

**No. 14-55583**

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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CITY OF SANTA MONICA,

*Plaintiff-Appellant,*

v.

UNITED STATES OF AMERICA, FEDERAL AVIATION ADMINISTRATION,  
and MICHAEL P. HUERTA, in his official capacity as Administrator of the  
Federal Aviation Administration,

*Defendants-Appellees.*

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Appeal from the United States District Court for the Central District of California,  
Hon. John F. Walter (Case No. CV 13-8046-JFW (VBKx))

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**BRIEF FOR AMICI CURIAE AIRCRAFT OWNERS AND PILOTS  
ASSOCIATION AND NATIONAL BUSINESS AVIATION ASSOCIATION  
IN SUPPORT OF DEFENDANTS-APPELLEES AND AFFIRMANCE OF  
THE DISTRICT COURT**

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**RULE 29(c)(1)**  
**DISCLOSURE STATEMENT**

The Aircraft Owners and Pilots Association (“AOPA”) is a national not-for-profit membership association incorporated under the laws of New Jersey and headquartered in Frederick, Maryland. AOPA is the world’s largest general aviation member association, representing pilots and aviation enthusiasts alike. A primary purpose of AOPA is to promote, protect, and represent the interests of its members. AOPA does not have any parent corporation. As a non-profit association, AOPA does not have any stock and therefore no corporation owns any AOPA stock.

The National Business Aviation Association (“NBAA”) is a national not-for-profit membership association incorporated under the laws of and headquartered in Washington, DC. NBAA is the leading voice for companies that operate general aviation aircraft in support of their business or are otherwise involved in business aviation. A primary purpose of NBAA is to promote, protect, and represent the interests of its members. NBAA does not have any parent corporation. As a non-profit association, NBAA does not have any stock and therefore no corporation owns any NBAA stock.

**RULE 29(c)(4)**  
**STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY**

AOPA and NBAA are trade associations that represent the interests of persons and companies that operate aircraft. AOPA is an independent, not-for-profit education and advocacy association incorporated under the laws of New Jersey and headquartered in Frederick, Maryland. AOPA is the world's largest general aviation member association, representing pilots and aviation enthusiasts alike. A primary purpose of AOPA is to promote, protect, and represent the interests of its members. NBAA is an independent, not-for-profit education and advocacy association incorporated under the laws of and headquartered in Washington, D.C. NBAA is the leading voice for companies that operate general aviation aircraft in support of their business or are otherwise involved in business aviation. A primary purpose of NBAA is to promote, protect, and represent the interests of its members.

The members of both associations operate general aviation aircraft, which account for approximately two-thirds of the aircraft hours flown in the national airspace system. As airport users, AOPA's and NBAA's members share an interest in preserving access to the nation's public-use airports, particularly those, such as Santa Monica Municipal Airport ("SMO"), that were transferred to localities by the Federal government under the Surplus Property Act of 1944, Pub. L. no. 457, 58 Stat. 765, *as amended* Pub. L. no. 289, 61 Stat. 678 (1947) ("SPA"). AOPA and

NBAA also are interested in preserving the Federal government's role, policies, and law in maintaining and developing a safe, efficient and integrated national transportation infrastructure – which is, in significant part, dependent on continued access to public-use and reliever airports such as SMO. *See* 49 U.S.C. §§ 40103, 47101, and 47103. The outcome of this case could undermine the national air transportation system by allowing localities to unilaterally renounce their surplus property obligations and piece-by-piece disassemble that system, harming the interests of not just AOPA and NBAA members but of the citizens of the United States generally. AOPA and NBAA can offer a practical perspective as to the importance of the Federal government's role and responsibility to manage the accessibility of individual airports in planning for national transportation needs and the importance of those airports to the national airport system.

While AOPA and NBAA are thus concerned with the implications of this case for this particular airport, AOPA and NBAA are also concerned with the broader implications of this case to other airports on a national level. Specifically, many other general aviation airports were transferred pursuant to the SPA and/or have received Airport Improvement Program (“AIP”) grants pursuant to 49 U.S.C. § 47104, *et seq.* Any decision in this case may set a precedent for other airports in regard to their obligations to adhere to restrictions and covenants agreed upon with the Federal Aviation Administration (“FAA”), including the obligation to continue

to be an integral part of the national aviation transportation system. AOPA and NBAA accordingly seek to assist the Court by addressing the underlying issues – including the merits and implications of the legal arguments made on appeal – and the broader ramifications of any disposition the Court may make in this case, so that the Court may be fully informed and that any decision in this case would not have unintended adverse consequences on future matters.

The parties – appellant City of Santa Monica (“City”) and appellees the United States of America, the Federal Aviation Administration, and Michael Huerta – have informed Amici that they do not oppose the filing of this brief, and thus this brief may be filed without motion pursuant to Federal Rule of Appellate Procedure 29(a).

**RULE 29(c)(5) STATEMENT**

This brief was in whole authored by counsel to the Amici. No party or party's counsel – or person other than Amici, their members, and counsel – has contributed money that was intended to fund preparing or submitting this brief.

## ARGUMENT

### **I. THE HISTORY AND PURPOSE OF THE SURPLUS PROPERTY ACT ARE RELEVANT TO UNDERSTANDING THE ISSUES BEFORE THE COURT AND THE POTENTIAL IMPLICATIONS SHOULD BE CONSIDERED.**

#### **A. The Surplus Property Act**

This case presents issues related to the execution of an instrument pursuant to a Federal statute that came into effect more than 70 years ago. Since that time, the intent of both the underlying law and the transaction now before the Court have been consistent – the public requires a national transportation system that is safe, efficient, and effective. For that reason and upon assurance that they would remain devoted to that purpose, SMO and numerous other airports were transferred to local control. The City now is attempting to undermine the public’s interest in the national transportation system. Restrictions on operations at or the outright closure of SMO – the potential results of an outcome in the City’s favor in this case – would entirely contradict the purpose of the SPA and the underlying transfer at issue.

During World War II, Congress enacted the Surplus Property Act of 1944 to provide a comprehensive system for the disposal of facilities no longer needed by the U.S. to serve the public interest. In accordance with that purpose, the SPA stated an intent “to dispose of surplus Government-owned transportation facilities

and equipment in such manner as to promote an adequate and economical national transportation system.” 58 Stat. 765, 766, § 2(s).

The importance of planning for a *national* transportation system in the surplus property disposal process was reiterated in regulations issued under the SPA. The disposal of surplus airport property, in particular, was to be performed in such a manner as to “encourage and foster the development of civil aviation and provide and preserve for civil aviation ... a strong, efficient, and properly maintained nationwide system of public airports.” War Assets Administration (“WAA”) Regulation 16, 32 C.F.R. § 8316.3, 10 Fed. Reg. 14204, 14204 (Nov. 17, 1945), recodified at 32 C.F.R. § 8305.3(e), 12 Fed. Reg. 2028, 2030 (Mar. 27, 1947). Benefits to the public and the nation were the principal considerations in disposing of surplus airport property. *Id.* Furthermore, these objectives were consistent with the recommendations of the then-Civil Aeronautics Administration’s (“CAA”) 1944 *National Airport Plan* (an ancestor of the FAA’s current National Plan of Integrated Airport Systems (“NPIAS”)), which emphasized that the “growth of both private and commercial flying depends on the development of airports, and that our present airport system is not adequate to serve the needs of aviation.” House Doc. No. 807, 78th Cong., 2d Sess., at 1 (Nov. 28, 1944), *available in* CIS U.S. Serial Set no. 10879, Fiche 15-16. Thus, airports that were considered valuable to the maintenance of “an adequate and economical

national transportation system” could be transferred to local governments, but only in consideration of the acceptance of reservations, restrictions, and conditions of the Federal government. *See* WAA Regulation 16, 32 C.F.R. §§ 8316.3 and 8316.18, 10 Fed. Reg. 14204, 14204 and 14207.

To implement these goals, Congress placed firm limits on the subsequent use of airport property for other than airport purposes, and “sought to provide the FAA with prospective oversight powers in furtherance of specific statutory purposes.” *Montara Water and Sanitary District v. County of San Mateo*, 598 F. Supp.2d 1070, 1089 (N.D.Cal. 2009). Transfers of airport property – specifically airports transferred for the value of the land and/or improvements made by the Government – contained restrictive covenants requiring the transferee to use the airport for public airport purposes. WAA Regulation 16, § 8316.10(a)(2), 10 Fed. Reg. 14204, 14205. The purpose of such restrictions was to “ensure that ‘every acre of a surplus airport is held in trust for a specific purpose and usage.’” *Montara*, 598 F. Supp.2d at 1087 (*quoting* FAA Order 5190.6A, ¶ 4-18(b) (Oct. 2, 1989)). In other words, the SPA specified that surplus airport property be disposed of in such a manner so as to ensure that the property remained airports as needed for an efficient *national* transportation system, under the oversight of the Federal government and that airport property not be misallocated by transferees for other purposes. *See* FAA Order 5190.6B, ¶ 23.17(a) (Sept. 30, 2009) (*see* ER112) (case

study of airport in which “mismanagement by the sponsor – including illegal disposal of the airport’s assets – and restricted access resulted in [reversion] action by the federal government”).

In this case, it appears that the City’s efforts to quiet title to the SMO property could have the ulterior purpose of restricting or closing SMO once its commitments to the Federal government pursuant to AIP grants and the 1984 Settlement Agreement have ended, an action that would entirely contradict both the overt purposes of the SPA and the transfers made pursuant to that law. Congress specifically intended that recipients of surplus airport property post-World War II maintain such property under express and relatively simple terms that allow for the preservation, maintenance, and improvement of the national air transportation system – *i.e.*, predicated on an explicit Federal right of reversion. Those terms cannot be avoided at a later date unless the recipient requests an exception from the FAA and a conscious determination is made by the FAA to allow such an exception, based upon the public interest. *See* 49 U.S.C. § 47151, *et seq.* (which re-codifies relevant provisions of the SPA); 14 C.F.R. Part 155. Santa Monica has not yet submitted such a request to the FAA, but the City’s intent in this regard seems obvious, and given the importance of SMO to the national air transportation system, it appears highly unlikely that such an exception would be allowed as it would manifestly not be in the public interest.

B. Potential Adverse Implications to Air Traffic in the Southern California Region and the National Airspace System

The potential fate of SMO itself is not all that is at stake in this case. The closure of SMO, or restricted access to SMO, would have a detrimental effect on air traffic in the Southern California region and the national airspace system, which in turn would detrimentally impact the members of both associations and the public as a whole.

SMO is part of a “geographic area covering several airports, serving major metropolitan areas and a diversity of aviation stakeholders,” often called the “SoCal Metroplex.” See *Optimization of Airspace & Procedures in the Metroplex*, [www.faa.gov/air\\_traffic/flight\\_info/aeronav/procedures/oapm](http://www.faa.gov/air_traffic/flight_info/aeronav/procedures/oapm). In planning for the SoCal Metroplex area, the FAA is attempting to:

provide[] solutions on a regional scale, rather than focus[] on a single airport or set of procedures. The optimization plan takes into account all airports and airspace that support each metropolitan area as well as how traffic in those areas interacts with other metroplexes. It considers a myriad of factors including safety, efficiency, capacity, access and environmental impact.

*Id.* SMO cannot be considered as a single airport, but rather must be viewed according to its role as an integral piece of the nationwide network of airports. Any modification or cessation of operations at this airport would have wide-ranging ramifications felt in not only the surrounding metropolitan area, but that also could

affect the “safety, efficiency, capacity, access and environmental impact” of airport operations *nationwide*. *Id.*

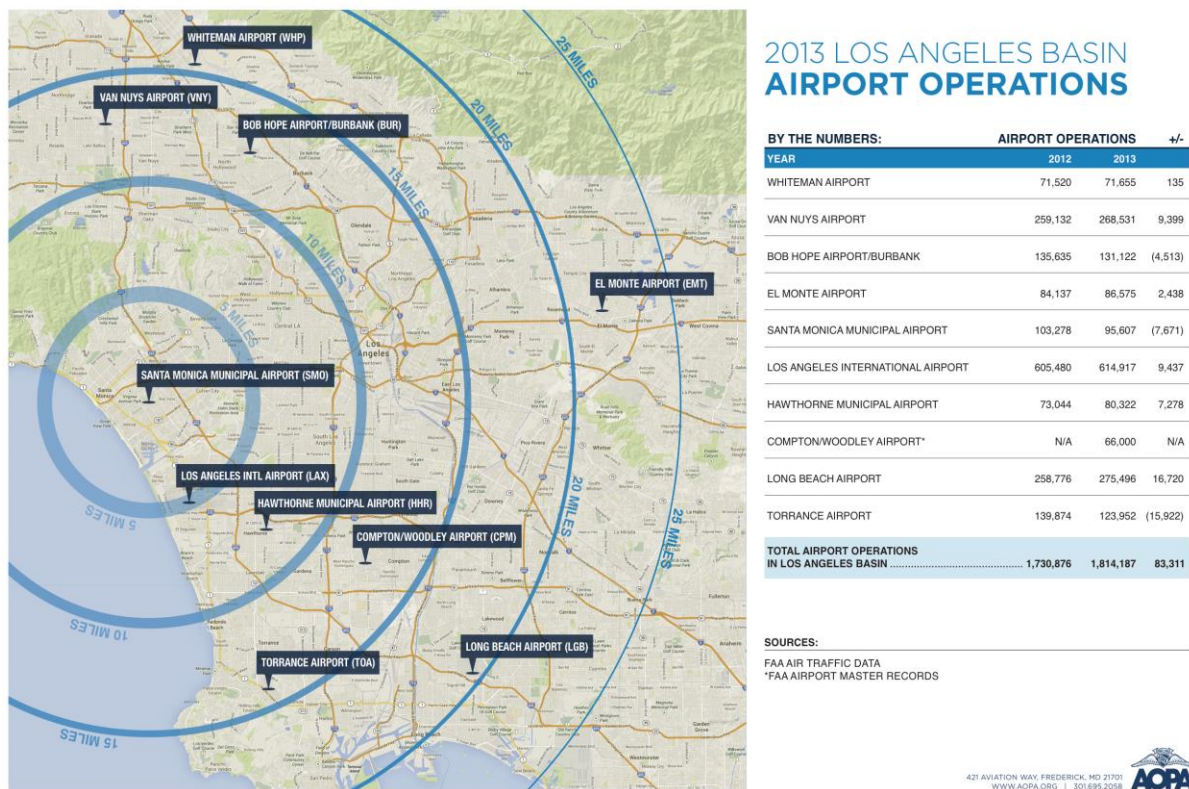
There already is limited airport capacity in the Los Angeles basin. For this reason, in 2009, the FAA rejected an application to impose a nighttime curfew on operations at nearby Bob Hope Airport (BUR). The FAA stated that “[t]he southern California airspace is currently highly congested and complex” and “[a] curfew at BUR would worsen congestion elsewhere”; thus restrictions at BUR would be inconsistent with the “safe and efficient use of the navigable airspace.” *FAA Letter of Decision on Burbank-Glendale-Pasadena Airport Authority Application for a Full Nighttime Curfew*, at 31, 35 (Oct. 30, 2009), available at [www.faa.gov/airports/environmental/airport\\_noise/part\\_161/media/burbank\\_10\\_30\\_09.pdf](http://www.faa.gov/airports/environmental/airport_noise/part_161/media/burbank_10_30_09.pdf). See also *In the Matter of Compliance by the City of Santa Monica, California*, no. 16-02-08, Director’s Determination, at 51 (May 27, 2008), available at [part16.airports.faa.gov/pdf/16-02-08b.pdf](http://part16.airports.faa.gov/pdf/16-02-08b.pdf) (“the Los Angeles region is one of the most congested air traffic control areas in the country”); *U.S. v. City of Santa Monica*, 330 Fed Appx. 124, 126 (9th Cir. 2009) (noting “potential disturbance to air traffic around the Los Angeles area” if the City was allowed to ban certain categories of aircraft from operating at SMO).

Awarding the City unfettered discretion to impose restrictions or potentially even *close* the Santa Monica Municipal Airport would doubtless have a similar or

even more dramatic effect on air traffic in Southern California. The operations currently being handled at SMO would necessarily move to other airports in the Los Angeles basin, affecting established routes and procedures at (as well as shifting environmental impacts to) other airports – many of which already operate at or near capacity. Notably, according to judicially-noticeable records of airport traffic posted by the City, in 2012-13 there were on average nearly 100,000 annual aircraft operations (*i.e.*, arrivals and departures) at SMO – more than 270 per day, with the airport serving as a significant reliever for general aviation traffic that might otherwise seek to utilize the already-congested Los Angeles International Airport or other bustling Southern California airports.<sup>1</sup> Table 1, *infra*, provides a summary of the overall air traffic in the Los Angeles basin, based on FAA data, underscoring SMO's importance to its neighboring airports as a reliever in this dense, busy area.

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<sup>1</sup> See [www.smgov.net/Departments/Airport/Operational\\_Data.aspx](http://www.smgov.net/Departments/Airport/Operational_Data.aspx). The data currently available for 2014 is incomplete and thus not included in the table. However, the 2014 data that is available indicates a similar trend in the number of operations.

Table 1

Clearly, the finite availability of airspace and the limited airport capacity existing in a region with a small number of public use airports to accommodate already congested operations would be impacted if operations at SMO were restricted or eliminated, causing greater congestion and burden to the system. The reverberations of any limitations or cessation of flights at SMO would be felt across the United States; could interfere with the FAA's mission in ensuring a safe and efficient transportation system; and would not be in the public interest.

Further, any decision in this case could set a precedent with wide-ranging implications. Out of the approximately 5,000 public-use airports in the United

States – and the approximately 2,800 of those that are considered to be general aviation and reliever airports for NPIAS purposes – there may be more than 200 airports that have executed surplus property transfer agreements that are similar to the agreement that is at issue in this case. If the City’s argument regarding the timeliness of its complaint challenging the effectiveness of a transfer executed in the 1940s is found to be valid, the consequence could be to open up an opportunity for the owners of hundreds of other public-use airports to consider the diminution or elimination of their operations, potentially leading to the substantial crippling of the nation’s air transportation infrastructure.

The conditions of the 1948 Instrument of Transfer are clear, and repeatedly have been acknowledged by Santa Monica. Thus the City’s claim of ignorance at this late date about the effect of the plain and recognized language at issue amounts to a transparent and parochial effort to selfishly achieve a City objective without regard to how it would effectively weaken the national air transportation system that has been planned, established, and nurtured to serve the nation’s public.

**II. THE CITY WAS AWARE OF THE FAA’S INTERPRETATION OF THE 1948 INSTRUMENT OF TRANSFER MORE THAN TWELVE YEARS AGO, AND AS A RESULT ITS QUIET TITLE ACT CLAIM IS TIME-BARRED.**

On appeal, the City does not dispute that there is a twelve-year statute of limitations for it to bring a claim pursuant to the Quiet Title Act, 28 U.S.C. § 2409a (“QTA”), regarding the title to SMO (*i.e.*, whether the Federal government

may revert the real property that comprises the Airport if that property is no longer used for aeronautical purposes). Rather, the City contends that it was not aware until 2008 that the Federal government interpreted the 1948 Instrument of Transfer to encompass an ongoing Federal interest in the real property that comprises SMO, and thus that its October 31, 2013 complaint in this case was timely.<sup>2</sup>

The District Court appropriately rejected that contention, finding that the City knew or should have known of the interest claimed by the government. In addition to the statements cited by Appellees,<sup>3</sup> there is further testimony that we believe may help the Court to fully understand the extent of the City's knowledge. Amici therefore request that this Court take judicial notice of testimony provided under oath in 2001 and 2003 by Stephen Stark, a former Assistant City Attorney

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<sup>2</sup> As an aside, the City states that certain parcels that now comprise SMO were not encompassed by the 1948 Instrument of Transfer, and are not at issue in this case. *See* Appellant's Brief at 4 n.1. However, Amici understand that certain *obligations* created by the 1948 Instrument of Transfer extend to *all* parcels that now comprise SMO, irrespective of how they were transferred to the City. Because this issue has not been briefed and is not necessary to the resolution of this appeal, Amici ask that the Court not make any rulings that would prejudice its consideration in the future.

<sup>3</sup> For decades, the Federal government's deliberations – and indeed, City and California deliberations also – on matters related to SMO have been guided by the knowledge of and reliance upon the obligations that have governed the airport, including that the City must continue to operate SMO upon condition of reversion. *See* Appellees' Brief at 17-18. Notably, it was upon such basis that the Federal government originally agreed to relinquish its interest in the airport property in 1948 – including the significant improvements made by the Federal government during World War II. *See, e.g.,* Appellees' Brief, at 6-7.

for the City of Santa Monica, as a witness for the City of Santa Monica. *See* Exhibits A and B. It is well-established that this Court may take judicial notice of relevant materials from other tribunals. *See, e.g., Biggs v. Terhune*, 334 F.3d 910, 915 n.3 (9th Cir. 2003); *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992); *Winfrey v. McDaniel*, 487 Fed. Appx. 331, 332 n.3 (9th Cir. 2012). In this case, the proffered transcripts are highly relevant because they further establish that the City in fact was aware of the Federal government's interpretation of the 1948 Instrument of Transfer more than twelve years before the complaint was filed, and thus that Santa Monica's QTA claim is untimely.

In particular, in 2001 Stark – who testified that he had been intimately involved in SMO matters during his tenure as an Assistant City Attorney for Santa Monica (1978-85) and Acting City Attorney (1980-81) – was questioned about his understanding, as of 1981, of the reversion language included in the 1948 Instrument of Transfer. Specifically, Stark was asked: “[B]asically if the city ever in perpetuity ever tries to convert any of this property to any other use, then the federal government gets it back, or can operate to get it back at that time?” Exhibit A, at 35. Stark responded: “I think that’s a reasonable plane [sic] English statement of what that purports to say.” *Id.* Stark also was asked if that understanding was

changed by the 1984 Settlement Agreement. Stark responded: “I don’t think so. . . . [T]he answer to your question is the problem is not going away.” *Id.* at 36.

In 2003 testimony, Stark was again asked about the 1948 Instrument of Transfer: “[T]his deed of transfer imposed a covenant and restriction that ran with the land, that the land subject to this deed be used as an airport in perpetuity; correct?” Exhibit B, at 337. Stark responded:

I understand that’s what it said. I also further understand that there was some controversy on the part of the City as to whether it covered to maintain the airport for airport purposes and perpetuity was enforceable. That was a matter of some discussions between us and the Federal government from time to time.

*Id.*

In other words, even though the City may not have *agreed* with the Federal government’s interpretation of the reversion language in the 1948 Instrument of Transfer, the City has been *aware* of that interpretation since at least the early 1980s. Indeed, Stark’s September 12, 2001 testimony – in the presence of Deputy City Attorney Martin Tachiki – itself was put on the record more than twelve years before this case was filed, and at a bare minimum should be construed to have triggered the running of the statute of limitations for a QTA claim. Moreover, Stark’s testimony also shows that the City did not believe that, via the 1984 Settlement Agreement – an agreement of which Stark was a primary drafter, *see* Exhibit B at 325 – the Federal government had abandoned its interpretation of the

reversion language in the 1948 Instrument of Transfer (an issue which is further discussed in the next section of this brief).

In circumstances such as this, where there is clear evidence that the City was aware of the Government's interpretation that the property must remain open as an airport or it would be subject to Federal reversion, any attempt to litigate the claimed Federal interest in the airport property is now time barred. To hold otherwise would not only run contrary to established law but would establish precedent that could have far-reaching consequences. Accordingly, the judgment of the District Court should be affirmed.

**III. THE 1984 SETTLEMENT AGREEMENT WAS NOT INTENDED TO RELEASE THE CITY FROM THE OBLIGATIONS OF THE 1948 INSTRUMENT OF TRANSFER; THIS ASSERTION WAS NOT RAISED BELOW AND PREVIOUSLY HAS BEEN REJECTED BY THE FAA.**

In its appeal, the City repeatedly asserts, for the first time in the context of this case, that the terms of the 1984 Settlement Agreement specifically released it from the obligations of the 1948 Instrument of Transfer. *See, e.g.*, Appellant's Brief, at 51. However, that agreement was narrow in scope and only reached the subject of then-existing litigation, not the 1948 Instrument of Transfer, and only released specified parcels from Federal obligations.

First, although the 1984 Settlement Agreement was cited in the proceedings below, this specific argument was not raised by the City in response to the Federal

government's motion to dismiss and was not raised or ruled upon by the District Court. Thus, it cannot now be raised for this Court's review. It has been waived. *State of Ariz. v. Components, Inc.*, 66 F.3d 213, 217 (9th Cir. 1995).<sup>4</sup>

Second, the City's argument is, in any event, contrary to the explicit terms of the agreement and instead relies upon out-of-context quotations from the 1984 Settlement Agreement. To the extent that the agreement resolved "existing legal disputes" between the City and the Federal government, it was explicitly clarified by the very next sentence of § 4 thereof (*see* ER369-70) to be applicable "to all existing litigation and/or administrative complaints pending between the parties." Neither the reversion condition nor any other component of the 1948 Instrument of Transfer was identified in the 1984 Settlement Agreement as being the subject of

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<sup>4</sup> As an aside, in arguments made about the 1984 Settlement Agreement the City refers to a FAA Director's Determination for the proposition that the City's last AIP grant agreement expired in 2014. *See* Appellant's Brief at 21-22 (*citing Santa Monica Airport Association v. City of Santa Monica*, no. 16-99-21, Director's Determination, at 22-23 (November 22, 2000), available at [part16.airports.faa.gov/pdf/16-99-21b.pdf](http://part16.airports.faa.gov/pdf/16-99-21b.pdf)). But that docket predated a 2003 amendment to one of the City's AIP grants. Although the City now asserts that the 20-year obligation period of AIP grants runs from the date of a grant's *execution*, *see* Appellant's Brief at 16, that is a contested issue. The FAA previously has opined that the 20-year period runs from the last *amendment*, *see In the Matter of Compliance Obligations by the City of Santa Monica, California*, no. 16-02-08, Director's Determination, at 13 – and a pending FAA Part 16 complaint to which AOPA and NBAA are parties (nos. 16-14-04/16-14-05) seeks definitive resolution of that very issue. Because this issue has not been briefed and is not necessary to the resolution of this appeal, Amici ask that the Court not make any rulings that would prejudice its consideration in the future.

litigation or an administrative complaint between the parties at that time – nor has Santa Monica done so now. Indeed, as stated above, Santa Monica has asserted that it was not even aware of the FAA’s interpretation of the 1948 Instrument of Transfer prior to 2008. Although this assertion is incorrect (as discussed in the prior section of this brief), their contention effectively constitutes a concession that from the City’s perspective any dispute over the reversion condition could not have been released by § 4 of the 1984 Settlement Agreement.

To the extent that the City also looks, *see* Appellant’s Brief at 51, to § 6 of the 1984 Settlement Agreement (which included a release from the 1948 Instrument of Transfer for “parkland and residual land,” *see* ER371), that release clearly was applicable to a *subset* of property at the airport, not the airport as a whole – consistent with the discussions of residual land and parks in § 2 and § 5 of the agreement. *See* ER369-70. *See also* *Santa Monica Airport Association*, no. 16-99-21, Director’s Determination, at 22 (noting that only “parkland and residual land” had been released), Final Decision and Order, at 22 n.12 (February 4, 2003), available at [part16.airports.faa.gov/pdf/16-99-21.pdf](http://part16.airports.faa.gov/pdf/16-99-21.pdf) (likewise).

The City also has acknowledged that § 3 of the 1984 Settlement Agreement (*see* ER369) provided that prior agreements regarding SMO should be interpreted consistently with that agreement. *See* Appellant’s Brief at 51. That language would be devoid of meaning if the 1984 Settlement Agreement were interpreted to have

released the City from all prior obligations, such as the 1948 Instrument of Transfer. As this Court knows, a basic canon of contractual interpretation is that “one provision should not be interpreted in a way which is internally contradictory or that renders other provisions ... inconsistent or meaningless.” *Bayview Hunters Point Community Advocates v. Metropolitan Transportation Commission*, 366 F.3d 692, 700 (9th Cir. 2004) (citations and internal quotation marks omitted). This is a further reason that the City’s proposed reading of the 1984 Settlement Agreement cannot stand.<sup>5</sup>

Finally, in a prior administrative proceeding concerning SMO, the FAA squarely rejected the entire line of argument now asserted by Santa Monica:

[T]he City contends ... that the FAA in executing the 1984 Agreement, released the City from the “conditions, covenants, and restrictions imposed by the Instrument of Transfer dated August 10, 1948, Deed No. 4 (CCS),[”] and allowed “use of land designated as parkland and residual land therein for other than airport and aviation purposes.” ... The Director finds that this argument lacks merit. The 1984 Agreement, agreed to by the City, only evidences release of *some* airport land covered by the Surplus Property Act, specifically certain residual land to be used for non-aeronautical uses, but not remaining aeronautical use property. ... The 1984 Agreement ... did not result in a release of Federal obligations permitting the City to close the Airport.

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<sup>5</sup> Nor is it inconsistent with anything in the 1984 Settlement Agreement that other obligations entered into by the City require SMO to be operated as an airport for different periods of time – but that is not an issue presently before this Court.

*In the Matter of Compliance Obligations by the City of Santa Monica, California*, no. 16-02-08, Director's Determination, at 60.<sup>6</sup> See also *Bombardier Aerospace Corp. v. City of Santa Monica*, no. 16-03-11, Director's Determination, at 2 (January 3, 2005), available at [part16.airports.faa.gov/pdf/16-03-11b.pdf](http://part16.airports.faa.gov/pdf/16-03-11b.pdf) (finding obligations in 1948 Instrument of Transfer applicable to SMO; the City did not argue that the instrument had been released by the 1984 Settlement Agreement – nor did the City appeal, which rendered the decision final pursuant to 14 C.F.R. § 16.33(h)). In sum, the FAA has made clear – and the City has accepted – that the 1984 Settlement Agreement does not serve as a blanket release of the 1984 Instrument of Transfer.

The City should not be permitted to misconstrue agreements into which it knowingly entered, with a full understanding of the implications, at a later time when it no longer likes the consequences. The City's assertions in this regard completely undermine the intent and purpose of the 1948 Instrument of Transfer and the SPA under which it was executed, to wit ensuring that the citizens of the United States have a safe and efficient national air transportation system to meet their needs. Nothing in the 1984 Settlement Agreement changes the fact that the

---

<sup>6</sup> The FAA subsequently issued a final administrative decision that was not premised on the obligations contained in the 1948 Instrument of Transfer and thus did not address this issue; the final administrative decision was affirmed in *City of Santa Monica v. FAA*, 631 F.3d 550 (D.C.Cir. 2011).

airport property is subject to Federal reversion if the City ever ceased to operate it as an airport, or alters the City's agreement pursuant to the 1948 Instrument of Transfer to operate the property as an airport in perpetuity.

### CONCLUSION

For the reasons stated, Amici respectfully request that this Court affirm the decision of the District Court in favor of the Defendants-Appellees.

Dated: January 22, 2015

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_

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**RULE 32(a) CERTIFICATE OF COMPLIANCE**

I certify that this brief contains 4,901 words, excluding parts exempted by Federal Rule of Appellate Procedure 32(a)(7)(B), according to a count by Microsoft Word, and has been prepared in 14-point Times New Roman, a proportionally-spaced font, and therefore complies with the limits set forth at Federal Rule of Appellate Procedure 32(a)(5), 32(a)(6), and 32(a)(7)(B)(i) as modified by Federal Rule of Appellate Procedure 29(d) for amicus parties.

\_\_\_\_\_/s/\_\_\_\_\_  
Kathleen A. Yodice

**CERTIFICATE OF SERVICE**

I certify that this on January 22, 2015, I electronically filed the foregoing brief with the Clerk of this Court using the appellate CM/ECF system. The participants in this case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

\_\_\_\_\_/s/\_\_\_\_\_  
Kathleen A. Yodice

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT WEST W

HON. JAMES A. ALBRACHT, JUDGE

ALICE J. COLE, et al.,

Plaintiff,

VS.

CITY OF SANTA MONICA, et al.,

Defendant.

Case No. SC055183

Reporter's Transcript

SEPTEMBER 12, 2001

TESTIMONY OF STEPHEN SHANE STARK

APPEARANCES:

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APRIL ADAMS, CSR 2824  
OFFICIAL REPORTER

1 MALIBU, CALIFORNIA; WEDNESDAY, SEPTEMBER 12, 2001  
2 DEPARTMENT WEST W HON. JAMES A. ALBRACHT, JUDGE  
3 11:05 A.M.  
4

5 (Appearances as heretofore noted)

6 (April Adams, CSR 2824)

7 oOo  
8

9 THE COURT: Okay we are ready to begin. All  
10 parties are present. I believe the defense is  
11 going to call another witness out of order.

12 THE WITNESS: May I affirm.

13 THE COURT: Yes.  
14

15 STEPHEN SHANE STARK  
16

17 Called as a witness for the defense, affirmed and  
18 testified as follows:

19 THE CLERK: You do affirm that the testimony  
20 you are about to give in the matter now pending  
21 before this court shall be the truth, the whole  
22 truth, and nothing but the truth.

23 THE WITNESS: Yes.

24 THE CLERK: State your name for the record.

25 THE WITNESS: Stephen Shane Stark.  
26

27 ///

28 ///

///

## DIRECT EXAMINATION

BY MR. TACHIKI:

Q. Who do you currently work for?

A. For the County of Santa Barbara, County Counsel.

Q. How long have you been County Counsel there?

A. Since May 1994.

Q. Prior to working for the county of Santa Barbara were were you employed by the city of Santa Monica?

A. Yes, I was.

Q. What position did you hold?

A. I was assistant city attorney. My employment there was between April of 1978 and December of 1985. For all of that time I was assistant city attorney except for the period of time between May of 1980 and April of 1981 when I was acting city attorney.

Q. When you started working for the city were you assigned to litigation regarding the Santa Monica Airport?

A. Yes, I was. I was assigned to participate in the city's defense of a case which was known as the Santa Monica Airport Association versus the City of Santa Monica.

Q. Were there other plaintiff's in the

1 case?

2 A. I'm trying to remember.

3 Q. Were there some national aviation  
4 interests?

5 A. They intervened. At some point in that  
6 litigation the National Business Aircraft  
7 Association and the General Aviation Manufacturers  
8 Association intervened in the case. Initially I  
9 think was just the airport association.

10 Q. Those are national aviation groups?

11 A. Yes. The one is composed of companies  
12 that, at the time one was composed of companies  
13 that used corporate aircraft in their business, and  
14 the manufacturer's association was composed of  
15 people that made general aviation aircraft, and  
16 parts as well.

17 THE COURT: For your purposes, when he said  
18 someone else intervened it essentially means that a  
19 lawsuit was initiated between parties A and B, and  
20 another party being aware said we have legitimate  
21 interests in this also, and they intervened. If  
22 they have legitimate interests they can intervene  
23 and make themselves part of the case. Originally  
24 filed by somebody else and other parties  
25 intervened.

26 Q. BY MR. TACHIKI: Were you one of the  
27 attorneys representing the city in the trial of  
28 this matter?

1           A.       Yes, I was.

2           Q.       And would you tell us what the action  
3 was about? What were the issues?

4           A.       The primary issues in this case -- I  
5 will try not to lapse into lawyerese.

6                   The action challenged five ordinances  
7 that the City of Santa Monica had adopted in order  
8 to abate noise at its airport, the Santa Monica  
9 Municipal Airport.

10                  The ordinances included a ban on jet  
11 aircraft, a single event noise limit of 100  
12 decibels, which basically is the amount of noise  
13 that an aircraft could lawfully make at a certain  
14 point when it left the airport. A curfew, night  
15 curfew on departures. I believe there was a ban on  
16 helicopter pattern flying, and a limit on touch and  
17 goes. Touch and go being an exercise that pilots  
18 use when they train. They land and immediately  
19 take off again.

20                  Those five ordinances were challenged  
21 on the grounds that they interfered with interstate  
22 commerce, and I think at least in some cases that  
23 they violated the equal protection clause.

24           Q.       In front of you there is a stack of  
25 papers. Can you look at the first one, exhibit  
26 344, ordinance number 996.

27           A.       I see it.

28           Q.       And on page two, section one.

1 A. Yes, I see it.

2 Q. Do you see what the title of the  
3 section is?

4 A. Jet aircraft prohibited.

5 Q. Is that the jet ban section that was  
6 challenged in U.S. District Court?

7 A. This is the ordinance that was  
8 challenged, and this is the guts of the ordinance  
9 that was challenged making it unlawful for people  
10 to take off and land at the airport with jet  
11 aircraft.

12 Q. Following the trial in this matter,  
13 what was the court's decision with regard to the  
14 jet ban?

15 A. The court's decision, if I recall  
16 correctly, was that the jet ban was invalid because  
17 it violated, --

18 Q. Just the decision.

19 A. The court enjoined the jet ban and  
20 upheld the other four ordinances.

21 Q. Do you remember when the district court  
22 made that decision?

23 A. There was an oral decision. Judge  
24 Irving hill, now deceased, gave an oral decision I  
25 think in April 1979.

26 It took a couple of months for him to  
27 actually reduce the decision, which he read from  
28 the bench, to writing it, having a final order. I

1 think it was in September. I could tell you if I  
2 had the decision in front of me.

3 Q. I think that's correct.

4 That decision, he permanently enjoined  
5 the jet ban?

6 A. Yes, he did. Enjoined the enforcement  
7 of it.

8 Q. Now, do you remember at that time if  
9 there were any signs on the east side of the  
10 airport? I'm talking about this location here.

11 A. Yes. Before Judge Hill issued his  
12 ruling invalidating the jet ban, there was a large  
13 sign, I think where the runway going east took off,  
14 "no jets". A big sign, you couldn't miss it.  
15 Driving on Bundy it said "no jets."

16 Q. After the district court's decision,  
17 was that sign removed?

18 A. Yes.

19 Q. Do you remember when it was removed?

20 A. Within a couple months, I believe I do.

21 Q. Your best approximation?

22 A. The sign was removed in, I believe May  
23 or June of 1980.

24 Q. And was that sign replaced?

25 A. Yes, it was.

26 Q. And what did the new sign say?

27 A. "Please fly quietly."

28 Q. Do you recall there ever being a sign

1 on the hill listing the hours of the airport was in  
2 operation?

3 A. I don't recall any, no. There may have  
4 been, but I don't recall.

5 Q. The district court opinion, was that  
6 appealed?

7 A. Yes, it was.

8 Q. And again without getting into the  
9 basis for the decision, what did the the Court of  
10 Appeal do?

11 A. The Court of Appeal affirmed, let  
12 stand, agreed with Judge Hill's decision  
13 invalidating the jet ban and upholding the other  
14 four ordinances.

15 Q. Do you remember approximately when that  
16 occurred?

17 A. I believe it was in 1981. I don't  
18 recall the exact month. It took a couple years for  
19 it to be decided by the Ninth Circuit on appeal.

20 Q. Again, after the district court  
21 enjoined the jet ban ordinance, did the City of  
22 Santa Monica adopt a new noise standard?

23 A. Yes.

24 Q. Would you take a look at the next  
25 document there, exhibit 345, ordinance 1137 dated  
26 September 10, 1979.

27 A. I'm looking at it.

28 Q. Can you look at page 7, Section 8.

1 A. I see it.

2 Q. Is that the section that set the new  
3 noise limit at the airport?

4 A. Yes.

5 Q. And what noise limit did that ordinance  
6 set?

7 A. The maximum permissible SENEL, single  
8 event noise exposure level, shall be 85 decibels.

9 Q. Was that ordinance challenged in court?

10 A. Yes.

11 Q. Do you recall who challenged it?

12 A. Yes, I believe the plaintiffs in that  
13 case were Gunnell Aviation. Gunnell ran a  
14 business, or fixed base operation, at the airport,  
15 and I believe the National Business Aviation  
16 Association. I.

17 Don't recall whether General Aviation  
18 Manufacturers challenged it or not. I recall one  
19 of the national groups challenged it and I don't  
20 believe the Santa Monica Airport Association was a  
21 plaintiff in that case.

22 Q. Do you recall when the second lawsuit  
23 was filed?

24 A. It was filed virtually within weeks if  
25 not days of the adoption of the ordinance. The  
26 ordinance was subject to a preliminary injunction  
27 before it became effective, which would have been a  
28 month after it was adopted. It was challenged

1 right after it was passed.

2 Q. And did this case ever go to final  
3 judgment?

4 A. This case was settled and dismissed.

5 Q. So the only injunction issued was a  
6 preliminary injunction in this matter?

7 A. That's correct.

8 Q. Now, while this, the original case the  
9 first SFA case was pending, was that when the SMA  
10 case was appealed?

11 A. Yes. The appeal was pending while the  
12 trial in the second case was going on. I hope that  
13 wasn't too confusing.

14 THE COURT: What are you referring to as the  
15 SMA case?

16 MR. TACHIKI: SMAA.

17 THE WITNESS: The first case was appealed  
18 while the trial in the second case was going on.

19 Q. BY MR. TACHIKI: The second case never  
20 went to trial?

21 A. It never went to trial.

22 Q. The second case. The NBAA case, that  
23 was pending through the early 1980's?

24 A. Yes.

25 THE COURT: The what case?

26 MR. TACHIKI: NBAA. National Business  
27 Aircraft Association.

28 THE COURT: Okay.

1 Q. BY MR. TACHIKI: While those actions  
2 were pending, could you look at exhibit 346 which  
3 is ordinance number 1239?

4 A. Yes, I'm looking at it.

5 Q. This ordinance, it's dated December 8,  
6 1981. Do you recall why this ordinance was  
7 adopted?

8 A. Yes.

9 Q. Let me go back, based on the initials  
10 at the top of this page, did you draft this  
11 ordinance?

12 A. Yes, I did.

13 Q. And do you recall why it was written?

14 A. Yes, I do.

15 Q. Why was it written and adopted?

16 A. The purpose of the ordinance was to  
17 ensure that we had an enforceable noise limit in  
18 place while -- if I can back up for a second.

19 We had appealed the first ruling. The  
20 first ruling had left the hundred decibel single  
21 event noise ordinance in place. We adopted the 85  
22 decibel ordinance, which dropped that limit.

23 The judge, Judge Hill, preliminarily  
24 enjoined that ordinance. Issued an injunction. We  
25 were concerned that we, we being the city attorney  
26 and I, views shared by the City Council, were  
27 concerned that we needed an enforceable ordinance  
28 in place and that some people might construe the

1 adoption of the 85 decibel ordinance as superseding  
2 the hundred decibel ordinance without replacing it  
3 with anything. So we wanted to make sure there was  
4 some noise ordinance on the books. That we were  
5 relatively confident, at least pending decision on  
6 appeal, that we could enforce.

7 I think we also extended the night  
8 departure curfew by an hour in the same ordinance  
9 so we could get an additional level of noise  
10 abatement at that time.

11 Q. That ordinance, this one, 1239?

12 A. Yes. There were two purposes, but the  
13 major purpose was to make sure we had something on  
14 the books that we were confident we could enforce.

15 Q. During the 1980's while this was  
16 occurring, did the City Council adopt resolutions  
17 about the continued operation of the airport?

18 A. They adopted a motion. I think it was  
19 a resolution that they adopted. They certainly did  
20 adopt a resolution, I believe in June of 1981, that  
21 announced their intent to close the airport when  
22 legally feasible, pending a determination of when  
23 that would be. I think that would be a resolution.

24 Q. Based on this resolution and the fact  
25 that the city adopted the prior ordinances, did  
26 that cause any challenges to arise to the city?

27 A. As I recall it did.

28 Q. And do you remember who the challenges

1       came from?

2           A.       Using the word challenge loosely, my  
3       recollection is that there were some airport  
4       operators, I don't recall if it was the airport  
5       association or individual operators. I believe  
6       they filed suit in state court. I think they filed  
7       an administrative complaint with the Federal  
8       Aviation Administration.

9           The Federal Aviation Administration  
10      raised heck with the city. I'm not sure if it was  
11      a formal complaint they initiated, but there was an  
12      administrative complaint initiated by the, with the  
13      FAA by the airport users.

14          Q.       Did the FAA become involved then?

15          A.       Well, the FAA was a friend of the  
16      court, they were not a party to the litigation  
17      involving the airport, but they wrote briefs and  
18      sent a lawyer to make argument and testimony before  
19      the judge, and they became more actively involved  
20      in the litigation. They didn't formally seek  
21      parties, but they intensified their efforts.

22          Q.       Did the city start having discussions  
23      with the FAA about the future of the airport?

24          A.       The city at some point in time, around  
25      1981, following the expression of interest by the  
26      FAA and what we were doing, yes, we commenced  
27      discussions with the FAA about the future of the  
28      airport and a noise abatement effort.

1 Q. And what did these discussions end up  
2 in?

3 A. The end product of the discussion was  
4 something called the airport noise agreement, the  
5 airport agreement, and a comprehensive airport  
6 noise ordinance which replaced the set of  
7 ordinances.

8 THE COURT: Is this the 1984 agreement.

9 THE WITNESS: Yes.

10 Q. BY MR. TACHIKI: In that stack, exhibit  
11 348?

12 A. I see the Santa Monica Airport  
13 agreement. That's what I'm referring to. The  
14 Santa Monica Airport agreement.

15 Q. Sometimes referred to as the 1984  
16 agreement?

17 A. Yes, and that is exhibit 348, now that  
18 I look at the back of it.

19 Q. You said you had settlement discussions  
20 with the FAA. Did you also have settlement  
21 discussions with the national aviation interests,  
22 the NBAA?

23 A. Yes.

24 Q. Did you take part in the settlement  
25 discussions?

26 A. Yes, I did.

27 Q. So as part of the settlement  
28 discussions did the city undertake planning studies

1 for the airport?

2 A. Yes, they did.

3 Q. And again if you look at the exhibits  
4 in front of you, look at exhibit 348 the airport  
5 master plan and exhibit 339 the environmental  
6 impact report.

7 A. I'm looking at them.

8 Q. Do you recall those as being the  
9 studies of the city?

10 A. They were among the studies. I think  
11 there was a prior airport plan done by somebody  
12 called the Arroyo Group, which was more of a  
13 conceptual plan. The master plan study is by CM2H  
14 Hill, which is an engineering firm, and that was a  
15 study done leading to the master plan for the  
16 airport.

17 The next document is the EIR, which I  
18 remember quite well, for the layout plan, being  
19 basically a map of a redesigned airport and a noise  
20 mitigation program which would include the  
21 ordinance that, the noise ordinance I just  
22 mentioned.

23 Q. Were these two reports done for the  
24 1984 agreement or for the second lawsuit, the NBAA  
25 lawsuit?

26 A. They were done for the 1984 agreement.  
27 My recollection is that the NBAA lawsuit, the 1981  
28 lawsuit, was dismissed after the city entered into

1 good faith -- dismissed without prejudice, meaning  
2 it could be brought again -- after the city signed  
3 contracts with the engineering firm to do the  
4 layout plan and with a noise consultant.

5 The planning process led to the  
6 dismissal of the lawsuit. The net result of the  
7 studies called for in this contract was the airport  
8 layout plan and the airport agreement with noise  
9 ordinance.

10 Q. Do you remember when the NBAA lawsuit  
11 was dismissed?

12 A. I thought it was dismissed in 1983 but  
13 I can't be sure.

14 Q. Go back and look at 347, ordinance  
15 1267?

16 A. Yes, I have that.

17 Q. This ordinance also indicates an  
18 adoption of the noise limit of a hundred decibels?

19 A. Yes.

20 Q. Why was this adopted?

21 A. If I could peruse it for a second.

22 It appears to be adopted about a year  
23 and a couple months after the interim limit.

24 Q. Was this adopted to make it a permit  
25 noise limit as opposed to an interim limit?

26 A. On its face it's a permit noise limit,  
27 yes. I don't know why it was adopted.

28 Q. This is the noise limit in effect

1 through the 1984 agreement at least; is that  
2 correct?

3 A. This ordinance was in effect until the  
4 amended comprehensive airport ordinance and the  
5 1984 agreement. There was some technical reason  
6 why it was adopted. My recollection is it was not  
7 regarded as a substantive change, simply to carry  
8 forward the notion of the interim ordinance which  
9 in turn carried forward the hundred SENEL limit  
10 which had been upheld in the first lawsuit.

11 Q. At this point we have a hundred decibel  
12 limit in effect. You testified there are two  
13 studies that have been adopted.

14 When was the 1984 agreement entered  
15 into? Back at exhibit 348.

16 A. Appears to be January 31st, 1984,  
17 executed by the parties.

18 Q. Based on your recollection of the 1984  
19 agreement and reading the agreement, what were the  
20 benefits the city obtained from the 1984 agreement?

21 A. Other than the assurance that the  
22 lawsuits would go away, the city gained the  
23 endorsement and approval of the FAA for a noise, a  
24 comprehensive noise abatement program with the  
25 implicit promise, if not the direct promise of  
26 federal funding and federal technical cooperation  
27 for the experimental part of the noise abatement  
28 program.

1           We gained a new airport layout plan,  
2           which had approximately, if I recall correctly,  
3           forty acres of land that was freed from the  
4           restrictions of airport use that we could use for  
5           nonaviation purposes.

6           Essentially we resolve our outstanding  
7           legal disputes with the FAA and the aviation  
8           community about our authority to regulate the  
9           airport. Primarily we got an agreement -- we got a  
10          lowered noise limit.

11          Q.       What did it get lowered to?

12          A.       The single event noise limit got  
13          lowered to 95 decibels, and in addition we got the  
14          agreement to do an experimental, I think a  
15          performance based noise limit that we would  
16          implement over time. The attempt to regulate  
17          aircraft based on their ability to fly within  
18          certain noise parameters.

19          Q.       Were there any other things in the  
20          agreement?

21          A.       My recollection is the FAA recognized  
22          our existing touch and go bans and helicopter bans  
23          could remain in place.

24          Q.       Were they adopted in the city municipal  
25          code?

26          A.       I believe so.

27          Q.       Look at exhibit 340. Ordinance 326?

28          THE COURT: What was --

1           THE WITNESS: We also gained certain safety  
2 improvements for the airport as a result of this  
3 agreement. This was part of the deal that we  
4 agreed that we would keep the airport open until  
5 the year 2015, and they agreed that they would help  
6 us fix it up and make it safe.

7           Q.       BY MR. TACHIKI: Have you been able to  
8 find 1326?

9           A.       I see it.

10          Q.       Now again, is this an ordinance you  
11 drafted?

12          A.       Yes, I did. Not only drafted but  
13 appears to reflect I typed this myself.

14          Q.       Is this the ordinance that basically  
15 incorporated the benefits that we, the city  
16 obtained from the 1984 agreement?

17          A.       Yes, it is. It overhauled the airport  
18 code.

19          Q.       Then again on the date, when was this  
20 adopted?

21          A.       January of 1985.

22          Q.       Now, going into the 1984 agreement,  
23 what was the city's main goal in entering into the  
24 1984 agreement?

25          A.       The city's main goal in entering into  
26 the 1984 agreement was to ratify our powers as the  
27 proprietor of the airport to abate airport noise  
28 and set airport regulations.

1 Q. Did the city achieve that goal?

2 A. Yes.

3 MR. TACHIHI: Thank you Your Honor.

4 I have no further questions.

5 THE COURT: Cross.

6 MR. HENDERSON: Thank you, Your Honor.

7

8 CROSS EXAMINATION

9

10 BY MR. HENDERSON:

11 Q. Good morning Mr. Stark.

12 A. Good morning.

13 Q. You have been an attorney for municipal  
14 or city governments for more than thirty years?

15 A. That's basically correct.

16 Q. Started out in the District of  
17 Columbia?

18 A. Yes.

19 Q. Came to Santa Monica?

20 A. I taught law school, in between the  
21 time, and at one time when I was moving from coast  
22 to coast I practiced law out of a van called the  
23 Law Van. That was a long time ago.

24 Q. Interesting stories, but if I ask a yes  
25 or no question you can answer yes or no.

26 Then you came to Santa Monica at some  
27 point?

28 A. Yes.

1 Q. And moved on now to Santa Barbara and  
2 eventual became County Counsel?

3 A. Yes.

4 Q. When you were at the City of Santa  
5 Monica you said there was a jet ban in place?

6 A. That's correct.

7 Q. You understood that to be in large part  
8 the result of the Nestle lawsuit brought against  
9 the City of Santa Monica?

10 A. My understanding is there was a  
11 relationship between the dismissal of the Nestle  
12 lawsuit after it was remanded by the State Supreme  
13 Court and the adoption of the noise ordinance,  
14 including the jet ban.

15 Q. The jet ban in place when you first got  
16 there, it was a categorical jet ban it, wasn't it?  
17 Do you know what that is?

18 A. I'm not sure I know. I have an  
19 understanding of what I think it means.

20 Q. At the time you got there there was a  
21 hundred decibel limit on all aircraft?

22 A. Right.

23 Q. And there was a jet ban. Absolutely no  
24 jets.

25 A. That's correct.

26 Q. And so this was just an arbitrary  
27 absolute. No jets.

28 A. I don't know if I would characterize it

1 as arbitrary, but it was absolute.

2 Q. Whereas for all aircraft, possibly  
3 including jets, you had a noise limit?

4 A. That is correct.

5 Q. Now. You said there was a lawsuit  
6 brought first by the Santa Monica Airport  
7 Association?

8 A. Yes.

9 Q. SMAA?

10 A. Yes.

11 Q. And they were joined in by these  
12 national aircraft interests, the people who build  
13 the business jets and things like that?

14 A. Yes.

15 Q. And they were attacking, I think you  
16 listed five elements they were attacking?

17 A. All of them were attacking the same  
18 thing. All five ordinances, yes.

19 Q. And one was this absolute ban on jets?

20 A. Yes.

21 Q. And I think they also were attacking  
22 this?

23 A. Yes.

24 Q. And the others related to helicopter  
25 and touch and go?

26 A. They attacked them all.

27 Q. And the nighttime curfew?

28 A. Yes.

1 Q. Now, so it went to court, right?  
2 District Court, Federal District Court in 1979; is  
3 that correct?

4 A. Yes.

5 Q. Were you counsel of record in that  
6 case?

7 A. Yes. Well, together with Mr.  
8 Knickerbocker, who was the city attorney at the  
9 time.

10 Q. This is exhibit 130. I will represent  
11 to you that this is a copy of the the District  
12 Court opinion in this case, and the counsel of  
13 record noted in this opinion, Richard Knickerbocker  
14 and Gene E. Penn?

15 A. Yes.

16 Q. Do you know who Mr. Pen was?

17 A. Yes, I do.

18 Q. It doesn't have your name there?

19 A. No, it doesn't.

20 Q. Why does it not appear there if you  
21 were counsel of record?

22 A. Apparently an oversight.

23 Q. Okay. But you worked with Mr.  
24 Knickerbocker and Mr. Penn on the lawsuit?

25 A. Yes, I did.

26 Q. The upshot of this was the Federal  
27 District Court looked at all these rules, and I  
28 think you mentioned analysis under equal protection

1 and commerce clause?

2 A. That's my recollection.

3 Q. Wasn't there also an analysis under  
4 federal preemption?

5 A. Yes, there was.

6 Q. And applying all that analysis, the  
7 court upheld these four ordinances, including the  
8 city's right to have this very unique noise limit?

9 A. I'm not sure if it was unique at the  
10 time, but it certainly upheld the four ordinances.

11 Q. You understood there were noise  
12 monitors, one about 1,620 feet off this end, and  
13 another off here, measured SENEL, the single event?

14 A. There was a meter at each end of the  
15 runway, it measured the noise and corresponded to I  
16 believe some meter in the airport office, and  
17 that's what it measured.

18 Q. The business interests, the airport  
19 association, national business interests, they all  
20 attacked that noise ordinance; is that correct?

21 A. Yes.

22 Q. And the curfew and the helicopter  
23 stuff. The District Court said that's all within  
24 the city's powers, right?

25 A. Well, I don't want to characterize  
26 Judge Hill's lengthy opinion. But the judge held  
27 yes, the city had the power as the proprietor of  
28 the airport to regulate noise from aircraft taking

1 off and landing at its airport.

2 Q. Put more simply, not only were they not  
3 preempted, they survived the commerce clause  
4 analysis, equal protection analysis and all those  
5 attacks?

6 A. The four ordinances that were upheld  
7 survived the preemption claim, the commerce clause  
8 challenge and equal protection claim.

9 Q. There were also challenges with respect  
10 to whether or not these ordinances breached the  
11 grant agreements between the FAA and the city  
12 through which federal funds were provided to the  
13 airport?

14 A. My recollection is there was some claim  
15 to that effect, yes.

16 Q. So all of these challenges were with  
17 respect to all except for the total jet ban, the  
18 court refused to enjoin the enforcement of those  
19 ordinances?

20 A. That's correct.

21 Q. With respect to the total jet ban,  
22 there was a different issue; isn't that correct?  
23 The court saw things differently?

24 A. That is quite correct. The court  
25 definitely saw things differently.

26 Q. Do you recall what the city argued to  
27 the court?

28 A. Yes.

1           Q.       What did the city argue to the court  
2 about justifying this total jet ban?

3           A.       The city argued based on some expert  
4 testimony that we produced that jet noise was of a  
5 different character and caliber than propeller  
6 noise from aircraft, and therefore it was not  
7 discriminatory or irrational for us to ban jet  
8 aircraft, even though there were some jet aircraft  
9 that made less noise than propeller planes that  
10 were allowed to use the airport.

11                   That's what we argued, in a nutshell.  
12 I'm sure it was much more complicated than that.

13           Q.       I'm sure. But, for example, if the  
14 argument was even if there is a jet that comes in  
15 at 80 decibels, it's a type of sound no one wants  
16 to hear, in comparison to a prop plane that comes  
17 in at 99 decibels, right?

18           A.       I'm not sure I would agree with that a  
19 hundred percent. That's generally the argument we  
20 made.

21                   I'm not sure we got to the fine point  
22 of saying even if the noise was as low as 80 that  
23 would pertain. I'm not a noise expert myself.  
24 That's the gist of our argument.

25           Q.       I'm not trying to say you used the  
26 number 80 in your argument, or any other number.  
27 Generally the argument was even a quiet jet sounds  
28 worse than a loud prop plane, where both might need

1 the hundred decibel level?

2 A. That's among the arguments we advanced,  
3 yes.

4 Q. There was also an argument about  
5 aircraft safety?

6 A. I don't recall, but I recall there was.

7 Q. Look at the upper right hand corner of  
8 the case. There are numbers on pages in bold  
9 letters, page sixteen.

10 A. I see it.

11 Q. I believe the first full paragraph is  
12 talking about the jet ban resolution or ordinance.  
13 Isn't it correct that it says that the jet ban is  
14 justified as both a noise and safety regulation?

15 A. That's what it says.

16 Q. And the following paragraph, the  
17 court -- and there is some discussion there, isn't  
18 there, on page sixteen of this document?

19 A. Yes. The judge finds that the evidence  
20 is utterly convincing that the modern jets are at  
21 least as safe if not safer than piston engine fixed  
22 wing aircraft now allowed to use the airport.

23 Q. Is it your understanding -- by the way,  
24 didn't the judge go out with the attorneys and the  
25 parties and actually listen to a brand new business  
26 class jet and compare it to a louder prop plane?

27 A. I don't think so. There was a jet test  
28 which I remember. Since I was only the assistant

1 city attorney I got to ride in the prop plane flown  
2 by the lawyer for the other side instead of the  
3 jet.

4 But there was a test administered by  
5 the FAA in which they flew various type of  
6 aircraft, including jets and fixed wing aircraft at  
7 the airport, and measured the noise. I don't  
8 believe that Judge Hill was at that test.

9 Q. Did he get recordings of the test?

10 A. Yes. He got full testimony about the  
11 test. And I think he got recordings. I honestly  
12 don't remember.

13 Q. Was it your understanding he heard a  
14 very quiet business jet and a very loud propeller  
15 plane, amongst other recordings?

16 A. I don't fully remember. I wouldn't  
17 doubt it.

18 Q. The judge looked at the two  
19 justifications the city had, one aircraft safety,  
20 and said there is no evidence that these brand new  
21 jets -- most impressed with the brand new jets  
22 because they were quieter; is that correct?

23 A. I can't speculate as to what impressed  
24 him.

25 Q. In any event, your understanding is  
26 that he dismissed the justification of the aircraft  
27 safety?

28 A. Yes.

1 Q. And dismissed the justification of the  
2 difference in the noise, saying in effect a really  
3 quiet jet could actually be less imposing on the  
4 community than a really noisy aircraft that would  
5 meet the hundred decibels?

6 A. That seemed to be what he found.

7 Q. So basically he said the city failed to  
8 justify this absolute categorical ban and found it  
9 to be discriminatory?

10 MR. GAMS: I object.

11 MR. HENDERSON: I will withdraw the question.

12 Q. So, he enjoined this absolute jet ban?

13 A. Yes.

14 Q. He said you can't enforce the absolute  
15 jet ban, you have to live with this, which applies  
16 to all aircraft.

17 A. He upheld that ordinance.

18 Q. And it applied to all aircraft,  
19 including jets?

20 A. Yes.

21 Q. And in doing so was there any  
22 indication from the court that you could lower  
23 this?

24 A. My recollection is that the judge said  
25 he expressed no opinion as to what would happen if  
26 the city lowered it.

27 Q. Including to a level that would exclude  
28 all jets?

1           A.     I believe he made a remark to that  
2 effect.

3           Q.     So the city could have said if we want  
4 to get rid of all jets we will just lower this.  
5 They could have said that?

6           A.     Yes.

7           Q.     But they didn't?

8           A.     They adopted the 85 decibel ordinance.

9           Q.     I want to get to that. First I want to  
10 ask, when you justified the jet ban were you  
11 justifying it on the basis of fences being blown  
12 down?

13          A.     I don't know. I came to work for the  
14 city in 1978. I believe the jet ban was adopted  
15 prior to that. I participated in defending it. I  
16 didn't participate in the drafting of it so I'm not  
17 sure the exact motivation for the city's adoption  
18 of that ordinance.

19          Q.     I believe you said you were there until  
20 1985?

21          A.     Yes.

22          Q.     At any time when you were there do you  
23 recall fences being blown down by jets across  
24 Bundy?

25          A.     I don't recall any.

26          Q.     How about complaints from the community  
27 of fumes from long-idling aircraft?

28          A.     I don't recall any complaints about

1 fumes.

2 Q. Even when you were drafting the 1984  
3 agreement or participating in the negotiations, do  
4 you remember that being an issue?

5 A. Fumes?

6 Q. Yes.

7 A. No, I don't.

8 Q. How about blast, direct jet blast  
9 coming out of jets holding brakes while taking  
10 off? Do you remember that being an issue?

11 A. No, I don't. I don't recall it. Not  
12 to say it wouldn't have come up in some study, but  
13 I don't recall it.

14 Q. I want to get back to the possibility  
15 of lowering the decibel level of all aircraft.

16 This was like a speed limit saying you  
17 have a thirty-five mile an hour speed limit,  
18 applies to everyone equally?

19 A. That's what we analogized it to.

20 Q. And also that you could lower the speed  
21 limit as long as you lower for everyone?

22 A. What I said was, he expressed no  
23 opinion on what would happen if you lower it.

24 Q. But given the fact that he had upheld  
25 under all challenges the hundred decibels, it  
26 wasn't because he liked the number hundred?

27 A. No. The judge was quite plain on  
28 this. The judge was not interfering with the

1 legislative prerogative of the city to determine  
2 what was an appropriate limit. He simply said that  
3 ordinance was discriminatory, didn't interfere with  
4 interstate commerce and wasn't preemptive. He was  
5 saying that was okay but he wasn't about to suggest  
6 to the City Council what to adopt. He was quite  
7 careful about that.

8 Q. So the City Council, in reaction to  
9 this, very quickly lowered the decibel limit to 85  
10 decibels?

11 A. That is correct.

12 Q. That's not the whole truth, is it?

13 A. I don't know what the whole truth is.  
14 Look at the entire ordinance.

15 Q. Well, look at the entire ordinance.  
16 Exhibit 345 in front of you. On page thirteen.

17 A. Page thirteen contains a grandfather  
18 clause.

19 Q. Right. So the city didn't lower to 85  
20 for all aircraft, did it? It lowered to 85 for all  
21 aircraft except for the special grandfather  
22 provision; isn't that true? Yes or no.

23 A. I'm not going to answer yes or no.  
24 It's true for a period of approximately nine  
25 months. What he did, if I understand correctly  
26 from reading the face, and basically what I  
27 remember, is that they gave existing aircraft  
28 unable to meet the 85 decibel limit a period of

1 nine months with which to relocate from the  
2 airport.

3 The grandfather clause says it shall  
4 not apply to an aircraft that's based, which I  
5 think mean tied down, at the airport on September  
6 10, 1979, which I think it was the date of the  
7 judge's ruling, until June 1, 1980 when it would be  
8 in full force and effect.

9 Your question is correct. It didn't  
10 apply to all aircraft for a period of nine months  
11 going forward from the adoption of the ordinance.

12 Q. And so at least for nine or ten months  
13 this was discriminatory -- it made a distinction  
14 between all aircraft and preexisting aircraft?

15 A. For a period of nine months, but it  
16 never became active because the judge issued a  
17 preliminary injunction before the judgment was  
18 effective.

19 Q. This is the same Judge Hill?

20 A. Yes, the same judge.

21 Q. And in addition, the city had argued to  
22 Judge Hill even before this that the city could  
23 lower the decibel limits, but arbitrarily decide  
24 who to apply it to?

25 A. We never suggested to Judge Hill we  
26 were being arbitrary. We were suggesting to Judge  
27 Hill we could rationally lower the noise limit to  
28 protect the peace and quiet of the community.

1 Q. Turn to page 17 of the case.

2 I will read to you a sentence, and you  
3 can confirm it, as to whether or not it's in this  
4 opinion. It's the second complete paragraph, first  
5 sentence of the second complete paragraph.

6 It says the city, within our admissible  
7 area of regulation, we can decide even arbitrarily  
8 whom to let in and whom to exclude.

9 Do you see that?

10 A. I see it. That's what Judge Hill  
11 said. I don't know I would characterize that's  
12 what we argued, but that's what he said.

13 Q. You think the judge misunderstood the  
14 city's argument?

15 A. I don't know. I don't want to  
16 speculate on that.

17 Q. Do you know the reasoning for enjoining  
18 this 85 decibel?

19 A. Yes, I do.

20 Q. What was it? Is it in the court  
21 opinion?

22 A. It was in the preliminary injunction.  
23 I have a vivid recollection.

24 Q. Let's leave that alone. I don't want  
25 you to characterize the court's opinion if it's not  
26 in writing.

27 Moving on, so basically the city  
28 decides okay, we will stay with the hundred for a

1 while. We will go back to the hundred. Since 85  
2 was enjoined you put in place a resolution  
3 restoring the hundred decibel limit applying to all  
4 aircraft?

5 A. Yes.

6 Q. And at the same time the city says  
7 let's, as soon as legally feasible we will close  
8 the airport?

9 A. That's correct.

10 Q. Now --

11 A. We intend to close the airport.

12 Q. As soon as legally feasible.

13 You were aware there was an instrument  
14 of transfer between the United States Government  
15 and the City of Santa Monica, were you not?

16 A. Yes, I was.

17 Q. And this was made in 1948 after the, in  
18 World War II the federal government came in and  
19 basically built this runway, right?

20 A. Yes. The federal government built the  
21 runway. I believe they built it to accommodate the  
22 Douglas aircraft factory holding DC-3's and fours.

23 Q. The employment of Douglas peaked in  
24 1943?

25 A. That's what I've heard.

26 Q. Now, at the end of the war, as they did  
27 all over the country in many airports and  
28 communities, they said you, community, you get it

1 back, it's yours. But they required an instrument  
2 of transfer. And that's exhibit 341.

3 I will just show you this copy.

4 There is a full paragraph at the bottom  
5 of this particular page. What's the top of the  
6 page. The top of the page is -- book 28955 page  
7 216.

8 And the last full paragraph, I will sum  
9 this up quickly, is that basically if the city ever  
10 in perpetuity ever tries to convert any of this  
11 property to any other use, then the federal  
12 government gets it back, or can operate to get it  
13 back at that time?

14 A. I think that's a reasonable plane  
15 English statement of what that purports to say.

16 Q. Okay. So one of the problems in 1981  
17 when you were there of the city saying gee, we  
18 intend to close the airport and perhaps convert it  
19 to other uses, is this instrument of transfer where  
20 the federal government says go ahead and try and  
21 then it's ours?

22 A. That was a problem.

23 Q. It's still a problem, isn't it, as far  
24 as you know?

25 A. Yes, it's still a problem.

26 Q. Okay.

27 A. As far as I know it's still a problem.

28 Q. And for example there is nothing in the

1 1984 agreement that you worked on that did away  
2 with this basic problem, is there?

3 A. I don't think so. I should point out  
4 there was difference of opinion as to how the  
5 instrument of transfer was interpreted or would be  
6 interpreted in the future. It was a fairly  
7 complicated subject, but the answer to your  
8 question is the the problem is not going away.

9 Q. And looking again at the '84 agreement,  
10 the city agreed with the FAA to lower this limit  
11 to 95?

12 A. Yes.

13 Q. And do you know why 95 was chosen?

14 A. It was a compromise.

15 Q. A compromise between the FAA, the city,  
16 and I think you testified the national business  
17 interests involved?

18 A. No. The national business interests  
19 were involved possibly in discussions. They were  
20 certainly involved in the lawsuit. The specific  
21 negotiations were just between the city and the  
22 FAA, and people were consulted, including I would  
23 be certain the national interests as well as the  
24 local interests.

25 THE COURT: How was the compromise to 95 dB  
26 memorialized?

27 Q. BY MR. HENDERSON: Is it correct that  
28 it was memorialized in two ways? One in the '84

1 agreement as the agreement between the federal  
2 government and the city, and secondly as a  
3 resolution later passed by the city?

4 A. I think an ordinance, but yes.

5 Q. I think you just said the only parties  
6 to the '84 agreement, the actual signatories were  
7 the federal government and the city?

8 A. I think that's correct.

9 Q. And isn't it true that looking at the  
10 1984 agreement, if you get that out, first of  
11 all -- you can answer this while you are looking --  
12 there was nothing in the 1984 agreement that said  
13 that people who live at the east end of the airport  
14 no longer have constitutional rights to the  
15 property?

16 MR. GAMS: Objection, Your Honor,  
17 argumentative.

18 THE COURT: Overruled.

19 THE WITNESS: No, there was nothing in the  
20 1984 agreement that said that the people living at  
21 the east or west end of the airport lost their  
22 constitutional rights.

23 Q. BY MR. HENDERSON: It wasn't the intent  
24 of the city to bring about that outcome that these  
25 people would lose their constitutional rights, was  
26 it?

27 A. Certainly not.

28 Q. Looking at the 1984 agreement, page 2

1 at the top, the first full sentence, fundamental  
2 purpose of the agreement is to expand and improve  
3 communication, cooperation, and mutual  
4 understanding of the various perspectives of the  
5 parties while recognizing and preserving their  
6 respective legal rights?

7 A. Yes.

8 Q. Was it the city's intent in entering  
9 into this agreement to preserve the city's legal  
10 rights, except as they were perhaps forfeited or  
11 stated, limited in this agreement?

12 A. Yes.

13 Q. On the next page it says amongst other  
14 things that the city has the responsibility to  
15 manage the airport, and there is a concluding  
16 clause, but in accordance with the principles of  
17 Santa Monica Airport Association versus the City of  
18 Santa Monica, the District Court case in 1979,  
19 affirmed by the Ninth Circuit in, it should have  
20 read 1981; is that correct?

21 A. That's correct.

22 Q. So all of the analysis of preemption,  
23 equal protection, and commerce clause analysis,  
24 that went up to upholding all the ordinances except  
25 the absolute jet ban, were meant to be preserved by  
26 the 1984 agreement; isn't that true?

27 A. I would say generally yes.

28 Q. Finally on page 14 of the 1984

1 agreement, the last paragraph, section fourteen  
2 spilling over from the previous page:

3 "Parties recognize and agree that  
4 it is appropriate for the city to  
5 exercise its proprietary authority to  
6 adopt ordinances and regulations  
7 applicable to lessees and users of  
8 the airport consistent with the terms  
9 of the agreement."

10 A. Yes.

11 Q. That was in fact what lawyers call a  
12 reserved powers clause, right? You were reserving  
13 unto the city the proprietary authority to regulate  
14 lessees and users of the airport?

15 A. Yes.

16 Q. And that would include the FBO's?

17 A. Yes.

18 Q. And users would include aircraft owners  
19 and operators?

20 A. Yes, as well as other persons using the  
21 aircraft, but principally aircraft users and  
22 operators.

23 Q. Your understanding, the '84 agreement  
24 was to allow the city to retain all the powers it  
25 had under the preemption analysis, commerce clause  
26 analysis, equal protection clause analysis in the  
27 1979 lawsuit, such that the city could continue to  
28 regulate airport users and owners; is that correct?

1           A.       Yes.

2           MR. HENDERSON: No further questions.

3           MR. TACHIKI: Nothing further, Your Honor.

4           THE COURT: Thank you Mr. Stark. Appreciate  
5 your help.

6                    Okay, ladies and gentlemen, 1:30.

7  
8           (At 12:00 the testimony of Mr. Stark  
9 was concluded)

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## COURT OF APPEAL OF THE STATE OF CALIFORNIA

B172242

## SECOND APPELLATE DISTRICT

SANTA MONICA AIRPORT ASSOCIATION, )  
 PLAINTIFFS-APPELLANTS, )  
 VS. )  
 CITY OF SANTA MONICA, )  
 DEFENDANT-RESPONDENT. )

CASE NO. SC059450

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY  
 HONORABLE CESAR C. SARMIENTO, JUDGE PRESIDING  
 REPORTER'S TRANSCRIPT ON APPEAL

TUESDAY, MARCH 19, 2003

COURT OF APPEAL, SECOND DISTRICT

FILED

JUN 28 2004

APPEARANCES:

JOSEPH A. LANE

Clerk

FOR THE PLAINTIFFS-APPELLANTS:

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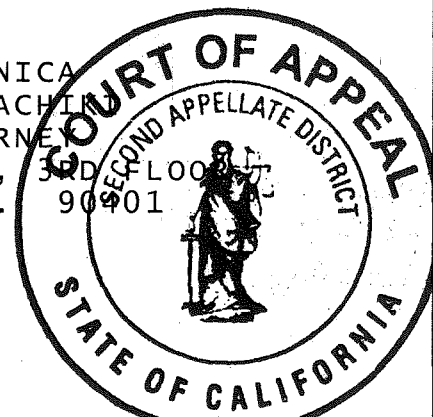
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 SANTA MONICA, CA. 90401

VOLUME 3 OF 12 VOLUMES  
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ORIGINAL

SUSAN M. POKERSNIK, CSR NO. 10298  
 OFFICIAL REPORTER



1 CASE NUMBER: SC059450  
2 CASE NAME: SANTA MONICA AIRPORT ASSOC.  
3 VS. CITY OF SANTA MONICA  
4 MALIBU, CALIFORNIA: WEDNESDAY, MARCH 19, 2003  
5 DEPARTMENT WE-W: HON. CESAR C. SARMIENTO, JUDGE  
6 REPORTER: SUSAN POKERSNIK, CSR #10298  
7 TIME: A.M. SESSION  
8

9 APPEARANCES:

10 LLOYD KIRSCHBAUM FOR THE PLAINTIFFS AND  
11 MARTIN TACHI KI FOR THE DEFENDANTS.  
12

13 THE COURT: ALL RIGHT. WE'RE ON THE RECORD IN  
14 THIS MATTER.

15 OKAY. I GOT THE MESSAGE YESTERDAY THAT WE'RE  
16 GOING TO PROCEED ON THE CONTRACT ISSUE REGARDING THE  
17 BENEFICIARY.

18 MR. TACHI KI: YES. BEFORE WE START, YOUR HONOR, I  
19 JUST WANT TO STRAIGHTEN OUT ONE ISSUE. I SHOULD HAVE  
20 MENTIONED IT ON MONDAY. BUT THE WAY THE LAW IS ON THIRD  
21 PARTY BENEFICIARY, ACTUALLY, THE BURDEN OF PROOF IS ON  
22 THE PLAINTIFF. IT'S IN THAT GARCIA CASE THAT I CITED IN  
23 THE TRIAL BRIEF BECAUSE IT IS AN AFFIRMATIVE PART OF  
24 THEIR ACTION, THAT THEY HAVE TO PROVE A STANDING.

25 AS FOR TODAY, I DON'T THINK IT WILL AFFECT  
26 THE ORDER OF TESTIMONY.

27 THE COURT: ALL RIGHT. SO WHO GETS TO CALL HIM AS  
28 A WITNESS?

1 MR. TACHIKI: I'LL CALL HIM AS A WITNESS.

2 MR. KIRSCHBAUM: YEAH, THAT'S FINE, YOUR HONOR. I  
3 JUST REALLY HAVEN'T BRIEFED THE ISSUE. I MEAN,  
4 ORDINARILY, AN AFFIRMATIVE DEFENSE, THE DEFENDANT BEARS  
5 THE BURDEN OF PROOF. I'VE BEEN IN THOSE ISSUES MANY  
6 TIMES.

7 I'M NOT SURE IF THERE IS AN EXCEPTION OF  
8 THIRD PARTY BENEFICIARY. I DON'T HAVE ANY REASON TO  
9 DOUBT THAT AT THE MOMENT.

10 THE COURT: I WOULD LIKE TO REVIEW THE CASE --  
11 PORTION OF THE CASE THAT DEALS WITH MR. TACHIKI'S SIDE  
12 OF THINGS, BUT AS FAR AS TODAY'S TESTIMONY, CALL THE  
13 FIRST WITNESS.

14 MR. TACHIKI: I WILL, YOUR HONOR. I WOULD LIKE TO  
15 CALL SHANE STARK.

16  
17 SHANE STARK,  
18 CALLED AS A WITNESS BY THE DEFENDANT,  
19 WAS SWORN AND TESTIFIED AS FOLLOWS:

20  
21 THE WITNESS: I WILL AFFIRM.

22 THE CLERK: STAND TO BE AFFIRMED, PLEASE.

23 PLEASE RAISE YOUR RIGHT HAND. YOU SOLEMNLY  
24 AFFIRM THAT THE TESTIMONY YOU MAY GIVE IN THE CAUSE NOW  
25 PENDING BEFORE THIS COURT, SHALL BE THE TRUTH, THE WHOLE  
26 TRUTH AND NOTHING BUT THE TRUTH? THIS YOU DO UNDER  
27 PENALTY OF PERJURY?

28 THE WITNESS: YES, I DO.

1 THE CLERK: THANK YOU.

2 PLEASE HAVE A SEAT.

3 SIR, CAN WE HAVE YOU STATE YOUR NAME AND  
4 SPELL YOUR LAST NAME FOR THE RECORD.

5 THE WITNESS: THAT'S STEPHEN, S-T-E-P-H-E-N,  
6 SHANE, S-H-A-N-E, STARK, S-T-A-R-K.

7 THE CLERK: THANK YOU.

8 DIRECT EXAMINATION

9 BY MR. TACHIKI:

10 Q GOOD MORNING, MR. STARK.

11 COULD YOU TELL US RIGHT NOW WHO YOU CURRENTLY  
12 WORK FOR?

13 A I WORK FOR THE COUNTY OF SANTA BARBARA.

14 Q WHAT IS YOUR POSITION THERE?

15 A I'M THE COUNTY COUNSEL. THAT'S WITH AN  
16 S-E-L.

17 Q HOW LONG HAVE YOU BEEN THE COUNTY COUNSEL?

18 A SINCE MAY OF 1994. THAT'S NINE YEARS NOW.

19 Q AND PRIOR TO BECOMING COUNTY COUNSEL, DID YOU  
20 ALSO WORK FOR THE CITY OF SANTA MONICA?

21 A AT ONE TIME, YES.

22 Q WHAT POSITION DID YOU HOLD WITH THE CITY OF  
23 SANTA MONICA?

24 A MOST OF THE TIME I WAS ASSISTANT CITY  
25 ATTORNEY.

26 Q AND DO YOU REMEMBER WHEN YOU STARTED WORKING  
27 FOR THE CITY OF SANTA MONICA?

28 A YES, I DO.

1 Q WHEN WAS THAT?

2 A APRIL, 1978.

3 Q WHEN YOU STARTED WORKING FOR THE CITY OF  
4 SANTA MONICA, WERE YOU ASSIGNED TO SOME LITIGATION  
5 INVOLVING SANTA MONICA AIRPORT?

6 A YES, I WAS.

7 Q WHAT CASE WAS THAT?

8 A I BELIEVE THE NAME OF THE CASE WAS  
9 SANTA MONICA AIRPORT ASSOCIATION VERSUS THE CITY OF  
10 SANTA MONICA.

11 Q AND DO YOU REMEMBER WHAT THE SUBJECT MATTER  
12 OF THAT LITIGATION WAS?

13 A YES.

14 Q WHAT WAS THAT?

15 A THE SUBJECT MATTER OF THE LITIGATION WAS A  
16 SERIES OF REGULATIONS THAT THE CITY IMPOSED TO ABATE  
17 NOISE MADE BY AIRCRAFT LANDING AND DEPARTING FROM THE  
18 SANTA MONICA AIRPORT. THERE WERE FIVE OF THEM  
19 ALTOGETHER, AS I RECALL.

20 Q AND WAS ONE OF THEM THE BAN ON JET AIRCRAFT?

21 A THERE WAS A BAN ON JET AIRCRAFT. THERE WAS  
22 ALSO, WHAT'S CALLED, A SINGLE EVENT, OR SENEL NOISE  
23 LIMIT, I THINK OF 100 DECIBELS. THERE WAS A LIMITATION  
24 ON TOUCH-AND-GO FLYING OR TRAINING PATTERN. THERE WAS A  
25 BAN ON HELICOPTER TRAINING, AND I BELIEVE THERE WAS A  
26 NIGHT CURFEW.

27 Q AND DO YOU REMEMBER WHO THE PLAINTIFFS WERE  
28 IN THAT CASE?

1           A       THE ORIGINAL PLAINTIFF WAS THE SANTA MONICA  
2 AIRPORT ASSOCIATION. SANTA MONICA -- YEAH, SMAA, SANTA  
3 MONICA AIRPORT ASSOCIATION. SUBSEQUENTLY, THE GENERAL  
4 AVIATION MANUFACTURERS' ASSOCIATION, GAMA, ACRONYM, AND  
5 THE NATIONAL BUSINESS AIRCRAFT ASSOCIATION -- I THINK  
6 THEY CALLED THEMSELVES NBAA -- INTERVENED AND BECAME  
7 PARTIES TO THE LITIGATION.

8           Q       AND YOU WERE ONE OF THE TRIAL ATTORNEYS THAT  
9 REPRESENTED THE CITY IN THAT CASE; IS THAT CORRECT?

10          A       YES. I WAS BASICALLY THE SECOND CHAIR TO  
11 MR. KNICKERBOCKER.

12          Q       NOW, DO YOU RECALL WHEN THE DISTRICT COURT  
13 ISSUED ITS OPINION IN THAT CASE?

14          A       YES, I DO.

15          Q       WHAT YEAR WAS THAT IN?

16          A       IT WAS 1979. I BELIEVE, IT WAS IN SEPTEMBER.

17          Q       AND THEN WAS THAT OPINION SUBSEQUENTLY  
18 APPEALED TO THE COURT OF APPEALS FOR THE --

19          A       YES, IT WAS.

20          Q       DO YOU REMEMBER WHEN THAT DECISION CAME DOWN?

21          A       I BELIEVE THE NINTH CIRCUIT'S ORIGINAL  
22 DECISION CAME DOWN IN APRIL OF 1981, AND I THINK THERE  
23 WAS A PETITION FOR A REHEARING IN BANK. IT WAS EITHER  
24 AN IN-BANK OPINION OR DENIAL -- I CAN'T REMEMBER  
25 WHICH -- FOUR OR FIVE MONTHS LATER.

26               THE COURT: IS THIS GENTLEMAN ON THE WITNESS LIST?

27               MR. TACHIKI: YES, HE IS.

28               THE COURT: WHAT NUMBER IS HE?

1 MR. KIRSCHBAUM: HE'S NO. 5 FOR THE CITY.

2 MR. TACHIKI: YES, NO. 5, YOUR HONOR.

3 THE COURT: OKAY.

4 Q BY MR. TACHIKI: IS IT FAIR TO SAY THEN BY  
5 1981, THE LAWSUIT FILED BY THE SANTA MONICA AIRPORT  
6 ASSOCIATION, ISSUES, WAS OVER WITH?

7 A WHEN THE ORDINANCES --

8 THE COURT: BY WHAT YEAR?

9 THE WITNESS: BY --

10 MR. TACHIKI: BY 1981.

11 THE WITNESS: I THINK THAT'S A FAIR STATEMENT.

12 Q BY MR. TACHIKI: SO THERE WERE NO FURTHER  
13 JUDICIAL PROCEEDINGS IN THAT CASE AFTER 1981?

14 A IN THAT CASE. THERE WERE OTHER CASES.

15 Q OKAY. AROUND THAT SAME TIME IN 1980, WAS  
16 THERE SOME DISCUSSION IN THE CITY ABOUT CLOSING THE  
17 AIRPORT?

18 A DID YOU SAY IN 1980?

19 Q EARLY 1980S, AROUND 1981?

20 A I WOULD SAY, YES. I WOULD SAY PROBABLY  
21 BEFORE 1981. IT WAS A CAMPAIGN ISSUE, IF I RECALL, IN  
22 THE 1981 ELECTION.

23 Q DO YOU RECALL THE CITY COUNCIL PASSING ANY  
24 RESOLUTIONS REGARDING THIS MATTER?

25 A YES, I DO. IF I REMEMBER CORRECTLY, WHEN  
26 THEY HAD NEWLY ELECTED COUNCIL MEMBERS IN APRIL OF 1981,  
27 THEY DIRECTED THE CITY ATTORNEY -- AT THAT TIME, IT WAS  
28 BOB MEYERS WHO HAD JUST TAKEN OFFICE -- TO DRAFT, AND I

1 THINK THE COUNCIL ADOPTED A RESOLUTION THAT SAID THE  
2 BOARD, THE COUNCIL INTENDED TO CLOSE THE AIRPORT WHEN  
3 LEGALLY POSSIBLE IN, I THINK IT WAS, JUNE OR -- JUNE OF  
4 1981.

5 Q NOW, DID THAT RESOLUTION GENERATE ANY  
6 INTEREST, ANY NATIONAL AVIATION INTEREST?

7 A WELL, THE RESOLUTION AND THE DISCUSSIONS THAT  
8 PRECEDED IT TO THE SAME EFFECT, IT DID, YES.

9 Q AND WHAT PARTICULAR GROUPS CONTACTED THE CITY  
10 ABOUT THE RESOLUTION OR ABOUT THE GENERAL DISCUSSION  
11 ABOUT THE CLOSURE OF THE AIRPORT?

12 A IN NO PARTICULAR ORDER OF EITHER TIME OR  
13 PRIORITY, THE FEDERAL AVIATION ADMINISTRATION, THE FAA;  
14 THE NATIONAL BUSINESS AIRCRAFT ASSOCIATION; AND GENERAL  
15 AVIATION MANUFACTURERS' ASSOCIATION THROUGH THEIR  
16 LAWYERS; I BELIEVE THE SANTA MONICA AIRPORT ASSOCIATION,  
17 INDIVIDUALLY LESSEES; INDIVIDUAL PILOTS; BUSINESS  
18 INTERESTS.

19 ON THE OTHER SIDE, THERE WERE NEIGHBORHOOD  
20 GROUPS BOTH IN SANTA MONICA AND LOS ANGELES THAT WERE  
21 PROTESTING AIRPORT NOISE. THERE WAS ONE GROUP OF  
22 NEIGHBORS THAT WAS THREATENING TO SUE THE CITY FOR  
23 INVERSE CONDEMNATION IF WE DIDN'T REGULATE AIRPORT NOISE  
24 AND VARIOUS OTHER TYPES OF PEOPLE THAT WERE INTERESTED  
25 IN THE CONTROVERSY.

26 Q SO IS IT FAIR TO SAY THAT THE INVOLVEMENT OF  
27 THE FAA PREDATED THE 1981 RESOLUTION?

28 A OH, THAT'S CERTAINLY TRUE. THE FAA EVIDENCED

1 A CONCERN. WELL, THEY WEREN'T PARTIES TO THE SMAA  
2 LITIGATION, BUT THEY SENT THEIR LAWYER TO THE HEARING.  
3 THEY HAD SOME PEOPLE TESTIFY. THEY HAD SOME CONCERNS  
4 ABOUT THE SCOPE OF OUR REGULATION.

5 SIMILARLY, THEY HAD SOME CONCERNS, ALTHOUGH  
6 THEY WEREN'T PARTIES TO THE LITIGATION, IN FEDERAL COURT  
7 THAT FOLLOWED THE CITY'S ADOPTION OF AN 85 DECIBEL  
8 ORDINANCE WHICH IS A SECOND AND SEPARATE LAWSUIT. THEY  
9 WEREN'T PARTIES, BUT THEY WERE PRESENT IN COURT AND MADE  
10 THEIR CONCERNS KNOWN.

11 SO WE KNEW THAT THE FAA WAS INTERESTED IN THE  
12 SITUATION ALTHOUGH I THINK THEY WERE CAREFUL NOT TO TAKE  
13 A FORMAL LITIGATION PARTY PRESENCE WELL BEFORE 1981.

14 Q AND WERE YOU EVER TOLD THAT THE FAA'S  
15 INVOLVEMENT WAS A RESULT OF COMPLAINTS BY SMAA?

16 A NO.

17 Q NOW, YOU JUST MENTIONED THAT THERE WAS A  
18 SUBSEQUENT LAWSUIT THAT WAS FILED AGAINST AN ORDINANCE  
19 THE CITY ADOPTED; IS THAT TRUE?

20 A THAT IS CORRECT. SECOND FEDERAL LAWSUIT.

21 Q THIS SECOND FEDERAL LAWSUIT, DO YOU REMEMBER  
22 WHO THE PLAINTIFFS WERE?

23 A I THINK I DO. IT WAS THE NBAA AND THE GAMA,  
24 THE NATIONAL INTEREST, AND GUNNELL AVIATION WHO IS AN  
25 FBO, FIXED BASE OPERATOR, AT THEIR AIRPORT.

26 Q DO YOU REMEMBER WHAT THAT LAWSUIT WAS ABOUT?

27 A YES, I DO.

28 Q AND WHAT WAS THAT?

1           A       I BELIEVE WITHIN DAYS AFTER THE TRIAL COURT'S  
2 DECISION INVALIDATING THE JET BAN, THE SANTA MONICA CITY  
3 COUNCIL ADOPTED AN ORDINANCE THAT LOWERED THE SINGLE  
4 EVENT NOISE LEVEL FROM 100 TO 85 DECIBELS WHICH IS A  
5 PRETTY RADICAL JUMP, I BELIEVE, WITH EITHER THE  
6 EXPRESSED OR CLEARLY IMPLIED PURPOSE OF SETTING THE  
7 NOISE LIMIT SO LOW THAT NO JET AIRCRAFT THEN IN  
8 EXISTENCE COULD MEET THE LIMIT.

9                   WE WERE SUED WITHIN A MONTH. AND I BELIEVE  
10 ABOUT A MONTH AFTER THAT, JUDGE HILL ISSUED A  
11 PRELIMINARY INJUNCTION AGAINST ITS ENFORCEMENT.  
12 SUBSEQUENT TO THAT, THERE WERE DISCUSSIONS ABOUT WHAT  
13 SCOPE THAT LAWSUIT WOULD TAKE. AND THERE WERE OTHER  
14 ISSUES THAT WERE BROUGHT INTO IT AND DISCUSSED. AND  
15 THAT WAS THE ESSENCE OF THE SECOND LAWSUIT.

16           Q       WAS SMAA A PARTY TO THAT LAWSUIT?

17           A       I DON'T BELIEVE THEY WERE.

18           Q       NOW, SUBSEQUENT TO THE ENTRY OF THE  
19 INJUNCTION IN THE NBAA LAWSUIT, DID THE PARTIES REACH  
20 SOME TYPE OF SETTLEMENT OR AGREEMENT ABOUT HOW TO  
21 DISPOSE OF THE PLACE?

22           A       IN THE SECOND LAWSUIT YOU MEAN?

23           Q       YES.

24           A       YES, WE DID.

25           Q       OKAY. I WANT YOU TO -- WE'RE GOING TO HAVE  
26 TO PULL OUT SOME NOTEBOOKS.

27                   THE COURT: WHAT YEAR ARE WE TALKING ABOUT NOW?

28                   THE WITNESS: THE SECOND LAWSUIT WAS IN 1979. IT

1 WAS THE INJUNCTION. THE SETTLEMENT OF THE LAWSUIT WAS  
2 ACTUALLY REACHED IN JANUARY OF 1983. SO WE'RE TALKING  
3 ABOUT THE EARLY '80S WHEN THEY WERE TALKING ABOUT THAT  
4 LAWSUIT.

5 MR. TACHIKI: YOUR HONOR, IF I COULD, I NEED TO  
6 PULL OUT SOME EXHIBITS.

7 THE COURT: OKAY.

8 MR. TACHIKI: WE'RE GOING TO PULL OUT  
9 EXHIBITS 491, 492 AND 494.

10 MR. KIRSCHBAUM: OKAY. THOSE ARE IN VOLUME 10.

11 THE COURT: IS THIS PLAINTIFFS' VOLUME 10?

12 MR. TACHIKI: THESE ARE PLAINTIFFS' VOLUMES.  
13 VOLUME 10.

14 THE WITNESS: YOU WANT ME TO LOOK AT 492?

15 Q BY MR. TACHIKI: CAN YOU LOOK AT 491, 492,  
16 AND 494. 491 SHOULD BE THE JOINT MOTION TO DISMISS.

17 A IT IS.

18 Q AND 492 SHOULD BE THE JOINT STATUS CONFERENCE  
19 REPORT.

20 A YES, IT IS.

21 Q AND 494 SHOULD BE AN ORDER IN THE SAME CASE.

22 A YES, IT IS.

23 Q ALL RIGHT.

24 NOW, THE RESOLUTION THAT WE JUST TALKED ABOUT  
25 THAT OCCURRED IN 1993, IS IT ENCOMPASSED WITHIN THESE  
26 DOCUMENTS HERE?

27 A THESE ARE THE DOCUMENTS THAT EFFECTUATED THE  
28 SETTLEMENT. THE JUDGE SIGNED THE ORDER. THE COPY

1 THAT'S IN THE EXHIBIT ISN'T SIGNED, BUT I'VE SEEN A  
2 SIGNED COPY.

3 Q CAN YOU BRIEFLY SUMMARIZE WHAT THE SCOPE OF  
4 THIS SETTLEMENT WAS?

5 A I WILL TRY. MECHANICALLY, THE PLAINTIFFS  
6 AGREED TO DISMISS THEIR COMPLAINT WITHOUT PREJUDICE, AND  
7 THE CITY AGREED TO UNDERTAKE A PROCESS THAT WOULD LEAD  
8 TO A MASTER PLAN FOR DEVELOPMENT OF THE AIRPORT. AND BY  
9 MASTER PLAN, I MEAN AN OFFICIAL AIRPORT PLAN THAT'S  
10 APPROVED BY THE FEDERAL GOVERNMENT, NOT A PLANNING -- A  
11 CITY PLANNING DOCUMENT.

12 AND I BELIEVE -- I CAN DOUBLE-CHECK IT, BUT  
13 I'M REASONABLY CERTAIN THAT THE CITY HAD UNTIL NOVEMBER  
14 OF 1983 TO FINISH THE PLAN. AND IF THEY DID, THE  
15 LITIGATION WOULD REMAIN DISMISSED. AND IF THEY MESSED  
16 UP ALONG THE WAY OR DIDN'T GET THE PLAN DONE ON TIME,  
17 THEN THE PLAINTIFFS COULD REVIVE THE LITIGATION.

18 PRESUMABLY, THEY WOULD HAVE FILED AN AMENDED  
19 COMPLAINT. WE WOULD HAVE STARTED FROM THERE.

20 Q OKAY. AND THAT'S ENCOMPASSED WITHIN THE  
21 ORDER SIGNED BY JUDGE HILL IN THIS CASE?

22 A YES.

23 Q IN 1983?

24 A YES.

25 Q NOW, SUBSEQUENT TO THE SIGNING OF THAT ORDER  
26 BY JUDGE HILL, DID THE CITY UNDERTAKE A PLANNING PROCESS  
27 FOR THE AIRPORT?

28 A YES, THEY DID.

1 Q AND WOULD YOU EXPLAIN BRIEFLY WHAT THAT  
2 PROCESS WAS?

3 A THE PROCESS WAS CONDUCTED BY THE USE OF A  
4 CONSULTANT WHICH I THINK IS CH2M HILL. IT'S AN  
5 ENGINEERING FIRM WITH THE INPUT OF AN AIRPORT WORKING  
6 GROUP. IT WAS A CITY STAFF CONSULTANT, AND THEY HAD AN  
7 AIRPORT WORKING GROUP. AND ON A MONTHLY BASIS THEY MET  
8 AT THE DOUGLAS MUSEUM AND HAD AREAS TO DISCUSS ON  
9 PARTICULAR ISSUES AND PROBLEMS RELATED TO THE AIRPORT.

10 I BELIEVE THE MECHANICS OF THE WORKING GROUP  
11 WERE CONVENED BY THE CITY MANAGER'S OFFICE, AND THE CITY  
12 MANAGER'S OFFICE AND THE AIRPORT DIRECTOR'S OFFICE  
13 BASICALLY MODERATED THE GROUP AND FACILITATED  
14 DISCUSSIONS.

15 Q OKAY. LET ME HAVE YOU TAKE A LOOK AT  
16 EXHIBIT 495, AND THAT'S THE PLAINTIFFS' 495 AND  
17 DEFENDANTS' EXHIBIT 2150.

18 A YEAH. YEAH. I SEE IT. 425. WHERE IS 2150?

19 Q YEAH. I'LL GET IT FOR YOU.

20 MR. KIRSCHBAUM: 2150?

21 MR. TACHIKI: 2150.

22 THE WITNESS: I'VE LOOKED AT THEM.

23 Q BY MR. TACHIKI: OKAY. LOOKING AT  
24 EXHIBIT 495, DO YOU SEE AT THE TOP WHERE IT SAYS  
25 "AIRPORT WORKING GROUP"?

26 A YES, I DO.

27 Q DOES THIS LIST REPRESENT THE MEMBERS OF THE  
28 AIRPORT WORKING GROUP?

1           A       YES, ALTHOUGH MY UNDERSTANDING IS THAT THE  
2 AIRPORT WORKING GROUP IS ASSEMBLED AROUND A LARGE ROUND  
3 TABLE, AND IF OTHER PEOPLE FROM SIMILAR COMMUNITY  
4 AVIATION INTERESTS OR NEIGHBORHOOD INTERESTS WANTED TO  
5 SIT AROUND THE TABLE AND PARTICIPATE IN DISCUSSIONS,  
6 THEY WOULD HAVE BEEN ALLOWED TO DO SO.

7                   BUT THIS WOULD BE THE BASIC GROUP, CORE GROUP  
8 OF PEOPLE THAT WERE WORKING ON THE AIRPORT.

9           Q       BASE GROUP, 2150, IS ALSO AN AIRPORT WORK  
10 GROUP ROSTER FOR THE MAY 11TH MEETING, SAME BASIC PEOPLE  
11 YOU SAW ON THE EARLIER ROSTER?

12          A       IT APPEARS TO BE THE SAME GROUP OF PEOPLE.

13          Q       AND YOU'RE LISTED ON BOTH OF THESE ROSTERS;  
14 ISN'T THAT CORRECT?

15          A       YES, I WAS.

16          Q       YOU WERE PRESENT AT THE WORKING GROUP  
17 MEETINGS?

18          A       YES.

19          Q       AND IS IT FAIR TO SAY THAT THE PURPOSE OF THE  
20 WORKING GROUP MEETINGS WAS TO SOLICIT INPUT ON AVIATION  
21 ISSUES FOR THE AIRPORT FROM A BROAD SEGMENT OF THE  
22 COMMUNITY?

23          A       THAT'S A FAIR STATEMENT.

24          Q       OKAY. AND WAS IT A FORMAL TYPE OF MEETING OR  
25 WAS IT INFORMAL?

26          A       WELL, THERE WASN'T SWORN TESTIMONY OR, YOU  
27 KNOW, RECORDED PROCEEDINGS OR ANYTHING LIKE THAT. THERE  
28 WAS AN AGENDA AND THERE WERE SET TOPICS THAT WERE GOING

1 TO BE DISCUSSED, AND I THINK THERE WERE HANDOUTS AT THE  
2 MEETINGS.

3 BUT I WOULDN'T SAY IT WAS A FORMAL TYPE.  
4 CERTAINLY NOT LIKE A COURTROOM OR EVEN A CITY COUNCIL  
5 MEETING. IT WASN'T A SET, YOU KNOW, COMMON PERIOD,  
6 THINGS LIKE THAT.

7 Q WELL, WAS IT FAIR TO SAY THAT THIS WAS ALL  
8 DIRECTED TOWARDS DEVELOPING TOPICS FOR THE MASTER PLAN?

9 THE COURT: ONE MOMENT, PLEASE.

10 ALL RIGHT. CONTINUE, PLEASE.

11 THE WITNESS: COULD YOU REPEAT THE QUESTION.

12 Q BY MR. TACHIKI: YEAH. I ASKED, WAS IT  
13 ACCURATE THAT THE PURPOSE OF THE AIRPORT WORKING GROUP  
14 WAS TO SOLICIT INFORMATION ABOUT TOPICS THAT WOULD LEAD  
15 TO THE MASTER PLAN?

16 A THAT'S A FAIR STATEMENT.

17 Q NOW, WAS THERE ANY DISCUSSIONS AT THAT POINT  
18 ABOUT THE TERMS OF THE 1984 AGREEMENT?

19 A NO.

20 THE COURT: I'M SORRY. WAS THE QUESTION, WAS  
21 THERE ANY DISCUSSIONS?

22 Q BY MR. TACHIKI: WAS THERE ANY DISCUSSIONS  
23 ABOUT THE -- IN THE WORK GROUP MEETING ABOUT THE 1984  
24 AGREEMENT?

25 A NO, NOT ABOUT THE TERMS OF THE 1984  
26 AGREEMENT.

27 Q NOW, DID THE CITY COMPLETE THE MASTER  
28 PLANNING PROCESS?

1 A I BELIEVE IT DID.

2 Q DID IT COMPLETE IT WITHIN THAT REQUIRED  
3 PERIOD BY, NOVEMBER OF 1983?

4 A YES, IT DID.

5 Q AND CAN YOU TAKE A LOOK AT EXHIBIT 425. I  
6 THINK IT'S IN THE SAME VOLUME THERE. 425.

7 THE COURT: HOLD ON A SECOND.

8 ALL RIGHT. GO AHEAD.

9 WE'RE LOOKING AT 425?

10 MR. TACHIKI: YEAH. WE'RE LOOKING AT EXHIBIT 425.

11 Q IS THAT THE DOCUMENT THAT ULTIMATELY CAME OUT  
12 OF THE AIRPORT WORKING GROUP PROCESS?

13 A THAT'S THE MASTER PLAN, YES.

14 Q OKAY. IN FACT, THERE ARE A COUPLE OF  
15 DOCUMENTS THAT CAME OUT OF THAT PROCESS. IF YOU WOULD  
16 LOOK AT EXHIBIT 641 WHICH IS THE NOTEBOOK RIGHT UP HERE.

17 MR. KIRSCHBAUM: VOLUME 13.

18 Q BY MR. TACHIKI: DO YOU SEE THAT?

19 A ITEM 641 SAYS, "AIRPORT LAYOUT CONCEPT PLAN."

20 Q RIGHT. THAT'S ANOTHER DOCUMENT THAT CAME OUT  
21 OF THE AIRPORT WORKING GROUP PROCESS; ISN'T IT?

22 A YES, IT IS.

23 Q SO BOTH OF THESE PLANS WERE ADOPTED BY  
24 NOVEMBER OF 1983; IS THAT CORRECT?

25 A YES.

26 Q OKAY. SO IS IT FAIR TO SAY, THEN, THAT THE  
27 PLANNING PROCESS FOR THE AIRPORT RAN APPROXIMATELY FROM  
28 JANUARY OF 1983 THROUGH NOVEMBER OF 1983?

1 A THAT'S A FAIR STATEMENT.

2 Q AND BY MEETING THAT DEADLINE, YOU WERE  
3 COMPLYING WITH THE TERMS OF THE DISMISSAL FROM THE NBAA  
4 LAWSUIT; IS THAT CORRECT?

5 A YES, WE WERE.

6 Q NOW, FOLLOWING ADOPTION OF THE MASTER PLAN BY  
7 THE CITY IN NOVEMBER, DID THE CITY UNDERTAKE  
8 NEGOTIATIONS WITH THE FAA FOR AN AGREEMENT?

9 A YES, WE DID.

10 Q DO YOU RECALL WHO WAS INVOLVED IN NEGOTIATING  
11 THE 1984 AGREEMENT FOR THE CITY OF SANTA MONICA?

12 A YES.

13 Q WHO WAS THAT?

14 A I WAS.

15 Q AND WHO REPRESENTED THE FAA IN THE  
16 NEGOTIATIONS?

17 A LEN, LEONARD CIRRUZI. I'M NOT SURE HE WAS  
18 THE GENERAL COUNSEL. I THINK HE WAS THE ASSISTANT  
19 GENERAL COUNSEL OF THE FAA AT THE TIME.

20 Q AND IF YOU COULD LOOK AT EXHIBIT 414.

21 A I SEE IT.

22 Q IS THAT THE DOCUMENT THAT'S COMMONLY REFERRED  
23 TO AS THE 1984 AGREEMENT?

24 A YES.

25 Q OKAY. AND THAT'S THE DOCUMENT THAT YOU AND  
26 MR. CIRRUZI WERE NEGOTIATING FOR?

27 A YES, IT IS.

28 Q NOW, WHO -- AND BASED UPON YOUR EXPERIENCE IN

1 NEGOTIATING THIS AGREEMENT, WHO WERE THE PARTIES TO THAT  
2 AGREEMENT?

3 A THE CITY OF SANTA MONICA AND THE FEDERAL  
4 AVIATION ADMINISTRATION.

5 Q AND WHILE YOU WERE NEGOTIATING THIS  
6 AGREEMENT, WERE THERE ANY OTHER PARTIES REPRESENTED IN  
7 THE NEGOTIATIONS?

8 A NO.

9 Q AND WAS THE SANTA MONICA AIRPORT ASSOCIATION  
10 CONSIDERED TO BE A PARTY TO THE 1984 AGREEMENT?

11 MR. KIRSCHBAUM: OBJECTION. VAGUE AND AMBIGUOUS.  
12 CONSIDERED BY WHOM?

13 THE COURT: ALL RIGHT.

14 Q BY MR. TACHIKI: LET ME REPHRASE.

15 DID THE CITY OF SANTA MONICA CONSIDER THE  
16 SANTA MONICA AIRPORT ASSOCIATION TO BE A PART OF THE  
17 1984 AGREEMENT?

18 A NO.

19 Q AS FAR AS YOU KNOW, FROM YOUR CONVERSATIONS  
20 WITH THE FAA, DID THE FAA CONSIDER THE SANTA MONICA  
21 AIRPORT ASSOCIATION TO BE A PART OF THE AGREEMENT?

22 MR. KIRSCHBAUM: OBJECTION. CALLS FOR  
23 SPECULATION.

24 THE COURT: YOU'RE ASKING ABOUT WHO?

25 Q BY MR. TACHIKI: IF HE WAS EVER TOLD BY THE  
26 FAA THAT SMAA WAS A PARTY TO THE 1984 AGREEMENT?

27 THE COURT: YOU CAN ANSWER THAT QUESTION.

28 THE WITNESS: THEY WERE EXPLICIT. THEY DIDN'T

1 WANT ANY OTHER PARTIES TO THE AGREEMENT BESIDES THE CITY  
2 AND THE FAA.

3 Q BY MR. TACHIKI: WHY WAS THAT?

4 A THE FAA AND THE CITY WANTED THE AIRPORT  
5 AGREEMENT TO BE ESSENTIALLY AN ORGANIC DOCUMENT, A  
6 GOVERNMENT TO GOVERNMENT DOCUMENT THAT WOULD PLUG -- YOU  
7 COULD PLUG INTO CERTAIN PROGRAMS AND FUTURE AGREEMENTS  
8 AND THEY DIDN'T WANT -- NEITHER OF US WANTED IT TO BE  
9 ENFORCED BY ANY PRIVATE PARTIES.

10 THE COURT: ONE MOMENT, PLEASE.

11 NEXT QUESTION, PLEASE.

12 Q BY MR. TACHIKI: DID YOU WANT TO FINISH THAT  
13 ANSWER?

14 A YEAH. THERE WERE ADDITIONAL REASONS. FROM  
15 THE CITY'S PERSPECTIVE, WE HAD LITIGATED THE ISSUE OF  
16 WHETHER THE SMAA WAS A THIRD PARTY BENEFICIARY OR A  
17 PARTY TO THE AGREEMENT, AND WE WERE SPECIFIC THAT WE  
18 DIDN'T WANT THAT INCLUDED IN THE AGREEMENT BECAUSE IT  
19 HAD FOLLOWED THE LITIGATION.

20 THE COURT: HOLD ON A SECOND. I'M NOT  
21 UNDERSTANDING WHAT YOU'RE SAYING.

22 THE WITNESS: IN THE AIRPORT ASSOCIATION, IN 1979  
23 LITIGATION --

24 THE COURT: RIGHT.

25 THE WITNESS: -- A MINOR COLLATERAL POINT OF JUDGE  
26 HILL'S DECISION WAS THAT THE AIRPORT ASSOCIATION DIDN'T  
27 HAVE ANY STANDING TO ENFORCE AIRPORT LEASES, NOT THIS  
28 AGREEMENT, AIRPORT LEASES AS A THIRD PARTY BENEFICIARY.

1 THAT WAS A POINT THAT WE HAD WON IN THE COURSE OF THE  
2 LITIGATION. WE DIDN'T WANT TO BASICALLY BACKTRACK ON  
3 THAT BY MAKING IT ENFORCEABLE.

4 WE ALSO HAD A CONCERN THAT IF WE MADE THE  
5 AIRPORT ASSOCIATION PARTIES TO THE AGREEMENT, THE  
6 NEIGHBORS WHO WANTED TO STOP THE AIRPORT GIVE-AWAY AND  
7 THE PEOPLE THAT WERE DEMANDING THAT THE CITY REDUCE  
8 NOISE WOULD ALSO WANT TO BE INCLUDED AS BENEFICIARIES OR  
9 PARTIES TO THE AGREEMENT, AND WE DID NOT WANT THAT.

10 FROM THE FAA'S PERSPECTIVE, ACCORDING TO  
11 MR. CIRRUZI, AT THE TIME, THEY TOOK THE POSITION THAT  
12 WHEN THEY HAD A CONTROVERSY WITH AN AIRPORT OPERATOR,  
13 THEY HAD A CONTRACT WITH THE AIRPORT OPERATOR. THEY  
14 WANTED TO DEAL DIRECTLY WITH THE LOCAL GOVERNMENT, NOT  
15 WITH THE NEIGHBORS, NOT WITH THE AVIATION INTEREST OR  
16 THE LESSEE. IT WAS SORT OF AN ADMINISTRATIVE PRINCIPLE  
17 WITH THEM.

18 THE COURT: ALL RIGHT. THE FIRST REASON YOU SAID  
19 YOU REFERRED TO IT AS AN ORGANIC DOCUMENT, I DON'T  
20 UNDERSTAND WHAT YOU MEAN BY THAT.

21 THE WITNESS: THAT MAY BE AN OVERSTATEMENT, MORE  
22 LIKE A CHARTER OR A CONSTITUTION THAN A SPECIFIC POINT  
23 BY POINT DETAILED DOCUMENT ALTHOUGH THERE ARE DETAILED  
24 DOCUMENTS IN IT.

25 FOR EXAMPLE, THE FAA DIDN'T -- DOESN'T HAVE A  
26 FUNDING COMMITMENT. IN OTHER WORDS, THEY DIDN'T AGREE  
27 TO GIVE US ANY MONEY. THEY AGREED TO CONSIDER THINGS  
28 AND TO PUT US ON A PRIORITY LIST.

1 THE COURT: AS YOU WERE NEGOTIATING THIS 1984  
2 AGREEMENT, DID THE ISSUE OF INTENDED BENEFICIARIES COME  
3 UP AT ALL, THIRD PART BENEFICIARIES?

4 THE WITNESS: NOT INTENDED BENEFICIARIES. I'M NOT  
5 SURE WE EVER USED THAT TERM. IT WAS CLEAR THAT WE  
6 DIDN'T WANT THEM AS PARTIES TO THE AGREEMENT. AND I  
7 BELIEVE WE MAY HAVE -- MR. CIRRUZI AND I MAY HAVE  
8 DISCUSSED THE FACT THAT WE DIDN'T WANT AN INTENDED  
9 BENEFICIARY CLAUSE IN THE AGREEMENT.

10 Q BY MR. TACHIKI: LET ME SHOW YOU A LETTER  
11 FROM THE FAA TO MR. ALSCHULER, PLAINTIFFS' 41.

12 THE COURT: WHAT IS IT?

13 MR. TACHIKI: 41. FOUR-ONE.

14 MR. KIRSCHBAUM: I'M SORRY, MARTY, WHAT WAS THE  
15 NUMBER?

16 MR. TACHIKI: FOUR-ONE. 41.

17 THE WITNESS: MAY I CLARIFY ONE THING, YOUR HONOR.

18 THE COURT: GO AHEAD.

19 THE WITNESS: MR. TACHIKI REMINDED ME OF THIS.  
20 THE LETTER IS FROM THE FAA TO MR. ALSCHULER AS THE CITY  
21 MANAGER. MR. CIRRUZI AND I WERE THE LAWYERS WHO  
22 NEGOTIATED THE AGREEMENT. WE REPORTED TO THE CITY  
23 MANAGER WHO WAS THE CHIEF ADMINISTRATOR OF THE CITY FOR  
24 POLICY ISSUES. SO THE LAWYERS DIDN'T MAKE THE  
25 SUBSTANTIVE POLICY. WE NEGOTIATED THE TERMS OF THE  
26 AGREEMENTS.

27 THE COURT: WAS IT USUALLY JUST THE TWO OF YOU  
28 DOING THE NEGOTIATION OR DID THE PRINCIPALS SHOW UP AS

1 WELL?

2 THE WITNESS: USUALLY IT WAS MR. CIRRUZI AND I,  
3 JUST THE TWO OF US.

4 THE COURT: OKAY.

5 THE WITNESS: THERE WERE MEETINGS WITH FAA  
6 REPRESENTATIVES IN GENERAL OUTSIDE THE PRECISE  
7 NEGOTIATION OF THE AGREEMENT. WE'RE TALKING ABOUT THE  
8 AIRPORT PLAN AND THINGS LIKE THAT. AS FAR AS THE ACTUAL  
9 NEGOTIATION OF THE AGREEMENT, IT WAS JUST DONE THROUGH  
10 THE LAWYERS.

11 THE COURT: HOLD ON A SECOND, PLEASE.

12 MR. TACHIKI: OKAY.

13 THE COURT: ALL RIGHT. GO AHEAD.

14 MR. TACHIKI: OKAY.

15 Q IS THIS LETTER THAT WAS RECEIVED FROM THE  
16 FAA, WAS THAT THEIR INDICATION FROM THE CITY OF SANTA  
17 MONICA THAT THEY WANTED TO PROCEED WITH THE AGREEMENT  
18 FROM THE CITY?

19 A WITH THE AGREEMENT WITH THE CITY?

20 Q RIGHT. AND IT WAS ONLY WITH THE CITY; IS  
21 THAT CORRECT?

22 A THAT'S CORRECT.

23 YOUR HONOR, I DON'T WANT TO MISLEAD THE  
24 COURT. YOU HAD ASKED WERE THERE -- WAS THE NEGOTIATIONS  
25 JUST BETWEEN THE LAWYERS. THERE WAS A MEETING IN  
26 WASHINGTON IN WHICH IT WAS AGREED THAT WE WOULD  
27 NEGOTIATE THE AGREEMENT, AND THAT HAD THE CITY MANAGER'S  
28 OFFICE FROM THE CITY, AS WELL AS I THINK GENERAL COUNSEL

1 FROM THE FAA. SO THAT WAS BASICALLY A KICK-OFF MEETING  
2 IN WHICH WE DISCUSSED WE WERE GOING TO NEGOTIATE THE  
3 AGREEMENT, AND THEN THE ACTUAL TERMS OF THE AGREEMENT  
4 WERE NEGOTIATED THROUGH THE LAWYERS.

5 Q NOW, WHILE YOU WERE NEGOTIATING THE 1984  
6 AGREEMENT, WAS THERE ANY DISCUSSION ABOUT USING THE 1984  
7 AGREEMENT TO SETTLE EXISTING LAWSUITS WITH THIRD  
8 PARTIES?

9 A OTHER THAN THE FAA?

10 Q OTHER THAN THE FAA.

11 A NO. THERE WAS A PROVISION IN THE AGREEMENT  
12 THAT IN THE EVENT THERE WAS A LAWSUIT, THAT THE  
13 AGREEMENT COULD BE INTRODUCED AS EVIDENCE, I BELIEVE,  
14 FROM THE CITY'S PERSPECTIVE OF OUR GOOD FAITH EFFORT TO  
15 KEEP THE AIRPORT OPEN AND REGULATED ON REASONABLE TERMS.  
16 BUT AS FAR AS SETTTLING ANY LAWSUITS WITH  
17 ANYONE OTHER THAN THE FAA, NO THERE WAS NO INTENTION TO  
18 DO SO.

19 Q AND WAS THE 1984 AGREEMENT AVAILABLE AS  
20 EVIDENCE IF THE NBAA OR GAMA TRIED TO REVIVE THE EARLIER  
21 LAWSUIT?

22 A I THINK THAT'S, AT LEAST IF NOT THE PRIMARY,  
23 A PRIMARY INTENT OF IT, YEAH.

24 Q SO, IN FACT, GAMA OR NBAA AGREED WITH THE  
25 PROCESSING AND DIDN'T AGREE WITH THE ORDER AND FILED A  
26 LAWSUIT, THIS WOULD HAVE BEEN A DEFENSE TO THAT LAWSUIT?

27 A THAT WAS THEIR INTENTION, THOUGH WE DID NOT  
28 BELIEVE THAT GAMA OR NBAA WOULD ATTEMPT TO ATTACK THIS

1 AGREEMENT.

2 Q NOW, AT THE TIME OF THE 1984 AGREEMENT, WERE  
3 YOU AWARE OF SOME ADMINISTRATIVE COMPLAINTS THAT WERE  
4 FILED WITH THE FAA?

5 A I BELIEVE THERE WERE TWO. I THINK THEY WERE  
6 CALLED PART 13 COMPLAINTS AT THE TIME. I THINK THE  
7 REGULATIONS HAVE CHANGED SINCE THEN.

8 Q AND DO YOU RECALL WHO FILED THOSE PART 13  
9 COMPLAINTS?

10 A I THINK GARY DANFORTH FILED ONE OF THEM. HE  
11 WAS THE OPERATOR OF A FIXED BASE OPERATION AT THE  
12 AIRPORT. AND I THINK -- I'M NOT ENTIRELY SURE, BUT THE  
13 SANTA MONICA AIRPORT ASSOCIATION FILED THE OTHER ONE.

14 Q OKAY. NOW, MR. DANFORTH FILED HIS COMPLAINT  
15 ON HIS OWN BEHALF; IS THAT CORRECT?

16 A YES, HE HAD A BUSINESS AT THE AIRPORT, AND HE  
17 WAS AGGRIEVED.

18 Q I'M GOING TO SHOW YOU EXHIBIT 476. IT'S TWO  
19 LETTERS FROM THE FAA, ONE TO SANTA MONICA AIRPORT  
20 ASSOCIATION AND ONE TO THE CITY.

21 THE COURT: WHAT EXHIBIT ARE WE LOOKING AT?

22 MR. TACHIKI: 476, YOUR HONOR.

23 THE WITNESS: I SEE THE EXHIBIT.

24 Q BY MR. TACHIKI: NOW, MR. STARK, DO YOU  
25 RECALL RECEIVING LETTERS FROM THE FAA ABOUT THE PART 13  
26 TAKING PLACE?

27 A YES. THESE TWO LETTERS ARE JUST ABOUT THE  
28 SANTA MONICA AIRPORT ASSOCIATION COMPLAINT.

1 Q OKAY. AND IF YOU LOOK AT THE FIRST LETTER,  
2 THE ONE ADDRESSED TO THE SANTA MONICA AIRPORT  
3 ASSOCIATION, THE SECOND PARAGRAPH, DOES IT INDICATE THAT  
4 THE COMPLAINT WAS INCOMPLETE?

5 A YES, IT DOES.

6 Q AND, IN FACT, ON THE SECOND LETTER WHICH IS  
7 ADDRESSED TO THE MAYOR OF SANTA MONICA AT THE TIME, RUTH  
8 GOLDWAY, DOES IT ALSO SAY THAT THE COMPLAINT WILL BE  
9 SERVED ON THE CITY LATER WHEN THE COMPLAINT IS COMPLETE?

10 A THAT'S WHAT IT SAID.

11 Q NOW, TO YOUR KNOWLEDGE, WAS THE COMPLAINT  
12 EVER AMENDED?

13 A I DON'T BELIEVE IT WAS.

14 Q AND SO DID THE CITY EVER FILE A RESPONSE TO  
15 THIS COMPLAINT?

16 A I DON'T BELIEVE WE EVER DID.

17 Q SO IT BASICALLY STAYED IN THIS UNFINISHED  
18 CONDITION?

19 A TO THE BEST OF MY KNOWLEDGE, IT'S STILL IN AN  
20 UNFINISHED CONDITION. I DON'T HAVE ANY KNOWLEDGE THAT  
21 IT'S NOT.

22 Q NOW, WHILE YOU WERE NEGOTIATING THE AGREEMENT  
23 WITH MR. CIRRUZI, DID YOU HAVE ANY DISCUSSIONS WITH THE  
24 FAA ABOUT SETTLING ANY STATE COURT LAWSUITS WITH THE  
25 SANTA MONICA AIRPORT ASSOCIATION?

26 A NO.

27 Q AND TO YOUR KNOWLEDGE, DID THE 1984 AGREEMENT  
28 SETTLE ANY DISPUTES THE CITY HAD WITH ANY OTHER PARTY

1 BUT THE FAA?

2 A I BELIEVE IT WAS OUR UNDERSTANDING THAT THE  
3 DANFORTH PART 13 COMPLAINT, WHICH WE DID ANSWER, I  
4 BELIEVE, WOULD NOT GO FORWARD. BUT THAT COMPLAINT IS  
5 WITH THE FAA -- BETWEEN THE FAA AND THE CITY.

6 Q RIGHT. BUT THERE WAS NO DISCUSSION ABOUT  
7 SETTling STATE COURT LAWSUITS?

8 A NO.

9 Q NOW, BASED ON YOUR KNOWLEDGE AS ONE OF THE  
10 PRIMARY DRAFTERS OF THE 1984 AGREEMENT, WERE THERE ANY  
11 PROVISIONS IN THE 1984 AGREEMENT THAT WERE INTENDED TO  
12 BE EXPRESSLY FOR THE BENEFIT OF SMAA?

13 A NO.

14 Q OKAY. AND BASED ON YOUR KNOWLEDGE AS THE  
15 PRIMARY DRAFTER OF THE 1984 AGREEMENT, WERE THERE ANY  
16 PROVISIONS OF THE 1984 AGREEMENT THAT CONFERRED ANY  
17 EXPRESSED STATUS UPON SMAA?

18 A NO.

19 Q AND ISN'T IT TRUE THAT SMAA IS ENTITLED TO  
20 THE SAME BENEFITS THAT THE PUBLIC AS A WHOLE IS ENTITLED  
21 TO?

22 A THAT WOULD BE GENERALLY TRUE.

23 MR. KIRSCHBAUM: OBJECTION. CALLS FOR A LEGAL  
24 CONCLUSION.

25 MR. TACHIKI: HE'S A LAWYER, YOUR HONOR.

26 THE COURT: LET'S ME STEP BACK A MINUTE.

27 WHO ACTUALLY DRAFTED THE DOCUMENT?

28 THE WITNESS: I BELIEVE I DID. WELL, ASSUMING I

1 DID. WE DIDN'T HAVE E-MAIL IN THOSE DAYS. SO WE SENT  
2 DRAFTS BACK AND FORTH PRETTY MUCH BY MAIL AND HAD A  
3 NUMBER OF PHONE CONVERSATIONS. I SAY "WE," I MEAN  
4 MR. CIRRUZI.

5 THE COURT: WHEN YOU DRAFTED THIS, WAS THERE ANY  
6 INTENTION ON YOUR PART THAT SANTA MONICA AIRPORT  
7 ASSOCIATION HAVE ANY BENEFITS THAT THE PUBLIC WAS NOT  
8 ENTITLED TO?

9 THE WITNESS: NO.

10 THE COURT: IS THERE ANY ORGANIZATION, ANY GROUP  
11 IN CERTAIN, THAT HAS ANY RIGHTS THAT ARE NOT RESERVED  
12 FOR THE PUBLIC -- THE GENERAL PUBLIC IS NOT ENTITLED TO?

13 THE WITNESS: NO.

14 THE COURT: MR. TACHIKI, PLEASE.

15 Q BY MR. TACHIKI: SO AT THE TIME THE 1984  
16 AGREEMENT WAS SIGNED, WAS THE CITY UNDER ANY COURT ORDER  
17 TO INCLUDE SMAA AS A PARTY TO THE AGREEMENT?

18 A NO.

19 Q AND WHILE YOU WERE NEGOTIATING WITH THE FAA,  
20 WERE YOU EVER INFORMED BY THE FAA THAT THEY WERE  
21 REPRESENTING ANYONE BUT THE FEDERAL GOVERNMENT?

22 A NO, TO THE CONTRARY. THEY WERE RATHER  
23 PARTICULAR TO INDICATE THAT THEY WERE ONLY REPRESENTING  
24 THE FEDERAL GOVERNMENT WHICH I THINK IS THEIR STANDARD  
25 PRACTICE.

26 Q AND, IN FACT, I HATE TO DO THIS TO YOU. BUT  
27 GOING BACK TO THE 1984 AGREEMENT, WHICH IS EXHIBIT 414.

28 A OKAY. I HAVE IT.

1 Q OKAY. DOESN'T, IN FACT, THE 1984 AGREEMENT  
2 SPECIFICALLY RESERVE -- HAVE EACH PARTY RESERVE ITS  
3 RIGHT WITH RESPECT TO LOSS?

4 THE COURT: WHAT WAS THAT QUESTION?

5 MR. TACHIKI: LET ME RESTATE IT.

6 THE COURT: EXCUSE ME. TO WHAT KIND OF LOSS?

7 THE WITNESS: THERE IS SECTION 21 OF THE  
8 AGREEMENT.

9 Q BY MR. TACHIKI: RIGHT. IN SECTION 21,  
10 WASN'T IT THE INTENT OF THE FAA AND THE CITY BASICALLY  
11 TO RESERVE ITS OWN POWERS TO THEMSELVES?

12 MR. KIRSCHBAUM: OBJECTION. CALLS FOR SPECULATION  
13 WITH RESPECT TO THE INTENT OF THE FAA.

14 THE COURT: HOLD ON A MOMENT. I'M GOING TO READ  
15 THIS SECTION.

16 MR. TACHIKI: PARDON ME, YOUR HONOR.

17 THE COURT: I JUST WANT TO READ THIS FOR A SECOND.

18 MR. TACHIKI: OKAY. GO AHEAD.

19 THE COURT: ALL RIGHT.

20 WHAT IS THE QUESTION ABOUT THIS SECTION?

21 MR. TACHIKI: OKAY.

22 Q SO IN SECTION 21, DOESN'T THAT BASICALLY HAVE  
23 BOTH PARTIES, THE CITY AND FAA, ACKNOWLEDGE THAT THEY'RE  
24 GOING TO RESERVE THEIR RIGHTS TO ENFORCE THEIR OWN LAWS?

25 A THAT'S PRETTY MUCH EXACTLY WHAT IT DOES.

26 Q AND THERE IS NO MENTION OF OTHER PARTIES, IS  
27 THERE?

28 A NO. THAT IS INTENDED.

1 IF I MIGHT ELABORATE, THE LITIGATION WITH THE  
2 AIRPORT ASSOCIATION, THE ONE THAT RESULTED IN THE  
3 PUBLISHED DECISION, IS ABOUT BALANCING THE FAA'S  
4 REGULATORY RESPONSIBILITY OF CONTROL OF NAVIGABLE AIR  
5 SPACE AND THE CITY'S PROPRIETARY RESPONSIBILITY TO  
6 MANAGE THE AIRPORT'S OPERATIONS.

7 AND WHERE THE COURT CAME OUT WAS THAT WE HAVE  
8 THE AUTHORITY TO REGULATE UNDER OUR PROPRIETARY AIRCRAFT  
9 WITHIN A REASONABLE TIME AND SPACE AFTER LANDING AND  
10 TAKING OFF AT THE AIRPORT. THAT'S BASICALLY WHAT THE  
11 LITIGATION WAS ABOUT.

12 AND BOTH THE CITY AND THE FAA WERE SENSITIVE  
13 ABOUT NOT DISTURBING IT, AND I THINK THE FAA WAS  
14 SENSITIVE ABOUT SETTING A PRINCIPLE THAT THEY DID NOT  
15 WANT TO BE INVOLVED IN -- THE TERM TODAY IS  
16 "MICROMANAGE" -- THE DETAILS OF CITY AIRPORT  
17 REGULATIONS. THAT'S WHY THAT CLAUSE IS IN THERE.

18 Q OKAY. AND IF YOU COULD TURN BACK TO  
19 SECTION 2 IN THE BEGINNING OF THE AGREEMENT, DOESN'T  
20 THAT ALSO SPELL THAT SAME PRINCIPLE OUT IN MORE DETAIL?

21 A YES. WE ACTUALLY SPENT A CONSIDERABLE PERIOD  
22 OF TIME REACHING AN AGREEMENT ON THESE BASIC PRINCIPLES.

23 Q IF YOU COULD LOOK AT THE FIRST PAGE OF THE  
24 1984 AGREEMENT. THE FIRST SECTION, SECTION 1, "PURPOSE"  
25 STARTS OFF WITH A SENTENCE THAT SAYS "THIS AGREEMENT  
26 INVOLVES A SERIES OF DISPUTES."

27 A YES.

28 Q DO YOU KNOW WHAT THAT REFERS TO WHEN IT

1 REFERS TO A SERIES OF DISPUTES?

2 A I THINK THAT REFERS TO THE HISTORY OF THE  
3 ENTIRE AIRPORT CONTROVERSY GOING BACK TO THE JET BAN AND  
4 POSSIBLY EARLIER.

5 Q WAS IT INTENDED TO REFER TO ONGOING LAWSUITS  
6 AT THE TIME?

7 A NO.

8 Q SO IT WAS A HISTORICAL REFERENCE?

9 A I BELIEVE THAT.

10 THE COURT: WHY WASN'T IT INTENDED TO REFER TO  
11 LAWSUITS PENDING?

12 THE WITNESS: IT WAS INTENDED TO REFER TO DISPUTES  
13 BETWEEN THE CURRENT -- PENDING DISPUTES BETWEEN THE FAA  
14 AND THE CITY, THE DANFORTH PART 13 COMPLAINT, TO BE  
15 SPECIFIC, AND TO ENSURE THAT THE FAA WOULD NOT INITIATE  
16 ANY ACTION AGAINST THE CITY SIMILAR TO THE CLAIMS MADE  
17 BY NBAA AND GAMA IN THEIR SECOND FEDERAL LAWSUIT.

18 Q BY MR. TACHIKI: OKAY. AND THEN LOOKING AT  
19 SECTION 4 WHICH IS ON PAGE 5, IT'S A SETTLEMENT OF LEGAL  
20 DISPUTES.

21 A DID YOU SAY SECTION 4 ON PAGE 5?

22 Q RIGHT. ON PAGE 5.

23 A I HAVE IT.

24 Q OKAY. NOW, IT SAYS, "THIS AGREEMENT SERVES  
25 TO RESOLVE ALL EXISTING LEGAL DISPUTES AMONG THE  
26 PARTIES."

27 IS THAT TO RESOLVE DISPUTES AMONG THE CITY  
28 AND THE FAA?

1 A YES.

2 Q AND IT IS NOT INTENDED TO RESOLVE DISPUTES  
3 AMONG OTHER PARTIES; IS THAT CORRECT?

4 A THAT'S CORRECT. THAT'S WHAT IT SAYS.

5 MR. TACHIKI: YOUR HONOR, I HAVE NO MORE  
6 QUESTIONS.

7 MR. KIRSCHBAUM: IF WE COULD TAKE A BRIEF MOMENT,  
8 YOUR HONOR.

9 THE COURT: SURE. WE'LL TAKE A FIVE-MINUTE BREAK.

10 MR. KIRSCHBAUM: THANKS.

11

12 (RECESS TAKEN.)

13

14 THE COURT: WE'RE BACK ON THE RECORD IN THIS  
15 MATTER.

16 MR. KIRSCHBAUM, YOU MAY CROSS.

17 MR. KIRSCHBAUM: THANK YOU, YOUR HONOR.

18

19 CROSS-EXAMINATION

20 BY MR. KIRSCHBAUM:

21 Q GOOD MORNING, MR. STARK.

22 A GOOD MORNING.

23 Q BEFORE I GET INTO A COUPLE OF DOCUMENTS YOU  
24 DISCUSSED EARLIER AND A COUPLE OF OTHER DOCUMENTS, I  
25 JUST WANT TO MAKE SURE I UNDERSTAND THE POSITION YOU'VE  
26 TAKEN THIS MORNING CORRECTLY.

27 IS IT YOUR TESTIMONY THAT THE 1984 AGREEMENT  
28 DID NOT RESOLVE ANY DISPUTE BETWEEN THE SANTA MONICA

1 AIRPORT ASSOCIATION AND THE CITY OF SANTA MONICA?

2 A YES.

3 Q AND HOW DID THE COMPLAINT FILED BY THE SANTA  
4 MONICA AIRPORT ASSOCIATION AGAINST THE CITY OF SANTA  
5 MONICA RELATING TO EVICTIONS FROM VARIOUS FBO PARCELS ON  
6 THE AIRPORT GET RESOLVED?

7 A ARE YOU REFERRING TO SOMETHING OTHER THAN THE  
8 COMPLAINT THAT WAS REFERRED TO IN THE LETTER THAT I WAS  
9 SHOWN?

10 Q YES, SIR.

11 DO YOU RECALL THERE BEING A COMPLAINT BY THE  
12 SANTA MONICA AIRPORT ASSOCIATION AGAINST THE CITY OF  
13 SANTA MONICA RELATING TO EVICTIONS ON THE AIRPORT?

14 THE COURT: AT WHAT TIME?

15 Q BY MR. KIRSCHBAUM: PRIOR TO THE '84  
16 AGREEMENT THAT WAS PENDING AT THAT TIME?

17 A THE ONLY COMPLAINT I RECALL -- AND FRANKLY, I  
18 DON'T KNOW WHAT THE UNDERLYING SUBSTANCE OF IT IS -- THE  
19 COMPLAINT THAT MR. TACHIKI TOLD ME. I HAVE NO  
20 INDEPENDENT RECOLLECTION OF THAT.

21 I DO RECALL THAT THE SANTA MONICA AIRPORT  
22 ASSOCIATION WAS AGGRIEVED BY CERTAIN EVICTIONS. I CAN'T  
23 CONNECT IT TO ANY SPECIFIC COMPLAINT.

24 Q DO YOU RECALL ON BEHALF OF THE CITY ENTERING  
25 INTO ANY OTHER SETTLEMENT AGREEMENTS WITH THE CITY --  
26 WITH THE AIRPORT ASSOCIATION? IN OTHER WORDS, WERE  
27 THERE ANY OTHER SETTLEMENT AGREEMENTS BETWEEN THE CITY  
28 AND THE AIRPORT ASSOCIATION THAT AREN'T IN THE '84

1 AGREEMENT?

2 A I DON'T RECALL ANY. IF YOU SHOWED ME A  
3 DOCUMENT, IT MIGHT REFRESH MY MEMORY. I DON'T REMEMBER  
4 IT.

5 Q TURNING YOUR ATTENTION BRIEFLY TO SECTION 4  
6 OF THE '84 AGREEMENT WHICH IS EXHIBIT 414 --

7 A THEY HAVE TAKEN MY EXHIBIT BOOKS AWAY FROM ME  
8 AND NOT BROUGHT THEM BACK. IF YOU GIVE ME A MINUTE I  
9 MIGHT BE ABLE TO FIND THEM BY NUMBER KEY.

10 Q IT'S THE LAST EXHIBIT, EXHIBIT 414.

11 A GIVE ME A MOMENT. EXHIBIT 414 IS THE AIRPORT  
12 AGREEMENT?

13 Q YES.

14 A I HAVE IT.

15 Q OKAY. COULD YOU TURN TO PAGE 5, SECTION 4,  
16 "SETTLEMENT OF LEGAL DISPUTES."

17 A I HAVE IT.

18 Q ISN'T IT TRUE, SIR, THAT IN JANUARY OF 1984,  
19 THERE WERE NO EXISTING LEGAL DISPUTES BETWEEN THE CITY  
20 AND THE FEDERAL AVIATION ADMINISTRATION?

21 A I BELIEVE THAT THE DANFORTH COMPLAINT, IT WAS  
22 STILL PENDING AT THE TIME.

23 Q BY THE DANFORTH COMPLAINT, YOU'RE REFERRING  
24 TO THE ADMINISTRATIVE COMPLAINT FILED BY DANFORTH WITH  
25 THE AVIATION ADMINISTRATION?

26 A WHAT I REFERRED TO AS THE PART 13 COMPLAINT,  
27 YES.

28 Q DID THE FAA FILE ANY ADMINISTRATIVE

1 COMPLAINTS AGAINST THE CITY OF SANTA MONICA?

2 A I DON'T BELIEVE IT DID.

3 Q DID THE FAA FILE ANY LAWSUITS AGAINST THE  
4 CITY OF SANTA MONICA PRIOR TO THE '84 AGREEMENT?

5 A NO, IT DID NOT.

6 THE COURT: THE FIRST SENTENCE HERE READS: "THE  
7 AGREEMENT SERVES TO RESOLVE ALL EXISTING LEGAL DISPUTES  
8 AMONG THE PARTIES."

9 USUALLY WHEN YOU USE THAT LINE, USUALLY IT  
10 MEANS MORE THAN TWO. FOR EXAMPLE, IN THE NEXT SENTENCE  
11 IT SAYS:

12 "IN THIS CONTEXT IT CONSTITUTES A  
13 SETTLEMENT AGREEMENT APPLICABLE TO ALL  
14 EXISTING LITIGATION AND/OR ADMINISTRATIVE  
15 COMPLAINTS BETWEEN THE PARTIES."

16 USUALLY WHEN YOU USE THE TERM "BETWEEN,"  
17 YOU'RE USUALLY TALKING ABOUT TWO PARTIES. WHEN YOU USE  
18 THE TERM "AMONG," THE USE OF THE TERM "AMONG" WOULD SEEM  
19 TO SUGGEST MORE THAN TWO.

20 DID YOU HAVE SOMETHING IN MIND WHEN YOU  
21 STATED "AMONG" BEFORE?

22 THE WITNESS: I DON'T THINK THERE'S ANY PARTICULAR  
23 SIGNIFICANCE TO THE USE OF THE TERM "AMONG" IN THE FIRST  
24 SENTENCE AND THE USE OF THE TERM "BETWEEN" IN THE SECOND  
25 SENTENCE.

26 THE COURT: ALL RIGHT. GO AHEAD, MR. KIRSCHBAUM.

27 Q BY MR. KIRSCHBAUM: WAS THERE ANY  
28 SIGNIFICANCE TO THE FACT THAT YOU DIDN'T SPECIFICALLY

1 IDENTIFY LITIGATION OR ADMINISTRATIVE COMPLAINT WITHIN  
2 THIS AGREEMENT?

3 A I DON'T THINK THERE'S ANY PARTICULAR  
4 SIGNIFICANCE TO THAT.

5 Q YOU DID DRAFT THIS AGREEMENT; CORRECT?

6 A MR. CIRRUZI AND I DRAFTED THIS AGREEMENT,  
7 YES.

8 Q YOU HAD AN OPPORTUNITY TO AMEND OR CORRECT  
9 ANY PORTION OF THIS AGREEMENT THAT THE CITY DIDN'T AGREE  
10 WITH; CORRECT?

11 A CERTAINLY.

12 Q LET ME INITIALLY DIRECT YOUR ATTENTION TO  
13 WHAT'S BEEN MARKED AS EXHIBIT 450. THAT WILL BE FOUND  
14 IN VOLUME NO. 9.

15 A IT SAYS -- THIS IS THE SECOND AMENDED  
16 COMPLAINT IN WHAT I REFER TO AS THE JET BAN LAWSUIT.

17 Q YES. YOU'VE SEEN THIS BEFORE?

18 A LET ME LOOK AT IT, AND I'LL DETERMINE IF I  
19 HAVE. IT'S NOT FILE STAMPED, BUT IT APPEARS TO BE THE  
20 LAST PLEADING FILED BY THE SANTA MONICA AIRPORT  
21 ASSOCIATION IN THAT CASE, YES.

22 Q OKAY. AND YOU CAN TELL BY THE CASE NUMBER ON  
23 THE RIGHT SIDE OF THE CAPTION THAT THIS WAS FILED IN  
24 1977; CORRECT?

25 A YES. I RECOGNIZE THE CASE NUMBER.

26 Q OKAY.

27 A THE ORIGINAL COMPLAINT WAS FILED IN 1977.

28 Q RIGHT. AND REFER IF YOU WOULD --

1           A       SO IS THE SECOND AMENDED COMPLAINT, FOR THAT  
2 MATTER.

3           Q       DO YOU REMEMBER IF THE SECOND AMENDED  
4 COMPLAINT WAS THE OPERATIVE COMPLAINT AT THE TIME OF THE  
5 TRIAL?

6           A       I THINK IT WAS.

7           Q       REFER TO A FEW DOCUMENTS EARLIER, TO  
8 EXHIBIT 447.

9           A       YES.

10          Q       OKAY. THIS IS THE CITY'S ANSWER TO THAT  
11 COMPLAINT; CORRECT?

12          A       NO, IT'S NOT. THIS IS THE CITY'S ANSWER TO  
13 THE ORIGINAL COMPLAINT.

14          Q       OKAY. DID THE CITY SUBMIT AN AMENDED ANSWER  
15 TO THE SECOND AMENDED COMPLAINT?

16          A       IT MAY HAVE. THIS DOCUMENT WAS PREPARED BY  
17 MR. KNICKERBOCKER AND MY PREDECESSOR, HIS ASSISTANT,  
18 ATTORNEY MR. STRICKMAN. I DIDN'T DRAFT THIS PARTICULAR  
19 ANSWER. I THINK -- BUT ALTHOUGH I DON'T HAVE AN  
20 INDEPENDENT RECOLLECTION THAT I PERSONALLY DRAFTED IT, I  
21 THINK THAT THEY WOULD HAVE FILED AN ANSWER TO THE SECOND  
22 AMENDED COMPLAINT.

23                   I GOT INTO THE CASE WHEN WE WERE DOING THE  
24 PRETRIAL STATEMENT WHICH SUPERSEDED THE PLEADINGS. SO  
25 THE DETAILS IS NOT IN MY MEMORY.

26          Q       OKAY. SO YOU DON'T HAVE ANY DOUBT IN YOUR  
27 MIND THAT THE CITY OF SANTA MONICA ACTUALLY ANSWERED THE  
28 COMPLAINT, DO YOU?

1 A WE CERTAINLY DID AT SOME POINT IN TIME.

2 Q LET ME DIRECT YOUR ATTENTION TO THE BOTTOM OF  
3 THE SECOND PAGE OF THIS ANSWER TO THE COMPLAINT AT LINE  
4 25 WHERE IT READS:

5 "DEFENDANTS FURTHER ALLEGE THAT  
6 PLAINTIFF SMAA HEREIN SEEKS TO ASSERT AND  
7 DEFINE RIGHTS UNDER CONTRACTS AND AGREEMENTS  
8 TO WHICH IT IS NOT A PARTY AND THEREFORE THE  
9 SMAA LACKS STANDING AS A PLAINTIFF IN THIS  
10 ACTION."

11 DO YOU SEE THAT?

12 A YES.

13 Q YOU DON'T BELIEVE THAT THE CITY MODIFIED ITS  
14 POSITION AT ANY TIME PRIOR TO TRIAL TO WITHDRAW THAT  
15 ALLEGATION, DO YOU?

16 A NO, I DON'T.

17 Q OKAY. THE CITY CONTENDED THROUGH TRIAL THAT  
18 THE AIRPORT ASSOCIATION, THE SAME PARTY THAT'S HERE  
19 TODAY, THAT IN 1977, THE AIRPORT ASSOCIATION LACKED  
20 STANDING BECAUSE IT WASN'T A PARTY TO THE AGREEMENTS IT  
21 WAS TRYING TO ENFORCE; CORRECT?

22 A I THINK THAT'S AN ACCURATE STATEMENT, SIR.

23 Q OKAY.

24 A I SHOULD TELL YOU THAT WITHOUT ACTUALLY  
25 READING THE PLEADINGS, WHICH I HAVEN'T DONE, I DON'T  
26 HAVE ANY MEMORY ABOUT WHETHER WE WERE REFERRING TO THE  
27 LEASES BETWEEN THE CITY AND THE AIRPORT OPERATORS OR THE  
28 GRANT AGREEMENTS BETWEEN THE CITY AND THE FAA OR BOTH.

1 Q LET'S TAKE A LOOK AT ONE REAL QUICK. REFER,  
2 IF YOU WOULD, TO EXHIBIT 100. THAT'S IN VOLUME 2.

3 A OH, I HAVE THE DOCUMENT.

4 Q OKAY. THIS IS WHAT'S BEEN COMMONLY REFERRED  
5 TO AS THE 1948 INSTRUMENT OF TRANSFER, IS IT NOT?

6 A ON THE FACE OF IT, IT LOOKS LIKE THE 1948  
7 INSTRUMENT OF TRANSFER, YES.

8 Q AND THIS IS THE DOCUMENT BY WHICH THE FEDERAL  
9 GOVERNMENT GRANTED BACK THE SANTA MONICA MUNICIPAL  
10 AIRPORT TO THE CITY OF SANTA MONICA FOLLOWING  
11 WORLD WAR II; CORRECT?

12 A THAT'S CORRECT. I THINK THERE'S A DOCUMENT  
13 CALLED AN INSTRUMENT OF REVERTER, TOO. BUT THIS IS  
14 BASICALLY HOW THEY DID IT, YES.

15 Q OKAY. AND YOU UNDERSTOOD THAT WITHIN THIS  
16 DOCUMENT, IN FACT, SPECIFICALLY ON PAGE 4 OF THIS  
17 DOCUMENT WHICH HAS A BATES NUMBER ON THE LOWER  
18 RIGHT-HAND SIDE OF 5048, SPECIFICALLY THE THIRD  
19 PARAGRAPH FROM THE BOTTOM, THAT THIS DEED OF TRANSFER  
20 IMPOSED A COVENANT AND RESTRICTION THAT RAN WITH THE  
21 LAND, THAT THE LAND SUBJECT TO THIS DEED BE USED AS AN  
22 AIRPORT IN PERPETUITY; CORRECT?

23 A I UNDERSTAND THAT THAT'S WHAT IT SAID. I  
24 ALSO FURTHER UNDERSTAND THAT THERE WAS SOME CONTROVERSY  
25 ON THE PART OF THE CITY AS TO WHETHER IT COVERED TO  
26 MAINTAIN THE AIRPORT FOR AIRPORT PURPOSES AND PERPETUITY  
27 WAS ENFORCEABLE. THAT WAS A MATTER OF SOME DISCUSSIONS  
28 BETWEEN US AND THE FEDERAL GOVERNMENT FROM TIME TO TIME.

1 Q THAT WASN'T EVER RESOLVED, WAS IT?

2 A SPECIFICALLY? NO, IT WAS RENDERED MOOT.

3 Q RIGHT. THIS 1948 INSTRUMENT OF TRANSFER WAS  
4 ACCEPTED BY THE CITY; CORRECT?

5 A IN 1948?

6 Q YES.

7 A I BELIEVE -- I'M QUITE SURE IT WAS. IT BEARS  
8 THE SIGNATURE OF SOME CITY OFFICIAL ON IT.

9 Q RIGHT. IF YOU WOULD REFER TO EXHIBIT 338.

10 A THAT WOULD BE IN VOLUME 6, WOULDN'T IT?

11 Q THAT WOULD BE VOLUME 6.

12 IN FACT, SIR, IS THIS NOT THE RESOLUTION OF  
13 THE CITY OF SANTA MONICA ACCEPTING THE 1948 INSTRUMENT  
14 OF TRANSFER?

15 A YES, IT IS.

16 Q AND WAS IT YOUR UNDERSTANDING THAT PART OF  
17 THE BASIS FOR THE AIRPORT ASSOCIATION'S LAWSUIT IN  
18 1977 --

19 LET ME RESTATE THE QUESTION SO I HAVE YOUR  
20 FULL ATTENTION.

21 ISN'T IT ACCURATE TO SAY THAT THE 1948  
22 INSTRUMENT OF TRANSFER WAS AT LEAST IN PART THE BASIS  
23 FOR THAT SANTA MONICA AIRPORT ASSOCIATION'S SUIT IN 1977  
24 SEEKING TO DO, AMONG OTHER THINGS, OVERTURN THE JET BAN?

25 A I DON'T HAVE A DISTINCT RECOLLECTION OF THAT.  
26 I DO RECALL THAT THE MEMBERS OF THE SANTA MONICA AIRPORT  
27 ASSOCIATION CONTENDED THAT THE CITY WAS OBLIGATED BY  
28 VIRTUE OF THE INSTRUMENT OF TRANSFER TO KEEP THE AIRPORT

1 OPEN IN PERPETUITY.

2 THE EXTENT TO WHICH THAT CONTENTION ENTERED  
3 INTO THE ISSUES IN THE 1977 LITIGATION, I'M NOT QUITE SO  
4 SURE OF. THEY DIDN'T ENTER INTO JUDGE HILL'S FINAL  
5 DECISION OR THE COURT OF APPEALS' DECISION. BUT WITHOUT  
6 PARSING THROUGH ALL THE PLEADINGS, I WOULDN'T BE IN A  
7 POSITION TO SAY YES OR NO AS TO WHETHER THAT WAS AN  
8 ALLEGATION IN THE LAWSUIT.

9 Q OKAY. AND WHEN THE TRIAL COURT RENDERED ITS  
10 DECISION IN THE 1977 SANTA MONICA AIRPORT ASSOCIATION  
11 CASE, THE CITY TOOK THAT DECISION UP ON APPEAL; CORRECT?

12 A I BELIEVE BOTH PARTIES APPEALED.

13 Q AND PRIOR TO THE RULING BY THE APPELLATE  
14 COURT, DID THE CITY TAKE ANY OTHER ACTION WITH RELATION  
15 TO REGULATION AT THE AIRPORT?

16 A DO YOU MEAN BETWEEN THE TIME OF THE TRIAL  
17 COURT DECISION AND THE APPELLATE COURT DECISION? IS  
18 THAT WHAT YOU'RE ASKING?

19 Q YES.

20 A YES, IT DID.

21 Q WHAT DID THE CITY DO?

22 A THE CITY -- THE CITY SHORTLY AFTER THE TRIAL  
23 COURT DECISION ADOPTED AN ORDINANCE THAT LOWERED THE  
24 SINGLE EVENT DECIBEL LIMIT FROM 100 DECIBELS TO 85  
25 DECIBELS.

26 Q THAT WAS WITHIN DAYS? WEEKS?

27 A DAYS OF THE TRIAL COURT DECISION, I THINK.  
28 NO LONGER THAN WEEKS.

1 Q AND WITHIN A MONTH OF LOWERING THE NOISE  
2 LEVEL TO 85 DECIBELS, THAT'S WHEN GAMA, NBAA, AND  
3 GUNNELL FILED THEIR SUIT FOR PRELIMINARY INJUNCTION;  
4 CORRECT?

5 A NO LONGER THAN TWO MONTHS. I THINK PROBABLY  
6 WITHIN A MONTH.

7 Q AND THEY RECEIVED A TEMPORARY RESTRAINING  
8 ORDER AND A PRELIMINARY RE-INJUNCTION; CORRECT?

9 A I DON'T KNOW IF THEY GOT A TEMPORARY  
10 RESTRAINING ORDER, BUT THEY GOT A PRELIMINARY  
11 INJUNCTION.

12 Q OKAY. THE ORDINANCE WAS NEVER ENFORCED AT 85  
13 DECIBELS; CORRECT?

14 A TO BE BLUNT ABOUT IT, SIR, JUDGE HILL MADE IT  
15 UNMISTAKABLY CLEAR THAT THE CITY'S ORDINANCE, THE 85  
16 DECIBEL ORDINANCE, WAS NOT GOING TO BE UPHELD, AND WE  
17 COULDN'T ENFORCE IT.

18 I BELIEVE THAT SHORTLY AFTER THAT -- I'M NOT  
19 QUITE SURE HOW LONG -- THE CITY, IN ORDER TO HAVE  
20 SOMETHING IN PLACE, REINSTATED THE 100 DECIBEL LIMIT.

21 Q REFER, IF YOU WOULD, TO EXHIBIT 241.

22 A DO YOU KNOW WHERE?

23 Q THAT IS IN VOLUME 4.

24 A I SEE THE EXHIBIT.

25 Q OKAY. I WOULD LIKE TO DIRECT YOUR ATTENTION  
26 TO THE LAST TWO PARAGRAPHS OF THE FIRST PAGE OF THIS  
27 EXHIBIT.

28 MR. TACHIKI: YOUR HONOR, I WOULD OBJECT. THERE

1 IS NO FOUNDATION FOR THIS. IT DOESN'T APPEAR TO BE A  
2 FINAL DOCUMENT.

3 THE COURT: WHICH EXHIBIT IS THIS?

4 THE WITNESS: IT IS EXHIBIT 241. IT SAYS "AIRPORT  
5 NOISE REGULATION" ON IT. I HAVEN'T GOTTEN ALL THE WAY  
6 THROUGH IT TO SEE IF IT'S SIGNED.

7 I'VE READ THROUGH THE DOCUMENT.

8 THE COURT: WHAT'S THE OBJECTION?

9 MR. TACHIKI: THERE IS NO FOUNDATION. IT IS NOT  
10 CLEAR WHAT THIS DOCUMENT IS BECAUSE THERE'S A COMPLETE  
11 BLANK ON THE FIRST PAGE. I'M NOT SURE MR. STARK CAN  
12 TESTIFY ABOUT THIS.

13 THE COURT: CAN YOU TRY TO LAY A FOUNDATION.

14 MR. KIRSCHBAUM: SURE.

15 Q DO YOU KNOW WHAT THIS DOCUMENT IS?

16 A I KNOW WHAT THIS DOCUMENT PURPORTS TO BE, BUT  
17 WHAT I DON'T KNOW IS WHETHER THIS IS A FINALLY  
18 AUTHORIZED DOCUMENT OR A DRAFT.

19 Q WHAT DOES IT PURPORT TO BE?

20 A IT PURPORTS TO BE A NOISE REGULATION THAT  
21 IMPLEMENTS, I THINK THE SD, THE 85 DECIBEL LIMIT.

22 THE COURT: WHAT IS THIS BEING OFFERED FOR?

23 MR. KIRSCHBAUM: ESSENTIALLY JUST THE TWO  
24 PARAGRAPHS AT THE BOTTOM OF THE FIRST PAGE. JUST WANTED  
25 TO ASK HIM IF THAT ACCURATELY SETS FORTH THE CHAIN OF  
26 EVENTS.

27 THE WITNESS: MAY I LOOK AT THEM?

28 MR. KIRSCHBAUM: YOU SURE CAN.

1 THE COURT: YOU CAN ASK HIM THAT.

2 THE WITNESS: ORDINANCE NO. 1137 WHICH IS WHAT IS  
3 REFERRED TO IN THE FIRST PARAGRAPH IS THE 85 DECIBEL  
4 ORDINANCE. AND THAT IS, IN FACT, ACCURATELY REFERRED TO  
5 IN THE LITIGATION THAT I SPOKE OF EARLIER, THE NATIONAL  
6 BUSINESS AIRCRAFT ASSOCIATION VERSUS THE CITY. THAT'S  
7 THE 1979 LITIGATION.

8 THE PREDECESSOR, THE 10105 IS, I THINK, BOTH  
9 THE JET BAN AND THE 100 SENEL ORDINANCE, AND THAT'S THE  
10 ONE THAT WAS CHALLENGED IN THE DECISION BY JUDGE HILL.  
11 IT WAS TAKEN UP ON APPEAL.

12 IS THAT WHAT YOU WANTED TO KNOW?

13 Q BY MR. KIRSCHBAUM: YES.

14 SO WOULD YOUR ANSWER TO THE QUESTION BE THAT  
15 THE TWO PARAGRAPHS AT THE BOTTOM OF THE FIRST  
16 PAGE ACCURATELY SET FORTH THE SCENARIO?

17 A THEY REFLECT THE FEDERAL LAWSUITS WITH THE  
18 CITY WITH RESPECT TO ITS NOISE ORDINANCES, YES.

19 Q NEXT, I WOULD LIKE YOU TO REFER TO  
20 EXHIBIT 458, WHICH IS IN VOLUME 9.

21 A OKAY. DID YOU SAY 458?

22 Q YES.

23 A I HAVE THE DOCUMENT.

24 Q OKAY. NOW, DOES THIS REFLECT THE CITY OF  
25 SANTA MONICA'S EFFORTS TO DETERMINE WHETHER OR NOT  
26 CLOSING THE AIRPORT MIGHT VIOLATE THE '48 INSTRUMENT OF  
27 TRANSFER THAT WE'VE JUST TALKED ABOUT, OR THE 1965 LEASE  
28 WITH THE FAA OVER THE AIR TRAFFIC CONTROL TOWER?

1           A       YES.  WHEN I WAS -- DURING THE PERIOD OF TIME  
2 WHEN I WAS ACTING CITY ATTORNEY, THE CITY COUNCIL, ON MY  
3 RECOMMENDATION, OBTAINED THE LAW FIRM OF FORMER JUSTICE  
4 ABE FORTIS TO WRITE US AN OPINION ON THE CITY'S LEGAL  
5 ABILITY TO CLOSE THE AIRPORT, CONTRARIWISE, ITS  
6 OBLIGATION TO KEEP THE AIRPORT OPEN.  AND THAT'S WHAT  
7 THIS LETTER FROM JOSEPH BURL, WHO'S AN OLD LAW SCHOOL  
8 CLASSMATE OF MINE, WHO WORKED WITH JUSTICE FORTIS  
9 PURPORTS TO BE.

10           Q       OKAY.  TURN TO THE NEXT EXHIBIT 460.

11           A       MAY I CLARIFY MY ANSWER TO THE PRIOR QUESTION  
12 FIRST?

13           THE COURT:  GO AHEAD.

14           MR. KIRSCHBAUM:  OKAY.

15           THE WITNESS:  I DON'T BELIEVE THE LETTER FROM  
16 MR. BURL DISCUSSES THE INSTRUMENT OF TRANSFER.  I THINK  
17 IT DISCUSSES THE AIRPORT GRANTS AND THE LEASES, BUT IT  
18 DOES NOT, AT LEAST FROM MY LEAFING THROUGH IT, APPEAR TO  
19 DISCUSS THE INSTRUMENT OF TRANSFER.

20           Q       BY MR. KIRSCHBAUM:  OKAY.  BUT IF YOU LOOK AT  
21 PAGE 10 OF THAT EXHIBIT, WE'RE NOW REFERRING AGAIN BACK  
22 TO EXHIBIT 458, HE CONCLUDES IN THE LAST PARAGRAPH, DOES  
23 HE NOT, THAT CLOSING THE AIRPORT WOULD VIOLATE AT LEAST  
24 THAT LEASE AGREEMENT?

25           A       THAT'S PRECISELY WHAT HE CONCLUDES, YES.

26           Q       ALL RIGHT.  REFERRING NOW TO EXHIBIT 460  
27 WHICH IS THE FOLLOWING EXHIBIT, IF YOU WOULD?

28           A       YES.  THE LOGO AT THE TOP IS CUT OFF, BUT

1 FROM THE FACT THAT IT SAYS "WESTERN REGION," I WOULD  
2 GATHER IT'S FROM THE FAA, THE FEDERAL ADMINISTRATION  
3 AVIATION ADMINISTRATION, OF THE WESTERN REGION.

4 Q IF YOU TURN TO THE SPECIFIED PAGE, IT'S  
5 SIGNED BY DEWITT LAWSON, D-E CAPITAL W-I-T-T. YOU KNOW  
6 HIM TO BE THE REGIONAL COUNSEL OF --

7 A I KNOW MR. LAWSON. HE WAS THE REGIONAL  
8 COUNSEL OF FAA FOR A LONG TIME.

9 Q RIGHT. HAVE YOU SEEN THIS LETTER BEFORE?

10 A YES, BUT NOT IN A WHILE.

11 Q OKAY. THIS LETTER EXPRESSES THE FAA'S  
12 CONCERN ABOUT THE CITY EVICTING TENANTS FROM THE  
13 AIRPORT; CORRECT?

14 A YES.

15 Q AND THE VERY FIRST SENTENCE: "WE HAVE BEEN  
16 INFORMED THAT THE CITY COUNCIL HAS DIRECTED THE CITY  
17 OFFICIAL TO ISSUE TENANCY TERMINATIONS TO VIRTUALLY ALL  
18 THE BUSINESS TENANTS"; CORRECT?

19 A THAT'S CORRECT, WHAT IT SAYS.

20 Q DO YOU KNOW HOW THE FAA WAS INFORMED OF THIS  
21 CIRCUMSTANCE?

22 A DO I KNOW?

23 Q YES.

24 A NO. I HAVE A FAIRLY GOOD IDEA OF WHO  
25 COMPLAINED TO THEM.

26 Q WHO COMPLAINED TO THEM?

27 A I BELIEVE THAT THE AIRPORT ASSOCIATION  
28 COMPLAINED TO THEM. I BELIEVE THAT THE INDIVIDUAL FIXED

1 BASE OPERATORS AND BUSINESS OWNERS COMPLAINED TO THEM,  
2 AND I THINK THAT THE NATIONAL BUSINESS AVIATION  
3 ADMINISTRATION COMPLAINED TO THEM.

4 Q DID ANY OF THESE COMPLAINTS TAKE THE FORM OF  
5 LITIGATION?

6 A I'M NOT SURE, SIR. NOT BY THE FAA. THERE  
7 WERE VARIOUS SUITS BY INDIVIDUAL LESSEES, AND I RECALL A  
8 STATE COURT -- I DON'T ACTUALLY RECALL THE STATE --  
9 WHETHER THE ASSOCIATION FILED A STATE COURT SUIT. THERE  
10 WERE SUITS FILED BY VARIOUS LESSEES.

11 I THINK MR. KNICKERBOCKER, AFTER HE CEASED  
12 BEING CITY ATTORNEY, FILED A LAWSUIT AGAINST THE CITY,  
13 BUT I DON'T RECALL WHO IT WAS ON BEHALF OF. SOME  
14 AVIATION INTEREST.

15 Q DO YOU KNOW THAT MR. KNICKERBOCKER WAS  
16 REPRESENTING THE SANTA MONICA AIRPORT ASSOCIATION AFTER  
17 HE LEFT THE SANTA MONICA CITY ATTORNEY'S OFFICE?

18 A YES. THE AIRPORT ASSOCIATION?

19 Q YES, SIR.

20 A I'M NOT ENTIRELY SURE. I THINK HE WAS. I  
21 KNOW HE HAD HIS OFFICES AT THE AIRPORT FOR A WHILE. AND  
22 I KNOW HE HAD AIRPORT -- AT LEAST AIRPORT BUSINESS  
23 CLIENTS. HE MAY HAVE REPRESENTED THE ASSOCIATION.

24 Q TURN TO EXHIBIT 464, IF YOU WOULD.

25 A I HAVE IT.

26 Q IN FACT, DIDN'T YOU WRITE THIS SPECIAL STAFF  
27 REPORT?

28 A YES, I DID.

1 Q AND WE CAN TELL THAT --

2 A I SHOULD POINT OUT THAT WHERE IT SAYS, "CA,"  
3 WHICH IS CITY ATTORNEY, IT SAYS, "RMM." THAT WOULD BE  
4 ROBERT MEYERS WHO IS THE CITY ATTORNEY AND THEN MY  
5 INITIALS AFTER THAT WHICH INDICATED I WAS THE DRAFTER OF  
6 IT. BUT MR. MEYERS HAD INPUT INTO THE FINAL PRODUCT.

7 Q RIGHT. AND AT THE END OF THE DOCUMENT WHERE  
8 IT INDICATES WHO PREPARED THIS DOCUMENT IT INDICATES  
9 IT'S PREPARED BY MR. MEYERS AND YOURSELF; CORRECT?

10 A YES.

11 Q WE CAN TELL THAT FROM BOTH THAT PREPARED BY  
12 PAGE AS WELL AS THE INITIALS ON THE FIRST PAGE?

13 A YES, YOU CAN.

14 Q OKAY. AND THE SECOND PARAGRAPH OF THE FIRST  
15 PAGE, DOES THAT ACCURATELY SET FORTH THAT THE CITY  
16 COUNCIL'S PRIMARY GOAL WAS TO PUT THE AIRPORT PROPERTY  
17 TO ITS HIGHEST AND BEST USE INCLUDING MAXIMUM REVENUE?

18 A I THINK THAT'S AN ACCURATE STATEMENT. I  
19 BELIEVE WE DERIVED THAT DIRECTLY FROM STATEMENTS OF THE  
20 CITY COUNCIL.

21 Q RIGHT. AND IT ALSO SETS FORTH THAT IF  
22 CONTINUED, AIRPORT USE IS DETERMINED TO BE INCOMPATIBLE  
23 WITH THE GOAL OF MAXIMUM REVENUE, THAT THE CITY SHOULD  
24 REMOVE THE LEGAL OBSTACLES TO CLOSING THE AIRPORT;  
25 CORRECT?

26 A THAT IS CORRECT.

27 Q OKAY. AND THIS OCCURRED IN -- THIS DOCUMENT  
28 IS DATED JUNE 23RD, 1981; CORRECT?

1 A YES.

2 Q THAT IS SOME SEVEN MONTHS AFTER THE MEMO FROM  
3 MR. BURL ADVISING THE CITY THAT IT'S HIS BELIEF THEY  
4 WOULD BE IN BREACH AT LEAST OF THE LEASE AGREEMENT WITH  
5 THE FAA IF THEY TRIED TO CLOSE THE AIRPORT; CORRECT?

6 A YES, IT IS.

7 Q AND IF YOU'LL LOOK THROUGH THE FIRST TEN OR  
8 ELEVEN PAGES OF THIS DOCUMENT, THAT PRETTY WELL SETS  
9 FORTH A DETAILED CHRONOLOGICAL HISTORY OF EVENTS AT THE  
10 AIRPORT AS THEY SPECIFICALLY RELATE TO THE DEVELOPMENT  
11 PROBLEMS AND THE ISSUES RELATED TO NOISE; CORRECT?

12 A I BELIEVE THAT'S THE FAIR SUMMARY OF WHAT IT  
13 DOES.

14 Q AND IT'S SPECIFICALLY ON THE NINTH PAGE OF  
15 THIS DOCUMENT, PARAGRAPH NO. 5, TALKS ABOUT THE LOCAL  
16 AIRPORT ASSOCIATION.

17 DO YOU SEE THAT?

18 A I MUST HAVE THE WRONG PAGE.

19 Q I'VE NUMBERED THEM CONSECUTIVELY. IT'S THE  
20 NINTH PAGE. THERE'S A PARAGRAPH NUMBERED FIVE ON THAT  
21 PAGE. IT STARTS WITH A, B, C, D, E AT THE TOP OF THAT  
22 PAGE.

23 A I'M SORRY. I DON'T -- THE NINTH PAGE FROM  
24 THE BEGINNING?

25 Q YES, SIR.

26 THE COURT: WHAT'S AT THE TOP OF IT?

27 MR. KIRSCHBAUM: THOSE SMALL LETTERS A, B, C, D,  
28 AND E FROM PARAGRAPH 4 ON THE PRECEDING PAGE.

1 THE WITNESS: I HAVE THE PAGE.

2 MR. KIRSCHBAUM: OKAY.

3 THE WITNESS: THE LOCAL AIRPORT. I HAVE IT. IT  
4 SAYS THE LOCAL AIRPORT ASSOCIATION LATER JOINED BY  
5 NATIONAL AVIATION INTEREST, DOT, DOT, DOT.

6 Q BY MR. KIRSCHBAUM: RIGHT. THAT'S MEANT TO  
7 REFER TO SANTA MONICA AIRPORT ASSOCIATION; CORRECT?

8 A YES, IT IS.

9 Q AND THEN IN PARAGRAPH 6 AND 7 BELOW THAT, IT  
10 DISCUSSES THE FINDINGS OF THAT CASE, THAT IT WAS -- THE  
11 JET BAN WAS FOUND TO BE IMPERMISSIBLE AND THAT THE CITY  
12 COUNCIL THEN LOWERED THE SENEL TO 85; CORRECT?

13 A THAT IS CORRECT.

14 Q AND IF YOU TURN TO THE PAGE THEREAFTER, THE  
15 TENTH PAGE, THE HEADING NO. F TALKS ABOUT THE CURRENT  
16 CONTROVERSY.

17 A YES.

18 Q THAT WAS THE CONTROVERSY THAT WAS CURRENT IN  
19 JUNE OF 1981; CORRECT?

20 A PRESUMABLY. IF I COULD GLANCE AT THAT, I  
21 COULD VERIFY IT.

22 THE COURT: WHEN WE'RE TALKING ABOUT THE 1981,  
23 WE'RE TALKING ABOUT THE NBAA DISPUTE?

24 MR. KIRSCHBAUM: I'M SORRY. SAY THAT AGAIN, YOUR  
25 HONOR.

26 THE COURT: I WANT TO MAKE SURE I'M KEEPING THIS  
27 STRAIGHT.

28 WHEN YOU SAY THE 1981 DISPUTE, THAT'S

1 INVOLVING THE NBAA; RIGHT?

2 MR. KIRSCHBAUM: NO, THAT'S NOT INVOLVING -- THE  
3 CURRENT CONTROVERSY AS EXPRESSED IN EXHIBIT 464 IS  
4 SUBSEQUENT TO NBAA'S INJUNCTION HAVING BEEN GRANTED.

5 THE WITNESS: THEN I THINK MY -- I'M SORRY. I  
6 DIDN'T MEAN TO INTERRUPT THE COLLOQUY.

7 MR. KIRSCHBAUM: THAT'S OKAY.

8 THE WITNESS: THE NBAA SUIT WAS STILL PENDING AT  
9 THE TIME OF THIS. THE PRELIMINARY INJUNCTION WAS IN  
10 EFFECT AND THE ORDINANCE THAT WAS THE SUBJECT OF THE  
11 NBAA LAWSUIT HAD BEEN ENJOINED FROM ENFORCEMENT.

12 THE CONTROVERSY THAT IS REFERRED TO IN THIS  
13 STAFF REPORT, I THINK, PROBABLY KICKS UP ON THE NOISE  
14 CONTROVERSY THAT'S REFERRED TO IN THE PRECEDING PAGES,  
15 BUT REFERS TO A SERIES OF ACTIONS THAT THE CITY TOOK  
16 WITH RESPECT TO THE DESIRE TO INCREASE REVENUE FROM THE  
17 AIRPORT AND DECREASE AIRPORT OPERATIONS, INCLUDING THE  
18 EVICTION OR NON-RENEWAL OF CERTAIN TENANCIES. THAT IS  
19 WHAT THIS REFERS TO AND THE VARIOUS SUBJECTS IN IT.

20 Q BY MR. KIRSCHBAUM: LET ME JUST SEE IF I CAN  
21 REFINE THAT THOUGHT JUST A LITTLE BIT.

22 THE CURRENT CONTROVERSIES EXPRESSED IN THIS  
23 STAFF REPORT HAS NOTHING AT ALL TO DO WITH THE NBAA  
24 LAWSUIT; CORRECT? THIS IS JUST ABOUT THE REVENUE THAT  
25 THE CITY WOULD DERIVE FROM CLOSING THE AIRPORT AND  
26 PUTTING IT TO A DIFFERENT USE?

27 A WELL, I THINK --

28 Q ISN'T THAT TRUE?

1           A       NOT TO QUIBBLE. THE -- WHAT IS STATED AS THE  
2 CURRENT CONTROVERSY DOES, AS YOU SAY, REFER TO THE  
3 CITY'S DESIRE TO DERIVE GREATER ECONOMIC USE FROM THE  
4 AIRPORT AND SHUT DOWN OR DECREASE AT A MINIMUM AVIATION  
5 OPERATIONS.

6           THE PRECEDING PARAGRAPH TALKS ABOUT THE  
7 LAWSUIT WHICH IS ALSO PENDING, I WOULD THINK, OF THESE  
8 VARIOUS ACTIONS AS A WHOLE. THEY'RE DESCRIBED -- THE  
9 LEASE THINGS -- ACTIONS ARE DESCRIBED IN ONE SECTION OF  
10 THE REPORT, AND THE NBAA LAWSUIT IS IN THE PRECEDING  
11 SECTION.

12           I THINK IF YOU WERE USING A LICENSE THEY BOTH  
13 WOULD BE PART OF THE CURRENT CONTROVERSY.

14           THE COURT: HOLD ON A MINUTE. OKAY. I JUST HAVE  
15 TO MAKE SURE I UNDERSTAND THIS.

16           YOU'RE TALKING ABOUT CURRENT CONTROVERSY  
17 HERE. AND IT HAS -- THE CONTROVERSY IS STEMMING FROM  
18 THE CITY'S DESIRE TO SHUT DOWN AIRPORT OPERATIONS OR AT  
19 LEAST CUT BACK THE AVIATION USE OF THE AIRPORT.  
20 THAT'S -- IS THAT THE WHOLE -- FIRST, THIS WAS JUST ONE  
21 ASPECT OF THE CONTROVERSY YOU'RE DISCUSSING?

22           THE WITNESS: I'M SEEING IF I CAN ACCURATELY, YOU  
23 KNOW, ASSESS THE ANSWER IN A CLEAR AND UNDERSTANDABLE  
24 WAY.

25           THE COURT: LET ME. THEN YOU'RE TALKING ABOUT --  
26 ARE YOU ALSO DISCUSSING THE CONTROVERSY BETWEEN THE NBAA  
27 ALSO HERE AS WELL?

28           THE WITNESS: TO THE EXTENT THAT THE NOISE

1 ORDINANCE, THE CONTROVERSY WITH THE NBAA IN ITS ORIGINAL  
2 FORM WAS OVER THE NOISE ORDINANCE THAT WAS PASSED AFTER  
3 THE CITY -- THE JET BAN WAS NOT VALIDATED BY THE TRIAL  
4 COURT. THAT'S WHAT THE LAWSUIT WAS ABOUT.

5 THERE WERE DISCUSSIONS ABOUT WHETHER THAT  
6 LAWSUIT WOULD HAVE MEANT EXPANDED HAD IT BEEN ACTIVATED.  
7 IT WAS NEVER ACTIVATED.

8 THE NOISE CONTROVERSY, THE ABILITY OF THE  
9 CITY TO MINIMIZE THE NOISE IS PART AND PARCEL OF THE  
10 OVERALL PROBLEM OF WHETHER YOU KEEP THE AIRPORT OPEN OR  
11 NOT.

12 THE CITY WAS MOTIVATED TO CLOSE THE AIRPORT  
13 FOR TWO REASONS: ONE WAS, TO BE FRANK ABOUT IT, TO  
14 FAVOR THE NEIGHBORS WHO WERE AGGRIEVED WITH AIRPORT  
15 NOISE BY REDUCING THE NOISE TO ITS ABSOLUTE MINIMUM,  
16 I.E., NOTHING BY SHUTTING THE AIRPORT DOWN. AND TWO WAS  
17 TO DERIVE MONEY FOR THE CITY IN THE WAKE OF PROPOSITION  
18 13.

19 THE CITY HAD DUAL MOTIVATIONS HERE. IF THE  
20 CITY WAS UNABLE TO CLOSE THE AIRPORT -- AS YOU CAN SEE,  
21 THE LEGAL OPINION COMING FROM BOTH OUR OFFICE AND OUR  
22 OUTSIDE COUNSEL WAS THAT AT A MINIMUM IT WOULD BE THE  
23 YEAR 2015 UNTIL THE AIRPORT COULD BE CLOSED AND THAT'S  
24 EVEN ASSUMING THAT THE INSTRUMENT OF TRANSFER IN  
25 PERPETUITY TO KEEP THE AIRPORT OPEN, IF WE HAD TO KEEP  
26 THE AIRPORT OPEN.

27 WE HAD TWO GOALS. ONE -- AGAIN, ONE WAS TO  
28 MAKE AS MUCH MONEY AS WE COULD FROM IT, AND TWO, TAKE

1 THE NOISE DOWN AS MUCH AS WE CAN. SO THE LAWSUIT IS  
2 PART OF THE OVERALL PROBLEM. BUT THE ACTIONS THAT ARE  
3 REFERRED TO IN THIS STAFF REPORT GO WELL BEYOND THE  
4 LAWSUIT. DOES THAT --

5 THE COURT: YEAH. THAT DOES IT.

6 Q BY MR. KIRSCHBAUM: WHILE THE NOISE PROBLEM  
7 AS A WHOLE WAS CERTAINLY A PART OF THE CITY'S MOTIVATION  
8 TO CLOSE THE AIRPORT, YOU WOULD AGREE, THOUGH, WOULD YOU  
9 NOT, THAT IT'S NOT REFERENCED IN WHAT'S TERMED THE  
10 CURRENT CONTROVERSY IN THIS DOCUMENT?

11 A IT IS NOT DIRECTLY MENTIONED IN THAT SECTION  
12 OF THE DOCUMENT EXCEPT INSOFAR AS THERE IS A REFERENCE  
13 TO THE AFFIRMANCE OF JUDGE HILL'S DECISION IN THE LAST  
14 PARAGRAPH OF THAT SECTION.

15 Q WELL, WAIT A MINUTE. THAT AFFIRMANCE OF  
16 JUDGE HILL'S RULING WAS NOT AN AFFIRMANCE OF THE NBAA'S  
17 PRELIMINARY INJUNCTION. THAT WAS AN AFFIRMANCE OF THE  
18 SANTA MONICA AIRPORT ASSOCIATION '79 CASE UPHOLDING THE  
19 JET BAN; CORRECT?

20 A NO. YOU ALMOST HAD IT RIGHT. IT'S AN  
21 AFFIRMANCE OF JUDGE HILL'S DECISION UPHOLDING ALL THE  
22 OTHER REGULATIONS EXCEPT THE JET BAN.

23 Q OKAY. IT LET STAND JUDGE HILL'S DECISION  
24 WHETHER YOU WANT TO VIEW IT UPHOLDING FOR AND  
25 INVALIDATING ONE. HOWEVER YOU WANT IT LOOK AT THAT?

26 A IT WAS THE 1979 JUDGE HILL'S DECISION THAT  
27 WAS AFFIRMED, YES.

28 Q IT HAD NOTHING TO DO WITH THE NBAA; CORRECT?

1           A       THE NBAA SUIT WAS INITIALLY PROMPTED BY THE  
2 ORDINANCE THAT REPLACED ESSENTIALLY THE JET BAN BY  
3 ADOPTING A LOWER SINGLE EVENT DECIBEL LIMIT.

4           Q       I'M NOT MEANING TO SUGGEST THAT ANY OF THESE  
5 LAWSUITS ARE NECESSARILY INDEPENDENT VARIABLES OF ONE  
6 ANOTHER, BUT YOU WOULD AGREE, SIR, WOULD YOU NOT, THAT  
7 IS LATER DOWN, THOUGH, IN THAT CHAIN FROM THE NINTH  
8 CIRCUIT'S UPHOLDING THE SANTA MONICA AIRPORT ASSOCIATION  
9 DECISION?

10          A       I WOULDN'T DISAGREE WITH THAT  
11 CHARACTERIZATION PARTICULARLY, NO.

12          Q       AND WOULD YOU ALSO AGREE WITH ME, SIR, THAT  
13 AT THE TIME IN JUNE OF 1981, THE CITY WAS NOT  
14 CONSIDERING SCALING BACK AIRPORT OPERATIONS, THEY WERE  
15 LOOKING AT CLOSING THE AIRPORT ALTOGETHER; CORRECT?

16          A       I'M NOT SURE I WOULD AGREE WITH THAT.

17          Q       YOU THINK THEY WERE TRYING TO SCALE BACK  
18 OPERATIONS?

19          A       MY UNDERSTANDING IS THAT THE CITY WAS TRYING  
20 TO DO WHATEVER IT LEGALLY COULD DO. I BELIEVE THERE WAS  
21 A RECOGNITION CERTAINLY AMONG THE CITY'S STAFF AND MOST  
22 LIKELY AMONG THE CITY MEMBERS OF THE CITY COUNCIL THAT  
23 BECAUSE IT WAS PROBABLE THAT WE WOULD NOT BE ABLE TO  
24 CLOSE THE AIRPORT FOR A NUMBER OF YEARS, THAT IT WAS A  
25 PRUDENT THING TO DO TO SCALE BACK THE AIRPORT  
26 OPERATIONS.

27          Q       WELL, TURN TOWARDS THE BACK OF THIS DOCUMENT.  
28 I PROBABLY SHOULD HAVE PUT PAGE NUMBERS HANDWRITTEN ON

1 THIS DOCUMENT, BUT I DIDN'T WANT TO DESTROY THE  
2 INTEGRITY.

3 IF THE PAGE TOWARDS THE END WHERE THREE --  
4 WITH YOUR NAME ON IT, WHERE IT SAYS "PREPARED BY ROBERT  
5 MEYERS, SHANE STARK," TURN TO THE TWO PAGES IN FRONT OF  
6 THAT WHERE THE TOP SENTENCE ON THAT PAGE SAYS "SIDE OF  
7 THE RUNWAY."

8 A I HAVE THE PAGE.

9 Q OKAY. AND THIS DISCUSSES A SPECIFIC PLAN FOR  
10 DEVELOPING THE AIRPORTS; CORRECT?

11 A MAY I HAVE A MOMENT AND READ IT?

12 Q SURE.

13 A I HAVE NOW READ THE PARAGRAPH.

14 COULD YOU REPEAT THE QUESTION.

15 Q SURE. THERE ARE PHASES SET FORTH IN THIS  
16 SECTION OF YOUR REPORT THAT ARE NUMBERED ONE THROUGH  
17 FOUR THAT TALK ABOUT THE DEVELOPMENT OF THE AIRPORT  
18 PROPERTY; CORRECT?

19 A WELL, TO BE SPECIFIC, WHAT IT SAYS IS THAT WE  
20 COULD DEVELOP A SPECIFIC PLAN FOR THE PROPERTY IN  
21 PHASES.

22 Q RIGHT.

23 A THEN IT GOES ONE, TWO, THREE, FOUR.

24 Q THEN TURN TO THE NEXT PAGE WHERE PHASE FOUR  
25 INDICATES THAT YOU'RE -- THE CITY WANTS TO DEVELOP THE  
26 ENTIRE AIRPORT PROPERTY INCLUDING THAT CURRENTLY  
27 OCCUPIED BY THE RUNWAY AND TAXIWAY; CORRECT?

28 A THAT'S WHAT IT SAYS, YES.

1 Q AND THEN UNDER RECOMMENDATIONS TO THE CITY  
2 COUNCIL, THE VERY FIRST RECOMMENDATION IS THAT THE CITY  
3 COUNCIL ADOPT THE ACCOMPANYING RESOLUTION WHICH STATES  
4 THAT THE CITY'S POLICY TO EFFECTUATE CLOSURE OF THE  
5 AIRPORT AS SOON AS POSSIBLE AND INITIATES THE  
6 PREPARATION OF THE PHASE DEVELOPMENT YOU JUST DISCUSSED;  
7 IS THAT CORRECT?

8 A THAT'S WHAT IT SAYS -- WELL, IT INITIATES THE  
9 PREPARATION OF A SPECIFIC PLAN, AND IN THIS CASE, THE  
10 REFERENCE TO THE GOVERNMENT CODE, I BELIEVE, MEANS THAT  
11 THIS IS A FORMAL GOVERNMENTAL PLANNING DOCUMENT RATHER  
12 THAN AN AIRPORT PLAN.

13 Q RIGHT. WELL, IT ATTACHES A RESOLUTION THAT  
14 RESOLVES THAT IT'S THE POLICY OF THE CITY OF SANTA  
15 MONICA TO EFFECTUATE THE CLOSURE OF THE SANTA MONICA  
16 MUNICIPAL AIRPORT AS SOON AS POSSIBLE; IS THAT CORRECT?

17 A THAT IS CORRECT.

18 Q AND THE CITY ADOPTED THAT RESOLUTION;  
19 CORRECT?

20 A YES, IT DID. CITY COUNCIL DID.

21 THE COURT: MR. KIRSCHBAUM, WHAT I WANT TO DO IS  
22 GET BACK ON TRACK HERE. ALL THESE QUESTIONS YOU'RE  
23 GOING TO TIE UP IN TERMS OF YOUR POSITION THAT --

24 MR. KIRSCHBAUM: ABSOLUTELY. ABSOLUTELY. THE  
25 CITY --

26 THE COURT: GIVE ME AN OFFER OF PROOF AS TO WHAT  
27 KIND OF SUMMARIZING YOU'RE GOING TO WITH ALL THESE  
28 QUESTIONS?

1 MR. KIRSCHBAUM: SURE. SURE.

2 THE CITY HAS TRIED TO PORTRAY THIS AS THE  
3 AIRPORT ASSOCIATION JUST BEING SOME KIND OF  
4 DISINTERESTED SPECTATOR THAT HAD THE SAME RIGHTS AS ANY  
5 OTHER MEMBER OF THE GENERAL PUBLIC, THAT THIS WAS NOT A  
6 SETTLEMENT AGREEMENT OF OUR LITIGATION.

7 AND IN ORDER TO SHOW THAT IT WAS, IN FACT,  
8 NOT ONLY A SETTLEMENT OF OUR LITIGATION BUT THE PRODUCT  
9 OF OUR NEGOTIATIONS TOWARD THE END OF THAT LITIGATION, I  
10 THINK IT'S IMPORTANT FOR ME TO SHOW, AT LEAST STARTING  
11 IN THE CONTEXT OF WHERE IT STARTED IN 1979, HOW IT  
12 PROGRESSED AND HOW THE AIRPORT ASSOCIATION WAS  
13 INTRINSICALLY INVOLVED IN EVERY STEP OF THE PROCESS.

14 THE FACT THAT OUR CASE IN 1977, THE SAME  
15 MUNICIPAL ENTITY WAS CLAIMING YOU DON'T HAVE STANDING  
16 THEN, AND THEN 23 YEARS LATER, 24 YEARS LATER, WE'RE  
17 STILL HEARING THE SAME COMPLAINT THAT YOU GUYS STILL  
18 DON'T HAVE STANDING TO COMPLAIN ABOUT THESE SAME  
19 PROBLEMS BASED ON THE FACT THAT THERE IS AN AGREEMENT  
20 BETWEEN THE CITY AND THE FEDERAL GOVERNMENT. I THINK I  
21 NEED TO SHOW THE PROGRESS OF HOW THIS HAPPENED.

22 IT'S THE AIRPORT ASSOCIATION'S POSITION THAT  
23 THE FEDERAL AVIATION ADMINISTRATION WOULD NEVER HAVE  
24 BECOME INVOLVED IN SENDING SOME OF THE DOCUMENTS THAT  
25 WE'RE GOING TO SEE IN JUST A FEW MINUTES TO THE CITY  
26 SAYING, "IT'S TIME TO NEGOTIATE A RESOLUTION OR WE'RE  
27 GOING TO SUE YOU," UNTIL AFTER THEY WERE PUT ON NOTICE  
28 BY THE AIRPORT ASSOCIATION THROUGH THE FILING OF BOTH

1 OUR STATE COURT COMPLAINTS AND OUR ADMINISTRATIVE  
2 COMPLAINTS.

3 THE WITNESS SEEMS TO REMEMBER A COMPLAINT BY  
4 MR. DANFORTH BUT HAS TROUBLE REMEMBERING THE AIRPORT  
5 ASSOCIATION'S COMPLAINTS. I'M GOING TO SHOW HIM THOSE  
6 TO TRY TO REFRESH HIS RECOLLECTION.

7 THE COURT: ALL RIGHT. GO ON.

8 Q BY MR. KIRSCHBAUM: TURN, IF YOU WOULD, NOW  
9 TO EXHIBIT 35 IN VOLUME 1.

10 A THIS APPEARS TO BE A MEMO FROM JIM HOYT WHO  
11 WAS THE AIRPORT'S COMMISSIONER AS WELL AS AN AIRPORT  
12 NEIGHBOR TO THE CITY COUNCIL.

13 THE COURT: I'M SORRY. WE'RE LOOKING AT WHICH  
14 NUMBER? 55?

15 THE WITNESS: I HAVE 36. I'M SORRY.

16 Q BY MR. KIRSCHBAUM: 35. THIS IS A JULY 1981  
17 MEMO.

18 THE WITNESS: YES, IT'S FROM MR. HOYT.

19 MR. KIRSCHBAUM: RIGHT.

20 Q IT TALKS ABOUT ESTABLISHING A TASK FORCE TO  
21 DEAL WITH SOME OF THE PROBLEMS INCLUDING UTILIZATION OF  
22 THE SOUTH SIDE OF THE AIRPORT -- CORRECT? -- AND NOISE  
23 ABATEMENT PROGRAM?

24 A MAY I READ IT?

25 Q SURE.

26 A NOW I'VE READ THE MEMO.

27 Q OKAY. I JUST WANT TO DIRECT YOUR ATTENTION  
28 ON PAGE 2 TO THE PORTION MARKED "AVIATION INTERESTS"

1 THAT INCLUDES BOTH THE SANTA MONICA AIRPORT ASSOCIATION  
2 AND THE FAA AS "AVIATION INTERESTS"; CORRECT?

3 A THAT'S WHAT IT SAYS.

4 Q LET ME NEXT DIRECT YOUR ATTENTION TO  
5 EXHIBIT 466. THAT'S ALSO IN VOLUME 9.

6 A THAT'S THE COMPLAINT.

7 Q OKAY.

8 A IT IS A COMPLAINT, YES.

9 Q DO YOU RECOGNIZE THIS? HAVE YOU SEEN IT  
10 BEFORE?

11 A I BELIEVE I HAVE SEEN THIS DOCUMENT BEFORE.

12 Q OKAY.

13 A I HAVEN'T READ IT IN 20 YEARS.

14 Q ISN'T THIS ONE OF THE PIECES OF LITIGATION  
15 THAT WAS PENDING AT THE TIME OF THE 1984 AGREEMENT?

16 A I DON'T KNOW THE STATUS THIS LITIGATION WAS  
17 AT THE TIME OF THE 1984 AGREEMENT. THIS SAYS A  
18 COMPLAINT FILED BY MR. KNICKERBOCKER. I GUESS THAT WAS  
19 THE NAME OF HIS FIRM AT THE TIME.

20 Q HE WAS A FORMER CITY ATTORNEY OF THE CITY OF  
21 SANTA MONICA; CORRECT?

22 A THAT'S WHO HE WAS.

23 Q YOU RECOGNIZE THAT IN ABOUT JULY 1981 TIME  
24 FRAME HE WAS ALSO REPRESENTING SANTA MONICA AIRPORT  
25 ASSOCIATION?

26 A THAT'S WHAT HE WAS DOING -- WELL, TO BE  
27 PRECISE, I'M LOOKING THROUGH THE LIST OF PLAINTIFFS, AND  
28 I RECOGNIZE THE NAMES AS SOME OF THE LESSEES AT THE

1 AIRPORT.

2 Q INCLUDING MR. KNICKERBOCKER HIMSELF; CORRECT?

3 A YES, HE LEASED -- THAT'S WHERE HE WAS, 200  
4 AIRPORT AVENUE, KNICKERBOCKER LAW FIRM, DOES 1 THROUGH  
5 10. WE USED TO REFER TO HIS LAW FIRM.

6 Q YOU REFER TO THE NAME AS SANTA MONICA AIR  
7 CENTER?

8 A THAT'S MR. BARKER, CORRECT. THAT'S DANFORTH.  
9 HE'S THE FIXED BASE OPERATOR, YES.

10 Q IF YOU LOOK ON THE SECOND PAGE, THE LAST OF  
11 THE -- OR THE SECOND TO THE LAST OF THE --

12 A I SEE MR. BRANDSEN AS A PLAINTIFF, TOO.

13 Q RIGHT. YOU KNEW MR. BRANDSEN AND  
14 MR. DANFORTH AND MR. BARKER WERE MEMBERS OF THE SANTA  
15 MONICA AIRPORT ASSOCIATION, DID YOU NOT?

16 A I THINK THAT'S A FAIR STATEMENT. I THINK  
17 MR. BRANDSEN, AT LEAST, WAS AN OFFICER OF THE  
18 ASSOCIATION AT ONE TIME.

19 I THINK MR. BARTON WHO SAID HE WAS ALSO A  
20 MEMBER OF THE ASSOCIATION.

21 Q RIGHT. IF YOU LOOK ON PAGE 4 OF THE  
22 COMPLAINT, YOU SEE MR. DANFORTH LISTED AS NO. K AND  
23 BARTON LISTED AS NO. L; CORRECT?

24 A RIGHT. IN FACT, I THINK PRACTICALLY ALL THE  
25 AIRPORT TENANTS EXCEPT GUNNELL AND MAYBE CALIFORNIA  
26 AVIATION AND WOODY DUKE AND THE AIRPORT ASSOCIATION ARE  
27 LISTED AS PLAINTIFFS. THERE'S A LOT OF PLAINTIFFS IN  
28 HERE.

1 Q AND IS IT YOUR TESTIMONY THAT THIS CASE WAS  
2 NOT RESOLVED BY THE '84 AGREEMENT?

3 A THIS CASE WAS NOT RESOLVED BY THE 1984  
4 AGREEMENT. I DON'T KNOW WHAT HAPPENED TO THIS CASE.

5 I DON'T KNOW IF IT WAS DISMISSED ON ITS OWN  
6 TERMS FOR NOT BEING BROUGHT TO TRIAL IN FIVE YEARS OR  
7 SOME ACTUAL AFFIRMATIVE ACTION WAS TAKEN TO DISMISS IT.  
8 I JUST DON'T HAVE A MEMORY OF THAT.

9 Q SO HOW IS IT THAT YOU KNOW THAT IT WASN'T  
10 DISMISSED BY THE '84 AGREEMENT?

11 A BECAUSE I KNOW THAT THE 1984 AGREEMENT WAS  
12 INTENDED TO SETTLE DISPUTES BETWEEN THE FEDERAL AVIATION  
13 ADMINISTRATION AND NOT BETWEEN PRIVATE LITIGANTS AND THE  
14 CITY OF SANTA MONICA.

15 Q DOESN'T THE TERM OF THE '84 AGREEMENT SAY  
16 "ALL DISPUTES"?

17 A IT SAYS "ALL DISPUTES BETWEEN THE PARTIES TO  
18 THE AGREEMENT," AND THE PARTIES TO THE AGREEMENT ARE THE  
19 FAA AND NOT THE CITY.

20 I BELIEVE IF WE HAD INTENDED TO RESOLVE  
21 SPECIFICATION PENDING STATE COURT LITIGATION BETWEEN  
22 PERSONS OTHER THAN THE CITY AND THE FAA, THAT WE WOULD  
23 HAVE SPECIFIED THAT.

24 THE COURT: MR. KIRSCHBAUM, HOW CAN THIS DOCUMENT  
25 SETTLE A CASE BETWEEN SANTA MONICA AIRPORT ASSOCIATION  
26 AND THE CITY OF SANTA MONICA WHEN THE SANTA MONICA  
27 AIRPORT ASSOCIATION IS CLEARLY NOT A SIGNATORY TO THIS  
28 AGREEMENT?

1           HOW WOULD THEY BE BOUND TO THIS SETTLEMENT IF  
2 THEY'RE NOT A PARTY TO THE AGREEMENT?

3           MR. KIRSCHBAUM: BECAUSE THEY PARTICIPATED IN ITS  
4 PREPARATION. IT WAS THE SETTLEMENT AGREEMENT OF THEIR  
5 CLAIMS.

6           THE COURT: IS THERE GOING TO BE EVIDENCE THAT  
7 THEY PARTICIPATED IN THIS DOCUMENT?

8           MR. KIRSCHBAUM: ABSOLUTELY. NOT FROM THIS  
9 WITNESS. APPARENTLY, HE'S DENYING THEIR PARTICIPATION,  
10 BUT WE'LL PRESENT EVIDENCE THAT WILL CONTROVERT THAT.

11           I GUESS IT'S UP TO THE COURT TO WEIGH THE  
12 CREDIBILITY AND DECIDE ITS VALUE.

13           THE COURT: LET ME ASK YOU DIRECTLY, SIR, DID THE  
14 SANTA MONICA AIRPORT ASSOCIATION OR ANY REPRESENTATIVES  
15 OF THE SANTA MONICA AIRPORT ASSOCIATION PARTICIPATE IN  
16 THE PREPARATION OR WRITING OF THIS DOCUMENT, THE 1984  
17 AGREEMENT?

18           THE WITNESS: IN THE WRITING OF IT, NO. I ASSUME  
19 THAT THEY TALKED TO THE FAA, BUT THEY WEREN'T PART OF  
20 THE DISCUSSIONS BETWEEN THE CITY AND THE FAA.

21           THE COURT: GO ON, MR. KIRSCHBAUM.

22           MR. KIRSCHBAUM: THANK YOU, YOUR HONOR.

23           THE COURT: I GUESS THE QUESTION STILL REMAINS IS  
24 HOW CAN THEY BE BOUND IF THEY'RE NOT A SIGNATORY TO THE  
25 AGREEMENT?

26           MR. KIRSCHBAUM: BECAUSE THE AGREEMENT SPECIFIES  
27 ON ITS FACE THAT IT'S A SETTLEMENT OF ALL PENDING  
28 LITIGATION RELATING TO THE AIRPORT.

1 THE COURT: BUT HOW CAN YOU BE BOUND BY A DOCUMENT  
2 WHEN YOU DO NOT SIGN THE DOCUMENT OR THERE IS NO --  
3 NOTHING IN THE DOCUMENT THAT INDICATES THAT YOU'RE  
4 WILLING TO BE BOUND BY ANY SETTLEMENT?

5 MR. KIRSCHBAUM: I'M NOT CERTAIN WHAT I UNDERSTAND  
6 YOU MEAN BY "BOUND BY."

7 THE COURT: BE "BOUND BY" IF THEY DON'T WANT --

8 MR. KIRSCHBAUM: IF THEY DIDN'T ACCEPT THE TERMS  
9 OF THIS 1984 AGREEMENT AND DECIDED INSTEAD TO PROCEED  
10 WITH EITHER THEIR STATE COURT LITIGATION OR THEIR  
11 ADMINISTRATIVE COMPLAINT?

12 THE COURT: RIGHT. HOW WOULD THIS BE A BAR TO  
13 THAT?

14 MR. KIRSCHBAUM: THE TERMS OF THE '84 AGREEMENT  
15 ITSELF SAY IT'S BARRED TO IT.

16 THE COURT: THE TERMS CAN SAY ANYTHING. MY  
17 CONCERN IS THERE'S NOTHING IN HERE -- YOU CAN TELL ME  
18 ABOUT THE TERMS, BUT MY QUESTION GOES TO HOW ARE THEY  
19 GOING TO BE LEGALLY BOUND BY A SETTLEMENT IN THIS  
20 DOCUMENT?

21 MR. KIRSCHBAUM: WELL, YOUR HONOR, THERE ARE A  
22 COUPLE OF POINTS TO THAT QUESTION. AND FRANKLY, I THINK  
23 A GREAT DEAL OF THE RESPONSIBILITY FOR WHAT IS CLEARLY  
24 AMBIGUITY FALLS ON THE SHOULDERS OF THE DRAFTER OF THIS  
25 DOCUMENT WHO IS THE CITY AND THE FAA.

26 NOW, THE AIRPORT ASSOCIATION DOES NOT CONTEND  
27 THAT THEY HAD ANY --

28 THE COURT: I'M NOT SUGGESTING WE ARGUE THE CASE

1 NOW. THIS IS -- YOU KNOW, I THINK THESE ARE THE ISSUES  
2 THAT IN MY MIND NEED TO BE ADDRESSED, AND HOPEFULLY, AS  
3 EVIDENCE FALLS, WE'RE GOING TO GO IN THAT DIRECTION.

4 MR. KIRSCHBAUM: YES, WE ARE, YOUR HONOR.

5 THE COURT: ALL RIGHT. WHY DON'T YOU CONTINUE.

6 MR. KIRSCHBAUM: THANK YOU.

7 Q TURN TO EXHIBIT 474.

8 A OKAY.

9 Q HAVE YOU SEEN THIS BEFORE?

10 A LET ME LOOK. I BELIEVE I'VE SEEN THIS  
11 BEFORE.

12 Q THIS IS SANTA MONICA AIRPORT ASSOCIATION'S  
13 PART 13 COMPLAINT FOR VIOLATION OF VARIOUS AGREEMENTS  
14 WITH THE FEDERAL GOVERNMENT; CORRECT?

15 A THAT'S WHAT IT PURPORTS TO BE, AND I BELIEVE  
16 IT IS THE DOCUMENT THAT IS REFERRED TO IN THE LETTER  
17 THAT MR. TACHIKI ASKED ME ABOUT PREVIOUSLY.

18 Q RIGHT. TURN TO 476.

19 A YES.

20 I HAVE THE DOCUMENT.

21 Q THESE ARE THE TWO LETTERS MR. TACHIKI  
22 DISCUSSED WITH YOU EARLIER ABOUT THE FEDERAL AVIATION  
23 ADMINISTRATION DOCKETING SANTA MONICA AIRPORT  
24 ASSOCIATION'S FORMAL COMPLAINT AS DOCKET NO. 13-82-2;  
25 CORRECT?

26 A THAT'S WHAT IT SAYS.

27 Q DO YOU HAVE PERSONAL INFORMATION AS TO HOW  
28 THIS ADMINISTRATIVE COMPLAINT WAS RESOLVED?

1           A     NO. I DON'T -- LIKE I SAID, I DON'T KNOW  
2 THAT IT WAS EVER RESOLVED.

3           Q     DO YOU KNOW IF THIS COMPLAINT WAS PENDING AT  
4 THE TIME THAT THE CITY AGREED TO ENTER INTO NEGOTIATIONS  
5 WITH THE FEDERAL AVIATION ADMINISTRATION?

6           A     WELL, I THINK ACTUALLY IF YOU LOOK AT  
7 EXHIBITS NO. 481 AND 482, THERE IS A LETTER FROM THE FAA  
8 TO MR. MEYERS, THE CITY ATTORNEY, THREATENING TO SUE US,  
9 AND A LETTER BACK FROM MR. MEYERS TO THE GENERAL COUNSEL  
10 THAT SAYS THAT WE'RE GOING TO MEET WITH THEM.

11                   AND I THINK THIS IS APRIL 14TH. THIS WOULD  
12 HAVE BEEN TWO MONTHS AFTER THE RESPONSE FROM THE FAA TO  
13 THE AIRPORT ASSOCIATION THAT YOUR COMPLAINT WAS  
14 INCOMPLETE. SO TO THAT EXTENT IF IT WAS PENDING, IT WAS  
15 PENDING AT THE TIME, YES.

16           Q     DO YOU KNOW IF THE AIRPORT ASSOCIATION EVER  
17 PROVIDED ANY FURTHER DOCUMENTATION TO THE FAA TO  
18 CONTINUE PROSECUTION OF THEIR ADMINISTRATIVE COMPLAINT?

19           A     I HAVE NO KNOWLEDGE ONE WAY OR THE OTHER.

20           Q     DO YOU HAVE ANY KNOWLEDGE THAT THE FAA  
21 DISMISSED THE AIRPORT ASSOCIATION'S COMPLAINT FOR  
22 FAILURE TO PROVIDE ANY FURTHER DOCUMENTATION?

23           A     NO, I HAVE NO KNOWLEDGE ON THAT, SIR.

24           Q     DO YOU HAVE ANY KNOWLEDGE ABOUT A SETTLEMENT  
25 AGREEMENT OUTSIDE THE SCOPE OF THE '84 AGREEMENT THAT  
26 RESOLVES THE CITY OF SANTA MONICA'S CASE WITH THE  
27 AIRPORT ASSOCIATION IN DOCUMENT NO. 13-82-2?

28           A     I DON'T RECALL ANY. IF YOU SHOWED ME ONE, IT

1 MIGHT REFRESH MY RECOLLECTION.

2 Q DIRECT YOUR ATTENTION TO PAGE -- TO  
3 EXHIBIT 479.

4 A YES. IT APPEARS TO BE MR. DANFORTH'S PART 13  
5 COMPLAINT.

6 Q OKAY. AND YOU ACKNOWLEDGE RECEIVING THIS  
7 COMPLAINT AT THE TIME ON BEHALF OF THE CITY?

8 A I DON'T KNOW IF I PERSONALLY DID, BUT SOMEONE  
9 FROM THE CITY CERTAINLY ACKNOWLEDGED RECEIVING IT.

10 Q WAS THIS COMPLAINT RESOLVED BY AN AGREEMENT  
11 OTHER THAN THE '84 AGREEMENT?

12 A I DON'T BELIEVE SO.

13 Q WAS THE COMPLAINT RESOLVED BY THE '84  
14 AGREEMENT?

15 A TO THE EXTENT THAT THE FAA DID NOT TAKE  
16 KNOWLEDGE -- TAKE ACTION ON THIS AND IT WAS PENDING AT  
17 THE TIME, I THINK IT WAS RESOLVED. I BELIEVE WE  
18 ANSWERED THIS COMPLAINT.

19 Q WELL, IS IT POSSIBLE TO RESOLVE AN  
20 ADMINISTRATIVE COMPLAINT WITHOUT AN ANSWER?

21 A I'M NOT SURE ABOUT THAT.

22 Q OKAY.

23 A MY UNDERSTANDING IS THE FAA WILL NOT TAKE  
24 FINAL ACTION AGAINST AN AIRPORT OPERATOR UNLESS THERE'S  
25 BEEN SOME JOINING OF THE ISSUES ALTHOUGH I SUPPOSE THERE  
26 COULD BE AN AGREEMENT TO HAVE THE COMPLAINT DISMISSED,  
27 BUT I DON'T REALLY HAVE ANY INDEPENDENT KNOWLEDGE OF THE  
28 FAA'S PROCEDURES.

1 Q THE CITY COULD ENGAGE IN SETTLEMENT  
2 NEGOTIATIONS AND RESOLVE AN ADMINISTRATIVE COMPLAINT  
3 BEFORE THE FAA BEFORE FILING AN ANSWER, COULD THEY NOT?

4 A IT'S CERTAINLY POSSIBLE, YES.

5 Q TURN, IF YOU WOULD, TO EXHIBIT 481.

6 A YES.

7 Q THIS IS A LETTER YOU JUST REFERRED TO A FEW  
8 MOMENTS AGO, AT LEAST THE FIRST PAGE OF THIS; CORRECT?

9 A ACTUALLY, IT ONLY HAS ONE PAGE.

10 Q THERE SHOULD BE TWO PAGES HERE.

11 A OH, I'M SORRY. I MISSPOKE. THE FIRST  
12 PAGE IS THE LETTER FROM THE FAA. THE SECOND PAGE IS THE  
13 LETTER FROM MR. MEYERS BACK TO THE FAA.

14 Q RIGHT. THE FIRST PAGE SAYS THAT THE -- AT  
15 LEAST ON THE SECOND PARAGRAPH, THAT:

16 "THE JUSTICE DEPARTMENT AUTHORIZED  
17 INITIATION OF SUIT ON BEHALF OF THE UNITED  
18 STATES, BUT BEFORE FILING A COMPLAINT, WE  
19 WOULD LIKE TO NEGOTIATE WITH YOU."

20 CORRECT?

21 A THAT'S EXACTLY WHAT IT SAYS.

22 Q DID THE DEPARTMENT OF JUSTICE EVER FILE SUIT  
23 AGAINST THE CITY OF SANTA MONICA?

24 A NO, IT DID NOT.

25 Q DID THE FAA EVER FILE SUIT AGAINST THE CITY  
26 OF SANTA MONICA?

27 A NO, IT DID NOT.

28 Q AND IN THE NEXT PAGE, TWO WEEKS AFTER THE

1 FIRST PAGE, APRIL 2ND, 1982, THE SECOND PAGE, APRIL 14,  
2 THE CITY ATTORNEY ACCEPTS THE FAA'S OFFER TO MEET AND  
3 START NEGOTIATIONS; CORRECT?

4 A WELL, IT SAYS MEET TO RESOLVE ANY AREAS OF  
5 CONCERN, BUT TO THE EXTENT THAT IT INVOLVES  
6 NEGOTIATIONS, YOU COULD FAIRLY IMPLY THAT, YES.

7 Q IT SAYS AT THE BOTTOM YOU'LL BE CONTACTING  
8 THE GENERAL COUNSEL WITHIN A FEW DAYS.

9 DO YOU SEE THAT?

10 A YES, IT DOES.

11 Q DID YOU, IN FACT, DO THAT?

12 A I BELIEVE I DID.

13 Q DID THAT, IN FACT, START THE NEGOTIATION  
14 PROCESS TOWARDS RESOLUTION OF THESE ISSUES?

15 A I BELIEVE WHAT THAT STARTED IS THE AGREEMENT  
16 BY WHICH THE NBAA AND GAMA SUIT WAS DISMISSED, AND WE  
17 AGREED TO COMMENCE A FORMAL AIRPORT MASTER PLANNING  
18 PROCESS.

19 TO THE EXTENT THAT THE NEGOTIATION OF THE  
20 SPECIFIC AGREEMENT, WHICH CAME LATER AFTER THAT, IS PART  
21 OF THAT PROCESS, THEN THE ANSWER TO YOUR QUESTION IS  
22 YES.

23 Q WELL, DIDN'T THE TERMS OF THE '84 AGREEMENT  
24 COME FROM THE MASTER PLANNING PROCESS?

25 IN SO FAR AS TO HOW THE AIRPORT WAS GOING TO  
26 BE DEVELOPED -- THE MOVEMENT OF SERVICES FROM THE SOUTH  
27 SIDE TO THE NORTH SIDE TO FREE UP RESIDUAL LAND, THE  
28 NOISE ABATEMENT PROGRAM -- DIDN'T ALL THOSE ELEMENTS

1 COME OUT OF THE MASTER PLANNING AND ENVIRONMENTAL IMPACT  
2 REPORT?

3 A WITHOUT --

4 Q I'M SORRY. I WAS DONE.

5 A WITHOUT GOING THROUGH THESE VARIOUS  
6 DOCUMENTS, SOME OF WHICH ARE VERY VOLUMINOUS IN DETAIL,  
7 I COULDN'T TELL YOU WHETHER ALL OF THE ELEMENTS IN THE  
8 AGREEMENT CAME DIRECTLY OUT OF THE MASTER PLANNING  
9 PROCESS. CERTAINLY AT LEAST SOME OF THEM DID, AND SOME  
10 OF THE MAJOR CONCEPTS DID. I THINK THAT'S A FAIR  
11 STATEMENT.

12 BUT UNLESS I REALLY HAD SAT DOWN AND COMPARED  
13 THESE TWO LINE BY LINE, I DON'T THINK I CAN REALLY SWEAR  
14 AT WHETHER ANY PARTICULAR THING WAS IN OR OUT UNLESS I  
15 STILL HAD REFERENCE TO THE ACTUAL DOCUMENTS THEMSELVES.

16 Q I'M SORRY. ISN'T IT A FAIR CHARACTERIZATION  
17 THAT THE VAST MAJORITY OF THE TERMS THAT RELATE TO THE  
18 OPERATION OF THE AIRPORT -- THE TECHNICAL TERMS LIKE HOW  
19 MANY FBOS WERE GOING TO BE REQUIRED, THE NUMBER OF  
20 PARKING SPACES FOR AIRCRAFT, AND THE TERMS OF THE NOISE  
21 ABATEMENT PROGRAM -- ISN'T IT FAIR TO SAY THAT ALL OF  
22 THOSE CAME OUT OF THE PLANNING PROCESS?

23 A I BELIEVE, AND AGAIN, I REALLY DON'T HAVE A  
24 PRECISE CONCEPT OF EITHER THE MASTER PLAN OR THE AIRPORT  
25 AGREEMENT FIXED IN MEMORY.

26 I BELIEVE THAT THE NUMBER OF FBOS WAS  
27 SPECIFICALLY PROVIDED FOR IN THE MASTER PLAN AND WAS  
28 CARRIED FORWARD IN THE AIRPORT AGREEMENT. I THINK

1 THAT'S A FAIR ASSESSMENT.

2 Q WHAT ABOUT THE NUMBER OF TIE DOWNS?

3 A THE NUMBER OF TIE DOWNS, I BELIEVE THERE IS A  
4 GROSS NUMBER OF TIE DOWNS THAT'S REFERRED TO IN THE  
5 AIRPORT PLAN, AND I THINK THEIR GENERAL LOCATION IS  
6 SPECIFIED. BUT UNLESS I REALLY HAD THE MAPS AND LOOK AT  
7 THEM, I COULDN'T GIVE YOU A MORE PRECISE ANSWER AS TO  
8 THAT. I THINK YOU PROBABLY BEST LOOK TO THE DOCUMENTS  
9 ON IT. I THINK GENERALLY THE NUMBER OF TIE DOWNS WAS  
10 CERTAINLY MENTIONED IN THE MASTER PLAN.

11 Q WHAT ABOUT THE NOISE ABATEMENT PROGRAM?  
12 WEREN'T THE TERMS OF ALL OF THAT SET FORTH IN THE  
13 PLANNING DOCUMENTS?

14 A NO, I DON'T THINK SO. FOR CERTAIN THE  
15 PERFORMANCE BASED NOISE ORDINANCE WAS NOT IN THE MASTER  
16 PLAN. THAT, I THINK, WAS A PRODUCT OF MESTRE IN  
17 NEGOTIATIONS, NOT CH2M HILL, AND IT CAME LATER. AND  
18 WHAT I AM NOT CERTAIN OF IS WHETHER THE AGREEMENT TO  
19 HAVE A 95 SINGLE EVENT NOISE LIMIT RATHER THAN WHAT WE  
20 HAD WHICH WAS 85 OR -- CITY'S INITIAL POSITION WHICH  
21 ORIGINAL POSITION WAS -- WHICH WAS 90. I'M NOT SURE  
22 WHETHER IT WAS IN THE MASTER PLAN OR NOT. I COULD LOOK  
23 AND TELL YOU, BUT I DON'T HAVE IT IN MEMORY.

24 Q YOU DON'T BELIEVE THAT MR. MESTRE'S WORK WAS  
25 PART OF THE PLANNING PROCESS?

26 A HE WAS PROBABLY ENTERED INTO IT IN SOME  
27 EXTENT. HE WAS ON THE TEAM. HE DID NOT -- I DON'T  
28 THINK THAT HE CAME UP WITH A PERFORMANCE-BASED NOISE

1 PLAN UNTIL WE WERE NEGOTIATING THE AIRPORT AGREEMENT.

2 Q AND YOU BELIEVE THAT OCCURRED BETWEEN  
3 NOVEMBER OF '81 -- I'M SORRY. NOVEMBER OF '83 AND THE  
4 EXECUTION OF JANUARY OF '84, THOSE TWO MONTHS? YOU SAY  
5 THAT?

6 A I DON'T UNDERSTAND YOUR QUESTION.

7 Q I BELIEVE YOU TESTIFIED EARLIER THAT THE  
8 PLANNING PROCESS WAS CONCLUDED IN NOVEMBER OF 1983;  
9 RIGHT?

10 A THE MASTER PLANNING PROCESS, YES.

11 Q YEAH. THAT'S WHAT WE'RE TALKING ABOUT, THE  
12 PLANNING PROCESS FOR THE DEVELOPMENT OF SANTA MONICA  
13 AIRPORT FOLLOWING THE NEGOTIATIONS WITH THE FAA AND THE  
14 WORKING GROUP AND THE CONSULTANTS AND ALL OF THESE  
15 PEOPLE THAT WERE GETTING TOGETHER FOR ALL OF THESE  
16 MEETINGS THROUGHOUT 1983, STARTING APPROXIMATELY JANUARY  
17 OF '83 RUNNING ALL THE WAY THROUGH NOVEMBER; CORRECT?

18 A I DON'T HAVE ANY PRECISE RECOLLECTION OF  
19 EXACTLY WHEN THE AIRPORT WORKING GROUP WAS MEETING, BUT  
20 IT SOUNDS -- THAT SOUNDS RIGHT TO ME.

21 YES, THERE WAS A LENGTHY PLANNING PROCESS  
22 LEADING UP TO THE DEVELOPMENT OF THE PLAN.

23 Q SO IS IT YOUR TESTIMONY THAT MR. MESTRE'S  
24 WORK RELATING TO THE PERFORMANCE-BASED NOISE PROGRAM DID  
25 NOT OCCUR DURING THAT TIME BUT, INSTEAD, OCCURRED AFTER  
26 THAT TIME, BETWEEN NOVEMBER OF 1983 AND THE EXECUTION OF  
27 THE SANTA MONICA AIRPORT AGREEMENT IN JANUARY OF '84?

28 A I BELIEVE THAT'S CORRECT. IF YOU SHOW ME THE

1 MASTER PLAN, I COULD LOOK AT IT AND GIVE YOU A BEST  
2 ANSWER.

3 Q THERE IS ALSO AN ENVIRONMENTAL IMPACT REPORT  
4 IN THE 1984 AGREEMENT; RIGHT?

5 A YES, IT WAS.

6 Q WASN'T MR. MESTRE'S OPINION INCLUDED ON THE  
7 WORK ON THAT?

8 A MR. MESTRE DID WORK AT DIFFERENT TIMES. I  
9 BELIEVE MR. MESTRE AT ONCE, AT LEAST, IT WAS INCLUDED IN  
10 THE ENVIRONMENTAL IMPACT REPORT. WHAT I DON'T KNOW IS  
11 WHETHER THE CONCEPT OF THE PERFORMANCE-BASED NOISE LIMIT  
12 WAS INCLUDED IN THAT. AGAIN, I WOULD HAVE TO LOOK AT  
13 THE DOCUMENT.

14 Q OKAY. OTHER THAN -- LET'S ASSUME FOR A  
15 MOMENT THAT WE'RE GOING TO TAKE THE PERFORMANCE-BASED  
16 NOISE PROGRAM OUT OF THIS QUESTION.

17 WHAT OTHER PORTIONS OF THE '84 AGREEMENT DO  
18 YOU RECALL NOT BEING A PART OR COMING OUT OF THE  
19 PLANNING PROCESS?

20 A HONESTLY, I WOULD HAVE TO LOOK AT THE  
21 DOCUMENTS THEMSELVES TO REFRESH MY MEMORY. I WOULD BE  
22 HAPPY TO DO THAT IF YOU WOULD LIKE ME TO DO IT.

23 Q NO. INSTEAD, I WOULD LIKE YOU TO LOOK AT  
24 EXHIBIT 482.

25 A THIS WOULD BE A LETTER RE FORMAL COMPLAINT,  
26 NO. 13-82-4.

27 Q YES, SIR.

28 HAVE YOU SEEN THIS BEFORE?

1 A I BELIEVE I HAVE, YES.

2 Q THIS IS THE LETTER FROM THE FAA DOCKETING  
3 MR. DANFORTH'S COMPLAINT AS A PART 13 ACTION, TWO  
4 NUMBERS AFTER THE AIRPORT ASSOCIATION'S, THE AIRPORT  
5 ASSOCIATION WAS 82-2, THIS ONE IS 82-4?

6 A YES.

7 Q NEXT, TURN YOUR ATTENTION, IF YOU WOULD, TO  
8 EXHIBIT 485.

9 A THAT WOULD BE THE CITY'S ANSWER TO THE  
10 COMPLAINT.

11 Q YES, IT IS.

12 A THAT WOULD BE DANFORTH'S COMPLAINT.

13 Q YES, IT IS.

14 A I SEE THE DOCUMENT.

15 Q OKAY. AND THE CITY PREPARED THIS IN RESPONSE  
16 TO MR. DANFORTH'S COMPLAINT?

17 A YES.

18 Q OKAY. AND IF YOU LOOK ON PAGE 4, PARAGRAPH  
19 NO. 11, THE SECOND SENTENCE STATES: "WE DO NOT REGARD  
20 THE 1948 INSTRUMENT OF TRANSFER AS HAVING ANY CONTINUED  
21 FORCE."

22 THAT'S WHAT WE SAID.

23 A OKAY.

24 Q AND ON THE BOTTOM OF PAGE 8, THE LAST  
25 SENTENCE STATES THAT: "IT'S THE CURRENT POLICY OF THE  
26 CITY COUNCIL AS FOLLOWS:" AND IF YOU GO TO THE NEXT  
27 PAGE NO. B, "THE CITY INTENDS TO CLOSE THE AIRPORT WHEN  
28 LEGALLY POSSIBLE"; CORRECT?

1           A       THAT'S WHAT IT SAYS AT SUB B OF THAT  
2 PARAGRAPH. IT ALSO SAYS, "THE CITY RECOGNIZES ITS  
3 PRESENT OBLIGATION TO OPERATE A GENERAL AVIATION AIRPORT  
4 OPEN TO THE PUBLIC."

5           Q       HOW ARE YOU GOING TO OPEN TO THE PUBLIC A  
6 GENERAL AVIATION AIRPORT IF YOU'RE GOING TO CLOSE THE  
7 AIRPORT?

8           A       WELL, WITHOUT QUIBBLING, IT SAYS RIGHT ON THE  
9 FACE OF THAT PARAGRAPH THAT WE INTEND TO CLOSE THE  
10 AIRPORT WHEN LEGALLY POSSIBLE. BUT WE RECOGNIZE OUR  
11 PRESENT OBLIGATION TO OPERATE A GENERAL AVIATION  
12 AIRPORT, WHICH I WOULD TAKE IT TO MEAN THAT THE CITY'S  
13 INTENTION IS TO CONTINUE TO OPERATE THE GENERAL AVIATION  
14 AIRPORT UNTIL IT IS ESTABLISHED THAT THERE IS NO LEGAL  
15 IMPEDIMENT TO CLOSING ITS AIRPORT.

16          Q       LET ME NEXT DIRECT YOUR ATTENTION TO  
17 EXHIBIT 487.

18          A       WHAT VOLUME IS THAT, SIR?

19          Q       THAT WOULD BE VOLUME 10.

20          A       I SEE THE DOCUMENT.

21          Q       THIS PURPORTS TO BE ANOTHER COMPLAINT UNDER  
22 PART 13. THIS ONE IS DATED MAY 22ND, 1982. IF YOU'LL  
23 TURN TO THE --

24          A       THAT'S WHAT IT PURPORTS TO BE, YES.

25          Q       LOOK TO THE TOP OF THE THIRD PAGE.

26               MR. TACHIKI: YOUR HONOR, I WOULD OBJECT TO THAT  
27 ON FOUNDATION GROUNDS TO --

28               THE COURT: WHAT EXHIBIT NOW?

1 MR. TACHIKI: THIS IS EXHIBIT 487.

2 MR. KIRSCHBAUM: EXHIBIT 487.

3 MR. TACHIKI: IT IS CLEARLY A DRAFT. IT IS NOT  
4 SIGNED, AND IT HAS BLANKS THROUGHOUT THE DOCUMENT, AND  
5 HE PURPORTS IT TO BE A COMPLAINT. IT CERTAINLY HAS NO  
6 NUMBER OR FILE STAMP TO SHOW THAT'S WHAT IT IS. I'LL  
7 LET MR. STARK PROVIDE THE FOUNDATION FOR THIS.

8 MR. KIRSCHBAUM: I DON'T BELIEVE MR. STARK CAN  
9 PROVIDE THE FOUNDATION FOR THIS DOCUMENT. I BELIEVE MY  
10 WITNESSES CAN, AND RATHER THAN HAVING TO RECALL HIM, I  
11 WOULD ASK THAT I BE PERMITTED TO QUESTION WITH  
12 RESPECT --

13 THE COURT: ALL RIGHT. I'LL ALLOW YOU TO QUESTION  
14 SUBJECT TO A MOTION TO STRIKE.

15 MR. KIRSCHBAUM: OKAY.

16 Q HAVE YOU SEEN THIS DOCUMENT BEFORE OR A  
17 DOCUMENT SIMILAR TO THIS PURPORTING TO BE A COMPLAINT  
18 UNDER PART 13 FILED IN OR ABOUT MAY OF 1982?

19 A I'M NOT SURE.

20 Q WELL, TURN TO -- I THINK IT'S THE SEVENTH  
21 PAGE UNDER THE MAJOR HEADING "PERSONS FILING COMPLAINT."

22 A I HAVE THAT PAGE, SIR.

23 Q OKAY. YOU SEE IN THE FIRST SENTENCE THERE  
24 UNDER THE PERSONS FILING THE COMPLAINT ARE IDENTIFIED AS  
25 THE SANTA MONICA AIRPORT ASSOCIATION AND ITS 1200 PLUS  
26 MEMBERS AND BRILES WING AND HELICOPTER, INC.?

27 A YES, I SEE THAT.

28 Q DO YOU EVER RECALL HAVING AN ADMINISTRATIVE

1 COMPLAINT FILED WITH THE FAA BY THE SANTA MONICA AIRPORT  
2 ASSOCIATION WITH REGARDS TO BRILES WING AND HELICOPTER,  
3 INC.?

4 A I DON'T SPECIFICALLY RECALL THIS DOCUMENT.  
5 IT WOULDN'T SURPRISE ME IF THIS DOCUMENT HAD ACTUALLY  
6 BEEN FILED.

7 Q WHY WOULDN'T IT SURPRISE YOU?

8 A BECAUSE I KNOW MR. BRILES WHO OPERATED A  
9 HELICOPTER OPERATION AT THE AIRPORT WAS AGGRIEVED, AND I  
10 KNOW THAT THE AIRPORT ASSOCIATION WAS AGGRIEVED. AND IT  
11 WOULDN'T SURPRISE ME IF THEY FILED A COMPLAINT.

12 Q WOULD IT SURPRISE YOU IF THIS COMPLAINT WAS  
13 PENDING AT THE TIME OF THE 84 AGREEMENT?

14 A I DON'T KNOW ONE WAY OR THE OTHER WHAT THE  
15 STATUS OF THIS COMPLAINT WOULD HAVE BEEN. I REALLY  
16 DON'T HAVE ANY INDEPENDENT RECOLLECTION.

17 Q DO YOU HAVE ANY PERSONAL KNOWLEDGE AS TO HOW  
18 THIS COMPLAINT MAY HAVE BEEN RESOLVED?

19 A NO.

20 Q DO YOU HAVE ANY PERSONAL KNOWLEDGE REGARDING  
21 ANY OTHER SETTLEMENT AGREEMENT OTHER THAN THE '84  
22 AGREEMENT THAT MAY HAVE RESOLVED THIS COMPLAINT?

23 A NO, NOT UNLESS YOU SHOW ME A DOCUMENT WHICH  
24 WOULD REFRESH MY MEMORY.

25 Q LET ME DIRECT YOUR ATTENTION TO EXHIBIT 153.

26 A THAT WOULD BE IN VOLUME 3, WOULDN'T IT?

27 Q THAT IS THE FIRST DOCUMENT IN VOLUME 3.

28 A YES, THAT'S THE SO-CALLED INTERIM ALTERNATIVE

1 STUDY PREPARED BY THE ARROYO GROUP.

2 Q DURING THE TIME THAT THE CITY WAS NEGOTIATING  
3 WITH THE FAA AFTER ACCEPTING THEIR INVITATION TO DO SO  
4 IN APPROXIMATELY APRIL OF 1981 AND THE MASTER PLANNING  
5 PROCESS THAT COMMENCED IN JANUARY OF 1983, DID THE CITY  
6 ALSO COMMISSION A COMPANY KNOWN AS THE ARROYO GROUP TO  
7 PREPARE THE INTERIM ALTERNATIVE STUDY THAT'S CONTAINED  
8 AS EXHIBIT 153?

9 A YES, ALTHOUGH I -- THE LETTER THAT YOU  
10 REFERRED TO FROM THE FAA WAS 1982, AND HE COMMISSIONED  
11 THE ARROYO GROUP SHORTLY AFTER THAT. THE ARROYO GROUP  
12 WAS A PLANNING FIRM IN PASADENA.

13 Q RIGHT. AND TURN TO PAGE 14 OF THIS DOCUMENT,  
14 THE ONE WITH THE BATES MARK 9057.

15 A I HAVE THE PAGE.

16 Q OKAY. DO YOU SEE THAT THERE ARE A SERIES OF  
17 BULLET POINTS ABOVE THE SECTION E ENTITLED "COMMUNITY  
18 GROUPS"?

19 I WOULD LIKE TO DIRECT YOUR ATTENTION TO THE  
20 FULL PARAGRAPH ABOVE THE SECTION LABELED "COMMUNITY  
21 GROUPS" THAT BEGINS:

22 "AN AIRPORT PLAN HAS BEEN PROPOSED BY  
23 THE SANTA MONICA AIRPORT ASSOCIATION, SMAA,  
24 WHICH PURPORTEDLY REFLECTS THE DESIRES OF  
25 THE COMMUNITY OPERATOR."

26 DO YOU SEE THAT?

27 A YES, FOR CALIFORNIA AVIATION OPERATION, WHICH  
28 IS AN FBO ON THE SOUTH SIDE OF THE AIRPORT. YES, I SEE

1 THE PARAGRAPH.

2 Q AND CALIFORNIA AVIATION DID NOT LIKE THE  
3 ASSOCIATION'S PLAN; CORRECT?

4 A FOR SOME REASON, YES.

5 Q WERE THERE ANY OTHER CITIZEN GROUPS THAT  
6 PROVIDED AN AIRPORT PLAN OR PROPOSED AIRPORT PLAN TO THE  
7 CITY DURING THE PLANNING PROCESS BETWEEN 1981 TO 1984?

8 A TO BE PRECISE, I GUESS THE AIRPORT  
9 ASSOCIATION PROVIDED ONE TO THE CITY AS WELL AS TO ITS  
10 CONSULTANTS, TO THE BEST OF MY KNOWLEDGE. I DON'T  
11 BELIEVE SO -- I DON'T THINK THE AIRPORT NEIGHBORS DID,  
12 ALTHOUGH YOU NEVER -- THEY COULD HAVE MADE SUBMISSIONS.  
13 I JUST DON'T REMEMBER ANY.

14 Q LET ME DIRECT YOUR ATTENTION TO EXHIBIT 489.

15 A THAT WOULD BE IN VOLUME 10?

16 Q THAT WOULD BE IN VOLUME 10. THIS IS A STAFF  
17 REPORT TO THE MAYOR AND CITY COUNCIL PREPARED BY  
18 YOURSELF?

19 A IT IS JOINTLY PREPARED BY MYSELF AND BY JOHN  
20 JALILI WHO AT THE TIME WAS THE ASSISTANT CITY MANAGER.

21 Q HE WAS ALSO AT THE TIME THE ACTING AIRPORT  
22 DIRECTOR; CORRECT?

23 A I THINK THAT'S RIGHT. MR. FITZGERALD HAD  
24 BEEN RETIRED. MR. DITTMAR HADN'T BEEN APPOINTED YET.  
25 SO I BELIEVE THAT'S CORRECT. I'M QUITE CERTAIN HE WAS  
26 THE ASSISTANT CITY MANAGER.

27 Q OKAY. LET ME DIRECT YOUR ATTENTION TO PAGE 6  
28 OF THIS DOCUMENT UNDER THE MAJOR HEADING NO. 2: "SCOPE

1 OF WORK FOR AIRPORT MASTER PLAN STUDY."

2 A I'M SORRY, WHAT PAGE?

3 Q NO. 6.

4 A I SEE IT.

5 Q OKAY. ABOUT HALFWAY DOWN THE FIRST  
6 PARAGRAPH, IT INDICATES:

7 "DURING THE COURSE OF STUDY THERE WILL  
8 BE EXTENSIVE CONSULTATION WITH THE AIRPORT  
9 COMMISSION, CITY STAFF, AIRPORT USERS,  
10 AIRPORT NEIGHBORS AND THE FAA."

11 A THAT'S WHAT IT SAYS.

12 Q OKAY. THERE WAS, IN FACT, EXTENSIVE  
13 CONSULTATION WITH THE SANTA MONICA AIRPORT ASSOCIATION  
14 AS PART OF THE AIRPORT USERS; CORRECT?

15 A I WOULD ASSUME THAT.

16 Q WEREN'T YOU A PART OF IT?

17 A YES.

18 Q OKAY. AND IN THE NEXT SEVERAL PARAGRAPHS AND  
19 PAGES, IT DETAILS THE TOPICS THAT ARE BEING INCLUDED;  
20 CORRECT?

21 A IN THE MASTER PLAN STUDY, YES.

22 Q THEY'RE NUMBERED 1 THROUGH 11; CORRECT?

23 A THAT'S WHAT IT SAYS.

24 Q OKAY. NO. 3 TALKS ABOUT THE RUNWAY LENGTH?

25 A YES, THAT'S WHAT IT TALKS ABOUT.

26 Q NO. 4 TALKS ABOUT THE NUMBER OF AIRCRAFT TIE  
27 DOWNS AND THE FLEET MIX?

28 A YEAH.

1 Q FIVE TALKS ABOUT THE FBOS AND THE FLEET MIX?

2 A IT SAYS THE FBOS THAT WOULD ADEQUATELY SERVE  
3 THE FLEET MIX AND THE ITINERANT MIX.

4 Q RIGHT. AND NO. 6 TALKS ABOUT LAND AVAILABLE  
5 FOR NON-AERONAUTICAL USE?

6 A YES.

7 Q AND PART D OF NO. 6 SAYS A RESIDUAL LAND PLAN  
8 SHOWING THOSE PARTS OF THE AIRPORT NOT NECESSARY FOR  
9 AERONAUTICAL USE?

10 A THAT'S ACTUALLY PART D OF NO. 7, BUT YES,  
11 THAT'S CORRECT.

12 Q PART D OF NO. 7.

13 I'LL DIRECT YOUR ATTENTION TO EXHIBIT 490 --  
14 I'M SORRY, 491.

15 A THAT'S THE JOINT MOTION TO DISMISS.

16 Q RIGHT. THIS CASE WAS DISMISSED PURSUANT TO  
17 THIS -- THIS CASE BEING THE NBAA CASE ABOUT THE '85  
18 DECIBEL NOISE LIMIT; CORRECT?

19 A YES.

20 Q THE MOTION WAS MADE IN JANUARY OF 1983;  
21 RIGHT?

22 A YES.

23 Q IN EXCHANGE FOR STARTING THE PLANNING PROCESS  
24 THAT LED TO THE '84 AGREEMENT?

25 A IT WAS ENTERED INTO AFTER WE LEFT THE  
26 CONTRACTS WITH THE PRIMARY AIRPORT CONSULTANT FOR THE  
27 MASTER PLAN AND WITH MR. MESTRE, AS IT TURNED OUT.

28 LET ME CLARIFY YOUR PRIOR QUESTION.

1 MR. MESTRE WAS ON BOARD WITH THE CITY AT THE TIME THE  
2 CONTRACT FOR THE MASTER PLAN WAS WRITTEN BUT -- YES,  
3 THAT'S CORRECT.

4 Q AND EXHIBIT 494 IS THE ORDER THAT WE JUST  
5 DISCUSSED EARLIER DISMISSING THIS CASE; CORRECT?

6 A YES.

7 Q AND ALTHOUGH IT WAS DISMISSED WITHOUT  
8 PREJUDICE, THIS CASE WAS NOT PENDING IN JANUARY OF 1984;  
9 CORRECT?

10 A NO. WE COMPLIED WITH THE TERMS OF THE  
11 DISMISSAL. AND A DISMISSAL WENT INTO EFFECT IN JANUARY,  
12 AND IT WASN'T REVIVED, NOT IN EFFECT IN JANUARY 1984.

13 Q LET ME DIRECT YOUR ATTENTION TO EXHIBIT 310.

14 A VOLUME 5, IS IT?

15 Q IT IS.

16 A I SEE IT.

17 Q DID YOU ASSIST IN THE PREPARATION OF THIS  
18 DOCUMENT?

19 A YES, I DID, TOGETHER WITH MR. JALILI AND  
20 MS. VIVIAN ROTHSTEIN WHO IS -- ROTHSTEIN, I BELIEVE,  
21 WORKED FOR THE CITY ADMINISTRATIVE OFFICE IN SOME  
22 CAPACITY.

23 Q FIRST PARAGRAPH DISCUSSES RETENTION OF THE  
24 FIRMS, CH2M HILL AND MESTRE GRIEVE IN NOVEMBER OF '82?

25 THE COURT: WE'RE LOOKING AT 310?

26 MR. KIRSCHBAUM: YES, YOUR HONOR. IT'S A  
27 MEMORANDUM DATED JANUARY 21, 1983.

28 THE WITNESS: IT'S FROM THE CITY STAFF TO THE

1 AIRPORT COMMISSION. YES, THAT'S WHAT IT SAYS.

2 Q BY MR. KIRSCHBAUM: OKAY. DOES THAT AT ALL  
3 REFRESH YOUR RECOLLECTION THAT MR. MESTRE, HAVING BEEN  
4 RETAINED IN NOVEMBER OF '82, WAS WORKING ON THE  
5 PERFORMANCE-BASED NOISE PROGRAM AS PART OF THE PLANNING  
6 PROCESS?

7 A NO, IT DOES NOT. IT INDICATES THAT  
8 MR. MESTRE HAD BEEN RETAINED AS A NOISE CONSULTANT. THE  
9 IDEA FOR THE PERFORMANCE-BASED NOISE PROGRAM CAME LATER  
10 IN THE PROCESS. I DON'T RECALL EXACTLY WHEN. SO IT  
11 REFRESHES MY RECOLLECTION AS TO WHEN MR. MESTRE WAS  
12 HIRED, BUT WHAT IT DOESN'T REFRESH MY RECOLLECTION AS TO  
13 IS WHETHER THE PERFORMANCE-BASED NOISE ORDINANCE WAS  
14 GERMINATED DURING THE MASTER PLANNING PROCESS OR DURING  
15 THE CONTRACT NEGOTIATION PROCESS. I DON'T HAVE A  
16 RECOLLECTION EITHER WAY AT THIS POINT.

17 Q I JUST THOUGHT THAT MIGHT REFRESH YOUR  
18 RECOLLECTION. I GUESS IT DOESN'T.

19 A UNFORTUNATELY, IT DOESN'T.

20 Q LOOK AT THE SECOND PAGE OF THIS DOCUMENT,  
21 UNDER THE HEADING "WORKING GROUP." THE ASSOCIATION,  
22 ABOUT TEN LINES DOWN ON THE PAGE, IS LISTED AS ONE OF  
23 THE MEMBERS OF THE WORKING GROUP; IS THAT CORRECT?

24 A YES, IT IS.

25 Q IT SAYS STAG, SMAA, NBAA. STAG WAS AN  
26 ANTI-AIRPORT GROUP, IF I RECALL CORRECTLY, THAT THEY'RE  
27 ONE OF THE NEIGHBOR GROUPS; CORRECT?

28 A "STOP THE AIRPORT GIVEAWAY," IF I REMEMBER

1 CORRECTLY.

2 Q LET ME DIRECT YOUR ATTENTION TO EXHIBIT 496.  
3 THAT IS IN VOLUME 10.

4 A I HAVE THE DOCUMENT, SIR.

5 Q ON 496, THIS IS AGAIN A DOCUMENT THAT YOU  
6 PREPARED?

7 A IT WAS PREPARED BY MR. JALILI AND MYSELF,  
8 YES.

9 Q AND IT'S A PROGRESS REPORT ON THE WORKING  
10 GROUP; CORRECT?

11 A YES, TO THE AIRPORT COMMISSION. IT'S A MEMO  
12 FROM THE STAFF TO THE AIRPORT COMMISSION THAT I THINK --  
13 I BELIEVE THAT'S CORRECT.

14 Q OKAY.

15 A IT SAYS, "THE WORKING GROUP HAS BEEN  
16 CONVENED, 15 MEMBERS. FULL SPECTRUM HAS ESTABLISHED A  
17 DIALOGUE."

18 Q ON THE COMPLEX ISSUES INVOLVED; CORRECT?

19 A YES.

20 IT SOUNDS MORE LIKE MR. JALILI'S WRITING THAN  
21 MINE.

22 Q OKAY. LET ME DIRECT YOUR ATTENTION TO  
23 EXHIBIT 501.

24 A THAT APPEARS TO BE A PRESS RELEASE FROM THE  
25 CITY MANAGER'S OFFICE.

26 Q RIGHT. DID THEY EVER SEND THESE PRESS  
27 RELEASES OVER TO THE CITY ATTORNEY'S OFFICE?

28 A WELL, THE CONTACT PERSON WAS A CITY

1 ATTORNEY'S WIFE, BUT I'M NOT SURE THAT'S QUITE THE SAME  
2 THING. I WOULDN'T DOUBT THAT THIS PARTICULAR PRESS  
3 RELEASE WAS SENT OVER TO THE CITY ATTORNEY'S OFFICE. I  
4 DON'T HAVE AN INDEPENDENT RECOLLECTION.

5 Q AT THE BOTTOM OF THE FIRST PAGE AND  
6 CONTINUING ON TO THE NEXT PAGE, IT DISCUSSES THE WORK OF  
7 THE WORKING GROUP AND INDICATES IT'S COMPOSED OF  
8 AVIATION, NEIGHBORHOOD, AND GOVERNMENT INTERESTS;  
9 CORRECT?

10 A THAT'S WHAT IT SAYS.

11 Q AND IT'S TALKING ABOUT FREEING UP COMPATIBLE  
12 NONAVIATION DEVELOPMENT TO EARN THE CITY \$4 TO  
13 \$10 MILLION A YEAR; RIGHT?

14 A YEAH, I DON'T KNOW WHERE THEY GOT THE NUMBER,  
15 THOUGH.

16 Q AND TOWARDS THE BOTTOM OF THAT SECOND PAGE,  
17 IT'S TALKING ABOUT REMOVING AND RELOCATING ALL OF THE  
18 FACILITIES SOUTH OF AIRPORT AVENUE TO A SUFFICIENT  
19 CONFIGURATION NORTH OF THE RUNWAY; RIGHT?

20 A THAT'S WHAT IT'S TALKING ABOUT, YES.

21 Q AND THOSE WERE TERMS THAT WERE INCORPORATED  
22 INTO THE '84 AGREEMENT; RIGHT?

23 A I WOULD HAVE TO LOOK AT THE '84 AGREEMENT. I  
24 KNOW THAT THE MASTER PLAN, HENCE, THE '84 AGREEMENT,  
25 CALLS FOR, I BELIEVE, 48 ACRES ON THE SOUTH SIDE OF THE  
26 RUNWAY TO BE USED FOR RESIDUAL LAND. BUT MY  
27 RECOLLECTION IS THAT THE PORTION OF THE SOUTH SIDE OF  
28 THE AIRPORT WAS TO BE KEPT IN AIRPORT USE AS WELL. BUT

1 AGAIN, I WOULD HAVE TO ACTUALLY LOOK AT THE DOCUMENT TO  
2 VERIFY THAT.

3 Q OKAY. CHECK -- TURN TO PAGE 7 OF THIS  
4 DOCUMENT.

5 A ARE WE STILL ON THE PRESS RELEASE?

6 Q I BELIEVE SO.

7 A SEVEN-PAGE PRESS RELEASE.

8 Q WELL, ACTUALLY, IT'S LABELED PAGE 7, BUT IF  
9 YOU'LL LOOK ON PAGE 4, IT'S THE HEADING ENTITLED  
10 "EXECUTIVE SUMMARY."

11 A AT THE TOP OF THE PAGE, IT SAYS, "REGULARLY  
12 USING SMO, REQUIRED RUNWAY LENGTH LESS THAN 5,000 FEET."

13 Q IT DOES.

14 A THEN IT STARTS WITH THE FIRST FULL PARAGRAPH,  
15 "LAYOUT CONCEPT PLAN."

16 Q THAT'S THE FIRST PARAGRAPH I WANT TO DRAW  
17 YOUR ATTENTION TO, "AIRPORT LAYOUT CONCEPT PLAN AND  
18 NOISE MITIGATION PROGRAM," WITH ATTENTION ON FIVE MAJOR  
19 OBJECTIVES, AND THE FIRST OBJECTIVE IS TO "END THE  
20 SERIOUS LEGAL CONTROVERSY AND RESTORE CERTAINTY OF  
21 OBLIGATION BETWEEN THE CITY AND AIRPORT USERS."

22 SEE THAT?

23 A YEAH. YES, I DO.

24 Q AND WHAT IS YOUR UNDERSTANDING OF WHAT THE  
25 SERIOUS LEGAL CONTROVERSY BETWEEN THE CITY AND THE  
26 AIRPORT USERS WAS AT THE TIME OF THIS PRESS RELEASE IN  
27 SEPTEMBER OF '83?

28 A I BELIEVE THE SERIOUS LEGAL CONTROVERSY

1 INVOLVES THE EXTENT TO WHICH THE CITY WAS OBLIGATED TO  
2 KEEP THE AIRPORT OPEN AND THE EXTENT TO WHICH WE HAD THE  
3 ABILITY TO REGULATE NOISE AT THE AIRPORT.

4 Q IS IT NOT TRUE THAT THE ONLY DOCUMENT FILED  
5 WITH RESPECT TO THE CITY'S ABILITY TO KEEP THE AIRPORT  
6 OPEN WAS THE AIRPORT ASSOCIATION'S PART 13 COMPLAINT  
7 FILED IN JANUARY OF 1983?

8 A THE ONLY DOCUMENT ON FILE?

9 Q THE ONLY DOCUMENT EVIDENCING A SERIOUS LEGAL  
10 CONTROVERSY THAT WAS FILED?

11 A THAT WAS FILED BY A PARTY OTHER THAN THE FAA,  
12 THAT IS CORRECT. THERE IS THE FAA'S THREAT TO SUE.

13 Q THAT THEY NEVER CARRIED THROUGH ON; CORRECT?

14 A NO, BECAUSE WE RESOLVED THE CONTROVERSY.

15 Q TURN TO PAGE 10 OF THIS DOCUMENT -- WELL --

16 A AFTER THE MAP?

17 Q I'M SORRY, GO BACK TO PAGE 7. THE TERMS OF  
18 THIS SECTION THAT DESCRIBE THE OBJECTIVE TALK ABOUT THE  
19 CONTROVERSY BETWEEN THE CITY AND THE AIRPORT USERS, NOT  
20 THE FAA; RIGHT?

21 A IT SAYS, "AND THE" -- YEAH, THE SENTENCE IS  
22 ACTUALLY AMBIGUOUS THE WAY IT IS WRITTEN, BUT I WOULD  
23 CERTAINLY RECOGNIZE A CERTAINTY OF OBLIGATIONS BETWEEN  
24 THE CITY AND AIRPORT USER. OBLIGATIONS BETWEEN AIRPORT  
25 USER I THINK WOULD MEAN THE LEASES AND TIE DOWNS.

26 Q TURN TO PAGE 10 IF YOU WOULD.

27 A TEN BEFORE OR AFTER THE PICTURE?

28 Q IT'S RIGHT AFTER THE PICTURE. TOWARDS THE

1 MIDDLE OF THE PAGE THERE'S A MAJOR HEADING, NO. 3,  
2 "IMPLEMENT THE PERFORMANCE-BASED NOISE PROGRAM."

3 A YES.

4 Q DO YOU SEE THAT?

5 A YES.

6 Q DOES THAT AT ALL REFRESH YOUR RECOLLECTION AS  
7 TO WHETHER OR NOT THE PERFORMANCE-BASED NOISE PROGRAM  
8 WAS PART OF THE PLANNING PROCESS IN SEPTEMBER OF 1983  
9 RATHER THAN SOMETHING NEGOTIATED SUBSEQUENT TO NOVEMBER  
10 OF '83?

11 A YES. IT WOULD INDICATE TO ME THAT THE  
12 NEGOTIATION -- THAT THE CONCEPT OF THE PERFORMANCE-BASED  
13 NOISE PROGRAM WAS DEVELOPED BEFORE NOVEMBER OF 1983.  
14 THAT'S WHAT IT WOULD INDICATE TO ME.

15 Q LET ME DIRECT YOUR ATTENTION TO EXHIBIT 43.  
16 THAT'S IN THE FIRST VOLUME.

17 A IT APPEARS TO BE MINUTES OF THE OCTOBER 24TH,  
18 1983 COMMISSION MEETING. IS THAT WHAT YOU HAD IN MIND?

19 Q YES, SIR. IF YOU WOULD REFER DOWN TO "NEW  
20 BUSINESS," IT INDICATES THEY'RE CONSIDERING THE  
21 MODIFICATIONS TO THE PROPOSED AIRPORT LAYOUT CONCEPT  
22 PLAN.

23 A IT SAYS, "AIRPORT CONCEPT PLAN." THAT'S  
24 CORRECT.

25 Q AND IT INDICATES IN THE ROLL CALL SECTION, IN  
26 SECTION 2 OF THIS DOCUMENT, THAT YOU WERE PRESENT FOR  
27 THIS MEETING?

28 A YES.

1           Q       IN THE SECOND PARAGRAPH OF NEW BUSINESS,  
2 MR. JALILI RELATED THAT AS A RESULT OF ADDITIONAL  
3 MEETINGS WITH AVIATION AND COMMUNITY INTERESTS, VARIOUS  
4 MODIFICATIONS TO THE PROPOSED CONCEPT PLAN WERE  
5 PROPOSED.

6           A       THAT'S WHAT IT SAYS.

7           Q       OKAY. DO YOU RECALL BEING A PART OF MEETINGS  
8 WITH AVIATION AND COMMUNITY INTERESTS RELATING TO  
9 CHANGES TO THE CONCEPT PLAN?

10          A       HOLD ON FOR A SECOND. THE THREE OR FOUR  
11 EXHIBIT BOOKS ARE SLIPPING.

12                   WOULD YOU REPEAT THE QUESTION, PLEASE.

13          Q       CERTAINLY. REFER, IF YOU WILL, TO THE SECOND  
14 PARAGRAPH OF THE SECTION MARKED NO. 4, "NEW BUSINESS,"  
15 WHERE MR. JALILI DISCUSSES --

16          A       IT'S AS A RESULT OF ADDITIONAL MEETINGS WITH  
17 AVIATION AND COMMUNITY INTERESTS, VARIOUS MODIFICATIONS  
18 HAVE BEEN MADE TO THE AIRPORT CONCEPT PLAN.

19          Q       YES.

20                   AND MY QUESTION TO YOU WAS, DO YOU RECALL  
21 BEING IN MEETINGS WHERE AVIATION INTERESTS DISCUSSED  
22 MODIFICATIONS TO THE CONCEPT PLAN?

23          A       I DON'T HAVE A SPECIFIC RECOLLECTION OF BEING  
24 IN SUCH MEETINGS, BUT I HAVE A GENERAL RECOLLECTION OF  
25 BEING PRESENT IN MEETINGS. I DON'T KNOW WHETHER  
26 MR. JALILI HAD MEETINGS WITH EITHER AVIATION INTEREST OR  
27 NEIGHBOR INTEREST, WHICH I TAKE WHAT IS MEANT BY  
28 COMMUNITY INTEREST, OTHER THAN THE WORKING GROUP

1 INDEPENDENT WHEN I WASN'T PRESENT.

2 Q BY AVIATION INTEREST, YOU UNDERSTAND THAT TO  
3 MEAN THE SANTA MONICA AIRPORT ASSOCIATION?

4 A NOT NECESSARILY. TO INCLUDE, BUT NOT LIMITED  
5 TO THE SANTA MONICA AIRPORT ASSOCIATION.

6 Q YOU KNEW THEY WERE A PART OF THESE MEETINGS;  
7 RIGHT?

8 A YES, I CERTAINLY -- I WOULD THINK THAT, AS A  
9 GENERAL MATTER, IN MEETINGS WHERE AVIATION INTEREST IN  
10 GENERAL, AS OPPOSED TO SPECIFIC LEASES, WERE DISCUSSED,  
11 GENERALLY REPRESENTATIVES FROM THE AIRPORT ASSOCIATION  
12 WOULD BE PRESENT.

13 Q LET ME --

14 THE COURT: WHY DON'T WE TAKE THAT UP AFTER THE  
15 LUNCH BREAK. LET'S BREAK FOR LUNCH AT THIS POINT.  
16 WE'LL RESUME AT 1:30.

17 MR. TACHIKI: WE HAVE A SCHEDULING PROBLEM WITH  
18 MR. STARK. I TOLD COUNSEL THAT HE NEEDS TO BE BACK IN  
19 SANTA BARBARA THIS AFTERNOON.

20 THE COURT: HOW MUCH MORE DO YOU HAVE?

21 MR. KIRSCHBAUM: I HAVE SEVEN MORE DOCUMENTS I  
22 NEED TO DISCUSS WITH HIM AND MAYBE 15, 20 MINUTES. I'M  
23 DOING MY BEST.

24 THE COURT: WHY DON'T YOU FINISH UP. I'LL GIVE  
25 YOU 15 MINUTES TO FINISH UP.

26 MR. TACHIKI: YOUR HONOR, I CAN CERTAINLY STAY A  
27 FEW MORE MINUTES. I HAVE A PRETTY IMPORTANT CONFERENCE  
28 CALL AT 2:00 O'CLOCK. 15 MINUTES.

1 THE COURT: 15 MINUTES, WE'LL --

2 MR. KIRSCHBAUM: I'LL DO MY BEST, YOUR HONOR.

3 THE COURT: IN 15 MINUTES I'M EXCUSING HIM, SO  
4 FINISH UP.

5 MR. KIRSCHBAUM: EXHIBIT 509, PLEASE.

6 THE WITNESS: THAT'S IN VOLUME 10?

7 MR. KIRSCHBAUM: IT IS IN VOLUME 10. THE TOP OF  
8 IT IS BLOCKED OUT, BUT IT APPEARS TO BE CITY COUNCIL  
9 MINUTES.

10 Q CITY COUNCIL MINUTES. I'M LOOKING AT  
11 EXHIBIT 509. IT'S A STAFF REPORT?

12 A I'M SORRY. I THOUGHT YOU SAID 510.

13 Q IF I DID, I MISSPOKE.

14 PLEASE REFER TO EXHIBIT 509?

15 A 509 IS A STAFF REPORT DATED NOVEMBER 8, 1983.

16 Q YOU WROTE THIS?

17 A YES, I DID. I TYPED IT. AS YOU SEE, THE  
18 LITTLE S AFTER THE BIG THREE S'S, I TYPED IT AS WELL AS  
19 WROTE IT.

20 Q I WOULD LIKE TO DRAW YOUR ATTENTION AT LEAST  
21 INITIALLY TO THE FIRST PARAGRAPH OF THIS DOCUMENT WHERE  
22 YOU TALK ABOUT STIPULATION OF THE PARTIES AND THE FAA IN  
23 THE NBAA CASE.

24 DO YOU SEE THAT?

25 A YES.

26 Q THE FAA WAS NOT A PARTY TO THAT CASE;  
27 CORRECT?

28 A NO, THEY WERE NOT. I THINK I MENTIONED WHO

1 THE PARTIES WERE EARLIER.

2 Q OKAY. TURN TO PAGE 3 OF THIS DOCUMENT.  
3 THAT'S SECTION MARKED "BACKGROUND STATEMENT OF THE  
4 PROBLEM."

5 A YES.

6 Q OKAY. IT INDICATES:

7 "THE SANTA MONICA AIRPORT HAS BEEN THE  
8 CENTER OF LEGAL AND POLITICAL DISPUTES FOR  
9 MANY YEARS. THESE DISPUTES HAVE INVOLVED  
10 THE CITY, THE FAA, VARIOUS AVIATION  
11 ASSOCIATIONS."

12 DO YOU SEE THAT?

13 A YES, I DO.

14 Q DOES THAT REFER AT LEAST IN PART TO THE SANTA  
15 MONICA AIRPORT ASSOCIATION?

16 A I BELIEVE, YES, IT DOES. ALSO THE NATIONAL  
17 AVIATION ASSOCIATIONS AS WELL AS THE SMAA.

18 Q TURN TO PAGE 14.

19 A WHERE IT SAYS "GENERAL PROVISIONS"?

20 Q YES. PROVISION NO. 4 INDICATES:

21 "ANY AGREEMENT WITH THE FAA WOULD  
22 SUPERSEDE ALL INCONSISTENT PROVISIONS OF  
23 OTHER AGREEMENTS BETWEEN THE UNITED STATES  
24 AND THE CITY."

25 A YES.

26 Q "THE PARTIES WOULD RELEASE EACH OTHER FROM  
27 LIABILITY AND SETTLE ALL LEGAL DISPUTES  
28 REGARDING THE AIRPORT"?

1 A YES.

2 Q THAT WAS THE INTENT?

3 A IT'S A MUTUAL THING. IT'S A FAIRLY  
4 STRAIGHTFORWARD MUTUAL RELEASE BETWEEN THE CITY AND THE  
5 FAA.

6 Q THIS STAFF REPORT PRESENTS MOST OF THE  
7 FEATURES OF THE '84 AGREEMENT, DOES IT NOT?

8 A I WOULD THINK THAT IT WOULD. BUT LET ME --  
9 IF I COULD LEAF THROUGH IT, I COULD VERIFY THAT.

10 YES, IT DOES. IT HAS THE THREE TIERED  
11 PERFORMANCE-BASED NOISE LIMIT.

12 Q RIGHT. AND THIS IS IN --

13 A AND THE GOLF COURSE TURN.

14 Q THIS WAS -- NOVEMBER 8TH, 1983 IS THE DATE OF  
15 THIS; CORRECT?

16 A YES.

17 Q AND THAT'S AT THE END OF THE PLANNING  
18 PROCESS; CORRECT?

19 A THAT'S CORRECT.

20 Q LET ME DIRECT YOUR ATTENTION TO EXHIBIT 510.

21 A OKAY.

22 Q THESE ARE MINUTES OF A CITY COUNCIL MEETING  
23 OF NOVEMBER 15, 1983; CORRECT?

24 A IT APPEARS THAT WAY. THERE'S A RECEIPT  
25 BLOCKING THE THING. SO IT SAYS "VICTIM."

26 Q TURN TO THE SECOND PAGE.

27 A YEAH, I THINK -- YES, THAT'S -- THE SECOND  
28 PAGE CLEARLY SAYS IT'S NOVEMBER 15TH, 1983 MINUTES.

1 Q OKAY. AND IF YOU TURN TO PAGE 4, THE CITY  
2 COUNCIL ACCEPTS THE ENVIRONMENTAL IMPACT REPORT AND  
3 AIRPORT LAYOUT CONCEPT PLAN AND NOISE MITIGATION  
4 PROGRAM; CORRECT?

5 A YES, IT DOES.

6 Q IT ALSO RESCINDS THE -- WELL, I'M SORRY.  
7 TURN TO EXHIBIT 511.

8 DO YOU SEE THAT? 511?

9 A THAT'S THE RESOLUTION APPROVING THE AIRPORT  
10 PLAN.

11 Q YES. AND SECTION 4 OF THIS RESOLUTION  
12 REPEALED RESOLUTION 6296 WHICH WAS THE CITY'S INTENT TO  
13 CLOSE THE AIRPORT AS SOON AS POSSIBLE; CORRECT?

14 A THAT'S WHAT IT DOES, YES.

15 I NOTE THAT IN THE MINUTES IT SAYS THAT THE  
16 ADOPTION OF THE RESOLUTION FOR THE NOISE PROGRAM IS  
17 DEFERRED UNTIL NEGOTIATIONS WITH THE FAA HAVE BEEN  
18 CONCLUDED AND AUTHORIZES NEGOTIATION FOR THE CONTRACT  
19 WITH THE FAA.

20 I THINK THAT THE CONTRACT WOULD HAVE BEEN  
21 PRETTY WELL DRAFTED AT THAT TIME BY THE LANGUAGE OF THE  
22 MINUTES.

23 MR. KIRSCHBAUM: NOTHING FURTHER, YOUR HONOR.

24 THE COURT: DO YOU HAVE ANYTHING?

25 MR. TACHIKI: JUST ONE QUICK QUESTION.

26 ///

27 ///

28 ///

## REDIRECT-EXAMINATION

BY MR. TACHIKI:

Q EARLY ON DIRECT EXAMINATION, WHEN JUDGE HILL ISSUED HIS DECISION IN THE SMAA CASE, HE ALSO MADE A RULING ON SMAA STATUS AS THIRD PARTY BENEFICIARY?

A YES, HE DID.

Q DO YOU REMEMBER WHAT HIS RULING WAS?

A HE REJECTED, AS IN THE NEGOTIATION, THAT THEY WERE THIRD PARTY BENEFICIARIES AND HAD ANY INDEPENDENT STANDING IN THE CONTRACT. I THINK YOU'LL FIND IT PROBABLY IN THE LAST PARAGRAPH OF HIS ORDER.

Q AND IN FACT, IT'S ONE -- LET ME STRIKE THAT. THAT WAS ONE OF THE CHALLENGES ON THE STANDING GROUNDS, WASN'T IT, THAT THIRD PARTY STATUS?

A THAT WAS ONE OF THE CHALLENGES, YES.

MR. TACHIKI: OKAY. THANK YOU.

I HAVE NOTHING FURTHER.

## RECROSS-EXAMINATION

BY MR. KIRSCHBAUM:

Q THE COURT DID FIND THAT THE AIRPORT ASSOCIATION HAD SOME STANDING BECAUSE IT INVALIDATED THE JET BAN; CORRECT?

A INDEPENDENT OF THE CONTRACTS, THE COURT, I BELIEVE, FOUND THAT ALL OF THE VARIOUS AIRPORT USERS HAD THE STANDING TO CHALLENGE THE JET BAN. THE SMAA HAS A GOOD STANDING AS THE AIRPORT MANUFACTURERS OR THE BUSINESS AIRCRAFT USERS, THE OTHER TWO PARTIES.

1                   YES, THEY HAD STANDING TO CHALLENGE THE JET  
2 BAN AND THE ORDINANCES BUT NOT AS THIRD PARTY  
3 BENEFICIARIES TO THE CONTRACT.

4           MR. KIRSCHBAUM: NOTHING FURTHER.

5           THE COURT: ALL RIGHT. THANK YOU, SIR.

6           THE WITNESS: THANK YOU VERY MUCH, SIR.

7           THE COURT: ALL RIGHT.

8                   COME BACK AT 1:45.

9  
10                   (LUNCH RECESS WAS TAKEN.)

11

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1 CASE NUMBER: SC059450  
2 CASE NAME: SANTA MONICA AIRPORT ASSOC.  
3 VS. CITY OF SANTA MONICA  
4 MALIBU, CALIFORNIA: WEDNESDAY, MARCH 19, 2003  
5 DEPARTMENT WE-W: HON. CESAR C. SARMIENTO, JUDGE  
6 APPEARANCES: (AS HERETOFORE NOTED.)  
7 REPORTER: SUSAN POKERSNIK, CSR #10298  
8 TIME: P.M. SESSION  
9  
10

11 THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD  
12 IN THIS CASE.

13 CONTINUE.

14 MR. KIRSCHBAUM: YES, YOUR HONOR. AT THIS POINT,  
15 WE WOULD LIKE TO CALL CAPTAIN BARRY SCHIFF, S-C-H-I-F-F.

16  
17 BARRY SCHIFF,  
18 CALLED AS A WITNESS BY THE PLAINTIFFS,  
19 WAS SWORN AND TESTIFIED AS FOLLOWS:  
20

21 THE CLERK: PLEASE RAISE YOUR RIGHT HAND TO BE  
22 SWORN.

23 YOU DO SOLEMNLY STATE THAT THE TESTIMONY YOU  
24 MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT  
25 SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE  
26 TRUTH, SO HELP YOU GOD?

27 THE WITNESS: I DO.

28 THE CLERK: THANK YOU. PLEASE HAVE A SEAT.

1                   COULD WE HAVE YOU STATE YOUR NAME AND SPELL  
2 YOUR LAST NAME FOR THE RECORD, PLEASE.

3           THE WITNESS: BARRY SCHIFF, S-C-H-I-F-F.

4           THE CLERK: THANK YOU.

5  
6                   DIRECT EXAMINATION

7 BY MR. KIRSCHBAUM:

8           Q       MR. SCHIFF, COULD YOU BRIEFLY DESCRIBE FOR  
9 THE COURT YOUR RELEVANT AVIATION BACKGROUND?

10          A       OH, WELL, I STARTED FLYING AT SANTA MONICA  
11 AIRPORT WHEN I WAS 14 YEARS OLD.

12          Q       WHEN WAS THAT?

13          A       50 YEARS AGO. IN 1952. I'VE BEEN A CAPTAIN  
14 FOR TRANSWORLD AIRLINES FOR 34 YEARS. RETIRED AT THE  
15 AGE OF 60 IN 1998.

16                   BUT I'VE BEEN FLYING SMALL AIRPLANES FROM  
17 SANTA MONICA AIRPORT THROUGHOUT MY 50-YEAR AVIATION  
18 CAREER. I'M AN AVIATION WRITER FOR THE LEADING AVIATION  
19 MAGAZINE IN THE WORLD. IT'S CALLED AOPA PILOT MAGAZINE.  
20 AND I'VE WRITTEN ABOUT ALMOST 1200 ARTICLES OVER THE  
21 YEARS FOR THAT MAGAZINE AS WELL AS A DOZEN BOOKS ON  
22 AVIATION SAFETY TECHNIQUE AND PROCEDURE.

23          Q       ABOUT HOW MANY FLIGHT HOURS DO YOU BELIEVE  
24 YOU HAVE?

25          A       26,200.

26          Q       AND HOW MANY DIFFERENT KINDS OF AIRPLANES  
27 HAVE YOU FLOWN?

28          A       276.

1 Q AND HAVE YOU BEEN ENGAGED TO RENDER OPINIONS  
2 AS AN EXPERT IN AVIATION-RELATED SUBJECTS?

3 A YES. I'VE WORKED AS AN EXPERT WITNESS IN  
4 AVIATION LITIGATION MATTERS FOR 30 YEARS APPROXIMATELY.

5 Q ABOUT HOW MANY CASES HAVE YOU BEEN INVOLVED  
6 WITH OVER 30 YEARS RELATING TO YOUR EXPERT WITNESS  
7 QUALIFICATIONS?

8 A WELL, I'VE PROBABLY BEEN INVOLVED IN  
9 HUNDREDS, BUT I'VE ONLY HAD TO TESTIFY IN PERHAPS 150,  
10 125.

11 Q OKAY. ARE YOU A MEMBER OF THE SANTA MONICA  
12 AIRPORT ASSOCIATION?

13 A YES, SIR.

14 Q HOW LONG HAVE YOU BEEN A MEMBER OF THE SANTA  
15 MONICA AIRPORT ASSOCIATION?

16 A SINCE ITS INCEPTION. I'VE ALSO BEEN A  
17 DIRECTOR OF THE ASSOCIATION FOR A NUMBER OF YEARS, AND  
18 I'VE BEEN CHAIRMAN OF THE BOARD FOR THE LAST TEN OR SO  
19 YEARS.

20 Q IN THE LATE '70S TIMEFRAME, WERE YOU THE  
21 PRESIDENT OF THE SANTA MONICA AIRPORT ASSOCIATION?

22 A YES, SIR, I WAS.

23 Q AND AT THAT TIME, DID THE SANTA MONICA  
24 AIRPORT ASSOCIATION FILE SUIT AGAINST THE CITY OF SANTA  
25 MONICA IN FEDERAL DISTRICT COURT CHALLENGING VARIOUS  
26 NOISE RELATED ORDINANCES?

27 A YES, IT DID.

28 Q AND AT THE TIME THAT THE AIRPORT ASSOCIATION

1 FILED SUIT, WERE YOU PRESIDENT?

2 A YES, SIR.

3 Q AND YOU ARE FAMILIAR WITH THE -- WHAT WE'LL  
4 REFER TO AS THE 1977 JET BAN CASE?

5 A YES, SIR. I TESTIFIED IN JUDGE HILL'S COURT  
6 IN THAT MATTER.

7 Q WHAT DID YOU TESTIFY ABOUT IN JUDGE HILL'S  
8 COURT MATTER?

9 A I TESTIFIED AS AN EXPERT WITNESS AS TO THE  
10 NATURE OF AIRCRAFT NOISE.

11 Q SUBSEQUENT TO THE RULING IN JUDGE HILL'S  
12 TRIAL COURT INVALIDATING THE JET BAN, DID YOU BECOME  
13 AWARE OF AN ORDINANCE THAT THE CITY OF SANTA MONICA  
14 PASSED LOWERING THE SINGLE EVENT NOISE LIMIT FROM 100  
15 DECIBELS TO 85 DECIBELS?

16 A YES, SIR.

17 Q HOW DID YOU BECOME AWARE OF THAT?

18 A I DON'T RECALL HOW I BECAME AWARE OF IT, BUT  
19 IT BECAME COMMON KNOWLEDGE FAIRLY QUICKLY.

20 Q AND IN RESPONSE TO THE 85 DECIBEL ORDINANCE,  
21 DID YOU BECOME AWARE THAT A LAWSUIT IN FEDERAL COURT, IN  
22 JUDGE HILL'S COURT ONCE AGAIN, WAS FILED TO SEEK TO  
23 ENJOIN THAT ORDINANCE?

24 A YES.

25 Q DO YOU REMEMBER WHO BROUGHT THAT LAWSUIT?

26 A I BELIEVE IT WAS SANTA MONICA AIRPORT  
27 ASSOCIATION.

28 Q WOULD IT HELP IF I REFRESHED YOUR

1 RECOLLECTION AND TOLD YOU THAT IT WAS THE NATIONAL  
2 BUSINESS AIRCRAFT ASSOCIATION AND GENERAL AIRCRAFT  
3 MANUFACTURING ASSOCIATION?

4 A WELL, IT WOULD, BUT THEY REALLY BROUGHT IT  
5 FORTH ON OUR BEHALF.

6 Q WHY DO YOU SAY THEY BROUGHT IT ON YOUR  
7 BEHALF?

8 A BECAUSE THEY HAD MORE TO LOSE THAN WE DID AS  
9 THE ASSOCIATION. THE ASSOCIATION AT THAT TIME CONSISTED  
10 MAINLY OF MEMBERS WITH SMALL AIRPLANES, WHEREAS THE  
11 GENERAL AVIATION MANUFACTURERS ASSOCIATION, GAMA AND  
12 NBAA, NATIONAL BUSINESS AIRCRAFT ASSOCIATION, FORESAW  
13 THE EXPANDING OF THE JET FLEET. AND THEY DIDN'T WANT TO  
14 SEE A NOISE LIMIT LIKE THAT IMPEDE THE PROGRESS OF  
15 INTERSTATE COMMERCE.

16 Q DID YOU HAVE ANY PERSONAL INTERACTION WITH  
17 ANYBODY AT GAMA OR NBAA REGARDING THE 85 DECIBEL NOISE  
18 LIMIT?

19 A YES, SIR.

20 Q WHEN DID YOU FIRST HAVE THAT CONTACT?

21 A OH, BOY. I DON'T RECALL SPECIFICALLY. IT  
22 WASN'T TOO LONG AFTER THE SUIT WAS FILED.

23 Q DO YOU KNOW WHO YOU TALKED WITH?

24 A I BELIEVE IT WAS STAN GREEN AT GAMA. HE WAS  
25 THE ATTORNEY FOR GAMA.

26 Q AND DID THE SANTA MONICA AIRPORT ASSOCIATION  
27 COOPERATE WITH GAMA AND NBAA IN THE PROSECUTION OF THAT  
28 LAWSUIT?

1 A YES, WE DID.

2 Q HOW DID YOU DO THAT?

3 A THEY NEEDED SUBSTANTIAL INFORMATION AND  
4 DOCUMENTATION THAT WE HAD AND THEY DID NOT HAVE. AND WE  
5 PROVIDED THAT IN ASSISTANCE TO THEM, BECAUSE WE WERE  
6 LOCALLY BASED AND THEY WERE NOT.

7 Q AND THE AIRPORT ASSOCIATION PROVIDED THAT  
8 ASSISTANCE?

9 A YES.

10 Q FOLLOWING THE INJUNCTION WHICH PROHIBITED THE  
11 ENFORCEMENT OF THE 1981 -- I'M SORRY. LET ME START THAT  
12 QUESTION AGAIN.

13 FOLLOWING THE INJUNCTION THAT PROHIBITED THE  
14 ENFORCEMENT OF THE 85 DECIBEL NOISE ORDINANCE, DID YOU  
15 BECOME AWARE OF A FURTHER RESOLUTION ON THE PART OF THE  
16 CITY OF SANTA MONICA SEEKING TO CLOSE THE SANTA MONICA  
17 AIRPORT?

18 A I CERTAINLY WAS. IT WAS LIKE A BOMBSHELL.

19 Q HOW DID YOU BECOME AWARE OF IT?

20 A I THINK I READ ABOUT IT IN THE SANTA MONICA  
21 OUTLOOK, BUT WORD SPREAD QUICKLY. EVERYBODY KNEW ABOUT  
22 IT VERY RAPIDLY.

23 Q WHAT DID YOU DO WHEN YOU HEARD THAT THE CITY  
24 WAS GOING TO TRY AND CLOSE THE SANTA MONICA AIRPORT?

25 A WELL, THAT'S -- THAT COVERS ALL OUR  
26 TESTIMONY. BUT BASICALLY, WE MET AS AN ORGANIZATION AND  
27 TRIED TO PUT FORTH A BATTLE PLAN TO DO WHATEVER WOULD BE  
28 NECESSARY TO PREVENT THE CITY FROM CLOSING THE AIRPORT.

1 WE REALLY KNEW THAT OR BELIEVED THAT THE CITY  
2 COULDN'T CLOSE THE AIRPORT BASED ON THE 1948 INSTRUMENT  
3 OF TRANSFER, AND YET WE DIDN'T HAVE ANY POWER TO SUE THE  
4 CITY ON THE BASIS OF THAT.

5 I WENT TO WASHINGTON D.C. AND MET WITH JAY  
6 LYNNE HELMS, WHO WAS THEN THE ADMINISTRATOR OF THE FAA,  
7 AND SPENT TWO HOURS WITH HIM. AND HE SAID, "BARRY," HE  
8 SAID, "WE'RE READY TO STAND BEHIND YOU," HE SAID. "BUT  
9 YOU NEED TO FILE A PART 13 ADMINISTRATIVE ACTION AND  
10 THAT WILL GET US INVOLVED."

11 Q LET ME JUST STOP YOU RIGHT THERE FOR A  
12 SECOND. JAY LYNNE HELMS, THE ADMINISTRATOR OF THE FAA,  
13 THAT'S THE TOP GUY OF THE FAA?

14 A YES, SIR. YES, SIR. HE REPORTED ONLY TO THE  
15 SECRETARY OF TRANSPORTATION.

16 Q AND YOU PERSONALLY MET WITH HIM?

17 A YES, SIR, FOR TWO HOURS.

18 Q AND DISCUSSED THE CIRCUMSTANCES OF THE CITY  
19 ATTEMPTING TO CLOSE THE AIRPORT?

20 A YES, SIR.

21 Q AND DID I HEAR YOU ACCURATELY, DID HE  
22 INSTRUCT YOU TO FILE A COMPLAINT?

23 A HE DIDN'T INSTRUCT IT. HE PROBABLY SUGGESTED  
24 IT. HE SAID IT WOULD BE NECESSARY FOR THAT ACTION TO BE  
25 FILED BEFORE THE FAA COULD GET INVOLVED OR WOULD GET  
26 INVOLVED. I'M NOT SURE WHICH.

27 Q LET ME SHOW YOU A DOCUMENT THAT'S BEEN MARKED  
28 AS EXHIBIT 474. THAT WILL BE IN VOLUME NO. 9.

1 MR. KIRSCHBAUM: MAY I APPROACH, YOUR HONOR?

2 THE COURT: YES.

3 THE WITNESS: WHICH NUMBER WAS THAT?

4 MR. KIRSCHBAUM: 474.

5 Q THIS APPEARS TO BE THE AIRPORT ASSOCIATION'S  
6 COMPLAINT UNDER PART 13 DATED JANUARY 13, 1982. WOULD  
7 YOU AGREE?

8 A YES.

9 Q OKAY. IS THIS THE COMPLAINT THAT THE AIRPORT  
10 ASSOCIATION FILED FOLLOWING YOUR MEETING WITH THE  
11 DIRECTOR OF THE FAA?

12 A WITH THE ADMINISTRATOR OF THE FAA.

13 Q I'M SORRY.

14 A YES, IT IS.

15 Q ADMINISTRATOR OF THE FAA.

16 A YES.

17 Q AND DO YOU RECALL THAT THE BASIS FOR THE  
18 FILING OF THIS PART 13 ACTION WAS THE 1948 INSTRUMENT OF  
19 TRANSFER?

20 A YES.

21 Q DID YOU DISCUSS THAT WITH THE ADMINISTRATOR?

22 A YES, SIR.

23 Q AND COULD YOU ADVISE -- TELL THE COURT WHAT  
24 THE SUBSTANCE OF THE CONVERSATION WITH THE ADMINISTRATOR  
25 RELATING TO THAT CONVERSATION ABOUT THE '48 INSTRUMENT  
26 OF TRANSFER WAS?

27 A WELL, I'M NOT SURE THAT I CAN RECALL ANY  
28 SPECIFIC DETAILS OF THE CONVERSATION. IT WAS AFTER ALL

1 ABOUT A QUARTER OF A CENTURY AGO, ALMOST.

2 I DON'T RECALL. I SIMPLY WENT IN THERE  
3 BEGGING AND PLEADING FOR THE FAA TO BACK UP THE  
4 CITIZENS' RIGHTS FOR THE AIRPORT. AND IT HAD, I  
5 BELIEVE, EVERY LEGAL RIGHT TO DO SO, THAT THE CITY  
6 SHOULD NOT BE ALLOWED TO CLOSE THE AIRPORT BASED ON ITS  
7 OBLIGATIONS TO THE FEDERAL GOVERNMENT, AND HE BASICALLY  
8 AGREED. AND HE SAID, "OKAY, BUT HERE'S WHAT YOU NEED TO  
9 DO."

10 I DID THAT, AND AFTER THE PART 13 SECTION WAS  
11 FILED, I WAS CALLED SEVERAL TIMES BY BILL SHEA, THE  
12 ASSOCIATE ADMINISTRATOR OF THE FAA, WANTING ALL KINDS OF  
13 DOCUMENTATION AND INFORMATION THAT WE HAD THAT WOULD BE  
14 OF ASSISTANCE TO THE FAA IN ITS INTERVENTION IN THIS  
15 MATTER. AND I MADE ANOTHER TRIP BACK TO WASHINGTON AND  
16 PROVIDED THAT MATERIAL TO HIM PERSONALLY.

17 Q LET ME DIRECT YOUR ATTENTION TO EXHIBIT 476  
18 IN THAT SAME VOLUME. THIS IS A LETTER DATED FEBRUARY  
19 THE 4TH, 1982, FROM THE FAA TO THE AIRPORT ASSOCIATION.  
20 IT'S DIRECTED TO PAUL BLACKMAN.

21 A RIGHT.

22 Q HE'S REFERENCED AS PRESIDENT.

23 DO YOU SEE THAT?

24 A YES.

25 Q DOES THAT MEAN THAT YOU HAD SOME DIFFERENT  
26 OFFICE AT THE AIRPORT ASSOCIATION?

27 A THERE WERE YEARS WHERE I WAS AND WAS NOT  
28 PRESIDENT, AND PAUL BLACKMAN WASN'T FOR SOME OF THOSE

1 YEARS. AND AT THOSE TIMES WHEN I WAS NOT, I WAS  
2 CHAIRMAN OF THE BOARD. BUT I'VE HELD OFFICE IN THE  
3 ASSOCIATION EVER SINCE THE LATE '70S.

4 Q THIS LETTER SEEMS TO ASK FOR ADDITIONAL  
5 INFORMATION IN THE FIRST PARAGRAPH.

6 DO YOU SEE THAT?

7 A YES.

8 Q THE INFORMATION THAT YOU PERSONALLY BROUGHT  
9 BACK TO WASHINGTON D.C., WAS THAT RESPONSIVE TO THIS  
10 REQUEST?

11 A YES, IN PART.

12 Q WHAT KIND OF INFORMATION DID YOU BRING BACK?

13 A OH, GOSH. I DON'T RECALL SPECIFICALLY. IT  
14 WAS JUST A BUNCH OF DOCUMENTATION AND RECORDS THAT WE  
15 HAD REGARDING THE AIRPORT, ITS HISTORY, AND WHAT WE  
16 BELIEVE TO BE THE FOUNDATION FOR THE FAA'S INTEREST IN  
17 MAINTAINING THE AIRPORT.

18 Q WAS THERE EVER ANYTHING THAT THE FAA ASKED  
19 YOU FOR THAT YOU DIDN'T PROVIDE TO THEM?

20 A NO.

21 Q IN RESPONSE TO PROVIDING THIS INFORMATION TO  
22 THE FAA, WHAT DID THEY THEN DO?

23 A THEY CONTACTED THE CITY AND SAID, "WE BETTER  
24 SIT DOWN AND TALK ABOUT THIS." AND THE CITY SAID,  
25 "OKAY."

26 Q LET ME DIRECT YOUR ATTENTION TO EXHIBIT 481,  
27 ALSO IN THIS VOLUME.

28 THE FIRST PAGE OF THIS EXHIBIT IS AN

1 APRIL 2ND, 1982 LETTER TO THE CITY ATTORNEY FROM THE  
2 DEPARTMENT OF TRANSPORTATION, AND THE SECOND PAGE IS AN  
3 APRIL 14, 1982 RESPONSE BACK TO THE DEPARTMENT OF  
4 TRANSPORTATION FROM THE CITY ATTORNEY.

5 IS THAT WHAT YOU JUST REFERENCED?

6 A YES. THERE WERE PHONE CALLS AS WELL.

7 Q AND WHEN THE FAA ASKED THE CITY OR ADVISED  
8 THE CITY AS IN EXHIBIT 481 AND THE CITY RESPONDED THAT  
9 THEY WOULD BE WILLING TO NEGOTIATE, DID YOU THEN HAVE  
10 FURTHER CONTACT WITH THE FAA REGARDING AIRPORT  
11 NEGOTIATIONS?

12 THE COURT: WOULD YOU HOLD ON A MINUTE, PLEASE.

13 OKAY. GO AHEAD.

14 MR. KIRSCHBAUM: THANK YOU.

15 Q FOLLOWING THESE APRIL LETTERS, DID YOU HAVE  
16 FURTHER CONTACT WITH THE FAA?

17 A YES. WE HAD CONTACT WITH THE FAA UP UNTIL  
18 THE SIGNING OF THE 1984 AGREEMENT.

19 Q OKAY. COULD YOU DESCRIBE TO THE COURT WHAT  
20 KIND OF CONTACT YOU HAD WITH THE FAA BETWEEN THE TIME OF  
21 THESE APRIL LETTERS AND THE TIME THAT THE WORKING GROUP  
22 STARTED ITS MEETINGS?

23 A WELL, ESSENTIALLY, THE FAA WANTED TO KNOW  
24 WHAT THE USERS OF THE AIRPORT WOULD BE SATISFIED WITH.  
25 AND SINCE WE, THE ASSOCIATION, REPRESENTED THE USERS, WE  
26 FELT IN A GOOD POSITION TO HELP FORM THE EVENTUAL  
27 CONTRACT THAT WOULD BE SIGNED BETWEEN THE CITY AND THE  
28 FAA.

1 WE HAD A LOT OF HELP THERE AS WELL. STAN  
2 GREEN, WHO WAS THE ATTORNEY FOR THE GENERAL AVIATION  
3 MANUFACTURER'S ASSOCIATION AND SENT TO SANTA MONICA ON  
4 THEIR BEHALF AS WELL AS OURS, WAS INVALUABLE IN DRAFTING  
5 THE AGREEMENT.

6 Q OKAY. AT SOME POINT IN 1983, DID A WORKING  
7 GROUP OF ABOUT A DOZEN OR SO PEOPLE COME INTO BEING TO  
8 DEAL WITH THE ISSUES RELATED TO PLANNING FOR THE NEW  
9 AIRPORT?

10 A YES.

11 Q AND WERE YOU A PART OF THAT WORKING GROUP?

12 A YES, I WAS.

13 Q AND ABOUT HOW MANY TIMES DID YOU MEET AS A  
14 PART OF THAT WORKING GROUP?

15 A OH, GEE. AT LEAST A DOZEN TIMES AND PERHAPS  
16 TWO DOZEN. I REALLY DON'T KNOW FOR SURE.

17 Q AND WHAT KIND OF THINGS WERE DEALT WITH IN  
18 THE WORKING GROUP MEETINGS?

19 A VIRTUALLY ALL OF THE ELEMENTS OF THE  
20 AGREEMENT THAT WOULD HAVE TO DO WITH THE NEIGHBORS AND  
21 THE USERS OF THE AIRPORT.

22 Q COULD YOU GIVE THE COURT THE EXAMPLES OF THE  
23 KINDS OF THINGS THAT WERE DISCUSSED?

24 A OPERATIONAL PROCEDURES, NOISE MATTERS, NOISE  
25 PROGRAMS. VIRTUALLY EVERY ASPECT OF THE CONTRACT WAS  
26 MULLED OVER AND DISCUSSED RATHER THOROUGHLY DURING THE  
27 USER GROUP MEETINGS, AND STAN GREEN WHO WAS AT THOSE  
28 MEETINGS AS WELL, THE ATTORNEY FROM GAMA, HELPED US TO

1 DETERMINE WHAT WOULD BE LEGAL, WHAT WOULD NOT, WHAT  
2 SHOULD BE PRESENTED TO THE CITY, WHAT SHOULD NOT. AND  
3 HE WOULD COME BACK WITH WHAT THE CITY HAD OFFERED, AND  
4 WE WOULD TALK ABOUT THAT.

5 AND ULTIMATELY WE CAME TO SOME AGREEMENT THAT  
6 WE FELT WOULD BE MUTUALLY BENEFICIAL TO BOTH SIDES.

7 Q AND WERE YOU INVOLVED IN ANY DISCUSSIONS  
8 DIRECTLY WITH THE CITY?

9 A MANY.

10 Q COULD YOU DESCRIBE SOME OF THOSE DISCUSSIONS?

11 A WELL, THERE WERE A NUMBER OF MEETINGS BETWEEN  
12 MYSELF; OTHER MEMBERS OF THE ASSOCIATION; AND JOHN  
13 ALSCHULER, WHO IS THE MANAGER OF THE CITY; JOHN JALILI;  
14 BOB MEYERS. I THINK IT WAS BOB -- I'M NOT SURE -- WHO  
15 WAS THE CITY ATTORNEY. AND WE MET WITH A NUMBER OF  
16 PEOPLE THROUGHOUT THE TIME.

17 Q MR. JALILI, HE WAS THE ASSISTANT CITY  
18 MANAGER?

19 A I THINK SO, YES.

20 Q HE WAS ALSO THE ACTING AIRPORT DIRECTOR AT  
21 THAT TIME?

22 A YES, HE WAS.

23 Q OKAY. AND DID YOU DEAL WITH THE ISSUES  
24 RELATED TO THE SPECIFIC CONTENT OF THE '84 AGREEMENT?

25 A YES, WE DID.

26 Q OKAY. DID YOU DEAL WITH THE NUMBER OF TIE  
27 DOWNS THAT WOULD BE REQUIRED FOR THE AIRPORT?

28 A YES, WE DID.

1 Q DID YOU DEAL WITH THE NUMBER OF FULL SERVICE  
2 FIXED BASE OPERATORS THAT WOULD BE REQUIRED?

3 A YES. THAT WAS A MAJOR POINT.

4 Q DID YOU DEAL WITH A DISPLACED THRESHOLD AT  
5 THE AIRPORT?

6 A YES, WE DID.

7 Q DID YOU DEAL WITH THE NOISE PROGRAM?

8 A OH, YES, EXTENSIVELY.

9 Q IN THE WORKING GROUP MEETINGS, WERE THERE  
10 DISCUSSIONS RELATING TO THE CONCEPT OF A  
11 PERFORMANCE-BASED NOISE PROGRAM?

12 A YES, THERE WAS.

13 Q COULD YOU DESCRIBE FOR THE COURT WHAT A  
14 PERFORMANCE-BASED NOISE PROGRAM IS?

15 A BASICALLY WHAT IT MEANS IS THERE WOULD BE  
16 DIFFERENT TIERS TO THE NOISE PROGRAM SUCH THAT LOUD  
17 AIRPLANES WOULD HAVE TO MEET CERTAIN LEVELS. BUT JUST  
18 BECAUSE YOU WERE A QUIET AIRPLANE DIDN'T MEAN YOU WOULD  
19 BE ALLOWED TO MAKE NOISE AT YOUR LEISURE. YOU WOULD  
20 HAVE TO MEET CERTAIN LESS REQUIREMENTS IN NOISE  
21 STANDARDS SO THAT THE OVERALL NOISE FOOTPRINT  
22 SURROUNDING THE AIRPORT WOULD BE REDUCED.

23 Q WAS THERE DISCUSSION WITH REGARD TO THE  
24 INSTALLATION OF A PRECISION APPROACH AT THE AIRPORT?

25 A YES, SOMETHING WE HAD BEEN LOBBYING FOR FOUR  
26 YEARS.

27 Q COULD YOU DESCRIBE FOR THE COURT WHAT A  
28 PRECISION APPROACH IS?

1           A       A PRECISION -- WELL, IT'S EASIER TO START  
2 WITH A NON-PRECISION APPROACH. THAT KIND OF AN APPROACH  
3 PROVIDES LEFT-RIGHT GUIDANCE FOR A PILOT SO HE CAN FIND  
4 THE AIRPORT. A PRECISION APPROACH ADDS ANOTHER  
5 DIMENSION, VERTICAL GUIDANCE, SO HE CAN DESCEND ALONG AN  
6 ELECTRONIC GLIDE PATH SAFELY TO THE AIRPORT.

7           THE COURT: WAS THIS DERIVED FROM THE LDA APPROACH  
8 WE DISCUSSED YESTERDAY?

9           THE WITNESS: THE --

10          MR. KIRSCHBAUM: THAT IS AN LDA APPROACH.

11          THE WITNESS: PRECISION APPROACH IS NOT AN LDA  
12 APPROACH.

13          THE COURT: WHAT'S THE ANSWER?

14                 WE DISCUSSED AN LDA APPROACH YESTERDAY. ARE  
15 WE TALKING ABOUT THE SAME THING?

16          MR. KIRSCHBAUM: WE ARE GETTING ALONG THE SAME  
17 PATH TO THAT, YES, YOUR HONOR.

18          Q       AN LDA IS ONE COMPONENT OF A PRECISION  
19 APPROACH; CORRECT?

20          A       YES, IT IS.

21          Q       THAT WOULD BE THE LEFT-RIGHT GUIDANCE PART OF  
22 THE APPROACH; CORRECT?

23          A       YES. IT PROVIDES MORE PRECISE GUIDANCE THAN  
24 THE STANDARD NON-PRECISION APPROACH THAT WAS IN EFFECT  
25 AT THE TIME.

26          Q       IN FACT, AT THAT TIME, WEREN'T THERE  
27 NEGOTIATIONS RELATING TO A MICROWAVE LANDING SYSTEM  
28 APPROACH AT SANTA MONICA?

1 A YES.

2 Q AND THE LDA WAS TO BE AN INTERIM MEASURE  
3 UNTIL THE MICROWAVE LANDING SYSTEM WAS INSTALLED?

4 A THAT'S CORRECT.

5 Q AND IN ADDITION TO THAT, THERE WERE OTHER  
6 ELEMENTS OF THE NOISE PROGRAM THAT WERE DISCUSSED IN THE  
7 WORKING GROUP; CORRECT?

8 A YES. YES. THERE WERE MANY, MANY THEORIES,  
9 WHEREAS MANY POSSIBILITIES. WE CAME UP WITH SOME, A FEW  
10 OF WHICH WERE TOTALLY IGNORED EVEN THOUGH THEY WERE  
11 PRAGMATIC AND EFFECTIVE.

12 Q AND AS A RESULT OF THOSE NEGOTIATIONS, WAS AN  
13 AGREEMENT REACHED?

14 A YES.

15 Q AND AT THE CONCLUSION OF THE NEGOTIATIONS,  
16 DID YOU HAVE ANY DISCUSSIONS WITH EITHER THE FAA OR THE  
17 CITY AS TO WHETHER OR NOT THE AGREEMENTS THAT HAD BEEN  
18 REACHED TO THAT POINT WOULD BE ACCEPTABLE TO THE AIRPORT  
19 ASSOCIATION?

20 A YES. THERE WERE CONVERSATIONS DEALING WITH  
21 ALL OF THOSE PARTIES. IN FACT, EACH AND EVERY TIME THE  
22 CITY AND THE FAA AND GAMA CAME TO AN UNDERSTANDING AS TO  
23 AN AGREEABLE LANGUAGE FOR A GIVEN PARAGRAPH, THEY WOULD  
24 COME TO US AND SAY, "WHAT DO YOU THINK?" AND MUCH OF  
25 THE -- MANY OF THOSE PARAGRAPHS IN TERMS AND CONDITIONS  
26 WERE ACCEPTABLE, MANY WERE NOT.

27 AND AS A RESULT OF OUR INPUT AND, I SHOULD  
28 SAY, OUTRIGHT REJECTION ON A COUPLE OF OCCASIONS, GAMA

1 AND THE FAA WENT BACK AND SAID, "WE NEED TO RE-TAILOR  
2 THIS," AND THE CONTRACT WAS MODIFIED.

3 Q DID THE FAA SEEK YOUR -- AND BY YOUR, I MEAN  
4 AIRPORT ASSOCIATION APPROVAL FOR THE TERMS OF THE '84  
5 AGREEMENT?

6 A YES. IT DID THIS THROUGHOUT THE PROCESS. IN  
7 FACT, BILL SHEA, WHO WAS THE FAA ADMINISTRATOR,  
8 CONTACTED US NUMEROUS TIMES THROUGHOUT THE PROCESS TO  
9 SEE HOW IT WAS GOING AND HOW HE COULD HELP.

10 Q DID YOU EVER HAVE ANY DISCUSSIONS WITH THE  
11 FAA ALONG THE LINES THAT THE '84 AGREEMENT WOULD BE  
12 RESOLVING THE AIRPORT ASSOCIATION'S COMPLAINT?

13 A THAT WAS OUR UNDERSTANDING, THAT THE  
14 AGREEMENT WOULD ELIMINATE THE NEED FOR THE PART 13  
15 COMPLAINT AND WOULD EFFECTIVELY SATISFY US.

16 AFTER ALL, IT WAS OUR GOAL TO KEEP THE  
17 AIRPORT OPEN CONTRARY TO THE CITY'S DESIRE TO CLOSE IT.

18 Q OTHER THAN THE AIRPORT ASSOCIATION, DO YOU  
19 KNOW OF ANY OTHER PARTY THAT FILED AN ACTION AGAINST THE  
20 CITY OF SANTA MONICA RELATING TO WHETHER TO KEEP THE  
21 AIRPORT OPEN OR NOT?

22 A NO, THERE WAS NO ONE.

23 Q LET ME DIRECT YOUR ATTENTION TO EXHIBIT 488.

24 A 488?

25 Q 488.

26 DO YOU HAVE IT?

27 A YES.

28 Q THIS IS A LETTER THAT YOU WROTE?

1           A       YES, SIR.

2           Q       WERE THERE SEVERAL LETTERS THAT WENT BACK AND  
3 FORTH BETWEEN THE AIRPORT ASSOCIATION AND THE FAA?

4           A       YES. I'M CERTAIN THERE WERE.

5           Q       AND IN THIS SECOND PARAGRAPH, IT TALKS ABOUT  
6 THE 4,000-FOOT RUNWAY PROPOSAL.

7                   DO YOU SEE THAT?

8           A       YES.

9           Q       WAS THAT ONE OF THE POINTS THAT THE AIRPORT  
10 ASSOCIATION SPECIFICALLY BARGAINED FOR IN THE  
11 NEGOTIATIONS LEADING TO THE '84 AGREEMENT?

12          A       WE FOUGHT BITTERLY AGAINST THAT, YES.

13          Q       WHY?

14          A       BECAUSE IT WOULD LIMIT THE AIRPORT TO THE  
15 TYPE OF AIRCRAFT THAT COULD USE IT, AND IT WOULD REDUCE  
16 THE SAFETY FACTOR.

17               MR. KIRSCHBAUM: NOTHING FURTHER.

18

19                   CROSS-EXAMINATION

20 BY MR. TACHIKI:

21          Q       IF I COULD HAVE YOU OPEN TO 488. THIS LETTER  
22 IS DATED OCTOBER 27TH, 1982; IS THAT CORRECT?

23          A       YES.

24          Q       DO YOU RECALL WHEN THE AIRPORT WORKING GROUP  
25 STARTED ITS WORK?

26          A       AFTER THIS, I BELIEVE.

27          Q       AFTER THIS.

28          A       I THINK SO.

1 Q SO WOULD IT HELP YOU IF I TOLD YOU I THINK IT  
2 STARTED IN JANUARY OF 1983?

3 THE COURT: JANUARY 1983?

4 MR. TACHIKI: JANUARY OF 1983.

5 THE WITNESS: YEAH, THAT DOESN'T SURPRISE ME.

6 Q BY MR. TACHIKI: SO THIS CLEARLY COMES BEFORE  
7 THE WORKING GROUP STARTED ITS WORK; IS THAT CORRECT?

8 A YES. THIS WAS A REFLECTION OF THE FEELINGS  
9 OF THE AIRPORT ASSOCIATION.

10 Q SO THIS WASN'T PART OF THE AIRPORT WORKING  
11 GROUP DELIBERATION?

12 A IT MIGHT HAVE BEEN AT A LATER DATE.

13 Q BUT IT WAS NOT AT THIS TIME WHEN YOU WROTE  
14 THIS?

15 A IF THERE WERE NO WORKING GROUP, IT COULDN'T  
16 HAVE BEEN.

17 THE COURT: HOW MANY MEMBERS DID YOU HAVE AT THE  
18 SANTA MONICA AIRPORT ASSOCIATION AROUND OCTOBER OF 1982?

19 THE WITNESS: I'M NOT SURE. IT WOULD BE IN THE  
20 HUNDREDS.

21 THE COURT: HOW MUCH?

22 THE WITNESS: IN THE HUNDREDS.

23 Q BY MR. TACHIKI: COULD WE GO BACK TO  
24 EXHIBIT 476.

25 NOW, 476 IS THE LETTER THAT CAME BACK FROM  
26 THE FAA, AND AGAIN, IT'S ADDRESSED TO PAUL BLACKMAN; IS  
27 THAT CORRECT?

28 A YES.

1 Q AND YOU SAID THAT AT THE TIME THAT YOU WENT  
2 TO TALK TO THE FAA, YOU WERE THE PRESIDENT OF SMAA?

3 A OR THE CHAIRMAN OF THE BOARD. ONE OF THE  
4 TWO. I WAS ALWAYS ONE OF THE TWO.

5 Q SO WHEN YOU WENT BACK TO TALK TO THE FAA, YOU  
6 MAY HAVE NOT BEEN THE PRESIDENT. IS THAT WHAT YOU'RE  
7 SAYING NOW?

8 A I'M NOT CERTAIN. THIS WAS FEBRUARY 4TH OF  
9 '82. I'M NOT SURE BECAUSE WE HELD ELECTIONS USUALLY AT  
10 THE BEGINNING OF THE YEAR. SO I'M NOT SURE WHEN THE  
11 ELECTIONS WERE.

12 Q I WAS TRYING TO GET SOME CLARIFICATION.  
13 BECAUSE YOU HAD STARTED YOUR TESTIMONY OUT BY SAYING YOU  
14 WERE PRESIDENT OF SMAA WHEN YOU WENT TO GO TALK TO THE  
15 FAA.

16 A I THINK I WAS. I COULD HAVE BEEN CHAIRMAN OF  
17 THE BOARD. IN EITHER EVENT, I WENT BACK THERE  
18 REPRESENTING THE BOARD OF THE SANTA MONICA AIRPORT  
19 ASSOCIATION.

20 Q NOW, THE LETTER CAME TO BLACKMAN SAYING THAT  
21 THE PART 13 COMPLAINT THAT WAS FILED BY SMAA WAS  
22 INCOMPLETE?

23 A YES.

24 Q WOULD THIS LETTER ALSO HAVE GONE TO YOU?

25 A NO, IT WOULD HAVE GONE TO THE ASSOCIATION.

26 Q NOW -- AND THEN YOU SAID YOU WENT BACK AND  
27 MET WITH A BILL SHEA, AND YOU TOOK ADDITIONAL DOCUMENTS  
28 BACK TO SHOW HIM?

1 A YES.

2 Q AND THAT WAS --

3 A NOT TO SHOW HIM. TO GIVE HIM UPON HIS  
4 REQUEST.

5 Q WAS THAT SPECIFICALLY IN RESPONSE TO THIS  
6 LETTER?

7 A I'M NOT CERTAIN, BUT I SUSPECT IT WAS BECAUSE  
8 THAT WAS THE PURPOSE OF THOSE MEETINGS.

9 Q OKAY.

10 A IT HAD TO DO WITH THE ACTION.

11 Q OKAY. DID SMAA AT ANY TIME AMEND THE  
12 COMPLAINT THEY FILED TO FILL IN THE GAPS THAT THE FAA  
13 FELT WERE IN THE LETTER?

14 A I DON'T RECALL.

15 Q SO YOU DON'T KNOW IF THERE WAS ANY FOLLOW-UP  
16 TO THE ORIGINAL COMPLAINT THAT WAS FILED?

17 A WELL, THERE WAS ALL KINDS OF FOLLOW-UP IN  
18 TERMS OF MEETINGS, DISCUSSIONS AND PROVIDING OF  
19 MATERIAL. BUT AS TO THE ACTUAL LEGAL MOVES THAT WERE  
20 MADE AT THAT TIME, I'M NOT QUITE SURE BEYOND THIS.

21 Q WELL, LET ME ASK YOU, HAVE YOU EVER SEEN A  
22 NEW COMPLAINT THAT WAS FILED AFTER THE ORIGINAL  
23 COMPLAINT IN THIS PART 13 ACTION?

24 A I DON'T RECALL.

25 Q YOU DON'T?

26 THE COURT: I JUST WANT TO BACK UP A SECOND. AS  
27 FAR AS THE PART 13 COMPLAINT, IT'S AN ADMINISTRATIVE  
28 PROCESS, I TAKE IT, AN ADMINISTRATIVE PROCEEDING?

1 MR. KIRSCHBAUM: CORRECT.

2 THE COURT: HOW WAS -- AS FAR AS THE FORMAL  
3 COMPLAINT HERE, WHAT WAS ORIGINALLY DONE WITH IT IN  
4 TERMS OF WAS IT DISMISSED?

5 MR. KIRSCHBAUM: IN OUR OPINION, IT WAS RESOLVED  
6 BY THE '84 AGREEMENT. IT WAS PENDING AT THE TIME.

7 THE COURT: WAS THERE SOME KIND OF FORMAL RULING  
8 THAT WAS RENDERED ON THIS?

9 MR. TACHIKI: I THINK WHAT HAPPENED, YOUR HONOR,  
10 WE FOUND NO DOCUMENTS AFTER THIS. SO WE HAVE TO ASSUME  
11 THAT'S WHAT HAPPENED. THEY NEVER SUPPLIED THE  
12 ADDITIONAL INFORMATION, AND THE COMPLAINT JUST  
13 WHITHERED.

14 MR. KIRSCHBAUM: I BELIEVE THAT'S CONTRADICTED BY  
15 HIS TESTIMONY. BUT OUR POSITION IS THAT THIS IS ONE OF  
16 THE ADMINISTRATIVE COMPLAINTS THAT'S SPECIFICALLY  
17 REFERENCED IN THE '84 AGREEMENT.

18 THE COURT: THAT'S WHY MY QUESTION IS, WAS THERE  
19 SOME KIND OF DISMISSAL FILED OF THE COMPLAINT?  
20 APPARENTLY, THERE ISN'T.

21 MR. KIRSCHBAUM: THERE IS NONE.

22 MR. TACHIKI: I BELIEVE WHAT THE FAA DOES, IF YOU  
23 DON'T SUPPLEMENT YOUR COMPLAINT, THERE IS NO FURTHER  
24 ACTION.

25 THE COURT: DO THEY WRITE A LETTER?

26 MR. TACHIKI: I THINK THIS IS THE LETTER. YOU CAN  
27 SUBMIT THE ADDITIONAL INFORMATION, WE WILL SERVE, BUT  
28 UNTIL WE GET IT, WE WILL TAKE NO FURTHER ACTION.

1 THE COURT: HOLD ON A MOMENT.

2 THE WITNESS: MAY I MAKE A COMMENT?

3 THE COURT: JUST A MINUTE.

4 ALL RIGHT. THE FIRST PARAGRAPH, LET ME  
5 DIRECT THIS QUESTION TO YOU, MR. SCHIFF.

6 THE FIRST PARAGRAPH, IN THIS CASE THEY WERE  
7 IN RECEIPT OF THE COMPLAINT AND PENDING THE RECEIPT OF  
8 THE INFORMATION REQUIRED TO BE SUBMITTED, I GUESS, IS  
9 WHAT THEY'RE HOLDING ONTO.

10 DID THE SMAA SUBMIT ANY ADDITIONAL  
11 INFORMATION AFTER THIS LETTER?

12 THE WITNESS: QUITE A BIT. THAT WAS SOME OF THE  
13 INFORMATION PROVIDED TO MR. SHEA, THE ASSOCIATE  
14 ADMINISTRATOR, DURING MY SECOND VISIT TO WASHINGTON.  
15 THE FAA RESPONDED TO THIS IN A WAY THAT CERTAINLY  
16 INDICATES THAT THIS ACTION WAS IN EFFECT BECAUSE THEY  
17 CONTINUED TO PURSUE AND WORK WITH THE AIRPORT  
18 ASSOCIATION IN ULTIMATELY ARRIVING AT A CONTRACT THAT  
19 RESOLVED THE DIFFERENCES, THAT BEING THE 1984 AIRPORT  
20 AGREEMENT.

21 THE COURT: OKAY, MR. TACHIKI. GO AHEAD.

22 MR. TACHIKI: OKAY.

23 Q I JUST WANTED TO CONFIRM ONE MORE TIME THAT  
24 YOU, TO YOUR KNOWLEDGE, HAD NEVER SEEN A FOLLOW-UP  
25 COMPLAINT TO THE ORIGINAL COMPLAINT FILED WITH THE FAA;  
26 IS THAT CORRECT?

27 A I DON'T RECALL ONE, NO.

28 Q NOW, WHEN YOU STARTED YOUR TESTIMONY, YOU

1 WERE TALKING ABOUT THE TWO DIFFERENT LAWSUITS THAT WERE  
2 FILED IN THE EARLY -- OH, ACTUALLY LATE '70S. ONE WAS  
3 FILED BY THE SANTA MONICA AIRPORT ASSOCIATION; IS THAT  
4 CORRECT?

5 A YES.

6 Q THERE WAS A SECOND LAWSUIT THAT WAS FILED BY  
7 THE NATIONAL BUSINESS AIRCRAFT ASSOCIATION?

8 A I THINK SO, YES.

9 Q AND THE NBAA LAWSUIT, YOU THINK, WAS FILED ON  
10 BEHALF OF SANTA MONICA, SANTA MONICA AIRPORT  
11 ASSOCIATION?

12 A AS I RECALL, IT WAS A RESULT OF OUR  
13 INSTIGATING. WE DID QUITE A BIT OF SHOUTING AND YELLING  
14 AT THE VARIOUS ALPHABET GROUPS. THAT'S HOW WE GOT A  
15 AOPA TO ANIMUS CURIAE IN THIS MATTER, IN THE 1984  
16 AGREEMENT, AND HOW WE GOT GAMA AND NBAA TO FIGHT -- ON  
17 BOARD TO FIGHT THE CITY, BECAUSE WE COULDN'T DO IT  
18 ALONE.

19 Q IS THERE A REASON WHY THE SANTA MONICA  
20 AIRPORT ASSOCIATION DIDN'T HAVE THEMSELVES NAMED AS A  
21 PLAINTIFF IN THE SECOND ACTION CHALLENGING THE '85 DB  
22 ORDINANCE?

23 A I'M SURE WE FOLLOWED ADVICE OF COUNSEL, AND  
24 I'M NOT SURE WHY WE DID OR DID NOT HAVE OUR NAMES.

25 FOR EXAMPLE, IN THE SUIT THAT WE FILED ON  
26 BEHALF OF TENANTS WHO WERE GOING TO BE EVICTED, WE  
27 DIDN'T NAME OURSELVES AS A PLAINTIFF EITHER, BUT CLEARLY  
28 WE FILED A SUIT ON THEIR BEHALF TO PROTECT THEIR

1 INTEREST AS USERS OF THE AIRPORT, TENANTS OF THE  
2 AIRPORT.

3 SO WE DID THIS ACCORDING TO THE ADVICE OF  
4 COUNSEL, AND I CAN'T EXPLAIN WHY OR WHY NOT CERTAIN  
5 THINGS MIGHT HAVE BEEN DONE AT THAT TIME. WE'RE TALKING  
6 A QUARTER OF A CENTURY AGO, AND I CERTAINLY DON'T RECALL  
7 ALL OF THE REASONS THAT COUNSEL MIGHT HAVE PROVIDED TO  
8 US FOR DOING THINGS OR NOT DOING THINGS IN A CERTAIN WAY  
9 AT THAT TIME.

10 Q OKAY. LET ME GET OFF THE TOPIC JUST A  
11 SECOND.

12 YOU JUST MENTIONED THAT IN THE STATE COURT  
13 LAWSUIT, THAT THAT LAWSUIT TO STOP THE EVICTIONS WAS NOT  
14 FILED IN THE NAME OF THE SANTA MONICA AIRPORT  
15 ASSOCIATION?

16 A NO, BUT WE FILED IT. THAT'S WHAT I RECALL.

17 Q SO IT WAS FILED IN SOMEBODY ELSE'S NAME?

18 A YES, I BELIEVE SO, AND ON BEHALF OF TENANTS  
19 WHO WERE GOING TO BE EVICTED. I DON'T THINK WE  
20 ANTICIPATED THIS TRIAL 25 YEARS LATER.

21 Q YOU SAID THAT YOU WERE AN ACTIVE PARTICIPANT  
22 IN THE AIRPORT WORKING GROUP; IS THAT CORRECT?

23 A YES, SIR.

24 Q OKAY. DID YOU VIEW THE AIRPORT WORKING GROUP  
25 MEETINGS TO BE SEPARATE FROM THE ACTUAL DISCUSSIONS  
26 REGARDING THE WORDING OF THE 1984 AGREEMENT?

27 A WELL, SOME OF THAT TOOK PLACE IN THE WORKING  
28 GROUP AND SOME OUTSIDE THE WORKING GROUP.

1 Q DIDN'T YOU SAY THAT IN YOUR DEPOSITION THAT  
2 YOU THOUGHT THAT THE BASIC ELEMENTS OF THE 1984  
3 AGREEMENT HAD BEEN SETTLED BASICALLY BY AROUND APRIL OR  
4 MAY OF 1983?

5 A MIGHT HAVE BEEN.

6 BASIC ELEMENTS IS A FAR CRY FROM CROSSING THE  
7 T'S AND DOTTING THE I'S, THOUGH. THE CITY KEPT TRYING  
8 TO SLIP THINGS IN ON US, AND THEY WEREN'T BEING VERY  
9 CLEAR ABOUT IT.

10 Q OKAY. BUT IN YOUR DEPOSITION, YOU SAID --  
11 YOU HAD SAID -- I CAN READ IT TO YOU IF YOU WANT. YOU  
12 SAID IN MAY 1983 YOU THOUGHT THAT'S THE POINT WHEN THE  
13 NEGOTIATIONS ON THE ACTUAL DRAFT OF THE 1984 AGREEMENT  
14 BEGAN?

15 A I'M NOT CERTAIN OF THE DATES. I'M REALLY  
16 NOT.

17 Q DO YOU RECALL THE PROCESS COMING TO AN END IN  
18 NOVEMBER OF 1983?

19 A I REMEMBER THE PROCESS COMING TO AN END WHEN  
20 THE CONTRACT WAS SIGNED.

21 Q WELL, DO YOU REMEMBER SITTING DOWN IN A ROOM  
22 WITH THE FAA AND THE CITY AND NEGOTIATING THE ACTUAL  
23 WORDING OF THE 1984 AGREEMENT?

24 A THAT NEVER OCCURRED, TO THE BEST OF MY  
25 KNOWLEDGE, ALTHOUGH IT CERTAINLY MIGHT HAVE.

26 OUR INVOLVEMENT WAS WITH STAN GREEN WHO WAS  
27 THE ATTORNEY FROM GAMA WHO WAS WORKING WITH THE  
28 ATTORNEYS FROM THE FAA, AND HE KEPT COMING TO US WANTING

1 TO KNOW IS THIS OKAY, IS THIS OKAY, IS THAT OKAY? AND  
2 WE GIVE HIM REASONS WHY THEY WERE OR WERE NOT OKAY, AND  
3 WE HAD TO SUBMIT CONSIDERABLE INPUT TO THESE CONDITIONS  
4 BEFORE THEY WERE FINALIZED.

5 Q SO YOUR INPUT INTO THE ACTUAL NEGOTIATIONS OF  
6 THE 1984 AGREEMENT, ACCORDING TO YOUR UNDERSTANDING, WAS  
7 THROUGH MR. GREEN WHO WOULD THEN TRANSMIT THAT TO THE  
8 FAA?

9 A NO. WE ALSO HAD DISCUSSIONS WITH THE FAA,  
10 MR. MURDOCH AND MR. CIRRUZI AND -- THEY ARE THE TWO TOP  
11 ATTORNEYS OF THE FAA.

12 THE COURT: WHEN YOU SAY "WE PERSONALLY HAD  
13 DISCUSSIONS," YOU MEAN YOU PERSONALLY WERE INVOLVED?

14 THE WITNESS: YES.

15 THE COURT: DID YOU EVER HAVE MEETINGS WITH THE  
16 CITY OF SANTA MONICA ITSELF?

17 THE WITNESS: SURE.

18 THE COURT: WHO WOULD YOU MEET WITH?

19 THE WITNESS: ALSCHULER -- MR. ALSCHULER,  
20 MR. MEYERS, WHO WAS THE ATTORNEY, AND MR. JALILI --  
21 PRIMARILY THOSE THREE. I HAD MEETINGS WITH RUTHIE  
22 GOLDWAY, THE MAYOR.

23 Q BY MR. TACHIKI: DID THOSE MEETINGS OCCUR  
24 BETWEEN NOVEMBER OF 1983 AND JANUARY OF 1984?

25 A I DON'T RECALL SPECIFICALLY DATES, MARTY. I  
26 REALLY DON'T. BUT IT WAS ALL IN THE PROCESS OF LEADING  
27 UP TO THE SIGNING OF THE CONTRACT. I MEAN, SO MUCH  
28 HAPPENED, I CAN'T PINPOINT SPECIFICALLY WHICH MONTHS

1 THEY WERE AT THIS TIME.

2 Q SO THESE MEETINGS COULD HAVE OCCURRED, SAY,  
3 BETWEEN JANUARY AND NOVEMBER OF 1983 ALSO?

4 A WELL, THERE WERE MEETINGS THAT OCCURRED  
5 DURING THAT PERIOD.

6 Q BUT AS OF RIGHT NOW, YOU CAN'T ACTUALLY  
7 PINPOINT WHEN THESE MEETINGS ACTUALLY OCCURRED?

8 A I CAN'T PINPOINT THEM. I JUST KNOW THEY  
9 OCCURRED. AND THERE WERE MANY OF THEM. AND IT WASN'T  
10 JUST ME, IT WAS MR. BRANDSEN, MR. BARTON. IT WAS OTHER  
11 MEMBERS, LONG-STANDING MEMBERS OF THE BOARD OF  
12 DIRECTORS.

13 Q NOW, WAS IT YOUR BELIEF THAT THE FAA WAS  
14 REPRESENTING SMAA ON THE NEGOTIATIONS?

15 A ABSOLUTELY.

16 Q DID THEY TELL YOU THAT DIRECTLY?

17 A WELL, THEY DIDN'T COME OUT AND SAY, "WE ARE  
18 REPRESENTING YOU." THEY CAME TO FIGHT FOR US ON BEHALF  
19 OF THE 1948 INSTRUMENT OF TRANSFER. THEY WERE FIGHTING  
20 FOR US TO KEEP THE AIRPORT. THAT WAS OUR GOAL.

21 I DON'T KNOW HOW YOU CAN ISOLATE THEIR  
22 INTENTION AND DEFINE IT. ALL I KNOW IS THE  
23 ADMINISTRATOR OF THE FAA SAID, "LOOK, YOU FILE A PART 13  
24 ACTION, WE'LL BE THERE FOR YOU."

25 NOW, YOU TELL ME WHAT THAT MEANS.

26 Q WELL, DID YOU VIEW THE FAA AS BEING INVOLVED  
27 IN DEFENDING THEIR OWN INTERESTS IN THESE NEGOTIATIONS  
28 OF THE 1984 AGREEMENT?

1           A       WELL, THE INTEREST OF THE FAA OF KEEPING THE  
2 AIRPORT WERE IDENTICAL TO THE AIRPORT ASSOCIATION. WE  
3 ALL WANTED TO KEEP THE AIRPORT OPEN.

4           Q       SO IN FACT, THE FAA'S POSITION WAS SIMILAR TO  
5 YOUR POSITION. YOU FEEL THAT, IN FACT, MADE THEM YOUR  
6 REPRESENTATIVE?

7           A       YOU'RE MISSTATING WHAT I'M SAYING. I DIDN'T  
8 SAY THAT. I TESTIFIED AS TO WHAT I BELIEVE TO BE THE  
9 CASE. BUT THE FAA CAME TO OUR AID TO HELP US KEEP THAT  
10 AIRPORT OPEN. OBVIOUSLY, THEY HAD THEIR OWN INTERESTS  
11 IN DOING SO AS WELL.

12          Q       BUT NOBODY EVER DIRECTLY SAID TO YOU AS A  
13 REPRESENTATIVE OF SMAA THAT THE FAA WAS REPRESENTING  
14 YOUR INTEREST IN THESE NEGOTIATIONS?

15          A       WELL, THAT'S WHAT WE WERE CERTAINLY LED TO  
16 BELIEVE.

17          Q       BUT NOBODY DIRECTLY TOLD YOU THAT?

18          A       I DON'T KNOW. YOU'RE ASKING ME TO COME UP  
19 WITH SOMETHING SOMEBODY MIGHT HAVE SAID SPECIFICALLY 25  
20 YEARS AGO. I DON'T KNOW. BUT THEIR ACTIONS SPOKE  
21 LOUDER THAN ANY WORDS YOU WANT TO HAVE ME SAY.

22          Q       WHEN YOU NEGOTIATED THE 1984 AGREEMENT --  
23 MR. KIRSCHBAUM: OBJECTION --

24          Q       BY MR. TACHIKI: -- DID YOU HAVE AN ATTORNEY  
25 REPRESENT YOU?

26          THE COURT: HOLD IT. ONE AT A TIME, PLEASE.

27          MR. KIRSCHBAUM: I SHOULD STATE AS A FORMAL  
28 OBJECTION, VAGUE AND AMBIGUOUS.

1 THE COURT: ALL RIGHT. SUSTAINED.

2 Q BY MR. TACHIKI: WHEN THE SANTA MONICA  
3 AIRPORT ASSOCIATION WAS NEGOTIATING THE 1984 AGREEMENT,  
4 DID IT RETAIN AN ATTORNEY TO REPRESENT THE ORGANIZATION  
5 IN THE NEGOTIATIONS?

6 A I BELIEVE WE ALWAYS HAD AN ATTORNEY. SO I'M  
7 NOT SURE HOW TO ANSWER THAT QUESTION.

8 Q WELL, WHO WAS THE ATTORNEY THAT YOU HAD  
9 RETAINED?

10 A I DON'T RECALL AT THE TIME. IT WAS BOB  
11 CLEVES -- I DON'T RECALL WHO AT THAT TIME -- WHO THE  
12 ATTORNEY WAS.

13 BUT THE ATTORNEY THAT WE WORKED WITH FOR THE  
14 MOST PART WERE THE TWO ATTORNEYS FROM THE FAA AND STAN  
15 GREEN FROM GAMA WHO BEST UNDERSTOOD THE PROBLEMS THAT  
16 WERE FACING US AND DID, INDEED, REPRESENT OUR INTERESTS  
17 BECAUSE THEY WANTED THE SAME THING WE DID, THAT IS, TO  
18 KEEP THE AIRPORT OPEN.

19 Q WELL, WAS MR. GREEN SMAA'S ATTORNEY ALSO?

20 A NO, HE WAS NOT. HE WAS AN ATTORNEY WHO WAS A  
21 FULL-TIME EMPLOYEE OF GAMA, THE GENERAL AVIATION  
22 MANUFACTURER'S ASSOCIATION.

23 Q AND THE FAA ATTORNEYS WERE ALSO NOT SMAA  
24 ATTORNEYS; IS THAT CORRECT?

25 A OF COURSE NOT.

26 Q I JUST WANT TO CLARIFY, BECAUSE YOU SAID THEY  
27 WERE REPRESENTING YOUR INTERESTS --

28 A WELL, THEY WERE.

1 Q BUT THEY WEREN'T YOUR ATTORNEYS REPRESENTING  
2 SMAA?

3 A NO, I DIDN'T SAY THAT.

4 Q DID YOU EVER HAVE ANY CONVERSATIONS WITH  
5 EITHER CITY REPRESENTATIVES OR FAA REPRESENTATIVES ABOUT  
6 BEING AN ACTUAL SIGNATORY TO THE 1984 AGREEMENT?

7 A I DON'T RECALL IF THAT EVER CAME UP.

8 MR. TACHIKI: YOUR HONOR, I HAVE NO FURTHER  
9 QUESTIONS.

10 MR. KIRSCHBAUM: JUST A COUPLE, YOUR HONOR.

11  
12 REDIRECT EXAMINATION

13 BY MR. KIRSCHBAUM:

14 Q MR. SCHIFF, IF YOU DIRECT YOUR ATTENTION TO  
15 EXHIBIT 466. THIS IS THE COMPLAINT THAT I BELIEVE  
16 YOU -- LET ME ASK IT IN THE FORM OF A QUESTION.

17 IS THIS THE COMPLAINT THAT YOU REFERENCED  
18 EARLIER RELATING TO THE EVICTIONS THAT THE AIRPORT  
19 ASSOCIATION BROUGHT IN THE NAMES OF THE INDIVIDUAL  
20 OPERATORS?

21 A YES, IT IS. AND IT ALSO REFRESHES MY MEMORY  
22 AS TO WHO OUR ATTORNEY WAS AT THE TIME.

23 Q AND WHO WAS THAT?

24 A MR. KNICKERBOCKER.

25 Q AND YOU KNEW HE WAS ALSO THE FORMER CITY  
26 ATTORNEY OF CITY OF SANTA MONICA; CORRECT?

27 A YES.

28 MR. KIRSCHBAUM: NOTHING FURTHER.

1 THE COURT: ALL RIGHT. ANYTHING ELSE?

2 MR. TACHIKI: CAN I ASK ONE QUESTION, YOUR HONOR.

3

4 RECROSS-EXAMINATION

5 BY MR. TACHIKI:

6 Q MR. SCHIFF, THIS PARTICULAR COMPLAINT WAS  
7 FILED. LEAD PLAINTIFF IS RICHARD KETTLER; IS THAT  
8 CORRECT?

9 A YES.

10 Q IN LOOKING AT THIS YOU DETERMINED THAT  
11 SANTA MONICA AIRPORT ASSOCIATION IS NOT NAMED AT ALL IN  
12 THIS COMPLAINT; IS THAT CORRECT?

13 A I DON'T THINK IT IS, BUT IT SPEAKS FOR  
14 ITSELF.

15 Q NOW, DO YOU SEE ON THE FRONT PAGE -- IT'S A  
16 LITTLE DIFFICULT TO READ -- THERE'S A CASE NUMBER THERE.  
17 IT SAYS C, AND IT'S A HARD NUMBER, BUT IT LOOKS LIKE  
18 376875?

19 A I SEE THAT BATES NUMBER, YES.

20 Q IN THE COMPLAINT FILED BY THE SANTA MONICA  
21 AIRPORT ASSOCIATION IN THIS CASE, THEY REFER TO A CASE  
22 FILED WITH A CASE NUMBER OF WEC 072094. IS THAT A  
23 DIFFERENT CASE?

24 A I DON'T KNOW.

25 Q IS THAT SUPPOSED TO BE THE SAME CASE THAT  
26 WE'RE LOOKING AT RIGHT HERE THAT WAS FILED WITH  
27 MR. KETTLER AS THE LEAD PLAINTIFF?

28 A I DON'T KNOW IF IT'S A DIFFERENT CASE OR NOT.

1 I REALLY AM NOT AN ATTORNEY, AND I CAN'T ANSWER THAT  
2 QUESTION. I MEAN, I DON'T KNOW WHAT THE NUMBERING  
3 SYSTEM MEANS.

4 Q OKAY. SO DO YOU KNOW ABOUT ALL THE LAWSUITS  
5 THAT WERE FILED BY THE SANTA MONICA AIRPORT ASSOCIATION?

6 A I DID AT ONE TIME OR ANOTHER.

7 Q OKAY.

8 THE COURT: ARE THERE MORE LAWSUITS OTHER THAN  
9 WHAT WE'VE DISCUSSED HERE?

10 MR. TACHIKI: YOUR HONOR, THIS IS NOT, AT LEAST,  
11 THE COMPLAINT THAT'S REFERENCED IN THE SECOND AMENDED  
12 COMPLAINT IN THIS CASE. THIS IS A WHOLLY DIFFERENT  
13 ACTION. PARAGRAPH -- IT'S PARAGRAPH 44 OF THE SECOND  
14 AMENDED COMPLAINT. IT DOES NOT REFERENCE THIS CASE AT  
15 ALL.

16 MR. KIRSCHBAUM: WE MAY HAVE --

17 MR. TACHIKI: PARAGRAPH 48, YOUR HONOR. I'M  
18 SORRY, YOUR HONOR, ON LINE 19.

19 MR. KIRSCHBAUM: WE MAY HAVE REFERENCED THE WRONG  
20 CASE NUMBER IN OUR COMPLAINT HERE, AND THIS DOCUMENT,  
21 EXHIBIT 476, HAS BEEN PROVIDED MANY MOONS AGO.

22 MR. TACHIKI: YOUR HONOR, I HAVE NO MORE  
23 QUESTIONS.

24 THE COURT: ANYTHING ELSE?

25 MR. KIRSCHBAUM: NOTHING FURTHER.

26 THE COURT: OKAY. THANK YOU, MR. SCHIFF. YOU MAY  
27 STEP DOWN.

28 DO YOU HAVE ANY OTHER WITNESSES?

1 MR. KIRSCHBAUM: YES, YOUR HONOR.

2 THE COURT: CALL YOUR NEXT WITNESS, PLEASE.

3 MR. KIRSCHBAUM: MR. BARTON, JAMES BARTON.

4

5 JAMES BARTON,

6 CALLED AS A WITNESS BY THE PLAINTIFFS,

7 WAS SWORN AND TESTIFIED AS FOLLOWS:

8

9 THE CLERK: PLEASE RAISE YOUR RIGHT HAND TO BE  
10 SWORN.

11 YOU DO SOLEMNLY STATE THAT THE TESTIMONY YOU  
12 MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT  
13 SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE  
14 TRUTH, SO HELP YOU GOD?

15 THE WITNESS: I DO.

16 THE CLERK: THANK YOU. PLEASE HAVE A SEAT.

17 SIR, COULD WE HAVE YOU STATE YOUR NAME AND  
18 SPELL YOUR LAST NAME FOR THE RECORD, PLEASE.

19 THE WITNESS: MY NAME IS JAMES ANTHONY BARTON,  
20 B-A-R-T-O-N.

21 THE CLERK: THANK YOU.

22

23 DIRECT EXAMINATION

24 BY MR. KIRSCHBAUM:

25 Q MR. BARTON, ARE YOU A MEMBER OF THE SANTA  
26 MONICA AIRPORT ASSOCIATION?

27 A I AM.

28 Q DO YOU CURRENTLY HOLD ANY OFFICE?

1 A I'M PRESENTLY THE PRESIDENT.

2 Q HAVE YOU BEEN THE PRESIDENT IN THE PAST?

3 A I HAVE.

4 Q HOW MANY TIMES OR HOW MANY YEARS?

5 A I DON'T REALLY REMEMBER HOW MANY TIMES, BUT  
6 PROBABLY SIX OR SEVEN TIMES OVER THE LAST 25 YEARS.

7 Q THAT WAS MY NEXT QUESTION.

8 HOW LONG HAVE YOU BEEN A MEMBER OF THE  
9 ASSOCIATION?

10 A SINCE 1975 OR SIX, SOMETHING LIKE THAT.

11 Q YOU'RE A PILOT?

12 A I'M A PILOT.

13 Q HOW LONG HAVE YOU BEEN A PILOT?

14 A SINCE 1964.

15 THE COURT: IS THAT WHAT YOU DO FOR A LIVING?

16 THE WITNESS: IT IS NOT.

17 Q BY MR. KIRSCHBAUM: WHAT DO YOU DO FOR A  
18 LIVING?

19 A I'M IN MARKETING SALES IN THE PRECIOUS METAL  
20 PLATING INDUSTRY.

21 Q DO YOU HAVE AN ESTIMATE AS TO HOW MANY FLIGHT  
22 HOURS YOU HAVE?

23 A AROUND 6,000.

24 Q AND DO YOU RECALL THE -- YOU'VE BEEN PRESENT  
25 IN THE COURTROOM TODAY?

26 A I HAVE.

27 Q DO YOU RECALL THE VARIOUS LITIGATIONS THAT  
28 WE'VE BEEN DISCUSSING, THE 1977 FEDERAL DISTRICT COURT

1 CASE? DO YOU RECALL THAT?

2 A I DO.

3 Q DO YOU RECALL THE GAMA AND NBAA CASE RELATING  
4 TO THE 85 DECIBEL NOISE ORDINANCE?

5 A I DO.

6 Q AND DO YOU RECALL THE PETITION FOR WRIT OF  
7 MANDATE THAT WE WERE JUST TALKING ABOUT WITH MR. SCHIFF  
8 FROM JULY 31ST OF 1981 RELATING TO THE EVICTIONS?

9 A I DO.

10 Q DO YOU RECALL THE PART 13 CASE FILED AGAINST  
11 THE CITY OF SANTA MONICA IN JANUARY OF 1982?

12 A I DO.

13 Q DO YOU RECALL A SUBSEQUENT PART 13 CASE FILED  
14 BY THE SANTA MONICA AIRPORT ASSOCIATION IN CONJUNCTION  
15 WITH BRILES HELICOPTER?

16 A I DO.

17 Q AND DO YOU ALSO RECALL A PART 13 COMPLAINT  
18 FILED BY MR. GARY DANFORTH?

19 A I DO.

20 Q OKAY. DID YOU HAVE ANY INVOLVEMENT WITH THE  
21 SANTA MONICA AIRPORT ASSOCIATION IN FORMULATING THE, FOR  
22 LACK OF A BETTER WORD, STRATEGY TO BE USED IN THE  
23 PARTICIPATION IN THE WORKING GROUP IN APPROXIMATELY  
24 1983?

25 A I DO.

26 Q COULD YOU DESCRIBE FOR THE COURT WHAT IT IS  
27 THAT YOU DID TO HELP PARTICIPATE IN THAT PROCESS?

28 A WELL, I VOLUNTEERED TO PARTICIPATE IN THE

1 WORKING GROUP AND HELP WITH ALL THE PEOPLE INVOLVED IN  
2 THE WORKING GROUP IN WORKING OUT ACCEPTABLE  
3 UNDERSTANDINGS AS TO HOW THE AIRPORT WAS GOING TO WORK  
4 AND WHAT THE CITY COULD AND COULDN'T DO RELATED TO THE  
5 '84 AGREEMENT.

6 Q DID YOU EVER HAVE ANY CONTACT IN THAT TIME  
7 FRAME WITH THE FAA?

8 A I DID.

9 Q WHO DID YOU TALK TO AT THE FAA?

10 A WELL, WE WERE ORIGINALLY VISITED BY SANDY  
11 MURDOCH AND LYNN CIRRUZI FROM WASHINGTON.

12 I WAS IN CONTACT WITH MR. HERMAN BLISS IN THE  
13 WESTERN REGION. AND THERE WERE MANY, MANY MEETINGS  
14 EARLY ON RELATING TO OUR CONCERNS OF THE CITY'S DESIRE  
15 TO CLOSE THE AIRPORT, RESTRICTED 85 DB, AND OTHER  
16 ASSORTED ATTEMPTS ON THEIR PART TO DOWNGRADE THE AIRPORT  
17 SO IT WASN'T A FUNCTIONAL AIRPORT.

18 Q DID YOU PARTICIPATE PERSONALLY IN THESE  
19 MEETINGS?

20 A I DID.

21 Q DID YOU ALSO ATTEND ANY MEETINGS WITH THE  
22 CITY OF SANTA MONICA DURING THAT TIME FRAME OR  
23 REPRESENTATIVES FROM THE CITY OF SANTA MONICA?

24 A YES, I DID.

25 Q COULD YOU DESCRIBE SOME OF THOSE MEETINGS?

26 A WITH JOHN ALSCHULER, WHO WAS THE CITY MANAGER  
27 AT THE TIME, AND JOHN JALILI, WHO WAS THE ASSISTANT CITY  
28 MANAGER AT THE TIME, AND BOB MEYERS, WHO WAS THE CITY

1 ATTORNEY RELATED TO NEGOTIATING ISSUES THAT THE -- THAT  
2 WOULD COME OUT TO BE THE FINAL '84 AGREEMENT. AND PRIOR  
3 TO THAT, IN THE '70S, LATE '70S, ALSO FROM TIME TO TIME,  
4 WOULD MEET WITH CITY OFFICIALS ABOUT MAJOR CONCERNS.

5 Q RELATING TO THE AIRPORT?

6 A RELATING TO THE AIRPORT.

7 Q AND DO YOU RECALL THE SUBSTANCE OF THE  
8 DISCUSSIONS THAT YOU HAD WITH THE CITY AND THE FAA IN  
9 THE APPROXIMATE 1983 TIMEFRAME RELATING TO WHAT FINALLY  
10 TURNED INTO THE PLANNING PROCESS AND THE '84 AGREEMENT?

11 A THE SUBSTANCE OF THE MEETINGS WERE TAKING  
12 SPECIFIC ISSUES THAT WAS BEING FORMULATED TO BE THE '84  
13 AGREEMENT IN DEALING WITH THE -- AS TO WHETHER THAT  
14 WOULD BE ACCEPTABLE TO THE SANTA MONICA AIRPORT  
15 ASSOCIATION AND USERS AND MAKING ADJUSTMENTS TO THE  
16 ROUGH DRAFT OF WHAT I'LL CALL THE AGREEMENT THAT WAS  
17 GOING TO BE DRAWN AS DEALING WITH THOSE ISSUES OF WHICH  
18 WE HAD CONCERNS.

19 Q AND DID YOU PERSONALLY VOICE CONCERNS WITH  
20 RESPECT TO CERTAIN ASPECTS OF THE PROPOSED AGREEMENT?

21 A VERY MUCH SO.

22 Q DO YOU RECALL ANY OF THE SPECIFICS THAT  
23 CONCERNED YOU?

24 A WELL, IT'S 25 YEARS AGO. BUT THE GUARANTEED  
25 MINIMUM FLEET OF THE AIRPORT IN TERMS OF TIE DOWN SPACES  
26 WAS ONE ISSUE.

27 THE NUMBER OF FIXED BASE OPERATORS AND WHAT  
28 THE DEFINITION, WHAT DEFINITION OF A FULL SERVICE FIXED

1 BASE OPERATOR WAS, WHERE THEY WERE GOING TO --  
2 THEORETICALLY GOING TO BE MOVED TO, HOW THAT WAS GOING  
3 TO BE HANDLED. THE NOISE PROGRAM AND HOW IT WAS GOING  
4 TO BE HANDLED WERE SOME OF THE KEY CONCERNS RELATING TO  
5 THE CRAFTING OF THE '84 AGREEMENT.

6 Q AND YOU EXPRESSED THOSE CONCERNS BOTH TO THE  
7 FAA AND TO THE CITY?

8 A YES.

9 Q IN RESPONSE TO YOUR EXPRESSION OF CONCERN IN  
10 SOME OF THOSE AREAS, WERE CHANGES MADE TO THE PROPOSED  
11 AGREEMENT?

12 A YES.

13 Q AT SOME POINT IN TIME, WERE YOU A PART OF THE  
14 GROUP ON BEHALF OF THE SANTA MONICA AIRPORT ASSOCIATION  
15 THAT APPROVED OF THE FINAL DRAFT OF THE '84 AGREEMENT?

16 A IN ROUGH FORM, YES.

17 Q WHAT DO YOU MEAN BY ROUGH FORM?

18 A WHEN THE '84 AGREEMENT WAS FINALLY WRITTEN  
19 WITH ALL THE LAWYERS PUTTING THEIR FINE DOTS ON IT, TO  
20 ME, THE FINAL DOCUMENT WAS A BIT VAGUE, IN SOME  
21 INSTANCES.

22 Q HOW SO?

23 A WELL, WE WOULD EXPRESS OUR MAJOR CONCERNS,  
24 BUT WHEN WE WOULD READ THE DOCUMENT, WE HAD WISHED THAT  
25 IT TURNED OUT TO BE A LITTLE MORE EXPLICIT.

26 THE COURT: IN WHAT AREAS?

27 THE WITNESS: PARDON?

28 THE COURT: IN WHAT AREAS DID YOU WANT IT MORE

1 EXPLICIT?

2 THE WITNESS: THE DEFINITION, FOR INSTANCE, OF A  
3 FULL SERVICE FIXED BASE OPERATOR WAS NOT SPECIFIED IN  
4 DETAIL. EVERYBODY KNEW IN THOSE DAYS WHAT A FULL  
5 SERVICE FIXED BASE OPERATOR WAS, BUT THERE WAS NO  
6 ITEM-BY-ITEM TYPES OF SERVICES THAT WOULD DEFINE WHAT A  
7 FULL SERVICE FIXED BASE OPERATOR WAS.

8 IT GETS MURKY AS TO WHAT A SPECIALTY OPERATOR  
9 MIGHT BE VERSUS A FULL SERVICE FIXED BASED OPERATOR.  
10 IT'S KIND OF LIKE, FOR INSTANCE, TRYING TO DESCRIBE --

11 THE COURT: HOLD ON A MINUTE.

12 THE WITNESS: SORRY.

13 THE COURT: I'M JUST ASKING WHAT AREAS, NOT  
14 PROBLEMS. OTHER THAN FBO, WHAT ELSE THAT YOU THOUGHT  
15 WAS VAGUE?

16 THE WITNESS: WELL, THAT'S THE ONE THAT COMES TO  
17 MIND NOW. THERE WERE A FEW OTHERS, BUT THAT'S THE ONE  
18 THAT COMES TO MIND.

19 THE COURT: THAT'S FINE.

20 Q BY MR. KIRSCHBAUM: LET ME DIRECT YOUR  
21 ATTENTION TO EXHIBIT 484. THAT'S IN VOLUME NO. 9.

22 THE COURT: YOU BETTER HELP HIM OUT.

23 MR. KIRSCHBAUM: I'LL GET IT.

24 THE WITNESS: NOW WHAT DO I LOOK AT, LLOYD?

25 Q BY MR. KIRSCHBAUM: THIS IS A LETTER DATED  
26 MAY 7TH, 1982 ON SANTA MONICA AIRPORT ASSOCIATION  
27 LETTERHEAD.

28 IS THAT YOUR SIGNATURE AT THE BOTTOM OF THE

1 FIRST PAGE?

2 A IT IS.

3 Q IT INDICATES AT THAT POINT IN TIME YOU WERE  
4 THE VICE PRESIDENT OF THE ASSOCIATION?

5 A THAT'S CORRECT.

6 Q IS THAT ANOTHER ONE OF THE OFFICES THAT YOU  
7 HELD?

8 A YES.

9 Q AND THIS LETTER DIRECTED TO THE ASSISTANT  
10 GENERAL COUNSEL FOR LITIGATION DEPARTMENT OF  
11 TRANSPORTATION PROVIDED ADDITIONAL DOCUMENTATION AND  
12 INFORMATION TO THE DEPARTMENT OF TRANSPORTATION IN THE  
13 FAA; CORRECT?

14 A YES.

15 Q LET ME DIRECT YOUR ATTENTION TO EXHIBIT 476  
16 WHICH IS IN THIS SAME BINDER.

17 A YES.

18 Q OKAY. THIS IS THE LETTER FROM THE FAA  
19 REQUESTING ADDITIONAL INFORMATION ABOUT THREE MONTHS  
20 EARLIER THAN YOUR LETTER OF EXHIBIT 484; CORRECT?

21 A YES, IT IS.

22 Q OKAY. YOUR LETTER THAT'S DATED MAY 7TH,  
23 EXHIBIT 484, WAS THAT IN RESPONSE TO THE LETTER DATED  
24 FEBRUARY THE 4TH?

25 A LET ME READ THIS. I BELIEVE IT IS.

26 Q WAS THERE EVER ANY TIME THAT YOU KNOW ABOUT  
27 WHERE THE FAA REQUESTED ANY ADDITIONAL INFORMATION FROM  
28 THE AIRPORT ASSOCIATION THAT YOU DIDN'T PROVIDE THEM?

1           A       I CAN'T THINK OF ANY TIME WHEN WE DIDN'T  
2 PROVIDE THE INFORMATION THAT THE FAA REQUESTED, ALTHOUGH  
3 WE WENT TO GREAT LENGTHS FROM TIME TO TIME IN ORDER TO  
4 BE ABLE TO ACQUIRE THAT INFORMATION TO GET IT TO THEM.

5           Q       AND WHEN YOU WERE PART OF THE WORKING GROUP  
6 IN THE PLANNING PROCESS THAT LED TO THE '84 AGREEMENT,  
7 DID YOU HAVE AN UNDERSTANDING AS TO WHETHER OR NOT THE  
8 AGREEMENT THAT WOULD ULTIMATELY BE REACHED WOULD RESOLVE  
9 THE AIRPORT ASSOCIATION'S COMPLAINT?

10          A       NO, I DIDN'T. AND MY WHOLE CONCERN WAS THAT  
11 UNTIL THE AGREEMENT WAS WORKED OUT TO OUR SATISFACTION,  
12 WE WEREN'T ABOUT TO REVERSE OUR POSITION, THAT WE  
13 INTENDED TO CARRY ON WITH ANY PENDING COMPLAINTS OR  
14 LITIGATION THAT'S NECESSARY. THE '84 AGREEMENT WOULD  
15 RESOLVE THOSE ISSUES IF IT COULD BE RESOLVED TO OUR  
16 SATISFACTION.

17          Q       OKAY. AND LET ME ASK YOU ABOUT SOMETHING  
18 THAT HAPPENED MUCH MORE RECENTLY.

19                   DO YOU RECALL THAT IN APPROXIMATELY NOVEMBER  
20 OF 1997 THE AIRPORT ASSOCIATION SUBMITTED AN  
21 ADMINISTRATIVE COMPLAINT TO THE FAA RELATING TO THE  
22 ISSUES THAT WE'RE HERE ABOUT IN THE CASE IN FRONT OF  
23 THIS COURT?

24          A       YES, I DO.

25          Q       AND YOU UNDERSTAND, DO YOU NOT, THAT THE  
26 STATUTE WAS CHANGED, CHANGING IT FROM PART 13 TO PART 16  
27 OF THE CODE OF FEDERAL REGULATIONS?

28          A       THAT IS CORRECT.

1 Q SO YOU UNDERSTAND THAT THE AIRPORT  
2 ASSOCIATION FILED A PART 16 COMPLAINT; CORRECT?

3 A THAT'S CORRECT.

4 Q OKAY. AND DO YOU ALSO HAVE AN UNDERSTANDING  
5 AS TO THE FAA'S DISMISSING THE PART 16 COMPLAINT WITHOUT  
6 PREJUDICE?

7 A YES.

8 Q AND FOLLOWING THAT PART 16 COMPLAINT AND ITS  
9 DISMISSAL WITHOUT PREJUDICE, WERE YOU A PART OF A GROUP  
10 OF SANTA MONICA AIRPORT ASSOCIATION MEMBERS THAT WENT  
11 AND MET WITH MEMBERS OF THE FAA AT THE WESTERN REGIONAL  
12 HEADQUARTERS?

13 A I WAS.

14 Q I'LL DIRECT YOUR ATTENTION TO EXHIBIT 637.

15 THE COURT: I'LL TELL YOU WHAT. I WOULD LIKE TO  
16 TAKE A BREAK RIGHT NOW.

17 WE'LL HAVE A 15-MINUTE RECESS.

18 MR. KIRSCHBAUM: THAT WOULD BE GREAT. THANK YOU.

19

20 (AFTERNOON RECESS WAS TAKEN.)

21

22 THE COURT: ALL RIGHT. WHY DON'T WE CONTINUE.

23 Q BY MR. KIRSCHBAUM: WHEN WE LEFT OFF, WE WERE  
24 GETTING READY TO TAKE A LOOK AT EXHIBIT 637. THAT IS IN  
25 VOLUME NO. 12.

26 DO YOU RECALL, MR. BARTON, THAT IN  
27 APPROXIMATELY APRIL OF 1998 THE AIRPORT ASSOCIATION  
28 CONTACTED THE FEDERAL AVIATION ADMINISTRATION AND SET UP

1 A MEETING IN WESTERN REGIONAL HEADQUARTERS?

2 A I DO.

3 Q AND WERE YOU A PART OF THAT MEETING?

4 A I WAS.

5 Q WHO ELSE WAS AT THAT MEETING?

6 A MR. DON BRANDSEN; MR. RANDY STEIN; AND  
7 YOURSELF, LLOYD KIRSCHBAUM.

8 Q WHO WAS THERE ON BEHALF OF THE FAA?

9 A THERE WAS THE FAA ADMINISTRATOR OF THE  
10 WESTERN REGION, WITHYCOMBE; HERMAN BLISS, WHICH HE USED  
11 TO BE HEAD OF ALL OF THE AIRPORTS IN THE WESTERN REIGN;  
12 DEWITTE LAWSON, GENERAL COUNSEL, I BELIEVE, OF THE  
13 WESTERN REGION; AND A MONROE BENTON, WHO SEEMED TO BE  
14 ALSO IN THE LEGAL DEPARTMENT OF THE WESTERN REGION.

15 Q AND DO YOU RECALL THE TOPICS OF DISCUSSION AT  
16 THAT MEETING?

17 A THE TOPIC OF DISCUSSION OF THAT MEETING WAS  
18 WE WERE VERY CONCERNED THAT THE '84 AGREEMENT WAS BEING  
19 VIOLATED, AND WE WANTED THE FAA TO TAKE ACTION TO  
20 ENFORCE THE '84 AGREEMENT.

21 Q TAKING A LOOK AT EXHIBIT 637, IS THIS A  
22 LETTER THAT WAS PRESENTED TO US AT THAT MEETING BY HAND?

23 A BY WHO?

24 Q BY HAND DELIVERY?

25 A OH, BY HAND DELIVERY. YES, IT WAS.

26 Q OKAY. AND DIRECTING YOUR ATTENTION TO THE  
27 SECOND PARAGRAPH, AFTER ADVISING THE FAA THAT THE  
28 AIRPORT ASSOCIATION WAS CONCERNED REGARDING THE TERMS OF

1 THE '84 AGREEMENT, DID THE FAA PROPOSE SOME TYPE OF  
2 RESOLUTION?

3 A THE FAA TOLD US THAT IF WE WANTED TO ENFORCE  
4 THE '84 AGREEMENT --

5 MR. TACHIKI: YOUR HONOR, I OBJECT. THIS CALLS  
6 FOR HEARSAY NOW.

7 THE COURT: SUSTAINED.

8 Q BY MR. KIRSCHBAUM: DID THE FAA MAKE ANY  
9 OFFERS WITH RESPECT TO A POTENTIAL RESOLUTION?

10 A YES. THEY SUGGESTED TO US --

11 MR. TACHIKI: SAME OBJECTION, YOUR HONOR. IT'S  
12 HEARSAY.

13 THE COURT: SUSTAINED.

14 Q BY MR. KIRSCHBAUM: LET ME DIRECT YOUR  
15 ATTENTION TO THE SECOND PARAGRAPH, THE FIRST SENTENCE  
16 WHICH INDICATES:

17 "THE FAA, THROUGH ITS WESTERN PACIFIC  
18 REGION HEREBY OFFERS TO ASSIST IN THE  
19 SETTLEMENT/RESOLUTION OF THE  
20 CITY/ASSOCIATION DISPUTE THROUGH AN  
21 ALTERNATE DISPUTES RESOLUTION PROCESS."

22 DO YOU SEE THAT?

23 A YES.

24 Q AND, IN FACT, DID THE FAA FACILITATE AN  
25 ALTERNATIVE DISPUTE RESOLUTION PROCESS BETWEEN THE CITY  
26 AND THE AIRPORT ASSOCIATION?

27 A THEY DID.

28 Q AND FURTHER DOWN IN THAT PARAGRAPH, IT

1 INDICATES:

2 "THE PROCESS WE SUGGEST IS MEDIATION IN  
3 WHICH THE FAA WOULD ATTEMPT TO FACILITATE  
4 SETTLEMENT. FAA WILL BE A NEUTRAL  
5 PARTICIPANT AND WILL LACK BOTH THE AUTHORITY  
6 AND INCLINATION TO IMPOSE A RESOLUTION."

7 DO YOU SEE THAT?

8 A YES.

9 Q IS THAT IN FACT WHAT THE FAA DID?

10 A YES.

11 Q AND YOU PARTICIPATED IN THE MEDIATION  
12 PROCESS?

13 A I DID.

14 Q AND THE MEDIATOR WAS FROM THE FAA?

15 A HE WAS IN WASHINGTON.

16 Q AND DID THE FAA ATTEMPT TO IMPOSE A  
17 RESOLUTION OF THE DISPUTE?

18 MR. TACHIKI: OBJECTION. YOUR HONOR, THAT'S  
19 VAGUE.

20 THE COURT: SUSTAINED. TRY AGAIN.

21 Q BY MR. KIRSCHBAUM: DURING THE MEDIATION  
22 PROCESS -- THE MEDIATION PROCESS ITSELF WAS  
23 CONFIDENTIAL; CORRECT?

24 A YES.

25 Q OKAY. YOU UNDERSTOOD THAT YOU WEREN'T  
26 SUPPOSED TO DISCLOSE THE DISCUSSIONS IN ANY FORUM  
27 INCLUDING IN A COURT OF LAW LIKE WE'RE IN TODAY;  
28 CORRECT?

1           A       THAT'S CORRECT.

2           Q       NOTWITHSTANDING THE CONFIDENTIALITY, I'M NOT  
3 ASKING YOU TO BREACH THE CONFIDENCE YOU AGREED TO  
4 MAINTAIN.

5                   AT ANY POINT IN TIME DURING THAT PROCESS, DID  
6 THE FAA ATTEMPT TO FORCE THE PARTIES TO ACCEPT A  
7 PARTICULAR RESOLUTION OF A PARTICULAR ISSUE?

8           MR. TACHIKI: OBJECTION. THAT'S NOT ONLY VAGUE,  
9 BUT IT VIOLATES THE VERY CONFIDENCE, THE CONFIDENTIAL  
10 AGREEMENT THAT MR. KIRSCHBAUM JUST MENTIONED, BECAUSE  
11 YOU'RE TRYING TO GET TO THE ACTUAL SUBSTANCE OF THE  
12 CONVERSATION.

13           THE COURT: HOLD ON A SECOND. SUSTAINED.

14                   WHAT RELEVANCY WOULD THAT HAVE ON THE ISSUES  
15 WE'RE DISCUSSING?

16           MR. KIRSCHBAUM: WELL, I'M TRYING TO SHOW, YOUR  
17 HONOR, THAT THE FAA VIEWED ITSELF AS A NEUTRAL, NOT AS A  
18 PARTY TO THE DISPUTE AND THAT IT DID, IN FACT, VIEW THE  
19 AIRPORT ASSOCIATION AS A PARTY TO THE DISPUTE AND THAT  
20 THE AIRPORT ASSOCIATION WAS THE PROPER PARTY TO BE  
21 CARRYING FORTH THE DISPUTE.

22           THE COURT: I'M GOING TO SUSTAIN THE OBJECTION TO  
23 THE QUESTION.

24           MR. KIRSCHBAUM: OKAY.

25           Q       AT ANY POINT IN TIME DURING THAT PROCESS,  
26 WERE YOU EVER ADVISED BY THE FAA THAT THE AIRPORT  
27 ASSOCIATION LACKED THE AUTHORITY TO ENFORCE THE '84  
28 AGREEMENT?

1 MR. TACHIKI: OBJECTION. THAT'S HEARSAY. IT  
2 VIOLATES --

3 THE COURT: SUSTAINED.

4 Q BY MR. KIRSCHBAUM: DURING THE COURSE OF THE  
5 WORKING GROUP DISCUSSIONS AND NEGOTIATIONS THAT LED UP  
6 TO THE '84 AGREEMENT, DID YOU HAVE OCCASION TO SPEAK  
7 DIRECTLY WITH THE FAA?

8 A I DID.

9 Q AND TO WHOM DID YOU SPEAK?

10 A MOSTLY TO LYNN CIRRUZI.

11 Q AND HOW OFTEN DID YOU SPEAK TO LYNN CIRRUZI?

12 A HE OFTEN CALLED ME AT WORK AND ASKED ME  
13 WHAT'S GOING ON IN SANTA MONICA; WHAT THE NEWSPAPERS  
14 HAVE THAT MIGHT BE OF INTEREST TO HIM; WHAT SORT OF  
15 SHENANIGANS ARE BEING PLAYED, AND THAT WENT ON THROUGH A  
16 COUPLE OF YEARS, MAYBE NOT QUITE THAT LONG, WHERE HE  
17 WOULD CHECK WITH ME TO JUST SEE WHAT'S GOING ON RELATED  
18 TO THE AIRPORT ISSUE AND THE DISPUTE.

19 Q AND DID YOU PROVIDE INFORMATION TO  
20 MR. CIRRUZI ABOUT THE STATUS AND WHAT WAS GOING ON?

21 A I DID. THAT WAS ABOVE AND BEYOND HIM COMING  
22 OUT HERE AND HAVING PRIVATE MEETINGS WITH US PRIOR TO  
23 MEETING WITH THE CITY AND WHATEVER OTHER AGENDAS THEY  
24 MAY HAVE HAD.

25 MR. KIRSCHBAUM: NOTHING FURTHER.

26 THE WITNESS: I --

27 THE COURT: HOLD ON.

28 MR. TACHIKI.

CROSS-EXAMINATION

BY MR. TACHIKI:

Q YOU STILL HAVE NOTEBOOK NO. 9, VOLUME NO. 9  
OUT IN FRONT OF YOU. WOULD YOU TURN TO EXHIBIT 476.  
IT'S THE LETTER TO PAUL BLACKMAN. IT'S DATED  
FEBRUARY 4TH, 1982.

A 476?

Q YES.

A I HAVE THAT LETTER.

Q OKAY. NOW, THIS LETTER, IT'S ADDRESSED TO  
MR. BLACKMAN, AND IT ASKS THE SANTA MONICA AIRPORT  
ASSOCIATION TO PROVIDE ADDITIONAL INFORMATION; IS THAT  
CORRECT?

ARE YOU LOOKING AT THE SECOND PARAGRAPH,  
MR. BARTON?

A YES, I AM. YES, IT DID.

Q DO YOU SEE AT THE BOTTOM OF THAT LETTER WHO  
SIGNED THE LETTER FOR THE FAA?

A IT SAYS JOHN H. CASSADY.

Q AND IT SAYS DEPUTY ASSISTANT CHIEF COUNSEL,  
IN THE REGULATIONS AND ENFORCEMENT DIVISION; IS THAT  
CORRECT?

A THAT'S WHAT IT SAYS.

Q AND YOU TESTIFIED EARLIER THAT YOU GAVE THIS  
ADDITIONAL INFORMATION TO THE FAA SUBSEQUENT TO THIS  
LETTER; IS THAT TRUE?

A I PERSONALLY?

Q YES, YOU PERSONALLY.

1           A       I PERSONALLY SIGNED THE LETTER. I BELIEVE  
2 I -- AND WE MAILED OUT WHATEVER IT WAS THAT THEY WERE  
3 ASKING FOR.

4           Q       WHY DON'T YOU TAKE A LOOK AT YOUR LETTER  
5 WHICH IS EXHIBIT 484. IT'S DATED MAY 7TH, 1982.

6           A       OKAY.

7           Q       NOW, THAT LETTER IS -- IS ADDRESSED TO  
8 SOMEBODY ELSE, ISN'T IT? IT'S ADDRESSED TO ASSISTANT  
9 GENERAL COUNSEL FOR LITIGATION?

10          A       THAT'S CORRECT.

11          Q       TO MR. STEINER. SO YOU DIDN'T SEND IT TO  
12 MR. CASSADY, DID YOU?

13          A       APPARENTLY NOT.

14          Q       BUT YOU'RE POSITIVE THAT, IN FACT, THIS  
15 INFORMATION WAS SUPPOSED TO BE RESPONSIVE TO THE LETTER  
16 OF FEBRUARY 4TH, 1982?

17          A       BEING THAT THIS IS 21 YEARS AGO, I CANNOT SAY  
18 I'M POSITIVE OF THAT.

19          Q       AND SUBSEQUENT TO THIS LETTER, DID YOU SEE  
20 ANOTHER PART 13 COMPLAINT FILED BY THE SANTA MONICA  
21 AIRPORT ASSOCIATION WITH THE INFORMATION REQUESTED BY  
22 THE FAA?

23          A       SUBSEQUENT TO MAY 7TH, 1982.

24          Q       AFTER THIS LETTER OF FEBRUARY 4TH, 1982 THAT  
25 ASKED FOR THE ADDITIONAL INFORMATION, DID YOU SEE  
26 ANOTHER PART 13 COMPLAINT FILED ON BEHALF OF SANTA  
27 MONICA AIRPORT ASSOCIATION?

28          A       I JUST DON'T REMEMBER.

1 Q YOU JUST GOT THROUGH SAYING THAT YOU HAD BEEN  
2 SPEAKING TO MR. CIRRUZI FOR A NUMBER OF YEARS. YOU SAID  
3 HE SPOKE TO YOU ON A REGULAR BASIS?

4 A THAT'S CORRECT.

5 Q YOU SAID IT HAPPENED OVER A COUPLE OF YEARS?

6 A YES.

7 Q WHAT YEARS WERE THOSE IN?

8 A I DON'T REMEMBER, BUT IT WAS IN THE 1980 TO  
9 1984 ERA.

10 Q SO IT WAS FOR FOUR YEARS THAT YOU SPOKE TO  
11 HIM?

12 A NO. MAYBE A YEAR AND A -- YEAR-AND-A-HALF OF  
13 TIME, AND IT WAS JUST WHEN THEY STARTED TO RESPOND TO  
14 THE CITY'S DESIRE TO CLOSE THE AIRPORT, AND OUR  
15 COMPLAINT RELATED TO THAT SUBJECT MATTER.

16 Q WELL, WAS IT IN 1982?

17 A I DON'T REMEMBER.

18 Q WAS IT IN 1983?

19 A I DON'T REMEMBER.

20 Q WOULD IT HAVE HAPPENED AROUND THE TIME OF THE  
21 AIRPORT WORKING GROUP?

22 A I BELIEVE WELL BEFORE THAT.

23 Q WELL BEFORE THAT? OKAY.

24 SO CERTAINLY NOT BETWEEN NOVEMBER OF 1983 AND  
25 JANUARY OF 1984 THEN?

26 A I DON'T REMEMBER, BUT IT WAS PRIOR TO THE  
27 CITY AND THE FAA STARTING TO PUT TOGETHER AN  
28 '84 AGREEMENT.

1 Q OKAY. THANK YOU.

2 A IT WAS DURING THE TIME THEY WERE VISITING THE  
3 CITY --

4 Q OKAY.

5 A -- AND THREATENING IT.

6 Q IT WAS PRIOR TO THE ACTUAL DRAFT --

7 A IT WAS DURING THE TIME.

8 Q WE CAN'T TALK AT THE SAME TIME.

9 BUT IT WAS PRIOR TO THE ACTUAL TIME THE 1984  
10 AGREEMENT WAS DRAFTED; IS THAT CORRECT?

11 A TO THE BEST OF MY RECOLLECTION.

12 Q NOW, WHEN YOU WERE ASKED ABOUT THE MEETING  
13 THAT YOU HAD WITH THE FAA ON -- IN APRIL OF 1998, WERE  
14 YOU LOOKING AT A PIECE OF PAPER? WAS THAT A DOCUMENT  
15 FROM THAT MEETING?

16 A I SAW A SUGGESTION OF AN ADR RESOLUTION.

17 Q YOU WERE LOOKING AT A LITTLE PIECE OF PAPER.  
18 IS THAT NOTES YOU HAVE?

19 A JUST SOME NOTES. I WROTE DOWN SOME NAMES  
20 BECAUSE THE NAMES ARE SOMETIMES VAGUE FOR MEETINGS THAT  
21 I HAD FOUR OR FIVE YEARS AGO.

22 Q YOU DIDN'T REMEMBER THE NAMES SO YOU JUST  
23 WROTE THEM DOWN?

24 A I KNEW SOME OF THEM, NOT ALL OF THEM.  
25 SPECIFICALLY I DIDN'T REMEMBER MR. MONROE BENTON.

26 Q I THINK IT'S BALTON.

27 A BALTON IS THE NAME. I KNEW HE WAS THERE.

28 BUT IT'S DEWITTE LAWSON THAT SAID IF WE WANTED TO FIGHT

1 THIS ISSUE, WE HAD STANDING TO SUE YOU.

2 Q THAT'S FINE. YOU ANSWERED THE QUESTION.

3 NOW, MR. BARTON, YOU SAID THAT YOU WERE A  
4 MEMBER OF THE AIRPORT WORKING GROUP?

5 A FROM TIME TO TIME.

6 Q CAN I SHOW YOU TWO EXHIBITS THAT ARE  
7 DEFENDANTS EXHIBIT 2149 AND 2150. CAN YOU TAKE A LOOK  
8 AT 2149 WITH THAT WORKING GROUP ROSTER DATED  
9 APRIL 6, 1983, AND YOU CAN LOOK AT 2150 WHICH IS THE  
10 WORKING GROUP ROSTER WHICH IS DATED MAY 4TH, 1983. IF  
11 YOU CAN JUST LOOK AT THE NAMES ON THE FIRST TWO PAGES.

12 A YES.

13 Q ARE YOU LISTED IN -- ON THAT GROUP?

14 A NOT EITHER ONE OF THESE SHEETS.

15 Q SO WERE YOU JUST AN INFORMAL MEMBER OF THE  
16 AIRPORT WORKING GROUP?

17 A WITH THESE GROUPS, I GUESS I WAS.

18 Q SO WERE YOU NOT ONE OF THE NAMED MEMBERS?

19 A NOT AT THAT TIME. I HAD BEEN -- I HAVE BEEN  
20 ON NUMEROUS AIRPORT WORKING GROUPS IN THE PAST WORKING  
21 WITH THE NEIGHBORS AND THE CITY TRYING TO RESOLVE  
22 ISSUES.

23 Q BUT I'M JUST TALKING ABOUT THIS SPECIFIC  
24 WORKING GROUP THAT DEALT WITH THE ISSUES THAT DEVELOPED  
25 INTO THE MASTER PLAN. YOU WEREN'T A FORMAL MEMBER OF  
26 THIS GROUP?

27 A MY NAME IS NOT ON HERE.

28 Q NOW, YOU INDICATED THAT YOU WERE ONE OF THE

1 NEGOTIATORS FOR THE SANTA MONICA AIRPORT ASSOCIATION  
2 REGARDING THE 1984 AGREEMENT; IS THAT CORRECT?

3 A I WAS ONE OF THE PERSONS INVOLVED IN WORKING  
4 OUT THE DETAILS OF THE '84 AGREEMENT WHERE WE FELT IT  
5 WAS NOT SATISFACTORY TO OUR -- TO THE USERS' NEEDS.

6 Q OKAY. BUT WERE YOU ONE OF THE NEGOTIATORS OR  
7 DID YOU JUST PROVIDE INFORMATION TO OTHER PEOPLE?

8 A WHAT DO YOU MEAN BY NEGOTIATOR?

9 Q WELL, DID YOU ACTUALLY MEET WITH OTHER  
10 PARTIES AND NEGOTIATE THE TERMS OF THE 1984 AGREEMENT?

11 A I DID WITH THE CITY.

12 Q OKAY. AND SO WERE YOU ONE OF THE NEGOTIATORS  
13 FOR THE SANTA MONICA AIRPORT ASSOCIATION?

14 A YES, I WAS.

15 Q SO WHEN YOU WERE IN THESE NEGOTIATING  
16 SESSIONS, WHO WAS REPRESENTING THE CITY?

17 A JOHN ALSCHULER, SHANE -- NO, JOHN JALILI WERE  
18 TWO OF THE PEOPLE THAT I REMEMBER SITTING ON THOSE  
19 MEETINGS REPRESENTING THE CITY.

20 Q WAS THIS DURING THE AIRPORT WORKING GROUP  
21 PROCESS?

22 A PARDON? NO, THESE WERE NOT WORKING GROUP.  
23 THIS HAD TO DO WITH MEETINGS WITH THE CITY OVER ISSUES  
24 OF THE '84 AGREEMENT. BETWEEN THE AIRPORT ASSOCIATION  
25 AND THE CITY.

26 Q WAS THIS PRIOR TO NOVEMBER OF 1983?

27 A I DO NOT REMEMBER.

28 Q DID YOU EVER NEGOTIATE DIRECTLY WITH THE FAA?

1           A       ON WHAT ISSUES?

2           Q       DID YOU EVER NEGOTIATE DIRECTLY WITH THE FAA  
3 ON THE ISSUES THAT ARE RAISED IN THE 1984 AGREEMENT?

4           A       NEGOTIATE MIGHT NOT BE THE RIGHT WORD. WE  
5 HAD MEETINGS WITH THE FAA.

6           Q       WERE YOU EVER AT A ROOM WHERE NEGOTIATIONS  
7 WERE OCCURRING WITH THE FAA AND THE CITY AT THE SAME  
8 TIME?

9           A       NO, I WAS NOT.

10          Q       AND WERE YOU EVER IN A MEETING WITH MR. STARK  
11 AND MR. CIRRUZI WHEN THE TERMS OF THE 1984 AGREEMENT  
12 WERE BEING NEGOTIATED?

13          A       I WAS NOT.

14          Q       DID SMAA HAVE ATTORNEYS REPRESENTING THEM AT  
15 THAT TIME DURING THE NEGOTIATIONS FOR THE 1984  
16 AGREEMENT?

17          A       I'M NOT SURE ABOUT THAT TIME FRAME, BUT I  
18 BELIEVE MR. GREEN WAS INVOLVED AT THAT TIME.

19          Q       AND MR. GREEN WAS THE ATTORNEY FOR --

20          A       GAMA.

21          Q       GAMA?

22          A       GAMA.

23          Q       BUT HE WASN'T THE ATTORNEY REPRESENTING THE  
24 SANTA MONICA AIRPORT ASSOCIATION?

25          A       THAT'S CORRECT. HE WAS NOT A EMPLOYEE OF THE  
26 SANTA MONICA AIRPORT ASSOCIATION.

27          Q       DID SMAA ITSELF HAVE ITS OWN ATTORNEY  
28 REPRESENTING THEM IN THE NEGOTIATIONS?

1           A       I'M NOT QUITE SURE WHEN MR. KNICKERBOCKER --  
2 WHERE MR. KNICKERBOCKER WAS AND WAS NOT INVOLVED IN  
3 THOSE DATES. IT GOES BACK TOO FAR.

4           MR. TACHIKI: YOUR HONOR, I HAVE NO MORE  
5 QUESTIONS.

6           MR. KIRSCHBAUM: I HAVE A COUPLE.

7  
8                               REDIRECT EXAMINATION

9 BY MR. KIRSCHBAUM:

10           Q       WHEN YOU WERE INVOLVED IN MEETINGS WITH THE  
11 FAA, DO YOU REMEMBER THE SUBSTANCE OF ANY OF THE ISSUES  
12 THAT WERE DISCUSSED WITH RESPECT TO THE '84 AGREEMENT?

13           A       TO THE '84 AGREEMENT?

14           Q       YES, SIR.

15           A       THE SUBSTANCE WAS BASICALLY ALL THE CONCERNS  
16 WE HAD AT THE TIME WITH CLOSING THE AIRPORT -- THE NOISE  
17 PROGRAM; THE NORTH SIDE DEVELOPMENT AND WHAT THAT WAS  
18 GOING TO CONSIST OF IN TERMS OF THE FIXED BASE OPERATORS  
19 AND HOW THE SERVICES WERE GOING TO BE PROVIDED; HOW THE  
20 NOISE LIMIT WAS GOING TO BE OPERATED, WHAT A GOOD  
21 DEFINITION WOULD BE FOR MITIGATING CIRCUMSTANCES RELATED  
22 TO THE NOISE PROGRAM;

23                       THE FLEET MIX AND THE NUMBER OF TIE DOWN  
24 SPACES AND WHAT WAS GOING TO BE LEFT WOULD BE RESIDUAL  
25 LAND, AND OF THAT, WHAT WOULD BE THE APPROPRIATE USES  
26 FOR RESIDUAL LAND; AND SEVERAL OTHER ITEMS THAT JUST  
27 DON'T COME TO MIND. THERE WERE MAJOR CONCERNS OF THE  
28 USERS OF THE AIRPORT INCLUDING USER FEES.

1 Q WHAT KIND OF FEES?

2 A TIE DOWN FEES.

3 Q AND THOSE ARE ALL SPECIFIC TOPICS THAT YOU  
4 PROVIDED INPUT TO THE FAA WITH RESPECT TO WHAT THE  
5 AIRPORT ASSOCIATION WAS EXPECTING TO COME OUT OF THE '84  
6 AGREEMENT; CORRECT?

7 A THOSE, YES.

8 Q AND YOU DID THAT PERSONALLY?

9 A I DID THAT PERSONALLY. I DID IT PERSONALLY  
10 WITH WASHINGTON AND WITH WESTERN REGIONAL.

11 MR. KIRSCHBAUM: NOTHING FURTHER.

12 MR. TACHIKI: JUST A COUPLE OF QUESTIONS.

13

14 RECROSS-EXAMINATION

15 BY MR. TACHIKI:

16 Q THE INFORMATION YOU GAVE TO THE FAA, DID YOU  
17 DO THAT DURING THE PERIOD OF TIME YOU WERE TALKING TO  
18 MR. CIRRUZI?

19 A I STARTED TALKING TO MR. CIRRUZI BEFORE THERE  
20 WAS ANYTHING CALLED THE '84 AGREEMENT.

21 Q THAT'S WHAT I'M ASKING YOU. THE INFORMATION  
22 THAT YOU GAVE TO THE FAA YOU GAVE TO MR. CIRRUZI DURING  
23 THIS TIME PERIOD THAT WE HAD TALKED ABOUT EARLIER?

24 A I GAVE HIM INFORMATION ALL ALONG. I GAVE HIM  
25 INFORMATION EARLY ON UNTIL -- ANY TIME I WAS TALKING TO  
26 MR. CIRRUZI OR MR. MURDOCH, I GAVE THEM INFORMATION.

27 Q OKAY. MAYBE MY QUESTION IS NOT CLEAR TO YOU.  
28 YOU TALKED ABOUT A TIME PERIOD THAT YOU GAVE

1 INFORMATION TO MR. CIRRUZI, AND YOU SAID IT PREDATED THE  
2 AIRPORT WORKING GROUP PERIOD OR AT LEAST THE '84  
3 AGREEMENT, THE DRAFTING OF THE '84 AGREEMENT; IS THAT  
4 CORRECT?

5 A IT PREDATED THE DRAFTING OF THE '84  
6 AGREEMENT.

7 Q WHEN YOU WERE GIVING THIS INFORMATION TO  
8 MR. CIRRUZI, THIS WAS PRIOR TO THE DRAFTING OF THE '84  
9 AGREEMENT; IS THAT CORRECT?

10 A THAT'S CORRECT. AFTER THAT I WAS TALKING  
11 WITH MR. BLISS.

12 Q SO THE TIME PERIOD YOU'RE TALKING ABOUT IS,  
13 AT LEAST, DURING THE AIRPORT WORKING GROUP MEETINGS OR  
14 EVEN EARLIER THAN THAT; IS THAT CORRECT?

15 A THAT COULD BE CORRECT.

16 MR. TACHIKI: I DON'T HAVE ANY FURTHER QUESTIONS.

17

18 FURTHER REDIRECT EXAMINATION

19 BY MR. KIRSCHBAUM:

20 Q AND THIS INFORMATION THAT YOU WERE PROVIDING  
21 TO THE FAA, WHEN YOU WERE PROVIDING THIS INFORMATION,  
22 DID YOU KNOW THAT IT WOULD ULTIMATELY END UP IN AN  
23 AGREEMENT?

24 A DID NOT.

25 Q DID THE FAA TELL YOU, "WELL, WE'VE GOT AN  
26 AGREEMENT ALL DONE, AND YOU JUST NEED INFORMATION"?

27 MR. TACHIKI: OBJECTION. HEARSAY.

28 THE COURT: SUSTAINED.

1 Q BY MR. KIRSCHBAUM: IN YOUR DISCUSSIONS WITH  
2 THE FAA, WERE YOU PROVIDED ANY GUIDANCE AS TO THE STATUS  
3 OF ANY NEGOTIATIONS BETWEEN THE CITY AND THE FAA?

4 MR. TACHIKI: OBJECTION. HEARSAY.

5 THE COURT: YOU CAN JUST ANSWER THAT "YES" OR  
6 "NO."

7 THE WITNESS: ASK THE QUESTION AGAIN, WOULD YOU,  
8 LLOYD.

9 MR. KIRSCHBAUM: SURE.

10 Q WHEN YOU WERE PROVIDING INFORMATION TO THE  
11 FAA REGARDING THE VARIOUS SUBSTANTIVE ISSUES THAT YOU  
12 JUST RECENTLY LISTED FOR US, DID THE FAA PROVIDE YOU  
13 WITH A STATUS OF WHERE THEIR NEGOTIATIONS WITH THE CITY  
14 WERE?

15 THE COURT: JUST ANSWER THAT "YES" OR "NO."

16 THE WITNESS: YES.

17 Q BY MR. KIRSCHBAUM: AND IN ADDITION TO  
18 PROVIDING INFORMATION THROUGH THE FAA, WAS THERE ALSO  
19 DIRECT CONTACT BETWEEN YOURSELF AND ANYONE FROM THE CITY  
20 DURING THAT TIME FRAME, WHETHER IT WAS MR. ALSCHULER,  
21 MR. JALILI?

22 MR. TACHIKI: OBJECTION. I'M NOT CLEAR WHAT TIME  
23 FRAME WE'RE TALKING ABOUT. IT'S VAGUE.

24 MR. KIRSCHBAUM: OKAY. LET ME SEE IF I CAN NARROW  
25 IT DOWN.

26 Q ARE YOU ABLE TO NARROW THE TIME FRAME DURING  
27 WHICH YOU WERE PROVIDING INFORMATION TO THE FAA AS TO  
28 ANYTHING MORE THAN IT OCCURRED BEFORE THE '84 AGREEMENT

1 AND AFTER THE CITY'S 1981 RESOLUTION TO CLOSE THE  
2 AIRPORT?

3 A I PROVIDED INFORMATION TO THE FAA FROM THE  
4 VERY BEGINNING OF 1978 OR THEREABOUTS, '77 ALL THE WAY  
5 THROUGH UNTIL THE SIGNING OF THE '84 AGREEMENT.

6 Q AND DURING THAT TIME FRAME, YOU ALSO  
7 PARTICIPATED IN DIRECT MEETINGS, NOT INVOLVING THE FAA  
8 ACTION BUT INVOLVING THE AIRPORT ASSOCIATION AND THE  
9 CITY; CORRECT?

10 A I DID.

11 Q AND DURING THOSE MEETINGS WAS MR. STARK  
12 PRESENT?

13 A I DON'T REMEMBER MR. STARK BEING IN ANY OF  
14 THOSE MEETINGS. I MAY BE WRONG, BUT I DON'T REMEMBER  
15 MR. STARK BEING THERE.

16 Q AND THESE WERE MEETINGS THAT YOU HAD WITH THE  
17 CITY MANAGER AND THE ASSISTANT CITY MANAGER?

18 A YES.

19 MR. KIRSCHBAUM: NOTHING FURTHER.

20 MR. TACHIKI: NO FURTHER QUESTIONS.

21 THE COURT: THANK YOU. YOU MAY STEP DOWN.

22 WHO ELSE DO WE HAVE AS WITNESSES?

23 MR. KIRSCHBAUM: YOUR HONOR, I HAVE

24 MR. DON BRANDSEN.

25 THE COURT: IS THAT DUPLICATIVE?

26 MR. KIRSCHBAUM: NO, IT'S NOT GOING TO BE  
27 DUPLICATIVE, BUT I THINK IT'S GOING TO BE -- I DON'T  
28 WANT TO SAY LENGTHY, BUT I THINK IT'S GOING TO EXCEED

1 THE TIME THAT WE HAVE AVAILABLE THIS AFTERNOON.

2 THE COURT: ALL RIGHT.

3 MR. KIRSCHBAUM: PERHAPS I COULD WORK ON NARROWING  
4 THE SCOPE OF THAT IF WE COULD START FIRST THING IN THE  
5 MORNING.

6 THE COURT: ACTUALLY, WE NEED TO START AT -- WE  
7 GOT A HEARING TOMORROW MORNING. SO I'M GOING TO ASK YOU  
8 TO COME IN -- I'LL ASK TO YOU COME IN AT TEN O'CLOCK.

9 MR. KIRSCHBAUM: SO I ANTICIPATE WE SHOULD BE ABLE  
10 TO CONCLUDE BEFORE THE NOON HOUR. AT LEAST I'LL DO MY  
11 BEST TO DO THAT.

12 THE COURT: I DON'T THINK -- I THINK YOU  
13 ADEQUATELY BRIEFED THIS. I DON'T THINK -- UNLESS  
14 COUNSEL FEELS THERE'S ADDITIONAL BRIEFING NECESSARY. I  
15 DON'T KNOW IF YOU WANT TO, BUT I KNOW MR. TACHIKI  
16 COVERED IT FAIRLY WELL IN HIS BRIEF.

17 MR. KIRSCHBAUM: JUST THINKING OFF THE TOP OF MY  
18 HEAD, YOUR HONOR, I DON'T BELIEVE I BRIEFED THE STANDING  
19 ISSUE SINCE THE MOTION FOR SUMMARY JUDGMENT, AND THAT  
20 WAS MORE DIRECTED TO THE FACTUAL SUPPORT RATHER THAN THE  
21 LEGAL.

22 THE COURT: WHAT I WOULD LIKE TO DO RIGHT AFTER  
23 YOU FINISH IS RATHER THAN ORAL ARGUMENT, I JUST WANT TO  
24 READ THE BRIEFS.

25 DO YOU WANT TO SUBMIT A FIVE-PAGE BRIEF ON  
26 THE ISSUE, MR. KIRSCHBAUM?

27 MR. KIRSCHBAUM: WELL, OKAY. AT THE COURT'S  
28 DISCRETION, I'M GLAD TO DO IT ANY WAY THE COURT WOULD

1 PREFER. I THINK -- FROM MY PERSPECTIVE, I THINK THAT IF  
2 YOU DON'T WANT TO HEAR ORAL ARGUMENT, I'M NOT GOING TO  
3 ARGUE FOR THAT. I THINK I COULD REASONABLY SUMMARIZE  
4 OUR POSITIONS WITH RESPECT TO THE FACTUAL BASIS ORALLY.  
5 IF YOU WOULD LIKE THAT IN WRITING AS WELL, I COULD DO  
6 THAT.

7 THE COURT: IF YOU WANT TO GIVE ME ORAL ARGUMENT,  
8 I'LL HEAR YOUR ORAL ARGUMENT. WHAT I AM SAYING IN TERMS  
9 OF AUTHORITIES, IF POINTS AND AUTHORITIES IS YOUR  
10 POSITION. THAT'S WHAT I HAD IN MIND SPECIFICALLY.

11 MR. KIRSCHBAUM: OKAY.

12 THE COURT: WHY DON'T WE DO THAT. WE CAN HEAR  
13 ORAL ARGUMENT, BUT I WOULD LIKE SOMETHING SUBMITTED ON  
14 POINTS AND AUTHORITIES, NOTHING LONGER THAN FOUR PAGES.

15 MR. TACHIKI, IF YOU WANT TO BRIEF ANYTHING  
16 ADDITIONAL, FOUR OR FIVE PAGES THE MOST. I THINK YOU  
17 COVERED IT FAIRLY WELL.

18 MR. TACHIKI: I'LL DO THAT. I JUST WANT TO GIVE  
19 YOU THIS CASE, BECAUSE YOU WANTED THAT ONE CASE.

20 THE COURT: THAT'S FINE. JUST HAND IT TO MANNY.  
21 WE'LL SEE YOU AT TEN O'CLOCK TOMORROW.

22

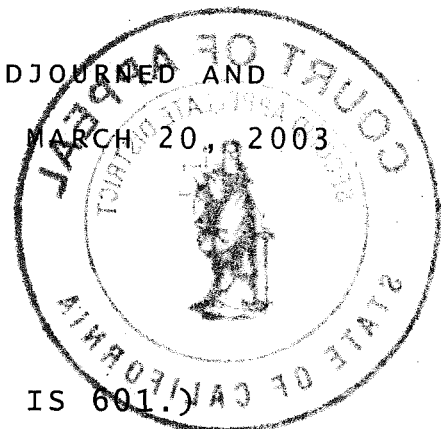
23 (THE PROCEEDINGS WERE ADJOURNED AND  
24 CONTINUED TO THURSDAY, MARCH 20, 2003  
25 AT 10:00 A.M.)

26

27

28

(THE NEXT PAGE NUMBER IS 601.)



JOSEPH A. LANE, Clerk of the Court of Appeal,  
Second Appellate District, State of California,  
do hereby certify that the preceding is a true and  
correct copy of the Original of this document on file in  
this Court, as shown by the records of my office.

Witness my hand and the seal of this Court.

Dated

FEB - 7 2014

By

Deputy Clerk

