitled to answer the question.

12 MS. GRAY: Mr. Mills --

13 THE WITNESS: She's trying to
14 deceive, because she's trying to pick and choose
15 which facts are going to malign me and suppress
16 the facts that show the truth.

17 THE HEARING OFFICER: Let me just
18 state that the normal adversary process calls for
19 questions to be answered, direct questions to be
20 answered directly. And if there is further
21 explanation that is not addressed in the exchange
22 of question and answer, your counsel may ask you
23 questions to further clarify and explain the
24 context, so I'm not presuming until the close of
25 all the evidence that I have the complete
81 1 understanding of the evidence, and it's not
2 necessary for you to explain everything in
3 response to each question.

4 So, I would ask you again to try to pay
5 attention to exactly the question being asked. I
6 understand that you don't want to give misleading
7 answers, but if there is a direct question and a
8 direct answer, I would prefer you give that. And
9 your counsel I'm sure is taking notes, and he can
10 ask you questions to bring out the context.

11 THE WITNESS: My nature is simply
12 to try to fully explain things and not just, you
13 know, bits and pieces that mislead.

14 THE HEARING OFFICER: Well, I
15 appreciate that but counsel is entitled to
16 present her case as she sees fit.

17 THE WITNESS: And mislead as she
18 sees fit.

19 THE HEARING OFFICER: Well, she's
20 entitled to ask the questions, so I'm not sure
21 where we were. Is there a question pending?

22 MS. GRAY: I believe there was an

23 objection pending, but I'll just move onto the
24 next question.

82 25 Q. (By Ms. Gray) Mr. Schafer, I'm showing you
1 Exhibit A-2 in evidence.
2 A. Why don't you just put all of them up here and it
3 will save your walk every time.
4 MS. GRAY: Mr. Mills, I would like
5 to be able to conduct my examination in the way
6 that I see fit and to give Mr. Schafer those
7 documents that I think are appropriate for him to
8 see at the time.
9 THE HEARING OFFICER: You may do
10 so.
11 MS. GRAY: Thank you.

12 Q. (By Ms. Gray) Mr. Schafer, looking at Exhibit
13 A-2, is that a copy of an order that you
14 requested after Judge Anderson ruled on December
15 15th, 1995?
16 A. Yes, it is.
17 Q. And this is the order authorizing you to remove
18 the Hoffman Estate file; is that correct?
19 A. Yes, it is.
20 Q. Approximately how long between Judge Anderson
21 issued -- the time Judge Anderson issued his
22 ruling on the Barovic case on December 15th,
23 approximately how long passed between that ruling
24 and the time when you checked out the estate
25 file?

83 1 A. I don't recall what courtroom Judge Anderson was
2 in, he was probably on the second floor. I don't
3 recall the extent to which I may have been
4 speaking in the hallway with others after the
5 hearing. I don't recall if I had other things to
6 do in the courthouse, but it was, I believe,
7 before I left the courthouse that morning.
8 My kind of vague recollection was that it
9 was just before lunch that I obtained the file
10 from the clerk's office in this form, filled it
11 out and went to one of the court commissioners
12 and asked to be able to check it out.
13 MS. GRAY: Mr. Mills, I'm about to
14 engage in a fairly lengthy series of questions
15 regarding this specific time period. I don't
16 know if you want to take a break now or have me
17 begin that series.
18 THE HEARING OFFICER: How long
19 will that go, half-hour, more?
20 MS. GRAY: I would say it will
21 probably go at least a half-hour.
22 THE HEARING OFFICER: All right.
23 Let's take what I would call our mid-morning
24 break. Generally I would like to take about a 15
25 minute break. So we'll take till 15 minutes from
84 1 now on everybody's watch.
2 MS. GRAY: Thank you.
3 (Brief recess taken.)
4 THE HEARING OFFICER: All right.
5 Is everyone ready?
6 THE WITNESS: I'm ready.
7 THE HEARING OFFICER: All right,
8 let's go back on the record. Ms. Gray, you may
9 resume your questioning.

10 MS. GRAY: Thank you.
11 Q. (By Ms. Gray) Mr. Schafer, I'm now going to ask
12 you a series of questions about conversations you
13 had with other people and letters that you sent
14 to other people between December 15th, 1995 and
15 February 1st, 1996.

16 My first question relates to whether or not
17 you spoke to a person by the name of Scott
18 Kilpatrick during that time frame?

19 A. I recall the name, and I think I did. I couldn't
20 say with certainty. I did try to call lawyers
21 who appeared to have been involved in the Hoffman
22 Estate and I think -- I know I've spoken -- I
23 recognize the name as a lawyer from that Pacific
24 County area that I spoke to. Whether I spoke
25 with him in that time frame you mentioned, I
85 1 could not say with certainty.

2 Q. Do you recall whether Scott Kilpatrick was an
3 attorney?

4 A. I believe he was, yes.

5 Q. And who did he represent?

6 A. I think he represented Millie Hoffman the --

7 Q. I'm going to show you what has been marked for
8 identification only as A-102. I'm going to ask
9 you -- I'm going to direct your attention to a
10 particular page and ask you to read it to
11 yourself. The second to the last page of A-102,
12 would you read that to yourself?

13 A. (Witness complies.) Okay. I'm skimming through
14 it.

15 Q. Does that refresh your recollection as to whether
16 or not you spoke to Scott Kilpatrick?

17 A. It indicates that I spoke to Scott Kilpatrick
18 over the telephone and that he was, had been an
19 attorney for M. Hoffman, which I take to mean
20 from my own notes Millie Hoffman, who died
21 January 22 of 1993.

22 Q. Approximately when did you speak to Scott
23 Kilpatrick?

24 A. Now, that is what I cannot -- I do not recall.

25 Q. When did you tell Mr. Kilpatrick, if anything,
86 1 about the bowling alley?

2 A. I do not recall.

3 Q. In December of 1995, did you speak to Assistant
4 Attorney General Jeff Even?

5 A. I called him about December 18th of '95.

6 Q. And did you speak to him?

7 A. I don't know. I mean, within a few days I did.
8 Whether I may have called him on the 15th, and he
9 called me back the 18th, I couldn't say with
10 certainty, but it was sometime that week after
11 the 15th that I spoke with him, I believe.

12 Q. What did you tell Mr. Even about the bowling
13 alley?

14 A. I don't believe I told him anything about the
15 bowling alley.

16 Q. Did you tell him anything about the bowling alley
17 at a later point in time?

18 A. I believe I provided him the papers that I
19 obtained from the gambling commission about the
20 purchase of the bowling alley.

21 I can say with -- let's see, I don't know

22 that I even ever sent a letter to Mr. Even. I
23 sent one to his boss, David Walsh. I simply
24 cannot answer your question, because I do not
25 know.

87 1 Q. So, is it correct that you do recall providing
2 Mr. Even from the Attorney General's Office with
3 information related to the Pacific Lanes Bowling
4 Alley?
5 A. I cannot say with certainty what I provided them
6 because I don't exactly, I can't recall that
7 precisely. I know I provided a number of papers
8 to him that I had obtained from the gambling
9 commission.
10 Well, I think, I think I probably provided
11 him the gambling commission papers. I recall
12 providing him some of the real estate documents.
13 But, you know, I couldn't say precisely what
14 papers I provided to him. But it was documents
15 that I had obtained from the various public
16 sources.

17 Q. The Bar Association has made a request to you
18 that you bring certain documents with you to the
19 hearing today; is that correct?
20 A. Yes, they have.
21 Q. And did you bring those documents?
22 A. Yes, I did.
23 Q. Would looking at those documents assist you in
24 refreshing your recollection about what
25 information you gave to Assistant Attorney
88 1 General Jeff Even that relates to the bowling
2 alley?
3 A. I'll pull the Attorney General file, but there's
4 nothing that I recall in that that would --
5 Q. Mr. Schafer, what I'm going to ask you to do is
6 to review the file to yourself and to indicate
7 whether or not there is anything in the file that
8 refreshes your recollection as to that question.
9 A. Would you repeat the question again?
10 Q. What information you provided to Jeffrey Even at
11 the Attorney General's Office that relates to the
12 bowling alley, either by letter or by telephone
13 or by providing him with documents?
14 A. During what time frame?
15 Q. Between December 1995 and March 1996.
16 MR. NEWMAN: Ms. Gray, just a
17 clarification. Does that include information he
18 provided to Mr. Walsh, who was I believe
19 Mr. Even's boss? Are you asking for that as
20 well?
21 MS. GRAY: I think it's probably
22 more efficient to do so, so yes, thank you.
23 THE HEARING OFFICER: While the
24 witness is looking through the file, is it Jeff
25 Even; E-V-E-N? How is his name spelled?
89 1 THE WITNESS: Yes.
2 THE HEARING OFFICER: Thank you.
3 THE WITNESS: Well, I've only
4 found one document that seems somewhat helpful as
5 to what I provided to him. It's his letter to
6 me, February 12, indicating some of the documents
7 that he had looked at.
8 Q. (By Ms. Gray) And does his letter of February

9 12th refresh your recollection as to what you
10 gave him?

11 A. Well, I must have provided him a copy of Chuck
12 Hoffman's will, because he's referring to the
13 provisions of the will. I don't know what I
14 provided him, but it looks like from his letter
15 that I must have provided him some information
16 about the transaction with Pacific Lanes.

17 Should I read the paragraph?

18 Q. No, Mr. Schafer. I have only asked you about
19 your recollection and not Mr. Even's letter.
20 Thank you.

21 Having reviewed that file, do you recall
22 whether or not you gave Mr. Even information
23 about the bowling alley?

24 A. He was aware of the bowling alley. I assume I
25 must have made him aware of that. As to what
90 1 documents I gave him, I don't recall.

2 Q. Mr. Schafer, what was your purpose in making
3 Mr. Even aware of the bowling alley in December
4 of '95 or January or February of '96?

5 A. The Hoffman Estate left -- the deceased Charles
6 Hoffman left 90 percent of his estate to what I
7 believed to have been a public charity, and as
8 one familiar with trust and estate law and the
9 Attorney General's responsibilities, I understood
10 that the Attorney General's Office had a
11 responsibility to protect the interest, the
12 public interest, really, in charitable
13 organizations.

14 So, they were the first officials that I
15 called when it appeared to me that this public
16 hospital probably had not received the bequest
17 that it was entitled to, thinking that that
18 office would be most immediately interested in
19 vindicating the financial interests of the, what
20 I thought was a public charity.

21 Q. What action did you think when you told the
22 Attorney General's Office about the bowling
23 alley?

24 What action do you think that they would
25 have authority to take with regard to the bowling
91 1 alley?

2 A. Your focus is on the bowling alley. My focus was
3 on a large trust that I thought had been
4 plundered by a lawyer who had milked it for four
5 years and not provided to that beneficiary, the
6 charitable beneficiary, the funds that it was
7 entitled to. It turns out to be a million and a
8 half dollars.

9 My focus was not at all on the bowling
10 alley, and I don't know why you, frankly, keep
11 referring to the bowling alley. I wasn't calling
12 saying, "Jeff, you know, there's this bowling I
13 want to talk to you about."

14 I wanted to talk to him about a charitable
15 trust that a public hospital should have
16 benefited from, and it appeared probably didn't
17 anywhere near to the extent that it should have.

18 Q. Mr. Schafer, with regard to the bowling alley,
19 the information that you had in your possession
20 arose from information that was imparted to you

21 by your client in 1992; is that correct?
22 A. No, no. I think there were documents that I
23 obtained from the gambling commission office that
24 documented the bowling alley transaction.
92 25 Q. And is it correct that you obtained those
1 documents based upon information that had been
2 given to you in 1992 by your client,
3 Mr. Hamilton?
4 A. I was aware from Mr. Hamilton's comment that he
5 had bought a bowling alley through the
6 corporation I formed from a lawyer who had been
7 milking an estate for four years, the Chuck
8 Hoffman Estate.
9 Q. And is it correct that but for the information
10 that your client gave to you in 1992 you would
11 not have been aware in 1995 or in 1996 that there
12 ever was a bowling alley purchase by William
13 Hamilton from the estate of Mr. Hoffman?
14 A. I would not have been aware that Pacific Lanes
15 was sold to Pacific Recreation Enterprises, the
16 corporation I formed for Bill Hamilton, had he
17 not come to me to form that corporation.
18 Q. So, my question to you -- let me repeat it -- is:
19 When you disclosed information about the bowling
20 alley to the Attorney General's Office in late
21 1995 and early 1996 what was your purpose in
22 disclosing to them information about the bowling
23 alley?
24 A. It was a very public transaction. There was
25 nothing at all secret or confidential about the
93 1 purchase of the bowling alley.
2 MS. GRAY: I object as not
3 responsive.
4 THE WITNESS: I was simply
5 apprising them, Christine, I was apprising them
6 simply --
7 THE HEARING OFFICER: Let me
8 interject, here. I'm not sure that your answer
9 is responsive to the direct question that was
10 asked, and I would like to hear the question from
11 the court reporter, and Ms. Gray is entitled to
12 an answer to the question that she asked.
13 THE WITNESS: Okay.
14 (Whereupon, the Court Reporter
15 read back the previous question.)
16 THE HEARING OFFICER: Would you
17 answer that question, please.
18 THE WITNESS: It was part of a
19 collection of information that related to what
20 appeared to me to be a fraudulent theft from a
21 public hospital that I thought they would have,
22 you know, jurisdiction and interest to look into,
23 as they had with the Fred Hutchinson Cancer
24 Center a few years earlier up here in Seattle.
25 Q. (By Ms. Gray) And believing that they had
94 1 jurisdiction to "look into the matter," what
2 action did you think that the attorney general's
3 office could take that was relevant to the sale
4 of the bowling alley?
5 A. I thought they could represent the public
6 hospital or motivate the public hospital to
7 require a full and complete accounting of this

8 probate estate and the trust that resulted from
9 it.

10 I lacked the ability as simply an interested
11 citizen trying to help out a hospital of
12 compelling an accounting.

13 As you know, I asked the hospital to let me
14 voluntarily represent them so I could insist on a
15 full accounting. They declined, not knowing who
16 I was. The Attorney General's office would have
17 been able to coach them or represent them to
18 require a full accounting, as eventually, the
19 hospital's attorneys did.

20 MS. GRAY: I would ask Mr. Mills
21 to instruct the witness to limit his answer to
22 the question asked, but I'm not going to ask that
23 that part of that response be stricken.

24 THE HEARING OFFICER: I think the
25 witness knows my opinion of the matter in terms
95 1 of responsiveness to the questions. I believe
2 the witness is trying to be responsive and I
3 don't think the witness is trying to lead off in
4 other paths. If you could simply answer the
5 question that's asked we'll go a lot faster.
6 Thank you.

7 Q. (By Ms. Gray) Mr. Schafer, did you think when you
8 disclosed information about the bowling alley to
9 the Assistant Attorney General that the Assistant
10 Attorney General could bring a civil or criminal
11 lawsuit related to the sale of the bowling alley?

12 A. No. I thought that they could require a full
13 accounting of the estate that should have gone to
14 the hospital and all of its assets, the Surfside
15 Inn, anything else, there was various assets in
16 the estate.

17 Q. And when you made the disclosure to the Assistant
18 Attorney General, did you believe that if that
19 accounting revealed any shortcomings that the
20 Assistant Attorney General's Office had any
21 authority to do anything about that?

22 A. I certainly did think that the Attorney General's
23 Office -- and they do have authority and they've
24 confirmed that they have authority, they have
25 discretion -- they could have participated. Jeff
96 1 Even's memo to David Walsh says that.

2 Q. Could have participated in what?

3 A. Representing the public hospital to ensure that
4 they got the full bequest that they rightfully
5 should have received.

6 Q. So, does that mean by instituting a lawsuit on
7 behalf of the public hospital?

8 A. Well, I don't call it a lawsuit, it's an
9 accounting in a probate related matter. The
10 probate states it's open until the estate's
11 closed and the resulting trust is closed. And
12 the beneficiary can file a petition requesting a
13 full accounting at any point, just as the
14 hospital's lawyers eventually did and recovered a
15 half-million dollars.

16 Q. Mr. Schafer, again, directing your attention to
17 the time period between December 15th, 1995 and
18 February 1st, 1996, did there come a time when
19 you contacted a person by the name of Ron Bender?

20 A. He was the administrator of the hospital, and I
21 think I called the hospital, you know, within the
22 first day or two, and I spoke with him a few
23 times, maybe three, I'm not sure exactly.

24 Q. Do you still have Exhibit A-102 in front of you?
25 A. I do.

97 1 Q. Could you put the other papers in the file,
2 please.
3 A. (Witness complies.)
4 Q. Looking at page 3 of Exhibit A-102, does that
5 refresh your recollection that you first
6 contacted Ron Bender of the hospital in
7 approximately December 18th, 1995?
8 A. Yes, it does.
9 Q. What, if anything, did you tell Mr. Bender about
10 the sale of the bowling alley?
11 A. I don't believe I told him anything about the
12 sale of the bowling alley, but on the other hand,
13 it was four-and-a-half years ago. But I don't
14 think so. I told him, I believe, that I had
15 strong, you know, reasons to believe that the
16 hospital had not received the full bequest to
17 which it was entitled, and I thought that they
18 would be wise to look into it.
19 My notes simply say, T-Ron Bender, which
20 means phone call. Item 1, he indicated the
21 hospital gets statements from S. Fisher, Steve
22 Fisher; and item 2, hospital got a distribution
23 from the trust.
24 So, you know, his response to me was, you
25 know, we got something.

98 1 Q. Mr. Schafer, did you speak to Mr. Bender of the
2 hospital about your representing the hospital?
3 A. I don't believe it was -- well, I can say I
4 strongly don't believe it was in that
5 conversation, but I believe it was in a later
6 conversation in January, perhaps, that I
7 indicated a willingness as a pro bono, which
8 means volunteer matter, to help the hospital try
9 to recover what I thought that they had not
10 obtained from Judge Anderson.
11 Q. And in either December of 1995 or January of 1996
12 did you inform any person connected with the
13 hospital that you had questions about the sale of
14 the bowling alley?
15 A. I don't believe that I did.
16 Q. So, you don't believe that when you asked or
17 offered to represent the hospital pro bono you
18 did not go into detail about why you thought that
19 there might be something for the hospital to
20 pursue?
21 A. My paramount concern was the comment by Bill
22 Hamilton, "Grant has been milking this estate for
23 four years." Then when I began gathering
24 documents the real estate documents immediately
25 confirmed that, that there was a great deal of
99 1 exploitation that occurred by Grant Anderson and
2 the other lawyers in his firm.
3 It was not about anything that Bill Hamilton
4 had done, my focus was on the judge and the
5 lawyers in his firm having plundered this estate
6 that should have gone to the hospital.

7 Q. Mr. Schafer, did you tell Mr. Bender or anyone
8 else at the hospital in December or January of
9 1996 that someone had told you that Grant
10 Anderson had been milking the estate for years?

11 A. No, I don't think I did.

12 Q. On December 18th, 1995 Mr. Hamilton told you
13 directly to stop looking for dirt on
14 Mr. Anderson; isn't that correct?

15 A. At the end of our three-hour meeting, yes.

16 Q. And he told you that on December 18th after you
17 had told him a number of things, including that
18 you had questions about the sale of the bowling
19 alley, correct?

20 A. No, I don't think I told him I had questions
21 about the sale of the bowling alley.

22 Q. I would now like to direct your attention to the
23 one or two days following December 18th, 1995.
24 Did you speak to William Rhodes?

25 A. Bill Rhodes, I did.

100 1 Q. And was that within the one or two days following
2 December 18th, 1995?

3 A. December 18th was a Monday. I met with Bill in
4 the morning. I believe it was that afternoon I
5 received and looked through the public disclosure
6 commission filings and --

7 MS. GRAY: I object as
8 non-responsive.

9 THE WITNESS: I'm getting there.
10 I'm giving you the chronology of those few days
11 so you understand what happened.

12 THE HEARING OFFICER: Complete
13 your answer. He's trying to tell you how he got
14 to that point.

15 THE WITNESS: You know, I had
16 looked at the PDC Reports. I saw that, you know,
17 there was initially no reporting of a Sound Bank
18 financial investment by Judge Anderson in the
19 first ones. And then, you know, in a subsequent
20 year he reported a large investment, stock
21 investment in Sound Banking Company.

22 I then had reason to question, having been
23 told by Bill Hamilton that he made a five figure
24 contribution to Grant Anderson. It didn't seem
25 right to me.

101 1 I called Bill Rhodes, who was the No. 2
2 executive for roughly 20 years with Western
3 Community. Then that crew of executives became
4 the executives at Sound Banking Company, and I
5 called Bill Rhodes, who I felt I could strongly
6 trust and basically said, I'm looking into this.
7 I have some reasons to, you know, question these
8 transactions and Bill's relationship with Grant
9 Anderson, and I see that Grant Anderson started
10 reporting this stock in Sound Banking Company
11 sometime after, I think it was '94.

12 And I simply asked Bill Rhodes if he could
13 confirm for me or indicate for me whether Grant
14 Anderson had obtained his stock in Sound Banking
15 Company, about a \$50,000 investment from Bill
16 Hamilton, because I was suspecting that maybe
17 Bill Hamilton had given that stock to Judge
18 Anderson as the payback for the bowling alley

19 deal.

20 So I asked Bill Rhodes, can you check into

21 how Grant Anderson got his Sound Banking Company

22 stock?

23 MS. GRAY: Mr. Mills, could I have

24 the Hearing Officer read back my question?

25 THE HEARING OFFICER: You mean the

102 1 Court Reporter?

2 MS. GRAY: I'm sorry, the Court

3 Reporter.

4 THE HEARING OFFICER: My notes

5 aren't quite that good. Yes, you may.

6 (Whereupon, the Court Reporter

7 read back the previous question.)

8 Q. (By Ms. Gray) Mr. Schafer, could you answer that

9 question? Did you speak to Mr. Rhodes within the

10 one or two days after December 18th, 1995?

11 A. It might have been three, I don't know.

12 Q. Thank you. What did you tell Mr. Rhodes about

13 the bowling alley?

14 A. I think I just answered that before you asked it.

15 My recollection is that I indicated to him

16 that -- I'm trying to recall.

17 Q. Did you --

18 A. I know I indicated that I had general concerns

19 about the relationship between Bill Hamilton and

20 Judge Anderson.

21 Q. Did you explain to Mr. Rhodes that you had just

22 met with Mr. Hamilton and that you had concerns

23 over Mr. Hamilton's purchase of Pacific Lanes

24 from Grant Anderson?

25 A. That sounds likely.

103 1 Q. Showing you a copy of Exhibit A-7 in evidence, I

2 ask you to look at page 3, the center of the

3 first full paragraph. Does that refresh your

4 recollection that you explained to Mr. Rhodes

5 that you had just met with Mr. Hamilton about

6 concerns over Mr. Hamilton's purchase of Pacific

7 Lanes from Grant Anderson?

8 A. I'm still trying to find just where you were.

9 Q. I'm right in the center of the first full

10 paragraph.

11 A. I explained -- yes, this is my declaration under

12 penalty of perjury that I provided to you and

13 everyone else in February of '96.

14 And I said under oath, under penalty of

15 perjury, "I explained that I had just met" -- my

16 conversation with Rhodes -- "I explained that I

17 had just met with Hamilton about concerns over

18 his purchase of Pacific Lanes from Anderson, that

19 I subsequently learned from PDC Reports that

20 Anderson became a Sound Bank shareholder after

21 that deal, and I asked Rhodes to check and let me

22 know when and from whom Anderson acquired his

23 Sound Bank stock.

24 "Rhodes reported back to me that Anderson

25 had been one of the 35 or so founding

104 1 shareholders and that because of the buy-sell

2 provision (I had drafted but forgotten about),

3 there had been no new shareholders since the

4 bank's opening in 1990."

5 Q. Mr. Schafer, in telling Mr. Rhodes that you had

6 concerns about the purchase of Pacific Lanes by
7 your former client, Mr. Hamilton, what was your
8 purpose in telling Mr. Rhodes that?
9 A. My purpose was to inform him why I was asking him
10 to check and let me know whether or not Grant,
11 Judge Grant Anderson had acquired his Sound
12 Banking Company stock from Bill Hamilton, because
13 it might have been a kickback.
14 Q. So, is it correct to say that your purpose in
15 telling him that was to conduct an investigation?
16 A. Yes, I think that's a correct statement.
17 Q. Within a day or two of your conversation with
18 Mr. Rhodes, your former client, Mr. Hamilton
19 telephoned you; is that correct?
20 A. That's correct.
21 Q. And Mr. Hamilton told you that he had heard that
22 you had spoken to Mr. Rhodes; is that correct?
23 A. That's correct.
24 Q. And Mr. Hamilton in that telephone conversation
25 instructed you to drop it, that is, to drop your
105 1 investigation of Grant Anderson's activities; is
2 that correct?
3 A. Yes, and he said Claudia and the girls were
4 wondering what's going on. Claudia was the title
5 clerk that handled the Cadillac transaction.
6 Q. I would like to direct your attention to on or
7 about January 5th, 1996. Did you communicate
8 with the State Board of Education?
9 A. I recall making a phone call to that office and
10 getting some things faxed to me about Grant
11 Anderson from that office, his, you know,
12 citation of commendation, his -- the Savior of
13 Education for the state or something.
14 Q. And what, if anything, do you recall -- what
15 information do you recall giving the State Board
16 of Education about the bowling alley purchase or
17 about information that Mr. Hamilton had given you
18 in 1992?
19 A. I don't believe -- I believe I just talked with a
20 secretary, and I do not believe that I gave any
21 information of a substantive nature. I believe I
22 was just requesting public documents about a
23 former board member.
24 Q. Did you contact on or about January 31st, 1996 a
25 CPA by the name of Gary Frind?
106 1 A. I think it's pronounced friend, but I don't know.
2 Q. How do you spell that?
3 A. F-R-I-N-D.
4 Q. And did you contact him?
5 A. Yes.
6 Q. In January of 1996?
7 A. Yes.
8 Q. What did you tell Mr. Frind about information
9 related to the bowling alley?
10 A. Actually, I believe I contacted him twice, once
11 on the phone, simply indicating that I was trying
12 to locate an appraiser named Jim Latteri, who the
13 court file had indicated had appraised all the
14 assets.
15 And he simply, in that conversation, said I
16 could probably get that information if I called
17 Bill Hamilton, and I said thank you.

18 And then I believe it was December 31st or
19 February 1st -- and I don't recall exactly, maybe
20 you'll have my earlier declaration that has the
21 exact date -- but once I determined that I was
22 going to act on the information that I had that
23 to me compellingly showed the corrupt judge, I
24 decided to visit Gary Frind unannounced, as I
25 did, and I simply explained to him that I urged
107 1 him to protect and preserve his files, he's a
 2 CPA, indicated that I had concerns about Grant
 3 Anderson's handling of the Hoffman Estate, told
 4 him that I had had a meeting with Bill Hamilton
 5 and Hamilton had told me he had made a five
 6 figure contribution to one of Grant Anderson's
 7 election campaigns, that I had been unable to
 8 find any evidence of -- on Grant Anderson's
 9 public disclosure commission reports.
 10 That I recall clearly saying to Accountant
 11 Gary Frind. I don't recall anything, you know,
 12 clearly enough beyond that.
 13 I recall simply apprising him that the
 14 authorities were almost certainly going to look
 15 into this matter and that he should preserve and
 16 protect his files.
 17 Q. On January 31st, 1996, did you indicate to Gary
 18 Frind that you had questions about Pacific Lanes?
 19 A. I don't recall that I did.
 20 Q. I would ask you to refer to your declaration
 21 which is in evidence as A-7, at the bottom of
 22 page 3 to the top of page 4.
 23 Did Mr. Frind suggest to you that you speak
 24 to William Hamilton who could answer any
 25 questions that you might have about Pacific
108 1 Lanes?
 2 A. That's what I just testified to.
 3 Q. And does that indicate to you that you indicated
 4 to Mr. Frind in January of 1996 --
 5 A. Well --
 6 Q. -- that you had questions about Pacific Lanes?
 7 A. -- no. The preceding sentence says, "I called
 8 Gary Frind ... saying I was trying to locate
 9 appraiser Jim Latteri (who appraised Surfside and
 10 Pacific Lanes for estate tax purposes, and whom I
 11 have not yet located)," and indicated to him that
 12 I had seen Latteri's name in the Hoffman Estate
 13 files.
 14 He suggested that I call Hamilton, "who
 15 could answer any questions I might have about
 16 Pacific Lanes."
 17 Q. Mr. Schafer, my question was not what does your
 18 declaration state, my question is: As you sit
 19 here now, by looking at this declaration can you
 20 determine that you must have indicated to
 21 Mr. Frind on January 31st, 1996, that you had
 22 questions about Pacific Lanes?
 23 A. No, not at all. I was trying to locate appraiser
 24 Jim Latteri and I told him that a court file
 25 indicated that appraiser, Jim Latteri, had
109 1 appraised a bowling alley and Surfside Inn, and
 2 therefore, I was trying to locate Jim Latteri. I
 3 did not indicate why. Maybe for all he knew I
 4 had a bowling alley I wanted appraised.

5 Q. When you later met with Mr. Frind, did you
6 discuss information related to the bowling alley?
7 A. Not that I recall.
8 Q. Did you speak to David Tuell on or about January
9 31st, 1996?
10 A. He was the partner for 25 years of Grant
11 Anderson. And when Bill Hamilton faxed me a
12 letter that expressed some anger, and I said to
13 Bill let's meet, and we agreed there should be
14 another lawyer present, I then called David Tuell
15 to see if he would host this meeting.
16 I believe I indicated to him -- I think I
17 asked him who was Monica Schmidt, because that
18 was one of the, you know, people who got the time
19 share on the sweetheart deal who I'd been able to
20 identify. He identified her to me as a
21 department of education or board of education
22 employee.
23 I may have mentioned to him that Bill
24 Hamilton had claimed to have made a five figure
25 contribution to Judge Anderson that was nowhere
110 1 evident from his public disclosure commission
2 filings.
3 Q. So Mr. Schafer, your answer is yes, you contacted
4 David Tuell on or about January 31st, 1996?
5 A. I believe so.
6 Q. And did I understand your testimony correctly
7 that your purpose in contacting David Tuell was
8 to ask him to host a meeting with you and
9 Mr. Hamilton?
10 A. Yes.
11 Q. Did you ask him to represent you?
12 A. No.
13 Q. Did you ask him to represent Mr. Hamilton?
14 A. I don't recall anything of that specific nature.
15 Q. When you called David Tuell, did you tell him
16 anything about information related to the bowling
17 alley?
18 A. I just related what, to the best of my
19 recollection, I had told to David Tuell in that
20 phone conversation. It was not a lengthy phone
21 conversation. He was not interested in being
22 involved.
23 Q. And to the best of your recollection, did you
24 impart information to David Tuell about the
25 bowling alley?
111 1 A. To the best of my recollection, no.
2 Q. I would like to direct your attention to February
3 1st, 1996. Did you speak with a lawyer by the
4 name of Cam Hall?
5 A. Are you directing my attention to something here?
6 Q. No, I'm --
7 A. Oh, okay.
8 Q. -- directing your attention to a day, February
9 1st, 1996, did you speak to a lawyer by the name
10 of Cam Hall?
11 A. Yes.
12 Q. And is it correct that at the time you spoke to
13 lawyer Cam Hall you understood that Mr. Hall was
14 representing Diane Anderson in divorce
15 proceedings between Diane Anderson and Grant
16 Anderson?

17 A. I believe I was, I believe I was aware of that by
18 then. I couldn't say with certainty. That might
19 have been the first -- I can't recall whether I
20 reviewed their divorce file before that date or
21 after that date. I left a note on the door of
22 Diane Anderson the night before and I believe Cam
23 Hall called me as a result of my having left a
24 note on her door asking about the handling of the
25 Hoffman Estate by her husband, estranged husband.

112 1 Q. And when you spoke to Cam Hall on February 1st,
2 1996, what information did you impart to him that
3 related to the bowling alley?
4 A. I told him I was looking into Grant Anderson's
5 handling of the Hoffman Estate. And he
6 immediately responded, "I was wondering when that
7 shoe was going to drop." And then he said,
8 "Somebody should look into how he got his
9 Cadillac, but don't tell anyone that I gave you
10 that --"
11 Q. What other --
12 A. -- "that you heard that from me."
13 Q. What other information did you impart to Cam Hall
14 in that conversation about the bowling alley?
15 A. None, that I recall.
16 Q. What was your purpose in telling lawyer Cam Hall
17 that you had questions about the Hoffman Estate
18 assets?
19 A. I had left a note on his client's door the night
20 before saying I wanted to talk to her about her
21 estranged husband's handling of the Hoffman
22 Estate because I thought a public hospital had
23 been cheated of over a million dollars, and I
24 still do.
25 Q. And is it correct then that your purpose was to
113 1 investigate?
2 A. Sure, sure. I mean, I guess I see some civic
3 duty on the part of people who are capable of
4 helping out the institutions that we rely on, you
5 may not.
6 MS. GRAY: Mr. Mills, I ask that
7 the last response be stricken.
8 THE HEARING OFFICER: I've heard
9 it, but I'll strike it anyway.
10 Q. (By Ms. Gray) Between December 15th, 1995 and
11 February 1st of 1996, other than the persons we
12 have talked about previously during your
13 testimony, to whom did you make disclosures about
14 either what Mr. Hamilton told you in 1992 or that
15 you were checking into the sale of Hoffman Estate
16 assets?
17 A. You have all of the memoranda that I prepared
18 fairly contemporaneously with that, trying to
19 make as clear a picture as I could to responsible
20 officials who I thought would responsibly
21 investigate, you being one of them. You chose
22 not to. You have it all, you know, prepared
23 contemporaneously, you know, just read it. It's
24 been four-and-a-half years.
25 MS. GRAY: Mr. Mills, I object to
114 1 the answer. I ask that it be stricken. I ask
2 that the Hearing Officer inform Mr. Schafer that
3 he needs to respond to the answer so that we have

4 evidence in this hearing regarding what
5 disclosures were made.

6 THE HEARING OFFICER: I think the
7 question was proper and it called for your
8 current recollection of anyone else other than
9 the people you have mentioned today.

10 THE WITNESS: Okay.

11 THE HEARING OFFICER: I think
12 that's a fair question.

13 THE WITNESS: I'll try to recall.
14 I called Bill Hamilton right away. I called the
15 Public Disclosure Commission, I think it was Kurt
16 Young who I requested of the PDC forms, he mailed
17 me the microfiche.

18 Q. (By Ms. Gray) Excuse me. Could I interrupt?
19 Kurt Young, you said PDC.

20 A. Public Disclosure Commission.

21 Q. And what did you tell Mr. Young about what
22 Mr. Hamilton had told you in 19 --

23 A. I'm relating my thought process from December
24 15th. I called Kurt Young at the PDC to request
25 the Public Disclosure Commission reports from
115 1 Grant Anderson. I did not relate to him anything
2 about Pacific Lanes or the Hoffman Estate, I was
3 simply making a public document request. I do
4 that a lot.

5 Q. Okay. My question goes to, to whom between
6 December 15th, 1995 and February 1st, 1996 did
7 you impart any information that you were checking
8 into Pacific Lanes or the Hoffman Estate or that
9 you had information from your client in 1992
10 about Grant Anderson milking the estate?

11 A. Well, you know, that's a broad question. I'll
12 answer it in terms of people who I contacted to
13 obtain information. We have mentioned Rhodes,
14 Hamilton, I did go to the gambling commission and
15 requested the public file on the Pacific Lanes.

16 Q. And so did you --

17 A. And I obtained that information. I recall the
18 name of a lawyer named, I think it was Gary Glenn
19 or Glen something. There was one notice of
20 appearance in the Hoffman Estate file, I called
21 him. He indicated that he had simply made an
22 initial appearance and then essentially withdrew.
23 I think he was on behalf of Millie. I think he
24 is the one who gave me the name of Scott
25 Kilpatrick.

116 1 I went to the Secretary of State's office,
2 got all of the corporate filings from
3 Hoffman-Stevenson, Inc., Surfside Inn, Pacific
4 Lanes, Pacific Recreation Enterprises. I can't
5 recall the name of the clerical person who I
6 spoke with there. They seemed most helpful in
7 providing me lots of materials.

8 Oh, let's see. You know, I called around
9 various people trying to locate this Jim Latteri.
10 I spoke with IRS agents, but that was basically
11 just trying to locate Jim Latteri, the appraiser.
12 I mean, there may be some that I'm overlooking,
13 but I'm not right now recalling.

14 Oh, sure, the title company, Pacific County
15 Title Company. I spoke several times with the

16 assistant manager there, Lisa something, to get
17 publicly recorded documents relating to the real
18 estate transactions involving the Surfside Inn.
19 I believe I asked her to provide me essentially
20 all the documents reflecting deeds that had been,
21 you know, executed by Hoffman-Stevenson, Inc.,
22 the corporation, that the estate owned during a
23 period of time, I don't recall, but she provided
24 a lot of documents.

117 25 Q. Let's go back and touch on several of the items
1 you mentioned.
2 In your contacts with the gambling
3 commission between December 15th, 1995 and
4 February 1st, 1996, what did you tell anyone from
5 the gambling commission about your purpose in
6 contacting them or about the bowling alley or
7 about information Mr. Hamilton had given to you?
8 A. I don't recall. I believe that I simply
9 requested public documents, which is something I
10 do a lot. I even do it with this office.
11 Q. Directing your attention to Gary Glenn, what
12 information, if any, did you impart to him about
13 the Hoffman Estate, the bowling alley, and your
14 investigation?
15 A. I believe I simply inquired of him what his role
16 was in the estate and whether he, you know, was
17 monitoring the actions of Grant Anderson, the
18 executor, and he responded in the negative, that
19 he had a very brief appearance and that was it.
20 Q. And is it your recollection that you made that
21 inquiry without telling him why you were making
22 the inquiry?
23 A. That's my recollection. I mean, probably I may
24 have said that, you know, I have some suspicions
25 about how this estate was handled or something to
118 1 that effect, but no.
2 Q. You indicated that you had contacted the
3 Secretary of State?
4 A. Well, I physically went there.
5 Q. When you went there and contacted them, did you
6 disclose any information about the bowling alley
7 sale, either learned from Mr. Hamilton or
8 subsequently?
9 A. Not that I recall, no.
10 Q. What about when you contacted the title company
11 and interacted with a person by the name of Lisa,
12 did you impart any information about the bowling
13 alley sale?
14 A. I believe I did not.
15 Q. Did you indicate your suspicions about the
16 bowling alley sale?
17 A. I don't believe so, because all my contact with
18 her related to Pacific County Real Estate, that
19 was the Surfside Inn.
20 Q. I believe you mentioned earlier that you had
21 received a letter from your client in early
22 December of 1996; is that correct?
23 A. I don't know what you are referring to. I need
24 more -- client, which client? Early '96?
25 Q. I'm going to hand you Exhibit A-3.
119 1 A. Oh, February. I was thinking December.
2 Q. On February 1st, 1996, did you receive by

3 facsimile a letter from your former client,
4 William Hamilton?

5 A. Yes, I did. I admitted this in the answer, by
6 the way.

7 Q. And did Mr. Hamilton instruct you, state in his
8 letter to you, "I wish to stress that you have no
9 authority to disclose any privileged information
10 relating to your prior representation of me or
11 Sound Banking."

12 A. That's correct, that's what it says.

13 Q. And you received that on the morning of February
14 1st, 1996?

15 A. I believe so. It says -- the fax, you know,
16 header says 10/22. It would have been a.m.

17 Q. And later that day did you meet with Mr. Hamilton
18 and Mr. Sloan at Mr. Sloan's office?

19 A. Yes, I did. That's Philip R. Sloan, a lawyer in
20 Tacoma.

21 Q. And at that meeting Mr. Philip Sloan, he was
22 representing Mr. Hamilton; is that correct?

23 A. I believe he was. That's my understanding. I
24 don't know their relationship, but I assume so.

120 25 Q. And during the course of that meeting, Mr. Sloan
1 instructed you not to disclose anything about the
2 Hoffman Estate; is that correct?

3 A. He threatened to sue me if I disclosed anything
4 at all about the Hoffman Estate.

5 Q. And at that meeting Mr. Sloan told you that in
6 his view disclosure was barred by the ethical
7 rules; is that correct?

8 A. He expressed a view -- something that I would
9 describe as the fruit of the poison tree -- that
10 because I began looking into Judge Anderson's
11 mismanagement of the -- or not mismanagement,
12 plundering of the Hoffman Estate as a result of a
13 comment, as a result of my initial contact with
14 Bill Hamilton, that nothing that I discovered
15 from any public sources could be disclosed to
16 anybody; which I thought was a mistaken view of
17 attorney/client privilege.

18 Q. And after the meeting of February 1st, 1996,
19 Mr. Sloan sent you a facsimile; is that correct?

20 A. The one where he threatened my family; yes.

21 Q. I would like to show you Exhibit A-4. Is that a
22 facsimile from Phil Sloan to you?

23 A. Yes, it is.

24 Q. And did you receive it on February 2nd, 1996?

25 A. I assume. I believe that I did. The fax header
121 1 has that date, has 15:36, 3:36 in the afternoon,
2 presumably.

3 Q. And in that facsimile Mr. Sloan communicated to
4 you the following: "Doug, per yesterday's
5 meeting, Bill H. instructed you not to disclose
6 any communication re: Grant Anderson to anyone.
7 If you do you will be in violation of RPC 1.6
8 triggering action under RPC 8.3. Please protect
9 your family, if not yourself, and stop your
10 threats, et cetera. If I can help, please call,
11 Phil." Is that correct?

12 A. I believe that's what he said.

13 Q. And in that previous day Mr. Sloan had indicated
14 to you that he thought you should get some help,

15 some counseling; is that correct?
16 A. Phil Sloan is a bombastic, insulting gentleman
17 who diagnoses anybody --
18 MS. GRAY: Mr. Mills, I object to
19 the last the response.
20 THE WITNESS: I object to your
21 trying to malign me with the diagnosis of a jerk.
22 THE HEARING OFFICER: I'm trying
23 to avoid interrupting anyone here for the record,
24 but I think the question was clear and the answer
25 is starting off another direction. So if you
122 1 would answer the question, and then your counsel
2 can ask you whatever he would like to about
3 Mr. Sloan.
4 THE WITNESS: What is the
5 question?
6 MS. GRAY: Would the Court
7 Reporter please read back my question.
8 (Whereupon, the Court Reporter read
9 back the previous question.)
10 THE WITNESS: That's the nature of
11 Mr. Sloan's behavior. He will readily suggest
12 that anyone who doesn't agree with him will need
13 counseling or is somehow, you know, off base. So
14 the answer to your question is that is
15 Mr. Sloan's behavior, he does that quite
16 willingly, accuse people of that type of --
17 whatever.
18 MS. GRAY: I object to the answer
19 and ask that it be stricken as not responsive.
20 THE HEARING OFFICER: I'm going to
21 permit that answer to stand.
22 Q. (By Ms. Gray) Mr. Schafer, I want to be clear.
23 Did Mr. Sloan tell you in sum and in substance
24 the previous day that he thought you should get
25 some counseling?
123 1 MR. NEWMAN: Your Honor, that's
2 been asked and answered. He just accepted the
3 answer.
4 THE HEARING OFFICER: I have
5 accepted the answer. I think the answer is yes.
6 Is that correct, Mr. Schafer?
7 THE WITNESS: You know, I don't
8 quite honestly recall. I recall reading more
9 recent accounts where he claims to have said that
10 to me. Also recent accounts, testimony by Bill
11 Hamilton that make -- that portray me as a raving
12 lunatic, but that is not at all my recollection
13 of the actual meeting.
14 I know how these people operate. They try
15 to malign, you know, and destroy the opposition,
16 and I don't think it's an accurate
17 characterization. And I do not have a
18 recollection of him telling me that I needed to
19 get counseling.
20 THE HEARING OFFICER: Thank you.
21 I think that's what Ms. Gray was getting at.
22 Q. (By Ms. Gray) Mr. Schafer, when you received the
23 fax of February 2nd, 1996, is it your testimony
24 that at that time, on February 2nd, 1996, that
25 you perceived that Mr. Sloan was making a
124 1 physical threat against your family and yourself?

2 A. I perceived that it could have some subtle
3 meaning. It concerned me a bit. I didn't really
4 think of him or Bill Hamilton as violent people,
5 but I couldn't help but recognize, you know, he's
6 referring to my family, why is he doing that? Is
7 he trying to give me some subtle hint here? It
8 did make me a little bit uncomfortable, frankly,
9 and I thought it was unnecessary.

10 Q. Did you report it to the police?
11 A. I did not.

12 Q. Did you report it to any other authority?
13 A. No, I did not. I tried to suppress my concerns
14 and I don't think he's violent, I don't think
15 Bill is violent, I think they are just, you know,
16 financial guys who will take what they can get.

17 Q. And you had known Mr. Sloan for years, correct?
18 A. I believe -- well, we were in the same firm
19 together from about 1978 until about 1985.

20 Q. And you were partners together; is that correct?
21 A. For the last two of those years, I believe, maybe
22 one.

23 Q. And during those years you had never known
24 Mr. Sloan to be physically violent?
25 A. No, no.

125 1 Q. Now, on that same day, February 2nd, 1996, is it
2 correct that you made a motion of prejudice
3 addressed to Judge Grant Anderson, who was then
4 sitting in the Barovic case?
5 A. Yes. It was the morning of that February 2nd
6 date.

7 Q. And is it correct that you worked on that motion
8 of prejudice, worked on the papers after your
9 meeting with Mr. Sloan and Mr. Hamilton the prior
10 day?
11 A. I believe that's correct.

12 Q. And was it your purpose in making the motion in
13 the Barovic case to benefit your client, Donald
14 Barovic?
15 A. To the extent your case is not being handled by a
16 corrupt judge who seems to have ties to all the
17 opposing counsel, I think most people would view
18 that as a benefit.

19 Q. So, is it correct that you were seeking to
20 provide a benefit to your client, Donald Barovic,
21 in making that motion?
22 A. An honest system of justice with integrity is a
23 benefit to everyone whose cases are decided by
24 it. So to the extent you can try to restore
25 integrity to the judicial system, it benefits
126 1 those whose cases are affected by the judicial
2 system, so the answer, I believe, is yes.

3 Q. Did you have any intention to benefit yourself
4 personally by filing that motion of prejudice in
5 the Grant Anderson case?
6 A. None whatsoever.

7 Q. Did you have any intention to benefit your former
8 client, Mr. Hamilton, by filing that motion in
9 the Barovic case?
10 A. No.

11 Q. And that motion was publicly filed?
12 A. It was filed when I handed it to his judicial
13 assistant, Sheri Fontana. I assume -- well, I

14 know that she put it in the public court file.
15 There were actually two motions, because there
16 were two different related, somewhat related
17 cases. The two motions varied, I think just one
18 sentence, referring to a participant, an attorney
19 or something.

20 Q. I would like to show you Exhibit A-5, which is in
21 evidence.

22 Is Exhibit A-5 a copy of your motion of
23 prejudice and supporting statements on behalf of
24 your client, Donald Barovic?

127 127 25 A. It's a copy of one of the two almost identical
1 but not quite identical ones. This is the one in
2 the case captioned, "In the Matter of the Donald
3 M. Barovic Trust." There was also one that was
4 captioned in the -- relating to the estates of
5 his parents.

6 Q. And it's dated February 2nd, 1996?

7 A. File stamped February 2nd and also dated, beside
8 my signature February 2nd.

9 Q. And in this motion of prejudice and supporting
10 statement -- I'm now referring to the bottom of
11 the second page and the top of the third page --
12 did you state the following: "In addition, I have
13 personally been making inquiries into the
14 handling by Judge Grant L. Anderson during the
15 almost four years, and particularly the last few
16 months, before he became a judge of the Estate of
17 Charles C. Hoffman, (Cause No. 89-4-00326-3.)
18 Based upon the public documents that I have
19 reviewed and the individuals with whom I have
20 spoken, I believe that a full investigation into
21 his and his firm's handling of that estate is
22 necessary"?

23 A. You read it correctly.

24 Q. On February 2nd, 1996, the day you filed the
25 motion of prejudice in the Barovic case, did you
128 128 1 meet with a group of lawyers who were involved in
2 the Barovic case?

3 A. When I filed that paper I had a duty as a lawyer
4 involved in the case to provide the same paper
5 pleading to every lawyer who was a participant in
6 those cases.

7 Q. And did you --

8 A. I did provide, as I was obligated to do so, a
9 copy of this to each of those lawyers.

10 Q. And did you speak to those lawyers as well?

11 A. I believe I did.

12 Q. And the lawyers that you spoke to on February
13 2nd, 1996, did they include Alan Weaver, Gerald
14 Neil, Robin Balsam and Lawrence Nelson?

15 A. Most likely, I could not say with certainty from
16 recollection right now, but those were lawyers
17 who were participants in some of those related
18 cases.

19 Q. Do you recall whether or not Kim Comfort or
20 Michael Smith was there?

21 A. I cannot now recall from -- simply from memory.

22 Q. And did you review your accusations against Judge
23 Anderson orally in meeting with those lawyers on
24 February 2nd, 1996?

25 A. I think not. My recollection is I simply assured

129 1 them that I had sound reasons for the statement
2 that I had provided that I thought there was
3 serious misconduct, and that I thought Judge
4 Anderson would eventually be removed, as he was
5 three-and-a-half years later.
6 Q. And did you indicate to those lawyers present on
7 February 2nd, 1996, that the misconduct that you
8 believed Grant Anderson was involved in regarded
9 the sale of estate assets?
10 A. I do not recall what I said at that meeting.
11 Q. Now, after -- I would now like to focus your
12 attention on a period between February 2nd, 1996,
13 and February 16th of 1996, after you had met with
14 William Hamilton and Phil Sloan.
15 On or about February 6, 1996, did you speak
16 to a woman named Georgia at the Department of
17 Licensing?
18 A. Yes, I did.
19 Q. And on or about that date, did you make a request
20 for public records from the Department of
21 Licensing?
22 A. I did.
23 Q. And did you send a letter requesting public
24 records?
25 A. No, I hand carried it that afternoon, trying to
130 1 get there before 4:30, because I had just
2 discovered the Cadillac right where Prosecutor
3 John Ladenburg told me the judges park.
4 Q. Prior to hand-delivering that letter, did you
5 speak to anyone at the Department of Licensing?
6 A. I'm assuming I must have because I knew, you
7 know, where to go and to whom to address the
8 letter. You know, my recollection is I called
9 and inquired what is necessary to get, you know,
10 public documents relating to a vehicle if I have
11 the license plate, and I believe their response
12 was it must be a written request, and if it's
13 from a lawyer, is my recollection, they said that
14 if it's from a lawyer they will honor the
15 request.
16 And so, I then prepared the letter and
17 immediately, as I recall, drove to their office
18 in Olympia to get the vehicle records on Judge
19 Anderson's Cadillac.
20 Q. Before you drove to Olympia had anyone from the
21 Department of Licensing indicated to you that you
22 were not entitled to receive the public records?
23 A. No, no.
24 Q. I would like to direct your attention to Exhibit
25 A-6 which is in evidence. Is this a copy of the
131 1 letter that you hand-delivered to the Department
2 of Licensing on February 6, 1996?
3 A. Yes, it is.
4 Q. And in that letter, did you write the following:
5 "Mr. Anderson is a Pierce County Superior Court
6 Judge. I have been investigating into his
7 handling of a certain probate estate during the
8 four-year period before he became a judge.
9 "After being elected, but before taking
10 judicial office, Mr. Anderson sold a business
11 that was an asset of the probate estate to a
12 friend of his, William L. Hamilton.

13 "Based on information I have received, I
14 believe that Mr. Hamilton may have transferred to
15 Mr. Anderson either the Cadillac or the funds to
16 purchase it. The ownership records that I am
17 requesting may confirm that or may permit further
18 inquiry of other sources; (e.g., a dealership)
19 who may confirm it."

20 Did you write that?

21 A. Yes, I did.

22 Q. What was your purpose in disclosing to Georgia at
23 the Department of Licensing on February 6, 1996
24 that Mr. Anderson had sold a business that was an
25 asset of an estate to a friend of his, William
132 1 Hamilton?

2 A. It's expressed in the last sentence when I say
3 I'm "motivated by a desire to purge the judicial
4 system of corrupt individuals."

5 Now, you know, that is, was my motivation.
6 I was following up on the tip that Camden Hall,
7 divorce lawyer for Judge Anderson's estranged
8 wife, told me somebody should look into how he
9 got his Cadillac.

10 Q. Mr. Schafer, is it correct that on February 6th,
11 1996 you did not believe that it was necessary to
12 mention the bowling alley or Mr. Hamilton in
13 order to get the public records you were seeking?

14 A. I saw nothing confidential about what I stated.

15 Q. My question was: Did you have any reason on
16 February 6, 1996 to believe that it was necessary
17 to disclose information about Mr. Hamilton's
18 purchase of an estate asset to Georgia in order
19 to get the public records you were requesting?

20 A. My experience particularly with offices, public
21 offices that I don't regularly deal with, is
22 sometimes you have to give a logical, plausible
23 reason as to why you are seeking the records or
24 they sometimes are not as cooperative.

25 Usually when you indicate to somebody you
133 1 were looking into a corrupt judge, they usually
2 are more likely to be helpful and supportive than
3 if you're just, you know, looking into a neighbor
4 or something, I would think. I don't know.

5 I generally give reasons for what I do. I
6 think people are more apt to cooperate.

7 Q. And is it correct that prior to your delivering
8 this letter, you had every reason to believe that
9 the Department of Licensing would indeed give you
10 the public records you were requesting?

11 A. I had never dealt with them before. You know, my
12 contact with them was limited to a phone call.

13 Q. And in that phone call they indicated to you that
14 if you were a lawyer they would provide the
15 public records to you; is that correct?

16 A. They may have indicated there must be a good, you
17 know, a good business reason or a good reason to
18 request them, I do not recall. But they could
19 just as readily have indicated there must be a
20 reason given, I don't recall.

21 MS. GRAY: I ask that it be
22 stricken. Mr. Schafer's response is speculating
23 as to what may or may not have been stated in the
24 conversation, it does not reflect his memory of

25 the conversation.

134 1 THE WITNESS: But your question is
2 speculating as well.
3 THE HEARING OFFICER: All right.
4 I'm not going to strike it. I have heard what he
5 said and I'll give it whatever weight that I deem
6 it entitled to.

7 Q. (By Ms. Gray) On or about February 5th, 1996, did
8 you meet or speak with Pierce County Prosecuting
9 Attorney John Ladenburg?

10 A. I believe it was February 6th. I believe it was
11 the same day that I did this records request. I
12 believe I met with him in the early afternoon for
13 about an hour face-to-face across his table,
14 provided him or, you know, had my briefcase full
15 of documents. I was wary of leaving my briefcase
16 anywhere at the time.

17 And I asked for his assistance in helping me
18 to identify the license plate of Judge Anderson's
19 Cadillac, who Camden Hall said somebody should
20 investigate into. His response was the judges
21 park in that lot out back behind the courthouse,
22 ground floor under the jail or whatever it is,
23 and he said, "I bet if you just go back out there
24 and look around you will probably see a
25 Cadillac."

135 1 He was right, I did. It had Judge
2 Anderson's mail on the passenger seat.

3 Q. Did you meet and speak to Mr. Ladenburg or
4 members of his staff in the prosecuting
5 attorney's office over the course of February,
6 1996 through April of 1996?

7 A. I met with John W. Ladenburg once and that was on
8 February 6th. I spoke with him then once later
9 on the phone, I think it was February 9th.

10 Someone called saying they were Frank Clark,
11 an investigator of his office, and that they were
12 beginning an investigation, so I therefore was
13 prohibited by law from disclosing any of the
14 information that I had shared with them to any
15 other party.

16 And I objected to that and told him he would
17 have to show me a lawful basis for supression of
18 my first amendment rights, at which point John
19 Ladenburg himself called me back and said there
20 must have been some misunderstanding, but he also
21 tried to assure me that it would be a violation
22 of law if I disclosed information to any other
23 source because they were beginning, I think he
24 made reference to a special inquiry court. And
25 frankly, I said, "I'm a lawyer, I need to see it
in black and white. You need to show me the
statutory basis because I cherish my First
Amendment rights."

136 1 So, Mr. Schafer, your answer is yes, you had
2 contacts with Mr. Ladenburg's office?

3 A. I did.

4 Q. Mr. Schafer, if you can answer this question yes
5 or no, please do so, and if you cannot answer the
6 question yes or no, please indicate that you
7 cannot and I will rephrase the question.

8 Did you tell Mr. Ladenburg or his staff that

12 you believed Mr. Anderson was involved in a
13 conspiracy to milk an estate from assets,
14 including the Pacific Lanes Bowling Alley?
15 A. I don't recall just what I told him
16 four-and-a-half years ago, I'm sorry.
17 Q. Mr. Schafer, again, if you can answer this yes or
18 no, and if not, indicate so and I'll rephrase it.
19 Did you tell Mr. Ladenburg or his staff that
20 one of the criminal issues that they should
21 investigate involved the Cadillac payments and
22 their relationship to the bowling alley sale?
23 A. I don't recall saying that because I was not
24 aware of Cadillac payments at the time. I
25 frankly, I guess I thought that Bill had given
137 1 him the Cadillac outright, but I didn't know.
2 Q. Did you tell Mr. Ladenburg or his staff that one
3 of the criminal issues they should investigate
4 involved a Cadillac and its relationship to the
5 bowling alley sale?
6 A. I had passed on to them, yes, you know, the tip
7 from Camden Hall, yes.
8 Q. What else did you tell Mr. Ladenburg or his staff
9 regarding the bowling alley?
10 A. I had the briefcase full of documents, the same
11 ones I gave you, at about the same time. You
12 know, I offered -- I had a lengthy meeting with
13 three of his investigators, Frank Clark, somebody
14 named Garrison, and someone else, and attempted
15 to walk them through the documents, showed them
16 the things that I thought were highly suspicious
17 or indicative of fraud.
18 Q. And what documents related to the bowling alley
19 sale that you showed them and shared with them?
20 A. The documents that I had obtained from the
21 gambling commission, which I think were the
22 transaction documents. It was the September, as
23 I recall, of 1992, three-page agreement between
24 Hamilton and Anderson for the sale of the bowling
25 alley. There were other papers from the gambling
138 1 commission, but that was probably the most
2 significant. I think there was a lease or
3 something. They are in the file that you have.
4 I mean, everybody has the same set of documents.
5 Q. Mr. Schafer, in telling Mr. Ladenburg and his
6 staff about the bowling alley and imparting
7 information to them about the bowling alley, what
8 action did you expect or hope that they would
9 take?
10 A. I expected that they would investigate into
11 criminal violations. I expected that they would
12 really look into it. And things that, at least
13 to me were highly suspect, they would have the
14 ability to, you know, to ascertain whether
15 criminal laws had been violated.
16 I mean, when the hospital loses a
17 million-and-a-half, that to me is kind of
18 significant and I would think there'd be some
19 crime that could be charged on that basis.
20 Real estate excise tax affidavits seemed to
21 be patently false. I would think that there
22 could be some perjury charges brought. You know,
23 the complete absence of what should have been a

24 shelf full of files in the time share
25 registration office -- that was another office I
139 1 went to, I forgot -- you know, relating to the
2 Surfside Inn time share, under the state Time
3 Share Registration Act.
4 And when I went down there no files could be
5 found, which made me highly suspicious. All of
6 these things I thought, you know, criminal law
7 enforcement authorities properly should
8 investigate.
9 Q. So, is it correct that by imparting information
10 about the bowling salary sale to Ladenburg and
11 his staff you expected or hoped that Ladenburg or
12 his staff would investigate possible criminal
13 violations related to the bowling alley sale?
14 A. I think my focus was on the Cadillac. I don't
15 recall, you know, I don't recall perceiving that
16 there was, you know, any clear evidence of
17 criminal activity, what you keep referring to as
18 the bowling alley sale. I mean, the bowling
19 alley sale was this, you know, three-page
20 document that I got from the gambling commission
21 that described the terms of that transaction.
22 Q. In your mind when you spoke to Ladenburg and his
23 staff did the issue of the Cadillac connect to
24 the sale of the bowling alley from the Estate of
25 William Hamilton [sic]?
140 1 A. I think most people would suspect there was a
2 linkage there, yeah.
3 Q. And did you suspect there was a linkage there?
4 A. Sure did.
5 Q. And is that why you suggested to Mr. Ladenburg
6 and his staff that they investigate it?
7 A. I was suggesting that they investigate
8 everything. It was a briefcase full of documents
9 and everything should have been investigated,
10 just like this office should have investigated.
11 Some people don't investigate, I don't know why.
12 Q. On February 10th, 1996, did you speak to Cathie
13 Livingston?
14 A. I don't know the date, but you have my notes, so,
15 you know, whatever I put down is probably
16 accurate.
17 Q. Do you recall who Cathie Livingston is?
18 A. I recall the name, she was the manager of the
19 Surfside Inn. She had left there. I located her
20 in some place in Nevada, and I called her there.
21 Q. And the Surfside Inn was some condominiums that
22 was an estate asset of the Hoffman Estate; is
23 that correct?
24 A. It really describes a resort that consisted of a
25 48-unit structure, 48 condominium apartments.
141 1 There was a, what they call a conference center
2 or convention center or something like that, as
3 part of the complex. She was the manager of it.
4 Q. And was it an estate asset?
5 A. It was wholly-owned by Hoffman-Stevenson, Inc.,
6 which was wholly-owned by the decedent, Chuck
7 Hoffman, and then his estate.
8 Q. And that was a separate asset from the Pacific
9 Lanes Bowling Alley; is that correct?
10 A. Pacific Lanes Bowling Alley, the business was

11 owned by Pacific Lanes, Inc., wholly-owned
12 corporation, owned by Chuck Hoffman and by his
13 estate. The real estate in Pacific Lanes was
14 owned by Hoffman-Stevenson, Inc.
15 Q. When you spoke to Cathie Livingston, what did you
16 tell her about the bowling alley?
17 A. I don't recall.

18 MS. GRAY: I'm handing to counsel
19 and to the witness Exhibit A-113 for
20 identification only.

21 Q. (By Ms. Gray) I ask you to look at the third
22 page. Does that refresh your recollection that
23 you spoke to Cathie Livingston on or about
24 February 10th, 1996?

142 25 A. These are my notes that I took and gave to all
1 the authorities that should have investigated.

2 Q. So the answer is yes?

3 A. It is. Why didn't you investigate?

4 MS. GRAY: Mr. Mills, I would ask
5 that the Hearing Officer instruct the witness to
6 quit directing questions to the disciplinary
7 counsel as it's an inappropriate procedure in
8 this hearing.

9 THE HEARING OFFICER: You are so
10 instructed.

11 THE WITNESS: Thank you.

12 Q. (By Ms. Gray) Reading these notes, does it
13 refresh your recollection that you informed
14 Cathie Livingston that you were inquiring into
15 Grant Anderson's honesty and that you told Cathie
16 Livingston that you questioned his sale of a
17 bowling alley to a friend?

18 A. That's what it says.

19 Q. Did Cathie Livingston refuse to provide you any
20 information?

21 A. That's correct.

22 Q. Now, is it correct that you prepared on or about
23 February 16th, 1996 a declaration under penalty
24 of perjury that we have previously seen as
25 Exhibit A-7?

143 1 A. And I gave it right to this office.

2 Q. And is it correct that you prepared a memo dated
3 February 29th, 1996 directed to "appropriate
4 public officials"?

5 A. Including this office who I directly gave it to.

6 Q. And that is Exhibit A-8; is that correct?

7 A. I don't know.

8 Q. I'm showing the witness Exhibit A-8 in evidence.

9 Is that your February 29th, 1996 memorandum
10 to appropriate public officials?

11 A. It appears to be.

12 Q. I would now like to direct your attention to the
13 time period between February 16th, 1996 and May
14 1st, 1996.

15 During that period of time between February
16 16th, 1996 and May 1st, 1996, did you contact the
17 Commission on Judicial Conduct?

18 A. I met with the investigator on February 13 for
19 almost seven hours, yes.

20 Q. And did you provide the Commission on Judicial
21 Conduct Exhibit A-7 and Exhibit A-8?

22 A. And which is, 7 is the declaration?

23 Q. It is. And I'm handing you a copy of Exhibit A-7
24 in evidence.

144 25 A. Yes. As I say, I provided these to all of the
1 authorities, including the Commission on Judicial
2 Conduct.

3 Q. Did you provide A-7 and A-8 to the Federal Bureau
4 of Investigation?

5 A. Yes, let's see, I did.

6 Q. Approximately when did you provide it to the
7 Federal Bureau of Investigation?

8 A. Probably the same time this office got it, which
9 would have been just after I prepared the
10 February 29th memo. My recollection is that I
11 prepared the declaration under penalty of perjury
12 on the date indicated, February 16, but held onto
13 it until I prepared the explanatory memo. The
14 declaration simply presented facts as accurately
15 as I could recall them.

16 The memo presented my analysis of those
17 facts, memo being prepared February 29th. I
18 think as soon as I had completed the memo, I then
19 provided both the declaration and the memo to
20 the -- several appropriate public officials with
21 whom I was providing documents.

22 When I say public officials, of course, that
23 includes this office, though it's not really a
24 public official, but it's kind of close.

145 25 Q. In providing the information to the Federal
1 Bureau of Investigation, some of the information
2 that you provided to them concerned the bowling
3 alley; is that correct?

4 A. That's correct.

5 Q. What was your purpose in providing information to
6 the Federal Bureau of Investigation, information
7 about the bowling alley?

8 A. I believe that there was a patently corrupt
9 sitting judge who has the power to destroy
10 people's lives and to take their lives, and I
11 thought it was deplorable that we should tolerate
12 a corrupt sitting Superior Court judge. I
13 believe that the Federal Bureau of Investigation
14 has jurisdiction to look into corrupt judges.

15 Q. Did you believe when you provided the information
16 to the Federal Bureau of Investigation that it
17 had the authority to investigate criminal
18 violations that might connect to the bowling
19 alley?

20 A. I believed it did.

21 Q. And did you provide Exhibit A-7 and Exhibit A-8
22 to the Internal Revenue Service?

23 A. Yes, I did.

24 Q. And did you believe from providing the
25 information to the Internal Revenue Service that
146 1 the Internal Revenue Service had authority to
2 investigate criminal violations connected to the
3 bowling alley?

4 A. I knew they had such authority.

5 Q. And did you provide Exhibit A-7 and Exhibit A-8
6 to the Washington State Bar Association
7 Disciplinary Counsel's office?

8 A. I certainly did, believing that I had the
9 authority and responsibility, but I had no idea

10 that it would do as it did.
11 Q. Did you provide Exhibit A-7 and Exhibit A-8 to
12 the Attorney General's Office, to David Walsh of
13 the Attorney General's Office?

14 A. I believe I did.

15 Q. And did you send him a letter dated March 1st,
16 1996?

17 A. Should I answer that before you hand it to me?

18 Q. I'll hand it to you first, that may make it
19 easier.

20 MS. GRAY: I'm handing the witness
21 Exhibit A-9 in evidence.

22 Q. (By Ms. Gray) Is that a letter that you sent to
23 David E. Walsh on or about March 1st, 1996?

24 A. Yes, it is.

147 25 Q. And with it did you enclose a copy of Exhibit A-7
1 and a copy of Exhibit A-8?

2 A. It indicates that in the first paragraph.

3 Q. And did you believe that by disclosing
4 information related to the bowling alley to the
5 Attorney General's Office that they had authority
6 to take action with regard to that?

7 A. I knew they had such authority, yes, and they
8 later confirmed it.

9 Q. And did you on April 26, 1996 file a pleading in
10 the Barovic matter, Court of Appeals, Division
11 II?

12 A. Yes, I did.

13 MS. GRAY: I would like to hand
14 the witness Exhibit A-10 in evidence.

15 Q. (By Ms. Gray) Is this a copy of a motion for
16 discretionary review that you filed in the Court
17 of Appeals, State of Washington, Division II, on
18 April 26, 1996?

19 A. It's not an exact copy because it shows a
20 received stamp from Law Office of Larry Nelson,
21 who immediately provided it to Kurt Bulmer,
22 former general counsel to the Bar, who has been
23 trying to, you know, destroy me for the last four
24 years and provided everything to this office, so
25 it does -- it's not the same as the one I filed.
148 1 It reflects the received stamp of Larry Nelson.

2 MS. GRAY: Mr. Mills, I ask that
3 the non-responsive part of his answer that
4 relates to Mr. Bulmer and his intentions be
5 stricken.

6 THE HEARING OFFICER: It's
7 stricken.

8 Q. (By Ms. Gray) Other than the handwritten notation
9 in the upper left-hand corner of the front page
10 and the received stamp from the Office of
11 Lawrence Nelson, to the best of your knowledge is
12 this an accurate copy of the motion for
13 discretionary review that you filed?

14 A. Well, it's about a hundred pages and I'm not
15 going to look at each one unless you want me to,
16 but it has the appearance, you know, of being a
17 correct copy, and I can provide what I consider
18 to be a correct copy and it's a public court
19 filed document, so anyone can confirm that it's a
20 correct copy. I believe it is a correct copy.

21 Q. In this motion for discretionary review, you

22 included or appended to it a copy of your
23 February 16th, 1996 declaration under penalty of
24 perjury; is that correct?
25 A. That is correct.

149 1 Q. Is it also correct that that declaration,
2 February 16th, 1996 was not a part of the record
3 that Judge Thompson had considered in making a
4 ruling that was being appealed?
5 A. It was directly relevant to the ruling that was
6 being appealed and that was later recognized by
7 Commissioner of the Court of Appeals, Don Meath.
8 Judge Thompson had kicked me out of the
9 courthouse for what was patently obviously the
10 reason of the papers I had filed concerning
11 requesting Judge Anderson to recuse himself and
12 indicating I thought he would eventually be
13 removed as a judge.
14 In order to defend myself and to explain, as
15 I had offered to do to Judge Thompson, I offered
16 to show him in camera, meet in chambers exactly
17 the documentation upon which I based my statement
18 previously filed. He declined.
19 He entered an order that ordered me to turn
20 over all my files relating to this client. I
21 appealed that order. It was eventually
22 overturned on due process grounds.
23 I appealed it and appended this exhibit,
24 Appendix D, for the reasons stated on page 5 of
25 the basic petition that says, "I am confident any
150 1 reasonable person would recognize the true reason
2 for Judge Thompson's banishing me from the
3 courthouse was the statements I made about
4 Anderson, and enclosed as the appendix are
5 documents that give my well-founded reasons for
6 making those statements."
7 Q. So is it your answer that Judge Thompson was
8 offered your declaration under penalty of perjury
9 but refused to consider it?
10 A. That's correct. I offered him -- well, I guess
11 I'll say I offered to show him the documents. I
12 may not have even prepared the declaration.
13 Let me withdraw that last answer because I
14 think I was going to share with Judge Thompson
15 all the real estate documents, all the
16 self-dealing documents, you know, the plundering
17 of the estate documents. I don't know exactly
18 what I was going to share with him. He declined
19 the offer to do anything.
20 THE HEARING OFFICER: All right.
21 We'll take a short break.
22 (Brief recess taken.)
23 THE HEARING OFFICER: All right.
24 We'll go back on the record again. Ms. Gray, you
25 may continue.

151 1 Q. (By Ms. Gray) Mr. Schafer, we were talking about
2 Exhibit A-10, the motion for discretionary review
3 that was filed in the Court of Appeals on the
4 Barovic matter.
5 In filing this motion for discretionary
6 review, it was one of your purposes, was it not,
7 to benefit your client, Donald Barovic?
8 A. No, no. Judge Anderson by then had recused

9 himself from Barovic's cases. I was trying to
10 expose a corrupt judge, you know, that concerned
11 me a lot.

12 Q. Was it one of your purposes in filing it before
13 the Court of Appeals to benefit yourself,
14 personally?

15 A. I guess I was seeking some degree of vindication
16 at having been, you know, banished from the
17 courthouse by Judge Thompson when he ordered me
18 to turn over all my files and get the hell out of
19 here. For, you know, I really thought it was, I
20 thought that what I was doing was the right
21 thing. You may not understand, but to me it was
22 the right thing to expose a corrupt judge.

23 Q. So, is it correct that you had two purposes; one
24 was personal vindication, and two was the public
25 exposure of a corrupt judge; is that correct?

152 1 A. Yes.

2 Q. And is it correct that when you filed this motion
3 in the Court of Appeals that you did not request
4 any protective order regarding any portion of it?

5 A. I'm not familiar with the process. I know
6 there's a general rule that's generally ignored,
7 GR-10, GR-15, something like that, that describes
8 a mechanism for sealing court files, but I know
9 court files are supposed to be public and I
10 think, you know, I support public access to
11 public government.

12 Q. So, the answer is that you did not request a
13 protective order; is that correct?

14 A. No, I did not. In fact, I was pleased that I was
15 able to put this in a public court file, you
16 know, under a basis that I felt I would be safe
17 from that threatened civil suit that Bill
18 Hamilton and Phil Sloan had threatened me with.

19 Q. Is it correct that there has been a fair degree
20 of press coverage of the commission charges
21 against Judge Grant Anderson and his removal from
22 office?

23 A. Nowhere near enough, but there's been some.

24 Q. Is it correct that there has been a substantial
25 number of newspaper articles that have mentioned
153 1 William Hamilton's role in purchasing a bowling
2 alley from the Hoffman Estate or Mr. Hamilton's
3 payments on a Cadillac belonging to Grant
4 Anderson?

5 A. I believe there were several articles during
6 Anderson's five-day trial in January of '98, but
7 beyond that I don't recall much coverage.

8 Q. To your knowledge, has Mr. Hamilton ever been
9 convicted of a crime?

10 A. I am not aware. I've seen from a court file that
11 he, you know, was the subject of a Federal grand
12 jury investigation, another court file that he or
13 his bank had made \$75,000 in kickbacks to a
14 lawyer that had just got out of prison for 18
15 months.

16 MS. GRAY: I object and ask that
17 the answer be stricken as non-responsive.

18 MR. NEWMAN: Your Honor, she
19 opened the door, he is trying to answer that
20 question. She asked the question of whether or

21 not Mr. Hamilton, to his knowledge, had any
22 criminal history or background, he is trying to
23 answer that by detailing Mr. Hamilton's use of
24 his bank to facilitate some --

154 25 THE WITNESS: Kickbacks.
1 MR. NEWMAN: -- apparent criminal
2 activity by another attorney.
3 THE WITNESS: In fact, the Bar
4 just had the disciplinary hearing on that lawyer.
5 THE HEARING OFFICER: You may
6 answer the question.
7 THE WITNESS: Okay. Yeah, Mike
8 McKean, you know, lawyer that just got out of
9 Federal prison in January. The presentencing
10 report indicates that among his various Federal
11 crimes were the \$75,000 in kickbacks that he was
12 getting from Bill Hamilton's banks, and in the
13 Commission on Judicial Conduct file there was the
14 documentation of the affidavit of a Federal
15 special agent about hidden microphone recordings
16 indicating that Bill Hamilton was making
17 kickbacks to this lawyer.
18 I'm aware the FBI has subpoenaed various
19 files relating to activities of Mr. Hamilton what
20 I believe was the fraudulent insurance claim on
21 the broken trusses and the bank fraud loan on his
22 home that Judge Anderson moved into as soon as he
23 got the mortgage loan as a supposed primary
24 residence or a principal residence mortgage loan.
25 So, yes, I fully expect that he will be
155 1 Federally indicted probably before November of
2 2001, would be my best guess. That's when I
3 think the five year statute starts to run out.
4 MS. GRAY: I would ask the Court
5 Reporter to read back my question and ask
6 Mr. Schafer to answer my question.
7 THE HEARING OFFICER: That's fine,
8 do so.
9 (Whereupon, the Court Reporter read
10 back the previous question.)
11 THE WITNESS: I'm not aware that
12 he has been convicted of a crime.
13 Q. (By Ms. Gray) To your knowledge, has Mr. Hamilton
14 ever been formally charged with a crime?
15 A. I'm not aware.
16 Q. The information that you testified about a moment
17 ago relating to Mr. McKean, do you have any
18 personal knowledge about any crimes committed by
19 Mr. McKean?
20 A. Personal knowledge in the sense that I have read
21 the criminal felony file that resulted in his
22 indictment where he admitted to various Federal
23 felonies, personal knowledge to the extent of
24 having read the documentation. Beyond that, I
25 have never spoken to Mr. McKean. I have spoken
156 1 to the Federal agents who were involved in his
2 case and to the U.S. attorneys, assistant U.S.
3 attorney who was involved in his case.
4 Q. So what you know is what you have read and what
5 you were told?
6 A. Certified documents in a court file I find to be
7 fairly credible.

8 Q. As of April 26, 1996, the Commission on Judicial
9 Conduct was still investigating; is that correct?
10 A. I assume it was.
11 Q. Well, they had not told you that they had closed
12 the matter as of that date, April 26, 1996?
13 A. They had not told me that nor had this office.
14 Q. That was my next question. As of April 26, 1996,
15 had the Pierce County Prosecuting Attorney's
16 Office informed you that they had closed their
17 matter?
18 A. No, they had not.
19 Q. As of April 26, 1996, had the FBI informed you
20 that they had closed their matter?
21 A. No, they had not.
22 Q. On April 26, 1996, is it correct that you sent
23 Exhibit A-7 and Exhibit A-8, the February 16th,
24 1996 declaration under penalty of perjury and the
25 February 29th, 1996 memo to Appropriate Public
157 1 Officials, is it correct that you sent that to
2 the Seattle Post Intelligencer?
3 A. After I filed this document with the Court of
4 Appeals and it was then a public document in a
5 public court file, I then faxed to the office
6 that you mentioned, I believe, the first page and
7 page 5, which explains the basis for Exhibit D or
8 Appendix D, as well as the first, I think, 12
9 pages of Appendix D.
10 Q. Is it correct that your fax to the Seattle Post
11 Intelligencer included all of the pages of A-7
12 and A-8?
13 A. They are among the first 12 documents, first 12
14 pages of Appendix D, so the answer would be yes.
15 Q. And did you send that same information on April
16 26, 1996 to the Seattle Times?
17 A. I faxed it to the Seattle Times, the Seattle PI
18 and the Tacoma News-Tribune.
19 Q. And do you have a copy of the fax that you used?
20 A. I do.
21 Q. Could I see it, please?
22 A. I was dying to hear you ask for it. Do you want
23 to see it?

24 MS. GRAY: Yes.

25 THE WITNESS: This is still a
158 1 copy. These are the pages that I faxed, 15
2 pages. It was 14 pages and a half-sheet cover
3 slip, which is way off of the -- so the cover
4 slip would say page 1 of 15; three cover slips
5 going to the three different news organizations.
6 Somehow I lost one of the confirmation
7 slips.

8 MS. GRAY: Mr. Newman, I would
9 like to offer each of the three half-page cover
10 sheets as Association Exhibits. I don't know if
11 you wish to have me make a photocopy before I
12 label them or whether I should label the
13 originals.

14 MR. NEWMAN: We don't have an
15 objection to that.

16 THE WITNESS: Let me just offer
17 one comment, is that it's important, I think,
18 that the cover slip identify clearly just what
19 pages were attached. The cover slip says page 1

20 of 15 and, you know, I would just ask that you
21 include the other 14 pages so, you know, those
22 who review this record later have no doubt as to
23 exactly what pages were included.

159 24 THE HEARING OFFICER: I would like
25 that, too, just so we know exactly what was
1 included with the fax.

2 MS. GRAY: In that case, I think
3 it might be appropriate to offer as a single
4 exhibit the three fax cover pages, dated, each of
5 them April 26, 1996; one to the News Tribune, one
6 to the Seattle Times, one to the Seattle Post
7 Intelligencer, with the 15 attached pages as a
8 single exhibit which I would like to label as
9 A-12.

10 THE HEARING OFFICER: Is there any
11 objection to A-12?

12 MR. NEWMAN: No, I don't.
13 Mr. Schafer has already identified those
14 exhibits. That's fine.

15 THE HEARING OFFICER: A-12 will be
16 admitted and we can substitute copies so you can
17 return that if you wish, or whatever counsel
18 worked out.

19 (Exhibit A-12 was received in evidence.)

20 MS. GRAY: Over the lunch break I
21 will make copies for the Hearing Officer and for
22 counsel of Exhibit A-12.

23 THE HEARING OFFICER: Thank you.

160 24 MS. GRAY: I believe the content
25 of Exhibit A-12 is identified for the record by
1 Mr. Schafer's prior testimony.

2 Q. (By Ms. Gray) In providing Exhibit A-12 to the
3 newspapers it was your hope that the newspapers
4 would pounce on the story; is that correct?

5 A. It was an election year and Judge Anderson was
6 going to be up for election and I had hoped that
7 members of the media who I perceived as having a
8 governmental watchdog function would recognize
9 the relevance of probing into this and, you know,
10 expose enough at least to motivate another
11 qualified candidate to run against or motivate
12 Judge Anderson not to seek re-election.

13 Q. So, you hoped that they would provide press
14 coverage of this matter?

15 A. Yes.

16 MS. GRAY: I have no further
17 questions.

18 THE HEARING OFFICER: Okay. This
19 may be an appropriate place to take our noon
20 break before we get started, so why don't we take
21 a one hour break, lunch break, and resume an hour
22 from now on everyone's watch, and we'll go from
23 there.

24 (Lunch recess taken, at which time
25 Mr. Schafer left the witness stand.)

161 26 THE HEARING OFFICER: All right.
27 We're back on the record after the lunch break
28 and I understand counsel had discussions
29 regarding changing the order of witnesses.

30 Ms. Gray, would you care to enlighten the
31 record as to what happened?

7 MS. GRAY: That's correct.
8 Respondent's counsel has graciously agreed to
9 postpone his questioning of Mr. Schafer so as to
10 provide a convenience to our next witness, Philip
11 R. Sloan. And so with the agreement of
12 Respondent's counsel and with the agreement of
13 the hearing officer the Association would like to
14 call now Philip R. Sloan.

15 THE HEARING OFFICER: All right.
16 Thank you. Mr. Sloan, would you please raise
17 your right hand.

18 AND THEREUPON,

19 PHILIP R. SLOAN,
20 called as a witness on behalf of the Bar Association,
21 after having been first duly sworn, was examined and
22 testified as follows:

23 DIRECT EXAMINATION

24 Q. (By Ms. Gray) Would you please state and spell
25 your name for the record.
162 1 A. Philip R. Sloan, S-L-O-A-N.
2 Q. And is Philip with one "l"?
3 A. Yes.
4 Q. Mr. Sloan, how are you employed?
5 A. I'm a lawyer with the firm of Sloan, Bobrick and
6 Oldfield in Tacoma.
7 Q. And when were you first admitted to the Bar?
8 A. California, 1970, and Washington, 1978.
9 Q. What are your main areas of practice?
10 A. Virtually exclusively litigation and dispute
11 resolution.
12 Q. Do you know the respondent, Douglas Schafer?
13 A. Yes, I do.
14 Q. How long have you known Mr. Schafer?
15 A. I met Doug when I was taking the Bar Review
16 Course in Washington with him in 1978.
17 Q. And in what capacities have you known Mr. Schafer
18 since 1978?
19 A. Well, during that course at U.P.S. Law School and
20 then later in 1981 I joined the law firm where
21 Doug was interning as a student and then he
22 joined as an associate when he was admitted, so
23 it was 1981 we were practicing together until
24 1985 when that law firm severed and he went with
25 the Gallagher Group that merged with Graham and
163 1 Dunn and I stayed with the Johnson Lane Group.
2 Q. What was the name of the law firm where you and
3 Mr. Schafer worked together?
4 A. Johnson, Lane and Gallagher.
5 Q. Do you have any current business or social
6 relationship with Mr. Schafer?
7 A. No.
8 Q. Do you know William Hamilton?
9 A. I do.
10 Q. How long have you known Mr. Hamilton?
11 A. Since 1981.
12 Q. And how do you know Mr. Hamilton?
13 A. He was an existing client of Johnson, Lane and
14 Gallagher, and I assumed certain responsibilities
15 for him and his company, Western Community Bank.
16 Q. And do you have any current business or social
17 relationship with Mr. Hamilton?
18 A. I do.

19 Q. And what is that?
20 A. Well, I am his lawyer on numerous matters.
21 Q. Do you consider yourself to be a friend of
22 Mr. Hamilton?
23 A. Yes.
24 Q. In 1992 and 1993, what role, if any, did you have
25 with Mr. Hamilton's purchase of a bowling alley
164 1 from the Estate of Charles Hoffman?
2 A. None, other than the fact that I was aware that
3 this was occurring, but I had no professional
4 involvement in that.
5 Q. I would like to direct your attention to February
6 of 1996. Did there come a time when you met with
7 Mr. Schafer and with William Hamilton?
8 A. Yes.
9 Q. When was that?
10 A. I believe it was February 1.
11 Q. Of 1996?
12 A. Yes.
13 Q. Where was that meeting?
14 A. At my office.
15 Q. How did you come to attend that meeting?
16 A. Well, Mr. Hamilton asked if I would participate
17 in it. Mr. Schafer had demanded a confrontation
18 and he asked that I participate.
19 Q. On February 1st, 1996 in that meeting between
20 yourself, Mr. Schafer and Mr. Hamilton, can you
21 describe to the best of your recollection who
22 said what during that meeting?
23 A. Well, put it into context that I wasn't fully
24 informed of what had been occurring, Mr. Schafer,
25 except by gossip around the town. The context
165 1 was that I wasn't really too aware of what was
2 going to occur or why this was happening, and
3 when Doug came in I was shocked at the demeanor
4 and the attitude and even the physical
5 appearance.
6 I really hadn't seen him much at all over
7 the years after he went to Seattle, and I don't
8 believe I had seen him in at least two or three
9 years, and I was just shocked, this was not the
10 guy I used to know.
11 Q. Can I interrupt you for a moment --
12 A. Sure.
13 Q. -- and ask you to describe what his demeanor and
14 physical appearance was that shocked you?
15 A. It was exceedingly agitated and hyper. He was
16 shouting, he was using obscenities. I don't
17 recall ever hearing him swear at any time before,
18 and this person was in my office shouting and so
19 forth. At one time one of the people in the
20 office knocked on the door and asked if it could
21 be held down.
22 Q. At the beginning of the meeting what to the best
23 of your recollection did Mr. Schafer say?
24 A. Well, he wanted to cross-examine Mr. Hamilton on
25 some issues that he had, and it was obviously in
166 1 a very hostile and aggressive manner. And at
2 that point in time I said no, that's not going to
3 happen, and I tried to shift the focus to my
4 personal concern for his mental state.
5 Q. What did you tell him about your concern for his

6 mental state in this meeting?
7 A. I said, "Doug, you're not the Doug I used to know
8 and what's going on here?"
9 And from there Mr. Hamilton and I both
10 offered, or expressed our concern and offered to
11 help him get psychological help. I mentioned the
12 Bar program for lawyers in trouble. We both
13 offered to even pay for help for him because this
14 person was not anybody I knew before at all.
15 Q. What do you recall Mr. Schafer saying during the
16 meeting about the bowling alley?
17 A. I don't recall, because I was deflecting the
18 meeting to my concern about him. And he was
19 making accusations, but I wasn't interested in
20 those.
21 Q. Towards the conclusion of the meeting did you
22 give Mr. Schafer any instructions?
23 A. Yes. I said that, "You are not to disclose any
24 communications that you had had with Mr. Hamilton
25 about anything pertaining to your representing
167 1 him as a lawyer."
2 Q. Did you threaten to sue him?
3 A. No.
4 Q. Did you threaten to file a Bar complaint?
5 A. Yes.
6 Q. What did you say when you did that?
7 A. Well, I said, "You're messing with your license,
8 and if you continue doing this you could lose
9 your license and lose your right to make a
10 living," and then he was swearing and yelling
11 back and so forth.
12 And I said, "Well, if you persist we'll file
13 a complaint."
14 Q. And did he respond when you indicated that you
15 might file a complaint if he persisted?
16 A. Yes, he did.
17 Q. What did he say?
18 A. Well, basically, the tone of it was -- excuse me,
19 but he said, "I don't give a shit." He said, "I
20 don't care for lawyers, I don't like lawyers, I'm
21 not proud to be a lawyer, I don't even want to be
22 one anymore, and so I don't care. I'll do what I
23 think is right."
24 Q. After the meeting, did you communicate with
25 Mr. Schafer to follow up on that meeting?
168 1 A. I wrote a fax.
2 Q. I would like to direct your attention to Exhibit
3 A-4 in evidence. Do you recognize A-4?
4 A. Yes.
5 Q. What is it?
6 A. It's the fax I sent to Doug.
7 Q. And could you read the handwriting? It's
8 somewhat difficult to read.
9 A. It's addressed to Doug Schafer, carbon copy Bill
10 Hamilton, his fax number, regarding confidential
11 communications, 2/2/96 from Phil Sloan, one page,
12 including cover page.
13 "Doug, per yesterday's meeting, Bill H.
14 instructed you not to disclose any communications
15 regarding Grant Anderson to anyone. If you do,
16 you will be in violation of RPC 1.6, triggering
17 action under RPC 8.3. Please protect your

18 family, if not yourself, and stop your threats,
19 et cetera. If I can help, please call, Phil."
20 Q. What did you intend to convey to Mr. Schafer when
21 you said, "Please protect your family if not
22 yourself and stop your threats, et cetera"?
23 A. I knew and very much liked Debbie, his wife, and
24 I was partners with him when his kids were born
25 and I -- during the course of the meeting before,
169 1 I said, Doug, think of your ability to make a
2 living, and I meant to say there, you know, think
3 of your license here, and take care of them if
4 not yourself.
5 Q. Have you become aware that subsequent to February
6 2nd Mr. Schafer disclosed information that had
7 previously been imparted to him by William
8 Hamilton?
9 A. Yes.
10 Q. You previously indicated, I believe, that you
11 have had continued contact with William Hamilton
12 up to the present?
13 A. Yes.
14 Q. Have you had regular contact with William
15 Hamilton between February 2nd, 1996 and the
16 present?
17 A. Yes.
18 Q. Based upon your personal observations, what
19 impact have the disclosures made by Mr. Schafer
20 had upon Mr. Hamilton?
21 A. It's destroyed him.
22 Q. In what way?
23 A. Well, Bill was a supremely extroverted, friendly
24 guy. He founded Western Community Bank, I
25 believe when he was either 25 or 26 years of age,
170 1 and he ran it for 25 years, approximately, until
2 it was acquired by Key Bank. And in that
3 capacity as president or then chairman of the
4 bank he knew everybody in town. It was a very
5 active bank and he was beloved.
6 He was very, very active and very visible in
7 community affairs. He would come into our office
8 and always had funny, friendly things to say for
9 anybody he encountered. We would have lunch
10 regularly. When we go to lunch, he was always
11 the center of attention.
12 He was just very, very, active and very
13 involved. He has six kids and each of the kids
14 he's sponsored in some form of business.
15 Today Bill is shunned. He doesn't go out at
16 all. Although we used to have lunch regularly, I
17 think we have had lunch twice since all this
18 started and each time it was in the context we
19 were somewhere on business where we would have
20 it. I have asked Bill for lunch many times. He
21 won't go.
22 His health is broken. He gets calls
23 constantly. Mr. Schafer has contacted his former
24 colleagues and associates and recently I learned
25 of one where he went to a designated escrow
171 1 company and demanded that the lady there tell him
2 something bad about Bill Hamilton. Those were
3 his words as they were related to me.
4 This conduct has gone on repeatedly from

5 many sources ever since this started. And as a
6 result, I have seen Bill come down to the point
7 where he's a recluse, and he's shunned wherever
8 he goes.

9 And he's heard -- and I've heard it said to
10 me many times, because I'm a visible friend of
11 his, "Where there's smoke, there's fire. You're
12 representing a crook, a thief."

13 And it's not stopped since February of '96,
14 it's not stopped as of right now.

15 Q. To your knowledge, have the disclosures made by
16 Mr. Schafer about Mr. Hamilton resulted in
17 substantial legal bills that Mr. Hamilton has
18 incurred?

19 A. Very much so.

20 Q. To your knowledge, has Mr. Hamilton ever been
21 charged with a crime?

22 A. No, he has not, to my knowledge.

23 Q. To your knowledge, has he ever been formally --
24 I'm sorry, has he ever been formally charged or
25 convicted of a crime?

172 1 A. Not to my knowledge.

2 MS. GRAY: I have no further
3 questions.

4 THE HEARING OFFICER: All right.
5 Thank you. Mr. Newman or whomever?

6 CROSS-EXAMINATION

7 Q. (By Mr. Newman) Mr. Sloan, my name is Shawn
8 Newman; I represent Mr. Schafer. Do you believe
9 it's correct for an attorney to report a corrupt
10 judge?

11 MS. GRAY: Objection, relevance.
12 It's for the Hearing Officer to determine these
13 legal issues.

14 THE HEARING OFFICER: It is, but
15 I'll let him express an opinion.

16 THE WITNESS: It depends on the
17 manner in which it's done, sir.

18 Q. (By Mr. Newman) All right. In this instance were
19 you aware that your client was providing Judge
20 Anderson with a Cadillac in the form of a
21 kickback, did your client ever tell you that?

22 MS. GRAY: Objection, relevance.

23 MR. NEWMAN: Well, Your Honor --

24 THE HEARING OFFICER: Excuse me.
25 Just a moment.

173 1 MR. NEWMAN: I can respond to
2 that.

3 THE HEARING OFFICER: You're
4 objecting on relevance now, that's the sole
5 objection?

6 MS. GRAY: Yes.

7 MR. NEWMAN: She's already brought
8 up the Cadillac repeatedly and Mr. Sloan is here
9 as the attorney for Mr. Hamilton.

10 THE HEARING OFFICER: I'll let him
11 answer the question.

12 Q. (By Mr. Newman) were you aware that Mr. Hamilton
13 was paying Judge Anderson a kickback in the form
14 of a Cadillac?

15 A. First of all, sir, I disagree that there was ever
16 any kickback and I resent the form of which you

17 asked the question. To answer the proper
18 question, I was not aware of the Cadillac
19 payments.

20 Q. He never appraised you of, as you testified, that
21 his health is broken, he's shunned, he's never
22 discussed with you this Cadillac issue.

23 A. Sir, that's an attorney/client confidential
24 communication and I refuse to answer it.

174 25 Q. Isn't it true, Mr. Sloan, that you indicated that
1 if Mr. Hamilton was going to be called in this
2 hearing he would take the fifth amendment, would
3 not answer questions; isn't that correct? He
4 would plead the Fifth, right?

5 A. Sir, I don't know what Mr. Hamilton would do.

6 Q. You seem to know what his state of mind is in
7 response to Ms. Gray's questions about --
8 MS. GRAY: Objection,
9 argumentative.

10 MR. NEWMAN: Your Honor, you know,
11 you're allowing Ms. Gray to ask --

12 THE HEARING OFFICER: I'm giving
13 you a lot of latitude, go ahead.

14 Q. (By Mr. Newman) Okay. Isn't it true that you
15 stated at a hearing on December 19th that if
16 Mr. Hamilton was called he would plead the Fifth
17 Amendment, not answer the questions, sir?

18 A. I think I said that would be my advice to him. I
19 don't recall specifically, but I do agree that
20 that was the context of a comment I made.

21 Q. Now, Mr. Hamilton has used a number of attorneys;
22 isn't that correct?

23 A. Yes. He's used Mr. Schafer.

24 Q. And several others, correct?

25 A. Yes.

175 1 Q. Now, you mentioned about gossip around town. Was
2 there gossip around town that Mr. Hamilton was
3 getting a good deal on this bowling alley, was
4 that part of the gossip?

5 MS. GRAY: Objection; without a
6 time reference.

7 THE HEARING OFFICER: Why don't
8 you tie it down as to a time reference.

9 Q. (By Mr. Newman) After 1992 to today?

10 MS. GRAY: Objection, unless it's
11 limited to between 1992 and April, 1996.

12 Q. (By Mr. Newman) All right. We'll limit it to
13 that date.

14 A. I don't understand your question, and I
15 apologize, I don't know the time relevance of
16 this.

17 Q. All right. Did Mr. Hamilton ever convey to you
18 that Mr. Anderson was milking an estate?

19 A. Sir, I'm not going to discuss communications I
20 had with Mr. Hamilton.

21 Q. All right. And again, you have indicated that
22 you're advising Mr. Hamilton to plead the fifth
23 amendment if he was called here to testify?

24 A. Sir, I just said I'm not going to discuss my
25 legal advice to Mr. Hamilton.

176 1 Q. Your firm represented Mr. Hamilton in a claim for
2 some damaged trusses, do you remember that?

3 A. Yes.

4 MR. NEWMAN: Your Honor, I have a
5 document here that I don't have three copies of,
6 and I would like to take a minute to see if I
7 could get copies of it and inquire of Mr. Sloan
8 about it, since he's been taken out of order.

9 THE HEARING OFFICER: Why don't
10 you show it to counsel.

11 MR. NEWMAN: Yes, I'll show it to
12 Ms. Gray.

13 MS. GRAY: Do you want me to read
14 it first or make four copies first?

15 MR. NEWMAN: Why don't you make
16 the copies first if you're going to object.

17 MS. GRAY: I would like to note
18 for the record that this is not a document that
19 has previously been provided to the Bar.

20 MR. NEWMAN: I would like note for
21 the record it's a public document, it's part of a
22 court file, and whether or not it's been provided
23 previously to the Bar, Mr. Schafer provided quite
24 a bit of data.

177 25 MS. GRAY: I was not trying to
1 insinuate that there was anything that required
2 it to be provided, I was only trying to point out
3 that I have not yet had the opportunity it read
4 it.

5 THE HEARING OFFICER: Let's wait
6 till we get a copy, and I'll deal with it. Let's
7 go off the record for a moment.

8 (Discussion off the record.)

9 THE HEARING OFFICER: All right,
10 let's go back on the record. We have copies of
11 the document. Why don't you show it to counsel
12 and see if there's any comment on the document.
13 I understand it's not being offered, it's just
14 being used for impeachment.

15 MR. NEWMAN: Right.

16 MS. GRAY: I have had an
17 opportunity to review the document.

18 THE HEARING OFFICER: Why don't
19 you proceed and we'll see where we go from here.
20 We're back on the record.

21 CONTINUED CROSS-EXAMINATION

22 Q. (By Mr. Newman) Mr. Sloan, I'm showing you a
23 document which is entitled Pacific Recreation
24 Enterprises, Inc., doing business as Pacific
25 Lanes versus United States Fidelity and Guarantee
178 1 Company. Do you recognize this document?

2 A. Do I specifically recognize this? No. I'm aware
3 of what it is.

4 Q. And Mr. Danbridge's signature is on it. He's an
5 employee of the firm?

6 A. He's an associate, yes.

7 Q. Now, in this document there's attached to this a
8 declaration of William Hamilton regarding costs
9 of repair for a collapse of a roof. Do you see
10 that, marked as Exhibit 5?

11 A. I see the document.

12 Q. In your communications -- let me go to the last
13 two pages of this Exhibit. Do you see there's a
14 proof of loss statement here, a sworn statement?
15 Item 6 has the actual cash value at the time of

16 loss of 1.25 -- 1.2 million, do you see that?
17 MS. GRAY: Objection to reading
18 the content of a document not in evidence.
19 MR. NEWMAN: I'm asking him a
20 question about it.
21 THE HEARING OFFICER: He can read
22 it because it doesn't mean anything to me at this
23 point.
24 Q. (By Mr. Newman) Do you know what I'm talking
25 about there, no. 6, Mr. Sloan? All right. No.
179 1 6, cash value, 1.25, right?
2 A. I see that.
3 Q. Okay, great. My question is -- and that's the
4 value for Pacific Lanes, right, the cash value of
5 the property Pacific Lanes, right?
6 A. 1.2.
7 MS. GRAY: Objection, unless he's
8 asking Mr. Sloan whether or not he has knowledge
9 of what the value of Pacific Lanes was at that
10 particular point in time.
11 THE HEARING OFFICER: I'm going to
12 overrule your objection. I think he's asking him
13 just to verify that he's reading the sentence
14 that says that. That's the way I --
15 THE WITNESS: I'm certainly not
16 knowledgeable about what the value was, I can
17 read the number.
18 Q. (By Mr. Newman) Sure. And at the time this
19 proof of loss was filed on July 20th, '93, the
20 value of the property was 1.25 million according
21 to this proof of loss?
22 A. The document speaks for itself, sir.
23 Q. Right. Now, are you aware that your client,
24 Mr. Hamilton, acquired the property for about
25 \$660,000, not for 1.25 million.
180 1 A. I'm not aware of that.
2 Q. Okay. Do you think there's a problem when a
3 person makes a claim to an insurance company and
4 reports the value of the property at 1.25 million
5 when the client purchased the property for 600,
6 about 660,000, is there a problem there?
7 MS. GRAY: Objection, lack of
8 foundation and argumentative.
9 THE HEARING OFFICER: Yes, I'll
10 sustain the objection. I don't think this
11 witness has much to say about this.
12 MR. NEWMAN: Just for the record,
13 Your Honor, his law firm represented Mr. Hamilton
14 in an insurance claim in which the proof of --
15 MS. GRAY: Objection.
16 MR. NEWMAN: I'm making the
17 record, here, okay.
18 THE HEARING OFFICER: Go ahead.
19 MR. NEWMAN: -- in which the
20 amount, the value of the property on the proof of
21 loss was 1.2 million when his client paid
22 660,000. This all goes to this plundering of the
23 estate that we talked about earlier and the fact
24 that there's an issue; why did Mr. Sloan's firm
25 make a claim of loss and represent the property
181 1 at a substantially higher value than the client
2 paid for it?

3 THE HEARING OFFICER: All right.
4 The objection is still sustained and it relates
5 to Mr. Sloan's lack of personal knowledge of any
6 of this.

7 You may proceed.

8 Q. (By Mr. Newman) Now, if I understood your
9 testimony right, Mr. Sloan, at one point in time
10 you either threatened to sue Mr. Schafer or
11 threatened to file a Bar complaint or both, isn't
12 that right?

13 A. No, it's not right. I threatened to file a Bar
14 complaint, I never threatened to sue him.

15 Q. Did you discuss with anyone, other than your
16 client, the desire to sue Mr. Schafer for his
17 activities regarding Judge Anderson?

18 A. The form of the question implies I had a desire
19 to sue Mr. Schafer. Mr. Schafer is a penniless
20 man. How would I sue him and why would I? No, I
21 had no desire to sue Doug Schafer.

22 Q. To your knowledge, did Mr. Schafer have anything
23 to do with your client's purchase of the bowling
24 alley?

25 A. I don't know that.

182 1 Q. You mentioned that Mr. Hamilton was being shunned
2 or that his health was destroyed. Were you aware
3 that Mr. Hamilton was the subject of a Federal
4 grand jury as of August, 1996? Were you aware
5 that Mr. Hamilton was the subject of a Federal
6 grand jury investigation as of August of 1996?

7 A. I am aware that there were inquiries made. I
8 can't place it in terms of dates.

9 Q. Were you aware that there was a Federal grand
10 jury investigating your client?

11 A. I am aware of that, sir.

12 Q. You are aware of that, is that your statement?

13 A. I am aware that that has occurred.

14 Q. What did you know about that Federal grand jury
15 investigation?

16 A. I'm not going to discuss that, sir.

17 Q. Are you claiming an attorney/client privilege?

18 A. I am claiming my belief in the attorney/client
19 confidential privileges, yes.

20 Q. Let's talk about your belief in that privilege.
21 Is there any time an attorney can breach the
22 attorney/client privilege?

23 MS. GRAY: Objection. It's up to
24 the Hearing Officer to determine the law
25 applicable to this case.

183 1 THE HEARING OFFICER: It is. I'll
2 let him express an opinion if he wants to.

3 THE WITNESS: How big is a bread
4 box, Mr. Newman? I can't answer that in a
5 vacuum.

6 Q. (By Mr. Newman) When you met with Mr. Schafer,
7 isn't it true that he provided you with some
8 documents that led him to believe that Judge
9 Anderson was corrupt?

10 MS. GRAY: Objection to the extent
11 that it asked Mr. Sloan what Mr. Schafer
12 believed.

13 THE HEARING OFFICER: That would
14 be sustained, but I think the question is for the

15 documents. You might want to rephrase it.

16 MR. NEWMAN: I can rephrase it.

17 Q. (By Mr. Newman) When you met with Mr. Schafer,
18 isn't it true he provided you with some
19 documents?

20 A. No. He offered to provide me with documents. He
21 came in with a mound of them; I refused to look
22 at them.

23 Q. Why did you refuse to look at them?

24 A. Because it wasn't my concern and I was much more
25 concerned about his mental stability in this
184 1 state and what he was threatening to do, and the
2 entire emphasis shifted to that.

3 Q. Did Mr. Schafer indicate to you that he believed
4 that Judge Anderson was corrupt in taking a
5 kickback?

6 A. With your tailer there, taking a kickback, he
7 said he had felt Judge Anderson was corrupt. I
8 don't recall anything about a kickback. As I
9 said, I quickly deflected the entire meeting.
10 So, we did not get into the merits of what Doug
11 Schafer's campaign was.

12 Q. Weren't you concerned about a sitting court
13 judge, these allegations that Mr. Schafer was
14 bringing to your attention about a sitting
15 Superior Court judge?

16 A. No, I was concerned about what he was doing to
17 our mutual client, Bill Hamilton.

18 Q. So it's fair to say your position was that
19 regardless of what Mr. Schafer had concerning
20 Judge Anderson that Mr. Hamilton's interest
21 should be paramount to whether or not there was
22 evidence of corruption of a judge?

23 A. I was concerned that the attorney/client
24 confidential privileges was paramount vis-a-vis
25 what he was saying about Mr. Hamilton. That was
185 1 my only concern. I did not make an evaluation of
2 the Grant Anderson charges.

3 Q. So you didn't make an evaluation of whether or
4 not your client was involved in an ongoing crime
5 of fraud by assisting Mr. Anderson?

6 A. I resent that question and the form of it implies
7 he was, and I say he was not.

8 Q. Well, it's undisputed, isn't it, that your client
9 provided Judge Anderson with a Cadillac, correct?

10 A. That is true.

11 Q. And that Cadillac was payback to Judge Anderson
12 for his working with Mr. Hamilton on this estate,
13 right?

14 MS. GRAY: Objection. This
15 witness has no personal knowledge about the
16 interactions of Mr. Hamilton and Mr. Anderson.

17 THE HEARING OFFICER: Let him
18 answer if he knows. It's up to him.

19 THE WITNESS: It's my belief that
20 it was not.

21 Q. (By Mr. Newman) Did you ever read the Supreme
22 Court case dealing with Judge Anderson, have you
23 had a chance to read that?

24 A. I perused it. Sir, I don't represent Judge
25 Anderson, at no time have I purported to do so.

186 1 Q. Are you aware that your client was interviewed by

2 the FBI?
3 A. No.
4 Q. Were you aware of your client communicating to
5 others, including Mr. Schafer, that he had made a
6 contribution to Judge Anderson, a five-figure
7 contribution to Judge Anderson?
8 A. Absolutely, he never has. That's Mr. Schafer's
9 fantasy.
10 Q. Did Mr. Schafer tell you that?
11 A. Mr. Schafer said it all over the press, sir, but
12 Mr. Hamilton denies it adamantly. I have no
13 personal knowledge.
14 Q. So, are you saying that you can state here under
15 oath that Mr. Hamilton did not make a five-figure
16 contribution to Mr. Anderson?
17 A. No. I can state my personal belief. I don't
18 know that.
19 Q. Mr. Sloan, do you know who Mr. Kurt Bulmer is?
20 A. Yes.
21 MS. GRAY: Objection, relevance.
22 THE HEARING OFFICER: Well, he
23 hasn't quite gotten there yet. We'll see. We'll
24 take them one by one.
187 25 Q. (By Mr. Newman) Did you prepare an affidavit for
1 Mr. Hamilton with the help of Mr. Bulmer?
2 MS. GRAY: Objection, relevance.
3 THE HEARING OFFICER: You may
4 answer that one. Overruled.
5 Q. (By Mr. Newman) I can show you the affidavit, if
6 you would like.
7 A. You'll have to.
8 MR. NEWMAN: I'm going to need
9 copies of this. We're going to have to have
10 copies of this.
11 MS. GRAY: I would ask for the
12 record for the efficiency of the proceedings that
13 for tomorrow's session that respondent's counsel
14 make some copies ahead of time so that we don't
15 have a delay every time he wants to show a
16 witness an exhibit.
17 THE HEARING OFFICER: That would
18 be desirable, if we could. I understand
19 sometimes things happen in the course of events
20 that make that impossible.
21 We'll be off the record for a moment.
22 (Discussion off the record.)
23 THE HEARING OFFICER: We'll go
24 back on the record. The copies have been made
25 and Ms. Gray has been given a copy to look at.
188 1 Why don't we pause for a moment and let Ms. Gray
2 have a chance to look at this and understand what
3 it is.
4 MS. GRAY: Thank you, Mr. Mills.
5 THE HEARING OFFICER: All right.
6 You may proceed.
7 Q. (By Mr. Newman) Mr. Sloan, I'm going to show you
8 what appears to be an affidavit of William
9 Hamilton and ask if you have seen this before.
10 THE HEARING OFFICER: Just for my
11 notes, could you read the date on it?
12 MR. NEWMAN: The date is 2nd day
13 of April, 1996. This was used by the CJC in

14 their investigation.

15 THE HEARING OFFICER: Thank you.

16 MR. NEWMAN: And Exhibit 117 in

17 the CJC proceedings.

18 MS. GRAY: It has not been marked

19 with an exhibit number for these proceedings; is

20 that correct?

21 MR. NEWMAN: That's correct.

22 THE HEARING OFFICER: All right.

23 Q. (By Mr. Newman) I just have a few questions.

24 A. First of all, I don't know if I have seen it

25 before or not.

189 1 Q. Did you represent or advise Mr. Hamilton during

2 this CJC investigation?

3 A. I'm not going to answer questions about my advice

4 to Mr. Hamilton.

5 Q. I'm not asking what you advised him about. I'm

6 simply asking if you represented him during the

7 CJC investigation?

8 A. At times.

9 Q. Were you aware that there was an affidavit

10 prepared for your client?

11 A. I think so.

12 Q. Okay. And do you think this is the affidavit

13 that was prepared for your client?

14 A. Well, I presume that this is his signature. This

15 notary is not in our office. I don't know who

16 she is.

17 Q. Let me ask, did Mr. Hamilton know Mr. Anderson

18 quite well?

19 A. Yes.

20 Q. Okay. And would you describe them as long-term

21 personal friends?

22 A. I'm told that.

23 Q. Let me ask in your representation of Mr. Hamilton

24 you represented him in a case filed by Judge

25 James Healy a number of years ago in 1989, do you

190 1 remember that case?

2 A. I do.

3 Q. What was that case about?

4 MS. GRAY: Objection, relevance.

5 THE HEARING OFFICER: I'm going to

6 give him latitude. There are various reasons to

7 do this, one might be bias and prejudice. I

8 don't know where he's going, but that's all

9 right, we'll give him a little leeway on this

10 one.

11 Go ahead.

12 Q. (By Mr. Newman) What was that case about,

13 Mr. Sloan?

14 THE WITNESS: Mr. Hearing Officer,

15 I apologize, and I don't mean to be evasive, but

16 my comments would not be flattering to a retired

17 judge, so I don't know what to say here.

18 Q. (By Mr. Newman) Let me just cut to the chase,

19 here, Mr. Sloan, maybe to help you. Did this

20 deal with some sort of financial transaction

21 involving Mr. Hamilton and his bank and the

22 judge, James Healy?

23 A. I don't recall that his bank was involved. It

24 involved Mr. Hamilton in the purchase of an

25 apartment complex with others, and retired Judge

191 1 Healy was an investor. And it was a tax shelter
2 thing and it got very convoluted.
3 Q. Resulting in Judge Healy suing your client,
4 Mr. Hamilton, correct?
5 A. Yes.
6 Q. Did Mr. Hamilton have frequent dealings, business
7 dealings with judges like Hamilton -- sorry, like
8 Anderson or Healy?
9 MS. GRAY: I object to the form of
10 the question as vague.
11 THE WITNESS: First of all, it was
12 not a --
13 THE HEARING OFFICER: Wait a
14 minute.
15 THE WITNESS: I'm sorry, I
16 apologize, Mr. Hearing Officer.
17 THE HEARING OFFICER: I'm
18 permitting a lot of latitude. I see lots of
19 problems here in terms of time references and
20 other things, but if you understand the question
21 why don't you go ahead and answer it.
22 THE WITNESS: I know lawyers make
23 the worst witnesses in the world --
24 THE HEARING OFFICER: Maybe the
25 worst Hearing Officers, I don't know.

192 1 THE WITNESS: -- and I would
2 object to most of these questions, but this did
3 not involve Judge Healy in his capacity as a
4 judge. But for 40 years, and I'm terrible on
5 dates, he was a business investor with a man
6 named Don Medley, and Mr. Hamilton was the
7 executor of that estate. And Mr. Healy was
8 making a claim against the -- as part of being an
9 investor with Don Medley.
10 It had nothing to do whatsoever with the
11 fact that he was a judge. It became exquisitely
12 uncomfortable for me to have to defend against a
13 sitting judge, because of the obvious.
14 Just in the last month I took Judge Healy's
15 deposition. He's a witness in an accident case,
16 and for a moment of levity I said, "Judge, I
17 won't give you the usual admonitions because
18 obviously when you were on the bench you never
19 listened to me."
20 And his retort was, "Mr. Sloan, if you had
21 had anything to say I would have listened."
22 So, what I'm trying to imply is that we were
23 friendly and so forth, but it was not a
24 comfortable thing for me to do to be in that
25 position.

193 1 Q. (By Mr. Newman) And I guess I want to make clear
2 at the time of this lawsuit in 1989 --
3 A. Was that when it was? See, I don't even remember
4 the date.
5 Q. Actually, you will see the filing date was 1989.
6 That's the cause number put on it.
7 MS. GRAY: I object to Mr. Newman
8 testifying. If he wants to ask the witness a
9 question, that's fine, but I object to him
10 seeking to introduce evidence into the record,
11 not to the witness?
12 THE HEARING OFFICER: He can

13 suggest to him when this occurred. Go ahead.
14 Q. (By Mr. Newman) My question simply is this,
15 Mr. Sloan: At the time you represented
16 Mr. Hamilton in this case James Healy was a
17 sitting judge?
18 A. Yes.
19 Q. All right.
20 A. I think so.
21 Q. And I think as you indicated you had some
22 trepidation in representing Mr. Hamilton where
23 the other side was a sitting Superior Court
24 Judge, right?
194 25 A. No, it wasn't Mr. Hamilton, it was the fact that
1 the other side was a sitting judge. It wasn't
2 the fact that I was representing Mr. Hamilton.
3 Q. Sorry. I didn't phrase the question properly.
4 And I guess what my question goes to is that
5 the -- whether or not you had any similar
6 reservations in looking at the documents provided
7 by Mr. Schafer concerning Mr. Anderson?
8 A. I don't understand your question.
9 Q. You indicated that in defending Mr. Hamilton in
10 this lawsuit filed by then sitting Judge James
11 Healy, you had some reservations in representing
12 and being on the other side of a case where a
13 judge was suing your client, right?
14 A. Yes.
15 Q. And I guess my simple question is: Did you have
16 similar reservations in looking at documents
17 Mr. Schafer was providing to you that may have
18 shown that Judge Anderson was corrupt?
19 A. Sir, I never looked at any documents provided by
20 Mr. Schafer.
21 Q. So you don't know if there was an ongoing crime
22 or fraud being committed?
23 A. I'm not going to answer that.
24 Q. The fact is your answer is no, then, right?
25 A. It's when did I quit beating my wife, sir. The
195 1 question is unfairly stated.
2 Q. As we sit here today, Mr. Sloan, do you think it
3 was correct for the Supreme Court to remove Judge
4 Anderson as a sitting Superior Court judge?
5 MS. GRAY: Objection, relevance.
6 MR. NEWMAN: It's his opinion.
7 THE HEARING OFFICER: I'll let him
8 answer that.
9 THE WITNESS: It's certainly not
10 my role to decide that.
11 MR. NEWMAN: Your Honor, we just
12 have one last item we would like to bring out in
13 Mr. Sloan's cross-examination, and this goes to
14 my prior questions that Mr. Hamilton and Mr.
15 Sloan had indicated that Mr. Hamilton would not
16 be testifying at this hearing and that he would
17 be taking the Fifth Amendment.
18 MS. GRAY: Objection. I think
19 that is not the nature of the testimony that
20 Mr. Sloan has given thus far, and I had intended
21 to clarify that on redirect.
22 MR. NEWMAN: What we have here is
23 the tape from the December 19th, 1997 CJC
24 telephonic hearing, where --

196 25 MS. GRAY: Mr. --
1 MR. NEWMAN: Let me just finish --
2 where Mr. Sloan indicates that Mr. Hamilton would
3 not be testifying.
4 MR. SCHAFER: He would be taking
5 the Fifth Amendment because the Federal grand
6 jury --
7 MS. GRAY: Mr. Mills, it is my
8 understanding that Mr. Newman asked and
9 Mr. Sloan answered that he did represent in 1997
10 that he would advise his client to take the Fifth
11 regarding an upcoming hearing, which I understand
12 to be the hearing on the Commission on Judicial
13 Conduct, to take the Fifth.
14 It is my understanding that Mr. Sloan
15 testified that he did state that in connection
16 with the CJC hearing.
17 It is not my understanding that Mr. Sloan
18 has testified in any way about whether or not
19 Mr. Hamilton would take the Fifth at this
20 hearing, and he did not testify, I believe, he
21 explicitly refused to testify about what advice
22 he would or would not give Mr. Hamilton about his
23 testimony of this hearing.
24 THE HEARING OFFICER: My
25 recollection of the testimony is the same as
197 1 Ms. Gray's, and if this tape is being offered to
2 simply impeach the witness, there's nothing to
3 impeach because he's admitted the statement that
4 is likely to be on this tape. I see no reason to
5 hear this tape. The record is clear.
6 MR. NEWMAN: That's it. Thank
7 you.
8 THE HEARING OFFICER: Thank you.
9 Redirect?
10 REDIRECT EXAMINATION
11 Q. (By Ms. Gray) Mr. Sloan, you heard what I said
12 just a moment ago about your testimony. Is it
13 correct that you made a representation in
14 connection with the CJC hearing that you would
15 advise your client to take the Fifth Amendment at
16 that hearing?
17 A. Yes, that was an entirely different proceeding,
18 nothing to do with this.
19 Q. Did Mr. Hamilton testify at that proceeding?
20 A. Yes.
21 MS. GRAY: I have no further
22 questions.
23 THE HEARING OFFICER: All right.
24 Does anyone have anything further from Mr. Sloan?
25 MR. NEWMAN: No further questions.
198 1 THE HEARING OFFICER: Thank you.
2 Mr. Sloan, you are excused. Thank you for
3 coming.
4 (Witness excused.)
5 MS. GRAY: Mr. Mills, we had
6 interrupted the testimony of Mr. Schafer to take
7 the testimony of Mr. Sloan. Last Friday we had a
8 discussion regarding a witness that the
9 Association wanted to call, John Strait.
10 The Association has -- and the Hearing
11 Officer deferred ruling on whether or not that

12 testimony could be taken by telephone. In light
13 of that ruling the Association has decided not to
14 call Mr. Straight in its case-in-chief.

15 However, should Mr. Schafer or anyone else
16 testify regarding any communications with
17 Professor Strait or with Professor Warner the
18 Association will seek to call him in its rebuttal
19 case.

20 So, that being said, Mr. Sloan is our last
21 witness, and I don't know as a matter of
22 procedure whether you or Mr. Newman prefer that
23 we rest now or that you prefer that we rest after
24 Mr. Newman has the opportunity to further examine
25 Mr. Schafer.

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1 THE HEARING OFFICER: Well, I
2 would wait until Mr. Newman has a chance to
3 question Mr. Schafer and then you may have some
4 redirect, if you will, for him.

5 So, I would wait until then. Keep your
6 powder dry. You can tell me whether you want to
7 rest then or have other witnesses in your
8 case-in-chief. As far as we're concerned, I
9 think that's probably a good way to handle this
10 problem at this time.

11 So, Mr. Schafer, I think you're up again,
12 you are still under oath. And Mr. Newman,
13 whenever you are ready and Mr. Schafer is ready,
14 you may proceed.

15 My intent is to go -- I don't know how long
16 you plan to question him -- but to go until maybe
17 about 3:30 and take a break at that time, so you
18 might pace yourself.

19 AND THEREUPON,

20 DOUGLAS A. SCHAFER,
21 recalled to the stand, having been called a witness by
22 The Bar Association and having been previously sworn, was
23 cross-examined and testified as follows:

24 CROSS-EXAMINATION

200

25 Q. (By Mr. Newman) Mr. Schafer, you heard Ms. Gray
1 ask a number of questions concerning your
2 communications about the Hoffman Estate. Did you
3 represent anyone on the Hoffman Estate?

4 A. No, I did not.

5 Q. She also asked you questions about the sale of
6 the bowling alley to the corporation you set up
7 for Mr. Hamilton. Did you represent Mr. Hamilton
8 in the sale of the -- in those negotiations?

9 A. Not at all. My very narrow role was simply this
10 virtually clerical task of preparing papers to
11 create a corporation, articles, by-laws, it's
12 basically routine forms and you change the names.

13 Q. Ms. Gray also asked a number of questions
14 concerning your communications with others about
15 Judge Anderson. Did you, at any time, represent
16 Judge Anderson?

17 A. I never have.

18 Q. Now, with respect to Mr. Hamilton, isn't it
19 correct he utilized a number of attorneys?

20 A. He has acknowledged, I mean, it was my knowledge
21 that he had many attorneys that he used and in
22 his testimony in the CJC proceedings he has
23 indicated that as well.

24 Q. I'm going to draw your attention to your
25 interactions with Mr. Hamilton in 1992,
201 1 particularly August of '92 when you spoke with
2 him. Could you explain again what transpired,
3 what communications were made to you by
4 Mr. Hamilton at that time?
5 A. My recollection is he telephoned me, said that he
6 needed a corporation formed. He asked me to
7 check the availability of a corporate name. He
8 indicated, and I don't know if it was in that
9 first telephone conversation or when he dropped
10 by my office maybe a week later or so, he
11 indicated that, you know, he was anxious to get
12 it done quickly. And he indicated that a friend
13 of his, a lawyer named Grant Anderson, had been
14 milking an estate for, I think he indicated the
15 name of the estate, I think it was when he was
16 physically present, milking an estate for four
17 years.

18 The lawyer was about to become a judge, was
19 closing the estate, but there would not be time
20 for an appraisal. Bill Hamilton indicated that
21 he was going to be getting a good deal and he
22 intended to pay back his friend later.

23 I believe he said, and has since confirmed
24 in his depositions -- his testimony in the CJC
25 proceeding --

202 1 MS. GRAY: I object to Mr. Schafer
2 testifying about what Mr. Hamilton testified at a
3 different proceeding.

4 THE HEARING OFFICER: That's a
5 good objection. I think you should restrict your
6 testimony to your personal knowledge unless it's
7 clear that you're testifying about something you
8 learned in another way.

9 THE WITNESS: Okay.

10 MR. NEWMAN: Well, if I can just
11 respond, Your Honor, two points. We've tried to
12 subpoena Mr. Hamilton and he's avoiding service.
13 We cannot get him here. There is sworn testimony
14 in depositions of what Mr. Hamilton testified to
15 in the CJC hearing which we'll gladly introduce
16 the whole thing, which we may do tomorrow. And
17 so Mr. -- what Mr. Schafer is referring to is
18 that testimony by Mr. Hamilton before a public
19 hearing like this one, and that's what he's
20 talking about.

21 THE HEARING OFFICER: I understand
22 what he's talking about. The question, though,
23 was what happened in this interaction and he
24 started with the telephone conversation and what
25 he was asked to do and suddenly he was off
203 1 talking about what Mr. Hamilton remembered in the
2 same conversation. I'd like to keep pure what
3 his recollection is and what it is -- it's mostly
4 for my clarity on what you recall.

5 THE WITNESS: The reality is it
6 was eight years ago. My actual recollection is
7 probably more based on what I have read that has
8 been memorialized in the intervening years, both
9 by me and by Bill Hamilton, and my memory is not
10 that fine and precise for a conversation of eight

11 years ago.

12 But in February of 1996 I memorialized and
13 signed under declaration, under penalty of
14 perjury a statement essentially as I have just
15 indicated, what I have just testified to. I had
16 indicated to Mr. Hamilton that I did not want to
17 hear about this deal that he was getting on the
18 bowling alley and his intention to pay him back
19 later.

20 He indicated that he might make him a
21 corporate secretary, and I understood that to
22 mean that he would pay him a retainer in that
23 capacity. At that time I did not even know where
24 to look to find the code of judicial conduct. I
25 was totally unaware that sitting judges were not
204 1 allowed to be corporate officers.

2 I continually thought that he probably ended
3 up making Anderson a corporate officer up until
4 the time I fetched the corporate annual reports
5 from the Secretary of State's office in December,
6 '95 or January -- the first few days of January,
7 '96.

8 I'm trying to recall if there's anything
9 else significant. I remember checking the
10 corporate name at the law library. The name he
11 wanted was previously taken, it was like Pacific
12 Recreation and that was not available. I ended
13 up telling him that and I think he wanted me to
14 put the word enterprises at the end of it. I
15 prepared the documents, he came in, signed them,
16 I shipped them off to be filed in the Secretary
17 of State's office and that was of the end of my
18 involvement.

19 I provided the documents to him, the minute
20 book, and that was the last I heard of anything
21 about Pacific Recreation Enterprises or Pacific
22 Lanes or Grant Anderson or anything or anybody.

23 Q. Did you know Grant Anderson at the time in 1992
24 when you had this conversation with Mr. Hamilton?

25 A. Only knew where his office was physically located
205 1 because of his own main arterial that I would
2 often drive by going to the freeway on-ramp. But
3 I have never, to my knowledge, had ever spoken to
4 the man or communicated with him in any fashion,
5 or anybody in his firm.

6 Q. So you weren't hired to negotiate the sale or
7 write up the sale agreement, correct?

8 A. No, not at all.

9 Q. Ms. Gray asked you questions concerning the
10 Barovic case. Can you explain to the Hearing
11 Officer what that case was about?

12 A. The Barovic case is actually a collection of
13 cases. The brief history of the case before I
14 became involved was there was a family feud going
15 on between a father in his nineties, two
16 daughters in their, I think seventies, and a son
17 who was, I think, then about seventy or
18 thereabouts.

19 The mother had died. The two daughters had
20 commenced a guardianship to basically take charge
21 of their father's affairs. The father resented
22 that, he sought to disinherit the daughters. It

23 was a highly contested guardianship matter.

206 24 At the time I was raising public awareness
25 of what I considered problems with guardianship
1 practices in the county and multiple people
2 called the Barovic case to my attention, saying
3 that I should look at it. I did so. I obtained
4 transcripts from some of the guardianship
5 hearings.

6 Those transcripts vividly illustrated the
7 concerns that I had about guardianship practices.
8 I ended up preparing, at my expense, about a 15
9 or 20-page handout that I handed out hundreds of
10 copies to illustrate problems with guardianship
11 practices, and that handout included, I think,
12 two transcripts from the Barovic guardianship
13 cases.

14 The elderly Barovic had by then died, I
15 think. I don't recall just when it was, but as a
16 result of my having used those transcripts in my
17 guardianship public efforts I was contacted by
18 this Don Barovic. You know, he just wanted to
19 introduce, you know, find out who I was and
20 whatnot, and then that was probably in May of
21 '95.

22 And it was actually in early July, I think
23 the date was July 9th, I think it was a Sunday
24 morning, actually, or a Saturday evening that I
25 was called by this gentleman, Don Barovic, and he
207 1 asked me to, he wished to retain me to join his
2 two other lawyers who were involved in what had
3 been a long fought, at that point, battle.

4 Initially, Don and his father against Don's
5 two sisters; father died. It was then Don
6 against the two sisters and they were, you know,
7 disputing which will was the valid will. They
8 were disputing partition of their mother's assets
9 their parents owned, to identify which of many
10 valuable commercial properties would go into the
11 mother's estate.

12 It just was a contentious matter at that
13 point for, I think, a couple years. Lawyers
14 representing Don Barovic had been a gentleman
15 named Dick Jensen, Richard Jensen, and a Seattle
16 lawyer named Shawn Hicks.

17 The client wanted me to get involved. The
18 other two lawyers were gracious, did not object.
19 They seemed to appreciate some of the points that
20 I was bringing out, particularly in the first
21 papers that I filed, the analysis that I did of
22 some of I thought serious problems, some of which
23 were Federal estate tax problems that everybody
24 involved seemed to have been overlooking
25 throughout.

208 1 So, I filed some papers in preparation for
2 the July 21 hearing, attended the hearing, sought
3 a continuance of the trial of the partition
4 action, which these two lawyers were strongly
5 urging that we needed to try to do.

6 They could not attend the hearing due to
7 prior scheduling problems. I attended. Judge
8 Anderson listened to the argument but said
9 essentially: It's an argument, it's interesting

10 but it's coming in too late, we're too far along
11 in this case, and denied the request for a
12 continuance.

13 It was not that big a deal, but at that
14 first occasion when I stood in front of him --
15 and I will say my practice has never been a
16 courthouse lawyer. I would occasionally go to
17 the courthouse and present ex-parte matters to
18 court commissioners, but I do believe that that
19 hearing, when I stood in front of Judge Anderson,
20 was either the first or second time in my, then,
21 about 17-year career that I had ever even stood
22 in front of a full blown judge, I guess I would
23 say, as opposed to a court commissioner. It
24 simply has never been my practice.

25 Q. Had you appeared before Judge Anderson before?

209 1 A. No, no, no. But I remember standing there and
2 seeing that big nameplate, you know, Grant L.
3 Anderson, and it hitting home to me that he's the
4 guy that Bill Hamilton had told me almost three
5 years ago, in August of '92, that had been
6 milking this estate for four years, was giving
7 Bill a good deal, and Bill commented that he
8 might pay him back later.

9 You know, that really struck me that, God,
10 there he is, you know, he's wearing the black
11 robe, that's the guy that Bill was talking about.

12 So, within a week, you know, I had looked at
13 my office file from when I had formed the
14 corporation for Bill, identified the name of the
15 estate, the Hoffman Estate, and I went to the
16 courthouse clerk's office and checked out the
17 Hoffman Estate because I was really having
18 doubts.

19 I really thought there was some things about
20 that that somebody probably should look into,
21 checked out the file, sat there in the clerk's
22 office looked through it for, I'm guessing a
23 half-hour to an hour, something like that,
24 remembered some things about it that really
25 concerned me, you know, the \$112,000 PR fee just
210 1 a few days before he became a judge.

2 It looked like an ex-parte hearing with
3 nobody representing the hospital or the long lost
4 son or no attorneys present in the case other
5 than Grant Anderson and his office colleagues.

6 MS. GRAY: Mr. Mills, I would like
7 to request of Mr. Newman and Mr. Mills that there
8 not be such lengthy narrative answers to each
9 question, so that the testimony can come in a
10 little bit more orderly fashion and so that I
11 have the opportunity to make objections.

12 I'm not making an objection to what
13 Mr. Schafer has just testified to, but I would
14 ask that he limit his answers more carefully to
15 what's been asked.

16 THE HEARING OFFICER: I understand
17 the objection. I think Mr. Newman might have the
18 same objection if the tables were turned.

19 MR. NEWMAN: Well, I guess, yes, I
20 asked for an explanation what the Barovic case
21 was about and will try to make my questions more

22 succinct in the future.

23 THE HEARING OFFICER: It does save
24 time, but it doesn't give counsel the opportunity
25 to object if things start to come out. So we'll
211 1 try to go a little more Q and A, but narrative
2 answers as long as they are clear and they're not
3 objectionable, I think, are just fine.
4 So far we are doing okay, but your objection
5 is noted and I'll be more attentive to that.
6 Thank you.

7 Q. (By Mr. Newman) Let me make it clear for the
8 Hearing Officer. The Barovic case dealt with a
9 guardianship and some fiduciary issues; is that
10 right? Is that a yes?
11 A. As a result, yes, it did. And in fact, my
12 client, Don Barovic, had been appointed the
13 trustee of his one-third of at least his mother's
14 estate of a trust for himself, he was the
15 trustee.

16 Within a few months some members of the
17 family were trying to depose him as trustee and
18 accusing him of fiduciary breaches -- breaches of
19 fiduciary duty, and ultimately, that was one of
20 the issues scheduled to come before Judge
21 Anderson February 2nd that particularly alarmed
22 me, for by then I had formed the conviction,
23 absolute conviction that Judge Anderson knew
24 nothing at all about fiduciary responsibility or
25 at least by his actions appeared not to have a
212 1 grounding of the law of trusts and estates and
2 fiduciary duties.
3 And it particularly alarmed me, particularly
4 seeing that all opposing counsel have been public
5 endorsers and financial contributors to him and
6 seeing what his conduct had been in the Hoffman
7 Estate, and to think that he would stand in
8 judgment of my client in any fiduciary matters
9 was troubling to me.

10 Q. All right. Now, Ms. Gray has made a great deal
11 about whether or not you were happy or unhappy
12 with Judge Anderson's rulings, and I guess my
13 question --
14 MS. GRAY: I object to the
15 characterization of the introduction of his
16 question.
17 MR. NEWMAN: I have it right here,
18 Your Honor. Were you unhappy with his rulings,
19 the question was.
20 THE HEARING OFFICER: That was a
21 question that was asked.
22 MS. GRAY: Thank you, Your Honor.
23 THE HEARING OFFICER: You may
24 proceed.

25 Q. (By Mr. Newman) Ms. Gray has asked you a series
213 1 of questions, whether you were happy or unhappy
2 with Judge Anderson's rulings since, I guess,
3 that's the motivation for you to investigate
4 Judge Anderson, based on what she said in her
5 opening about some sort of vengeance against
6 Judge Anderson. Was that the motivation for you
7 to investigate Judge Anderson?
8 A. Not at all. When I first stood in front of him

9 and I saw that nameplate and I drew the
10 connection, you know, to me it was just obvious
11 to me from that point on I was going to look into
12 that. You know, it was something that I recalled
13 thinking years earlier it really should be looked
14 into but, you know, I didn't feel earlier that I
15 could in light of my not knowing what activities
16 my client had engaged in.

17 And even then, after I looked at the file I
18 felt that, you know, not enough time had gone
19 under the dam. My client might have been
20 involved in aiding and abetting a fiduciary
21 breach and I was thinking it was a three-year
22 statute of limitations.

23 But I quite sincerely have been kind of a
24 Boy Scout all my life. I report bad guys, you
25 know, I do that. I've done that all my life.

214 1 And when I see people doing things that seemed to
2 me to be evil, you know, actions that are people,
3 you know, intentionally breaking the law,
4 violating the law, disregarding the law, I report
5 them, you know, I do.

6 Because I think we all have that civic duty
7 to share in the self-policing of society. And so
8 there's really no doubt at all in my mind that I
9 would have done essentially as I did regardless
10 of whatever rulings.

11 I mean, I had only stood in front of him
12 once, you know, and his decision not to grant a
13 continuance of a partition trial that was
14 scheduled to begin in a week was hardly
15 surprising, you know. I mean, we didn't really
16 expect to win that. It was worth a try.

17 Q. Ms. Gray has suggested that you may have had some
18 financial motive to pursue and investigate Judge
19 Anderson because of some attorney fee issue or I
20 forget exactly what Ms. Gray suggested. Do you
21 recall?

22 MS. GRAY: I object to the
23 characterization of what Ms. Gray has suggested.

24 THE HEARING OFFICER: I think he's
25 trying to tie it to your direct examination and
215 1 there was discussion about what Mr. Schafer's
2 motives were, so I'm going to let him go ahead
3 and ask a question about financial motive.

4 Q. (By Mr. Newman) The question, Doug, is Ms. Gray
5 made a great deal about an attorney fee issue
6 that arose in the Barovic case.

7 A. Mr. Bulmer has been publicly making that
8 allegation for over a year including to the Bar
9 Office, which included in their record that they
10 submitted to the Supreme Court and to Judge
11 Anderson as public --

12 MS. GRAY: I object to what --

13 THE WITNESS: It's public.

14 MS. GRAY: Mr. Schafer is
15 testifying about what Mr. Bulmer has made part of
16 the record. That is not in evidence in this
17 case. It is hearsay and it is not relevant.

18 THE WITNESS: We're not --

19 THE HEARING OFFICER: Let's be
20 careful, here. I just want to make sure the

21 answers to the question -- the question was, I
22 think, basically: Did you have some sort of
23 financial motive to investigate Judge Grant
24 Anderson?

25 I would like to get an answer to that.

216 1 THE WITNESS: The answer is none,
2 whatsoever. It was a disincentive or a counter
3 motive because all the time I spent looking into
4 Anderson was on my own nickel. I mean, nobody
5 has been paying me for four years trying to get
6 the responsible officials to do their damn job.
7 You know, it took three-and-a-half years to get
8 that guy's robe taken off and no one has paid me
9 a dime for it.

10 You know, the one and only thing is that
11 very first day, July 28th of 1995, I spent
12 virtually the entire day working on various
13 things for Don Barovic in that case. And when I
14 was at the courthouse I checked out the Hoffman
15 file and spent some time looking through it.

16 So, that running 8-hour or 6-hour or
17 whatever it was block of time on that date, you
18 know, was billed. As I prepared monthly bills,
19 you know, to Don Barovic, he paid it. And it
20 does reflect about, I don't know, a half-hour,
21 hour, I don't know, it's not individually
22 itemized.

23 When I put in a full day for a client I bill
24 for a full day. So, you know, that very first
25 peek at the file I was compensated for by Don
217 1 Barovic, who paid my bills monthly.

2 You know, not being a courthouse lawyer, I'm
3 not accustomed to this concept that you got to
4 get your fees approved by a judge, you know. I
5 send clients a bill on a monthly basis and they
6 normally pay it. So, you know, this thing about
7 a fee hearing in September was really a nuisance
8 to me. Don's sisters were --

9 MS. GRAY: Mr. Mills, I object to
10 testimony about a fee hearing in September.
11 There has not been testimony and there's no
12 question about a fee hearing in September.

13 THE HEARING OFFICER: I'll sustain
14 the objection. I think we're getting far afield
15 from the original question. Counsel can ask you
16 about that, but let's try to get back to the Q
17 and A format.

18 MR. NEWMAN: I would just want to
19 make it clear, Your Honor, in an effort to have
20 judicial efficiency I'm being allowed to inquire
21 with Mr. Schafer into areas beyond the direct
22 testimony.

23 THE HEARING OFFICER: Yes, you
24 are.

25 MR. NEWMAN: Oh, okay.

218 1 Q. (By Mr. Newman) Well, why don't you tell us about
2 that fee hearing.

3 A. Basically, what came about is, I think in early
4 September, early August, I don't recall just
5 when, but Don Barovic's sisters and their
6 attorneys scheduled a hearing seeking the court
7 to approve and reimburse from their parents'

8 estate all attorney's fees, about \$150,000 that
9 had been either accrued or paid, and I don't know
10 which, up to that time to the two daughters doing
11 battle with the son, my client.

12 Dick Jensen and Shawn Hicks, the co-counsel
13 with me at that point in the matter said: We
14 need to respond in kind. We need to put together
15 documentation of all the fees that Don Barovic
16 has either accrued or paid to us. So, you know,
17 Mr. Schafer, would you provide your fee -- your
18 invoice information.

19 For me that was a nuisance because that's
20 not my practice. My practice was to send out
21 bills and the clients, you know, pay it directly.
22 Having to put together the invoices with a
23 declaration that basically said, yes, this time
24 was related to this estate, et cetera, et cetera,
25 you know, I felt I had to do it because these
219 1 other attorneys were saying there's a chance Don
2 Barovic might get some of his fees reimbursed, so
3 I did.

4 I pulled on the oars that they said needed
5 to be pulled on at the time. I did not even
6 attend that hearing. I frankly didn't give a
7 damn about its outcome from my perspective
8 because I was billing and being paid directly.

9 I later learned that the decision from that
10 hearing was, you know, one that seemed on its
11 phase equitable. He basically said, you know,
12 three children each get the same amount of the
13 fees paid directly by the estate. So, the two
14 daughters had been together, were given \$75,000
15 each reimbursement from the estate, and Don
16 Barovic was given \$75,000 to be reimbursed by the
17 estate, and he could decide how he allocated
18 among his attorneys.

19 Frankly, it didn't concern me at all. You
20 know, I didn't really pay any attention to it. I
21 didn't attend that hearing, but Mr. Bulmer has
22 been screaming to the legislature --

23 MS. GRAY: I object to what Mr.
24 Bulmer has said.

25 THE WITNESS: Well, I object to
220 1 what he's been saying, too.

2 MS. GRAY: Mr. Bulmer --

3 THE WITNESS: You know, he's been
4 maligning me for a year.

5 THE HEARING OFFICER: Mr. Schafer,
6 could you please restrict your remarks to the
7 answering of the question, and there wasn't any
8 question about Mr. Bulmer. So, let's -- if your
9 counsel wants to ask about Mr. Bulmer and we get
10 an objection or acquiescence, that's fine, but I
11 don't want to hear about Mr. Bulmer unless
12 there's a question.

13 THE WITNESS: Okay.

14 Q. (By Mr. Newman) Well, let me ask about
15 Mr. Bulmer.

16 Are you aware of criticisms made regarding
17 your -- this case and the Barovic case, in
18 particular, made by former Bar Association chief
19 counsel, Kurt Bulmer?

20 A. I'm very much aware of it.

21 MS. GRAY: Mr. Mills, I --

22 THE HEARING OFFICER: Do you have
23 an objection?

24 MS. GRAY: Mr. Mills, I object to
25 that question as irrelevant as to whether or not
221 1 Mr. Bulmer has criticized Mr. Schafer. I believe
2 that any criticisms that the question refers to
3 occurred in 1997 or 1998, and I respectfully
4 submit that it's not relevant.

5 MR. NEWMAN: Now, let me respond.
6 They are relevant, because as I indicated in my
7 opening argument, the question really at issue is
8 why the Bar Association is pursuing Doug Schafer.
9 And as I indicated in my opening argument, it is
10 our belief we need to establish that the Bar
11 Association is pursuing Mr. Schafer because of
12 its former chief counsel, Kurt Bulmer, who
13 represented Judge Anderson is using the Bar
14 Association to seek vengeance upon Mr. Schafer
15 for taking out Judge Anderson.

16 THE HEARING OFFICER: All right.
17 Let me just say this. I think that it's
18 important for Mr. Schafer to make a complete
19 record in relation to this hearing. I find this
20 evidence not particularly helpful in terms of the
21 issues that I'm supposed to decide here, frankly,
22 but I think, I will permit the evidence to come
23 in.

24 I simply believe that it's not going to be
25 of great assistance to the Hearing Officer in
222 1 deciding the case. And if you want to go into it
2 in great detail at some point I'm probably going
3 to restrict you, because it does not relate to
4 the charges, the statement of charges of fact and
5 related to the charges. It's kind of after the
6 fact.

7 I do understand that it's important to
8 develop a full record. I understand that it's
9 important to Mr. Schafer to establish motive and
10 other things that are probably not particularly
11 relevant to the facts and the law that I need to
12 deal with. But with that said, I mean, I'm
13 playing the arbitrator's presumption that if
14 there's some connection I'll hear it, but the
15 weight of this seems to be very slight to the
16 Hearing Officer.

17 MR. NEWMAN: I'd like to clear the
18 connection because in her opening statement
19 Ms. Gray made this claim that Mr. Schafer is
20 acting as a self-appointed vigilante or seeking
21 vigilante justice, and we have raised in my
22 opening argument the question of why the Bar
23 Association waited nearly two-and-a-half years to
24 pursue this case, why the Bar Association did not
25 pursue Judge Anderson, and I think it is germane
223 1 to the issue, to the key question under 4.11 as
2 to whether or not Mr. Schafer's activities in
3 reporting a corrupt judge should impact his
4 license to practice law.

5 THE HEARING OFFICER: Ms. Gray?

6 MS. GRAY: Mr Mills, with regard

7 to this issue, I understand your desire to allow
8 Mr. Schafer to make a record in this matter.
9 However, it is clear from Mr. Newman's argument
10 that he wants to turn this matter into a hearing
11 regarding the Bar Association's motives and the
12 Bar Association's conduct of a disciplinary
13 investigation of Grant Anderson and the Bar
14 Association's conduct of a disciplinary
15 investigation against Mr. Schafer.

16 It our position, respectfully, that the
17 issues to be decided by the Hearing Officer
18 relate to Count One of the formal complaint and,
19 if appropriate, to any sanction being imposed if
20 there is a finding on Count One that Mr. Schafer
21 has violated Count One.

22 If evidence is admitted regarding Mr. Bulmer
23 and regarding their allegations that Mr. Bulmer
24 has somehow had influence within the Office of
25 Disciplinary Counsel regarding decisions made in
224 1 this case, then it would be necessary for the Bar
2 Association arguably to rebut evidence if it's
3 admitted as relevant in this matter.

4 The other possible way to proceed is to
5 allow Mr. Newman to make a proffer of the
6 evidence that would be submitted but not to admit
7 it, in which case the Bar Association wouldn't be
8 put in the position of having a mini trial on
9 this issue that the Bar respectfully submits is
10 irrelevant and collateral.

11 MR. NEWMAN: Your Honor, the
12 bottom line is, again, Ms. Gray in her opening
13 ascribed certain motives to Mr. Schafer in
14 pursuing this issue, and what we intend to show
15 is that those motives, including this idea he had
16 some sort of financial problem or interest or
17 whatever, which at least in the pleadings has
18 been perpetuated by the former chief counsel, who
19 was also in charge of ordering discipline who
20 coincidentally represented Judge Anderson.

21 THE WITNESS: May I also express a
22 factual matter that to me is extraordinarily
23 relevant, and that is that in Judge Anderson's
24 lawyer disciplinary matter the Bar Office of
25 Disciplinary Counsel allowed Mr. Bulmer to
225 1 include in the record that went to the 14-member
2 disciplinary board and then to the State Supreme
3 Court, you know, his multi-page diatribe of me
4 that was based on factual -- based on lies, and
5 maligned me extraordinarily, attributed these
6 motives to me based on this hearing that I did
7 not attend, that was totally fabricated.

8 So, he's poisoned the well in the
9 disciplinary board and he's tried to poison the
10 well and maybe he has in the State Supreme Court,
11 and assuming the members of those bodies actually
12 read the stuff that gets sent them, they will
13 have a preconceived impression of me thanks to
14 Mr. Bulmer's, you know, skullduggerous approach.
15 And I think I'm entitled to try and purge, you
16 know, have the record reflect how malicious that
17 was and how false it was.

18 THE HEARING OFFICER: I'm ready to

19 rule on this. I'm going to permit Mr. Newman to
20 ask questions regarding this. I want both
21 counsel to understand that under Rule 4.11(c) I
22 have discretion to exclude incompetent,
23 irrelevant, material and unduly repetitious
24 evidence.

226 25 I find this evidence that's being offered
1 very weak evidence in relation to the charges or
2 in defense of the charges. However, if Mr.
3 Schafer, whose license could be impacted by this
4 proceeding, believes it's important I think it's
5 important for me to give some leeway to hear
6 this. I'll hear it, but I don't want to go very
7 far down this road.

8 It seems to me that it is not helpful to me
9 in deciding -- making findings and conclusions on
10 the charges. It simply is not. There may be
11 another purpose for this in relation to the
12 record that I don't believe I fully understand,
13 but this seems to be getting very far afield.

14 So I'm going to let you go ahead and I don't
15 want to spend a lot of time on this and I want
16 you back to the real issues at stake here.

17 So Mr. Newman you can proceed. You were
18 asking -- I have my notes on the question. You
19 may want to rephrase the question, it's been some
20 time.

21 Q. (By Mr. Newman) The question, Doug, was whether
22 or not you know who Kurt Bulmer is, and
23 secondarily, if he has somehow in your mind
24 maligned you in this case?

227 25 A. Mr. Kurt Bulmer was former general counsel of the
1 State Bar Association, joined the staff in 1974,
2 became general counsel in '76 and retired or left
3 as general counsel in 1981, and since has
4 restricted his practice to ethical and
5 disciplinary matters.

6 He regularly speaks at Bar sponsored
7 functions, serves on most Bar committees and task
8 forces dealing with Bar discipline and
9 professional responsibility related matters.
10 He's recognized as one of the authorities in that
11 field.

12 He has been defending Judge Anderson since
13 approximately February or March of 1996. He has
14 expressed great animosity towards me on multiple
15 occasions, beginning in May of 1999 when the
16 legislature -- it might have been April when the
17 legislature was serious about acting to begin the
18 process, passed the resolution leading to the
19 potential removal of Judge Anderson.

20 Kurt Bulmer sent a letter to the leaders of
21 the legislature with a fairly lengthy, I think it
22 was like a 12 or 14-page release. Several pages,
23 like four or five pages were devoted entirely to
24 maligning me and attributing me, the motive to me
25 that I was reacting vindictively to Judge

228 1 Anderson's refusal to approve some fees, which
2 was patently false. He attributed it to some
3 hearing that occurred in September of 1995.

4 When I challenged him on it and told him
5 that it was malicious and false, he then obtained

6 the trial transcript from the court reporter,
7 Carol Wilson, who prepared it for him at the end
8 of June of 1999, or I think May, but it was not
9 filed in the court file, and I did not even get
10 my hands on it until about a week or two weeks
11 ago.

12 And it totally provides no support
13 whatsoever for the malicious accusations that
14 Kurt Bulmer has been making ever since. And I
15 was outraged to see that the Office of
16 Disciplinary Counsel permitted Mr. Bulmer to
17 include that malicious diatribe towards me as
18 part of the record of its investigation of Judge
19 Anderson that went to the 14-member disciplinary
20 board and then went to the members of the State
21 Supreme Court.

22 I just found it outrageous. There was no
23 effort to confirm its validity and it maligned me
24 and I'm planning on suing.

25 MS. GRAY: Mr. Schafer has no
229 1 knowledge of whether or not there was an effort
2 made to confirm its validity and what motivations
3 went into the --

4 THE HEARING OFFICER: That part is
5 sustained.

6 Q. (By Mr. Newman) Let me follow up, then.

7 Doug, when did you provide information to
8 the Bar Association and others regarding what you
9 found out about Mr. Anderson?

10 A. It was either February 29th, 1996, or within a
11 day or two at the most thereafter. Right after I
12 completed that analytical memo, I then packaged
13 that with the February 16 declaration under
14 penalty of perjury, together with a full set of
15 documents each in a separate manila file folder,
16 each labeled to be a category in the analytical
17 memo I described, and provided it to them.

18 I received a phone call, I believe, March
19 8th of 1996 from Julie Shankland. I explained
20 the essence of it to her; she was the assigned
21 Disciplinary Counsel. She indicated that their
22 standard first response upon receipt of any
23 accusatory grievance paper is to send all the
24 papers directly to the lawyer who is the subject
25 of the grievance.

230 1 I said, no, please don't do that. There are
2 law enforcement officials looking into these same
3 accusations or the documentation that I had
4 provided. And so she at that point said that if
5 I submitted a written request she would shelf the
6 grievance or defer it, I think was her term,
7 until the other investigations were through.

8 I then, that day, March 8th, did send her
9 such a letter. I also the same day or within a
10 few days sent a memo to all of the other
11 appropriate public officials to let them know and
12 provide them a copy of my letter to Julie
13 Shankland and expressed my shock at the manner in
14 which the Office of Disciplinary Counsel, you
15 know, investigates lawyers who are accused of
16 misconduct by immediately providing them all the
17 incriminating documents.

18 Q. Were you ever interviewed by the Bar Association
19 as a part of its inquiry into Judge Anderson?
20 A. In my letter to Julie Shankland I expressed to
21 her that I had put an extraordinary investment of
22 personal time into investigating the matter and
23 was very familiar with it. I think I used the
24 words, "putting the puzzle pieces together," and
25 I've been embarrassed ever since I misspelled
231 1 puzzle.

2 But nonetheless, I asked her to please allow
3 me to participate, answer questions, you know,
4 contribute to their understanding of what had
5 gone on, but sadly, there was no communication to
6 me whatsoever by the Bar office on that
7 grievance.

8 Actually, it was -- they opened grievances
9 against four or five lawyers, I forget, you know,
10 until I received a letter dated August 15th that
11 declared their investigation closed. And it went
12 into explanation of the reasons. Many of the
13 reasons were mistaken reasons that I could have
14 readily corrected had they just had the courtesy
15 of calling.

16 MS. GRAY: I object to
17 Mr. Schafer's opinion of the letter and the
18 contents.

19 THE HEARING OFFICER: This will be
20 overruled. He can testify what his reaction was
21 to the letter.

22 Q. (By Mr. Newman) So, the point is Mr. -- Doug, is
23 that you provided quite a bit of information to
24 the Bar Association, correct?

25 A. Lots. I mean, I referred to it as a briefcase
232 1 full, because for weeks I was packing a full
2 briefcase that, you know, could barely close.
3 And I was fearful of even leaving it at the
4 office and I ultimately left it at the Commission
5 on Judicial Conduct, and they made multiple sets
6 of the documents and shipped them to me. One set
7 was provided to the Bar office.

8 Q. All right. And despite providing the Bar
9 Association with all that material they never
10 interviewed you before they sent you the letter
11 closing the case out; is that correct?

12 A. That's correct, not even a telephone call.

13 THE HEARING OFFICER: Would this
14 be a good time for a break? All right. Let's go
15 with a 15-minute break.

16 (Brief recess taken.)

17 THE HEARING OFFICER: All right.
18 Let's go back on the record.

19 We'll continue with the questioning of
20 Mr. Schafer by Mr. Newman.

21 Q. (By Mr. Newman) Thank you. Mr. Schafer, let me
22 draw your attention to what's already been
23 admitted as Exhibit A-7, your declaration under
24 penalty of perjury. Ms. Gray asked several
25 questions concerning who you sent this to, who
233 1 you sent this declaration to, and could you

2 explain who you sent those to?

3 A. At the time -- I will answer the question, but
4 preliminary, to understand the answer, I had been

5 threatened. I perceived at the least that I had
6 been directly threatened by Bill Hamilton and
7 Phil Sloan on February 1st, 1996.

8 Very mindful of that, I was cautious to only
9 disclose the information I possessed about what I
10 thought was the exploitation or fraud of the
11 Hoffman Estate by Grant Anderson, and Bill
12 Hamilton's participation to the extent he did,
13 only to parties under circumstances where I felt
14 that I could be assured of protection or immunity
15 from civil liability.

16 You know, I was well aware, actually, I was
17 well aware of the rule of the Commission on
18 Judicial Conduct that protects from civil
19 liability complaining parties who file
20 information or provide information to that
21 agency, so I was comfortable with that.

22 I was well aware of the Rules for Lawyer
23 Discipline provision that protects from civil
24 liability complaining parties to this Bar office.
25 I was aware of the RCW provision 4.24.500 and
234 1 .510 that provide protection from civil liability
2 for any citizen who provides information germane
3 to the commission of any state -- local, state or
4 Federal authorities.

5 So, I felt comfortable going to the FBI, to
6 the IRS, to the Attorney General's office, all of
7 whom I felt quite comfortable I could avoid the
8 exposure of civil liability providing that
9 information to them.

10 After Judge Thompson summarily ejected me
11 from the courtroom in connection with the Barovic
12 cases and summarily ordered me to turn over all
13 of my files without even giving me an opportunity
14 to explain why I had filed the motion with the
15 documentation, with the statements that I did in
16 Judge Anderson's case, and after Judge Thompson
17 had declined my offer to let him examine in
18 chambers my basis for filing the papers that I
19 did, in the Court of Appeals I did file, I
20 believe, an emergency petition -- I don't know,
21 it might have been just a regular petition, I
22 don't recall now -- but I felt that it was
23 essential, both to defend myself from the -- or
24 the implicit charge, well, the express charge by
25 Judge Thompson that I had acted unethically, but
235 1 implicitly the reason being statements I made
2 about Judge Anderson, I felt it was incumbent and
3 appropriate for me to provide to the Court of
4 Appeals the record or the documentation that
5 supported that.

6 So, I did file April 26, 1996 exactly the
7 document that was earlier admitted as an exhibit,
8 and recognizing that I had a -- that I was
9 required in filing that to provide a copy to each
10 of the attorneys who are participating in those
11 cases that were the subject of that appeal, I
12 provided it to them as well.

13 Beyond that -- well, as I have admitted
14 earlier, I did, once that became a public file
15 document in the Court of Appeal's file, provided
16 the declaration and this memo, Exhibits A-7 and

17 A-8, and some other papers, memorandum, the first
18 12 pages of that Appendix D to the news rooms of
19 the Seattle Times, Seattle PI and Tacoma
20 News-Tribune, thinking that it was important for
21 oversight of governmental officials, believing
22 that journalists had a responsibility to the
23 community to serve in that function, in light of
24 the upcoming filing season for Superior Court
25 positions, so I provided it to them.

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1 Now, I do not think that I provided it to
2 anyone else. I do feel I was, I was remaining
3 fearful that I would be subjected to the risk of
4 civil liability if I, you know, provided it to
5 anyone else until after the Commission on
6 Judicial Conduct filed the Cadillac charges. And
7 I think it was subsequent to that that I provided
8 it to the hospital's attorneys.

9 Q. Okay. Now, prior to your preparation of this
10 declaration under penalty of perjury you sat down
11 and met with Mr. Hamilton on or about December of
12 1995, correct?

13 A. I'm sorry. My mind just shot off for a second.
14 What was the question again?

15 Q. Well, before you provided your declaration under
16 penalty of perjury and the memorandum to the
17 public officials you've identified, isn't it true
18 you sat down with Bill Hamilton and discussed
19 your findings, your investigation of what, or
20 your concerns about Judge Anderson?

21 A. There were two meetings with Bill Hamilton. The
22 first was my initial meeting that I arranged by
23 calling Bill Hamilton December 15, 1995, after I
24 had checked out the court file and spent a couple
25 hours while I copied the entire court file, and
237 1 then was looking through it, you know, had some
2 concerns but was recalling a great concern over
3 the comment that Bill Hamilton had made to me
4 three years and five months earlier.

5 I called Bill Hamilton and I said, "We
6 haven't spoken in months or years, I don't
7 recall, there's some things I want to talk to you
8 about. Let's get together sometime early next
9 week, if we can."

10 He suggested we meet, I think it was like
11 eight o'clock, seven-thirty, something like that
12 the following Monday morning at the Pine Cone
13 Restaurant. We did.

14 Actually, I was amazed, I think we literally
15 spent about three hours. He kept wanting to
16 describe to me and doodle on a napkin about some
17 big problems he was having over the broken
18 trusses in the bowling alley -- bowling lane
19 building and his dispute with an insurance
20 company.

21 My focus was: "Bill, you know, you made
22 this comment to me about this Grant Anderson.
23 I've got a client who his case is being decided
24 by Grant Anderson and I'm concerned as to whether
25 or not this Grant Anderson has stellar
238 1 integrity," and the term stellar was the term I
2 repeatedly used. "Does he have stellar
3 integrity?"

4 And though I asked the question several
5 times, as I recall, the most responsive answer I
6 think I ever got was a comment such as something
7 such as, well, you know, he's as honest as
8 lawyers are.

9 And the way in which that comment was made
10 suggested to me quite clearly that Bill Hamilton
11 did not regard lawyers generally as being honest
12 individuals. He spent a lot of time talking to
13 me about Grant Anderson and his history,
14 friendship with him and, you know, his knowledge
15 of his medical condition and his knowledge of
16 Grant Anderson's divorce.

17 He also commented to me, and it was so -- it
18 was a very casual conversation and not the least
19 bit confrontational, it was just very open and
20 flowing -- and he said to me that he had made a
21 five figure contribution.

22 Now, Bill, being a banker, talks about
23 dollar amounts in terms of the number of digits
24 and the number of figures in the number, and I
25 was used to hearing Bill in that fashion.

239 1 And it was unequivocal when he said to me,
2 and it really caught my attention when he said,
3 "I made a five-figure contribution to his
4 election campaign," and this was Monday morning,
5 December 18th.

6 The prior Friday afternoon that I had called
7 Bill I had also called the Public Disclosure
8 Commission to request the PDC filings of Judge
9 Anderson, and the person there had inquired if I
10 wanted the ones for just his Superior Court
11 campaign, which was 1992, or also his State
12 Supreme Court election campaign, which was 1994.

13 As a result of that comment by the PDC staff
14 person I knew there had been two election
15 campaigns. So, when Bill Hamilton told me that
16 he had made a five-figure contribution I then
17 asked if it had been to the State Supreme Court
18 election campaign or to the Pierce County
19 Superior Court election campaign, and the answer
20 I was given was that Bill Hamilton could not
21 recall which, but it was one of them.

22 The next meeting, you know, I had -- well, I
23 don't know how much you want me to elaborate on
24 that. That meeting was a, was what I considered
25 a very cordial meeting, not a stern word by
240 1 either was spoken. I was simply inquiring, he
2 was volunteering the information that for the
3 most part was responsive by wanting to fill me in
4 on his bowling alley roof problems and stuff like
5 that.

6 Q. Did the --

7 A. At the end of that meeting as we were going to
8 our cars outside the door he made the comment, he
9 said, "You know, if you don't like this judge,
10 just run against him. Don't go around looking
11 for dirt on him." That's the way Bill talks. It
12 was that casual a comment.

13 I recall responding, I recall thinking to
14 myself that I really think I'm onto something
15 here that looks really slimy, but I recall saying

16 to Bill, "You know, I don't know what I'm going
17 to do, I'll think about it."
18 Q. In that first conversation with Mr. Hamilton you
19 conveyed to him -- did you convey to him your
20 recollection of his statement -- of Hamilton's
21 statement that Anderson was milking the estate?
22 A. I did as clearly as I could recall it. It was
23 reminding him that he had said to me that this
24 lawyer friend had been milking an estate for four
25 years, was giving Bill a good deal on the bowling
241 1 alley, and that Bill was intending to pay him
2 back later.
3 Q. Did Mr. Hamilton tell you at that time, "I don't
4 want you using that information as part of your
5 investigation"?
6 A. No, no, he didn't, no. As I sit here and recite
7 that, you know, it could -- I mean, it's possible
8 that just kind of out of polite tact I might not
9 have reminded Bill that he said he was going to
10 pay him back later, but I might have just
11 commented about his prior comment about his
12 friend Anderson having milked the estate. You
13 know, I think it would have seemed more
14 confrontational than I was at that point
15 intending if I had reminded Bill about the
16 comment about paying him back later. I honestly
17 don't recall right now whether I reminded him of
18 that comment or just the, you know, the comments
19 about milking an estate.
20 But it was, you know, a very cordial visit,
21 no admonitions, no warnings, no anything, you
22 know, nothing remarkable. It was just a long
23 chat among guys who have known each other for, by
24 then, at least 15 years.
25 Q. These documents that you provided to the various
242 1 public attorneys, the county prosecutor, the FBI,
2 the Attorney General's office, the State Bar
3 Association, all those groups, these documents
4 you have provided, were they from any
5 attorney/client file that you had maintained on
6 Mr. Hamilton?
7 A. Almost entirely they were documents that I had
8 obtained from public sources, but there was among
9 them the file folder that I had that was labeled
10 Pacific Recreation Enterprises.
11 And in that file folder I had the notes from
12 my brief, you know, conversation with Bill that
13 basically just said, you know, Hoffman Estate,
14 Pacific Lanes, "Prez.; Bill, Sec.; you know,
15 Shaun, VP; Shawn, Treasurer; Bill," or something
16 like that, in other words, my brief cryptic notes
17 about the information that I needed in order to
18 prepare the corporate documents, you know, par
19 value of the stock, the corporate name that he
20 wanted, the one I checked out. You know, it was
21 that file folder.
22 And I, I had that with me with all the
23 others when I went to visit Sally Carter-Dubois
24 at the Commission on Judicial Conduct, and she
25 persuaded me to leave my entire collection of
243 1 papers there and she copied the whole set. So
2 the whole set, including every scrap of paper

3 that was there, was then provided to all of the
4 agencies.

5 Q. Now, the documents you are talking about, the
6 corporate paperwork, that would have been filed
7 with the Secretary of State's office, right?

8 A. Yes.

9 Q. So, that would have been a public document
10 anyway?

11 A. Yeah. And there's nothing remotely confidential.
12 It's every annual report in the corporation, you
13 know, reports, who were the corporate officers.
14 You know, there was nothing -- you know, I saw
15 nothing there that seemed to me to be of a
16 confidential nature.

17 Q. Regarding Sally Carter-Dubois, she is
18 investigator for the Judicial Conduct Commission,
19 right?

20 A. Well, she's a lawyer graduate of Pepperdine Law
21 School. She was the one and only full-time
22 investigator for the Commission on Judicial
23 Conduct from, I think it was 1988, it might have
24 been '89, but we have papers that can document
25 that up until, I believe it was early June of

244 1 1997. She's the one that I met with for nearly
2 seven hours on I believe February 13, you know,
3 1996 at their office in Olympia.

4 Q. Did you let her know that you had filed materials
5 with the State Bar Association?

6 A. Well, by that time I had not done so. I had not
7 filed, I had not provided documents to anyone
8 except I had provided copies of some of the
9 documents to Jeff Even at the Attorney General's
10 Office.

11 I think actually the day that I had gone
12 down to get the vehicle license information that
13 office is in the same building as Jeff Even and
14 the AG's office upstairs. And I had, at that
15 point, gone upstairs, Jeff Even was unavailable,
16 but using their copier I made photocopies of a
17 number of the documents that I then had, you
18 know, the time share deeds and some of the
19 Surfside Inn related deeds and whatnot. I made
20 some copies and left them with them.

21 I probably must have left copies of the, oh,
22 the gambling commission's papers that were the
23 purchase and sale documents on Pacific Lanes that
24 I had obtained from the gambling commission.

25 Back to your question when I met with Sally
245 1 Carter-Dubois, aside from what I provided to Jeff
2 Even at the AG's office I don't think I had
3 provided copies of documents, I forget the
4 sequence.

5 By then I had met with several officials, I
6 had met with John Ladenburg, with the FBI,
7 possibly the IRS, and shown them some of the
8 papers that I had at that point, February 13. I
9 had not yet even prepared that declaration, much
10 less the memorandum.

11 So, you know, when I met with her, no, I had
12 not provided -- other than showing some things, I
13 had not taken the step of copying everything. It
14 was going to be an expensive proposition. I

15 didn't really look forward to having to bear the
16 cost, but I would have done it.

17 I had by then incurred about \$250
18 out-of-pocket costs just in getting the records
19 that I had, largely the cost being to the title
20 company and the assessor of Pacific County who
21 gave me a printout of all the condominium owners,
22 all the time-share owners, so that's 48 times 52,
23 that's a big list. It's about two inches thick,
24 it's in the box over there. You know, there was
25 a fair expense involved.

246 1 I was grateful when Sally Carter-Dubois
2 indicated that she would be able to reproduce the
3 copies for all different law enforcement and
4 other officials.

5 Q. Your purpose in contacting the Attorney General's
6 Office, the FBI, these other groups, was that
7 because you sought protection under the various
8 whistle-blower protections that you mentioned,
9 the state statute and the various rules?

10 A. My reason for going to them was, it was patently
11 obvious to me that there was an extraordinarily
12 corrupt judge wearing a black robe everyday
13 affecting people's lives, and who knows how much
14 misconduct was resulting from that.

15 I felt it essential that he be exposed as
16 quickly as possible, you know, and removed, at
17 least from sitting at the bench. Immediately
18 suspended is what I frankly expected would happen
19 in short order.

20 Sadly, it was three-and-a-half years before
21 he was removed from presiding over people's
22 cases.

23 I was eager to pass the information on to
24 any responsible official who would act on it in a
25 responsible fashion.

247 1 I felt the need to limit my circulation of
2 the information to those officials for whom I
3 could -- to whom I could provide the information
4 without subjecting myself to the potential of
5 civil liability by Bill Hamilton and Phil Sloan.

6 Q. Did you have, at this time did you have a
7 reasonable belief that your client was working
8 with Mr. Anderson or had worked with Mr. Anderson
9 in some sort of continuing crime or fraud?

10 MS. GRAY: I object to the form of
11 the question, both because it's two-pronged and
12 also because it's leading.

13 THE HEARING OFFICER: Well, there
14 might be another problem there, but the
15 reasonableness of his belief, I'm going to let
16 him answer the question. Maybe you could amend
17 it if he believed that this was ongoing.

18 Q. (By Mr. Newman) At some point in time did you
19 believe that your client was involved in some
20 sort of ongoing crime or fraud?

21 A. Now, are you referring to Bill Hamilton, my then
22 former client?

23 Q. Yes.

24 A. At least as early as after he gave me the letter
25 saying I don't represent him in any fashion

248 1 February 1st. So, you're asking if I had -- I'm

2 sorry.
3 Q. If you had a reasonable belief that your client
4 was engaged in some ongoing crime or fraud?
5 A. Referring to Bill Hamilton?
6 Q. Correct.
7 A. Okay. I certainly did, largely from the comments
8 that he had made to me, the comment that Camden
9 Hall had made: "Look into the Cadillac." I know
10 Bill Hamilton was himself into big, fancy luxury
11 cars. Cadillac and Lincoln Town Car were his
12 favorites. You know, I strongly suspected that
13 Bill Hamilton had provided -- as the letter to
14 Department of Licensing, Georgia, had indicated,
15 I suspected that Bill Hamilton had provided the
16 Cadillac to Judge Anderson.

17 MS. GRAY: Your Honor, can we have
18 a clarification as to his answer as to when he
19 held this belief as to an ongoing crime or fraud?

20 THE HEARING OFFICER: I was just
21 about to ask that. Could you perhaps clarify the
22 time when perhaps Mr. Schafer first believed that
23 his client, his former client was involved in the
24 crime of fraud? I need a time reference for your
25 answer.

249 THE WITNESS: I guess I would say
2 it was an evolving or a growing conviction or a
3 growing belief, you know, it was a case of
4 initial information produces a stronger
5 conviction. I had, you know, suspicions that
6 something was not right, you know, based on the
7 very initial comments, at least suspicion that
8 there had been self-dealing involving the estate
9 in 1992.

10 When I met with Bill Hamilton and he told me
11 that he had made a five-figure contribution, I
12 could not then identify it on the PDC reports.
13 That was alarming to me. I mentioned that to,
14 fairly conspicuously to each of the authorities I
15 went to, because it seemed like very much a
16 smoking gun type of thing, you know, that would
17 be fairly easy to identify if they had subpoena
18 power to look at bank records and whatnot, you
19 know, I had looked at the PDC reports.

20 I guess the next factor that made me very
21 strongly feel that Bill Hamilton was involved in
22 the continuing covering up of this fraud which
23 left the hospital, you know, being denied the
24 bequest to which it was entitled and ought to be
25 able to obtain if they were properly advised and
249 informed, the tip by Camden Hall on February 1st
2 after I had left a note on the door of his client
3 the night before.

4 And he called me up as I recall in response
5 to that note, said, "I represent Diane Anderson,"
6 and when I indicated I was looking into the
7 Hoffman Estate, as I have said before, he said,
8 "I wondered when that shoe was going to drop."
9 And then he went on to say, "You know, somebody
10 needs to look into how he got his Cadillac, but
11 don't tell anyone I told you that."

12 You know, all of that seemed -- by then I
13 was strongly of the belief that there was a

14 continuing, there was a, what I will casually
15 call a fraud.

16 I am not a criminal law lawyer. I know just
17 being a lawyer that the criminal laws are a very
18 wide net with thin mesh, and just from kind of
19 reading the paper and having been a lawyer I get
20 the feeling that once the Feds think that you're
21 a bad actor they will find, they will find
22 statutes that you fall under. Maybe it's
23 telephone fraud or wire fraud, whatever a wire
24 is, or various bank fraud or mail fraud or this
25 fraud or that fraud.

251 1 It's just kind of my general awareness once
2 the Feds think of you as a bad actor they will
3 come up with any number of crimes that they can
4 charge you with. And I suspect State criminal
5 authorities do the same thing. I mean, that's
6 their ballgame. They know what their tools are
7 and they use them when they have reason to.

8 You know, I don't know what all those tools
9 are, but I know when somebody appears to be
10 clearly a bad actor, bad meaning defrauding a
11 public hospital of what looked to me to be
12 clearly over a million dollar sum, and
13 self-dealing and kickbacks and all that sure
14 looks slimy enough to me that it had to violate
15 some criminal laws.

16 And it struck me as the type of continuing
17 deception that the hospital was unaware that, you
18 know, it needed to, it needed to recover. Not so
19 much recover, it needed to get what it was
20 entitled to get that had never been gotten, it
21 had never been received. So, you know, we see
22 these phrases, you know, continuing crime,
23 continuing fraud -- I don't know.

24 I mean, my feeling is that as long as
25 somebody who is rightfully entitled to receive
252 1 something is being deprived of it, you know, it's
2 a continuing crime to me, that they can, that
3 they can be -- I don't know what the right word
4 would be, but not prevented but cured by getting
5 them the money that they are entitled to.

6 Q. (By Mr. Newman) You reported that among the
7 people you reported to was Pierce County
8 Prosecutor, Mr. Ladenburg --

9 A. John W. Ladenburg, yeah. I called him up and
10 expressed the need for a meeting directly with
11 him and he accommodated me and we met for -- I
12 don't know if it was a half-hour or an hour, I'm
13 thinking it was probably about an hour, and off
14 the top of my head I think it was that February
15 6, because it was as a result of the meeting with
16 him that I got, I found out -- I didn't even know
17 where the judges parked. And thanks to his
18 pointing me in the right direction I got the
19 license plate, quickly got the vehicle records,
20 and --

21 Q. Now, did Prosecutor Ladenburg or one of his
22 investigators subsequently contact you concerning
23 the status of their investigation of Judge
24 Anderson?

25 A. Well, what transpired was it was a cordial

253 1 meeting with John Ladenburg. He indicated that
2 he was going to arrange a meeting by me with some
3 of his staff. Investigators is who I ended up
4 meeting with.

5 I think it was February, I think it was
6 February 9th, yeah. I think it was February 9th
7 that I was telephoned by a gentleman named Frank
8 Clark, who indicated that he was an investigator
9 or on the staff, at least, of the prosecutor's
10 office, and indicated that he was -- well,
11 arranged for me to meet with he and others on
12 February 12th, but in the course of that
13 conversation he indicated to me that because
14 their office was then beginning, was then opening
15 an investigation, that by law I was precluded
16 from discussing anything about this matter with
17 any other party.

18 Now, you know, I guess I'm from Missouri, as
19 they say, I need to be shown in black and white
20 where a law says something that affects my
21 conduct. My response to him, was, "You know, I
22 think the First Amendment is pretty powerful and
23 I'm not willing to agree with your assertion that
24 some law prevents me from going to whoever I
25 choose to go to with this information. So,
254 1 please be more specific if there is such a law."

2 I then received a phone call within five or
3 ten minutes from John Ladenburg, the prosecutor
4 himself, who started out, as I recall, saying, "I
5 hear there's some misunderstanding," or something
6 of that nature, and he also attempted to persuade
7 me that there was some law.

8 And I think he referred to some inquiry
9 court, and I think I wrote that down at the time,
10 not a term or phrase that I had been familiar
11 with, but he assured me that there was a
12 provision in the State criminal statutes dealing
13 with inquiry courts that, in fact, supported what
14 he was telling me, namely, that I was not
15 permitted to discuss anything about this matter
16 with any other parties because they were
17 beginning to investigate it.

18 I expressed, you know, doubts but I think I
19 indicated to him that I would sure take a look.

20 I then did check out the RCW's that seemed
21 to relate to inquiry courts and special inquiry
22 courts and frankly found no provision consistent
23 with what he had been telling me.

24 The language and the statutes simply muzzles
25 the personnel involved in the proceeding; the
255 1 staff, the court reporters and whatnot, but not
2 somebody providing information.

3 But the long and the short of it, I felt as
4 a result of that that there seemed to be a
5 tendency or an interest on the part of that
6 office in reining me in or muzzling me, keeping
7 me from sharing the information with other
8 parties.

9 I did not tell them that I think I, at that
10 point, either already had been spending several
11 hours with the FBI. I think the meeting with the
12 FBI was on February 8th, and it was on February

13 9th that they were telling me that I was not
14 allowed to discuss it with anyone else, with
15 anybody other than the prosecutor's office.

16 Frankly, I wasn't so sure I could trust the
17 prosecutor's office. Pierce County has some kind
18 of a history of less than honorable government,
19 and I don't know who I can really trust and who I
20 can't.

21 Q. At some point in time did you come to the
22 conclusion that you had been used by Mr. Hamilton
23 to further a crime of fraud?

24 A. Well, once I came to recognize or came to, at
25 least, believe that there was some significant
256 1 fraudulent activity that had gone on, once I
2 believed that there was a Cadillac that had
3 probably been given by Bill Hamilton to the
4 judge, you know, I eventually came to recognize
5 that I was like a little cog in the wheel of that
6 conspiracy, I guess I'll call it, at that
7 undertaking or that effort by these two
8 gentlemen, who appeared to be very close to one
9 another, to basically avoid, you know, avoid the
10 hospital getting what it was rightfully due and
11 getting a sweetheart deal for Bill. And by my
12 forming the corporation, that was one step in
13 furtherance of that -- their effort.

14 Now, in 1996 was I familiar with the crime
15 fraud exception? No, I can't say. I've done a
16 great deal of research, you know, after the Bar
17 seemed seriously more interested in coming after
18 me than coming after Anderson and his law
19 partners.

20 Since then I've done a lot of research and
21 learned a lot about various exceptions and there
22 are many, many exceptions to attorney/client
23 privilege, but at the time that I was reporting
24 to the authorities, you know, my real concern was
25 there is a corrupt judge in the Pierce County
257 1 courthouse and that's going to do a lot of harm
2 to a lot of people and I just can't fathom that.
3 That was the he essence of it.

4 As I have said previously, I was well aware
5 of the national debate over, you know, when
6 lawyers can blow the whistle and aware of
7 comments and articles about that national debate,
8 comments prominently saying, you know, client
9 confidentiality in every circumstance trump other
10 important policy interests.

11 And I thought the policy interest of
12 exposing and removing a corrupt judge was about
13 the highest policy that I think our system of law
14 would recognize. I mean, there cannot be, in my
15 view, any policy higher than maintaining the
16 integrity of the judicial system, because there's
17 no point in even being concerned with client
18 secrets if you have a corrupt judicial system.

19 You know, there's nothing gained by being
20 able to have effective strategy if the judges are
21 corrupt.

22 So, my analogy is: Who would play in an
23 athletic contest if they know the referees have
24 been bought and paid for by the other side?

258 25 There's no point in it. It's not a contest, it's
1 a circus.
2 Q. I want to ask you a little bit about Mr. Sloan's
3 testimony. You were here and heard his
4 testimony, correct?
5 A. I heard his testimony, and frankly, I did not
6 believe a good bit of his testimony.
7 MS. GRAY: Objection as to whether
8 Mr. Schafer believed it or not believed it. He
9 can testify about his recollection about the
10 meeting, but I don't think it is relevant whether
11 or not he believed it.
12 THE HEARING OFFICER: That will be
13 sustained. I think you can ask him questions
14 about whether he recalls things differently or
15 whatever.
16 Q. (By Mr. Newman) All right. You recall the
17 meeting at which Mr. Sloan and Mr. Hamilton met
18 with you, correct?
19 A. Yes, I do.
20 Q. All right.
21 A. February 1st, 1996, one o'clock or so.
22 Q. You heard Mr. Sloan's testimony that you were
23 threatening and angry. What is your recollection
24 of that meeting?
259 25 A. It was quite, quite different. I mean, there was
1 no shouting. There were no threats. I was
2 simply expressing a very firm determination. I
3 was wanting to show them, you know, the volume of
4 evidence, of documentary evidence, you know, of
5 deeds with Grant Anderson's signature showing
6 when you add up these transactions how you get to
7 more than \$2,000,000, deeds showing all the time
8 share interests that were doled out to all his
9 law partners and office staff and close friends
10 just before he became a judge.
11 I was eager to share all this with them, to
12 let them fully understand that, you know, you
13 know, the compelling evidence of Grant Anderson's
14 misconduct was very well available in the public
15 domain.
16 And they were not interested, and they, Bill
17 Hamilton basically talked not that much. It was
18 mostly Phil Sloan talking, but there was no
19 shouting.
20 I just was thinking he was making that stuff
21 up, quite seriously.
22 MS. GRAY: Objection.
23 THE HEARING OFFICER: Sustained.
24 THE WITNESS: I have no
25 recollection.
260 1 MR. NEWMAN: He was at the
2 meeting. He can --
3 THE WITNESS: I believe there was
4 no truth to the assertion here that there was
5 screaming and shouting and people coming and
6 asking for people in the room to quiet down, none
7 of that occurred. I am more of a quiet person.
8 I simply expressed to them, "You know, this
9 Judge, I think, is clearly corrupt. I'm not
10 going to look the other way. I think we have a
11 duty to self-police our profession. This guy has

12 got to be exposed and I'm going to do it and I
13 don't give a damn. This is wrong. I'm not going
14 to just look the other way. The guy is bad."

15 Q. At that time --

16 A. They would try to say you can't do it, you can't
17 do it because of the gambling commission looking
18 into it based on Hamilton's comment. And I'm
19 saying the evidence is overwhelming and it's all
20 in the public domain, and I'm going to stop this
21 guy. This guy is not going to continue to harm
22 my client or anybody else.

23 MS. GRAY: Mr. Mills, may I make a
24 request regarding a procedural matter?

25 THE HEARING OFFICER: Sure. Go
261 1 ahead.

2 MS. GRAY: I have noticed that
3 throughout Mr. Schafer's testimony that when an
4 objection is made Mr. Schafer has a tendency to
5 continue to answer the question rather than
6 keeping quiet and waiting for a ruling after both
7 I have had a chance to make my objection and
8 Mr. Newman has had a chance to state his
9 position.

10 I would ask the Hearing Officer, both for
11 the sake of the record and the sake of the court
12 reporter, to instruct the witness to stop
13 answering the question until after there's a
14 ruling.

15 THE HEARING OFFICER: I think that
16 would be better practice. I'll tell you my
17 feelings on it. I know sometimes we get people
18 talking over each other and it's better if we
19 allow time for an objection to be raised and
20 maybe even a response to the objection and then
21 I'll rule.

22 I'm feeling a little left out at times
23 because the answer is already out of the box.
24 Often the answer is not necessarily objectionable
25 and I'm not saying the record is tainted in any
262 1 way, but I would like the opportunity to at least
2 think about where we are going with the record.

3 So, I would instruct the witness that once
4 an objection is being asserted to stop your
5 answer until we have had a chance to get the
6 objection heard and then I'll rule on it
7 promptly.

8 I think counsel, I think, would agree that I
9 have been very free about allowing testimony, so
10 it's likely I'm going to hear the testimony
11 rather than not hear it. But I would like an
12 opportunity to rule on the objections. Is that
13 sufficient for your purposes, Ms. Gray?

14 MS. GRAY: Thank you, Mr. Mills.

15 MR. NEWMAN: Thank you.

16 Q. (By Mr. Newman) Doug, regarding the meeting you
17 had with Mr. Hamilton and Mr. Sloan, did
18 Mr. Sloan at all threaten you civilly, did he
19 threaten to report you to the Bar Association or
20 any other threat?

21 A. The threat that I recalled most vividly that I
22 was frankly most concerned about was his threat
23 to sue me, because I recognize that that gets

24 very expensive very quickly if you are named a
25 defendant in a lawsuit, even if you ultimately
263 1 are vindicated.
2 So, that concerned me and that's why I was
3 very judicious in only reporting to authorities
4 with whom I felt that I would have an absolute
5 summary judgment defense and probably assistance
6 by some other official in getting that summary
7 judgment dismissal of any claim.
8 I don't doubt that he -- and I'm not
9 disputing that he was saying that if I reported
10 anything whatsoever about Grant Anderson's
11 handling of the Hoffman Estate, in Phil Sloan's
12 view that would be violating client confidence.
13 I did not see it that way. I did not think that
14 it would be violating any confidence or
15 disclosing any communication to me, you know, by
16 my former client if I simply exposed, you know,
17 the public information that was readily available
18 to anyone who would look at it about Judge
19 Anderson's doling out time share interests, for
20 example, to everybody in the law firm at about a
21 third or less than a third of the price that the
22 public buyers had paid for those same units in
23 those same apartment condos.
24 Things like that, I thought simply he was
25 off base in his perception of confidentiality
264 1 duties. But furthermore, I thought that as I had
2 read in articles, you know, client
3 confidentiality does not necessarily trump every
4 other fundamental policy upon which our system of
5 justice rests, namely, the preservation or
6 restoration of integrity in the judicial system
7 ought to be recognized as having some value, and
8 I submit value greater than keeping secrets of a
9 client who appeared to have been engaged in
10 unlawful fraudulent activities to the detriment
11 of a rural public hospital.
12 Q. Now, when I asked Mr. Sloan whether he had
13 threatened to sue you civilly, you may recall,
14 and the Hearing Officer may want to correct me,
15 but I thought Mr. Sloan's answer was something to
16 the effect, "Why would I want to sue Mr. Schafer,
17 he's penniless." Do you remember that comment?
18 A. Yes, and that kind of surprised me. You know,
19 the fact is he did threaten to sue me, and I
20 don't know why he somehow is making this kind of
21 a maligning, but frankly, that's the nature of
22 Phil Sloan. He maligns those who he's trying to
23 oppose, and I've seen that over the years with
24 him.
25 I mean, when our firm split up in 1985, you
265 1 know, I went with one faction, he stayed with the
2 other faction. He became very immediately,
3 quickly very critically maligningly personal
4 towards those who didn't stay.
5 You know, I, at that point, you know, formed
6 the strong conviction that the guy really had no
7 moral integrity, I really did. He was making all
8 kinds of accusations about, you know, some of the
9 partners who had left that were totally unfounded
10 and could be proven unfounded and yet he

11 continued to make them. I just consider that's
12 part of his kind of mad dog style in trying to
13 joust with people, so I readily dismissed him.
14 Q. And as you testified, the reason you provided the
15 documents, the declaration under penalty of
16 perjury and the other information to the public
17 authorities was because of your fear that
18 Mr. Sloan was going to sue you, right?

19 A. I provided them to the authorities because I
20 wanted a corrupt judge removed from office. I
21 limited the distribution to those public
22 officials for whom I could provide them without
23 potentially -- exposing myself potentially to a
24 civil liability suit that would, that would not
25 be readily dismissed in summary judgment.

266 1 Q. And as you indicated, you talked to Jeff Even in
2 the Attorney General's Office. Was that with the
3 hope that under the state anti-SLAPP statute,
4 which you indicated, which you noted to be RCW
5 4.24.500, 510, was it your hope that you would be
6 protected in reporting what you believed to be a
7 crime to those officials?

8 A. I recognized that statute. When that statute was
9 enacted in 1989 I immediately or within a few
10 weeks sent out a broadcast, kind of a marketing
11 piece to a number of banking and credit union
12 clients advising them of that because it's a
13 topic of some interest.

14 They often, in financial institutions, get
15 inquiries by public officials, law enforcement or
16 otherwise, with which they would like to comply,
17 but they always had been in somewhat fear of
18 risking civil liability to customers whose
19 information they provide.

20 So, I sent that out to my client list
21 assuring them that from that point on --

22 MS. GRAY: Objection. My
23 objection is to the relevance of what he sent out
24 to his clients in 1989.

25 THE HEARING OFFICER: I think he's
267 1 just explaining his awareness of the statute.
2 I'll let him proceed.

3 THE WITNESS: I was simply well
4 aware of that statute and had been from the time
5 that it was adopted in 1989. I knew that that
6 was designed to protect the person who provides
7 information, and it doesn't need to be
8 information of a crime, it can be information,
9 any information that the public official, you
10 know, as part of their job, as part of their
11 function properly should be made aware of. So, I
12 took great comfort in that.

13 The only thing that is unfortunately lacking
14 in that is protection of the whistle blower from
15 licensing authorities.

16 Q. (By Mr. Newman) Also, isn't it correct you also
17 believed that you would have some protection and
18 some obligation to report lawyer misconduct under
19 the Rules of Lawyer Discipline, correct?

20 A. I've always believed that we are a self-policing
21 profession, that if we are going to consider
22 ourselves professionals we have to police our own

23 ranks.

24 I was aware that the provisions give

25 protection from civil liability for any person

268 1 who reports professional misconduct to lawyer

2 licensing authorities and to judicial

3 disciplinary authorities.

4 Q. So, when you reported this Judge Anderson who you

5 established eventually to be corrupt, was it

6 because he was both a lawyer and a judge in your

7 efforts?

8 A. My overwhelmingly overshadowed -- my overwhelming

9 concern was that this guy was a judge. You know,

10 I just couldn't fathom ignoring and letting him

11 continue as a judge based on what I knew.

12 Now, had he been a lawyer it would have been

13 a tougher call, and I'm not sure how I would have

14 ultimately acted. But the fact that he was a

15 judge, and I had seen, you know, in the prior

16 year I had been publicly critical of judges

17 apparent lack of interest in the problems of the

18 local guardianship scene.

19 And I knew from all the calls that I was

20 getting from lots of people that there were a lot

21 of people who felt that they were not treated

22 right in the judicial system. And I had one

23 client who I represented who I was convinced had

24 not been treated right.

25 And the thought that one of those 18 judges

269 1 up there, who seemed indifferent to the plight of

2 these elderly and disabled people, was himself a

3 corrupt, you know, scoundrel, who would steal

4 somewhere between one and two million dollars

5 from a public hospital, to me it was just

6 unfathomable. I just couldn't, I just couldn't

7 imagine how anybody could look the other way and

8 tolerate that.

9 Q. Let me ask how do you know that Judge Anderson's

10 activities in collaboration with your client

11 resulted in a loss of 1.5 million to that

12 hospital, how do you know that?

13 MS. GRAY: Objection. It assumes

14 a fact not in evidence.

15 MR. NEWMAN: The rules of evidence

16 are relaxed.

17 THE HEARING OFFICER: He can give

18 his opinion about it. Go ahead.

19 THE WITNESS: You know, the

20 hospital administrator did testify --

21 MR. NEWMAN: I'm sorry, we didn't

22 get the Judge's ruling.

23 THE HEARING OFFICER: I said he

24 can give his opinion about it.

25 Q. (By Mr. Newman) Thank you.

270 1 A. In March of 1999, sometime later, the

2 administrator of the public hospital, Pam Ott,

3 did give testimony to the legislature that she

4 felt, that they felt the hospital officials felt

5 they were robbed of one-and-a-half million

6 dollars by Grant Anderson.

7 My assessment that it was at least a million

8 dollar shortfall was simply a function of adding

9 up the proceeds from a number of real estate

10 transactions, all of which were involved in the
11 estate, and arriving at a figure when combined
12 with the million dollar bowling lane deal was, I
13 think, 2.4 million dollars, and then seeing that
14 the inventory that Judge Anderson, lawyer
15 Anderson had filed within a month before he
16 declared the estate closed, reported the total
17 estate as having a value of, I think, about
18 \$900,000.

19 And this was after he had already received
20 over 2.4 million dollars, as I recalled. It just
21 struck me as immediately and obviously highly
22 suspect, to say the least.

23 Q. (By Mr. Newman) And do you know what the
24 hospital did once they got that money, got their
25 money?

271 1 MS. GRAY: Objection, relevance.

2 MR. NEWMAN: Well, Your Honor, I
3 think if we're going to talk about the scope and
4 whether or not Mr. Schafer's activities in the
5 reporting of this corrupt judge should have an
6 impact on his license I think it's important for
7 you to understand that what happened here was
8 that Judge Anderson, acting in concert with
9 Mr. Hamilton, did dire damage to this hospital.

10 And you balance things out, and law is a
11 balancing issue. You balance things out and you
12 ask yourself: Should Mr. Schafer be persecuted
13 for revealing this corrupt judge, which in the
14 end, Mr. Schafer will testify to in the end
15 resulted in this hospital getting fetal monitors,
16 basic equipment, which this judge and
17 Mr. Hamilton acting in concert prevented the
18 people in that rural area from receiving this
19 basic healthcare?

20 As I said in my opening, I said this in my
21 opening, I don't think you can --

22 MS. GRAY: Mr. Newman, I'll
23 withdraw my objection.

24 MR. NEWMAN: Okay. I want to
25 finish my point here. I don't think you can
272 1 create a more outrageous situation than to have a
2 judge and a wheeler-dealer client rip off a trust
3 which results in the people of that area being
4 denied basic health equipment. So, my question
5 simply is to ask Mr. Schafer what did the
6 hospital do, and the hospital administrator has
7 testified publicly in the legislature about this
8 and we can go and pull out the record on that, or
9 we can simply have Mr. Schafer testify to it.

10 THE HEARING OFFICER: I think
11 counsel has withdrawn her objection. I think
12 this goes beyond this witness' acknowledgement,
13 but go ahead.

14 THE WITNESS: My recollection from
15 the article in the Chinook Observer which serves
16 that community was the administrator, Pam Ott,
17 was quoted as saying that once they got the
18 settlement, the half-million dollar proceeds,
19 that they used it to buy fetal monitors, and I
20 think they mentioned ultrasound equipment.

21 My wife having given birth to three sons, I

22 know that fetal monitors are important in
23 ensuring healthy deliveries, as are ultrasound,
24 which is routinely used in connection with
25 confirming the good condition of babies in utero,
273 1 and it just struck me as so much more compelling
2 and outrageous.

3 Now, that, of course, did not occur until
4 early 1999, but it's pretty obvious to anyone
5 who's been around the block that, you know, rural
6 public hospitals are unable to provide the degree
7 of sophisticated healthcare that an urban
8 hospital provides, and when a benefactor such as
9 Charles W. Hoffman is intending to leave 90
10 percent of his estate to a rural public hospital,
11 they probably can really use it to improve the
12 quality of healthcare for their community.

13 Q. (By Mr. Newman) Mr. Schafer, once you learned
14 that you had been used by your client,
15 Mr. Hamilton, as part of this, as you put it,
16 conspiracy to defraud this public hospital which
17 needed money, did you consider that whatever he
18 had told you back in 1992 to be a confidence?

19 A. Having reviewed thoroughly the law and studied
20 extensively the law, I think there is ample
21 authority to conclude that his comments to me at
22 the time he made them, considering the obvious
23 motive that he had in mind, would not have been
24 client confidences or secrets, you know, based on
25 the legal analysis that it was clearly not a
274 1 confidence under the crime fraud exception that
2 was well established, and there is a considerable
3 degree of authority in support of the recognition
4 that the duty of confidentiality similarly does
5 not apply when the client is using the lawyer to
6 further a crime or a fraud and the lawyer
7 subsequently learns of that.

8 There is ample authority from the American
9 Bar Association Annotated Rules on Professional
10 Conduct, first edition in 1984, second edition in
11 1992, that say unequivocally that under
12 established law in such a circumstance there is
13 not a professional relationship existing between
14 the lawyer and the client when the client is bent
15 on that unlawful activity, and without a
16 professional relationship that the law will
17 recognize there is then no secret or confidence,
18 no secret that would be covered by the duty of
19 confidentiality.

20 So, I think there is ample authority to
21 justify, you know, if one wants to argue the
22 technicalities, you know, do the kind of Bill
23 Clinton approach to this.

24 MS. GRAY: Objection. Mr. Mills,
25 this testimony is legal argument, which I believe
275 1 is appropriate for closing argument and
2 appropriate for hearing briefs, but since it
3 appears not to have been his belief in 1996 I
4 don't think it's appropriately a subject of
5 testimony here.

6 MR. NEWMAN: Let me respond,
7 Mr. Mills. Mr. Schafer has already testified
8 that there was an evolving reasonable belief that

9 his client was engaged in a continuing crime of
10 fraud, and that evolving reasonable belief was
11 based on certainly his comments, Hamilton's
12 comments to Mr. Schafer about Mr. Anderson
13 milking the estate, then Mr. Anderson's various
14 behavior in the Barovic case, then the Cadillac
15 tip which is not related to any attorney/client
16 relationship, and then finally Mr. Hamilton's
17 indication he had given a five-figure
18 contribution to Mr. Anderson, which was nowhere
19 to be found on the PDC reports.

20 So, I think it is imperative to understand
21 Mr. Schafer's state of mind when he decided to
22 report this and his position now with respect to
23 whether or not there was indeed a professional
24 relationship and whether or not an attorney
25 should be viewed as in a professional
276 1 relationship when a client wants to use the
2 attorney to perpetuate the crime of fraud.

3 THE HEARING OFFICER: I'm going to
4 overrule the objection, but I would like to make
5 sure that these comments that the witness is
6 making about the analysis of the various sources
7 of law occurred before February 16 or
8 thereabouts, 1996 and not after.

9 If it occurred after, then perhaps the
10 objection has merit. Do you recall when you
11 first went through this analysis about there
12 being no professional relationship in 1992?

13 THE WITNESS: At the time in
14 February of 1996 when I filed the report the
15 things that were foremost on my mind is: This
16 guy is a corrupt judge. How can any responsible
17 officer of the court, any lawyer tolerate a
18 corrupt judge? The guy has got to be exposed.

19 You know, that to me was just, you know,
20 just an absolute, an absolute.

21 Now, I believe my subjective thoughts at the
22 time included things such as, you know, just
23 because you're a lawyer doesn't mean everything
24 somebody tells you is a client confidence or
25 secret.

277 1 You know, if some lawyer comes to me to form
2 a corporation and is boasting about molesting
3 children the night before, you know, I'm sorry if
4 people don't like it, but I'm going to report the
5 bastard.

6 There are to me some fundamentals. There's
7 right and wrong, I mean, I believe it. We've got
8 to have some fundamental morality. I'm not a
9 whore. I'm not a prostitute. I'm not going to
10 sell my soul for some jerk, you know, who has no
11 respect for humanity and the law. So you know --

12 THE HEARING OFFICER: I'm still
13 not clear.

14 THE WITNESS: My feeling at the
15 time was simply that the guy has to be reported.

16 Now, I also recognized just from my
17 awareness of the ongoing debate relating to the
18 Kutack Commission report in 1983 that client
19 confidences had been a subject by then for 12
20 years, if not more, of great contentious debate.

21 There was no doubt in my mind that law
22 professors would probably spend many decades
23 continuing to debate this, and some people would
24 say that I was wrong to report, others would say
25 I was right to report.

278 1 You know, there will be -- as I said in my
2 hearing brief, reasonable minds will differ, but
3 I knew that in my own mind the right thing to do
4 was to report this judge, and I'll let the
5 profession continue the debate for another five
6 decades if it wants.

7 THE HEARING OFFICER: My question
8 is actually quite simple and probably wasn't as
9 direct.

10 What I was concerned about is if you're
11 testifying about the debate within the legal
12 community, which I acknowledge has been in
13 existence for many decades, then that could have,
14 you could have been considering that before
15 February of 1996.

16 THE WITNESS: I definitely was.

17 THE HEARING OFFICER: And if you
18 were, then that is relevant, I think, to your
19 state of mind at the time of the declaration. I
20 happen to be looking at Exhibit A-7.

21 But if you had not considered it at that
22 time then what you are really testifying to is in
23 the nature of legal argument which I can
24 certainly get at closing argument.

25 I'm just trying to explore what your state
279 1 of mind was, and you've been very clear that you
2 wanted to get rid of a corrupt judge. I just
3 can't tell still whether it entered your mind at
4 that point that there may not have been a
5 professional relationship, as you described it,
6 in 1992 because of what was going on.

7 THE WITNESS: As I said, I recall
8 being -- and frankly, you know, she has access
9 and we can put it in the record. My very first
10 letter response to Mr. Hamilton's grievance that
11 I wrote in August of '96 reflected essentially
12 the same state of mind that I was in in February,
13 '96, six months earlier. And I stressed in that
14 letter not every comment made to a lawyer is a
15 confidence in secret. The wild boast, you know,
16 of something unrelated to the purposes of the
17 representation I don't think should be treated as
18 confidence and secret in every case.

19 THE HEARING OFFICER: Well, that
20 answered my question. You may proceed.

21 Q. (By Mr. Newman) Mr. Schafer, isn't it true that
22 you keep a file, an ethics file at your office?

23 A. I believe I have for years and years, in the desk
24 drawer right beside my legs, you know, where the
25 most important, most frequently used files are
280 1 readily available.

2 And I have always had one that said ethics,
3 you know, right there that I would put in
4 photocopies of things that to me seemed most key
5 and important, and I had at that time in that
6 file and referred to in that file an article from
7 the Business Lawyer Magazine by the American Bar

8 Association.

9 MS. GRAY: Objection, unless
10 Mr. Schafer can testify that he referred to this
11 article prior to his --

12 THE WITNESS: I am testifying to
13 that. That's exactly what I'm saying.

14 THE HEARING OFFICER: I'll let him
15 continued. Overruled.

16 THE WITNESS: I'll grab it out of
17 the box. I still have it. You know, it was a
18 page out of the Business Lawyer from March of
19 1993. I was just looking at it again last night,
20 you know, and it describes this ABA formal
21 opinion on business lawyers being permitted to
22 make a noisy withdrawal when they discover that
23 their client has used them to perpetuate a fraud.

24 And it quotes the passage that I have
25 mentioned several times, namely, that client
281 1 confidence does not in every instance trump, you
2 know, other important legal policies or other
3 important policies. I don't recall verbatim, but
4 that's the essence of it. Now, I would be glad
5 to pull it out of the box and put it in as an
6 exhibit if anybody wants to.

7 The other was an article from the National
8 Law Journal that I have subscribed to for
9 probably ten years or more, I don't recall. I
10 think I started my subscribing to it when I
11 was -- opened my own office in March of '89, but
12 it was an article on the very same ABA formal
13 opinion and it had the very same prominent quote,
14 because it really kind of jumps out at everybody,
15 and that to me said a lot.

16 And I think it needs to be more widely
17 recognized. The client confidence is not the sum
18 total of the justice system in the United States.
19 There's got to be some recognition of the higher
20 priority of maintaining integrity in the judicial
21 system. And if client confidence means you can't
22 report a corrupt judge, you know, we've gone to
23 hell as far as I'm concerned.

24 Q. (By Mr. Newman) Mr. Mills, I would like to make
25 that file an exhibit, and given the time we have
282 1 got, now it's five of five, perhaps it would be
2 prudent to break at this time, recess, so I can
3 conclude my direct tomorrow morning and properly
4 introduce the file that Mr. Schafer had referred
5 to.

6 THE HEARING OFFICER: All right.
7 That seems reasonable to me. It will give us a
8 chance to prepare that.

9 All right. We'll be in recess for today and
10 resume at 9:00 tomorrow morning. Thank you.

11 - - - - -

12 (Whereupon, the proceedings adjourned
13 for the day at 5:00 o'clock p.m.)

14 - - - - -

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1 Seattle, Washington, Tuesday, July 18, 2000

2 9:00 a.m.

3 -- oo 0 oo --

4 THE HEARING OFFICER: All right.

5 Let's go on the record.

6 MS. GRAY: There's one preliminary

7 matter that was addressed yesterday morning by

8 Mr. Newman that I would like to now respond to on

9 the record, and that is the question raised by

10 Mr. Newman and Mr. Schafer about the

11 Association's response to Mr. Schafer's subpoena,

12 dated July 7th, 2000, to the Bar Association.

13 As the Hearing Officer is aware, because

14 I've copied you on my letter dated July 13th,

15 2000, we provided documents responsive Bates

16 stamped 1 through 79, and also documents

17 responsive Bates stamped 80 through 104, by

18 objection filed on July 13th, 2000, and provided

19 to the Hearing Officer. We objected to providing

20 one single page document.

21 In response to the inquiry yesterday morning

22 I had people in my office review our files to

23 make sure that we had provided all responsive

24 documents other than the one that we have taken

25 exception to, and we have.

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1 By saying this, I don't mean to imply that

2 Mr. Schafer may not have given the Bar

3 Association additional documents that we no

4 longer have or can find. I am saying that we

5 have provided to him what we have.

6 THE HEARING OFFICER: All right.
7 Thank you. Counsel, you want to be heard on
8 this?

9 MR. NEWMAN: Yes, Mr. Mills. We
10 do intend to address this issue because we think
11 there is a problem. In particular, Ms. Gray is
12 asking Mr. Schafer to comment on notes that he
13 provided to the Bar Association as part of the
14 materials regarding Judge Anderson. And those
15 note materials, which she's asked him to talk
16 about, identify, were not part of the response to
17 the subpoena.

18 So, you have to ask yourself: Why didn't
19 the Bar Association provide, in response to our
20 subpoena for everything that Mr. Schafer gave to
21 the Bar Association, why didn't the Bar
22 Association give us back his notes, and yet uses
23 them at this hearing to ask Mr. Schafer questions
24 about?

25 That, to my knowledge, was not part of the
291 1 materials responsive, and we are greatly
2 concerned about that.

3 THE HEARING OFFICER: All right.
4 Ms. Gray?

5 MS. GRAY: If I may address that
6 matter. It is correct that I showed Mr. Schafer
7 yesterday some handwritten notes that were
8 apparently made by him that were marked as an
9 Association exhibit. We obtained those notes
10 from Frank Clark of the Pierce County
11 prosecutor's office this year. It may be true
12 that Mr. Schafer also provided those notes to us.
13 I have no way from the file of ascertaining that.

14 The copy that I used was provided to us by
15 the Pierce County prosecuting attorney's office
16 and not by Mr. Schafer. We made selected copies
17 of the materials that they provided to us, that
18 they made available to us for our use in this
19 case, and that is why we did not provide those
20 notes in response to the subpoena.

21 THE HEARING OFFICER: All right.
22 I'm not sure it's productive to continue to go
23 back and forth. We have made a record of where
24 this document came from, that Mr. Schafer may
25 have provided other documents to the Bar
292 1 Association that are not available at this time.
2 If this becomes an issue later I would like to
3 hear, perhaps in closing argument, what
4 inferences you are asking the Hearing Officer to
5 draw in relation to this or whatever significance
6 this has. But the record has been made, and I'm
7 not sure there's anything to rule on at this
8 point. I don't think I'm being asked to make a
9 ruling at this time.

10 MR. NEWMAN: The point I do want
11 to make for the record is the fact that Mr.
12 Schafer did, his February 29th, 1996 request for,
13 um, subpoena asked for his handwritten notes.
14 His request regarding -- to the Bar for the
15 information specifically mentioned handwritten
16 notes.

17 THE HEARING OFFICER: That's true.
18 And I have reviewed the subpoena, I have reviewed
19 the Bar Association's response. They are in the
20 record because they are in the file, the public
21 file, so that would be part of the record of this
22 hearing.

23 Are there any other preliminary matters this
24 morning before we proceed with further testimony?

293 25 MR. NEWMAN: I have a preliminary
1 matter, and I guess I would like to lay out a
2 road map of what I would hope to cover as the
3 balance of our case to provide the Hearing
4 Officer and Ms. Gray with some semblance of
5 order.

6 Let me first make a comment. I was quoted
7 in the paper, one of the papers yesterday, as
8 indicating that Judge Anderson had taken a bribe
9 or was accepting bribes. That is incorrect. I
10 meant to refer to kickbacks and I was thinking
11 about, I think, the CJC counsel's
12 characterization of Judge Anderson as being a
13 justice for sale. So, I want to make sure the
14 record is correct on that issue.

15 Secondly, we intend to call three more
16 witnesses. One is Pam Ott. She is the CEO and
17 administrator of the hospital in Ilwaco.

18 Now, we would ask that she be allowed to
19 testify by telephone. As you are well aware,
20 Ilwaco is quite a distance and I don't anticipate
21 her testimony taking very long. We view her as
22 further illustrating the impact of the ongoing
23 crime of fraud on that beneficiary. So we can
24 get her on the phone at virtually any time.

294 25 The other two witnesses, you have already
1 authorized Judge Strombom to be -- to testify by
2 telephone. I understand she is in Minnesota.

3 THE HEARING OFFICER: I think it's
4 Wisconsin.

5 MR. NEWMAN: Wisconsin, one of the
6 cheese states, I get them both mixed up.

7 And lastly, we have Julie Shankland who you
8 would like to ask some questions to and she is
9 here with the Bar Association and I understand is
10 available.

11 Obviously, what I want to begin today with
12 is Mr. -- continuing Mr. Schafer's testimony, and
13 I intend to cover five areas, just for your
14 information.

15 We left off on the issue of the ethics file
16 which he maintains. We intend to introduce the
17 file, the contents of the file.

18 The second part would be queries with Mr.
19 Schafer explaining his investigation, and in that
20 context, Mr. Hearing Officer, we would like to
21 introduce, for the record, information the CJC
22 considered, including findings of fact,
23 transcripts and their exhibits, and these are --
24 if you could take judicial notice of this, the
25 Bar Association already has this material. We
295 1 have copies. They are quite voluminous.

2 Quite frankly, I don't intend to ask Mr.
3 Schafer many questions about the content, but I

4 do believe it is necessary for my client's rights
5 on any potential appeal to make sure that's in
6 the record.

7 Thirdly, I'm going to ask Mr. -- we're going
8 to inquire about Mr. Hamilton's involvement with
9 other attorneys in response to Ms. Gray's
10 questions about the criminal history of
11 Mr. Hamilton, and that would include further
12 information from the CJC and other court
13 documents involving an attorney named McKean and
14 FBI affidavits that were filed in response to
15 attorney Phil Sloan's motion to quash a subpoena
16 for Mr. Hamilton to testify.

17 Number four, we intend to bring to your
18 attention certain articles and letters written by
19 former counsel to the Bar, Mr. Bulmer, who had
20 written, in his defense of Judge Anderson had
21 written materials to the Board: "You are going
22 to make an advisory opinion," which are
23 incorrect, we believe defamatory, and have
24 poisoned the well. I think it's very important
25 that you understand that there is a problem
1 there.

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2 And lastly, we do want to further make
3 inquiries into the reason why the Bar Association
4 in our opinion has not fully responded to the
5 subpoena.

6 So, that's kind of a road map, if that
7 helps.

8 THE HEARING OFFICER: It does
9 help. Let me just state for the record where I
10 think we are in the proceedings.

11 Ms. Gray yesterday called Mr. Schafer as the
12 Bar Association's witness and now we have shifted
13 over for examination by you, Mr. Newman, of
14 Mr. Schafer. And Ms. Gray was offering to rest
15 her case yesterday. I suggested that she might
16 want to reserve that till later.

17 So this may sound overly technical, but I
18 don't think the Bar Association has actually
19 rested yet. They offered to, I kind of declined
20 that. So the Bar Association may still call
21 witnesses if it wishes as part of its case, but
22 probably will not do so, stating it very broadly.

23 However, my understanding is that there are
24 rebuttal, potential rebuttal witnesses; is that
25 correct, for the Bar Association?

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1 MS. GRAY: It's difficult to
2 answer that question, Mr. Mills, because
3 Mr. Schafer is essentially undergoing a direct
4 examination now, and because we have not yet
5 technically rested it's difficult to know whether
6 or not it's going to be our obligation to put it
7 on in our case-in-chief or in rebuttal, and I
8 have not heard all of his testimony yet.

9 At this point in time I don't intend to call
10 any witnesses additionally in our
11 case-in-chief, but that could change at any
12 moment.

13 THE HEARING OFFICER: Okay. I
14 just want to reserve that, so that we understand
15 that the Bar's case is still open. If you would

16 like to do something different this would be the
17 time to do it.

18 In other words, if the Bar Association wants
19 to rest its case and then shift over to the
20 respondent's case, I would be happy to do that.

21 I just want to keep things procedurally --
22 it may not make any difference at all in terms of
23 the information I receive, but I want to make
24 sure I understand who is eliciting this evidence
25 and for what purpose, and at this point, it's a
298 1 little bit unclear.

2 So I'm not saying we should do anything
3 different, I just want to make sure it's clear
4 that the Bar Association still has the ability to
5 call witnesses if it wishes to present additional
6 evidence in this case, and she certainly has an
7 opportunity to rebut.

8 MR. NEWMAN: I don't think
9 Ms. Gray and I have a dispute on that. If she
10 needs to call another witness to offer something
11 we're certainly not going to oppose that. And I
12 appreciate the flexibility that the Hearing
13 Officer and Ms. Gray is allowing in the
14 questioning.

15 THE HEARING OFFICER: I think it's
16 more efficient to do it the way we're doing it.

17 And thank you for the road map. I neglected
18 to say yesterday what I usually say at the outset
19 of the hearing, is that I would like both counsel
20 to cooperate in disclosing to the other the
21 witnesses they intend to call the next day,
22 day-by-day, so there can be adequate preparation,
23 and it sounds like you are cooperating just fine.

24 All right. I guess, Mr. Schafer, if you want
25 to resume the witness stand, you are still under
299 1 oath.

2 THEREUPON,

3 DOUGLAS A. SCHAFER,

4 returned to the stand, having been previously sworn,
5 and was examined and testified as follows:

6 THE HEARING OFFICER: All right.

7 Mr. Newman. You may proceed when you are ready.

8 MR. NEWMAN: Thank you, Mr. Mills.

9 EXAMINATION

10 Q. (By Mr. Newman) I'm going to ask -- I have
11 marked as Exhibit B the ethics file we have
12 talked about.

13 MS. GRAY: Excuse me, Mr. Newman.
14 That's not been admitted into evidence.

15 MR. NEWMAN: I have it marked and
16 then I would like to --

17 MS. GRAY: Well, I would like you
18 not to give it to the Hearing Officer until after
19 it's been admitted, please. And what is it
20 marked as?

21 MR. NEWMAN: It's going to be D-1.

22 MS. GRAY: D-1.

23 MR. SCHAFER: Yes, A-1 and D-1.

24 MS. GRAY: And is the copy that
25 you are handing to Mr. Schafer marked as D-1?

300 1 THE WITNESS: Not yet, nothing is
2 marked. I was at Kinko's at 3:00 a.m. and trying

3 to --

4 MS. GRAY: Does the court reporter
5 have a stamp in which to mark it?

6 THE HEARING OFFICER: Either that
7 or I can mark it.

8 MS. GRAY: If you could wait for a
9 moment and let me review it.

10 THE HEARING OFFICER: Actually,
11 this isn't going very well, because I don't want
12 to look at it until counsel has had a chance to
13 look at it. So, why don't you mark it,
14 Mr. Newman, for identification, and then we'll go
15 from there.

16 (Subject Matter File on Ethics
17 marked as Respondent's Exhibit No. D-1.)

18 THE HEARING OFFICER: The record
19 should reflect that Ms. Gray is reviewing the
20 exhibit that's been marked and that the Hearing
21 Officer has not reviewed it as yet.

22 THE WITNESS: Just for the record,
23 it's been marked for identification but not
24 offered.

25 THE HEARING OFFICER: Not offered
301 1 or admitted.

2 We are on the record. We are just waiting
3 for Ms. Gray to read her review of the exhibit
4 which she's entitled to do before questions can
5 be asked about it.

6 THE WITNESS: Oh, okay.

7 THE HEARING OFFICER: If you want
8 to leave the witness chair for a moment, it's
9 fine with me.

10 THE WITNESS: Can we go off the
11 record while we're waiting so we can talk?

12 MS. GRAY: I think that would be
13 distracting because I would need to participate
14 in that, and I would be unable to read when we
15 were doing that.

16 THE WITNESS: I was just going to
17 ask a question on what basis could she object to
18 an article from a journal?

19 THE HEARING OFFICER: Mr. Schafer,
20 I don't know on what basis, but I'm going to let
21 her proceed, so let's just be silent and let her
22 do that.

23 THE WITNESS: Okay.

24 THE HEARING OFFICER: Thank you.

25 MS. GRAY: Mr. Mills, I recognize
302 1 that it's taken me a while to review the document
2 that's being shown to the witness. I would like
3 to just point out that on June 28th I had a
4 conversation with Mr. Newman in which I pointed
5 out to him that if I did not receive copies of
6 exhibits ahead of time there would be delays
7 during the disciplinary proceedings.

8 I wrote a letter to Mr. Schafer last week, I
9 believe it was dated on Wednesday, in which I
10 pointed out to Mr. Schafer that if I did not
11 receive copies ahead of time there would be
12 delays in the proceedings. I provided to
13 Mr. Schafer last week copies of our exhibits.
14 So, that is the reason why it's necessary for me

15 to take time during these proceedings to read the
16 exhibits.

17 MR. NEWMAN: Mr. Mills, let me
18 just make this clear. Last week I was away on an
19 emergency on the East Coast. Ms. Gray knows
20 that. We have had discussions about exhibits.
21 They've not been super productive. There's a lot
22 of exhibits in this case and I would be happy to
23 walk through and take the time to make sure these
24 are -- you can take judicial notice of those.

303 25 THE WITNESS: And I could say they
1 could have investigated me at any point in the
2 last four-and-a-half years and I would have
3 provided all this stuff to them, but they never
4 did.

5 THE HEARING OFFICER: All right.
6 Well, normally, at least in arbitration hearings,
7 I set deadlines for exchanging exhibits, at least
8 for the case-in-chief, and we have not had a
9 discovery deadline to that effect in this case.

10 I'm relying on counsel to cooperate. I
11 understand there could be problems in producing
12 exhibits before the hearing, but I am going to
13 adhere to the practice of having counsel review
14 the proposed exhibits before they are offered, so
15 that if there are exhibits that are likely to
16 come in, then perhaps during breaks or lunchtime
17 it would be useful to share the exhibits with
18 opposing counsel so that they could be reviewed
19 ahead of time and save time during the hearing.

20 Ms. Gray, the question of the hour is: Do
21 you have an objection to the exhibit, at least at
22 this point, that is in your hands?

304 23 MS. GRAY: I have an objection to
24 all the telephone messages and the handwritten
25 notes of Douglas Schafer that are part of the
1 exhibit. With regard to the printed law articles
2 I would ask to voir dire Mr. Schafer with one
3 question before I indicate whether or not I have
4 an objection.

5 THE HEARING OFFICER: All right,
6 you may proceed on that.

7 THE WITNESS: What does voir dire
8 mean?

9 THE HEARING OFFICER: Simply to
10 ask you a question about those articles.

11 THE WITNESS: Oh, okay, simple
12 English. I appreciate simple English.

13 VOIR DIRE EXAMINATION

14 Q. (By Ms. Gray) Mr. Schafer, looking at D-1, and
15 ignoring the handwritten notes contained in D-1,
16 did you review each of the articles contained in
17 D-1 sometime between December, 1995 and April,
18 1996?

19 A. I am confident that yes, I did.

20 Q. Is that that you recall that you did?

21 A. I'm sure that I did.

22 MS. GRAY: I have no objection to
23 the articles. I have objection to all of the
24 handwritten notes.

305 25 THE WITNESS: Can I ask what
1 basis?

2 THE HEARING OFFICER: Let me ask.
3 Let me take control of this, Mr. Schafer, that's
4 my job, not yours.

5 THE WITNESS: Okay.

6 THE HEARING OFFICER: On what
7 basis do you object, Ms. Gray?

8 MS. GRAY: At this point, there
9 are a number of handwritten notes that appear to
10 be in Mr. Schafer's handwriting. There has been
11 no testimony about them, and it is unclear what
12 the purpose of the offer of the handwritten notes
13 is.

14 THE HEARING OFFICER: All right.
15 Maybe I'm premature by asking your objection
16 without allowing questioning. I think that the
17 witness can be questioned about this document,
18 and if you wish to offer it later then I'll rule
19 on this further objection.

20 MR. NEWMAN: Thank you, Mr. Mills.
21 Let me make a brief response. Obviously, as part
22 of my foundation I'm going to ask Mr. Schafer if
23 these are indeed his notes, if they were made
24 contemporaneous. He's the witness, these are his
25 notes. I don't know of any valid objection that
306 1 would prevail to exclude him from talking about
2 his own notes.

3 THE HEARING OFFICER: All right.
4 You may proceed and I will reserve my ruling.

5 THE WITNESS: The rules of
6 evidence do not apply, right?

7 CONTINUED EXAMINATION

8 Q. (By Mr. Newman) Mr. Schafer, you have been
9 shown what's been marked as Exhibit D-1 and I'm
10 going to ask if you can identify this exhibit?

11 A. These are papers that were in a file folder that
12 I kept in my desk drawer alongside my legs that
13 was labeled Ethics. And I kept in my desk drawer
14 photocopies of articles that seemed relevant to
15 my practice as a business lawyer, and I would
16 toss them in there.

17 Now, these papers, you know, are not all the
18 papers that have been in that ethics folder. I
19 still have in my desk an ethics folder, but these
20 are the papers that, you know, as this matter,
21 the Hoffman Estate, Judge Anderson thing became
22 obviously relevant in late '95, early '96, you
23 know, I pulled that folder and put it in a box,
24 you know, with the folders that related to the
25 other things.

307 1 I'm trying to recall if this was even in the
2 stack that was in my briefcase. It might have or
3 it might not have, I cannot recall. If I had a
4 complete set of those I would know. It could
5 have been.

6 Q. Let me ask then, there's some handwriting on
7 these documents. Page 1, for example, has
8 certain dates.

9 A. Uh-huh.

10 Q. And above the --

11 A. Yes, as I was, you know, deliberating as to can I
12 safely report this evidence of the corrupt judge,
13 you know, particularly after Phil Sloan had

14 threatened to sue me and, you know, made quite a
15 point about the client confidentiality item, you
16 know, I studied it.

17 Basically, I made a very conscious decision.
18 I looked over the rule, I looked over the
19 materials in my ethics file. I looked over these
20 articles, as I testified yesterday, you know, the
21 articles about the ABA opinion that says a
22 business lawyer can make a noisy withdrawal to
23 signal when a client is perpetuating a fraud, and
24 that the formal opinion, you know, quite

308 1 prominently said, you know, client
2 confidentiality should not necessarily and in
3 every case trump other ethical rules with which
4 it collides.

4 All that seemed to me quite relevant to the
5 balancing client confidence against judicial
6 integrity, which I thought was fraught with
7 problems in a particular courtroom.

8 So, these notes simply reflect some of the
9 steps that I took, efforts that I made. You
10 know, the very first page stapled to the paper,
11 and I just stapled it this morning, it was paper
12 clipped previously, was a little, I think a
13 mailer insert from the American Bar Association
14 about their ethics hotline. I see that I had
15 received it in September 1st of '93, and it had
16 been in my ethics folder.

17 Q. This September 1st, '93, that's your handwriting?

18 A. That's my handwriting and that reflects -- I mean
19 that's been my practice to date things.
20 Certainly not everything and I'm not as
21 methodical as I should be, but I try to put dates
22 on things when I receive them.

23 I did call that ABA ethics hotline as the
24 notes at the top indicate, February 5th, spoke
25 with someone named David Brent. Quite frankly,
309 1 my recollection is that he did not seem to be
2 particularly helpful.

3 Q. Your notes also reflect the name of Jeffrey
4 Hazzard in Philadelphia. Can you explain that?

5 A. I was wanting to speak with him and consult with
6 him because he is the author of many articles
7 that appear in the National Law Journal, which
8 I've been reading since at least 1989 or 1990 as
9 a regular reader, and they have regular columns
10 on ethics. He's the author of those columns and
11 I know him to be probably the most nationally
12 recognized expert on ethics in the country.

13 As you can see from my notes I identified a
14 phone number for him. I don't recall right now
15 if I tried to phone him and failed or if I did
16 not phone him, I don't recall.

17 Maybe it was, maybe these were, you know,
18 notes that this David Brent was giving me because
19 he refers to the Law of Lawyering, which is a
20 treatise authored by Professor Hazzard and
21 jointly with Professor Bill Hodus in Illinois, I
22 don't know.

23 Q. Your next entry --

24 A. The next entry is just, you know, very, very
25 briefly, it's the phone number of Professor

310 1 Strait, who is a professor at U.P.S. Law School,
2 which at that point was just one block away from
3 my office, downtown Tacoma.
4 The date, February 5, '96, the abbreviation
5 under that MTG-Professor Strait, just
6 memorializing in my records that I had a meeting
7 with Professor Strait.
8 Q. Why don't you explain who Professor Strait is?
9 A. He's one of the two ethics professors at the
10 university, what was then University of Puget
11 Sound Law School. And as it shows, I met with
12 him from about 9:15 to about 10:00 that day,
13 February 5th.
14 The notes under that, I made a record that
15 he called my attention to the fact that RLD
16 12.11, which is Rules for Lawyer Discipline
17 12.11, you know, protects whistle blowing to the
18 legal, you know, Bar disciplinary authorities.
19 Again, my great concern as a result of my
20 meeting with Phil Sloan on February 1st and Bill
21 Hamilton was that they were poised, and frankly,
22 appeared eager to sue my rear end if I reported,
23 as I was inclined to do.
24 Q. And what we have here on the exhibit is rule, for
25 Mr. Mills' sake, Rule 12.11, which is blown up as
311 1 a demonstrative exhibit, which states under B,
2 "Communications to the Association ...
3 Disciplinary Counsel ... are absolutely
4 privileged," and this was part of your
5 consideration when you, when you reported this
6 information to the Bar Association; is that
7 correct?
8 A. Well, yes. My concern was fear of being sued by
9 Phil Sloan and Bill Hamilton, but recognizing
10 that, you know, as a moral matter, in order to
11 restore judicial integrity in at least one
12 courtroom in Pierce County I felt it absolutely
13 essential to report to the appropriate
14 authorities.
15 Q. This meeting with Professor Strait, can you
16 explain what transpired there?
17 A. Well, give a little bit more background. If
18 we're going to open this door and dive into it,
19 I'll dive in. Basically, when I met with Phil
20 Sloan and Bill Hamilton, Phil, among other
21 things, said, "You need ethical guidance. Why
22 don't you go to one of the law professors at the
23 law school," or he suggested that I go to one of
24 them.
25 I also, because I know, I have my own ideas
312 1 about how Phil Sloan practices law, and I was
2 quite --
3 MS. GRAY: Objection. I ask that
4 that be stricken.
5 THE WITNESS: I have my own ideas.
6 THE HEARING OFFICER: He can
7 answer. Overruled.
8 THE WITNESS: You know, my
9 perception is that if he were going to sue me the
10 first thing he would do would be to try to hire
11 somebody who can speak with authority as to what
12 the law is because I didn't think Phil Sloan,

13 frankly, would know where to look to find the
14 law.

15 So, I just recognized that trial lawyers
16 often follow the practice of hiring somebody to
17 testify as to what the law is rather than
18 researching it themselves.

19 I had, frankly, the strong belief that law
20 professors or these law professors, you know, if
21 they were hired by Sloan, you know, might give
22 testimony that would be critical of me, and as a
23 business lawyer who had been around the block a
24 few years I knew that one of the strategies
25 typically employed in commercial litigation is to
313 1 corner the experts to disqualify them from
2 representing the opposition.

3 So, I put together a collection of
4 documents, including some of the time share deeds
5 that showed the blatant self-dealing and some of
6 the other things I thought were -- you know,
7 clearly demonstrated the corruption of this judge
8 and the lawyers who practices with him. And I
9 delivered them, I believe I delivered a package
10 of documents to both Professor Strait and
11 Professor Boerner.

12 I know I, at least, left notes on the doors
13 or under the doors for both of them. Frankly, as
14 I, as I've testified, one of my strong objectives
15 was to prevent them from being available to
16 testify against me if Phil Sloan and Bill
17 Hamilton were hiring experts.

18 I then visited their offices until I caught
19 them in. I don't think it was hard to catch
20 Professor Strait. As the note indicates, on
21 February 5th, 1996 I had about 45 minutes with
22 him, you know, I walked him through the
23 documents. You know, we discussed my first and
24 foremost concern being a threatened civil
25 liability. He called my attention to that.

314 1 He also made the observation, his background
2 being more in litigation and criminal law
3 matters, he said, "On the basis of what you're
4 showing me this judge looks corrupt. What jury
5 is going to find civil liability against you on
6 the basis of reporting a corrupt judge?"

7 Q. When you say he pointed out to you, that's RLD
8 12.11, is that what was pointed out?

9 A. He pointed that out, but he also said, "Even if
10 they do file a lawsuit," he said, "What civil
11 jury, you know, what jury is going to rule
12 against a whistle blower on a corrupt judge? You
13 know, I don't think you have much to worry about
14 on the civil side."

15 Q. All right.

16 A. Okay. On the basic subject about, you know, can
17 I safely report, one of the things he did right
18 then and there is pick up the phone and called
19 Barrie Althoff, but he just left a voice mail
20 message because he obviously must not have been
21 in.

22 But as we discussed it he said to me, and
23 I -- this was important to me so I was paying
24 close attention. And he said, "It's in this gray

315 25 area. It's been a debate for a long time, you
1 know, and, you know, some people may criticize
2 you for reporting, other people will say that you
3 have a duty to report or that you should report,
4 there's a question potentially as to whether it's
5 a past crime or an ongoing crime. You know, it's
6 simply in this debatable zone," he said.

7 Then he said, "When I am dealing with a
8 dilemma like this," he said, "I take the course
9 that is most morally defensible, and based on,
10 you know, the evidence that you have shown me
11 that this judge clearly looks corrupt, the most
12 morally defensible position, of course, in the
13 eyes of the public would be to report the guy."

14 So, I felt strongly reinforced. That was
15 his message to me: "It's a gray area, you know,
16 people could debate whether you should or you
17 shouldn't, but when I deal with these dilemmas I
18 take the path that seems most morally defensible,
19 and that would be reporting this corrupt judge."

20 Now, I recognized, you know, some members of
21 the profession might fault me. I recognized that
22 other members of the profession might applaud me.
23 But, you know, to me it was clear; the morally
24 right thing to do was to report the guy.

316 25 The next page of notes reflects Professor
1 Strait calling me back on March 5th. It had been
2 almost a -- it had been a full month before he
3 got back to me again. And his phone message when
4 he got back to me was that he had spoken with Bob
5 Weldon and Cathy Blinka. Cathy Blinka at that
6 time was the predecessor of Chris Sutton, manning
7 the desk at the Bar office that, you know, offers
8 ethics advice to lawyers calling in.

9 And his message to me at that time was that
10 it was safe for me to report this information to
11 the State Bar office. Now, that was what I wrote
12 down as a result of speaking to him that day.

13 Now, the telephone --

14 Q. Go ahead.

15 A. The telephone messages on this second slip, and I
16 just stapled them there this morning when I was
17 at Kinko's making copies, but they were all
18 collected together in this file, paperclipped
19 together. I would have provided it to the Bar if
20 they ever asked.

21 The phone message on the lower right is from
22 this other professor, and he called back to my
23 office. I again, as I say, had left notes under
24 their door I think the previous day, and I think
25 I had telephoned their offices as well.

317 1 At any rate, he called my office at 10:10
2 the same day that I had met with Strait, until
3 about 10:00. I think Strait had a class that he
4 had to teach at 10:00 or just, I don't know,
5 10:15. We could not continue because he had to
6 go to a class.

7 But the phone message from David Boerner,
8 Professor Boerner, simply that he had returned my
9 call.

10 Now, the dominant or most of the handwriting
11 on that is from then my secretary/receptionist,

12 Ms. Zan Conlon; C-O-N-L-O-N, just saying Dave
13 Boerner returned the call.

14 The handwriting on the "of" line is my own
15 handwriting, and what that reflects is when I
16 returned then his call, and I don't know, at that
17 time I got his voice mail or got him directly,
18 but when he pronounced his name -- I didn't even
19 know how to pronounce the guy's name, you know, I
20 thought Boerner, but it was in that when I was
21 returning his call, either to him directly or to
22 his voice mail I understood that it was
23 pronounced burner, as in burner on a kitchen
24 range, so I wrote it down that way in quotes as a
25 reminder to myself how to properly pronounce the
318 1 guy's name.

2 And it was either in that conversation if I
3 got him, and I don't recall if I got him right
4 away or if we played telephone tag a little bit,
5 but the message back from him was that simply
6 that he agreed with John Strait, you know, his
7 colleague at the law school.

8 The other message on that page was a phone
9 message returning a call that I had made to
10 Barrie Althoff.

11 Q. Identify who Mr. Althoff is.

12 A. Well, Barrie Althoff is in charge of -- is the
13 Chief of Lawyer Discipline for the State Bar
14 Association. He's, I guess, the director of
15 lawyer discipline and chief disciplinary counsel.
16 He has been since November of 1994. He replaced
17 Leon Ripley who in turn replaced Kurt Bulmer.

18 He returned my call on February 20th. I had
19 been, as I recall, wanting to, you know,
20 personally deliver the documents, sit down and
21 explain everything, walk somebody through this
22 briefcase full of documents, and I had this full
23 set for them by then.

24 He returned the call and basically he said I
25 should direct anything that I had to Randy
319 1 Beitel. My secretary Zan had written Randy's
2 last name with a V as in Victory, Veitel. She
3 must not have heard correctly. But it's
4 correctly B as in Boston, and I think it's
5 probably E-I-T-E-L, but that was Barrie's
6 message.

7 Now, you can see the "from" line and the
8 message lines are from my secretary. The "of"
9 line that says WSBA fax number and the phone and
10 it says 5th floor, that's my writing, and that
11 possibly could have been jotted on there at a
12 later time, I just don't know exactly. I don't
13 think that fax number would have been put there
14 as a result of returning a call to Barry or
15 calling Randy, but it was more likely when I
16 called Julie Shankland or she called me.

17 What I ended up doing is simply just
18 shipping up all the documents, I think, in a box
19 is my recollection, rather than driving them up
20 here. Because it didn't appear that anyone was
21 willing to sit down and meet with me as Sally
22 Carter-DuBois had done for six-and-a-half to
23 seven hours on February 13th.

24 So I just put them in a box and shipped them
25 up and I think it was on March 8th that Julie
320 1 Shankland called me. It was either a box or a
2 big manila envelope. It would have been a box,
3 it wouldn't have fit in a manila envelope.

4 Julie called me on March 8th and at that
5 point, you know, indicated that she wanted to
6 know if they wanted me to treat -- wanted them to
7 treat me as the grievant so that they would be
8 authorized to keep me informed, and I said
9 absolutely.

10 And she said their normal practice is to
11 send all the documents out to the accused
12 lawyers. And I said, "Hold everything, don't do
13 that, because I have taken all these things to
14 various law enforcement offices and it would be,
15 you know, really careless, reckless to provide
16 the targets with all these documents when the law
17 enforcement officials are conducting an
18 investigation." So, I then --

19 MS. GRAY: Objection. This is
20 repetitious of yesterday's testimony.

21 THE HEARING OFFICER: It is, but
22 I'll let him continue.

23 THE WITNESS: I'm explaining why
24 the fax number. My belief is that she said,
25 "Well, then fax me a letter to that effect," and
321 1 I think it was at that time and that conversation
2 on March 8th that I wrote down this fax number.
3 That I couldn't say with certainty as to that,
4 but, you know, to me that's the most likely
5 explanation of that.

6 Q. (By Mr. Newman) And as you have testified in
7 response to Ms. Gray's questions, you have
8 reviewed this material at what period of time?

9 A. It was, you know, it was during January,
10 February, 1996. You know, these articles that
11 are here, you know, the first one is from the
12 American Bar Association. I'm not sure if this
13 was copied -- okay, I can tell it's from the
14 Business Lawyer, kind of a glossy magazine that's
15 a monthly, you know, it's just current news.

16 And they have this "get out and be noisy"
17 article that discusses this formal ABA opinion
18 that authorizes -- and again, this was a subject
19 of great concern to business lawyers ever since
20 the trial lawyers, you know, won the battle of
21 the 1983 Bar Convention, American Bar Association
22 Convention and the Cutack Commission's
23 recommendations were shot down by the trial
24 lawyers.

25 And the business lawyers ever since have
322 1 been trying to get it clearly re-established as
2 it had been for, you know, a century before '70
3 or '83, that lawyers can report when their
4 clients have used the lawyers to commit a fraud.

5 At any rate, this article, you know, says,
6 as I have quoted several times, the recognition
7 that the client confidentiality should not in
8 every case trump other ethical rules and
9 policies.

10 That to me -- the other thing that I

11 highlighted that seems real significant is the
12 recognition in the column to the right that says,
13 basically discussing the problems that a lawyer
14 is in when he discovers a fraud and is concerned
15 about confidentiality.

16 The quote, "any decision a lawyer makes in
17 this situation is loaded with judgment," you
18 know, there's inevitably going to be some element
19 of judgement, noting that each situation has its
20 own intricacies.

21 And frankly, I have never, and even to this
22 date have never seen a case, seen a journal
23 article, seen even an illustration or a
24 hypothetical that comes close --

323 1 MS. GRAY: Objection to what
2 Mr. Schafer has seen to this date. I think his
3 testimony should be limited as to what he saw in
4 1996. The rest of it is legal argument.

5 THE HEARING OFFICER: It borders
6 on argument. I think he's explaining his thought
7 processes as he was reviewing those articles, but
8 if it's something you thought about this week
9 then I think it's probably beyond the scope.

10 THE WITNESS: No, it's not
11 something this week. It's simply a recognition
12 that I could never and never have to date found
13 any illustrations, hypotheticals, cases or
14 journal articles that really balance the dilemma
15 of a lawyer who knows that a judge is absolutely
16 corrupt and is a sitting judge deciding the fate
17 of poor, innocent people or guilty people,
18 whatever, a sitting judge, clearly corrupt.

19 And the lawyer is wrestling with the
20 confidence of a client who appears to have been a
21 co-conspirator with a judge in defrauding a
22 public hospital of a million-and-a-half bucks.

23 Q. (By Mr. Newman) Well --

24 A. At any rate, continuing, the next article is from
25 the National Law Journal --

324 1 MS. GRAY: Objection. It's
2 unclear what pending question there is,
3 Mr. Mills.

4 THE WITNESS: Well, I was just
5 wanting to ask a question.

6 THE HEARING OFFICER: Let your
7 counsel ask you about questions.

8 THE WITNESS: I was a professor
9 for a while.

10 Q. (By Mr. Newman) For the purposes of foundation,
11 there's some Xs, and for example, background, the
12 articles, the ethics article from Jeffrey
13 Hazzard, which is dated January 23rd, 1993,
14 there's some markings on that underlined in
15 brackets. Are those your markings?

16 A. Yes. Actually, January 25th, the second page of
17 that article, does not have the date cut off by
18 the photocopier, Monday, January 25th, 1993. And
19 those -- yes, it's my handwriting.

20 Q. All right.

21 A. Can I testify with certainty as to when exactly I
22 put these underlinings and the bracket in? I
think it was, you know, at the time that I was

23 wrestling with this, but I couldn't say
24 absolutely. I can say that it was in my ethics
25 file at that time.

325 1 Q. All right.
2 A. I was concerned about the issue I was going over,
3 the reference materials that are readily
4 available to me.
5 Q. And did you maintain what I would call a subject
6 matter file on ethics right at your desk?
7 A. Have for years.

8 MS. GRAY: Objection; asked and
9 answered.

10 THE HEARING OFFICER: All right.
11 My point, quite simply, Mr. Nelson [sic], is
12 to --
13 THE WITNESS: Is this a rule of
14 evidence?
15 THE HEARING OFFICER: Mr. Schafer,
16 I'm sorry, but it is irritating when you
17 interrupt.
18 THE WITNESS: I'm sorry.
19 THE HEARING OFFICER: I understand
20 that you're emotionally involved in this, but if
21 we can get one person speaking at a time it will
22 be useful. Your counsel was responding.
23 MR. NEWMAN: Mr. Mills, I don't
24 mean to be repetitive, but my point was simply to
25 reinforce the fact that this ethics file was not
326 1 something that was created for this hearing, it
2 was created contemporaneous with the dates
3 indicated on the materials.
4 THE HEARING OFFICER: I think the
5 objection was just that it was repetitious and
6 that will be overruled, and we will just proceed.
7 MR. NEWMAN: Well, at this point I
8 think Mr. Schafer has covered everything
9 necessary for this exhibit and we'll move that to
10 be admitted.
11 MS. GRAY: No objection.
12 THE HEARING OFFICER: Exhibit D-1
13 is admitted and I would like a copy. I've not
14 been able to look at it until now.
15 (Respondent's Exhibit No. D-1
16 received into evidence.)
17 THE WITNESS: Can you make -- we
18 may want a transcript of this portion dealing
19 with Strait's, my meeting with Strait.
20 Q. (By Mr. Newman) Mr. Schafer, did you have any
21 subsequent conversation with either Professor
22 Strait or Professor Boerner beyond what you have
23 already testified to?
24 A. My only other -- I think I already testified to
25 the fact that I never actually met with Boerner
327 1 and I cannot recall with certainty if I even ever
2 spoke with him directly on the phone.
3 It might have been just a phone message from
4 him to me saying I talked with John Strait and I
5 agree with the advice that he gave you.
6 That's my recollection that I got, the clear
7 message from him, and it was either in a direct
8 conversation or in a voice mail from him that
9 simply there was no need for a meeting with him;

10 that he had discussed, you know, the facts of my
11 case with John Strait and that he shared John
12 Strait's thoughts on the subject.

13 Q. And you have provided a substantial amount of
14 material to Professor Strait, correct?

15 A. Yes, I did. I know I provided enough of the what
16 I considered smoking gun documents to make it,
17 you know, clear to anyone, you know, to him at
18 the time that, yes, this judge really seems from
19 these documents to be corrupt.

20 I mean, we'll come to them here probably
21 this morning or today, but just showing the
22 excise tax affidavit showing he bought the
23 bowling alley for \$508,000, and about three days
24 later he's getting a First Interstate Bank loan
25 for \$900,000 for the very same property, you
328 1 know, it kind of has a suspicious odor to it, you
2 know.

3 You know, the kickback -- I mean, all the
4 time shares that went to his campaign chair and
5 everybody in his office, you know, a month before
6 he was sworn in all for less than a third of the
7 price that members of the public had just paid
8 for units in the very same two-bedroom condo, you
9 know, you don't need to be that astute to see the
10 slime that, you know, covers this kind of stuff.

11 Q. And the time shares you're talking about which we
12 will get to are part of the Hoffman Estate,
13 correct?

14 A. Yes, yes. They were Surfside Inn time share
15 interests.

16 Q. Now, was there an occasion that Professor Strait
17 called and left a voice mail message for you?

18 A. I guess -- is now the time to go through the
19 chronology of my -- I would rather wait and if he
20 disagrees with my testimony as to our
21 conversation then I would like to go into a long
22 presentation of why I think he would be
23 disagreeing, and that would --

24 MS. GRAY: Objection.

25 THE HEARING OFFICER: Yes.

329 1 MS. GRAY: Mr. Mills, Mr. Schafer
2 appears to be having a conversation with his
3 counsel as to whether or not he wants to answer
4 the question. I do not believe that that is
5 appropriate. If they wish to privately confer I
6 think that would be appropriate, but I don't
7 think --

8 THE HEARING OFFICER: Would you
9 like to confer with your counsel at this point?

10 MR. NEWMAN: I don't think we need
11 to, Mr. Mills. I guess what I want to make clear
12 is that if, should the Bar Association call
13 Professor Strait that there is some further
14 testimony at this time that Mr. Schafer can
15 present which includes a voice mail message left
16 by Professor Strait, and I'll just leave it at
17 that, and we will just wait and see what
18 Professor Strait says.

19 THE HEARING OFFICER: All right,
20 thank you.

21 Q. (By Mr. Newman) Now, Mr. Schafer, in addition to

22 Professors Boerner, Professor Strait, the Bar
23 Association and those identified in Exhibit D-1,
24 you made contact with Sally Carter-DuBois. I
25 think I was --

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1 A. DuBois.
2 Q. All right. In fact, can you relay to Mr. Mills
3 the conversation you had with that individual?
4 A. Sure, sure.
5 Q. Identify who she is.
6 A. Sally Carter-DuBois is a lawyer by training.
7 She's a graduate from Pepperdine Law School. She
8 became I think the only full-time investigator
9 for the Commission on Judicial Conduct. I
10 believe it was either 1988 or '89.

11 I had phoned the commission, I have notes
12 that would reflect the date but -- remember I
13 called them from the Temple of Justice initially
14 on a Friday, like February -- the first Friday it
15 was in February of 1996, because I was testifying
16 at a guardianship hearing at the capital building
17 and after that I went across the street to the
18 Temple of Justice, the Supreme Court, asking
19 about where is the office of the CJC.

20 And they gave me the phone number and said
21 it was not on the premises, so I phoned in. She
22 called back, I arranged a meeting with her
23 February 13, 1:30 in the afternoon.

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24 I went to her office in Olympia, Commission
25 on Judicial Conduct office, was there until 8:15
1 that evening going over this. When I say full
2 briefcase I'm talking about a large Samsonite,
3 hard-walled briefcase, you know, full of
4 documents that I could barely get it closed.

5 As I, you know, went through document after
6 document it was -- you know, become obvious to
7 her that this was serious.

8 MS. GRAY: Objection as to what
9 she thought. I have no objection to Mr. Schafer
10 testifying about what she told him during this
11 meeting but I do object to his characterization
12 of her beliefs.

13 THE HEARING OFFICER: It will be
14 sustained as to her thought processes but you may
15 testify as to what she told you.

16 THE WITNESS: Okay.

17 THE HEARING OFFICER: What her
18 reaction was to what she provided to you.

19 MR. NEWMAN: If I may, Mr. Mills,
20 just as a response to the objection, we have
21 tried to subpoena this individual and she has
22 objected based on some confidentiality rules that
23 the CJC is operating under, so for purposes of an
24 offer of proof Mr. Schafer has prepared a
25 declaration which illustrates what his

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1 conversation with Ms. Dubois would be, and that's
2 what I'm trying to get to. So I understand your
3 point about he shouldn't testify with respect to
4 her thoughts, but I do want to point out that we
5 have tried to subpoena her and they have objected
6 to that.

7 THE HEARING OFFICER: Do you want
8 to make a record on this, Ms. Gray?

9 MS. GRAY: I think it's
10 appropriate just to point out for the clarity of
11 the record that on Friday morning the Hearing
12 Officer orally ruled in a telephone conference
13 that he was quashing the subpoena of Sally
14 Carter-DuBois and indicated that he would be
15 eventually issuing a written ruling which I have
16 not yet seen, but which I assume would be
17 forthcoming.

18 Q. (By Mr. Newman) Why don't we go ahead.
19 Mr. Schafer, we were talking about your
20 interaction with the CJC investigator and your
21 meeting with her.

22 A. The lengthy meeting with her, late in the meeting
23 after I had gone through all or substantially all
24 of the documents, my notes -- and my handwritten
25 notes filed, by the way, reflect that when I
333 1 first called the CJC office seeking an
2 appointment I expressed to whoever answered that
3 I had what I considered to be a very important
4 matter that I would rate as a 9-plus on a scale
5 of 1 to 10 or something like that. It was 9 on a
6 scale of 1 to 10 or 9-plus, but that was in my
7 handwritten notes from my call scheduling the
8 appointment.

9 So, after my meeting with her I asked her,
10 "You know, how do you rate it on a scale of 1 to
11 10, you know, based on what you have seen," since
12 she had been there by then six or seven years.

13 She said, "It's a 13." I'll never forget
14 how emphatic she was. She was very emphatic
15 that, you know, it seemed so obvious.

16 But she said, "Of course, we have to do our
17 own investigation and, you know, confirm from our
18 own sources everything that you have provided."

19 But, you know, she was -- I had been
20 intending to take all the documents back with me
21 to Tacoma to arrange to make copies for all the
22 authorities, and she was quite adamant that she
23 did not want the documents to leave her
24 possession from that point on.

25 And so she said that she would make whatever
334 1 number of sets of copies she needed, at which
2 point I sat down and counted the different
3 agencies.

4 With respect to the State Bar Association,
5 she affirmatively --

6 MS. GRAY: Objection.

7 THE WITNESS: I'm telling you what
8 she said to me.

9 MS. GRAY: Objection. I would
10 like to be able to state the basis of my
11 objection.

12 THE HEARING OFFICER: Please
13 proceed.

14 MS. GRAY: My objection is -- I do
15 not object to what she said about the State Bar
16 authorities coming in or Mr. Schafer's state of
17 mind at the time. I do object to its coming in
18 for the truth of the matters asserted.

19 THE HEARING OFFICER: Any response
20 to that?

21 MR. NEWMAN: Well, as indicated in
22 4.11, the strict rules of evidence don't apply.
23 I'm assuming she's making some sort of
24 preliminary hearsay objection. The rules of
25 evidence are pretty loose, and I think you have
335 1 taken a lot of testimony already, and I would
2 just ask the -- I think I certainly have faith in
3 your ability to weigh the evidence and take it
4 for whatever weight it's worth.

5 THE HEARING OFFICER: All right.

6 MS. GRAY: My objection is also as
7 to the relevance to the extent that it comes in
8 for the truth of what she said about the
9 disciplinary authorities.

10 THE HEARING OFFICER: All right.
11 In crafting my written ruling, which counsel has
12 not yet received, regarding the subpoena directed
13 to Sally Carter-DuBois, I indicate in there that
14 I would permit, as I indicated on the telephone,
15 the questioning of Mr. Schafer regarding his
16 interaction with Ms. Dubois and what he provided
17 to her and his best recollection of what she told
18 him, but not for the purpose of the truth of the
19 statements she told him, but simply what, to
20 support his state of mind, what he believed at
21 the time that he talked with her.

22 So, I will allow him to testify as to
23 statements made by Ms. Carter-DuBois to him at
24 any time.

25 The mental processes of Ms. Carter-DuBois,
336 1 that's kind of beyond the scope. But in terms of
2 actually what she said to you, Mr. Schafer, that
3 would be appropriate. And I think the question
4 was, you were starting to say she agreed about
5 something and you were interrupted by an
6 objection.

7 And I hope there's not a strict question
8 pending, but that was where you were, so you may
9 proceed.

10 Q. (By Mr. Newman) Your Honor, I think the question
11 we left was Mr. Schafer was commenting on what he
12 was told by the CJC investigator concerning the
13 State Bar and other disciplinary authorities.

14 A. She actively discouraged me from reporting it to
15 the Bar, telling me that her prior experience
16 with the Bar office staff has been that they
17 interfere and try to impede investigations of
18 disciplinary misconduct and try to protect in
19 some cases the targets of those investigations.

20 She had had such an experience she related
21 to me in the Judge Ritchie case, for example.
22 She had expressed to me the opinion that, you
23 know, that the State Bar was controlled by or
24 heavily influenced by, what she said,
25 behind-the-scenes power players.

337 1 She just was very, very critical of the
2 effectiveness with respect to professional
3 disciplinary matters of the State Bar office
4 personnel, and I don't know if she was referring
5 strictly to paid staff or powerful lawyers who
6 are not paid staff, but it was a clear,
7 unequivocal message that she conveyed to me.

8 She also had indicated, you know, that law
9 enforcement prosecutors are very reluctant to,
10 seem unwilling to thoroughly scrutinize any
11 judges or lawyers.

12 She indicated that she was aware of, you
13 know, criminal activity that had been perpetuated
14 in the past by judges and lawyers but prosecutors
15 were unwilling to get into it, to look into it or
16 to act on it.

17 So, she expressed a considerable degree of
18 cynicism.

19 Q. And just to tie up your meetings with her, was
20 there anything else that transpired that you
21 would like to comment on?

22 A. I guess the other thing that comes to mind was,
23 you know, I had by then incurred about \$250 in
24 out-of-pocket expenses obtaining public documents
25 from the Pacific County Auditor's office and
338 1 Assessor's office and Gambling Commission and
2 Secretary of State's office. There were probably
3 others, but I don't recall. But she indicated
4 that her office could and would reimburse me for
5 that, and I provided her, probably at that same
6 meeting, you know, the receipts that I then had,
7 although it could be that I mailed them down to
8 her later, I don't recall with certainty.

9 But she did provide me a reimbursement check
10 fairly quickly, which I still have copies of the
11 check, copies of the out-of-pocket expenses.

12 I've even got a -- I'm a saver. I've got a
13 copy of the label on the side of the cardboard
14 box that she shipped all the copies back to me
15 in, because it reflected the street address of
16 the Office of the Commission on Judicial Conduct,
17 which is an address that they customarily have
18 tried to make non-public by using a p.o. box
19 exclusively.

20 But I thought it was important that I keep
21 proof of, you know, who I had seen, what I had
22 done, what I received. So, I was fairly careful
23 in keeping all of these things.

24 The one other thing that she said as a
25 result of that meeting was she was going to, she
339 1 had in mind, at least, immediately putting on a
2 retainer or personal service contract the lawyer
3 who had worked on the King County District Court
4 Judge Ritchie case, and that she thought she was
5 going to get him immediately working on this
6 case.

7 Q. Who was that lawyer?

8 A. Paul Taylor, Burns & Keller.

9 Q. Did the CJ --

10 A. I don't think that she identified him to me at
11 that time but, you know, within a day or two,
12 probably the next day, you know, I looked up the
13 Ritchie case and identified who the lawyer was
14 who had represented the CJC, and from that point
15 on kept a copy of the cover page of the Ritchie
16 case with Paul Taylor's name circled and, you
17 know, the firm name and phone number in my what I
18 called my officials file.

19 One of the files that I kept on this project

20 was officials, which reflected my visiting the
21 various, you know, the FBI and the CJC and the
22 prosecutor's office and whatnot.

23 Q. Now, Mr. Taylor mentioned he was retained by the
24 CJC as part of the investigation?

25 A. I believe he was retained within a week or within
340 1 a few days. I sought through the public records
2 of the CJC a copy --
3 MS. GRAY: Objection; no
4 relevance.
5 THE HEARING OFFICER: Overruled.
6 THE WITNESS: I had sought through
7 the CJC a copy of the personal service contract
8 that would indicate the date he was retained, but
9 my understanding was that it was going to be
10 right away.

11 Q. (By Mr. Newman) In addition to the CJC, isn't it
12 correct you contacted the Supreme Court itself?

13 A. Basically, what had happened is that I spent a
14 good portion of the day on February 8, which was
15 a Thursday, meeting with the --
16 MS. GRAY: Is this 1996?
17 THE WITNESS: 1996, Thursday,
18 February 8th, 1996 I had called the FBI and was
19 directed to meet with Supervisory Special Agent
20 Ellen Glasser; G-l-a-s-s-e-r, who was in charge
21 of the Tacoma office at the time.
22 You know, she was going to meet with me, I
23 think like 10:00 or 10:30 or something like that.
24 I have a phone slip. In fact, it's been put in
25 the record in this case, you know, the copy of
341 1 the telephone message slip when she called my
2 office or had someone call saying she was stuck
3 in traffic, she would call me when she got to the
4 Tacoma office.
5 I did meet with her at some length about
6 this case on that day. That evening was the
7 Pierce County Bar Association Lincoln Day
8 Banquet, an annual bash with many judges always
9 attending.
10 And that evening after that session I
11 approached Supreme Court Justice Charles W.
12 Johnson, because, you know, in my collection of
13 reference materials I had a newspaper clipping
14 from I believe it was early July of 1995, the
15 prior July, that reported that a judge in King
16 County District Court, I think it was in the
17 Bothell area, reportedly was being -- the report
18 in the newspaper account -- to me it would make
19 more sense to put this in the record rather than
20 me trying to recall all the details of a
21 newspaper article.
22 The essence of it was she was involved in
23 marital problems, allegedly threatening court
24 employees, allegedly packing a weapon. The
25 newspaper report said Supreme Court Justice
342 1 Barbara Durham was deciding how to deal with the
2 problem and was considering ordering her to stay
3 out of the courthouse.
4 It indicated to me that, consistent with
5 what I had long heard, that the Supreme Court,
6 the Supreme Court has inherent authority over the

7 judicial branch of government; that it appeared
8 to me that this was an illustration of the
9 Supreme Court exercising that inherent authority,
10 you know, to summarily put on administrative
11 leave a judge who seemed at that time -- for
12 whatever, health or other reasons -- unfit to be
13 adjudicating cases.

14 So, I approached Justice Johnson that
15 evening at the Tacoma Club and said, "I have
16 spent the afternoon with the FBI describing to
17 them what I think is clear evidence of a clearly
18 corrupt Pierce County Judge and I am aware that
19 the Supreme Court appeared to summarily act to
20 suspend a judge up in Bothell last July. I would
21 like to share my information with an appropriate
22 person in the Supreme Court so that you may
23 consider the necessity of an immediate action,
24 immediate suspension or something of that nature
25 in this case."

343 1 He said he would look into it and get back
2 to me. He then telephoned me the next day. I
3 believe it was, on the phone slips it said like
4 4:30 in the afternoon, it was late -- to me
5 that's not late in the afternoon, that's
6 mid-afternoon --

7 And I called him back and he said to me at
8 the time that he had looked into it. He said,
9 yes, he was aware of the incident involving the
10 judge in Bothell.

11 He said there had been a letter that had
12 been written by the Chief Justice to the
13 administrator, I think he said, of the Commission
14 on Judicial Conduct discussing such a procedure.

15 He indicated, I believe, that the -- I don't
16 know if he said it was the consensus or his
17 thought. I think he said it was the feeling or
18 the perception in the court was that they really
19 lacked the authority and it was something that
20 the Commission on Judicial Conduct, you know,
21 should consider whether it should seek a
22 procedure or mechanism to handle those sorts of
23 kind of emergency matters.

24 But the essence of the message from him was
25 that the Supreme Court was not going to consider
344 1 any administrative suspension, was not going to
2 meet with me about this concern that I had.

3 Q. All right.

4 A. Now, as everybody here knows, this is all been
5 documented and put in the record of this
6 disciplinary case, including Judge Justice
7 Johnson's letter essentially confirming the
8 essence of that.

9 THE HEARING OFFICER: Let me just
10 stop there. I'm not sure that really is the
11 case, Mr. Schafer. I acknowledge I received a
12 letter from Judge Johnson, as I disclosed in our
13 telephone conference last Friday, but I'm not
14 sure that's in the record, the public record of
15 this hearing. So, let's rely on counsel to take
16 it from there.

17 MR. NEWMAN: Thank you, Mr. Mills.
18 I do have a copy of the letter.

19 Q. (By Mr. Newman) I believe this is the letter
20 you're referring to, Doug?

21 A. Yes, that's the letter I'm referring to, his
22 letter of July 7, 2000, Justice Charles W.
23 Johnson to me in response to the subpoena that I
24 had served him with, and he graciously accepted
25 service of that subpoena.

345 1 MR. NEWMAN: If I may, Mr. Mills,
2 I want to give Ms. Gray, who I think has received
3 this already, but an opportunity to review this
4 and mark this as an exhibit, as D-2.

5 (Letter from Justice Charles W.
6 Johnson marked as Respondent's Exhibit No. D-2.)

7 THE WITNESS: This is the original
8 that probably should go in the disciplinary board
9 file.

10 THE HEARING OFFICER: Ms. Gray has
11 had an opportunity to review the Exhibit D-2,
12 marked for identification. Perhaps counsel
13 should go ahead and question about it unless
14 there's a preliminary objection.

15 MS. GRAY: It may just speed
16 things up. The only -- I only object, if it's
17 going to be offered, to page 3, the Declaration
18 of Douglas A. Schafer.

19 Mr. Schafer has testified here. I don't
20 think it's appropriate to have an additional --
21 if there is anything that he wants to testify
22 about that's in the declaration that he has not
23 done so, he is free to do so, but I don't think
24 it's appropriate to have it appended to this
25 exhibit.

346 1 MR. NEWMAN: Mr. Mills, it's
2 merely a recitation of his interactions with the
3 special agent at the FBI and Justice Johnson on
4 that day. He has testified to most of this. I
5 don't see how it can hurt.

6 THE WITNESS: Is the objective the
7 truth or to kind of filter the truth? I mean,
8 I'm just saying let it all in, it's true.

9 MS. GRAY: Mr. Mills, Mr. Newman
10 is supposed to be handling the objections in this
11 matter and Mr. Schafer keeps making objections as
12 well.

13 I understood at the beginning of these
14 proceedings that one lawyer was going to be
15 making objections for each witness and not two
16 different lawyers.

17 THE HEARING OFFICER: That's
18 correct. I would like to have counsel make the
19 objections and me have an opportunity to rule on
20 them. The objection is to the declaration?

21 MR. NEWMAN: It's to the
22 declaration, and quite frankly, you may want to
23 look at that before you rule on the objection.

24 My bottom line, it's certainly not
25 prejudicial to the Bar Association. Mr. Schafer
347 1 is testifying to it, and we would simply ask that
2 it be allowed in. I could have him read the
3 entire declaration. We could take that time.

4 THE HEARING OFFICER: Is the
5 declaration referenced in or related to the

6 letter?

7 MR. NEWMAN: Yes, it references
8 his conversation with Justice Johnson.

9 THE HEARING OFFICER: Not the
10 declaration, I'm asking if the letter references
11 the declaration.

12 MR. NEWMAN: No, the letter
13 from -- the documents that I've given -- seek to
14 have introduced here are actually several. One
15 is the letter from Justice Johnson to
16 Mr. Schafer.

17 THE WITNESS: Which references the
18 declaration on the bottom of the first page.

19 "Reviewing the paperwork attached to the
20 subpoena and the statements contained in your
21 declarations, I generally recall" -- you know, I
22 gave him the declaration with the subpoena.

23 THE HEARING OFFICER: You can stop
24 there, it answers my question. I don't see how
25 it's possible for me to understand what the
348 1 contents of the letter are, assuming I were to
2 admit it without the declaration being attached,
3 so I'm going to overrule the objection on this
4 basis.

5 I don't think it's really been offered yet,
6 so if you want to ask questions about it that's
7 fine, if you want to offer it at this point.

8 MR. NEWMAN: I think we -- unless
9 Ms. Gray has other objections I think that was
10 the only one on the declaration.

11 MS. GRAY: I have no other
12 objection.

13 MR. NEWMAN: All right. If there
14 is no objections, I mean, Mr. Schafer has already
15 testified to the other exhibits that we seek to
16 introduce here; one is a telephone message from
17 Chuck Johnson with Mr. Schafer's notes on it, and
18 the other is this article from the News-Tribune
19 which references this Judge Rosemary Bortemay.

20 THE HEARING OFFICER: Bortemay?

21 MR. NEWMAN: Sorry, I can't
22 pronounce it. And lastly is a phone message
23 about Ellen Glasser from the FBI being stuck in
24 traffic and needs to reschedule, which
25 Mr. Schafer has already testified to, but if
349 1 there's no objection I'm going to ask that this
2 be admitted as Exhibit D-2.

3 THE HEARING OFFICER: It will be
4 admitted. If you want to ask him questions about
5 it, that's fine.

6 (Respondent's Exhibit D-2 received
7 into evidence.)

8 Q. (By Mr. Newman) Mr. Schafer, did you want to make
9 anymore comments on this Exhibit D-2?

10 A. Yes, just one last comment, and that is, as his
11 phone message to me indicated, there was a letter
12 from the Chief Justice to the Administrator of
13 the CJC.

14 I went to the Temple of Justice to obtain
15 that letter under public records request and was
16 told by the clerk's office that there is no
17 repository in the Temple of Justice of individual

18 correspondence by justices and that I would have
19 to locate Retired Justice Barbara Durham to find
20 out if she kept her letter, which frankly,
21 shocked the heck out of me.

22 MR. NEWMAN: Mr. Mills, perhaps
23 this is a good time to take a break. I do have a
24 the number of the exhibits that I would like to
25 concur with Ms. Gray about so we can expedite the
350 1 remainder of the hearing.

2 THE HEARING OFFICER: How much
3 time would you like?

4 MR. NEWMAN: Fifteen minutes.

5 THE HEARING OFFICER: All right.
6 We will take a fifteen minute break at this time.

7 (Brief recess taken.)

8 THE HEARING OFFICER: All right.
9 Let's go back on the record. During the break
10 counsel has had an opportunity, I believe, to
11 discuss some potential exhibits to be introduced
12 in this hearing.

13 Does counsel have anything, any statements
14 they wish to make at this time?

15 MR. NEWMAN: Well, let me just
16 begin with, I apologize to Ms. Gray for the
17 tardiness of getting the copies of these exhibits
18 to her. Virtually all of the exhibits had
19 previously been provided to the Bar or are public
20 records, which I think Mr. Mills can take
21 judicial notice of. Quite a bit of information
22 is from the CJC proceedings and our purpose is
23 simply to make sure the record is complete.

24 I don't intend to require of Mr. Schafer a
25 detailed -- and rehash the CJC case, but to
351 1 protect his interests in this case I think it's
2 important to have a complete record. Again, I
3 appreciate Ms. Gray's patience and understanding.

4 THE HEARING OFFICER: All right.
5 Ms. Gray, do you want to say anything at this
6 time?

7 MS. GRAY: I think each exhibit
8 needs to be taken separately, Mr. Mills.

9 THE HEARING OFFICER: All right.
10 Before we proceed the Hearing Officer wants to
11 make a statement. I am concerned also about the
12 record and would really like to make sure the
13 record is clear and complete. And as Mr. Schafer
14 indicates, we are about trying to get to truth,
15 what happened here and when it happened.

16 I too share the objective. I didn't comment
17 on your comment earlier. I wanted to make clear
18 that I, too, am seeking that.

19 THE WITNESS: Okay.

20 THE HEARING OFFICER: And, in
21 fact, I wanted to indicate that when I was
22 expressing irritation earlier it was merely at
23 everyone speaking at the same time because I
24 think it muddies the record and doesn't benefit
25 anyone.

352 1 So, when I was expressing that frustration
2 earlier it was merely just to make sure that we
3 have a clear record, that I understand what is
4 happening and I have an opportunity to rule on

5 objections. So, if there any offense taken about
6 that, that is my objective.

7 I, too, would like to have a very clear
8 record. I would like to make sure that any
9 relevant evidence is in the record. I realize
10 that this is a process and this is one step in
11 the process, but this is the appropriate time to
12 make sure the record is complete.

13 To that end, in terms of the objecting
14 process and responses to objections, I don't have
15 a problem having individuals respond with
16 objections, and frankly, I don't have a problem
17 with Mr. Schafer expressing concern or objection
18 to the way exhibits are being handled. I just
19 want to make sure that they are expressed in a
20 sequential manner so it's clear exactly what's
21 happening.

22 So, let me just say how I would like to have
23 it go, just so we have a clear record. If
24 there's testimony going on, and as an example,
25 Bar Counsel, Disciplinary Counsel makes an
353 1 objection, I would respectfully request that
2 everyone be silent and allow the Bar Counsel to
3 make the objection. Normally, I would turn to
4 counsel for a response or maybe some colloquy.

5 Mr. Schafer, I don't have a problem if you
6 want to speak also --

7 THE WITNESS: Thank you.

8 THE HEARING OFFICER: -- that's no
9 problem for me, whatsoever, and once that kind of
10 record is made about the objection, give me an
11 opportunity to rule and then we will proceed.

12 Hopefully, we won't have a lot of that,
13 because if you can communicate during breaks or
14 whatever it will kind of grease the skids so we
15 won't have that happening.

16 And my main concern in my expression earlier
17 about being irritated, it was an irritation of
18 people speaking at the same time. It's just
19 confusing for me and I'm sure it's confusing for
20 the court reporter to try to get this down.

21 So, I just wanted to make that statement to
22 be clear about what we're trying to do here.
23 Okay.

24 MR. NEWMAN: Thank you.

25 THE HEARING OFFICER: You may
354 1 proceed.

2 MR. NEWMAN: Mr. Mills,
3 Mr. Schafer was testifying concerning his
4 communications with Sally Carter-DuBois, and he
5 had previously submitted to the Bar Association
6 in reply to a motion to quash the subpoena for
7 Ms. Dubois, an affidavit. I've provided a copy
8 to Ms. Gray.

9 This is similar to the affidavit which we
10 talked about regarding Mr. -- I mean, Justice
11 Johnson.

12 And again, to make sure the record is
13 complete, I'm going -- Ms. Gray already has a
14 copy. I'm going to show Mr. Doug, Mr. Schafer
15 the original and then ask that --

16 MS. GRAY: Have you identified

17 this for the record?

18 MR. NEWMAN: I'm going to ask him
19 to identify it.

20 THE WITNESS: This is my reply to
21 motion to quash subpoena for a hearing which I
22 served on Sally Carter-DuBois and the Attorney
23 General's Office filed a motion to quash.

24 I prepared this declaration, sworn under
25 penalty of perjury, giving I thought compelling,
355 1 persuasive reasons why that motion should not be
2 quashed, but it was nonetheless quashed. But
3 this reflects, you know, essentially the
4 testimony that I had hoped to be able to elicit
5 from her.

6 I think, frankly, I should be permitted to
7 argue at higher levels of appeal that that motion
8 should not have been quashed, and this is my
9 offer of proof, I guess you guys call it, as to
10 what I think would have come in, and it's signed
11 by me under penalty of perjury and I would like
12 it in the records so I can preserve my right to
13 make these arguments.

14 MR. NEWMAN: Let me mark it as
15 Exhibit D-3, I think, are we at?

16 MS. GRAY: Yes.

17 (Reply to Motion to Quash Subpoena
18 marked as Respondent's Exhibit No. D-3.)

19 MR. NEWMAN: And I don't know if
20 Ms. Gray has any objection to that.

21 MS. GRAY: I have an objection to
22 it being admitted in evidence in this proceeding.
23 However, by its offer it will be made a part of
24 the record and can be made a part of the proffer
25 for purposes of appeal.

356 1 I object to it being made a part of the
2 record because Mr. Schafer has been able to
3 testify about what he said to Ms. Carter-DuBois
4 and what she said to him. I don't think that any
5 additional material is appropriate for the part
6 of the evidence for this proceeding.

7 THE WITNESS: Mr. Mills?

8 THE HEARING OFFICER: Yes,
9 Mr. Schafer, go ahead.

10 THE WITNESS: I just briefly want
11 to stress that what I am intending is I want to
12 ensure that the 14 members, the four non-lawyers
13 and the ten lawyers on the Disciplinary Board
14 have the opportunity to read this as part of
15 their decision-making process, as well as if it
16 ultimately does become reviewed by the State
17 Supreme Court I want them to be able to read this
18 document as well.

19 THE HEARING OFFICER: I have one
20 question for you, and that is: If you were asked
21 to testify regarding this subject matter here
22 today would you testify consistent with your
23 declaration?

24 THE WITNESS: Yes.

25 THE HEARING OFFICER: All right.

357 1 I'm going to admit the declaration.

2 MR. NEWMAN: Thank you. Mark this
3 as D-3.

4 (Respondent's Exhibit D-3 received
5 into evidence.)

6 THE WITNESS: The original is
7 here, if that should go in the Disciplinary
8 Board. There is a stapler near the microphone
9 there if you need it.

10 THE HEARING OFFICER: Just for
11 clarification, I have an exhibit book which I
12 understand is mine. I hope it is because I have
13 marked on these exhibits.

14 MS. GRAY: It is.

15 THE HEARING OFFICER: Is there a
16 set of original exhibits that is in the record
17 somewhere?

18 MS. GRAY: It has been my
19 practice, Mr. Mills -- and we can change it if
20 you think that that's appropriate -- I have been
21 showing each witness what I considered to be the
22 original exhibit and they are in my files here
23 now.

24 If you wish me to give you each of the
25 original exhibits and have you make them a part
358 1 of the record now, that will be fine. It has
2 been my practice in some other proceedings to
3 file everything that is admitted at the
4 conclusion of a proceeding with notice to the
5 other side.

6 THE HEARING OFFICER: All right.
7 I just want to make sure that all the exhibits
8 that I'm admitting are in the record on file, and
9 I want to signal to counsel that the exhibits
10 that are being given to me -- other than this
11 one, which is an original -- I'm treating as my
12 copies and that I'm going to be putting a mark on
13 them and deal with them as my copies.

14 So, perhaps we should have a separate stack
15 for original exhibits being offered by
16 Mr. Schafer.

17 MR. NEWMAN: I appreciate that,
18 Your Honor. And we have tried to introduce the
19 originals for purposes of the court file.

20 So, we have copies of those, and perhaps as
21 we tie up the hearing if Ms. Gray is going to
22 provide copies or whatever we can take care of
23 that at that point in time; is that okay?

24 THE HEARING OFFICER: That's fine.

25 MR. NEWMAN: Do you want copies as
359 1 you go along?

2 THE HEARING OFFICER: No, that's
3 fine, but I want to make sure that I don't mark
4 on the original exhibits that you have provided
5 to me today, for example. All right, thank you.
6 Sorry for that.

7 MR. NEWMAN: Not a problem.

8 Q. (By Mr. Newman) Mr. Schafer, we had discussed at
9 length the Exhibit D-1, which was a copy of your
10 subject matter file on ethics, attorney ethics,
11 and I'm going to show you what I would like to
12 mark as Exhibit D-4, marked for identification.

13 (Letter to Julie Shankland marked
14 as Respondent's Exhibit No. D-4.)

15 Q. (By Mr. Newman) And I have provided a copy

16 to -- this is the letter, this is a letter from
17 you to Julie Ann Shankland, dated August 19th,
18 1996, and ask if you can identify that letter?

19 A. Yes, this was my, you know, very immediate
20 response to the letter that advised me that
21 Mr. Hamilton had filed a Bar grievance against
22 me.

23 I think it was like the day or two before I
24 received -- before I did this letter I had
25 received also the letter from Julie Shankland
360 1 that declared the investigation of Anderson
2 closed as unsupported.

3 I immediately responded with this letter,
4 simply based on pulling out my ethics file,
5 looking at the materials that had caused me to
6 make the decision that I did, expressing the
7 strong feeling that I then had at the outset to
8 the effect that -- in fact, you'll see in this
9 letter I, you know, I quote from some of those
10 articles.

11 The last page starts by saying: "Judicial
12 integrity concerns should trump client
13 confidentiality concerns," and that was kind of
14 paraphrasing that phrase that was in both of
15 those articles dealing with the noisy withdrawal
16 opinion of the American Bar Association.

17 So, you know, yesterday when I was giving
18 testimony there seemed to be some desire to focus
19 on, you know, what was my frame of mind before
20 I've spent hours and hours and hours in law
21 libraries reading journals articles about the
22 multi-decade debate over client confidences.
23 This reflects my state of mind before I've been
24 spending those library hours.

25 Q. And it's true that you referred to your ethics
361 1 subject matter file in creating this letter?

2 A. Yes, I did.

3 MR. NEWMAN: If there's no
4 objection I would like to introduce this.

5 MS. GRAY: There's no objection.

6 THE HEARING OFFICER: Okay,
7 Exhibit D-4 will be admitted.

8 (Respondent's Exhibit No. D-4 was
9 received into evidence.)

10 Q. (By Mr. Newman) Mr. Schafer, I'm going to ask you
11 some questions about your investigation, what you
12 did.

13 MR. NEWMAN: And Mr. Mills, there
14 are some documents I have provided to Ms. Gray.
15 I doubt if she has had time to review all of
16 those.

17 Q. (By Mr. Newman) I would like to start out with
18 discussing Mr. Schafer's checking out the Hoffman
19 Estate court file and ask you when you did that?

20 A. Well, as was covered yesterday, December 15,
21 1995, a Friday, just before lunch.

22 MR. NEWMAN: Okay. I'm going to
23 show you what I would like to have marked as
24 Exhibit D-5.

25 MS. GRAY: Can I just clarify that
362 1 you are showing him a packet of papers, the first
2 of which is petition for order?

3 MR. NEWMAN: That's correct.
4 THE WITNESS: That's correct.
5 MS. GRAY: Just so that
6 Mr. Schafer isn't testifying about the content of
7 an exhibit before it's in evidence, I can
8 indicate that if it is offered I will not object
9 to D-5.

10 (Copy of Hoffman Estate File
11 marked as Respondent's Exhibit No. D-5.)

12 MR. NEWMAN: With that, I would
13 move for this document to be admitted. I have
14 already marked this as D-5.

15 THE HEARING OFFICER: D-5 will be
16 admitted.

17 (Respondent's Exhibit No. D-5
18 received into evidence.)

19 Q. (By Mr. Newman) Mr. Schafer, you have in front of
20 you a document that Ms. Gray indicated begins
21 with: "In the matter of the Estate of Chuck
22 Hoffman." Would you indicate to the Hearing
23 Officer what caused you to check this out and
24 what you find, what you found in your review of
25 this file?

363 1 A. This is a complete copy of the Pierce County
2 Superior Court clerk-maintained court file for
3 the case known as the: In the Matter of the
4 Estate of Charles C. Hoffman, Deceased, Pierce
5 County Cause No. 98-4-00326-3.

6 And my practice when I start to look into
7 something is go to, in this case, a court file,
8 copy the whole thing, and begin reading through
9 it.

10 And it simply is starting with the petition
11 for admission of a will and the will and, you
12 know, the routine documents including, you know,
13 creditors' claims; there was the Small Business
14 Administration loan to Chuck Hoffman and his
15 corporations documented in there; there was, you
16 know, the will that indicated who was to receive
17 the estate proceeds; there were, there was --

18 Q. There's an inventory. I would like to draw your
19 attention to a schedule with assets and inventory
20 with assets, which is about, which should be
21 about --

22 A. I'll tell you --

23 Q. -- 20 pages in.

24 MS. GRAY: Uh --

364 25 Q. (By Mr. Newman) Let me finish the question,
1 here.

2 A. Sure.

3 Q. It appears to be about 20 pages into this, and
4 it's on page --

5 MS. GRAY: Could you refrain from
6 asking a question until I locate the document?

7 MR. NEWMAN: I'm trying to find
8 you the page. It's on page --

9 THE WITNESS: Working down from
10 the top?

11 MS. GRAY: I have it about
12 two-thirds of the way through, a little over
13 half.

14 MR. NEWMAN: It's 22 pages.

15 THE HEARING OFFICER: Is this the
16 inventory dated the 8th day of November, 1989?
17 MR. NEWMAN: Correct. I'm looking
18 at the schedule of assets, here, Mr. --
19 THE WITNESS: Okay. This is above
20 the 50 pages of time sheets, I think, or is it?
21 MS. GRAY: Below.
22 THE WITNESS: Below?
23 THE HEARING OFFICER: I'm there.
24 Q. (By Mr. Newman) All right. You're there, he's
25 not.
365 1 A. Schedule of assets, okay. So, it was filed
2 before the 50 page time sheets.
3 MS. GRAY: Are you --
4 MR. NEWMAN: I'm asking the
5 question.
6 MS. GRAY: No, it's unclear to me
7 whether he's -- I'm after the 50 pages of time
8 sheets.
9 THE WITNESS: Well, you might --
10 higher on the stack?
11 MS. GRAY: I'm looking at
12 inventory of assets. It's notarized on November
13 8th, 1989. Am I on the correct page?
14 THE WITNESS: Yes, that's the one
15 I'm on.
16 MS. GRAY: Thank you.
17 MR. NEWMAN: Then at the top of
18 the next page he has schedule of assets.
19 THE WITNESS: Right, I'm with you.
20 Q. (By Mr. Newman) Now, you reviewed this file and
21 reviewed this schedule of assets as part of your
22 investigation into what you believed to be an
23 ongoing crime or fraud, correct?
24 A. That's correct, and review understates the
25 intensity with which I read this repeatedly.
366 1 Q. And what led you to believe that there was a
2 problem with either the schedule of assets or any
3 other -- this particular portion of the, of
4 the --
5 A. Okay. This schedule of assets attached to this
6 inventory, I mean, kind of -- the clues that as a
7 lawyer conversant with settling estates, probate
8 matters kind of jump out at me at the outset is,
9 you know, the person died in March of '89. The
10 probate was opened immediately. The law requires
11 the inventory be filed within I think three
12 months, as I recall.
13 You know, this was filed December 14, 1992
14 along with papers declaring or seeking a decree
15 closing the estate. So, you know, it got filed
16 very late, although it says that it was signed
17 two years, three years earlier, November 8th of
18 '89. So, that kind of jumps out as warranting
19 some suspicion.
20 The schedule of assets, you know, when I add
21 up the figures, you know, just looking at the
22 first three line items; 10,000 for some real
23 estate, 757,000 for value of Hoffman-Stevenson,
24 Inc., and 133,600 for Pacific Lanes and, you
25 know, those three figures themselves add up to
367 1 \$890,000.

2 You know, the other things are not very
3 significant but, you know, looking at some notes
4 it looks like the total value shown on this
5 inventory is about a little less than \$920,000.

6 Q. And why did that cause you alarm?

7 A. Well, because one of the first things I -- types
8 of documents I began getting is from the title
9 company in Pacific County, all deeds that were
10 from Hoffman-Stevenson, Inc., from the time of
11 Chuck Hoffman's death. You know, those totaled
12 up 1.4 million dollars.

13 And then the Pacific Lanes transaction from
14 what I saw from the gambling commission papers
15 was, appeared to be a million dollar transaction.
16 So, you know, I quickly recognized that there was
17 2.4 million dollars produced from selling assets
18 of this estate, and yet just before they are
19 declaring it closed they are filing papers
20 showing the estate is \$900,000. That to me
21 warrants a well founded suspicion.

22 Q. In the documents you have from the file there is
23 a decree of distribution.

24 MR. NEWMAN: And Christine, this
25 is about the third document in the text, in the
368 1 materials entitled "Decree of Distribution,"
2 filed, file stamped open court, it looks like
3 January 6, 1993.

4 THE WITNESS: Okay, you're working
5 down from the top?

6 MR. NEWMAN: I'm working down from
7 the top. Do you have that? It's a five-page
8 document.

9 MS. GRAY: I have it.

10 Q. (By Mr. Newman) Now, was there something in this,
11 in your review of this document that caused you
12 to believe that there may have been some ongoing
13 crime or fraud involved in this matter?

14 A. My, you know, my quick -- the thing that kind of
15 jumped out at me on this is just the fact that,
16 you know, this was -- looked like a big estate
17 with lots of money that should be going to a
18 public hospital and there seemed to be no
19 attorney participating on behalf of the hospital.

20 You know, these papers were filed, you know,
21 just before Anderson was going to be sworn in.
22 He had been elected a judge in the mid-September
23 primary, and these papers, which requested and
24 were approved a lawyer's -- no, not a lawyer's
25 fee, it was a PR fee, you know, an executor's
369 1 fee, it was not -- I mean, right there on page 3,
2 line 16; Grant Anderson, Personal Representative,
3 \$112,000, you know, a PR's fee.

4 Q. And from your experience is that unusual to have
5 a --

6 A. Well, it sure struck me as a shockingly high
7 figure. But, you know, there was the 50-page
8 itemization that accompanied the petition.

9 But what really struck me as very
10 significant is that it was signed January 6th by
11 Commissioner David Johnson, who within I think
12 two or three days was going to be one of the
13 subordinates of Grant Anderson, who was putting

14 on a black robe to be one of the 18 judges to
15 whom the Commissioner is an at-will employee
16 under the Constitution.

17 It just did not look to me that it likely
18 would have been subjected to any scrutiny by any
19 party who would have a reason to look closely at
20 it.

21 Q. So, it's fair to say this was one of those -- an
22 indicia that led you to believe that you were
23 being used as part of a crime or fraud, was this?

24 A. It was simply an indicia that there was strong
25 grounds for serious suspicion that there was a
370 1 fraud that had been committed by Judge Anderson
2 and lawyers in his firm, for which the victim was
3 a public hospital and the culprit was a sitting
4 judge.

5 You know, my focus looking through this was,
6 you know, for the most part on the Surfside Inn,
7 the Hoffman-Stevenson, Inc., just lots of things.

8 As I said, I read this, frankly, many times,
9 and as I went through line by line the 50-page
10 time sheet records, you know, some things, again,
11 just kind of jumped out as being shockers.

12 This inventory that was supposedly signed in
13 November of 1989, when you go through the time
14 sheets you see that they were preparing it in
15 November of 1992 and they were discussing what
16 values they should use for it.

17 And it wasn't just one employee but it
18 was -- you know, a lawyer and a paralegal both
19 had time sheet entries showing that it was still
20 in the discussion stage, in the preparation stage
21 in either October or November of 1992, but when
22 they put it in the court file it appeared to --
23 you know, it reflected the notarized signature of
24 a judge from three years earlier.

25 There were just, you know, lots of things
371 1 about this. Again, you know, I went through
2 hours and hours, repeatedly, this detailed,
3 50-page detail of time sheet and I noted every
4 individual name on it, and I had a separate list
5 of names and time sheet date entries and I
6 started correlating who is who with other events
7 that -- you know, just connecting the dots, as I
8 say, just putting the puzzle pieces together and
9 identifying.

10 You know, what probably was really going on,
11 you know, we'll probably get to later, but there
12 were many, many entries about the tasks that the
13 law firm had to deal with.

14 The Surfside Inn was being sold in one week
15 time share intervals. Our state consumer
16 protection laws require that time shares be sold
17 much like stocks and bonds and securities are
18 sold with a detailed offering circular that has
19 to pass the SMEL test of the officials in the
20 time share registration office.

21 And it's a consumer protection thing and
22 those offering circulars have to be updated, I
23 think, every year and they are periodically
24 updated or they lapse into a non-compliance,
25 which gives consumers important remedies to

372 1 rescind transactions and liability.
2 So, it was obvious to me from the time
3 sheets that there were many, many contacts and
4 formal registrations concerning Surfside Inn time
5 share units.

6 That logically was one of the public offices
7 that I recognized I could readily obtain relevant
8 information from, but when I went down there in
9 January of 1996 the gentleman in charge was
10 completely unable to find any records at all of
11 the registration of time share units by
12 Hoffman-Stevenson, Inc., concerning the Surfside
13 Inn.

14 All that they could find was a file that
15 reflected time share registrations by one
16 gentleman or business in Tacoma -- excuse me, in
17 Vancouver, Washington, you know, who had
18 purchased one individual condominium apartment in
19 that building, Surfside, and was then attempting
20 to sell weeks out of his one apartment.

21 And it, again, struck me as shockingly
22 suspicious that this state office that should
23 have had, I believe, a voluminous collection of
24 files, because I've been involved in things like
25 this and I know how many drafts you go through,
and correspondence and all this stuff.

373 1
2 And it was for a period of years; it should
3 have been voluminous files. But the claim was:
4 "Never heard of it, you know, I have no records
5 whatsoever."

6 That struck me as so suspicious that I asked
7 the gentleman who was the, they called the
8 program manager, the guy in charge of that office
9 to give me, you know, the names of their auditor
10 for the department, the Assistant Attorney
11 General or the Attorney General assigned to their
12 department.

13 I was particularly alarmed when the
14 gentleman who I was dealing with had visibly on
15 his desk a stack of papers that showed Trendwest
16 Resorts' letterhead at the top, because Trendwest
17 Resorts was the, as these time sheet details
18 show, the business to whom Grant Anderson had
19 negotiated the sale of substantially all of the
20 available parts of the Surfside Inn project.

21 And we'll come to, you know, my reasons for
22 suspicion about them and their executives, but I
23 was particularly alarmed when I would go to the
24 state office that should have this voluminous
25 file and they claimed to know nothing about it.

374 1 Also, in these time share -- I mean, there
2 are many references to a gentleman who was then
3 in charge of that office named Arnold Stoehr,
4 S-T-O-H-R, I believe it was, and when I got the
5 printout from the Pierce County -- excuse me, the
6 Pacific County Assessor of the owners of all of
7 the time share intervals in Surfside Inn, lo and
8 behold, he's got a couple weeks himself in
9 Surfside Inn. Again --

10 MS. GRAY: Objection, unless
11 Mr. Schafer makes clear when he received that
12 information.

13 THE WITNESS: In January of 1996.
14 Everything I'm talking about -- I mean, this is
15 all stuff I was doing in January. This is what I
16 was going to lay on Phil Sloan and Bill Hamilton,
17 on your office and everybody else. I mean, this
18 was from December 15 of '95 through January of
19 '96.

20 Q. (By Mr. Newman) Let me show you an exhibit that I
21 have already provided to Ms. Gray.

22 MR. NEWMAN: Now, the first page
23 of this, it's a handwritten list, this is Mr.
24 Schafer's handwriting.

25 MS. GRAY: Let me find it first.

375 1 Q. (By Mr. Newman) Mr. Schafer, you have talked
2 about the Surfside Resort and I'm going to show
3 you an exhibit I'm going to mark as I think we
4 are up to D --

5 THE HEARING OFFICER: 6.

6 Q. (By Mr. Newman) -- 6. Let me ask if you can
7 identify this exhibit?

8 (Fax to Lisa Mullen re: Surfside
9 marked as Respondent's Exhibit No. D-6.)

10 A. Oh, okay. This is a copy of a fax that I
11 actually had sent to Lisa Mullen, who was the
12 assistant manager at the Pacific County Title
13 Company, who was the person I was obtaining real
14 estate documents from concerning the Surfside Inn
15 project.

16 And based on other documents that she had
17 provided me, you know, I had -- initially, I
18 believe my request to her was a copy of all
19 publicly recorded real estate documents showing
20 interest in real estate being granted, being
21 sold, transferred by Hoffman-Stevenson, Inc.,
22 which was the corporation owned by the decedent
23 and then by the estate, and then, you know, run
24 by Grant Anderson during his tenure as executor
25 of the estate, all real estate records that had,
376 1 you know, reflected interests sold by HSI, which
2 is my acronym for Hoffman-Stevenson, Inc.

3 She had provided a lot of deeds, and on the
4 basis of those deeds I -- you know, the deed
5 always shows a stamp on the face of it indicating
6 real estate excise tax that would have been
7 required to be paid as part of the -- in order to
8 record it, and the real estate, you know, that
9 stamp would show the real estate excise tax
10 affidavit number.

11 And by February 1st of 1996, you know, I was
12 convinced on the basis of the deeds that she had
13 provided me that, you know, this really looked
14 nefarious, and I thought it would be useful to
15 get copies, in addition to the deeds, of the real
16 estate excise tax affidavits that would show more
17 signatures and would show in very simple black
18 and white terms what the amount paid was.

19 Now, it's pretty simple to use a little
20 elementary math, and by looking at the face of a
21 deed which indicates the dollar and cent amount
22 that was paid in real estate excise tax, you
23 simply take that figure, divide it by one plus
24 the tax rate --

25 (Whereupon, a cell phone rang in the hearing
377 1 room.)
2 Just turn it off. The red button, the power
3 button is in the lower left hand corner, sorry.
4 You simply do the simple math. This one I'm
5 looking at showed excise tax of \$61.20. You
6 divide that by 1.053, which was the tax rate in
7 Pacific County at that time. That produces a
8 sale price of \$4,000.
9 So, but I thought it would be the useful to
10 get the actual real estate excise tax affidavits.
11 So, this is my fax to Lisa Mullen, saying: "Per
12 our chat please fax and mail me copies of the
13 real estate excise tax affidavits."
14 I wanted the most clear and obvious
15 documentation to be able to share with people who
16 I thought I could readily get their attention,
17 and this lists reflects, and I'll just identify
18 who these people --
19 MS. GRAY: I object to him reading
20 from an exhibit before it's entered into
21 evidence.
22 MR. NEWMAN: Then let me move to
23 admit Exhibit D-6.
24 THE HEARING OFFICER: Is there any
25 objection to D-6?
378 1 MS. GRAY: I would like to inquire
2 before I determine whether or not I have an
3 objection.
4 THE HEARING OFFICER: Why don't
5 you proceed?
6 VOIR DIRE EXAMINATION
7 Q. (By Ms. Gray) You have already testified,
8 Mr. Schafer, about page 1 of D-6. Page 2 of D-6
9 says Exhibit B sort of at the top of the page.
10 A. Yeah.
11 Q. Did you receive that from Ms. Mullen in February
12 of '96?
13 A. Yes, this was Exhibit B to the deed from
14 Hoffman-Stevenson, Inc., or it wasn't from
15 Hoffman, it was someone else to Arnold Stoehr,
16 who was the manager of the time share office.
17 And it was at that time, I believe it was in
18 January -- it might have been early February --
19 that I received that deed. I simply copied
20 Exhibit B because it shows these one-week
21 intervals, where on the calendar they would fall.
22 Q. Mr. Schafer, with regard to page 3 of Exhibit
23 D-6, if you can answer this yes or no, did you
24 receive this from Ms. Hoffman in January or
25 February -- I'm sorry, from Ms. Mullen in January
379 1 or February of 1996?
2 A. Yes.
3 Q. What about page 4?
4 A. Yes.
5 Q. And the remainder of the pages, did you receive
6 all of them from Ms. Mullen in January or
7 February of 1996?
8 A. Yes, I did.
9 Q. Looking at page 4, over on the right-hand column
10 do you see some handwritten notations?
11 A. Yes.

12 Q. Are those your handwritten notations?
13 A. Yes, they are.
14 Q. And are those based on information contained in
15 the document that they are on?
16 A. Yes, they are.
17 Q. Same question as to the next page on the
18 handwritten notation; are those based on the
19 document on which they are made?
20 A. Absolutely.
21 Q. I'm now going down to handwritten notations where
22 in the upper right-hand corner it says: "10/92,
23 Maus/Salqiel; M-A-U-S/S-A-L-Q-I-E-L."
24 A. I don't have it front of me. Is it --
25 Q. Part of that exhibit, it's several pages down.
380 1 A. Is it an excise tax affidavit or a deed?
2 Q. It's an indenture and an assignment of rights
3 under lease.
4 A. Yeah, it's essentially a deed but because there's
5 a 100-plus year ground lease they call it an
6 indenture when they transfer the time share.
7 That's good for --
8 Q. Mr. Schafer, there's no pending question.
9 MR. NEWMAN: I thought the
10 question was whether or not these are his notes
11 on that exhibit?
12 THE WITNESS: Well, I now have the
13 document in front of me. It's probably easiest
14 to refer to it by its recording number, document
15 recorded under Pacific County Auditor's File No.
16 31059 on November 5th, 1992, and that is entirely
17 my handwriting in the right-hand margin.
18 Q. (By Ms. Gray) And the information that says
19 "10/92" and "10/20/92," does that come from the
20 face of the document?
21 A. The document is an indenture dated October 20,
22 1992.
23 Q. So, the answer is yes?
24 A. It sure is.
25 Q. With regard to the figures and the dates noted
381 1 down farther on the document, are they based on
2 the contents of this page of this document?
3 A. Yes, because there's -- well, when you say this
4 page, the real estate excise tax stamp is on the
5 second page, but it shows excise tax of \$110.93
6 right below the notary seal. You divide that by
7 1.053 and you get 7,250.
8 And the deed shows it's for two weeks, you
9 know, two intervals they call them, A-3 and F-1.
10 And they correlate to the weeks that I have
11 indicated based on that table that we already
12 referred to on the Arnold Stoehr deed.
13 MS. GRAY: I have no objection to
14 D-6.
15 THE HEARING OFFICER: All right,
16 D-6 will be admitted.
17 (Respondent's Exhibit D-6
18 received into evidence.)
19 THE WITNESS: Well, what I was
20 trying to explain before --
21 MS. GRAY: There is no question
22 pending.
23 THE HEARING OFFICER: Why don't we

24 wait for a question, Mr. Schafer. D-6 was
25 admitted.

382 1 MR. NEWMAN: Okay, fine. Thank
2 you.

3 EXAMINATION CONTINUED

4 Q. (By Mr. Newman) Mr. Schafer, you were going to
5 discuss the first page of this exhibit, which you
6 have identified as your handwriting.

7 Let me first ask, the numbering on the far
8 left-hand side, there are a number of five digit
9 code numbers. What are those referring to?

10 A. Those are the number of the real estate excise
11 tax affidavit that on each deed appears in the
12 stamp on the face of the deed that reflects both
13 the dollar amount of excise tax that was paid and
14 the real estate excise tax affidavit number.

15 One of the reasons, frankly, I wanted the
16 affidavits is because each affidavit above the
17 signature says: "I certify under penalty of
18 perjury under the laws of the State of Washington
19 that the foregoing is true and correct."

20 I thought it was kind of important in
21 demonstrating, you know, what I believed to be
22 the criminal and fraudulent activity that I have
23 the affidavits that show the signatures of
24 whoever was taking responsibility for these
25 transactions, certifying under penalty of perjury
383 1 as to the terms of these transactions. The deed
2 does not reflect that certification. The excise
3 tax affidavit does.

4 Q. In the middle column there are a number of dates,
5 and those dates refer to what?

6 A. At the top of the column the header says
7 "Recording Date." Those were the dates that the
8 deed was recorded that reflects the stamp that
9 shows the excise tax affidavit number.

10 Q. In the third column there is a list of names and
11 could you explain the significance of those?

12 A. The significance of the list of names are simply,
13 you know, who was the recipient of the time share
14 interest or the TSU, time share unit, sometimes
15 referred to as interval, meaning a one-week usage
16 of a condominium.

17 And it indicates, you know, the person who
18 received it, and I wrote in, you know, the
19 per-week dollar amount.

20 The first one, you know, was -- I see it's
21 crossed out. I did get the excise tax affidavit.
22 I don't know why I later, you know, at some point
23 crossed this out, but it simply is the excise tax
24 affidavit for the 52-week use, meaning a hundred
25 percent title or ownership of a particular

384 1 condominium unit, 1 of the 48, that reflected it
2 passing from Hoffman-Stevenson, Inc., to the
3 Surfside Condominium Association, Steve Fisher,
4 president, for \$34,000.

5 The next two are what I have indicated,
6 public sales. These were both, you know, members
7 of the public.

8 I personally spoke with Ms. Maus; M-a-u-s,
9 to inquire as to the circumstances under which
10 she and her co-owner, who I think was a doctor --

11 I believe Ms. Maus was, as I recall, a nurse at
12 Madigan -- the circumstances under which they
13 decided, you know, they bought the two weeks, I
14 believe it was that they bought and, you know,
15 how they arrived at the price.

16 And she said they simply paid the price that
17 they were told was the price; that they visited
18 the facility, kind of liked the area, decided to
19 buy a couple weeks, and paid the asking price for
20 it.

21 Q. Now, I note on the next column that you have a
22 Mr. Pagni, is that correct?

23 A. Well, first I'll explain every reference to GLA
24 is Grant L. Anderson and WLH is William L.
25 Hamilton. I had been accustomed to using
385 1 initials in identifying people.

2 Pagni, and I do not know if I'm pronouncing
3 it correctly, I've never spoken with Louise
4 Pagni, but she was the, I'm told, the right-hand
5 gal, many year loyal assistant to the decedent,
6 Chuck Hoffman.

7 I don't know the history of these people,
8 but she was, as you will see on other documents,
9 consistently his corporate secretary or
10 vice-president or she, I think, helped him manage
11 his business activities like an administrative
12 assistant type of capacity.

13 So, the deed that caught my eye, here, was
14 one from Louise Pagni to Grant Anderson in
15 November of 1991 that reflected a per week -- I
16 think it was four weeks -- and it reflected a per
17 week transaction price of \$1,000.

18 The next you will see January of '93,
19 January 19th of '93 from Hoffman-Stevenson, Inc.,
20 to Monica Schmidt. I did not recognize the name,
21 not, and you see I say, "unknown, probably an
22 insider."

23 It was not until I spoke with David Tuell,
24 looking for a host of my meeting with Bill
25 Hamilton February 2nd, that I asked him, "Have
386 1 you ever heard of Monica Schmidt? Do you know
2 anything?"

3 And he indicated that she was an employee at
4 the State Department of -- or the, what's it
5 called, the Board of Education where Grant had
6 been a board member for a couple decades or so.

7 Next one on the list is David Tuell, a
8 25-year partner of Grant Anderson, who continues
9 to share many real estate properties with him.
10 He had acquired for reportedly a thousand dollars
11 a week.

12 And all of these that are being listed here,
13 from at least Maus/Salqiell on down were all weeks
14 in the same two-bedroom condo.

15 In this three floor comp building with 18
16 units on each floor, the two units on each end
17 are two-bedroom units, the rest are all
18 one-bedroom units. So, there are six two-bedroom
19 condominiums.

20 You know, down the road the two bedrooms
21 were sold to Trendwest for \$55,000 each and the
22 one-bedrooms for \$40,000 each, to give a

23 perspective as to the scale in difference in
24 market price.

25 All of these were in Condo No. 132, which is
387 1 the one that Chuck Hoffman had used for his
2 personal use, ground floor on one end.

3 Q. Let me just see if I can ask you something, a
4 question that summarizes your reaction to your
5 research, here.

6 Is it fair to say you learned that this
7 condo or these condos were being sold at a
8 discounted price to what you term as insiders?

9 A. It was immediately obvious when the public is
10 paying \$3,625 per week for weeks in Condo 132,
11 which is a two-bedroom unit, and that was
12 recorded in November of 1992, and the very next
13 month everybody close to Bill -- to Grant
14 Anderson and his law firm; his lawyer, law firm
15 partners, his paralegals, his secretarial staff,
16 even Jack Nelson, his campaign committee
17 treasurer and long-time friend, are all getting
18 weeks in the very same unit at a thousand dollars
19 a pop.

20 That immediately is obvious to me as what is
21 called self-dealing, you know, when a fiduciary,
22 one entrusted to administer property of another,
23 and is supposed to maximize their return and is
24 supposed to be faithful and loyal starts selling
25 assets to friends, family, close associates.

388 1 Even if they paid full value it would be a
2 breach of fiduciary duty, but it is instead a
3 breach of fiduciary duty when selling them at
4 less than fair market value.

5 I mean, there are absolute rules that have
6 been created and under the common laws that a
7 fiduciary is not permitted to buy assets from the
8 trust themselves, because the rationale for that is
9 it's too easy for them to cause it to appear,
10 based on their inside information, that they are
11 paying fair value.

12 So, there are absolute rules, and this
13 violates it in spades. It obviously does. I
14 taught this subject in law school.

15 Q. Is it fair to say that based on your research of
16 the Surfside Resort, this listing you have just
17 testified to, was that part of your belief that
18 there was an ongoing fraud or crime being
19 committed, perpetrated against the beneficiary,
20 the hospital?

21 A. It was obvious to me that there had been an
22 egregious breach of fiduciary duty under
23 Washington laws and that breach of fiduciary duty
24 is, per se, fraud, fraud as a matter of law. And
25 it looked to me to be clearly fraud by -- as the
389 1 term is used in the body of law, related to
2 trusts and estates.

3 It appeared to be a widespread matter. It
4 appeared to be, you know, just not at all
5 inadvertent or careless, but a conscious --
6 conscious steps that were taken.

7 You know, I was particularly concerned in
8 focusing on the four weeks that were transferred
9 from Louise Pagni to Grant and Diane Anderson in

10 this unit in November of '91.

11 Again, he was appointed by the court, a
12 court appointed fiduciary in March of '89, and
13 here there is a transfer to him of four weeks,
14 one month to he and his wife, Diane, in November
15 of '91 by someone who was sort of the right-hand
16 gal of the decedent.

17 And the comment that I heard from a number
18 of sources, some of which are documented in the
19 record, Chuck Hoffman had a practice of putting
20 assets of his in the names of others so they
21 could serve his purposes. Duncan McMillan
22 testified as to that in the CJC hearing.

23 MS. GRAY: Objection as to what
24 was testified to in the CJC hearing. It has no
25 bearing on Mr. Schafer's state of mind in 1996.

390 1 THE WITNESS: He also told me
2 directly when I spoke to him in 1996.

3 THE HEARING OFFICER: Let's slow
4 down, here. All right. The witness has already
5 answered. The Hearing Officer has heard the
6 answer. It will stand.

7 Q. (By Mr. Newman) So, let's pick it up where you
8 left off. Doug, you talked to --

9 A. I first talked to Ian McMillan, who was one of
10 the owners of what I call the hundred percent
11 interests. There were ten condos who had been,
12 or ten apartment units that had been, going to
13 the public records, sold to individuals before
14 the decision had been made sometime, I don't
15 recall which year, in the early '80s or so, to
16 convert to a time share marketing plan.

17 So -- and I was particularly suspicious when
18 the records reflected all 10 of those units were
19 transferred to Trendwest Resorts within a very
20 short period of time, and particularly when I had
21 been having suspicions about the way in which
22 this whole resort was handled and the files were
23 not on the shelves in the public office where
24 they should have been.

25 I, initially, as the memoranda that I
391 1 provided to the Bar office indicated, had
2 suspicions as to whether these ten condos were in
3 the names of straw men, as we use as a legal term
4 or jargon meaning someone who has not truly paid
5 value for them, but is just allowing their name
6 to be used as a disguised owner, although not a
7 genuine owner.

8 So, I had suspicions, in fact, I continued
9 to think that Louise Pagni was a straw man on the
10 unit that she owned, but I later in February of
11 '96 ended up calling one of those parties, Ian
12 McMillan, who lives in, I don't remember if it
13 was Puyallup or Sumner, and inquired as to the
14 transaction where he had sold his two units to
15 Trendwest Resorts, and he basically was very
16 eager to help me.

17 He was still outraged or very upset that
18 Grant Anderson had required him to pay, he
19 thought it was 10,000 -- it turned out to be
20 really \$9,000 -- as a commission for selling his
21 units to Trendwest Resorts. Other owners were

22 similarly cooperative and eager to expose the guy
23 for what he was.

24 Q. Let me make sure that the Hearing Officer
25 understands this. You're stating that
392 1 Mr. Anderson was at the time the executor or the
2 trustee of the estate, right?
3 A. He was executor of the Hoffman Estate. The will
4 provided that on closure of the estate the assets
5 would flow into a trust until his deceased or
6 estranged, his former wife, Millie, passed on.
7 Q. And in addition to being the executor of the
8 trustee he, and charging the estate for those
9 services, he was also charging the estate for a
10 commission in selling those estate assets?
11 A. Again, that's referred to as a breach of
12 fiduciary duty, breach of duty of loyalty for a
13 trustee to be making, you know, side -- pocketing
14 compensation from third parties unbeknownst to
15 the principal when they are shepherding or
16 responsible for the management of an estate or a
17 trust.
18 You know, and simply he is, while he was
19 managing the estate, doing side deals with using
20 the information he has and the time that he's
21 spent as executor of the estate to do side deals
22 from which he profits.
23 He later testified that he made about
24 \$40,000 on commissions from selling or brokering,
25 as he calls it, these apartments from these ten
393 1 condo owners to Trendwest Resorts on the terms
2 that he had negotiated while he was working,
3 charging his time to the estate.
4 These people were upset. They didn't think
5 he deserved a ten percent commission for just
6 introducing them to Trendwest, who had already
7 committed to buy any condos that could be
8 delivered on those terms.
9 Q. Now, you had occasion to further investigate the
10 involvement of Trendwest with Surfside Resort,
11 correct?
12 A. Well, I certainly was intrigued and had reason to
13 be quite suspicious, based on all the real estate
14 documents that I had obtained from the Pacific
15 Title Company indicating, you know, who the
16 signing executives of those documents were.
17 I went -- when I went to the Secretary of
18 State's office I got corporate records from
19 public files about Trendwest Resorts and its
20 various corporate affiliates further indicating
21 who the executives were.
22 When I started, as I say, connecting the
23 dots with the names of contributors on Grant
24 Anderson's public disclosure commission reports,
25 lo and behold, those executives were loyal to
394 1 Grant Anderson in his Pierce County Superior
2 Court election campaign and also his Washington
3 State Supreme Court election campaign that he
4 sought in 1994.
5 He was elected judge in the fall of '92 in
6 Pierce County and two years later had an election
7 campaign for election to the State Supreme Court,
8 and he lost in the primary. Ultimately, Judge

9 Justice Talmage was the victor in that election.
10 (Schafer Handwritten Notes re:
11 Trendwest marked as Respondent's Exhibit No. D-7.)
12 Q. (By Mr. Newman) I would like to show you at
13 this time what I have marked as Exhibit D-7 and
14 ask if you can identify that exhibit.
15 A. These are my handwritten notes concerning
16 Trendwest Resorts. The page on the top is a
17 photocopy simply because this morning I wanted to
18 have the -- I wanted to be able to feed these
19 through an automatic and so I had this phone
20 message slip from my conversation with Bill
21 Peare, who is the CEO of Trendwest Resorts,
22 signed some of the real estate documents and is
23 mentioned many times in the 50 pages of time
24 sheet detail in the court file as someone who
25 Bill Hamilton spoke to and negotiated with. I
395 1 spoke with him on January 9th of 1996.
2 Q. And that's reflected in the note, correct?
3 A. And these are the notes from that conversation.
4 Q. Let me just walk through so you can identify the
5 exhibit, first.
6 A. Sure.
7 MS. GRAY: I don't know if you
8 intend to offer it.
9 MR. NEWMAN: I do.
10 MS. GRAY: I do not have an
11 objection if that makes it easier.
12 MR. SCHAFFER: Oh, you do not?
13 Okay, that does make it easier.
14 THE HEARING OFFICER: Exhibit D-7
15 will be admitted. Could I get a copy of that?
16 (Respondent's Exhibit No. D-7 was
17 received into evidence.)
18 THE WITNESS: I don't know if you
19 want the original that has the actual pencil
20 notes. You might staple that together because
21 that --
22 MS. GRAY: Is the original marked?
23 THE HEARING OFFICER: Yes, D-7.
24 Q. (By Mr. Newman) Let's just walk through this
25 document, here. The first page, as you have
396 1 testified to, are your notes of what, a
2 conversation with a Mr. --
3 A. Bill Peare.
4 Q. Okay.
5 A. I called him. He called me back. After playing
6 telephone tag a few times we connected. He was
7 president of Trendwest Resorts. You know, I
8 can't recall exactly what I said to him but I was
9 inquiring of him about Grant Anderson.
10 You know, he indicated that Trendwest bought
11 25 condominiums, you know, and of course, we were
12 talking, I had indicated that I was talking about
13 Surfside Inn.
14 He said that Trendwest bought 25
15 condominiums from Grant, Grant L. Anderson, and
16 he said that Trendwest contracts to manage the
17 Surfside Inn after Cathy Livingston resigned.
18 Cathy Livingston was the resident manager there.
19 And frankly, what jumps out at me is
20 Trendwest bought 25 condos from Grant Anderson.

21 Well, as I said, the real estate records
22 reflected 15 were transferred from
23 Hoffman-Stevenson, Inc., that Grant was president
24 of, made himself president because the estate
25 owned that corporation entirely.

397 1 The other ten condos were sold by folks
2 like, you know, Ian McMillan, he had two, the
3 Neibergs had a couple, Margaret Shipley had a
4 couple, Ms. Oberding had one. There were other
5 individuals that sold to Trendwest the other ten.

6 It caught my attention that he said he
7 bought 25 from Grant Anderson; a reason to
8 suspect maybe they were straw men or something.

9 His comment was Grant seemed like a hard
10 liner. He said he was maybe overprotective. He
11 drove a hard bargain. He really forced us to pay
12 top dollar for everything, was kind of the
13 essence of the message.

14 He said he was overprotective of the
15 condominium owners in dealing with Trendwest. He
16 said he was difficult to negotiate with.

17 He identified -- he said that he had been
18 introduced to Grant Anderson by Don LeMaster, who
19 was a name that appeared frequently in the time
20 sheet records.

21 THE HEARING OFFICER: When you say
22 time sheet records --

23 THE WITNESS: The 50 pages of time
24 sheet records in the court file that supported
25 the \$112,000 fee.

398 1 Q. (By Mr. Newman) Mr. Anderson's \$112,000 fee,
2 right?

3 A. Right. He said Don LeMaster, a mutual friend,
4 had arranged for Bill Peare to have dinner with
5 Don LeMaster and Grant Anderson. Bill Peare
6 developed respect for Grant Anderson, considers
7 Grant Anderson a business acquaintance, not a
8 personal friend.

9 I indicated to Mr. Peare that I noticed that
10 he had made campaign contributions to Grant
11 Anderson. I asked if he could recall the
12 circumstances that caused him to make those
13 contributions.

14 He said that he had obtained a "dear friend"
15 letter soliciting campaign contributions, so he
16 contributed a few hundred dollars.

17 I asked Bill Peare if he ever felt
18 uncomfortable about anything in his dealings with
19 Grant Anderson, and he said no.

20 That was my conversation with him. I
21 memorialized it by putting my initials, the date,
22 January 9th, 1996, at 8:45 a.m.

23 Q. And attached to this exhibit are copies of the
24 corporate licensing information for Trendwest,
25 correct?

399 1 A. Well, yes, but before you get to that page, the
2 second page has some of my information that I got
3 on Trendwest Resorts. It has the page numbers
4 from the 50-page time sheet detailed record of
5 the conversations and interactions between Grant
6 Anderson and Bill Peare, at least some of them,
7 not all of them.

8 Down at the bottom you see references to
9 some other things. Club Esprit is a subsidiary
10 or at least totally controlled by Trendwest
11 Resorts. Pacific Resorts International, I was a
12 little unclear on that as to whether it was an
13 affiliate of Trendwest or independent.

14 The next two pages are, in fact, from the
15 Secretary of State's office; the annual report
16 for 1994, I believe it is, or 1995, June of '95,
17 William F. Peare; P-e-a-r-e, as president of
18 Trendwest Resorts, Inc., the listing of the
19 directors, the next page.

20 Following that are three pages that are just
21 copies of the Public Disclosure Commission
22 campaign contribution reports, the Form C-3s that
23 have to be filed in connection with every bank
24 deposit of amounts received during an election
25 campaign.

400 1 The first one is reflecting a signature by
2 Jack Nelson, also known as John Nelson, the
3 campaign treasurer for Grant Anderson in the 1992
4 election campaign. It shows a contribution by
5 Frank Needham; N-e-e-d-h-a-m, from a Mt. Shasta,
6 California, address of \$100.

7 The next one shows a campaign contribution,
8 July 30 of 1992, from Trendwest Resorts in
9 Kirkland of \$150 and immediately under that is a
10 contribution by William Peare with a Leavenworth,
11 Washington, address of \$100.

12 And then the next page is from the 1994
13 State Supreme Court election campaign,
14 contribution shown as being received September 13
15 of '94 from Trendwest Resorts to Grant's campaign
16 of \$200.

17 Q. Let me make sure the record is clear. When you
18 refer to Frank Needham that's your handwriting
19 above on the exhibit, correct?

20 A. Correct. In the upper portion of that circle
21 where it's far more readable -- unfortunately,
22 Jack Nelson must have used a kind of thick felt
23 tip pen when he filled this, so many of the names
24 were difficult to read. The finer print is my
25 rewriting of the name after I had figured out who
401 1 the person is.

2 Q. You have noted there Trendwest. What was
3 Mr. Needham's connection, if any, with Trendwest?

4 A. He was, I believe, a vice-president. He had
5 signed some of the real estate documents that we
6 may get to -- maybe I didn't put them in as
7 exhibits -- but he was one of the
8 vice-presidents, I think was his title of
9 Trendwest Resorts and signed some of the real
10 estate documents as such.

11 Q. Why don't I ask you about those real estate
12 documents to expedite things --

13 A. Okay.

14 Q. -- to make sure the record is complete.

15 THE HEARING OFFICER: All right.
16 Are we ready to proceed?

17 MR. NEWMAN: We are. Thank you.

18 THE HEARING OFFICER: Why don't we
19 take a one-minute stretch break.

20 (Brief recess taken.)
21 THE HEARING OFFICER: Let's go
22 back on the record. During the short break I
23 want to indicate that I removed from the witness
24 table the originals of the Exhibits D-1 through
25 D-7, which are now on the Hearing Officer's
402 1 table, and I will keep them together in a stack.
2 And I also made sure that the Hearing Officer's
3 copies of those same exhibits are identical to
4 the copies in the record, so those are clear.
5 And so from now on, on my right will be the
6 official exhibits and on my left will be my
7 exhibits which I intend to mark on with impunity.
8 THE WITNESS: Thank you.
9 MS. GRAY: Mr. Mills, perhaps now
10 may be an appropriate time for me to hand you the
11 original of the Association's Exhibits 1 through
12 12, all of which have been admitted.
13 THE HEARING OFFICER: That would
14 be appropriate. I'll just put them in the stack.
15 Thank you.
16 All right. You may proceed when you are
17 ready.
18 MR. NEWMAN: Thank you, Mr. Mills.
19 (Surfside Statutory Warranty Deeds
20 marked as Respondent's Exhibit No. D-8.)
21 Q. (By Mr. Newman) At this time I'm going to show
22 Mr. Schafer an exhibit I have marked as D-8. I
23 have already indicated to the Bar's counsel that
24 I was going to go through three exhibits which
25 follow up on his testimony concerning his
403 1 investigation of the Surfside Resort issue, and
2 the first I'm going to show him is what's been
3 marked as D-8 and ask him if you have seen this
4 before and if the notations here are your
5 notations?
6 A. Yes, all of the handwritten marginal notations
7 are in fact mine, that's correct.
8 MR. NEWMAN: And I understand
9 Ms. Gray may have some questions before I move to
10 admit this.
11 VOIR DIRE EXAMINATION
12 Q. (By Ms. Gray) I have two. On page 2 of D-8
13 there is a handwritten notation, "per CLM."
14 A. No, that one is not my --
15 Q. Was -- whose is it?
16 A. I believe that was simply on there when I got it.
17 I think it probably was somebody at the title
18 company, and I think it is -- I see checkmarks
19 beside the parcels.
20 Q. Did you --
21 A. Let me just read it for a sec. "Per CLM parcel
22 B-1, 2 and 3 are all portions tract 5, DN-5, can
23 be posted as just portions."
24 Yeah, I think that probably it was for
25 internal use in Pacific County Title Company, you
404 1 know, maintaining their title plant so they can
2 cross-reference ownership of everything. I think
3 it was on the deed or on the copy that I have
4 received.
5 Q. And last, did you receive all of the pages except
6 for the last page in January or February of 1996?

7 A. That's correct.
8 Q. The last page you did not receive until 1997; is
9 that correct?
10 A. That's correct.

11 MS. GRAY: I object only to the
12 last page.

13 THE WITNESS: I think it is
14 relevant.

15 THE HEARING OFFICER: Go ahead. I
16 was going to have your counsel explain, but go
17 ahead.

18 THE WITNESS: I just consider it
19 very relevant because what I'm attempting to do
20 here is show how I, you know, quickly recognized
21 that the Trendwest Resorts had paid quite a
22 substantial sum for buying Surfside Inn, and
23 later was delighted to see when they went public
24 and had a public offering that their prospectus
25 that showed the dollar amount that they had paid
405 1 for their various resorts, the figure for
2 Surfside Inn was very close to what I had
3 calculated from my inquiry or investigation.

4 THE HEARING OFFICER: Would it
5 make sense to separate this into two exhibits and
6 pull the last page off of D-8 and then we don't
7 have any question about that for this point?

8 And then the last page can be offered later
9 perhaps and we'll deal with it at that time,
10 maybe for another purpose.

11 MR. NEWMAN: So, we'll have as
12 D-8, then, everything but the last page.

13 MS. GRAY: I'm sorry? Everything
14 but the last page, okay.

15 THE HEARING OFFICER: My sense of
16 doing that is that we're trying to kind of
17 reconstruct what was happening in 1996 and that's
18 what your testimony is about at this time.

19 THE WITNESS: That's fine.

20 THE HEARING OFFICER: So, let's
21 address that with this exhibit.

22 MR. NEWMAN: I'm handing the
23 original then to Mr. Mills and I'll provide a
24 copy.

25 THE HEARING OFFICER: D-8 is
406 1 admitted.

2 (Respondent's Exhibit No. D-8 was
3 received into evidence.)

4 EXAMINATION CONTINUED

5 Q. (By Mr. Newman) Mr. Schafer, it's fair to say you
6 acquired copies of these deeds and other
7 information as part of your investigation?

8 A. Yes, from Lisa Muller, assistant manager of
9 Pacific County Title Company, who was very, very
10 helpful.

11 This first deed -- should I just explain
12 what these are?

13 MS. GRAY: I would prefer that
14 there be a question posed rather than --

15 THE HEARING OFFICER: I think I
16 would prefer that, too, so I just know where
17 you're going. Also, I didn't get a copy. Is
18 there an extra copy for me? This is the

19 original, I think, unless there's an extra copy
20 attached.

21 I can look at it for the testimony but I
22 would like to have a copy for my use later.

23 MR. NEWMAN: Why don't we go ahead
24 and -- I must have set that down somewhere.

25 THE HEARING OFFICER: Thank you.

407 1 Q. (By Mr. Newman) Mr. Schafer, looking at the first
2 deed, could you explain the significance of that?

3 A. This first deed is the deed that actually
4 occurred, the transfer, and it's dated January 16
5 of 1995 from Hoffman-Stevenson, Inc., to a couple
6 entities.

7 And you'll see in the names up in the upper
8 margin, it says, you know, "Filed at request of
9 and when recorded return to Joe and Amy McHugh
10 and Les and Eleanor Swenson." So, this is what I
11 considered -- well, in fact, it shows in the
12 grantee line, "Swenson-McHugh, a Limited
13 Liability Company."

14 What this is referring to is what they
15 referred to as the, I think, convention center
16 associated with Surfside Inn, which was -- I've
17 never been there myself, but I understand it was
18 a separate building separate from the
19 48-apartment structure, and it was designed to
20 support usage of the resort; meeting rooms,
21 restaurant, et cetera, et cetera.

22 The Hoffman-Stevenson, Inc., sold the
23 convention center building and grounds to these,
24 to local, what I'll refer to as developers. It
25 may not be a precise term, but my understanding
408 1 is that they were going to do something with the
2 property and the facility and probably upgrade it
3 and whatnot.

4 What's really significant here is that the
5 dollar amount of the transaction was \$550,000.
6 That's readily calculated by taking the excise
7 tax amount shown on the face of the deed, \$8,415,
8 and you divide it by the excise tax rate, and you
9 arrive at the value of the transaction.

10 And that was confirmed to me when I spoke in
11 January of 1996 with Joe McHugh, because someone
12 at the hospital, I think it was Ron Bender,
13 suggested that I might call him when I expressed
14 I had some concerns about the Hoffman Estate,
15 Grant Anderson and the Surfside Inn.

16 And he suggested I call Joe McHugh, who he
17 thought also had some concerns, and indeed, Joe
18 had lots of concerns, which he shared with me.

19 Q. Let's make sure Mr. Mills understands. You were
20 concerned about the \$550,000 because of what?

21 A. Actually, no, I was not at all concerned about
22 the dollar figure. I offer it here in this
23 collection as part of this exhibit to show the
24 amount that the Hoffman-Stevenson, Inc., wholly
25 owned corporation, owned by the Estate of

409 1 Hoffman, the Hoffman Estate, you know, what they
2 received for selling this convention center, you
3 know, \$550,000.

4 The next deed is one -- and you will see my
5 notes in the right-hand margin. This is a sale

6 from Hoffman-Stevenson, Inc., to Pacific Resorts,
7 Inc., which is a company, I believe independent
8 of Trendwest, although sometimes it was a little
9 unclear.

10 But this deed, which was dated February 17th
11 of 1993, so over a month after Grant L. Anderson
12 had become a judge, and it was signed by Grant
13 Anderson as president of Hoffman-Stevenson, Inc.,
14 and it was reflecting an excise tax affidavit
15 amount -- where is the stamp, here?

16 I guess the stamp is on the fourth page
17 after the last notary block. It's hard to read
18 on this copy but I must have had a better quality
19 copy.

20 THE HEARING OFFICER: Would you
21 like to look at the original? It might help.

22 THE WITNESS: Well, yes, the
23 excise amount shown on the fourth page is
24 \$1,291.74, so that lets one readily calculate the
25 amount paid. If it's not -- sometimes a deed
410 1 will show on the face what's the dollar amount
2 paid. Sometimes it just recites a nominal \$10
3 figure.

4 But you see my notes at the bottom of the
5 first page of this deed, indicating that it was
6 \$122,336 price for 147 intervals, interval being
7 a week of use of a condo.

8 So, \$832 per week in my notation indicates
9 that all of the weeks transferred here were in
10 one-bedroom units, Class A, as opposed to Class
11 B. Class A are the one-bedroom condominiums.

12 Q. Let me ask what concerned you about Grant
13 Anderson's signature on this deed?

14 A. Well, you know, judges are not supposed to be
15 businessmen on the side. It's unethical, it
16 violates the Code of Judicial Conduct for a judge
17 to be engaged in business transactions other
18 than, you know, pure personal investment matters.

19 They are not supposed to be engaged in an
20 active trade or business, they are not supposed
21 to be corporate officers of business enterprises.

22 He should have, right after his September
23 1992 election, taken measures to withdraw himself
24 from this type of business activity.

25 I offer it here partly because I'm going to
411 1 show how the total dollar figure quickly added
2 up. The next deed was September 20 of 1991,
3 Hoffman-Stevenson, Inc., to Club Esprit. Club
4 Esprit was a wholly-owned affiliate of Trendwest
5 Resorts.

6 The notes in the margin, this particular
7 deed was for land as opposed to weeks of use in a
8 condominiumized, time share registered regime.
9 But this was for the sale of land that was
10 subject to some long-term leases, I think, as I
11 recall.

12 Significant here is simply the dollar
13 figure. The land sale was \$86,400. You know, my
14 notation below that, TW, meaning Trendwest, paid
15 \$731,400 for 15 units plus the land.

16 The copy I have here is kind of cut off on
17 the right margin, but there's an adding machine

18 tape below that, and what that adding machine
19 tape is simply doing is totaling up the figures
20 of the \$86,400 for the land and the amount for
21 the deeds that follow this in the stack. The
22 deeds that follow this in the stack were for what
23 I will refer to as unsold condo units.

24 What Grant Anderson or others did was
25 negotiated apparently with Trendwest Resorts that
412 1 Trendwest would buy any fully unsold; in other
2 words, condominiums that had no weeks sold out of
3 them, for the price of 55,000 for two bedrooms,
4 40,000 for one-bedroom units.

5 So, this next deed shows the sale of five
6 units to Club Esprit, which is, again, part of
7 Trendwest's organization.

8 The five units; four of them being Class A,
9 Unit 332 -- anything that ends with 32 or 02 is a
10 two-bedroom unit on one of the ends.

11 So, the four Class A 1-bedroom totaled
12 \$160,000; 55 for the other, 215,000, and that
13 tracked with the amount of excise tax that was
14 paid on the transaction that appears on the
15 second page of the deed right below the signature
16 of Frank Needham, who is that contributor from
17 Mount Shasta, California, to Grant's election
18 campaign.

19 The next deed is one from December of '91,
20 and these basically were all going on, I mean,
21 the transfers to Trendwest of these condo units
22 were in the fall of '91. The first one for five
23 units November; this one December 11th of two
24 units, \$80,000; the next one December 12th, two
25 units, another \$80,000.

413 1 I just might note the second deed, I guess
2 it's the second, was signed by Sally Jo Tendrick,
3 a name that will be relevant when you see the
4 officers of Trendwest and you see, I think she's
5 named as one of the officers of the Condominium
6 Owners Association.

7 The next one, the December 12 of '91 --
8 well, same price, two units, signed by Bill Peare
9 on behalf of Club Esprit. Bill Peare was the
10 CEO. In fact, the notary block says "William F.
11 Peare, President of Club Esprit."

12 The next one is for six units, September,
13 '91. This one actually is a deed correcting a
14 mistaken deed that had reflected the six units,
15 and there was some mistake, I don't recall right
16 now what it was, but also, you know, from
17 Hoffman-Stevenson, Inc., to Club Esprit. The
18 price, you know, always tracks, as I have
19 indicated.

20 The next one, I guess maybe this is the
21 mistake deed, but this one, the six units, the
22 total dollar figure was \$270,000, you know, four
23 at forty grand is a hundred-sixty; two
24 two-bedrooms at fifty-five grand, so that's 110.
25 Total transaction price is 270,000.

414 1 So, when you come back to that adding
2 machine tape, you know, you will see these
3 figures all reflected on that tape; the first
4 being the 86,400 for the land transaction, the

5 next being the \$270,000 for the last deed we
6 looked at, 215,000 for the other deed, and then
7 there were two deeds for two units each, 80 Grand
8 for each of those.

9 The total amount was \$731,000 that Trendwest
10 paid in the fall of 1991 to Hoffman-Stevenson,
11 Inc. for these units. You add that to the
12 \$55,000 that Swenson-McHugh paid for the
13 convention center --

14 THE HEARING OFFICER: It's
15 550,000.

16 THE WITNESS: I'm sorry, 550,000
17 plus the 122,000 that Pacific Resorts paid for
18 the odds-and-ends weeks, you know, just adding
19 the 550,000 and the roughly 220, that's 670,000.
20 And when you add that to the 731, and you come up
21 with --

22 THE HEARING OFFICER: 1.4 million
23 and change.

24 THE WITNESS: Yes, 1.4 million and
25 change. And then I recognize that the
415 1 documentation indicated that the bowling alley
2 transaction was a million dollar transaction,
3 been well documented. That's how I quickly
4 arrive at the 2.4 million dollars that should
5 have flowed into this estate.

6 And it only looked like about \$900,000
7 flowed out of it or was reported as flowing into
8 it on the inventory that had been prepared just
9 before it was closed.

10 The other thing I will mention is, again,
11 consistent with -- we have already seen the court
12 file and the 50 pages of time sheet entries. You
13 will see in October of 1991 a reference to
14 Bill -- excuse me -- to Grant Anderson in his
15 discussion or in connection with entries with
16 William Peare referring to a memorandum of
17 understanding as to additional units.

18 Now, I have never yet obtained that but I
19 can infer from the title of the document it would
20 have been under Grant Anderson, who was
21 Timekeeper No. 002, and it would have been in
22 October of '91, and there's a reference to a memo
23 of understanding regarding purchase of additional
24 units.

25 I believe that that would have indicated
416 1 that Trendwest was willing to pay 55,000 for any
2 two-bedroom and 40,000 for any one-bedroom
3 condominiums that Grant could deliver to them.

4 Bill Peare when I called him told me, "Grant
5 sold us 25 units." We just walked through the 15
6 that were transferred from Hoffman-Stevenson.

7 The other 10 were in the names of these
8 individuals; one of whom, Louise Pagni, I thought
9 was probably a straw man for Chuck Hoffman, and
10 others of whom at least I initially were
11 suspicious of but later determined that were bona
12 fide owners who had bought in in the early stages
13 of the project thinking it was going to be a
14 glorious project, and it became a very expensive
15 to maintain project that went downhill and they
16 were eager to bail out.

17 So, when Grant Anderson contacted them and
18 said, "I think I have a buyer; if you pay me 10
19 percent I'll see what I can do for you," they
20 accepted that offer, although at least in the
21 case of Ian McMillan when I spoke to him in
22 February or March of 1996 was still very
23 embittered at having had to pay 10 percent, which
24 he thought was 10,000, in fact, it was 9,000 or
25 9,500, because he had a two-bedroom unit and a
417 1 one-bedroom unit and he really thought that it
2 was outrageous that he had to pay that to Grant
3 Anderson just to sell --

4 MS. GRAY: Objection; repetitious
5 of prior testimony.

6 THE HEARING OFFICER: It may be
7 but I'll let him continue. The Hearing Officer
8 notes that the time entry on October 24th by
9 Timekeeper No. 2 appears to be Grant Anderson;
10 telephone conference with Frank Needham,
11 preparation of letter of understanding re
12 purchase of additional unit.

13 This is just by way of indicating that the
14 Hearing Officer confirms what the witness has
15 testified to.

16 THE WITNESS: Thank you for doing
17 that. The other element is when you look at the
18 units that were sold I can tell you from personal
19 knowledge, having studied all this stuff, that it
20 would have added up to \$430,000 for the 10 units
21 owned by the ten people -- and I can present
22 exhibits if you want to see it -- that would have
23 generated for Grant Anderson \$43,000 at his 10
24 percent rate. He later testified that he got
25 about \$40,000.

418 1 MS. GRAY: Objection as to what
2 Grant Anderson later testified to.

3 THE HEARING OFFICER: I have
4 actually heard the testimony before so that will
5 be overruled. I have heard that.

6 THE WITNESS: And the relevance to
7 this page that was not yet been admitted is if
8 you add the \$730,000 that was reflected in the 15
9 units that went directly from Hoffman-Stevenson
10 to Trendwest and you add that to the \$430,000
11 that was the ten additional units, you come up to
12 \$1,160,000, which is still what, about 300 or
13 \$280,000 short of what Trendwest reported
14 acquisitions cost on Surfside, which at least
15 left me wondering if there were payments to Grant
16 Anderson as part of the acquisition cost that
17 Trendwest paid but maybe had not disclosed.

18 MS. GRAY: Mr. Mills, may I
19 respectfully inquire? When I made an objection
20 just a moment ago about Mr. Schafer testifying to
21 what Grant Anderson testified to presumably after
22 1996, the Hearing Officer indicated that he's
23 already heard testimony about that, and I was
24 unclear as to what you were referring to.

25 THE HEARING OFFICER: I just meant
419 1 it's part of Mr. Schafer's comments earlier, not
2 necessarily in response to a question, that he
3 had alluded to that number, that I had heard that

4 number earlier, not that I had -- I certainly
5 haven't gone beyond the record. I haven't had
6 time to look at anything else. It's all been
7 directed to Mr. Schafer's prior testimony.

8 MS. GRAY: And I was also just
9 wondering if something came in that I missed.

10 THE HEARING OFFICER: No, there
11 was no exhibit or anything.

12 MS. GRAY: Thank you.

13 (One-Page Document, "WorldMark the
14 Club" marked as Respondent's Exhibit No. D-9.)

15 Q. (By Mr. Newman) Perhaps this is the appropriate
16 time to ask, inquire about what I'll mark as
17 Exhibit D-9, which is this one-page document
18 entitled "World Mark the Club," and
19 Mr. Schafer, can you identify this document,
20 first of all?

21 A. Yes, it was one of the pages in the financial
22 section of the definitive offering circular for
23 the initial public offering of stock in Trendwest
24 Resorts, Inc., which trades under the symbol
25 TWRI. It was in the prospectus dated August 14,
420 1 1997. I have the glossy in the box over there if
2 you would like it.

3 Q. And the writing in the bottom, is that your
4 handwriting?

5 A. It is.

6 Q. I would move to admit this as Exhibit D-9.

7 THE HEARING OFFICER: Is there any
8 objection to that?

9 MS. GRAY: Yes, Mr. Mills. The
10 Association objects to this because it is a 1997
11 document and it could not possibly have formed
12 any basis for Mr. Schafer's state of mind in 1996
13 at the time he made the disclosures in question.

14 The Association has previously, even before
15 hearing, argued to the Hearing Officer about its
16 view on the irrelevance of a document that was
17 created only in 1997 and has also referenced that
18 in its brief.

19 MR. NEWMAN: If I could just
20 briefly respond, it does confirm the numbers,
21 that Mr. Schafer's investigation was indeed
22 correct. This is a public offering, it's really
23 a public document, and confirms that the value of
24 the estate was fairly large and that it appeared
25 from Mr. Schafer's research that both

421 1 Mr. Anderson, acting in concert with his client,
2 had orchestrated an ongoing crime of fraud to rip
3 off this estate.

4 THE HEARING OFFICER: Let me hear
5 from Mr. Schafer, also.

6 THE WITNESS: Thank you very much
7 for letting me comment on this. It indicates not
8 just the price but it indicates the name of the
9 resorts, Surfside Inn, Long Beach. It indicates
10 the number of condominium units, 25. It
11 indicates the acquisition dates, from September,
12 '91 through September, '93 or November '92.

13 And furthermore, what I am presenting as a
14 part of my defense, both in this hearing and will
15 be fully documented in memoranda following this

16 hearing, that this pursuit of me as the whistle
17 blower is motivated by things that seem nefarious
18 by an office that seems more interested in
19 pursuing the whistle blower reporting lawyer
20 misconduct than demonstrating any interest on the
21 part of that office to look into lawyer,
22 profoundly serious criminal lawyer misconduct
23 that can be and has been readily documented from
24 public documents, and even to this date they seem
25 to want to refuse to recognize and acknowledge
422 1 what this case is presenting, extraordinary
2 lawyer misconduct by many lawyers in many ways in
3 big numbers.

4 And they seem determined to want to suppress
5 and not take cognizance, though the rules say
6 that they are required to take cognizance of
7 lawyer discipline, and they seem determined to
8 refuse to do so.

9 And I think that needs to be part of this
10 record that goes to the disciplinary board and
11 goes to the State Supreme Court and is laid in
12 the lap of the public.

13 THE HEARING OFFICER: All right.
14 The exhibit will be admitted for a slightly
15 different reason than has been argued. It seems
16 to me the witness can testify regarding whether
17 he was able to confirm the results of his
18 investigation in some way and he could be shown
19 this document.

20 I asked if this refreshes his recollection
21 about that. I see no reason to exclude it from
22 the record so it will be admitted. D-9 will be
23 admitted.

24 (Respondent's Exhibit No. D-9 was
25 received into evidence.)

423 1 THE HEARING OFFICER: D-9 is
2 admitted. Now, did you want to testify about
3 this? We've already heard about it.

4 THE WITNESS: Well, I mean, do you
5 want me to restate what I just said or can that
6 be considered part of the record?

7 THE HEARING OFFICER: It can be
8 considered part of the record and I certainly
9 have reviewed it.

10 Q. (By Mr. Newman) Mr. Schafer, I'm going to now
11 show you a set of documents regarding -- okay,
12 thank you -- regarding the -- I'm going to show
13 you a document which in the upper right-hand
14 corner has a notation, 1/11/93, and underneath it
15 says condo owners association. I ask if you
16 recognize this document?

17 A. Yes, I do. It's another one of the many
18 documents I obtained from Pacific County Title
19 Company reflecting the real estate transactions
20 involving the Charles Hoffman Estate, the Charles
21 Hoffman Trust, Hoffman-Stevenson, Inc., the
22 enterprise, potentially racketeering enterprise
23 that Grant Anderson, Steve Fisher and their
24 cohorts were orchestrating.

25 Q. There's writing on that page and on the second
424 1 page of this document, and I ask if that's your
2 handwriting?

3 A. Yes, it is my handwriting.
4 MR. NEWMAN: All right. I'm going
5 to move to admit this, unless you have an
6 objection.
7 MS. GRAY: Would you just identify
8 for the record what you are marking it as?
9 MR. NEWMAN: We're going to mark
10 it as D-10.

11 (Surfside Warranty Deed & Certificate
12 of Incorporation marked as Respondent's Ex. D-10.)

13 MS. GRAY: I have no objection to
14 D-10.

15 THE HEARING OFFICER: D-10 will be
16 admitted.

17 (Respondent's Exhibit No. D-10 was
18 received into evidence.)

19 Q. (By Mr. Newman) Mr. Schafer, could you explain
20 the significance of these documents in your
21 research concerning what you believe to be an
22 ongoing crime of fraud?

23 A. The first document is a deed reflecting on its
24 face a consideration of \$16,000 for Lots 1, 2, 3
25 and 4, Block 3, Surfside Estates. When you look
425 1 back at the court file in the inventory you will
2 see up at the top these lots are listed as real
3 estate of the estate. It was owned in the name
4 of Charles Hoffman individually as opposed to his
5 corporations. I believe these were lots adjacent
6 to the Surfside Inn building parcel.

7 I include it partly to show that it's a
8 transaction from the trust, which again, the
9 estate flowed into a trust. The trust was to
10 terminate upon the death of Millie Hoffman.

11 She died January 22 of 1993, at which point
12 the assets in the trust were supposed to be
13 turned over to the public hospital for their
14 community benefit.

15 This particular transaction of these four
16 lots was called to my attention by actually Joe
17 McHugh, the co-owner of McHugh-Swenson. Again,
18 he had been referred to me as one who had
19 suspicions.

20 He felt quite strongly that these lots were
21 sold for considerably less than their fair market
22 value, but it was kind of an inside deal. He
23 believed, and it's documented from the trust to
24 the condominium owners association.

25 My understanding is they ended up building a
426 1 swimming pool or something like that on this lot
2 after the convention center was destroyed in the
3 mysterious arson fire that occurred in 1995.

4 Q. Doug, could you explain who Mr. McHugh is so
5 Mr. Mills understands it?

6 A. Joe McHugh and Les Swenson were the two local
7 developers who bought the convention center for
8 \$550,000 in, I believe it was January of 1995,
9 the deed that we looked at here a few minutes
10 ago, one of the earlier exhibits.

11 The next page in this exhibit is a transfer
12 of -- this was what I referred to in that first
13 list as the manager's apartment that I had
14 crossed out the insider listing fax cover to Lisa

15 Mullen.

16 This is the deed showing this particular
17 condominium unit, No. 218, a one-bedroom, second
18 floor, middle of the row condominium. And it
19 shows the deed from Hoffman-Stevenson, Inc., to
20 the Surfside Condo No. 1 Owner's Association,
21 dated December of 1991.

22 The pencil notation is my own, noting that
23 Steve Fisher, who was a partner of Grant Anderson
24 in the law practice and who succeeded Grant
25 Anderson in this position of trust concerning the
427 1 Hoffman Estate and Trust, Steve Fisher was the
2 president of the association from 1989 until
3 about 1995.

4 And at the time that I wrote this; namely,
5 February 4th, 1996, Judge Grant Anderson was the
6 president of that condominium owner's
7 association.

8 This was a deed purportedly for or it was
9 based on a transfer price of \$34,000 from the
10 corporation, owned by the estate that was
11 supposed to benefit the hospital, to the
12 condominium association that was controlled by
13 Grant Anderson and Steve Fisher that the
14 Trendwest company left in charge of the
15 condominium association.

16 Even after they bought 25 of the 48 units,
17 giving them clear voting control over who is to
18 be in charge of the condominium association, they
19 chose to leave Grant Anderson and Steve Fisher in
20 charge of the condominium association.

21 And I note the marginal notation that at the
22 time of this transfer for \$34,000
23 Hoffman-Stevenson and others were selling their
24 one-bedroom units to Trendwest for \$40,000.

25 I note the difference between those two
428 1 prices, 34,000 and 40,000 -- well, 10 percent of
2 the \$40,000 transaction is -- well, my math is
3 off, it would be \$36,000, but maybe the
4 difference is nobody got a commission on the sale
5 to the condominium owners association.

6 After that deed, the next document is one I
7 obtained from the Washington Secretary of State's
8 office, showing the formation of Surfside No. 1
9 Condominium Owners Association, formed in May of
10 1993, so this was four months after Grant
11 Anderson became a judge.

12 The document under the certificate is the
13 articles of incorporation, showing that the
14 directors, page 2 of the articles, were Grant L.
15 Anderson and some other people.

16 The only name I recognize is Catherine
17 Livingston, who is the woman I called in Nevada,
18 who had been the resident manager of Surfside
19 Inn. Of course, it has an indemnification
20 provision.

21 The registered agent was Steve Fisher. And
22 then continuing to turn the pages, when you get
23 to the corporate annual report it shows signed
24 April 29th of 1994.

25 So, not quite a year-and-a-half after he had
429 1 become a judge Grant Anderson is designated as

2 the Chairman of the Board and signing these
3 documents.

4 The next page attached is a continuation
5 that reflects the officers of the condominium
6 owners association, and I note: "Secretary;
7 Catherine Livingston, Directors," and the
8 notation, the handwriting is my own, "Kim
9 Ohmstead," and I note the Post Office Box in
10 Kirkland is the same P.O. Box that the, that is
11 the Trendwest Resorts Company.

12 And I say "per SS No. 1, Articles of
13 Incorporation," and so turning back to the
14 articles, page 2 of the Articles of
15 Incorporation, under directors you will see the
16 name Leslie Brown, care of Trendwest Resorts,
17 Post Office Box 97082, Kirkland, Washington.

18 So, the significance is that Trendwest
19 Resorts, which of course, with ownership of 25
20 out of 48 condominium units could control any
21 majority vote, has their employee and also has
22 Grant Anderson in charge of the condominium
23 owners association.

430 24 The last page is the last document I
25 obtained concerning the condo owner's
1 association, which is the annual report from
2 1995, so this was a couple years after Grant
3 became a judge, and he is still named as the
4 president of the condominium owners association.

5 The other thing of significance to me as a
6 business lawyer about this association is that it
7 was not created as a non-profit when you look
8 back at the certificate.

9 One would think that an association of
10 condominium owners would be formed as a
11 non-profit corporation, but this was formed as a
12 profit corporation.

13 The distinction is if you are a non-profit
14 the directors may not take payment, as I recall.
15 There are no owners who share in the profits,
16 there are no shareholders.

17 But if it is a profit corporation there must
18 by law be shareholders. There is capital, there
19 are dividends or earnings, there is an equity
20 stake.

21 Now, perhaps it was simply a result of lack
22 of knowledge of substantive law by all of these
23 lawyers; Grant Anderson, Steve Fisher and others
24 in their firm that did not know the difference
25 between a non-profit corporation and a profit
431 1 corporation, but it was immediately obvious to
2 me.

3 MS. GRAY: I hope you don't mind
4 my requesting that we take our lunch break now or
5 that we take a five-minute break.

6 MR. NEWMAN: I actually only have
7 one more document for him to identify for this
8 segment. I don't mind taking a break, but --

9 MS. GRAY: Well, it's been my
10 experience that each document is taking quite a
11 bit of time. I would ask for at least a
12 two-minute break.

13 THE HEARING OFFICER: Why don't we

14 go ahead and take our lunch break and then we'll
15 finish up. I realize I'm breaking the flow a
16 little bit, but I think it's about time for a
17 break. So, we'll resume at about two o'clock.

18 (Lunch recess taken.)

19 THE HEARING OFFICER: Is everyone
20 ready?

21 MR. MULLINS: Yes.

22 THE HEARING OFFICER: Let's go
23 back on the record. Are there any preliminary
24 matters before we call the next witness?

432 1 MS. GRAY: I would just like to
2 clarify the record with regard to calling the
3 next witness, that Mr. Schafer's testimony is
4 still in the middle of Mr. Schafer's testimony
5 and we are still in the middle of the
6 Association's case.

7 I have agreed that Mr. Newman, for the
8 convenience of his witness, Pamela Ott, may call
9 his witness by telephone essentially now, but it
10 is still my understanding that it is the
11 Association's case and we have not yet rested.

12 THE HEARING OFFICER: That's the
13 case as far as the Hearing Officer is concerned.

14 MR. NEWMAN: That's my
15 understanding.

16 THE HEARING OFFICER: Are you
17 ready to call your next witness?

18 MR. NEWMAN: I am ready to call
19 Pamela Ott. She's the chief executive officer
20 and administrator for Ocean Beach Hospital in
21 Ilwaco, Washington. She's available by phone.
22 I'm going to ask Mr. Schafer to dial her up.
23 She's waiting and --

24 MR. SCHAFFER: Is there something
25 which I need to dial first for long distance?

433 1 MS. GRAY: Actually, why don't you
2 do the dialing.

3 (Whereupon, Pam Ott was contacted
4 via telephone.)

5 MR. NEWMAN: Pam, Shawn Newman,
6 can you hear me?

7 PAMELA OTT: Hi, Shawn. I can
8 hear you.

9 MR. NEWMAN: You're on a speaker
10 phone and your testimony will be recorded. The
11 Hearing Officer, Mr. Mills, will swear you in as
12 a witness, and then I'll proceed to ask you some
13 questions.

14 MS. GRAY: I think it also might
15 be appropriate to identify for the record who is
16 here. I am Disciplinary Counsel, Christine Gray.

17 MR. NEWMAN: And you have met me,
18 I'm Shawn Newman, the attorney for Mr. Schafer.
19 With me is obviously Mr. Schafer, and our
20 co-counsel on the case, Don Mullins.

21 THE HEARING OFFICER: All right.
22 Ms. Ott, this is Larry Mills. I'm the Hearing
23 Officer. I want you to know your testimony is
24 being transcribed by a court reporter as well,
25 and in order for you to give testimony I need you
to raise your right hand, please.

434 1 AND THEREUPON,
2 PAMELA OTT,
3 called as a witness out of order on behalf of the
4 Respondent herein, after having been first duly sworn,
5 was examined and testified via telephone as follows:
6 THE HEARING OFFICER: Thank you.
7 You are coming through loud and clear here.
8 Mr. Newman, you may question.
9 DIRECT EXAMINATION
10 Q. (By Mr. Newman) Pamela, could you identify your
11 position at the Ocean Beach Hospital?
12 A. My position is CEO and Superintendent of Public
13 Hospital District No. 3 of Pacific County.
14 Q. And when you say Public Hospital District No. 3,
15 that is a government agency?
16 A. Yes, it's a public hospital district.
17 Q. Okay, correct. Now, in 1995 did you have
18 occasion to speak with Mr. Schafer?
19 A. Yes, I did.
20 Q. Would you tell Mr. Mills what that conversation
21 was about?
22 A. We had had a person in our community who had
23 bequeathed the lion's share of his personal
24 properties upon his becoming deceased to the
25 hospital, and so when we were contacted by
435 1 Mr. Schafer it was in relationship to the Hoffman
2 Trust, which was that trust.
3 Q. And do you have any recollection of the initial
4 contact or your opinion of Mr. Schafer's
5 contacting you?
6 MS. GRAY: Objection to the
7 multiple question.
8 MR. NEWMAN: Thank you, I'll
9 rephrase the question.
10 Q. (By Mr. Newman) Did you have any feeling -- what
11 was your feeling about Mr. Schafer contacting you
12 in 1995?
13 MS. GRAY: I object to her feeling
14 or her opinion. I do not object to what he said
15 to her and what she said to him.
16 MR. NEWMAN: She can testify to
17 her own feelings and opinions.
18 THE HEARING OFFICER: She can
19 testify to that. I'll let her testify to that.
20 Overruled.
21 Q. (By Mr. Newman) Ms. Ott?
22 A. Yes.
23 Q. The question was: What was your feeling when
24 Mr. Schafer contacted you in 1995?
25 A. We had already discussed amongst the Board of
436 1 Commissioners and I that we had serious concerns
2 about the estate, just based on some of the
3 occurrences, that there was a problem with the
4 way the estate was being managed.
5 Q. When you say some of the occurrences, can you be
6 more specific?
7 A. One of which -- at the time I was not the CEO.
8 At the time I was the Chief Operating Officer and
9 we had another administrator here at the
10 facility. So, between that administrator and one
11 of the Board of Commissioners and I, we had had
12 information that three different individuals had

13 put bids in for one of the pieces of property,
14 which was the property in Surfside that included
15 a restaurant and hotel.

16 And those bids were never accepted and there
17 was always some question about why the group had
18 not responded to those bids that had been put in.

19 And then also the bowling alley, we knew
20 that there had been an appraisal and we knew what
21 the bowling alley was supposed to have been
22 worth, and then we had received a call and had
23 been told that we would have to sell the bowling
24 alley for over a million dollars less than what
25 it had been appraised for based on the fact that
they had discovered asbestos.

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1 And it had been our understanding that the
2 original appraisal had included the fact that the
3 asbestos needed to be resolved after the sale of
4 the property.
5

6 So, between those two issues there were
7 already lots of questions about how that estate
8 had been managed.

9 Q. Now, in addition to the December, 1995 contact
10 with Mr. Schafer did you have any other contact
11 with him?

12 A. Never.

13 Q. All right. Now, as a result of Mr. Schafer's
14 investigation did that bring any benefit to the
15 hospital?

16 A. Yes. We had already had our attorneys look into
17 some of the paperwork and they felt that there
18 were big question marks, but not big enough
19 question marks to actually -- what they had told
20 us is that the cost of them doing the research
21 might outweigh what we would earn or benefit from
22 it, and so they didn't recommend moving forward.

23 After the phone call with Doug Schafer and
24 him sharing with us some of the concerns that he
25 had, then our attorneys felt that it was our
fiduciary responsibility to move forward and look
into the situation.

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1 Q. And what was the final result, Ms. Ott, with
2 respect to the hospital?

3 A. As a result we have accomplished goals that
4 Mr. Hoffman had intended for us. As you know,
5 with very small rural hospitals monies are always
6 a concern, and just being able to break even is
7 always the biggest goal, and the biggest dream
8 that you can fulfill is making sure that you
9 break even. There's never enough money for
10 equipment.
11

12 Mr. Hoffman's estate related to specifically
13 purchase of equipment. We have been able to
14 replace our fluoroscopy radiology equipment,
15 which cost about \$450,000. A facility like this
16 could never afford to do a thing like that.
17

18 The tube on our old 30 year-old machine was
19 going out and the tube alone is \$75,000, and to
20 spend that kind of money and not have a new unit
21 would have been very difficult for us but we
22 couldn't have afforded to purchase the new unit,
23 so it's helped us with that.

24 We also have had to send our patients far,

439 25 far away for any ultrasound studies such as
1 echocardiography or vascular studies or just
2 general ultrasound, looking at a gall bladder
3 type studies.
4 And so we have been able to purchase an
5 ultrasound machine which gives us the ability to
6 care for our patients at home and not have to
7 send them two hours away for those kinds of
8 technology.
9 Q. Now, did you have occasion to testify before the
10 state legislature regarding Mr. Anderson?
11 MS. GRAY: Objection to relevance.
12 THE HEARING OFFICER: That will be
13 overruled. You may answer the question.
14 Q. (By Mr. Newman) Ms. Ott, did you have occasion to
15 testify before the legislature?
16 A. Yes, I was asked by one of the hospital
17 commissioners to go with him to testify, and I
18 did testify that I do believe that, very
19 conservatively, there was about a
20 million-and-a-half dollars that was not accounted
21 for in the estate because of the dealings we were
22 not entitled to. And we have recovered 750,000
23 of those dollars which did benefit our community.
24 This is our citizens' money, it's their hospital.
440 25 Q. All right. And your attorneys that represented
1 the hospital district that would have been Ivan,
2 Murphy & Wallace, correct?
3 A. That's correct.
4 Q. And specifically, Mr. Don Black?
5 A. Mr. Don Black and Mr. Douglas Albright.
6 Q. Okay. Did you happen to get a copy of a demand
7 letter that your attorneys sent to the attorneys
8 for the Hoffman Trust, do you remember that
9 letter?
10 A. Yes, I do.
11 Q. And that would have been a letter dated June
12 22nd, 1998?
13 A. Yes.
14 Q. Okay. And I have the letter in front of me, you
15 probably don't.
16 A. No, I don't.
17 Q. Do you remember the gist of that letter? Could
18 you relay to Mr. Mills essentially what the
19 letter talked about?
20 MS. GRAY: I object to the
21 relation of the letter. Mr. Newman has described
22 it as a demand letter. It contains allegations,
23 it does not support any conclusions.
24 It is the opinion -- it is a litigation
441 25 position issued in 1998, well after the events
1 that are charged in Count One of the formal
2 complaint.
3 THE HEARING OFFICER: All right.
4 I'm going to let her testify as to any
5 recollection she has about the letter. I think
6 the letter itself should not come in through this
7 witness, because she doesn't have it, she can't
8 authenticate it.
9 Q. (By Mr. Newman) My simple question is, and
10 whether you call it a demand letter or litigation
11 strategy, you do recall then that your attorneys

12 had sent a letter to the attorneys for the trust,
13 correct?

14 A. Yes.

15 Q. And the gist of that letter was essentially what,
16 as you recall?

17 A. To resolve the issue that they had not been fair
18 and ethical and had not provided us with the due
19 monies that were coming to us based on the
20 Hoffman Trust.

21 MR. NEWMAN: All right. I don't
22 have any further questions, Mr. Mills.

23 THE HEARING OFFICER: Any
24 cross-examination, Ms. Gray?

25 MS. GRAY: Yes, just briefly.

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1 CROSS EXAMINATION

2 Q. (By Ms. Gray) Ms. Ott, this is Christine Gray,
3 Disciplinary Counsel. You testified a moment ago
4 about your feelings in December of 1995, but to
5 the best of my knowledge you did not testify
6 about the content of your telephone call with
7 Douglas Schafer in December of 1995.

8 With regard to your testimony about your
9 feelings -- well, no, let me rephrase the
10 question. What did Mr. Schafer tell you in
11 December, 1995 and what did you tell him in
12 December of 1995?

13 A. When he telephoned me he said that he was very
14 concerned about being a partner in a group that
15 he felt that there may be some concern about the
16 way the Hoffman Trust was handled, and asked if
17 he could get a hold of our legal counsel.

18 And I at that time had told him that we had
19 some concerns about that, that I had already
20 asked our legal counsel to look into that
21 situation, and that I would be very happy to
22 share with him our legal counsel's name because I
23 would very much like to see the situation looked
24 into, and I had board members who had always been
25 concerned, who really wanted to look at that
issue.

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1
2 Q. Did you specify to Mr. Schafer in December of
3 1995 what concerns you had had at that time?

4 A. You know, I can't remember if I said specifically
5 what the areas of concern were.

6 MS. GRAY: I have no further
7 questions.

8 THE HEARING OFFICER: Any
9 redirect?

10 MR. NEWMAN: I have no redirect.

11 EXAMINATION

12 Q. (By The Hearing Officer) I have one question,
13 Ms. Ott. You said the hospital recovered
14 approximately \$750,000 of the 1.5 million that
15 you feel that was not accounted for. Where did
16 that money come from?

17 A. We had a mediation, Ocean Beach Hospital and
18 multiple other groups that were involved on the
19 other side, and in the mediation there was an
20 agreement that they would pay those dollars to
21 the hospital.

22 Q. What groups were involved in that mediation?

23 A. Judge Anderson, Fisher from Judge Anderson's past

24 law group, a bank, a banker.
25 Q. Do you know which bank and which banker?
444 1 A. I know it was Hamilton and I can't remember the
2 bank.
3 THE HEARING OFFICER: Okay. Thank
4 you. That's all I have.
5 MS. GRAY: Could I ask a follow-up
6 question to the Hearing Officer's question?
7 THE HEARING OFFICER: Sure, go
8 ahead.
9 RE-CROSS EXAMINATION
10 Q. (By Ms. Gray) Christine Gray again. With
11 regard to the receipt of the hospital of the
12 \$750,000, who wrote the checks or the check?
13 A. Malpractice insurance coverage.
14 MS. GRAY: I have no further
15 questions.
16 MR. NEWMAN: I have no further
17 questions.
18 THE HEARING OFFICER: All right.
19 Thank you, Ms. Ott, for coming on the telephone.
20 I appreciate your testimony. You are excused.
21 THE WITNESS: Thank you.
22 (Witness excused.)
23 THE HEARING OFFICER: Shall we
24 resume Mr. Schafer's testimony or do we have
25 something else in store?
445 1 MR. NEWMAN: No, we can resume. I
2 would like Mr. Mills and Ms. Gray to know that we
3 do not -- at this point in time our intention is
4 not to call Judge Strombom.
5 Mr. Schafer has a declaration of his
6 communication with Judge Strombom, who, as you
7 know, is in Minnesota or Wisconsin, and it would
8 probably more efficient just to have Mr. Schafer
9 testify as to his interaction with Judge Strombom
10 than to burden the court with getting her on the
11 phone.
12 MS. GRAY: I wish to make clear
13 that while we will not object to Mr. Schafer
14 testifying about his conversation with Judge
15 Strombom, we will object to his submission of a
16 declaration regarding what she would testify to
17 in return.
18 Judge Strombom has made it clear, I think,
19 that she is available by telephone and can
20 testify. So, I just wanted to let counsel know
21 when he makes his decision that we will make that
22 objection.
23 MR. NEWMAN: Well, we'll get to it
24 when we get there.
25 THE HEARING OFFICER: All right.
446 1 (Off the record.)
2 THE HEARING OFFICER: All right.
3 Let's go back on the record. We're returning to
4 testimony of Mr. Schafer. You're still under
5 oath and, Mr. Newman, whenever you're ready.
6 THEREUPON,
7 DOUGLAS A. SCHAFER,
8 having been previously sworn, returned to the stand
9 and was examined and testified as follows:
10 CONTINUED EXAMINATION

11 Q. (By Mr. Newman) Thank you, Mr. Mills. I'm going
12 to show Mr. Schafer what's been marked as D-11
13 and ask Mr. Schafer to identify this exhibit.
14 Let me give you your copy. Let me have the
15 original.

16 (Pacific Lanes Deed Documents
17 marked as Respondent's Exhibit No. D-11.)

18 Q. (By Mr. Newman) Mr. Schafer, looking at what's
19 been marked as D-11, there's some handwriting on
20 this document. Is that your handwriting?

21 A. Yes, it is.

22 Q. Can you identify these exhibits?

23 A. These are, at least the first pages, the
24 documents that appear to be, you know, deed type
25 real estate recorded documents are just that,
447 1 that I obtained either, and I don't recall at the
2 moment from the county auditor's office, whether
3 put in the public record or from a title company.

4 CTI refers to Commonwealth Title Insurance
5 Company, and I received cooperation and
6 assistance from staff there obtaining copies of
7 publicly recorded documents.

8 The document on top is a statutory warranty
9 deed reflecting the transfer by Grant L. Anderson
10 as president of Hoffman-Stevenson --

11 MS. GRAY: I --

12 Q. (By Mr. Newman) Mr. Schafer, let me just
13 interject to make sure for purposes of foundation
14 did you acquire these documents prior to February
15 of 1996?

16 A. Oh, yes. This was part of my January of 1996
17 investigation.

18 Q. And the handwritten notes you have here were done
19 prior to February, '96?

20 A. That's correct.

21 Q. Now, we have -- the last two pages are a document
22 entitled, or I'm sorry, last three pages, four
23 pages now, two amortization schedules, and the
24 date at the top of the first one is January 30,
25 '96.

448 1 A. And that is when I prepared it, I believe.

2 Q. Okay. And then the second one is February 10th,
3 1996?

4 A. Again, reflecting, I believe that was the date I
5 prepared it.

6 Q. Okay.

7 MR. NEWMAN: I would move for
8 admission of what's been marked as D-11.

9 MS. GRAY: No objection.

10 THE HEARING OFFICER: D-11 would
11 be admitted.

12 (Respondent's Exhibit No. D-11 was
13 received into evidence.)

14 Q. (By Mr. Newman) All right. Mr. Schafer, let's
15 walk through this document and maybe you can
16 explain the significance of this document to the
17 Hearing Officer in relation to your investigation
18 of what you believed to be an ongoing crime or
19 fraud.

20 A. As I begin, the first page is the face of a,
21 well, the only page of a one-page statutory
22 warranty deed. The handwriting on the left

23 margin and to some extent in the middle of the
24 page is mine.

449 25 This is a deed from Hoffman-Stevenson, Inc.,
1 signed by Grant L. Anderson, president of
2 Hoffman-Stevenson, Inc., dated October 12, 1993.

3 Left of his signature, I say HSI, meaning
4 Hoffman-Stevenson, Inc. transaction by GLA,
5 meaning Grant L. Anderson, nine months after
6 taking the bench -- January 11th of '93 was his
7 constitutional date; he had actually been sworn
8 in a few days before ceremoniously.

9 It is a deed that reflects consideration
10 typed in on the face of the deed of 508,000;
11 5-0-8, 96 dollars, so \$508,096.07, which was,
12 according to the deed, paid by Pacific Recreation
13 Enterprises, Inc., which I recognize as the
14 corporation I formed for Bill Hamilton, preparing
15 the papers in August of 1992 for the attached
16 property, which I was assured by title company
17 personnel and confirmed by the legal description
18 on Exhibit A was the Pacific Lanes property.

19 The notation to the left of that refers to
20 the CTI stamp on the face of the deed, which has
21 a number which correlates, I believe, to the
22 title insurance policy number that Commonwealth
23 would have issued to First -- well, in connection
24 with the transaction.

450 25 And I don't know, but I'm suggesting to
1 appropriate public authorities to whom I was
2 delivering this document that they just might
3 find more relevant information in the non-public
4 files of Commonwealth Title Insurance Company
5 that are associated with that title insurance
6 policy. At any rate, it's significant that it
7 was dated October 12th of 1993.

8 The third page of this exhibit is the real
9 estate excise tax affidavit, which is, you know,
10 Affidavit No., Pierce County Treasurer's
11 Department, I think, No. 847798. You see it on
12 the face of the deed with the excise tax amount
13 of \$9,044.11.

14 And the excise tax affidavit signed by both
15 Grant L. Anderson, president of
16 Hoffman-Stevenson, Inc., and also signed by
17 William L. Hamilton, president of Pacific
18 Recreation Enterprises, and I note that the
19 signature of Bill Hamilton is a distinctive
20 signature, which is why I recognized it when it
21 had bled through the back of that proof of loss
22 claim that we were discussing with Phil Sloan
23 yesterday.

451 24 This excise tax affidavit is consistent with
25 the face of the deed, certifying under penalty of
1 perjury, both gentlemen certifying that the total
2 amount paid, the total consideration paid for
3 this real estate transaction, none of which was
4 attributable to personal property, according to
5 their sworn statement, the total amount was
6 \$508,096.07, that's 5-0-8,0-9-6.0-7.

7 They also on the excise tax affidavit do
8 give the street address of Pacific Lanes, namely
9 7015 South D, as in delta, Street, Tacoma.

10 Also I note, just kind of looking at this,
11 of significance the address for Pacific
12 Recreation Enterprises being shown as 3538 71st
13 Avenue West. That was the residence of Bill
14 Hamilton until Grant Anderson moved in in
15 November of '96.

16 The next document is a deed of trust. The
17 title officer thought it was a bit surprising
18 that this transaction that I just went through
19 for \$500,000 was October 12th, recorded October
20 13th of 1993, and the next document was also
21 recorded October 13th, 1993, as evident by the
22 recording number right above the title of the
23 document.

24 And this is a deed of trust running in favor
25 of First Interstate Bank of Washington, and the
452 1 arrow in the middle of the page recites that
2 this --

3 MS. GRAY: I hate to interrupt but
4 I am -- the document, I have a document that is a
5 deed of trust dated October 12, 1993 to Pacific
6 Recreation Enterprises, and the next document
7 after that is Exhibit A and the next document
8 after that in my copy is a letter dated January
9 5th, 1996. So, I'm --

10 THE WITNESS: All of this relates
11 to Pacific Lanes.

12 MS. GRAY: I don't believe that I
13 can look at what you are looking at.

14 MR. NEWMAN: He's looking at the
15 document entitled "Deed of Trust," which right
16 above the words "Deed of Trust" it has the date
17 October 13, 1993. That is the document he's
18 looking at. It has 900,000 written in the
19 corner.

20 MS. GRAY: But was it correct that
21 he was then testifying about a different deed of
22 trust to a bank?

23 MR. NEWMAN: No.

24 THE WITNESS: Upper right-hand
25 corner says "After Recording Mail to First
453 1 Interstate Bank of Washington."

2 MS. GRAY: Okay. Thank you for
3 clarifying.

4 THE HEARING OFFICER: You're on
5 page 4 of Exhibit D-11, is that correct?

6 THE WITNESS: Yes.

7 MR. NEWMAN: Yes.

8 THE HEARING OFFICER: Okay, I'm
9 there. Thank you.

10 Q. (By Mr. Newman) I think, Mr. Schafer, you were
11 testifying as to the arrow and the 900,000
12 number. Do you want to explain the significance
13 of that, why that caused you some concern?

14 A. Yes, I will. And, you know, I note first before
15 we focus on the \$900,000 figure that the top
16 portion of this deed reflects on the right:
17 "After Recording Mail to First Interstate Bank of
18 Washington, NA." NA stands for National
19 Association, which means it's a national bank,
20 federal charter by the comptroller of the
21 currency.

22 The next line, SWWCBC is Southwestern
23 Washington Commercial Banking Center in Tacoma.
24 To the left it says: "Loan Number,
25 Commercial Loan, Southwestern Washington
454 1 Commercial Banking Center No. 231,' and down to
2 the arrow it says: "This deed is to secure
3 repayment of \$900,000 pursuant to a promissory
4 note dated October 12, 1993, which is the same
5 date that the prior deed for \$500,000 on the
6 Pacific Lanes transaction was."
7 So, the significance of this to me as a
8 fairly experienced banking lawyer is that most
9 likely the proceeds for Bill Hamilton to buy, to
10 exercise his option at the negotiated discount
11 that he negotiated of \$500,000, the money likely
12 came directly from First Interstate Bank.
13 And they had a simultaneous financing where
14 First Interstate Bank funded this commercial
15 property loan to the tune of \$900,000. And
16 giving their banking regulatory requirements of
17 having commercial loans not exceeding a loan to
18 property value I think of 75 percent, that would
19 have indicated that they had an appraisal
20 reflecting a value of Pacific Lanes of at least
21 1.2 million dollars, which is again consistent
22 with the proof of loss form that Bill Hamilton
23 had signed July of 1993 when he made the claim to
24 the insurance company on the broken trusses.
25 So, collectively, I'm seeing that Bill
455 1 Hamilton is getting the bowling alley for
2 \$508,000 the same day he's financing \$900,000,
3 which would have been supported by an appraisal
4 of 1.2 million dollars, all of which looks like a
5 pretty extraordinary sweetheart deal. To me it
6 was an indication of fraud.
7 I note that Exhibit A to the deed of trust
8 is the identical Exhibit A to the \$508,000
9 transaction. In fact, they were recorded one
10 document apart, the recording numbers on these
11 two documents. The deed is, reflects recording
12 93, meaning 1993; 10, meaning October; 13,
13 meaning October 13th, 0514.
14 And the next one from First Interstate is
15 identical but for the last digits being 0515, so
16 they were recorded all as part of the same
17 escrowed transaction.
18 And the stamp above the deed of trust
19 reflecting the CTI policy number is the same
20 policy number that is shown on the deed from
21 Grant Anderson to Bill Hamilton or their
22 respective corporations.
23 So, clearly, it's all part of one
24 transaction, Bill paying \$500,000 and getting
25 immediate financing of \$900,000 from First
456 1 Interstate Bank, which based on banking
2 regulations is only permitted to loan based on
3 well-documented loan to value ratios.
4 The next document here is a letter from the
5 gambling commission to me, delivering the
6 documents that I had requested. They mailed all
7 public records relating to their gambling
8 licensee, Pacific Lanes in Tacoma, and I assume

9 that I probably just asked for public documents
10 subsequent to mid-1992.

11 At any rate, Ken Muhlman, the supervisor,
12 was helpful in providing me those documents.
13 Among the documents are the three-page definitive
14 agreement for this million dollar transaction,
15 which in of itself would cause any business
16 lawyer to recognize is shocking to have a million
17 dollar commercial transaction reflected on the
18 back of a napkin, virtually, but I guess if
19 people are close enough friends that's the way
20 they do things.

21 This definitive agreement that purports to
22 be a business acquisition and lease agreement,
23 and I say and Ken Muhlman from the gambling
24 commission pointed out that it says it's a lease,
25 but it really doesn't appear to be in and of
457 1 itself a lease.

2 But as you read through it you will see it's
3 an agreement between Pacific Recreation
4 Enterprises on the one hand and two corporations
5 on the other hand, the second group being Pacific
6 Lanes, Inc., and Hoffman-Stevenson, Inc., for the
7 purchase of the business and lease of the
8 property thereon known as Pacific Lanes at 7015
9 South D in Tacoma.

10 Paragraph 1 says: "Hoffman," which is HSI,
11 Hoffman-Stevenson, Inc. "will lease to
12 Enterprises," meaning Bill Hamilton's
13 corporation, "the entire real estate, building
14 and all attachments pursuant to lease to be
15 agreed upon, the option and terms of which will
16 include the following: Monthly rent of \$6,000
17 per month, non-refundable option deposit of
18 \$50,000, an option to purchase the property at
19 each two-year anniversary for cash in amounts
20 hereafter set forth."

21 This document dated September, '92 reflected
22 options at each two-year anniversary of October
23 1, '92, the 1st, and the two-year anniversary
24 being October of '94, for values which instead of
25 going up, as one would customarily believe real
458 1 estate prices to go, reflected a steady decline.

2 So, there would be no incentive whatsoever
3 for a sane or a prudent holder of this lease
4 option contract to ever exercise before, assuming
5 property values don't suddenly go through the
6 toilet. But it started at 600,000 in '96,
7 540,000 and so forth, down to a piddly \$305,000
8 option price 10 years down the road.

9 "The term of the lease shall be for 10
10 years," and it somewhat discusses the lease.
11 Then at paragraph 9: "As between Enterprises and
12 Pacific," Pacific being Pacific Lanes, Inc.,
13 defined in the first paragraph, the operator of
14 the bowling business on the premises owned by
15 HSI, it says "Enterprises," that's Bill
16 Hamilton's Pacific Recreation Enterprises, "shall
17 purchase from Pacific all operating assets known
18 as Pacific Lanes, shall pay \$50,000 cash at
19 closing, the balance of a quarter million dollars
20 payable at \$3,000 a month with interest at

21 seven-and-a-half percent, of which \$30,000 would
22 be attributable to goodwill."

23 Well, the tax relevant aspects of this I
24 recognize immediately, that being that by
25 disguising this transaction as a rent with option
459 1 it would allow Bill Hamilton and his corporation
2 to deduct every penny paid every month as
3 business rent, where in fact documented as a
4 loan, a promissory note, he would deduct the
5 interest but not the principal portion. So,
6 there's a tax advantage.

7 And by reflecting a very low amount
8 attributable to the goodwill, goodwill is not
9 deductible, is not depreciable, you know, it is
10 to the advantage of the buyer to minimize the
11 amount attributable to goodwill.

12 I note paragraph 10: "The sale will close
13 at Legal Escrow." Well, as one who drove by
14 Union Street on the way to the freeway on-ramp in
15 Tacoma where Grant Anderson's office is located,
16 law office was, I notice that the sign also says
17 Legal Escrow. Well, that's their law office real
18 estate closing escrow business.

19 So, I assume they derive fees. It does say:
20 "The cost of escrow shall be paid one-half by
21 buyer and one-half by seller."

22 I noticed on the third page of this,
23 paragraph 13, the whole transaction, reflected in
24 the September 19, 1992 definitive million dollar
25 deal, is contingent upon successful transfer of
460 1 all permits including gambling and license
2 permits.

3 They say it is: "Conditioned upon Item B
4 that Hoffman and Pacific have disclosed to
5 Enterprises that the suspended roof over the
6 lanes is asbestos, as well as in the back ball of
7 the unit, which is covered with sheet rock. The
8 asbestos has been encapsulated in accordance with
9 EPA standards."

10 So, it looks like they're covering that and
11 they are in mutual agreement that it is
12 acceptable in the way it is.

13 The next page or I guess the next four pages
14 are spreadsheets that I prepared. I am
15 proficient in the use of spreadsheets and
16 computers and spreadsheets, and frankly, I kind
17 of enjoy doing that kind of thing.

18 It's actually going to be easier to go to
19 the second spreadsheet first, the one that says
20 at the top: "Amortization Schedule by D. Schafer
21 2/10/96," meaning February 10 of 1996.

22 And what I attempted to do, just to fully
23 understand everything I could about the
24 transaction is I put on the spreadsheet
25 amortization schedule the terms of the
461 1 acquisition arrangement, and this reflects the
2 purchase of the active business for \$50,000 down
3 and \$250,000 payable at \$3,000 a month with
4 interest at seven-and-a-half percent.

5 So, among the documents I obtained from the
6 gambling office, but are not included in this
7 exhibit, were papers reflecting the closing on

8 December 4 of 1992, yes, December 4, 1992.

9 So, the amortization schedule starts showing
10 the first payment being as one month later,
11 January 4th of '93. And I just, you know,
12 thought it would be interesting to see with those
13 terms what was the duration of this transaction.

14 And, you know, it looks like it would have
15 fully paid off after 100, you know, just short of
16 120 months, so, 10 years. So, it was 10-year
17 financing.

18 The first of the two spreadsheets, the
19 amortization schedule immediately preceding that
20 was engaging in what might be sometimes referred
21 to as reverse engineering, kind of trying to
22 figure out how did they arrive at these figures,
23 the option price amount.

24 And you know, Bill had in fact told me, and
25 it was reflected in my notes of the meeting when
462 1 he came to me to form the corporation that he was
2 buying Pacific Lanes for a million dollars.

3 This reflected 300,000 for the business,
4 operating business. That would suggest to me
5 that 700,000 was the component of the land and
6 building, land, fixtures and building.

7 The three-page definitive agreement said
8 50,000 for the option, so that would have
9 suggested \$650,000 for the, you know, being paid
10 over time.

11 The interest rate on the business side was
12 seven-and-a-half percent, so I suspected probably
13 it was the same implicit interest rate that
14 generated the option exercise price figures at
15 every two-year interval.

16 I prepared this spreadsheet, which clearly
17 seemed to confirm that; namely, a loan of
18 \$650,000 at seven-and-a-half percent interest
19 with monthly payments of \$6,000, which was the
20 so-called rental figure, which would leave a
21 balance remaining after two years of one dollar
22 less than the \$600,000 option price shown on the
23 face of this three-page agreement.

24 After two years; 541,000, which is just a
25 nudge more than the option price of \$540,000
463 1 shown on the definitive agreement for four years
2 out.

3 Likewise, six years out the amortization
4 schedule showed 475, which correlated to the
5 option exercise price, and the same for the
6 eighth and the tenth year, the tenth year being
7 on the amortization schedule, \$305,260, and the
8 option exercise price on Hamilton and Anderson's
9 three-page, million-dollar deal was for \$305,000.
10 So, you know, I hit the target with this
11 spreadsheet.

12 One of the reasons I prepared this
13 spreadsheet is that Bill Hamilton, when I met
14 with him in my first meeting in -- well, my
15 meeting in December of '95, having called him up
16 and saying, "I'm concerned about whether this
17 judge has integrity in light of your own
18 comment," and we talked for nearly three hours,
19 in that period Bill was relating to me about the

20 bowling lanes and what he knew about the Hoffman
21 Estate.

22 And he said that just after we had this deal
23 nailed down he said he had favorable terms and
24 didn't have to fund the acquisition for many
25 years out. He said that Millie Hoffman had died
464 1 and the hospital began to want their money.

2 Well, you know, in December of '92 he had
3 locked in this 10-year financing thing. Millie
4 Hoffman died January 22, slightly over a
5 month-and-a-half after Bill had locked in this
6 deal.

7 Bill had said to me in that meeting when I
8 was probing about Anderson's integrity that once
9 the hospital began looking to get paid he began
10 looking for financing.

11 He said he first went to Key Bank, decided
12 he was not happy with their terms, and ended up
13 financing with First Interstate, I believe he
14 said.

15 But he also said that because he was not
16 legally required to pay off this acquisition he
17 said he negotiated a substantial discount with
18 Steve Fisher, and so he got an even better deal.

19 He also indicated to me that after he had
20 closed on this closing, the purchase of the
21 bowling alley, he was a bit surprised that Steve
22 Fisher sent him a bill for \$15,000 because Steve
23 Fisher was the guy he was negotiating with. He
24 said while that was surprising to him, he just
25 paid it and didn't complain.

465 1 The hospital later used that as a basis for
2 showing the complicity of lawyer Steve Fisher in
3 their settlement negotiations.

4 At any rate, I prepared the spreadsheet in
5 part because I wanted to get some idea of how
6 heavy this discount was. The excise tax
7 affidavit had shown \$508,000. At the time I
8 wanted to know what would have been the remaining
9 balance had that been documented as a loan.

10 So, you will see my handwriting in here
11 showing that, you know, if it were in fact a loan
12 when it closed in December of '92, and if in fact
13 payments were made on schedule, you know, come
14 October 4th of '93 the remaining balance would
15 have been \$630,071; 6-3-0,0-7-1.

16 And at that point you will see my little
17 math representation on the right for the
18 discounted payoff. If he paid 508 when it was
19 really 630, then he had a discount of \$121,975,
20 which I calculated as a 19.36 percent discount
21 from the full amount.

22 So, I was thinking at the time that Bill had
23 gotten roughly a 20 percent discount when he
24 negotiated with Steve Fisher over. Why should he
25 pay off this bowling alley purchase that he could
466 1 have stretched on at \$6,000 a month for the next
2 10 years, leaving the hospital unable to buy that
3 equipment that it desperately needed?

4 So, to me these were all just documents that
5 helped, as I say, connect the dots or put the
6 puzzle pieces together.

7 You know, it makes it easier for people
8 willing to look at, you know, turn their
9 attention to these things, as Sally Carter-DuBois
10 did, makes it better able for them to understand
11 the degree of fraud that seemed to me to be
12 rampant and extreme.

13 Q. Doug, in the three-page document, the sale
14 agreement, the business acquisition and lease
15 agreement, which is midway through the document
16 pile, the last page, paragraph 13-A, as you
17 testified, conditioned the sale on the transfer
18 of the gambling and liquor license.

19 Did you do any investigation to determine
20 whether those licenses were indeed transferred as
21 set forth here as a condition to the sale?

22 A. As a matter of law, licenses for gambling
23 activities and liquor activities are not
24 transferable from one licensee to some other
25 licensee. If somebody buys a business that has a
467 1 license, the buyer has to themselves apply for
2 permission to be licensed for those activities.

3 There are criminal background checks and
4 other checks. Those are highly regulated
5 activities by the state. It is, I believe, a
6 felony for someone to participate in the
7 management of gambling and liquor dispensing if
8 you have not been properly licensed, and there's
9 no such thing as transferring.

10 And you simply are not under the law of this
11 state permitted to begin to manage or have
12 controlling responsibility for those kinds of
13 activities until you as an individual have been
14 checked out, screened; no underworld connections
15 or criminal history that would preclude you from
16 engaging in that.

17 And my understanding is that those licenses
18 were applied for by Bill Hamilton and I think his
19 son as operators of Pacific Recreation
20 Enterprises, and sometime before December 4th, I
21 think just shortly before December 4th of that
22 year, 1992, they were granted approval on their
23 license applications, which is why they closed on
24 an odd day, December 4th, eager to lawfully
25 assume control of the bowling alley business,
468 1 although they later testified that they were in
2 fact in control.

3 MS. GRAY: Objection as to what
4 they later testified.

5 THE HEARING OFFICER: I will
6 sustain that.

7 Q. (By Mr. Newman) I guess in conclusion, could the
8 contract be followed or was it followed with
9 respect to that condition precedent?

10 MS. GRAY: Objection to the
11 multiple question.

12 Q. (By Mr. Newman) Was the condition precedent
13 followed?

14 A. I was not involved in the transaction. I was
15 simply looking at these papers after they were
16 provided to me in January of 1996. It says by
17 its terms, "conditioned upon successful
18 transfer," and I know as a matter of law there's

19 no such concept as a transfer of these licenses.
20 You know, the gambling commission provided
21 this to me when I asked for their public records
22 concerning Pacific Lanes.

23 I assumed that a license was issued or had
24 been issued at that time. I didn't know the
25 detail of it until the first day of Judge

469 1 Anderson's disciplinary hearing, when the --

2 MS. GRAY: Objection as to Judge
3 Anderson's disciplinary hearing.

4 THE WITNESS: Can I respond to
5 that objection?

6 THE HEARING OFFICER: Yes.

7 THE WITNESS: Simply, you know,
8 the exhibit book made all the documents publicly
9 available.

10 THE HEARING OFFICER: All right.
11 Well, maybe that will come in at some later time.

12 Q. (By Mr. Newman) Do you have anything else,
13 Mr. Schafer?

14 A. I don't think so.

15 MR. NEWMAN: We're now going to
16 shift, Mr. Mills, to an issue which Ms. Gray had
17 made some inquiry about with various witnesses
18 regarding Mr. Hamilton's criminal history, if he
19 had a criminal history, and so the first document
20 I'm going to mark as Exhibit D-12.

21 (Opposition to Motion to Quash
22 marked as Respondent's Exhibit No. D-12.)

23 THE HEARING OFFICER: We're back
24 on the record.

470 1 MS. GRAY: Mr. Newman has just
2 indicated that he plans on inquiring and making
3 inquiry of Mr. Schafer with regard to
4 Mr. Hamilton's criminal history, for lack of a
5 better word.

6 It is accurate that I asked if Mr. Sloan,
7 and I believe of Mr. Schafer as well, whether or
8 not Mr. Hamilton has been convicted or charged,
9 formally charged with any crimes.

10 That is relevant to the issue of potential
11 sanction in this case because the harm to
12 Mr. Hamilton is relevant to any potential
13 sanction in this case.

14 The Association has not called Mr. Hamilton
15 in this case. It is my understanding that
16 Mr. Newman is not calling Mr. Hamilton in this
17 case.

18 An attack on his credibility -- I am not
19 done, Mr. Schafer -- an attack on his credibility
20 by documents that do not relate to any conviction
21 by Mr. Hamilton of any crime, do not even relate
22 to Mr. Hamilton being formally charged with any
23 crime, is inappropriate in these proceedings.

24 I do not understand that Mr. Newman and
25 Mr. Schafer are -- I believe they are going to
471 1 offer through the CJC proceedings testimony of
2 William Hamilton, and I believe that they are
3 then going to attack it.

4 I do not think that this is an appropriate
5 proceeding for them to offer hearsay testimony
6 that was not known to Mr. Schafer in 1996 and

6 then attack credibility other than by a
7 conviction of a crime of Mr. Hamilton.

8 MR. NEWMAN: Let me respond first.

9 THE WITNESS: May I?

10 THE HEARING OFFICER: Who's going
11 first?

12 MR. NEWMAN: I will go first.

13 First of all, Ms. Gray opened the door when she
14 asked about Mr. Hamilton's criminal history, and
15 I think it's extremely misleading to the Hearing
16 Officer to portray Mr. Hamilton as some innocent
17 person who was run down, like someone hit and run
18 on the street.

19 What documents we intend to introduce are
20 from the Bar Association's own official files of
21 other attorneys who were investigated who had
22 some unusual dealings with Mr. Hamilton.

23 That includes, as well as the official
24 documents, public documents which are in the CJC
25 file, which include an affidavit from an FBI
472 agent which says basically that Mr. Hamilton --

2 MS. GRAY: I --

3 MR. NEWMAN: I'm explaining what
4 the documents are -- which says that Mr. Hamilton
5 was the subject of a Grand Jury investigation.

6 So, when Ms. Gray wants you to believe that,
7 and has Mr. Sloan testify that Mr. Hamilton is
8 somehow devastated and that the only reason for
9 the devastation was Mr. Schafer's disclosure of
10 the conversation they had in '92, that is
11 extremely misleading.

12 And our point is to show you that
13 Mr. Hamilton, Mr. Hamilton probably had a lot of
14 reasons to be depressed because he was the
15 subject of a Federal Grand Jury, and as far as we
16 know still is, and that's what the documents we
17 intend to introduce are.

18 THE HEARING OFFICER: Mr. Schafer?

19 THE WITNESS: He substantially
20 covered it, but I think it's imperative that I be
21 permitted in response to Philip Sloan's testimony
22 suggesting that somehow I had devastated the
23 quality of life of Mr. Hamilton and turned him
24 into a recluse, I think I should be entitled to
25 present publicly available documents that show
473 1 that the FBI has had a task force on his tail
2 since August of 1996, and people on the sidewalks
3 of Tacoma have told me that they hear rumors that
4 the Feds are after Bill Hamilton.

5 So, you know, it's not anything that I did.
6 This happened before anything that I did ever
7 became known by anybody, entirely independent,
8 unrelated in any respect to my reports to the Bar
9 office and to the other officials.

10 I knew nothing about this until it became
11 public through the public files of the CJC. And
12 Mr. Sloan, as we know, was actively involved in
13 that, representing Hamilton, you know, asserting
14 very aggressively that Bill Hamilton was in fact
15 taking the Fifth Amendment.

16 It wasn't just that he, Sloan, might
17 recommend that, but it was an emphatic: "We have

18 discussed it and he is, by golly, taking the
19 Fifth Amendment," and I had FBI agents seeking my
20 files, seeking information from me.

21 I do believe that he is going to be charged
22 with Federal crimes, I believe probably RICO that
23 will involve several people. I don't believe the
24 statute will run until November of 2001 and I
25 think it's entirely understandable for him to be
474 1 reclusive and to be embarrassed in his community.

2 THE HEARING OFFICER: All right.
3 Unless Ms. Gray has something further, I'm
4 troubled by this because it seems to me that
5 Mr. Hamilton's situation is relevant for a number
6 of reasons.

7 First, it's relevant in relation to Mr.
8 Schafer's knowledge and Mr. Schafer's reasonable
9 beliefs at the time of the disclosure of
10 information, No. 1.

11 Number 2, I think it's important that the
12 Hearing Officer have a clear record as to the
13 harm or potential harm that may or may not have
14 been caused to Mr. Hamilton by the disclosure
15 that's at issue by Mr. Schafer.

16 I am concerned about the quality of this
17 evidence and its relationship to this witness.
18 For example, the rules indicate that I can take
19 judicial notice as Hearing Officer of judicially
20 cognizant facts.

21 If there is something in a public record
22 somewhere that reflects certain facts regarding
23 Mr. Hamilton, I think I can take judicial notice
24 of that even without a witness if it's presented
25 to me properly, if it comes from a public record.

475 1 However, if Mr. Schafer is going to testify
2 about facts that have come to his attention by
3 other means outside of the public record, we're
4 going to have to go one-by-one on that. I don't
5 think I can make a general ruling about that.

6 So, I'm a little troubled with the -- when
7 it's presented to me kind of in gross it's hard
8 for me to make a ruling.

9 But it seems to me if it's something in the
10 public record that reflects Mr. Hamilton's
11 status, even if it's not a charge or a
12 conviction, I think that's appropriate for me to
13 take into evidence.

14 If it's something else we're going to have
15 to go by question and answer and you are going to
16 have to show me how this relates to the subject
17 matter of this hearing.

18 MR. NEWMAN: I appreciate that and
19 let me just following up.

20 What we intend to do is simply identify in
21 the public record information that's already
22 available that shows that Mr. Hamilton's status
23 or character, as you characterized him, and that
24 any harm done to him, that there were other
25 things going on in his life that would cause him
476 1 to be, as Mr. Schafer testifies, a recluse.

2 And I would emphasize your point, which is
3 well taken, which is this all goes to the
4 reasonable belief that Mr. Schafer -- and Ms.

5 Gray, if the Bar Association is going to somehow
6 portray Mr. Hamilton as an innocent bystander and
7 has never had his hands dirty, I think that is a
8 gross mischaracterization of Mr. Hamilton, and I
9 think the public records reflect that.

10 THE HEARING OFFICER: All right.
11 Could I hear you, Ms. Gray?

12 MS. GRAY: Mr. Mills, I would like
13 to remind you I have not yet had an opportunity
14 to read these documents.

15 It is my, it is clear on this record that
16 Mr. Schafer has been allowed to testify at great
17 length about things that he knew and that he
18 believed in 1996 based on all sorts of documents,
19 all sorts of suspicions that he had of
20 Mr. Hamilton in 1996.

21 I do not believe that any of these documents
22 were known to Mr. Schafer in 1996, so that
23 addresses your first concern.

24 With regard to your second concern, I would
25 just like the opportunity to read these documents
477 1 and to make any additional objections, and I note
2 that they are somewhat lengthy.

3 THE WITNESS: Mr. Mills, just ever
4 so briefly, what we are seeking to admit, you
5 know, one collection of documents are sitting in
6 that disciplinary file right in the middle, where
7 this office is seeking the disbarment of the Gig
8 Harbor lawyer who was getting kickbacks from Bill
9 Hamilton and spent 18 months in prison on.

10 They're all right there. This office has
11 had them. I've been hammering them for months
12 that it's all related, it's all the same people.

13 You know, if they refuse to take cognizance
14 of that then I think they should not have the
15 lenity of saying they need time to think about it
16 or read it for the first time when I've been for
17 two years trying to focus their attention on it.

18 Likewise, with the public documents and the
19 CJC file, as soon as I saw that I faxed it to
20 Barrie Althoff in December of 1997, the same time
21 I had faxed it to Justice Charles Johnson and
22 also to Justice Richard Sanders, two justices who
23 I knew or believed would have to recuse
24 themselves in Anderson's case, one because
25 Justice Johnson's clerk, Dawn Black, was leading
478 1 the charge as the associate for the hospital;
2 Richard Sanders, because he had his own dispute
3 with the CJC and was publicly maligning them in
4 the press as not knowing how to even find a law
5 library.

6 So, I thought when I saw the FBI task force
7 or the Federal Grand jury was looking into the
8 matters involving Bill Hamilton, I considered it
9 a judicial emergency that needed to come to the
10 attention of the highest levels of the judiciary
11 that we have a Superior Court judge who appears
12 to be living in the home of an individual who
13 gave him a Cadillac and is under a Federal Grand
14 Jury investigation.

15 It's all public. It alarmed the heck out of
16 me. I couldn't get this office to even give a

17 damn. I still am very resentful.

18 THE HEARING OFFICER: All right.

19 I understand your frustration. I don't think the
20 Hearing Officer is going to require Ms. Gray to
21 have knowledge or familiarity with all the
22 documents that happen to be in a disciplinary
23 file that happen to be in the Bar Association
24 where she works.

479 25 So, I'm going to give her time to review the
1 documents. Let's take a 15-minute break to allow
2 that to happen. Then we'll go on the record and
3 we'll see where we go from here.

4 THE WITNESS: Could I just make
5 one comment while we're still on the record? I
6 was bringing it to the attention of her
7 predecessor on my disciplinary case, Tim
8 Leachman, repeatedly.

9 THE HEARING OFFICER: I don't want
10 to argue with you. I'm just saying that I don't
11 believe that Ms. Gray has been focusing on these
12 particular documents recently, and this is a
13 hearing in which my job is to ensure fairness and
14 I think that she should have an opportunity to
15 read them before they are introduced or offered
16 in evidence.

17 THE WITNESS: I welcome fairness.

18 THE HEARING OFFICER: We'll go off
19 the record.

20 (Brief recess taken.)

21 THE HEARING OFFICER: All right.

22 We are back on the record after a break for
23 Ms. Gray to review certain documents that are
24 proposed to be offered as exhibits in this
480 25 hearing. Ms. Gray, do you have a statement to
1 make for the record?

2 MS. GRAY: I do. There are two
3 documents, neither are of which have been
4 identified by a designation number for the
5 hearing. One is an information along with a
6 government sentencing memorandum and a plea
7 agreement in the case of United States versus
8 Michael A. McKean.

9 Mr. Hamilton's name does appear within the
10 context of this exhibit. It is the Association's
11 position that the exhibit makes no indication on
12 its face that Mr. Hamilton is alleged to have had
13 any criminal intent in connection with his
14 interactions with Mr. McKean.

15 I have no objection to the Hearing Officer
16 reviewing the document and making that
17 determination for himself, but the government --
18 the Association's position is that unless there
19 is an indication in this document, which is
20 clearly a public document, that somehow
21 Mr. Hamilton had some criminal intent, that it is
22 irrelevant to these proceedings.

23 With regard to the other document, which is
24 in opposition to motion to quash, which I don't
25 believe is the purpose of the offer, and then
481 1 attached to it is an affidavit of a Special
2 Agent, Denise Stone, in the case of United States
3 versus Michael McKean and others, not including

4 William Hamilton.

5 Again, Mr. Hamilton is mentioned in the
6 course of her lengthy affidavit. I have no
7 objection to the Hearing Officer reviewing that
8 affidavit. It is our position that there is no
9 indication in that affidavit that Mr. Hamilton
10 had any criminal intent on his part in his
11 interactions with Mr. McKean, and if so, it is
12 irrelevant in our position.

13 THE HEARING OFFICER: All right.
14 Mr. Newman, would you care to be heard about
15 this?

16 MR. NEWMAN: Well, I think it's --
17 I would rather Mr. Schafer address the documents
18 themselves and point out where it indeed shows
19 that Mr. Hamilton was party to what appeared to
20 be an ongoing fraud involving Mr. Anderson as
21 well as Mr. McKean.

22 And I think if the Bar Association has
23 already noted its objection for the record and I
24 believe if I understood it, it doesn't have an
25 opposition for you to look at it, just doesn't
482 1 believe it shows Mr. Hamilton had any criminal
2 intent or whatever.

3 And I think once you look at the documents,
4 as pointed out by Mr. Schafer, it's clear that
5 Hamilton did.

6 THE HEARING OFFICER: Let me just
7 make clear my thought on these particular
8 documents is that if they are public record in
9 another proceeding or on file in a public office
10 somewhere, that it would be my presumption that I
11 could review those and give them the weight to
12 which I deem them appropriate, and the witness
13 may testify about them.

14 But if the witness -- well, we'll have to go
15 question by question in terms of the witness'
16 knowledge, whichever witness, whether it's Mr.
17 Schafer or anyone else that testifies about these
18 documents.

19 So, should we mark them and go forward?

20 MR. NEWMAN: What I'm going to
21 mark, Ms. Gray. No. 12 will be the Opposition to
22 the Motion to Quash and No. 13 will be the
23 Information.

24 So, first I'm going to -- Mr. Mills, let me,
25 I can provide you with the original now.

483 1 THE HEARING OFFICER: Just put it
2 in the stack.

3 MR. NEWMAN: And then query Mr. --

4 MS. GRAY: Mr. Mills, I would like
5 to note an objection to having Mr. Schafer
6 testify about these documents. I believe that
7 there is no reason to believe that he has any
8 knowledge, personal knowledge about the
9 interactions between Mr. McKean and Mr. Hamilton.

10 The documents say what they say. I have no
11 objection to him reading them or pointing out to
12 the Hearing Officer which paragraphs he wants the
13 Hearing Officer to review, but I do object to his
14 interpreting them in the form of testimony.

15 If indeed the Hearing Officer determines

16 that they are appropriately admitted, then legal
17 argument can be made in closing as to what
18 interpretations should be drawn, but Mr. Schafer
19 has no particular knowledge that makes him
20 appropriate as a witness to testify as to their
21 interpretation.

22 THE WITNESS: May I briefly
23 respond?

24 THE HEARING OFFICER: No, I'm not
25 going to rule on that objection right now. I
484 1 think we'll go with question and answer and then
2 we'll see if it truly is just interpretation of
3 language without any other knowledge, then
4 probably -- well, then the objection may be well
5 taken.

6 Q. (By Mr. Newman) Why don't we go ahead, Doug. The
7 first document marked as Exhibit 12, can you
8 identify what it is?

9 A. It was a document that I observed and obtained a
10 copy from the public files of the Commission on
11 Judicial Conduct in Olympia, Washington, when I
12 visited that office on, I believe the date was
13 December 23, 1997, and this was in their public
14 file which I requested to review. And after I
15 put my eyes back in their sockets, asked for a
16 copy.

17 It had been filed in that office, public
18 file, I believe December 19th, the date it shows
19 at the bottom of the first page. The CJC is an
20 inadequately funded office that doesn't even have
21 an official looking received stamp, but
22 nonetheless, that's what they were using at the
23 time.

24 It reflects a four-page Opposition to Motion
25 to Quash. I have not put in the record as part
485 1 of this exhibit the motion to quash that prompted
2 this, but I have listened to the audiotape and
3 it's a 16-minute audiotape, we can all listen to
4 if we would like to, where Phil Sloan --

5 MS. GRAY: I object to Mr. Schafer
6 testifying about an audiotape that is not in
7 evidence. Mr. Sloan was asked about it. He
8 answered about it. I have not had an opportunity
9 to hear it. They have not asked me to listen to
10 it. I object to Mr. Schafer testifying as to
11 what is on it.

12 THE HEARING OFFICER: I'm not sure
13 he was going to. Let's see what he says.

14 THE WITNESS: I wasn't going to,
15 but it is inconsistent with Mr. Sloan's
16 testimony, and I frankly would like the first
17 three minutes to be heard, because it is
18 inconsistent with what Mr. Sloan testified.

19 And if there is interest in understanding
20 these documents better it would facilitate the
21 Hearing Officer and anyone else better
22 understanding this.

23 I can explain the setting if I'm permitted
24 to, if we are interested in that, the setting of
25 which this Opposition to Motion to Quash arose.

486 1 Essentially, the CJC had taken
2 Mr. Hamilton's deposition on two occasions during

3 it's investigatory stage. Mr. Bulmer,
4 representing Judge Anderson, had not been present
5 or permitted to participate in those depositions.
6 Those were taken in early 1997.

7 When the charges on the Cadillac came out,
8 bottom of page 3 of this Opposition to Motion to
9 Quash, actually of the top of page 4, documents
10 over the signature of Paul Taylor, attorney for
11 the CJC, that after the Cadillac charges came out
12 it says briefly: "Shortly after the statement of
13 charges was filed the United States Attorney's
14 Office asked Commission Counsel" -- that would be
15 Paul Taylor -- "for copies of the investigative
16 files underlying the statement of charges. Due
17 to confidentiality requirements Commission
18 Counsel declined the request."

19 He then goes on to describe what he knows,
20 and we can read the document out loud or read it
21 silently, but essentially, you know, Paul Taylor
22 indicates that the U.S. Attorney's Office sought
23 the records.

24 The bottom of page 3 says: "Commission
25 Counsel believes that Mr. Hamilton may invoke
487 1 self-incrimination privilege at the upcoming
2 hearing of Judge Anderson."

3 First, a Federal Grand Jury in Western
4 District of Washington" -- I'm reading -- is
5 currently investigating the various banking
6 related offenses. The investigation involves,
7 among other things, transactions handled by Sound
8 Bank and Hamilton during the time that Hamilton
9 was president of Sound Bank, as detailed in an
10 affidavit filed by the United States in support
11 of a restraining order freezing various assets.

12 "The potential offenses include" -- I'm not
13 going to read the U.S. Code sections, but a
14 section on false claims, mail and wire fraud,
15 false statements, theft of mortgaged property,
16 and conspiracy to defraud.

17 The affidavit also details Hamilton's role
18 in various questioned transactions.

19 Essentially, Paul Taylor at the time of this
20 had come to believe, as he said, that Bill
21 Hamilton would be taking the Fifth Amendment in
22 Judge Anderson's disciplinary hearing; feared
23 that if he did so Paul Taylor --

24 MS. GRAY: Objection to what Paul
25 Taylor feared or knew. If he wants to read what
488 1 Paul Taylor said in the document, I have no
2 objection to that.

3 THE WITNESS: Wrong verb. Paul
4 Taylor stated expressly in the hearing and it's
5 stated in writing in this document that if Bill
6 Hamilton took the Fifth Amendment he would seek
7 to introduce the prior deposition transcripts
8 from the investigatory depositions.

9 But he said under the strict rules of
10 evidence applied in those judicial disciplinary
11 hearings he feared he would not be permitted to
12 use those prior deposition transcripts because
13 Mr. Bulmer had not been afforded an opportunity
14 to ask questions of Mr. Hamilton under oath in

15 such a setting.

16 So, Mr. Taylor sought to depose Mr. Hamilton
17 for the third time in order simply to give
18 Mr. Bulmer that opportunity to ask questions of
19 banker Bill Hamilton.

20 Phil Sloan objected to Mr. Hamilton being
21 deposed for the third time. He said it was a
22 nuisance, inconvenient, disruptive of his life,
23 et cetera, et cetera.

24 Mr. Paul Taylor filed this Opposition to the
25 Motion to Quash and there was this 16-minute
489 1 hearing that we have the tape on. In the first
2 three minutes Phil Sloan testifies --

3 MS. GRAY: Objection, again.

4 THE HEARING OFFICER: I think that
5 goes beyond the question.

6 THE WITNESS: Okay. At any rate,
7 this Opposition to Motion to Quash does say, as
8 we have said, I urge everyone to read it. It
9 makes specific reference on the bottom of page 3
10 to the affidavit that details Hamilton's role in
11 various transactions, calling attention to
12 paragraphs 70 and 72.

13 As I look at this affidavit, which consists
14 of, I think it was 40 pages, 39 pages --
15 actually, there's a page missing because the last
16 page had the signature. It was 40 pages, and at
17 least the copy that I have seems to be missing
18 the signature of Special Agent Denise Stone from
19 the U.S. Department of Agriculture, which is the
20 agency that subsidized Mr. McKean's low income
21 housing projects.

22 On this affidavit it starts by identifying
23 on page 3 various parties named in the affidavit.
24 Page 3 identifies Sound Banking Company, a
25 federally insured banking institution, giving its
490 1 address in Tacoma where Michael McKean maintains
2 rural housing service project bank account
3 balances.

4 It identifies next William L. Hamilton using
5 his home address, and I think it also
6 identified -- I guess it did not in the
7 definitions at the outset identify Western
8 Community Bank, which was the bank that Bill
9 Hamilton was CEO of up until it sold to Key Bank
10 in 1989 or '90, I think it was.

11 If we turn -- I urge everyone to read this.
12 I hope -- this copy I'm looking at has a bit cut
13 off on the right margin, but turning to page 32,
14 which is where you find paragraph 70, I will read
15 this paragraph.

16 "The investigation has shown that Michael
17 McKean" -- who, by the way, is an attorney
18 awaiting hopefully disbarment, his disciplinary
19 hearing. He was released from prison in January
20 for 18 months service and his disciplinary
21 hearing was last month.

22 Paragraph 7 says: "The investigation has
23 shown that Michael A. McKean from at least June 1
24 of 1994 to present diverted project reserve
25 accounts funds to his own use by using William L.
491 1 Hamilton and other bank officials of Sound

2 Banking Company to reduce the amount of interest
3 paid on project reserve account balances
4 maintained in savings accounts at the bank and
5 returned the difference to Michael A. McKean by
6 payments through his young daughter.

7 "This banking arrangement was created as a
8 mechanism by which Michael McKean would divert
9 additional project funds from the project in an
10 unlawful manner."

11 Earlier in this 40-page affidavit they made
12 references to learning much of this through
13 hidden microphone, you know, wiretapped -- not
14 wiretapped, but what do you call it, informant,
15 hidden microphone conversations or recorded
16 conversations using informants.

17 The next key paragraph I would like to
18 read -- again, this seems to be unfortunately cut
19 off on the right margin.

20 THE HEARING OFFICER: Do you want
21 the original? I'm not looking at it.

22 MR. NEWMAN: The original is not
23 cut off.

24 THE WITNESS: Well, I'm thinking
25 it would be important to have a full one in at
492 1 least the original file. Yes, page 33 is much
2 better.

3 Paragraph 72 of this affidavit says:
4 "Thomas A. Wilson told me in October, 1995," and
5 the person, me, refers to Special Agent Denise
6 Stone, who works in the Federal Building here in
7 Seattle -- "told me that in October, 1995 during
8 his due diligence audit" --

9 MS. GRAY: I'm sorry, where are
10 you reading?

11 THE WITNESS: Page 33 of the
12 affidavit, paragraph 72, the second paragraph,
13 Paul Taylor referred to as describing the --

14 MS. GRAY: Thank you.

15 THE WITNESS: Paragraph 72:
16 "Thomas C. Wilson told me that in October, 1995,
17 (during his due diligence audit) he questioned
18 Michael McKean about the seemingly low amount of
19 interest paid on Rural Housing Service project
20 reserve account balances.

21 "Michael A. McKean explained that the
22 reserve account balances were placed with Sound
23 Banking Company, a small Federally insured bank
24 with deposits totaling \$40,000,000, of which
25 \$8,000,000 was made up of Michael A. McKean's
493 1 controlled project reserve account money.

2 "Michael A. McKean said that a non-written
3 agreement existed between himself (Michael A.
4 McKean) and William Hamilton, bank owner, under
5 which William Hamilton paid Michael A. McKean a
6 monthly "advisory" fee of two-and-a-half percent
7 based on reserve account balances for bringing
8 the deposits to the bank.

9 "Michael McKean said he was not worried
10 about ever getting caught because the
11 transactions were untraceable in the bank's books
12 and that Hamilton got the money to Michael McKean
13 by paying "Michelle McKean," Michael McKean's

14 young daughter."

15 After I discovered this, again, I was so
16 alarmed that I called up Justice Johnson and
17 Justice Sanders and I said, "I am very alarmed at
18 what I believe to be ongoing criminal activity
19 involving a Pierce County Superior Court Judge
20 that I think should come to your attention."

21 They both invited me to fax to them the
22 papers, at which point I faxed to them this
23 document that is Exhibit 12.

494 24 Q. (By Mr. Newman) All right. I'm going to now show
25 you exhibit, what's going to be marked as Exhibit
1 13, which again, Christine, is the information.

2 THE HEARING OFFICER: Did you want
3 to offer Exhibit D-12?

4 MR. NEWMAN: Yes, please. I would
5 like to offer 12 into evidence and you have the
6 original.

7 THE HEARING OFFICER: Any
8 objection to D-12?

9 MS. GRAY: I have made my
10 objection previously.

11 THE HEARING OFFICER: It's
12 overruled. I'll admit Exhibit D-12. I have one
13 original for the file.

14 (Respondent's Exhibit D-12 was
15 received into evidence.)

16 MR. NEWMAN: You may have actually
17 two copies there, Christine.

18 MS. GRAY: I don't believe so,
19 no -- oh, I may have, wait a minute.

20 (Off the record.)

21 THE HEARING OFFICER: The record
22 should reflect that the Hearing Officer has
23 received a copy of Exhibit 12 and it, too, is cut
24 off on some of the pages, but the Hearing Officer
25 has made note of the page, line number and
495 1 paragraph from the testimony and so will review
2 the original exhibit.

3 (Information referred to was
4 marked as Respondent's Exhibit No. D-13.)

5 Q. (By Mr. Newman) All right. We were just about
6 ready to talk about Exhibit 13, which I'll show
7 you and ask if you can identify that exhibit.

8 A. These are papers that I copied from the criminal
9 file in the Tacoma Courthouse in Federal District
10 Court, under the file number that correlated to
11 the affidavit of Special Agent, Denise Stone, at
12 least I think it's the same file number. It's
13 the same case. I may have had to get -- I don't
14 know, I don't still have the prior exhibit to
15 match the file number, but it's the same case.

16 I came to learn that Mr. McKean was charged
17 with an information alleging felonies, and the
18 information refers on page 2 to Western Community
19 Bank of Tacoma, now owned by Key Bank, and Sound
20 Banking Company also of Tacoma.

21 Q. Doug, before you go on I would like to get this
22 to Mr. Mills.

23 MR. NEWMAN: You have already made
24 your objection?

25 MS. GRAY: I have already made it

1 clear that I've already objected. I have no
2 objection to Mr. Mills reviewing it.

3 MR. NEWMAN: So, at this time
4 before Mr. Schafer.

5 THE HEARING OFFICER: So I can
6 follow along?

7 MR. NEWMAN: Yes. This is the
8 original and here's a copy.

9 THE HEARING OFFICER: Thank you.
10 Exhibit D-13 is admitted and the Hearing Officer
11 has a copy.

12 (Respondent's Exhibit No. D-13 was
13 received into evidence.)

14 Q. (By Mr. Newman) Doug, this is a public document
15 you got from the court file, correct?

16 A. Absolutely, it's a public document. I simply had
17 requested the criminal court file, and pushing
18 dimes and quarters and others into the
19 coin-operated machine at the courthouse made the
20 copy, I believe, although they may have made it
21 for me and I wrote them a check, I don't know.

22 The information which is on top of this
23 exhibit at the start indicates Michael McKean is
24 an attorney living in Gig Harbor.

25 One thing, by the way, I failed to mention
1 in the last exhibit, the affidavit, was in
2 October of 1996, I think it was, yeah, it was in
3 October of 1996, the affidavit of Denise Stone,
4 Special Agent.

5 This information is February of 1998,
6 recites that Mr. McKean, an attorney living in
7 Gig Harbor was general partner of numerous,
8 namely 65 Federally financed and subsidized low
9 income housing projects in 20 states. Each
10 project had between 24 and 70 apartments.

11 Paragraph 5 on page 2 identifies Western
12 Community Bank of Tacoma now owned by Key Bank,
13 and Sound Banking Company, also of Tacoma, were
14 both Federally insured financial institutions.

15 The banks received and maintained the
16 segregated accounts for many of Mr. McKean's
17 approximately 65 rural housing service projects.
18 Those are Federally subsidized low income housing
19 projects.

20 Page 3 of the information, paragraph 9,
21 around line 19 or 18 says: "All funds were
22 required to be fully -- and any interest thereon
23 were required to be fully disclosed to the Rural
24 Housing Service and expended only for the benefit
25 of respective projects.

1 "Mr. McKean's project funds were deposited
2 to Western Community Bank between approximately
3 1981 and September, 1990. During that period of
4 time Mr. McKean received payments from the bank
5 which he used for his own benefit. He obtained
6 such payments by submitting false attorney
7 billing statements to Western Community Bank."

8 The paragraph following that, paragraph 10
9 says: "Beginning September, 1993, and continuing
10 through 1996 Mr. McKean's project funds were
11 deposited at Sound Banking Company and during
12 that time Mr. McKean received and presented for

13 payment forged cashiers checks to Sound Banking
14 Company in a way intended to conceal Mr. McKean's
15 receipt and possession of such funds."

16 I'm now going to go to the -- well, there
17 was a count, unlawful payment from bank, on page
18 6, that pretty much is similar to what we just
19 read.

20 This information is signed by Katrina
21 Pflaumer -- I don't know how you pronounce
22 that -- Robert Westinghouse, Kenneth Parker and
23 Kurt Hermans, the latter three Assistant U.S.
24 Attorneys. Ms. Pflaumer --

499

25 THE REPORTER: Could you spell it,
1 please?

2 THE WITNESS: P-f-l-a-u-m-e-r.

3 MS. GRAY: Pflaumer.

4 THE WITNESS: Pflaumer. The P is
5 silent, okay, thanks.

6 The next document is a government sentencing
7 memorandum. Perhaps the better order would have
8 been to go to the last document next.

9 Under the sentencing memorandum is the plea
10 agreement reflecting the signatures of Michael
11 McKean and the U.S. Attorney that basically
12 indicates that he pleaded guilty to six felonies
13 involving the information.

14 Among the felonies he pleaded guilty to, is
15 on page 4, the references to his project account
16 balances at Western Community Bank in Tacoma and
17 his transactions with Sound Banking Company.

18 Then, jumping back to the government's
19 sentencing memorandum -- the plea agreement, by
20 the way, was March 3rd of 1993 when it was signed
21 and filed. The sentencing memorandum, dated May
22 22, when it was filed, it appears, of 1998.

500

23 Of particular significance to me is the
24 lower lines on page 3 that describe, and I'll
25 read this, one specific example, where Mr. McKean
1 obtained funds through false documents, as set
2 out in Count 4 of the information. In that
3 particular count, "Mr. McKean presented false
4 invoices for legal fees to Western Community
5 Bank. The payments he received for those phony
6 invoices came from interest earned on Rural
7 Housing Service project accounts at Western
8 Community Bank.

9 "His machinations with the false bills thus
10 allowed him to receive a portion of the interest
11 on the Department of Agriculture funds. That
12 interest belonged to and ought to have gone to
13 the Department of Agriculture.

14 "The investigation identified approximately
15 \$75,000 which Mr. McKean obtained from Western
16 Community Bank in that fashion. None of those
17 monies were ever paid back or returned to the
18 Department of Agriculture."

19 Q. (By Mr. Newman) Do you have any other thing you
20 want to read, any other portion of the document
21 that you would like to read?

22 A. I would only like to note that these documents
23 are in the Bar office disciplinary file of
24 Mr. Mike McKean, which is sitting on the table

25 right in front of the Hearing Officer.

501 1 MR. NEWMAN: Mr. Mills,
2 Mr. Schafer has referred to the part of the CJC
3 hearing in which Mr. Sloan basically strongly
4 emphasized that his client, Mr. Hamilton, would
5 be taking the Fifth Amendment.
6 We have an audiotape and have isolated the
7 3-minute portion in which Mr. Sloan adamantly
8 makes that position. We would like to play that
9 and it merely -- at this time because it does
10 contradict to some degree Mr. Sloan's, the way he
11 characterized how he advised or how he conveyed
12 it -- to you how Mr. Hamilton was advised that he
13 might take the Fifth.

14 THE HEARING OFFICER: Do you have
15 an objection to that?

16 MS. GRAY: I have two objections.
17 One is I have not had an opportunity to review
18 the exhibit that they are offering. Just like
19 any document, I would like to hear it outside of
20 the presence of the Hearing Officer before it's
21 played.
22 The second is relevance. The testimony I
23 think is clear, and I don't think there's any
24 dispute that Mr. Hamilton testified at the CJC
25 proceedings. So, whatever Mr. Sloan said earlier
502 1 about his advice or Mr. Hamilton's intent is a
2 purely collateral matter.
3 THE WITNESS: Mr. Mills, if I may?
4 THE HEARING OFFICER: Go ahead.
5 THE WITNESS: I don't consider it
6 collateral at all because we had no advance
7 awareness of the evidence that you were going to
8 present yesterday in the live testimony of Philip
9 R. Sloan, a lawyer. We didn't get the chance to
10 hear that beforehand out of anybody's presence.
11 You just let us listen.
12 We're asking the same privilege. This is a
13 public audiotape that I obtained shortly after I
14 obtained these papers from the CJC office. It
15 simply is Phil Sloan saying emphatically a
16 statement that is quite inconsistent with what he
17 sat here in front of the microphone and said
18 yesterday, when he simply said that he merely was
19 as attorney advising Mr. Hamilton.
20 What he says on that tape is far more
21 specific and says: "We have discussed the matter
22 and he will be taking the Fifth Amendment."
23 THE HEARING OFFICER: All right.
24 Let me just deal with this right now. I think
25 that it's appropriate, assuming it's a tape of a
503 1 public hearing and it's part of the public
2 record, to play an excerpt of the tape for
3 impeachment purposes.
4 I'm not sure it's appropriate to play it as
5 part of Mr. Schafer's testimony, but that is
6 something I should listen to. It's impeachment,
7 it's like a document, public record document.
8 And I would also like Ms. Gray to have a
9 chance to listen to it ahead of time in case
10 there's some other objections she may have. So,
11 I'm going to defer that and not hear it at this

12 point but I'm not ruling it out at this point.

13 MS. GRAY: I would also like to
14 note that although the rules of evidence don't
15 apply, the proper way of impeaching a witness
16 would have been to play it for the witness --

17 THE WITNESS: We asked --

18 MS. GRAY: -- and not wait until
19 afterwards.

20 THE HEARING OFFICER: Perhaps, but
21 this is contradicting him with a public record.
22 I'm still looking at the rules. That's the
23 reason I keep, that I have the rule book out, is
24 I'm looking at 4.11(c)(4), which allows me to
25 take judicial notice of certain things.

504 1 Maybe I'm taking expansive judicial notice,
2 but I believe this tape is something I can take
3 judicial notice of. It's contradictory evidence,
4 not necessarily offered for impeachment, but it's
5 a contradiction.

6 I'm going to defer hearing the tape but if
7 you could let Ms. Gray listen to it outside the
8 hearing and bring it up again at a future time.

9 MR. NEWMAN: Let me just add, and
10 I appreciate your consideration and I will confer
11 with Ms. Gray and let her hear the tape, perhaps
12 we can do that shortly.

13 I do want to emphasize, because Ms. Gray has
14 pointed out that Mr. Hamilton has not been called
15 as a witness. As I have indicated, and Mr.
16 Schafer can certainly testify to this, we have
17 tried to subpoena him. He's apparently avoiding
18 it. We have had two service processors trying to
19 nail him down. He's making himself unavailable.

20 So, I don't want you misled, Mr. Mills, that
21 we have somehow decided not to call Mr. Hamilton.
22 We would love to have Mr. Hamilton here under
23 oath to testify.

24 And then why this tape is germane is because
25 the prior testimony of his attorney he said he's
505 1 going to take the Fifth and we expected him to
2 take it here, as well in the Grand Jury
3 investigation.

4 THE HEARING OFFICER: All right.

5 Q. (By Mr. Newman) Let me move on to one of the
6 demonstrative exhibits we have used in my opening
7 is a quote from the CJC, which you should have
8 it.

9 MS. GRAY: I haven't had time to
10 read it. I haven't had time to read any of the
11 CJC materials.

12 THE WITNESS: Well, if I may
13 simply note for the record that the document that
14 she's been handed was one of the 24 documents in
15 the public record that her office provided to the
16 disciplinary board and then forwarded to the
17 State Supreme Court to support their
18 recommendation and the deal they cut for the
19 two-year law license suspension of former Judge
20 Grant Anderson that was approved by the Supreme
21 Court May 4th of this year. It is very public in
22 many places.

23 MR. NEWMAN: Let me make sure you

24 know what I'm talking about.

25 THE HEARING OFFICER: Yeah, I'm

506 1 not sure what you're talking about. First of

2 all, have you marked it as --

3 MR. NEWMAN: I have not marked it.

4 It would be Exhibit 14, though.

5 THE HEARING OFFICER: Okay. Let's

6 mark it Exhibit D-14 for identification.

7 MR. NEWMAN: All right.

8 THE HEARING OFFICER: And then we

9 can proceed from there.

10 (Public Press Release and Statement

11 of Charges marked as Respondent's Exhibit D-14.)

12 THE HEARING OFFICER: I understand

13 you have shown it right now to Ms. Gray. She

14 hasn't had a chance to read it yet. You want to

15 characterize it?

16 MR. NEWMAN: I can characterize

17 what it is. It's a public press release. The

18 first page is press release from the Commission

19 on Judicial Conduct regarding the Anderson case,

20 and then following that is the Statement of

21 Charges produced by the CJC, in particular, David

22 Akana, Executive Director, regarding the Anderson

23 case.

24 THE WITNESS: And the date?

25 MR. NEWMAN: The date of the press

507 1 release is August 11, 1989.

2 THE HEARING OFFICER: 1989?

3 MR. NEWMAN: Sorry, 1999.

4 THE HEARING OFFICER: Thank you.

5 MR. NEWMAN: And the statement

6 charges was filed, has a filed stamp of August

7 9th, 1999.

8 And again, if I may, in my opening I talked

9 about the CJC said that Mr. -- Judge Anderson had

10 engaged in a pattern of dishonesty and deception

11 in the past, and that certainly goes to our

12 defense.

13 One of our defenses is that Mr. Schafer

14 reasonably believed that there was an ongoing

15 conspiracy or fraud and our point is simply that

16 this raised or confirmed his understanding.

17 Before Ms. Gray goes further, there is a

18 stipulation in the record. I believe it's

19 Exhibit A. Help me, Ms. Gray.

20 MS. GRAY: A-11, I believe.

21 THE HEARING OFFICER: A-11.

22 MS. GRAY: A-11.

23 THE HEARING OFFICER: And it was

24 designed, I don't know why it was entered into,

25 but it's very helpful because it's essentially a

508 1 stipulation by the Bar Association in this

2 proceeding to the fact that on February 29th,

3 1996 and thereafter, respondent, Mr. Schafer,

4 believed that Grant Anderson had committed acts

5 of misconduct as a lawyer, a fiduciary and a

6 judge.

7 And then there's a stipulation to the

8 contents of the Supreme Court's decision in the

9 Anderson matter, and a copy of that is attached

10 for my consideration. Incidentally, I had read

11 that long ago but that definitely is correct.
12 And if that is the purpose for which this exhibit
13 is offered, it may be repetitive.

14 MR. NEWMAN: It's not really the
15 same purpose because the Supreme Court's case was
16 somewhat different than the CJC's consideration,
17 and the CJC did make some very specific
18 pronouncements as to the pattern of dishonesty
19 and deception over the past decade. I don't
20 think the Supreme Court used that particular
21 language. Maybe Mr. Schafer can illuminate.

22 THE WITNESS: If I may, Mr. Mills.

23 THE HEARING OFFICER: Go ahead.

24 THE WITNESS: Thank you very much.

509

25 I consider it important. Again, the purpose of
1 this proceeding is to see whether what I did
2 should affect my license to practice law.

3 I think from the perspective of the
4 profession, perspective of the honor and
5 integrity of the judiciary and the perspective of
6 public confidence in the judiciary it's important
7 to get all the relevant facts out here.

8 And I consider this very relevant that not
9 only did the CJC 17 months after I first went to
10 them charge Judge Anderson with a number of acts
11 of extraordinary misconduct which led to the
12 Supreme Court declaring his acts to be a clear
13 pattern of dishonest behavior in their opinion on
14 July 29th, 1999, but less than two weeks later
15 the commission which had been continually
16 investigating him charged him with much more
17 misconduct, including several specific acts of
18 misconduct as a lawyer that related to the
19 Hoffman Estate, including the backdating of the
20 inventory in the Hoffman Estate that we had
21 referred to that I pointed out in my first memo
22 to the appropriate authorities in February of
23 1996, and other acts of moral turpitude in the
24 form of falsifying documents.

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25 They even charged him with -- which was, I
1 believe, entirely correct -- a false police
2 report which directly resulted from someone
3 phoning me and giving me a tip and me passing it
4 on with other information to the CJC.

5 I mean, this guy is just as evil as can be
6 and creates the not just potential, but a very
7 real threat to serious harm to liberty and
8 freedom and life and well being in Pierce County.

9 And these charges which the CJC only brings
10 when they have, they believe, clear, cogent and
11 convincing evidence that they can prove their
12 charges were brought public two weeks after this
13 opinion that we stipulated to.

14 I stipulated to this opinion simply because
15 it seemed to me pretty obvious that no one could
16 challenge the findings of the State Supreme
17 Court, so I signed that.

18 And it's been thrown back at me continuously
19 as a way to suppress relevant truthful
20 information in this proceeding and I frankly
21 regret ever having signed it.

22 THE HEARING OFFICER: Let me hear

23 from Ms. Gray.

24 MS. GRAY: There is a large volume

25 of CJC materials that was provided to me this

511 1 morning that I have not had an opportunity to

2 review today. As Mr. Schafer will undoubtedly

3 point out, they are available to our office.

4 That does not mean that they were identified to

5 me as exhibits or were copies provided to me

6 prior to today.

7 As well, the press release that has just

8 been marked as D-14, I have not yet had an

9 opportunity to review.

10 I think in terms of the volume of the

11 material I'm going to suggest that it not be

12 ruled upon as to its admissibility until tomorrow

13 morning. That's just a practical suggestion.

14 With regard to the CJC proceedings, the

15 Supreme Court's opinion is the final word on what

16 charges were proven and what facts ultimately

17 were found to have had.

18 The CJC made a ruling that was altered

19 somewhat, I think, in the Supreme Court's

20 opinion. That is stipulated to. That is part of

21 this record.

22 I have made it clear, both during the course

23 of this hearing and previously that it is our

24 belief that all materials that were not known to

25 Mr. Schafer in 1996, the time that concerns Count

512 1 One of this complaint, are irrelevant.

2 Mr. Schafer, by their nature, could not have

3 been aware of the CJC charges, evidence,

4 testimony or exhibits because they did not exist

5 in 1996.

6 So, it's our position that all of this

7 material is irrelevant with regard to

8 Mr. Schafer's state of mind in 1996, which we do

9 concede is relevant and he's testified at great

10 length regarding it.

11 THE WITNESS: If I may respond?

12 THE HEARING OFFICER: Why don't we

13 hear from Mr. Newman first, and then Mr. Schafer.

14 MR. NEWMAN: Well, I think, Your

15 Honor, you have already let in information which

16 basically confirmed Mr. Schafer's belief that

17 there was an ongoing crime of fraud.

18 I think I certainly appreciate Ms. Gray's

19 characterization that the Supreme Court is the

20 last word on it, but as in any case, a person

21 could have a reasonable belief that an individual

22 committed a crime and yet the Court could find

23 that the individual was innocent or not guilty.

24 So, I think the purpose of introducing this

25 information from the Judicial Conduct Commission

513 1 is to show that not only did Doug Schafer

2 reasonably believe that he was being used by his

3 client who was working with Judge Anderson, who

4 had a history with the client, that he was being

5 used, that Doug was being used to further a crime

6 of fraud; that the Judicial Conduct Commission,

7 in addition to the Supreme Court, agreed that

8 indeed there was an ongoing pattern of dishonesty

9 and deception over the past decade.

10 So, I think it is important. It shows
11 that -- it goes to the reasonableness -- let me
12 put it this way. It really goes to the
13 reasonableness of Mr. Schafer's belief.

14 I think the fact that the CJC found that
15 there was a pattern for the past decade shows
16 that Mr. Schafer's, the indicia that he's gone
17 into in great detail, it's the little things that
18 caused red flags to go off in his mind that there
19 was something that smelled makes the CJC
20 information germane.

21 THE HEARING OFFICER: All right.
22 Mr. Schafer?

23 THE WITNESS: Mr. Mills, quite
24 frankly I'm offended by the defense that's being
25 presented in this that the disciplinary counsel
514 1 has not been aware previously of these things,
2 because I've been trying for four years to insist
3 and prod and pressure them to review these
4 documents and recognize that everything in my
5 case is inseparably linked to the case involving
6 Judge Anderson, and they have, you know, either
7 refused or simply indicated that they have the
8 documents.

9 They have all the records from the CJC
10 proceeding. I've been assured that by
11 Disciplinary Counsel from this office. Ms. Gray
12 is the third Disciplinary Counsel that has been
13 involved in my case. Each one I have stressed
14 that it's all part of one big case, it's all
15 related.

16 You know, I have been attempting to defend
17 myself by asserting the reasonableness of my
18 actions and the public necessity, the literal
19 emergency nature of my actions in light of every
20 signal that I had ever received from multiple
21 sources to the effect that the Bar Office and
22 some other officials like the prosecutor, you
23 know, would not seriously investigate this
24 corrupt judge and his lawyer colleagues.

25 And everything that has happened, including
515 1 in this very room, reinforces my belief that
2 there is no effort being made by the disciplinary
3 authorities of our legal profession to address
4 this kind of matter, and they simply act like
5 they have no interest in being aware of it. It's
6 all in their other files.

7 They pull things out readily when it's
8 useful to them, they pull it out of the box and
9 push it in front of me, but when it's relevant to
10 investigating another lawyer who possibly has
11 more prominence or pedigree than I, they ignore
12 it, and I'm offended by it.

13 I think our profession is not being served
14 by this office. I want to expose it to the
15 public and to the leaders of the profession and
16 the judiciary, and putting all this material in
17 the record furthers doing that.

18 THE HEARING OFFICER: All right.
19 It seems to me that the thrust of this is simply
20 that Mr. Schafer would like to have the entire
21 public disciplinary file -- I'm sorry, the public

22 file for the Commission on Judicial Conduct in
23 the Anderson matter placed of record in this
24 proceeding to make a record and to allow for,
25 recognizing that I am but a weigh station in this
516 1 procedure, make a record so that anyone looking
2 at this can have a full understanding of the
3 factual context.
4 My personal opinion is that the issues in
5 this case relate to reasonable belief at the time
6 of disclosures and that post, after that this is
7 weak evidence at best for my consideration.
8 On the other hand, I understand
9 Mr. Schafer's concerns. My information -- and
10 I'll tell you now I'm not going to rule right now
11 because I want Ms. Gray to be able to review the
12 CJC file and call my attention to any
13 questionable materials that may be in there for
14 other reasons -- but my inclination is simply to
15 make the CJC file for the Anderson matter a part
16 of the record of this proceeding, and I'll review
17 it.
18 But I have to tell you that my sense of the
19 matter is that the post-1996 additions to that
20 file are of weak relevance to the issues that I'm
21 asked to decide in this case.
22 And I would welcome -- I have heard
23 Mr. Newman's argument and I understand there's
24 another view of this, but that's my personal
25 opinion sitting here at the moment.
517 1 On the other hand, I do think the record
2 should be completely clear for anyone who would
3 be reviewing my decision-making in this
4 proceeding.
5 I would welcome some help from counsel at
6 this point because I'm sensitive to allowing
7 Ms. Gray a chance to review these materials. I'm
8 not sure whether there's more we can do today
9 either with or without these materials to
10 continue the hearing, but I don't think I should
11 rule on this until Ms. Gray has had an
12 opportunity to take a look at them.
13 MR. NEWMAN: Let me just, for ease
14 of reference for Ms. Gray's sake, I would
15 preliminarily identify the CJC materials.
16 D-14 would be the press release, and
17 attached to that is the statement of charges.
18 D-15, which you have, Ms. Gray, would be the
19 CJC findings of probable cause. The first
20 page --
21 MS. GRAY: It says Request for
22 Public Records?
23 MR. NEWMAN: That's correct.
24 MS. GRAY: D-15?
25 MR. NEWMAN: That would be D-15.
518 1 D-16 would be the mini-transcript of the
2 proceedings, Days 1 through 5.
3 MS. GRAY: I'm sorry; D-16?
4 MR. NEWMAN: Yes, D-16. Then D-17
5 is the exhibits, using the exhibit for the first
6 page as a --
7 MS. GRAY: Okay.
8 MR. NEWMAN: So, when we come

9 back --

10 MS. GRAY: May I inquire? One of
11 the parts of the complete CJC record would be the
12 CJC findings at the conclusion. Are these in
13 your exhibits?

14 THE WITNESS: I was not proposing
15 to offer them but they are readily available. I
16 probably have a copy in the box. You have them
17 in connection with Judge Anderson's or lawyer
18 Anderson's two-year deal that you cut. It's one
19 of the documents that went to the disciplinary
20 board and the Supreme Court.

21 MS. GRAY: I do have them. If
22 it's going to be admitted into the record I think
23 the CJC findings should also be admitted. So, I
24 could admit it as an Association exhibit or --

519 25 MR. NEWMAN: Why don't we
1 stipulate that that would be D-18, that the
2 findings would be D-18.

3 MS. GRAY: If you want I could
4 give you a copy and so I'll review that as well.

5 MR. NEWMAN: Mr. Mills, as I
6 outlined the road map for today, I had set forth
7 four areas. We have already covered the ethics
8 file, we covered Mr. Schafer's investigation that
9 he did, and we are into the issue of status of
10 Mr. Hamilton, and it's under that topic we want
11 to introduce the CJC materials.

12 Let me just say our intent is to -- as you
13 observed, I think, astutely -- our attempt to
14 make sure that everything is in the record that
15 needs to be in there, and that if someone has the
16 time to read everything they would understand the
17 scope and breadth of this ongoing crime of fraud.

18 Our last segment can be handled tomorrow. I
19 think it would probably be maybe a good time to
20 recess so we can give Ms. Gray an opportunity to
21 listen to this Sloan tape and begin tomorrow with
22 the CJC materials and move on to the last
23 segment, which concerns the --

520 24 THE WITNESS: Excuse me. Could we
1 just confer for just a moment? I think there
2 were a couple more exhibits that I thought
3 were --

4 THE HEARING OFFICER: Let's go off
5 the record for just a moment to allow a
6 conference to occur, but stay right here, please.
7 (Documents referred to were marked as
8 Respondent's Exhibits D-15, D-16, D-17 and D-18.)
9 (Off the record.)

10 THE HEARING OFFICER: We'll go
11 back on the record now. We have had a conference
12 of counsel and Mr. Schafer regarding where we go
13 from here.

14 The Hearing Officer just observed, I was
15 looking through my notes on the five areas and
16 there was something about Mr. Bulmer's letters to
17 the disciplinary board. There was something
18 about Judge Strombom.

19 MR. NEWMAN: Yes.

20 THE HEARING OFFICER: You have
probably already addressed these in your private

21 conference. Those are a couple of areas that you
22 might want to consider.

23 MR. NEWMAN: What we're going to
24 do, so there's an understanding of the game plan,
25 is we would like to offer the Strombom issue now
521 1 and address that. I think that can be addressed
2 very expeditiously, and then we're going to
3 reserve the Bulmer materials for tomorrow.

4 THE HEARING OFFICER: All right.

5 MR. NEWMAN: I have already
6 provided to Ms. Gray a copy of a Reply to Motion
7 to Quash Subpoena for Hearing of Judge Strombom,
8 which Mr. Schafer had prepared and had provided
9 to Ms. Gray.

10 And our purpose is to -- I would like Mr.
11 Schafer to testify concerning the content of this
12 declaration, which he had already provided to the
13 Bar, and I've marked this as D-19.

14 (Reply to Motion to Quash Subpoena
15 marked as Respondent's Exhibit No. D-19.)

16 MR. NEWMAN: This, again, would be
17 the Reply to Motion to Quash and it's a
18 declaration, an affidavit from Mr. Schafer.

19 MS. GRAY: Mr. Mills, it's our
20 position that we would have no objection to
21 Mr. Schafer testifying about everything about his
22 interaction with Ms. Strombom that is contained
23 in his declaration. We have no objection in the
24 alternative to admitting the declaration, but we
25 do not think it's appropriate to do both. I know
522 1 the Hearing Officer has reviewed the declaration
2 last week.

3 THE HEARING OFFICER: I guess I
4 think it's kind of form over substance. I
5 understand it's your concern, but I think I asked
6 the question earlier whether Mr. Schafer would
7 adopt the contents of the previous declaration as
8 his testimony if he were asked to testify about
9 that, and to me that's equivalent of his
10 testifying to the same subject matter. So, I
11 think it would be appropriate to admit the
12 exhibit, it's just more efficient.

13 MS. GRAY: I agree with you there,
14 but then my argument is that having him testify
15 again about it is repetitious.

16 THE WITNESS: May I observe or
17 make a comment?

18 THE HEARING OFFICER: Sure, but
19 I'm going to let you testify. If you're arguing
20 about that you can certainly testify to highlight
21 parts of your declaration.

22 THE WITNESS: My brief comment is
23 simply that this is a public proceeding and the
24 public is watching closely. The cameras are
25 rolling. There are people in the audience.

523 1 I think while some information can be
2 submitted simply in documentation form that goes
3 in the record, I think we owe it to the public to
4 have a public proceeding that the public can
5 observe and listen to.

6 MR. NEWMAN: With Ms. Gray's
7 objection noted, I'm going to move for admission

8 of what's going to be marked as D-19, and I'm
9 providing a copy to Mr. Schafer, and that's the
10 original. You have the original in the file but
11 there's one for the record and a copy.

12 THE HEARING OFFICER: All right,
13 D-19 is admitted.

14 (Respondent's Exhibit D-19 was
15 received into evidence.)

16 Q. (By Mr. Newman) Mr. Schafer, I'm showing you
17 what's been marked as D-19. Can you identify
18 this exhibit?

19 A. Yes, I can. It's a document that I prepared
20 about -- well, actually on July 13, just five
21 days ago, that expresses my objection to what I
22 perceived to have been a motion to quash that was
23 in the form of a letter that Pierce County
24 Superior Court Judge Karen Strombom had sent to
25 the Hearing Officer in response to the subpoena
524 1 that I had served and she had graciously
2 accepted, and that she had indicated that she
3 would be out of town.

4 And my reply to the motion to quash was
5 expressing what I hoped to include in the record
6 of this proceeding as reasons why I wanted her
7 testimony, and I prepared this, signed it as a
8 declaration under penalty of perjury asserting to
9 its truthfulness.

10 Her letter to Mr. Mills of July 5 expressed
11 some puzzlement as to why she was being
12 subpoenaed, and her letter said: "I do not know
13 what information I have that is relative to the
14 above matter. As Mr. Schafer has never talked to
15 me about the case."

16 My reply indicates my belief that her
17 statement was inaccurate and that she must have
18 forgotten our conversation of four-and-a-half
19 years ago, which occurred on the morning of
20 Friday, February 2nd, though it was quite
21 memorable to me.

22 I recited in this document that for weeks
23 prior to that morning of February 2nd --
24 actually, it's got a mistake, it says the morning
25 of February 2nd, 2000, it should have been
525 1 February 2nd, 1996, which was the morning that I
2 served the motion requesting that Judge Grant
3 Anderson disqualify himself from hearing my
4 client's cases.

5 And I say in this document that for weeks
6 prior to that I had been investigating the
7 apparent fraudulent exploitation of the Hoffman
8 Estate by his former lawyer, Grant Anderson, and
9 that I had arrived at the conclusion that he
10 would likely be removed as a judge when the
11 authorities observed what had transpired.

12 I say that in the morning of February 1st I
13 had spoken with Diane Anderson, the estranged
14 wife of Grant Anderson, her lawyer, Camden Hall,
15 of the Seattle firm of Foster, Pepper and
16 Sheffelman, and because the prior evening I had
17 left a note on her door and Mr. Hall had called
18 me and advised me, as I had previously testified
19 in this proceeding what he advised me; namely,

20 look into the Cadillac.

21 I recite in this that the morning of
22 February, Friday, February 2nd, 1996, as soon as
23 the courtroom door was unlocked, Judge Anderson's
24 courtroom, by his assistant, Sherry Fontana -- a
25 lawyer who had been an associate in his firm, by
526 1 the way -- at about 9 a.m. I delivered to her the
2 documents that are the exhibits that the
3 commission has filed in this case.

4 MS. GRAY: I would like to object
5 unless they are identified more specifically what
6 documents he delivered.

7 THE WITNESS: Well, I don't have
8 them in front of me, but it was the motion for
9 disqualification, I believe, if you have the
10 exhibit list. There were two of them relating to
11 the Barovic cases. I think you have entered them
12 both as exhibits, although you might have chosen
13 one or the other, I don't recall. They were
14 substantially the same.

15 MS. GRAY: Okay, that answers my
16 question.

17 THE WITNESS: I had delivered that
18 to Ms. Fontana and urged her to bring it to the
19 attention of Judge Anderson. The hearing in the
20 Barovic cases was scheduled for, I believe it was
21 the 9:30 docket.

22 Immediately after giving it to her I went
23 upstairs directly to the chambers of that
24 calendar year's presiding judge, who was Judge
25 Karen L. Strombom, and I was permitted to speak
527 1 with her in chambers.

2 I gave her a copy of those statements. I
3 informed her of what I had been told the previous
4 day by Mr. Camden Hall about looking into the
5 acquisition of the Cadillac.

6 I informed her that I had been looking into
7 the handling of the Hoffman Estate and it was
8 apparent and quite obvious to me that Judge
9 Anderson was unfit to be a judge, and I asked her
10 assistance in helping me to get the license plate
11 number for Judge Anderson's Cadillac because I
12 was confident that that Cadillac license number
13 would be in the records of the court
14 administration office because the judges, I
15 assumed, had assigned parking spots.

16 So, I asked her. Knowing that the clerk in
17 the court administration office would not likely
18 give it to me without the okay from the presiding
19 judge, I went straight to the presiding judge,
20 and again, gave her that background. She
21 responded that she would consider, as I recall,
22 consider or get back to me on that.

23 In the course of that conversation that I
24 had with Judge Strombom that lasted, I would
25 estimate about 15 minutes, I expressed to her my
528 1 great, very strong feelings that we as lawyers
2 and judges have a professional responsibility to
3 self-police our profession and not look the other
4 way or decline to cooperate when there appears to
5 be evidence of misconduct of a fellow
6 professional.

7 I was quite adamant with her about that in
8 expressing my views, and then I left her chambers
9 and returned to Judge Anderson's courtroom, who,
10 to his credit, did recuse himself immediately.

11 Later that same day the associate lawyer who
12 was then working -- employed by me received a
13 phone call at 5:45 that late afternoon from Judge
14 Karen Strombom.

15 His message slip is taped to the original of
16 this document, this exhibit on the last page. I
17 asked him -- because I still know him, he is also
18 a subtenant of a third firm, as am I -- and I
19 asked him to simply prepare a declaration, which
20 he was very reluctant to do, that described this
21 message slip and decipher it, because his
22 handwriting is not the epitome of clarity.

23 I prepared the declaration, as I was able to
24 read his handwriting, he looked at it, he edited
25 it slightly, and when he was quite comfortable
529 1 with it he signed it James H. MaGee.

2 And the message slip, according to his
3 declaration, said: "I wrote this message slip to
4 report to Mr. Schafer that I received on one of
5 our law firm phone lines a call from Pierce
6 County Superior Court Judge Karen Strombom at
7 approximately 5:45 on February 2nd, 1996.

8 "The message that I wrote was intended to
9 read, 'No authorization by Anderson to release
10 license plate number. Please call Monday if have
11 any questions.'"

12 I was shocked to see the response being that
13 she, at least it appeared, reasonably, I think,
14 appeared to me that in response to my request
15 that she assist me in getting Judge Anderson's
16 license plate it appeared that she went directly
17 to Judge Anderson and informed him of my efforts,
18 asked if he was willing to let me have his
19 license plate number, to which he apparently
20 declined.

21 And I was shocked because this to me
22 represented strong evidence that leaders of my
23 profession who would be in a position to assist
24 in the investigation of what appeared to be an
25 obviously corrupt judge were unwilling to
530 1 cooperate or assist in such an investigation.

2 Therefore, if anything was going to come of
3 this concern of mine it would require a great
4 deal of effort on my part and full and complete
5 disclosure to authorities of every bit of
6 information that I possessed, including the
7 comment that I am now being accused of being
8 unethical about.

9 Q. (By Mr. Newman) Do you have any other comment
10 regarding that exhibit that you would like to
11 make at this time, Doug?

12 A. Only an expression of gratitude to Mr. MaGee for
13 being at least willing to sign his name to vouch
14 for the authenticity of the message slip that is
15 a courageous act on his part, knowing how
16 retaliatory judges have been to me.

17 I hope they don't retaliate towards him or
18 any other lawyer who assists in cleaning up

19 problems in our profession.

20 MR. NEWMAN: I would second that.

21 Thank you.

22 Mr. Mills, I think it may be a good time to
23 break and I think at this time talk with Ms. Gray
24 about what remaining exhibits we hope to talk
25 about tomorrow so there won't be any impediment
531 1 in getting on with the hearing.

2 THE HEARING OFFICER: Ms. Gray,
3 you wanted to address a procedural matter?

4 MS. GRAY: I do wish to address a
5 procedural matter.

6 Mr. Schafer has testified today about his
7 conversation with Professor John Strait, as was
8 brought to your attention last week.

9 During our telephone conference and by
10 submission of the Bar's papers we made a motion
11 for the Hearing Officer to hear telephone
12 testimony of Mr. Strait. Mr. Schafer objected.

13 It was clear from our discussion on the
14 record last week that Mr. Strait's testimony,
15 both sides expected Mr. Strait's testimony to
16 differ somewhat from Mr. Schafer's. So, it
17 appears to be clearly relevant to these
18 proceedings.

19 I have been in touch with Mr. Strait,
20 including indirectly today -- actually, I should
21 say directly today by telephone. He is out of
22 state on vacation through August, I believe I
23 said 9th last week. He is in Tahoe. He is the
24 only adult with a number of teenagers in the
25 cabin.

532 1 We think that it is appropriate to take his
2 testimony by telephone. He has indicated with
3 great hesitation that if push comes to shove he
4 might be able to fly here, testify, and fly back
5 so that he's not gone overnight, which will, of
6 course, cause some expense for the Bar, but
7 that's not the issue.

8 So, we would like, because he's on vacation
9 we keep trying to have him available by telephone
10 and then not available by telephone.

11 I think it may be appropriate to resolve the
12 telephone issue now and, you know, since we're
13 still on our case and since we have been taking
14 witnesses out of order, perhaps be able to set up
15 a time such as first thing tomorrow morning if
16 we're able to take his testimony by telephone.
17 If not, I'm going to have to work out with him
18 when he might be able to come otherwise.

19 THE HEARING OFFICER: All right.
20 I would like to know in general, in general the
21 subject matter Professor Strait would be offered,
22 would be testifying about and approximately how
23 long it would take for his testimony, his direct
24 testimony.

25 MS. GRAY: His direct testimony I
533 1 assume would take no more than about 15 minutes.
2 I think most of our witnesses -- well, Mr. Sloan
3 was certainly a quick witness.

4 Mr. Strait would testify in some regards in
5 agreement with Mr. Schafer's testimony; that is,

6 that he would agree that he did advise
7 Mr. Schafer that with regard to civil liability,
8 should Mr. Hamilton sue him, that if he reported
9 it to the Bar he believes that RLD 4.11 would
10 protect Mr. Schafer from any civil liability for
11 reporting information to the Bar.

12 Mr. Schafer also testified earlier today
13 about what Mr. Strait told him about the gray
14 areas. Mr. Strait's testimony would be different
15 than Mr. Schafer's testimony about whether or not
16 he advised Mr. Schafer that his revealing what
17 Mr. Hamilton told him would violate RPC 1.6.

18 Mr. Strait would testify in general that
19 based on the information Mr. Schafer gave him he
20 told Mr. Schafer that he could not under RPC 1.6
21 reveal that.

22 He would go on to testify that he did
23 discuss with Mr. Schafer that there are some gray
24 areas of the law and that if Mr. Schafer could
25 find out certain information about Mr. Hamilton's
534 1 conduct that he had made; for example, a false
2 sworn statement related to what Mr. Schafer
3 believed to be a fraud, then there might, might
4 be an argument that there was an ongoing crime of
5 perjury.

6 Mr. Strait will testify that he told
7 Mr. Schafer that he did not believe under
8 Washington law that fraud was an ongoing crime.

9 THE HEARING OFFICER: I think
10 that's sufficient for my purposes.

11 THE WITNESS: Mr. Mills, could I
12 make a comment?

13 THE HEARING OFFICER: Yes, just a
14 moment.

15 Let me just observe that although Professor
16 Strait would be, I think, qualified as an expert
17 in the application of the Rules of Professional
18 Conduct, for the purpose that he is testifying
19 it's really in regard to his interactions with
20 Mr. Schafer which indicates he's more or less a
21 fact witness in this case; is that correct?

22 MS. GRAY: That is absolutely
23 correct. We are not seeking to offer him as an
24 expert, we're seeking to offer him as to what he
25 told Doug Schafer on a particular day.

535 1 THE HEARING OFFICER: That seems
2 very relevant to me.

3 Mr. Schafer, would you like to respond?

4 THE WITNESS: I would like to make
5 a few comments, because I think it will be
6 relevant to a decision you might make as to
7 whether arrangements should be made, and if so,
8 what types of arrangements should be made for his
9 testimony.

10 It was four-and-a-half years ago that I, as
11 I testified, I had a conversation with him.

12 You know, after the Bar filed the formal
13 charges or recommendation for formal charges
14 against me in February I attempted to communicate
15 with Mr. Strait at the legislative hearing on
16 March 19th, and I'm under oath, March 19th of
17 1999.

18 He attended and expressed to me in the
19 legislative hearing room that because he was
20 actively involved as head of the law school's
21 clinic that was assisting the Bar office in their
22 disciplinary matters that he would be unable to
23 provide me any assistance in connection with my
24 defense of these Bar charges.

536 25 You know, he later has told me that Barrie
1 Althoff, Chief Disciplinary Counsel of this
2 department, made it clear to him sometime time
3 ago that if he represents lawyers resisting Bar
4 office disciplinary proceedings that he would no
5 longer be eligible to be special district
6 counsel, which is essential for him to head that
7 law school clinic that gets funding by the
8 American Bar Association.

9 There are other things that if he testifies
10 I will feel the need to impeach his testimony
11 that, quite frankly, I don't relish doing. I
12 would rather be on cordial terms with someone,
13 with Mr. Strait, but he will be, I assume, from
14 what she has said, testifying substantially as
15 she has indicated, and I will be then in a
16 position where I feel the need to demonstrate why
17 I believe, as I truly believe, his recollection
18 has altered over the course of four-and-a-half
19 years in large part due to his closeness with the
20 Bar Association office and personnel and possibly
21 other factors.

22 And frankly, I don't relish having to be
23 that confrontational with him and I submit that
24 there is enough on the record just from what has
25 been said so far that what you will hear
537 1 ultimately is there was a private conversation
2 between two lawyers, both of whom had been in
3 practice something over 20 years, who are
4 recalling a conversation from four-and-a-half
5 years earlier somewhat differently.

6 And I submit that it doesn't do, I don't
7 think -- I'm fully prepared to do it because I on
8 principle will stand my ground against anybody,
9 but I don't look forward to it.

10 THE HEARING OFFICER: Well, the
11 Bar Association can call whatever witnesses it
12 wishes. I think the issue before me right now is
13 whether to take Professor Strait's testimony by
14 telephone or in person.

15 THE WITNESS: Could I make one
16 comment to that?

17 THE HEARING OFFICER: Yes. I
18 would like to hear from Mr. Newman as well about
19 that telephone testimony versus in person
20 testimony.

21 And the motion was certainly timely made.
22 This is not a surprise to anyone that Professor
23 Strait was going to be gone at this time. So, I
24 would like to focus in on whether -- argument
25 about whether we should take his testimony by
538 1 telephone or should we require him to be here.

2 MR. NEWMAN: Well, let me respond
3 briefly. As Mr. Schafer indicated, there is
4 going to be a substantial amount of impeachment

5 evidence used, including a voice mail message
6 left by Professor Strait on Mr. Schafer's
7 machine, which is still our main testimony.

8 Our main concern is if this is done
9 telephonically how we intended to access his
10 voice mail and play it so there's no dispute that
11 that's where it came from.

12 I do believe Mr. Schafer as the defendant in
13 this matter has a right to confront witnesses,
14 and you as the Hearing Officer have the right to
15 subpoena the witness when evidence that
16 contradicts his testimony is presented.

17 I think the demeanor, the body language of a
18 witness is obviously an important matter for
19 anyone that's doing trial work and, personally,
20 we would like to accommodate Mr. Strait.

21 I think that the Bar Association intends to
22 use him. Although he's not going to directly
23 contradict Mr. Schafer's recollection, I think
24 Mr. Schafer has a right to personally have him
25 here and have you observe his demeanor in
539 1 response to some impeachment evidence we have.

2 THE WITNESS: And as a father of
3 teenagers myself, I would be quite amenable to a
4 suspension of the hearing and recontinuation for
5 a morning or an afternoon after August 9th when
6 he returns, rather than run the prospect of his
7 teenagers being left alone at Tahoe, Nevada,
8 possibly overnight if the flights get missed. I
9 certainly would not want to do that.

10 I don't want to disrupt his parental
11 responsibilities, but I do want the opportunity
12 to look him in the eye and to address my
13 questions directly to him.

14 And I don't think it would be fair to force
15 me to waive that or to deny me that right. The
16 rules I think expressly say that if I'm not
17 mistaken, RLD -- I don't know what the number
18 is -- but it expressly says that a respondent
19 lawyer in disciplinary proceedings has the
20 opportunity to confront witnesses against him.

21 THE HEARING OFFICER: Ms. Gray,
22 one final round and then I'll give it my best
23 shot. Go ahead.

24 MS. GRAY: With regard to the
25 using of the tape, the Bar will not contest that
540 1 it comes off of Mr. Schafer's voice mail. The
2 technology easily permits the making of a
3 recording of his voice mail that can be played
4 over the speakerphone to confront Mr. Strait
5 during this cross-examination if that is by
6 telephone.

7 There is no right to face-to-face
8 cross-examination for Mr. Schafer in these
9 proceedings. There is one in criminal
10 proceedings, but there is not one here.

11 The Constitution of Washington does not
12 require it. The Rules For Lawyer Discipline do
13 not require in-person testimony.

14 The civil rules and the rules of evidence
15 confer discretion on the Hearing Officer on the
16 manner of taking witness testimony. It is clear

17 that the Rules For Lawyer Discipline do give
18 Mr. Schafer a right to cross-examine, and that
19 will not be impeded by the taking of telephone
20 testimony.

21 Mr. Schafer will have the opportunity to ask
22 him all the necessary questions, to play the tape
23 that he wishes to play for Mr. Strait, and to
24 have Mr. Strait's testimony considered.

541 25 I think it's appropriate under all the
1 circumstances, including the taking of telephone
2 testimony from other witnesses in this
3 proceeding, for the Hearing Officer to consider
4 the witness' convenience in this regard.

5 THE WITNESS: And the last comment
6 I would like to make is I think that I'm entitled
7 to have the opportunity to, once he has given his
8 testimony, present to him documentation and ask
9 him questions about that.

10 And if he is remote I don't think there is a
11 practical opportunity to, after his testimony has
12 been given, to then present him with some
13 documentation, you know, without affording him
14 great opportunity to prepare and think through
15 responses.

16 THE HEARING OFFICER: What
17 documents are you referring to?

18 THE WITNESS: I'm referring to
19 some E-mail, I'm referring to some correspondence
20 that his wife, a lawyer prominent in guardianship
21 circles, has made -- well, just by saying it I've
22 essentially put the cat out of the bag to some
23 extent, but there is documentation that I would
24 like to present. Again, I don't look forward to
25 this, but if I have to I will.

542 1 MR. NEWMAN: If I have the last
2 word, here --

3 THE HEARING OFFICER: I think I
4 get the last word, but go ahead.

5 MR. NEWMAN: Well, the second to
6 last word. I think, as illustrated by Ms. Ott's
7 testimony, and just the difficulty in asking her
8 to identify a document from her lawyers and Ms.
9 Gray's objection that she's not here, therefore,
10 it's not going to come in, that kind of thing.

11 Mr. Schafer is identifying some documents
12 including e-mails that he sent or were received
13 by Mr. Strait that we will want to show him and
14 ask him directly: Did you get this, is this what
15 was said, is this what you said? This kind of
16 thing.

17 THE HEARING OFFICER: Let me
18 ruminate a little bit. First of all, I have been
19 a Hearing Officer in other proceedings and I have
20 addressed this issue on right to confrontation
21 and I am convinced that there is no right to
22 confront the witnesses in person under the RLD's.
23 Maybe there should be, but there isn't.

543 24 It is discretionary with the Hearing Officer
25 to allow telephone testimony. The types of
1 factors that are typically weighed by the Hearing
2 Officer includes convenience, the importance of
3 the testimony, preserving your right to

4 cross-examine the witness, kind of the usual
5 things you would expect in terms of the fairness
6 of the hearing.

7 The only thing that really gives me pause as
8 far as taking telephone testimony from Professor
9 Strait is the ability of Mr. Schafer and counsel
10 to cross-examine him with regard to documents.

11 The tape doesn't trouble me at all, because
12 I think a tape can easily be played over the
13 telephone, and I understand by virtue of the fact
14 that these are impeaching documents it's not
15 really something that you want to send down by
16 fax or otherwise to Professor Strait to have him
17 review in advance of his testimony.

18 I would ask counsel to communicate about
19 this and see if we can make arrangements to take
20 Professor Strait's testimony by telephone and
21 also have arrangements to provide him with
22 documents that can be reviewed either for his
23 direct or cross-examination, so both those rights
24 are preserved. I would prefer to do it by
25 telephone for his convenience.

544 1 Frankly, Mr. Schafer even observed that the
2 subject matter was pretty well confined, here.
3 It's not -- the offer of proof was fairly
4 detailed and I don't think, based on what I
5 understand the testimony is likely to be, that
6 it's really necessary to cause Professor Strait
7 to interrupt his vacation and come back here
8 personally and testify for 15 minutes or a
9 half-hour about these matters, even recognizing
10 the importance of that.

11 Also, I would ask counsel to see if we could
12 work out an arrangement to take Professor
13 Strait's testimony by telephone with opportunity
14 to provide documents to him. If he's in a cabin
15 somewhere and not near a fax machine, it may not
16 be possible.

17 Please advise me of what the result of your
18 conference is and I'll make a ruling tomorrow.
19 My inclination at this point is not to require
20 him to appear personally.

21 THE WITNESS: May I as a corollary
22 to that request that if I am able to persuade
23 cooperation that I be permitted to have
24 telephonic testimony from people including the
25 National Law Journal reporter who spoke at length
545 1 with Professor Strait and possibly other news
2 reporters who also, I believe, spoke with him, if
3 they are willing to express to them what they
4 expressed to me about he expressed to them?

5 THE HEARING OFFICER: I think you
6 should work with counsel to understand what
7 witnesses you are proposing and how they would
8 testify, and I can make a ruling on that.

9 Are we going to be in this room tomorrow,
10 Ms. Gray?

11 MS. GRAY: We are going to be in
12 the room that you are sitting in, but not the
13 room that the audience is sitting in. We are
14 going to be in a smaller, sort of half-sized
15 room. The TVW people are aware that they are

16 going to need to rearrange their cameras set up.
17 I noticed today that there were not all that
18 many members of the public attending the hearing,
19 but for tomorrow and the next day we are in
20 smaller quarters and then beginning Friday and
21 Monday we have the bigger quarters again.

22 THE HEARING OFFICER: All right.
23 Is there anything further we need to address
24 right now? I know there are lots of pending
25 matters that I am asking counsel to communicate
546 1 about in the off-hours. If necessary I will make
2 rulings. I am not disinclined to make rulings,
3 but I am hoping we can work out the logistics of
4 this.

5 I'm also a little bit interested in the
6 timing for the hearing and how much time -- I
7 realize it's difficult, but how much time counsel
8 believes is going to be necessary to complete the
9 hearing and whether we're on schedule in that
10 regard.

11 MR. NEWMAN: Well, let me, again,
12 give you a road map. As you observed, I laid out
13 four or five areas. We're down to the last area
14 and this regards Judge Anderson's attorney,
15 Mr. Bulmer and his involvement, and it will
16 become clear from the evidence why we want to
17 mention that.

18 And I am prepared to, again, give to Ms.
19 Gray documentation so we don't have any delays
20 tomorrow on what I call the Bulmer documents.

21 Timewise, I believe we could be done -- I
22 could be done with Mr. Schafer tomorrow morning.
23 We have no other -- at this time, without
24 consulting with Doug, our intention, leaving
25 aside rebuttal witnesses on Mr. Strait, we have
547 1 no other witnesses.

2 THE HEARING OFFICER: How about
3 Ms. Shankland, were you going to call
4 Ms. Shankland?

5 THE WITNESS: Yeah.

6 MR. NEWMAN: Sorry, there is
7 Ms. Shankland if she is available, but that won't
8 be very long. So, outside of Shankland and
9 finishing up with Mr. Schafer, I believe that's
10 about it and we should be done hopefully tomorrow
11 morning.

12 THE HEARING OFFICER: How about
13 the rebuttal? I know that's a little difficult.

14 MS. GRAY: It's a little
15 difficult. You know, obviously, I'm going to
16 have some cross-examination for Mr. Schafer once
17 his, what I consider to be direct, is over. I
18 don't anticipate that to be terribly long,
19 certainly much, much shorter than his examination
20 by Mr. Newman.

21 I expect to try and call Mr. Strait tomorrow
22 and perhaps one other witness tomorrow. I'm
23 trying to work on that.

24 I would be surprised if we had very many
25 rebuttal witnesses, so I think it's unlikely that
548 1 we will finish all the testimony in this case
2 tomorrow, but it's possible.

3 And I think based on what I heard from
4 Mr. Newman that it's reasonably likely that we
5 would finish testimony on Thursday.

6 THE HEARING OFFICER: Can I make
7 one comment? Well, maybe we could go off the
8 record for this discussion of our schedule.
9 We'll go off the record.

10 (Off the record.)

11 THE HEARING OFFICER: We're back
12 on the record for Mr. Schafer's comment.

13 THE WITNESS: I just want to make
14 the comment or request that to the extent that,
15 you know, Mr. Strait or conceivably Professor
16 Boerner are asked to testify, I would ask to the
17 extent the Hearing Officer has the power to
18 direct them to do this, to provide any and all
19 records that related to my visit to their
20 offices, as I had testified to the papers that I
21 delivered to them and any subsequent papers,
22 because I have not been able to get cooperation,
23 at least to the extent of confirming that they
24 have those documents and whatnot to them, because
25 I think that is very relevant to what they may be
549 1 testifying to.

2 THE HEARING OFFICER: That would
3 be a little irregular to do during the course of
4 the hearing, but if you want to make your request
5 if those witnesses are called, I'll consider it.

6 THE WITNESS: How do I make that?

7 THE HEARING OFFICER: Normally you
8 would subpoena those documents if you thought
9 that those people were going to be witnesses and
10 have them available, or some other procedure
11 other than having the Hearing Officer during the
12 course of the hearing try to direct those things
13 be produced.

14 THE WITNESS: Well, I'm just
15 saying it's hard to serve a subpoena, you know,
16 on someone that's out of state. If the court, I
17 guess I'll call it the court is having
18 jurisdiction over them to accommodate them I
19 would like, at least, that they provide the
20 documentation that was given to them.

21 Our hearing Friday morning did not indicate
22 that he was going to be testifying, and as I
23 said, I'm quite agreeable to deferral and
24 resumption in August after he returns.

25 THE HEARING OFFICER: All right.

550 1 The Hearing Officer would like to conclude the
2 hearing. I'm not trying to rush to justice but I
3 would like to conclude the hearing within the
4 time that we have set aside, partly because the
5 hearing has been postponed a couple times, but I
6 have set aside this time to consider the matter.

7 I would like to be able to limit it, if
8 possible. If that's not possible, if there's a
9 better way we'll certainly consider it, and I
10 think the court reporter is about to run out of
11 paper so we'll go off the record at this time.

12 - - - - -

13 (Whereupon, the proceedings adjourned
14 for the day at 5:05 o'clock p.m.)

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557 1 Seattle, Washington, Wednesday, August 19, 2000
2 9:00 a.m.
3 -- oo 0 oo --
4 THE HEARING OFFICER: All right.
5 Let's go back on the record.
6 Good morning. This is a continuation of the
7 disciplinary hearing in re: Douglas A. Schafer.
8 This is the third day of the hearing, and the
9 Hearing Officer actually has two preliminary
10 matters and perhaps counsel has some preliminary
11 matters before we continue with the hearing.
12 First, there was reference yesterday to the
13 Hearing Officer producing an order arising out of
14 the telephone conference on July 14th on the
15 motion by the Commission on Judicial Conduct to
16 quash a subpoena for hearing issued to Sally
17 Carter-DuBois.
18 The Hearing Officer has with him this
19 morning the original of the order. Incidentally,
20 the telephone conference was reported by a court
21 reporter. The Hearing Officer did not have
22 access to a transcript, but the Hearing Officer
23 prepared this order based on the Hearing
24 Officer's notes and recollection of the subject
25 matter of the telephone conference.
558 1 So, the order is being filed in the public

2 file and I have copies for counsel. Copies will
3 also be mailed by my office to your office just
4 so the record is complete.

5 MS. GRAY: Thank you. May I ask
6 for one clarification?

7 THE HEARING OFFICER: Yes.

8 MS. GRAY: Your order makes it
9 clear that Mr. Schafer's testimony about what
10 Ms. Carter-DuBois said to him is to be considered
11 solely for the purpose of explaining his state of
12 mind and not to prove the truth of the statements
13 made by Ms. Carter-DuBois.

14 Since in more recent times a declaration has
15 also been submitted, does that ruling about the
16 admissibility of what Ms. Carter-DuBois said to
17 him apply also to the declaration that's been
18 admitted into evidence?

19 THE HEARING OFFICER: Yes, it
20 does.

21 MS. GRAY: Thank you.

22 THE HEARING OFFICER: Next, on
23 another matter last evening when I accessed my
24 voice mail messages at my office there was a
25 voice mail message received on my telephone
559 1 yesterday afternoon during the hearing when I was
2 not in my office, of course, from someone named
3 Denise Ost, think it's O-S-T, Justice Charles
4 Johnson's administrative assistant.

5 There was a brief message. She indicated
6 that she was following up on Justice Johnson's
7 letter to the Hearing Officer in response to the
8 subpoena for hearing that had been served on
9 Justice Johnson, and the sole purpose of the
10 call, she said, was she wanted to confirm that
11 Justice Johnson's testimony is not needed.

12 I have not returned the call. I have a
13 telephone number for Ms. Ost, and I have not --
14 actually, what I hoped to do is simply advise
15 counsel that I received this call and, hopefully,
16 we can resolve the matter during the hearing and
17 counsel can return the call to Ms. Ost and tell
18 her what the resolution was.

19 So, may I hear from counsel on this one?

20 MR. NEWMAN: Your Honor,
21 obviously, we do not intend to call Justice
22 Johnson, given your leeway allowing
23 Mr. Schafer to testify concerning his
24 communications with Justice Johnson.

25 THE HEARING OFFICER: Yes, and I
560 1 will note for the record that there is an exhibit
2 that has been admitted into evidence, which just
3 for the record, if I can find it, it's --

4 MS. GRAY: D-2, I believe.

5 THE HEARING OFFICER: D-2 has been
6 admitted and will be considered by the Hearing
7 Officer. It's Justice Johnson's letter to
8 Mr. Schafer, dated July 7, 2000, and certain
9 attachments, including a declaration of
10 Mr. Schafer.

11 MR. NEWMAN: Mr. Mullins has
12 indicated he could call Ms. Ost either at the
13 break or immediately.

14 THE HEARING OFFICER: If you like,
15 I can hand you the message and the number is on
16 the message.

17 MR. NEWMAN: Great.

18 THE HEARING OFFICER: Thank you
19 very much.

20 All right, are there any other preliminary
21 matters before we begin today?

22 MR. NEWMAN: One other preliminary
23 matter, perhaps more than one.

24 Regarding Professor Strait, as indicated off
25 the record the Bar Association intends to call
561 1 him and he will be available by phone.

2 Mr. Schafer has provided to the Bar the relevant
3 documents, we intend to query Mr. Professor
4 Strait about.

5 The only thing we have not provided yet,
6 which we intend to use, perhaps for impeachment
7 purposes, is a voice mail message left by
8 Professor Strait on Mr. Schafer's telephone.

9 I did want to, for the record, have
10 clarified, Mr. Mills, that it's my understanding
11 you may have served with Professor Strait on the
12 Rules of Professional Conduct Committee of this
13 Bar Association at some time.

14 MS. GRAY: I'm sorry, I could not
15 understand what you just said.

16 MR. NEWMAN: I just want to make
17 it clear if you have worked with Professor Strait
18 on the Rules of Professional Conduct Committee?

19 THE HEARING OFFICER: I have been
20 on the Rules of Professional Conduct Committee
21 with Professor Strait. Professor Strait is kind
22 of a perennial member of the Rules of
23 Professional Conduct Committee, who attends
24 virtually every meeting.

25 I was on the committee for a term, and if
562 1 you press me for the dates perhaps with a little
2 difficulty I could reconstruct it. I was a
3 funded member of the committee for, I think, two
4 or three years in the early '90s, early to mid
5 '90s -- I simply don't recall precisely the
6 dates -- and then I continued to attend the
7 meetings for another roughly year thereafter as
8 an unfunded member, and then I basically dropped
9 off the committee.

10 The committee consists of -- well, the
11 committee meetings when I was attending consisted
12 of maybe 30 to 40 people, it was a large
13 committee, and Professor Strait was a regular
14 attendee.

15 So, yes, I know who Professor Strait is. I
16 have talked with Professor Strait before.

17 MR. NEWMAN: The only other
18 question I have, Mr. Mills, just for the record,
19 if I may ask if you or your firm have any other
20 business relationships with Professor Strait?

21 THE HEARING OFFICER: Our law firm
22 has actually defended lawyers at disciplinary
23 proceedings before, and in connection with that
24 I'm sure some one or two lawyers in my firm who
25 do that type of work have consulted with

563 1 Professor Strait, and if you like I can inquire
2 within my firm and put that on the record who has
3 talked with him.

4 And I don't know if we can identify the
5 matters, but we can certainly identify who has
6 consulted with him in the past, so there is a --
7 that has occurred.

8 MR. NEWMAN: I just wanted that on
9 the record. The only other points we left off
10 yesterday on concerned some outstanding exhibits
11 from the CJC hearing.

12 And I understand based on conversations with
13 Ms. Gray this morning that she has -- you have
14 already allowed those in. She has already made
15 whatever objections or concerns she has. So, I
16 did want to perhaps expedite things and provide
17 you copies of those and I'll have Mr. Schafer
18 identify those.

19 But at some point in time I want to make
20 sure we all have the same set, the same songbook
21 we're working from.

22 THE HEARING OFFICER: Just for
23 clarity, I don't think I've actually admitted
24 those exhibits yet. I did indicate a willingness
25 to do so, pending -- I mean, I was inclined to do
564 1 so but I wanted Ms. Gray to have an opportunity
2 to make any independent objections she had and
3 maybe I should hear from Ms. Gray about that.

4 MS. GRAY: I think that's correct.
5 I have no additional objections other than those
6 previously stated to D-14, D-15, D-16, D-17,
7 D-18.

8 THE HEARING OFFICER: All right.
9 Exhibits D-14 through D-18 will be admitted and
10 the witness may testify about those.

11 (Respondent's Exhibits D-14
12 through D-18 were received into evidence.)

13 MR. NEWMAN: All right. The only
14 other matter I have is when Ms. Ott testified,
15 you recall she is the CEO of the hospital, she
16 did reference the fact there had been a lawsuit
17 by the hospital and it was settled out. I have a
18 copy of the complaint and would ask that that be
19 admitted because it is a public record.

20 (Pacific County Hospital Complaint
21 & Settlement marked as Respondent's Exhibit D-20.)

22 MR. NEWMAN: I believe, Mr. Mills,
23 you have queried as to who was involved and
24 because she didn't have the documents -- she did
25 indicate a bank and Mr. Hamilton -- and perhaps
565 1 just to make the record clear, the bank and
2 Mr. Hamilton were the subject of that lawsuit and
3 so I would ask that that be admitted as D-20.
4 I'm providing a copy.

5 THE HEARING OFFICER: D-19, just
6 for the record, is the Reply to Motion to Quash
7 related to Karen Strombom; is that correct?

8 MS. GRAY: Yes, it is.

9 THE HEARING OFFICER: Is there any
10 objection to D-20?

11 MS. GRAY: I have not seen what
12 he's proposing to offer as D-20 yet. I have seen

13 the complaint, but not --
14 THE HEARING OFFICER: Ms. Gray has
15 indicated she would like to see a copy of what's
16 been marked as Exhibit D-20.
17 MS. GRAY: I have a copy in other
18 places, I just -- this is more than the
19 complaint -- oh, wait a minute.

20 MR. NEWMAN: Attached to the
21 complaint is the release, settlement and hold
22 harmless agreement. It's signed by Mr. Anderson
23 and others.

24 MS. GRAY: This is D-20?

25 MR. NEWMAN: Yes.

566 1 THE HEARING OFFICER: Is there any
2 objection to D-20?

3 MS. GRAY: My objection is to
4 relevance. These are the -- the complaint is a
5 charge. There was no litigation resolving it.
6 There was a hold harmless agreement by which the
7 releasers specifically acknowledged that it was
8 the release -- payment was made solely to buy
9 peace and is in settlement of a disputed claim
10 and releasees contend this is a doubtful claim.

11 Under those circumstance this does not
12 appear to be a relevant document. They were not
13 known to Mr. Schafer in 1996.

14 THE HEARING OFFICER: All right.
15 I don't need argument.

16 MR. NEWMAN: Okay.

17 THE HEARING OFFICER: I'm going to
18 admit Exhibit D-20 as a judicially cognizable
19 fact of which I may take notice as Hearing
20 Officer, and I'll give it the weight that I deem
21 appropriate in considering this matter. D-20 is
22 admitted.

23 (Respondent's Exhibit D-20 was
24 received into evidence.)

567 1 MR. NEWMAN: D-20, as Ms. Gray
2 indicated, includes -- attached to it is the
3 settlement, the release and hold harmless
4 agreement, and among the defendants named in the
5 case were Mr. Hamilton and the bank.

6 So, I'm going to provide Mr. Mills a copy of
7 the original and a copy. There's a copy, and
8 it -- there's one other matter. I would like to
9 have introduced this letter from -- it was
10 characterized as a demand letter -- from the
11 attorneys. Let me explain what the document is
12 and explain why.

13 MS. GRAY: Did you just hand the
14 Hearing Officer a copy?

15 MR. NEWMAN: No.

16 THE HEARING OFFICER: Excuse me
17 for interrupting. I think I just have one copy
18 of Exhibit D-20. There needs to be one for the
19 public record and one for the Hearing Officer, if
20 you have that.

21 MS. GRAY: I have that here.

22 THE HEARING OFFICER: Thank you.

23 MR. NEWMAN: This is the original.

24 THE HEARING OFFICER: All right.

Thank you.

25 MR. NEWMAN: The other document
568 1 that is related to this is what I characterize as
2 a demand letter from the bank's attorneys -- I'm
3 sorry, from the hospital district's attorneys to
4 Mr. Hamilton and the other parties.
5 I would ask that the Hearing Officer
6 consider this because it was acquired through a
7 public disclosure request. It is a public
8 document. This is a public hospital district.
9 This is not an internal document, it's a public
10 record, and I would ask that this be made part of
11 the record.
12 THE HEARING OFFICER: Ms. Gray?
13 MS. GRAY: What is this marked?
14 MR. NEWMAN: It would be D-20.
15 THE HEARING OFFICER: D-21.
16 MS. GRAY: There are two
17 documents; one a letter of January 6, 1999; one a
18 letter of June 22nd, 1998. I would make the same
19 objections as to relevance as I have to the
20 previous exhibit, but in addition, I note that
21 there is no indication on their face that they
22 are public documents. I don't question --
23 MR. SCHAFFER: The last line of the
24 letter: "In response to my public records
25 request" --
569 1 MS. GRAY: I see that.
2 MR. SCHAFFER: -- "to the hospital
3 district, a public instrumentality of
4 government."
5 MS. GRAY: I was just about to say
6 I did not question Mr. Newman's representation
7 that it was obtained pursuant to a public
8 disclosure request. However, this is a different
9 sort of matter than a complaint filed in a
10 proceeding. The fact that it's a public hospital
11 does not make a demand letter any more relevant
12 or appropriate.
13 MR. NEWMAN: Mr. Mills --
14 THE HEARING OFFICER: Go ahead,
15 one of you.
16 MR. NEWMAN: I appreciate it. You
17 will note in the letter it was also sent to the
18 News-Tribune. We can talk about evidence rules
19 of lively publicized events, ER-201.
20 In addition, it clearly states that it was
21 in response to a public disclosure request. So,
22 this is not a secret document. It is very
23 public. It was submitted to the News-Tribune and
24 various other public agencies, in addition to the
25 fact that it's a public hospital district.
570 1 MR. SCHAFFER: And if I may?
2 THE HEARING OFFICER: Go ahead.
3 MR. SCHAFFER: Very briefly, as I
4 have been saying repeatedly since the first
5 stages of this proceeding, one of the defenses
6 that I believe I can properly argue and that
7 should be properly considered by all decision
8 makers and policy makers who will touch this
9 proceeding, that when a client is in conspiracy
10 with a sitting judge to commit an egregious
11 fraud, that public policy ought to allow the

12 lawyer -- I mean, the balancing of policies
13 should be taken into account and the greater harm
14 to society is to allow the sitting judge to
15 continue.

16 I'm saying this is a letter from the
17 hospital attorney, a demand letter saying these
18 individuals, the judge and my former client, have
19 committed fraud, and the liability in excess of
20 one million dollars would be found if they went
21 to the distance in litigation. It's supported by
22 their complaint that was served on these
23 gentlemen and there was a settlement agreement.

24 And this to me -- again, you know, I'm not a
25 student of the rules of evidence, but any prudent
571 1 person walking the street, if you ask them if
2 they think it's relevant to this proceeding and
3 to what I did they are going to tell you: "Damn
4 right it is."

5 THE HEARING OFFICER: All right.
6 Let me just indicate I think that this is not a
7 document of which I can take judicial notice, but
8 that doesn't necessarily mean I can't admit it
9 for other reasons.

10 So, I'm going to admit it under rule
11 4.11(c)(1), which basically says I can admit
12 anything that seems to possess a probative value.

13 I, as Hearing Officer, am interested in the
14 individuals who were defendants in the lawsuit by
15 the hospital and this is helpful to the Hearing
16 Officer, so I'm going to admit it for that
17 purpose.

18 MR. NEWMAN: I'm handing you the
19 original and then a copy. That would be D-21.

20 MS. GRAY: Just to note for the
21 record, I had no objection to its authenticity.

22 THE HEARING OFFICER: Thank you.

23 (Letter from Donald Black
24 marked as Respondent's Exhibit No. D-21 and
25 was received into evidence.)

572 1 MR. NEWMAN: With that, Mr. Mills,
2 I believe we can resume the inquiry of
3 Mr. Schafer and then move -- then get the CJC
4 documents identified.

5 THE HEARING OFFICER: Mr. Schafer,
6 would you return to the witness chair, please,
7 and you are still under oath, of course.

8 THEREUPON,

9 DOUGLAS A. SCHAFER,
10 having been previously sworn, returned to the witness
11 stand, and was examined and testified as follows:

12 EXAMINATION

13 Q. (By Mr. Newman) Mr. Schafer, I want to go back
14 to your investigation of this matter and ask you
15 to identify these exhibits. First, what's been
16 marked as D-14, I ask if you have seen that?

17 MS. GRAY: I would like to have
18 Mr. Newman clarify whether he's talking about
19 Mr. Schafer's investigation in 1995 or 1996 or
20 some later investigation.

21 MR. NEWMAN: I'm talking about his
22 total investigation and whether or not he had
23 reviewed those documents.

24 Obviously, he could not have reviewed these
25 prior to 1996, they are dated 1999, but for
573 1 purposes of establishing that not only did Mr.
2 Schafer believe that there was a pattern of
3 corrupt and fraud or crime, that the CJC indeed
4 confirmed that in their press release and
5 findings.
6 So, we can go about it a number of ways, but
7 since counsel has already agreed that this can be
8 admitted, I'm just simply confirming that Mr.
9 Schafer saw it at some point in time and get his
10 reaction to it.
11 THE HEARING OFFICER: All right.
12 Ms. Gray, you may inquire about that when you
13 have a chance to cross-examine Mr. Schafer at
14 some time later.
15 Q. (By Mr. Newman) Why don't I just hand the Court
16 the original of D-14, and Ms. Gray already has a
17 copy of it, and Mr. Schafer, have you seen this
18 document?
19 A. Yes, I have.
20 Q. And it is dated August 11th, 1999, correct?
21 A. That's correct.
22 Q. All right. And --
23 A. Both -- well, the press release is dated August
24 11th. The statement of charges attached bears a
25 filed stamp from the Commission on Judicial
574 1 Conduct of August 9th and it's signed by David
2 Akana, Executive Director of the CJC on August
3 9th. I believe it was made publicly available on
4 Monday, August 11th.
5 Q. And you secured this through a public records
6 request?
7 A. I'm on their mailing list. They send me
8 virtually everything that they release to the
9 public and they have for a number of years.
10 Q. Is it fair to say that the CJC statement of
11 charges was a product of your investigation into
12 the Hoffman Estate, Judge Anderson, and your
13 former client, Mr. Hamilton?
14 A. I believe that they recognized me as the grievant
15 on this second investigation that led to the
16 second set of charges as well as on the first
17 investigation that led to the first set of
18 charges.
19 Q. Without going into great --
20 A. If I may just further explain that, among other
21 reasons, the statement of charges on page 4, line
22 19, paragraph 9, specifically charges him with
23 misconduct for the backdating of the inventory in
24 the Hoffman Estate that I pointed out in my very
25 first memo of February 29th, 1996 to all
575 1 appropriate public officials, including the
2 Office of the Disciplinary Counsel.
3 THE HEARING OFFICER: Excuse me
4 for interrupting. I realize I just marked on
5 what was handed to me as D-14. If this was
6 intended to be an original I just despoiled it.
7 Do you have another copy?
8 MR. NEWMAN: I have another copy
9 of D-14. I thought I had handed you two copies,
10 but --

11 THE HEARING OFFICER: I apologize.
12 Q. (By Mr. Newman) On the statement of charges
13 there's some indication of various potential
14 criminal activity; is that correct?
15 A. That's correct. I think it was bank fraud in
16 connection with the backdating of leases or a
17 lease. And quite frankly, the first thing I did
18 upon receipt of these things and the exhibits
19 associated with it is deliver them to the Office
20 of the Assistant U.S. Attorney, because I was
21 urged to do so.
22 Q. Urged by whom to do so?
23 A. Somebody with the Commission on Judicial Conduct.
24 Q. In addition to bank fraud, is there any
25 indication of any other crimes, tax or otherwise,
576 1 in those documents you want to bring to the
2 Hearing Officer's attention?
3 A. Well, the thing that's most alarming is they
4 confirmed, to their satisfaction -- and they do
5 not, of course, release public charges unless
6 they are confident they can prove the misconduct
7 by clear, cogent and convincing evidence.
8 MS. GRAY: Objection as to the
9 characterization of the procedures of the
10 Commission on Judicial Conduct.
11 THE HEARING OFFICER: Sustained.
12 MR. NEWMAN: If I could just
13 respond to the objection for the record, that is
14 the established burden of proof by the CJC, and
15 why that is relevant it's a matter of undisputed
16 fact that's the burden of proof, because the
17 burden of proof at this stage is --
18 THE WITNESS: Clear preponderance.
19 MR. NEWMAN: -- clear
20 preponderance, so it does have some relevance
21 regarding the weight that should be given to the
22 CJC's findings by this Hearing Officer.
23 MS. GRAY: I object to the
24 characterization of this press release as CJC
25 findings. This is a press release regarding
577 1 filing of chargings.
2 THE WITNESS: If I may --
3 THE HEARING OFFICER: I'm going to
4 let him testify about it. Go ahead.
5 THE WITNESS: Okay.
6 THE HEARING OFFICER: I overrule
7 my earlier sustaining of the objection.
8 THE WITNESS: You know, I will
9 testify that I have received letters from the
10 Commission on Judicial Conduct dismissing
11 grievances for the statement -- for the reason
12 being given to me by them that they are
13 dismissing it because they do not feel that they
14 can prove the acts of misconduct by clear, cogent
15 and convincing evidence, which is the standard of
16 proof, burden of proof that they must bear, and
17 they do not bring charges unless they are
18 confident they can overcome that burden.
19 Q. (By Mr. Newman) Anything else that you would
20 like to point out to the Hearing Officer
21 regarding this particular exhibit, D-14?
22 A. Of greatest alarm to me, and I think most people

23 who would like to think, have confidence in the
24 integrity of the judicial system, is the charges
25 that are described, a factual basis on page 4,
578 1 paragraph 8, that describe the knowingly false
2 police report that the CJC concluded Judge
3 Anderson had made against an individual, a
4 citizen, for the purpose of getting his probation
5 revoked and sent to prison for an extended
6 period.

7 And the reason for that was related to a
8 personal matter in that this individual,
9 Mr. Santos, that was the subject of the knowingly
10 false police report, was romantically connected
11 with a young lady who Grant Anderson's friend
12 wanted to become romantically linked to.

13 Q. Anything else?

14 A. And she was, I should say, the daughter of Grant
15 Anderson's longtime close friend, Samuel J.
16 Alotta, who had died September 25th, 1989. And
17 Grant Anderson filed the police report within two
18 weeks after that or about two weeks after that,
19 October 12th, 1989.

20 Q. All right. Anything else regarding Exhibit D-14
21 you would like to bring to Mr. Mills' attention?

22 A. Simply that two of the charges that are described
23 in this relate to his conduct, Judge Anderson's
24 conduct as a lawyer in handling the Charles
25 Hoffman Estate.

579 1 The false police report was conduct during
2 the same period of time but had nothing to do
3 with the Charles Hoffman Estate.

4 Q. And it's your understanding under the Bar rules
5 that attorneys have some obligation to report
6 lawyers engaged in illegal or engaged in
7 misconduct?

8 A. The rules say that lawyers should report. It is
9 advisable. I think the word "should" is
10 perceived as not mandatory, in the sense that we
11 don't subject ourselves to this type of
12 discipline if we look the other way and pretend
13 we didn't notice and decide that it's not worth
14 getting involved or that we fear that if we
15 report someone else then others will report us or
16 similar fears.

17 In many states reporting is mandatory but
18 this state rejected mandatory reporting in 1985
19 when the Supreme Court adopted a variant on the
20 American Bar Association model rules of
21 professional conduct.

22 Q. So, it's fair to say one of your motivations in
23 February of '96 in reporting Judge Anderson was
24 not only because he was a judge but because of
25 his activities as a lawyer?

580 1 A. That's absolutely correct, because it appeared to
2 me -- and there was far worse information that I
3 was provided by many informing sources concerning
4 Alotta, his relationship with Samuel J. Alotta
5 and others.

6 I've received so many calls from people in
7 the community with horror stories about Judge
8 Anderson that to me it was patently obvious that
9 he had no business being a judge or a lawyer. I

10 think he may eventually end up in prison. I
11 think that's where he belongs.

12 Q. Anything else to D-14 you want to bring to
13 Mr. Mills' attention?

14 A. No, nothing comes to mind right now.

15 Q. Let's move to D-15, and these are the CJC
16 findings. I have provided a copy to Ms. Gray.
17 I'm going to hand the Hearing Officer the
18 original.

19 I'm handing up what's already been agreed as
20 D-15, the original and a copy, and handing to the
21 witness what has already been agreed as D-15, and
22 ask if you have seen that and how you came about,
23 how that came to your attention?

24 A. The cover sheet is simply the public records
25 request form that was filled out and I signed
581 1 requesting the publicly released documents that
2 the Commission on Judicial Conduct makes publicly
3 available under their rules and RCW on the first
4 day of a disciplinary hearing that provide to the
5 public, consistent with constitutional amendments
6 in 1989, the information from their investigation
7 stage that supports the charges that they have
8 publicly filed.

9 So, this is what they refer to as their
10 finding of probable cause documents. And this
11 particular collection includes transcripts of two
12 depositions of Grant L. Anderson, two depositions
13 of William L. Hamilton, it includes documentation
14 on the Pacific Lanes transaction, a three-page
15 agreement.

16 The third page of this exhibit lists the
17 documents, and I should add this third page of
18 the exhibit is simply a table that I prepared to
19 make it easier for myself and for all others to
20 know what is in this, roughly, I don't know,
21 hundred page stack of papers.

22 And it simply, you know, accurately
23 describes these exhibits by number, numbers 1
24 through 15, because the CJC did not provide such
25 a table.

582 1 Q. Is it fair to say these findings by the CJC were
2 a direct result of your providing them
3 information regarding your former client,
4 Mr. Hamilton and Mr. Anderson and any others?

5 MS. GRAY: I object to the
6 characterization of the exhibit as findings.

7 MR. NEWMAN: I think that is what
8 the first page says, they are findings.

9 THE HEARING OFFICER: Overruled;
10 you may answer the question.

11 THE WITNESS: Yes, it's my strong
12 belief that everything that the CJC did directly
13 resulted from my seven-hour meeting with Sally
14 Carter-DuBois, their investigator, on February
15 13th, 1996.

16 Q. (By Mr. Newman) And is it fair to say some of
17 the documents they relied on were documents you
18 acquired through your investigation?

19 A. Indeed. When you look at some of the documents
20 in this collection you will see some that I had
21 provided to them.

22 I think, just looking quickly, probably
23 Exhibit 5, possibly -- I don't know about Exhibit
24 4 -- Exhibit 14, yes. In fact, Exhibit 14 is an
25 extraordinarily poor quality photocopy of one of
583 1 the documents I was testifying as to yesterday,
2 the deed from Hoffman-Stevenson, Inc., to Pacific
3 Recreation Enterprises with my handwriting in the
4 upper left margin showing the dollar figure
5 \$508,096.07.

6 MR. NEWMAN: For the record,
7 Mr. Mills, that was D-11. That's been admitted.

8 THE HEARING OFFICER: Yes, I have
9 it, thank you.

10 Q. (By Mr. Newman) Anything else, Mr. Schafer, you
11 would like to bring to Mr. Mills' attention
12 regarding Exhibit D-15?

13 A. Possibly the last exhibit in this stack, Exhibit
14 15, is a document that seems to be something that
15 I think should be noted as relevant. It's also
16 an exhibit in other collections, such as in their
17 exhibit book it was Exhibit 117.

18 But this is the affidavit that was prepared
19 right at the outset once they knew that I had
20 blown the whistle and that Cam Hall had blown the
21 whistle and that there was going to be inquiry as
22 to how Grant got his Cadillac.

23 You know, their testimony in this -- well,
24 these depositions, both Mr. Anderson and
25 Mr. Hamilton, indicated that this affidavit was a
584 1 result of the collaboration of Philip Sloan and
2 Kurt Bulmer; Mr. Bulmer representing Judge
3 Anderson, Mr. Sloan representing Bill Hamilton.
4 And they, working together, created this
5 affidavit to cause these gentlemen, Hamilton and
6 Anderson, to appear to be the closest of
7 life-long friends so as to justify this Cadillac
8 gift.

9 Of course, the Supreme Court found it all
10 implausible and not believable, but these two
11 lawyers worked as hard as they could to create
12 this story and try to hold to this party line to
13 avoid the ultimate sanction that occurred.

14 MS. GRAY: Mr. Mills, I would like
15 to note an ongoing objection to Mr. Schafer
16 characterizing documents from 1997, 1998, 1999,
17 and 2000, and providing his interpretation of
18 those documents in the form of summation
19 argument.

20 I didn't want to interrupt him, I'm not
21 asking that it be stricken, but I would like to
22 note my ongoing objection to his being allowed to
23 characterize them rather than to read
24 particularly relevant portions that he would like
25 to call your attention to.

585 1 THE HEARING OFFICER: I think I
2 can separate that out. Your objection is noted
3 as continuing, and to the extent that
4 Mr. Schafer is expressing opinions of motivations
5 and people and how they went about preparing
6 these documents, obviously, I can ferret that
7 out. I'm looking at the documents themselves.

8 MR. NEWMAN: If I could just

9 respond to the objection for the purposes of the
10 record, Mr. Schafer's comments on the affidavit,
11 the last item we talked about of Mr. Hamilton,
12 which he testified was written by Mr. Sloan and
13 Mr. Bulmer, does go to the fact, the admitted
14 undisputed Supreme Court decision, which as the
15 Hearing Officer knows, specifically pointed out
16 that Judge Anderson had not only violated the
17 Code of Judicial Conduct but clearly exhibited a
18 pattern of dishonest behavior unbecoming of a
19 judge.

20 And the point being, Mr. Mills, is that even
21 with the efforts of Mr. Sloan and Mr. Bulmer in
22 order to characterize this Cadillac as some
23 benevolent gift from Mr. Anderson to his long
24 lost or long time friend, Mr. Hamilton, the
25 Supreme Court didn't buy it and we want to make
586 1 sure you understand the Supreme Court didn't buy
2 it, and also the involvement of Mr. Bulmer with
3 Mr. Sloan in order to protect Mr. Hamilton, which
4 will become more clear as we get into further
5 documents.

6 THE HEARING OFFICER: All right.
7 I'll let you connect that up. I have read the
8 Supreme Court opinion and I know about that
9 Supreme Court document.

10 MR. NEWMAN: Thank you.

11 Q. (By Mr. Newman) Mr. Schafer, anything else on
12 D-15 that you want to comment on?

13 A. Only that it was another 20 bucks I spent of my
14 own funds to try to bring integrity to my
15 profession.

16 MR. NEWMAN: All right. Let's
17 move on to D-16, and this is the mini-transcript
18 of the proceedings, Day 1 through 5 of the Grant
19 Anderson hearing.

20 I'm handing the witness a copy, giving the
21 Court, Mr. Mills, the original and a copy.

22 MS. GRAY: Mr. Newman, Mr. Mills,
23 it would be the Association's -- I'm just telling
24 you this so that you can plan your presentation
25 of evidence -- I have just received a note that
587 1 Mr. Strait can make himself available to testify
2 at 2:00 p.m., if that would be convenient for
3 Mr. Mills and Mr. Newman.

4 MR. NEWMAN: That's fine.

5 THE HEARING OFFICER: It seems
6 like a good time, right after our lunch break, so
7 why don't you go ahead and arrange that.

8 MS. GRAY: Thank you.

9 Q. (By Mr. Newman) Mr. Schafer, I've shown you
10 what's been marked as D-16 and ask if you have
11 seen this before and if you can identify it?

12 A. Yes. This is a full transcript of the five-day,
13 fact-finding hearing in the disciplinary
14 proceeding of Judge Grant Anderson that occurred
15 at the Federal courthouse -- the Federal judges
16 graciously allowing the use of their courtroom --
17 conducted by the CJC from January 12th, 1996,
18 from January 12th through January 16th of 1998.

19 This is what they call a mini-transcript,
20 four pages compressed on a page. It reduces the

21 copy burden. Hopefully, I do have this, I
22 believe, in full size pages, which also cost me a
23 lot, as reproducing these cost me several hundred
24 more dollars, but if Disciplinary Counsel or
25 others would like the full page, five-day
588 1 transcript, which stands about ten inches tall, I
2 would be glad to provide it.

3 THE HEARING OFFICER: It's not
4 necessary for my purposes. Since I've got my
5 bifocals I can read now this.

6 MS. GRAY: And it's not necessary
7 for our purposes, thank you.

8 Q. (By Mr. Newman) Mr. Schafer, beyond the fact
9 that you acquired this, is there anything else
10 you want to bring to the Hearing Officer's
11 attention regarding this exhibit?

12 A. This exhibit includes considerable testimony by
13 Judge Anderson, by William Hamilton, I think it
14 included testimony by Stephen Fisher in their
15 firm, by Judge Anderson's former wife, Diane
16 Anderson, various other people.

17 Mr. Bulmer put me briefly on the stand to
18 ask me one question about a document, I believe.

19 The CJC did, in response to my document
20 request, provide this to me on computer digital
21 form, so it has been a public document on my web
22 site since last December. So, it's easy to
23 search it electronically, looking for particular
24 names or words. I can provide that on floppy
25 disk to anybody who wants it.

589 1 I'm not trying to hide anything. My
2 objective is to get everything out on the table
3 to be convenient.

4 MS. GRAY: I object to his speech
5 about his purposes. It is not testimony.

6 THE WITNESS: I'm just offering to
7 make it easier for you.

8 MR. NEWMAN: I think he just
9 wanted to indicate to Mr. Mills that if you had
10 the desire to search a term you could go to his
11 web site and put in the name and find a name and
12 search a term.

13 THE HEARING OFFICER: I should
14 make clear that I've been aware of the existence
15 of a web site, at least, during the course of the
16 proceedings. I have not visited the web site and
17 I do not intend to visit the web site because I
18 think it is important for me to preserve the
19 integrity of the evidence that I'm considering,
20 so I didn't intend to that.

21 THE WITNESS: And I wasn't
22 suggesting that. I can provide it on floppy disk
23 with just this if anybody would like it involved
24 in this proceedings. It's not an offer to the
25 viewing audience.

590 1 The other thing that I would like to say
2 about both this five-day transcript, the
3 statement of probable cause documents and the
4 exhibit book, which I guess is coming next, is I
5 had been assured by Disciplinary Counsel, Doug
6 Ende, involved with Judge Anderson's case, that
7 this office, the Office of Disciplinary Counsel

8 has had all of those documents for some time
9 since they were made public January 12, 1998,
10 well, aside from the transcript of that hearing
11 which was public shortly after the hearing
12 concluded January 16th.

13 Q. (By Mr. Newman) All right. Let's move on then
14 to that exhibit book. This has been already
15 agreed as D-17.

16 I'll provide the Hearing Officer with --
17 this is the original.

18 MS. GRAY: My assistant is going
19 to get rubber bands.

20 THE HEARING OFFICER: Thank you.

21 MR. NEWMAN: This is a copy of
22 D-17. I'm providing Mr. Schafer with a copy.

23 Q. (By Mr. Newman) Mr. Schafer, I've shown you
24 what's been marked as D-17 and ask you to
25 identify it?

591 1 A. This is a copy of the exhibit book that was
2 utilized in connection with Judge Anderson's
3 five-day fact finding hearing before the
4 Commission on Judicial Conduct that we just
5 discussed, for which the transcript, the last
6 exhibit was the transcript.

7 Q. And the exhibits identified there, were some of
8 those exhibits provided by you?

9 A. That's correct. Actually, quite a number of them
10 were. There is -- among other things, you know,
11 that might be relevant to this proceeding are the
12 corporate documents that I prepared, you know,
13 near the back, as I recall.

14 Q. Any other documents that you have provided that
15 was --

16 A. I just spotted what I was looking for there.
17 Exhibit No. 111 was the, you know, the
18 organization, you know, the documentation of what
19 is essentially the organizational meeting of
20 Pacific, of Pacific Recreation Enterprises. A
21 number of the documents in this exhibit book were
22 documents that I provided in my initial meeting
23 with Sally Carter-DuBois.

24 Q. Anything else you want to bring to Mr. Mills'
25 attention concerning what's been marked as D-17?

592 1 A. One thing that at least I have found very
2 interesting is Exhibits 127 and 128, which are
3 amortization schedules that the CJC apparently
4 obtained from Mr. Hamilton; one dated August 16th
5 of '92, the other August 23 of '92.

6 And I myself was surprised at how close to
7 the mark my amortization schedules were to those
8 that were apparently generated at the bank for
9 Mr. Hamilton in connection with his, what I guess
10 you would call the disguised purchase/lease for
11 Pacific Lanes.

12 Q. The amortization schedules that you prepared were
13 already admitted as Exhibit D-11.

14 A. In this proceeding.

15 Q. Yes.

16 A. And I see, yes, Exhibit 128 in the CJC's
17 proceeding is, you know, very, very close to that
18 that I surmised --

19 Q. All right.

20 A. -- and prepared.

21 Q. Mr. Schafer, anything else with respect to that

22 Exhibit D-17 you would like to bring to Mr.

23 Mills' attention?

24 A. The only other thing that I'll mention, and as I

25 sit here I'm not exactly certain, there were a

593 1 very few exhibits that were not initially in the

2 exhibit book and were admitted during the

3 proceeding, and I'm trying to recall if it was

4 like Exhibits 15, 16. I think they started

5 filling in the blanks, the first reserve spots.

6 I later obtained those exhibits and I think

7 I inserted copies in this book, in this

8 collection, so that it would be, in fact, a full

9 collection of the exhibits in that proceeding.

10 I'm just looking to see where Exhibit 15

11 begins to see if there's one in there. Okay, it

12 would follow that.

13 The appraisal reports, yeah, that's another

14 something that would be significant is Exhibit

15 14, and it shows that Mr. Anderson had obtained

16 an appraisal from this Jim Latteri, who was

17 mentioned frequently in Judge Anderson and his

18 law firm's time sheets that were in the court

19 file.

20 And here it is in this exhibit book, Exhibit

21 14, showing that on November 15th, 1989

22 appraiser, James Latteri, L-a-t-t-e-r-i, had

23 delivered an appraisal opining that the value of

24 Pacific Lanes, lock, stock and barrel, and by

25 that I mean operating business and real estate

594 1 combined, was \$1,334,000.

2 Q. All right.

3 A. I can see from turning the pages immediately

4 following that appraisal there is an Exhibit 15.

5 It's hard, it's kind of cut off on the right

6 margin, but it was a City of Tacoma Finance

7 Department Tax and License Application that

8 Mr. Hamilton had filled out -- I'm looking for

9 the date on it but I think he testified as to

10 it -- asserting they began operating Pacific

11 Lanes October 1st of '92.

12 The next item I think was the next exhibit

13 admitted at the trial and it's a temporary permit

14 from the liquor control board that was issued to

15 Grant Anderson. Let's see -- no, I take that

16 back.

17 Okay. It was a temporary permit issued

18 December 4, 1992, so that explained why they

19 closed on December 4, of 1992.

20 Prior to that they would have been

21 committing a felony if Bill Hamilton would have

22 been overseeing or in a position of management or

23 control or oversight over any of the bar

24 facilities.

25 And one thing that is testified to in the

595 1 transcript of the hearing is that a bowling lanes

2 generates, at least this one, about seventy

3 percent of its revenue from the bar and the

4 gambling, the pull-tab activity.

5 Bill has said under oath in many of these

6 transcripts, as I recall, that, you know, the

7 balls and the lanes are really just an excuse to
8 get the gamblers and the drinkers in the
9 premises. He would give away the bowling if he
10 could get them in there.

11 Q. Anything else, Mr. Schafer, you would like to
12 bring to Mr. Mills' attention regarding this
13 exhibit?

14 A. Just continuing the same thought, Exhibit 19 was
15 also presented at the hearing. It was not
16 initially in the minute book. I think those
17 three were the only ones that came in during that
18 hearing that are not identified by a description
19 on the table of contents page at the outset.

20 THE HEARING OFFICER: Just for
21 clarity, my review of this is that there are
22 Exhibits 15 through 19 in these materials and the
23 table of contents says reserved, so actually five
24 exhibits that are added.

25 THE WITNESS: Oh, okay.

596 1 THE HEARING OFFICER: And I'll
2 look at them later.

3 THE WITNESS: I lost count.

4 Q. (By Mr. Newman) All right. Well, let me move
5 on then to what's already been marked as Exhibit
6 D-18. These are the findings, the commission
7 findings themselves. I'm handing the witness a
8 copy, handing the court the original and a copy.

9 All right. Mr. Schafer, I've handed you
10 what's been marked as Exhibit D-18 and ask if you
11 can identify this exhibit?

12 A. Yes, I can. This is a copy of the ruling. It's
13 the written decision that was made public on
14 April 3rd, 1998 as a result of this disciplinary
15 hearing of the charges on then Judge Grant
16 Anderson.

17 Page 9 of this decision shows the names of
18 the individuals who sat on their panel that was
19 in essence the jury; Dale Brighton, Vivian Caver,
20 Judge Michael Donahue, Judge John Schultise,
21 Judge Steven Brown, Lawyer Harold Clark, now a
22 judge, Nora Reynolds and Todd Whitrock.

23 And I note that there is a concurring and
24 dissenting opinion. The basic decision concluded
25 that there was clear, cogent and convincing
597 1 evidence to prove that the Cadillac payments that
2 were made to Judge Anderson were compensation.
3 I'm looking for the --

4 Q. It's paragraph 13 or 14, I believe.

5 A. I was going to say on page 6 there's a reference.
6 I'm sorry, you said paragraph what?

7 Q. You're looking, I believe, for commission page 3,
8 paragraphs 13 and 14.

9 A. Oh, these are, okay, the findings of fact. Yes,
10 the findings of fact, page 3, paragraph 13,
11 indicating that Judge Anderson accepted the offer
12 of Bill Hamilton to pay his automobile loan
13 payments as compensation for selling the estate's
14 bowling business to Bill Hamilton, his long-time
15 friend.

16 Judge Anderson told his then wife, Diane
17 Anderson, that the car was a commission from
18 William Hamilton for selling the bowling alley to

19 him.

20 The other thing that I frankly wish to point
21 out is there was -- the panel determined that
22 this kickback should result in a four-month
23 suspension from his judicial duties without pay,
24 which frankly I thought was deplorably
25 inadequate. I thought it was deplorable that the

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1 the commission did not bring out the full extent of
2 the misconduct and the degree of a sweetheart
3 deal, the below-fair-market-price element of the
4 bowling alley transaction.

5 I had been told by Paul Taylor that he would
6 never charge somebody --

7 MS. GRAY: Objection, hearsay.

8 THE WITNESS: I'm reciting what I
9 was told, and I think a reasonable person
10 would --

11 THE HEARING OFFICER: I'm going to
12 let him testify; overruled.

13 THE WITNESS: Paul Taylor, who was
14 the hired prosecutor for the commission, when I
15 complained to him why did the commission not
16 charge them with the financial fraud of selling
17 the bowling alley so far below it's market value,
18 his response was it's always possible for a
19 lawyer to find an expert consultant who will, for
20 the right fee, testify as to a value that would
21 exonerate the accused.

22 So, he said, "I would never, when I have to
23 overcome a burden of clear, cogent and convincing
24 evidence, bring charges where some doubt could be
25 raised by a hired expert."

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1 I objected also to something in the
2 concurring and dissenting opinion, the fact that
3 it was signed by Court of Appeals Judge John
4 Schultise from Spokane's Court of Appeals,
5 because on December 23rd I had delivered to
6 Mr. Akana my concern that Mr. Bulmer was too well
7 connected with too many judges.

8 And I asked, specifically in writing that
9 they ensure that the none of the judges who would
10 participate in Judge Anderson's disciplinary case
11 had a prior relationship with Mr. Bulmer.

12 I got a response simply that he would pass
13 on the request, and during the first day of this
14 hearing, after opening arguments had begun, the
15 Hearing Officer expressed that they wanted the
16 record to reflect that John Schultise had an
17 attorney/client relationship with Mr. Bulmer not
18 too long prior to that hearing.

19 And I objected and continued to object and I
20 have raised objection publicly in articles
21 printed in the media that I don't think judges
22 who have a personal relationship with a defense
23 attorney should be adjudicating cases argued by
24 that defense attorney.

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25 Q. (By Mr. Newman) All right. Anything else, Mr.
1 Schafer, you want to bring to Mr. Mills'
2 attention regarding Exhibit D-18?

3 A. Only that as, you know, from the Supreme Court's
4 opinion the Supreme Court clearly rejected the
5 lenity that seemed to have been extended and, you

6 know, in their defense I'll acknowledge that
7 these members of the commission are virtually
8 volunteers, I think they receive a hundred
9 dollars for each day that they meet.

10 But in the light of what is expected of them
11 in a case such as this and the voluminous
12 material that they would be expected to digest,
13 while I'm disappointed in their decision I
14 commend them for their public service.

15 Fortunately, the Supreme Court has paid
16 clerks who spent 14 months reviewing the entire
17 record, and the judges can take the time, the
18 justices can take the time to do a more thorough
19 job and the result of that was clear evidence of
20 a pattern of dishonest behavior unbecoming of a
21 judge.

22 Q. Anything else, Mr. Schafer, on that exhibit?

23 A. No.

24 Q. You obviously were present when Mr. Sloan
25 testified and I asked him about a document.

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1 MR. NEWMAN: And I believe I have
2 already provided to you, Ms. Gray, this
3 declaration of Attorney Bridges. You should have
4 that. You can have that copy.

5 You heard Mr. Sloan testify about a proof of
6 loss claim that was made by his firm on behalf of
7 Mr. Hamilton, and I would like to have this
8 marked as an exhibit but I did query Mr. Sloan
9 about this. This is a public document.

10 What it is, just for the record, the case
11 title is Pacific Recreation Enterprises, Inc.,
12 doing business as Pacific Lanes -- that's the
13 corporate entity Mr. Schafer set up -- versus
14 United States Fidelity and Guarantee Company.

15 What we have here is an official court
16 document, declaration of Attorney Bridges, and
17 that's Dan Bridges, who was an associate in the
18 Sloan, Bobrick, Oldfield firm, and attached to
19 that is the declaration of William Hamilton
20 regarding repairs on the collapse of a roof and
21 then a statement of claim or proof of loss, I
22 should say.

23 THE HEARING OFFICER: Have you
24 marked that for identification?

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25 MR. NEWMAN: I have not. I don't
1 believe it is in the record yet, and I would mark
2 it as --

3 THE HEARING OFFICER: D-21, it
4 looks like.

5 MR. SCHAFFER: D-22.

6 MR. NEWMAN: Yes.

7 THE HEARING OFFICER: All right.
8 It will be marked as D-22.

9 (Declaration of Attorney Bridges
10 marked as Respondent's Exhibit No. D-22.)

11 THE HEARING OFFICER: Ms. Gray?

12 MS. GRAY: Briefly -- and there
13 was no indication that it was going to be offered
14 and I need to take a close look at this
15 particular document before I state whether or not
16 I have any objection and see what it is.

17 THE HEARING OFFICER: All right.

18 I'm going to take about a five-minute recess to
19 have you read that.

20 MS. GRAY: That would be great.

21 THE HEARING OFFICER: Let's go off
22 the record for about five minutes and then we'll
23 resume.

24 (Off the record.)

25 THE HEARING OFFICER: All right.

603 1 Let's go back on the record. We were considering
2 what's been marked as Exhibit D-22, and Ms. Gray,
3 you were going to review it and advise the
4 Hearing Officer if you have any objections to
5 admitting that into evidence.

6 MS. GRAY: May I ask Mr. Schafer
7 one question?

8 THE HEARING OFFICER: Go ahead.

9 MS. GRAY: Mr. Schafer, is it
10 correct you first received D-22 sometime in 1997?

11 THE WITNESS: I believe it was in
12 1997 that I first reviewed this court file and
13 made copies of these documents, yes.

14 MS. GRAY: My objection is solely
15 to relevance.

16 THE WITNESS: Can I respond to it?

17 THE HEARING OFFICER: I'm going to
18 overrule the objection and admit the exhibit. I
19 don't think you need to make a statement. I'm
20 admitting this because it is a -- I'll take
21 judicial notice of it under the rules and also
22 I'll give it whatever weight I deem relevant or
23 necessary.

24 (Respondent's Exhibit D-22 was
25 received into evidence.)

604 1 Q. (By Mr. Newman) Mr. Schafer, I've shown you
2 what's been marked as Exhibit D-22 and I ask if
3 you can identify, if you have seen that before?

4 A. Yes, I have. It is papers I copied out of the
5 Pierce County Superior Court file, Case No.
6 94-2-10512-0. It was a lawsuit by Pacific
7 Recreation Enterprises, Inc., doing business as
8 Pacific Lanes, against United States Fidelity and
9 Guarantee Company as defendant.

10 The essence of the lawsuit was the claim by
11 Pacific Recreation that the insurance company was
12 acting wrongfully in denying coverage of the
13 claim for the broken trusses that were, that
14 existed in the roof structure of the Pacific
15 Lanes building.

16 Q. Why don't you explain to Mr. Mills why this proof
17 of loss concerned you or alarmed you, if it did?

18 A. The things about this document that struck me as
19 particularly significant are that it was, the
20 lawsuit being pursued by Philip Sloan's law firm,
21 Sloan, Bobrick and Oldfield, some of the
22 documents that I obtained relating to it were
23 signed by an associate, Mr. Bridges. Some of the
24 documents were signed by Mr. Philip Sloan,
25 representing Bill Hamilton, the hundred percent
owner of Pacific Recreation Enterprises.

605 1 You know, as part of this particular
2 declaration by Attorney Bridges it struck me as
3 significant, the declaration by Mr. Hamilton,
4

5 signed September 18, 1995, detailing the cost of
6 repair, you know, the loss that he was seeking
7 coverage of.

8 Among other defenses, the insurance company
9 was claiming it was a pre-existing condition that
10 they should not have to cover, it existed before
11 he took out the insurance policy in October of
12 1992, and Bill Hamilton claimed that it was
13 discovered for the very first time in July of
14 1993 during the quiet summer period for bowling
15 establishments.

16 Exhibit No. 9 caught my eye as being
17 particularly relevant to this total case,
18 everything about Judge, about Bill Hamilton's
19 relationship with Judge Anderson and the types of
20 activity they were engaged in, because Exhibit 9
21 is a proof of loss statement. It says "Sworn
22 Statement, Proof of Loss," and I recognized the
23 handwriting as being that of Bill Hamilton, whose
24 handwriting I had read for many years, and I note
25 that it's referring to the Pacific Lanes
606 1 building.

2 In item 6 the question is being asked the
3 actual cash value at the time of loss, and Bill
4 had written in \$1,250,000. He estimated that the
5 loss was \$125,000, and that was the amount that
6 he was claiming, which certainly I was at the
7 time hoping to find objective documentary
8 evidence that would bear Bill Hamilton's
9 signature showing that as a matter of public
10 record this bowling alley that he had just
11 bought -- and actually, he didn't close, of
12 course, on the purchase until, as we saw
13 yesterday, October, 1993 -- or at least a sworn
14 statement under penalty of perjury that declared
15 the total price paid as being \$508,000.

16 You know, to see his signature on a document
17 like this in a public file showing his statement,
18 his sworn statement that it had a value of one
19 and a quarter million would have been highly
20 significant, but this Exhibit 9 did not bear his
21 signature on the face of page 1 of the exhibit.

22 But the back side, the next leaf, the next
23 page in the court file, which purported to be the
24 back side of this very same piece of paper, the
25 proof of loss, it struck me as particularly
607 1 significant that when you look at the top of this
2 next page where it says Schedule A, to the left
3 of the heading you will see the reverse image,
4 meaning the ink bled through from the front side,
5 and you see both the notary stamp and the, you
6 know, the rubber stamp imprint of the notary's
7 name. You hold it up and you see clearly it was
8 Yvonne O'Brien.

9 And if you look over to the right, holding
10 it up to the light, you clearly see the signature
11 of William Hamilton, which correlates with
12 signatures on many of the documents. So, as you
13 hold it up to the light and look through, about
14 the second line up above the bottom right-hand
15 side you will distinctively "Wm." for William and
16 the name "Hamilton," H-a-m-i-l-t-o-n, quite

17 clearly.

18 It just struck me as evidence that there was
19 collusion or participation by this law firm in
20 efforts to continue to conceal elements of an
21 ongoing crime or fraud.

22 I brought this matter, this case and various
23 aspects of it, including testimony and the
24 exhibits we have just admitted in which Grant
25 Anderson testifies that they have known for some
608 1 time about the broken trusses before they sold
2 the bowling alley to Bill Hamilton, testimony of
3 Richard Hoefel consistent with that, and yet
4 Mr. Hamilton, as is testified to, bought the
5 insurance policy in October, '92 through his good
6 friend, Robert Pierce, referred to on declaration
7 of Item 8 -- I perhaps should include that as
8 part of this exhibit -- he declared on his
9 declaration that the damage was first found in
10 July, '93.

11 I passed this information all on to the FBI
12 and I was told by an employee at the insurance
13 company that the FBI subpoenaed their entire file
14 on this.

15 I expect this is going to be one of the
16 predicate acts in what I expect to be an eventual
17 Racketeering and Corrupt Influence Organization,
18 or RICO, Racketeering Influence and Corrupt
19 Organization charge that I frankly expect will be
20 brought against some of the individuals involved
21 in these things.

22 Q. So, it's fair to say that you suspect that your
23 client, former client, Mr. Hamilton, was involved
24 in insurance fraud, correct?

25 A. That's correct.

609 1 Q. And that --

2 A. And that Mr. Sloan may have been involved and
3 that Mr. Anderson may have been. They may have
4 all been participating in this group, this
5 organization that, as I have researched RICO
6 statutes, casts a broad net. And all those who
7 have conspired in connection with a pattern of
8 racketeering activity, whether or not they
9 participated in each individual act, all share in
10 the criminal liability.

11 Q. And again, the plaintiff in this case, Pacific
12 Recreation Enterprises, was the entity you
13 established back in 1992 for Mr. Hamilton?

14 A. It's the corporation for which I drafted the
15 governing documents and Mr. Hamilton signed and I
16 delivered to the Secretary of State's office in
17 late August of 1992, which issued the corporate
18 charter giving birth to this corporate entity.

19 Q. All right. And your belief that there was
20 insurance fraud and that insurance fraud occurred
21 after, obviously after the establishment of the
22 corporate entity and before you wrote your
23 February, 1996 declaration under penalty of
24 perjury.

25 A. On the basis of what I know, who I have had
610 1 talked to, I believe it was well known. In fact,
2 Larry Capps, who oversaw the over a hundred
3 thousand dollars' worth of improvements and

4 repairs that the estate paid for in spring and
5 early summer of 1992, told me directly that Grant
6 Anderson asked him to go up and check out the
7 broken trusses, which he did, confirmed that they
8 were broken, but the building did not seem to be
9 falling down.

10 MS. GRAY: I object unless this --

11 THE WITNESS: I'm just --

12 MS. GRAY: I would like to make my
13 objection.

14 THE HEARING OFFICER: Go ahead,
15 please.

16 MS. GRAY: Thank you. I object to
17 his testimony about anything that someone told
18 him unless it was told to him prior to or May
19 1st, 1996. He has not indicated when this
20 conversation took place.

21 MR. NEWMAN: If I could respond, I
22 could have Mr. Schafer point to testimony that's
23 already in the record from the CJC, whereby I
24 believe Mr. Anderson indicated that he told
25 Mr. Hamilton prior to the purchase that there may
611 1 be a problem with the trusses. The CJC sworn
2 testimony from Mr. Anderson says that Hamilton
3 knew about it before the purchase.

4 This is significant because Mr. Schafer's
5 belief that his client, after he formed the
6 corporate entity, was using not only Mr. Schafer,
7 but other attorneys, perhaps Mr. Sloan, whoever
8 else, to engage in an ongoing crime of fraud, it
9 goes to the heart of this case.

10 And I could have Mr. Schafer dig out from
11 the CJC testimony that portion from Judge
12 Anderson's testimony if you would like.

13 THE HEARING OFFICER: Well, the
14 objection will be overruled. We're getting into
15 hearsay testimony, a fair amount here, but again,
16 the rules of evidence do not apply strictly and
17 I'm just going to have to sort out any weight to
18 give this.

19 But I think in terms of explaining Mr.
20 Schafer's view of the matter I think it's useful
21 for the Hearing Officer to hear his testimony.

22 MS. GRAY: Mr. Mills, I just have
23 a request. Mr. Schafer has been testifying by
24 lengthy narrative, which is not ordinary.
25 Mr. Schafer's testimony about -- that I
612 1 interrupted by my objection -- was about a
2 conversation that he had, I believe, with
3 Mr. Capps, and he has not identified at all when
4 that conversation took place. My request is
5 simply that he identify that.

6 THE HEARING OFFICER: All right.
7 I'll ask him to do that for your benefit.

8 I think to the extent that the record is not
9 clear in his direct testimony, and I'm taking
10 notes on what he does say, if the date is not
11 clear in the record I think that's up to
12 Mr. Newman and Mr. Schafer to make clear.

13 If you want to ask questions later about
14 precisely when those conversations occurred, you
15 can note that and ask about it later.

16 So, I will rely on your cross-examination,
17 if you will, to elicit testimony rather than
18 interrupt the direct testimony.

19 Q. (By Mr. Newman) We can handle that right now
20 and save Ms. Gray the problem. Can you explain
21 who Mr. Capps is, and secondarily, when you had
22 this conversation?

23 A. Mr. Capps is a gentleman that lives in the north
24 end of Tacoma. I had been given his name by
25 people in town who had alerted me to his
613 1 participation in the -- essentially, he acted as
2 a general contractor, overseeing significant
3 improvements to Pacific Lanes in the spring and
4 summer of 1992.

5 I visited him, I believe it was in November
6 of 1999. He was cordial and met with me and, you
7 know, recalled very distinctly; in fact, you
8 know, had a number of papers relating to that,
9 you know, his arrangement with Mr. Grant
10 Anderson.

11 You know, he was, as most people are, wary
12 of becoming involved. You know, I believe I
13 could still, if it's important, compel him
14 through a subpoena to provide the papers, but he
15 shared them with me and it reflected that he was
16 retained by Judge Anderson or lawyer Grant
17 Anderson at the time to oversee and arrange for
18 approximately, I think it was \$130,000 worth of
19 improvements to the bowling lanes that occurred
20 that summer, and I think it's all, to me,
21 germane.

22 In fact, the exhibits in the exhibit book
23 for the CJC proceeding do show a number of the
24 ledger entries and receipts from some of the work
25 that he was overseeing.

614 1 He simply -- as I just testified, you know,
2 I asked him about the broken trusses and he was
3 quite direct in telling me that Grant Anderson
4 asked him to go up into the attic space, which
5 I've never been there, but apparently you just
6 walk up a stairway and you are in this big, open
7 overhead area where the trusses are, and he
8 walked around and could visually see that a
9 number of them were cracked and patched with
10 four-by-fours bolted onto them.

11 I don't know how extensive, he just said he
12 went up and looked around and, sure enough, it
13 was all damaged and he reported that or confirmed
14 that to Grant Anderson.

15 I think this is all relevant to what I
16 intend to argue was a policy matter to the State
17 Supreme Court or others that, you know, my client
18 when he came to me in forming a corporation was
19 intending to perpetuate various frauds; liquor
20 and gambling law violations, likely insurance
21 fraud, an extraordinary sweetheart deal, a breach
22 of fiduciary duty. There was a lot of milking
23 going on of every victim that they could
24 identify.

615 1 And I think I'm on solid factual ground when
2 I assert that at least the factual predicate for
arguing a crime fraud exception ought to apply to

3 let a lawyer make more than just a noisy
4 withdrawal, but in fact to alert law enforcement
5 and disciplinary officials that there is an
6 extraordinary degree of fraud, crime and
7 misconduct going on, and if I as -- if being a
8 lawyer means I have to ignore those kinds of
9 facts and to just tolerate that kind of evil,
10 then I would rather not be a lawyer.

11 Q. Mr. Schafer, is there something in the record you
12 can readily point to where, I think in the CJC
13 records, where Mr. Hamilton knew of the roof
14 truss problem prior to the purchase? Is there
15 some testimony from the CJC or somebody you could
16 point to?

17 A. Actually, what would be better is the book on the
18 floor or the other three-ring binder over there,
19 it has stickers.

20 MR. NEWMAN: Could we take a
21 minute, here, Mr. Mills?

22 THE WITNESS: I might be able to
23 kind of just pull it up from memory. It was in
24 the very first -- I mean, Judge Anderson was
25 deposed twice, and in the first deposition -- and
616 1 I'm looking at the exhibit that is the finding of
2 probable cause documents -- and this was the very
3 first, December 17, 1996 deposition, and I rather
4 infer from the story line that he told that he
5 had not got his signals quite coordinated with
6 Bill Hamilton before that, because when asked
7 about the bowling alley he repeatedly was saying
8 that he sold it for a low price because of the
9 structural problems, among other things.
10 Structural and asbestos was what they kept
11 referring to.

12 And when Paul Taylor asked him about this,
13 his repeated references to the structural
14 problems and asked him to explain that a little
15 further, he then said, "Well, I knew there were
16 some broken trusses," and I'm trying to find --

17 THE HEARING OFFICER: It's on page
18 55, line 24 of the deposition on December 17th,
19 1996. It's about one, two, three, four, five,
20 six, eight or nine pages into Exhibit D-15, the
21 lower right-hand corner.

22 THE WITNESS: You said page 55?

23 THE HEARING OFFICER: Yes, page 50
24 to 55 is on there. It's in the lower right-hand
25 corner: "I had developed an awareness of many

617 1 problems with the alley, primarily the structural
2 problems, and the asbestos was my greatest fear."

3 MR. NEWMAN: And it was on page --
4 what page exactly, Mr. Mills?

5 THE HEARING OFFICER: Page 55.

6 MR. NEWMAN: Right here
7 (indicating).

8 THE WITNESS: For some reason --
9 the upper right corner says December 17?

10 THE HEARING OFFICER: Yes, 55.
11 The number is cut off at the right --

12 THE WITNESS: Oh, okay. You're
13 looking at the numbers in the very bottom of the
14 page. I was looking at the numbered

15 mini-transcript pages.
16 THE HEARING OFFICER: That's page
17 11, it looks like, of that.
18 THE WITNESS: So, it's page --
19 each mini-page, there's six on a sheet.
20 THE HEARING OFFICER: Right, it's
21 page 11.
22 THE WITNESS: Page 11?
23 THE HEARING OFFICER: Yes.
24 THE WITNESS: Okay.
25 THE HEARING OFFICER: On the lower
618 1 right-hand corner. I'm just inquiring if that's
2 the reference you're looking for. I'm just
3 trying to help.
4 THE WITNESS: I appreciate the
5 help. You know, you have the original and I'm
6 fearing that maybe this was, at least the copy
7 I'm looking at has been inaccurately copied
8 because it doesn't have the back side of any of
9 the pages.
10 MR. NEWMAN: Yeah, please.
11 THE HEARING OFFICER: Let me show
12 you what I was referring to. I had marked this
13 before (indicating).
14 THE WITNESS: We may have to check
15 the quality of the -- thank you.
16 Yes, it is on the deposition transcript of
17 Grant Anderson's deposition, December 17, 1996.
18 We are looking at mini-transcripts and the
19 deposition page numbered page 55.
20 Okay. And questions -- Paul Taylor asked
21 the question: "When did discussions with
22 Mr. Hamilton first start?"
23 Answer by Judge Anderson: "Probably, my
24 general recollection is that it might have
25 started with him in early to mid, maybe mid 1992
619 1 about suggestions for selling, moving, doing
2 something with it. I was aware, I developed an
3 awareness of many problems with the alley,
4 primarily structural problems, and the asbestos
5 was my greatest fear with the bowling alley
6 within the frame of the funds that were usable."
7 And I'm skimming down, trying to find where
8 it was where he made specific reference -- could
9 we take a break and I get the book that I have
10 stickers all over it?
11 THE HEARING OFFICER: Yes, let's
12 take a break so we can keep the record clear.
13 We'll take about a five-minute break.
14 (Brief recess taken.)
15 THE HEARING OFFICER: Let's go
16 back on the record.
17 Mr. Newman, before you begin, again, and I
18 do want to complete the thought, there are a
19 couple of matters that came up during the break.
20 I don't know if you want to complete your
21 questioning on this hearing or whatever, but
22 there are two things I need to raise.
23 MR. NEWMAN: If we could, because
24 we were going to start a new segment, I think
25 where we left off is that Mr. Schafer was
620 1 examining the CJC materials and the depositions

2 of Mr. Anderson and was going to point out
3 something related to the truss issue.

4 Q. (By Mr. Newman) Do you want to indicate?

5 A. Yes, I now have the heavily marked, heavily
6 stickered copy that I use, as I have used for
7 several years as my working copy of these
8 transcripts.

9 And the testimony that seems particularly
10 relevant in that deposition of Grant Anderson on
11 December 17, 1996, where I already read the
12 portion on page 55 and 56, and then continuing
13 the very bottom of 56, Judge Anderson says: "I
14 had in my mind that I had to have a fair price,
15 but I was also trying to dodge a lot of problems
16 that were out there, the structural problems and
17 the asbestos problems. I indicated to him
18 anything was as-is/where-is; you see it, you get
19 it. If it goes sour, you fix it." That's top of
20 page 57.

21 And then continuing at the bottom of page 57
22 from that transcript, Paul Taylor says:

23 "QUESTION: When you say
24 'structural problems' in addition to asbestos,
25 what are you talking about?"

621 1 "ANSWER: They were more than --
2 ultimately ended up worse than I thought. I knew
3 there were wiring problems. I was aware of some
4 beams that had been cracked up in the attic and
5 jerry-rigged together with two-by-fours. I did
6 not appreciate the extent of those problems which
7 came out later.

8 "QUESTION: Did you disclose that
9 to Mr. Hamilton?

10 "ANSWER: I think I did. I mean,
11 I said, 'Go up and look around.' I don't know
12 what you were looking at and I don't know that he
13 did, either. I know that I did not fully
14 appreciate what I was looking at."

15 And then he continues describing problems
16 with the roof.

17 Q. So, to make sure and to close out this part of
18 the testimony, your understanding from that and
19 from the prior document, proof of loss submitted
20 by Mr. Sloan's firm, was that that proof of loss
21 was false?

22 A. I believe so. And one other past answer that I
23 would like to read, again, because it's
24 significant, it was the deposition of Bill
25 Hamilton approximately one month later, January
622 1 21, 1997, which is in the statement for probable
2 cause. On page 24 of that Paul Taylor asks Bill
3 Hamilton: "What do you" -- actually, page 23 it
4 starts: "What due diligence, if any, did you do
5 in connection with the purchase other than work
6 the numbers?" And the prior questions were
7 referring to the bowling alley.

8 "ANSWER: To the extent that I am
9 capable of seeing anything, I walked through the
10 facility, talked to the operators, the
11 management. I was aware of the management. I
12 knew the people that were managing, the lady who
13 was managing who is now deceased.

14 "I principally made my decision on the
15 numbers, which is the way I make all of my
16 investment decisions. I'm not qualified to look
17 at something structurally or something of that
18 nature.

19 "QUESTION: Did you retain anyone
20 to look at the facility structurally?

21 "ANSWER: No, I did not.

22 "QUESTION: Why not?

23 "ANSWER: It is just not in my
24 nature to do that.

623 25 "QUESTION: Let me ask it this
1 way: Have you in the past bought other
2 commercial structures?

3 "ANSWER: I have purchased several
4 buildings and properties and businesses, some of
5 which have properties attached to them.

6 "QUESTION: In those transactions
7 did you retain someone to do a physical
8 inspection or a structural inspection?

9 "ANSWER: No."

10 In the insurance claim dispute there are
11 affidavits. There is an affidavit from -- in
12 fact, it was Bill Hamilton's own affidavit where
13 he testified that, you know, the employees who
14 were long-term employees knew for years that
15 there were broken trusses overhead, but he
16 continued to claim that he first discovered that
17 in July of '93.

18 Q. Anything else you would like to address on this
19 issue, Mr. Schafer?

20 A. There was also reference in the testimony by Rick
21 Hoefel; H-o-e-f-e-l -- actually, it was the -- if
22 I can find the right one -- where he indicated
23 they had been aware of the structural problems,
24 they simply did not know it was life-threatening,
25 as the building department or an engineer who
624 1 they called to look at it in July of 1993 told
2 them that it was life-threatening, and that they
3 would have to immediately close the building and
4 prevent anyone from being inside it until these
5 trusses were fixed.

6 So, the testimony from Mr. Hoefel was:
7 Well, we knew there was a problem but we did not
8 appreciate how serious it was.

9 Q. Anything else, Mr. Schafer?

10 A. Actually, I'm looking at one of the particular
11 other -- and what I'm saying is maybe it was not
12 the testimony at that point of Hoefel but of
13 Steve Fisher.

14 His transcript testimony from January 23rd,
15 1997, in this collection of probable cause
16 documents, on page 41 -- the page numbers I'm
17 referring to are the actual pages of the
18 transcript. There are six displayed on a sheet.

19 Page 41, question from Paul Taylor; he's
20 asking: "In the early fall of 1993 the sale of
21 the ground and buildings by Hoffman-Stevenson to
22 Mr. Hamilton's entity was renegotiated, do you
23 recall that?

24 "ANSWER: Yes, I do.

25 "QUESTION: How did that come

1 about?

2 "ANSWER: It came about for a
3 couple of reasons. One was there were problems
4 with the building, significant problems with the
5 building, which we were aware of, but they became
6 very severe.

7 "The other was the primary beneficiary, the
8 hospital, was in desperate need of cash. So,
9 there were two interests out here that became
10 very significant at that time. It would have
11 been the summer, fall of '93.

12 "QUESTION: Can you describe to me
13 then what occurred; who raised the idea?

14 "ANSWER: Well, the building
15 department raised the idea of closing down the
16 bowling alley. That was real easy. Mr. Hoefel,
17 in my office, went down and we looked at the
18 bowling alley and the bowling alley was in
19 trouble. It was going to fall down."

20 The next page, page 42, the question is:
21 "Who was involved in that negotiation?

22 The answer, again, by Stephen Fisher: "Bill
23 Hamilton and I were there for sure. And that I
24 believe I also talked to Grant Anderson to
25 understand some of the events that were out there
626 1 because I knew, on the periphery, that there were
2 problems with the building. I had to get more
3 information as to what the significant problems
4 were. The person who had that information was
5 Grant Anderson."

6 That's, I think, enough about the structural
7 problems.

8 MR. NEWMAN: All right. Could I
9 just indicate in the record Exhibit D-15, which
10 is the probable cause documents, is clear and
11 complete in the original exhibit that has been
12 filed.

13 My copy, for some reason there's a problem
14 with the copying in places and reverse sides are
15 not there, so I was having a little difficulty
16 finding the language. I did find it in the
17 original.

18 But if there is another possibility of
19 getting another copy with the reverse sides I
20 would appreciate that, just for the Hearing
21 Officer.

22 MS. GRAY: Mr. Mills --

23 THE WITNESS: If I may, because
24 your assistant and I discussed this during the
25 break, I recognized that when I had the copies
627 1 made at Kinko's I looked at the stack and they
2 all appeared to be one-sided as I thumbed up from
3 the bottom, but the top 50 or so pages are
4 two-sided.

5 Ms. Jacques agreed graciously that the Bar
6 would take the original that you have and make
7 accurate copies for all concerned of the pages
8 that were two-sided. I think she said that they
9 have the capacity to convert those two-sided
10 pages to one-sided pages so that further problems
11 in the mechanical copying will not arise.

12 THE HEARING OFFICER: All right.

13 Thank you. I did review the language as you were
14 testifying. I just wanted you to know that my
15 copy is not complete.

16 THE WITNESS: Thank you.

17 THE HEARING OFFICER: This would
18 be a good time to raise the two matters that came
19 up during the break; first, the public
20 information officer of the Bar Association spoke
21 to me and indicated that King TV wants to take
22 some photographs -- I'm not sure how long or to
23 what extent -- today sometime, and I suggested
24 that they might want to arrive after our lunch
25 break.

628 1 So, I was asked when we anticipated taking
2 our lunch break. I told her from one to two, and
3 I indicated no objection to having the King TV
4 folks show up here.

5 I want to coordinate with the existing
6 recording to the extent possible to avoid
7 disruption, and I wanted to raise this so counsel
8 would have an opportunity to think about it, how
9 this might be handled.

10 I have no idea what they have in mind or the
11 duration of the time they expect to be here.
12 That was called to my attention.

13 THE WITNESS: Could I just offer a
14 comment in the for-what-it's-worth department?
15 Personnel from TVW that are videotaping indicated
16 that one of the virtues of their presence is that
17 they could provide a news feed to any other
18 broadcast outlet that wants it. So, I just offer
19 that for your information.

20 THE HEARING OFFICER: Usually in a
21 court situation there is one feed for all, but
22 I'll leave that to the technical folks.

23 I just wanted to alert counsel that we would
24 have someone arriving probably between 1:00 and
25 2:00 to set up and discuss this, if counsel
629 1 wanted to be present.

2 I intend to eat my lunch, so I will not be
3 here until 2:00 and we'll take up any objections
4 or problems at that time. That's the first
5 matter.

6 The other matter, Mr. Newman asked me about
7 my dealings with Professor Strait, and since we
8 had a break I called my office and did the best
9 checking I could on that. There's one individual
10 lawyer who has represented at least two attorneys
11 in disciplinary proceedings that I've wanted to
12 talk to and unfortunately, he was on a conference
13 call so I could not talk with him.

14 However, I checked with the attorney who is
15 responsible for checking our conflict of interest
16 system to see if Professor Strait showed up, and
17 I am embarrassed somewhat to tell you that I am
18 now aware that Professor Strait was hired by
19 attorneys for our law firm in a claim that has
20 been made against our law firm. He was hired as
21 an expert witness.

22 The attorneys who hired him, our attorney is
23 Ron Layton of the Gordon Thomas firm, and he has
24 retained Professor Strait as an expert witness.

25 And I am embarrassed because I have, at
630 1 least until January and as the managing partner
2 of our firm you would think I would know this,
3 but now that it's called to my attention I
4 probably did know that, but that is another
5 contact with Professor Strait.
6 Incidentally, I have nothing to do with
7 that, the factual basis for the claim or the
8 dealings with Mr. Layton relating to that, but
9 that has occurred, so I wanted to put that on the
10 record. It would be embarrassing to me if
11 Professor Strait calls in, which presumably he
12 will if asked, and I had not disclosed it.
13 THE WITNESS: Would it be
14 appropriate to put in the record at this point
15 your firm's relationship with Kurt Bulmer in the
16 past?
17 THE HEARING OFFICER: Sure. I
18 think I was asked this in an earlier telephone
19 conference, and hopefully my comments will be
20 consistent with that.
21 MS. GRAY: May I interrupt before
22 you answer about Mr. Bulmer? Just for the
23 record, are you aware of when Professor Strait
24 was hired as an expert? I know that there was an
25 inquiry made in the middle of 1999 about your
631 1 contact with a number of people. I was not
2 representing the Bar at the time.
3 THE HEARING OFFICER: Right.
4 MS. GRAY: And I was just
5 wondering if he was hired as an expert before
6 that or after that.
7 THE HEARING OFFICER: It's
8 probably before then, because the claim has been
9 in existence for a period of time.
10 MS. GRAY: And you were going to
11 answer about Mr. Bulmer.
12 THE HEARING OFFICER: As to
13 Mr. Bulmer, I am aware that Mr. Bulmer was
14 actually in a co-counsel with my partner, David
15 Swartling, in a disciplinary proceeding that is a
16 public matter for Attorney Wade Dann.
17 There is a published decision on that, and
18 Mr. Bulmer represented Mr. Dann in disciplinary
19 matters and then our firm; David Swartling,
20 specifically, my partner David Swartling came in
21 to handle the appeal.
22 And I think we represented, the firm through
23 Mr. Swartling represented Mr. Dann before the
24 Disciplinary Board and the Supreme Court, if I'm
25 not mistaken, and Mr. Bulmer, of necessity,
632 1 consulted with him.
2 I was not involved in that case at all. I
3 was aware of its going on, of course. I'm
4 confident that Mr. Bulmer has been in our law
5 office in connection with that case.
6 THE WITNESS: I guess the question
7 I would ask that you put in the record is: Was
8 it a sequential representation of Mr. Dann, with
9 Mr. Bulmer going up to a certain point and then
10 your partner taking over or was there a period of
11 co-counsel cooperation between?

12 THE HEARING OFFICER: I'm sure
13 that there was a transition phase, but
14 essentially our firm, David Swartling was hired
15 to handle the appellate process.

16 THE WITNESS: Okay. Thank you
17 very much.

18 THE HEARING OFFICER: And frankly,
19 I would welcome inquiry of Professor Strait if he
20 has had any other contacts with attorneys in our
21 firm. I'm endeavoring to check that out but I
22 have not made a complete check in the system.
23 That has just come to my attention.

24 Anyway, you can proceed.

633 25 MR. NEWMAN: I am now going to
1 move into the next phase of the road map I gave
2 to you, Mr. Mills, and to Ms. Gray, and this
3 concerns Mr. Bulmer and his involvement in
4 representing Judge Anderson and his involvement
5 in what I think will become clear, his attempts
6 to malign Mr. Schafer before the Disciplinary
7 Board itself.

8 So, the first -- I have provided Ms. Gray a
9 number of documents and I'm not sure if she has
10 any objections but we'll walk through them one at
11 a time.

12 MS. GRAY: Well, I think it may be
13 more appropriate to -- I think I'm going to have
14 one large objection to all of the documents and
15 to the entire line of questioning. I think it
16 may be appropriate to just handle that first; is
17 that okay, Mr. Mills?

18 THE HEARING OFFICER: That's okay
19 with me.

20 MR. NEWMAN: That's fine.

21 MS. GRAY: There was some
22 testimony on questioning by Mr. Newman, and I
23 don't recall whether it was yesterday or the day
24 before, about Mr. Bulmer.

634 25 Mr. Schafer expressed in his testimony, to
1 the best of my recollection, some outrage that
2 Mr. Bulmer had accused him of something, and it
3 connected most specifically with a September,
4 1995 hearing before Judge Anderson.

5 And then Mr. Schafer testified at some
6 length about what occurred at that hearing and,
7 you know, what the ruling was and whether he
8 cared about it and whether he didn't care about
9 it.

10 That was the first testimony about that
11 hearing. The Association had not inquired about
12 it. I believe I objected to the relevance at the
13 time. It was overruled. Mr. Schafer testified
14 about it.

15 And I believe Mr. Newman indicated yesterday
16 that at least one theory of relevance -- my
17 objection is going to be relevance -- one theory
18 of relevance was because it is their position
19 that materials having been provided to the
20 Disciplinary Board that considered a stipulation
21 in the Grant Anderson disciplinary matter, they
22 received certain materials submitted by
23 Mr. Bulmer as part of a package that went to that

24 Disciplinary Board that did criticize
25 Mr. Schafer.

635 1 And I understand that argument but I do not
2 understand that argument to be relevant to these
3 proceedings.

4 If indeed Mr. Schafer wishes to make a
5 motion to recuse Disciplinary Board members for
6 their exposure to that material because it may
7 prejudice them in considering any potential
8 appeal, I think that is a motion appropriately
9 made to the Disciplinary Board and not a matter
10 for making a record in this proceeding.

11 If, however, it is unclear to me whether or
12 not they are saying that by presenting evidence
13 about the matter in this proceeding they are
14 trying to cure any prejudice that might occur
15 from the Disciplinary Board members having
16 reviewed that document, that is unclear.

17 It's our position that Mr. Schafer should
18 not present in the first instance that he had a
19 dispute with Mr. Bulmer well after 1996, where
20 Mr. Bulmer criticized him and he feels that it
21 was inappropriate and that -- but to present the
22 evidence of the criticism and then knock it down
23 when it is not at issue thus far in these
24 proceedings, it is our position that it is
25 irrelevant and I would like the record clear on

636 1 whether or not it's being offered to cure any
2 possible prejudice that Disciplinary Board
3 members might have.

4 THE HEARING OFFICER: Mr. Newman
5 first.

6 MR. NEWMAN: If I could just ask
7 for a two-minute break to confer with Mr. Mullins
8 and Mr. Schafer in coordinating our response so
9 we're not stepping on each others toes?

10 THE HEARING OFFICER: All right.
11 We will take a short break.

12 (Brief recess taken.)

13 THE HEARING OFFICER: We are back
14 on the record.

15 MR. NEWMAN: In responding to Ms.
16 Gray's objection, I believe, to information
17 concerning Mr. Bulmer, I think it's important
18 first to remind you, Mr. Mills, as you are aware,
19 that Mr. Bulmer used to be general counsel to the
20 Bar Association. At that time he was head of
21 discipline.

22 He later obviously went into private
23 practice, represented Judge Anderson in this
24 whole ordeal, including the Supreme Court mess.

637 1 Why Mr. Bulmer's information is important is
2 because when Mr. Schafer subpoenaed the documents
3 from his disciplinary file, from his disciplinary
4 file, there was information from Mr. Bulmer,
5 including a letter to various legislative
6 authorities. Mr. Bulmer had published an article
7 in some judicial news magazine highly critical
8 and we believe potentially defamatory to Mr.
9 Schafer.

10 Now, in his representation of Mr. Anderson
and when the Bar Association agreed, the

11 disciplinary panel agreed to the discipline, the
12 temporary suspension of his license he gave to
13 that panel, which you advise, which your
14 recommendation would go to, this material which
15 we consider defamatory, and we need to cure or
16 correct the record and point out that the motive,
17 I mean, what the material talks about is that Mr.
18 Schafer was motivated because Judge Anderson
19 denied him fees.

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20 And Mr. Bulmer publicly communicated with
21 various reporters, including one for the National
22 Law Journal and one for the L.A. Times, claiming
23 that somewhere in the transcript of one of the
24 Barovic hearings that that established, provided
25 substance to his claim, and that was not the
1 case, and perhaps that's why the Bar Association
2 today in this hearing is not using the particular
3 order at issue.

4 But in representing Mr. Schafer I think it's
5 important, imperative to have you understand that
6 the well has been poisoned, that Mr. Bulmer has
7 already given to the disciplinary panel you will
8 send your recommendation to information which
9 basically says that, you know, Mr. Schafer did
10 this because he was denied fees, and that is not
11 correct.

12 THE WITNESS: And to the Supreme
13 Court.

14 THE HEARING OFFICER: All right.
15 Let me make sure I understand the basis for this
16 evidence. It's mainly that Mr. Bulmer in his
17 capacity as counsel for Judge Anderson has
18 submitted information in Mr. Schafer's
19 disciplinary file that is false or erroneous and
20 you -- Mr. Schafer wants to correct the record in
21 this proceeding in order to avoid any
22 misunderstanding by myself and also the
23 Disciplinary Board and perhaps ultimately the
24 Supreme Court, is that the basis?

25 MR. NEWMAN: That's correct.

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1 THE WITNESS: May I? I'm sorry.
2 I just need to correct to an extent. It's not
3 just the fact that there's papers in my
4 disciplinary file that has not yet gone to the
5 Disciplinary Board and could be plucked from that
6 file, but there is information, there is a
7 perception of me in the minds, between the ears
8 of the members of the Disciplinary Board and the
9 Nine Justices of the Supreme Court, all of whom
10 received this false, defamatory, maliciously so,
11 diatribe that attributes vile motives to me based
12 on alleged facts that are fabricated by
13 Mr. Bulmer and his client, Judge Anderson.

14 It's gone very public. All of these
15 individuals will not likely forget it. Many of
16 these individuals probably themselves have
17 attorney/client relationships with Mr. Bulmer.
18 It's a public fact that Justice Sanders hired
19 Mr. Bulmer to defend him in a Bar disciplinary
20 proceeding.

21 I don't know how many people are going to
22 put great weight on Mr. Bulmer's allegations as

23 to what is the truth and what is the true motive,
24 but when he, you know, spews falsehoods
25 throughout this profession in this state that are
640 1 pure fabrication, maliciously designed to malign
2 me, I demand the opportunity to publicly disprove
3 the truth of this gentleman's vile.

4 THE HEARING OFFICER: I don't have
5 any problem with your testifying about those
6 things. What we're talking about right now is
7 documents. I'm not -- where I was going with my
8 little statement is I'm trying to understand
9 exactly what documents we're talking about.

10 MR. NEWMAN: I intend to go
11 through theirs. I have already provided the
12 documents I would like Mr. Schafer to address
13 that concerns Mr. Bulmer's communications with
14 the Disciplinary Board. That's in the file.
15 That we will walk through. I have already
16 provided those to Ms. Gray.

17 THE HEARING OFFICER: Ms. Gray, do
18 you want to be heard on this point?

19 MS. GRAY: I do. Mr. Newman said
20 that with regard to Doug Schafer's disciplinary
21 file -- not Grant Anderson's disciplinary file --
22 Doug Schafer's disciplinary file that there has
23 been a subpoena and in response to that subpoena
24 documents from Mr. Bulmer were produced.

25 The public file is before you. I am not
641 1 aware of any subpoena for Doug Schafer's
2 disciplinary file or any material from Mr. Bulmer
3 in it that relates to any attack by Mr. Bulmer on
4 Mr. Schafer.

5 And so I think it's important that the
6 record be clear as to whether or not such a
7 document exists, and one of the purposes for
8 having the public file here is that we determine
9 if indeed there is any information in
10 Mr. Schafer's disciplinary file.

11 I haven't reviewed it with this in mind, but
12 I think it's important that the record be clear
13 and accurate in that regard because I don't
14 believe that there is but I could be wrong.

15 THE WITNESS: I withdraw. Thank
16 you for pointing that out. I did get confused.
17 When you responded to my subpoena by providing me
18 the package of documents Bates stamped in the
19 mail last Friday, my subpoena in connection with
20 this case, it was the documents that I had, you
21 know, the 79 pages. It also included Bates
22 stamped all of the documents, and you are
23 correct, they were in the Judge Anderson file and
24 I was mistaken and I apologize for thinking that
25 those were from my file. I was confused.

642 1 THE HEARING OFFICER: Do you have
2 any further objection related to the fact that
3 these documents are in the Grant Anderson file?

4 MS. GRAY: Certain documents are
5 in the Grant Anderson file. I know that to be
6 true. I've stated my objection. It covers both,
7 you know, it covers both testimony and documents.
8 There's nothing particular to the documents other
9 than my general objection.

10 THE HEARING OFFICER: All right.
11 It appears to the Hearing Officer that there may
12 be materials -- I haven't seen them, obviously --
13 in the Grant Anderson disciplinary file that
14 might impugn Mr. Schafer's motives and integrity
15 and that he should have an opportunity to rebut
16 those.

17 And so I'm going to -- we'll go one by one
18 with documents, but as to your general objection,
19 it will be overruled. We will proceed and go one
20 by one with the documents.

21 MS. GRAY: In that case I think it
22 may be efficient to admit the documents because
23 the only objection I have to them is the general
24 one.

25 THE HEARING OFFICER: All right.

643 1 MR. NEWMAN: Why don't we just do
2 that right now, Mr. Mills, and I have already
3 provided copies to Ms. Gray.

4 MS. GRAY: Yes, but I need to get
5 the labeling straight.

6 MR. NEWMAN: The first document is
7 the Reply to Motion to Quash.

8 MS. GRAY: This is not a Bulmer
9 document.

10 MR. NEWMAN: It has Bulmer
11 information attached to it.

12 MS. GRAY: I would like to address
13 that separately. That does not --

14 MR. NEWMAN: Well, let me explain
15 this, if I may. We just got done talking about
16 Mr. Sloan. What Mr. -- let me explain the
17 purpose of this document. You already have this,
18 you should have this. This is the reply to
19 motion to quash.

20 The problem here is that, as you well know,
21 exhibits -- attachments are not officially
22 admitted. If she wants to officially admit those
23 then he can testify regarding these right now.

24 THE WITNESS: It is the motion to
25 quash the subpoena of Phil Sloan, and the
644 1 exhibits supporting it were showing the close,
2 cooperative efforts by Philip Sloan and Kurt
3 Bulmer to work together in their common defense
4 of their clients; Judge Anderson and --

5 THE HEARING OFFICER:
6 Unfortunately, I think we do have to go one by
7 one. I don't mean to interrupt you, but why
8 don't we mark them, take any objection, and I'll
9 rule on them. We'll follow the procedure.

10 THE WITNESS: Okay.

11 MS. GRAY: I did not understand
12 that they were offering this on the Bulmer issue,
13 I'm sorry.

14 MR. NEWMAN: I clearly provided
15 you a file.

16 MS. GRAY: You provided me this
17 document, there's no question. My objection is I
18 didn't know I had to cover this document.

19 MR. NEWMAN: All right.

20 THE HEARING OFFICER: Exhibit --

21 MR. NEWMAN: 23.

22 THE HEARING OFFICER: D-23.
23 MS. GRAY: D-23 is reply to motion
24 to quash.

25 MR. NEWMAN: Yes.
645 1 (Reply to Motion to Quash
2 marked as Respondent's Exhibit No. D-23.)

3 THE HEARING OFFICER: Has counsel
4 had an opportunity to review what's been marked
5 for identification as Exhibit D-23? And if so,
6 do you have any objection to its admission?

7 MS. GRAY: Okay. D-23 is a
8 document you have already seen and I do have an
9 objection to its admission.

10 The front part is a legal argument and that
11 was ruled upon and that record is available for
12 appeal on the question of the legal argument, so
13 I don't think the front part is appropriately
14 admitted in these proceedings.

15 Exhibit A has no relation to Kurt Bulmer.
16 Exhibit B has no relation to Kurt Bulmer.
17 Exhibit C is already in evidence, so my objection
18 is that it is needlessly burdening the record
19 with a document that's already in evidence.

20 I believe Exhibit D is -- it looks like it
21 was a CJC exhibit, so that's already in evidence.
22 Exhibit E looks like a CJC exhibit that's already
23 in evidence.

24 Exhibit F looks like a CJC exhibit that's
25 already in evidence. G looks like a CJC exhibit
646 1 that's already in evidence. H doesn't look like
2 it relates to Mr. Bulmer. I don't know what its
3 relevance is to the hearing.

4 Exhibit I does not appear to relate to
5 Mr. Bulmer. I don't know what its evidentiary
6 value to the hearing is. Exhibit J I believe is
7 already in evidence. Exhibit K is already in
8 evidence. Exhibit L is already in evidence.

9 Exhibit M is a letter from Mr. Bulmer to
10 Mr. Pan regarding Grant Anderson in June of 1996.
11 Although it doesn't appear to have been one of
12 the ones submitted to the Disciplinary Board I
13 wouldn't have an objection to Exhibit M based
14 on -- my same objection to relevance applies but
15 no additional objection to Exhibit M.

16 The next -- I don't know if this is part of
17 Exhibit M. Then there are some time sheets and I
18 object to those because they contain
19 Mr. Schafer's handwritten interpretations of what
20 blacked out portions mean.

21 If it were, if Mr. Schafer's handwritten
22 notations were taken off I would not object to
23 Exhibit M on the issue of Kurt Bulmer, other than
24 to the extent that I have already objected.

25 Exhibit N is part of the CJC proceeding,
647 1 it's already in evidence and it's only annotated
2 by Mr. Schafer and I object to that as needless
3 duplication. Exhibit O is already in evidence.
4 Exhibit P I assume is part of the CJC
5 proceedings, it contains an exhibit number, and
6 Exhibit Q is already in evidence.

7 So, there's two documents related to Kurt
8 Bulmer that I have no additional objection to.

9 THE HEARING OFFICER: Before
10 you -- I'll give both of you an opportunity to
11 respond. I would prefer for clarity, for myself
12 as Hearing Officer, that we not have multiple
13 copies of documents as exhibits, it's just
14 confusing.

15 MR. NEWMAN: I understand.

16 THE HEARING OFFICER: And so if
17 some of the exhibits to whatever the main
18 document is are redundant it would be useful if
19 we could remove those from this exhibit. I don't
20 have any objection to the witness testifying
21 about those documents, but I would like to
22 reference to existing exhibits in the record, if
23 possible.

24 MR. NEWMAN: I understand.

25 THE HEARING OFFICER: Again,
648 1 recognizing clarity in the record is the most
2 important thing. I don't want exhibits having
3 two different numbers.

4 The second thing, I don't hear any objection
5 to the -- I think it's Exhibit M, the letter
6 dated June, 1996, the Bulmer letter.

7 MS. GRAY: Well, I think M
8 includes the bill, which I did object to the
9 handwritten notations of Mr. Schafer.

10 THE HEARING OFFICER: Okay. That
11 objection I would rule that summarily I would
12 overrule that objection. He can explain what the
13 handwritten notes are.

14 So, if Exhibit M is the crux of this,
15 including the time sheets, I would have no
16 problem doing that as say a substitute or
17 truncated Exhibit D-23, and I'll hear from
18 counsel about why the rest might be important.

19 MR. NEWMAN: Let me first say that
20 we're trying to segway from the information
21 you've heard regarding Mr. Sloan and his firm and
22 the trust, what we believe to be an example of an
23 ongoing -- that Mr. Schafer could view as a
24 reasonable person as some evidence of an ongoing
25 crime of fraud, illustrations of that problem.

649 1 The other exhibits which Ms. Gray is
2 objecting to, while it is true they don't talk
3 about Mr. Bulmer, they do segway from our prior
4 testimony, from Mr. Schafer's prior testimony
5 about the trusses and about that whole issue
6 dealing with the value of the property, that kind
7 of stuff.

8 So, I don't want -- Mr. Mills, I don't want
9 you to be, to exclude -- I think it's important
10 that Mr. Schafer explain these are public
11 documents, he got them. They do follow through
12 on this, what appears to be a utilization by his
13 client, former client, Mr. Hamilton, of various
14 attorneys to continue what a person could
15 reasonably believe to be a fraudulent or a
16 criminal activity.

17 THE HEARING OFFICER: Mr. Schafer,
18 do you want to be heard about this?

19 THE WITNESS: Yes, I thank you
20 very much. At the outset I guess I would say I

21 think it should be recognized that everything
22 here is already in the, you know, the public
23 disciplinary file.

24 I guess I thought that the public
25 disciplinary file that goes to the public goes to
650 1 all those who review the proceeding; the
2 Disciplinary Board members, the Supreme Court. I
3 am still somewhat uncertain of that in light of
4 comments made by Disciplinary Counsel here.

5 You know, I guess I thought that this was
6 already public but if there's a concern -- I now
7 have a concern that some of these papers might
8 not go to the reviewing authorities who review
9 your recommendations.

10 I recognize, you know, this is perhaps
11 bulkier than it perhaps needs to be in light of
12 other things that have been admitted, and I would
13 readily say that at least Exhibits J, K and L,
14 which are the demand letter, complaint and
15 settlement agreement by the hospital's attorneys,
16 could readily be pulled out of this, which would
17 shrink its size by more than half. That is the
18 greatest amount of the bulk.

19 The other papers, I think, are kind of
20 necessary for the reader reviewing the first
21 eight pages to conveniently understand what is
22 being said and understand the relevance of it
23 all.

24 I recognize that some of these other
25 exhibits indeed are within the 1,300,300 pages of
651 1 the record of the CJC, but to expect every one of
2 the 14 Disciplinary Board members and nine
3 Supreme Court Justices, plus their staff members,
4 to cull out from those 1,300 pages the documents
5 that were referred to in the eight-page
6 narrative, here, I think is more of a burden upon
7 them than the burden of having a few more sheets
8 of paper in their stack of the record.

9 MR. NEWMAN: Mr. Mills, if you
10 would like Mr. Schafer could obviously go
11 through, as Ms. Gray has, Exhibit A, B, C, D, and
12 explain that they were public documents, and
13 there are some repetitions here. So, I don't
14 think we have an objection to pulling out the
15 repetitious documents.

16 THE HEARING OFFICER: Well, my
17 concern is the clarity of the record, number one,
18 and also not burdening the record by having
19 different -- I guess it's the same point, not
20 having different numbers on the same document,
21 but I think we have already done that.

22 THE WITNESS: And the CJC has done
23 that in their public record.

24 THE HEARING OFFICER: So, I'm
25 going to admit this exhibit in its entirety.

652 1 MR. NEWMAN: This would be D-23,
2 then. You should already have the original,
3 though.

4 (Respondent's Exhibit No. D-23
5 was received in evidence.)

6 THE HEARING OFFICER: Yes.

7 Q. (By Mr. Newman) Mr. Schafer, Doug, can you

8 explain what this exhibit is?

9 A. This exhibit was an eight-page narrative and many
10 pages attached as exhibits that was my reply to
11 the motion that Mr. Lawyer Philip R. Sloan filed
12 in this proceeding about a month ago.

13 I had served him with a deposition seeking
14 to take his testimony with respect to his
15 conversations with his client, William L.
16 Hamilton, and review his files concerning his
17 representation of William L. Hamilton during the
18 time frame surrounding and subsequent to the
19 meeting that I had with those two gentlemen on
20 February 1st of 1996.

21 And I argued based on the case law of this
22 state and other states that's reflected in this
23 eight-page reply and also reflected in the more
24 lengthy prior brief concerning the crime fraud
25 exception that I had filed in this proceeding
653 1 from December 7th or 8th, I believe, 1999, when
2 Mr. David Tuell was similarly seeking to quash my
3 subpoena.

4 And among the reasons that I argued that
5 there should be no protection by the
6 attorney/client privilege of Mr. Sloan's
7 communications and files and records was that it
8 seemed there was ample evidence that he was
9 actively participating or that his client,
10 Mr. Hamilton, was using him, whether or not he
11 knew it, because the case law required no
12 knowledge of the lawyer as to the criminal or
13 fraudulent or concealment activities or motives
14 of his client in perpetuating or concealing
15 fraudulent or criminal activities.

16 And I thought that this documentation
17 demonstrated that Mr. Phil Sloan had been
18 actively involved with Mr. Kurt Bulmer in doing
19 just that.

20 You know, of particular significance within
21 this exhibit, it's internal Exhibit M as in
22 monopoly, which is, as Ms. Gray referred to, a
23 letter from Kurt M. Bulmer, Attorney at Law,
24 representing Mr. Hamilton -- Judge Anderson, to
25 the Pierce County risk manager, Mr. Bulmer
654 1 forwarding his invoice for costs of defense of
2 Judge Anderson, dated June 3rd, 1996, the date on
3 the letter.

4 And in that he, you know, generally seems to
5 be critical of me and maligning of me, but he
6 includes in the body of his letter the statement
7 that he has redacted some information from the
8 bill, saying that it related to a personal
9 matter.

10 The fourth paragraph of his letter says:
11 "The billing in this matter is complicated by the
12 fact that some of the legal services I have
13 provided to Judge Anderson, while necessary to
14 defend Judge Anderson from this attack, may also
15 be of a personal nature which Judge Anderson
16 might have incurred even if he had not been
17 subject to this attack. Judge Anderson properly
18 feels that such services should not be paid for
19 by the County."

20 Now, the Pierce County ordinance that
21 supports county taxpayers paying the defense
22 costs of Judges in disciplinary matters says that
23 the itemization of the legal services should be
24 provided to the county officials.

655 25 Certainly, it's understandable that he
1 redacted passages relating to representation of a
2 personal nature for which the county taxpayers
3 are not being paid, but his invoice redacted a
4 number of time sheet entries or time slip entries
5 for which the county taxpayers did pay, including
6 his entry on March 14th.

7 I'm now looking at his invoice dated June 1,
8 1996. The entry on March 14th says: "Telephone
9 conference with Grant regarding," and then
10 there's a blanked out word "history and possible"
11 another blanked out word.

12 As you can see, as anyone can see the
13 handwritten notations opposite the black felt pen
14 redactions are my own handwriting, which simply
15 represents my, you know, strong suspicion,
16 suspicion based as to what the word blanked out
17 was, suspicion based in part upon, you know, my
18 knowledge that this being in courier font type,
19 which is 10 characters per inch whether it's an I
20 or a W, looking at the length of the redacted
21 word, identifying the number of characters of
22 type that it could have been, and then putting
23 bits of the puzzle together, knowing what was
24 going on at the time and the relationship,
25 knowing that the affidavit was signed April 2nd
656 1 or 4th, I forget which, of that year, knowing
2 that Mr. Bulmer would obviously be concerned
3 about what he would call the conflict in the
4 relationship between Judge Anderson and Bill
5 Hamilton.

6 So, you see, I have written in what I think
7 the true time slip entry was for that date:
8 "Telephone conference with Grant regarding
9 Hamilton history and possible conflicts."

10 Next entry, March 20, 1996: "Draft Hamilton
11 affidavit in several versions. Sent to Sloan and
12 Grant for review."

13 The next entry, March 28th: "Revise
14 Hamilton affidavit, prepare a letter to," and I
15 have inserted my belief that the redacted word is
16 "Sloan. Telephone conference with Grant
17 regarding corrections and situation of Schafer
18 before Thompson" -- that's referring to my
19 appearance before Grant Anderson's judicial
20 colleague, Judge Donald Thompson, who is the one
21 who banished me from the courthouse. It looks as
22 possibly Judge Anderson may have had an
23 involvement in that as well.

24 That is maybe the most key part of this.

657 25 The next exhibit, Exhibit N, as in November,
1 -1 is a key page from the first deposition, from
2 the transcript previously admitted December 17,
3 1996, when the Commission on Judicial Conduct
4 prosecutor asked Judge Anderson on page 100:
5 "When Mr. Hamilton prepared his affidavit in
6 April, 1996, did you assist him in preparing

7 that?
8 "ANSWER: No. Did I see it? Yes.
9 "QUESTION: Did you see it before
10 he signed it?
11 "ANSWER: I probably did. I don't
12 know that I did or I didn't, but I probably did.
13 "QUESTION: Did you make any
14 suggestions as to the wording or language?
15 "ANSWER: No, Mr. Bulmer was in
16 contact with his attorney and I think they hashed
17 it out, if that is the right word, the
18 preparations."

19 The next page, Exhibit N, as in November, -2
20 is the excerpt from the deposition transcript of
21 William Hamilton that was on May 21st, I believe
22 it is. It's hard for me to see -- no, it's
23 January 21st, 1997.

24 On page 92 Mr. Paul Taylor asked William L.
25 Hamilton the question: "What were the
658 1 circumstances that led to the creation of the
2 affidavit that has been marked as Exhibit 2," and
3 that is referring to the affidavit where Bill
4 Hamilton claims a long-term friendship, close
5 friendship, very close, with Mr. -- Judge
6 Anderson.

7 Bill Hamilton's answer -- mind you, his
8 lawyer, Philip Sloan, was at his side, and
9 lawyers are well aware they may not participate
10 in a proceeding where their client is committing
11 perjury. Mr. Hamilton was under oath.

12 Mr. Hamilton answered: "I'm not sure I can
13 remember the circumstances. I believe that -- I
14 can't tell you whether Mr. Bulmer called me or
15 Judge Anderson called me and asked me to state my
16 recollections in writing. I know that I took a
17 shot at it and talked to Phil."

18 At which point Mr. Phil Sloan, his lawyer,
19 interrupts and says: "Didn't I tell you Bulmer
20 asked me to do it?"

21 The witness, Mr. Hamilton, says: "Yes."

22 And then Mr. Sloan, says: "Counsel, without
23 testifying, I believe Mr. Bulmer and I spoke and
24 he made the suggestion that I obtain it." And
25 then they just give other -- well, I'll read the
659 1 rest of it -- well, it's in the record. There's
2 no need to read it at this point.

3 The next exhibit, Exhibit O, numbered on
4 this document, is what was Exhibit 2 for
5 Mr. Hamilton's deposition, and that is the
6 affidavit signed by Mr. Hamilton April 2nd, 1996,
7 in which there is a lengthy narrative about how
8 close and dependent he had been for a period of
9 many, many years on his legal advisor, Grant
10 Anderson, and how he felt guilty at not having
11 properly compensated his lawyer/advisor, Grant
12 Anderson, and that that was the reason he decided
13 to provide him or make his payments on the
14 Cadillac automobile.

15 I can testify that I, as we learned two days
16 ago, had been a regular advisor of Bill Hamilton
17 for many years, including in 1990 forming a
18 community bank of which he was the lead promoter,

19 and in 1991 and '92 leading a -- being the only
20 attorney involved with Bill Hamilton as the
21 primary member of this group doing a proxy
22 contest involving First Mutual Savings Bank of
23 Bellevue which was represented by Bogel and Gates
24 and controlled substantially by its chairman,
25 Kemper Freeman.

660 1 And during the course of that I spent a
2 great deal of time with Mr. Hamilton on both
3 projects and I never had recalled him mentioning
4 Grant L. Anderson as a lawyer that he knew or was
5 regularly getting advice from.

6 So, it frankly surprises me a great deal
7 when I saw this affidavit and saw the testimony
8 that Bill Hamilton gave in the five-day hearing
9 where he says that "Judge Grant L. Anderson is as
10 close a male friend as I have," because I
11 strongly believe that that was the story line
12 that Kurt Bulmer had devised and got the
13 participation of Bill Sloan and Bill Hamilton.

14 Q. In the first exhibit there, Mr. Schafer, can you
15 identify what that is and where you got it?

16 A. Following the narrative, just kind of quickly
17 going through the exhibits, the first Exhibit A
18 is simply the appraisal letter signed by Jim
19 Latteri giving his opinion as to the value of
20 Pacific Lanes in March of 1999 as being
21 \$1,333,000.

22 The next is the MAI appraisal by the firm
23 Eastman and Associates in Seattle that Key Bank
24 retained in response to Bill Hamilton's request
25 to obtain a commercial bank loan to buy Pacific
661 1 Lanes and make improvements to the equipment.

2 The bank retained Eastman and Associates,
3 these two appraisers; Leslie Eastman, his
4 associate, Paul Zemtseff; Z-e-m-t-s-e-f-f, and
5 they cooperatively in response to a subpoena I
6 delivered to them last summer provided me the
7 more than a hundred page full text of their MAI
8 appraisal; this being the cover sheet expressing
9 their opinion that at that time, June 8th of
10 1993, the fair market value of the Pacific Lanes
11 as a going concern, including real estate and
12 operating business, was \$1,775,000.

13 And it was about five months later that
14 Mr. Hamilton and Mr. -- Judge Anderson signed
15 their affidavit under penalty of perjury that
16 their total transaction price, at least as to the
17 real estate, was \$508,000.

18 The next item, Exhibit C, is simply that
19 three-page definitive agreement, the version or
20 the copy that I obtained from the gambling
21 commission in early July -- excuse me, January of
22 1996.

23 Exhibits D and E are from the exhibit book
24 of the CJC proceedings that further illustrate
25 the terms of their transaction.

662 1 Exhibit F simply is, again, from the exhibit
2 book of the CJC proceeding illustrating the
3 option terms with the declining price.

4 Exhibit G is that affidavit signed by the
5 two of them as to the purchase price.

6 Exhibit H and I are inserted to help the
7 reader understand the narrative that I have at
8 the outset, the first eight pages. And
9 specifically, turning back to page 6, the bottom
10 paragraph on that page shows how I arrive at the
11 conclusion that I have stated on line 25, that
12 when you --

13 THE HEARING OFFICER: I'm sorry,
14 I'm not sure what page you're on.

15 THE WITNESS: I'm on page 6 of the
16 Reply to Motion to Quash, the sixth page of this
17 exhibit near the top.

18 THE HEARING OFFICER: Thank you.

19 THE WITNESS: And showing the
20 relevance of these exhibits, H and I; on page 6
21 at line 24 or 25 I assert that Bill Hamilton
22 ended up paying only \$657,000 for this bowling
23 center, which included real estate and operating
24 business. And I assert for the operating
25 business, which included the equipment there, he
663 1 paid \$207,000, and that's based on Exhibit E,
2 which is the adjustment sheet, which was the
3 central focus of the CJC proceeding.

4 That was where after Bill Hamilton was
5 paying for the Cadillac in March of 1993 Judge
6 Anderson, then a judge, met with their
7 accountants, Steve Fisher and Bill Hamilton, and
8 they all agreed to make a retroactive adjustment
9 in the \$300,000 purchase price of the operating
10 business, so as to give Bill Hamilton the benefit
11 of all the revenues generated during the period
12 from September through the end of 1992, which
13 resulted in that purchase price being reduced to
14 the figure that is in the middle of the page on
15 Exhibit E, where it says: "Adjusted purchase
16 price; \$207,000, \$207,171.

17 So, back on the narrative I state that:
18 "For the operating business Hamilton paid
19 \$207,000, for the real estate Hamilton initially
20 paid \$50,000 for an option," which Exhibit F
21 recites at the second -- at the first line: "In
22 consideration for \$50,000 Hoffman-Stevenson
23 hereby grants to Pacific Recreation Enterprises
24 an option."

25 And back to the narrative on page 6, I say:
664 1 "And he then paid \$400,000 when he exercised that
2 option in October, 1993," referring to Exhibits
3 G, H and I. G simply is showing he exercised the
4 option or shows that he paid at that time
5 \$508,000.

6 Exhibit H is a letter from Stephen Fisher to
7 the accountants that they were using in
8 connection with this, and he says in the first
9 paragraph: "Pacific Recreation Enterprises has
10 proposed to pay off the promissory note to
11 Pacific Lanes in the sum of \$108,000. Pacific
12 Recreation Enterprises has also proposed to pay
13 \$400,000 in exercising its option with
14 Hoffman-Stevenson for the real property."

15 Now, I'm not taking, I'm not ascribing
16 particular relevance in this exercise of totaling
17 the components of the total price, not focus on

18 the 108, because it is a portion of the \$207,000
19 adjusted purchase price, but I focus on the
20 400,000 that was declared as the amount to
21 exercise the purchase option.

22 The next, Exhibit I, again, a letter from
23 Stephen Fisher, again, to their accountant, one
24 of the individuals sued, by the way, by the
25 hospital.

665 1 Another letter showing consistent
2 information, saying that it was the closing of
3 the exercise of the option between
4 Hoffman-Stevenson and Pacific Recreation
5 Enterprises, occurred October 12th. A check was
6 payable to Hoffman-Stevenson in the sum of
7 \$309,995.

8 THE HEARING OFFICER: 390,000,
9 wasn't it?

10 THE WITNESS: Yes, I'm sorry,
11 390,995.89. Hoffman-Stevenson was required to
12 pay the excise tax of slightly more than \$9,000.

13 When you add the excise tax to the figure
14 reported in the prior sentence you arrive at the
15 flat amount of \$400,000, which was the amount
16 that was the option -- was the amount that he
17 paid to exercise the option.

18 Maybe I skipped Exhibit -- no, I didn't.
19 Okay, I've covered those exhibits. I considered
20 important to make it clear because, frankly, I
21 sat through the portion that I was permitted to
22 sit through of Judge Anderson's disciplinary
23 hearing, and I guess I should say I was impressed
24 at the extent to which Kurt Bulmer could confuse
25 everybody with the numbers that he was scribbling
all over the chart.

666 1 And I think, unfortunately, the volunteers
2 on the panel of the CJC failed to really
3 understand the degree of fraud that was committed
4 and the fact that Bill Hamilton, yes, indeed, did
5 exercise an option, it's well documented, and
6 bought this bowling for the sum total of \$675,000
7 when it was appraised at one million seven -- had
8 already been appraised at \$1,775,000, and was
9 supposed to benefit a rural public hospital that
10 had horribly outdated x-ray equipment and other
11 such equipment.

12 THE HEARING OFFICER: Can I ask a
13 question for clarification?

14 MR. NEWMAN: Sure.

15 THE HEARING OFFICER: On page 7 of
16 Exhibit D-23 there is a statement on line 5 that
17 the hospital settled the dispute for \$500,000
18 without having to file the lawsuit.

19 And then if I look back in Exhibit I to this
20 same document, Mr. Fisher's letter says a partial
21 disbursement was made from the trust to the
22 hospital of \$270,000. And I have in my testimony
23 yesterday from Pam Ott that the hospital got
24 \$750,000 in a mediation.
25

667 1 I'm just a little bit confused and I'm not
2 sure, Mr. Schafer, if you can shed light on that,
3 but if you can I would like to know what you
4 know.

5 THE WITNESS: I can probably shed
6 light on just about everything through this
7 five-year, you know, saga that I've been through
8 and I would be glad to do so.

9 THE HEARING OFFICER: Specifically
10 at this time all I'm interested in is how much
11 did the hospital eventually get, if you know?

12 THE WITNESS: My understanding is
13 that the hospital had received, I think it was
14 \$626,000 that their chief financial officer
15 informed me that they had received up until, I
16 think it was the fall of 1998 when he provided me
17 that letter.

18 My understanding is that once I obtained
19 these public records from the hospital district's
20 attorneys this settlement agreement recites, and
21 it's Exhibit L here, paragraph one of Exhibit L,
22 that this particular settlement agreement -- and
23 there might have been another one, there might
24 have been something else -- this particular
25 settlement agreement does not name any bank.

668 1 Perhaps there was another settlement between the
2 hospital and the bank that was subsequent to this
3 or --

4 MS. GRAY: Objection to
5 speculation.

6 THE HEARING OFFICER: It is, but I
7 can take that into account and it will be
8 overruled.

9 THE WITNESS: You know, this
10 settlement agreement simply is between
11 individuals and law firms and accounting firms,
12 and it reflects a settlement amount of, paragraph
13 one, \$500,000, of which the hospital's attorneys
14 received \$139,000, and I received not a single
15 penny, for what it's worth.

16 THE HEARING OFFICER: Thank you.
17 I'm sorry to interrupt your questioning. I think
18 we will take about a five-minute break at this
19 point.

20 MR. NEWMAN: Sure.

21 THE HEARING OFFICER: So, off the
22 record for five minutes.

23 (Brief recess taken.)

24 THE HEARING OFFICER: All right.
25 Let's go back on the record.

669 1 MR. NEWMAN: Thank you. The next
2 exhibit which has been identified -- will be
3 identified as D-24, it's a letter on
4 Mr. Schafer's letterhead.

5 I've provided it to Ms. Gray and, given that
6 I think she's had an outstanding objection,
7 perhaps, to some of these, I would like to show
8 it to the witness and see if he can identify
9 this.

10 MS. GRAY: My objection is noted
11 for the record and the Hearing Officer has noted
12 that he'll admit it, so it probably should just
13 be admitted now.

14 THE HEARING OFFICER: All right.
15 Exhibit D-24 will be admitted. I have the
16 original and a copy.

17 Q. (By Mr. Newman) Mr. Schafer, can you identify
18 that exhibit?

19 A. Can I preliminarily -- and I apologize and I
20 appreciate all you're doing -- just suggest that
21 perhaps it would be more understandable to folks
22 if we start with the other exhibit that reflects
23 the Judicial News, that reflects the letter to
24 the Disciplinary Board and the Judicial News
25 publication of that, because this has been my
670 1 response upon learning of that?

2 This (indicating), and there was one more,
3 the one that has the letter to the Disciplinary
4 Board on top has the full text of what his
5 diatribe was. It's a thicker one. That's just
6 the cover of the Judicial News.

7 MR. NEWMAN: Let me make sure I
8 have the right exhibit.

9 THE WITNESS: Yes, this would be
10 then logically, to me, the first one to cover,
11 followed by Judicial News, followed by my
12 response.

13 MR. NEWMAN: Okay. Thank you.
14 Let's do this in some logical order, here. If
15 you don't mind, Mr. Mills, that exhibit that we
16 have marked as D-24, that would not be D-24, just
17 to make it in logical order.

18 Ms. Gray has already indicated she will
19 accept these documents, so for Mr. Schafer's sake
20 and for your sake, if we can just walk through
21 these in some sort of order, the first one would
22 be --

23 THE HEARING OFFICER: You want to
24 renumber Exhibit D-24; is that correct?

25 MR. NEWMAN: Yeah, it's going to
671 1 be -- and I can't tell you right now what it's
2 going to be.

3 THE WITNESS: 24, 25, 26.

4 THE HEARING OFFICER: Why don't
5 you just start -- let's just withdraw Exhibit
6 D-24.

7 MR. NEWMAN: Okay.

8 THE HEARING OFFICER: And I'm
9 going to hand it back to you, it had my markings
10 on it, and we'll kind of recycle here and start
11 again.

12 MR. NEWMAN: Okay. Thank you.

13 THE HEARING OFFICER: So, we're
14 ready for Exhibit D-24, the real Exhibit D-24,
15 and someone should identify the new Exhibit D-24
16 for the record.

17 (Letter from Bulmer to Board Members
18 marked as Respondent's Exhibit No. D-24.)

19 Q. (By Mr. Newman) Mr. Schafer, I'm going to show
20 you what's now going to be Exhibit D-24. See if
21 you can identify it for the record. Let me give
22 you a copy.

23 A. Thank you. This exhibit is a letter on the
24 letterhead of Kurt M. Bulmer, Attorney at Law,
25 addressed to the Disciplinary Board of the
672 1 Washington State Bar Association, you know, dated
2 February 4 of the year 2000.

3 It was one of the documents. I believe

4 there were 24 documents submitted to the
5 Disciplinary Board in connection with the
6 stipulation that the Office of Disciplinary
7 Counsel was recommending that the board approve,
8 calling for Judge, former Judge Anderson's
9 two-year suspension of his license to practice
10 law.

11 MR. NEWMAN: Well, let me provide
12 it first to Mr. Mills. That's a copy and here is
13 the original.

14 THE HEARING OFFICER: Is there any
15 objection?

16 MS. GRAY: No additional
17 objection.

18 THE HEARING OFFICER: Thank you.
19 D-24 is admitted.

20 (Respondent's Exhibit No. D-24 was
21 received into evidence.)

22 Q. (By Mr. Newman) Go ahead, Mr. Schafer. You
23 were identifying the exhibit?

24 A. Yes. This letter indicates that Mr. Bulmer
25 represents Judge Anderson. Of particular
673 1 significance here is on page 2 of this letter,
2 the first full paragraph on the page, let's see,
3 let me turn back. He, I believe, refers to me
4 earlier.

5 He says: "As to other matters which have
6 been submitted by Mr. Schafer," referring to me,
7 "and which pervade this case, I ask that you
8 review the attached Background information -- he
9 capitalized B in background -- "provided to the
10 state legislature. It addresses many of the
11 common misunderstandings about this case."

12 The paragraph on the bottom of this page
13 says: "That the grievant in this matter,
14 Mr. Schafer, thrives on publicity and for his own
15 purposes needs as much adverse publicity as he
16 can get against Judge Anderson. He will most
17 surely want and demand disbarment."

18 But the suggestion that they should look
19 closely at the background material to provide to
20 the legislature in the letter I am confident did
21 not go unnoticed, and it appears that the next
22 document in this collection is a letter that
23 Mr. Kurt M. Bulmer sent on March 27, 1999 to
24 leaders in the legislature; namely, the Honorable
25 Sid Snyder, Majority Leader in the Senate, as
674 1 well as to House of Representatives members,
2 Darrell Constantine, who is a lawyer from West
3 Seattle, and Mike Carroll, who is a non-lawyer
4 from the Tacoma area. Mr. Constantine and
5 Mr. Carroll are co-chairs of the Judiciary
6 Committee of the House of Representatives.

7 And this was delivered at a time when their
8 committee was considering approving the
9 concurrent resolution that had been authored
10 substantially by Senator Snyder and had already
11 been approved, I believe unanimously, or at least
12 maybe one vote short of being unanimous, by the
13 Senate, the resolution that would call for the
14 initiation of proceedings by the legislature to
15 use their constitutional power to, what I label

16 as recall Judge Anderson, because it's
17 distinguished from disbarment proceedings which
18 would have been under a different section.

19 The letter from Mr. Bulmer in the third
20 paragraph asserts that: "This bill, the momentum
21 for this bill seemed to be based on inaccurate
22 newspaper reports of a settlement, misstatements
23 of what the Commission on Judicial Conduct
24 considered and did, and the use of selected
25 portions of documents, mixed with wild
675 1 speculation and innuendo.

2 "These misperceptions are being driven by
3 Mr. Schafer, who has admitted that he has
4 fantasies of obtaining vigilante justice against
5 Judge Anderson, and who is subject to a
6 recommendation of a Bar disciplinary hearing for
7 his dishonest conduct in connection with Judge
8 Anderson."

9 Now, he is referring, of course, to this Bar
10 office's recommendation to the review committee
11 that was delivered in their letter of February
12 4th that I had lied on multiple occasions.

13 "The purpose of the letter and attachments
14 is to place before you an alternative point of
15 view," and provides a copy of his letter to Judge
16 Anderson, and the attachment with it is a
17 14-page, it looks like 14 point type, very large,
18 unusually large type; the type of type you would
19 use if you were making overlay or making
20 transparencies for an overhead projector -- I
21 guess it's 13 pages -- but the table of contents
22 indicates that the second section is all about
23 Attorney Doug Schafer, pages 3 through 5 or 6.

24 And when we turn to those pages he asserts
25 that: "Attorney Douglas Schafer has been leading
676 1 a one-person attack on Judge Anderson.
2 Accordingly, it is appropriate to look at his
3 motives and his propensity for truth and
4 accuracy."

5 He then has a bulleted list of several
6 items, the first of which says: "Schafer began
7 his attack campaign when Judge Anderson refused
8 Schafer's request to have an estate pay Schafer's
9 fees."

10 "Schafer had appeared at the last minute and
11 had added nothing to the process, but instead had
12 driven up the cost of the estate so that the
13 amount to go to the heirs was being reduced.

14 "A vindictive response to Judge Anderson's
15 refusal to allow Schafer to get the money he was
16 not entitled to is what motivated Schafer in his
17 attacks.

18 "Schafer would like to cloak himself in the
19 robe of public good, but that is a sham. His
20 goal is to punish Judge Anderson for daring to
21 deny his attorney's fees."

22 It says: "When Schafer did not get his fees
23 he suddenly remembered that several years ago,"
24 and then it goes into evidence of the bowling
25 alley transaction.

677 1 The next bullet is: "Schafer is under
2 investigation by the Bar Association for conduct

3 in misusing information, and a recommendation has
4 been made that a hearing be held regarding his
5 conduct."

6 Next bullet: "Bar Association has noted
7 that Schafer's campaign began with an adverse
8 ruling by Judge Anderson."

9 The Bar notes: "We believe that a clear
10 preponderance of the evidence establishes that
11 Lawyer Schafer was untruthful to third parties,
12 third persons in the course of representing his
13 client in violation of his ethical duties. The
14 circumstances surrounding the investigation
15 suggest that" -- underlined -- "the falsehoods
16 were knowingly offered and not the result of
17 simple mistake."

18 The next bullet point, he quotes from the
19 letter that I had sent to Don Black of the firm
20 of Ogden, Murphy, Wallace.

21 I believe it was in November, late November
22 of 1998 where I had run out of patience, having
23 been assured by members of that firm as early as,
24 I believe it was April, the prior spring, that
25 they were going to be make public the hospital's
1 recognition that it had been defrauded of over a
2 million dollars, and I had been waiting since
3 April for them to make that public revelation.

4 They assured me it would happen by the end
5 of May, it did not. They assured me it would
6 happen by the end of June, it did not. Virtually
7 every month that went by I was being assured that
8 it was going to soon become public, and by
9 November of 1998 I had run out of patience and I
10 had submitted a public document request directed
11 to the hospital district through their attorneys
12 at Ogden, Murphy, Wallace.

13 And the response that I got struck me as
14 inappropriate in asserting that there was some
15 inherent right to decline to deliver public
16 documents because they were in negotiation over
17 the settlement of a matter.

18 And there is no such exemption to the public
19 document laws, Chapter RCW 42.17. So, I
20 expressed a degree of anger in writing in my
21 letter that I would -- you know, that I, myself,
22 have made very public, because at some point I
23 think every honest person has a right to get
24 indignant at the continuing cover-up of the most
25 egregious frauds by people who wear black robes.

678 1 So, my letter expressed a degree of outrage
2 at their lack of apparent conviction or priority
3 or emphasis or whatever acts that was involved in
4 not publicly exposing this scoundrel for what he
5 was by virtue of the hospital's claim, and I
6 expressed some anger at that.

7 And I did put in this material that he
8 quotes. I said: "Forgive me if I get too
9 emotional about such antiquated concepts as
10 truth, justice and morality, but I think about
11 the Judge every day, and being able to
12 periodically vent in this manner perhaps keeps me
13 from acting out my vigilante justice fantasies.

14 "It is possible to get somewhat unstable

15 when the trusted public institutions, the
16 judiciary and its disciplinary system, the Bar
17 and its disciplinary system, law enforcement and
18 prosecutorial officials, public interest
19 journalists that one has believed in for decades
20 have been shown to be virtually worthless, no one
21 else seeming to notice or to care."

22 I'll say that to anybody, to any camera, to
23 any judge, to any lawyer, to absolutely anybody
24 alive and walking around, that if we can't
25 responsibly purge our governments and our
680 1 institutions from the most corrupt individuals
2 that we can imagine, we're doing some things
3 wrong.

4 And if the solution is not -- if there is
5 not a law abiding solution then humans will do as
6 the patriots in the Revolutionary War did and
7 seek unlawful avenues for redress, and that's
8 just -- any student of history will see that.

9 Continuing on his bulleted list, you know,
10 he just continues to malign me fundamentally.

11 This document that he presented, he
12 continues on page 7 saying: "None of Schafer's
13 allegations against Judge Anderson have ever been
14 found to be accurate. Schafer has always
15 contended that the payments were exchanged for a
16 sweetheart deal but the allegations have been
17 repeatedly rebuffed."

18 This was, of course, before the Supreme
19 Court found the rebuffing testimony to be not
20 credible. Then he talks about the settlement and
21 minimizes, of course, everything.

22 That is Bulmer's diatribe. That is what has
23 continued to be circulated with the cooperation,
24 active cooperation of the Office of Disciplinary
25 Counsel to the 14 members of the Disciplinary
681 1 Board and also to the nine Justices on the State
2 Supreme Court, who at least in my conversation
3 with Judge Sanders said, when I raised the
4 subject of Bulmer's diatribe, recognizing that he
5 had himself used Kurt Bulmer as his defense
6 counsel, I expressed outrage at the diatribe that
7 was in the public record, and his response was:
8 "Well, wasn't that a stipulated matter, we don't
9 really review the record of stipulated matters,"
10 which further enraged me, frankly.

11 Q. Mr. Schafer, did you become aware at some point
12 in time that Mr. Bulmer was using your materials
13 as part of a CLE program?

14 A. That I would like to get to later but, yes, in
15 fact, he did.

16 Q. The next exhibit, which -- let me make sure we
17 have the right order, here.

18 A. Yes, that's it.

19 Q. The next one will be --

20 MS. GRAY: All right.

21 MR. NEWMAN: I'm going to hand the
22 witness --

23 MS. GRAY: D what?

24 MR. NEWMAN: D-25.

25 THE WITNESS: D-25.

682 1 MS. GRAY: No additional

2 objection.

3 THE HEARING OFFICER: All right.
4 I'm going to admit D-25.

5 (Letter from Schafer to Leachman
6 marked as Respondent's Exhibit No. D-25
7 and received into evidence.)

8 Q. (By Mr. Newman) Mr. Schafer, I've showed you
9 what's been marked as Exhibit D-25. Can you
10 didn't identify it?

11 A. Yes, this is a letter on my letterhead that I
12 wrote to the Disciplinary Counsel, who was, at
13 that point, June, 1999, assigned to this
14 grievance against me, the direct predecessor of
15 the incumbent Disciplinary Counsel, Christine
16 Gray. Tim Leachman was then Disciplinary
17 Counsel. My letter is dated June 21st.

18 I had, as the letter indicates, said to him
19 that I had just discovered, as I read the
20 Judicial News, which is an every-other-week
21 clipping service that the office of the
22 administrator of the court of this state provides
23 to approximately 750 judges, judicial staff and
24 some lawyers, and they were gracious enough to
25 include me on their mailing list after I
683 1 suggested I might do a public document request
2 for each issue, and I read it every time it
3 arrives.

4 And I was surprised to see they had
5 included, beginning on page 4 of that issue of
6 June 7th, 1999, Mr. Bulmer's, what he calls media
7 release, followed by the 13 pages of this
8 malicious diatribe.

9 And his media release asserts that he
10 provided this to the, these materials, this
11 material was provided to the state legislature.
12 So, he presumably provided it to a number of
13 members of the media as well. It certainly
14 surprised me.

15 Q. When you say the malicious diatribe, just so the
16 record is correct, you are referring to Exhibit
17 D-24, the large print document, the 13 pages?

18 A. The 13-pages that's titled "Background
19 Information, Grant L. Anderson," with six
20 sections, one of which is Attorney Douglas
21 Schafer as the second section.

22 So, I sent this copy to Tim Leachman with my
23 letter. The subject line was the grievance of
24 William Hamilton against me, the file number of
25 this proceeding at that time.

684 1 "Dr. Mr. Leachman, I enclose a copy of the
2 media release dated May 3rd, 1999 by Kurt M.
3 Bulmer, former Washington State Bar Association
4 General Counsel, and the section of its
5 accompanying 14-page Background Information
6 (previously provided, he says, to the State
7 Legislature) that seeks to exonerate his client,
8 Pierce County Superior Court Judge Grant
9 Anderson, by maligning me, his whistle-blower.

10 "Mr. Bulmer quotes from your letter of
11 February 4, 1999 that conveyed to the review
12 committee your apparent personal opinion that I
13 had knowingly lied. He does not report, of

14 course, that your opinion is based solely upon
15 uncorroborated reports by two individuals who had
16 conversed privately with me and then months later
17 had reasons to give you inaccurate accounts of
18 their private conversations with me."

19 "Mr. Bulmer implies that your apparent
20 personal opinion expresses the final conclusions
21 of the Bar Association, even though no member of
22 any review committee, of any hearing panel, or of
23 any Disciplinary Board has considered the matter
24 and shared your apparent personal opinion.

685 25 "Whether or not any of them ever shares your
1 personal opinion, you can personally gloat at how
2 effectively Mr. Bulmer already has used it to
3 malign me.

4 "I do not know yet how widely he has
5 distributed this material to the state
6 legislature and the media, but I noticed it in
7 the June 7th, '99 issue of Judicial News that the
8 administrator of the courts mails statewide to
9 about 750 judges, court staffers, and prominent
10 lawyers.

11 "For your information, I also enclose a copy
12 of my letter to Mr. Bulmer of June 15, 1999
13 challenging the truth of his other fabricated
14 allegations. I doubt that he will even respond."

15 And I provided copies of this letter to the
16 State Bar president at the time, Mr. M. Wayne
17 Blair; Wayne is W-a-y-n-e, M. Janice Michaels,
18 State Bar Executive Director, and to some media
19 representatives.

20 Q. Did you get any response from the Bar Association
21 regarding that letter?

22 A. I do not believe that I received any response
23 whatsoever from anybody representing the Bar
24 Association on that point.

686 25 Q. You reference a letter you sent to Mr. Bulmer.
1 Did Mr. Bulmer respond to you?

2 A. It is in the next exhibit probably. Here, I've
3 got it (indicating).

4 MR. NEWMAN: Your Honor, this is
5 D-26.

6 THE HEARING OFFICER: All right.
7 I'm going to change the marking to D-26.

8 (Letter from Schafer to Armstrong,
9 et al., marked as Respondent's Exhibit No. D-26.)

10 Q. (By Mr. Newman) Mr. Schafer, could you identify
11 that exhibit?

12 A. This is my letter of July 17 to staff members who
13 are key staff members in the legislature.
14 Mr. Dick Armstrong is staff counsel, I think the
15 senior staff member assigned to the Senate
16 Judiciary Committee, Mr. Bill Perry, a similar
17 position in the House of Representatives
18 Judiciary Committee, and third addressee is a
19 lawyer named Milt Doumit; D-o-u-m-i-t, Office of
20 Senate Counsel, who assists Senate Majority
21 Leader Sid Snyder.

22 And the subject line of the letter is SSCR,
23 which stands for Substitute Senate Concurrent
24 Resolution 8406, possible removal of Judge Grant
25 L. Anderson.

687 1 And I recite in this that: "In mid June I
2 learned from the OAC's Judicial News clipping
3 service that Judge Anderson's counsel, Kurt
4 Bulmer, had distributed on about May 3rd to the
5 legislature and the media a 15-page booklet
6 seeking, it appears, to prove his client's
7 innocence by vilifying me.
8 "They charge that my actions to expose the
9 Judge are simply a vindictive response to his
10 alleged refusal to allow me to get paid some
11 money in a case. The enclosed papers demonstrate
12 that to be simply untrue.
13 "I enclose my letter of June 15, '99 to
14 Mr. Bulmer challenging the truth of his
15 allegations and Mr. Bulmer's reply of July 6th,
16 1999. I also enclose copies of various papers
17 from the court file from the Estate of Mike
18 Barovic -- I'm not going to re-read the Pierce
19 County cause number, that's in the record -- that
20 preceded and followed the hearing on September
21 29, 1995 before Judge Anderson concerning
22 attorney's fees.
23 "Those papers included invoices that I had
24 billed directly to my client, Don Barovic, who
25 was paying them and did fully pay them directly
688 1 to me. (Sure, he would have welcomed
2 reimbursement by his father's estate, two-thirds
3 of which was going to his hostile sisters, but I
4 frankly didn't care.)
5 "Please note that the copy of my Invoice No.
6 3277, dated August 5, 1995, that I included in
7 the court file at page 3 is a blacked-out phrase
8 in my time entry for July 28th, 1995.
9 "I enclose a non-redacted copy of page 3 of
10 my Invoice No. 3277 showing that the blacked-out
11 phrase from my time entry for July 28, 1995 read
12 'going to the courthouse and reviewing file from
13 Hoffman Estate (settled by Grant Anderson).'
14 "For obvious reasons I blacked-out that
15 phrase when I appended Invoice 3277 to the" --
16 and this is capitalized -- "Declaration
17 Concerning Attorney's Fees Charged to Donald M.
18 Barovic that I filed September 21, 1995 for
19 consideration by Judge Grant Anderson.
20 "The Hoffman Estate was the one that Grant
21 Anderson and my former client, Bill Hamilton,
22 fraudulently exploited to the detriment of Ocean
23 Beach Hospital, the estate's primary beneficiary.
24 "Though I reviewed the Hoffman Estate court
25 file on July 28, 1995, one week after my very
689 1 first appearance before Judge Anderson on July
2 21, 1995, I held off then actually beginning to
3 investigate the fiduciary misconduct that I
4 suspected because I thought I'd let the
5 three-year statute of limitations expire on
6 whatever complicity my former client, Bill
7 Hamilton, may have engaged in.
8 "He had told me in August, 1992, that he was
9 getting a good deal from Grant Anderson on the
10 bowling alley and would be repaying Grant for it.
11 "After my second appearance before Judge
12 Anderson on December 15, 1995 I decided that

13 enough time had elapsed for me to begin that
14 inquiry as I then did.

15 Except for the brief time that I spent on
16 July 28, 1995 initially reviewing the Hoffman
17 Estate court file I have not billed any client or
18 received payment from any source for the
19 considerable time that I have spent investigating
20 and seeking to fully expose Judge Grant L.
21 Anderson.

22 "My motive is simply that I feel a civil
23 duty to expose what I believe to be a corrupt
24 judge."

690 25 I won't read the rest of that letter.
1 There's a couple more closing paragraphs, but
2 immediately following it is the page 3 referred
3 to from my invoice to Donald Barovic, Invoice No.
4 3277, showing the non-redacted or non-blacked-out
5 time sheet entry from July 28th, 1995 that
6 includes, as previously stated, the statement:
7 "Going to courthouse and reviewing file from
8 Hoffman Estate, settled by Grant Anderson," as
9 part of -- among the things that I did that day
10 when I spent the entire day working on assisting
11 Donald Barovic in his case.

12 The next page is a letter to me from Kurt
13 Bulmer, which is really in response to the
14 subsequent document. Mr. Bulmer's letter to me
15 is dated July 6, 1999, and he says: "In
16 response, "Your letter of June 15, '99.

17 "Dear Mr. Schafer, I have carefully reviewed
18 a court transcript, your own writings, the
19 investigation by the Washington State Bar and
20 court records. These documents are consistent
21 that you did not begin your attacks on Judge
22 Anderson until after the \$11,000 in fees you
23 claimed from the Barovic Estate was not accepted
24 by Judge Anderson," and then he continues and I
25 won't read the rest of his letter.

691 1 Following that is my letter to him of June
2 15, where I -- the subject line is: "Your
3 malicious lies about me in your May 13, 1999
4 media release," and I basically in this letter
5 challenge the truthfulness of his assertions. I
6 quote from his diatribe.

7 After I quote I say: "Mr. Bulmer, your
8 information is mistaken, and you apparently never
9 bothered to verify it before you began
10 maliciously using it to malign me. My only
11 appearances before Judge Anderson were on behalf
12 of Don Barovic. He hired me in early July, 1995
13 to join with his other lawyers, Richard Jensen
14 and Shawn Hicks, in disputes with his two sisters
15 involving their parents' substantial estates. I
16 billed Mr. Barovic directly for my services and
17 he paid me directly.

18 "In early September, 1995 the two sisters
19 filed motions in their father's estate proceeding
20 before Judge Anderson seeking to assess against
21 Mr. Barovic or the estate approximately \$104,800
22 in legal fees they had incurred with their three
23 law firms.

24 "As a defensive response, Mr. Jensen,

692 25 Mr. Hicks and I filed a similar motion on
1 Mr. Barovic's behalf for the legal fees that he
2 had incurred concerning the estate, being \$72,485
3 to Mr. Jensen's firm, \$34,723 to Mr. Hick's firm,
4 and \$11,197 to me.

5 "At a hearing on September 29, 1995, Judge
6 Anderson denied the sisters' requested assessment
7 against Mr. Barovic and ruled essentially that
8 each of the three siblings could recover the same
9 amount -- about \$52,400 -- for their incurred
10 legal fees from their father's estate (which
11 estate was to be divided equally among them.)

12 "Thus, the two sisters' request for legal
13 fees of about \$104,800 from the estate was
14 approved, and Mr. Barovic was awarded half that
15 amount -- about \$52,400 -- for his combined legal
16 fees incurred.

17 "Judge Anderson's ruling was not surprising
18 or particularly disappointing. I did not even
19 attend the hearing. I believe Mr. Jensen
20 represented Mr. Barovic there.

21 "If anything critical of me was said at that
22 hearing, I have to this day been unaware of it.
23 Mr. Barovic had already paid me \$10,000 before
24 the hearing, and paid me \$5,000 more before the
25 written order from the hearing, a copy of which

693 1 is enclosed, was entered on November 9, 1995.

2 "Judge Anderson's ruling did not deny or
3 deprive me of any fees from my client, Don
4 Barovic, nor did it precipitate my investigation
5 that I began in mid-December, 1995, into
6 Anderson's mishandling of the Hoffman Estate.

7 "Mr. Bulmer, if you have any evidence to
8 support the above-quoted maliciously false and
9 defamatory accusations that you have publicly
10 made about me, please provide it. Absent your
11 doing so promptly, I will report your misconduct
12 to the appropriate authorities, expose you to the
13 public as the liar that I believe you to be, and
14 begin exploring legal action against you for
15 defamation."

16 That was my letter to him of June 15.

17 Following that are a number of documents
18 from that Barovic Estate file, all of which are
19 consistent with the narrative that I just read,
20 and I will not belabor this by going further
21 through each of those documents, but it's
22 important for me that they be in this record.
23 They will probably be prominent in another legal
24 proceeding that I expect to pursue.

694 25 Among the papers included in here -- well, I
1 did prepare a memorandum that was filed September
2 21st, 1995, prepared it at the request of
3 co-counsel, Jensen and Hicks, and my client, Don
4 Barovic, that simply presented the applicable
5 law, which in essence indicated to Judge Anderson
6 that the matter was entirely within his
7 discretion.

8 This is all part of the package that I
9 provided to the senior staff members and the
10 legislature for, by that time, June 15, the
11 legislature had in fact passed Substitute Senate

12 Concurrent Resolution 8406, and I simply wanted
13 all of this material in their files so that if
14 the Supreme Court did not in fact remove Judge
15 Anderson and the legislature began that process
16 in the subsequent session of the legislature,
17 that they would have more accurate information so
18 they would not dismiss the information that I had
19 provided to many authorities about him, based on
20 Mr. Bulmer's maliciously false and defamatory
21 allegations that my motive was as he claimed it
22 to be.

23 THE HEARING OFFICER: Well, before
24 you proceed, counsel, I was just thumbing through
25 the orders that were attached and it appears --
695 1 this may be not relevant at all -- but it appears
2 that the November 9th, 1995 order was signed by a
3 different judge. It looks like Judge Verheren,
4 perhaps?

5 THE WITNESS: That's the last
6 document?

7 THE HEARING OFFICER: No, it's the
8 one right below your letter to Mr. Bulmer.

9 THE WITNESS: Okay.

10 THE HEARING OFFICER: Order
11 Authorizing Payment of Fees and Costs on Personal
12 Representative's Petition No. 7.

13 THE WITNESS: Yes, okay.

14 THE HEARING OFFICER: Is that the
15 order arising out of the hearing?

16 THE WITNESS: I can explain that.

17 THE HEARING OFFICER: I don't
18 quite understand how that fits.

19 THE WITNESS: Let me explain. The
20 actual written order that resulted from the
21 September 29th, 1995 hearing -- again, I did not
22 attend the hearing, I had no interest even in the
23 order, but it was prepared by one of the
24 participants in that hearing, a Tacoma lawyer who
25 I somewhat -- that I refer to as the Guardianship
696 1 Godfather of Tacoma because his practice is
2 exclusively guardianship practice, and he has
3 been the subject of much focus of my attention
4 for five years, as I've pointed out problems in
5 guardianship.

6 But he is the court appointed personal
7 representative of the estate that's in question.
8 He was at that meeting. In fact, some of the
9 comments in the transcript reflect his views
10 towards me, which I can understand him not
11 considering me his friend.

12 But this hearing, the next exhibit we will
13 be presenting is the transcript of the actual
14 hearing. My understanding is the hearing
15 dismissed with directions to prepare an order
16 consistent with the ruling from the bench, and I
17 infer from the fact that this order was prepared
18 by Mr. Neil with a signature line showing Judge
19 Grant Anderson, but the name Grant Anderson typed
20 below the signature was crossed out and it was
21 signed by Judge Arthur W. Verheren, Senior judge
22 of the bench of Pierce County Superior Court,
23 that it must have been circumstances that caused

24 Judge Anderson to be unavailable when the parties
25 agreed to present it for entry, for signature and
697 1 entry.
2 My assumption, in fact, from looking at the
3 signatures are that at least Richard Jensen had
4 stipulated to the presentment of this order, as
5 did Mr. Barnett of the firm Campbell, Dille and
6 Barnett, who represented the -- well, the
7 sisters.
8 And then Mr. Miller, who had previously
9 represented the deceased father, Mike Barovic,
10 and then subsequently became counsel for Jerry
11 Neil, Executor, signed off on it.
12 THE HEARING OFFICER: Okay. I
13 understand now what happened. I think unless you
14 each have one or two questions it's about time
15 for our lunch break.
16 MR. NEWMAN: I think we might be
17 able to tie this up.
18 THE WITNESS: Yes, this will go
19 quickly.
20 THE HEARING OFFICER: Go ahead.
21 MR. NEWMAN: This is the last of
22 this set of exhibits.
23 THE HEARING OFFICER: We'll take a
24 full hour for lunch.
25 MR. NEWMAN: This is marked as
698 1 D-27, this is the transcript, and I'll make this
2 as simple as possible.
3 (Transcript of Barovic Hearing
4 marked as Respondent's Exhibit No. D-27.)
5 Q. (By Mr. Newman) Mr. Schafer, in your
6 explanation of the prior exhibit you talked about
7 a letter Mr. Bulmer sent to you and Mr. Bulmer
8 referenced a transcript. Could you explain the
9 significance of this final exhibit in this
10 segment?
11 A. Yes. Mr. Bulmer's diatribe had said that in the
12 hearing concerning these fees that Judge Anderson
13 had been highly critical of me and admonished me
14 or something of that nature.
15 His letter, Mr. Bulmer's letter to me of
16 July 6 in the prior exhibit defended his diatribe
17 by saying "I have carefully reviewed a court
18 transcript." Bear in mind his diatribe had gone
19 to the legislature in March of that year.
20 As you can see from the last exhibit, I went
21 to the court file to myself get copies of
22 whatever had transpired in that hearing. There
23 was no transcript in that court file of what
24 transpired at that September 29, 1995 hearing.
25 I kind of thought not that much about it. I
699 1 did thoroughly look for the transcript but none
2 could be found. I think I may have even checked
3 again later.
4 In early March of this year a reporter from
5 the Los Angeles Times spent a week preparing to
6 do a story, which he did June 10th, met with me
7 several times, met with Mr. Bulmer. He told me
8 that Mr. Bulmer was asserting that, was making
9 assertions consistent with his diatribe to the
10 legislature.

11 The writer, Barry Segal, told me that he had
12 asked Mr. Bulmer to provide the transcript that
13 would justify or that would demonstrate the truth
14 of his assertions as to what transpired in that
15 hearing, and Barry Segal then assured me that he
16 had seen -- I don't remember if it was the entire
17 transcript or portions of it -- and he assured me
18 that the transcript did not at all support what
19 Mr. Bulmer was alleging.

20 More recently, I decided to attempt to get a
21 copy of that transcript, myself. I thought I
22 could perhaps subpoena Mr. Bulmer, but I presumed
23 that that subpoena would probably be quashed as
24 every other subpoena I have served seems to have
25 been.

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1 MS. GRAY: Objection.

2 THE WITNESS: So, I went to --
3 I'll withdraw the comment -- so I then went to
4 the court reporter, Diane Wilson, who had been
5 court reporter for Judge Anderson prior to his
6 removal by the Supreme Court -- she is now the
7 court reporter for Judge Van Deeren -- and I
8 basically reminded her that the state law
9 reflected in the Washington Administrative Code
10 governing court reporters directs them not to
11 prepare transcripts of proceedings, judicial
12 proceedings for strangers to the proceeding and
13 only for parties to the proceeding, and if they
14 prepare a transcript for someone who is not a
15 party they must first advise all the parties and
16 get their consent or at least give them an
17 opportunity to object, I don't recall.

18 The statute or the regulation also requires
19 that any transcript be immediately filed, the
20 original filed in the court proceeding, the court
21 case file. Of course, this was not there.

22 So, I asserted to her that I strongly wanted
23 to see this transcript that Mr. Bulmer has been
24 claiming supports his malicious lies about me.

701

25 She said perhaps it had been misfiled, and I
1 will graciously allow her to assert that until it
2 becomes more important to prove otherwise, but
3 she then said that she would prepare another.
4 She had it on her computer system and could print
5 out another, would sign it as another original,
6 and see that it got promptly filed, and a few
7 days later I confirmed that she had done so.

8 She told me, when she said, "It's still on
9 my computer," that she had prepared it on June
10 29th of 1999, this September 29th, 1995 hearing.

11 I note that June 29th, 1999 was 14 days
12 after I confronted Mr. Bulmer with my letter as
13 to the maliciousness and falsehoods of his
14 diatribe.

15 So, apparently, it was at that point that
16 either he or Judge Anderson instructed the court
17 reporter to prepare this transcript and provided
18 it to Mr. Bulmer but not in the public record,
19 for that might have allowed me greater ability to
20 demonstrate to leaders in the legislature and
21 members of the media that Mr. Bulmer was
22 maliciously and falsely maligning me with no

23 support in the record.

24 But at any rate, I have it now and
25 hopefully, any journalist who wants to give
702 1 credence to what Mr. Bulmer appears to continue
2 to say with the active support of the Office of
3 Disciplinary Counsel, when it goes to the members
4 of the Disciplinary Board and the members of the
5 Supreme Court, hopefully, at some point I will --
6 justice will be done.

7 With that, I think bad faith has been
8 demonstrated by an awful lot of people for an
9 awful long time.

10 THE HEARING OFFICER: Thank you.

11 MR. NEWMAN: Any other points,
12 Mr. Schafer, before we break?

13 THE WITNESS: That's all I have.

14 THE HEARING OFFICER: All right.
15 Let's break for lunch. We'll take an hour break.
16 I realize that Professor Strait is prepared to be
17 on the telephone at 2:00. I also realize we have
18 media representatives showing up between 1:00 and
19 2:00.

20 If someone is here, hopefully, someone will
21 be here to help the media people between 1:00 and
22 2:00, and then at 2:00 we may need to at least
23 advise Professor Strait of the delay and start at
24 about 2:10.

25 MS. GRAY: We'll call Professor
703 1 Strait so he knows to expect a call somewhat
2 later than 2:00.

3 THE HEARING OFFICER: Okay. Thank
4 you.

5 (Lunch recess taken.)

6 THE HEARING OFFICER: We're ready
7 to go back on the record. Are we ready to
8 proceed?

9 MR. NEWMAN: We're ready.

10 THE HEARING OFFICER: Let's go
11 back on the record. And just before we get
12 going, my notes don't reflect my usual notation
13 when I admit an exhibit, so I'm not certain I
14 stated clearly for the record that Exhibit D-27,
15 the last exhibit before the lunch break, is
16 admitted and it's in the record. I just wanted
17 to clarify that.

18 (Respondent's Exhibit No. D-27
19 was received into evidence.)

20 THE HEARING OFFICER: And
21 secondly, I understand that the King 5 news folks
22 have been here and gone, so we have no need to
23 address their taking pictures at this time.

24 Are we ready to proceed with the next
25 witness?

704 1 MR. NEWMAN: We're ready.

2 MS. GRAY: We are. I would like
3 to put one issue on the record. With regard to
4 Professor Strait, it's my understanding that
5 Mr. Newman and Mr. Schafer may wish to call a
6 witness who they consider as potentially
7 impeaching to Professor Strait.

8 I know the strict rules of evidence don't
9 apply here, but I think that they make some

10 sense, that under the Rules of Evidence, Rule
11 613, in order to produce extrinsic evidence on a
12 matter to impeach a witness you have to first
13 confront the witness with that evidence to see if
14 the witness denies it or confirms it.

15 So that we're not in a situation of having
16 Professor Strait having another witness, having
17 Professor Strait back and forth, I think that
18 that would be an appropriate procedure to follow
19 and I would make that request, if indeed they are
20 going to offer any extrinsic evidence to impeach
21 Professor Strait, that they not do so until after
22 Professor Strait has an opportunity to understand
23 the content of it and comment on it.

24 THE HEARING OFFICER: Counsel, do
25 you want to be heard on this?

705 1 MR. NEWMAN: We do have a
2 potential witness from the Los Angeles Times
3 that's available by telephone that really does
4 depend on what Mr. Strait says, and we will
5 certainly confront him directly, and based on
6 that determine if it's necessary to call the L.A.
7 Times reporter -- I'm sorry, let me make that
8 correction, it's National Law Journal, not L.A.
9 Times.

10 THE HEARING OFFICER: Thank you.

11 MS. GRAY: With that said, we're
12 ready to proceed with Professor Strait.

13 THE HEARING OFFICER: So, there
14 was no ruling for me to make on this objection,
15 simply a signal to counsel, I think, as to how
16 Bar counsel thinks the proceedings should
17 proceed. There's nothing for me to rule on at
18 this point.

19 MR. NEWMAN: This is going to be
20 Ms. Gray's direct examination of Mr. Strait, of
21 Professor Strait. We do have a, as I've
22 indicated previously, we have a tape from Mr.
23 Schafer's voice mail, a message from Mr. Strait,
24 which hopefully he'll be able to hear and we'll
25 use.

706 1 THE HEARING OFFICER: All right.

2 MR. SCHAFFER: May I ask one other
3 preliminary question?

4 THE HEARING OFFICER: Certainly.

5 MR. SCHAFFER: Although I know your
6 ruling is only one lawyer badgering the witness
7 at a time, I've been substantially the only
8 witness.

9 But in this case, given that we are
10 basically addressing what was a private
11 conversation between Professor John Strait and I
12 and other things, while I'll defer to my capable
13 counsel, Shawn Newman, I would ask that I be
14 permitted to ask some questions of Professor
15 Strait directly after Mr. Newman is through.

16 THE HEARING OFFICER: No, I'm
17 going to deny that request. Here's my reading on
18 that. It seems to me, Mr. Schafer, with all due
19 respect, you are the primary witness here and you
20 can testify in contradiction to what Professor
21 Strait says when he's completed and say whatever

22 needs to be said about that.

23 I think that's the time for you to do that,
24 and I think it's important for the orderly
25 proceedings to have one counsel do the
707 1 questioning. I don't want to get -- I think it's
2 going to get very confusing to have more than one
3 person asking questions.

4 MR. SCHAFFER: I ask partly
5 because, you know, having been a participant, I
6 can jog his memory and he will then potentially
7 recall more clearly.

8 THE HEARING OFFICER: Go ahead.

9 MS. GRAY: Mr. Mills, I would just
10 like to comment on that; one, Mr. Schafer can
11 give any notation to Mr. Newman about a question
12 to be asked; two, I know that Mr. Schafer and
13 Mr. Strait have had a number of conversations in
14 the last six months regarding attempts to jog
15 memory. So, I think it's, I think the request
16 may be more in the matter of, you know, being an
17 argument rather than a question.

18 Certainly, Mr. Newman can pose any question
19 that Mr. Schafer thinks that he should pose, and
20 certainly the time for Mr. Schafer to convey that
21 information to Mr. Newman is appropriate.

22 THE HEARING OFFICER: Let me also
23 state -- Mr. Schafer and Mr. Newman, I'll just
24 state that I have no objection to having
25 Mr. Schafer ask all the questions or Mr. Newman
708 1 ask all the questions, it's just that I don't
2 want to be flipping back and forth.

3 So, if it's more efficient, Mr. Schafer --
4 I'm sorry I didn't offer that alternative -- for
5 you to ask questions, that's fine with me. I
6 just want one questioner.

7 MR. SCHAFFER: Okay. I'll take it.

8 MR. NEWMAN: Mr. Schafer is going
9 to do the questioning.

10 Before we get Professor Strait on, I have
11 provided to Ms. Gray some e-mails we intend to
12 inquire with Professor Strait, and I would like
13 to have that in front of you, Mr. Mills, just to
14 expedite Professor Strait's testimony, and would
15 like to mark this as Exhibit D-28 at this time.

16 MS. GRAY: I would object to that.
17 They are practically all e-mails from Mr. Schafer
18 to Professor Strait. I have no objection to them
19 asking Professor Strait to review it and to
20 comment on it, but this is all, with I think one
21 exception where Professor Strait talked about not
22 having notes available to him any longer and not
23 having any special influence on a particular
24 person, this is all Doug Schafer to John Strait,
25 and I don't think it's appropriately admitted at
709 1 this time. Mr. Schafer is not on the stand.

2 MR. NEWMAN: Can we then, at
3 least, agree to get the one e-mail, which appears
4 to be from John Strait to Doug Schafer, dated
5 March 3rd, 2000?

6 MS. GRAY: My only objection to
7 that is I don't think it's appropriate to admit
8 it unless it is denied or in some way the subject

9 of controversy.

10 THE HEARING OFFICER: My sense is
11 that eventually all these will probably come into
12 the record but I think we should just wait and
13 offer them perhaps after the testimony.

14 MR. NEWMAN: Right.

15 THE HEARING OFFICER: I think
16 it's -- or if you want to offer, if somebody
17 wants to offer this as part of the questioning,
18 then I'll take it up at that time. I understand
19 that you're trying to be more efficient but I
20 think it's better to do it that way.

21 All right. Are we ready to get Professor
22 Strait on the telephone?

23 MS. GRAY: The Association is.

24 THE HEARING OFFICER: Are we ready
25 to get Professor Strait on the phone?

710 1 MR. NEWMAN: We have it. Go
2 ahead.
3 THE HEARING OFFICER: All right.
4 MS. GRAY: The Association calls
5 John Strait.
6 THE HEARING OFFICER: All right.
7 You may get him on the phone.
8 (Whereupon, John Strait was
9 contacted via telephone.)
10 MS. GRAY: John Strait?
11 MR. STRAIT: Speaking.
12 MS. GRAY: This is Christine Gray.
13 You are on a speaker phone at the hearing, and
14 with that said I'll have the Hearing Officer take
15 over.
16 MR. STRAIT: Very good.
17 THE HEARING OFFICER: Professor
18 Strait, can you hear me okay? This is Larry
19 Mills.
20 THE WITNESS: I can.
21 THE HEARING OFFICER: Great. You
22 are on a speaker phone in a room with several
23 people here. I'll just identify the main players
24 here. Christine Gray, Bar Disciplinary Counsel
25 is here with her assistant, Douglas Schafer is
711 1 here with his two lawyers, Shawn Timothy Newman
2 and Donald Mullins, and your testimony is going
3 to be taken down by a court reporter.
4 So, it may be possible that the court
5 reporter may want to interject from time to time
6 just to make sure he is hearing what you're
7 saying.
8 In order to get your testimony in the record
9 of the hearing it's necessary for me to swear you
10 in, so would you please raise your right hand?
11 THE WITNESS: I am doing so.
12 THEREUPON,
13 JOHN STRAIT,
14 called as a witness on behalf of the Bar Association
15 herein, after having been first duly sworn, was
16 examined and testified via telephone as follows:
17 THE HEARING OFFICER: You may
18 proceed, Ms. Gray.
19 DIRECT EXAMINATION
20 Q. (By Ms. Gray) Mr. Strait, how are you employed?

21 A. I'm a professor at the Seattle University Law
22 School.

23 Q. And do you have a particular specialty that you
24 teach at Seattle University Law School?

712 25 A. I teach professional responsibility and run a
1 clinic in ethics that works with the Office of
2 Discipline.

3 Q. If you will just wait one second, we're going to
4 turn up the volume slightly. Thank you.

5 A. If I can complete that answer. I teach a number
6 of other subjects, but they are not relevant to
7 our inquiry today.

8 Q. Thank you. Professor Strait, are you a lawyer
9 licensed to practice law in Washington?

10 A. I am.

11 Q. How long have you been licensed to practice law
12 in Washington?

13 A. Since 1972.

14 Q. How long have you been teaching law at Seattle
15 University?

16 A. Since August of 1974.

17 Q. Mr. Strait, do you know Douglas A. Schafer?

18 A. I do.

19 Q. I would like to direct your attention to February
20 5th, 1996, on or about that day. Did there come
21 a time when you met with Mr. Schafer?

22 A. I did. I don't know that that's the exact date.

23 Q. But around that day do you recall meeting?

24 A. In that year, in the spring of that year or the
25 late winter. I thought it might have been in --

713 1 February 5th is about right.

2 Q. Directing your attention to that meeting, did
3 Mr. Schafer come to your office?

4 A. He did.

5 Q. And did he want to discuss something with you?

6 A. He did.

7 Q. To the best of your recollection what did he say
8 and what did you say when he came to your office
9 that day?

10 A. He brought with him a stack of documents and
11 wanted to talk with me about what he saw as an
12 act of corruption by a local judge in Pierce
13 County, and what his risks would be if he were to
14 disclose that information.

15 Q. And was that judge then Judge Grant Anderson?

16 A. It was.

17 Q. And when he approached you what did he tell you
18 about -- what do you recall that he told you
19 about acts of corruption by Grant Anderson?

20 A. I recall the gist of what he said, not the
21 details. It was a reasonably lengthy
22 conversation and I have not had an opportunity to
23 review those documents he provided, which were
24 fairly complicated, going from my memory.

25 But the gist of it was that Anderson had

714 1 been an attorney for an estate, is my
2 recollection, and that another client of
3 Anderson's had gotten a sweetheart deal from
4 Anderson selling out a bowling alley, which was
5 one of the major assets if not the major asset of
6 the estate, in return for which the beneficiary
7 of that deal paid essentially a bribe to Judge

8 Anderson for that sweetheart deal.
9 Q. Do you recall whether Mr. Schafer explained to
10 you why he was concerned about whether or not he
11 could make any disclosures?
12 A. He said that some of the information that he had
13 learned came from the beneficiary of the
14 transaction who had become his client, and that
15 he wanted to know what his obligations were about
16 disclosing what he believed to be an act of
17 fraud, essentially, damaging the beneficiaries.

18 THE REPORTER: Excuse me, Your
19 Honor. Could I just move up closer?

20 THE HEARING OFFICER: You're not
21 coming through very well on our end and the court
22 reporter has asked to move closer to the speaker
23 phone, so we're doing that, and you may have to
24 repeat the end of your previous answer.

715 25 THE WITNESS: All right, I'll be
1 glad to. Do you want me to do that now or wait?

2 THE HEARING OFFICER: Whenever the
3 court reporter is ready. Are you ready?

4 THE REPORTER: Yes, sir.

5 THE HEARING OFFICER: Could you go
6 back? Would you like to read back what you have?
7 The court reporter is going to read back how far
8 he got.

9 (The court reporter read back the
10 last question and answer.)

11 THE WITNESS: Yeah, the
12 beneficiaries of the estate, who I believe were
13 two charities, if I recall correctly. That's a
14 pretty good summary.

15 Q. (By Ms. Gray) What did you tell Douglas Schafer
16 on that date?

17 A. I cannot recall the conversation word for word.
18 It is not a new issue to me and it was not a new
19 issue to me at the time. So, I believe my best
20 recollection of what I told Doug was the
21 following; that unless it was a continuing crime
22 to fall within the exception of RPC 1.6, or he
23 got consent of his client to reveal the client
24 confidences or secrets, that he could not.

716 25 If the crime fraud exception under
1 Washington's version of RPC 1.6 did not apply,
2 then he was not in a position to release the
3 information.

4 I also told him that the question of whether
5 fraud was a continuing crime, particularly a
6 fraud involving an estate, was a question which
7 had not been fully answered in Washington law to
8 the best of my knowledge, and then we had a
9 somewhat extended discussion about what the
10 implications of a continuing crime might be in
11 terms of his right to disclose or his obligation
12 to disclose.

13 We also had an extended discussion about
14 civil liability, whether he would be sued and
15 could be sued for filing a Bar complaint or a
16 Judicial Conduct Commission complaint, either
17 one.

18 We also had an extended discussion about the
19 ambiguities of the law of perjury, because I had

20 asked him if there were any statements that he
21 believed were false that were in pleadings of an
22 ongoing matter, and that's the overall tenor of
23 the conversation.

24 Q. Do you recall whether or not you discussed with
25 him whether or not he might have civil liability
717 1 if sued by that client of his?
2 A. Yes, I believe I did.
3 Q. And what do you believe you said to him?
4 A. Oh, I believe I told him that I thought civil
5 liability was an extremely remote possibility,
6 and I explained to him that, first of all, if he
7 filed a disciplinary complaint to the Bar that
8 that would be protected as a matter of law. He
9 couldn't be sued for doing that.

10 Secondly, that even in the remote
11 unlikelihood that he could be sued or would be
12 sued, I thought that if in fact it turned out
13 that the judge was corrupt or had been corrupt
14 when he was a practicing lawyer and engaged in
15 the transactions that Doug was talking about,
16 that it was very unlikely that the jury would
17 ever award any damages, and it would be very
18 difficult for someone in a position of either his
19 former client or the attorney or Grant Anderson
20 to bring a viable claim. I doubted very much
21 that a jury would give it any consideration.

22 Q. Did you discuss with him, based on what he had
23 told you during that conversation, whether or not
24 you believed -- did you tell him whether or not
25 you thought there was a continuing crime based on
718 1 what he told you?
2 A. I told him based on what he told me that I didn't
3 think that he could reveal the information.
4 He then asked me what would be likely to
5 happen to him if he did and we had a discussion
6 about that, and he told me at some point in that
7 conversation, I believe at the very end of it,
8 that he intended to go ahead and reveal the
9 information.

10 Q. Do you recall whether or not you discussed with
11 Mr. Schafer during that conversation the extent
12 to which a disclosure could be made if one were
13 to be made?
14 A. I'm sure I did that. I don't recall specifically
15 doing so but I believe that was the -- that was
16 in the discussion about the hypothetical
17 possibility about the crime fraud exception.
18 And my best recollection, and I have to say
19 here on this part I have no specific recollection
20 so I'm giving you my best estimate, but I have
21 less confidence in the exact memory here than I
22 do on so some of the other matters that I have
23 expressed already.

24 My best recollection is that I told him if
25 he revealed it to a disciplinary authority or to
719 1 an appropriate supervisory court, that that would
2 be the limit of the exposure that he could make.
3 He couldn't go public and put it in the
4 newspaper or something like that, unless he --
5 well, unless he got client permission, which he
6 indicated would be impossible to get.

7 Then he told me that Mr. Hamilton, if I
8 remember the name of the client correctly, had
9 already told him that he didn't want any of this
10 information revealed.

11 MS. GRAY: I have no further
12 questions.

13 THE HEARING OFFICER: All right.
14 Cross-examination by either Mr. Newman or
15 Mr. Schafer? It looks like Mr. Newman is going
16 to cross-examine.

17 CROSS EXAMINATION

18 Q. (By Mr. Newman) Professor Strait, my name is
19 Shawn Newman. I represent Mr. Schafer.

20 Let me just follow up on Ms. Gray's inquiry
21 about your background. I understand you are a
22 graduate from Yale; is that correct?

23 A. Yes.

24 Q. At one point in time didn't Mr. Schafer ask if
25 you could act as a liaison with an ethics expert
720 1 named Geoffrey Hazzard?

2 A. Yes.

3 Q. All right. And were you a classmate of
4 Mr. Hazzard?

5 A. Yes, I was.

6 Q. Are you aware that Mr. Hazzard graduated from
7 Columbia Law School and not Yale?

8 A. No, he was at Yale at an LLM program.

9 Q. All right.

10 A. Classmate meaning he was a student at the same
11 time I was.

12 Q. All right. And your testimony is you were a
13 student of his or that you were both --

14 A. No, we were both students at the same time is my
15 memory.

16 Q. All right. You received a number of e-mails that
17 you should have been faxed by Ms. Gray. Do you
18 have those in front of you?

19 A. I do.

20 Q. I'm going to ask you if you recall -- let's walk
21 through those one at a time.

22 A. Indicate which one you want to start with.

23 Q. The first one is dated Thursday the 26th of
24 August, 1999.

25 A. I have it.

721 1 Q. And it's from Doug Schafer to you?

2 A. Yes.

3 Q. Do you recall receiving that?

4 A. I do.

5 Q. All right. The second e-mail is dated Monday, 27
6 September, '99 from Doug Schafer to you. Do you
7 recall receiving that?

8 A. Yeah.

9 Q. All right. The third is an e-mail dated December
10 14th, 1999 from Doug Schafer to you, carbon copy
11 Bob Van Voris, National Law Journal reporter. Do
12 you recall receiving that?

13 A. I have a couple that I received on the same date.
14 Let me see if I have the same one here. Yes, I
15 have that and I do recall receiving it, yes.

16 Q. The next one is dated December 14th, 1999 from
17 Doug Schafer to you. Do you recall receiving
18 that?

19 A. Yes.
20 Q. Then we have one dated December 29th, 1999 from
21 Doug Schafer to you. Do you recall receiving
22 that?
23 A. Yes.
24 Q. All right. And then we have one from you dated
25 January 3rd, 2000 to Doug Schafer. Do you recall
722 1 sending that?
2 A. Yes.
3 Q. Okay. Then there's an e-mail dated March 23rd,
4 2000 from Doug Schafer to you. Do you recall
5 receiving that?
6 A. Yes.
7 Q. All right.
8 A. Did you skip over the March 9th one?
9 Q. Yes, that was apparently connected to the March
10 23rd e-mail. It looks like it was appended to
11 it, it was the original message.
12 A. Yes, I have it and I remember seeing it.
13 Q. Let me, first -- for the record, I inquired with
14 Mr. Mills, the Hearing Officer, if you had any
15 connection with this law firm, Mills, Myers and
16 Swartling. Do you have any connection?
17 A. I believe that I have been retained by that firm
18 as an expert witness on occasion and I may have
19 also given an opinion against them as an expert
20 witness on one occasion.
21 Q. All right.
22 A. I don't know if any of those things are pending
23 now, but there may be a matter which is.
24 Q. All right. And with respect to the State Bar
25 Association, you've served on the Rules of
723 1 Professional Conduct Committee; is that right?
2 A. Correct, I do so at this time.
3 Q. And how long?
4 A. Oh, off and on for 10 or 12 years.
5 Q. And you did testify in response to Ms. Gray's
6 question about the clinic, and does that have an
7 connection with the State Bar Association?
8 A. It does. I'm appointed as a Special District
9 Counsel on the Special District Counsel panel and
10 cases and Bar complaints are assigned to me as
11 Special District Counsel. And then I have
12 students under a confidentiality agreement who
13 work as essentially my paralegals in that
14 clinical course.
15 The purpose of the course is to give
16 students a hands-on experience with the law of
17 ethics.
18 Q. All right.
19 A. And so my formal relationship with the Bar, to
20 answer your question, is I'm the Special District
21 Counsel appointed by the Bar Association and I
22 receive assignments on specific ethics
23 grievances.
24 Q. Now, is it correct that you had a conversation
25 with Mr. Schafer in which you indicated you could
724 1 not assist him because of your position as
2 Special District Counsel?
3 A. That's correct.
4 Q. Okay. Did that conversation also include --
5 express a concern by you that the clinic might --

6 there may be some effect on the clinic if you
7 assisted Mr. Schafer?
8 A. No, it wouldn't. I told him what had happened
9 with the Bar, and if you wish me to expand on
10 that answer, I can.
11 Q. Yes, please.
12 A. Barrie Althoff, who is the Chief Disciplinary
13 Counsel had apparently received complaints from a
14 couple of his staff lawyers, I don't know who,
15 that I had been appearing defending lawyers in
16 Bar Disciplinary proceedings, and they felt
17 uncomfortable with me doing so, even though
18 there's technically no conflict of interest that
19 I would appear on cases where I wasn't special
20 counsel doing an investigation.

21 And Barrie Althoff agreed there was not a
22 conflict of interest, but he expressed concern
23 that because his staff did not feel comfortable
24 in that relationship that the Bar counsel would
25 have some difficulty in recommending my
725 1 reappointment as special district counsel if I
2 were to continue doing that.

3 This is a conversation that went on over a
4 couple of months with a certain amount of
5 negotiation involved, the end result of which was
6 that I thought that my function as a law
7 professor and maintaining the law clinic was more
8 important than the occasional case that I took
9 defending lawyers before the Bar.

10 And I agreed, except on pro bono cases
11 involving public practitioners, the prosecutors
12 and public defenders, et cetera, not to appear in
13 Bar disciplinary matters.

14 And it wasn't ever put in exactly a
15 one-to-one quid pro quo, but it was my
16 understanding that if I were not to agree to that
17 that I would probably not be reappointed as a
18 Special District Counsel and that would in turn
19 make it impossible to run the clinic.

20 MS. GRAY: Mr. Strait, your voice
21 dropped quite a bit during the end of that
22 answer. I think the court reporter got it all,
23 but I think it would help Mr. Mills, here, and
24 all of us here if you would speak up.

25 THE WITNESS: All right. Is that
726 1 better?

2 MS. GRAY: That's much better.
3 Thank you.

4 THE WITNESS: Do I need to repeat
5 any of that answer?

6 MS. GRAY: The court reporter just
7 nodded no.

8 Q. (By Mr. Newman) Let me take you now, Professor,
9 to your contact with Mr. Schafer. Do you recall
10 a conversation with Mr. Schafer in which you told
11 him that this was a gray area?

12 A. Well, I think the question is what "this" refers
13 to. I do recall telling him that the question of
14 whether fraud or perjury in Washington was a
15 continuing crime and would therefore fall or
16 arguably could fall within the 1.6 exception was
17 indeed a gray area, meaning it had not been

18 answered by any case law, and that in my teaching
19 of the subject and in my expert opinion of the
20 area that I warned people that it was ambiguous.

21 But I also told him that I knew what the Bar
22 counsel's position was, I believe -- or at least
23 what I believed it would be, and I believe my
24 memory has been refreshed since looking at these
25 e-mails.

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1 I believe I did agree to call Bob Weldon or
2 Cathy Blinka, who was then the hotline advisory
3 attorney at the Bar, to run my opinion past them
4 and see if they agreed with it.

5 Q. Isn't it true that when you met with Mr. Schafer
6 you actually called, tried to call Barrie Althoff
7 and left a message on his voice mail regarding
8 your meeting with Mr. Schafer?

9 A. I doubt it was Barrie, it was probably Bob.

10 Q. All right.

11 A. I wouldn't normally call Barrie Althoff
12 because -- with an inquiry like that because
13 Mr. Althoff is the head of the Disciplinary
14 Counsel's Office, and when I want an advisory
15 opinion I rarely ask somebody directly in the
16 Disciplinary Counsel's Office, I will usually use
17 the hotline attorney, at that time Ms. Blinka or
18 Bob Weldon.

19 Q. In your conversation with Mr. Schafer isn't it
20 correct that you basically told him to do the
21 morally right thing and referenced your own
22 history in protesting the Vietnam War?

23 A. No. I told him that I thought that if he
24 believed that the ethics rules would not allow
25 him to do what he thought he was morally required
728 1 to do, that -- and in the context of this
2 conversation my memory is that Mr. Schafer told
3 me that he was going to reveal because he
4 considered the fact that a corrupt judge was on
5 the bench was an overriding concern.

6 And I talked to him about civil disobedience
7 and moral responsibility and talked with him
8 about my own values about disobeying an otherwise
9 proper law because you believe it was morally
10 wrong, but I certainly did not tell him to do so,
11 quite the contrary.

12 Q. Well, he did provide you with a substantial
13 amount of documentation regarding Judge Anderson.

14 A. He did.

15 Q. And did you review that information?

16 A. Not at that time, and I looked through it later.
17 Doug then sent me still more material. I think
18 at one time I had over two inches of material in
19 the file. And it seemed to me at some point that
20 Doug was taking a great deal of my time, more
21 than I could afford to give, and I stopped
22 reviewing the material at that time, but I
23 remember reviewing a very substantial amount of
24 material.

25 Q. Did you maintain any notes from your meeting
729 1 Mr. Schafer?

2 A. I thought I did, but when we moved the law school
3 up here to Seattle Doug's file was in storage and
4 apparently that file was not retained. When I

5 went through my files trying to find that
6 material, I couldn't.

7 And what I have now is a file which largely
8 contains Doug's 1999 e-mails and other material
9 that Doug sent me on other matters involving
10 different judges and, for example, some e-mails
11 about the Bar Association, et cetera, but nothing
12 that goes back to the time frame we're talking
13 about.

14 Q. All right. And did you have occasion to discuss
15 Mr. Schafer's concern with Professor Boerner?

16 A. I did. I believe that was the very same day or
17 the next day. Doug had told me that he had tried
18 to reach Boerner, I think before he called me, if
19 my memory is correct, and that he had left a
20 message for Dave, who had not responded.

21 I happened to run into Dave either later
22 that day or the next morning, I don't remember
23 which now, and I told him that I had met with
24 Doug and that -- and I remember reviewing with
25 Boerner briefly -- this was not an extended
730 1 conversation, maybe ten minutes, max -- what I
2 had told Doug, and Boerner told me that he agreed
3 with that analysis and that he was going to tell
4 Doug that as well.

5 The reason that I talked with Boerner about
6 it was because I was getting as many second
7 opinions as I could, because I knew that Doug
8 intended to go forward and disclose. I wanted to
9 make sure that Doug understood what the
10 circumstances were of doing that.

11 Q. When Mr. Schafer contacted you did he draw your
12 attention to the Rules of Professional Conduct,
13 in particular, 1.6(2), which talks about
14 fiduciary?

15 A. (c)?

16 Q. I'm sorry, (c), which states that a lawyer may
17 reveal to the tribunal confidences or secrets
18 which disclose any breach of fiduciary
19 responsibility by a client who is a guardian,
20 personal representative, receiver or other court
21 appointed fiduciary?

22 A. I don't remember if he specifically called my
23 attention to it, and I was trying to remember
24 exactly when that one was adopted, it would have
25 been fairly new at that time, but the answer is I
731 1 was aware of it when it was adopted.

2 I believe -- I think that the problem with
3 that section, in my memory of the discussion, was
4 that Doug's client wasn't a fiduciary.

5 Q. How lengthy was that discussion with Mr. Schafer,
6 do you recall?

7 A. Overall?

8 Q. Yes.

9 A. I would guess at least an hour but I don't
10 remember how much more than that.

11 Q. All right.

12 A. You mean the original discussion?

13 Q. Yes.

14 A. Yes, that's my memory, is an hour, in that time
15 frame. I'm not giving that as an exact time.

16 Q. Now, Professor Strait, you had occasion to be

17 interviewed by a National Law Journal reporter
18 named Bob Van Voris, correct?
19 A. Among others, yes.
20 Q. We have arranged for Mr. Van Voris to testify and
21 I'm asking you now if you would waive any
22 privilege that Mr. Van Voris claims? Before he
23 could testify he needs you to waive any
24 communication?

732 25 A. You mean a source privilege?
1 Q. Yes.
2 A. I don't -- well, first of all, I would waive it,
3 I will waive as to that. But secondly, I don't
4 know if there is one. I only talked to him with
5 Doug's permission. Any confidentiality, in my
6 opinion, was Doug's, not mine.
7 Q. Okay, I appreciate that. Professor Strait, do
8 you recall leaving a voice mail message on
9 Mr. Schafer's telephone on or about the second
10 week of classes in the fall? It would have been
11 about mid September, 1999.
12 A. If it was mid September it probably would be in
13 about the third week of classes, but I don't
14 remember the exact date. I do remember leaving a
15 voice mail.
16 Q. Do you recall receiving a copy of Mr. Schafer's
17 answer to the Bar complaint?

18 A. Yes.
19 Q. And do you recall approximately when that was?
20 A. I believe I had it for a while before I left that
21 voice mail, but I don't remember when.
22 Q. Would July be about right?
23 A. It may well be. I would have been out of the
24 state for some period of time, all of July and
25 most of August, the first two weeks of August,
733 1 and that sounds about right. I think it came
2 while I was away on vacation and I was getting
3 ready for the beginning of the fall semester and
4 didn't review it. That's consistent with what I
5 recall.

6 Q. With that answer, do you recall a handwritten
7 note from Mr. Schafer asking for your cooperation
8 in the documents he provided to you?

9 MS. GRAY: Objection to the form
10 of the question. I'm not sure that the question
11 is clear.

12 THE HEARING OFFICER: Why don't
13 you rephrase the question.
14 Q. (By Mr. Newman) First of all, Professor Strait,
15 do you recall receiving a handwritten note from
16 Mr. Schafer with the answer that he sent to your
17 office?

18 A. Oh, yes. I don't know if it was handwritten but
19 there was a note that came with his copy of the
20 answer, and it did ask me if I had any records,
21 including his file materials or, that is, the
22 materials he sent me.

23 MR. NEWMAN: Mr. Mills, at this
24 time I would like to play the voice mail message
25 to ensure that Professor Strait identifies it as
734 1 his voice, and then follow up with some
2 questions.

3 THE HEARING OFFICER: All right.

4 Before you do that, Professor Strait, we have a
5 portable tape recorder here and on it I
6 understand is a tape that has a message that
7 apparently you left on Mr. Schafer's voice mail.

8 His counsel would like to play that for you
9 right now and have you listen to it and then ask
10 you some questions.

11 THE WITNESS: That's fine.

12 THE HEARING OFFICER: So, I'm
13 going to have him put the tape recorder next to
14 the speaker phone and hopefully you can hear it.
15 If you cannot, let us know right away.

16 THE WITNESS: Thank you.

17 THE HEARING OFFICER: All right.

18 Here we go.

19 MS. GRAY: Wait a minute. It's my
20 perception that it would probably be most helpful
21 for the record if the court reporter took a
22 transcript as the tape played, so that a separate
23 transcript won't have to be prepared and agreed
24 upon and later admitted into evidence.

25 THE HEARING OFFICER: That was my
735 1 intent. I'm sure that's what the court reporter
2 intends to do.

3 MS. GRAY: Thank you.

4 THE HEARING OFFICER: There will
5 be a transcript.

6 MR. SCHAFFER: I mean is there
7 going to be separate -- isn't it just part of
8 this statement?

9 MR. NEWMAN: It's going to a part
10 of the record.

11 THE HEARING OFFICER: Yes, it will
12 be a part of the record. You may proceed.

13 (Thereupon, a voice mail message
14 was played on a tape recorder in open court.)

15 VOICE MAIL MESSAGE: "Doug, this
16 is John Strait. I'm in the process of reading
17 your answer. I haven't had a chance to go
18 through it yet because we're getting set up here
19 in the new law school and we're in the second day
20 of classes, but my recollection of our original
21 conversation way back when was that I gave you
22 the stock explanation that I always give
23 everybody in a situation like that; is that if
24 the information you acquired was covered by RPC
25 1.6, then the exception that allows you to reveal
736 1 otherwise confidential or secret information is
2 the right to prevent commission of a future crime
3 as opposed to revealing past criminal action.

4 "And my recollection of our conversation was
5 that the issue that you were concerned about
6 factually was that you considered it to be an
7 ongoing criminal event as opposed to one that was
8 completed, and that puts you into a gray area and
9 that's what I recall our conversation concluding
10 on.

11 "I recall discussing that also with Dave
12 Boerner and Dave agreeing with me that that was a
13 correct analysis; i.e., that if it's a continuing
14 fraud then you have a right to disclose because
15 1.6 has an exception that allows you to do so.

16 Conversely, if it's a past criminal event
17 and the client won't give permission then you
18 can't reveal it, although you can, of course,
19 withdraw and stop representing the individual
20 under any circumstances, and so that's what I
21 recall our conversation consisting of.

22 "I don't believe I ever expressed an opinion
23 about whether or not under the exact
24 circumstances it was a completed criminal act or
25 a continuing criminal act or a future crime, as
737 1 well.

2 So, I'm not sure exactly what you've said I
3 said, but that's what I recall saying, and I
4 think I may even have some notes that I took on
5 our conversation. I'm going to try to see if I
6 can find that file, which is in storage, but I
7 have a generic file when I meet with people the
8 way I did with you, where if I take notes I
9 usually put the notes, and I probably, assuming
10 that my memory is correct, I think I'll have a
11 yellow pad, a sheet that will have your name and
12 a brief summary of what we discussed. I'll
13 double-check. I don't know if that helps or
14 hurts, but that's what my memory is.

15 "Now, in the meantime I will just read what
16 you sent me and see, first of all, what you
17 state, and then secondly I'll talk to you again
18 to try to do that and tell you whether I can
19 agree or disagree or neither with what you've
20 said, okay? Bye."

21 (Off the record.)

22 THE HEARING OFFICER: Excuse me.
23 Professor Strait, the court reporter has just
24 indicated that he was unable to get the entire
25 text of your voice mail message because it was a
738 1 little scratchy and soft here in the room. Were
2 you able to hear the message?

3 THE WITNESS: I guess it was
4 better over the phone. I could hear it quite
5 well.

6 THE HEARING OFFICER: All right.
7 Then we'll proceed and perhaps -- well, I'll just
8 make a note in the record that the court reporter
9 is authorized to listen to the tape at some other
10 time and supplement his notes so that we have an
11 accurate transcript of what's on the tape, and
12 that will be a part of this record.

13 Mr. Newman, do you want to ask questions of
14 Professor Strait?

15 MR. NEWMAN: Yes.

16 CONTINUED CROSS EXAMINATION

17 Q. (By Mr. Newman) Professor, first of all, that
18 is your voice, correct?

19 A. Yes, and I believe it's an accurate quote of my
20 voice mail as I recall it.

21 Q. And it is accurate then when Mr. Schafer came to
22 you his concern was of an ongoing criminal event,
23 I think those were the words you used; is that
24 correct?

25 A. Well, that's the summary that I gave. What I
739 1 recalled specifically is that he was concerned
2 about the fact that Grant Anderson had done this

3 and that Hamilton had been involved, and the
4 issue we discussed was whether it was a
5 continuing criminal event or not.
6 Q. And did you come to some conclusion on whether or
7 not it was a continuing event?

8 A. No.
9 Q. I'm sorry, the answer to that was no?

10 A. The answer to that was no.

11 Q. Okay.

12 A. I didn't express an opinion about it. I didn't
13 express an opinion about it for a couple of
14 reasons.

15 Q. Then let me follow up on Ms. Gray's question. I
16 believe you stated in response to direct that you
17 told Doug Schafer he didn't think -- you didn't
18 think he could reveal the information.

19 A. I told him that it sounded to me like a past
20 criminal event because everything had happened
21 before, but the issue was whether or not fraud
22 was a continuing crime.

23 And I also told him because the materials
24 were complex and I didn't fully understand them
25 and couldn't under those circumstances, that I
740 1 didn't want to opine one way or the other about
2 that.

3 Q. But you, in your direct testimony with Ms. Gray
4 you did use the term bribe, that you must have
5 come to some conclusion that Judge, then Judge
6 Anderson or Attorney Anderson had accepted a
7 bribe?

8 A. No, that was what Doug was saying.

9 Q. I thought that's what you were saying.

10 A. No. I was asked by Ms. Gray if I understood the
11 question correctly, to paraphrase or review as
12 best as I could the conversation that I had with
13 Doug, and I was quoting or paraphrasing what Doug
14 told me.

15 Doug told me that it was a bribe or
16 equivalent to a bribe.

17 Q. Professor, does the fact that there was a judge
18 involved change any analysis that you may have
19 provided to Mr. Schafer?

20 A. No, I don't believe it would, meaning other than
21 I think that Doug's moral outrage about somebody
22 who had become a judge had done this was
23 certainly something I could well understand.

24 Q. I only have a few more questions, Professor, and
25 I guess, following up on my earlier question, do
741 1 you think it's morally right for an attorney to
2 report a corrupt judge?

3 A. Morally correct? Yes.

4 Q. Professor, if you had the opportunity, or I don't
5 know if you reviewed any of the evidence, but did
6 you believe based on whatever review you did or
7 in your conversation with Mr. Schafer that Judge
8 Anderson was corrupt?

9 MS. GRAY: I object unless
10 Mr. Strait feels qualified to give an opinion on
11 that issue based on the materials he's reviewed.

12 THE HEARING OFFICER: I'll let him
13 answer the question if he can.

14 THE WITNESS: The short answer is

15 if Anderson did what Doug alleged Anderson did,
16 then in my opinion he certainly was corrupt in
17 his function as counsel for that estate, and I
18 wouldn't want to see somebody who had that kind
19 of history sitting on the bench.

20 But I was never in a position, and still,
21 really to this day -- other than having read the
22 State Supreme Court decision, which kind of ducks
23 the factual issues a little bit -- still to this
24 day I don't know exactly whether they expressed
25 quid pro quo or implied quid pro quo.

742 1 To my understanding what the court found was
2 that Anderson did not answer truthfully in the
3 investigation about whether or not he had
4 received additional compensation in his report,
5 in his final report on the state proceeding, but
6 even that I'm not sure of. I'm operating from
7 memory of having read the opinion sometime ago.

8 The short answer to your question is I don't
9 know what Anderson did or didn't do. What I do
10 know is if Doug was right, in my opinion Anderson
11 was not somebody who should be sitting as a
12 judge.

13 MR. NEWMAN: I don't have any
14 further questions for Professor Strait.

15 THE HEARING OFFICER: Is there any
16 redirect?

17 MS. GRAY: Yes.

18 REDIRECT EXAMINATION

19 Q. (By Ms. Gray) Yes. Professor Strait, do you
20 recall being asked just a minute or two ago about
21 whether you believe that it's morally right to
22 report a corrupt judge?

23 A. I do.

24 Q. In your opinion is it ethically right to report a
25 corrupt judge by disclosing a client's
743 1 confidences or secrets?

2 A. No. And I don't agree with Doug's position on
3 that, which he's made very clear, which he
4 believes is an overriding obligation. I don't
5 share that opinion. I believe the
6 confidentiality function is a very important one.

7 Q. Do you believe that it is --

8 MR. SCHAFER: Just a minute. Is
9 he a fact witness or an expert witness?

10 THE HEARING OFFICER: Mr. Schafer,
11 would you please let her complete her redirect?

12 Q. (By Ms. Gray) Professor Strait, following up on
13 the questions asked by Mr. Newman about your
14 personal belief on what is morally right, do you
15 believe it is morally right for someone to
16 disclose a client's confidences and secrets to
17 the press in order to expose a corrupt judge?

18 A. That's a more complicated question than I think
19 you mean it to be. The short -- in most
20 circumstances, no.

21 You're again asking my opinion on moral
22 matters and I consider those to be highly
23 personal, not abstract, not ones that everyone
24 would necessarily agree on.

25 My own opinion is that, assuming there's
744 1 another vehicle available if one is going to be

2 civilly disobedient on a moral principle one
3 should choose the least damaging vehicle to the
4 principles that you are asserting, and in this
5 case that would have been to go to the Bar
6 Association or to the Judicial Conduct
7 Commission, not public.

8 On the other hand, I do believe that
9 whistle-blowers going public at times accomplish
10 things when there is no other vehicle available.
11 Is my answer clear enough?

12 You're asking me on moral grounds should he
13 go public? And the answer is if there's another
14 more consistent with the values which you are
15 saying or superseding vehicle, you should use
16 that first.

17 Would it ever be morally justified in going
18 public? Well, I think the answer is, in some
19 circumstances, morally, yes. For example, I
20 think that when Ellsberg went public with the
21 Pentagon papers, that was a morally justified
22 act. Whether it was legally justified is a whole
23 other question. You are asking me on moral
24 grounds.

745 25 MS. GRAY: I have no further
1 questions.

2 THE HEARING OFFICER: All right.
3 Professor Strait, I think that completes your
4 examination. Thank you for interrupting your
5 vacation to testify here, and I believe you --

6 THE WITNESS: I apologize to
7 everyone for the circumstances. I've tried to do
8 the best I can but I really hadn't expected to be
9 called as a witness either way, and I apologize
10 for the difficulty.

11 THE HEARING OFFICER: I appreciate
12 you making yourself available and I think we have
13 made a record of your comments and testimony.
14 Thank you.

15 THE WITNESS: Am I free to hang up
16 now?

17 THE HEARING OFFICER: Yes, you are
18 excused.

19 THE WITNESS: Thank you very much.

20 THE HEARING OFFICER: Thank you.

21 (Witness excused.)

22 THE HEARING OFFICER: Let's take a
23 short break so we can get resituated here. Let's
24 recess for about five minutes.

25 (Brief recess taken.)

746 1 THE HEARING OFFICER: Should we go
2 ahead? Let's go back on the record, counsel.

3 MR. NEWMAN: Mr. Mills, as you
4 know, Professor Strait identified all the
5 e-mails. I provided those e-mails to Christine
6 Gray and we are going to mark those as Exhibit
7 D-28. I'm handing you the original and a copy of
8 them.

9 THE HEARING OFFICER: Any
10 objection?

11 MS. GRAY: No objection.

12 THE HEARING OFFICER: Exhibit D-28
13 will be admitted.

14 (E-mails from Schafer to John Strait
15 marked as Respondent's Exhibit No. D-28
16 and received into evidence.)

17 THEREUPON,

18 DOUGLAS A. SCHAFFER,
19 having been previously sworn, returned to the stand
20 and was examined and testified as follows:

21 EXAMINATION

22 Q. (By Mr. Newman) Mr. Schafer, do you recognize
23 what's been marked as D-28?

24 A. Yes, I do. I recognize it as e-mails that are
25 stored on my computer system. I printed these
747 1 out actually this morning before coming up here
2 to Seattle, but they have been on my -- you know,
3 they are e-mails that reflect -- that were
4 exchanged on the dates indicated in the headers.

5 Q. You heard the testimony of Professor Strait and
6 does your recollection differ from Professor
7 Strait's testimony?

8 A. My recollection does differ from his
9 recollection. We're both recalling a 45-minute
10 conversation from four-and-a-half years ago. It
11 was very important to me.

12 I felt, you know, a personal stake in the
13 matter to be attentive to what he said, and
14 frankly, I was relieved by what he said when I
15 visited at the time.

16 My strong recollection, clear recollection
17 is that I was sharing with him what I considered
18 to be the very smoking gun documents. Most
19 obvious of those is the fax sheet that we
20 presented as an exhibit yesterday, where I was
21 requesting from the Pacific County Title Company
22 assistant manager real estate excise tax deeds
23 from those time share interest transfers that
24 were being made a month before Judge Anderson
25 took the bench to most members of his law firm
748 1 and staff and his campaign treasurer and whatnot;
2 that even though the numbers were not big, you
3 know, obtaining a time share week for \$3,000 that
4 had a market value according to arm's length
5 transactions of \$3,600, not a big number, but
6 showing a clear pattern. That I know I shared
7 and explained to John Strait.

8 The other obvious smoking gun documents that
9 I was sharing immediately with people like him to
10 get their attention as to how egregious the fraud
11 appeared to be was the combination of essentially
12 the October 12, 1993 real estate documents that
13 showed signatures of both Grant Anderson and Bill
14 Hamilton certifying under penalty of perjury to a
15 \$508,096.07 transaction transferring the bowling
16 alley, and that the same day there was recorded a
17 deed of trust supporting a \$900,000 commercial
18 bank loan from First Interstate.

19 To me, any, you know, any competent attorney
20 would recognize immediately that it was a sign of
21 extreme misconduct, actually of extreme fraud.

22 So, that was the document, those were the
23 key documents. I believe I had the supporting
24 documents on the time shares and others.

25 Among the papers that I provided to the two

749 1 of them, most particularly I discussed them with
2 Professor John Strait -- I pause only that I
3 guess I can't say with the degree of certainty --
4 I can say with certainty, absolute certainty that
5 I provided those and showed them and explained
6 those to John Strait.

7 Professor Boerner I can't say as clearly
8 whether I pushed those under his door along with
9 a note. It might have been just a few of those,
10 but I can't say with certainty. I had no direct
11 personal contact with Professor Boerner.

12 But with John Strait I did. And we went
13 through these and he expressed, he expressed to
14 me unequivocally that it was compelling evidence
15 of fraud, of this guy is clearly corrupt.

16 Now, you know, on the academic discussion
17 about what risk is there in reporting this, while
18 I was sitting there he was at his desk. He
19 turned and called the Bar office.

20 I thought that his call was to Barrie
21 Althoff. He's testified that it was to Bob
22 Weldon. My notes, reflected in the record
23 yesterday, indicate that he called me back and
24 said it was -- that Weldon and Cathy Blinka said
25 it was safe.

750 1 You know, in light of the plain words of RLD
2 12.11 that say there's no civil liability to a
3 grievant, I don't know what else he would have
4 been asking to them. I mean, he wouldn't be
5 asking for their opinion as to whether RLD 12.11
6 means what it says. You know, he certainly
7 wouldn't have asked that.

8 I understood that he was checking out as to
9 whether I would be faced with ethical sanctions
10 in reporting a corrupt judge.

11 Q. And it's correct you went to Professor Strait and
12 tried to reach Boerner because of your fear that
13 you would be sued by Mr. Sloan on behalf of
14 Mr. Sloan's then client, Mr. Hamilton?

15 A. It was a combination fear. It was Phil Sloan had
16 specifically threatened to sue me and he also was
17 very strongly stressing that it would result in
18 ethical sanctions, that it would be violating the
19 ethics rules, now, regardless of the degree of
20 corruption that was evident in the conduct of
21 Judge Anderson.

22 You know, I have an absolutely clear
23 recollection that Professor John Strait, at the
24 conclusion of that meeting, you know, expressed
25 to me that, you know, it's potentially in a gray
751 1 area, as he has said in this testimony, both on
2 the voice mail and in his live testimony,
3 emphasis on gray area. You know, perhaps I was
4 hearing what I wanted to hear, but gray area was
5 distinctive in my recollection.

6 And he also expressed to me in unequivocal
7 terms, and I remember just how he said it. He
8 said: "When I am faced with this kind of a
9 quandary or dilemma" -- I don't know if he said
10 quandary or dilemma, but he expressed: "When I
11 am faced with this kind of a situation where I
12 could take this path or I could take that path, I

13 choose the path that seems most morally
14 defensible in the eyes of the public, because we
15 serve the public." It was unequivocal that he
16 said: "I choose the path that is most morally
17 defensible."

18 And the important part to me of the
19 conversation was that he acknowledged there is a
20 moral right and a moral wrong, just as he did in
21 this conversation.

22 He did not seem to want to discuss what we
23 described as his personal views on morality, but
24 at the time he clearly expressed to me that there
25 was a morally better course than the other.

752 1 And when I prepared my answer I said,
2 choosing my words carefully as business lawyers
3 and all lawyers do, I said I consulted with two
4 law professors before I reported Judge Anderson
5 and they supported my doing so.

6 And I continue to believe that he did
7 support, and I think on a moral ground even now
8 if I was permitted to directly ask him the right
9 question I think he would agree that it was the
10 morally right thing to do, as he reaffirmed to
11 me, frankly, last October in a phone conversation
12 that I did not record because he and I were
13 talking -- it was not a message on my voice
14 mail -- but he then analogized to his years, I
15 think he said, at --

16 MS. GRAY: Objection. I object to
17 hearsay testimony about what Professor Strait
18 said in a conversation last October that
19 Professor Strait was not asked about during his
20 testimony.

21 THE HEARING OFFICER: I'm going to
22 let him testify about that; overruled. If you
23 want reasons I'll give you reasons, but I will
24 let him testify.

25 THE WITNESS: It was just touched
753 1 on. I was trying to, you know, trying to steer
2 Mr. Newman to ask what I wanted to ask, and that
3 was about this.

4 What he said was: "You know, hopefully they
5 will not prosecute you, but if they do sanction
6 you, you should wear it as a badge of honor." He
7 said: "When I was a college student and I
8 protested the war in Vietnam I was arrested, but
9 I wore it as a badge of honor because it was the
10 morally right thing to do and I have no regrets
11 at having done it." I continue to think that he
12 supported me as doing the morally right thing.

13 You know, notwithstanding his understandable
14 concerns about appearing to not be supportive of
15 the Bar office, he told me specifically last
16 March when he and I both appeared before the
17 House of Representatives Judiciary Committee -- I
18 was urging the legislature to act to remove
19 Anderson; he was, at the request of the
20 Commission on Judicial Conduct or judicial
21 representatives or representatives to the
22 judiciary, urging them to not interfere with
23 judicial matters -- but after that I asked him if
24 he could help me, because February 4th --

754 25 actually, February 2nd, the first letter that was
1 fraught with problems recommending my discipline,
2 a corrected letter being February 4th -- I had
3 received and I asked John Strait if he could
4 assist me in defending that.

5 And his response was because of his
6 activities as head of the law school's student
7 clinic that assists the Office of Disciplinary
8 Counsel that he would not be permitted or he did
9 not think it was appropriate or safe for him to
10 assist me because it might -- in light of his
11 relationship with this office.

12 As soon as I prepared my answer on July 7th,
13 as soon as I had put it in the mail I delivered a
14 copy each to the offices of Professor Boerner and
15 Professor Strait.

16 Professor Boerner had a student working
17 there, he was not there. I delivered it to her.
18 Each was accompanied by a handwritten note from
19 me that urged them to look at the particular
20 paragraph to which I referred to my interaction
21 with them.

22 I asked them if they agreed or disagreed,
23 asked them to provide me copies of any records
24 they had of that conversation, because frankly, I
25 believed and I still believe that Mr. Strait will
755 1 have or did have, at least, records that would be
2 more consistent with my recollection than the
3 recollection that he has related.

4 He was not -- I think I was told that he was
5 returning from vacation August 1st. I called
6 multiple times. He has been consistently
7 reluctant to talk to me.

8 We did have the conversation in October. At
9 that conversation he suggested I, you know, look
10 at some reference materials, suggested that there
11 was some publication of a Supreme Court minute
12 entry in one of the Bar News articles, one of the
13 Bar News issues in 1977 or '78 that he thought
14 might be helpful, where the court appeared to
15 recognize the priority of preventing fraud on the
16 court.

17 I spent several hours in the library going
18 through all the issues of the mid '70s to about
19 1980. I could not find that. He referred me to
20 an article or commentary or treatise that he said
21 he and Professor Aaronson from the UW had
22 authored in 1985 about the new rules.

23 He did not think it had been published. He
24 did not think he could find a copy, suggested
25 that possibly Professor Aaronson might.

756 1 Professor Aaronson has not responded to my phone
2 calls or e-mails.

3 You know, I appreciate some efforts that
4 Professor Strait has undertaken to help me a bit,
5 but pretty much I guess he felt that I had to be
6 on my own.

7 In the October conversation when I expressed
8 to him that I thought I was hoping perhaps I
9 could find a nationally prominent expert such as
10 Geoffrey Hazzard, who publishes regularly in the
11 National Law Journal, you know, to assist me, he

12 responded quickly by saying, "Oh, I know
13 Geoffrey, we were classmates together," Geoffrey
14 Hazzard.

15 That surprised me because I previously had
16 seen, you know, the biographical information on
17 the internet of Geoffrey Hazzard that had
18 indicated that he, I think, got his law degree in
19 1954 or something like that, and I did not think
20 Professor Strait was quite of that vintage.

21 And I expressed that to John Strait that I
22 thought Geoffrey Hazzard was a lot older and he
23 said that, well, he was probably -- he, John
24 Strait, was probably older than I was assuming,
25 but he said that Geoffrey Hazzard had either been
757 1 in the class ahead of him or the class behind
2 him. I think he said: "He was in my class or
3 the class behind me," and frankly, it caught my
4 attention because I thought it was a false
5 statement.

6 So, when the question was asked by Shawn
7 Newman I will say in this exhibit, you know, my
8 practice is to do as I did here. I believe in
9 October that he had made to me a false statement.

10 So, you will see that I cogitated on that as
11 to what to do about it. Maybe it's not in this
12 exhibit. I sent John Strait an e-mail that
13 reiterated that I had been informed by him in
14 October that he was a classmate of Geoffrey
15 Hazzard and asked if he could assist me in
16 getting in touch with him, and he responded to my
17 e-mail that said, basically, "I don't really know
18 him all that well," but he did not deny my
19 message to him reminding him that he had told me
20 that he was a classmate of Geoffrey Hazzard.

21 So, frankly, I thought that might be useful
22 to impeach the credibility of Professor John
23 Strait if he might end up giving testimony quite
24 different than mine as to our conversation of
25 four-and-a-half years ago.

758 1 His explanation that Professor Hazzard was a
2 graduate student appears somewhat consistent with
3 the bio that I have on the table indicating that
4 Professor Hazzard obtained an honorary degree
5 from Yale in 1972 or something like that.
6 Professor Strait earned his law degree from Yale
7 in 1969.

8 So, it could be that they were both
9 physically present. So, you know, I apologize if
10 it appears that I was maligning his integrity. I
11 don't like being maligned but I don't like to
12 malign others, but when I see bits of information
13 that raise what I think is grounds for reasonable
14 suspicion, I act on them.

15 Q. Let me point out, Mr. Schafer, I think the
16 document you're looking for is, from the back of
17 the package is the third page from the back.

18 A. Oh, it's in this exhibit?

19 Q. Yes, third page. It's from John Strait to you
20 dated January 3rd, 2000.

21 MR. NEWMAN: And Mr. Mills, do you
22 see that, third from the back?

23 MS. GRAY: I have it many more

24 from the back, I have it five from the back.
25 MR. NEWMAN: I'm sorry, five from
759 1 the back.
2 MS. GRAY: Five pages.
3 THE HEARING OFFICER: I'm there
4 now, yes.
5 Q. (By Mr. Newman) Do you see that, Doug?
6 A. Yes.
7 Q. Do you testify that it's your practice to repeat
8 the question? Why don't you explain.
9 A. What you are seeing on this page is simply the
10 recognition that it was in late December -- I did
11 not print it out. No, in fact, the prior page
12 shows the date. The preceding page, at least on
13 the copy I have, shows that on December 29th,
14 last December 29th, 1999, you know, I sent
15 Professor Strait this e-mail, asking if he has
16 yet been able to locate any of the notes.
17 I thought he would have telephone notes from
18 his conversation with Bob Weldon or Cathy Blinka
19 or with Barrie Althoff.
20 Certainly, he would have all the papers I
21 brought him. I just can't believe that
22 lawyers -- I don't think I'm the only pack rat
23 lawyer in town. We customarily save our notes
24 and documents when we consult with somebody, even
25 in the fashion that I did with him.
760 1 So, I certainly expected he would be able to
2 provide those. So, I asked if he had yet
3 found -- been able to locate those notes.
4 The other thing that I think is significant
5 is I asked him in July, before the law school
6 moved, in fact, in February -- excuse me, in
7 March of last year. He knew that this case was
8 going to be proceeding to a disciplinary hearing.
9 So, if at any time from March of 1999 if he
10 had encountered his file folder -- and since he's
11 saying that I have buried him with papers I would
12 have thought that it would be significant enough
13 that he could locate -- I would have thought that
14 he would have been able in that period of a year
15 and four months to locate his papers from my
16 consultation with him.
17 So, I'm asking in December if he had located
18 the notes. My second item was, in fact, an
19 attempt to, shall we say, trip him up or expose
20 if he was, in fact, giving false information to
21 me.
22 I said: "I would like to recruit a national
23 expert to assist me, if possible. The most
24 visible from my casual reading is Professor
25 Hazzard.
761 1 "In our October conversation you said that
2 you knew him as an old law school classmate.
3 Could you please assist me in contacting him or
4 soliciting his help in my case, either by you
5 being an intermediary or at least giving me his
6 direct phone number," which I had already, by the
7 way, and had directly spoken to Geoffrey Hazzard,
8 "or other means."
9 Q. You did indeed research the biography of
10 Professor Hazzard, correct?

11 A. I've printed it out. It's posted on the
12 internet, at least it was at the time a few years
13 ago when I printed that out. It goes on for 14,
14 15 pages. It lists every article he's written
15 and treatise he's written and symposium he's
16 held.

17 He was the reporter -- he was the Executive
18 Director of the American Law Institute for about
19 20 years, I believe.

20 MR. NEWMAN: Mr. Mills, the only
21 reason I could introduce this into the record or
22 just simply have it to refresh Mr. Schafer's
23 testimony, but the reason I asked Professor
24 Strait that question is because of this specific
25 reference that Professor Hazzard was an old law
762 1 school classmate.

2 And I didn't mean to embarrass Professor
3 Strait but the biography, the curriculum vitae we
4 have for Professor Hazzard says he graduated in
5 1954 from Columbia and Professor Strait graduated
6 in 1969 from Yale.

7 The only time they could have possibly
8 crossed was when Professor Hazzard got an MA, an
9 honorary degree, an MA from Yale University in
10 1971, and that's under honorary degrees, and I
11 could certainly provide this.

12 THE WITNESS: Could I see that for
13 just a moment? I think it indicates where he
14 began, where he held his professorships.

15 Academic appointments; he was a professor at
16 Yale University from 1971 through 1994. It says
17 he was the professor of law at University of
18 Chicago from 1969 -- excuse me, 1964 to 1971.

19 So, from the time -- Professor Strait would
20 have presumably started at Yale three years
21 before he graduated, so 1969. This would at
22 least indicate that Professor Geoffrey Hazzard
23 was at University of Chicago from 1964 to 1971
24 and was a professor at Yale from 1971 to 1994.

25 I guess I still assert it as the question
763 1 that strikes me as surprising that he would refer
2 to a professor as a classmate, certainly not in
3 the class behind me.

4 Yale's -- excuse me -- John Strait's posted,
5 published bio on the internet for Seattle
6 University Law School indicates that he earned
7 his bachelor's degree at University of California
8 at Davis, consistent with his Vietnam potentially
9 protests, and earned his J.D. degree at Yale in
10 1969 and became an associate professor at
11 University of Puget Sound, later converted to
12 Seattle University. 1974 was when he became a
13 professor.

14 I don't know. Make of it what you will.

15 THE HEARING OFFICER: I appreciate
16 your being direct. Professor Strait testified
17 and Mr. Schafer testified and I'll just -- I
18 don't think there's any need for me to receive
19 those curriculum vitae or whatever they are
20 called in evidence.

21 THE WITNESS: And I can submit
22 that perhaps this is more illustrative of me than

23 of him. You know, I check things out. I check
24 lots of things out. I am a detail-driven person.
25 I like precision and I like truth.

764 1 Q. (By Mr. Newman) Let me ask or take a closing
2 question, Doug, unless you have something else in
3 the e-mail you want to talk about.
4 A. One other thing I will say. Is now the
5 appropriate time? You know, my e-mail message to
6 him, the second page here, I'd just like to call
7 people's attention to the third paragraph of my
8 e-mail of September 27, 1999.
9 And, you know, I recognize that everybody
10 who wants to condemn me can say that this was
11 self-serving, but I submit that it was truthful
12 then and is truthful now.
13 I say: "On the question of the propriety of
14 my reporting my former client's communications
15 concerning Judge Anderson's misconduct, my
16 recollection is that you indicated while I could
17 be faulted for reporting the judge's misconduct
18 as well as faulted for not reporting the judge's
19 misconduct, your preference when faced with such
20 ethical quandaries is to take the course that
21 seems the most morally defensible to the general
22 public in that case, report the corrupt judge."
23 I just will never forget his words where he
24 said, "When a judge is corrupt, and from what you
25 have shown me it clearly appears that he is, he
765 1 should be reported."
2 You know, he expressed to me the clear
3 conclusion that the papers that I had shown him
4 clearly showed, clearly indicated that this judge
5 was corrupt and he should be reported.
6 Q. Doug, did Professor Strait ever send you any
7 communication correcting your statement, that
8 statement you just read?
9 A. No, he generally did not respond.
10 Q. As you heard him testify, Professor Strait
11 testified that he told you that he, Professor
12 Strait, didn't think you could reveal the
13 information. Was that your recollection of your
14 conversation?
15 A. Not at all, not at all. He clearly communicated
16 to me that it was in a gray area; that, you know,
17 it could be some would say I shouldn't report,
18 others would say I have a duty to report, but it
19 was a clear message that this guy appears to be
20 corrupt and the morally right thing to do is to
21 report him.
22 You know, frankly, my phone message from a
23 few weeks later, early March, from John Strait,
24 saying he had consulted with general counsel, Bob
25 Weldon and, you know, the hotline lawyer, Cathy
766 1 Blinka, and reported that reports to the Bar are
2 safe, I don't know how else to interpret that
3 other than consistent with what I understood he
4 had communicated to me, that it was the morally
5 right thing to do.
6 It's not consistent with if he in fact had
7 said to me, you know: "Do not report it, you may
8 not report it." I don't know why he would be
9 calling me back a few weeks later and saying a

10 report to the Bar is safe.

11 Q. Mr. Schafer, do you have anything else you want
12 to discuss regarding the e-mails or your
13 interaction with Professor Strait?

14 A. I guess the only other thing that I feel that
15 should be pointed out is one of these e-mails was
16 my, you know, very open and frank e-mail in early
17 December to the reporter -- who is a lawyer, by
18 the way -- reporter for the National Law Journal,
19 no longer practicing lawyer, but now a
20 journalist, a guy named Bob Van Voris.

21 I participate and have for some time in an
22 internet discussion group called Legal Ethics-L
23 hosted by Washburn University Professor Sheila
24 Reynolds.

767 25 It is simply a discussion group that
1 primarily law school ethics professors
2 participate in, as well as practicing lawyers,
3 but most of the dialogue is between the
4 professors with the lawyers occasionally chiming
5 in.

6 And I believe it was in early or mid
7 November I made some, posted something that made
8 reference to my case, and I was then contacted by
9 Bob Van Voris from the National Law Journal who
10 was interested in learning more about it.

11 I provided him voluminous materials, about
12 10 pounds worth. He seemed to digest it all.

13 He sent me an e-mail asking -- saying that
14 he wished -- in fact, it's the prior page, or
15 maybe two pages prior -- Bob Van Voris asked if
16 he could speak with the two law professors
17 referenced not by name but by title, I guess, in
18 my answer. And he said he had contacted
19 Professor Strait, who had declined to talk with
20 him, speak with him without my consent.

21 I sent to Bob Van Voris a message that
22 expressed to him some degree of concern. I'm
23 turning pages trying to find it. Is it in here?
24 I don't know.

768 25 THE HEARING OFFICER: I don't see
1 it in here, myself. I've been scanning these as
2 you were speaking.

3 THE WITNESS: I thought that it
4 was going to be -- I would like it to be made an
5 exhibit. Perhaps it's still in the file. Could
6 we take a short break?

7 THE HEARING OFFICER: Well, we can
8 add it later.

9 MR. NEWMAN: If he wants to
10 testify to it I quite frankly thought it was part
11 of the file. If you just simply take a minute
12 break he could look at the file.

13 THE HEARING OFFICER: All right.
14 Let's take a very short break. I'm planning to
15 take a 15-minute break in about 10 minutes if
16 anybody is keeping score. We're off the record.
17 (Off the record.)

18 THE HEARING OFFICER: All right,
19 let's go back on the record. Mr. Newman?

20 MR. NEWMAN: Your Honor,
21 Mr. Schafer was discussing certain e-mails he

22 sent to an attorney/reporter named Bob Van Voris.
23 We have now copied those. We have given a copy
24 to Ms. Gray and would like to mark this as, I
25 think we are at D-28.

769 1 THE HEARING OFFICER: D-8. So
2 this would be D-29.

3 MR. NEWMAN: That would be D-29.

4 THE WITNESS: Should I begin?

5 Q. (By Mr. Newman) Well, first let me lay a
6 foundation.

7 MS. GRAY: Could you just wait
8 until I read it before you lay a foundation for
9 it?

10 THE WITNESS: Okay.

11 MS. GRAY: It might make it
12 easier, I'm not going to have any objection.

13 THE HEARING OFFICER: All right.
14 Exhibit D-29 will be admitted, whatever it is.

15 (E-mails from Schafer to Bob Van
16 Voris marked as Respondent's Exhibit No. D-29
17 and received into evidence.)

18 Q. (By Mr. Newman) Mr. Schafer, I was asking,
19 could you explain what this exhibit is?

20 A. This exhibit represents on the first page an
21 e-mail to me from the National Law Journal
22 reporter, who is a lawyer, who had been in
23 private practice for a number of years and then
24 became a journalist, named Bob Van Voris, and he
25 was preparing to write a story about my
whistle-blowing on the corrupt judge, Anderson.

770 1 And he, on the first page says that he had
2 telephoned John Strait at Seattle University Law
3 School and he had indicated to me that he had
4 also telephoned, left a message with Professor
5 Boerner, and he felt he was not going to find
6 their willingness to speak with them without my
7 clear consent. That was a message to me on
8 Tuesday, December 7th, 1999, 7:30 in the evening.

9 My response to him at 12:48 a.m. on
10 Thursday, December 9th, expressed my views at the
11 time. I said: "I am wary of Professor Strait
12 for a number of reasons. Though he taught at the
13 school when I attended from 1975 to '78 I never
14 took any course from him or ever got to know him.

15 "In early February, 1992 when Bill Hamilton
16 and his lawyer, Phil Sloan (former partner with
17 me in a 10-lawyer law firm pre-mid-1985) had
18 specifically threatened to sue me if I reported
19 anything about the Hoffman Estate, I think I left
20 notes on the office doors of both Professor
21 Strait and Boerner, (who was also unknown to me.)

22 "In truth, one of my chief reasons for
23 'consulting' with both was to prevent Sloan from
24 hiring either to testify as experts against me,
25 as I have read many opinions and heard of many
771 1 cases wherein they sell their testimony as ethics
2 experts.
3

4 "I dropped by later (the law school was only
5 a block from my office in Tacoma before it moved
6 to Seattle last August) catching Professor Strait
7 in and he spoke with me for about 45 minutes (per
8 my brief notes.)

9 "Professor Boerner phoned me later (I saved
10 the phone message slip to prove his
11 disqualification if Sloan sued me) and said that
12 he had discussed my case with Professor Strait
13 and that he concurred with Strait's views. They
14 were the only ethics professors at the University
15 of Puget Sound Law School (since sold to Seattle
16 University), which was the only law school in
17 town.

18 "There is also University of Washington Law
19 School in Seattle in Gonzaga 300 miles away in
20 Spokane.

21 "My prior 'big firm' experience had taught
22 me the wisdom of disqualifying the experts that
23 you least want to oppose you if a dispute goes to
24 litigation."

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25 THE HEARING OFFICER: Mr. Schafer,
1 excuse me, if you are just going to read the text
2 of this I can certainly read it.

3 THE WITNESS: Okay.

4 THE HEARING OFFICER: In fact, I'm
5 a little bit ahead of you in my reading, but I'm
6 wondering if there's certain specific parts of it
7 that you would like to highlight, I think it's
8 better for me if you read that. If you want to
9 read it I'll permit you to read it.

10 THE WITNESS: Well, you know, I
11 would kind of like to read it, as I said earlier.
12 Just the fact that this is a public proceeding,
13 members of the public, I think, will not be able
14 to see. I will perhaps skim some of it.

15 THE HEARING OFFICER: Have at it.
16 I'll read along then.

17 THE WITNESS: Okay. "I previously
18 sent you a batch of e-mails that included mine to
19 Professor Strait of September 27, '99. It
20 truthfully recounts my best recollection of our
21 conversations.

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22 "In contrast, Strait's lengthy voice mail to
23 me that I saved in early September says, that he
24 has not yet read my answer nor looked for any
25 notes that he might have retained, but he says he
1 thought he told me that I could only report to
2 prevent a crime. That's not at all what I recall
3 him saying at the time.

4 "For one thing, at the time I thought that I
5 had discovered was a flagrant self-dealing in
6 breach of fiduciary duties -- which I never
7 really thought it was a crime. I had also been
8 given the tip by Diane Anderson's divorce lawyer
9 ('don't tell anyone you heard this from me, he
10 said') to look into how the judge got his
11 Cadillac.

12 "But I still never thought that what I was
13 onto was a crime. I didn't even get the Caddy's
14 license plate until after I met with the county
15 prosecutor on, I think, February 6, 1996, and he
16 described to me where the judges park their cars.

17 "Strait told me on March 18, 1999 when we
18 gave opposing testimony" -- well, I recite what I
19 have already just said here. I won't read that
20 portion again.

21 "I have been able to have only one
22 substantive conversation with Strait, (not that I
23 haven't tried) since the formal case commenced
24 against me last spring. That was in late October
25 I think. He did offer some limited suggestions
774 1 but he still said he had not thoroughly read my
2 answer.

3 "In that conversation he said that I did the
4 right thing and if I am disciplined for it I
5 should wear the sanction as a badge of honor,
6 analogizing to his having been arrested years ago
7 for protesting the Vietnam War.

8 "That's the attitude that I recalled him
9 expressing in February, 1996: Do the right
10 thing. If the Judge is corrupt, as it appears he
11 is, he should be reported.

12 "Boerner is a non-player as far as I'm
13 concerned. I still have his February 5, 1996
14 phone message slip, but we have not exchanged
15 words since then. Even then I think it was only
16 a voice mail message that I got from him.

17 "His concurrence with Strait was significant
18 for purposes of drafting my answer. That
19 assumes, of course, that Strait doesn't 'turn on
20 me.'

21 "Bob, the fact is that I trust you far more
22 than I trust Strait because he's demonstrated an
23 unwillingness to communicate with me and a
24 recollection that differs from mine. I still
25 don't know if he has any notes from our
775 1 conversation. I kind of assume that his views
2 about me are tainted by his regular contacts with
3 Barrie Althoff and his staff."

4 "Another factor (to add to my paranoia) is
5 that Strait's wife, Barbara Isenhour, is a
6 prominent Seattle elder law, AKA guardianship
7 lawyer, formerly the Medicaid expert at the
8 Seattle Legal Aid office now in private practice.

9 "In 1996 I was preaching guardianship
10 reforms to the legislature she and other Seattle
11 guardianship lawyers led the strong opposition,
12 saying it was just a Pierce County problem, not
13 warranting statewide legislative fix.

14 "Since then a self-proclaimed victim (I get
15 many, many victim calls) contacted me with
16 complaints about her guardian, Barbara Isenhour.
17 I didn't do anything but speak with the victim a
18 couple of times, but it's possible that the
19 victim may have dropped my name as her champion
20 to Ms. Isenhour.

21 "Quite frankly, I'm pleased to learn that
22 Strait feels that he has a duty of
23 confidentiality towards me. Still, he and others
24 may take the position that by my raising the
25 defense of advice of counsel (which I knew was a
776 1 gamble), in my answer permits their testimony to
2 be compelled by subpoena, not privileged.
3 (Subtle distinctions -- see my letter to the
4 Hearing Officer of today.)

5 "I would not mind Strait testifying, so long
6 as his recollection is similar to mine, and to
7 the remarks he made in our last conversation

8 about 'wear your sanction as a badge of honor,'"
9 And then it continues with some other things.

10 There was then -- and I apologize for the
11 disarray of these exhibits, but there was then an
12 e-mail message that I sent to John Strait that
13 specifically gave him authorization and urged him
14 to speak openly with Bob Van Voris.

15 You know, at this moment it is my
16 understanding or my belief that we're not likely
17 going to be able to get the testimony of Bob Van
18 Voris because he said he would need to get the
19 approval of their general counsel for American
20 Lawyer Media, the corporate parent of National
21 Law Journal. I believe that what Bob Van Voris
22 would say --

23 MS. GRAY: Objection.

24 THE HEARING OFFICER: He can make
25 an offer of proof.

777 1 THE WITNESS: -- would be really
2 very similar -- that John Strait told him very
3 much the same as he testified on the conference
4 speaker phone today, but more emphasis on the
5 discussion of the moral aspect of it, as being
6 morally right, but I believe Bob Van Voris would
7 say that what John Strait said to him in December
8 was very similar to what he testified here, that
9 it would be a violation of the rules, but that it
10 was the morally right thing to do.

11 THE HEARING OFFICER: I think it
12 would be a good time for a break.

13 MR. NEWMAN: Yes, a good time to
14 take a break, yes.

15 THE HEARING OFFICER: Let's take a
16 15-minute break.

17 (Brief recess taken.)

18 THE HEARING OFFICER: Let's go
19 back on the record.

20 MR. NEWMAN: Mr. Mills,
21 Mr. Schafer just has some minor clean-up
22 clarifications he would like to make for the
23 record and he's looking at, I believe D --

24 THE WITNESS: 28.

778 25 THE HEARING OFFICER: All right.
1 Returning to Exhibit D-28.

2 THE WITNESS: All I really felt
3 that it would be helpful to reviewers of this
4 record to clarify is the last four pages of this
5 Exhibit D-28, just to explain what it is.

6 You can see from the distinction between
7 this and the prior page, there's no header at the
8 top and no footer with this morning's date and
9 6:00 a.m. time on it, but I did prepare it at the
10 same time.

11 This was, in fact, an e-mail that I sent to
12 Professor John Strait on Thursday, March 23rd of
13 this year, 2000, and I was calling his attention
14 to an article that had just appeared in the local
15 press, written by a writer named Rick Anderson,
16 whose name appears on the bottom of the second to
17 the last page, which on the second to the last
18 page from the bottom says "Rick Anderson, Seattle
19 Weekly."

20 And continued on the last page, the first
21 part of Rick Anderson's message to me was, "I've
22 finished reading (gasp) web site and other
23 publications. I had been familiar with your
24 story and thought most of the coverage was kind
25 of timid ... planning a short piece for February
779 1 22 edition supporting your effort. A few
2 questions:" He then asked me five questions.
3 When I sent the e-mail on March 23rd --
4 fourth from the last page -- to John Strait, I
5 said: "John, please read specifically the last
6 paragraph of my answer to Rick Anderson's
7 Question No. 5."
8 I just want the record to note that the
9 subject line refers mistakenly to the Tacoma
10 Reporter article. It should have been the
11 Seattle Weekly article, which is the publication
12 that Rick Anderson writes for."
13 And I simply was calling John Strait's
14 attention to, I thought -- and I still think --
15 that it was unfortunate that the quote attributed
16 to John Strait in that article seemed to further
17 muddy the water and the confusion, both in the
18 minds of the public and lawyers as to the proper
19 reading of the crime fraud exception.
20 So, this first page is simply explaining,
21 calling to John Strait's attention that, and the
22 next page reflects Question No. 5 from Rick
23 Anderson, and the reason it is not in the same
24 format as the preceding e-mails is this was a
25 very, very lengthy e-mail. It included the full
780 1 text of Rick Anderson's questions to me, and
2 inserted above that were the full text of my five
3 verbose answers, and then the message to John
4 Strait.
5 And in the interest of not overwhelming
6 everybody with this I copied the e-mail message
7 to, you know, a minimal word processor, Word Pad
8 on our Windows systems, and cut out what I
9 thought was irrelevant to this proceeding,
10 questions about the procedure and a number of
11 things. I can make it available if anyone
12 considers it germane, I just did not think it
13 was.
14 I wanted to focus on my exchange with John
15 Strait and on the topic that my response to
16 Question No. 5 from Rick Anderson, which was, you
17 know, do you plan to argue a legal defense or
18 will you also argue the morality question to
19 raise despite rules and oaths there is a basic
20 right and wrong regarding confidentiality over a
21 criminal or wrongful acts.
22 And I invite anyone to read my -- well, I
23 guess for the cameras I'll read briefly my
24 response to Rick Anderson.
25 I said: "Sure. Please re-read my posted
781 1 answer to the Bar staff's formal complaint, for
2 my answer lists seven separate defenses. The
3 first defense there listed is what I consider the
4 common sense, common morality defense. It looks
5 to the State Supreme Court's 1993 Hansen case
6 decision, written by Chief Justice Guy, that

7 declares without any supporting legal analysis,
8 in very broad emphatic terms, that a lawyer as an
9 officer of the court has an actual, affirmative
10 duty, the neglect of which may lead to sanctions
11 or liability, to disclose any true threat of harm
12 that they learn about directed towards a judge
13 (but it's hard to glean if the court considers
14 prosecutors, public defenders, non-government
15 lawyers, child custody evaluators, probation
16 officers, law enforcement officers, politicians
17 or insignificant ordinary folks within the
18 court's protected class who deserve to be warned
19 by lawyers of true threats of death or harm
20 planned against them."

21 And then I put in brackets [who says we're a
22 classless society?]

23 "To me the Hansen case represents the
24 court's recognition of the role of fundamental
25 morality, acting upon the difference between
782 1 right and wrong, to at least protect the
2 effective operation of our judicial system.

3 "I note that while our state's current
4 lawyer conduct rules permit disclosure of a
5 client's confidence to prevent the client from
6 committing a crime, the court's Hansen case
7 mandates go well beyond that.

8 "It requires a lawyer to report when a
9 client discloses in confidence that a non-client;
10 e.g., the client's vengeful friend, relative or
11 spouse intends to harm a judge, even though our
12 state's current lawyer conduct rules do
13 specifically not -- do not permit the lawyer to
14 report, absent the client's consent, the client's
15 confidential disclosure in that circumstance, for
16 the client is not the one about to commit the
17 crime.

18 "Rick, I have difficulty with the
19 distinction you are suggesting exists between
20 legal defenses and moral defenses, for having
21 read appellate opinions for over 25 years I know
22 that appellate courts routinely and often
23 expansively interpret statutory and regulatory
24 language based upon public policy objectives and
25 regularly weigh competing public policies against
783 1 one another in arriving at decisions.

2 "I will argue that the court should
3 emphatically recognize that a lawyer's absolutely
4 very highest duty is to protect the integrity of
5 the judicial system, which includes a duty to
6 report any credible evidence of judicial
7 corruption to appropriate authorities.

8 "I will separately argue that lawyers should
9 be permitted to disclose confidences of a crooked
10 client who has used the lawyer to further a fraud
11 upon others (arguing for our Supreme Court to
12 adopt the concept being promoted as the moral
13 duty of lawyers by national legal scholars and
14 Bar leaders.)

15 "The distinction that must be kept in mind
16 is that client confidences must be protected when
17 a client consults a lawyer after committing
18 unlawful acts to seek the lawyer's guidance or

19 defense to charges.

20 "Nothing that I have or will argue in this
21 case would change that concept, for it is
22 fundamental to the protection of the client's
23 personal rights in our legal system. Please keep
24 this distinction in mind."

784 25 That's the essence of it. To me it's a
1 distinction that needs to be kept in mind and I
2 urge you to do so.

3 THE HEARING OFFICER: Thank you.

4 Q. (By Mr. Newman) Mr. Schafer, do you have
5 anything else before you step down?

6 A. Do I get to step down now?

7 Q. I'm just trying make sure we have covered all
8 bases here.

9 A. No, I think that's covered enough.

10 MR. NEWMAN: With that, Mr. Mills,
11 the only remaining witness we have is Julie
12 Shankland, who is a Bar staff member. Mr.
13 Schafer is going to handle the inquiry of Ms.
14 Shankland, and there are some documents which are
15 in the Bar file which will be identified.

16 But you wanted to know, I think, a game plan
17 for tomorrow, given it's about 4:30.

18 THE HEARING OFFICER:

19 Procedurally, I guess we're still in part of the
20 Bar's case. The Bar has not rested and Ms. Gray
21 has an opportunity to cross-examine Mr. Schafer,
22 and I'm going to permit you, whatever it is,
23 redirect or recross, a re-examination of
24 Mr. Schafer when Ms. Gray is done.

25 MR. NEWMAN: Sure.

785 1 THE HEARING OFFICER: With that, I
2 did suggest before the break that we would talk
3 about where we go from here in terms of sequence.
4 Just, for example, we have probably about a
5 half-hour left today and I want to make efficient
6 use of that, and is it better to take
7 Ms. Shankland now or should we wait till
8 tomorrow?

9 THE WITNESS: I would ask to wait,
10 myself, till tomorrow. I've been preoccupied
11 with the John Strait material.

12 MS. GRAY: Mr. Mills, Mr. Schafer
13 has been testifying a long time and I must admit
14 that I've been a bit queasy all afternoon, so I
15 would prefer not to start my cross-examination of
16 Mr. Schafer this afternoon, but I can. It's
17 not -- obviously, I've been here and been
18 participating.

19 THE HEARING OFFICER: Shall we go
20 off the record and talk about the schedule for
21 the rest of the hearing? I don't think this is
22 needs to be on the record unless someone wants it
23 on the record.

24 All right. Let's go off the record.

25 (Off the record.)

786 1 THE HEARING OFFICER: All right.
2 We are ready to go on the record. We've been off
3 the record discussing the logistics for the
4 hearing and now we are prepared to hear an
5 audiotape that Mr. Schafer is going to describe

6 what this is.

7 THE WITNESS: Okay. This
8 audiotape was provided to me at my request under
9 the public records laws of Washington by the
10 Commission on Judicial Conduct of a recorded
11 telephone hearing that occurred on, I believe the
12 date was December 19, 1997 in connection, as part
13 of the disciplinary proceeding involving Judge
14 Grant Anderson.

15 At that point or shortly before that the
16 Commission's prosecutorial attorney, Paul Taylor,
17 had served a subpoena for a deposition upon
18 Mr. William L. Hamilton, who had been deposed
19 twice before, as the exhibits in this case show.

20 Mr. Phil Sloan filed a motion to quash with
21 the presiding officer, Judge Brown, as I recall,
22 and Mr. Paul Taylor had filed in response to that
23 motion to quash the papers that we have filed
24 here under the designation Exhibit D --

25 THE HEARING OFFICER: D-12.

787 1 THE WITNESS: D-12. And all we're
2 going to play is the first three minutes of that
3 16-and-a-half minute hearing, because at just
4 about the three-minute point Mr. Sloan makes a
5 fairly emphatic assertion that I'll let everyone
6 hear and judge what he says.

7 THE HEARING OFFICER: You may
8 proceed.

9 THE WITNESS: There might be a few
10 seconds of dead time at the start, but it's not
11 long.

12 (Whereupon, an excerpt from an
13 audiotape of a hearing was played in open court.)

14 "MR. SLOAN: I'm Phil Sloan for
15 Mr. Hamilton.

16 "MR. TAYLOR: Paul Taylor, Your
17 Honor, on behalf of the Commission.

18 "MR. BULMER: Your Honor, I'm Kurt
19 Bulmer on behalf of Judge Anderson.

20 "THE HEARING OFFICER: On the
21 motion then we should hear from the moving party.

22 "MR. SLOAN: Yes, Your Honor. We
23 have prepared -- "

24 (Thereupon, the tape was stopped
25 to make decisions on putting it on the record.)

788 1 THE HEARING OFFICER: Let's get
2 whatever we can get right here and provide the
3 tape to the court reporter to do the best job at
4 making a transcript that he could do.

5 So, we'll just -- you can continue where it
6 stopped.

7 THE WITNESS: I may have rewound
8 it. Yeah, I think I rewound it.

9 (Thereupon, the tape was
10 commenced to play again.)

11 "MR. SLOAN: I'm Phil Sloan for
12 Mr. Hamilton.

13 "MR. TAYLOR: Paul Taylor, Your
14 Honor, on behalf of the commission.

15 "MR. BULMER: Your Honor, I'm Kurt
16 Bulmer on behalf of Judge Anderson.

17 "THE HEARING OFFICER: On the

18 motion then we should hear from the moving party.
19 "MR. SLOAN: Yes, Your Honor. We
20 have prepared and filed a short brief, and we
21 were closed yesterday afternoon for our Christmas
22 party so I did not receive Mr. Taylor's papers
23 until this morning when I arrived at the office,
24 but the basis of the motion has several factors;
25 and one is that Mr. Hamilton has already given
789 1 the sworn statements to Mr. Taylor.
2 "Mr. Taylor now asks that he present himself
3 again for the third time and, apparently, for the
4 specific and limited purpose of advising whether
5 or not he will invoke his rights under the Fifth
6 Amendment.
7 "Mr. Taylor argues, and I understand his
8 brief, that if Mr. Taylor -- Hamilton asserts the
9 Fifth Amendment privilege then he should be
10 required to so state on the record, and then
11 apparently by innuendo submit to full
12 cross-examination to Mr. Bulmer, and thereby, by
13 having been cross-examined, the deposition could
14 be used under 8.04(b).
15 "Now, inherent in that premise is the
16 belief, apparently, that Mr. Hamilton would waive
17 his rights under the Fifth Amendment and submit
18 to cross-examination by Mr. Bulmer. We have
19 decided that for the purposes of any deposition
20 Mr. Hamilton will assert his rights under the
21 Fifth Amendment.
22 "Now, the deposition then would be just a
23 waste. Mr. Taylor would ask the question and we
24 would assert the Fifth.
25 "So, I'm asking on two bases; one,
790 1 convenience and practicality, he's already been
2 put to the economic and emotional hardship of the
3 statements; and more importantly, his
4 Constitutional rights. He's going to assert the
5 Fifth at the deposition and it would be just be a
6 waste of time to go through the exercise.
7 "THE HEARING OFFICER: All right.
8 Thank you, counsel."
9 (Thereupon, the audiotape was
10 stopped.)
11 THE HEARING OFFICER: Thank you.
12 I've heard it and we'll get a transcript of that.
13 Is there anything further for today?
14 MR. NEWMAN: Just one follow-up.
15 As I indicated, Mr. Mills, we have tried to get
16 Mr. Hamilton and Mr. Anderson via two process
17 servers and they have both been unsuccessful.
18 THE HEARING OFFICER: Thank you,
19 that's noted. Is there anything further for
20 today?
21 MR. NEWMAN: That's it.
22 THE HEARING OFFICER: All right.
23 I'll just put on the record that we will be in
24 recess until tomorrow morning at 8:15 a.m. We're
25 going to start early with the consent of all
791 1 participants.
2 MS. GRAY: Ms. Shankland is
3 available at 8:15 tomorrow morning.
4 THE HEARING OFFICER: We will

5 begin with Ms. Shankland's testimony. Thank you.
6 - - - - -
7 (Whereupon, the proceedings adjourned
8 for the day at 4:55 o'clock p.m.)
9 - - - - -
10 END OF VOLUME 3
11 VOLUME 4 CONTINUES ON PAGE 793
12 - - - - -

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1 C E R T I F I C A T E
2 STATE OF WASHINGTON)
3) SS.
4 COUNTY OF KING)
5 I, the undersigned Notary Public in and for
6 the State of Washington, do hereby certify that in the
7 case of In Re: Douglas A. Schafer, Attorney at Law,
8 Washington Bar No. 8652 and Public No. 00#00031, the
9 hearing in the above named cause began at the hour of
10 9:00 o'clock a.m., the 17th day of July, 2000; that I
11 was authorized to and did report stenographically the
12 aforementioned proceedings and that the foregoing pages
13 comprise a true and correct transcription of those
14 proceedings.
15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and affixed my official seal this 7th day
17 of September, 2000.
18
19
20 _____
21 MARK E. KING, CSR, RPR, and Notary
22 Public in and for the State of
23 Washington, residing at Bellevue.
24 My Commission expires March 16, 2001.
25 CSR License No. KING*ME43001

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25				
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1 Seattle, Washington, Thursday, July 20, 2000

2 8:20 a.m.

3 -- oo 0 oo --

4 THE HEARING OFFICER: All right,

5 let's go on the record.

6 Good morning. This is the fourth day of the

7 Disciplinary Hearing in the matter of Douglas

8 Schafer. I tried to get a little bit earlier
9 start this morning and my understanding was that
10 we were going to proceed with the testimony of
11 Julie Shankland.

12 I understand there's been a change and I'll
13 let counsel advise me of what the change is.

14 MR. NEWMAN: Thank you, Mr. Mills.
15 Yes, there are about five documents that
16 Mr. Schafer would like in the record which follow
17 up on his testimony he gave yesterday. I don't
18 anticipate that it will take very long.

19 After he is done, I believe by agreement we
20 will then have Julie Shankland, and after that
21 Ms. Gray, I believe, will proceed with her
22 cross-examination of Mr. Schafer, followed by my
23 redirect.

24 THE HEARING OFFICER: All right.
25 Is that your understanding, Ms. Gray?

800 1 MS. GRAY: Yes.

2 THE HEARING OFFICER: Mr. Schafer,
3 then if you would resume the witness chair, you
4 are still under oath.

5 THE WITNESS: Thank you.

6 (Whereupon, Mr. Schafer took the
7 witness stand.)

8 MR. NEWMAN: Mr. Mills, we can, I
9 guess, do this most efficiently -- I did give
10 copies to Ms. Gray of all the documents. She has
11 spent time reviewing those. We have numbered
12 them and perhaps we could just get whatever
13 objections Ms. Gray has on the record.

14 MS. GRAY: I think it would be
15 easier to go one by one.

16 THE HEARING OFFICER: All right.
17 (Off the record.)

18 MS. GRAY: At any rate, we were
19 dealing with D-30. I have no objection to D-30.

20 THE HEARING OFFICER: All right.
21 Exhibit D-30 will be admitted.

22 (Motion to Unseal Court Record
23 marked as Respondent's Exhibit No. D-30
24 and received in evidence.)

801 1 MR. NEWMAN: Here's a copy, then
2 the original, here.

3 MS. GRAY: I should clarify the
4 record. I have a relevance objection to D-30 but
5 I'm confident that will be overruled based on the
6 rulings of yesterday.

7 THE HEARING OFFICER: It will be
8 overruled. Let me just state for the record that
9 I'm not trying to be self-serving here, but I
10 think the Hearing Officer has been relatively
11 liberal in allowing Mr. Schafer to make a record
12 and I intend to continue that.

13 So, my inclination would be, unless there's
14 some significant objection, to admit all these
15 exhibits, if that saves some time.

16 MS. GRAY: I understand and I was
17 just making my relevance objection noted for the
18 record.

18 THEREUPON,

19 DOUGLAS A. SCHAFFER,

20 having been previously sworn, returned to the witness
21 stand, and was examined and testified as follows:

22 EXAMINATION

802 23 Q. (By Mr. Newman) Mr. Schafer, I've shown you a
24 document which is a Court of Appeals, appears to
25 be a Court of Appeals Division II Motion to
1 Unseal Court Record. Can you identify this
2 document?

3 A. Yes. This is a document from the public court
4 files of the Court of Appeals, State of
5 Washington, Division II in Tacoma in connection
6 with the appeal that was the subject of some of
7 the initially introduced exhibits, most
8 particularly the exhibit that I referred to as
9 the Petition for Discretionary Review by that
10 court in connection with three linked cases
11 involving the Barovic family, and there was my
12 Appendix D that included a number of pages that
13 have been repeated many times in the exhibits
14 that was, I think, Prosecution's Exhibit 12, I
15 think it was, or 11.

16 At any rate, this is a motion that I filed
17 March 12th of 1999 during the time period that I
18 was trying to demonstrate through documentary
19 evidence to the legislature why I thought they
20 should act to recall or remove Judge Anderson.

21 And I wanted to, or wanted the Court of
22 Appeals to unseal that Appendix D that, I think
23 it was a couple weeks or so after I filed that
24 the Commissioner had on his own initiative
25 ordered that Appendix sealed.

803 1 Q. Mr. Schafer, just so we can make sure Mr. Mills
2 understands, Appendix D, what was Appendix D?

3 A. I have a list of exhibits. Appendix D was the 59
4 pages that I had appended to the Petition for
5 Discretionary Review.

6 MS. GRAY: A-10.

7 THE HEARING OFFICER: I'm aware of
8 what Appendix D is in general. Would you like to
9 look at it or --

10 MR. NEWMAN: No.

11 Q. (By Mr. Newman) No, I just want to make sure
12 for the record, A-10, which was already in the
13 record, but go ahead.

14 A. Okay. And I noted in this, you know, accurately,
15 that I had filed that Appendix D for the reason,
16 as I explained on page 2 of this motion, that it
17 seemed apparent to me and any other reasonable
18 person, I believed, who would observe what had
19 transpired that Judge Thompson's true basis for
20 banishing me from the courthouse and ordering me
21 to turn over my files was that I had filed the
22 statements, the Motion of Prejudice and
23 Supporting Statement that indicated my belief
24 that Judge Anderson might well be removed from
25 judicial office based on his handling of the
804 1 Hoffman Estate.

2 As a result of that filing, Commissioner
3 Donald G. Meath, in his order granting an
4 emergency stay, or I don't recall exactly what it
5 was captioned, but his first ruling -- I'm
6 referring to the bottom of page 2 of this motion.

7 At page 3 of his ruling entered May 3rd,
8 1996, he indicated that he shared my presumption
9 that the statement supporting my request for
10 Judge Anderson's recusal was in fact a
11 significant underlying reason why Judge Thompson
12 found me to have acted unethically.

13 Commissioner Meath stated, and then I quote
14 accurately from his ruling: "The Court found
15 that Schafer's letters (and presumably his
16 affidavit supporting the motion for Judge
17 Anderson's recusal), were an apparent violation
18 of the Rules of Professional Conduct."

19 And I say that my inclusion of the material
20 in Appendix D supporting my request for Judge
21 Anderson's recusal was relevant to the Motion For
22 Discretionary Review to this Court of Appeals,
23 and I further asked the Court of Appeals to
24 unseal that Appendix D.

805

25 The attached page at the bottom is simply an
1 indication of all of the attorneys who were
2 active participants in that Court of Appeals
3 proceeding in 1996, all of whom I was required by
4 the Court rules to provide that Appendix -- my
5 petition to, which included all of its
6 appendices.

7 Just to complete the tale, this motion to
8 unseal the court record was heard by Commissioner
9 Meath, and the only person of -- none of these
10 lawyers named on the last page attended.

11 The only person who attended was Kurt
12 Bulmer, who vigorously objected to the unsealing
13 of that, and told the court that he had never
14 seen the contents of Exhibit D, did not know what
15 it contained, and therefore requested a
16 postponement of the motion hearing until he had
17 had a chance to review the Appendix D.

18 And I pointed out to the Court of Appeals
19 later that afternoon that his own invoices showed
20 that he had received it directly from Larry
21 Nelson contemporaneously with me giving it to
22 Larry Nelson at the time it was filed in 1996, in
23 April 26 of 1996.

806

24 So, I urged the Court of Appeals to act
25 responsibly to scrutinize whether Mr. Bulmer was
1 being honest with them.

2 (Billing Statement marked as
3 Respondent's Exhibit No. D-31.)

4 MR. NEWMAN: That brings us to
5 what's been marked as Exhibit 31, D-31.

6 THE HEARING OFFICER: Any
7 objection to D-31?

8 MS. GRAY: With regard to D-31 I
9 do have -- I have the same relevance objection,
10 but I do have a specific objection. This is a
11 bill of Kurt Bulmer to Grant Anderson, dated
12 September 24th, 1996. Mr. Bulmer is not being
13 called as a witness to testify as to what the
14 notations therein refer to and what they mean.

15 I believe that this exhibit cannot be
16 appropriately interpreted without that testimony.
17 I believe that it's being offered so that defense
18 can argue interpretations of what is in here from

19 the document alone, and I believe that with this
20 type of a document that that is inappropriate.

21 THE WITNESS: May I?

22 THE HEARING OFFICER: One or the
23 other.

24 MR. NEWMAN: Well, briefly; one,
25 it's a public document. In order for Mr. Bulmer
807 1 to get reimbursed by the county he had to submit
2 the billings; secondarily, Mr. Schafer is just
3 going to read from the document; thirdly, we have
4 talked about the fact that it is our belief that
5 Mr. Bulmer is behind the scenes and has went
6 beyond the zealous representation of his client,
7 Judge Anderson, in attempting to malign Mr.
8 Schafer, and this is further evidence of that
9 activity.

10 THE HEARING OFFICER: I'm going to
11 admit Exhibit D-31. I understand counsel's
12 objection and I will give the exhibit the weight
13 I deem it is entitled to.

14 (Respondent's Exhibit No. D-31
15 was received into evidence.)

16 Q. (By Mr. Newman) Mr. Schafer, I'm showing you
17 what's been marked as D-31. Can you explain how
18 you came to acquire this exhibit?

19 A. Yes. When I recognized that Pierce County
20 taxpayers were paying the defense costs for the
21 Honorable Judge Grant L. Anderson in connection
22 with his disciplinary case, I made a public
23 records request to the Pierce County office that
24 pays those bills, the Office of Risk Management.

25 The gentleman there, as everybody calls him,
808 1 Mike Pan -- I think it's Panagetto or something
2 like that, a Greek name, I believe -- and
3 graciously he told me that he first had to advise
4 all of the parties whose records were involved
5 that a request had been made, and absent an
6 objection from them he would provide, and he did
7 provide me the full file reflecting the invoices
8 from Mr. Bulmer.

9 That file also included, by the way, the
10 Statement of Allegations from the Commission on
11 Judicial Conduct that pointed out the \$125,000
12 fees that were taken during the estate.

13 A number of things that are not normally
14 public, the CJC does not make those public, but
15 they were all in the public file, as well as
16 Mr. Bulmer's response, which included the
17 allegations about the straw man aspect of Duncan
18 MacMillan and things of that nature.

19 So, it was a wealth of information that
20 helped considerably, again, in putting the puzzle
21 pieces together, connecting the dots, fully
22 understanding what had gone on.

23 Q. You had just testified about some conflict that
24 you perceived in Mr. Bulmer's billing and
25 knowledge of your Appendix D. Can you point
809 1 Mr. Mills to that section?

2 A. That was actually in the prior invoice that is
3 appended to the motion to quash Sloan's subpoena,
4 or the reply to that.

5 You know, at this point my objective in

6 getting this admitted was so that I could ask
7 questions of the next witness, and it having been
8 submitted I don't see the need at this point to
9 take more time with it, myself.

10 MR. NEWMAN: All right. We'll
11 move on to what's been marked as Exhibit D-32.

12 MS. GRAY: All right. This is now
13 D-32.

14 (Composite of Documents with Letter
15 to Schafer marked as Respondent's No. D-32.)

16 THE HEARING OFFICER: Is there a
17 general objection to Exhibit D-32 other than the
18 standing relevance objection?

19 MS. GRAY: There is only the
20 standing relevance objection.

21 THE HEARING OFFICER: That will be
22 overruled.

23 MR. NEWMAN: This is the original.
24 I'm handing Mr. Mills the original and a copy of
25 D-32.

810 1 (Respondent's Exhibit No. D-32
2 was received into evidence.)

3 Q. (By Mr. Newman) Mr. Schafer, I've shown you
4 what's been marked as D-32. Can you identify it
5 for Mr. Mills?

6 A. D-32 represents, you know, the papers that were
7 provided to me as the grievant. Actually, it's a
8 combination of some of the papers that I had
9 submitted to the Bar office, as well as the
10 responses that they provided to me in connection
11 with the grievance that I submitted in February
12 of 1996 concerning Judge Anderson and other
13 lawyers.

14 Significant in this response, if I work from
15 the bottom, as we often keep our chronological
16 files, a letter on the bottom was my letter to
17 Julie Shankland of March 8, 1996, confirming that
18 I wished her office to treat me as the grievant
19 so that we may communicate concerning it and I be
20 informed of its outcome.

21 I say: "As I indicated to you and as the
22 documentation I provided to you shows, I have an
23 extraordinary investment of time and expense
24 piecing together the puzzle pieces in this case.
25 I hope you will allow me to assist you with it."

811 1 I also indicated to her that several other
2 public officials were currently investigating the
3 matter.

4 I expressed: "I am concerned that your
5 premature disclosure of the detailed information
6 to the accused may jeopardize those other
7 investigations. Please contact me before you
8 make any disclosures so I may discuss with those
9 other officials or have them get in touch with
10 you concerning it."

11 She had indicated that the Bar's practice is
12 to essentially shelve grievance files during the
13 pendency of any other legal proceeding of a
14 criminal or even civil nature.

15 MS. GRAY: Don't you mean that she
16 had intended, that she indicated that it was the
17 practice to show to the respondents the materials

18 submitted by the grievants.

19 THE WITNESS: If that's not what I
20 said, that's what I intended, you know.

21 THE HEARING OFFICER: That's what
22 I understood, even if that wasn't what he said.

23 THE WITNESS: Okay. The target
24 lawyers, the accused lawyers are immediately
25 provided all materials submitted.

812 1 The document above that pretty much speaks
2 for itself. I won't repeat it. The letter
3 before that is April 12th from Julie Shankland,
4 simply saying that the grievance has been
5 deferred, it will be shelved.

6 The next letter above that is a copy that
7 went to me of a letter that Ms. Shankland
8 directed to Kurt Bulmer, Attorney for Honorable
9 Grant L. Anderson, that says: "Enclosed is a
10 copy of a grievance filed against Judge
11 Anderson." It indicates that no response is
12 necessary."

13 It says in the second paragraph: "Your
14 client may but is not required to respond at this
15 time. We are sending this letter to notify your
16 client that a grievance has been filed," and that
17 was May 2nd.

18 The next letter, working up from the bottom,
19 is the 8-page letter to me from Julie Shankland,
20 dated August 15, 1996, that starts out by saying:
21 "This letter is to advise you that we have
22 completed our investigation of your grievance
23 against lawyer Grant Anderson and to advise you
24 of our decision."

813 1 I'm not going to read the whole thing. I'm
2 going to read a sentence on page 4 where I have
3 put a pencil mark in the right-hand margin, where
4 she says: "Our investigation did not find any
5 evidence that Lawyer Anderson or any of his
6 partners or friends benefited from Lawyer
7 Anderson's actions as personal representative."

8 There's a passage on the next page, page 5,
9 but I will defer discussing that until
10 Ms. Shankland is available and under oath.

11 Q. (By Mr. Newman) Mr. Schafer, why don't we just
12 address that now, if we can, on page 5.

13 A. All right.

14 Q. You're talking about what appears to be the
15 second full paragraph under No. 4, which begins
16 with: "Mr. Hamilton agrees that he made the
17 statements you attribute to him."

18 A. Okay.

19 Q. Can you explain for the record what that refers
20 to in your mind?

21 A. The preceding paragraph says: "This allegation
22 is based on a statement Mr. Hamilton made to you
23 during an attorney/client meeting," it says.

814 1 "You state that Mr. Hamilton told you that
2 Grant Anderson had been `milking an estate for
3 years.' You also state that Mr. Hamilton said
4 that Lawyer Anderson was giving him a good deal
5 on Pacific Lanes, so he would `repay Anderson
6 down the road by paying him -- appointing him
7 corporate secretary or something like that.'

5 "You allege that Mr. Hamilton meant that
6 Lawyer Anderson had been using the Hoffman Estate
7 for his own advantage for years. You also allege
8 that Lawyer Anderson was selling Pacific Lanes to
9 Hamilton for less than market value. You
10 apparently did not review lawyer Anderson's
11 1040."

12 The next paragraph, and I will simply read:
13 "Mr. Hamilton agrees that he made the statements
14 you attribute to him. He states, however, that
15 you have misinterpreted those statements.

16 "Mr. Hamilton states that by 'milking' the
17 estate he meant that Lawyer Anderson was working
18 hard to turn the estate assets into more profits
19 than losses and generate cash for the
20 beneficiaries."

21 "Mr. Hamilton emphatically states that
22 Lawyer Anderson, to his knowledge, was not
23 gaining any personal advantage from the estate.

24 "Mr. Hamilton was also emphatic that he told
25 you not to reveal any of these statements, that
815 1 he considered them to be secrets. Mr. Hamilton
2 agrees that he told you that Pacific Lanes was a
3 good deal, but that he was only referring to the
4 terms of the option." Then it goes into a long
5 narrative.

6 The pages near the top of this, just for
7 information purposes, are the pages that show the
8 Office of Disciplinary Counsel negotiated a
9 stipulation to a two-year suspension of Lawyer
10 Anderson's Bar license, and it was signed by
11 Lawyer Grant Anderson, Grant L. Anderson, January
12 24th of this year, 2000.

13 I would like to say one thing for the record
14 and partly for those who might be seeing this on
15 videotape. There is a very highly reputable
16 lawyer named Grant B. Anderson in Tacoma who
17 should never be confused with Grant L. Anderson.
18 It's unfortunate that they have the same first
19 name and last name and have practiced for years
20 in the same community.

21 One other thing in this collection that I
22 would like to bring out to the attention -- it's
23 near the top, just below the stipulation.
24 Actually, below the stipulation is a letter from
25 Doug Ende to me of January 18th, and below that
816 1 is a copy of the e-mail that I had personally
2 sent to Doug Ende, Disciplinary Counsel, to whom
3 the Grant Anderson case was assigned after it was
4 reopened in, I believe it was February of 1999.

5 And I sent this e-mail to Disciplinary
6 Counsel, Doug Ende, and I say: "As you know, I'm
7 the grievant in this case initially filed in
8 February, 1996. Your last correspondence" --
9 this is an e-mail of January 17, 2000 -- "Your
10 last correspondence to me was your letter of
11 April 19, 1999. Please advise me if this
12 grievance remains under your active
13 investigation."

14 I'll skip a passage. It can be read in the
15 record. "Rules for Lawyer Discipline 2.6(b)(1)
16 prescribes your duty as Disciplinary Counsel to

17 'Take cognizance of any alleged or apparent act
18 of misconduct by a lawyer, whether by grievance
19 or otherwise, and investigate the same.'
20 "I hereby supplement my previous
21 documentation concerning this grievance with the
22 material posted on my web site about the
23 misconduct by lawyer Grant L. Anderson and
24 others, the URL for which is
25 http://members.AA.net/ -- that's the wiggly
817 1 hyphen -- followed by my last name, Schafer.
2 "I urge you to take cognizance of the
3 misconduct reported on my web site. If you
4 desire any documentation supporting any of the
5 statements made on my web site, please tell me.
6 If you need the web site pages in hard copy paper
7 form, I trust you are capable of printing them
8 out."
9 I'll skip the next paragraph and read the
10 following one: "I would feed you evidence of
11 Grant L. Anderson's misconduct concerning the
12 Anna Marie Alotta Estate, but I fear that doing
13 so would so overwhelm your office that any
14 investigation of him would reach gridlock, though
15 that may already have occurred."
16 I think that's enough for this exhibit.
17 MR. NEWMAN: All right. Moving on
18 then to what's been marked as Exhibit D-23 --
19 THE HEARING OFFICER: You said 23
20 or 33?
21 MR. NEWMAN: Yes, 33.
22 THE HEARING OFFICER: Ms. Gray,
23 have you had a chance to review this exhibit?
24 MS. GRAY: I have, and I have only
25 my standing objection to relevance.
818 1 THE HEARING OFFICER: All right.
2 Your objection is noted and overruled. Exhibit
3 D-33 will be admitted.
4 (Schafer Letter to Members of CJC
5 marked as Respondent's Exhibit No. D-33
6 and received into evidence.)
7 Q. (By Mr. Newman) Mr. Schafer, you have been
8 shown Exhibit D-33. Can you identify this
9 exhibit?
10 A. This is a letter that I prepared and
11 hand-delivered on December 23rd, 1997, to the
12 Office of the Commission On Judicial Conduct. As
13 you might note, I also delivered copies of it to
14 the Temple of Justice to Supreme Court Clerk
15 Jerry Merritt, to the Office of the Governor, and
16 also to the office you see on the left margin,
17 the Office of Senator Roach, who then was Chair
18 of the Senate Law and Justice Committee.
19 This is a letter that was prompted primarily
20 by Mr. Kurt Bulmer's subpoena served on me
21 seeking to take my deposition in order allegedly
22 to defend Judge Grant L. Anderson in the CJC
23 proceeding, which I thought was really a ploy to
24 harass me, which Paul Taylor thought as well.
25 He saw no relevance to my involvement in any
819 1 of Anderson's activities, and as it turned out,
2 when Mr. Bulmer did depose me he immediately
3 began focusing on my investigation steps because

4 there was -- I had no participation whatsoever in
5 any of Anderson's Hoffman Estate misdeeds.

6 My letter at the bottom of the first page
7 asks the petition to grant me relief from what I
8 regarded as highly unethical and unlawful
9 harassment that Mr. Bulmer seemed determined to
10 put me through.

11 I explained my reasons for that. I pointed
12 out that, you know, a number of things had
13 occurred that seemed to me to be obviously
14 directed at retaliation towards me rather than
15 seemed justified by any other motive.

16 I indicated that I was concerned when
17 Mr. Bulmer called me to tell me he was going to
18 take my deposition in early December of 1997.
19 When I received his subpoena I sent him a letter
20 informing him that I was not willing to disclose
21 anything that my former client, Bill Hamilton,
22 had said to me, for I recognized that it appeared
23 to me that Mr. Bulmer was working as part of
24 Mr. Hamilton's team in seeking to retaliate
25 against me, as reflected in this grievance.

820 1 I won't try, you know, just right now to
2 read through this, but I urge all decision makers
3 in connection with this proceeding to read
4 through this carefully. It simply describes a
5 number of steps that Mr. Bulmer was taking and my
6 concern or objection to that.

7 One of the more significant things that I
8 attached to this that supported my belief that
9 Mr. Bulmer was actively working with Mr. Judge
10 Anderson, not just his client, Judge Anderson,
11 but also with Bill Hamilton, the attachment that
12 is marked No. 5 points out my letter to
13 Mr. Bulmer saying: "First, I assume that his" --

14 MS. GRAY: I'm sorry. I'm not
15 with you.

16 THE HEARING OFFICER: There's an
17 attachment.

18 MS. GRAY: I have found Attachment
19 5, thank you.

20 THE HEARING OFFICER: Go ahead,
21 Mr. Schafer.

22 THE WITNESS: This was my letter
23 to Mr. Bulmer of December 15, saying that I had
24 been assuming that any deposition of me had been
25 cancelled for I had not received anything in
response to it, a subpoena.

821 1
2 And I say: "Since his subpoena indicates an
3 intent to ask me questions about William Hamilton
4 and Pacific Recreation Enterprises, I indicated
5 that I would decline to do so unless he obtained
6 the consent and waiver from those parties, which
7 was attached to this letter."

8 I point out in the last paragraph on this
9 December 15, 1997 letter that: "I note that you,
10 Mr. Bulmer, seem to be" -- well, I say, "I'm well
11 aware that Mr. Hamilton filed a grievance against
12 me in July of 1996 with the State Bar, of which I
13 understand you headed its disciplinary functions
14 as its general counsel before you crossed the
15 line and became a defense, a disciplinary defense

16 specialist.

17 "I note that you, Mr. Bulmer, have even
18 included the Bar Counsel's letters to me, dated
19 August 5, 1996, and August 21, 1996, in the
20 written materials for the State Bar Ethics
21 Seminar that you, Mr. Bulmer, presented with your
22 friends, as they are referred to, the
23 Disciplinary Lawyers, on October 18, 1996" -- and
24 I can provide the audiotape of his presentation
25 because it was audio CLE.

822 1 But in that presentation of October 18,
2 1996, a Bar sponsored seminar, continuing Legal
3 education seminar he is referring to the
4 Disciplinary Counsel as his friends in his
5 written materials that were included in the
6 seminar notebook included, and they are attached
7 to this letter, you know, first page 3-1 at the
8 bottom simply introduces the chapter of his
9 written materials and describes his practice and
10 history with the Bar.

11 Page 3-9 was a copy for which he had taken a
12 black felt pen and blacked out my name, but when
13 you compare it to the next page, and I should say
14 on the next page, the August 21 letter,
15 unfortunately, my name at the bottom must have
16 been highlighted with a pink or some -- was not
17 blacked out, this was a letter from my own file,
18 a copy of a letter from Julie Shankland to me
19 concerning the grievance by Mr. William Hamilton.

20 And it's easy to see by comparing page 3-9
21 of Mr. Bulmer's seminar materials with the actual
22 letter from Julie Shankland to me that Mr. Bulmer
23 in fact had possession of the letter that the Bar
24 had sent to me.

823 1 Likewise, page 3-7 and 3-8 are from the
2 seminar materials that Mr. Bulmer provided for
3 the seminar, and that is the identical letter of
4 August 5, 1996 from Julie Shankland to me,
5 saying: "Enclosed is a copy of a grievance filed
6 against you," which was Mr. Hamilton's grievance,
7 which is the proceeding we are now continuing
8 with.

9 And I just want to testify under oath that I
10 certainly did not provide Mr. Kurt Bulmer copies
11 of these what were then confidential Bar office
12 documents.

13 They would have only been in the possession
14 of me, as a copy recipient, Mr. Hamilton, to whom
15 either they were directed directly or as a copy
16 recipient, or in the files of this Bar office.
17 So, Mr. Bulmer either was getting them from
18 Mr. Hamilton or from the Bar office.

19 (WSBA's Response to Schafer's
20 Subpoena marked as Respondent's Exhibit No. D-34.)

21 MR. NEWMAN: All right. We're
22 moving on now to what's been marked as Exhibit
23 D-34.

24 MS. GRAY: That's D-34. Do you
25 have a copy for me?

824 1 THE HEARING OFFICER: Ms. Gray,
2 have you had a chance to review Exhibit D-34?

MS. GRAY: Yes, I have.

3 THE HEARING OFFICER: And do you
4 have an objection to D-34?

5 MS. GRAY: Yes. My only
6 objection -- this is a copy of the subpoena that
7 Mr. Schafer served on the WSBA offices on July
8 7th, 2000 and my response to that subpoena,
9 including Bates stamped documents.

10 My only objection is it includes documents
11 Bates stamped 1 through 79 but does not include
12 documents Bates stamped 80 through 104.

13 THE HEARING OFFICER: I think the
14 exhibit should probably be complete.

15 THE WITNESS: I would welcome
16 that. I thought that there would be an objection
17 to the redundancy or irrelevance of those so I
18 left them at home, but if she could provide those
19 I would be glad to supplement it to have it
20 include all 104 pages, not just the first 79
21 pages.

22 THE HEARING OFFICER: Would you
23 prefer that or just leave this exhibit the way it
24 is and note for the record that other documents
25 were provided?

825 1 MS. GRAY: I guess I would rather
2 just note for the record that other documents
3 were provided.

4 THE HEARING OFFICER: All right.
5 So, this exhibit is not necessarily a complete,
6 it does not reflect a complete response from the
7 Bar Association. There were more documents
8 provided. Is that --

9 MS. GRAY: Yes.

10 THE HEARING OFFICER: Thank you.
11 Exhibit D-34 will be admitted.

12 (Respondent's Exhibit No. D-34
13 was received into evidence.)

14 MR. NEWMAN: Mr. Mills, as
15 Mr. Schafer indicated, we would welcome a
16 complete document be on file so there's no
17 dispute on appeal on what exactly was provided.

18 And since I think we are only talking about
19 20 pages perhaps in material, maybe at the break
20 the document can be made complete.

21 And if Ms. Gray would stipulate to that that
22 would probably be -- we would ask that the
23 document be made complete.

24 THE HEARING OFFICER: I have no
25 problem with that.

826 1 MS. GRAY: I have no problem with
2 the document being made complete and I'll ask
3 Ms. Jacques to make the requisite copies.

4 THE HEARING OFFICER: All right.
5 Then let the record reflect that Exhibit D-34
6 will contain the complete response of the Bar
7 Association to Mr. Schafer's subpoena, dated July
8 7th, 2000, in addition to whatever else this
9 exhibit contains. You may proceed.

10 Q. (By Mr. Newman) Mr. Schafer, regarding D-34,
11 could you explain what it is and how you acquired
12 it?

13 A. This is the cover letter from Disciplinary
14 Counsel, Christine Gray, that recites in response

15 to the subpoena that I served upon her office
16 early in July or July 7th she has provided the
17 following 104 pages.

18 The first 79 pages were in response to that
19 portion of the subpoena by which I requested:
20 "All documents submitted to your office," the Bar
21 office, "by me in February through April of 1996
22 in connection with the grievance against Grant L.
23 Anderson and other lawyers."

24 And in response to that specific request the
25 79 pages were provided.

827 1 Q. You mean the 79, plus the additional that were --

2 A. No, in response to that specific request for
3 documents that I had submitted as the grievant,
4 the response provided 79 pages, not the briefcase
5 full of eight files that I had provided to them.

6 Part two of my request was that they provide
7 me with all documents submitted to their office,
8 all documents or other records received by their
9 office from or on behalf of the lawyers named in
10 the preceding paragraph in response to the
11 grievances therein identified.

12 And in response to that they provided 24
13 pages, pages Bates stamped 80 through 104. And
14 this response will be, again, relevant in
15 connection with questions that I hope to ask the
16 next witness.

17 Q. Anything else you would like to bring to
18 Mr. Mills' attention regarding that exhibit?

19 A. I don't know if now is the time. I'm sure he's
20 been around long enough to know that we are going
21 to raise objection to the lack of proper response
22 by the Bar.

23 THE HEARING OFFICER: You might
24 want to make a record on that. I clearly
25 understand that, Mr. Schafer, you provided a
828 1 briefcase full of documents, a large volume of
2 documents to the Bar Association. I think you
3 have previously testified to that.

4 THE WITNESS: I have.

5 THE HEARING OFFICER: But in
6 relation to this particular exhibit you might
7 refresh my recollection of how much, in terms of
8 volume you provided so I can compare it to how
9 much you got back.

10 THE WITNESS: Very simply, as I
11 had testified previously I had a large Samsonite
12 hard-walled briefcase that was chock full of
13 documents, and when I went to the CJC they made a
14 full set for each of the agencies and offices
15 that I intended to submit it to, one of which was
16 this Bar office.

17 And frankly, over the four-and-a-half years
18 since then, because in part I have continued to
19 receive many, many calls from people providing
20 information about this case and I have continued
21 to pursue information that relates to misconduct
22 of that Judge, former judge and other lawyers, my
23 own files had become somewhat in a degree of, in
24 a state that didn't seem, you know, as precisely
25 to reflect their condition at the point I gave
829 1 them to the Bar office.

2 And in preparing to defend myself in this
3 proceeding I thought it would be helpful to have
4 an accurate set that reflected just what I knew
5 at the time that is, as Ms. Gray is so emphatic
6 in asserting, that that is a point in a continuum
7 of four-and-a-half years that is the only point
8 of relevance to her.

9 And the package of documents I provided to
10 her at that time or to her office at that time,
11 you know, would well document just what exactly I
12 knew or had strong reason to suspect at that
13 time.

14 Obviously, I was not going to be able to
15 recover that collection of documents from the
16 Commission on Judicial Conduct, nor from the FBI
17 nor, from the IRS criminal investigation
18 division, not likely, actually, from the Attorney
19 General's office because they showed so little
20 interest that I don't think I even provided them
21 a complete set.

22 In essence, the Bar office seemed the most
23 logical source that would have the duty in this
24 proceeding to provide me an accurate compilation
25 of the, I think it was eight files full of
1 documents that I provided them.

2 And in response to the subpoena, the
3 assertion is that they only received or have
4 evidence of having received 79 pages, and yet on
5 the first day of this hearing, as I was
6 testifying, Ms. Gray was repeatedly pulling out
7 copies of documents that were from that
8 collection, or at least so it appeared, documents
9 from one of the eight file folders that was
10 labeled "handwritten notes."

11 I'm not a trial lawyer. I don't know how
12 far you can break the rules before somebody says
13 stop, but I see phrases in newspaper articles
14 about, you know, prosecutorial abuses and
15 litigation abuses and, you know, I tend to be
16 somewhat cynical myself of a lot of what goes on
17 in courtrooms, but I think this case probably
18 illustrates better than many others that there's
19 been a lot of abuse and bad faith demonstrated in
20 this case, and I hope the Hearing Officer and all
21 others who review this case take that into
22 account.

23 THE HEARING OFFICER: All right.

24 Thank you.

25 MS. GRAY: Mr. Mills, having
1 listened to Mr. Schafer, although I believe that
2 the record has already been made on this, I think
3 it important to further clarify the record at
4 this time.

5 If you will recall, the issue of the July
6 7th, 2000 subpoena was raised on the first day of
7 this hearing. At that time Mr. Schafer expressed
8 the belief that there were documents that we
9 should have responsive to the subpoena that had
10 not been produced.

11 I informed Mr. Schafer and Mr. Newman, I
12 believe on the record, that I would thoroughly
13 look into and review everything that we had to

14 make sure that we had indeed produced everything
15 that we have that was responsive to the subpoena.
16 After doing so late Monday in the evening I
17 put on the record Tuesday morning that, indeed,
18 we had reviewed all the documents that we have in
19 our possession and we have produced all the
20 responsive documents under No. 1, which was the
21 area that Mr. Schafer believed was missing.

22 I also indicated on the record that he may
23 well have produced documents to the Bar that we
24 did not currently have in our possession and
25 therefore could not produce.

832 1 Mr. Schafer raised at that time on Tuesday
2 that he perceived that I had possession of some
3 of those documents. He referred to handwritten
4 notes that I had shown him in my examination on
5 Monday.

6 I responded by stating, as I will repeat,
7 because our records do not contain documentation
8 about the briefcase full of documents that
9 Mr. Schafer gave to the Bar in 1996 -- and I'm
10 not denying that he did that, indeed, I believe
11 he did -- there is no way for us to know whether
12 or not documents that we received from other
13 sources were contained in that briefcase full of
14 documents.

15 I indicated on Tuesday morning, and I
16 indicate again as a part of this record, that the
17 handwritten notes of Mr. Schafer that I showed to
18 him during his examination on Monday were
19 obtained by our office in preparation for the
20 hearing from Frank Clark of the prosecuting
21 attorney's office. That's in Pierce County,
22 Mr. Ladenburg's office.

23 We did not produce those handwritten notes
24 that were a part of the materials that we
25 reviewed from Frank Clark because we obtained
833 1 them from Frank Clark and not from Mr. Schafer.

2 I indicated that on Tuesday and I indicate
3 so again today, and I believe that the testimony
4 of Ms. Shankland may illuminate this matter
5 further.

6 THE HEARING OFFICER: All right.
7 Just for the record, the Hearing Officer did hear
8 the testimony -- thank you for refreshing my
9 recollection of it -- and it does, what Ms. Gray
10 has said and what Mr. Schafer said I think
11 accurately reflects statements made earlier in
12 this hearing, but now the record is very clear
13 about the various positions being taken here
14 today.

15 MR. NEWMAN: I just have a couple
16 follow-ups with Mr. Schafer.

17 THE HEARING OFFICER: Go ahead.

18 Q. (By Mr. Newman) Mr. Schafer, approximately how
19 many pages were provided in that briefcase of
20 materials, can you ballpark it?

21 A. Well, if I think in terms of a ream is normally
22 500 pages. I guess I would say maybe a couple
23 thousand pages.

24 Q. And when the CJC -- you provided -- let me back
25 up here. You provided the same materials to the

- 1 CJC, correct?
- 2 A. Let me back up. As I think about it, a couple
3 thousand pages is probably too high. I spent
4 seven hours going through the documents with
5 Sally. I guess I would safely estimate a
6 thousand pages. I mean, the printout alone from
7 the time share interest holders was an
8 inch-and-a-half thick or so. It's in the box
9 over there. You will see better when Julie
10 Shankland is testifying.
- 11 Q. I'm just trying to get an idea. When the CJC,
12 when Sally Carter-DuBois copied the materials for
13 you, you know, roughly how big of a stack or how
14 much papers -- I mean, how many pages?
- 15 A. I think the five sets returned to me in two
16 cardboard boxes like those (indicating). My
17 originals were all in sorted files that included,
18 you know, small slips and big slips and, you
19 know -- the actual, the actual clean copies, each
20 set was probably, I'm going to guess about seven
21 inches thick, you know, when it was kind of a
22 pristine set.
- 23 Q. And you can hold up what was provided to you by
24 the Bar.
- 25 A. Well, it's 79 pages.

- 1 MS. GRAY: I think the record
2 should reflect that the revised exhibit is going
3 to contain 100 pages.
- 4 THE WITNESS: No, but I'm
5 referring to what I provided to your office. You
6 responded with 79 pages.
- 7 MS. GRAY: You are correct. I
8 withdraw.
- 9 Q. (By Mr. Newman) Anything further, Mr. Schafer,
10 you want to comment on regarding Exhibit D-34?
- 11 A. I'm just surprised at how little that they have
12 that was relevant. I mean, to me, the obvious
13 clearly, smoking-gun documents that I was using
14 to immediately demonstrate to everybody the
15 obvious fraud, like the fax sheet to the title
16 company that listed everybody in Grant Anderson's
17 law firm as having received for a thousand
18 dollars time share interests that were being sold
19 for thirty-six hundred to strangers is not here.
20 You know, none of the deeds where Grant
21 Anderson is doling out the goodies to everybody
22 he knows are here.
- 23 The documents that show the very same day
24 that Bill Hamilton and Grant Anderson are passing
25 the bowling alley for \$508,000 Bill Hamilton is
836 1 getting a \$900,000 bank loan; not here.
- 2 Now, I guess it's no wonder to me that the
3 Disciplinary Board seemed to accept the Bar
4 Office's assertion that Grant Anderson really had
5 never done anything wrong because it appears that
6 they were pretty effective in purging their files
7 of any evidence that he had done anything wrong.
- 8 So, you know, trust and confidence in the
9 system, you know, has got to be shattered to
10 anyone who looks at this.
- 11 I mean, how can -- I don't see any point in
12 even filing a grievance against any lawyer until

13 this office gets its act together and gets some
14 integrity and effectiveness.

15 Q. Anything else, Mr. Schafer?

16 A. It's all on my web site. You know, I publicly
17 say and have since last December the Bar Office
18 is corrupt, and I'll say that to anybody, to
19 their face, they are corrupt.

20 MR. NEWMAN: All right. I believe
21 we are done with Mr. Schafer's direct testimony.

22 THE HEARING OFFICER: All right.
23 I think the plan would be then to take a short
24 break and summon Ms. Shankland to testify and
25 then we'll take her testimony on the record.

837 1 So, why don't we take a 10-minute break and
2 come back with Ms. Shankland's testimony.

3 (Brief recess taken.)

4 THE HEARING OFFICER: All right.
5 Let's go back on the record. During the break
6 the next witness has arrived and is sitting in
7 the witness chair. Mr. Newman, do you want to
8 make a statement.

9 MR. NEWMAN: Yes, Your Honor.

10 Mr. Schafer has made some statements concerning
11 the prosecutor's motive and used the term
12 prosecutorial misconduct.

13 Mr. Schafer has asked me to indicate for the
14 record that in the context of calling Professor
15 Strait Ms. Gray communicated to me that because
16 Mr. Schafer was penniless that if the Bar
17 Association was forced to call Professor Strait
18 that they would ask you to force Mr. Schafer to
19 pay Professor Strait's air fare up here.

20 I quite frankly thought she was joking since
21 it's their witness, and I suggested that she get
22 a cheap air fare on priceline.com. I asked where
23 he was at. She would not identify that.

24 Mr. Schafer has asked me to make that on the
25 record to buttress his belief that this is some
838 1 sort of -- this is a vendetta and there's
2 prosecutorial misconduct.

3 THE HEARING OFFICER: All right.
4 Your statement is noted on the record. Ms. Gray,
5 did you want to say anything in response to that?

6 MS. GRAY: I think I do need to
7 say something to respond to that. I had a
8 conversation with Mr. Newman in which I was
9 discussing with Mr. Newman whether or not they
10 were going to -- this was either on Monday or
11 Tuesday of this week, probably on Monday in the
12 hallway during a break, in which we were
13 discussing whether or not they would continue to
14 oppose our motion for telephone testimony.

15 And I told Mr. Newman that I had talked to
16 Professor Strait about whether or not he would be
17 willing to fly here, testify, and fly back. I
18 told Mr. Newman that that would incur, obviously,
19 some additional expense.

20 I did not refer to Mr. Schafer as being
21 penniless. I have no knowledge of his finances
22 other than he has made some comments on his web
23 site and otherwise, but I did comment that
24 Mr. Schafer has indicated a cost-consciousness in

25 these proceedings.

839 1 For example, during telephone conferences
2 when we have had a court reporter there he has
3 questioned whether or not that was a necessary
4 expense and has commented that if ultimately a
5 sanction is imposed upon him he will be
6 responsible for costs.

7 I reminded Mr. Newman, who may not be aware
8 of how the Rules For Lawyer Discipline work, so
9 he may not have understood me correctly, but I
10 told Mr. Newman that if a sanction was imposed
11 that Mr. Schafer will be responsible for costs.
12 That is not a decision to be made by you,
13 Mr. Mills, in any case.

14 But I did make statements to Mr. Newman in
15 the course of trying to get some agreement about
16 telephone testimony, or in the alternative to not
17 raise the subject at all.

18 THE HEARING OFFICER: All right.
19 Thank you. Mr. Newman, do you want to further
20 state anything?

21 MR. NEWMAN: The only thing I
22 would say, you know, I'm not under oath, but the
23 word penniless was used. It was right after
24 Mr. Sloan -- you may recall I asked Mr. Sloan on
25 direct whether he threatened to sue Mr. Schafer
840 1 and he made a comment that: "Why would I sue
2 him, he's penniless."
3 The word penniless was used, and it's my
4 understanding that Mr. or Professor Strait was
5 their witness. If they had to pay to get him
6 here, that was their responsibility. What
7 transpired transpired.

8 MR. SCHAFFER: She refused to tell
9 you where he is.

10 MR. NEWMAN: And she did refuse to
11 tell me where he was. I thought that was
12 peculiar.

13 THE HEARING OFFICER: All right.
14 I think you have made your record on that. Thank
15 you.

16 All right. You want to call -- let's see,
17 we're simultaneously in the Association's case
18 and Mr. Schafer's case, but I believe this is a
19 witness from Mr. Schafer.

20 Call your next witness, please.

21 MR. NEWMAN: Mr. Schafer is going
22 to handle the direct questioning of Julie
23 Shankland.

24 THE HEARING OFFICER: All right.
25 So, you are calling Ms. Shankland as your next
841 1 witness?
2 MR. NEWMAN: Correct.
3 THE HEARING OFFICER: Okay.
4 Ms. Shankland, would you raise your right hand.
5 THEREUPON,
6 JULIE SHANKLAND,
7 called as a witness on behalf of the Respondent herein,
8 after having been first duly sworn, was examined and
9 testified as follows:
10 THE HEARING OFFICER: You may
11 proceed.

DIRECT EXAMINATION

- 12
- 13 Q. (By Mr. Schafer) Good morning, Ms. Shankland.
- 14 A. Good morning.
- 15 Q. You and I have spoken many times. I wish to say
- 16 preliminarily that you have always been very
- 17 cordial, very cooperative, and I have appreciated
- 18 that very much.
- 19 A. Thank you, Mr. Schafer.
- 20 Q. Can you for the record indicate, tell us
- 21 something about your background as a lawyer, and
- 22 if I need to ask questions to elicit this I will
- 23 but, you know, perhaps you could just give a
- 24 brief background and your activities historically
- 25 in the Bar Association.
- 842 1 A. Sure. I graduated from the now non-existent UPS
- 2 Law School in 1990 and I practiced in a small
- 3 full-service firm in Tacoma; Bonneville, Viert,
- 4 Morton and McGoldrick in Tacoma until like March
- 5 or something of 1995, when I came to the Bar
- 6 Association.
- 7 When I came to the Bar Association I worked
- 8 in the Office of Disciplinary Counsel from, it
- 9 was either March or April of 1995, until I think
- 10 it was early March of 1998 when I took the clerk
- 11 counsel to the board position, and I'm in that
- 12 position now.
- 13 Q. Okay. And when you were working in the Office of
- 14 Disciplinary Counsel were you like part of a team
- 15 or was there a supervisor? How was that
- 16 organized or structured; do you report to --
- 17 well, maybe you can answer.
- 18 A. During the time I was there I always reported to
- 19 a supervisor. At some point during that time
- 20 there were formal teams created. Prior to that
- 21 time it was more of an informal team system and
- 22 then it became more formalized during that time.
- 23 Q. Can you tell us who your supervisor was during
- 24 the time you were working on the Grant Anderson
- 25 case in 1996?
- 843 1 A. I knew you were going to ask me that. I was
- 2 desperately trying to remember this morning. To
- 3 the best of my knowledge it was Maria Regimbal.
- 4 Randy Beitel may have been involved, but I'm not
- 5 certain. I think there was a switchover at some
- 6 point, but I believe that would have been after
- 7 the Grant Anderson case.
- 8 Q. I had inquired of you in your capacity as clerk
- 9 of the -- what is your position now and maybe you
- 10 should just explain briefly what your job
- 11 function is now?
- 12 A. My title is clerk/counsel to the Disciplinary
- 13 Board, and my understanding is that before I took
- 14 that position there was some kind of an argument
- 15 about which came first and I don't really know
- 16 about that. I sort of have two duties.
- 17 The clerk part is being custodian of the
- 18 public records of the disciplinary hearings,
- 19 disciplinary cases, and the counsel to the
- 20 Disciplinary Board is kind of what it says. I
- 21 helped the Disciplinary Board and give them
- 22 advice in their decision making.
- 23 Q. What I was coming to is I had inquired as to the

24 names or a list of the current hearing panel
25 officers and there was just one name that I'm
844 1 going to raise at this point. Do you recall --
2 MS. GRAY: I object because he's
3 referring to matters that are not in evidence.
4 He can put them in -- ask Ms. Shankland and get
5 them into evidence through Ms. Shankland, but
6 there is no evidence about his inquiry into the
7 names of the Disciplinary Board as of this time.
8 THE HEARING OFFICER: Is this an
9 objection to learning the names of those on the
10 panel or just the manner in which he's
11 proceeding?
12 MS. GRAY: I have no objection to
13 learning the names of those on the panel. I am
14 objecting to -- there is no record and he's
15 referring in his question as if there is a
16 record.
17 THE HEARING OFFICER: Mr. Schafer,
18 why don't you rephrase the question and let me
19 listen carefully to it.
20 Q. (By Mr. Schafer) I'll rephrase the question.
21 We have throughout this record seen the name of
22 Grant Anderson and his partners, including David
23 Tuell, Jr., a lawyer in Tacoma. Is David Tuell,
24 Jr., currently a hearing officer for the Bar
25 Association? And you may look at this to refresh
845 1 your recollection if you would like.
2 A. I believe that you were correct, that he is
3 currently on the Hearing Officer panel.
4 Q. That's just a little tidbit I wanted to get in
5 the record. Thank you.
6 MR. SCHAFFER: Excuse me, Your
7 Honor. May I ask her to read just a brief
8 passage from this Rules for Lawyer Discipline?
9 THE HEARING OFFICER: Well, why
10 don't you ask a question and then to direct her
11 attention to it, but yes, fine, I don't have any
12 problem with that.
13 Q. (By Mr. Schafer) My question is: Would you
14 mind reading Rule Section 2.9(a)(4); (a), the
15 introduction, and (4.)
16 A. Sure. This comes from the 1998 court rules,
17 2.9(a).
18 Q. (4).
19 A. The part with your marking, is that what you
20 want?
21 Q. Yes, the blue mark in the margin.
22 A. The heading is "Grievant" and Section A says,
23 "rights: Any person filing a grievance with the
24 Association alleging an act of misconduct by a
25 lawyer shall have the right to" --
846 1 Q. And then jump down to (4).
2 A. Jump down to (4): "Receive a copy of any
3 response submitted by the lawyer against whom a
4 grievance is filed, except when that response
5 makes reference to confidences or secrets of a
6 client of the lawyer, to which the grievant is
7 not privy or contains information of a personal
8 and private nature regarding the lawyer, or when
9 a Review Committee determines that the interests
10 of justice would better be served if the response

11 is not released."
12 Q. Thank you. You can just set that aside. I just
13 wanted that in the record.

14 I am handing to you what has been marked as
15 Exhibit D-32, which is a collection of papers
16 involving the grievance against Grant Anderson,
17 and when it was handed to you it was opened to
18 the letter from August 15, 1996, which you sent
19 to me, an eight-page letter that declared the
20 grievance closed.

21 MS. GRAY: If you could wait just
22 one moment until I locate it.

23 Q. (By Mr. Schafer) I'll tell you what, let me
24 instead drop to the very bottom page on that
25 stack and we'll work up from the bottom. It will
847 1 be easier, I believe.

2 Do you recall seeing -- I mean, I realize
3 you see lots and lots of letters. Would you take
4 just a minute and read through this and then I'll
5 ask you a question about it.

6 A. Okay.

7 Q. Do you have any recollection as to what papers
8 or, you know, what the papers were that triggered
9 the grievances referred to in here, I mean, in
10 terms of the bulk of the papers or what?

11 A. Are you asking me what you submitted with your
12 grievance?

13 Q. What's your recollection as to what was submitted
14 that prompted this to be treated as a grievance?

15 MS. GRAY: May I clarify whether
16 or not the question is about the grievance
17 against Grant L. Anderson?

18 THE HEARING OFFICER: I think it
19 relates to the letter, it's my understanding. Is
20 that the witness' understanding of the question?

21 THE WITNESS: Yes. I'm sorry, I
22 don't recall the context of this letter. I
23 certainly remember there being documents but
24 whether they were related to this letter, I'm
25 sorry, I just don't remember.

848 1 Q. (By Mr. Newman) Then I'll rephrase the
2 question. Do you recall me submitting a
3 collection of documents that were organized into
4 a collection of files that related to -- that
5 included, you know, some memoranda from me and a
6 declaration under penalty of perjury from me that
7 described various activities that I thought
8 should be investigated?

9 A. Yes, I remember you submitting a lot of
10 documentation. I can't tell you if they were
11 separated as related to any of these specific
12 people. That I can't remember, but I certainly
13 remember your memoranda and documents.

14 Q. And that's consistent, frankly, with my
15 recollection. There was no, you know, attempt to
16 be specific as to this lawyer, that lawyer, all
17 the -- well, what you've answered is correct.

18 MS. GRAY: Mr. Mills?

19 THE HEARING OFFICER: Yes.

20 MS. GRAY: I would ask that the
21 Hearing Officer tell Mr. Schafer that he should
22 only ask questions and not make his own testimony

23 during this part of the proceeding. He'll have
24 an opportunity to do so later.

25 THE HEARING OFFICER: I think
849 1 that's an appropriate objection. At this point,
2 let's try to go Q and A, and then if you need to
3 resume the stand and testify further later,
4 that's fine.

5 Q. (By Mr. Schafer) Okay. Ms. Shankland, you in
6 your last response indicated that there were a
7 lot of papers. Could you from recollection give
8 any estimate; was it perhaps like about 80 pages
9 or was it perhaps -- did it arrive in a box, in a
10 small envelope?

11 A. It arrived in a box and I believe the box was
12 yellow and had butterflies on it, and it was
13 full. And the box was at least the size of one
14 of those banker's boxes, however, I believe it
15 was actually a little larger and it was full.

16 Q. Thank you. Do you recall was it immediately
17 assigned to you or assigned to someone else
18 initially?

19 A. I don't have any idea about that, sorry.

20 Q. Okay. Do you recall a conversation with me
21 concerning, concerning other investigations that
22 related to the papers identified?

23 A. I really don't, but I do see it in that last
24 section of your letter here where you're worried
25 about that.

850 1 Q. Okay. Let's turn then to the page, to page --
2 three sheets above that. That is your letter of
3 April 12, 1996 to me.

4 A. Okay.

5 Q. You might take just a moment to skim this letter.

6 A. Okay.

7 Q. Can you tell us what the essence of this letter
8 is saying?

9 A. Well, I have to say that I'm concerned about
10 testifying at all about this letter because I
11 don't believe this is a public document. I may
12 be incorrect, but I believe that it refers to
13 things that are still confidential pursuant to
14 RLD 11.1.

15 Q. Are you referring to everything other than the
16 proceeding involving Grant Anderson, all the
17 other lawyers?

18 A. Well, perhaps. My problem with the Grant
19 Anderson matter is the things that are public on
20 that case are things that are either in the
21 public file or things that were submitted with
22 the stipulation to the Disciplinary Board, and my
23 understanding is everything else is remaining
24 non-public.

25 And off the top of my head I don't know
851 1 whether this was submitted with the stipulation
2 to the Disciplinary Board. It likely was, but I
3 don't know the answer.

4 Q. It's not that important. We can just --

5 THE HEARING OFFICER: Excuse me.
6 Ms. Gray wants to make a statement.

7 MS. GRAY: Because this document
8 has been admitted in this proceeding I don't
9 think there's any problem with reading the

10 document. It is my belief, based on the
11 documents that I reviewed this morning, that this
12 particular letter is not public as a matter of
13 record in the Grant Anderson file, so it is only
14 public because Mr. Schafer had a copy and it was
15 admitted in these proceedings.

16 So, there is a concern under RLD 11.1 with
17 regard to any testimony, but reading it, it's in
18 evidence.

19 THE HEARING OFFICER: The witness
20 is instructed that you may testify regarding the
21 contents of the letter as is, but if you feel you
22 have some other objection or there's a
23 confidentiality objection, please raise it and
24 the Hearing Officer can rule on that, but this is
25 part of the public record for this proceeding.

852 1 THE WITNESS: Okay, thank you.

2 THE HEARING OFFICER: You may
3 proceed, Mr. Schafer.

4 Q. (By Mr. Schafer) Then looking at this letter of
5 April 12, what, in essence, are you informing me
6 of by this letter concerning the investigation or
7 the pendency of your investigation?

8 A. That the grievances have been deferred, I think,
9 right, and that you can challenge the deferral
10 determination if you wanted an immediate
11 investigation, and you needed to notify us in
12 writing of that.

13 Q. Okay. Did you say that it was being deferred?

14 A. I believe I did. If I didn't, that is in fact
15 what it says.

16 Q. Okay, okay. This letter of April 12,
17 specifically, does it refer to the grievance
18 against Grant Anderson; yes or no, is his name
19 there?

20 A. His name is on the page, yes.

21 Q. See, that's simple, we can tell that. There's
22 cameras rolling. The audience may not know.

23 A. Okay.

24 Q. That's the purpose of the question. Two pages
25 above that, can you describe this letter and is
853 1 this a standard form letter, and please confirm
2 if this is a letter from you and to whom you
3 addressed it and the date?

4 A. It's got my signature on it, and again, when I
5 testify about all these I don't mean to be
6 disruptive and so I'll just say it once now, I'm
7 not certain which ones are public and which ones
8 are not. Have these all been admitted, so I
9 should assume that I can testify about the
10 contents?

11 MS. GRAY: The entire packet of
12 D-32 has been admitted into evidence.

13 THE WITNESS: Oh, okay.

14 MS. GRAY: This particular letter
15 of May 2nd, 1996 is, in my understanding, a part
16 of the Grant Anderson public file.

17 THE WITNESS: Oh, good. Okay.

18 Sorry, I just haven't reviewed it and so I'm not
19 aware.

20 This is a, or at least at the time I was in
21 the Office of Disciplinary Counsel was a standard

22 letter that goes to the respondents, requesting
23 that they -- but sort of notifying them of the
24 grievance and requesting that they respond.

25 The date on it, I believe you asked me for
854 1 that, is May the 2nd, 1996, and it's signed by me
2 and it's on my letterhead.

3 Q. (By Mr. Schafer) Do you have any recollection
4 as to the prior letter of April 12 having stated
5 that the matter was being deferred?
6 What event precipitated this May 2 letter
7 whereby you apparently took it out of deferral
8 status, you know, and began the process that you
9 normally would use?

10 A. The letter says: "We initially deferred this
11 grievance due to ongoing criminal investigations.
12 Those investigations have now been completed."
13 So, I assume that I believed that the criminal
14 investigations had been completed.

15 Q. Do you have any recollection as to from whom you
16 heard that?

17 A. No, I don't, I'm sorry.

18 Q. The next eight pages above that is the letter
19 that I initially referred to, which is your
20 August 15, 1996 letter to me.

21 A. Uh-huh.

22 MS. GRAY: It may be of assistance
23 if I note that this August 15th, 1996 letter is a
24 public document in the Grant Anderson file.

25 THE HEARING OFFICER: Thank you.

855 1 Q. (By Mr. Schafer) Why don't you take a moment to
2 skim this letter. Obviously, I don't want you to
3 take the time to read the whole thing. I'm only
4 going to call your attention to a couple
5 passages. They are the passages that are marked
6 in the margins.

7 A. Oh, okay. The mark on page 5 refers to the
8 paragraph that it's next to; is that correct?

9 Q. Yes, the paragraph preceding it and adjacent to
10 it.

11 A. Okay. So, there are two marks?

12 Q. (Counsel nods head.) Okay.

13 A. Okay.

14 Q. Is it correct that this is a letter that you sent
15 to me that declared the grievance investigation
16 closed?

17 A. Yes.

18 Q. Thank you. And on page 4 near the bottom it
19 states -- and I'll just read this -- it states:
20 "Our investigation did not find any evidence that
21 Lawyer Anderson or any of his partners or friends
22 benefited from Lawyer Anderson's actions as
23 personal representative."
24 Are the steps that were -- this may require
25 that you read it more fully -- could you describe
856 1 to us, to the best of your recollection, what
2 steps you took to investigate this, you know, to
3 arrive at this conclusion? You had mentioned
4 this box full of documents.

5 A. I think that I can't go beyond what is in this
6 letter because the investigation, other than what
7 has been made public by documents submitted to
8 the Disciplinary Board, remains confidential, and

9 I don't believe that I can testify about those
10 things.

11 The paragraphs in the beginning of the
12 letter indicate that I reviewed a lot of
13 documents, that I reviewed the estate file, that
14 I reviewed the complete PDC documentation
15 regarding Grant Anderson.

16 I had conversations with you, I had
17 conversations with all respondents, either
18 personally or through counsel, and I talked to
19 all of those witnesses that are listed in
20 paragraph two. And I'm sorry, but I believe that
21 I am constrained by RLD 11.1 from going behind
22 that.

23 Q. So, essentially, you are saying that even though
24 he was removed as a judge for a pattern of
25 dishonest behavior and even though the Bar has
857 1 suspended his license for two years the
2 investigation files are not publicly available?

3 A. Yes, I believe that's true.

4 Q. Okay. The non-public availability of those
5 files, is that essentially the standard practice
6 or is this some unique order in this case?

7 A. I believe it's pursuant to RLD 11.1, which is a
8 rule enacted by the Supreme Court.

9 I think it's 11.1(d), if I'm not mistaken,
10 that says that anything that is not made public
11 remains confidential, and 11.1(c) is the list of
12 public documents. One of the things on that list
13 is documents submitted to the Disciplinary Board
14 with a stipulation.

15 And my understanding is other than the
16 public file itself, that's the only action that's
17 been taken in this case that would make things
18 public.

19 Q. And is it correct that the record of documents
20 that is submitted with the stipulation is the
21 result of a, essentially, a negotiation between
22 the respondent lawyer and the Bar office?

23 A. I don't know how to answer your question because
24 at the time of the Anderson stipulation I didn't
25 work in the Office of Disciplinary Counsel. At
858 1 the time I worked there, that would be
2 essentially true.

3 Q. Okay. Let's jump then now to -- well, let me ask
4 first; that box of documents that you referred
5 to, would it have been the custom or do you have
6 a recollection as to whether you reviewed all
7 those papers?

8 A. I remember reviewing them, yes.

9 Q. Okay, thank you. Do you have any recollection of
10 a paper that listed some time share deeds that
11 had gone to members, you know --

12 A. I'm really sorry but I don't have any specific
13 recollection.

14 Q. Okay. Then if we turn to page 5 of your letter,
15 and I will ask you about the two paragraphs under
16 Item 4.

17 Item 4, and I'll just read the heading, it
18 says, "referring to an apparent allegation that
19 Lawyer Anderson received some kind of personal
20 consideration in return for his bargain sale of

21 Pacific Lanes to William L. Hamilton and did not
22 report his income on IRS 1040".
23 Please take a minute and carefully read
24 those two paragraphs.
25 A. There are three paragraphs on the page so I'm
859 1 confused.
2 Q. The first two and the first two lines of the
3 third one.
4 A. Okay. I have read them.
5 Q. Can you describe to us from your recollection how
6 you conferred with Mr. Hamilton; was it in person
7 or by phone, and if you could describe that
8 interaction?
9 A. My letter indicates that it's a conversation.
10 And, again, I'm stuck because I don't know if I
11 can go, I don't believe I can go beyond what's in
12 the letter. It's not that I mind if you know,
13 but I don't want to violate the confidentiality
14 of the investigation.
15 I certainly had a conversation with him.
16 And your question to me was whether it was on the
17 telephone or in person?
18 Q. I'm just trying to elicit as much information as
19 I can about what Mr. Hamilton said to you and the
20 circumstances as to how he said it, recognizing
21 that he about the same time he was meeting with
22 you apparently filed a grievance against me.
23 While I understand your concern for Grant
24 Anderson's rights to continued secrecy, my career
25 is also at risk, here, and I guess I would hope
860 1 for some recognition that I have a right to know.
2 And I think I have the right to compel testimony
3 as to matters relevant to the grievance against
4 me. And Mr. Hamilton's accusations, I think, are
5 kind of central to the grievance against me.
6 THE HEARING OFFICER: Is there a
7 question pending right now? I'm not sure what it
8 is.
9 Q. (By Mr. Schafer) The question is: Would you
10 provide to us the content of the conversation you
11 had with Mr. Hamilton when you were investigating
12 this grievance against Grant Anderson?
13 A. Other than what's in the letter I don't believe I
14 can do that.
15 Q. One of the assertions in the memorandum I made
16 was that he told me he had made a five-figure
17 contribution to Grant Anderson's election
18 campaign. Do you recall that ever being a
19 subject of interest on your part or investigation
20 on your part?
21 A. I don't recall anything other than what I have
22 reviewed in the documents. Sorry, it's been a
23 long time.
24 Q. Do you recall in the course of this investigation
25 receiving any responses from Mr. Kurt Bulmer on
861 1 behalf of Judge Anderson?
2 A. Nothing in writing.
3 Q. Nothing in writing. Do you recall me, over a
4 period of time, requesting copies of all
5 responses from Mr. Bulmer on behalf of
6 Mr. Anderson?
7 A. Yes.

8 Q. Do you recall your responses to my requests for
9 those?

10 A. Not specifically, other than I don't have a
11 written response, so I don't have one to give
12 you. Like I said, I do not recall my specific
13 words to you. They probably are in this packet
14 somewhere.

15 Q. You read earlier that rule. Under the rules that
16 govern these matters is it correct that if you
17 had received a response from Mr. Bulmer or
18 someone else on behalf of Mr. Anderson that I
19 would have had a right to receive a copy of it as
20 the grievant?

21 MS. GRAY: Objection; it calls for
22 Ms. Shankland's legal testimony and legal
23 interpretation of the rule.

24 THE HEARING OFFICER: Overruled.
25 I'll let her testify to her best understanding of
862 1 what would be required.
2 THE WITNESS: I believe that you
3 would have had a right to receive it unless there
4 had been a request by Mr. Bulmer that you not
5 receive it and the Review Committee ruled that
6 that was in the interest of justice.

7 Q. (By Mr. Schafer) To the best of your
8 recollection do you recall any request -- well, I
9 think you just testified, did you not, that there
10 was no written response from Mr. Bulmer?

11 A. No, and the document that we already looked at,
12 my request to him I believe specifically said
13 we're not requesting a written response at this
14 time.

15 Q. It did. Do you recall having any contact with
16 Mr. Bulmer in connection with your investigation
17 of this grievance?

18 A. Yes.

19 Q. Can you please describe to us what that contact
20 with Mr. Bulmer was?

21 A. I don't believe I can, I'm sorry, for the same
22 reasons.

23 Q. Do you, in your experience in the Office of
24 Disciplinary Counsel do you know what Mr. Bulmer
25 looks like?

863 1 A. Absolutely.
2 Q. Do you see him around and about the Office of
3 Disciplinary Counsel on occasion?

4 A. I don't recall ever seeing him back within the
5 locked part of the Office of Disciplinary
6 Counsel. He's here and I currently see him at a
7 lot of Disciplinary Board meetings because he
8 represents some of the respondents in oral
9 arguments.

10 Q. Do you have any recollection of meeting with him
11 directly in connection with the grievance of
12 Grant Anderson?

13 A. Again, we're back to the same question about --
14 I'm not sure what you're asking me.

15 Q. I'm just asking you to inform us as to the extent
16 of interaction with Mr. Bulmer while you were
17 investigating this grievance?

18 A. I had conversations with him, yes.

19 Q. Do you recall those conversations as being in

20 person or being over the phone?
21 A. I guess at this point I really don't.
22 Q. Okay, okay. Do you recall -- you have just a bit
23 ago testified that there were no written
24 responses that he had provided. Do you recall if
25 he -- referring to this eight-page letter, did he
864 1 to the best of your recollection provide any of
2 the input for this letter, either in the form of
3 suggested content, either verbally or through any
4 suggested drafts, language on disc, any aspects?
5 A. Suggested drafts?
6 Q. That is the question, yes.
7 A. He certainly didn't do that. He must have
8 provided information. I'm sorry I'm laughing,
9 I'll try not to do that.
10 At the top of page 5 it says "Lawyer
11 Anderson states," and goes on, and I don't know
12 anywhere else I would have gotten that
13 information.
14 Q. But do you recall receiving anything in textual
15 form, either in paper form, on computer disc
16 form, or suggested dictation of passages?
17 A. Certainly not. That would be inappropriate.
18 Q. Okay. That would be inappropriate?
19 A. Yes.
20 Q. Do you recall or have any recollection of
21 Mr. Bulmer expressing any personal views about me
22 as the grievant in connection with this?
23 A. I don't have memory of those, and again, I don't
24 believe that I can discuss specific contents of
25 specific investigative conversations that I had.
865 1 Q. You're saying that you don't believe that you are
2 permitted to?
3 A. Right, I think the rules prevent me from doing
4 that.
5 MR. SCHAFFER: Mr. Mills, can
6 you -- I would ask Mr. Mills to instruct her, in
7 that she is under oath in the context of this
8 proceeding to answer relevant questions.
9 THE HEARING OFFICER: As to the
10 question you asked, I believe she said that she
11 did not recall any contact with Bulmer on that,
12 on the point you were asking her about. If
13 there's another question you want to ask about,
14 then I can take that up.
15 MR. SCHAFFER: I believe I asked
16 her if she had any recollection of any personal
17 views that Mr. Bulmer may have expressed about
18 the grievant, namely me.
19 THE HEARING OFFICER: And she said
20 no.
21 THE WITNESS: That is what I said.
22 I said that, even though I said I think under RLD
23 11.1 you are asking me for investigative
24 information that is not public and I don't
25 believe that the rules allow me to testify to
866 1 that.
2 THE HEARING OFFICER: My only
3 point -- I'm sorry I wasn't very clear -- is that
4 if you ask in the next question about, you know,
5 assuming she had a recollection, about what he
6 said, then I think you've made a record, I would

7 have to rule on that.

8 I don't think I need to make a ruling on it
9 at this point, at this juncture.

10 Q. (By Mr. Schafer) I'm handing to you a copy of a
11 document that has been marked Exhibit D-33.

12 A. Okay.

13 Q. It has been opened to a page near the bottom and
14 is headed Chapter 3 at the top. It is from
15 seminar materials from a Bar sponsored seminar in
16 October of 1996. I'll wait until you both --

17 THE HEARING OFFICER: I'm sorry.

18 Thank you.

19 Q. (By Mr. Schafer) And as this page that is
20 headed Chapter 3, "What To Do When a Grievance is
21 Filed; the Grievance Process From the Other
22 Side," by Kurt M. Bulmer and Leland G. Ripley,
23 you can see, I believe, from the bottom of the
24 page, can you not, that it says Seminar No. 778,
25 Bulmer and Ripley, page 3-1, do you see what I'm
referring to?

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1 A. That is what it says.

2 Q. Then if you would turn to the next page and the
3 subsequent page, you'll see the next page is
4 marked page 3-9.

5 A. That's what it says.

6 Q. And I will tell you it's been admitted as being a
7 page from the seminar materials behind the page
8 previously looked at. Do you see the similarity
9 between that page that's marked 3-9 and the next
10 page?
11

12 A. It looks like a form document to me. I see the
13 same similarity you would see in a form document.

14 Q. Do you see the date on each?

15 A. Yes, they are the same date.

16 Q. Then let's go to the next four pages following
17 that, page 3-7 and 3-8.

18 A. Okay.

19 Q. And then the two pages that follow that is, the
20 last two pages there, can you describe just ever
21 so briefly what this letter is, the letter of
22 August 5?

23 A. It appears to be a request for response from me
24 to you regarding William L. Hamilton's grievance
25 against you.

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1 Q. Okay. And if you then turn to the prior two
2 pages, would you describe this as a standard form
3 letter or do you think that this more accurately
4 looks like a copy of the letter from you to me on
5 which Mr. Bulmer apparently has blacked out my
6 name?

7 A. You know, I could speculate that but I certainly
8 don't know. I've never seen these before, that I
9 know of.

10 Q. Okay. Well, then let me ask: Would Mr. Bulmer
11 likely have received from this office, from your
12 office, when you were in the Office of
13 Disciplinary Counsel, copies of your
14 correspondence to me, the last two pages?

15 A. Well, you know, I don't know. It says "cc: to
16 William L. Hamilton," it says nothing about Kurt
17 Bulmer on here. So, you know, as I'm sitting
18 here, I don't know. Sorry, I don't know how to

19 answer your question.
20 Q. Do you have any recollection of Mr. Bulmer being
21 counsel for William L. Hamilton, the grievant, in
22 the case against me?
23 A. I don't recall, I really don't.
24 MS. GRAY: May I make a suggestion
25 that may assist Ms. Shankland in recalling?
869 1 THE HEARING OFFICER: Certainly,
2 go ahead.
3 MS. GRAY: Do you mind?
4 MR. NEWMAN: No, go ahead.
5 MS. GRAY: Ms. Shankland, if
6 Mr. Bulmer had been representing Mr. Hamilton at
7 the time you wrote the August 5th, 1996 letter
8 would you have cc'd Mr. Bulmer or would you have
9 cc'd Mr. Hamilton?
10 THE WITNESS: Mr. Bulmer.
11 THE HEARING OFFICER: Thank you.
12 Q. (By Mr. Schafer) Again, looking at these last
13 two letters; one being the unredacted copy of
14 your letter to me of August 5, and the letter
15 immediately preceding that, appearing to be
16 identical except for the names that have been
17 blacked out or redacted, can you offer any
18 explanation as to how this might have been
19 included as part of Mr. Bulmer's seminar
20 materials?
21 A. I have no idea. Like I said, I have never seen
22 this, to the best of my knowledge, before just
23 now.
24 Q. Are these your signatures, though, on both
25 letters?
870 1 A. It looks like it.
2 Q. Okay. We are now going to present to you another
3 exhibit. This is marked 23. This was admitted
4 as the Reply to Motion to Quash Subpoena on
5 Mr. Sloan, and it has been opened for you. You
6 might turn to the preceding page from that
7 because it illustrates what this document is.
8 The top may be cut off. If you turn to the
9 two pages preceding that, it is Exhibit M, as in
10 monopoly, to this motion, is the letter from Kurt
11 Bulmer to Mike Pan, Pierce County Risk Manager,
12 simply a two-page letter that transmits his
13 invoice, which follows that.
14 A. Okay.
15 Q. I'm just kind of giving you kind of what we are
16 referring to. And if you then turn to the
17 invoice dated June 1, 1996 addressed to Grant
18 Anderson from Mr. Bulmer, if you turn to page 2
19 of that invoice you see an entry under the date
20 May 2nd, 1996.
21 A. Uh-huh.
22 Q. Would you read that to me, please?
23 A. "Telephone conference with Shankland at WSBA re:
24 file and her approach to case. File notice of
25 appearance."
871 1 Q. And do you recall that date as being the date of
2 your letter that we just were looking at that
3 took the case out of deferral status?
4 A. I didn't recall that but it may very well be
5 true. Yes, it is the same day.

6 Q. So, is it possible that your taking the case out
7 of deferral status based on the law enforcement
8 investigations having been concluded was
9 information that you were given by Mr. Bulmer?

10 A. I doubt it.

11 Q. Why do you doubt that?

12 A. I think it would be unlikely for me to rely on
13 Mr. Bulmer for that kind of information.
14 However, I don't, as I sit here, have any
15 specific knowledge, as I testified to before,
16 about how I decided that that was true.

17 And I also think that I'm still stuck with
18 RLD 11.1, which doesn't allow me to go past what
19 is in the public documents. So, I guess my
20 answer to the question is just what I said, it's
21 unlikely.

22 Q. Do you have any recollection of calling or
23 communicating with me in any fashion as to the
24 question of whether the law enforcement
25 investigations had been terminated?

872 1 A. I don't have any recollection. I know I talked
2 to you a lot but I don't certainly know -- over
3 the last several years I have talked to you a
4 lot. I certainly could not sit here and tell you
5 all the dates of each of the conversations and
6 what was in them.

7 Q. Just for clarification, you saw my body language
8 when you said "I've talked with you a lot," and
9 are you saying that you recall talking to me a
10 lot between the time you began investigating this
11 grievance on May 2nd and the time you declared it
12 closed by your letter of August 15, 1996?

13 A. I recall talking with you some, specifically
14 about the documents, and the thing that you
15 showed me here, the letter from you dated March
16 8th, the last page of this document, specifically
17 says: "As I informed you by phone, several other
18 public officials are concurrently investigating
19 this matter."

20 Obviously, we did discuss your desire that
21 we not blow the investigation and the documents,
22 so I know that we did have some conversations.
23 As to the dates and other specifics, I really
24 don't recall.

873 1 Q. That's sufficient. Looking back at the invoice,
2 would you read the entry on May 22nd?

3 A. "Telephone conference with Shankland at WSBA re:
4 status of investigation. Information we can
5 apply to her. Actions concerning time share
6 units. What she wants us to do in near future."

7 Q. "The passage that says "information we can
8 provide to her," do you recall Mr. Bulmer
9 providing any information to you in written form?

10 A. I certainly don't.

11 Q. Turning then to the next -- I guess I'll go to
12 the exhibit at this point.

13 MR. SCHAFFER: We are presenting
14 the witness with Exhibit No. 31. This Exhibit 31
15 is the next invoice submitted by Mr. Bulmer to
16 the Pierce County office that paid it on behalf
17 of his client, Grant Anderson.

18 Q. (By Mr. Schafer) If you would read the entry

18 for July 8th of 1996, please.
19 A. July 8th?
20 Q. Yes.
21 A. "Telephone conference with WSBA re: questions for
22 judge and plans re: getting report finalized."
23 Q. You seemed to kind of pause at that, "plans for
24 getting report finalized." Is there any doubt in
25 your mind that on July 8th that there must have
874 1 been a communication from you to Mr. Bulmer about
2 getting a report finalized?
3 A. I never call anything I do in investigations
4 reports, so I don't have any idea what this
5 means. That's why I reacted funny. It's not a
6 word I would use, so I don't know what it refers
7 to.
8 Q. Do you believe that Mr. Bulmer might have been
9 communicating -- is it possible?
10 MS. GRAY: Objection; he's asking
11 the witness to speculate.
12 THE HEARING OFFICER: Well, let's
13 let him finish the question, first.
14 Q. (By Mr. Schafer) Do you believe that you were
15 the only attorney handling this grievance in the
16 Office of Disciplinary Counsel and that
17 Mr. Bulmer's communication with WSBA would have
18 been with you?
19 A. That is probably true. You know, he certainly
20 could have talked with other people. You know,
21 his other bills certainly had my name on them and
22 this one does not, but I don't know.
23 Q. Do you recall when you were conducting this
24 investigation if any other lawyer in the Office
25 of Disciplinary Counsel was assisting you in the
875 1 investigation?
2 A. I thought about that this morning and last night.
3 I don't believe so, but I certainly had
4 conversations with people like you would if you
5 were trying to really figure something out.
6 Whether that means that they had conversations
7 with Mr. Bulmer, I just couldn't tell you at this
8 point in time.
9 Q. Okay. Would you read the next entry, July 9th,
10 1996?
11 A. "Telephone conference with Judge re: WSBA inquiry
12 and strategy on remaining complaints from
13 Schafer."
14 Q. Do you have any recollection as to what he might
15 have been referring to with the words "WSBA
16 inquiry"?
17 A. No, because I don't -- I believe the rules
18 weren't changed until 1997 to even include the
19 word inquiry, so I don't know what -- you know,
20 now there is an inquiry, a specific inquiry in
21 the RLD's, I think it's in 11.1 and I don't
22 believe it was there at this time, so I have no
23 idea.
24 Q. I'm confused. What does inquiry mean other than
25 in its ordinary sense, I mean, you ask a
876 1 question, you make an inquiry? Does it have some
2 other meaning?
3 A. I think currently under the rules -- and I don't
4 have them in front of me so I could certainly be

5 making a mistake -- but my understanding of RLD
6 11.1 is that there is a specific section in it
7 now that says if a grievance comes in and it
8 doesn't on its face allege misconduct that it
9 should be treated as an inquiry and not a
10 grievance.

11 Q. Oh, I see.

12 A. So, there's sort of a -- that's what I was
13 referring to. I think now there actually is a
14 technical meaning for that word, but I don't
15 think it was true at this time.

16 Q. If you would turn the page and read the entry for
17 July 9th of 1996.

18 A. "Prepare response to WSBA re: Schafer inquiries."
19 Wow.

20 Q. You seem surprised. Why do you express surprise?

21 A. Because I didn't ever receive a written response
22 from Mr. Bulmer. I did receive a letter.

23 Q. Are you quite certain on that?

24 A. Yes, I received a letter from Mr. Bulmer. And I
25 don't know if it's in this packet and I don't

877 1 know if it's a public document so I don't know
2 that I could say anything about it, but it was
3 not something that I would consider to be a
4 response because it didn't respond to your
5 allegations.

6 Q. But you say you did receive a letter from
7 Mr. Bulmer, you recall that?

8 A. Yes.

9 Q. Do you recall when you received that letter?

10 A. Not off the top of my head.

11 Q. Do you recall if it was during this
12 investigation?

13 A. I'm sure it was.

14 Q. Do you recall if it related to the investigation?

15 A. It related to it, but as I said, it was not a
16 response to any of the allegations.

17 Q. Do you recall if it was him responding to some
18 communication from this office, your office?

19 A. No, I don't, I only recall receiving something, a
20 letter.

21 Q. Was it like an invitation to a party? I mean,
22 what was it relating to?

23 A. If that is a public document I'll be happy to
24 testify, but if it's not a public document I
25 don't believe I can.

878 1 I don't know the status of that piece of
2 paper and I guess until I know I'm a little
3 concerned that I'm prohibited by the rules from
4 going any further.

5 Q. Okay.

6 A. If you want to show it to me, perhaps we can
7 figure it out.

8 Q. Well, let's continue through the invoice. You
9 just read the first line of July 9th, a one-hour
10 time entry. Would you read the next line of the
11 July 9th entry?

12 A. "Telephone conference with judge re: letter and
13 WSBA questions."

14 Q. Okay. And then the next entries on the next
15 date, both entries for July 10th of 1996?

16 A. "Telephone conference with judge re: Corrections

17 and possible other places for Schafer to
18 complain. Telephone conference with Shankland at
19 WSBA re: information she wanted and next steps in
20 her investigation."

21 Q. If he had responded to information that you
22 wanted, would you consider -- and he sent you a
23 letter provided you information you wanted --
24 would you treat that as a response?

25 A. Absolutely, and I would have sent it to you.

879 1 Q. Do you recall receiving a letter from him at
2 about that time?

3 A. I don't recall receiving a letter from him, like
4 I said, that I would call a response at any time.
5 I don't have any recollection of specific dates
6 at this point.

7 Q. Would you please read the next entry of July 17,
8 1996?

9 A. "Telephone conference with WSBA re: letters she
10 is sending and okay to combine her analysis with
11 that of others that Schafer has complained
12 about."

13 Q. Do you have any recollection of this telephone
14 conference with Mr. Bulmer?"

15 A. No, I don't.

16 Q. Do you have any reason to think he's referring to
17 anyone other than you?

18 A. I don't know. My name is not there. I'm
19 certainly a she. There are lots of "shes" in the
20 Office of Disciplinary Counsel.

21 Q. As we noticed in the initial letter where I asked
22 you to defer the investigation, there were a
23 number of lawyers mentioned in the subject line,
24 and I know you're wary of naming the names of
25 lawyers who you have exonerated, but in light of
880 1 the lawyers named in that subject line and the
2 files identified in that subject line, as you
3 again focus your attention on this entry on July
4 17, 1996, could the reference to others that
5 Schafer has complained about possibly refer to
6 the other lawyers named in that subject line on
7 the deferral letter?

8 MS. GRAY: I object to his asking
9 Ms. Shankland to speculate. She's already
10 testified that she does not recall the
11 conversation and that she doesn't -- this is not
12 her bill.

13 MR. SCHAFFER: But I have just
14 asked her to refresh her recollection by
15 referring to the subject line on the other letter
16 where there were a number of lawyers, all where
17 grievances were opened by Ms. Shankland.

18 THE HEARING OFFICER: The
19 objection is overruled. You may testify to your
20 best recollection.

21 THE WITNESS: I don't know, and I
22 would like to say that I didn't open any of the
23 grievances. My job was never to open grievances.
24 There is an intake department that does that and
25 then the grievances were assigned out in some

881 1 manner that I had nothing to do with to specific
2 Disciplinary Counsel.

3 Q. (By Mr. Schafer) Thank you for informing us of

4 that. Do I understand then that this large box
5 that arrived, you were not the first person to
6 open it and read through the papers; was there
7 someone else who did?
8 A. That's certainly possible. You know, I don't
9 know what other people in the office did for
10 sure, so I can't really tell you that, but it's
11 certainly possible.
12 Q. Well, let me just ask as to what were the
13 practices within the office while you were a
14 Disciplinary Counsel? I think you just indicated
15 that the standard practice was an intake
16 lawyer --
17 A. Uh-huh.
18 Q. -- would review things.
19 A. Yes.
20 Q. Review all documents submitted that would be
21 initiating a new grievance?
22 A. I have no idea if her practice is to review every
23 single document that's submitted. I would tend
24 to say that I don't think that's accurate because
25 she had --
882 1 Q. When you say not every single page.
2 A. My understanding -- I don't work in the intake
3 department, but my understanding of how it works
4 is that she, at least, reviews the grievances
5 that come in and makes sort of a preliminary
6 decision about whether they are something that
7 can be dismissed because they don't claim
8 misconduct on their face or whether it's
9 something that should be assigned to a
10 disciplinary counsel for an investigation.
11 Q. Okay. You have referred several times to "she."
12 Are you referring to a specific individual? If
13 so, please state the individual's name and the
14 date that that individual, to the best of your
15 knowledge, was in that position in February and
16 March of 1996?
17 A. Felice Congalton is in that position now and I
18 don't recall if she was in that position at that
19 time.
20 Q. Okay, thank you. Turning back to the invoice, if
21 you would read the next line, the next date, the
22 July 18, 1996?
23 A. "Telephone conference with judge re: WSBA inquiry
24 on them sending a single letter and possible CJC
25 inquiry being started."
883 1 Q. Okay. Reading the one for the prior date and the
2 date of the 18th, does it, are you better able to
3 understand what maybe he was referring to on the
4 inquiry on the 17th when you see the reference to
5 sending a single letter?
6 A. No, I'm sorry, I don't have any idea what we were
7 talking about, if it was me. I'm assuming it was
8 me, but maybe that's not a good assumption. I
9 really don't know what he put on his bill.
10 Q. And you have several times referred to WSBA. Is
11 that what you folks who work in the Bar Office
12 refer to what I call the WSBA?
13 A. Yes, sorry. I should have said that.
14 Q. Thank you. There's an Exhibit D-32, is that
15 still up there?

16 A. Is that this whole packet of stuff (indicating)?
17 Q. It looks like it.
18 MR. SCHAFFER: Can you help her
19 find the letter of March 23rd?
20 THE WITNESS: March what?
21 MR. SCHAFFER: 23rd.
22 MS. GRAY: What year?
23 MR. SCHAFFER: 1999. It's Doug
24 Ende's letter.
25 THE WITNESS: Oh, I have it.
884 1 Sorry about that.
2 Q. (By Mr. Schafer) Would you just take a few
3 moments to skim through that letter and the page,
4 the four pages that follow it?
5 A. Four pages that follow it?
6 Q. Yes.
7 MS. GRAY: It may be of assistance
8 if I point out that the March 23rd letter from
9 Douglas Ende to Mr. Schafer is not a public
10 document in the Anderson file, although it is
11 admitted as a part of this exhibit. The
12 following four pages are all public documents in
13 the Anderson file.
14 THE HEARING OFFICER: Thank you.
15 Okay.
16 Q. (By Mr. Schafer) Turning to the letter
17 immediately following the March 23, 1999 letter,
18 namely, turning to the letter from Kurt Bulmer to
19 you of May 22 of 1996, do you have any
20 recollection of receiving this?
21 A. I think that's the letter, however, I don't
22 recall any attachments. So, I couldn't tell you
23 from my knowledge that these other two pages were
24 with this letter. It does say in the letter that
25 it's there.
885 1 Q. It does, doesn't it?
2 A. Yes, it does.
3 Q. Do you have any doubt that you received this
4 letter and the attachments?
5 A. I sure don't. This is the letter that I
6 remember. Like I said, I don't recall the
7 attachments. I recall reading these documents.
8 I thought they came in the box that you sent me.
9 Q. Do you regard -- now, you, as we saw, sent a
10 letter to Mr. Bulmer on May 2nd that said he may
11 respond but he's not required to do so.
12 A. Yes.
13 Q. Was this a response?
14 A. I wouldn't call it a response because it says he
15 stands ready to answer the questions, but there's
16 nothing substantive in there. He doesn't respond
17 to any of your other allegations.
18 Q. You don't treat this as his position that they
19 are without substance?
20 A. No, I really didn't. I considered this to be a
21 fluff letter that was sort of worthless, and
22 maybe that was wrong and maybe I should have sent
23 it to you, but this is not something that I would
24 consider in the nature of a response.
25 Q. Just for the purpose of those who might view
886 1 these proceedings, can you quickly describe what
2 this May 22 letter from Kurt Bulmer to you is,

3 what it says?
4 A. Let's see. He says that Judge Anderson is ready
5 to answer any questions I have and that he
6 understands I am gathering information and that
7 Judge Anderson is not required nor has he been
8 asked to respond.
9 He does say he wants to make a matter of
10 record that Judge Anderson denies wrongdoing.
11 Q. Please read the next sentence.
12 A. Next sentence after what?
13 Q. After denies wrongdoing.
14 A. "Mr. Schafer directed his wrath toward Judge
15 Anderson when the Judge denied Mr. Schafer
16 attorney's fees."
17 Q. Thank you.
18 A. And then at the end he says, to says me in my
19 information gathering he is sending me a copy of
20 an investigation report from the Pierce County
21 Prosecutor's Office.
22 Q. And is that the two-page report that is attached?
23 A. I'm assuming it is.
24 Q. Well, what does it say at the top of the --
25 A. At the top of it it says: "Originating Agency,
887 1 Pierce County Prosecutor's Office." So, I'm
2 assuming that's what it referred to.
3 Q. And please take a minute and skim through this
4 two-page letter and tell me if you think it is
5 responsive to any of the allegations.
6 A. The letter or the report?
7 Q. The report that Mr. Bulmer sent to you.
8 A. Well, the report has nothing to do with the
9 allegations that you sent me. As far as I know,
10 it's the same facts, it's true. And like I said,
11 I believe that I saw this document in the box
12 that you gave me. I thought you submitted it
13 with your stuff.
14 Q. Now, take a look at the last page of this
15 two-page report. At the bottom of the report
16 there's a signature line and a date.
17 A. Yes.
18 Q. What is the date?
19 A. May 1st, 1996.
20 Q. Okay. And do you recall the letter that I
21 requested your deferral of the investigation in
22 light of the pending criminal investigation?
23 A. If it's the document that's the last page of this
24 exhibit, it's March 8, 1996. It would have been
25 before that.
888 1 Q. So, would this two-page document have been one
2 that I provided to you?
3 A. Well, I don't know how to answer that because I
4 don't recall specifically what dates you
5 submitted the documents, I'm sorry.
6 Q. But the letter that you just referred to, what
7 was the date on that where I requested that you
8 defer the investigation during the pendency of
9 the criminal investigation?
10 A. March 8, but I don't get your point. I don't
11 understand the question.
12 Q. Do you recall if the large box of papers that I
13 provided you might have been prior to March 8?
14 A. That's what I just said, is I don't recall. I'm

15 sorry.

16 Q. Okay. Again, looking at this two-page narrative,
17 if you would skim through it and indicate whether
18 you think this is addressing the issues that were
19 the substance of the grievance?

20 A. As I said, I think it addresses some of the same
21 facts but it's not specifically responsive to the
22 grievance that you filed.

23 Q. What distinguishes the response from being one
24 that you consider responsive to the grievance and
25 one that just provides information about the
889 1 allegations? Does it have to have the word
2 responsive at the top?

3 A. No, no, no, that would be silly. I understand
4 that your point is you think you should have
5 gotten this document. That's probably true. If
6 I had realized that this document, that I had it
7 in my file, I probably would have sent it to you.
8 Like I said, my recollection is that I
9 received this from you, so it would have been
10 sort of silly for me to send it back to you. If
11 that was an error that I made, then that was an
12 error.

13 Q. Thank you very much. I guess a last question:
14 You referred to the letter from Mr. Bulmer as, I
15 think your word was fluff.

16 A. Yes, I did.

17 Q. I like that word. The attachment that was with
18 it, the two-page letter sent to you with his
19 letter, would you characterize that as fluff as
20 well?

21 A. No, I would not.

22 Q. I'm sorry, I'm being coached. As you can tell
23 I'm not used to this role and I'm sure you're not
24 used to that role. Thank you.
25 Turning to the page that immediately
890 1 precedes Mr. Bulmer's letter in that exhibit --
2 MS. GRAY: I'm sorry, I closed the
3 exhibit. Can you tell me what document you are
4 looking at?
5 MR. SCHAFER: Doug Ende's letter
6 of March 23, 1999.

7 Q. (By Mr. Schafer) Would you please read the
8 first paragraph of that letter? It was a letter
9 from Douglas J. Ende, Disciplinary Counsel, to me
10 on March 23rd, 1999, and just if you would be so
11 kind as to read the first paragraph?

12 A. "In reviewing the file on this matter I came
13 across a letter to the Bar Association dated May
14 22nd, 1996 authored by Judge Anderson's counsel,
15 Kurt Bulmer. It is not a response to the
16 grievance per se and it is not responsive to the
17 specifics of the grievance. In fact, its central
18 message is to point out that Judge Anderson is
19 not required to, nor has he yet been asked to
20 respond.
21 "Nevertheless, it appears that this letter
22 falls within the guidelines of Rules for Lawyer
23 Discipline RLD 2.9(a)(4) for providing to the
24 grievants a copy of any response by the lawyer.
25 Since the grievance is now reopened, I am
891 1 providing a copy, including enclosure, to you."

2 Q. And what is the date of this letter?
3 A. March 23rd, 1999.
4 Q. And what is the date of Kurt Bulmer's letter to
5 you immediately beneath it?
6 A. Is it the May 22nd? May 22nd, 1996, I believe.
7 Q. That's correct. So, the question is, looking at
8 those two dates; namely, May 22, 1996 and March
9 23, 1999, what was the passage of time between
10 your receipt of Mr. Bulmer's letter and my
11 receipt of Mr. Bulmer's letter?
12 A. You want me to do math, huh?
13 Q. Well, ballpark.
14 A. Almost three years.
15 Q. Thank you very much.

16 MR. SCHAFFER: I have no other
17 questions. Thank you, Julie.

18 THE HEARING OFFICER: All right.
19 Would this be a good time for --

20 MR. SCHAFFER: Oh, excuse me, I'm
21 sorry. I'm sorry, I spoke too quickly. There
22 was one other folder that I had not noticed
23 that's a little different. I would like to
24 introduce as an exhibit -- this would be Exhibit
25 D --

892 1 THE HEARING OFFICER: 35.

2 MR. SCHAFFER: 35.

3 THE HEARING OFFICER: Exhibit D-35
4 would be marked for identification.

5 (Shankland to Schafer Request for
6 Response Letter marked as Respondent's No. D-35.)

7 THE HEARING OFFICER: Ms. Gray,
8 have you received a copy of this?

9 MS. GRAY: I have received a copy
10 of it. My only objection to it is my standing
11 relevance objection and I would note that it is
12 not a public record.

13 THE HEARING OFFICER: So, you want
14 me to exclude this from the record of this
15 hearing?

16 MS. GRAY: No. I have no
17 objection to it being admitted here, other than
18 relevance.

19 THE HEARING OFFICER: Okay.

20 MS. GRAY: But because of the
21 issues that have arisen with regard to her
22 testimony I am just pointing out that it is not a
23 public record so that we know that we're dealing
24 with that type of letter.

25 THE HEARING OFFICER: Thank you.

893 1 The relevance objection will be overruled. The
2 exhibit will be admitted, so Exhibit D-35 is
3 admitted.

4 (Respondent's Exhibit No. D-35
5 was received into evidence.)

6 THE HEARING OFFICER: You may
7 proceed when ready.

8 MR. SCHAFFER: I thought I would
9 let Ms. Shankland skim through it. I can see her
10 eyes are moving back and forth.

11 THE WITNESS: Thank you. Okay.

12 Q. (By Mr. Schafer) As you and I both recognize,
13 have you and I spoken and communicated on many

14 occasions?
15 A. Yes, sir.
16 Q. Do you have any recollection of how many
17 grievances you have been involved in that have
18 been directed towards me in the last four years?
19 A. I don't think I can answer that question.
20 Q. Do you think it was more than one?
21 A. You're putting me on the spot because, as you
22 know, there are things that are confidential.
23 Q. No, I say grievances against me, and I can waive
24 any confidentiality and make public as much as I
25 want about grievances that have been directed
894 1 against me, and I'm just asking you if you have a
2 recollection of the number of grievances that the
3 Bar office has processed against me?

4 MS. GRAY: Mr. Mills?

5 THE HEARING OFFICER: Yes.

6 MS. GRAY: I think -- there is no
7 question that Mr. Schafer can testify all he
8 wants about grievances that have been filed
9 against him, but it is not clear to me that he's
10 accurate that he can waive and make public
11 something which is not public. I haven't read
12 the rule with that in mind but I'm not sure that
13 that is --

14 THE HEARING OFFICER: I think the
15 contents of the grievances would probably be
16 private and I would have a little more trouble
17 with it. The number of grievances, assuming we
18 have the affected lawyer present and he's willing
19 to waive, I think that that's an appropriate
20 question if the witness has knowledge of that.

21 So, you may answer the question to the best
22 of your knowledge.

23 THE WITNESS: More than one. I
24 don't know that I can remember how many but more
25 than one. Wasn't that what you asked me, was it
895 1 more than one?

2 Q. (By Mr. Schafer) That's what I wanted to know.
3 I was going to ask; was it more than two, more
4 than three, more than four, and I will testify it
5 was five.

6 This Exhibit 35, do you recognize your
7 signature on the second page of this exhibit?

8 A. It looks like my signature, yes.

9 Q. And can you describe briefly what the nature of
10 your letter to me, the date and what the nature
11 of the letter is?

12 A. The date is January 9th, 1998, and the title is
13 "Request For Response To Grievance." This one is
14 a little different than the form letters that we
15 saw before, because it says that the grievance
16 was received from a person who requests to remain
17 a confidential source.

18 And then there's a list of it looks like
19 five questions that I asked you to address and
20 then I attached, I'm assuming, the offending
21 document on the back.

22 Q. Could you, turning to the offending document,
23 could you just describe to those who don't have
24 it in front of them what the essence of this
25 document is without going into all the detail

896 1 included?
2 A. It's -- you know, I'm having sort of a hard time
3 remembering exactly where it came from, but it
4 was something that was published in the news
5 media somewhere.
6 It says near the top, "Summarized as of
7 12/18/97 by watchdog Tacoma lawyer, Douglas A.
8 Schafer, from public records," but it doesn't
9 say, you know, where the document came from. The
10 title is: Our Disgraced Judge "Cadillac"
11 Anderson's Ethics Trial.
12 Q. Please read the subtitle.
13 A. And the subtitle, in quotes, the whole thing in
14 quotes is, "Exposing the Crook Inside the
15 Robe ... How Long Do We Let a Child Abuser Run a
16 Nursery."
17 Q. Thank you. And the date you say summarized, what
18 was the date?
19 A. 12/18/97.
20 Q. And do you recall the date that the grievance
21 concerning Grant Anderson was first received in
22 the Bar office? The month would do.
23 A. You know, I don't know when it was first
24 received, but the first indication I have is your
25 letter to me of March 8, 1996 asking for
897 1 deferral.
2 Q. Is it fair to assume that the large box might
3 have arrived in your office prior to the March 8,
4 1996 letter?
5 A. I don't know. I don't -- not all grievants
6 submit all of their documentation with their
7 first grievance, and I cannot remember if you
8 submitted everything all together or not, I'm
9 sorry.
10 Q. But I guess the question is: Would there have
11 been some papers submitted prior to the March 8th
12 letter?
13 A. I suspect you would not have submitted a
14 grievance without additional paperwork.
15 Q. And the March 8th letter refers to several files
16 by number?
17 A. Oh, yes.
18 Q. Okay, I think we have established that. Can you,
19 again, without pressing you to do difficult math,
20 give a ballpark as to the passage of time between
21 the initiation of the grievance and this date on
22 this flyer?
23 A. The initiation of the grievance by you and this
24 flyer?
25 Q. Yes, the grievance, yes, against Judge Anderson.
898 1 A. Well, it looks to me like the Judge Anderson
2 grievance -- and I have not reviewed the
3 dismissal letter, it may say in there when it was
4 filed. I'm assuming it was early '96, and this
5 looks like it was the end of '97.
6 Q. A passage of approximately how many years?
7 A. Two years.
8 Q. Thank you. So, you have read the subtitle.
9 Would you read once again the subtitle?
10 A. "Exposing the Crook Inside the Robe ... How Long
11 Do We Let a Child Abuser Run a Nursery."
12 Q. And then if you would turn to the first page of

13 the request, your letter to me, request for
14 response to grievance, would you read the first
15 numbered paragraph?
16 A. No. 1, and it quotes, "How Long Do We Let a Child
17 Abuser Run a Nursery? This statement appeared in
18 your written summary about Judge Grant Anderson
19 delivered to many Pierce County law firms on or
20 about December 19th, 1997."

21 "This statement appears to violate the RPC
22 8.2(a) prohibition on making a false statement
23 concerning the qualifications or integrity of a
24 judge. Please specifically indicate the facts
25 you relied upon to determine that Judge Anderson
899 1 had been accused of child abuse or runs a
2 nursery."

3 Q. Have you ever heard of the term metaphor?

4 A. Yes.

5 Q. Do you know what it means?

6 A. Absolutely.

7 Q. Do you have any sense here and now as to what I
8 may have been attempting to do with the subtitle
9 when I prepared this flyer two years after I had
10 reported a judge who I thought was not fit to be
11 a judge?

12 A. I don't think it would be appropriate for me to
13 speculate on what you meant.

14 MR. SCHAFFER: I have no further
15 questions.

16 THE HEARING OFFICER: All right.
17 Before we allow Ms. Gray to ask the questions I
18 think we'll take a short break, and let's make it
19 short; how about a five-minute break?

20 (Brief recess taken.)

21 THE HEARING OFFICER: We're back
22 on the record. This will be questioning of Ms.
23 Shankland by Ms. Gray. You may proceed when
24 you're ready.

25 CROSS EXAMINATION

900 1 Q. (By Ms. Gray) Ms. Shankland, I would like to
2 direct your attention to Exhibit D-33.

3 A. Okay.

4 Q. At the bottom of page 3 there's a subheading B.

5 A. All right.

6 Q. It states the following: "I suggest that the
7 Commission inquire concerning Bulmer's role in
8 the retaliatory WSBA grievance by Hamilton
9 against me."

10 To the best of your knowledge, based on your
11 handling of Mr. Hamilton's grievance against
12 Douglas Schafer, what role if any did Mr. Bulmer
13 have in that grievance?

14 A. I'm not aware of any role that he played.

15 Q. And did you handle Mr. Hamilton's grievance
16 against Mr. Schafer from shortly after it was
17 filed in our office until -- when I say our
18 office, the Office of Disciplinary Counsel --
19 until you left the Office of Disciplinary Counsel
20 in March of 1998?

21 A. I believe that's true, yes.

22 Q. Do you recall being asked questions about CLE
23 materials that are at the back of Exhibit D-33?

24 A. Yes.

901 25 Q. With regard to the non-redacted letters, August
1 21st from you to Mr. Hamilton with a copy to
2 Mr. Schafer, during the course of a disciplinary
3 investigation is it standard practice to copy a
4 grievant on such, copy a grievant on most of the
5 letters sent to the respondent and copy the
6 respondent on most of the letters sent to the
7 grievant?
8 A. Yes.
9 Q. In the course of a disciplinary investigation, as
10 a general matter is it a practice to copy during
11 the course of the investigation any persons who
12 are not either the grievant or the respondent or
13 the lawyer for the grievant or the lawyer for the
14 respondent?
15 A. No.
16 Q. To the best of your knowledge, during your
17 handling of the grievance that Mr. Hamilton filed
18 against Mr. Schafer did you ever send
19 investigation letters, including the August 5th,
20 1996 letter and the August 21st, 1996 letter to
21 anyone other than the grievant, the respondent,
22 counsel for the grievant or counsel for the
23 respondent?
24 A. No.
902 25 Q. Mr. Schafer has asked you a number of questions
1 in his direct examination about a volume of
2 documents that he provided relatively early in
3 his grievance against Grant L. Anderson.
4 A. Yes.
5 Q. And you've testified that you recall receiving
6 those documents and you recall the box?
7 A. Yes.
8 Q. Do you know what happened to that box?
9 A. Yes.
10 Q. What happened to that box?
11 A. When the Bar Association moved its offices from
12 the Westin Building to here, that box
13 disappeared.
14 Q. How do you know that?
15 A. Well, because I specifically was very concerned
16 because, clearly, Mr. Schafer had gone to a huge
17 effort to obtain all those documents. And in
18 fact, I believe that, as it said in my letter, I
19 didn't think all of his responses were complete
20 so I had obtained additional documents and I had
21 stuck them in that box.
22 I wanted that box. I wanted to retain it,
23 so I kept it in my office and had it moved by the
24 movers with my office stuff. And when the
25 office -- I can't recall exactly, but it was like
903 1 they shut the office on a Friday, and then when
2 we reopened on Monday we were in this building.
3 It was gone.
4 Q. And when did the Bar offices move to this
5 building?
6 A. It was in December of '96 but I don't know the
7 exact date.
8 Q. And was the grievance that Mr. Schafer had filed
9 against Mr. Anderson opened at that time?
10 A. No.
11 Q. Given that it was a closed matter, why were you

12 concerned about the loss of that box of
13 documents?
14 A. I believe that I had already -- and I may even
15 have written a letter to Mr. Schafer, and I think
16 I knew that he was unhappy with the
17 investigation, and I think I had sent him a
18 letter, saying: "If you are unhappy you need to
19 protest, you need to have this sent to Review
20 Committee and have them look at it," and I wanted
21 to have all the documents.

904

22 Q. During any of your numerous conversations with
23 Mr. Schafer prior to today did you ever inform
24 him that some of the documents that he had
25 provided in the course of the Anderson grievance
1 had been lost?
2 A. You know, I'm not absolutely certain. I actually
3 believe that I did, but it would have been in
4 connection with what the CJC was requesting from
5 our office and that I could not provide all the
6 documents to the CJC. But like I said, I can't
7 be certain. I sort of have a vague recollection,
8 but it may not be accurate.

9 MS. GRAY: I have no further
10 questions.

11 THE HEARING OFFICER: All right.
12 Any redirect?

13 MR. SCHAFFER: Yes.

14 REDIRECT EXAMINATION

15 Q. (By Mr. Schafer) Ms. Shankland, when Ms. Gray
16 asked you questions about these letters that were
17 in Mr. Bulmer's seminar materials you, I think
18 your answer expressed that you remembered some
19 things very clearly about that. Did I hear you
20 incorrectly?

21 A. I thought I had given yes and no answers. I
22 don't recall saying I remembered anything
23 clearly. I'm confused about your question.

905

24 Q. Well, she asked you about these letters that you
25 had addressed to me and if they had possibly gone
1 to anyone other than the grievant, which was
2 Mr. Hamilton, or the respondent, which was me.

3 A. Uh-huh.

4 Q. And I think -- well, do you have a clear
5 recollection to the answer of that question,
6 whether they may have gone to anyone else?

7 A. No. Her question, though, was did it go to the
8 grievant, the grievant's lawyer, the respondent,
9 anyone other than the grievant, the grievant's
10 lawyer, the respondent, or the respondent's
11 lawyer, and my answer to that was no.

12 Q. And do you have a recollection of having any
13 communication at all with Mr. Bulmer about
14 Mr. Hamilton's grievance of me?

15 A. I don't.

16 Q. You have no recollection of that?

17 A. I don't have. I'm not doing very well today at
18 recalling specific conversations that happened in
19 1996.

20 Q. The date of your letter dismissing the Anderson
21 grievance, we just looked at that. Do you recall
22 the date of that eight-page letter?

23 A. Looking at the exhibit, it's August 15th, 1996.

24 Q. And I believe the record here shows -- well,
25 maybe we can look at the seminar letters as to
906 1 the date of the letter that you sent to me
2 beginning Mr. Hamilton's grievance of me. What's
3 the date on that, the last letter in this Exhibit
4 33?
5 A. August 5th, 1996.
6 Q. So, the passage of time would have been 10 days
7 before I learned that you dismissed my grievance
8 of Anderson, you had commenced a grievance
9 against me?
10 A. It would be somewhere close to that. That's the
11 date that I wrote the letter. It probably took
12 you a couple days in the mail to receive it.
13 Q. I recognize that you could not read my mind, but
14 is there any reason that you might assume I would
15 be wary about seeking to protest your denial of
16 one letter when you have commenced an
17 investigation of me on the same matter?
18 MS. GRAY: Objection.
19 THE HEARING OFFICER: She can
20 answer the question if she understands it.
21 THE WITNESS: I have no idea
22 what's in your mind.
23 Q. (By Mr. Schafer) Let's phrase it in terms of
24 the lawyer's favorite; an ordinary reasonable
25 person.
907 1 If an ordinary, reasonable person was
2 suddenly the subject of an investigation by
3 someone who has just dismissed another
4 investigation, would an ordinary, reasonable
5 person wish to challenge the investigator as to
6 the quality of their investigation?
7 MS. GRAY: I object to the
8 question as argumentative. Mr. Schafer will be
9 able to testify as to what was in his mind if he
10 so desires, but this is argument.
11 THE HEARING OFFICER: Sustained.
12 Q. (By Mr. Schafer) You seemed to testify earlier
13 as to a distinctive recollection of that box.
14 Would you tell us once again what was distinctive
15 about it?
16 A. It was bright yellow and had butterflies on the
17 outside. And I guess I can't be certain that you
18 sent that, but that was the box in which I
19 received the documents, so I assumed they came in
20 that box.
21 Q. Okay. And that box you say was kept in your
22 office prior to December of 1996?
23 A. Yes, that was our office policy. We had very
24 little storage space at the Westin Building.
25 Q. Do you recall clearly whether or not you did or
908 1 did not inform me that that box, the papers that
2 I had submitted, had disappeared?
3 A. I recall exactly what I testified to earlier,
4 which is I'm not certain. I believe that I did.
5 I believe that when the CJC asked for those
6 documents and I had to tell the CJC that they had
7 disappeared and that I didn't have them any
8 longer, I thought that you and I had a
9 conversation, but I can't be absolutely certain.
10 Q. Was there any correspondence indicating -- do you

11 recall any correspondence indicating that the
12 files had been lost?

13 A. I suspect not, because the grievance had been
14 closed at that point in time and you had not
15 protested. So, I don't know, other than to just
16 talk to you about it in the course of talking
17 about the CJC investigation, why I would have
18 written a letter.

19 Q. Do you recall if you provided any documents to
20 the CJC or was the entire material lost?

21 A. No, we did provide some documents, but I at this
22 point have no idea what those were.

23 Q. Do you recall if you indicated in writing to the
24 Commission on Judicial Conduct that your files
25 had been lost?

909 1 A. I believe I did.
2 Q. Okay.
3 A. Where that letter is at this point, I couldn't
4 tell you.
5 Q. Would it have been part of the file that would
6 have been the grievance of Grant L. Anderson?
7 A. I don't know. You know, that letter was separate
8 because it was a separate request from the CJC
9 for material and I don't -- I'm sorry, but I just
10 don't remember where it would be.
11 Q. Do you recall if other grievants' files were lost
12 during the period that you were in the Office of
13 Disciplinary Counsel?
14 A. I know that there were some problems because of
15 the move. It did create some specific problems,
16 but to tell you whether I know that specific
17 files were lost, no, I don't know that.
18 Q. Of the files, the grievants' files that were in
19 your custody by being under your physical
20 control, were there any other grievants' files
21 that got lost?
22 A. Not to my knowledge.
23 Q. Possibly there might have been some that you were
24 unaware that got lost?
25 A. The reason I'm hedging is because I left the
910 1 office in early 1998 and I suppose it's possible
2 that, you know, some document was lost that I
3 don't know about, but as I sit here I'm not aware
4 of anything else.
5 Q. You said the relocation was December of 1996?
6 A. I believe that's true.
7 Q. And you remained in the Office of Disciplinary
8 Counsel until when?
9 A. March. I believe it was sometime in March of
10 '98, so it's a long period of time.
11 Q. And you're not recalling any other files that
12 were lost other than the one that I submitted
13 for --
14 A. Yes.
15 Q. -- Grant Anderson?
16 A. Yes.
17 Q. Do you recall if strong efforts were made to
18 locate that file?
19 A. Yes. I was very upset that it was lost and I
20 couldn't believe that -- how can you lose a
21 bright yellow box with butterflies? It's got to
22 be the only one in the whole Bar Association. It

23 was very incredulous.

24 Q. When this grievance was reopened in February of
25 1999, assigned to Disciplinary Counsel Doug Ende,
911 1 were you contacted about providing and assisting
2 or reconstructing or obtaining those documents?
3 A. No, I didn't work in the office and specifically,
4 I have no ability to look at or be involved in
5 investigations. So, I wasn't contacted at all.
6 Q. So, Mr. Doug Ende did not contact you about
7 trying to reassemble those documents?
8 A. I don't recall that. I don't recall any contact
9 about the case.
10 Q. Do you have any recollection as to whether
11 Mr. Bulmer had ever seen the contents of that
12 box?
13 A. I'm sure he did not.
14 Q. Do you recall placing any notation in the files
15 that apparently must have been reconstructed?
16 Well -- which is the exhibit that is the
17 subpoena? Well, what I'm coming to is would
18 there have been a written notation in the file of
19 the disciplinary office in connection with the
20 investigation of Grant Anderson that was reopened
21 that would have indicated that documents were
22 missing?
23 Did you make a notation for the record in
24 the investigation file of Grant Anderson that the
25 documents had disappeared?
912 1 A. I may have, but I don't recall absolutely doing
2 that.
3 MR. SCHAFFER: If we could present
4 to her the exhibit that is the Commission on --
5 that is the Bar's response to my subpoena for all
6 of their documents in the Grant Anderson file?
7 THE HEARING OFFICER: That would
8 be Exhibit D-34. That's been handed to the
9 witness.
10 THE REPORTER: Was that previously
11 marked?
12 THE HEARING OFFICER: It's
13 previously marked and admitted.
14 MR. SCHAFFER: Now, we have
15 obtained the pages 80 through --
16 MS. GRAY: No.
17 MR. SCHAFFER: No, okay.
18 Q. (By Mr. Schafer) This is just going to be the
19 79 pages. If you would, take a minute and look
20 through the pages that are Bates stamped in the
21 lower right corner, pages 1 through 79.
22 At the present time my question is simply
23 going to be if you have any recollection of
24 having seen those pages and can identify them as
25 pages that would have been in that box?
913 1 A. They certainly could have been. Those are the
2 types of documents that I recall. Not all of
3 them, but some of them are. Some of them are
4 clearly written by me and were not in your box,
5 but some of them could have been and they appear
6 to have your handwriting on the side.
7 Q. Uh-huh.
8 A. So, likely as not, this is some of them.
9 Q. You might, if you would, take just a minute and

10 read the second page of that exhibit, which is a
11 subpoena, and if you would read the first portion
12 of that, you know, the first, the numbered one,
13 the paragraph No. 1 that indicates what is
14 requested by that subpoena.

15 A. The subpoena says: "All documents submitted to
16 your office by Douglas A. Schafer in February,
17 1996 through April, 1996 in connection with" --

18 Q. That's sufficient. Well, I guess, name the first
19 lawyer involved.

20 A. Grant L. Anderson.

21 Q. And then if you would turn to the top page, which
22 is a letter from Disciplinary Counsel Christine
23 Gray to me, July 13 of this year, if you would
24 read the introductory sentence in Item 1.

25 A. "In response to your subpoena to the Washington
914 1 State Bar Association, dated July 7th, 2000, I
2 have enclosed the following documents. Documents
3 responsive to your Item No. 1 are enclosed (Bates
4 stamped 1 through 79)."

5 Q. Okay, thank you. You mentioned that there are
6 some documents in here that I think you said you
7 prepared. Do you see anything that would appear
8 to be a note from you indicating that the files
9 are missing?

10 A. No, I'm sure that that wouldn't be in here.

11 Q. Do you have a recollection of ever having
12 prepared a note or a file memo, anything that
13 would indicate to subsequent investigators,
14 Disciplinary Counsel, or anyone else that files
15 were missing?

16 A. The letter to the CJC, but I don't -- you know, I
17 guess I'm confused by the question because your
18 subpoena asks for all documents that you
19 submitted. So, I guess I'm confused about why
20 that would be in here.

21 Q. Is there any -- to your knowledge, would there
22 have been any reason for the current, who I will
23 identify as the third Disciplinary Counsel
24 involved in this case, to have been aware that
25 the file on the Grant Anderson investigation
915 1 would have been lost?

2 A. I don't know what they may be aware of, you know,
3 all I know is I wrote the letter --

4 Q. The letter being what letter?

5 A. -- to the CJC saying the documents have been
6 lost. I don't know where that letter is. They
7 didn't ask me for information, so I don't have
8 any way to know what their conversations were or
9 what they were aware of.

10 Q. They, being?

11 A. The Office of Disciplinary Counsel.

12 Q. Okay. I think you mentioned that you thought you
13 might have informed me that the files, that the
14 box of papers was missing. Do you recall writing
15 a letter to me?

16 A. No, I don't, at all. Like I testified before, I
17 don't think there would have been any reason to
18 write you a letter. The file was closed, the
19 investigation was not ongoing. We were only
20 responding to a request for additional
21 information from the CJC.

22 And I have a vague recollection that you and
23 I talked about it and you knew the CJC wasn't
24 getting everything, but I could be wrong. We
25 have had an awful lot of discussions over time.

916 1 Q. Right.
2 A. And I could be confused.
3 Q. Do you recall whether, subsequent to the loss of
4 the files and records, whether I continued to
5 strongly request copies of all responses from
6 Mr. Bulmer or other parties in connection with
7 this grievance?
8 A. I don't recall but there were letters back here
9 where I believe you did.
10 Q. And they are in the record?
11 A. I think that's --
12 Q. They were subsequent to that, and we will --
13 A. I don't recall, but I believe you did.
14 Q. I guess the record can speak for itself as to
15 that.

16 MS. GRAY: I have no additional
17 questions.

18 THE HEARING OFFICER: Is there
19 anything further from Mr. Schafer?
20 MR. SCHAFFER: No, there's not.
21 THE HEARING OFFICER: I have no
22 questions.

23 THE WITNESS: Well, I was just
24 going to say I am going to be gone tomorrow, so I
25 just want -- if anybody has anything you think
917 1 you may want of me, please let me know.
2 THE HEARING OFFICER: Does anyone
3 have any further question or any reason that this
4 witness cannot be excused?
5 MR. SCHAFFER: Let me just ask, and
6 I don't know procedurally what might be
7 necessary, but she's referred several times to a
8 letter to the CJC indicating that the records had
9 all been lost.

10 And I have never seen such a record and this
11 is, frankly, my first awareness that everything I
12 provided them was lost, and is it possible to
13 obtain and put in the record that letter? Is
14 that something that you could obtain?
15 THE WITNESS: You are asking me?
16 Q. (By Mr. Schafer) Yes.
17 A. I don't know, because like I said, I don't know
18 where it is. I don't know if it's a public
19 document. I'm a witness. I don't know that I
20 can go find a document. I don't have access to
21 those files.
22 Q. Can you indicate where one might look for it?
23 A. I really don't recall. I'm sorry, I don't recall
24 if there was a separate file about the CJC
25 response, which there might be, I don't remember,
918 1 sorry.
2 Q. Is it something that Disciplinary Counsel Gray
3 could help us with locating that?
4 MS. GRAY: I don't believe that
5 it's appropriate to inquire of the witness. If
6 you want to discuss with me what we can do to try
7 and find a letter that Ms. Shankland doesn't know
8 where it is, I can make efforts to locate it and

9 to determine whether or not it can be produced to
10 you.

11 But I have not, since this letter did not
12 arise until the testimony here today, I have not
13 undertaken any of those efforts to either locate
14 it or to determine if it can be found, whether or
15 not it can be produced.

16 THE HEARING OFFICER: Are you
17 requesting a search?

18 MR. SCHAFER: I am requesting a
19 search by the Office of Disciplinary Counsel to
20 produce this letter that documents that the
21 records that I have provided to them four
22 and-a-half years ago all got lost, you know,
23 within 10 months after I provided them.

24 THE HEARING OFFICER: All right.

919 1 I'm going to ask Ms. Gray to make a reasonable
2 search for that letter. I'm not indicating I'm
3 going to admit it as any evidence here, and if
4 you do find the letter, Ms. Gray, if possible, if
5 it's not part of the confidential file, I would
6 like you to share it with Mr. Schafer and his
7 counsel, and then we'll go from there.

8 If you can't locate it, I'll put that on the
9 record. If it's located, we will deal with it at
10 that time.

11 I want to be confident we can excuse this
12 witness so she doesn't need to be called back.

13 MR. NEWMAN: I know Mr. Schafer is
14 handling this, but I want to make it clear that
15 if there is such a letter and if Ms. Shankland is
16 not available tomorrow we would not need her to
17 bring it in. We would not need her to identify
18 that letter.

19 MS. GRAY: We have not been
20 objecting to the authenticity of documents that
21 we have produced, and I have no reason to think
22 that if we find such a document in our files that
23 we're going to have such an objection.

24 MR. NEWMAN: I think the only
25 thing germane here is that we already have the
complete CJC records and it's not there.

920 1 THE HEARING OFFICER: Yes, I think
2 that's very clear to me. I'm looking at the CJC
3 records and I did look at them last night.

4 All right. Ms. Shankland, you are excused.
5 Thank you for coming in to testify.

6 THE WITNESS: Thank you.

7 (Witness excused.)

8 THE HEARING OFFICER: Would this
9 be a good time for a lunch break? It seems to be
10 a natural break point. Why don't we take our
11 lunch break and let's make it 1:00. We'll resume
12 here at 1:00.

13 (Lunch recess taken.)

14 THE HEARING OFFICER: All right.
15 Let's go back on the record. This is a
16 continuation of the Disciplinary Hearing in re:
17 Douglas Schafer.

18 My understanding, the next thing we need to
19 do today is, Mr. Schafer, you would be back on
20 the witness stand for examination by Ms. Gray; is

21 that correct?

22 MS. GRAY: That's my

23 understanding.

24 MR. NEWMAN: That's correct.

25 THE HEARING OFFICER: Mr. Schafer,

921 1 would you take the witness chair again and you

2 are still under oath.

3 (Whereupon, Mr. Schafer returned

4 to the witness stand.)

5 MS. GRAY: May I note for the

6 record that at the conclusion of the lunch break

7 we supplemented in all copies of D-34, adding the

8 last pages, which I believe were Bates stamped 80

9 through 104, and so that we had already put on

10 the record that that was going to be done and it

11 has now been done.

12 THE HEARING OFFICER: Okay.

13 That's noted in the record, confirmed. The

14 initial Exhibit D-34 and the Hearing Officer's

15 copy have been so submitted and I assume

16 everybody else has copies.

17 THE WITNESS: Preliminarily, can I

18 inquire whether that letter documenting the loss

19 of the Anderson grievance box has been located?

20 THE HEARING OFFICER: Why don't we

21 defer that to future. This may not be necessary,

22 but let me just state at this point, Ms. Gray,

23 I'm going to give a lot of latitude in

24 questioning and I would like to have good direct

25 questions and good direct answers and then your

922 1 counsel or yourself can embellish or respond or

2 explain later.

3 So, I want to make sure we have a good

4 record of this. So, no questions back to

5 counsel, that kind of thing.

6 THE WITNESS: I'll try.

7 THE HEARING OFFICER: Thank you.

8 EXAMINATION

9 Q. (By Ms. Gray) Mr. Schafer, during my

10 examination of you now, many of the questions I'm

11 going to be asking of you I'm going to ask you if

12 you can answer yes or no.

13 When I do so, if there is a question that

14 you cannot answer yes or no to, please tell me

15 that you can't answer yes or no and I'll rephrase

16 the question, okay?

17 A. I'm okay.

18 Q. I would like to show the witness D-24. Do you

19 recall testifying, Mr. Schafer, on questioning by

20 Mr. Newman that you had written a letter to

21 Mr. Black in which you made mention of "being

22 able to periodically vent in this manner keeps me

23 from acting out my vigilante justice fantasies"?

24 A. Yes.

25 Q. And do you remember that in that letter you had

923 1 expressed dissatisfaction with "the judiciary and

2 its disciplinary system, the Bar and its

3 disciplinary system, law enforcement and

4 prosecutorial officials and public interest

5 journalists"?

6 A. Can I ask where you are reading from on this

7 exhibit? The pages are Bates stamped, so maybe

8 you can refer to a page number for me.

9 Q. In the very lowest right-hand corner it's Bates
10 stamped 95.

11 A. Thank you. You are referring to Mr. Bulmer's
12 quote of my letter to Don Black of Ogden, Murphy,
13 Wallace in November of 1998?

14 Q. Yes.

15 A. What is the question?

16 Q. My question is: Do you recall criticizing the
17 judiciary and its disciplinary system, the Bar
18 and its disciplinary system, law enforcement and
19 prosecutorial officials, and public interest
20 journalists?

21 A. I said that I was terribly disappointed in their
22 ineffectiveness. I was not criticizing them, I
23 was expressing my emotion at being so
24 disappointed that I no longer could believe in
25 their integrity and effectiveness from what I had
924 1 seen in this case.

2 Q. And in your letter to Don Black that is quoted in
3 D-24 did you use the term "virtually worthless"?

4 A. It would be most enlightening if we just read it
5 again, if I may do so.

6 Q. Please answer my question, Mr. Schafer.

7 THE HEARING OFFICER: At this
8 point I think it's important that you just answer
9 the question if you can.

10 THE WITNESS: Okay. Which line
11 are you referring to?

12 Q. (By Ms. Gray) I'm referring to the first two
13 words on the top of the next page, 96.

14 A. Okay. Those two words are "virtually worthless."

15 Q. And it is correct, is it not, Mr. Schafer, that
16 you have been critical of the judiciary, the CJC,
17 the WSBA, prosecutors and law enforcement and
18 journalists in connection with their handling of
19 issues relating to Grant L. Anderson?

20 A. Yes.

21 Q. Is it correct that in December of 1997 you made a
22 four-page statement about the Grant L. Anderson
23 matter, an overview?

24 A. Yes.

25 Q. And did you distribute that four-page statement
925 1 about the Grant L. Anderson matter?

2 A. I recall distinctly distributing it to some
3 judges with a note urging them to urge Judge
4 Anderson to resign and not put our profession
5 through what it was going to go through.

6 Q. And did you distribute that into the boxes of the
7 Superior Court Judges in Pierce County in
8 December of 1997?

9 A. I gave it to Andrea Motika, the Court
10 Administrator of Pierce County, with a request
11 that she put one in each of their boxes, which
12 she declined to do until we had a long discussion
13 later, late Friday evening.

14 She assured me she would do so Monday
15 morning, December 9th, I believe. I assume she
16 did so. I do not know with certainty that she
17 did.

18 Q. And is it correct to characterize your reaction
19 to the CJC recommendation of a four-month

20 suspension that you felt it was inadequate?
21 A. That's a fair characterization of my assessment
22 of that.
23 Q. Your words might have been stronger than that?
24 A. Perhaps.
926 25 Q. And did you on your own initiative take action to
1 remedy that by lobbying legislators?
2 A. I exercised my constitutional rights. The answer
3 is yes.
4 Q. And did you send the legislators a letter or an
5 e-mail in January of 1999 urging them to take
6 action against Grant L. Anderson?
7 A. I distinctly recall, I think, that e-mail. Is
8 that an exhibit? I'm sorry.
9 Q. I do not believe it is. Would it assist you in
10 answering the question if I refreshed your
11 recollection?
12 A. Well, could it be an exhibit?
13 Q. Mr. Schafer, your attorney after I am done is
14 going to have an opportunity to ask you any
15 questions that are appropriate and to offer any
16 exhibits that are appropriate.
17 A. Okay. I'm sorry, I don't have an e-mail handy.
18 Q. I have the January 11th, 1999 letter to the
19 legislators handy. Would that assist you in
20 testifying?
21 A. I suppose it depends on what you are asking me.
22 If you are asking me about an e-mail, you know, I
23 send lots of e-mails. I think I got 36 in my
24 in-basket yesterday.
927 25 Q. Let me just move on to the next question, and if
1 you think that looking at a January 11th, 1999
2 letter to the legislators will assist you in
3 responding, I will then show it to you.
4 A. Depending on your question, it may or may not
5 assist.
6 (Letter to Legislative Leaders
7 marked as Association Exhibit No. A-132.)
8 Q. (By Ms. Gray) I would like to show you what has
9 been marked for identification as Exhibit A-132.
10 I'm handing Mr. Newman a copy. I'm handing Mr.
11 Schafer a copy. Is this a letter that you sent
12 to the legislative leaders on or about January
13 11th, 1999 regarding Grant L. Anderson?
14 A. Yes.
15 Q. In addition to sending it out to the legislators,
16 did you distribute it to other persons?
17 A. I see that it says on the bottom of page 2:
18 "Copies to Legislative Members." There are 147
19 of them. I believe each one of them was provided
20 a copy of this; copy to Governor Gary Locke, I
21 believe he was provided a copy.
22 Copy to media representatives; I cannot here
23 and now recall just which media representatives,
24 but I'm sure I provided it to some.
928 25 Copy to Commission on Judicial Conduct; I
1 believe I would have provided it to them, and a
2 copy to Steven A. Reisler, Esquire; Ogden, Murphy
3 and Wallace, and I believe I provided a copy to
4 him.
5 Q. I would now like to direct your attention to
6 Exhibit D-35 in evidence. The last two pages of

7 Exhibit D-35 contains a flyer that you prepared,
8 is that correct?
9 A. The one subtitled, "How Long Do We Let A Child
10 Abuser Run A Nursery"? That's correct.
11 Q. And when did you prepare this flyer?
12 A. I believe, consistent with the preface, it says:
13 "Summarized as of December 18th, 1997." So, I
14 believe that was the date I prepared it.
15 Q. Did you prepare any other leaflets or flyers
16 concerning Grant Anderson?
17 A. I distribute, post and hand out many documents,
18 sometimes letters, sometimes memos, sometimes
19 documents such as this with a title at the top.
20 I don't know exactly what you mean by
21 leaflets or flyers. I distribute out a lot of
22 information to a lot of people.
23 Q. And have you distributed this flyer by handing it
24 out in the lobby of the County/City Building?
25 A. I recall handing it out to people in many
929 1 different places including within the
2 Tacoma/Pierce County, County/City Building.
3 Q. And do you recall sending either this flyer or
4 other similar information to numerous law firms?
5 A. You know, I don't have a clear recollection of it
6 but something we saw this morning indicated that
7 I had, and I believe I probably -- I think I took
8 it over to the legal messenger's office and they
9 agreed to provide a copy to every stop on their
10 route.
11 Q. I'm now going to ask you certain questions about
12 press material, but I'm going to limit my
13 questions to press material that you yourself
14 have written.
15 And I would first like to ask you whether or
16 not you wrote a letter to the editor of the
17 University Place Journal in December of 1997 that
18 was a commendation of Diane Anderson?
19 A. I sense I'm going to get reprimanded for my
20 letters again. I thought there was a first
21 amendment, but the answer is yes.
22 Q. And in that letter --
23 A. May I see a copy of it if you're asking me
24 questions about it?
25 THE HEARING OFFICER: She doesn't
930 1 need to do that if she doesn't want to,
2 Mr. Schafer, so please don't ask her questions.
3 THE WITNESS: Okay.
4 THE HEARING OFFICER: Don't ask
5 her questions. If there's an objection to the
6 question I will rule on it, but I would like your
7 counsel in the first instance to make the
8 objection, not the witness.
9 THE WITNESS: Okay.
10 THE HEARING OFFICER: Thank you.
11 Q. (By Ms. Gray) Mr. Schafer, if I ask you a
12 question and you cannot recall without looking at
13 a document it is appropriate for you to say that
14 you cannot recall, and then I will have the
15 option of showing you the document, okay?
16 A. Thank you very much.
17 Q. Mr. Schafer, in your letter to the editor
18 commending Diane Anderson, did you indicate that

19 the charges that were pending against Judge
20 Anderson focused on a sweetheart sale of an
21 estate asset to a friend who then paid for the
22 judge's new Cadillac?
23 A. I don't recall exactly the contents of that
24 letter and I'm not going to testify as to its
25 contents without being shared the copy that you
931 1 have in your hand.
2 (Letter to the Editor By Mr. Schafer
3 marked as Association Exhibit No. A-190.)
4 Q. (By Ms. Gray) I'm going to show you Exhibit
5 A-190 for identification, which I have handed to
6 Mr. Newman. I'm handing it to you, Mr. Schafer.
7 I direct your attention to the first letter
8 on the page, the second paragraph, last sentence.
9 A. It says: "The charges focus on the sweetheart
10 sale of an estate asset to a friend who then paid
11 for the Judge's new Cadillac."
12 MS. GRAY: Mr. Mills, I offer
13 Exhibit A-190.
14 THE HEARING OFFICER: Any
15 objection?
16 MR. NEWMAN: No objection.
17 THE HEARING OFFICER: Exhibit
18 A-190 will be admitted.
19 (Association Exhibit A-190
20 was received into evidence.)
21 THE WITNESS: May I?
22 THE HEARING OFFICER: No. No
23 question is pending, I'm sorry.
24 (1/98 News Article was marked as
25 Respondent's Exhibit No. A-192.)
932 1 Q. (By Ms. Gray) I would now like to show you,
2 Mr. Schafer, A-192 for identification. Is this
3 an article written by you from January, 1998
4 about the upcoming CJC trial of Grant L.
5 Anderson?
6 A. Yes, it is. Actually, it was not upcoming
7 because it was printed, I think, the last day of
8 his trial after the materials had been made
9 public by the CJC.
10 Q. At the time it was printed?
11 A. Yes.
12 Q. At the time it was written, Mr. Schafer, is it
13 correct that the CJC trial had not yet begun at
14 the time you wrote it?
15 A. I do not know the time that I wrote it.
16 Q. Would it refresh your recollection if I pointed
17 you to the last page, the second to the last
18 paragraph?
19 MS. GRAY: It may for the sake of
20 argument be easier if I offer A-192 at this time.
21 THE HEARING OFFICER: Any
22 objection to A-192 being admitted?
23 THE WITNESS: May I raise a
24 question?
25 THE HEARING OFFICER: The last
933 1 time your counsel expressed no objection so I
2 admitted it and you tried to say something. This
3 time I will let you make an objection, if you
4 wish.
5 MR. SCHAFFER: Thank you.

6 MR. NEWMAN: Well, for the record,
7 first of all, my copy, it looks like it's cut off
8 at the bottom of the first page, so I don't know
9 if I have a complete --

10 MS. GRAY: Mr. Newman, it's not a
11 beautiful copy. The second page is somewhat
12 redundant of the first page but does contain the
13 bottom of the first page.

14 And the same thing for the last two pages;
15 while the last page is somewhat redundant of the
16 third page it contains the bottom of the third
17 page.

18 MR. NEWMAN: I guess the only
19 other point I want to make -- and it's not really
20 an objection -- is, again, Ms. Gray is using
21 documents which are not part of the response the
22 Bar Association provided to Mr. Schafer's
23 subpoena.

24 You'll note the Bates stamp at the bottom,
25 it looks like No. 50, 51, 52, and if you go to
934 1 what's been marked as Exhibit D-34, these aren't
2 the same Bates stamp.

3 And again, I don't know whether this is from
4 the mysteriously lost box of documents or what,
5 but the point being, Your Honor, is that we have
6 subpoenaed all the records that Mr. Schafer had
7 provided the Bar Association and Ms. Gray is
8 again using records from some other source or
9 whatever to query Mr. Schafer about his knowledge
10 of the information.

11 THE HEARING OFFICER: Your
12 statement is noted but there's no objection. Mr.
13 Schafer, do you have an objection to my admitting
14 this exhibit?

15 THE WITNESS: My objection, as
16 Ms. Gray has been prone to do, giving kind of
17 general blanket objections to categories of
18 materials, I wish to make a general blanket
19 objection to newspaper reports in that often they
20 are the result of the reporter's words, not
21 necessarily my words.

22 And I just want the record to clearly
23 reflect that no reporter I have dealt with to
24 date has given me the opportunity to correct
25 their proposed story before it's printed, and I
935 1 think everyone to date has had some material that
2 I wished I had had an opportunity to correct,
3 because I like things to be accurate and precise.

4 But, you know, putting what -- I just want
5 to recognize that the contents of a published
6 article are not necessarily my own words.

7 THE HEARING OFFICER: So noted.
8 There's no objection that I'm hearing so I'm
9 going to admit this as an exhibit. So, that
10 would be exhibit -- sorry, I lost my --

11 MS. GRAY: Exhibit A-192.
12 (Association Exhibit No. A-192
13 was received into evidence.)

14 THE WITNESS: Could I just call
15 attention to the left margin on page 2 of this
16 exhibit that does have the date. It's January 15
17 of 1998, which was the fifth day, I believe, of

18 the CJC hearing.
19 THE HEARING OFFICER: All right.
20 You have done it.
21 THE WITNESS: Thank you.
22 Q. (By Ms. Gray) Mr. Schafer, the words in Exhibit
23 A-192 are yours; is that correct?
24 A. I could not say with certainty whether every word
25 was mine. I can say I believe that this was an
936 1 accurate print of the material that I had given
2 to them. In this particular case this particular
3 publisher was concerned.
4 Q. And is it correct that in this document -- I'm
5 now directing your attention to the second full
6 paragraph on the first page under the heading
7 introduction -- that you state, "Due to an
8 indiscreet comment made to me by a former client,
9 William L. Hamilton, in August 1992, I began in
10 December, 1995 looking into the handling of a
11 probate estate by a lawyer, Grant L. Anderson"?
12 A. Yes.
13 THE HEARING OFFICER: Ms. Gray,
14 I'm sorry to interrupt you. I don't have a copy
15 of what you're reading from.
16 MS. GRAY: I apologize.
17 THE HEARING OFFICER: Thank you.
18 MS. GRAY: Mr. Schafer has in his
19 hand the official exhibit that I'll give to you
20 when we're done with it.
21 THE HEARING OFFICER: Okay, I'm
22 there. Thank you.
23 MS. GRAY: And I just had him read
24 from the second paragraph.
25 Q. (By Ms. Gray) I would now like to move on,
937 1 Mr. Schafer. This is the original of A-192.
2 (4/30/98 University Place Journal
3 Article marked as Association Exhibit No. A-193.)
4 MS. GRAY: I'm handing Mr. Newman
5 A-193, and to Mr. Schafer, A-193 for
6 identification.
7 Q. (By Ms. Gray) Mr. Schafer, is this a guest
8 column that was authored by you and printed in
9 the University Place Journal on Thursday, April
10 30th, 1998?
11 A. It appears to be, yes. It was also published in
12 the Washington Journal, a lawyer's magazine, a
13 weekly.
14 Q. And do you have any reason to believe that it
15 wasn't accurately printed from your words?
16 A. I believe this was accurately printed.
17 MS. GRAY: I offer A-193.
18 THE HEARING OFFICER: Any
19 objection to 193?
20 MR. NEWMAN: I'm going to renew my
21 objection and to point out, Mr. Mills, that this,
22 again, is another exhibit which was not provided
23 in response to our subpoena. And I want to
24 strongly emphasize that as a defendant
25 Mr. Schafer has asked for that information in
938 1 order to fully prepare for his defense.
2 And quite frankly, I am surprised that Bar
3 counsel would not provide this in response to our
4 subpoena and now attempts to query Mr. Schafer

5 regarding information that should have been
6 provided that was not.

7 MS. GRAY: Mr. Mills, let me --

8 THE HEARING OFFICER: Excuse me.

9 I'm reading the subpoena and this document as
10 described, I have not seen it. It does not
11 appear to be responsive to the subpoena that I'm
12 looking at, which is the second page of D-34.
13 So, would you please enlighten me?

14 MR. NEWMAN: It says: "All
15 documents submitted to your office by Douglas A.
16 Schafer in February, 1996 and all documents" --

17 MS. GRAY: Through.

18 MR. NEWMAN: -- "through April,
19 1996. Part 2; All documents or other records
20 received by your office from or on behalf of the
21 lawyers named in the preceding paragraph."

22 My point is simply that perhaps it should
23 have been provided, and if counsel takes offense
24 at the fact that some of these items are Bates
25 stamped, they don't match the Bates stamping of
939 1 their -- I still maintain that any exhibit she
2 uses that is not responsive should have been
3 provided. Whether this should have been
4 provided, I'll leave it up to you, Mr. Mills.

5 THE HEARING OFFICER: Well, I have
6 admitted many exhibits both ways, both sides,
7 that have not necessarily been provided before.

8 I'm trying to give counsel an opportunity to
9 review them as we go, and I sincerely believe
10 that this is proper in terms of showing documents
11 to counsel and having those objections stated on
12 the record. I'm going to admit this exhibit.

13 (Association Exhibit No. A-193 was
14 received into evidence.)

15 MS. GRAY: I'm handing the Hearing
16 Officer his copy. That was marked -- 193 is in
17 evidence now.

18 THE HEARING OFFICER: Excuse me?

19 Q. (By Ms. Gray) I would like to direct your
20 attention to the third paragraph, Mr. Schafer, in
21 this article. You state: "In 1992 Hamilton had
22 told me (I was then one of his attorneys) that he
23 was getting a great deal from Anderson on the
24 Hoffman Estate bowling business and that he would
25 pay back Anderson later for it."

940 1 A. That's the statement that Julie Shankland told me
2 he admitted in August 15, 1996, and you are
3 reading it correctly in the news article, yes.

4 Q. Mr. Schafer, if you would answer the following
5 question yes or no, if you can: In the center
6 column, first full paragraph, did you write in
7 this column, "I now label the Commission the
8 Judicial Cover-Up Commission because I truly
9 believe it covered up more misconduct by Anderson
10 than it exposed"?

11 A. And I still do believe that, yes.

12 Q. Mr. Schafer, were you unable to answer that yes
13 or no?

14 A. Oh, I guess I was.

15 (4/30/98 Tacoma News Article
16 marked as Association Exhibit No. A-194.)

17 Q. (By Ms. Gray) I would now like to show you
18 Exhibit A-194 for identification. I'm handing a
19 copy to Mr. Newman and a copy to Mr. Schafer.
20 Did you write a piece that was published in
21 the Tacoma city paper on April 30th, 1998?
22 A. Yes, I did. I forgot about this one.
23 Q. And is this a copy of that?
24 A. It certainly appears to be so.
25 MS. GRAY: I offer A-194.
941 1 THE HEARING OFFICER: Any
2 objection to A-94 being admitted?
3 MR. NEWMAN: A-194?
4 THE HEARING OFFICER: I'm sorry,
5 A-194, I misspoke.
6 MR. NEWMAN: No objection.
7 THE HEARING OFFICER: Mr. Schafer,
8 do you have an objection? I'm going to ask you
9 each time. An objection only, not to comment
10 about the exhibit at this point.
11 THE WITNESS: No, no objection.
12 THE HEARING OFFICER: Exhibit
13 A-194 will be admitted.
14 (Association Exhibit No. A-194
15 was received into evidence.)
16 MS. GRAY: Mr. Mills, I'm handing
17 you the originals of A-193 and A-194.
18 THE HEARING OFFICER: Thank you.
19 (4/16/99 Letter to Seattle Times
20 marked as Association Exhibit No. A-196.)
21 Q. (By Ms. Gray) Finally, Mr. Schafer, I would
22 like to show you Exhibit A-196. Do you recall
23 writing a letter to the editor that was printed
24 in the Seattle Times on or about August 16th,
25 1999?
942 1 A. Yes, I do.
2 Q. And is this a fair and accurate copy of the
3 article as printed?
4 A. Give me a moment to read it and I will answer.
5 Yes.
6 MS. GRAY: I offer A-196.
7 THE HEARING OFFICER: Any
8 objection to A-196?
9 MR. NEWMAN: No objection.
10 THE HEARING OFFICER: Objection,
11 Mr. Schafer?
12 THE WITNESS: No objection.
13 THE HEARING OFFICER: Exhibit
14 A-196 is admitted.
15 (Association Exhibit No. A-196
16 was received into evidence.)
17 MS. GRAY: I'm handing the Hearing
18 Officer his copy. Mr. Newman, it happens that
19 the date is highlighted on Mr. Mills' copy. Do
20 you have any objection to that?
21 MR. NEWMAN: No, that's fine.
22 Q. (By Ms. Gray) Mr. Schafer, I would like to
23 direct your attention to the first full paragraph
24 in the second column. Does that read as follows:
25 "My former client, Bill Hamilton, used my
943 1 services forming his corporation to further his
2 fraudulent sweetheart purchase of a bowling alley
3 from an estate for which his friend, then Lawyer

4 Anderson, was court appointed executor. Hamilton
5 commented to me about the kickback he would be
6 giving for the great deal he was getting."
7 A. You read it correctly.
8 Q. Mr. Schafer, shifting to another topic, is it
9 fair to state that since formal charges were
10 filed in that matter --
11 A. Which formal charges against who, because there
12 have been a lot of formal charges against various
13 folks?
14 Q. Is it fair to state that since the filing of a
15 formal complaint against you in the case that we
16 are herein hearing about, that part of your
17 strategy in responding to those formal charges
18 has included criticizing Bar disciplinary
19 authorities?
20 A. I have been criticizing Bar disciplinary
21 authorities long before any formal charges or
22 informal charges were filed against me, because
23 I'm trying to clean up this profession and the
24 disciplinary system and make it work like it
25 should.

944 1 MS. GRAY: I would ask the court
2 reporter to read back my question and ask
3 Mr. Schafer if he can answer my question.

4 THE HEARING OFFICER: All right.
5 You may do that.

6 (Thereupon, the court reporter
7 read back the last question.)

8 THE WITNESS: You asked whether
9 it's fair to state that. You ask about my
10 strategy. I'm simply continuing what I have been
11 doing for years. I think it's relevant to my
12 defense of these charges.

13 Q. (By Ms. Gray) Mr. Schafer, if you can answer
14 this question yes or no, please do so. In your
15 counsel's opening and in your presentation of
16 evidence here has that been part of your
17 presentation of your case in this matter?

18 A. You know, I guess most people would perceive
19 that, yes.

20 Q. Do you perceive that?

21 A. Again, you are asking is something fair?

22 Q. I did not ask if it was fair.

23 A. I thought you did. You said is it a fair
24 assessment, or something like that.

25 Q. Let me pose a new question. You mentioned on
945 1 your examination by Mr. Newman that you had a
2 conversation with Justice Sanders. Do you recall
3 mentioning that?

4 A. I recall that, yes.

5 Q. When did you have a conversation with Justice
6 Sanders?

7 A. Upon discovering that the Federal Grand Jury was
8 investigating the gentleman who gave Judge
9 Anderson his Cadillac and there was reason to
10 believe that Judge Anderson was also potentially
11 under investigation by the Federal Grand Jury as
12 well, and I spoke to Justice Sanders about that.

13 Q. When chronologically did you speak to Justice
14 Sanders?

15 A. I believe it was December 23rd or 24th of 1997.

16 Q. In January of this year did you make a call to a
17 Disciplinary Board member, Douglas Smith?
18 A. Yes, I did.
19 Q. And in your telephone call to Disciplinary Board
20 member Douglas Smith in January of this year, did
21 you tell him that you wanted to talk to him about
22 reform of the disciplinary system?
23 A. I don't have a specific recollection of that,
24 but, you know, I've seen a written, you know,
25 representation of that and I believe he says --
946 1 you know, I don't really recall. I've talked to
2 so many people about wanting to bring about
3 improvement in the quality of the disciplinary
4 system, I really lose track of how many people I
5 have been saying that to, seeking meetings or
6 discussions and the opportunity to share with
7 them how, you know, appalled I am based on
8 everything I have seen.
9 Q. If you would answer this question yes or no, if
10 you can: When you spoke to Disciplinary Board
11 member Douglas Smith do you recall talking to him
12 about what you expected to be a stipulation in
13 the Grant Anderson case?
14 A. I don't recall specifically what was -- I think
15 Doug Ende had indicated --
16 Q. Your answer is you don't recall?
17 A. What was the date?
18 Q. On or about January 20th of this year.
19 A. It was about that time that I believed that there
20 was going to be a stipulation based on what Doug
21 Ende had told me. So, if I was talking with
22 Mr. Whomever-he-was at that time I may have said
23 that that was what I was expecting would probably
24 occur.
25 Q. So, I take it your answer is that you don't
947 1 recall what, if anything, you said to the
2 Disciplinary Board member; is that correct?
3 A. I don't recall my words but it sounds like
4 something I probably would have expressed to him.
5 Q. And do you recall contacting, in March of this
6 year, an employer of a Disciplinary Board member?
7 A. Not at the moment, no. Who are you --
8 Q. Do you recall in March of this year contacting
9 Mary Anne Vance?
10 A. Yes, yes.
11 Q. And do you recall that at the time you contacted
12 her you knew she was the employer of Disciplinary
13 Board member Kimberly Goetz; G-o-e-t-z?
14 A. Did not know that, but I believed that that was
15 likely the case based on the biographical
16 information about the Disciplinary Board member
17 that the Bar Office publishes, the prior year I
18 believe it was.
19 Q. And did you send an e-mail to Kimberly Goetz in
20 March of this year?
21 A. Yes, I did -- oh; Kimberly Goetz?
22 Q. I'm sorry, Mary Anne Vance. Did you send an
23 e-mail to Mary Anne Vance?
24 A. To Lawyer Mary Anne Vance, yes, I did.
25 Q. And in that e-mail to Lawyer Mary Anne Vance did
948 1 you criticize the Bar's Disciplinary authorities'
2 handling of any matters?

3 A. I did not criticize them for losing the files
4 because I did not know they had lost the files,
5 but I criticized them for the action that they
6 had taken or really failed to take against Grant
7 Anderson and his colleagues for the plundering of
8 an estate that should have gone to a hospital.

9 Q. Did you indicate to Ms. Vance that you wrote to
10 her in part because you assumed that her former
11 or present assistant, Ms. Goetz, would at least
12 recognize the magnitude of fiduciary misconduct
13 in the Grant Anderson case?

14 A. Yes, because Ms. Vance advertises in every
15 month's Bar News --

16 Q. The answer is yes?

17 A. -- as a probate specialist, yes.

18 Q. If you can answer this yes or no, did you
19 indicate to Ms. Vance that you viewed the
20 disciplinary staff as grossly incompetent or
21 outright corrupt?

22 A. I would have to see the document to be able to
23 tell you what I said, I don't know.

24 (E-Mail from Schafer to Vance
25 marked as Association Exhibit No. A-182.)

949 1 Q. (By Ms. Gray) I'm showing Mr. Newman, giving
2 him a copy of A-182, and giving Mr. Schafer a
3 copy of A-182. It is not in evidence.
4 Directing your attention to the second page,
5 the second full paragraph, Mr. Schafer, having an
6 opportunity to review A-182, does it refresh your
7 recollection, yes or no --

8 A. If I may have a moment.

9 Q. You may have a moment. Please read the second
10 full paragraph on the second page.

11 A. Am I not allowed to read the first page?

12 Q. You can read any part of it you want.

13 A. Thank you. Okay, I have read it.

14 Q. Having looked at A-192, I direct your attention
15 to the bottom of the first page.

16 A. That's 182.

17 Q. I'm sorry, 182. Is this -- does this contain as
18 a part of it an e-mail you sent to Mary Anne
19 Vance on Sunday, March 19th, 2000?

20 A. Yes.

21 Q. And in this e-mail that you sent to Mary Anne
22 Vance on March 19th, 2000, did you criticize the
23 Bar's disciplinary staff as either grossly
24 incompetent or outright corrupt?

25 A. I certainly did.

950 1 Q. Mr. Schafer, I would now like to turn your
2 attention to a different subject that you
3 testified on examination by Mr. Newman.
4 THE HEARING OFFICER: Okay. You
5 did not offer A-192. That's fine.

6 Q. (By Ms. Gray) I believe on your examination by
7 Mr. Newman you mentioned something about waiting
8 in 1995, about waiting for a statute of
9 limitations to expire.
10 Mr. Schafer, my question is, and if you can
11 answer this question yes or no, please do so: Is
12 it your testimony that you waited during the time
13 period between July, 1985 and December, 1985, you
14 waited to conduct an active investigation of

15 Grant Anderson because you wanted to wait for a
16 civil statute of limitations on fraud to elapse
17 with regard to your former client, William
18 Hamilton?

19 A. No.

20 Q. Is it your testimony that you waited for a longer
21 period of time than that for that purpose?

22 A. No. Can I give a longer than one word answer or
23 do you want the truth?

24 Q. Mr. Schafer, when I ask you a question that calls
25 for a longer than one word answer, then you can
951 1 answer that.
2 A. Thank you.
3 Q. Until then --
4 MS. GRAY: Actually, Mr. Mills, I
5 would ask you to again ask Mr. Schafer not to
6 engage in colloquy with counsel during
7 questioning.
8 THE HEARING OFFICER: I think the
9 key to that is don't ask counsel questions.
10 THE WITNESS: Okay.
11 Q. (By Ms. Gray) Mr. Schafer, why did you wait
12 between July of 1995 and December of 1995 to
13 conduct a more active investigation other than
14 reviewing the Hoffman Estate file?
15 A. Because of my belief that my former client, Bill
16 Hamilton, had -- would probably have civil
17 liability for breach of fiduciary duty, which I
18 perceived or thought was a three-year statute of
19 limitations type of matter that would -- that he
20 could potentially have civil liability for.
21 I think it's referred to as aiding and
22 abetting in a breach of fiduciary duty or breach
23 of a duty of loyalty by a trustee or executor.
24 I did not know what he had done, only that
25 his comment to me in August of 1992 suggested
952 1 that he had in mind providing some monetary
2 compensation, some compensation in some form to
3 Mr. Lawyer Grant Anderson for the favorable deal,
4 the good deal on the bowling alley.
5 So, I thought I would wait until an ample
6 cushion beyond the three years from August of
7 1992 had elapsed, so that if I discovered
8 problems that might -- my real concern was that
9 the sitting judge had committed an outrageous
10 breach of fiduciary duty.
11 Q. Is it your testimony --
12 A. And I was fearing my former client might suffer
13 civil consequences as a result of that.
14 Q. Is it your testimony that that was your fear in
15 July, 1995?
16 A. Yes.
17 Q. Between August of 1992 and July of 1995, yes or
18 no, did you forget about the comments that Bill
19 Hamilton had made to you in August of 1992?
20 A. I don't know. Is this yes or no?
21 Q. Yes.
22 A. Then the answer is no, I did not forget about it.
23 Q. Between August, 1992 and July 1st of 1995, before
24 you appeared before Grant Anderson, during that
25 period of time, yes or no if you can, is it
953 1 correct to state that you had no intention of

2 conducting any investigation during that period
3 of time?
4 A. Investigation during or intent during?
5 Q. My question is: You had no intent to perform an
6 investigation in the future between August of
7 1992 and July 1st of 1995?
8 A. And how is it phrased again? I don't want to
9 make the mistake on which is a yes and which is a
10 no. If I can use a sentence I will give your
11 answer.
12 Q. Can you answer in one sentence?
13 A. I believe so.
14 Q. Go ahead.
15 A. My recollection is that I knew or I perceived
16 that there might have been a serious problem that
17 I intended at some point in the future to look
18 into.
19 Q. In 1992 did you tickle your calendar for some
20 point in the future to begin looking into
21 something?
22 A. No.
23 Q. Did you do so in July of 1995, did you tickle
24 your calendar?
25 A. I don't tickle calendars.

954 1 Q. Now, in February of 1996 you met with
2 Mr. Ladenburg and with other representatives of
3 his office; is that correct?
4 A. That's correct; John W. Ladenburg, Pierce County
5 Prosecutor.
6 Q. And in February of 1996, yes or no, you gave
7 information to the prosecuting attorney regarding
8 Pacific Lanes and regarding the Cadillac?
9 A. Yes.
10 Q. And in February of 1996 when you gave information
11 to the prosecuting attorney did you believe that
12 the statute of limitations on any criminal
13 activity related to Pacific Lanes or the Cadillac
14 had run the criminal statute of limitations?
15 A. I know very -- almost nothing about criminal
16 laws. I took one course in criminal law my first
17 year in law school 25 years ago, and that is
18 almost, aside from occasionally researching a
19 specific thing, the sum total of my knowledge of
20 criminal laws. I leave it to other lawyers who
21 have chosen that field.
22 Q. So, is it correct to say that in February, 1996
23 you had no idea whether or not the statute of
24 limitations had run on any potential crime
25 related to Pacific Lanes sale or the payments on

955 1 the Cadillac?
2 A. That's a correct statement.
3 Q. And is it correct to say that you had no idea
4 about the statute of limitations federally when
5 you spoke to the FBI in February or March of
6 1996?
7 A. That's correct.
8 Q. Had it occurred to you when you spoke to the
9 prosecuting attorney's office in February of 1996
10 that the statute of limitations might have
11 already run?
12 A. You know, I was not familiar with criminal law,
13 as I have said.

14 (Letters to Review Committee and
15 Leachman marked as Association's A-139 and A-144.)
16 Q. (By Ms. Gray) I would like to hand to the
17 witness and to counsel two exhibits, A-139, a
18 letter from Mr. Schafer to the Review Committee
19 dated February 25th, 1999, and A-144, a letter
20 from Mr. Schafer to Timothy Leachman,
21 Disciplinary Counsel, dated April 6th, 1999.
22 As I have not previously provided marked
23 copies to Mr. Schafer or Mr. Newman, they may
24 want to take a moment to look at them.
25 MR. NEWMAN: If we could just take
956 1 a moment, maybe a two-minute break.
2 THE HEARING OFFICER: Do you want
3 to take a break? I would actually prefer to stay
4 on the record and keep going. So, why don't you
5 just read them and when you are finished reading
6 we can go forward, just let me know.
7 (Off the record.)
8 THE HEARING OFFICER: We're back
9 on the record. You've been examining exhibits
10 marked for identification as A-139 and A-144.
11 You may proceed, Ms. Gray.
12 MS. GRAY: I would like to offer
13 A-139 and A-144.
14 THE HEARING OFFICER: All right.
15 Is there any objection to those being admitted
16 into evidence?
17 MR. NEWMAN: I don't have any
18 objection. They appear to be documents prepared
19 by Mr. Schafer.
20 THE WITNESS: They are all in the
21 public file in this proceeding. I would hope
22 that every reviewer would review the entire
23 public file.
24 THE HEARING OFFICER: All right.
25 Exhibits A-139 and A-144 are admitted. I would
957 1 like to receive a copy, if I could, receive
2 copies.
3 (Association Exhibits A-139 and
4 A-144 were received into evidence.)
5 MS. GRAY: Actually, Mr. Schafer,
6 let me give you the original and give Mr. Mills
7 those copies.
8 THE HEARING OFFICER: Thank you.
9 Q. (By Ms. Gray) I would like to direct your
10 attention to Exhibit A-139. Is it correct, yes
11 or no, Mr. Schafer, that this letter, among other
12 things, was intended to try and convince the
13 Review Committee not to authorize the filing of
14 charges against you?
15 A. This was my response to Mr. Leachman's
16 recommendation for formal charges, my response
17 suggesting to them that there was not good reason
18 to do so.
19 Q. So, is it correct to state, Mr. Schafer, yes or
20 no, that part of the purpose in sending this
21 letter to Review Committee was to convince them
22 not to authorize the filing of charges against
23 you?
24 A. The entire purpose, yes.
25 Q. And is it correct to say that this February 25th,

958 1 1999 letter was intended -- you intended in part
2 to convey to the Review Committee that you had
3 made disclosures only to appropriate authorities?
4 A. Excuse me?
5 MS. GRAY: Mr. King, would you
6 mind reading that back?
7 (Thereupon, the court reporter
8 read back the last question.)
9 THE WITNESS: If there's a passage
10 you would like to direct my attention to, I can
11 answer the question.
12 Q. (By Ms. Gray) Directing your attention to page
13 5 of Exhibit A-139, the last two -- no, all of
14 the full paragraphs on page 5 of Exhibit A-139,
15 if you would read them to yourself then I'll ask
16 a question. Let me know when you're done
17 reading.
18 A. Okay. These are the three full paragraphs on page
19 5?
20 Q. Yes, and obviously, you are welcome to read
21 anything else in the letter you wish.
22 A. I have read the three paragraphs.
23 Q. My question to you, Mr. Schafer, page 5 of
24 Exhibit A-139, yes or no: In writing the
25 paragraphs contained on page 5 did you intend to
959 1 convey to the Review Committee that you made
2 disclosures only to appropriate authorities?
3 A. No, I did not intend to convey that.
4 Q. Is it correct, Mr. Schafer -- in your opinion
5 does A-139, page 5, imply that you made
6 disclosures only to appropriate authorities?
7 A. Not to one who carefully picks their words and
8 carefully reads those words, it nowhere says
9 that. I knew full well but I provided it to the
10 newsrooms and I was being careful in the
11 selection of my words to not make a false
12 statement.
13 Q. Is it correct, however, that the members of the
14 Review Committee reading this letter would have
15 no way of knowing that you had made disclosures
16 to the newspapers?
17 A. I don't know how careful they are. I don't know
18 how carefully they read materials and how
19 carefully they think about things.
20 Q. Is it correct --
21 A. It is -- go ahead.
22 Q. Is it correct that on page 5 of Exhibit 139 you
23 tell the Review Committee that you made
24 disclosures to various appropriate public
25 officials?
960 1 A. Where are you referring to?
2 Q. The middle paragraph. I'm not reading it
3 verbatim.
4 A. Well, where is it you are referring to? I'm
5 careful with my words, so show me where I said
6 something that you are focusing on.
7 Q. I'll withdraw the question and ask the following
8 question. Do you state on page 5 of A-139: "ODC
9 makes the bald, unsupported assertion that I
10 provided my perjury declaration through other
11 members of the community in a letter dated
12 February 29th, 1996"?

13 A. I'm sorry, which paragraph are you on again?
14 Q. The center paragraph.
15 A. Okay. What's the question?
16 Q. Did you make that statement?
17 A. You have read it correctly.
18 Q. And do you go on to say: "I challenge ODC to
19 produce such a letter, for none exists"?

20 A. I said that. There is no such letter. They are
21 referring to a letter of February 29th.
22 Q. Mr. Schafer --
23 MS. GRAY: Mr. Mills, I would ask
24 you to ask Mr. Schafer to answer only the
25 question and to not volunteer other information
961 1 and remind him that he will have an opportunity
2 to be questioned by Mr. Newman.
3 THE HEARING OFFICER: You are so
4 admonished.
5 THE WITNESS: Thank you.
6 Q. (By Ms. Gray) Mr. Schafer, the next sentence of
7 the letter, does it go on to say in your words:
8 "My over-arching concern was in only
9 disseminating my perjury declaration and
10 memoranda in privileged matters whereby I would
11 not be vulnerable to the lawsuit that Messrs.
12 Hamilton and Sloan threatened against me on
13 February 1st, 1996," does it say that?
14 A. It says that.
15 Q. And in the final paragraph of that letter do you
16 disclose to the Review Committee that you made
17 those and other documents -- I'm reading from the
18 second full sentence -- "Those and other
19 documents as a relevant appendix to my motion in
20 the Washington Court of Appeals for Discretionary
21 Review of the Pierce County Superior Court's
22 unconstitutional order summarily disqualifying me
23 from representing Mr. Barovic after I sought
24 Judge Anderson's recusal by alleging his
25 misconduct in The Hoffman Estate"?

962 1 A. I do state that I filed them in the public court
2 file of the Court of Appeals in connection with
3 that case, yes, properly so.
4 Q. Is there anyplace in this letter to the Review
5 Committee of February 25th, 1999 where you advise
6 the Review Committee that you also disclosed on
7 that same day, April 26, 1996, that you disclosed
8 both your February 29th, '96 memo and your
9 perjury declaration of February 16th to the
10 newspapers?
11 A. They would know that media look at court files,
12 public court files. Did I volunteer that I faxed
13 them to the newsrooms? You don't see it in
14 writing so I did not volunteer it.
15 Had I been asked, I would have answered
16 truthfully. I was never asked until here in this
17 hearing.
18 Q. And so the February 29th, 1996 memo was faxed to
19 the newspapers on April 26, 1996?
20 A. The first 12 pages of Appendix D to the petition
21 in the Court of Appeals, which included the two
22 documents you just referenced, was faxed, as I
23 testified -- it's an exhibit in this
24 proceeding -- to the newsrooms of the Seattle

963 25 Times, the Seattle Post-Intelligencer, and the
1 Tacoma News-Tribune on April 26th, 1996.
2 Q. So, your answer is yes?
3 A. Yes.
4 Q. And is it correct that you also transmitted to
5 the newspapers by fax on April 26, 1996 your
6 February 16th, 1996 declaration under penalty of
7 perjury?
8 A. Yes.
9 MS. GRAY: I have no further
10 questions.
11 THE HEARING OFFICER: All right.
12 Mr. Newman?
13 MR. NEWMAN: Thank you.
14 EXAMINATION
15 Q. (By Mr. Newman) Doug, Ms. Gray has criticized
16 your criticism of the Bar?
17 A. Excuse me. Are these two exhibits the last two
18 items, because I still have the originals here?
19 MS. GRAY: Yes, they are. I am
20 handing to the Hearing Officer for the public
21 file Exhibit A-139 and A-144.
22 THE HEARING OFFICER: Thank you.
23 You may proceed when ready, Mr. Newman.
24 Q. (By Mr. Newman) Doug, Ms. Gray has expressed
25 criticism of your dissatisfaction with how the
964 1 Bar Association and other public authorities have
2 acted on your information.
3 MS. GRAY: I object to the
4 characterization of the question. Ms. Gray asked
5 questions, she did not express criticism.
6 THE HEARING OFFICER: The
7 preamble -- I know what happened, so you may
8 proceed with your question. I appreciate your
9 statement.
10 Q. (By Mr. Newman) Well, Doug, could you explain
11 why you were so critical of the Bar Association's
12 handling of your complaint against Judge Grant
13 Anderson?
14 A. I was critical because it was obvious to me --
15 maybe I assume to much of other lawyers -- but
16 when you see a transaction where on the same day
17 two individuals; one who has been a judge for 10
18 months, the other a businessman, are swearing
19 under penalty of perjury to a real estate
20 transaction for \$500,000, and the very same day
21 it is being documented as collateral supporting a
22 \$900,000 national bank commercial bank loan,
23 given the information particularly that I
24 provided explaining the relevance of that and the
25 loan to value ratios, no, in my view, competent
965 1 and honest lawyer could fail to recognize the
2 seriousness of that type of transaction as an
3 indication of egregious self-dealing in the
4 context in which it was.
5 And likewise, for the long list of
6 sweetheart deal, self-dealing, doling out time
7 share interests by a lawyer who had already won
8 an election to be a Superior Court Judge, and
9 within one month before he takes the bench he is
10 doling out time share interests to his campaign
11 manager, virtually everybody in his law firm and,

12 you know, other friends, the Secretary from the
13 Board of Education, to me it was as astounding as
14 anything that I had ever seen as a lawyer.

15 And to see that the disciplinary authorities
16 of this profession were failing to act
17 responsibly on that, failing to recognize the
18 gravity of that, to me was utterly appalling.
19 Q. Now, Doug, we -- in prior testimony you heard
20 about the box of materials that you provided to
21 the Bar Association.

22 MS. GRAY: I object to this as
23 beyond the scope of cross-examination.

24 THE WITNESS: I would like to
25 answer that one, too.

966 1 MR. NEWMAN: I'll bring it into
2 the scope because he --

3 THE HEARING OFFICER: I'll allow
4 you to go for it.

5 Q. (By Mr. Newman) Let me make sure. Doug, in one
6 of your answers to Ms. Gray's questions you
7 referenced the box of documents.

8 A. I did.

9 Q. All right.

10 A. And I delivered a large volume of documents, and
11 up until when Julie Shankland was sitting in this
12 chair testifying I always thought that the Bar
13 had possession of all of those documents in Grant
14 Anderson's grievance file.

15 I had asked many times Doug Ende, who
16 succeeded to that file when it was reopened in
17 February of 1999 if he had everything, because I
18 was eager to ensure that he had everything and I
19 wanted to walk him through everything. And he
20 repeatedly assured me that he did have everything
21 and that he was spending time with it.

22 And I just find myself incensed, angry,
23 enraged that they did this without even having
24 the common courtesy of letting me know that they
25 had lost all the documents I had provided.

967 1 I would have come up -- you know, I would
2 have been in their office within an hour if they
3 had allowed me to spend time with them to walk
4 them through the obvious smoking-gun documents
5 that just made it so patently obvious that this
6 lawyer and the other lawyers in his firm were as
7 unethical as any lawyers I have ever encountered.

8 Q. Mr. Schafer, Ms. Gray has also questioned you
9 concerning your actions before the state
10 legislature, and could you explain to Mr. Mills
11 why you went to the state legislature?

12 A. I contacted the state legislature after I
13 obtained the information and the documentation
14 from Ogden, Murphy and Wallace representing the
15 hospital of their half-million dollar settlement,
16 because I felt so strongly that responsible
17 action had to be taken to remove this sitting
18 judge who had never missed a day of work, but for
19 his vacation, or a couple days of his trial I
20 think he missed sitting on the bench, but aside
21 from that he was still a sitting judge, affecting
22 people's lives and well being.

23 And I knew how corrupt the transactions had

24 been. I knew how obvious it would be to anyone
25 who would take the time responsibly to look at
968 1 the documents. I had all the documents.
2 I also had the documents showing the
3 half-million dollar settlement, and when I had
4 the documents from Ogden, Murphy, Wallace signed
5 by, you know, prominent lawyers, who in this
6 profession pedigree means a heck of a lot. When
7 a prominent lawyer signs a demand letter saying
8 your liability will exceed a million dollars it
9 gets more attention than an unknown lawyer from
10 Tacoma.
11 So, once I was armed with all those
12 documents, and with the strong support of Senate
13 Majority Leader Sid Snyder, whose constituents
14 were the victims of the fraud and the corruption
15 and the sweetheart deals and the delayed recovery
16 of anything -- had there been a responsible
17 disciplinary authority I'm convinced the hospital
18 would have recovered its full one and-a-half
19 million, but from their perspective, seeing how
20 unwilling this profession was to address the
21 misconduct of lawyers and judges, I can
22 understand them settling for a half-million, even
23 though they thought that they had been wrongfully
24 deprived of a million-and-a-half, or maybe they
25 settled for three-quarter million. I thought it
969 1 was a half-million based on what I saw, what I
2 had.
3 So, I went to the legislature because they
4 were -- they had the authority under the
5 constitution and they, as responsible citizens,
6 seemed like they would be receptive to
7 vindicating the wrong that had occurred, and they
8 were very interested and they acted very
9 responsibly.
10 Q. All right. I'm going to draw your attention to
11 Exhibit A-132.
12 Mr. Schafer, in the first full paragraph --
13 I mean, the second paragraph, do you want to read
14 that for the record and I'll ask you a question
15 about it?
16 A. This is the letter of January 11, 1999 that was
17 addressed to Senate Majority Leader Senator Sid
18 Snyder, Senator Dan McDonald, the Republican side
19 leader, Minority Leader, House of
20 Representatives, co-speakers Clyde Ballard and
21 Frank Chopp, and it was addressed to "Dear
22 Legislative Leaders."
23 The second paragraph of this letter said,
24 and this was a letter from me: "Legislative
25 action is needed because the Commission on
970 1 Judicial Conduct failed to do its job. The CJC
2 investigated Judge Anderson from early 1996 to
3 mid 1997, charged him only for the misconduct of
4 accepting \$31,000 in Cadillac payments from his
5 close friend to whom he made a sweetheart sale of
6 the estate's Tacoma bowling business, then last
7 April recommended merely a four-month suspension
8 for that kickback.
9 "My understanding is that the Commission
10 felt that the sweetheart nature of the bowling

11 alley sale was really within the jurisdiction of
12 the Bar Disciplinary Office because it occurred
13 before he was a full-time judge."

14 So, they had left that matter to the Bar
15 Office to act upon, act responsibly upon.

16 Q. Doug, my question in relation to that part that
17 you just read is: Your knowledge of the Cadillac
18 payment; Mr. Hamilton didn't tell you that he was
19 going to pay a kickback to Judge Anderson in the
20 form of a Cadillac, did he?

21 A. No, he did not. My knowledge of the Cadillac
22 payments was derived entirely and exclusively
23 from documents released by the Commission on
24 Judicial Conduct.

971 25 Q. And, in fact, isn't it correct that you did not
1 do the legal work on the sale of the bowling
2 alley?

3 A. Absolutely not. Mr. Hamilton, in fact, has
4 testified at several points in the CJC trial and
5 his depositions that he came to me as he did
6 solely to form a corporation quickly. He did not
7 seek my advice concerning any aspect of the
8 bowling alley purchase.

9 I did not offer advice as to any aspect of
10 the bowling alley purchase, it was simply a
11 routine. I charged him \$300 simply preparing
12 articles of incorporation, bylaws, initial
13 meeting minutes, stock certificate, corporate
14 minute book, initial annual report, very clerical
15 things. You put names in the blanks, basically.

16 Q. Doug, on page 2 of that document you mention a
17 judge, I think, Gary Little.

18 A. This is in reference to my strong view that the
19 Commission on Judicial Conduct is failing then in
20 January, 1999, and frankly still fails to comply
21 with, to recognize and to heed the mandate of the
22 voters of this state who passed an amendment to
23 the constitutional provisions that created and
24 govern the Commission on Judicial Conduct.

972 25 Major reforms were voted in after the
1 deplorable scandal that related to the deceased
2 King County Superior Court Judge, Gary Little.
3 Those reforms directed the Commission on Judicial
4 Conduct to make their documents, to make the
5 materials from their investigation public as soon
6 as they find probable cause. They continue to
7 refuse to do so. There are a number of other
8 failings, I believe, in my opinion.

9 As I have stated, reasonable minds may
10 differ, but as to some things we can still argue
11 about it intensely, and I would like scrutiny to
12 be brought to bear on the practices of the
13 Commission on Judicial Conduct.

14 Q. Doug, for those that -- perhaps Mr. Mills or
15 others may not know -- briefly, what the Gary
16 Little reference was about, such scandal.

17 THE HEARING OFFICER: I know about
18 it, but if he wants to testify about it, that's
19 fine.

20 THE WITNESS: For the public
21 record, in a very brief summary, Judge Gary
22 Little was a King County Superior Court Judge who

23 was apparently rumored for many years to have an
24 interest in young boys, sexually inappropriate
25 interest in young boys.

973 1 And eventually in August of 1998 a newspaper
2 reporter named Duff Wilson -- then with the P.I.,
3 now with the Times -- told Judge Gary Little that
4 he was going to print the story concerning Judge
5 Gary Little's situation in the paper the next
6 day, and as a consequence Judge Gary Little
7 committed suicide that evening in the courthouse
8 of King County.

9 The result from that, after that tragic
10 event, many people stepped forward to report that
11 they had made reports to the Commission on
12 Judicial Conduct concerning the matter of Gary
13 Little and his interest in young boys, and that
14 the Commission on Judicial Conduct had failed to
15 responsibly act upon that information,
16 notwithstanding several reports, and it was never
17 made public.

18 That resulted in special, not a special
19 session but an intense interest by the state
20 legislature.

21 At that time Senator Phil Talmadge, and
22 Representative Marlin Applewick, both of whom are
23 now members of the judiciary, were among those
24 leading that cause to bring about some reforms so
25 such a problem would never happen again and so
that the judicial disciplinary process would
function properly and openly so the public could
see all the investigative material as soon a
finding of probable cause of misconduct was made.

974 1 Q. So, it's fair to say your criticism of the CJC
2 was based on your concern that they were falling
3 back into the pre-Gary Little status?
4

5 A. It resulted from many -- there were many aspects
6 to my criticism; it was their failure to
7 disclose; it was their failure to act promptly as
8 they should or as promptly as they should; it was
9 my perception, given the investigator's
10 assessment that it's a 13 on a scale of 1 to 10
11 after the initial meeting, that it should not
12 have taken 17 or 18 months for them to find
13 probable cause.

14 But what their practices were then, and I
15 believe still are now, is that they do not
16 acknowledge that there is probable cause until
17 they have completed a complete investigation that
18 can overcome the burden of clear, cogent and
19 convincing evidence, which I have contended is
20 nowhere mandated by the constitution that creates
21 them, and that they should use a lower burden of
22 proof, such as preponderance, or at the highest,
23 clear preponderance, and possibly even one such
24 as substantial evidence if they're talking about
25 evidence of corruption or moral turpitude by a
judge.

975 1 I don't think the citizens even would feel
2 the burden to have to be so high as a
3 preponderance, if it's evidence of some extreme
4 character flaw, but that's my opinion.

5 Q. Now, you referenced an investigator at the CJC,
6
7
8
9

10 and the number 13. I think you said something
11 about on a scale of 10 she said it was a 13.
12 That person was Sally Carter-DuBois, correct?

13 A. That's correct.

14 Q. And getting back to the questions Ms. Gray asked
15 you about your dissatisfaction with the Bar
16 Association's handling of the Anderson complaint,
17 did you have a discussion with Sally
18 Carter-DuBois about the Bar Association's
19 involvement with investigating such complaints?

20 MS. GRAY: I object as this
21 testimony has been given several times during the
22 course of these proceedings.

23 THE HEARING OFFICER: I think I
24 know exactly what he's going to answer, so I
25 guess I'm somewhat in agreement. I don't want to
976 1 cut off making a point but I have heard this
2 before.

3 MR. NEWMAN: Well, for the record,
4 two points; he can certainly say what we all
5 expect him to say, but furthermore, I wanted to
6 follow-up on the fact that Ms. DuBois insisted on
7 Mr. Schafer remaining and having all the
8 materials copied when he was there.

9 And I believe, Mr. Mills, that may have not
10 been as significant a revelation as we have now,
11 since we have learned in the course of today's
12 hearing that the Bar Association lost the box,
13 the same material that Mr. Schafer provided to
14 the Bar Association.

15 So, my point simply is the investigator for
16 the CJC had expressed extreme reluctance with or
17 concern about the ability of the Bar Association
18 to investigate its own, and went to the trouble
19 of having Mr. Schafer wait while she copied this
20 box of material, and perhaps that's basically
21 what I was going to inquire with Mr. Schafer
22 about.

23 THE HEARING OFFICER: Well,
24 without accepting all the characterization of
25 what he's going to say, I'll let him answer the
977 1 question. I do find this repetitive but you may
2 answer the question.

3 THE WITNESS: Thank you. Very
4 briefly, the investigator who was then the sole
5 investigator for the Commission on Judicial
6 Conduct, Sally Carter-DuBois, who is a lawyer,
7 graduate of Pepperdine Law School, who had been
8 with the Commission since -- I forget if it was
9 '89 or '88, through, I believe it was June of
10 1997 when I met with her -- she expressed to me
11 her personal view based on her experiences up
12 through that time that the Bar Association tended
13 to interfere with and impede investigations.

14 She actively discouraged me from even
15 turning in the materials to the Bar Association,
16 and she related just briefly some experience in
17 connection with their investigation of King
18 County Judge, I think the name was John Ritchie
19 or something Ritchie.

20 She also indicated to me that the Bar
21 state-wide seems to be controlled to a great

22 degree by lawyers who she referred to as power
23 players.

24 She did at that time indicate to me that she
25 was pleased that when Mr. Jerry Merritt became
978 1 the Supreme Court clerk that he at least stopped
2 the practice of documents being filed through
3 friends after hours by Mr. Kurt Bulmer in the
4 Temple of Justice, which was kind of a compliment
5 for Mr. Merritt.

6 But I suspect that she feared that if I took
7 the documents that I had with me to the Bar
8 Office they might never been seen again.
9 Possibly, as we have now seen, the documents
10 apparently disappear in the Bar office.

11 Q. All right. I turn your attention to what
12 Ms. Gray has identified as A-190, which appears
13 to be a letter --

14 THE HEARING OFFICER: Excuse me
15 for interrupting. Before you do that, there were
16 two things on my mind; one is Exhibit A-132 has
17 not been offered as an exhibit. Ms. Gray did not
18 offer it. There's been extensive testimony about
19 it. It is not in the record. If you would like
20 it to be in the record, if you would offer it
21 then I can rule on that.

22 MR. NEWMAN: I don't intend to
23 offer it.

24 THE WITNESS: Yeah, offer it.

25 MR. NEWMAN: Mr. Schafer would
979 1 like it in the record.

2 THE WITNESS: Let it all in.

3 MR. NEWMAN: Well, I don't have a
4 copy. This is the only one I have and it's
5 already marked up.

6 MS. GRAY: Well, this can be the
7 original.

8 THE HEARING OFFICER: I could
9 review the original.

10 MS. GRAY: I'll look for the other
11 copy but my papers are out of order.

12 THE HEARING OFFICER: As counsel
13 can guess here, I'm prepared to admit this
14 document if there's no objection.

15 MS. GRAY: There's no objection.

16 THE HEARING OFFICER: Exhibit
17 A-132 will be admitted.
18 (Association Exhibit No. A-132
19 was received into evidence.)

20 MR. NEWMAN: Mr. Mills, can we
21 take a short break, here?

22 THE HEARING OFFICER: That was the
23 second thing that was on my mind. I think it's a
24 good time for a break.

25 MS. GRAY: Mr. Mills, I
980 1 actually --

2 THE HEARING OFFICER: Should we go
3 off the record for this conversation or do you
4 want it on the record?

5 MS. GRAY: I think it might as
6 well be on the record.

7 THE HEARING OFFICER: All right.

8 MS. GRAY: I am going to request a

9 lengthy break because of the issue that related
10 to the request for the letter. I've had people
11 looking and I need to consult with various people
12 and figure out what's going on.

13 And I am going to need to present something
14 on that once Mr. Schafer's testimony is done, but
15 I don't know yet what it is, and although I know
16 this is asking a lot of indulgence I would like
17 to ask for a half-hour break.

18 THE HEARING OFFICER: All right.
19 Thanks, that's about what I was going to suggest
20 anyway. So, let's take a half-hour break. Let's
21 start again -- let's set a time. Let's start by
22 this clock here at about ten after three.

23 (Brief recess taken.)

24 THE HEARING OFFICER: All right.
25 When you're ready I would like to go back on the
981 1 record.

2 MR. NEWMAN: Thank you, Mr. Mills.
3 I would like to mark as an exhibit, I guess
4 we're at No. D-35?

5 THE HEARING OFFICER: 35 is in
6 evidence. Oh, I think it's D-36, D-36.

7 MS. GRAY: Yes.

8 MR. NEWMAN: And this is the
9 grievance filed by Mr. Hamilton against
10 Mr. Schafer, and I believe still within the scope
11 of redirect because the letters Ms. Gray
12 referenced talked about regarding the grievance
13 of Mr. Hamilton, so I would move for the
14 admission of D-36. It's a Bar Association
15 document.

16 THE HEARING OFFICER: Any
17 objection to the admission of D-36?

18 MS. GRAY: No objection.

19 THE HEARING OFFICER: D-36 is
20 admitted.

21 (WSBA Hamilton Grievance against
22 Schafer marked as Respondent's Exhibit No. D-36
23 and received into evidence.)

24 Q. (By Mr. Newman) Mr. Schafer, looking at what's
25 been admitted as D-36, if you look at page 2 of
982 1 that exhibit do you see a signature on that page?

2 A. Yes, I distinctively recognize that signature as
3 that of William L. Hamilton, and it's signed with
4 a date of July, no number, but July, 1996. The
5 front page shows it's received by the Office of
6 Disciplinary Counsel of the State Bar on July 26
7 of 1996.

8 Q. All right. Now, is there a statement above his
9 signature line?

10 A. Yes, right above his signature is the statement
11 that says: "Consent and Affirmation." It says:
12 "I understand that rule 2.9(c) of the Rules for
13 Lawyer Discipline provides that unless I
14 specifically withhold my consent, the filing of a
15 grievance constitutes my consent to the
16 disclosure of the content of my grievance to the
17 lawyer and others, and to the disclosure by the
18 lawyer and others of any information relevant to
19 the investigation.

20 "In filing this grievance with the State Bar

21 I affirm the information I am providing is true
22 and accurate to the best of my knowledge."
23 Q. The documents, Ms. Gray has asked you to look at
24 several, and I'm just walking through them, but
25 are they dated after July 26, 1996? We'll look
983 1 at A-193. What is the date of that document?
2 A. Exhibit A-93 is dated April 30, 1998.
3 THE HEARING OFFICER: It's
4 actually A-193, and I made the same error in
5 speaking.
6 THE WITNESS: Same one?
7 THE HEARING OFFICER: Yes.
8 THE WITNESS: A-193.
9 THE HEARING OFFICER: Thank you.
10 THE WITNESS: Thank you.
11 Q. (By Mr. Newman) That's Exhibit A-194.
12 A. Exhibit A-194 from the Tacoma city paper is dated
13 April 3, 1998.
14 Q. Exhibit A-196?
15 A. Exhibit A-196, which is from the Seattle Times,
16 was dated August 16, 1999.
17 Q. Exhibit A-132?
18 A. Exhibit A-132 was my letter to the leaders of the
19 legislature, dated January 11, 1999.
20 Q. Exhibit A-192?
21 A. Exhibit A-192 was an article in what was then
22 called the Tacoma Voice, now called the Tacoma
23 Reporter, a Tacoma weekly. It was published on
24 January 15, 1998.
25 Q. And then A-190?
984 1 A. Exhibit A-190 was a letter to the editor, printed
2 in the University Place Journal, a weekly, on
3 December 4, 1997.
4 Q. Regarding that letter to the editor, second
5 paragraph, the last sentence, could you read that
6 for the record?
7 A. It says, in referring to the charges by the
8 Commission on Judicial Conduct against Judge
9 Grant Anderson, it says, "The charges focus on
10 the sweetheart sale of an estate asset to a
11 friend, who then paid for the judge's new
12 Cadillac."
13 Q. And again, you did not represent Mr. Hamilton
14 regarding the sale, correct?
15 A. No, and that's an accurate characterization of
16 the written charges publicly disclosed and filed
17 against Judge Anderson in August of 1997 by the
18 Commission on Judicial Conduct.
19 Q. So, it's fair to say you were referencing a
20 public document in that statement?
21 A. That's correct.
22 Q. Now, Ms. Gray has asked you some questions
23 concerning what's marked as Exhibit A-139. This
24 is a letter from you to the Review Committee of
25 the Disciplinary Board, dated February 25th,
985 1 1999.
2 She drew your attention to page 5 of that
3 exhibit and I would ask you to read the first
4 paragraph, first sentence of the second full
5 paragraph.
6 A. Page 5 of this letter I sent to the Review
7 Committee in response to Disciplinary Counsel Tim

8 Leachman recommending formal disciplinary
9 proceedings against me, the Review Committee
10 being the three-member body that would have the
11 authority to either approve or disapprove those
12 recommendations for proceeding with formal
13 discipline.

14 In this paragraph on page 5 I'm responding
15 to Mr. Leachman's letter of February 4th, 1999.
16 I say: "ODC," which has been defined previously
17 in the letter as the Office of Disciplinary
18 Counsel, referring to Mr. Leachman's letter, "ODC
19 makes the bald, unsupported assertion that I
20 provided my perjury declaration to 'other members
21 of the community in a letter dated February 29,
22 1996.' I challenge ODC to produce such a letter,
23 for none exists."

24 Q. Has the ODC produced such a letter to you?

986 25 A. I have never -- no, they have never produced such
1 a letter and I continue to believe no such letter
2 exists.

3 Q. I'm going to show you now what's been marked
4 Exhibit 182 unless you have something else to say
5 about that exhibit.

6 A. What I continue to say in this same paragraph, I
7 say, "My over-arching concern was in only
8 disseminating, only disseminating my perjury
9 declaration and memoranda in privileged manners,
10 whereby I would not be vulnerable to the lawsuit
11 that Messrs. Hamilton and Sloan threatened
12 against me on February 1, 1996."

13 Among the privileges I was referring to was
14 the qualified privilege or stronger privilege
15 that applies when lawyers are filing papers in
16 court files that are germane to the issues in
17 dispute, such as the papers that I filed with the
18 Court of Appeals on April 26, 1996, after I had
19 been banished from the Pierce County courtroom
20 and ordered to pass my files in the Barovic
21 matter by Judge Thompson.

22 And I filed papers with the Court of
23 Appeals, which subsequently recognized that his
24 action was unconstitutional and violative of due
25 process, and recognized that his motive in doing
987 1 so was quite probably the papers that I had filed
2 concerning Judge Anderson's likely eventual
3 removal by the appropriate authorities.

4 I regarded my filing in the Court of Appeals
5 as a privileged matter for which I would not be
6 subjected to civil liability, and no one has yet
7 disputed that.

8 I also recognized by putting the documents
9 there they would be publicly available to any
10 journalist who reviewed the public court files in
11 the Court of Appeals.

12 I therefore thought it was entirely
13 appropriate to call their attention, the
14 attention of journalists, to the public court
15 file in the Court of Appeals, knowing that 1996
16 was an election year, and my own view is that the
17 highest authority, the highest authority with
18 respect to judicial discipline are the voters of
19 the State of Washington.

20 And it was an election year and I was
21 hopeful that if the journalists would just expose
22 even the tip of the iceberg that at least there
23 would be the possibility of another candidate
24 filing against Judge Anderson. And if this came
25 out in an election campaign he would certainly
988 1 not be re-elected and the voters and the citizens
2 of Pierce County would not have had to endure the
3 decisions of a blatantly corrupt judge for the
4 full three-and-a-half year period that they did
5 after he was exposed by me.

6 Q. On that same page, Mr. Schafer, the last
7 paragraph, the beginning of the last paragraph,
8 you indeed do reference that these are public
9 documents, right?

10 A. I make reference to the fact that the papers that
11 I filed with the Attorney General's Office --
12 which, again, I consider entirely proper and
13 appropriate in light of their function --
14 presumably would have been publicly available to
15 anyone who requested them under the Public
16 Records Laws of the State of Washington, under
17 RCW Chapter 42.17.

18 There might have been some exception that
19 they could have claimed based on an ongoing
20 investigation, had they conducted an
21 investigation. I'm not sure that they did.

22 Documents that I received from them pursuant
23 to the Public Records Act, including the
24 memorandum from Jeff Even to his boss, David
25 Walsh, indicated that they could go either way;
989 1 they could pass on it or they had it within their
2 power to investigate, and they had in connection
3 with the exploitation of trusts that were to
4 benefit the Fred Hutchinson Cancer Center, which
5 is a published Court of Appeals or Supreme Court
6 case a few years earlier.

7 Q. On the following page, Mr. Schafer, you reference
8 a number of letters or documents, I believe it's
9 on the next page. Could you explain what that
10 reference was, why you referenced all those
11 documents, including letters from yourself?

12 A. Again, my practice is to lay it all out, to put
13 it all out in the open. I think that people
14 benefit from being able to see everything that's
15 germane.

16 I had corresponded at great length with
17 Mr. Tim Leachman and with his predecessor, Julie
18 Shankland. There was a voluminous file in
19 connection with this grievance.

20 I thought that since he was, I thought,
21 required to provide the Review Committee with the
22 full contents of that file that he should have
23 done so and not omitted each of these eight
24 significant documents that I had submitted to him
25 with voluminous supporting documentation.

990 1 So, I simply said on this page 6: "I urge
2 the Review Committee members to review carefully
3 the documents I had provided. I realize that
4 that may be difficult for you to do unless ODC
5 provides them to you.

6 "I assume that it was mere sloppiness rather

7 than an attempted deception that caused ODC to
8 omit from its documentation list appended to its
9 conclusory letter the following letters that I
10 submitted to ODC relating to this grievance that
11 I have numbered, to follow the 14 documents that
12 the ODC did list."

13 And this is followed by documents numbered
14 15, which included components A, B, C, and D, 16,
15 which included some reference material from the
16 treatise by Professor Rice on attorney/client
17 privilege in the United States; included a letter
18 from me to Mr. Leachman; included another letter
19 from me to Mr. Leachman that included the
20 documents that are an exhibit in this proceeding
21 from the hospital's attorneys, their demand
22 letter for the million dollar likely liability;
23 their complaint for fraud and breach of fiduciary
24 duty; their settlement agreement for the
25 half-million dollar settlement, and a letter from
991 1 me to their associate, Don Black, who had been
2 the clerk for Justice Johnson a year or so before
3 that; a letter from me to Mr. Leachman in
4 January; another one in January with four
5 enclosures; a letter from me to Barrie Althoff
6 January 25th, 1999, another from me to Mr.
7 Althoff; and a letter from me to Executive
8 Director Jan Michaels of the State Bar,
9 expressing great concern about the quality of the
10 work by the Office of Disciplinary Counsel.

11 I thought it was appropriate that the Review
12 Committee be appraised of all those documents.

13 Q. Now, Mr. Schafer, you have gone through a whole
14 list of documents. Do you recall if on any of
15 those documents you cc'd the media or any of the
16 newspapers?

17 A. I believe that many of the documents were
18 provided directly and indicated on the footer at
19 the end of the letter that they were provided
20 to -- I usually just use the phrase "media
21 representatives," which means I'll pass it out to
22 any journalist that I choose to pass it out to.

23 Q. Mr. Schafer, I'll show you what's already been
24 marked as Exhibit A-182. This is an e-mail from
25 Julie Shankland to Barrie Althoff, Chris Gray,
992 1 and following that is an e-mail from you to Mary
2 Anne Vance, and I draw your attention to the last
3 page of this exhibit.

4 A. Now, this is not yet an exhibit but I would like
5 it to be.

6 THE HEARING OFFICER: I was just
7 going to point that out. Exhibit A-182 has not
8 been admitted, and if it's being offered --

9 THE WITNESS: I would like it to
10 be admitted. I like everything, as I say --

11 THE HEARING OFFICER: Let it all
12 hang out.

13 THE WITNESS: Lay it all out.

14 MS. GRAY: I have no objection.
15 That can be the original.

16 THE HEARING OFFICER: Okay.

17 Exhibit A-182 is admitted.

18 (Exhibit No. A-182 was received

19 into evidence in behalf of Respondent.)

20 Q. (By Mr. Newman) Mr. Schafer, I draw your
21 attention to the first sentence in the third
22 paragraph and ask you to read that for the
23 record.

24 A. First, to identify this, it was my e-mail to a
25 prominent Seattle lawyer named Mary Anne Vance,
993 1 who advertises in the State Bar News magazine on
2 almost a monthly basis, or so it appears to me,
3 that she is available for consultation on matters
4 relating to trusts and estates and probates;
5 someone who I would assume to have extensive
6 knowledge about matters of fiduciary law, be able
7 to identify a breach of fiduciary duty when it's
8 obvious, at least, and I recognize that her --
9 that Kimberly Goetz; G-o-e-t-z, who was
10 identified in the Bar's Annual Report as the
11 member of the Disciplinary Committee, was
12 identified as a paralegal in the office of Mary
13 Anne Vance.

14 So, I sent this e-mail after Judge
15 Anderson's case had been completely concluded,
16 old and cold, at least with respect to its being
17 handled by the Bar office.

18 In my second paragraph of this e-mail said,
19 "Because of the State Bar Disciplinary Staff's
20 gross incompetence or outright corruption, shown
21 by their mishandling of Anderson's case, I've
22 lost the ability to respect them as lawyers.

23 "The last straw was their negotiating a
24 two-year suspension recommendation for Anderson,
25 and the Disciplinary Board rubber-stamping that
994 1 without even investigating into or considering
2 the astounding degree of fraudulent fiduciary
3 misconduct that he and his former law partners
4 committed.

5 "I write to you in part because I had
6 assumed that your former or present assistant,
7 Ms. Kimberly Goetz, as a Disciplinary Board
8 member nearing the end of her term, would at
9 least recognize the magnitude of fiduciary
10 misconduct committed by Anderson as demonstrating
11 his unfitness as a lawyer.

12 "To my shock, however, she was one of the
13 two Disciplinary Board members who voted against
14 his two-year suspension as being too harsh."

15 Parenthetically, I put, "(I hope that her
16 comfort with Anderson's self-dealing is not due
17 to practices that she has observed at your
18 firm.)"

19 Q. Mr. Schafer, my follow-up questions are: We have
20 learned today for the first time that the Bar
21 lost your box of materials when they moved from
22 their old offices to their present office, which
23 I guess was about December of '96.

24 A. That's what they testified to and it was a shock
25 to me. I had never heard that before.

995 1 Q. Now, the suspension recommendation was made on or
2 about what date, do you know?

3 A. The grievance against Judge Anderson was reopened
4 in February of 1999 after the Supreme Court six
5 months earlier had declared him to -- no, I'm

6 mistaken -- after the legislature had begun
7 proceedings to seek his removal in February of
8 1999, after the Supreme Court declared him to
9 be -- his pattern, clear pattern of dishonest
10 behavior made him unfit to be a judge.

11 Six months later or five months later the
12 Office of Disciplinary Counsel entered into a
13 stipulation for a two-year suspension of his
14 license as a lawyer. That was approved by the
15 Disciplinary Board. Let's see if it says the
16 exact date. I think it was sometime in March, I
17 believe.

18 That ultimately got forwarded to the Supreme
19 Court, which approved it on May 4th of the year
20 2000.

21 Q. Given that we have learned today that the Bar
22 Association lost that information, your
23 information, on or about December of '96, do you
24 have any knowledge whether or not the information
25 you provided was part of the consideration for
996 1 the suspension?

2 A. I was assured repeatedly by Doug Ende, who was
3 the Disciplinary Counsel assigned when this
4 grievance, my grievance of Judge Anderson was
5 reopened, and I specifically on multiple
6 occasions asked if he had all the documentation
7 that I had initially provided, and I was
8 repeatedly assured that he had, and that he had
9 considered it and was considering it.

10 And I sent him an e-mail that specifically
11 called his attention to my internet web site that
12 has all of the, substantially all of the
13 conclusion, you know, the analysis of what that
14 documentation indicates.

15 And I urged him to ask me, contact me if
16 there was any statement made on that web site
17 that he felt he did not recognize the supporting
18 documentation for and I would readily provide it,
19 and he never did.

20 Q. Now, Mr. Schafer, you talked about the Gary
21 Little matter. And with respect to Judge
22 Anderson's removal from the court did you have an
23 understanding of how common that occurs?

24 A. Judge Anderson was the very first Superior Court
25 Judge to ever be removed for misconduct in the
997 1 State of Washington.

2 Q. And does that -- and does the Bar's loss of your
3 file reinforce your statement that you make in
4 that e-mail in the third paragraph regarding Bar
5 incompetence or corruption?

6 A. Absolutely, it reinforces the statement that I
7 made and all of the statements that I have made
8 from my perspective, observing the horrendous,
9 horrendously inadequate response of the Bar
10 Association when a matter as serious as what was
11 obvious in the papers I provided them about Judge
12 Anderson was.

13 MR. NEWMAN: I have no further
14 questions.

15 THE HEARING OFFICER: All right.
16 Any wherever we are here; re-redirect or cross,
17 reexamination by Ms. Gray?

18 MS. GRAY: No, thank you,
19 Mr. Mills.
20 THE HEARING OFFICER: All right.
21 I think you can step down now, Mr. Schafer.
22 (Witness excused.)
23 THE HEARING OFFICER: If we're
24 keeping score here, I think neither side has
25 rested its case, so there's still open
998 1 opportunities to do that.
2 We have had witnesses called by both the Bar
3 Association and by Mr. Schafer, and the record
4 will reflect which witnesses were which.
5 I would leave open now -- my understanding
6 from Mr. Schafer's side is there are no more
7 witnesses you wish to call as part of your case;
8 is that correct?
9 MR. NEWMAN: That is correct.
10 THE HEARING OFFICER: And
11 Ms. Gray, whether you call witnesses as part of
12 your direct -- your opening case, rather -- or as
13 rebuttal, it's open to you if you wish to call
14 any witnesses.
15 MS. GRAY: Mr. Mills, I need to
16 address the issue that arose this morning. Well,
17 it arose on Monday and again this morning with
18 Ms. Shankland's testimony, and I am going to want
19 to call two very brief, what is arguably rebuttal
20 witnesses.
21 And I must -- this is all concerns
22 Mr. Schafer's subpoena to the Bar of the 7th of
23 July which we have talked about a great deal
24 today.
25 I have to state that I think that I have to
999 1 apologize to Mr. Schafer and to Mr. Newman and to
2 Mr. Mills.
3 This morning during Ms. Shankland's
4 testimony she referred to a letter that she wrote
5 to the Commission on Judicial Conduct and
6 Mr. Newman and Mr. Schafer requested that we look
7 for that document.
8 I asked Ms. Matsumoto to direct a search in
9 various places where such a document might be
10 found to see if we could find such a document.
11 I'll start off by saying we did not find
12 such a document, but we did find a document that
13 I am going to produce to the other side.
14 But more importantly, during the course of
15 this morning and this afternoon's search we came
16 across a section of documents in manila file
17 folders that I believe to be at least part of the
18 documents that Mr. Schafer seems to think we
19 should have produced pursuant to the subpoena
20 dated July 7th, 1996, but which we did not
21 produce. We have them here in the courtroom now.
22 They -- based on everything that Mr. Schafer
23 has testified about those documents I believe
24 that they are the documents that he is referring
25 to.
1000 1 The folders do not indicate when they were
2 received or from whom they were received. The
3 box they were found in does not so indicate --
4 and I'm going to put on testimony to this

5 effect -- nor do the "red wells" in which they
6 were located indicate from whom they were
7 received or when they were received.

8 But I believe that -- and Mr. Schafer will
9 know as soon as he sees the folder whether or not
10 that's at least part of what he has been
11 referring to as documents that he provided that
12 have not been produced.

13 So, with the Hearing Officer's permission
14 I'll at least first -- there's no point in
15 putting on the testimony if they are not those
16 documents, so I think I should have Mr. Schafer
17 look at them, but with the Hearing Officer's
18 permission I would like to put on brief testimony
19 from two people who can explain the circumstances
20 under oath.

21 THE HEARING OFFICER: All right.
22 I would like to hear the testimony. And
23 actually, I would like to hear the testimony
24 before we deal with whether these documents are
25 those that are, that were produced by Mr.
1001 1 Schafer.

2 But I'll hear from Mr. Schafer's side. Do
3 you want to look at these documents before the
4 testimony?

5 MR. NEWMAN: Well, let me first
6 say I appreciate Ms. Gray's recognition; that
7 even though it's at the eleventh hour I would say
8 that if I was in a courtroom in a court of law I
9 would move for dismissal right now for failure to
10 provide discovery.

11 I think I did mention, and I did not mention
12 lightly, prosecutorial misconduct. I think it is
13 outrageous to put a man's livelihood on trial in
14 this hearing when we requested documents, and at
15 the eleventh hour they suddenly find them in a
16 box we were told was lost.

17 I personally and professionally cannot
18 express enough of my outrage at what has occurred
19 in this hearing.

20 I am going to move for dismissal, and I'll
21 save it for after these two witnesses make
22 their -- whatever they are going to say. I'm not
23 sure what they are going to say, but I will tell
24 you that this is extremely upsetting to me, and
25 I'm sure to my client, that at the eleventh hour

1002 1 we are now told they finally found, apparently,
2 some of the information we subpoenaed before this
3 hearing.

4 THE HEARING OFFICER: Well, this
5 reinforces -- well, I would like to hear from the
6 witnesses first, I think, about the documents.
7 And then if we need to go off the record for a
8 period of time to have Mr. Schafer and his
9 counsel look at the documents and see what they
10 are, that would be fine.

11 But I think we should hear the testimony as
12 to where the documents came from and where they
13 were discovered. So, I would ask you to call
14 your two witnesses.

15 MS. GRAY: I would like to call
16 Marsha Matsumoto; M-a-t-s-u-m-o-t-o.

17 THEREUPON,
18 MARSHA MATSUMOTO,
19 called as a witness on behalf of the Association
20 herein, after having been first duly sworn, was
21 examined and testified as follows:

22 DIRECT EXAMINATION

- 23 Q. (By Ms. Gray) Ms. Matsumoto, how are you
24 employed?
- 1003 25 A. I am an employee of the Disciplinary Counsel for
1 the Washington State Bar Association.
2 Q. And how long have you been a Disciplinary Counsel
3 for the Washington State Bar Association?
4 A. Since September of '96.
5 Q. And what role have you taken with regard to the
6 hearing in this matter, the Schafer hearing?
7 A. I was assigned to work on this hearing
8 approximately a month ago. I probably started
9 actively doing small projects the beginning of
10 this month.
11 Q. And did there come a time on Monday of this week,
12 Monday, July 17th, when I asked you to perform a
13 task related to an issue that had come up on
14 Monday, July 17th?
15 A. Yes, you did.
16 Q. What did I ask you to do?
17 A. You asked me to look in the grievance file
18 against Grant Anderson for documents provided by
19 Mr. Schafer and also documents related to the CJC
20 investigation proceedings.
21 Q. And did I ask you to compare the documents that
22 you found with any documents that had been
23 produced to Mr. Schafer?
24 A. Yes, you did.
25 Q. And what were you looking for?
1004 1 A. I was looking for documents, correspondence from
2 Mr. Schafer, as well as any documents that were
3 attached to the correspondence, and then in
4 addition, I looked for CJC documents.
5 Q. Is it correct to say that you were looking for
6 documents that had not been produced but which
7 were responsive but that Mr. Schafer had provided
8 to us during the time period requested?
9 A. Well, initially I looked for all documents
10 provided by Mr. Schafer, and then I compared them
11 to the documents that had been provided. So,
12 yes, I was trying to discern whether there were
13 any documents that complied with the subpoena
14 that hadn't been provided.
15 Q. And were you given assistance by anybody?
16 A. Yes.
17 Q. From whom?
18 A. Douglas Ende.
19 Q. What did you do?
20 A. I spoke with Mr. Ende. He and I went to look
21 through the boxes also related to the Grant
22 Anderson grievance. We found two boxes. He and
23 I looked in the boxes to determine whether or not
24 there were documents responsive to the subpoena.
25 Q. And one box contained black binders; is that
1005 1 correct?
2 A. Yes.
3 Q. And from whom had we received those documents?

4 A. Those documents came from CJC.
5 Q. And the other box of documents, did they contain
6 any documents that are sitting on the table?
7 A. Yes.
8 Q. Do they contain a number of manila file folders
9 with handwritten labels?
10 A. Yes.
11 Q. When you reviewed that box of documents on Monday
12 can you describe the box itself?
13 A. Well, this was the box they were in. This was
14 the actual box (indicating).
15 Q. And have you removed from that box documents that
16 are clearly not from Douglas Schafer?
17 A. Yes.
18 Q. When you went through the box, that box on
19 Monday, did you see these manila file folders?
20 A. Yes.
21 Q. What did you do when you saw these manila file
22 folders?
23 A. Mr. Ende and I both looked at them. We tried to
24 determine the source of those folders. We
25 couldn't determine who they were provided by or
1006 1 whether they were provided from multiple sources,
2 so we left them in the box and didn't take them
3 to be produced.
4 Q. And was there any indication on the box from whom
5 they had been received?
6 A. No, we couldn't tell who they had been received
7 from.
8 Q. And later in that day did you report to anyone
9 the results of your search?
10 A. Yes, I did, I reported them to you.
11 Q. Okay. Did those manila folders again come to
12 your attention?
13 A. Yes, they did.
14 Q. Were you asked to perform a task today?
15 A. Yes, I was.
16 Q. By whom?
17 A. By you.
18 Q. What tasks were you asked to perform?
19 A. After Ms. Shankland's testimony you asked me to
20 look for the letter that she may have written to
21 the CJC.
22 Q. And in looking for that letter where did you
23 look?
24 A. I looked -- well, I looked in a couple different
25 places. I looked initially in an RLD 11.1 file
1007 1 in our office to determine if the letter was in
2 that file. I didn't find this. I also then
3 looked in the Grant Anderson grievance file.
4 Q. And did you find a letter in the Grant Anderson
5 grievance file?
6 A. I did.
7 Q. And did you find anything else in the Grant
8 Anderson grievance file?
9 A. Well, these files were also in the box when we
10 were looking for the letter.
11 Q. And who were you with in looking for the letter
12 and when those files came to your attention?
13 A. I was with Disciplinary Counsel Leslie Allen, and
14 at various points Disciplinary Counsel John Berg
15 was also looking for the file, and then

16 Ms. Shankland also came in the office.
17 Q. Did something occur when Ms. Shankland came into
18 the office that alerted you to the possible
19 significance of those manila folders?
20 A. Yes, Ms. Shankland indicated that those folders
21 looked like the materials that Mr. Schafer had
22 provided during the grievance investigation that
23 she worked on.
24 Q. And could she -- what did she say with regard to
25 whether or not they were indeed materials
1008 1 provided by Mr. Schafer during the grievance
2 investigation of the Anderson case?
3 A. She thought that the file folders looked like the
4 file folders and the originals that Mr. Schafer
5 had provided to her, and that this perhaps was
6 the entire box of files that he had provided, or
7 most of them.
8 Q. Did she discuss how those folders -- you know,
9 did she mention what she knew about how those
10 folders came to be in that particular box?
11 A. My understanding is she did not know because the
12 last she knew, the box that she testified about
13 earlier had disappeared and she had not been able
14 to find the documents.
15 Q. And the box on your table is not a yellow box
16 with butterflies, is that correct?
17 A. No, it's not.
18 Q. It's a copy paper box?
19 A. Yes.
20 Q. You say you identified a letter to Paul Taylor
21 from Julie Shankland?
22 A. Yes.
23 MS. GRAY: I would like to provide
24 to counsel a copy of the letter.
25 Q. (By Ms. Gray) This is a letter dated January
1009 1 30th, 1997 from Julie Shankland to Paul Taylor;
2 is that correct?
3 A. Yes, it is.
4 Q. And I think it should be marked A-13.
5 THE HEARING OFFICER: A-13 is not
6 used yet.
7 MR. NEWMAN: Fine with us.
8 (1/30/97 Letter from Shankland to
9 Taylor marked as Association Exhibit No. A-13.)
10 Q. (By Ms. Gray) Does the letter indicate in its
11 contents that any documents were lost?
12 A. Not specifically, although it does say that we
13 have additional documents that we are unable to
14 release today.
15 MS. GRAY: I guess I should move
16 for the Admission of A-13.
17 THE HEARING OFFICER: Any
18 objection?
19 MR. NEWMAN: No objection.
20 THE HEARING OFFICER: All right.
21 Exhibit A-13 will be admitted.
22 (Association Exhibit No. A-13
23 was received into evidence.)
24 Q. (By Ms. Gray) Would you read the content of the
25 letter?
1010 1 A. It says: "Dear Mr. Taylor, enclosed please find
2 copies of the documents from our file that we

3 believe fall within your release. As we
4 discussed on the telephone, we have additional
5 documents that we are unable to release today.
6 We will send you the additional documents as soon
7 as possible. Thank you for your patience.
8 Sincerely, Julie Ann Shankland."

9 MS. GRAY: I have no further
10 questions.

11 THE HEARING OFFICER: All right.
12 Mr. Newman?

13 CROSS-EXAMINATION

14 Q. (By Mr. Newman) I'm going to refer to you as
15 Marsha, if you don't mind. Marsha, is it
16 correct, my understanding, you are co-counsel on
17 this case?

18 A. I'm assigned to work on the case. Obviously, I
19 haven't functioned as active co-counsel during
20 the hearing.

21 Q. You are an attorney, though, correct?

22 A. I am.

23 Q. Now, you were here when you heard Julie Shankland
24 testify that she had written the CJC telling them
25 that the information was lost?

1011 1 A. Yes.

2 Q. And I understood that you --

3 A. Well, let me correct that. I believe her
4 testimony was that she thought she may have
5 written a letter to the CJC which may have stated
6 that the documents were lost.

7 Q. In fact, you engaged in a search for this letter,
8 right?

9 A. Yes.

10 Q. And your result of that search is A-13, correct?

11 A. Yes.

12 Q. And as you read the letter it does not indicate
13 at all that any documents were lost, correct?

14 A. Well, the word lost is not specifically used,
15 that's true.

16 Q. And is there anything Mr. Taylor could read from
17 this letter to imply that you have lost the
18 documents?

19 A. I don't know what Mr. Taylor might discern from
20 the letter. It certainly does say "we have
21 additional documents that we are unable to
22 release today and we will send you the additional
23 documents as soon as possible."

24 Q. Now, in questioning by Ms. Gray she indicated you
25 went through this box and apparently identified
1012 1 materials from Doug Schafer and removed materials
2 that were not from Doug Schafer, apparently, is
3 that correct?

4 A. Yes. Well, I don't know specifically whether
5 these are materials from Doug Schafer -- I'm
6 assuming they are -- and then we did remove other
7 materials that were part of the grievance
8 investigation.

9 Q. My question is: If you couldn't determine what
10 was from Doug Schafer and what was not from Doug
11 Schafer, how could you figure out -- how could
12 you come to conclude that these were from him?
13 Do you understand my question?

14 Let me make it clear to you, because it's a

15 little confusing to me. I understood the
16 question from Ms. Gray is that she said: How do
17 you know what documents were from Doug Schafer,
18 or something to that effect.

19 And I thought you said you could not
20 determine the source of the documents, those
21 documents (indicating), right?

22 A. Yes. When we originally conducted our search, or
23 I did anyway on Monday, I did not know that these
24 documents were from Doug Schafer, if in fact they
25 are.

1013 1 Q. And you just began your search today for those
2 documents?

3 A. No, I searched once on Monday with Mr. Ende, and
4 in looking through the file again today for the
5 CJC letter we looked again at these documents.

6 Q. And you are aware that Mr. Schafer subpoenaed
7 those documents on July 7, correct?

8 A. Well, I understand that from hearing the
9 proceedings in this room.

10 Q. So, if I understand it correctly, the first
11 effort made to find these documents was Monday.

12 A. My first involvement in looking for the documents
13 was Monday.

14 Q. Do you know of anyone else's involvement in
15 looking for those documents prior to Monday?

16 A. I'm assuming that Ms. Gray and Ms. Jacques or
17 someone else from our office conducted some kind
18 of prior search.

19 Q. And they were just unable to find it because why?

20 A. I don't know.

21 MR. NEWMAN: I would like to show
22 you what's already been marked as D-34, I
23 believe.

24 MR. SCHAFER: It's also A-7 or 8.
25 It's the February 29th memo. It's one of the
very first exhibits, Exhibit A-8, as well.

1014 1 Q. (By Mr. Newman) I'm just going to point your
2 attention to the first attachment, which is a
3 memo to appropriate public authorities from Doug
4 Schafer. Do you see that?

5 A. Yes, I do.

6 Q. I point your attention to the third paragraph, in
7 which Doug Schafer states that -- identifies
8 several files. Can you read that paragraph for
9 the record, please?

10 A. The entire paragraph?

11 Q. Please.

12 A. "This memo is to briefly call your attention to
13 several issues presented by the documentation I
14 am providing with it. My 2/16/96 declaration
15 under penalty of perjury memorializes relevant
16 that I was told by parties whom I contacted.

17 "My files that have been copied and provided
18 to you are captioned Hoffman Estate, Pacific
19 Lanes, Surfside, Condo 132, Trendwest, PDC
20 Reports, Financial Address Listing, Pacific Rec
21 Enterprises, abbreviated, Miscellaneous, and
22 Handwritten Notes.

23 Q. All right. And indeed, the files you have here
24 are entitled Hoffman Estate, Trendwest, Inc.,
25 Miscellaneous -- we can go through the list,

1015 1 Miscellaneous -- we can go through the list,

2 here, but they would seem to parallel the letter
3 that was attached to the subpoena and you have
4 identified those; is that right? Do you want to
5 take some time to make sure it's a match?
6 A. Yes, thank you. Yes, it appears that they do.
7 Q. Are any of the files identified by Mr. Schafer
8 not in that material?
9 A. I don't believe so. No, I don't think so.
10 Q. Now, in your conversations with Doug Ende are you
11 aware, do you know if he studied those files as
12 part of the Anderson case?
13 A. I don't believe we discussed that.
14 Q. Were those files where, again? Were they in the
15 Anderson file or where were they?
16 A. In the grievance file against Grant Anderson.
17 Q. And how were you directed to those files? Who
18 told you to look there?
19 A. Initially -- well, today or Monday?
20 Q. Anytime.

21 A. Initially on Monday when I was looking for
22 documents responsive to the subpoena Ms. Gray
23 indicated that the boxes might be in a certain
24 location. Mr. Ende and I went to look for those
25 boxes. He was able to tell me whether or not
1016 1 those were, in fact, the boxes for the grievance
2 file against Grant Anderson.

3 Q. And so when you stumbled across these documents
4 was Mr. Ende with you?
5 A. I'm not sure what you mean by stumbled. When we
6 located the boxes, yes, he was with me.
7 Q. And did he express recognition of those files?
8 A. He recognized them as this was in fact the box
9 that contained the grievance investigation file.
10 So, yes, these files looked familiar to him.

11 MR. NEWMAN: I don't have any
12 further questions.

13 THE HEARING OFFICER: Any
14 redirect?

15 MS. GRAY: No redirect.

16 THE HEARING OFFICER: All right.

17 Ms. Matsumoto, you can step down. Thank you.
18 Why don't you just leave the files there for now.

19 (Witness excused.)

20 MS. GRAY: The Association would
21 next like to call Cynthia Jacques.

22 THE REPORTER: May I change paper?

23 THE HEARING OFFICER: Sure.

24 (Off the record.)
25

1017 1 THEREUPON,

2 CYNTHIA JACQUES,
3 called as a witness on behalf of the Association
4 herein, after having been first duly sworn, was
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 Q. (By Ms. Gray) Ms. Jacques, how are you
8 employed?

9 A. I'm a paralegal with the Office of Disciplinary
10 Counsel.

11 Q. And how long have you been a paralegal with the
12 Office of Disciplinary Counsel?

13 A. Almost two years.

14 Q. And prior to that where were you -- how were you
15 employed?
16 A. I was lead secretary in the Office of
17 Disciplinary Counsel.
18 Q. How long have you worked for the Washington State
19 Bar Association?
20 A. Since August 17th of 1981.
21 Q. Last week did there come a time when you were
22 given an assignment connected to responding to a
23 subpoena that had been received by this office
24 from Mr. Schafer?

25 A. Yes.
1018 1 Q. And from whom did you receive that assignment?
2 A. You gave me the assignment.
3 Q. And what was your assignment?
4 A. You asked me to locate the Grant Anderson
5 grievance box with the grievance in it and go
6 through the files and, pursuant to the subpoena,
7 look for any documents that Doug Schafer
8 submitted to the WSBA, tag those, and also do a
9 list of the documents.
10 Q. And did I give you any instructions as to -- I'll
11 withdraw that. Let me start again. Did you do
12 so?

13 A. Yes, I did.
14 Q. And in going through the box and tagging
15 documents did you observe the manila folders that
16 are in the box on the table as you testified?
17 A. Yes, I did.
18 Q. And when you went through the box last week did
19 you tag those folders?
20 A. No, I did not.
21 Q. To what extent were you able to identify from the
22 folders, from the box when and from whom they
23 were received?
24 A. The file folders that are in here now?

25 Q. Yes.
1019 1 A. I was unable to ascertain who submitted them, and
2 if they were submitted on a certain date, there
3 was no indication to that.
4 Q. With regard to other documents, did you tag some
5 documents?
6 A. Oh, yes.
7 Q. And were you able to determine with regard to
8 those documents from whom and when they were
9 received?
10 A. Yes, I did.
11 Q. And were certain documents produced last week
12 pursuant to that subpoena?
13 A. Yes, they were.
14 Q. Were these documents produced last week pursuant
15 to the subpoena?
16 A. No, they were not.

17 MS. GRAY: I have no further
18 questions.

19 CROSS-EXAMINATION

20 Q. (By Mr. Newman) Ms. Jacques, is there a file
21 entitled "Handwritten Notes" in that material?
22 A. Yes, there is.
23 Q. All right. And you have been assisting Ms. Gray
24 in this prosecution and handwritten notes from
25 Mr. Schafer have been used in this hearing,

1020 1 correct?
2 A. Yes, they have.
3 Q. Can you pull out that file, please.
4 A. (Witness complies.)
5 Q. Ms. Jacques, you indicated there was no
6 indication who that material was from or who it
7 belonged to, is that right?
8 A. I couldn't tell you, no, that's correct.
9 Q. If you go to the file -- aren't there materials
10 in that file; letters from, for example, the
11 Gambling Commission to Mr. Schafer?
12 MR. SCHAFFER: Pacific Lanes file.
13 Q. (By Mr. Newman) The Pacific Lanes file, front
14 page.
15 A. Yes, there is. I did see it.
16 Q. All right. Right in the front, this file is a
17 letter from Doug Schafer on his letterhead, dated
18 February 6, 1996 to the Department of Licensing,
19 correct?
20 A. That's correct.
21 Q. All right. And it mentions Judge Anderson,
22 right, Grant Anderson, correct?
23 A. Yes, it does.
24 Q. And your testimony is that somehow you missed
25 that and did not know it was Mr. Schafer's
1021 1 material?
2 A. Yes, I did not see that. I did not recognize it
3 as materials that he had submitted.
4 Q. If you look on those file folders headings,
5 Ms. Jacques, there's a number of names, like
6 Surfside Inn; you see that? Pacific Lanes; you
7 see that?
8 A. Yes, I do.
9 Q. Condo 132?
10 A. Yes.
11 Q. Trendwest, right?
12 A. Yes.
13 Q. And as a paralegal I'm assuming you were assigned
14 by Ms. Gray to fulfill -- maybe she has already
15 indicated this -- to fulfill and respond to the
16 subpoena by Doug Schafer dated July 7, 2000,
17 remember this?
18 A. Yes, I do remember the subpoena.
19 Q. Do you remember seeing this memo from Mr. Schafer
20 entitled "To Appropriate Public Authorities,
21 Officials"?
22 A. I may have seen this but I'm not familiar with it
23 at this point.
24 Q. I've gone through a laundry list of information
25 that Mr. Schafer outlined by headline, by
1022 1 heading; Hoffman Estate, Pacific Lanes, et
2 cetera.
3 A. I see that.
4 Q. Did you at all look at this in your effort to
5 fulfill the obligations to respond to this
6 subpoena?
7 A. I had a copy of the subpoena only.
8 MR. NEWMAN: Now, Ms. Gray has
9 used some handwritten notes in this hearing. I
10 won't bother to go back and dig those out, Mr.
11 Mills.
12 Q. (By Mr. Newman) My only question to Ms. Jacques

13 is: If those handwritten notes from Mr. Schafer
14 did not come from his file entitled "Handwritten
15 Notes," where did they come from?

16 A. I can't answer that.

17 Q. Did you work for Julie Shankland during this
18 investigation in 1996?

19 A. No, I did not.

20 Q. Did you work for Mr. Ende during this
21 reinvestigation in 1999?

22 A. I worked in the Office of Disciplinary Counsel
23 but I did not work with him.

24 Q. Whether you can answer this question or not, do
25 you know whether Mr. Ende was fully cognizant of

1023 1 these documents when he agreed to the stipulation
2 for Judge Anderson?

3 A. I have no idea.

4 MR. NEWMAN: Mr. Mills, I have no
5 further questions for Ms. Jacques but we would
6 like to ask that Mr. Ende be called as a witness.

7 THE HEARING OFFICER: All right.
8 Well, let me just see if there are any further
9 questions for Ms. Jacques, first.

10 MS. GRAY: No, thank you.

11 THE HEARING OFFICER: Ms. Jacques,
12 you are excused as a witness.

13 THE WITNESS: Thank you.

14 (Witness excused.)

15 THE HEARING OFFICER: Did you want
16 to review these files and records any further?

17 MR. SCHAFFER: I've virtually
18 memorized them. I can tell you what's in every
19 folder. I'll take a look at them, but --

20 MR. NEWMAN: We would like to call
21 Mr. Ende. We have just not very many, a few
22 questions if he's here.

23 THE HEARING OFFICER: Let me make
24 sure Disciplinary Counsel is making a record at
25 her request and at my request, first, before we
1024 1 can decide what to do at this point.

2 Did Disciplinary Counsel intend to call
3 Mr. Ende as a witness?

4 MS. GRAY: I had not intended to
5 but I have no objection to him being called in
6 this regard, and he may still be here, I don't
7 know.

8 THE HEARING OFFICER: Why don't we
9 take a brief recess and see if Mr. Ende is
10 available to testify.

11 (Brief recess taken.)

12 THE HEARING OFFICER: All right,
13 we can go back on the record.

14 MR. NEWMAN: We're ready.

15 THE HEARING OFFICER: Let's go
16 back on the record. Counsel has had a chance to
17 discuss Mr. Ende's availability and situation,
18 and would someone like to advise me what you have
19 decided to do?

20 MS. GRAY: As I indicated
21 previously off the record, Mr. Ende has left the
22 office for the day. His office is dark.

23 I consulted with Mr. Newman and Mr. Schafer
24 just a moment ago about what they hoped to elicit

1025 25 from Mr. Ende as a witness, and I believe it will
1 not be necessary to call him as a witness.
2 The Association is willing to stipulate on
3 this record that Mr. Ende had those manila file
4 folders available to him and reviewed them prior
5 to entering into the stipulation for a two-year
6 suspension with Grant L. Anderson in the Grant L.
7 Anderson case.
8 THE HEARING OFFICER: All right.
9 Is that correct, Counsel?
10 MR. NEWMAN: That is what we
11 wanted to elicit from Mr. Ende. If Ms. Gray is
12 vouching for that, that's fine.
13 THE HEARING OFFICER: All right.
14 That will be a stipulation in the record.
15 Anything further, Ms Gray, on this subject?
16 MS. GRAY: Not on that subject,
17 no.
18 THE HEARING OFFICER: All right.
19 Are there any further witnesses that either side
20 would like to call for any purpose?
21 MR. NEWMAN: No.
22 MS. GRAY: No.
23 THE HEARING OFFICER: All right.
24 My intent today was to attempt to close the
25 testimony, which would require each side to rest.
1026 1 Now, this is in terms of testimony and exhibits.
2 Is the record complete in that regard? Let me
3 hear from both counsel on that.
4 MR. NEWMAN: Yes.
5 MS. GRAY: The record is complete.
6 MR. NEWMAN: Mr. Schafer's only
7 question is now with these documents, he would
8 like those as exhibits for purposes of any
9 review.
10 THE HEARING OFFICER: Is there any
11 objection to that other than the volume?
12 MS. GRAY: I think practically all
13 of them are already in the record, but I don't
14 think I'm in a position here to object.
15 THE HEARING OFFICER: Well, I
16 think it may be useful, assuming there's a review
17 of this proceeding at some point, to see
18 physically what was produced at this point in the
19 hearing.
20 Can we mark the box with all the file
21 folders as one exhibit?
22 MR. SCHAFER: To be referred to as
23 needed, perhaps.
24 MS. GRAY: I think as a practical
25 matter for the record I'm going to suggest an
1027 1 alternative, because Ms. Shankland ultimately
2 won't be able to transmit easily to the
3 Disciplinary Board or to the Supreme Court a box.
4 What I would propose is that we make sets
5 for everyone; the Hearing Officer, Mr. Newman,
6 us, and the original of all documents and all the
7 file folder labels and all of the outside labels
8 to be marked as a replacement exhibit for the
9 box.
10 MR. NEWMAN: However it's done, it
11 doesn't matter to us. I mean, it can all be one

12 exhibit. If you want to do it as Mr. Schafer had
13 produced it, that's fine. Let's just mark it as
14 one exhibit.

15 THE HEARING OFFICER: All right.
16 For the integrity of this exhibit, would counsel
17 or someone like to identify what is in the box or
18 identify the box for the record?

19 MR. NEWMAN: Well, I think we can
20 stipulate to this, perhaps. Mr. Schafer has
21 already gone through it, has verified that it is
22 the materials.

23 MR. SCHAFFER: Not in detail, but
24 it appears.

1028 1 MR. NEWMAN: It appears to be the
2 materials he did provide, except for some
3 memoranda.

4 MR. SCHAFFER: I don't see the
5 perjury statement. The other things have already
6 been admitted that I had prepared. These are the
7 supportive documents, not my memoranda and
8 declaration and whatnot.

9 MR. NEWMAN: And that's already in
10 the record, so in answer to your question,
11 Mr. Mills, Mr. Schafer will authenticate those
12 documents as those he had provided to the Bar.

13 THE HEARING OFFICER: All right.
14 Let's proceed the way Ms. Gray suggests.

15 MS. GRAY: Should we mark it as
16 A-14?

17 THE HEARING OFFICER: That's where
18 we are. Let's mark it as Exhibit A-14.

19 (Box of Schafer Documents
20 marked as Association Exhibit No. A-14.)

21 THE HEARING OFFICER: Is there
22 any objection to Exhibit A-14 being admitted?

23 MR. NEWMAN: No.

1029 1 THE HEARING OFFICER: Exhibit
2 A-14, which is the box of documents, all the file
3 folders therein and documents therein, is
4 admitted as A-14.

5 (Association Exhibit No. A-14
6 received in evidence.)

7 THE HEARING OFFICER: All right.
8 I guess I have received statements from Counsel.
9 The record is complete as far as each side is
10 concerned; is that correct?

11 MS. GRAY: Yes, it is.

12 THE HEARING OFFICER: All right.
13 Would you like to go off the record to discuss
14 arrangements for closing or is there anything
15 else we need to address on the record?

16 MR. NEWMAN: Well, if the Bar is
17 concluding its case I am going to formally move
18 to dismiss based on two grounds, and I would like
19 this on the record.

20 THE HEARING OFFICER: All right.

21 MR. NEWMAN: The first is failure
22 to provide discovery as required by the civil
23 rules. We have this eleventh hour disclosure and
24 explanation that reminds me of the AG's Office's
25 failure to file that appeal, the notorious
26 appeal, within 30 days; someone misplaced the

24 order, that kind of thing. But first of all, the
25 first basis is failure to provide discovery.
1030 1 Secondarily, and more fundamentally is our
2 belief that the Bar Association has not carried
3 its burden of proof in this case. As you are
4 well aware, Mr. Mills, the burden of proof under
5 Rule 4.11 -- and I can pull it out here for
6 you -- but it's clear preponderance of the
7 evidence.

8 And in the seminal case of In Re: Little,
9 which interpreted that term, clear preponderance
10 of the evidence, the Supreme Court stated that:
11 "Every doubt should be resolved in his favor, and
12 only upon a clear preponderance of the evidence
13 that the acts charged have been done and were
14 prompted by improper motives" -- I want to
15 emphasize that -- "and were prompted by improper
16 motives, should disciplinary action be taken.

17 "The privilege -- and it is a privilege, not
18 a right -- to practice his profession cannot be
19 lost to a practitioner upon slight evidence."

20 The key question, when I began my opening --
21 and I'm not doing my closing now, obviously --
22 but in 4.11 the whole purpose of this hearing is
23 intended to determine whether a lawyer's conduct
24 should have an impact upon his license to
25 practice law.

1031 1 We have talked about the preamble to the
2 rules, which talk about attorneys as guardians of
3 the law. That preamble as well says that: "Not
4 every situation which a lawyer may encounter can
5 be foreseen, but fundamental ethical principles
6 are always present as guidelines."

7 This, quite frankly, is one of those
8 situations which the Bar Association has not
9 carried its burden of proof. Mr. Schafer is
10 clearly recognized as a whistle-blower. The Bar
11 concedes he achieved a laudable result.

12 If you go back to the In Re: Little case --
13 which, by the way, Mr. Mills, is found at 40
14 Washington 2d, 421, a 1952 case -- I don't think
15 anyone can seriously challenge the motives of Mr.
16 Schafer.

17 It's been made abundantly clear that he
18 acted with the best interests of the judiciary,
19 with the best interests of the people in
20 revealing a corrupt judge who was indeed corrupt.

21 We can talk about the failure of the Bar
22 Association to, on the crime fraud exception, you
23 talk about if a lawyer reasonably believes.

24 Mr. Schafer has already testified he's not a
25 criminal lawyer. His actions speak volumes. He
1032 1 reported to the FBI, the IRS, the County
2 Prosecutor, the AG's office, the State Bar
3 Association, the CJC predicate acts which
4 appeared to him, even as a civil lawyer, as
5 something was wrong, something stunk.

6 The term itself, "when a lawyer reasonably
7 believes," I think it's crucial that it's the
8 lawyers's reasonable belief, the lawyer's
9 reasonable belief, not the Bar Association's
10 reasonable belief.

11 I think what Ms. Gray tries to do is say
12 that because Mr. Hamilton has no apparent
13 criminal history, which we don't know, and even
14 though the FBI is still investigating him, that
15 somehow Mr. Schafer's conclusions were wrong.

16 Again, we go back to the burden of proof,
17 which is the core of this motion to dismiss. I
18 want to emphasize that what Doug Schafer did with
19 respect to Mr. Hamilton, which is germane to this
20 case, is simply establish the corporate entity.

21 He did not represent the Hoffman Estate, he
22 did not represent Hamilton regarding the sale of
23 the bowling alley, did not represent Anderson,
24 and I think it's clear from the record that
25 Mr. Hamilton has a history of using attorneys.

1033 1 And we talked about the McKean case, where the
2 FBI had a sting going and Mr. Hamilton's bank was
3 used in that operation.

4 We are talking about joint conduct between
5 Mr. Hamilton and Mr. Anderson that resulted in an
6 extremely serious harm to a public hospital
7 district located in remote, rural Ilwaco,
8 Washington. And I go back again to the In Re:
9 Little case, the definitive case on what clear
10 preponderance means.

11 Again, the Bar would have to establish to
12 get over my motion that Mr. Schafer was prompted
13 by improper motives, and I don't know if you
14 caught this, but Mr. Schafer made a statement
15 that he had always been a boy scout. He's the
16 kind of guy that reports bad guys.

17 You know, we have already repeatedly talked
18 about our opinion that the Bar Association is
19 pursuing this effort, pursuing this persecution
20 in bad faith. We do believe that.

21 I won't go into detail, but I think the fact
22 that this box suddenly was lost or apparently was
23 lost, now reappears, is indicative of some
24 problems.

25 Consequently, we are asking you to consider
1034 1 our motion to dismiss because of the Bar
2 Association's failure to carry its burden of
3 proof, clear preponderance of the evidence, and
4 recognize as the -- I won't point out the case,
5 but the highest duty an attorney has to the
6 justice system is to make sure it's fair, to make
7 sure it's fair, and I think it's time to stop
8 torturing Mr. Schafer.

9 He is a solo. I'm here as a volunteer to
10 help him out, along with Mr. Mullins. I strongly
11 believe in his cause and I think it's about time
12 the Bar Association realizes this was a mistake.

13 THE HEARING OFFICER: Thank you
14 for your argument. Ms. Gray, would you care to
15 respond?

16 MS. GRAY: With regard to the
17 first basis for the motion to dismissal, I must
18 repeat again my apology for the failure to
19 provide these manila folders prior to today, my
20 embarrassment that they were not.

21 That having been said, I do not believe that
22 the failure to provide discovery should provide a

23 basis for dismissal in this case. Mr. Schafer
24 noted on the record just moments ago that the
25 material was all intimately familiar to him and
1035 1 that he has seen it and that he had it and that
2 he didn't need it now to complete the record of
3 this hearing.
4 These were all documents that Mr. Schafer
5 provided to the Association. That is not to say
6 that I, again, am not embarrassed that they
7 weren't provided timely last week and that I'm
8 not apologizing for that.
9 With regard to whether or not the
10 Association has carried its burden of proof, I
11 would be happy to go into it. I don't know if
12 the Hearing Officer would like me to address that
13 in some detail now.
14 I know that -- and both sides have rested.
15 Usually this motion is made when the Association
16 rests and before the Defense rests.
17 We have summations on Monday. Obviously,
18 much of the summation will address whether or not
19 we have carried our burden of proof and whether
20 or not you should so find.
21 I would be happy to address it now if you
22 wish, but --
23 THE HEARING OFFICER: I don't
24 think it's necessary to do that. If there's
25 something more you want to say I'll be happy to
1036 1 hear it. I think I --
2 MS. GRAY: No.
3 THE HEARING OFFICER: I'm ready to
4 rule on the motion to dismiss. It has two parts;
5 first is the motion to dismiss for failure to
6 provide discovery.
7 I, too, regret that we're in a position
8 where discovery was not timely provided. Based
9 on the record today I do not find it was done in
10 bad faith or maliciously.
11 I think there has not been an argument made
12 to me regarding the prejudice to Mr. Schafer
13 caused by the failure to have these documents at
14 the commencement of the hearing.
15 In fact, I think if there were such an
16 argument I think the dismissal of the entire
17 matter is too draconian a sanction for failure to
18 provide discovery, and the sanction would simply
19 be a continuance for whatever time would be
20 necessary to remedy the problem and then the
21 consideration of monetary sanctions, if any, not
22 to dismiss. So, I'm not going to dismiss these
23 proceedings on that ground.
24 As to the burden of proof, what that really
25 forces me to do, because of the timing of this --
1037 1 and I realize that perhaps in terms of hearing
2 management this was not the best performance by
3 the Hearing Officer because there wasn't a clear
4 delineation from when the Disciplinary Counsel
5 had rested and the opportunity to make this
6 motion in the middle.
7 But I would find at this point that there is
8 a prima facie case made by the Association and,
9 really, you're asking me to decide the issue now

10 and I'm not prepared to do that.

11 So, I guess in one sense I'm just deferring
12 the decision on this. It's still possible I
13 could decide to dismiss these proceedings. I
14 would like the opportunity to review the
15 voluminous exhibits and have argument of Counsel.

16 I think there are important legal issues at
17 stake here. It's not just factual issues, but I
18 would like to have the complete record and the
19 complete input from counsel, not only in the form
20 of legal argument but also in the form of
21 proposed written findings and conclusions and
22 recommended sanctions, if any, that I have asked
23 for previously.

24 So, I'll deny the motion to dismiss at this
25 time and proceed to closing arguments. Is there
1038 1 anything further on this?

2 MR. NEWMAN: With respect to
3 closing arguments, I do have a request.
4 Mr. Mullins and I would like to split up that,
5 our portion of the closing arguments. He would
6 like 20 minutes and I will take whatever balance
7 is left of that time.

8 THE HEARING OFFICER: Is there any
9 objection to that?

10 MS. GRAY: No, I have no objection
11 to that, although my request would be that they
12 not repeat each other, but given that you have
13 limited our time, I believe, to an
14 hour-and-a-half each --

15 THE HEARING OFFICER: Yes.

16 MS. GRAY: -- as long as they
17 manage that I have no objection.

18 THE HEARING OFFICER: All right.
19 Let's stay on the record. I would like to
20 discuss the timing of closing.

21 We had discussed yesterday the possibility
22 of starting on Monday at 8:15 a.m. I'm kind of
23 reconsidering that, but I know that we were
24 discussing that because of a scheduling problem
25 you had, Mr. Newman, I think.

1039 1 MR. NEWMAN: I'm supposed to have
2 a deposition in the afternoon, which I think is
3 going to be cancelled, so I can -- I think that's
4 going to be resolved, so it wouldn't appear -- I
5 had a trial set that day that's been bumped, and
6 I have a dep set in the afternoon and I don't
7 think that's going to go, so --

8 THE HEARING OFFICER: Well, given
9 that, I would prefer, anyway, to start at 9:00
10 a.m. on Monday. I will allow each side up to an
11 hour and-a-half of kind of air time, if you will.
12 I don't necessarily think it should take an
13 hour-and-a-half. I'm not saying you have to take
14 all of that time, but I will keep time so that no
15 one side get more than an hour and-a-half.

16 So, my anticipation would be that closing
17 arguments would be completed on Monday morning.
18 And we say the time in part because I do think
19 this a matter of public interest and I want to
20 make sure that if people want to be here to
21 observe that, they can.

22 So, if that works for everyone we'll resume
23 the hearing on Monday at 9:00 a.m. for closing
24 arguments.

25 The record will be closed at this time.

1040 1 This is not to say the hearing is closed, because
2 if the hearing is closed then I have 20 days to
3 render my findings and conclusions. So, the
4 hearing will not be closed, of course, until
5 after closing arguments on Monday.

6 Is there anything further we need to address
7 for today?

8 MR. NEWMAN: No.

9 MS. GRAY: Nothing.

10 MR. SCHAFER: I guess the only
11 other question is these exhibits. Will it be
12 possible for the Bar to prepare a table of all
13 the exhibits that have been presented and fax it
14 to us so we're all working off the same
15 numerical?

16 I think I've got everything through the
17 lunch break, but the additional things this
18 afternoon.

19 MS. GRAY: It may be appropriate.
20 We can prepare an updated exhibit list. We
21 provided one, of course, for our first 10, but
22 have not provided an updated one.

23 We can provide the Hearing Officer and Mr.
24 Schafer with one probably sometime before the end
25 of the day tomorrow. And Mr. Schafer, if you

1041 1 would like us to fax it to you we would be happy
2 to do so.

3 Mr. Mills, do you wish us to fax it to you
4 tomorrow, as well?

5 THE HEARING OFFICER: I normally
6 prepare my own, but if you're going to do it I
7 would coattail on that.

8 MS. GRAY: Well, we've prepared a
9 partial list already, we try to update it, so
10 that would be appropriate.

11 THE HEARING OFFICER: That would
12 be useful.

13 Incidentally, my intent is to take the
14 Hearing Officer's copies of the exhibits away
15 today so that I can review them before Monday,
16 but the official exhibit file will remain here.

17 So, if anybody wants to come and look at
18 those, those are here, obviously, for examination
19 at any time.

20 All right. Is there anything further for
21 today?

22 MR. NEWMAN: No.

23 THE HEARING OFFICER: All right.
24 We will be in recess until Monday at 9:00 a.m.

25 - - - - -

1042 1 (Whereupon, the proceedings adjourned
2 for the day at 4:37 o'clock p.m.)

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4 END OF VOLUME 4

5 VOLUME 5 CONTINUES ON PAGE 1044

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C E R T I F I C A T E

1 STATE OF WASHINGTON)
2) SS.
3 COUNTY OF KING)

4 I, the undersigned Notary Public in and for
5 the State of Washington, do hereby certify that in the
6 case of In Re: Douglas A. Schafer, Attorney at Law,
7 Washington Bar No. 8652 and Public No. 00#00031, the
8 hearing in the above named cause began at the hour of
9 9:00 o'clock a.m., the 17th day of July, 2000; that I
10 was authorized to and did report stenographically the
11 aforementioned proceedings and that the foregoing pages
12 comprise a true and correct transcription of those
13 proceedings.

14 IN WITNESS WHEREOF, I have hereunto set my
15 hand and affixed my official seal this 10th day
16 of October, 2000.

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MARK E. KING, CSR, RPR, and Notary
Public in and for the State of
Washington, residing at Bellevue.
My Commission expires March 16, 2001.
CSR License No. KING*ME43001

BEFORE THE DISCIPLINARY BOARD
OF THE

WASHINGTON STATE BAR ASSOCIATION

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In Re:)
) Volume 5
DOUGLAS SCHAFER,)
) Day 5
An Attorney-at-law,)
) Pages 1044-1135

Bar No. 8652 - Public No. 00#00031

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TRANSCRIPT OF PROCEEDINGS

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A hearing was held in the above-captioned matter beginning at the hour of 9:00 a.m. on the 17th day of July, 2000, at 2101 Fourth Avenue, Baker Room, Seattle, Washington, before Hearing Officer Lawrence R. Mills.

Reported By: Mark E. King, CSR, RPR

The parties were present and represented as follows:

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For The Bar: WASHINGTON STATE BAR ASSOCIATION
Office of Disciplinary Counsel
CHRISTINE GRAY, ESQUIRE
MARSHA MATSUMOTO, ESQUIRE
2101 Fourth Avenue
Fourth Floor
Seattle, WA 98121-2330
For Respondent: SHAWN NEWMAN, ESQUIRE
Attorney at Law
2507 Crestline Drive NW
Olympia, WA 98502
For Respondent: BADGLEY-MULLINS LAW GROUP
1201 Third Avenue, Suite 5100
Seattle, WA 98101
BY: DONALD H. MULLINS, ESQUIRE
Also Present: Douglas Schafer
Cynthia Jacques

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I N D E X

2	CLOSING ARGUMENTS	PAGE
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4	By Mr. Newman	1086
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6	By Ms. Gray	1130

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Seattle, Washington, Monday, July 24, 2000

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9:05 a.m.

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THE HEARING OFFICER: All right.

5

Is everyone ready to proceed?

6

MS. GRAY: Yes, Mr. Mills.

7

THE HEARING OFFICER: All right.

8

Let's go on the record. This is actually the

9

fifth day of the Disciplinary Hearing in regard

10

to Douglas A. Schafer. Today we are scheduled

11

for closing argument.

12

Before we do that, let me indicate for the

13

record that at the Hearing Officer's request both

14

the Bar Association and Mr. Schafer have

15

submitted proposed findings of fact, conclusions

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of law, and sanctions, recommended sanctions, if

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any, and those have been lodged in these

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proceedings and the Hearing Officer has a copy of

19

that.

20

In addition, the Association has submitted a

21

supplemental hearing brief regarding continuing

22

crimes which I have received also this morning.

23

Have counsel exchanged all these documents?

24

MS. GRAY: Yes.

25

THE HEARING OFFICER: Everyone has

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1

all these?

2

MR. NEWMAN: Yes.

3

THE HEARING OFFICER: All right,

4

thank you. As we discussed at the conclusion of

5

our last session, the closing arguments this

6

morning will be limited to no more than an hour

7

and a half for each side, and I will keep time

8

and try to, you know, make sure that that is

9

adhered to.

10 I have already had a request to divide time
11 between the counsel for Mr. Schafer, and you may
12 divide the time any way you choose.

13 I will allow the Bar Association, which has
14 the burden of proof, to open and close. So, Ms.
15 Gray, you should reserve enough time, if you
16 wish, to close, to have a final word in closing
17 argument.

18 MS. GRAY: I would like to reserve
19 15 minutes for any rebuttal.

20 THE HEARING OFFICER: All right.
21 I'll try to warn you if you are exceeding your
22 time. The record should reflect that I have
23 received estimates from counsel of the time, and
24 an hour and a half appears to be more than
25 adequate time for both sides to present whatever
1049 1 they want to present for closing.

2 Are there any preliminary matters that we
3 should address before we begin closing arguments?

4 MS. GRAY: I would just like to
5 note that I have provided the Hearing Officer
6 with an official record of A-14, his personal
7 copy of A-14, and I have provided a copy of A-14
8 to the respondent.

9 THE HEARING OFFICER: All right.
10 We might also indicate, just for the record,
11 that, Mr. Schafer, this morning you substituted,
12 I believe it was D-19, the original of Exhibit
13 D-19 for the exhibit that's been previously
14 admitted.

15 It's identical, we just were substituting an
16 original for a copy. So, that's been done.

17 Mr. Newman, you wanted to say something?

18 MR. NEWMAN: Well, I just wanted
19 to make it clear that A-14 was materials the Bar
20 Association indicated had been lost but then was
21 found, the box of documents that Mr. Schafer had
22 provided the Bar back in apparently February,
23 1996, and as you recall, Julie Shankland
24 testified it had been lost.

25 THE HEARING OFFICER: That's
1050 1 correct.

2 MR. MULLINS: Oh, one more point.
3 I would ask that we be provided leave to respond
4 to the supplemental hearing brief we received
5 from Ms. Gray this morning that's entitled
6 "Association's Supplemental Hearing Brief Re:
7 Continuing Crimes."

8 I have perused it but, obviously, we would
9 ask for a reasonable, reasonable period of time
10 in which to make our response, our written
11 response.

12 THE HEARING OFFICER: Is there any
13 objection to allowing time for a response?

14 MS. GRAY: No objection.

15 THE HEARING OFFICER: All right.
16 At the conclusion of the argument we will set a
17 time line for further briefing on this issue.

18 MR. MULLINS: Thank you.

19 THE HEARING OFFICER: All right.
20 Is there anything further before we begin closing
21 arguments? All right. We'll proceed with

22 closing arguments. Ms. Gray, you may proceed
23 when you are ready.

24 MS. GRAY: Thank you, Mr. Mills.
25 The respondent, Douglas Schafer, will not follow
1051 1 what the ethical rules require. He didn't in
2 1996 and he won't now.

3 He has appointed himself the sole arbiter of
4 what is moral and of what is ethical. He thinks
5 he knows better than everyone, including his
6 client, who told him not to disclose, and
7 including the Supreme Court, which adopted RPC
8 1.6.

9 Clients go to their lawyers with their
10 problems, difficult problems, and they look to
11 their lawyers to keep their confidences and keep
12 their secrets and to protect their interests.

13 The respondent made it clear when he spoke
14 to William Hamilton and Philip Sloan on February
15 1st, 1996, and he has made it clear again last
16 week, that he doesn't care what RPC 1.6 says, he
17 doesn't care what effect a disclosure might have
18 on his client.

19 If he personally decides that there is a
20 higher purpose to disclosure of his client's
21 secrets, he will disclose it.

22 Now, RPC 1.6, which is on the board here for
23 the Hearing Officer to refer to, is of critical
24 importance to the lawyer's role within the system
25 of justice. The confidentiality provisions of

1052 1 RPC 1.6 help define the lawyer-client
2 relationship so that our system of justice can
3 work.

4 And it already reflects much debate and much
5 thought and much balancing, a balancing of the
6 tension of interests between the lawyer's duty to
7 keep a client's secrets and confidences, and the
8 sometimes strong needs for disclosure that are
9 reflected in the exceptions in RPC 1.6(b) and
10 (c). There are three exceptions.

11 The RPC 1.6 duty of confidentiality is so
12 important that it is included in the oath that
13 lawyers take.

14 I'm handing to the Hearing Officer as an
15 aid, and first to respondent's counsel, a copy of
16 the oath as it existed in 1978 when Mr. Schafer
17 was admitted to practice in the State of
18 Washington.

19 Under Admission to Practice Rule 5(g)(6),
20 the oath of office says: "I will maintain the
21 confidence and preserve inviolate the secrets of
22 my client." That is the oath of office that Mr.
23 Schafer took in 1978.

24 Now, I'm going to go through, once again,
25 facts that I'm sure are quite familiar to you by
1053 1 now, so I will go through them quickly.

2 In 1992 Bill Hamilton had an attorney/client
3 relationship with the respondent. He went to the
4 respondent, asking him to form a corporation so
5 that he could purchase a bowling alley from an
6 estate.

7 And during that period of time on two dates
8 in August, 1992 Bill Hamilton told the respondent

9 that he wanted to purchase this bowling alley and
10 he needed to do it quickly and he told Mr.
11 Schafer why.

12 He told him he needed it done fast, he was
13 getting a good deal from someone who was about to
14 become a judge, and that that person, the lawyer
15 for the estate, had been milking the estate for a
16 number of years. That lawyer, as we know, is
17 Grant Anderson.

18 The respondent put his hands over his ears,
19 said, "I don't want to hear about it." He formed
20 the corporation. He took his fee from
21 Mr. Hamilton. In 1992 he took no action to
22 investigate, he took no action to report.

23 And as his own testimony indicated, the 1992
24 comments from Mr. Hamilton to Mr. Schafer were
25 not particularly conclusive of fraud.

1054 1 In January of 1993 Grant Anderson became a
2 judge. In 1993 the respondent took no action to
3 investigate or to report any of the activity of
4 Mr. Hamilton or Mr. Anderson.

5 In 1994 he took no action to investigate or
6 report. It wasn't until 1995 when the respondent
7 was personally appearing before then Judge Grant
8 Anderson, representing a client, Donald Barovic,
9 it was only then that he started taking action.

10 In 1995, after Judge Anderson made rulings,
11 both while the respondent was representing
12 Mr. Barovic and prior to that time, making
13 rulings against Mr. Barovic that the respondent
14 didn't like, only then did he investigate or
15 report any activities that related to the sale of
16 the bowling alley.

17 Now, as you know and as you are quite
18 familiar, having sat through last week,
19 Mr. Hamilton repeatedly instructed the respondent
20 not to pursue the matter. He instructed the
21 respondent not to disclose attorney/client
22 information relating to the respondent's 1992
23 representation of Mr. Hamilton.

24 Most significantly, that includes a February
25 1st, 1996 meeting in which Philip Sloan, who was
1055 1 then representing Mr. Hamilton, and Mr. Hamilton,
2 met with Mr. Schafer.

3 At that meeting Mr. Sloan told the
4 respondent unequivocally that he must not and
5 that under the ethics rules he could not disclose
6 information about Mr. Hamilton's bowling alley
7 purchase.

8 In response, according to the respondent's
9 own testimony, he told Mr. Sloan, he told Mr.
10 Hamilton, "I am not going to look the other way.
11 I will expose Judge Anderson. I don't give a
12 damn if it violates some rule."

13 After that time the respondent made numerous
14 and extensive disclosures over the course of
15 February, 1996 through April, 1996.

16 He disclosed to the Pierce County
17 prosecutors, he disclosed to federal law
18 enforcement, to the FBI, to the IRS. These
19 disclosures exposed his former client to criminal
20 investigation.

21 He exposed -- he made disclosures to the
22 Attorney General's Office, he disclosed to the
23 Commission on Judicial Conduct, he disclosed to
24 the Washington State Bar Association, he
25 disclosed to the numerous attorneys and the court
1056 1 on the Barovic case, and most significantly, he
2 disclosed to the Tacoma News-Tribune and the
3 Seattle Post-Intelligencer and the Seattle Times.
4 His disclosures during that period of time were
5 extensive and public.

6 What did he disclose? In his testimony he
7 has emphasized that he disclosed many public
8 documents that he had gathered during the course
9 of his investigation, items that he learned
10 between December and February.

11 But he has not emphasized that his
12 disclosures included the detailed comments made
13 by his client to him in 1992 in all the detail
14 that he remembered.

15 Those comments were spelled out on the first
16 page of Exhibit A-7. That's the February 16th,
17 1996 declaration under penalty of perjury.

18 Those comments were not from public
19 documents, those comments were part of the
20 attorney/client communication that took place in
21 1992.

22 And also, by his own testimony, his
23 disclosures included turning over documents, his
24 file folder from his 1992 representation of
25 William Hamilton, containing his own handwritten
1057 1 notes of his conversations with Mr. Hamilton in
2 1992.

3 His disclosures went way far beyond public
4 documents that he had gathered between December,
5 1995 and February, 1996.

6 And if you will recall, on the first day of
7 testimony, last week on Monday, with regard to
8 the series of disclosures, I think in each case I
9 asked him what was the motive behind the
10 disclosure and in each case he talked about
11 exposing a corrupt judge.

12 And with regard to the Barovic appeal court
13 he gave clear, unequivocal testimony. He had two
14 motives; one was personal vindication of the
15 ruling that Judge Thompson had given the prior
16 month removing him from the Barovic case, and the
17 other was to publicly expose someone whom he
18 believed to be a corrupt judge, and that is born
19 out by the fact that that same day he transmitted
20 part of the appendix in the Barovic appeal to the
21 newspapers.

22 Now, the RPC 1.6 exceptions rely on a
23 lawyer's reasonable belief at the time that he
24 makes a disclosure.

25 There are three exceptions; to prevent the
1058 1 client from committing a crime, to establish a
2 claim or defense on behalf of the lawyer in a
3 controversy between the lawyer and the client --
4 that's not applicable here; to establish a
5 defense to a criminal charge or a civil claim
6 against the lawyer based upon conduct in which
7 the client was involved -- that doesn't apply

8 here; to respond to allegations in any proceeding
9 concerning the lawyer's representation of the
10 client -- that doesn't apply here; or pursuant to
11 court order -- that doesn't apply here.

12 And (c); a lawyer may reveal to the tribunal
13 confidences or secrets which disclose any breach
14 of a fiduciary by a client -- that doesn't apply
15 here.

16 The only exception in RPC 1.6 as written
17 that is arguably applicable here is exception
18 (b)(1), and I would like to address that argument
19 for a moment.

20 The testimony taken as a whole, listened to
21 carefully, indicates that the respondent did not
22 believe in February, 1996 that Mr. Hamilton had
23 committed a crime.

24 He testified all morning on Monday, July
25 17th. He was asked about his motives all
1059 1 morning. He never once indicated that he thought
2 there was any kind of crime committed by
3 Mr. Hamilton or any kind of crime continuing, a
4 crime that could be prevented. That's what the
5 words of (b)(1) require, preventing something.

6 On Monday afternoon during the course of the
7 testimony Mr. Newman asked the respondent a
8 leading question about whether or not he had a
9 belief that there was an ongoing crime, and the
10 answer was instructive, as was his testimony over
11 the rest of the week.

12 In response to that question Mr. Schafer
13 testified about a number of things. He talked
14 about suspicions that he had, using the past
15 tense, that something had happened, that there
16 had been a Cadillac, that there had been a breach
17 of fiduciary duty.

18 He testified at that time that he didn't
19 know the criminal law. He said in his view, once
20 the feds, the federal investigative authorities,
21 think that someone is a bad actor, they will find
22 some statute. That is not a reasonable belief.

23 He also testified that as long as, in his
24 view, a victim, a beneficiary of an estate that
25 should have received value, was deprived of the
1060 1 value, it seemed continuing in his mind.

2 Well, that is not the law and it certainly
3 doesn't suggest that anything could be prevented.

4 Exhibit D-29 came in on the respondent's
5 case, and I would like to read from the bottom of
6 page 2 of D-29. This is an e-mail from Doug
7 Schafer to Bob Van Voris in December of 1999, and
8 he's talking about his state of mind at the time
9 that he spoke to Professor Strait. That's
10 February 5th, 1996, and he says, quote -- I'm at
11 the bottom of the second page.

12 THE HEARING OFFICER: Okay, I'm
13 there, thank you.

14 MS. GRAY: "For one thing, at that
15 time all I thought I had discovered was flagrant
16 self-dealing in breach of fiduciary duties --
17 which I'd never thought of as a crime. I'd also
18 been given the tip by Diane Anderson's divorce
19 lawyer ("don't tell anyone you heard this from

20 me," he said) to look into how the judge got his
21 Cadillac, but I still never thought that what I
22 was onto was a crime."

23 After Mr. Schafer testified about his
24 beliefs in the context of an ongoing crime on the
25 first day of the hearing he testified for several
1061 1 more days. He testified through most of Tuesday,
2 Wednesday and Thursday, with some relatively
3 brief interruptions for other witnesses.

4 During that period of time on several
5 occasions Mr. Newman asked him a leading
6 question, using the phrase "continuing or ongoing
7 crime."

8 In each instance the respondent did not
9 answer, "Yes, I thought that." He launched into
10 a narrative where he always described any
11 activity in the past tense. He never again
12 testified in a way that would indicate that his
13 belief in 1996 was that there was something
14 ongoing that could be prevented.

15 And indeed, in 1996 there was nothing to
16 prevent. The bowling alley deal was done at the
17 end of '92 and all the property was transferred
18 by the end of 1993. The Cadillac payments were
19 over by the end of May, 1995.

20 There was no affirmative acts of concealment
21 by Mr. Hamilton, and even if there had been, that
22 would not be indicative of an ongoing crime.

23 It is not a crime, I will note, for Mr.
24 Hamilton to refuse to answer Mr. Schafer's
25 questions on February 1st, 1996. That is not a
1062 1 crime.

2 Mr. Schafer, in all his days of testimony,
3 did not identify a single anticipated act by his
4 client, Mr. Hamilton, that he sought to prevent.

5 And, indeed, in his testimony, again, on
6 that first day, he talked and he used the phrase
7 that he thought he couldn't so much not prevent
8 it, but cure it. That's the phrase he used.
9 That's what he had in his mind.

10 He was talking about rectifying or curing a
11 fraud or something that had happened in the past,
12 not preventing anything.

13 This same view is expressed in Mr. Schafer's
14 admissions to the Bar Association for the Review
15 Committee; that's A-139 and A-144. He doesn't
16 talk about preventing but he does mention
17 rectifying.

18 None of his submissions to the Bar,
19 including his answer, referenced a motive to
20 prevent any ongoing crime by his client.

21 THE HEARING OFFICER: Ms. Gray,
22 excuse me for interrupting. Could I ask a
23 question?

24 Under the existing Rules of Professional
25 Conduct and, specifically, Rule 1.6 (b)(1), if a
1063 1 lawyer learns that his services have been used in
2 the past to commit a crime, can the lawyer then
3 disclose confidential information in an attempt
4 to rectify that?

5 MS. GRAY: No. There are states,
6 there are a few states of the 50 that do allow

7 for rectification or mitigation of a crime when
8 the lawyer's services have been used. I believe
9 New Jersey is one of those states. I think it's
10 possible Massachusetts is one of those states.
11 Relatively few of the 50 states have such an
12 exception.

13 There is a proposed exception that is being
14 considered by the American Bar Association
15 presently. It hasn't been adopted. It was
16 debated years before, it will be debated again
17 now, but that is not the law here in Washington.

18 THE HEARING OFFICER: Thank you.

19 MS. GRAY: The next aspect of RPC
20 1.6 that I want to focus on is a very important
21 phrase: "A lawyer may reveal such confidences to
22 the extent the lawyer reasonably believes
23 necessary."

24 Even if an exception applies, it is not
25 carte blanche to say anything to anyone; it is
1064 1 only to the extent necessary to achieve the
2 stated purpose.

3 Between August of 1992 and December of 1995
4 the respondent apparently believed it was
5 reasonable for him to do nothing. Judge Anderson
6 was a judge from January of 1993, on.

7 That changed in 1996. The easy case
8 scenario on the facts of this hearing relate to
9 the April 26th public filing in the Barovic case
10 and the facsimile to the three newspapers. That
11 is the easy case scenario in determining whether
12 the respondent limited disclosures to the extent
13 reasonably necessary.

14 The disclosures to the newspaper and public
15 filing reflects no judgment on behalf of Mr.
16 Schafer on limiting the extent of disclosure.
17 There was no redaction in the materials he
18 provided. There was no protective order.

19 Mr. Schafer has testified that his main
20 focus during this period of time was Surfside.
21 He thought the main fraud, the clearest fraud was
22 Surfside. That didn't involve Mr. Hamilton, but
23 the disclosures weren't limited to Surfside.

24 Public dissemination in the press was the
25 respondent's very purpose, to personally
1065 1 vindicate himself and to expose a corrupt judge.
2 It wasn't reasonably necessary to prevent a crime
3 by Mr. Hamilton, it wasn't even reasonably
4 necessary to expose a corrupt judge, and it
5 certainly wasn't necessary, reasonably necessary
6 to rectify or mitigate a past fraud. It was not
7 reasonably necessary at all.

8 THE HEARING OFFICER: Ms. Gray,
9 can I interrupt again? Sorry.

10 Under the existing the Rules of Professional
11 Conduct in the State of Washington, if a lawyer
12 gains confidential information from his client to
13 the effect that another attorney or a judge is
14 engaged in a continuing breach of fiduciary duty,
15 is there any circumstances under which the lawyer
16 can disclose the confidential client
17 communication to someone else?

18 MS. GRAY: They are limited to the

19 circumstances in RPC 1.6(b), and since it's
20 another person 1 would not apply; 2 is unlikely
21 to apply, but it might under unusual
22 circumstances; and (c) is unlikely to apply. So,
23 the answer is in general, no, there aren't.

24 THE HEARING OFFICER: Okay. Thank
25 you.

1066 1 MS. GRAY: In terms of the extent
2 of the respondent's disclosure and his disclosure
3 to the press, there seems to be irony in the
4 respondent's outrage last week during his
5 testimony at Kurt Bulmer's attack on him in 1998.

6 He was outraged at Kurt Bulmer's release,
7 public release of Bulmer's personal review of him
8 in the absence of a hearing or findings or
9 anything. That's expressed in D-24 and D-25.

10 But yet, in April of 1996, without charges,
11 without findings, without procedures, he exposed
12 to the press his personal view of his client's
13 communications to him in 1992.

14 And keep in mind that at the time he
15 disclosed to the press there were numerous
16 investigations by authorities that were only
17 opened within the previous two months. Those
18 investigations were still pending.

19 Now, in the course of the hearing testimony
20 the Association did not present testimony on
21 certain issues that were raised by the
22 respondent, and in closing argument there are
23 certain issues that are undoubtedly going to be
24 raised by the respondent that we're not going to
25 address at any length.

1067 1 Whether or not Grant Anderson committed a
2 crime or a fraud has not been established
3 conclusively by the Supreme Court or by the CJC
4 or by any public body. We are not prepared to
5 argue. It doesn't appear to us to be relevant to
6 argue whether or not that occurred.

7 We are not going to dispute that the
8 respondent reasonably believed between February
9 and April of 1996, he reasonably believed that
10 Mr. Anderson had committed misconduct.

11 With regard to William Hamilton, again,
12 there are no formal charges, there has been no
13 proceedings, there is no conclusive evidence as
14 to whether or not he ever committed a crime or a
15 fraud.

16 In our view the evidence shows, as I have
17 discussed earlier, that in February of 1996 he
18 didn't, the respondent did not actually believe
19 that Bill Hamilton had committed a crime, and he
20 could not have reasonably so believed in February
21 of 1996.

22 The value of the bowling alley, the
23 appraisal evidence was obtained by Mr. Schafer
24 after 1996. The evidence of the Cadillac
25 payments was obtained by Mr. Schafer after 1996,

1068 1 not known to him in 1996.

2 In 1996 he had comments made by his client
3 in 1992, he had a comment made by his client in
4 December of 1995 about a five-figure campaign
5 contribution, and he had speculation and he had

6 innuendo.

7 Now, one other issue that I believe will be
8 argued by the respondent's counsel in closing has
9 to do with the motives of the Bar Association and
10 the competence of the Bar Association.

11 There is no evidence on this record that the
12 Bar Association in bringing these proceedings and
13 pursuing them had an improper motive or vendetta
14 against the respondent.

15 There is the respondent's speculation to
16 that effect -- and I will remind you in this
17 regard that Ms. Carter-DuBois' statements were
18 admitted for a limited purpose, for the
19 respondent's state of mind.

20 There is no evidence that Kurt Bulmer was
21 involved in or directed the investigation on the
22 prosecution of this case, the case against
23 Mr. Schafer. Ms. Shankland laughed at the
24 thought that Mr. Bulmer wrote her dismissal
25 letter of August, 1996.

1069 1 And the CLE materials that Mr. Bulmer
2 included, Ms. Shankland denied that he would
3 have, that Mr. Bulmer would have received them
4 from her.

5 It's easy to understand that Mr. Hamilton,
6 who received those letters, and who was friends
7 with Mr. Anderson, might well have given
8 Mr. Anderson or Mr. Bulmer a copy.

9 We have objected to the admission of
10 evidence of the Bar Association's handling of the
11 Anderson case in August of 1996 when it was
12 dismissed and earlier this year when it was
13 reopened and there was a stipulation to
14 discipline against Grant Anderson.

15 It may well be, Mr. Mills, that you are
16 critical of one or both of those decisions, but
17 they are simply not relevant to whether or not
18 the respondent violated Count One of the charges
19 here that relate to his disclosure of William
20 Hamilton's confidences and secrets.

21 The respondent's attacks on anyone and
22 everyone; Anderson, Hamilton, the Bar,
23 Mr. Bulmer, Mr. Strait, Mr. Sloan, they serve to
24 distract the attention of the Hearing Officer
25 from the issue in this case, which is the

1070 1 respondent's conduct in revealing his former
2 client's confidences and secrets.

3 Now, I would like to move on to some of
4 legal defenses that have been and are being
5 raised by the respondent.

6 I have already mentioned with regard to an
7 ongoing crime. I would just like to point out,
8 as is pointed out in my supplemental brief, a
9 fraud may be a continuing crime if there are a
10 series of takings, but it's over when the last
11 taking occurs.

12 Concealment that happens later collateral to
13 the central purpose of a crime does not make a
14 crime continuing, nor does the lasting effect of
15 a crime make it a continuing crime.

16 Now, in terms of the legal defenses, we're
17 talking here about a system that has a rule of

18 law, a system of justice that depends upon a rule
19 of law, lawyers following the rules, judges
20 following the rules, and one of those key rules,
21 as I said before, is the attorney/client
22 confidentiality rule.

23 Acting as a vigilante is the antithesis of
24 what a lawyer should be about. It is the
25 antithesis of living within the rule of law.

1071 1 Acting as a vigilante is acting outside the
2 system to achieve a personal, self-appointed
3 goal.

4 Sometimes the right person is lynched, but
5 the concept of working as a vigilante is
6 abhorrent to our system of justice. The
7 respondent's actions in 1996 and subsequently
8 amounted to a public lynching of William
9 Hamilton.

10 And I'm not going to stand here and argue
11 whether or not he is an innocent or a guilty
12 person. He is a person who was never charged, he
13 is a person who was never convicted, and the
14 effects on William Hamilton occurred not so much
15 because the respondent was out to get William
16 Hamilton, it was a by-product of the fact that
17 William Hamilton knew Grant Anderson and the
18 respondent was out to get Grant Anderson.

19 Now, the crux of the respondent's legal
20 defenses is that the rule should be rewritten to
21 accommodate his personal view of what goals are
22 more important than what other goals. He has
23 appointed himself to be the arbiter of what is
24 the right rule.

25 Now, in opening statements Mr. Newman
1072 1 referred to the preamble of the RPCs, but he left
2 out a very important paragraph of the preamble to
3 the RPCs, and that is the first paragraph.

4 The RPCs' preamble needs to be looked at in
5 the context of all the paragraph. The first
6 paragraph, first sentence, refers to the rule of
7 law: "The continued existence of a free and
8 democratic society depends upon recognition of
9 the concept that justice is based upon the rule
10 of law, grounded in respect for the dignity of
11 the individual, and the capacity through reason
12 for enlightened self-government."

13 The public has an interest in protecting the
14 confidences and secrets of persons who go to
15 their lawyers. It is a difficult balance to
16 write the rule. It should not be rewritten
17 thoughtlessly, it should not be rewritten outside
18 of the rules, it should be rewritten as a result
19 of considered and thoughtful debate.

20 Respondent argues that there is no
21 attorney/client relationship here because William
22 Hamilton was using him in 1992 to commit a fraud,
23 and he argues that this rule should be read in
24 such a way as to add in that rule that I
25 mentioned in response to your question a little

1073 1 while ago, to add in that if a lawyer's services
2 are used, then the protection doesn't apply.

3 But interestingly enough, those states that
4 do have the rule allowing for disclosure to

5 rectify or mitigate don't have a rule of "if the
6 client uses the lawyer's services there's no
7 protection at all," they have a rule that allows
8 for the revelation to the extent reasonably
9 necessary.

10 Respondent's reading of this rule would
11 provide no protection for the client at all
12 whenever a client uses the lawyer's services.

13 His proposed reading of this rule would
14 provide -- would make an absurd result. For
15 example, if the attorney, if an attorney -- this
16 is a hypothetical -- intended to violate RPC 1.6
17 by making a disclosure and had no reasonable
18 belief that there was any exception, he just
19 decided to disclose, Mr. Schafer's proposed
20 reading of the rule would say: If coincidentally
21 years later the attorney happened to find out
22 that the client had used the lawyer's services,
23 then he's safe.

24 He cites in his brief two particular items
25 that I want to address briefly. One is Sloan v.
1074 1 Nevada, which was on one of the blowups.
2 Interestingly, the section on the blowup did not
3 deal with the court's holding in Sloan v. Nevada,
4 it dealt with the Bar position in Sloan v.
5 Nevada.

6 The Bar position in Sloan v. Nevada was
7 based on a rule in Nevada that does not exist in
8 Washington.

9 In Nevada a newly enacted ethical rule
10 provided that: "The attorney shall reveal all
11 information reasonably necessary to prevent the
12 client from committing a violent crime, and the
13 attorney may reveal information he believes
14 necessary to prevent or rectify the consequences
15 of clients' criminal or fraudulent acts in
16 commission of which lawyers' services have been
17 used." So, we're starting out with a state with
18 a different set of rules.

19 But then the holding of the court was that
20 the attorney in that case was justified under the
21 rule then in effect, which was an earlier rule
22 than the one I just read, that he was prohibited
23 from divulging information received from his
24 client.

25 The other legal authority that I thought I
1075 1 should mention that Mr. Schafer has relied upon
2 is an Illinois State Bar opinion, 9316, which
3 does not have the weight of law. It's an
4 educational service to the State Bar members.

5 The Illinois Rule RPC 1.6 is significantly
6 different from the Model Rule RPC 1.6, and more
7 significantly, the Washington Rule 1.6.

8 That Illinois Bar opinion makes a reference
9 to a case In re Marriage of Decker, 153 Il. 2d,
10 298.

11 THE HEARING OFFICER: Excuse me.
12 The citation was what?

13 MS. GRAY: 153 Illinois 2d, 298.

14 THE HEARING OFFICER: Thank you.

15 MS. GRAY: Decker dealt with the
16 crime-fraud exception as an evidentiary matter.

17 It did not deal with the rule of confidentiality.

18 With regard to the respondent's arguments,
19 he has also argued that RPC 1.6 should be written
20 by you, the Hearing Officer, to create a new
21 exception to report a corrupt judge.

22 And indeed, in asking you to do that he does
23 not even cite to any proposed rule at the ABA or
24 anywhere else that would permit such an
25 exception.

1076 1 He also cites to and asks you to create a
2 new exception to rectify or mitigate a past
3 fraud. There is debate ongoing, has been for
4 many, many years, probably will be for many, many
5 years, as to whether such an exception is
6 appropriate. It has been adopted in a very few
7 states. It has not been adopted in Washington.

8 In opening statements the respondent's
9 lawyer talked about a case, In re Little, and he
10 talked about it to suggest that the Bar
11 Association has to prove that the respondent had
12 an improper motive. That is not the law.

13 I would point to the Hearing Officer's
14 attention a later case that clarifies part of
15 what Little is about, In re Krogh; K-r-o-g-h, 85
16 Wn. 2d, 462, at 483, a 1975 case, in which the
17 Krogh court talks about Little's comments that
18 doubt should be resolved in favor of the lawyer,
19 reminding us that the comment refers only to
20 doubts concerning the condition of the acts
21 charged against the lawyers, not the violation of
22 the ethical rules.

23 To the extent that Little stands for the
24 proposition that in the 1950's the Bar had to
25 prove that a lawyer had an improper motive, it
1077 1 has been superseded. The adoption of RPC 1.6
2 does not require as an element that there be an
3 improper motive. The adoption of the ABA
4 standards supersedes it.

5 The ABA standards do not require an improper
6 motive. The ABA standards require it could be
7 intentional, it could be knowing, it could be
8 negligent.

9 Later case law, current case law -- I cite
10 you here to In re Boelter, which is cited in our
11 brief repeatedly -- does not require an improper
12 motive. It's a relevant issue for sanction but
13 it is not a required element of the charge.

14 I would now like to finally turn to the
15 issue of sanction. The respondent acted
16 knowingly in revealing his client's confidences
17 and secrets between February and April of 1996.
18 He acted with the conscious awareness that he was
19 revealing information that had been imparted to
20 him by his client, Mr. Hamilton, in 1992. He
21 also intended to reveal that information.

22 He didn't mistakenly leave some papers on a
23 desk where somebody else discovered them, he
24 intended and he knew that he was revealing what
25 his client told him.

1078 1 And there is substantial harm. Mr. Hamilton
2 has never been convicted of or charged with a
3 crime. Nevertheless, there has been widespread

4 publicity regarding Mr. Anderson's handling of
5 the Hoffman Estate and Mr. Hamilton's role in
6 purchasing the bowling alley, including newspaper
7 coverage of the details of what Mr. Hamilton told
8 respondent in 1992.

9 Mr. Hamilton's reputation has been
10 destroyed. Once a prominent businessman and an
11 extrovert, he is shunned now. His health has
12 deteriorated. He has substantial legal bills,
13 and he is reclusive.

14 In addition, respondent's conduct
15 foreseeably subjected Mr. Hamilton to criminal
16 investigation regarding his purchase of the
17 bowling alley.

18 It's also interest -- the respondent's
19 conduct has also injured the legal profession and
20 the administration of justice. His disregard of
21 the rule of law has been flagrant. He has
22 allowed his own personal beliefs to usurp the
23 rule of law.

24 Under these circumstances ABA Standard 4.22
25 for suspension is the presumptive sanction. 4.22
1079 1 says: "Suspension is generally appropriate when
2 a lawyer knowingly reveals information relating
3 to the representation of a client not otherwise
4 lawfully permitted to be disclosed and this
5 disclosure causes injury or potential injury to a
6 client."

7 Now, I mentioned a moment ago that the
8 respondent's motives are relevant to the
9 imposition of sanction, and I think what the
10 evidence shows in this case is mixed motives.

11 Respondent has over and over and over again
12 explained that his motive was to expose a corrupt
13 judge, no matter what, but the timing of what he
14 did is instructive. He waited for nearly three
15 and a half years. Only when he had a client
16 before the judge, only when the judge made
17 rulings against his client, did Doug Schafer
18 spring into action.

19 And the testimony indicates -- and I'm not
20 denying that exposing a corrupt judge was part of
21 what was going on here, but there's more to it
22 than that.

23 This matter became intensely personal to the
24 respondent. In April, 1996 he was seeking
25 personal vindication, and that resulted in public
1080 1 exposure of a judge.

2 The respondent's self-serving claims are not
3 the entire story. Yes, he believed Anderson to
4 have committed serious misconduct, yes, he
5 believed it was important to remove him from the
6 bench, but these motives were mixed in with his
7 much more personal motives.

8 In terms of aggravating factors, under
9 9.22(c) there is a pattern of misconduct proven
10 in this case. The respondent made multiple
11 disclosures between February and April to
12 government and to disciplinary agencies, and in
13 April he determined to make those disclosures
14 public.

15 He filed the April 26th motion for

16 discretionary review in Barovic, and he faxed
17 confidential client information to three
18 newspapers.

19 This pattern is further supported by the
20 respondent's later conduct in 1997 through the
21 first half of this year. He did not leave the
22 matter of Mr. Anderson's removal from office to
23 the authorities to whom he had reported it. He
24 determined to do everything he could to ensure
25 that result.

1081 1 He personally wrote newspaper materials,
2 further publicizing his former client's
3 confidences and secrets.

4 Another aggravating factor which should
5 apply in this case is 9.22(f); "the submission of
6 false evidence, false statements or other
7 deceptive practices during the disciplinary
8 process," and I'm focusing here on other
9 deceptive practices.

10 When the Office of Disciplinary Counsel sent
11 this matter to the Review Committee of the
12 Disciplinary Board in early 1999 it requested
13 that the Review Committee authorize a hearing.

14 The respondent wrote two letters for the
15 Review Committee's consideration; A-139 and
16 A-144, and he hoped to persuade the Review
17 Committee not to authorize the filing of formal
18 charges.

19 In his letter, dated February 25th, 1999;
20 that's A-139, the respondent sought to create the
21 impression that the disclosures he made were
22 careful and limited.

23 In his letter he implies that he only made
24 the disclosures therein -- and I say implies; he
25 doesn't state it outright. As he testified, he
1082 1 chooses his words carefully, and he implies that
2 he disseminated his February 16th, 1996
3 declaration only as indicated in that letter.

4 In that letter he intentionally omitted any
5 reference to the April 26, 1996 disclosures to
6 the press, although he does disclose the
7 disclosure in the Barovic appeal that same day.
8 This conduct constituted a deceptive practice.

9 9.22(g) is an aggravating factor; refusal to
10 acknowledge wrongful nature of conduct.

11 This case presents an extreme example. The
12 respondent adamantly refuses to acknowledge that
13 his repeated disclosures of Mr. Hamilton's
14 confidential information violated his ethical
15 obligations.

16 Through three and a half days of his own
17 testimony he never acknowledged that he might
18 have taken steps to protect his former client's
19 interests, nor has he acknowledged the impact
20 that his disclosures have had upon his former
21 client.

22 Instead, he wants us to praise him, to give
23 him an award for his conduct. He has clearly and
24 repeatedly stated that he would do it again.

25 The last aggravating factor that I would
1083 1 like to draw to your attention is that the
2 respondent has substantial experience in the

3 practice of law, having been admitted in 1978.

4 Mitigating factors? There is the absence of
5 prior discipline. He will also undoubtedly argue
6 that his motives and his attempt to conform to
7 the rule provide mitigation in this case.

8 I have already talked about how his motives
9 were mixed, but his attempt to conform to the
10 rule, RPC 1.6, is belied by his disclosure to the
11 press in April of 1996.

12 When he spoke to John Strait in February of
13 1996 he had already decided that he was going to
14 disclose. He had made that statement on February
15 1st, 1996, to Mr. Hamilton and Mr. Sloan.

16 He had committed himself by filing a motion
17 forcing Judge Anderson's recusal in the Barovic
18 matter, which he filed on February 2nd.

19 Tellingly, when he was testifying about John
20 Strait, he said: "Perhaps I heard what I wanted
21 to hear."

22 He reviewed an ethics file in his office.
23 Now, he has testified that he didn't do his
24 crime-fraud research until well after 1996, but
25 the ethics file that is in evidence talks about a
1084 1 noisy withdrawal.

2 Well, one of the key points about that
3 ethics file and that article is that an explicit
4 revelation of client confidences is not allowed.
5 That's exactly what the concept of a noisy
6 withdrawal is about.

7 I believe that the respondent will also
8 argue that there should be a mitigation for delay
9 in this case. From July, 1996, when the
10 grievance was filed against Mr. Schafer, to early
11 1999 the investigation of this case proceeded --
12 and I am not going to argue that that time period
13 elapse wasn't in the hands of the Association --
14 but there is no evidence, none, that the
15 post-charging delay, once charges were filed, was
16 caused by the Association.

17 And more significantly, in terms of the
18 issue of delay, there is no evidence that the
19 respondent has been prejudiced by any delay.

20 In re Huddleston, 137 Wn. 2d, 520, a 1999
21 case, the Supreme Court suggests that in the
22 absence of prejudice delay is not a mitigating
23 factor.

24 On the issue of prejudice, the mere
25 allegation, without proof, the mere allegation
1085 1 that witnesses are unavailable or that memories
2 are dimmed is insufficient. There must be actual
3 demonstration that the delay has caused
4 prejudice. I would ask you to consider Norby;
5 N-o-r-b-y, 122 Wn. 2d, 258.

6 In going through the sanction analysis, the
7 aggravating factors in this case outweigh the
8 mitigating factors. There is an extreme instance
9 in this case of lack of acknowledgement of having
10 the possibility of having done anything
11 differently, of the impact that the disclosures
12 have had.

13 He has admitted disregard for the rule in
14 1996 and in the future. Because of this admitted

15 disregard in 1996 and in the future, the
16 Association recommends an 18-month suspension.

17 Over and over during the four-day hearing
18 the respondent indicated that he didn't care what
19 the rule required, he was going to apply his own
20 personal standards.

21 He has shown an extreme disregard for the
22 rule of law and for his own ethical obligations
23 to his clients. Thank you.

24 THE HEARING OFFICER: Before you
25 sit down, Ms. Gray, I have looked at the Boelter
1086 1 case and the McMullen case.

2 MS. GRAY: Yes.

3 THE HEARING OFFICER: And they
4 seem to say that absent any aggravating or
5 mitigating factors, if the Hearing Officer were
6 to find that suspension is the appropriate
7 sanction the suspension should be six months or
8 more. Is that your reading of those cases?

9 MS. GRAY: Yes. In saying so,
10 they are relying upon a provision in the ABA
11 standards that provides generally in considering
12 a suspension, while it is possible to go from any
13 period from one day to two years, normally a
14 suspension of less than six months is not
15 appropriate.

16 That is stated in the ABA standards, and
17 that is why you see that reflected in the Boelter
18 opinion.

19 THE HEARING OFFICER: All right.
20 Thank you.

21 MS. GRAY: Any further questions?

22 THE HEARING OFFICER: I have no
23 further questions. Just for the record, here,
24 you took almost an hour, about 57 minutes by my
25 watch.

1087 1 Would the court reporter like to have a
2 short break?

3 THE REPORTER: Sure.

4 THE HEARING OFFICER: Let's have a
5 short stretch break before we resume with
6 closings.

7 (Brief recess taken.)

8 THE HEARING OFFICER: All right.
9 Are we ready to proceed? We can go back on the
10 record. This is Mr. Schafer's argument. I'm not
11 sure who is going to begin.

12 MR. NEWMAN: Mr. Mills, I'm going
13 to begin. Let me first thank you for your time
14 and patience throughout these five days of
15 hearings.

16 When I listen to Ms. Gray's closing it
17 reminds me of a quote from Edmund Burke, which
18 goes like this. He said, "When bad men combine,
19 the good must associate, else they will fail and
20 fall one by one, an unpitied sacrifice in a
21 contemptible struggle."

22 It is in this spirit that Mr. Mullins and I
23 have come to the aid of Doug Schafer. As you've
24 listened to his testimony and can judge the
25 veracity of Mr. Schafer, he is a self-described
1088 1 idealistic attorney, a boy scout who reports bad

2 guys.

3 He, Mr. Schafer, learned of events which
4 were difficult to speak about but impossible to
5 be silent. These events implicated a sitting
6 Superior Court Judge and a former client,
7 Mr. Hamilton, in a web of deceit and fraud.

8 It was based on Mr. Schafer's courage and
9 diligence that the Supreme Court took the
10 historic and unprecedented action of removing
11 Judge Grant Anderson from the Pierce County
12 bench.

13 Now, it's over four years since
14 Mr. Hamilton, nearly four years to the day since
15 Mr. Hamilton filed his Bar complaint against Mr.
16 Schafer, charging that he violated the
17 attorney/client privilege.

18 While this case is about Doug Schafer, it is
19 really the conscience of our profession that sits
20 in judgment before you.

21 When I began my opening argument I drew your
22 attention to the Rules for Lawyer Discipline
23 4.11, which talks about the purpose of this
24 proceeding.

25 And again, I draw your attention to 4.11(a),
1089 1 which states that: "Disciplinary hearings are
2 neither civil nor criminal, but are intended to
3 determine whether a lawyer's conduct should have
4 an impact upon his license to practice law."

5 There's only one count left in the Bar's
6 persecution of Mr. Schafer, and that is the
7 attorney/client privilege issue. The facts are
8 really undisputed.

9 Mr. Hamilton came to Doug Schafer simply to
10 form a corporation. He told Mr. Schafer that a
11 lawyer named Grant Anderson was milking an estate
12 for years, that Anderson had promised Mr.
13 Hamilton a good deal on a bowling alley, and that
14 Hamilton would pay back Anderson down the road.

15 Mr. Schafer remembered that conversation
16 when he had one of his few court appearances
17 before Judge Anderson in another fiduciary case
18 involving the Barovic situation, and that
19 happened in 1995.

20 Naturally, Mr. Schafer, recalling the
21 conversation, was concerned about whether his
22 client, Barovic, was going to get a fair shot
23 from Anderson.

24 What did he do? First, he met with Hamilton
25 and said, "I have concerns about Anderson. I

1090 1 recall you telling me that he was milking an
2 estate, et cetera. Is he honest? Can I trust
3 him? What about his integrity?"

4 What did Hamilton say to him? Mr. Schafer
5 testified that Hamilton made a comment to the
6 effect that, "He's as honest as any other
7 attorney."

8 Now, Mr. Schafer didn't leave it go at that,
9 he persisted. He reviewed the public records, he
10 got tips from a prominent Seattle divorce
11 attorney about the Cadillac. He contacted
12 judges, law enforcement and other public
13 entities.

14 When he learned and gathered these facts he
15 determined, which is true, that it was his duty
16 to speak out and protect the profession.

17 I find it noteworthy that Ms. Gray cites the
18 oath of attorney, and in that oath part four
19 says: "I will maintain the respect due to the
20 courts of justice and judicial officers."
21 Clearly, Mr. Schafer felt that this judge was
22 owed no respect. He was, indeed, corrupt.

23 There's a great quote from William Randolph,
24 which describes a person like Mr. Anderson, and
25 I'm going to read this because I love the quote.

1091 1 The quote goes that: "He was a man of splendid
2 abilities, but utterly corrupt. He shines and
3 stinks like rotten mackerel by moonlight." I
4 thought that was an interesting quote.

5 So, who did he contact? In addition to his
6 client, Hamilton, he went back and talked to
7 Hamilton again with his attorney, Mr. Sloan.

8 Now, let's not be deceived by Mr. Sloan's
9 motives. Mr. Sloan represented Hamilton. Mr.
10 Sloan threatened to sue Doug Schafer if he
11 revealed any information on Anderson.

12 And remember, Mr. Schafer didn't represent
13 Anderson, didn't represent the Hoffman Estate,
14 didn't represent Hamilton even in the sale of the
15 bowling alley. All he did was handle a
16 ministerial task of setting up a corporate
17 entity.

18 Now, it was interesting because Sloan's
19 threat was a catalyst to Mr. Schafer to seek
20 advice from two ethics professors on what to do.
21 And he did that, under oath he said he did that
22 in order to disqualify them from being used
23 against him as a witness.

24 And while Professor Strait's memory after
25 four years may be cloudy, the voice mail message
1092 1 that we played for you clearly showed that what
2 was considered was whether or not there was an
3 ongoing crime or fraud.

4 The subsequent message that Mr. Schafer
5 received at his office from Professor Strait was
6 that reporting to the Bar Association is
7 protected, that he could go ahead and do it.

8 Now, while it is true Mr. Schafer's concerns
9 were heightened by the Barovic case, he testified
10 that he did not forget the conversation he had
11 with Mr. Hamilton and he shared the details of
12 what he found with law enforcement, disciplinary
13 authorities and, indeed, the press.

14 Again, the historic result -- and I think
15 this needs to be emphasized -- the historic
16 result was that both the Judicial Conduct
17 Commission and the Supreme Court found that
18 Anderson had engaged in a pattern of dishonesty
19 spanning over the past decade.

20 Now, there are a number of flaws in the Bar
21 Association's case. Their case really boils down
22 to four points.

23 The first is this demonizing the messenger
24 theory. Ms. Gray characterizes Mr. Schafer as a
25 self-appointed vigilante working somehow outside

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1 the system.

2 You look at what Mr. Schafer did. He
3 contacted everybody conceivable within the
4 system; FBI, AG's Office, IRS, this Bar
5 Association, provided them with the smoking gun
6 documents in February, 1996, a box.

7 You heard Julie Shankland, Bar staff,
8 describe the box. It was a colorful box, had
9 butterflies on it, yellow box.

10 And what did the Bar Association do with
11 that box? They lost it. They lost this,
12 apparently, as Ms. Shankland testified, in the
13 move.

14 And then we had the revelation last Thursday
15 of the mysterious box being found, yet we are to
16 believe that the Bar Association reviewed that
17 box of information in determining what discipline
18 to mete out to Judge Anderson, Attorney Anderson.

19 Demonizing the messenger, as a motive or as
20 a policy, is unfortunately insulting to the Bar
21 Association. First of all, it is not relevant.
22 Secondly, it is clear that Mr. Schafer had a keen
23 interest in getting a corrupt judge off the
24 bench, especially when the appointed authorities
25 failed to do that.

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1 I would point out one of the Canons of
2 Judicial Conduct, quoted in our findings, states
3 that, Canon 1 states: "An independent and
4 honorable judiciary is indispensable to justice
5 and our society," an independent and honorable
6 judiciary.

7 So, what do you do if you're an attorney and
8 you find out through a client that a judge is not
9 independent, not honorable, but indeed corrupt,
10 thoroughly corrupt?

11 Now, Ms. Gray makes a lot to do about the
12 preamble. Let's talk about the preamble. It
13 does start out with the statement that a
14 lawyer -- excuse me, it starts out with the
15 statement: "The continued existence of a free
16 and democratic society depends upon recognition
17 of the concept that justice is based upon a rule
18 of law grounded in respect for the dignity of the
19 individual, and the capacity through reason for
20 enlightened self-government."

21 That doesn't change things. Just look at
22 the canon, the purpose, the fact that an
23 independent and honorable judiciary is
24 indispensable to justice and society.

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25 And the preamble itself, the preamble,
1 again, says: "Lawyers are the guardians of the
2 law. They play a vital role in the preservation
3 of society. The fulfillment of this role
4 requires an understanding by lawyers of their
5 relationship with and function in our legal
6 system."

7 Now, this is important, Mr. Mills, because
8 lawyers are not, do not sign away their
9 conscience to a client. They are independent.
10 They are advisors to clients.

11 Furthermore, the preamble goes on to say:
12 "In fulfilling professional responsibilities a

13 lawyer necessarily assumes various rules that
14 require the performance of many difficult tasks.
15 Not every situation which a lawyer may encounter
16 can be foreseen, but fundamental ethical
17 principles are always present as guidelines."

18 Now, this is very important, because you
19 asked the question about what happens
20 hypothetically if a client comes to you and
21 reports on a corrupt judge.

22 Let's say you get done with a trial and the
23 client comes to you and says: "Great job. I'm
24 sure that bribe I provided to the judge may have
25 helped." What do you do?

1096 1 Well, there is a case, In re Hansen, which
2 is helpful. In that case, which is detailed in
3 our findings, a client came to an attorney,
4 wanted to sue a prosecutor and a judge. The
5 attorney declined. The client made an
6 off-the-cuff comment, "Well, I might as well just
7 get a gun and take care of it myself."

8 The attorney reported that. The Supreme
9 Court found that he was right to report that.

10 How different is that if a client comes to
11 you and tells you that a judge is corrupt?
12 Ultimately, who are you protecting? You are
13 protecting society.

14 Doug Schafer is one of those attorneys that
15 believes that lawyers are indeed guardians of the
16 law as officers of the court. He also believes
17 that attorneys are servants of the law rather
18 than the highest bidder, and when he took his
19 action he carefully researched the provisions
20 protecting whistle-blowers, and we have a number
21 of provisions that do that.

22 The Rules of Lawyer Discipline provides an
23 exoneration of liability for grievants and
24 witnesses. There's a provision about reporting
25 judicial misconduct in which the whistle-blower
1097 1 is privileged from suit, from a lawsuit.

2 The reporting of lawlessness in general is
3 covered by the state Anti-SLAP Statute, acting in
4 good faith.

5 Now, Mr. Schafer went to the appointed
6 authorities, and as I indicated, they did not
7 act. And I think it's clear from the evidence
8 that what motivated the Bar Association to act
9 was that Mr. Schafer went to the legislature,
10 stirred the pot down in the legislature, and got
11 the Bar Association and the Supreme Court moving
12 on the issue.

13 I think it is also germane that
14 Mr. Anderson's attorney was indeed the Former
15 General Counsel to the Bar Association. He was
16 an individual who had sent a letter in response
17 to the Anderson complaint to the Bar Association
18 which ascribed these motives to Mr. Schafer which
19 attached a report from the County Prosecutor, yet
20 the Bar Association, for whatever reason, did not
21 follow its own rules and provide that to Mr.
22 Schafer until three or four years had passed.

23 The point here, Mr. Mills, is that
24 Mr. Bulmer had poisoned the well. He had done

25 behind closed doors, apparently, a character
1098 1 assassination of Mr. Schafer.
2 Now, you know from the Wade Dann case, which
3 is detailed in our briefing, that Judge Alexander
4 in the majority opinion made a finding that this
5 kind of repeated character assassination in this
6 case, in the Wade Dann case, dealt with a former
7 associate who happened to be a West Point
8 graduate who felt that his firm's billing records
9 were being manipulated, hokeyed up.
10 Judge Alexander found that the defense's
11 repeated character assassination of this former
12 associate as being disgruntled, and questioning
13 the motives of the former associate, had no
14 bearing on the wrongs that were brought to light.
15 The second thesis and flaw in the Bar's case
16 is that in 1996 Mr. Schafer betrayed his client,
17 Mr. Hamilton, by disclosing the information to
18 the government and the press.
19 As we have indicated, Mr. Schafer was only
20 hired to set up the corporate entity. The
21 disclosures he made were part of the public file.
22 I think it's germane, too, if you recall,
23 Ms. Gray's questions focused on if Doug Schafer
24 disclosed any information on the bowling alley
25 sale or anything regarding the Hoffman Estate.
1099 1 Again, Doug Schafer did not represent the
2 Hoffman Estate, did not represent Hamilton in the
3 sale of the bowling alley, did not represent
4 Anderson, and did not represent the hospital
5 district.
6 Now, as for Mr. Hamilton, he did file a Bar
7 complaint on July 26, 1996, and above his
8 signature is an acknowledgement that the
9 information would be and could be disclosed to
10 the lawyer.
11 Rule RLD 2.9(c) talks about that, and let's
12 not get misled on who Mr. Hamilton is. Ms. Gray
13 as her third point talks about that Mr. Schafer
14 could have minimized disclosure and any harm to
15 Mr. Hamilton.
16 We wish we had Mr. Hamilton here. As we
17 indicated, we had two process servers trying to
18 locate him and we were not able to locate him.
19 Now, I think it's interesting that his
20 attorney, Mr. Sloan, had testified in the CJC
21 process that his client was going to take the
22 Fifth, but Mr. Hamilton is clearly what I call an
23 agent of influence.
24 He's a wheeler-dealer. He's someone who is
25 the subject of an FBI or was the subject of an
1100 1 FBI investigation. A Grand Jury I think is still
2 investigating him.
3 We talked about the McKean case. That is an
4 attorney who was using Mr. Hamilton's bank to
5 provide for some fraudulent transactions and
6 Mr. McKean went down for, I think, about a half a
7 dozen felonies.
8 So, when Ms. Gray says that Mr. Hamilton's
9 health is broken, he's destroyed, he's a recluse,
10 recognize that this FBI investigation was
11 unrelated to anything Doug Schafer brought out.

12 It was an independent thing.

13 This is a guy who has a history of financial
14 transactions with judges and a history of using
15 attorneys in what ends up to be criminal
16 activity.

17 As for what -- minimizing the disclosure and
18 any harm to Mr. Hamilton, I think it's clear as
19 you observe Mr. Schafer, he was vitally concerned
20 that here you had on the bench in the black
21 robes, sitting, Grant Anderson, in judgment of
22 other people, in judgment of their lives, I mean,
23 fundamental issues.

24 And how long does a person wait for the
25 authorities to act? Three and a half years had
1101 1 passed after Mr. Schafer provided the material to
2 the Bar, and again, the Bar never told Mr.
3 Schafer they lost the stuff.

4 But, you know, at some point in time
5 patience ceases to be a virtue, and I think an
6 attorney cannot sit back and let an injustice,
7 and especially a situation where you have a judge
8 who you have information is corrupt, you can't
9 just sit back and let that go on. He waited --

10 THE HEARING OFFICER: Counsel, may
11 I interrupt just for a moment?

12 MR. NEWMAN: Sure.

13 THE HEARING OFFICER: You've
14 passed your discussion of Mr. Hamilton and I
15 would like to ask about him for a moment.

16 If a lawyer gains confidential information
17 from a client that suggests that the client might
18 engage in a fraud, and then later the lawyer goes
19 to the public record and there is evidence that
20 suggests that the client has committed a fraud,
21 does that give the lawyer the right, if you will,
22 to disclose the confidential information that the
23 lawyer received from the client about that?

24 MR. NEWMAN: I think the answer is
25 yes. I think if the attorney was used, knowingly
1102 1 or unknowingly, to further a crime or fraud,
2 there is a question of whether or not there's a
3 professional relationship.

4 There's ample case law which we have cited
5 which stands for the proposition that if a person
6 comes to an attorney, and whether the attorney
7 knows it or doesn't, but later learns that he has
8 been used to further a crime of fraud, that there
9 is no professional relationship.

10 I think this goes back to the point set
11 forth in the exhibits that, you know, attorneys
12 don't sell their conscience or should not sell
13 their conscience to clients.

14 So, the answer to your question is -- I
15 think if -- let me just provide a hypothetical.
16 Let's say a client came to me for an adoption,
17 and the client in the process says: "This kid's
18 going to be my meal ticket, he's going to be my
19 insurance policy."

20 Weeks later the kid is found dead and you
21 find that there's a \$700,000 insurance policy on
22 this little kid. Does the attorney have an
23 obligation to report, to do something about it?

24 And I think the answer is yes. I think you go
25 back to the preamble. You know, not everything
1103 1 is covered by the rules.
2 But in response to Ms. Gray's point about,
3 well, Mr. Schafer could have minimized the
4 disclosure, that he should have waited; well, he
5 waited for the Bar Association. You know, the
6 CJC investigated. The CJC investigator warned
7 him that the Bar does more to obstruct than to
8 facilitate.
9 And I take, you know, offense at Ms. Gray's
10 characterization of Mr. Hamilton as some hapless
11 victim. Quite frankly, that's just pure malarky.
12 Her question was whether or not he had a criminal
13 history. I mean, I don't know and Mr. Schafer
14 doesn't know his criminal history. There hasn't
15 been any information produced to say he doesn't.
16 I mean, given the fact he was mixed up in
17 the McKean mess and that he was the subject of an
18 unrelated FBI investigation, that he's the
19 subject of a Grand Jury investigation, I think
20 it's, you know, misleading to characterize him as
21 some sort of victim.
22 The real victim here is the hospital
23 district. As Pam Ott testified, you know,
24 Hamilton and Anderson were ripping them off to
25 the tune of 1.5 million dollars or more. They
1104 1 had suspicions, but for Doug Schafer's
2 information they would not have been able to blow
3 the lid on that conspiracy.
4 And, you know, you had heard Pam Ott testify
5 because of Doug Schafer's courageous actions and
6 diligence they were able to buy basic lifesaving
7 equipment that they could have bought before had
8 Anderson been an honest guy.
9 And furthermore, I fail to see how this
10 disclosure was harmful to Hamilton at all. He
11 admits publicly what he told Schafer -- it was
12 certainly harmful to Anderson -- and you will
13 note that Hamilton never signed off on the
14 settlement agreement in the hospital district
15 case, and I think someone testified that the
16 insurance company paid it off.
17 The fourth flaw in the Bar's case is that
18 Doug Schafer delayed taking action from 1992 to
19 '95, as if that should make any difference in
20 exposing a corrupt judge, as if that should make
21 any difference.
22 What did Doug Schafer know in '92? He
23 didn't know that there was a crime of fraud in
24 '92. All he knew was that he had a boastful
25 client make some colorful remarks about an
1105 1 attorney he didn't know.
2 And lo and behold, in '95 he ends up before
3 this guy; doesn't know the guy, remembers the
4 conversation, was concerned about his client, Mr.
5 Barovic, was concerned about the ethics of this
6 judge, and that was a catalyst.
7 And what the Bar Association is attempting
8 to do is take that sapling of truth, that it was
9 a catalyst, and create a forest of falsehoods to
10 malign Mr. Schafer, that this was done because of

11 some fee dispute. He was paid the fees. In
12 fact, as you pointed out in the hearing, Judge
13 Anderson didn't even sign the order.

14 Now, the Bar's case is focused on 1.6.
15 Let's look at 1.6 here in a minute. It says: "A
16 lawyer may reveal such confidences or secrets to
17 the extent the lawyer, the lawyer reasonably
18 believes necessary."

19 Now, what struck me as curious is Ms. Gray
20 in her argument kept on saying that is not a
21 reasonable belief, and we could go through the
22 litany of indicia of indications that Doug
23 Schafer had. She goes, "Well, that's not a
24 reasonable belief."

25 Well, you know what; it's not the Bar
1106 1 Association's reasonable belief, it's the
2 lawyer's reasonable belief; if the lawyer
3 reasonably believes it's necessary to prevent the
4 client from committing a crime, to prevent the
5 client from committing a crime.

6 Now, it is true that Mr. Schafer is not a
7 criminal lawyer and it is true he didn't know if
8 a crime, a specific crime had been committed.

9 But you know what; you look at his actions,
10 you look at what he did, who he contacted, and
11 that speaks volumes for what he believed.

12 Look, he contacted the county prosecutor,
13 the FBI, the IRS. He contacted all of the law
14 enforcement authorities who would know what crime
15 was going to be committed or was being committed.

16 And for Ms. Gray to say that, well, you
17 know, the crime had been done because the sale
18 had occurred years before, well, that's like
19 saying, you know, I've got a client who robbed a
20 bank and he's got the money at home and the bank
21 robbery occurred, so the fact he's keeping the
22 money, you know, it's a case closed.

23 That just does not make any sense. What was
24 going on here was a continuing -- as the Supreme
25 Court says -- a pattern of dishonest behavior

1107 1 unbecoming of a judge, a pattern of dishonesty
2 and deception over the past decade. That pattern
3 was, indeed, ripping off a public hospital
4 district in excess of 1.5 million.

5 THE HEARING OFFICER: Mr. Newman,
6 just a moment. You flipped on, you focused on
7 Judge Anderson's conduct. I think there's a
8 stipulation in the record that there was a
9 pattern of dishonesty and deception, but what
10 about Mr. Hamilton's crime, if any, in 1996 when
11 the disclosure was made?

12 MR. NEWMAN: Well, I think, first
13 of all, he is the subject, from my understanding,
14 of a Grand Jury investigation. When the
15 disclosure was made it was clear that Hamilton
16 and Anderson acted as partners in this plundering
17 of the estate. I don't think that's in dispute.

18 And the fact that he hasn't been convicted
19 yet doesn't lessen the fact that Doug Schafer
20 reasonably believed that it was necessary to
21 prevent the client from committing a crime.

22 It is true, Mr. Mills, as you know, that

23 Doug Schafer's preeminent interest was that there
24 was a corrupt judge sitting on the bench making
25 life or death decisions regarding people.

1108 1 And as I talked about the In re Hansen case,
2 when a client comes to you and tells you that
3 something, that a third-party is involved, the
4 attorney has the right to disclose that
5 information.

6 Now, in summary, Ms. Gray and I at least
7 agree that there is a balancing test here, that
8 you have to balance the rights of the client and
9 the ethical duties of an attorney as an officer
10 of the court to determine whether a lawyer's
11 conduct should have an impact on his or her
12 license to practice law.

13 And it is clear, I think, from the record
14 and Mr. Schafer's testimony that he acted with
15 the best intentions possible. He acted as a
16 reasonable man, as a reasonable attorney would
17 act. He made -- you look at all the people he
18 contacted, you look at the fact that here's a guy
19 that keeps a subject matter file on ethics.

20 This is not a person that did a knee-jerk
21 reaction, as the Bar would have it characterized,
22 in response to the Barovic case.

23 This is a person who teaches as an adjunct
24 professor. This is a person who is keenly
25 concerned about the ethics of fiduciaries. And

1109 1 that really was the driver of why he went to
2 Professor Strait.

3 On 1.6(d): "A lawyer may reveal to the
4 tribunal confidences and/or secrets to disclose
5 any breach of fiduciary responsibility."

6 He knew there had been at least that. He
7 may not have known what specific crime was
8 occurring, but he certainly knew there was at
9 least that.

10 I would like to say that in his research
11 Doug Schafer provided to the court a copy of, I
12 think, a Minnesota Law Review article from a
13 Professor Roger Crampton, and in that article
14 Professor Crampton writes that: "Ordinary human
15 beings, even lawyers, should not be put in the
16 position of risking their livelihood or careers
17 by doing the right thing. Exceptions to the
18 professional duty of confidentiality should be
19 broad enough to permit the lawyer to take action
20 necessary to prevent serious and unusually
21 irreparable harm in situations when failure to do
22 so is clearly condemned by ordinary morality."

23 In this regard you may recall Doug's
24 testimony regarding his conversation with
25 Professor Strait, and as Doug testified,

1110 1 Professor Strait basically told him to do the
2 right thing, to do what was morally right, and
3 that if he did that it was unlikely any jury on
4 earth would convict him of any crime or any
5 breach of fiduciary responsibility or
6 attorney/client privilege.

7 And I believe Doug Schafer was motivated by
8 the best intentions this profession can have,
9 which is the need for an independent and

10 honorable judiciary.

11 It reminds me again of a quote from Edmund
12 Burke, in which he said: "It is not what the
13 lawyers tell me I may do but what humanity,
14 reason and justice tell me I ought to do."

15 And it was that principle that drove Doug
16 Schafer to expose a corrupt judge and save
17 society from having this corrupt judge sitting on
18 the bench. Thank you.

19 THE HEARING OFFICER: Okay.

20 Mr. Mullins?

21 MR. MULLINS: Thank you, Mr.
22 Mills. I think it might be helpful, just in
23 order to keep the record clear and complete, to
24 mention here that there are a number of responses
25 that have been made by Mr. Schafer early on and
1111 1 these continue to be in existence at this time,
2 responses that neither Mr. Newman nor I will
3 necessarily address in our argument here today.

4 Those responses, articulated in terms of
5 being defenses, are set forth in Mr. Schafer's
6 answer. They have also been in large part argued
7 in the hearing brief filed with you prior to this
8 proceeding, they been responded to in large part
9 by Ms. Gray in her hearing brief, and they have
10 been testified to by Mr. Schafer.

11 I don't want to take much time on this, but
12 I do want to outline for you what the basic
13 defenses are or the responses, again, so the
14 record is complete and nothing falls aside or
15 between two chairs.

16 We, of course, Mr. Newman and I have, and I
17 will argue concerning the exception of
18 providing -- the exception to 1.6 (b)(1), that
19 "disclosure may be made to prevent the client
20 from committing a crime," and the other being at
21 1.6(c), another exception that applies to
22 disclosures that are appropriate.

23 The provision states "may be revealed,"
24 indicating breaches of fiduciary duty by a
25 court-appointed fiduciary such as a personal
1112 1 representative, a receiver or any other, any
2 number of other fiduciaries that are court
3 appointed.

4 Now, the others stated by Mr. Schafer that
5 still exist include; a lawyer's moral duty to
6 report judicial corruption; another is the
7 crime-fraud exception that should apply directly
8 or indirectly to attorney/client confidences,
9 somewhat the counterpart to that that applies
10 generally to the attorney/client privilege in an
11 evidence context; a lawyer's moral duty to
12 rectify or mitigate fraud; another being
13 whistle-blower protection; another being that the
14 information revealed by Mr. Schafer indeed did
15 not fall within the intended definition of
16 confidences or secrets; and finally, advice of
17 counsel.

18 Now, that's taken me some time, because I
19 thought it necessary to do that to have the
20 record complete.

21 I'll address briefly here this morning the

22 basis for Mr. Schafer's beliefs that existed by
23 him as of mid to late February, 1996, and I'll
24 also speak briefly about the burden of proof.

1113 25 Mr. Newman has talked about the early
1 meetings; in particular, a telephone conversation
2 and a meeting between Mr. Hamilton and Mr.
3 Schafer in August of 1992.
4 Again, that involved a statement by
5 Mr. Hamilton that his good friend, Mr. Anderson,
6 had been milking an estate for years, was about
7 to become a judge, and would give him a good deal
8 in the purchase of a bowling alley, and that
9 sometime in the future he would be paid back.

10 Mr. Schafer has said on more than one
11 occasion during his testimony that while he
12 didn't think it was necessarily fraud, he was
13 suspicious at that time, August of 1992.
14 And there is that gap, that period of time
15 that Ms. Gray has talked about. Mr. Newman has
16 argued, has given you our explanation with
17 respect to that point.

18 It was in the summer of '95 and then in the
19 fall of '95 that Mr. Schafer obtained more
20 information. In the fall, in the late fall of
21 '95, I believe it was December 18, he met with
22 Mr. Hamilton. That was a long meeting, it took
23 about three hours.

24 Mr. Hamilton there said: "Will you stop
25 digging up dirt about my friend, Mr. Anderson,"
1114 1 at that time Judge Anderson.
2 He also said at that time that he had made a
3 contribution to a judicial campaign. It's not
4 clear which one, but a judicial campaign by,
5 again, his friend, Mr. Anderson. Mr. Schafer did
6 look into that but he was unable to find anything
7 definitive from public records.
8 His testimony was that he saw information,
9 language about stock transactions, but nothing
10 that focused on a campaign contribution of this
11 kind.
12 In December he also reviewed the file, the
13 estate file of Mr. Hoffman, and you will recall
14 he testified at great length about what he did
15 here in reviewing that particular file.
16 He looked at the inventory, related papers,
17 and at that time it became known to him that
18 there was, there had been and there was fraud and
19 self-dealing with respect to this particular
20 estate.
21 And then going on into the year 1996 we have
22 heard testimony repeatedly about the Cadillac tip
23 that was provided to Mr. Schafer. He got that, I
24 believe it was on February 1 of 1996, and that
25 placed Mr. Schafer on notice at that time, and
1115 1 he's testified about this, but he was on notice
2 and suspicious; could that be the quid pro quo
3 for the great deal on the bowling alley?
4 Then Mr. Schafer, the next few days he spoke
5 with government agencies and he learned more
6 about not just fraud and not just fiduciary duty,
7 but this approaching and being criminal conduct.
8 I recall him testifying about becoming aware

9 of the more broad, sweeping federal and state
10 statutes that come into play where there's wire
11 fraud and mail fraud, in particular -- I don't
12 believe he mentioned this -- but RICO statutes,
13 both state and federal.

14 It's important, Mr. Mills, that you
15 consider, particularly in light of Ms. Gray's
16 comments, how Mr. Schafer acted, and I submit to
17 you that, with all due respect, that this person
18 acted cautiously and carefully.

19 He testified about being concerned about the
20 potential liability of Mr. Hamilton for being an
21 accessory to Mr. Anderson in plundering the
22 estate. And if I remember right, he talked about
23 a three-year statute of limitations, he was
24 looking at that, he was monitoring that.

1116 25 He had two meetings with Mr. Hamilton. I've
1 mentioned one. Another one was on February 1 of
2 1996, and that was attended as well by his
3 attorney, Mr. Philip Sloan. He talked to two law
4 professors. That's been discussed by Mr. Newman.

5 Despite what Ms. Gray and the Association
6 argues and contends, this is not a reckless,
7 careless man. In slang language, he's not a
8 loose cannon. He is an idealist. He's a lawyer
9 who kept before him, with him, an ethics file.
10 He was careful and deliberate.

11 He has also -- and this is important -- he
12 has also testified at some length about the
13 evolution of his knowledge from in August, '92,
14 suspicion, but not thinking it was fraud or a
15 crime.

16 This intensified. It increased in 1995 and
17 it intensified in 1996, particularly after he
18 talked to the government agencies. Even though
19 he didn't necessarily have good luck in dealing
20 with them, his knowledge of the criminal aspect
21 of this type of conduct increased.

22 And it's important, here, too, that with all
23 due respect, you keep in mind his background.
24 He's not a criminal law. He's not a trial
25 lawyer. His frame of reference for bad conduct
1117 1 was generally that of business fraud and that of
2 the breach of a fiduciary duty.

3 And he talked then about, and there is
4 testimony about him seeing and understanding that
5 this conduct was criminal-type conduct as of mid
6 February and late February. It's true, he did,
7 he talked generally about there being broad
8 statutes that would encompass this kind of
9 conduct.

10 He said, several times he said: "The more I
11 looked at what was going on, the more concerned I
12 got and the more I found."

13 Now, I'm not going to take much longer, but
14 I want to address the 1.6 (b)(1) exception and
15 the (c) exception. I won't say much more about
16 the (b)(1) exception. I have addressed that; his
17 state of mind, his reasonable belief.

18 We submit that the crimes are, or at least
19 at that time were ongoing, they were continuing
20 crimes. And for that reason, as I mentioned to

21 you, we will be responding to Ms. Gray's
22 supplemental memoranda.

23 Ms. Gray takes the approach, with all due
24 respect to her, she takes the approach that the
25 crimes here were maybe analogous -- this may be
1118 1 an extreme example, but it makes the point --
2 maybe to a mugging on the street or a brawl in
3 the bar. Within a minute or within 5 minutes or
4 10 minutes they are over, they are done,
5 everybody knows they are done.

6 That's not the case with respect to business
7 fraud and crimes, and the record has supported
8 this, does support this time and time again.

9 And again, how could he know for sure that
10 the crimes had been completed? I remember the
11 old adage or epigram, and I can't do it justice,
12 but that with respect to conspiracies, the facts
13 and circumstances are and remain in the hands and
14 the minds of the perpetrators, the
15 co-conspirators.

16 He has stated, and I agree that he has
17 stated on the stand that he believed he had this
18 higher calling, a higher duty to come forth and
19 report.

20 Probably not -- and I think his testimony
21 would be it would not be if Mr. Anderson was a
22 lawyer, but with him being a sitting judge, and
23 of some significance here, too, although it would
24 not change things, but the sitting judge was in
25 his county and in his city.

1119 1 He stated he had a higher purpose, but he
2 also has made it very clear that as of mid
3 February and on into later February during this
4 relevant period he clearly believed that this
5 conduct, it was bad, it was fraudulent, and then
6 that it approached and indeed was, fell within
7 the umbrella of criminal conduct.

8 Another exception that is clearly applicable
9 here is that of 1.6(c), and the reason -- I would
10 like -- Ms. Gray was using a --

11 THE HEARING OFFICER: It's on
12 there.

13 MR. MULLINS: We have that, thank
14 you. And that is that in August of '92 or even
15 before this criminal entity was formed by
16 Mr. Anderson and Mr. Hamilton they were for sure
17 two members of this conspiratorial nucleus that
18 was to carry out criminal activity over a period
19 of time.

20 And Mr. Schafer has said: "I may have been
21 a small cog in the wheel of that event," and
22 indeed, he was. The corporation that was formed
23 as well became part of this conspiratorial
24 nucleus.

25 Where a conspiracy such as that is formed,
1120 1 all the members of the conspiracy are agents of
2 each other. And at that time -- now, and
3 probably before, but this was the time that this
4 was revealed to Mr. Schafer.

5 At that time Hamilton was Anderson and
6 Anderson was Hamilton. And, in fact, you had
7 this conspiratorial element of the two of them

8 joined together, and the corporation, being
9 another what I'll call act in furtherance of that
10 co-conspiratorial scheme, became part of the
11 corporation.

12 And of course, there were other members,
13 too, but Anderson and Hamilton were the key
14 members and they were the, so-to-speak, the
15 founding members of this conspiratorial entity.

16 THE HEARING OFFICER: Mr. Mullins,
17 let me make sure I understand. You are asking
18 the Hearing Officer to construe RPC 1.6(c) to
19 bring the client of Mr. Schafer, Mr. Hamilton,
20 under the rubric, if you will, of a guardian,
21 personal representative, receiver, or other
22 court-appointed fiduciary, is that right?

23 MR. MULLINS: Yes, that's exactly
24 right. You stated it better than I could have
25 stated it. That's exactly right.

1121 1 And the fact that because a conspiracy was
2 involved here, I submit that it was very
3 difficult for someone like Mr. Schafer at the
4 time, with respect to disclosing information, to
5 parse it out piecemeal or to dissect it in a way
6 that just the right pieces -- with a sharp line
7 distinction between what he's revealed and what
8 he's maintained. It's more than very difficult,
9 I submit it's possible, that it simply can't be
10 done by the nature of a conspiracy.

11 Again, this wasn't, as I said, a barroom
12 brawl or a mugging on the street; far more
13 complicated.

14 Just a couple minutes. This is a very
15 unusual and unfortunate case. We all, I believe,
16 agree with that. It's a sad case.

17 The Bar found Mr. Schafer to be overzealous.
18 He was continual in his effort to express his
19 need and desire for reforms and to explain the
20 defense or reasons for him doing what he did.

21 And he absolutely infuriated the
22 Association, that's very clear. It's an
23 understatement to say they considered him one big
24 problem. In fact, Ms. Gray's questions are quite
25 telling on this point, too, where she asked Mr.

1122 1 Schafer questions about his relationship with
2 certain members of the press and his effort to
3 show that the Association was, among other
4 things, stupid, incompetent and inept.

5 I mention this just because it does place
6 everything in perspective, and I submit it tells
7 us something about why the Bar, why the
8 Association became so obsessed, absolutely
9 unrelenting in its effort to prosecute Mr.
10 Schafer.

11 Ms. Gray refers to this being personal with
12 Mr. Schafer. Indeed, if that exists, the same is
13 true with respect to the Association. Even
14 though it's an institution, it's a big
15 organization, it was just as personal with that
16 body.

17 Of course, the overriding question that has
18 existed here, too, is what happened with respect
19 to the complaint against Judge Anderson? What

20 happened? Why was that investigation at that
21 time, during the relevant period, not pursued?
22 I ask you seriously, and with all due
23 respect, to consider these two exceptions, that
24 Doug Brown's [sic] conduct and activity fell
25 within them, and I'm referring to 1.6(c) dealing
1123 1 with fiduciaries and 1.6(b)(1). From the facts,
2 I submit, both exceptions apply here.
3 Very briefly, I would just say that the
4 burden of proof is high. I know you as the
5 Hearing Officer, you are very familiar with the
6 burden of proof that exists here. You mentioned
7 it in the first part of the proceeding.
8 I would simply urge you, with all due
9 respect, to continue to keep in mind that burden,
10 that sometimes it is possible that clear
11 preponderance of the evidence sort of moves over
12 into the preponderance area or the area where
13 it's more probable than not. And so I ask you,
14 and I know you will, to continue to keep that
15 distinction in mind.
16 We have mentioned to you the In re Little
17 case, among others. I would urge you to consider
18 in this regard the Halverson proceeding, 998
19 Pacific 2d, 833, particularly the concurrence and
20 dissent on the part of Justice Sanders.
21 And also the matter, the disciplinary
22 proceeding against J. Allotta, 109 Wn. 2d, 789,
23 748 Pacific 2d, 628. In that case there was a
24 statement regarding clear preponderance at page
25 9 -- no, at page 791.

1124 1 Thank you very much.
2 THE HEARING OFFICER: All right.
3 I will review those materials.
4 I had one question. You touched on an
5 argument in your kind of list of defenses that I
6 just want some clarity on.
7 And I'm not sure what category it fits
8 under, but in the brief which I have reviewed Mr.
9 Schafer is asking the Hearing Officer to
10 essentially apply common sense and take notice of
11 the debate, the ongoing debate within the
12 American Bar Association regarding proposed
13 revisions to Rule 1.6. That would include an
14 explicit crime-fraud exception to the rule
15 against disclosing client confidences.
16 I would like to know from Mr. Schafer's
17 side: Are you asking the Hearing Officer to
18 modify the existing RPC 1.6 in this proceeding?
19 MR. MULLINS: I'm going to, with
20 your permission, ask, because of his extensive
21 involvement here, ask Mr. Schafer to respond.
22 THE HEARING OFFICER: That's fine.
23 MR. MULLINS: But I would state
24 that we are asking you as the Hearing Officer to
25 consider as to whether that exception exists
1125 1 directly or impliedly, and we are also asking you
2 to consider modification immediately retroactive
3 to the date and time of these particular charges,
4 but this can best be answered by Mr. Schafer.
5 THE HEARING OFFICER: Mr. Schafer?
6 MR. SCHAFFER: Thank you. I think

7 my answer requires that I reiterate what I said
8 on the first page of that brief for the hearing,
9 and that is very simply that I was taught when I
10 began law school 25 years ago, and I think every
11 law student and lawyer is taught and reaffirmed
12 regularly, that important decisions are driven by
13 policy basis, and there is ample opportunity for
14 any decision maker to pull out authority here or
15 authority there or construe words here or
16 construe words there to achieve the policy
17 objectives that they are seeking to give priority
18 to.

19 My references to common sense were simply
20 to, primarily to our own Supreme Court's
21 nationally recognized decision in the Hansen
22 case, where they did not apply extensive analysis
23 and made extraordinarily broad statements that
24 said there's an absolute duty on the part of a
25 lawyer to report to any judicial officer when
1126 1 they are subject to a threat, regardless of how
2 the lawyer learned of it, whether it was in a
3 confidential setting: "My client says my
4 boyfriend is going to kill the judge but don't
5 tell anyone."

6 Clearly, that would violate the Code of
7 Professional Responsibility, this 1.6, if it were
8 repeated. But the Hansen court, speaking through
9 Justice Richard P. Guy, said emphatically there's
10 a duty as an officer of the court to maintain the
11 security, the integrity, the administration of
12 the justice system.

13 And I'm simply saying that same policy
14 should apply when I as a lawyer have what I
15 consider to be, and I'm convinced any reasonable,
16 objective person would consider to be irrefutable
17 proof that a sitting judge is patently corrupt.

18 I feel in that circumstance, and only in
19 that clear circumstance I would do it again, and
20 I think any lawyer should do it again, and I
21 think if our system is going to refuse to permit
22 lawyers to report judges that they can
23 conclusively show from objective documentation,
24 signatures on pages, that that judge is clearly
25 corrupt, without giving regard to the number of
1127 1 victims who potentially are being abused by that
2 judge through his decisions that are affected by
3 his twisted character, and only giving
4 preeminence to one accomplice of that judge who
5 has cooperated in robbing a hospital of more than
6 a million dollars, I think we're suffering from,
7 you know, a complete lack of an internal moral
8 compass within our profession.

9 I think the leaders of the profession need
10 to set priorities and need to set direction, and
11 if they are unwilling to recognize that the
12 highest priority of every officer of the legal
13 system is to maintain the integrity of that legal
14 system, then we are far off course.

15 THE HEARING OFFICER: My question
16 to Mr. Mullins actually related more to what my
17 authority, the source of my authority as Hearing
18 Officer in this proceeding to essentially modify

19 RPC 1.6, if that is required to get the result.

20 I understand you are arguing that two of the
21 exceptions apply, and I have heard the argument
22 on that.

23 I'm sensing that this is a -- the point is I
24 think that the Hearing Officer is just one step
25 in the disciplinary process, and I'm asking you
1128 1 to advise me if there is something that in the
2 RPCs, the RLDs, or any other legal authority that
3 would give the Hearing Officer authority to
4 essentially modify the RPCs in connection with
5 this proceeding.

6 MR. SCHAFFER: The answer is
7 clearly you cannot revise the words of the RPC
8 any more than you can revise the words of a
9 statute but, clearly, you can apply a
10 policy-based interpretation of selected words, as
11 I have shown you the path in the phrase
12 "professional relationship" in the definition of
13 secrets. And I think it's acknowledged that what
14 I disclosed would not be a confidence as defined
15 under the rules of evidence of attorney/client
16 privilege -- the assertion is that it is a
17 secret.

18 And by focusing on the language used to
19 define secret; namely, a professional
20 relationship, and how that phrase, "professional
21 relationship," was used in the American Bar
22 Association Annotated Rules of Professional
23 Conduct, the 1982 or 1984 edition and the 1992
24 edition, both of which were, at least the first
25 of which was before presumably the Supreme Court
1129 1 in 1985 when they adopted the very definitional
2 language that they used, affords a very
3 straightforward path to take to achieve what I
4 think is a sound policy objective that I hope you
5 and others will share, without needing to claim
6 authority inherent or on any basis, you know, to
7 alter the rules as written.

8 Frankly, that is the way decisions are made
9 all the time; I know it, you know it, every
10 lawyer knows it.

11 THE HEARING OFFICER: All right.
12 Thank you. Is there anything further?

13 MR. NEWMAN: I would just add that
14 I believe that you don't need to modify the
15 rules. I think the rule should be left. The
16 preamble, as I have already pointed out, provides
17 enough leeway to address the situation.

18 And as Mr. Schafer indicated, the Hansen
19 case should act as guidance to you that not all
20 situations are covered by the rules, and this is
21 a situation which is not directly covered, and
22 common sense should be applied to allow an
23 attorney to report a corrupt judge.

24 THE HEARING OFFICER: Thank you.
25 Let's take another short break for the court
1130 1 reporter's benefit and then we'll hear rebuttal
2 argument.

3 MS. GRAY: Mr. Mills, that's fine,
4 but I anticipate it will be less than five
5 minutes.

6 THE HEARING OFFICER: All right.
7 Let's go ahead. You may proceed.

8 MS. GRAY: Thank you, Mr. Mills.
9 In listening to the closing statements by counsel
10 for Mr. Schafer I only heard one argument that I
11 had not addressed in my main summation, so my
12 rebuttal is going to be very brief and just
13 address that one argument, unless, of course, the
14 Hearing Officer has a question.

15 With regard to the one argument that I had
16 not previously addressed, it concerns RPC 1.6(c),
17 and although I mentioned it in my main summation
18 I just dismissed it. And I would like to
19 explain, having heard Mr. Mullins' argument, why
20 it is that I just dismissed it and why it is that
21 the Hearing Officer should reach that same
22 conclusion.

23 1.6(c): "A lawyer may reveal to the
24 tribunal." In the facts of this case Mr. Schafer
25 did not reveal to the tribunal of the Hoffman
1131 1 Estate the confidences and secrets.

2 That is the only disclosure permitted in RPC
3 1.6(c), to the tribunal. Those are not the
4 disclosures that we have in this case, which
5 include numerous disclosures, including to the
6 press.

7 The second thing I would like to point out
8 vis-a-vis RPC 1.6(c) is it talks about a breach
9 by a client who is a guardian, personal
10 representative, receiver, or other
11 court-appointed fiduciary. Mr. Hamilton, the
12 client, was not a guardian, personal
13 representative, receiver, or other
14 court-appointed fiduciary.

15 I suggest that Mr. Mullins' reading
16 involving his view on conspiracy, et cetera, is
17 not a common sense reading and should not be
18 applied to your reading of RPC 1.6(c).

19 I would like to conclude by thanking you
20 very much for all your attention and your time
21 and your consideration of these many issues.

22 THE HEARING OFFICER: Thank you.

23 All right. Let's remain on the record for a
24 moment to discuss where we go from here. Closing
25 arguments have been completed.

1132 1 There has been a request by Mr. Schafer to
2 file a supplemental hearing brief on the
3 continuing crimes issue. How long would you like
4 to have to file the brief?

5 MR. MULLINS: One week.

6 MR. NEWMAN: One week, Your Honor.

7 THE HEARING OFFICER: Okay. I
8 feel it would be appropriate to give the Bar
9 Association a chance to respond to that, even
10 if -- there may not be a need for a reply or it
11 may be a very brief reply, so I think -- would
12 two or three days be appropriate after that?

13 MS. GRAY: That would be fine. I
14 would prefer three.

15 THE HEARING OFFICER: Why don't we
16 set the deadline; could you file the brief by
17 Friday of this week, Mr. Schafer's side?

18 MR. NEWMAN: I think so. Yes,
19 we'll shoot for Friday.

20 THE HEARING OFFICER: Why don't we
21 schedule the filing of Mr. Schafer's brief on the
22 continuing crimes issue for this Friday, which is
23 what; the 29th?

24 And then the Bar Association will have
25 until -- I'll give you until Wednesday, the
1133 1 following Wednesday, which I believe is the 2nd
2 of August. If it isn't, it will be the following
3 Wednesday, anyway, to file a responding brief.

4 Incidentally, I don't want briefing on any
5 additional issues. This briefing should be
6 restricted to this limited point. I don't want
7 to receive a bunch of other briefs. We have had
8 a lot of briefing in this case so far.

9 I will not close the hearing until the Bar
10 Association files its brief. The significance of
11 that would be that the Hearing Officer has 20
12 days from the conclusion of the hearing within
13 which to file with the Association findings of
14 fact, conclusions of law, and a sanction
15 recommendation, if any, and I would like the 20
16 days to begin when the briefing has been
17 completed. So, that will be my order on that
18 point.

19 I, too, would like to thank counsel and Mr.
20 Schafer for your courtesies to each other and
21 your professionalism within this hearing and your
22 significant efforts to bring to my attention both
23 factual information and law that bear upon this
24 important issue.

25 I know that this is a very serious
1134 1 proceeding. I know it's a matter of public
2 interest, and I take it seriously and I'll do my
3 best.

4 That concludes the hearing for today unless
5 there's anything further.

6 MS. GRAY: Nothing further.

7 MR. NEWMAN: Nothing.

8 THE HEARING OFFICER: All right.
9 We'll be off the record. Thank you.

10 - - - - -

11 (Whereupon, the proceedings were
12 adjourned at 11:24 o'clock, a.m.)

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1135 1 C E R T I F I C A T E
2 STATE OF WASHINGTON)
) SS.
3 COUNTY OF KING)

4 I, the undersigned Notary Public in and for
5 the State of Washington, do hereby certify that in the
6 case of In Re: Douglas A. Schafer, Attorney at Law,
7 Washington Bar No. 8652 and Public No. 00#00031, the
8 hearing in the above named cause began at the hour of
9 9:00 o'clock a.m., the 17th day of July, 2000; that I
10 was authorized to and did report stenographically the
11 aforementioned proceedings and that the foregoing pages
12 comprise a true and correct transcription of those
13 proceedings.

14 IN WITNESS WHEREOF, I have hereunto set my
15 hand and affixed my official seal this 11th day
16 of October, 2000.

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20 MARK E. KING, CSR, RPR, and Notary
Public in and for the State of
Washington, residing at Bellevue.
21 My Commission expires March 16, 2001.
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