

Case No. 78341

In the Supreme Court of Nevada

In the Matter of the Estate of
MILTON I. SCHWARTZ, deceased.

A. JONATHAN SCHWARTZ, Executor of
the Estate of MILTON I. SCHWARTZ,

Appellant,

vs.

THE DR. MIRIAM AND SHELDON G.
ADELSON EDUCATIONAL INSTITUTE,

Respondent.

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APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable GLORIA J. STURMAN, District Judge
District Court Case No. 07-P061300-E

**APPELLANT'S APPENDIX
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114	Stipulation and Order Regarding Trial Transcripts	08/05/19	27	6596–6597
31	Supplement to Opposition to Motion for Partial Summary Judgment	07/02/14	6	1274–1280
61	Supplement to Opposition to Motion for Summary Judgment Regarding Breach of Contract and Countermotion for Advisory Jury	08/08/18	10	2387–2416
28	Supplement to Petition for Declaratory Relief to Include Remedies of Specific Performance and Mandatory Injunction	05/28/17	5	1159–1165
64	Supplement to the Estate's Motion for Reconsideration of: The Court's Order Granting Summary Judgment on the Estate's Claim for Breach of Oral Contract	08/14/18	11	2624–2646
60	Supplement to the Estate's Opposition to Motion for Partial Summary Judgment Regarding Fraud	08/08/18	10	2353–2386
105	The Adelson Campus' Motion to Re- Tax and Settle Costs	03/06/19	26	6479–6489

53	The Adelson Campus' Opposition to the Estate's Countermotion for Advisory Jury	07/23/18	9	2156–2161
66	The Adelson Campus' Opposition to the Estate's Motion for Reconsideration of the Court's Order Granting Summary Judgment on the Estate's Claim for Breach of Contract and Countermotion to Strike the 8/14/18 Declaration of Jonathan Schwartz and All Attached Exhibits in Support	08/16/18	12	2765–2792
93	The Adelson Campus' Opposition to the Estate's Motion to Retax Costs Pursuant to NRS 18.110(4) and to Defer Award of Costs Until All Claims are Fully Adjudicated	11/21/18	24	5789–5803
59	The Adelson Campus' Pre-Trial Memorandum	08/07/18	10	2275–2352
54	The Adelson Campus' Reply in Support of Motion for Partial Summary Judgment Regarding Fraud	08/02/18	9	2162–2177
55	The Adelson Campus' Reply in Support of Motion for Partial Summary Judgment Regarding Statute of Limitations	08/02/18	9	2178–2209
111	The Adelson Campus' Reply in Support of Motion to Re-Tax and Settle Costs	04/04/19	27	6547–6553
92	The Dr. Miriam and Sheldon G. Adelson Educational Institute's Opposition to the Estate's Motion for Post-Trial Relief from Judgment on Jury Verdict Entered October 4, 2018	11/21/18	23 24	5694–5750 5751–5788
95	The Dr. Miriam and Sheldon G. Adelson Educational Institute's Opposition to the Estate's Post-Trial	12/21/18	24	5817–5857

	Brief Regarding the Parties' Equitable Claims and for Entry of Judgment			
85	The Dr. Miriam and Sheldon G. Adelson Educational Institute's Verified Memorandum of Costs	10/11/18	19	4576–4579
71	The Estate's Motion for Judgment as a Matter of Law Regarding Construction of Will	09/03/18	18	4334–4341
89	The Estate's Motion for Post-Trial Relief from Judgment on Jury Verdict Entered October 4, 2018	10/22/18	21 22	5168–5250 5251–5455
63	The Estate's Motion for Reconsideration of: The Court's Order Granting Summary Judgment on the Estate's Claim for Breach of Oral Contract and Ex Parte Application for an Order Shortening Time	08/14/18	11	2539–2623
110	The Estate's Opposition to the Adelson Campus' Motion to Re-Tax and Settle Costs	03/25/19	27	6522–6546
57	The Estate's Pretrial Memorandum	08/06/18	9 10	2246–2250 2251–2263
58	The Estate's Pretrial Memorandum	08/06/18	10	2264–2274
94	The Estate's Reply to Adelson Campus's Opposition to Motion for Post-Trial Relief from Judgment on Jury Verdict Entered on October 4, 2018	12/21/18	24	5804–5816
96	The Estate's Response to the Adelson Campus' Post-Trial Brief on Outstanding Claims	12/21/18	24	5858–5923
32	Transcript for Motion for Summary Judgment	07/09/14	6	1281–1322
21	Transcript of Proceeding: Motion for Reconsideration	12/10/13	3	639–669
42	Transcript of Proceedings: Motion for Protective Order on Order Shortening Time	04/19/17	6	1465–1482

22	Transcription of Discovery Commissioner Hearing Held on January 29, 2014	01/29/14	3	670–680
136	Trial Exhibit 111		28	6868–6869
152	Trial Exhibit 1116A		29	7008
137	Trial Exhibit 112		28	6870
138	Trial Exhibit 113		28	6871
139	Trial Exhibit 114		28	6872
140	Trial Exhibit 115		28	6873
141	Trial Exhibit 118		28	6874–6876
142	Trial Exhibit 128		28	6877
143	Trial Exhibit 130		28	6878–6879
144	Trial Exhibit 134		28	6880–6882
145	Trial Exhibit 139		28	6683–6884
123	Trial Exhibit 14		27	6626–6628
146	Trial Exhibit 149		28	6885–6998
147	Trial Exhibit 158		28	6999
148	Trial Exhibit 159		28	7000
149	Trial Exhibit 162		28	7001
150	Trial Exhibit 165		29	7002
124	Trial Exhibit 17		27	6629–6638
125	Trial Exhibit 22		27	6639–6645
126	Trial Exhibit 28		27	6646–6647
118	Trial Exhibit 3		27	6607–6609
127	Trial Exhibit 38		27	6648–6649
151	Trial Exhibit 384		29	7003–7007
119	Trial Exhibit 4		27	6610–6611
128	Trial Exhibit 41		27	6650–6675
129	Trial Exhibit 43		27	6676–6679
130	Trial Exhibit 44		27	6680–6682
120	Trial Exhibit 5		27	6612–6620
131	Trial Exhibit 51		27	6683–6684
132	Trial Exhibit 52		27	6685–6686
133	Trial Exhibit 55		27	6687–6713
121	Trial Exhibit 6		27	6621
134	Trial Exhibit 61		27 28	6714–6750 6751–6799

135	Trial Exhibit 62		28	6800–6867
122	Trial Exhibit 9		27	6622–6625
69	Trial Transcripts (Rough Drafts)	09/03/18	12 13 14 15 16 17 18	2903–3000 3001–3250 3251–3500 3501–3750 3751–4000 4001–4250 4251–4304
76	Verdict Form	09/05/18	19	4513–4516
103	Verified Memorandum of Costs of A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz	02/27/19	25	6111–6015

1 Hebrew Academy was still being held out to be the
2 pre-K through 8th grade portion of the school,
3 right?

4 A. It was, yes.

5 Q. Who is Rhonda Glyman?

6 A. Rhonda Glyman was the project manager for
7 us in the building of the campus and creating the
8 whole entire facility. Her job was to hire the
9 architects, planning. She hired pretty much all of
10 the consultants who worked on the campus and the
11 construction company.

12 Q. She is presenting a report here about the
13 high school, right?

14 A. Yes.

15 Q. She is saying that currently 10 million has
16 been spent on the high school; do you see where I
17 read that?

18 A. Yes.

19 Q. And then it's estimated that between 55
20 million and 62 million will be the total; do yo see
21 that?

22 A. Yes.

23 Q. Says nothing about money being spent on the
24 elementary school or middle school, does it?

25 A. It does not.

1 Q. Joint Exhibit 42, three months later,
2 December 2007. I believe you were here. Let's make
3 sure.

4 A. Yes.

5 Q. You were present at that meeting. Do you
6 see that?

7 A. I do.

8 Q. I believe you also testified in one of your
9 depositions that you recall being at this
10 December 2007 meeting; is that correct?

11 A. That's correct.

12 Q. And this meeting memorializing a resolution
13 that was passed. Do you see that?

14 A. I do.

15 Q. Where Sam Ventura made a motion that was
16 seconded by Jill Hanlon to approve a resolution to
17 grant the Adelson Family Charitable Foundation, and
18 that there was a discussion. There was another
19 motion to approve the grant and that that passed
20 unanimously. Do you see that?

21 A. Yes.

22 Q. Is it your recollection, as you sit here
23 today, that that motion was, in fact, passed
24 unanimously?

25 A. It was passed unanimously.

1 Q. Go to the resolution. I'm not going to ask
2 you too much about this Mr. Schiffman. We have
3 already gone over quite a bit. I'm going to call
4 out one of the resolutions, and that is that the
5 corporation's elementary school shall be named in
6 honor of Milton I. Schwartz Hebrew Academy in
7 perpetuity.

8 A. Yes.

9 Q. Do you remember that?

10 A. Yes.

11 Q. Do you remember why that was passed?

12 A. There was discussion with board members and
13 there were a couple people thought it was important
14 to keep Milton's name on the schools. So that's why
15 that was passed.

16 Q. Was that the general consensus of the
17 majority of the board?

18 A. Really can't remember.

19 Q. We can look at the signatures, right?

20 A. Pretty sure everybody signed it.

21 Q. Do you recall during this board meeting or
22 any meeting before it any discussions concerning
23 whether Mr. Schwartz had a naming rights agreement
24 before this?

25 A. No.

1 Q. No you don't remember or you didn't look?

2 A. No, I don't remember having anything to say
3 he had naming rights. There is no documentation I'm
4 aware of.

5 Q. Was there an investigation to?

6 A. See if there were materials?

7 Q. Correct?

8 A. I was the person that worked on the files.

9 Q. You looked in the files?

10 A. I read every single file.

11 Q. Did you see anything in there?

12 A. The only thing I saw was a letter from
13 Roberta Sabbath and I provided that to the
14 attorneys.

15 Q. Do you remember seeing any bylaws?

16 A. There were lots of bylaws there were a
17 couple different bylaws again if you ask me today I
18 don't have any detail on that I can't remember.

19 Q. The only document you found was the letter
20 we are referring to is the Sabbath letter that was
21 from 1996?

22 A. Right.

23 Q. But you don't remember seeing any minutes
24 where there was resolutions to change the school's
25 name or anything like that?

1 A. I don't remember.

2 Q. And what about the 1996 Sabbath letter made
3 you conclude that there was no binding agreement
4 with Mr. Schwartz and the school?

5 A. Excuse me? Could you repeat that.

6 Q. You said the only thing you found was the
7 1996 Sabbath letter; is that correct?

8 A. That is correct.

9 Q. What about a that letter made you believe
10 that there was no naming rights agreement with
11 Mr. Schwartz and the school?

12 A. Wasn't a question of naming rights. It was
13 a question for me when I came across the letter that
14 it could pertain to the disputed (inaudible) to both
15 parties.

16 Q. When did you perform this investigation?

17 A. I can't give you a date. I don't remember.

18 Q. Was it before or after Mr. Schwartz died?

19 A. Well after.

20 Q. After he passed away?

21 A. (No audible answer.)

22 Q. Did you attempt to contact Jonathan
23 Schwartz to see if there was a naming rights
24 agreement?

25 A. I did not.

1 Q. Did you contact any of the former board
2 members?

3 A. I did not.

4 Q. Did you consult any current board members?

5 A. It was discussed with the current board
6 members I asked if anybody had anything, any
7 paperwork.

8 Q. Who?

9 A. It was the entire board at that time.

10 Q. Would that include Mr. Adelson?

11 A. Yes.

12 Q. Would that include Mr. Chaltiel?

13 A. Yes.

14 Q. Do you recall that as a result of this
15 resolution that Mr. Chaltiel signed a grant
16 agreement with the Adelson Family Charitable
17 Foundation?

18 A. Yes, he did.

19 Q. We will take a look at that. At the top in
20 the highlight I kind you of cut it off, do you see
21 how much the Adelson prejudiced in exchange for this
22 grant agreement?

23 A. Adelson family foundation agrees to make a
24 grant of \$3 million to the corporation.

25 Q. \$3 million, right?

1 A. Yes.

2 Q. If you go to paragraph 2 -- actually, just
3 to save some time, we will go to 3.

4 Paragraph 3 talks about the corporation
5 agreeing that the corporation, the campus, the high
6 school, the middle school, and the classrooms
7 themselves will be named in perpetuity in honor of
8 Dr. Miriam Adelson and Sheldon G. Adelson. Do you
9 see that?

10 A. Yes.

11 Q. That makes no mention of the elementary
12 school?

13 A. Doesn't say "elementary school."

14 Q. Do you know why it doesn't say elementary
15 school?

16 A. I don't remember.

17 Q. We looked at the resolution from the same
18 date. We just looked at that exhibit, right?

19 A. Yes.

20 Q. Do you remember the resolution where it
21 talked about naming the elementary school in Milton
22 I. Schwartz Hebrew Academy in perpetuity?

23 A. Yes.

24 Q. Is that why it's not in paragraph 3 of the
25 grant agreement?

1 A. I can't remember that.

2 Q. I think we are in the same book. If you
3 could go to 51, please.

4 (Discussion between witness and
5 Judge Sturman.)

6 THE COURT: He is requesting a break, so he
7 will answer this question.

8 BY MR. LEVEQUE:

9 Q. Let's get with one over with? I'm fine
10 with that. Are you aware Mr. Schiffman, that the
11 school amended its articles of incorporation to
12 change the corporate name from the Milton I.
13 Schwartz Hebrew Academy to the Dr. Miriam and
14 Sheldon G. Adelson Educational Institute?

15 A. Yes.

16 Q. If you look at the file stamp of this
17 document, do you see when that was filed with the
18 secretary of state?

19 A. Yes.

20 Q. And what date was that?

21 A. 3/21/2008.

22 Q. March 21, 2008. I'm going to ask you to
23 remember that date because we are going to get back
24 to it but we will break and come back.

25 THE COURT: Let's come back in ten minutes.

1 During this recess, you are admonished not
2 to talk or converse among yourselves or with anyone
3 else on any subject connected with this trial; or
4 read, watch or listen to any report of or commentary
5 on the trial or any person connected with this trial
6 by any medium of information, including, without
7 limitation, to newspapers, television, the internet
8 and radio; or form or express any opinion on any
9 subject connected with the trial until the case is
10 finally submitted to you.

11 We will be in recess until 2:22 p.m.

12 (Off the record.)

13 THE COURT: Back on the record. We have
14 the witness returned to the stand Mr. LeVeque you
15 were in the midst of your examination.

16 MR. LEVEQUE: May I proceed.

17 THE COURT: You made.

18 BY MR. LEVEQUE:

19 Q. I want to ask a follow-up question to a
20 question I had before. Back on the issue of the
21 Sabbath letter.

22 A. Yes.

23 Q. I believe, didn't you testify in your 2004
24 deposition that you did not discuss with the board
25 the Sabbath letter that you found?

1 A. I did not discuss that with the board. I
2 discussed that with my chairman of the board.

3 Q. Who was your chairman of the board?

4 A. Victor Chaltiel.

5 Q. So the only person you discussed the
6 Sabbath letter was with Mr. Chaltiel?

7 A. Right.

8 Q. Do you have any sort of family or
9 friendship relationship with Mr. Chaltiel?

10 A. Yes.

11 Q. What is that?

12 A. We were dearest of friends.

13 Q. Any familial relationship?

14 A. No.

15 Q. By marriage or blood?

16 A. No, not relation but truth be known his
17 wife in New York had dinner in our home last week.
18 I had dinner with her last evening so very close.
19 Very dear people. Very nice people. I hear some
20 people aren't hearing me am I okay.

21 THE COURT: If you can't hear him, just
22 raise your hand. We will let you no know if it's
23 not recording.

24 BY MR. LEVEQUE:

25 Q. If you know, if you don't know the answer,

1 that's fine. Was it Mr. Chaltiel that made the
2 determination that the Sabbath letter shouldn't have
3 been investigated further?

4 A. The letter was given to our attorney at the
5 time.

6 Q. Who is that?

7 A. That was Max Couvillier.

8 Q. I can't get into the legal advice of what
9 was provided but was legal advice provided, to your
10 knowledge?

11 A. No.

12 Q. No it wasn't or you don't know?

13 A. I don't know. I'm sorry.

14 Q. Going to shift gears here, Mr. Schiffman.
15 If you could go to Exhibit 61. Mr. Schiffman, you
16 should have in front of you the school's petition
17 that was filed in May of 2013. Do you see that?

18 A. I do.

19 Q. Have you reviewed this document before?

20 A. Yes.

21 Q. Is this the petition that you verified?

22 A. Yes.

23 Q. And this is the petition that the school
24 seeks to compel distribution from the estate of
25 Milton Schwartz for the half million dollars?

1 A. Yes.

2 Q. And what's the file stamp on this?

3 A. I'm sorry?

4 Q. The date that was filed I pulled it up for
5 you.

6 A. Great. May 3, 2013.

7 Q. And if you actually look at the top left
8 block, you will see Mr. Couvillier's name up there
9 do you see that?

10 A. Yes.

11 Q. That's the attorney that the school sought
12 legal advice from?

13 A. Yes, that's correct.

14 Q. And I will direct you down to page 12,
15 which doesn't have -- it's 12 in the petition. You
16 should see page numbers at the bottom. It should be
17 your verification page.

18 A. Yes.

19 Q. So here you are saying that you are
20 declaring under penalty of perjury that you are the
21 head of school, that's correct, right?

22 A. Uh-huh.

23 Q. And the school is the petitioner in the for
24 going petition, that's correct, right?

25 A. That's correct.

1 Q. And that you read and know the contents of
2 the petition, would you agree with me there?

3 A. Yes.

4 Q. And that the petition is true to the best
5 of your own personal knowledge unless for any matter
6 stated upon information and belief. Do you see
7 that?

8 A. Yes.

9 Q. So unless you state in the petition things
10 alleged on information and belief we are to assume
11 that you have personal knowledge of the facts in
12 this case; is that right?

13 A. Yes.

14 Q. If we go to page 4 of the petition, you
15 will see that the petition states -- it's defining
16 the three schools, at least as of May 2013, and that
17 there is the high school which is 9 through 12,
18 known as Adelson upper school, the middle school, 5
19 through 8, known as the Adelson middle, and the
20 lower school for the preschool -- excuse me, lower
21 school for preschool through the 4th grade is known
22 as the Milton I. Schwartz Hebrew Academy, housed in
23 the building identified below. Do you see that?

24 A. Yes, I do.

25 Q. As of May 2013, the school, the Milton I.

1 Schwartz Hebrew Academy was reduced to pre-K through
2 4th grade; is that correct?

3 A. That is correct.

4 Q. And as of May 2013, did the signage appear
5 on the front of the old building as it does in the
6 petition?

7 A. Yes.

8 Q. Next page talks about conditions in the
9 with will. And you are saying here that the
10 language of the will only imposes two conditions.
11 The first condition requires that any mortgage on
12 the property held at the time Mr. Schwartz's passing
13 would have to be satisfied first with the \$500,000,
14 and then if there is no mortgage, the second
15 condition would be that that money needs to go to
16 scholarships for Jewish children. Would you agree
17 with me?

18 A. I do.

19 Q. And then same page, starting in subheading
20 C, there is a representation that at the time Milton
21 Schwartz's death, the school did have an outstanding
22 mortgage of 1.8 million which is personally
23 guaranteed by Mr. Schwartz up to 1 million. Do you
24 see that?

25 A. Yes.

1 Q. Do you see the little footnote that says 14
2 right at the end of one million?

3 A. Yes.

4 Q. So if we look at footnote 14, you are
5 directing us to paragraph 16 in whatever Exhibit 1
6 is then you are also asking -- which says -- which
7 is going to be your declaration but the other thing
8 you are referencing is a promissory note dated
9 December 7, 2006, correct?

10 A. Yes.

11 Q. Keep that date in mind, December 7, 2006,
12 okay?

13 A. Yes.

14 Q. Now we are going to go to Exhibit 10 that
15 you reference. I have got to find it myself.
16 Exhibit 10 is the note you are referring to under
17 oath that was taken on December 7, 2006, do you
18 remember that?

19 A. That is.

20 Q. So let's look at this note. Do you see the
21 date of the note in the bottom right of my call out?

22 A. Yes, December 6, 2007.

23 Q. It's not December 7, 2006, it's December 6,
24 2007, correct?

25 A. Yes.

1 Q. And the date of this note is -- would you
2 agree with me that the date is four months after
3 Mr. Schwartz died?

4 A. Yes.

5 Q. And you see that the principal amount of
6 the loan is \$1.8 million?

7 A. Yes.

8 Q. Do you see that the borrower is Milton I.
9 Schwartz Hebrew Academy?

10 A. Yes.

11 Q. And in your petition you are testifying
12 that this loan was guaranteed by Mr. Schwartz up to
13 a million dollars that the school paid off, right?

14 A. I'm not understanding what you are asking.

15 Q. Sure. You are state in your petition that
16 this was a mortgage on the property that
17 Mr. Schwartz guaranteed up to a million dollars that
18 the school paid off?

19 A. Yes.

20 Q. How can Mr. Schwartz guarantee a loan that
21 was taken out four years after he died?

22 A. This was an extension that loan was
23 renewed. It was the same loan that we had with the
24 bank so we -- it was renewed again.

25 Q. Can you look in the note to see if there is

1 any language with respect to renewal?

2 A. Well --

3 Q. You can probably look at it a little easier
4 in your hard copy.

5 A. Page number for me, please.

6 Q. This doesn't have a Bates but I can
7 probably help you find it if you would like me to.
8 It's Exhibit 10.

9 A. I cannot find it.

10 Q. Is there any mention of Mr. Schwartz
11 whatsoever in this note?

12 A. No, there is not.

13 Q. So you would agree with me, Mr. Schiffman,
14 that your representation under oath in the petition
15 that you filed makes the representation with respect
16 to a loan that was taken out after Mr. Schwartz
17 died?

18 A. You are correct in stating that the loan --
19 this particular loan did not have the guarantee from
20 Mr. Schwartz.

21 Q. It did not?

22 A. Did not.

23 Q. And in your petition, which is the petition
24 on file with the court, where the school seeks to
25 compel the estate to distribute a half million

1 dollars has made the representation that that's the
2 only loan, that's the only mortgage that was on the
3 property at the time of the school; is that right?

4 A. It was my understanding that we were
5 extending the loan that we currently had.

6 Q. But that's nowhere in the record in this
7 case is it?

8 A. I have to tell you as I look at this today,
9 it is not there.

10 Q. I think we have got to go to page 21.

11 A. Page 21?

12 Q. Yes, sir. It's Exhibit 2 of the petition.
13 So it's the same exhibit.

14 A. I'm not finding that. Exhibit 2?

15 MR. LEVEQUE: May I approach, Your Honor?

16 THE COURT: Sure.

17 BY MR. LEVEQUE:

18 Q. You are right there. You are looking at
19 this section here and I have it blown up on your
20 screen for you.

21 Have you seen this provision of the will
22 before?

23 A. I have to tell you I do not remember.

24 Q. Okay.

25 A. You would like me to read it now.

1 Q. Let me have you read the highlighted
2 portion.

3 A. Oh.

4 Q. Not out loud just to yourself is fine.

5 A. It's the educator in me, I apologize.

6 Q. That's okay.

7 A. Yes.

8 Q. So it states I here by give devise and
9 bequeath the sum of \$500,000 to the Milton I.
10 Schwartz Hebrew Academy and it defines the Hebrew
11 Academy. Do you see that?

12 A. Yes.

13 Q. This petition was filed in 2013, correct?

14 A. I can't remember the date, but I will --

15 Q. Will you accept my representation that it
16 was filed May 2013?

17 A. Yes.

18 Q. We looked at it before the break, the
19 articles of amendment that amended the corporate
20 name of the school to the Dr. Adelson Educational
21 Campus in March of 2008, correct?

22 A. That's correct.

23 Q. About five years before?

24 A. Yes.

25 Q. Mr. Schiffman how account estate make a

1 gift to the Milton I. Schwartz Hebrew Academy if
2 there is no Milton I. Schwartz Hebrew Academy?

3 MR. JONES: Object to the form of the
4 question. Calls for legal conclusion. Secondly, it
5 mischaracterizes the language of the bequest.

6 THE COURT: I think it should be -- I
7 understand the question. I think it could be
8 rephrased because I think that did call for ultimate
9 issue.

10 MR. LEVEQUE: Okay.

11 BY MR. LEVEQUE:

12 Q. Let me say if I can lay a little
13 foundation.

14 Mr. Schiffman, you filed a verification
15 necessary to file the petition to compel the
16 distribution, correct?

17 A. Yes.

18 Q. You stated in that petition that everything
19 that is stated in the petition is true to the best
20 of your knowledge and recollection, correct?

21 A. Yes.

22 Q. All right. So as you sit here and read
23 this provision today, without asking for a legal
24 opinion, how, in your mind, when you filed this
25 petition in 2013, can the estate make a gift to the

1 Milton I. Schwartz Hebrew Academy when it no longer
2 exists?

3 MR. JONES: Objection, Your Honor. That
4 misstates the evidence as well.

5 THE COURT: Not necessarily for that
6 reason, but that does -- that does seem to assume
7 something that I think maybe the flip side of it is
8 why they thought so and why they filed the petition
9 based on that. Because otherwise asking him --
10 that's asking him for the ultimate decision in the
11 case. But I certainly do think it's appropriate to
12 ask why they filed the petition what they thought it
13 was based on the petition but that seems to me to be
14 the ultimate question.

15 MR. LEVEQUE: Is that objection sustained
16 or overruled?

17 THE COURT: Sustained.

18 BY MR. LEVEQUE:

19 Q. Let me ask you a slightly different
20 question. Is the Adelson Educational Institute in
21 that stated in there?

22 A. Not what you are reading there.

23 Q. At the time this petition was filed the
24 corporate name of the school was the Dr. Miriam and
25 Sheldon G. Adelson Educational Institute; is that

1 correct?

2 A. That's correct.

3 Q. And it doesn't say to the Milton I.
4 Schwartz Hebrew Academy or its successor, does it?

5 A. Does not.

6 Q. Mr. Schiffman, do you recall testifying in
7 your 2016 deposition that your recollection of when
8 the logo of the Milton I. Schwartz Hebrew Academy
9 was removed from the letterhead was May 30, 2008?

10 A. Yes, I do.

11 Q. May 30, 2008. Thanks.

12 All right. So this is, for the record,
13 Exhibit 158 which is already been admitted into
14 evidence and to save time I just ask if you look at
15 the monitor unless you want to look at the exhibit.

16 A. We will go with the monitor.

17 Q. Do you see that this is a letter that you
18 sent in April 17, 2008?

19 A. Yes.

20 Q. So by your testimony, this was
21 approximately a month before the school removed the
22 Milton I. Schwartz Hebrew Academy logo from the
23 letterhead, correct?

24 A. I can't tell you about the logo on the
25 letterhead I'm not sure about that.

1 Q. You testified in your deposition that you
2 removed in on May 30, 2008, correct?

3 A. Yes.

4 Q. So this is a month before that removal, but
5 do you see that this is a letter that you sent
6 Mr. Schwartz?

7 A. Yes.

8 Q. What's the date of that letter?

9 A. Date of the letter is April 17, 2008.

10 Q. And you would agree with me it shows both
11 logos?

12 A. Yes.

13 Q. Why are you sending this letter?

14 A. It was for, if I remember, it was done on
15 behalf of the gift that he made to the school.

16 Q. And you say in the last -- secretary to the
17 last paragraph that the Adelson School and the
18 Milton I. Schwartz Hebrew Academy, what did you mean
19 by that?

20 A. We were operating with the two names.

21 Q. What was the Milton I. Schwartz Hebrew
22 Academy at this time?

23 A. At that particular -- when you are
24 talking -- remind me the date.

25 Q. April 17, 2008.

1 A. 2008 they were operating as the two
2 separate institutions.

3 Q. What grades was the Milton I. Schwartz
4 Hebrew Academy at this time?

5 A. It was in the MIS building so that would
6 have been pre-K, 18 months, to 8th grade.

7 Q. 18 months to 8th grade?

8 A. Right.

9 Q. Thank you. And this letter you are sending
10 thanking Jonathan -- Mr. Jonathan shorts for a gift
11 to the school?

12 A. Yes. Uh-huh.

13 Q. Okay. Go to Exhibit 52 which is a joint
14 exhibit as well. It's a letter from my client to
15 you. This one is dated August 28, 2008. Do you see
16 that?

17 A. Yes.

18 Q. In the first paragraph says it was a
19 pleasure meeting with you again today at the Milton
20 I. Schwartz Hebrew Academy. Does this refresh your
21 memory at all with respect to meeting with
22 Mr. Jonathan Schwartz on August 28, 2008?

23 A. Yes.

24 Q. And he is talking about how the Adelson
25 School development is truly spectacular, and you,

1 the Adelsons, the entire board are to be
2 congratulated for the growth of the school. It goes
3 on and talks about the gift. And do you remember,
4 in this, letter, that Mr. Jonathan Schwartz was
5 asking just for a confirmation in writing from you
6 that the gift was going to be used -- that the -- he
7 requested a letter acknowledging that the
8 anticipated Milton I. Schwartz scholarship fund
9 would be utilized to fund scholarships in perpetuity
10 at MISHA for the purpose of educating Jewish
11 children. Do you remember that?

12 A. Yes.

13 Q. Did you ever respond to this letter?

14 A. I don't remember.

15 Q. Let me ask you this. If you responded to
16 the letter, would it be in the file?

17 A. Every single thing that I wrote was in the
18 files, yes.

19 Q. Okay.

20 A. But again, I don't have those files.

21 Q. Thank you.

22 Do you remember this meeting at all in
23 August 2008?

24 A. Talking about the meeting at the school?

25 Q. Yeah.

1 A. It was a very nice meeting.

2 Q. I have got one that's not in evidence yet
3 so I need you to look at Exhibit 162, which should
4 be in the binder of 101 to 178.

5 A. Yes.

6 Q. Okay. Do you recognize the envelope, the
7 logo and where the envelope probably came from?

8 A. Yes, came from the school.

9 Q. Any reason to dispute that this note was
10 sent by Davida Sims?

11 A. No.

12 Q. Who is Davida Sims?

13 A. Director of development at the time.

14 MR. LEVEQUE: The estate moves to admit
15 proposed Exhibit 162.

16 THE COURT: Any objection?

17 MR. JONES: The date of this is again
18 March 10 of 2010? -- I'm sorry, March 4 of 2010.

19 MR. LEVEQUE: Yes.

20 MR. JONES: No, no objection.

21 THE COURT: It will be admitted.

22 BY MR. LEVEQUE:

23 Q. All right. So this is a letter that was
24 sent to my client, Jonathan Schwartz about Davida
25 Sims. Do you see that there was a mailing stamp

1 when this was mailed?

2 A. Yes, I do.

3 Q. What date was that?

4 A. March 4, 2010.

5 Q. And do you see that the logo still shows
6 the Milton I. Schwartz Hebrew Academy?

7 A. I noticed that, yes.

8 Q. So that's inconsistent with your testimony
9 that we just were discussing about when letterhead
10 was removed in 2008, correct?

11 A. Yes, this letterhead should not have been
12 used.

13 Q. It should not have been used. Do you know
14 why it was used?

15 A. I do not.

16 Q. This is a reminder and a hopeful wish that
17 Jonathan Schwartz would go to the gala fundraiser;
18 is that correct?

19 A. I can only make that assumption.

20 Q. What's the main purpose of the gala events?

21 A. Always fundraiser.

22 Q. Is it fair that this was being sent to
23 Jonathan Schwartz so he would come to the gala and
24 donate?

25 A. I can assume, yes.

1 Q. And this again was sent two years after you
2 testified that the letterhead changed in May
3 of 2008?

4 A. Yes. If I can add this is the first time I
5 have seen this and I'm embarrassed by it.

6 Q. Fair enough. I think all we need to could
7 is jump a couple more exhibits down?

8 A. Do you remember.

9 Q. 165. Had it in my head. You can't read my
10 mind? 165.

11 Mr. Schiffman, do you recognize this to be
12 another letter sent to my client from the school?

13 A. I do.

14 Q. All right. You see that it's addressed in
15 my client's address?

16 A. I do.

17 Q. Any reason to believe that this is not an
18 accurate letter that was sent by the school to my
19 client?

20 A. I need to say at this particular time I
21 would agree this was sent.

22 MR. LEVEQUE: Estate moves to admit
23 proposed Exhibit 165.

24 MR. JONES: I have no objection, but -- I
25 have no objection.

1 THE COURT: It will be admitted.

2 BY MR. LEVEQUE:

3 Q. Do you see the date of this letter?

4 A. Yes.

5 Q. December 2, 2011, right?

6 A. Yes.

7 Q. So about a year after the last letter we
8 saw actually more than a year, right?

9 A. Yes.

10 Q. And again, this letter is being sent to my
11 client with the Hebrew Academy logo on it. Do you
12 see that?

13 A. That's correct.

14 Q. In the upper left it says Milton I.
15 Schwartz Hebrew Academy in Summerlin?

16 A. It does.

17 Q. And your testimony is that that shouldn't
18 have happened, shouldn't have gone on that
19 letterhead?

20 A. I can state and I will state publicly that
21 Davida Sims was in charge of this area and this
22 letter -- actually she was in charge of the gala
23 committee and again I sit here embarrassed.

24 Q. And this letter again had to do with the
25 gala?

1 A. Yes.

2 Q. And this one is acknowledging a gift that
3 Mr. Schwartz made in the amount of \$12,500, correct?

4 A. Yes.

5 Q. Based on the correspondence we have seen
6 Mr. Schiffman don't you think it's reasonable for my
7 client to assume and conclude that the Milton I.
8 Schwartz Hebrew Academy was still the name of the
9 school?

10 A. These letters coming out, I would have to
11 conclude that.

12 Q. Mr. Schiffman, do you recall having a lunch
13 with Victor Chaltiel and Jonathan in or about
14 February 2010?

15 A. We had lunch twice, yes.

16 Q. The one in February of 2010, do you
17 remember that one?

18 A. I can't say that I remember the dates but I
19 do remember going to lunch at Marche Bacchus.

20 Q. Both times?

21 A. I believe so.

22 Q. Do you remember what time period that was?

23 A. When you say time period?

24 Q. Do you remember what year it was?

25 A. I don't remember.

1 MR. LEVEQUE: May I approach the witness,
2 Your Honor?

3 THE COURT: You may. One second
4 Mr. Schiffman.

5 MR. LEVEQUE: Do you have another copy?

6 MS. KEAST: I do.

7 THE COURT: Thank you Mr. LeVeque.

8 BY MR. LEVEQUE:

9 Q. I'm going to ask you some questions about
10 this.

11 MR. JONES: May we approach? I want some
12 clarification about these documents.

13 THE COURT: Yes.

14 (Bench conference.)

15 THE COURT: Mr. LeVeque.

16 BY MR. LEVEQUE:

17 Q. I believe that the first page of the
18 document I gave you, Mr. Schiffman, I asked you if
19 you recall when the lunch occurred at least one of
20 the lunches occurred with my client Jonathan
21 Schwartz and Victor Chaltiel. Do you remember that
22 question?

23 A. Yes.

24 Q. After looking at that document does it
25 refresh your memory as to when that lunch occurred?

1 A. Just looking at dates here, to me, but I
2 don't remember personally.

3 Q. Okay.

4 A. Actually Jonathan thanked us for the
5 lunch --

6 THE COURT: We don't want to talk about it.
7 BY MR. LEVEQUE:

8 Q. I'm asking you to read it. If you look at
9 the document I gave you, does that help remind you
10 of when the lunch actually occurred?

11 A. No.

12 Q. It does not. Okay.

13 Do you recall if my client ever expressed
14 to you a desire to expedite the gift to the school,
15 the \$500,000?

16 A. He did.

17 Q. He did? When was that?

18 A. I don't remember the date, but he did.

19 Q. I'm going to ask you some questions about
20 that later but we will move on in the interest of
21 time.

22 Do you recall giving my client, Jonathan
23 Schwartz a tour of the school in March of 2013?

24 A. Yes.

25 Q. Can you tell me about that, what happened

1 there?

2 A. We took a tour of the school and Jonathan
3 was appreciative of what he saw. I had taken it
4 upon myself to actually move the portrait of his
5 father from an outer office to out in the new
6 hallway that we built and actually putting a plaque
7 up in honor of his dad and I wanted to show it to
8 him. I was proud of it.

9 Q. Was the signage of the school still on the
10 old building?

11 A. It was.

12 Q. The question that's come up in this case,
13 Mr. Schiffman, is whether Dr. Lubin Saposhnik had
14 any signage on the school.

15 A. She did.

16 Q. She did?

17 A. She did.

18 Q. Can you tell us where that was?

19 A. There was an old gym recreation building on
20 the Hillpointe Road.

21 Q. Yes.

22 A. And it was -- her name was on the side of
23 that building.

24 Q. Okay.

25 A. On the corner.

1 Q. Was that always the case when you first
2 started at the school in 2006?

3 A. It was -- yes, it was there when I arrived.

4 Q. If I showed you an aerial map of that time
5 period would you be able to point it out to the
6 jury?

7 A. I could.

8 MR. LEVEQUE: This is from fall of 2006.

9 MR. JONES: I think we have one from 2002.

10 MR. LEVEQUE: No objection.

11 MR. FREER: I think it is in.

12 MR. LEVEQUE: This is different I printed
13 it today. May I approach the clerk to mark this.

14 THE COURT: I understand, Mr. Jones, there
15 is no objection.

16 MR. JONES: Mr. LeVeque, just so you know,
17 112 is the exhibit in evidence. I don't care, but
18 it's already in evidence.

19 MR. LEVEQUE: I thought yours was 2002.

20 MR. JONES: It is.

21 MR. FREER: This 2006.

22 MR. JONES: Okay.

23 THE COURT: So 183 will be the 2006 map.

24 MR. LEVEQUE: Yes.

25 MR. JONES: Just to make it easier, I will

1 stipulate that's what it looked like in 2006. I
2 don't care.

3 THE COURT: Give us a chance to get it
4 focused.

5 THE WITNESS: It's not my eyes? Thank you.

6 BY MR. LEVEQUE:

7 Q. All right. So now --

8 MR. LEVEQUE: Mr. Freer, may I use your
9 pointer.

10 MR. JONES: Here is mine.

11 BY MR. LEVEQUE:

12 Q. If you could -- Mr. Schiffman, with this
13 laser pointer, if you could just show the jury what
14 building had the Dr. Lubin signage on it?

15 A. This building right here.

16 Q. And that was eventually knocked down,
17 correct?

18 A. That was knocked down for construction,
19 yes.

20 Q. When was that knocked down?

21 A. Let's see. We knocked it down during our
22 first year so it had to be two thousand -- sometime
23 in 2006 during winter.

24 Q. Sometime in 2006. Okay.

25 Did you notify Dr. Lubin Saposhnik about

1 that?

2 A. I actually I think I notified her son, who
3 was a parent in the school, that it was coming down.

4 Q. Do you know if her son is in the courtroom
5 right now?

6 A. I don't.

7 MR. JONES: Your Honor, may we approach,
8 please?

9 THE COURT: Sure.

10 (Bench conference.)

11 THE COURT: We are keeping an eye on the
12 clock.

13 BY MR. LEVEQUE:

14 Q. After you informed Ms. Lubin's son, was
15 there any response was there any objection to it?

16 A. Tamar Lubin visited with me, and we
17 discussed the building came down and that we were
18 discussing with the board what we would do.

19 Q. I'm sorry, I can't hear you.

20 A. We discussed with the board what we would
21 do with the signage on the building.

22 Q. What did you do?

23 A. It was eventually decided with the board
24 that the sign would not be replaced.

25 Q. Was there any objection by Dr. Lubin?

1 A. She was disappointed and told me that she
2 would think about it. And we never discussed it
3 again.

4 Q. Thank you.

5 Mr. Schiffman, were you ever instructed by
6 the board to remove the Milt Schwartz signage from
7 the building?

8 A. Yes.

9 Q. Can you tell me when that was?

10 A. I can't remember the exact date.

11 Q. Was it after the lawsuit was filed?

12 A. Yes.

13 Q. Do you remember why?

14 A. It was the board's feeling if there was
15 going to be a lawsuit filed that they wanted the
16 name to be removed from the building and the
17 portrait to be taken down.

18 Q. What's the portrait? Tell me about that.

19 A. The portrait of Milton Schwartz and
20 (inaudible) they also wanted that down as well.

21 Q. Was there an instruction given by a
22 specific board member to do that?

23 A. I took all of my instructions from
24 Mr. Chaltiel.

25 Q. Mr. Chaltiel, who was your close friend,

1 correct?

2 A. Yes.

3 Q. Was there a vote of the board to do this?

4 A. Yes, there was.

5 Q. Should that have been reflected in the
6 board meeting minutes?

7 A. I would assume so.

8 Q. Do you recall if Mr. Adelson voted on that?

9 A. Yes.

10 Q. And did he vote in the affirmative?

11 A. He did.

12 Q. Was there any objection stated?

13 A. There was none that was voted on, no.

14 Q. Okay.

15 A. Again, I don't remember at the end of the
16 evening.

17 Q. Did you vote?

18 A. I'm not a voting member of the board. I'm
19 an employee.

20 Q. If you had been on the board, would you
21 have agreed with that decision?

22 A. I will tell you what my thought was and I
23 shared it that I agreed with the taking the name
24 down because in discussions it was business people
25 with business -- trying to I guess strong arm. I

1 can call it that. I guess maybe I had an affinity
2 with the portrait I was the one who put it up. But
3 I made sure it was placed and I followed the board's
4 direction and placed everything carefully in
5 storage.

6 Q. Mr. Schiffman, was there was an effort made
7 by my client Jonathan Schwartz trying to come to a
8 settlement a resolution with respect to the estate's
9 claim that there is a valid naming rights and then
10 the school's claim that it's until the half million
11 dollars?

12 MR. JONES: Your Honor, I object that's
13 inappropriate.

14 THE COURT: Sustained.

15 BY MR. LEVEQUE:

16 Q. Okay.

17 A. If I also might add to that other piece
18 that you asked is that the board did not take down,
19 on my asking, that Milton I Schwartz is mentioned in
20 the history of the school on the website. And they
21 agreed to that.

22 Q. That's it, though, right, nothing else? I
23 think that's in the about us part of the website
24 that says something one or two sentences about
25 Mr. Schwartz?

1 A. Yes.

2 Q. And that's it?

3 A. I'm not there. Yes. Mr. Schwartz is in,
4 and the board agreed to do that.

5 Q. Do you recall, Mr. Schiffman, when the
6 Adelsons completed their gift?

7 MR. JONES: Object to the form of the
8 question. I think it's ambiguous as to completed.

9 MR. LEVEQUE: Okay I can rephrase it Your
10 Honor.

11 THE COURT: Rephrase.

12 BY MR. LEVEQUE:

13 Q. Do you recall in 2012 and 2013 -- no, 2012
14 that the school had a construction loan of
15 approximately \$45 million?

16 A. Yes.

17 Q. And what was that loan for?

18 A. One was for the construction of the campus.

19 Q. Do you know when that was paid off?

20 A. I can't tell you the date, but I do know
21 that I was surprised with a visit from Dr. Adelson.
22 She came into my office and said that these words, I
23 know you have been worried about this so Sheldon and
24 I are going to pay the school \$50 million to pay off
25 the loan. Now the bad news was I thought I was

1 going to get a check and hold it, but it was money
2 wired to the bank to pay the loans off. And I
3 proceeded the next couple days to the bank to pay
4 those loans.

5 Q. You were worried? Why were you worried?

6 A. What happened is that we had major issues
7 when I came to the school with accreditation.
8 Actually, the school was -- and the board did not
9 know, but our accreditation was about to be pulled,
10 and that the people who were there before me were
11 hiding this from the board. When I first came in, I
12 didn't realize that the school almost lost its
13 accreditation. We were reaccredited for a two-year
14 period of time and then we had to go through
15 reaccreditation. When it came back, the
16 accreditation body loved what we were doing at the
17 school, loved the curriculum, loved everything we
18 were doing. Their only objection was that the
19 school had a 50 -- excuse me a \$45 million loan and
20 if the -- you know with one major donor if we didn't
21 get that money, they were really concerned about
22 that. And that was one of the things that we had to
23 address with reaccreditation. And it was bothering
24 me because the school had to be accredited.

25 Q. So there was a issue of accreditation

1 because there was this outstanding loan. What about
2 servicing the debt? Was that an issue too?

3 A. No, that was not an issue with them.

4 Q. I will pull this up on the monitor, but
5 these are board meeting minutes from January 8,
6 2013. Do you see that?

7 A. Yes.

8 Q. I will call out a paragraph here where it
9 says the board watts presented with a gift from the
10 Adelson family to the school of \$50 million do you
11 see that?

12 A. Yes.

13 Q. This gift was presented in January 2013
14 does that sound about right?

15 A. Yes.

16 Q. And the lawsuit was filed -- the school's
17 lawsuit was filed against the estate, what, about
18 four months later; is that right?

19 A. I believe so.

20 Q. And the name, the Milton I. Schwartz Hebrew
21 Academy logo, and every signage, and the portrait,
22 that was taken off sometime shortly after this, too;
23 is that correct?

24 A. That is correct.

25 Q. I'm going to pull up 64. We went over this

1 in your deposition, Mr. Schiffman. Do you remember
2 me showing you a bunch of website printouts,
3 snapshots from the school's website on certain
4 dates?

5 A. I do.

6 Q. I'm actually going to pull up one that I
7 highlighted to make this a little easier.

8 So do you see -- and I represented to you
9 in the deposition and I will represent again that
10 this is a snapshot from a service called the Wayback
11 Machine that take snapshots in a given period of
12 time do you accept that?

13 A. Yes.

14 Q. Do you see this was a snapshot in
15 September 7, 2008?

16 A. Yes.

17 Q. If you go to a section of the Web page, it
18 talks about the schools are, right?

19 A. Yes.

20 Q. It's saying that the Milton I. Schwartz
21 Hebrew Academy is 18 months through 4th grade. Do
22 you see that?

23 A. Yes.

24 Q. Then it defines the middle school and then
25 the upper school, right?

1 A. Uh-huh. Yes.

2 Q. So this was only about a year after
3 Mr. Schwartz passed away; is that right?

4 A. Yes.

5 Q. Apologize we got to go back to the big
6 book. 172.

7 A. 172?

8 Q. Yes. Are you there, sir?

9 A. I do.

10 Q. I will represent to you that this is a
11 document that we got straight from archive dot org
12 and the front page is an affidavit custodian of
13 records affidavit that discusses what a Web crawler
14 is and how it obtains websites from certain periods
15 ever time. And then you will see several pages
16 afterward that have snapshots of the school's
17 website for certain months, dates, and years. Do
18 you see that?

19 A. Yes.

20 MR. LEVEQUE: The estate moves for the
21 admission of proposed Exhibit 172.

22 MR. JONES: The affidavit doesn't really do
23 anything, Your Honor, but could you tell me what the
24 dates of the website --

25 THE COURT: If you looked at them and can

1 identify them, recognizing the screen shots, that's
2 one thing.

3 MR. LEVEQUE: We went over this in his
4 deposition. I got a custodian of records affidavit
5 to err on the side of caution.

6 THE COURT: Okay.

7 BY MR. LEVEQUE:

8 Q. Let me ask some foundation questions,
9 Mr. Schiffman. You were involved with the copy that
10 was on the websites, correct?

11 A. Actually, I had people who worked for me do
12 that.

13 Q. But you reviewed them from time to time,
14 correct?

15 A. From time to time I did, yes.

16 Q. Some of them you actually signed your name
17 Paul at the end of them?

18 A. I do.

19 Q. If you look for example there is a
20 signature block on the fourth page and the last
21 page. Do you see that?

22 MR. JONES: Counsel --

23 MR. LEVEQUE: One of them didn't show up.

24 BY MR. LEVEQUE:

25 Q. So you had a hand in preparing these

1 website pages, correct?

2 A. I reviewed these, yes. They were prepared
3 for me.

4 Q. Do they appear to be true and correct
5 copies of the websites on the dates that they are
6 representing?

7 A. They have to be.

8 MR. JONES: Here is my only question I'm
9 not necessarily going to object I just can't tell
10 what the dates are.

11 MR. LEVEQUE: Custodian of record affidavit
12 describes it but the way you look at it, this is the
13 date, 2010, 08, 17.

14 MR. JONES: They are from that date.

15 MR. LEVEQUE: No everyone is different.
16 Next one would be 2011, 08, 06.

17 MR. JONES: Your Honor to make it easier, I
18 wasn't disputing these for the website I just want
19 to make sure what the dates were so I would not
20 object to the admission of these.

21 THE COURT: It's confusing because the date
22 appears on the next page.

23 MR. JONES: I understand how it flows now.
24 It was hard for me to tell.

25 THE COURT: I didn't get it either, so with

1 that explanation now it makes sense.

2 MR. LEVEQUE: Requires reading the
3 custodian of record affidavit.

4

5 BY MR. LEVEQUE:

6 Q. I will represent to you that the first one
7 we are going to look at is from August 17.

8 THE COURT: Are you moving to admit?

9 MR. LEVEQUE: It's 172.

10 MR. JONES: How do we tell that's August?

11 MR. LEVEQUE: 2010, August 17, and this is
12 the time stamp afterwards.

13 MR. JONES: Thank you.

14 THE COURT: You have to be nice to us
15 people who are not millennials.

16 BY MR. LEVEQUE:

17 Q. The first one is a snapshot of the website
18 from the school on August 17, 2010.

19 A. Okay.

20 Q. In August of 2010, you agree with me that
21 the school is still representing the Milton I.
22 Schwartz Hebrew Academy to be the elementary school,
23 18 months through 4th grade?

24 A. Yes.

25 Q. Now we are going to go to the next one.

1 This one is a snapshot from August 6, 2011. Again
2 slightly different page but it's still holding out
3 the Milton I. Schwartz Hebrew Academy to be the
4 elementary grades of the school, correct?

5 A. Yes.

6 Q. All right. But then a month later,
7 approximately a month later, on September 19, 2011,
8 the school now defines the elementary portion as the
9 lower school, do you see that?

10 A. Yes.

11 Q. Why did they do that?

12 A. I don't know. At this particular -- I
13 can't remember when we were changing and branding.
14 I was working with our consultant. So . . .

15 Q. Do you know if there was a board decision
16 to scrap --

17 A. There was not a board decision.

18 Q. There was not. So how did it happen?

19 A. Our people were remarketing the school.

20 Q. Don't the marketing people take direction
21 from the board?

22 A. No, the marketing people were working for
23 me at the time.

24 Q. Would they have taken direction from you?

25 A. They took direction from me under -- yes,

1 under my guise of people working with them. I had
2 my director of admissions and director of
3 development were the people responsible.

4 Q. It ultimately falls on you, correct?

5 A. Everything falls on my shoulders,
6 absolutely.

7 Q. Mr. Schiffman, you briefly mentioned that
8 accreditation issue. What would happen to the
9 school if the Adelsons hadn't completed the gift of
10 the \$50 million?

11 A. We still would have been accredited. I
12 would have had to appear once a year before the
13 accrediting body to explain how we were solvent and
14 stay in that realm of being accredited. They
15 weren't going to pull the accreditation it was just
16 an issue they had with us and it was the only point
17 of accreditation.

18 Q. So the only issue that you were concerned
19 about with respect to the timing of the gift to pay
20 off the debt of approximately \$45 million was just
21 the accreditation and your testimony is that really
22 wasn't anything more than an inconvenience, I guess?

23 A. No, it wasn't -- our accreditation is
24 important. The school is not accredited, we lose
25 credibility. I have kids in high school going off

1 to college. If I'm not accredited, those kids are
2 all in trouble.

3 Q. I get that. But you wouldn't have lost
4 your accreditation if the gift hadn't been paid,
5 isn't that what you just said?

6 A. We would not have lost accreditation.

7 Q. So other than the accreditation issue were
8 there any other time sensitive concerns that the
9 school had with respect to having a \$45 million loan
10 that it had to service every month?

11 A. Well, part of this gift of \$50 million was
12 helping to take care of the deficit for the next two
13 years.

14 Q. That was about \$5 million, correct?

15 A. Yes.

16 Q. But how was the school making its nut to
17 service the \$45 million in construction loan debt?

18 A. It was basically coming from revenues and
19 it was coming directly from gifts from the Adelson
20 family.

21 Q. How much? What percentage came from the
22 Adelson family?

23 A. I can't tell you percentage.

24 Q. Would it be more than half?

25 A. No.

1 Q. Would be more than 25 percent?

2 A. I know that, let's say, tuition was taking
3 in about 65 percent of the costs of running the
4 school.

5 Q. And the difference was made of with what?

6 A. We had galas we had fund-raisers I was out
7 seeking to raise funds other than the Adelsons,
8 rentals of the school.

9 Q. I didn't mean to cut you off.
10 But the Adelsons were contributing as well,
11 correct?

12 A. Yes.

13 MR. LEVEQUE: I will pass the witness
14 reserve my right for redirect.

15 Thank you, Mr. Schiffman.

16 THE WITNESS: You are welcome.

17 THE COURT: For the record, while we are
18 doing that change out because Mr. Schiffman would
19 have been testifying on your petition as well,
20 Mr. Jones, the agreement was you have both follow-p
21 to Mr. LeVeque on their petition as well as your own
22 petition for the school.

23 MR. JONES: Thank you, Your Honor.

24 THE COURT: He is a witness for both and
25 won't be called again because he is only here today.

1 MR. JONES: That's my understanding Your
2 Honor.

3 THE COURT: Just wanted to make it clear.

4 THE WITNESS: I did not understand that.

5 THE COURT: You are here only one time we
6 are not going to bring you back another time for
7 Mr. Jones. So this is just your one time.

8 THE WITNESS: Thank you for complaining
9 that.

10 EXAMINATION

11 BY MR. JONES:

12 Q. Good afternoon, Mr. Schiffman.

13 MR. JONES: Good afternoon ladies and
14 gentlemen.

15 BY MR. JONES:

16 Q. There has been lots of talk about the name
17 Milton I. Schwartz Hebrew Academy on documents and
18 even on the school up until Jonathan Schwartz sued
19 the school. Do you recall that?

20 A. Yes.

21 Q. So the fact that -- why -- let me ask
22 another way.

23 Could you tell the jury, did you ever look
24 to see if there was -- did you do -- put it a little
25 differently.

1 What efforts did you do, if you could
2 explain to the jury what efforts made to try to find
3 out if there was a contract between Milton Schwartz
4 and the school for naming rights?

5 A. I was asked by our attorney at the time to
6 actually go and have people look through the files.
7 Quite honestly, if I was going to be the person to
8 attest to that, I went through the files personally
9 myself from the records going back, and I can't
10 remember the year, to actually go through page by
11 page, which took me -- I did it over a two-week
12 period of time. Not full-time, I was still going to
13 school at the time.

14 Q. How comfortable are you that you looked
15 everywhere you could think of with any school
16 records that existed to try to determine whether or
17 not any such agreement existed?

18 A. I'm extremely comfortable that I went
19 through every page of the documents. They were at
20 the present time of kept in locked files.

21 Q. Who had access to them?

22 A. The business manager and his assistant.
23 There were two keys.

24 Q. And how did you get access to them?

25 A. I asked the assistant to open up the files

1 for me and they did at the time.

2 Q. Was there a question of about -- a few
3 months of files, I think 11 months of files for 2005
4 that you couldn't find we have already testified
5 that was before you got there. But was there any
6 evidence you ever saw that anybody was intentionally
7 trying to hide anything or not produce what was
8 available?

9 A. Not to my understanding, no.

10 Q. Now let me go back a minute here to kind of
11 backtrack a bit. You told the jury you live in
12 White Plains, New York now?

13 A. I do.

14 Q. How is it you got out here? You have
15 already testified that the Adelsons paid for your
16 plane ticket.

17 A. Yes.

18 Q. Are you here voluntarily or otherwise?

19 A. I am here voluntarily.

20 Q. I asked you some questions on what we call
21 voir dire about your feelings about Milton Schwartz
22 and the Adelsons. Could you please explain. Do you
23 have any ill will towards the Milton I. Schwartz
24 estate or Jonathan Schwartz?

25 A. I do not.

1 Q. What was your relationship like with
2 Mr. Schwartz when he was alive, Milton Schwartz?

3 A. Avenues gracious, kind, and caring man. He
4 was wonderful. He just was vicarious, he always had
5 jokes to tell. He loved children. He liked to talk
6 to kids about his pigeon collection. And even when
7 I was invited some students to come over and see the
8 pigeons, just a nice person.

9 Q. So let me ask you, did you ever receive a
10 subpoena from the estate to come to trial?

11 A. I did.

12 Q. Where were you served with that subpoena?

13 A. I was served at my home in White Plains.

14 Q. Did any lawyer ever call you about that
15 before you got served?

16 A. No.

17 Q. By the way, you said Mr. Adelson or
18 Dr. Adelson paid --

19 A. Mr. Adelson paid.

20 Q. Paid for your airfare out here. Was there
21 any effort by the estate to pay your travel
22 expenses?

23 A. I received a check, which I have not cashed
24 and will not, for \$35.

25 Q. So they gave you a check for \$35?

1 A. Right.

2 Q. Was there an expectation that you would
3 then have to travel out here on your own?

4 A. I was told to the subpoena said I would be
5 given notice of an hour and a half to two hours to
6 be here and they would pay me mileage which that
7 would be very expensive. Lot more than an airline
8 ticket.

9 Q. How did you feel when you got that
10 subpoena?

11 A. I was upset and angry. You was actually to
12 the point I do have a daughter who is an attorney.
13 He called her and said dad I can't deal with you.
14 You have to call an attorney in Las Vegas. And then
15 I called your offices.

16 Q. Let me ask another way about Mr. Schwartz
17 and the estate. Do you have belief you will have --
18 excuse the expression, a dog in this fight?

19 A. Explain a to me.

20 Q. Are you on one side -- do you see yourself
21 as being a witness for one side or the other?

22 A. No, I would love to see this thing
23 resolved.

24 Q. Did both sides ask for you to come to court
25 today?

1 A. Yes.

2 Q. Thank you. All right. So now let me ask
3 you some other questions about Mr. Adelson and his
4 involvement with the school. Mr. Adelson testified
5 to the jury yesterday and he talked about being on
6 the board. Did Mr. Adelson spend any personal time
7 in addition to the money that the family gave, did
8 he actually spend his own personal time on the
9 school?

10 A. Mr. Adelson spent more hours than one could
11 possibly imagine. Actually I kidded with him that
12 all of the plans for the school were on their dining
13 room table. Any time you walked in the house they
14 were out there and he would roll those out. I can
15 tell you that I used to fly out on Sundays, get into
16 Vegas at 10:00 be at the Adelsons at 1045 and catch
17 a redeye home and until I left 930, 10:00 o'clock we
18 were very busy working on that. Every single plan
19 and detail was taken a look at. I visited the site.
20 So he was extremely involved besides the money. It
21 was I think beyond a labor of love.

22 Q. Did he continue to be involved personally
23 after the school -- the new school got built?

24 A. Yes, he did.

25 Q. Okay. Thank you. I'm -- I will get back

1 to that later.

2 There has been some discussion about
3 accreditation. You already mentioned that. When
4 you first came to the school, was the school --
5 well, explain -- first of all explain -- I know you
6 did a little bit I don't want to waste much time
7 because I don't have much time to waste how
8 important that accreditation is to a school?

9 A. If you are a true independent school having
10 the accreditation is the difference between being
11 able to pass your students on with credentials to
12 colleges, for them to certify the student is going
13 to move to another school that they have come from a
14 school that meets the standards of accreditation.
15 And as I states and sorry I got a little upset about
16 it, can you imagine telling a senior that they
17 are -- their transcript is not from a accredited
18 school? Not on my watch it wasn't going to happen.

19 Q. So if the two years before you came there,
20 you came in I think July of 2006?

21 A. Right.

22 Q. Two years before. So what was the status
23 of accreditation for the prior two years?

24 A. What happened is that three years prior,
25 the school hired one of the teachers to write the

1 accreditation report. Accreditation reports must be
2 from the entire community. The board has to be
3 interviewed, every teacher has to be interviewed,
4 and everybody needs to write it. It was written by
5 one person. And when they came, our accrediting
6 body back then was called Pacific Northwest
7 independent school association under the auspices of
8 the national association, independent schools which
9 I'm a mentor for, they found that out. And they
10 gave them one year to fix it up. They sent in a new
11 report that didn't meet the standards, they did it
12 the following year and then the credentials were
13 going to be pulled. And I was able to intercede
14 through the national association independent schools
15 to get an additional extension even though it was
16 going to be granted.

17 Q. Would that have had any -- well, how long
18 have you been involved in education?

19 A. I was involved -- I started in
20 September 1972.

21 Q. Would that affect, in your experience,
22 based on your experience, would the loss of
23 accreditation or the threat of loss of accreditation
24 have affected the school that at that time was
25 strictly the Milton I. Schwartz Hebrew Academy,

1 would that have affected the school its ability to
2 attract students, in your experience?

3 A. Absolutely.

4 Q. If the school didn't have students, would
5 it be able to continue?

6 A. No.

7 Q. Was the school able to pay its operating
8 costs when you first came there?

9 A. They were not.

10 Q. And this million 8 debt we were talking
11 about, why did you have this debt on the school?

12 A. The debt was, again, it was part of
13 construction and operating expenses that the school
14 had and they were using that money.

15 Q. And how had you understood that the school
16 had been operating before the Adelsons got involved
17 at a deficit, at a loss?

18 A. I believe the school always operated in a
19 deficit. We have a saying why are we called not for
20 profit, because we are.

21 Q. An accurate description.

22 Do you have an opinion, when you came to
23 the school in 2006, was the school in jeopardy of
24 being able to continue?

25 A. I had the assurances from Victor Chaltiel

1 that they would find the funding to keep the school
2 going. And also I had from the board I would not
3 work for a school that did not have accreditation.
4 Not after all these years at my tail end. So I was
5 assured that the school would continue to be part of
6 that. And they did not know about the issue.

7 Q. Let me do this, if I may. I want to talk
8 about the construction of the school for a moment.
9 I would like to show you this photograph. In fact,
10 probably show the one that Mr. LeVeque put up, his
11 new exhibit I can't remember what number that was.

12 MR. CARLSON: 183.

13 BY MR. JONES:

14 Q. 183.

15 MR. LEVEQUE: I can turn that on for you.

16 MR. JONES: If you don't mind using the one
17 you have, that would be great. Thank you
18 Mr. LeVeque. Appreciate that.

19 BY MR. JONES:

20 Q. So if you can turn around and look?

21 A. Use the pointer again.

22 Q. I have it?

23 A. Thank you.

24 Q. I'm going to show you right here. What is
25 this area as you under it?

1 A. That was the entrance area when you came to
2 the school drop off point so you came in on
3 Hillpointe Road.

4 Q. This would be him point road?

5 A. That's right you came around the circle.

6 Q. And you came in a roundabout?

7 A. Yes.

8 Q. And then of course the main entrance of the
9 school is right here, right?

10 A. Yes.

11 Q. What was right here?

12 A. There was a sign.

13 Q. What did that sign say?

14 A. It said the Milton I. Schwartz Hebrew
15 Academy.

16 Q. And when you drove in, was there really any
17 way to miss that sign?

18 A. No, you would actually be going right into
19 it.

20 MR. JONES: Your Honor may I approach.

21 THE COURT: You may.

22 MR. JONES: I would like to mark these next
23 in order as a group. Would the Court like a copy?

24 THE COURT: Thanks.

25 THE CLERK: Next in line is 1123.

1 THE COURT: Okay 1123 is admitted.

2 Mr. LeVeque?

3 MR. LEVEQUE: I don't have an objection.

4 THE COURT: For the record that's four
5 pages of photographs.

6 MR. JONES: Yes, Your Honor it's a total of
7 four pages, but what they are is they are simply
8 trying to zoom in on the first photograph. If we
9 could back out for a minute, Shane.

10 BY MR. JONES:

11 Q. Mr. Schiffman, the entrance to the school
12 changed, did it not?

13 A. It did.

14 Q. So is this a photograph -- I will represent
15 to you this came out of Google Earth in fact Google
16 Earth info is up here. This is a street view where
17 you can go from an overhead to the ground. I think
18 it's 143 if that helps orient the jury. If you
19 could just put that up real quick for the jury to
20 see. Take that one down the Google Earth we showed
21 in opening statement.

22 MR. GODFREY: 174?

23 MR. JONES: Yes.

24 BY MR. JONES:

25 Q. If we could look at this part right here,

1 Mr. Schiffman?

2 A. Yes.

3 Q. This entryway is now different than the one
4 in the old photograph from 2006 that we showed,
5 right?

6 A. Yes, we changed it to accommodate the
7 traffic flow.

8 Q. And completely redid the entryway and moved
9 it down essentially to the east; is that right?

10 A. I can tell you I'm not sure east or west
11 but we moved it further uphill point.

12 Q. Let's go back to the new exhibit, just a
13 new exhibit. So this is the new entryway can you
14 tell the jury what this is?

15 A. There are two vinyl banners, one had the
16 Milton I. Schwartz Hebrew Academy, that was on the
17 left, and the Adelson Educational Campus on the
18 right -- I'm sorry, vice versa.

19 Q. You say banners?

20 A. Yes, banners.

21 Q. What does that mean? So the jury
22 understands what you are talking about.

23 A. Those have the vinyl banners you see in
24 front of stores. I don't want to cheapen it, but on
25 sale today. The guy on Spring Mountain makes those

1 for \$49 each.

2 Q. Over there in the upper left-hand corner,
3 there is a date there. Do you see that is a street
4 view, October 2007, right?

5 A. Yes.

6 Q. During 2007, tell the jury what was going
7 on up at the property.

8 A. We were in the middle of major
9 construction. We took this piece of property. We
10 were keeping school open. We were building
11 160,000 square feet of space at \$45 million expense
12 plus we were also redoing the Milton I. Schwartz
13 Hebrew Academy building at that time.

14 Q. I will get to that in a bit because there
15 have been some questions asked about that.

16 Were those permanent monuments there in the
17 front?

18 A. Absolutely not.

19 Q. So what were they essentially made out of?

20 A. Vinyl.

21 Q. Vinyl?

22 A. Tent material, I would say.

23 THE COURT: That would be 1124. Any
24 objections, Mr. LeVeque?

25 MR. LEVEQUE: I guess I need some

1 foundation.

2 MR. JONES: Regardless of who took it --

3 Your Honor, perhaps maybe it would be
4 helpful to Mr. LeVeque if I laid some foundation
5 with the photo.

6 THE COURT: Yes.

7 MR. JONES: May I approach with the copies.

8 THE COURT: Tell us what we are looking at.

9 BY MR. JONES:

10 Q. Mr. Schiffman, showing you what has been
11 marked as 1124, I believe --

12 A. Yes.

13 Q. Have you ever seen that picture -- or a
14 picture of that before?

15 A. Yes.

16 Q. Does that accurately reflect what you
17 believe exists up at the Adelson Campus to this day?

18 A. Yes.

19 Q. Do you believe that that is a true and
20 correct photograph of the monument up at the Adelson
21 Campus?

22 A. Yes, it is.

23 MR. JONES: Your Honor I would move its
24 admission.

25 THE COURT: Okay.

1 MR. LEVEQUE: As long as you do the one
2 with the metadata I have no objection.

3 MR. JONES: With the metadata.

4 MR. LEVEQUE: Yes.

5 THE COURT: So that version will be
6 admitted as 1124.

7 THE WITNESS: By the way, if I can be a
8 teacher for a second. You will notice the American
9 flag is in the center. Usually see the American
10 flag on the left. When you are marching the flag
11 goes to the left. If it's stationary, it stays in
12 the center. We had a lot of controversy on that,
13 had a lot of people visiting me and had to get the
14 Veteran's group to fully understand.

15 BY MR. JONES:

16 Q. I did not know that, so that's news to me.

17 So you will see up at the top this has the
18 metadata, that means that shows from a computer when
19 that picture was taken, October 6, 2008.

20 A. Yes.

21 Q. Now if we go back down to the picture, now,
22 do you have a recollection of when the school was
23 completed?

24 A. We opened up for students the last
25 Friday -- excuse me, the first Monday in August

1 of 2007 -- no, excuse me, 2008.

2 Q. And was that monument -- by the way, what
3 happened to the one that said the Milton I. Schwartz
4 Hebrew Academy that was the vinyl one?

5 A. I don't know.

6 Q. Go away?

7 A. I guess it did.

8 Q. Did you ever see it up there when the
9 school was opened when the grand opening occurred in
10 two thousand -- in August of 2008?

11 A. No.

12 Q. Exhibit 158 do you have it there in front
13 of you? We can put it up on the screen. That's not
14 what I thought it was. Is that 158?

15 MR. GODFREY: 157.

16 MR. JONES: So let's look at that letter
17 again, that's April 17, 2008. That's not the one
18 I'm looking for. I'm looking for the one from
19 August 28 of 2008. I thought I had it in my
20 documents but I apparently do not.

21 MR. GODFREY: 52.

22 MR. JONES: 52 thank you.

23 BY MR. JONES:

24 Q. That appears to be a letter from
25 Mr. Schwartz to Mr. Schiffman do you see that?

1 A. Yes.

2 Q. We talked about that before it's August 28,
3 2008, he says it was a pleasure meeting with you
4 again today at the Milton I. Schwartz Hebrew
5 Academy. It has been a pleasure getting to know you
6 over the last year I find the MISHA's progress to be
7 tremendous the development of the Adelson School is
8 truly spectacular you and the Adelsons and the
9 entire board are to be congratulated for the growth
10 of the school. Do you see that?

11 A. Yes.

12 Q. He actually came out and toured the school,
13 didn't he?

14 A. Yes, he did.

15 Q. Was that sign that we just looked at that's
16 Exhibit 1124 the photograph dated October 6, 2008,
17 was that sign there in the front that said the
18 Adelson Campus there in August 28 of 2008?

19 A. Let me just think again. The sign was put
20 up -- I think the sign went up around June, prior.

21 Q. June of 2008?

22 A. Right.

23 Q. Would there be any way possible you can
24 conceive of -- let me put it this way.

25 Did people come in the back entrance?

1 A. No, the school is extremely secure. You
2 can only come in one way.

3 Q. Would you know of any way possible that
4 somebody driving in that school could not have seen
5 that sign that said the Adelson -- the Dr. Miriam
6 and Sheldon G. Adelson Educational Campus, if they
7 drove in the school in August 28 of 2008?

8 MR. LEVEQUE: Objection. Calls for
9 speculation.

10 THE COURT: Sustained.

11 You can answer, if you know.

12 THE WITNESS: You have to go past the sign.

13 BY MR. JONES:

14 Q. You would have to go past the sign. Okay.

15 So would you -- let's look at -- do you
16 remember any Review-Journal articles about the
17 opening of the school?

18 A. There were many arms that were written, but
19 I don't remember off the top of my head.

20 Q. Was it your understanding that Mr. Schwartz
21 in his claim against the school was claiming that
22 the middle school should be named after Milton
23 Schwartz?

24 A. Yes.

25 Q. And was it publicized to the -- made public

1 in the announcements from the Review-Journal by the
2 school that the middle school was going to be named
3 after the Adelsons?

4 MR. LEVEQUE: Objection. Foundation.

5 THE COURT: Overruled.

6 THE WITNESS: I can't remember the article
7 but we had hired a person to be in charge of the
8 middle school it was a separate building.

9 MR. JONES: May I approached, Your Honor?

10 THE COURT: You may.

11 BY MR. JONES:

12 Q. Let me show you a document that's from the
13 Review-Journal?

14 MR. LEVEQUE: Do you have a copy.

15 MR. JONES: Let me show to counsel first.

16 BY MR. JONES:

17 Q. Mr. Schiffman, I'm showing you a document.
18 Does that refresh your recollection whether when the
19 announcement went out about the opening of the --

20 A. Yes.

21 Q. What is your recollection now that's
22 refreshed?

23 A. I remember seeing this.

24 Q. I would like to show you now Exhibit 33. I
25 can take that back from you. Thank you, sir.

1 A. You are welcome.

2 Q. This document is in evidence. Again, it's
3 announcement, a groundbreaking ceremony you see
4 Summerlin Nevada November 21, 2006?

5 A. Right.

6 Q. Talking about the groundbreaking and
7 Mr. LeVeque asked you some questions about that?

8 A. Yes.

9 Q. To break ground do you have to have plans
10 completed?

11 A. Yes.

12 Q. Were the --

13 A. And the permits. You also have to have
14 permits from the City of Las Vegas.

15 Q. Were the plans completed by November 2006
16 as best you can recall?

17 A. The plans that were completed were what we
18 call the building edifice itself.

19 Q. Right?

20 A. We were still working on. So whatever the
21 building perimeter would be there, we were still
22 working on completing the interior of the building.

23 Q. With that understanding, were those plans
24 ever shown to the board?

25 A. Yes.

1 Q. Before November of 2006?

2 A. Yes.

3 Q. Were they talked about on many board
4 meetings?

5 A. We always ways start every board meeting
6 off with a conversation about building and what was
7 progressing at the time. It was a major
8 undertaking.

9 Q. Could you tell the jury was Milton Schwartz
10 at those meetings?

11 A. He was at some of them.

12 Q. Was there any discussion of where the
13 middle school was going to be in the new building?

14 A. Yes.

15 Q. And can you tell the jury, was Mr. Milton
16 Schwartz present during discussions of where the
17 middle school was going to be in the new building?

18 A. I have to phrase it this way. He was
19 present when we discussed all of the pieces of it.
20 I can't say that we pulled that one piece and
21 said --

22 Q. Sure?

23 A. But he saw all the plans.

24 Q. Is it your belief or recollection that
25 Mr. Milton Schwartz was aware that at least by even

1 November of 2006 that the middle school is going to
2 be in the new buildings?

3 A. Yes.

4 Q. Did Mr. Milton Schwartz can you tell the
5 jury did Mr. Milton Schwartz ever voice an objection
6 about putting the middle school in the new building?

7 A. He did not.

8 Q. Did Mr. Milton Schwartz ever tell anybody
9 on the board in your presence or did you ever hear
10 that Milton Schwartz says I demand that my name be
11 put on the middle school of the new building?

12 A. Not to my knowledge.

13 Q. Did Mr. Schwartz as far as you can recall
14 have ever opportunity to say that as far as you were
15 aware, if he wanted to object to it?

16 A. I believe he could have.

17 Q. I'm going to go back in time here just a
18 minute. It's going to be before you were -- I
19 believe this is exhibit that's in evidence,
20 Exhibit 680.

21 MR. JONES: Ms. Clerk -- Lorna, is 680 in?
22 Should have asked the official record.

23 THE CLERK: No.

24 BY MR. JONES:

25 Q. Let me go about it this way. Did you ever

1 have any board meetings that you attended where
2 naming opportunities were discussed?

3 A. Yes.

4 Q. And was there any limit -- was this before
5 the Adelsons had finalized their gift, their first
6 gift about naming to the school?

7 A. For their first gift was before -- the
8 \$25 million gift was prior to my coming to the
9 school.

10 Q. Fair enough. By the way do you know if
11 that \$25 million even though it says 3 million and
12 the jury has seen this multiple times but that one
13 resolution says \$3 million we are going to name
14 everything all these things after the Adelsons, you
15 saw that?

16 A. Right.

17 Q. Did the \$25 million even though it's not
18 mentioned, did that come into play as part of that
19 decision whether or not to name the school after
20 them?

21 MR. FREER: Objection. Lack of foundation.

22 BY MR. JONES:

23 Q. If you know.

24 A. It was before my time. I can't answer
25 that.

1 Q. I do want to look at Exhibit 34, which I
2 believe is a joint exhibit. Let's look at that.

3 Mr. LeVeque asked you some questions about
4 Dr. Lubin's name off of the building. Do you
5 remember that?

6 A. Yes.

7 Q. And board minutes about that?

8 Let's look at who was present at this
9 meeting. It says present, Victor Chaltiel, Susan
10 Steinberg, Milton Schwartz, Paul Schiffman. You
11 were there, right?

12 A. Uh-huh. Yes.

13 Q. So Milton Schwartz was there we know from
14 these meeting minutes, right?

15 A. Yes.

16 Q. But who was absent? Sheldon Adelson?

17 A. Yes.

18 Q. So Mr. Adelson didn't vote, as far as you
19 know if he wasn't at the meeting he couldn't have
20 voted to take Dr. Lubin's name off the building,
21 could he?

22 A. No.

23 Q. So let's look at the next page. It says up
24 there at the very top Paul notified Tamar Lubin that
25 the building with her name was demolished.

1 A. Yes.

2 Q. So did you ever -- were you aware of any
3 agreements between the school and Dr. Lubin about
4 her name?

5 A. Yes, there was an agreement that was a
6 court order that her name go on the side of the
7 building. It specified the building, where it was
8 supposed to be located, the size and the detail as
9 to what would be said.

10 Q. And so let me ask you. Did you ever talk
11 to Milton Schwartz about taking Dr. Lubin's name off
12 the building?

13 A. Yes. He was present when we announced it.
14 He was there when we announced that that building
15 was going to be demolished.

16 Q. Can you tell the jury if you had any
17 conversations specifically with Mr. Milton Schwartz
18 about removing Dr. Lubin's name in connection with
19 that building?

20 A. Mr. Schwartz had filled me in on the
21 cantankerous times where Milton Schwartz's name came
22 off the building so he said he was not -- you know,
23 that it was okay for him to have this building
24 demolished.

25 Q. He was fine with having that happen?

1 A. Yes.

2 Q. By the way, did you ever talk to him about
3 replacing her name anywhere else on the property?

4 A. We had had some conversations with the
5 board about possibly taking that area there a road
6 that goes near there and putting her name up.

7 Q. Did Milton Schwartz make any comment about
8 that?

9 A. Not about the sign, no.

10 Q. So let's now look at Exhibit 221. That's
11 not in evidence. I don't recall if it is or not?

12 MR. JONES: Ms. Clerk is 221 in evidence?

13 THE CLERK: No.

14 BY MR. JONES:

15 Q. Take a look at -- 212. I'm transposing
16 numbers. I'm trying to rush here and I'm screwing
17 things up. All right. Got the right one.

18 Can you take a look at that, sir?

19 A. Yes.

20 Q. All right. Does -- first of all, does that
21 appear to be meeting minutes?

22 A. Yes.

23 Q. Does it appear you are present at that
24 meeting?

25 A. Yes.

1 Q. Do you have any reason to believe that this
2 is not a true and accurate copy of the meeting
3 minutes from June 12, 2007?

4 A. No.

5 Q. So let's --

6 MR. JONES: Your Honor I would move for its
7 admission.

8 MR. LEVEQUE: No objection.

9 THE COURT: Thank you. It's admitted.

10 BY MR. JONES:

11 Q. Look at the first page, June 12, 2007.
12 Milton Schwartz is there, right?

13 A. Yes.

14 Q. And you are there?

15 A. Yes.

16 Q. And then there -- if you look at the next
17 page, about -- under the treasurer's report that
18 last part of the page, you will see pressure's
19 report, \$1.7 million note from Bank of America will
20 come due in September. Nevada State Bank loan has
21 11 months left with 9600 monthly. Do you see that?

22 A. Yes.

23 Q. Could you tell the jury what that's a
24 reference to?

25 A. That's a reference to the loan that we have

1 been talking about dealing with the one that was
2 guaranteed by Milton Schwartz.

3 MR. FREER: Objection best evidence rule.

4 THE COURT: Overruled.

5 MR. JONES: I'm sorry.

6 THE COURT: Overruled.

7 BY MR. JONES:

8 Q. So what would have happened -- tell the
9 jury what would have happened had the school not
10 renewed or actually they didn't renew the note they
11 went out and got to another bank?

12 A. Right.

13 Q. The loan we saw was from a different bank
14 wasn't it?

15 A. Yes.

16 Q. So when counsel said to you there is no
17 renewal that's because it wasn't renewed isn't that
18 true?

19 A. Yes.

20 Q. So tell the jury what would have happened
21 if the school hadn't gone out and figured a way to
22 get a new loan for that?

23 A. As the head of the school, I would have had
24 to figure out a way to raise 1.7 million dollars,
25 which I don't know how I would have done that.

1 Q. Let me ask it a different way. If the
2 school had defaulted on it, was there any real
3 estate securing that loan?

4 A. No.

5 Q. So it would just have been a note that
6 would have to be paid back?

7 A. Yes.

8 Q. Be in default.

9 So by the way, we looked at this, June 12,
10 2007, before Mr. Schwartz died?

11 A. Yes.

12 Q. So do you have any reason to believe that
13 Mr. Schwartz was not well aware of this note that --
14 let me rephrase it a different way.

15 Is the note that's referenced in this --
16 these minutes from Bank of America, the one you
17 believe or understood that Mr. Schwartz had
18 personally guaranteed?

19 A. Yes.

20 Q. Is it possible, as far as you know, and I
21 know you shall not a lawyer or a banker but would it
22 be possible for you for Mr. Schwartz to have
23 guaranteed a loan after he passed away?

24 A. No.

25 Q. Let's look at the last will and testament

1 which is Exhibit 22. I can't transpose 22. I got
2 that number right.

3 We talked about this will, Mr. LeVeque
4 showed it to you let's look at page 2 which is the
5 provision at the top 2.3, the one that's central
6 issue in this case. Mr. LeVeque asked you if it
7 says anywhere in there "the successor to the Hebrew
8 Academy." Do you remember he asked you about that,
9 and it wasn't in there?

10 A. Right, it's not there.

11 Q. What he didn't ask you was, if you look at
12 that, it says the Milton I. Schwartz Hebrew Academy,
13 the Hebrew Academy. Do you see the word
14 "corporation" in there?

15 A. No.

16 Q. So there is nothing -- do you see anywhere
17 in there where it says that he is going to give
18 \$500,000 or give a gift of \$500,000 to the Milton I.
19 Schwartz Hebrew Academy corporation?

20 A. No, doesn't say that.

21 Q. Now let me ask you another question. Up
22 until Mr. Jonathan Schwartz sued the school, was
23 there, in fact, a Milton I. Schwartz Hebrew Academy?

24 A. Yes, there was a building.

25 Q. Sure. And in fact, had there continued to

1 be a building for over -- I think I call of
2 calculated he died in August of 2007, and
3 Mr. Jonathan Schwartz sued the school in May 28 of
4 2013, I calculated that approximately five years and
5 about I think nine months or so. So would it be
6 true to say that from the date of Mr. Milton
7 Schwartz's death up until May 28, 2013, there was a
8 Milton I. Schwartz Hebrew Academy?

9 A. Yes.

10 Q. Have you asked at the school and you
11 personally asked Jonathan Schwartz to pay the
12 \$500,000 bequest during that five and a half or five
13 and a half plus years time period?

14 A. I was present when Mr. Chaltiel asked. I
15 did not ask.

16 Q. And with respect to that issue, can you
17 tell the jury, as far as you know, was there anybody
18 on the board, anybody at the school talking about
19 taking Mr. Milton Schwartz's name off of that
20 elementary school until his son sued the school?

21 A. No.

22 MR. FREER: Objection misstates facts.

23 THE WITNESS: Yes.

24 THE COURT: Overruled. He answered it.

25 BY MR. JONES:

1 Q. So to this day, as far as you know, based
2 on everything that you know, would it still be the
3 lower school, the elementary school still have that
4 name Milton I. Schwartz Hebrew Academy on it, had
5 his son not sued?

6 MR. FREER: Objection. Calls for
7 speculation.

8 THE COURT: Sustained.

9 THE WITNESS: Do I answer?

10 BY MR. JONES:

11 Q. Let me put it a different way. Based on
12 everything that you know up to May 28, 2013, is
13 there any reason for you to believe, based on your
14 conversations with the board, all of the actions of
15 the board, is there any reason to believe that his
16 name would not still be on there?

17 A. His name would still be on there.

18 Q. Can you tell me, Mr. Schiffman -- maybe,
19 better yet, can you tell the jury that even
20 though -- do you believe that, based on everything
21 you were able to find and see, that Milton Schwartz
22 had an enforceable contract for naming rights?

23 MR. FREER: Objection. Calls for legal
24 conclusion.

25 THE COURT: Sustained.

1 MR. JONES: Fair enough, Your Honor I
2 understand.

3 MR. FREER: Lack of foundation as well.

4 BY MR. JONES:

5 Q. Well you did look for a contract, you
6 testified to that, right?

7 A. Yes, I did.

8 Q. You couldn't find one?

9 A. Could not.

10 Q. Is there anything you ever saw, based on
11 your investigation of this very subject and your
12 understanding of the facts as a layperson, not as a
13 lawyer, is there anything that ever led you to
14 believe that Milton I. Schwartz had an enforceable
15 naming rights for the school?

16 MR. FREER: Objection as to "enforceable."

17 THE COURT: That's the ultimate issue. We
18 have had some challenges.

19 MR. JONES: Your Honor I appreciate that.
20 I'm just asking him opinion based on what he was
21 able to find and certainly other witnesses have
22 testified directly on their opinion on that subject
23 I think just about every witness.

24 THE COURT: Counsel approach.

25 (Bench conference.)

1 THE COURT: We are going to rephrase thank
2 you very much.

3 MR. JONES: Thank you Your Honor let me
4 rephrase and see if I can ask this a better way.

5 BY MR. JONES:

6 Q. Based upon -- well, you were asked to try
7 to see if there was -- if you could find anything
8 that you understood to be an agreement, right?

9 A. Yes.

10 Q. A naming rights agreement?

11 A. Yes.

12 Q. And I think you testified you were unable
13 to do that?

14 A. Yes.

15 Q. Based on your own personal investigation
16 you weren't able to find anything like that, true?

17 A. That is correct.

18 Q. Why then would the school continue to leave
19 Mr. Milton Schwartz's name up on the lower school if
20 he didn't have an agreement to do that based on your
21 understanding?

22 MR. FREER: Objection. Calls for
23 speculation. Lack of foundation.

24 THE COURT: So again, based on his
25 experience.

1 MR. JONES: That's correct.

2 THE COURT: Okay. I will overrule that
3 objection.

4 MR. JONES: Thank you.

5 THE COURT: You can answer that.

6 THE WITNESS: Thank you. People loved
7 Milton. That's as simple as that.

8 BY MR. JONES:

9 Q. The fact that -- I will withdraw that.

10 Let me ask you to look at Exhibit 213 which
11 should be right behind that one.

12 A. Okay.

13 Q. I think that actually is in evidence. So
14 let's put that up on the board. If you look at the
15 top it's a board minutes from December 13, 2007.
16 You will see that you are there present at the
17 meeting?

18 A. I was.

19 Q. It's part of Exhibit 213. There you go.

20 A. We are looking at December 6? I'm on the
21 wrong page.

22 Q. Got it?

23 A. I have December 13 in front of me. Awe
24 here it is. Thank you. I will look up here.

25 Q. That's probably easier.

1 So you are at that meeting, right?

2 A. Yes.

3 Q. And if we look at the next page -- actually
4 I'm sorry, two pages back, you will see at the very
5 top again talks about this whole issue?

6 THE COURT: On that exhibit list we have a
7 different date.

8 MR. LEVEQUE: It has multiple board meeting
9 minutes.

10 THE COURT: That's the one. I forgot.

11 MR. FREER: 28 pages of exhibits.

12 THE COURT: Thank you.

13 BY MR. JONES:

14 Q. I should have referred to a Bates number.
15 He has it now. Says, we are now banking with Bank
16 of America. The new loan for Milton I. Schwartz
17 Hebrew Academy is from Bank of Nevada. The
18 executive committee recommends that the Hebrew
19 academy have a credit line. Our knew loan is for a
20 million 810. The credit line will be \$2 million.
21 Do you see that?

22 A. Yes.

23 Q. Is that exactly consistent with your
24 statement under oath and the petition that was filed
25 with the court?

1 A. Yes.

2 Q. Does that again relate back to the loan
3 that Mr. Schwartz had guaranteed that had expired in
4 the fall of 2007?

5 MR. FREER: Objection. Best evidence rule
6 there is no guarantee that's ever been submitted
7 into evidence.

8 THE COURT: Overruled. With that
9 understanding, if he can answer -- just asking if it
10 was consistent with what he put in the petition.

11 MR. JONES: That's what I'm asking Your
12 Honor.

13 THE COURT: What is in the petition not
14 whether we have anything else.

15 BY MR. JONES:

16 Q. Is that consistent with the information
17 that your statement in the petition about that loan?

18 A. Yes.

19 MR. JONES: By the way, Your Honor, since
20 Mr. LeVeque did the examination, I assume
21 Mr. LeVeque would be doing the objections as opposed
22 to Mr. Freer.

23 THE COURT: I was busy taking notes but
24 that is a good point.

25 MR. JONES: This is a point of procedure,

1 Your Honor.

2 THE COURT: Your Honor.

3 MR. JONES: Not that I don't like
4 Mr. Freer.

5 THE COURT: Technically.

6 MR. JONES: Not supposed to tag team.

7 THE COURT: Technically you are correct.

8 MR. FREER: I think there is a Nevada
9 Supreme Court back in the 40s.

10 MR. JONES: I'm not aware of that but I
11 would ask that only one lawyer object.

12 THE COURT: Understood. Thank you. Good
13 point.

14 BY MR. JONES:

15 Q. I'm not going to belabor the December 13,
16 2007, minutes because the jury has seen it about 50
17 times.

18 I would like to talk to you about
19 Exhibit 43 that they have also seen about 50 times
20 but I hope they will indulge me one more time.
21 December 13, 2007, these are the resolutions that do
22 mention, by the way, Mr. Schwartz at the bottom of
23 the page.

24 A. Yes.

25 Q. Talks about the corporation's elementary

1 school shall be named in honor of Milton I. Schwartz
2 in perpetuity?

3 A. Yes.

4 Q. And you do have a recollection of that?

5 A. Yes, I do.

6 Q. So let's go back up. The first one is the
7 one that talks about this corporation shall be known
8 in perpetuity as the Dr. Miriam and Sheldon G.
9 Adelson Educational Institute in per Tuesday,
10 et cetera et cetera, right?

11 A. Yes.

12 Q. And then if you look at the next page, it
13 says at the top -- I'm sorry -- these are the pages
14 that are out of order. So it's actually the third
15 page. Victor Chaltiel was authorized on behalf of
16 the corporation to execute and deliver the grant
17 agreement letter dated December 13, 2007, blah,
18 blah, blah, the jury has heard that, but this is
19 authorizing him to sign an agreement?

20 A. Yes.

21 Q. The reason I wanted to mention it is it
22 says right in there talking about naming the campus
23 and the schools. What were the schools?

24 A. We had three different schools at the time.

25 Q. Can you tell the jury what they were in

1 December of 2007?

2 A. 2007 we had the lower school, the middle
3 school, and the upper school.

4 Q. I will withdraw that question. Thank you.
5 If we could look at Exhibit 44. The jury
6 has seen this more times than they probably ever
7 hoped to. This is the actual naming rights
8 agreement, right?

9 A. Yes.

10 Q. And if you look down at Paragraph 3, you
11 have seen this before, but it says, first line,
12 corporation agrees that the corporation, the campus,
13 the high school, the middle school, and the
14 classroom buildings themselves will be named in
15 perpetuity in honor of the Adelsons. Do you see
16 that?

17 A. Yes.

18 Q. What were -- well, was the elementary
19 school one of the classroom building?

20 A. I'm sorry?

21 Q. Was the elementary school one of the
22 classroom buildings?

23 A. Yes, it was.

24 MR. FREER: Objection lack of foundation.

25 THE COURT: Overruled.

1 BY MR. JONES:

2 Q. Your answer, sir?

3 A. Yes.

4 Q. Now, just the fact -- do you know why the
5 Adelsons didn't incident immediately upon taking
6 Milton I. Schwartz name off the elementary school
7 even though they had this agreement?

8 A. It was always to honor Milton.

9 Q. Thank you.

10 A. It was just as I said he was important and
11 we did want -- the Adelsons and everyone else wanted
12 to memorialize him.

13 Q. Did you believe that based on your
14 understanding of the agreement, though, that the
15 Adelsons had the right to take his name off if they
16 wanted to?

17 A. Yes.

18 Q. Now I want to show you, I don't know that
19 these are admitted yet. Exhibit 912.

20 MR. JONES: Your Honor I move for the
21 admission of 912.

22 THE COURT: Any objection to that.

23 MR. LEVEQUE: No objection.

24 THE COURT: Thank you. It will be
25 admitted.

1 BY MR. JONES:

2 Q. If you look at -- there we have January 10,
3 2008, board minutes. You will see who is present.

4 A. Yes.

5 Q. Does it indicate you are present as well,
6 "Staff"?

7 A. Yes.

8 Q. And if you look at the next page, it's the
9 third paragraph down, the resolution of the
10 articles?

11 A. Yes.

12 Q. So this would be the next meeting after the
13 December meeting in 2007; is that right?

14 A. Yes.

15 Q. So this is the very next month you are
16 having another meeting?

17 A. Yes.

18 Q. Says the resolution of the articles of
19 incorporation were discussed. The motion had passed
20 on December 13, 2007, meeting that's the one we just
21 talked about?

22 A. Yes.

23 Q. Clarification on the wording is still being
24 reviewed by the Adelson family. At the meeting a
25 discussion ensued whether kippas should be mandatory

1 or strongly encouraged for Beit Midrash. The
2 Adelsons will review this with their lawyer and
3 bring this part of the resolution back to the board
4 of trustees at a following meeting. Do you see
5 that?

6 A. Yes, I do.

7 Q. Do you recall, as you sit here in front of
8 this jury, whether or not that resolution of
9 December 13 was still in a state of flux even though
10 it had been signed off?

11 A. It was still in a state of flux. They were
12 still reviewing it.

13 Q. Let's if we can move to Exhibit 50.

14 A. Is that in the original book?

15 Q. We will put it on the screen. It will make
16 it quicker and easier. This is the March 11,
17 2008 -- again the jury has seen this many times, but
18 you will see if we can compare this from the one
19 from December 13 of 2007, put them side by side. It
20 is Exhibit 43.

21 So if you could blow up the bottom of that.
22 This is the one from December. And you will see at
23 the bottom it says the corporation's elementary
24 school shall be named in honor of Milton I. Schwartz
25 in perpetuity, correct?

1 A. Yes.

2 Q. Now, if we go to the later one in March, on
3 March 11, there is no reference to the Milton I.
4 Schwartz Hebrew Academy, right?

5 A. That is correct.

6 Q. And this one also -- one of the differences
7 is this one in the first resolution references an
8 Exhibit A as being the agreement. Do you see that?

9 A. Yes.

10 Q. So is it your understanding that -- well,
11 what is your understanding of this resolution as it
12 relates to the ones we saw in December and January
13 that the jury just saw?

14 MR. LEVEQUE: Objection. Foundation. He
15 wasn't a board member.

16 MR. JONES: His understanding.

17 THE COURT: Taking into consideration he is
18 not answering this as a board member but as the --
19 their executive.

20 MR. JONES: That's my question.

21 THE COURT: With that understanding.

22 THE WITNESS: The March resolution was the
23 one that was eventually adopted and executed by the
24 chairman of the board at that time.

25 BY MR. JONES:

1 Q. We have seen it before, I won't belabor it
2 because of the lateness of the hour but is it your
3 understanding that a contract was signed by
4 Mr. Chaltiel granting the Adelsons perpetual naming
5 rights for the school?

6 A. Yes, it was executed.

7 Q. I'm going to show you what's been marked as
8 Exhibit 51 admitted as Exhibit 51. This is from
9 March 21, 2008. So a couple days later than the --
10 than those resolutions we were looking at on March
11 11th. But were you aware that the school had filed
12 a certificate of amendment of the articles of
13 incorporation with the secretary of state's office?

14 A. Yes, they did.

15 Q. And in this case, it goes from the Milton
16 I. Schwartz Hebrew Academy the name to what?

17 A. To the Dr. Miriam and Sheldon G. Adelson
18 Educational Institute.

19 Q. Are the words "in perpetuity" used as part
20 of the quotation?

21 A. Yes.

22 Q. If we could look at -- I don't know if it's
23 in evidence I think it might be, but 1012. That's
24 the e-mail from Mr. Schwartz to . . .

25 MR. JONES: Your Honor I moved for its

1 admission.

2 THE COURT: It's admitted.

3 BY MR. JONES:

4 Q. Let's put this up. If you look at the --
5 right there where your cursor is, it's from
6 Mr. Jonathan Schwartz to Mr. Chaltiel, right? It
7 says it's dated March 5 of 2010. You already told
8 this jury that you had some meetings with
9 Mr. Jonathan Schwartz in the first of the year of
10 2010, right?

11 A. Right.

12 Q. And that the meetings were to discuss the
13 gift from his father?

14 A. Yes. It was to talk about the school and
15 what was going on.

16 Q. So let's back out for a second. Do you
17 recall ever seeing this e-mail or talking to
18 Mr. Chaltiel about this e-mail? Take a moment to
19 read it you are certainly welcome to it?

20 A. I remember it. I think Victor shared this
21 with me. I remember seeing it.

22 Q. So he talks about meeting with you and with
23 Mr. Chaltiel. And as always enjoyed seeing the
24 school. By the way do you recall him saying, hey, I
25 don't like the monument out front that has only the

1 Adelson name on it?

2 A. He never discussed it.

3 Q. Did he ever say anything else about the way
4 the school looked that he was objecting to about
5 some naming rights?

6 A. No.

7 Q. Well, in this document, he does say the
8 agreement is to make sure that my dad's intent is
9 respected and followed the agreement. Do you recall
10 him discussing that he wanted to talk about an
11 agreement for naming rights?

12 A. We had so much going on then, I really
13 can't remember.

14 Q. Then let me move on, then, so we don't
15 belabor that, to another document. I would like to
16 show what's been marked I believe admitted into
17 evidence as 56 so if we could put that on the
18 screen. You will see up at the top it says minutes
19 of the Adelson Educational Campus board of trustees,
20 June 8, 2010, right?

21 A. Yes.

22 Q. You see you are present, staff, Paul
23 Schiffman?

24 A. Yes.

25 Q. And if you go down below under the

1 chairman's report, second paragraph, it says a
2 discussion referencing financial obligations
3 forthcoming to the Adelson Campus from the estate of
4 the deceased benefactor Milton I. Schwartz commenced
5 after board member received a certified letter from
6 Milton's son, Jonathan Schwartz, please see letter.

7 Do you see that?

8 A. I do.

9 Q. I take it at that time since you were the
10 ahead of the school you saw a copy of the letter
11 too?

12 A. I did.

13 Q. Let's look at the letter, Exhibit 55. It
14 says in the first paragraph, do you see that's dated
15 May 10 of 2010, this is now Mr. Schwartz's been
16 passed since -- Milton Schwartz since August
17 of 2007. So it's almost three years, correct?

18 A. Yes, it is.

19 Q. His death to this letter.

20 It says, Mr. Jonathan Schwartz is saying I
21 take my duty to fulfill my dad's wishes extremely
22 seriously. I have done everything within my power
23 over the last two and a half years to make certain
24 that my dad's wishes are carried out precisely as
25 provided for in his will.

1 Do you see that?

2 A. Yes, I do.

3 Q. Goes on to say that he met with you at
4 least four times about the bequest and met with
5 Mr. Chaltiel twice. Right?

6 A. Yes.

7 Q. If you go to the next page, you will see
8 that he says up in the -- third page. Third page, a
9 draft settlement basically accepts what the school
10 is already doing, despite the fact that some of what
11 the school has done in the last two and a half years
12 breaches the agreements.

13 Do you see that?

14 A. Yes, I do.

15 Q. Now what did you think when Mr. -- well, do
16 you have any understanding as to why Mr. Jonathan
17 Schwartz would need a new agreement signed if he
18 already had an agreement that set forth his father's
19 rights?

20 MR. LEVEQUE: Objection foundation calls
21 for speculation.

22 THE COURT: Overruled.

23 MR. JONES: Thank you.

24 THE WITNESS: Let's go through the question
25 again, I'm sorry.

1 BY MR. JONES:

2 Q. Sure. Let me put it a different way.

3 Did it make any sense to you that
4 Mr. Jonathan Schwartz would be demanding that the
5 school sign a new agreement if his father already
6 had one?

7 A. I'm a firm believer that you go by one
8 agreement and don't go for a new one. That's in
9 every case of anything that goes on.

10 Q. Now, let's look at that agreement that was
11 attached. That should be a part of that exhibit,
12 Shane, if we could get to Bates number page 4, E S T
13 4.

14 So this is the document that Mr. Schwartz
15 was demanding the school pay before it would give
16 the money, the \$500,000 scholarship to the school,
17 right?

18 A. Yes.

19 Q. And if you look at the document, it talks
20 about a number of different things, but the school
21 located, number two, let's go to number 2 down
22 there. First of all -- well, number 2, that's good.
23 The school located on the land grades pre-K through
24 4th and any new location shall be known in
25 perpetuity as the Milton I. Schwartz Hebrew Academy

1 and any and all laws agreements, articles of
2 incorporation, operating agreements or other
3 documents associated with the school located on the
4 land or any new location shall here to for and in
5 perpetuity identify grades pre-K through 4th as the
6 Milton I. Schwartz Hebrew Academy.

7 Do you see that?

8 A. I do.

9 Q. Based on your understanding of the
10 agreement that the board -- the contract, the naming
11 rights contract that the board entered into with the
12 Adelsons, if the school did that, would the school
13 be in breach of their agreement with the Adelsons?

14 MR. LEVEQUE: Objection to the extent it
15 calls for legal opinion.

16 MR. JONES: His understanding.

17 THE COURT: To the extent it's his
18 understanding only.

19 THE WITNESS: My understanding, it would
20 have made their agreement null and void.

21 BY MR. JONES:

22 Q. Let's look at the next one. It says, MISHA
23 shall prominently depict signage on the face of the
24 building housing the pre-K and 4th grades, and any
25 new location and all entrances, therefore,

1 exclusively identifying it and regularly maintaining
2 it as the Milton I. Schwartz Hebrew Academy so it's
3 clearly evident to the public that it's known as the
4 Milton I. Schwartz Hebrew Academy. It says, the
5 sign facing Hillpointe located on the MISHA as of
6 March 3, 2010, is acceptable to Schwartz.

7 Well, was there a sign for Milton Schwartz
8 on Hillpointe avenue on March 3, 2010?

9 A. The sign on the building was facing
10 Hillpointe Road.

11 Q. But the monument out front, the sign at the
12 entryway on the ground, did that say Milton I.
13 Schwartz?

14 A. Did not.

15 Q. Look at the next page. It says 4. Goes on
16 and talks about all different other kind of things
17 that had to have the logo of Milton Schwartz on it.
18 If the school had signed this agreement, what is
19 your understanding of what that would have done in
20 connection with the agreement the school already had
21 with the Adelsons?

22 MR. LEVEQUE: Same objection.

23 THE COURT: Same ruling.

24 BY MR. JONES:

25 Q. Your understanding?

1 A. The Adelsons are honorable people,
2 wonderful, but it would have put us in a very
3 precarious situation because we had this agreement,
4 and then we have the agreement to the people who
5 just gave us over \$50 million.

6 Q. Let me put it a different way. Would this
7 agreement be consistent with the agreement that the
8 school enter into with the Adelsons?

9 A. It would not be.

10 Q. Would it be in conflict?

11 A. I believe so.

12 Q. Would it be in direct conflict based on
13 your understanding of the two agreements?

14 A. Yes, I believe it would have been direct
15 conflict with each other.

16 Q. I would like to go now to Exhibit 61, which
17 is the petition. Again, Mr. LeVeque asked you about
18 this. You signed this and verified the facts at
19 least as you understood them at the time to be true,
20 right?

21 A. That is correct.

22 Q. Was this an easy decision -- well, let me
23 get some foundation here so you can tell the jury.

24 Were you involved in the board discussions
25 about the decision to file this petition?

1 A. I was present for the board conversations.

2 Q. That's what I meant. I understand you
3 weren't a board member.

4 Based on your observations of being there,
5 was this an easy decision for the board to make?

6 A. No, it wasn't.

7 Q. Can you tell the jury why it wasn't an easy
8 decision?

9 A. Because of the people's love of Milton
10 Schwartz that it was very difficult to try to force
11 this matter. They didn't want to get into a legal
12 situation, but the board came to a point of their
13 fiduciary responsibility, which is what made them
14 get to this point to do this. But it was a very --
15 it was tough, tough conversation.

16 Q. Was this done -- based on your observation
17 and being present when this was discussed, was there
18 any discussion of trying to disrespect Milton
19 Schwartz or his legacy?

20 A. Absolutely not.

21 Q. Let's look at page 4, which Mr. LeVeque
22 actually referred you to. So it talks about the
23 different schools, and you put this in this
24 petition, right? And you said under oath this is
25 what the very different schools were named, right?

1 A. Right. We were referring to our buildings.

2 Q. And so at the time of the filing of this
3 petition, Mr. Schwartz's name, Milton Schwartz name
4 was still on the school, wasn't it?

5 A. Yes, it was.

6 Q. Let's look at the picture that's attached
7 to the -- to this complaint. Is that a picture of
8 the front of the building?

9 A. It is.

10 Q. Was that accurate at the time that the
11 petition was filed?

12 A. Yes.

13 Q. And so up to this point in time, at least
14 when you filed this petition, was there any reason,
15 based on your understanding, this is again, just
16 your understanding of what you -- when you were
17 looking at that will and the provisions of 2.3 that
18 said the money was to go to the Milton I. Schwartz
19 Hebrew Academy, did the Milton I. Schwartz Hebrew
20 Academy actually exist?

21 A. Yes.

22 Q. Is this actual proof of that?

23 A. This is proof that the building was there,
24 yes, that it was there.

25 Q. I would like to refer you to your

1 declaration in this petition, Exhibit 61 but the
2 problem is we found with Mr. LeVeque, it doesn't
3 have a Bates numbers on it. You got to kind of dig
4 through it. It's actually Exhibit 1. I think you
5 have it up there, Mr. Schiffman.

6 MR. JONES: May I approach, Your Honor.

7 THE COURT: You may.

8 MR. JONES: Let me get this out of why you
9 are way.

10 BY MR. JONES:

11 Q. All right. Because there has been some
12 issues about timing, if you look at -- third page of
13 your declaration, paragraph 18, it says -- here it
14 says the \$1.8 million mortgage was paid off and the
15 guarantee of Mr. Schwartz was extinguished on
16 November 2, 2010, from the proceeds of a portion of
17 a generous \$25 million donation made by the
18 Adelsons. Do you remember that?

19 A. Yes.

20 Q. And there was some questions as to whether
21 or not any of the money that Adelsons donated was
22 used to pay off that debt. Would this be -- would
23 this refresh your recollection that in fact that's
24 what happened with some of that money?

25 A. The Adelsons had paid that debt off.

1 Q. I bring this up because there was another
2 question asked about specifically in connection with
3 some resolutions if a particular amount of money was
4 used to -- as part of the lower school. And so let
5 me ask you, if you could, the building that had
6 Mr. Milton Schwartz name on it?

7 A. Yes.

8 Q. We are all very familiar with at this
9 point, was any of the Adelsons money used in
10 connection with that building?

11 A. Absolutely.

12 Q. Would you please tell the jury the real
13 history of what money of the Adelsons went in
14 connection with the old building?

15 A. It was -- the Adelsons instructed me to
16 make sure that the building was brought up to code
17 and to what would be true. First story we had was
18 that the building did not have fire prevention in
19 it. There was no sprinkler system in it. Under
20 code, because that building wasn't attached to the
21 new building, we didn't have to put sprinklers in
22 it. Mr. Adelson insisted there would be sprinklers
23 and a brand-new fire system put in the building. It
24 was also that we built two new classrooms on to that
25 building. We refurbished almost all of the

1 classrooms, and we built a gymnasium on to that
2 building as well, which was the first event in that
3 facility was the memorial service for Milton, which
4 I thought it was very memorable. They also spent --
5 I was getting upset at the amount of money spent on
6 the new playground area that was built outside but
7 it's one of the nicest playgrounds you can imagine
8 for kids. So my recollection somewhere between
9 three and \$4 million was spent on refurbishing that
10 building and then the building was refurbished,
11 again, through a donation three and a half years
12 ago, and it was totally painted, and we put in new
13 bathrooms as well.

14 Q. Do you remember approximately how much
15 money of the Adelsons -- well, was any of the
16 Adelson gifts used to do that refurbish?

17 A. 100 percent.

18 Q. I'm sorry?

19 A. 100 percent.

20 Q. Can you tell the jury how much money that
21 was of the one that happened three and a half years
22 ago?

23 A. A couple years ago it was around a quarter
24 of a million dollars.

25 MR. JONES: Court's indulgence. I think

1 I'm just about done.

2 THE COURT: Thank you.

3 BY MR. JONES:

4 Q. Mr. Schiffman, you mentioned on direct
5 examination you were aware of a conversation that
6 was between Mr. Chaltiel, the chairman of the board?

7 A. Right.

8 Q. Mr. Adelson and Mr. Milton Schwartz?

9 A. Yes.

10 Q. About naming issues. Do you recall that?

11 A. Yes, and paying off the loans and the half
12 million dollar gift.

13 Q. While you weren't at that meeting, were you
14 aware that the general nature of the conversation
15 was that the campus -- between those three people,
16 was that the campus would be named Dr. Miriam and
17 Sheldon G. Adelson Educational Campus?

18 MR. LEVEQUE: Objection. Foundation.
19 Calls for hearsay. Calls for speculation.

20 THE COURT: Yes. So it does seem to be out
21 of court statements. I mean he --

22 MR. JONES: Let me go back Your Honor maybe
23 I can rephrase.

24 THE COURT: Okay.

25 BY MR. JONES:

1 Q. Did you have any conversations with
2 Mr. Chaltiel or Mr. Adelson or Mr. Schwartz after
3 they met, the three of them met?

4 A. I had dinner that evening with Mr. Adelson
5 and Mr. Chaltiel did our wives.

6 Q. Was that a subject of discussion even if it
7 was just in general?

8 MR. LEVEQUE: Objection hearsay.

9 THE COURT: That question is okay.

10 MR. JONES: Thank you.

11 THE WITNESS: They were very happy that
12 they had a great meeting with Milton and that he
13 agreed to --

14 THE COURT: Okay here we go.

15 THE WITNESS: Okay, I will stop.

16 BY MR. JONES:

17 Q. Without saying what they said, did you end
18 up having an understanding of what the discussion
19 was about?

20 A. Yes.

21 MR. LEVEQUE: Same objection.

22 THE COURT: That question is okay.

23 MR. JONES: Thank you Your Honor.

24 BY MR. JONES:

25 Q. Part of your understanding -- was part of

1 your understanding that the naming the campus the
2 Dr. Miriam and Sheldon G. Adelson was part of the
3 discussion, is that part of your understanding?

4 A. I have to tell you at this time I don't
5 remember.

6 Q. Fair enough. So if I could, I would like
7 to publish Mr. Schiffman's deposition?

8 THE COURT: Okay.

9 BY MR. JONES:

10 Q. Mr. Schiffman, do you remember that? Do
11 you remember you had your deposition taken?

12 THE COURT: There were two of them.

13 THE WITNESS: Yes.

14 BY MR. JONES:

15 Q. The first one was, I believe, in March
16 of 2014, so much longer time ago?

17 A. Yes.

18 Q. You would say your memory back then about
19 the events that happened in --

20 THE COURT: While we are doing that, we are
21 going to take a very brief recess. I think we have
22 jurors that need to take a break. Come back right
23 at five. That will give us --

24 MR. JONES: I have two or three questions.

25 THE COURT: We will be staying until about

1 5:30.

2 Don't talk about it and don't do research
3 while you were in the bathroom. Come right back.
4 No more Starbucks.

5 (Off the record.)

6 THE COURT: Ladies and gentlemen of the
7 jury, we appreciate your return on case P061300.
8 Mr. Jones is going to wrap up his questioning and
9 then we will hear from Mr. LeVeque and Mr. Jones
10 again, and then it will be your turn.

11 Mr. Schiffman, in Nevada jurors it ask
12 questions. As an FYI, you will hear from counsel,
13 but you may hear from jurors. Hang in there.

14 MR. JONES: We stipulate to the presence of
15 the jury.

16 MR. FREER: Stipulate to the presence of
17 the jury and the entry of 159.

18 THE COURT: We have updated for 1459.

19 MR. JONES: I so stipulate as well, Your
20 Honor.

21 THE COURT: Thank you.

22 BY MR. JONES:

23 Q. Mr. Schiffman, I want to keep my promise.
24 On page 29 of your deposition you may recall I asked
25 you if you recalled specifically making any comment

1 or remembered having -- I'm sorry. An impression or
2 understanding about the meeting between Mr. Milton
3 Schwartz, Mr. Adelson, and Mr. Chaltiel. If you
4 look at page 29, lines 5 through 18, I ask if you
5 review that. Does that refresh your recollection
6 that you do have a recollection of an understanding
7 of what was discussed?

8 A. Reading what I said then, yes.

9 Q. All right. So what was your
10 recollection -- or what is your recollection of what
11 was -- your impression of what was discussed or
12 understanding of what was discussed?

13 A. Reading backward from way back when, it was
14 that the campus would be named the Dr. Miriam and
15 Sheldon G. Adelson Educational Campus.

16 MR. JONES: Thank you. I have no further
17 questions. Thank you, Your Honor. Thank you,
18 Mr. Schiffman.

19 THE COURT: Thank you. Then while Shane
20 changes out, Mr. LeVeque, are you going to have some
21 redirect and/or cross?

22 MR. LEVEQUE: Yes. I will start where we
23 left off.

24 EXAMINATION

25 BY MR. LEVEQUE:

1 Q. Page 29 of your deposition taken on 2014,
2 do you also -- do you recall the follow-up question
3 where it was asked whether in that conversation it
4 was represented that Milton's name would no longer
5 be associated with the campus and your answer was
6 "no knowledge," do you remember that?

7 A. Yes.

8 MR. JONES: Your Honor, that's a legitimate
9 question. I just think it not the proper use of a
10 deposition, but in the interest of time --

11 THE COURT: So noted.

12 MR. JONES: -- I certainly think that's
13 appropriate question just not using the deposition.

14 THE COURT: You are not waiving any future
15 objections.

16 MR. JONES: All right.

17 MR. LEVEQUE: May I approach the witness
18 Your Honor?

19 THE COURT: Sure.

20 BY MR. LEVEQUE:

21 Q. Mr. Schiffman, I will represent to you that
22 these are pretrial disclosures that was filed by the
23 school right before trial. Do you see you listed as
24 a witness?

25 A. Yes.

1 Q. What address do they have on there?

2 A. 2012 Summit (inaudible), Unit 101, Las
3 Vegas, Nevada.

4 Q. Is that your address?

5 A. It is not.

6 Q. Did that used to be your address?

7 A. That's why where I lived before leaving
8 town.

9 Q. Do you think it's fair for the estate to
10 assume that the address provided by the school with
11 respect to where you are would be a reasonable
12 assumption to make?

13 MR. JONES: Your Honor, I don't think that
14 was the testimony that that's where he was served.

15 THE COURT: No. But the disclosure was the
16 old address. The question is it fair. You know I
17 don't think that's inappropriate question for the
18 witness to answer.

19 THE WITNESS: The school has my address in
20 White Plains.

21 BY MR. LEVEQUE:

22 Q. Do you know whether or not if we attempted
23 to serve you in Nevada first?

24 A. I do not know.

25 Q. If I represent to you that we did would you

1 accept my representation?

2 A. I would accept that. I did accept your
3 summons in New York. Made arrangements for it.

4 Q. That was only after we attempted to serve
5 you in Nevada based on the address provided by the
6 school?

7 A. Nice man.

8 Q. Service processor?

9 A. Yes.

10 Q. Mr. Jones asked you about questions about
11 the old building being refurbished do you remember
12 that?

13 A. Yes.

14 Q. I don't think you said when. When was
15 that?

16 A. That was done while we were doing the
17 construction, so simultaneous to building the new
18 facility.

19 Q. It was refurbished again, though, wasn't
20 it?

21 A. No, we received a donation to refurbish
22 Bishop, to paint the building, fix the bathrooms.
23 And that was -- has to be three and a half years
24 ago, just before I left.

25 Q. Okay. So 2014, 2015, somewhere in there?

1 A. Yes.

2 Q. But after Mr. Schwartz died, right?

3 A. Yes.

4 Q. So we looked at Exhibit 55, which was the
5 letter that Jonathan Schwartz sent in 2010 to all of
6 the board members which you testified that you saw
7 and you read it, correct?

8 A. Correct.

9 Q. Do you know, as of the date of that letter,
10 which was May of 2010 if my client knew that the
11 school had passed that resolution in December
12 of 2007 and the grant letter was signed in
13 December 2007?

14 A. No.

15 Q. You don't know one way or the other?

16 A. Right, I do not.

17 Q. And did the school provide any sort of
18 response to that offer of settlement, any sort of
19 counteroffer or anything?

20 A. That was left in the hands of Mr. Chaltiel.
21 I was not privy to those conversations.

22 Q. So you don't know one way or the other?

23 A. No.

24 Q. And I believe you testified the reason why
25 the board voted to take the signage off the old

1 school building was because my client filed a
2 lawsuit; is that correct?

3 A. That is correct.

4 Q. And was that a unanimous decision of the
5 board?

6 A. There was no objection.

7 Q. Okay.

8 A. So I can't --

9 Q. Did Mr. Adelson vote for that?

10 A. Yes, he did.

11 Q. Did he state whether that was the reason
12 that he wanted the name removed because my client
13 filed a lawsuit?

14 A. He was one of many who had conversations
15 about that.

16 Q. So removing the name on the building had
17 nothing to do with other alleged promises that
18 Mr. Schwartz had to the school was it?

19 MR. JONES: Your Honor I just object it
20 calls for speculation or lacks foundation.

21 THE COURT: I think maybe lacks foundation.
22 I would certainly agree.

23 BY MR. LEVEQUE:

24 Q. There were no other reasons other than the
25 fact the lawsuit was filed, correct?

1 A. That's right.

2 Q. Are you aware that Mr. Adelson testified
3 that there were other reasons?

4 A. Do not know about his testimony.

5 Q. Did you ever -- were there ever any
6 commitments, alleged commitments discussed in board
7 meetings having to do with a half million dollar
8 commitment and another half million dollar
9 commitment other than what's provided in the will?

10 MR. JONES: I think that actually just my
11 only objection I think that misstates Mr. Adelson's
12 testimony.

13 MR. LEVEQUE: I didn't say it was his
14 testimony.

15 BY MR. LEVEQUE:

16 Q. I asked if there were any discussions with
17 the board?

18 A. Not that I am aware of or could remember.

19 Q. We need to go back to something here. Do
20 you remember Mr. Jones showing you a resolution from
21 December of 2007 and then a resolution from March
22 of 2008?

23 A. Right.

24 Q. I'm going to pull up the one from I guess
25 it was 2008. Does this resolution say in 2008 that

1 it's amending or superseding a previous resolution?

2 A. It's not written there, no.

3 Q. This resolution actually talks about
4 different things than the December 1, right, it
5 talks about taking out a \$500,000 loan and then
6 another \$670,000 loan. Do you see that?

7 A. Yes.

8 MR. JONES: Object to the form of the
9 question.

10 THE COURT: He has answered, so overruled.

11 MR. LEVEQUE: Okay.

12 BY MR. LEVEQUE:

13 Q. Do you remember if these resolutions with
14 respect to these two loans were even in the December
15 resolution?

16 A. I don't remember.

17 Q. This is a different resolution, isn't it,
18 Mr. Schiffman?

19 A. Yes.

20 Q. Do you remember seeing drafts, various
21 drafts of a resolution relating to this that weren't
22 signed?

23 A. There were many drafts of the resolutions
24 that came through.

25 Q. Right. Do you remember an interim

1 discussion about whether the school was going to
2 operate as an orthodox institution as opposed a
3 nonorthodox institution?

4 A. That was not the conversation.

5 Q. What about wearing a kippa?

6 A. Yarmulke, kippa.

7 Q. Can you tell the jury what that is?

8 A. It's a skull cap that men wear during
9 traditional Jewish services. So that was the
10 conversation about it should men have their heads
11 covered when they are in the Bait Man Ross
12 [phonetic], which is the -- our -- it called Bait
13 Man Ross is actually for learning, but it's also the
14 campus is where we kept the torah scrolls, and there
15 were services held there.

16 Q. I pulled up I'm going to try to do a side
17 by side comparison here one of the several drafts of
18 the resolution during this time period that was
19 never signed and it's been admitted into evidence as
20 Exhibit 921. I want to direct your attention to the
21 first resolution of the one that wasn't signed. It
22 states the first resolution of the board meeting
23 dated December 13, 2007, be amended and restated as
24 follows. Do you see that?

25 A. Yes, I do.

1 Q. But that language isn't in the March 2008
2 that was signed, was it?

3 A. I don't believe so, no.

4 Q. So the March 2008 resolution is not
5 intended to amend or restate to the extent it's
6 inconsistent the December 2007 resolution is it?

7 MR. JONES: Objection urine assumes facts
8 not in evidence.

9 BY MR. LEVEQUE:

10 Q. I didn't hear your answer?

11 THE COURT: Hang on Mr. Schiffman. I lost
12 the train of that question.

13 BY MR. LEVEQUE:

14 Q. To your knowledge, Mr. Schiffman -- we can
15 agree that this language that was in a draft about
16 the first resolution being amended and restated is
17 not in the March 2008 resolution, correct?

18 A. Yes.

19 Q. To your knowledge, if the March 11, 2058,
20 res Lewis was intended to amend and restate the
21 December 1, you would expect to see that language in
22 the March 2008 resolution, wouldn't you?

23 A. This was drawn up by attorneys.

24 MR. JONES: Your Honor. Lacks foundation.

25 THE COURT: That was his answer is it was

1 drafted by counsel, so it doesn't matter.

2 BY MR. LEVEQUE:

3 Q. Go to Exhibit 212. I will just pull it up
4 because it's already been admitted. Trying to get
5 to the treasurer's report here talking about the
6 loan. There it is.

7 Do you remember Mr. Jones questioning you
8 about this report from the treasurer in these
9 minutes?

10 A. Yes.

11 Q. All right. Nothing in these minutes said
12 that this loan was guaranteed by Mr. Schwartz, does
13 it?

14 A. Does not say that.

15 Q. How do you know? Did you look at the loan
16 to see if it was guaranteed or is that just what
17 someone told you?

18 A. This was talking about the new loan or the
19 old loan?

20 Q. The purported old loan.

21 A. The old loan I saw the paperwork in that.

22 Q. It's not been produced in this case, has
23 it?

24 A. No.

25 Q. And there is nothing in these minutes

1 Mr. Jones made a point I'm showing that Mr. Schwartz
2 was present in this meeting. Do you remember that?

3 A. Yes.

4 Q. And again this is the meeting from June 12,
5 2007, approximately two months before he passed
6 away. There was a discussion about this loan, but
7 there certainly isn't any discussion about
8 Mr. Schwartz back off that loan, is there?

9 A. Not in here.

10 Q. And there was no demand made against the
11 estate for repayment of that loan, was there?

12 A. No there was not.

13 Q. And it was not in the petition that was
14 filed that you verified, was it?

15 A. No.

16 Q. Prior to the 2010 letter that was May 2010
17 that Mr. Schwartz sent the board, to your knowledge,
18 did anyone at the school notify Jonathan that the
19 school changed its corporate name to the Adelson
20 Educational Campus?

21 A. No, I'm not aware of that.

22 Q. To your knowledge, did the school notify
23 Jonathan that it entered into a naming rights
24 agreement in December 2007?

25 A. I don't believe it did.

1 Q. You mentioned the phrase fiduciary
2 responsibility in Mr. Jones' examination of you. Do
3 you understand that my client Jonathan Schwartz also
4 has a fiduciary responsibility as the executor of
5 the estate?

6 A. I do understand that.

7 Q. To your knowledge, actually let me ask you
8 this question. About the lawsuit that precipitated
9 the removal of the name from the building. Who
10 filed the lawsuit first?

11 A. The school filed the lawsuit.

12 Q. Is a building a legal entity, to your
13 knowledge?

14 A. I can't answer that.

15 MR. JONES: Object to the form.

16 BY MR. LEVEQUE:

17 Q. Do you know one way or the other?

18 A. I don't want to guess at legal terms.

19 Q. Let me ask you this. The petition that the
20 school filed that you verified was in May of 2013,
21 correct?

22 A. Yes.

23 Q. And at that time there was no legal entity
24 known as the Milton I. Schwartz Hebrew Academy,
25 correct?

1 MR. JONES: Object to the form of the
2 question your again lacks foundation.

3 THE COURT: If he knows.

4 THE WITNESS: I don't know.

5 BY MR. LEVEQUE:

6 Q. We did look at the amendment to the
7 articles of incorporation that changed the corporate
8 name to the Dr. Miriam and Sheldon G. Adelson
9 Educational Institute in March 2008, correct?

10 A. Yes.

11 Q. Let's assume for a moment that the check
12 was made out to Milton I. Schwartz Hebrew Academy in
13 May of 2013. Okay?

14 A. Yes.

15 Q. How is the bank going to cash that check?

16 A. We actually had the department state I'm
17 not sure what the terminology is we actually had
18 many names that we were doing business under.

19 Q. So you were doing business under the Milton
20 I. Schwartz Hebrew Academy?

21 A. That was, I believe, one of the things
22 still registered.

23 Q. The building that was demolished that had
24 Dr. Lubin Saposhnik's name on it, what was is
25 demolished for?

1 A. To build the new campus.

2 Q. A specific building, or do you know?

3 A. It actually became a parking lot. And two
4 new gyms were built.

5 Q. In 2008 when you gave the tour, I think it
6 was in August 2008, with Jonathan Schwartz, did you
7 ever tell him that there was no longer a corporate
8 name of the school as the Milton I. Schwartz Hebrew
9 Academy?

10 A. That did not come up in the conversation.

11 Q. Did you tell him that the naming rights
12 agreement, the one in December 2007 changed the name
13 of the middle school to the Adelson middle school?

14 A. Did not.

15 Q. I believe you testified that the attorney
16 that you gave -- I think it was you gave the Sabbath
17 letter to when you were doing your due diligence to
18 determine whether there was a naming rights
19 agreement, prior one that was Max Couvillier; is
20 that correct?

21 A. That's correct.

22 Q. And Mr. Couvillier's firm was the law firm
23 hired to file the petition; is that correct, the
24 petition to compel the distribution of the \$500,000?

25 A. Yes.

1 Q. Who paid that bill?

2 A. The school paid the bill.

3 Q. Did the school get reimbursement for the
4 payment of that bill?

5 A. No.

6 Q. Who is paying for the fees for this
7 litigation right now, do you know?

8 A. I have no idea.

9 Q. The construction loan, the \$45 million
10 construction loan, that was secured by the property,
11 correct?

12 A. Technical pieces, I don't want to guess. I
13 believe it was, but I really don't want to guess.

14 Q. I don't want you to guess. Let me see if I
15 can rephrase the question.

16 Did you have any understanding with respect
17 to, if the school defaulted on that loan, if the
18 bank would come in and take the property?

19 A. Again, I don't remember the technical
20 pieces of it. I say that to you because I was in
21 the middle of trying to get students, the school
22 opened and we had lots of people handling those
23 pieces for me.

24 Q. In your opinion would it be unusual for a
25 loan of that sides to be not secured by property?

1 MR. JONES: Object Your Honor lacks
2 foundation.

3 THE COURT: Again his understanding through
4 his experience and knowledge.

5 THE WITNESS: I can tell you that my home
6 in White Plains would be taken by the bank if I
7 didn't pay. It's the best I can answer that.

8 BY MR. LEVEQUE:

9 Q. Fair enough.

10 You would agree with me that there was no
11 other feasible way of paying off that \$45 million
12 loan other than a donation by the Adelsons?

13 A. Absolutely. Only way to pay it off was a
14 donation.

15 Q. By the Adelsons, correct?

16 A. Yes.

17 Q. There was no other donors out there that
18 would be willing could come up with nearly as much
19 money, to your knowledge?

20 A. The gift is unprecedented in the
21 independent school world.

22 Q. So to your knowledge, Mr. Schiffman, with
23 respect to the claims in this case, the only promise
24 or obligation in your knowledge that has not been
25 fulfilled by Mr. Schwartz is the payment of the

1 bequest through the will; is that correct?

2 A. That's the only piece of paper that I read
3 that has the half million dollars.

4 Q. Are you aware of any other information that
5 you obtained in board meetings or conversations with
6 Victor Chaltiel or Mr. Adelson that would lead you
7 to believe that there were any other obligations
8 that Mr. Schwartz had that he did not satisfy?

9 A. Only from conversations. I don't have -- I
10 never read anything.

11 Q. Nothing in writing?

12 A. Right.

13 Q. Nothing reflected in the board minutes,
14 correct?

15 A. Right.

16 MR. LEVEQUE: Court's indulgence, Your
17 Honor.

18 THE COURT: Okay.

19 BY MR. LEVEQUE:

20 Q. You previously said -- I might be
21 paraphrasing correct me if I'm wrong you would love
22 to see this case resolved; is that correct?

23 A. That's right.

24 Q. Do you believe it was fair for the school
25 to remove Milton's name from the school?

1 MR. JONES: Your Honor I don't know if I
2 need to make an objection to that.

3 THE COURT: Sustained.

4 MR. LEVEQUE: With that, I conclude my
5 examination.

6 THE COURT: Mr. Jones.

7 MR. JONES: Three minutes? I think I have
8 three questions.

9 EXAMINATION

10 BY MR. JONES:

11 Q. I have got three notes to myself I want to
12 follow up on, and that's it -- hopefully, that will
13 be it.

14 You said you are not aware of any other
15 agreements or other reasons that Mr. Adelson might
16 have voted to take down the name, right?

17 A. Right.

18 Q. That doesn't mean there weren't other
19 reasons that Mr. Adelson had for taking down the
20 name?

21 A. Only ones that I'm aware of.

22 Q. Mr. LeVeque showed you the resolution from
23 March 11, 2008, and it said -- showed you that it
24 had -- it was different than the resolution from
25 December of 2007?

1 A. Yes.

2 Q. Rather than waste the jury's time since
3 they have seen them 40 times the very first
4 resolution on each of those days, first resolution
5 in December of 2007, and the first resolution in
6 March of 2008, those are the same subject, aren't
7 they, they both relate to authorizing Mr. Chaltiel,
8 and I can bring them up for you and the jury?

9 A. No.

10 Q. Those both specifically relate to naming
11 rights contract and authorizing Mr. Chaltiel to sign
12 a naming rights contract, right?

13 A. That is correct.

14 Q. So the fact that they talk about other
15 things at that March meeting doesn't take away that
16 they were also talking about the same thing at the
17 March meeting in part as they were talking about in
18 December, would you agree with that?

19 A. I would agree.

20 Q. Only other question I have is Mr. LeVeque
21 asked you if you ever specifically told Mr. Jonathan
22 Schwartz when you met with him at any time,
23 including going way back to August of 2008, that
24 there was going to be the Adelson middle school,
25 right?

1 A. That's correct.

2 Q. And I think you said no I don't remember
3 saying that?

4 A. I don't remember saying it.

5 Q. We talked about some of these things
6 before, but was this -- was the school doing
7 anything to keep that information secret?

8 A. It was up on our website.

9 Q. Was it also in a press release that went
10 out in the newspaper that we already saw today?

11 A. Yes.

12 Q. That we talked about?

13 To your knowledge, was the school
14 interested in getting out to the public the fact
15 that there was a new Adelson middle school, the fact
16 that there was a new Adelson high school, was that
17 something that when the opening occurred in 2008,
18 was that something that the school wanted to pub
19 size as much as it could?

20 A. The best thing to do to have students in a
21 high school is to have students in a middle school
22 who want to stay and go to the high school.

23 Q. Do you believe -- and this is just based on
24 what you understood was a press release that was
25 provided by the school, that anybody who read the

1 paper could have easily seen that the Adelson -- one
2 of the schools was going to be called the Adelson
3 middle school in early -- or certainly by August
4 of 2008?

5 MR. LEVEQUE: Objection. Misstates the
6 evidence.

7 THE COURT: Overruled.

8 MR. LEVEQUE: The article was
9 October 2000 --

10 THE WITNESS: Yes.

11 BY MR. JONES:

12 Q. If they would have read the paper they
13 would have seen that press release?

14 A. Yes.

15 MR. JONES: No further questions. Thank
16 you very much.

17 THE COURT: Ladies and gentlemen, this is
18 your opportunity -- Mr. Schiffman, as we have told
19 you, resides out of state and we will be saying
20 good-bye to him. He is on his way home. This is
21 your chance to ask questions. I do see some
22 questions.

23 THE WITNESS: How does this work?

24 THE COURT: What's going to happen is the
25 marble is going to bring me the written questions

1 from the jury. I will talk to counsel. If it's a
2 question we can ask you, I will read it and you will
3 answer, if you can, the question the way it's
4 written. I can't ask you anything other than the
5 question the way its written.

6 THE WITNESS: That's a great system.

7 THE COURT: Just a couple minutes here. We
8 will be right back with you.

9 (Bench conference.)

10 THE COURT: Mr. Schiffman, as I explained
11 the court can only ask you questions of fact so
12 these -- I can't ask you about any legal conclusion
13 so we are asking you for facts. Got some good
14 questions for you here from the jurors. The first
15 one from Sarah? Seat 9 is why did you not respond
16 to Jonathan Schwartz letter in 2008 since the school
17 was still named as MISHA.

18 THE WITNESS: At that time in 2008, I asked
19 our board to take on all correspondence details. I
20 was in the process of -- had a brand-new school, I
21 had students I had all other responsibilities. So I
22 asked Victor Chaltiel if he would do responses,
23 because it was a board issue, not a management
24 issue.

25 THE COURT: The next question -- and these

1 are from William Hall in seat 4. When seeing the
2 Sabbath letter, did you believe that Milton Schwartz
3 make an attempt to have a school named after him in
4 perpetuity?

5 THE WITNESS: I don't believe that he did.
6 I believe there was a situation at hand that you
7 need to know at the time the school was in financial
8 trouble and he did step forward to take care of the
9 finances at that particular time, but I didn't think
10 it had to do with naming rights in perpetuity of the
11 school.

12 THE COURT: There is a subpart of to
13 question.

14 Did the Milton I. Schwartz Hebrew Academy
15 and the Adelson high school coexist for some more
16 time because of marketing strategy by Kay Lau &
17 Associates, or more because of concern related to
18 the aforementioned letter?

19 THE WITNESS: It was all to do with
20 marketing of the school and to bring together the
21 campus as one.

22 THE COURT: Thank you.

23 Another subpart to that question, again,
24 from Mr. Hall.

25 The naming rights agreement with the

1 Adelsons explicitly mentions middle school and high
2 school both, not elementary. Is this because of the
3 Sabbath letter you found?

4 THE WITNESS: When those agreements were
5 signed, we didn't even know the Sabbath letter
6 existed. We are talking about a distance of about
7 five or six years. Sabbath letter came much later.

8 THE COURT: Question number one from
9 Giovana Corona in seat 8 is: Mr. Schiffman, can you
10 please clarify what it takes for a school to be
11 accredited?

12 There are some subparts, but just generally
13 what it takes for accreditation.

14 THE WITNESS: You have to present yourself
15 to our accrediting body. Has to be only not for
16 profit schools cannot be a profit center. Case in
17 point the Challenger schools in town those are for
18 profit schools including Las Vegas day. For our
19 accrediting body you have to prove you are not for
20 profit, that you are meeting your mission and that
21 you are acting -- you are helping the students in a
22 very -- not rigorous program but providing them with
23 the best qualities that you can afford, as well as
24 that you have a governing board and that you will
25 adhere to the rules and regulations of the national

1 association of independent schools. So that's our
2 accrediting. All schools you can get accrediting.
3 By the way, there are accrediting bodies where you
4 can buy accreditation. It's sad to say, I won't
5 tell you who but there are some schools in town that
6 you send them a couple hundred dollars and you fill
7 out a one page form and you are accredited.

8 THE COURT: I think you answered this part,
9 but I will read it to you and you can tell me if you
10 think you have answered it.

11 What are the requirements a school must
12 meet to be accredited and remain in compliance?

13 THE WITNESS: I think I answered that
14 question.

15 THE COURT: The "remain in compliance"
16 part.

17 THE WITNESS: The remain in compliance part
18 is actually -- even though you are reviewed every
19 year you have to file a report with the accrediting
20 body. You have to be open to visits and also in the
21 state of Nevada, you have to have a license. And we
22 for our accrediting body, we have our license and,
23 then we have to present that also to the accrediting
24 body. It's a very strenuous process. It takes just
25 to do the preliminary report takes eight to nine

1 months. You don't get it. While I was here, I'm
2 sorry to say it went up to Anchorage Alaska trying
3 to credit the first school there the. They didn't
4 get it because actually it was their finances. But
5 it's a very arduous thing if I can, Your Honor, if
6 you are a parent, take a look at who is accrediting
7 your kid's school.

8 THE COURT: That's another question, then,
9 similar from Ms. Corona.

10 In the state of Nevada who is the
11 accrediting board for a private school and is it the
12 same as for public schools?

13 THE WITNESS: No. Public schools, which I
14 spent 28 years in, is accredited by a different
15 organization body. Excellent to do that. And here
16 in the state of Nevada they have wonderful ones.

17 But here in the state of Nevada, I'm sorry
18 to say, that charter schools, parochial schools,
19 for-profit schools all have a different accrediting
20 body. In the Las Vegas Valley there are only three
21 schools that meet the criteria for our
22 accreditation, that's the Adelson Campus, the
23 Meadows, and Alexander Dawson. And we have to go --
24 we actually have to climb some pretty high
25 mountains. And in the state, there is only one

1 other school in Reno. That's it. We need this
2 accrediting.

3 THE COURT: So finally does the name of a
4 school matter when it comes to accreditation and if
5 it does, why?

6 THE WITNESS: No, it doesn't matter. As
7 long as you call yourself something that's open and
8 honest, you can't -- if I may real quick, I sat on
9 the accrediting body for this organization -- after
10 getting beat up they said come on and join us. We
11 had a school in Montana that was -- they had Bible
12 in their name, and we found out they didn't have
13 anything to do with bibles. They didn't have
14 anything to do with religion. So we actually pulled
15 their accreditation, but other than that, no. It
16 wouldn't make a difference.

17 THE COURT: And some follow-up questions
18 from seat number 9, Mr. Schiffman, please correct me
19 if I heard you wrong, but did you say you
20 recommended the campus be under one name? Why is
21 that?

22 THE WITNESS: We wanted a campus because
23 when people came to the campus we wanted to be pre-K
24 for 12 for the campus so we would actually have the
25 difference divisions inside of it. I felt it was

1 important for marketing, for identification and also
2 to cut out confusion with families. I want
3 everybody coming to the Adelson Campus by the way is
4 we operated as a campus. We had the same dining
5 room facilities, sports facilities and it was all
6 shared. We had kindergartners eating with 12th
7 graders.

8 THE COURT: You said you were responsible
9 for naming rights in the process. Did you notice
10 the missing minutes? Was that brought up in any of
11 the board meetings and what was the resolution if
12 not one?

13 THE WITNESS: I presented it to our
14 attorneys. We brought in. We brought people going
15 back and forth. I had discussed it with some board
16 members who were around at that time but those
17 minutes were never found and I don't know why.

18 THE COURT: Question number three, was
19 Davida Sims also included in other actives? Why do
20 you think she kept using the old letterhead in 2010
21 and '11, even though the corporation was now named
22 Adelson as of March 21, 2008?

23 THE WITNESS: First time I saw that. And I
24 can only conjecture -- let me go back. Davida also
25 taught. She is an attorney she taught a law class

1 for us. She ran the law program for us so we
2 actually had a mock trial club. She was in charge
3 of development, he had to raise money as I said
4 before I was embarrassed to see what she did and I
5 did not know that until today.

6 THE COURT: The fourth and sub parts in
7 here is when the building was being demolished that
8 had Dr. Lubin's name, did you or any other board
9 member bring up the legal obligation that the school
10 had to keep Dr. Lubin's name on the building? You
11 said it was a court order.

12 THE WITNESS: There was a court order.
13 What transpired is that the legal name actually
14 specified the building it had to be on. It
15 specified where it was going to be located so
16 therefore that agreement became null and void. And
17 I hate to tell you, Tamar Lubin was very generous
18 when she and I met about that.

19 THE COURT: All right. Counsel,
20 Mr. LeVeque follow up.

21 MR. LEVEQUE: Just one.

22 EXAMINATION

23 BY MR. LEVEQUE:

24 Q. I guess I should have asked this. When did
25 you find the Sabbath letter?

1 A. When we were looking through the files to
2 find out about the naming rights.

3 Q. I think you testified that it was much
4 later, much after the December 2007 naming rights
5 agreement was entered with the Adelsons?

6 A. That was not -- I did not find the Sabbath
7 letter at that time. It was later when I was
8 looking through the files when we were originally
9 hired Max Couvillier.

10 Q. So the review of the letter and giving it
11 to Mr. Couvillier was essentially hindsight that was
12 several years after the naming rights agreement was
13 entered with the Adelsons, correct?

14 A. Yes.

15 MR. LEVEQUE: Thank you.

16 THE COURT: Mr. Jones.

17 EXAMINATION

18 BY MR. JONES:

19 Q. Just on the same subject, Mr. Schiffman.
20 In other words, Milton Schwartz was -- well, the
21 Sabbath letter was dated from years before when you
22 found it?

23 A. Right.

24 Q. I think the jury has seen it, 1996.

25 A. Right.

1 Q. Did anybody ever tell you or suggest to you
2 that that Sabbath letter was somehow or other an
3 enforceable contract for naming rights?

4 A. No.

5 Q. And so even though you found it years
6 later, that's the only thing you ever saw that would
7 indicate what -- even if it was wasn't a contract
8 some contract that talked about Milton Schwartz
9 naming rights?

10 A. I was asked by the attorneys for any type
11 of things that came up and I came across it and said
12 I'm not sure and attorneys said not a contract.

13 Q. And by the way, that was in the school
14 files, so it was a part of the files that the school
15 had?

16 A. Yes.

17 Q. So it was there for anybody on the board
18 including Milton Schwartz to get if they wanted to
19 get it when Milton was alive he could have asked
20 to go look for that letter, right?

21 A. Yes.

22 MR. JONES: I have nothing further.

23 THE COURT: Ladies and gentlemen of the
24 jury we appreciate you staying extra late it is
25 noted Mr. Schiffman is happy to go home to New York

1 we are going to meet again tomorrow at 1 and we will
2 be back on schedule. See you tomorrow at 1:00 p.m.

3 During this recess, you are admonished not
4 to talk or converse among yourselves or with anyone
5 else on any subject connected with this trial; or
6 read, watch or listen to any report of or commentary
7 on the trial or any person connected with this trial
8 by any medium of information, including, without
9 limitation, to newspapers, television, the internet
10 and radio; or form or express any opinion on any
11 subject connected with the trial until the case is
12 finally submitted to you.

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003897

EXHIBIT 6

In the Matter Of:
Schwartz vs Adelson Educational Institute

TRIAL TRANSCRIPT

August 30, 2018

003899

003899

ROUGH DRAFT TRANSCRIPT

REALTIME AND INTERACTIVE REALTIME TRANSCRIPT

ROUGH DRAFT DISCLAIMER

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3 realtime and is in rough draft form, please be aware
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5 line number when comparing the realtime screen, the
6 rough draft, rough draft disk, and the final
7 transcript.

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10 screen and the uncertified rough draft transcript
11 may contain untranslated steno, reporter's notes,
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003902

1 THE MARSHAL: Court is back in session.
2 Please be seated.

3 THE COURT: Good afternoon.

4 MR. JONES: Good afternoon.

5 MR. FREER: Good afternoon.

6 THE COURT: All right. So where were we.
7 Are we ready to get working a different witness.

8 MR. JONES: I think we are ready to proceed
9 Your Honor. Mr. LeVeque and I were having a
10 discussion about scheduling.

11 THE COURT: Appreciate the fact that you
12 have been able to put most of your case on already
13 you would have called different witnesses but, you
14 know, you need some time.

15 MR. JONES: Right. So we were talking
16 about witnesses called tomorrow. I think we have an
17 agreement it's going to be five witnesses assuming
18 we get done with both witnesses we have five
19 tomorrow you have three and we have two.

20 MR. LEVEQUE: Yes.

21 THE COURT: Is one of your three
22 Mr. Schwartz.

23 MR. JONES: They decided to put him ban on
24 today is my understanding so Rabbi Wyne and
25 Mr. Schwartz today. Tomorrow it's former board

1 members, Ventura, Dorit Schwartz, and Dr. Pokroy.
2 And then I was going to call Dr. Lubin and Phil
3 Kantor, current board member. So we have been
4 trying to figure out if we can get everybody done
5 there is some scheduling issues and of course,
6 Mr. Kantor, you know, brought up the point that he
7 being Jewish he needs to be home before sundown and
8 sundown is not 5:00 but he lives in Summerlin he is
9 very concerned that if he went late that he would
10 not get home in time. So those are I assume
11 concerns that other witnesses have as well.

12 THE COURT: I have a consideration for you.
13 To cut down on time lost to lunch, we could order
14 lunch so they don't have to leave they get half an
15 hour to sit back in their jury room to eat a
16 sandwich box.

17 MR. JONES: I think whatever we could do
18 because I don't want to be in a position to rush my
19 case and potentially compromise my client's rights.

20 THE COURT: Sure.

21 MR. JONES: That is a concern.

22 THE COURT: I understand. So that's what I
23 thought is that maybe that might be one way to save
24 us a little bit of time, an hour to an hour and a
25 half like we typically do.

1 MR. LEVEQUE: That makes sense.

2 THE COURT: If we bought them lunch you
3 have to agree to that we can order it through the
4 count and that would be part of the cost of the
5 bill. But if you are in agreement that will save us
6 half hour or 45 minutes or maybe even longer
7 potentially.

8 MR. LEVEQUE: Okay. Yeah.

9 MR. JONES: We would be agreeable to that
10 Your Honor to get this done.

11 THE COURT: At least a half an hour maybe
12 more for some time with witnesses. And then that
13 seems like the best option. I haven't thought about
14 them being home at five I should have thought about
15 that from last week, it was a problem. Are you
16 willing to agree just as they were available because
17 didn't you say Mrs. Schwartz is only available in
18 the afternoon.

19 MR. LEVEQUE: That's my understanding, Your
20 Honor. Sherry just came in and came back out. She
21 is the keeper of the schedule my understanding is
22 that it's got to be after 12 or 1230 tomorrow.

23 THE COURT: We could certainly accommodate
24 that.

25 MR. JONES: I'm happy to try to do that

1 Your Honor. I haven't talked to Mr. Saposhnik. I
2 haven't talked to him at all about his mother,
3 whether she is available tomorrow or not. And I
4 need to talk to Mr. Kantor about that as well
5 because we didn't know he was going to be called
6 until tomorrow until really yesterday evening. That
7 was even a possibility. The only concern I have is
8 I would what not want to call anybody out of order
9 if it compromises my right to bring a rule 50 rule,
10 which I'm going to do at the close of their case in
11 chief. The rules say if I call a witness then I
12 have blown my Rule 50 rights. If that precludes me
13 from calling a witness out of order in their case in
14 chief, unless there is an agreement on the record
15 that that's not going to prejudice my rights to the
16 Rule 50.

17 MR. LEVEQUE: I think that's something I
18 would need to talk with my client and Mr. Freer
19 about.

20 THE COURT: Okay.

21 MR. JONES: I understand that. That's
22 fine. The only point I would make is that --

23 THE COURT: Yes. At some point we have to
24 cut off and allow another party to have their
25 opportunity, so...

1 MR. JONES: I'm going to, Your Honor, put
2 on the record that if my opportunity is truncated,
3 there's has not been, I'm going to move for a
4 mistrial if I'm unable to put on the case as fully
5 as I believe is appropriate for my client's rights.

6 THE COURT: I understand.

7 MR. JONES: So I want to make sure that's
8 clear to everybody going in, so to speak.

9 THE COURT: I mean, it's not an uncommon
10 thing at all to put on cases in just when witnesses
11 are available. We do it all the time. And jurors,
12 they understand if you tell them, you know, we are
13 not done yet because we are going to take a witness
14 because they are available now. Jurors, they can
15 follow that. They don't have any problem with that.
16 This idea that you have to put your case on all in
17 one peace jurors can follow. You have a group of
18 ten really smart people over there.

19 MR. JONES: It is a technicality but
20 unfortunately it exists.

21 THE COURT: You are correct it is in the
22 rules.

23 MR. JONES: The only thing I would also ask
24 is that we be told the court and we be told within
25 the next half hour or something because we would

1 have to make arrangements. I need to let them know
2 as soon as possible.

3 THE COURT: We will take a moment here to
4 make that decision. We will get a record made.

5 So to advise the jury that there will be
6 two witnesses today, this afternoon. We have five
7 more witnesses. We believe we can do them tomorrow.
8 And due to religious constraints, needing to make
9 sure people could be home in plenty of time for
10 their religious observances, that we are going to
11 have lunch brought in, they will eat here and that's
12 going to save time. Hopefully nobody is planning on
13 spending a hour and a half on some Starbucks
14 excursion.

15 MR. LEVEQUE: Is that what happened?

16 THE COURT: That's what happened last time.

17 MR. LEVEQUE: Okay.

18 THE COURT: They ended up taking a half
19 hour. It's not as easy as it looks. It's right
20 outside the back door, but you can't get back in.
21 It's a problem. So we can see if we can finish at
22 five, but they will be needed on Tuesday to listen
23 to jury instructions and the arguments of counsel.
24 I do have -- I think I have a set, Mr. LeVeque that
25 you sent a long time ago.

1 MR. LEVEQUE: But that was before -- that
2 was a long time ago so we are going to be revising
3 those.

4 THE COURT: Lorna even printed them. I was
5 reading them. I thought there was some places where
6 there was conflicts.

7 If that's it, we can go ahead and bring in
8 the jury. I think maybe at the first break maybe
9 would tell them or do you want me to do it? I don't
10 want you to sit there thinking about it you --

11 MR. JONES: First break is fine with me.

12 THE COURT: Then that gives them a while to
13 think about it instead of listen to you.

14 MR. LEVEQUE: Okay, Your Honor.

15 THE COURT: I think we have a plan. If you
16 guys can just take a couple minutes. Ron, wait a
17 minute or two to bring the jury in. Let us know one
18 way or the other how we are going to organize
19 witnesses. If it's understood that somebody is only
20 available in the afternoon, then they are not going
21 to be able to testify unless there is a way to
22 stipulate. Witnesses are just going to be taken in
23 the order available due to our time constraints.

24 MR. LEVEQUE: I don't know if that was bad
25 or not, but are we on the record?

1 THE COURT: No.

2 (Off the record.)

3 THE MARSHAL: Please be seated.

4 THE COURT: We are back on the record.

5 Record should reflect presence of counsel and their
6 clients. Jurors have been inquiring with Mr. Lee if
7 they can stay late and finish. I asked Mr. Lee to
8 explain that due to religious considerations we need
9 to observe, we will be unable to stay really past 5.
10 So, unfortunately, they will be coming in on Monday.

11 MR. FREER: Tuesday.

12 THE COURT: Tuesday.

13 So they are aware of that. And that we are
14 also going to order them lunch and they will be
15 eating here. So we will do that to try to make sure
16 they get out of here but unfortunately we have told
17 them that.

18 MR. JONES: So you can have Mr. Ventura on
19 tomorrow morning.

20 MR. LEVEQUE: Ventura can go on in the
21 morning.

22 MR. JONES: So he can go first.

23 MR. LEVEQUE: Okay.

24 MR. JONES: I'm trying to get ahold of
25 Mr. Saposhnik. Phil Kantor, I spoke to him on the

1 way over here.

2 THE COURT: Who is that?

3 MR. JONES: He is a transactional lawyer.
4 He said that he is the one that told me he had
5 physical therapy in the afternoon and had to be home
6 by sundown. If he can make it in -- well if we have
7 Dr. Lubin on after Sam Ventura assuming she can do
8 it, maybe we could have Mr. Kantor on after that at
9 like 11, I don't know. How long do you think you
10 are going to have with Sam Ventura.

11 MR. LEVEQUE: 45 minutes.

12 THE COURT: Double that so it's an hour and
13 a half.

14 MR. LEVEQUE: True.

15 MR. JONES: So I have to do some cross so
16 we won't get to Mr. Kantor before -- until after
17 lunch. There is no way. Assuming that Dr. Lubin
18 can even do it in the morning so I don't know if we
19 can put Mr. Can core on after lunch.

20 THE COURT: I'm not a morning person but I
21 will tell you do you think it would make a
22 difference to start at 830.

23 MR. JONES: I don't think it will make a
24 appreciable difference.

25 THE COURT: Just short lunch to give them

1 more time? That's at least 45 minutes that
2 otherwise we would lose to going out for meals. And
3 as you said lost a half hour right now. If you
4 think you can make that work did just explain to the
5 jury that in order to get all of these witnesses in
6 in the time they are available and to be respectful
7 of the religious observations we are going to have
8 to finish at five so we will be ordering them lunch
9 and we will be taking witnesses in just various
10 orders as they are available. We are going to call
11 them as they are available. And we will tell you if
12 it's an estate witness or a school witness. We will
13 make that clear to them.

14 MR. LEVEQUE: We can go at some degree past
15 five tomorrow. I mean, sundown is 7, 7:30.

16 THE COURT: Right but I don't think anybody
17 would be comfortable past 5:30.

18 MR. JONES: It's not an issue for me, but
19 some of us who it is.

20 THE COURT: It is not for us.

21 MR. JONES: That's why we had to put this
22 trial on when we did because we are going to run
23 into high holy days.

24 THE COURT: There is reasons why we have to
25 get this done now. So I think we can -- I think

1 maybe 5:30 --

2 MR. JONES: I know Mr. Kantor specifically
3 said he is not comfortable with that, and he would
4 have to move his physical therapy anyway. So I
5 would ask that I be allowed -- if we are going to
6 have to do this, and I'm going to have to make
7 accommodations in my case, because I'd rather not
8 put them on in my case. Even if they agreed to it,
9 that doesn't help me. I have to do my Rule 50
10 motion at some point tomorrow, Judge. I don't know
11 if the parties even will stipulate I do it on
12 Tuesday morning but I don't know how that works.

13 THE COURT: I don't have all day Tuesday.

14 MR. JONES: When are we going to settle
15 instructions and a jury form.

16 THE COURT: That may be us staying late on
17 Friday. We have to send the jury home because we
18 don't need anybody else.

19 MR. JONES: That's going to take a while, I
20 have a sneaking suspicion.

21 THE COURT: I had a 91st birthday party to
22 go to, but I was there for the 90th.

23 MR. JONES: That's a tough one to miss.

24 THE COURT: I was there for the 90th.

25 MR. LEVEQUE: My suggestion is maybe to see

1 what pans out with your two witnesses and see what
2 their availability is.

3 MR. JONES: Like I said, I'm confident
4 Dr. Lubin is going to take a while. Mr. Ventura is
5 going to take 45 minutes on their side. I'm going
6 to take at least a half hour, and I suspect more
7 like 45 minutes. So that puts us hour and a half,
8 then we have another hour and a half for noon --

9 THE COURT: Yes.

10 MR. JONES: -- for Dr. Lubin. Dr. Lubin is
11 not going to take an hour and a half. It makes no
12 sense to me to bring Mr. Kantor before noon because
13 he is not going to go before then. No way.

14 THE COURT: I think if you are going to
15 bring in Ms. Schwartz are you for sure bringing her
16 and she is only available afternoon.

17 MR. LEVEQUE: That's my understanding, any
18 time afternoon. But if Mr. Kantor needs to get on.

19 THE COURT: That's not a really long
20 witness, correct?

21 MR. JONES: Mr. Kantor isn't either, Your
22 Honor.

23 THE COURT: Maybe an hour each.

24 MR. LEVEQUE: That would be a pretty fair
25 estimation.

1 MR. JONES: I would agree with that.

2 THE COURT: 10 or 15 minutes. These folks
3 are inquiring minds.

4 MR. JONES: Dr. Pokroy, I assume, I don't
5 have a whole lot of questions for him. I don't know
6 if you do.

7 MR. LEVEQUE: He is short.

8 MR. JONES: I will be happy to tell
9 Mr. Kantor to be available right after lunch and
10 then however we slot him in. I know he doesn't want
11 to have to sit down here, but he has a 4:00 physical
12 therapy appointment he would like to not miss. So
13 if it's possible to get him on right after lunch
14 that would be optimal. I'm trying to be sensitive
15 to everybody's schedule here to but I think we are
16 the ones going out of our way to accommodate.

17 THE COURT: Absolutely. And we appreciate
18 the fact that rather than bringing back Mr. Adelson
19 or Mr. -- even if they had been available,
20 Mr. Schiffman that we got them done. We got them
21 done.

22 MR. JONES: Your Honor are we on the
23 record.

24 MR. LEVEQUE: We are making accommodations
25 here too.

1 MR. JONES: You have.

2 THE COURT: We have been working together
3 and worked so far for their purposes and my
4 purposes, I think we can explain it and I can
5 remember who was whose witness. And I think we can
6 make it work but just with the understanding that
7 this is why we have to do it. We have a immaterial
8 willed amount of time available and we have these
9 considerations I forgot we can't go the following
10 week.

11 MR. JONES: Your Honor are we on the
12 record.

13 THE COURT: Yes. Next week I only have the
14 one day.

15 MR. JONES: Your Honor, just then I would
16 like to be clear. If I am taking witnesses -- my
17 witnesses in their case in chief, I want to make
18 sure it's clear on the record that there is a
19 stipulation that I have not waived my Rule 50 rights
20 for that motion.

21 MR. LEVEQUE: We agree with that.

22 THE COURT: All right. So it's clear that
23 we are doing this as an accommodation. We want to
24 be respectful of witnesses personal schedules.
25 These aren't parties these are just witnesses and

1 they certainly have religious considerations we need
2 to be sensitive to as well so we will try to make
3 that. I know the jury does not want to come back on
4 Tuesday. They would stay late, but the parties
5 would not be able to stay.

6 MR. LEVEQUE: If we went four hours on
7 Tuesday do you think it might make some sense to
8 have a time limit for closing arguments?

9 MR. JONES: It's going to take a half hour
10 to charge the jury. So if we start at 1:00, that
11 should give each side two hours, basically. I don't
12 think I'm going to need two hours.

13 THE COURT: Let's see if they can continue
14 motions in limine. See if we can move those. I
15 will e-mail them and see if we can.

16 We could maybe move that and start earlier
17 and get our jury instructions settled and we can do
18 some tomorrow night and then finishing them up and
19 do the settling on Tuesday. We will see if we can
20 get a couple things vacated.

21 MR. LEVEQUE: Don't you have motion
22 calendar on Tuesday?

23 THE COURT: Yes, I do.

24 MR. JONES: I think, realistically, I
25 always understood a jury trial takes precedence over

1 virtually anything.

2 THE COURT: We will see if we can get it
3 moved.

4 The jury is out there waiting for us.
5 Rather than wait until later. I will just make that
6 record for them because, unfortunately they were
7 already asking the question.

8 Ladies and gentlemen we are going to go
9 back on the record in P061300. Presence of counsel
10 and counsel stipulate to the presence of jury.

11 MR. LEVEQUE: So stipulated.

12 MR. JONES: Yes, Your Honor.

13 THE COURT: I understand from Mr. Lee we
14 have figured out we have a time problem. We have a
15 time problem. We have been in here working figuring
16 out how to reschedule witnesses so we can finish all
17 of the testimony by 5:00 p.m. tomorrow. We need to
18 be sensitive to the religious observations that some
19 of our witnesses have tomorrow, being particularly
20 important to them, that they be home by sundown.
21 So, unfortunately, we can't work until midnight. I
22 have had jurors state into midnight and they are
23 happy do it but unfortunately this time we can't do
24 it. At this time we believe we can finish all of
25 our testimony but we are going to ask that we be

1 able to bring you in a box lunch instead of going
2 out for lunch I know you would rather go out of the
3 building but that way we only have to take half hour
4 for lunch and that would save us some time. We
5 ballparked and it and we think we can fit all these
6 people in. We will be taking people out of order
7 though I will be sure to tell you whether it a
8 witness for the estate or a witness for the school
9 because they are going to be come in when we can get
10 them. These are independent witnesses, they aren't
11 parties. They are just people coming in on their
12 own time. We will take them when we can get them so
13 we can finish everything by five. That's our goal.
14 Maybe by 5:30, but we really can't go much later
15 than that. They have to be home by sundown. So
16 apologize for that. If you figure that out that
17 means yes we are going to be here on Tuesday. I
18 apologize. We really thought we were going to be
19 done, but it just took a little longer. This is a
20 30-year story and it's taking a little longer to
21 tell it. We apologize in advance we are going to be
22 very efficient now. Mr. LeVeque, Mr. Freer.

23 MR. FREER: I am, Your Honor.

24 THE COURT: Mr. Freer is going to call his
25 next witness.

1 MR. FREER: Your Honor, the estate calls
2 Rabbi Wyne.
3 Whereupon --

4 RABBI LORNE WYNE,
5 having been first duly sworn to testify to the
6 truth, was examined and testified as follows:

7 THE WITNESS: Yes, I do.

8 THE CLERK: Please be seated. And if you
9 will state and spell your name for the record,
10 please.

11 THE WITNESS: It's Lorne Wyne, L-O-R-N-E,
12 W-Y-N-E.

13 THE CLERK: Thank you.

14 EXAMINATION

15 BY MR. FREER:

16 Q. Good afternoon, Rabbi. You are a rabbi.
17 Can you please explain what that term involves for
18 the jury, just so they have a little background
19 information?

20 A. Sure. A rabbi is a -- a rabbi is an
21 individual who spends a lot of time learning Torah
22 learning Jewish tradition, Jewish laws, Jewish
23 customs. In my case, it was a seven and a half --
24 post high school, seven and a half-year process at
25 the beginning. And then you get tested on all sorts

1 of areas of Jewish law and customs. And even more
2 importantly, when it comes to rabbis how to
3 administer law and implement it. And then you get
4 your test and you get something called Semikhah,
5 which is rabbinical ordination. You have to
6 continue learning, as the years go on, in updating.

7 In the certificate of Semikhah, it says
8 that the person is someone who fears God and lives
9 with a particular character that's consistent with
10 Jewish values and Jewish laws and that kind of
11 stuff.

12 Q. Thank you, Rabbi. When were you ordained?

13 A. 1991.

14 Q. How long have you resided in Las Vegas?

15 A. Since -- it's 24 years.

16 Q. Puts us about what, 1994?

17 A. '94, August '94.

18 Q. Why did you come to Las Vegas?

19 A. Jews. Jews. I had an opportunity --

20 when -- a national organization that oversees Jewish
21 day schools called Torah Masoretic [phonetic] called
22 me and they said have you ever thought about going
23 to Vegas? And I said what's in Vegas and they said
24 70,000 Jews, and nothing going on. And so it was an
25 opportunity to literally start up -- start a

1 community. I'm from the orthodox genre. At the
2 time there was only one orthodox rabbi in Las Vegas.
3 At the time, I was the second. And the only school
4 that had Jewishness attached to it at the time was
5 the Milton I. Schwartz Hebrew Academy. So it was to
6 build a community.

7 Q. And you mentioned the Milton I. Schwartz
8 Hebrew Academy. Did you know Milton I. Schwartz?

9 A. I knew him very well.

10 Q. When did you first meet Milton?

11 A. I came in August; I must have met him in
12 September, right after I got here.

13 Q. September of '94?

14 A. Yeah.

15 Q. Did you have a relationship with Milton?

16 A. Yes. It was -- Milton was very involved.
17 At that time Dr. Lubin was the head of the Milton I.
18 Schwartz Hebrew Academy. And things in the
19 community were not so great. So being as my mission
20 was to be the rabbi of a synagogue and create
21 schools and create Jewish infrastructure we saw an
22 opportunity to start another Jewish day school and
23 the Milton was also part of that. So that led me to
24 Milton and so on and so forth and we found out that
25 we had other connections from other people.

1 Q. You just said things in the Jewish
2 community weren't so great. What do you mean by
3 that?

4 A. There was not a lot of positive feeling
5 between the Jews that were around -- some of the
6 Jews that were around and the school as its role as
7 a Jewish school. So as an orthodox Rabbi, I felt we
8 can start another school and there was room for it
9 and Milton and I became friend and he was
10 instrumental in pulling people like Dr. Pokroy and
11 Leon Steinberg and some of the other people that
12 were around, the Kantors. I'm just saying names
13 that were spoken up front. All of these people were
14 involved, Sam Ventura, at that time, as well in the
15 founding of another school the Jewish community day
16 school. Milton was the president -- second
17 president of that and the major benefactor of that
18 school. That school lasted five years. It was a
19 project that was very involved with Milton in
20 founding the school, getting the school's director
21 to come. That all happened in my house. And
22 between my house and his office. And then after
23 things were smoothed out with the Milton I. Schwartz
24 Hebrew Academy, so then there really wasn't a need
25 for the school that we had started and at the time

1 another school had also sprung up in which case the
2 community day school closed down and that was it.

3 Q. That was a long answer.

4 A. Long answer.

5 Q. Gives us good background. I will try to
6 give you some more direct questions and then we can
7 kind of go through there. So you mentioned that
8 Milton I. Schwartz helped you with this Jewish
9 Community Day School. Do you have a date that you
10 and he started working on that?

11 A. It was around or about September 1st. It
12 was very, very soon.

13 Q. Of '94?

14 A. Of '94 -- yeah, it was probably around
15 there, maybe October 1st. You know, but it was in
16 there.

17 Q. And you mentioned that Milton was a major
18 benefactor of that school during that period of
19 time?

20 A. Yes.

21 Q. And what did that -- what did his
22 involvement entail?

23 A. Well, he was year in and year out he was
24 probably announced a gift of hundred thousand
25 dollars at the dinners. He was I believe the second

1 president. Len Gallatz [phonetic] was the first
2 president. Milton's idea of fundraising was to give
3 more money, to be charitable. So he continued that
4 for several years. And then was very -- he was also
5 in the involved in my synagogue as well.

6 Q. Let's talk about your synagogue. What's
7 the name?

8 A. Young Israel Aish, A-I-S-H, of Las Vegas.

9 Q. When was that founded?

10 A. That was founded in '95, September '95.

11 Q. You said Milton contributed about a hundred
12 thousand dollars a year. Were there any other
13 contributions that he made with respect to the
14 Jewish Community Day School?

15 A. So he gave many others which I don't know
16 the details of, but I'm just -- in terms of
17 physically -- in terms of publicly, yes. He gave
18 more than that.

19 Q. Do you have any personal knowledge of any
20 opportunities that Milton was presented with in
21 terms of naming rights with respect to the Jewish
22 Community Day School?

23 A. Yes. We had a discussion at one point. I
24 think this was the fourth year in the school where
25 we could purchase an existing school that was no

1 longer around. And it was going to cost a million
2 dollars. And I had spoken with Milton about it.
3 And Milton said he was willing to go forward with
4 that project, on condition that it would always be
5 called the Milt I Schwartz community day school.

6 Q. You said forever. Did he use the term in
7 perpetuity?

8 A. I don't recall if it was this or that. But
9 the tone was, and the understanding was, this is how
10 he we would name it and that's that.

11 Q. You said the school was eventually closed
12 down. Just so we have a particular date, do you
13 recall when the school was closed down?

14 A. I want to say June of '90 or 91 -- I'm
15 sorry, two thousand -- 2000, 2001. School was
16 around five years.

17 Q. What were the circumstances of it being
18 closed down?

19 A. We had a director of school Dr. Jerry
20 Cutleroff, and he had he had -- so he had -- Sam
21 Ventura was the president that succeeded Milton, and
22 things financially were very difficult for the
23 school. And when Dr. Cutleroff accepted a job in
24 Memphis, so then at the board meeting, the board was
25 faced with the decision to either find a new head of

1 school and run it as a basically as a competing
2 school to the Milton I. Schwartz Hebrew Academy or
3 just kind of fold this one down? As much as we had
4 not gone forward with our own property yet. So then
5 the decision of the board was to fold up the school.

6 Q. Now moving on to Young Israel Aish -- it
7 was pronounced Aish?

8 A. Yes.

9 Q. Did Milton ever contribute funds to young
10 Israel?

11 A. Yes, he did.

12 Q. Tell me about that.

13 A. So Milton -- you know we had a personal
14 relationship. He would come to a class every
15 Tuesday in Jewish law that I think the reason he was
16 there not because he was actually following it but
17 it reminded him of when he was growing up because he
18 was very nostalgic in that regard. He was the head
19 of an educational sanctuary in that room, and that's
20 where the class was. And pretty much every year
21 Milton would come up and say, you know, now -- he
22 knew that things for synagogues were always difficult
23 in January, February -- January, February, March.
24 Those are the dry season for us so to speak. And he
25 always knew that we were in need of funds and every

1 year he with come and say you know like, for
2 example.

3 MR. JONES: Your Honor, I'm going to
4 object.

5 THE COURT: He's not quoting him.

6 THE WITNESS: Actually, I can give an exact
7 quote with that conversation.

8 BY MR. FREER:

9 Q. That would be hearsay. Your understanding
10 from your discussions with him would be sufficient.

11 A. Would be you need -- right now you need
12 some money and how much would you like and I would
13 say a number and then he would cut it as he
14 typically -- he would say do you want it and I would
15 say yes and it would be a generous donation every
16 year.

17 Q. In or around 2004 did there ever come a
18 time where Milton and the synagogue had any type of
19 donation and consideration for naming rights?

20 A. Yes. That's when he -- that's the case I
21 was specifically thinking of when he named the
22 educational sanctuary.

23 Q. Tell me how that donation and the naming
24 came about.

25 A. Well, it was one day after class in that

1 room. He came over --

2 Q. For the record do you remember when this
3 event occurred?

4 A. No, I don't remember the month. It was
5 probably -- it was probably around January or
6 February. Just because that seemed to be when he
7 would bring it up.

8 And there was no name on that -- on the
9 outside of that room and it's the second largest
10 room in the synagogue and there is a big board in
11 the front of the synagogue of all of the different
12 people that have dedicated different rooms and he
13 said how much do you wanted for the -- you know for
14 that sanctuary and I said how about \$50,000 for that
15 room, and he said --

16 MR. JONES: Your Honor I'm trying --

17 THE WITNESS: Okay.

18 BY MR. FREER:

19 Q. The gist of the deal?

20 A. The gist of the deal was he said how about
21 18 -- do you want it or not? Yes. And thank you
22 very much. And with that was the understanding that
23 his name would go on the board and his name -- or
24 just on the board and it would go on a plaque that's
25 sitting at the doorway of that room.

1 Q. And what's the name of that room?

2 A. The Milton I. Schwartz and Abigail Schwartz
3 educational center.

4 Q. Just for the jury's benefit what is an
5 educational sanctuary?

6 A. It's a big room that we now use for
7 additional services, prayer services on the sabbath
8 and classes during the week.

9 Q. What is your understanding of how long
10 Milton's name is to remain on that room?

11 A. As long as the building is there.

12 Q. So forever?

13 MR. JONES: Objection. That misstates the
14 testimony, I believe.

15 THE COURT: Yes. So perhaps Rabbi can
16 clarify.

17 THE WITNESS: Yes, as long as he dedicated
18 the room and the room is named after him, and there
19 will always be recognition as long as that building
20 is used for Young Israel Aish, and there is no
21 reason to ever assume that it would not be used for
22 that synagogue. His name will stay on the outside
23 of that door and on the main plaque in the foyer of
24 the synagogue.

25 BY MR. FREER:

1 Q. Do you have any understanding as to why
2 Milton wanted his name on that particular room?

3 A. Yes.

4 Q. What is that understanding?

5 MR. JONES: Your Honor, just for the
6 record, I believe this testimony would have to be
7 based on hearsay, so I would object on that ground.

8 THE COURT: Well, to the extent that the
9 Rabbi can answer this based on -- I mean, there is a
10 privilege but I'm going to assume that Mr. Schwartz
11 has waived for his father any.

12 MR. FREER: Any --

13 THE COURT: In this case, Rabbi, that's
14 what it's called with respect to the privilege. So
15 to the extent he can't quote, he can certainly tell
16 him what he -- us what he knows from his
17 relationship, religious relationship with Milton.

18 MR. JONES: Your Honor just for the record,
19 I don't want to go on too much. I would object to
20 this whole line of questions relevance. Relevance
21 to this case.

22 MR. FREER: We are tying it into the 2004
23 which is the same time period that the will was
24 executed.

25 THE COURT: So under the safe harbor we can

1 go that far.

2 BY MR. FREER:

3 Q. So in 2004 --

4 A. Yes.

5 Q. -- what if any understanding did you have
6 with respect to why Milton would want his name
7 associated with a gift?

8 A. Yes. Milton and I had a discussion. We
9 were having lunch. And he asked me --

10 Q. What was your understanding of the
11 discussion?

12 A. I will tell you. I'm going to tell you my
13 answer -- I'm going to tell you his question to my
14 he I will tell you my answer and my belief is that
15 he understood my answer and my belief is that he
16 accepted my answer. And then afterwards, he named
17 that room in the synagogue.

18 Q. What was your answer?

19 A. So his was what's the significance? I said
20 there were two significances to naming a building
21 after you in a synagogue school whatnot, one is a
22 earthly significance one is a heavenly significance.
23 An earthly significance is that it inspires other
24 people -- when a person's name is on the building,
25 it inspires other people to give to the building; it

1 tells the world what your value is. And most
2 importantly, it tells your children, grandchildren
3 and great grandchildren "This is important to you.
4 This institution is important to you and what it
5 represents is important to you and that's your
6 value."

7 And I specifically said to him, your
8 children and grandchildren will be connected to
9 whatever you put your name on. On a heavenly
10 significance, it is that the problem with being dead
11 in Judaism is that we can no longer perform any of
12 the commandments and, therefore, no longer develop a
13 closer relationship with God in this world, which
14 gives us, what we consider, our portion in the world
15 to come, heaven.

16 So what we do is we do commandments today
17 for the sake of our eternity. When you name
18 something after yourself, you are giving yourself
19 eternal merit in the next world because that --
20 again, that is the value or whatever commandments
21 are being fulfilled through that institution you
22 know are permanently attached to your identity in
23 which case God rewards you, not only in this world,
24 but in the next world and I explained that to him
25 and I believe that was his understanding.

1 MR. JONES: Again Your Honor for the record
2 I believe relevance in this case to that testimony.

3 THE COURT: Overruled.

4 BY MR. FREER:

5 Q. Now you are familiar with in 2006, 2007 the
6 construction of the high school, the Adelson School
7 that was then on the Milton I. Schwartz Hebrew
8 Academy, correct?

9 A. Yes.

10 Q. Did you have any discussions with Milton
11 concerning any naming rights with respect to that?

12 A. No.

13 MR. FREER: Court's indulgence for one
14 moment.

15 MR. LEVEQUE: I will pass the witness Your
16 Honor.

17 Thank you.

18 THE COURT: Mr. Jones.

19 MR. JONES: Good afternoon, Rabbi. Again,
20 my name is Randall Jones. We met when you came into
21 the courtroom today.

22 THE WITNESS: Right.

23 MR. JONES: Nice to meet you.

24 By the way, good a afternoon.

25 Your Honor, may I proceed?

1 THE COURT: You may.

2 EXAMINATION

3 BY MR. JONES:

4 Q. Rabbi, I guess I would start with where you
5 left off with Mr. Freer. You talked about this
6 conversation you had with Mr. Schwartz, Milton
7 Schwartz in 2004, right, about the naming rights and
8 the significance of naming rights?

9 A. Yes.

10 Q. I think you told the jury that there were
11 two things about those naming rights that were
12 significant. If I got -- understood you correctly
13 you said -- you explained all this to Milton
14 Schwartz?

15 A. Yes.

16 Q. One was that an earthly significant and the
17 other one was a heavenly significant?

18 A. Yes.

19 Q. And I believe you told this jury that you
20 are of the belief any way that Mr. Schwartz
21 understood -- If you will excuse the expression --
22 the significance of that discussion?

23 A. Yes.

24 Q. Is that the first time you had a
25 conversation about that, about that subject?

1 A. I definitely recall in group discussion
2 talking about the concept in terms of the class.
3 But that was the first time I had the discussion
4 with him because he had asked me a direct question.

5 Q. So fair enough. By the way, do you
6 understand what the significance of that testimony
7 is, how it has any relationship in this case?

8 A. I have an understanding. I don't know if
9 it's the correct one or the full one.

10 Q. So you have your own understanding of that.
11 Let me ask you. You told me you had this
12 conversation with Mr. Schwartz in 2004 and you told
13 the jury that you moved here in 1994, right?

14 A. Correct.

15 Q. So as you sit here today, you have no idea,
16 no idea, whether Mr. Schwartz had the understanding
17 about the naming -- significance of naming rights
18 both earthly or heavenly in 1989, correct?

19 A. No, that's not correct.

20 Q. Well, you didn't know him in 1989, did you?

21 A. Oh, no I'm sorry. I was thinking -- that
22 is correct. I did not know him until -- that is
23 correct.

24 Q. So in 1989, you have no idea what
25 Mr. Schwartz's knowledge was, if any, about the

1 significance, the earthly and heavenly significance
2 of naming rights, right?

3 A. Inasmuch as I did not know him then the
4 answer at that time is no. However, when I did get
5 to know him, one thing that was very clear about
6 Milton is that he grew up in an orthodox
7 neighborhood where these concepts are discussed very
8 commonly and the from his -- from his family. And I
9 think this plays a very big part of it. A big part
10 of his connection to me was because I represented a
11 consistency with his youth and how he grew up.
12 Whereas you are correct in 1989 I did not know him
13 so I could not say anything. What is clear to me is
14 that many of the concepts that we discussed
15 throughout our relationship were not new to him at
16 all.

17 Q. I appreciate that. That's an interesting
18 story. But my question is really more specific,
19 very specific. So if you could -- I just want to be
20 clear about this. You have no personal knowledge,
21 other than -- meaning other than speculating, you
22 don't know for a fact if Milton Schwartz understood
23 the significance you just sprained to the jury about
24 naming rights, correct?

25 A. I have no personal knowledge before I knew

1 him, correct.

2 Q. Thank you.

3 By the way, you and I just met today in the
4 courtroom. Have you had a chance to meet with and
5 talk to either Mr. Freer or Mr. LeVeque about this
6 case prior to today?

7 A. Okay, now I'm going to sound really silly.
8 Which one is which?

9 Q. Mr. LeVeque on your left, Mr. Freer on your
10 right?

11 A. I think we met. We spoke about this stuff.
12 It was a long time ago.

13 Q. Before your deposition? You had your
14 deposition taken?

15 A. I remember having my deposition taken. And
16 I really don't remember. Sounds -- I remember
17 people. But I think we did. I think we did. I
18 don't know. I don't know. I mean in other words
19 there really was not a -- in other words, these are
20 the gentlemen running the case. I think we have
21 met, spoke. Their assistant. You know, has
22 e-mailed me but I really have not had a lot of
23 contact.

24 Q. How about Mr. Jonathan Schwartz, do you
25 know Mr. Jonathan Schwartz?

1 A. I know Jonathan.

2 Q. Have you talked to him about this case?

3 A. Not nearly as much as I would have liked
4 to. I really -- I don't know Jonathan and I have
5 spoken over the years did we have not spoken for
6 quite some time and for quite some time before that.

7 Q. Thank you.

8 Now, you indicated with Mr. Freer, the one
9 on the right --

10 A. Thank you.

11 Q. That Mr. Milton Schwartz helped you start
12 the Jewish Community Day School in around 1994 or
13 shortly thereafter when you came to down, right?

14 A. Yes.

15 Q. And would you agree with me, Rabbi, that
16 that was the time that Mr. Schwartz was no longer
17 associated with the -- what I will refer to as the
18 Hebrew Academy. Do you recall that? There was a
19 rift I think as you put it in your deposition, there
20 was a rift between Dr. Schwartz and Dr. Lubin and
21 ears on the board of the Hebrew Academy?

22 A. Yes. I don't know if he never spoke, never
23 walked in, but there was a rift.

24 Q. Okay. And that's why he came to talk to
25 you about starting another -- well, actually as I

1 understood your testimony in deposition, that's why
2 the times was good for you because you wanted to
3 start another Jewish day school?

4 A. Yes.

5 Q. And Mr. Schwartz at that time was having
6 issues with what had been called the Milton I.
7 Schwartz Hebrew Academy, and so he was talking with
8 you about let's start another one, right?

9 A. Correct.

10 Q. And isn't it true that you knew during that
11 time period that there was this rift that existed
12 that Mr. Schwartz's name was taken off the school?

13 A. No. As a matter of fact, my first
14 awareness that Milton's name was taken off the
15 school was extremely recent. It was actually I
16 think when I first heard about this -- about this,
17 you know what we are doing here today, which -- and
18 it was shocking to me. It was completely shocking
19 to me that his name was taken down.

20 Q. So you weren't aware of that. Mr. Schwartz
21 never mentioned that to you?

22 A. No.

23 Q. So if there was testimony in front of this
24 jury that he was very upset and talked to everybody
25 that he knew about how upset he was that his name

1 had been taken off that school, he never mentioned
2 that to you during that time period?

3 MR. FREER: Objection. Vague as to time.
4 I want to make sure we understand what period of
5 time.

6 THE COURT: 1994.

7 MR. JONES: That's correct, Your Honor.

8 BY MR. JONES:

9 Q. 1994, 1995, he never said that once to you?

10 A. No -- I mean, no. I was always -- it's the
11 Milton I. Schwartz Hebrew Academy. It runs in one
12 sentence that's how I have always known it.

13 Q. Now, you did have -- as I understand it,
14 you did have discussions with Mr. Schwartz as to why
15 his name was on the school, is that true?

16 THE COURT: By school you mean the Hebrew
17 Academy.

18 MR. JONES: I'm sorry let me rephrase the
19 question. Actually I think I got it wrong.

20 BY MR. JONES:

21 Q. Isn't it true Rabbi that you did not have
22 any specific discussions in terms of why he gave the
23 money to the Hebrew Academy what was called the
24 Milton I. Schwartz Hebrew Academy, isn't that true?
25 You do did not have any specific discussions with

1 him about that?

2 A. That is correct.

3 Q. You did have an understanding that he gave
4 some money, right?

5 A. Yes.

6 Q. But you didn't know how much he gave,
7 right?

8 A. Correct.

9 Q. And you did not understand what the terms
10 or conditions were of his gift to the Milton I.
11 Schwartz Hebrew Academy; is that right? Whether it
12 was forever or for a limited period of time, he
13 didn't discuss that with you?

14 A. I never had a discussion, but the tone --
15 the understanding that was out there for myself and
16 I'm assuming anyone who is not intimately involved
17 in the discussions was that it is in perpetuity,
18 it's, you know, forever. I just want you to know,
19 it's so foreign in the Jewish world that you would
20 have a name on a school, a synagogue, an
21 institution, that the benefactor would give -- you
22 know, would give money, have their name attached to
23 the institution and then not have the name -- have
24 the name removed. As a matter of fact, I cannot
25 recall one other case that I have ever heard this

1 happening, ever. And I think the reason for that is
2 it just goes you know for us grad Tuesday is
3 something that has no statute of limitations. A
4 Rabbi would never take the name off of a synagogue,
5 a head of school -- I mean, obviously head of school
6 did, but such a thing is just it's not heard of.
7 This is the only case I have ever heard of.

8 MR. JONES: I didn't want to interrupt you
9 but I would move to strike as nonresponsive and pure
10 speculation.

11 THE COURT: To the extent that it was not
12 responsive to the question, I understand that's his
13 view, but he is not responding to the question. It
14 will be stricken.

15 BY MR. JONES:

16 Q. Rabbi, what I'm trying to ask you about is
17 information you know about, as opposed to what you
18 think might be the case.

19 A. Right.

20 Q. Thank you.

21 So you don't know what the terms and
22 conditions were with respect to his giving of that
23 money, correct?

24 A. Correct.

25 Q. Whether it was forever or for time on

1 the -- time the building existed or until the board
2 decided to change its mind? You don't have any
3 information on that, do you?

4 A. That is correct.

5 Q. Thank you. You never had any discussions
6 with Mr. Schwartz about what he promised and what he
7 had been promised in return, is that true with
8 respect to his naming rights in connection with the
9 Milton I. Schwartz Hebrew Academy?

10 A. Correct, I do not recall a specific
11 discussion.

12 Q. You did tell this jury that you had
13 discussions about Mr. Schwartz giving a million
14 dollars to the Jewish Community Day School, the
15 school you were starting, right?

16 A. Yes.

17 Q. And he said he was going to do that, right?

18 A. Yes, he was open to the idea.

19 Q. And so you told this jury in exchange for
20 that he wanted that school to be known as the Milton
21 I. Schwartz Jewish Community Day School?

22 A. Yes.

23 Q. If your understanding is he already had a
24 school named the Milton I. Schwartz Hebrew Academy
25 named after his so it's your testimony to this jury

1 he wanted a second school named after him, a second
2 elementary school named after him?

3 A. Yes. And that is standard practice by
4 people who are philanthropic.

5 Q. So he wanted --

6 A. Yes. I mean, again, I want to add one --
7 you might strike it. If one were to go to
8 Los Angeles you will see -- or any major Jewish
9 community you will see many institutions and schools
10 named after the same people because they are giving
11 money to many places and that's significant.

12 Q. Nothing ever came of that, right?

13 A. Correct.

14 Q. So there was no agreement reached, right?

15 A. Yes. It never came to fruition.

16 Q. You did talk about money that Mr. Schwartz
17 gave I think you said was it auto thousand or 25,000
18 for the educational sanctuary?

19 A. He ended up giving 18.

20 Q. How much?

21 A. 18.

22 Q. How much did he agree to give initially?

23 A. 18.

24 Q. 18?

25 A. I asked for something much larger than that

1 and he gave 18 thousand.

2 Q. Okay. What did you ask for originally?

3 A. You know, I think we had just -- I said --
4 at this moment I don't recall.

5 Q. Now, when Mr. Freer asked you very
6 specifically was that naming right, the Milton I.
7 Schwartz and Abigail Schwartz that's up there on the
8 wall in front of the educational sanctuary was that
9 for ever and ever in perpetuity. I heard your
10 answer, and you said, yes, as long as the building
11 is there; isn't that what you said?

12 A. Correct.

13 Q. So would you agree with me there is all
14 kinds of different naming rights -- let me put it
15 this way -- all kinds of different arrangements can
16 be made with respect to how long naming rights are
17 going to stay in place. Would you agree with that?

18 A. Sure.

19 Q. And the naming rights could be it will
20 state up until somebody puts up more money, right,
21 that's one way it could happen?

22 A. It could happen that way.

23 Q. It could be that as long as that building
24 is there your name will be on it you just described
25 what's going on at young Israel?

1 A. Could be.

2 Q. That's the deal with Mr. Schwartz at young
3 Israel A isn't that right?

4 A. No, the deal is when I accepted that
5 donation was that his name would be on that
6 educational sanctuary. Now, if we were to mow down
7 the building and rebuild it as something else so
8 then, you know, then what I would do is I would
9 probably put a plaque up thanking an initial
10 benefactor for the old building and then for the new
11 building, we would seek out other donations and
12 dedications.

13 Q. If somebody gave you a lot of money, you
14 would probably put their name up there for that --
15 where that new sanctuary was, right?

16 A. Right. What I --

17 Q. By the way, you didn't have anything in
18 writing with Mr. Schwartz on this sanctuary?

19 A. No.

20 Q. So that leads me to one other issue. You
21 already talked to the jury about other institution.
22 You just talked about going to Los Angeles and
23 seeing other institutions with naming things on
24 them. So you are familiar with those kinds of
25 agreements, right?

1 A. Yes.

2 Q. In fact I think you already told this jury
3 both Mr. Freer and me that you are very familiar
4 with those kind of agreements?

5 A. Correct.

6 Q. Seen them many times?

7 A. Yes.

8 Q. You have a very good understanding in your
9 mind what they typically involve, right?

10 A. Yes.

11 Q. But you never negotiated one of those kind
12 of agreements where naming rights of a building
13 yourself, have you?

14 A. That is correct.

15 Q. And you have never been a party to an
16 institution that has negotiated that kind of
17 contract, correct?

18 A. To its fruition, correct.

19 Q. I'm sorry incorrect?

20 A. Correct.

21 Q. That is correct?

22 A. Yes, in other words we had the discussion.

23 Q. But you have heard of those kinds of
24 contracts?

25 A. Yes.

1 Q. And so in a situation like Mr. Schwartz
2 had, it was anticipated there would be a naming
3 rights agreement entered into for the millions of
4 dollars, would you agree that that would of been
5 formalized typically?

6 MR. FREER: Objection. Calls for
7 speculation.

8 THE COURT: To the extent that he knows on
9 his own.

10 THE WITNESS: Not necessarily, no. No, not
11 necessarily. These -- a lot of these things are
12 done on good faith. You have a contributor who
13 loves the institution who loves the head Rabbi the
14 head of the school, the board, whatever. They
15 wanted their name to be, you know, passed on, to
16 inspire others. And it's -- a lot of it is a
17 handshake. When I named my building after the
18 people who donated the land, it was thank you so
19 much for the land, I'm going to put your name up on
20 the building. In other words, fantastic, thank you.
21 How do you want your name, this is what we want, in
22 the name of our father, whatever it is. That's how
23 a lot of them work.

24 BY MR. JONES:

25 Q. By the way, Rabbi, I'm trying to not cut

1 you off, but we are all working under a real time
2 crunch here. So to the extent you could be more
3 brief, I will put it that way.

4 THE COURT: What he is tactfully saying if
5 you answer just the question that's asked, thank
6 you. Do you know what time it is? Yes or no.

7 THE WITNESS: I'm not trying to elongated
8 I'm trying to make sure that the point I'm trying to
9 make is there for the jury.

10 BY MR. JONES:

11 Q. And the point you were trying to make is
12 that in Mr. Schwartz's case you wouldn't think that
13 a naming rights for the Hebrew Academy would be
14 formalized?

15 A. That is right.

16 MR. JONES: Can I publish Rabbi Wyne's
17 deposition, please.

18 BY MR. JONES:

19 Q. Do you remember we talked a little bit
20 about your deposition earlier. Do you remember
21 having your deposition taken?

22 A. Yes.

23 Q. And that was taken in an attorney's office,
24 right?

25 A. Yes.

1 Q. And there was a court reporter like our
2 court reporter that's over here sitting in the side
3 of the courtroom that's there, right?

4 A. Yes.

5 Q. And the court reporter put you under oath
6 like you were put under oath in this court, right?

7 A. Yes.

8 Q. And you promised to tell the truth, right?

9 A. Yes.

10 Q. And you understood your deposition would be
11 typed up later so you could read it?

12 A. Yes.

13 Q. All right. I asked you that question about
14 formalizations. Would you please look at your
15 deposition testimony on page 41 and read to yourself
16 lines 13 through 21. Let me know when you are done.

17 A. Okay.

18 Q. So in your deposition, which was taken on
19 July 25, 2016, you were asked this question: Okay
20 back to Mr. Schwartz's situation. Was it
21 anticipated that there would be a naming rights
22 agreement entered into for the million dollars?

23 Answer: Yes.

24 In other words it would have been
25 formalized.

1 Are you referring to -- maybe I
2 misunderstood you. You were referring to the
3 agreement that you were going to have for the Jewish
4 Community Day School?

5 A. Yes.

6 Q. Fair enough so then I misunderstood you.
7 Let me ask you. If Mr. Schwartz was going to give
8 you a million dollars for a naming right for that
9 school you would have made sure it was formalized
10 into a written contract is that your testimony?

11 A. No. Would I have made sure? If he would
12 want it, then I would have done it. But I wouldn't
13 have gone forward and said let's put it in writing.
14 It's a no-brainer for me.

15 Q. Let me ask you this question. When you
16 read your deposition starting at line 22 to yourself
17 to line 24. Do you see that?

18 A. Yeah.

19 Q. In connection with the million dollars that
20 you said Mr. Schwartz was going to give you, you did
21 say up above: In other words, yes, it was -- it
22 was -- it would have been formalized. The next
23 question was: By "formalized" you mean entered into
24 a written contract? And your answer is: Into a
25 written agreement, right.

1 Didn't you say that then?

2 A. If it's typed here, then I said it.

3 Q. Thank you. And that would be -- the reason
4 you would have wanted it in writing if he gave you a
5 million dollars for naming rights is so that bother
6 parties know what's expected he them?

7 MR. FREER: Objection misstates prior TAM.

8 MR. JONES: This is a new question.

9 THE WITNESS: You know -- Your Honor I'm a
10 little confused.

11 THE COURT: Okay ask Mr. Jones to rephrase.

12 THE WITNESS: I'm a little confused because
13 you are taking to -- I'm not -- you are asking on
14 the detail with the Jewish Community Day School and
15 I answered these question in the context of that
16 discussion that was happening under the -- you know
17 we did a deposition. Now we are having a different
18 discussion. So I just want to clarify. As I said
19 before, my assumption -- my assumption is that my
20 approach to donations is that it is good -- of good
21 faith. If the donor wants something formalized,
22 then I formalize it. And I believe -- and that's --
23 that's -- that's what it is. Are you asking
24 specifically, like if we were sitting down and
25 formalizing it? No, because we never got to that

1 point.

2 MR. JONES: Your Honor, again.

3 THE COURT: We will strike that. I think
4 perhaps we need to --

5 MR. JONES: I would like to.

6 THE COURT: Rephrase. Rephrase a direct
7 question.

8 BY MR. JONES:

9 Q. Rabbi, it's real simple. Didn't you
10 testify in your deposition that when you were
11 talking to Milton Schwartz about the million dollar
12 contract for naming rights for the Jewish Community
13 Day School, you said it would have been formalized
14 into a written contract?

15 A. That's what I testified. And.

16 Q. You have answered my question, sir?

17 THE COURT: Yes.

18 THE WITNESS: Okay.

19 THE COURT: Mr. Freer will have another
20 chance.

21 BY MR. JONES:

22 Q. Isn't it true that when you were asked so
23 both parties know what's expected of them, you
24 answered, exactly, yeah?

25 A. Yes.

1 Q. So the reason that you would have a written
2 contract for naming rights formalized into a
3 document is so the parties would know exactly what
4 was agreed to isn't that true?

5 A. Yes.

6 Q. And if naming rights were a part of an
7 agreement, in other words, you were entering into a
8 an agreement about naming rights forever, you would
9 want to clarify exactly what those rights were,
10 won't you?

11 MR. FREER: Objection. Vague. Calls for
12 speculation.

13 THE COURT: Overruled.

14 You can answer if you can.

15 MR. JONES: He has been doing that in
16 direct examination all over the place, Your Honor,
17 over my objection.

18 THE COURT: Go ahead.

19 THE WITNESS: What's your question?

20 BY MR. JONES:

21 Q. Sure.

22 You want to make sure that if you have a
23 naming rights agreement that's forever, that
24 everybody knows exactly what the terms are; isn't
25 that true?

1 A. That is the wise thing to do.

2 Q. Okay. Thank you.

3 Would you agree with me, Rabbi, that the
4 naming rights of the school itself, the overall
5 school -- let me backtrack a little bit here. Your
6 job -- part of your job, which I'm sure that part
7 you are not most fond of is trying to go out to the
8 community and get donations because you need that to
9 be able to grow your synagogue and to have different
10 programs and all kinds of things, right?

11 A. Correct.

12 Q. And so part of that process, you and many
13 institutions, including a lot of other types of
14 religious institutions, hospitals, colleges,
15 museums, they give naming rights to people, right?

16 A. Correct.

17 Q. And you have told this jury about naming
18 rights for the educational sanctuary that
19 Mr. Schwartz agreed to pay money for, right?

20 A. Yes.

21 Q. And so would you agree with me that an
22 institution, whether it be a synagogue or museum or
23 hospital, it has a limited number -- I know
24 sometimes administrators and managers get creative,
25 but they have a limited number of rooms and closets

1 and gardens that they can give naming rights to,
2 right?

3 A. Correct.

4 Q. Would you also agree with me that the --
5 probably the biggest one that any institution has,
6 religious or otherwise, is the over all name of the
7 property?

8 A. Yes.

9 Q. So would you also agree with me that name
10 away forever and ever and ever, it's very important
11 to the institution to know or to contemplate what's
12 going to happen in the future because you can't take
13 it back if you do it in perpetuity and you do it
14 under a contract, right?

15 A. Correct.

16 Q. So would you agree with me that it's very
17 important, you as a Rabbi, one of your
18 responsibilities would be to make sure if you are
19 going to give away that most valuable asset of that
20 institution, you are going to make sure that
21 everybody understands what the terms are and how
22 long it's going to last, what it entails and the
23 best way to do that is in a written agreement that
24 both parties sign; agree with that?

25 A. Yes, with a caveat.

1 MR. JONES: Thank you I have no further
2 questions.

3 THE COURT: Mr. Freer exam.

4 By the way in Nevada jurors get to ask
5 questions. We will ask the jury they may have
6 questions.

7 EXAMINATION

8 BY MR. FREER:

9 Q. I only have three questions the first one
10 being what was the caveat you wanted to discuss?

11 A. The caveat is you are dealing with a good
12 faith relationship where people understand what's --
13 you know, what you are doing. And it's not a
14 typical -- when you name a building, you name an
15 institution, a lot of times you are going to name --
16 give the name to someone, not only for what they
17 have done but you are naming them because it builds
18 a future connection, you know, for as long as you
19 want. So if that's your intention, it's not
20 necessarily true that you are going to overly
21 formalize and overly write down things. That's my
22 caveat.

23 Q. That leads into my second question.

24 You testified earlier, and I don't recall
25 if this part was stricken, that the written

1 agreement was largely at the request of the donor.
2 So is it your testimony that a naming rights
3 agreement would be in writing if it's requested by a
4 donor?

5 A. Correct.

6 Q. And if not, you operate on the good faith
7 concept?

8 A. Correct.

9 Q. With respect to the Jewish Community Day
10 School, let's discuss a little bit more. How far
11 along were you with respect to the purchase of that
12 property and the million dollars? Was it into any
13 kind of written contract phase?

14 A. No, it wasn't. We had identified the
15 property, figured out how much money we would need,
16 and then how were we going to do it. And because
17 Milton had named the school before, I mean, the rule
18 is if someone names a school once or if it's
19 anything, a synagogue once they are more likely to
20 do it again. That's, you know -- because that
21 obviously means that's their value. That's why I
22 went to Milton.

23 Q. Why did the school not purchase that
24 property?

25 MR. JONES: Objection, Your Honor.

1 Relevance.

2 THE COURT: Relevance, yes, but I will let
3 it go.

4 THE WITNESS: I actually don't recall.

5 BY MR. FREER:

6 Q. So Mr. Jones got his objection in.

7 A. Yeah, I mean.

8 THE COURT: Thanks that's fine.

9 MR. FREER: No further questions.

10 THE COURT: Thank you very much. Mr. Jones
11 any follow up.

12 MR. JONES: Very briefly, Your Honor.

13 THE COURT: Sure.

14 EXAMINATION

15 BY MR. JONES:

16 Q. One thing we can all agree with, even those
17 of us who are adversaries in this proceeding, is
18 that good faith is a wonderful thing. And the best
19 way to make sure that everybody remains in good
20 faith is, because things can be confused, right?
21 And people -- one person could have an understanding
22 in good faith; they could believe that this is what
23 my rights are. And the other person on the other
24 side of the equation, in good faith, can
25 legitimately believe something different, right?

1 Would you agree with that?

2 A. Yes.

3 Q. And so the best way to keep things so that
4 even if you are working in good faith, there is no
5 misunderstandings or confusion or bad blood down the
6 road is to simply put it in writing; isn't that
7 true?

8 A. It is wise.

9 MR. JONES: Thank you. I have nothing
10 further, Your Honor.

11 THE COURT: Ladies and gentlemen, your
12 opportunity, now that Rabbi has finished answering
13 questions from counsel, they may be allowed to ask
14 you questions related to facts. They can't ask you
15 any legal questions or religious questions,
16 necessarily, but I can ask you about the facts.
17 Give us a second. I will need to talk to the
18 attorneys about it.

19 THE WITNESS: Okay.

20 (Off the record.)

21 THE COURT: There are others. Again, I can
22 only ask you about questions of fact. So the first
23 with one is from juror 4, in seat number four: Is
24 the agreement between your land donor and the Aish
25 synagogue in writing or good faith?

1 THE WITNESS: Good faith.

2 THE COURT: And from the juror in seat No.
3 2, Cheryl Samlaska: In your testimony to Mr. Freer,
4 you stated that you told Milton Schwartz the naming
5 rights to the room in the synagogue would be 50
6 thousand dollars but he offered 18 and you accepted
7 that. And named the room after he and Abigail. If
8 someone offered you the 50 thousand dollars that you
9 asked for would you have taken that over
10 Mr. Schwartz's 18?

11 THE WITNESS: Does that mean that they are
12 standing over here like both in front of me at the
13 same time and one is saying 50 and one is saying 18?

14 THE COURT: You have to interpret the
15 question. So the way it was asked is: If somebody
16 else offered you \$50,000, would you take that
17 instead of the 18?

18 THE WITNESS: Not -- not afterwards. Once
19 I have taken the 18, I wouldn't consider any other
20 gift for it. If it came beforehand, my only -- the
21 only other consideration would be long term would
22 the person I knew that with Milton everything is a
23 long term thing not just I'm giving it to you now
24 and I'm going away. So if I would determine you
25 know what the truth is in the long run there will be

1 much more than this then I would take the 18 over
2 the 50.

3 THE COURT: The 18 over the 50?

4 THE WITNESS: Because in the long run, I
5 will have a relationship with this man for the next
6 30 years, and he is a generous man instead of a
7 one-shot deal.

8 THE COURT: I appreciate that, Rabbi.

9 Mr. Freer, Mr. Jones, questions on
10 follow-up with the jurors?

11 MR. FREER: No questions.

12 THE COURT: Did we get all of the jury
13 questions?

14 MR. JONES: I have no questions, Your
15 Honor.

16 THE COURT: Rabbi Wyne, thank you for your
17 time. You are excused.

18 It's only been an hour so rather than
19 interrupt that we should maybe take our break now.
20 If that makes sense we are going to start with
21 Mr. Schwartz so we can just go I think we will take
22 our break now so we could come back at quarter till.

23 During this recess, you are admonished not
24 to talk or converse among yourselves or with anyone
25 else on any subject connected with this trial; or

1 read, watch or listen to any report of or commentary
2 on the trial or any person connected with this trial
3 by any medium of information, including, without
4 limitation, to newspapers, television, the internet
5 and radio; or form or express any opinion on any
6 subject connected with the trial until the case is
7 finally submitted to you.

8 (Off the record.)

9 THE COURT: Let's go back on the record.
10 We have a question here from juror No. 7. He asked
11 some of the other jurors, and I would like to know
12 if you could say for certain whether the Tuesday
13 trial session will begin at 1:00 p.m., similar to
14 the other half days we've had. I have some make-up
15 quizzes and work to schedule with professors, and
16 early Tuesday morning is the only time it seems it
17 will work for my and their schedules.

18 I think so. Tamara is working to clear the
19 calendar so you can come in and finalize jury
20 instructions at 10. So that's exactly --

21 MR. JONES: I'm fine with that. Your
22 Honor. I think that as long as you can start
23 charging the jury by one, then I think we should
24 have both sides should have more than enough time.
25 But to be on the safe side -- there might be some

1 rebuttal on each -- I suspect there will be on each
2 side. That's going to take two hours each.

3 THE COURT: So do we think we can have some
4 jury instructions to look at over the weekend? Not
5 that I'm going to be working. I would read them.

6 MR. JONES: At least you will have them.

7 THE COURT: Yeah.

8 MR. JONES: We will he endeavor to get them
9 to you over the weekend.

10 THE COURT: We will give you an address to
11 send them to over the weekend.

12 MR. JONES: Thank you.

13 MR. LEVEQUE: All right.

14 MR. JONES: Just let us know so we can make
15 sure we get them to you Your Honor.

16 MR. LEVEQUE: Your Honor the ones we e-mail
17 I'm assuming you want draft with supporting case law
18 and eliminate that once we have finals.

19 THE COURT: Mr. Lee bring them in.

20 If there is something unusual about it, if
21 it's from one of the books, I don't need it. But if
22 it's like a case or something, that's helpful.

23 MR. LEVEQUE: Okay.

24 THE COURT: Were we still on direct of
25 Mr. Schwartz?

1 THE MARSHAL: Be seated.

2 THE COURT: We will go back on the record.
3 Record will reflect presence of counsel their
4 clients and the jury.

5 MR. JONES: So stipulated.

6 MR. LEVEQUE: So stipulated.

7 THE COURT: Our plan would be to start at
8 1:00 p.m. with what we call jury instructions or
9 charging the jury that's when we read the jury
10 instructions. And then counsel would then begin
11 immediately with their closing statements. So we
12 believe that in the period of between 1 and 5, 5:30,
13 we can be done. Shouldn't take anymore than that.
14 Yes, 1:00 p.m. would be the time to come in. We
15 certainly appreciate your accommodations. It was a
16 surprise. It was a surprise to us too but you can't
17 tell a 30-year old story -- so we appreciate your
18 patients with this. I think Mr. Jones, you were
19 going to resume.

20 MR. JONES: The examination of Mr. Shorts,
21 yes Your Honor.

22 ///

23 ///

24 ///

25 ///

1 THE COURT: Mr. Schwartz only because of
2 the number of days that have passed we will reswear
3 you.

4 Whereupon --

5 A. JONATHAN SCHWARTZ,
6 having been first duly sworn to testify to the
7 truth, was examined and testified as follows:

8 THE CLERK: State your name for the record.

9 THE WITNESS: A. Jonathan Schwartz.

10 THE COURT: You may begin.

11 MR. JONES: Thank you, Your Honor, and
12 ladies and gentlemen, and Mr. Schwartz.

13 EXAMINATION

14 BY MR. JONES:

15 Q. Good afternoon.

16 A. Good afternoon.

17 Q. When we broke the other night, we were
18 talking about some of these documents that
19 referenced naming rights for your father going back
20 to the 19 -- well, 1989, 1990. Do you remember
21 that?

22 A. Yes.

23 Q. If I could, I would like to first look -- I
24 tried anticipating this and be a little more
25 organized. Your counsel has been better at this

1 than I have. We have some of these binders up there
2 ahead of time so hopefully that will speed things
3 along.

4 If you could look at Exhibit 5, which we
5 looked at a lot. I just want to get an orient of
6 time frame again. So these are the articles that --
7 these are the bylaws. This is Exhibit 5. It's the
8 bylaws. It refers to naming rights in perpetuity,
9 right? It's on the very first page.

10 A. Right.

11 Q. Number one.

12 And we talked a little bit about this. If
13 you look at the second to the last page, again I
14 don't want to belabor this, it's where the article 8
15 of the article at the top, amendments. This is just
16 where it says: The board has the power to make,
17 alter, amend, and repeal the bylaws of the
18 corporation by a majority vote, right?

19 A. Correct.

20 Q. And this is one of the documents that you
21 pointed to in saying that this demonstrates that
22 your father had naming rights in perpetuity, right?

23 A. Correct.

24 Q. And as you look at that amendment -- excuse
25 me, article 8 of the bylaws, there is no limitation

1 of that stated in the amendment, right?

2 MR. FREER: Objection. Calls for legal
3 conclusion.

4 THE COURT: To the extent he is merely
5 being asked to look at the document and not make a
6 legal conclusion.

7 MR. JONES: Right.

8 BY MR. JONES:

9 Q. Literally would you agree with me
10 Mr. Schwartz that literally there is nothing stated
11 in article 8 of the bylaws that limits the ability
12 to make alter amend or repeal the bylaws there are
13 no words used --

14 A. Correct.

15 Q. So let's go back to Exhibit 3 which is the
16 resolution that talks about naming rights. This is
17 from 1990, August 22 of 1990 these were filed
18 secretary of state's office, official documents. It
19 says down below under paragraph 2, resolved:
20 Corporation be amended to change the language of
21 article one of said articles to read as follows.
22 This corporation shall be known as the Milton I.
23 Schwartz Hebrew Academy, right?

24 A. That's what it says.

25 Q. And there is nothing -- the words in

1 perpetuity do not exist in that resolution, right?

2 A. It works in could be junction with the
3 prior document.

4 Q. I'm sorry?

5 A. It works in conjunction with the bylaws.

6 Q. By the way, you do recall that the
7 resolution with respect to the Adelson foundation
8 specifically used the words "in the amendment with
9 the secretary of state in perpetuity" do you recall
10 that?

11 A. I don't remember.

12 MR. JONES: Shane, could you find that for
13 us? It's from May of 2008 and I can't remember what
14 exhibit it is. Josh, maybe you can find it for me.
15 It's a file for certificate of amendment with the
16 secretary of state's office.

17 BY MR. JONES:

18 Q. Sorry, Mr. Schwartz, for the delay. Let's
19 put this up on the screen and save a little time
20 unless you want to pull it up and look there
21 Mr. Schwartz, it's up to you. This is the amendment
22 to the articles of incorporation that were filed in
23 March 21 of 2008. It says there in the amendment
24 the words this corporation shall be known in
25 perpetuity as the Dr. Miriam and Sheldon G. Adelson

1 Educational Institute, right?

2 A. I see that it says that, yeah.

3 Q. Thank you.

4 Then let's look at Exhibit 112. If you go
5 back there, you will see that -- go down to the
6 third paragraph if you would, this is the reference
7 to the naming -- the original naming 1989 of the
8 school after your father. Do you recall that?

9 A. Yes.

10 Q. And you agree that the words in perpetuity
11 are not a part of that resolution, correct?

12 A. Not in this document.

13 Q. Then it --

14 A. Not in these minutes. It's a set of
15 minutes.

16 Q. Thank you not in the minutes. Thank you.

17 It says George Rudiak moved and the board
18 accepts with thanks the donation of Milton Schwartz
19 and Gertrude Rudiak -- George and Gertrude rude jack
20 and Paul something. Then it says the letter should
21 be written to Milton Schwartz stating that the
22 academy will be named after him.

23 Do you see that?

24 A. Yes.

25 Q. It doesn't say named after him in

1 perpetuity, does it?

2 A. This document doesn't, but the others do.

3 Q. Your father didn't have it in any of his
4 files a signed letter from the school consistent
5 with this reference, does it?

6 A. I don't know.

7 Q. Pardon me?

8 A. I don't know.

9 Q. You never found one, did you?

10 A. I haven't found one, no.

11 Q. You did find or Ms. Pacheco did find a
12 letter that she said your dad, Milton said he
13 prepared, he dictated to her, but it was never
14 signed as far as you know, correct?

15 A. I don't know which letter you are referring
16 to.

17 Q. Fair enough.

18 Now when we were here last week, I believe
19 we saw that the petition that you filed in
20 connection with this case where you said in that
21 petition under oath that your father was given
22 perpetual naming rights in consideration of \$500,000
23 that he gave the school, right?

24 A. Right.

25 Q. And then you said your deposition which the

1 jury also saw, that I think you said the agreement
2 using the word the agreement was my father would pay
3 500,000 and then he raised 500,000 for a total of a
4 million, correct?

5 A. That's what happened.

6 Q. And that's what -- okay. I don't need to
7 belabor that again.

8 You heard Mr. Schwartz say that it was --
9 initially say I believe in his testimony it was
10 500,000 that he understood, correct?

11 A. I thought I recalled him saying the same
12 thing, that it was 500,000 and that my dad raised
13 500,000. That's my recollection.

14 Q. So --

15 A. I believe we said the same thing.

16 Q. So you don't recall -- and the record we
17 will get that fore closing argument. But your
18 recollection isn't that he said -- changed what he
19 believed the terms were several times in his
20 cross-examination?

21 A. I don't.

22 Q. So you don't recall him saying at one
23 point, even, well, it was 500,000 that he gave and
24 there was some other amount, but he said there was
25 no definitive amount that your father had to raise?

1 A. I don't recall.

2 Q. Fair enough. Thank you.

3 But I assume you did hear Roberta Sabbath
4 testify and tell this jury that the number she
5 understood was \$1 million from your father?

6 A. I heard her say a million, but it seemed to
7 me that she wasn't clear on whether it was -- yeah,
8 I did hear her say a million.

9 Q. Would you agree that she would certainly be
10 in a position to know better than you what the
11 number was because she was there at the time?

12 A. 30 years ago, yes.

13 Q. I would like to show you Exhibit 134. I
14 don't think this is -- is this in evidence?

15 MR. JONES: Miss clerk is 134 in evidence?

16 MR. CARLSON: Yes it is.

17 BY MR. JONES:

18 Q. Then I would like to show you Exhibit 134.
19 We talked about this I believe I didn't remember if
20 it was in evidence or not. This was an affidavit --
21 a second affidavit that your father signed in
22 connection with the dispute with the other Hebrew
23 Academy board, right?

24 A. Let me read it.

25 Q. Sure. Take your time. If you look at

1 Paragraph 3 that would kind of help I think orient
2 you.

3 A. I recognize that this is an affidavit that
4 he signed 31st of March 1993. I don't recall what
5 it was in relation to -- in regard to, sorry.

6 Q. That's fair enough. It says in Paragraph 3
7 it's in support of an opposition to plaintiff's
8 motion for declaratory judgment and injunctive
9 relief?

10 A. I do.

11 Q. We will get to that document a little
12 later. That will refresh your memory.

13 Let's look at Paragraph 5 right now. It
14 says that "affiant," which was in reference to your
15 father, right?

16 A. Right.

17 Q. "Donated \$500,000 to the Hebrew Academy
18 with the understanding that the school would be
19 renamed the Milton I. Schwartz Hebrew Academy in
20 perpetuity."

21 Do you see that?

22 A. Which number are you pointing to?

23 Q. I'm sorry?

24 A. Which number? Oh, sorry. I see it
25 highlighted. I'm looking at the book.

1 Q. I thought I said paragraph 5. If I didn't,
2 I apologize.

3 A. I see it's highlighted, yes.

4 Q. Couple questions I have about that is would
5 you agree with me that your father didn't say he
6 donated 500,000 and raised 500,000 with the
7 understanding that the school would be renamed the
8 Milton I. Schwartz Hebrew Academy?

9 A. Later on in the affidavit it refers to him
10 raising additional funds.

11 Q. We will get to that but in that paragraph
12 he certainly doesn't say that he donated 500,000
13 plus raised 500,000 with the understanding that the
14 school would be renamed after him, correct?

15 MR. FREER: Objection, the document speaks
16 for itself.

17 THE COURT: Overruled.

18 THE WITNESS: It doesn't say it in that
19 paragraph, correct.

20 BY MR. JONES:

21 Q. By the way, it doesn't say that the affiant
22 donated \$500,000 to the Hebrew Academy and got a
23 contract with the school that would rename the
24 school the Milton I. Schwartz Hebrew Academy in
25 perpetuity, does it? Used the word understanding

1 instead of contract?

2 A. It depends upon one's understanding of the
3 term "understanding." He could have understood that
4 to be a contract.

5 Q. I'm asking you literally, he didn't use --
6 when he signed that?

7 A. The word contract does not appear in the
8 first sentence of Paragraph 5.

9 Q. And so what you just told the jury is that
10 it could have been a reference to an -- to a
11 contract, right?

12 A. Right.

13 Q. And so if it could have been that, it could
14 have been just literally his understanding, right?

15 A. I don't know.

16 Q. So in other words, what I'm asking you, I
17 guess, Mr. Schwartz is at best that's ambiguous,
18 isn't it, as to what it means, what he meant by
19 "understanding"?

20 MR. FREER: Objection. Calls for legal
21 conclusion.

22 THE COURT: What?

23 MR. FREER: Calls for legal conclusion.

24 THE COURT: Overruled.

25 THE WITNESS: Shall I answer?

1 THE COURT: Yes.

2 THE WITNESS: Given everything I understand
3 about this case, no, he thought he had a contract.

4 BY MR. JONES:

5 Q. You mentioned the fact that he mentions
6 later -- it's in Paragraph 6 on the next page about
7 giving certain money, right? First paragraph at the
8 top of the second page, affiant solicited
9 contributions from Paul Sogg and Robert Cohen. Is
10 that as a result of affiant's efforts, Paul Sogg
11 pledged to donate \$300,000 and that as a result of
12 that affiant efforts Robert Cohen pledged to donate
13 had \$100,000?

14 A. I see that in Paragraph 6.

15 Q. It does not say that as part of that
16 effort, that was also why they named the school
17 after him, doesn't say anything about naming rights
18 in that paragraph? Let me rephrase the question.
19 Withdraw.

20 It doesn't say anything whatsoever about
21 naming rights in that paragraph, does it?

22 A. It doesn't say it in that paragraph, but it
23 says it in other documents.

24 Q. By the way, it says -- if you could
25 highlight this for us, Shane -- it says pledged to

1 donate; do you see that?

2 A. Yes.

3 Q. A pledge is not a donation; it's a pledge
4 to pay something in the future, correct?

5 A. Correct.

6 Q. And that says both the reference to
7 Mr. Sogg and to Mr. Cohen references a pledge, not a
8 payment; would you agree with me?

9 A. Correct. But it does say it in the next
10 paragraph.

11 THE COURT: There is no question pending.

12 MR. JONES: Your Honor, at this time I
13 would like to play the video of Mr. Schwartz --
14 Milton Schwartz that is Exhibit 1116A. I have
15 provided the court and counsel a transcript to make
16 sure that it complies with the court's order with
17 respect to that portion of the video. I see that
18 Mr. LeVeque is out.

19 MR. FREER: My understanding is that
20 Mr. LeVeque reviewed it.

21 MR. JONES: He said that to me as well, but
22 he is not here and I did not want to speak with him.

23 THE COURT: If Mr. LeVeque is not raising
24 an objection, I will allow it. I don't have a
25 transcript.

1 MR. JONES: I'm sorry, Your Honor. I was
2 supposed to give it to you. I wanted you to look at
3 this before we play it. It's highlighted. May I
4 approach?

5 THE COURT: Sure. Thank you.

6 MR. JONES: What is highlighted has been
7 deleted.

8 THE COURT: That's the portion we agreed
9 upon Mr. Freer?

10 MR. FREER: Yes.

11 MR. JONES: We have provided I would move
12 the admission of that DVD that is marked as 1116A
13 which is the modified version.

14 THE COURT: That's the clip.

15 MR. JONES: That's the clip. I'm trusting
16 Mr. God free that that portion the court did not
17 want is taken out.

18 THE COURT: I feel confident. Thank you.
19 (Video played.)

20 BY MR. JONES:

21 Q. Let me ask you a couple questions about
22 that, Mr. Schwartz. First of all, would you agree
23 that your father said that it was give a half
24 million and raise a half million?

25 A. We all just heard it. He said whatever he

1 said.

2 Q. You make a valid point. Lawyers sometimes
3 get redundant and it drives everybody crazy so I
4 apologize to everybody. We can't help ourselves
5 sometimes so I apologize.

6 So you would also degree with me -- I know
7 it was just said this is something I want to talk
8 about later that your dad said he felt he couldn't
9 afford to pay a million dollars at that time so
10 that's why he gave the half million?

11 A. I heard him say that, yes.

12 Q. And that's how it started. Let me ask it a
13 different way.

14 As you sit here today, do you know
15 whether -- do you have any idea personally whether
16 or not the Howard Hughes Corporation gave that land
17 to the school because of your father or Dr. Lubin?

18 A. The story I heard for years was that it was
19 my dad. The same thing he just said. I heard that
20 story more times than I can count.

21 Q. Where he said I don't know the answer
22 whether he gave me the land for me or for her did
23 you hear that part of the story?

24 A. No, the story I heard was he always thought
25 that Goolsby did it for him. I have heard that

1 story from other people that it was because of my
2 dad.

3 MR. JONES: If we could just play the
4 tape -- cue the tape up again, please.

5 (Video played.)

6 BY MR. JONES:

7 Q. We can end the tape there. Did you ever
8 have any conversations with your father about
9 whether Dr. Lubin raised any money?

10 A. I never did, no.

11 Q. So we know in your father's affidavit --
12 well, I will withdraw the question.

13 Now you saw on that video that your dad
14 said he raised 300,000 for Mr. Paul Sogg, right?

15 A. Mr. Jones, I'm not watching the video very
16 closely because if I watch it you are going to get
17 me to cry and I'm trying not to.

18 Q. Fair enough, sir. That's a very valid
19 point?

20 A. It says what it says that's it. I'm trying
21 not to pay that close attentions to it, to be
22 perfectly honest with you.

23 Q. That is a very valid point and I won't ask
24 anymore things about the video. Let me try to do
25 this. I'm trying to do my job and I forget

1 sometimes that this is something to do with your
2 dad. So having lost my father not that long ago, I
3 can appreciate that. I apologize if I upset you
4 about that. That's not my intent.

5 Let me go back and try to do this a little
6 differently. Let look at documents so hopefully
7 that won't be as troubling. Okay. In the affidavit
8 your dad talks about getting a pledge of 300,000
9 from Mr. Sogg, do you remember that?

10 A. Right.

11 Q. We talked about it being a pledge, and a
12 hundred thousand dollars from Mr. Cohen, right?

13 A. What is the number again? Sorry.

14 Q. The affidavit is 134 Paragraph 6 Page 2 on
15 the affidavit.

16 A. Okay.

17 Q. So just looking at that, just to refresh
18 your memory because I'm going to show you a document
19 that I would like to ask you to look at.

20 There is a reference there to both Mr. Sogg
21 and Mr. Cohen, correct?

22 A. Correct.

23 Q. And we already talked about them being
24 pledges. But even if you assume that money was
25 paid, that doesn't add up to \$500,000, does it?

1 A. It doesn't, but where are you splitting
2 hairs Mr. Jones.

3 THE COURT: Don't argue just answer the
4 questions that are asked. Mr. Freer will have an
5 opportunity.

6 BY MR. JONES:

7 Q. Look at Exhibit 118 that I believe is in
8 evidence.

9 A. 118?

10 Q. 118, yes, sir. By the way, Mr. Schwartz,
11 again, I'm sorry that I have to bring up some
12 things, but again, you filed the petition asserting
13 naming rights, correct?

14 A. I did, because your client sued me.

15 Q. Is that the only reason that you filed that
16 claim?

17 A. We had to get this cleared up somehow, and
18 they weren't going to do it in good faith so that's
19 why we are here.

20 Q. Understood. So you understand that since
21 you filed a petition asserting that the estate -- or
22 that your father had naming rights, you understand
23 that you have to -- the burden of proofing to the
24 jury that those naming rights exist, right?

25 A. I do.

1 Q. So my job is then to try to show what
2 evidence exists of that, would you agree with that?

3 A. Go ahead. I'm not trying to impede you.
4 I'm really not, go ahead, please.

5 Q. If you look at the trustee board of trustee
6 minutes from January of 1990, you will see your dad
7 is there at that meeting, right?

8 A. Correct.

9 Q. If you go back to the last page, jury has
10 seen this before. In fact I believe your counsel
11 put this in front of the jury. But it's actually --
12 let's do this again. Take it from two thirds of the
13 way up, go to Mr. Rudiak and come down from there.

14 So let's highlight Mr. Rudiak because I
15 believe at some point your father said he was
16 responsible for Mr. Rudiak giving some money. Do
17 you recall that?

18 A. I recall Mr. Rudiak's name being mentioned.

19 Q. The other one was Robert Cohen. Would you
20 agree that his name was specifically mentioned in
21 your dad's affidavit, right?

22 A. I remember that name being mentioned.

23 Q. That shows Mr. Cohen's name there. And
24 then we have Mr. Paul Sogg there as well, right?

25 If you look at those numbers, it says

1 George Rudiak, and I believe if you look at the top
2 of the document, it says pledged, and then it says
3 amounts paid and then it says amounts unpaid, right?

4 A. Right.

5 Q. If we go back up, Mr. Rudiak pledged 50 and
6 he paid 25 as of that date. I certainly understand
7 "as of that date." Go back so the jury can see the
8 dates -- through February 21 of 1990. Go back down.
9 You see Mr. Cohen, says pledged and then it says
10 amounts unpaid, far right column, it says none. So
11 you would agree with me that that would indicate a
12 record from the school indicating Mr. Cohen had paid
13 his money, the hundred thousand?

14 A. That he had or had not.

15 Q. Had, he had paid his money?

16 A. Appears to because it says unpaid none.

17 Q. That's how I understood it but I'm not the
18 witness. So I think we could agree about that. He
19 paid his money that he pledged.

20 If you look down at Mr. Sogg says pledged
21 300,000 and then under the amounts paid column it
22 says 100,000 do you see that?

23 A. I see that.

24 Q. It says in the unpaid column it says
25 200,000?

1 A. Correct.

2 Q. So are you aware of any documents that are
3 in evidence in this case that would demonstrate to
4 the jury that your father or anybody that your
5 father claimed he raised money through for the
6 \$500,000 actually gave enough money to total
7 \$500,000 raised?

8 A. The --

9 Q. Let me rephrase the question. Bad
10 question.

11 Would you agree with me that based on this
12 document any way, that there was only \$225,000
13 raised -- actually paid. A hundred thousand from
14 Mr. Sogg, a hundred thousand from Mr. Cohen, and
15 25,000 from Mr. Rudiak that relate to people that
16 your father claimed he raised money from?

17 A. I'm not the custodian of this document. I
18 don't know --

19 Q. That's not my question sir?

20 A. All I can assume is that as of February 21,
21 1990, it's correct.

22 Q. So my question, though, was -- my question
23 was: Based on this document, even if you assume
24 that those people paid the money directly in
25 response to your father's efforts, that only comes

1 up to \$225,000, doesn't it?

2 A. My information is that they must have paid
3 it because they named the school after my father,
4 and they performed on the naming rights agreement.
5 So they must have paid it.

6 Q. Not my question, sir.

7 A. At some date.

8 Q. Not my question. Based on this document,
9 would you agree with me that the most it shows, even
10 if you assume that those payments were made as a
11 direct response to your father's efforts, it only
12 totals \$225,000? Yes or no?

13 A. Wait a minute. You are including Paul Sogg
14 and George Rudiak?

15 Q. Yes. 100,000 from Paul Sogg, 100,000 from
16 Robert Cohen, and 25,000 from Mr. Rudiak.

17 A. You are looking at the paid? Which column
18 are you asking me about?

19 Q. I'm looking at the "paid" column. The
20 reason -- Robert Cohen -- we have agreed that
21 Mr. Cohen looks like he did pay?

22 A. It appears that Sogg, Cohen, and Rudiak as
23 of February 21, 1990, paid 225.

24 Q. While you are not the custodian of records
25 in this case, would you agree with me that you, as

1 the petitioner in this case, have the burden of
2 proving that your father raised \$500,000 in
3 connection with the naming rights?

4 MR. LEVEQUE: Objection. Assumes legal
5 conclusion.

6 MR. JONES: I'm asking him as a witness, as
7 the petitioner, Your Honor.

8 THE COURT: "Burden of proof" being a legal
9 term.

10 MR. JONES: He has testified that he
11 understood that he has a burden of proof as a
12 petitioner, Your Honor.

13 THE COURT: Okay. Didn't object to that
14 one, but they objected to this one so I'm going to
15 sustain that.

16 MR. JONES: Sorry, Your Honor?

17 THE COURT: The jury is going to be
18 instructed.

19 MR. JONES: Understood.

20 THE COURT: I'm sustaining the objection.

21 BY MR. JONES:

22 Q. Let me ask you a different way
23 Mr. Schwartz. As you sit here today you can't point
24 to any evidence to show that your father was
25 directly responsible for raising a total of \$500,000

1 in connection with the naming rights agreement, can
2 you?

3 A. Not true. He just said he did on the
4 video.

5 Q. Well, he referenced I believe two people,
6 Mr. Sogg -- in fact, I have the transcript here.
7 Let me double-check. I believe you referenced two
8 people: Mr. Sogg and I raised a half million
9 dollars, 300,000 from one man, Paul Sogg, a hundred
10 though from another, Jo Cohen, who is still alive I
11 think he's 95 now, and 25,000 from Geri Rentchler's
12 father -- your dad gets another 25,000 -- I still
13 remember George Rudiak who was my lawyer at the
14 hospital, so that's 825. And I raised a million
15 dollars. A half million, and I gave a half million,
16 and they agreed to make the name of the school
17 Milton I. Schwartz Hebrew Academy in perpetuity. So
18 I reference the specifically Paul Sogg 300,000,
19 which we just saw the jury just saw looks like it's
20 only a hundred thousand. He said at least as of
21 that date, Joe Cohen, who we agree gets credit for a
22 hundred thousand, Geri Rentchler, 25,000.

23 Have you ever been seen any documentation
24 that showed that Geri Rentchler paid 25,000?

25 A. I have no idea.

1 Q. Again, as you sit here today, you can't
2 point the jury to a particular piece of evidence or
3 any evidence specifically where it demonstrates that
4 your father was able to raise \$500,000 from others
5 in connection with his naming rights, correct?

6 A. No.

7 Q. Could you tell me what evidence it is?

8 A. The bylaws that say it's the Milton I.
9 Schwartz Hebrew Academy in perpetuity, the Sabbath
10 letter, the quitclaim deed, and a series of minutes,
11 and numerous documents, and pattern and practice of
12 the school for more than ten years that it was the
13 Milton I. Schwartz Hebrew Academy in perpetuity. If
14 he hadn't raised the money, if they hadn't
15 accepted -- and/or if they hadn't accepted his
16 performance, he did what was necessary to create a
17 contract.

18 Q. Let me try to rephrase it. Can you point
19 this jury to any financial documents from the school
20 that demonstrate that your father was responsible
21 for raising a total of \$500,000 from others?

22 A. I think I just answered it.

23 Q. I'm talking financial document. I believe
24 maybe I misunderstood, all of the documents you
25 reference the are the bylaws and the articles which

1 we have already talked about extensively. You would
2 degree with me, this is -- this page of Exhibit 118
3 we are looking at is a ledger if you will of what
4 has been paid and unpaid from pledges, right?

5 A. As of February 21, 1990, it doesn't mean
6 the next day that it didn't all get paid.

7 Q. It doesn't. But you have no way to prove
8 that it was paid, do you?

9 A. I just heard his word for it.

10 Q. Your father said it. Do you have any
11 documentation that demonstrate it actually occurred?

12 A. I believe that the bylaws would not have
13 been enacted saying the Milton I. Schwartz Hebrew
14 Academy in perpetuity if it didn't happen.

15 MR. JONES: Your Honor I'm trying to be
16 patient but Mr. Schwartz wants to answer his
17 question not mine.

18 THE COURT: I understand.

19 MR. JONES: I would ask that he actually
20 answer the question or we will never get done by
21 Tuesday.

22 THE COURT: Yes or no answer.

23 MR. JONES: Yes Your Honor.

24 THE COURT: Answer yes or no.

25 THE WITNESS: Repeat it again.

1 BY MR. JONES:

2 Q. Mr. Schwartz, you are not aware of any
3 documentation that shows the money paid actually
4 paid, the total amounts actually paid by Paul Sogg
5 or George Rudiak or the Rentchler family other than
6 what is sitting there before the jury; is that
7 correct?

8 A. I don't agree with you, Mr. Jones.

9 Q. Okay. Fair enough. But you referred me to
10 it, what it is?

11 A. I did. I tried to answer you and you
12 wouldn't accept my answer.

13 Q. Let's look at Exhibit 121. Your father,
14 you contend, had the naming rights to the elementary
15 school, correct?

16 A. Correct.

17 Q. And he had those in perpetuity, correct?

18 A. Correct.

19 Q. And he had those in perpetuity starting
20 from 1989 when we read those first meeting minutes
21 from 1989, correct?

22 A. From 1989, that's what I recollect.

23 Q. If his name was not on that school, that
24 was violation of the agreement that you contend
25 existed at that time, correct?

1 A. Correct.

2 Q. So if you look at these meeting minutes
3 from November 29, 1990, you will see the next page
4 your father was at this meeting. If you look at the
5 next page -- the jury has already seen this, I think
6 it's important to look at. If you go down to the
7 second to the last paragraph: A motion was made by
8 Roberta Sabbath and seconded by George Rudiak that
9 Dr. Lubin should be honored by naming the Tamar
10 Lubin Saposhnik Elementary School. The motion was
11 passed unanimously.

12 Do you see that?

13 A. I do see that.

14 Q. It would appear if it passed unanimously if
15 your father was in attendance he agreed with that?

16 A. Evidently.

17 Q. And that would be a blatant breach of what
18 you have told this jury was the naming rights
19 agreement he had, wasn't that true?

20 A. Well, I have heard a couple different --

21 Q. Isn't that true, sir, yes or no?

22 A. No, because I heard different testimony
23 from Schiffman.

24 Q. Mr. Schiffman didn't come to that school
25 until 2005, isn't that true?

1 A. I don't remember the date. I'm sorry.

2 Q. Certainly wasn't in 1990, was it?

3 A. Correct, it was not in 1990.

4 Q. He would not have any personal knowledge of
5 what happened in 1989 or 1990 with respect to the
6 Hebrew Academy, would he, to your knowledge?

7 A. No. No.

8 Q. Let's look at Exhibit 217A and 217B. We
9 will put them on the screen. They are photographs.
10 If you could put that next to 217 B, Shane, for
11 Mr. Schwartz and the jury.

12 Would you agree with me that's the front of
13 the school, the Hebrew Academy?

14 A. Correct.

15 Q. And I believe there has been an agreement
16 with the school that in fact the name -- it's hard
17 to make out there, and the jury will have a chance
18 in the jury room to look at it more closely. But it
19 says the Tamar Lubin Saposhnik Elementary School on
20 the front of the school, and if that happened from
21 1990 to 1996, that would be, in your opinion, based
22 on what you said to this jury, a blatant violation
23 of your father's naming rights contract, right?

24 A. It says what it says.

25 Q. That's not my question.

1 MR. JONES: I would ask the witness to
2 answer my question. We will get out of here a lot
3 quicker.

4 THE COURT: They are leading questions
5 requiring a yes or no answer, so an appropriate
6 answer would be either yes or no.

7 BY MR. JONES:

8 Q. You would like the question again, sir?

9 A. Go ahead.

10 MR. FREER: I object. It calls for legal
11 conclusion.

12 THE COURT: Okay. Overruled.

13 MR. JONES: Thank you.

14 BY MR. JONES:

15 Q. Mr. Schwartz, Dr. Tamar Lubin Saposhnik's
16 name appeared on the elementary school in the very
17 place that you contend that your father's name was
18 supposed to always be there, from 1990. And it
19 appears that Dr. Lubin's name appeared there instead
20 from 1990 to 1996, that would be, in your opinion, a
21 blatant breach of what you contend to be your
22 father's naming rights agreement, correct?

23 THE WITNESS: I can only yes or no?

24 THE COURT: Or you can say you don't know.

25 THE WITNESS: I don't know.

1 BY MR. JONES:

2 Q. Well, haven't you told this jury,
3 repeatedly, that your father's naming rights require
4 his name to be on the front of that building in
5 perpetuity from 1989 until the present day?

6 A. That's my belief.

7 Q. Thank you.

8 So if that's your belief, then putting
9 Dr. Lubin's name on that building from 1990 to 1996
10 would be a blatant breach of what your belief was
11 the naming rights agreement was, correct?

12 MR. FREER: Objection. Calls for a legal
13 conclusion.

14 MR. JONES: He is the petitioner, Your
15 Honor.

16 THE COURT: Overruled.

17 BY MR. JONES:

18 Q. Can you answer my question?

19 A. Might be. Might be.

20 Q. Would you find it ironic, Mr. Schwartz,
21 that your father would vote to breach his own naming
22 rights agreement?

23 MR. FREER: Objection. Argumentative.

24 THE COURT: I would sustain that.

25 MR. JONES: I understand, Your Honor.

1 If we could look at Exhibit 11.

2 BY MR. JONES:

3 Q. These were meeting minutes from August 25
4 of 1994. I will represent to you that this is after
5 the thing occurred with your father and the other
6 board or I guess a board. And you will see down
7 there on the second -- on the bottom of that page
8 right above -- right at the bottom of what the
9 screen shot is, says resolved and is advisable and
10 in the best interests of the Corp. -- this
11 corporation that its articles of incorporation be
12 amended by changing the language of the article one
13 to read as follows. It then goes on to say this
14 corporation will be known as the Hebrew Academy. Do
15 you see that?

16 A. I see that.

17 Q. And that would be -- by changing the name
18 in 1994 of the corporation would be a blatant breach
19 of your father's alleged naming rights agreement,
20 correct?

21 A. It's the set of minutes that I think was
22 corrected later, but that's what it says on this
23 document, yes.

24 Q. Well, do you recall the testimony that this
25 was during the time period when there were two

1 boards and your father sued --

2 A. Oh, right, right, right. Yes.

3 Q. So --

4 A. If it was that period, yeah.

5 Q. If that's the case, would you agree with me
6 that that goes to the heart of your claim that your
7 father's name be on the corporation as well as other
8 documents? Let me rephrase that?

9 A. That was a long question, Mr. Jones.

10 Q. I will rephrase it. It was a bad question.
11 I will sustain your objection on me.

12 Would you agree with me, Mr. Schwartz, that
13 if the corporation changed its name from Milton I.
14 Schwartz Hebrew Academy in 1994 to the Hebrew
15 Academy, that would be what you would have
16 considered to be a breach of the naming rights
17 agreement?

18 A. Yes.

19 Q. Thank you.

20 And have you told this jury many times that
21 this was an extremely important thing for your
22 father to have his naming rights in perpetuity,
23 correct?

24 A. Yes.

25 Q. And so would you -- withdraw that.

1 If we could look at Exhibit 9. Just look
2 at the caption there if you would. The caption says
3 the board of directors of the Milton I. Schwartz
4 Hebrew Academy versus the second board of directors
5 of the Hebrew Academy and certain individuals,
6 right?

7 A. Right.

8 Q. And if you go back and look at the date of
9 this, 1992 was filed with the district court, the
10 same court we are in today. So this would have been
11 actually about two years before the articles were
12 changed to take your dad's name off of the
13 corporation, right?

14 A. I don't know. I will accept your
15 submission.

16 Q. Thank you.

17 So if you look at this declaration, if you
18 have it there in front of you, just look at each
19 page. If you will take a moment, it's not very
20 long, it's only about five pages, but I'm trying to
21 move this along a little bit, but if you will
22 confirm for me there do not seem to be any
23 allegations by your father about claims for naming
24 rights.

25 A. I don't know. Do you want me to read it?