

1 THE COURT: MS. MORGAN, WOULD YOU TELL MR. LOWELL,  
2 WHO WILL TELL EVERYBODY ELSE WHAT I JUST DID?

3 (PAUSE)

4 THE COURT: IS THAT ALL RIGHT WITH EVERYONE? IS  
5 EVERYONE COMFORTABLE WITH THAT?

6 MR. MCDUFF: YES, SIR.

7 THE COURT: OKAY. ALL RIGHT. PLEASE FACE HER AND  
8 SHE WILL SWEAR YOU IN.

9 (WITNESS SWORN)

10 DANNY CUPIT

11 WAS THEREUPON CALLED AS A WITNESS FOR AND ON BEHALF OF THE  
12 GOVERNMENT AND, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MS. MORGAN:

15 Q. PLEASE STATE YOUR NAME FOR THE RECORD.

16 A. MY NAME IS DANNY CUPIT.

17 Q. HOW DO YOU SPELL YOUR LAST NAME?

18 A. C-U-P-I-T.

19 Q. ARE YOU EMPLOYED, MR. CUPIT?

20 A. I AM A SELF-EMPLOYED LAWYER.

21 Q. AND DO YOU PRACTICE HERE IN JACKSON?

22 A. YES, MA'AM.

23 Q. WHAT KIND OF LAW DO YOU PRACTICE?

24 A. IT'S A GENERAL PRACTICE. I GUESS PREDOMINANTLY PERSONAL  
25 INJURY LITIGATION, BUT A VARIETY OF THINGS.

1 Q. ALL RIGHT. I ASK YOU, IF YOU WOULD, TO DIRECT YOUR  
2 ATTENTION TO THE YEAR 2000, AT SOME POINT BEFORE MARCH OF 2000.  
3 ALL RIGHT? ARE YOU ABLE TO DO THAT?

4 A. WELL, I CAN DRAW MY ATTENTION TO IT --

5 Q. ALL RIGHT.

6 A. -- IF THAT'S WHAT YOU ASK.

7 Q. YEAH, IF YOU WOULD. OKAY?

8 A. ALL RIGHT.

9 Q. THAT'S THE TIME PERIOD I'M GOING TO BE ASKING YOU ABOUT.  
10 OKAY?

11 A. OKAY.

12 Q. ALL RIGHT. WAS THERE A VACANCY ON THE MISSISSIPPI SUPREME  
13 COURT AT THAT TIME DUE TO THE DEATH OF JUSTICE SULLIVAN?

14 A. THERE WAS A VACANCY ON THE COURT DUE TO THE DEATH OF  
15 JUSTICE SULLIVAN. I CANNOT CORRELATE THE DATE. BUT IF THAT'S  
16 WHEN IT WAS --

17 Q. ALL RIGHT. LET'S GO FROM THAT PERIOD OF TIME. DO YOU  
18 RECALL THAT PERIOD OF TIME?

19 A. YES.

20 Q. ALL RIGHT. AND WHEN THERE IS A VACANCY ON THE SUPREME  
21 COURT DUE TO THE DEATH OR THE RETIREMENT OF A JUDGE IN BETWEEN  
22 AN ELECTION CYCLE, HOW IS THAT JUSTICE REPLACED? DO YOU KNOW?

23 A. BY APPOINTMENT OF THE GOVERNOR.

24 Q. ALL RIGHT. AND WHO WAS THE GOVERNOR DURING THE YEAR 2000?

25 A. RONNIE MUSGROVE.

1 Q. DID YOU -- AT THAT TIME DID YOU KNOW RONNIE MUSGROVE  
2 PERSONALLY?

3 A. YES, MA'AM.

4 Q. AND WHAT, IF ANYTHING, DID YOU DO IN CONNECTION WITH A  
5 MEETING OR TALKING TO GOVERNOR MUSGROVE CONCERNING THE VACANCY  
6 ON THE SUPREME COURT?

7 A. HE ASKED SEVERAL PEOPLE TO MAKE RECOMMENDATIONS TO HIM OF  
8 PEOPLE WHO WE THOUGHT WOULD BE GOOD FOR THAT POSITION. AND I  
9 TRIED TO ACCUMULATE SOME NAMES OF PEOPLE THAT I FELT  
10 COMFORTABLE RECOMMENDING. AND SO I DID THAT.

11 Q. ALL RIGHT. AND DID YOU ACTUALLY HAVE A PERSONAL MEETING  
12 WITH GOVERNOR MUSGROVE?

13 A. YES, MA'AM. WE HAD -- THERE WAS A MEETING ATTENDED BY  
14 PAUL MINOR AND DICK SCRUGGS AND ME AND THE GOVERNOR.

15 Q. WHERE DID THAT -- WHERE DID THAT TAKE PLACE? DO YOU KNOW?

16 A. WELL, IT WAS AT HIS OFFICE OR AT THE GOVERNOR'S MANSION.  
17 I CAN'T REMEMBER, TO BE HONEST WITH YOU.

18 Q. OKAY. AND WHO ALL WAS THERE? IT WAS YOU?

19 A. THE FOUR OF US.

20 Q. THE GOVERNOR, YOU, PAUL MINOR AND RICHARD SCRUGGS?

21 A. YES, MA'AM.

22 Q. AND WHAT WAS DISCUSSED AT THAT MEETING? WHAT WAS THE  
23 TOPIC OF DISCUSSION?

24 A. THE TOPIC OF DISCUSSION WERE NAMES OF CANDIDATES WHO WE  
25 THOUGHT WOULD BE GOOD TO FILL THE VACANCY CREATED BY JUSTICE

1 SULLIVAN'S DEATH.

2 Q. ALL RIGHT. AND DID PAUL MINOR SUGGEST A NAME OF A PERSON  
3 WHO WOULD BE GOOD TO FILL THE VACANCY THERE ON THE COURT?

4 A. I DON'T REMEMBER ANY -- I DON'T REMEMBER PAUL SUGGESTING A  
5 PARTICULAR NAME. THERE WERE SEVERAL NAMES THAT I HAD  
6 ACCUMULATED AND --

7 Q. OKAY. WHAT --

8 A. -- THREW THEM OUT ON THE TABLE, AND WE DISCUSSED THOSE. I  
9 GUESS THAT WAS MORE --

10 Q. OKAY. TELL US WHO THOSE NAMES -- WHAT THOSE NAMES WERE.

11 A. WHO THEY WERE?

12 Q. UH-HUH.

13 A. WELL, THERE WAS, OF COURSE, JUSTICE DIAZ. JUDGE BILL  
14 MYERS, WHO WAS A CHANCELLOR FROM JACKSON COUNTY. ANOTHER  
15 CHANCELLOR FROM HATTIESBURG BY THE NAME OF JOHNNY WILLIAMS.  
16 CIRCUIT JUDGE LANDRUM FROM JONES COUNTY. HOW MANY IS THAT?  
17 FIVE? FOUR? I THINK THERE WAS SIX. THERE WAS BOB EVANS, WHO  
18 IS A CIRCUIT JUDGE FROM SMITH COUNTY. AND THEN LARRY  
19 BUFFINGTON, WHO WAS A CHANCELLOR FROM COVINGTON COUNTY OR  
20 SOMEWHERE DOWN IN THERE.

21 Q. ALL RIGHT. AND AT THAT POINT IN TIME, OLIVER DIAZ WAS A  
22 JUDGE ON THE COURT OF APPEALS; IS THAT RIGHT?

23 A. YES, MA'AM.

24 Q. OKAY. OF THOSE NAMES THAT YOU JUST GAVE US, WHO WAS PAUL  
25 MINOR SUPPORTING OR BACKING?

1 A. WELL, I -- I DON'T -- I DON'T KNOW. I CAN SORT OF RELATE  
2 THE CONVERSATION. I KNOW THAT DICKIE WAS URGING THE  
3 APPOINTMENT OF JUDGE MYERS, WHO WAS FROM HIS HOMETOWN. I  
4 HAD -- HAD COME TO BELIEVE THAT JUSTICE DIAZ WOULD MAKE A GOOD  
5 APPOINTMENT AND THE BEST APPOINTMENT. AND I WAS URGING JUDGE  
6 DIAZ. AND I THINK PAUL WAS -- I THINK PAUL WAS CONTENTED WITH  
7 ALL OF THE NAMES DISCUSSED. I GOT THE IMPRESSION THAT HE WAS  
8 TRYING TO BE DEFERENTIAL TO DICKIE AND NOT GET CROSSED UP IN --  
9 WITH THE RECOMMENDATIONS COMING FROM THE GULF COAST. SO I  
10 DON'T REMEMBER PAUL MAKING A SPECIFIC RECOMMENDATION OF ONE  
11 PERSON OVER THE OTHER.

12 Q. ALL RIGHT. WAS IT YOUR IMPRESSION THAT PAUL MINOR WAS  
13 SUPPORTING DIAZ?

14 A. I THINK HE -- SURE. I THINK HE KNEW DIAZ, OF COURSE. AND  
15 I THINK HE WAS -- THE COMMENTS THAT I REMEMBER HIM MAKING WERE  
16 FAVORABLE COMMENTS.

17 Q. FAVORABLE TO JUDGE DIAZ?

18 A. YES, MA'AM.

19 Q. WHO -- WELL, LET ME ASK YOU THIS. WHO DID THE GOVERNOR  
20 END UP ACTUALLY APPOINTING?

21 A. JUDGE DIAZ.

22 Q. WHAT DID YOU DO AFTER THE MEETING, YOU YOURSELF? WHERE  
23 DID YOU GO?

24 A. I HAVE -- I HAVE UTTERLY NO RECOLLECTION. I DON'T EVEN  
25 REMEMBER WHAT TIME THE MEETING TOOK PLACE.

1 Q. ALL RIGHT. WELL, LET ME ASK IT THIS WAY. DID YOU GO TO A  
2 RESTAURANT WITH MR. MINOR AND MR. SCRUGGS?

3 A. NO, MA'AM.

4 Q. ALL RIGHT. DO YOU KNOW OR DO YOU HAVE ANY KNOWLEDGE OF  
5 HOW OLIVER DIAZ WAS NOTIFIED THAT HE RECEIVED THE APPOINTMENT  
6 TO THE SUPREME COURT?

7 A. I PRESUME THE GOVERNOR CALLED HIM AND TOLD HIM. I  
8 REMEMBER TWO OR THREE DAYS LATER, HE APPEARED AT A PRESS  
9 CONFERENCE. AND I THINK I TALKED TO HIM SOMETIME AFTER THAT  
10 AND ASKED HIM HOW IT CAME ABOUT. BUT I CAN'T BE ABSOLUTELY  
11 CERTAIN. BUT I'M JUST ASSUMING THE GOVERNOR CALLED HIM AND  
12 TOLD HIM.

13 Q. ALL RIGHT. DID YOU TALK TO PAUL MINOR ABOUT WHETHER HE  
14 HAD NOTIFIED JUDGE DIAZ THAT THE GOVERNOR WAS GOING TO APPOINT  
15 HIM?

16 A. NO, MA'AM.

17 Q. DO YOU KNOW IF PAUL MINOR CALLED JUSTICE DIAZ AND TOLD HIM  
18 THAT HE HAD GOTTEN THE APPOINTMENT?

19 A. I DO NOT.

20 Q. ALL RIGHT.

21 MS. MORGAN: IF I COULD HAVE THE COURT'S INDULGENCE,  
22 YOUR HONOR?

23 THE COURT: AND COUNSEL, IS THERE A 302?

24 MS. MORGAN: NO, YOUR HONOR.

25 THE COURT: OKAY.

1 MS. MORGAN: I DON'T THINK SO.

2 THE COURT: COULD YOU CHECK AND SEE?

3 MS. MORGAN: THERE IS NOT.

4 THE COURT: ALL RIGHT.

5 (PAUSE)

6 MS. MORGAN: TENDER THE WITNESS, YOUR HONOR.

7 THE COURT: WHO IS GOING FIRST?

8 MR. MCDUFF: I AM, YOUR HONOR.

9 THE COURT: ALL RIGHT. CROSS-EXAMINATION.

10 CROSS-EXAMINATION

11 BY MR. MCDUFF:

12 Q. GOOD MORNING, MR. CUPIT.

13 A. GOOD MORNING.

14 Q. JUST SO THE JURY WILL KNOW, YOU AND I HAVE KNOWN EACH  
15 OTHER FOR SEVERAL YEARS; RIGHT?

16 A. RIGHT.

17 Q. AND IN FACT, YOU OWN THE APARTMENT THAT I HAVE LIVED IN --

18 MS. MORGAN: OBJECTION, YOUR HONOR. I DON'T SEE WHAT  
19 RELEVANCE IT HAS WHETHER HE KNOWS THE WITNESS OR NOT.

20 THE COURT: ALL RIGHT. LET'S GO ON.

21 MR. MCDUFF: ALL RIGHT. WE WON'T GO INTO THAT.

22 BY MR. MCDUFF:

23 Q. THE PROSECUTION HAS ASKED YOU ABOUT WHAT GOVERNOR MUSGROVE  
24 WAS TOLD AT THAT MEETING. ONE OF THE THINGS HE WAS TOLD IS

25 THAT HE SHOULD CONSIDER JUDGE DIAZ BECAUSE NO ONE CONTROLS HIM?

1 A. RIGHT.

2 Q. AND HE SHOULD CONSIDER JUDGE DIAZ BECAUSE HE VOTES HIS  
3 CONSCIENCE?

4 A. RIGHT.

5 MS. MORGAN: OBJECTION, YOUR HONOR. IF WE COULD GET  
6 THE SPEAKER? A MOMENT AGO THE WITNESS COULDN'T RECALL THE  
7 CONVERSATION. I WOULD LIKE FOR THE SPEAKERS TO BE IDENTIFIED.

8 THE COURT: ALL RIGHT. I SUSTAIN THE OBJECTION.

9 MR. MCDUFF: OKAY.

10 THE COURT: LET'S IDENTIFY THE SPEAKERS.

11 MR. MCDUFF: ALL RIGHT.

12 BY MR. MCDUFF:

13 Q. WHO TOLD THE GOVERNOR THAT NOBODY CONTROLS JUDGE DIAZ?

14 A. WELL, I TOLD HIM THAT IN A MANNER OF SPEAKING. I DON'T  
15 KNOW IF I USED THOSE EXACT WORDS. BUT I TOLD HIM THAT I  
16 THOUGHT JUDGE DIAZ WAS A PERSON OF HIGH INTEGRITY AND HAD  
17 PRINCIPLES THAT HE WOULD ADHERE TO AND WAS CONSCIENTIOUS AND  
18 WOULD MAKE A GOOD APPOINTMENT.

19 Q. DID YOU TELL THE GOVERNOR THAT JUDGE DIAZ WILL NOT ABANDON  
20 HIS CONSCIENCE JUST BECAUSE PEOPLE, EVEN HIS SUPPORTERS, ASK  
21 HIM TO DO THAT?

22 A. I SPECIFICALLY TOLD HIM THAT BECAUSE I HAD SUFFERED FROM  
23 THAT IN A PERSONAL EXPERIENCE.

24 Q. AND DID YOU TALK -- DID YOU TALK TO THE GOVERNOR ABOUT  
25 SOME SPECIFIC EXPERIENCES WHEN JUSTICE DIAZ WAS IN THE

1 LEGISLATURE?

2 A. I DID.

3 Q. OKAY. AND ONE OF THOSE WAS WHEN YOU, WHO WAS A  
4 LONG-TIME -- YOU AND OTHER LONG-TIME SUPPORTERS WENT TO HIM AND  
5 ASKED HIM TO DO SOMETHING AND HE SAID HE WOULDN'T DO IT BECAUSE  
6 HE DIDN'T BELIEVE THAT WAS THE RIGHT THING?

7 A. THAT'S EXACTLY THE INCIDENT I RELATED TO GOVERNOR  
8 MUSGROVE.

9 Q. DID YOU ALSO TALK TO THE GOVERNOR ABOUT THE FACT THAT WHEN  
10 JUSTICE DIAZ WAS IN THE LEGISLATURE, EVEN THOUGH HE WAS ELECTED  
11 AS A REPUBLICAN, HE OFTEN RESISTED THE REPUBLICAN PARTY  
12 POSITION THAT WAS TRYING TO CUT BACK ON THE RIGHTS OF WORKERS  
13 AND POOR PEOPLE AND THAT HE STOOD UP FOR WORKERS AND POOR  
14 PEOPLE WHEN HE WAS IN THE LEGISLATURE?

15 A. THAT WAS PART OF THE ARGUMENT FOR HIM OR AT LEAST FOR MY  
16 RECOMMENDATION AND FOR HIS LEVEL OF INTEGRITY AND INDEPENDENCE  
17 IS THAT WHILE HE WAS A REPUBLICAN FROM AN AREA OF THE STATE  
18 THAT VOTED HEAVILY REPUBLICAN, HE MAINTAINED HIS INDEPENDENCE  
19 IN THE LEGISLATURE AND VOTED HIS CONSCIENCE, WHICH WAS  
20 TYPICALLY THE AVERAGE WORKING PERSON.

21 Q. AND DID YOU ALSO TELL THE GOVERNOR THAT -- OR I GUESS THE  
22 GOVERNOR KNEW, OF ALL THE CANDIDATES YOU JUST LISTED, JUDGE  
23 DIAZ WAS THE ONLY ONE WITH EXPERIENCE AS AN APPELLATE JUDGE;  
24 RIGHT?

25 A. THAT'S RIGHT.

1 Q. OKAY.

2 A. AND GOVERNOR MUSGROVE KNEW HIM FROM THE LEGISLATURE.

3 Q. AND DID YOU ALL TALK ABOUT THE FACT THAT OLIVER DIAZ IS  
4 SOMEBODY WHO IS WELL LIKED AND GETS ALONG WITH PEOPLE AND WOULD  
5 WORK WELL IN THE KIND OF COLLEGIAL SETTING YOU HAVE ON AN  
6 APPELLATE COURT WHERE SEVERAL JUDGES WORK TOGETHER?

7 A. YES, SIR. AND I THINK -- I THINK THE GOVERNOR RELATED  
8 THAT EXPERIENCE WITH HIM AS WELL IN COMMITTEES AND THEY WOULD  
9 GO TO CONFERENCE. THE GOVERNOR WAS IN THE SENATE, AND DIAZ WAS  
10 IN THE HOUSE. AND THEY HAD -- YOU KNOW, THEY HAD SIMILAR  
11 INTERESTS. THE GOVERNOR HAD SIMILAR POLITICAL INTERESTS AS  
12 DIAZ, EDUCATION AND ISSUES LIKE THAT. AND THEY WORKED IN  
13 COMMITTEES AND CONFERENCES TOGETHER. AND I MEAN, HE RELATED  
14 THAT VERY SAME SENTIMENT.

15 Q. AND DID YOU ALL TALK ABOUT THE FACT THAT JUDGE DIAZ WHEN  
16 HE WAS IN THE LEGISLATURE WAS NOT ONLY A SUPPORTER OF EDUCATION  
17 BUT A DEFENDER OF CIVIL RIGHTS AND THE ENVIRONMENT?

18 A. YES.

19 Q. OKAY. NOW, DID MR. MINOR AGREE WITH THOSE SENTIMENTS THAT  
20 WE HAVE JUST TALKED ABOUT? DID HE EXPRESS HIMSELF ON ANY OF  
21 THOSE?

22 A. I -- AGAIN, I DON'T REMEMBER SPECIFIC VERBIAGE, BUT I  
23 THINK HE NODDED HIS AGREEMENT. AND HE -- JUST THE WORDS HE  
24 USED, IT WAS CLEAR THAT HE AGREED WITH THAT AND SUPPORTED THOSE  
25 VIEWS.

1 Q. NOW, YOU SAID EARLIER THAT YOU HAD SUPPORTED JUDGE DIAZ  
2 MORE THAN ANYONE ELSE IN THE ROOM IN TERMS OF TALKING ABOUT WHO  
3 WOULD MAKE THE BEST SUPREME COURT JUSTICE. AND YOU SAID  
4 MR. SCRUGGS PREFERRED A JUDGE NAMED MYERS, AND THAT MR. MINOR  
5 DID NOT ENDORSE ANY PARTICULAR CANDIDATE?

6 A. WELL, I DON'T -- I DON'T KNOW THAT IT WOULD BE COMPLETELY  
7 ACCURATE TO SAY HE DIDN'T ENDORSE ANY. I THINK HE WOULD HAVE  
8 ENDORSED OR DID ENDORSE ALL OF THE NAMES THAT WE HAD ON THE  
9 TABLE.

10 Q. OKAY. BUT IN FACT, I MEAN, MR. MINOR REALLY WENT ALONG  
11 WITH MR. SCRUGGS IN TERMS OF HIS PREFERENCE FOR JUDGE MYERS; IS  
12 THAT RIGHT?

13 A. HE -- MY IMPRESSION WAS HE WAS CLEARLY TRYING TO BE  
14 DEFERENTIAL TO SCRUGGS AND NOT GET IN A CROSSFIRE WITH --  
15 SCRUGGS WAS PRETTY VOCAL IN HIS SUPPORT OF JUDGE MYERS.

16 Q. BUT EVERYONE WHO WAS IN THAT MEETING LIKED OLIVER DIAZ AND  
17 RESPECTED HIM; RIGHT?

18 A. RIGHT.

19 Q. NOW, WHAT DID MR. MINOR TALK ABOUT MOST DURING THAT  
20 MEETING WITH GOVERNOR MUSGROVE?

21 A. WELL, THE THING THAT I -- THAT STICKS IN MY MIND MOST IS  
22 HE SEEMED TO BE MORE INTERESTED IN SOME GUY THAT HE WANTED TO  
23 GET PROMOTED ON THE HIGHWAY PATROL. HE HAD THE GUY'S RESUME IN  
24 HIS POCKET. AND HE WAS -- AND SCRUGGS AND I LAUGHED ABOUT THAT  
25 AFTERWARDS. WE ARE OVER HERE TALKING ABOUT A SUPREME COURT

1 JUSTICE APPOINTMENT, AND MINOR SEEMED TO BE MORE INTERESTED IN  
2 SOME BROTHER-IN-LAW OF A SISTER'S COUSIN'S AUNT OR SOMETHING  
3 WHO WAS ON THE HIGHWAY PATROL. BUT I MEAN, HE PARTICIPATED IN  
4 THE DISCUSSION ABOUT JUDGES, TOO.

5 Q. OKAY. BUT MR. MINOR TALKED MORE ABOUT THIS PERSON WHO HE  
6 THOUGHT SHOULD BE PROMOTED IN THE HIGHWAY PATROL THAN WHO OUGHT  
7 TO BE THE NEXT SUPREME COURT JUSTICE; IS THAT RIGHT?

8 A. I HAVE TO SAY THAT'S TRUE.

9 Q. OKAY. AND YOU SAID THAT GOVERNOR MUSGROVE HAD TALKED  
10 ABOUT HIS EXPERIENCE WITH JUDGE DIAZ WHEN JUDGE DIAZ -- WHEN  
11 THEY BOTH WERE IN THE LEGISLATURE. DID GOVERNOR MUSGROVE, FROM  
12 WHAT HE SAID, KNOW JUDGE DIAZ BETTER THAN ANY OF THE OTHER  
13 PEOPLE YOU ALL WERE DISCUSSING FOR THIS VACANCY?

14 A. HE CLEARLY DID.

15 Q. OKAY. AND DID HE INDICATE THAT HE LIKED JUDGE DIAZ AND  
16 ADMIRED HIS INDEPENDENCE?

17 A. HE DID. AND HE -- YOU KNOW, WE COMMENTED -- HE COMMENTED  
18 OR WE DISCUSSED ALL THE OTHER CANDIDATES. AND HE HAD  
19 RESERVATIONS ABOUT SOME. AND -- BUT MY IMPRESSION WAS HE  
20 CLEARLY LIKED DIAZ. BUT HE -- YOU KNOW, HE DIDN'T INDICATE WHO  
21 HE WAS GOING TO APPOINT.

22 Q. NOW, DID THE GOVERNOR TELL YOU THAT HE WANTED TO APPOINT  
23 SOMEONE -- WELL, LET ME ASK YOU THIS FIRST. THERE WAS A  
24 VACANCY BECAUSE JUSTICE SULLIVAN DIED. SOMEBODY WAS GOING TO  
25 BE APPOINTED. BUT THERE WAS GOING TO BE AN ELECTION FOR THAT

1 SEAT ABOUT EIGHT MONTHS LATER; RIGHT?

2 A. I DON'T REMEMBER THE TIME FRAME, BUT THERE WAS GOING TO BE  
3 AN ELECTION.

4 Q. THE APPOINTMENT WAS IN MARCH OF 2000. THE ELECTION WAS  
5 LATER THAT YEAR; RIGHT?

6 A. OKAY. YEAH.

7 Q. SO THE PERSON WHO WAS APPOINTED WAS GOING TO SERVE A FEW  
8 MONTHS AND THEN HAVE TO RUN FOR ELECTION?

9 A. YES, SIR.

10 Q. AND DID GOVERNOR MUSGROVE SAY HE WAS GOING TO APPOINT  
11 SOMEONE WHO WOULD BE -- WHO THE VOTERS WOULD LIKE AND WHO MIGHT  
12 HAVE A CHANCE AT GETTING ELECTED TO THAT SEAT?

13 A. SURE. I MEAN, WHILE GOVERNORS WOULD LIKE TO APPOINT  
14 JUDGES WHO ARE GOOD JUDGES, THEY ALSO HAVE ULTERIOR MOTIVES.  
15 AND ONE OF THEM OBVIOUSLY WAS THAT HE THOUGHT WHOEVER HE  
16 APPOINTED WOULD REFLECT ON HIM POLITICALLY. AND HE WANTED  
17 SOMEBODY WHO WAS FROM A POPULATED COUNTY WHO COULD HELP -- YOU  
18 KNOW, HELP ATTRACT VOTERS DOWN THERE. BECAUSE, YOU KNOW, IT  
19 WOULD HAVE REFLECTED POSITIVELY ON THE GOVERNOR WHEN HE DECIDED  
20 TO RUN FOR REELECTION.

21 Q. AND DID GOVERNOR MUSGROVE INDICATE THAT HE KNEW OLIVER  
22 DIAZ WAS LIKED AND RESPECTED IN THE AREA WHERE HE GREW UP AND  
23 HAD BEEN CHOSEN BY THE VOTERS TO REPRESENT THEM IN THE  
24 LEGISLATURE AND LATER ON THE APPEALS COURT?

25 A. HE -- HE EXPRESSED THAT IN SOME MANNER. I CAN'T REMEMBER

1 THE WORDS THAT HE USED. BUT I MEAN, HE CLEARLY ACKNOWLEDGED  
2 THAT DIAZ WAS -- HAD BEEN ELECTED DOWN THERE, WAS WELL LIKED  
3 DOWN THERE AND WAS WELL RESPECTED.

4 Q. AND DID HE BELIEVE THAT BECAUSE OF THOSE FACTS, JUDGE DIAZ  
5 MIGHT BE SOMEONE THE VOTERS WOULD WANT TO REPRESENT THEM ON THE  
6 SUPREME COURT?

7 A. I THINK HE OBVIOUSLY DID BECAUSE HE MADE THE APPOINTMENT.

8 Q. AND GOVERNOR MUSGROVE IS A DEMOCRAT, BY THE WAY; IS THAT  
9 RIGHT?

10 A. RIGHT.

11 Q. OKAY. NOW, EVEN THOUGH HE IS A DEMOCRAT, GOVERNOR  
12 MUSGROVE IS AN INDEPENDENT PERSON IN HIS OWN RIGHT. HE MAKES  
13 UP HIS OWN MIND, DOESN'T HE?

14 A. YES. HE IS SORT OF -- HE IS NOT A DOCTRINAIRE KIND OF  
15 GUY. HE IS KIND OF A MIDDLE OF THE ROAD -- I THINK THEY USED  
16 TO CALL IT SELF-PROFESSED MODERATE OR SOMETHING LIKE THAT. BUT  
17 HE WAS MORE OR LESS -- HE CALLED HIS OWN SHOTS.

18 Q. AND FROM YOUR EXPERIENCE, HE IS NOT GOING TO APPOINT  
19 SOMEONE JUST BECAUSE DANNY CUPIT OR PAUL MINOR OR SOMEBODY ELSE  
20 WANTS HIM TO, IS HE?

21 A. WELL, HE NEVER DID IN THE YEARS THAT I HAD SOMETHING TO DO  
22 WITH IT.

23 Q. AND AT THE END OF THE MEETING, DID HE INDICATE WHAT HE WAS  
24 GOING TO DO OR DID YOU HAVE ANY SENSE THAT HE HAD MADE UP HIS  
25 MIND?

1       A. WELL, I HAD LEARNED IN DEALING WITH HIM OVER THE YEARS  
2 THAT IT IS VERY HARD TO PREDICT WHAT HE IS GOING TO DO. I  
3 THINK -- I MEAN, MY SENSE WAS THAT GIVEN ALL THE CANDIDATES,  
4 DIAZ WAS CLEARLY THE ONE WHO EMERGED AS THE -- AS THE BEST  
5 CANDIDATE AND THE MOST LIKELY. BUT DEALING WITH GOVERNOR  
6 MUSGROVE -- AND I -- YOU KNOW, I HAVE HAD MEETINGS WITH HIM ON  
7 LEGISLATION AND APPOINTMENTS AND STUFF LIKE THAT. AND I NEVER  
8 LEFT A MEETING KNOWING OR CONFIDENT OF WHAT HE WAS GOING TO DO.  
9 I WOULD FEEL THAT HE WAS GOING TO DO A, AND THEN I WOULD READ  
10 IN THE PAPER HE DID B. SO --

11       Q. NOW, YOU MENTIONED THAT THREE DAYS AFTER THIS MEETING,  
12 THERE WAS A PRESS CONFERENCE TO ANNOUNCE THE APPOINTMENT OF  
13 JUSTICE DIAZ THAT GOVERNOR MUSGROVE HAD. AND THEN I GUESS  
14 JUSTICE DIAZ ACTUALLY TOOK THE BENCH A FEW DAYS THEREAFTER.  
15 THIS -- JUSTICE SULLIVAN DIED ABOUT TWO WEEKS BEFORE JUSTICE  
16 DIAZ OFFICIALLY TOOK THE BENCH; IS THAT RIGHT?

17       A. IT WAS FAIRLY QUICK.

18       Q. OKAY. AND YOU ALL OBVIOUSLY HAD THE MEETING AFTER JUSTICE  
19 SULLIVAN HAD DIED?

20       A. SURE.

21       Q. AND YOU URGED THE GOVERNOR TO MOVE QUICKLY IN MAKING A  
22 DECISION, DIDN'T YOU?

23       A. YEAH. MY EXPERIENCE WAS THAT THE LONGER YOU LET AN  
24 APPOINTMENT LIKE THAT LINGER, THE MORE PEOPLE WHO WOULD BE  
25 INTERESTED IN IT AND THE MORE PEOPLE WHO WOULD BE DISAPPOINTED

1 IN NOT GETTING IT AND WOULD THEN BE MAD AT THE -- AT THE  
2 GOVERNOR.

3 Q. NOW, WAS THERE ANYTHING SAID IN ANY OF YOUR DISCUSSIONS  
4 WITH PAUL MINOR THAT OLIVER DIAZ WAS GOING TO PAY PAUL BACK FOR  
5 ANY SUPPORT OR ENDORSEMENT BY VOTING A PARTICULAR WAY IN A  
6 CASE?

7 A. NO.

8 Q. OKAY. NOW, IF THERE WAS A DECISION OF THE COURT OF  
9 APPEALS THAT WAS RENDERED ON MARCH 14TH AND THEN JUSTICE DIAZ  
10 WENT TO THE SUPREME COURT ON MARCH 15TH, IS THERE ANYTHING TO  
11 YOU THAT INDICATES THIS DECISION WAS SOME SORT OF PAYBACK TO  
12 MR. MINOR?

13 A. NOT ONLY -- NO. THE ANSWER TO THAT IS NO. NOT ONLY WAS  
14 NOTHING EVER SAID THAT INDICATED THAT, I DON'T BELIEVE BASED ON  
15 WHAT I --

16 MS. MORGAN: OBJECTION, YOUR HONOR.

17 THE COURT: SUSTAINED. NEXT QUESTION.

18 BY MR. MCDUFF:

19 Q. YOU ARE FAMILIAR -- HOW LONG HAVE YOU BEEN PRACTICING LAW?

20 A. ABOUT 35 YEARS.

21 Q. OKAY. YOU STARTED OUT -- WHERE DID YOU START OUT WORKING?

22 A. I WORKED -- MY FIRST YEAR, I HAD A FELLOWSHIP TO WORK FOR  
23 A LEGAL SERVICES PROGRAM HERE IN JACKSON. AND THEN I WENT TO  
24 WORK FOR A LABOR LAWYER AND WORKED WITH HIM FOR SEVERAL YEARS.  
25 AND THEN WE LEFT AND FORMED OUR OWN FIRM SOMETIME IN THE MID

1 '70S.

2 Q. OKAY. SO YOU STARTED OUT WITH THE LEGAL SERVICES PROGRAM  
3 FOR POOR PEOPLE, AND YOU BASICALLY REPRESENTED WORKING PEOPLE  
4 IN YOUR PRACTICE OVER THE YEARS?

5 A. RIGHT.

6 Q. AND HAVE YOU DONE WORK AT BOTH THE TRIAL LEVEL AND IN  
7 APPELLATE COURTS?

8 A. YES, SIR.

9 Q. AND YOU HAVE DONE A LOT OF CASES BEFORE THE MISSISSIPPI  
10 SUPREME COURT?

11 A. WELL, NOT A LOT. I HAVE DONE -- I HAVE DONE SOME.

12 Q. AND HAVE YOU DONE APPELLATE CASES IN OTHER APPELLATE  
13 COURTS? IN THE FEDERAL SYSTEM, FOR EXAMPLE?

14 A. RIGHT.

15 Q. OKAY. ARE YOU AWARE, MR. CUPIT, THAT APPELLATE DECISIONS  
16 ARE GENERALLY THE PRODUCT OF SEVERAL MONTHS OF DISCUSSION AND  
17 REVIEW OF OPINIONS AND DRAFTING OF OPINIONS BY THE APPELLATE  
18 JUDGES?

19 MS. MORGAN: OBJECTION, YOUR HONOR.

20 THE COURT: SUSTAINED. TO THE FORM OF THE QUESTION,  
21 MR. MCDUFF. YOU ASKED HIM TO ASSUME SOME FACTS HERE.

22 MR. MCDUFF: OKAY.

23 THE COURT: YOU NEED TO ASK HIM --

24 MR. MCDUFF: ALL RIGHT.

25 THE COURT: -- TO ESTABLISH THOSE FOUNDATION FACTS.

1 BY MR. MCDUFF:

2 Q. MR. CUPIT, FROM YOUR EXPERIENCE, WHAT IS SORT OF -- HOW  
3 MUCH TIME IS INVOLVED IN THE -- IN THE APPELLATE PROCESS PRIOR  
4 TO THE TIME AN APPELLATE DECISION IS ANNOUNCED?

5 MS. MORGAN: OBJECTION. OUTSIDE THE SCOPE.

6 THE COURT: I'M GOING TO LET HIM ANSWER SO I CAN SEE  
7 WHERE WE'RE GOING AND SEE IF THAT'S STILL WITHIN THE SCOPE OF  
8 DIRECT.

9 A. WELL --

10 THE COURT: GO AHEAD.

11 A. -- THE TIME VARIES. IT -- I GUESS A LOT OF IT DEPENDS ON  
12 HOW BUSY THE JUDGES ARE. BUT OBVIOUSLY, YOU KNOW, THEY HAVE TO  
13 MEET -- WELL, THEY GET THE BRIEFS. AND THEY READ THE BRIEFS.  
14 THERE IS ORAL ARGUMENT. THEY MEET AND DECIDE, YOU KNOW, WHO IS  
15 GOING WHERE ON THE VOTES ON THE CASE. AND THEN SOMEBODY IS  
16 ASSIGNED THE DUTY OF WRITING AN OPINION. AND THEN IT'S  
17 CIRCULATED AMONG THE JUDGES. AND THOSE WHO CAN SUPPORT IT,  
18 SIGN ON. THOSE WHO CAN'T EITHER -- EITHER WRITE A DISSENT OR  
19 JUST DON'T AGREE WITH THE MAJORITY OPINION. AND THEN IT'S --  
20 YOU KNOW, IT'S SENT TO PROOFREADERS WHERE THEY CHECK FOR  
21 GRAMMAR AND CITATIONS OF CASES. THERE IS A LOT OF CITES IN  
22 CASES. SO THEY HAVE TO CHECK THE CITES AND EVERYTHING. AND  
23 THEN ULTIMATELY IT IS SENT TO A TYPESETTER WHERE IT'S PUT IN  
24 PRINT AND PUBLISHED.

25 BY MR. MCDUFF:

1 Q. DO APPELLATE JUDGES IN YOUR EXPERIENCE GENERALLY MAKE UP  
2 THEIR MIND AND ANNOUNCE THEIR INTENTIONS TO THEIR COLLEAGUES  
3 WEEKS AND EVEN MONTHS PRIOR TO THE DECISION BEING ANNOUNCED TO  
4 THE PUBLIC?

5 MS. MORGAN: OBJECTION, YOUR HONOR.

6 THE COURT: ALL RIGHT. SUSTAINED.

7 BY MR. MCDUFF:

8 Q. AFTER JUSTICE DIAZ WAS APPOINTED, HE RAN FOR ELECTION;  
9 RIGHT?

10 A. RIGHT.

11 Q. AND OBVIOUSLY WAS ELECTED TO THE SEAT?

12 A. RIGHT.

13 Q. NOW, THE PROSECUTOR EARLIER BROUGHT OUT THE FACT THAT YOU  
14 HAD SUPPORTED JUSTICE DIAZ. AND I WANT TO FOLLOW-UP ASKING YOU  
15 THIS. YOU'RE A LONG-TIME DEMOCRAT?

16 A. YES.

17 Q. OKAY. AND YOU SERVED ON THE DEMOCRATIC EXECUTIVE  
18 COMMITTEE FOR MANY YEARS IN MISSISSIPPI?

19 A. YES.

20 Q. AND YOU HAVE SERVED UNDER A NUMBER OF CHAIRMEN. AARON  
21 HENRY. IN FACT, YOU WERE LATER A CHAIRMAN YOURSELF, WEREN'T  
22 YOU?

23 MS. MORGAN: I OBJECT TO THIS WHOLE LINE. I DON'T  
24 UNDERSTAND WHAT THE WITNESS' POLITICAL AFFILIATION HAS TO DO  
25 WITH ANYTHING.

1 MR. MCDUFF: YOUR HONOR -- I'M SORRY.

2 THE COURT: I'M GOING TO LET YOU ASK THE QUESTIONS.  
3 I THINK I KNOW WHERE YOU'RE GOING.

4 MR. MCDUFF: OKAY.

5 THE COURT: SO WE WILL SEE HOW FAST YOU GET THERE.

6 MR. MCDUFF: OKAY.

7 BY MR. MCDUFF:

8 Q. AS A LONG-TIME DEMOCRAT, WHY WOULD YOU SUPPORT OLIVER  
9 DIAZ, WHO HAD BEEN A REPUBLICAN IN THE LEGISLATURE?

10 A. WELL, IT WAS NOT EASY. I THOUGHT IT SENT A GOOD MESSAGE  
11 TO SHOW BY PARTISANSHIP IN JUDICIAL APPOINTMENTS. AND HE  
12 EXHIBITED A LEVEL OF INDEPENDENCE AND INTEGRITY WHICH I THOUGHT  
13 WOULD MAKE HIM A GOOD JUDGE DESPITE THE FACT THAT HE WAS A  
14 REPUBLICAN.

15 Q. AND YOU HAD -- AND JUST TO FINISH UP A POINT, I THINK,  
16 THAT MAY HAVE GOTTEN INTERRUPTED. YOU YOURSELF HAVE BEEN  
17 CHAIRMAN OF THE MISSISSIPPI DEMOCRATIC PARTY IN THE PAST;  
18 RIGHT?

19 A. YES, SIR.

20 Q. OKAY. AND WHY DID YOU SUPPORT JUDGE DIAZ IN HIS ELECTION  
21 CONTEST IN NOVEMBER?

22 A. FOR THE SAME REASON. HE, I THOUGHT, WAS A GOOD JUDGE. HE  
23 WAS A CONSCIENTIOUS JUDGE AND A FAIR JUDGE. AND I THINK THAT'S  
24 ALL ONE SHOULD EXPECT OF A JUDGE IS TO SORT OF -- IS TO TRY TO  
25 BE FAIR AND KEEP THE PLAYING FIELD LEVEL.

1 Q. AND WHY DID YOU CONTRIBUTE MONEY TO HIS CAMPAIGN?

2 THE COURT: MR. MCDUFF, I ALLOWED THE WITNESS TO  
3 ANSWER THE FIRST PART OF THE QUESTION AS TO WHY HE MADE THE  
4 RECOMMENDATION TO THE GOVERNOR. ANYTHING BEYOND THAT IS BEYOND  
5 THE SCOPE OF DIRECT EXAMINATION.

6 MR. MCDUFF: OKAY. THANK YOU, YOUR HONOR. ONE  
7 MOMENT, YOUR HONOR.

8 (PAUSE)

9 MR. MCDUFF: THANK YOU, MR. CUPIT.

10 THE COURT: NOT YET. ANYTHING ELSE, MR. MCDUFF?

11 MR. MCDUFF: NO. I'M SORRY.

12 THE COURT: ALL RIGHT. NEXT?

13 MR. LOWELL: YES, YOUR HONOR. THANK YOU.

14 THE COURT: ALL RIGHT. CROSS-EXAMINATION.

15 CROSS-EXAMINATION

16 BY MR. LOWELL:

17 Q. GOOD MORNING, MR. CUPIT. I AM ABBE LOWELL. I REPRESENT  
18 PAUL MINOR.

19 A. HI.

20 Q. MS. MORGAN ASKED YOU QUESTIONS THAT STARTED YOUR TESTIMONY  
21 MORE OR LESS AT A MEETING THAT OCCURRED IN THE SPRING OF 2000.  
22 BUT IN REALITY, THE PARTICIPANTS AT THAT MEETING -- YOU,  
23 MR. MINOR, GOVERNOR MUSGROVE, MR. SCRUGGS -- HAD KNOWN EACH  
24 OTHER FOR SOMETIME BEFORE THAT?

25 A. RIGHT.

1 Q. HOW LONG HAD YOU KNOWN MR. MINOR?

2 A. MR. MINOR?

3 Q. YES, SIR.

4 A. I GUESS SINCE -- SINCE WE GOT OUT OF LAW SCHOOL. I KNEW  
5 HIS FATHER WHEN I WAS IN COLLEGE.

6 Q. I MEAN, IT HAD BEEN DECADES THAT YOU HAD KNOWN EACH OTHER;  
7 RIGHT?

8 A. YES.

9 Q. AND OVER THE COURSE OF THAT, YOU HAD COME TO KNOW HIM AND  
10 HE HAD COME TO KNOW YOU; RIGHT?

11 A. RIGHT.

12 Q. I THINK YOU MENTIONED YOUR CAREER, INCLUDING YOUR WORK  
13 PRIOR TO SETTING UP YOUR OWN FIRM, FOR EXAMPLE, INVOLVING LEGAL  
14 SERVICES COURT. YOU KNEW MR. MINOR FROM THAT EFFORT AS WELL?

15 A. RIGHT. HE WAS ON A BOARD OF A LEGAL SERVICES PROGRAM IN  
16 SOUTH MISSISSIPPI.

17 Q. IN FACT, HE WAS THE FOUNDER OF THAT PROGRAM; RIGHT?

18 A. I DIDN'T KNOW IF HE WAS A FOUNDER, BUT I KNEW HE HAD BEEN  
19 AFFILIATED WITH IT FOR YEARS AND YEARS.

20 Q. AND WHAT DID THAT PROGRAM THAT YOU AND HE WORKED ON, WHAT  
21 DID IT DO?

22 MS. MORGAN: OBJECTION, YOUR HONOR. OUTSIDE THE  
23 SCOPE.

24 THE COURT: I SUSTAIN THE OBJECTION AS TO GOING INTO  
25 ALL THE DETAILS OF THE PROGRAM. I THINK WE HAVE ESTABLISHED

1 THAT HE HAS KNOWN HIM FOR YEARS. ALL RIGHT.

2 BY MR. LOWELL:

3 Q. IN THE TIME THAT YOU GOT TO KNOW MR. MINOR, YOU KNEW HIM  
4 TO BE SOMEBODY THAT WAS VERY COMMITTED TO CAUSES?

5 A. YES.

6 Q. VERY PASSIONATE ABOUT THE THINGS THAT HE BELIEVED IN?

7 A. YES.

8 Q. YOU KNEW HIM TO BE A TRIAL LAWYER?

9 A. YES.

10 Q. SOMEBODY WHO ACTUALLY WENT TO TRIAL ON BEHALF OF HIS  
11 CLIENTS; CORRECT?

12 A. RIGHT.

13 Q. NOW, OVER THE TIME THAT YOU KNEW MR. MINOR, YOUR  
14 ACTIVITIES WITH HIM WEREN'T JUST OVER POLITICS. IT WAS  
15 SOMETIMES OVER THE CASES THAT YOU ALL WERE WORKING ON AND  
16 ISSUES THAT AFFECTED PEOPLE THAT YOU REPRESENTED; IS THAT  
17 RIGHT?

18 A. YEAH. I MEAN, WE -- WE GOT CLOSELY AFFILIATED IN  
19 LITIGATION BECAUSE WE BOTH HAD A LARGE NUMBER OF ASBESTOS CASES  
20 ON THE COAST FROM PEOPLE WHO HAD BEEN INJURED AT INGALLS  
21 SHIPYARD FROM BREATHING ASBESTOS. AND WE BOTH LITIGATED  
22 AGAINST THOSE DEFENDANTS FOR -- AGAIN, FOR DECADES. I MEAN --  
23 AND WE GOT TO KNOW EACH OTHER PRETTY WELL DURING THAT.

24 Q. YOU GOT TO KNOW HIM AS A MAN WHO WORKED VERY HARD ON HIS  
25 CASES?

1 A. YES.

2 Q. SOMEBODY WHO DIDN'T TAKE THINGS FOR GRANTED WHEN HE WAS  
3 WORKING ON A CASE?

4 A. RIGHT.

5 Q. IN FACT, THERE WERE EXCHANGES BETWEEN THE TWO OF YOU  
6 OUTSIDE OF JUST TALKING ABOUT POLITICS --

7 A. OH, SURE.

8 Q. -- IN WHICH YOU ALL ACTUALLY CONFERRED ON LEGAL ISSUES AND  
9 STRATEGIES; CORRECT? IT WASN'T JUST POLITICS?

10 MS. MORGAN: OBJECTION, YOUR HONOR. WE ARE WAY, WAY  
11 OUT OF THE SCOPE OF DIRECT AT THIS POINT.

12 THE COURT: COUNSEL, I AGREE. I THINK -- YOU WANT TO  
13 ESTABLISH HOW WELL HE KNOWS HIM. SO YOU'VE GOTTEN IT  
14 ESTABLISHED. AND YOU CAN GENERALLY HIT THE HIGH POINTS WITHOUT  
15 GOING TO SPECIFICS.

16 MR. LOWELL: OKAY. LET ME MOVE ON TO A DIFFERENT  
17 AREA THEN.

18 BY MR. LOWELL:

19 Q. YOU THEN TALKED ABOUT BEING INVOLVED IN THE PROCESS OF  
20 MEETING WITH GOVERNOR MUSGROVE OVER THE SELECTION OF JUDGES  
21 WHEN THERE WAS A VACANCY; RIGHT?

22 A. RIGHT.

23 Q. THIS WASN'T THE ONLY TIME THAT YOU HAD BEEN INVOLVED IN  
24 THE PROCESS OF RECOMMENDING PEOPLE FOR OFFICE, WHETHER THEY BE  
25 JUDGES OR OTHERWISE; IS THAT RIGHT?

1 A. RIGHT.

2 Q. COULD YOU DESCRIBE HOW OFTEN YOU HAVE DONE THAT?

3 A. YOU MEAN ME PERSONALLY OR ME IN CONJUNCTION WITH PAUL?

4 Q. WELL, JUST YOU TO BEGIN WITH.

5 A. WELL, BACK IN THE '70S, I HAD WORKED IN THE CARTER  
6 CAMPAIGN. AND PRESIDENT CARTER HAD SET UP WHAT'S CALLED A  
7 CIRCUIT COURT NOMINATING COMMISSION, WHERE HE RECEIVED  
8 NOMINATIONS. HE WAS TRYING TO DEPOLITICIZE THE JUDICIAL  
9 APPOINTMENT PROCESS ON THE FEDERAL LEVEL. AND --

10 MS. MORGAN: YOUR HONOR, I OBJECT. WE ARE TALKING  
11 ABOUT STATE COURT JUDGES AND THE GOVERNOR OF MISSISSIPPI, NOT  
12 PRESIDENT CARTER IN THE '70S. IT'S OUTSIDE THE SCOPE.

13 THE COURT: I'M GOING TO LET YOU REDIRECT ON THAT.  
14 COUNSEL, AGAIN, LET'S HIT THE HIGH POINTS --

15 MR. LOWELL: I AM TRYING, YOUR HONOR --

16 THE COURT: -- TO ESTABLISH THAT --

17 MR. LOWELL: OKAY.

18 THE COURT: -- WHAT HIS BACKGROUND HAS BEEN IN THIS  
19 AREA. AND I WILL LET YOU DO THAT TO SOME DEGREE, BUT LET'S GO  
20 TO THE HIGH POINTS AND NOT TO SPECIFICS.

21 MR. LOWELL: I WILL NARROW IT BY A LITTLE BIT MORE OF  
22 A SELECTIVE QUESTION THEN.

23 THE WITNESS: AND I WILL TRY TO BE SHORTER.

24 THE COURT: WELL, YOU WERE ASKING HIM ABOUT -- THE  
25 LAST ONE, ABOUT HIS INVOLVEMENT ON THE COMMISSION TO RECOMMEND

1 TO THE FEDERAL BENCH OR TO PRESIDENT CARTER. SO GO AHEAD. BUT  
2 LET'S --

3 MR. LOWELL: THANK YOU, YOUR HONOR.

4 BY MR. LOWELL:

5 Q. I'M TRYING TO ESTABLISH IF THIS IS A TRUE STATEMENT, AND  
6 YOU CAN TELL ME IF IT ISN'T.

7 A. OKAY.

8 Q. IS THAT THIS EVENT MS. MORGAN ASKED YOU ABOUT WASN'T THE  
9 ONLY TIME THAT YOU HAD BEEN INVOLVED IN MAKING RECOMMENDATIONS  
10 OR BEING INVOLVED IN TRYING TO GET JUDGES TO EITHER RUN FOR  
11 OFFICE, SUPPORT THEM OR GET THEM APPOINTED; CORRECT?

12 A. THAT'S CORRECT.

13 Q. OKAY. NOW, IN THIS PARTICULAR INSTANCE, YOU WERE THERE  
14 WITH THE GOVERNOR AND OTHER ATTORNEYS. AND YOU HAD COLLECTED  
15 NAMES OF JUDGES. AND YOU WERE PUTTING FORWARD THOSE NAMES.  
16 WHAT WAS YOUR GOAL IN BEING INVOLVED WITH GOVERNOR MUSGROVE?  
17 WHAT WERE YOU TRYING TO ACHIEVE?

18 A. WELL, I WAS TRYING TO HELP HIM MAKE -- I WAS TRYING TO GET  
19 SOME NAMES THAT HE COULD FEEL COMFORTABLE WITH IN NOMINATING OR  
20 NAMING TO THAT VACANCY.

21 Q. HAD HE BEEN SOLICITING NAMES FROM OTHERS AS WELL AS  
22 YOURSELF?

23 A. I ASSUME HE HAD.

24 Q. NOW, WHEN YOU WERE PUTTING FORWARD THE NAMES OF PEOPLE  
25 THAT YOU HAD GATHERED, WHAT KIND OF JUDGE WERE YOU SEEKING?

1 WHAT WERE YOU TRYING TO ACHIEVE? WERE YOU TRYING TO GET A  
2 JUDGE WHO WAS GOING TO DO YOU A FAVOR IN RETURN?

3 A. NO. MY MOTIVATION WAS TRYING TO LEVEL THE PLAYING FIELD.

4 Q. WHAT DOES THAT MEAN?

5 A. WELL, GOVERNOR FORDICE HAD MADE APPOINTMENTS WHEN HE WAS  
6 IN OFFICE WITH THE AVOWED PURPOSE OF GETTING PRO BUSINESS OR  
7 PRO OR ANTI TRIAL LAWYER OR ANTI TORT REFORM. HE WAS TRYING  
8 TO -- AND HE SAID THAT HE WAS MAKING APPOINTMENTS BASED ON A  
9 PRECONCEIVED AGENDA. I AND OTHERS LIKE PAUL AND SCRUGGS AND  
10 OTHER LAWYERS WHO WERE INVOLVED HEAVILY IN LITIGATION WERE  
11 TRYING TO BALANCE THAT OUT WITH JUDGES WHO WOULD ENSURE  
12 INDEPENDENCE, WHO WOULD -- WHO WOULD NOT COME WITH A PRO THIS  
13 OR PRO THAT OR ANTI THIS OR ANTI THAT. BUT WHO WOULD BE FAIR  
14 AND OBJECTIVE AND INDEPENDENT AND MAKE THE COURTROOM A LEVEL  
15 BATTLEGROUND.

16 Q. AND AT NO POINT IN YOUR ACTIONS WHEN YOU WERE DOING THIS  
17 FOR THE GOVERNOR OR FOR OTHERS DID YOU EVER SEEK TO DO THIS SO  
18 THAT WHOEVER THE GOVERNOR APPOINTED WOULD THEN BE BEHOLDING TO  
19 YOU IN A PARTICULAR CASE IN A PARTICULAR TIME?

20 A. I DID NOT.

21 Q. AND SO ALL THE JUDGES THAT YOU WERE PUTTING FORWARD THAT  
22 DAY, DID THEY MEET THAT CRITERIA THAT YOU JUST SAID? DID THEY  
23 MEET THE QUALIFICATIONS?

24 A. I WOULD SAY TO SOME DEGREE THEY ALL DID, BUT I WAS NOT  
25 PERSONALLY RECOMMENDING SOME OF THOSE PEOPLE. THEY WERE NAMES

1 THAT OTHERS HAD RECOMMENDED TO ME.

2 Q. AND YOU WERE RECOMMENDING -- AT THIS MEETING AND  
3 THEREAFTER, YOU WERE RECOMMENDING JUSTICE DIAZ?

4 A. YES.

5 Q. ALL RIGHT. AND YOUR INVOLVEMENT THAT DAY WAS NOT ALSO IN  
6 A VACUUM. IT WASN'T A SOLE EVENT. YOU HAD BEEN VERY ACTIVE IN  
7 SUPPORTING BY WAY OF RECOMMENDATION OR CONTRIBUTIONS JUDGES IN  
8 THE STATE OF MISSISSIPPI; RIGHT?

9 A. RIGHT.

10 Q. I MEAN, IT WASN'T -- I GUESS IT WASN'T OUT OF THE BLUE  
11 THAT THE GOVERNOR ASKED YOU FOR YOUR INVOLVEMENT. I TAKE IT  
12 THAT HE WAS AWARE OF YOUR INVOLVEMENT IN THESE KINDS OF  
13 ACTIONS; CORRECT?

14 A. YES.

15 Q. AND AGAIN, WHEN YOU WERE INVOLVED IN THE SYSTEM OF  
16 MISSISSIPPI TO SUPPORT JUDGES, THAT WAS BECAUSE JUDGES HAD TO  
17 RUN FOR OFFICE. SO YOU HAD TO SUPPORT AND PROVIDE THEM FUNDS?

18 A. SURE.

19 Q. AND WHEN YOU WERE DOING THAT, WHEN YOU WERE PROVIDING  
20 FUNDS FOR JUDGES, INCLUDING SUPREME COURT, WHAT WAS YOUR GOAL  
21 IN THAT? WHAT WAS YOUR GOAL IN SUPPORTING THOSE JUDGES?

22 MS. MORGAN: OBJECTION, YOUR HONOR. OUTSIDE THE  
23 SCOPE. IT'S IRRELEVANT.

24 THE COURT: HE'S ASKING WHAT'S THE GOAL IN MAKING THE  
25 RECOMMENDATION TO THE SUPREME COURT.

1 MS. MORGAN: I THOUGHT HE SAID WHAT WAS HIS GOAL IN  
2 PROVIDING FUNDS IN HELPING JUDGES BE ELECTED.

3 MR. LOWELL: WELL, I WILL ADD ONE QUESTION TO IT.

4 THE COURT: OKAY.

5 MR. LOWELL: I THINK -- I'M SORRY, YOUR HONOR?

6 THE COURT: IF YOU ARE ASKING FOR FUNDS, THEN I  
7 SUSTAIN THE OBJECTION.

8 MR. LOWELL: ALL RIGHT.

9 BY MR. LOWELL:

10 Q. MR. MCDUFF ASKED YOU THAT YOU UNDERSTOOD, FOR EXAMPLE, IN  
11 THE APPOINTMENT OF JUSTICE DIAZ FOR THE VACANCY, THERE WOULD BE  
12 AN ELECTION; CORRECT?

13 A. RIGHT.

14 Q. AND THAT HE WOULD HAVE TO RUN FOR OFFICE AND BE ELECTED BY  
15 THE PEOPLE OF THE STATE OF MISSISSIPPI; RIGHT?

16 A. RIGHT.

17 Q. AND THAT WAS GOING TO REQUIRE FUNDS; CORRECT?

18 A. RIGHT.

19 Q. AND YOU ALSO SUPPORTED HIM IN THAT ENDEAVOR?

20 A. RIGHT.

21 Q. OKAY. WHY DID YOU DO THAT?

22 THE COURT: I SUSTAIN THE OBJECTION TO THAT.

23 BY MR. LOWELL:

24 Q. GOING BACK TO THIS MEETING THEN. AS I UNDERSTOOD IT, YOU  
25 SAID THAT YOU AND MR. MINOR WERE THERE AND HAD COLLECTED NAMES

1 AND GOVERNOR MUSGROVE AND THEN RICHARD SCRUGGS?

2 A. YES.

3 Q. AND YOU KNEW MR. SCRUGGS AS WELL?

4 A. YES.

5 Q. MR. SCRUGGS, AS I UNDERSTOOD YOUR TESTIMONY, WAS PUTTING  
6 FORWARD THE NAME OF SOMEBODY AS WELL FOR THE GOVERNOR TO  
7 CONSIDER?

8 A. RIGHT.

9 Q. AND HIS CANDIDATE WAS WHO?

10 A. A WILLIAM MYERS WHO WAS A CHANCELLOR DOWN THERE.

11 Q. AND DID MR. SCRUGGS HAVE A CONNECTION WITH JUDGE MYERS?  
12 HE WAS IN THE SAME TOWN, YOU SAID?

13 A. HE WAS IN THE SAME TOWN. AND I, FRANKLY, FELT LIKE THAT  
14 HE -- JUDGE MYERS HAD HANDLED THE TOBACCO LITIGATION. AND  
15 SCRUGGS WAS SORT OF THE LEAD GUY IN THE TOBACCO LITIGATION.

16 Q. SO MR. SCRUGGS WAS PUTTING FORWARD THE NAME OF THE LAWYER  
17 WHO WAS THE JUDGE WHO HEARD THE LITIGATION THAT MR. SCRUGGS WAS  
18 THE LEAD LAWYER FOR?

19 A. YES.

20 Q. I SEE. AND THEN YOU WERE, AS I SAID -- AS YOU SAID,  
21 ARTICULATING MR. -- IN THAT CASE, JUDGE DIAZ'S POINT OF VIEW.  
22 AND YOU SAID YOU WENT THROUGH ALL THE JUDGES' NAMES THAT DAY;  
23 CORRECT?

24 A. RIGHT.

25 Q. IT WASN'T THAT MR. SCRUGGS GOT TO SAY, I WANT MYERS; AND

1 YOU GOT TO SAY, I WANT DIAZ; AND THAT WAS IT. BUT YOU AND THE  
2 GOVERNOR AND MR. SCRUGGS AND MR. MINOR WENT THROUGH THE ENTIRE  
3 LIST, AS I UNDERSTAND WHAT HAPPENED?

4 A. RIGHT.

5 Q. AND THE GOVERNOR LISTENED AND GAVE YOU INPUT, SUCH AS WHAT  
6 MR. MCDUFF AND YOU DISCUSSED, AS TO THIS IS THE ATTRIBUTES OF  
7 JUSTICE DIAZ; THIS IS THE ATTRIBUTES OF JUSTICE MYERS. AND I  
8 SUSPECT YOU DID THAT ABOUT THE OTHERS?

9 A. YES.

10 Q. NOW, BEFORE GOING TO SEE THE GOVERNOR THAT DAY, DID YOU  
11 HAVE A CALL WITH MR. MINOR WHERE HE SAID, LOOK, YOU'VE GOT TO  
12 GO TO THIS PLACE? AND YOU'VE GOT TO PUT FORWARD THE NAME OF  
13 JUSTICE DIAZ. IT'S REALLY IMPORTANT TO ME. YOU'VE GOT TO DO  
14 IT. DID ANYTHING LIKE THAT EVER HAPPEN?

15 A. NO.

16 Q. AT THE MEETING, DID MR. MINOR SHOW SOME SENSE OF URGENCY  
17 THAT HE REALLY NEEDED JUSTICE DIAZ TO BE APPOINTED BY THE  
18 GOVERNOR THAT DAY? DID THAT COME OUT AT THAT MEETING?

19 A. NO. HE DID NOT EXHIBIT THAT.

20 Q. AFTER THE MEETING -- AFTER YOU GUYS LEFT, DID HE CALL YOU  
21 AND SAY, LOOK, I DON'T KNOW WHAT INFLUENCE YOU HAVE, DANNY, BUT  
22 YOU'VE GOT TO MAKE SURE THAT THE GOVERNOR APPOINTS JUSTICE  
23 DIAZ? IT REALLY IS IMPORTANT TO ME. DID ANYTHING LIKE THAT  
24 HAPPEN?

25 A. NO.

1 Q. AND AFTER THAT MEETING, YOU LEFT. DIDN'T HAVE ANY OF  
2 THOSE CONVERSATIONS. AND THE GOVERNOR MADE THE DECISION HE  
3 MADE. IS THAT WHAT HAPPENED?

4 A. RIGHT.

5 THE COURT: ONE SECOND.

6 (PHONE RINGING AT THE BENCH)

7 THE COURT: WAS ANYBODY EXPECTING A TELEPHONE CALL?

8 [LAUGHTER] THIS EQUIPMENT HAS THE CAPACITY TO ALLOW US TO CALL  
9 OUT AND SOMEONE TO CALL IN. NOW, THIS IS NOT MY REGULAR  
10 COURTROOM, AS I THINK I MIGHT HAVE TOLD YOU ALL BEFORE, WHICH  
11 IS WHY TWANA WORKS OUR EQUIPMENT HERE. BECAUSE MY COURTROOM IS  
12 ON THE FIRST FLOOR, AND I HAVE A DIFFERENT SET OF ELECTRONIC  
13 EQUIPMENT DOWN THERE. BECAUSE LATER WE ARE BUILDING A NEW  
14 COURTHOUSE. AND IN ABOUT FOUR YEARS, WE WILL HAVE THIS  
15 COURTHOUSE CONSTRUCTED. AND WHEN WE CONSTRUCT THE COURTHOUSE,  
16 THEN WE INTEND TO STOCK THE COURTHOUSE WITH DIFFERENT KINDS OF  
17 ELECTRONICS AND TECHNOLOGY. SO THAT WE COULD GET A FULL  
18 UNDERSTANDING AS TO WHAT IS THE BEST TECHNOLOGY, JUDGE BARBOUR  
19 HAS ONE TYPE OF TECHNOLOGY IN THIS COURTROOM AND I HAVE A  
20 DIFFERENT TYPE IN MY COURTROOM SO THAT WE ALL MAY GAIN  
21 EXPERIENCE AS TO THE DIFFERENT KIND OF TECHNOLOGY AND WHAT  
22 BENEFITS THAT IT HAS. SO I HAVE A DIFFERENT KIND OF  
23 PRESENTATION EQUIPMENT IN MY COURTROOM. NOW, I DO HAVE THE  
24 CAPACITY TO CALL OUT TO MAKE TELECONFERENCES AND STUFF LIKE  
25 THAT. AND THERE IS A TELEPHONE NUMBER TO MY COURTROOM, WHICH I

1 NEVER GIVE OUT BECAUSE I NEVER WANT MY TELEPHONE TO RING IN THE  
2 COURTROOM. I HAVE NO IDEA WHY THIS TELEPHONE RANG JUST THEN.  
3 SO I DON'T KNOW WHAT THE CIRCUMSTANCE IS CONCERNING THIS  
4 EQUIPMENT AND WHY THE TELEPHONE RANG. SO I APOLOGIZE FOR THIS.  
5 WE WILL TRACK IT DOWN AND FIGURE OUT LATER ON WHAT THE  
6 CIRCUMSTANCE IS THAT CAUSED THIS TELEPHONE TO RING IN THE  
7 COURTROOM. BUT THERE IS A TELEPHONE NUMBER TO MY TELEPHONE  
8 DOWNSTAIRS IN MY COURTROOM THAT WOULD ALLOW ME TO RECEIVE A  
9 CALL IF I WERE SO INCLINED. I AM NOT SO INCLINED. SO I DID  
10 NOT GIVE THAT NUMBER OUT TO ANYBODY. THAT DOESN'T MEAN,  
11 HOWEVER, THAT SOMEBODY COULDN'T CALL THE WRONG NUMBER. WE  
12 NEVER HAD IT. AND SINCE THERE IS THIS POSSIBILITY AND SINCE I  
13 HAVE NEVER HAD IT HAPPEN IN MY COURTROOM, THEN I WILL MAKE THE  
14 ADJUSTMENT IN MY COURTROOM TO BE SURE THAT IT NEVER CAN HAPPEN.  
15 BUT ANYWAY, LET ME APOLOGIZE TO YOU, AND WE WILL CONTINUE. AND  
16 I WILL DETERMINE LATER ON WHAT HAPPENED HERE. BUT WE WILL MOVE  
17 ON.

18 MR. LOWELL: THANK YOU, YOUR HONOR. I DIDN'T PRESS A  
19 BUTTON EITHER.

20 BY MR. LOWELL:

21 Q. JUST TO FINISH THAT LINE, PLEASE, MR. CUPIT. SO AT THE  
22 MEETING WITH THE GOVERNOR, IT WAS DISCUSSED THAT JUSTICE DIAZ  
23 HAD BEEN A STATE LEGISLATOR; CORRECT?

24 A. RIGHT.

25 Q. THAT HE HAD BEEN ON AND PRESENTLY WAS ON THE COURT OF

1 APPEALS; RIGHT?

2 A. RIGHT.

3 Q. AND THAT NOW, HE, AMONG OTHERS, WERE BEING CONSIDERED BY  
4 THE SUPREME COURT?

5 A. RIGHT.

6 Q. OKAY. AND YOU WERE PUTTING FORWARD YOUR POSITION. AND I  
7 JUST WANTED TO CONCLUDE BECAUSE OF THE TELEPHONE CALL  
8 INTERRUPTION THAT AT NO TIME DID MR. MINOR SAY TO YOU, THE  
9 GOVERNOR OR MR. SCRUGGS IN YOUR PRESENCE, YOU'VE GOT TO DO THIS  
10 FOR ME. IT'S REALLY IMPORTANT. HE NEVER SAID THAT?

11 A. NO.

12 Q. NOW, EVEN THE FACT THAT YOU WERE PUTTING FORWARD SOMEBODY  
13 THEN AND MR. SCRUGGS WAS PUTTING FORWARD SOMEBODY THEN,  
14 MR. MINOR WAS THERE AND THE OTHER SITUATIONS THAT YOU AND HE  
15 HAVE BEEN IN, HAS MR. MINOR EVER SAID TO YOU, YOU'VE GOT TO DO  
16 SOMETHING, DANNY, OR SOMETHING BAD IS GOING TO HAPPEN TO YOU?  
17 HAS HE EVER DONE THAT?

18 A. WELL, MAYBE IN THE COURSE OF A --

19 MS. MORGAN: I OBJECT TO THE FORM OF THE QUESTION AND  
20 OUTSIDE THE SCOPE.

21 MR. LOWELL: I WILL REPHRASE THE QUESTION.

22 BY MR. LOWELL:

23 Q. IN THE CONTEXT OF THIS MEETING OR ANY OTHER, HAS MR. MINOR  
24 EVER THREATENED YOU IN ANY WAY?

25 A. NO.

1 Q. OKAY.

2 A. WE DISAGREED ON LEGAL STRATEGIES IN CASES. AND HE WOULD  
3 TELL ME I'M SCREWING IT UP. BUT HE NEVER THREATENED ME BECAUSE  
4 OF IT.

5 Q. RIGHT. YOU COULD DISAGREE AS LAWYERS, BUT HE HAS NEVER  
6 HEAVYHANDED OR THREATENED YOU?

7 A. NO.

8 MR. LOWELL: THAT'S ALL I HAVE, YOUR HONOR.

9 THE COURT: ALL RIGHT. NEXT?

10 MR. LUCAS: NO QUESTIONS, YOUR HONOR.

11 THE COURT: ALL RIGHT.

12 MR. CROSBY: NO QUESTIONS, YOUR HONOR.

13 THE COURT: REDIRECT.

14 REDIRECT EXAMINATION

15 BY MS. MORGAN:

16 Q. THERE WERE LOTS OF QUESTIONS ABOUT -- ON CROSS-EXAMINATION  
17 CONCERNING JUSTICE DIAZ'S QUALIFICATIONS DURING THE  
18 CONVERSATION THAT YOU HAD WITH GOVERNOR MUSGROVE. DID PAUL  
19 MINOR BRING UP THE FACT THAT HE HAD A CASE PENDING BEFORE  
20 JUSTICE -- JUDGE DIAZ IN HIS ROLE AS COURT OF APPEALS JUDGE AT  
21 THAT VERY TIME THAT Y'ALL WERE MEETING WITH THE GOVERNOR?

22 A. NO, MA'AM.

23 Q. DID YOU KNOW THAT HE HAD THAT CASE?

24 A. I DIDN'T. DID NOT.

25 Q. OKAY. AND BEFORE YOU WENT AND SUPPORTED JUDGE DIAZ WITH

1 THE GOVERNOR, HOW MANY OF HIS COURT OF APPEALS OPINIONS HAD YOU  
2 READ?

3 A. I DON'T HAVE ANY EARTHLY IDEA.

4 Q. HAD YOU READ ANY AT ALL?

5 A. I'M SURE I HAD READ SOME.

6 Q. ALL RIGHT. DO YOU RECALL TESTIFYING IN THE GRAND JURY  
7 THAT YOU HAD NOT READ ANY OF HIS COURT OF APPEALS OPINIONS?

8 A. NO.

9 Q. ALL RIGHT.

10 A. BUT IF I SAID THAT, LET ME TELL YOU THAT'S WHAT I MEANT  
11 THEN AND THAT'S WHAT I MEANT NOW.

12 Q. ALL RIGHT. SO YOU DIDN'T KNOW EVEN WHAT KIND OF A JUDGE  
13 OLIVER DIAZ HAD BEEN BECAUSE YOU HAD NEVER LOOKED AT ANY OF HIS  
14 OPINIONS IN THE COURT OF APPEALS, DID YOU?

15 A. THAT'S NOT TRUE. I KNEW WHAT KIND OF A JUDGE HE WOULD BE  
16 BECAUSE I KNEW WHAT KIND OF A PERSON HE WAS. I DIDN'T MAKE A  
17 RECOMMENDATION BASED ON THE TYPE OPINIONS SOMEBODY WOULD WRITE.  
18 I MADE -- PARTICULARLY WITH DIAZ, I MADE A RECOMMENDATION BASED  
19 ON HIM AS A PERSON, NOT ON, YOU KNOW --

20 Q. NOT AS --

21 A. -- HIS LIFESTYLE OR WHETHER HE VOTED THIS WAY OR THAT WAY.

22 Q. ALL RIGHT. SO YOU DID NOT MAKE YOUR RECOMMENDATION BASED  
23 ON HIS ABILITY TO INTERPRET THE LAW CORRECTLY?

24 A. WELL, I FELT HE -- SURE. I MEAN, THAT WAS PART OF IT.  
25 YOU KNOW, YOU HAVE TO HAVE THE INTELLIGENCE TO BE ABLE TO DO

1 THAT. BUT YOU'RE ASKING ME ABOUT OPINIONS. AND I'M TELLING  
2 YOU THAT I DID NOT EVER BASE AN OPINION ON ANY RECOMMENDATION  
3 FOR ANY JUDGE ON WHAT OPINIONS THEY WROTE.

4 Q. OKAY. NOW, YOU ARE A PLAINTIFFS' LAWYER; IS THAT RIGHT?  
5 MAINLY? OR --

6 A. PREDOMINANTLY, YEAH. I PREDOMINANTLY REPRESENT PLAINTIFFS  
7 OR UNION MEMBERS AND PEOPLE LIKE THAT.

8 Q. ALL RIGHT. ARE YOU A MEMBER OF THE MISSISSIPPI TRIAL  
9 LAWYERS ASSOCIATION?

10 A. YES, MA'AM.

11 Q. AND ARE YOU A MEMBER OF THE AMERICAN TRIAL LAWYERS  
12 ASSOCIATION?

13 A. PROBABLY.

14 Q. ALL RIGHT. AND PAUL MINOR AND RICHARD SCRUGGS ARE ALSO  
15 PLAINTIFFS' LAWYERS; IS THAT CORRECT?

16 A. YES, MA'AM. YES, MA'AM.

17 Q. ALL RIGHT. AND YOU WERE THERE WITH THE GOVERNOR NOT  
18 BECAUSE OF YOUR STATUS AS A DEMOCRAT, BUT BASICALLY ON BEHALF  
19 OF PLAINTIFFS' LAWYERS; ISN'T THAT CORRECT?

20 MR. LOWELL: YOUR HONOR, I DON'T MIND THIS TESTIMONY  
21 COMING OUT, BUT IT SHOULDN'T BE LEADING.

22 BY MS. MORGAN:

23 Q. WERE YOU THERE IN YOUR ROLE AS A DEMOCRAT OR AS A  
24 PLAINTIFFS' LAWYER?

25 A. WELL, I DON'T --

1 Q. OR FOR SOME OTHER REASON?

2 A. YOU KNOW, I DIDN'T DESIGNATE MY ROLE. I WAS JUST THERE.  
3 I MEAN, I WAS BOTH A DEMOCRAT. I WAS BOTH A PLAINTIFF LAWYER.  
4 I WAS BOTH A MAN. I WAS, YOU KNOW, A BUNCH OF DIFFERENT  
5 THINGS.

6 Q. WHAT I'M ASKING YOU ABOUT IS THE SITUATION WITH THE  
7 POLITICAL ACTION COMMITTEE CALLED ICEPACK. IT WAS MY  
8 UNDERSTANDING YOU, PAUL MINOR AND RICHARD SCRUGGS WERE THERE  
9 REPRESENTING THAT GROUP.

10 MR. LOWELL: AGAIN, YOUR HONOR, BEYOND THE SCOPE. IF  
11 SHE WANTS TO GO INTO IT, LET'S GO INTO IT.

12 THE COURT: I WILL LET YOU ASK IF YOU WISH. THE  
13 OTHER SIDE HAS A RIGHT TO CROSS-EXAMINE ON THIS MATTER.

14 MS. MORGAN: I WILL WITHDRAW THAT QUESTION, YOUR  
15 HONOR.

16 THE WITNESS: THANK YOU.

17 BY MS. MORGAN:

18 Q. IS THAT THANK YOU FROM YOU? YOU DIDN'T WANT TO ANSWER  
19 THAT?

20 A. I JUST WAS HOPING WE COULD GET THROUGH SOMETIME THIS WEEK.

21 Q. WELL, WE WILL TRY TO HURRY UP FOR YOU, MR. CUPIT. LET'S  
22 SEE. THERE WERE SOME QUESTIONS ABOUT THE RESERVATIONS THAT  
23 GOVERNOR MUSGROVE HAD ABOUT WILLIAM MYERS. WHAT WERE THOSE  
24 RESERVATIONS?

25 A. I THINK YOU MISUNDERSTOOD. I HAD RESERVATIONS ABOUT

1 MYERS. I DON'T KNOW THAT MUSGROVE ARTICULATED ANY. BUT I HAD  
2 SOME.

3 Q. ALL RIGHT. DID HE NOT ARTICULATE THAT HE MIGHT HAVE SOME  
4 MISGIVINGS ABOUT WILLIAM MYERS BECAUSE OF MYERS' ASSOCIATION  
5 WITH THE TOBACCO LITIGATION?

6 A. THAT WAS MY MISGIVING.

7 Q. ALL RIGHT. HAVE YOU EVER TESTIFIED DIFFERENTLY TO THAT  
8 EFFECT?

9 A. I MEAN, YOU WOULDN'T LET ME READ MY TESTIMONY BEFORE. SO  
10 I CAN'T TELL YOU. BUT WHAT I'M TELLING YOU IS I HAD A  
11 RESERVATION ABOUT MYERS BECAUSE I THOUGHT IT LOOKED BAD  
12 POLITICALLY. I SUSPECT MUSGROVE CONCURRED IN THAT, BUT I'M  
13 TELLING YOU THAT THAT WAS --

14 Q. ALL RIGHT. WHAT I'M ASKING YOU --

15 A. -- A RESERVATION I HAD.

16 Q. -- IS DO YOU RECALL TESTIFYING IN THE GRAND JURY ON  
17 JULY 24TH, 2003?

18 A. I RECALL TESTIFYING IN THE GRAND JURY.

19 Q. ALL RIGHT. DO YOU RECALL BEING ASKED A QUESTION AS  
20 FOLLOWS -- AND I'M ON PAGE 7 FOR COUNSEL.

21 A. COULD I LOOK AT IT?

22 Q. I'M GOING TO READ YOU THE QUESTION, AND THEN I WILL LET  
23 YOU LOOK AT IT. OKAY?

24 A. ALL RIGHT.

25 Q. THE QUESTION WAS: AND DID GOVERNOR MUSGROVE HAVE A

1 PROBLEM WITH APPOINTING JUDGE MYERS BECAUSE OF THAT CONNECTION  
2 TO THE TOBACCO LAWYERS AND THE TRIAL LAWYERS BASED ON -- AND  
3 AGAIN, I'M ASKING YOU TO DO THIS BASED ON THE DISCUSSION THAT  
4 Y'ALL WERE HAVING DURING THAT MEETING, NOT ANY SPECULATION.  
5 AND YOUR ANSWER WAS: HE -- HE HAD TOLD US THAT HE WANTED TO  
6 GET A CANDIDATE WHO, YOU KNOW, STOOD A GOOD CHANCE OF BEING  
7 REELECTED WHEREVER THE ELECTION CAME. SO THERE WOULD BE A GOOD  
8 STRONG CANDIDATE. PLUS HE DID NOT WANT TO CREATE ANY POLITICAL  
9 REPERCUSSIONS AGAINST HIMSELF. AND SO MY RECOLLECTION WAS THAT  
10 HE -- HE -- MY RECOLLECTION WAS THAT HE VOICED SOME MISGIVINGS  
11 ABOUT MYERS BECAUSE OF MYERS' ASSOCIATION WITH THE TOBACCO  
12 LITIGATION. AND HE THOUGHT THAT LOOKED TOO POLITICIZED. AND  
13 HE DIDN'T REJECT HIM. HE JUST SORT OF RAISED THAT AS A  
14 POTENTIAL PROBLEM. DO YOU RECALL THAT TESTIMONY BEFORE THE  
15 GRAND JURY?

16 A. IF YOU SAID I -- IF YOU -- IF YOU READ THAT, THAT'S WHAT  
17 HAPPENED. I MEAN, I --

18 Q. THAT'S WHAT YOU TESTIFIED TO IN THE GRAND JURY, THAT  
19 GOVERNOR MUSGROVE RAISED A CONCERN ABOUT THE -- IT WOULD LOOK  
20 TOO POLITICIZED IF HE APPOINTED MYERS?

21 A. HE WAS CLEARLY INTERESTED IN THE POLITICAL REPERCUSSIONS.  
22 AND I DON'T -- I MEAN, IF THAT'S HIS VIEW, THAT WAS HIS VIEW.  
23 I THINK I HAD THAT SAME VIEW. I'M NOT SAYING --

24 Q. BUT WHAT I'M ASKING YOU IS WHAT THE GOVERNOR'S VIEW WAS  
25 ABOUT MYERS. OKAY? AND LET'S TAKE IT -- THE REASON I'M ASKING

1 YOU THAT IS BECAUSE ONCE THE GOVERNOR --

2 MR. LOWELL: OBJECTION AS TO WHY SHE IS ASKING THE  
3 QUESTION, YOUR HONOR. SHE JUST ASKED IT.

4 THE COURT: OKAY.

5 BY MS. MORGAN:

6 Q. ONCE THE GOVERNOR GAVE HIS MISGIVINGS CONCERNING MYERS  
7 BEING ASSOCIATED WITH THE TOBACCO LITIGATION, WHO WAS THE NEXT  
8 CHOICE OF A CANDIDATE AS FAR AS PAUL MINOR WAS CONCERNED? WAS  
9 IT JUSTICE DIAZ?

10 A. WE DIDN'T HAVE A PECKING ORDER. WE DISCUSSED ALL OF THE  
11 NAMES, THE PROS AND CONS OF EVERYBODY. AND I DON'T REMEMBER  
12 ONE BEING DISCARDED AND THEN WE PICK UP THE NEXT GUY. I  
13 JUST --

14 Q. OKAY.

15 A. MY RECOLLECTION IS WE WERE, YOU KNOW, DISCUSSING ALL OF  
16 THE GUYS AND THE PROS AND CONS OF EACH ONE PERSON. SO --

17 Q. ALL RIGHT.

18 A. -- THAT HE WOULD HAVE A -- YOU KNOW, HE WOULD HAVE A  
19 COMPLETE PICTURE.

20 Q. WAS PAUL MINOR ALSO INVOLVED IN THE TOBACCO LITIGATION  
21 WITH RICHARD SCRUGGS?

22 A. I DON'T -- TO BE HONEST WITH YOU, I WAS NOT. SO I ASSUME  
23 HE WAS. AND I THINK -- BUT I WOULD -- I THINK HE AND SCRUGGS  
24 WERE BOTH INVOLVED IN IT.

25 Q. OKAY. NOW, YOU SAY THAT YOU -- BASICALLY YOUR TESTIMONY

1 WAS THAT PAUL MINOR WAS MORE INTERESTED IN A HIGHWAY PATROLMAN  
2 GETTING PROMOTED THAN SUPPORTING JUSTICE DIAZ. DO YOU REMEMBER  
3 IF THAT HIGHWAY PATROLMAN'S NAME WAS DENNIS STEVENSON?

4 A. NO. I WAS -- I FRANKLY WAS -- THAT WAS JUST AN ASIDE.  
5 AND WE LAUGHED ABOUT IT LATER. BUT --

6 Q. OKAY. AND IN FACT, YOU HAVE, AGAIN, PREVIOUSLY TESTIFIED  
7 DIFFERENTLY IN THE GRAND JURY AS TO WHO PAUL MINOR WAS BACKING  
8 DURING THAT MEETING. THAT IS, YOU TESTIFIED ONE WAY IN THE  
9 GRAND JURY AND YOU TESTIFIED HERE ANOTHER TODAY IN TRIAL; IS  
10 THAT RIGHT?

11 MR. LOWELL: YOUR HONOR, I OBJECT TO THE WAY SHE IS  
12 CHARACTERIZING HIS TESTIMONY. IF SHE WANTS TO ASK HIM --

13 THE COURT: ALL RIGHT.

14 MR. LOWELL: -- A QUESTION, I THINK THE FULL GRAND  
15 JURY TESTIMONY SHOULD BE CLEAR.

16 THE COURT: REPHRASE YOUR QUESTION.

17 MS. MORGAN: ALL RIGHT.

18 BY MS. MORGAN:

19 Q. HAVE YOU AT A PREVIOUS TIME UNDER OATH TESTIFIED  
20 DIFFERENTLY CONCERNING WHO PAUL MINOR WAS PUSHING IN THAT  
21 MEETING BEFORE GOVERNOR MUSGROVE?

22 A. AGAIN, I CAN'T RECALL VERBATIM EVERY WORD I SPOKE. AND I  
23 ASKED YOU TO LET ME REVIEW THAT THIS MORNING.

24 Q. SIR, I HAVE NOT SPOKEN TO YOU TODAY. AND YOU --

25 A. I SPOKE TO AN AGENT, AND HE TOLD --

1 Q. WELL, SIR --

2 A. -- ME THAT YOU SAID I DID NOT NEED TO READ THAT TESTIMONY.

3 Q. RIGHT.

4 A. SO I'M TAKING HIS WORD FOR WHAT --

5 Q. AND JUST SO THE RECORD IS STRAIGHT, DID WE ASK YOU TO COME  
6 AND MEET WITH US AT 8:15 THIS MORNING -- THAT IS, WE BEING THE  
7 GOVERNMENT -- SO THAT WE COULD TALK TO YOU ABOUT YOUR TESTIMONY  
8 AND YOU COULD READ YOUR GRAND JURY TRANSCRIPT?

9 A. RIGHT.

10 Q. AND DID YOU REFUSE?

11 A. I WOULDN'T COME AT 8:15. I WANTED TO READ THE TESTIMONY.  
12 AND I WORKED OUT --

13 Q. AND DID YOU TELL THE AGENT LAST NIGHT THAT YOU WERE NOT --

14 MR. MCDUFF: OBJECTION, YOUR HONOR.

15 BY MS. MORGAN:

16 Q. -- GOING TO TALK TO US?

17 A. NO, I DIDN'T.

18 THE COURT: ONE SECOND.

19 MS. MORGAN: YOUR HONOR, HE BROUGHT IT UP.

20 THE COURT: I KNOW. I'M NOT STOPPING YOU FROM ASKING  
21 THE QUESTION.

22 MR. MCDUFF: I WOULD JUST LIKE MS. MORGAN TO LET THE  
23 WITNESS FINISH HIS ANSWER.

24 THE COURT: ALL RIGHT. LET HIM FINISH HIS ANSWER.  
25 GO AHEAD.

1 MS. MORGAN: OKAY.

2 THE COURT: NEXT QUESTION. MS. MORGAN, ASK YOUR  
3 QUESTION. THE LAST QUESTION WAS --

4 MS. MORGAN: DID YOU --

5 THE COURT: -- WHETHER HE HAD REFUSED --

6 MS. MORGAN: TO MEET WITH US THIS MORNING.

7 BY MS. MORGAN:

8 Q. DID YOU REFUSE TO MEET WITH ME AS THE GOVERNMENT  
9 PROSECUTOR THIS MORNING TO GO OVER YOUR TESTIMONY AND REVIEW  
10 YOUR GRAND JURY TRANSCRIPT?

11 A. LAST NIGHT, I TOLD THE AGENT THAT I WAS NOT GOING TO COME  
12 OVER HERE AT 8:15 AND TALK TO YOU UNTIL I HAD READ THE  
13 TESTIMONY. YOU COULD -- I TOLD HIM -- I SUGGESTED THAT YOU  
14 CALL ME LAST NIGHT AND WE WILL TALK ABOUT IT, BUT I WANTED TO  
15 READ THE TESTIMONY BECAUSE I HADN'T SEEN IT IN A YEAR.

16 Q. AND DID THE AGENT TELL YOU --

17 A. AND THEN I TOLD HIM THIS MORNING --

18 Q. YEAH. I WANT TO GO BACK TO LAST NIGHT --

19 A. -- THAT I WOULD MEET WITH YOU --

20 Q. -- BEFORE WE GO TO -- I'M GOING TO LET YOU FINISH, BUT I  
21 WANT TO GO BACK TO THE CONVERSATION LAST NIGHT. OKAY? BECAUSE  
22 THIS IS --

23 THE COURT: MS. MORGAN?

24 MS. MORGAN: YES, SIR.

25 THE COURT: LET HIM FINISH HIS ANSWER.

1 MS. MORGAN: OKAY.

2 THE COURT: THEN GO TO THE NEXT QUESTION. FINISH  
3 YOUR ANSWER.

4 A. ALL RIGHT. THEN I TOLD HIM THIS MORNING THAT I WOULD BE  
5 HAPPY TO MEET WITH YOU AFTER I READ THE TESTIMONY.

6 BY MS. MORGAN:

7 Q. OKAY.

8 A. AND I'M STILL HAPPY TO MEET WITH YOU. I JUST --

9 Q. BUT YOU --

10 A. IT'S KIND OF UNFAIR TO ME TO ASK ME VERBATIM THINGS SPOKEN  
11 A YEAR AGO.

12 Q. AND I DON'T WANT TO BE UNFAIR. I DON'T WANT TO BE UNFAIR.  
13 WHAT I WANT YOU TO DO IS TELL US TO THE BEST OF YOUR  
14 RECOLLECTION WHAT YOU REMEMBER HAPPENED AT THAT MEETING WITH  
15 GOVERNOR MUSGROVE AND WHETHER OR NOT PAUL MINOR WAS PUSHING FOR  
16 OLIVER DIAZ.

17 A. PAUL MINOR SUPPORTED THE APPOINTMENT OF OLIVER DIAZ. NOW,  
18 I DON'T KNOW --

19 Q. NO DOUBT -- IS THERE ANY DOUBT IN YOUR MIND ABOUT THAT?

20 A. NO.

21 Q. OKAY.

22 A. I THOUGHT I TESTIFIED TO THAT EARLIER WITH -- I GUESS  
23 SOMEBODY ASKED THAT, AND I THOUGHT I SAID THAT. BUT --

24 Q. THAT'S ALL I WANTED TO ESTABLISH. OKAY?

25 A. OKAY.

1 Q. FINE. DO YOU KNOW WHO THE BIGGEST CAMPAIGN CONTRIBUTOR TO  
2 GOVERNOR MUSGROVE WAS, THE LARGEST AMOUNT OF MONEY GIVEN TO  
3 HIM? AT THE TIME YOU HAD THE MEETING, DID YOU KNOW THAT?

4 MR. MCDUFF: OBJECTION.

5 THE COURT: HOLD IT. I'M GOING TO ALLOW YOU TO ASK  
6 THE QUESTION. BUT THAT'S GOING TO ALLOW THE DEFENSE --

7 MS. MORGAN: OKAY.

8 THE COURT: -- TO ASK QUESTIONS ABOUT THAT, TOO.

9 BY MS. MORGAN:

10 Q. DID YOU -- AND YOU MAY NOT KNOW. AT THE TIME THAT YOU MET  
11 WITH GOVERNOR MUSGROVE, DID YOU KNOW WHO HIS LARGEST CAMPAIGN  
12 CONTRIBUTOR WAS?

13 A. NO.

14 THE COURT: THEN WE DON'T GET AROUND TO ANY MORE  
15 QUESTIONS ON THAT POINT --

16 MS. MORGAN: OKAY.

17 THE COURT: -- SINCE HE SAID NO.

18 MS. MORGAN: THAT'S ALL I HAVE, YOUR HONOR. AND I  
19 APOLOGIZE FOR THE ARGUMENT. TO THE COURT, I APOLOGIZE. THANK  
20 YOU, MR. CUPIT.

21 MR. LOWELL: YOUR HONOR, I WOULD ASK THAT A PORTION  
22 OF THE GRAND JURY TESTIMONY THAT MS. MORGAN MISSTATED BE PUT  
23 INTO THE RECORD. THAT WOULD BE PAGE 12. THIS WITNESS SHOULD  
24 NOT BE MADE TO HAVE UNDERGONE THAT WITHOUT --

25 THE COURT: COUNSEL, IF YOU HAVE A QUESTION

1 CONCERNING --

2 MR. LOWELL: YES, SIR.

3 THE COURT: -- THE GRAND JURY TESTIMONY --

4 MR. LOWELL: OKAY.

5 THE COURT: -- THEN YOU CAN ASK A QUESTION.

6 MR. LOWELL: I WOULD LIKE TO ASK ONE THEN.

7 RE-CROSS-EXAMINATION

8 BY MR. LOWELL:

9 Q. MR. CUPIT, LET ME SHOW YOU WHAT IS YOUR GRAND JURY  
10 TESTIMONY.

11 A. GREAT.

12 Q. AND IF YOU LOOK AT PAGE 12 IN THE MIDDLE OF THE PAGE,  
13 WOULD YOU PLEASE READ OUT LOUD THE QUESTION THAT MS. MORGAN  
14 ASKED YOU IN THE GRAND JURY?

15 A. AND WHO WAS MINOR SUPPORTING? AND MY ANSWER WAS THIS:  
16 WELL, MY IMPRESSION WAS THAT MINOR WAS -- WAS SUPPORTING DIAZ,  
17 BUT I ALSO THINK HE AND SCRUGGS WERE FRIENDS. SO I DON'T THINK  
18 HE WANTED TO BE -- YOU KNOW, GIVE THE APPEARANCE OF BEING  
19 AGAINST SOMEBODY THAT SCRUGGS WAS -- WAS SUPPORTING. SO I KIND  
20 OF -- I CAN'T REMEMBER ARTICULATE -- I CAN'T MINOR ARTICULATING  
21 THIS GUY OVER THIS GUY. I MEAN -- YOU WANT ME TO KEEP READING?

22 Q. UNTIL IT'S COMPLETE.

23 A. I MEAN, I DON'T THINK HE SAID SUPPORT MYERS OVER DIAZ OR  
24 DIAZ OVER MYERS. BUT I DON'T THINK HE VOICED HIS  
25 SATISFACTION -- I THINK THAT'S MEANT TO SAY DISSATISFACTION.

1 BUT SATISFACTION WITH EITHER OF THOSE TWO GUYS.

2 MR. LOWELL: THANK YOU, YOUR HONOR. THAT'S ALL I  
3 HAVE.

4 MS. MORGAN: YOUR HONOR, SO THE RECORD IS COMPLETE,  
5 CAN WE HAVE HIM READ PAGE 8 OF THE GRAND JURY TRANSCRIPT, WHICH  
6 IS WHAT I WAS REFERRING TO WHEN I ASKED HIM MY QUESTION ON  
7 REDIRECT?

8 THE COURT: GIVE IT BACK TO HIM SO THAT HE CAN READ  
9 THE QUESTION AND ANSWER ON PAGE 8, LINE WHAT?

10 MS. MORGAN: 10.

11 THE COURT: LINE 10.

12 MR. LOWELL: I WILL LEAVE HIM MINE --

13 THE WITNESS: ALL RIGHT. PAGE 8, LINE?

14 MS. MORGAN: 10 THROUGH 16. LINE 10.

15 THE WITNESS: OKAY. QUESTION: DID -- BASED ON WHAT  
16 WAS -- OCCURRED IN THAT ROOM AND THE DISCUSSIONS THERE, DID IT  
17 SEEM TO YOU THAT PAUL MINOR AND/OR DICK SCRUGGS WERE REALLY  
18 PUSHING FOR OLIVER DIAZ? HOW WOULD YOU DESCRIBE THAT? I WOULD  
19 THINK THAT -- I WOULD SAY YES TO THAT.

20 THE COURT: ALL RIGHT. THAT'S THE ANSWER? ALL  
21 RIGHT. READ THE ANSWER AGAIN, PLEASE.

22 THE WITNESS: THE ANSWER? I'M SORRY. I DIDN'T  
23 INDICATE IT AS THE ANSWER. ANSWER: I WOULD THINK THAT -- I  
24 WOULD SAY YES TO THAT.

25 THE COURT: OKAY. MR. LOWELL, ANYTHING FURTHER?

1 MR. LOWELL: ONLY IF THE WITNESS WOULD LIKE TO, NOW  
2 THAT HE HAS GOTTEN TO SEE THE GRAND JURY TESTIMONY, EXPLAIN  
3 WHETHER OR NOT HE HAD -- WHICH MEMORY -- I WANT HIM TO HAVE THE  
4 OPPORTUNITY TO EXPLAIN SINCE HE HADN'T HAD IT. THAT'S ALL I  
5 WANTED. SO IF HE HAS READ THE ONLY TWO PORTIONS, INCLUDING THE  
6 ONE I WANTED READ, THEN I'M CONTENT.

7 THE COURT: OKAY. WHO IS -- ANYBODY ELSE NEXT ON  
8 THIS GRAND JURY MATTER?

9 MR. MCDUFF: YES. I JUST WANT TO ASK HIM ONE THING,  
10 YOUR HONOR.

11 THE COURT: GO AHEAD. KEEP YOUR VOICE UP AND YOU CAN  
12 STAND RIGHT THERE AND ASK HIM. KEEP YOUR VOICE UP.

13 RE-CROSS-EXAMINATION

14 BY MR. MCDUFF:

15 Q. MR. CUPIT, YOU HAD SAID EARLIER THAT MR. MINOR DID NOT  
16 ENDORSE ANY CANDIDATE OVER ANY OTHER?

17 A. RIGHT.

18 Q. AND YOU ALSO SAID THAT HE DID SUPPORT JUSTICE DIAZ?

19 A. RIGHT.

20 Q. OKAY. EXPLAIN THAT, PLEASE.

21 A. WELL, I MUST BE MISSING SOMETHING BECAUSE I -- AND I  
22 APOLOGIZE FOR BEING CONFUSING. BUT I THOUGHT I SAID IN THE  
23 GRAND JURY TESTIMONY, I THOUGHT I SAID JUST A FEW MINUTES AGO,  
24 I DON'T RECALL MINOR ARTICULATING ANY ONE PERSON OVER ANOTHER.  
25 I WAS CONVINCED THAT HE ENDORSED DIAZ. HE ENDORSED MYERS. AND

1 I THOUGHT THAT'S WHAT I SAID BOTH TIMES.

2 Q. YOU DID.

3 A. OH, OKAY.

4 Q. AND DID EVERYONE IN THE ROOM THINK -- LIKE AND RESPECT  
5 OLIVER DIAZ AND THINK HE WOULD BE A GOOD JUDGE?

6 A. YES.

7 MR. MCDUFF: NO FURTHER QUESTIONS.

8 THE COURT: ANYTHING ELSE FROM THE GOVERNMENT?

9 MS. MORGAN: NO, YOUR HONOR.

10 THE COURT: EITHER SIDE ANTICIPATE RECALLING THIS  
11 WITNESS? DOES THE GOVERNMENT?

12 MS. MORGAN: THE GOVERNMENT DOES NOT.

13 THE COURT: DOES THE DEFENSE?

14 MR. MCDUFF: YOUR HONOR, THERE IS --

15 THE COURT: HOLD IT, MR. CUPIT.

16 MR. MCDUFF: THERE IS -- IN LIGHT OF THE GOVERNMENT'S  
17 OBJECTIONS TO SOME OF MY QUESTIONS, WE MAY RECALL MR. CUPIT. I  
18 DON'T KNOW THAT WE WILL NEED TO, BUT IT IS A POSSIBILITY.

19 THE COURT: OKAY. ANYBODY ELSE?

20 MR. LUCAS: NO, SIR.

21 THE COURT: ALL RIGHT. MR. CUPIT, YOU CAN STEP DOWN,  
22 BUT YOU MAY BE SUBJECT TO RECALL. AND IF SO, THEN MR. MCDUFF  
23 WILL BE THE ONE TO CONTACT YOU ON THAT.

24 THE WITNESS: OKAY. THANK YOU, YOUR HONOR.

25 THE COURT: ALL RIGHT. YOU MAY BE EXCUSED. YOU CAN