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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

DETROIT FREE PRESS, INC. ,

a Michigan corporation,

Plaintiff:

-vs-

No. 08-100214-CZ

HON. ROBERT COLOMBO, JR.

CITY OF DETROIT,

Defendant:

\_\_\_\_\_ /

DEPONENT: Michael L. Stefani , Esq.

DATE: Wednesday, January 30, 2008

TIME: 1:00 P.M.

LOCATION: Stefani & Stefani

512 East Eleven Mile Road

Royal Oak, Michigan

REPORTER: Candace C. Noblett, (R-2238)

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APPEARANCES: HONIGMAN, MILLER, SCHWARTZ & COHN  
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Appearing on behalf of the Detroit News:

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Appearing on behalf of the Defendant:

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Appearing on behalf of the Defendant:

\* \* \*

1	<u>I N D E X</u>	
2		<u>Page</u>
3	EXAMI NATION BY MR. FINK	4
4	EXAMI NATION BY MR. STEWART	109
5	EXAMI NATION BY MS. HA	139
6	EXAMI NATION BY MS. McPHAI L	175
7	RE-EXAMI NATION BY MR. FINK	193
8	RE-EXAMI NATION BY MS. McPHAI L	193
9	* * *	
10	<u>E X H I B I T S</u>	
11		<u>Marked</u>
12	DEPOSI TI ON EXHI BI T NUMBERS	
13	1 THROUGH 17	4
14	DEPOSI TI ON EXHI BI T NUMBER 18	133
15	DEPOSI TI ON EXHI BI T NUMBER 19	154
16	DEPOSI TI ON EXHI BI T NUMBERS	
17	20 AND 21	183
18	* * *	
19		
20		
21		
22		
23		
24		
25		

1 Royal Oak, Michigan

2 January 30, 2008

3 1:50 A.M.

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5 (WHEREUPON THE COURT REPORTER MARKED  
6 DEPOSITION EXHIBIT NUMBERS 1 THROUGH  
7 17, RESPECTIVELY, AND THE PROCEEDINGS  
8 IN THIS MATTER COMMENCED WITHOUT THE  
9 PRESENCE OF VALERIE COLBERT-OSAMUEDE,  
10 ESQ.)

11 MICHAEL L. STEFANI

12 Being first duly sworn to tell the truth, the  
13 whole truth and nothing but the truth,  
14 testified as follows:

15 EXAMINATION

16 BY MR FINK:

17 Q Well, Mr. Stefani --

18 MS. HA: (Interposing) Before Mr.  
19 Stefani --

20 MS. McPHAIL: No. Wait. Before you  
21 begin --

22 MS. HA: (Interposing) Before you  
23 begin, Mr. Fink, with all due respect, I'd like to  
24 place a couple of -- couple of objections on the  
25 record.

1 MR. FINK: Um-hum (affirmatively).

2 MS. HA: First of all, the record  
3 should reflect that Mr. Fink has indicated that Mr.  
4 Stefani's production of documents here during the  
5 deposition, prior to the deposition officially  
6 taking place, that these records were provided to  
7 counsel of record to the Detroit Free Press,  
8 Detroit News, and that Mr. Fink has indicated, at  
9 least on behalf of the Free Press, that he will  
10 take the record that was produced himself, and will  
11 deliver them to the court tomorrow morning.

12 The City of Detroit objected to that issue  
13 for the reason that with all due respect to Mr.  
14 Fink personally, as a gentleman and as a lawyer, we  
15 have no guarantees what's going to happen after Mr.  
16 Fink walks out of this room. Mr. Fink's car may  
17 get stolen. It may be misplaced in his home. We  
18 have absolutely no guarantees. And the City of  
19 Detroit will be prejudiced by Mr. Fink's --

20 MR. FINK: (Interposing) Being  
21 mugged?

22 MS. HA: I don't know. Anything  
23 could happen. And we cannot take that risk,  
24 pursuant to this Court's order, which specifically  
25 indicates that nothing produced during this

1 deposition or information during this deposition  
2 shall be disclosed to anyone or any person.

3 MR. FINK: It doesn't -- it doesn't  
4 say -- the order speaks for itself, Ms. Ha.

5 And let's begin the deposition, other than  
6 to note on the record that Ms. McPhail just called  
7 me an idiot. But other than that...

8 MS. HA: The second objection --

9 MS. MCPHAIL: (Interposing) Now,  
10 that's not fair.

11 MS. HA: Wait. But the second  
12 objection is that this deposition is being  
13 tape-recorded by Mr. Fink.

14 I assume, Mr. Stewart, Detroit News is  
15 taking no action in terms of tape recording this  
16 deposition, am I correct?

17 MR. STEWART: I am not.

18 MS. HA: Okay.

19 MR. STEWART: But it is my point that  
20 I am also intending to retain in my possession a  
21 copy of the records that have been produced today.

22 MS. HA: And the same objection is  
23 made for the Detroit News -- or, against the  
24 Detroit News by the City of Detroit.

25 MR. FINK: With regard to the tape

1 recording, 2.306 (C)(2)(b) gives me, without your  
2 consent, the right to tape record, as long as it is  
3 not a surreptitious recording. And obviously  
4 you're aware of it, okay?

5 MS. HA: And counsel for the City of  
6 Detroit, for the record, is calling Judge Colombo  
7 at this time to obtain a ruling on this matter, and  
8 Mr. Fink has insisted that this deposition pursue.

9 MR. FINK: Okay. Mr. Stefani --

10 MS. McPHAIL: (Interposing) And  
11 on -- and since my name was mentioned, I'm Sharon  
12 McPhail.

13 I'd also like to mention that Mr. Fink  
14 indicated that he doesn't care what we think, and  
15 that he's not willing to have discussions on these  
16 matters; he's just going to do what he wants to do.  
17 So we aren't able to have a collegial discussion  
18 and come to any agreement, because Mr. Fink refuses  
19 to do so. That's all.

20 Q (Continuing by Mr. Fink) Okay. Mr. Stefani, you  
21 are the attorney, I understand, who represented the  
22 plaintiffs, Mr. Brown, Mr. Nelthorpe and Mr.  
23 Harris, or all officers, I should say police  
24 officers in the whistle-blower lawsuit against the  
25 City of Detroit and Mayor Kwame Kilpatrick, is that

1 correct?

2 A That's correct.

3 Q I think it ought to be self-evident, but I'm going  
4 to ask you, because it appears to be an issue for  
5 the city. In suing Mayor Kilpatrick, did you sue  
6 him as a private citizen, or did you sue him in his  
7 capacity as mayor of the City of Detroit for  
8 allegedly illegal acts he committed in office?

9 A We sued him as the mayor of the City of Detroit.

10 Q Thank you. Now, in a story -- I'm glad Ms. McPhail  
11 is here. In a story that the Free Press published  
12 on January 28th, Ms. McPhail, who has filed and is  
13 here, apparently filed an appearance as special  
14 counsel to the City of Detroit, is identified as  
15 the mayor's general counsel. But here's what she's  
16 quoted as -- or, here's what she says. Now, I'm  
17 going to ask you a question if this is consistent  
18 with your knowledge. She's quoted in the Free  
19 Press as saying that, "Calls for the Mayor to repay  
20 the city for paying his legal bills in the  
21 whistle-blower suit and the nine million dollar  
22 judgment in that case are misplaced. The case  
23 resulted because of Kilpatrick's official decision  
24 justifying a taxpayer-funded legal defense, she  
25 said."

1 So I would ask you if that statement then  
2 is consistent with the theory that you sued --  
3 under which you sued the mayor?

4 MS. McPHAIL: I'm going to object to  
5 that. How would he know what's consistent with  
6 that what?

7 But go on.

8 A We sued the mayor as the mayor of the City of  
9 Detroit, as the chief executive.

10 Q (Continuing by Mr. Fink) She said that --

11 A (Interposing) We did not sue him in his individual  
12 capacity.

13 Q All right. That's fine. Thank you.

14 And to your knowledge, and we'll get into  
15 this in more detail subsequently, did the City of  
16 Detroit itself, and obviously its taxpayers  
17 indirectly, pay and settle or satisfy this I think  
18 8.4 million dollar judgment against Mayor  
19 Kilpatrick and the city?

20 A Yes. You spoke -- you misspoke a minute ago and  
21 said it was a nine million dollar judgment plus  
22 expenses. And it was an 8.4 -- it was a  
23 combination of two judgments, and it was settled  
24 for 8.4 million dollars.

25 Q Okay. The media's had a number of statements about

1 nine million dollars. Is that just false, or were  
2 there some added expenses here for the other  
3 lawsuit?

4 MS. HA: Objection as to foundation.  
5 Mr. Stefani would have no idea what the -- would  
6 not be able to testify on behalf of the news media,  
7 unless you want us to depose members of the media  
8 who published the story about nine million dollars.

9 Q (Continuing by Mr. Fink) Okay. Can you answer  
10 whether you understand where the nine million  
11 dollar figure came from?

12 A I don't understand.

13 Q Okay.

14 A I mean, the settlement we arrived at was 8.4  
15 million dollars. That is the only money --

16 Q (Interposing) Okay.

17 A -- that the -- that we received from the city.

18 Q Okay.

19 A There was no other money or secret money.

20 Of that 8.4, four was for the Walter  
21 Harris case; and the Brown and Nelthrope had, I  
22 believe, a -- total verdicts of about I think it  
23 was 6.5 or 6.4 million. The accrued interest on  
24 that verdict -- since there were appeals taken,  
25 that delayed the case four and a half years. The

1 accrued interest was -- brought the total amount to  
2 7.9 million.

3 And I was asking for a one hundred -- a  
4 one million dollar attorney's fee, for which I had  
5 time records. And my normal practice is to bill by  
6 the hour, and so we used the same system for  
7 recording our time, and it justified a bill of a  
8 million dollars.

9 And we ended up discounting that million  
10 dollar attorney fee down to one hundred thousand,  
11 which brought the settlement to -- from 7.5 -- 7.9  
12 million to eight million. And then when we settled  
13 the Harris case at the same time, that was settled  
14 for an additional four hundred thousand. So the  
15 total amount was eight million four hundred  
16 thousand.

17 Q Okay. To your knowledge, did Kwame Kilpatrick pay  
18 any part of that amount personally?

19 A You know, I only know what I read in the paper, and  
20 it sounded like the city council authorized the  
21 settlement. And there was no mention of Mr.  
22 Kilpatrick, although the judgment was joint and  
23 several, so we did have the right to collect from  
24 Mayor Kilpatrick as well as the city. I don't know  
25 where the eight point -- I assume it was all city

1 money, because the checks we received, which are in  
2 these documents I just -- I provided for you for --

3 Q (Interposing) Yes, I'll get to those.

4 A Okay.

5 Q Okay.

6 A They were all -- all the checks were City of  
7 Detroit checks. Nothing came from Mr. Kil -- or,  
8 Mayor Kilpatrick's account.

9 Q Okay. Now --

10 A (Interposing) There was --

11 Q (Interposing) Go ahead. Are you done?

12 A I was going to say, the checks are at the end of  
13 the pile.

14 Q Okay. And I'll have those marked, or I have them  
15 marked. We'll get to them later in the deposition.

16 On October 19th, 2007, the Detroit Free  
17 Press submitted a Freedom of Information Act -- or,  
18 request under the Freedom of Information Act for,  
19 "All documents or other information related to the  
20 settlements." And I'm going to -- I'm just going  
21 to -- I had this marked. I'm just going to put it  
22 out here.

23 So even though you can't identify it, this  
24 is an exhibit in the Freedom of Information  
25 lawsuit. So let me just get that out and give a

1 copy to everyone.

2 MR. FINK: Let's see. There's a copy  
3 for you all, and one for Mr. Stewart.

4 Q (Continuing by Mr. Fink) Okay. Now, again, you  
5 would not directly have knowledge of this, but the  
6 City of Detroit advised Mr. Schaefer that it had no  
7 responsive documents, and that he should submit a  
8 request at a later point in time. And he will  
9 submit an Affidavit to that account. I will just  
10 tell you that he was directed to submit a later  
11 request, which he did --

12 MS. HA: (Interposing) I would just  
13 object to the comment, for the reason that nobody  
14 else knows better than I do, the City of Detroit,  
15 for the record, and it is not disputing that it did  
16 receive a first Freedom of Information Act request  
17 from the Detroit Free Press dated October 19th,  
18 2007. The City of Detroit did not advise Mr.  
19 Schaefer, because the City of Detroit cannot advise  
20 anybody other -- the counsel for City of Detroit,  
21 as a FOIA coordinator, cannot advise anyone other  
22 than its client.

23 Secondly, the records -- I'm sorry, the  
24 request, the first request was denied for the  
25 reason that there was no settlement agreement, and

1 there was no document responsive to the FOIA  
2 request.

3 (WHEREUPON VALERIE COLBERT-OSAMUEDE,  
4 ESQ. ENTERED THE DEPOSITION ROOM.)

5 MS. HA: I did not advise Mr.  
6 Schaefer to submit a second request.

7 MR. FINK: All right. Well, in any  
8 event, Exhibit 2 is Mr. Schaefer's second request  
9 dated November 13, 2007.

10 MS. McPHAIL: Excuse me, Mr. Fink.

11 MR. FINK: Yes.

12 MS. McPHAIL: The Court is going to  
13 set up a conference call, and would like us to stop  
14 now and speak to the Court.

15 MS. COLBERT-OSAMUEDE: So, Mr.  
16 Stefani, I don't know if you can call the Court  
17 back on the phone?

18 (WHEREUPON A BRIEF PAUSE WAS HAD IN  
19 THE PROCEEDINGS, FOR A  
20 TELECONFERENCE AS FOLLOWS:)

21 JUDGE COLOMBO: Hello. This is Judge  
22 Colombo.

23 MS. COLBERT-OSAMUEDE: Judge Colombo,  
24 this is the parties on the FOIA matter with the  
25 City of Detroit. This is Valerie Colbert-Osamuede

1 speaking to you.

2 We just began our deposition, and the  
3 question was posed or it has come to our attention  
4 that the Free Press plans to leave the room with  
5 the records that have been produced, which we  
6 believe is in violation of your court order. And  
7 also there is a recording device outside of the  
8 court reporter being utilized by Mr. Fink as well.

9 So we wanted to get a ruling as to whether  
10 or not the court reporter is to seal the records  
11 and to deliver them to the Court, and none of the  
12 parties are to take the records out of this room.

13 JUDGE COLOMBO: Okay.

14 MR. FINK: May I be heard, your  
15 Honor? Herschel Fink.

16 JUDGE COLOMBO: Right.

17 MR. FINK: A couple of things. I  
18 have asked the court reporter to expedite a  
19 transcript and to deliver it to me tonight.

20 I have a set of the documents that Mr.  
21 Stefani produced pursuant to your order. Everyone  
22 is aware of the fact that you have issued a  
23 non-disclosure order. We are all subject to that.

24 My intention is to present to you tomorrow  
25 morning, along with Mr. Stewart representing the

1 Detroit News, the official transcript, along with  
2 the documents, and an argument why you should read  
3 it as quickly as you are able to, and release it as  
4 quickly as you are able to. In order for me to do  
5 that, I need a set of all of the materials. As I  
6 said, I am subject to the non-disclosure provision.

7 I brought my own tape recorder pursuant to  
8 MCR 2.306 (C)(2)(b), which gives me the right, as  
9 long as it's not surreptitious, without consent of  
10 parties to record it myself.

11 And I don't think we have a problem, other  
12 than constant interruptions and objections from a  
13 gaggle of city lawyers who all insist that they are  
14 going to make objections, when I've asked only one  
15 to do so. Ms. McPhail has shown up and said she's  
16 going to make objections, as well as Ms. Ha. And  
17 so as long as you're making rulings on various  
18 things, I would ask that you do rule on whether one  
19 city lawyer speaks for the city.

20 MS. COLBERT-OSAMUEDE: Well, your  
21 Honor, there's three attorneys in the room, three  
22 attorneys for the City of Detroit in the room, and  
23 so there's six attorneys, three on each side.

24 And as a matter of fact, Ms. McPhail  
25 indicated to Mr. Fink that Ms. Ha will be

1 conducting the deposition, and that she would be  
2 making the relevant objections. She also indicated  
3 that she may have questions, and if she were going  
4 to have questions, she didn't see where there was  
5 any reason why she could not make the objections  
6 or -- not objections, but ask questions on the  
7 record.

8 So one person will be speaking at a time  
9 for the City of Detroit during this deposition.

10 JUDGE COLOMBO: Okay.

11 MR. STEWART: Your Honor, if I may,  
12 this is James Stewart.

13 I also -- it is also my plan to retain the  
14 records tonight subject to the non-disclosure  
15 order, that Mr. Stefani has produced today, for the  
16 same reasons that Mr. Fink explained.

17 JUDGE COLOMBO: Okay.

18 MS. HA: Your Honor, this is Ellen  
19 Ha.

20 This poses a big question for the City of  
21 Detroit. I assume Mr. -- if Mr. Fink and Mr.  
22 Stewart walks out with a copy of the private  
23 agreements, then the city would also be required to  
24 do so. I think it's only fair that we do the same.  
25 Except once -- this is how -- this is our entire

1 theory of the case and our defense in this case,  
2 once we possess this record and we walk out of  
3 here, we have a legal obligation to produce all of  
4 these records, which are not our records. This  
5 is -- this is the record of Kwame M. Kilpatrick.  
6 That is a big legal issue for us, the City of  
7 Detroit.

8 JUDGE COLOMBO: Okay. Anybody else  
9 want to say anything?

10 MR. FINK: No, your Honor. But when  
11 you see these records, I think you'll understand  
12 what's going on here. But I won't pre-judge it.

13 JUDGE COLOMBO: Okay. Here's what I  
14 want. I do not want the court reporter to turn any  
15 transcripts over to the attorneys. The transcripts  
16 should be -- and all exhibits should be given  
17 directly to me. So whenever that can happen, I  
18 guess it would be the first thing tomorrow, 'cause  
19 I doubt that the transcript will be prepared by the  
20 close of the business day. So I would expect that  
21 would be brought to my office at 1101 Coleman A.  
22 Young Municipal Center.

23 I don't believe that the attorneys for the  
24 Free Press or the News need to have the transcript  
25 to be able to prepare their motions. You'll have

1 just sat through the depositions, and you'll be  
2 able to paraphrase what occurred in -- or whatever  
3 happened in terms of that, and I'll be able to  
4 confirm that.

5 In addition, I assume that the transcript  
6 will mark the exhibits, and they will be made part  
7 of the records. So the court reporter should also  
8 deliver the exhibits to me, okay?

9 The second thing, it's fine, the court  
10 rule allows Mr. Fink to make a recording. But  
11 again, you cannot give that recording to anybody,  
12 Mr. Fink. It's for your own personal purposes.  
13 And if I find that it's been turned over to anybody  
14 outside of that room, you'll be in contempt of  
15 court. Understood?

16 MR. FINK: Understood, your Honor.

17 JUDGE COLOMBO: And only one -- there  
18 has to be designated a city attorney to handle this  
19 matter. Only one city attorney should ask  
20 questions, make objections. Now, if that attorney  
21 wants to consult with the other attorneys, that's  
22 fine. But I only want one attorney handling this  
23 matter on the record. And that's what we do in  
24 every trial that we hold.

25 So do we know who that's going to be?

1 MS. COLBERT-OSAMUEDE: Well, two  
2 things, Judge, so just so I'm clear or we're clear.  
3 No one takes the documents out of the room, is that  
4 correct?

5 JUDGE COLOMBO: Other than the court  
6 reporter.

7 MS. COLBERT-OSAMUEDE: Other than the  
8 court reporter.

9 JUDGE COLOMBO: And then they'll be  
10 attached to the record that I'm going to get  
11 delivered to my office I presume the first thing  
12 tomorrow morning.

13 MS. COLBERT-OSAMUEDE: Okay.

14 MR. FINK: Your Honor, I have one  
15 problem --

16 MS. McPHAIL: (Interposing) She's  
17 not done.

18 MR. FINK: -- that I need to advise  
19 the Court of.

20 JUDGE COLOMBO: What is that?

21 MR. FINK: All right. I have -- when  
22 I received the documents this afternoon in  
23 connection with the deposition, I asked for a  
24 second copy so that I could highlight and annotate,  
25 so that I can ask Mr. Stefani relevant questions.

1 So in addition to the copies that will be the  
2 official copy, I have a set that contain my notes  
3 as to the significance of various points and  
4 statements in these records. I would like to be  
5 able to retain my copy, with my notes, subject to  
6 your protective order -- or, your order. I'm  
7 subject to your order, the same as with the  
8 recording.

9 JUDGE COLOMBO: No. That was not my  
10 intention that you would just -- just because you  
11 would write on a copy, that you would be able to  
12 bootstrap yourself up into getting those documents.  
13 I'm not going to permit that. Either those  
14 documents are going to be destroyed at the end of  
15 the deposition, or they're going to be made part of  
16 the record that is submitted to me.

17 So what do you -- what do you want to do  
18 about that, Mr. Fink? How are you going to handle  
19 that?

20 MR. FINK: Well, obviously I can use  
21 it during the deposition?

22 JUDGE COLOMBO: Right.

23 MR. FINK: Because I've noted all  
24 these things. I don't know what you want me to do  
25 with it, your Honor, but that's part of my ability

1 to prepare a -- an intelligent argument to you as  
2 to the significance, is being able to point to  
3 specific things in these documents that contradict  
4 statements made directly to you, as well as  
5 statements made in writing to the Free Press and in  
6 pleadings before you.

7 JUDGE COLOMBO: Mr. Fink, I am sure  
8 you'll be able to paraphrase those things. I am  
9 confident in your ability. I don't believe that  
10 you need to have those with you to write a brief,  
11 and I'm not going to let you do that.

12 MR. FINK: Okay. Then I will -- I  
13 suppose I --

14 JUDGE COLOMBO: (Interposing) Will  
15 you dispose of those documents? Is there a  
16 shredder at Mr. Stefani's office?

17 MR. FINK: Either that, or I'll give  
18 them back to Mr. Stefani.

19 A Your Honor, this is Mike Stefani. And I just want  
20 you to know that I've made four copies of the  
21 exhibits, and I've furnished two to the city and  
22 two to Mr. Fink.

23 (WHEREUPON RICHARD ZUCKERMAN, ESQ.,  
24 LEFT THE DEPOSITION ROOM.)

25 A And then of course I have what -- I have my own

1 copy, which I suppose will be introduced into  
2 evidence. So there are actually five copies of  
3 these documents in this deposition.

4 JUDGE COLOMBO: Well, my expectation  
5 is that, Mr. Stefani, that you will collect the  
6 other four copies, the two that you gave to the  
7 city attorneys and the two that you gave to Mr.  
8 Fink, and hold those, and not allow anyone to see  
9 those. And that your -- your copy apparently is  
10 the copy that you intended to be marked as the  
11 exhibit, and that should be provided to the court  
12 reporter.

13 A Yes, sir, I understand.

14 JUDGE COLOMBO: Okay.

15 MS. HA: Your Honor --

16 MR. FINK: (Interposing) Understood,  
17 your Honor.

18 MS. HA: Your Honor, this is Ellen Ha  
19 again. I'm sorry.

20 It just occurred to me that -- and I  
21 assume that this is part of the order, but can we  
22 also have a ruling that Mr. Stefani not talk about  
23 today's deposition to anyone or disclose any of the  
24 records to anybody else?

25 JUDGE COLOMBO: Well, he's already

1 under a confidentiality order. I allowed him to  
2 only talk about this in terms of the deposition. I  
3 think it's obvious that he's not supposed to talk  
4 to anybody about this, should not be talking to the  
5 media about this on anything.

6 But I think maybe I should enter an order  
7 to that effect, and instruct Mr. Stefani that  
8 you're not to have a discussion with the media or  
9 anybody else afterwards about what was discussed  
10 during this deposition. Do you understand that,  
11 Mr. Stefani?

12 A Well, I -- I read your original order to encompass  
13 that.

14 JUDGE COLOMBO: Okay.

15 A And I will say on the record now that I agree that  
16 I will not discuss the deposition or the documents  
17 or furnish the documents to anyone.

18 (WHEREUPON RICHARD ZUCKERMAN  
19 RE-ENTERED THE DEPOSITION ROOM.)

20 A And I will follow the Court's order very strictly.

21 JUDGE COLOMBO: Okay. Because I  
22 intend it to be followed strictly. Because one of  
23 the reasons that this all became an issue, is  
24 because you were talking to the media and suggested  
25 that there were some confidential agreements there,

1 Mr. Stefani.

2 So the question becomes, do I need to have  
3 another order with respect to that, or is the order  
4 that I entered sufficient, Ms. Ha?

5 MS. HA: It's sufficient for the  
6 reason that there is a court reporter here who is  
7 taking down everything that is being said.

8 JUDGE COLOMBO: Okay. All right. Is  
9 there anything else that we need to take up?

10 MS. COLBERT-OSAMUEDE: One other  
11 thing with respect to your decision, Judge, about  
12 the attorneys for the City of Detroit, one speaking  
13 for the city. Is the mayor allowed a  
14 representative in this -- in his official capacity  
15 in today's proceeding?

16 JUDGE COLOMBO: There's been no  
17 motion to intervene by anybody other than the  
18 Detroit News. And so as far as I'm concerned, the  
19 only parties to this deposition are the Free Press,  
20 the News, and the City of Detroit. So why would a  
21 nonparty be permitted to -- to participate, when  
22 there was no motion to intervene?

23 MS. COLBERT-OSAMUEDE: So the mayor  
24 is not allowed a rep in his official capacity, is  
25 that my understanding?

1 JUDGE COLOMBO: That's the -- well,  
2 there's no motion to intervene. I presume the  
3 mayor's known about this, and this action has been  
4 in the newspaper, so yes, that's my ruling.

5 MR. FINK: Well, your Honor, I would  
6 just note that Ms. McPhail's official job is  
7 general counsel to Mayor Kwame Kilpatrick, yet  
8 she's here participating in this deposition on  
9 behalf of the City of Detroit.

10 MS. COLBERT-OSAMUEDE: She -- she is  
11 special counsel to the City of Detroit. She has  
12 been duly noted as special counsel pursuant to the  
13 charter to the City of Detroit, and she's entered  
14 an appearance with that specific delegation, and it  
15 has been filed with the Court as well.

16 JUDGE COLOMBO: Well, that's  
17 satisfactory to me. As long as she's representing  
18 the City of Detroit, I don't see that there's a  
19 problem.

20 MR. FINK: Okay, your Honor.

21 JUDGE COLOMBO: Okay.

22 MR. FINK: Thank you.

23 MS. HA: Thank you, your Honor.

24 JUDGE COLOMBO: Thank you. Hopefully  
25 you'll be able to get this in. I'm hoping that

1 there's not going to be anymore interruptions. I  
2 am in a trial this afternoon, Counsel, so try to  
3 work through your problems. And if it -- if it  
4 really becomes important that you talk to me, I  
5 would prefer that you wait until 3:45 to call me,  
6 when I'm going to be done with my trial for the  
7 day.

8 MR. FINK: Thank you, your Honor.

9 JUDGE COLOMBO: Okay. Bye.

10 MS. HA: Thank you, your Honor.

11 (WHEREUPON THE TELECONFERENCE  
12 CONCLUDED AND THE PROCEEDINGS  
13 CONTINUED AS FOLLOWS: )

14 A So remember, everyone, there have been four copies;  
15 two to the Free Press, two to the city, and I would  
16 appreciate it if you give those to me.

17 Q (Continuing by Mr. Fink) We'll give them all back.

18 A So that I'm not -- diligent in my duties.

19 Q Okay. Continuing where we left off was, Mr.  
20 Schaefer did indeed submit, and that's Exhibit  
21 Number 2, a request dated November 13, 2007. And  
22 the record will reflect -- the document will  
23 reflect that it is somewhat broader. And in  
24 addition to requesting that the city produce, "All  
25 documents or other information related to the

1 conclusion of the cases", it goes on and expressly  
2 asks for, "Any and all documents that the city or  
3 its lawyers may consider or have labeled  
4 'confidential'."

5 All right. So now in response to the Free  
6 Press' second request, the city, on December the  
7 7th, produced just two documents that they -- the  
8 city claimed, and I'm going to mark as Exhibit  
9 Number 3, it's also in evidence -- or, it's an  
10 exhibit to our lawsuit, the cover letter dated  
11 December the 7th, 2007, from the city.

12 They produced two documents, both of them  
13 labeled, and we'll mark those 4 and 5, Settlement  
14 Agreement and General Release. And I'll go through  
15 the dates, so the record is clear as to what was  
16 produced by the city. And those are also exhibits  
17 to the Free Press' Complaint in this case.

18 I'm handing Mr. Stefani, just for purposes  
19 of reference, Exhibit Number 4. And I'm going to  
20 go through it, because I think he can identify  
21 those. And Exhibit Number 5. And I will give  
22 copies to everyone.

23 This is 5, and this is 5, and this is 4,  
24 and this is 4 (indicating).

25 MR. STEWART: Thanks.

1 Q (Continuing by Mr. Fink) Okay. Now, Exhibit  
2 Number 4 is the Settlement Agreement and General  
3 Release in the Harris case. And, Mr. Stefani, are  
4 you able to identify Number 4 as the settle -- a  
5 Settlement Agreement and General Release in the  
6 Harris case?

7 A Yes, that's correct.

8 Q All right. And just to walk you through it, that  
9 agreement is signed of course by Walter Harris, who  
10 was the plaintiff, dated November 1, '07. It is  
11 signed by Valerie Colbert -- is it Os -- I'm sorry.

12 A Osamuède.

13 Q Osamuède.

14 MR. FINK: I have problems, and I  
15 apologize to you.

16 MS. COLBERT-OSAMUEDE: That's fine.

17 MR. FINK: If I just say Valerie  
18 Colbert --

19 MS. COLBERT-OSAMUEDE: (Interposing)  
20 That's fine.

21 Q (Continuing by Mr. Fink) And she signed in her  
22 capacity as attorney both for the city and Kwame  
23 Kilpatrick, is that correct? Does that appear on  
24 there?

25 A Yes.

1 Q And then --

2 MS. HA: (Interposing) Well, that's  
3 not correct. It does say Kwame M. Kilpatrick. And  
4 under Ms. Colbert's signature, it says, "Attorney  
5 for Defendants." And whomever the defendants may  
6 have been for that case, that is what it appears to  
7 be. And City of Detroit, it was signed by Ms.  
8 Colbert, and it says, "Attorney for Defendants."

9 MR. FINK: Well, in fact she signed  
10 it under Kwame Kilpatrick, and she signed it under  
11 City of Detroit as authorized agent. It speaks for  
12 itself, Ms. Ha.

13 MS. HA: Okay.

14 Q (Continuing by Mr. Fink) Now, Exhibit Number 5,  
15 Mr. Stefani, can you identify as a Settlement  
16 Agreement and General Release in the Brown and  
17 Nelthrope case?

18 A Yes.

19 Q And it's signed on November 1 by both Brown and  
20 Nelthrope, and notarized by you, correct?

21 A That is correct.

22 Q And on this Settlement Agreement, Samuel McCargo,  
23 or Sam -- I don't know. Let me see what it says.  
24 I can't see. Maybe it's just his initials. But  
25 Mr. McCargo signed for Kilpatrick on December 5.

1 And can you -- you can confirm that?

2 A That's correct.

3 Q And a William Copeland, II, also signed on December  
4 5. And his signature is marked as authorized agent  
5 for the City of Detroit. Can you confirm that as  
6 well, Mr. Stefani?

7 A That's correct.

8 Q Now, referring to both 4 and 5, can you confirm  
9 that each of those agreements contained what we  
10 lawyers refer to as an integration clause, saying  
11 that each of those two agreements contains the  
12 entire agreement, and supersedes all other  
13 agreements with regard to the subject material?

14 MS. HA: I'm sorry. What paragraph  
15 are you referring to?

16 MR. FINK: Well, it's a different  
17 paragraph in each one, but it's the one that says  
18 "Entire Agreement."

19 A If you look, it's Paragraph 11 in Exhibit 5.

20 Q (Continuing by Mr. Fink) Yeah.

21 A And para -- well, both are Paragraph 11. One's --  
22 one's -- Exhibit 4, it's on Page 3 -- well, they're  
23 both on Page 3, also.

24 Q And you can confirm that that says that, correct?

25 A Well, you know, you paraphrased it, and the

1 agreement really speaks for itself. It says -- it  
2 says approximately what you said, but not in those  
3 exact words.

4 Q All right. Well, my -- you're absolutely correct,  
5 the agreement speaks for itself. But the question  
6 I have now for you is, was that a true statement?

7 A It says, "This Agreement contains the entire  
8 agreement and understanding between Plaintiff and  
9 Defendant -- Defendants, with respect to any and  
10 all disputes or claims that Plaintiff has, or could  
11 have had, against the Defendants as of the date of  
12 this Agreement -- the date this Agreement is  
13 executed, and supersedes all other agreements  
14 between Plaintiff and Defendants with respect to  
15 such disputes or claims and may not be amended  
16 except in writing, signed in -- in a writing signed  
17 by all the parties."

18 Q And is that true that this -- this document, 5  
19 and -- these documents, 4 and 5, contain the entire  
20 agreement and understanding between the plaintiffs  
21 and defendants with respect to any and all disputes  
22 or claims? Is that a -- was that a true statement?

23 A (No response).

24 Q Stated another way, were there other agreements?

25 A There were. There was the Confidentiality

1 Agreement that was executed, I believe, on the same  
2 date. But as -- you know, whether or not that  
3 Confidentiality Agreement relates to a dispute  
4 between the plaintiffs and the defendants, is a  
5 matter of interpretation. It could be -- it could  
6 be interpreted as -- it certainly -- the  
7 Confidentiality Agreement doesn't relate to the  
8 whistle-blower claim. It relates to certain  
9 documents that were intended to be kept  
10 confidential by the parties. So I suppose it's --  
11 you know, you could interpret it as being  
12 encompassed by the -- that the language in  
13 Paragraph 11 could encompass that agreement. But I  
14 think an argument could be made -- if you're asking  
15 my opinion, an argument could be made that the  
16 Confidentiality Agreement relates to the text  
17 messages, and doesn't relate to the original  
18 disputes between the parties.

19 Q Would -- would the case have settled without the  
20 Confidentiality Agreement, in your opinion? And  
21 I'll get to the specifics of it later, but just  
22 that much.

23 MS. HA: Objection as to foundation.  
24 And he's -- you're asking the witness to speculate  
25 on whether or not -- it's just his opinion.

1 MR. FINK: Fine. I'll take his  
2 opi ni on.

3 MS. HA: That -- I think that is a  
4 legal conclusion that would -- that ultimately has  
5 to be made by Judge Colombo.

6 MR. FINK: Ms. Ha, it's either an  
7 opinion or a legal conclusion. I think it's an  
8 opinion, and that's what I'm asking him.

9 A Well, I can't -- the best way I can answer that is,  
10 when we met for facilitation on the --

11 MS. HA: (Interposing) I'm going to  
12 object, because I'm not sure if Mr. Stefani knew  
13 this, and we might have to call the judge. But Mr.  
14 Fink, and I'm sorry, Mr. Stewart, but I completely  
15 failed to mention this, but during our meeting with  
16 Judge Colombo in chambers, Mr. Fink and I and Judge  
17 Colombo had some discussions. And the court rule  
18 is very clear regarding any testimony pertaining to  
19 mediation and facilitation. And I'm referring to  
20 MCR 2.411. And Mr. Fink gave his word that -- to  
21 the judge and to myself, that that line of  
22 questioning will not be pursued.

23 MR. FINK: In response, Ms. Ha, and  
24 I'll be very specific later, but in general as to  
25 the representation about what occurred before Judge

1 Colombo, you will recall that I was not served with  
2 a copy until Monday. This occurred in chambers on  
3 Friday. Your office sent over a document that only  
4 you looked at and then raised verbally with the  
5 judge about the privilege you said applied to what  
6 took place in mediation. And I said to the judge,  
7 "I am not interested in things that occurred three  
8 years ago in mediation, your Honor, and I don't  
9 intend to ask questions about it." It was only on  
10 Monday you when you -- your office actually served  
11 me a copy of the document that was taken over to  
12 chambers and given to you, that I saw there was a  
13 reference to the October 17, 2007 facilitation with  
14 regard to attorney fees.

15 Now, the court rule that you cited,  
16 relates -- assuming it applies, and assuming it  
17 isn't superseded by the crime fraud exception to  
18 all privileges, which the judge can determine  
19 later, it -- on its face, the court rule refers to  
20 statements made. I'm not asking Mr. Stefani, and I  
21 don't believe he was about to tell us about  
22 statements that were made at the mediation, but  
23 rather actions that took place and what happened at  
24 the facilitation. And that is outside even of the  
25 court rule, assuming the court rule applied.

1 MS. HA: Well, can we just take a  
2 break for a moment to review the statute? I have  
3 to --

4 MR. FINK: (Interposing) It's not a  
5 statute. It's a court rule.

6 MS. HA: I mean the court rule. Can  
7 we take a break?

8 MR. FINK: A short one.

9 MS. HA: Yeah.

10 MR. FINK: But I don't intend to be  
11 here all night.

12 (WHEREUPON A BRIEF PAUSE WAS HAD IN  
13 THE PROCEEDINGS.)

14 MS. HA: I'm ready.

15 MR. FINK: Okay.

16 MS. HA: I'm just going to place an  
17 objection on the record.

18 MR. FINK: Sure.

19 MS. HA: I think MCR 2.411(B)(5)  
20 speaks for itself. But I also believe that when it  
21 says statements made during the mediation,  
22 including statements made in written submissions,  
23 also is interpreted to mean actions taken. Because  
24 I don't think you can separate the actions without  
25 statements being made.

1                   And I move to strike Mr. Stefani's  
2                   testimony --

3                   MR. FINK: (Interposing) Oh, you can  
4                   move --

5                   MS. HA: (Interposing) -- pertaining  
6                   to that.

7                   MR. FINK: You can move to strike in  
8                   front of the judge, because I think we're going to  
9                   just put it all on the record. It's subject to  
10                  confidentiality. And you can make your objection  
11                  to the judge. He can decide whether the  
12                  exception -- or, the court rule applies or doesn't  
13                  apply, okay? And I think that that's particularly  
14                  relevant to some of the public policy reasons that  
15                  might apply to this in terms of whether this record  
16                  will reveal --

17                  MS. HA: (Interposing) Well.

18                  MR. FINK: (Interposing) -- crimes  
19                  or frauds.

20                  MS. HA: I'm objecting, and I am  
21                  requesting --

22                  MR. FINK: (Interposing) Okay.

23                  MS. HA: -- that Mr. Stefani not  
24                  answer that question.

25                  MR. FINK: You will recall that the

1 judge told you specifically you have no right to  
2 direct Mr. Stefani not to answer a question.

3 MS. HA: I'm not directing him.

4 MR. FINK: Okay.

5 MS. HA: I'm asking Mr. Stefani not  
6 to answer that question, because I think that that  
7 would be a breach of Michigan Professional Rules of  
8 Conduct.

9 MR. FINK: Well, I'm glad you're the  
10 expert, but the judge expressly said in my presence  
11 to you, that of course you don't have the right to  
12 direct him not to answer. So...

13 MS. HA: Well --

14 MR. FINK: (Interposing) Let's go  
15 forward.

16 Q (Continuing by Mr. Fink) Do you need the court  
17 reporter to read you back where you were, what you  
18 were starting to say?

19 A No, not really. I only got a couple words out.

20 It's -- all I was going to say -- your  
21 question was, would there have -- in my opinion  
22 would the case have settled without the  
23 Confidentiality Agreement I believe you said.

24 Q Yes.

25 A And I was going to answer that by saying I -- a few

1 months prior to that time, I had another case  
2 against the City of Detroit involving Lieutenant  
3 Bowman. And we had a facilitation to --

4 MS. HA: (Interposing) Same  
5 objection.

6 A To arrive at attorney's fees. And Ms. Osamuede and  
7 I conducted that facilitation. And during the  
8 course of that facilitation, I --

9 MS. HA: (Interposing) Objection.

10 A -- asked her if she would be amenable to  
11 facilitating not just the attorney's fees, but the  
12 appellate rights, or the whole case in other words.  
13 And she made a phone call and agreed to it, and we  
14 facilitated the whole case.

15 In this case, we had a facilitation  
16 ordered by the judge for attorney's fees. When I  
17 say this case, I'm talking about the  
18 Brown/Nelthrope case. And we spent an hour or more  
19 negotiating attorney's fees. And at that time I  
20 asked if the city would be interested in  
21 facilitating the entire case, that is the appellate  
22 rights. And I was told -- at that facilitation,  
23 there was Ms. Osamuede --

24 MS. HA: (Interposing) I'm going to  
25 object to Mr. Stefani further --

1 MR. FINK: (Interposing) You have a  
2 standing objection, Ms. Ha, to anything having to  
3 do with the facilitation. I will so agree.

4 MS. HA: And I still have the right  
5 to make an objection.

6 MR. FINK: Not to continually  
7 interrupt with the same interruption or the same  
8 objection when it's already on the record. And you  
9 object to anything having to do with the  
10 facilitation.

11 MS. HA: That's my right.

12 MR. FINK: I don't think it's your  
13 right to continually interrupt.

14 Q (Continuing by Mr. Fink) But go ahead, please, Mr.  
15 Stefani. Finish what you were saying.

16 A Ms. Osamuede was present, Mr. Copeland was present,  
17 Mr. McCargo was present, and there were two other  
18 attorneys that were assisting McCargo and Copeland.  
19 So that's a total of I guess five attorneys for the  
20 defendants. And they said --

21 MS. HA: (Interposing) I'm going to  
22 object. That's a statement made --

23 A (Interposing) Okay.

24 MS. HA: -- during facilitation.

25 Q (Continuing by Mr. Fink) Go ahead.

1 A In any event, they declined --

2 MR. FINK: (Interposing) No. You  
3 can say it. You can say it, and the judge --

4 MS. HA: (Interposing) No, you  
5 cannot.

6 MR. FINK: The judge will decide  
7 whether it's --

8 MS. HA: (Interposing) No. That is  
9 not what the judge said. We can call the judge  
10 right now.

11 MR. FINK: You can call him any time  
12 you want, Ms. Ha. Let's continue with the  
13 deposition.

14 Q (Continuing by Mr. Fink) Go ahead.

15 MS. McPHAIL: You can't continue  
16 while she's calling the judge.

17 Q (Continuing by Mr. Fink) Go ahead, please.

18 A In response to my question whether or not they  
19 wanted to negotiate the entire thing rather than  
20 just the attorney's fees, I should say that we were  
21 at approximately five hundred thousand dollars in  
22 attorney's fees.

23 MS. HA: That is going into  
24 statements made during facilitation. I object.

25 Q (Continuing by Mr. Fink) Continue.

1 A And I told them that I would accept that for  
2 attorney's fees if --

3 MS. HA: (Interposing) I would  
4 object. That is a statement made during  
5 facilitation, and I again move to strike.

6 MR. FINK: You cannot continue to  
7 interrupt the witness. You've made your objection.  
8 Now he can answer if he chooses, and he chooses.  
9 So let's cut it out.

10 MS. HA: And I can continue to  
11 object.

12 A I told him I would take -- I think we were at four  
13 seventy-five or five hundred thousand dollars. And  
14 I said --

15 MS. HA: (Interposing) Objection.

16 A -- I will accept that amount if we can resolve the  
17 whole matter, and I was told that we couldn't  
18 resolve the whole matter.

19 MR. FINK: Thank you. Okay.

20 MS. HA: I'm going to move to --

21 MR. FINK: (Interposing) I'll get  
22 back in --

23 MS. HA: (Interposing) -- strike all  
24 of that testimony.

25 MR. FINK: Ms. Ha -- never mind.

1 Q (Continuing by Mr. Fink) Mr. Stefani, I'll get  
2 back to those agreements specifically, and what  
3 occurred on October the 17th, 2007, and  
4 subsequently -- and in subsequent questions.

5 At the hearing that Judge Colombo held on  
6 last Friday, January 25th, in connection with that,  
7 the city filed a response to a motion that I had  
8 filed to expedite discovery. And they made the  
9 following statement at Page 3 of their response.  
10 I'm just going to read it to you. I don't need to  
11 mark it. It's part of the court file.

12 The city's response said, "In regards to  
13 plaintiffs" that's the Detroit Free Press  
14 "assertion pertaining to 'additional confidential  
15 documents', if such documents exist, they could  
16 only be documents signed by individuals in their  
17 private capacity, and are not public records  
18 subject to disclosure under the Michigan Freedom of  
19 Information Act. The City of Detroit and its  
20 agents did not execute, participate, negotiate,  
21 possess, or was otherwise involved in any  
22 additional documents related to the settlement of  
23 Brown and Nelthrope versus City of Detroit and  
24 Harris versus City of Detroit."

25 Is that a true statement, to your

1 knowledge? You can answer yes or no.

2 MS. HA: I'm going to object to Mr.  
3 Stefani's testimony --

4 MR. FINK: (Interposing) I can show  
5 you a copy if you would like to see it.

6 MS. HA: -- regarding what the city  
7 said. He can testify as to his opinion.

8 MR. FINK: Ms. Ha, that's all I'm  
9 asking. Do you understand that?

10 MS. McPHAIL: He's asking his opinion  
11 whether something's true or not?

12 MS. HA: I don't know.

13 Q (Continuing by Mr. Fink) Here, what --

14 A (Interposing) What am I reading, anyway? Is this  
15 a transcript?

16 Q No. This is the city's response to my motion to  
17 expedite discovery.

18 A Oh.

19 MS. HA: You're asking the witness to  
20 answer what the city said?

21 MR. FINK: Starting on --

22 MS. HA: (Interposing) The document  
23 speaks for itself.

24 MR. FINK: I want to know if he, to  
25 his knowledge, believes it's false. I have the

1 right to ask that question.

2 MS. HA: How would he know what's  
3 false -- what the city --

4 MR. FINK: (Interposing) Oh, cut it  
5 out.

6 MS. HA: -- said was false?

7 MR. FINK: Cut it out. Let's not ask  
8 silly -- make silly statements.

9 MS. McPHAIL: Okay. Let's ask the  
10 judge. Excuse me, if we can for a moment. Let's  
11 just ask the judge if we can bring the deposition  
12 down to his chambers, because we're not going to  
13 take this kind of abuse during the deposition.  
14 A That's all I -- the only way I can answer this --  
15 answering whether I think it's true or false, you  
16 know, I would have to study it more carefully to  
17 formulate an opinion. But the -- we signed an  
18 agreement the day of the facilitation in my office.  
19 The facilitation --

20 MS. HA: (Interposing) I'm going to  
21 object to any testimony about facilitation.

22 A -- ended at four o'clock. We came back to my  
23 office, and we stayed here until eight thirty  
24 pounding out the terms of a document, and we signed  
25 that document.

1 Q (Continuing by Mr. Fink) And did the city have a  
2 participation in that additional document?

3 MS. HA: Are we talking --

4 MR. FINK: (Interposing) The  
5 confidential document.

6 Q (Continuing by Mr. Fink) Did the city's  
7 representatives --

8 A (Interposing) Well, they signed it, and they --  
9 and they -- the terms were negotiated. The  
10 language was negotiated.

11 MS. HA: Who signed it for the city?

12 MR. FINK: Let me --

13 MS. HA: (Interposing) What are you  
14 talking about?

15 MR. FINK: You don't have the right  
16 to ask questions. You have the right to ask  
17 questions later.

18 MS. HA: But are we talking about the  
19 Settlement Agreement, the Exhibit 4 and 5?

20 MR. FINK: No, no. I'm asking -- I'm  
21 asking whether it -- this -- the city's statement  
22 basically says there are no confidential documents  
23 that the city was involved in.

24 Q (Continuing by Mr. Fink) I'm asking, and I know  
25 I'm getting a little ahead of the story, but Mr.

1 Stefani, was the city not involved in a negotiating  
2 or participating in a Confidentiality Agreement on  
3 October 17, 2007?

4 A We signed an agreement in my office on that day,  
5 that was, I believe, entitled -- and you've all got  
6 it right in front of you. I believe it was  
7 entitled Settlement Agreement, but it had a  
8 confidentiality provision in it.

9 Q Okay. And my answer -- or, my question is, the  
10 statement that the city was not involved in any  
11 additional documents relating to the settlement, is  
12 false then as it relates to the Confidentiality  
13 Agreement, correct?

14 MS. HA: I'm going to object to that  
15 question, because he cannot answer what -- what --  
16 he cannot answer on behalf of the City of Detroit.  
17 The last I -- Mr. Stefani represented Mr. Harris,  
18 Mr. Brown, and Mr. Nelthrope. He did not represent  
19 the City of Detroit. He cannot testify whether or  
20 not -- what City of Detroit did. He is not an  
21 agent of City of Detroit.

22 MR. FINK: Ms. Ha, you have there the  
23 document signed by --

24 MS. HA: (Interposing) Well, then  
25 why don't you --

1 MR. FINK: -- Ms. Colbert on behalf  
2 of the mayor and the City of Detroit. It's the  
3 first Settlement Agreement, because somebody tore  
4 up the first Settlement Agreement, except Mr.  
5 Stefani has produced it to us today, to defeat the  
6 Free Press' Freedom of Information Act request.  
7 The city was directly involved in all --  
8 orchestrating the entire coverup. So why don't we  
9 get it out on record, and then we'll -- we'll  
10 decide. You can argue all of these objections to  
11 the judge.

12 MS. HA: Well, we need to take a  
13 break, because I'd like a moment to review it. I  
14 know that we were late, but I'd like to take a look  
15 at it.

16 MR. FINK: Well, before you take your  
17 break, let's all know what page we're on. Mr.  
18 Stefani has produced a complete file which shows  
19 that there were two settlement agreements with  
20 confidentiality provisions; the first one which was  
21 signed by Ms. Colbert on behalf of both the city  
22 and the mayor was subsequently destroyed, then  
23 there was a later one, I believe dated November the  
24 1st, which was -- purports to be just between Kwame  
25 Kilpatrick and Mr. Stefani. So this was obviously

1 a coverup. It is all going to come out now.

2 And Ms. Colbert's representation to the  
3 judge on the record, I've ordered the transcript,  
4 Friday morning that she had no knowledge of any  
5 confidentiality provision, is a blatant falsehood.  
6 But it will all come out --

7 MS. McPHAIL: (Interposing) Mr.  
8 Fink --

9 MR. FINK: -- so let's get it out.

10 MS. McPHAIL: Excuse me. I'm not  
11 objecting for the record here. I'm just confused  
12 by what you're saying. You're saying that the  
13 Settlement Agreement that is signed as of -- are  
14 you referring to this one, the one that -- I can't  
15 seem to see a date on here. Where's the date?

16 MR. FINK: October 17.

17 MS. McPHAIL: Oh, okay. It says  
18 October 17.

19 MS. HA: Wait. What page?

20 MS. McPHAIL: Is the Settlement  
21 Agreement -- it's up here, October 17.

22 MR. FINK: Why don't we do this  
23 deposition in the normal fashion? I'll produce all  
24 these, I'll ask the questions about it, and if you  
25 folks stop interrupting the witness, we'll get it

1 all out, and you can argue to the judge whatever  
2 you want to argue.

3 MS. McPHAIL: Yeah. The only thing  
4 I'm concerned about, honestly, is that he will  
5 answer a question not knowing what you're talking  
6 about. Because if the rest of us over here can't  
7 figure out what you're talking about -- you know.  
8 I know you know what you're talking about, but --

9 MR. FINK: (Interposing) He knows.  
10 These documents were produced to me this afternoon  
11 in connection with his deposition.

12 MS. McPHAIL: Before we got here.

13 MS. HA: Well, I'm just asking for --

14 MR. FINK: (Interposing) Well, you  
15 were an hour late.

16 MS. McPHAIL: I know.

17 MR. FINK: Yeah. He gave them to me  
18 at two o'clock and I went and started going through  
19 them so that I could better prepare.

20 MS. McPHAIL: Okay.

21 MR. FINK: You could have had the  
22 same thing if you'd been here.

23 MS. McPHAIL: We were here --

24 MR. FINK: (Interposing) One  
25 o'clock. I'm sorry, not two o'clock, one o'clock.

1 MS. HA: Well, and I'm just asking  
2 can we have a few minutes --

3 MR. FINK: (Interposing) Yes.

4 MS. HA: -- to take a look at this  
5 document?

6 A Yeah. I mean, I'm going to excuse myself for a  
7 minute. I think it -- you know, it's hard enough  
8 sitting through this deposition, without -- I mean,  
9 without the bickering going on. And you did look  
10 at it, and I think it would be unfair to expect her  
11 to respond.

12 MR. FINK: I'm happy to let them look  
13 at it.

14 A Unless she hasn't seen it before -- I mean, if she  
15 hasn't seen it, then she needs to look at it.

16 MR. FINK: Well, sure, but Ms.  
17 Colbert signed some of them. Sure, yeah.

18 (WHEREUPON A BRIEF PAUSE WAS HAD IN  
19 THE PROCEEDINGS.)

20 MS. HA: Just so that -- I'd like  
21 everyone, just so that I put this on the record, we  
22 did have an opportunity to review the settlement --  
23 the document entitled Settlement Agreement, which  
24 is dated October 17th, 2007, which was the line of  
25 questioning that Mr. Fink had prior to the break.

1 In reviewing the document, it's -- this is  
2 a draft document, a tentative agreement that was to  
3 memorialize what the parties had discussed at the  
4 facilitation. And the contents of this October 17,  
5 2007 document, is what was finally merged into the  
6 official settlement doc -- settlement and  
7 agreement, which was executed by the respective  
8 parties, Mr. Brown, and Mr. Nelthrope, and Mr.  
9 Harris. So just so that everyone in this room  
10 understands that.

11 MR. FINK: Okay.

12 Q (Continuing by Mr. Fink) All right. Mr. Stefani,  
13 I'm going to hand you copies marked as exhibits of  
14 all of the documents that you produced to me today.  
15 And if you'll give me one second, for some reason  
16 they seem to be out of order. I want to get my  
17 copy, which of course I'll turn in to you at the  
18 end of the day. But I -- to ask you some  
19 questions, I just want to make sure I've got them  
20 in the right order, so I refer to the right  
21 numbers.

22 (WHEREUPON A DISCUSSION WAS HAD OFF  
23 THE RECORD.)

24 Q (Continuing by Mr. Fink) All right. Mr. Stefani,  
25 I'm going to hand you back now, with exhibit

1 stickers, the documents that you produced for this  
2 deposition. And I'm going to briefly go through  
3 each, and then I'm going to ask you more specific  
4 questions about each.

5 Document Number 8, for starters --

6 MS. HA: (Interposing) I thought we  
7 were on Exhibit Number 6.

8 MR. FINK: Yeah. Well, there's some  
9 I'm not going to go through, so I'm just not going  
10 to use those.

11 MS. HA: Okay.

12 MR. FINK: I had them marked in  
13 advance.

14 MS. HA: Oh, I see.

15 MR. FINK: But they're preliminary  
16 kind of documents, so let's just get to the meat of  
17 this, which is what we're doing now.

18 Q (Continuing by Mr. Fink) Now, Number 8 appears to  
19 be, and I'm going to ask you some questions, but  
20 just as a preliminary matter, it looks like this is  
21 a document signed by Mayor Kilpatrick, in which he  
22 appoints William Mitchell, III, as his  
23 representative for purposes of receiving records  
24 under the Confidentiality Agreement, correct?  
25 That's what it says?

1 A Yes.

2 Q Okay. Those records referred to in Exhibit Number  
3 8, were the text messages, is that correct, that  
4 are now the subject of some notoriety, correct?

5 A Correct.

6 Q All right. So the mayor, or I should say Kwame  
7 Kilpatrick, authorized William Mitchell on November  
8 1, to hold the text messages, is that correct?

9 MS. HA: Well, objection --

10 MR. FINK: (Interposing) Or to  
11 receive them?

12 MS. HA: -- as to foundation. Mr.  
13 Stefani cannot testify as to what the mayor -- or,  
14 what Mr. Kilpatrick did or not.

15 Q (Continuing by Mr. Fink) Is that your  
16 understanding of --

17 MS. HA: (Interposing) That is not a  
18 proper question.

19 Q (Continuing by Mr. Fink) Is that your  
20 understanding of what this -- this agreement or  
21 this document signed by Mayor Kilpatrick was to  
22 accomplish?

23 A Yes. But it wasn't signed on November 1st, as far  
24 as I know, because we actually signed up some of  
25 these documents I believe on December 5th. And

1 this was not one of them, because the mayor's  
2 designee had not been chosen at that point.

3 Q What do you understand the purpose was of Exhibit  
4 8?

5 A Well, there was certain documents were to be held  
6 in escrow.

7 Q And those were the text messages?

8 A The text messages and some documents that related  
9 to matters of my client. So this -- this  
10 designation form refers to them as "K/B records".  
11 Those are the text messages. I believe there's  
12 also in the confidentiality -- a second -- or, the  
13 document entitled Confidentiality Agreement,  
14 there's a reference to the -- probably  
15 Brown/Nelthrope or B and N documents.

16 Q Yep.

17 A And the escrow agreement called for all those  
18 documents to be put in escrow. Well, they had been  
19 put in escrow a long time before that. But the  
20 escrow agreement provided that when the matter was  
21 fully resolved, approved by the city council, the  
22 money was paid, those documents would be released  
23 from escrow to the mayor's designee. And we didn't  
24 know who the mayor's designee was when we signed  
25 the escrow agreement, nor did we know who the

1 mayor's designee was on the -- I believe the 12th  
2 of December, when we signed the second Settlement  
3 Agreement or Exhibit 5.

4 So this was sent to me, or I -- I believe  
5 I received this in the mail a couple of days later,  
6 naming William Mitchell as the designee.

7 Q Okay. And the escrow agreement you reference,  
8 would be Exhibit 14 and 15, is that correct?

9 A Let's see. Yes.

10 Q All right. Now, Exhibit 14 and 15 relate to a  
11 safety deposit box in which -- and I'll ask you if  
12 this is correct, in which the confidential records,  
13 including the text messages, were to be placed?

14 A That's correct. And I believe -- that's correct.  
15 I believe that was spelled out or alluded to in the  
16 October 17th agreement, but I'm not certain.

17 Q Okay. We'll get to that. And your understanding  
18 was that, if I'm reading this correctly quickly,  
19 that you and Mr. McCargo would have keys to the  
20 safety deposit box, and both of you would need to  
21 be present to withdraw these confidential  
22 documents, including the text messages?

23 A Originally that was our understanding. But when we  
24 opened the box, we were told that they couldn't  
25 require two people to have the keys at the same

1 time, that they would be obligated to open the box  
2 if either one of us showed up with the key. And I  
3 believe that is why the second escrow agreement,  
4 which you --

5 Q (Interposing) The supplemental escrow agreement,  
6 Exhibit 15?

7 A I believe that's why we did it.

8 Q Okay.

9 A Because -- but eventually the bank changed its mind  
10 and said we can allow -- we can have a policy that  
11 the box will not be opened in the absence of both  
12 of you; and so as it turned out, our final escrow  
13 agreement reflected our original intent, but there  
14 was a little hiccup in between.

15 Q Let me invite your attention now to what's been  
16 marked as Exhibit Number 9, which is captioned  
17 "Notice of Mayor Kwame Kilpatrick's Approval Of  
18 Terms And Conditions Of Settlement As Approved By  
19 The City Council On October 23, 2007."

20 What was your -- what is your  
21 understanding of the purpose of that document?

22 A Well, the -- as Ms. Ha has pointed out, the  
23 agreement entitled Settlement Agreement in  
24 general -- or, Settlement Agreement, executed by  
25 all of us on the 17th of October, it was a

1 contract, but it was a contract with a condition  
2 precedent in it. And the condition precedent was  
3 that Brown and Nelthrope had so many -- and Harris  
4 had so many days to approve this settlement, and  
5 the mayor had so many days, and the City of Detroit  
6 had so many days to approve this settlement.

7 This document, Number 9, I believe I also  
8 received this after the 5th of December, was the  
9 mayor's official notification that he rejected the  
10 settlement.

11 Q Well, this one is an acceptance. Are you referring  
12 to Exhibit Number 10, which is his rejection?

13 A Correct. I misspoke. Yes.

14 Q Okay. Now, you referenced a Settlement Agreement.  
15 Is that Exhibit 11? We're talking about the  
16 October 17, 2007 Settlement Agreement, Exhibit 11?

17 A That's the agreement that I referenced that we all  
18 signed in my office on October 17th. It is --  
19 apparently in the -- in the exhibit that rejects  
20 the Settlement Agreement from Mayor Kilpatrick,  
21 he's referring to this conditional Settlement  
22 Agreement of October 17th. And the one where --  
23 that he's notifying me of his acceptance, in there  
24 he's referring to the Settlement Agreement that is  
25 dated November 1st, 2007.

1 Q All right. So let's get the time line straight. I  
2 think you've said it clearly, but let's get the  
3 time line straight. We have Exhibit 11, which is a  
4 fully-executed Settlement Agreement on October 17,  
5 2007?

6 MS. HA: I object to the  
7 characterization of that --

8 MR. FINK: (Interposing) Okay, fine.

9 MS. HA: -- question.

10 Q (Continuing by Mr. Fink) Now, that is signed by  
11 Mr. McCargo and Ms. Colbert on behalf of Mr. Kwame  
12 Kilpatrick. It's signed by the City of Detroit,  
13 signed also by Ms. Colbert, and I can't read the  
14 other signature.

15 A That's Mr. Copeland.

16 Q Mr. Copeland. Okay.

17 A I believe.

18 Q And then you sign it on behalf of all three  
19 plaintiffs?

20 A Correct.

21 Q Okay.

22 A Yeah.

23 Q So we've got that three --

24 A (Interposing) And it's also signed, I believe, by  
25 Frank Rivers. We both signed it on behalf of all

1 the plaintiffs. Frank Rivers and I.

2 Q Oh, okay.

3 A We were co-counsel.

4 Q His signature's under yours?

5 A I believe so, yes.

6 Q I can't quite make it out.

7 All right. Now, then we go to Exhibit 10,  
8 which is dated October 27, which is the Mayor Kwame  
9 Kilpatrick's rejection, Exhibit 10, correct?

10 A Correct.

11 Q Why did he -- what is your understanding of the  
12 reason he rejected Exhibit Number 11?

13 A Well, I think he didn't -- first of all, he  
14 didn't -- he didn't --

15 MS. HA: (Interposing) You know, I'm  
16 going to object to him --

17 A (Interposing) I never spoke to him about it.

18 Q (Continuing by Mr. Fink) Okay. What is your  
19 understanding? What do you understand took place  
20 here between October 17 and October 27?

21 A The Free Press filed a Freedom of Information Act.  
22 And I'm presuming, but don't know for a fact, that  
23 they -- that is, Mayor Kilpatrick and perhaps  
24 Beatty, did not --

25 MS. HA: (Interposing) I'm going to

1 object to this as to foundation.

2 A -- want the reference to the text messages in the  
3 Settlement Agreement.

4 Q (Continuing by Mr. Fink) Now, going back to  
5 Exhibit Number 11, the October 17, fully-executed  
6 agreement, in the first paragraph it refers to --  
7 specifically to your surrender of and transfer to  
8 an attorney to be designated by the mayor, we know  
9 later that was Mr. Mitchell, "All records,  
10 originals and copies, of text messages from SkyTel  
11 Messaging for the text pager leased by the City of  
12 Detroit and issued to Christine Beatty for the  
13 periods of September through October, 2002, and  
14 April through May, 2003 ('Records')." Correct?

15 A Yes.

16 Q So your understanding was that the representatives  
17 of the city and the mayor decided to avoid and  
18 evade the Detroit Free Press' Freedom of  
19 Information Act request which you previously saw as  
20 dated on the 19th of October, that they then  
21 entered into -- they rejected after the fact this  
22 Settlement Agreement Exhibit 11, and entered into a  
23 new one, is that correct?

24 MS. HA: Objection, foundation,  
25 argumentative.

1 MR. FINK: Argumentative? Okay.

2 Q (Continuing by Mr. Fink) Is that right? Is that  
3 your understanding?

4 A I'm sorry. That was kind of a long question.

5 Q I know.

6 A And you might have had some adjectives or adverbs  
7 in there that I cannot agree with. But I will tell  
8 you my understanding.

9 Q Please.

10 A Was that the reason that they didn't want to --  
11 they -- they rejected the October 17th Settlement  
12 Agreement, was that they had received a Freedom of  
13 Information Act, and it dawned on somebody that  
14 they didn't want the text messages referenced in  
15 the Settlement Agreement, so they'd have to  
16 separate it out into a separate Confidentiality  
17 Agreement and a separate Settlement Agreement.

18 And if I might add further,  
19 confidentiality agreements are used all the time in  
20 settlements. And -- but between private parties,  
21 you don't -- you don't think of the Freedom of  
22 Information Act. It's not applicable. So, you  
23 know, when we signed this thing, it was on our  
24 understanding that these things would be kept  
25 confidential.

1 Q Okay. Now --

2 MS. HA: (Interposing) I'm going to  
3 move to strike Mr. Stefani's deposition.

4 MR. FINK: Well, okay.

5 MS. HA: I mean, not deposition, but  
6 his -- well, I might as well. I'm going to move to  
7 strike his deposition testimony.

8 MR. FINK: Of course you are.

9 MS. HA: And I'm going to move to  
10 strike his answers to the question that I objected  
11 to --

12 MR. FINK: (Interposing) Okay.

13 MS. HA: -- Mr. Fink.

14 Q (Continuing by Mr. Fink) Okay. So, Mr. Stefani,  
15 on October 17 we have everyone execute Exhibit 11,  
16 the Settlement Agreement which makes direct  
17 reference to turning over the SkyTel text messages  
18 to the mayor's and the city's representatives?

19 MS. HA: I'm going to object.

20 Q (Continuing by Mr. Fink) Then we have a Freedom of  
21 Information Act request served by the Detroit Free  
22 Press two days after October -- on, on October 19.  
23 So as of October 19 -- now, note that Exhibit 10 is  
24 the rejection, which is dated October 27. So on  
25 October 19, this was -- Exhibit Number 11 was still

1 a city document, correct?

2 MS. HA: Objection. Foundation. Mr.  
3 Stefani cannot answer on behalf of the City of  
4 Detroit.

5 Q (Continuing by Mr. Fink) Is that your  
6 understanding, Mr. Stefani?

7 A I can tell you that --

8 MS. HA: (Interposing) Same  
9 objection.

10 A -- that, as I said before --

11 (WHEREUPON AN INTERRUPTION WAS HAD IN  
12 THE PROCEEDINGS, AND VALERIE  
13 COLBERT-OSAMUEDE, ESQ., LEFT THE  
14 DEPOSITION ROOM.)

15 Q (Continuing by Mr. Fink) Finish your statement, so  
16 we can at least have it. We were asking about --

17 A (Interposing) We operate -- this Settlement  
18 Agreement that has the condition precedent in it,  
19 was followed by the parties as if it were going to  
20 be approved by all of the parties, and we treated  
21 it as binding. That's why I actually turned over  
22 the documents long prior to --

23 Q (Interposing) By documents we're talking about the  
24 text messages?

25 A The text messages.

1 Q Um-hum (affirmatively).

2 A Long -- and that's why they went to escrow long  
3 prior to the new Settlement Agreement. But the  
4 mayor had the right to reject this, which --  
5 which --

6 Q (Interposing) Which he did on October 27?

7 A Well, I told you, I didn't get that letter I think  
8 until October 5th, but -- I mean until December  
9 5th.

10 Q Okay. All right.

11 A But in any event, he had the right to reject it.

12 MR. FINK: All right. Go ahead, take  
13 the phone call, and then we'll get back to all of  
14 this interesting information.

15 (WHEREUPON A BRIEF PAUSE WAS HAD IN  
16 THE PROCEEDINGS, FOR A  
17 TELECONFERENCE AS FOLLOWS, AND  
18 VALERIE COLBERT-OSAMUEDE RE-ENTERED  
19 THE DEPOSITION ROOM.)

20 MS. COLBERT-OSAMUEDE: He wants you  
21 to put this on a conference call.

22 A Hello.

23 JUDGE COLOMBO: Hello. This is Judge  
24 Colombo.

25 A This is Mike Stefani, your Honor. And I'm just

1 putting the phone on the table so everybody can get  
2 to it.

3 JUDGE COLOMBO: Okay.

4 MR. FINK: We're all here, your  
5 Honor. We hear you.

6 JUDGE COLOMBO: I got a call from Ms.  
7 Colbert-Osamuede, a call to call at 3:45.

8 MR. FINK: News to me.

9 MS. HA: Your Honor, this is Ellen Ha  
10 on behalf of the City of Detroit.

11 We made the call to you because there is  
12 some testimony that came out during Mr. Stefani's  
13 deposition pertaining to the facilitation. And we  
14 made it clear before Mr. Stefani could answer the  
15 question, that Mr. Fink and I had had an  
16 understanding with you in chambers that no line of  
17 questioning was going to be pursued regarding the  
18 facilitation/mediation, pursuant to the Michigan  
19 Court Rules.

20 MR. FINK: Can I respond, your Honor?

21 JUDGE COLOMBO: Yes.

22 MR. FINK: It's Herschel Fink, your  
23 Honor.

24 You may recall Friday afternoon, while Ms.  
25 Ha and I were in your chambers, and in fact we

1 al ready were leaving when a messenger brought a  
2 document to Ms. Ha. I did not see that document  
3 until Monday. She then raised with you verbally a  
4 concern about the mediation rule. And what I said  
5 to you was, I'm not concerned about things that  
6 happened three years ago, thinking we were talking  
7 about a mediation or a...

8 A Case evaluation?

9 MR. FINK: A case evaluation. And I  
10 said I don't intend to ask any questions about  
11 that, I'm interested in what happened at the  
12 settlement.

13 Subsequently, on Monday, I saw the  
14 document she was referring to. I don't believe you  
15 saw it either.

16 JUDGE COLOMBO: I saw it. I knew  
17 exactly what she was talking about.

18 MS. HA: Well --

19 MR. FINK: (Interposing) Well, I  
20 didn't. But let me just respond, your Honor. That  
21 rule, to the extent it even applies, talks about  
22 statements. Mr. Stefani was talking about actions  
23 that occurred there, which is, to use my  
24 characterization, I realize it's argumentative, was  
25 the coverup. There is, of course, a crime/fraud

1 exception and a public policy exception even to  
2 attorney/client privilege.

3 My -- my request would be we put this all  
4 on the record. It's sealed, and you'll make a  
5 determination whether this was potentially a fraud  
6 and a crime, or otherwise not subject to that court  
7 rule.

8 MS. HA: But, your Honor, you already  
9 ruled on Friday that we were not to pursue any  
10 questions regarding facilitation. I don't think  
11 Mr. Fink can request that your Honor now carve out  
12 an exception to the facilitation/mediation rule.

13 MR. FINK: All I'm suggesting is,  
14 your Honor, you'll have all the facts and the  
15 documents on the record sealed in front of you.  
16 You'll make the determination. You'll hear  
17 argument. I'm sure that they'll tell you that it  
18 shouldn't be released because it's subject to that  
19 rule. You need to know what all the facts are  
20 first. And it will all be on the record. It will  
21 all be sealed. You'll have it tomorrow. And then  
22 you can make a determination whether maybe this  
23 just might be covering up a fraud and a crime and  
24 is an exception.

25 MS. HA: But again, your Honor, the

1 motion was delivered to your attention on Friday.  
2 Both Mr. Fink and I reviewed the motion --

3 MR. FINK: (Interposing) I did not.

4 MS. HA: -- for protective order  
5 together.

6 MR. FINK: I didn't. I did not.

7 MS. HA: And your Honor then  
8 indicated to us in chambers that you did review the  
9 motion, and that facilitation/mediation was not  
10 going to be pursued.

11 And I might add, your Honor, that  
12 indicated to Mr. Fink that he is well aware of Mr.  
13 Fink's reputation, and that it is this Court's  
14 understanding, as well as the City of Detroit's  
15 understanding that the line of questioning  
16 regarding facilitation will not take place in the  
17 deposition.

18 MR. FINK: Your Honor, may --

19 JUDGE COLOMBO: (Interposing) Okay.  
20 Wait a second. Wait a second. Let me set the  
21 record exactly of what happened, because I remember  
22 this vividly.

23 You had come in, you had left. There was  
24 some discussion about the order when this new  
25 motion comes in that basically seeks to prohibit

1 any discussions regarding the facilitation that  
2 occurred I believe it was in October of 2007, after  
3 this trial.

4 And so I reviewed the motion. And we had  
5 a discussion about it. And I pointed it out that  
6 I'm fairly familiar with this rule, because I'm  
7 sitting on a committee that is considering  
8 amendment of the mediation rule, or they call it  
9 mediation, now it's 2.410, I believe -- or, 2.409.  
10 And I said, this stuff that occurred in  
11 facilitations or mediations, is not supposed to be  
12 disclosed. And -- and Mr. Fink did say he wouldn't  
13 disclose it. Now he says he didn't read the  
14 motion, and he didn't understand that it dealt with  
15 the facilitation that occurred in October; he  
16 thought it was referring apparently to a case  
17 evaluation that was done on the case some time ago.  
18 So we did have that agreement that this would not  
19 be inquired into on the record. Now apparently  
20 someone wants to ask some questions about it.

21 MS. HA: It already happened, your  
22 Honor.

23 JUDGE COLOMBO: So the questions have  
24 already happened?

25 MS. HA: Yes, your Honor.

1 JUDGE COLOMBO: And have they been  
2 answered?

3 MS. HA: Yes, your Honor, contrary to  
4 our objection -- or, my objections, your Honor.

5 JUDGE COLOMBO: Okay. Then what are  
6 we -- there's nothing to talk about. At this point  
7 in time, it's going to be part of a sealed record.  
8 We'll have to argue about whether or not there is  
9 a -- a privilege there. And since it's happened,  
10 there's really nothing further to discuss. It's  
11 already in the record, so...

12 MS. HA: Well, your Honor --

13 JUDGE COLOMBO: (Interposing) All I  
14 can tell you, is that as long as you objected, I  
15 don't consider it -- I don't consider there would  
16 be a waiver.

17 And I am unhappy about this, Mr. Fink.  
18 Frankly, I expect if I have enough time on a very  
19 busy day on Friday to read that motion, I would  
20 have thought that you would have had enough time to  
21 read that motion and understand exactly what the  
22 motion was about. Because we all understood, at  
23 least Ms. Ha and I understood exactly what the  
24 issue of the motion was. So I'm unhappy about  
25 that, that you're now claiming you didn't

1 understand the issue.

2 MR. FINK: May I try to refresh the  
3 court's recollection that I said I'm not interested  
4 in things that happened three years ago, I want to  
5 know what happened at the settlement. I didn't  
6 read it, because I wasn't even given a copy of it  
7 until it arrived at my office on Monday, your  
8 Honor. It was walked into chambers as we were  
9 walking out. Ms. Ha looked at it, gave it to you.  
10 I never had it. And I expressly, you may remember,  
11 said I'm not interested in things that happened  
12 three years ago.

13 I was in good faith. I would never  
14 misrepresent any such thing to the Court. That's  
15 what I believed that was all about. It wasn't  
16 shown to me. And you may remember, I said I wasn't  
17 interested in things that happened three years ago.

18 JUDGE COLOMBO: Well, I do vaguely  
19 remember that. But I still felt that there was an  
20 understanding that there would be no discussion  
21 with respect to settlement conferences. And I  
22 think you should have raised that issue with me, in  
23 light of our agreement, before you proceeded on  
24 your own to make that determination. And I find  
25 that objectionable.

1 MR. FINK: I apologize to the Court.

2 JUDGE COLOMBO: Okay.

3 MS. HA: Your Honor, this is --

4 JUDGE COLOMBO: (Interposing) I  
5 mean, to me, the appropriate thing to do is, if  
6 there's any question about an issue like that, is  
7 to address it with me first, and not make the  
8 unilateral decision to proceed.

9 MR. FINK: I understand, your Honor.  
10 And just because this was all in a sealed record  
11 that you would make a determination on, I felt that  
12 there was no harm, particularly when I looked at  
13 the documents and saw that this is all wrapped up  
14 in the rubric of this facilitation. And I think  
15 you'll understand what happened when you look at  
16 it.

17 JUDGE COLOMBO: Okay. In any event,  
18 is there anything else I need to take up?

19 MS. HA: Yes, your Honor. I would  
20 like an order that no further questions from Mr.  
21 Fink be pursued or Mr. Stewart, although Mr.  
22 Stewart hasn't had the opportunity, regarding the  
23 facilitation.

24 Secondly, I am requesting whether we --  
25 the City of Detroit can ask questions, based on Mr.

1 Fink's already asked questions regarding the  
2 facilitation.

3 JUDGE COLOMBO: Here's my feeling  
4 about this. It's already occurred. We might as  
5 well get the complete record made. It makes  
6 absolutely no sense to me now to limit questions in  
7 this regard. It is a sealed record. There is no  
8 waiver as far as I'm concerned, and consequently I  
9 want all questions asked that relate to this  
10 facilitation now.

11 MR. FINK: Thank you, your Honor.

12 MS. HA: Thank you, your Honor.

13 JUDGE COLOMBO: Okay. Bye.

14 MR. FINK: Bye.

15 (WHEREUPON THE TELECONFERENCE  
16 CONCLUDED AND THE PROCEEDINGS  
17 CONTINUED AS FOLLOWS:)

18 Q (Continuing by Mr. Fink) Okay. All right. Do you  
19 need a break?

20 A No.

21 Q Okay.

22 A I need about a year off. But go ahead, go ahead.

23 I will say this, I've sat through so many  
24 depositions --

25 MR. FINK: (Interposing) Wait.

1 We're back now.

2 A -- with the city where -- no, let's go onto...

3 Q (Continuing by Mr. Fink) No, we are.

4 A I'm glad to be more or less a neutral observer.

5 But...

6 Q Okay.

7 A It still gives me a headache.

8 Q All right. So just getting back to this time line,  
9 we have the Exhibit 11, the October 17th Settlement  
10 Agreement, we have the Detroit Free Press October  
11 19 Freedom of Information Act request, which was --  
12 anybody know the number?

13 MR. STEWART: Yep.

14 MS. HA: Exhibit...

15 MR. STEWART: 3, I think. Just a  
16 minute.

17 A Yeah, that's one. October 19th, 2007.

18 MR. STEWART: It's Exhibit 1.

19 MR. FINK: Exhibit 1. Okay.

20 Q (Continuing by Mr. Fink) We have, although you  
21 thought it might have actually been later, at least  
22 you learned of it later, we have the Exhibit 10, in  
23 which the mayor rejects the settlement terms or  
24 rejects the settlement dated October 17. Exhibit  
25 10 is dated October 27. And then we have Exhibit

1 9. And let me ask you about that. I think we were  
2 just maybe starting to ask about Exhibit 9.

3 Now, Exhibit 9 you understand to be Mayor  
4 Kilpatrick's acceptance of the settlement -- of a  
5 settlement? We'll get to which one it was in a  
6 minute.

7 A Um-hum (affirmatively).

8 Q Is that correct?

9 A Yes, correct.

10 Q Okay. And that would be Exhibit 12, correct? Is  
11 that what he's referring to in Exhibit 9?

12 A Yes.

13 Q Okay. To your knowledge, was the city council  
14 advised ever of Exhibit 11, the Settlement  
15 Agreement that references the text messages?

16 A I had no knowledge of that.

17 Q Okay. I suppose the council will speak for itself  
18 on that issue.

19 Now, let me ask you about Exhibit 13 which  
20 you produced today. That also is captioned  
21 Confidentiality Agreement, and it is, by its own  
22 term, effective November 1, 2007. Tell me -- now,  
23 let's -- let's talk about who was a party to  
24 Exhibit 13, and then I'm going to ask you what you  
25 know about how that came about.

1 Now, that document is signed on the last  
2 page, Page 9, by Brown, Nel thrope and Harri s; by  
3 you, and on their behal f; and you, yoursel f, on  
4 behal f of your fi rm. And then it's signed by --  
5 all of a sudden we don't see the name mayor, it's  
6 just Kwame Kilpatrick and Christine Beatty, who  
7 wasn't even a party in your lawsuit, is that  
8 correct?

9 A No.

10 Q Ms. Beatty was not --

11 A (Interposing) No, she was not a party.

12 Q She wasn't a party. Now, the first paragraph of  
13 Exhibit 13 talks about the parties who entered into  
14 this agreement, Number 13, the Confidentiality  
15 Agreement. And it describes them, among others, as  
16 Kwame Kilpatrick individually and personally, and  
17 Christine Beatty individually and personally?

18 MS. HA: Can I just ask what page are  
19 you on?

20 MR. FINK: I'm on the first page, the  
21 first paragraph I said.

22 MS. HA: Thank you.

23 Q (Continuing by Mr. Fink) Could you explain, first  
24 of all, how -- why Ms. Beatty suddenly becomes a  
25 party to a Confidentiality Agreement in this case?

1 MS. HA: Objection, foundation.

2 A The records were -- the text messages were of Ms.  
3 Beatty's text messaging machine. They were  
4 messages either sent by her or to her. And she  
5 obviously had a vested interest in keeping those  
6 records personal or confidential.

7 Another thing is that I requested a  
8 release from Ms. Beatty as part of the overall  
9 Settlement Agreement. And I believe that is  
10 reflected in Exhibit -- the document we signed in  
11 my office on the 17th of October. I believe in  
12 there I make -- or, I inserted that releases would  
13 be entered by all the parties, plus I thought I  
14 said Christine Beatty. But obviously the document  
15 speaks for itself.

16 Q (Continuing by Mr. Fink) Going back to Exhibit 13,  
17 this Confidentiality Agreement signed by Kwame  
18 Kilpatrick and Christine Beatty, whose idea was it  
19 to draft this document, as far as you know?

20 MS. HA: Objection, foundation.

21 A I don't know. I don't know that.

22 Q (Continuing by Mr. Fink) Was it -- okay. Was it  
23 your idea?

24 A No.

25 Q Who presented it to you for signature?

1 A We had -- on I believe it was December 5th, we had  
2 a closing on these documents. And present at that  
3 closing -- it was in Mr. Wilson Copeland's office.  
4 I was present representing the plaintiffs, Brown,  
5 Nelthrope and Harris. And I believe Ms. Osamuede,  
6 McCargo, Copeland, and perhaps a paralegal. I  
7 think one of the city's paralegals. I forgot. I  
8 may be wrong on that. Those people were there for  
9 sure, and there may have been a paralegal or two  
10 there also.

11 Q Now --

12 A (Interposing) And these documents are what we --  
13 you know, we had reviewed these documents ahead of  
14 time, passed them back and forth. And essentially,  
15 13 was supposed to incorporate the confidentiality  
16 provisions of 11, the original conditional  
17 Settlement Agreement, and then we tweaked the  
18 language. The mayor -- or, it was suggested that  
19 it encompass the documents that Brown and Nelthrope  
20 wanted back from the city that they considered to  
21 be of a confidential nature.

22 Q So am I correct in assuming that everyone present  
23 at that meeting, who you just identified, was aware  
24 of Exhibit 13 --

25 MS. HA: (Interposing) Objection,

1 foundation.

2 Q (Continuing by Mr. Fink) -- the Confidentiality  
3 Agreement?

4 A I can't -- I can't say that. From the beginning,  
5 all the way back to October 17th when the -- when  
6 the city and all their attorneys said we will not  
7 negotiate a global resolution is the word we used  
8 to this case, I said, well, in that case I won't  
9 accept the four hundred or five hundred thousand.

10 And then I asked the facilitator in  
11 private if he would furnish Mr. McCargo only with a  
12 motion that I had prepared for attorney's fees,  
13 which referenced the con -- the text messages. And  
14 I do not know whether Ms. Osamuède or Mr. Copeland  
15 ever saw the text messages. I -- well, I'm not  
16 going to guess.

17 And I really don't know whether they ever  
18 saw this Confidentiality Agreement. They were in  
19 the room when it was signed, but I'm not sure --  
20 you know, they gave these documents to me to be  
21 signed, and I signed them. They didn't come from  
22 Ms. Osamuède. They came from McCargo. Whether  
23 they were aware of this document or not, I can't  
24 say.

25 Q Now, Ms. Osamuède, to your knowledge, was aware of

1 the text messages, because it's referenced in the  
2 October 17th Settlement Agreement that she signed,  
3 correct?

4 MS. HA: Objection, foundation. Mr.  
5 Stefani cannot answer for Ms. Osamuède.

6 (WHEREUPON SHARON McPHAIL, ESQ.,  
7 LEFT THE DEPOSITION ROOM.)

8 Q (Continuing by Mr. Fink) Correct, sir?

9 A I believe -- I believe she was aware that there  
10 were text messages. I don't believe she -- at  
11 least I have no reason to believe that she was  
12 aware of the context of those messages. I think  
13 McCargo told me, and I'm going by memory --

14 MS. HA: (Interposing) Objection,  
15 hearsay.

16 Q (Continuing by Mr. Fink) Go ahead.

17 A I think he said --

18 MS. HA: (Interposing) Move to  
19 strike.

20 A -- that Mr. Copeland and Ms. Osamuède were not  
21 going to review the specifics of my motion, but  
22 they were aware that I was going to file a motion.

23 Q (Continuing by Mr. Fink) All right. So let's --  
24 we're clear on the record, the motion was what you  
25 referred to a minute or two ago, a motion for

1 attorney's fees?

2 A Supplemental motion for attorney's fees.

3 Q Okay. You had prepared that document, correct?

4 A Correct.

5 Q And in it, am I correct that there was a reference  
6 to these text messages and perhaps an excerpt in  
7 this motion?

8 A Oh, it was extensively excerpt -- extensively  
9 excerpted with the areas -- the basis of the motion  
10 was that we should get additional attorney's fees,  
11 because the mayor and Beatty perjured themselves.  
12 And I set out extensive examples in the -- of the  
13 text messages in that motion. And that's what I'm  
14 saying. McCargo read it, read it carefully. He  
15 took about forty-five minutes to read it. But I  
16 don't think Ms. Osamuade ever -- at least I -- I  
17 have no reason to believe she read it.

18 MS. HA: Then how --

19 A (Interposing) In fact, I have the opposite.

20 Q (Continuing by Mr. Fink) Okay.

21 A McCargo said he wasn't going to share it with her  
22 or Copeland.

23 Q Okay. Then --

24 MS. HA: (Interposing) Just so that  
25 the record is clear, this motion that we're talking

1 about is a motion that was submitted to the  
2 facilitator during facilitation, right?

3 A I handed it to the fac -- it wasn't really part of  
4 the facilitation. I handed it to him when it  
5 appeared the facilitation broke down and we weren't  
6 going to resolve the attorney's fee issue. And we  
7 were really kind of preparing to leave. And I  
8 said, "Would you please give this to Mr. McCargo,  
9 and -- but give it only to him", I said.

10 Q (Continuing by Mr. Fink) This was a document you  
11 intended to file in the circuit court with Judge  
12 Callahan, correct?

13 A Absolutely.

14 Q Okay. Now, after Mr. McCargo received this  
15 document, what then transpired with regard to the  
16 mayor's acceptance of the settlement?

17 MS. HA: Objection, foundation.

18 Q (Continuing by Mr. Fink) Or the mayor's settlement  
19 of the case. What can you --

20 A (Interposing) Forty-five minutes after the  
21 facilitator handed McCargo the document, there was  
22 a knock on our door. We were in separate rooms.  
23 And the facilitator said, "McCargo wants to talk to  
24 you." And I got outside -- he was actually outside  
25 of the building. So I left the building and walked

1 out in the parking lot. And McCargo looked ashen  
2 or shook up. And he looked at me, and he said, "I  
3 had no idea" --

4 MS. HA: (Interposing) Objection.

5 A -- "about these. Have you filed it with the  
6 Court?" And I said, "No, I haven't filed it yet,  
7 but I'm going to do that tomorrow." And he said,  
8 "Give me some time." And a few minutes went by.  
9 He called back, he says, "Boy, I was lucky. I got  
10 the mayor right at the airport." And he said, Mr.  
11 So and So, who is the head of the legal  
12 department --

13 Q (Continuing by Mr. Fink) John, is it Johnson?

14 A "Is on his way down here." And when he got down  
15 there, McCargo -- we all started negotiating more  
16 seriously a global solution. And that's where I  
17 ended up discounting the fees by nine hundred  
18 thousand dollars and we resolved the case.

19 Q So Mr. Johnson, the corporation counsel of the City  
20 of Detroit, was then involved in this resolution  
21 after Mr. McCargo learned of the text messages,  
22 correct?

23 MS. HA: Objection, foundation.

24 A He came to the facilitation, introduced himself,  
25 was extremely pleasant. But we were in two

1 separate rooms, so I don't know what they told him.

2 But in response to McCargo's call to the  
3 mayor, Mr. Johnson came down to the fac -- if  
4 that's his name, Mr. Johnson, came down to the  
5 facilitation, and then we went in separate rooms  
6 and we never talked to each other again. We just  
7 like passed notes through the facilitator.

8 Q (Continuing by Mr. Fink) Thank you. Just so we  
9 can clean this up, you also gave me a package of  
10 checks which I marked as Exhibit 16, which you have  
11 there.

12 A Yes.

13 Q Okay. And do I understand that there were separate  
14 checks drawn for different types of injuries? Is  
15 that the reason we have multiple checks?

16 A That's not the reason we have multiple checks.

17 (WHEREUPON SHARON McPHAIL, ESQ.,  
18 RE-ENTERED THE DEPOSITION ROOM.)

19 A But the part of the settlement -- the tentative  
20 conditional Settlement Agreement, is that we would  
21 allocate the settlement among several different  
22 categories; past wages, future wages, past pension,  
23 future pension, emotional damage and physical  
24 injury. And that is the way we did it. But I  
25 don't think those bear -- well, they might bear a

1 relationship to the checks. There might be -- some  
2 of these -- each defendant received -- each  
3 plaintiff, rather, received two checks. One was  
4 for the nonearnings or noncompensation portion, and  
5 there was a check written for that with appropriate  
6 deductions for federal withholding, state  
7 withholding and city withholding. And then there  
8 was a separate check issued for the noncompensation  
9 aspects of the transaction.

10 And if you look at these checks, they're  
11 dated December 4th, 2007. At least some of them  
12 are dated December 4th, 2007, which is -- refreshes  
13 my recollection why we didn't sign these documents  
14 until December 5th. They wanted me to sign to  
15 release and all that stuff ahead of time, and I  
16 simply told them that I wouldn't do it until we had  
17 the checks in hand, and then I would sign it. So  
18 we didn't end up signing the Settlement Agreement,  
19 we didn't have the closing so to speak until the  
20 next day, December 5th.

21 Q (Continuing by Mr. Fink) Okay. Now, just to fill  
22 in the blank here, I'm going to hand you what I've  
23 had marked as Exhibit 17. You would not recognize  
24 the cover letter. This was produced in court on  
25 last Friday. But the attachment to it, you may be

1 able to identify.

2 A Yes.

3 MS. HA: Is this Exhibit 17?

4 MR. FINK: 17 is what I marked it.

5 A Yeah. Page 2 and Page 3 of 17 are a letter from me  
6 to Ms. Colbert-Osamuede, dated November 1st, 2007,  
7 in which we set forth the break-down of how the  
8 party -- or, the plaintiffs allocated the  
9 settlement proceeds.

10 And I should point out, and I'd like to  
11 point out anyway, that you notice on here Stefani  
12 and Stefani has a rather large figure. But that  
13 doesn't necess -- these figures don't necessarily  
14 mean they -- some of these figures -- some of the  
15 payment to Stefani and Stefani was for advances  
16 that were the responsibility of all the clients.  
17 You know, client expenses. And then there were a  
18 couple other disbursements made. So these numbers  
19 don't necessarily reflect the amount that went into  
20 the bank accounts of each of the participants. I  
21 don't know if that make it clear, if that clarifies  
22 anything, but...

23 Q (Continuing by Mr. Fink) Sure. Okay. Now, I know  
24 that you produced to us today Exhibit 11, which is  
25 the first Settlement Agreement October 17, 2007.

1 It's the one with the reference to the text  
2 messages. Do you know what happened to other  
3 copies of that document, or was there -- let me  
4 withdraw that question and rephrase it.

5 Was there any understanding with regard to  
6 existing copies of that Settlement Agreement, to  
7 your knowledge?

8 A There was no discussion of it at all. And in fact,  
9 it -- it -- all the parties here in this case tried  
10 to rep -- in my opinion, tried to represent their  
11 clients to the very best of their ability. There  
12 were some areas that might not be up to the  
13 standards if we had all the time in the world.

14 And I considered this settlement -- this  
15 Exhibit 11 required Brown, Nelthrope and Harris to  
16 enter into a separate Settlement Agreement, a  
17 nondisclosure agreement. And they entered into  
18 those agreements pursuant to Exhibit 11. And the  
19 so-called -- the second Settlement Agreement,  
20 Exhibit 12, requires them to do the same thing.  
21 But they had already entered into it, so it's a  
22 little bit bollexed up.

23 In other words, they followed some of the  
24 terms of Exhibit 11, all the parties did. And then  
25 when we changed it, we didn't go back and re-do

1 those separate agreements. And we all agreed that  
2 they were clear, the intent was clear as to the  
3 confidentiality, and -- but if I were a law  
4 professor, a contracts professor looking at this, I  
5 would -- I would say hey, you should have had ---  
6 re-executed those agreements, you should have  
7 retaken the documents back and given them back to  
8 them. But we didn't do it that way.

9 But all the parties were trying -- all the  
10 attorneys were trying their best to get this matter  
11 resolved, and I feel had their clients' best  
12 interests at heart.

13 Q All right. I want to ask you --

14 MS. HA: (Interposing) Wait, wait a  
15 minute.

16 Q (Continuing by Mr. Fink) -- some more questions  
17 about Exhibit 13.

18 MS. HA: Wait.

19 MS. McPHAIL: She has an objection.

20 MS. HA: Exhibit 12 was never  
21 entered. I don't know what Exhibit 12 Mr. Stefani  
22 was referring to.

23 MS. McPHAIL: I thought he said what  
24 it was.

25 MS. HA: Well, he said --

1 A (Interposing) I believe that's the revised or  
2 second Settlement Agreement dated --

3 MR. FINK: (Interposing) I think  
4 that's 11 -- no, no, no, no.

5 A Well, it's not on mine.

6 MR. FINK: No. You're right. It's  
7 12. Absolutely it's 12.

8 MS. HA: Now, what's 12?

9 MR. FINK: 12 is the so-called  
10 official agreement that we were given in response  
11 to the Freedom of Information Act request.

12 MS. HA: Okay.

13 Q (Continuing by Mr. Fink) Okay. Let me go now back  
14 to Number 13. I have a few questions about 13,  
15 which is the second Confidentiality Agreement,  
16 so-called, November 1.

17 Okay. Now, there's some reference I  
18 believe in here to your employees having to sign --

19 A (Interposing) That's correct.

20 Q -- confidentiality...

21 Tell me what your office was asked to do  
22 with regard to the -- oh, it's on Page 3, the  
23 bottom of Page 3. What did the -- I guess the  
24 mayor require, or his representatives require you  
25 and your employees to do with regard to destruction

1 of the text messages?

2 A We -- we -- we didn't destroy the text -- there's  
3 nothing required us to des -- all of the text  
4 messages, except to turn over all copies into this  
5 escrow account.

6 Q Okay.

7 A So we didn't destroy anything. We were -- we were  
8 also required to -- I wouldn't even say we were  
9 required. As part of the negotiations, I  
10 volunteered to remove -- they insisted upon the  
11 motion that I had drafted be turned over.

12 Q Yes.

13 A And I volunteered, as part of the negotiations, to  
14 remove them from our computer. Because if we  
15 didn't remove them, it would -- it would defeat the  
16 purpose.

17 Q Who removed them from your computer?

18 A I did. Well, I did, and I had Roquia, my legal  
19 assistant, remove them from her computer.

20 Q Did the city or the mayor's representatives have  
21 anything to do with scrubbing your computers?

22 A No. Not to my -- I mean, no, no. Nobody.

23 Q Okay.

24 A Unless somebody broke in in the middle of the  
25 night, nobody's come over and checked them or

1 anything.

2 Q Okay. But part of the requirement that was made of  
3 you, and part of the settlement, was that your  
4 employees would sign confidentiality agreements  
5 also relating to the text messaging?

6 A That's correct, because we involved -- the text  
7 messages were so extensive, we involved several of  
8 our employees in reviewing them. And as part of  
9 our arrangement, you know, Mr. McCargo said, "Well,  
10 what about your staff? Well, maybe they'll release  
11 them." And I said, "No, they're very trustworthy.  
12 They have been with me a long time, and I trust  
13 them. We're like family." And they said, "Okay,  
14 then they can just sign the agreement too."

15 Q Now, I'm interested in on paragraph -- now I'm  
16 referring -- I'm still on -- on Exhibit 13, the  
17 Confidentiality Agreement. And I see there's a  
18 reference to Ms. Beatty's home.

19 MS. HA: What page?

20 MR. FINK: Page 2, Paragraph 4 A.

21 Q (Continuing by Mr. Fink) Can you tell me what your  
22 understanding is with regard to why documents  
23 obtained by the plaintiffs concerning the purchase  
24 of Christine Beatty's home and financing through  
25 Fifth/Third Bank, why was that an issue?

1 A You know, I only know what McCargo told me. And  
2 McCargo told me --

3 MS. HA: (Interposing) Well,  
4 objection, hearsay.

5 Q (Continuing by Mr. Fink) Okay. Go ahead, tell us.

6 A First of all, it could have been a negotiation  
7 tactic on his part. It could have been pure BS.  
8 But he said in order for us to get you this much  
9 money, you have to give us some more documents.  
10 You -- we have to make it look like we're really  
11 getting a bang for our buck. And I said -- and so  
12 he said we want the Christine Beatty, her mortgage,  
13 her husband's mortgage, anything you've got on  
14 that. And I said, fine, I'm -- I said it's been  
15 reported already in the newspaper, but I will be  
16 happy to turn -- and that was also turned over and  
17 put in escrow.

18 Q Well, what was -- what was -- what did that relate  
19 to?

20 A Well, I had contended, and I believe to this date,  
21 it's only my belief, that the mayor gave Christine  
22 Beatty twelve thousand dollars to buy that house  
23 on -- that new house she bought. Because she and  
24 her -- she had moved out of the home that she was  
25 living in with her husband. And my sources told me

1 the mayor actually helped her pick this house out,  
2 this new one on Westmoreland. And when she went to  
3 apply for the mortgage, she had no money to put  
4 down. And the bank told her that she needed  
5 twenty-four thousand dollars. And the bank gave  
6 her, gave her, not loaned her, but gave her  
7 twenty-four -- twelve thousand dollars. And my  
8 source told me that Beatty said, "Well, the mayor  
9 will give me the other twelve." And the bank said,  
10 "Look, this can't be a loan. It has to be a gift."  
11 And she says, "Well, it will be a gift." And he  
12 said, "Nobody's going to believe that the mayor  
13 gave you a gift, so have the mayor give the money  
14 to your mother, then have your mother make a gift."

15 So I tried to get the bank records to show  
16 this. I subpoenaed the mother's account -- the  
17 mother gave either a money order or certified  
18 check -- I mean, a money order or a cashier's  
19 check. And I tried to get the records as to where  
20 the money... but in any event, I sent out a bunch  
21 of subpoenas, and those were all quashed by Judge  
22 Warfield Moore. Because I sent those out in the  
23 Harris case -- or, wait a minute. Let me think.  
24 Harris? Yeah, the Harris case.

25 So that's how I happened to have all these

1 records. And McCargo said, we want everything.

2 Q Okay.

3 MS. HA: And I'm object -- I have  
4 objected to the hearsay, and I'm going to move to  
5 strike Mr. Stefani's entire statement.

6 MR. FINK: You make your objection.  
7 You move to strike in a trial or in front of a  
8 judge. But that's fine, Ms. Ha, okay? Your  
9 objection is absolutely clear, and you can make  
10 that argument to the judge, and I'm sure you will.

11 Q (Continuing by Mr. Fink) Now, Mr. Stefani, going  
12 back to the -- what I'll call the formal  
13 settlement, Exhibit 5, I notice that it's signed  
14 by, and we referenced this earlier, Wilson  
15 Copeland, II, as the -- on behalf of the City of  
16 Detroit. What is your understanding of Mr.  
17 Copeland's role in the settlement -- first I'll ask  
18 you with regard to the settlement. What was Mr.  
19 Copeland's role with regard to the settlement, as  
20 you understand it? What was his involvement?

21 A When you say settlement now, you know, we've got  
22 these documents called Settlement Agreements. What  
23 are you referring to when you say settlement?

24 Q The resolution of the lawsuit.

25 A The --

1 Q (Interposing) I'm talking in broader terms.

2 A Yeah. The oral agreement --

3 Q (Interposing) And I'll --

4 A (Interposing) -- that we arrived at on the 17th  
5 and then reduced to writing in my office that  
6 evening?

7 Q Yes.

8 A He was representing -- he is co-counsel with Ms.  
9 Osamuede for the City of Detroit. McCargo is  
10 co-counsel with Ms. Osamuede for Mayor Kilpatrick.

11 We all traded these notes back and forth  
12 about dollar amounts, and we all came here and made  
13 a few changes to this agree -- I had drafted a  
14 Settlement Agreement on a yellow pad at the  
15 facilitation meeting, the conference. And the  
16 facilitator was from Flint, and he had to go back  
17 at four o'clock, I think. And so we said, well,  
18 how about going to my office, and we'll reduce this  
19 to writing? And Mr. -- Mr.

20 Q McCargo, Copeland?

21 A Copeland and McCargo and Ms. Osamuede all came to  
22 my office, and we tweaked the thing a little bit,  
23 the yellow paper, tweaked it a little bit. And  
24 then I -- then we had it typed, and then there  
25 might have been a little bit more tweaking. But we

1 didn't get out of here till about -- I think I left  
2 at 8:30.

3 Q So that --

4 A (Interposing) And they left at maybe 8:15.

5 Q So the facilitator was long gone by the time you  
6 really hammered out the agreement with regard to  
7 the text messages and all?

8 A The fac -- first of all, the facilitator had no  
9 idea about the text messages.

10 Q All right.

11 A He -- I gave him a sealed envelope with a motion in  
12 it, and asked him to give it to Mr. McCargo.

13 Q So all -- just let me -- let me, just so we get  
14 this in the right order. So the -- the resolution  
15 of the case where the text messages came into play,  
16 was outside of the purview of the facilitator? He  
17 wasn't involved in that, correct?

18 MS. HA: Well, I object to that line  
19 of questioning, because what -- what do you mean by  
20 resolution of this case?

21 MR. FINK: What I mean, Ms. Ha, is  
22 the quid pro quo, or the destruction of the  
23 incriminating evidence of the mayor's perjury in  
24 exchange for the mayor's decision to settle the  
25 case. Does that make it clear?

1 MS. HA: Well, first of all, Mr.  
2 Fink, you don't have to be so snide to me.

3 MR. FINK: I wasn't snide. I was  
4 explaining it to you, because you don't seem to  
5 understand it.

6 MS. HA: Well, thank you.

7 MR. FINK: Okay.

8 MS. HA: Thank you for --

9 A (Interposing) You know, I think, in all due  
10 respect, Mr. Fink, I know you are -- have quite a  
11 reputation for being an outstanding constitutional  
12 lawyer. But as a favor to me, I think you are  
13 being a little snide to her, and I wish you  
14 wouldn't.

15 MR. FINK: Well, I would apologize to  
16 her, and I do so right now.

17 Q (Continuing by Mr. Fink) Now, let's get the  
18 information on the record. My question related to  
19 whether the resolution of the case, which is the  
20 settlement on the 17th of October, the decision to  
21 settle the case by the mayor's representatives,  
22 took place outside of the purview so to speak of  
23 the facilitator? This was negotiated between you,  
24 Mr. McCargo and Mr. Copeland, correct, and Ms.  
25 Osamuede?

1 A That --

2 MS. HA: (Interposing) Objection as  
3 to Mr. Fink's characterization of settlement of  
4 October 17th, 2007.

5 A And, Mr. Fink, that -- that -- that can't be  
6 answered simply yes or no. The facilitator -- we  
7 were in two separate rooms during the facilitation  
8 when this thing was negotiated. I drafted it,  
9 passed it, the facilitator took it to their side.  
10 They changed it. And by the time the facilitator  
11 left, had to leave, we had arrived at 99.9 percent  
12 of the agreement. And it had to be reduced to  
13 writing, so we came to my office.

14 Now, the facilitator was never -- other  
15 than numbers, he was not aware of what was in these  
16 agreements. You know, I would give him -- 'cause I  
17 told him, I said, "I would prefer you not know  
18 what's in this envelope", when I gave it to him.  
19 And he said, "Believe me, I don't want to know.  
20 It's not my"... So he did facilitate the settlement  
21 by coming back and saying they say they can't go --  
22 they can't go a -- they can't go to eight million.  
23 There's no way they can get approval for eight  
24 million. And I told him, well, then we won't  
25 accept eight million -- I mean, we won't settle for

1 less than eight million. And he would take that  
2 back to them. And in the meantime, we were  
3 drafting this on a yellow pad of paper.

4 Now, he didn't read it, I don't believe.  
5 But when the deal was over, he knew we had a  
6 handshake agreement or an oral agreement to reduce  
7 it to writing. But he knew, and everybody knew  
8 that it had to be approved by the parties who  
9 weren't there.

10 So when you say was it negotiated outside  
11 the facilitation, I would say no.

12 Q (Continuing by Mr. Fink) Well, I think you  
13 answered it when you said that he was not a  
14 participant and had no knowledge, as far as you  
15 know, of the text message component to the  
16 settlement?

17 A No. He -- that's all he knew, is what I told him,  
18 "I've developed" --

19 Q (Interposing) Okay.

20 A -- "information that Mr. Kilpatrick lied -- or,  
21 committed perjury, and I would like you to give  
22 this document." He didn't know what was in the  
23 envelope. And we didn't want him to know.

24 Q Okay. Now, there was another name that's appeared.  
25 And actually, it's been in the newspaper. And that

1 involves a person named William Mitchell, III. And  
2 there was a story in the Detroit Free Press  
3 yesterday, that in October of 2007, he had traveled  
4 to SkyTel in Mississippi, and made contact with  
5 SkyTel with regard to the text messages. What do  
6 you know about Mr. Mitchell's involvement in any  
7 matter relating to the settlement of the lawsuit?

8 MS. HA: I'm going to object to Mr.  
9 Fink's reference to the Detroit Free Press article  
10 as a hearsay.

11 A You know, of course I know Mr. Mitchell. But by  
12 reputation, he's got the reputation of being a fine  
13 attorney. I believe he specializes in criminal  
14 law.

15 Mr. McCargo took the position, not during  
16 facilitation, but in other conversations, that  
17 these text messages were the personal property of  
18 the mayor and Ms. Beatty, and they should be  
19 returned. And the city was going to tell SkyTel  
20 that -- or, McCargo, somebody was going to tell  
21 SkyTel that this was personal property, and they  
22 had no right to have those records.

23 So I presume Mitchell was hired to do  
24 that. But that's -- that -- that's a presumption.  
25 But it kind of fits in with what you're saying that

1 someone went down there and tried to get SkyTel to  
2 return those records to the mayor and Beatty.

3 Q (Continuing by Mr. Fink) But you didn't -- he  
4 didn't come to any proceeding that you were  
5 involved in relating to the settlement?

6 A He wasn't identified until -- a moment ago I told  
7 you we signed this, we had a closing on December  
8 5th. We didn't even know who the mayor's  
9 representative was going to be on December 5th. We  
10 didn't know whether it was going to be McCargo. I  
11 assumed it was going to be McCargo. McCargo said,  
12 "Well, it might not be me." It wasn't until  
13 several days later that I received these exhibits,  
14 I think it's the one that identifies Mitchell as  
15 the mayor's representative.

16 MR. FINK: Yeah. What was the date  
17 of that, do you remember? What was the date? What  
18 was the date of the Mitchell document? I can't  
19 find it.

20 MR. STEWART: Let me see.

21 MR. FINK: Maybe you can just hand it  
22 to me so I can just --

23 A (Interposing) Well, I'm looking right now.

24 Q (Continuing by Mr. Fink) Okay.

25 A It's one of the early ones that we had here.

1 What's this? This is a notice of mayor --  
2 approval -- no, that's not it.

3 MR. STEWART: Here we go.

4 A It's a notice of designation of representative,  
5 right there.

6 MR. STEWART: Exhibit 8.

7 Q (Continuing by Mr. Fink) Okay. So the first you  
8 knew of Mr. Mitchell's involvement at all in the  
9 settlement situation, for lack of a better word,  
10 was this document, Exhibit 8, dated November 1?

11 A Yeah. And it seems to me -- well, no, not  
12 necessary -- I mean, I hate to split hairs here,  
13 but we had the closing on the 5th of December,  
14 because we had all the checks. And, you know,  
15 originally we thought that we would deliver  
16 everything out of the safety deposit box that day.  
17 But by the time we finished the closing, it was  
18 seven or seven thirty in the evening, and then I  
19 believe the next day either Mitchell couldn't make  
20 it -- and I was told over the phone, the mayor's  
21 going to designate Mitchell. And that came after  
22 the 5th. But Mitchell couldn't be there I believe  
23 on the 6th or something, so --

24 Q (Interposing) By be there, you're referring to the  
25 bank or to --

1 A (Interposing) At the bank, right.

2 Q Okay.

3 A So I can tell you I have a letter authorizing my  
4 son to represent me. And he went down, Brady  
5 Stefani, who's a lawyer, went down, represented --  
6 took my key down, met Mitchell, gave him all the  
7 records out of the box.

8 So I don't mean to split hairs, but I  
9 think I knew about Mitchell perhaps a day before I  
10 got this Exhibit 8.

11 Q Which was not until December --

12 A (Interposing) Yes, correct.

13 Q -- of 2007?

14 A Right.

15 Q And you may have just said it, but if you don't  
16 mind, I didn't pick it up. What date were the  
17 documents retrieved from the safe deposit box?

18 A I didn't say. I said I got a letter to my --

19 Q (Interposing) That's why I don't remember it.

20 A We ran into some glitches. Like one guy couldn't  
21 make it on -- so I know I wrote an authorization  
22 for my son to represent me. Whatever date that is,  
23 that's when the documents were retrieved.

24 Q Okay. And to your -- the best of your knowledge,  
25 it was Mr. Mitchell who came to get them on behalf

1 of the mayor?

2 A Absolutely. I don't even know if Mr. McCargo was  
3 there, but he probably was. He probably introduced  
4 my son Brady to Mr. Mitchell. But I know Brady  
5 came back telling me that he turned them over to  
6 Mitchell.

7 MR. FINK: I'm going to confer with  
8 my co-counsel.

9 A Esteemed co-counsel?

10 MR. FINK: My esteemed co-counsel,  
11 Mr. Stewart.

12 (WHEREUPON A BRIEF PAUSE WAS HAD IN  
13 THE PROCEEDINGS.)

14 MR. FINK: Okay. One more brief line  
15 of questioning, Mr. Stefani, if I can. And I'm  
16 interested in this, and I'm sure there's a good  
17 reason.

18 Q (Continuing by Mr. Fink) When I issued a subpoena  
19 to SkyTel earlier this month, I copied from a  
20 subpoena in the court file in the Brown, et al,  
21 versus Kwame Kilpatrick, et al lawsuit in front of  
22 Judge Callahan. There is in that file a subpoena  
23 to SkyTel. And I copied the language to parallel  
24 exactly what you had asked for or your office had  
25 asked for. And that was, I'm going to read it out

1 of mine, and I believe it's identical.

2 "Identify the City of Detroit Michigan  
3 pager number for Christine Beatty of the City of  
4 Detroit, and produce text messages received by and  
5 sent from that pager number for the period of  
6 September 1, 2005, through October 31, 2005" --  
7 excuse me if I said '5. I meant 2002. "September  
8 1, 2002, through October 31, 2002, and for the  
9 period April 1, 2003, through May 31, 2003."

10 It was very specific. And I am interested  
11 in knowing why you asked for that -- those specific  
12 messages, and why you asked for them? Yeah, I  
13 guess that's the question.

14 MS. HA: I'm going to object.

15 Q (Continuing by Mr. Fink) How did you know that  
16 there was something there between those dates?

17 MS. HA: Object to irrelevancy.

18 A The -- I limited it to those dates, because it's my  
19 belief in discovery, and this has been my practice  
20 at least for recent years, to limit your discovery  
21 requests so that you can avoid the other side  
22 contending that it's burdensome and expensive and  
23 all that stuff. If you really want something, be  
24 as narrow as you can.

25 And the reason I chose those two months,

1 is because Walt Harris had testified he saw -- he  
2 accompanied the mayor out of town in September, I  
3 believe. And the mayor tried -- the mayor didn't  
4 allow Walt to make his usual security check of the  
5 hotel room. And when the mayor opened the door, he  
6 saw Christine Beatty sitting on the bed, totally --  
7 as I understand it, totally clothed. And I wanted  
8 to see if there were text messages about that.

9 Also the Manogian Mansion party was  
10 supposed to have taken place in September. And I  
11 wanted to see if there were text messages about  
12 that.

13 The April and May time frame was done  
14 because that's when Nelthrope reported to Internal  
15 Affairs the misconduct by the security people Jones  
16 and Martin. And Beatty you know, of course, and  
17 the mayor of course, have always said his  
18 termination had nothing to do with that; that his  
19 termination came from the result of an anonymous  
20 letter. And I wanted the text messages around that  
21 time to see if there weren't discussions of Brown's  
22 termination prior to the date this so-called  
23 anonymous letter showed up. And sure enough, the  
24 text messages confirmed that the mayor and Beatty  
25 had made up their mind not only to fire Brown, but

1 to fire his -- his inspectors and commander before  
2 the so-called anonymous letter was slid under  
3 Beatty's door.

4 So I picked those two dates -- those two  
5 two-month time periods, because I thought if there  
6 was going to be anything, it would be in that  
7 period. And then if I needed more, I could always  
8 send another subpoena.

9 Q (Continuing by Mr. Fink) And I guess it's  
10 self-evident, but I'm assuming the officers used to  
11 see the mayor and Ms. Beatty text messaging, and  
12 that's why you knew there were text messages, am I  
13 correct?

14 MS. HA: Objection as to foundation.  
15 A Yes. The office -- well, they don't know who they  
16 were text messaging.

17 Q (Continuing by Mr. Fink) But they saw them using  
18 text pagers?

19 MS. HA: Objection, foundation.  
20 A Right. And they heard cell phone calls also, which  
21 were testified to.

22 MR. FINK: Okay. Mr. Stewart, if you  
23 have any questions, I am...

24 MR. STEWART: Oh, all right.

25 MR. FINK: I'm done.

1 MR. STEWART: Thank you. I have just  
2 a few.

3 You've been patient, Mr. Stefani. I'll  
4 try to be as quick as I can.

5 EXAMINATION

6 BY MR. STEWART

7 Q When did you first get these text messages that  
8 were the subject of these various agreements we've  
9 seen here?

10 A I believe it was like October 5th or so. If you --  
11 I believe in the documents I gave you, if my  
12 parallel legal followed my instructions, there's a  
13 cover letter from SkyTel --

14 MR. FINK: (Interposing) No.

15 A -- encompassing the text messages and a printout of  
16 Beatty's -- some kind of computer printout, one  
17 page of like her account or something.

18 MR. FINK: We did not get that for  
19 the record.

20 A Well, then she must have left them out of the  
21 package, but I can get them for you. They were  
22 intended to be in the package.

23 And I believe that letter is dated like  
24 the 4th or 5th of October. And that's the first  
25 time I got the text messages.

1 Q (Continuing by Mr. Stewart) All right. Help me --  
2 A (Interposing) Of 2007.  
3 Q Right.  
4 A 4th and 5th, after the trial.  
5 Q Yeah. And the trial ended roughly when, basically?  
6 A I think it was around the 12th. I'm guessing now,  
7 but around the 10th or 12th of September.  
8 Q September.  
9 MS. COLBERT-OSAMUEDE: September  
10 11th.  
11 MR. FINK: Yeah, September.  
12 MS. COLBERT-OSAMUEDE: I remember  
13 9-11.  
14 MR. FINK: Yeah, it was.  
15 Q (Continuing by Mr. Fink) Do you want to look for  
16 that before you and I go on to discuss all of this?  
17 A No, no.  
18 Q You look like you're looking for something, that's  
19 why I stopped.  
20 A I am, but I can -- believe it or not, I can --  
21 Q (Interposing) You're multitasking?  
22 A Despite what my wife says, I can do two things at  
23 once.  
24 Q Okay.  
25 A Despite the fact that I'm not a woman.

1 Okay. Go ahead.

2 Q So the trial ends roughly on September 11th. You  
3 did not have these text messages during the trial  
4 then, as I understand it?

5 A No. That's correct.

6 Q Do you know why you didn't have them during the  
7 trial?

8 A Yes.

9 Q Why is that?

10 A Because when I originally requested the text  
11 messages, I believe it was September or October,  
12 2004. The city -- the city brought an emergency  
13 motion to quash the subpoena. There was a hearing  
14 on it. The judge ruled in my favor, and I sent out  
15 a second subpoena to SkyTel. And the city filed a  
16 second emergency motion to quash. And at that  
17 second motion, they argued that there was a  
18 government deliberative process privilege that made  
19 these text messages confidential. And Judge  
20 Callahan sort of laughed, and he said, "Well, you'd  
21 better have a better privilege than that." He  
22 says, "But I'll tell you what, have the messages  
23 sent to me, and I'll be the judge of whether  
24 they're privileged."

25 So my second subpoena went out directing

1 SkyTel to send the messages directly to Judge  
2 Callahan. From that day forward, I assume Judge  
3 Callahan got them. You know, they filed their  
4 motion for summary disposition. We filed motions  
5 for summary disposition almost immediately after  
6 that, and all our attention was focused on those.  
7 And then they appealed, and for the next three  
8 years we handled appeals.

9 We got to the trial. I put Beatty on the  
10 stand. I asked her some very specific questions  
11 about text messages: Did she ever send a romantic  
12 message to the mayor? Did she ever send a  
13 sexually-explicit message to the mayor? Did she  
14 ever discuss Gary Brown in a text message? Did she  
15 ever discuss the release of Nelthorpe's name? Her  
16 answers were no to everything. So then I went to  
17 the judge and I said, "Would you look at the  
18 records? And if there's anything in those text  
19 messages that's contradictory, I want to introduce  
20 it." He said, "I don't have the text messages."  
21 And I said, "Sure you do." And he said, "No,  
22 you've got them." I said, "No, I don't. You've  
23 got them." And it turned out nobody had them.

24 So after the trial was over, I went back  
25 to Sky -- well, the judge told me, "Well,

1 re-subpoena the messages. Re-subpoena the  
2 messages." And I think that was like three days  
3 before the end of the trial. And I did re-subpoena  
4 them. But I got -- I was told by SkyTel they were  
5 no longer available because of some sort of a  
6 corporate reorganization, and those records weren't  
7 available.

8 So I didn't take that for an answer, and I  
9 contacted a person who had -- that I had sent the  
10 subpoena to three years earlier. And he said those  
11 messages are still there, these new people just  
12 don't know where to find them. And he told me. So  
13 I sent out a new. And I said, "Hey, by the way,  
14 why didn't you send them to the judge?" And he  
15 said someone from -- the one from 2004, I said,  
16 "Why didn't you follow that order and send them to  
17 the judge?" Now, this guy no longer worked for  
18 SkyTel. He was working for the state department or  
19 something. And he said, "Because we got a call  
20 from the City of Detroit telling us that they had  
21 filed a motion to quash the subpoena, another  
22 motion to quash the subpoena, and not to release  
23 those messages until the judge ruled."

24 Well, then I examined my records, and I  
25 found that the city did file a third motion to

1 quash like two days after the judge -- or, three  
2 days after the judge ruled the records be sent to  
3 him. In other words, I filed my first motion, they  
4 lost. The second motion, the judge said send the  
5 records to me. Then unbeknownst to me, they filed  
6 a third motion to quash, and they called SkyTel and  
7 said, we've -- we're contesting this subpoena,  
8 don't send those records until the judge rules.

9 Then they never brought -- they never  
10 motioned it for hearing. So for three years, I was  
11 unaware that there had been a third motion to  
12 quash, and --

13 Q (Interposing) Let me interrupt you for one second.

14 A Yeah, I wish you would, because I kind of forgot  
15 what your question was.

16 Q Was the third -- was the third motion to quash  
17 served on you?

18 A You know, I don't remember having been served on  
19 it. We've got twenty-five boxes. But -- but, I  
20 did find a copy of the motion in amongst those  
21 twenty-five boxes, so it probably was served on me.

22 Q Okay. But it was never noticed for hearing?

23 A No.

24 Q Are you able to tell us the name of the person at  
25 SkyTel who provided this information to you, the

1 man you said is now at the state department?

2 A You know, I don't remember. But we've got it  
3 written down, and, you know, I could do that. But  
4 I don't remember it right now.

5 Q Okay. You don't recall it off the top of your head  
6 here?

7 A No.

8 Q All right. Did you -- did he tell you who it was  
9 from the city --

10 A (Interposing) No.

11 Q -- who called?

12 Did he tell you if it was an attorney or  
13 not an attorney?

14 A I don't -- I think he just said someone from the  
15 city.

16 Q Had they called him?

17 A You know -- you know, and I don't know that. I  
18 didn't ask him that. I think he just said someone  
19 from the city called and told us not to reduce --  
20 release the records until the judge ruled on their  
21 new motion to quash.

22 Q Which was never noticed for hearing?

23 A Correct.

24 Q All right. Let's come to the end of the trial  
25 again now. Let's come back to that time frame, if

1 we may.

2 You indicated you sent another subpoena  
3 per the Judge Callahan's direction two to three  
4 days before the trial ended?

5 A Yes.

6 Q Okay.

7 A That's the one we were told...

8 Q You were called -- you called, and they said gee,  
9 we're sorry, those records don't exist?

10 A That's correct.

11 Q You then called the person who had dealt with the  
12 subpoena at SkyTel back in 2004; he said that's  
13 wrong, they do exist?

14 A (Shaking head affirmatively).

15 Q How did you end up getting them after that? What  
16 happened?

17 A He told me the person to address the subpoena to --  
18 or, he gave the instructions on what to say in the  
19 subpoena. And I think we had to address it to a  
20 particular person. And we sent it out and got the  
21 records. We got them on -- we got a -- they came  
22 by -- with this cover letter that I'm referring to,  
23 and this printout of her -- probably the first page  
24 in her account or something like that. Didn't have  
25 any text messages. It just showed all the

- 1 particulars of her account, along with a CD. And  
2 that CD had all these text messages on it.
- 3 Q Could you even estimate how many text messages  
4 there were?
- 5 A I know that I printed them out right away so we  
6 could read them, and only made one copy. And they,  
7 single spaced, a little bit smaller type than  
8 ordinary type, there were like two hundred twenty  
9 pages or two hundred and ten pages. I don't have  
10 any idea how many.
- 11 Q And that two hundred and ten pages covered both the  
12 period --
- 13 A (Interposing) Yes.
- 14 Q -- in '02 and '03?
- 15 A Yes. There was about a hundred and five or a  
16 hundred and ten in each -- covering two months in  
17 '02 and two months -- each one amounted to about a  
18 hundred and ten pages.
- 19 Q Okay. So you got those some time before October  
20 17th?
- 21 A Yeah. The date -- I think it was the 5th, 6th.
- 22 Q Okay. Whatever date's on that letter, is when you  
23 got them?
- 24 A Yes.
- 25 Q All right. Let me see if I have understood

1 everything you've said earlier today about some of  
2 the chronology. The trial ends on September 11th.  
3 I assume, as with all civil trials where there was  
4 a judgment, there were discussions about settlement  
5 pre appeal, is that right?

6 A No.

7 Q You told me you -- or, you told Mr. Fink earlier  
8 today that you had talked to Ms...

9 A Osamuède.

10 Q Osamuède regarding whether there could be a global  
11 settlement?

12 A That was in another case. That was in the Bowman  
13 case.

14 Q I understand.

15 A And we did have a global settlement during  
16 facilitation on attorney's fees.

17 Q But did you tell us that she had said there would  
18 be no -- there was not going to be a global  
19 settlement on this case, this case we're here  
20 about?

21 A It didn't come from her lips. It came from the  
22 facilitator. He came back in and said they said  
23 there won't be any global settlement, because they  
24 don't even know whether they've got grounds to  
25 appeal, or they don't know what their grounds to

1 appeal are.

2 Q Okay.

3 A Yet.

4 Q So you go -- so the facilitation is scheduled for  
5 October 17th I guess, right?

6 A Yeah.

7 Q Is that a facilitation on the whole case, or simply  
8 on your attorney's fees under the whistle-blower  
9 statute?

10 A Just attorney fees under the whistle-blower, the  
11 same as the prior that I -- that's why I gave the  
12 example of the Bowman facilitation. They were both  
13 facilitations to deal only with attorney's fees.

14 Q So you -- prior to the 17th, had there been any  
15 discussions about settling the liability?

16 A None.

17 Q Okay. Has anybody said we don't want to settle the  
18 liability?

19 A There were no discussions one way or the other.

20 Q All right. Why was the facilitation limited only  
21 to the attorney's fees under whistle-blower?

22 A Because that's Judge Callahan's practice. He  
23 doesn't like -- he likes -- under whistle-blower  
24 suits or any suit where by statute he can award  
25 attorney's fees, he sends it to a facilitator. I

1 think it saves him time.

2 Q All right. So as far as you know at the  
3 facilitation, forgive me if I didn't pick this up,  
4 Mr. McCargo is there, although in another room  
5 perhaps, Ms. Osamuede is there. What other  
6 attorneys were there on the other side?

7 A There's Wilson Copeland.

8 Q Okay.

9 A And I believe there were two young attorneys. I  
10 believe one worked for McCargo and one worked  
11 for -- and they were the attorneys who were in the  
12 courtroom during the trial.

13 Q All right. You spend all day going back and forth  
14 on your attorney fees under the whistle-blower,  
15 correct?

16 A I said we spent about two and a half, three hours.

17 Q All right. You feel you've come to loggers heads  
18 on that?

19 A They -- I think they said they might be inclined to  
20 pay -- I think they may -- maybe the facilitator  
21 came back. Four hundred fifty thousand came up. I  
22 believe they said we'll pay four hundred fifty  
23 thousand for attorney's fees. I sent back the  
24 message, I will accept five hundred thousand if we  
25 can have a global resolution of appellate rights

1 and get it over with. The facilitator came back  
2 and said, they say that they can't do that, they  
3 don't want to do it because they haven't examined  
4 the record yet.

5 But, you know, that -- it was the same  
6 thing as Bowman. I mean, they could have been --  
7 they could have been BS'ing me. That could have  
8 been a tactic. I didn't know.

9 Q Okay. But this --

10 A (Interposing) But that's when I said, you know,  
11 okay. Then I -- you know --

12 Q (Interposing) After you -- let me see if I can  
13 help you.

14 A I'm sorry.

15 Q No. I just want to make sure that I get this  
16 right. After you understand that the city will not  
17 enter into a global agreement on this case, you  
18 ended your loggers heads on your attorney's fees,  
19 you give the sealed envelope with your motion for  
20 attorney's fees which references details of the  
21 Kilpatrick/Beatty text messages, is that right?

22 A That's correct.

23 Q And you give the direction that only Mr. McCargo's  
24 to look at that, is that right?

25 A That's correct. And I -- could I add one other

1 thing?

2 Q Sure.

3 A Because it's important to me, but maybe not to you.

4 The facilitator said, "What's in this  
5 envelope?" And I said, "I've got irrefutable", is  
6 the word I used, "Irrefutable proof that the mayor  
7 and Beatty perjured themselves." And he said,  
8 "Well, what do you want me to tell them?" And I  
9 said, "I don't want you to tell them anything,  
10 except I want you to give them the envelope."

11 Q Okay.

12 A And he said to me, you know, "You have to careful.  
13 You don't want to tie -- you don't want to like  
14 threaten to release the information if they don't  
15 settle." And I said, "I'm not doing that. I only  
16 want you to tell them that this is a motion." And  
17 he gave it to them, and he coached me on not saying  
18 anything else or something.

19 Q All right. In your motion that you had drafted for  
20 attorney's fees that you gave to Mr. McCargo in  
21 this envelope, am I correct that your argument was  
22 you were entitled to enhanced fees because you had  
23 proof that Beatty and Kilpatrick had perjured  
24 themselves during the trial?

25 A It wasn't that I had proof. You know, there are

1 certain criteria that the statute -- or, not  
2 statute, but the case law says you have to take  
3 these things into consideration. One of them is  
4 the difficulty that -- the time consumed.

5 The basis of my motion was that if Beatty  
6 and the mayor had not lied since day one through  
7 all of these depositions, we would have not had to  
8 incur anywhere near a million dollars' worth of  
9 attorney time; and, therefore, the judge should  
10 take that into consideration and award us the  
11 million dollars instead of just, you know, saying  
12 okay, I'll give you twenty-five thousand or  
13 something.

14 Q And you supported your motion with the --

15 A (Interposing) A brief.

16 Q With a brief and quotations, which I think you  
17 called rather extensively --

18 A (Interposing) Very extensive.

19 Q -- from the Beatty/Kilpatrick text messages --

20 A (Interposing) Corrects.

21 Q -- which you argued demonstrated they had lied from  
22 the beginning of the case, is that right?

23 A That's correct.

24 Q All right. As I understand it, it was then  
25 approximately a forty-five minute break?

- 1 A That McCargo was reading it.
- 2 Q McCargo. Then McCargo asked to see you alone?
- 3 A Yes.
- 4 Q And you go outside?
- 5 A That's correct.
- 6 Q Where was this?
- 7 A This was at the -- Charfoos and Charfoos has a mock  
8 courtroom, mock trial courtroom.
- 9 Q Um-hum (affirmatively).
- 10 A And that's where the facilitation was, in that mock  
11 trial courtroom. And right outside the door is a  
12 big parking lot for Charfoos and Charfoos' cars.  
13 And when I -- I do know that McCargo -- he gave the  
14 thing to McCargo outside. McCargo stayed outside  
15 reading it, didn't -- didn't show it to the other  
16 attorneys.
- 17 Q Okay. You --
- 18 A (Interposing) And then when I walked out, there  
19 was McCargo standing. And I -- and I said to  
20 you -- or, testified that he looked ashen.
- 21 Q And McCargo told you, "I had no idea of this"?
- 22 A That's exactly what he meant -- I mean, that's what  
23 he said. I don't know whether he was saying I had  
24 no idea you got these text messages, or he meant I  
25 had no idea my clients were lying about their

1 relationship. I didn't discuss that with him. He  
2 just said, "I had no idea." And then he -- he  
3 sheepishly, a few seconds later said, "Have you  
4 filed this?" And that's when I said, "No."

5 Q All right. He then calls -- he told you that he  
6 called the mayor and got him on his phone at the  
7 airport, is that right?

8 A He said --

9 Q (Interposing) From where doesn't matter.

10 A He said to me -- I want to be as correct as I can.  
11 He said, "Can you stay here a while while I try to  
12 get ahold of the mayor" -- or -- or, "Will you stay  
13 here a while while I make a phone call?" And I  
14 said, "Sure." And, you know, another fifteen  
15 minutes went by. And the facilitator came back  
16 into the room and said, "He got ahold of the mayor  
17 at the airport, and the mayor has approved  
18 negotiating for a global resolution. And the city  
19 attorney" -- this gentleman...

20 Q The corporation counsel John Johnson?

21 A Yes. "Is coming down. And we can have -- we can  
22 resume negotiations when he gets here."

23 Q Okay. So after McCargo --

24 MS. HA: (Interposing) Mr. Stewart,  
25 I'm just going to place the same objections that I

1 had stated on the record for Mr. Fink's same  
2 questions that are being asked, but differently, to  
3 Mr. Stefani.

4 MR. STEWART: So noted.

5 Q (Continuing by Mr. Stewart) So after McCargo calls  
6 the mayor, you're informed there's going to be a  
7 global settlement, and the corporation counsel of  
8 the City of Detroit is coming down to these  
9 negotiations?

10 A I'm informed -- I was informed they would be  
11 willing to negotiate a complete resolution or  
12 global settlement. Because that's what I had been  
13 asking for. They didn't say we're going to settle.  
14 They said we will discuss a complete --

15 Q (Interposing) And they had rejected that prior in  
16 the dep -- in the facilitation? They had rejected  
17 a global settlement approach or negotiation?

18 A Yes, they did.

19 Q All right.

20 A And as I said, whether it was a tactic or not -- I  
21 didn't get the impression it was a tactic. I got  
22 the impression it was over with.

23 Q Okay.

24 A We weren't -- you know, if I didn't take the  
25 forty-five -- or, four hundred fifty thousand

1 dollar attorney fee and forget everything else, we  
2 were done talking.

3 Q But what you know is, prior to your discussion with  
4 McCargo in the parking lot, refusal to negotiate a  
5 global settlement by the defendants, correct?

6 A Yes.

7 Q After your discussion with McCargo in the parking  
8 lot, and he contacts the mayor, willingness to  
9 negotiate now a global settlement, is that correct?

10 A Yes.

11 Q All right. And the corporation counsel of the City  
12 of Detroit then in fact does come to participate,  
13 is that correct?

14 A Yes.

15 Q All right.

16 A Now, I -- now, I don't mean to make this difficult,  
17 but I don't know whether McCargo got permission  
18 from the corporation counsel too. You made it  
19 sound like the mayor said go ahead and negotiate a  
20 global settlement and this Mr. Johnson was coming  
21 down to assist in that. It may have been Mr.  
22 Johnson who said okay, it's all right to do a  
23 global. I don't know that. All I know is the  
24 facilitator came to me and said, good news. He got  
25 the mayor at the airport, and they're willing to

1 negotiate a global resolution, and Johnson's coming  
2 down, or the -- whatever it is, the corporation  
3 counsel is coming down.

4 Q The parties then -- what was the amount, if you  
5 recall then, approximately, of your verdict with  
6 interest?

7 A Oh, it was -- it was 7.9 million. There was no  
8 question about that.

9 MR. FINK: Is that 7.9? I'm sorry,  
10 what did you say?

11 A 7.9.

12 MR. FINK: Okay.

13 Q (Continuing by Mr. Stewart) 7.9?

14 A And we didn't even negotiate that.

15 Q That included the interest and --

16 A (Interposing) No attorney's fees, but interest.

17 Q That was the total dollar value of your  
18 settlement -- I'm sorry, of your verdict at that  
19 time?

20 A That's correct.

21 Q 7.9 million?

22 A Yeah.

23 Q Did that include four hundred thousand dollars for  
24 the one of your clients? I forget which one.

25 A No.

1 Q So the total value was, if I'm correct, and you  
2 correct me if I'm wrong, 7.9 million, plus four  
3 hundred thousand for your other client?

4 A Well, total value of what? You mean --

5 Q (Interposing) Of what that verdict was worth at  
6 that time.

7 A Well, I didn't have a verdict for four hundred  
8 thousand for the third client. That hadn't gone to  
9 trial yet.

10 Q I see. All right.

11 A So I -- that's all I had in my hand, was 7.9  
12 million. And nobody argued that.

13 Q All right.

14 A Nobody said I'll give you 7.6.

15 Q All right. That's what you had --

16 A (Interposing) Yes.

17 Q -- the 7.9 in hand at the time?

18 A Subject to an appeal.

19 Q I understand. So coming back to the day of October  
20 17th then, after Mr. Johnson has arrived, you and  
21 the other side negotiate what becomes -- I sort of  
22 forget the exhibit here, the agreement of October  
23 17th, which is Exhibit 11, is that correct?

24 A Yes. Exhibit 11 is the typed version of the oral  
25 agreement we arrived at during the facilitation.

1 Oral agreement, and then my yellow sketchy out --  
2 sketched-out portion.

3 Q All right.

4 A Yellow pad.

5 Q This is the agreement you worked out after Mr.  
6 Johnson arrived at the facilitation?

7 A That -- that's correct, yeah.

8 Q Okay.

9 A I don't know if he stayed there the whole time  
10 though.

11 Q But this agreement wasn't done --

12 A (Interposing) Absolutely not.

13 Q -- prior to --

14 A (Interposing) No.

15 Q -- you giving Mr. McCargo the envelope? You were  
16 at Loggers heads then, weren't you?

17 A Yes.

18 Q Okay. So this is the agreement that got worked out  
19 after McCargo had the envelope?

20 A Yes.

21 MS. HA: Asked and answered.

22 Q (Continuing by Mr. Stewart) Okay, good. Now, you  
23 indicated Christine Beatty signed one of these  
24 agreements. We'll say the second agreement I'll  
25 call it, right?

1 A No. She signed the release.

2 Q The release. Was she represented by anyone, to  
3 your knowledge, in all of this?

4 A Oh, no, no. She wasn't at the facilitation. She  
5 was at none of the meetings. Whether she consulted  
6 with an attorney, I have no idea.

7 Q All right.

8 A Although I did note that Morgan -- More -- what's  
9 his name, Morganroth?

10 MR. FINK: Mike Morganroth.

11 MR. STEWART: Morganroth?

12 MR. FINK: Yeah.

13 A He volunteered to the newspaper, which kind of  
14 pissed me off, he said, "Well, this thing really  
15 won't go up on appeal. They'll probably accept  
16 three million dollars." Now I find out he's  
17 representing Beatty. In other words, he tells the  
18 world what he thinks I'll settle for, and then now  
19 he's representing Beatty.

20 Q (Continuing by Mr. Stewart) Okay.

21 A But if he's a friend of yours -- I know he's a  
22 great lawyer, but it rubbed me the wrong way.

23 MR. FINK: No friend of mine.

24 MR. STEWART: That's all off the  
25 record.

1 A 'Cause there was no way in hell we were going to  
2 settle for that.

3 Q (Continuing by Mr. Stewart) All right.

4 A Actually, the city ended up getting -- I am as  
5 confident as I sit here, and I've been practicing  
6 law for thirty-five years, if not thirty-six, we  
7 would have ended up with a 12 million dollar -- at  
8 the rate -- we're getting a thousand dollars,  
9 pretty close to a thousand dollars a day interest.  
10 And we would have got attorney's fees of a million  
11 dollars. Because once the text messages became  
12 part of the record, they would have gone into the  
13 appeal, and we would have ended up with 12 million  
14 dollars. So I personally think -- sometimes I  
15 think I settled for too little in terms of  
16 attorney's fees, 'cause we only took a hundred  
17 thousand dollars. And that was really expenses.  
18 We had a hundred thousand dollars in expenses.

19 But in any event, I thought they  
20 negotiated a good deal, and -- and we were all in  
21 agreement with it.

22 MR. STEWART: Okay. Thank you. I  
23 don't have anymore questions. Thanks very much.

24 MS. HA: Okay. Can we take a  
25 five-minute break?

1 A Sure.

2 (WHEREUPON A BRIEF PAUSE WAS HAD IN  
3 THE PROCEEDINGS.)

4 MS. HA: Thank you.

5 (WHEREUPON THE COURT REPORTER MARKED  
6 DEPOSITION EXHIBIT NUMBER 18.)

7 MS. HA: Just so that the record is  
8 clear, I'm going to ask the court reporter to also  
9 submit and retain a second copy of less than what  
10 is the exhibit. It's the documents that were  
11 produced and received by the attorneys of City of  
12 Detroit, which has been initialed by Ms. McPhail  
13 and numbered. We're going to ask that -- we're not  
14 going to give those records to Mr. Stefani, but  
15 we're going to give those records to the court  
16 reporter to be delivered to the judge. I know that  
17 it may be repetitive, but we want to make clear  
18 that what was produced is initialed and signed off  
19 by the City of Detroit. And I don't see any  
20 objection.

21 MR. FINK: What -- well, I'm not sure  
22 I understand. It has the court reporter's sticker  
23 on it, and those are the only official documents  
24 that are going to the judge.

25 MS. HA: Right.

1 MS. McPHAIL: Can I say -- can I tell  
2 you why?

3 MR. FINK: Yeah, okay, please.

4 MS. McPHAIL: Okay. None of the  
5 records that Mr. Stefani handed us when we walked  
6 into the room are Bates stamped. There are  
7 thirty-three pages that was in that, right? Okay.

8 MR. FINK: I don't know. I  
9 haven't --

10 MS. McPHAIL: (Interposing) Just  
11 work with me.

12 MR. FINK: All right.

13 MS. McPHAIL: There's thirty-three  
14 pages --

15 MR. FINK: (Interposing) I'll assume  
16 you're right.

17 MS. McPHAIL: -- right, in the file.  
18 If next week someone wanted to say that there was a  
19 document in that file other than those thirty-three  
20 pages, there's no evidence of what he handed us;  
21 except that they are numbered now, and initialed.  
22 So when we walk out of here, we have a record of  
23 what was given to us today. That's the only  
24 reason.

25 MR. FINK: I don't know what I'm --

1 MS. McPHAIL: (Interposing) Do you  
2 understand?

3 MR. FINK: -- missing. No, I don't.  
4 I don't understand what I'm missing here, because  
5 we can agree that -- what the documents are that  
6 Mr. Stefani produced today. They're also --

7 MS. McPHAIL: (Interposing) Um-hum  
8 (affirmatively), yeah, but we hadn't yet, so...

9 MR. FINK: What's that?

10 MS. McPHAIL: We hadn't yet, so  
11 that's why I was making sure.

12 MR. FINK: Well, why don't you -- I  
13 mean, we'll look at the official exhibits, and  
14 we'll all agree those --

15 A (Interposing) Well, she's saying that you may not  
16 have introduced all the documents that I gave you.

17 MR. FINK: Oh, I did. I labeled  
18 every single documents that you gave me.

19 MS. HA: Except we were missing some  
20 exhibit numbers. Remember we skipped a couple  
21 of --

22 MR. FINK: (Interposing) No. The  
23 only ones you were missing were my documents, and  
24 that's 6 and 7. 6 is the Free Press story. I  
25 didn't introduce it, because we were beyond that.

1 And 7 was the Judge's order for deposition, which I  
2 didn't bother introducing either, because we'd  
3 already gone past it.

4 MS. McPHAIL: No. But it isn't  
5 really about you or anything you've produced.  
6 Honestly, it's about what Mr. Stefani handed us  
7 when we walked into the room; some of which you  
8 used, and some of which you didn't.

9 MR. FINK: I used every one that he  
10 gave me, every one.

11 MS. McPHAIL: Okay.

12 MR. FINK: And they're numbered 8  
13 through 16.

14 MS. McPHAIL: Right. Whatever you  
15 used, there's thirty-three pages between documents  
16 8 through 16.

17 MR. FINK: I don't know. I'll count  
18 them.

19 MS. McPHAIL: Okay. That's why I  
20 did, this so we would know.

21 MR. FINK: How many do you think  
22 there are?

23 MS. HA: Wait. There's thirty-five  
24 including the one that he just produced.

25 MS. McPHAIL: No. Just what was in

1 the file folder when you walked in.

2 MS. HA: Oh, I see.

3 MS. McPHAIL: The one you just  
4 produced is not in here.

5 MS. HA: Okay.

6 MS. McPHAIL: You can ask questions  
7 about that. It will be part of the record.

8 MS. HA: Okay.

9 MS. McPHAIL: But the file folder he  
10 handed us, had thirty-three pages in it, that's all.

11 MR. FINK: All right, yeah, okay.  
12 Mr. Zuckerman suggested, and I think it's a good  
13 suggestion, why don't we match them up after? Ask  
14 the questions. Let's finish that up, and we'll  
15 match up the exhibits, and we'll stipulate that  
16 these are the exhibits. You don't have to take a  
17 lot of time --

18 MS. McPHAIL: (Interposing) I'm not  
19 asking her to label them or anything, just keep  
20 them.

21 A And then if somebody got an exhibit that somebody  
22 else didn't get, I can assure you that it was --  
23 it's an oversight.

24 MS. McPHAIL: Right.

25 A Because I just said make three copies of

1 everything. My copy, which --

2 MS. McPHAIL: (Interposing) Yeah.

3 And I wouldn't think you would have done it on  
4 purpose. It's just, you know, oversights happen.

5 A You know, to further complicate this so that none  
6 of us get home in time, I will tell you that I did  
7 not produce a whole bunch of e-mails that were  
8 exchanged between Ms. Osamuede and me and McCargo.  
9 You know, I have a stack with some duplication of,  
10 you know, a half inch, three-quarters of an inch  
11 thick. I went through them all last night, and I  
12 didn't -- you know, you're welcome to those if you  
13 want, but I didn't produce them.

14 MR. FINK: I have thirty-three.

15 MS. McPHAIL: Right. That's right.

16 MR. FINK: I thought you said  
17 thirty-two.

18 MS. McPHAIL: No. Thirty-three  
19 pages.

20 MR. FINK: I have thirty-three pages.  
21 And you can count them yourself, if you like.

22 MS. McPHAIL: No. I believe you. I  
23 just want to make sure.

24 A So we're all in agreement I won't produce those  
25 e-mails?

1 MR. FINK: No.

2 A I mean, they're here, but they're not worth it.

3 MR. FINK: No.

4 MS. McPHAIL: No.

5 A In my opinion.

6 MS. McPHAIL: Okay. Go on.

7 EXAMINATION

8 BY MS. HA

9 Q Okay. Mr. Stefani, did you notify the defendants'  
10 attorneys of all of the subpoenas that were issued  
11 in Brown/Nelthrope versus City of Detroit and Mayor  
12 Kwame Kilpatrick, and Harris versus City of Detroit  
13 and Mayor Kwame Kilpatrick case -- cases?

14 A Yes. To the best of my knowledge we not only  
15 notified them, but we served them with a copy.  
16 Now, I didn't serve the copy on this one. The one  
17 that actually resulted in the records, I didn't  
18 give them till that night in my office. But I  
19 served each of them with a copy, and we've done a  
20 Proof of Service on it.

21 Q Okay.

22 MR. FINK: Let me just make an  
23 objection on the record, and you proceed, and Mr.  
24 Stefani will answer as he wishes.

25 But this is outside the scope of the

1 judge's order which related to the Confidentiality  
2 Agreement and documents requested by the Free  
3 Press. It's also outside -- it's irrelevant. It  
4 has no relevance whatsoever to the Free Press'  
5 lawsuit, which is the issue here, which is over the  
6 confidential settlement documents.

7 MS. HA: You know, what, Mr. --

8 MR. FINK: (Interposing) So now  
9 you're getting into things that happened with the  
10 Brown and Nelthrope trial and subpoenas, and -- but  
11 whatever.

12 MS. HA: You know what, Mr. Fink, I  
13 want to thank you for that, because I completely  
14 forgot. And I believe I did mention this earlier,  
15 but I wanted to move and strike this entire  
16 deposition testimony. Because as Mr. Fink so  
17 noted, this deposition testimony is absolutely  
18 irrelevant to the scope of the Michigan Freedom of  
19 Information Act. The Michigan Freedom of  
20 Information Act only requires production of records  
21 that is in the possession of the City of Detroit.  
22 And Mr. Stefani would have no knowledge as to what  
23 record the City of Detroit possessed.

24 MR. FINK: So noted.

25 MS. HA: Thank you.

1 Q (Continuing by Ms. Ha) Mr. Stefani, did you, or  
2 your staff or associate review or share the SkyTel  
3 records with the Free Press or anyone else?

4 MR. FINK: I'll object on the same  
5 basis that I've just made an objection.

6 MS. HA: So noted.

7 MR. FINK: Outside of the -- let me  
8 say it. It is outside of the scope of the judge's  
9 order. It is outside -- it is irrelevant to the  
10 cause of action of the Free Press, and it's also  
11 invasive of a privilege that the Free Press has  
12 under the First Amendment and Michigan Law with  
13 regard to sources. To allow a -- I assume you  
14 believe potential source to either take himself out  
15 of consideration as a source, would tend to narrow  
16 the field of people who might be a source. And so  
17 on that basis, and all of those bases, I'm  
18 objecting.

19 And I am telling Mr. Stefani certainly if  
20 he wishes to agree with that objection, he has his  
21 right to do so, and we can argue that in front of  
22 the judge as well.

23 MS. HA: I think Mr. Stefani would  
24 like to clear his name. Mr. Stefani --

25 MR. FINK: (Interposing) I don't

1 think Mr. Stefani's name is in issue. I think  
2 there are a lot of other names that are in issue,  
3 but not Mr. Stefani's.

4 But it's --

5 MS. McPHAIL: (Interposing)  
6 Whatever. Let's go on.

7 MR. FINK: -- it's his right to agree  
8 or not to agree.

9 Q (Continuing by Ms. Ha) Mr. Stefani, once again,  
10 did you, or your staff or associate, review or  
11 share the SkyTel records with the Free Press or  
12 anyone else?

13 MR. FINK: You noted my objection,  
14 and all of the three grounds.

15 A You know, Mr. Fink makes a good point. And that  
16 is, if I were to say absolutely not, I didn't share  
17 any records, I would clear myself of suspicion, but  
18 I would narrow the field of other possible sources  
19 of information that the Free Press might have used.  
20 So I'm going to answer that question to -- only as  
21 follows: I -- I followed to the letter both the  
22 October 17th agreement and the November 1st  
23 agreement.

24 And in that regard, I would like to add  
25 that the judge made mention about this deposition

1 being partly the result of me talking to the press  
2 and saying that there was a Confidentiality  
3 Agreement. And if you look at the second -- or,  
4 the -- the second Confidentiality Agreement, it  
5 specifically says that if I am contacted by the  
6 press, I am allowed to answer that all the parties  
7 entered into a Confidentiality Agreement, and we  
8 settled this case by accepting less than we thought  
9 we were entitled to.

10 Q (Continuing by Ms. Ha) Mr. Stefani, going back to  
11 Exhibit Number 11, which I believe is the October  
12 17, 2007 --

13 A (Interposing) Yes.

14 Q -- record.

15 A Tentative.

16 Q It's a tentative agreement.

17 A It says Settlement Agreement.

18 Q Prior to October 17th, did you give or review or  
19 share the SkyTel records with anyone else?

20 MR. FINK: Asked and answered. Same  
21 question.

22 MS. McPHAIL: He didn't answer.

23 MR. FINK: Same objections.

24 MS. HA: So noted.

25 A Yeah. I am going to refuse to answer that

1 question, because I think Mr. Fink makes a good  
2 point, and that is if I did -- I know you're all  
3 shaking your heads saying ahh, we figured it out.  
4 But the point is that by -- if I were to say no to  
5 that question, it would make it easier for the city  
6 to identify the source, because there'd be one less  
7 suspect. So I'm -- I will answer if the judge  
8 orders me to answer it. But in view of Mr. Fink's  
9 objection, I'm going to decline to answer it.

10 Q (Continuing by Ms. Ha) Did you at any time provide  
11 a copy of the SkyTel record to counsel for the City  
12 of Detroit?

13 MR. FINK: Same objection.

14 MS. McPHAIL: No.

15 MR. FINK: Well, he's answered it.  
16 He answered it.

17 MS. HA: Well, your objection is  
18 noted, Mr. Fink.

19 A Absolutely not.

20 Q (Continuing by Ms. Ha) Do you have a copy of the  
21 SkyTel record now?

22 A I just told you, I didn't breach this agreement.  
23 And the agreement called me to turn over those  
24 records. I turned over the -- the agreement says I  
25 am to turn over the printout, or whatever it says,

1 copies made by me. I turned over the original and  
2 any copies that I made. And they have everything.  
3 I don't have anything. Somebody has it. When I  
4 say they, I don't know. I presume Mitchell's got  
5 it or the mayor and Beatty have it.

6 Q Did you ever receive the SkyTel records from anyone  
7 else, other than pursuant to the subpoenas you  
8 issued or your firm issued?

9 A No.

10 Q Do you have any idea how Free Press got the SkyTel  
11 record?

12 MR. FINK: Same objection that I've  
13 made before. The objections being that it's  
14 outside the scope of the judge's order, it's  
15 irrelevant to the cause of action, and it's  
16 invasive of the Detroit Free Press' privilege.

17 MS. HA: Noted.

18 A Yeah, I have an idea.

19 Q (Continuing by Ms. Ha) Who do you think gave the  
20 SkyTel records to the Free Press?

21 MR. FINK: Same objection.

22 Q (Continuing by Ms. Ha) What's your idea?

23 A And I'm not going to answer, because as I told you,  
24 Mr. Fink raises a good point. I mean, he -- by  
25 clearing myself, I could be implicating somebody

1 else. And I -- I personally believe whoever did  
2 furnish this information to the Free Press, did the  
3 city a service, because it did disclose obvious  
4 mistruths. And this whole thing could have been  
5 avoided if Christine Beatty had taken my phone call  
6 before there was any lawsuit, just talked to me  
7 about the mistake they made with Gary Brown. She  
8 said, "No. It's a one-day news story." And so,  
9 therefore, I think whoever did it should get an  
10 atta-boy. But I'm not going to tell you who I  
11 think it was.

12 Q As to the private agreement which is Exhibit Number  
13 13, who signed the agreements?

14 A You know, I signed on behalf of Brown, Nelthorpe  
15 and Harris. Then I signed on behalf of the firm.  
16 And Mr. Kilpatrick -- or, Mayor Kilpatrick and  
17 Christine Beatty signed the agreements. It's their  
18 handwriting. I mean, I presume it's their  
19 handwriting. I took the representation of Mr.  
20 McCargo that it was their handwriting, and I  
21 believe it to be both Beatty and Kil -- or, Mayor  
22 Kilpatrick's signatures.

23 Q How many copies of the agreements were made by you  
24 or your firm, still talking about Exhibit Number  
25 13?

1 A Well, we were trading e-mails back and forth,  
2 negotiating little changes to the language. When  
3 it was finalized, Mr. McCargo had the mayor and  
4 Christine Beatty sign it. And when we closed --  
5 oh, wait a minute. Let me see a minute. No. When  
6 we had the closing on December 5th, I received one  
7 or two copies of this agreement with the mayor and  
8 Beatty's signature. And we executed probably  
9 about -- I don't know, maybe five or six of them.  
10 And Mr. McCargo took everything except the two that  
11 I took.

12 Now, we have since made copies for this  
13 deposition, but we haven't made any copies -- since  
14 December 5th and this deposition, we haven't made  
15 any copies to those agreements of Exhibit 13. And  
16 the only purpose we made them today, is to give  
17 them to the attorneys here at this deposition.

18 Q To your knowledge, other than yourself and your  
19 firm, who else has a copy of this agreement, to  
20 your knowledge?

21 A Confidentiality Agreement? Absolutely nobody. I  
22 didn't even give this -- I don't believe I gave  
23 this to Brown and Nelthrope. I told them that I  
24 executed something, but -- a Confidentiality  
25 Agreement which was very similar to the language

1 in -- in the October 17th agreement, but I don't  
2 even think I gave them these, this document.  
3 Because we took the obligation to keep this  
4 confidential seriously, very seriously. Because,  
5 you know, nobody wanted to pay back any money to  
6 the city. I mean, that money is owed -- that was  
7 owed to my clients based on a jury verdict and the  
8 court rules. And that is -- you know, we didn't  
9 want to see them go through years of problems and  
10 then have to end up regurgitating or rebating if  
11 you will some of the money to the city.

12 Q To your knowledge, was any city official, employee  
13 or attorney given a copy of Exhibit 13?

14 A City attorney, employee --

15 Q (Interposing) Or city official.

16 A No, no.

17 Q Okay

18 A The only copies are the two that I took, and the  
19 four or five that McCargo took. And he made it  
20 clear that they were not to get this. I mean, at  
21 one time while we were signing this, I passed it  
22 toward Ms. Osamuede. And he says, no, no, that's  
23 between -- that stays with McCargo.

24 Q Okay. Mr. Stefani, you had indicated earlier that  
25 you have some idea as to who gave the SkyTel

1 records to the Free Press. Just for the record,  
2 you do understand that unless I'm grossly  
3 misunderstanding, you are not a representative of  
4 the Detroit Free Press, is that correct?

5 A Heck no.

6 Q You're not being paid by the -- you're not in any  
7 ways legal counsel to Detroit Free Press, or you  
8 don't have a contract with Detroit Free Press for  
9 any services?

10 A No. The Detroit Free Press hires lawyers from  
11 places like Clark Kline, and Bodman Longley, and  
12 Dykema, and Mr. Herschel's firm. They don't hire  
13 Stefani and Stefani.

14 Q Okay. So you are not an agent or a representative  
15 of the Detroit Free Press, correct?

16 A Absolutely not in any way.

17 Q Then I'd like to know why you're asserting the  
18 privilege on behalf of the Free Press.

19 MR. FINK: He's not. I am.

20 MS. McPHAIL: She's not asking you,  
21 Mr. Fink.

22 MR. FINK: I don't care. I'm a --  
23 all right. Objection to the form of the question.

24 MS. McPHAIL: All right.

25 MR. FINK: I am the one who is

1 asserting that particular portion of the privilege.

2 I was also pointing out, for the record,  
3 that this is beyond the scope of Judge Colombo's  
4 order of this deposition, which dealt with the  
5 subject matter of the Free Press' FOIA request.

6 It is also outside of the scope of the  
7 lawsuit. It is not relevant in any way, shape or  
8 form to the Free Press' lawsuit relating to the  
9 city's withholding of confidential settlement  
10 documents which, of course, we got today in this  
11 deposition.

12 So it's not relevant, it's outside the  
13 scope of the order, and I added it also is invasive  
14 of the Free Press' privilege. We have the right to  
15 assert that. There is a lot of -- you're shaking  
16 your head, Ms. McPhail. I've done it. I just did  
17 it in a case involving --

18 MS. McPHAIL: (Interposing) I know.  
19 You're the authority on everything. But Mr.  
20 Stefani doesn't have the right to assert a  
21 privilege for you, and you coached him not to  
22 answer the question. That's what you did a few  
23 minutes ago. So just for the record --

24 MR. FINK: (Interposing) Well, I'm  
25 shocked that you would accuse me of coaching

1 anybody.

2 MS. McPHAIL: You absolutely did.

3 MR. FINK: I have a right and an  
4 obligation to raise my client's privilege, and Mr.  
5 Stefani --

6 MS. McPHAIL: (Interposing) I know.  
7 And if your client were the deponent, that would be  
8 perfect, but he's not. Mr. Stefani doesn't have a  
9 right to protect your privilege.

10 MR. FINK: Well, I'm glad you --

11 MS. McPHAIL: (Interposing) It's  
12 further evidence of a conspiracy between the Free  
13 Press, Mr. Stefani, and some other folks that we  
14 all know about.

15 MR. FINK: Well, we know that there's  
16 a conspiracy that was revealed here today.

17 MS. McPHAIL: Right. And it involves  
18 you.

19 MR. FINK: And it doesn't involve me.

20 MS. McPHAIL: Yes, it's does.

21 MR. FINK: It involves the folks on  
22 your side of the table --

23 MS. McPHAIL: (Interposing) It  
24 involves you.

25 MR. FINK: -- and others, including

1 the mayor.

2 MS. McPHAIL: I'm surprised that Mr.  
3 Stefani would participate in this. Frankly I  
4 didn't think he was at all involved with you, but  
5 clearly he is.

6 MR. FINK: So you say, Ms. McPhail.

7 MS. McPHAIL: We'll see.

8 Go ahead.

9 Q (Continuing by Ms. Ha) Mr. Stefani --

10 A (Interposing) I can answer your question. I told  
11 you that if I were to deny being a source -- or, I  
12 mean -- I'm sorry. If I were to tell you who I  
13 suspected gave these documents, it would narrow the  
14 field down. And I firmly believe that whoever did  
15 this, did a service. Well, they certainly did a  
16 service to --

17 Q (Interposing) That wasn't the question I asked.

18 MR. FINK: Let him finish answering.

19 A You just asked me why I didn't answer it though.  
20 And, I mean, he objected. I don't have to follow  
21 his instructions. I could answer if I wanted to.  
22 But I sincerely believe I will want to protect  
23 whoever did this, because I think they did a  
24 service. And I think like shame on you for  
25 worrying about that stuff. You ought to be worried

1 about the wrongdoing that the mayor -- you know,  
2 maybe the city didn't do any wrongdoing, but you  
3 certainly defended him vigorously, and he was lying  
4 since day one in his deposition.

5 Q (Continuing by Ms. Ha) To your knowledge, has  
6 there ever been an order of any -- order of any  
7 court determining the status of the SkyTel records?

8 MR. FINK: If you understand it. I  
9 don't.

10 Q (Continuing by Ms. Ha) For example, was there any  
11 court determination pertaining to the -- either the  
12 privileged contents or the protection of the actual  
13 text messages? Has any court ruled on that issue?

14 MR. FINK: Object to the form of the  
15 question. I don't even understand what the  
16 question is.

17 MS. HA: Well, you don't have to  
18 understand it. Mr. Stefani has to understand the  
19 question.

20 MR. FINK: Yeah, but I have to  
21 protect the record and make an objection.

22 A The judge, when I filed my -- when I served SkyTel  
23 a subpoena the first time, and the city came in and  
24 objected, and the city -- I filed a second  
25 subpoena, and the city objected again, the judge

1 ruled that they were proper discovery. And prior  
2 to that time, in the prior suit with the Free  
3 Press, I'm not -- I'm not sure you're aware of it,  
4 but, you know, in the same Brown and Nelthrope  
5 suit, the judge ruled that discovery information  
6 was not going to be suppressed, and the public had  
7 a right to know 'cause it's a whistle-blower. So  
8 if you apply that same reasoning to these SkyTel  
9 records, I would interpret it that the same logic  
10 applies.

11 However, no specific order has ever  
12 been -- that specifically addresses the SkyTel  
13 records has been issued.

14 Q (Continuing by Ms. Ha) Okay.

15 A I hope that answers your question.

16 Q It does. I'm going to show you what I'm going to  
17 mark as Exhibit 19. And I apologize, but I only  
18 have one copy, so I'm going to show the attorneys  
19 first, and then...

20 (WHEREUPON THE COURT REPORTER MARKED  
21 DEPOSITION EXHIBIT NUMBER 19.)

22 A Now, what is your question, ma'am?

23 Q (Continuing by Ms. Ha) The question is, can you  
24 identify what that is, Exhibit Number 19?

25 A Well, obviously it's a form of a subpoena. And the

1 blanks are filled in, you know, Gary Brown and  
2 Harold Nel throp e versus Kwame Kilpatrick and the  
3 City of Detroit. It's directed to SkyTel, keeper  
4 of the records. And it's dated October 5th, 2007,  
5 ten a.m. And -- but it's not signed. It looks  
6 like it was prepared by Frank Rivers, my associate  
7 or partner. And I don't know whether -- I don't  
8 know whether this is the subpoena that was sent to  
9 SkyTel, or -- and it could have been. Without a  
10 signature, I doubt if they would have accepted it.

11 Let's see. What does it say here? It's  
12 got a date of 1-30-2008, a fax from Lewis and  
13 Munday. So I don't know what it is. It could be a  
14 draft of a -- or, it's possible that my assistant  
15 Roquia was on her toes and sent out the subpoena  
16 with the -- and then I told Frank to send it out,  
17 and he started doing it and found out that it was  
18 the second -- that there had already been one sent  
19 out. So that's the best I can answer the question.  
20 I really don't know what this is. Sorry.

21 Q Did your firm, or you or Mr. Rivers, issue a  
22 subpoena to SkyTel on October 5th, 2007?

23 A No. Wait a second. I misspoke to you. This  
24 subpoenaed wasn't issued October -- if I said the  
25 issue date was Friday, October 5th, I'm mistaken.

1 That's the production date. The issue day is  
2 September 28th, '07. So that the day it was  
3 supposed to be signed by Rivers and sent out, would  
4 have been September 28th, '07. And they -- and  
5 SkyTel was ordered to return the documents on  
6 Friday, October 5th, 2007, at ten a.m.

7 And your question was did we ever send it?

8 Q Yes.

9 A I'm sorry. Would you repeat the question?

10 Q Did you send that -- did you send that subpoena, a  
11 copy of which you see, to SkyTel, Exhibit Number  
12 19?

13 A I don't know. I don't know. This -- this could be  
14 an unsigned copy. In other words, we may have  
15 made -- we may have made photocopies of the  
16 subpoena for purposes of serving the other side and  
17 for our records, prior to Frank signing it. And  
18 then when he signed it, the photocopies that were  
19 made didn't show his signature, because he only  
20 signed the one that went to SkyTel. That would be  
21 my guess. But I really don't know, and I'm not  
22 sure.

23 Q You had indicated earlier that SkyTel was to  
24 forward the text messages to Judge Callahan only.  
25 Can you indicate where on that subpoena that

1 indicates that?

2 A It doesn't. The -- I told you that Judge Callahan  
3 wrote in 2004, after the city filed their second  
4 motion to suppress, my second subpoena, the judge  
5 said, "Well, I'll tell you what, have the records  
6 sent to me." And this subpoena, which was issued  
7 on 9-28-07, after the trial, tells them to send it  
8 to Stefani and Stefani.

9 Q Now, you had indicated that the trial was over on  
10 September 11th. A jury rendered a verdict on  
11 September 11th. Why did you subpoena the SkyTel  
12 text records?

13 MR. FINK: Asked by me and answered  
14 by Mr. Stefani. He can answer it yet again.

15 A Well, I subpoenaed the records during the trial.  
16 And we were told that we couldn't get those records  
17 because of some corporate reorganization or  
18 something. And then through investigation, I  
19 learned that the records were available, so I sent  
20 out another subpoena, because there was still going  
21 to be post trial motions. I mean, I firmly  
22 believe -- I mean, no question in my mind that the  
23 mayor lied through his teeth, and so did Beatty.  
24 And I knew there were going to be post trial  
25 motions, because you probably saw the mayor's

1 speech on TV where he blamed the make-up of the  
2 jury, and he was blown away by the results. So I  
3 expected them to file motions for new trial,  
4 motions for directed -- or, verdict JNOV. And I  
5 wanted to obtain the records, especially after I  
6 had found out that the jury was deprived of these  
7 records really through the chicanery of somebody  
8 from the city who told SkyTel not to honor the  
9 subpoena until the judge ruled, and then never  
10 brought the motion up for hearing. So I felt  
11 like -- and, you know, I felt like I had been  
12 tricked. I felt like it was dishonest. And I  
13 wanted to see what was in those records for post  
14 trial motions.

15 Q (Continuing by Ms. Ha) When did you first receive  
16 and see the SkyTel records?

17 MR. FINK: Asked and answered. He  
18 even produced the cover letter. Do you remember  
19 that, Ms. Ha?

20 MS. HA: It hasn't been entered.

21 MR. FINK: No. But you have them.

22 A Yeah, that's --

23 MR. FINK: (Interposing) And he  
24 testified to it.

25 Q (Continuing by Ms. Ha) Okay. I'm going to enter

1 Exhibit Number 18, and --

2 MR. FINK: There already is an 18 if  
3 I am not mistaken.

4 MS. HA: I didn't enter it.

5 A Well, she --

6 MS. HA: (Interposing) I did a  
7 Herschel Fink.

8 MR. FINK: No. I thought there was  
9 another one. Okay.

10 MS. HA: Okay.

11 MR. FINK: I thought I had one. I  
12 stand corrected.

13 Q (Continuing by Ms. Ha) Okay. Exhibit Number 18 is  
14 the letter that you produced dated October 4, 2007.  
15 Now, can you tell me why the shade is darker on  
16 October 4, 2007?

17 A Oh, that's -- that's my yellow highlighting.

18 Q Okay.

19 A See, my copy of it is highlighted in yellow,  
20 because -- I've got a copy here somewhere, and --  
21 well, it doesn't show yellow either. But the  
22 original one had yellow. And the original one  
23 actually had the overnight expressed envelope  
24 attached to it. And those were turned over to Mr.  
25 Mitchell. So if you don't believe me, that I

1 highlighted it in yellow, it certainly wasn't  
2 changed. It wasn't whited out, if that's what you  
3 think.

4 Now, it says October 4th. I'm not sure  
5 whether we got it on the 5th, or the 6th, but it  
6 was a day or two after it, because obviously we  
7 couldn't get it the same day he over-nighted it to  
8 us.

9 Q And for the record, would you identify what Exhibit  
10 18 is?

11 A Yeah. 18 is a letter to me, dated October 4th,  
12 2007, from a Stephen M. Oshinsky, Director, Systems  
13 Engineering, SkyTel; Subject: Case Number  
14 03-317557-NZ.

15 And do you want me to read it, or is that  
16 good enough?

17 Q That's good enough.

18 A Thank you.

19 Q Thank you, Mr. Stefani.

20 Mr. Stephen M. Oshinsky, was he the  
21 gentleman that you were referring to who used to  
22 work for the --

23 A (Interposing) No.

24 Q Okay. Would it be fair to state, Mr. Stefani, that  
25 you had the SkyTel text messages before the October

1 17, 2007 facilitation?

2 A Yes.

3 Q Why did it take you so long -- well, assuming you  
4 had the SkyTel text messages on October 5th, and  
5 the facilitation was on the 17th, that's twelve  
6 days, almost two weeks. Why did it take you so  
7 long to share that part of -- or, the SkyTel text  
8 messages with -- I'm sorry, strike that.

9 There had been -- from October -- assuming  
10 that you had the SkyTel text messages on October  
11 5th, 2007, you clearly knew that there was...

12 MR. FINK: Perjury?

13 Q (Continuing by Ms. Ha) You indicated that you  
14 served the subpoena on September 28th on the city,  
15 is that correct, for the SkyTel records?

16 A What? What did you say?

17 Q I'm sorry. You indicated that you served the  
18 subpoena on the 28th for the SkyTel records, is  
19 that correct?

20 A 28th of?

21 Q September.

22 A No, I didn't say that. I said I gave them a copy  
23 of the subpoena at that night we sat in here on the  
24 17th and hacked out the proposed or tentative  
25 Settlement Agreement. I served them each with a

1 copy of the subpoena.

2 Q When you sent it to SkyTel, Exhibit Number 18, did  
3 you serve the subpoena to the City of Detroit or  
4 its attorneys at the same time?

5 A The first subpoena that we sent to -- now, the  
6 first subpoena in 2007, September, 2007, during the  
7 trial, you know, I believe --

8 Q (Interposing) After the trial.

9 A No. The first subpoena went to SkyTel during the  
10 trial. And that's when we were told the records  
11 weren't available. I believe I -- my staff sent  
12 them a copy of that, but I'm not certain.

13 The second subpoena, the one that you're  
14 showing me today, which is dated September 28th,  
15 '07, I didn't serve the city with a copy until that  
16 October 17th facilitation.

17 Q Okay. Do you have all of the envelopes from SkyTel  
18 in which the records were contained?

19 A Well, there was only one envelope. It was an  
20 overnight. It was a -- like what do you call it?  
21 Like you know what I'm talking about.

22 MR. ZUCKERMAN: Fed-Ex?

23 A Fed-Ex. That's what it was, Fed-Ex. And I believe  
24 that went to Mitchell, because I know I showed it  
25 to the attorneys. They said where are these

1 records, when we were here on the 17th. And I have  
2 this safe back here that used to be in my father's  
3 office. And it's kind of old and rickety, but I  
4 opened it up and I said, "They are right here."  
5 And I showed them the Fed-Ex envelope.

6 And when I turned over the e-mails -- or,  
7 I turned over the -- when we turned the escrow --  
8 I'm sorry. When I turned the CDs and all the other  
9 documents I told you I turned over to the escrow  
10 agent, I don't think I gave them an envelope. I --  
11 in other words, I believe I left this out. When I  
12 say this, I'm talking about the envelope and --

13 Q (Interposing) The second page of Exhibit 18?

14 A And the first page of Exhibit 18. I believe I left  
15 that out. And McCargo said, "You know that  
16 document, that envelope you showed us with the  
17 thing? We probably ought to get that, too." And  
18 this was after I turned everything over to them.  
19 And I said, "Oh, yeah. I think it's still in my  
20 safe." And I either gave it to Mitchell or -- I  
21 think I sent it to Mitchell. But, yeah, I'm  
22 almost -- I'm pretty sure I gave it to Mitchell.

23 Now, the envelope I might have just thrown  
24 away. But I know the -- wanting these two pages of  
25 Exhibit 17 or 18 -- 18, I know I sent to Mitchell,

1 because McCargo said, "Hey, you know that envelope  
2 you showed us in your safe that night? We probably  
3 ought to get that too."

4 Q On September 11, 2007, the day when a jury verdict  
5 came in for the Brown case, were you present?

6 A Oh, yeah.

7 Q Did you ask the judge about the SkyTel records on  
8 September 11th?

9 A Did I ask him about the SkyTel records?

10 Q Yes.

11 A No. I thought -- you know, my recollection is that  
12 he told us to re-subpoena those records a couple of  
13 days before the trial was over.

14 (WHEREUPON RICHARD ZUCKERMAN, ESQ.,  
15 LEFT THE DEPOSITION ROOM.)

16 A So I don't remember discussing it on the last day,  
17 but it's possible. You know, there was a lot going  
18 on.

19 You mean in open court, of course? That's  
20 the only place I talked to him about it.

21 Q (Continuing by Ms. Ha) What happened to the  
22 records of -- that Judge Callahan had? You didn't  
23 ask him about those records, the SkyTel records?

24 MR. FINK: It's been asked and  
25 answered.

1 A No.

2 MR. FINK: He's testified about this  
3 already.

4 A No. What I said, and I understand it's confusing,  
5 while Christine Beatty was on the witness stand, I  
6 thought the judge had the records. I didn't know  
7 anything about this someone from the city calling  
8 SkyTel and saying don't send the records. I  
9 thought the judge had the records.

10 When I got done cross-examining Beatty, I  
11 asked her specific questions: Did you send to the  
12 mayor or receive from the mayor a message  
13 discussing Gary Brown, termination? No. Did  
14 you -- so, you know, I asked a whole series of  
15 questions thinking the judge had it. When she  
16 got -- when she was done, I then asked the judge  
17 where are those records. He told me he thought I  
18 had them. I said, "Well, why would I have them?  
19 They were to be sent to you?" And we were both  
20 kind of befuddled.

21 Q (Continuing by Ms. Ha) Do you remember the judge  
22 saying that he couldn't find the records?

23 A Yes, you're absolutely correct. I don't believe  
24 that was the last day. But Mr. McCargo argued  
25 rather verci f -- rather adamantly that the judge

1 had the records. And the judge said, "I don't have  
2 them, or if I did, I lost them, re-subpoena them."  
3 And it was in the process of re-subpoenaiing them I  
4 found out SkyTel never sent them. The judge  
5 couldn't have had the records, because they told me  
6 we've never sent them, because we got a call from  
7 the city.

8 Q Do you recall the day when you put the settlement  
9 on the record with Judge Callahan?

10 A Yes.

11 Q Would it be fair to say that was December 11, 2007?

12 A You know, I don't remember.

13 Q Okay.

14 A But if you -- if you represent that, I'll take your  
15 word for that.

16 Q Thank you. Who was present at the settlement that  
17 was before -- who was present at that -- that day  
18 when you presented the settlement to Judge  
19 Callahan?

20 A Gary Brown, Harold Nelthrope, me, I believe -- I  
21 know Ms. Osamuède, and I'm -- and I know McCargo  
22 was present, and I believe, but I'm not certain,  
23 that Mr. Copeland was present.

24 Q Okay.

25 A But he may not have been, because I think he wanted

1 to adjourn that date because he was going to be out  
2 of town, and the judge said no, I want you in here.  
3 And Mitchell was in the back of the courtroom, but  
4 he didn't participate in the settlement. I mean,  
5 he didn't put anything on the record.

6 Q How do you know what Mr. Mitchell looks like, if  
7 you've only heard of him?

8 A Well, do you want to know the honest truth?

9 Q Sure. Don't we want the honest truth?

10 A Until I saw the picture in the paper, I didn't know  
11 what -- I mean, I met -- years ago Mitch -- when I  
12 moved out of an office in Troy, Mitchell moved into  
13 it. And Brown knew him. And I asked Brown, "Who's  
14 Mitchell?" And he said, "Mitchell's that guy that  
15 rented your office in Troy." And I still couldn't  
16 picture him. But when I saw the picture in the  
17 Free Press either yesterday or today, I recognized  
18 him. But I didn't recognize him in the courtroom  
19 that day. Brown did though. He said, "Did you see  
20 Mitchell sitting in the back?" And I said, "No."

21 Q Okay. Was there a point when the judge asked Mr.  
22 Brown and Mr. Nelthrope to come into the -- to come  
23 into his chambers --

24 A (Interposing) He asked --

25 Q (Interposing) -- that day?

1 A I think he asked Brown, Nel throe and me to come  
2 into the chambers.

3 Q Okay. What -- what was said in chambers?

4 A He really asked both men what they were going to do  
5 in the future, what their plans were, and wished  
6 them -- that they would get on with their lives or  
7 something like that, right. You know, put this  
8 behind you, get on with your life.

9 Q Anything else?

10 A Oh, he asked -- that's right. Most of the rest of  
11 the conversation, Judge Callahan has a -- quite an  
12 interesting family of adopted children. He has,  
13 you know, like two or three African American  
14 children, and I think I believe an oriental child.  
15 And he was telling us where they go to school and  
16 what they do. And that was it.

17 MS. HA: Okay. For the record --

18 MR. FINK: (Interposing) Asi an.

19 MS. HA: Asi an. Thank you, Mr. Fink.

20 MR. FINK: That's fine.

21 A What's the difference? I mean, wait a minute.

22 MS. HA: Oriental is supposed to be a  
23 derogatory term.

24 A Oh, I'm sorry.

25 MS. HA: Yeah, that's okay.

1 A No. I'm sorry. I wouldn't do that in front of  
2 Judge Callahan then. I'm glad you warned me.

3 Jesus, oriental is derogatory?

4 Q (Continuing by Ms. Ha) Did your clients ever  
5 discuss with you what was said in chambers?

6 A I was with them.

7 Q Oh, I'm sorry.

8 A I sat right with them.

9 Q I forgot.

10 Do you also recall that Judge Callahan had  
11 asked Mr. Elrick from the Free Press to wait and to  
12 come back after the judge speaks to you and Mr.  
13 Brown and Mr. Nelthrope?

14 A You know, I don't recall the judge asking Elrick.  
15 But I think Elrick tried to get in to see the  
16 judge, and he -- and he told Elrick or Schaefer to  
17 wait until we were done. I don't know whether he  
18 initiated that contact or they initiated it. I  
19 just remember him saying something like, "Well,  
20 just have a seat. I'm going to be with these guys  
21 for a few minutes."

22 Q Okay. Were you in chambers when the judge talked  
23 to Mr. Elrick?

24 A Oh, no.

25 Q Do you have any reason to know what is in the City

1 of Detroit's files?

2 A On what, ma'am?

3 Q On the Brown/Nelthrope, the cases that you  
4 represented, the cases that you represented, the  
5 Brown/Nelthrope and Harris case.

6 A I've never seen the files, but I presume that when  
7 I've sent e-mails to Ms. Osamuade, she probably  
8 either kept an electronic copy of it, and when the  
9 documents -- when the final -- when we had the  
10 closing on December 5th, she took a stack of  
11 documents too. But I -- I think I already made  
12 that clear, that she did not, in my presence, have  
13 this so-called Confidentiality Agreement. Because  
14 that's the one I was going to pass to her, and  
15 McCargo said, "No, that doesn't go for her  
16 signature. That stays with me." And he took it  
17 back.

18 So other than thinking that those  
19 documents that she took out of that conference are  
20 in that file, I'd have no other way of knowing it.  
21 I surely didn't see the file.

22 Q Okay. Now, going back to the October 17, 2007  
23 record, which is Exhibit Number 11?

24 A Yes.

25 Q Would you agree with me that this is a --

1 A (Interposing) It's not a draft as you said before.  
2 It is a contract, signed and sealed and delivered.

3 Q No, no. I'm talking about --

4 A (Interposing) But it has --

5 Q (Interposing) -- Exhibit 11.

6 A Oh, I'm sorry.

7 MR. FINK: Wait a second.

8 A I'm sorry. No, this is a signed, sealed, and  
9 delivered contract. However, it has a condition  
10 precedent in it, which means that the obligations  
11 of the parties -- well, you know what a condition  
12 precedent is. It had to be approved by the city  
13 council. And if they didn't approve it, and the  
14 mayor didn't approve it, then it ceased to exist.  
15 And I think we even have a phrase in here that says  
16 if it's not approved -- "As a condition precedent  
17 to this Agreement becoming operative", becoming  
18 operative, "the monetary terms of this settlement  
19 must be approved by Gary Brown, and Harold  
20 Nelthrope, and Walter Harris, Mayor Kwame  
21 Kilpatrick, and the City of Detroit. Brown and  
22 Nelthrope shall have 24 hours to approve it." And  
23 they did.

24 Q They approved this?

25 A Absolutely. Well, the terms of it, yes. I sent

1 this to them.

2 And then, "Brown and Nel throp e shall have  
3 24 hours to approve. Walter Harris shall have 10  
4 days to approve this Agreement in writing, and the  
5 City shall have 10 days to approve it in writing.  
6 The Ci ty -- the Ci ty shall have 45 days from the  
7 date hereof to obtain the approval of the City  
8 Council, and noti fy Stefani and Stefani of such  
9 approval in writing. In addition, the City and the  
10 Mayor shall have 21 days after approval of the City  
11 Council to deliver the settlement check..." "In  
12 the event of a failure to pay" -- I'm sorry. "In  
13 the event of a failure of any party to meet the  
14 time deadlines set forth in this Paragraph 8, this  
15 Agreement shall be null and void."

16 So it's really semantics. This was a  
17 contract. But by its own terms, it didn't become  
18 operative or require performance until this  
19 condition precedent was met. It was never met, and  
20 then it became null and void.

21 Q Thank you. You testified earlier, going back to --  
22 taking you back to the facilitation day, you had  
23 indicated that it dawned on somebody that the city  
24 wouldn't want to produce the tentative agreement.

25 A The tentative agreement, the one I just referred

1 to, paragraph -- I mean, the one I just read to  
2 you. It's entitled Settlement Agreement. It has a  
3 confidentiality provision in it. But the title is  
4 Settlement Agreement. And we've been referring to  
5 it as tentative agreement, although from a legal  
6 standpoint I just explained to you that it is a  
7 binding contract subject to a condition precedent,  
8 which never -- so it never became -- the parties to  
9 it were not required to perform their obligations  
10 under that agreement, because it was not -- the  
11 condition precedent never arose.

12 MR. FINK: For clarity, that's  
13 Exhibit 11.

14 MS. HA: All right.

15 Q (Continuing by Ms. Ha) Who did you talk to about  
16 the agreement? How do you know that it dawned on  
17 somebody at the --

18 A (Interposing) Oh, oh, oh, oh, oh.

19 Q Isn't that your assumption that it dawned on  
20 somebody?

21 A Yes.

22 Q Okay.

23 MR. FINK: Is there more to your  
24 answer than yes?

25 MS. McPHAIL: Excuse me, but you're

1 not asking the questions. She's asking the  
2 questions right now.

3 MR. FINK: Well, it seemed like he  
4 didn't finish his answer.

5 MS. McPHAIL: No, no. It's  
6 inappropriate.

7 Go on, ask your questions.

8 Q (Continuing by Ms. Ha) Why did you ask the  
9 facilitator to show the text message -- or, the  
10 motion which you indicated had the explicit details  
11 of the text message to Mr. McCargo?

12 MR. FINK: This was also testified  
13 to.

14 MS. McPHAIL: Okay, but --

15 MS. HA: (Interposing) He didn't say  
16 why he asked the facilitator to -- facilitator to  
17 just show to it Mr. McCargo. And I believe --

18 MR. FINK: (Interposing) Yes, he  
19 did.

20 MS. HA: I believe he also said he  
21 didn't want the facilitator to look at it, but he  
22 wanted it -- to deliver it to Mr. McCargo.

23 Q (Continuing by Ms. Ha) What was your intention,  
24 Mr. Stefani?

25 A Well, I think these records showed that we were

1 entitled to a million dollars of attorney's fees.  
 2 (WHEREUPON Lines 2 through 7  
 3 were stricken from the  
 4 record as per Hon. Robert  
 5 Colombo's instruction  
 6 -----  
 7 -----.) So I said,  
 8 "Just show it to McCargo." He's the -- he's the  
 9 one who, even though he's co-council with Ms.  
 10 Osamuede, he's -- he took the lead. He was the  
 11 lead lawyer.

12 (WHEREUPON A BRIEF PAUSE WAS HAD IN  
 13 THE PROCEEDINGS, AND ELLEN HA, ESQ.,  
 14 AND VALERIE COLBERT-OSAMUEDE, ESQ.,  
 15 LEFT THE DEPOSITION ROOM.)

16 MS. McPHAIL: Let me just say for the  
 17 purposes of expediting the rest of this, I just  
 18 have a few questions, and everyone's agreed that I  
 19 can ask them so we can all go home.

20 MR. FINK: Agreed.

21 MS. McPHAIL: Because our attorney  
 22 had to leave the room, she's not feeling well.

23 EXAMINATION

24 BY MS. McPHAIL:

25 Q Mr. Stefani, you participated in the drafting of

1 the Confidentiality Agreement, didn't you?

2 MR. FINK: Exhibit 11?

3 MS. McPHAIL: Yeah.

4 MR. FINK: Okay.

5 A Yes.

6 Q (Continuing by Ms. McPhail) Okay. And --

7 A (Interposing) You mean a Settlement Agreement,  
8 Exhibit --

9 Q Oh, no. I'm sorry.

10 MR. FINK: No, no, no, no.

11 MS. McPHAIL: That's the wrong  
12 exhibit. I'm talking about the Confidentiality  
13 Agreement that we're all --

14 MR. FINK: (Interposing) The last  
15 one?

16 MR. STEWART: Yes. Refer to the  
17 exhibit number, please?

18 MS. McPHAIL: What's the exhibit  
19 number?

20 MR. FINK: Exhibit 11.

21 MS. McPHAIL: There it is. That  
22 exhibit.

23 A No, no. This is supplement to the escrow.

24 MR. STEWART: What number is it,  
25 please? What number are you referring to?

1 MR. FINK: 11.

2 A I think they're all right here. Let's just find  
3 them so we can --

4 MS. McPHAIL: (Interposing) Yeah.  
5 Because I didn't get copies that were labeled.

6 MR. FINK: No. You know what, I'm  
7 sorry. I'm screwing this up. It's actually 13.

8 MS. McPHAIL: This (indicating).

9 MR. FINK: 13. That's 13. It's 13.

10 MS. McPHAIL: Okay. This is 13.  
11 Number 13. All right.

12 Q (Continuing by Ms. McPhail) Number 13, you  
13 participated in that?

14 A Absolutely.

15 Q And it involves your clients' records? You didn't  
16 want -- they didn't want their records produced  
17 either, correct?

18 A That's correct.

19 Q Okay. So could you describe just briefly, not a  
20 long one, your clients' concerns regarding the  
21 release of their own records?

22 A Well, they contained personal matters, and they  
23 didn't want that out in public.

24 Q Okay. So, you know, that was their reason for the  
25 agreement.

- 1 A Yeah.
- 2 Q Okay.
- 3 A Yeah.
- 4 Q And you said you believe the mayor gave Christine  
5 Beatty twelve thousand dollars. Why do you believe  
6 that?
- 7 A Because my confidential source told me that Beatty  
8 told him -- Beatty told the mortgage broker -- or,  
9 the banker for Fifth/Third Bank, that she would get  
10 the twelve thousand dollars from the mayor. And  
11 the guy said to her, "But it's got to be a gift.  
12 You can't borrow a down payment." And she said,  
13 "It will be a gift." And he said, "Well, no one  
14 will believe it's a gift from the mayor. They'll  
15 think it's a loan."
- 16 Q Okay. I remember all of that. No offense. Stop.
- 17 A I'm sorry. I'm just explaining it.
- 18 Q I don't need you to explain it again.
- 19 A Yeah.
- 20 Q But what I'm asking you here is, who was your  
21 source? Who told you?
- 22 A Oh, my God, I can't -- I wouldn't you tell that if  
23 I knew.
- 24 Q Okay. So you're declining to answer that question?
- 25 A Absolutely.

1 Q Okay. Do you know or have any information as to  
2 how the Free Press got SkyTel records?

3 MR. FINK: Wait a minute.

4 MS. McPHAIL: Oh, I'm sorry. She  
5 asked that.

6 MR. FINK: Yeah, we did that.

7 MS. McPHAIL: Yeah. I'm sorry. She  
8 asked that.

9 Q (Continuing by Ms. McPhail) Okay. You testified  
10 that after the jury verdict, the judge told you to  
11 subpoena the SkyTel records, suggested that you do  
12 that?

13 A No. It was before the jury verdict.

14 Q Before the jury verdict?

15 A Oh, absolutely.

16 Q Okay. But not after? After the jury verdict, when  
17 you subpoenaed them --

18 A (Interposing) No, I don't believe so.

19 Q When you subpoenaed them the second time --

20 A (Interposing) No.

21 Q -- that wasn't the judge telling you to do that?

22 A No, no, no.

23 Q Okay. I'm almost done. Okay. And one thing, Mr.  
24 Stefani, it's just a little confusion on my part.  
25 You said that the judge ruled in your favor as to

1 the release of the SkyTel records. And we don't  
2 have anything but these two orders, which grant in  
3 part the Mayor Kilpatrick's motions to quash the  
4 subpoenas for the SkyTel records. Do you have an  
5 order in which the judge, Judge Callahan that is,  
6 ruled in your favor in terms of release of the  
7 SkyTel records?

8 A Yes. I don't know what you have there. That isn't  
9 something I produced, is it?

10 Q Well, these are -- this is -- I don't know whether  
11 you produced it or not, frankly.

12 (WHEREUPON VALERIE COLBERT-OSAMUEDE,  
13 ESQ., RE-ENTERED THE DEPOSITION  
14 ROOM.)

15 Q (Continuing by Ms. McPhail) These are the two  
16 orders that the court ordered granting Mayor  
17 Kilpatrick's emergency motions, you know, to quash  
18 the --

19 A (Interposing) Yeah. But if you read those, those  
20 are drafted by the city. And the -- and the title  
21 of them is very misleading. If you read the order,  
22 it says, "We grant the emergency motion in part,  
23 but we order the SkyTel records" --

24 Q (Interposing) Produced to the court.

25 A Well, the second motion did that. I don't believe

1 the first motion did that.

2 Q But they never ordered them produced to you? That  
3 is, the judge never ordered SkyTel to produce the  
4 records to you?

5 A Well I would say the first time, the subpoena that  
6 I sent out the first time, instructed SkyTel to  
7 produce the records for me. And the judge refused  
8 to quash that subpoena. And so while he didn't  
9 specifically order the first time that they go to  
10 me, it was clear that by quash -- by refusing to  
11 quash the subpoena, that the subpoena ordered the  
12 records to go to me, as any discovery would  
13 normally do.

14 Q And when did that happen? Was that before -- are  
15 you talking about the first subpoena you issued?

16 A Yes.

17 Q The one before -- not the September 28th subpoena?

18 A No.

19 Q The one before that?

20 A There were actually -- like I believe there were  
21 three.

22 Q Oh. I thought you said two.

23 A In September or October of 2004, I sent out a  
24 subpoena. The city came in and did an emergency  
25 motion to quash. The judge refused to grant their

1 motion.

2 (WHEREUPON ELLEN HA, ESQ. ,  
3 RE-ENTERED THE DEPOSITION ROOM.)

4 A I sent out another subpoena.

5 Q (Continuing by Ms. McPhail) Did you get the  
6 records then?

7 A No, no,

8 Q In 2004?

9 A No, no, I didn't.

10 Q Okay. All right.

11 A And then I sent out another one, and the city came  
12 in with another one. And that's the -- I believe  
13 that's the order that you're referring to in front  
14 of you, is the order that was issued by the judge  
15 or signed by the judge as a result of that second  
16 subpoena. And then --

17 Q (Interposing) So basically you're interpreting.  
18 The city drafted these. So what you're saying is  
19 that the orders relative to the production of the  
20 SkyTel records, you view as favorable to you,  
21 although they're captioned emergency -- granting in  
22 part defendants --

23 A (Interposing) Well, I think you're -- I think  
24 there's only one order that --

25 Q (Interposing) There were two. Here they are. Let

1 me show them to you.

2 MR. STEWART: Mark them as exhibits,  
3 please?

4 MS. McPHAIL: Yeah, okay. Let's mark  
5 the first "Order Granting, In Part, Defendant Mayor  
6 Kwame Kilpatrick's Emergency Motion To Quash  
7 Subpoena For SkyTel Messaging Pager And For A  
8 Protective Order." That's this one. I know it's a  
9 lot of records. You probably may not remember.  
10 But I'm trying to refresh your recollection on  
11 this.

12 A Excuse me. Yeah. I want to make sure we're even  
13 talking about the same case here, because,  
14 "Granting In Part Defendant"...

15 (WHEREUPON THE COURT REPORTER MARKED  
16 DEPOSITION EXHIBIT NUMBERS 20 AND 21,  
17 RESPECTIVELY.)

18 A Yes. This -- this order's dated August 26th. And  
19 it's -- it's the judge doesn't quash the subpoena,  
20 but he directs that SkyTel be told to send the  
21 documents to him.

22 Q (Continuing by Ms. McPhail) Where in that  
23 document, which is Exhibit Number 20, does it say  
24 that SkyTel should send them to you?

25 A It doesn't. I -- in Exhibit 20? No. It says, "IT

1 IS ORDERED that Defendant's Motion be granted, in  
2 part, records" -- I'm sorry, "the records sought by  
3 Plaintiffs' subpoena dated August 18th, 2004 and  
4 directed to MCI Subpoena Compliance, care of SkyTel  
5 Messaging Pager, Attention Bill Marsden", and then  
6 an address, Northwest Washington, DC, "in lieu of  
7 the subpoena direction in -- in lieu of the  
8 subpoena direction, shall be filed with this Court  
9 for an in-camera inspection pursuant to the  
10 governmental deliberative process privilege; and IT  
11 IS ORDERED that the contents of the records filed  
12 with this Court in-camera, pursuant to this Order  
13 shall be released only upon the further order of  
14 this Court, at the time of trial upon a  
15 determination by this Court that the release of  
16 specific information contained therein is  
17 appropriate for release."

18 Q Thank you. Okay. So it doesn't say that the  
19 records should be produced to you?

20 A No.

21 Q In fact, by the very nature of the order, which is  
22 that the records shall be produced in-camera, they  
23 are not to be produced to you pursuant to that  
24 Exhibit 20, right?

25 A Yes.

1 Q Okay. So let me ask you to take a look at Exhibit  
2 21, which is an "Amended Order Granting, In Part,  
3 Defendant Mayor Kwame Kilpatrick's Emergency Motion  
4 To Quash Subpoena For SkyTel Messaging Pager And  
5 For A Protective Order." If you'd take a look at  
6 this, please?

7 A Thank you.

8 Okay. This is dated September 27th.

9 MR. FINK: Do you want to see these,  
10 or are we -- do we want to see these?

11 MR. STEWART: (Shaking head  
12 negatively).

13 MR. FINK: No. Okay.

14 MS. McPHAIL: I mean, technically I  
15 guess I should hand them to you, but, you know...

16 MR. STEWART: That's all right.

17 A This order seems to be verbatim with the order  
18 dated September 26th. It looks like it's  
19 identical.

20 Q (Continuing by Ms. McPhail) Okay. So there's  
21 nothing in that order, that is Exhibit 21, that  
22 suggests that the records should be sent to you?

23 A No.

24 Q Is there any other order, of which you are aware of  
25 the court, that either removes the records from

1 their in-camera seal, or allows the records to be  
2 produced to you?

3 A The -- other than the verbal order the judge issued  
4 from the bench on two occasions I believe during  
5 the trial. He said re-subpoena the records.

6 Q Okay.

7 A And he says, maybe we'll get them in time. And he  
8 didn't -- he didn't say have them sent to you. He  
9 didn't have them -- he didn't say have them sent to  
10 me.

11 And if you ask me why I had them sent to  
12 me, it's because I wanted to avoid the shenanigans  
13 that the city had pulled to keep -- to keep them  
14 confidential. If I had sent them to the judge --  
15 again, the judge has got a lot of cases pending.  
16 And I would have no way of knowing whether SkyTel  
17 sent them to him. And a simple phone call saying,  
18 hey, that matter's over with, the trial's over  
19 with, don't bother, would have ended it.

20 Do you want some Pepsi?

21 MS. HA: Oh, no, thank you.

22 A I don't know whether your stomach's upset, but  
23 this...

24 MS. HA: Thanks.

25 Q (Continuing by Ms. McPhail) Yeah. The concern

1 here, Mr. Stefani, is that because you didn't  
2 notify the city of your September 27th subpoena  
3 until October 17th, the city was deprived of the  
4 ability to come in and seek -- I'm sorry.

5 MS. McPHAIL: When I'm done, you want  
6 to object?

7 MR. FINK: No. I'm just telling  
8 Mr. --

9 MS. McPHAIL: Okay.

10 MR. FINK: I'm just waving and  
11 encouraging Mr. Stefani not to answer --

12 MS. McPHAIL: (Interposing) Not to  
13 answer?

14 MR. FINK: -- until I put my  
15 objection to the question.

16 MS. McPHAIL: But you don't represent  
17 Mr. Stefani, do you?

18 MR. FINK: I have a right to put on  
19 an objection.

20 MS. McPHAIL: I didn't say that. I'm  
21 just trying to make sure. And I'm going to wait  
22 for your objection, as soon as I can finish my  
23 question.

24 Where were we? Would you read it back?

25 (WHEREUPON THE COURT REPORTER

1 READ BACK AS FOLLOWS: "Q Yeah. The  
2 concern here, Mr. Stefani, is that  
3 because you didn't notify the city of  
4 your September 27th subpoena until  
5 October 17th, the city was deprived  
6 of the ability to come in and seek --  
7 I'm sorry.")

8 Q (Continuing by Ms. McPhail) And to seek a  
9 protective order. And the court rules -- I'm  
10 almost done here.

11 MR. FINK: Okay.

12 Q (Continuing by Ms. McPhail) The court rules do  
13 require that you serve the other parties at the  
14 same time that you serve the deponent with the  
15 subpoena, correct?

16 MR. FINK: Well, let me make my  
17 objection to the predicate of your question.

18 MS. McPHAIL: Okay.

19 MR. FINK: So-called question.

20 MS. McPHAIL: Well, now there you go.  
21 You were doing fine until you got to that.

22 MR. FINK: It's not really -- All  
23 right. My objection is to the form of your  
24 question. It isn't really a question. It's also  
25 argumentive, and it doesn't ask a simple question.

1 It is a statement on your part. And it's better  
2 addressed to the court than to a witness.

3 MS. McPHAIL: Thank you so much.

4 MR. FINK: You're welcome.

5 Q (Continuing by Ms. McPhail) Mr. Stefani, as I  
6 said --

7 A (Interposing) He's right. You did say the  
8 concerns, as opposed to asking a question.

9 Q Right.

10 A You were making --

11 Q (Interposing) Right, absolutely.

12 A I mean, I don't know what -- I don't know.

13 Q But I did ask a question at the end.

14 A Oh, I'm sorry.

15 Q I did ask a question at the end.

16 A I'm sorry. I didn't catch it.

17 Q I was prefacing the question --

18 A (Interposing) I didn't catch it.

19 Q -- with some information that Mr. Fink didn't want  
20 me to say. But I said --

21 A (Interposing) Oh, I'm sorry. Go ahead.

22 Q And then I asked the question.

23 MR. FINK: I want you to say  
24 whatever's on your mind.

25 MS. McPHAIL: No. Only to the extent

1 it's relevant.

2 MR. FINK: Well, obviously.

3 Q (Continuing by Ms. McPhail) Mr. Stefani?

4 A Yes, ma'am.

5 Q So you're aware, aren't you, that the court rules  
6 require you to send a subpoena to all parties at  
7 the time that you send it to the deponent, the  
8 intended deponent?

9 A You know, I'd have to look at the rules. You may  
10 very well be right, but I -- I don't know whether  
11 the rules -- well, I got it right here. You know,  
12 I have the rules here if you want to tell me. I  
13 don't require -- I don't know whether it has to be  
14 sent simultaneously or not. I don't know the  
15 answer to that. I know they have to be served a  
16 copy.

17 Q Okay. And do you believe that serving a copy  
18 nineteen days after you serve it on the deponent is  
19 acceptable under the rules?

20 MR. FINK: Objection. It calls for  
21 you to give a legal conclusion. I don't know --

22 MS. McPHAIL: (Interposing) Like  
23 your other questions about on your opinion.

24 MR. FINK: I don't know if you're  
25 qualified as an expert. Maybe we'll get a -- maybe

1 we'll get an evidence expert to testify.

2 MS. McPHAIL: Well, you asked for a  
3 bunch of opinions.

4 MR. FINK: Not a legal conclusion.

5 MS. McPHAIL: Yeah, you sure did.

6 MR. FINK: You think?

7 MS. McPHAIL: Um-hum (affirmatively).

8 A I don't know what -- what the rules -- I mean,  
9 seventeen days after you serve a subpoena is sort  
10 of like a search warrant. I know you're very  
11 familiar with search warrant law. Probable cause  
12 can be stale twenty-four hours after it's served,  
13 after the warrant is issued, and sometimes it can  
14 be fresh probable cause two years later. It  
15 depends on the circumstances. I don't know what --  
16 Q (Continuing by Ms. McPhail) What does that have to  
17 do with this?

18 A Well, what is reasonable for some search warrants  
19 is not reasonable for others. And what's  
20 reasonable for some subpoenas, may not be  
21 reasonable for others. I don't know. I don't know  
22 the answer to the question.

23 Q Okay. Thanks. That's all I have.

24 And I want to make sure you -- we're going  
25 to give you back everything you gave us, documents,

1 labeled -- some exhibits and some -- the other set  
2 of documents that you copied for me, Mr. Stefani,  
3 before. Remember I asked you to make a copy of the  
4 ones that I had numbers on?

5 A Yeah.

6 Q And you did that, and we're giving them all back to  
7 you?

8 A Oh, thank you.

9 Q So we don't have anything, right?

10 A I was told last night by somebody that I'm your  
11 attorney.

12 MS. McPHAIL: My attorney?

13 A That's what I was told.

14 MS. McPHAIL: Am I getting money?

15 A No.

16 MS. McPHAIL: Oh, well, then.

17 MR. FINK: I have one question that I  
18 have waited patiently to ask.

19 A Okay.

20 RE-EXAMINATION

21 BY MR. FINK:

22 Q Ms. Ha asked you, Mr. Stefani, with regard to  
23 Exhibit 13, the "Confidentiality Agreement" of  
24 November 1, 2007. She asked you did -- were any  
25 city officials given a copy of Exhibit 13. Were

1 two city officials obviously given a copy of  
2 Exhibit 13?

3 MS. McPHAIL: What are you pointing  
4 him to, Mr. Fink?

5 A Christine Beatty and Kwame Kilpatrick's signatures.

6 MR. FINK: Thank you. That's all.

7 MS. McPHAIL: Does that mean they got  
8 a copy?

9 MR. FINK: They signed it.

10 MS. McPHAIL: Does that mean they got  
11 a copy?

12 MR. FINK: Hell yes.

13 RE-EXAMINATION

14 BY MS. McPHAIL:

15 Q Are you saying that, Mr. Stefani, that you saw them  
16 get a copy?

17 A I'm not saying that.

18 MR. FINK: No. I'm still asking the  
19 questions.

20 MS. McPHAIL: Okay.

21 A I do -- don't forget, though, I have a very short  
22 statement that I want to put on the record.

23 MR. FINK: Go ahead. I'm done.

24 A So don't walk out of here without letting me do  
25 that.

1 MR. FINK: I am done.

2 A And the statement is --

3 MR. FINK: (Interposing) Unless Mr.  
4 Stewart has...

5 MR. STEWART: I have nothing further.  
6 Thank you, Mr. Stefani.

7 A All right. Thank you.

8 MS. McPHAIL: Mr. Stefani, with all  
9 due respect, I mean, I'm not sure that this is the  
10 place for you to make a statement.

11 MR. FINK: I have no objection to it.  
12 Go ahead.

13 MR. STEWART: I have no objection.

14 MS. McPHAIL: Okay. But I do.

15 MR. FINK: Okay. Well, objection  
16 noted.

17 MS. McPHAIL: I mean, we don't even  
18 know what you're going to say.

19 MR. STEWART: Well, objection noted.  
20 You go ahead and make your statement.

21 MS. McPHAIL: I mean, we don't want  
22 you to start talking --

23 A Well, it has nothing to do -- no, it's not  
24 substantive, believe me. And even if you object,  
25 I'm going to put it on the record. But it's not

1 substantive.

2 It's just that I want everybody to know  
3 that I've got the e-mails, and you've all agreed  
4 that I didn't have to produce those, because  
5 they're just voluminous, and not --

6 MS. McPHAIL: (Interposing) Oh,  
7 okay.

8 A Secondly, I wanted to say that under the  
9 Confidentiality Agreement, I was -- well, I already  
10 said that. I was instructed to say -- to reveal  
11 the fact that there was a Confidentiality  
12 Agreement. I didn't breach any trust by doing  
13 that.

14 And the third thing we've already  
15 discussed, I would like to get the transcript,  
16 according to the new rules, when it's released, to  
17 make sure you didn't make your second mistake in  
18 thirty years, okay?

19 MS. McPHAIL: Thank you so much.

20 MR. FINK: Well, we're done.

21 \* \* \*

22 (WHEREUPON THE PROCEEDINGS IN  
23 THIS MATTER WERE CONCLUDED AT  
24 6:52 P. M. )

25

1 STATE OF MICHIGAN )  
 2 COUNTY OF ST. CLAIR ) SS

3 CERTIFICATE OF NOTARY PUBLIC

4 I, the undersigned, do hereby certify that  
 5 the witness, whose attached deposition was taken  
 6 before me in the above-entitled matter, was by me  
 7 first duly sworn to testify to the truth; that the  
 8 testimony contained herein was by me reduced to  
 9 writing in the presence of the witness by means of  
 10 Stenography; afterwards transcribed on computer;  
 11 and that the deposition is a true and complete  
 12 transcript of the testimony given by the witness.

13 I further certify that I am not connected  
 14 by blood or marriage with any of the parties, their  
 15 attorneys or agents; that I am not an employee of  
 16 either of them; and that I am not interested,  
 17 directly or indirectly, in the matter of  
 18 controversy.

19 IN WITNESS WHEREOF, I have hereunto set  
 20 my hand and affixed my notarial seal at Riley, in  
 21 the County of St. Clair, State of Michigan, this  
 22 30th day of January, 2008.

23 Candace C. Noblett R-2238  
 24 Notary Public, St. Clair County, MI  
 25 My Commission Expires: 5-23-2011