

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.

Electronically Filed
Jan 29 2020 04:44 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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
VOLUME 13
PAGES 3001-3250**

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CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Pages
1	Petition for Probate of Will	10/15/07	1	1–26
2	Order Granting Petition for Probate of Will and Codicils and Issuance of Letters Testamentary	12/10/07	1	27–28
3	Petitioner’s Response to Objection to Petition to Probate Will and for Issuance of Letter Testamentary and Request for All Future Notices to be Properly Served	01/03/08	1	29–60
4	Notice of Entry of Order	01/04/08	1	61–66
5	Notice of Entry of Order	01/29/08	1	67–71
6	Ex Parte Order for Extension of Inventory	05/23/08	1	72–73
7	Petition to Compel Distribution, for Accounting and for Attorneys’ Fees	05/03/13	1	74–159
8	Notice of Entry of Order to Appear and Show Cause	05/14/13	1	160–163
9	Objection to Petition to Compel Distribution, for Accounting, and for Attorneys’ Fees and Ex Parte Petition for Order to Issue Citation to Appear and Show Cause	05/28/13	1	164–230
10	Petition for Declaratory Relief	05/28/13	1 2	231–250 251–298
11	Motion to Dismiss Executor’s Petition for Declaratory Relief	06/12/13	2	299–329
12	Adelson Campus’ Reply in Support of Petition to Compel Distribution, for Accounting and for Attorneys’ Fees & Preliminary Objection to Accounting	06/17/13	2	330–356
13	Recorder’s Transcript of All Pending Motions	06/25/13	2	357–385
14	Opposition to Motion to Dismiss	07/01/13	2	386–398

15	Reply in Support of Motion to Dismiss Executor's Petition for Declaratory Relief	10/02/13	2	399–432
16	Recorder's Transcript of Motions Hearing	10/08/13	2	433–475
17	Notice of Entry of Order Denying Adelson Campus' Motion to Dismiss Executor's Petition for Declaratory Relief Without Prejudice & Allowing Limited Discovery	11/13/13	2	476–479
18	Demand for Jury Trial	11/27/13	2	480–481
19	Motion for Reconsideration	12/02/13	2 3	482–500 501–582
20	Opposition to the Executor's Motion for Reconsideration of the Court's November 12, 2013, Order Denying Adelson Campus' Motion to Dismiss Executor's Petition for Declaratory Relief without Prejudice & Allowing Limited Discovery	12/09/13	3	583–638
21	Transcript of Proceeding: Motion for Reconsideration	12/10/13	3	639–669
22	Transcription of Discovery Commissioner Hearing Held on January 29, 2014	01/29/14	3	670–680
23	Notice of Entry of Order Denying Motion for Reconsideration and Re-Setting Discovery Deadline	02/27/14	3	681–684
24	Notice of Entry of Order Regarding Deposit of Funds in Blocked Account at Morgan Stanley	03/07/14	3	685–690
25	Notice of Entry of Order Granting Motion to Modify November 12, 2013 Order and/or Limit Discovery; and Order Denying the Dr. Miriam and Sheldon G. Adelson Educational Institute's Ex Parte Application (with notice) Countermotion to Continue the	03/07/14	3	691–696

	February 11, 2014 Hearing to Allow Discovery Commissioner to Resolve Discovery Dispute			
26	Adelson Campus' Motion for Partial Summary Judgment	04/22/14	3 4	697–750 751–772
27	Opposition to Motion for Partial Summary Judgment	05/27/17	4 5	773–1000 1001–1158
28	Supplement to Petition for Declaratory Relief to Include Remedies of Specific Performance and Mandatory Injunction	05/28/17	5	1159–1165
29	Errata to Opposition to Motion for Partial Summary Judgment	06/03/14	5	1166–1181
30	Adelson Campus' Reply in Support of Motion for Partial Summary Judgment	06/24/14	5 6	1182–1250 1251–1273
31	Supplement to Opposition to Motion for Partial Summary Judgment	07/02/14	6	1274–1280
32	Transcript for Motion for Summary Judgment	07/09/14	6	1281–1322
33	Notice of Entry of Order Denying the Dr. Miriam and Sheldon C. Adelson Educational Institute's Motion for Partial Summary Judgment	09/05/14	6	1323–1326
34	Opposition to the Adelson Campus' Motion for Reconsideration of Denial of Motion for Partial Summary Judgment	10/06/14	6	1327–1333
35	Reporter's Transcript of Proceedings	10/08/14	6	1334–1376
36	Notice of Entry of Stipulation and Order for Protective Order	03/05/15	6	1377–1389
37	Petition for Partial Distribution	05/19/16	6	1390–1394
38	Errata to Petition for Partial Distribution	06/02/16	6	1395–1410
39	Recorder's Transcript of Proceeding: All Pending Motions	08/03/16	6	1411–1441

40	Recorder's Transcript of Proceedings: Calendar Call	08/18/16	6	1442–1454
41	Recorder's Transcript of Proceeding: Status Check	09/28/16	6	1455–1464
42	Transcript of Proceedings: Motion for Protective Order on Order Shortening Time	04/19/17	6	1465–1482
43	Notice of Entry of Order Regarding the Adelson Campus' Motion for Protective Order	05/08/17	6	1483–1486
44	Notice of Filing Petition for a Writ of Mandamus of Prohibition	05/17/17	6	1487
45	Notice of Entry of Stipulation to Stay Matter Pending Petition for Writ of Mandamus or Prohibition	05/24/17	6	1488–1492
46	Motion for Partial Summary Judgment Regarding Fraud	06/04/18	6 7	1493–1500 1501–1523
47	Motion for Partial Summary Judgment Regarding Statute of Limitations	06/04/18	7	1524–1541
48	Motion for Summary Judgment Regarding Breach of Contract	06/04/18	7	1542–1673
49	Opposition to Motion for Partial Summary Judgment Regarding Fraud	07/06/18	7 8	1674–1750 1751–1827
50	Opposition to Motion for Partial Summary Judgment Regarding Statute of Limitations	07/06/18	8	1828–1986
51	Opposition to Motion for Summary Judgment Regarding Breach of Contract and Countermotion for Advisory Jury	07/06/18	8 9	1987–2000 2001–2149
52	Errata to Opposition to Motion for Partial Summary Judgment Regarding Statute of Limitations	07/10/18	9	2150–2155
53	The Adelson Campus' Opposition to the Estate's Countermotion for Advisory Jury	07/23/18	9	2156–2161

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
56	Reply in Support of Motion for Summary Judgment Regarding Breach of Contract	08/02/18	9	2210–2245
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
59	The Adelson Campus' Pre-Trial Memorandum	08/07/18	10	2275–2352
60	Supplement to the Estate's Opposition to Motion for Partial Summary Judgment Regarding Fraud	08/08/18	10	2353–2386
61	Supplement to Opposition to Motion for Summary Judgment Regarding Breach of Contract and Countermotion for Advisory Jury	08/08/18	10	2387–2416
62	Recorder's Transcript of Hearing on Motions in Limine and Motions for Summary Judgment	08/09/18	10 11	2417–2500 2501–2538
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
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

65	Recorder's Transcript of Proceedings, Pretrial Conference, All Pending Motions	08/15/18	11 12	2647–2750 2751–2764
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
67	Recorder's Transcript of Proceedings, Pretrial Conference – Day 2, All Pending Motions	08/16/18	12	2793–2868
68	Motion for Judgment as a Matter of Law Regarding Breach of Contract and Mistake Claims	08/31/18	12	2869–2902
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
70	Opposition to Motion for Judgment as a Matter of Law Regarding Breach of Contract and Mistake Claims	09/03/18	18	4305–4333
71	The Estate's Motion for Judgment as a Matter of Law Regarding Construction of Will	09/03/18	18	4334–4341
72	Recorder's Partial Transcript: Jury Instructions	09/04/18	18	4342–4367
73	Recorder's Partial Transcript of Jury Trial: Closing Arguments	09/04/18	18	4368–4467
74	Amended Jury List	09/05/18	18	4468
75	Jury Instructions	09/05/18	18 19	4469–4500 4501–4512

76	Verdict Form	09/05/18	19	4513–4516
77	Proposed Jury Instructions Not Used at Trial	09/05/18	19	4517–4520
78	Proposed Verdict Form Not Used at Trial	09/05/18	19	4521–4525
79	Judgment on Jury Verdict	10/04/18	19	4526–4532
80	Recorder’s Transcript of Proceedings, Motion for Judgment as a Matter of Law Regarding Breach of Contract and Mistake Claims, The Estate’s Motion for Judgment as a Matter of Law Regarding Construction of Will	10/04/18	19	4533–4554
81	Notice of Entry of Order Denying the Adelson Campus’ Motion to Strike Jury Demand on Order Shortening Time	10/05/18	19	4555–4558
82	Notice of Entry of Order Denying the Adelson Campus’ Motion for Summary Judgment Regarding Breach of Contract	10/05/18	19	4559–4562
83	Notice of Entry of Order Denying 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 the Adelson Campus’ Countermotion to Strike the August 14, 2018 Declaration of Jonathan Schwartz an All Attached Exhibits in Support	10/05/18	19	4563–4566
84	Notice of Entry of Judgment on Jury Verdict	10/05/18	19	4567–4575
85	The Dr. Miriam and Sheldon G. Adelson Educational Institute’s Verified Memorandum of Costs	10/11/18	19	4576–4579
86	Appendix of Exhibits to the Dr. Miriam and Sheldon G. Adelson Education Institute’s Verified Memorandum of Costs (Volume 1 of 2)	10/11/18	19 20	4580–4750 4751–4842

87	Appendix of Exhibits to the Dr. Miriam and Sheldon G. Adelson Education Institute's Verified Memorandum of Costs (Volume 2 of 2)	10/11/18	20 21	4843–5000 5001–5123
88	Motion to Retax Costs Pursuant to NRS 18.110(4) and to Defer Award of Costs Until All Claims are Fully Adjudicated	10/16/18	21	5124–5167
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
90	Adelson Campus' Post-Trial Brief on Outstanding Claims	11/16/18	22 23	5456–5500 5501–5555
91	Post-Trial Brief Regarding the Parties' Equitable Claims and for Entry of Judgment	11/16/18	23	5556–5693
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
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
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
95	The Dr. Miriam and Sheldon G. Adelson Educational Institute's Opposition to the Estate's Post-Trial Brief Regarding the Parties' Equitable Claims and for Entry of Judgment	12/21/18	24	5817–5857

96	The Estate's Response to the Adelson Campus' Post-Trial Brief on Outstanding Claims	12/21/18	24	5858–5923
97	Reply in Support of Motion to Retax Costs Pursuant to NRS 18.110(4) and to Defer Award of Costs Until All Claims are Fully Adjudicated	01/04/19	24	5924–5941
98	Reporter's Transcription of Proceedings	01/10/19	24	5942–5993
99	Judgment on A. Jonathan Schwartz's Petition for Declaratory Relief	02/20/19	24	5994–5995
100	Judgment on the Dr. Miriam and Sheldon G. Adelson Educational Institute's Petition to Compel Distribution, for Accounting and for Attorneys' Fees	02/20/19	24	5996–5997
101	Notice of Entry of Order Denying the Estate's Motion for Post-Trial Relief from Judgment on Jury Verdict Entered on October 4, 2018	02/20/19	24 25	5998–6000 6001
102	Notice of Entry of Judgment on A. Jonathan Schwartz's, Executor of the Estate of Milton I. Schwartz, Claims for Promissory Estoppel and Revocation of Gift and Construction Trust	02/21/19	25	6002–6010
103	Verified Memorandum of Costs of A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz	02/27/19	25	6111–6015
104	Appendix of Exhibits to Verified Memorandum of Costs of A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz	02/27/19	25 26	6016–6250 6251–6478
105	The Adelson Campus' Motion to Re-Tax and Settle Costs	03/06/19	26	6479–6489
106	Notice of Appeal	03/08/19	26 27	6490–6500 6501–6510
107	Case Appeal Statement	03/08/19	27	6511–6515

108	Notice of Appeal	03/22/19	27	6516–6517
109	Case Appeal Statement	03/22/19	27	6518–6521
110	The Estate’s Opposition to the Adelson Campus’ Motion to Re-Tax and Settle Costs	03/25/19	27	6522–6546
111	The Adelson Campus’ Reply in Support of Motion to Re-Tax and Settle Costs	04/04/19	27	6547–6553
112	Recorder’s Transcript of Pending Motions	04/11/19	27	6554–6584
113	Notice of Entry of Order	07/25/19	27	6585–6595
114	Stipulation and Order Regarding Trial Transcripts	08/05/19	27	6596–6597
115	Notice of Appeal	08/16/19	27	6598–6599
116	Case Appeal Statement	08/16/19	27	6600–6603
117	Notice of Posting Supersedeas Bond on Appeal	08/19/19	27	6604–6606
118	Trial Exhibit 3		27	6607–6609
119	Trial Exhibit 4		27	6610–6611
120	Trial Exhibit 5		27	6612–6620
121	Trial Exhibit 6		27	6621
122	Trial Exhibit 9		27	6622–6625
123	Trial Exhibit 14		27	6626–6628
124	Trial Exhibit 17		27	6629–6638
125	Trial Exhibit 22		27	6639–6645
126	Trial Exhibit 28		27	6646–6647
127	Trial Exhibit 38		27	6648–6649
128	Trial Exhibit 41		27	6650–6675
129	Trial Exhibit 43		27	6676–6679
130	Trial Exhibit 44		27	6680–6682
131	Trial Exhibit 51		27	6683–6684
132	Trial Exhibit 52		27	6685–6686
133	Trial Exhibit 55		27	6687–6713
134	Trial Exhibit 61		27 28	6714–6750 6751–6799
135	Trial Exhibit 62		28	6800–6867
136	Trial Exhibit 111		28	6868–6869

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
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
151	Trial Exhibit 384		29	7003–7007
152	Trial Exhibit 1116A		29	7008

ALPHABETICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Pages
26	Adelson Campus' Motion for Partial Summary Judgment	04/22/14	3 4	697–750 751–772
90	Adelson Campus' Post-Trial Brief on Outstanding Claims	11/16/18	22 23	5456–5500 5501–5555
30	Adelson Campus' Reply in Support of Motion for Partial Summary Judgment	06/24/14	5 6	1182–1250 1251–1273
12	Adelson Campus' Reply in Support of Petition to Compel Distribution, for Accounting and for Attorneys' Fees & Preliminary Objection to Accounting	06/17/13	2	330–356
74	Amended Jury List	09/05/18	18	4468
86	Appendix of Exhibits to the Dr. Miriam and Sheldon G. Adelson Education Institute's Verified Memorandum of Costs (Volume 1 of 2)	10/11/18	19 20	4580–4750 4751–4842
87	Appendix of Exhibits to the Dr. Miriam and Sheldon G. Adelson Education Institute's Verified Memorandum of Costs (Volume 2 of 2)	10/11/18	20 21	4843–5000 5001–5123
104	Appendix of Exhibits to Verified Memorandum of Costs of A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz	02/27/19	25 26	6016–6250 6251–6478
107	Case Appeal Statement	03/08/19	27	6511–6515
109	Case Appeal Statement	03/22/19	27	6518–6521
116	Case Appeal Statement	08/16/19	27	6600–6603
18	Demand for Jury Trial	11/27/13	2	480–481
29	Errata to Opposition to Motion for Partial Summary Judgment	06/03/14	5	1166–1181
52	Errata to Opposition to Motion for Partial Summary Judgment Regarding Statute of Limitations	07/10/18	9	2150–2155

38	Errata to Petition for Partial Distribution	06/02/16	6	1395–1410
6	Ex Parte Order for Extension of Inventory	05/23/08	1	72–73
99	Judgment on A. Jonathan Schwartz’s Petition for Declaratory Relief	02/20/19	24	5994–5995
79	Judgment on Jury Verdict	10/04/18	19	4526–4532
100	Judgment on the Dr. Miriam and Sheldon G. Adelson Educational Institute’s Petition to Compel Distribution, for Accounting and for Attorneys’ Fees	02/20/19	24	5996–5997
75	Jury Instructions	09/05/18	18 19	4469–4500 4501–4512
68	Motion for Judgment as a Matter of Law Regarding Breach of Contract and Mistake Claims	08/31/18	12	2869–2902
46	Motion for Partial Summary Judgment Regarding Fraud	06/04/18	6 7	1493–1500 1501–1523
47	Motion for Partial Summary Judgment Regarding Statute of Limitations	06/04/18	7	1524–1541
19	Motion for Reconsideration	12/02/13	2 3	482–500 501–582
48	Motion for Summary Judgment Regarding Breach of Contract	06/04/18	7	1542–1673
11	Motion to Dismiss Executor’s Petition for Declaratory Relief	06/12/13	2	299–329
88	Motion to Retax Costs Pursuant to NRS 18.110(4) and to Defer Award of Costs Until All Claims are Fully Adjudicated	10/16/18	21	5124–5167
106	Notice of Appeal	03/08/19	26 27	6490–6500 6501–6510
108	Notice of Appeal	03/22/19	27	6516–6517
115	Notice of Appeal	08/16/19	27	6598–6599

102	Notice of Entry of Judgment on A. Jonathan Schwartz's, Executor of the Estate of Milton I. Schwartz, Claims for Promissory Estoppel and Revocation of Gift and Construction Trust	02/21/19	25	6002–6010
84	Notice of Entry of Judgment on Jury Verdict	10/05/18	19	4567–4575
4	Notice of Entry of Order	01/04/08	1	61–66
5	Notice of Entry of Order	01/29/08	1	67–71
113	Notice of Entry of Order	07/25/19	27	6585–6595
17	Notice of Entry of Order Denying Adelson Campus' Motion to Dismiss Executor's Petition for Declaratory Relief Without Prejudice & Allowing Limited Discovery	11/13/13	2	476–479
23	Notice of Entry of Order Denying Motion for Reconsideration and Re-Setting Discovery Deadline	02/27/14	3	681–684
82	Notice of Entry of Order Denying the Adelson Campus' Motion for Summary Judgment Regarding Breach of Contract	10/05/18	19	4559–4562
81	Notice of Entry of Order Denying the Adelson Campus' Motion to Strike Jury Demand on Order Shortening Time	10/05/18	19	4555–4558
33	Notice of Entry of Order Denying the Dr. Miriam and Sheldon C. Adelson Educational Institute's Motion for Partial Summary Judgment	09/05/14	6	1323–1326
101	Notice of Entry of Order Denying the Estate's Motion for Post-Trial Relief from Judgment on Jury Verdict Entered on October 4, 2018	02/20/19	24 25	5998–6000 6001
83	Notice of Entry of Order Denying the Estate's Motion for Reconsideration of the Court's Order Granting Summary	10/05/18	19	4563–4566

	Judgment on the Estate's Claim for Breach of Oral Contract and the Adelson Campus' Countermotion to Strike the August 14, 2018 Declaration of Jonathan Schwartz and All Attached Exhibits in Support			
25	Notice of Entry of Order Granting Motion to Modify November 12, 2013 Order and/or Limit Discovery; and Order Denying the Dr. Miriam and Sheldon G. Adelson Educational Institute's Ex Parte Application (with notice) Countermotion to Continue the February 11, 2014 Hearing to Allow Discovery Commissioner to Resolve Discovery Dispute	03/07/14	3	691–696
24	Notice of Entry of Order Regarding Deposit of Funds in Blocked Account at Morgan Stanley	03/07/14	3	685–690
43	Notice of Entry of Order Regarding the Adelson Campus' Motion for Protective Order	05/08/17	6	1483–1486
8	Notice of Entry of Order to Appear and Show Cause	05/14/13	1	160–163
36	Notice of Entry of Stipulation and Order for Protective Order	03/05/15	6	1377–1389
45	Notice of Entry of Stipulation to Stay Matter Pending Petition for Writ of Mandamus or Prohibition	05/24/17	6	1488–1492
44	Notice of Filing Petition for a Writ of Mandamus of Prohibition	05/17/17	6	1487
117	Notice of Posting Supersedeas Bond on Appeal	08/19/19	27	6604–6606
9	Objection to Petition to Compel Distribution, for Accounting, and for Attorneys' Fees and Ex Parte Petition for Order to Issue Citation to Appear and Show Cause	05/28/13	1	164–230

70	Opposition to Motion for Judgment as a Matter of Law Regarding Breach of Contract and Mistake Claims	09/03/18	18	4305–4333
27	Opposition to Motion for Partial Summary Judgment	05/27/17	4 5	773–1000 1001–1158
49	Opposition to Motion for Partial Summary Judgment Regarding Fraud	07/06/18	7 8	1674–1750 1751–1827
50	Opposition to Motion for Partial Summary Judgment Regarding Statute of Limitations	07/06/18	8	1828–1986
51	Opposition to Motion for Summary Judgment Regarding Breach of Contract and Countermotion for Advisory Jury	07/06/18	8 9	1987–2000 2001–2149
14	Opposition to Motion to Dismiss	07/01/13	2	386–398
34	Opposition to the Adelson Campus’ Motion for Reconsideration of Denial of Motion for Partial Summary Judgment	10/06/14	6	1327–1333
20	Opposition to the Executor’s Motion for Reconsideration of the Court’s November 12, 2013, Order Denying Adelson Campus’ Motion to Dismiss Executor’s Petition for Declaratory Relief without Prejudice & Allowing Limited Discovery	12/09/13	3	583–638
2	Order Granting Petition for Probate of Will and Codicils and Issuance of Letters Testamentary	12/10/07	1	27–28
10	Petition for Declaratory Relief	05/28/13	1 2	231–250 251–298
37	Petition for Partial Distribution	05/19/16	6	1390–1394
1	Petition for Probate of Will	10/15/07	1	1–26
7	Petition to Compel Distribution, for Accounting and for Attorneys’ Fees	05/03/13	1	74–159
3	Petitioner’s Response to Objection to Petition to Probate Will and for Issuance of Letter Testamentary and	01/03/08	1	29–60

	Request for All Future Notices to be Properly Served			
91	Post-Trial Brief Regarding the Parties' Equitable Claims and for Entry of Judgment	11/16/18	23	5556–5693
77	Proposed Jury Instructions Not Used at Trial	09/05/18	19	4517–4520
78	Proposed Verdict Form Not Used at Trial	09/05/18	19	4521–4525
73	Recorder's Partial Transcript of Jury Trial: Closing Arguments	09/04/18	18	4368–4467
72	Recorder's Partial Transcript: Jury Instructions	09/04/18	18	4342–4367
13	Recorder's Transcript of All Pending Motions	06/25/13	2	357–385
62	Recorder's Transcript of Hearing on Motions in Limine and Motions for Summary Judgment	08/09/18	10 11	2417–2500 2501–2538
16	Recorder's Transcript of Motions Hearing	10/08/13	2	433–475
112	Recorder's Transcript of Pending Motions	04/11/19	27	6554–6584
39	Recorder's Transcript of Proceeding: All Pending Motions	08/03/16	6	1411–1441
41	Recorder's Transcript of Proceeding: Status Check	09/28/16	6	1455–1464
80	Recorder's Transcript of Proceedings, Motion for Judgment as a Matter of Law Regarding Breach of Contract and Mistake Claims, The Estate's Motion for Judgment as a Matter of Law Regarding Construction of Will	10/04/18	19	4533–4554
67	Recorder's Transcript of Proceedings, Pretrial Conference – Day 2, All Pending Motions	08/16/18	12	2793–2868
65	Recorder's Transcript of Proceedings, Pretrial Conference, All Pending Motions	08/15/18	11 12	2647–2750 2751–2764

40	Recorder's Transcript of Proceedings: Calendar Call	08/18/16	6	1442–1454
56	Reply in Support of Motion for Summary Judgment Regarding Breach of Contract	08/02/18	9	2210–2245
15	Reply in Support of Motion to Dismiss Executor's Petition for Declaratory Relief	10/02/13	2	399–432
97	Reply in Support of Motion to Retax Costs Pursuant to NRS 18.110(4) and to Defer Award of Costs Until All Claims are Fully Adjudicated	01/04/19	24	5924–5941
35	Reporter's Transcript of Proceedings	10/08/14	6	1334–1376
98	Reporter's Transcription of Proceedings	01/10/19	24	5942–5993
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 meeting?

2 A. Yes, I was.

3 Q. What about Milton Schwartz, was he present
4 at this meeting?

5 A. Yes, according to the minutes, he was.

6 Q. What about Dr. Lubin was she present at
7 this meeting?

8 A. She was as far as I recall at every
9 meeting.

10 Q. Who was Dr. Lubin with respect to her
11 position at the school?

12 A. She was the head of the school. She was --
13 I don't recall what her position was called,
14 director or president. I think head of school is
15 what we used.

16 Q. I asked you about it but I will show it to
17 you. Do you see at the bottom of this document
18 where the minutes discuss the status of building
19 fund pledges?

20 A. Yes.

21 Q. All right. Go to the last page -- I'm
22 sorry. That's your signature, right?

23 A. Yes, it is.

24 Q. Call out a portion of this document. What
25 does the document say up top?

1 A. Hebrew Academy Building Fund Pledges.

2 Q. Do you see yourself on that list?

3 A. I do.

4 Q. Do you see the amount you pledged?

5 A. Yes.

6 Q. How much was it?

7 A. \$2,000.

8 Q. Do you see the column for the amount you
9 paid?

10 A. Yes.

11 Q. How much?

12 A. \$2,000.

13 Q. Do you see how much you owe?

14 A. Yes.

15 Q. How much?

16 A. I owe none.

17 Q. Do you see the amount Milton I. Schwartz
18 donated?

19 A. Yes.

20 Q. Is it consistent with your recollection?

21 A. It is.

22 Q. Do you see any amounts due and owing on the
23 pledge memo that was a document in the school's
24 record?

25 A. No. I'm quite sure Milton Schwartz paid

1 the full \$500,000 before the new school was built.

2 Q. Thank you, Mr. Schwartz.

3 Mr. Schwartz, if you could please flip to
4 proposed Exhibit 173. I don't know if it's in that
5 book or if it's in another one.

6 A. It looks like it is here. Yes, I see 173.

7 Q. What is this document?

8 A. It's a photograph of the school building.

9 Q. Does that look like the school building
10 that was built in 1990?

11 A. Yes.

12 MR. LEVEQUE: Estate proposes to admit 173.

13 THE COURT: Mr. Jones, 173.

14 MR. LEVEQUE: Yes, 173.

15 MR. JONES: No objection, Your Honor.

16 THE COURT: It will be admitted.

17 BY MR. LEVEQUE:

18 Q. Now the jury gets to see it. This was the
19 building that was built in 1990 that Milton
20 contributed the half million dollars to; is that
21 correct?

22 A. Yes.

23 Q. Now, if you could please turn to tab 3, the
24 joint exhibits.

25 A. I have it in front of me.

1 Q. Mr. Schwartz, if you could turn to the
2 secretary page of the document, let me know if you
3 recognize your signature?

4 A. That's my signature on the line with my
5 name typed underneath it.

6 Q. What's the date of this document?

7 A. There are several dates on the document.
8 The signatures are dated the 13th of August 1990.
9 It was filed with the secretary of state of the
10 state of Nevada on August 22, 1990, and it was filed
11 with the clerk of Clark County on all 29, 1990.

12 Q. What is this document?

13 A. It's a certificate of amendment of the
14 articles of incorporation of the Hebrew Academy.

15 Q. What does this document do?

16 A. It changes the name of the school to --
17 changes the name of the corporation to Milton I.
18 Schwartz Hebrew Academy.

19 Q. When the school made the agreement with
20 Milton I. Schwartz to name itself after him, what
21 did that include in addition to the corporate name
22 being changed?

23 MR. JONES: Your Honor just object to lacks
24 foundation.

25 THE COURT: Yeah.

1 MR. LEVEQUE: I will rephrase.

2 THE COURT: Thank you.

3 BY MR. LEVEQUE:

4 Q. Mr. Schwartzer, to your understanding in
5 your capacity as a board member at this time what
6 was your understanding with respect to what the
7 naming rights agreement covered, other than naming
8 the corporation of the school Milton I. Schwartz
9 Hebrew Academy?

10 A. That there would be an appropriate signage
11 on the building saying it was the Milton I. Schwartz
12 Hebrew Academy in some way. I don't think at first
13 we had any specific signage in mind, but I know we
14 intended that to be something that says on the
15 building Milton I. Schwartz Hebrew Academy and as a
16 result -- what we did -- and what we actually did
17 complies with that understanding.

18 Q. At the time there was only one building on
19 the property; is that right?

20 A. That's correct.

21 Q. So other than the building, the land --
22 well, actually, I didn't ask that question.

23 Was the land owned by the Milton I.
24 Schwartz Hebrew Academy too?

25 A. That's my -- yes, the land was donated to

1 the corporation, so it would have been owned by the
2 Milton I. Schwartz Hebrew Academy.

3 Q. Was everything that was owned by the
4 corporation to be named Milton I. Schwartz Hebrew
5 Academy?

6 A. When you say everything, I don't know. I
7 mean, we also agreed that some of the rooms would be
8 named after other donor's.

9 Q. Sure.

10 A. But the school would be named the Milton I.
11 Schwartz Hebrew Academy.

12 Q. If I could have you go to proposed
13 Exhibit 120, please. Are you there?

14 A. I'm there.

15 Q. Okay. Do you see your signature on this
16 document?

17 A. Yes.

18 Q. What's this document dated?

19 A. This is a letter from me to Jack Wallace at
20 Nevada State Bank.

21 Q. Any reason to believe this isn't a true and
22 correct copy of the letter you sent to Mr. Wallace?

23 A. No. It's my signature on it.

24 MR. LEVEQUE: Estate moves for Exhibit 120
25 to be admitted.

1 MR. JONES: No objection, Your Honor.

2 THE COURT: It's admitted.

3 BY MR. LEVEQUE:

4 Q. Again, Mr. Schwartzer, for the benefit of
5 the jury this is dated October 11; is that right?

6 A. Yes, the letter is dated October 11, 1990.

7 Q. Who is Mr. Wallace?

8 A. I remember Mr. Wallace being an officer of
9 the bank.

10 Q. Which bank was that?

11 A. Nevada State Bank.

12 Q. Do you see what this letter was regarding?

13 A. It's providing Mr. Wallace with
14 documentation that the name of the corporation was
15 the Milton I. Schwartz Hebrew Academy.

16 Q. Why would you be sending a letter to a bank
17 officer with relation to the school?

18 A. Two things come to mind. Opening bank
19 accounts, or number two, documentation for a loan.

20 Q. What loan is that?

21 A. Probably a loan to build the building.

22 Q. So in addition to a fund raiding campaign,
23 the school also needed to obtain a loan in order to
24 construct the building?

25 A. Even in 1990, a million dollars wouldn't

1 build that building.

2 Q. Do you know if Mr. Milton I. Schwartz had
3 any involvement with respect to securing that loan?

4 A. My recollection is that he arranged for it.

5 Q. Do you know if he guaranteed the loan?

6 A. I don't know. I don't believe -- I don't
7 recall at this time that I ever saw the loan
8 documents. I might have because, as secretary of
9 the corporation, I might have had to sign them.

10 Q. Sorry to do this Mr. Schwartz, I forgot
11 something on 118. Could you please go back to 118?

12 A. Yes.

13 Q. This is the meeting minutes from, I think
14 it was January 18, 1990, with the pledge memo
15 attached?

16 A. Yes.

17 Q. Do you see anything in this memo -- excuse
18 me in these minutes discussing Dr. Lubin objecting
19 to the amount reported on the pledge memo with
20 respect to what Mr. Schwartz owed?

21 MR. JONES: Object to the form of the
22 question. Assumes --

23 THE COURT: I lost the threat also.

24 MR. LEVEQUE: I will restate and I will
25 provide a little foundation too.

1 BY MR. LEVEQUE:

2 Q. What's the purpose of meeting minutes,
3 Mr. Schwartz?

4 A. To reflect what occurred at the board of
5 trustees meeting.

6 Q. And when you signed board meeting minutes,
7 what's the purpose of signing them?

8 A. Well, the process is if there is a meeting
9 on January 18, 1990, someone would prepare the
10 minutes, whether it was me or someone on the staff
11 of the school, I don't recall, necessarily, and then
12 at the next board meeting, it would have been
13 circulated to the members of the board and there
14 would have been a vote to approve the minutes of the
15 previous meeting. And the purpose is to -- for
16 everybody to agree of what happened at the prior
17 meeting.

18 Q. Okay. So there is an opportunity that the
19 board has to review the minutes from the previous
20 meeting to make sure that they are all accurate and
21 if they are, there is a motion and if passed, you
22 sign it; is that correct?

23 A. Yes.

24 Q. Okay. On these minutes which you signed,
25 is there any discussion raised by Dr. Lubin with

1 respect to the amounts reported on the pledge memo?

2 A. No.

3 Q. Thank you.

4 MR. LEVEQUE: This is joint Exhibit 4.

5 THE COURT: Exhibit?

6 MR. LEVEQUE: 4. Four, Your Honor.

7 THE COURT: Thank you.

8 BY MR. LEVEQUE:

9 Q. Are you there?

10 A. I'm there.

11 Q. Again, Page 2 of the document, do you see
12 if the meeting minutes are signed?

13 A. These minutes have my signature on them.

14 Q. Which means, then, that there was a motion
15 to approve the meeting minutes to be accurate, is
16 that right?

17 A. That's what would have occurred.

18 Q. And Page 1 of this document, joint
19 Exhibit 4, do you see minutes that discuss revising
20 the bylaws?

21 A. Yes.

22 Q. And was a motion made to amend the bylaws?

23 A. Yes.

24 Q. Was that motion passed?

25 A. If the motion included correcting the name

1 and address of the school.

2 Q. Right. Can you see if the motion was
3 unanimously passed?

4 A. Yes, it was.

5 Q. The date of these minutes?

6 A. October 18, 1990.

7 Q. Thank you. If you could please turn to
8 Exhibit 5, which is a joint exhibit.

9 A. I have it.

10 Q. Are you there? All right. Do you
11 recognize this document?

12 A. It's the bylaws of the Milton I. Schwartz
13 Hebrew Academy.

14 Q. All right. Did you prepare this document?

15 A. I would think so. And the reason I think
16 so is from the little footer on it.

17 Q. Right there?

18 A. Yes.

19 Q. How is that recognized, is that your
20 initial?

21 A. Has my initials, L E S, so that probably
22 indicates I was the author of it.

23 Q. If you go down to the last page of this
24 document, you will see a bunch of signatures and a
25 date?

1 A. Yes, I do.

2 Q. And it's handwritten but can you make out
3 the date?

4 A. 18th of December 1990.

5 Q. Do you see your signature on it?

6 A. My signature is the second signature down.

7 Q. I'm going to take you back to the first
8 page of the bylaws. Are you there?

9 A. Yes.

10 Q. All right. What's the first article? What
11 does it say?

12 A. Name, the name of this corporation is the
13 Milton I. Schwartz Hebrew Academy, hereinafter
14 referred to as the academy. And shall remain so in
15 perpetuity.

16 Q. Why did you write that provision?

17 MR. JONES: Withdraw objection.

18 THE COURT: Thank you.

19 THE WITNESS: To reflect the decision of
20 the board of trustees to name the school the Milton
21 I. Schwartz Hebrew Academy in perpetuity.

22 BY MR. LEVEQUE:

23 Q. Did you have an understanding of whether
24 this bylaw was irrevocable?

25 A. I wouldn't say that all of it was

1 irrevocable. In other words, if they want --
2 somebody wanted to change the committees or
3 something like that, we had no intention of making
4 this -- every provision in here irrevocable.

5 Q. Sure, what about this provision, though,
6 provision one?

7 A. This provision one was supposed to be in
8 perpetuity. So that's what it means, forever, to
9 me, which means it's not going to be changed.

10 Q. Thank you.

11 When you are talking about amending other
12 provisions, if you go to -- it looks like the 8th
13 page of the document, is this what you are talking
14 about?

15 A. Yes. It is an amendment provision that
16 allows for the board of trustees to amend the
17 bylaws.

18 Q. But not the first paragraph?

19 MR. JONES: Object to the form.

20 MR. LEVEQUE: Withdraw.

21 MR. JONES: Also calls for a legal
22 conclusion.

23 THE COURT: Sustained, Mr. LeVeque.

24 BY MR. LEVEQUE:

25 Q. Let me ask you this, Mr. Schwartzer.

1 Strike that.

2 Mr. Schwartzer, did there come a time when
3 you faced the possibility of having to take your
4 kids out of the school?

5 A. I did take Michael out of the school, and
6 the school asked that Sherri not come back to the
7 school.

8 Q. Why was that?

9 A. When Michael was in 8th grade, the school
10 decided that it was going to try and open a high
11 school. And Michael was in 8th grade, and he did
12 not want to go to a high school that was going to
13 have less than 20 kids in it. So we agreed with him
14 and he went to Bonanza High School.

15 Q. Who created that policy?

16 A. Dr. Lubin.

17 Q. So unless both your kids went there, no
18 kids could go there?

19 A. Unless there was an excuse. They had an
20 excuse for Fay because they could not provide the
21 right program for my middle daughter, Fay, but they
22 said Sherri could not -- if Michael was not coming
23 back to the school, Sherri could not come back to
24 the school in the fall.

25 Q. If you could please turn to joint

1 Exhibit 9.

2 A. Got it.

3 Q. Before I ask you questions about Exhibit 9,
4 Mr. Schwartz, have you and I met before?

5 A. Huh?

6 Q. Have you and I met before?

7 A. Yes.

8 Q. How long ago was that?

9 A. Last week.

10 Q. What were we doing in our meeting?

11 A. Discussing this -- my testimony.

12 Q. Do you remember me going over this document
13 with you, joint Exhibit 9?

14 A. Yes, you asked me about this document.

15 Q. Do you have any recollection of this
16 lawsuit?

17 A. Not really because as you can see I'm not a
18 party to it. I think I was already off the board of
19 trustees at this time.

20 Q. Well, if you look at the date of filing,
21 what's the date of the filing of this lawsuit?

22 A. The lawsuit is filed December 21, 1992.

23 Q. And when is your recollection of when you
24 got off the board?

25 A. Michael started high school in '95, so his

1 last time at Hebrew Academy would have been May
2 of 1995.

3 Q. So if this was filed until '92, you would
4 still be on the board, right?

5 A. There might have been a period of time I
6 was off. Because I recall going over minutes that
7 said my term was up, and then I saw later minutes
8 that said I have been newly elected to the board.
9 So it appears to have been at least a short period
10 of time when I was no longer on the board.

11 Q. The date of this filing was December 21,
12 1992; is that right?

13 A. That is correct.

14 Q. All right. Now if you could please go to
15 proposed Exhibit 128.

16 A. Yes, 128?

17 Q. Should be a letter dated July 17, 1992.

18 A. No, it's a letter dated July 24th.

19 MR. LEVEQUE: May I approach the witness,
20 Your Honor.

21 THE COURT: Sure.

22 MR. LEVEQUE: Let's see what you have got.

23 MR. JONES: Alex it's in your book if you
24 want to change it out I have no objection.

25 THE CLERK: Please don't change those out.

1 MR. LEVEQUE: 129, I guess.

2 MR. FREER: With they interposed 128 and
3 129.

4 MR. LEVEQUE: We can't change it on that
5 one.

6 MR. JONES: Can we stipulate to changing it
7 Your Honor.

8 THE CLERK: Look at this one and tell me.

9 MR. LEVEQUE: That is the correct one.

10 MR. JONES: That's the right one, Alex?

11 THE COURT: So we are okay. We just had
12 one copy that was wrong.

13 THE WITNESS: Did I switch.

14 THE CLERK: I'm going to trade books with
15 you.

16 THE COURT: They get very fuzzy about their
17 exhibits.

18 THE WITNESS: I always ask permission from
19 the clerk.

20 BY MR. LEVEQUE:

21 Q. So this should be July 17, 1992, letter?

22 A. Yeah, this is a letter from me dated July
23 17, 1992.

24 Q. Is that your signature?

25 A. That's my signature.

1 Q. Any reason to think this isn't a true and
2 correct copy of the letter you sent to Mr. Schwartz
3 on July 17, 1992?

4 A. No, I'm quite sure it is. I'm quite sure I
5 have identified it before.

6 MR. LEVEQUE: Estate moves for admission.

7 MR. JONES: No objection, Your Honor.

8 THE COURT: It's admitted.

9 BY MR. LEVEQUE:

10 Q. This is a letter that you sent to
11 Mr. Schwartz, right?

12 A. Correct.

13 Q. Why were you sending this letter?

14 A. I think because of the litigation that was
15 pending was something that I was hoping could be
16 solved without further litigation. And I was asking
17 him to make the good of the school the primary thing
18 to be considered in the litigation.

19 Q. At the time that you wrote that letter, did
20 you believe that it was Milton's school that he has
21 his name on it forever?

22 MR. JONES: I will just object it's leading
23 but I will withdraw. It's late in the afternoon.
24 That's fine, Your Honor.

25 MR. LEVEQUE: Five minutes left for the

1 day.

2 THE WITNESS: The answer is yes.

3 BY MR. LEVEQUE:

4 Q. Is that consistent with your recollection
5 today?

6 A. That's consistent with my recollection
7 today.

8 MR. LEVEQUE: Your Honor I'm at a decent
9 segue. It's close to five. If you want me to keep
10 on going --

11 THE COURT: Mr. Jones, you have
12 questioning.

13 MR. JONES: Yes.

14 THE COURT: Mr. Schwartzer --

15 THE WITNESS: Do you want me back here at
16 9:00.

17 THE COURT: Thank you. Can you do that?

18 THE WITNESS: I can do that.

19 THE COURT: Very accommodating of you.
20 Appreciate you so much.

21 So ladies and gentlemen of the jury
22 Mr. Schwartz will be back here in the majority and
23 we will be eager to hear from him during this
24 recess, you are admonished not to talk or converse
25 among yourselves or with anyone else on any subject

1 connected with this trial; or read, watch or listen
2 to any report of or commentary on the trial or any
3 person connected with this trial by any medium of
4 information, including, without limitation, to
5 newspapers, television, the internet and radio; or
6 form or express any opinion on any subject connected
7 with the trial until the case is finally submitted
8 to you.

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EXHIBIT 2

In the Matter Of:

Jonathan A. Schwartz vs Adelson Educational Institute

VOL 2 TRANSCRIPT

August 24, 2018

003022

003022

ROUGH DRAFT TRANSCRIPT

REALTIME AND INTERACTIVE REALTIME TRANSCRIPT

ROUGH DRAFT DISCLAIMER

IMPORTANT NOTICE: AGREEMENT OF PARTIES

We, the party working with realtime and rough draft transcripts, understand that if we choose to use the realtime rough draft screen or the printout, that we are doing so with the understanding that the rough draft is an uncertified copy.

We further agree not to share, give, copy, scan, fax or in any way distribute this realtime rough draft in any form (written or computerized) to any party. However, our own experts, co-counsel, and staff may have limited internal use of same with the understanding that we agree to destroy our realtime rough draft and/or any computerized form, if any, and replace it with the final transcript upon its completion.

1 REPORTER'S NOTE:

2 Since this deposition has been provided in
3 realtime and is in rough draft form, please be aware
4 that there may be a discrepancy regarding page and
5 line number when comparing the realtime screen, the
6 rough draft, rough draft disk, and the final
7 transcript.

8
9 Also please be aware that the realtime
10 screen and the uncertified rough draft transcript
11 may contain untranslated steno, reporter's notes,
12 asterisks, misspelled proper names, incorrect or
13 missing Q/A symbols or punctuation, and/or
14 nonsensical English word combinations. All such
15 entries will be corrected on the final, certified
16 transcript.

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18 Court Reporter's Name:

19 Carre Lewis, CCR 497
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17
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I N D E X

EXAMINATION	PAGE
WITNESS: Lenard Schwartzer	
By Mr. LeVeque	131
By Mr. Jones	142
By Mr. LeVeque	202
By Mr. Jones	217
WITNESS: Susan Pacheco	
By Mr. LeVeque	231
By Mr. Jones	291
By Mr. LeVeque	316
By Mr. Jones	322
By Mr. LeVeque	329
By Mr. Jones	330
WITNESS: Roberta Sabbath	
By Mr. LeVeque	338

1 THE COURT: We are outside the presence of
2 the jury. We've got Mr. Schwartzer back?

3 MR. LEVEQUE: Yes, he is outside.

4 THE COURT: Anything before we want to
5 bring if the jury and we are ready to go?

6 MR. LEVEQUE: Yes, Your Honor. One issue.
7 This morning I had Susan Pacheco come to my office
8 to prepare her for a day, and she brought with her
9 documents that that she was able to subsequently
10 find after her deposition that support the
11 spreadsheet that she prepared for quantification of
12 damages at her deposition. If the court recalled,
13 she said she shredded them. Turns out she was able
14 to find some of the things she thought she shredded
15 but she didn't. So we would be seeking to introduce
16 that evidence in support of her --

17 THE COURT: Mr. Jones, you don't have to
18 say anything.

19 No.

20 MR. LEVEQUE: A couple of the documents are
21 documents from the school that weren't produced from
22 the school. They were receipts acknowledging
23 donations, and I don't know why they weren't
24 produced by the school but they certainly were from
25 the school but I don't know why there would be an

1 unfair notice.

2 THE COURT: No. They are not coming in,
3 but -- so I don't know how you want to handle it,
4 but no. I mean, they can't. We are literally -- we
5 have to start the trial. It's just too late. But
6 you know, fine. She has found things. She can't --
7 we can't. We just can't let them in. Just can't.
8 I realize that some of them may have come from the
9 school and that's on the school as well and so yes I
10 understand that. So I think that limits their
11 ability to challenge her accuracy for one thing
12 because if they do, then that is a different matter.

13 MR. LEVEQUE: Sure.

14 THE COURT: But if they aren't going to
15 challenge her, then there is like no way.

16 MR. JONES: Your Honor, I would like to
17 make a record too.

18 MR. LEVEQUE: I'm not finished Mr. Jones.

19 MR. JONES: I just want to make sure.

20 MR. LEVEQUE: The main thing that we want
21 to address is that Ms. Pacheco is the type of person
22 that doesn't destroy things so she went back to make
23 sure that her testimony was correct.

24 THE COURT: Now, they have never tried to
25 do any kind of a spoliation status, they have never

1 even --

2 MR. LEVEQUE: No.

3 THE COURT: -- words of "destruction" so
4 they haven't tried to challenge her on having
5 willfully or intentionally -- they have never said
6 that.

7 MR. LEVEQUE: Never have sought.

8 THE COURT: That's why as I said if they
9 are not challenger her on those things, then
10 anything that would have been adverse against them,
11 I mean they also didn't produce these receipts.
12 That would be different. Then of course you could
13 use them. But when they are not challenging, they
14 have never tried to infer anything about that from
15 her having said I just can't find them, I think I
16 may have destroyed them when we moved and I packed
17 up.

18 MR. LEVEQUE: Okay.

19 THE COURT: As long as they are not
20 challenging her veracity, her implying that this was
21 an intentional destruction of documents you know the
22 classic you know, in my case, the insurance company
23 lost the videotape. My client sent it to him.
24 Didn't help so you know they have not even tried.
25 They don't have records either. And they

1 acknowledge it so that's why they are not trying to
2 say that about Mr. Schwartz and his death because
3 they know they have some stuff too. I really like I
4 said, if for some reason I'm wrong and that is a
5 strategy they were trying to pursue if you have
6 proof where why didn't the school provide it we
7 found it I would take another look at it but just
8 ordinarily -- Mr. Jones is going to say for the
9 record.

10 MR. LEVEQUE: Right.

11 THE COURT: But I just can't, you know,
12 short of somehow this is going to somehow impeach
13 them, it's otherwise not admissible, as far as I can
14 tell. Unless I'm missing something, let me know.
15 But if that's the intended purpose is that, yes, I
16 later found them, and they were saying you destroyed
17 them intentionally, we could talk about it, but they
18 haven't taken that approach. I just can't.

19 MR. LEVEQUE: Your Honor, I understand the
20 Court's ruling. I want to make sure that, for the
21 record, counsel has a copy of it, the court has a
22 copy of it, because we do intend on using those
23 refresh her memory with respect to those.

24 THE COURT: That's a different thing.
25 If -- for example, if the school representative were

1 to say, no, we never got a check for that much,
2 that's impeachment, but otherwise, just no, sorry.

3 MR. LEVEQUE: I understand the Court's
4 ruling.

5 THE COURT: Mr. Jones if you choose to make
6 a record.

7 MR. JONES: Thank you Your Honor. I
8 appreciate your ruling one thing I would certainly
9 ask not to assume that the school didn't produce
10 anything because there is no evidence of that. What
11 we got today was probably 50 documents that
12 apparently.

13 MR. LEVEQUE: Not like a.

14 THE COURT: Not like a couple pages.

15 MR. JONES: 50 documents, financial
16 documents. There is one document from the school --
17 apparently it's from the school. I don't know if it
18 was ever requested. So let's not assume here that
19 the school has done anything incorrect.

20 THE COURT: That's what I said.

21 MR. JONES: Judge, what I will tell you is
22 I had this in one of my slides I took it out because
23 I misunderstood one of their arguments that I
24 thought they were trying to add up a bunch of
25 contributions that Mr. Schwartz allegedly made in

1 connection with his association with the school over
2 20 years.

3 THE COURT: Right.

4 MR. JONES: And then I understood that no
5 that had to do with this restitution argument so I
6 took that out of my slides. What I had in the
7 slides is where Ms. Pacheco testified in 2014 they
8 moved their offices -- excuse me, 2013, they moved
9 their offices and she shredded what appears to be
10 this information. She shredded it.

11 THE COURT: I have to assume it ended up in
12 the shredder I think that's what she said.

13 MR. JONES: That's what she said. She said
14 I think I shredded it. Then she went -- on the next
15 page of her deposition she said I shredded it. It
16 got shredded. So she was called as a custodian of
17 records so she was there on behalf of the estate to
18 produce documents. And here is the thing. She said
19 that this was done in 2014, November 2014 I think is
20 when she said they moved the office. The
21 complaint -- the petition was filed in May of 2013.
22 So we did intend if they wanted to get into this
23 issue, to ask for an instruction to the jury about a
24 presumption that this information was not valid or
25 essentially these claims were not valid. Which we

1 had a right to do. We took a strategic choice to
2 not come in beforehand because I wanted to get -- we
3 are going to have a jury. I can ask for a
4 presumption. I can ask for that if it's a bench
5 trial. But to suggest somehow based on counsel's
6 statement to the court that we didn't produce things
7 that we should have produced.

8 THE COURT: He didn't say that. He said
9 documents from the school --

10 MR. JONES: That came from the school.
11 There is one that I have seen in my brief review of
12 these things that came from the school. Maybe there
13 is others but I certainly saw this. But I see no
14 request that suggests that somehow or other this
15 particular document was ever requested.

16 THE COURT: Responsive to a request. Do I
17 have a set of them.

18 MR. LEVEQUE: I have to look for a request.

19 MR. JONES: My point is, judge, I think I
20 should have the ability to talk to her about the
21 fact that at a minimum she did not provide the
22 information at the time of her deposition that she
23 said in her deposition she shredded the information,
24 if she comes back and says yeah I found it now I
25 would say isn't that convenient. I think she should

1 be to this jury say well now I have come up with --
2 I mean this is stuff I would want an accountant to
3 look at to compare to see if in fact comports with
4 the schedule that she prepared which is the document
5 that she actually gave us which is the schedule
6 without the backup. The backup which she used the
7 word I recall she used the word the backup was
8 shredded. So Your Honor, I do believe I should have
9 the opportunity to question her about this and that
10 she should not be allowed at this juncture to say,
11 oh, yeah well I found it today and then make some
12 kind of an implication that how they got the backup
13 and that -- to support all of this stuff and I never
14 had an opportunity to investigate that. That's just
15 totally prejudicial unfair.

16 THE COURT: Right. Like I said that's the
17 general rule. It's too late.

18 MR. LEVEQUE: Too take it into evidence and
19 I think where Mr. Jones is trying to go and correct
20 me if I'm wrong Mr. Jones but cross examining her on
21 destruction on finding them later, that's fair game.
22 I can't argue that point, but I hope you are not
23 saying that you are requesting the court to
24 foreclose my opportunity for me to examine
25 Ms. Pacheco and say since your deposition did you

1 later find out that you did not shred everything?
2 And she can't lie under oath. Her answer is going
3 to have to say, yes, I did find things after I
4 thought I shredded them. But with respect to
5 seeking an adverse inference or rebuttal of
6 presumption, we are past that. They are on notice
7 for deposition in 2014. If they thought they had a
8 basis to seek, you know, a Bass-Davis instruction,
9 that's --

10 THE COURT: We will get to that in jury
11 instructions. But he is certainly able to impeach
12 her on the fact that all this testimony about
13 shredding documents.

14 MR. LEVEQUE: Yeah I'm not seeking to limit
15 that.

16 THE COURT: Nothing he said sounds wrong to
17 me. I think he is perfectly entitled. The jury is
18 not going to see them though they just can't see
19 them. They haven't had a chance to cross examine
20 her on them. She is not going to sit up here and
21 testify about it. If she needs something to refresh
22 her recollection about that check for \$10,000 on it,
23 no, I don't, does this refresh your recollection,
24 you can do that. You can refresh her recollection
25 with anything. The jury is not going to see it.

1 MR. JONES: Your Honor, my concern about
2 that statement is that, at a minimum, there should
3 be a sanction to not allow her to -- I understand
4 your point, I agree with that. If we had an
5 interesting discussion with judge Johnson one time
6 where she was making the point that you could
7 refresh somebody's recollection with the label on a
8 bottle of water. So I appreciate that the court has
9 wide latitude on refreshing recollection or a party
10 does. The difference here is, though, then it gets
11 around the fact that they never produced the
12 information because then she looks at a document,
13 the jury sees, oh, she has something that actually
14 shows her that what she put in the schedule is
15 correct, which I have never had a chance to
16 challenge or request. So I believe that this is a
17 circumstance where the general rule is should they
18 be allowed to refresh with anything in this case
19 since they did not produce that anything to give me
20 the opportunity to investigate it and do follow up
21 discovery on it, they should not be allowed to had
22 refresh recollection with these documents that were
23 produced this morning. So how am I supposed to ever
24 effectively cross exam her? My argument would be,
25 Your Honor, the prejudice far outweighs. This is

1 something they created, they created the problem and
2 they should not be able to benefit from it so the
3 prejudice of allowing her to refresh her
4 recollection with documents that have been excluded
5 by the court effectively gets around the exclusion
6 of the document then the jury says she obviously saw
7 something here is the proof that my number is
8 correct.

9 THE COURT: No, but -- I would agree with
10 you if, for example, somebody were to put
11 together -- put in front of her her chart or
12 whatever her calculations were and say, you know,
13 does this looking at this document refresh your
14 recollection that you were right that's not how it
15 works. It's if she doesn't remember. I don't know
16 when a certain document was -- a check was written
17 if she needs to find a date that's different. But
18 they are not going to be able to put in front of her
19 her damage calculation or her contribution
20 calculation, whatever it's called, and say now look
21 at this document doesn't that you know confirm
22 exactly what you have -- that's not refreshing
23 recollection.

24 MR. LEVEQUE: That wouldn't be my line of
25 questioning.

1 THE COURT: Just so we are clear, that
2 would not be appropriate to refresh recollection if
3 she truly doesn't remember. It's probably on her
4 chart I'm not understanding how she would need to
5 refresh her recollection on anything.

6 MR. LEVEQUE: Probably not.

7 THE COURT: But that's one possible use
8 just, again, to look at. As I said if the school
9 were to deny we never got a check from him in X
10 month for X dollars, that's impeachment but again
11 the jury doesn't see it.

12 MR. LEVEQUE: I will be sure to let
13 Ms. Pacheco know the court's ruling.

14 THE COURT: Thanks. Do we have
15 Mr. Schwartzer out there?

16 MR. LEVEQUE: Yes.

17 THE COURT: Anything before the jury comes
18 in and Mr. Schwartzer's testimony? I think we are
19 okay with him. There were no issues. I think it
20 was just going, as you expect, to hear from
21 Mr. Schwartzer.

22 MR. LEVEQUE: I think I have maybe 15
23 minutes for Mr. Schwartzer. We have Ms. Pacheco
24 lined up. If we have time, we have Ms. Sabbath; if
25 not, we will start her after lunch.

1 THE MARSHAL: Please be seated.

2 THE COURT: Good morning ladies and
3 gentlemen we are going back on the record in case P
4 061300 the record should reflect the presence of
5 counsel with their respective clients and counsel
6 will stipulate to the presence of our jury panel.

7 MR. LEVEQUE: So stipulated.

8 MR. JONES: Yes Your Honor.

9 THE COURT: We are ready to resume with
10 Mr. Schwartz.

11 MR. FREER: Your Honor while they are
12 bringing in Mr. Schwartz there is one matter of
13 procedure that we need to do on the record and
14 that's we got joint Exhibits 1 through 64 that we
15 need to stipulate to on the record in front of Your
16 Honor.

17 THE COURT: All right. Thank you.

18 MR. JONES: Yes, Your Honor.

19 THE COURT: Got it joint Exhibits 1 through
20 64.

21 Ladies and gentlemen all that means the
22 parties agree these are documents that they both
23 agree should be used so they have agreed to just
24 have one set that way we are not bouncing back and
25 forty between two different books.

1 Mr. Schwartzer, just for the record I know
2 you know the oath but we are going to swear you in
3 again.

4 Whereupon --

5 LENARD SCHWARTZER,
6 having been first duly sworn to testify to the
7 truth, was examined and testified as follows:

8 THE CLERK: Please be seated and state your
9 name for the record.

10 THE WITNESS: Lenard Schwartzer.

11 DIRECT EXAMINATION

12 (continued)

13 BY MR. LEVEQUE:

14 Q. Welcome back, Mr. Schwartzer. Do you have
15 the exhibit binder in front of you?

16 A. I have two binders.

17 Q. Could you please turn to proposed
18 Exhibit 176, please?

19 A. 176. The binder I have only goes to 174.

20 Q. It might still be in there?

21 A. It is.

22 Q. Yes, we had to add some.

23 A. Okay. I found 176.

24 Q. Mr. Schwartzer, what does the document
25 appear to be?

1 A. Board meeting minutes for 8/25/1990 of the
2 Hebrew Academy.

3 Q. Does this document indicate that you were
4 present for that meeting?

5 A. It does.

6 Q. And at the bottom of the document do you
7 see a Bates number?

8 A. Yes.

9 Q. What are the initials of that?

10 A. AC.

11 Q. I will represent to you that that's for the
12 Adelson campus?

13 A. Okay.

14 MR. LEVEQUE: Estate moves to admit.

15 MR. JONES: No objection, Your Honor.

16 THE COURT: It's admitted.

17 BY MR. LEVEQUE:

18 Q. Mr. Schwartzer, I guess the first question
19 I have for you is do you see handwriting on that
20 document?

21 A. Yes.

22 Q. Do you recognize if that's yours?

23 A. It does look like my handwriting. It does.

24 MR. JONES: I'm sorry, Counsel, we have a
25 different document -- oh, second page. Sorry. No

1 problem.

2 BY MR. LEVEQUE:

3 Q. I direct your attention to Paragraph 4 of
4 these minutes, Mr. Schwartzer.

5 A. Yes.

6 Q. And states Milton Schwartz reported under
7 his good solicitation and auspices that Paul Sogg
8 has paid 100,000 of his pledge; Robert Cohen has
9 paid 100,000 of his pledge; and Oscar Alterwitz
10 estate forthcoming; and MS -- I think that's
11 probably Milton Schwartz -- will call on this issue.

12 Mr. Schwartzer, other than Paul Sogg,
13 Robert Cohen and Oscar Alterwitz, do you recall
14 anyone else that committed to a sizeable
15 contribution for the construction of the building?

16 A. Off the top of my head, no. Oh, wait, yes
17 I do. I think George Rudiak -- George Rudiak and
18 his wife made a substantial contribution.

19 Q. Do you know if Mr. Schwartz also solicited
20 Mr. Rudiak for a contribution?

21 MR. JONES: Objection Your Honor lacks
22 foundation.

23 THE WITNESS: Yes. You have to lay some
24 foundation.

25 BY MR. LEVEQUE:

1 Q. Mr. Schwartz, you prepared these minutes;
2 is that correct?

3 A. Yes, I did.

4 Q. Is there any reason to believe that the
5 representation --

6 A. Let's put it this way, I edited these
7 minutes because it looks like someone else prepared
8 the first draft.

9 Q. Okay.

10 A. The reason I say that is because somebody
11 put Lenny Schwartz Esquire as the name for my name
12 on the original board minutes. And if I had typed
13 it, if I had written it, it would be Lenard
14 Schwartz.

15 Q. Got it. But is it fair to assume that you
16 reviewed these and made edits to them yourself after
17 they were typed?

18 A. Yes, that's what this clearly appears to be
19 my editing of it.

20 Q. Is there any reason to believe that what's
21 represented in paragraph four that was discussed is
22 inaccurate?

23 A. I would have to think that I was trying to
24 make it as accurate as I could when I was editing it
25 back in 1990.

1 Q. So other than what's been stated in
2 Paragraph 4 in addition to your recollection that
3 Mr. Rudiak contributed, was there anyone else that
4 Milton Schwartz solicited for donations?

5 MR. JONES: I'm just going to object to the
6 question. Mr. Schwartzer never said Mr. Rudiak
7 contributed; he said he made a substantial pledge.

8 THE COURT: Correct.

9 MR. LEVEQUE: With that he adjustment, I
10 suppose Mr. Schwartzer can answer the question.

11 THE WITNESS: I don't know who else
12 Mr. Schwartz solicited, beyond the people who was
13 reported that they made contributions, so if he
14 solicited other people, I don't know who they were.
15 BY MR. LEVEQUE:

16 Q. Okay. These minutes were in 1990. What's
17 your recollection of how minutes were taken and
18 prepared and ratified?

19 A. I don't recall. This is 28 years ago. I
20 guess I don't recall, but it's clear that the
21 original draft of the minutes was not prepared by
22 me, and then I got to edit it because I was the
23 secretary of the corporation.

24 Q. Okay. Mr. Schwartzer, could you please go
25 to Exhibit 422, which is probably in the other

1 binder.

2 A. Yes.

3 THE COURT: Which page?

4 MR. LEVEQUE: Exhibit 422.

5 THE COURT: I'm going to need that binder.

6 MR. LEVEQUE: Thank you.

7 BY MR. LEVEQUE:

8 Q. Mr. Schwartzer, let me know when you are at
9 422?

10 A. Okay, I found 422.

11 Q. Mr. Schwartzer, what does this document
12 appear to be?

13 A. It appears to be a Hebrew Academy executive
14 board meeting minutes for December 16, 1992.

15 Q. Does it identify whether you are present or
16 not?

17 A. It indicates that I'm not present.

18 Q. Do you see a signature on the board meeting
19 minutes?

20 A. Geri Rentchler's, yes.

21 Q. Do you know who Geri Rentchler was at that
22 time?

23 A. She was George Rudiak's daughter, and she
24 was a member of the board of the Hebrew Academy.

25 MR. LEVEQUE: Estate moves for admission of

1 Exhibit 422.

2 MR. JONES: Your Honor, I think there is a
3 lack of foundation.

4 THE COURT: Sustained.

5 BY MR. LEVEQUE:

6 Q. Let me ask you this, Mr. Schwartzer. If
7 you look at the bottom of the document there is a
8 pretty long paragraph could you read that for me,
9 please?

10 THE COURT: Not out loud.

11 BY MR. LEVEQUE:

12 Q. To yourself.

13 A. Yes.

14 Q. Okay. Do you have any recollection of
15 those things occurring?

16 MR. JONES: I'm sorry. I got it. I'm
17 fine. Sorry.

18 THE WITNESS: I recall there was a point in
19 time when there was news articles about cab drivers
20 getting kickbacks from gentlemen's clubs, and Milton
21 Schwartz impeded one of their cab companies. But I
22 don't recall the discussion, this discussion being
23 held at a board meeting.

24 BY MR. LEVEQUE:

25 Q. Do you know if any of those eventually

1 occurred?

2 MR. JONES: Just object to the form of the
3 question. Vague and ambiguous. I'm not sure --

4 MR. LEVEQUE: I'm trying to lay foundation.

5 THE COURT: Yeah. That question needs to
6 be rephrased.

7 MR. LEVEQUE: The event stated in the last
8 paragraph. Can I restate the question.

9 MR. JONES: Reask the question.

10 BY MR. LEVEQUE:

11 Q. Mr. Schwartz, in the last paragraph of
12 that document, it discusses the events that
13 occurred. Do you recall any of those events
14 actually occurring?

15 A. As I said, I recall there being newspaper
16 articles that involved cab companies and the taxicab
17 drivers getting the kickbacks from the gentlemen's
18 clubs. I am aware and I think it was in the paper
19 but I was aware otherwise that Mr. Schwartz owned a
20 cap company but I don't recall a board meeting where
21 the board discussed the remainder of what was said
22 at that paragraph.

23 Q. I guess, Mr. Schwartz, I'm asking more
24 about the events that the school took in this
25 paragraph, not so much the discussion about the cab

1 company.

2 A. I don't remember what the school did at
3 this point in time.

4 Q. Okay.

5 A. This is again, this is 26 years ago.

6 Q. Were you on the board as of December 16,
7 1992?

8 A. I think I was because I think I was on the
9 board generally through 1995, but I could be wrong
10 about the dates that I was on the board. At some
11 point I went off but I know definitely I was off by
12 the spring of 1995.

13 Q. Okay. During your tenure on the board, do
14 you remember the school taking any action to remove
15 the namesake of Milton Schwartz in any way?

16 A. No.

17 Q. If you could probably change books,
18 Mr. Schwartz, to the one with Exhibit 11 in it.

19 A. I'm looking at exhibit -- I'm looking at
20 Exhibit 11.

21 Q. Is that the minutes for the August 25,
22 1994, meeting?

23 A. Yes, it says the Hebrew Academy board
24 meeting minutes August 25, 1994.

25 Q. And does it state whether you are present?

1 A. It states that I was present.

2 Q. If you go to the third paragraph where it
3 starts "resolved," do you see that?

4 A. Yes.

5 Q. It states the minutes state "resolved that
6 it is advisable and in the best interest of the
7 corporation that its articles of incorporation be
8 amended by changing the language of article 1 of
9 said articles to read as follows, article one this
10 corporation shall be known at the Hebrew Academy do
11 you see that?"

12 A. Yes.

13 Q. Do you know why in August 25, 1994, that
14 the board resolved to change the name back from
15 Milton I. Schwartz to the Hebrew Academy?

16 MR. JONES: Was this admitted in evidence.

17 THE COURT: It's a joint 11.

18 MR. JONES: I was going to stipulate
19 anyway, but just want to make sure. Thank you.

20 THE WITNESS: I don't recall this meeting
21 or that I was at such a meeting.

22 BY MR. LEVEQUE:

23 Q. Do you recall the name of the school ever
24 being reverted back to the Hebrew Academy?

25 A. No.

1 Q. This is Exhibit 12, next one. What does
2 this document appear to be?

3 A. It's a certificate of amendment of articles
4 of incorporation for the Milton I. Schwartz Hebrew
5 Academy filed with the secretary of state of Nevada
6 in October of 1994.

7 Q. Mr. Schwartz, what does this document do?

8 A. It changes the name of the corporation to
9 the Hebrew Academy.

10 Q. Mr. Schwartz, based on your understanding
11 of the agreement that the school had with Milton
12 Schwartz that was entered into back in 1989, do you
13 believe the board's resolution to change the name
14 back to the Hebrew Academy breached that agreement.

15 MR. JONES: Object to the form of the
16 question to the extent that it calls for legal
17 conclusion.

18 THE COURT: To the -- we are not asking
19 Mr. Schwartz for his opinion as an attorney just
20 as a --

21 MR. LEVEQUE: As a board member.

22 MR. JONES: Fair enough.

23 THE WITNESS: As a board member, I think it
24 would have be the mutual understanding of the
25 parties that had been made earlier that the name of

1 the school would be the Milton I. Schwartz Hebrew
2 Academy forever.

3 MR. LEVEQUE: Court's indulgence.

4 THE COURT: Sure.

5 MR. LEVEQUE: Thank you, Your Honor. I
6 will pass the witness.

7 THE COURT: Mr. Jones.

8 CROSS EXAMINATION

9 BY MR. JONES:

10 Q. Good morning, Mr. Schwartz.

11 A. Good morning.

12 Q. You and I have known each other for -- I
13 guess, the color of our hair would probably be an
14 indication of number of years we have known each
15 other?

16 A. I'm sure it's 25, 30 years, Mr. Jones.

17 Q. Nice to see you this morning, although
18 probably seeing you under circumstances that would
19 probably be better than sitting on the witness
20 stand, but nice to see you.

21 A. This is more relaxing than being the
22 attorney questioning the witness.

23 Q. Fair enough. If I could, I would like to
24 start by where you ended. I listened carefully to
25 what you said, Mr. Schwartz, about when you saw

1 that amendment of the articles, I think that was
2 exhibit -- it was the last exhibit that was put up
3 was 112 -- 111. Yes, thank you.

4 MR. CARLSON: Joint 11.

5 MR. JONES: Joint 11. Thank you.

6 BY MR. JONES:

7 Q. If you could blow up that part, Shane,
8 where it talks about amending the articles?

9 A. I can see it.

10 Q. I want to make sure the jury can too.

11 So it says there that there is a resolution
12 to change the name. Up at the top -- up at the top
13 of the document, it says the name of the
14 corporation?

15 A. Yes.

16 Q. Is the Hebrew Academy. We have highlighted
17 it on the -- I'm sorry the Milton I. Schwartz heap
18 academy?

19 A. Correct.

20 Q. The way this would work, this is an
21 official document that gets filed with the secretary
22 of state's office if the corporation wants to change
23 its name formally, right?

24 A. Yes.

25 Q. And so the corporation would have to pass a

1 resolution to accomplish this change and then file
2 this document with the secretary of state's office,
3 right?

4 A. Yes.

5 Q. And then it becomes sort of official for
6 the world, everybody in the world should know if
7 they wanted to look up what the name of this company
8 was or corporation in this case, nonprofit they
9 could see that it went from the Milton I. Schwartz
10 Hebrew Academy to the Hebrew Academy, right?

11 A. Correct.

12 Q. So what I heard you to say is that in
13 response to Mr. LeVeque's question, it probably
14 would have violated the mutual understanding with
15 Milton I. Schwartz changed the name from the Milton
16 I. Schwartz Hebrew Academy to the Hebrew Academy; is
17 that right?

18 A. That's correct, sir.

19 Q. And I listened to your words carefully
20 because you are a lawyer and I know you to be a very
21 good lawyer and a very careful lawyer. You said
22 mutual understanding. You would agree with me and
23 I'm asking you for your opinion for yourself, not as
24 anybody else's understanding of the law, but your
25 understanding of the law is that bylaws are not a --

1 bylaws by themselves are not an enforceable
2 contract?

3 MR. LEVEQUE: Objection Your Honor calls
4 for a legal opinion.

5 THE COURT: Sustained.

6 MR. JONES: Again Your Honor just to be
7 clear, I don't want him to give a legal opinion in
8 general, I want him to give us, if I may, Your
9 Honor, his understanding as a board member who was
10 sitting on that board. So with that hopefully I can
11 avoid the objection.

12 THE COURT: No. I think that the last
13 question, Mr. LeVeque asked of Mr. Schwartzer was as
14 a member of the board, you know, what did he think.

15 MR. JONES: Right.

16 THE COURT: But so again.

17 MR. JONES: I will rephrase Your Honor.

18 THE COURT: Okay.

19 MR. JONES: I was trying to get to a
20 rephrasing and I didn't get to it very articulately.
21 Let me try again.

22 BY MR. JONES:

23 Q. You have been involved in both for profit
24 and nonprofit corporations over the years is that
25 true?

1 A. That's true.

2 Q. And in your experience as a board member,
3 who it also be true to say that you never understood
4 bylaws that you were enacting on behalf of the
5 corporation to be legally enforceable contracts with
6 third parties?

7 MR. LEVEQUE: Object to the form.
8 Overbroad and vague.

9 THE COURT: I will allow that.

10 THE WITNESS: I never would think that
11 bylaws were -- yeah, I agree with you, bylaws can be
12 changed.

13 BY MR. JONES:

14 Q. So as your understanding as a board member,
15 when you were passing bylaws regardless of what they
16 said, you never considered those bylaws to be a
17 contract with somebody else, did you?

18 A. No, I didn't. I agree with you. Bylaws
19 are not a contract unless there is a separate
20 agreement to the to change the bylaws.

21 Q. Fair enough.

22 Now let's go to Exhibit 111. There was a
23 document right before this that Mr. LeVeque showed
24 you. And Shane if you could just pop up the top
25 part who shows who is present there.

1 A. It shows that I was present.

2 Q. Right. So you are there. And again, the
3 date, Shane, so we could see the date for the jury?

4 A. It's August 4, 1989.

5 Q. I'm sorry. I have the wrong --

6 MR. JONES: That's 111?

7 THE COURT: 11 or 111.

8 MR. CARLSON: Hold on a second. 11 is
9 8/25.

10 MR. JONES: I wrote it down with three ones
11 instead of two. My fault.

12 BY MR. JONES:

13 Q. So now we are looking at August 25 of 1994
14 and it shows that you were present at this meeting
15 as well?

16 A. That's what is that shows.

17 Q. All right. Again apologize to everybody
18 for my confusion. This is the second to the last
19 document that Mr. LeVeque showed you right before we
20 looked at the articles that changed the name,
21 correct?

22 A. Correct.

23 Q. And so you are there at this meeting. I
24 know and I don't blame you we are talking about
25 ancient history for some of our jurors may not have

1 been alive back when this meeting was held so it was
2 a long time ago. So if you look then down to the
3 portion that Mr. LeVeque referred you to, the third
4 paragraph where it says, resolved, it is advisable
5 and in the best interests of the corporation that
6 its articles of incorporation be amended by changing
7 the language of article one of said articles as
8 follows. This corporation shall be known as the
9 Hebrew Academy, right?

10 A. That's what it says.

11 Q. You would agree with me that it's your
12 understanding that this resolution is what gave rise
13 to the exhibit we just looked at that was filed with
14 the secretary of state's office?

15 A. Yes.

16 Q. So you would not have done anything, would
17 you -- let me rephrase that.

18 Knowing you, Mr. Schwartz, I would
19 believe you would not have done anything that you
20 thought was directly in violation of a contract that
21 somebody had, is that true?

22 A. That's a rather broad question.

23 Q. It is.

24 A. The answer is there are times when
25 breaching a contract is advisable.

1 Q. Fair enough. In looking back at this, and
2 I understand as you said ancient history, but do you
3 believe that you would have consciously and
4 intentionally passed a resolution that would have
5 directly violated what you believed to be an
6 enforceable agreement with Milton I. Schwartz?

7 A. No, that's why I don't think I have no
8 recollection of this meeting and I really don't
9 believe I would have done that.

10 Q. Do you have any reason to disbelief that
11 you attended this meeting based upon what it says?

12 A. Yes because I can't imagine me agreeing to
13 violate that understanding with Milton Schwartz.

14 Q. So the only reason that you think you
15 weren't at that meeting, even though the minutes
16 suggest that you were or say that you were is
17 because it seems contradictory to what you think was
18 an agreement that the school had with Mr. Schwartz?

19 A. That is correct. I mean, I had expressed
20 my understanding in earlier correspondence that the
21 school had to be named after Milton I. Schwartz in
22 perpetuity, forever.

23 Q. We will get to that in a minute, but it
24 also says in this resolution it is advisable and in
25 the best interests of this corporation. Do you see

1 that?

2 A. Yes.

3 Q. Now, that language is often used by boards
4 when they think it's something so important for the
5 corporation that they do something, right? That's
6 not unusual language, right?

7 MR. LEVEQUE: Objection. Foundation.

8 THE COURT: Overruled.

9 THE WITNESS: Could you repeat the
10 question?

11 BY MR. JONES:

12 Q. Sure. You have been on other boards where
13 we talked about that?

14 A. Yes.

15 Q. And you have been a participant in other
16 resolutions, correct?

17 A. Mostly as the attorney preparing them.

18 Q. And do you often advice your counsel -- I
19 mean your clients to say things like if you think --
20 if a board thinks it's in the best interest of the
21 corporation to do something that they should make
22 sure to put that in the language of the resolution?

23 MR. LEVEQUE: Objection calls for a legal
24 opinion.

25 MR. JONES: I'm asking what his practice

1 is.

2 THE COURT: So to be -- because he did say
3 he is usually acting as the attorney so are you
4 talking about those times when he is acting as a
5 member of the board.

6

7 MR. JONES: Yes, Your Honor.

8 THE COURT: As a member of the board.

9 THE WITNESS: In 40 years I don't ever
10 remember using that language.

11 BY MR. JONES:

12 Q. Okay.

13 A. I would have resolved whatever they are
14 thinking of doing.

15 Q. So then would you say at least in your
16 experience when a board puts language like that
17 advisable and in the best interests of the
18 corporation, they are putting that in there for
19 emphasis?

20 A. If I have never seen it before, I can't
21 base any opinion on my experience.

22 Q. Fair enough.

23 Let me also ask you. Did you have an
24 opportunity to speak with the estate's attorneys
25 last night?

1 A. No.

2 Q. Have you talked to them at all about this
3 case before you testified today?

4 A. I talked to them -- yes. The answer is
5 before my deposition and last week.

6 Q. And last week?

7 A. Yes.

8 Q. So you are familiar with the estate's
9 claims in this case?

10 A. No. I mean, I understand it's a dispute
11 about whether the estate should complete a gift to
12 the school. And that's why we are here, but I don't
13 know -- I have never seen any of the pleadings or
14 anything like that to give me an idea what anybody's
15 legal theories are or what anybody's defenses are.

16 Q. You didn't -- you and I have not spoken
17 about this case, though, correct?

18 A. No, you were not at my deposition.

19 Q. All right. So now when you were acting as
20 a board member for the -- let me rephrase that.

21 Even though your practice is primarily
22 focused in the bankruptcy area?

23 A. Yes, about 80 percent.

24 Q. With that said, is it true that you
25 certainly as a lawyer have to deal with legal issues

1 concerning contracts?

2 A. Yes.

3 Q. And you believe you have an understanding
4 of what it takes to create a legally binding
5 contract, correct?

6 A. Yes.

7 Q. And so there are certain elements that most
8 lawyers agree to -- agree have to be present in
9 order to form a legally binding contract, would you
10 agree with that?

11 A. Yes.

12 MR. LEVEQUE: Calls for a legal opinion.

13 THE COURT: Sustained. Do you want me to
14 strike that?

15 MR. LEVEQUE: Was there an answer?

16 THE COURT: Yes.

17 MR. LEVEQUE: Move to strike.

18 THE COURT: The jury is instructed to
19 disregard the answer to the last question.

20 MR. JONES: Your Honor, if I may, my
21 question was -- I didn't ask what the elements were,
22 I just said that most lawyers agree that there are
23 certain elements.

24 THE COURT: Right. But he is not here as
25 an expert. He is here --

1 MR. JONES: I certainly agree with that.

2 All right. Fair enough, Your Honor.

3 BY MR. JONES:

4 Q. It's my understanding is you didn't know
5 Milton Schwartz real well when you were on the
6 board; is that true?

7 A. We were friendly but I wouldn't consider us
8 friends.

9 Q. But you were also familiar with some of the
10 businesses that he owned or was involved with at
11 that time?

12 A. The only -- my understanding was more from
13 the newspapers than anything else or from just
14 general public knowledge that he owned the taxicab
15 company and then he also had something to do with a
16 hospital.

17 Q. With Valley Hospital?

18 A. Yeah.

19 Q. Okay. Was it your understanding that he
20 was a knowledgeable and sophisticated businessman?

21 A. I would have come to that -- I came to that
22 conclusion, yes.

23 Q. Now, would you also agree with me that as a
24 board member, you had a fiduciary duty to protect
25 the interests of the corporation?

1 A. Yes.

2 Q. And you also acted as the attorney for the
3 corporation of the Hebrew Academy corporation at
4 certain times, correct?

5 A. That's correct.

6 Q. And you did that, by the way, on a pro bono
7 basis which means you didn't get paid for it?

8 A. Correct.

9 Q. Good for you.

10 And so an attorney for a corporation also
11 has fiduciary duties to their client, right?

12 A. Correct.

13 Q. By the way, could you just explain to the
14 jury your understanding of definition of fiduciary
15 duty so they get -- some of them might not know what
16 that term means?

17 MR. LEVEQUE: Objection. Your Honor.

18 THE COURT: Now, again, Mr. Schwartzer, as
19 a member of the board, his view of what the duties
20 of the board members are.

21 THE WITNESS: In a nonprofit corporation, a
22 duty, I believe, goes to the corporation that you
23 have a duty to do what's in the best interests and
24 vote your vote in favor of things and policies and
25 contracts that are in the best interest of the

1 corporation rather than in your best interest or
2 your family's best interests or your other
3 businesses best interests.

4 BY MR. JONES:

5 Q. Thank you.

6 Now, as an attorney, again from your
7 perspective, maybe different lawyers have different
8 thoughts about this but generally as an attorney,
9 what do you understand your duties would be to a
10 client?

11 THE COURT: Wait.

12 MR. LEVEQUE: Objection.

13 THE COURT: What.

14 MR. JONES: In this case, if he was working
15 for the board, what he believed his duties were to
16 the board of the Hebrew Academy or the Milton I.
17 Schwartz Hebrew Academy when he was acting in the
18 capacity as a lawyer for the company.

19 THE COURT: Right.

20 MR. LEVEQUE: My problem is he has never
21 been designated as an expert witness to give expert
22 testimony.

23 THE COURT: Right. So not as an expert but
24 just for those -- that period of time because he
25 said he wasn't always.

1 MR. JONES: That's right.

2 THE COURT: That he was acting I guess both
3 as a board member and as the attorney for the board?

4 MR. JONES: I believe on some occasions
5 that's my understanding Mr. Schwartzer's position.

6 THE COURT: In that context, I will allow
7 that.

8 THE WITNESS: I guess as an attorney
9 representing the school on specific matters, my
10 obligation was to act in the best interests of the
11 school.

12 BY MR. JONES:

13 Q. So if the school entered into a contract
14 for example or had some kind of an agreement, you
15 would agree with me that it would have been in the
16 best interests of the school to make sure that
17 contract was clear and in writing?

18 A. Are you saying 2020 hindsight we should
19 have done things differently? I would say yes to
20 that.

21 Q. And so if you were advising the school as
22 eight attorney, you would have certainly advised it
23 to put any kind of written agreement or any kind of
24 agreement in to a written contract form, correct?

25 A. No. I mean, sometimes -- you are asking me

1 that every agreement has to be in writing?

2 Q. Good question, Mr. Schwartzer. Let me ask
3 you another question.

4 You have been on -- how many nonprofit
5 boards have you been on in your lifetime?

6 A. Two.

7 Q. What was the other one?

8 A. Hemophilia Foundation of Nevada.

9 Q. And did the hemophilia foundation of Nevada
10 ever have any fundraising drives?

11 A. Yes.

12 Q. Did it ever provide for any incentives if
13 you will to prospective donor's like, for instance,
14 naming opportunities?

15 A. That never occurred at the hemophilia
16 foundation. They didn't have a building. They
17 didn't even have a permanent office most of the
18 time.

19 Q. So the only board that you ever sat on that
20 talked about naming opportunities was the Hebrew
21 Academy, correct?

22 A. Yes.

23 Q. And you are familiar with things like the
24 Smith Center?

25 A. Yes.

1 Q. And do you have any information -- have you
2 heard how much the Smith Center -- how much the
3 donation was from the Smiths?

4 A. Huge.

5 Q. Hundreds of millions of dollars?

6 A. I don't know. I don't know.

7 Q. What about?

8 A. I'm just a hundred dollar a year member.

9 Q. So am I but any way. What about Thomas &
10 Mack center?

11 A. I would assume that was also multimillions
12 of dollars.

13 Q. So would you agree with me that when as
14 somebody who was on the board of a charitable
15 institution or in this case nonprofit in this case
16 Milton I. Schwartz Hebrew Academy at the time that
17 one of the most valuable assets a nonprofit
18 corporation has that it can give away are naming
19 rights to the facility?

20 MR. LEVEQUE: Objection. Foundation.

21 BY MR. JONES:

22 Q. Just in your experience.

23 THE COURT: Overruled.

24 THE WITNESS: My experience is only with
25 that question has only been with two boards, one

1 that never had a building, and one that didn't have
2 a written agreements with regard to building or rule
3 namings or anything like that just put it in the
4 minutes.

5 BY MR. JONES:

6 Q. So limited to your -- you also have life
7 experience of what you have seen and what you have
8 learned in the course of your lifetime. Would you
9 agree with me that one of the most valuable assets a
10 nonprofit has that it can give away are naming
11 rights to raise money?

12 A. If a nonprofit organization has a facility
13 that can be named, yes. I don't know if it's the
14 most valuable or not.

15 Q. I think I said one of the most.

16 A. Okay.

17 Q. Certainly would you agree it's one of the
18 most valuable, if not the most?

19 A. Yes, if they have a facility, I mean, if
20 it's -- you know, people have sewage facilities
21 named after them. I can't imagine why.

22 Q. So would you agree with me also
23 Mr. Schwartzer that if the Hebrew Academy is going
24 to give away the name of the school forever and ever
25 in perpetuity, it wants to be very careful about how

1 it does that?

2 A. It should be careful about doing that, yes.

3 Q. Because, for instance, if the Hebrew
4 Academy gave away all of its naming rights for
5 \$500,000 and a Ben factor came along 20 years later
6 and said I will give you \$50 million, you don't want
7 to be in a position to preclude that future Ben
8 factor from giving away the money, unless you feel
9 confident that that's the best thing to do for the
10 corporation, right?

11 MR. LEVEQUE: Objection. Calls for
12 speculation.

13 THE COURT: Overruled.

14 THE WITNESS: I think the answer to the
15 question has to be yes, looking at things in
16 retrospect. You know, I know of situations where
17 that has occurred.

18 BY MR. JONES:

19 Q. Now I read your deposition. In your
20 deposition, you said you believed that Mr. Schwartz
21 gave a lot of money but you didn't say the amount of
22 money?

23 A. Correct.

24 Q. In your testimony yesterday, you told the
25 jury that you believed it was \$500,000 that he gave,

1 and \$500,000 that he raised. Do you recall that?

2 A. That's my recollection, that he -- he at
3 this point in time, that he gave 500,000 and that he
4 raised approximately another 500,000.

5 Q. Approximately. Well, that brings up an
6 interesting question. Was it 500,000? Was it
7 400,000, was it 600,000? What was it?

8 A. The answer is I can't give you -- other
9 than the 500,000 that he personally gave and my
10 understanding that Paul Sogg gave another 300,000,
11 and that there was another donor that was related to
12 solicited by Mr. Schwartz that gave a hundred
13 thousand dollars. I can't tell you that the number
14 was more than that.

15 Q. So what was the agreement? Tell this jury
16 exactly what the agreement was. How much money to
17 the dollar was he going to pay in exchange for
18 perpetual naming rights?

19 MR. LEVEQUE: Objection. Asked and
20 answered.

21 THE COURT: Overruled.

22 THE WITNESS: My understanding of the
23 agreement -- my understanding, is that Mr. Schwartz
24 gave a half a million dollars.

25 BY MR. JONES:

1 Q. Okay.

2 A. And was aiming at raising another half --
3 that he gave a half million dollars and that in
4 exchange for that and his offices in soliciting
5 additional monies, that he was going to have the
6 school named after him forever.

7 Q. How much?

8 A. Half a million dollars.

9 Q. Half a million and a half million?

10 A. I'm not -- that's not what I said.

11 Q. Wait a minute.

12 A. I understood that he gave a half a million
13 dollars cash, his money. I understood that he was
14 seeking to raise another half -- that the school was
15 seeking to raise another half a million and that the
16 balance would be for building the school would come
17 from loans.

18 Q. Tell this jury exactly the specific details
19 of this contract that you believe the school had
20 with Mr. Schwartz. The exact details.

21 A. A half million dollars for the name of the
22 school.

23 Q. That's it?

24 A. At that point in time, the only thing we
25 had for sure was his half a million dollars.

1 Q. So that was the agreement?

2 A. You are asking me what -- we all
3 understood --

4 Q. Who is we?

5 A. I think the board members.

6 Q. Who was that? Let me back up.

7 A. At that time the board members that I
8 remember are Elliot Klain and Geri Rentchler, George
9 Rudiak. George's wife, whose name I can't remember
10 off the top of my head. May have -- those are the
11 ones I remember. Probably Roberta Sabbath as well.

12 Q. What Mr. Dr. Lubin she was on the board as
13 well?

14 A. And Dr. Lubin was on the board.

15 Q. So --

16 A. I think all of us understood that because
17 Milton Schwartz was coming to the rescue, remember
18 the school was not going to exist if he didn't -- if
19 this didn't happen, he came to the rescue, said I'm
20 giving a half a million dollars and I will help you
21 raise the remainder of the money you need. And in
22 exchange for that, we agreed to name the school the
23 Milton I. Schwartz Hebrew Academy.

24 Q. So it's your belief that all -- ever board
25 member that was on that board had the same

1 understanding that you just told this jury?

2 A. I can't say what is in the mind of every
3 board member. I can say from my vague recollection,
4 based upon looking at notes, these board minutes,
5 looking at my letter, that's was -- that's my
6 recollection today, that the board had an
7 understanding that in exchange for the half a
8 million dollars and the intention to raise enough
9 funds to build a school, that we agreed to name the
10 school the Milton I. Schwartz Hebrew Academy.

11 Q. So now I want to make sure. I wrote down
12 and I believe refresh your recollection I can check
13 the record and we will get the end at closing
14 argument I believe you said categorically that
15 Milton I. Schwartz gave 500,000 and got donations of
16 500,000, and that was the agreement. Are you taking
17 back that testimony, Mr. Schwartz, I need to know?

18 MR. LEVEQUE: Objection. Misstates
19 testimony.

20 THE COURT: Overruled.

21 THE WITNESS: No, I don't think so. I
22 think the aim -- I think at that point in time his
23 aim was to raise another half a million dollars, but
24 I don't know if it was the aim for him individually
25 to raise the other half a million dollars. I think

1 it was the board's job to raise the other half a
2 million dollars. So add up all of the donations
3 should have come to a million dollars because that
4 was the amount of money we thought that was
5 necessary to build the school on the Summerlin
6 campus, assuming that we got financing from the
7 bank.

8 BY MR. JONES:

9 Q. Have you ever heard the term meeting of the
10 minds, Mr. Schwartzer?

11 A. Yes.

12 Q. Meeting of the minds, have you ever heard
13 that in the context of a contract?

14 A. Yes.

15 Q. Is it your understanding as a board member
16 that if there is no meeting of the minds as to what
17 the deal is, there is no contract?

18 MR. LEVEQUE: Objection. Can you clarify
19 what context?

20 MR. JONES: Any context.

21 MR. LEVEQUE: As a board member?

22 MR. JONES: As a board member.

23 THE COURT: In that context I will allow.

24 BY MR. JONES:

25 Q. I think your answer was yes?

1 A. My answer would be if there is no meeting
2 of the minds, that would be true.

3 Q. That would be no contract?

4 A. If there is no meeting of the minds on
5 important aspects of the deal, in other words, not
6 everything has to be agreed upon. If you don't
7 agree on the closing date for example of the sale.

8 Q. Let's talk about this so-called agreement
9 with Mr. Schwartz. I think it's been clear, and I
10 think you have been unequivocal. By the way, as I
11 told the jury, we are not quibbling with the fact
12 that Mr. Schwartz paid \$500,000 by the way we are
13 also not quibbling that that was a very important
14 and significant contribution to the school. It was
15 critical to the school and everybody understand that
16 and that's a wonderful thing. What we are
17 questioning is what were the other terms, material
18 terms of this so-called contract? So I want to know
19 if you can tell this jury under oath that you can
20 say with absolute assurance if there were any other
21 material terms of that contract in exchange for
22 perpetual naming rights, other than him paying a
23 half a million dollars and if there were any other
24 material terms could you tell this jury, please,
25 what those were.

1 A. The material terms were the actual donation
2 of the half million dollars and Mr. Schwartz's
3 efforts to raise additional -- best efforts to raise
4 an additional half million dollars.

5 Q. Is it your testimony that if he only raised
6 auto thousand dollars that he still had perpetual
7 naming rights?

8 A. Yes.

9 Q. And if he only raised 25 more dollars, he
10 still had perpetual naming rights?

11 A. Yes, because a half a million dollars
12 was -- if we didn't get that half a million dollar
13 donation from him, we wouldn't have even bothered
14 going forward trying to build the school.

15 Q. Okay.

16 A. There wouldn't be any way that school could
17 have been built without his first half a
18 million dollars.

19 Q. Was it a material term to this agreement
20 that you say existed, that Mr. Schwartz had to be
21 the one that raised that extra money?

22 A. No, but he was going to make his best
23 efforts to raise that money.

24 Q. So it was basically he tried. If he
25 didn't, then he still got the perpetual naming

1 rights?

2 A. Well, if we didn't raise another half a
3 million dollars, we wouldn't have been able to build
4 the school and he would have gotten his half a
5 million dollars back because it was a building fund
6 donation if there is no building built, I assume we
7 give back the half a million dollars.

8 Q. I understand that. What I was talking
9 about is, for instance, would you agree with me
10 that -- and I think Dan Saposhnik is sitting here in
11 the back of the room -- would you agree with me that
12 she was instrumental for raising money from other
13 people, too, at that time?

14 A. Yes.

15 Q. So Mr. Schwartz could have raised -- I'm
16 not saying he didn't, but he could have raised no
17 more money, and other people like Dr. Lubin
18 Saposhnik could have raised the additional money to
19 make sure the building got built, correct?

20 MR. LEVEQUE: Objection. Calls for
21 speculation.

22 THE COURT: Overruled.

23 THE WITNESS: That is correct.

24 MR. JONES: Court's indulgence.

25 BY MR. JONES:

1 Q. Mr. Schwartz --

2 A. Yes.

3 Q. By the way I have been proud of myself; I
4 haven't mixed up Schwartz and Schwartz -- yet. If I
5 did, I missed it.

6 A. You haven't missed it.

7 Q. Would you believe that Jonathan Schwartz,
8 Milton's son, who is sitting here, would know more
9 about what the agreement was between the school and
10 his father and the deal, in other words, what the
11 terms of the deal were, than you?

12 MR. LEVEQUE: Objection. Calls for
13 speculation.

14 THE COURT: Sustained.

15 BY MR. JONES:

16 Q. Well, let me ask it a different way.

17 Would you defer to Jonathan Schwartz if
18 what he says the deal was, or would you disagree
19 with him if he had a different understanding than
20 you?

21 A. My understanding is my understanding. If
22 he has a different understanding, then it would be
23 different than mine, and I would disagree with him,
24 yes.

25 Q. And so in that case where he has an

1 understanding of one thing, material terms of a
2 contract, and you have -- let me start over. In
3 that situation where you have one understanding of a
4 material terms of a contract and he had a different
5 understanding of the material term of the contract,
6 you would say there would be no meeting of the minds
7 on those terms, right?

8 MR. LEVEQUE: Objection, Your Honor
9 Jonathan wasn't a party.

10 MR. JONES: I'm just asking a hypothetical.

11 THE COURT: Wait. Stop. Your objection.

12 MR. LEVEQUE: Object to the form improper
13 hypothetical Mr. Jonathan wasn't a party to the
14 contract.

15 THE COURT: I guess that's my question was
16 it a hypothetical or are you saying to assume that
17 Jonathan has a different recollection?

18 MR. JONES: I was saying that, Your Honor.
19 But if that's acceptable, I will let it go with that
20 if not, fine, I can move on.

21 THE COURT: Okay.

22 BY MR. JONES:

23 Q. Assuming that Jonathan Schwartz had a
24 different understanding of what the material terms
25 were of a contract, say, what the amount of the

1 money was going to be or how much money would be
2 required, then the understanding that you had the
3 amount of money that would be required, would that
4 be something you would say was -- there would be no
5 meeting of the minds in that situation?

6 A. No, I would not say that.

7 Q. Why not?

8 A. Because there is lots of times -- I think I
9 have made a living 40 years over people not agreeing
10 on what the meaning of a written contract was. So
11 the answer is there is contracts and then you can
12 have disputes about what you meant.

13 Q. Okay.

14 A. And that's different than saying there is
15 no contract.

16 Q. That's when a contract is ambiguous,
17 though, isn't it?

18 THE COURT: We really are getting into --

19 MR. JONES: You are right I withdraw.

20 THE WITNESS: I was going to quote the
21 Supreme Court on that.

22 THE COURT: That's fine Mr. Schwartzer.

23 BY MR. JONES:

24 Q. Mr. Schwartzer, let me ask it a
25 different -- well, let's just do this. Let's play

1 the clip and we will go from there?

2 (Video played.)

3 BY MR. JONES:

4 Q. So Jonathan Schwartz says that the deal
5 was, the agreement was that he would give 500,000
6 and raise 500,000?

7 THE COURT: He who?

8 MR. JONES: That's what he said he
9 understood the deal was.

10 THE COURT: He who was going to raise the
11 money?

12 MR. JONES: I'm sorry, you are right. He
13 knew what the deal was.

14 THE COURT: Jonathan Schwartz testified he
15 who? Who is the "he" was going to give the half a
16 million dollars?

17 MR. JONES: "He" being Mr. Schwartz.

18 THE COURT: Got to be clear.

19 MR. JONES: Thank you. You are right. And
20 a "Schwartz," so really...

21 BY MR. JONES:

22 Q. Let me try to start over.

23 So you testified here to this jury
24 yesterday that it was Mr. Schwartz would give a half
25 a million and he would raise a half a million and

1 then this morning you told this jury that he would
2 give a half a million and he would try to raise some
3 more money, but he didn't have to raise that money
4 in total. He just had to try. And now Mr. Jonathan
5 Schwartz says the agreement was that he had to give
6 a -- he being Milton Schwartz, had to give a half a
7 million dollars and raise a half a million dollars
8 for a total of a million dollars, and that's what he
9 did. So do you have -- well, let me put it another
10 way. There is no written agreement that says what
11 Mr. Jonathan Schwartz says in that videotape
12 deposition, is there?

13 A. Correct.

14 Q. So this is a verbal understanding that you
15 had with Milton Schwartz?

16 A. I think it's a verbal understanding that
17 the board had with Milton Schwartz.

18 Q. The board?

19 A. Because you have to remember, at the time
20 he was donating a half a million dollars. We knew
21 that he had gone to Paul Sogg and had gotten a large
22 commitment from Paul Sogg. We knew he was speaking
23 to a couple other people who he gave us the
24 understanding that there would be a couple of other
25 large donations made to the school. But the whole

1 fundraising was based upon the fact that his half a
2 million dollars was such a good big start that it
3 was easier to ask other people to then donate that
4 kind of money.

5 Q. When you say the board had an
6 understanding, again, this was a verbal
7 understanding, right?

8 A. Yes.

9 Q. So this would be what you would call --
10 would you consider this, as a board member of this
11 situation, a verbal contract with Mr. Schwartz?

12 MR. LEVEQUE: Objection. Calls for legal
13 conclusion.

14 THE COURT: Sustained.

15 MR. JONES: Your Honor, I'm asking as a
16 board member his capacity as a board member. That's
17 a key issue in this case is what his understanding
18 was about this alleged agreement. I -- they have
19 just asked Mr. Schwartz the same thing so as a
20 board member, not as a lawyer.

21 THE COURT: Okay.

22 MR. JONES: His understanding as a board
23 member that he believed the board had a -- an oral
24 contract with Mr. Schwartz.

25 THE COURT: Okay. I will allow that.

1 THE WITNESS: The answer is yes, I believe
2 that we had an agreement that in exchange for his
3 half a million dollar donation and for his efforts
4 in raising the additional money that the school
5 would be named the Milton I. Schwartz Hebrew Academy
6 in perpetuity.

7 BY MR. JONES:

8 Q. Now when you say "the board," I just want
9 to be clear about that. The board -- an individual
10 board member such as yourself cannot act alone for
11 the board, correct?

12 A. Correct.

13 Q. So the way this worked, as I understand it,
14 Mr. Schwartz, and you were on the board so you
15 tell me if I'm wrong. Everything on the board had
16 to be on the same page as to what the terms of this
17 deal was in order for the corporation to be bound,
18 right?

19 A. A majority of the board members.

20 Q. I'm sorry, good point majority of the board
21 members had to be on the same page as to what the
22 intention was here, right?

23 A. Yes.

24 Q. So everybody on that board would have had
25 to have the same understanding you had that you just

1 told this jury about, that the deal was the oral
2 contract was that Mr. Schwartz would give a half a
3 million dollars, which he gave, we know that, and
4 that he would raise some other amount of money in
5 order to get perpetual naming rights related to the
6 school, right?

7 A. I think the way I worded it was make best
8 efforts to raise another half a million dollars.

9 Q. Certainly what you said is more important
10 than what my question was. So uses best efforts to
11 raise another half a million dollars.

12 And so in your mind, if I understand you
13 correctly, if Mr. Schwartz didn't raise -- was not
14 responsible for raising another half a million
15 dollars, that would not be a breach of the naming
16 rights agreement, is that what you are telling me?

17 A. You have to say and realize that in
18 context, at the time, we already knew that he
19 commitments from other people for substantial sums.
20 So it's not like we -- we had the half a million
21 dollars and we had \$0 above that. At the point that
22 we were going to name the school in his honor, we
23 knew we had the half a million dollar commitment
24 from him and we -- I believe we had knowledge that
25 there were substantial commitments from other people

1 who Mr. Schwartz had been motivating force to get
2 them to donate six figure donations.

3 Q. So fair enough. So let me rephrase it,
4 then.

5 In your mind, what you believe the
6 agreement was, is that Mr. -- if Mr. Schwartz was
7 not able to get up to a half a million dollars, it
8 would not be a breach of the contract?

9 A. Yes, that's correct.

10 Q. All right. But that's not in writing
11 anywhere, right?

12 A. There is no contract signed by both sides
13 in this case, is my understanding, because otherwise
14 we wouldn't be here.

15 Q. I think you are probably right about that.

16 So let me ask a related question. So
17 that's what your mind was, that he had been
18 responsible already at the time he gave the half
19 million for getting other people to put up
20 substantial sums of money but even if it didn't
21 reach a half million, it was still -- that was still
22 a deal with him?

23 A. Yes.

24 Q. As you sit here today, do you know, can you
25 say with assurance under oath that the other

1 majority of the other board members agreed with you
2 about this other aspect, that he didn't have to
3 raise another half a million, it could just be
4 500,000 and that's it?

5 A. You are asking me what other people thought
6 26 years ago.

7 Q. I am.

8 A. I don't -- they were at the same meetings
9 as me, so I assume they had the same understanding
10 as me.

11 Q. And I appreciate that. But as you sit here
12 today you can't tell this jury with assurance that
13 they did have the same understanding as you?

14 A. I only spoken to one other board member,
15 and I don't think -- we both -- we both understood
16 that we were permanently naming the school after
17 Milton I. Schwartz.

18 Q. But you didn't get into the details about
19 specifics?

20 A. This kind of detail about what the exact
21 terms were?

22 Q. Right.

23 A. No. We both -- he told me that he agreed
24 that the school was supposed to be permanently named
25 after Milton I. Schwartz.

1 Q. By the way who was that other board member?

2 A. Michael Novick.

3 Q. Michael Novick. Thank you.

4 When was that other conversation, by the
5 way?

6 A. A few weeks ago.

7 Q. And was part of the deal --

8 A. Huh?

9 Q. Was a material term of the deal in your
10 mind as a board member was a material term of the
11 deal that he at least had to try to raise another
12 sum of money?

13 A. Yes.

14 MR. LEVEQUE: Objection, Your Honor. Asked
15 and answered. We have been going over this quite a
16 bit.

17 THE COURT: Sustained.

18 MR. JONES: I'm setting up for my next
19 question, Your Honor.

20 THE COURT: You can move on.

21 MR. JONES: I would like to move the
22 admission of Exhibit 134.

23 THE COURT: 134?

24 MR. LEVEQUE: Did we go over 134.

25 MR. CARLSON: That's ours.

1 MR. LEVEQUE: No objection, Your Honor.

2 THE COURT: It's admitted.

3 BY MR. JONES:

4 Q. Okay. So, Mr. Schwartzer, having put up on
5 the screen, it's an affidavit from Milton Schwartz
6 that relates to 1993 and, of course, you understand
7 an affidavit, a person states -- makes an affidavit
8 under oath, right?

9 A. Yes.

10 Q. And this was in connection with this, a
11 dispute that arose in 1992, '93, I think Mr. LeVeque
12 talked to you about it between school and
13 Mr. Schwartz. If you look at the next page, you
14 will see that on Paragraph 5 --

15 A. I'm sorry, what document?

16 Q. Second page?

17 A. I have it in front of me.

18 Q. You will see that Mr. Schwartz said that
19 "affiant," who is Mr. Schwartz, right?

20 A. Yes.

21 Q. "Donated 500,000 to the Hebrew with the
22 understanding that the school would be renamed the
23 Milton I. Schwartz Hebrew Academy in perpetuity."
24 Do you see that?

25 A. Yes.

1 Q. Now, that does not say anything, does it,
2 about raising any additional sums of money, right?

3 A. That's true. It does not say that.

4 Q. So that's different than your understanding
5 what you just told this jury about is that the
6 deal -- the agreement was he had to give 500,000 and
7 at least raise some additional amounts of money,
8 right?

9 A. I told you that at the time that we had
10 that understanding, we were aware that there was
11 substantial other contributions to be made that had
12 been solicited by Mr. Schwartz. So --

13 Q. I understand that.

14 A. You don't partially perform the second
15 part.

16 Q. It's not mentioned in his affidavit in this
17 particular instance, though, is it, anything about
18 raising any money?

19 A. He did. That's on Page 2, Paragraph 6, 7,
20 and 8.

21 Q. Thank you. Those paragraphs, let's bring
22 those up, I did want to reference those. If you
23 will look at Paragraph 7, for instance, it says the
24 Summerlin only donated 17 acres for the Hebrew after
25 of affiant donated 500,000 and Paul Sogg pledged and

1 donated 300,00 and Robert Cohen pledged and donated
2 one hundred thousand.

3 Do you see that?

4 A. Yes.

5 Q. And that by the way -- I was going to get
6 to this later in some documents that Mr. LeVeque
7 showed you, a pledge is not a donation, right?

8 A. No, it's a contract to make a donation.

9 Q. Right. It's a promise to make a donation
10 essentially. So a lot of times people pledge things
11 and they don't always fulfill their pledge, right?

12 A. Are you asking me if people break their
13 contracts? Yes.

14 Q. As you sit here today you don't know how
15 much Paul Sogg actually paid of his pledge, do you?

16 A. I have an understanding from reading
17 documents that I have been examined on that
18 indicates he has paid part of it.

19 Q. Part of it. Yeah. But he paid some of
20 that pledge, but is the best information you have is
21 he didn't pay all of it, did he?

22 A. The answer is I don't know what he paid. I
23 know he paid a portion because that's in the minutes
24 that we previously identified.

25 Q. As you sit here today, you don't know how

1 much money that Mr. Schwartz was responsible for
2 raising above and beyond the \$500,000 he gave,
3 right? That actually got paid.

4 A. Other than the minutes that reflect how
5 much that Paul Sogg had paid, I don't know.

6 Q. I would like to show you what's been marked
7 as Exhibit 217. I don't know if you have that
8 binder, Mr. Schwartz. If you don't I can get it.

9 A. I do not have that binder.

10 THE COURT: Let's get the binder, 217.

11 BY MR. JONES:

12 Q. So Mr. Schwartz, before you take a look
13 at that you can take a look at the first page if you
14 like --

15 MR. JONES: Your Honor, I would like to --
16 I'm just going to mark some pages -- two pages --
17 well, one page, actually, out of the book that I
18 would like to have as supplemental Exhibits 217 A
19 and 217 B. I will show these to counsel.

20 BY MR. JONES:

21 Q. If we could pull up --

22 MR. JONES: I will give these to the court.
23 I'm sorry, Your Honor. May I approach.

24 THE COURT: Sure.

25 BY MR. JONES:

1 Q. Before I get to the specifics of the book,
2 Mr. Schwartzer, let me show you Exhibit 173. I
3 believe it's in evidence.

4 A. 173?

5 Q. We will put it on the screen. It's a
6 photograph.

7 A. Okay.

8 Q. Do you recognize that?

9 A. That's the school's building in Summerlin.

10 Q. And that was when the building had the name
11 the Milton I. Schwartz Hebrew Academy, correct?

12 A. Correct.

13 Q. And no question that's the building that
14 was up there on Hillpointe?

15 A. Correct.

16 Q. Okay. So let me show you in that
17 Exhibit 217, there is a picture.

18 MR. JONES: Sorry, Your Honor. I should
19 have done this sooner.

20 BY MR. JONES:

21 Q. All right. Could you look at -- by the
22 way, you testified to Mr. -- with Mr. LeVeque, you
23 told this jury that the deal with Mr. Schwartz was
24 that they named the school after him and put that
25 name on the building, right?

1 A. That was my understanding, that the school
2 would be called the Milton I. Schwartz Hebrew
3 Academy and there would be appropriate signage.

4 Q. That's what I wrote down. Appropriate
5 signage means you put his name up on the building
6 just like the picture we just saw?

7 A. Yeah, that's what I thought was in
8 compliance with the understanding.

9 Q. And that was a part of what you believed to
10 be a material term of the agreement with Milton
11 Schwartz?

12 A. Yes.

13 Q. And if you didn't do that, that would be a
14 violation, in your mind, of the agreement that the
15 board made with Milton Schwartz, right?

16 A. I still think it is.

17 Q. Fair enough. So if you could look at Bates
18 page AC 500087. It's kind of hard to see there, but
19 you see a photograph, right?

20 A. Yes.

21 Q. Can you read at all what the name there on
22 that -- first of all, can you tell if that's the
23 same building as we were just looking at?

24 A. I would guess it was.

25 Q. And could you see what the name is on that

1 building?

2 A. You can't read it from the picture. You
3 can only look underneath what it says it says. But
4 underneath the picture it says.

5 Q. Don't read what it says because it's not in
6 evidence yet. I would love you to but I got to
7 follow the rules.

8 Isn't it true, Mr. Schwartzer, that the
9 school's building was actually named the Dr. Tamar
10 Lubin Saposhnik Elementary School?

11 A. I don't recall that ever happening while I
12 was on the board.

13 Q. Okay.

14 A. I'm not saying it didn't, I just -- I don't
15 recall.

16 Q. Well, I don't want to -- the judge was
17 talking about taking a break but let's real quick if
18 we could look at Exhibit 384. I think that's in
19 evidence.

20 MR. JONES: It's not, 384.

21 MR. LEVEQUE: I don't object.

22 MR. JONES: No objection.

23 MR. LEVEQUE: No.

24 MR. JONES: Your Honor move 384 into
25 evidence.

1 BY MR. JONES:

2 Q. Take a look at Exhibit 384. While you are
3 pulling that up we will put it up on the screen.
4 Let's look at what it says. It says board of
5 trustees meeting, November 29, 1990. That's around
6 the time that this whole deal with Mr. Schwartz was
7 being put together, right?

8 A. Yes.

9 Q. It shows there -- let's go to who attended
10 the meeting.

11 A. I did.

12 Q. Lenard E. Schwartz that's you correct?

13 A. Yes.

14 Q. Now let's go to the last page, and let's
15 see if we could, let's see who signed those minutes.

16 A. I did.

17 Q. Mr. Schwartz. Good.

18 And then let's see about a motion that was
19 made. It says a motion was made by Roberta Sabbath
20 and seconded by George Rudiak that Dr. Lubin should
21 be honored by naming the Tamar Lubin Saposhnik
22 elementary school the most was passed unanimously.

23 Do you see that?

24 A. Yes.

25 Q. Does that refresh your memory that you

1 actually voted to put her name on the school?

2 A. I must have.

3 Q. And does that seem consistent with the
4 picture we just saw on Exhibit 217?

5 A. The picture doesn't say what the name is on
6 the building.

7 Q. Actually I think if you look at it again, I
8 think you will see it's such a blurry picture it's
9 hard to see?

10 A. It's a blurry picture. So I don't think --
11 I don't think the building actually ever had on the
12 building.

13 MR. JONES: Is there a way, Shane, to put
14 the picture without enhancement on his screen alone,
15 the witness's screen.

16 That's fine Your Honor we will deal with
17 that later.

18 BY MR. JONES:

19 Q. So if the facts show that Dr. Lubin's
20 name -- let's go back to see who was present at this
21 meeting too. Milton I. Schwartz is there too?

22 A. Yes.

23 Q. If the passed unanimously it means Milton
24 I. Schwartz voted along with you to put Dr. Lubin's
25 name on that building, right?

1 A. It doesn't say it would be put a sign on --
2 her name on the building.

3 Q. I'm sorry?

4 A. It didn't say put a sign on the building.
5 It said it would name the elementary school.

6 Q. There was only a an elementary school at
7 the time, right?

8 A. The intention was at the time to also put
9 in a high school. That's why you needed 17 acres.

10 Q. But the only actual building that was on
11 there until the Adelsons came along essentially was
12 the elementary school, right?

13 A. Yes, that's correct.

14 Q. So the only building that her name could go
15 on at that time was the elementary school which is
16 the same building you saw later had Milton
17 Schwartz's name on?

18 A. My understanding the building always had
19 the name Milton I. Schwartz on it.

20 Q. If your understanding is incorrect and the
21 building had from 1990 to 1996 Dr. Lubin's name on
22 it, would you agree with me that would be a directly
23 contrary to what you think the terms of this
24 contract was with Milton Schwartz?

25 A. Yeah, that would be true.

1 MR. JONES: Thank you, Your Honor. This is
2 fine for a break.

3 THE COURT: We will come back at 11.

4 Ladies and gentlemen we are going to take
5 our morning res, ever time during this recess, you
6 are admonished not to talk or converse among
7 yourselves or with anyone else on any subject
8 connected with this trial; or read, watch or listen
9 to any report of or commentary on the trial or any
10 person connected with this trial by any medium of
11 information, including, without limitation, to
12 newspapers, television, the internet and radio; or
13 form or express any opinion on any subject connected
14 with the trial until the case is finally submitted
15 to you.

16 We are outside the presence of the jury.

17 MR. JONES: Thank you Your Honor.

18 THE COURT: We just need to get
19 Mr. Schwartzer back. We will go back on the record.
20 Mr. Schwartzer can retake his place on the stand as
21 he is so gracious to do and we will get back you
22 observed way. So Mr. Jones.

23 MR. JONES: May I proceed?

24 THE COURT: Absolutely.

25 MR. JONES: I would stipulate to the

1 presence of the jury.

2 THE COURT: Thank you very much. Yes they
3 are all here. Thank you, sir. We are ready to go.

4 BY MR. JONES:

5 Q. Mr. Schwartzer, I wrote down one of the
6 things you said in your direct testimony with
7 Mr. LeVeque he was asking you about some of the
8 board minutes and you said the purpose of the board
9 minutes was to reflect what occurred at the meeting
10 do you remember that?

11 A. Yes.

12 Q. Would you agree with me that --

13 THE COURT: My colleague next door handles
14 mental health on Fridays. We will get the door
15 shut. The folks that went in and out of there
16 today. Sorry about that.

17 MR. JONES: No worries. Thank you Your
18 Honor.

19 BY MR. JONES:

20 Q. So we were talking about board minutes and
21 they should accurately reflect what occurred with
22 the board right?

23 A. Right.

24 Q. There is a mechanism of fixing the minutes
25 if the next meeting one of the standard things in

1 the boards do is review the minutes to see that they
2 are accurate, right?

3 A. Correct.

4 Q. And then if they are not accurate, then the
5 board amend the meeting to reflect -- excuse me,
6 amend the minutes to reflect what actually happened,
7 right?

8 A. Correct.

9 Q. And a lot of times even in the agenda it
10 will say review the minutes and approve them, right?

11 A. Correct.

12 Q. And that's again to make sure that those
13 minutes accurately reflect what the board decided to
14 do at the last meeting, right?

15 A. That's what's supposed to be done, yes.

16 Q. And you, as far as you know, all of the
17 minutes we have looked at that Mr. LeVeque showed
18 you and that I showed you were accurate as best your
19 recollection after 26 years or so?

20 A. I would vouch for the ones that I prepared
21 or modified or amended.

22 Q. Okay.

23 A. I can't vouch for the ones I didn't.

24 Q. Okay. Let's look at one of the minutes we
25 looked at before was exhibit -- it's in evidence,

1 it's Exhibit 112. These are meeting minutes from
2 August 14 of 1989, right, it's on the screen too,
3 Mr. Schwartz.

4 A. Yes, it is.

5 Q. And I believe we talked about this before
6 with Mr. LeVeque. It doesn't indicate you were
7 present, right?

8 A. Correct.

9 Q. So if you weren't present obviously you
10 couldn't have voted on anything?

11 A. Correct.

12 Q. But if you look down at the provision that
13 Mr. LeVeque referred you to, paragraph says George
14 Rudiak moved and the board accepts with thanks the
15 donations of Milton Schwartz, George and Gertrude
16 Rudiak and Paul Sogg. Do you see that?

17 A. Yes.

18 Q. There is nothing in that motion talks about
19 perpetuity, does it?

20 A. No.

21 Q. And in fact, the next line reads "a letter
22 should be written to Milton Schwartz stating the
23 academy will be named after him." Do you see that?

24 A. Yes.

25 Q. Now do you see anything in that sentence

1 about in perpetuity?

2 A. No.

3 Q. So let's go to Exhibit 3 we have also
4 talked about. Look at this is the certificate of
5 amendment that was filed with the state of Nevada,
6 1990. Mr. LeVeque asked you about that. And that
7 refers to the minutes we were just talking about.
8 Down in paragraph 2, on the 14th day of August 1989,
9 Exhibit 112 we just looked at, "Meeting of board of
10 trustees duly called and convened at which a quorum
11 for the transaction of business was present. Notice
12 of said meeting having been previously waived by the
13 trustees of said corporation in writing, the
14 following resolution was adopted by the board of
15 trustees of said corporation."

16 Do you see that?

17 A. Yes.

18 Q. And there is a resolution it actually says
19 what the resolution is. Resolved that it is
20 advisable and in the best interests of this Corp.
21 that its articles of incorporation be amended by
22 changing the language of article 1 of said articles
23 to read as follows article one this corporation
24 shall be known as the Milton I. Schwartz Hebrew
25 Academy. There is nothing else related to that

1 motion, is there?

2 A. Yes, I see that.

3 Q. So in that resolution, the words in
4 perpetuity are not mentioned whatsoever, are they.
5 That's true. Now, a resolution to actually change
6 the articles that so they would change the name in
7 perpetuity would have to have the words "in
8 perpetuity," in it, correct?

9 MR. LEVEQUE: Objection. Calls for legal
10 conclusion.

11 MR. JONES: I'm asking as a board member.

12 THE COURT: If the question is as a board
13 member, I will allow it.

14 THE WITNESS: Could you repeat the
15 question?

16 BY MR. JONES:

17 Q. Sure. Let me rephrase it. In other words,
18 if the board wanted to say that that change of the
19 name was in perpetuity, they should have put that in
20 the resolution, right?

21 A. They could put it in the resolution.

22 Q. That would be clear so that was the
23 resolution they should have put it in that
24 resolution, right?

25 A. In retrospect you are asking me, yeah, they

1 should have.

2 Q. Let me ask you a different way. If I was
3 just looking at this document, and I wanted to know
4 what was this resolution that was passed in
5 August 14 of 1989, I would have no idea that
6 anything was done about perpetuity, would I, forever
7 and ever?

8 A. You can't tell that from the resolution.

9 Q. So as far as you can tell, you have never
10 seen a resolution changing the name of the
11 corporation to the Milton I. Schwartz Hebrew Academy
12 in any resolution of the board filed -- amending the
13 arms of incorporation that says the Milton I.
14 Schwartz Hebrew Academy should be that name in
15 perpetuity, correct?

16 A. Nothing of that nature was filed with the
17 secretary of state. The bylaws said that.

18 Q. You already told us a minute ago that the
19 bylaws can be changed by the board?

20 A. Well, the bylaws that were adopted by the
21 board said that he intended to make it in
22 perpetuity.

23 Q. Sure. But those bylaws can be changed,
24 can't they?

25 A. So could arms of incorporation, as they did

1 here.

2 Q. By the way, I agree with that. That's why
3 bylaws and articles are not contracts, correct?

4 A. They can be.

5 Q. But they are not in this case, are they?

6 MR. LEVEQUE: Objection. Calls for a legal
7 conclusion.

8 THE COURT: Sustained.

9 BY MR. JONES:

10 Q. Let's look at Exhibit 9 that Mr. LeVeque
11 showed you which was a complaint for declaratory
12 relief in 1992. This was filed -- let's just look
13 at the caption if we could for a second, it says the
14 board of directors of Milton I. Schwartz Hebrew
15 Academy versus the second board of directors of
16 Milton I. Schwartz Hebrew Academy. Do you see that?

17 A. Yes.

18 Q. Do you know what this lawsuit was about?

19 A. My vague recollection was that there was a
20 board meeting that wasn't noticed in a new board of
21 trustees was selected. And the first board of
22 trustees objected to the second board of trustees.

23 Q. So what happened is, best you can recall,
24 is that the board of trustees for the Hebrew
25 Academy, Milton I. Schwartz Hebrew Academy because

1 it lists both of them, first and second boards,
2 they -- there was a dispute as to who was going to
3 control the school, right?

4 A. I don't remember.

5 Q. That's all right.

6 A. I don't remember. It's 1992. I don't
7 remember.

8 Q. Let's look at Exhibit 128, real quick.
9 That's your letter.

10 A. My letter, okay, yes.

11 Q. Probably easier on the screen don't have to
12 dig through all those binders so this is a letter
13 dated July 17, 1992, and you shall writing this
14 letter to Mr. Schwartz. And is it your general
15 understanding, I know it's been a lot of time, is it
16 your general understanding that this letter is
17 related to that dispute we were just looking at?

18 A. It is my vague recollection that that's
19 what's written because there was such a dispute.

20 Q. Right. And so you indicated there that it
21 would be best for the academy and you if you would
22 throw your support behind the board of trustees and
23 Ira Sternberg as its president. Do you see that?

24 A. Yes.

25 Q. That was the board that Mr. Schwartz didn't

1 like, right?

2 A. That's correct.

3 Q. And so Mr. Schwartz didn't agree with that,
4 did he, at that time? He didn't follow your advice
5 or request?

6 A. He did not -- apparently. The lawsuit was
7 filed months later so the answer is apparently they
8 did not reach an agreement.

9 Q. So this was not about the name of the
10 school, was it, this lawsuit appears to be about
11 control of the school, not naming rights, correct?

12 MR. LEVEQUE: Objection foundation.

13 BY MR. JONES:

14 Q. That's your understanding?

15 THE COURT: Overruled.

16 THE WITNESS: Yes, this was about avoiding
17 a public dispute concerning the school because I
18 didn't think it was good for the school to have a
19 public dispute.

20 BY MR. JONES:

21 Q. And even Mr. Schwartz when he filed his
22 lawsuit both parties were referenced as the Milton
23 I. Schwartz Hebrew Academy so there clearly was not
24 a fight over the name of the school, right?

25 A. Nobody was disputing that the name of the

1 school was going to be the Milton I. Schwartz Hebrew
2 Academy.

3 Q. Right. So this was really just as far as
4 you can recall, and understand, a fight over
5 control, right?

6 A. Yeah, if you have two board of trustees
7 from one school, that's a problem. It's a control
8 issue, yes.

9 Q. So in essence, you appealed to Mr. Schwartz
10 to say look for the best interest of the kids and
11 the school, let's try to work this out, and it
12 didn't get worked out, right?

13 A. I think eventually it did, but not after --
14 not until after the litigation was filed.

15 Q. So at least up to that point, then, control
16 was more important than the best interests of the
17 kids, right?

18 A. You are asking me what was in Milton
19 Schwartz's mind at the time the litigation was filed
20 I can't answer that.

21 Q. Fair enough. I will withdraw the question?

22 MR. JONES: I will pass the witness, thank
23 you Your Honor.

24 THE COURT: Thank you.

25 MR. JONES: Thank you Mr. Schwartzer.

1 FURTHER EXAMINATION

2 BY MR. LEVEQUE:

3 Q. Mr. Schwartzer, do you remember a lot of
4 questions asked by Mr. Jones, but do you remember
5 the question with respect to whether you remember or
6 not if there was any resolution of the board to
7 discuss the in perpetuity language do you remember
8 that discussion?

9 A. Yes.

10 Q. Could you go to Exhibit 384, please. Are
11 you there?

12 A. Yes.

13 Q. We already went over this exhibit,
14 Mr. Jones did with you. These are minutes from the
15 school of November 29 of 1990 is that right?

16 A. Yes.

17 Q. And do you see that you are present?

18 A. I was present, and I was the secretary.

19 Q. And you signed these minutes, right?

20 A. Yes.

21 Q. And does it also show who else was present
22 in the highlighted. You can look at the screen.

23 A. Yes.

24 Q. If you go to the second paragraph of these
25 minutes?

1 A. Yes.

2 Q. Does it discuss naming the corporation
3 after Milton I. Schwartz in perpetuity?

4 A. Yes.

5 Q. Was this a resolution?

6 A. Yes -- well, the board adopted the revised
7 bylaws, yes.

8 Q. And naming the corporation after Milton I.
9 Schwartz in perpetuity?

10 A. Revised bylaws specifically did that, yes.

11 Q. Let's go to the second page of this
12 Exhibit 384. Do you remember Mr. Jones asking you
13 questions about the naming of the elementary school
14 after Dr. Lubin?

15 A. Yes.

16 Q. Do you see any language in there with
17 respect to whether it was perpetual name change?

18 A. No.

19 Q. But would you agree with me that the page
20 above did with respect to Mr. Schwartz?

21 A. Yes.

22 Q. And at the time, Mr. Schwartz, how many
23 grades did the school go up to in 1990?

24 A. Either to sixth grade or to 8th grade I'm
25 not sure which.

1 Q. How would you define elementary school at
2 least as of 1990?

3 A. Kindergarten through 8th grade,
4 kindergarten through 6th grade, one of the two.
5 Because at that time, it was a big deal in this
6 county about having sixth grade centers and then
7 they sort of became middle schools. And so there
8 was a lot of -- because parents didn't want to send
9 their parents to sixth grade centers, a lot of --
10 the sixth grade was always full. I don't remember
11 the 7th and 8th grade as necessarily being full or
12 even existing every year.

13 Q. If there were 7th and 8th grade would that
14 be more defined as a middle school or elementary
15 school?

16 A. In my mind, sixth 7th, 8th is middle
17 school. In this county. When I went to school in
18 New York, that's the way they did it up to sixth
19 grade was elementary school, 6, 7 were the middle
20 schools -- 6, 7, 8 were the middle schools and nine
21 through 12 were the high schools.

22 Q. Thank you. Do you recall, Mr. Schwartzer,
23 if Dr. Lubin paid any sort of money to name the
24 elementary school after her?

25 A. No, I don't recall that that occurred.

1 Q. If you could go to Tab 18. Did I say the
2 wrong one?

3 THE COURT: 18?

4 MR. LEVEQUE: I'm sorry, 118.

5 THE COURT: Oh, 118. Thank you. I believe
6 that's admitted, Mr. LeVeque.

7 MR. LEVEQUE: It is.

8 THE WITNESS: I'm looking at 118.

9 BY MR. LEVEQUE:

10 Q. And I asked you about this yesterday, do
11 you recall me asking you questions about this pledge
12 memo?

13 A. Yes.

14 Q. Do you see any pledges for Dr. Lubin?

15 A. By Dr. Lubin, the answer is no.

16 Q. Thank you for correcting. By Dr. Lubin?

17 A. No.

18 Q. And again, this pledge memo was for the
19 construction of the building; is that right?

20 A. Yes. This was the building fund.

21 Q. Mr. Schwartzer, in 1994, what would you
22 have had to do if you wanted to look to see if there
23 was an amendment filed with the secretary of state
24 to change corporate articles?

25 A. You could look on the secretary of state's

1 website.

2 Q. Did that exist in 1994?

3 A. Oh, right. 1994, you would have had to go
4 to the secretary of state's office.

5 Q. So it would have required you physically to
6 walk down to the secretary of state to check?

7 A. I guess you could -- there might have been
8 some way of contacting them to have them look it up
9 for you. Apparently.

10 Q. Long time.

11 A. In my office a paralegal would have done
12 whatever was necessary to get that kind of document.

13 Q. If you go back to Exhibit 3, that's the
14 bylaws we have been admitted into evidence.

15 A. Got it.

16 Q. I'm sorry. Wrong one. There we go. That
17 would be Exhibit 5.

18 A. Okay. I see that.

19 Q. Do you remember Mr. Jones line of
20 questioning with respect to whether bylaws can be
21 changed?

22 A. Yes.

23 Q. And I asked you about this too when I first
24 was examining you, Mr. Schwartz. Do you believe
25 that if these bylaws were amended such that article

1 1 that cuss discusses the school shall be named in
2 perpetuity or be changed that would violate or
3 otherwise breach the agreement between the school
4 and Mr. Schwartz?

5 MR. JONES: I object that clearly calls for
6 a legal conclusion court's Providence.

7 THE COURT: Okay.

8 MR. LEVEQUE: Let me rephrase.

9 THE COURT: I think I understand what you
10 are asking.

11 MR. LEVEQUE: Yes.

12 BY MR. LEVEQUE:

13 Q. Mr. Schwartz, you drafted these bylaws,
14 correct?

15 A. Yes, I did.

16 Q. And when you drafted these, did you believe
17 that this provision of article one could ever be
18 changed?

19 A. I thought it was an agreement that it would
20 never be changed.

21 Q. How about that it should never be changed?

22 MR. JONES: Object to the form.

23 THE WITNESS: Yes, it should not be --

24 THE COURT: Mr. Jones had an objection.

25 MR. JONES: Object to the form of the

1 question "should be changed." Vague and ambiguous.

2 THE COURT: Overruled. Mr. Schwartzer can
3 answer.

4 THE WITNESS: I think that if the way we
5 adopted these bylaws and the understanding at the
6 time with Mr. Schwartz was that it would not be
7 changed because of our understanding that the school
8 would be named Milton I. Schwartz Hebrew Academy in
9 perpetuity.

10 BY MR. LEVEQUE:

11 Q. Now I believe Mr. Jones asked you a
12 question about whether this agreement was in writing
13 or it wasn't. Mr. Schwartzer is this a writing?

14 A. This is a writing. I mean, I think he was
15 aiming it is there a signed agreement signed by both
16 sides saying we agree and here is all the terms.
17 There isn't a separate written contract. We didn't,
18 I guess, nobody thought it was necessary.

19 Q. Are these bylaws signed by all of the board
20 members?

21 A. Yes. At the last page it appears -- I
22 mean, it appears to be. I mean, you could
23 identify -- I can identify my signature, and I can
24 see the name read most of the other names as being
25 the members of the board.

1 Q. By signing these bylaws yourself, any way,
2 did you do so -- well, strike that. Bad question.

3 Mr. Jones asked you a question about
4 whether the agreement with Mr. Schwartz was legally
5 enforceable. Do you remember that question?

6 A. Yes.

7 Q. Do you believe that the school had a
8 legally enforceable agreement, in your capacity as a
9 board member at the time with Milton Schwartz?

10 A. Yeah. Yes.

11 Q. I just wanted to clarify for the jury what
12 you actually said in your deposition. Could we
13 publish Mr. Schwartz's deposition?

14 THE COURT: We have not yet.

15 MR. LEVEQUE: Okay. Move to publish his
16 deposition.

17 THE COURT: Ladies and gentlemen when we
18 say we are publishing a deposition, deposition is
19 testimony taken out of court under oath by a court
20 reporter such as you see here. And publishing
21 simply means we are opening it. It's sealed, it's
22 in a sealed envelope we are just opening it. We are
23 not putting it on the Internet. Just publishing it
24 is just opening it in court so it can be used. We
25 will publish Mr. Schwartz's deposition.

1 MR. JONES: Are you going to ask questions.

2 MR. LEVEQUE: I'm going to ask questions.

3 MR. JONES: Just wanted to make sure.

4 THE COURT: Mr. Schwartzer.

5 THE WITNESS: Thank you, Your Honor.

6 BY MR. LEVEQUE:

7 Q. Mr. Schwartzer, on page --

8 A. I was just handed the deposition of Sheldon
9 Adelson.

10 MR. LEVEQUE: Oops.

11 THE COURT: That's not yours. Okay.

12 THE WITNESS: I know I'm not Sheldon
13 Adelson. I know that.

14 THE COURT: There you go. Sorry about
15 that.

16 MR. JONES: While that is out, if he is
17 going to try to read from the deposition and ask the
18 witness to confirm a statement, that's an improper
19 use of a deposition.

20 THE COURT: It is what it is. If it's just
21 a question of --

22 MR. LEVEQUE: Your Honor, Mr. Jones made a
23 representation as to what his testimony was so -- in
24 deposition so I'm just seeking to clarify.

25 MR. JONES: You can ask a question, but you

1 can't --

2 MR. LEVEQUE: I can ask questions. You can
3 object.

4 THE COURT: Counsel. So this is much more
5 realistic, Mr. Schwartzer.

6 THE WITNESS: Yeah, that's --yes. Thank
7 goodness.

8 BY MR. LEVEQUE:

9 Q. We have Lenard Schwartzer's deposition in
10 front of you?

11 A. Yes.

12 Q. If you go to Page 3?

13 A. Yes.

14 Q. Actually I'm sorry, go to Page 2. Do you
15 see whether there is an attorney present at that
16 deposition on behalf of the school?

17 A. Yes, that -- yes, there is.

18 Q. Who is that attorney?

19 A. Maximiliano D. Couvillier, III.

20 Q. If you can go to Page 9 of your deposition,
21 Mr. Schwartzer.

22 A. I have it.

23 Q. And I'm going to start with line 7 there is
24 a question that was posed.

25 MR. JONES: Your Honor that's improper use

1 of a deposition.

2 THE COURT: Yeah, okay. Counsel approach.
3 (Bench conference.)

4 THE COURT: We will let Mr. LeVeque ask the
5 question first, Mr. Schwartz.

6 BY MR. LEVEQUE:

7 Q. Mr. Schwartz, do you remember the line of
8 questioning with respect that Mr. Jones asking about
9 you testifying in your deposition?

10 A. Yes.

11 Q. Do you remember that he made a
12 representation with respect to what you testified
13 about?

14 A. Yes.

15 Q. And do you remember that his representation
16 was that you testified that there was a financial
17 commitment and then also commitment to raise money?

18 A. Yes.

19 Q. All right. Now, if you could look at the
20 question that was posed on Page 9 at line 7 the
21 question was?

22 MR. JONES: Your Honor I'm going to object.
23 I absolutely did not ask that question. I -- that
24 is not a question I asked and we can look back at
25 the transcript.

1 MR. LEVEQUE: Sure.

2 MR. JONES: He can ask whatever he wants
3 but I don't want him to represent that to this jury
4 something that I did not say.

5 THE COURT: Okay so noted.

6 BY MR. LEVEQUE:

7 Q. If you could read your answer?

8 THE COURT: To himself.

9 BY MR. LEVEQUE:

10 Q. To yourself, Mr. Schwartzer.

11 A. Yes, the answer on lines 9 through 21?

12 Q. Yes.

13 A. Yes.

14 Q. Did you answer anything with respect to
15 whether there was a commitment or promise to
16 fundraise that Mr. Schwartz had with other people?

17 A. No, actually I don't think -- let's see
18 what I said here. Actually, I discussed the fact
19 that he made a large donation and then arranged for
20 the financing of the construction of the new school.

21 Q. Thank you. The bylaws that we looked at
22 quite a bit, Mr. Schwartzer, do you recall anyone
23 refusing to sign those bylaws from 1990?

24 A. No. I don't recall.

25 Q. Do you recall anyone voting no on agreeing

1 to change the name of the school to the Milton I.
2 Schwartz Hebrew Academy in perpetuity?

3 A. No, I don't recall that.

4 Q. Are there any writings that we have seen
5 today or that you are otherwise aware of that
6 memorialize the agreement that the school had with
7 Milton Schwartz concerning naming rights?

8 A. I think whatever writings were in the board
9 minutes and the articles and the bylaws. I don't
10 recall a -- and possibly there was a letter written
11 to Mr. Schwartz, but -- draft of, but other than
12 that I don't see anything that you would call a
13 contract where both sides signed it.

14 Q. Sure not a pretty contract that we are all
15 used to seeing where it's signed by both people,
16 right?

17 MR. JONES: Objection. Your Honor not a
18 pretty contract object to the form of the question.

19 THE COURT: Beg pardon.

20 BY MR. LEVEQUE:

21 Q. Not a formal contract that you would
22 typically see?

23 A. No. There is no formal written contract.

24 Q. But is there a writing showing how much
25 money Milton Schwartz promised to pay?

1 A. Yes.

2 Q. Is there a writing showing what the school
3 was going to do for Milton Schwartz?

4 A. Yes.

5 Q. Is there more than one writing that shows
6 what the school was going to do for Mr. Schwartz?

7 A. Yes.

8 Q. Just to avoid some confusion on some of the
9 questioning, was Jonathan Schwartz ever a board
10 member during this time period?

11 A. No.

12 Q. To your knowledge, was Jonathan Schwartz
13 ever a member of the board?

14 A. Not to my knowledge. I have only met him I
15 think about once before.

16 Q. Okay. Would the board have voted to change
17 the name of the school to the Milton I. Schwartz
18 Hebrew Academy if it believed Milton had not
19 performed?

20 MR. JONES: Objection to the form of the
21 question. Calls for speculation.

22 THE COURT: Yeah. So I think certainly as
23 to himself, he can answer.

24 MR. JONES: Thank you, Your Honor.

25 BY MR. LEVEQUE:

1 Q. Okay.

2 A. Would I have voted if I didn't think he had
3 performed? The answer is no, I would not have voted
4 to change the name of the school if he hadn't
5 actually donated the half a million dollars and
6 hadn't actually solicited some other contributions
7 to the school.

8 Q. As a board member, Mr. Schwartz, do you
9 believe there was a good faith obligation for the
10 school not to change the name Milton I. Schwartz
11 Hebrew Academy?

12 MR. JONES: Objection Your Honor to the
13 form of the question.

14 THE COURT: Seems like it was a double
15 negative.

16 MR. LEVEQUE: I will try to restate it.
17 BY MR. LEVEQUE:

18 Q. As a board member, Mr. Schwartz, do you
19 believe that there was a good faith obligation to
20 make sure that the Milton I. Schwartz Hebrew Academy
21 would not be changed?

22 MR. JONES: Your Honor also that's a
23 leading question of a direct witness on direct
24 examination.

25 THE COURT: I will overrule on that

1 grounds. I think specifically as a -- himself as a
2 board member just for himself.

3 MR. LEVEQUE: Yes.

4 THE COURT: Okay not advising the board.

5 MR. LEVEQUE: Correct.

6 THE COURT: He can answer that.

7 THE WITNESS: My understanding was the
8 agreement with Milton Schwartz was to name the
9 school Milton I. Schwartz Hebrew Academy in
10 perpetuity and changing the name would be a
11 violation of that agreement between the board of
12 trustees and Mr. Schwartz.

13 MR. LEVEQUE: I have nothing further Your
14 Honor.

15 Thank you Mr. Schwartz.

16 THE COURT: Redirect -- recross.

17 FURTHER EXAMINATION

18 BY MR. JONES:

19 Q. Mr. Schwartz, Mr. LeVeque showed you at
20 the beginning of Exhibit 118 the pledge documents?

21 A. Yes.

22 Q. You see those different categories on
23 there. And you will see that there is a number of
24 different people mention the. You are mentioned,
25 Mr. Sogg is mentioned down there. You can see down

1 below very bottom Paul Sogg is mentioned?

2 A. Yes.

3 Q. Can you bring that up?

4 So if you see there is Paul Sogg is
5 mentioned. It says on the far left column 300,00.
6 That's under the pledge column, right?

7 A. Yes.

8 Q. That means that's what he promised to pay,
9 right?

10 A. Correct.

11 Q. And then there is a paid column, right?

12 A. Yes.

13 Q. And then it shows how much he paid was a
14 hundred thousand, right?

15 A. Yes.

16 Q. And he still owes 200,000?

17 A. Yes.

18 Q. So that doesn't prove if Mr. Schwartz said
19 that Paul Sogg gave 300,000, clearly he pledged
20 300,000, but if the deal -- assuming that was a
21 material term of this agreement, that Mr. Sogg pay
22 the full amount of money, that was what the
23 agreement was, and Mr. Sogg didn't pay the full
24 300,000, then that would be breach of this agreement
25 by Mr. Schwartz, right?

1 MR. LEVEQUE: Objection. Improper
2 hypothetical.

3 MR. JONES: So let me rephrase the
4 question.

5 BY MR. JONES:

6 Q. There has been this discussion about what
7 the deal was. And initially yesterday you told the
8 jury it was 500,000 that he gave and 500,000 that he
9 was going to raise. Then when we talked to you
10 today you said well he was going to try to raise son
11 more money and he did raise some but you weren't
12 sure how much it was, right?

13 A. Correct.

14 Q. So if Mr. Schwartz himself said that my
15 deal was I was going to raise 500,000, and I was
16 going to -- excuse me. I was going to give 500,000
17 and I was going to raise 500,000, if that was the
18 agreement, then if he didn't raise the other 500,000
19 that would be a breach of the agreement, right?

20 MR. LEVEQUE: Same objection, Your Honor.

21 THE WITNESS: You are asking me if the
22 agreement was he had to raise an additional
23 \$500,000?

24 THE COURT: As a hypothetical.

25 MR. JONES: Yes, Your Honor.

1 THE WITNESS: Well, if that was the
2 agreement, this then not racing all the money would
3 be a breach.

4 BY MR. JONES:

5 Q. And the school would not have to keep his
6 name on the school in perpetuity, right, under your
7 understanding of that agreement, hypothetically?

8 A. Now you are asking a question that's
9 slightly different. Somebody raise nine -- one --
10 \$999,099 and was \$1 short, would you take away all
11 of the benefits of the contract? You wouldn't do
12 that.

13 Q. Is there some point hypothetically as you
14 understand it, as you understood the deal was he had
15 to raise an additional 500,000, and he was short a
16 hundred thousand dollars, wouldn't that be a breach?
17 That would be a big difference, right? That was the
18 deal?

19 A. Yes, I think if -- but I don't think that
20 was the deal.

21 Q. I understand that. I understand that,
22 Mr. Schwartzer.

23 A. Thank you.

24 Q. We talked about this pledge. Mr. LeVeque
25 showed you there this and said you didn't see

1 Dr. Lubin on this list here. Do you know if
2 Dr. Lubin ever gave any money?

3 A. I have a vague recollection that she
4 donated money and raised money from other people.

5 Q. And she also ran the school for many, many
6 years, right?

7 A. She did.

8 Q. And isn't it true that there are lots of
9 schools for example in this town, elementary schools
10 that are named in perpetuity for teachers because of
11 their contribution to schools and teaching?

12 MR. LEVEQUE: Objection. Foundation.
13 Calls for speculation.

14 THE COURT: Sustained.

15 BY MR. JONES:

16 Q. Well, are you aware of the fact that there
17 are -- like Howard Heckethorn is one example here.
18 Are you aware in this county there are elementary
19 schools named in perpetuity after teachers that
20 taught in the Clark County School District?

21 A. The answer is I know there are schools
22 named after teachers. I don't know what the acclaim
23 is to make it in perpetuity or not.

24 Q. Fair enough.

25 A. That's not been one of the honors I have

1 gotten so I never negotiated anything like that.

2 Q. I appreciate that. Let's pull up Exhibit 5
3 again. If we go to -- I think it's the last page --
4 second to the last page, yes. If you look under
5 amendments, Paragraph 1, amendments. Blow that up
6 for the jury.

7 Now, Mr. LeVeque asked you about this and
8 so did I. These are the bylaws that you signed, as
9 well as all those other board members and they
10 specifically say the board of trustees shall have
11 the power to make, alter amend and appeal the bylaws
12 of the corporation by affirmative vote of a majority
13 of the full board at a meeting duly noticed there
14 for, right?

15 A. That's correct.

16 Q. And it doesn't limit that in any way,
17 shape, or form, does it?

18 A. Correct.

19 Q. You again answered Mr. LeVeque's question
20 you said you believed there was a legally
21 enforceable contract, right?

22 A. Yes.

23 Q. And you told this jury you thought it was
24 an oral contract, right?

25 A. What it was, was an orally stated, mutual

1 understanding between the members of the board and
2 Milton Schwartz, that in exchange for his donation
3 and raising additional funds and making sure the
4 school got built, that the school would be named
5 after him in perpetuity.

6 Q. To be a legally enforceable oral contract
7 as a board member, you would agree with me that all
8 of the board members had to have the same
9 understanding that you did as to what the terms of
10 that oral contract were to be enforceable, right?

11 A. Majority.

12 Q. A majority. And if a majority of the board
13 members had different understanding of what that
14 oral contract was, then there would be no
15 enforceable oral contract with Mr. Schwartz, isn't
16 that true?

17 A. I think you are asking me a legal question.
18 And I -- as a lawyer I could come up with scenarios
19 going both ways. For example, if somebody says
20 something orally and they say this is what I am
21 agreeing to, but somehow in their mind they are
22 thinking of something else, the person on the other
23 side would still have the right to enforce the
24 agreement that was orally stated.

25 Q. I appreciate your point. So let me ask you

1 this, Mr. Schwartzer. Can you tell this jury in
2 your mind the oral agreement was Mr. Schwartz had to
3 give 500,000 and raise some additional amount of
4 money, right?

5 A. My understanding is that he was going to --
6 that he was going to give \$500,000 of his own money
7 and make an effort to raise sufficient funds that
8 the school could be built.

9 Q. Okay. So that's your understanding. And
10 those would be in your mind material terms of that
11 oral contract, right?

12 A. Yes.

13 Q. And so if another board member -- if a
14 number of other board members made up a majority had
15 a different understanding, for example, using this
16 as an example, if other board members thought he
17 promised to pay himself a million dollars, by
18 himself, not just 500,000 and try to raise some more
19 money, if they believed the deal was he had to pay a
20 million dollars, then that would be -- and he didn't
21 pay a million dollars, that would be a material
22 difference in what the terms of the agreement were,
23 right?

24 MR. LEVEQUE: Objection. Asked and
25 answered. Improper hypothetical.

1 THE COURT: Overruled.

2 THE WITNESS: If they had stated that's
3 what was their understanding contrary to what
4 everybody else was talking about at the meeting, the
5 answer is then they would have been a difference,
6 but I don't recall any -- I don't recall anybody
7 ever thinking that -- I don't recall it being
8 thought that he was going to come up with the
9 million dollars, I always thought it was he was
10 coming up with a half a million dollars and he was
11 going to make the best effort to help raise another
12 half million dollars, as was all of the other board
13 members had an obligation to attempt to raise more
14 money.

15 BY MR. JONES:

16 Q. Dr. Lubin -- if you weren't finished I'm
17 sorry.

18 A. No, I think I if you should.

19 Q. Dr. Lubin was a board member, right?

20 A. Yes.

21 Q. If she testified that she believed he had
22 to raise a million dollars and he didn't do it, that
23 was the deal that she believed was in place and that
24 would be clearly different than your understanding,
25 wouldn't it?

1 A. Yes, it would be.

2 Q. A material term that would be different
3 about a material term of the contract, right, the
4 oral contract, million versus 500,000, you have to
5 say that's a material difference, isn't it?

6 A. That would be a material difference.

7 Q. If Robert a Sabbath she was on the board
8 too wasn't she? If she said under oath that Milton
9 Schwartz promised to pay a million dollars in
10 exchange for naming rights that would be a material
11 difference in your understanding of what this
12 contract was, correct?

13 A. Yes.

14 MR. FREER: Objection. Material calls for
15 legal conclusion.

16 MR. JONES: I'm asking as a board member,
17 Your Honor.

18 THE COURT: I think that that's -- the
19 question of material is probably, but . . .

20 MR. JONES: Even as a layperson it's an
21 important thing for a board member.

22 THE COURT: Important for a board member is
23 different from material terms. So important for a
24 board member I would agree is an appropriate
25 question for a board member.

1 MR. JONES: Thank you.

2 BY MR. JONES:

3 Q. Do you remember if Mr. Klain was on the
4 board?

5 A. Dr. Klain.

6 Q. I'm sorry, Dr. Klain.

7 If Dr. Klain believed Mr. Schwartz paid
8 millions of dollars -- more than a million dollars
9 as part of his agreement, that would be different
10 than your understanding?

11 A. Yes, it would be.

12 Q. Now, Mr. LeVeque asked you if the school
13 had a good faith obligation not to change the name
14 of the Milton I. Schwartz Hebrew Academy. And I
15 believe you said yes. Would you agree with me also,
16 then, that Milton Schwartz had a good faith
17 obligation to live up to his promises of what he
18 agreed to do in exchange for perpetual naming
19 rights?

20 A. Yes.

21 MR. JONES: Thank you I have no further
22 questions.

23 Thank you Mr. Schwartz.

24 THE COURT: Ladies and gentlemen as you
25 recall jurors have the right to ask questions of a

1 witness once the attorneys have finished. And
2 should you have any questions of fact directed to
3 Mr. Schwartzer this is your opportunity to ask those
4 questions before he is excused and we go to lunch.
5 So anybody got a question that you wish to ask of
6 Mr. Schwartzer? I don't see any affirmative
7 responses for Mr. Schwartz that means there are no
8 further questions for you. At this point in time we
9 will take our recess for our lunch break. We will
10 return at 1:00, an hour and five minutes.

11 During this recess, you are admonished not
12 to talk or converse among yourselves or with anyone
13 else on any subject connected with this trial; or
14 read, watch or listen to any report of or commentary
15 on the trial or any person connected with this trial
16 by any medium of information, including, without
17 limitation, to newspapers, television, the internet
18 and radio; or form or express any opinion on any
19 subject connected with the trial until the case is
20 finally submitted to you.

21 Mr. Schwartzer you are excused. We will
22 have another witness after lunch.

23 THE WITNESS: Thank you.

24 (Off the record.)

25 MR. LEVEQUE: I want to clarify the record

1 we have realtime here. Mr. Jones is right. He did
2 not say that in Mr. Schwartz's deposition he said
3 that there was a commitment for 500,000 and for a
4 commitment to raise. The reason why I got confused
5 is because the question was now I read your
6 deposition in your deposition you said that you
7 believe Mr. Schwartz gave a lot of money but you say
8 not the amount of money. Then he asked a follow-up
9 question in your testimony yesterday you told the
10 jury you believed it was 500,000 and you raised
11 500,000. I thought he was still talking about the
12 deposition. So I apologize to Mr. Jones and I would
13 like to clarify with the jury. I don't want to
14 think Mr. Jones misrepresented anything.

15 THE COURT: Okay.

16 MR. JONES: Appreciate that.

17 THE COURT: We will do that when we come
18 back.

19 (Off the record for noon recess.)

20 THE COURT: Then if we have everything set
21 up and ready for our next witness we will just bring
22 the jury in. They are outside waiting. And then we
23 will call the next witness.

24 MR. LEVEQUE: I can explain to them my
25 gaffe with respect to what we said?

1 THE COURT: Yes.

2 MR. LEVEQUE: Appreciate that.

3 THE COURT: Thank you very much. Ladies
4 and gentlemen thank you for your time and attention.
5 We are back after lunch and we are going to go on
6 the record in case P061300. We are all back after
7 lunch. Counsel will stipulate to the presence of
8 our jury.

9 MR. LEVEQUE: So stipulated.

10 MR. JONES: Yes, Your Honor.

11 THE COURT: Beginning with our next witness
12 in order.

13 MR. LEVEQUE: Yes, Your Honor. Before I
14 call my next witness I ask the court to address you
15 on an issue after our recess I looked back at our
16 realtime transcript, I thought Mr. Jones said
17 something with respect to what Mr. Schwartzer said
18 in his deposition. I went back and checked, and he
19 did not say that. So I wanted to apologize to
20 Mr. Jones and to you for that. That was my error.
21 We don't agree on much anything in this case, but I
22 have a lot of respect for Mr. Jones so I thank you
23 for at least entertaining that.

24 THE COURT: Appreciate that. Thank you,
25 Mr. LeVeque. Thank you for clearing that up. And

1 we are ready to begin.

2 MR. LEVEQUE: Ms. Pacheco is in the
3 restroom.

4 THE COURT: We will wait for a minute
5 because we can't start without our witness.
6 Whereupon --

7 SUSAN PACHECO,
8 having been first duly sworn to testify to the
9 truth, was examined and testified as follows:

10 THE CLERK: Please be seated. And if you
11 will state and spell your name for the record,
12 please.

13 THE WITNESS: Susan Pacheco, S-U-S-A-N,
14 P-A-C-H-E-C-O.

15 THE CLERK: Thank you.

16 THE COURT: Thank you.

17 MR. LEVEQUE: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. LEVEQUE:

20 Q. Good afternoon, Ms. Pacheco. How are you
21 today?

22 A. Okay.

23 Q. I'm just going to ask you some questions
24 about your background and then we will get into the
25 meat of the case. Fair enough?

1 A. Fair enough.

2 Q. Ms. Pacheco, how long have you resided in
3 Las Vegas?

4 A. Since 1984.

5 Q. All right. What brought you out here?

6 A. My parents -- my father stepfather was
7 stationed at Nellis and I had just graduated from
8 college and I had no money and no job.

9 Q. Okay.

10 A. So I moved back in with them.

11 Q. Did you sometime get employment after you
12 moved here?

13 A. Oh, yes. Right after I moved here I was
14 trying to get out of the house so I got employed
15 right away.

16 Q. Did you ever come to work for Milton
17 Schwartz?

18 A. Yes.

19 Q. Can you tell me how that came about?

20 A. I was I was 24, I moved here when I was 22.
21 I was 24. I was working for a man named Cam Chefner
22 at the time. He was selling security cameras to
23 casinos and businesses. And he knew Mr. Schwartz
24 through the cameras and the cable business because
25 Mr. Schwartz at that time owned a cable company and

1 satellite companies. So he knew Mr. Schwartz and he
2 knew Mariah, his, at that time personal secretary.
3 And she wanted to retire. I'm not -- she didn't
4 retire but she moved to another job. Any way, she
5 was trying to move on. And he was looking for a
6 replacement. And Cam Chefner thought it would be --
7 we would be a good fit. And he did not have much to
8 offer me and he liked me, so he introduced me to
9 Mr. Schwartz, and Mr. Schwartz interviewed me and
10 then I was hired after that.

11 Q. Do you remember when you started working
12 for Mr. Schwartz?

13 A. May 27, 1987.

14 Q. Pretty specific. How do you remember that?

15 A. Because that's the same weekend I moved in
16 with my first husband, boyfriend at the time.

17 Q. How long did you work for Milton Schwartz?

18 A. I worked for him until he passed away, and
19 that was approximately -- little over 20 years, 21
20 years, something like that. 20 years.

21 Q. All right. Do you still work for the
22 Schwartz family?

23 A. Yes.

24 Q. Who would be your boss, so to speak?

25 A. Jonathan Schwartz, my current boss.

1 Q. Let's take you back to May 1987 when you
2 started. What sort of job duties and
3 responsibilities did you have at that time?

4 A. At that time. Well, at that time there
5 were no computers or cell phones or anything like
6 that. So I did his travel arrangements, made his
7 appointments, I did dictation. I went to meetings
8 with him when he went to meetings, which was often.
9 And I did accounting. I kept track of his accounts
10 receivables, accounts payables, a little bit of this
11 and a little bit of that.

12 Q. You mentioned dictation.

13 A. Yes.

14 Q. Did you type documents or was that just
15 handwritten?

16 A. Both. He would dictate to me. I had my
17 own form of shorthand, and then I would type it from
18 there.

19 Q. So can you tell me back then the general
20 process for writing a letter on behalf of Milton
21 Schwartz, how that would go?

22 A. He would call me into his office and I
23 would go into his office and he would tell me what
24 he wanted, and then I would write it down as he was
25 speaking, and when he talked too fast, I would raise

1 my hand and he would slow down and repeat himself.

2 Q. And then what would you do after that?

3 A. Then I would go to my office and -- which
4 is right around the corner at that time, at the
5 beginning, we are talking about the beginning,
6 right, so I would go right around the corner to my
7 office and I would type the letter.

8 Q. And after you typed it, then what would you
9 do?

10 A. I would go back into his office and he
11 would read it, proofread it, and if there were
12 errors, he would circle them and then I would go to
13 my office and retype the entire letter again.

14 Q. Would Mr. Schwartz sign his own letters or
15 did he have some sort of stamp?

16 A. He signed everything. He did not believe
17 in stamps, he did not own a stamp.

18 Q. Now, you mentioned that you handled
19 accounts payable and receivable. Can you explain
20 what that is?

21 A. Yeah, billing people and paying people, and
22 writing checks and receiving checks and putting
23 checks into bank accounts and I'm not sure --

24 Q. Let me ask you this. Did you keep track
25 for Mr. Schwartz the amount of money going out?

1 A. Yes.

2 Q. Did you keep track of the amount of money
3 going in?

4 A. Yes, I did that for himself and for his
5 trust, and he had companies, some companies, some
6 LLCs, a variety of different things that he was
7 involved with.

8 Q. Back then in 1987 were you operating with
9 computers?

10 A. No.

11 Q. How would you keep track of monies going
12 out and monies coming in?

13 A. The green sheets, accounting sheets. There
14 is a specific name for them. I'm not sure what they
15 are called. But I called them green sheets because
16 they were green.

17 Q. So these are sheets that you handwrite out?

18 A. Yes.

19 Q. How long was that practice in place in
20 Mr. Schwartz's office where you were using green
21 sheets?

22 A. Well, I'm a little behind times, so up
23 until he died, I was using green sheets through
24 2007. And then I would hand those over to the
25 accountants.

1 Q. After 2007, what happened?

2 A. There was changes in our office, and we
3 had -- I'm not sure exactly how it happened, but I
4 have two assistants now. And one of them takes the
5 accounting, my handwritten accounting, and she puts
6 them into the computer and we now have financials on
7 the computers from my handwritten accounting which I
8 still handwrite.

9 Q. Still do it yourself?

10 A. Yes. Some things are on the computer, some
11 things are handwritten.

12 Q. Back then in '87 do you remember where the
13 office was located?

14 A. 1987, it was 89445 Las Vegas Boulevard
15 south. MISCO cable.

16 Q. As you sit here today, can you remember
17 what the office looked like inside?

18 A. It was -- well, inside. It was a warehouse
19 type of building, and our office -- I say "our,"
20 mine and Mr. Schwartz was in the back. In the front
21 of the office, it was a reception area for people to
22 come in and pay their cable bills and that sort of
23 thing. And then they would -- in the middle of it
24 were employees of the cable company. And then
25 Mr. Schwartz and I were in the back office. And his

1 pigeon coops were on the top of the roof.

2 Q. Do you remember if Mr. Schwartz had any
3 memorabilia or anything on the walls at that point
4 in time?

5 A. Yes.

6 MR. JONES: Your Honor relevance.

7 THE COURT: Overruled.

8 BY MR. LEVEQUE:

9 Q. You can answer.

10 A. Oh, yes. He had -- well, my father would
11 call it I love me wall where he would put his
12 plaques and his accomplishments, and certificates on
13 the wall -- on his office walls, let me put it that
14 way. Not in the business area but on the office
15 wall -- his office wall. Sorry.

16 Q. Okay. I believe you testified that you
17 knew Mr. Schwartz for the better part of 20 years;
18 is that right?

19 A. Yes.

20 Q. Was being recognized for accomplishments
21 something that was important to Mr. Schwartz?

22 A. Yes.

23 Q. How so?

24 A. He was -- he was a fun guy. He was a
25 businessman, and he was a proud man. And he was --

1 well, I don't know how to answer that. He was like
2 a grandpa to me when I first started working there.
3 I was in my early 20s; he was in his mid 60s. And
4 he would love to tell stories. And he would tell
5 stories of how he got this one or this one or this
6 one or this one. And he was just proud of what he
7 had accomplished and he was proud of the different
8 certificates, like the Help Me Walk Again [sic]. He
9 had a fundraiser for Help Me Walk Again [sic] every
10 year at Roy Woodner's house. They would have a
11 fundraiser. And he had several plaques from those.
12 And would have a story forever year and he
13 remembered all this stuff. I mean each year he
14 would remember the difference between each event.

15 Q. Throughout your 20 or so years working with
16 Mr. Schwartz, did he regularly give to charities?

17 A. Yes.

18 Q. Would you be the one responsible for
19 keeping track of charitable contributions to
20 different charities?

21 A. Yes.

22 Q. Let me ask you, Ms. Pacheco. At the time
23 you started, what were Mr. Schwartz's business
24 endeavors?

25 A. When I first started?

1 Q. Uh-huh.

2 A. He was -- he owned MISCO cable and several
3 satellite companies. They were LLCs, which each
4 individual company would service a particular
5 apartment building. He owned the property of Valley
6 Hospital at that time. He didn't -- he had already
7 sold the business part of Valley Hospital but he
8 still owned the property that Valley Hospital -- the
9 building and the land. What else did he own? He
10 owned several different pieces of vacant land. He
11 had LLCs because he was in partnership with other
12 people. He also owned one sixth of Yellow, Checker,
13 and Star Cab company. He owned -- that was later.
14 What else did he own? I think that was pretty much
15 it at that time.

16 Q. And over the years, do you know -- do you
17 have a recollection of what charities he was
18 involved with?

19 A. Yes. There were several, so I may miss a
20 few. But he was involved in, like I said, Help Them
21 Walk Again, Boy Scouts, Claremont Lodge, Sibelius
22 Lodge [phonetic], KNPR, he gave to that, ORT, he
23 gave to that, Chabad, various different temples,
24 Milton I. Schwartz Hebrew Academy. Marvin Diabetes
25 Association [phonetic], Blue Coats, PETA, different

1 animal organizations, rescue -- not rescue mission,
2 but rescue for Golden Retrievers. That's all I can
3 think of right now.

4 Q. You mentioned -- strike that.

5 So we all know that Milton Schwartz died in
6 2007. Could you tell the jury what the typical day
7 was for Mr. Schwartz, say, in the last ten years of
8 his life?

9 A. Well, I can testify they would be -- he
10 would go to dialysis in the morning, 530ish. Then
11 from there he went to the cab company, Yellow
12 Checker Star cab. Then he would come into the
13 office and do work from there, whether it be having
14 to do with his investments or if it had to do with
15 different charities. And from there after 5:00, he
16 would -- oh, he would take a nap, a 20-minute nap in
17 the afternoon. Then he would after five he would go
18 to whatever meeting he had.

19 Q. Were charities an important part of his
20 life?

21 A. Yes. He thought it was very important to
22 give back to the community.

23 Q. Are you familiar with the Jewish school
24 currently known as the Adelson Educational Campus
25 and formerly known as the Milton I. Schwartz Hebrew

1 Academy?

2 A. Yes.

3 Q. I think you testified that that was one of
4 the nonprofits that Mr. Schwartz contributed to?

5 A. Yes.

6 Q. Did you serve in any capacity on the board
7 of trustees for the Hebrew Academy?

8 A. I served as acting secretary in the late
9 '80s, I think it was 1988 to 1990.

10 Q. Do you know if the school -- do you know
11 when the school changed its name to the Milton I.
12 Schwartz Hebrew Academy?

13 A. Oh, jeez. The actual date? No.

14 Q. Ballpark it for me.

15 A. It was 1989.

16 Q. Okay. Were you at any meetings where the
17 name change was discussed?

18 A. Yes.

19 Q. If you could -- you can actually look on
20 the screen because this has been admitted as an
21 exhibit.

22 A. Look at that.

23 Q. I would like you to take a look at this, at
24 the bottom do you see your name? Is that you?

25 A. That is me.

1 Q. You are Ms. Pacheco. Can you explain that?

2 A. That was my maiden name, Susan McGarrah.

3 Q. If you look at the top of this document, do
4 you see who is present?

5 A. Yes, I do.

6 Q. Do you see your name?

7 A. I do.

8 Q. Do you see where it discusses a letter
9 being written to Milton Schwartz or a letter should
10 be written to Milton Schwartz?

11 A. Yes.

12 Q. That the academy should be named after him?

13 A. Yes.

14 Q. Do you have a recollection of being at this
15 meeting?

16 A. Yes.

17 Q. Can you tell me what transpired during this
18 meeting?

19 A. Well, there were serial discussions. They
20 talked about scholarships. I will have to read it
21 to tell you exactly what happened. Oh, the Jewish
22 Federation I remember that. They would not give the
23 amount of money that they wanted to. Do you want me
24 to go through the whole minutes.

25 Q. I'm just asking for your general

1 recollection of what happened during the meeting.

2 A. Okay, well, they were talking about gifting
3 monies to the school and who would be named what.
4 And George Rudiak made a motion to name the school
5 after Mr. Schwartz to Milton I. Schwartz and they
6 were going to write a letter stating that. And then
7 a letter was going to be written to Paul Sogg naming
8 a building after him. He was -- it doesn't say
9 that. Never mind. And then George and Gertrude
10 Rudiak as well.

11 Q. Do you remember discussions about Milton
12 Schwartz receiving naming rights to the school
13 during this meeting or any other meeting that you
14 had while you are in your capacity as acting
15 secretary?

16 A. Yes, they talked about him having his -- a
17 school named after him. Throughout the years, you
18 are talking about just now or throughout the whole
19 years?

20 Q. Talking about August of 1989.

21 A. Okay. Yes. He was going to give \$500,000
22 to the Hebrew Academy in return he was going to have
23 the school named after him, Milton I. Schwartz
24 Hebrew Academy. It was going to be named after him.

25 Q. Okay.

1 A. And there were several discussions there
2 was discussions in the meeting. There was
3 discussions in our office. He was very excited
4 about it. He talked to various people on the phone,
5 I can't tell you who, because I don't know who,
6 but -- at this time, right now. But yes, there were
7 discussions.

8 Q. Do you have a recollection one way or
9 another whether an agreement was actually reached?

10 MR. JONES: I object to the form of the
11 question, Your Honor. It sounds like it's calling
12 for a legal conclusion.

13 THE COURT: Right.

14 MR. LEVEQUE: Let me rephrase.

15 BY MR. LEVEQUE:

16 Q. Do you have a recollection of whether
17 Mr. Schwartz had an understanding that an agreement
18 had been reached?

19 MR. JONES: That calls for speculation.

20 THE COURT: Right. Yeah, I think her
21 understanding of just what went on, she can tell us
22 that, but terms of art, I mean, you haven't laid
23 foundation she would know what those terms might be.

24 BY MR. LEVEQUE:

25 Q. Did you have discussions with Mr. Schwartz

1 personally about this idea that he was going to give
2 \$500,000 in exchange for the school to be named
3 after him?

4 A. Yes.

5 Q. Do you know one way or the other if
6 Mr. Schwartz actually paid the \$500,000?

7 A. Yes.

8 Q. Do you know one way or the other if the
9 school actually changed its name?

10 A. Yes.

11 Q. Do you know if during your tenure as acting
12 secretary, if there was discussion or agreement with
13 respect to how long the school was going to be named
14 Milton I. Schwartz Hebrew Academy?

15 MR. JONES: Just object vague as to time
16 and who the discussion would be with.

17 THE COURT: Overruled.

18 BY MR. LEVEQUE:

19 Q. You can answer.

20 A. Oh, okay. Mr. Schwartz was under the
21 impression because he told me.

22 MR. JONES: Your Honor, I'm going to object
23 as hearsay.

24 MR. LEVEQUE: Goes to his intent.

25 THE COURT: Rephrase that then.

1 THE WITNESS: Yes. Mr. Schwartz discussed
2 with me --

3 MR. JONES: Your Honor, for the record, I
4 object. Hearsay. Inadmissible hearsay.

5 MR. LEVEQUE: Could go to state of mind
6 just depends on what her answer is.

7 THE COURT: We need to lay a foundation for
8 what time frame she is talking about, what the
9 context was and those kinds of things.

10 BY MR. LEVEQUE:

11 Q. Let's go back --

12 THE COURT: You started out with her as
13 acting secretary for the board.

14 MR. LEVEQUE: Right.

15 THE COURT: So in that context, she might
16 have a foundation for what she knew, independent.

17 MR. LEVEQUE: All right. I'll see if I can
18 rephrase the question.

19 BY MR. LEVEQUE:

20 Q. In August of 1989, Ms. Pacheco, I believe
21 you already testified that you recall discussion
22 about the naming rights at this meeting, August 14;
23 is that right?

24 A. Correct.

25 Q. Did you have -- did you ever form a belief

1 based on the actions of Mr. Schwartz that he got
2 what he wanted?

3 A. Yes. He gave \$500,000 to the Milton I.
4 Schwartz Hebrew Academy -- the Hebrew Academy at
5 that time, in exchange for the naming of the school
6 the Milton I. Schwartz Hebrew Academy. That's what
7 was -- that was the deal.

8 Q. Okay. Did you ever develop an
9 understanding while serving on the board as an
10 acting secretary as to how long that deal was
11 supposed to last?

12 MR. JONES: Your Honor I have an objection
13 as to that question as to time.

14 MR. LEVEQUE: I just said while she was on
15 the board.

16 MR. JONES: Well if while she was on the
17 board was it at this meeting? There is an issue
18 there Your Honor that I would like to make sure
19 there is clarification is it this meeting or a
20 subsequent meeting. When did it happen it's so
21 broad as to time.

22 THE COURT: We can follow up on that if she
23 has a recollection based on her service as acting
24 secretary.

25 BY MR. LEVEQUE:

1 Q. Can you answer?

2 A. Okay. I was just trying to see what was
3 going on. Do the question again, please. Getting
4 all flustered here.

5 MR. JONES: Sorry, Ms. Pacheco.

6 THE WITNESS: Everybody is staring at me
7 I'm nervous any way.

8 BY MR. LEVEQUE:

9 Q. We are just trying to get the right
10 question so as not to draw an objection?

11 A. I want to answer correctly.

12 Q. Let me try one more time here.

13 A. Okay.

14 Q. In August of 1989, while you were serving
15 as acting secretary?

16 A. Yes.

17 Q. Did you formulate an understanding as to
18 how long the agreement was going to be that the
19 school was going to name itself the Milton I.
20 Schwartz Hebrew Academy?

21 A. Forever. Because he gave the money, they
22 named the school, and there you go.

23 Q. Thank you.

24 You should have some exhibit binders in
25 front of you?

1 A. Yep.

2 Q. If you could go to Tab 113. It should
3 be --

4 A. These are 500s.

5 Q. Not that one.

6 A. 113. Yes.

7 Q. So do you recognize this document?

8 A. Yes.

9 Q. Do you recognize the signatures on the
10 document?

11 A. Yes.

12 Q. Do you know if you were the one who drafted
13 these documents?

14 A. Yes.

15 MR. JONES: Counsel, I have no objection.

16 MR. LEVEQUE: Move to admit 113.

17 THE COURT: 113 is admitted.

18 BY MR. LEVEQUE:

19 Q. You can look at the screen now three checks
20 I'm kind of calling out the first one now. What's
21 this check amount for?

22 A. 25000.

23 Q. What's the date of the check?

24 A. August 14, 1989.

25 Q. Is that the same date as the board minutes

1 we just looked at?

2 A. I believe so.

3 Q. And do you recognize the signature?

4 A. Yes.

5 Q. Whose signature is that?

6 A. Mr. Schwartz.

7 Q. Did you draft this check?

8 A. Yes.

9 (Discussion between counsel.)

10 Q. Draft I guess means something else.

11 A. Typed it.

12 Q. You typed it in. Draft can be something
13 different with a check?

14 A. That's true.

15 Q. And this is the second check on this
16 document. Did you type this one as well?

17 A. Yes.

18 Q. And is the -- what's the date of this
19 check?

20 A. August 14, 1989.

21 Q. What's this amount?

22 A. 125,000.

23 Q. And the third check, how much is this one
24 for?

25 A. 350,000.

1 Q. And the date of this check?

2 A. August 23, 1989.

3 Q. Did you type this one?

4 A. Yes.

5 Q. If you add up all three of these what does
6 it equal?

7 A. 500,000.

8 Q. Do you have a recollection of Mr. Schwartz
9 asking you to prepare these?

10 A. Yes.

11 Q. What's your recollection of that
12 occurrence?

13 A. He told me after the board meeting.

14 MR. JONES: Objection. Hearsay. Sorry.

15 THE COURT: Rephrase.

16 MR. LEVEQUE: It's a verbal act.

17 THE COURT: Right. Yes. Maybe -- well...

18 BY MR. LEVEQUE:

19 Q. Let me rephrase my question.

20 A. Okay.

21 Q. Did Mr. Schwartz instruct you to do these?

22 A. Yes.

23 Q. Why did he instruct you?

24 A. Because at the board meeting, it was agreed
25 that they were going to change the name to his name

1 if -- change. They were going to name the school
2 the Milton I. Schwartz Hebrew Academy in exchange
3 for the \$500,000 donation. So after the meeting, he
4 told me to write the checks.

5 Q. Okay.

6 A. Should I say more?

7 Q. If you can.

8 A. You will notice the dates on the check.

9 Q. Yes.

10 A. The 14th and the 14th those are from two
11 different accounts. So I had to write the checks on
12 three different accounts because of the amount of
13 money that was in the account at that time.

14 Q. Okay.

15 A. And then we had to transfer money for the
16 last one. So that's why it's dated a week later.

17 Q. I see. Well thank you.

18 Do you recall Mr. Schwartz ever agreeing to
19 pledge a million dollars?

20 A. No.

21 Q. Do you recall Mr. Schwartz ever asking you
22 to write checks for a million dollars?

23 A. No.

24 Q. Were you present when these checks were
25 transferred to the school, delivered to the school?

1 A. No.

2 Q. Okay. If you could go to the exhibit
3 binder that has Tab 6 in it, please.

4 A. Yes.

5 Q. Are you there?

6 A. Yep.

7 Q. Direct you to the bottom left-hand portion
8 of this document. Do you recognize that stamp?

9 A. I do.

10 Q. What is that?

11 A. That is my notary stamp.

12 Q. Is that your signature?

13 A. Yes, it is.

14 Q. Do you recognize what this document is?

15 A. Yes.

16 Q. What is it?

17 A. It's a quitclaim deed.

18 Q. And where is the property being transferred
19 to or to whom is the property being transferred to?

20 A. The Milton I. Schwartz Hebrew Academy, a
21 Nevada nonprofit corporation.

22 Q. Is this document signed by anybody else?

23 A. Yes.

24 Q. Who else is it signed by?

25 A. Milton Schwartz.

1 Q. On what date?

2 A. April 9, 1991.

3 Q. In speaking with Mr. Schwartz over the
4 years did you ever form an impression or
5 understanding as to the importance of school being
6 named after him forever?

7 A. Yes, he was -- yes. He -- it was extremely
8 important to him that the school be named after him
9 in perpetuity, forever. He even taught me how to
10 say that word. I don't even know where to start on
11 this. Okay. He liked his name, number one, and his
12 name being on his accomplishments was important.
13 And we changed not only this document but other
14 documents, which I assume that's going to come out
15 somewhere, bylaws and different things, that it was
16 important for his name to be on the school and that
17 it's in perpetuity. There were -- I don't know.
18 Ask me more specific questions. I'm really nervous.
19 I'm sorry.

20 Q. I understand. Let me take you back to what
21 you said about Valley Hospital. Do you remember
22 that?

23 A. Yes.

24 Q. Do you know if Mr. Schwartz had any sort of
25 plaque or anything at Valley Hospital with his name

1 on it?

2 A. Yes. Valley Hospital was, as I stated
3 earlier, he owned the building when I started
4 working for him. He had already sold the business,
5 but one of my jobs was was to take an annual
6 walk-through through Valley Hospital and make sure
7 it was painted and that the ceiling tiles were
8 correct, and that -- and make sure that the plaque
9 that said Milton I. Schwartz founded was in the
10 entryway of Valley Hospital. And throughout the
11 years that I worked for him, Valley Hospital
12 would -- what do I want to say, upgrade their
13 reception area. And it moved one time from one end
14 to the other end, but they left the plaque at the
15 back area, which the front area was now over here.
16 So he had a -- he was very upset about that. So we
17 would have to write a letter and make a formal
18 complaint and then they would move the plaque to the
19 front of the building. And that was one of the
20 things we looked for. I looked for every year when
21 I did the walk through at Valley Hospital was to
22 make sure that his name was on the plaque, in the
23 front area where everybody could see it.

24 Q. Do you remember when this was, at least the
25 occurrence where you noticed that the plaque was in

1 the wrong spot?

2 A. I can't give you the exact dates, but I'm
3 going to say early '90s.

4 Q. Ms. Pacheco, I think we have already
5 established you had known Mr. Schwartz for a long
6 time. In your opinion, would Mr. Schwartz have ever
7 given the school a half million dollars if it was
8 not going to be named after him in perpetuity?

9 MR. JONES: Objection. Speculation.

10 THE COURT: Overruled.

11 THE WITNESS: No.

12 BY MR. LEVEQUE:

13 Q. Why do you think that?

14 MR. JONES: Objection, Your Honor. Calls
15 for speculation.

16 THE COURT: He specifically asked in her
17 opinion. I think that's the term. She can say what
18 her opinion is.

19 THE WITNESS: I don't believe he would give
20 that amount of money to the school without his name
21 being on the school. He gives to a lot of
22 charities, but they were never in that amount of
23 money and he was a very generous man and he did give
24 money like I said to a lot of charities but he would
25 have never given that amount of money to any

1 organization without his name being on it.

2 BY MR. LEVEQUE:

3 Q. Thank you for that. Let's talk about time.
4 How much time did Mr. Schwartz invest in the Milton
5 I. Schwartz Hebrew Academy?

6 A. He spent a lot of time. And by a lot of
7 time, it was not just corporate paperwork. He spent
8 a lot of time with the kids. He would go to the
9 school. He spent a lot of time with the teachers.
10 He would get involved with disputes, if you will,
11 between administration and teachers and things like
12 that. He did a lot of -- we did a lot of
13 fundraising, a lot of fundraising. I did a lot of
14 phone calls. Again back then we didn't have
15 computers so it was all done by hand and all of the
16 phone calls and there were no e-mails or anything so
17 it took a lot of time. As far as a percentage of
18 time, the first half of the day he was usually at
19 the cab company, and he did dialysis. Sometimes he
20 would go golf after dialysis. But second half of
21 the day was mostly devoted to the Hebrew -- Milton
22 I. Schwartz Hebrew Academy during the earlier years.
23 I want to say early '90s.

24 Q. Okay. Thank you. I just want to go back
25 to one of your answers. You said that Milton

1 Schwartz taught you how to say the word in
2 perpetuity can you tell me about that?

3 A. I used to say forever. And he said no, in
4 perpetuity. It was important -- this was after --
5 his name was taken off the school for a period of
6 time. Then it was put back on the school, and when
7 he had it put back on the school, it was -- he had
8 it -- it was in the bylaws that it was Milton I.
9 Schwartz Hebrew Academy in perpetuity because he did
10 not want his name taken off the school again. So
11 bylaws were changed. I think that's -- I don't
12 remember what all the documents. I would have it
13 look at the dates as to what was changed. But in
14 perpetuity, he liked that word. He would often
15 refer to the school as the Milton I. Schwartz Hebrew
16 Academy in perpetuity throughout the office. He
17 would add that at the end.

18 Q. Thank you. That become a running joke in
19 the office, the "in perpetuity" language?

20 A. I won't say it was a joke, but it was cute.
21 But he was serious. So it was . . .

22 Q. When -- during the time period when
23 Mr. Schwartz made the half million dollar donation
24 to the school, do you know if he assisted in
25 arranging any financing with the school for the

1 construction of the building?

2 A. Yes.

3 Q. Okay. Can you tell me anything about that?

4 A. He met with the banks. I think it was -- I
5 say banks because I think it was -- Bank of Nevada.
6 Bank of America, one loan was with Bank of America.
7 He liked -- he enjoyed negotiating with banks. He
8 just got the business part of him, in my opinion.
9 He enjoyed negotiating with banks. But yes, he did
10 negotiate. Brian Call was one of the men at Bank of
11 America that he dealt with.

12 Q. Do you know if he guaranteed any loans for
13 the school?

14 A. Yes, he did.

15 Q. Did he ever express to you his emotions
16 about having to do that?

17 A. Yes, he did not like it. He did it for the
18 sake of the school is what he told me. But he
19 didn't like the idea of guaranteeing it, but he did
20 it for the sake of the school. He also -- he also
21 wrote a letter to Victor Chaltiel saying that if he
22 ever had to pay that off, that he wouldn't give
23 anymore money to the school.

24 Q. What's your understanding what guaranteeing
25 a loan means?

1 A. That if somebody doesn't pay like they were
2 supposed to pay, then the guarantor has to pay for
3 it.

4 Q. Do you remember any period of time where
5 Mr. Schwartz stopped donating to the school?

6 A. Yes.

7 Q. Do you remember when that time period was?

8 A. '93 to '96, I believe. I believe
9 99 percent sure.

10 Q. Let's do this.

11 A. Leaving that 1 percent open.

12 Q. If you could go to Tab 103 in the binder.

13 A. Yes.

14 Q. Does that refresh your memory looking at
15 that what years he did not donate any money?

16 A. Yes. That was 1993 through 1996.

17 Q. Okay. Do you know why he stopped making
18 donations?

19 A. Because his name was taken off the school,
20 and that was the main reason. But he was disputing
21 with -- I'm not going to say that. I'm just going
22 to say the one, that it was because his name was
23 taken off the school.

24 Q. Okay.

25 A. And he was kicked off the board.

1 Q. Right.

2 If you could go to Tab 130 in your exhibit
3 binder, please.

4 MR. LEVEQUE: Hold on.

5 MR. JONES: I don't know that that's in
6 evidence.

7 MR. LEVEQUE: It's the board meeting
8 minutes from December 1992.

9 MR. CARLSON: I don't have 130.

10 MR. LEVEQUE: Do you have objection? This
11 would be 130.

12 MR. JONES: I don't have objection.

13 MR. LEVEQUE: Estate moves to admit
14 Exhibit 130.

15 THE COURT: 130?

16 MR. LEVEQUE: 130.

17 THE COURT: Mr. Jones, any objection?

18 MR. JONES: No, Your Honor.

19 THE COURT: Admitted.

20 MR. LEVEQUE: Thank you.

21 BY MR. LEVEQUE:

22 Q. These are board meeting minutes of the
23 Hebrew Academy. I will represent to you
24 Ms. Pacheco, can you see the date of these minutes?

25 A. December 16, 1992.

1 Q. At the bottom you see a highlighted
2 paragraph could you just read that for me, please.

3 A. Yeah, I just read it.

4 Q. You did?

5 A. I did.

6 Q. You are ahead of me then?

7 A. While you were doing what you were trying
8 to do over there I read it over here.

9 Q. Let me ask you this. Did any of these
10 things occur, to your knowledge, reducing the size
11 of the letterhead, taking the sign off the building,
12 did any of this stuff actually happen, to your
13 knowledge?

14 A. Yes.

15 Q. What was your impression on how
16 Mr. Schwartz felt about these things that occurred?

17 A. He was extremely unhappy, to say it nicely.
18 He was furious would be a better way of putting it.

19 Q. Okay.

20 A. He was -- well he told me we were going to
21 go to war is what he told me. He was very -- he was
22 extremely upset that they took his name off because
23 he gave the money and the name of the school is
24 Milton I. Schwartz Hebrew Academy. And he really
25 did not like the idea of his picture coming off the

1 wall. He likes things on walls. And the letterhead
2 also upset him.

3 Q. Okay.

4 MR. JONES: Your Honor, I'm sorry, but I'm
5 trying to be patient here, but this is all hearsay.
6 Trying not to interrupt the witness but they are
7 just getting in blatant hearsay.

8 THE COURT: Counsel, approach.

9 MR. JONES: For the record I have to --
10 (Bench conference.)

11 THE COURT: I would caution you that if you
12 are asked a question such as do you know what time
13 it is, the appropriate answer to that would be
14 either yes or no. You don't need to make a call.
15 So just answer the question you are asked.

16 THE WITNESS: Okay. I hate to do this but
17 I have to go to the bathroom.

18 THE COURT: We will take a break we have
19 been going about an hour that's a perfect time.
20 Let's take a 10-minute recess and come back at a
21 quarter after.

22 During this recess, you are admonished not
23 to talk or converse among yourselves or with anyone
24 else on any subject connected with this trial; or
25 read, watch or listen to any report of or commentary

1 on the trial or any person connected with this trial
2 by any medium of information, including, without
3 limitation, to newspapers, television, the internet
4 and radio; or form or express any opinion on any
5 subject connected with the trial until the case is
6 finally submitted to you. Take ten minutes and come
7 back.

8 We are outside the presence of the jury.
9 The objection was that getting indirect statements
10 of Mr. Schwartz through Ms. Pacheco was violating
11 the hearsay rule. And there are certainly times
12 when she can testify about what he said. For
13 example, why she took a certain action, why did you
14 call the attorney and make an appointment for him?
15 He told me we were going to war. That would be
16 different from her just saying, quoting, he told me
17 we were going to be going to war. She is not
18 answering the questions as asked. She is
19 volunteering a lot of information. I understand she
20 is very nervous but it's just, I think the questions
21 are perhaps a little too open-ended such that they
22 are allowing her to engineer expand. Because again
23 she can't get in what Mr. Schwartz was feeling. She
24 can talk about why she took certain actions because
25 of what Mr. Schwartz did.

1 MR. LEVEQUE: Or she could observe what his
2 physical state was.

3 THE COURT: Right, but not quote him. He
4 was really upset about it. I have no problem with
5 that. He was very upset, he was very angry. Those
6 are -- I have no problem with that. That is not a
7 problem. Where we sort of stepped over the line
8 when she specifically said and we are going to go to
9 war. As I said certain context that would have been
10 okay. If she said I was -- I called up the attorney
11 and scheduled an appointment for him to go in. Why?
12 Because he said we are going to war. Told me to do
13 that. That's different from as part of describing
14 his just general condition of he was not happy about
15 this and you know I think we all understand he was
16 not happy about this, quoting him is kind of our
17 problem. It's just such a defect quote. That's not
18 her impression. I think there might be a way you
19 can ask as to what was your impression.

20 MR. LEVEQUE: I think that --

21 THE COURT: Might have been able to get
22 that in like what was your impression of his
23 reaction. When he said we are going to war, I
24 assumed he meant he was angry. But that's not how
25 it was done.

1 MR. LEVEQUE: I will try to keep the
2 questions not as open-ended, Your Honor, to try
3 avoid that. Ms. Pacheco is back. We will get her
4 back on the stand and be ready to go.

5 (Off the record.)

6 THE COURT: We will have the witness retake
7 the stand. We will resume with your examination.

8 MR. LEVEQUE: Estate moves to admit 139.

9 THE COURT: Any objection.

10 MR. JONES: Your Honor in the interest of
11 everybody' sanity and Friday afternoon, I will not
12 object.

13 THE COURT: Thank you we will admit.

14 MR. JONES: That's fine.

15 BY MR. LEVEQUE:

16 Q. Ms. Pacheco, have you perused this exhibit?
17 Let me know when you are done.

18 MR. JONES: Just for clarification counsel
19 this is the enhanced version of the letter?

20 MR. LEVEQUE: This is just my highlighting
21 on the record.

22 MR. JONES: This is very hard to read.

23 MR. LEVEQUE: Actually, this is from your
24 file.

25 MR. JONES: This is the other version.

1 Thank you.

2 MR. LEVEQUE: Sure.

3 BY MR. LEVEQUE:

4 Q. Have you had a chance to review it?

5 A. Most of it.

6 Q. Just let me know.

7 A. Glanced through it, I didn't read every
8 single word.

9 Q. That's okay. Do you recall Mr. Schwartz
10 receiving this letter?

11 A. Yes.

12 Q. Can you see what the letter is dated?

13 A. May 23, 1996.

14 Q. Do you recall reviewing this letter when it
15 was received?

16 A. After he gave it to me, yes.

17 Q. What was Mr. Schwartz's emotional estate
18 after he received this letter?

19 A. His emotional state, he was excited. He
20 was happy. He was -- my description, he was
21 ecstatic. He was very pleased.

22 Q. Do you know why?

23 A. Because his name was put back on the school
24 and the letterhead was changed.

25 Q. Let's go through each one.

1 A. Okay.

2 Q. Looks like there is a bunch of bullet
3 points on this letter, right?

4 A. Yes.

5 Q. Who is the letter from?

6 A. It's from Roberta Sabbath.

7 Q. Do you know who Roberta Sabbath was?

8 A. Yes.

9 Q. Who was she?

10 A. She -- well, at that time she was the
11 school head.

12 Q. Again this letter was dated what date?

13 A. May 23, 1996.

14 Q. So if we go to the first bullet point, we
15 already discussed this one, was Mr. Schwartz excited
16 about this?

17 A. Yes.

18 Q. I think you mentioned number 2, amending
19 the Hebrew Academy's articles. Do you know if this
20 happened?

21 A. Yes, it did.

22 Q. What about number three: Restore the
23 marker in front of the Hebrew Academy identifying it
24 as the Milton I. Schwartz Hebrew Academy. Do you
25 know if that happened?

1 A. Yes, he was -- it did.

2 Q. Number 4, changing the Hebrew Academy's
3 formal stationery to include its full name, Milton
4 I. Schwartz Hebrew Academy. Do you know if that
5 occurred?

6 A. Yes.

7 Q. Do you know if this occurred right away or
8 did it occur over a period of time?

9 A. It occurred over a period of time.

10 Q. How do you know that?

11 A. Well, the stationery had stickers. The --
12 it took time for them to reconstruct the thing out
13 in the front, and it took time to do the articles of
14 incorporation. It was not delayed intentionally, it
15 just takes time to do those sort of things.

16 Q. Do you recall do you and/or Mr. Schwartz
17 followed up with the school to make sure these
18 promises were being implemented?

19 A. Mr. Schwartz did mostly, yes.

20 Q. Do you know how this letter came about, why
21 it was sent to Mr. Schwartz?

22 MR. JONES: Objection. Lacks foundation,
23 Your Honor.

24 MR. LEVEQUE: I asked her if she knew.

25 THE COURT: Overruled.

1 THE WITNESS: It came about because
2 Mr. Schwartz wanted his name back on the school. He
3 wanted it in perpetuity. He wanted to be back on
4 the board as well. And I'm not sure -- that's what
5 he wanted. I mean I'm not sure where we are headed,
6 but yes.

7 BY MR. LEVEQUE:

8 Q. You answered the question.

9 A. Okay.

10 Q. All right. And from the day of this
11 letter, which is May 23, 1996, to his passing in
12 2007 do you recall any other issues that Milton had
13 with the school?

14 A. No, not major issues. There were disputes
15 within the school but like any organization -- okay.
16 Back to what the judge said. No.

17 Q. What was the overall mood of the office
18 after this letter was received?

19 A. It was light. It was just very light. And
20 happy.

21 Q. Do you know if Mr. Schwartz placed any
22 degree of importance on this document?

23 A. Yes.

24 MR. JONES: Objection. Your Honor. Calls
25 for speculation.

1 THE COURT: Overruled.

2 BY MR. LEVEQUE:

3 Q. You can answer.

4 A. Oh. Yes.

5 Q. Do you know why?

6 MR. JONES: Just for the record, Your
7 Honor -- sorry, Ms. Pacheco, I didn't mean to
8 interrupt you.

9 THE WITNESS: That's okay.

10 MR. JONES: For the record I have to put my
11 objections. Again, calls for speculation. Lacks
12 foundation.

13 THE COURT: Overruled.

14 THE WITNESS: Because his name was put back
15 on the school, which is what he intended originally
16 when he gave the \$500,000, his initial \$500,000 for
17 the -- in exchange for the naming of the school to
18 be the Milton I. Schwartz Hebrew Academy. And do
19 not elaborate. Do you want me to elaborate? This
20 was his love. The school was his love, and so this
21 was really important to him, that his name be on
22 there for his legacy. And he just -- he wanted his
23 name on that school in perpetuity for the legacy for
24 his kids and his grandkids and their kids. He was
25 very proud of it. He was very brought of the school

1 and the naming and Jewish education.

2 BY MR. LEVEQUE:

3 Q. Thank you. At some point in time,
4 Ms. Pacheco, did you come to learn that Dr. and
5 Mr. Adelson were going to become involved in some
6 way with the school?

7 A. Yes.

8 Q. Do you recall what time period that
9 occurred?

10 A. I don't want to guess.

11 Q. Please don't guess.

12 A. Then I'm not going to guess.

13 Q. Well, in terms of trying to estimate it
14 from a period of time when Mr. Schwartz died in
15 August 2007, does that help out at all?

16 A. Well, it was before that.

17 Q. Obviously.

18 A. Sorry. I can't put a date on it, but I
19 remember the conversations that we had, and I know
20 that his emotions -- he was excited about it.

21 Q. What was your understanding of what the
22 involvement was going to be with the Adelsons?

23 A. That the Sheldon Adelson was coming on
24 board with the school, in the vision that
25 Mr. Schwartz had with having the grade school --

1 grade school meaning pre-K through 8th grade being
2 the Milton I. Schwartz Hebrew Academy, and then the
3 high school being the Dr. Miriam and Sheldon Adelson
4 high school or Adelson School. Not sure if it had
5 the word "high" in there. But there was going to be
6 two separate schools and he was very excited about
7 it because he -- Sheldon Adelson was going to be
8 bringing a lot to the property by adding basketball
9 courts and swimming pools and things like that.
10 And it was just going to complete the whole vision
11 he had. Yeah.

12 Q. Do you recall any meetings that
13 Mr. Schwartz had with the Adelsons during this time
14 period?

15 A. Yes.

16 Q. Where did those meetings occur?

17 A. Well, I know he had some in the office.
18 And I know I had made reservations out of the
19 office. So out of the office and in the office, our
20 office, when I say "the office," I'm talking about
21 Mr. Schwartz's office.

22 Q. Were you ever a participant in any of those
23 conversations?

24 A. I was in and out of the office, but I
25 wasn't a participant in the meeting. I was working

1 and making copies and coming in and out of the
2 office, but I want involved in the conversation.

3 Q. Do you remember any documents that were
4 being exchanged? Did you ever see any of those
5 between Mr. Schwartz and Dr. and Mrs. -- excuse me,
6 Dr. and Mr. Adelson?

7 A. They had plans that they were looking at of
8 the -- what the school was going to look like once
9 the high school was put in -- on the property. As
10 far as specific documents I put through the copy
11 machine, no, I don't remember.

12 Q. Do you know why Mr. Schwartz was excited
13 about the Adelsons coming on board?

14 A. Because he was going to build the high
15 school. He was going to donate the money to build
16 the high school.

17 Q. Take you back a little bit in the beginning
18 of your testimony, Ms. Pacheco. I believe you
19 testified that last ten years or so was like
20 Mr. Schwartz would spend a lot of time working with
21 the Milton I. Schwartz Hebrew Academy and going to
22 the Hebrew Academy; is that right?

23 A. Uh-huh.

24 Q. Did he stop making those visits to the
25 Hebrew Academy during that period of time where I

1 guess there was a rift and he stopped making
2 donations?

3 A. Oh, yeah. As far as I recall, he stopped
4 going there.

5 Q. After he received the letter that we are
6 looking at right now, which is Exhibit 139, do you
7 know if he started going back to the Hebrew Academy
8 for visits?

9 A. Yes.

10 Q. Over the years, in addition to the \$500,000
11 that we already saw that Mr. Schwartz gave the
12 school, did he give any other money to the school?

13 A. Yes.

14 Q. Are you able to tell me -- I'm going to ask
15 you about a bunch of different years here.

16 A. Okay.

17 Q. Are you able to tell me how much money he
18 gave in 1990?

19 MR. JONES: Objection. Your Honor --
20 Ms. Pacheco, I think it's the next one I have an
21 objection to.

22 THE WITNESS: Okay.

23 THE COURT: This was okay. Go ahead.

24 THE WITNESS: Can I look at my schedule?

25 BY MR. LEVEQUE:

1 Q. You can use anything to refresh your
2 memory.

3 A. That was --

4 Q. Let me tell you where what it is. 103, I
5 think it is.

6 A. It is. 1990 you asked?

7 Q. Yes.

8 A. Yes, he gave money.

9 Q. How much?

10 A. 9,000.

11 MR. JONES: Your Honor, again, I would --
12 I'm going to object. It lacks foundation based upon
13 deposition testimony that Ms. Pacheco does not
14 provide us the opportunity to examine the witness
15 about the issue.

16 THE COURT: Overruled. She can answer.

17 THE WITNESS: Yes, \$9,000.

18 BY MR. LEVEQUE:

19 Q. And what about 1991?

20 A. \$150.

21 MR. JONES: Sorry, just for the record.

22 THE COURT: Ongoing objection.

23 MR. JONES: Yes, ma'am.

24 THE COURT: Understood.

25 BY MR. LEVEQUE:

1 Q. In 2000?

2 MR. JONES: Same objection.

3 THE WITNESS: 2000, 7,400.

4 BY MR. LEVEQUE:

5 Q. And 2004?

6 MR. JONES: Same objection.

7 THE WITNESS: 135,277.

8 BY MR. LEVEQUE:

9 Q. 2005?

10 MR. JONES: Same objection.

11 THE COURT: Same.

12 THE WITNESS: 9,622.

13 BY MR. LEVEQUE:

14 Q. 2006?

15 A. 100,000.

16 MR. JONES: Same objection.

17 THE WITNESS: Oh, sorry.

18 THE COURT: Same response.

19 MR. JONES: I'm just doing it for the
20 record.

21 MR. LEVEQUE: Do you want a standing
22 objection?

23 MR. JONES: I would, but I think the rules
24 say you can't actually do that, or I would. I don't
25 like to interrupt you.

1 THE COURT: It would be nice if we could
2 just say I object to everything and then the whole
3 trial could just go. Unfortunately, that's not the
4 rule. Sorry, Mr. LeVeque, for interrupting you.

5 MR. LEVEQUE: Let's do it as we do.

6 BY MR. LEVEQUE:

7 Q. Where was I? 2006?

8 A. 2006.

9 MR. JONES: Same objection.

10 THE WITNESS: A hundred thousand.

11 BY MR. LEVEQUE:

12 Q. 2007?

13 MR. JONES: Same objection.

14 THE WITNESS: It's on the schedule or what
15 actually happened.

16 BY MR. LEVEQUE:

17 Q. What actually happened?

18 A. A hundred thousand.

19 THE COURT: She is refreshing her
20 recollection so she has to respond with what that
21 document refreshes her recollection to.

22 MR. LEVEQUE: Unless she has a different
23 recollection as to other than the document.

24 THE COURT: She is looking at this so we
25 need the answer as to what this says. We will get

1 into the other issue in a minute.

2 MR. JONES: Your Honor may we approach
3 about that.

4 THE COURT: Yes.

5 MR. JONES: Thank you.

6 (Bench conference.)

7 THE COURT: We have got it figured out. So
8 Mr. LeVeque is going to restate his question to you.

9 BY MR. LEVEQUE:

10 Q. Is the document that you are looking at
11 Ms. Pacheco, for 2007?

12 A. Yes.

13 Q. All right. Do you have an independent
14 recollection as to what the amount Mr. Schwartz
15 contributed in 2007 is?

16 A. Yes.

17 Q. How much?

18 A. A hundred thousand.

19 Q. Thank you. In addition to Mr. Schwartz
20 contributing to the school, did any of his -- do you
21 know if any of his entities, his cab company or
22 anything else?

23 A. Yes.

24 Q. What entities also contributed?

25 MR. JONES: Objection, Your Honor,

1 relevance.

2 THE COURT: Overruled.

3 THE WITNESS: He had a trust, the Milton I.
4 Schwartz charitable trust, which was -- well, it
5 gave money to the Milton I. Schwartz Hebrew Academy.
6 Valley View constructors is another company that
7 gave to the Milton I. Schwartz Hebrew Academy, and
8 Yellow checker and Star -- Yellow -- I should say
9 Yellow Cab company gave to the Milton I. Schwartz
10 Hebrew Academy. I don't think it was the other two.
11 BY MR. LEVEQUE:

12 Q. All right. When you said "trust," do you
13 know the name of that trust?

14 A. Milton I. Schwartz Charitable Lead Trust.

15 Q. Do you know if the charitable lead trust
16 made any contributions in 1992?

17 MR. JONES: Your Honor, objection. Again,
18 all to relevance.

19 MR. LEVEQUE: Can I address that one, Your
20 Honor?

21 THE COURT: Let's approach.

22 (Bench conference.)

23 THE COURT: We have that question reframed
24 for you and we are going to ask it again.

25 THE WITNESS: Okay.

1 BY MR. LEVEQUE:

2 Q. Ms. Pacheco, in the years 2004 through
3 2007, did Mr. Schwartz, through his trusts and his
4 companies, make any charitable contributions to the
5 Milton I. Schwartz Hebrew Academy?

6 MR. JONES: Ms. Pacheco, I'm sorry, so the
7 record is clear -- and I understand your ruling,
8 Your Honor. So I have a record, I would object to
9 relevance, that question.

10 THE COURT: Overrule. I think that
11 question is appropriate.

12 MR. JONES: Understood.

13 THE WITNESS: What was -- what were the
14 years again?

15 BY MR. LEVEQUE:

16 Q. 2004 to 2007, did his charitable trust
17 and/or his companies make any charitable
18 contributions to the Milton I. Schwartz Hebrew
19 Academy?

20 A. Yes.

21 Q. Exhibit 103, Ms. Pacheco, has some
22 documents behind the spreadsheet you are looking at.
23 Do you see those?

24 A. I do.

25 Q. All right. Can you tell me -- the first

1 document behind it, which I don't think it has a
2 Bates number but it's got the heading MIS 2000?

3 A. Correct.

4 Q. Did you prepare this document?

5 A. Yes.

6 MR. LEVEQUE: Here is what we need to do.

7 THE COURT: Okay.

8 (Bench conference.)

9 THE COURT: So we are going to label
10 certain pages and you will tell Michelle what you
11 number the pages.

12 MR. LEVEQUE: Yes. Michelle if you could
13 do like looks like there is 11 pages. If we could
14 do 103A through L for each page.

15 THE CLERK: You want an alpha on each page
16 for Exhibit 103?

17 THE COURT: Those are going to be admitted.
18 The whole thing is not being.

19 MR. LEVEQUE: The whole thing isn't.

20 THE COURT: It's ten pages of Exhibit 103.

21 MR. LEVEQUE: It would be Page 3, 4.

22 THE CLERK: Page 3 will be A, Page 4?

23 MR. LEVEQUE: Yes.

24 THE CLERK: That would be B.

25 MR. LEVEQUE: Page 6.

1 THE CLERK: That would be C.

2 THE COURT: We learn our alphabet and our
3 numbers.

4 MR. LEVEQUE: I guess it's just those.

5 THE CLERK: Exhibit 103 Page 3 will be
6 103A, Page 4 will be 103B, and Page 6 will be 103C.

7 THE COURT: Okay.

8 MR. LEVEQUE: All right.

9 THE COURT: Mr. Jones, do we have a
10 stipulation to the admission of those three pages or
11 do you want foundation?

12 MR. LEVEQUE: Three, four, five.

13 MR. JONES: Three, four, six.

14 MR. LEVEQUE: Three, four, five, my
15 apologies.

16 THE CLERK: 103 Page 5 will be C.

17 MR. LEVEQUE: Three four five seven.

18 THE CLERK: So 7 will be D.

19 THE COURT: Are you following this,
20 Ms. Pacheco?

21 MR. LEVEQUE: It's why we are not doctors.

22 THE COURT: We have pages 3, 4, 5 and 7.

23 MR. LEVEQUE: Yes.

24 THE COURT: And they will be consecutive
25 letters. Do we have an objection?

1 MR. LEVEQUE: I don't know. I guess I will
2 move to admit those.

3 THE COURT: Do you want a foundational
4 question first, Mr. Jones?

5 MR. JONES: I don't think a foundation has
6 been laid, but I think Ms. Pacheco can. These are
7 all documents that she compiled as part of the
8 schedule, as I understand it. If that's true, which
9 I believe it to be true, then I have no objection.

10 THE COURT: Okay.

11 MR. JONES: My only objection, Your Honor,
12 is relevance, but I understand that that's
13 overruled.

14 THE COURT: Overruling the relevance
15 objection. We are going to add these, as they were
16 prepared by the witness.

17 MR. LEVEQUE: Thank you.

18 BY MR. LEVEQUE:

19 Q. After all that, Ms. Pacheco, what is this
20 document?

21 A. This is a schedule that I prepared from my
22 green sheets in 2004 to -- for Mr. Schwartz's taxes.

23 Q. It looks like --

24 A. Which summarizes his -- I'm sorry,
25 summarizes his charitable contributions for that

1 year.

2 Q. All right. So it looks like -- what's the
3 far left column? What do those numbers represent?

4 A. Check numbers.

5 Q. Then the one after that is the date?

6 A. The date, and the name of the charity, the
7 amount, and the account it came out of.

8 Q. So looks like on June 22, there was 1,500;
9 July 23, there was 43,750; is that right?

10 A. Correct.

11 Q. And then July 26, 630. November 9 --

12 THE COURT: What about that 10/18 one?

13 MR. LEVEQUE: Did I miss one?

14 THE COURT: Yes.

15 MR. LEVEQUE: Oh, I didn't highlight that
16 one. That's a big one. Let me highlight it.

17 MR. JONES: Thanks, Your Honor.

18 MR. LEVEQUE: There it is.

19 THE WITNESS: Yeah.

20 BY MR. LEVEQUE:

21 Q. So we got that one. 10/18, 43,750; and
22 then 11/9, 1,897; and then 12/1, 43,750; is that
23 right?

24 A. Yes.

25 Q. How was this document prepared back in

1 2007?

2 A. This would have been me typing this, not
3 typing it. This would have been in the -- all
4 right. The best that I can recall is that I would
5 have taken this from the green sheets and I would
6 have typed it into computer, 2004, and printed it
7 out for Mr. Schwartz because he asked me what he
8 paid in charities for -- and that would have also
9 gone to the accountants.

10 Q. Was this prepared in early 2005?

11 A. That would be correct.

12 Q. Is this a true and correct copy of the
13 document that you prepared?

14 A. Yes.

15 Q. Can you tell me what this document is?

16 A. Yeah, that is charitable contributions from
17 1990.

18 Q. Okay.

19 A. And, yeah, and if you will notice on this
20 document, I did not add very well. There is another
21 contribution above that. There is \$25,000
22 contribution to the MIS Hebrew Academy on this
23 document. And you will notice at the bottom I put
24 5,000 plus 5,000 equals 9,000 so I added wrong.

25 Q. What's the correct number?

1 A. It's 10,000.

2 Q. Thank you.

3 Did you prepare this document too?

4 A. Yes.

5 Q. When was this document prepared?

6 A. This would have been prepared in 1991.

7 Q. Ms. Pacheco, do you remember your
8 deposition being taken in this case?

9 A. Yes.

10 Q. Do you remember being asked a question by
11 the school's counsel about where the backup
12 documentation was for that spreadsheet that you
13 prepared?

14 A. Yes.

15 Q. Do you remember what your answer was?

16 A. I don't remember it verbatim, but I have an
17 idea what I said.

18 Q. Can you tell me?

19 A. That the reason that I did not have all of
20 the backup to this particular schedule was that in
21 2014, when we moved our offices, prior to our move
22 in I think it was like October of 2017 -- '14,
23 sorry, we shredded a lot of our documents from 2006,
24 prior, before, 2006. We were told by our accountant
25 that they were not needed, so they were shredded.

1 Q. Okay.

2 MR. JONES: Counsel -- can we have a
3 sidebar about this, Your Honor?

4 THE COURT: Sure.

5 (Bench conference.)

6 THE COURT: So thanks, Counsel. We are
7 going to move on to the next question.

8 BY MR. LEVEQUE:

9 Q. I'm going to go back. I'm just going to
10 have to reask you some questions to get us all back
11 on the same page.

12 A. Okay.

13 Q. Ms. Pacheco, do you remember being deposed
14 in this case?

15 A. Yes.

16 Q. Do you remember counsel for the school
17 asking you in addition to that documentation you
18 provided at the deposition that we just looked at,
19 if you had any other documentation. Do you recall
20 your answer being that you believe you shredded it?

21 A. Yes.

22 Q. I believe you testified that that was based
23 on the advice of an accountant?

24 A. Yes.

25 Q. When did you move your office, what year

1 was that?

2 A. 2014.

3 Q. Do you know when the lawsuit was filed in
4 this case?

5 A. No.

6 Q. If I represent to you that it was in May
7 of 2013, would you accept my representation?

8 A. Yes.

9 Q. Did you intentionally destroy documents
10 because of this litigation?

11 A. No.

12 Q. Were you directed by Mr. Jonathan Schwartz
13 or anybody else to destroy documents in this
14 litigation?

15 A. No.

16 Q. At the time of your deposition do you
17 believe -- at the time of your deposition, were you
18 testifying truthfully that at that time you believed
19 that all of the documents other than the ones
20 already produced, had been inadvertently destroyed?

21 A. Yes.

22 MR. LEVEQUE: Thank you Your Honor,
23 Ms. Pacheco. I pass the witness.

24 THE COURT: Ms. Pacheco, it's Mr. Jones'
25 turn.

1 THE WITNESS: Okay.

2 MR. JONES: Thank you Your Honor.

3 CROSS EXAMINATION

4 BY MR. JONES:

5 Q. Good afternoon, Ms. Pacheco.

6 A. High.

7 Q. My name is Randall Jones, and I represent
8 the school. We have never met before, right?

9 A. No.

10 Q. All right. Just to start off with, you
11 worked for Mr. Milton Schwartz for 20-some-odd
12 years?

13 A. Yes.

14 Q. And you now work for Jonathan Schwartz; he
15 is your boss?

16 A. Yes.

17 Q. And you are employed by, sounds like, a
18 whole number of different companies that the
19 Schwartz family owns?

20 A. Five, yes.

21 Q. Five different companies?

22 A. Yes.

23 Q. And so you essentially it sounds like you
24 kind of grew up with this job where you started out
25 as a young kid, so to speak, and became -- took over

1 greater and greater responsibility for the
2 businesses. Would that be an accurate statement?

3 A. Yes. Not for the businesses but
4 responsibilities of the businesses, yeah.

5 Q. Sure. Fair enough.

6 With respect to the businesses,
7 Mr. Schwartz I think under he was in his 60s or so
8 when you first met him?

9 A. Yes.

10 Q. Would you agree with me, he was a very
11 successful man?

12 A. Yes.

13 Q. His son Jonathan has described him in his
14 deposition testimony where he was like you had your
15 deposition taken, as a genius?

16 A. Yes.

17 Q. Would you agree with that?

18 A. Yes.

19 Q. And it sound like you told the jury that he
20 was -- well he loved to negotiate with banks is one
21 thing you said?

22 A. Yes.

23 Q. And anybody who loves to negotiate with
24 banks -- well, let me step back a second.

25 Was it your understanding that he loved to

1 negotiate with banks in the context of loan
2 agreements, that kind of a setting?

3 A. With boilerplate agreements.

4 Q. Right. So when a bank would give you --
5 like a business loan, like Mr. Schwartz would have a
6 business loan, the bank has their loan documents
7 that's basically a promissory note, okay, we will
8 give you this, a million dollars, and you sign this
9 agreement that pays us back over this period of
10 time, right?

11 A. Right.

12 Q. And would you agree with me, those are
13 extremely complex legal documents?

14 A. Yes.

15 Q. So you have seen lots of them in your job
16 for Mr. Schwartz?

17 A. Yes, I have seen a few.

18 Q. And he was really good at getting down to
19 the nitty-gritty and sitting down with those bankers
20 and negotiating those terms, even through
21 nitty-gritty terms of those very complex banking
22 documents, right?

23 A. Correct.

24 Q. Did he do that on his own or did he have
25 his lawyers do it for him?

1 A. Both.

2 Q. So you actually saw him do that by himself
3 where he was confident enough he knew what he was
4 doing to do it even without lawyers?

5 A. Yes and no.

6 Q. Sometimes yes, sometimes no?

7 A. No.

8 Q. Okay.

9 A. I don't mean it that way.

10 Q. Okay.

11 A. He would, for instance, Brian call who I
12 mentioned earlier, he would come in, they would
13 negotiate in our office or in a lunch or whatever
14 but what I have seen was in our office. They would
15 negotiate. They would -- he would cross off this
16 and they would go back and they would cross off
17 this, that, and the other on a just a regular old --
18 like a boilerplate loan.

19 Q. Okay.

20 A. Now, what I don't recall, and I'm not going
21 to testify for sure, that he ran that by an attorney
22 or not on a bank loan I'm talking about. Other
23 loans he would do himself.

24 Q. Other loan documents he would do himself?

25 A. Other loan documents he would produce

1 himself, but he would take them from other loan
2 documents that were produced by an attorney.

3 Q. What about other contracts? I assume
4 owning a cab company and being owner of the land of
5 Valley Hospital, those all involved contracts,
6 right?

7 A. Oh, I'm sure they do.

8 Q. And did you ever see him negotiate in draft
9 contracts for other types of deals or agreements?

10 A. No. I wouldn't -- I mean, the cab company
11 has its own office. He did cab companies. I was in
12 his personal office I'm his personal secretary so I
13 was not in specific really big business deals.

14 Q. Put it this way. Based on your experience
15 with him for 20 plus years, you got the strong
16 impression he knew his way around a contract?

17 A. Absolutely.

18 Q. And he wasn't going to sign anything that
19 he didn't agree to?

20 A. Absolutely.

21 Q. And he knew what he wanted to sign, would
22 that be a true statement?

23 A. Yes.

24 Q. And I think -- one of the reasons I brought
25 this subject up was because he signed his own

1 letter. He didn't use a stamp, right?

2 A. Correct.

3 Q. So he was a really precise guy, would you
4 say that when it came to documents of importance?

5 A. Yes.

6 Q. He wasn't going to leave I leave anything
7 to chance, would you agree with that?

8 A. I would agree with that.

9 Q. Now, there have been some discussion
10 here -- well, I will withdraw that.

11 Let's look at, if we could for a minute,
12 Exhibit 112. I think it's in evidence. And we will
13 put it up on the screen too Ms. Pacheco but if you
14 have it there you are welcome to look at the binder.

15 A. It's easier to see here.

16 Q. Okay.

17 A. All right.

18 Q. So we have seen this before. This is --
19 these are the minutes that you signed as the
20 secretary with your maiden name do you remember
21 that?

22 A. Yes.

23 Q. You were there says Susan McGarrah at the
24 bottom, attending/present?

25 A. Uh-huh.

1 Q. I think you testified about this. In fact
2 I think you testified about this in your deposition.
3 You understood how important it was to be accurate
4 when you were taking minutes of these meetings,
5 didn't you?

6 A. Correct.

7 Q. And you were -- are you confident, can you
8 tell this jury, look them in the eye and say, "I
9 made sure that whatever they said there that was
10 agreed to, I wrote it down the way they said it"?

11 A. Yes, I can testify to that. I agree to --
12 that I made sure that what is in the minutes
13 actually was said happened, agreed to. It's true.

14 Q. You are confident about that?

15 A. I'm confident.

16 Q. And if there were any important things
17 said, you would have made sure they got in those
18 minutes, right?

19 A. Correct.

20 Q. All right. So let's look down at the
21 minutes, a little lower. It says under George
22 Rudiak moved?

23 A. Yep.

24 Q. Remember we looked at this before?

25 A. Yep.

1 Q. And he moved and the board accepts with
2 thanks, the donations from Milton Schwartz?

3 A. Yes.

4 Q. George Rudiak and Gertrude Rudiak and Paul
5 Sogg?

6 A. Correct.

7 Q. And then it says -- by the way it doesn't
8 say in there how much the donation was from
9 Mr. Schwartz, does it?

10 A. No.

11 Q. Doesn't say how much the donation was for
12 the Rudiaks does it?

13 A. No, it does not.

14 Q. Doesn't say how much Paul Sogg's donation
15 was, does it?

16 A. No, it doesn't.

17 Q. And it doesn't say that the donations were
18 in hand, right, doesn't say they actually got the
19 money yet, right?

20 A. No.

21 Q. In fact we looked at those checks that you
22 showed us that were two of them were from I think it
23 was 150 thousand of checks written the day of these
24 minutes?

25 A. Yes.

1 Q. And then 350,000 was written a couple days
2 later, right?

3 A. Correct.

4 Q. So we don't know by -- well, let me put it
5 another way, Ms. Pacheco.

6 If you made sure you put down what they
7 said in these minutes that if they would have said
8 Milton Schwartz donated \$500,000, you would have put
9 that down there in the minutes, right?

10 A. Not necessarily.

11 Q. That's an important thing, isn't it, how
12 much it was, why wouldn't that be put down there?

13 A. Because there was possibly another
14 agreement that was at this meeting at the same time.

15 Q. So what you are telling the jury is that
16 contrary to what you just told them, if it was in
17 those minutes, you could look them in the eye and
18 tell them -- if it was said in that meeting you put
19 that down in those minutes?

20 A. I put down what I wrote in the minutes when
21 I was taking the minutes. I did not write down
22 everybody's every sentence that they said during the
23 meeting or it would have been 20 pages long.

24 Q. Fair enough.

25 A. Okay.

1 Q. So did you write down everything that was
2 important about what was said in the meeting?

3 A. I wrote down what I felt was important at
4 that time. Now, if there was things that were said
5 at that meeting, that there was an assumption that
6 they agreed upon or they had already said or it was
7 just already there, then maybe it wouldn't have
8 gotten in there. I don't know exactly because I
9 don't remember and I don't want you to -- and I said
10 this in my deposition. I don't want to be tricked
11 or manipulated here. I don't remember exactly
12 everything that went on on August 14, 1989. What I
13 do remember is what I read here and that I was
14 there.

15 Q. By the way, Ms. Pacheco, my job is not to
16 trick you or manipulate you. That would be totally
17 inappropriate.

18 A. Okay.

19 Q. My job is to ask you questions and try to
20 get at the truth. Does that sound fair?

21 A. Okay. That's fair enough.

22 Q. Okay. But it's important that I find out
23 what you know about this -- these minutes?

24 A. Okay.

25 Q. Because you were there and I wasn't and

1 neither was this jury.

2 A. Right.

3 Q. So let's look at the next line?

4 A. Okay.

5 Q. Because now we understand there may be some
6 things that were said at that meeting that didn't go
7 in your minutes. Is that your testimony now?

8 A. Absolutely because the meeting, these
9 meetings typically took hours. And this is one two
10 three four paragraphs. This particular meeting
11 actually was only 45 minutes, according to the time
12 it started, the time it ended. But there were more
13 than those four paragraphs said during those 45
14 minutes, correct. There was more than that that was
15 said.

16 Q. Let's look at the next line. It says a
17 letter should be written to Milton Schwartz stating
18 the academy will be named after him. Do you see
19 that?

20 A. Yep, yes, sorry.

21 Q. You didn't write down named after him in
22 perpetuity, did you?

23 A. No, I did not.

24 Q. Those were really important words. You
25 told this jury?

1 A. Yes.

2 Q. How critical those words were to
3 Mr. Schwartz, right?

4 A. Right. That was after.

5 Q. Oh, that didn't happen at this meeting?

6 A. No, that didn't happen at this meeting.
7 This happened in '96 after we got the name put back
8 on the school. See back here when it was put on the
9 school, it was assumed that it was going to be named
10 Milton I. Schwartz Hebrew Academy forever. It was
11 assumed, but then it was taken off. So then when he
12 had it put back on, then we had -- then he added the
13 word or it was agreed upon that the words in
14 perpetuity would be added on into the bylaws.

15 Q. So because again, this was not -- there was
16 no -- my job is not to trick you or manipulate you.
17 There are bylaws that come more than a year after
18 this in 1990, not '96 where bylaws say "in
19 perpetuity."

20 A. Okay.

21 Q. But they are not in this document right
22 here, right?

23 A. Okay.

24 Q. Would you agree with me, they are not in
25 this document, the words "in perpetuity"?

1 A. I would agree, yes.

2 Q. You also told the jury it was assumed.

3 A. Uh-huh.

4 Q. Who was it assumed by that this was
5 forever?

6 A. It was assumed by myself.

7 Q. Okay.

8 A. It was assumed by Milton Schwartz, and I
9 assume it was assumed bill several people because
10 when you give money in general when someone gives
11 money and is named after something, it's not changed
12 at a later date.

13 Q. Why do you say that? How do you know that?

14 A. Well, the Thomas & Mack center, there is a
15 lot of buildings that the Ruvo, whatever his name
16 is, Cleveland Clinic, the brain clinic.

17 Q. Right.

18 A. There is a lot of things that are named.

19 Q. So -- sorry, I didn't mean to interrupt
20 you.

21 A. That's why it's assumed.

22 Q. So just to be clear, you don't know what
23 was in the heads -- in the minds of the other board
24 members about whether this was forever or not at
25 that meeting, do you?

1 A. No, I don't.

2 Q. So let's look at the rest of the letter.

3 It says the letter should be written to Paul Sogg
4 stating that a room or building would be named after
5 him. Do you know if that ever happened?

6 A. No, I don't.

7 Q. And do you know if Mr. Sogg thought that a
8 room or a building would be named after him in
9 perpetuity?

10 A. No, I do not.

11 Q. What about -- and it says a letter should
12 be written to George and Gertrude Rudiak stating
13 that they have until December 31, 1989, as to which
14 room they would like to have their -- like to have
15 named after their daughter Geri Rentchler. Do you
16 see that?

17 A. Yes.

18 Q. Do you know if the Rudiaks ever asked for a
19 room to be named after their daughter?

20 A. No.

21 Q. Do you know if it was intended to be in
22 perpetuity?

23 A. No.

24 Q. And so just to be clear, so looking at this
25 resolution, you can't just by reading that document,

1 you can't tell if the board intended any of these to
2 be in perpetuity by just reading the document,
3 right?

4 A. I would assume by just reading the
5 document.

6 Q. Why? What in the document tells you that
7 anything is going to be named in perpetuity?

8 A. It doesn't say that. I said I assume that.

9 Q. Oh, okay. It doesn't say that?

10 A. No, it doesn't say that. I would assume
11 that because if I give money and something is named
12 after me, I would assume it is in perpetuity.

13 Q. I think you also testified to Mr. LeVeque
14 when he was asking you questions that Milton
15 Schwartz's agreement to have the school named after
16 him was in exchange for \$500,000, right?

17 A. Correct.

18 Q. And that was the total amount. And once he
19 paid that, he was done, the deal was done, right?

20 A. Correct.

21 Q. And he didn't have to do anything else
22 other than get that 500,000 and he had a solid deal
23 and it was over?

24 A. That was -- no. My understanding is that
25 in exchange for the 500,000 that the school would be

1 named after him.

2 Q. Okay.

3 A. There was also an understanding, my
4 understanding, that everyone else's understanding
5 was that he was going to be on the board and he
6 would be involved in the school doing fundraising,
7 being on the chairman of the board or being on the
8 board, and he would be heavily involved in the
9 school forever, for as long as he could.

10 Q. Okay.

11 A. That was the assumption. Now whether or
12 not that's in writing somewhere, I don't know.

13 Q. Okay.

14 A. Or I don't recall. It could be.

15 Q. But generally speaking, what you said
16 before is that once he paid his 500,000, it was,
17 again, he clearly was going to be continue to be on
18 the board, be involved with the school. But the
19 critical part of the deal for the naming rights was
20 that he put up the 500,000, right?

21 A. Correct.

22 Q. You said there were several documents that
23 you believe supported the idea that his name would
24 be in perpetuity. One you said was the quitclaim
25 deed do you remember that?

1 A. I do. But I think I was wrong.

2 Q. But the quick claim deed didn't say
3 anything about in perpetuity?

4 A. Right. It was the bylaws that said that
5 not the quitclaim deed. I figured that out later.
6 Correct.

7 Q. The only document you have ever seen that
8 says in perpetuity are the bylaws, right?

9 A. Correct. Correct. Yes.

10 Q. That's good because that will save me some
11 questions and everybody I'm sure will be happy about
12 that.

13 A. Oh, yeah. I just thought it was on the
14 deed, but it wasn't.

15 Q. Fair enough. I do understand that
16 Mr. Schwartzer who testified before you -- we are
17 talking about things that happened 26 years ago or
18 something so it's a long time ago.

19 A. Yes, it is.

20 Q. I understand it's heart to remember.

21 With respect to the letter from Dr. Sabbath
22 that we looked at, Exhibit 139, do you remember that
23 letter that was in 1996? I don't know if we need to
24 show the jury if we can avoid it we will do that.
25 That letter was written 1996. I think you said it

1 was kind of a reconciliation of the board and
2 Mr. Schwartz.

3 A. Uh-huh.

4 Q. I think you said the letter came about
5 because Milton Schwartz wanted his name back on the
6 school?

7 A. Correct.

8 Q. But you don't know -- you were not present
9 when the board was meeting as to why they wrote that
10 letter, right?

11 A. I was not at the board meeting when they
12 discussed this, no.

13 Q. So we will have some board members like
14 Dr. Sabbath I think will be coming in and she was
15 actually at that meeting so you agree you would
16 defer to her as to the reason that that letter was
17 written because she was one of the board members who
18 actually was involved in writing that letter?
19 Actually, I misspoke. I don't think she was on the
20 board; I think she was head of the school.

21 A. Yes, she was school head.

22 Q. You would defer to the people at that
23 meeting as to what they discussed that letter as to
24 what they intended with that letter, right?

25 A. I was not at the meeting. I know what

1 Mr. Schwartz told me but I was not at this meeting,
2 no.

3 Q. So you don't know what was in their mind I
4 guess is what I'm saying?

5 A. No. I'm not a mind reader.

6 Q. Just to be clear about those minutes, I'm
7 looking at your deposition that was taken before to
8 make sure that I got this right. You don't have any
9 reason to believe that any of the items stated in
10 the minutes that we just read were inaccurate. Is
11 that true?

12 A. That's true.

13 MR. JONES: Please indulge me, Your Honor.

14 THE COURT: Sure.

15 BY MR. JONES:

16 Q. That was a good break because that means I
17 don't have to ask you about another document so I'm
18 going to try to move along here.

19 A. Okay.

20 Q. Now, you did tell the jury about some
21 meetings that you know took place between Mr. Milton
22 Schwartz and the Adelsons, correct?

23 A. Uh-huh.

24 Q. You have to say yes.

25 A. Yes, I am sorry.

1 Q. That's okay. Everybody does it.

2 You know they talked and Mr. Schwartz told
3 you -- well, did Milton Schwartz tell you about what
4 was agreed to in those meetings, or do you know?

5 A. He told me --

6 Q. Well, because it's hearsay, what he told
7 you. Let me try to rephrase the question.

8 A. Okay.

9 Q. How many meetings -- first of all how many
10 meetings do you think there were?

11 A. Two or three.

12 Q. And some were in Milton Schwartz office and
13 some were in other offices?

14 A. Well, two or three in our office. Outside
15 the office I don't know.

16 Q. I see. Thank you for that clarification.
17 So two or three in Milton Schwartz's office and
18 others may have occurred somewhere else?

19 A. Correct.

20 Q. Let me put it this way. You don't recall
21 any written agreements coming out of any of those
22 meetings between Mr. Adelson and Mr. Schwartz, do
23 you?

24 A. No.

25 Q. So there were preliminary discussions about

1 two schools at one point for sure, right, about the
2 Milton I. Schwartz Hebrew Academy and the Adelson
3 high school or Adelson campus that's your
4 understanding?

5 A. Yes, the Dr. Miriam and Sheldon Adelson
6 School. Yes.

7 Q. But you don't know what ultimately was
8 agreed to about that subject between Milton Schwartz
9 and the Adelsons, do you?

10 A. I know what my boss Milton Schwartz told me
11 happened.

12 Q. I appreciate that. But you never talked to
13 the Adelsons to get their side of the story about
14 what they believed was agreed to, if anything, as a
15 result of those meetings, right?

16 A. I did not talk to the Adelsons. I just
17 know what I have seen on paper and what Mr. Schwartz
18 told me.

19 Q. Right. And you didn't see -- when you say
20 what you saw on paper, you certainly didn't see any
21 agreements written and signed by the Adelsons and
22 Mr. Schwartz, did you?

23 A. No. I saw brochures, I saw plans, but no
24 agreement.

25 Q. Those plans certainly changed over time,

1 didn't they?

2 A. Well, since 2007 and now, I don't even know
3 what's there now. I haven't been by there.

4 Q. I guess my point is it was an evolving
5 process of exactly what was going to happen, right?

6 A. There was a vision, yes.

7 Q. Thank you. Now, with respect to
8 Exhibit 103, that's your schedule there, right?

9 A. Yes, it is.

10 Q. Your chart?

11 A. Uh-huh.

12 Q. When -- you had your deposition taken on
13 this in part about this chart, right?

14 A. Yes.

15 Q. And at the time you had your deposition
16 taken, there was a subpoena served to ask you to
17 collect any and all information that you could find
18 about the information contained in the chart, right?

19 A. Yes. Find donations so that's what I did.

20 Q. And you prepared the chart at Mr. Jonathan
21 Schwartz's direction, correct?

22 A. Yes.

23 Q. And you did your best to collect that
24 information at the time, right? Right?

25 A. For this schedule, I -- I wouldn't say I

1 did my best.

2 Q. Okay.

3 A. But I did produce this schedule, yes.

4 Q. You understood when you were under subpoena
5 that the school was asking you to collect all of the
6 information, all of the backup so they would have a
7 chance to review it, right? That was part of the
8 process, right?

9 A. It was part of the process. But that's not
10 in the order it happened.

11 Q. Okay. So let me ask a different way.

12 You got a subpoena?

13 A. Yes.

14 Q. It asked you to collect all of the
15 information?

16 A. To come up with the schedule to -- of
17 donations so that's what I did.

18 Q. And that's information that one of the
19 other attorneys was able to ask you about for the
20 school. They asked you about -- it wasn't me, it
21 was somebody else, right?

22 A. Correct.

23 Q. And at that time, 2014, you told them, as
24 Mr. LeVeque had you testify, that it was your belief
25 that you shredded all of that information -- orb you

1 shredded -- I'm sorry. All of the information
2 except what you were able to produce that day, it
3 was your understanding had been shredded, right?

4 A. Correct. Because I was given that date to
5 find the backup from this original schedule.

6 Q. And you believe that in fact your best
7 recollection at that time or understanding at that
8 time in 2004 was that only -- the only backup you
9 had was what you gave a day to the lawyers for the
10 school?

11 A. At that time, yes, because I -- yes, that's
12 what I found that day, correct.

13 Q. So and you said in your deposition and we
14 can look at it and I can ask you about that, but is
15 it your understanding and recollection that you told
16 the attorney for the school at that time when you
17 were under oath that to the best of your
18 understanding, all the other backup had been
19 shredded?

20 A. At that time, to the best of my
21 understanding, yes. That was not a hundred percent.
22 Okay.

23 Q. Okay.

24 A. All right.

25 Q. So the fact is that we didn't get all of

1 the backup information, right, at that time?

2 A. No, because I didn't have it at that time,
3 correct.

4 Q. By the way, you are a bookkeeper, you
5 understand --

6 A. I'm not a bookkeeper but I do understand
7 the concept of it.

8 Q. But you understand the concept of backup as
9 a person who keeps books because that's what you are
10 doing, right, you are kind of keeping the books?

11 A. Yep. Yep.

12 Q. You understand that the whole point of the
13 backup is to be able to check to make sure that all
14 of the anonymous for example in that chart are
15 correct, right?

16 A. Correct.

17 Q. That's why you want the backup so you can
18 double-check to make sure that the information on
19 the chart, the summary, is all accurate and true,
20 right?

21 A. Absolutely.

22 Q. And unfortunately, because in 2014, you
23 thought it had all been shredded, my client wasn't
24 allowed the opportunity to look at all of the rest
25 of the backup, was it?

1 A. No.

2 Q. And so we weren't able to check the backup
3 material to see if you had got all of the
4 information on that chart accurately projected,
5 right? Would you agree with that?

6 A. Yes.

7 MR. JONES: I have no further questions for
8 Ms. Pacheco. Thank you, ma'am.

9 THE COURT: Any redirect?

10 MR. LEVEQUE: Yes, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. LEVEQUE:

13 Q. Ms. Pacheco, could you go flip to the
14 Tab 62, which is a joint exhibit? Let me know when
15 you are there.

16 A. Almost. Yes.

17 Q. All right. First page of the document
18 which also should be showing up on your screen, do
19 you see a file stamp at the top right corner of that
20 screen?

21 A. Yes.

22 Q. What's the file stamp say?

23 A. May 28, 2013.

24 Q. Do you see where the title of this document
25 is?

1 A. Petition For Declaratory Relief.

2 Q. And in the upper left-hand side of the
3 document, do you see who filed it and who the party
4 was?

5 A. Yes, your office.

6 Q. Who is the party?

7 A. Party. PET --

8 Q. The italics, "Attorneys For Respondent," do
9 you see that?

10 A. A. Jonathan Schwartz.

11 Q. If you go to the back of this document, you
12 will see an exhibit. It's Exhibit 9 to the petition
13 towards the end.

14 A. Okay. 1. 9.

15 Q. Are you there?

16 A. Oh, I'm there.

17 Q. Is this spreadsheet that you prepared that
18 we have been talking about?

19 A. Yes.

20 Q. All right. And were you asked to prepare
21 the spreadsheet to be attached as an exhibit to this
22 petition?

23 A. I assume I was. I was asked to produce
24 this spreadsheet in May of 2013. So I would assume
25 that it was for this.

1 Q. We are going to go back to Exhibit 139 --
2 I'm sorry. 112.

3 A. Yes.

4 Q. Mr. Jones asked you a lot of questions
5 about this did asked you some questions about the
6 sentence starting with the letter should be written
7 to Milton Schwartz. Do you see that sentence?

8 A. Yes.

9 Q. Stating the academy will be named after
10 him?

11 A. Yes.

12 Q. Again, what's the date of these meeting
13 minutes?

14 A. August 14, 1989.

15 Q. If you could go to the next exhibit in that
16 binder which is Exhibit 114.

17 A. Yes.

18 Q. Have you seen this document before?

19 A. Yes.

20 Q. Did you type this document?

21 A. Yes.

22 Q. Did anyone direct you to type this
23 document?

24 A. Yes.

25 Q. Who was that?

1 A. Mr. Schwartz.

2 Q. What's the date of this document?

3 A. August 14, 1989.

4 Q. The?

5 MR. LEVEQUE: The estate moves to admit
6 Exhibit 114 in order to prove that an effort was
7 made to draft and send the letter.

8 MR. JONES: I don't understand that
9 proffer. An effort was made: I have never heard of
10 such a proffer Your Honor what I can say is he can
11 move to admit it.

12 MR. LEVEQUE: Okay. I was anticipating his
13 objection, but I move to admit Exhibit 114.

14 MR. JONES: Your Honor --

15 THE COURT: She has identified this as
16 something she prepared.

17 MR. LEVEQUE: I forgot a question, before I
18 move to admit.

19 BY MR. LEVEQUE:

20 Q. Ms. Pacheco, is this the letter that was
21 drafted as a result of the August 14, 1989, board
22 meeting?

23 MR. JONES: Objection. Lacks foundation.
24 I'm not saying you can't do that foundation, but
25 give us some foundation.

1 THE COURT: Yes. I mean, so I'm correct,
2 though, that she did.

3 MR. LEVEQUE: She typed it at the direction
4 of Milton Schwartz and it was the letter drafted as
5 a result of that August 14, 1989, minutes.

6 THE WITNESS: Yes.

7 THE COURT: Okay.

8 MR. LEVEQUE: Move to admit Exhibit 114.

9 THE COURT: Mr. Jones, with that
10 foundation? I think the problem with if we just
11 stuck with "This was drafted at the direction of her
12 boss after that meeting," I think that's fine, but I
13 think you added to that.

14 MR. JONES: He did. The way he has laid a
15 foundation that she did it, she knows where it came
16 from, I will not object to the admission of that
17 document.

18 THE COURT: That much. Absolutely.
19 Admitted.

20 MR. LEVEQUE: Thank you.

21 BY MR. LEVEQUE:

22 Q. Ms. Pacheco, I believe you testified that
23 this is a letter you drafted?

24 A. Yes.

25 Q. And do you recall the circumstances with

1 respect to why you drafted this document?

2 A. Because Mr. -- yes, it was after the board
3 meeting. We wrote the checks, and he -- actually I
4 don't know if the checks were before or after the
5 meeting. And he had me draw up this letter after
6 the meeting.

7 Q. Okay.

8 A. For them to sign and to go on the new
9 letterhead.

10 Q. Okay. Where was this document located?
11 Let me ask you this: Was this document located in
12 Mr. Schwartz's office?

13 A. Yes.

14 Q. Have you had a chance to read it?

15 A. Yes.

16 Q. The first paragraph discusses the \$500,000
17 gift, would you agree?

18 A. Yes.

19 Q. With respect to the second paragraph, is
20 this consistent with your recollection at all of
21 what was discussed in the August 14, 1989, meeting?

22 A. Yes.

23 Q. You never found a signed copy of this
24 letter anywhere, did you?

25 A. No.

1 Q. Did Mr. Schwartz believe, to your
2 knowledge, that the contents of this letter was the
3 agreement between he and the school concerning
4 naming rights?

5 MR. JONES: Objection, Your Honor, calls
6 for speculation.

7 THE COURT: Sustained.

8 BY MR. LEVEQUE:

9 Q. Did Mr. Schwartz ever express to you a
10 belief that he thought the school required to be
11 named after him in perpetuity?

12 A. In exchange for -- yes. I should just say
13 yes.

14 MR. LEVEQUE: Thank you Ms. Pacheco.

15 THE COURT: Did you want to follow up
16 Mr. Jones are we ready to excuse the witness and ask
17 the jury for their questions first.

18 MR. JONES: I have just some follow up on
19 this document, Your Honor, recross and I will be
20 done.

21 THE COURT: Thanks very much.

22 RECROSS EXAMINATION

23 BY MR. JONES:

24 Q. Almost done Ms. Pacheco. I'm just going to
25 look back at the letter, we just had to switch out.

1 A. That's fine.

2 Q. So Shane could put it back up on the
3 screen. It's 114. You could probably just look at
4 it on the screen rather than having to deal with
5 those binders. Looking at the letter pan back, this
6 is on a blank piece of paper, right, there is no
7 letterhead or anything, right?

8 A. Correct.

9 Q. This would be what we call a draft?

10 A. Correct.

11 Q. And it was -- this document, you testified
12 with Mr. LeVeque, it was never signed, to your
13 knowledge, by the school, was it?

14 A. I don't have a copy of the signed copy.

15 Q. To your knowledge, it was never finalized
16 and signed, was it?

17 A. No.

18 Q. And in fact, the letter says -- just if we
19 can pan back in on it now. It says, "The Hebrew
20 Academy acknowledges with thanks your generous gift
21 of \$500,000 to be used in the academy building
22 program for the construction of the new campus in
23 Summerlin." It says \$500,000 there, right?

24 A. Correct.

25 Q. It doesn't say a million, right?

1 A. Correct.

2 Q. It doesn't say 500,000 and that Milton
3 Schwartz promises to raise another 500,000 on top of
4 the 500,000, does it?

5 A. Correct.

6 Q. And as you have already told this jury,
7 it's your understanding that the agreement that --
8 well, is it your understanding that this letter, had
9 it been signed, would have essentially had the terms
10 that Milton Schwartz had you say Milton Schwartz
11 agreed to with the school about naming the school
12 after him, 500,000 in exchange for naming the
13 campus, the Milton I. Schwartz Hebrew Academy in
14 perpetuity. That was the your understanding of what
15 the deal was, right?

16 A. Yes.

17 Q. So if it was something -- if the board says
18 it was something other than that, then that would
19 certainly be different than what your understanding
20 of this so-called agreement was, right?

21 A. Say again.

22 Q. Sure. One more time.

23 If the board members said under oath that
24 they believed that the agreement was that Milton
25 Schwartz had to pay a million dollars, that would

1 certainly be different than your understanding,
2 correct?

3 A. Oh, absolutely.

4 Q. And if the board members said that his
5 agreement was he had to pay \$500,000 and raise
6 another \$500,000 as part of this deal, that would be
7 different than your understanding of the agreement,
8 right?

9 A. Correct.

10 Q. Would you even agree with me that if Milton
11 Schwartz himself said -- well, Milton Schwartz,
12 based on your long association and history with
13 Milton Schwartz, Milton Schwartz would have never
14 said that "my deal with the school for perpetual
15 naming rights was that I had to pay 500,000 and
16 raise 500,000 from other people for a total of a
17 million," you don't believe Milton Schwartz would
18 have ever said that because you don't believe that
19 was the deal, correct?

20 A. Correct.

21 MR. JONES: No further questions.

22 THE COURT: Does anyone have a question
23 before we let Ms. Pacheco go? We have a couple
24 questions from the jury so bring those up and I will
25 confer with counsel.

1 (Bench conference.)

2 THE COURT: Ms. Pacheco, I don't know if
3 you know this process. In Nevada, jurors are
4 allowed to ask questions. If I read a question it's
5 from a juror, and I read it the way they wrote it.
6 We are asking -- this is your personal knowledge of
7 the following things. This is the way this question
8 is written.

9 First this is from Sarah Langlois. Number
10 one: What was the biggest donation Mr. Milton
11 Schwartz made, besides the \$500,000, to any other
12 charities or cause? If so, who and which other
13 charities or cause?

14 THE WITNESS: The other one that I recently
15 just saw, the biggest one that I have seen is
16 20,000, and it was to the Jewish Federation.

17 THE COURT: There is a subpart to that
18 question: Why was Mr. Milton Schwartz not on the
19 board from 1992 to '96?

20 THE WITNESS: He was kicked off the board.
21 There was a board meeting that was held and it
22 was -- there were some elections that were taken.
23 What I don't recall is if that -- there was a
24 dispute whether that -- that's my opinion.

25 Okay. There was a board meeting that was

1 held and elections were held and Mr. Schwartz was
2 not reelected but there was question as to whether
3 or not that was a legal board meeting or if the
4 elections were correct or not. I'm sorry, I'm vague
5 on that one, but I don't know a for sure answer on
6 that one.

7 THE COURT: The subpart of that is: And
8 why was his name removed from the school's plaque
9 and stationery?

10 THE WITNESS: They removed all of that when
11 they did no reelect him on the board in that board
12 meeting. They had a fight, basically. It was a
13 feud. And they took the name off.

14 THE COURT: Part 3A, again, if you know:
15 Did the board, including Mr. Schwartz, agree to
16 remove his name from the school and stationery?

17 THE WITNESS: No, he did not agree to it at
18 all.

19 THE COURT: And then 3B: Were the board
20 members the same from 1989 to 1996?

21 THE WITNESS: No, not at all.

22 THE COURT: This is from juror No. 11.

23 MR. JONES: You Honor, I'm sorry. Do
24 counsel get an opportunity to do some follow up on
25 those?

1 THE COURT: Yeah, when I finish. I have
2 another page.

3 MR. JONES: Oh, okay.

4 THE COURT: I have got a whole other page.

5 This is from Juror No. [inaudible]: If "in
6 perpetuity" was so important to Mr. Schwartz, why
7 did the quitclaim deed of 1991 and the letter from
8 Dr. Sabbath from May 23, 1996, not state "in
9 perpetuity"?

10 THE WITNESS: I have no idea.

11 THE COURT: Did Mr. Schwartz have any
12 issues with the incomplete name?

13 THE WITNESS: We put the deed -- "we,"
14 meaning because I typed it up and notarized it,
15 that's why I say "we," made the deed Milton I.
16 Schwartz Hebrew Academy. I don't know why "in
17 perpetuity" wasn't put on there. I have no idea.

18 What was the other part of the question?

19 THE COURT: And the other part of the
20 question was: Did Mr. Schwartz have any issues with
21 the incomplete name?

22 THE WITNESS: Well, I don't think he
23 thought it was incomplete, but I don't know. "In
24 perpetuity" was just so people would know that it's
25 forever, and it wasn't going to be taken off later

1 on. I don't think he considered it incomplete.

2 THE COURT: There is another question.

3 No. 3, which was: Why would there be instructions
4 to shred any documents in 2014 when there is a court
5 case and probate going on? Did Mr. Schwartz's son
6 question the accountant's directive before
7 proceeding with the shredding of the documents?

8 THE WITNESS: When we moved, we were -- we
9 had boxes and boxes and boxes of documents. And we
10 needed to consolidate. And we were trying to figure
11 out what to shred and whatnot to shred. What to
12 take with us and what not to take with us. So we
13 called the accountant and said what should we keep
14 and what shouldn't we keep? And the accountant says
15 you can shred -- keep everything for seven years.
16 Everything before that you can go ahead and shred.
17 At the time the question was asked, we were in the
18 process of moving, we were not thinking about the
19 case.

20 THE COURT: So at that point, then,
21 Mr. LeVeque, if you wish to follow up on any of the
22 juror questions.

23 DIRECT EXAMINATION

24 BY MR. LEVEQUE:

25 Q. Ms. Pacheco, do you know whether or not a

1 deed can say "in perpetuity" on it?

2 A. I have no idea.

3 Q. Based on your 20-plus-year relationship
4 with Mr. Schwartz, in your opinion, do you think he
5 understood that he had a binding agreement with the
6 school?

7 A. I think he understood he had what
8 agreement?

9 Q. That he had a binding agreement with the
10 school?

11 MR. JONES: For the record --

12 BY MR. LEVEQUE:

13 Q. For the naming rights to be in perpetuity?

14 MR. JONES: Just for the record, calls for
15 speculation.

16 THE COURT: Again, it's her knowledge.

17 THE WITNESS: Yes. Yes.

18 MR. LEVEQUE: That's it. Thank you.

19 THE COURT: Mr. Jones.

20 CROSS EXAMINATION

21 BY MR. JONES:

22 Q. Ms. Pacheco, as you sit here today, you
23 don't have any reason to believe you couldn't put
24 the words "in perpetuity" on that quitclaim deed,
25 right?

1 A. No. Other than when you sell a property,
2 you change the name, and -- when you change the
3 deed. So I just don't know. I don't know what the
4 legal things are on the deeds in perpetuity.

5 Q. With respect to that issue in 1992,
6 unusually you said he was kicked off the board?

7 A. Yeah, I'm not sure exactly. I shouldn't
8 have said, because I don't know exactly. And I
9 swore to tell the truth, and I'm telling the truth.
10 I don't know exactly what went on.

11 Q. Isn't it your best recollection or
12 understanding, even though I know you don't have an
13 exact understanding that what happened there is he
14 was not reelected to the board?

15 A. Right. There still was a question whether
16 or not that was supposed to -- if it went down
17 correctly or not.

18 Q. Right. So what you remember about it is he
19 was not reelected to the board?

20 A. Correct.

21 Q. And then he took issue as to whether or not
22 that board had properly not reelected him, right?

23 A. Correct.

24 Q. So isn't it true that election of a board
25 is essentially a democratic process, there is a

1 vote?

2 A. Uh-huh.

3 Q. You have to say "yes."

4 A. Yes. I'm sorry. Yes.

5 Q. So based on what you understood is, for
6 whatever reason, a majority of the board voted not
7 to reelect Mr. Milton Schwartz at that time, right?

8 MR. LEVEQUE: Objection. Lacks foundation.

9 MR. JONES: I think that's what she just
10 testified.

11 THE COURT: Overruled.

12 MR. JONES: Thank you.

13 THE WITNESS: Yes.

14 BY MR. JONES:

15 Q. And Mr. Schwartz, who clearly was -- as you
16 have already said, he loved this school?

17 A. Yep.

18 Q. He was all about this school?

19 A. Yep.

20 Q. And he was extremely angry when the board
21 decided that he shouldn't be on the board anymore,
22 right? Right?

23 A. Yes.

24 Q. And he said I'm not going to stand for
25 that, I'm going to sue and say that was not a proper

1 election, isn't that true?

2 A. Not -- no. I don't know if that's what he
3 said.

4 Q. Well, there was --

5 A. I --

6 Q. I'm sorry, I didn't mean to interrupt you,
7 ma'am.

8 A. I don't know exactly what he said.

9 Q. There is a lawsuit though that we can look
10 at that would tell us in fact Mr. LeVeque showed it
11 before and it had Hebrew Academy board and the
12 second board. Mr. Schwartz --

13 A. Yes.

14 Q. Creating his own board another board that
15 he said was the proper board, right?

16 A. Correct, yes, I remember now, yes.

17 Q. So that lawsuit all came out of the fact
18 that there was an election called, he didn't get on
19 the board, and he wasn't going to have any of it,
20 correct?

21 A. Well.

22 Q. Correct?

23 A. Well, one board voted him off, yes. One
24 election.

25 Q. Well, at the time there was only one board,

1 wasn't there?

2 A. Well, the way it was done was questionable
3 as to whether it was proper or not, yes.

4 Q. But there was only one board at that time,
5 and whether he believed it was done properly or not,
6 that one board had an election and he was removed --
7 was not reelected to the board, right?

8 MR. LEVEQUE: Objection. Foundation.

9 THE WITNESS: Correct.

10 MR. JONES: Thank you.

11 THE COURT: Overruled. Thank you very
12 much, Ms. Pacheco. Appreciate your time. You are
13 excused.

14 Unless anybody wants to take a break now,
15 we will call our next witness. I think we have a
16 witness waiting.

17 MR. LEVEQUE: I do. Dr. Sabbath is
18 waiting.

19 THE COURT: We will take a brief recess
20 until we get Dr. Sabbath in here.

21 During this recess, you are admonished not
22 to talk or converse among yourselves or with anyone
23 else on any subject connected with this trial; or
24 read, watch or listen to any report of or commentary
25 on the trial or any person connected with this trial

1 by any medium of information, including, without
2 limitation, to newspapers, television, the internet
3 and radio; or form or express any opinion on any
4 subject connected with the trial until the case is
5 finally submitted to you.

6 We will be back at 4:15. Thank you.

7 (Off the record.)

8 THE COURT: We are outside the presence of
9 the jury. Take a brief recess, and get Dr. Sabbath
10 in here. How long do you want to go. Have Ron
11 check to see if anybody has an issue. Do you want
12 to say 5:30?

13 MR. LEVEQUE: I have no problem with that.
14 I know Dr. Sabbath would like to be done today, if
15 possible. I probably have an hour of direct. And
16 I'm sure you are going to have more than a half hour
17 of cross.

18 MR. JONES: I hope I don't -- it's hard to
19 predict. I think probably an hour. It would be
20 safer to say I have got an hour. I have never heard
21 a lawyer in trial underpredict.

22 THE COURT: So if it seems likely that we
23 are only going to be able to go until 5.

24 MR. FREER: She said she was available
25 Monday morning.

1 MR. LEVEQUE: She has to be out at 11:30
2 because she is teaching at UNLV.

3 THE COURT: The ideal would be if we could
4 finish your questioning. So let's just check with
5 the jury and see how late they are going to stay.
6 We are not going to be able to finish. She will
7 come back Monday. She has to leave by?

8 MR. LEVEQUE: Has to leave by 11:30.

9 THE COURT: See if they can stay a little
10 bit late. So our goal would be to let Mr. LeVeque
11 finish if we could stay until 5:30. If anybody
12 needs to leave sooner, then we will leave at five.
13 The point being we can't finish this witness today
14 but we need to get as much of her done as we can.

15 MR. FREER: Jonathan has to be with his
16 kids at 5:00, if he can be excused at 5:00?

17 THE COURT: Absolutely.

18 MR. FREER: Should we announce that to the
19 jury?

20 THE COURT: Absolutely.

21 MR. CARLSON: Our client representative
22 also needs to leave, if that's fine.

23 THE COURT: We had not planned on being
24 here this late. But we since we do have need to
25 finish Dr. Sabbath if we can on Monday. I just

1 don't think 9 to 11:30 -- there is no point in not
2 doing as much as we can today. Nine to 11:30 is not
3 enough.

4 MR. FREER: She did say she would be able
5 to come back. She teaches from 11:30 to 1:30.

6 MR. BRENSKE: And that class is only once a
7 week. And the following Monday is Labor Day. So
8 she has to encompass two weeks in that one class.
9 So if she is not available Monday afternoon for her
10 class, that will ruin part of the semester. She has
11 to be out of here by 11:30 to be able to get there.

12 THE COURT: It takes that long to get
13 there. I mean it's horrible to get to UNLV in the
14 middle of the day. There is no way to do it. What
15 we would tell the jury is that because the
16 representatives have been -- had made other plans
17 not knowing that we might need to stay late today
18 they will have to leave. However, if the jury can
19 stay just a little bit later because we only have
20 two and a half hours with Dr. Sabbath on Monday
21 morning and that's it. And we are not sure we can
22 finish her. We need to do as much as we can today
23 otherwise we won't be able to finish because.

24 MR. BRENSKE: I don't think she knows that
25 much so I can't imagine it going that long.

1 THE COURT: Oh, Mr. Brenske.

2 (Off the record.)

3 THE COURT: Thank you ladies and gentlemen,
4 Mr. Freer has been called away. We are going to
5 work until five today. We have Dr. Sabbath we will
6 get through Dr. Sabbath. We will work through until
7 five.

8 Whereupon --

9 ROBERTA SABBATH,
10 having been first duly sworn to testify to the
11 truth, was examined and testified as follows:

12 THE CLERK: Please be seated. And if you
13 will state and spell your name for the record,
14 please.

15 THE WITNESS: Roberta, R-O-B-E-R-T-A,
16 Sabbath, S-A-B-B-A-T-H.

17 THE CLERK: I need you to speak a little
18 louder please.

19 THE WITNESS: R-O-B-E-R-T-A, Sabbath,
20 S-A-B-B-A-T-H.

21 DIRECT EXAMINATION

22 BY MR. LEVEQUE:

23 Q. Good afternoon, Dr. Sabbath.

24 A. Good afternoon.

25 Q. Have we met before?

1 A. I don't remember. I don't think so.

2 Q. Let's say recently have you ever seen me
3 recently say within the last year?

4 A. No, I don't think so.

5 Q. Dr. Sabbath, are you currently a resident
6 of Las Vegas?

7 A. I am.

8 Q. How long have you been a resident here?

9 A. '69, December '69.

10 Q. Do you have a PhD?

11 A. Yes, I do.

12 Q. What is that in?

13 A. Comparative literature.

14 Q. Are you familiar with the Jewish school
15 currently known as the Adelson Educational
16 Institute, formerly known as the Milton I. Schwartz
17 Hebrew Academy?

18 A. Yes, I am familiar with that campus.

19 Q. Did you ever have any children attend?

20 A. I did.

21 Q. How many children attended that Hebrew
22 Academy?

23 A. Three.

24 Q. Do you remember the years of when your
25 children attended the school roughly?

1 A. I would have to approximate the oldest is
2 43 and he started in kindergarten and the youngest
3 is 36 and he finished -- they all finished K through
4 8.

5 Q. Okay. Thank you. Did you ever serve on
6 the school's board of trustees?

7 A. I did.

8 Q. Do you remember when you first served on
9 the board?

10 A. I couldn't remember that date, that
11 specific date when I started.

12 Q. You have got some exhibit binders in front
13 of you. Can you find the binder that has a tab
14 No. 323?

15 A. Tab 323?

16 Q. 323, yes.

17 THE CLERK: Three?

18 MR. LEVEQUE: 323.

19 THE CLERK: 323.

20 MR. LEVEQUE: Thank you.

21 THE WITNESS: I have got that 323.

22 BY MR. LEVEQUE:

23 Q. Do you see the date of this document?

24 A. Do I see what?

25 Q. The date on the top?

1 A. May 28, 1987.

2 Q. Do you see your name anywhere in the
3 attendance portion of the document?

4 A. I do, minus the A. On my first name.

5 Q. Says Robert, doesn't it. As of May 28,
6 1987, were you on the board?

7 A. From using this as a backup, yes.

8 Q. Do you know how long your tenure was for
9 the board position?

10 A. From then forward.

11 Q. How long were you on the board?

12 A. How long?

13 Q. Yes.

14 A. If it's from then forward, until '96.

15 Q. 1996?

16 A. Would be my best guess.

17 Q. Okay.

18 A. I would have to . . . I don't remember if
19 there was a period when I was off the board and then
20 back on.

21 Q. Okay. But the last you remember was around
22 1996, your last -- the last time you were on the
23 board; is that correct?

24 A. Correct and I became director.

25 Q. That was my next question. Do you recall

1 being interim director for any period of time?

2 A. Yes, I do.

3 Q. What period of time was that?

4 A. That was '96 to '99.

5 Q. After that position, after the term of that
6 position ended in 1999 did you serve in any other
7 capacity with respect to the Hebrew Academy?

8 A. I did not.

9 Q. Do you know my client Jonathan Schwartz?

10 A. Just actually through this court case from
11 my deposition was taken I think is when we met.

12 Q. What about his father Milton Schwartz, did
13 you know him?

14 A. I did on just a limited basis.

15 Q. Do you remember when you first met
16 Mr. Schwartz?

17 A. I could not say the exact. He was a public
18 figure so no, not beyond his being a public figure
19 other than the specific meeting took place.

20 Q. Let me ask you this. When you were on the
21 board let's say 1987 based on the document we just
22 looked at was Mr. Schwartz on the board then?

23 A. No.

24 Q. Do you know how it came to be that
25 Mr. Milton Schwartz came on the board?