

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
THE FUND FOR ANIMALS, ANIMAL WELFARE INSTITUTE, AND HSUS'
MOTION FOR A PROTECTIVE ORDER**

Civ. No. 1:07-cv-1532

Ex. 12

Joel Kaplan Deposition

Page 1

1 VIRGINIA:
 2 IN THE CIRCUIT COURT OF FAIRFAX COUNTY
 3 ----- :
 4 JOEL KAPLAN, :
 5 Plaintiff, :
 6 vs : Law No. 163075
 7 SELLS-FLOTO, INC., :
 8 Defendant. : Fairfax, Virginia
 9 ----- : April 22, 1998

10 Deposition of:
 11 JOEL KAPLAN
 12 called for examination by counsel for the defendant,
 13 pursuant to notice, at the offices of Blankingship &
 14 Keith, 4020 University Drive, Suite 312, Fairfax,
 15 Virginia, commencing at 10:35 a.m., before Diana L.
 16 Cox, Notary Public for the Commonwealth of
 17 Virginia.
 18
 19
 20
 21
 22

Commonwealth Court Reporting, Inc.

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1 P-R-O-C-E-E-D-I-N-G-S
 2 Thereupon,
 3 JOEL KAPLAN
 4 was called as a witness and, after being duly sworn
 5 by the notary, was examined and testified as
 6 follows:
 7 EXAMINATION BY COUNSEL FOR THE DEFENDANT
 8 BY MR. KEITH:
 9 Q State your name, sir.
 10 A Joel L. Kaplan.
 11 Q Your business address?
 12 A 2851 Duke Street, Alexandria, Virginia.
 13 Q How are you employed?
 14 A I am the president and director of Action
 15 Investigative Services Incorporated.
 16 Q How long has Action Investigative Services
 17 Incorporated been in existence?
 18 A Since 1974.
 19 Q And are you the sole proprietor of that
 20 business?
 21 A It's a corporation, yes.
 22 Q All right. Are you the sole owner of it?
 Commonwealth Court Reporting, Inc.

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1
 2 APPEARANCES:
 3 For the Plaintiff:
 4 WILLIAM L. STAUFFER, JR., ESQUIRE
 5 Stauffer, Mannix, Rommel, Decker & Dulaney, L.L.C.
 6 Suite 1000
 7 8300 Greensboro Drive
 8 McLean, Virginia 22102-3604
 9 For the Defendant:
 10 JOHN A.C. KEITH, ESQUIRE
 11 Blankingship & Keith
 12 4020 University Drive
 13 Suite 312
 14 Fairfax, Virginia 22030
 15
 16 C-O-N-T-E-N-T-S
 17 WITNESS: Joel Kaplan
 18
 19 EXAMINATION BY: PAGE
 20 Mr. Keith 3
 21
 22 E-X-H-I-B-I-T-S IDENT.
 No. 1 - Agreement..... 45
 No. 2 - Letter from Snyder to Kaplan Dated
 6/4/97..... 132
 No. 3 - Letter from Kaplan to Snyder
 Dated 6/9/97..... 135
 No. 4 - Letter from Snyder to Kaplan Dated
 6/23/97..... 158

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1 A Yes.
 2 Q Have you had your deposition taken before?
 3 A Ever?
 4 Q Yes, sir.
 5 A Yes.
 6 Q So you know what the drill is?
 7 A Pretty much.
 8 Q I'll ask you questions, and if I don't
 9 make myself clear, feel free to ask me to rephrase
 10 the question, I'll be glad to do that. And if you
 11 need a break, just let me know.
 12 A Okay.
 13 Q What's your educational background, Mr.
 14 Kaplan?
 15 A I completed -- actually, excuse me. Is she
 16 going to bring a glass of water?
 17 (A discussion was held off the record.)
 18 BY MR. KEITH:
 19 Q Educational background?
 20 A I completed high school in New York City
 21 and I have obtained numerous seminars in security,
 22 electronics and other educational, continuing
 Commonwealth Court Reporting, Inc.

1 education, real estate license.
 2 **Q What licenses do you hold from the State**
 3 **of Virginia?**
 4 A State of Virginia, I have a Virginia
 5 private investigator's license, I have a personal
 6 protection specialist license, security guard
 7 license, electronic technical license, electronic
 8 sales license, and a Real Estate License, and a
 9 driver's license.
 10 **Q Now, do you use your real estate license**
 11 **in your business?**
 12 A In my investigative business? No.
 13 **Q Yes. Do you have any other business,**
 14 **other than AIS?**
 15 A Yes.
 16 **Q What is your other business?**
 17 A I have a real estate company investment
 18 and rental company in Phoenix, Arizona and I have an
 19 investment real estate company here, in Virginia.
 20 **Q What's the name of that?**
 21 A Kaplan & Associates.
 22 **Q Is it run out of the same office as AIS on**
 Commonwealth Court Reporting, Inc.

1 **Did you have any significant employment before that?**
 2 A Prior to 1973?
 3 **Q Yeah.**
 4 A I was doing investigative work for
 5 somebody else in the area, I had a rather large
 6 stereo and TV repair center in Arlington. I had a
 7 furniture store in Arlington. At the same time --
 8 **Q Okay.**
 9 A -- was teaching martial arts.
 10 **Q Okay.**
 11 A And then prior to that, from 1969 to 1971
 12 I was in the military, stationed in Arlington.
 13 **Q Is that what brought you to this area, the**
 14 **military?**
 15 A Yes.
 16 **Q Okay.**
 17 A I chose Arlington over Vietnam.
 18 **Q All right. When did you first have any**
 19 **dealings with Feld Entertainment or Ringling**
 20 **Brothers, Barnum & Bailey?**
 21 A 1980.
 22 **Q Prior to 1980, what sorts of projects had**
 Commonwealth Court Reporting, Inc.

1 **Duke Street?**
 2 A No.
 3 **Q Where is it located?**
 4 A I just -- it's my home.
 5 **Q All right.**
 6 A It's not an active real estate business.
 7 I am not a brokerage firm.
 8 **Q Okay. When were you first licensed as a**
 9 **private investigator?**
 10 A I basically wrote the license laws for
 11 private investigation, taught the first school in
 12 1974. The state first licensed investigators in
 13 1974. So I was actually in business before they
 14 ever had licenses, ever had a state license.
 15 **Q All right. And remind me when you formed**
 16 **AIS?**
 17 A Was formed in late 1973.
 18 **Q All right. Is it accurate for me to say**
 19 **that AIS has been your primary employer since 1973,**
 20 **your primary employment?**
 21 A Yes.
 22 **Q What did you do before you formed AIS?**
 Commonwealth Court Reporting, Inc.

1 you been involved in, in the personal investigation
 2 line of work? Private investigation is what I meant
 3 to say.
 4 A The general private investigative work
 5 that everybody else. Did domestic, criminal,
 6 civil. And my background is very heavy in
 7 electronics, design surveillance equipment.
 8 **Q And was your work for -- certainly you did**
 9 **work for private individuals?**
 10 A Correct.
 11 **Q Worked for corporations?**
 12 A Correct.
 13 **Q Did you do any work for the government?**
 14 A No.
 15 **Q How did you first come in contact with**
 16 **Feld Entertainment or an affiliated company?**
 17 A First came into contact with them through
 18 Charles Smith.
 19 **Q Describe that first contact for me.**
 20 A He had called me out of the yellow pages,
 21 I believe, it was. Either that, or I forget how he
 22 got the referral. Either through the yellow pages
 Commonwealth Court Reporting, Inc.

1 or through an attorney, to assist him in a personal
 2 matter.
 3 **Q What type of matter was it?**
 4 A Domestic matter.
 5 **Q Okay. And did you complete that**
 6 **assignment?**
 7 A Yes.
 8 **Q All right. And was that paid for by Mr.**
 9 **Smith personally?**
 10 A Yes.
 11 **Q Okay. Do I understand, though, that that**
 12 **contact with him then led to your doing work for the**
 13 **company or companies by which Mr. Smith was**
 14 **employed?**
 15 A That's correct.
 16 **Q How soon after your completion or how soon**
 17 **after your being hired to do this domestic work did**
 18 **you begin to do work for those companies?**
 19 A I believe probably four or five months
 20 afterwards.
 21 **Q All right. Do you recall what was the**
 22 **first thing or types of things that you did for Feld**
 Commonwealth Court Reporting, Inc.

1 do that, and it was Monday, the following Monday
 2 that I actually put the system together over the
 3 weekend and then demonstrated it on that Monday.
 4 **Q What year?**
 5 A I believe it was 1980.
 6 **Q Okay.**
 7 MR. STAUFFER: 19 what?
 8 THE WITNESS: 1980.
 9 MR. STAUFFER: Thank you.
 10 THE WITNESS: And then several of the
 11 Sells-Floto employees arrived, mid-level executives
 12 went up with me to the Baltimore arena to run a test
 13 of the unit. And we tested it out and it worked.
 14 And I guess that is how I got involved with the
 15 company at that point.
 16 BY MR. KEITH:
 17 **Q And what was the basic idea of this unit**
 18 **that you helped them install?**
 19 A Well, it was a music system that would
 20 Broadcast circus type, circus music or ice show
 21 music simultaneously to all the concession stands,
 22 so that it gave the feeling when you walk around.
 Commonwealth Court Reporting, Inc.

1 **Entertainment?**
 2 A Yeah. Actually, I remember very well. It
 3 was the concession music system, which was -- I
 4 guess I kind of lucked into, because my specialty
 5 was in electronics and wireless communications. And
 6 Mr. Smith had asked me to look at some security
 7 problems that were on the circus units at the time
 8 and do an overall security assessment. And that was
 9 probably going to be a one- or two-day assignment.
 10 And on the way back from, I believe it was New York,
 11 I was flying back with Mr. Smith, and he was
 12 discussing with me this music system that the
 13 company, Sells-Floto, concession business was trying
 14 to put together to design, so that they could play
 15 simultaneous music on all of the music stands, on
 16 all of the concession stands, and that they had been
 17 trying to develop this system for about a year and a
 18 half, two years, and they had some engineers working
 19 on it and they just couldn't seem to get it
 20 designed. And I remember, it was like it was
 21 yesterday, because it was on a -- I believe it was
 22 on a Friday afternoon that I told him that I could
 Commonwealth Court Reporting, Inc.

1 Back in 1980 we had a lot of old arenas, not like
 2 you have today with all the modernization. The old
 3 arenas, and all the stands, the concession stands
 4 were outside in the street area or the foyer area
 5 and this would play music so it would increase
 6 sales, concession sales because you had an
 7 atmosphere of music and that was --
 8 **Q The music system was sort of the second**
 9 **project that you undertook; is that right?**
 10 A It was the first large project that I
 11 undertook. The first project was merely just to go
 12 out and do a security assessment.
 13 **Q Okay.**
 14 A That was only a couple-of-day assignment.
 15 The music system turned in to be a major project.
 16 **Q By what entity were you employed for the**
 17 **security assessment?**
 18 A By my, Action Investigative Service.
 19 **Q But by who --**
 20 A Sorry. Sells-Floto.
 21 **Q By Sells-Floto for both of these?**
 22 A Yes.
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1 Q Okay. And then tell me, if you can, just
2 kind of bring me along and tell me some other
3 projects that you did in the next ten years or so. I

4 suppose you can't remember them all, but --

5 A I have a list of probably 60 or 70 that I
6 believe Mr. Sowalksy and Mr. Snyder have. I
7 provided them with that at our -- at one of our --
8 our first meeting --

9 Q We're looking for that.

10 A -- in April.

11 Q We're looking for that. Do you have a
12 copy of that by any chance?

13 A I believe I do.

14 Q Could you provide us with a copy of that
15 list?

16 A I have it here with me.

17 MR. KEITH: Okay. Would you be able to --

18 THE WITNESS: Do you want to break for a
19 second? I'm not sure I can find it.

20 MR. KEITH: It might save me time.

21 THE WITNESS: Oh, sure.

22 (A discussion was held off the record.)
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1 understand. That prior to the Feld Entertainment
2 umbrella, there was -- there's a division between
3 the show and the performers and the concessions.
4 And the concession business was called, is called
5 Sells-Floto Incorporated and the other entertainment
6 aspect of the show is called I&K Productions. And
7 now, as I believe, and I may be wrong, but I believe
8 that's now all encompassed under Feld Entertainment.

9 Q Okay. Is it accurate for me to say that
10 the projects which came to you virtually always came
11 through Chuck Smith?

12 A Most of them did come through or at least
13 his approval on the project came. I would get
14 assignments from many different people, but he would
15 always approve the expenditure of funds because
16 there were so many various budgets that had various
17 people, various units had various budgets. So
18 before they would expend any funds, it would get the
19 approval of Chuck Smith for the funds and the
20 assignment would either come from him or from the
21 person that requested it.

22 Q What form did the approval take? Were
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1 BY MR. KEITH:

2 Q In working on these various projects, Mr.
3 Kaplan, was Chuck Smith your primary contact on all
4 of them?

5 A I don't have the list in front of me, as
6 you do, but I think it would suffice to say that at
7 least on 90 percent of whatever you're looking at,
8 my direct contact with Sells-Floto, in terms of
9 reporting, was Chuck Smith.

10 Q Did it differ if you were doing a project
11 for I&K Productions?

12 A My primary contact was always Chuck
13 Smith. I mean, it was always more than one person
14 involved in a project. It wasn't a secretive
15 meeting. If it was an I&K project, certainly it was
16 other people that were involved in it. It could
17 have been somebody from personnel or any one of six
18 or seven people in the executive level.

19 Q Same with Feld Entertainment?

20 A Feld Entertainment is only an entity that
21 was developed, I believe, last year, in 1997. Just
22 so, I guess, for the record, too, so that you
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1 they verbal or written?

2 A Verbal.

3 Q And in the time frame between 1980 and
4 1990, let's say, what was the basis on which you
5 worked for these entities?

6 A Basically the time, materials,
7 reimbursement for third-party expenses.

8 Q And you charged your time on what sort of
9 basis?

10 A It was, I basically billed by the hour or
11 by the day, if I was out of town I would bill on a
12 daily rate.

13 Q How did you decide on or negotiate an
14 hourly rate?

15 A I had set a standard hourly rate, which I
16 would charge for services that I rendered and then
17 an hourly rate that we would charge for security
18 services because we had security personnel working
19 also. And there was other hourly rates for other
20 third-party people that I brought in to assist what
21 we did.

22 Q Before you would begin a project, did you
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1 discuss the hourly rate with Mr. Smith?
 2 A No.
 3 Q Did you provide detailed invoices that
 4 would reflect the services which you had provided?
 5 A To a point.
 6 Q What do you mean by that?
 7 A I mean, we provided detailed records for
 8 expense reimbursements and then detailed -- we would
 9 not put out, let's say, a time sheet like perhaps a
 10 law office would. Our conversation with so and so,
 11 .2; conversation with so and so, .4; telephone call
 12 to so and so.
 13 Q You didn't do that?
 14 A No.
 15 Q How did your bills, how were they
 16 formatted?
 17 A Just in terms of blocked time. It was
 18 actually very loosely billed.
 19 Q Would you give a description of services,
 20 the things you had done, and then one sort of dollar
 21 amount for the --
 22 A Right. Might have said investigation,
 Commonwealth Court Reporting, Inc.

1 A Correct.
 2 Q Who approved them for payment?
 3 A Correct.
 4 Q Did he ever question your invoices?
 5 A No. Actually no.
 6 Q He didn't have any problems along those
 7 lines?
 8 A No. I have a really bad problem of
 9 under-billing.
 10 Q During, let's say, the first ten years
 11 that you worked with Sells-Floto, I&K Productions,
 12 the circus generally, did your level of involvement
 13 fluctuate up and down? Did it increase? What
 14 happened to it?
 15 A It increased substantially. The company
 16 got much larger, moved to a new headquarters, built
 17 a building, went international. The involvement
 18 increased substantially.
 19 Q And did the type of project that you were,
 20 that you were working on change?
 21 A Of course.
 22 Q And describe the change, if you can.
 Commonwealth Court Reporting, Inc.

1 investigation of truck theft, blue unit, two days,
 2 Milwaukee, and that would be it.
 3 Q Did your bills provide, or your invoices
 4 provide any, on the face of them, any hourly rate
 5 and what times, hours worked and that sort of thing?
 6 A Yeah. Yes.
 7 Q Or daily rate times the number of days?
 8 A Yes.
 9 Q All right. And then did you also break out
 10 the third-party expenses that you had and the costs
 11 advanced?
 12 A Yes. So a typical bill -- I'm sorry. A
 13 typical bill might have said investigation,
 14 Milwaukee, or investigation, Milwaukee, blue unit
 15 drug testing, two days, whatever the rate was and
 16 then would say underneath, air, hotel,
 17 miscellaneous, lab fees, shipping fees. That would
 18 be just a simple invoice.
 19 Q Your invoices -- I'm sorry.
 20 A I'm sorry. Go ahead.
 21 Q You then submitted your invoices to Mr.
 22 Smith?
 Commonwealth Court Reporting, Inc.

1 A It's not -- you have to understand how
 2 this whole system works. I mean, that's a -- and I
 3 don't mean it to be rude. But it's a bad question
 4 because --
 5 Q Ask yourself a good one then.
 6 A I have many of them. The level of
 7 responsibility certainly increased and the
 8 assignments so varied that it wasn't like you were
 9 working for a regular company that just has a
 10 project and you go from this project to that
 11 project. We worked all over the place.
 12 Q Did you have any employees of AIS at the
 13 time other than yourself?
 14 A No. I had subcontractors.
 15 Q All right. So you didn't take on employees
 16 at AIS in order to cover this demand?
 17 A Oh, sure I did. We took on -- well, yes.
 18 The answer in reality, yes. For tax reasons, no.
 19 We paid everybody as subcontractors but we certainly
 20 utilized many different peoples' services. We just
 21 didn't pay them as employees.
 22 Q But in terms of their being
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1 subcontractors, you passed their bills directly on
 2 to Sells-Floto, correct?
 3 A Yeah. I added some extra fees on for
 4 company fees, then yes.
 5 Q What I mean -- I am not sure I understand.
 6 You did pass through the --
 7 A It wasn't --
 8 Q Let me finish the question.
 9 A I'm sorry.
 10 Q You did pass through the independent
 11 contractor cost, didn't you?
 12 A Yes.
 13 Q What was your -- again, taking the time
 14 period from 1980 to 1990, how much, during that time
 15 period, where was the office of Sells-Floto?
 16 A 3201 New Mexico Avenue.
 17 Q And at what point did they move out to
 18 Virginia?
 19 A I believe it was 1987. Is that right?
 20 MR. SOWALSKY: '89.
 21 THE WITNESS: '89.
 22 BY MR. KEITH:
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1 A What do you mean by "involvement"?
 2 Q Well, you've met him, you know him.
 3 A Many times.
 4 Q All right. What projects have you been
 5 involved with that brought you into contact with Mr.
 6 Kenneth Feld?
 7 A Basically everything I did at Sells-Floto,
 8 since he owns it.
 9 Q And so, do you really mean to say that
 10 every single job that you did, you had some personal
 11 interaction with Kenneth Feld about?
 12 A No. No. Everything that I -- I assume that
 13 everything I did he either knew about or was told
 14 about.
 15 Q Okay.
 16 A I mean, I have been to his home. I did
 17 personal security for his family. We did personal
 18 security systems for his home. I have met with him
 19 several times, many discussions with him. We've
 20 bumped into each other at shows a hundred times.
 21 Q So you've done personal security work for
 22 him you just said, correct?
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1 Q And how much time, on average, did or any
 2 way you can describe it during that time period, did
 3 you spend at the headquarters of the company?
 4 A You're asking me from 1980 to '89?
 5 Q Yeah.
 6 A So how much time did I spend at New Mexico
 7 Avenue?
 8 Q Yes.
 9 A I was there probably an average of three
 10 or four hours a week, at least.
 11 Q Okay. And then compare that to the time
 12 you were out on assignment, away from the
 13 headquarters. How much time would you say per week,
 14 on average, you would have spent?
 15 A It was increasing substantially. I mean,
 16 I can't -- I really don't know.
 17 Q Okay.
 18 A I mean, it started out minimal and
 19 increased, and increased ten-fold.
 20 Q What involvement from as long as you've
 21 been with the company have you had with Kenneth
 22 Feld?
 Commonwealth Court Reporting, Inc.

1 A Correct.
 2 Q Involving his home?
 3 A Correct.
 4 Q Give me some examples of some other
 5 specific projects that you have worked on with him,
 6 where you've actually had interaction with him?
 7 A The stuff we did at his house, for his
 8 family. There was some times where there was some
 9 threats and we sent security out to his house that
 10 was actually not billed to him directly. It was
 11 billed to the company.
 12 Q Okay.
 13 A We had many investigations that he was
 14 aware of and part of. There were numerous times
 15 when I was in Chuck Smith's office and Kenneth was
 16 on the speaker phone, we discussed cases.
 17 Q Give me an example of some of the threats
 18 that you're talking about?
 19 A Well, People for the Ethical Treatment of
 20 Animals had a demonstration at his home several
 21 years ago.
 22 Q Any others that come to mind?
 Commonwealth Court Reporting, Inc.

1 A No. Most of the threats were from PETA.
 2 Q What does that stand for?
 3 A People for the Ethical Treatment of
 4 Animals.
 5 Q When you were -- I'm sorry. When the
 6 companies were located on New Mexico Avenue, did you
 7 have access to the premises other than going there
 8 to visit Mr. Smith or some other employee?
 9 A No, I did not. I mean, now that I am
 10 thinking, if you don't mind me going back to the
 11 other question. There were also many threats on
 12 Kenneth Feld's life. There was a crazy guy, David
 13 Mayfield, down in Florida, who was sending in
 14 letters by the ton for quite some time, directed at
 15 Mr. Feld and at Mr. Feld's now deceased father.
 16 Kenneth was directly involved in that. It was also a
 17 couple of -- another guy who threatened out in
 18 Maryland, same story. Kenneth Feld was directly
 19 involved in that. Kenneth Feld through his office.
 20 Q All right.
 21 A Sorry. I didn't mean to go --
 22 Q No. I appreciate that. Feel free to do
 Commonwealth Court Reporting, Inc.

1 to think of every little thing. I'll expand. I was
 2 at that building probably 25 hours a week for six or
 3 seven months during the move.
 4 Q What did the security system entail at the
 5 new building?
 6 A Access control, elevator control, CCTV
 7 cameras.
 8 Q What is CC?
 9 A Closed circuit TV cameras.
 10 Q Okay. Anything else?
 11 A I mean, design layout of various parts of
 12 the building for security purposes; issuing, you
 13 know, training somebody on the computer for
 14 programming the security system; keys; key control;
 15 parking lot security.
 16 Q Now, as of the time of the move, what
 17 percentage of your or AIS' business was related to
 18 the Feld companies?
 19 A You mean from '89 through '96?
 20 Q Well, just take that. You know, answer it
 21 that way. '89 to '96, what was the percentage?
 22 A Of my gross income, probably derived, I
 Commonwealth Court Reporting, Inc.

1 that.
 2 In the late '80s, 1989, when the company
 3 moved out to Virginia, and for the last -- for the
 4 seven or eight years that you were involved out
 5 there, did your level of involvement continue to
 6 increase?
 7 A Yes.
 8 Q Did you undertake any projects with regard
 9 to the move to that building?
 10 A Yes.
 11 Q What sorts of things did you do?
 12 A I designed the security system for the
 13 building, I assisted with the moving of valuables
 14 and Mr. Irvin Feld's personal affects from New
 15 Mexico Avenue to Westwood Center Drive and numerous
 16 other ventures. I was the real estate agent for --
 17 not for the building, but I was the real estate
 18 agent responsible for leasing out about 8-, 9,000
 19 feet of restaurant space in the building. There are
 20 three restaurants that are in there now.
 21 Q Okay. Anything else come to mind?
 22 A It's a long list. It would take me hours
 Commonwealth Court Reporting, Inc.

1 would say, 75 percent.
 2 Q All right. And other than the Feld work,
 3 what else were you doing? Not specific clients, but
 4 what other types of things were you doing outside of
 5 that?
 6 A General investigative work, law firms,
 7 other clients.
 8 Q The same sorts of things that you had been
 9 doing since the beginning presumably?
 10 A Yes. Correct. Yes.
 11 Q Mr. Stauffer has supplied me with answers
 12 to interrogatories. And I don't believe I have
 13 signed ones yet.
 14 MR. STAUFFER: Mr. Kaplan has given them to
 15 me, but I just haven't given them to you yet. But
 16 they are without change.
 17 BY MR. KEITH:
 18 Q Okay. You have reviewed them, Mr. Kaplan?
 19 A Yes, I have.
 20 Q And are they accurate and complete insofar
 21 as they are not objected to?
 22 A Yes.
 Commonwealth Court Reporting, Inc.

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1 Q Do you have -- strike that.
 2 I also submitted a request for documents
 3 to you. Have you seen that?
 4 A Yes.
 5 Q And your counsel has submitted some
 6 documents to me which are no more than the documents
 7 that were attached to the motion for judgment and
 8 the same sorts of documents or the same documents
 9 which we provided to you. Do you have documents in
 10 your possession or in your company which relate to
 11 the various projects which you have done since 1980
 12 for Feld, the Feld companies?
 13 A Documents such as invoices? You're
 14 talking about financial documents?
 15 Q Well, I am talking about -- a broad
 16 question, do you have documents which relate to
 17 those projects?
 18 A Yes.
 19 Q And do those documents, do you have
 20 records of your invoices?
 21 A Yes.
 22 Q Payments received?
 Commonwealth Court Reporting, Inc.

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1 several unique security devices for the shows. I
 2 have, you know, schematics.
 3 Q When you purchase equipment for the
 4 benefit of the Feld companies, did you keep those
 5 invoices?
 6 A Keep my purchase invoices?
 7 Q Yes.
 8 A I believe I have most of them, yes.
 9 Q Okay. You said that your first
 10 introduction to Chuck Smith was a personal matter?
 11 A Correct.
 12 Q In the first ten years, from 1980 to 1990,
 13 did you undertake any other personal assignments for
 14 him?
 15 A None that I billed for.
 16 Q Did you undertake some that you didn't
 17 bill for?
 18 A Not really an assignment, no. We actually
 19 became friends. And if I am not mistaken, there was
 20 probably a six-month to maybe a year period in the
 21 first year where I was still doing some personal
 22 work for Chuck Smith.
 Commonwealth Court Reporting, Inc.

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1 A Yes.
 2 Q People you hired?
 3 A Yes.
 4 Q And are your records relatively complete?
 5 A I am not sure I understand what you're --
 6 Q You keep these records on a regular basis,
 7 do you not?
 8 A Financial records.
 9 Q All right.
 10 A If that is what you're asking.
 11 Q All right. Do you keep any records other
 12 than financial records?
 13 A Very few.
 14 Q All right. What sorts of records do you
 15 keep other than financial records?
 16 A Might be some scratch notes. For
 17 instance, the polygraph test, we would have a
 18 transcript of the polygraph, questions and the
 19 answers; drug testing, we would have the actual lab
 20 result sheets; security equipment that were supplied
 21 to the shows. I would have instruction books and
 22 manuals. We designed several other -- I designed
 Commonwealth Court Reporting, Inc.

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1 Q Relating to his domestic situation?
 2 A Right. And then after that, we actually
 3 both decided that I didn't want -- we weren't going
 4 to pursue that avenue any longer and he hired some
 5 other investigator.
 6 Q What was the nature of your friendship?
 7 A Can you explain that question.
 8 Q Sure. I would assume that you got along
 9 well together and that you were friendly in
 10 connection with work; is that right?
 11 A That's correct.
 12 Q And did your friendship extend outside of
 13 work?
 14 A When you're working, I am answering -- I
 15 am sure Mr. Sowalsky understands what I am saying.
 16 This business is 24 hours, 7 days a week. You have
 17 to understand the nature of the beast. This is not
 18 working for Xerox, where the office closes at 6:15
 19 and everybody goes home, and then you go out to the
 20 Happy Hour Bar and have a couple of drinks with
 21 somebody. This is a 24 hour. These shows are up
 22 and running until 2 a.m. in the morning, with time
 Commonwealth Court Reporting, Inc.

1 changes on the east coast, west coast. So we had a
 2 lot of contact. I guess I'll expand. Did we ever
 3 go out and sit down and have happy hour, drinking
 4 together, no.
 5 **Q Did you ever visit his home?**
 6 A Yes.
 7 **Q Did he visit your home?**
 8 A No.
 9 **Q In that time period, from '80 to '90, how**
 10 **many times did you visit Mr. Smith at his home on a**
 11 **purely social basis?**
 12 A Probably zero.
 13 **Q How many times did you visit him at his**
 14 **home where there was some work connection?**
 15 A Fifteen, twenty, thirty times.
 16 **Q Okay. And would I be correct in guessing**
 17 **that there might have been some social aspect to**
 18 **those visits but there was a business aspect as**
 19 **well, occasionally.**
 20 MR. STAUFFER: I am going to object to the
 21 form of the question.
 22 MR. KEITH: Yeah. It's a pretty lousy
 Commonwealth Court Reporting, Inc.

1 baseball or football? No.
 2 **Q Okay. Between 1980 and 1990, did you ever**
 3 **undertake any surveillance for Sells-Floto or Feld**
 4 **company?**
 5 A Oh, numerous times.
 6 **Q Give me some examples.**
 7 A We had numerous workman comp, compensation
 8 cases; we had thefts, unit thefts; we conducted
 9 surveillance on the units. Units meaning the shows.
 10 **Q And how would that, would that**
 11 **surveillance typically be conducted?**
 12 A What do you mean by that?
 13 **Q Well, if you had a workman's comp claim**
 14 **that you were instructed to conduct surveillance on,**
 15 **how would that typically work? What would that**
 16 **entail?**
 17 A We followed people all over the country,
 18 set up surveillance points. This is, so that you
 19 understand this, and I don't know if you do or not
 20 --
 21 **Q That's why I am asking the questions. I**
 22 **am here to learn.**
 Commonwealth Court Reporting, Inc.

1 question.
 2 MR. STAUFFER: I wouldn't say that, but I
 3 am not sure I understand it.
 4 MR. KEITH: I am not either. I'll withdraw
 5 it.
 6 BY MR. KEITH:
 7 **Q Let me take one more crack at it. When you**
 8 **would go to his house on these occasions, why did**
 9 **you meet with him at his house instead of at the**
 10 **office?**
 11 A As I said, understand the nature of the
 12 beast, this is a 24-hour, basically 24 hours, just
 13 about 6-day-a-week business. So all of the
 14 executives and some of the mid-level executives all
 15 had extension phones in their homes that came off
 16 the switchboard in the office. You know, most of the
 17 people there, especially the executives, especially
 18 Chuck Smith, who is a workaholic. He works 20 hours
 19 a day. So sometimes you'd have to go to his house
 20 and pick something up or drop something off. I
 21 mean, I couldn't recall every single instance. Did
 22 we ever sit down for five hours and talk about
 Commonwealth Court Reporting, Inc.

1 A This defies any rule of normality. These
 2 companies defy -- this is not normal. So, I mean, I
 3 know you're probably used to dealing with most
 4 normal -- and I use the term "normal." I don't mean
 5 normal as opposed to abnormal. I mean, this is not
 6 your everyday -- you know -- again, Xerox where
 7 you're doing workman's comp case and the guy lives
 8 in Reston and the company is in Chantilly. These
 9 people are all over the country, so you're
 10 everywhere.
 11 **Q A lot of travel involved?**
 12 A A lot of travel.
 13 **Q And the surveillance, in the average sort**
 14 **of workman's comp sort of thing, would it be just**
 15 **physical line-of-sight type surveillance as opposed**
 16 **to electronic surveillance?**
 17 A No. It could have been both.
 18 **Q Okay. What sort of electronic**
 19 **surveillance would you employ on a case like that?**
 20 A Tracking devices on somebody's car, video
 21 surveillance, video cameras.
 22 **Q How often did you use video cameras to**
 Commonwealth Court Reporting, Inc.

1 **conduct that kind of surveillance on, say, suspected**
2 **worker's comp case?**

3 A As soon as they became small enough.

4 **Q Which was about when?**

5 A '80.

6 **Q Okay.**

7 A '83, '84.

8 **Q So would you, you say that you frequently**
9 **used video surveillance in that time period, between**
10 **'80 and '90?**

11 A Sure.

12 **Q Who did you deal with at the company on**
13 **surveillance projects? Chuck Smith?**

14 A There was no -- again, this is -- there is
15 no division. There is no one person who is in
16 charge of surveillance projects, one person who is
17 in charge of drug testing projects, one person --
18 this is a very close family or was a very close
19 family of people that had been there for many, many,
20 many years and everybody interacted. Most of the
21 workman's comp and insurance came from Judy Godfrey,
22 who was in charge of insurance. And some of it went
Commonwealth Court Reporting, Inc.

1 A Phone taps? No. Only audio surveillance
2 would have been recording somebody's conversation.

3 **Q Okay. Did you do that from time to time?**

4 A Oh, sure.

5 **Q Okay. So back to -- now I think I have got**
6 **the definition straight. What sorts of things,**
7 **other than worker's comp, required or caused you to**
8 **use audio or video surveillance?**

9 A Well, that's not really surveillance. I
10 mean, I don't consider that surveillance.

11 **Q What do you consider?**

12 A If I am recording your conversation with a
13 tape recorder, while we're talking, I don't consider
14 that surveillance.

15 **Q What if I don't know you're recording it?**

16 A It's still not surveillance.

17 **Q Okay. What is it?**

18 A Recording a conversation.

19 **Q Okay.**

20 A That's all it is.

21 **Q Okay.**

22 A And it's legal.

Commonwealth Court Reporting, Inc.

1 through Mr. Sowalksy's office, through Julie
2 Strauss' office.

3 **Q What other sorts of problems or projects**
4 **would require the use of surveillance other than**
5 **worker's comp?**

6 A You mean on the units themselves or in the
7 building?

8 **Q Well, on the units themselves.**

9 A It would require -- I'm sorry. Would
10 require electronic surveillance?

11 **Q Electronic surveillance?**

12 A Electric surveillance meaning cameras or
13 are you talk about --

14 **Q Well, audio, video?**

15 A Electronic surveillance is also motion
16 detectors. It's also infrared. Any type of
17 security system is basically electronic security,
18 electronic surveillance, because it tells you
19 whether somebody is in or out.

20 **Q Let's just talk about audio and video?**

21 A In audio, there was none.

22 **Q None? No phone taps, for instance?**

Commonwealth Court Reporting, Inc.

1 **Q Okay. And video, if you have a camera in a**
2 **place, taking pictures, is that surveillance?**

3 A If it's unmanned, it's surveillance.

4 Yeah. If it's manned, then the person's actually --

5 **Q I understand. I understand. It's not**
6 **when dad takes a picture of his kid at the zoo?**

7 A Right.

8 **Q But when there's a hidden camera taking**
9 **pictures, does that meet your definition of**
10 **surveillance?**

11 A Right. I am not trying to argue
12 semantics.

13 **Q You're the expert. I want to hear what**
14 **you have to say. But the question I am trying to ask**
15 **with difficulty is, other than worker's comp, what**
16 **sorts of things, if any, caused you to use recording**
17 **devices, either audio or video, between 1980 and**
18 **1990?**

19 A Well, when we installed the video system
20 in the building in 1989 --

21 **Q Okay.**

22 A -- to 1990.

Commonwealth Court Reporting, Inc.

1 Q All right. And I want to ask you about
 2 that. I am going to come back to that.
 3 A I am sure.
 4 Q But tell me about before, other than that,
 5 in terms of the units. Were there any other
 6 things? I can understand you're thinking that
 7 people are malingering on workman's comp claims and
 8 wanting to get a picture of them doing pole vaulting
 9 or something like that and find out they're in great
 10 shape. Can you give me other examples?
 11 A Of video surveillance?
 12 Q Video, yes.
 13 A Unmanned video surveillance?
 14 Q Yes.
 15 A No.
 16 Q Back to one other point. And that is,
 17 after the first personal project that you handled
 18 for Mr. Smith regarding his domestic problems until
 19 he left the company, did you do any other personal
 20 work for him?
 21 A Personal work for him?
 22 Q Yes. And clearly the initial matter
 Commonwealth Court Reporting, Inc.

1 equipment, and I knew where to get it and I was a
 2 dealer for a lot of electronic equipment. He wanted
 3 a GPS receiver thing for his car, so I went and got
 4 him one and sold it to him.
 5 Q Okay.
 6 A I mean, I would do stuff like that.
 7 Actually, I did that for a lot of people in the
 8 company, numerous people.
 9 Q What other things did you do for Chuck
 10 Smith?
 11 A I don't remember. I really don't
 12 remember. Well, I installed a cellular phone in his
 13 personal car. I had a cellular -- I also had a
 14 cellular telephone business. I neglected to tell
 15 you that. From 1987 to 1994 I had a cellular
 16 telephone business, so I installed a phone in his
 17 car. I installed a phone in Kenneth's car. I
 18 installed a phone in Charlie Feld's car. That was
 19 personal.
 20 Q Okay. Did you ever install any
 21 surveillance equipment in Mr. Smith's home?
 22 A No.
 Commonwealth Court Reporting, Inc.

1 regarding his domestic situation was a personal
 2 matter and didn't have nothing to do with the
 3 company. Did you involve -- were you hired by him
 4 personally to do any other matters for him?
 5 A Let me just answer the question with one
 6 answer. I never billed Chuck Smith for any personal
 7 services that I provided after probably 1980, '81.
 8 Q Okay. Did you bill anyone else for
 9 personal services that you did for him?
 10 A Did I bill anyone else for personal
 11 services I did for Chuck Smith?
 12 Q Yes.
 13 A No.
 14 Q So, is it your testimony that you did no
 15 personal services for him?
 16 A No.
 17 Q What personal services did you provide for
 18 him?
 19 A I mean, I was doing favors from time to
 20 time, which had nothing to do with company
 21 business. If he wanted -- I mean, I just did one
 22 two weeks ago, same thing. He wanted a piece of
 Commonwealth Court Reporting, Inc.

1 Q Anybody elses' home for him, for Mr.
 2 Smith?
 3 A Nope.
 4 Q Did you ever sell him any surveillance
 5 equipment for him to use himself, perhaps install
 6 himself?
 7 A I think I sold him a couple of cameras, I
 8 sold him some tape recorders. I was a dealer for
 9 Olympus. I sold to I&K, Sells-Floto tape recorders,
 10 tapes, transcribers.
 11 Q During the period prior to 1995, you
 12 worked exclusively on a time and materials basis
 13 with the Feld companies; isn't that correct?
 14 A Yes.
 15 Q And then in July of 1995, you entered into
 16 some sort of an agreement; is that correct?
 17 A No.
 18 Q Okay. When was the first time you entered
 19 into an agreement with regard to your provision of
 20 services to Sells-Floto?
 21 A Whatever the date of the contract was. I
 22 believe it was April of '96. Let me answer the
 Commonwealth Court Reporting, Inc.

1 question. Was a written agreement, is that what
2 you're saying, or when did I enter into an
3 agreement?

4 **Q The question was an agreement.**

5 A I had an agreement since 1979.

6 **Q I thought you told me that between, from,
7 I thought it was '80, but from 1979 on, until 1995,
8 your agreement was that you would provide services
9 on a time and materials basis; isn't that correct?**

10 A That's correct.

11 **Q Okay. Now, did you, in July of 1995,
12 arrive at any other sort of arrangement with
13 Sells-Floto?**

14 A No.

15 (No. 1 - Agreement, marked for
16 identification.)

17 BY MR. KEITH:

18 **Q You have before you what's been marked for
19 this deposition as Exhibit Number 1. It is a
20 document consisting of four pages, entitled
21 "Agreement". Do you recognize this document?**

22 A I do.

Commonwealth Court Reporting, Inc.

1 **there more than one, was there more than one
2 discussion?**

3 A Let me, again, if I might, spend a minute,
4 if I might. And when you talk to Chuck Smith you
5 usually get, most of the time, any time between one
6 to six minutes of time. He operates like an
7 allergist would operate. You have 16 patients in
8 rooms and he's going back and forth. So you're
9 called up for a meeting, that's why I started this
10 with that joke. I mean, you're called for a meeting
11 at one o'clock but you don't ever see him until
12 3:30, 4 o'clock. So you really don't have this
13 conference table, two-hour meeting with Chuck Smith,
14 debating how much you're going to charge and how
15 you're going to charge and how you're going to be
16 billed and when you're going to be paid. The things
17 that you would normally, I guess in a normal type of
18 environment, discuss. So it was two minutes here,
19 three weeks later it was five minutes there. Phone
20 call, maybe 30 seconds.

21 It sounds ridiculous, I know, to you and
22 trying to explain it now, in a deposition, sounds a
Commonwealth Court Reporting, Inc.

1 **Q Bare your signature on Page 4?**

2 A It does.

3 **Q The very first sentence, up there at the
4 top, says, "This agreement, while signed by the
5 parties on April 1, 1996, confirms and ratifies a
6 verbal agreement entered into in July of 1995."**

7 A I see that it says that. And I guess I
8 misunderstood your question as to whether or not we
9 entered into a confirmed agreement. We had, without
10 expanding on your answer, we had an agreement that
11 we were going to change the arrangement that we had
12 previously had with regard to billing, but we did
13 not have -- we obviously did not have it in writing
14 and we didn't have the exact terms and conditions
15 down to a science. But we had agreed sometime in
16 July that we were going to change the methods by
17 which I was going to be paid.

18 **Q All right.**

19 A If that answers the question.

20 **Q Think about July of 1995, and tell me
21 about the discussion you had that is reflected in
22 Exhibit Number 1. Was there one discussion or were**

Commonwealth Court Reporting, Inc.

1 little ridiculous, but that's basically how
2 everything operates. And that's just the nature of
3 the beast of that type of company.

4 So I guess I am going to answer the
5 question that you're going to ask me next. Why did
6 it take me so long? Because Chuck Smith was out of
7 the country for a month at a time, I was on
8 assignment. It was a five-minute meeting here,
9 ten-minute meeting there, so it took a while before
10 we finally were able to put it on paper.

11 **Q To change the way in which you did
12 business, was your idea?**

13 A It was a mutual -- it was mutual idea.

14 **Q I don't suppose you both came up with it
15 at exactly the same time. Where did it come from
16 initially?**

17 A I mean, well, because the company was
18 growing at leaps and bounds, I was devoting a
19 substantial amount of my time to various entities, I
20 had a quantity of equipment that I had been storing
21 in my home for eight, nine years, from some failed
22 shows that never got off the ground, I had equipment
Commonwealth Court Reporting, Inc.

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1 from Broadway shows and I had Sells-Floto electronic
 2 equipment and I had a portion in my house designated
 3 for storage space. And I had thousands or more, I
 4 couldn't even count them, thousands of hours
 5 unbilled for time for meetings, for waiting for
 6 Chuck for discussions. And at the time Chuck
 7 approached me and said, You know, we really need
 8 some more time. We need to do this. We need to do
 9 that. And I was having a substantial problem
 10 running my business with other clients and being
 11 able to, again, the nature of the beast, it was
 12 always an emergency. Nothing, or probably five
 13 percent of all assignments were ever planned in
 14 advance more than a day or two. Everything was,
 15 let's, we're going to do it this minute. Right now.
 16 So it was very difficult to have other
 17 clients and make a promise to anybody as to where I
 18 could be more than about literally 20 minutes in
 19 advance. Because when Chuck Smith calls, everybody
 20 comes. I know that kind of sounds ridiculous here,
 21 but that's how it works.
 22 So, I found it very difficult to continue
 Commonwealth Court Reporting, Inc.

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1 able to answer the call of, now I guess it's called
 2 Feld Entertainment.
 3 **Q Okay.**
 4 A So I had a problem with that.
 5 **Q Right.**
 6 A I approached Chuck and explained that
 7 problem, and he first wanted me to put in more time
 8 and hours. And I told him what I was doing. We
 9 discussed the thousands of hours that I had never
 10 billed for, plus the stuff that was stored in my
 11 house. It was an on-going discussion that lasted
 12 many months. Like I said, three minutes here, five
 13 minutes there. Neither one of us was in a real rush
 14 to get it into writing because we had a very good
 15 relationship and we trusted each other.
 16 **Q Is this statement in Exhibit Number 1**
 17 **accurate, that you had a verbal agreement, a verbal**
 18 **agreement in July of 1995, or would it be more**
 19 **accurate to say that you began discussing the verbal**
 20 **agreement in July of 1995?**
 21 A No. We had -- I mean, you're playing on
 22 semantics. I really can't answer that question.
 Commonwealth Court Reporting, Inc.

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1 running an investigative agency and make promises to
 2 other clients who had me on retainer. And I
 3 expressed that to Chuck Smith, and he understood
 4 that. And that's the discussions that started that
 5 way.
 6 **Q So, it sounds like to me that you were the**
 7 **one that was having the problem that made you want**
 8 **to have this agreement; is that right? I mean, from**
 9 **Sells-Floto's standpoint, it was working pretty**
 10 **smoothly, wasn't it? You were doing a great job?**
 11 A Yes. That's true.
 12 **Q Did Sells-Floto want to have this**
 13 **agreement or did you want to have it?**
 14 A It was mutual. They wanted to be able to
 15 -- I mean, they had been able to and they wanted to
 16 be able to continue to, on an increased -- and I
 17 answered the other question, from 1980, yes. The
 18 business was going -- my involvement was increasing
 19 substantially. I was involved in numerous projects,
 20 as you'll see by that sheet, the secondary sheet
 21 that you haven't looked at yet. But, so there was a
 22 major conflict with running my business and being
 Commonwealth Court Reporting, Inc.

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1 **Q Well, the document says that a verbal**
 2 **agreement was entered into in July of 1995.**
 3 A Okay. Let me answer the question. We
 4 entered into a verbal agreement, whereby it was
 5 understood by both parties that I was -- that we,
 6 both parties were going to negotiate some type of a
 7 contractual arrangement rather than a
 8 billing-by-the-hour arrangement and that I was going
 9 to make some adjustments into how I was going to
 10 handle Action Investigative Services, et cetera, et
 11 cetera, et cetera, and as to how we were going to
 12 bill.
 13 **Q And so that was in July of '95 when you**
 14 **agreed to embark on this process?**
 15 A That's what's referred to in the agreement
 16 that we had. The agreement that we had is that we
 17 were going to assess, review, and continue to
 18 discuss the arrangement that we -- we had agreed
 19 that we were going to go on some type of
 20 contractual, guaranteed, monthly payment for
 21 services rendered. That agreement was in July. We
 22 didn't agree on the terms, we didn't agree on the
 Commonwealth Court Reporting, Inc.

1 amount of hours, and that was in negotiations.
2 And like I said, it sounds like a long
3 period of time but, I have to tell you, it isn't.
4 It's like, in reality, if this was Xerox, the
5 reality of it would probably be three weeks, even
6 though it seems like seven or eight, seven months or
7 eight months.

8 **Q Over that period of time, you met with Mr.
9 Smith many times?**

10 A Correct.

11 **Q And you discussed bits and pieces of this
12 agreement, if I understand your testimony correctly,
13 many times?**

14 A That's correct.

15 **Q Was anyone keeping a score card of what
16 things you were agreeing to in these short one- to
17 three-minute meetings, one- to three-minute
18 discussions about this topic?**

19 A No.

20 **Q No notes were kept by you?**

21 A No.

22 **Q Over the course of these months, between
Commonwealth Court Reporting, Inc.**

1 A Signed it.

2 **Q In your presence?**

3 A I don't believe he did sign it in my
4 presence. I think we left it. I think I actually
5 sent it over with a courier, if I am not mistaken,
6 because -- and then I think I talked with him and I
7 asked him what happened, what was -- where we were
8 with the agreement. And he said he received it and
9 that he was talking about it with Kenneth Feld and
10 that it would be ready in a couple of days.

11 **Q And did he make any changes to it?**

12 A No. I don't believe he did.

13 **Q Not a single change?**

14 A No. I don't think so. I honestly don't
15 remember. I don't remember if he changed something
16 and maybe we sent it back because it was already
17 typed. I see where it's typewritten the 1st day of
18 April, so it wasn't just he decided to sign on the
19 day, it just happened to be the first day of April.
20 We might have sent it back. There may have been a
21 change. I honestly don't remember. Maybe that's what
22 happened. Maybe there was a change and he said, No.
Commonwealth Court Reporting, Inc.

1 July of '95 and April of '96, and the many meetings
2 that you had, in those meetings, would this be a
3 matter that you would bring up for discussion?

4 A It could have been either party. I mean,
5 I believe that we started or I retained Mr. Stauffer
6 some time about a month or so prior to the actual
7 date that we signed the contract. So we had, we had
8 that in the works, too.

9 **Q How many drafts of this document preceded
10 the one that you have in front of you?**

11 A I really don't remember.

12 **Q Do you know if there were any previous
13 drafts?**

14 A Yeah. There was probably one or two.

15 **Q Were any of the previous drafts submitted
16 to Mr. Smith?**

17 A No.

18 **Q When did you present this document to Mr.
19 Smith?**

20 A Probably during the -- I signed it on
21 April 1st. Probably the last week of March '96.

22 **Q What did he do with it?**
Commonwealth Court Reporting, Inc.

1 you've got to change this to that, that to this, and
2 I did and maybe I showed up with it or we sent it
3 over with a courier and he said, I'll sign it right
4 now or send it over, maybe we faxed it in. I don't
5 remember.

6 **Q Did he elaborate on his discussions with
7 Mr. Feld?**

8 A No, never did that.

9 **Q Tell me again exactly what he said on that
10 subject.**

11 A He was going to discuss, he was going to
12 discuss it with Kenneth Feld and then sign it.

13 **Q Let me make sure I understand. He said,
14 "I am going to discuss this with Kenneth Feld"?**

15 A I don't remember the exact verbiage used.
16 He said, I'm going to talk to Kenneth about it. I
17 mean, again, this is not -- this is -- you're making
18 it sound a whole lot more formal than it was. It's
19 not that formal.

20 **Q I understand it wasn't formal, but the
21 details are important in this instance?**

22 A I believe he just said, I have got to show
Commonwealth Court Reporting, Inc.

1 it to Kenneth, talk to Kenneth, and that was -- and
2 then he said, I think maybe he said, change this or
3 change that, and then we typed in, or Mr. Stauffer's
4 office typed in the date of April 1st, and I believe
5 either we sent it over with a courier or we faxed it
6 over. I don't remember which, and then he signed it
7 on April 1st.

8 **Q I have asked you in my request for**
9 **documents for any drafts that may exist of this,**
10 **previous drafts that may exist of this document, and**
11 **none have been produced. Are any of those in your**
12 **possession?**

13 A No.

14 **Q Are any of them in the possession of your**
15 **attorney?**

16 A I don't think so. I would say no. I
17 would have no reason to keep a draft.

18 **Q All right. Back to our story. You**
19 **indicated that Mr. Smith said that he was going to**
20 **check, that he needed to check with Kenneth Feld; is**
21 **that correct?**

22 A I don't think he said "needed." I think he
Commonwealth Court Reporting, Inc.

1 could have read it to him. Kenneth could have been
2 in Bulgaria. I don't know where he was.

3 **Q But everyone recognized that it was -- I**
4 **mean, he wouldn't have entered into this contract**
5 **without Kenneth's approval; is that right?**

6 MR. STAUFFER: Objection.

7 THE WITNESS: I don't know.

8 BY MR. KEITH:

9 **Q You can answer the question.**

10 A I can't answer that question. I don't
11 know. He entered into contracts with me every week
12 without Kenneth's approval.

13 **Q He hired you on a times and materials**
14 **basis?**

15 A Well, it was a contract. He had 200
16 probably, various consultants working on all kinds
17 of projects that I don't know if he had written
18 contracts, verbal contracts. I mean on almost every
19 one of them.

20 **Q But he was going to discuss this one with**
21 **Kenneth?**

22 A That was my understanding.
Commonwealth Court Reporting, Inc.

1 said, I'm going to show it to Kenneth, or talk to
2 Kenneth, or check with Kenneth.

3 **Q Did he ever indicate to you that he had in**
4 **fact discussed it with Feld?**

5 A Did he ever or --

6 MR. STAUFFER: Is that question at any
7 time?

8 MR. KEITH: At any time.

9 THE WITNESS: Okay. Sure.

10 BY MR. KEITH:

11 **Q When?**

12 A Well, prior to signing it.

13 **Q What did he say?**

14 A Nothing. Just, you know, he said Kenneth
15 knows.

16 **Q He says Kenneth knows?**

17 A Yeah.

18 **Q You're quite sure? Is that a quote?**

19 A No. It's not a quote. Kenneth has seen
20 the contract or he indicated to me, prior to signing
21 it, that Kenneth had seen the contract, that while
22 he was reviewing it with Kenneth -- Kenneth, he
Commonwealth Court Reporting, Inc.

1 **Q And it was your understanding that he did**
2 **discuss this contract with Kenneth?**

3 A I guess you could say. The answer is yes.

4 **Q Did you have any discussion about whether**
5 **or not it was going to be reviewed by the legal**
6 **department at Feld Entertainment?**

7 A No. When you say any discussion, you're
8 talking about in the days, the few days preceding
9 the signing of the contract or at any time?

10 **Q Well, your lawyer prepared this document**
11 **and sent it over to Mr. Smith. Your lawyer's**
12 **involved. Did you have any indication that Mr.**
13 **Sowalsky or any one in his staff was involved in the**
14 **legal review of the document?**

15 A No.

16 **Q Mr. Smith made no mention of legal review?**

17 A No. Again, I refer back to the nature of
18 the beast and the way the business is conducted.
19 That's something that would just never happen.

20 **Q The lawyers didn't review contracts?**

21 A No. Just Mr. Smith -- no. Mr. Smith
22 himself would never, would never offer that as a
Commonwealth Court Reporting, Inc.

1 conversational -- would never offer that in
 2 conversation. That's just the way he converses with
 3 people.
 4 **Q He doesn't say, "I have to check with my**
 5 **lawyer"?**
 6 A He doesn't say, I need to check with my
 7 lawyer. Just a minute. I'll be right back. Just a
 8 minute. I got a phone call. Let me do this. I
 9 need to check that. That's just not the way he does
 10 business. He makes 50,000 intense business
 11 decisions every day and he doesn't discuss who he
 12 checks with or who he doesn't check with. I don't
 13 know. Probably anybody except probably Kenneth and
 14 probably Mr. Sowalsky. So that's just not his
 15 method of conversation.
 16 **Q But you do specifically remember that he**
 17 **told you that he was going to discuss this matter**
 18 **with Kenneth Feld?**
 19 A That's correct.
 20 **Q Okay. Have you ever had any discussions**
 21 **with Kenneth Feld about this agreement?**
 22 A No.

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1 names. Various mid level -- Mike Diamond, Charlie
 2 Greco. Am I going too fast?
 3 **Q No.**
 4 A Charlie Greco. Steve Bailey, Julie
 5 Strauss. Joe Dugan.
 6 **Q Okay.**
 7 A And other people that were giving me
 8 assignments and they would always have to clear it
 9 through Chuck. Because instead of taking out of
 10 their unit budget, there was a general Sells-Floto,
 11 there was a general account. So the object is
 12 always to try to convince -- not to convince -- but
 13 the object was to get Chuck Smith's approval. And
 14 by doing so, then the individual executive, there
 15 was the mid-level executives, didn't have to take it
 16 out of their budget. It would come out of the
 17 general Sells-Floto fund. That was the kind of joke
 18 about the whole thing. I say "joke," because they
 19 didn't want to spend money for investigative work.
 20 So I approached Chuck with that and said is it okay
 21 to tell these people now that they can just call me
 22 directly and not have to go through you every time

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1 **Q Have you had any discussions about this**
 2 **agreement with anyone else at the Feld companies?**
 3 A Probably everyone else with the exception
 4 of lower-level employees.
 5 **Q Well, start the list with me?**
 6 A Well, I think I did in the answer. I
 7 think there's a whole list in the answer.
 8 MR. STAUFFER: What he's asking again.
 9 THE WITNESS: Can I refer to the list or --
 10 Mr. Sowalsky knew.
 11 BY MR. KEITH:
 12 **Q Who did you discuss this agreement with?**
 13 A I'll start from the top, I guess. Mr.
 14 Sowalsky knew, Julie Strauss knew about it. As a
 15 matter of fact, the question that I asked Chuck
 16 Smith, probably two or three weeks after the signing
 17 of the agreement, I approached him and I said,
 18 Chuck, is it okay if I tell the various members of
 19 Sells-Floto about our agreement because of the
 20 billing situation. And what I mean by that is,
 21 there was assignments that would come to me from
 22 various, various mid level -- I mean, I'll give you

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1 they need to do something, because now that I am on
 2 a contractual basis, it will save a lot of time.
 3 And he said, sure. Just tell everybody. And I did.
 4 It was probably within three weeks to a
 5 month. I would say prior to May 1st that almost
 6 everybody, and I say everybody. I mean everybody
 7 with any authority knew. If you want me to go
 8 through the list, I'll be happy to reiterate the
 9 list again.
 10 **Q Well, you told me Mr. Sowalsky, Julie**
 11 **Strauss, Mike Diamond, Charlie Greco, Steve Bailey.**
 12 A Judy Godfrey, Joe Dugan, Lauri Gaurdia,
 13 Tony Dowling, Pat Ewing, Sheila Hastings.
 14 **Q All right.**
 15 A I mean, there's Vinicio Murrillo, who's a
 16 unit manager; Mike Kessler, Larry Sardelli.
 17 **Q And what did you tell these people? Let**
 18 **me start out specifically. Tell me what conversation**
 19 **you had with Mr. Sowalsky about it?**
 20 A Again, these were not formal meetings. It
 21 was just in passing.
 22 **Q Okay. What did you tell Mr. Sowalsky in**

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1 passing?
 2 A I believe I told Mr. Sowalsky just that I
 3 was under contract and that if anybody needed me for
 4 anything, just give me a call. I didn't really
 5 detail it to Mr. Sowalsky. I more detailed it to
 6 the Sells-Floto people. As a matter of fact, I
 7 thought Mr. Sowalsky had a copy of the contract,
 8 quite frankly.
 9 Q And what did Mr. Sowalsky say to you, if
 10 you recall?
 11 A Well, I don't remember what he said.
 12 Acknowledge okay.
 13 Q Okay. How about Julie Strauss?
 14 A Probably same thing.
 15 Q Same thing?
 16 A These were not -- again, these are not
 17 formal -- let me. This was -- I didn't send out
 18 invitations to make a formal announcement. This
 19 was, I was in the building. Every time I go into
 20 the building, I would see 15, 20 people. So it was
 21 walking by, in the midst of other meetings.
 22 Q So, if I understand correctly, I mean,
 Commonwealth Court Reporting, Inc.

1 Q Just divided 60/40?
 2 A I believe it was 60/40.
 3 Q Without relation to what actual projects
 4 you were working on?
 5 A That is correct. And I submitted time
 6 sheets for each entity.
 7 Q And did they reflect your actual time or
 8 did they reflect 60/40?
 9 A I don't understand the question.
 10 Q Well, you submitted invoices which were
 11 60/40 regardless of the actual allocation of your
 12 time, correct?
 13 A No. I submitted an actual real time
 14 sheet.
 15 Q I understand.
 16 A What I did for this --
 17 Q Let me just go through this a little bit
 18 my way. You submitted invoices 60 percent to Feld,
 19 40 percent to Sells-Floto?
 20 A No. The opposite.
 21 Q Sixty percent to Sells-Floto and 40
 22 percent to Feld Entertainment?
 Commonwealth Court Reporting, Inc.

1 once you had entered this document, you then told
 2 people as you would see them about it and the fact
 3 that then they could come directly to you and didn't
 4 have to go through Chuck Smith any more?
 5 A That's correct.
 6 Q That was your message that you delivered
 7 to these people?
 8 A That's right. And then I sat down with
 9 Joe Dugan, Lauri Gaurdia, Tony Dowling in the second
 10 week of April, third week of April, because they
 11 were administrating the payment of the contract. So
 12 Joe Dugan had a copy of the contract as did Tony.
 13 As Lauri Gaurdia, I don't know how many -- I don't
 14 know how many copies were made. But I know Joe
 15 Dugan had a copy, and Tony Dowling was instructed on
 16 making payment. Then there was another meeting
 17 after that where Chuck wanted to divide the payments
 18 from I&K and Sells-Floto. I believe it was 60/40,
 19 instead of 100 percent from Sells-Floto. Because I
 20 was doing a lot of work for I&K. So then I would
 21 get paid from two entities and I would submit two
 22 invoices, one to each entity.
 Commonwealth Court Reporting, Inc.

1 A No. To I&K.
 2 Q I&K. And those were taking your monthly
 3 figure and dividing it 60/40?
 4 A No. I would submit a separate for actual,
 5 real time. So if I did 17 hours for I&K, it would
 6 say 17 hours and if I did 15 hours or 50 hours for
 7 Sells, it would say 50 hours.
 8 Q All right. I am confused.
 9 A Okay.
 10 Q What was the 60/40 all about, if you were
 11 doing it on an hourly basis?
 12 A No. I was doing it -- I was being paid on
 13 a monthly basis.
 14 Q I understand. And you were dividing that,
 15 the payment 60/40?
 16 A Chuck Smith, he divided it 60/40. So I
 17 was getting 60 percent of the \$15,000, I believe it
 18 was 60 percent, it could have been 65 percent.
 19 Q Okay.
 20 A I was getting about, approximately 60
 21 percent was being paid out of the Sells-Floto
 22 general account and 40 percent was being paid out of
 Commonwealth Court Reporting, Inc.

1 the I&K.
 2 **Q** And did I not understand, that you billed
 3 Sells-Floto for 60 percent and you billed I&K for 40
 4 percent, so they would have an invoice --
 5 **A** Of the total amount. No. You asked me
 6 about hours. No. I was billing for the total
 7 money, yes.
 8 **Q** And then you would also submit your hours?
 9 **A** That is correct.
 10 **Q** And your hours reflected your actual
 11 hours --
 12 **A** That's correct.
 13 **Q** -- without regard to the 60/40?
 14 **A** That's correct.
 15 **Q** Okay. That is all I was trying to get
 16 to.
 17 **A** Sorry.
 18 **Q** Did you retain copies of your time sheets?
 19 **A** Yes. I believe I have most of them.
 20 **Q** How much money did you bill and collect
 21 from Sells-Floto or Feld companies in 1994?
 22 **A** I really don't know.
 Commonwealth Court Reporting, Inc.

1 course.
 2 **Q** Well, if you had billed and collected
 3 \$300,000 the year before and then you agreed to 180,
 4 did you expect it to go up because you expected to
 5 exceed the 26 weeks?
 6 **A** No. Let me explain the answer that I just
 7 gave you.
 8 **Q** Okay.
 9 **A** There's a difference between what I
 10 billed. Because when you're saying, how much did I
 11 bill, this is the contract for my personal services.
 12 **Q** Okay.
 13 **A** That was the 180. When I billed the
 14 \$300,000, that included equipment that was sold to
 15 the company, it was third-party contractors, it was
 16 reimbursement for expenses, so it wasn't --
 17 **Q** I understand. Let me rephrase.
 18 **A** So, that \$300,000 was not the same as
 19 billing the contract at 180.
 20 **Q** Well, let me ask you another question
 21 then. In the year prior to this, how much did you
 22 personally bill? How much was attributed to your
 Commonwealth Court Reporting, Inc.

1 **Q** How about 1995?
 2 **A** Off the top of my head, I don't know.
 3 **Q** Okay.
 4 **A** I would say probably \$300,000 plus.
 5 **Q** Okay. And then in 1996, beginning on April
 6 1, you go on to an hourly agreement by which you get
 7 paid \$180,000 a year; is that right?
 8 **A** I believe it was 185 or 180?
 9 **Q** Look at Paragraph 3.
 10 **A** Sorry.
 11 **Q** It's 180; 15,000 a month.
 12 **A** Yes. That is correct.
 13 **Q** Plus an override if you exceed 26 weeks;
 14 is that right?
 15 **A** That's correct.
 16 **Q** And did you expect, in your contemplation
 17 at the time you entered this agreement, that your
 18 overall compensation from Sells-Floto or the Feld
 19 companies, would go up or down after you entered
 20 this, signed this document?
 21 **A** Quite frankly, it was -- I would
 22 anticipate, I was anticipating it going up, of
 Commonwealth Court Reporting, Inc.

1 time and efforts?
 2 **A** I can't answer that. But it was probably
 3 somewhere in the neighborhood, I would guess
 4 somewhere in the neighborhood of 150.
 5 **Q** How did you and Mr. Smith arrive at 180?
 6 **A** I don't think we actually arrived at 180.
 7 I think we arrived at 15,000.
 8 **Q** Okay. Both of you guys can multiply by 12,
 9 I assume?
 10 **A** Yeah. We can both do that.
 11 **Q** How did you arrive at 15,000?
 12 **A** Again, Mr. Sowalsky can probably explain
 13 that to you better than I can. But when you're
 14 dealing in the nature of this business, and
 15 Sells-Floto, et cetera, et cetera, this is -- the
 16 nature of the numerous consultants and the cash
 17 flow, I mean, so that you understand that this is
 18 not two guys, myself and Mr. Smith, sitting at a
 19 conference table with a calculator trying to figure
 20 out, well, this should be 12,600. No. It should be
 21 14,800. No. I'll give you 13,500. It was, 15,000
 22 is just a simple, it's an easy figure. It could have
 Commonwealth Court Reporting, Inc.

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1 been 14,200. It could have been 13,900. It could
2 have been 16,100. It was just a figure that we both
3 kind of picked up, said that's, you know, what it
4 should be. Understand, again, the nature of the
5 beast and how these things culminate. This wasn't,
6 you know, done by a group sitting down, a group of
7 accountants. It was just a rough figure.

8 **Q And there was no back and forth on
9 numbers, that you recall?**

10 A No. There was really no haggling, if
11 that's what you're saying.

12 **Q That's what I am saying.**

13 A No.

14 **Q Look at R-2 on Page 1. Where it says that
15 the company desires to increase the contractor's
16 level of personal services. Do you recall any
17 discussion of that?**

18 A Oh, sure. I already mentioned that
19 several times.

20 **Q And mention it just one more time. What
21 was your understanding of Mr. Smith's desire to
22 increase your level of services?**

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1 certainly, obviously, Kenneth knew about that. I
2 mean, that's just an example. And I can sit here
3 and give you a hundred of them, but I'd be chuckling
4 most of the afternoon because it's kind of funny to
5 discuss it at the conference table, not so funny
6 when you're actually out on the street doing it.

7 So the level of responsibility was
8 increasing and the required time was increasing and
9 the numerous meetings back and forth at the
10 building, plus we were changing over the security
11 system in the building and that required some
12 training, and we were moving the security office
13 from the ground floor, up to the second floor. I
14 mean, I was back and forth and back and forth and
15 back and forth. And I could not, you know, answer
16 my business phone -- it was a matter, it was
17 becoming an impractical matter for me to conduct my
18 business, to run an investigative agency other than
19 as a sole source supplier.

20 **Q Look at the bottom of that first page,
21 where it says, "Contractor", that was you, "retains
22 the right to decline any service requested by the
Commonwealth Court Reporting, Inc.**

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1 A That's Paragraph R-2, is the reason why it
2 took me or took us so long to finally reduce it to
3 writing. I could expand on a personal level, and I
4 may do that.

5 **Q Okay.**

6 A But to answer your question, I guess,
7 you'd say personal services is referring to my
8 services. Not personal for Chuck Smith.

9 **Q Right.**

10 A The company was growing, Sells-Floto had
11 numerous security problems, plus just numerous -- I
12 was doing a lot more than security, let's say that.
13 I was doing an awful lot more for both companies
14 than just security. I mean, I had moved up in the
15 level of responsibility later, and I had a lot of
16 authority on the units, and I was asked to do many
17 things. Just a very simple example. I took King
18 Tusk for a promotional tour through Mexico, which is
19 not Sells-Floto business. It was I&K business.
20 Certainly not necessarily a security matter. It was
21 a logistical matter, it was PR. But I was put in
22 and asked by Chuck Smith to go on that excursion,
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1 **Company which Contractor believes, in good faith, to
2 be inconsistent with (i) his licensing, insurance,
3 or certification requirements or standards or (ii)
4 industry practices." Did you want that in the
5 contract or is that Mr. Stauffer's idea?**

6 A That was probably Mr. Stauffer's idea.

7 **Q Do you have any reason at the -- in the
8 time frame of this document was prepared, to think
9 you needed to put that in there? Any past
10 experience which made you feel that you wanted to
11 put that in there?**

12 A I have to answer, sir, and say, I am going
13 to answer the question, and I am thinking. I am
14 answering the question. That was basically legal
15 mumbo jumbo that was put in by --

16 **Q Okay.**

17 A -- the attorney that was representing me
18 for the contractual interest. I didn't ask for it. I
19 didn't expand on it. It's just one of those things
20 that is just in there.

21 **Q Okay. The middle of the next page, Mr.
22 Kaplan, it says, "The Company shall reimburse
Commonwealth Court Reporting, Inc.**

1 Contractor for all reasonable expenses." You see
 2 where I am?
 3 A Yes.
 4 Q "Incurred by Contractor in performing the
 5 Services consistent with practices established by
 6 the prior sixteen (16) year relationship." Is there
 7 anything unusual about those practices? You passed
 8 along all the expenses that you incurred, both
 9 out-of-pocket type costs that you advanced, as well
 10 as your independent contractors that you hired? Is
 11 that about it? What it amounted to?

12 A I don't understand. I understand the last
 13 part of what you said. You said "unusual". I don't
 14 understand what you mean by unusual.

15 Q You billed to the company all of the costs
 16 which you advanced, if you bought equipment, if you
 17 took -- as well as your travel expenses, as well as
 18 your --

19 A Hotel, rental car.

20 Q Hotel, that sort of thing. Your travel
 21 and subsistence. And presumably you had a certain
 22 way that you had done that. And all this is saying
 Commonwealth Court Reporting, Inc.

1 incurred by contractor in terminating or suspending
 2 an assignment with another client. Did that ever
 3 happen?

4 A No. Well, actually, what's the question?
 5 Let me. What is the question? Did I ever bill them
 6 for any or did I --

7 Q Did you ever bill them for any of these
 8 extraordinary expenses?

9 A No. It happened, but I never billed them.
 10 No.

11 Q Okay. Paragraph Number 9, with the first
 12 part, deals with the definition "without cause." Was
 13 that a subject of discussion between you and Mr.
 14 Smith?

15 A Yes, it was.

16 Q At what point?

17 A I don't remember at what point.

18 Q Let me ask you this. During the time prior
 19 to your and Mr. Smith signing this document, was it
 20 a subject of discussion?

21 A Yes.

22 Q Was it the subject of negotiation?
 Commonwealth Court Reporting, Inc.

1 is that you were going to continue to do the same
 2 thing?

3 A That's correct.

4 Q The term of the agreement that says in
 5 Number 4 is for five years?

6 A That's correct.

7 Q Was there any discussion between you and
 8 Mr. Smith about the term of the agreement?

9 A Sure.

10 Q Was there any back and forth or haggling
 11 about that?

12 A No.

13 Q Whose idea was five years? Yours or his?

14 A I believe that was mine.

15 Q Let me invite your attention to Paragraph
 16 Number 8, on Page 3. In this provision, I recognize
 17 that you would do work for other clients as well.
 18 But that, I gather, that you would give sort of
 19 primary attention to this contract; is that right?

20 A That's correct.

21 Q And it said that the company would
 22 reimburse contractor for any extraordinary expense
 Commonwealth Court Reporting, Inc.

1 A Are you asking about the first part, about
 2 the "without cause", or are you asking about the
 3 liquidated damages?

4 Q Well, I am asking first of all about the
 5 definition of "without cause"?

6 A Well, it was an agreed upon and probably
 7 what was by me. Again, without understanding my
 8 personality, it's hard to understand why I would put
 9 it and why I would have had -- why the discussion
 10 would have taken place. I am just a person who
 11 happens to be of the belief that if somebody doesn't
 12 want to continue using my services or do business
 13 with me, then as far as I am concerned, it's over.
 14 And also the nature of understanding, and I think
 15 maybe I didn't explain it properly. But
 16 understanding the spirit of the discussions of how
 17 this contract culminated, I have a small business;
 18 for all practical purposes, I am a sole proprietor;
 19 I have had several clients, the largest of which
 20 being the Feld corporations, entities, and I was
 21 being asked to basically put myself in a position
 22 whereby I would devote almost 100 percent of my time
 Commonwealth Court Reporting, Inc.

1 to the Feld entities.
 2 And I understand, now I believe you
 3 understand, that this is a 24-hour, 7-day-a-week
 4 job. This is three o'clock in the morning phone
 5 call, money got stolen; six o'clock in the morning,
 6 truck got broken into; train derailed; this
 7 happened; that happened. So it's basically putting
 8 your life into your work. And in order to do that on
 9 a sole source basis, I basically had to close down
 10 or sell my investigative agency. And then I thought
 11 about it for a while and said, well, this is a great
 12 idea, but should some day come along and someone
 13 says, by the way, we just don't like you anymore, we
 14 don't want to give you any more business, then where
 15 was I going to be? I was going to be in the street.
 16 I would have had no business left. All my clients
 17 were gone. My business was up for sale.

18 **Q All right. I understand what you're**
 19 **saying.**
 20 A So that was a method of security for me in
 21 order for me to be in a position that I didn't want
 22 to be in today quite frankly.

Commonwealth Court Reporting, Inc.

1 with Mr. Smith. And so it's your testimony that you
 2 discussed this Paragraph 9 with Mr. Smith, including
 3 the definition of "without cause"?
 4 A I didn't discuss the definition, no. Chuck
 5 Smith, I am assuming, knows what that means.
 6 **Q Okay.**
 7 A We didn't.
 8 **Q Well, let me tell you that in my opinion,**
 9 **just for what it's worth, the definition here of**
 10 **without cause is a bit unusual. And so, you know,**
 11 **it's something that if it's unusual, it was not the**
 12 **top -- well, strike that.**
 13 **It was not the topic of discussion between**
 14 **you and Mr. Smith how you defined without cause?**
 15 A I am not sure if I understand -- well,
 16 without cause seems to be pretty clear to me.
 17 **Q Oh, it does?**
 18 A Without cause, somebody says to me, I
 19 don't want you here today. Good-bye.
 20 **Q Okay.**
 21 A I don't know. Perhaps I am wrong and
 22 perhaps Mr. Smith is wrong, but I think that's -- I

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1 **Q But let me go back and reask the question,**
 2 **because my question is a narrow one. And it has to**
 3 **do with this definition quoted in here, "without**
 4 **cause." And ask you if you and Mr. Smith**
 5 **specifically discussed that or if that was, again,**
 6 **something that just showed up in the draft that was**
 7 **prepared by your lawyer?**
 8 A No. We discussed that. We discussed that
 9 and then I discussed that -- I mean, I had discussed
 10 all of this with my attorney. This was not, so you
 11 understand --
 12 **Q I am not interested in what you discussed**
 13 **with your attorney.**
 14 A No. I am not going to tell you that.
 15 **Q I am interested in what you discussed with**
 16 **Mr. Smith.**
 17 A Everything in this contract was discussed
 18 with Mr. Smith, with the exception of some legal --
 19 **Q And that's what I am trying to**
 20 **differentiate, what you consider the legal mumbo**
 21 **jumbo and what you consider to be the important**
 22 **business points and what ones you actually discussed**

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1 believe that's what he thought that meant also. And
 2 that's exactly -- that wasn't my legal words,
 3 without cause. It was my concept. It was a
 4 conceptual discussion whereby I, myself and Chuck
 5 Smith, discussed that situation. I said, well, what
 6 if you people don't want me here any more? What if
 7 something happens you just don't want me here
 8 anymore?
 9 He said, well --
 10 What happens, I'll be out on the street.
 11 My business is sold and there I stand, maybe a year,
 12 two years, three years from now.
 13 **Q Did you discuss with Mr. Smith the formula**
 14 **which is in the end of that paragraph, one-third of**
 15 **the base compensation from the date of termination**
 16 **to the end of the term?**
 17 A Again, we -- yeah. We talked about it.
 18 We didn't have, again, a major discussion over it. I
 19 think I spent more time discussing that with other
 20 people than I did with Chuck Smith as to what would
 21 be fair, and then he agreed.
 22 **Q Who did you talk to about that?**

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1 A Various business people I associate with.
 2 I discussed it with Mr. Stauffer, my attorney.
 3 MR. KEITH: Off the record.
 4 (A lunch recess was taken.)
 5 BY MR. KEITH:
 6 Q Okay. Mr. Kaplan, you are aware, aren't
 7 you, that certain surveillance cameras and tape,
 8 audio tape equipment was installed in the
 9 headquarters building on Westwood Center Drive?
 10 A No.
 11 Q So, the equipment which was, for instance,
 12 the video cameras that were installed in Mr.
 13 Froeming's office, Ms. Sparshott's office, are you
 14 aware of those?
 15 A Yes.
 16 Q All right.
 17 A Yes.
 18 Q Okay. And are you aware of any other video
 19 cameras that were installed within the headquarters
 20 building?
 21 A Yes.
 22 Q What others?

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1 Q Let me ask you this. When I first asked
 2 you the question were you aware of any, you said
 3 no. Is that because of the way I phrased the
 4 question?
 5 A Yes. You asked me if I was aware of any
 6 audio and video equipment and I said no.
 7 Q Okay. And what was the -- was it audio and
 8 video, the fact that I hooked those two together,
 9 that made you say no?
 10 A Yes.
 11 Q Okay. And is that because you took that to
 12 mean audio and video in the same unit?
 13 A No. I took it to mean in the same
 14 sentence.
 15 Q Okay. Were you aware of any audio tape
 16 equipment that was installed for the purpose of
 17 surveillance?
 18 A I don't understand the question. Illegal
 19 audio taping or legal audio taping?
 20 Q Well, what's illegal?
 21 A Illegal is no party consent, legal is one
 22 party consent.

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1 A Probably there's about 15, 20 others.
 2 Q And are there any others that are within
 3 offices of individuals?
 4 A That I know of?
 5 Q Yes.
 6 A No.
 7 Q Only those two that I mentioned?
 8 A Yes.
 9 Q And was there one in Mr. Smith's office?
 10 A Yes.
 11 Q As well?
 12 A Yes.
 13 Q So that's a third?
 14 A There was one, I believe there was one in
 15 Mr. Smith's office.
 16 Q All right. When I first asked you the
 17 question, you said no, that you weren't aware of
 18 that. Is that because of the way I phrased the
 19 question?
 20 A No. I honestly don't know. I honestly
 21 don't know if there was actually one in Mr. Smith's
 22 office. I don't know the answer to that question.

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1 Q Okay. Are you aware of any legal audio
 2 taping equipment that was installed within the
 3 headquarters building?
 4 A Not installed as -- there is no such thing
 5 as installed. I mean, if it was attached to a
 6 telephone or it was a suction cup, I don't really
 7 consider that installed.
 8 Q Okay.
 9 A Yes. There were many tape recorders in
 10 the building.
 11 Q All right. Was there any that were
 12 hidden?
 13 A I don't know. If they were hidden, I
 14 wouldn't have saw them.
 15 Q Were there any that were designed to
 16 surreptitiously record audio?
 17 A I have no idea.
 18 Q You didn't have anything to do with
 19 installing any for surreptitiously recording audio?
 20 A That's correct.
 21 Q Did you have anything to do with
 22 installing the video cameras in Mr. Froeming's

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1 office and Ms. Sparshott's office?
 2 MR. STAUFFER: I am going to make the --
 3 only one time, so I don't interrupt the flow of
 4 questions. You know I have made an objection in the
 5 interrogatory questions and I just want to simply
 6 appropriate that objection. Mr. Kaplan can answer.
 7 I just don't want you to take it as a waiver.
 8 THE WITNESS: Yes.
 9 MR. STAUFFER: I mean, is that all right
 10 with you, John?
 11 MR. KEITH: That's fine.
 12 MR. STAUFFER: So I don't keep interrupting
 13 you.
 14 MR. KEITH: Absolutely.
 15 MR. STAUFFER: Okay.
 16 BY MR. KEITH:
 17 Q When were those cameras installed?
 18 A I honestly don't remember the dates.
 19 Q Can you give me the year?
 20 A In 1997.
 21 Q All right. First quarter?
 22 A That was the only quarter I was there.
 Commonwealth Court Reporting, Inc.

1 the other camera was actually in her office.
 2 Q But she worked in the travel office?
 3 A Correct. And the --
 4 Q The purpose?
 5 A -- purpose was that he suspected that,
 6 originally suspected -- he couldn't figure out what
 7 she was doing. She was -- I guess I'll expand that,
 8 so I'll cover four questions.
 9 Q Good.
 10 A They had a relationship at the time, as
 11 you probably know. And she, I believe her job was
 12 executive travel coordinator. And she basically
 13 worked and booked travel for the top-level
 14 executives, which I guess was Kenneth Feld, Chuck,
 15 Allen Blume, Jerry Sowalsky, and I think Mr. Holt.
 16 And she had, as part of it, she had two or three or
 17 four cellular telephones; she had two or three
 18 different pagers; she had tape recorders; she had --
 19 they would go out to dinner. She had two cellular
 20 phones she would put on the table and then go into
 21 the bathroom and make a phone call from a pay
 22 phone. She was always on phones, getting pages, and
 Commonwealth Court Reporting, Inc.

1 Q All right. Sometime between January and
 2 March of 1997?
 3 A I believe the camera that was in Shan
 4 Sparshott's office was in '96.
 5 Q Okay.
 6 A Later part of '96.
 7 Q Okay?
 8 A Froeming's office was '97.
 9 Q Why did you install those cameras?
 10 A Because I was asked to.
 11 Q By Chuck Smith?
 12 A Yes.
 13 Q Did he tell you the purpose?
 14 A Told me the purpose for Shan Sparshott.
 15 He didn't tell me the purpose for Richard Froeming.
 16 Q What was the purpose?
 17 A For Shan Sparshott?
 18 Q Yes.
 19 A Well, we had an -- I'll elaborate. There
 20 was actually two cameras. One was in the hallway,
 21 which is the common area of the building, just --
 22 which was just facing the travel office door, and
 Commonwealth Court Reporting, Inc.

1 he believed that she wasn't even working. So the
 2 first camera went into the hallway because it never
 3 even seemed like she was in the office. He wanted
 4 to see if she was even working in the building.
 5 Q All right.
 6 A And then I guess as time progressed, he
 7 was noticing -- he would go down I guess to see her
 8 on a three- or four-time-a-day basis for whatever
 9 reason and he noticed that she kept changing her
 10 jewelry all the time. One minute she'd have on like
 11 an opal ring and a diamond brooch and the next
 12 minute she would have on a pearl brooch and a Mickey
 13 Moto pearl set and two or three times a day she's
 14 changing jewelry. And then he found in her office,
 15 what he told me, it was like a million dollars worth
 16 of jewelry in her office.
 17 I guess he had opened up a drawer and
 18 found sacks of jewelry, boxes of jewelry. And he
 19 thought that she was actually working, more to the
 20 background of her, he thought that she was actually
 21 dealing in stolen jewelry in her office. She had
 22 all these people coming in and out of the office
 Commonwealth Court Reporting, Inc.

1 constantly who didn't seem to be in the travel
 2 business. And her door was always closed when
 3 people would come in. And he thought she was
 4 dealing in hot jewelry, so we put the camera in the
 5 office for that purpose.
 6 **Q How about Mr. Froeming's office?**
 7 A I couldn't say that. I have no idea.
 8 **Q Did Mr. Smith tell you that he suspected**
 9 **that Ms. Sparshott was cheating on him in their**
 10 **relationship?**
 11 A Oh, yeah. From time to time he would tell
 12 me that. That she was going back with her husband,
 13 she had a couple other boyfriends. She's an
 14 interesting individual, to say the least.
 15 **Q Did the video camera have anything to do**
 16 **with his wanting to keep an eye on her from that**
 17 **aspect?**
 18 A I have no idea.
 19 **Q All right. Did you bill Sells-Floto for**
 20 **that work?**
 21 A No. I think that was -- equipment was
 22 billed to I&K.

Commonwealth Court Reporting, Inc.

1 **Same sort of thing?**
 2 A Same scenario.
 3 **Q Mr. Smith with you when you installed**
 4 **them?**
 5 A Yes.
 6 **Q Did he give you advice on where to place**
 7 **the cameras?**
 8 A No.
 9 **Q Why was he with you?**
 10 A Why was he with me?
 11 **Q Yes.**
 12 A I don't understand the question. He asked
 13 me to do that job for him. He stayed with me when I
 14 did it.
 15 **Q Did he just like to watch a craftsman at**
 16 **work, or did he have any input into the project?**
 17 A No. He basically told me what he wanted
 18 to see, so I would be able to aim the camera.
 19 **Q That's kind of what I just asked you about**
 20 **placement of the camera. He was giving you some**
 21 **input in that?**
 22 A Yes.

Commonwealth Court Reporting, Inc.

1 **Q To I&K. How about the time? Where did**
 2 **you allocate the time that you spent on that?**
 3 A I&K, for building security.
 4 **Q Okay. Did you use any subs?**
 5 A No.
 6 **Q Did you do the work yourself?**
 7 A Yep. Well, for the most part.
 8 **Q Did you do it after hours?**
 9 A Yes.
 10 **Q All right. Did you have access to the**
 11 **building in any time of day or night?**
 12 A Yes.
 13 **Q And did you -- did you frequently go in**
 14 **after hours?**
 15 A Frequently? What's after hours? Again,
 16 back to that same scenario. Chuck Smith was in the
 17 building usually until 10, 11 o'clock almost every
 18 night. So I don't know what after hours is.
 19 **Q What time was it when you installed the**
 20 **camera in Ms. Sparshott's office?**
 21 A I have no idea. Probably 10, 11, 12.
 22 **Q Okay. How about Mr. Froeming's office?**

Commonwealth Court Reporting, Inc.

1 **Q Did he help you at all? I mean physically**
 2 **help you.**
 3 A He carried a ladder, opened the door,
 4 handed me the screwdriver.
 5 **Q Just the two of you were there?**
 6 A His son was there, Bradley. I don't
 7 remember. Every now and then Brad would show up.
 8 **Q How old is Brad?**
 9 A Just turned 18.
 10 **Q Okay. How about a camera in Ms.**
 11 **Sparshott's residence? Are you aware that there was**
 12 **a camera there?**
 13 A I was told there was.
 14 **Q And would that have been a camera that you**
 15 **supplied to Mr. Smith?**
 16 A No.
 17 **Q Was Mr. Smith -- did Mr. Smith install**
 18 **that camera?**
 19 A I have no idea.
 20 **Q Who told you that there was a camera**
 21 **there?**
 22 A He did.

Commonwealth Court Reporting, Inc.

1 Q Mr. Smith?
 2 A (Witness nods an affirmative response.)
 3 Q Yes?
 4 A Yes.
 5 Q What was the purpose of that camera, if
 6 you know?
 7 A He suspected -- I'm going to tell you. He
 8 suspected that Shan was having sexual relations with
 9 her dog.
 10 Q So that's why he had a camera there?
 11 A That's right. And she was.
 12 Q And that's what the -- there were tapes of
 13 that?
 14 A Yes, there was.
 15 Q Where was the tape unit for the cameras
 16 that were -- for the camera that was in Mr.
 17 Froeming's office?
 18 A I think that was in Mr. Smith's office.
 19 Q All right. So there was a wire that went
 20 from, or cable, that went from the camera to Mr.
 21 Smith's office where the, I don't know what you call
 22 the box?

Commonwealth Court Reporting, Inc.

1 '97. Did you come into the headquarters building
 2 that day?
 3 A What was -- that was the day Mr. Smith was
 4 fired.
 5 Q Yes?
 6 A No.
 7 Q Well, with reference to the day he was
 8 fired --
 9 (Discussion between Mr. Sowalsky and Mr.
 10 Keith.)
 11 BY MR. KEITH:
 12 Q You have seen in the documents that
 13 Sells-Floto has produced a transcript of a tape?
 14 A I didn't actually read that, no. I saw
 15 there was a transcript, several of them. I didn't
 16 read them.
 17 Q That transcript of the tape is dated March
 18 7th, and there's some phone calls on there between
 19 you and Mr. Smith. Do you recall what was going on,
 20 on the day when some tapes and so forth were
 21 delivered mistakenly to Ms. Sparshott's office?
 22 A Do I remember what happened?

Commonwealth Court Reporting, Inc.

1 A The recorder.
 2 Q Where the recorder was?
 3 A Right.
 4 Q All right. And did the same recorder
 5 attach to the camera in Ms. Sparshott's office or
 6 was there a separate recorder?
 7 A Separate recorder.
 8 Q Okay. And where were they located in Mr.
 9 Smith's office?
 10 A Under his couch.
 11 Q Okay. Were all those cameras on all the
 12 time or were they just turned on and off by Mr.
 13 Smith?
 14 A I really don't know.
 15 Q Do you have, in your possession, any of
 16 the tapes that were made from those cameras?
 17 A No.
 18 Q Do you have any, in your possession, any
 19 of the tapes from the cameras or camera in Ms.
 20 Sparshott's residence?
 21 A No.
 22 Q Directing your attention to March 7th of

Commonwealth Court Reporting, Inc.

1 Q Yes.
 2 A There was an altercation, I understood,
 3 that broke out between Jear Vandercamp and Shan
 4 Sparshott in the travel office.
 5 Q And what was that about?
 6 A I don't know. That was about the bag of
 7 -- bag that he delivered to Shan Sparshott
 8 mistakenly.
 9 Q All right. And on that same day, did Mr.
 10 Smith make any requests of you with regard to the
 11 cameras?
 12 A I think he wanted me to take them out.
 13 Q Okay. Did you take them out?
 14 A No. I took out the one in Shan
 15 Sparshott's office, yes.
 16 Q Okay. When did you do that?
 17 A I believe it was probably the evening of
 18 March 7th.
 19 Q Okay.
 20 A And I answer -- thank you for interjecting
 21 the comment. I didn't know which date, what March
 22 7th was respective of. I thought that was the day

Commonwealth Court Reporting, Inc.

1 that Mr. Smith was fired.
 2 **Q All right.**
 3 A So the answer to that is, yes, I was in
 4 the building on March 7th.
 5 **Q Where in the afternoon there was this**
 6 **altercation in the travel office?**
 7 A Correct.
 8 **Q So you came in later that day?**
 9 A That night.
 10 **Q What time?**
 11 A Nine, ten, eleven.
 12 **Q Okay. What did you do?**
 13 A Removed the camera from Shan's office.
 14 **Q Okay. Why did you do that?**
 15 A Because I was asked to do that.
 16 **Q What did you do with it?**
 17 A I took it back to my office.
 18 **Q Did you take anything else away from the**
 19 **headquarters building that evening?**
 20 A No.
 21 **Q How big is this camera?**
 22 A The mount was probably 12 inches high.
 Commonwealth Court Reporting, Inc.

1 A Let me, just so it doesn't sound like I am
 2 not telling the truth. Yes. I have been in the
 3 building many times, because I eat in the
 4 restaurants.
 5 **Q Okay.**
 6 A With the exception of the restaurants,
 7 have I been past the ground level of the building?
 8 Is that a better question?
 9 **Q Better question, yeah.**
 10 A No.
 11 **Q All right. Let me ask you some questions**
 12 **about these transcripts of these conversations. Let**
 13 **me just go through a few of these things. Do you**
 14 **recall on March 7th that Mr. Smith called you on the**
 15 **telephone?**
 16 A Yes.
 17 **Q And do you recall him saying, "The biggest**
 18 **screwup of all just occurred. You know all the**
 19 **videos we hid, that we cleaned this office out with**
 20 **last night?"**
 21 A Is that a question.
 22 **Q Yes. Do you recall that?**
 Commonwealth Court Reporting, Inc.

1 **Q Okay.**
 2 A The camera itself was probably four inches
 3 by three inches and it went with a lens on it.
 4 **Q Where was the camera located?**
 5 A In the ceiling.
 6 **Q Up in the --**
 7 A Top of the drop ceiling.
 8 **Q Okay. Did you take any documents away from**
 9 **there that night?**
 10 A No.
 11 **Q Have you, after March 7th, that evening,**
 12 **been back in the headquarters building?**
 13 A Yes.
 14 **Q When?**
 15 A Twice.
 16 **Q On what occasions?**
 17 A I believe the last week of April, the
 18 middle of April and June 2nd.
 19 **Q For meetings with Mr. Snyder?**
 20 A Correct.
 21 **Q All right. Other than those two meetings,**
 22 **have you been back in the headquarters building?**
 Commonwealth Court Reporting, Inc.

1 A I don't remember the exact conversation.
 2 **Q Do you know what he's talking about?**
 3 A He's talking about a bag of video and
 4 audio tapes that he gave to Jear to take home or put
 5 in a storage locker or destroy or something like
 6 that.
 7 **Q And he says, "The videos that we hid",**
 8 **talking to you. Did you have any participation in**
 9 **those videos?**
 10 A No.
 11 **Q What's he mean, that we cleaned this**
 12 **office out with last night? Does that ring a bell?**
 13 A Yeah. I was there.
 14 **Q So you were in the office the evening**
 15 **before?**
 16 A That's correct.
 17 **Q And what were you doing?**
 18 A Oh, we had a meeting, and then Chuck took
 19 a lot of -- took some stuff out of the office he
 20 had.
 21 **Q These tapes were in his office?**
 22 A Yeah. Chuck had -- just so you
 Commonwealth Court Reporting, Inc.

1 understand. Again, back to the abnormality of
 2 the -- Chuck was a person that recorded a lot of
 3 stuff.
 4 **Q Okay.**
 5 **A** You could walk into his office, he had
 6 five tape recorders laying on his desk. He had a
 7 punch bowl, party-size punch bowl with 150 tapes in
 8 it. You could see it right there. He had tapes all
 9 over his desk. He had boxes of empty tapes, boxes
 10 of unused tapes. He had video tapes. So he took a
 11 quantity of some of these tapes and put them into a
 12 bag.
 13 **Q There's also some conversation where he**
 14 **says, "I took the Jeep." Do you recall that?**
 15 **A** Yeah.
 16 **Q What was that about?**
 17 **A** That was his Jeep that Shan Sparshott was
 18 driving.
 19 **Q Okay.**
 20 **A** He had given her a Jeep, he had given her
 21 a BMW, he had given her a \$700,000 house to live in
 22 free, he put her kid in private school, gave her
 Commonwealth Court Reporting, Inc.

1 throw it out with the trash.
 2 **Q Well, a while later Smith says to you, "We**
 3 **have got to get, you know, the wires, man." What's**
 4 **he talking about?**
 5 **A** The wires that went to the cameras.
 6 **Q And did you get the wires later on?**
 7 **A** Yes.
 8 **Q Let me understand it physically. What**
 9 **floor was Mr. Smith's office on?**
 10 **A** Sixth.
 11 **Q And how about Froeming's office?**
 12 **A** Sixth.
 13 **Q And Sparshott's office?**
 14 **A** The lobby, ground floor.
 15 **Q All right. And so when you wired those**
 16 **cameras, you had to take the camera in Sparshott's**
 17 **office, you had to go from the sixth floor down to**
 18 **the lobby?**
 19 **A** Correct.
 20 **Q And did you remove that wire when you took**
 21 **the camera out?**
 22 **A** No. I think we just pulled it back and
 Commonwealth Court Reporting, Inc.

1 credit cards, cash. She was living pretty good.
 2 **Q Okay. And he went and took the Jeep, the**
 3 **Jeep back?**
 4 **A** Yes.
 5 **Q Okay.**
 6 **A** He didn't. I think he sent Jear to go get
 7 the Jeep.
 8 **Q Okay. And then after this, he then says,**
 9 **and I told him what -- and you say or Smith said to**
 10 **you, "He was supposed to take care of that last**
 11 **night," referring to the tapes.**
 12 **And you said, "I told him what to do. I**
 13 **told him to put it into a metal pot and melt it down**
 14 **in the oven." What were you talking about?**
 15 **A** Chuck had told him to destroy the tapes.
 16 **Q Okay.**
 17 **A** And he didn't know what to do. Jear is
 18 not a very brilliant person. He's a nice boy, but
 19 rowing with one oar out of the water. So he didn't
 20 know what to do. I just told him, I said, if you
 21 want to destroy them, just put them in a microwave
 22 oven and melt them down, destroy them, and then
 Commonwealth Court Reporting, Inc.

1 cut it.
 2 **Q Pulled it back out just far enough so it**
 3 **wouldn't be in the overhead?**
 4 **A** Yeah, exactly.
 5 **Q Further on in the conversation, you say,**
 6 **"I think they figure out what's going on. When**
 7 **they know the whole story, she's going to be in**
 8 **deeper shit than you are."**
 9 **And he says, "About the dog you mean?"**
 10 **And that's what you just referred to in terms of the**
 11 **video tapes?**
 12 **A** No.
 13 **Q All right. What sort of problem did she**
 14 **have with the dog, if it wasn't on the video tapes?**
 15 **A** No. I'm sorry. Your answer is yes,
 16 because he had been -- I'm sorry. I am just trying
 17 to think of the sequence. I don't remember the
 18 total sequence. I don't remember the sequence. I
 19 believe that's correct though. Because I think
 20 those tapes, I believe, I don't know for sure, I
 21 believe that some of those tapes were tapes from
 22 Chuck's/Sparshott's house.
 Commonwealth Court Reporting, Inc.

1 Q Okay.

2 A I don't know what the tapes were. I have

3 no idea.

4 Q You had never seen them? Did you ever --

5 A He had numerous ones. I don't even

6 remember which one was in what bag or which one I

7 saw, but I saw a couple of them.

8 Q And which ones did you see?

9 A I don't know which ones.

10 Q What tapes did you see?

11 A I saw two tapes, two tapes.

12 Q Okay. Of Ms. Sparshott?

13 A Yes.

14 Q All right. Doing what?

15 A Having sex with a dog.

16 Q On both tapes?

17 A Yep. He originally couldn't -- go ahead.

18 Q In her residence?

19 A That's correct.

20 Q Go ahead. What were you saying?

21 A No. I am finished.

22 Q All right. What did Mr. Smith intend to do

Commonwealth Court Reporting, Inc.

1 A No.

2 Q Have you spoken to any law enforcement

3 officers about it?

4 A About what?

5 Q About this matter of taping --

6 A Yes.

7 Q -- and so forth?

8 A Yes.

9 Q Where were the officers from?

10 A Fairfax County Police Department.

11 Q Did you speak to anyone, to any other law

12 enforcement agency?

13 A No.

14 Q What were they investigating?

15 A Mr. Smith and the supposed illegal video

16 taping.

17 Q Okay. You say supposed because -- well,

18 why do you say supposed?

19 A Because there's a gray area of expectation

20 of privacy and when the law was passed, the law had

21 only been passed for -- video tape law, I believe,

22 was passed in the late part or the third quarter of

Commonwealth Court Reporting, Inc.

1 with those tapes?

2 A I have no idea. I can tell you that he

3 confronted her, I believe, about it and two days

4 later she took the dog to the vet and had him

5 castrated.

6 Q Anything else about -- that went on about

7 that?

8 A Not that I am aware of.

9 Q Later on he says, Mr. Smith says to you,

10 "Joel, you better get over here right now and get

11 the cameras out of Richard's office. There's nobody

12 in there. Okay." Richard is Richard Froeming?

13 A Correct.

14 Q And how many cameras were in there?

15 A One.

16 Q And why were they there?

17 A I don't know.

18 Q All right. Did you ever remove that

19 camera?

20 A No.

21 Q Have you testified anywhere else about

22 this matter?

Commonwealth Court Reporting, Inc.

1 '96. And prior to that, there was no law for video

2 taping. So he was -- so whatever he did was legal.

3 So some of the tapes, I guess, were legal and some,

4 I guess, were illegal.

5 Q All right. When you installed these tape

6 cameras within the headquarters building, video tape

7 cameras, did you question whether it was an

8 appropriate thing to do?

9 A No. I made a decision whether it was legal

10 or illegal.

11 Q Did you make any -- did you give any

12 thought to whether or not it was in the best

13 interest of Sells-Floto?

14 A You mean I&K.

15 Q I&K?

16 A Well, yeah. Sure, I did.

17 Q And did you have any discussion of whether

18 or not it was in the best interest of I&K or any

19 Feld company with Mr. Smith?

20 A Yes.

21 Q What was that conversation?

22 A Only regarding Shan Sparshott, only

Commonwealth Court Reporting, Inc.

1 regarding the travel office. Not Froeming.
 2 **Q What was that? What was that**
 3 **conversation?**
 4 A Chuck Smith was telling me why he wanted
 5 the cameras in there, so it seemed very appropriate.
 6 **Q Okay.**
 7 A I mean, I had viewed the jewelry myself. I
 8 had been in there numerous times. She had a file
 9 cabinet, file drawer, when you would open it up, she
 10 had, I think one time there was like \$10,000 in cash
 11 sitting in there. There was Mickey Moto pearls.
 12 There were all kinds of diamonds. I am not an
 13 expert. I am not a gemologist. But there was what
 14 appeared to be a lot better than costume jewelry
 15 sitting in boxes looking like it was new or just
 16 purchased or watches in the original box.
 17 **Q Did you ever get to the bottom of where**
 18 **that stuff was coming from?**
 19 A Nope. Nope. Could never figure that out.
 20 **Q When's the last time you talked to Chuck**
 21 **Smith?**
 22 A About a week ago.
 Commonwealth Court Reporting, Inc.

1 **Q Are you aware that -- are you aware that**
 2 **any file relating to your activities has been**
 3 **removed from the headquarters building?**
 4 A No. The only time I was semi-aware of that
 5 was when there was a request for production of
 6 documents asking me for what you already have.
 7 **Q If, in fact, we have it?**
 8 A I'm sorry?
 9 **Q If, in fact, we have it?**
 10 A Right. I couldn't understand the nature of
 11 the question.
 12 **Q Do you have any continuing personal**
 13 **relationship or -- yeah -- strike that.**
 14 **Any continuing business relationship with**
 15 **Mr. Smith?**
 16 A Yes.
 17 **Q What sort of business are you doing**
 18 **together now?**
 19 A Doing some investigative work for one of
 20 his companies.
 21 **Q What company?**
 22 A Fortress.
 Commonwealth Court Reporting, Inc.

1 **Q What was the subject of your conversation?**
 2 A How are you? What's happening?
 3 **Q Have you talked to him about this case?**
 4 A Oh, sure.
 5 **Q Talked to him about your deposition being**
 6 **taken?**
 7 A Not when it was. I mean, he knew my
 8 deposition was going to be taken. Sure.
 9 **Q Have you talked to him about the notice of**
 10 **deposition which has been noticed for his**
 11 **deposition?**
 12 A No.
 13 **Q Have you asked him if he'll be a witness**
 14 **at the trial of this case?**
 15 A Yes.
 16 **Q What did he say?**
 17 A Yes.
 18 **Q Did you help Mr. Smith take any boxes out**
 19 **of the office on the evening of March the 7th?**
 20 A No.
 21 **Q Briefcases?**
 22 A No.
 Commonwealth Court Reporting, Inc.

1 **Q Is he employed by Fortress?**
 2 A I believe he is.
 3 **Q Where does he live?**
 4 A Don't know.
 5 **Q Do you know whether he lives in Virginia**
 6 **or the District of Columbia?**
 7 A No, I don't. I know he moved about three
 8 or four months ago.
 9 **Q Where did he used to live before he moved?**
 10 A McLean.
 11 **Q Other than put a cell phone in Mr. Smith's**
 12 **car, which you referred to earlier, can you think of**
 13 **any other items you did for him personally in the**
 14 **last five years or so?**
 15 A I mean, I did some upgrading of his home
 16 security system.
 17 **Q Okay. Anything else?**
 18 A I helped to do some security work and
 19 secure some electronic equipment for his son, for
 20 Bradley, when he opened up his office.
 21 **Q What does he do?**
 22 A He has a computer business.
 Commonwealth Court Reporting, Inc.

1 Q Anything else?
 2 A Not off the top of my head. If it was,
 3 it's somewhat irrelevant. I mean, not irrelevant.
 4 Sorry, it's just --
 5 Q Incidental?
 6 A Incidental.
 7 Q How was it determined that the billing for
 8 the installation of the video camera that you've
 9 been, testified about would be made to -- where was
 10 it made?
 11 A I&K?
 12 Q To I&K. How was that determined?
 13 A It was determined by me.
 14 Q Well, what was the -- did you flip a coin
 15 or was there a reason for it?
 16 A Anything that had to do with the building
 17 was under I&K.
 18 Q Okay.
 19 A Sells-Floto was only concessions under
 20 the -- concessions was only the concessions
 21 business. Anything that had nothing to do with
 22 concessions was billed to I&K. I only usually
 Commonwealth Court Reporting, Inc.

1 A Yeah. It was basically this. Let's see.
 2 We had --
 3 Q Just for the record, Mr. Kaplan is looking
 4 at a document that is Bates numbered SF0012,
 5 services provided by Joel Kaplan and Action
 6 Investigative Services for the period January 1996
 7 through April 1997. And my question is actually
 8 which ones you worked on after March 7, 1997?
 9 A Honestly, I really don't remember.
 10 Q Okay.
 11 A We just had -- it was -- it was an
 12 on-going. It was just a couple investigations, I
 13 believe, that were on-going. And there was, like I
 14 said, a big project, was the badging system.
 15 Q Did your level of activity decrease after
 16 March 7th?
 17 A Again, I don't remember what day Mr. Smith
 18 was let go. Was that March 9th?
 19 MR. SOWALSKY: 7th.
 20 THE WITNESS: Was it the 7th?
 21 MR. SOWALSKY: That is when he was put on a
 22 leave of absence.
 Commonwealth Court Reporting, Inc.

1 billed two accounts. Very rarely I think I billed
 2 one other one.
 3 Q So if it's in the building, it's I&K?
 4 A If it's in the building, it's I&K.
 5 Q Okay. After the March 7th incident, when
 6 you came, at Mr. Smith's request, and took out the
 7 camera, did you perform any other duties for I&K,
 8 Sells-Floto or any other Feld company?
 9 A I believe I was still working on a whole
 10 bunch of projects. I mean, I had stuff in my house,
 11 equipment. Bradley had some equipment. Bradley and
 12 I were working on some projects together.
 13 Q Okay.
 14 A So, yeah, it was an on-going --
 15 Q Do you recall what some of the projects
 16 were?
 17 A I believe it's in that, probably on the
 18 second list that I gave you. One of the major ones,
 19 we were doing a corporate badging system,
 20 computerized badging system for the whole company.
 21 I still had music systems, parts and redoing that.
 22 Q All right.
 Commonwealth Court Reporting, Inc.

1 THE WITNESS: It was at that point.
 2 BY MR. KEITH:
 3 Q So after Mr. Smith left the company, did
 4 your level of activity decrease?
 5 A Yes.
 6 Q Did you continue to keep time sheets?
 7 A Yes.
 8 Q Well, you testified that you met at some
 9 point after March 7th with Stuart Snyder?
 10 A Correct.
 11 Q Do you know when that was? When was your
 12 meeting?
 13 (A discussion was held off the record.)
 14 (The record was read back as follows:
 15 "Q do you know when that was? When
 16 was your meeting?")
 17 THE WITNESS: Oh, I believe it was in the
 18 middle of April sometime.
 19 BY MR. KEITH:
 20 Q Okay. Just about a year ago?
 21 A Correct.
 22 Q Who attended the meeting?
 Commonwealth Court Reporting, Inc.

1 A It was myself, Stuart Snyder, and Mike
 2 Rusch.
 3 **Q How long did the meeting last?**
 4 A It was about an hour and a half. It was a
 5 long meeting.
 6 **Q Where did it take place?**
 7 A In Stuart Snyder's office.
 8 **Q What happened at the meeting?**
 9 A Well, I was the person who initiated the
 10 meeting.
 11 **Q Okay. Tell me about that. How did you**
 12 **initiate the meeting?**
 13 A By calling Stuart Snyder's office --
 14 **Q Okay.**
 15 A -- and requesting a meeting with him
 16 because Chuck Smith was gone, I had nobody to report
 17 to, and I wanted to know who I was going to get
 18 direction from.
 19 **Q Okay.**
 20 A So I felt it was my obligation to make
 21 contact with Stuart Snyder or one of his designees,
 22 to continue on doing what I was doing.

Commonwealth Court Reporting, Inc.

1 asked him what he would like me, anything that he
 2 had in mind that I should continue, who I should
 3 report to, what I should do, and keep going? If
 4 you're taking notes, I'll stop.
 5 **Q That's all right.**
 6 A So the meeting progressed into --
 7 **Q Okay.**
 8 A -- what we were going to, what we were
 9 going to continue on doing and where we were going
 10 to go from there.
 11 **Q Okay. And what was that discussion?**
 12 A He had my contract with him. He was
 13 familiar with it. He read it.
 14 **Q Okay.**
 15 A He told me, he basically -- we left the
 16 meeting, we left with the agreement that I was going
 17 to continue on doing what I was doing and that I was
 18 to prepare for him a condensed version of what I had
 19 given him, showing projects that were either in the
 20 middle, completed or on-going for only a year, from
 21 '96 to '97.
 22 **Q And that's SF0012?**

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1 **Q Okay.**
 2 A So he scheduled a meeting.
 3 **Q All right.**
 4 A And lo and behold, I showed up.
 5 **Q Then what happened?**
 6 A And I brought with me what you've
 7 labelled, I guess it was Number SF0011.
 8 **Q Okay.**
 9 A And --
 10 **Q And did bring that? Was that your idea or**
 11 **did he ask you to bring that?**
 12 A No. That was my idea.
 13 **Q Okay. All right. Tell me about the meeting**
 14 **with as much detail as you can?**
 15 A Well, I made a presentation, introduced
 16 myself, explained to him who I was, what I basically
 17 had done for the company, and provided him with a
 18 list of some of the, I guess, more prevalent or
 19 outstanding cases or achievements or equipment or
 20 whatever, whatever we did. Basically an overview of
 21 where I was and what I was doing and who I was and
 22 told him what I was -- projects I was working on and

Commonwealth Court Reporting, Inc.

1 A That's correct.
 2 **Q Okay.**
 3 A And that whatever I was working on, that's
 4 fine, continue on doing it, and that I should call
 5 his office back in a couple of weeks and reschedule
 6 another meeting.
 7 **Q Did Mr. Rusch play any role in the**
 8 **meeting?**
 9 A Not much. Just a matter of handshaking.
 10 **Q Okay. Who did most of the talking in this**
 11 **meeting in April? You?**
 12 A Are you answering it for me?
 13 **Q Yeah. I am trying to. You can agree or**
 14 **disagree. Who did most the talking?**
 15 A I probably did. It was probably 50/50
 16 between Stuart and myself. We both seem to be
 17 talkers.
 18 **Q Okay.**
 19 A We discussed -- you know -- we were there
 20 for over an hour, about an hour and a half, so we
 21 talked about a whole lot of things.
 22 **Q What was going to be the purpose of the**

Commonwealth Court Reporting, Inc.

1 next meeting, as far as you understood at that time?

2 A To determine who I was going to report to
3 and get assignments from.

4 Q Okay. Did you discuss this meeting with
5 Mr. Smith?

6 A I believe I did.

7 Q What did he think about it?

8 A I don't remember what he thought about it.

9 Q What did he say about it?

10 A Again, I don't remember what he said.
11 Okay, or good luck. Nothing really. Nothing for
12 him to say about it.

13 Q What did you do between the time of that
14 meeting and the next meeting, which must have been
15 about six weeks later?

16 A I prepared that SF0012 document --

17 Q Okay.

18 A -- and continued working on this video
19 project I was working on with Bradley. And were
20 doing whatever else I was doing. It could have been
21 some stuff with Sells-Floto. This is, again, this
22 is phone call, this is every day, this is 10, 15

Commonwealth Court Reporting, Inc.

1 detail as you can.

2 A Well, all right. It was a very friendly
3 meeting. Stuart was very receptive. I gave him the
4 SF0012. He looked at it. We talked about what was
5 going to happen. What was happening on the shows,
6 where the company was going to go. At that time, I
7 had not been paid for April and May's contract. Mr.
8 Rusch was the CFO. He was brand-knew. He was
9 inundated with his learning process and paperwork
10 and just hadn't gotten around to paying. I talked
11 to him, we discussed that. We discussed the
12 past-due invoice I had for reimbursable expenses,
13 for security up in the Baltimore arena with the show
14 that had just left. We talked about what I was
15 going to do on a continued basis.

16 And then he said, I had time to think
17 about this and review everything, and I would like
18 to continue on using your services and I would just
19 not feel -- that's almost a direct quote. He just
20 said, I don't feel comfortable with the present
21 financial arrangement that we have with this
22 contract.

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1 phone calls from everybody, on the units, in the
2 building. I couldn't remember. I couldn't remember
3 on Tuesday who I talked to on Sunday. I mean it was
4 so many. Units would call me two, three o'clock in
5 the morning. People from the building would call me
6 during the day, sometimes at night. I couldn't
7 recall everybody I spoke to. But, I mean, it was
8 basically just about business as usual.

9 Q Except your level of activity had
10 decreased?

11 A Well, I hadn't gotten any new assignments
12 in six weeks or eight weeks.

13 Q Okay. Then you met again with Mr. Snyder
14 in early June; is that correct?

15 A June 2nd.

16 Q June 2nd. Where was that meeting?

17 A In his office.

18 Q Who was there?

19 A Myself and Stuart Snyder.

20 Q Nobody else?

21 A Correct.

22 Q Describe that meeting for me in as much

Commonwealth Court Reporting, Inc.

1 I said, well, Stuart, what do you mean by
2 that?

3 And he says, Well, I just don't want to be
4 bound by your contract and I would like to continue
5 using your services. I have talked to a lot of
6 people in this company and they have all told me
7 that you've done a great job, you've been around for
8 a long time, you know the system, you're part of the
9 building, you're part of the family, and you know
10 we'll work together, we'll do something and I would
11 like to terminate the contract.

12 So I said, Well, that's certainly your
13 option. I said, I'll be a gentleman about it. And
14 we actually shook hands. And he was behind the desk
15 and I was in front of it. And I said, just to be a
16 gentleman about it, I'll even agree that today is
17 June 1st. And that was a big thing. We both kind
18 of chuckled about it. And I said, because if it was
19 June 2nd, you'd owe me for another month of the
20 contract. But I'll agree that it's June 1st.

21 And he said, Fine. And he said to me, so
22 look. He says, I would like to negotiate a

Commonwealth Court Reporting, Inc.

1 settlement with you on the liquidated damages. And
2 he says, he figured it out. He calculated it out,
3 and so did I, and it came to \$230,000.

4 And so I am sitting there and knowing that
5 he still owed me \$44,000 of which 15 was for April
6 and 15 was for May and 14 and change was for the
7 expenses. And I am sensing that he's trying to lob
8 this whole \$274,000 into one pot and now he's going
9 to make that part of this negotiation.

10 And he goes on to further say that he
11 would really like to negotiate this and that there
12 is no way we're ever going to end up having to talk
13 to lawyers about this. He doesn't want to deal with
14 lawyers, he doesn't want to go to court, and he just
15 wants to be able to settle this and continue on
16 having a relationship.

17 So I took that kind of half truth and half
18 not truth, because I felt like I was being bullied,
19 quite frankly, by the big guy with the purse strings
20 into taking a settlement. And as you can probably
21 imagine, I have been part of that same team of
22 strangling the small guy for a lot of years, so I
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1 and said, well, you're right. He said, I really
2 should do that. You're absolutely right. I am
3 wrong and I am sorry. He says, Come back in a couple
4 of days and pick up your checks. And after, he says,
5 And after you get your checks, we'll negotiate the
6 liquidated damages and I'll give you a call and
7 we'll continue on working.

8 And I said, Great. I appreciate that.

9 He said, I just have to have some time to
10 think about it and we'll talk.

11 So he left me with a feeling that A, I was
12 going to be paid \$44,000 in a couple of days and B,
13 that there was going to be some type of negotiation
14 on the \$230,000 liquidated damages and that C, I was
15 going to continue to work for the company. And
16 that's how I left.

17 **Q How long was this meeting?**

18 A Probably an hour.

19 **Q Mr. Snyder tell you with any specificity
20 what problems he had with the contract?**

21 A He had no problems with the contract. He
22 just said that he wanted to change our financial
Commonwealth Court Reporting, Inc.

1 knew the routine.

2 **Q How so?**

3 A Well, just kind of business, that's how
4 it's done. Workman's comp stuff, buying somebody
5 out. You know, you wait until they need the money
6 real bad and then you offer them a small sum and
7 they have to take it. When you're the giant, you
8 can do that. So I have watched that happen. I have
9 been there enough times and I felt that that was
10 happening to me.

11 So I said to Mr. Snyder, I said, Stuart,
12 look, if you want to negotiate this thing. At least
13 let's negotiate it in good faith.

14 And he said, What do you mean by that?

15 I said, Well, you owe me for April and
16 May, which you haven't paid and you owe me for
17 \$14,000 expenses, which I paid out of my pocket.
18 Don't you think that it's fair that before we
19 negotiate the liquidated damages, as you put it,
20 that you pay me for that amount of money?

21 And he rocked back in his chair a couple
22 of times, looked out the window and kind of chuckled
Commonwealth Court Reporting, Inc.

1 arrangement.

2 **Q Okay.**

3 A That he didn't feel comfortable with the
4 contract, for whatever that's worth.

5 **Q But he didn't go into any more detail?**

6 A No.

7 **Q Do you recall anything else of any
8 significance that he said during that meeting? I
9 mean, you've given a pretty complete rundown?**

10 A I think I have almost related -- I mean,
11 that meeting is probably the most significant in my
12 mind. I mean, it's almost verbatim.

13 (No. 2 - Letter from Snyder to Kaplan
14 Dated 6/4/97, marked for
15 identification.)

16 BY MR. KEITH:

17 **Q Exhibit 2 is a letter dated June 4, 1997
18 from Stuart Snyder to you. Did you receive it?**

19 A Yes, I did.

20 **Q What was your reaction to the letter?**

21 A I was incredibly pissed off, to put it
22 bluntly.

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1 **Q Why?**
 2 A Why? Because he had made this big speech
 3 about how he wanted to be fair and he wanted to
 4 negotiate and talk to me and work out our
 5 arrangement and et cetera, et cetera, et cetera.
 6 And then he sends me this one-time nonnegotiable,
 7 take it or leave it, get lost, get out of here, drop
 8 dead, go away letter, which I took very personally.
 9 And as you can see, it says, "As I mentioned, it is
 10 our desire to change the relationship between AIS
 11 and Feld Entertainment," which is exactly what he
 12 said in the meeting.
 13 **Q Okay. And then he makes an offer, which he**
 14 **also told you he was going to do in the meeting.**
 15 A No. He told me he was going to -- we were
 16 going to negotiate. That's what his word was. We
 17 would talk.
 18 **Q Okay.**
 19 A He didn't say, come back tomorrow or I'll
 20 come to your house tomorrow or we'll meet for
 21 lunch. He just basically said we'll talk. We'll
 22 negotiate. Meaning like I'm going to call you back
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1 this was a nonnegotiable, we're the big guys, we've
 2 got the money, you got nothing, you're just a
 3 nobody, here's a 100 grand, now go fly a kite, take
 4 off, and have a nice day.
 5 **Q Okay.**
 6 **(No. 3 - Letter from Kaplan to Snyder**
 7 **Dated 6/9/97, marked for**
 8 **identification.)**
 9 BY MR. KEITH:
 10 **Q Exhibit 3 is a two-page letter from you to**
 11 **Stuart Snyder, dated June 9th. Did you write this**
 12 **letter?**
 13 A I did.
 14 **Q After receipt of Exhibit Number 2?**
 15 A Oh, no. I waited until after I got the
 16 checks.
 17 **Q Okay.**
 18 A Which was in the interim time.
 19 **Q When did you get the checks?**
 20 A The 6th or the 7th.
 21 **Q Okay. And how did you get them? Did you**
 22 **go pick them up or did they come in the mail?**
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1 in a week and you're going to tell me there's three
 2 more cases that we need you to work on, go down to
 3 the unit, go do this and in the interim time, we'll
 4 negotiate, we'll talk and we'll work it out.
 5 **Q Okay.**
 6 A And I had no problem with that. I didn't
 7 care. I had been there for, like I said, 18 years.
 8 I had no problem with that. If he wanted to
 9 terminate the contract, if he was going to pay me
 10 for time and materials at that point, negotiate a
 11 settlement, I mean, I wasn't in a rush. I had no
 12 problem with that.
 13 **Q In the meeting -- strike that.**
 14 **If I understand you correctly, what**
 15 **irritated you about this letter was the fact that it**
 16 **said one-time nonnegotiable, and you took that to be**
 17 **at odds with what he said at the meeting, we'll**
 18 **negotiate?**
 19 A Well, there was two points. One was the
 20 way the letter was written, I took it basically that
 21 this was a good-bye letter. This was a Dear John,
 22 which I hadn't anticipated. And two, I took it as
 Commonwealth Court Reporting, Inc.

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1 A I actually -- I think I may not have told
 2 the truth when I answered that question. I think I
 3 actually went to the building to pick them up myself
 4 from the receptionist's desk.
 5 **Q Okay.**
 6 A Sorry.
 7 **Q You open the letter with, after thanking**
 8 **him for meeting, you say, "I hope I cleared up the**
 9 **confusion in the Hisham Cheib matter"?**
 10 A Right.
 11 **Q What was that?**
 12 A That was an on-going investigation. Like
 13 I had said, there were several still going. The
 14 Hisham Cheib was a manager of Sells-Floto and there
 15 was some questions as to what took place. It was an
 16 investigation. I don't remember the exact fact.
 17 **Q You were investigating him on behalf of**
 18 **Sells-Floto?**
 19 A Yes. Stuart was aware of what was going
 20 on with regard to that, and he wanted to know what
 21 the outcome was of the investigation.
 22 **Q Okay.**
 Commonwealth Court Reporting, Inc.

1 A I forgot about that.
 2 **Q And down in the next to the last paragraph**
 3 **you indicate that you had explained to him that you**
 4 **had all but closed your business in order to serve**
 5 **Feld Entertainment on a full-time basis?**
 6 A That is correct.
 7 **Q In the years 1995 and 1996, what**
 8 **percentage of your income came from the Feld**
 9 **companies?**
 10 A I would guess probably about 75 percent.
 11 **Q Okay. And continuing on in that paragraph,**
 12 **you say, "I have participated in many forced**
 13 **settlements of the holdings of Feld Entertainment**
 14 **Corp."**
 15 A That's what I said before.
 16 **Q What did you mean by that?**
 17 A Just what I said before.
 18 **Q What was your participation?**
 19 A Well, again, I don't want to -- you may
 20 want to, and I am not going to, nitpick every word
 21 in here just because maybe we don't have the same
 22 definitions. But I was in the company for a long
 Commonwealth Court Reporting, Inc.

1 a tenth of what they asked for. Because they needed
 2 the money, they took it. And I wasn't about to do
 3 that. I didn't want to be a victim of my own, well,
 4 you know, my own doing.
 5 **Q And what do you mean by that?**
 6 A I mean, I have been there so long and I
 7 participated in so many, it was almost like I was
 8 involved and I didn't want to do it to myself. I
 9 didn't want to be a victim.
 10 **Q All right. The top of the next page --**
 11 A Page 2?
 12 **Q Yep. You say that you might also talk to**
 13 **Mr. Feld. If this matter goes to court, you're the**
 14 **last person on earth you want to have as a witness**
 15 **explaining the "services" I provided for seventeen**
 16 **years to Mr. Feld. What were you alluding to there?**
 17 A The many things that we did and
 18 participated in over the years. This letter was
 19 basically -- I know this has become a major issue
 20 here. This letter was written by me, quite frankly,
 21 in a very emotional state. It was written hopefully
 22 to get into Mr. Feld's hands and I really hoped
 Commonwealth Court Reporting, Inc.

1 time and, like I said, the object was to always buy
 2 somebody out for as little as you can do that for
 3 and I think probably Mr. Sowalsky could answer that
 4 question better than I can.
 5 **Q No. I am asking you about the words that**
 6 **you wrote in this letter. When you say that you**
 7 **participated, it sounds to me like your answer is**
 8 **you're aware of settlements. But what I am trying**
 9 **to understand is exactly how you participated in**
 10 **them. Whether you were the person who was talking to**
 11 **these people, whether you wrote letters to them,**
 12 **whether you said, We're the big guys and you're the**
 13 **little guy and therefore --**
 14 A No. I was involved in the investigative
 15 aspect of them. I was involved in some of the
 16 negotiations when we discharged people, vendors, et
 17 cetera, and paying them off and getting rid of
 18 people. So I have been there many times, whether it
 19 be -- I wasn't -- I wasn't a corporate officer of
 20 Feld Entertainment. I wasn't involved in the
 21 decision-making process for insurance and so forth,
 22 but I, you know, watched many a person get paid off
 Commonwealth Court Reporting, Inc.

1 that he would have read it and just said, well, you
 2 know, just pay this guy. I mean, he was here. He
 3 did what he was supposed to do. He worked for us
 4 for 18 years. We're talking about \$230,000, which
 5 is peanuts to Sells-Floto. And, you know, they
 6 spend that much money on an opening night party. So
 7 I was hoping the letter would just get to Mr. Feld
 8 and it would have been done.
 9 I realize I probably went a little
 10 overboard, I got a little too emotional but --
 11 probably put too many words in there. But that is
 12 what I did. This was not supposed to be -- it
 13 wasn't supposed to be threatening. It was just the
 14 last paragraph. I just got a little carried away.
 15 **Q You have to admit that it was kind of**
 16 **threatening, don't you?**
 17 A I guess if you read it 75 times, examine
 18 it, tear it apart, have five lawyers read it, I
 19 guess you could probably say that. But in reality,
 20 it kind of isn't. I mean, in the spirit of doing
 21 business every day and everybody knowing my
 22 personality, no. If you just take it at face value
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1 and really don't put a name to it, just read it,
2 think who the hell is this guy, I guess you could
3 say it's a little threatening or maybe it's very
4 threatening.

5 But knowing who I am and knowing what I do
6 and knowing the story and how I was being treated at
7 the time, I really don't think it was that personal,
8 that threatening, and I can't imagine anybody --
9 except perhaps Stuart Snyder, because he didn't
10 really know me, thinking it was threatening.

11 **Q What would be the difference between Mr.**
12 **Snyder's attitude towards you, since he didn't know**
13 **you very well, and someone who did know you very**
14 **well? How would knowing you? What would people**
15 **that knew you well know about this letter?**

16 A They would know my personality, know what
17 I was all about. Stuart Snyder doesn't know that.
18 Kenneth knows that.

19 **Q How would that help them understand this**
20 **intemperate language at the end of the letter?**

21 A They would probably know what I know.

22 **Q Okay.**

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1 A Well, actually you're absolutely -- you're
2 probably right. You're right. I didn't have
3 anything in mind. I was sitting down at the
4 typewriter, at the computer, and I was very annoyed,
5 as I said, and very agitated that somebody would do
6 that to me and treat me that way, and I was watching
7 at the same time, you have to also understand, there
8 was wholesale firings going on at this company. It
9 was just not me. I mean, they were coming in and
10 firing everybody. They just fired somebody that I
11 worked with for 18 years. It was a chief
12 executive. They fired the number two person at the
13 company, who had been there, what, 49 years and 18
14 weeks, who started working there when he was 12
15 years old, putting record labels on Mr. Feld's
16 records. He came in, threw him out the door,
17 settled with him on a very small basis also, what he
18 was owed.

19 They threw Chuck Smith out of the door,
20 Susanna Smith out of the door, and several other
21 mid-level and upper-level executives, they just came
22 in and threw them, fired them out of the door. And
Commonwealth Court Reporting, Inc.

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1 A And they would probably think, well, you
2 know, just let's talk to -- somebody talk, somebody
3 talk to me. I would have been real happy to have
4 Jerry Sowalsky call me in and sit down and say, hey,
5 let's discuss this matter, let's work it out. Have
6 Stuart Snyder, with Mr. Sowalsky, say, come in,
7 let's talk. But they sent me this one letter, it
8 was like -- so, that was how I felt. And I just
9 have that personality that you can't do that to me.
10 That's the way I am.

11 **Q So it got you mad? Got your back up?**

12 A It definitely got me mad.

13 **Q All right. And so you -- I mean, you**
14 **really didn't have anything particularly in mind**
15 **when you talked about the "services" that you**
16 **provided for 17 years for Mr. Feld?**

17 A Are you making a statement or asking me a
18 question?

19 **Q Is that correct?**

20 A That I didn't have anything in mind?

21 **Q Anything specific in mind. I mean, you**
22 **say services and you put that in quotes.**

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1 I was helping them out of the building. So now I
2 was a victim of my own circumstance, so you can
3 imagine how pissed off I was. And I apologize for
4 keep using that word. Sorry.

5 **Q That's all right.**

6 A But I was pissed off and still am, and
7 that's why I wrote the letter.

8 **Q Okay.**

9 A Hoping that Mr. Feld or somebody, Mr.
10 Sowalsky, would get this.

11 **Q Now, in the last paragraph you say that**
12 **you've undertaken assignments that were "immoral,**
13 **illegal, unethical, and dangerous." What were you**
14 **talking about?**

15 A Well, illegal assignments, I participated
16 in a couple of those.

17 **Q Such as?**

18 A Such as going through Warsaw, Poland and
19 being asked to take \$230,000 of U.S. currency out of
20 the country that we weren't allowed to take money
21 out of and illegally removing funds out of the
22 country, which I think anybody would consider very

Commonwealth Court Reporting, Inc.

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1 dangerous.

2 **Q Who told you to do that?**

3 A Mr. Feld, Chuck Smith.

4 **Q Okay.**

5 A And I went to Poland, I had the money.

6 **Q What else?**

7 A Conducted investigations throughout the

8 country, in several states, that I wasn't really

9 licensed to do that in, which could have gotten

10 myself in trouble if the authorities in that

11 particular state had wanted to prosecute me. And

12 then I would have consequently lost my license in

13 the states that I was licensed in. I did that for

14 17, 18 years.

15 **Q What states are you licensed in?**

16 A Florida and Virginia.

17 **Q Okay. What else?**

18 A That is pretty much it for what I did

19 illegal. Immoral, unethical, a long list. Very

20 long list. Do you want some of those?

21 **Q Yes.**

22 A We had situations in Sells-Floto, we had,
Commonwealth Court Reporting, Inc.

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1 A Sorry. Immoral and unethical for

2 Sells-Floto, we had continuing, on-going drug

3 testing, probably three or four times a year,

4 polygraphs two, three times a year to weed out

5 operators and vendors that were using drugs. We

6 knew that the drugs were actually coming from the

7 show side, working men, the performers. Mr. Feld

8 was told that. We didn't -- we were not allowed to

9 ever test any of the performers, the working men.

10 We knew that for a fact, that the working men were

11 selling the drugs to the vendors. We couldn't test

12 anybody. So we only stuck to testing vendors

13 continuously and basically harassing the vendors.

14 We had, I mean, just numerous situations

15 of, you know, despicable living conditions. The

16 drug thing was really a serious -- I mean, a real

17 serious problem with Sells-Floto. From the circus,

18 from the I&K, from the entertainment side, we had

19 also major drug problems. We had two people die on

20 the train, from overdoses.

21 **Q And how is that an assignment that you**

22 **undertook?**
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1 you know, sexual assaults; pedophiles on the show;

2 we had, you know, thefts; we had people we basically

3 threw out of the buildings; we had people that

4 didn't even have clothes on their backs.

5 MR. KEITH: Let's take a short break.

6 (The record was read back as follows:

7 "Q Okay. What else?

8 A That is pretty much it for what I

9 did illegal. Immoral, unethical, a

10 long list. Very long list. Do you

11 want some of those?

12 **Q Yes.**

13 A We had situations in Sells-Floto,

14 we had, you know, sexual assaults;

15 pedophiles on the show; we had, you

16 know, thefts; we had people we

17 basically threw out of the buildings;

18 we had people that didn't even have

19 clothes on their backs.")

20 BY MR. KEITH:

21 **Q Okay. Then we were interrupted and you**

22 **were still going.**
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1 A Well, I dragged the body off the train, if

2 that makes -- that puts me there. I dragged a

3 bloated heroin ingested, five-day-old body off a

4 train. I guess you can say I was involved in that.

5 **Q Where was that?**

6 A In D.C.

7 **Q Where did you take it?**

8 A I'm sorry?

9 **Q Where did you take the body?**

10 A The body went into an ambulance, into a

11 body bag.

12 **Q Okay.**

13 A We had some real problems with some of the

14 elephants. I was told in 1993 by Dr. Hallock that

15 about half of the elephants in each of the shows had

16 tuberculosis and that the tuberculosis was an easily

17 transmitted disease to individuals, to human beings,

18 the circus, the elephants were transported all

19 throughout Florida, which is illegal to do that in

20 the State of Florida.

21 **Q How is that related to an assignment that**

22 **you took?**
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1 A Just an assignment that I was just there.
2 I was there with Dr. Hallock. We were designing a
3 system. At the time he wanted to design a system to
4 put a wireless transmitter into an elephant,
5 pregnant elephant. Swallow a wireless transmitter.
6 We were designing a system to do that, so that he
7 would be able to determine if an elephant was
8 pregnant. So he wanted me to build a box that would
9 transmit sounds from inside an elephant, outside to
10 another receiver. Because he claimed that he could
11 not ever tell if an elephant was pregnant unless you
12 heard two heartbeats. So he wanted to listen to the
13 internal organs of an elephant.

14 **Q Is there anything wrong with that?**

15 A I don't know. I think that's kind of a
16 little bit unethical, immoral, having an elephant
17 swallow a big capsule. I think it's immoral to have
18 elephants traveling by every arena in the country
19 with tuberculosis. I was asked by Chuck, through
20 Kenneth, to find a physician who would test the
21 people on the circus to see if they had tuberculosis
22 but who would destroy the records and not turn them
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1 A Again, you can interpret the statement any
2 way you want to. There's a million ways to
3 interpret undertaking assignments. I was constantly
4 undertaking assignments because I was there all the
5 time.

6 **Q I understand.**

7 A So whether I undertook an assignment and
8 marched the elephants into the arena or whether I
9 was just there, I don't know what difference that
10 makes, quite frankly. I mean, I was under a general
11 assignment. There's a few other things.

12 **Q What else?**

13 A I guess just the general overall, you
14 know, state of affairs, the way a lot of the people
15 were treated, conditions, living conditions.

16 MR. STAUFFER: His question though is
17 premised on your involvement in some manner as an
18 assignment, I think is his question.

19 THE WITNESS: Right.

20 MR. STAUFFER: So he's not interested, and
21 I am not interested, in anybody's views of the case
22 about the circus general. Just things you were
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1 in to the center for disease control. And I was in
2 the process of doing that when the assignment got
3 squashed because the personnel director had a
4 cousin, Connie Cappel had a cousin, who was a
5 physician who then proceeded with that assignment.

6 I have knowledge of the fact that Richard
7 Froeming and his group broke into an office in
8 Toronto Canada and stole paperwork relating to a
9 council meeting that they were having to ban
10 elephants from performing in circuses. I thought
11 that was pretty immoral. Should I go on?

12 **Q Well, it seems to me that you're giving me
13 a list of everything that you've ever heard of, that
14 you consider to be negative about the circus?**

15 A I can give you a list of a lot of positive
16 things, too.

17 **Q Well, I am sure you could. But the
18 question that I would ask you is how, they relate to
19 assignments that you've undertaken. What someone
20 else might have done and you heard about some how or
21 another, it seems to me really doesn't relate to the
22 statement that you made?**

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1 involved in.

2 THE WITNESS: Well, the criminal -- we had
3 undocumented aliens working for cash at Sells-Floto,
4 hundreds of them. We had criminals, people with
5 extensive warrants out for their arrest working as
6 working men under assumed names.

7 BY MR. KEITH:

8 **Q Now, in terms of undocumented aliens, what
9 was your involvement as in -- what assignment did
10 you have related to that?**

11 A I was basically the director of security
12 for Sells-Floto and in the later years I&K, Feld
13 Entertainment, so I was always involved in that. A
14 lot of what I did was clean up. We cleaned that up
15 in the later years, how it got substantially -- we,
16 Julie Strauss and I, undertook that project and we
17 kind of cleaned that up.

18 **Q How about the criminals working under
19 assumed names?**

20 A Well, we started doing criminal checks in
21 the later years. Only up to about three or four
22 years ago, we started doing criminal checks on
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1 matching social security numbers. We had people
 2 working with different social security numbers.
 3 **Q So your assignment basically, on those,**
 4 **was to clean them up?**
 5 A Well, no. I undertook those assignments
 6 because I discovered all that stuff. That was what I
 7 was supposed to be doing, was going after the units
 8 and looking.
 9 **Q When was this?**
 10 A From day one.
 11 **Q So you had a general --**
 12 A No.
 13 **Q -- responsibility?**
 14 A No. I had a general responsibility and I
 15 didn't get involved with the I&K's or the show side
 16 until probably '87, '88, '89. Prior to that, it was
 17 strictly Sells-Floto. But I was there and I was on
 18 the shows. I talked to everybody. Everybody knows
 19 me. I mean, I went through all the train cars, put
 20 the communication system in. They were supposed to
 21 invent a communication system in the train car prior
 22 to the derailment that the two people died in. The
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1 involved, kind of involved in that situation. Every
 2 time we had a protest. So I was involved in all
 3 that. I was involved in terms of -- now you're going
 4 to pick on the word involved. I was there. I was
 5 in the middle of it. I was involved. I was --
 6 **Q Why did you put the camera in Richard**
 7 **Froeming's office?**
 8 A I already told you. I don't know.
 9 **Q You don't have any idea?**
 10 A No.
 11 **Q You didn't ask any questions?**
 12 A No.
 13 **Q It seemed like a good idea to you?**
 14 A I didn't say that.
 15 **Q Did it seem like a good idea to you?**
 16 A It didn't seem like any idea to me. I was
 17 asked to do something, and I did it.
 18 **Q Was that your general attitude, that if**
 19 **you were asked to do something, you would do it?**
 20 A My general attitude, unless I was asked to
 21 do something that I thought was, you know,
 22 completely illegal, no, I wouldn't have done it.
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1 communication system was never installed. They
 2 hushed that up real quick, and then we proceeded to
 3 put one in. So, you're asking me, you know, to
 4 expand on this immoral, unethical things. And we
 5 had people, pedophiles, taking kids in, the
 6 performers, taking them into trailers. We had some
 7 vendors that raped a few and the concessionaires in
 8 the building, and it was on and on and on.
 9 **Q So, was your assignment to enable these**
 10 **people to do these bad things or try to prevent them**
 11 **from doing things, bad things?**
 12 A Try to prevent them from doing bad things.
 13 **Q But in despite of your best efforts, bad**
 14 **things happened, correct?**
 15 A No. It was a lot of things that I had no
 16 control over. I wasn't in charge of elephants. I
 17 wasn't in charge of the investigations that Richard
 18 Froeming was working on. The major assignment, when
 19 he first came into the company, was to try to
 20 destroy People for the Ethical Treatment of Animals
 21 and create some illusionary defusion, which he
 22 didn't, people treating other people, so I was
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1 And I will say for the record, on the record, I am
 2 glad that Mr. Sowalsky is here to tell Mr. Feld,
 3 that at no time did any surveillance of any sort,
 4 never was I -- I was never asked nor did I ever
 5 participate in any surveillance of Mr. Feld or Mr.
 6 Blume. I know that's going to be a major question
 7 and that's the answer. That never happened and had
 8 I ever been asked that question, that never would
 9 have happened. I would have never put a camera in
 10 Ken's office or Allen's office.
 11 **Q Okay. You have testified about all the**
 12 **cameras that you did place, haven't you?**
 13 A Yes.
 14 **Q There are no others?**
 15 A No. Well, no others in anybody's office.
 16 **Q Okay. There were security cameras in**
 17 **public areas to see who was coming and going?**
 18 A Garage, building, yes, hallways.
 19 **Q Right. And as far as the last, next to**
 20 **the last sentence of -- that you've turned down**
 21 **offers from outsiders to provide them with internal**
 22 **information.**
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1 A Not true.
 2 Q You have indicated to me --
 3 A That's bologna.
 4 Q That's bologna and you just threw that in
 5 for effect?
 6 A Threw it in for another sentence. That's
 7 what I did.
 8 Q Okay.
 9 A Probably another 20 minutes and I would
 10 have thrown in two more paragraphs.
 11 Q Well, you thought --
 12 A I could have gotten myself in more
 13 questions.
 14 Q You thought that it might help you get
 15 their attention?
 16 A I thought that, honestly thought that one
 17 of two things were going to happen. I thought that
 18 Stuart Snyder would get the letter as I sent it to
 19 him and then he would present it to Mr. Sowalsky,
 20 who would then or somehow it would get to Kenneth,
 21 Kenneth would just read it and say, let's just pay
 22 this guy and be done with him. Forget about it. Go
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1 Q Who have you talked to?
 2 A Well, a lot of them are ex-employees now I
 3 have talked to. I have talked to --
 4 MR. STAUFFER: Wait a minute. Maybe Mr.
 5 Keith wants to elaborate further. John are you
 6 interested in people who are still there or just
 7 anybody in the universe over the past year?
 8 MR. KEITH: Well, I am particularly
 9 interested in people that are still there.
 10 MR. STAUFFER: Okay. Do you understand the
 11 question now?
 12 THE WITNESS: Yes. Of the people that are
 13 still there?
 14 BY MR. KEITH:
 15 Q Yep?
 16 A Larry Sardelli, Charlie Greco.
 17 Q Okay.
 18 A I don't think anybody else is still there.
 19 Q Okay. What did you talk to Mr. Sardelli
 20 about?
 21 A We're friends. I got Mr. Sardelli -- it
 22 was me that brought Mr. Sardelli into Sells-Floto.
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1 on to another thing. Because I had no cards. I
 2 mean, I was supposed to be in the negotiating stage
 3 and then they pull the plug, so I had no cards.
 4 When you put -- I am the kind of guy, when you back
 5 him up into the wall, you really need to have
 6 something to hold me there, because I am not going
 7 to stand in the corner too long. So I basically put
 8 the gloves on and typed the letter.
 9 (No. 4 - Letter from Snyder to Kaplan
 10 Dated 6/23/97, marked for
 11 identification.)
 12 BY MR. KEITH:
 13 Q Exhibit 4 --
 14 A Yes.
 15 Q -- is a letter to you from Stuart Snyder,
 16 dated June 23, 1997. You received that letter?
 17 A Yes, I did.
 18 Q Now, since you have left, so let's just
 19 say since June 23 of 1997, have you had
 20 communications with employees of Sells-Floto, Feld
 21 Entertainment?
 22 A Uh-huh, yes.
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1 Q What did you talk to him about? How many
 2 times have you talked to him?
 3 A Maybe 40; 30, 40 times.
 4 Q How about Greco?
 5 A Five or six times.
 6 Q Did you talk to Sardelli about this case?
 7 A Brief.
 8 Q Did he give you any information?
 9 A No.
 10 Q Okay. How about Greco, what did you talk
 11 to him about?
 12 A Same thing.
 13 Q This case?
 14 A No.
 15 Q You just friends with him, too?
 16 A Yes.
 17 Q Okay. Did you talk to him about your
 18 contract?
 19 A No. When? After I left?
 20 Q After you left.
 21 A Not really, no.
 22 Q Did you talk to him about whether he was
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1 aware of the contract?
 2 A Actually I did mention that to him, yes.
 3 Q And what did he tell you?
 4 A He said yes.
 5 Q Did he tell you when he became aware of
 6 and the circumstances under which he became aware of
 7 it?
 8 A I made it very clear that if I talked to
 9 anybody from the show, from Feld Entertainment, that
 10 I am not going to interrogate them. Went out to
 11 dinner or we talked. The meeting was not a business
 12 meeting, it was a social meeting.
 13 Q Okay. What was Sardelli's job?
 14 A He's still there.
 15 Q What is it?
 16 A He's a concession manager for
 17 International Ice Shows.
 18 Q Okay. Who have you talked to who's no
 19 longer there, other than Chuck Smith?
 20 A Susanna Smith, Mike Franks, Marlene
 21 Voekler, Jear. I think that's about it.
 22 Q Okay. And have there been any common
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1 yeah, sure. That was it. We didn't discuss the
 2 particulars of my contract, the inner workings of
 3 Feld Entertainment.
 4 Q Did you talk to them about the
 5 circumstances under which they left?
 6 A Not really. I mean, they were just fired.
 7 I mean, it was pretty cut and dry.
 8 Q Did you ask them the circumstances? I
 9 mean, what sort of deal did they get upon their
 10 termination?
 11 A Not really. They all filed EEOC
 12 complaints or lawsuits.
 13 MR. KEITH: Take a break here and see what
 14 I missed.
 15 MR. STAUFFER: I doubt if you've missed
 16 anything.
 17 (A short break was taken.)
 18 MR. KEITH: I have no further questions.
 19 MR. STAUFFER: I don't have any questions
 20 of Mr. Kaplan and we don't waive signature. Now
 21 we're finished.
 22 (At 3:25 p.m., the deposition was
 concluded.)
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1 questions to those conversations that you've asked
 2 them all?
 3 A No. Not -- well, Larry. Asked Larry the
 4 question. I asked Marlene.
 5 Q What question?
 6 A Mike Franks, Susanna Smith wouldn't have
 7 known. I don't know if Susanna Smith knew. I think
 8 Susanna Smith knew about the contract, too.
 9 Q Okay.
 10 A Mike Franks wouldn't have known. Mike
 11 Franks, I would never have told. I was friendly
 12 with Susanna Smith and I was friendly with Marlene
 13 Voekler. I was friendly with Larry Sardelli and
 14 Charlie Greco.
 15 Q And what kinds of things have you talked
 16 to with this second group of people that you've
 17 named who are no longer there?
 18 A Again, the same thing. We've had dinner.
 19 We've talked. This is not the focus of -- this is
 20 unfortunately not a real interesting conversation.
 21 I mean, I have asked them one question. Whether or
 22 not they remember me telling them and they all said,
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1 AFFIDAVIT OF DEPONENT
 2
 3 I have read the foregoing deposition, which
 4 contains a correct transcription of the answers
 5 given by me to the questions therein recorded,
 6 except as to errors which may be indicated on any
 7 attached errata sheet.
 8
 9
 10 Joel Kaplan
 11
 12
 13
 14 Subscribed and sworn to before me this
 15 day of _____, 19____, in _____
 16
 17 Notary Public
 18 My Commission Expires:
 19 _____, 19____
 20
 21
 22

CERTIFICATE OF NOTARY PUBLIC

1
2 I, Diana L. Cox, the officer before whom the
3 foregoing deposition was taken, do hereby certify
4 that the witness whose testimony appears in the
5 foregoing deposition was duly sworn by me; that the
6 testimony of said witness was taken by me in
7 stenotype and thereafter reduced to typewritten form
8 under my supervision; that said deposition is a true
9 record of the testimony given by said witness; that
10 I am neither counsel for, related to, nor employed
11 by any of the parties to the action in which this
12 deposition was taken, and further that I am not a
13 relative or employee of any attorney or counsel
14 employed by the parties thereto, nor financially or
15 otherwise interested in the outcome of the action.

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18
19
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21
22

Diana L. Cox Notary Public for the
Commonwealth of Virginia

My Commission Expires:
September 30, 2000

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