

1 wouldn't pop up and say, oh, this -- this items fine, this items fine, because if
2 I would've found something wrong then I would've said so.

3 Q Right. So while you may not do a legal analysis at the meeting,
4 you had previously looked at it at least on a legal analysis in your head based
5 upon your expertise and either said it's okay, or there's problems with it.

6 A Yes.

7 Q And then you would tell Mr. Thomas whether it was okay or
8 problems with it; correct?

9 A Yes.

10 Q And in this case you told him you didn't see any problems in it;
11 correct?

12 A I may have said that I didn't understand it very well, but if you
13 financial types are okay with it, then fine.

14 Q Yeah. I mean, it had to do with not only financial types, but it
15 had to do with financial stuff that relates to a hospital, which --

16 A Right.

17 Q -- is a pretty technical thing.

18 A Which I didn't understand.

19 Q Right. And so when you approved again toward the legality, that
20 then allowed Lacy to sign off on it, and it went before the board of --

21 A No. When I approved it for legality, that meant it went before the
22 board and they authorized Lacy to sign off on it.

23 Q Oh, yeah, but what I meant -- I meant Lacy signed off on it to put
24 before the board for the board's approval because --

25 A He signed the agenda item.

1 Q Right. And if he didn't do that, it wouldn't go before --

2 A No.

3 Q -- the board. Right. The next one I'd like to talk to you about is
4 a contract with a company called Frasier Systems Group. Do you remember
5 that one?

6 A No.

7 Q So as you sit here today you can't remember specifically, or --
8 well, let me ask you this. Are you saying I don't remember one and there
9 could've been one, or are you saying that one never came before me?

10 A I don't remember it, but there could've been one like that.

11 Q How about a contract with Premier Alliance Management?

12 A I don't recall that one.

13 Q Did you ever recall -- and this wouldn't have been a contract, but
14 it would've been a business doing business with UMC. Did you ever recall
15 discussing anything with Don Hayt or Lacy Thomas about TBL Construction
16 and their work on the new tower?

17 A TB -- I don't know. I didn't know that that's who the contractor
18 was for --

19 Q Do you remember, though, having discussions about the
20 contractor who was building the new tower without knowing specifically who
21 it was?

22 A No, because there didn't seem to be problems with the
23 construction. If there had been problems with construction, I would've
24 remembered the --

25 Q Okay.

1 A -- contractor. But that -- I don't recall that name.

2 Q And lastly, Crystal Communications. Do you remember working
3 on a contract with Crystal Communications, a company that was going to
4 help install phone lines and things into the --

5 A No.

6 Q You don't remember looking at that contract either?

7 A No, but I probably did. They just all sound the same after awhile.

8 Q So your testimony isn't that you didn't work on it, but you
9 just -- after this amount of time, and all the contracts that you looked at you
10 can't remember?

11 A I can't remember.

12 Q Can you estimate? I mean, if you can even probably guesstimate
13 how many contracts would be in each one of these bimonthly meetings? I
14 mean, are we looking at a couple, are we looking at --

15 A Oh, gosh. There -- there might've been -- it seemed like there
16 were maybe 20 items, 20 UMC items every meeting, so that might've been
17 40. They were not all necessarily contracts, so I -- but I probably reviewed
18 20 or 30 contracts a month.

19 MR. ALBREGTS: Nothing further. Thank you.

20 THE COURT: Mr. Mitchell.

21 MR. MITCHELL: Thank you.

22 CROSS-EXAMINATION

23 BY MR. MITCHELL:

24 Q You were asked about a number of contracts just now, and the
25 only one that you had a specific memory of was Superior Consulting or ACS;

1 is that right?

2 A Yes.

3 Q Okay. With respect to what you remember about that contract,
4 do you remember ever having any confidential communications with Lacy
5 Thomas about that contract whatsoever?

6 A No.

7 Q So whatever it is you had to do with the ACS contract would've
8 been done in connection with several people; is that right?

9 A Yes.

10 Q And only in the context of it coming up as a possible agenda item
11 that you were supposed to review for superficial problems that it might have
12 in its legality?

13 A Right. Yes.

14 Q Okay. So this is a relatively cursory review of a contract to see if
15 anything immediately jumps out at you when you're looking it over; right?

16 A Yes. I look for stuff like if it has the hospital indemnifying the
17 contractor. We don't have the authority to do that, so that clause would
18 have to be modified. And as long as it complied with the budget act, you
19 know, just -- just things like that just that I looked at in every contract.

20 Q Okay. And as you review a contract, and there's already been
21 testimony that -- that you didn't provide, but from another witness, that you
22 were sort of considered a contract specialist, that you had more background
23 in contract review.

24 A Yes.

25 Q Could you just outline, when you look at a contract there are

1 certain red flags, I assume, that you look for immediately that are going to
2 trigger a response from you if they are there; is that correct?

3 A Yes.

4 Q Okay. And if there are certain things that are supposed to be
5 there and aren't, that would trigger the same response?

6 A Yes.

7 Q And it would be your obligation in this meeting with other people
8 to bring up that this contract may be defective or -- or have to be revised
9 before it can become an agenda item?

10 A Yes, but usually that conversation is something I would have with
11 Don Hayt before the agenda meeting ever came up.

12 Q Okay. So in the contract discussion, most of that is taking place
13 with Don Hayt because he's the contract writer; is that right?

14 A He negotiated them. He drafted a lot of them, yes.

15 Q All right. Now, those red flags that your looking for, if you could
16 just summarize those, the ones that would -- that you could pick out pretty
17 easily and quickly as you're looking at a contract that Don Hayt has sent you
18 to review.

19 A Indemnification, compliance with the budge act, if it had any
20 open ended spending clauses that had to somehow be subject to the budget
21 act.

22 That -- that just means that the County can't obligate itself
23 financially for more than one budget year at a time. And so if it had an open
24 ended spending clause it had to be tied subject to the budget act for that
25 year, that fiscal year.

1 Insurance, we had no -- UMC had no authority to insure
2 anyone else or name anyone as an insured, had no authority to indemnify
3 anyone else. And then the subject matter of the contract itself, it had to -- I
4 would, you know, have to make sure that it didn't fall under -- that it fell
5 under its own competitive bidding exception, or that it was something that
6 had been bid, and just make sure that all the legal steps had -- had gone
7 through. And that's pretty much what I looked at.

8 Q Okay. So when you're doing this kind of legal work, your
9 emphasis is not on the person you're working with, but the document you're
10 working with that -- that you're reviewing; is that right?

11 A That's all I look at is the document.

12 Q Okay. And you are not -- you're not giving any private legal
13 advise to anybody; is that --

14 A No.

15 Q -- correct?

16 A No.

17 Q You have a set of statutes that you are bound by and you're
18 supposed to know those statutes and see if the contract conforms with the
19 statute; is that --

20 A Yes.

21 Q Okay. Now, you mentioned that in these meetings, your general
22 sense was that your input seemed less welcome than Don Hayt's to Lacy
23 Thomas; is that correct?

24 A Yes.

25 Q You said that he would waive you off and interrupt you, and

1 prefer to hear from Don Hayt; is that correct?

2 A Yes.

3 Q Was that the way it was supposed to be set up?

4 A Well, I didn't think so, but that's the way it was. It just -- once
5 the transition was made from Mark Wood to me, it just -- it was as if I was
6 not welcome there. It was just kind of chilly, and I felt distinctly unwelcome
7 and it was very uncomfortable.

8 Q Okay. Did Don Hayt have any legal authority whatsoever to
9 decide on whether or not the contract met the legal requirements that you
10 were supposed to be reviewing?

11 A No.

12 Q Okay. Did Lacy Thomas ever refer to Don Hayt as his lawyer?

13 A Yes.

14 MR. ALBREGTS: Objection. Hearsay.

15 THE COURT: Sustained.

16 MR. MITCHELL: Well, I'm not asking for the proof of -- proof of
17 the matter asserted in the statement, but only whether or not Lacy Thomas
18 considered himself to have a lawyer/client relationship with Don Hayt.

19 MR. ALBREGTS: That's exactly the truth of the matter asserted,
20 and that's why it's hearsay.

21 MR. MITCHELL: Well --

22 THE COURT: Sustained.

23 MR. MITCHELL: Very well.

24 BY MR. MITCHELL:

25 Q Did you consider yourself to have a close personal relationship

1 with Lacy Thomas?

2 A No.

3 Q And you've already testified about that a little bit. Were there
4 any other reasons why you formed that conclusion?

5 A Well, just the way he acted towards me. He -- he was dismissive
6 and, you know, barely civil most of the time. I just felt very uncomfortable
7 around him. I knew he didn't want anything to do with me. He didn't want
8 me around.

9 Q Okay. If you were to attempt to count up all the times and
10 estimate the number of private conversations you had with Lacy Thomas
11 where nobody else was present discussing county business, could you make
12 an estimate of the number of times that happened?

13 A One.

14 Q One. And that would be during your entire -- your entire time as --
15 in your position with the DA's office?

16 A Yes.

17 Q And what was that occasion, if you recall?

18 A Well, it was when the reassignment was made from Mark Wood
19 to me. And I can't remember who suggested it, it may have been a mutual --
20 mutual suggestion that we go out to lunch together to kind of get
21 acquainted. And we went to Lawry's a few blocks from UMC and -- just to
22 kind of -- kind of get acquainted, and I was telling him about my contracts
23 background.

24 He didn't understand why the -- why the transition was
25 being made. And I was telling him about my contracts background, that I've

1 reviewed county contracts for nine years and I knew them pretty well, and
2 thought maybe I could review UMC's contracts. And he kept saying --

3 MR. ALBREGTS: I'm going to object to anything he said. It's
4 hearsay.

5 MR. MITCHELL: Well -- very well.

6 BY MR. MITCHELL:

7 Q It was -- the conversation that you're testifying to was a one time
8 occurrence where you went to lunch with Lacy Thomas at that restaurant
9 Lawry's and explained to him why you were the new assignee at UMC; is
10 that correct?

11 A Yes. As well as I understood, it was just to go in and take a
12 closer look at the contracts.

13 Q Okay. And he was asking you questions about why you were the
14 new person coming on?

15 A Yes, probably because I had no hospital law experience. I didn't
16 know a thing about hospitals, and it was probably, understandably, making
17 him nervous because I didn't know anything about hospitals.

18 Q Okay.

19 A But I do know about contracts.

20 Q So during this lunch that you attended together he was asking
21 you questions, you were answering his questions?

22 A Yes.

23 Q But it was not about the law you were not giving him legal
24 advice, you were -- the subject of discussion was why you were coming on
25 to replace Mark Wood, generally.

1 A That's generally what I remember.

2 Q And as far as you can recall, that's the only one to one
3 conversation you ever had with Lacy Thomas?

4 A As far as I can recall.

5 Q And you actually said that you do not remember ever once
6 speaking to him on the telephone or writing him an email; correct?

7 A At least not one that other people weren't copied on. There
8 might've been one or two emails that Don was also copied on, and -- but
9 that's it, one or two only.

10 Q Okay. Now, just to go back to the example of the ACS contract
11 for a second. If provisions had been written into that contract that were
12 clearly detrimental to the County from a financial standpoint, would that be
13 something that you would be expected to catch? In other words, let me -- let
14 me rephrase the question so that --

15 MR. ALBREGTS: Well, Judge, I think she can answer the
16 question. She hasn't indicated --

17 MR. MITCHELL: Well --

18 THE COURT: Do you -- do you understand the question?

19 THE WITNESS: Yes, I understand it.

20 BY MR. MITCHELL:

21 A I'm not sure I would've been expected to catch that because I
22 didn't know anything about finance, anything about accounting or hospital
23 finance. That's why I inquired of Don Hayt are the UMC financial people
24 okay with this contract because I didn't understand it. All I could glean from
25 it was it didn't seem to have any of the clauses I usually look for as being

1 illegal. But I didn't really -- I guess I trusted the financial people to know
2 whether it was in UMC's best interest or not.

3 Q Okay.

4 A Because I wouldn't ordinarily recognize something like that.

5 Q So if the contract had been structured that the contractee was
6 going to -- was going to -- well, that UMC was going to lose a lot of money
7 on this contract unnecessarily, that was not your area of responsibility to
8 determine?

9 A No, but I hope I would've recognized it --

10 Q Okay.

11 A -- and said something, but I didn't.

12 Q But it -- that would be something that could be hidden in the
13 structure of the contract that would be outside your purview; is that right?

14 A Yes, but -- and -- and I did happen to see George Stevens who is
15 a county financial officer. He happened to send me once something about
16 the -- the ACS contract called an administrative clarification. It had Don
17 Hayt's initials on it next to Lacy's signature line, Lacy signed it, AS -- ACS
18 signed it. It was an amendment to the contract that should've gone to the
19 board, and that concerned me greatly.

20 Q Because it hadn't gone to the board like it was --

21 A Because it hadn't gone to the board, and it was going to cost the
22 County more money.

23 Q Okay. So an amendment to the contract had been made outside
24 your knowledge, and that was the exact type of thing that was supposed to
25 go before you before that happened; is that right?

1 A Yes.

2 Q Okay.

3 A Yes.

4 Q So to -- to summarize, if they were going to avoid legal
5 requirements, they were -- they would have to make an end run around you?

6 A Yes.

7 Q Okay. Did you ever in any way try to help Lacy Thomas secretly
8 avoid the requirements of the law?

9 A No.

10 Q Did you ever discuss doing that with him whether you were
11 trying to help him or not?

12 A No.

13 MR. MITCHELL: Nothing further.

14 THE COURT: Redirect.

15 REDIRECT EXAMINATION

16 BY MR. ALBREGTS:

17 Q The amendment to the contract that you just discussed to ACS,
18 when you found out about that, what did you do?

19 A Well, I contacted Don Hayt and said, hey, this is a substantive
20 change to the contract. If you want to amend the contract, it needs to be
21 done so that it goes to the board of county commissioner -- or the board of
22 hospital trustees, so --

23 Q And UMC withdrew that amendment to the contract; didn't they?

24 A I don't know about withdraw because it was never properly put
25 forth, but -- but --

1 Q Well, whatever word you call it, UMC did not go further with that
2 based upon your advice; did they?

3 A No.

4 Q In fact, they went back to the board on that issue; didn't they?

5 A Yes.

6 Q So they followed your advice; didn't they?

7 A Yes.

8 Q You testified about emails and that there were just a few. There
9 were just a few that Lacy was solely the subject, or at least was the person
10 that received the email, but there were hundreds of emails between all of the
11 people running the hospital; correct?

12 A Yes.

13 Q And Lacy would've been Cced on those or copied on those as
14 CEO; correct?

15 A I can't recall that. I either asked Don Hayt or Lacy early on in my
16 tenure there if he wanted to be copied on everything, and apparently not
17 because I didn't copy him.

18 Q On everything, but --

19 A I can't --

20 Q -- you did on things that you, as the lawyer for UMC, thought the
21 CEO should know; correct?

22 A Yes.

23 Q And that's because the buck stops with the CEO; right? That's
24 the person that makes the decisions on behalf of the hospital?

25 A Yes.

1 Q And so you, as lawyer for the hospital, would use your own
2 judgment in thinking, well, this is something that the CEO ought to have, so
3 I'm going to copy him on it?

4 A Yes, but the two -- the two times that I recall emailing Lacy, one
5 of them was an independent contractor, in fact, ACS wanted a legal opinion
6 from me on something. Our office doesn't give legal opinions to anyone but
7 our agencies. And so I recall emailing -- I don't even know if I emailed Lacy.
8 I may have emailed Don Hayt to find out if anyone wanted me to give an
9 email -- to give a legal opinion on this particular issue.

10 And Lacy heard about it somehow and got very angry with
11 me that I would even say I wasn't going to give a legal opinion to an
12 independent contractor. I found out who was supervising the independent
13 contractor. That was Mike Walsh, the finance guy, and I asked Mike if he
14 wanted the legal opinion and Mike said yes. So I did provide a legal opinion
15 on that, but I was just surprised at how angry Lacy got that I would even,
16 you know, express reluctance to give a legal opinion to someone not in UMC
17 administration.

18 And it seemed like there was another occasion Lacy
19 wanted us to -- wanted to investigate the possibility of building a parking
20 garage. And I emailed Don Hayt, and I believe I copied Lacy on a bunch of
21 statutes that we'd have to, you know, jump through to get to anywhere near
22 the project. And I was asking Lacy and Don, do you want an opinion, do you
23 want a legal opinion? These are kind of -- this is kind of what I put in the
24 legal opinion. I think the answer was, no, your email was legal opinion
25 enough.

1 And -- but those are the only two emails I actually recall
2 copying Lacy on or inter -- or having email contact with him on.

3 Q So that one last example you talked about, there was questions
4 about whether they could do a parking garage for the hospital. And you
5 provided them legal advice as to whether they could do a parking garage for
6 the hospital; correct?

7 A Yes.

8 Q And they followed that advice; didn't they?

9 A I think the project got dropped.

10 Q And was that your advice that they couldn't do it because of the
11 legal -- the statutes and other law you provided to them, and so they dropped
12 the project based upon that legal advice?

13 A Yes.

14 Q So they followed that legal advice?

15 A Yes.

16 Q Now, you described how you felt unwelcome and that Lacy was
17 dismissive of you and everything else. Even though that's how you felt, he
18 still followed your direction, such as the parking garage, or other agenda
19 items. If you were to say this can't go on, he would say, well, okay. He
20 might've been dismissive, mean, rude, discourteous, but he followed that
21 advice; didn't he?

22 A Yes.

23 MR. ALBREGTS: Nothing further.

24 THE COURT: Any recross?

25 MR. MITCHELL: Yes, just a couple questions, Judge.

1 RECROSS-EXAMINATION

2 BY MR. MITCHELL:

3 Q Counsel just asked you if you gave advice on something like the
4 garage and whether the project got dropped pursuant to your advice. It
5 wasn't your advice that dropped the project; is that right?

6 A Well, it was the law. It was extremely difficult to do what they
7 wanted to do under the structures of Nevada law.

8 Q Okay. And so when something gets dropped, it means that it
9 doesn't go to the board to even be decided on; is that correct?

10 A Yes.

11 Q So it's not like you have just shut down this project, it's --

12 A No.

13 Q -- that you have told them, this will not make it past the hospital
14 board of trustees because it violates that law?

15 A Yes.

16 Q Okay.

17 MR. MITCHELL: Nothing further.

18 MR. ALBREGTS: I have one area that I didn't --

19 THE COURT: I'll let -- go ahead.

20 FURTHER REDIRECT EXAMINATION

21 BY MR. ALBREGTS:

22 Q Do you report to Mary-Anne Miller -- or you reported to
23 Mary-Anne Miller?

24 A Yes.

25 Q Can you estimate how often you would discuss UMC matters

1 with her, these issues? Was that on a daily basis, on a monthly basis, on a
2 need to know basis? How did that work?

3 THE COURT: Mr. Albregts, when you say these issues, what
4 specifically are you referring to?

5 MR. ALBREGTS: Any UMC issues. I'm --

6 THE COURT: Okay.

7 MR. ALBREGTS: I apologize.

8 BY MR. ALBREGTS:

9 Q You know, I mean, how often would you meet with Mary-Anne
10 Miller and say, okay, let's talk about UMC issues? I --

11 A There was no particular time. I emailed her when something --
12 when I felt like she needed to know something. I just kind of kept her
13 informed by email. Sometimes I'd go in her office, sometimes she'd come
14 into my office and ask me a question about UMC. And it was never a
15 particular meeting time, just on -- as things came up and --

16 Q Would you estimate that would occur daily or a couple times a
17 week or -- I mean, can you estimate?

18 A Oh, a couple times a week probably.

19 Q And how many of those other agencies did Ms. Miller oversee?

20 A Well, she oversaw our office, every agency. Well, each attorney
21 was assigned his own agency, but, you know, Mary -- Mary knew everything
22 that was going on. She was pretty much up on everything.

23 Q But you wouldn't go, you know, each contract or each --

24 A No.

25 Q She gave you the autonomy to do -- that was your job --

1 A Yes.

2 Q -- and so you did it.

3 A Yes.

4 Q Okay.

5 MR. ALBREGTS: That's it. Nothing further.

6 THE COURT: Any follow up, Mr. Mitchell?

7 MR. MITCHELL: No.

8 THE COURT: All right. Thank you, ma'am.

9 Next witness.

10 MR. ALBREGTS: Mary-Anne Miller.

11 THE BAILIFF: And if you'll remain standing, please. Raise your
12 right hand and face the clerk.

13 MARY-ANNE MILLER

14 Having been called as a witness and being first duly sworn testified as
15 follows:

16 THE CLERK: Please be seated.

17 THE WITNESS: Thank you.

18 THE CLERK: And please state your name and spell it for the
19 record.

20 THE WITNESS: Mary-Anne Miller; M-A-R-Y hyphen A-N-N-E M-I-
21 L-L-E-R.

22 THE CLERK: Thank you.

23 DIRECT EXAMINATION

24 BY MR. ALBREGTS:

25 Q Ms. Miller, what's your occupation?

1 A I'm a Deputy District Attorney.
2 Q And what is your assignment?
3 A County counsel.
4 Q And what does that entail?
5 A I run the civil division of the District Attorney's office in Clark
6 County.
7 Q And how many people are below you, or do you supervise?
8 A Approximately 32.
9 Q And how many of those are lawyers?
10 A Approximately 22.
11 Q And how many agencies do those lawyers represent throughout
12 the county that you oversee?
13 A Approximately 40.
14 Q And what is the biggest agency of the County in your estimation
15 in terms of size and scope and everything that -- that your office oversees,
16 handles?
17 A Probably McCarran Airport.
18 Q Where does UMC fit in that grouping?
19 A It's a very large agency.
20 Q About five probably?
21 A Probably.
22 Q How long have you been in that position?
23 A Ten years.
24 Q So you were in that position when Lacy Thomas was hired as the
25 CEO of UMC?

1 A Yes.

2 Q Were you involved at all in the hiring process of Lacy Thomas, or

3 was that something that was left to the County and the people who did that?

4 A It was left to County management.

5 Q Were you at all involved in working with Mr. Thomas's

6 employment contract?

7 A Yes, I was.

8 Q Did you draft that or did somebody else draft that?

9 A I drafted it off of a revised prior CEO agreement at the direction --

10 Q And the agreement has a provision for legal counsel for the

11 hospital; correct?

12 A Yes.

13 Q And that's your office?

14 A Yes.

15 Q And is that pretty standard contract language, or is that

16 something that's specific to UMC?

17 A Most department heads do not have a written employment

18 agreement, so --

19 Q Can -- can you estimate how many department heads of the

20 groups that you oversee have employment agreements?

21 A Two or three.

22 Q Mr. Walker at McCarran?

23 A Yes.

24 Q And then UMC, and what other agency if you can think of?

25 A Possibly the Water Reclamation District, but I'm not sure.

1 Q So -- and that -- all those other 40 agencies then, their agency
2 heads do not have written employment contracts like Mr. Thomas other than
3 the three we just talked -- or two we just talked about?

4 A To the best of my knowledge.

5 Q Who, in your estimation, when your office and your staff
6 attorneys work on behalf of UMC, who is the client?

7 A Clark County.

8 Q And why is that?

9 A Because Clark County is the legal entity that they represent.

10 Q Can you estimate on the time that Mr. Thomas was the CEO at
11 UMC, how -- how much interaction you had with him? And -- and you've
12 been a lawyer for a long time. Do it in a way that let's us know, you know,
13 what it was like on a day to day basis. I mean, monthly, yearly, daily. I
14 mean, give an idea -- an idea of how much you would interact with Mr.
15 Thomas.

16 A Me personally?

17 Q Yes, you personally.

18 A I interacted with him very little.

19 Q And what does very little mean, if you could?

20 A Almost not at all his first year, and only a handful of occasions
21 would I interact with Mr. Thomas directly after that. That's not unusual.
22 Some department heads don't meet with me that often.

23 Q Well, and you have -- you have a staff attorney assigned to it too;
24 correct?

25 A That's correct.

1 Q And how often would you meet with the staff attorney on UMC's
2 stuff? On a weekly, monthly basis, however you would do that?

3 A It would -- it would vary depending on what was going on with
4 the agency. Sometimes I would talk to the Deputy a couple times a day, and
5 other times a month would go by before we'd have a substantive
6 conversation.

7 Q So if there was a big contract or a big outweigh or something big
8 going on with the hospital, that might take more of your time during the
9 course of a week. And then if that passed and nothing went on, you might
10 not have any contact. Is that a fair --

11 A That's fair.

12 Q What about at -- at the county manager's meetings? Would you
13 meet with Mr. Thomas at those?

14 A If he attended.

15 Q And how often were those meetings?

16 MR. MITCHELL: I object to the form of the question. It's not
17 clear whether it's being asked how often the meetings with the county
18 manager took place, or how many times Lacy Thomas would attend those
19 meetings.

20 MR. ALBREGTS: Well, I --

21 THE COURT: Why don't we clarify that during his tenure, and
22 then -- so how many county manager's meetings and then how many did he
23 attend that --

24 MR. ALBREGTS: I --

25 THE COURT: -- Ms. Miller also attended.

1 MR. ALBREGTS: Let me see if I can clear this up.

2 THE COURT: Okay.

3 MR. ALBREGTS: Thanks.

4 BY MR. ALBREGTS:

5 Q How often are there county manager's meetings?

6 A There's a wide variety of county manager's meetings. And I
7 wondering if you're meaning -- you're referring to agenda prep meetings?

8 Q No. Were there -- we'll get to those in a minute. Were there
9 other manager meetings where you would meet with certain county officials
10 such as Lacy Thomas in -- in his position as Chief Executive Officer?

11 A I met with Mr. Thomas and the county manager a handful of
12 times during his tenure. It did not occur often.

13 Q Okay. Are they -- is there some rule as to -- or maybe not rule,
14 but is there some agreement that you have insofar as we're going to meet
15 once a month or we're going to meet -- or does that just depend on the
16 agency?

17 A I -- I did not attend the staff meetings at the county manager's
18 office regularly.

19 Q And on the handful of occasions during Mr. Thomas's tenure that
20 you had those meetings, who -- who would be there?

21 A Tom Riley, the county manager, perhaps George Stevens, it might
22 be somebody from the controller's office.

23 Q The county controller or UMC's?

24 A The county controller.

25 Q Okay.

1 A Maybe the PIO on occasion.

2 Q What -- what's PIO for the record --

3 A I -- I'm sorry.

4 Q -- and for me.

5 A The --

6 MR. MITCHELL: Public --

7 A The Public Information --

8 Q Information Officer.

9 A -- Officer.

10 Q Okay. So those weren't -- those weren't one on one meetings

11 with Mr. Thomas?

12 A No.

13 Q How many one on one meetings did you have with Mr. Thomas

14 during his whole tenure?

15 A I don't recall ever having a one on one meeting with Mr. Thomas.

16 Q Did you ever personally oversee or review any of UMC's

17 contracts during the course of time Mr. Thomas was the CEO?

18 A I'm not sure I know what you mean by oversee or review.

19 Q Poor choice of words. Did you ever, yourself, review the

20 contracts, either on your own or with the Deputy who was assigned to -- to

21 handle UMC?

22 A On occasion, either at the request of the Deputy, or at county

23 manager's request, or at finance department's request, I would review a

24 contract.

25 Q Would that be akin to going over either Holly or Mark's head, so

1 to speak, going to you, or is that something you would do in connection with
2 Holly or Mark?

3 A Sometimes in connection with Holly and Mark, sometimes the --
4 the county management staff generally knows me better than they do the
5 individual deputies and they would just ask me directly because I would see
6 them often. I don't --

7 Q Did you ever do that for the Superior Consulting contract or the
8 ACS contract? Did you specifically look at that one? Was that one of the
9 ones that --

10 A I don't know that I actually reviewed it or looked at it. I did
11 discuss, I believe, the ACS contract with the county auditor.

12 Q And who would the county auditor have been?

13 A Jerry Carroll.

14 Q And would that have been before the contract in the
15 investigation, or would that have been after the investigation or during the
16 investigation?

17 A It was before the investigation, but after the contract had been
18 entered into.

19 Q Okay. What about the Frasier Systems Group contract, was
20 there any -- was that one of those ones you looked at?

21 A I'm not familiar with that contract by name.

22 Q Crystal Communications contract, is that one that you ever
23 looked --

24 A I did not look at that one.

25 Q Premier Alliance Management contract?

1 A No.

2 Q And that would've been something that would've been, at the
3 time, delegated to Holly because she was assigned to UMC?

4 A If they had asked for DA review of it, yes.

5 Q Well, if it was going to go on the agenda, getting to those agenda
6 meetings, then it would've had to go through DA review; correct?

7 A It should have gone to review. Occasionally, contracts get on the
8 agenda without being seen by a Deputy DA.

9 Q Can you estimate how many times that happened during the
10 course of Mr. Thomas's tenure as CEO?

11 A It happened quite a bit during the beginning of his tenure. And at
12 some point county management objected to that and asked us to take a
13 closer look at the stuff he put on the agenda.

14 Q Is that a reason, or one of the reasons why Holly Gordon was
15 assigned UMC and -- and Mr. Wood was taken off UMC and put onto other
16 county agencies?

17 A That would be one of the reasons, yes.

18 Q Were there other reasons?

19 A Holly was chosen because she had some experience in contract
20 review.

21 Q And when you described this procedure early on in Mr. Thomas's
22 tenure where contracts would get on the agenda without the proper review
23 of -- of your office, were any of the contracts that I just talked about, the
24 ACS, Superior, Frasier, or Crystal Communications, were any of those
25 contracts in that group of contracts that got through to the agenda without

1 approval?

2 A I'm sorry, I don't know.

3 Q How often did you have contact, if at all, with Don Hayt?

4 A Not very often.

5 Q What was your understanding of his position at UMC?

6 A My understanding of his position was that he was supposed to be
7 a contract administrator.

8 Q And what did that mean to you?

9 A I'm not sure about the particular details, but my general
10 understanding is that he would make sure contracts got signed, and as --
11 watch them as they were being carried out and make sure that they were
12 carried out appropriately.

13 MR. ALBREGTS: I have no further questions.

14 THE COURT: Cross.

15 MR. MITCHELL: Thank you.

16 CROSS-EXAMINATION

17 BY MR. MITCHELL:

18 Q Ms. Miller, when you're speaking about the size of a county
19 agency, is that to mean the number of employees that work there?

20 A Generally, that would -- that's what I would mean.

21 Q And -- or might that be just a classification of the budget that
22 governs that particular agency? One of those two ways of --

23 A I generally don't know how much money is in any particular
24 department's budget, to be frank with you.

25 Q Okay. Is the reason you don't know about the budget because

1 that is not part of the responsibility that's been given you, other than making
2 sure that budgetary provisions are in conformity with the law?

3 A That's fair.

4 Q Okay. Now, the question that you received about the
5 employment contract for Mr. Thomas, is there anything about having an
6 employment contract that -- that has legal significance as far as, you know --
7 I mean, you said that there are three, perhaps, CEO's or heads of agencies
8 that have an employment contract. Does that confer any status that's
9 important as far as the law is concerned?

10 A It wouldn't confer any additional status as far as the law is
11 concerned. It just sets out with more particularity the terms under which
12 they operate.

13 Q Okay. Does it sort of legally attach more conditions to their
14 employment that they've got to comply with so that the -- so if the -- the
15 County has more oversight over their performance?

16 A With respect to the UMC contract, that's accurate.

17 Q Okay. And, generally, is that why a contract was drafted up and
18 it actually obtained your input in the drafting of it so that the performance at
19 UMC could be closely monitored?

20 MR. ALBREGTS: Objection as to foundation, as to how she
21 knows or if she know why the contract in this particular situation was drawn
22 up. I mean, I don't know if it --

23 THE COURT: Sustained. Why don't you --

24 MR. MITCHELL: Very well.

25 THE COURT: Let's find out --

1 MR. MITCHELL: Very well.

2 THE COURT: -- if she knows.

3 BY MR. MITCHELL:

4 Q Was it -- was it a normal thing for you to participate in the
5 drafting of a contract, of an employment contract such as this one?

6 A Such as this one, yes, it would be.

7 Q Okay. So you participated in this one because that's one of the
8 things you would do?

9 A Yes.

10 Q If the airport were hiring a new person to direct it, would you be
11 expected to come up with a contract for that?

12 A Yes.

13 Q Okay. And what about decisions on how much the CEO of UMC
14 or of McCarran Airport was supposed to be paid? Would that be your
15 decision or somebody else's?

16 A How -- how much they were supposed to be paid?

17 Q Their salary, yes. Uh-huh.

18 A That would not be my decision.

19 Q Okay. The reason your input -- or the reason, as you understand
20 it, why they go to you to draft that contract is what as you understand it?

21 A In this particular case, as a UMC CEO contract, it was to tighten
22 up some oversight responsibilities as a result of difficulties with the previous
23 CEO.

24 Q Okay. And did the contract require that the CEO of UMC accept
25 the DA's office as the entity that would provide legal advice as to the legality

1 of what was going on at UMC?

2 A Yes.

3 Q Okay. Was this contract a personal services contract between
4 the County and Mr. Thomas, or was it a contract just obligating him to
5 perform certain functions for UMC?

6 A I'm not sure I understand the distinction that you're drawing.

7 Q Well, did the contract establish a relationship between you and
8 your office that you had to provide certain services to Mr. Thomas, or, if not,
9 what did it provide?

10 A It wasn't a contract for personal services between my office and
11 Mr. Thomas.

12 Q Okay.

13 A It was an employment agreement between Mr. -- for Mr. Thomas
14 to work at UMC.

15 Q All right. So it governed a relationship, a legal relationship that --
16 that was not one that the civil division of the DA's office was a party to?

17 A That's correct.

18 Q All right. Now, how would you characterize the nature of your
19 personal relationship, if any, with Mr. Thomas?

20 A I didn't have a personal relationship with Mr. Thomas.

21 Q In fact, you testified that you do not recall ever having a one on
22 one conversation with him; is that right?

23 A Not that I can recall.

24 Q Okay.

25 A I -- I'm sorry, on -- with respect to business?

1 Q Right. In fact, the question that you were asked was if you had
2 ever had a one on one meeting with Mr. Thomas, and you said you did not
3 recall that. Is that --

4 A I don't -- I don't recall ever having a one on one meeting.

5 Q Okay.

6 A I may have run into him in a hallway or outside of a meeting and
7 chatted with him, but --

8 Q Okay.

9 A -- nothing that was planned.

10 Q All right. You testified before the Grand Jury in this matter on a
11 prior occasion; is that correct?

12 A Yes.

13 Q And you did testify with respect to a conversation --

14 MR. ALBREGTS: Judge, I object to the relevancy as to the issues
15 before the Court on this.

16 MR. MITCHELL: Well --

17 THE COURT: Well, let me hear the question first. It's --

18 MR. MITCHELL: Okay.

19 THE COURT: I don't know what his --

20 MR. ALBREGTS: Well, can we --

21 THE COURT: -- question is.

22 MR. ALBREGTS: Can we approach?

23 THE COURT: Okay.

24 (Conference at the bench.)

25 BY MR. MITCHELL:

1 Q You testified, Ms. Miller -- and I'm -- I'm withdrawing that last
2 question, so we're going on to a new subject here. You testified that on rare
3 occasions you actually would discuss a specific contract, maybe with -- with
4 other attorneys in your office, that might be one that was generated by UMC
5 personnel. Who would be the person requesting that you have input in that
6 meeting?

7 A It would vary. Sometimes the Deputies would come to me for
8 advice, sometimes audit would come to me, sometimes finance, sometimes
9 the county manager.

10 Q Okay. Was it ever Lacy Thomas that came to you seeking your
11 advice on that?

12 A Not that I recall.

13 Q Okay. If contracts were getting on the agenda without DA
14 review previously, without previous DA review, would that be contrary to the
15 established order of things?

16 A Yes.

17 Q And would that be contrary to the requirements of law?

18 A The law does not require the DA to review the contracts, the
19 county policy does.

20 Q Okay. So county policy would have to be avoided at very least in
21 order for something to get on the agenda without your office seeing it first?

22 A That's correct.

23 Q Okay. Don Hayt has been mentioned in prior questions. Did Don
24 Hayt have legal authority under any contract or agreement or county policy to
25 provide legal counsel to Lacy Thomas?

1 A No.

2 Q Was anybody authorized without a specific agreement giving that
3 authorization to provide legal advice besides the civil division of the DA's
4 office?

5 A They -- with our permission, they were allowed to hire outside
6 counsel. I assume that they would have legal agreements to provide for
7 payment of that and the usual terms that would involve representation of
8 counsel, but there could've been some situation where they hired an outside
9 counsel without a legal agreement.

10 Q Okay. Were you supposed to be in the loop on those decisions
11 when outside counsel was acquired?

12 A They were supposed to get permission expressly from David
13 Roger or from me before they hired outside counsel.

14 Q Okay. Now, as far as the counsel was concerned that you were
15 supposed to provide from your office, did it have anything to do with the
16 financial profitability of a contract whatsoever?

17 A That generally was not part of our review, no.

18 Q Your review would be restricted to what?

19 A Generally speaking, it was whether it was -- the contract was
20 legal, and to the extent that we had sufficient knowledge whether was it in
21 the best interest of the County.

22 Q Okay. This may sound like a stupid question or an obvious
23 question, but it's actually a brilliant question. You said that you represent
24 Clark County. What does it mean to represent Clark County? What do you
25 do for Clark County when you represent them?

1 A Well, I don't know that I have a brilliant answer in response, but
2 we provide them legal advice, and in the event that they need representation
3 in courts and administrative hearings, we provide them that.

4 Q Do you ever, as part of that representation, give them any
5 confidential advice on how to avoid the law or get around it?

6 A No, we do not.

7 MR. MITCHELL: Nothing further.

8 THE COURT: Redirect?

9 MR. ALBREGTS: No.

10 THE COURT: All right. Thank you.

11 Any other witnesses, Mr. Albregts?

12 MR. ALBREGTS: No. I mean, other than my record before, but I
13 think we can address that here in a second.

14 THE COURT: All right. Go ahead, Mr. Albregts.

15 MR. ALBREGTS: Judge, I think after today's hearing my record is
16 made that we need to have these other three witnesses. Both Mr. Hayt and
17 Mr. Hayes were a part of these agenda meetings where District Attorney
18 approval -- Attorney approval was sought and legal advice was sought.

19 Their testimony will provide further information for this
20 Court to consider in terms of what the relationship was between the parties.
21 And it will also, probably more importantly, complete the record that I think is
22 going to be need -- needed to be made on this one way or the other because
23 this is, at least in my estimation, a case that may end up becoming, a
24 watershed case is a little bit too strong, but at least a case in the State of
25 Nevada that defines where you got to draw the cutoff line for the District

1 Attorney's office in terms of a conflict when you're prosecuting county
2 employees.

3 And so I would urge the Court to give me a second hearing
4 where I think we can complete it within an hour. I -- I think my questioning
5 of these witnesses would be substantially less than the four today. I don't
6 know what cross would be.

7 I just need ten days, I think, according to statute to -- to
8 serve the subpoena and give people the ten days. So if I can get two to
9 three weeks, I will get these people subpoenaed, and we really only need an
10 hour or two of the Court's time to complete the record.

11 But they have been talked about, they have been in the
12 meetings, this is the crux of the issue, and I've made good faith efforts to get
13 a hold of these people. The only one arguably, to be intellectually honest,
14 one could say to me, you should've had Tom Riley by now, and that's
15 perhaps an issue with my investigator or I. But the other two witnesses,
16 Judge, there's nothing I could've done.

17 And so we're asking in good faith that you give us a little
18 more time so that we can finish and supplement the record, and I will get it
19 done as quickly as possible.

20 THE COURT: Mr. Mitchell.

21 MR. MITCHELL: Your Honor, in response, I -- I know the Court's
22 desire to provide a complete and fair hearing to counsel. Respectfully, I'm
23 going to argue now that he's already received that, that we have fulfilled, by
24 any measure and by any criteria that obligation to allow Mr. Albrechts to make
25 his legal point here.

1 Until Thursday of last week there was no mention that
2 other witnesses other than DA's would be necessary for this hearing. And
3 even -- that isn't necessarily a big point, but I think, originally, when we were
4 looking at this motion, we were looking at it accurately and the question, as
5 we sought then, is still the way the State sees it now, and that is what is the
6 legal relationship between the Clark County District Attorneys office and Mr.
7 Thomas, and does it provide such a close privileged communication
8 opportunity that it would be unfair for us to prosecute him when we have
9 had this close legal relationship that is in the nature of providing private
10 counsel to him.

11 And -- and I think that question has been answered four
12 times over today already. And the witnesses that Mr. Albregts seeks to call
13 cannot offer testimony on that specific point. Don Hayt is not legally
14 competent to testify on this legal point, neither is Mr. Hayes, he's not even a
15 lawyer. But the fact that Don Hayt is a lawyer doesn't qualify him here
16 because he's not the party that is supposedly in conflict with Mr. Hayt.

17 Tom Riley, and -- and I -- and I should say this, that during
18 my questioning, I, over and over again, emphasized that the relationship that
19 the DA's office had with Mr. Thomas was strictly legal requirements. It was
20 to provide legal requirements and make sure he complied with them.

21 So whenever there was a question as to whether somebody
22 in the DA's office was supposed to do anything else, the answer was always
23 the same, no, we didn't do that other stuff, we didn't figure out if a contract
24 was profitable, we didn't figure out if it was in the best interest of people,
25 we just reviewed it for legal sufficiency.

1 And Tom Riley is not competent to testify on that issue
2 either because he's not a lawyer in the DA's office. And it was his position
3 to make other decisions. It was his position to decide if it was Lacy Thomas
4 that got hired or somebody else. But as far as what the legal advice was that
5 was being given, there were only four witnesses that have testified here that
6 could testify on that point competently, and the people Mr. Albregts seeks to
7 call can't because they're not legally competent.

8 I would like him to make an offer of proof as to how they
9 can shed more light on the law governing this subject before we decide that
10 we have to continue this hearing anymore. I think that the evidence has been
11 more than sufficient to decide this -- this narrow legal issue, and I would
12 further like to comment on Mr. Albregts characterization as this issue being a
13 watershed issue. The fact that it is a watershed issue is kind of indicative of
14 what the -- what the result should be because the nature of this motion is,
15 basically, to suggest that if we can't prosecute Lacy Thomas, who can we
16 prosecute? What county employee can we prosecute?

17 The questions that I asked went to that point, to point out
18 how many hundreds and hundreds of county employees there are. There are
19 actually thousands. And it would be very, very difficult, based on his own
20 arguments, to show that Lacy Thomas is in a different position than so many
21 others that work for so many county agencies.

22 And how could one say that the relationship of the County
23 and Mr. Thomas was materially different than all these other thousands of
24 relationships. And so I think this point has been born out, I think it's been
25 belabored, and I think the Court should be able to rule now that we don't

1 need to hear additional witnesses and they were not even contemplated just
2 a little while ago. Thank you.

3 THE COURT: Well, Mr. Albregts, just so I'm clear, is it your
4 position that the DA, because of their being county counsel, that they are
5 precluded completely from prosecuting a county employee, and we'll say a
6 high level employee, for example, the director of McCarran. Are you -- are
7 you saying that because they're at meetings with this gentleman -- I don't
8 know if he's female or male --

9 MR. ALBREGTS: Male.

10 THE COURT: -- but that because they provide legal services to
11 the airport authority or to this -- or they have some contact with this
12 gentleman that they are precluded from prosecuting the manager of the
13 McCarran? And that's just an example, we're not saying he's done anything
14 wrong. I mean, are you saying the statute is --

15 MR. ALBREGTS: What I --

16 THE COURT: -- unconstitutional or --

17 MR. ALBREGTS: No. What I'm saying is that I could only
18 answer that question in the context of what the relationship was between
19 county counsel and the airport director.

20 And I would suggest that that case is far closer to crossing
21 the line of the conflict than, yes, than, say, someone who doesn't have an
22 employment contract whose activities, for instance, in Fran Dean's case, are
23 not at all within the purview of her office, but rather constitutes selling, at
24 least the way I understand the case, selling documents that she has been
25 elected and entrusted to take care of for a profit on the side outside of her

1 office.

2 That sort of case is completely distinguishable from here
3 where you have the State saying these are bad contracts for the benefit of
4 Mr. Thomas's friends, when their own lawyers were acting as the lawyers on
5 these contracts.

6 And that's why, Judge, the State has completely missed
7 the point when it comes to who is a competent witness. You don't have to
8 be a lawyer to testify. You're the one that gets paid the big bucks to make
9 the decision on the legal question, not the lawyers, not his colleagues.

10 And that's why these witnesses are important because I
11 need to establish a record as to what advice was being given in these
12 meetings regarding these contracts. And that's why those three are
13 important. Did I think I needed them three or four weeks ago? Not
14 necessarily. But as I started preparing for this thing, I thought to myself,
15 heck yeah, I need them. And I got my investigator out there two to three
16 weeks ago and said, get these people subpoenaed, let's get going.

17 And we couldn't find Mr. Hayt until about -- well, until
18 Wednesday of last week. When we got a hold of Mr. Hayes, he was in North
19 Carolina until tomorrow. And -- and, again, Tom Riley was somebody we
20 should've been able to find because he's a professor and works at Harrah's.
21 But the numbers we had weren't good and so we started down that track of
22 trying to find him.

23 And that's why these people are important is to be able to
24 say to you, look, this is what we were advised in these meetings. And I
25 think you have an obligation to consider what all these people say about

1 what went on to decide what advice was given, is there an attorney/client
2 privilege that's been established based upon this advice, and if so, can these
3 attorneys now be used by the same office to prosecute Mr. Thomas in
4 violation of the Supreme Court rules.

5 And so that's why those witnesses, I think, are absolutely
6 necessary. I'm only asking for a couple weeks, I'm only asking for a couple
7 hours.

8 THE COURT: The testimony so far is -- from the attorneys is that
9 they reviewed the contracts for their, I guess their phrase is legal sufficiency.
10 Basically, I'm interpreting it as that the i's were dotted and t's crossed, that
11 certain requirements were followed. Not that it was a good con -- financially
12 good contract, not that they were paying \$100 for a box of gauze, versus,
13 you know, 50 cents for the box of gauze.

14 Is it -- is it your position that these other witnesses are
15 going to go to that issue, I mean --

16 MR. ALBREGTS: Well --

17 THE COURT: -- as far as that -- that the -- the county attorneys
18 were involved in the contracts and advising Mr. Thomas on the contracts as
19 far as -- well, let's say advising and beyond the legal sufficiency of the
20 contract, make sure that they just followed the proper protocols.

21 MR. ALBREGTS: Well, Ms. Miller just testified a little bit more
22 than that, Judge. She said that she was also ensuring that the contract was
23 in the best interest of the County to the extent that they could make that
24 determination.

25 And so the answer, then, to your other question is, yes.

1 These witnesses can come in here, and, I think, paint a little bit of a different
2 story, if not a significantly different story, about the extent to which the DA's
3 office was relied upon for this advice.

4 And that's the sort of thing that we think creates the
5 attorney/client relationship beyond just the fact that, you know, we're the
6 county attorney, and we represent all county employees in these matters
7 and, therefore, would forever be precluded from prosecuting a county
8 employee. That's not the case at all.

9 What we're trying to establish is in this scenario, in this
10 business arrangement, with this employment contract which says you have
11 to rely on these people for your legal advice, that goes above and beyond the
12 normal situation requiring disqualification.

13 And I think these three witnesses are necessary to create
14 that record, to provide you all the facts about what was going on in these
15 meetings. And then at least you can make a decision, and if one of us
16 disagrees with it there is a complete record that the Supreme Court can look
17 at when they decide this issue.

18 And that's all I'm saying in terms of a watershed issue is
19 when you research this you can't find any cases that have been litigated that
20 give us much direction on this stuff.

21 THE COURT: Did -- did any -- I don't think there was any
22 question by either counsel as far as what best interest of the County meant
23 as far as was it a profitable contract versus, you know -- I think one of the
24 witnesses testified, well, if I had an insurance provision that was a no, you
25 know, because we weren't going to pay for insurance. If there was an

1 indemnification clause, that was inappropriate, and I think there was one or
2 two other items that -- that they would look at.

3 But I don't know if any of the witnesses here, or if anyone
4 was asked, what do you mean best interest of the County? Does that just
5 strictly mean insurance provisions, indemnification provisions, open meeting
6 law provisions -- I mean, open bid provisions --

7 MR. ALBREGTS: Right.

8 THE COURT: -- versus why are we paying 100 -- like the old
9 military, why are we paying \$100 for a toilet seat.

10 MR. ALBREGTS: Well, I think Holly Gordon to an extent -- and
11 this is exactly why we need Mr. Hayt. If you remember, Holly Gordon said, I
12 really didn't know about these aspects of it and so I was relying on Don Hayt
13 and these people to say, is it in the best interest of the County, is this the
14 sort of thing that's going to be good for the County. That's exactly why we
15 need Don Hayt to come in and testify as to what that relationship was and
16 what was said.

17 THE COURT: But Don Hayt was not a county employee, county
18 attorney.

19 MR. ALBREGTS: He's a witness, though. You don't have to be
20 a county employee or county attorney. He's the one who is going to say,
21 this is our interaction with the county attorneys who we are saying
22 represented and had an attorney/client relationship with Mr. Thomas in his
23 capacity as the CEO of UMC. He can testify that this is the interaction I had
24 with the county attorneys and the advice that we relied upon. And I --

25 THE COURT: Beyond making sure that --

1 MR. ALBREGTS: Yes.

2 THE COURT: -- they said the i's are dotted --

3 MR. ALBREGTS: Yes.

4 THE COURT: -- and t's are crossed.

5 MR. ALBREGTS: And I think there's enough of an inference in
6 the evidence here and the record here that requires that these other
7 witnesses testify so that we can complete the record.

8 THE COURT: Now, are you assuming that, or have you had
9 conversation with them and -- and giving as an officer of the court, an offer
10 of their testimony that they're going to testify that these county attorneys
11 were intimately involved with discussions with Mr. Thomas regarding how
12 appropriate the contract was not for following, you know, open bid process,
13 but as far as, you know, is this a profitable contract, is this vendor licensed,
14 those types of things?

15 MR. ALBREGTS: I cannot, as an officer of the court, sit here and
16 tell you that I can give you an offer of proof as to what they're going to say
17 because I had extensive discussion with them. Mr. Hayes was on vacation.
18 We talked briefly and he talked with my investigator, and I couldn't find Mr.
19 Hayt.

20 But I can tell you in my conversations with Mr. Hayt at the
21 inception of the investigation and during that time, I fully expect him to come
22 in here and provide testimony to that end that's going to talk about the
23 relationships between the two county attorneys that we heard from today,
24 their advice to the hospital and his involvement in that advice to the hospital
25 as one of the attorneys working for the hospital that was involved in this

1 circle of advice. But have I sat down and -- and pre-tried him? No, sir,
2 because I couldn't find him until last week.

3 THE COURT: And now we're going to be in a position that
4 you're going to -- you're going to say, well, Judge, we need these other three
5 people that were also at these meetings.

6 MR. ALBREGTS: No. That, as an officer of the court, I can tell
7 you that in my research and looking at this stuff those are the only other
8 three that I could see calling.

9 MR. MITCHELL: May I respond, Your Honor?

10 THE COURT: Just a question here. Now, Mr. Hayes, who does
11 he work for right now?

12 MR. ALBREGTS: He's -- he's retired as well.

13 THE COURT: And Mr. Hayt, he's private attorney here in town
14 or --

15 MR. ALBREGTS: No. No, he's retired and went up to -- to --
16 that's part of the reason. If he was an attorney in town I would've had him
17 here, Judge. He retired and went up to Zephyr's Cove, I think. It's
18 somewhere up in Tahoe.

19 THE COURT: All right. Mr. Mitchell.

20 MR. MITCHELL: Yes, Judge. I have profound respect for Mr.
21 Albregts here. I do think, though, his argument has just mixed apples and
22 oranges. All his argument has been is that these are good trial witnesses.
23 These are witnesses who would come in and tell the jury why they gave the
24 advice that they did, what decisions were made and why, but they're not
25 bearing on the legal issue before the Court, which is a legal motion to

1 disqualify the DA's office.

2 They might be exculpatory witnesses. I happen to think
3 that the reason Don Hayt has been hard to find, there's a very good reason
4 for that, but that's neither here nor there. I think if he -- if his presence is
5 secured he would certainly be a relevant witness as to the guilt or innocence
6 of Mr. Thomas, but he is legally incompetent to testify as to what the --
7 whether or not the DA's office should be disqualified from prosecuting this
8 case. He cannot come in and say the DA's office had more of a relationship
9 with Mr. Thomas than legal. How can he say that? How could he provide
10 that testimony?

11 And Mr. Albregts has also ignored the answer that Holly
12 Gordon gave to his question. He said that -- well, she sort of brought this
13 issue up when she said that she asked whether this one ACS contract was in
14 the best interest of the County.

15 And her explanation was that Don Hayt said, oh, yeah,
16 we've talked to the financial people, yeah, they're okay with it. And she
17 said, okay, I don't understand it, but as far as the legal specifications of the
18 contract are concerned, I don't see a problem. So as far as my responsibility
19 extends, I have no problem, but, boy, this is a confusing contract because I
20 don't recognize the language in it, and I'm wondering if other people are
21 okay.

22 But she made clear that that was outside her responsibility
23 because her focus was so narrow as the legality. She also came back and
24 revisited that issue, and this is what she said. That when she found out that
25 a provision has been sneaked into that contract, that it had not been there

1 when she had seen it, and that the only way that she became aware of it
2 was not because Lacy Thomas or anybody affiliated with him brought it to
3 her attention, but George Stevens, the CFO for the County, the Chief
4 Financial Officer, who brought it to her attention that a provision had been
5 put in that specifically required DA review. And all of a sudden it was there
6 in the contract and the DA had had no input.

7 So, again, focusing on the strict legal relationship, that's
8 been established. These other people may have knowledge about a lot of
9 things, but they don't have any more knowledge on this point. And I think,
10 again, that this hearing shouldn't be extended.

11 THE COURT: Anything else, Mr. Albregts?

12 MR. ALBREGTS: No, Your Honor.

13 THE COURT: The Court is going to consider this matter and will
14 advise counsel no later than Wednesday as far as its decision to continue the
15 hearing for further testimony. Okay.

16 MR. ALBREGTS: Thank you.

17 MR. MITCHELL: Thank you.

18 -oOo-

19 ATTEST: I hereby certify that I have truly and correctly transcribed the
20 audio/video proceedings in the above-entitled case to the best of my ability.

21
22 
23 JULIE POTTER
24 TRANSCRIBER
25

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CLERK OF THE COURT

1 MOT
2 DANIEL J. ALBREGTS, ESQ.
3 Nevada Bar No. 004435
4 DANIEL J. ALBREGTS, LTD.
5 601 S. Tenth Street, Suite 202
6 Las Vegas, Nevada 89101
7 (702) 474-4004
8 Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 LACY L. THOMAS,

13 Defendant.

CASE NO. C241569
DEPT. NO. XVII

14 **MOTION TO RECONSIDER THE COURT'S ORDER DENYING DEFENDANT'S**
15 **MOTION TO DISQUALIFY THE DISTRICT ATTORNEY'S**
16 **OFFICE AND DENYING A BRIEF EVIDENTIARY HEARING TO**
17 **FURTHER SUPPLEMENT THE RECORD IN THIS CASE**

18 The defendant, LACY L. THOMAS, by and through his attorney, DANIEL J. ALBREGTS,
19 ESQ., hereby requests that this Court reconsider its Order filed June 19, 2008 denying the
20 defendant's Motion to Disqualify the District Attorney's Office and denying the defenses request for
21 the opportunity to present further evidence before this Court for the purposes of the record in this
22 matter. This Motion to Reconsider is based upon the attached Memorandum of Points and
23 Authorities, together with all of the papers and pleadings on file herein, and any argument at a
24 hearing if the Court deems a hearing necessary on this issue.

25 DATED this 2nd day of July, 2008.

DANIEL J. ALBREGTS, LTD.

By: *[Signature]*

Daniel J. Albregts, Esq.
Nevada Bar No. 004435
601 S. Tenth Street, Suite 202
Las Vegas, Nevada 89101
(702) 474-4004
Attorney for Defendant

CLERK OF THE COURT

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JUL 22 2008

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The Court is well aware of the facts related to the Motion to Disqualify the District
3 Attorney's Office and the procedural background of this case as outlined in its Order dated June 19,
4 2008. The defense will incorporate by reference these facts without restating them at length here.
5 The defense will only outline the facts relevant to this Court's consideration of the request herein
6 which is to allow for further evidentiary hearing to complete the record in this case, after which
7 Thomas will also ask the Court to reconsider its order denying the Motion to Disqualify the District
8 Attorney's Office. In the event this Court denies Thomas' motion to disqualify the District
9 Attorney's Office, at the very least the record will be complete with all of the relevant witnesses so
10 that the Nevada Supreme Court can adequately consider this issue on appeal.

11 As the Court correctly noted, Thomas brought to the Court's attention that he intended to file
12 a motion to disqualify the district attorney's office at the time of Thomas' initial appearance in
13 District Court on February 28th, and thereafter on a number of occasions during the course of the
14 litigation. The Court fails to consider that prior to filing such motion counsel had to review nearly
15 900 pages of discovery and nearly 400 pages of Grand Jury transcripts in order to be prepared to file
16 the motion to disqualify the district attorney's office. Thus, the five week time the defense took to
17 file the motion to disqualify the district attorney's office was not unreasonable and in fact was done
18 rather expeditiously taking into consideration the normal press of business and the amount of
19 documents that needed to be reviewed prior to the motion being filed.

20 The defense did not receive the district attorney's response to the motion to disqualify the
21 district attorney's office until April 23, 2008 and therefore could not have known what the State's
22 position would be as to why they should not be disqualified. It was only at that time that defense
23 counsel could begin formulating the witnesses that would be necessary at the time of the hearing in
24 addition to what should be included in a reply to the State's response. The reply was filed on May
25 7, 2008.

26 During this time the defense began attempting to locate and subpoena all the witnesses that
27 were necessary. Three of the witnesses were not subpoenaed, Don Haight, Mike Hayes and Thom
28 Riley. As counsel indicated during the hearing when he requested a continued evidentiary hearing

1 in order to present these witnesses, only Riley arguably could have been served prior to the June 16,
2 2008 hearing. As counsel stated to the Court, Mike Hayes had been contacted but he was out of the
3 state on vacation and was not returning until the following day, June 17, 2008. Thus, he could not
4 be personally served with a subpoena and even had he been served, he would not have been available
5 to testify at the evidentiary hearing. As it relates to Don Haight, counsel notified the Court that Mr.
6 Haight had retired and unbeknownst to the defense moved to Zephyr Cove, Nevada, near Lake
7 Tahoe. By the time the defense was able to track Don Haight down at his new residence there was
8 not sufficient time to subpoena Mr. Haight to be present at the evidentiary hearing.

9 There is no question that as it relates to Haight and Hayes, the defense exercised due
10 diligence and simply could not have them present at the hearing. Thus, the inference in the Court's
11 Order that the defense should have had all three additional witnesses present given the amount of
12 time that lapsed from notifying the court of the intent to file the motion and the time of the
13 evidentiary hearing is belied by the record. While the defense would concede that Thom Riley
14 probably should have been served in time for the hearing and was not, the defense wrongly assumed
15 that the Court would allow the defense a brief amount of time to secure the witnesses for completion
16 of the evidentiary hearing and intended to simply include Riley in the second group of witnesses.

17 As the Court correctly noted in its Order, when asked to make a proffer defense counsel
18 stated that he had not spoken to the witnesses and could only offer what he anticipated their
19 testimony to be. As it relates to Haight, counsel could not locate him so obviously counsel could not
20 interview him. As it relates to Hayes, he was on vacation when the defense finally reached him and
21 given the fact that he could not testify anyway at the hearing he was not interviewed at length
22 regarding his testimony. Regarding Riley, as outlined above, counsel simply intended to interview
23 Riley after a date for the second evidentiary hearing was set which obviously did not occur.
24 Regardless of counsel's inability to make an exact proffer as to the witnesses testimony, the record
25 is clear that the witnesses are relevant and necessary to complete the record in this case.

26 Specifically, the witnesses who did testify at the hearing acknowledged that both Hayes and
27 Haight were directly involved in meetings during which legal issues were discussed and had specific
28 knowledge as to these meetings, the contracts in question in the indictment, and other evidence

1 relevant to the consideration of the motion to disqualify the district attorney's office. Moreover,
2 Riley was the County Manager for most of the time in question and dealt directly with Mary Ann
3 Miller, Holly Gordon, Lacy Thomas, and the relationship between the three. Clearly his testimony
4 regarding that relationship is directly relevant to the attorney-client relationship Thomas alleges and
5 would be necessary for this Court to consider prior to ruling on the motion and more importantly for
6 the Supreme Court to consider in the event the Court denies Thomas' motion to reconsider.

7 This Court erroneously stated in its Order that Thomas has not presented or proffered any
8 testimony or evidence to support the existence of an attorney-client relationship. Thomas provided
9 his employment contract as an exhibit to the motion and there was testimony regarding the contract
10 at the time of the evidentiary hearing. Clearly the contract states that the District Attorney's Office
11 is the attorney for the hospital and Lacy Thomas will use them in his capacity as the Chief Executive
12 Officer of UMC. Moreover, Holly Gordon testified that she provided legal advice to the hospital
13 and Lacy Thomas, and Lacy Thomas followed that legal advice on behalf of UMC. Moreover,
14 Gordon testified that she provided legal advice on at least two of the contract matters at issue in this
15 indictment. Thus, there is at least some evidence of an attorney-client relationship between Thomas
16 and the District Attorney's Office, and the additional witnesses the defense requests to present to the
17 Court will provide further evidence regarding the nature of that attorney-client relationship which
18 needs to be considered prior to the Court making a decision regarding the motion to disqualify the
19 district attorney's office.

20 The Court also correctly noted that Thomas did not testify at the evidentiary hearing. Again,
21 counsel wrongly assumed that this Court was going to allow the defense to supplement the record
22 with additional witnesses and was withholding his decision on whether Thomas should testify on this
23 issue until the time of that hearing. However, the Court's Order, if not reconsidered, will preclude
24 Thomas from testifying on this issue. Thomas should not be precluded from testifying on this issue
25 if he so chooses because a tactical decision made by his defense counsel backfired because counsel
26 erred in his belief as to what this Court would decide relating to a further evidentiary hearing. For
27 this reason alone the Court should reconsider its Order denying a further evidentiary hearing.

28 The Nevada Supreme Court has made clear in at least two cases that an evidentiary hearing

1 must be conducted to determine whether the appearance of impropriety is such that a disqualification
2 is warranted. See, Collier vs. Legakes, 98 Nev. 307, 646 P.2d 1219 (1982); Attorney General vs.
3 Eighth Judicial District Court in and for the County of Clark, 108 Nev. 1073, 844 P.2d 124 (1992).
4 Indeed, as the Supreme Court said in Attorney General vs. Eighth Judicial District Court, "District
5 Courts may only disqualify district attorneys offices after conducting a full evidentiary hearing and
6 considering all the facts and circumstances." 108 Nev. at p. 1075. Thus, if this Court fails to
7 reconsider its Order regarding a further evidentiary hearing, the Supreme Court will be left with no
8 choice but to remand this case for further evidentiary hearing given the importance of these
9 witnesses' testimony to the issue at hand. Given the Supreme Court's desire for the District Court
10 to conduct a full evidentiary hearing to consider all the facts and circumstances, clearly the three
11 additional witnesses, along with Thomas' testimony, require this Court to reconsider its prior Order
12 denying a further evidentiary hearing and to reset an evidentiary hearing for the purposes of
13 considering this testimony.

14 For the foregoing reasons, Thomas would request that this Court reconsider its prior Order
15 and allow for further evidence to be taken at a brief evidentiary hearing. Thereafter, Thomas will
16 request that this Court further reconsider its Order and disqualify the District Attorney's Office from
17 prosecuting this case.

18 DATED this 2nd day of July, 2008.

19 DANIEL J. ALBREGTS, LTD.

20 By: 

21 Daniel J. Albregts, Esq.
22 Nevada Bar No. 004435
23 Attorney for Defendant
24
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Scott S. Mitchell
Chief Deputy District Attorney
477-2949 (Facsimile)

An Employee of Daniel J. Albregts, Esq.

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1 0120
2 DANIEL J. ALBREGTS, ESQ.
3 Nevada Bar No. 004435
4 DANIEL J. ALBREGTS, LTD.
5 601 S. Tenth Street, Suite 202
6 Las Vegas, Nevada 89101
7 (702) 474-4004
8 Attorney for Defendant

2008 JUL 22 P 4: 02

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,
10 vs.
11 LACY L. THOMAS,
12 Defendant.

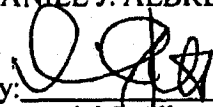
CASE NO. C241569
DEPT. NO. XVII

**AMENDED MOTION TO RECONSIDER THE COURT'S ORDER DENYING
DEFENDANT'S MOTION TO DISQUALIFY THE DISTRICT ATTORNEY'S
OFFICE AND DENYING A BRIEF EVIDENTIARY HEARING TO
FURTHER SUPPLEMENT THE RECORD IN THIS CASE**

16 The defendant, LACY L. THOMAS, by and through his attorney, DANIEL J. ALBREGTS,
17 ESQ., hereby files this Amended Motion to Reconsider the Court's Order Denying Defendant's
18 Motion to Disqualify the District Attorney's Office and Denying a Brief Evidentiary Hearing to
19 further Supplement the Record in this Case. The defendant previously filed a Motion to Reconsider
20 on July 2, 2008. However, defense counsel failed to file this motion with Master Calendar and have
21 the motion set for hearing. This Amended Motion to Reconsider is based upon the attached
22 Memorandum of Points and Authorities, together with all of the papers and pleadings on file herein,
23 and any argument at a hearing if the Court deems a hearing necessary on this issue.

DATED this 21st day of July, 2008.

DANIEL J. ALBREGTS, LTD.

By: 
Daniel J. Albregts, Esq.
Nevada Bar No. 004435
Attorney for Defendant

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JUL 22 2008

CLERK OF THE COURT

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Dated this 21st day of July, 2008.

By:

MEMORANDUM OF POINTS AND AUTHORITIES

The Court is well aware of the facts related to the Motion to Disqualify the District Attorney's Office and the procedural background of this case as outlined in its Order dated June 19, 2008. The defense will incorporate by reference these facts without restating them at length here. The defense will only outline the facts relevant to this Court's consideration of the request herein which is to allow for further evidentiary hearing to complete the record in this case, after which Thomas will also ask the Court to reconsider its order denying the Motion to Disqualify the District Attorney's Office. In the event this Court denies Thomas' motion to disqualify the District Attorney's Office, at the very least the record will be complete with all of the relevant witnesses so that the Nevada Supreme Court can adequately consider this issue on appeal.

As the Court correctly noted, Thomas brought to the Court's attention that he intended to file a motion to disqualify the district attorney's office at the time of Thomas' initial appearance in District Court on February 28th, and thereafter on a number of occasions during the course of the litigation. The Court fails to consider that prior to filing such motion counsel had to review nearly 900 pages of discovery and nearly 400 pages of Grand Jury transcripts in order to be prepared to file the motion to disqualify the district attorney's office. Thus, the five week time the defense took to file the motion to disqualify the district attorney's office was not unreasonable and in fact was done

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11 The Nevada Supreme Court has made clear in at least two cases that an evidentiary hearing
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15 Indeed, as the Supreme Court said in Attorney General vs. Eighth Judicial District Court, "District
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19 choice but to remand this case for further evidentiary hearing given the importance of these
20 witnesses' testimony to the issue at hand. Given the Supreme Court's desire for the District Court
21 to conduct a full evidentiary hearing to consider all the facts and circumstances, clearly the three
22 additional witnesses, along with Thomas' testimony, require this Court to reconsider its prior Order
23 denying a further evidentiary hearing and to reset an evidentiary hearing for the purposes of
24 considering this testimony.

25 For the foregoing reasons, Thomas would request that this Court reconsider its prior Order
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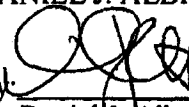
27 ...

28 ...

1 request that this Court further reconsider its Order and disqualify the District Attorney's Office from
2 prosecuting this case.

3 DATED this 21st day of July, 2008.

4 DANIEL J. ALBREGTS, LTD.

5 By: 

6 Daniel J. Albregts, Esq.
7 Nevada Bar No. 004435
8 Attorney for Defendant

9 **RECEIPT OF COPY**

10 **RECEIPT** of the foregoing **AMENDED MOTION TO RECONSIDER THE COURT'S**
11 **ORDER DENYING DEFENDANT'S MOTION TO DISQUALIFY THE DISTRICT**
12 **ATTORNEY'S OFFICE AND DENYING A BRIEF EVIDENTIARY HEARING TO**
13 **FURTHER SUPPLEMENT THE RECORD IN THIS CASE** is hereby acknowledged this ____
14 day of July, 2008.

15 DAVID J.J. ROGER
16 CLARK COUNTY DISTRICT ATTORNEY

17 By: _____
18 200 Lewis Avenue
19 Las Vegas, NV 89101


CLERK OF THE COURT

1 **OPPS**
2 **DAVID ROGER**
3 Clark County District Attorney
4 Nevada Bar #002781
5 **SCOTT S. MITCHELL**
6 Chief Deputy District Attorney
7 Nevada Bar #000346
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,
-vs-
LACY L. THOMAS,
#2676662
Defendant.

CASE NO: C241569
DEPT NO: XVII

OPPOSITION TO AMENDED MOTION TO RECONSIDER THE COURT'S
ORDER DENYING DEFENDANT'S MOTION TO DISQUALIFY THE
DISTRICT ATTORNEY'S OFFICE AND DENYING A BRIEF
EVIDENTIARY HEARING TO FURTHER SUPPLEMENT THE RECORD
IN THIS CASE

DATE OF HEARING: 08/05/08
TIME OF HEARING: 8:00 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
SCOTT S. MITCHELL, Chief Deputy District Attorney, and hereby submits the attached
Points and Authorities in Opposition to Defendant's Amended Motion To Reconsider The
Court's Order Denying Defendant's Motion To Disqualify The District Attorney's Office
And Denying A Brief Evidentiary Hearing To Further Supplement The Record In This Case.

This opposition is made and based upon all the papers and pleadings on file herein,
the attached points and authorities in support hereof, and oral argument at the time of
hearing, if deemed necessary by this Honorable Court.

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1 indicate that the witnesses who'd already testified would be contradicted by further
2 testimony from people less involved than the defendant and the attorneys. Since neither side
3 should be allowed to say that it deserves to have a continuation of an already-lengthy hearing
4 to produce yet-unsubpoenaed witnesses when all the defense witnesses who testified have
5 already belied the defendant's claim, the court was right to conclude the hearing.

6
7 The Unsubpoenaed Witnesses Proffered by Defendant Would Clearly Fail to
8 Establish a Conflict of Interest.
9

10 As the State already argued at the hearing on the defense motion to extend the
11 hearing, it is self-evident that the witnesses now sought to be called would be unable to
12 establish the existence of a conflict of interest. This is true for two reasons: First, the nature
13 of Defendant's claim requires a legal conclusion to be made, but the subpoenaed witnesses
14 are not lawyers. They aren't qualified to supplement the record regarding the legal
15 relationship between the district attorneys and the defendant. The lawyers who are qualified
16 to speak to that issue have already testified regarding the legal nature of that relationship. To
17 suggest that non-lawyers are going to override the testimony of four district attorneys on the
18 issue of the legal relationship between those district attorneys and the defendant, and thus
19 cause this court to conclude a conflict exists as a matter of law, is unfathomable.

20 Second, and even more obviously, the subpoenaed witnesses aren't qualified to
21 testify regarding confidential, privileged communications between Lacy Thomas and the
22 various district attorneys. If the communications were of the attorney-client type, how could
23 the witnesses have been there to witness them? At no time has Defendant indicated how the
24 subpoenaed witnesses could establish what privileged communications took place
25 between Defendant and the district attorneys. But even if defense counsel had provided such
26 an offer of proof, could the proffered testimony be strong enough to override the
27 overwhelming weight of the evidence already before the court?

28 ///

1 When Defendant Moved to Extend the Hearing on its Motion, no Mention was
2 made of Defendant's Desire to Testify, and the Defense should not Raise that
3 Issue now.
4

5 The defendant did not express a desire to testify, nor claim he'd been deprived of that
6 opportunity, when defense counsel asked this court to allow him to subpoena additional
7 witnesses for another day. If the defendant were allowed to extend the hearing by now
8 claiming he wants to testify after his motion has already been heard and denied, the motion
9 could never be concluded, as each side could endlessly change tactics and seek to provide
10 additional witnesses in areas where the record was deemed weak. Such a tactic is not even
11 allowed in jury trials, where more of the defendant's rights are at stake. A defendant cannot
12 be found guilty, then decide he want to invoke his right to testify before the jury when he
13 waived that right during trial. Nor can the State absorb a not guilty verdict, then ask the
14 judge to reopen the case so additional witnesses may bolster the State's case. Given the
15 limitations on jury trials, it goes without saying that the law certainly doesn't contemplate
16 defendants being given multiple chances to revise pretrial strategies by getting new hearings
17 after the first strategy failed.

18
19 Defendant's Motion Ignores the Express Intent of the Law that District
20 Attorney Prosecute Crimes against County Employees, and Defendant has
21 Failed to Show this Case to be an Exception.
22

23 In rendering its decision, this court referred to the statutory law requiring prosecutions
24 of county employees to be carried out by the district attorney of that county. Defendant has
25 ignored this law as if it had no bearing on how this case should be decided. But counsel has
26 failed to allege any facts here that would show why this case would be a conflict of interest
27 any more than any other case in which a county employee is being prosecuted by the district
28 attorney. If Defendant would have the law ignored, facts should be alleged that indicate this

1 case to have been so far outside the norm that the law couldn't have contemplated the
2 specific scenario presented. Defendant has made no such allegation. Nevertheless, he
3 continues to ignore the black letter law governing this case. The evidence already before the
4 court has shown that this case provides no grounds for an exception to be made.

5 CONCLUSION

6 This court's decision denying Defendant's request to extend the hearing and subpoena
7 new witnesses should not be modified.

8 DATED this 1st day of August, 2008.

9 Respectfully submitted,

10 DAVID ROGER
11 Clark County District Attorney
12 Nevada Bar #002781

13
14 BY /s/ SCOTT S. MITCHELL
15 SCOTT S. MITCHELL
16 Chief Deputy District Attorney
17 Nevada Bar #000346

18 CERTIFICATE OF FACSIMILE TRANSMISSION

19 I hereby certify that service of OPPOSITION TO AMENDED MOTION TO
20 RECONSIDER THE COURT'S ORDER DENYING DEFENDANT'S MOTION TO
21 DISQUALIFY THE DISTRICT ATTORNEY'S OFFICE AND DENYING A BRIEF
22 EVIDENTIARY HEARING TO FURTHER SUPPLEMENT THE RECORD IN THIS
23 CASE, was made this 1st day of August, 2008, by facsimile transmission to:

24 DANIEL J. ALBREGTS, ESQ.
25 FAX # (702) 474-0739

26 /s/ M. JENKINS
27 Secretary for the District Attorney's Office

28 SM/mj

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

LACY L. THOMAS

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK,
AND THE HONORABLE MICHAEL
VILLANI, DISTRICT JUDGE

Respondent,

and

THE STATE OF NEVADA,

Real Party in Interest.

OCT 15 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

S.Ct. No. 52351

APPENDIX

**TO ANSWER TO PETITION FOR WRIT MANDAMUS
OR IN THE ALTERNATIVE, WRIT OF CERTIORARI**

DANIEL J. ALBREGTS, ESQ.
Daniel J. Albregts, LTD.
Nevada Bar #004435
601 S. Tenth Street, Suite 202
Las Vegas, Nevada 89101
(702) 474-4004

Counsel for Appellant

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
Clark County Courthouse
200 South Third Street, Suite 701
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 455-4711
State of Nevada

CATHERINE CORTEZ MASTO
Nevada Attorney General
Nevada Bar No. 003926
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265

Counsel for Respondent

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OCT 15 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

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DANIEL J. ALBREGTS, ESQ.
Daniel J. Albregts, LTD.
Nevada Bar #004435
601 S. Tenth Street, Suite 202
Las Vegas, Nevada 89101
(702) 474-4004

Eileen Davis
Employee Clark County District Attorney's Office

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Judge Michael Villani
District Court Department XVII
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101

Eileen Paine
Employee, Clark County
District Attorney's Office

4
E:\APPELLATE\WPDOCS\SECRETARY\WRITS\THOMAS, LACY L., 52351, C241569, APPENDIX TO WRIT A

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[Signature]
CLERK OF THE COURT

11

1 IND
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 SCOTT S. MITCHELL
6 Chief Deputy District Attorney
7 Nevada Bar #000346
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 -vs-)

13 LACY L. THOMAS,)

14 Defendant(s).)

Case No. C241569
Dept. No. XVII

INDICTMENT

18 STATE OF NEVADA }
19 COUNTY OF CLARK } ss.

20 The Defendant(s) above named, LACY L. THOMAS, accused by the Clark County
21 Grand Jury of the crime(s) of THEFT (Felony - NRS 205.0832, 205.0835); and
22 MISCONDUCT OF A PUBLIC OFFICER (Felony - NRS 197.110), committed at and
23 within the County of Clark, State of Nevada, on or between September, 2004, and January,
24 2007, as follows:

25 COUNT I - THEFT

Defendant did, on or between May, 2005, and January, 2007, then and there
knowingly, feloniously, and without lawful authority, commit theft by using the services or
property of another person entrusted to him, or placed in his possession of a limited,

CLERK OF THE COURT

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1 authorized period of determined or prescribed duration or for a limited use, having a value of
2 \$2500.00 or more, lawful money of the United States, belonging to University Medical
3 Center and/or Clark County, Clark County, Nevada, in the following manner, to-wit: by the
4 Defendant, while employed as Chief Executive Officer at said University Medical Center,
5 entering into a contract with Superior Consulting and/or ACS Company, a company run by
6 longtime friends or associates of Defendant, for Superior Consulting and/or ACS to collect
7 money owed to University Medical Center under contracts or terms grossly unfavorable to
8 said University Medical Center, whereby University Medical Center was obligated to pay
9 said Superior Consulting and/or ACS for collection work already being performed by an
10 agency of Clark County and could not terminate said contract for a lengthy period of time
11 regardless of whether Superior Consulting and/or ACS was successfully increasing the
12 collection of University Medical Center's debt, and/or by allowing Superior Consulting
13 and/or ACS to sell valuable accounts receivable to a third party for an unreasonably low
14 price and to charge a high commission for said sale, and after learning that debt collection
15 had decreased under the direction of Superior Consulting and/or ACS, modifying the
16 contract to greatly increase the amount of money University Medical Center paid said
17 Superior Consulting and/or ACS for said debt collection services, thereby using the services
18 or property for another use.

19 COUNT 2 – THEFT

20 Defendant did, on or between December, 2004, and December, 2006, then and there
21 knowingly, feloniously, and without lawful authority, commit theft by using the services or
22 property of another person entrusted to him, or placed in his possession of a limited,
23 authorized period of determined or prescribed duration or for a limited use, having a value of
24 \$2500.00 or more, lawful money of the United States, belonging to University Medical
25 Center and/or Clark County, Clark County, Nevada, in the following manner, to-wit: by the
26 Defendant, while employed as Chief Executive Officer at said University Medical Center,
27 entering into contracts with Frasier Systems Group, a company owned by Gregory Boone, a
28 friend of said Defendant, whereby said Frasier Systems Group was paid with University

1 Medical Center funds to plan and implement a project manager's office for University
2 Medical Center projects but never produced any product or services in return for said
3 payment, and said Defendant causing payments to be made on said contract while he knew
4 or should have known that services were not being received as contracted for under said
5 contract and said contract was unnecessary in that University Medical Center already had
6 available, free of charge, the services of a project manager's office run by Clark County,
7 thereby using the services or property for another use.

8 COUNT 3 - THEFT

9 Defendant did, on or between September, 2004, and December, 2006, then and there
10 knowingly, feloniously, and without lawful authority, commit theft by using the services or
11 property of another person entrusted to him, or placed in his possession of a limited,
12 authorized period of determined or prescribed duration or for a limited use, having a value of
13 \$2500.00 or more, lawful money of the United States, belonging to University Medical
14 Center and/or Clark County, Clark County, Nevada, in the following manner, to-wit: by the
15 Defendant, while employed as Chief Executive Officer at said University Medical Center,
16 entering into a contract with TBL Construction, on behalf of University Medical Center
17 whereby said TBL Construction was paid by University Medical Center to oversee the
18 installation of the landscaping and electrical feed to University Medical Center Northeast
19 Tower project under construction; Defendant knowing at the time of entering into said
20 contract that the electrical feed and landscaping work was already covered and provided for
21 in a separate contract with the general contractor of said project, and that said general
22 contractor was already being paid to do said work, and that the said TBL Construction would
23 not be doing any work pursuant to said contract with University Medical Center, and that
24 said contract was unnecessary, thereby using the services or property for another use.

25 COUNT 4 - THEFT

26 Defendant did, on or about April, 2005, then and there knowingly, feloniously, and
27 without lawful authority, commit theft by using the services or property of another person
28 entrusted to him, or placed in his possession of a limited, authorized period of determined or

1 prescribed duration or for a limited use, having a value of \$2500.00 or more, lawful money
2 of the United States, belonging to University Medical Center and/or Clark County, Clark
3 County, Nevada, in the following manner, to-wit: by the Defendant, while employed as
4 Chief Executive Officer at said University Medical Center, by paying University Medical
5 Center funds to Premier Alliance Management, LLC, a company owned by Orlando Jones, a
6 friend of Defendant, after said Premier Alliance Management LLC agreed to analyze and
7 report on planning, priorities and communications systems at University Medical Center, in
8 return for which said Premier Alliance Management LLC provided no report or analysis to
9 University Medical Center, and none was requested of required by Defendant in return for
10 said money paid, thereby using the services or property for another use.

11 COUNT 5 – THEFT

12 Defendant did, on or between June 2005 and December, 2006, then and there
13 knowingly, feloniously, and without lawful authority, commit theft by using the services or
14 property of another person entrusted to him, or placed in his possession of a limited,
15 authorized period of determined or prescribed duration or for a limited use, having a value of
16 \$2500.00 or more, lawful money of the United States, belonging to University Medical
17 Center and/or Clark County, Clark County, Nevada, in the following manner, to-wit: by the
18 Defendant, while employed as Chief Executive Officer at said University Medical Center,
19 entering into a contract with Crystal Communications LLC, a company owned and operated
20 by Orlando Jones and Martello Pollock, friends of the Defendant, to pay Crystal
21 Communications, LLC, to oversee the selection and installation of the best
22 telecommunications equipment available for the University Medical Center Northeast Tower
23 project, and Defendant thereafter paying said Crystal Communications, LLC, without said
24 company being qualified or capable of providing services valuable to University Medical
25 Center, and said company thereafter failing to provide a valuable service pursuant to said
26 contract, thereby using the property of University Medical Center for another use.

27 COUNT 6 – MISCONDUCT OF A PUBLIC OFFICER

28 Defendant did, on or between May, 2005, and January, 2007, then and there

1 knowingly, feloniously, and without legal authority, while acting as a public officer as Chief
2 Executive Officer of University Medical Center, employ or use money under his official
3 control or direction, or in his official custody, for the private benefit or gain of himself or
4 another, by doing the acts set forth in Count 1, hereinabove.

5 COUNT 7 – MISCONDUCT OF A PUBLIC OFFICER

6 Defendant did, on or between December, 2004, and December, 2006, then and there
7 knowingly, feloniously, and without legal authority, while acting as a public officer as Chief
8 Executive Officer of University Medical Center, employ or use money under his official
9 control or direction, or in his official custody, for the private benefit or gain of himself or
10 another, by doing the acts set forth in Count 2, hereinabove.

11 COUNT 8 – MISCONDUCT OF A PUBLIC OFFICER

12 Defendant did, on or between September, 2004, and December, 2006, then and there
13 knowingly, feloniously, and without legal authority, while acting as a public officer as Chief
14 Executive Officer of University Medical Center, employ or use money under his official
15 control or direction, or in his official custody, for the private benefit or gain of himself or
16 another, by doing the acts set forth in Count 3, hereinabove.

17 COUNT 9– MISCONDUCT OF A PUBLIC OFFICER

18 Defendant did, on or about April, 2005, then and there knowingly, feloniously, and
19 without legal authority, while acting as a public officer as Chief Executive Officer of
20 University Medical Center, employ or use money under his official control or direction, or in
21 his official custody, for the private benefit or gain of himself or another, by doing the acts set
22 forth in Count 4, hereinabove.

23 COUNT 10 – MISCONDUCT OF A PUBLIC OFFICER

24 Defendant did, on or between June, 2005, and December, 2006, then and there
25 knowingly, feloniously, and without legal authority, while acting as a public officer as Chief

26 //

27 //

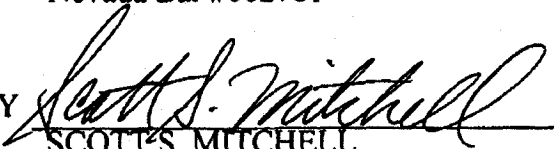
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1 Executive Officer of University Medical Center, employ or use money under his official
2 control or direction, or in his official custody, for the private benefit or gain of himself or
3 another, by doing the acts set forth in Count 5, hereinabove.

4 DATED this 20th day of February, 2008.

5
6 DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

7
8
9 BY


SCOTT S. MITCHELL
Chief Deputy District Attorney
Nevada Bar #000346

10
11 ENDORSEMENT: A True Bill

12
13 
14 Foreperson, Clark County Grand Jury
15
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1 Names of witnesses testifying before the Grand Jury:

2 CARROLL, JERMAH, CPA, DIRECTOR, CLARK COUNTY AUDIT DEPT., C/O
3 CCDA, 200 LEWIS AVENUE, LVN 89101

4 VALENTINE, VIRGINIA, CLARK COUNTY MANAGER

5 MARY ANNE MILLER, DEPUTY DISTRICT ATTORNEY, CIVIL DIVISION

6 FORD, MICHAEL, LVMPD P#5279

7 CLAYPOOL, D. BLAINE, CHIEF EXECUTIVE OFFICER, UNIVERSITY OF NEVADA,
8 SCHOOL OF MEDICINE

9 WALSH, MICHAEL, DIRECTOR OF ADMINISTRATION, SOUTHERN NEVADA
10 HEALTH DISTRICT

11 FINGER, EDWARD, COUNTY COMPTROLLER

12 MYERS, H. LEE, UMC SUPPORT SERVICES

13 MALCOLM JOHN ERNEST MCKINLEY, UMC, DIRECTOR OF INFORMATION
14 SYSTEMS

15 CALUYA, CHRIS, VICE PRESIDENT CLARK-SULLIVAN CONSTRUCTORS

16 WHITELEY, ROBERT, LVMPD P#4996

17 STEVENS, GEORGE, CHIEF FINANCIAL OFFICER, CLARK COUNTY

18 REILLY, THOMAS, C/O CCDA, 200 LEWIS AVE., LVN 89101

19 HARRIS, QUINCY, NETWORKS WEST , PRESIDENT

20 ANDREWS, WILLIAM, INTERNAL AUDIT, UMC

21 Additional witnesses known to the District Attorney at the time of filing this Indictment:

22 COE, DANIEL, LVMPD P#4552

23 SAMPSON, NANCY, LVMPD P#4627

24 ROTH, CHRISTOPHER, FORMER DIRECTOR OF PLANNING AND OPERATIONS,
25 UNIVERSITY MEDICAL CENTER

26 HAIGHT, DON, UMC EXECUTIVE DIRECTOR FOR CONTRACT MANAGEMENT

27 NORTHCUTT, DOUG, UMC, CHIEF INFORMATION OFFICER

28 STEVENS, FLOYD, UMC COMPTROLLER

HAYES, MICHAEL, UMC MANAGEMENT ANALYSIS

MCELHONE, JOHN II, UMC, DIRECTOR OF CONSTRUCTION

1 THREATT, LORI, C/O CCDA, 200 LEWIS AVENUE, LVN 89101
2 ESPINOZA, JOHN, UMC DIRECTOR OF EMPLOYEE SERVICES
3 McQUILLEN, BARBARA, UMC SENIOR CONTRACTS ADMINISTRATOR
4 HARPER, JEAN, UMC ECECUTIVE SECRETARY
5 MILES, BOB, DIRECTOR OF MATERIAL MANAGEMENT
6 MOSS, THERESA, UMC PURCHASING AGENT
7 GRUIDL, NADINE, UMC SENIOR PURCHASING
8 CARR, VIRGINIA, UMC, DIRECTOR OF ELIGIBILITY
9 HARRIS, RONALD, FORMER TBL CO-OWNER
10 TAYLOR'S CONSULTING, WILLIAM TAYLOR, PRESIDENT, C/O CCDA, 200 LEWIS
AVENUE, LVN 89101
11 GREAT LAKES MEDICAID, JAMES A. KNEPPER, PRESIDENT, C/O CCDA, 200
12 LEWIS AVENUE, LVN 89101
13 FRASIER SYSTEMS GROUP, GREGORY A. BOONE, PRESIDENT, C/O CCDA, 200
LEWIS AVENUE, LVN 89101
14 SUPERIOR CONSULTANT COMPANY, ROBERT J. MILLS, VICE PRESIDENT, C/O
15 CCDA, 200 LEWIS AVENUE, LVN 89101
16 RISK MANAGEMENT SOLUTIONS OF AMERICA, BENNIE JONES, C/O CCDA, 200
LEWIS AVENUE, LVN 89101
17 CRYSTAL COMMUNICATIONS TECHNOLOGIES CORPORATION, MARTELLO
18 POLLOCK, PRESIDENT, C/O CCDA, 200 LEWIS AVENUE, LVN 89101
19 CRYSTAL COMMUNICATIONS TECHNOLOGIES CORPORATION, ORLAND
JONES, C/O CCDA, 200 LEWIS AVENUE, LVN 89101
20 ALLIANCE HEALTH SERVICES, VELMA BUTLER, PRESIDENT C/O CCDA, 200
21 LEWIS AVENUE, LVN 89101
22 FAMILY GUIDANCE CENTERS INC; HENRENE THOMAS, PRINCIPAL, C/O CCDA,
200 LEWIS AVENUE, LVN 89101
23 NETWORKS WEST COMMUNICATIONS
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CLERK OF THE COURT

0214
 DANIEL J. ALBREGTS, ESQ.
 Nevada Bar No. 004435
 DANIEL J. ALBREGTS, LTD.
 601 S. Tenth Street, Suite 202
 Las Vegas, Nevada 89101
 (702) 474-4004
 Attorney for Defendant

DISTRICT COURT
 CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

LACY L. THOMAS,

Defendant.

CASE NO. C241569
 DEPT. NO. XVII

MOTION TO DISQUALIFY THE DISTRICT ATTORNEY'S OFFICE

The defendant, LACY L. THOMAS, by and through his attorney, DANIEL J. ALBREGTS, ESQ., hereby files this Motion to Disqualify the District Attorney's Office from prosecuting this matter. This motion is based upon the attached Memorandum of Points and Authorities together with Nevada Court Rules 1.9(a), 1.10(a), and 3.7(b), all of the pleadings and papers on file herein, the evidentiary hearing which may be necessary for the determination of this motion, and further argument at the hearing this Court will schedule on this issue.

DATED this 4th day of April, 2008.

DANIEL J. ALBREGTS, LTD.

By: 

Daniel J. Albregts, Esq.
 Nevada Bar No. 004435
 601 S. Tenth Street, Suite 202
 Las Vegas, Nevada 89101
 (702) 474-4004
 Attorney for Defendant

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CLERK OF THE COURT

1 **NOTICE OF MOTION**

2 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the above and
3 foregoing Motion on for hearing before the above entitled court on the 17 day of
4 April, 2008, at 8:00 a.m. in Department XVII of said court.

5 Dated this 4th day of April, 2008.

6 DANIEL J. ALBREGTS, LTD.

7
8 By: 
9 DANIEL J. ALBREGTS, ESQ.
10 Nevada Bar No. 004435
11 601 S. Tenth Street, Suite 202
12 Las Vegas, Nevada 89101
13 Attorney for Defendant

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. FACTUAL BACKGROUND**

16 Lacy Thomas is charged in a ten count Indictment with five counts of Theft in violation of
17 NRS 205.0832, 205.0835 and five counts of Misconduct of a Public Officer in violation of NRS
18 197.110. The allegations involve five contracts negotiated by Lacy Thomas in his capacity as CEO
19 of UMC with five different entities for work to be performed on behalf of UMC. In their Indictment
20 the District Attorney's Office has listed their witnesses, including at least one District Attorney,
21 Maryann Miller. Additionally, during the course of litigation of other motions in this case the
22 prosecution has indicated it will also call Holly Gordon from the District Attorney's Office as a
23 witness in the case. Thomas anticipates calling District Attorney David Rogers as well given his
24 involvement with UMC matters and specifically issues relevant to the allegations contained in the
25 Indictment.

26 The facts necessary for the determination of this motion are as follows. Thomas was hired
27 in November of 2003 to be the Chief Executive Officer of the University Medical Center of Southern
28 Nevada. Thomas was hired pursuant to an employment agreement which gave him broad authority
to conduct the affairs of the hospital as outlined in the agreement. The contract provided that

1 "Thomas shall provide total management services for the hospital in a manner consistent with and
2 subject to the responsibilities of UMC as the hospital licensee and holder of the medicare provider
3 number." (See Exhibit 1 attached hereto, §2) Other specific duties of the CEO were outlined within
4 the employment contract. The contract further provided that "The Clark County District Attorney
5 shall be legal counsel for the hospital and all its operations and agencies until otherwise authorized
6 by the District Attorney. Any expenditure of funds for outside legal services may be approved or
7 authorized by UMC or by express operation of the laws of the State of Nevada". (See Exhibit 1, §
8 3.06)

9 During the course of his employment with UMC, Thomas interacted with deputies from the
10 District Attorneys office on nearly a weekly basis and had substantial contact with District Attorney
11 David Roger on any number of issues. During his employment, Thomas was informed by the District
12 Attorneys office that they were the sole attorneys allowed to give legal advice to Thomas in his
13 capacity as the CEO of UMC. The District Attorneys office advised Thomas on a broad array of
14 issues, including the contracts at issue in the Indictment. Given this, an attorney-client relationship
15 existed between UMC, Thomas as the Chief Executive Officer of UMC, and the deputy district
16 attorneys handling the civil matters on behalf of the hospital.

17 There were occasions during the course of his employment that Thomas sought legal advice
18 from outside counsel on behalf of UMC in his capacity as the CEO of the hospital and was informed
19 by attorneys from the District Attorneys office that their office was the sole provider of legal advice
20 to Thomas and UMC. This became an issue during the course of Thomas' employment with UMC
21 and the circumstances surrounding this issue will become relevant during the course of the litigation
22 of this case. Anytime the issue of the attorney-client relationship between the District Attorneys
23 office, UMC and Thomas arose, the District Attorney's office made it clear to Thomas that they were
24 his attorney thus clearly establishing an attorney-client relationship between not only UMC and the
25 District Attorneys Office, but with Lacy Thomas in his capacity as the Chief Executive Officer of
26 UMC.

27 There is no question that the District Attorney prosecuting this case is a part of the same law
28 firm as the very witnesses he has noticed, Maryann Miller and Holly Gordon. There is also no

1 question that Lacy Thomas is a former client of the law firm of the District Attorneys office taking
2 into consideration his employment contract and his position at UMC. Thus, a conflict of interest
3 clearly exists when the same law firm that previously represented Thomas is now prosecuting him
4 on ten very serious felony charges. As outlined below, this is a conflict that absolutely requires this
5 Court to disqualify the District Attorneys office from prosecuting this case.

6 II. LEGAL ARGUMENT

7 Nevada Rules of Professional Conduct 3.7(b) states that "A lawyer may act as advocate in a
8 trial in which another lawyer in the lawyers firm is likely to be called as a witness unless precluded
9 from doing so by Rule 1.7 or Rule 1.9." Nevada Rules of Professional Conduct 1.9(a) states that "A
10 lawyer who has formally represented a client in a matter shall not thereafter represent another person
11 in the same or a substantially related matter in which that person's interest are materially adverse to
12 the interests of the former client unless the former client gives informed consent, confirmed in
13 writing." Nevada Rules of Professional Conduct 1.10(a) is the imputation of the conflict of interest
14 rule stating in relevant part, "While lawyers are associated in the firm, none of them shall knowingly
15 represent a client when any one of them practicing alone would be prohibited from doing so by Rules
16 1.7, 1.9, or 2.2, ...". There is no question that the prosecutor in this case intends to call other lawyers
17 in his firm as witnesses in this case. Additionally, there is no question that these lawyer witnesses
18 formerly represented Lacy Thomas and their interests are materially adverse to Lacy Thomas'
19 interests. Finally, there is no question whatsoever that Thomas has not given informed consent
20 confirmed in writing that he would waive any conflict of interest to allow the current prosecutor to
21 handle the prosecution of this case. Thus, the Nevada Rules of Professional Conduct plainly prohibit
22 the District Attorneys office from prosecuting this case.

23 There does not appear to be any Nevada cases specifically addressing the issue of the district
24 attorneys office prosecuting a public official for acts committed in connection with his official duties
25 when that same district attorneys office provided legal advice, counsel and representation to the same
26 individual. Thus, this case appears to be a case of first impression. There is, however, at least one
27 civil case which provides this Court with guidance as to how the disqualification determination
28 should be made. *In Waid v. Eighth Judicial Dist. Court Ex Rel., County of Clark*, 121 Nev. 605, 119

1 P.3d 1219 (2005) the Nevada Supreme Court denied a writ of mandamus challenging the district
2 court's disqualification of an attorney from representing guarantors in a suit by the lenders assignees.
3 While the Waid court considered the issue in the context of old Supreme Court Rule 159, it also
4 correctly noted that old Rule 159 is essentially the same as new Nevada Court Rule 1.9.

5 In upholding the disqualification of the attorney, the Supreme Court noted that the district
6 court has broad discretion in attorney disqualification matters which will not be overturned absent an
7 abuse of discretion. Waid at p. 609. The court also noted that disqualification under the rule is
8 warranted only if a prior representation and the current representation are substantially related. Id.
9 While the burden of proving that two matters are substantially related falls on the party seeking
10 disqualification, the moving party is not required to divulge the confidences actually communicated
11 during the prior representation nor should the court inquire into whether an attorney actually acquired
12 confidential information in the prior representation which is related to the current representation.
13 Waid at p. 610. The Supreme Court adopted a Seventh Circuit three part test for determining when
14 a former and present matter are substantially related for the purposes of disqualification. This test
15 requires the trial court to (1) make a factual determination concerning the scope of the former
16 representation, (2) evaluate whether it is reasonable to infer that the confidential information allegedly
17 given would have been given to a lawyer representing a client in those matters, and (3) determine
18 whether that information is relevant to the issues raised in the present litigation.

19 In this case, there clearly is no question that the prior representation of UMC and Thomas by
20 the District Attorneys office is substantially related to the present litigation. The District Attorneys
21 office provided a broad array of representation for Thomas and the hospital, including reviewing and
22 approving the various contracts at issue here. Thus, there clearly is far greater than a superficial
23 similarity between the prior representation and the present case sufficient to warrant disqualification.

24 Thomas acknowledges that generally, a lawyer representing a corporate entity represents only
25 the entity, not its officers, directors, or shareholders, and not any related entity such as parents,
26 subsidiaries, or sister companies. Restatement (3rd) of the Law Governing Lawyers §131 Cmt. b
27 (2000). However, as the Nevada Supreme Court correctly noted in the Waid decision, the inquiry into
28 whether an attorney-client relationship has been established is very fact-specific, and so in various

1 situations courts have found sufficient connection to warrant a lawyers disqualification
2 notwithstanding the fact that the prior attorney may have technically represented the corporation and
3 not the individual. Waid at p. 611. Clearly a fact-specific analysis in this case reflects that
4 disqualification should not be denied simply because the District Attorneys office represented UMC
5 as a corporate entity. There is no question whatsoever that given Thomas' employment contract
6 together with the District Attorney's position regarding their representation of the hospital that the
7 attorney-client relationship extended beyond the corporation and directly to Thomas in his capacity
8 as the CEO of the hospital. Thus, there is a sufficient connection between Thomas and the District
9 Attorneys office to warrant the disqualification of the District Attorneys office from prosecuting this
10 case.

11 While Waid considered the application of the relevant rules in the context of a civil case, this
12 Court must consider the rules in the context of a criminal case. There is no question that a criminal
13 defendant is afforded far greater constitutional rights than individuals in civil actions. Thomas is
14 protected by both the United States Constitution and the Nevada Constitution, each guaranteeing him
15 the right to a fair trial and due process throughout the course of this proceeding. Any determination
16 on the disqualification of the District Attorneys office must be considered in this context and would
17 warrant greater scrutiny of the actual conflict or even the potential of a conflict of interest given the
18 dual representation of the District Attorneys office in this matter. Thomas would submit that if there
19 is any doubt whatsoever as to whether this motion should be granted, that doubt should be resolved
20 in favor of Thomas' constitutional due process rights to a fair trial. In this context disqualification
21 is most certainly warranted taking into consideration the relevant rules and the facts of this case.

22 There is no question under the facts of this case that the District Attorneys office's Civil
23 Division represented UMC and Lacy Thomas during the course of his employment as the CEO of the
24 hospital. There is equally no question that the District Attorney's Criminal Division is now
25 prosecuting this case, and that the Criminal Division and the Civil Division are a part of the same law
26 firm. Finally, the matters are identical, far beyond the substantially similar standard required. Under
27 Nevada Rules of Professional Conduct Rule 1.10, all of the lawyers within the District Attorneys
28 office would be prohibited from prosecuting this case given their prior representation of Thomas. As

1 such, this Court is left with no choice but to disqualify the District Attorneys office from the
2 prosecution of this case.

3 For the foregoing reasons, Thomas would ask that this Court disqualify the District Attorneys
4 office and make a determination as to what other agency or special prosecutor would be available to
5 handle this matter after the disqualification of the District Attorney's office.

6 DATED this 4th day of April, 2008.

7 DANIEL J. ALBREGTS, LTD.

8 By: 

9 Daniel J. Albregts, Esq.
10 Nevada Bar No. 004435
11 Attorney for Defendant

12 **RECEIPT OF COPY**

13 **RECEIPT** of the foregoing **Motion to Disqualify the District Attorney's Office** is hereby
14 acknowledged this ____ day of April, 2008.

15 DAVID J.J. ROGER
16 CLARK COUNTY DISTRICT ATTORNEY

17 By: _____
18 200 Lewis Avenue
19 Las Vegas, NV 89101
20
21
22
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26
27
28

EXHIBIT 1

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT is entered into on the ____ day of November, 2003, by and between LACY L. THOMAS, (hereinafter referred to as "THOMAS"), and the BOARD OF HOSPITAL TRUSTEES OF UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA, Clark County, Nevada (hereinafter referred to as "UMC").

WITNESSETH:

WHEREAS, UMC presently owns and operates a General Hospital, known as UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA. As referred to in this Agreement, "HOSPITAL" shall refer to UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA and shall include the real property occupied by HOSPITAL, and the HOSPITAL buildings, the improvements, including all off-site satellite centers, and all furnishings and equipment contained therein; and

WHEREAS, UMC and THOMAS desire to enter into this Employment Agreement, and to fix their rights and duties hereunder, in order to better attempt to facilitate provision of quality health care services at the HOSPITAL;

NOW, THEREFORE, the parties hereto hereby agree as follows:

Section 1. TERM. The term of the Agreement shall commence on December 30, 2003, and, unless sooner terminated pursuant to this Agreement or by operation of law, will run for a period of five years. This agreement shall be automatically renewed for one year terms thereafter, unless either party hereto indicates an objection to such extension

by three months notice to the other.

Section 2. RESPONSIBILITIES. THOMAS shall provide total management services for the HOSPITAL in a manner consistent with and subject to the responsibilities of UMC as the HOSPITAL licensee and holder of the Medicare "provider number", including, but not limited to the following:

2.01. Services. THOMAS shall provide such administrative and management services for the HOSPITAL in conformity with NRS Chapter 450, with standards for an accredited HOSPITAL, including activities which are customary and usual in connection therewith (more specifically including the services set forth herein below), and with the policies of UMC as adopted from time to time. These duties shall include the administration and management of all of the HOSPITAL's departments, including, but not limited to, those departments performing the functions of nursing, personnel, purchasing, administration, planning, finance, reimbursement, credit, collection, housekeeping, maintenance, medical records, security, Medical Staff liaison, asset management, pharmacy, contract management relations, dietary services, data processing, laboratory, marketing, outpatient clinics, rehabilitation unit, radiology, quality improvement, training, education/University relations, and other business office and administrative matters. In the event of a conflict between or among UMC policies, accreditation requirements, or Chapter 450 of the Nevada Revised Statutes, the statutes will govern. Except as expressly limited hereunder and consistent with UMC's status as licensee and holder of the "provider number," subject to UMC's budgetary approval pursuant to Paragraph 2.14,

THOMAS's supervisory responsibilities also include recommendation of the charges for the HOSPITAL daily room rate, for approval by UMC, and other services rendered thereat, the development and implementation of labor policies (including wage rates, the hiring and discharging of employees and the installation of employee fringe benefit plans), for approval by UMC, and the development and implementation of other operating business and administrative policies. THOMAS also shall from time to time make recommendations with respect to HOSPITAL by-laws and rules and regulations, which shall be consistent with the provisions of this Agreement. THOMAS shall devote his full time and effort to the performance of these duties, and in doing so shall comply with all the laws of the State of Nevada applicable thereto.

2.02. Standards. THOMAS shall manage the HOSPITAL in conformity with the standards of performance of the Joint Commission on Accreditation of Health Care organizations (JCAHO), the Accreditation Council for Graduate Medical Education (ACGME), and other accrediting or regulatory bodies, agencies and authorities having jurisdiction over the HOSPITAL. THOMAS shall ensure that the HOSPITAL complies with all applicable statutes and regulations.

2.03. Medical Staff. THOMAS agrees to perform all customary functions which are reasonably required to recruit and to retain a Medical Staff in conformity with UMC's standards and regulations and in keeping with the operation of an accredited HOSPITAL, consistent with the fact that membership on the Medical Staff and clinical privileges may be granted only in conformity with the Medical Staff By-Laws, Rules and Regulations.

2.04 Public Relations. THOMAS shall organize appropriate ongoing and periodic HOSPITAL public relations programs within the limits of the HOSPITAL's fiscal budget.

2.05. Personnel. THOMAS shall be responsible for the supervision and direction of the personnel department of the hospital at UMC. All public employees of UMC shall be hired and discharged in conformity with UMC's approved personnel policies, the laws of the United States and the State of Nevada, and the budget approved pursuant to Paragraph 2.14.

2.06. Hospital-Based Specialists. After soliciting proposals where applicable, negotiating agreements for such services, and consulting with the Medical Staff, THOMAS may seek UMC's approval to appoint and contract with, on UMC's behalf, all physicians who shall operate the "Specialty Departments" of the HOSPITAL, including, but not limited to Physical Medicine, the Radiology Department, the Pathology Department, Inhalation Therapy, the Trauma Center, the Emergency Room, Cardiology, and Anesthesia. All such contracts are subject to the approval of UMC. However, if an emergency requires interim coverage of a Specialty Department and such coverage cannot be obtained in conformity with this Section, THOMAS, may, without prior approval of UMC, contract on UMC's behalf with respect to such a department on an interim basis, but only to the extent that money is budgeted therefor. Such an interim contract shall terminate on the earlier of (a) 30 days after becoming effective, or (b) action by UMC.

2.07. Licensees and Tenants. In the event UMC directs to contract out the

services of certain departments, THOMAS shall negotiate and recommend agreements for the approval of UMC, for services including, but not limited to, concessionaires, licensees, tenants and other intended users of the facilities of the HOSPITAL, including the Pharmacy, Laboratory, Physical Therapy Department and the Ancillary Service Departments, if any. THOMAS may recommend termination of any such agreements in accordance with the applicable contract provisions, with the approval of UMC. This paragraph shall not be interpreted to state the intent of either party to contract out any such Department.

2.08. Licenses and Permits. THOMAS shall take all reasonable actions to maintain all licenses and permits required in connection with the management and operation of the HOSPITAL.

2.09. Actions or Proceedings. THOMAS shall, within the limits of the HOSPITAL's fiscal budget, take any and all reasonable actions or proceedings, with approval of UMC, (i) to collect charges or other income of the HOSPITAL, (ii) if legal grounds exist, to oust or dispossess tenants or other persons in possession thereunder, or (iii) if legal grounds exist, to cancel or terminate any lease, license or concession agreement. Selection of attorneys to achieve this shall be approved by UMC, upon recommendation of THOMAS.

2.10. Accreditation. Within the limits of the HOSPITAL's fiscal budget, THOMAS shall initiate and supervise all steps necessary to maintain accreditation from the JCAHO, and accreditation or approval from all other relevant accrediting or

regulatory bodies in compliance with Federal and Nevada laws, and as approved by UMC, other agencies and authorities having jurisdiction over the HOSPITAL, and third-party payors or fiscal intermediaries. The parties acknowledge that many functions required for accreditation or approval are performed by the Medical Staff or its committees; however, THOMAS shall use reasonable efforts to obtain appropriate Medical Staff compliance.

2.11. Banking. The depository to be used by the HOSPITAL for banking purposes shall be designated by UMC. All payments shall be processed in accordance with NRS 450.250(3). Checks shall be drawn upon such signatures as may from time to time be designated by UMC.

2.12. Supervision. THOMAS shall operate under the supervision of the Clark County Manager or his designee and shall take direction from the Manager in the customary manner of a Clark County Department Head. Further, THOMAS shall meet with the individual members of UMC, at their option, at least twenty-four (24) hours prior to any scheduled regular or special meeting, to report on aspects of operations at the HOSPITAL.

2.13. Reports for Third-Party Payors. THOMAS shall supervise the preparation of reports required for Medicare, Medicaid, and other third-party payors.

2.14. Budget. THOMAS shall carry out the Hospital fiscal budget as approved by UMC.

2.15. Repairs. Within the limits of the HOSPITAL's fiscal budget and any

additional monies as approved by UMC, except as elsewhere limited or excused, THOMAS shall take all reasonable actions to keep the HOSPITAL in good order and condition as may be necessary to maintain the standards defined in Paragraph 2.02, including the undertaking of all necessary repairs thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, or radical, foreseen and unforeseen, as well as such alterations or additions in or to the improvements which are customarily made in connection with the operation of such a HOSPITAL. As used herein "repairs" shall include all necessary replacements, renewals and alterations. All repairs (or other services or materials) obtained or furnished pursuant to this Paragraph 2.15 shall be in conformity with the budget approved pursuant to Section 2.14, and in compliance with the requirement of NRS Chapter 332. All public works construction project awards shall be approved by UMC, in accordance with NRS Chapter 338.

2.16. Comprehensive Health Planning Applications. THOMAS shall use reasonable efforts to pursue all of the HOSPITAL's applications presently on file with the applicable comprehensive health planning agency, and any future applications as may be authorized by UMC.

Section 3. RESPONSIBILITIES AND COVENANTS

3.01. Applicable Laws. The parties acknowledge and agree that the delegations of powers and responsibilities to THOMAS hereunder or by the Clark County Manager may be limited by applicable federal, state and local laws and regulations affecting the operation of the HOSPITAL, and the services provided there. UMC and THOMAS agree

to fully comply with such applicable laws and regulations in the performance of their powers and responsibilities hereunder.

3.02. Medical Staff. The parties acknowledge and agree that THOMAS's powers and responsibilities hereunder shall be exercised in a manner consistent with the Medical Staff By-Laws, Rules and Regulations as adopted by the Medical Staff annually and approved by UMC.

3.03. Approval of Purchases. Any provision of this Agreement to the contrary notwithstanding, THOMAS shall take no action nor incur expenses with respect to a specific item, nor commit UMC or the HOSPITAL with respect to an item, except in accordance with the Local Government Purchasing Act (Chapter 332 of NRS), unless the expenditure is justified on an emergency basis as defined by Nevada law.

3.04. Control of Conflicts of Interest. THOMAS shall not enter into any agreement with respect to the HOSPITAL with any association, partnership or company in which THOMAS has an ownership interest without the prior written approval of UMC. THOMAS shall comply with all Nevada laws and policies adopted by UMC related to the ethics and conduct of public employees. Further, THOMAS agrees that, as a condition of his employment under this Agreement, THOMAS will not engage in any employment, either as an employee or as an independent contractor, with any person, firm, corporation, or other entity that is a business competitor of UMC, without the prior, express, and written consent of UMC.

3.05. Excused Performance. Any provision of this Agreement to the contrary

notwithstanding, THOMAS shall be excused from any obligation to operate the HOSPITAL in conformity with an accredited HOSPITAL standard (but shall not be excused from his obligation to manage the HOSPITAL) to the extent that the Medical Staff does not perform its customary functions or pursuant to the Medical Staff By-Laws, Rules and Regulations, or UMC refuses to expend the funds, approve agreements or otherwise acts in a manner which unreasonably prevents THOMAS from meeting such standards or instituting such systems or procedures as are necessary in order to meet such standards. THOMAS shall use all reasonable efforts to maintain accreditation in accordance with the limits imposed by UMC.

3.06. Legal Counsel. The Clark County District Attorney shall be legal counsel for the HOSPITAL and all its operations and agencies until otherwise authorized by the District Attorney. Any expenditure of funds for outside legal services may be approved or authorized by UMC or by express operation of the laws of the State of Nevada.

3.07 Nondisclosure of Confidential Information; Retention of Records. THOMAS covenants and agrees that he will not, either during the term of his employment or at any time thereafter, disclose to anyone any confidential information concerning the business or affairs of the HOSPITAL, except as required by law.

THOMAS further covenants and agrees that he will retain, or direct the retention of, as required by Nevada law, all records of the Hospital on site at the hospital, except as storage requirements may dictate otherwise, and that all such retained records shall remain in the custody of the Hospital at all times, including after the termination of this

Agreement.

Section 4. COMPENSATION.

4.01. Basic Compensation. For services rendered by THOMAS hereunder during the term of this Agreement, UMC shall pay THOMAS a base salary of Two Hundred Forty Thousand No/100 Dollars (\$240,000.00), from which UMC will withhold appropriate federal income taxes in accordance with the Form W-4 filled out by THOMAS, and other deductions as directed by THOMAS or law. THOMAS shall be entitled to all of the other benefits afforded to Category 1 employees under UMC's Executive and Management Benefits Plan.

4.02. Salary Adjustment. Upon or about each anniversary date of this Agreement, THOMAS shall receive a performance evaluation from the County Manager or his designee, and, based thereon, shall be eligible for an increase to his base salary in accordance with UMC's Executive and Management Benefit Plan. This base salary is in addition to other compensation and benefits, including bonuses, that may be awarded or for which THOMAS is eligible as a Category 1 employee under the Executive and Management Benefit Plan.

5. TERMINATION

5.01. Termination for Convenience. For a three month period following each annual performance evaluation provided in Section 4 above, UMC may terminate this Agreement for the convenience of UMC. Upon such termination, THOMAS shall be entitled to a separation fee equal to six month's of his then current base salary.

5.02 Termination for Cause. The following actions by THOMAS shall constitute cause for termination:

- A. Failure to comply with the lawful directions of the Clark County Manager or UMC;
- B. Conviction in a court of law of a felony or of any crime or offense involving misuse or misappropriation of money or other property;
- C. Any act of dishonesty by THOMAS which adversely affects the business of UMC;
- D. Willful violation of the policies or procedures of UMC or of any applicable state or local regulation or law, or the performance by THOMAS of any willful or intentional act which reflects unfavorably on the reputation of UMC; or
- E. THOMAS's abuse of drugs, alcohol, or other substance which interferes with THOMAS's performance of any of his obligations under this Agreement, and which is not remedied within sixty (60) days after notice.

5.03. Procedure for Termination for Cause.

A. This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

1. not less than ten (10) days written notice of intent to terminate; and
2. an opportunity for consultation with the terminating party prior to

termination.

B. If termination for cause is effected by either THOMAS or UMC, UMC will pay THOMAS that portion of the compensation which has been earned as of the effective date of termination, including buy-out for accumulated sick leave, annual leave and severance pay as provided for Category 1 employees in UMC's Executive and Management Benefits Plan, as it may be amended from time to time.

C. Upon receipt or delivery by THOMAS of a termination notice, THOMAS shall immediately discontinue all services (unless the notice directs otherwise).

D. The rights and remedies of UMC and THOMAS provided in this Section are in lieu of any other rights and remedies that may be provided by law.

E. Neither party shall be considered in default in the performance of its obligations hereunder, or any of them, to the extent that performance of such obligations, or any of them, is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party.

Section 6. SUCCESSORS AND ASSIGNS.

6.01. Assignment by THOMAS. THOMAS shall not assign his rights under this Agreement.

6.02. Binding on Successors. Subject to the limitations on assignment hereunder, the terms, provisions, covenants, undertakings, agreements and obligations of this Agreement shall be binding upon and shall inure to the benefit of the transferees, successors in interest and the assigns of the parties hereto with the same effect as if

mentioned in each instance where the party hereto is named or referred to.

Section 7. NOTICES.

All notices, requests and approvals required or permitted to be. given hereunder shall be in writing and shall be sent by hand delivery, overnight carrier, facsimile, or by U.S. mail, with postage prepaid, registered or certified, and addressed to:

UMC: Chair, Board of Hospital Trustees
Commissioners Chambers, 6th Floor
500 S. Grand Central Parkway
Las Vegas, Nevada 89155

THOMAS: LACY L. THOMAS
University Medical Center of Southern Nevada
1800 West Charleston Boulevard
Las Vegas, Nevada 89102

Any notice required or permitted to be given hereunder shall be deemed to be given to, and received by the addressee thereof on the third business day after the sending thereof. Either of the parties may change the address for these purposes by such party giving notice of such change to the other party in the manner hereinabove provided.

Section 8. SEVERABILITY.

In the event that any provision of this Agreement is rendered invalid or unenforceable by any valid act of Congress or the Nevada State Legislature, or declared null and void by any court of competent jurisdiction or the Nevada Department of Human Resources, or is found to be in violation of Nevada statutes and/or regulations, said provision (s) will be immediately (or retroactively) void and may be renegotiated for the

sole purpose of rectifying the non-compliance. The remainder of the provisions of this Agreement not in question shall remain in full force and effect.

Section 9. WAIVER.

The waiver by a party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or subsequent breach of the same or any other term, covenant or condition herein contained.

The subsequent acceptance by a party of performance by the other shall not be deemed to be a waiver of any preceding breach of any term, covenant or condition of this Agreement, other than the failure to perform the particular duties so accepted, regardless of knowledge of such preceding breach at the time of acceptance of such performance.

Section 10. BENEFIT TO PARTIES.

UMC does not intend to benefit any person who is not named as a party to this Agreement, to assume any duty to inspect, to provide for the safety of any person or to assume any other duty beyond that imposed by general law.

Section 11. LIMITATION OF APPROPRIATED FUNDS.

In accordance with NRS 354.626, the financial obligations under this Agreement between the parties shall not exceed those monies appropriated and approved by UMC for this Agreement for the then current fiscal year under the Local Government Budget Act. This Agreement shall terminate and UMC's obligations under it shall be extinguished at the end of any of HOSPITAL's fiscal years in which UMC fails to appropriate monies for the ensuing fiscal year sufficient for the performance of the functions provided by this

Agreement. UMC shall make, in good faith, all reasonable efforts to secure the necessary

....

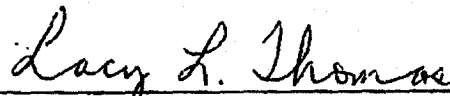
....

....

funding for the position filled by THOMAS under this Agreement and for the operation of the Hospital.

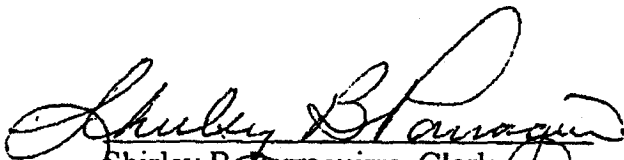
IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

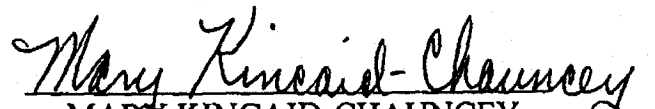
Employee:


LACY L. THOMAS

Attest:

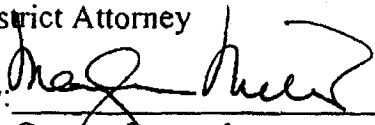
Clark County Board of Commissioners
Sitting as:
Board of Hospital Trustees of
University Medical Center of
Southern Nevada



Shirley B. Parraguirre, Clerk


MARY KINCAID-CHAUNCEY
Chair

Approved as to form:

David Roger
District Attorney

By: 
County Counsel


CLERK OF THE COURT

1 **RSPN**
2 **DAVID ROGER**
3 Clark County District Attorney
4 Nevada Bar #002781
5 **SCOTT S. MITCHELL**
6 Chief Deputy District Attorney
7 Nevada Bar #000346
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,)

13 Plaintiff,)

14 -vs-)

15 LACY L. THOMAS,
16 #2676662)

17 Defendant.)

CASE NO: C241569

DEPT NO: XVII

STATE'S RESPONSE TO MOTION TO DISQUALIFY THE

DISTRICT ATTORNEY'S OFFICE

DATE OF HEARING: 05/01/2008

TIME OF HEARING: 8:00 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through SCOTT S. MITCHELL, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Disqualify the District Attorney's Office.

This response is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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1 POINTS AND AUTHORITIES

2 STATEMENT OF FACTS

3 Several assertions represented to be "facts" by the defense in the "Factual
4 Background" portion of its motion are not supported by any evidence, and should not be
5 accepted as facts for the purposes of this motion. Probably the most important of these are
6 the following statements from Page 3 of the Defendant's motion:

7 "During the course of his employment with UMC, Thomas interacted
8 with deputies from the District Attorneys [sic] office on nearly a weekly
9 basis and substantial contact with District Attorney David Roger on any
10 number of issues...The District Attorneys [sic] office advised Thomas on a
11 broad array of issues including the contracts at issue in the Indictment."

12 The statement regarding contact between the Defendant and David Roger is not
13 cognizable because neither David Roger nor the Defendant testified before the Grand Jury,
14 nor did any other witness testify regarding contact between the two men. Indeed, the State
15 believes sworn testimony on this point, when and if it is received, will establish the
16 opposite—that no legal counsel was ever given by David Roger to Lacy Thomas at any time.
17 For now, however, this court should disregard this statement as unsupported by evidence.

18 That the Defendant "interacted with deputies from the District Attorneys [sic] office
19 on nearly a weekly basis" is another assertion not established by any testimony before the
20 Grand Jury. Mary-Anne Miller, chief of the civil division of the District Attorney's Office,
21 was the only member of her office that testified. She testified that the District Attorney's
22 Office civil division was "charged by statute with giving legal advice and representation to
23 the county, the Board of County Commissioners and its agencies," and that included UMC
24 (GJC vol. 1, p. 62). The law thus required Miller and her office to advise Defendant on the
25 legality of contracts he proposed, and the legal process he was required to follow in securing
26 them (GJT vol. 1, p. 63, 68). The following exchange took place between the prosecutor and
27 Ms. Miller regarding her office's relationship with the Defendant:

28 "Q Okay. So if he wanted to hire some company to do work for UMC, he
would have to run that by you before that contract could come into
being and go before the hospital board of trustees?

///

1 "A He's supposed to do that.
2 "Q If he followed the law that's what he would do?
3 "A That's correct." (GJT vol. 1, p. 63)

4 Ms. Miller went on to testify, however, that the Defendant *resisted* and *rejected* the
5 input and oversight of the D.A.'s Office. She described her first conversation with the
6 Defendant, after having met him in a purely social setting, as having taken place after he one
7 day insisted she come to his office during the noon hour. She described the ensuing
8 conversation, and the relationship between Defendant and her office, thusly:

9 "A Yes. It was an unusual conversation because we hadn't had a lot of
10 experience together. He told me his theory of how the hospital should
11 be run and that he was aware that there were statutes that governed how
12 the hospital ran but they often got in his way, and he, my role should be
13 to find a statute that would help him find a way around the statutes or to
14 get out of the way.
15 "Q And you responded how?
16 "A I'm not sure how it works in Chicago but it doesn't work that way here.
17 "Q Lacy Thomas was from Chicago?
18 "A Yes.
19 "Q And he had been hired by Clark County from a similar position in
20 Chicago?
21 "A Yes. He ran a government funded hospital in Chicago and he told me
22 his job was to compete with the private hospitals here and that the state
23 statutes would put him on an uneven playing field and he wasn't
24 willing to do that.
25 "Q All right. When you told him that's not the way we do things here, did
26 you elaborate on what that meant?
27 "A Yeah. We had a detailed discussion. I said the statutes weren't there to
28 put him on an even playing field with the private hospitals, they were to
assure that the taxpayers money was spent in an aboveboard fashion, to
put some limits on what a hospital and its trustees could do and that my
job was to make sure that he followed those statutes and followed the
rules that the Board of County Commissioners set.
"Q All right. And when you told him that, what was his response?
"A He told me this isn't going to work at all.
"Q And you said?
"A It worked for everyone else, I don't know why it won't work for you."
(GJT vol. 1, pgs. 70 and 71)

23 Miller explained the Defendant's response when thereafter, her office questioned a lot
24 more of his transactions:

25 "Q And he objected to the diligence of the deputy that you had appointed
26 to work over UMC?
27 "A He objected to the interference of our office, yes.
28 "Q Can you give us a taste of what the objections concerned, what he
didn't like you doing?
"A He didn't like us offering advice on whether certain provisions were in
the best interest of the county, he didn't like us indicating that before

1 any contract goes on the board of county commission agenda we
2 needed to see it and review it.
3 "Q Was that the main sticking point or the remaining source of conflict
4 over the months?
5 "A Over getting board of county commission approval of his expenditures,
6 yes.
7 "Q Now did you have subsequent conversations with him about this same
8 subject as time went on?
9 "A As time went on the issue would crop up again and again what the
10 extent of his authority was and we had discussions about that.
11 "Q Okay. Did he at any time question whether or not the D.A.'s office had
12 authority over him or was the proper entity to be reviewing his
13 contracts?
14 "A He brought it up several times, but it was hard for him to dispute
15 because there is a state statute and his own contract indicated that he
16 would obtain D.A. approval on his expenditures." (GJT vol. 1, pgs. 71
17 and 72)

18 Near the end of Miller's testimony, the prosecutor asked whether the above-described
19 conflict between Lacy Thomas and Miller's office ever resolved satisfactorily. Miller
20 testified, "I would say no. It was always a matter of us having to tell him what the limits on
21 his authority w[ere]." (GJT vol. 1, p. 76)

22 ARGUMENT

23 I.

24 NEVADA STATUTORY LAW DESIGNATES THE DISTRICT
25 ATTORNEY AS THE PROSECUTOR OF CRIMINAL ACTIONS
26 AGAINST COUNTY OFFICERS OR EMPLOYEES, WHILE
27 SIMULTANEOUSLY MANDATING THE CIVIL REPRESENTATION OF
28 COUNTY AGENCIES, THUS INDICATING THAT SITUATIONS SUCH
AS THE INSTANT ONE ARE NOT CONSIDERED CONFLICTS OF
INTEREST.

As set forth in NRS in 228.175 and 228.177, the attorney general is authorized to
prosecute criminal actions against state officers or employees, and the district attorney is
authorized to prosecute cases against county officers or employees. In fact, per NRS 252.
080, the "district attorney in each county shall be public prosecutor therein." County officers
or employees are defined as "an elected officer of a county or any county officer or
employee who is compensated from a county treasury." NRS 228.177.1. As was testified to

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1 by Mary-Anne Miller before the grand jury, the Defendant Lacy Thomas was "a public
2 officer under the meaning of the law." (GJT, vol. 1, p. 64, ll. 3-5)

3 As evidenced by statute, there can be no doubt that the Nevada legislature has
4 emphasized its strong preference that the district attorney be the prosecutor when a county
5 officer is being criminally charged. The attorney general is not empowered to prosecute
6 county officers or employees unless the district attorney either (1) states in writing to the
7 attorney general "that he does not intend to act in the matter;" or (2) the attorney general has
8 inquired in writing whether the district attorney intends to act in the matter and "has not
9 received a written response within 30 days after the district attorney received the inquiry," or
10 (3) the district attorney has responded in writing that he intends to act in the matter, "but an
11 information or indictment is not files within 90 days after the response." NRS 228.177.
12 Even in the event of one of these three situations, the attorney general must receive leave of
13 the court to proceed with the prosecution. NRS 228.177.3 Thus, the attorney general is not
14 even allowed to proceed as prosecutor except in relatively extreme or unusual circumstances.
15 None of these special circumstances is present here, and Defendant doesn't contend
16 otherwise.

17 More importantly, the same Nevada statutory law requires district attorneys to
18 provide legal advice to their respective county agencies. NRS 252.160 reads as follows:
19 "The district attorney shall, without fees, give his legal opinion to any assessor, collector,
20 auditor or county treasurer, and to all other county, township or district officers within his
21 county, in any matter relating to the duties of their respective offices." It is therefore
22 obvious from the statutory scheme set forth above that the law does not contemplate the
23 instant situation to be an conflict of interest, as the law itself goes out of its way to require
24 the district attorney to prosecute the same county officials that he is required to legally
25 advise. Given this statutory scheme, which appears to be dispositive of the issue before the
26 court, it is not surprising that Defendant was unable to find case law applicable to the instant
27 set of facts. Defendant has completely ignored this body of law in his brief.

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1 II.

2 OTHER JURISDICTIONS HAVE NOT DISQUALIFIED PROSECUTORS
3 IN CASES SIMILAR TO THE CASE AT BAR

4 In a case very similar to the one at bar, a New Mexico state official contended on
5 appeal of his conviction that the state attorney general should have been disqualified from
6 assisting federal prosecutors in prosecuting him criminally because the same attorney
7 general's office provided civil legal advice to the defendant and the state agency for which
8 he worked. Citing numerous authorities, the federal Eleventh Circuit Court of Appeals
9 specifically found that "an inherent conflict of interest does not arise merely because a state
10 attorney general prosecutes a state officer whom he formerly represented." U.S. v.
11 Troutman, 814 F.2d 1428 (11th Cir. 1987) at 1438. The court agreed with the many courts
12 who have addressed the issue that "*a state attorney general has a primary responsibility to*
13 *protect the interests of the people of the state and must be free to prosecute violations of*
14 *those interests by a state officer regardless of his representation of the state officer in past or*
15 *pending litigation.*" Id. (Emphasis added).

16 Furthermore, the Troutman court held that the trial court has absolute discretion
17 regarding whether to permit a defendant to call a prosecutor as a witness, and may deny the
18 request if it does not appear the prosecutor possesses information vital to the defense, and it
19 was not a an abuse of discretion to deny the request where the testimony of the prosecutor
20 was not vital to the defense and could be obtained through other witnesses. Id., at 1439,
21 1440.

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III.

IN CONVENTIONAL CONFLICT-OF-INTEREST CASES NOT INVOLVING PUBLIC OFFICERS, NEVADA CASE LAW HAS INDICATED A STRONG PREFERENCE THAT, IN THE ABSENCE OF "EXTREME" CIRCUMSTANCES NOT ALLEGED HERE, DISTRICT ATTORNEYS NOT BE DISQUALIFIED FROM PROSECUTION.

The Courts have generally been reluctant to disqualify an entire prosecutor's office. The California Court of Appeals in *People v. Petrisca*, 41 Cal. Rptr. 3d 182 (2006) stated:

Moreover, "[d]isqualification of an entire prosecutorial office from a case is disfavored by the courts, absent a substantial reason related to the proper administration of justice." The showing of conflict of interest necessary to justify so drastic a remedy must be especially persuasive. (Citation omitted.)

The Nevada Supreme Court has indicated that disqualification of a prosecutor's office may be warranted in "extreme cases where the appearance of unfairness or impropriety is so great that the public trust and confidence in our criminal justice system could not be maintained without such action." *Collier v. Legakes*, 98 Nev. 307, 310, 646 P.2d 1219 (1982); (emphasis added.)

In a case ten years after *Collier v. Legakes*, *supra*, the Nevada Supreme Court was presented in Attorney General v. Eighth Judicial District Court in and for the County of Clark, 108 Nev. 1073, 844 P.2d 124 (1992) with a case different from the instant one (but similar to Defendant's characterization of this one). There, disqualification of the district attorney's office had been ordered by the district court after it was determined a DA's office investigator had previously interviewed the defendant and other witnesses in the case before coming to work for the district attorney. The district attorney, however, had not allowed the investigator to have any involvement with the prosecution of the defendant. The Nevada Supreme Court reversed the district court order, finding it to be an abuse of discretion to disqualify the district attorney absent an evidentiary hearing in which it was established that the case presented the "extreme" danger of unfairness as required by the opinion in *Collier*, *supra*. The mere appearance of an arguable conflict was not enough to disqualify the district attorney, the court held, citing approvingly its previous holding in *Collier* that the trial judge,

1 in exercising his discretion, should consider all the facts and circumstances and determine
2 whether the prosecutorial function could be carried out impartially without any breach of
3 privileged communication, Collier v. Legakes, *supra*, 98 Nev. at 311.

4 The thrust of the above-stated law is that disqualification might be justified in the
5 very rare case where it is shown that the prosecutor's prior or current relationship with the
6 defendant makes him privy to confidential information relevant to the prosecution. Again,
7 however, Defendant has not alleged this to be the case. Even if this court were to find all the
8 above arguments unpersuasive, in order to disqualify the district attorney here it would have
9 to specifically find through an evidentiary hearing the existence of privileged, confidential
10 information obtained from the defendant by virtue of the district attorney's role of providing
11 legal advice to county officers, and that information being used against the defendant so as to
12 cast doubt upon the possibility of a fair trial. Merely alleging that the criminal prosecutor
13 and the attorneys providing legal advice to UMC officials both come from the same office is
14 clearly not enough for Defendant to carry its burden in this motion.

15 16 IV.

17 CONCLUSION

18 Based on the foregoing, the court should not disqualify the district attorney's office from
19 prosecuting the instant case. First, the law of Nevada mandates prosecution by the district
20 attorney for acts committed by public officers. Second, the circumstances of this case are
21 not such as other jurisdictions have held to constitute conflicts of interest. Third, Nevada
22 cases have disfavored disqualification of the district attorney absent actual, extreme

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1 situations in which a breach of confidential communications is shown to exist and cast doubt
2 on the possibility of the defendant receiving a fair trial. Defendant's motion should be
3 denied.

4 DATED this 23RD day of April, 2008.

5 Respectfully submitted,

6 DAVID ROGER
7 Clark County District Attorney
8 Nevada Bar #002781

9 BY /s/ Scott S. Mitchell

10 SCOTT S. MITCHELL
11 Chief Deputy District Attorney
12 Nevada Bar #000346

13 CERTIFICATE OF FACSIMILE TRANSMISSION

14 I hereby certify that service of STATE'S RESPONSE TO MOTION TO
15 DISQUALIFY THE DISTRICT ATTORNEY'S OFFICE, was made this 23rd day of
16 April, 2008, by facsimile transmission to:

17 DANIEL J. ALBREGTS, ESQ.
18 FAX # (702) 474-0739

19 /s/ M. Jenkins
20 Secretary for the District Attorney's Office

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28 SM/mj

ORIGINAL

FILED

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Clark
CLERK OF THE COURT

1 RPLY
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3 Nevada Bar No. 004435
4 DANIEL J. ALBREGTS, LTD.
5 601 S. Tenth Street, Suite 202
6 Las Vegas, Nevada 89101
7 (702) 474-4004
8 Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

LACY L. THOMAS,

Defendant.

CASE NO. C241569
DEPT. NO. XVII

**DEFENDANT'S REPLY TO THE STATE'S RESPONSE TO THE
MOTION TO DISQUALIFY THE DISTRICT ATTORNEY'S OFFICE**

The defendant, LACY L. THOMAS, by and through his attorney, DANIEL J. ALBREGTS, ESQ., hereby submits the attached Points and Authorities in reply to the State's response to the defense's motion to disqualify the District Attorney's office. The defense will supplement this reply with argument at the time of the hearing on this matter as well as at an evidentiary hearing if the Court deems that necessary taking into consideration the issues raised herein.

DATED this 7th day of May, 2008.

DANIEL J. ALBREGTS, LTD.

By: *[Signature]*

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Attorney for Defendant

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MAY 08 2008

CLERK OF THE COURT

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. STATEMENT OF FACTS

3 The State requests that this Court disregard any statement of facts proposed by the defense as
4 it relates to the conflict of interest issue. The State points out that neither David Roger nor the
5 defendant testified before the Grand Jury, nor did any witness testify regarding the contact between
6 the two men. The State is correct that this fact is not in the record because the record at the present
7 time consists solely of the testimony before the Grand Jury. This may raise the issue as to whether
8 an evidentiary hearing is necessary for the Court to determine whether or not a conflict of interest
9 issue warrants disqualification of the District Attorney's office. It is the defense's position that an
10 evidentiary hearing is not necessary because it is clear on its face that when two attorneys from the
11 District Attorney's office are witnesses against Lacy Thomas, and those two witnesses represented
12 Lacy Thomas in his capacity as CEO of UMC, the same law firm (i.e., the District Attorney's office)
13 cannot possibly prosecute the case given this conflict of interest.

14 Using the only evidence in the record before the Court further substantiates this. During the
15 course of her testimony, Ms. Miller was asked her position with the county. The following questions
16 and answers occurred on that issue:

17 BY MR. MITCHELL:

18 "Q Ma'am, what is your position at the county?

19 A I'm county counsel.

20 Q What does that mean?

21 A It means I'm the deputy district attorney assigned to run the civil division of the
22 District Attorney's Office. We're charged by statute with giving legal advice and representation to
23 the county, the Board of County Commissioners and its agencies.

24 Q Generally speaking are you the county's lawyer?

25 A That's an easy way to say it.

26 Q Okay. You've been in this position how long now?

27 A As county counsel I've been in that position for ten years. I've served as a civil deputy
28 for twenty-two years.

1 Q Okay. Now in your duties do you have any kind of supervisory relationship with
2 UMC, one of the county agencies?

3 A Yes. UMC is required by the Board of Hospital Trustees to get all its legal advice and
4 representation through the Clark County District Attorney's Office.

5 Q So would it be fair to say that the law requires them to go through you for legal advice?

6 A Yes.

7 Q If Lacy Thomas, when he was the CEO at UMC, had wanted to hire a private lawyer
8 to advise him on legal matters, would that have been within the law for him to do that?

9 A He would have had to receive permission from our office to do that.

10 Q So you were the person or people working under you, you were the people who would
11 tell him what he could do legally and what he couldn't do legally; is that right?

12 A. Yes.

13 Q Would that also include you giving advice on the legality of contracts or the process
14 whereby contracts were secured?

15 A Yes.

16 Q Okay. So if he wanted to hire some company to do work for UMC, he would have to
17 run that by you before that contract could come into being and go before the hospital board of
18 trustees?

19 A He's supposed to do that.

20 Q If he followed the law that's what he would do?

21 A That's correct." (GJT Vol. 1, pp. 62-63)

22 These answers clearly establish the record necessary to substantiate a conflict of interest that
23 requires the District Attorney's office to be removed from this case. Miller admits that UMC is
24 required by the Board of Hospital Trustees to get all of its legal advice and representation from the
25 District Attorney's office. Miller testified that that attorney-client privilege is so strong that if Lacy
26 Thomas wanted to hire his own private lawyer to advise him on legal matters he would have had to
27 receive permission from the District Attorney's office to do so. Moreover, Miller testified that the
28 District Attorney's office told Thomas what he could legally do and not legally do and gave advice

1 on the legality of contracts and the contract process. Thus, the District Attorney has established
2 through the Grand Jury testimony that an attorney-client relationship existed between Lacy Thomas
3 and the District Attorney's office.

4 Specifics regarding discussions between Lacy Thomas and David Roger to which Roger's will
5 testify simply raises an additional issue which creates a conflict of interest to disqualify the District
6 Attorney's office. David Roger will be a witness called by the defense (if the prosecution does not
7 call him) regarding issues that arose between Mary Ann Miller and Thomas during the course of her
8 representation of him that will provide a motive for Miller to testify against Thomas. If the court
9 needs this additional information or other information regarding Thomas' belief regarding the
10 relationship between he and the District Attorney's office, then an evidentiary hearing would be
11 warranted to further create a record regarding this issue. However, the defense believes that an
12 evidentiary hearing is not necessary given that an attorney-client relationship between the District
13 Attorney's office and Lacy Thomas has clearly been established, and this same District Attorney's
14 office is attempting to prosecute their former client using at least two of the attorneys working in the
15 office. This scenario must result in the District Attorney's office being disqualified from prosecuting
16 this case.

17 II. LEGAL ARGUMENT

18 A. NEVADA STATUTORY LAW DOES NOT INDICATE THAT
19 SITUATIONS SUCH AS THIS ARE NOT CONSIDERED A CONFLICT OF
20 INTEREST, ESPECIALLY WHERE THERE WAS A DIRECT
21 ATTORNEY-CLIENT RELATIONSHIP BETWEEN ATTORNEYS FROM
 THE DISTRICT ATTORNEY'S OFFICE AND THE PERSON BEING
 PROSECUTED AND THOSE SAME ATTORNEYS ARE BEING USED AS
 WITNESSES AGAINST THE DEFENDANT IN THE CASE.

22 The State argues that various Nevada statutes authorize the District Attorney to prosecute
23 cases against county officers and employees. Thomas would acknowledge that the district attorney
24 in each county shall be a public prosecutor therein and that the district attorneys office can prosecute
25 county employees notwithstanding the fact that the district attorney's office is also the attorney for
26 the county. However, by creating such a statutory scheme (a common scheme used by most states),
27 the Nevada Legislature did not give an indication of its strong preference in the district attorney being
28 the prosecutor when a county officer is being criminally charged as alleged by the State in their

1 response. The State alleges that the defendant completely ignored this body of law in his brief.
2 (Response at p. 5) The reason these statutes were not addressed in the motion is because they do not
3 apply to the issue before this Court.

4 Specifically, the issue before this Court is whether a conflict exists when the same agency who
5 is prosecuting a defendant previously represented that defendant. The appropriate rules to review
6 when addressing this situation are Nevada Court Rules which address conflicts of interest in situations
7 such as this. The rules cited by the defense in their motion are directly on point insofar as they
8 address when a lawyer may act as an advocate in a trial when other lawyers in the firm are going to
9 be called as witnesses. This is exactly the case here. The rules are clear that attorneys should be
10 disqualified from handling cases where attorneys in their firm previously represented the individual,
11 especially when those attorneys are also witnesses against their former client.

12 There is no doubt here that there was an attorney-client relationship between Thomas and the
13 District Attorney's office, that same office is now prosecuting Thomas, and using lawyers from the
14 same office as witnesses against Thomas, their former client. Since three lawyers from the law firm
15 that is prosecuting Thomas are acting as witnesses, two who previously had an attorney-client
16 relationship with Thomas, the District Attorney's office is precluded from prosecuting him in this
17 case pursuant to Nevada Rules of Professional Conduct. Nothing in the Nevada statutory scheme
18 which allows the District Attorney's office to be a prosecutor as well as the attorney for county
19 agencies suggests that the Nevada Rules of Professional Conduct should be disregarded in this type
20 of situation. The State's argument otherwise is completely unfounded and does not support denying
21 the motion to disqualify their office from prosecuting this case.

22 B. THERE ARE NO CASES IN OTHER JURISDICTIONS SIMILAR
23 TO THE CASE AT BAR WHERE PROSECUTORS WERE NOT
DISQUALIFIED.

24 The State broadly alleges that other jurisdictions have not disqualified prosecutors in cases
25 similar to the case at bar and then proceeds to cite an Eleventh Circuit case from 1987 as the only
26 support for this assertion. It first must be noted that even if you assume that the case cited by the
27 State in this two paragraph argument section of their brief is similar to the case at bar and would
28 support this position, one case from the Eleventh Circuit does not make "other jurisdictions".

1 Moreover, the case cited by the State to support this broad assertion is distinguishable from this case
2 and does not support their position that their office should be allowed to prosecute this matter when
3 three of their lawyers are going to be witnesses, two against Thomas.

4 In U.S. v. Troutman, 814 F.2d 1482 (11th Cir. 1987) the Eleventh Circuit refused to overturn
5 Troutman's conviction for conspiracy to commit extortion as a result of a potential conflict of interest
6 when the attorney general's office assisted the United States Attorney's prosecution of Troutman
7 under the federal Hobbs Act. Troutman was a New Mexico state investment officer who managed
8 and invested approximately three billion dollars in state funds on behalf of the state. While the facts
9 of the Troutman case are rather convoluted, simply stated, Troutman was accused of attempting to
10 extort others in order to award certain contracts to certain entities. During the course of his case,
11 Troutman contended that the attorney general's office should be disqualified under a provision that
12 an attorney should preserve the confidences and secrets of a client. Troutman argued that he enjoyed
13 an attorney/client relationship with the attorney general because the attorney general represented him
14 in his daily business affairs as a state investment officer until the time of his arrest and because he was
15 acting in his official capacity while committing the acts which led to the charges.

16 In response, the prosecution argued that Troutman's extortion attempts lay outside the ambit
17 of his official duties and he would not be entitled to representation by the attorney general's office
18 because they only represented state officers in actions brought against them in their official capacities.
19 In denying Troutman's motion to disqualify, the court ruled that the deputy attorney general who was
20 assisting the government in the prosecution created no inherent conflict of interest because the New
21 Mexico statute in question required the attorney general to defend actions against the state officer only
22 when the cause of action arises while the officer is acting in his official capacity and that the unlawful
23 acts in the indictment were not encompassed by Troutman's official duties. The court further
24 concluded that no inherent conflict of interest existed merely because the attorney general had advised
25 Troutman in Troutman's official capacity as a state investment officer on matters unrelated to the
26 offenses charged. There is no doubt that the Troutman case is clearly distinguishable from this case.

27 First, all of the contracts contained in the indictment in this case clearly arise out of Thomas'
28 official capacity as CEO of UMC. While one can argue whether these were good contracts or not,

1 or whether they benefitted friends of Thomas at the expense of UMC, there is no question whatsoever
2 that these contracts were done in the scope of Thomas' employment as CEO of UMC. Unlike the
3 Troutman extortion attempts, or other crimes that would clearly be outside the purview of Thomas'
4 position as CEO, the contracts in this case clearly were done pursuant to Thomas' position with
5 UMC.

6 Additionally, in Troutman the attorney-client relationship existed as a result of advice given
7 in other areas of Troutman's employment and not directly related to the extortion attempts which led
8 to Troutman's conviction. In this case, the District Attorney's office advised Thomas directly on
9 these contracts and other contracts and clearly acted as the attorney on behalf of Thomas and UMC
10 during the negotiation of these specific contracts which form the basis of the charges in the
11 indictment. Finally, Miller's own testimony reveals that there was a very close attorney-client
12 relationship between her, attorneys from her office, and Thomas during the course of his employment
13 as the CEO of UMC. Indeed, as Miller indicated, Thomas would not even be able to obtain his own
14 attorney as it related to his duties as the CEO of UMC unless he sought and received the approval of
15 the District Attorney's office.

16 Clearly, Troutman is not "similar to the case at bar." Equally clear is the fact that there are
17 no "other jurisdictions" which have not disqualified prosecutors in situations such as this. In fact,
18 there is absolutely no case law whatsoever which would support the District Attorney's claim that
19 they should not be disqualified from prosecuting Thomas in this case. As such, Thomas' motion must
20 be granted.

21 C. THE CIRCUMSTANCES OF THIS CASE CLEARLY WARRANT
22 DISQUALIFICATION OF THE DISTRICT ATTORNEY'S OFFICE
23 FROM PROSECUTING THE CASE EVEN IN LIGHT OF NEVADA
 CASE LAW NOT INVOLVING PUBLIC OFFICERS.

24 The State is correct when it states that in cases not involving county officials who were
25 previously represented by the District Attorney's office there is a preference toward not disqualifying
26 the District Attorney's office. However, the cases cited by the State to support their position that
27 Thomas' motion should be denied do not warrant denial of Thomas' motion. In fact, they support
28 Thomas' motion that the District Attorney's office must be disqualified.

1 The first case cited by the State in support of this proposition, People vs. Petrisca, 41 Cal.
2 Rptr. 3d 182 (2006), is completely distinguishable from this case and does not support the State's
3 position that Thomas' motion should be denied. In Petrisca, the defendant was charged with various
4 counts related to a traffic accident in which the mother of a deputy district attorney was killed. Thus,
5 Petrisca attempted to disqualify the entire district attorneys office on the basis of an appearance of
6 impropriety based upon the fact that the district attorney prosecuting him would be pressured or
7 otherwise persuaded to prosecute his case differently simply because the victim was the mother of
8 another deputy in the district attorney's office. While recognizing that the quote cited by the State
9 is in fact a portion of that case, the California Supreme Court was simply reiterating that inherent
10 conflicts of interest will not be enough to disqualify an entire district attorneys office unless there are
11 extreme circumstances in an individual case. Moreover, the defendant in that case attempted to
12 disqualify the district attorneys office based upon a specific California statute addressing the issue,
13 a statute which is not at issue in this case. Rather, in this case the issue involves the prosecution of
14 Thomas by the same office which previously represented him using his prior attorneys as witnesses
15 against him. Clearly this situation is entirely different from an appearance of a conflict and the
16 California case cited by the State does not support denial of Thomas' motion.

17 However, the two Nevada cases cited by the State relating to this issue do shed more light on
18 this issue and would support Thomas' motion to disqualify the District Attorney's office. In Collier
19 v. Legakes, 98 Nev. 307, 646 P.2d 1219 (1982), the Nevada Supreme Court had the opportunity to
20 consider the disqualification of the district attorney's office because a deputy had previously
21 represented co-defendants or been involved in the case through the public defender's office prior to
22 changing employment and going to work for the district attorney's office. In deciding those issues,
23 the Supreme Court recognized that a trial judge should consider all the facts and circumstances and
24 determine whether the prosecutorial function could be carried out impartially and without a breach
25 of any privileged communication. Legakes at p. 310. Even without a direct conflict, the Supreme
26 Court found that vicarious disqualification may be warranted in extreme cases where the appearance
27 of unfairness or impropriety is so great that the public trust and confidence in our criminal justice
28 system could not be maintained without such action. The court stated: "Such an extreme case might

1 exist even where the state has established an effective screen precluding the individual lawyers direct
2 or indirect participation in the prosecution." Legakes at p. 310. Thus, the Supreme Court in Legakes
3 recognized that even when there is not a direct conflict of interest under the rules (as there is in this
4 case), there still could be a situation in extreme circumstances where disqualification of the district
5 attorney's office is warranted.

6 Likewise, in Attorney General vs. Eighth Judicial District Court in and for the County of
7 Clark, 108 Nev. 1073, 844 P.2d 124 (1992) the Supreme Court considered the disqualification of the
8 district attorney's office in the context of an investigator taking employment with the Clark County
9 District Attorney's office after previously working for the defense. In this case, the district court
10 disqualified the District Attorney's office despite the fact that the DA's office insured the court that
11 the investigator had been completely screened from the case. The court granted the motion to
12 disqualify without an evidentiary hearing based upon its concern of an appearance of impropriety.
13 The court also based its disqualification on the fact that an appealable issue might arise if the
14 defendant was convicted. In overturning the district court, the Supreme Court found that the district
15 court erred because it did not conduct an evidentiary hearing. The court found that under Collier,
16 district courts may only disqualify district attorneys offices after conducting a full evidentiary hearing
17 and considering all the facts and circumstances. The court reiterated that disqualification based upon
18 an appearance of impropriety is warranted only in "extreme" cases where the appearance "is so great
19 that the public trust and confidence in the criminal justice system could not be maintained without
20 such action." Attorney General at p. 125.

21 It is important to note that in both cases the court found that an evidentiary hearing must be
22 conducted to determine whether the appearance of impropriety is such that disqualification is
23 warranted. In this case, the defense would suggest that an evidentiary hearing is not warranted
24 because this is not a case of an appearance of a conflict, but rather an actual conflict given the
25 representation of Thomas by the witnesses against him. Thus, there is clearly an established attorney-
26 client relationship between Thomas and the District Attorney's office, and there is no question that
27 the District Attorney's office is going to call two of their lawyers as witnesses in this case. An
28 evidentiary hearing would not necessarily be warranted because these facts are uncontroverted.

1 This is not a case of an appearance of impropriety, and therefore an "extreme" circumstance
2 is not necessary in order to warrant disqualification of the District Attorney's office. However, even
3 under the extreme circumstances standard outlined by the Supreme Court in these cases,
4 disqualification would be appropriate. As the Legakes court stated, where the appearance of
5 unfairness or impropriety is so great that the public trust and confidence in our criminal justice system
6 could not be maintained without such action disqualification would be warranted. This is clearly the
7 case. Here, the same law office that provided legal advice for Lacy Thomas in his capacity as CEO
8 of UMC is now prosecuting him for alleged crimes that occurred during the course of his
9 employment. The District Attorney's office reviewed these contracts, consulted Thomas on these
10 contracts, and acted as his attorney as it related to these contracts. Now, the same office is not only
11 prosecuting him, but using at least two of the attorneys who represented him in that prosecution. One
12 cannot conceive of an appearance of impropriety such as this that does not undermine the public trust
13 and confidence in the criminal justice system. No other law firm in any other litigation would be
14 allowed to prosecute such an action and allowing the District Attorney's office to do so in this case
15 will clearly undermine the public's confidence in the criminal justice system. Even without the actual
16 conflict, which has been established in this case, the appearance of a conflict in this case is so extreme
17 that disqualification would be warranted.

18 III. CONCLUSION

19 For the foregoing reasons, and the reasons cited in his original motion, Thomas would request
20 that this Court order that the District Attorney's office be disqualified from this case and thereafter
21 appoint a special prosecutor pursuant to NRS 252.100 to prosecute this case.

22 DATED this 7th day of May, 2008.

23 DANIEL J. ALBREGTS, LTD.

24 By: 

25 Daniel J. Albregts, Esq.
26 Nevada Bar No. 004435
27 Attorney for Defendant
28

RECEIPT OF COPY

RECEIPT of the foregoing **Defendant's Reply to State's Response to Motion to Disqualify**
the District Attorney's Office is hereby acknowledged this 7 day of May, 2008.

DAVID J.J. ROGER
CLARK COUNTY DISTRICT ATTORNEY

By:

Eileen Menville
200 Lewis Avenue
Las Vegas, NV 89101

ORIGINAL

FILED

2008 MAY 30 P 3 35

CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

LACY L. THOMAS,

Defendant.

CASE NO. C241569
DEPT. NO. XVII

MOTION TO VACATE THE HEARING ON THE WRIT

The defendant, LACY L. THOMAS, by and through his attorney, DANIEL J. ALBREGTS, ESQ., hereby files this Motion to Vacate the Hearing currently scheduled for oral argument on the writ which will be filed in this case currently scheduled for Tuesday, June 10, 2008 at 9:00 a.m. This motion is based upon the attached Memorandum together with all of the pleadings and papers on file herein, together with any argument if the Court deems that necessary in this case.

DATED this 30th day of May, 2008.

DANIEL J. ALBREGTS, LTD.

By:

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MC

MAY 30 2008

CLERK OF THE COURT

1 MEMORANDUM


2 This matter is currently scheduled for a hearing on June 10, 2008 at 9:00 a.m. for oral
3 argument on the defendant's writ of habeas corpus. As this Court is well aware, there is currently a
4 Motion to Disqualify the District Attorney's Office pending before this Court. The defense has taken
5 the position since the beginning of this case that the issue regarding the conflict of interest must be
6 litigated before any other issues are litigated in this case. The defense has previously stated this
7 position on the record and indicated that a writ could not be filed until this issue was resolved. As
8 such, the time within which to file the writ and the related pleadings has been stayed pending the
9 outcome of the Motion to Disqualify the District Attorney's Office.

10 Given that the time within which to file the writ of habeas corpus has been stayed until the
11 decision on the conflict issue, no writ has been filed yet. Obviously, since no writ has been filed no
12 oral argument can be heard on the writ. Therefore, the currently scheduled hearing should be vacated.
13 Moreover, the defense would simply request that a scheduling order be issued at such time as this
14 Court makes a determination on the Motion to Disqualify the District Attorney's Office.

15 For the foregoing reasons, the defense would request that the Court vacate the hearing without
16 the parties needing to appear and suggests that the issue regarding the timing of the writ can be
17 addressed at the conclusion of the hearing on the Motion to Disqualify the District Attorney's Office
18 currently scheduled for Monday, June 16, 2008.

19 DATED this 29th day of May, 2008.

20 DANIEL J. ALBREGTS, LTD.

21 By: 
22 Daniel J. Albregts, Esq.
23 Nevada Bar No. 004435
24 Attorney for Defendant
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Scott S. Mitchell
Chief Deputy District Attorney
477-2949 (Facsimile)

Kimberly LaPointe
An Employee of Daniel J. Albregts, Esq.

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1 LAS VEGAS, CLARK COUNTY, NV, MONDAY, JUNE 16, 2008

2
3 THE COURT: This is the State versus Thomas. Let the record
4 reflect the presence of the defendant at liberty with counsel, Mr. Albregts.
5 Mr. Mitchell, for the State. This is the time set for the evidentiary hearing.

6 Parties ready to proceed?

7 MR. ALBREGTS: Your Honor, I am with the caveat that as I
8 indicated last week, there are three witnesses that I – well, two that I've not
9 been able to serve, and one that's out of town today, getting back tomorrow.
10 I think they are necessary for the final determination of the motion. I
11 certainly have no problem going forward today with the four witnesses who
12 are here.

13 The other three witnesses are Don Hayt (phonetic), who is
14 a lawyer who worked at UMC as, essentially, in-house counsel. I think his
15 testimony would be relevant regarding the attorney/client relationship and
16 issues related to that.

17 The second is Mike Hayes, whose exact title I'm not sure
18 of. He wasn't a lawyer, but he worked in the legal offices there at UMC as
19 an assistant. And, again, I think he would have testimony regarding meetings
20 and attorney/client issues.

21 And then the third is the county manager, Tom Riley, who,
22 for some reason, my investigator wasn't able to serve before today. And
23 there's a longer version as to why I think that is, but he's not here as well.

24 Mr. Hayes is the one that's out of town and he'll be back
25 tomorrow. He's been out of town for about two weeks. We did contact

1 him, but obviously couldn't serve him and he couldn't get back here.

2 Mr. Hayt retired. We have now located him in Zephyr
3 Cove, Nevada, up in -- in the Tahoe area where he has retired, but we
4 weren't able to subpoena him before today. It was a little harder to locate
5 him than we anticipated, given that he retired and -- and moved out of town.
6 But we have now located him and would intend to serve him if you give me a
7 second evidentiary hearing to have these three witnesses testify.

8 THE COURT: Can you provide me with an offer of proof as to
9 their expected testimony?

10 MR. ALBREGTS: As to Mr. Hayt and Mr. Hayes, they would
11 testify that they were involved in meetings that I suspect you're going to
12 hear testimony about this morning with the District Attorney's office when
13 issues were discussed, such as, you know, contracts that UMC was doing,
14 including some of the contracts at issue here, legal advice the that DA's
15 office gave UMC and Mr. Thomas during the course of his employment, the
16 fact that Mr. Thomas was not allowed by contract to -- to go out and get his
17 own attorney. He had to rely on the DA's civil division as an attorney.

18 And so it would be the -- the content of those meetings,
19 and the advice that the District Attorney's office gave to Mr. Thomas during
20 these meetings and during the course of his employment as the CEO.

21 As to Mr. Riley, it would also involve the attorney/client
22 relationship. I would expect him to testify that he had conversations with
23 Mr. Thomas regarding the attorney/client relationship, regarding some
24 difficulties Mr. Thomas perceived with the District Attorney's office and
25 attorneys in that office who were advising Mr. Thomas.

1 And then also, one incident with a -- with a contract and a
2 potential lawsuit against a service provider who was -- or a general contractor
3 who was building out one of the new towers at UMC and had did some work
4 there and there was problems with the work. That'll be, I think, testimony
5 today about that issue, that contract, and a conflict that arose between Mr.
6 Thomas and Ms. Miller as it relates to whether they should sue the contractor
7 or how they should handle the problem that -- that occurred as a result of
8 that contractor's work at UMC. And Mr. Riley would also testify regarding
9 that issue as well.

10 THE COURT: Counsel, you would agree that in your 228.177 the
11 DA's office is authorized by state law to prosecute county officers; correct?
12 And just when we rise to the level of perhaps some specific privileged
13 communication, is that where the conflict arises?

14 MR. ALBREGTS: That and the prior attorney/client relationship
15 that is so close in this case, including being involved in contracts that are part
16 of the indictment, that, yes, at some stage conflicts can arise. And I would
17 argue that this is a case where conflict has arisen. I don't think that that
18 statute says that you can't look at the prosecution in the context of a
19 conflict.

20 THE COURT: I would agree. I'm just saying just, at least initially,
21 we start off that the DA's office is authorized to prosecute county officers.
22 And then we go into the issue of more specific communications, legal advice.
23 And I think that's what you're looking at this --

24 MR. ALBREGTS: Right. Right.

25 THE COURT: Okay.

1 All right. Mr. Mitchell.

2 MR. MITCHELL: Yes, Judge. Several points are very relevant
3 here. One is that the law not only authorizes the DA's office to prosecute
4 county officers, but mandates that -- that there is a strong statutory
5 presumption in favor of a DA's office doing it as opposed to anybody else.
6 So the legislature has manifested a very strong preference that that be the
7 case. And it makes sense because it is the County that has the greatest
8 interest in seeing that the County is run right.

9 And so the legislature goes to the great trouble of limiting
10 the circumstances under which anybody else could ever prosecute county
11 officers. And they do the same thing for the state officers, excluding the
12 DA's office from that because the State has the greatest interest in
13 prosecuting county officers, excuse me, in -- in prosecuting state officers.

14 And so I'm not correcting the Court, I'm just supplementing
15 that notion that we begin with, which is that there is a very strong
16 preference written right into the law that it be the DA's office almost
17 exclusively. And only -- the only exceptions that law allows are when the
18 DA's office has specifically made clear its desire not to.

19 Also, we should keep in mind that in cases like this, this
20 case is conceptually no different than any other case where a county officer
21 is going to be prosecuted because the county officer is going to be working
22 for some county agency that receives legal advice from the DA's office. That
23 is the way the law has set that up.

24 The DA's office provides legal advice to all county
25 agencies. UMC happens to be under county control at this time, so that's

1 why this case is exactly like every other case, and that's why the DA's office
2 prosecutes countless county employees, historically has. We're doing it right
3 now with respect to many county employees from different agencies, and
4 never has the law figured that there is this idea that there is some sort of
5 personal relationship between the civil DA that just happens to be assigned to
6 a county agency and the person that's running that county agency.

7 Now, with that as background, I am going to make a legal
8 motion here and ask the Court to exclude any testimony from Don Hayt
9 anyway. Don Hayt was not a county lawyer.

10 He was a lawyer; he was not employed by the County as a
11 lawyer for UMC. He has no ability to testify in this case as to whether or not
12 there was a conflict between county lawyers and UMC. He was a contracts
13 administrator. That was his position, and that will come out from my
14 witnesses that the defense asked me to have here today. And that's a very
15 important point.

16 Don Hayt cannot testify as to any of his communications
17 with Lacy Thomas regarding contracts because he's not the County's
18 assigned legal representative to represent Lacy Thomas. It just so happens
19 that Don Hayt passed the bar and could say he's a lawyer, but that was not
20 his employment status.

21 Also, I'm going to make an even stronger argument with
22 respect to Mike Hayes. If this guy works for the County, but is not a lawyer
23 himself, the fact that he may have sat in on some contract negotiations
24 doesn't bear on the issue that we're here today to decide, which is a very
25 narrow one, and that is whether or not the County had -- or specific county

1 lawyers had that personal relationship with Mr. Lacy Thomas that would
2 disqualify them from being part of the same office that prosecutes him,
3 unless -- unless somehow he could testify to personal relationships that
4 they're not aware of and -- and maybe -- maybe the Court might want to
5 defer any decision on whether or not we need to hear from this Mike Hayes
6 at all until after you've heard from the witnesses that will testify.

7 But I can't see how he, as a non-lawyer and apparent
8 acquaintance of Lacy Thomas, could provide the kind of testimony that the
9 Court needs to hear to decide this legal motion. It's a strictly legal issue; it's
10 not a factual issue here.

11 Now, finally, with respect to Tom Riley, the county
12 manager. Tom Riley did testify before the Grand Jury, and his testimony is
13 well known. And I question the -- unless he's going to say something
14 different than what he's already said under oath, I don't see why he's a
15 necessary witness either.

16 So I believe that we can resolve all the legal issues that are
17 before the Court today with the witnesses that are sitting outside the
18 courtroom ready to testify.

19 THE COURT: All right. Well, we'll address that after the
20 testimony today.

21 And so at this point let's call your first witness, Mr.
22 Albregts. The burden is on you.

23 MR. ALBREGTS: I need Roger, David Roger.

24 Your Honor, do you prefer from the podium or the seat?

25 Do you --

1 THE COURT: Whatever you feel comfortable with.
2 MR. ALBREGTS: I would -- the only thing is that the podium is
3 right in my way, so I --
4 THE COURT: Doesn't it -- it has wheels.
5 MR. ALBREGTS: Yeah, but it's attached --
6 THE COURT: Be careful with the cords.
7 MR. ALBREGTS: It is attached here.
8 THE RECORDER: Do you think you're going to want to use the --
9 THE COURT: The ELMO or anything?
10 MR. ALBREGTS: No, I would just prefer -- I don't foresee that
11 being necessary. I would just prefer to sit down if that's all right with
12 everybody.
13 THE COURT: That's fine.
14 MR. ALBREGTS: But I would need to unhook this. Can I do that
15 and --
16 THE RECORDER: Well, just --
17 THE COURT: Or the Marshall will help you with that.
18 THE BAILIFF: Mr. Rogers, if you'll just remain standing and raise
19 your right hand.

20 DAVID ROGER

21 Having been called as a witness and being first duly sworn testified as
22 follows:

23 THE CLERK: Please be seated. Can you please state your name
24 and spell it for the record.

25 THE WITNESS: David Roger; D-A-V-I-D. Roger; R-O-G-E-R.

1 THE CLERK: Thank you.

2 DIRECT EXAMINATION

3 BY MR. ALBREGTS:

4 Q Mr. Roger, can you state your -- what is your employment?

5 A I'm the District Attorney for Clark County.

6 Q In that capacity -- could you give a brief description of what your
7 job entails?

8 A My duties are set fort by statute, but -- but primarily I represent
9 the County of Clark. We have a criminal division, which is responsible for
10 prosecuting all criminal cases in Clark County, a civil division, family support,
11 and a juvenile division.

12 Q And are those all a part of the same office?

13 A Yes, sir.

14 Q Okay. And do you consider the lawyers in each of those
15 divisions lawyers in your office or law firm?

16 A Yes, sir.

17 Q Is your position primarily administrative, or do you get involved
18 in -- in day to day cases?

19 A I still carry a small case load myself, and when I say small, I mean
20 one or two cases a year. But primarily it's administrative.

21 Q Do you do any cases or work on the civil side of the work that
22 the DA's office does?

23 A I don't try any civil cases, but I do spend some time over in the
24 civil division talking with county counsel and the various lawyers in the
25 office.

1 Q Do you do any work with the agencies or entities that the civil
2 lawyers in your office work with and represent?

3 A I do not directly have contact with any of the department heads
4 and agencies concerning legal issues. Periodically I'll be brought in on a
5 meeting, but primarily it's county counsel Mary-Anne Miller.

6 Q Were you ever, in periodically having been brought in on meetings
7 occasionally, were you ever brought in on meetings as it relates to -- to work
8 done at University Medical Center over the course of the last five or six
9 years?

10 A I -- I remember having conversations with Mary-Anne Miller, but I
11 was not directly involved in any meetings involving third parties from --

12 Q Did you ever --

13 A -- the civil -- civil side of it.

14 Q Okay. Did you ever have any meetings with Lacy Thomas as -- in
15 his capacity as the CEO of -- of UMC?

16 A No, sir.

17 Q I'm sorry, no?

18 A No.

19 Q Did you ever have any telephone conversations with Mr.
20 Thomas?

21 A No, sir.

22 Q And that -- any -- any of those meetings or the like would've
23 primarily been Mary-Anne Miller and the -- and the people she had assigned
24 to UMC?

25 A Yes.

1 Q As the agency head of the District Attorney's office, when your
2 entity represents -- or when your office represents those entities --

3 A Yes, sir.

4 Q -- who, in your mind, is -- is the client or is there a client of those
5 lawyers?

6 A In my mind it is the agency which is the client. Now, obviously,
7 when there are lawsuits, providing there aren't conflicts of interest, we
8 represent all of the parties. But we represent the County of Clark, and that's
9 by statute, and the agencies.

10 Q Okay. So when you say the agencies really are the clients, you --
11 my next question was going to be, why do you say that? And you say that's
12 by statute?

13 A Yeah.

14 Q Or are there --

15 A The -- the statute setting forth the duties of the District Attorney
16 provides that the District Attorney shall defend all lawsuits filed against its
17 county, or Clark County.

18 Q So let me ask you a hypothetical. If UMC would have been sued
19 and Lacy Thomas would've been sued in his capacity as the CEO of UMC,
20 who -- who would the District Attorney's office civil division have
21 represented?

22 A Mary-Anne Miller is probably a better person to answer that
23 question. However, it depends on the nature of the claim. If there do not
24 appear to be any conflicts, we might very well represent all of the parties. If
25 there is a claim for punitive damages, then, obviously, other counsel would

1 have to be brought in to represent the individuals.

2 Q So in the former situation, then, without punitive damages or
3 personal liability, perhaps on the part of the individuals, the DA's office would
4 then represent everybody in that type of lawsuit?

5 A As I said, Mary-Anne Miller would be a better person to answer
6 that question because she oversees the civil division. But from my
7 perspective and my limited knowledge about how we assign counsel for
8 cases, we would represent everybody unless there was a conflict of interest.

9 Q And would you agree that in that situation, if your office was
10 representing everybody, then your office would be the attorney for that
11 individual as well in that situation you just described?

12 A Provided there were no conflicts of interest we would be primarily
13 responsible for the entity, which would be UMC. Obviously there would be a
14 discussion with all the individuals outlining the potential for conflicts of
15 interest. They would be the individuals who would have an opportunity to go
16 retain their own counsel, but our primary interest is to defend Clark County.

17 Q Are you, in your capacity, privy to the employment contracts of
18 county employees who are at a -- at a higher level? I mean, for instance, Mr.
19 Thomas is a CEO of UMC. That puts him a little bit different level than other
20 county employees. Are you privy to the contracts, employment contracts
21 that these individuals have?

22 A I've never had to review any employment contracts, but I assume
23 that I probably would be able to gain access to it.

24 Q Were you aware that Mr. Thomas's contract provided that the
25 District Attorney's office, your office, would be the attorney for UMC? Were

1 you --

2 MR. MITCHELL: I object to --

3 Q -- aware of that?

4 MR. MITCHELL: -- the form of the question as being too vague
5 to answer. The attorney for UMC on a contract.

6 THE COURT: Sustained.

7 BY MR. ALBREGTS:

8 Q Well, were you aware that in Mr. Thomas's contract there was a
9 provision regarding legal counsel for -- for the hospital?

10 A I haven't seen Mr. Thomas's contract, so the answer would be
11 no.

12 Q Does your office have a standard set of procedures as it relates
13 to conflict issues?

14 A Mary-Anne Miller would probably be best suited to answer that
15 question.

16 Q Why -- and why is that?

17 A Because she is the county counsel. She oversees the -- the civil
18 division, and I'm sure that she has probably set forth policies on dealing with
19 conflict issues. But general -- general law dealing with conflicts of interest
20 would obviously apply.

21 Q And when you -- what do you mean by that?

22 A I mean if there is a perceived conflict of interest, people would be
23 advised of the potential conflict of interest, and they would be given the
24 opportunity to go hire outside counsel.

25 Q And when you say rules of conflict of interest would apply, do

1 you mean the Nevada Supreme Court rules that talk about conflicts of
2 interest and --

3 A Yes, sir.

4 Q -- and the like?

5 A Yes, sir.

6 Q So to your knowledge then, your office has no set rule regarding
7 conflict, it's just a case by case basis? If somebody perceives a potential
8 conflict then the issue is raised?

9 A I can't say one way or the other. Mary-Anne Miller would --
10 would be able to tell you if there's a written policy on conflicts of interest.

11 Q Let me ask you about a specific case where a conflict of interest
12 came up and your office recused itself. Are you aware of -- of the Plank
13 case?

14 A Yes, sir.

15 Q And your office recused yourself, or as -- as a conflict of interest
16 in that case; correct?

17 A You're referencing the criminal complaint?

18 Q Yes.

19 A Yes, sir.

20 Q Okay. And why was that decision made in -- in that case to
21 recuse your office for a con -- as a result of a conflict of interest if you could
22 tell the Judge that?

23 A I -- I had neighbors on both the north side of my house and the
24 south side of my house who had relatives who had pending criminal cases in
25 my office. And I felt that it would be best to avoid the appearance of

1 impropriety to conflict off of those cases.

2 Q And was there a specific rule that -- that came to mind for you
3 when you decided the appearance was too great to have your office
4 prosecute it?

5 A Obviously the Nevada Supreme Court sets forth general
6 guidelines in their -- in their Supreme Court rules and it's up to us to apply the
7 facts on a case by case basis. I felt because we were prosecuting a family
8 member that it would be appropriate to recuse the office and submit the case
9 to outside counsel.

10 Q But you had had no direct contact with these neighbors about the
11 cases; had you?

12 A One neighbor came to me after his son had been arrested and
13 asked me to help him secure an OR release. I declined. But there was no
14 direct contact with the neighbor about the Plank case.

15 Q And it was the appearance of impropriety, then, in that case that
16 caused you to have your office taken off that case and recuse itself.

17 A True.

18 Q Were you familiar with who in your office was assigned to UMC
19 to -- to handle the UMC matters? Which lawyer?

20 MR. MITCHELL: Object to the form of the question as being too
21 non-specific as to time.

22 THE COURT: Sustained.

23 Why don't you give us a timeframe, Counsel.

24 BY MR. ALBREGTS:

25 Q Well, do you know who is assigned now to UMC?

1 A We have a new lawyer who has been with our office for a couple
2 months. He is assigned to UMC. I -- I don't know the timeframes, but at one
3 point it was Mark Wood who was assigned to represent UMC, and then it
4 changed to Holly Gordon.

5 Q And do you know why that was?

6 A No.

7 Q That wasn't a decision that you made?

8 A No.

9 Q And then that lawyer, whether it was Mark or Holly, would report
10 to Mary-Anne Miller?

11 A Yes, sir.

12 Q Do you recall a situation in which Mary-Anne Miller got in a
13 substantial disagreement with Mr. Thomas over an issue as it relates to a
14 construction problem at UMC and the floors for the outpatient surgery?

15 A No, sir.

16 Q You don't remember a discussion where Mr. Thomas wanted to
17 sue the contractors and Mary-Anne Miller didn't want to, and Mr. Thomas
18 got outside counsel to look at the issue? You don't recall that being raised?

19 A No, sir.

20 Q So you -- you don't recall a time where Mary-Anne Miller
21 would've come to you, in your capacity as her boss, and said that Lacy
22 Thomas isn't following her direction on this issue with the floors and went
23 behind her back to get a third party opinion? That doesn't ring a bell?

24 A No, sir.

25 Q Did you ever have any discussions or contact with Tom Riley, the

1 county manager at the time, regarding that issue?

2 A No, sir.

3 Q Did you ever have any contact with Tom Riley about Lacy
4 Thomas or any UMC matter?

5 A No, sir.

6 MR. ALBREGTS: I have no further questions.

7 THE COURT: Mr. Mitchell.

8 MR. MITCHELL: Thank you.

9 CROSS-EXAMINATION

10 BY MR. MITCHELL:

11 Q Mr. Roger, if you were to estimate, or if you know specifically,
12 what the number of employees in the DA's office is? Could you give that
13 figure adding all the different civil division, criminal division, juvenile division,
14 family support employees?

15 A We have roughly 750 employees.

16 Q Okay. You are the head of the largest law firm in the state; is
17 that right, if we would classify the DA's office a law firm?

18 A The Attorney General might disagree, but I think we have more
19 employees than any other law firm in the state.

20 Q Okay. You have mentioned the nature of Mary-Anne Miller's
21 responsibilities as county counsel. How do hers differ from yours?

22 A I -- I try not to micromanage my departments. I set policy, I have
23 discussions about big issues, but I oversee all of the heads of the different
24 departments within the District Attorney's office. She oversees the civil
25 division and she represents the County and the County Commission.

1 Q Okay. And, in fact, the civil division itself is about how big with
2 respect to the lawyers in that division, if you know?

3 A I -- I would say that they have roughly 35 lawyers.

4 Q Okay. And -- and, again, if you could give a rough estimate as to
5 the number of county agencies that those 35 lawyers are providing legal
6 advice to, do you have any idea of that number?

7 A 60, 70.

8 Q Okay.

9 A The best estimate.

10 Q Now, all of these county agencies that are receiving legal advise
11 from the civil division of the DA's office I assume have numerous employees
12 of their own; is that right?

13 A Yes.

14 Q And you mentioned in discussing the subject of conflict of
15 interest that when a county agency gets sued the county might be defending
16 all of the employees of a particular agency; is that right?

17 A True.

18 Q And when you were talking about conflict of interest, you were
19 discussing the -- the point of whether or not the DA's office might be able to
20 represent some, but not others within the same agency; is that correct?

21 A Yes.

22 Q And that would be because some might have a different legal
23 defense than others would, which would allow them to be sort of fighting
24 against each other; is that correct?

25 A Right.

1 Q But does the DA's office have any policy of preferring certain
2 employees over others in their duty to -- to provide a defense for employees
3 of the County?

4 A No.

5 Q So if -- if somebody was in trouble with the law, for example, or
6 if they were being sued -- let -- let's stick to a civil lawsuit. If somebody is
7 being sued in a civil lawsuit and there are, let's say for the sake of argument,
8 three employees from a county agency being sued, the DA's office would not
9 say, well, we will assign ourselves to be the -- the attorney for the most
10 important of those three and place less emphasis on the other two. You
11 would not do that as a matter of course.

12 A Correct.

13 Q Is your legal obligation, or is -- is the office's legal -- legal
14 obligation in defending county agencies basically the same as to every
15 employee within that agency?

16 A We represent the -- the agency and we are to defend the County
17 of Clark.

18 Q So the -- the representation is not designed for individuals, it's
19 designed for the fact that they work for Clark County; is that correct?

20 A Yes, sir.

21 Q Okay. Now, in that representation that the County gives them
22 because of their county employee -- employee status, are the issues
23 necessarily restricted to whether or not they were doing their county job
24 right?

25 A I'm not sure that I understand your -- your question.

1 Q Well, if they were being sued for personal matters that had
2 nothing to do with their performance as a county employee, would the DA's
3 office be involved at all?

4 A No, sir.

5 Q So the only thing the DA's office gets involved in in the first
6 place is matters related to their job performance and then make the -- the
7 DA's office makes the decision as to whether or not that's something that
8 we can defend.

9 A Correct. We represent employees who -- who -- who do non-
10 criminal acts during the ordinary course of their course and scope of their
11 occupation.

12 Q And if they were accused of a crime, the DA's office only role
13 would be to prosecute them and not defend them; is that correct?

14 A Yes, sir.

15 Q Okay. Now, in mentioning that the DA's office could defend
16 county employees under certain circumstances that you set forth, it wasn't
17 asked of you whether or not you also prosecute county employees, but do
18 you?

19 A Yes, sir.

20 Q Have you made that, in fact, a matter of -- of personal emphasis
21 to clear out county -- to clear out corruption from county employees since
22 you've been DA?

23 A The Las Vegas Metropolitan Police Department has conducted
24 investigations concerning alleged misconduct by some of the county agency
25 department heads. They have brought those cases to us and in cases where

1 we felt there was sufficient evidence we have prosecuted them.

2 Q Okay. And have you ever declined a case merely because the
3 person that was a suspect worked for the County?

4 A No, sir.

5 Q And have you always accepted that as your role that you were
6 the go to entity as far as prosecuting county employees were concerned if
7 they were the suspects in a crime?

8 A We believe that it is our obligation to present -- prosecute those
9 crimes which have occurred in Clark County. I don't believe in deferring
10 prosecutions to other agencies unless there is an apparent conflict of interest.

11 Q Okay. And in fact, as we speak, are there numerous criminal
12 prosecutions being conducted by the District Attorney's office against former
13 or present county employees? Well, maybe not present, but at least former
14 county employees?

15 A We do have some cases filed against former county employees,
16 yes.

17 Q Now, there are two kinds of conflict of interest that I think have
18 already been alluded to in the questions thus far. And for the purpose of my
19 question, let me define what kind I'm talking about here. When you were
20 discussing conflict of interest, am I correct in assuming that you were talking
21 about potential conflicts of interest where legal claims are being made against
22 separate employees of the same county agency that might have a different
23 individual defense?

24 A That is one type of conflict of interest, yes.

25 Q Okay. And so when you were saying that the County would

1 decide whether or not it could defend all of them, you were talking about that
2 situation where you would have to decide whether the defense would be the
3 same for all of them or whether the County could provide an adequate
4 defense for everybody.

5 A Well, our -- our obligation is to defend Clark County. Other
6 people may have differing defenses, and they're advised early on that, you
7 know, there may be a potential for a conflict of interest and other counsel
8 might be appropriate.

9 Q Okay. So when you were discussing that in your testimony, you
10 were not discussing the conflict of interest that is alleged to exist here of the
11 DA's office prosecuting criminally a former county employee?

12 A Yes.

13 Q All right. Now, in providing legal assistance with contracts that
14 the County enters into, is that one of the assignments that the civil division
15 has of the DA's office?

16 A Yes, sir.

17 Q And is that one of the things that you have put Mary-Anne Miller
18 in charge of?

19 A Yes, sir.

20 Q So if -- if contracts are entered into with the County, whoever is
21 assigned to provide whatever services the County provides in negotiating that
22 contract would not be a decision made by you because you would've
23 delegated that to somebody else; is that right?

24 A True.

25 Q Now, you were asked about the Plank decision or the decision

1 that you made in the Plank case. Was your concern in declining to be the
2 entity that prosecuted that case that it might appear that you were being too
3 lenient because these people lived around you and actually knew you
4 personally?

5 A Yes.

6 Q So it was not a concern that you would be unfairly tough on
7 them, but that it might appear to the public the opposite; is that right?

8 A Right.

9 Q Okay. And was it your concern that you appear to be, to the
10 public, for the public trust, that you would prosecute aggressively, or as
11 aggressively as you should, ethically, anybody regardless of their status and
12 regardless of who they know or where they live?

13 A Correct.

14 MR. MITCHELL: I have no further questions.

15 THE COURT: Any redirect?

16 MR. ALBREGTS: Real brief, Judge.

17 REDIRECT EXAMINATION

18 BY MR. ALBREGTS:

19 Q Mr. Roger, you indicated that your office would prosecute and
20 does prosecute county employees where you think there are law violations
21 and would do so unless, and I think you said there was an apparent conflict
22 of interest?

23 A I'm not sure that that -- that was my response, but our job is to
24 prosecute individuals who commit crimes in Clark County based upon our
25 statute.

1 Q Whether they're county employees or not?

2 A Yes, sir.

3 Q And you don't recall on questioning from Mr. Mitchell saying
4 something to the effect that unless there was an apparent conflict of
5 interest?

6 A I don't recall that response.

7 Q Let me ask -- I would assume if there was a conflict of interest
8 then the County wouldn't prosecute county employees if -- if you felt there
9 was a conflict of interest; true?

10 MR. MITCHELL: Judge, at this point I'm going to interpose a
11 request that Mr. Albregts make clear in the question what kind of conflict of
12 interest he's talking about because there are clearly two different kinds that
13 don't have much to do with each other, and the questioning has been about
14 both kinds at this point.

15 MR. ALBREGTS: Well, Judge, that's a vague objection, objection
16 vague or something, if that what he's interposing. It's not vague. Mr. Roger
17 is a very seasoned attorney. If he doesn't understand the question, he can
18 certainly tell me he doesn't understand it, or he can make the distinction
19 between the conflict.

20 MR. MITCHELL: True, Judge, but the questions that Mr. Albregts
21 was asking originally about conflict of interest were not the type that's
22 involved in this legal motion. They were about representing multiple county
23 employees from the same agency, which is a completely different kind of
24 contract -- conflict of interest than what we're talking about in this motion,
25 which is whether or not the DA's office should be disqualified from

1 prosecuting a county employee for a criminal violation. And we need to keep
2 those distinctions straight in the question so that the answer can be accurate
3 and make sense to the question.

4 THE COURT: I think the questions do need to be distinguished,
5 but I think Mr. Roger has the ability to -- to distinguish his answers in any
6 fashion because of his status as the District Attorney, so I'm going to allow
7 the question.

8 But, Mr. Roger, feel free to, if you don't understand it,
9 obviously, say you don't understand or that if you need to distinguish your
10 answer on the types of conflicts please feel free to go ahead.

11 THE WITNESS: Sure.

12 BY MR. ALBREGTS:

13 Q Well, I'm not sure I remember the question, so let me --

14 A I -- I think I can take a stab at it.

15 Q Okay.

16 A Now, our obligation is to defend Clark County in criminal actions.
17 Clark County is the client. When -- when individuals who are employed by
18 Clark County allegedly commit crimes, it's our responsibility to prosecute
19 those -- those crimes.

20 Now, some people may say, well, it appears that you might
21 have a conflict of interest because they were once part of the Clark County
22 family, but as a District Attorney for Clark County, we have an absolute
23 obligation to prosecute those people who allegedly commit crimes in Clark
24 County.

25 Q Was any determination made in this case regarding any conflict

1 of interest issues prior to the prosecution decision being made? Did that ever
2 come up?

3 A No, sir.

4 Q So nobody ever said let's discuss a conflict of interest issue, Mr.
5 Thomas was the CEO of UMC, worked, you know, directly with our
6 attorneys. There was no discussion about that before the decision was
7 made?

8 A No, sir. I -- I don't think it was addressed. I -- I think that in my
9 mind, because Mr. Thomas allegedly committed crimes, it really didn't matter
10 whether he had a relationship with our civil division because our civil division
11 represents Clark County, not specifically him. And so we decided to
12 prosecute the case.

13 Q And I -- I think you answered my next question, but let me make
14 sure it's clear on the record. So you -- you basically don't believe there's a
15 conflict of interest at all with your office because Mr. Thomas wasn't the
16 client, UMC was the client?

17 A Right. The county agencies in the County of Clark are our
18 clients.

19 Q Do you think that the CEO is in a different position than other
20 employees of UMC as it relates to the relationship between your office?

21 A No, sir.

22 Q Why not?

23 A Because he's an employee of Clark County.

24 MR. ALBREGTS: I have nothing further.

25 THE COURT: Mr. Mitchell.

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MR. MITCHELL: I have nothing further.

THE COURT: Thank you, Mr. -- Mr. Roger.

THE WITNESS: Thank you.

THE COURT: Next witness, please.

MR. ALBREGTS: Mark Wood.

THE BAILIFF: Mr. Wood, if you'll remain standing, please. Raise
your right hand and face the clerk.

MARK WOOD

Having been called as a witness and being first duly sworn testified as
follows:

THE CLERK: Please be seated. Will you please state your name
and spell it for the record.

THE WITNESS: Sure. My name is Mark Wood; M-A-R-K W-O-O-
D.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. ALBREGTS:

Q Mr. Wood, what is your occupation?

A I am an attorney with the District Attorney's office, the civil
division.

Q And how long have you been employed there?

A Approximately 13 and a half years.

Q And what, specifically, is your position within the office? What
do you do on a day to day basis?

A Well, I'm a -- I'm a Deputy District Attorney. And as part of the

1 civil division I am assigned certain departments of the County or different
2 organizational subsets of the County to provide legal advice to.

3 Q To whom?

4 A To -- well, for example, right now one of my departments is,
5 that's assigned to me, is the treasurer's office. So I work with them on any
6 legal issues or questions that they have. The same --

7 Q When you say -- when you say them or they, who are you
8 referring to?

9 A To employees of the -- of that department. Certainly to the
10 person who would be in charge of the department and anybody underneath
11 him who -- who they would -- would ask me to interact with on a -- on a
12 regular basis.

13 Q That was going to be my next question. Can anybody from that
14 department call you and ask you a legal question as it relates to the
15 treasurer's office?

16 A They -- they do try to do that.

17 Q Are they successful?

18 A I will -- I'm courteous not to talk to them, certainly. And if -- if
19 it's a legal issue that I can help them with immediately, then I try to -- I do try
20 to do that. I don't always answer all of their questions. I might redirect
21 them to somebody else in their own department or to the policies and
22 procedures that they might have already on hand.

23 Q Is it fair to say that in the course of your work with the various
24 agencies that your contact with people within those agencies is limited to a
25 couple two, three people?

1 A No, that would not be accurate.

2 Q Why not?

3 A Because I -- my contact is with many more people than that.

4 Q Was there a time that, in your capacity as an attorney in the civil
5 division, that one of your agencies that you were assigned was -- was UMC?

6 A Yes.

7 Q When was it at?

8 A I don't recall when I first was given that assignment, but it
9 predated Mr. Thomas's hiring, and it ended approximately November of
10 2004.

11 Q So when Mr. Thomas was hired as the CEO of UMC, you were
12 already the attorney from the District Attorneys office assigned to UMC?

13 A That's correct.

14 Q Were you involved at all in the negotiations or the preparation of
15 the employment contract for Mr. Thomas?

16 A No, I was not.

17 Q Do you know who that was?

18 A I can't state with any certainty. I could speculate, but that's
19 what I would be doing.

20 Q Okay. We don't want speculation.

21 A I didn't think so.

22 Q Were you privy to the contract? Were you aware of his
23 employment contract, familiar with it?

24 A I was not familiar with it.

25 Q Do you know if the employment contract had any provisions

1 about legal counsel for UMC?

2 A I do not know. I -- I was not familiar with the contract.

3 Q What sort of legal advice would you provide to UMC during the
4 course of your work with that agency?

5 A Well, it would run, more or less, the gamut of legal advice that
6 would be provided by an in-house attorney in a -- in a large hospital. And
7 that would range from medical staff issues to administrative issues, you
8 know, business type issues. I was involved with -- in with doing litigation to
9 try to do some collections work. There is a whole host of different issues
10 that can arise.

11 Q Would contract negotiations be included in that?

12 A No. I never really was involved in contract negotiation.

13 Q What about the review of contracts that the hospital had?

14 A Yes. Yes.

15 Q Describe that work.

16 A Well, the hospital had an attorney on staff who was involved
17 with contract negotiation and the actual writing of contracts.

18 Q Who was that person, if I can interject?

19 A Don Hayt.

20 Q Okay. Go ahead, please.

21 A And so I would review contracts, but I did rely to a large extent
22 on work that he had done, knowing and had a relationship with him where I
23 would talk to him about anything unusual in these contracts or -- and then --
24 and then I would review contracts, but not all the contracts in terms of
25 actually reading through them.

1 Q Who did you interact with primarily during your time as the
2 attorney assigned to UMC from UMC?

3 A Well, I would say on the administrative side I had a lot of
4 interaction with people like Don Hayt. I had interaction with Annette Bradley
5 who is a risk manager. I had interaction with Mike Walsh who was the CFO,
6 and prior to Mr. Thomas he was the acting, sort of the interim acting
7 administrator. I had a good relationship with him. And, you know, I would
8 interact with the -- the PR people. I don't remember what their titles are, but
9 they had somebody on staff there.

10 I would interact with them because of the confidentiality
11 laws that the hospital has to comply with. I would interact with people in the
12 business office on collection matters I was doing interpleader or other
13 litigation work on. And I would interact with the medical staff office fairly
14 extensively also. I had -- I had interaction with Mr. Thomas, though I would
15 characterize it as being principally just in meetings where we were common
16 participants along with other people.

17 Q We'll get to those in a minute. Did you ever have any individual
18 interaction with Mr. Thomas other than the meetings?

19 A I do not recall ever having, for example, a meeting in his office
20 where it was -- would've been just the two of us. I know that I've had some
21 interactions with him just in passing, for example, meeting him in the parking
22 lot as we were -- one person was going and one was coming out. I'm sure
23 that I would've had some telephone calls with him where it would've been
24 just the two of us on the phone, though those were not frequent or -- or
25 common. That's my memory of it anyway.

1 Q The -- those telephone conversations, I would presume that that
2 would involve Mr. Thomas asking you legal questions or about legal issues
3 that were related to UMC?

4 A Yeah, I would -- I would think so, though I can't -- right now I
5 don't remember any specific telephone conversations.

6 Q Well, can you think of any other reason why Mr. Thomas would
7 be calling you during the course of a work day --

8 A I would --

9 Q -- other than to talk to you about legal issues?

10 A I would assume they would be legal issues or matters relating to
11 the -- to UMC, you know, matters. We could've had a conversation about a
12 medical staff issue, for example.

13 Q In your mind, as a civil District Attorney in these matters, who is
14 the client when you are assigned an agency like UMC?

15 A Well, the -- the County is the client. And in this setting, UMC as
16 a part of the County would've been my client. I would've viewed my
17 responsibilities, did view my responsibilities, as -- as representing, really, the
18 County and its best interests.

19 Q To your knowledge, did Mr. Thomas, at the time that you were
20 there, have his own lawyer that -- that he consulted on UMC issues or work
21 related issues?

22 A I know that there was one instance where they hired another
23 attorney, an outside attorney, to provide them with an opinion on a particular
24 matter.

25 Q Would that have been the matter relating to the out -- the floors

1 at the outpatient surgery unit that had to do with the floors being defective
2 and Mr. Thomas wanting to sue the construction company to recoup that
3 money? Does that ring a bell?

4 A No, that -- that issue sort of rings a bell. I don't -- I really don't
5 remember what the particular opinion was about.

6 Q And do you remember, was there any response from your office
7 regarding his having gone out and gotten another opinion instead of using
8 your office?

9 A I think that it was viewed as being inappropriate to do that.

10 Q Why?

11 A Because I think the -- it's viewed that the -- the District
12 Attorney's office is the office that would represent the hospital or any county
13 department except in those instances where we would delegate that. We
14 would -- we would authorize or approve or give consent to a department
15 going out and getting a particular piece of legal help that they might need. I
16 mean, there are times when, of course, when that happens when -- when we
17 don't have the expertise to provide certain legal -- legal work.

18 Q But for Mr. Thomas as the CEO of UMC to seek other legal
19 advice in his capacity as the CEO of UMC he would have to get he
20 permission of your office; correct?

21 A That -- that's the way I would view that, yes.

22 Q And you don't have any other independent recollection about this
23 other one instance where Mr. Thomas went outside without getting the
24 approval and it was frowned upon? You can't remember the specifics of
25 what the issue was or --

1 A Yeah. Right now off the top of my head I don't remember the
2 specific issues. I don't -- I'd have to refresh my memory on that.

3 Q Do you have something that would help refresh your memory?
4 Did you --

5 A No.

6 Q Do you keep notes or files or --

7 A You know, it's -- it's been -- it's been four years. I don't -- I
8 don't know what I might have in a file or if I would have anything at this
9 point.

10 Q In your view, would you view the -- the CEO of the county
11 agency differently in terms of your interaction as a lawyer for the County
12 than other employees for the entity?

13 A Well, I would -- I would -- I'm not sure that I understand the
14 question exactly. If you could restate it, please.

15 Q Well, is the CEO, in your mind, going to get the same treatment
16 or -- or the same consideration as just some employ -- lower level employee
17 of UMC?

18 A From the perspective of the -- of the CEO or from my
19 perspective?

20 Q Your perspective, yes. Do you view the CEO as different than,
21 say, somebody further on down the hierarchy chart?

22 A Well --

23 MR. MITCHELL: Could -- could the question be clarified as to
24 different in what way.

25 THE COURT: It's appropriate. Sustained.

1 BY MR. ALBREGTS:

2 Q Well, different in any way to you.

3 A Well, again, I tried to answer the question. I'm not sure. From --
4 from the -- from the -- I can't answer it from the perspective of the -- of the
5 CEO of that agency. But from my perspective, I mean, if I got a phone call --
6 if I got two phone calls and one of them was from the, for example, from the
7 county treasurer versus one of their -- her file clerks, I would certainly phone
8 back the county treasurer first before I'd phone back the file clerk.

9 Q And without stating the obvious, but we need it for the record,
10 why -- why is that? I mean --

11 A Well, because they're the person who -- who has responsibility
12 for that organization and those issues. They have -- they have the big picture
13 vision. And so those issue that are significant and important to that person
14 would be those that I would deem to be significant and important to the
15 agency, and I'd want to be most responsive to.

16 Q I would like to talk briefly about your interaction with the hospital
17 and Mr. Thomas over the course of time that -- that you were there. What
18 sort of meetings and things would you have with Mr. Thomas and others that
19 you described earlier in your testimony?

20 A I know that we would've been together in medical executive
21 committee meetings. Those are monthly meetings that involve principally the
22 medical staff, the officers of the medical staff. We would typically also be
23 together normally in an agenda review meeting that they would have that
24 would be twice a month.

25 Q And those would be the agenda review for the county

1 commission meetings; correct?

2 A Yes.

3 Q And who all would be present in these meetings?

4 A Excuse me. Normally -- well, the attendance would -- would vary
5 from meeting to meeting, but the sort of the standard group --

6 Q Yeah. That's -- that would be perfect --

7 A -- would be the CFO, the COO, Mr. Thomas. I'm sure that there -
8 - I know there are other people there as well as myself.

9 Q Would --

10 A I don't know their --

11 Q -- Mr. Hayt --

12 A I don't remember their titles. Pardon?

13 Q Would Mr. Hayt have been there during those meetings?

14 A Yes. Uh-huh. Absolutely.

15 Q And during these meetings is it fair to characterize your
16 involvement as providing the legal advice for whatever issues might arise as it
17 relates to the hospital?

18 A If -- if there were legal questions about particular agenda items
19 that they wanted to ask me. You know, does this need to be publicly bid or
20 not, or -- or is a procedure being properly followed here, or -- I mean, those
21 would -- those questions would be directed towards me.

22 Q And you would provide legal advice to UMC as UMC needed it;
23 correct?

24 A Yes, or as they -- as they asked it. Uh-huh.

25 Q And is it fair to say that, generally, in those meetings Mr. Thomas

1 would be the one that would be asking the legal questions or asking for the
2 legal advise in his capacity as CEO?

3 A No, I -- I wouldn't say that. I would say it was kind of an open
4 forum, and if anybody had a question they would ask it. I mean, that's sort
5 of my recollection.

6 Q To your knowledge, did anybody else have an employment
7 contract with the County other than Mr. Thomas?

8 A I'm sorry. Did anybody -- I was distracted. I'm sorry.

9 Q That's okay. I don't think they're coming for you. To your
10 knowledge, did anybody else have an employment contract with the County
11 at UMC other than Mr. Thomas?

12 A During that -- the period that Mr. Thomas is employ, I'm not
13 aware of there being other employment contracts. I know that a prior
14 hospital administrator, Bill Hayle, had an employment contract.

15 Q Now, I would like to talk to you about your involvement with
16 some specific contracts that are listed in the indictment, and what, if
17 anything, you did in relation to those.

18 A Uh-huh.

19 Q First of all, are you familiar with the Superior Consulting ACS
20 contract that UMC entered into?

21 A I don't -- I don't -- if I -- I don't remember if I was even involved
22 with the contract at all. And if I was, I don't -- at this time I don't remember
23 any details of the contract.

24 Q So you have no recollection of advising the County or Mr.
25 Thomas or UMC officials as it relates to the Superior Consulting ACS

1 contract?

2 A Not at the moment.

3 Q Were you familiar all with the contract for a -- between UMC and
4 a company called Frasier Systems Group?

5 A Again, I don't -- I don't recall if I was involved with -- with such a
6 contract, or if I were involved, what the details would've been.

7 Q And then the same with the contract that UMC had with a
8 company called Crystal Communications; do you have any recollection of
9 being involved?

10 A I do not.

11 Q Do you have any recollection of being involved with any of the
12 contracts during your time as the attorney for the District Attorney's office
13 civil division that UMC entered into with suppliers, vendors, or the like?

14 A You know, there's -- they have a lot of contracts.

15 Q Well, and let's -- let's --

16 A The only -- the only one that I can remember -- remember that
17 they were going to -- they entered into a contract with John Ellerton, and I
18 don't remember what the capacity was that he was going to have, but I
19 remember -- I remember being aware of that contract and having concerns
20 about it would've -- it would create conflicts of interest.

21 Q Let me ask you this then. You're familiar with the procedure
22 from your time as the attorney for UMC, the contract procedure on what has
23 to occur to get the contracts approved if they're over a certain amount. Is
24 that -- are you familiar with that procedure?

25 A Yes.

1 Q Could you describe that procedure for the Judge in the record as
2 to how that would work?

3 A Well, there -- you had contracts that if they were over a certain
4 amount, like a \$50,000 amount, they'd have to be publicly bid unless they
5 fell into one of the exceptions, for example, the statute has a listing of
6 exceptions.

7 Q Are you finished with your answer or --

8 A Yeah, I think so. I mean, I'm not sure how much more to say
9 about it, but that's as outlined or codified in the Nevada Revised Statutes.

10 Q And so was there ever a time where you were asked about
11 whether a contract would fit into the excep -- the statutory exceptions and
12 whether the contract would be entered into without going through this public
13 bidding process and the like?

14 A I -- I -- I remember asking those questions. Was this publicly bid,
15 and if not, why not, what was the rationale on behalf of the hospital as to
16 why they did not go to public bid on a particular item. And, you know, I
17 would satisfy myself that the answer made sense to me.

18 Q Did that happen on a regular basis or --

19 A It was not uncommon.

20 Q Did you ever provide legal advice as to what contract must be
21 brought before the commission or what contract must be publicly bid?

22 A I'm sure there -- there were instances where I did say that or -- or
23 said the opposite.

24 Q And who would these discussions be with, if you recall?

25 A It could've happened in that agenda review meeting. It very likely

1 could've happened with Don Hayt, for example, or there was another person
2 that worked with Don Hayt, Mike --

3 Q Hayes?

4 A Hayes, that's correct.

5 Q Would you have ever done that with Mr. Thomas?

6 A It's -- it's possible.

7 Q Where he would call and say this is a contract we're looking at,
8 can we do it this way, you know. I mean, that type of discussion where you
9 would provide legal advice on the contract?

10 A It's -- it's possible that we had a conversation like that. I think
11 it's more likely I would've been the one asking the question.

12 Q Meaning what?

13 A Well, it's just -- it seems my -- my memory is that more often
14 than the hospital would come to me asking whether a contract needed to be
15 publicly bid or not, my memory is that I was looking at it and asking was this
16 publicly bid, and if -- if not, why not, which exception did it fall into?

17 Q Did -- were there times where you felt the exceptions weren't
18 correct and -- and it should've been done differently?

19 A I don't remember. There may have been.

20 Q But nothing sticks out in your mind now?

21 A No specific contract.

22 Q Is it -- during these agenda meetings and the like that you would
23 have with Mr. Thomas and -- and the others you described as sort of the core
24 group that would be at these meetings, say an agenda meeting, were there
25 ever discussions about what could be done with a contract and what couldn't

1 be done with a contract and you providing your legal advise and expertise
2 during those meetings, say, before agenda -- you know, on agenda items and
3 the like?

4 A When you say what could be done and or what could not be
5 done with reference to --

6 Q Well --

7 A -- to what?

8 Q -- you know, the law says that we have to bid this contract
9 because it's so much and it doesn't fit under any exceptions and so, you
10 know, this is just one that's got to go to the public bid and, you know, it
11 might've been on the agenda for just an immediate approval without doing
12 that.

13 A Uh-huh.

14 Q Did those sort of discussions ever occur during your time as the
15 legal counsel for the hospital?

16 A I would say that there's a good chance that that did happen?

17 Q Do you ever recall a time where UMC officials, including Mr.
18 Thomas, wouldn't follow your legal advice when you said this needs to be
19 done this way, you can't do it the way that you're proposing to do it? Can
20 you think of a time where they said, no, we -- we're not following your legal
21 advice?

22 A I don't remember such an occasion.

23 Q Do you know -- I'm sorry.

24 (Off-record colloquy between defense.)

25 Q Do you know who -- who conducted those meetings, or was

1 there somebody who led the meetings? Did Mr. Thomas lead the meetings?

2 A You know, I don't -- I don't remember if he led the meeting or if it
3 was Don Hayt just sort of going through the -- the contracts himself. I
4 don't -- I don't remember who led the meeting.

5 Q But certainly final decisions about following your advice or not
6 following your advice or what was going to happen with the hospital, that
7 was Mr. Thomas's say, right, as CEO?

8 A I would view that is his call.

9 Q Do you know why, if there's a reason why, you were moved
10 from UMC to other agencies in November of '04?

11 A I think -- I think my review of the contracts was not as thorough
12 as -- as it might've been. I did -- delegate may not be the perfect word, but
13 did rely more on, for example, the work of Don Hayt and my relationship with
14 than -- than maybe I should have, or was --

15 Q What --

16 A -- maybe it was viewed as what was proper.

17 Q Why do you say that now?

18 A Why do I say that?

19 Q Yeah.

20 A Because I think -- looking back I think that the District Attorney's
21 office was interested in having a more thorough review of the contracts than
22 what I was giving them. And I think the person who -- who replaced me at
23 the hospital had an expertise in that area.

24 Q In contracts? Either yes or no for the record.

25 A Can you restate the question then?

1 Q The -- the person -- the area, you said the person had more
2 expertise was in the area of contracts?

3 A Right. That's correct.

4 Q And that would've been Holly Gordon?

5 A Yes.

6 MR. ALBREGTS: No further questions.

7 THE COURT: Counsel approach, please.

8 (Conference at the bench.)

9 CROSS-EXAMINATION

10 BY MR. MITCHELL:

11 Q Mr. Wood, you had characterized the nature of the meetings that
12 you would have with Lacy Thomas as being, typically, ones where there were
13 several people present; is that correct?

14 A Yes.

15 Q And when you said the CFO, the COO, and then Lacy, you were
16 talking about three different people right there; right?

17 A Yes.

18 Q CFO is Chief Financial Officer, COO is Chief Operating Officer,
19 CEO is who Lacy was; right?

20 A That's correct.

21 Q And then you mentioned Don Hayt would typically be there, you
22 would be there, and you said also that it wouldn't be untypical for a Mike
23 Hayes to be there; is that right?

24 A Yes, and -- and my recollection is that there were others that
25 would've commonly been there also. But, you know, their -- their titles I

1 don't -- I don't recall.

2 Q Okay. Generally, could we summarize by saying there were a lot
3 of county employees in those meetings?

4 A I would say, yes. I would say it was not an intimate meeting.

5 Q Okay. And in a meeting like that would there be secret
6 communications typically shared with you about any personal legal strategy
7 of any one of the participants in the meeting?

8 A No.

9 Q Would the -- would the topic of discussion be restricted to
10 hospital business?

11 A I would say that anything of substance would've been hospital
12 business. I mean, there may have been some bantering about the World
13 Series or some other sporting event at some point, but anything of substance
14 would've been hospital business.

15 Q Okay. And all of the participants would be people that you could
16 provide some legal advice to under those circumstances; is that correct?

17 A Yes.

18 Q In fact, that would be the reason for your presence in the meeting
19 is if any of those participants had a legal question, that's what you were
20 there for to answer; is that right?

21 A Yes.

22 Q And, in fact, you have mentioned the status of Don Hayt. You
23 said that he was a lawyer, but was he an employee of the Clark County
24 District Attorney's office at that time?

25 A No.

1 Q Do you remember off-hand what his title was?

2 A I think it was contracts manager, but that's -- I'm not -- that's not
3 spoken with certainty.

4 Q Okay. As far as you remember, though, his responsibility was as
5 a hospital employee to write up contracts?

6 A Yes, to negotiate and to draft contracts.

7 Q And your responsibility differed from his in what respect?

8 A To review the contracts for compliance with the purchasing laws,
9 or the -- the required procedures for approval by the board of county
10 commissioners.

11 Q So you were there to make sure that whatever contract Don Hayt
12 had drawn up met the requirements of the law?

13 A Yes.

14 Q Among your other responsibilities there to provide whatever
15 other -- whatever other legal advice was necessary to the meeting; would
16 that be correct?

17 A Yes. Uh-huh.

18 Q All right. So you would be dealing with Don Hayt a lot in a
19 meeting like that, you could be dealing with the Chief Financial Office, the
20 Chief Operating Officer, whatever the legal nature of the question was, that's
21 what you were supposed to do; is that correct? Is provide an answer as to
22 what the law provided?

23 A I'd say that's accurate.

24 Q Okay. Were you there to provide personal legal advice to any of
25 the participants as opposed to business advice on how to comply with the

1 law?

2 A No, I was not there to provide personal legal advice.

3 Q Okay. And so when you said that Don Hayt was a lawyer, you
4 didn't mean that he was employed as a person with the same job
5 responsibility that you had; correct?

6 A Correct.

7 Q He just happened to be somebody who had passed the bar in the
8 past and knew something about drafting contracts?

9 A That's correct.

10 Q Okay. You have answered some of the questions by saying that
11 it's possible that something happened in a particular meeting, but that you
12 don't have a specific memory of it. Why was it, or why is it now that you
13 don't have specific memories of all the meetings that you sat in on?

14 A There are too many and it was too long ago.

15 Q Okay. And in fact, by nature, is there anything different about
16 the meetings you had with UMC employees versus those that you would
17 have with the other county agencies that you provided legal advice to?

18 A Well, I don't have, necessarily, similar type meetings with all of
19 the other agencies that I -- I do work with, though I do review their agenda
20 items and their contracts as well. I guess --

21 Q So with respect to -- with every agency that you advise, your
22 purpose is to make sure that that agency complies with the law however.

23 A Yes. Uh-huh.

24 Q And the only difference between UMC and those other ones
25 might be that UMC is larger and so that more meetings are required

1 A Yes, and -- and because of that maybe they're more -- a little
2 more formalized where you would have a group like that come together at a
3 stated date and time.

4 Q UMC is a very large county agency; is that correct?

5 A Yes.

6 Q And it is like a big corporation that builds buildings and has
7 hundreds of employees, and negotiates hundreds of contracts; is that
8 correct?

9 A Yes.

10 Q And so the running of UMC requires a lot of meetings and a lot of
11 people, and you're responsible to all of them.

12 A To say that I'm responsible to all of them --

13 Q With respect to providing legal advice.

14 A My responsibilities would be the same.

15 Q Yeah. Okay.

16 MR. MITCHELL: And, you know, I don't know if I've reached the
17 deadline you --

18 THE COURT: That's -- that's fine. We're just going to take our
19 lunch recess at this time. We can come back at 12:45.

20 Are you able to come back --

21 THE WITNESS: Yes.

22 THE COURT: -- at 12:45?

23 THE WITNESS: 12:45.

24 THE COURT: All right. We'll see everybody back then. Thank
25 you.

1 (Recess taken at 11:23 a.m.)

2 THE BAILIFF: Department 17 of the Eight Judicial District is now
3 in session. The Honorable Judge Michael P. Villani presiding. Please be
4 seated, remain in order. Make sure your cell phones are turned off, please.

5 THE COURT: Okay. I believe that we were at the redirect of Mr.
6 Wood. Or still cross, is that --

7 MR. ALBREGTS: I think it's still cross, Your Honor.

8 MR. MITCHELL: It's still cross, yes.

9 MR. ALBREGTS: But if your staff wants to shout out a score
10 here in 20 minutes, I'd be happy to listen.

11 THE COURT: Good afternoon, Mr. Wood. You understand
12 you're still under oath?

13 THE WITNESS: Yes.

14 THE COURT: All right.

15 CROSS-EXAMINATION CONTINUED

16 BY MR. MITCHELL:

17 Q Mr. Wood, you already answered most of my questions. The -- I
18 believe that the last question you answered, I think, was that you don't have
19 specific memories of a lot of meetings you've been in because you've been in
20 a lot of meetings; is that right?

21 A I did answer that question.

22 Q Okay.

23 A And that is a true statement.

24 Q Okay. And that would be true not only of UMC, even though
25 UMC has more meetings than other agencies, but because you -- you

1 represent multiple agencies in addition to UMC; is that right?

2 A That's true.

3 Q Okay. And that those other agency meetings, besides UMC's,
4 are there multiple employees present in those meetings too typically?

5 A Yes.

6 Q Okay. And you talked about phone conversations that you'd had
7 with Lacy Thomas although you didn't remember any of the specifics of
8 them. Do you have phone conversations like that with -- with hundreds of
9 county employees in the course of your employment?

10 A Yes.

11 Q And, generally speaking, is the topic always the same, whether or
12 not legal requirements are being met in the -- in the running of those
13 agencies?

14 A That -- yes, that would be -- that would be the common concern.

15 Q Okay. And when you were asked about the hypothetical -- or,
16 actually, I believe that you came up with a hypothetical of receiving a phone
17 message from two people from the same agency, one being the head of the
18 county treasurer's office and somebody else in that same office being a file
19 clerk, and you said that you would probably return the treasurer's call first.
20 Was that because your legal obligation is different as to those two people, or
21 merely out of professional respect and because of the fact that one has more
22 authority over a decision than the other?

23 A Yes, that -- I mean, that -- I would certainly be -- I would -- my
24 legal obligations to the two people would be the same. I think in answer to
25 that -- I think there's a two part question there. In answer to that I'd say,

1 yes, my legal approach and my legal responsibility would be the same to two
2 people. I would return the department head's call first out of a -- out of a
3 common courtesy to them and out of respect for both the -- usually the
4 complexity of the issues that they're facing and the time constraints that
5 they're operating under are usually more severe.

6 Q Okay. But in the meetings that you've described with UMC
7 personnel, where you had people who were over finances and over
8 operations, and then over the whole thing and different large responsibilities,
9 would there be very much differentiation between the way you're responding
10 or allocating your time to these individuals in these large meetings?

11 A No.

12 Q Okay.

13 MR. MITCHELL: Nothing further.

14 THE COURT: Any redirect?

15 REDIRECT EXAMINATION

16 BY MR. ALBREGTS:

17 Q I'd like to ask you a few more questions about the meetings, and,
18 specifically, the agenda item meetings that you would have with Lacy
19 Thomas and others for UMC. Now, you said that there were more people in
20 that meeting than just you and Lacy Thomas; correct?

21 A That's true.

22 Q Now -- but we're not talking about a room full of 20 or 30 people
23 either, are we?

24 A No.

25 Q More like seven, six, seven, eight people depending on what the

1 agenda items were?

2 A Yes.

3 Q So if there was, say, an agenda item specific to, say, a nursing
4 portion of the UMC, you might have the head of the nursing section in for
5 that meeting to address that issue?

6 A Yes.

7 Q And so if there weren't that type of agenda items, there might be
8 less people like just Mr. Thomas and the CFO and Mr. Hayt?

9 A Yes. I mean, it could be that you would have one or two few
10 people, but I -- I think sort of the standard group, I would say is, I'm guessing
11 is probably be a half a dozen people.

12 Q Yeah. I was going to say a handful, maybe five or six people,
13 and then yourself.

14 A And -- and then -- and then other people as -- as necessary.

15 Q And what you're doing in those meetings, or at least the agenda
16 meetings, were discussing items that UMC had on the county commission's
17 agenda for that specific commission meeting; correct?

18 A Yes.

19 Q And you described earlier that you often would ask questions.
20 The agenda item would be there assuming that everything is legitimate and
21 legal, and then you would ask questions to make sure that, in fact, it was.

22 A I would ask questions. I mean, that was a part of what happened
23 and that's part of the dynamic in that room. And if I had -- if I -- if -- as
24 presented with an agenda item, if I had a concern about it, I would ask
25 questions about, you know, this aspect of it or that, yes.

1 Q And when you ask questions, what you're doing is asking
2 questions regarding -- well, you're asking questions to obtain information so
3 that you can make a judgment as the lawyer as to the legality of the
4 contract, or -- or any legal issues that may arise; correct?

5 A Yes, including the procedure by which is being brought forward
6 before the county commission.

7 Q And so you would provide legal advice to the people in that room
8 on those issues; correct?

9 A Yes. Uh-huh.

10 Q And Lacy Thomas was the person in that room who had to sign
11 off on whether the agenda items would go forward or not; correct?

12 A Yes, and he -- he had the responsibility for that. That would --
13 could happen by one of his subordinates in his absence, but, yes.

14 Q But if Lacy Thomas was there, the buck stopped there. He made
15 the final decision; correct?

16 A Yes.

17 Q And if you advised him as legal counsel for UMC not to put
18 somebody -- something on the agenda or not to sign off on something on the
19 agenda --

20 A Uh-huh.

21 Q -- he would follow that legal advice; wouldn't he?

22 A I don't recall him -- I don't recall there being a situation where
23 that did not happen.

24 Q Right. You don't recall a situation where he ever did not follow
25 your legal advice.

1 A Yeah, where I advised him not to send it forward to the -- to the
2 board of county commissioners, and yet he did anyway. I -- I don't recall
3 that happening.

4 Q Okay. And then lastly, the -- Holly Gordon had more of a
5 contract background as a lawyer than you did; didn't she?

6 A Yes.

7 Q And you had more of a healthcare law background?

8 A Holly had, as her principle assignment before she had UMC, her
9 principle assignment was the purchasing department for the County. And so
10 she had spent, for an extended period of time, she had spent a significant
11 portion of her work day, you know, in the contract area, whereas my
12 experience to the County required that I be more diversified, so to speak.

13 Q And one of the reasons, then, Ms. Gordon was brought in, I think
14 you testified, was so that she could pay closer attention to the contracts that
15 UMC was -- was handling in the course of their business?

16 A I think I testified that that's my impression.

17 Q Okay.

18 MR. ALBREGTS: Nothing further, Judge. Thank you.

19 THE COURT: Mr. Mitchell.

20 RECROSS-EXAMINATION

21 BY MR. MITCHELL:

22 Q You said that you did not recall an occasion where Lacy Thomas
23 went against your advice regarding whether or not to send a contract to the
24 board for approval or to put it on an agenda; is that correct?

25 A Yes.

1 Q Do you recall other county employees with other agencies or with
2 UMC going against your advice on whether or not to put something on the
3 agenda?

4 A I don't recall that happening.

5 Q So there was nothing unique in the fact that he didn't go against
6 your advice vis-à-vis what everybody else was doing; is that correct?

7 A Yes.

8 MR. MITCHELL: Nothing further.

9 MR. ALBREGTS: No questions.

10 THE COURT: All right. Thank you, sir.

11 THE WITNESS: Thank you.

12 THE COURT: Next witness.

13 MR. ALBREGTS: Holly Gordon, please.

14 MR. MITCHELL: Your Honor, may I move this a little bit, so --

15 THE COURT: Sure.

16 MR. MITCHELL: -- so I can see.

17 THE BAILIFF: Ms. Gordon, if you'll remain standing, please.

18 Raise your right hand and face the clerk.

19 HOLLY GORDON

20 Having been called as a witness and being first duly sworn testified as
21 follows:

22 THE CLERK: Please be seated. Will you please state your name
23 and spell it for the record.

24 THE WITNESS: Holly Gordon; H-O-L-L-Y G-O-R-D-O-N.

25 THE CLERK: Thank you.

1 DIRECT EXAMINATION

2 BY MR. ALBREGTS:

3 Q Ms. Gordon, are you presently employed?

4 A No, I'm not. I am recently retired from the District Attorney's
5 office.

6 Q And what did you do for the District Attorney's office?

7 A I worked in the civil division, and I was assigned as UMC's legal
8 counsel.

9 Q So you were an attorney with the civil division?

10 A Yes.

11 Q Were you just assigned to UMC or did you have other agencies
12 that you were assigned to?

13 A Well, first it was UMC in addition to another agency, and then it
14 was just UMC.

15 Q And did you recall about when you were assigned to simply UMC
16 and nothing else?

17 A Probably sometime in late 2000 -- gosh, 2005? I don't
18 remember.

19 Q And was there a specific reason why you were taken away from
20 other agencies and directed to stay solely on UMC matters?

21 A Because the work load at UMC was so heavy, I just -- I was --
22 you know, I was just overworked and I asked to just have UMC.

23 Q And what did your duties entail, briefly, for the Judge when you
24 worked as county counsel for UMC?

25 A I -- for UMC administration I reviewed UMC's contracts. And for

1 the business office I dealt with the interpleaders and helped them on
2 collections matters. And for the medical staff office I attended medical
3 executive committee meetings and fair hearings for doctors and responded to
4 their requests for legal opinions.

5 Q Would Lacy Thomas be involved in all of those aspects of your
6 work for UMC or just specific portions of those aspects?

7 A What do you mean by involved?

8 Q Well, would he be consulted, would he have knowledge as to
9 what was happening, what your advice was, what the issues were that you
10 were addressing?

11 A I don't know. When I -- when I wrote a legal opinion I may have
12 copied on them, or -- I just guess it -- depending on the circumstances I don't
13 know how to answer that.

14 Q Okay. Well, is it fair to say, then, the answer would be on some
15 issues he would be involved, but sometimes he wouldn't be?

16 A Probably, yes.

17 Q And on the contracts that you reviewed, would he always be
18 involved in those?

19 A Again, I don't know what you mean by involved. I worked with
20 Don Hayt, the contracts -- UMC contracts manager on the contracts.

21 Q Describe that. How would you work with Don Hayt?

22 A He would either send over hard copies of contracts he wanted me
23 to review, or he would email them to me and ask me to review them.

24 Q And can you give the Judge an idea of -- of the -- what types of
25 contracts we're talking about, just sort of a sample of the types of contracts?

1 A Oh, there were contracts for goods and services, for hospital
2 equipment, for janitorial services, for medical doctor's services, for, oh gosh,
3 financial services. Just about anything a contract -- a hospital would need to
4 buy, there were contracts to review.

5 Q And would you just review those contracts, or were they
6 contracts that you would have to approve before UMC could enter into them?

7 A Well, I just approved them for legality. First I looked at them to
8 see what type of contract it was and whether it was something that needed
9 to be bid, or whether it fell under a competitive bidding exception. When I
10 saw the contract itself I reviewed it to make sure that it was -- it didn't
11 contain any clauses that the County could not agree to. And it was just for
12 legality and for legal procurement. That's all I looked at.

13 Q So -- so you didn't look at whether the equipment that might've
14 been purchased was a good deal or -- or might be able to be found cheaper or
15 whether the vendor who was providing something under the contract might
16 be good or bad for the hospital? That wasn't your position?

17 A That wasn't my role; I didn't run the hospital.

18 Q And so whose role would that have been?

19 A Well, there were -- there were a lot of department heads within
20 the hospital who I suppose decided what their departments needed, then --
21 then asked for the assistance of contracts management in obtaining that item
22 or that good or service.

23 Q And contract management would've been headed by Mr. Hayt?

24 A Yes.

25 Q And would -- was it your understanding that, ultimately, the final

1 decision rested with the head of the hospital, which would've been Lacy
2 Thomas?

3 A Well, it would've been his responsibility whether or not to put the
4 item on the agenda and recommend it to the board of hospital trustees for
5 purchase.

6 Q And before I go further, hold that thought. Who did you replace?

7 A I replaced Mark Wood.

8 Q Okay. The individual who just left?

9 A Yes.

10 Q Now, you said it would've been Mr. Thomas's decision to place
11 an item on -- a contract or an item on the agenda ultimately?

12 A I believe so, yes.

13 Q Now, you would have meetings before the county commission
14 hearings in which those agenda items would be discussed; correct?

15 A Yes, twice a month -- or, yeah, twice a month about two or three
16 weeks an agenda, a board agenda, was going to be heard we would meet in
17 the conference room and UMC administration, usually Lacy, Don Hayt,
18 somebody from finance, the agenda coordinator, we'd all meet and talk about
19 the agenda items.

20 Q And how many people would be there, a handful of people?

21 A Yeah. Yes.

22 Q Would Mike Hayes have been there from the hospital?

23 A Yes.

24 Q And how would that work then? You would go over the agenda,
25 and would you then go through -- I mean, who would run the meeting, first

1 of all?

2 A Lacy.

3 Q And then, how would a meeting go? Give the Judge a brief
4 overview of what would happen when you were at these meetings.

5 A Well, Don Hayt would have a stack of agenda items in front of
6 him and he would just briefly say what it was about. And if Lacy had any
7 questions on it, he would answer Lacy's questions. If I hadn't seen the
8 agenda item before, if I had anything to say about the agenda item because I
9 just reviewed them mainly for complaints with the open meeting law. If I had
10 anything to say about it, I'd give my input. And if the item was okay to go,
11 Lacy would sign it and it would be put in the mix for the agenda.

12 Q Before the county commission?

13 A Yes.

14 Q You said you just looked at it for the open meeting laws, but you
15 also, for instance, if contracts were there to be approved, you -- you'd do
16 your function that you previously described in terms of looking at the
17 contract for the legal standpoint, meaning does this violate any of the
18 statutes, does this violate county policy. Again, not whether the contract
19 was good or not, but whether the contract was legal; you would also do
20 that?

21 A Well, most of the contracts I would've already seen. But if -- if I
22 hadn't seen one, I'd -- I'd usually say, I don't think I've seen this one yet, I
23 need to look at it first. Then -- but it would just be for those things I
24 mentioned, legal procurement and legal language in the contract.

25 Q And before Lacy could or would sign off on that, your office, and

1 specifically, you, would have to say, look, it meets all the legal requirements;
2 correct?

3 A Yes.

4 Q Was there ever a time where you said this doesn't meet all the
5 legal requirements, and Lacy Thomas said, I don't care, I'm putting it on the
6 agenda anyway?

7 A I don't recall anything like that.

8 Q And is it fair to say if that happened --

9 A That --

10 Q -- that would stick in your head because it would be going against
11 your advice?

12 A Yes.

13 Q And so do you remember times where you said, this isn't a
14 contract I can approve as to the legality of it so it's not going on the agenda,
15 and Lacy would say, okay, that goes on the other pile?

16 A Yes.

17 Q And so he would follow the advice that you would give him in
18 those meetings?

19 A Yes.

20 Q Were there ever times that you -- you and Mr. Thomas had a
21 disagreement about the legality of a contract and he sought Mary Miller's
22 advice or input?

23 A I don't recall that.

24 Q As an attorney in the District Attorney's office when you were
25 working for UMC, who did you think your client was?

1 A I didn't work for UMC, I worked for David Roger. I worked for
2 the District Attorney.

3 Q Did you think you had a client, though, in that situation?

4 A My client was University Medical Center and the hospital board of
5 trustees.

6 Q And were you aware of Lacy Thomas's employment contract, or
7 that he had one?

8 A Yes.

9 Q And you were familiar with that?

10 A Yes.

11 Q And were you familiar with the provision in there that provides
12 that legal counsel for the hospital is the Clark County District Attorney's
13 office?

14 A Yes.

15 Q Was there ever a time where Lacy Thomas sought legal counsel
16 outside of your office?

17 A Well, Don Hayt was an attorney, and I know that Lacy frequently
18 sought his advice. As far as outside UMC, I don't know.

19 Q Would Lacy be able to do that? Your understanding of -- of how
20 this was working, would Lacy be able to say to you, you know what, I want
21 to go get a second opinion on a legal issue that you're supposed to advise me
22 on?

23 A Well, I know that our office could authorize outside counsel in
24 certain areas where the District Attorney's office was not ready, willing, and
25 able to perform, such as specialized areas like EMTALA, the Emergency

1 Maternity and Labor Act, whatever that was called, for maybe Medicare
2 issues that we didn't have expertise in. I -- but our office had to approve
3 that.

4 Q So is it fair to say, then, if Mr. Thomas wanted to get outside
5 counsel, or get a second opinion, he would have to go to you or Ms. Miller to
6 get approval for that; correct?

7 A Yes.

8 Q Could you estimate how often, on a monthly or weekly,
9 whichever is easier for you based upon what you know, that you had
10 interaction with Lacy Thomas?

11 A Twice monthly, agenda review meetings. We sat pretty much
12 next to each other once a month in the medical executive meetings. Every
13 now and then I'd come down to the board meeting and ask him a question.
14 If there was an item on the agenda that was being held separately, I'd ask
15 him what it was about, and other than that, really had no contact.

16 Q Any telephone calls during the course of a month ever, or was
17 it --

18 A No.

19 Q Correspondence ever?

20 A No.

21 Q And during these other contacts that you described, either before
22 a board meeting or in the other meeting that you were talking about, was
23 your discussions in your capacity as the lawyer for the hospital and Mr.
24 Thomas as CEO for the hospital?

25 A Yes.

1 Q And were these discussions legal in nature?

2 A What do you mean legal in nature?

3 Q Well, had -- had to do with the law, with your job as counsel for
4 the hospital?

5 A Yes.

6 Q And did you ever feel like he was seeking your advice, legal
7 advice, on behalf of the hospital in your capacity as the attorney for the
8 hospital in these discussions?

9 A That was basically our only contact.

10 Q Was seeking your legal advice and input on issues such as
11 contracts.

12 A He mostly -- I don't know. Seeking my advice might be a little
13 generous because he -- he was really kind of distant and, you know,
14 impatient with me. And he mostly sought Don Hayt's advice and kind of
15 waived me off. When I was trying to say something he frequently interrupted
16 me, so I didn't feel like my advice was welcome.

17 Q But it was your job to provide it --

18 A But it was --

19 Q -- anyway?

20 A -- my job to provide it, and I did the best that I could.

21 Q Right. Were you familiar at all with the situation that occurred
22 with a company called the Sletton Construction Company as it related to a
23 flooring problem in the outpatient surgery wing of the hospital? Were you
24 familiar at all with that issue?

25 A I remember attending a meeting with Mary Miller and Mark Wood

1 about it, but that was before I had become UMC's counsel.

2 Q Was anybody else at that meeting?

3 A Mark Wood, Mary Miller, a couple people from the hospital, I
4 don't remember who, and Lacy was there.

5 Q And the -- do you remember the discussion being about whether
6 or not you all could sue this construction company because of what the
7 hospital perceived as defects in the way that the floor was put in so that
8 some money could be recouped for -- for that problem?

9 A I don't remember exactly what it was. That was before I had
10 come on. I wasn't paying that close attention.

11 Q You remember was Tom Riley at that meeting?

12 A I don't believe so.

13 Q Was David Roger?

14 A No.

15 Q That's something you'd remember?

16 A Yes.

17 Q Do you remember whether there was any disagreement between
18 Mary-Anne Miller and Mr. Thomas regarding how to proceed on that matter,
19 or do you just have no memory?

20 A I have no memory.

21 Q Fair enough. All right. I'd like to ask you about some specific
22 contracts that you may or may not have had some involvement with. Were
23 you ever involved in the contract for Superior Consulting or ACS?

24 A I remember reviewing that contract.

25 Q What do you remember about reviewing that contract?

1 A Well, it had to do with trying to improve UMC's cash flow, and it
2 was so technical, the scope of work was so technical I didn't understand it
3 very well. And I recall asking Don whether or not the UMC's financial people
4 were okay with it and if they had reviewed the language and -- and could --
5 could properly administer the contract, and he said yes. And I didn't see
6 anything in the language that gave me pause legally, and it was professional
7 services so there was no problem with the wording directly, and that's what I
8 recall about it. It was one of the first contracts I would -- I had reviewed for
9 UMC.

10 Q So when you just said it was one of those contracts, it was a
11 personal services contract, therefore, it didn't have to go to an open bidding
12 process?

13 A No.

14 Q But it had to go before the board --

15 A Yes.

16 Q -- of county commissioners to be approved; correct?

17 A Yes, and it did.

18 Q And you would've discussed that at one of these meetings that
19 you just testified about?

20 A Yes.

21 Q And you offered your opinion as to whether it met the legal
22 requirements that you were required to review; correct?

23 A Well, I don't know if I -- if I offered my opinion like that every
24 time. If I didn't have any objection to being -- it being on the agenda, it
25 meant that I had usually seen it before and that Don and I had discussed it. I