BEFORE THE SENATE OF THE STATE OF ARIZONA

SITTING AS A COURT OF IMPEACHMENT

In the Matter of the Impeachment of:	)
EVAN MECHAM, Governor of the State of Arizona.	)

Phoenix, Arizona
March 28, 1988
9:04 a.m.

TRIAL VOLUME 21

BEFORE THE HONORABLE FRANK X. GORDON,
PRESIDING OFFICER

For the Board of Managers: Storey & Ross
By William P. French, Esq.
and
Brown & Bain
By Paul Eckstein, Esq.

For the Respondent: Jerris Leonard, Esq.
and
Craft & Loesch
By Winfred O. Craft, Jr., Esq.

COPPERSTATE REPORTING SERVICE, INC.
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(602) 266-2601

Reported by: David R. Minder
and
Robert M. Ferrara

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MECHAM, EVAN	4581	4607	4687		
L'ECUYER, ROBERT A.	4752				

9 E X H I B I T S

NO.	DESCRIPTION	IN EVIDENCE

1 Phoenix, Arizona
March 28, 1988
2 9:04 a.m.

3 THE PRESIDING OFFICER: Thank you, ladies and
4 gentlemen. The Court of Impeachment will reconvene.
5 Show the presence of a majority of the Board
6 of Managers, its counsel, counsel for the respondent.
7 The clerk will now call the roll.
8 THE CLERK: Senator Alston?
9 Senator Brewer?
10 SENATOR BREWER: Present.
11 THE CLERK: Senator Corpstein?
12 SENATOR CORPSTEIN: Here.
13 THE CLERK: Senator De Long?
14 SENATOR DE LONG: Present.
15 THE CLERK: Senator Gabaldon?
16 SENATOR GABALDON: Here.
17 THE CLERK: Senator Gutierrez?
18 SENATOR GUTIERREZ: Present.
19 THE CLERK: Senator Hardt?
20 SENATOR HARDT: Here.
21 THE CLERK: Senator Hays?
22 Senator Henderson?
23 Senator Higuera?
24 SENATOR HIGUERA: Here.
25 THE CLERK: Senator Hill?

1 SENATOR HILL: Here.
2 THE CLERK: Senator Kay?
3 SENATOR KAY: Here.
4 THE CLERK: Senator Kunasek?
5 SENATOR KUNASEK: Here.
6 THE CLERK: Senator Lunn?
7 Senator MacDonald?
8 SENATOR MacDONALD: Present.
9 THE CLERK: Senator Mawhinney?
10 SENATOR MAWHINNEY: Present.
11 THE CLERK: Senator Osborn?
12 SENATOR OSBORN: Present.
13 THE CLERK: Senator Pena?
14 SENATOR PENA: Here.
15 THE CLERK: Senator Rios?
16 Senator Runyan?
17 Senator Sossaman?
18 SENATOR SOSSAMAN: Here.
19 THE CLERK: Senator Steiner?
20 Senator Stephens?
21 SENATOR STEPHENS: Here.
22 THE CLERK: Senator Stump?
23 SENATOR STUMP: Present.
24 THE CLERK: Senator Taylor?
25 SENATOR TAYLOR: Present.

1 THE CLERK: Senator Todd?
2 SENATOR TODD: Here.
3 THE CLERK: Senator Usdane?
4 SENATOR USDANE: Here.
5 THE CLERK: Senator Walker?
6 SENATOR WALKER: Here.
7 THE CLERK: Senator West?
8 SENATOR WEST: Present.
9 THE CLERK: Senator Wright?
10 SENATOR WRIGHT: Here.
11 THE CLERK: Senator Alston?
12 Senator Hays?
13 Senator Henderson?
14 SENATOR HENDERSON: Here.
15 THE CLERK: Senator Lunn?
16 Senator Rios?
17 Senator Hays?
18 SENATOR HAYS: Here.
19 THE PRESIDING OFFICER: Senator Usdane.
20 THE CLERK: Senator Alston?
21 SENATOR ALSTON: Here.
22 SENATOR USDANE: Mr. Presiding Officer, I ask that
23 Senators Runyan and Lunn be excused from attending today's
24 proceeding.
25 THE PRESIDING OFFICER: That will require a

1 two-thirds majority to excuse.

2 All those in favor signify by saying "aye."

3 All opposed say "no."

4 The "ayes" appear to have it. They do have

5 it, and it's so ordered.

6 THE CLERK: Senator Rios?

7 SENATOR RIOS: Here.

8 THE CLERK: Senator Steiner?

9 SENATOR STEINER: Here.

10 THE PRESIDING OFFICER: The record will show that

11 28 of the senators are present and two are absent and

12 excused.

13 THE PRESIDING OFFICER: We will resume at this time

14 with Governor Mecham on the stand on Direct.

15

16 EVAN MECHAM,

17 a witness herein, after having been previously duly sworn,

18 was examined and testified as follows:

19

20 THE PRESIDING OFFICER: Good morning, Governor.

21 I'll remind you you're still under oath, sir.

22

23 DIRECT EXAMINATION

24 BY MR. LEONARD:

25 Q. Governor, on Friday, I had asked you whether

1 or not you periodically had discussions with your staff
2 about the use of the funds, and you went on to explain how
3 you had such discussions, including the uses of the funds,
4 and the last thing that you mentioned was, and let me
5 quote to you from the record to refresh your recollection:
6 "Particularly the things like you take your
7 wife with you to a convention. She should be
8 there, relate with other people, but you can't use
9 state funds for it, and a number of things like
10 that."
11 Governor, did you have discussions with your
12 staff about the potential of returning the funds to the
13 contributors?
14 A. I don't know that I had a discussion with the
15 staff. I discussed this when the idea came through that
16 they were having trouble with the original intent.
17 I made a suggestion to perhaps return it to
18 the people that put it in if we couldn't use it for what
19 it was supposed to, but it was not a meeting with the
20 staff.
21 Q. Pull that microphone up just a little bit.
22 A. Okay.
23 Q. And did you have that discussion with Jim
24 Colter?
25 A. Yes, I'm sure I had it with Jim, and I don't

1 know whether anybody was in on the discussion or not.
2 Q. And when did that discussion take place?
3 A. Well, I can't pinpoint it, but it would have
4 been in the time when it looked like it could not be used
5 for the original intent. I was not in on any of those
6 discussions, but was reported back to me they were having
7 some problems with the original intent, and I just made
8 that as a suggestion.
9 Q. Did there come a point in time when the funds
10 were, for the most part, sitting idle in the bank?
11 A. Yes, there was.
12 Q. And would that have been in July of '87?
13 A. Yes.
14 Q. Now, tell us, in July of '87, what your views
15 were with respect to the funds that led up to your
16 discussion with Dennis Mecham.
17 A. Well, I asked Jim Colter what -- where they
18 were, what was happening to them, and he said that they
19 were sitting in the bank in just kind of a passbook-type
20 interest, and that was -- that was it. And so I suggested
21 to him that he look for better interest. This was
22 probably going to be a long-term program, and that he
23 should be looking at better interest than that on the
24 funds, and that if he didn't have any better place, I was
25 certain that Dennis was borrowing funds from banks from

1 nine to ten percent, and that we could certainly use the
2 funds there and give good security if he didn't have
3 anything better.
4 Q. Did you subsequently have a conversation with
5 Dennis Mecham with respect to that question?
6 A. I think I did. I think I called Dennis just
7 to make sure that it would fit.
8 Q. And that eventually resulted in the loan of
9 the Mecham Inaugural Committee $80,000 to Mecham Pontiac?
10 A. Yes, sir, it did.
11 Q. Governor, let me show you what has been
12 marked Exhibit 77 and ask you if that exhibit represents a
13 loan that you made in December of 1986 from the Farmers &
14 Merchants Bank.
15 A. Yes, sir, it does.
16 Q. Was that loan secured in any way?
17 A. No, sir, it wasn't.
18 Q. What was the date of the original unsecured
19 loan?
20 A. December 8th, 1986.
21 Q. And when was that loan paid back?
22 A. December 15th, 1986.
23 Q. Now, did you subsequent to December, that is,
24 in the spring of '87, borrow some more money from Farmers
25 & Merchants?

1 A. Yes, we did, yes, sir.
2 Q. And one of the Board of Managers witnesses,
3 their accountant, testified, I believe, that he said, "I
4 suspected they used the loan to buy cars."
5 Is that why you made the loan from Farmers &
6 Merchants Bank in the spring of '87?
7 A. Oh, I don't remember. You're using an amount
8 of money to be able to ensure you've got ample
9 inventories, and it could very well have been to buy used
10 cars. I don't know what he was talking about. It
11 wouldn't have been to buy new cars.
12 Q. What did you do with the $150,000 when you
13 borrowed it in the spring of '87?
14 A. Deposited in the bank and just used it in the
15 normal course of business like all the rest of the capital
16 in the company.
17 Q. And in whose account was it deposited?
18 A. Mecham Pontiac.
19 Q. So it was an infusion of you by capital into
20 the business?
21 A. Yes, that's correct.
22 Q. You had previously borrowed 250,000 in
23 December. Why did you only borrow 150,000 in the spring
24 of '87?
25 A. At the time that's all we needed. You don't

1 borrow any more money than you could put at good use
2 because you don't want to pay any more interest than
3 necessary.
4 Q. Do you know of any more reasons why you
5 couldn't have borrowed $80,000 from Farmers & Merchants
6 Bank in July of 1987?
7 A. I see no reason why, that we couldn't have
8 borrowed the 250 or more, m'hum.
9 Q. Did Farmers & Merchants Bank ever establish a
10 top line of credit for you at the bank?
11 A. I don't recall that ever happening.
12 Q. In July of '87, there was a borrowing from
13 the Paulin Trust?
14 A. Yes, sir.
15 Q. And do you recall how much in July of '87 you
16 owed to the Paulin Trust?
17 A. Well, we made this for $250,000.
18 Q. And what was your line of credit at the
19 Paulin Trust?
20 A. Oh, we didn't have a specific line of credit.
21 It was what I asked for. We didn't discuss at that
22 particular time anything but this one figure.
23 Q. And what was the rate of interest?
24 A. Prime rate, which at that time I'm told was
25 about eight-and-a-quarter.

1 Q. And did you pay part of that loan off in July
2 of '87?
3 A. No, no, I didn't.
4 Q. You made a payment of $267,000 to some
5 creditor in July of '87. Who was that to?
6 A. That was First Interstate Bank.
7 Q. And was that loan due in July of '87?
8 A. No, sir, it wasn't.
9 Q. When was the $267,000 to First Interstate
10 due?
11 A. I don't recall. It was -- it was in the
12 month or two after that, but it was not due in that month,
13 and it was just an unsecured note, as I recall.
14 Q. To you personally?
15 A. I think I did that personally. I think I had
16 used that one personally.
17 Q. Or in any event, you guaranteed it?
18 A. Yes, m'hum.
19 Q. But it was unsecured?
20 A. It was unsecured. I think I used it as --
21 you know, I'm just going back in recollection, and I think
22 I did it for the convenience in my own name, and then used
23 it in the company, however.
24 Q. Governor, this may sound overly simplistic,
25 but considering the person who's asking the question, if

1 the loan was not due to be paid off in July of 1987, if it
2 wasn't due to be paid sometime after that, if you had not
3 paid the loan off, would it be that you would have had an
4 additional $267,000 in cash in the Mecham Pontiac account?
5 A. I think, if I recall, it seems like the
6 figure was 160, or thereabouts, and then plus the
7 interest. But yes, I would have had it in the account if
8 I hadn't have paid it off.
9 Q. Governor, I want to move on to the Tacoma
10 property. There has been evidence that would indicate
11 that there was a loan on the Tacoma property other than
12 the Prudential loan.
13 A. Yes, there was.
14 Q. Is that accurate?
15 A. There was.
16 Q. And who was that due to?
17 A. That was to Tom Sturgeon.
18 Q. And tell us how the relationship between you
19 and Sturgeon developed or Mecham Pontiac and Sturgeon
20 developed with respect to the Tacoma property.
21 A. Well, I'll try to make it a thumbnail sketch.
22 As we were going to exercise an option to purchase that,
23 he and another fellow got themselves involved in it,
24 convinced us that they could help us develop the property
25 or manage it. They were local people. And -- well, I

1 won't go into all the details, but they had injected
2 themselves into it. As a result, we went along with them
3 on the program.
4 They didn't actually follow through, and I
5 took over the management of it, but they had a small part
6 in what was then a general partnership with me as the
7 general partner, and they were going to manage it, but
8 when they didn't do the job properly -- and we had a
9 little conflict over that. They were not able to produce.
10 We had given them a little position, frankly.
11 They put $10,000 in, and they had a position in the
12 property, and it was a expensive piece of property, but
13 for what they were going to do, and so we had a little
14 difference of opinion on that, and I ended up buying them
15 out of it.
16 And that was the result of a balance owed to
17 them on just buying their share of the limited partnership
18 before the whole thing was transferred to Mecham Pontiac.
19 Q. Now, to summarize that, therefore, they had
20 been a partner. You bought them out, but in buying them
21 out, they retained a $90,000 debt position against the
22 property?
23 A. Well, I bought them out for a certain amount
24 of money, and then I was paying them $2,000 a month to
25 finish buying their interest with a balloon payment in

1 some years in the future.
2 Q. Focus with me, Governor. What was the
3 remaining debt that was due to Sturgeon in July of 1987 on
4 the Tacoma property?
5 A. Somewhere in the vacinity of $100,000, in
6 that -- 90 to a hundred thousand.
7 Q. And was that in the form of a deed of trust
8 or mortgages against the property?
9 A. Yes, it was.
10 MR. LEONARD: If you would show the witness
11 Exhibit 70, please.
12 BY MR. LEONARD:
13 Q. Governor, that's a letter from Prudential
14 purporting to put you on notice of a trustees' sale as a
15 result of a default in a second trust deed on the property
16 in Tacoma, Washington. The testimony and the purpose of
17 the exhibit, I believe, was to indicate that you were in
18 default in the payments due on that second deed of trust,
19 and that that had a relationship to a $20,000 check that
20 was cut, a cashiers' check that was cut against Mecham
21 Pontiac late in July of '87.
22 Can you explain to us why you would have
23 allowed that second trust, which I assume was the Sturgeon
24 Trust, to go into default?
25 A. Well, actually Sturgeon was the first, and

1 when I came down and started functioning in my government
2 job, I turned everything over to the office manager to
3 look after. And she did not make the payments, the 2,000
4 a month that was due to Sturgeon, for about three months.
5 It became another front-page deal. I did not even know
6 that it was behind.
7 But there then became a big wide story that I
8 was behind on it, that I hadn't -- that I hadn't answered
9 phone calls, nor did I -- there was no phone calls. There
10 wasn't anything. And it was not a -- you know, it was
11 just sort of set up to make me look bad, I felt. I didn't
12 appreciate it.
13 When I saw what it was, and that she hadn't,
14 I checked it out and found that she hadn't made the
15 payments for three months. And so I just let it sit, let
16 him go through his machinations, and then paid him the
17 money to go through his work of declaring it in default,
18 and whatnot, then paid the money to take care of it.
19 Q. Were the payments that were made at the end
20 of July within the limits of the loan agreement?
21 A. Oh, yes, yes, m'hum.
22 Q. So that the notice of trustees' sale that's
23 referred to in the letter, in the second paragraph, is it
24 fair to state that Mecham Pontiac had ample time after the
25 receipt of the notice to cure the default?

1 A. Oh, yes, which we did, m'hum, yes, sir.
2 Q. And is that first mortgage -- and thank you
3 for correcting me. Sturgeon had a first mortgage and
4 Prudential had a second? Is that the idea?
5 A. Yes, that's correct.
6 Q. Is that mortgage still on the property?
7 A. Yes, yes.
8 Q. And is it in default today?
9 A. Yes, it's on notice of default, m'hum.
10 Q. So you have been curing the default within
11 the terms of the note and the deed of trust? Is that fair
12 to say?
13 MR. ECKSTEIN: Objection, leading.
14 THE PRESIDING OFFICER: Overruled.
15 THE WITNESS: Well, the -- I didn't wrap it up to
16 suit Mr. Sturgeon the end of the year, so I let him just
17 go ahead and do whatever he wanted to do, and I'll just
18 pay it off next month. It's as simple as that. Rather
19 than fool with him and argue with him, I just let him do
20 whatever he wanted to do and then I'll just settle with
21 the attorneys and pay the money and clear him out.
22 BY MR. LEONARD:
23 Q. I take it that there is some relationship to
24 the bad feelings between you and Sturgeon and the way
25 you're handling the payments? Is that what you're

1 testifying to?

2 A. I guess probably I decided, and perhaps

3 that's maybe not right, but you know, he and Stanton made

4 this a national case on something as simple as that I

5 thought was being handled by my office manager, and she

6 slipped up, and maybe I didn't instruct her properly. I

7 don't know. I handed her a whole sheaf of details.

8 MR. ECKSTEIN: Objection. The answer is going well

9 beyond the question, and I would ask the witness be

10 reminded that he should listen to the question and respond

11 to it.

12 THE PRESIDING OFFICER: I think that answer did go

13 far beyond the question, Governor.

14 THE WITNESS: I thought he asked me about a feeling

15 between us, and yes, we do have a little feeling between

16 us, and that's the way I've handled it, and it did become

17 a very public thing that was a very simple thing. And so

18 I just said I'll handle it in my way, I guess, and that's

19 what I've done.

20 BY MR. LEONARD:

21 Q. Governor, last week we heard testimony from a

22 young man who was a real estate developer and working with

23 a mortgage brokerage firm, and on cross-examination, I was

24 asking him questions with respect to the liens on the

25 Mecham Pontiac property in Glendale, and his testimony

1 related to December of 1986, and I asked this question:
2 "How did you the determine what the balance
3 of the loan was?"
4 "ANSWER: In December of --" this is page
5 4211 in Volume 19. His answer: "In December of '86,
6 that's when Prudential Federal Savings & Loan was
7 actually put on record. At that time that lender
8 requested subordination of both the Willard Mecham
9 loan and the Wayne Mecham loan, and in those
10 subordination agreements are the then outstanding
11 principal balances.
12 "QUESTION: So your testimony really relates
13 to the financial status of the three mortgages as
14 of December 1986?
15 "ANSWER: Yes, sir.
16 "QUESTION: Do you know what the status of
17 the outstanding balance on those three loans was in
18 July of '87?
19 "ANSWER: I don't know the exact number, no.
20 I would expect it was very close to those amounts."
21 Governor, you have previously indicated and
22 introduced documents indicating that the Willard and Wayne
23 Mecham loans were paid off, that is, the deeds of trust
24 were released in, I believe, March of 1987; is that
25 correct?

1 A. I'm thinking it was February, but -- m'hum.
2 Q. So that in July of 1987, at the time that the
3 Mecham Inaugural Committee loan was made to Mecham
4 Pontiac, what was the status with respect to mortgages,
5 liens against the Glendale property?
6 MR. ECKSTEIN: The question has been asked and
7 answered and went into in great detail on Friday
8 afternoon. I would object.
9 THE PRESIDING OFFICER: Overruled.
10 THE WITNESS: There was between the Glendale
11 property and the Tacoma property --
12 BY MR. LEONARD:
13 Q. Governor, I asked you about the Glendale
14 property only.
15 A. Okay. Well, there was technically close to a
16 two-and-a-half million dollar mortgage on it, whatever had
17 been paid off. Technically, actually, part of it rested
18 on Tacoma.
19 Q. And that's because your previous testimony of
20 the agreement with Prudential to split the loan as between
21 Tacoma and Glendale?
22 A. That's correct.
23 Q. Were there any other liens, to your
24 knowledge, against the Glendale property owned by Mecham
25 Pontiac other than Prudential in July 1987?

1 A. No, sir, there wasn't.
2 Q. Governor, the real estate expert also
3 testified that the real estate was the primary source of
4 the repayment of the Mecham Inaugural Committee loan.
5 Would you agree what that statement?
6 A. Absolutely not.
7 Q. What was the primary source of repayment of
8 the loan?
9 A. The source of repayment is the money, the
10 working capital and the flow, the cash flow of a going
11 business, of Mecham Pontiac.
12 Q. The witness also testified that the value of
13 the real estate as shown on the Mecham Pontiac financial
14 statement --
15 MR. LEONARD: And would you hand the witness
16 Exhibit 71.
17 THE WITNESS: Thank you.
18 BY MR. LEONARD:
19 Q. And if you will look at the front page, the
20 testimony was that the value of land and buildings, the
21 two items under "Fixed Assets" just below the capitalized
22 letters, "Total Current Assets," that the $3.6 million and
23 the $2.3 million were over-valued. Governor, were you
24 familiar with the values of the Glendale property in July
25 of 1987?

1 A. Yes, sir, I was.
2 Q. And were you familiar with the value of the
3 Tacoma property in July of 1987?
4 A. Yes, I was.
5 Q. Governor, do you have an opinion as to
6 whether or not this financial statement, which reflects
7 the values as of the end of June of 1987, is a fair
8 representation of the values of those two properties?
9 A. Probably a little conservative.
10 Q. So that it was at least $5.9 million? Is
11 that your testimony?
12 A. That's correct.
13 Q. Now, last Friday, I believe it was, we went
14 through some numbers with you about the value of the
15 Glendale property, and I believe that you put a -- we kind
16 of agreed that 3.5 million, for round figures, would be a
17 conservative but fair value. Is that a fair statement of
18 what your testimony was?
19 A. That's fair.
20 Q. In your opinion, Governor, would the value of
21 the Mecham Glendale property today be significantly
22 different than it was in July of 87?
23 A. Somewhat, yes, it would be higher value today
24 than that, a little.
25 Q. A little?

A. M'hum.

Q. And buy "a little," how much would that be?

A. Oh, give or take a quarter or a half million dollars.

Q. So that your opinion would be that it would be, using our $3.5 million dollar figure, it would range somewhere not less than three-and-a-quarter and not more than three-and-three-quarters million?

A. Oh, I -- I would really myself have placed a value of $4 million on it then, and I would place the same value on it today, but if we were using a three-and-a-half, I'd say more like $4 million today.

Q. Governor, do you have a contract to sell the Mecham Pontiac property?

A. Yes, I do.

Q. And for what value?

A. $4 million.

Q. And is that a part of a transaction which involves other parts, sale of the other parts of your business dealings?

A. I wouldn't like to answer that publicly.

Q. Does the agreement set the value of the land separate from any other transaction?

A. It stands on its own.

Q. Pardon?

1 A. It stands on its own.
2 Q. And the value placed on the land is how much?
3 A. Well --
4 Q. Land and building.
5 A. The property is $4 million.
6 Q. That's the land and the building?
7 A. That's right.
8 Q. And includes only the Mecham Pontiac property
9 in Glendale?
10 A. That's correct.
11 Q. Now, Governor, looking at Exhibit 71, there
12 was testimony from the MeraBank accountant that with
13 respect to the adjustments that are shown in the third
14 column on that exhibit, in your experience in the
15 automobile business, is it necessary for an automobile
16 dealer at the end of the month to make adjustments in the
17 financial statement prior to its submission to General
18 Motors?
19 A. Yes, sir, it is.
20 Q. And tell us why adjustments need to be made
21 after the last day of the month to the transactions which
22 occurred during that month.
23 A. Well, a general ledger trial balance is made
24 up of when you total all the journals, and close their
25 accounts into the general ledger accounts. You know,

1 you've got your sales journal, your purchase journal, and
2 the various ones. You close them into your general
3 ledger, make your trial balance, and this is a few days
4 after the first of the month.
5 But your sales journal, for example, just to
6 give you a case in point, maybe would have some
7 transactions in it that you didn't get cleared. You could
8 possibly have a fleet sale that really you didn't get all
9 delivered, but it was billed out. I mean there's a
10 number -- there's a myriad of things that you could do,
11 and the accountant then goes through and sometimes in
12 discussion with management and decides what deals go in
13 which month and which ones go the next.
14 It's just -- so there's -- then there's
15 things that are discovered after the fact, and what you do
16 is you adjust the ledger accounts to give you as true a
17 picture as possible of what's really there.
18 Q. And the adjustments that are made, for
19 instance, to June will eventually show up in July, is
20 that --
21 MR. ECKSTEIN: Objection. Counsel continues to
22 lead the witness.
23 MR. LEONARD: I'll withdraw the question, Counsel.
24 BY MR. LEONARD:
25 Q. Tell us what happens to an adjustment that's

1 made in one month with respect to the next month.
2 A. Well, if you took a sale that had been
3 initially billed out into the sales journal -- you know,
4 you're doing things pretty well instantaneously by
5 computer accounting.
6 Q. Governor, you started to answer the question.
7 Will you take the sale in June --
8 A. I'll handle it. I'll handle it. I'm just
9 saying you would ask, well, why was it there. Well, you
10 put it in, and then maybe you don't get it done, and
11 you've billed it out in June, and say, well, we didn't
12 really get that and we don't want it in June's business,
13 so we would adjust it and take it out and end up in July.
14 Q. Anything evil about making these kind of
15 adjustments?
16 A. I don't think so. I've never heard of it if
17 there was.
18 Q. Governor, looking at Exhibit 71, and
19 particularly on page 2, at the total net worth
20 shown in both the General Motors column and the general
21 ledger column, did the adjustments that the accountant
22 made in July of 1987 to the June general ledger have any
23 impact on the net worth of the agency?
24 A. No, it didn't.
25 Q. Do you have an opinion as to whether $4.2

1 million was a fair value of Mecham Pontiac in July of
2 1987?
3 A. Yes, it was.
4 Q. Governor, do you recall the allegations that
5 were made with respect to the Mecham Pontiac loan before
6 the House Special Committee?
7 A. Yes, yes, I do.
8 Q. And what was it at that time that you were
9 alleged to have done with the Mecham Inaugural Committee
10 money when it was deposited into the Mecham Pontiac
11 account?
12 A. Well, the prosecutors made a -- took great
13 pains to try to make a case that if this money had not
14 been borrowed from the inaugural fund, I wouldn't have
15 been able to make the $20,000 payment on the property
16 to -- in Tacoma, and was therefore presumably the reason
17 for doing it.
18 Q. And what do you understand from the testimony
19 in this proceeding to be the claim by the Board of
20 Managers as to why the Mecham Inaugural Committee loaned
21 $80,000 to Mecham Pontiac?
22 MR. ECKSTEIN: Objection. The testimony is
23 whatever it is in this matter, and what the witness
24 understands that testimony to be is irrelevant and
25 immaterial.

1 THE PRESIDING OFFICER: Overruled. You may answer,
2 sir.
3 THE WITNESS: Well, it switched now to the fact
4 that we were desparately out of trust and needed the money
5 for that purpose.
6 BY MR. LEONARD:
7 Q. Governor, when did you start in business?
8 A. 1950.
9 Q. And how did you start in business?
10 A. Well, I started in business by drawing out a
11 savings account of $6500 I had accumulated while I was
12 selling insurance and going to school, and borrowing the
13 same amount from my mother, and getting a franchise that
14 nobody else would take down in Ajo, Arizona, to sell
15 Pontiac automobiles.
16 Q. And that was in 1950?
17 A. That was in 1950.
18 Q. And have you been in the automobile business
19 continously since that time?
20 A. I have, yes, sir.
21 Q. And from that $13,000, half of it borrowed,
22 you've built a net worth of what, Governor? What's the
23 estimate of your worth?
24 A. Oh, I guess the world can see $4.2 million.
25 Let's use that.

1 Q. That is, Mecham Pontiac's net worth
2 constitutes the net worth of Evan Mecham?
3 A. Well, the majority part, yes, sir.
4 Q. During that period of time, Governor, since
5 1957, have you ever failed to pay anybody any money that
6 was due to them?
7 A. You mean from 1950?
8 Q. Did I say '57?
9 A. You said '57, yeah.
10 Q. '50.
11 A. I didn't know any significance on that. Not
12 to my knowledge. I've always paid.
13 Q. Governor, tell this Court what your opinion
14 is with respect to the impact of the revelation of your
15 personal business affairs on your attitude with respect to
16 public offers.
17 MR. ECKSTEIN: Objection, irrelevant and immaterial
18 to this proceeding.
19 THE PRESIDING OFFICER: Sustained.
20 BY MR. LEONARD:
21 Q. Governor, after you testified on Count I,
22 there was testimony by Officer Frank Martinez that you had
23 attempted to reach him by telephone during the time he was
24 testifying. Did you try to reach Officer Martinez?
25 A. Absolutely not.

1 MR. ECKSTEIN: Objection, objection. First of all,
2 it is irrelevant to this count. Secondly, Mr. Martinez
3 was the very first witness in Article I and the respondent
4 was one of the last witnesses, so his testimony came well
5 after Officer Martinez' testimony, and for those two
6 reasons, I object.
7 MR. LEONARD: Well, we are just trying to clear the
8 record up on a question of credibility, Your Honor.
9 That's all.
10 THE PRESIDING OFFICER: We shouldn't have them
11 bleeding over between different Articles, so the objection
12 is sustained.
13 BY MR. LEONARD:
14 Q. There was testimony in this Count that you
15 had attempted to reach Jim Colter. Did you try to reach
16 Jim Colter?
17 A. Absolutely not.
18 Q. Tell us what the purpose of the phone call to
19 his wife was.
20 A. I watched the proceedings here, and I had not
21 seen Jim Colter, who we've had a friendship extending
22 since 1962. Jim had had some -- he had been gone out of
23 the country for a month, and he had been -- had some
24 surgery, and I was a little concerned about his overall
25 health.

1 And going out of the parking lot, I left
2 immediately after watching that, and I picked up the
3 telephone in the automobile and called Liz, his wife, who
4 picked up the phone, and I told her that I thought Jim
5 looked just great, and I was pleased that he looked so
6 well, and that was the message. There was no intent to
7 contact him. I knew he was this --
8 But it did teach me that I guess I can't use
9 my automobile telephone, either, because somebody -- I was
10 shocked the next day when Mr. French asked Mr. Colter if I
11 had called his home, because somebody had to be monitoring
12 my telephone conversation to even know that. I was
13 shocked.
14 Q. Where was Mr. Colter at the time you made the
15 call?
16 A. He had to be still in this building, because
17 I called right after the proceedings were through, and I
18 knew that he wouldn't be home.
19 MR. LEONARD: May I have a moment, Your Honor?
20 THE PRESIDING OFFICER: Certainly.
21 (Discussion off the record.)
22 MR. LEONARD: Thank you, Governor.
23 Your witness, Counsel.
24 THE PRESIDING OFFICER: You may cross-examine.
25

1 CROSS-EXAMINATION

2 BY MR. FRENCH:

3 Q. Mr. Presiding Officer, members of the Court,

4 Governor Mecham.

5 A. Yes.

6 Q. Governor, I'm going to be asking you a series

7 of questions this morning about this particular Article.

8 A. M'hum.

9 Q. I'm going to ask you to be as specific as you

10 can in your responses, because that will move it along.

11 A. Sure.

12 Q. And as you probably know, your counsel is

13 going to have a chance to come back on redirect to clear

14 up anything that you two want to clear up at that time,

15 but I would appreciate specific answers to my questions.

16 A. I understand.

17 Q. Okay. In addition, Governor Mecham, if I ask

18 you a question you don't completely understand, I would

19 sincerely ask that you tell me that and I'll rephrase it.

20 A. Fine.

21 Q. And based on that, if you answer my question,

22 I'm going to assume you understood it. Is that fair

23 enough?

24 A. That's fair enough.

25 Q. Just toward the end of your testimony,

1 Governor, you mentioned that perhaps there was some kind
2 of a monitor on your telephone?
3 A. I couldn't figure out any other reason, Mr.
4 French, that you would ask Mr. Colter if I called his
5 house unless somebody was listening to the fact that I did
6 call his house and talked to his wife. That's just an
7 assumption on my part, unless you were just making a lucky
8 guess that you didn't -- you didn't ask that of any other
9 witnesses. I was surprised. That led me to that
10 conclusion, sir.
11 Q. Would it surprise you, Governor, if someone
12 on my staff had been talking to Mr. Colter before he took
13 the stand on that day and he mentioned that he had gotten
14 a call from you? Would that surprise you?
15 A. Well, yes, it would surprise me, but if you
16 tell me, I'll accept it. I don't know that that has a big
17 effect, but I was surprised by your question.
18 MR. FRENCH: Would the clerk please place in front
19 of the Governor Exhibit No. 82.
20 BY MR. FRENCH:
21 Q. You recognize that document, do you not?
22 A. Yes, I do.
23 Q. You placed this exhibit through your counsel
24 in evidence last Friday, and you identified it as a deed
25 of release and reconveyance signed by Wayne Mecham and his

1 wife, correct?
2 A. Yes, sir, that's correct.
3 Q. Counsel asked you this question last Friday,
4 and you gave the following answer. This is Volume 20,
5 page 4554, lines 21 through 25. This question:
6 "Does that document and the documents
7 attached to it fully convey all of the right, title
8 and interests that were held by Wayne Mecham and
9 his wife back to Mecham Pontiac?
10 "ANSWER: Yes."
11 Do you recall that question, Governor?
12 A. Yes, I do, I do.
13 Q. And you recall that answer?
14 A. I do.
15 Q. And that answer was a truthful answer, was it
16 not?
17 A. That's correct.
18 Q. You were further asked the following question
19 by your counsel this past Friday and you gave the
20 following answers, Volume 20, page 4555, lines 17 through
21 25:
22 "QUESTION: Is it correct, Governor, that in
23 July of 1987, at the time that the Mecham Inaugural
24 Committee loan was made to Mecham Pontiac, that
25 Wayne Mecham and his wife had no encumberance

1 against the Glendale property of Mecham Pontiac?
2 "ANSWER: That's correct.
3 "QUESTION: Would you open your folder and
4 strike off --
5 "ANSWER: $700,000."
6 Do you recall that?
7 A. Yes, I do.
8 Q. The answers that you gave to that question,
9 those were truthful, were they not?
10 A. They were.
11 Q. Your counsel next had you identify Exhibit
12 No. 83. Could we have that handed to the Governor,
13 please?
14 You identified this, I believe, as the same
15 type instrument dealing with the lien on the Mecham
16 Pontiac property held by another brother and his wife,
17 that is, Willard Mecham and his wife, correct?
18 A. Yes, sir.
19 Q. On Friday last, your counsel then asked you
20 the following questions and you gave the following
21 answers, Volume 20, page 4556, lines 13 through 19:
22 "QUESTION: Therefore, in July of 1987,
23 Willard Mecham and his wife had no encumberance on
24 the Glendale property at which Mecham Pontiac
25 Corporation is operated?

1 "ANSWER: That is correct.
2 "QUESTION: Would you strike off the
3 $500,000 from your indebtedness list?
4 "Answer: Okay."
5 You recall those questions and answers?
6 A. I do, sir.
7 Q. Were your answers truthful?
8 A. They were.
9 Q. Governor, would you please, with those
10 exhibits, look at the second page of Exhibit No. 82. Up
11 at the top, it says, "deed of trust and Assignment of
12 Rents."
13 Are you with me?
14 A. Second page?
15 Q. Yes, sir.
16 A. M'hum. The second page is --
17 Q. Let me ask you something, Governor. Are
18 yours printed on the back?
19 A. No, sir.
20 Q. Okay. So it would be the following page.
21 A. Okay. All right.
22 Q. "deed of trust and Assignment of Rents," do
23 you see that?
24 A. Yes, I do.
25 Q. Now, if you go down the left margin under

1 that, Governor, you'll see date, trustor, beneficiary,
2 trustee and property. Do you see the word "property" in
3 the left margin?
4 A. Yes, m'hum. Let's see. Wait a minute. The
5 property?
6 Q. Yes, it says "property," and then it's typed
7 in "Maricopa County."
8 A. Oh, yes, m'hum.
9 Q. Then you see the typed in words after that?
10 A. Yes, I do, m'hum.
11 Q. Now, does it not say in there, the typed
12 part, that Exhibits C, D and E relate to the property
13 located at 4510 West Glendale?
14 A. Yes, it says that, m'hum.
15 Q. And that address, that's the location of
16 Mecham Pontiac, is it not?
17 A. Let's see. It says: "See attached Exhibits
18 A and B relating to property located in Ari --
19 Mesa, Arizona and attached Exhibits C, D and E
20 relating to property located on West Glendale
21 Avenue."
22 Q. Right. I'm referring specifically to the C,
23 D and E relating to property located at 4510 West
24 Glendale.
25 A. Yes, that's correct.

1 Q. My question is, the 4510 West Glendale is
2 Mecham Pontiac; is that correct?
3 A. That's correct.
4 Q. If you would look, please, at Exhibit 83, and
5 again refer to the deed of trust and the assignment of
6 rents, if you would, the same place.
7 A. M'hum, yes, sir.
8 Q. Does that exhibit not also state that
9 Exhibits C, D and E relate to the property located at 4510
10 West Glendale Avenue?
11 A. It does.
12 Q. And again, that's the location of Mecham
13 Pontiac, correct?
14 A. Yes, sir, m'hum.
15 Q. Now, Governor, when you testified here last
16 Friday about Exhibits 82 and 83, you certainly wanted the
17 Senators to rely upon on your testimony, correct?
18 A. That's correct.
19 Q. And when you introduced Exhibits 82 and 83,
20 you expected the Senators to rely upon them, didn't you?
21 A. You bet.
22 Q. And there was no intent on your part at that
23 time to mislead the Senate?
24 A. Nope.
25 Q. Governor Mecham, the true fact of the matter

1 is that the liens of Wayne Mecham and his wife and Willard
2 Mecham and his wife, these deeds of trust, covered more
3 than just the Mecham Pontiac property, and in fact,
4 encumbered property owned by Mecham Investment Company in
5 Mesa, Arizona, correct?
6 A. That is correct.
7 Q. You sold the property in Mesa to the
8 Sullivans in March of 1987, didn't you?
9 A. Someplace there. I can't tell you the date.
10 Q. Okay. I'm not tying you down to the exact
11 date.
12 Isn't it true, Governor Mecham, in connection
13 with the sale of that property, Willard Mecham and Wayne
14 Mecham released their deeds of trust with regard to the
15 Mesa property, correct?
16 A. The --
17 Q. Or do you know?
18 A. The release was handled and the release, the
19 total release, was my understanding, was executed because
20 it had to be redone about two months ago, Mr. French.
21 Q. Isn't it also true that those two deeds of
22 trust still encumber the Mecham Pontiac property and
23 continuously have encumbered the Mecham Pontiac property
24 through today?
25 A. That's not what I've been told, no.

1 Q. There's no question in your mind, is there,
2 Governor, that on January 21, 1988, the two deeds of trust
3 that we've just been talking about, Exhibits 82 and 83,
4 were each re-recorded to reflect the fact that it was an
5 error to have ever released the two liens on the Mecham
6 Pontiac property listed as Exhibits C, D and E, correct.
7 A. They were re-recorded to re-establish the
8 lien on the property.
9 Q. In fact, your Exhibits 82 and 83, if you
10 would switch to the last page, is it not true that stamped
11 thereon, it clearly states on each exhibit, "Re-recorded
12 in official records of Maricopa County, Arizona, January
13 21, 1988"? Is that true?
14 A. That's correct.
15 Q. Now, Governor, if you would take a look at
16 the deed of trust and assignment of rents on each one
17 again, that page, you see that?
18 A. Yes, I do.
19 Q. At the bottom of each exhibit, is there not
20 blocked language, that is identical and reads as follows:
21 "Re-recorded to reflect lien on Exhibits C,
22 D and E erroneously included in deed of release
23 recorded in Exhibit 82 at Document 87123940 on
24 March 2nd, 1987"?
25 A. That is correct.

1 Q. And in Exhibit 83, at Document 87123939 on
2 March 2nd, 1987?
3 A. That's correct.
4 Q. Governor, the truth of the matter is that
5 both of these two liens were on the Mecham Pontiac
6 property continually from 1984 to today, correct?
7 A. No, that isn't true, absolutely not true.
8 Q. Governor, you're testifying, are you not,
9 that they were not reflected as recorded during July of
10 1987, but they were still in fact on the property, weren't
11 they?
12 A. Mr. French, I have told you a straight
13 answer. They were -- the liens were not on the property
14 from the period of time that this was until January of
15 this year, and at the time that your man looked at that,
16 he was erroneous. He didn't even check in July, and it
17 was erroneous. He made a statement that was wrong, and
18 I'm giving you a statement that's right. I still owed
19 them the money, but it was not a lien on the property.
20 Q. And you've owed the money since 1984,
21 correct?
22 A. I never said otherwise, sir.
23 Q. Okay. Governor, you testified here last week
24 under oath toward the end of your testimony that you were
25 receiving a fair trial, and that the Senate was not

1 biased. Do you remember that testimony in substance?
2 A. I recall that, yes, m'hum.
3 Q. That's contrary, is it not, to your TV
4 advertisements that talk about gestapo tactics, grossly
5 unfair, bias, et cetera, true?
6 A. I haven't seen it, but I've seen the copy,
7 but, no, there's nothing wrong with that, Mr. French.
8 You're trying to characterize something that we're doing
9 from an advertising standpoint, and I said, if I recall,
10 if you'd like to get my testimony out and read it, that I
11 had every hope to get a fair trial in this Senate.
12 Q. In fact, you said you were, didn't you?
13 A. Well, let's get my testimony. I don't
14 remember the exact words, sir. If you want me to testify
15 on it, please get my testimony, sir.
16 Q. If you testified to that -- maybe we can do
17 it in a shorter way -- in substance, then it's contrary to
18 what kind of commercials are running? Is that not true?
19 A. I don't believe I'd say that, no.
20 Q. All right. On Friday, your counsel had you
21 go through an arithmetic calculation which wound up
22 valuing the Tacoma property at 1.9 million and the
23 Glendale property at 3.2 million, and that equaled 5.1
24 million, correct?
25 A. That's correct.

1 Q. Then you subtracted liens of 2.5 million,
2 which is the Prudential loan --
3 A. Yes, sir.
4 Q. -- and 1.2 million from Wayne and Willard,
5 correct?
6 A. That's correct.
7 Q. Now, the difference between 5.1 million and
8 3.7 million was 1.4 million.
9 A. Yes, sir, it was.
10 Q. And you calculated, I believe, an approximate
11 70 percent loan to value ratio?
12 A. I did some figuring, and I think that was
13 roughly right.
14 Q. Then, if I recall correctly, you removed the
15 1.2 million liens in favor of your brothers, correct?
16 A. Yes, sir, m'hum.
17 Q. Now, since Willard and Wayne's lien are still
18 on the Mecham Pontiac property, don't you think, to be
19 honest, we should put the 1.2 million back on your paper
20 calculations?
21 MR. LEONARD: Objection, if the Court please. That
22 is a mischaracterization of the evidence. The evidence is
23 that the liens were not on the property from March of 1987
24 until January of 1988. That's the evidence, and the
25 question by counsel mischaracterizes the evidence.

1 THE PRESIDING OFFICER: That's correct. Sustained.
2 We may have an argument as to what the legal language
3 means in these documents, but this witness has not
4 conceded that they are in fact not liens -- that they are
5 liens on the property.
6 BY MR. FRENCH:
7 Q. You did subtract them off, though, last
8 Friday, did you not?
9 A. I did, sir.
10 Q. Now, isn't it true that the Prudential lien
11 on its face encumbered 2.5 million of the equity on the
12 Glendale property?
13 A. Yes, sir, it technically does.
14 Q. The agreement you claimed to have had with
15 Prudential is that upon a sale of the Tacoma property,
16 $500,000 would go to Prudential to pay down the lien to
17 two million, correct?
18 A. Yes, sir, 500,000 was put on the Tacoma
19 property and two million on the Glendale -- Glendale
20 Avenue property, but the total mortgage amount of
21 two-and-a-half million was recorded on both pieces of
22 property.
23 Q. The Prudential lien on the Tacoma property is
24 behind a first lien to Tom Sturgeon, correct?
25 A. That's correct.

1 Q. The Sturgeon lien arose as a result of a
2 settlement of a lawsuit by your partners at that time,
3 mainly, Mr. Sturgeon and Mr. Lewis, wherein I believe they
4 accused you of unlawfully encumbering the Tacoma property
5 with the Citibank lien, correct?
6 A. They were -- they were creating some
7 questions as far as threatening to sue. They had been
8 handling the property, hadn't handled it properly, and
9 they felt the best way to drive me into a settlement with
10 them was to threaten to sue me, and so I made an agreement
11 to buy them out. There was never a lawsuit filed.
12 Q. There was what?
13 A. To my knowledge, no lawsuit filed, or if
14 there was, they filed something, and we took care of it,
15 but no litigation really ensued, Mr. French.
16 Q. Are you telling the Court that there has
17 never been a lawsuit filed in the clerk's office in the
18 County of Pierce, State of Washington, concerning this
19 matter?
20 A. Mr. French, in my recollection, they may have
21 filed something, and we sat down and I arranged to buy
22 them out to get rid of their nuisance value, and they may
23 have filed a lawsuit, and I do not recall the details.
24 You obviously have something in your hands, and so perhaps
25 they did.

1 Q. Does that help refresh your recollection?
2 A. Does it help me?
3 Q. Yes.
4 A. It doesn't change things. I went up to see
5 them -- if you'd like the details --
6 Q. Just a moment.
7 A. Would you like to know the answer?
8 Q. I'd like you to respond to my question. You
9 stated you believe first that there was no lawsuit filed.
10 Now there may have been one filed?
11 A. I said to my recollection.
12 Q. Would it refresh your recollection, Governor,
13 if I tell you that there was in fact a lawsuit filed in
14 the State of Washington, County of Pierce, September 19th,
15 1984, where certain allegations are made against you by
16 your ex-partners?
17 A. I'll accept that.
18 Q. Okay. Would it come as a surprise to you,
19 Governor Mecham, that in that lawsuit, certain allegations
20 were made against you concerning the unlawful use of
21 $8,500 of partnership money to buy diamonds and jewelry
22 for yourself?
23 A. No, they had several allegations they were
24 making.
25 Q. So it wouldn't surprise you?

1 A. No, it wouldn't surprise me.
2 Q. Isn't it true, Governor, that in July --
3 A. No, allegations don't surprise me any more,
4 Mr. French. I've been a recipient of a lot of them now,
5 lately particularly.
6 Q. Isn't it true that in July of 1987, when the
7 protocol loan was made, the Sturgeon lien was in
8 foreclosure?
9 A. No, I know what was happening.
10 Q. Pardon me?
11 A. I know exactly what was happening. I'm in
12 very -- I know exactly where we were.
13 Q. My question was: When the the protocol fund
14 loan was made, the Sturgeon lien was in foreclosure?
15 A. Yes, yes, m'hum.
16 Q. Isn't it a fact that an equity in a parcel of
17 land which is in foreclosure really is meaningless?
18 A. No, I don't think that at all. A foreclosure
19 is, sir, you have the terms and conditions, and I allowed
20 it to happen and then paid it off. It was never in
21 danger, so that isn't true at all.
22 Q. You understand, Governor, that bankers do not
23 view a piece of property that is in foreclosure as having
24 equity to secure a loan?
25 A. Well, I don't understand what you're driving

1 at, Mr. French. Please be specific and I'll answer
2 specifically.
3 Q. Well, let me ask it again.
4 A. All right.
5 Q. And if you don't understand, just tell me and
6 I will rephrase it.
7 A. I'll tell you. I'll tell you, you bet.
8 Q. Do you understand that bankers --
9 MR. LEONARD: If the Court please, I want to object
10 that unless counsel is willing to prove that the property
11 actually went into foreclosure, that the fact that there
12 is a notice of foreclosure is not foreclosure, and I
13 assume that counsel is going to show this Court that there
14 was an actual foreclosure proceeding.
15 MR. FRENCH: Mr. Presiding Officer, I don't think
16 that objection is valid at all. I have a right to
17 cross-examine. That's what I'm doing. I'd like to
18 proceed.
19 THE PRESIDING OFFICER: The objection is overruled.
20 MR. LEONARD: Well, if the Court please, counsel is
21 making a representation, and I'm assuming counsel is going
22 to prove the representation, that there was in fact a
23 foreclosure. I'm putting him on notice that if he
24 doesn't, this testimony is irrelevant, immaterial, and
25 terribly misleading.

1 THE PRESIDING OFFICER: You may correct it on
2 redirect if it's misleading. I don't expect counsel will
3 be making misleading statements to the Court.
4 MR. FRENCH: Thank you, Mr. Presiding Officer.
5 BY MR. FRENCH:
6 Q. Now if, Governor, that foreclosure had gone
7 through, isn't it true the Prudential lien would have been
8 wiped out?
9 A. That was really not a consideration, but
10 the -- if it had gone through, the property would have put
11 in -- put up for sale, Mr. French, as I'm sure you
12 realize, and everyone else should. Then it would be bid
13 in. Whatever would have been bid for the property would
14 have paid off the first lien, and then paid off
15 Prudential, because we were looking at a piece of property
16 in excess of $2 million in value, and we were talking
17 about less than $100,000 indebtedness on the Sturgeon
18 note, rather a ridiculous assumption that it would have
19 gone in and wiped out the Prudential lien, absolutely not.
20 Q. Would you assume for purposes of this
21 question that the foreclosure had occurred.
22 Isn't it true, Governor, that Prudential
23 would have been left with with a 2.5 million lien on the
24 Tacoma property as their sole security?
25 A. No, I won't say that at all.

1 Q. Governor, in the event the Tacoma property
2 went into default, Prudential could have proceeded against
3 the Glendale property for a full 2.5 million of its
4 equity, correct?
5 A. They may, perhaps. I haven't read all the
6 legal technicalities, but I deal in practicalities, not
7 always just technically legal, Mr. French.
8 Q. Governor, I had a person say to me one time
9 if somebody asked you what time it is, don't build me a
10 clock. So if you could, please, just answer my question,
11 I would appreciate it.
12 A. Did I deserve that, Mr. French? Was I that
13 long in answering? I'm sorry, sir.
14 Q. Is it a result of this scenario that even if
15 the $80,000 deed of trust somehow had been recorded, which
16 we know it wasn't, the lien would have been on a parcel of
17 real estate appraised at between 3.2 to 3.35 million with
18 prior liens of 3.7 million?
19 A. Would you state that again?
20 Q. I certainly will. I sort of rambled on.
21 A. Yes, you did a little.
22 Q. Sorry about that.
23 Even if the $80,000 deed of trust somehow had
24 been recorded, which we know it was not, the lien would
25 have been on a parcel of real estate appraised at between

1 3.2 and 3.35 million with prior liens of 3.7 million,
2 correct?
3 A. No, that isn't true.
4 Q. Governor, after your election to the office
5 of Governor, you had approximately $695,000 outstanding in
6 campaign debts. Is that true?
7 A. I don't recall. It was that or more.
8 Q. So you don't quarrel with the figure,
9 correct?
10 A. Oh, I don't -- I'm trying to not quarrel with
11 anything today, Mr. French.
12 Q. We're going to get along great, Governor.
13 A. I think so. You and I might become good
14 friends. Who knows? I've got to get rid of those smoking
15 mirrors you've been using in these whole proceedings to do
16 it.
17 Q. Maybe we ought to get back to the questions,
18 Governor.
19 You were aware early in 1987, Governor, that
20 a question had arisen as to whether or not Proposition 200
21 would allow the fund generated from the Inaugural Ball to
22 be used to reduce the campaign debt?
23 A. I was told that, yes.
24 Q. In fact, you were aware, Governor, that the
25 Mecham for Governor Inaugural Committee was having

1 discussions with the County Attorney in an attempt to
2 resolve the problem concerning the use of the funds,
3 correct?
4 A. I was -- I was told that, yes, sir.
5 Q. You were personally involved with this
6 committee, weren't you?
7 A. No, sir, I wasn't.
8 Q. You certainly prevailed upon Mr. William Long
9 to be involved in the committee, didn't you?
10 A. Prevailed? Frankly, the committee, the
11 campaign committee put together the inaugural committee.
12 I don't recall. Mr. Long is a little bigger than I, and I
13 didn't twist his arm. I'm not even sure I asked him to,
14 but that's what it ended up. I can't tell you for sure.
15 Q. Maybe we can agree on this. He did become
16 involved?
17 A. He did. He did become the chairman.
18 Q. Okay. You knew also, did you not, Governor,
19 that Attorney Warner Lee and John Mangum were the
20 attorneys for the committee involved in trying to settle
21 the dispute?
22 A. I think I found that out after the fact, Mr.
23 French.
24 Q. You certainly wanted these funds to be used
25 to decrease your campaign debt, didn't you?

1 A. That definitely did. That was the plan from
2 the beginning.
3 Q. So it was important to you to know how these
4 funds would be used, wasn't it?
5 A. That's correct.
6 Q. In view of the importance of that, didn't you
7 make sure that you were kept advised by the discussions
8 with the County Attorney involved in this dispute?
9 A. Mr. French, I was kept only peripherally
10 advised on any of this. I was going about a hundred miles
11 an hour trying to organize a government and work in a
12 jillion things, and about 16 hours a day, and I was
13 only -- Jim Colter is the one that mentioned to me, and
14 perhaps Ralph Watkins, and I was kept peripherally advised
15 once in a while, and that was it.
16 My primary thing is when are you going to get
17 that so you can pay off some of these campaign loans.
18 Q. So it was of importance to you, wasn't it?
19 A. Of course, sure, sure.
20 Q. Didn't William Long inform you in the spring
21 of 1987 that the committee had reached an agreement with
22 the County Attorney as to how these funds could be used?
23 A. No, not in the spring of 1987.
24 Q. You knew, didn't you, that the committee
25 decided to enter into an agreement with the County

1 Attorney in order to prevent exposure to a lawsuit?
2 A. No, I'm not aware of that.
3 Q. If I told you, Governor, that Mr. Long has
4 testified that that's one of the reasons the agreement was
5 entered into, would you dispute that testimony?
6 A. I'd have no basis to say yes or no. I don't
7 know. I didn't know of it. I've just known from
8 testimony since.
9 Q. Governor, you also knew that the County
10 Attorney would not have dropped its case against the
11 committee unless an agreement had been entered into by the
12 parties?
13 A. No, I do not know that, no.
14 Q. If I told you, Governor, that Mr. Long has
15 testified that the County Attorney would not have dropped
16 its case against the committee unless the agreement was
17 entered into, would you dispute that testimony?
18 A. I would neither say yes or no, Mr. French.
19 Q. You certainly wanted to avoid a lawsuit with
20 the County Attorney and put this matter behind you, didn't
21 you?
22 A. I was never aware that there was any question
23 of any litigation, Mr. French. You're asking me what I
24 know. That's my honest statement.
25 Q. At the time Mr. Long turned the bank records

1 for the inaugural fund over to your office, he told you of
2 the contents of the agreement reached with the County
3 Attorney, didn't he?
4 A. No, he did not.
5 Q. Governor, if I told you that Mr. Long has
6 testified that he discussed the contents of the agreement
7 with the County Attorney with you, would you dispute that
8 testimony?
9 A. Yes, I would dispute it, m'hum. I have no
10 recollection of having that conversation with Mr. Long.
11 Q. Mr. Long told you of the limitations imposed
12 upon the use of these funds, didn't he?
13 A. If you're -- if you would like to recall what
14 I've already testified, that's the extent of the
15 instructions from Mr. Long, Mr. French.
16 Q. Why don't you repeat that.
17 A. All right. It was, "You can use them for any
18 damn thing you want to as long as you don't use them to
19 pay off campaign debts or campaign and don't use them for
20 personal living expenses." Those were his words. That
21 was the extent of my bringing up to date on what could be
22 done.
23 Q. Mr. Long told you that the money was given to
24 the Governor's office to be used only for activities
25 surrounding your duties as Governor? Is that true?

1 A. No, that isn't true.
2 Q. He specifically told you that the fund could
3 only be used by the Office of Governor pursuant to Arizona
4 Revised Statute 41-1105, correct?
5 A. No, that's not true.
6 Q. Have you ever testified to that?
7 A. To what?
8 Q. To that fact.
9 A. To which fact? You've asked me two or
10 three --
11 Q. The fact that he told you that it could only
12 be used in accordance with 41-1105.
13 A. Mr. French, I'm testifying as to my
14 knowledge, and I'm doing the best I can.
15 Q. I understand that.
16 Governor, you're aware, at least since you've
17 become Governor and traveled around, that most governors
18 in other states usually have some kind of fund-raisers to
19 raise money for uses contemplated by 41-1105, correct?
20 A. When -- let's leave 41 -- whatever you're
21 talking about, the legal aspects out. Most of them have
22 some kind of a fund that assists them so that they don't
23 have to spend personal money for things they can't spend
24 state money for.
25 Q. Like Jack Williams told you about having to

1 take money out of his own pocket, correct?
2 A. Yes, m'hum.
3 Q. Are you telling the Court here today that you
4 were not personally aware of any of the limitations that
5 were placed upon these funds by virtue of the June 26,
6 1987 letter from Mr. Long to the County Attorney?
7 A. No, that isn't what I said. I said any of
8 them. I -- let's go over what I said again, and that
9 doesn't -- that statement there isn't correct. He told me
10 there were some limitations, and I've told you what he
11 told me they were.
12 Q. And that's that statement that you just made?
13 A. That's correct.
14 Q. And that's the only limitations he told you
15 about?
16 A. That's the only ones to my recollection.
17 Q. Have you ever read the statute that we've
18 been talking about in here for needless days?
19 A. I have.
20 THE PRESIDING OFFICER: Counsel --
21 BY MR. FRENCH:
22 Q. It's very brief, Governor --
23 THE PRESIDING OFFICER: It's 10:15. Why don't we
24 take our morning recess at this time. We'll resume at
25 10:30.

1 (Recess taken at 10:15 a.m.)
2 (Reconvened at 10:33 a.m.)
3 THE PRESIDING OFFICER: Thank you, ladies and
4 gentlemen.
5 The Court of Impeachment is reconvened. Show
6 the presence of a majority of the Board of Managers, their
7 counsel, and counsel for the respondent.
8 We'll have Governor Mecham resume on
9 cross-examination.
10 I'll remind you, Governor Mecham, you're
11 still under oath.
12
13 CONTINUED CROSS-EXAMINATION
14 BY MR. FRENCH:
15 Q. Mr. Mecham, you were told that the funds
16 could only be used by the Office of the Governor pursuant
17 to 41-1105?
18 A. Told when, Mr. French?
19 Q. Told by Mr. Long when they were delivered to
20 you, the bookkeeping records and the funds were brought to
21 the Office of the Governor.
22 A. No, no, that -- no law was ever mentioned.
23 Q. Let me refer back to some House testimony
24 that you gave, and I'm going to refer to House Volume 10,
25 page 46, beginning with line 20, going through line 10 on

1 page 47.
2 A. Do you have a copy of that for me?
3 Q. I'm sorry. I don't.
4 A. Okay. Go ahead.
5 Q. But let me read it to you, and if you have
6 any problems with understanding, just let me know and I'll
7 reread it.
8 A. Fine.
9 Q. The question that was posed to you was as
10 follows:
11 "Would you agree that the expenditures
12 listed there, either checks from the campaign
13 committee or invoices that were to be paid out of
14 the protocol fund, fell within the meaning of
15 41-1105?"
16 And now you start your answer, Governor
17 Mecham, and it goes as follows:
18 "I think these and a whole lot of other
19 things -- it could have been a list 100 miles long,
20 and it would fall within the meaning of 41-1105,
21 doesn't say what you can spend it for. It says,
22 'The Governor may accept and expend public or
23 private gifts, grants, donations or funds for the
24 purpose of promoting the interest of the state or
25 to promote and encourage citizens' public service

1 to the state.'" And then you go ahead. "And it's
2 under that purview that they said under that
3 purview we're transferring the money.
4 "QUESTION: Pursuant to 1105?
5 "ANSWER: Yes, m'hum."
6 Does that refresh your recollection, Governor
7 Mecham?
8 A. Not at all, not at all. You're talking about
9 what I said in the House testimony, and if I remember your
10 question, it was did Mr. Long tell me these things.
11 Q. My question was: Did it refresh your
12 recollection, and you said it does not?
13 A. Does not, no.
14 Q. Fine. Let's proceed, then, Governor.
15 A. Okay.
16 Q. Did you understand the terms of 41-1105?
17 A. When are you asking me that, sir? What time?
18 Q. At the time the funds were delivered to you.
19 A. No, sir, I didn't. I never heard of 4105, or
20 whatever it is, at that time.
21 Q. Let me see if if we can refresh your
22 recollection again, please.
23 How about when you testified before the
24 House? Did you think you understood the terms and
25 conditions of 41-1105?

1 A. When I testified before the House, I had
2 looked at whatever that was and was to some degree
3 knowledgeable of it at that time. But I -- you know, not
4 before.
5 Q. All right. That's fair enough.
6 Since 41-1105 is brief, you read it before,
7 and do you recall the contents of what you said, the
8 interests of the state?
9 A. I think I read -- I think I read out of the
10 bill -- out of the law.
11 Q. Do you still remember what it said?
12 A. Well, generally.
13 Q. Let's go over it briefly, and some of it
14 eliminated, but basically it says:
15 "The Governor may accept and expend public
16 or private gifts, grants, donations or funds for
17 the purpose of promoting the interests of the state
18 or to promote and encourage citizens' public
19 service to the state."
20 Now, you understand that now, don't you?
21 A. Well, I understand what that says.
22 Q. Okay. And it's fair to conclude, then, that
23 the funds must be accepted and expended only for the
24 purpose of the benefits to the state, correct?
25 A. I don't think that there's -- I don't think

1 that's a narrow situation. I think that it can be done,
2 and my understanding was that it can be done for -- that
3 it couldn't use it for political purposes because it would
4 then not fit Proposition 200.
5 And, Mr. French, I'm not even sure that any
6 of this falls under that. Nobody ever decided. They just
7 looked and said maybe it does, but nobody ever actually
8 decided, and nobody has ever, with authority, ever said
9 what it includes and what it doesn't.
10 They read a statute, and I can't interpret
11 that statute. The thing I can interpret is what I was
12 told by Mr. Long.
13 Q. You've testified that you did not see the
14 June 26th letter from William Long to Tom Collins until
15 the commencement of the House Impeachment Proceedings. Is
16 that true?
17 A. That's true.
18 Q. You're aware, aren't you, that both you and
19 Mr. Corbin were copied on this letter?
20 A. I see by the letter that there's a copy
21 listed there, m'hum.
22 Q. Don't you review all of your important
23 correspondence that came to you as Governor?
24 A. Yes, I do. At least I hope I do. I hope the
25 important stuff always gets to me.

1 Q. You would consider this letter to be
2 important, would you not?
3 A. Oh, I would, particularly in light of what's
4 happened since. It was very important.
5 Q. Was it not true that your staff would refer
6 to you all of the correspondence that they thought was
7 important and you should know about?
8 A. Mr. French, I'm sure that most of the items
9 was referred to me. I can't vouch for the fact that they
10 did refer everything to me, but we had a process set up
11 which that was to be the end result.
12 Q. Well, the agreement with the County Attorney
13 concerning the use of these funds was personally very
14 important to you, wasn't it?
15 A. No, at that time I was not even concerned
16 about it, Mr. French.
17 Q. Can you think of any reasons why your staff
18 would not have presented this letter to you?
19 A. Mr. French, I do not think that letter ever
20 reached the ninth floor. We have found no trace of it. I
21 never saw it before. The only thing that I heard was
22 that -- there was a -- when it came about, our people said
23 they were even doubting if it was ever sent to the County
24 Attorney.
25 I don't think that it ever reached me. I

1 don't think it ever reached my staff.
2 Q. You've seen a copy of the letter?
3 A. Yes, I have.
4 Q. Is there any reason why anyone would not send
5 it to you?
6 A. I know of none, but you're asking me to pass
7 opinion on somebody else and what they were doing. I have
8 no idea.
9 Q. Isn't it a fact, though, Governor, that
10 because an agreement had been reached with the County
11 Attorney's office wherein the County Attorney agreed not
12 to pursue litigation against you, that you wanted this
13 particular agreement in writing?
14 A. Oh, no, no, and you made a misstatement
15 there. The County Attorney was never questioning whether
16 he would sue me, as you just said.
17 Q. Oh, I'm sorry. I didn't mean you personally.
18 A. I want you to set that up -- I appreciate you
19 recanting that. Appreciate that.
20 Q. As a businessman of long standing, though,
21 you know the importance of having agreements in writing?
22 A. Oh, yes, yes.
23 Q. Mr. Ralph Watkins served as your campaign
24 treasurer? Is that true?
25 A. The campaign finance committee, not the time

1 treasurer.

2 Q. Well, campaign finance committee, and I

3 believe you've already testified you discussed the

4 problems with the use of the Inaugural Ball funds with

5 Ralph Watkins as early as 1987, correct?

6 A. As early --

7 Q. Or in early 1987?

8 A. Oh, yes, yes. Ralph, on occasion, said -- he

9 kept saying -- in fact, before the inaugural, we're going

10 to be able to have some surplus put on this, and on

11 occasion said, well, hopefully we'll get this squared away

12 so we can apply to it to some of the notes.

13 Q. You know Mr. Watkins publicly announced in

14 April, 1987, that your campaign finance committee was

15 going to get written confirmation of the agreement with

16 the County Attorney?

17 A. I don't recall that, Mr. French. I don't say

18 that it didn't. I just don't recall.

19 Q. Would it also be your testimony, Governor,

20 that Mr. Ralph Watkins failed to show you a copy of the

21 letter, the June 26th letter?

22 A. Well, I don't know that he -- I -- I don't

23 thing that's a right characterization, because I doubted

24 that Ralph ever had a copy of the letter.

25 Q. The Mecham for Governor Inaugural Committee

1 was disbanded after Mr. Long turned the bank records over
2 to the Office of the Governor; is that correct?
3 A. I wouldn't say that's correct. I think
4 that's a matter of semantics and could be argued both
5 ways. I don't think it's important, but I think that can
6 be argued both ways, and I'm not a -- I really, you know,
7 don't have an opinion one way or the other.
8 Q. Would you contradict Mr. Long's testimony if
9 he so testified?
10 A. I wouldn't agree or disagree, Mr. French.
11 I've stated my feeling.
12 Q. You and Mr. Ralph Watkins kept in contact
13 regarding ways to reduce your campaign debt, correct?
14 A. We did, m'hum.
15 Q. You are aware that the phrase "protocol fund"
16 was coined long before the House Select Committee hearings
17 began, aren't you?
18 A. Probably. I don't know where it came from or
19 when, but I presume that it probably did.
20 Q. You are aware that in April of 1987, before
21 the agreement was reached with the County Attorney, Mr.
22 Ralph Watkins publicly stated that he intended to set up a
23 protocol fund with the funds from the Inaugural Ball to
24 pay for gifts for out-of-town visitors? Do you know that?
25 A. I don't recall that. I won't say it's true

1 or untrue.

2 Q. Let me see if I can refresh your recollection

3 a little bit in that regard.

4 On April 24th, 1987, there's an article

5 concerning the campaign debts, and so forth, that appeared

6 in the Arizona Republic, and the following was in that

7 article:

8 "'However, just what the money legally may

9 be used for has not be determined,' Schwartz said,

10 adding that Mecham's fund-raisers are researching

11 the law on the use of such funds. 'We're still

12 going to retain the money,' Watkins said. He said

13 Mecham intends to set up a protocol fund, pay for

14 gifts or meals for out-of-town visitors."

15 Does that refresh your recollection at all?

16 A. Not really, Mr. French. I believe by the

17 computer analysis, there were about 5,000 different things

18 in the Arizona Republic relative to me in 1987, and I

19 really don't remember the details of very many of them.

20 Q. Well, apparently this idea of using it for

21 gifts for dignitaries to the state and such like purposes

22 was within the confines of 41-1105, as you understand it?

23 A. Well, as I understand it today, since 41 --

24 let me get it right. 4105?

25 Q. How about 1105?

1 A. 41 --
2 Q. Dash.
3 A. -- dash 1105. I'll see if I can remember
4 that one so we'll be talking about the same thing.
5 I think I understand what it speaks about.
6 That was never used in any contents of any conversation
7 that I know of before the -- you know, your act came into
8 my -- into the picture, and consequently, as far as
9 discussing what that was, I don't recall discussing --
10 Heavens, we had a number of people talking about different
11 things, and I've testified to everything that I know about
12 it.
13 Q. Let me refer to a part of the June 26th
14 letter from Mr. Long to Mr. Collins and ask you some
15 questions about it, please.
16 A. Fine, m'hum.
17 Q. Everybody's stated that you have read it.
18 It's Exhibit 47, please, if we could hand it to the
19 Governor.
20 MR. LEONARD: If the Court please, I'm going to
21 object to counsel asking any further questions about
22 Exhibit 26, the -- I'm sorry, Exhibit 47, the June 26th
23 letter. The witness has already said that he never read
24 the letter and never saw it. And I think counsel has
25 asked that question a number of times. I think this is

1 all asked and answered questions.

2 THE PRESIDING OFFICER: Sustained.

3 BY MR. FRENCH:

4 Q. You're aware of the contents of that letter,

5 are you not?

6 A. Well, generally, yeah.

7 Q. Okay. What do you consider to be the

8 cornerstone of the agreement with the County Attorney?

9 A. I don't know, Mr. French. I was not a party

10 to it. How would I know what the cornerstone was of it?

11 Q. Is it your testimony, then, Governor Mecham,

12 that this agreement was entered into by Mr. Long with the

13 County Attorney with absolutely no authority from you?

14 A. That's correct, Mr. French. That's

15 absolutely correct.

16 Q. So it was an unauthorized act by Mr. Long to

17 reach the agreement with the County Attorney, as far as

18 you're concerned?

19 MR. LEONARD: Objection. That's a

20 mischaracterization and argumentative.

21 THE PRESIDING OFFICER: Overruled. You may answer.

22 THE WITNESS: Mr. French, I was not a part of the

23 discussions. I wouldn't say Mr. Long did anything

24 unauthorized. I believe that we should properly

25 characterize this. I was extremely busy with other

1 affairs. I was talked to peripherally about this. I
2 wouldn't say Mr. Long did anything unauthorized.
3 When you -- when somebody constitutes a
4 committee, this was the work of the committee. It was not
5 the work of me, and they were the ones that were involved.
6 And it was nothing to do with me personally, and
7 therefore, I don't believe you're proper in trying to cast
8 a finger at Mr. Long as doing something unauthorized. He
9 had full charge of the committee. He was the chairman.
10 BY MR. FRENCH:
11 Q. And that committee was part of your
12 administration, right?
13 A. No, no.
14 Q. It wasn't?
15 A. No, it wasn't part of my administration. It
16 was the -- the committee was for one specific thing, to
17 have an affair called an inaugural ball. That is aside
18 from the official state activities of a Governor. It's a
19 social event that's outside of the official activities of
20 the Governor.
21 Q. And as part of this social event, as you
22 refer to it, which it certainly is, another purpose is for
23 the purpose of raising money, isn't it?
24 A. Well, it's a purpose for whatever you want to
25 make it, and we hoped that would be a purpose.

1 Q. And you did raise some money, right?
2 A. Well, the committee did. I didn't.
3 Q. And is it your testimony --
4 A. I got a free ticket.
5 Q. So is it your testimony, Governor, that Mr.
6 Long's attempt to, and final resolution of the problem
7 with the County Attorney's office, that he was not acting
8 for Governor Mecham?
9 A. Mr. French, I don't know any better more
10 plain way, if you ask this 10,000 times, I could answer,
11 and that is, he was acting as chairman of the committee.
12 The committee was an independent organization. He was not
13 my agent. He was there. He was not part of the Mecham
14 administration, per se. I don't mean that I didn't know
15 what -- you know, that that committee was in action, but I
16 was operating for the committee, not for me.
17 Q. This inaugural committee, though, was for
18 Governor Mecham's inauguration?
19 A. I think we've agreed to that.
20 Q. We'll agree on that?
21 A. I think we will agree on that one.
22 Q. It is a fact, is it not, Governor Mecham,
23 that you did play an active part in deciding what expenses
24 were to be paid for out of the protocol fund and what were
25 not to be paid? Isn't that true?

1 A. Expenses -- give me a time frame, Mr. French,
2 please.
3 Q. How about in July of 1987?
4 A. I think I had something to say about money
5 that was spent in most cases. I think it was checked with
6 me, you know.
7 Q. And if I told you that Mr. Colter has
8 testified that you did play an active role in determining
9 what checks would be paid out of the protocol fund, would
10 you say this testimony is truthful?
11 A. Oh, I think generally so, yes, m'hum.
12 Q. In fact, you instructed your brother Willard
13 to pay invoices from the protocol fund for expenses
14 involving such things as legislative dinner, your
15 stationery, and inaugural thank-you letters, true?
16 A. No, no, that isn't true. I didn't instruct
17 Willard to do anything of the kind as far as to that. He
18 had no authority over the fund. I pointed out to him as
19 fund -- as the bills were sent, as to whether it should
20 come out of the campaign fund, that it would be best to
21 come out of the inaugural fund and to see the people who
22 were in charge of the fund about it.
23 MR. FRENCH: Could you hand the Governor Exhibit
24 No. 55, please.
25 BY MR. FRENCH:

1 Q. You've seen that document before?
2 A. Yes, I have, I have.
3 Q. That's a letter dated July 14th, 1987, from
4 Willard Mecham to James Colter; correct?
5 A. That is, it is.
6 Q. And the first paragraph of that letter, the
7 second sentence states:
8 "I," being Willard Mecham, "I have gone over
9 these with Evan, and he said to send them to you
10 for payment from the protocol fund."
11 Correct?
12 A. Exactly what I just got through saying, is
13 that I didn't have him do anything out of the fund. I
14 told him that rather than these be paid out of the
15 campaign fund, I thought they should come out of the
16 inaugural fund.
17 Q. The next paragraph of the letter states as
18 follows:
19 "There have also been some payments from the
20 campaign fund that Evan said should be reimbursed
21 from the protocol fund."
22 Did I read that correctly?
23 A. I think you read well, Mr. French.
24 Q. So you were telling Willard certain things
25 should be paid for out of the protocol fund?

1 A. Again, let's repeat what I've said. Some
2 expenses were sent to Willard because he was the campaign
3 finance treasurer, and he asked me if they should be paid
4 from there, and I said I thought they should be out of
5 inaugural funds rather than fit in a -- rather than the
6 campaign fund.
7 Q. So you believed that these payments that
8 we've just been talking about were proper and came within
9 the confines actually of 41-1105, didn't they?
10 A. Well, whatever you -- however you want to
11 characterize it. I thought that they could very well be
12 paid out of the inaugural funds, yes.
13 Q. Because these particular activities that were
14 paid for you suggested being paid for out of the protocol
15 fund served the state's interest, didn't they?
16 A. Well, they served the -- they served my
17 interests of things. I couldn't charge the state for, and
18 that if I didn't pay them out of this fund, they'd have to
19 be either paid out of my personal checking account or out
20 of some campaign fund.
21 Q. Governor, you're aware that in July, early
22 July of 1987, Jim Colter asked Warner Lee for legal advice
23 about the ability to use the protocol fund for educational
24 scholarships? You're aware of that, aren't you?
25 A. I'm aware of it now. I don't think that was

1 a discussion at the time I was there, but I have since
2 become aware of that, yes.
3 Q. You're aware of the fact that Mr. Colter
4 testified to that?
5 A. Correct. I didn't hear all of it, but I
6 would accept that he would have said that. I know that
7 has been brought up.
8 Q. Are you aware of the fact Mr. Lee has
9 testified to that fact?
10 A. I don't know that I heard Mr. Lee's
11 testimony, but I would not dispute it.
12 Q. Did not Mr. Colter tell you, Governor, that
13 Mr. Lee had informed him that he should ask the Attorney
14 General if the funds could be used for educational
15 scholarships and get an opinion from the Attorney General?
16 A. Mr. French, I'm not in a position to testify
17 as to what Mr. Lee told Mr. Colter. I am not a witness to
18 it, and therefore, it would -- I can't really testify to
19 that.
20 Q. Let me ask it this way: If I told you that
21 Mr. Lee and Mr. Colter have testified that Mr. Colter was
22 told to ask the Attorney General if the funds could be
23 used for educational scholarships under 41-1105, would you
24 dispute that testimony?
25 A. I would neither agree nor dispute it, Mr.

1 French. I would be totally out of line of trying to pass
2 an opinion on something that I directly do not know about.
3 Q. Let me ask you this way: If Mr. Colter had
4 believed that these funds from the inaugural ball were
5 private funds, he would never have to ask Mr. Lee how the
6 funds could be used, would he?
7 MR. LEONARD: Objection; gross speculation.
8 THE PRESIDING OFFICER: Sustained.
9 BY MR. FRENCH:
10 Q. If Mr. Lee had believed that the funds were
11 private, there's no reason for him to tell Mr. Colter, is
12 there, that he should get an Attorney General's opinion?
13 MR. LEONARD: Same objection.
14 THE PRESIDING OFFICER: Sustained.
15 BY MR. FRENCH:
16 Q. Now, neither you nor Mr. Colter, as far as
17 you know, ever asked Mr. Lee if it would be proper to loan
18 money from the protocol fund to your car dealership,
19 Mecham Pontiac, did you?
20 MR. LEONARD: Objection. The question is compound
21 and asks for an answer from two different people, and I
22 object to the form.
23 THE PRESIDING OFFICER: Overruled. You may answer.
24 THE WITNESS: Would you ask it again, please, Mr.
25 French?

1 BY MR. FRENCH:

2 Q. Certainly. Neither you nor Mr. Colter, as
3 far as you know, ever asked Mr. Lee if it would be proper
4 to loan money from the protocol fund to your car
5 dealership, Mecham Pontiac?

6 A. I did not. I cannot speak for Mr. Colter.

7 Q. Mecham Pontiac is a corporation whose shares
8 are owned fully by you and your wife; is that correct?

9 A. That is correct, sir.

10 Q. It's a family business which you personally
11 built up since at least 1954?

12 A. 1950, to be exact.

13 Q. Is it fair to say that Mecham Pontiac is your
14 main source of revenue?

15 A. Primary, yes, sir.

16 Q. After you became Governor, you still kept
17 abreast, did you not, of the financial conditions of
18 Mecham Pontiac?

19 A. Oh, peripherally. Dennis was managing the
20 business, and, you know, peripherally.

21 Q. In fact, after you become Governor, you had
22 occasion to call the bookkeeper for Mecham Pontiac
23 directly to check on Mecham Pontiac's financial condition,
24 didn't you?

25 A. I may have called her. I don't recall. I --

1 when I talked, it was primarily once in a while with
2 Dennis, but I won't say that I didn't sometime call her.
3 Q. You were aware of Mecham Pontiac's financial
4 condition in July of 1987, weren't you?
5 A. Oh, I think generally speaking, yes.
6 Q. Did you know that July of 1987 was one of the
7 worst financial months that Mecham Pontiac ever had?
8 A. No, I'm not aware of that. I don't know
9 whether I recalled how good business was that month or
10 not.
11 Q. I believe you maintained that Mecham Pontiac
12 had no need for the loan from the protocol fund in July;
13 is that correct?
14 A. I believe that's correct, m'hum.
15 Q. Now, you're aware that in July of 1987,
16 Mecham Pontiac took out a loan from Farmers & Merchants
17 Bank in the amount of 150,000?
18 A. Yes, I'm aware of that.
19 Q. You also know that Mecham Pontiac was loaned
20 250,000 from the Paulin Trust on July 28th, 1987, true?
21 A. I arranged that, yes.
22 Q. Isn't it a fact, Governor, that you testified
23 this morning that you don't borrow money unless you need
24 the money?
25 A. Of course, always.

1 Q. So it follows that Mecham Pontiac needed the
2 money when it borrowed the $80,000 from the fund, correct?
3 A. Correct. We wouldn't borrow money we needed,
4 and the source would be -- we would include our source,
5 m'hum.
6 Q. In July of '87, you instructed Mr. Colter to
7 loan $80,000 to Mecham Pontiac, correct?
8 A. Well, instructed, you can stretch it a little
9 and say that.
10 Q. If I told you that Mr. Colter has testified
11 you instructed him to loan $80,000 to Mecham Pontiac,
12 would you say his testimony was untruthful?
13 A. No, I didn't say. I said that's a little
14 stretched, but go ahead.
15 Q. You did know Mr. Colter told Donna Carlson
16 that he loaned you $80,000 from the protocol fund because
17 of financial problems you were having?
18 A. No, I sincerely doubt he ever did.
19 Q. That he said that to Donna Carlson?
20 A. Yes, I doubted very serious he ever told that
21 to Donna Carlson.
22 Q. You're aware of the fact that Donna Carlson
23 testified he did?
24 A. That would not make much difference to how I
25 feel about what anything she may have said. I doubt very

1 seriously he ever said that to Donna Carlson.
2 Q. Mr. Colter told you at the time of the loan
3 that it would be unwise to make this loan, didn't he?
4 A. I didn't recall him saying it at the time. I
5 recall -- everybody -- you know, we're all good
6 Monday-morning quarterbacks, and everybody decided it was
7 a stupid thing to do after the fact. I won't say Jim
8 isn't right. I don't recall it.
9 Q. You did not tell Mr. Colter at the time of
10 the loan that it was being made merely as a good
11 investment for the protocol fund, did you?
12 A. I told him that it would be very secure if he
13 wanted to do it. I told him to put the money in one of
14 several places, and if he didn't -- if he didn't find a
15 better place, that Dennis could use the $80,000 and would
16 give him a good rate of interest. We were borrowing money
17 from nine to ten percent.
18 Q. Let me reask that question, Governor.
19 A. Go ahead.
20 Q. You did not tell Mr. Colter at the time of
21 the loan that it was being made merely as a good
22 investment for the protocol fund, did you?
23 A. I can't recall saying that, saying that
24 specifically, Mr. French.
25 Q. Okay. As a businessman, Governor Mecham,

1 when you're looking to invest funds, you shop around for
2 the best interest rate available, don't you?
3 A. Generally, yes.
4 Q. You know that Mr. Colter didn't shop around
5 for the best interest rates for investment for the
6 protocol fund?
7 A. I don't know that, but you could be right.
8 Q. Isn't it true that the immediate need for
9 this $80,000 by Mecham Pontiac was so great that Mr.
10 Colter put aside his busy schedule and went to the bank
11 that same day that you asked for the loan to get the
12 $80,000?
13 A. No, I don't think that is right at all, Mr.
14 French.
15 Q. Did you hear the testimony of Mr. Colter when
16 he was here?
17 A. I heard probably 60 or 70 percent of his
18 testimony.
19 Q. There was no negotiation over the interest
20 rate by Mecham Pontiac, was there?
21 A. I don't think so.
22 Q. Isn't it true that you merely told Mr. Colter
23 what the interest would be?
24 A. I don't recall me stating that, but that
25 could very well be. Nine percent was a fair rate of

1 interest.

2 Q. You don't consider your either requesting or
3 directing, or whatever you want to call it, Mr. Colter to
4 loan your car dealership $80,000 at a favorable interest
5 rate, you don't call that an arm's length transaction, do
6 you?

7 A. Yes, I do, Mr. French. I borrowed $250,000
8 at three-quarters of a percent less than that month, and I
9 could have borrowed the $80,000 from Mr. Paulin
10 additionally and could very easily have done it. So, yes,
11 it was an arm's length transaction.

12 Q. What's your definition of an arm's length
13 transaction, Governor?

14 A. For Jim and Dennis to put the details
15 together, and you have a note which binds everything in
16 the business, and you have a deed of trust, and they go
17 handle it, and that was an arm's length transaction. It
18 would have been handled the same if it had been loaned to
19 Colter Cadillac or anyone else, but the details would have
20 been exactly the same.

21 Q. During the course of these proceedings a
22 question was asked, I believe if I recall correctly, by
23 Senator Stephens of Mr. Colter, and he asked him about the
24 arm's length, and then he referred him to a definition
25 from Black's Dictionary, which I'd like to read briefly to

1 you.

2 A. Go ahead, please.

3 Q. And that is: "Said of a transaction

4 negotiated by unrelated parties each acting in his

5 or her own self-interest."

6 Now, in this instance, after that was read to

7 Mr. Colter by Senator Stephens, then Mr. Colter said no,

8 under that definition, it was not an arm's length

9 transaction.

10 Now, is it not true, Governor, the parties,

11 Mecham Pontiac and yourself, are not unrelated parties,

12 are they?

13 A. I think we're related, m'hum.

14 Q. And so if that's a true definition, then

15 under that definition, it was certainly not an arm's

16 length transaction?

17 A. Mr. French, I won't argue with you and

18 Blackstone. I use a Webster's Dictionary myself, and I

19 think that we had an arm's length transaction, but if

20 that's important to you, I'll give you and Mr. Blackstone

21 whatever dues you want.

22 Q. The loan from the protocol fund was secured

23 by the real estate upon which Mecham Pontiac sits,

24 correct?

25 A. That's correct.

1 Q. According to your testimony, you believed
2 that this loan would be safe with Mecham Pontiac, true?
3 A. It was very safe.
4 Q. And a prudent investor won't put these funds
5 at risk by loaning them to a financially troubled entity,
6 would they?
7 A. Certainly wouldn't; neither would I.
8 Q. You know in order to make a loan safe, it is
9 collateralized?
10 A. Not necessarily.
11 Q. A note and deed of trust were in fact created
12 and signed by Dennis Mecham, were they not?
13 A. Yes, they were.
14 Q. And are you aware of the fact that the deed
15 of trust was not executed until August 20th, 1987, only
16 one month after the loan to Mecham Pontiac was made?
17 A. I am aware now, yes.
18 Q. You're also aware of the fact that the deed
19 of trust was never recorded, correct?
20 A. I am now, yes.
21 Q. Isn't it a fact that Mr. Colter asked you if
22 he should record the deed of trust, and you told him not
23 to?
24 A. I don't recall that. That's a possibility,
25 but I don't recall it.

1 Q. While we are on that deed of trust and the
2 fact it's not recorded, let's go back, if we will, because
3 what springs to mind to me are these deeds of trust of
4 your brothers Wayne and Willard that we talked about this
5 morning, Exhibits 82 and 83.
6 I believe that you testified there that since
7 they were not recorded in July of 1987, they were not on
8 the property, correct?
9 A. They were not on the property, no.
10 Q. So are you saying to this Senate now, under
11 this deed of trust in connection with the protocol loan,
12 that since it was not recorded, that it was of no value?
13 A. No, I didn't say that.
14 Q. Wouldn't you agree that when the property is
15 given as security for a loan, that it is the overwhelming
16 practice for the lender in the transaction to record a
17 deed of trust?
18 A. Mr. French, I can't tell you what
19 "overwhelming" is. I have met many transactions,
20 sometimes a deed of trust is recorded, sometimes it isn't.
21 And I can't -- you say "overwhelming." I'm not an expert
22 witness on that, so I could -- you know, I can't answer
23 that.
24 Q. The recording of such an instrument, though,
25 is to be available to the world if they want to look to

1 find out whether or not there are liens on the property,
2 correct?
3 A. No, no, that isn't the -- I don't think the
4 world goes down and lines up to look at records. The
5 reason for it, the reason for the record is very simple.
6 It's so that if anybody wanted to decide that something
7 did happen and if somebody was going to do something with
8 the property, it just says that if it's recorded, then
9 this is the order of how anybody would have claim on the
10 property.
11 Q. If someone later loans money to Mecham
12 Pontiac and records a deed of trust, that deed of trust
13 takes priority over any unrecorded deed of trust, doesn't
14 it?
15 A. As I just got through saying, it would take
16 priority according to what's recorded. That's what's
17 that --
18 Q. Doesn't that mean if the Mecham Pontiac
19 property is foreclosed upon, the loan secured by the
20 recorded deed of trust is paid off before the unrecorded
21 deed of trust?
22 A. Well, you're hypothetically talking and
23 you're talking about a prudent investment, Mr. French, and
24 there was absolutely no probability of that ever
25 happening, but I suppose technically, your word would be

1 right.

2 Q. Would you agree, Governor, that if someone

3 had searched the records of the Maricopa County Recorder's

4 office, he would not uncover the fact that $80,000 had

5 been loaned to Mecham Pontiac?

6 A. That's correct.

7 Q. Likewise, isn't it true that at the time the

8 loan was made to Mecham Pontiac from the protocol fund,

9 there was a deed of trust against Mecham Pontiac securing

10 a loan in the amount of $2,500,000 to Prudential Federal

11 Savings & Loan?

12 A. Yes, I have testified to that many times.

13 Q. Prudential was in first lien position on the

14 Mecham Pontiac property, wasn't it?

15 A. That is correct.

16 Q. Now, the Prudential deed of trust contains

17 what is commonly known as a due on encumberance clause

18 prohibiting any further encumberance from property unless

19 Prudential first gives written consent to the

20 encumberance, correct?

21 A. You've said that in these proceedings, and I

22 haven't gone back to check you, but I'll take your word

23 for it.

24 Q. If you want to check, it's Exhibit 72.

25 A. No, I'll take your word for it.

1 Q. If Mecham Pontiac violated the due on
2 encumberance clause, is it not true that Prudential could
3 have called the entire debt due and owing immediately?
4 A. I presume they could if that's the clause
5 there.
6 Q. That would certainly not be Mecham Pontiac's
7 best interests, would it?
8 A. Not unless we wanted to pay the mortgage off.
9 Q. Had you recorded the deed of trust which
10 secured the loan from the fund, the protocol fund,
11 Prudential could have found out about the loan, true?
12 A. Yes, they could have done, m'hum.
13 Q. Isn't it true that Mecham Pontiac never
14 received written permission from Prudential to allow the
15 Office of the Governor to secure a loan from the protocol
16 fund with the property of Mecham Pontiac?
17 A. Your question is improperly stated, Mr.
18 French. Would you like to state it more properly?
19 Q. Is it not true that Mecham Pontiac never
20 received written permission from Prudential to allow the
21 protocol loan in this case?
22 A. They with never asked.
23 Q. They were never asked? Now, your written
24 agreement requires that they be advised and that they get
25 written permission, does it not?

1 A. I haven't read it, but I'll take your word
2 for it.
3 Q. Now, is it not true that neither you nor
4 anyone else representing Mecham Pontiac ever asked for
5 permission from Prudential?
6 A. Mr. French, if I can give you an answer that
7 will sort of clear this whole thing up --
8 Q. Did you or did you not ask, please?
9 A. It may not be the answer you want --
10 Q. Please --
11 MR. FRENCH: Mr. Presiding Officer --
12 THE PRESIDING OFFICER: Just answer the question,
13 Governor.
14 THE WITNESS: Ask your question again so I can
15 answer it, sir.
16 BY MR. FRENCH:
17 Q. Specifically, Governor, neither you nor
18 anyone else representing Mecham Pontiac ever asked for
19 permission from Prudential?
20 A. I did not.
21 Q. Okay. You have seen, I believe, the check
22 registry, Exhibit No. 54. Could we hand that to the
23 Governor, please.
24 Isn't it true that if one looks at the check
25 registry of the protocol fund, from that record alone, one

1 would never know that a loan had been made specifically to
2 Mecham Pontiac?
3 A. I don't see it listed here, Mr. French.
4 Q. Okay.
5 MR. LEONARD: If the Court please, I'm going to
6 object to any questions about this document. I believe
7 the witness said he never saw it.
8 THE PRESIDING OFFICER: Overruled. He may answer
9 if he can.
10 BY MR. FRENCH:
11 Q. You did testify, I believe, as counsel just
12 indicated, that you never saw it?
13 A. I never saw this, Mr. French.
14 Q. That's like you never saw the June 26th
15 letter, correct?
16 A. The same truthful answer, Mr. French.
17 Q. Isn't the reason the deed of trust wasn't
18 recorded and Mecham Pontiac was not listed in the check
19 registry was to avoid discovery of the loan by Prudential
20 and the public?
21 A. Absolutely not.
22 Q. This nondisclosure served only your private
23 interest and no public interest, true?
24 A. Absolutely not.
25 Q. You consider the monies in the protocol fund

1 to be your personal fund, don't you?
2 A. First of all, your characterization of a
3 protocol fund is not correct. It was the inaugural
4 committee fund, and I never concluded that they were my
5 personal funds in the sense that I could spend them for
6 living expenses, but to again quote, "any damn thing I
7 wanted," Mr. Bill Long, accept campaign or personal living
8 expenses, Mr. French. That should take care of it.
9 Q. You recall a few moments ago when, in an
10 attempt to refresh your recollection, in April of '87
11 there was an article wherein Mr. Watkins, Ralph Watkins,
12 was quoted as saying, "protocol fund"?
13 A. Mr. French, if you'll recall, my answer was
14 that I didn't recall what -- and certainly it wasn't me
15 saying it. It was Mr. Watkins. And I'm not terribly
16 disturbed except you have made such a big issue out of
17 this being a protocol fund to try and tie it in like it
18 was something official, and that's an improper
19 characterization. And that's your smoking mirrors I've
20 been talking about.
21 Q. Excuse me, Governor. I'm not going to argue
22 with you.
23 A. Well, I just have to clarify once in a while.
24 We're after light and truth here, aren't we?
25 Q. Absolutely.

1 A. Okay. Let's get that.
2 Q. You don't believe, if I understand your
3 theory correctly, that the funds are held by the Office of
4 Governor, do you?
5 A. Not the Office of Governor, absolutely not.
6 Q. You didn't list the Inaugural Ball funds, if
7 you want to call them those, as a source of income --
8 A. Thank you, thank you.
9 Q. -- to you on your personal financial
10 disclosure statement for 1987, which is required to be
11 filed by public officers, did you?
12 A. I did not.
13 Q. Governor, in July, 1987, you and your wife
14 were the 100 percent shareholder of Mecham Pontiac?
15 A. Yes.
16 Q. Let's assume for a moment that in July, 1987,
17 you truly believed that you could spend the money for
18 anything except reduction of campaign debts or personal
19 living expenses.
20 A. M'hum.
21 Q. In July of 1987, could you have used the
22 money to send one of your grandchildren to a private
23 school?
24 A. That thought never come up. I'll have to
25 stop and think on that one, Mr. French. I think that

1 would be the same category as personal living expenses.
2 Q. So are you saying you could not do that?
3 A. I am saying that I think that would come
4 under the same category as personal living expenses.
5 Q. Which is precluded?
6 A. In my opinion, yes.
7 Q. Okay. Could you have used the $80,000 to put
8 a swimming pool and tennis court in to the back yard at
9 your house?
10 A. Let's see. I probably could have done, if I
11 would have made sure I invited all the Legislators and the
12 Cabinet officers to come and swim once a month, and we
13 used it that way, I suppose I could have done that.
14 But --
15 Q. Is your answer yes?
16 A. The answer is, I guess I -- I shouldn't -- I
17 shouldn't jest with you on these ridiculous questions, Mr.
18 French. I suppose the answer is -- let's go ahead. I got
19 off, and I'm sorry.
20 Q. Is your answer yes or no?
21 A. Give me the question again.
22 Q. Could you have used the $80,000, under your
23 theory, to put a swimming pool and tennis court in to the
24 back yard at your house?
25 A. No, I could not -- I would not have thought

1 of that.
2 Q. That would come under personal living?
3 A. Personally, that's correct.
4 Q. Could you have used money to buy yourself a
5 car for your own personal use and enjoyment?
6 A. Now you're getting close, since I furnished
7 my own car, at that time, in the Governor's office, yes, I
8 could have used it to buy myself a personal car to drive
9 myself back and forth to the office, Mr. French. That
10 would have been all right.
11 Q. Could you have gifted the money to your
12 wholly-owned corporation, Mecham Pontiac, to buy 12 cars
13 for its inventory?
14 A. Absolutely not.
15 Q. Could you have loaned the money to yourself
16 for the purpose of buying a car for your own personal use
17 and enjoyment?
18 A. Isn't that a repetition I just answered?
19 Q. No, no. This one is a loan.
20 A. Oh, okay.
21 Well, I think anything that would have come
22 under the category of personal living expenses I would not
23 have thought was proper.
24 Q. Governor, do you differentiate between a loan
25 to yourself and a loan to your wholly-owned corporation?

1 A. Mr. French, differentiate -- no, I may have
2 misunderstood some of your questions. You've been talking
3 about could I spend it for this or spend it for that.
4 Now, let's go back to your questions. Were
5 you saying "loans" instead of "expenditures"?
6 Q. Governor, any time you have any question, let
7 me know.
8 A. Let's go back over, because a loan is one
9 thing, and expenditure is much, much different.
10 Q. Could you have used the money to buy yourself
11 a car for your own personal use and enjoyment?
12 A. The answer --
13 Q. That's not a loan.
14 A. Okay, fine.
15 Q. What's the answer to that?
16 A. Answer to that was no.
17 Q. Could you have gifted the money to your
18 wholly-owned corporation, Mecham Pontiac, to buy 12 cars
19 for its inventory?
20 A. No, not gifted, no.
21 Q. Could you have loaned the money to yourself
22 for the purpose of buying a car for your own personal use
23 and enjoyment?
24 A. Oh, on a loan, I think that could have been
25 done. I would not have done it, but I think it could have

1 been.

2 Q. So the answer is yes?

3 A. Yes, let's say yes, m'hum.

4 Q. So, Governor, since you've testified that you

5 couldn't use money to buy a car for personal use and

6 enjoyment, but you could loan the money to yourself,

7 you're obviously differentiating between an unconditional

8 delivery of money for personal reasons, which would be

9 illegal use, and a loan of the money, which is not an

10 illegal use?

11 MR. LEONARD: Objection. I think that's more

12 testimony than it is a question.

13 THE PRESIDING OFFICER: Overruled. You may answer

14 if you can, sir.

15 BY MR. FRENCH:

16 Q. Is that correct?

17 A. You're talking about illegality, Mr. French,

18 and I believe we're going to have to sit down and do a

19 little figuring out. I'm talking about what's proper and

20 what's improper, and when you start talking about an

21 illegal use, why, then I guess I better get my counsel and

22 we better interpret the law and we better start talking

23 about legalities.

24 I'm not in a position to talk about when you

25 say a legal term, so I don't believe that I can answer

1 that.

2 Q. What I'm trying to do, Governor, is to take

3 you through and play it out --

4 A. I know what you're trying to do, Mr. French.

5 I know full well.

6 Q. Assume for purposes of this question that the

7 $80,000 protocol fund loan had not been repaid and had

8 gone into default.

9 A. M'hum.

10 Q. Now, under that situation, hypothetical as it

11 might be, would you have then contacted a lawyer to sue

12 Mecham Pontiac to collect the loan on behalf of the Mecham

13 Inaugural Committee?

14 MR. LEONARD: If the Court please, I'm going to

15 object to this. This is going from what started out to

16 be, I think, some proper cross-examination to being the

17 ridiculous. I think it's way off the subject, is a waste

18 of time of this Court, and it's not proper. It's

19 argumentative.

20 THE PRESIDING OFFICER: I'll overrule the

21 objection. I think it's extending the theory and the

22 explanation that the Governor made concerning his ability

23 to use the fund. It has some minimal relevance.

24 THE WITNESS: I would be in the same place there.

25 I'm sure Mr. Colter would, if the bank went broke. You

1 would do the same thing, no matter where you had the
2 money, you would try to do whatever you could to recover
3 it, just like -- you know, some banks occasionally file,
4 and we would have done the same thing there.
5 BY MR. FRENCH:
6 Q. If the protocol fund, under your theory, was
7 in default, would you then have recorded the deed of
8 trust?
9 A. You made -- you'll have to redo that one
10 again. You said if the protocol fund was in default.
11 Q. Yes, sir.
12 A. How could the protocol fund be in default?
13 Of what?
14 Q. If it had not been paid back in a timely
15 fashion.
16 A. Think carefully, Mr. French. You've asked me
17 a question I don't understand, and I'm not sure --
18 Q. Let me redo it for you.
19 If the protocol fund went into default on its
20 loan to Mecham Pontiac, Mecham Pontiac did not timely pay
21 it -- are you with me so far -- then would you consider
22 filing, recording the deed of trust?
23 MR. LEONARD: I object to that question. That is
24 simply not comprehensible. If the protocol fund went into
25 to default?

1 THE PRESIDING OFFICER: I think it can be restated.
2 MR. FRENCH: Thank you.
3 BY MR. FRENCH:
4 Q. If the loan to Mecham Pontiac from the
5 protocol fund had not been timely paid and was in default,
6 would you then have recorded the deed of trust?
7 A. It's a speculative thing. I don't know that
8 the recording would have made any difference, Mr. French,
9 one way or the other, but I don't know that that's a
10 question anybody can answer. You're giving a hypothetical
11 thing, but you've kind of gone back on your agreement.
12 You were going to call it "inaugural fund."
13 Q. Wouldn't you agree, Governor, that every loan
14 has a certain level of risk, whether large or small?
15 A. Oh, I'm -- I must say that that would be the
16 case.
17 Q. Isn't it true that by making a loan from the
18 protocol fund, you, Governor Mecham, were unilaterally
19 subjecting the protocol fund to a risk that only you had
20 assessed?
21 A. No, I won't say that. I wouldn't say that at
22 all.
23 Q. Who else assessed this for the benefit of
24 Mecham Pontiac and the fund?
25 A. Oh, well, Western Savings, Valley National

1 Bank, First Interstate Bank, Bob Paulin, North American
2 Bank, Farmers & Merchants Bank have all assessed the risk
3 of loaning money to Mecham Pontiac, and maybe somebody I
4 can't remember, and they all said it was a good risk. So
5 I had a lot of other people to assess the kind of risk it
6 was to loan money to Mecham Pontiac.
7 Q. I take it it's your position, Governor
8 Mecham, that the loan to Mecham Pontiac from the fund was
9 a permitted use of the Inaugural Ball Fund; is that
10 correct?
11 A. Absolutely.
12 Q. It's also true that you view this use of the
13 fund as merely a secured loan which was paid back,
14 correct?
15 A. That's correct.
16 Q. Under your theory then, hypothetically, it
17 would have been proper to loan the money to your wife so
18 long as it was secured with a deed of trust on your home,
19 correct?
20 A. Could be.
21 Q. And under your theory, your wife could spend
22 that money on anything, as long as she paid it back with
23 interest, correct?
24 A. I think that's what you say on a loan, yes.
25 Q. Let me ask you this question: Assume for a

1 moment that a bank official needs to pay $80,000 in
2 medical bills for his wife. Assume further that instead
3 of applying for a loan, he takes $80,000 from the vault
4 but leaves in the vault a note and a deed of trust on his
5 house. Assume further that 90 days later, he pays back
6 $80,000 plus interest.
7 Now, Governor, paying the money back plus
8 interest doesn't make the bank employee any less guilty of
9 embezzlement, does it?
10 MR. LEONARD: Objection. That hypothetical is so
11 far removed from the facts of the case it couldn't
12 possibly be comparable.
13 THE PRESIDING OFFICER: Sustained.
14 THE WITNESS: I have to make a statement, if I may,
15 Mr. French --
16 MR. FRENCH: Let me proceed with a question --
17 THE PRESIDING OFFICER: There is no question --
18 THE WITNESS: I have to make a statement.
19 THE PRESIDING OFFICER: Governor, there is no
20 question before you.
21 THE WITNESS: I resent so highly the word
22 "embezzlement" in my presence, sir, and this was
23 characterized and done before, and I'm insulted by it, and
24 I have to tell the people of this state and this body --
25 THE PRESIDING OFFICER: I sustained the objection,

1 Governor. It is not going to be answered, and I hope,
2 sir, that you believe the rules are for you as well as
3 everyone else in these proceedings.
4 THE WITNESS: I have not seen any individual
5 witness insulted as I have been, sir. Go ahead.
6 BY MR. FRENCH:
7 Q. Governor, and there's nothing personal in
8 what I'm going to ask you now whatsoever, I think it's
9 testing your theory if, God forbid, something had happened
10 to you, who would get this money?
11 A. Which money?
12 Q. The protocol money.
13 A. Who would get it?
14 Q. Yes, sir.
15 A. The committee still has charge of it. Jim
16 Colter, I think, is the signature on it. It would be used
17 for whatever purposes to wrap up whatever would be
18 involved in my administration, and in that, anything that
19 was involved, and then I think it would go back to the
20 people that put it in. They're the ones that put the
21 money up.
22 Q. So I think I understand your answer. You're
23 not saying that this would become part of your estate, are
24 you?
25 A. No, it wouldn't.

1 Q. It would stay with the Office of the
2 Governor?
3 A. No, it -- it wouldn't stay with the Office of
4 the Governor. It was never part of the Office of the
5 Governor, Mr. French, never was. It was given to Mr.
6 Mecham, Governor Mecham, to do things that would otherwise
7 have to spend personal money for. It would not stay with
8 the office under any circumstance, because it was not
9 given to the official Office of Governor, no.
10 Q. Maybe I misunderstood. I understood on the
11 end you said it would be given back to those who
12 contributed, but where is it, if it's not back to those
13 who contributed? Who has custody and control of that fund
14 in your absence? And by that I mean if something should
15 dramatically happen to you.
16 A. Today, I think Jim Colter is still on it. I
17 presume he is, unless he had it changed to Bob Hubbard on
18 the check book.
19 Q. Let's say it's Jim Colter then, just for
20 purposes of exploring this. What would his duties and
21 responsibilities be with that fund?
22 A. Whatever the committee that got the fund
23 together would decide, Mr. French, whatever they decided.
24 It would have nothing to do with the state.
25 Q. Once the money from the protocol fund was

1 loaned to Mecham Pontiac, it is true, is it not, Governor,
2 that the Office of the Governor lost its immediate access
3 to those funds?
4 A. Oh, no, heavens no, huh-uh, not at all.
5 Q. Well, the money is over at Mecham Pontiac,
6 $80,000. They don't have use of that fund, correct?
7 A. Mr. French, you've missed something. They
8 had access to it at all times, as was demonstrated when
9 Mr. Eckstein went through this exercise with my son
10 Dennis, and they asked for the money back, and they got
11 it. They had -- this was the best place to have access to
12 the fund and still get a higher interest rate, and that
13 was the objective.
14 Q. Would you not agree with me, Governor, that
15 while Mecham Pontiac had the money, it could not be used
16 by the Office of the Governor to promote state interests,
17 correct, because they don't have it?
18 A. They had access to it on any call, Mr.
19 French. That's not a true statement, and that's been
20 demonstrated.
21 Q. Governor, are you asking the Court to believe
22 that the failure to record the Mecham Pontiac loan in the
23 check registry was something that just happened out of
24 happenstance?
25 A. Oh, I don't know whether it just happened. I

1 don't know what difference it makes.

2 MR. LEONARD: Objection, Your Honor. The witness

3 testified he doesn't know anything about the check

4 registry and has never seen it.

5 THE PRESIDING OFFICER: Sustained.

6 BY MR. FRENCH:

7 Q. Let me ask you this question, Governor, and I

8 don't think it calls for a long answer, but I would like a

9 succinct answer, and everyone would be interested. Why

10 did you not want the deed of trust on the protocol loan to

11 Mecham Pontiac recorded?

12 MR. LEONARD: Objection, asked and answered.

13 THE PRESIDING OFFICER: Overruled. You may answer

14 if you can, sir.

15 THE WITNESS: I had no concern about it being, Mr.

16 French, nothing sinister in that at all. I don't even

17 recall that I never said not to do it. It was a thing of

18 a fairly short-term duration, and no problem on my part.

19 BY MR. FRENCH:

20 Q. Governor, you attended meetings with your

21 staff prior to July, 1987, wherein various uses of these

22 funds had been discussed, correct?

23 A. I remember one staff meeting. I can't tell

24 you the time frame.

25 Q. At any of these meetings, it was never

1 discussed, much less decided, that one use that would be
2 good for the State of Arizona would be a loan to your car
3 dealership, Mecham Pontiac. That's a true statement,
4 isn't it?
5 A. That's a true statement, yes.
6 Q. And you didn't issue a press release when the
7 loan was made to your car dealership letting the citizens
8 of the state know what a wise investment you had made?
9 A. I don't believe I found any reason to think
10 they'd be interested, Mr. French. I guess we didn't.
11 Q. When the loan was paid back with interest on
12 October 22nd, 1987, no press release was issued then,
13 either, was it?
14 A. I don't recall it.
15 Q. It is true, is it not, that you did not want
16 the public to ever know about the loan to your car
17 dealership?
18 A. Absolutely not. I couldn't care less.
19 Q. Under your theory, as I understand it,
20 Governor Mecham, once the loan was made to Mecham Pontiac,
21 Mecham Pontiac's use of the funds was not restricted by
22 the agreement with the County Attorney that the funds
23 would be used only pursuant to 41-1105; is that correct?
24 MR. LEONARD: Objection, asked and answered.
25 THE PRESIDING OFFICER: Sustained.

1 BY MR. FRENCH:

2 Q. Under your theory, Mecham Pontiac could use

3 the money for any reason, correct?

4 MR. LEONARD: Objection, asked and answered.

5 MR. FRENCH: That has not been asked and answered.

6 THE PRESIDING OFFICER: Overruled. You may answer,

7 sir.

8 THE WITNESS: Of course.

9 BY MR. FRENCH:

10 Q. You're now familiar with the June 26th letter

11 agreement from Mr. Long to the County Attorney, are you

12 not?

13 A. I am.

14 Q. The unbridled use of the $80,000 by Mecham

15 Pontiac totally destroys that agreement, does it not?

16 MR. LEONARD: Objection, argumentative.

17 THE PRESIDING OFFICER: Overruled. You may answer

18 if you can.

19 THE WITNESS: Mr. French, you're totally incorrect

20 in that question, and questions. You're trying to draw

21 that the money was spent. It made no difference whether

22 the money was on deposit in a bank at a low rate of

23 interest or put in the same instrument to another

24 association. The use of the funds would always be

25 unbridled.

1 There was no requirements on the Valley
2 National Bank, and isn't today, sitting in their bank
3 account, and they're a private association owned by
4 private stockholders, just the same as the company, and
5 there's nothing flowing through, and there's nothing to
6 change the use of the funds just because of who has them.
7 It's the same thing.
8 Do you want to ask that question have the
9 Valley National Bank, if they really wanted to be a part
10 of their county association, and whatnot, if they take the
11 fund?
12 BY MR. FRENCH:
13 Q. I don't have them on the stand right now,
14 Governor Mecham. I'm going to have to define my questions
15 to you.
16 A. I'm trying to shed truth and light here, Mr.
17 French.
18 Q. Let's talk about truth and light in the
19 $80,000 loan. In connection with that $80,000 loan, let
20 me advise you that when that $80,000 loan was made, the
21 evidence is there was approximately $92,000 in the fund.
22 So, assuming that to be true, let's take the
23 $80,000 that goes to Mecham Pontiac. It's your testimony
24 that that loan can be used by Mecham Pontiac as it so
25 desires, correct?

1 MR. LEONARD: Objection, asked and answered.
2 THE PRESIDING OFFICER: Sustained.
3 BY MR. FRENCH:
4 Q. Let's go to the $12,000 that's left in the
5 fund. Are there any restrictions on that $12,000 that are
6 still in the fund?
7 A. Yes, it cannot be used to pay off campaign
8 debts or get into a campaign or be used for personal
9 living expenses. Those are the restrictions.
10 Q. And you're testifying, are you not, that the
11 1105 places no restrictions on that $12,000?
12 A. I'm giving you my testimony, Mr. French. I'm
13 not arguing any point with you, no. We're getting to be
14 friends. We don't want to do that.
15 Q. Let me read you A.R.S. 35-301, Governor. And
16 it's a very short one. And the pertinent parts read as
17 follows:
18 "A public officer or other person charged
19 with the receipt, safekeeping, transfer or
20 disbursement of public money is guilty of a Class 4
21 felony who:
22 "Number 2. Knowingly loans it or any
23 portion thereof."
24 Do you understand that statute?
25 A. Yes, but you're trying to switch statutes on

1 me, Mr. French.

2 Q. No, I'm not. No, I'm not. What I'm asking

3 you is this: Keeping that statute in mind, you will

4 admit, will you not, that if this Court decided that when

5 the money in the fund was transferred to the Office of the

6 Governor, it became public monies, that by loaning public

7 money to your car dealership, you would have violated that

8 statute?

9 MR. LEONARD: Objection. It's a legal conclusion

10 which this witness has no qualification to answer or come

11 to.

12 THE PRESIDING OFFICER: Overruled. He may answer

13 if he can.

14 THE WITNESS: Mr. French, that statute under no

15 circumstances ever applied to this. You're trying to say

16 that the money went through one statute to the other that

17 regulates spending. That money was not spent. This money

18 was loaned from one institution, taken out of one

19 institution at interest and put into another one. That

20 statute, in my opinion, has never applied, in spite of

21 your desire to try to make it so.

22 BY MR. FRENCH:

23 Q. We appreciate your opinion, but this Court --

24 A. Well, you asked for my opinion.

25 Q. -- also heard an opinion from Mr. Jack LaSota

1 concerning the nature of this fund. You're aware of that,
2 are you not?
3 MR. LEONARD: Objection. That statement by counsel
4 is argument.
5 THE PRESIDING OFFICER: Sustained.
6 BY MR. FRENCH:
7 Q. Governor, on Friday, just this past Friday,
8 you testified that you got a loan from Farmers & Merchants
9 Bank. You further testified that this loan was a $250,000
10 unsecured loan, and that you never did give any of these
11 special favors. Do you remember that testimony?
12 A. That's correct.
13 Q. The chairman of the board of Farmers &
14 Merchants Bank is a gentleman by the name of Mr. Ralph
15 Watkins?
16 A. That's right.
17 Q. That's true?
18 A. M'hum.
19 Q. Ralph Watkins was chairman of your -- what
20 did you call it? Campaign Finance Committee?
21 A. That's correct, m'hum.
22 Q. This Ralph Watkins also is the same person
23 who signed a $50,000 personal note to assist your campaign
24 for Governor, correct?
25 A. M'hum, that's correct.

1 Q. It's also true that that Ralph Watkins is the
2 same Ralph Watkins that you subsequently appointed to the
3 Arizona Board of Regents, correct?
4 A. That's correct.
5 MR. FRENCH: I have no further questions.
6 THE WITNESS: Okay.
7 THE PRESIDING OFFICER: Redirect.
8
9 REDIRECT EXAMINATION
10 BY MR. LEONARD:
11 Q. Governor, I have just a few questions. Would
12 you look at Exhibits 82 and 83, please?
13 When these were offered into evidence by you
14 last Friday, if you'll turn to the third, what is your
15 third page, at the bottom of that page you have read the
16 language that said that these were re-recorded to reflect
17 the liens, that statement at the bottom? You had read
18 that, hadn't you?
19 A. Yes, I had, m'hum.
20 Q. And on the very last page, you read the
21 material on the stamp?
22 A. Yes.
23 Q. "Recorded in official records of Maricopa
24 County, January 21, 1988"?
25 A. I had.

1 MR. ECKSTEIN: Objection. The last two questions
2 have been leading, and I would ask counsel to proceed by
3 direct and nonleading questions.
4 MR. LEONARD: I'll do my best.
5 THE PRESIDING OFFICER: Overruled. You may
6 proceed.
7 BY MR. LEONARD:
8 Q. Now, Governor, what was the purpose of
9 introducing these two documents into evidence last Friday?
10 A. Very simple. The prosecution was trying to
11 make a great case that there was not enough value, and
12 that the liens on the property -- and expressly said the
13 liens on the property left not enough value. And it was
14 totally incorrect, and this presented a totally correct
15 view at that given time.
16 Q. Were the liens that were reflected -- not the
17 liens, the loans to Willard and Wayne Mecham reflected on
18 the books and records, that is, on the financial
19 statement --
20 A. Yes.
21 Q. -- of Mecham Pontiac in July of 1987?
22 A. They were, m'hum.
23 Q. So they continued to be loans, but not liens?
24 A. That's right.
25 Q. Governor, do you know the difference between

1 a foreclosure proceeding and a notice of foreclosure?
2 A. Sure do.
3 Q. Is the receipt by a borrower who has a lien
4 on his property in favor of a financial institution of a
5 notice of foreclosure a foreclosure proceeding?
6 A. Not at all.
7 MR. ECKSTEIN: Objection, leading.
8 THE PRESIDING OFFICER: Overruled. The question
9 was asked on cross.
10 BY MR. LEONARD:
11 Q. In your 38 years of business, has anyone ever
12 foreclosed on any property?
13 A. Not on mine.
14 Q. In your opinion, Governor, was there ever any
15 danger that the Tacoma property would be foreclosed on by
16 a legal proceeding?
17 A. Absolutely not.
18 Q. When you received the notice of foreclosure
19 under the terms of the deed of trust, did that give you
20 certain rights to redeem your position and eliminate that
21 default?
22 A. That is correct, it did.
23 Q. Was that property ever in danger of being
24 foreclosed on?
25 A. Absolutely not.

1 Q. Governor, you had wanted, when Mr. French was
2 asking you about the relationship between you and Mr.
3 Sturgeon and the other partner on the Tacoma property, to
4 give some of the details, and you were restricted at that
5 point in time to a yes or no answer.
6 Would you just tell us very briefly, please,
7 very briefly, what the circumstances were that led up to
8 the lawsuit which you testified you settled?
9 A. Mr. Sturgeon and his partner injected
10 themselves, and we agreed to work out an arrangement with
11 them, with them accepting the responsibility of developing
12 the property, and being the managers up there. They did
13 not do that. They took funds out, later replaced them.
14 They didn't do their part, and I took the management of it
15 over from them.
16 They were demanding that we eject a tenant,
17 and I said no, we wouldn't do that, and I took over, and
18 took the books and records from them, and they then
19 started on a course of harassment which led to finding
20 that for a $10,000 investment, I gave them $130,000
21 because the property was worth more than the percentage
22 would have been. Rather than force them out of the
23 partnership by demanding they put the money in to match
24 it, I did what I thought was the good thing, and we were
25 going to -- and I bought them out for $130,000 for a

1 $10,000 investment, and bought them out and paid them part
2 down and the rest on time.
3 Q. Now, Governor, did they start a lawsuit?
4 A. They -- from what he said there, they very
5 well might have filed one. We never did go to court.
6 There was never anything there. I never answered
7 anything. We just went up and sat down with them, and
8 that's probably the result.
9 Q. And again, as part of the settlement with
10 them, you paid part in cash and part took the form of a
11 first deed of trust on the property for the original
12 amount of $90,000?
13 A. That's correct.
14 MR. LEONARD: That's all I have.
15 THE PRESIDING OFFICER: Questions by Senators?
16 Senator Kay.
17 SENATOR KAY: Thank you, Mr. Presiding Officer.
18 Good morning, Governor Mecham.
19 THE WITNESS: Good morning, Senator Kay.
20 SENATOR KAY: I have a few questions to ask.
21 According to Mr. Colby up there, he
22 characterizes my questions as interminable, and I wanted
23 to at least give him an opportunity to get an early lunch
24 if he gets too bored.
25 Governor Mecham, on Page 111 of the House

1 testimony by Mr. Long, he said that he never did tell you
2 about the agreement that he had reached with County
3 Attorney Schwartz. And of course, according to your
4 testimony, you didn't know about it, either. So I think
5 it's been established, it's quite clear, that there wasn't
6 an agency relationship between you and Mr. Long, or
7 between you and the inaugural committee.
8 Now, the question that I'm trying to figure
9 out is: Who owned the money at what particular time? My
10 first question would be: Do you believe that the money
11 could have been transferred to the state without it first
12 having been transferred to you, to yourself from the
13 inaugural committee?
14 THE WITNESS: I don't know, Senator. I really
15 don't know. I know that -- you know, my opinion, if
16 you're transferring it to the state, you've got to go
17 through the treasury and handle it, and that was never
18 discussed at all, that I know of.
19 SENATOR KAY: My perplexity is to who owned the
20 funds. For example, all of us that are in politics, when
21 we run for election, we receive campaign funds. There
22 will be checks written to the Governor Mecham Campaign
23 Committee, Governor Mecham personally, the inaugural
24 committee, and a whole bunch of things, but what people
25 are actually doing is giving you the money. They're not

1 giving it to anyone but to you.

2 And so my thought was that when it went to

3 the inaugural committee -- and I've received a number of

4 letters substantiating this -- that they were, in effect,

5 giving you the money for your campaign purposes, but

6 because of Proposition 200, that intention was vitiated by

7 the passage of Proposition 200.

8 When Proposition 200 passed, would you say

9 that there was a type of constructive trust or an

10 obligation by Mr. Long and the committee to give that

11 money to you?

12 THE WITNESS: That was -- that was the intention,

13 and the answer would be yes.

14 SENATOR KAY: Do you believe, sir, that these funds

15 could be considered public funds without your specific

16 assent or your specific agreement with the County

17 Attorney, for example?

18 THE WITNESS: No, I certainly don't.

19 SENATOR KAY: Do you not feel that it is somewhat

20 strange, unusual, that here is a County Attorney who

21 testified that you could be subject to criminal penalties,

22 as well as civil penalties, and yet he never communicated

23 with you?

24 THE WITNESS: Not only that. I had nothing to do

25 with it, is what he was talking about.

1 SENATOR KAY: Isn't it true that when a criminal
2 reaches a plea bargain, a plea agreement, doesn't he have
3 to know a little something about it?
4 THE WITNESS: Well, I've never been involved in
5 that, but I would sure think so.
6 SENATOR KAY: It was never your intention,
7 Governor, to permanently deprive the state of the money?
8 THE WITNESS: To permanently what?
9 SENATOR KAY: To permanently deprive the state of
10 the money that was lent to Mecham Pontiac.
11 THE WITNESS: To deprive them?
12 SENATOR KAY: It was not your intention to abscond
13 with the money, was it?
14 THE WITNESS: Absolutely not.
15 SENATOR KAY: The question that I wonder about,
16 sir, is whether the committee itself, Mr. Long, had the
17 right to transfer the money to the state, because in
18 effect, they were holding it as trustees for you. Money
19 was really given to you, not to some amorphous committee,
20 which is established. The money was given to you.
21 And therefore, would you not say that it was
22 incumbent upon the committee to give the money to you in
23 order to effect a transfer of title to the state?
24 THE WITNESS: Yes, I think I would have had to be
25 conduit.

1 SENATOR KAY: Thank you, sir.

2 THE PRESIDING OFFICER: Senator Rios was next.

3 SENATOR RIOS: Thank you, Mr. Presiding Officer.

4 Good morning, Governor.

5 THE WITNESS: Good morning.

6 SENATOR RIOS: I have three short questions. I

7 hope they're short.

8 I guess the first thing that I need to

9 clarify in my mind, do you still today believe that you

10 can use the monies from the inaugural fund for anything,

11 so long as it's not for campaign or for your own personal

12 expenses?

13 THE WITNESS: Senator, after all the discussion

14 that's gone on, I would be pretty careful, because it is

15 for my use, but essentially it still comes down to that.

16 It still comes down to it, that the use of those inaugural

17 funds can be used essentially pretty much as long as

18 they're not personal or campaign. Those were the two

19 things.

20 If they were used for personal expenses, then

21 it would have to come in as personal income. But it's

22 therefore my purpose to use for things that otherwise I'd

23 have to pay my personal money for, and that's a pretty

24 broad scope.

25 SENATOR RIOS: But do you believe, Governor, today,

1 that you could still use that fund for a loan to Mecham
2 Pontiac?
3 THE WITNESS: I didn't use it. We loaned it.
4 There's a difference between "use."
5 SENATOR RIOS: Do you believe you could still loan
6 that money, then?
7 THE WITNESS: Oh, yes, yes, I think that's a
8 perfectly legitimate thing, legally. Politically,
9 absolutely not. I agree with those who said it was
10 political stupidity --
11 SENATOR RIOS: Okay, Governor.
12 THE WITNESS: -- just from the looks of it, the
13 perception.
14 SENATOR RIOS: On another point, Governor, and I
15 hope this question is not too convoluted, but what I'm
16 trying to get at is: You have the protocol fund, and you
17 want to improve the interest rate that it's drawing. On
18 the other hand, we have Mecham Pontiac that is in business
19 to save money and to make a profit, of course.
20 We have your son, and I think you stated
21 yourself today, that Mecham Pontiac had borrowed a quarter
22 of a million dollars from the Paulin Trust at an
23 eight-and-a-quarter interest rate, that on this hand,
24 through the loan, or through the inaugural fund, you
25 loaned Mecham Pontiac $80,000 at nine percent.

1 So I guess what I'm having difficulty there
2 seeing, even though we're talking about a small amount of
3 dollars compared to your total worth at that dealership,
4 what I'm having difficulty understanding is: Why would
5 Mecham Pontiac borrow at nine percent when they could
6 borrow at eight-and-a-quarter from the Paulin Trust? Is
7 there some justification or reason for that?
8 THE WITNESS: Sure, sure. We set up -- and I had
9 discussed with them to put this money -- you're talking
10 about a portfolio of loans just like you have a portfolio
11 of investments. It would have been easy to have done,
12 Senator, to have said on the Paulin Trust, let's make this
13 a loan of $230,000 instead of -- or 330, and today, I
14 sincerely regret I didn't do it that way, but I didn't.
15 It was just the idea that we set this up, portfolio of
16 money.
17 Nine was a very decent, fair interest. It
18 was a decent deal for Mecham Pontiac, and it was good for
19 the fund and it would be available, and I was trying to
20 set it up to where it would be available at its call at
21 any time. We thought the money we left in would be ample
22 to take care of the needs for a while, but you didn't
23 know, and you needed to have it so it was available. So
24 we thought it served the purpose, and that's why we did it
25 that way.

1 SENATOR RIOS: On another subject, Governor, did I
2 understand you to say this morning that you signed a
3 contract to sell your business or that you had a contract
4 offer to sell your business?
5 THE WITNESS: No, no, that wasn't what it was. I
6 said that I have arranged, negotiated to sell the property
7 for $4 million.
8 SENATOR RIOS: So that would be the value of the
9 property?
10 THE WITNESS: That's correct.
11 SENATOR RIOS: So then you would still have value
12 in the line that you carry, like for General Motors, and I
13 think you also sell AMC/Renault, so that the worth of the
14 total business would be considerably higher than the $4
15 million; is that correct?
16 THE WITNESS: That's correct, that is correct,
17 several million dollars higher.
18 SENATOR RIOS: Thank you, Governor.
19 THE PRESIDING OFFICER: Senator Gutierrez?
20 SENATOR GUTIERREZ: Thank you, Mr. Presiding
21 Officer.
22 I would like to at least clarify in my mind
23 perhaps an inconsistency, and I believe that was to the
24 question that Senator Kay raised, and I believe Senator
25 Kay went to Exhibit 84-B, Page 111. And I believe the

1 question to the Governor was: "After June 26th --" and
2 this is a question that is being asked of Mr. Long.
3 "After June 26th, did you ever have any
4 conversation -- that letter of yours, did you ever
5 have any conversation with Governor Mecham that he
6 didn't understand the letter or the agreement?"
7 And I believe the Governor has said, no, that
8 he never discussed the letter with him. Is that correct,
9 Governor?
10 THE WITNESS: That's correct, Senator.
11 SENATOR GUTIERREZ: I would like to refer back,
12 then, to the same exhibit, to page 103.
13 "QUESTION: Was there any conversation at
14 that point in time with the Governor?"
15 And this is Mr. Long again: "Not a lengthy
16 conversation."
17 Excuse me. That was not it. Excuse me.
18 it's Page 104.
19 "When you were discussing the letter and the
20 settlement with the Governor, did he seem to
21 understand the basis of the settlement?
22 "RESPONSE: He understood, certainly, that
23 the funds could not be used to pay off campaign
24 debts."
25 So, Governor, in one part of the testimony,

1 and I believe that is the part that Senator Kay asked, I
2 believe your response was correct, because I believe the
3 question was after June 24th, but again, you're stating,
4 Governor, that at no time did Mr. Long have any
5 conversation with you regarding the letter and the
6 settlement; is that correct?
7 THE WITNESS: I think you've got two there,
8 Senator. You're talking about one -- on one hand, a
9 discussion of the letter, and on the other hand, a
10 discussion of what we could do with the fund.
11 I had no discussion with Mr. Long relative to
12 the letter. At the time he and I talked, I didn't even
13 know of the existence of the letter. That didn't come to
14 any knowledge of mine until these proceedings started.
15 I think the other thing he's talking about is
16 what he told me, which I have previously testified to,
17 which fits apparently in with his -- I have not seen this
18 exhibit and read his testimony, but it apparently is
19 exactly the same as mine, is that I characterized his
20 words I could use it for anything except personal living
21 expenses and campaign or paying off campaign debts.
22 SENATOR GUTIERREZ: So, Governor, again, then the
23 question is:
24 "When you were discussing the letter and the
25 settlement with the Governor, did he seem to

1 understand the basis of the settlement?"

2 And you're saying, as you understood that,

3 the fund could not be used to pay off campaign debts?

4 THE WITNESS: Yes, I knew I couldn't pay off

5 campaign debts with them, that's correct.

6 SENATOR GUTIERREZ: And that the response from Mr.

7 Long was not to the question, then?

8 THE WITNESS: Oh, no, no, I think he and I are

9 exactly on target. I think there's someplace in here that

10 the letter is getting mixed up with what he told me. I

11 don't belive you'll find any place -- would you? I don't

12 know. I can look at his testimony. I don't think he

13 testified that he discussed the letter with me, did he?

14 I'd be surprised if he did.

15 SENATOR GUTIERREZ: Mr. Presiding Officer, I would

16 interpret that in his response when he says -- when the

17 question was, "...did he seem to understand the basis of

18 the settlement," his response was, "He understood,

19 certainly," that at least in his mind, "that the funds

20 could not be used to pay off campaign debts."

21 That, in my mind, Governor, understands -- or

22 puts a different meaning to his response, and perhaps

23 you're giving his response.

24 THE WITNESS: Well, maybe the key question here,

25 Senator, that you're bringing up may be in talking with

him relative to settlement, and maybe that's the thing that's confusing. My instructions were what I have testified to, and so maybe that's confusing the issue for you, and I can't vouch for him.

I can just reiterate that he and I made no -- had no conversation on a letter, because at this given time, I really don't know -- I guess Mr. Long must have signed this letter, but certainly it was not known to the rest of us, you know, at least to me. I don't know anybody else that might have known.

SENATOR GUTIERREZ: Thank you, Governor.

THE PRESIDING OFFICER: Other questions by Senators?

Senator Mawhinney.

SENATOR MAWHINNEY: Mr. Presiding Officer, good morning, Governor.

THE WITNESS: Good morning.

SENATOR MAWHINNEY: The Proposition 200 argument, as I recall, that was on the ballot at the same time you were running for Governor?

THE WITNESS: That's correct, yes, sir.

SENATOR MAWHINNEY: Did you have a position relative to that, or did you, like him, have us just let the public decide?

THE WITNESS: Oh, I don't recall campaigning on it,

1 Senator, one way or the other.

2 SENATOR MAWHINNEY: Were you aware of generally

3 what it would do to campaign financing? Did anybody on

4 your staff do an analysis about campaign funding after or

5 post Proposition 200?

6 THE WITNESS: You're talking about before the

7 election?

8 SENATOR MAWHINNEY: Yes, sir.

9 THE WITNESS: No, they didn't, no.

10 SENATOR MAWHINNEY: And after the election?

11 THE WITNESS: Afterwards, there was a question of

12 what does it mean, and there was a discussion. I don't

13 know -- you know, when you say "an analysis," I don't

14 know. I know that it was coming along and everybody was

15 wondering if it was constitutional, and when it took

16 effect, and all of these -- you know, I hear those, but I

17 don't recall anybody really getting down to brass tacks

18 with me on an analysis. I never did read it myself.

19 SENATOR MAWHINNEY: Were you aware that the

20 Secretary of State asked the Attorney General for an

21 opinion about its constitutionality and about different

22 points?

23 THE WITNESS: I think I remember that, yes.

24 SENATOR MAWHINNEY: Do you remember the reply of

25 the Attorney General about dealing with its

1 constitutionality and how it would be applied?
2 THE WITNESS: I think -- wasn't this along in
3 February or March? And by that time, it was awhile
4 coming, and I think that, to the best of my recollection,
5 that question, it was constitutional. I remember that
6 that's the recollection.
7 SENATOR MAWHINNEY: And, yes, it was
8 constitutional, but he took a great number of pages to say
9 that, and to say other things, other restrictions that
10 would ultimately apply to all of us in collection of
11 campaign monies and paying of campaign debts.
12 But, you weren't briefed by your staff about
13 the effect of Proposition 200, at least as opined by the
14 Attorney General?
15 THE WITNESS: Senator, there was -- there was
16 discussion. When you say by my staff, there was
17 discussion. Mr. Colter, and of course he being an
18 attorney, and Watkins and Long were working on the effects
19 of that. I was so busy, I -- they told me, and I was
20 peripherally involved in it, and at one time had some
21 conversation with Mr. L'Ecuyer, and I remember being told
22 that we really -- in fact, we really didn't think that
23 Proposition 200 would affect my campaign, but apparently
24 they waited until Mr. -- but thought that they better be
25 safe and not wait until -- or not do anything until that

1 was done.

2 I know it held us up as far as doing anything

3 relative to fund-raising for several months, and that this

4 was -- that there was some talk of going to court and

5 finding out that it wasn't -- in fact, the author of the

6 proposition himself had made a public statement that it

7 was his opinion that he didn't think it affected the

8 campaign at that time, because it went into effect the

9 same time as the election. But nobody ever did anything

10 to prove that, so that's a moot question, I guess.

11 SENATOR MAWHINNEY: So once we elect not to do

12 that, then although it is not law, we are generally bound

13 by what the Attorney General gives in his opinion?

14 THE WITNESS: Not necessarily, as I understand it,

15 Senator. As I understand it, the Attorney General says if

16 you follow what he says, you probably wouldn't get in

17 trouble. But on the other hand, I don't think that that

18 will be determined for sure until somebody tries it in

19 court. I think that's yet to be done, and that case still

20 could go to -- you know, the action could still be

21 brought.

22 SENATOR MAWHINNEY: But had you gone along, say,

23 with the Attorney General's opinion, then, in any future

24 dispute you would expect an Attorney General would come in

25 on our side or your side to try to support whatever

1 opinion he had granted, right?

2 THE WITNESS: Oh, I presume, yeah, m'hum.

3 THE PRESIDING OFFICER: Senator, are you going to

4 have many more questions? If so, we can take our recess

5 at this time. I know we do have at least one other

6 Senator with questions, and so we won't be able to finish

7 at this time.

8 So, we'll stand at recess until 2:00 this

9 afternoon.

10 Who will be your next witness, Mr. Leonard?

11 MR. LEONARD: Mr. L'Ecuyer.

12 THE PRESIDING OFFICER: We'll stand at recess.

13 (Recessed at 12:04 p.m.)

14 (Reconvened at 2:05 p.m.)

15 THE PRESIDING OFFICER: Thank you, ladies and

16 gentlemen. The Court of Impeachment is reconvened. Show

17 the presence of a majority of the Board of Managers, their

18 counsel, and counsel for the respondent.

19 We will have the Governor resume the stand on

20 questions from the Senators. Senator Mawhinney was still

21 questioning.

22 I'll remind you, Governor, you are still

23 under oath.

24 THE WITNESS: Thank you.

25 SENATOR MAWHINNEY: Governor, the Long letter, the

1 letter from Mr. Long to Mr. Collins, you stated earlier
2 that you have no recollection of ever seeing that?
3 THE WITNESS: Senator, the first that I saw that
4 was when these proceedings started.
5 SENATOR MAWHINNEY: Mr. Long was the head of the
6 Inaugural Committee?
7 THE WITNESS: Yes, sir.
8 SENATOR MAWHINNEY: And he was in charge of
9 gathering all of the funds; he was the man to whom wrote
10 the checks that all came in to support the inaugural ball?
11 THE WITNESS: I don't know who wrote the checks.
12 He and Joyce Downey. I don't know, she probably did a lot
13 of the work, but he was the chairman of the work of the
14 committee that oversaw, I guess you could say that would
15 be --
16 SENATOR MAWHINNEY: The money collected wasn't
17 collected in your name, it was collected in the name of
18 this Inaugural Committee?
19 THE WITNESS: The Mecham Inaugural Committee, yes,
20 sir.
21 SENATOR MAWHINNEY: It was designed to pay for the
22 expenses for the inaugural ball, and, as I recall, trying
23 to sell the tickets to defray campaign expenses?
24 THE WITNESS: Yes, sir.
25 SENATOR MAWHINNEY: Then the Attorney General

1 apparently rules, and the ruling says that there is a
2 serious question about whether you could use those funds
3 to retire campaign debts?
4 THE WITNESS: I don't know if there was actually a
5 ruling; if there was, I never saw it. Influence -- but
6 there, that is, don't mean, I did not see any ruling to
7 that effect.
8 SENATOR MAWHINNEY: Well, apparently that Exhibit
9 52 is the Attorney General's opinion, that brings us to
10 where we are today. It says that there is serious doubt
11 as to whether -- in fact, he says in his opinion they
12 cannot be used to do certain things.
13 THE WITNESS: Okay.
14 SENATOR MAWHINNEY: The next step we have is the
15 Maricopa County Attorney entering into the picture and
16 saying that -- and I can't recall who brought the
17 complaint or how it originated right now, although I am
18 sure it is in these papers -- but the net effect is that
19 you can no longer use those monies to do the things that
20 you wanted to do, according to now not only the Attorney
21 General, but the Maricopa County County Attorney.
22 And he testified that there were three
23 options, I think, available to them. One, to take the
24 money, all of it, for the state's purpose, put it into the
25 general fund of the state, which would have deprived you

1 of the ability to use it for anything other than usual
2 state management or financing of the whole state
3 government.
4 The other option was to sue for treble
5 damages, in other words, your campaign and your committee,
6 I guess not you personally, but Mr. Long and that campaign
7 committee, would have had to pay treble damages for
8 collecting that money under Proposition 200 would then be
9 false pretenses. Did you hear them discussing the treble
10 damage issue?
11 THE WITNESS: I believe I heard -- was that the
12 County Attorney Schwartz? I think I heard something about
13 that, Senator, yes, sir.
14 SENATOR MAWHINNEY: One of the other options I
15 asked them about was, could they have returned the money
16 to the people. And they said that wasn't discussed, as I
17 recall, but it seems to me that would have been one of the
18 options available to Mr. Long and the Inaugural Committee,
19 and that is to say, "We are in this big mess with this
20 money, we can't do with it what we chose to do, therefore,
21 why don't we return it to the people from whom we
22 collected it."
23 Did you ever discuss any of those options?
24 THE WITNESS: I didn't. In fact, these things from
25 the County Attorney was the first -- the only person that

1 I discussed these options with, I believe, was probably
2 Jim Colter and Robert L'Ecuyer, and everything was always
3 up. It looks like, well, have to have a lawsuit to
4 determine it, or something, because even -- I was told we
5 wasn't even sure we could give the money back. That was
6 my option, that if it's a disputed thing, let's give it
7 back to the people who gave it. Probably take a lawsuit
8 to be able to do that.
9 SENATOR MAWHINNEY: No doubt, sue over everything.
10 I am not sure from what I see here that it
11 was yours to give back. In other words you, Governor
12 Mecham, that the money was collected by this committee,
13 and the committee had the power to do with that money as
14 they saw fit, and you didn't enter into it until later.
15 Clearly they would follow your instructions, I presume.
16 Mr. Long was there in your behalf to raise the money and
17 use it to defray your inauguration ball and your campaign
18 expenditure validation or whatever.
19 But it occurs to me that it wasn't your money
20 to give back. Mr. Long and the committee could have given
21 it back since it wasn't made out to you and it wasn't your
22 personal money.
23 Right up until the time that they signed this
24 agreement, and Mr. Long speaking for the committee signed
25 this agreement that said we agree that all these

1 restrictions will apply to the money and in return for
2 that we will get to use the money to help your office in
3 this protocol area, using it for the things that you have
4 described, but under certain limitations.
5 Did Mr. Long, in your opinion, have the right
6 to make that agreement?
7 THE WITNESS: Senator, under normal circumstances
8 it would sure appear, but when you start asking that from
9 a legal sense, what I have seen that he did, in other
10 words, this was a private association, it was, had the
11 right to do whatever it saw in reality, they did have an
12 obligation to me because the funds were collected under
13 the auspices for my benefit, so I don't think it is
14 clearcut that said, you know, that they didn't have to pay
15 any attention to my welfare, but I think a private
16 association, I think they were pretty much able to do what
17 they wanted to do.
18 SENATOR MAWHINNEY: So he had the right to make the
19 agreement, then?
20 THE WITNESS: I would assume so.
21 SENATOR MAWHINNEY: I do, too. Seems to me that
22 they were in charge of collecting it, they ought to be in
23 charge or be allowed then to have the right.
24 When they made the agreement then, when they
25 signed away, as they clearly did, a lot of the powers and

1 freedoms that were available to the committee to use those
2 monies for, the net result of that was to give it to the
3 Office of the Governor, and that is the language that they
4 used, the Office of the Governor with the following
5 restrictions -- and I guess the question that burns in my
6 mind is: Regardless of what Mr. Long might have told you
7 or regardless of what you might have heard from somebody
8 else, do you believe that the restrictions that were in
9 that letter, whether you knew them or not, were legal
10 restrictions placed on the use of that money?
11 THE WITNESS: Senator, the restrictions, they could
12 very well be there. I mean, if it adheres to that
13 particular part of the code. I am not a lawyer, and, of
14 course -- but yes, and I frankly, I think we have adhered
15 to them, really.
16 SENATOR MAWHINNEY: You think that you have adhered
17 to the restrictions that were in the Long letter to the
18 County Attorney?
19 THE WITNESS: We have not spent the money for
20 anything that was not tied into, you know, my activities
21 as a person. I disagree with you on the idea that there
22 was a tie in there, that it was officially the Office of
23 Governor. I think they were turned over to, for my
24 direction, but obviously with the idea that we use them.
25 I don't think, I don't think it is fighting

1 the words at all when we say, I think his summary was
2 realistic when he said, you can't use it for private, you
3 know, personal living expenses and for anything of the
4 campaign. Anything else you use it for would be to some
5 degree on what we wanted to accomplish with me -- for me
6 to accomplish as, you know, in the Office of Governor that
7 wouldn't be state funds, but you know, and heavens, maybe,
8 maybe we are talking about semantics, it seems to me that
9 the terminology given to the Office of Governor and if
10 given to Governor Mecham are substantially where it is,
11 and my impression was that it was always given to me to
12 use in that, you know, and I think if it had meant to be
13 given to officially to the state, it would have taken an
14 entirely different course.
15 SENATOR MAWHINNEY: Well, you have looked at the
16 letter and you do see that it says it was given to the
17 Office of the Governor under these terms and conditions.
18 So there is some room for two people to honestly disagree
19 about whether it was given for you and for what purposes,
20 but the letter itself is very specific. You didn't see
21 the letter, and you were given kind of a very short
22 analysis of what it said, an analysis which may not have
23 been as complete as it should be.
24 The question is: What is legal -- and I am
25 not asking you a legal opinion, I guess, neither one of us

1 being lawyers we can talk sensibly -- what was agreed to
2 by that letter is what ought to have been required to
3 happen; isn't that correct? Not a legal opinion, but
4 whatever was signed in the agreement to the County
5 Attorney that let you keep the money, the terms under
6 which you agreed to use it?
7 THE WITNESS: Senator, I don't think that, I don't
8 think that you can say that I should -- if I would have
9 been given it and needed to go get a legal opinion of what
10 we could do so, if it had been that, that was the
11 presentation at all. I don't think that there has been
12 anything different done with it than that, but if you want
13 to get really total, technically, then the County Attorney
14 should have come out and overseen what we did and seen
15 that we all adhered to it, and he ought to have called up,
16 checked on us once in awhile. If we are going to get real
17 totally technical, then we should have had, if they wanted
18 to put more strings than that on, should have known it
19 and, Jim Colter ought to have known about it. Jim was not
20 a party to it. He didn't know about it either. So if we
21 start talking that way, then somebody has a responsibility
22 to come out and say, hey, and I haven't heard from any of
23 those people, none whatsoever.
24 SENATOR MAWHINNEY: Wouldn't it be fair to presume
25 on their part, Governor, that when they sent you a copy,

1 at least as far as they are concerned, they sent the
2 Honorable Evan Mecham a copy of this agreement, and in a
3 previous exhibit the attorney who drew it up even
4 apparently filled out the envelopes and sent them along
5 with it so that everybody involved would get a copy, don't
6 you think that that would put in the eye of the County
7 Attorney and the attorneys involved, the fact that the
8 Governor had now been briefed, Mr. Colter, who was
9 involved somewhat was briefed, and everybody knew what was
10 going to happen to the money.
11 And I guess the net, Mr. Craft suggested at
12 one time that a lot of this is like electricity, and that
13 you have to be able to prove you went from the power to
14 the light bulb and all of that involved relays, and that
15 they all had to be closed to make this thing work.
16 The relay that appears to be open, according
17 to your testimony, is the fact that all of these people
18 who had the power, the right, the ability under the law to
19 sign an agreement that restricted that money, never got
20 that information to you.
21 That relay was not closed. Is that an
22 accurate depiction of what we have?
23 THE WITNESS: No, no. I think Mr. Long felt he was
24 relaying to me when he told me what could be done with the
25 money, and I don't think he was inaccurate in what he

1 said. I think it's very broad based in what it is. I
2 don't see anything in that letter that is counter to what
3 he told me.
4 SENATOR MAWHINNEY: Do you believe, if there was a
5 fund established under what is -- You are getting better
6 at this than we are. 41-1105.
7 THE WITNESS: I believe it is 1105.
8 SENATOR MAWHINNEY: If you had a fund over there in
9 the office, 41-1105 is how you set up, and you have people
10 in the office who were set to monitor and operate that
11 fund, and you wanted to operate under the spirit and the
12 intent of that particular piece of legislation, you
13 believe you could loan money to your car dealership?
14 THE WITNESS: I don't think, Senator, that there is
15 any difference between loaning the money to the car
16 dealership or to somebody else's dealership or the Valley
17 National Bank is really any different in the spirit of the
18 law. I really don't.
19 SENATOR MAWHINNEY: Then your answer to that is
20 that you believe that if you had a fund 41-1105 and it had
21 $350,000 that was given to you by the people of this state
22 as a protocol fund, that you could then loan that to,
23 well, whoever you chose to loan it to, including Mecham
24 Pontiac?
25 THE WITNESS: According to the conditions of the

1 fund. The conditions under this fund I've always admitted
2 that this was, because I never even thought about the
3 appearances, quite frankly, that it was a poor choice from
4 appearances standpoint, but from a legality that there was
5 no problem with it.
6 SENATOR MAWHINNEY: Thank you, Governor.
7 THE PRESIDING OFFICER: Senator Stephens was next.
8 SENATOR STEPHENS: Thank you, Mr. Presiding
9 Officer.
10 Good afternoon, Governor.
11 THE WITNESS: Good afternoon, Senator.
12 SENATOR STEPHENS: In regards to the Paulin Trust
13 loan, which I think was in the neighborhood of July 28th
14 in 1987, you have testified that that was at the prime
15 interest rate at that point, which was something like 8.25
16 percent; is that correct?
17 THE WITNESS: That's what I have been -- it was at
18 prime, there has been some people in these proceedings
19 that has looked it up. I have heard at that time eight
20 and a quarter, it would have been whatever, it was Valley
21 Bank prime.
22 SENATOR STEPHENS: Governor, that is a pretty good
23 interest rate, isn't it?
24 THE WITNESS: Yes, it's a good interest rate.
25 SENATOR STEPHENS: How long were you in

1 negotiations with either Mr. Paulin or whoever had control
2 of the Paulin Trust fund to set up that loan?
3 THE WITNESS: One day.
4 SENATOR STEPHENS: Basically, we are talking about
5 somewhere around the 26th or 27th of July when you entered
6 into this agreement, and you were negotiating what the
7 interest rate would be and the terms of the loan?
8 THE WITNESS: Whatever.
9 SENATOR STEPHENS: You have testified there was no
10 reason why you couldn't have gone to the Paulin Trust fund
11 to get $330,000 as opposed to the 250, because you had
12 another source of money; therefore, the $80,000 that you
13 took out, that you borrowed out of the inaugural fund, you
14 could have got that from the Paulin fund; is that correct?
15 THE WITNESS: Yes, sir.
16 SENATOR STEPHENS: Governor, that was about ten
17 days later, however, in which from the period you got the
18 loan from the inaugural fund, as I understand it, on July
19 17, and you received the money from the Paulin loan around
20 July 28th, so there was about a period of 11 or ten days;
21 is that correct?
22 THE WITNESS: I don't know. I have not looked at
23 the dates. I am just in concept of what we were doing, I
24 remember.
25 SENATOR STEPHENS: If you received the money from

1 the inaugural fund on July 17, but you didn't enter
2 negotiations with the Paulin Trust fund until July 27th or
3 so, as you have testified, one day previous to the time
4 when you received it, wouldn't it be fair to say that you
5 didn't know you could get a loan at the prime interest
6 rate on July 17?
7 THE WITNESS: I don't think so, Senator. I talked
8 to Bob Paulin, you said negotiations. Didn't take us long
9 to put it together. I talked with Bob and knew he had
10 money available, and, you know, it had been offered to me,
11 so in that concept I knew it was there. That's what I am
12 saying.
13 SENATOR STEPHENS: Governor, you knew it was there
14 then, that the prime interest rate --
15 THE WITNESS: Bob had pointed out to me that he
16 borrowed money, he had a line of credit at prime, and that
17 he would let me have any time I wanted any at the same
18 rate.
19 SENATOR STEPHENS: Governor, on another issue, one
20 that I need some clarification on, and that is this issue
21 of, that is in Exhibit 82 and 83 in regards to the release
22 of loans from your brothers, the liens that they had
23 against the property.
24 THE WITNESS: Yes.
25 SENATOR STEPHENS: Could you describe the

1 circumstances in which they released the loan or released
2 the lien, but then reinstituted the lien several months
3 later? And the way it appears, at least from the
4 document, that it was reinstituted as a lien against the
5 property on West Glendale Avenue, as a result of an error
6 when it was in the original document in March of 1987.
7 THE WITNESS: The release was made relating, when
8 we sold another piece of property, and then was not put
9 back on, but the loans was not paid off, as I said this
10 morning. In other words, I purchased my brothers'
11 portions of the business a few years ago, and I bought
12 them out with some cash and some deferred payment over a
13 period of ten years time, so that is what I still owed
14 them was for, in buying their stock in the company when
15 they got ready to retire, I wasn't ready, so -- and that
16 was what, this was lifted and then put on actually in
17 January of this year. And we didn't, I didn't pay them
18 the balance; in fact, they didn't want the balance. But
19 the lien was lifted, and this was, as I testified this
20 morning, no circumstances to try to fool anybody, ample,
21 but that was just to show that there was some statements
22 made by the prosecution's witness that this indebtedness
23 was against the property. It really wasn't. We just
24 brought it factually into line and that it wasn't really
25 an indebtedness.

1 SENATOR STEPHENS: I guess I am still a little
2 confused about this. You are testifying that the lien
3 wasn't against the property. Don't you really mean that
4 the lien wasn't against the property during July of 1987?
5 THE WITNESS: The lien wasn't against the property
6 from March 24, 1987 until January something 1988.
7 SENATOR STEPHENS: But in fact there was a loan
8 that was outstanding for the same amount that you owed,
9 was that correct?
10 THE WITNESS: I said that. That was when we come
11 to the bottom line on net worth, it is after deducting the
12 money you -- it did not come off the net worth. It was in
13 the obligations.
14 SENATOR STEPHENS: Governor, when you still
15 considered your net worth, you had to calculate in the
16 value of those loans as debts or liabilities against that
17 net worth?
18 THE WITNESS: That's true. They had already been
19 deducted. You know, you take the assets, and, you know,
20 Senator, and the liabilities, and they were part of the
21 liabilities of the company.
22 SENATOR STEPHENS: Governor, I guess one more
23 question in regards to that. I am still not clear why
24 they were lifted in March and then reestablished in terms
25 of recording of the lien in January for the same amounts.

1 There seems the only purpose was for some reason to
2 release them temporarily and then reinstitute them, what,
3 nine months later.
4 THE WITNESS: Well, not really. They were, they
5 were released in the release of another piece of property
6 that I sold, and then not replaced until later. That's
7 what happened.
8 SENATOR STEPHENS: Governor, I am sorry, but I
9 don't think you answered my question. I was asking why
10 that would occur. We have an explanation on the form
11 which says that they were lifted or released in error in
12 March, that they really should have excised, but in error
13 in the recording process they were inadvertently included
14 in the release of lien against the Mesa property.
15 And according to the document in the County
16 Recorder's office that is presented in evidence says that
17 was done in error, and you have testified that really it
18 wasn't in error, or at least I think you have alluded it
19 wasn't in error. I wanted to know why, then, was it
20 released during that period of nine months and then
21 reinstituted with no change in the amount of indebtedness,
22 no appearance, attempts to pay off the amounts that the
23 same amount of money listed as a lien in March was lifted
24 and then reinstituted in January of 1988?
25 THE WITNESS: Senator, I didn't testify to any

1 reason. I gave no reason. I didn't do it. I was just
2 testifying as to facts, that's all.
3 SENATOR STEPHENS: Well, Governor, I am asking the
4 question why that was done.
5 THE WITNESS: I don't know. I didn't ask it to be
6 done, so you will have to find somebody else, Senator. I
7 didn't do it.
8 SENATOR STEPHENS: Governor, you are testifying you
9 don't know the reason that your brothers simultaneously,
10 and two documents that are simultaneous in dating and
11 numerical or chronological order, one right after the
12 other that went through a law firm with another relative
13 of yours, evidently Morris, Walker & Mecham law firm, you
14 are testifying that you had no knowledge about why this
15 was done?
16 THE WITNESS: I didn't have anything to do with
17 doing it. Kent handled the paperwork. And the lien was,
18 on all property, was taken off in February the 24th, and
19 then it was put back on these other two, was put back on
20 the property that it should remain on in January of this
21 year. There was no plan or anything else to do that. It
22 was just done. And who made the error, I don't know, but
23 I didn't.
24 I didn't ask it to be done, was just -- I am
25 just testifying to you to the facts, and all we were

1 saying, there was a point to be made. I don't really
2 think it is important, but there was a point being tried
3 to be made by the prosecution that we really didn't have
4 the equity for this $80,000 in the value of the property,
5 and went through, and we pointed out that this witness was
6 totally incorrect, and we just testified as to facts not
7 with any desire to say that I didn't still owe the money
8 to my brothers because the amounts -- the liens that's
9 there is the beginning balances, and we pay them, I pay
10 them a monthly money every month, so the amounts change by
11 the month. But no desire, you know, nothing sinister,
12 nothing secret, just figure as to facts. And I didn't do
13 it, so I can't tell you any reasons because I was given no
14 reasons.
15 SENATOR STEPHENS: Well, Governor, in regards to
16 whether it is important or not, I think there has been, at
17 least on the case of the Board of Managers, the allegation
18 or assertion that in fact there were a number of
19 obligations that faced Mecham Pontiac in July of 1987, and
20 that that might have led to, for instance, the decision
21 not to record the deed of trust in connection with the
22 $80,000 loan which may have precipitated the enactment on
23 the due on encumbrance clause in the Prudential loan that
24 you had outstanding, and also this curious fact of having
25 another substantial obligation that would not appear to be

1 on the records with the County Recorder if one went down
2 to look at July of 1987, but in fact did exist and
3 evidently was reinstituted once the error was discovered.
4 So I think through the set of circumstances
5 that it does become important as to whether in fact the
6 loan, the $80,000 loan was very important to Mecham
7 Pontiac at that time and, whether you in fact could get
8 any credit or another source for that $80,000 in July, or
9 whether in fact your property and your assets had an
10 outstanding or had more liabilities against it than has
11 been testified to.
12 THE WITNESS: Well, Senator, if you want to go back
13 and reconstruct it, I'll be glad to do it with you if you
14 would like to.
15 There was something under $2,000,000 due to
16 Prudential. There was something under a million to Wayne
17 and Willard. We had property worth roughly
18 three-and-a-half million dollars, and the $80,000, so if
19 you want to take that and let's say that it was two
20 million or a million 980, and let's say that the other was
21 a million 150 or 75,000, due them, you would go up to
22 three million -- three million one and three million two
23 something, I could write it down, and to add another
24 80,000, too, was still less than the real value of the
25 property.

1 I think that, if that is what we are looking
2 at, I am not sure where that comes into this whole being,
3 but there was nothing not recorded for anything sinister
4 or anything, nothing of the kind, so that is why I really
5 wonder where this is coming or going.
6 SENATOR STEPHENS: You are just testifying this was
7 just a circumstance, coincident set of circumstances that
8 the loans from your brother were released, your brothers
9 were released at the same time, and also that the loan was
10 never, the deed of trust was not recorded that had been
11 entered into by Mr. -- I guess your son, Dennis Mecham,
12 and the inaugural fund?
13 THE WITNESS: The two events have no relationship
14 to each other whatsoever.
15 SENATOR STEPHENS: Thank you.
16 THE PRESIDING OFFICER: Senator Higuera was next.
17 SENATOR HIGUERA: Good afternoon, Governor.
18 THE WITNESS: Good afternoon.
19 SENATOR HIGUERA: According to your son Dennis'
20 testimony, it was you who initiated the call and the loan
21 between the Governor's alleged protocol fund and Mecham
22 Pontiac. Is this correct? Yes or no.
23 THE WITNESS: Ask that again. Where was I or did
24 I?
25 SENATOR HIGUERA: According to Dennis, your son,

his testimony was that you were the one that initiated the call to initiate the loan from the protocol fund to Mecham Pontiac. Is this a correct statement?

THE WITNESS: I think so, yes.

SENATOR HIGUERA: Did you make this loan offer to anyone else?

THE WITNESS: Did I what?

SENATOR HIGUERA: Did you make this loan offer to anyone else?

THE WITNESS: Not specifically, no.

SENATOR HIGUERA: Governor, were you given advice regarding loaning $80,000 to a private business which you controlled? By your CPA, maybe?

THE WITNESS: No, I don't believe I talked to my CPA about it.

SENATOR HIGUERA: Governor, do you believe now, today, that any citizen out there in Arizona has the right to borrow from the alleged protocol fund now that we have established a precedent by the loan to Mecham Pontiac?

THE WITNESS: I think out of the protocol, as you call it, I choose to call it the inaugural funds, presently they are all being loaned to the Valley National Bank. And I think any place that's safe would still be all right to loan them to, Senator.

SENATOR HIGUERA: You would agree that Valley

1 National Bank is in the lending business and not the
2 Governor; the Governor is not in the lending business, is
3 he?
4 THE WITNESS: I don't think that it makes any
5 difference. If you got a place to invest money, Senator,
6 if you've got a good enough collateral and want to come up
7 and there, I would say that you had just as much right to
8 negotiate as anybody else.
9 SENATOR HIGUERA: Governor, please help me go make
10 up my mind. I think we are now at a critical stage at the
11 proceedings.
12 What is the scheduled date for your criminal
13 trial regarding the Wolfson loan? If you want to answer,
14 it is immaterial to this --
15 THE WITNESS: I'll answer that, be glad to.
16 SENATOR HIGUERA: It is up to you, sir.
17 THE WITNESS: To my dismay it was put from the 22nd
18 of March to the 22nd of April. Right now, the week ago
19 tomorrow, there was motions argued that would, could
20 perhaps, end up in bringing it to a halt before it goes
21 any farther. We are waiting for a determination from the
22 judge on that today or tomorrow.
23 SENATOR HIGUERA: So I guess we could be safe by
24 saying that we are approximately three weeks from that
25 date?

1 THE WITNESS: If it goes to trial, Senator. There
2 is always good potential it will not, but if it goes to
3 trial, that would be the date that it will go.
4 SENATOR HIGUERA: Thank you.
5 By all conservative estimates we should be
6 done with this $80,000 alleged protocol loan by this week.
7 The public is demanding, I know that on both sides of the
8 aisle, one is pro and one con for impeachment, are
9 demanding that the legislature preoccupy itself with its
10 primary responsibility, which is to address the critical
11 issues facing our state, which are air pollution,
12 overcrowded freeways, deficiencies in education,
13 contaminated water supplies, and our mandate to submit a
14 balanced budget.
15 Governor, please tell me, after concluding
16 all testimony on this charge, do you wish for the Senate
17 to take a vote on Articles I and III prior to you
18 appearing before the court on the criminal charge?
19 THE WITNESS: Well, if I had my choice, Senator, I
20 would say recess until we finish the item. We have taken
21 up I and III, and then take up, well, actually Article II,
22 I guess after that time, get your work done, and then take
23 the other one up as soon as the criminal trial is over as
24 you see fit. That is what I would choose if you gave me a
25 choice.

1 SENATOR HIGUERA: All right. I guess you wouldn't
2 blame any of us if we voted to take, I guess, our chances,
3 that is what it would be, of exonerating you on the
4 charges or convicting you of the charges; you wouldn't
5 blame us for doing it, right?
6 THE WITNESS: I wouldn't, unless you said at this
7 time we will forget the one, because the court is going to
8 take care of that one. If you want to say we will call
9 this game at the end of six innings and do it then, with
10 the fact that this is the game, why I don't suppose we
11 could argue with you on that. But I don't, as we asked in
12 the very beginning which we wanted, we wanted to get the
13 criminal trial out of the way before taking these events
14 up in this body, and I would still be in that position
15 unless you just said, well, we walk away from Count II, we
16 will just say that that's all done and we deal on these
17 two.
18 SENATOR HIGUERA: I am a golfer, not a baseball
19 player. I know lot of times when darkness sets in, games
20 have been called prior to the ninth inning.
21 Thank you very much.
22 THE PRESIDING OFFICER: Senator Osborn is next.
23 SENATOR OSBORN: Thank you, Mr. Presiding Officer.
24 Good afternoon, Governor.
25 THE WITNESS: Good afternoon.

1 SENATOR OSBORN: A couple of items I would like you
2 to help me clear up, if you can. One is with respect to
3 the testimony of Donna Carlson last Wednesday before this
4 Court, Wednesday, March 23.
5 Are you aware, sir, that under direct
6 examination by Mr. French of what she testified with
7 respect to the so-called protocol fund? Could I read it
8 to you?
9 THE WITNESS: I think reasonably I am, but go
10 ahead.
11 SENATOR OSBORN: The question was, "Question: Did
12 you have occasion to become aware of what that money could
13 be used for?" And she said, "Well," and then the question
14 was, "What is your understanding?" And the answer was:
15 "My understanding, Mr. French, was that the money could be
16 used to promote the best interests of the state. It could
17 be used in protocol matters for the Governor's office."
18 And there were a lot of discussions as to how that might
19 be used, and then here is the sentence that I am
20 particularly interested in, Governor.
21 "There was a protocol committee at one time
22 that was discussing uses of the money." End of sentence,
23 and end of the direct quotation.
24 I am troubled by the fact that she described
25 the committee not as an Inaugural Committee but as a

1 protocol committee, and described the uses of the money,
2 it could be used in protocol matters.
3 Were you aware of that particular passage in
4 her testimony?
5 THE WITNESS: I think we need to clear it up,
6 Senator, because the protocol committee had nothing to do
7 with the inaugural funds.
8 We were working with a committee to put
9 together, relative to people coming in from out of state,
10 we were working very diligently for an expanded view from
11 Arizona to talk with people from coming, you know, in the
12 Pacific basin and other states, and the protocol committee
13 was put together and then changed as the Ambassadors
14 Committee. In fact, that change was made on this meeting
15 at the Mansion Club that has come up, as far as paying for
16 it out of this fund, and the objective of that committee
17 was to further, you know, to get a group of people that
18 would work as hosts and whatnot when people come, and to
19 work with people coming out from out of state whether they
20 be foreigners or that. That was the protocol committee
21 had nothing to do with the inaugural funds.
22 SENATOR OSBORN: That really, I guess, Governor, is
23 also the thrust of the question.
24 Her testimony indicates that with respect to
25 the funds that are here under discussion, that it could be

1 used in protocol matters, and that there was a protocol
2 committee. And at that time who, sir, did you believe was
3 on the protocol committee?
4 THE WITNESS: Let's see. Seems like Dot Robberson
5 was the chairman of that, and then the people in the
6 Department of Commerce, and then the objective was to
7 bring a whole lot of people in who would volunteer their
8 time and efforts to be hosts of people from out of state.
9 And so there was quite a few of those people, so that is
10 who was on it.
11 SENATOR OSBORN: May I interrupt then. But you, at
12 this point at least, acknowledge no connection between the
13 inaugural funds and what you have identified as the
14 protocol committee?
15 THE WITNESS: None whatsoever. They are worlds
16 apart.
17 SENATOR OSBORN: Moving on to another topic,
18 Governor, if I could direct your attention to Exhibit 74.
19 That is a reproduction of what appear to be tickets or
20 pledge cards for your inaugural ball.
21 THE WITNESS: Uh-huh.
22 SENATOR OSBORN: Do you have that in front of you,
23 sir?
24 THE WITNESS: I do.
25 SENATOR OSBORN: Bottom of each of those cards we

1 see that the proceeds are to be used to defray ball
2 expenses and retire campaign obligations and retire
3 campaign obligations.
4 THE WITNESS: Yes, I see that.
5 SENATOR OSBORN: At that time, which had to be
6 prior to January 5th by at least a week or two, in order
7 to get the tickets printed and to sell them and get
8 pledges, would you generally agree with that? That these
9 tickets had to have been printed sometime before January
10 5th?
11 THE WITNESS: Oh, yes, certainly.
12 SENATOR OSBORN: Maybe two, three weeks,
13 THE WITNESS: Or a month then.
14 SENATOR OSBORN: And at that time, then, you
15 thought that raising money to retire campaign obligations
16 was perfectly legal in this fashion?
17 THE WITNESS: Well, first of all, Senator, I was
18 not in on this, this was being done, so I wasn't part of
19 the decision. But the people who did, did think so, and
20 they reported to me and I thought it was a great idea.
21 SENATOR OSBORN: And so, sir, you thought there was
22 nothing improper about that?
23 THE WITNESS: Nothing, that's right. We didn't see
24 anything improper about it.
25 SENATOR OSBORN: To use the money raised to retire

1 campaign expenses?
2 THE WITNESS: That's correct.
3 SENATOR OSBORN: Were you aware, sir, that
4 Proposition 200 had been, had taken effect on, I believe,
5 December 16th, say a month earlier by Governor's
6 proclamation? That it had taken effect?
7 THE WITNESS: No, not by the Governor's
8 proclamation. It was the Secretary of State that verified
9 it. But--
10 SENATOR OSBORN: You don't quarrel with the date?
11 THE WITNESS: I don't know what date it was. I am
12 sure we would agree on, because it's a matter of record.
13 SENATOR OSBORN: Yes. Then at some later date, and
14 I have gathered that this date was somewhere near the time
15 that the box full of records and so on from the Inaugural
16 Committee were carried up to the ninth floor and delivered
17 either to you or to somebody else, at sometime your
18 concept of what that money could be used for changed, and
19 your new concept was it could be used for anything except
20 politics and later you understood campaign debts, and
21 personal living expenses.
22 THE WITNESS: Uh-huh.
23 SENATOR OSBORN: Your view point of that money then
24 changed.
25 THE WITNESS: I was given a new view of it,

1 Senator. I was told -- now, keep in mind as you are going
2 over this, Proposition 200 passed simultaneously with the
3 election. It was the feeling of many people that it did
4 not affect our campaign, but in order, I guess you would
5 say, to exercise an abundance of caution, nothing was
6 going to be done that would be counter to that. And I
7 don't think, if you will go back and check with the
8 committee members, that there was anything really wrong
9 with desiring to pay campaign debts. In fact, first of
10 all, perhaps you are better than I, that it would have
11 been maybe late February or March, I think, the
12 legislature, the legislative bodies, the Senate and the
13 House were likewise anxious to hear from the Attorney
14 General as to whether, first of all, that he thought it
15 really did, really was constitutional. There was, if you
16 remember back, there was a lot of confusion about that.
17 I know that as I mentioned this morning, that
18 the author of Proposition 200 himself said before the
19 Attorney General's opinion, that in his opinion in other
20 words his attitude was it didn't affect that last election
21 and wouldn't affect mine, so I don't think there was any
22 question there.
23 The other thing was, is that committee itself
24 sought out legal advice from the Attorney General's Office
25 to run this program so that any money left over would be

1 available to pay off campaign debts.

2 Now, I never was given a total explanation of

3 whatever changed in there. I don't know because the

4 concept going in was that whatever it was would be legal

5 to pay campaign debts off under Proposition 200, was my

6 understanding.

7 SENATOR OSBORN: All right, Governor. I am going

8 to try to cut through some of this.

9 At one time you had a conviction that you

10 were comfortable with, and that was that raising the money

11 to retire campaign obligations was proper.

12 THE WITNESS: Yes.

13 SENATOR OSBORN: Then later your conviction changed

14 because, as you say, of what you were told.

15 THE WITNESS: That is correct.

16 SENATOR OSBORN: You were told something by

17 Mr. Long?

18 THE WITNESS: I was told along in the spring that

19 they were running into some problems.

20 SENATOR OSBORN: By whom, sir?

21 THE WITNESS: I don't remember, probably Ralph

22 Watkins, because I kept asking why don't we get that money

23 and pay off these loans, you know, some of the loans,

24 because they are drawing interest, and so that was my

25 interest, and that along sometime late in the spring was

1 told that they were running into some difficulties and
2 maybe it couldn't be used for that.
3 SENATOR OSBORN: But the point I am trying to make,
4 sir, is that you accepted that cautionary note about the
5 expenditure of these funds?
6 THE WITNESS: Oh, yes, yes, uh-huh.
7 SENATOR OSBORN: But it is your testimony that you
8 never got a communication from Mr. Long further
9 restricting the use of the funds?
10 THE WITNESS: Senator, the only communication that
11 I recall getting from Mr. Long was when he brought, came
12 into the office -- I think it was he and Joyce Downey, and
13 I believe Jim Colter was there -- and said, you know, here
14 it all is, and was told there was a box of records and it
15 was brought, and then, as I have related, the instructions
16 he gave me on what it could be used for.
17 SENATOR OSBORN: Not to be used for politics or
18 personal living expenses?
19 THE WITNESS: That's correct.
20 SENATOR OSBORN: Thank you, Governor.
21 THE PRESIDING OFFICER: Senator Walker is next.
22 SENATOR WALKER: Good afternoon, Governor.
23 Governor, I want to briefly follow up on the
24 line of questioning that Senator Stephens was pursuing.
25 Governor, last Friday when you were here you

1 stated that there were no liens or encumbrances on your
2 property, and this morning we find that there appears that
3 there was a lien on your property of Mecham Pontiac but,
4 it was erroneously removed when another property
5 transaction had taken place.
6 Would you look at Exhibit No. 82? I think it
7 would be the second page, where it says re-recorded.
8 THE WITNESS: Yes. It says "Re-recorded to reflect
9 lien on Exhibit C, D, & E erroneously included in deed of
10 release recorded at document 87-123940 on March 2, 1987."
11 SENATOR WALKER: Now, Governor, when you testified
12 Friday that there were no encumbrances on the property,
13 did you mean that there were no recorded encumbrances on
14 the property, or that there were no encumbrances on the
15 property?
16 THE WITNESS: Senator, Friday, as well as today, I
17 have said that the only lien on the property in July of
18 1987 was the two-and-a-half million dollar mortgage to
19 Prudential.
20 SENATOR WALKER: Governor, does not re-recorded to
21 reflect lien on C, D, and E erroneously included in deed
22 of release recorded in document 87-123940, in March of
23 1987, indicate that there were indeed liens on the
24 property? Even though they may not have been recorded,
25 they were still liens on the property?

1 THE WITNESS: You could argue that. I have agreed
2 that I owed the money, but it was not a lien on the
3 property, it had to be redone to put it back on this
4 particular piece of property.
5 SENATOR WALKER: Governor, doesn't it say it was
6 taken off erroneously?
7 THE WITNESS: I haven't argued that, Senator, at
8 all.
9 SENATOR WALKER: Does that not mean it was
10 technically there?
11 THE WITNESS: No, no, we are talking about facts,
12 Senator, and that is what I testified to, and that was the
13 fact that the prosecution witness testified erroneously to
14 some facts to try to make a point. I just used facts to
15 point out he was wrong simply as that.
16 SENATOR WALKER: Would the $80,000 loan which was
17 not recorded, would that not have been an encumbrance on
18 the property, or would that just have been a loan?
19 THE WITNESS: It was there to be recorded if it
20 needed to be recorded and was available to be so. It was
21 just not shown of record.
22 SENATOR WALKER: Governor, does that mean that it
23 was not an encumbrance on the property or was it a loan?
24 THE WITNESS: Well, to me, it was the same, I never
25 looked at it -- I never looked at it as it -- having to be

1 used any way. And the real security for the loan is the
2 assets of the entire dealership and the cash flow, and, of
3 course, as that turns out, that was a good reliance and
4 that's what you would use. But as for the necessity of
5 seeing that it was recorded, could have been and perhaps
6 should have been.
7 SENATOR WALKER: Governor, was the deed of trust
8 for the $80,000 loan an encumbrance on Mecham Pontiac, or
9 was it a lien?
10 THE WITNESS: It was a -- it was -- I don't know,
11 whichever one you say it was not recorded, but it was set
12 up to be. So I believe what I am pointing out, Senator,
13 is that as far as I am concerned they were all debts that
14 we owed, and all assets were pledged behind them. But it
15 wasn't recorded, as you said.
16 SENATOR WALKER: Did that make it an encumbrance on
17 Mecham Pontiac?
18 THE WITNESS: Senator, the $80,000 was an
19 encumbrance on every dollar, every piece, every asset that
20 Mecham Pontiac had. A note is far more reaching than is a
21 deed of trust on a piece of property. A note is an
22 encumbrance upon all assets that the company owns, so yes,
23 it was an encumbrance upon the property.
24 SENATOR WALKER: When you go back to your statement
25 Friday, if you owed your brothers a note on the property,

1 there were encumbrances on the property in July of 1987,
2 held by Willard and Wayne Mecham?
3 THE WITNESS: Senator, I have always said that the
4 company and the part of the liabilities of the company
5 included what they were owed, and that the net worth was
6 calculated after deducting that. We never said, well, the
7 net worth is another $1.2 million more than it is. That
8 was part of the lien -- part of the encumbrances or part
9 of the liabilities is the proper way to say it. I never
10 said anything any different than that.
11 All I have ever testified to is the fact that
12 such a great effort was made by the prosecution to point
13 out, and using as a factual basis, that these liens were
14 in reality the encumbrance of even the first mortgage, the
15 money owed to them. They have a note that goes along with
16 the deed of trust, and that note written by anybody
17 pledges everything you have. So we have not tried to beg
18 the question at all on what was owed. It is all there.
19 SENATOR WALKER: I would like to read to you your
20 answer to the question from Mr. Leonard, Friday. The
21 question is: "Is it correct, Governor, that in July of
22 1987, at the time the Mecham Inaugural Committee loan was
23 made to Mecham Pontiac, that Wayne Mecham and his wife Mae
24 had no encumbrance against the Glendale property of Mecham
25 Pontiac?" Governor, your answer is, "That is correct."

1 THE WITNESS: That was correct.

2 SENATOR WALKER: But they had a lien --

3 THE WITNESS: Uh-huh.

4 SENATOR WALKER: -- to you for $700,000, even

5 though there was not a deed recorded. But that was not an

6 encumbrance against the property?

7 THE WITNESS: Oh, Senator, use it any way you want.

8 Semantics. I believe I have said that we owed the money,

9 and, you know, you can make it any way you want.

10 SENATOR WALKER: Was your statement Friday there

11 were no encumbrances on the property held by your brothers

12 incorrect?

13 THE WITNESS: No, it was a correct statement. We

14 were talking about liens, Senator. We were talking about

15 liens.

16 SENATOR WALKER: Governor, I am not going to argue

17 with you. I simply want to point out that Mr. Leonard's

18 question was encumbrance, not liens. And you said Friday

19 there were no encumbrances on your property.

20 THE WITNESS: Well, okay. Whatever.

21 THE PRESIDING OFFICER: Senator Hays is next.

22 SENATOR HAYS: Mr. Presiding Officer.

23 Good afternoon, Governor. There is one point

24 of confusion in my mind from the testimony this morning.

25 On dealing with Mr. Long, did you say that Mr. Long

1 arranged the agreement with the Maricopa County Attorney's
2 office on the use of the protocol funds without any
3 authorization from you?
4 THE WITNESS: I had nothing to do with it, Senator.
5 I really didn't.
6 SENATOR HAYS: Well, Governor, did you point this
7 unauthorized action out to Mr. Long when he came to your
8 office with the box and the papers, et cetera to turn the
9 fund over to you?
10 THE WITNESS: I don't know why you are
11 characterizing it as an unauthorized activity. This was
12 handled by the committee without me being a party to what
13 is going on.
14 Now, I don't believe that this, works of this
15 association necessarily had to have me approve the things
16 they didn't or didn't have to. I certainly don't want to
17 characterize what he did as unauthorized. I am assuming
18 he did what he thought best.
19 And I don't really think that Mr. Long went
20 and negotiated anything. I think this was some lawyers
21 put some things together and asked him to sign a letter as
22 I understand it, but at the time I couldn't challenge him
23 because I didn't even know that such a letter existed.
24 SENATOR HAYS: Thank you.
25 THE PRESIDING OFFICER: Other questions by

1 Senators?

2 Senator Hardt.

3 SENATOR HARDT: Governor Mecham, something kind of

4 bothers me a little bit. In all this testimony that's

5 been going on, I remember Jim real well, Jim Colter,

6 pardon me, sitting there, and was asked the question of

7 him: Did you suggest to the Governor or ask him if he

8 wanted to record the lien, the deed of trust. And his

9 answer, was: Yes, I mentioned it to him, I forget the

10 exact words, or asked him. And your answer to him was --

11 This is his testimony: "The Governor said 'I'd rather you

12 didn't.'"

13 And I wondered, since then, why you would say

14 that, could you give me a logical reason for saying you

15 would rather he didn't?

16 THE WITNESS: Senator, I don't recall saying it,

17 but -- and so I can reach and say what would be, the only

18 thing I could think of would be is if at the time this

19 looked like it would be something of reasonably short

20 duration, and I, you know, I don't remember all the

21 details.

22 I think it was Jim said, well, should we put

23 together a deed of trust. I said, you know, make it an

24 arm's length transaction, and a deed of trust, and it's

25 always just extra work and expense, and, you know, today I

1 wish it had been recorded, because there was no reason for
2 it not to be, none whatsoever. So that is just to the
3 best of my recollection, Senator.
4 SENATOR HARDT: Thank you.
5 THE PRESIDING OFFICER: Other questions by
6 Senators? If not, may this witness be excused? Is he to
7 be called back any further on this Article at this point?
8 If not, you are excused, sir, thank you. You
9 shouldn't leave the country or the state.
10 THE PRESIDING OFFICER: Before we begin with
11 Mr. L'Ecuyer's testimony, we do have a Board of Managers'
12 motion in limine to exclude certain portions of testimony
13 of Robert A. L'Ecuyer, document No. 91. Is this the
14 appropriate time to urge that motion?
15 MR. ECKSTEIN: Mr. Presiding Officer, I think so.
16 And actually I think the motion is broader, and it is
17 broader as a result of what we learned this morning.
18 Mr. L'Ecuyer was listed as a witness in the
19 papers filed by the respondent some time ago, and it was
20 listed as follows: Mr. L'Ecuyer may testify concerning
21 his investigations of the Inaugural Committee, its
22 purposes, organizations, solicitation for funds,
23 complaints, and their disposition in the application of
24 campaign finance laws including Proposition 200. He may
25 also describe discussions with attorneys and parties

1 concerning various proposed uses of the Inaugural
2 Committee funds.
3 Last week, Thursday or Friday, I think
4 Friday, I asked Mr. Leonard, actually I think the
5 conversation took place a little earlier, when I would be
6 able to talk with Mr. L'Ecuyer regarding his testimony,
7 and we agreed that I could talk with him at 8:00 this
8 morning.
9 We did get together somewhat after 8:00, I
10 think around 8:30 this morning, and for the first time we
11 learned that his testimony would go considerably beyond
12 what he had been listed as a witness on. Indeed, we got a
13 stack of materials an inch thick which Mr. L'Ecuyer has in
14 his hand, I believe, and while we have briefly reviewed
15 these materials, this was the first that we realized that
16 these materials would be used, number one, in connection
17 with Mr. L'Ecuyer's testimony, and number two, that his
18 testimony would go beyond what he had been listed as a
19 witness.
20 Last night we did prepare a motion in limine
21 based on his testimony, or at least what we thought what
22 his testimony would be, and we based that on two grounds:
23 Number one, that any opinion he might give as to the
24 intent of the parties entering into the agreement would be
25 inappropriate by virtue of being a lawyer. He is not, he

1 does not have the qualifications to give expert opinion
2 evidence on intent of the parties.
3 And secondly, any evidence and any testimony
4 given with respect to Proposition 200 would be irrelevant
5 to these proceedings except as to background.
6 That was the basis for the motion this
7 morning.
8 We add to those -- and I might add that
9 Mr. Leonard has said that Mr. L'Ecuyer will not be called
10 to testify as to the intent of the parties entering into
11 the agreement; I don't think that is going to be a
12 problem. We still have a problem, number one, with
13 respect to any testimony in detail about Proposition 200,
14 the constitutionality of Proposition 200, all of that
15 which we believe is irrelevant once the agreement was
16 made, and any testimony that goes beyond the items that he
17 was listed as testifying on in his statement.
18 That is the basis of our motion.
19 THE PRESIDING OFFICER: Counsel, we did allow
20 Mr. LaSota to testify concerning the effect and what
21 41-1105 stood for, and what document number -- Exhibit
22 No. 47, the letter to Tom Collins by Mr. Long. We allowed
23 Mr. LaSota to testify as to what that document stood for,
24 what he understood its terms to require, and we allowed
25 him to talk about the requirements of the statute.

1 Now, you would have no objection to
2 Mr. L'Ecuyer testifying to those things, would you?
3 MR. ECKSTEIN: We spelled out precisely in
4 Mr. LaSota's testimony that he would testify to those
5 things, expert testimony as to the appropriate uses of
6 funds under A.R.S. 41-1105, and expert testimony as to
7 what constitutes public funds under A.R.S. 41-1105 and the
8 appropriate uses thereof, and that certainly put the
9 respondent on notice as to what the testimony was going to
10 be.
11 We have no such information provided to us,
12 and again, we believed, I think in good faith until this
13 morning, that the testimony would be as outlined in
14 Mr. L'Ecuyer's statement of testimony.
15 THE PRESIDING OFFICER: Mr. Leonard, do you wish to
16 respond?
17 MR. LEONARD: Briefly, if the Presiding Officer
18 please. It is obvious from our filing with respect to
19 Mr. L'Ecuyer that he is a summary witness. The language
20 contained in paragraph 4 of our filing is that language
21 that is ordinarily used to describe a summary witness.
22 That language includes the Inaugural
23 Committee, its purposes, organizations, solicitation of
24 funds, complaints and their disposition, the applicability
25 of campaign finance laws including Proposition 200.

1 Now, the Presiding Officer has not yet had an
2 opportunity to look at our filings, but let me try to just
3 briefly summarize so that you can have in focus our
4 response to the Board of Managers' motion in limine.
5 Mr. L'Ecuyer will not testify as to the
6 intent of the parties. Most assuredly that would be
7 improper for him to do so. What we he will testify to, in
8 his opinion, as to the legal effect of the acts that were
9 taken, including the Exhibit 47, its legal effect, the
10 gift statute provisions of the law, he'll start his
11 testimony by when he gets into it, an analysis of public
12 versus private funds.
13 I think, in other words, the summary of his
14 testimony will be completely relevant without his
15 attempting to tell the Presiding Officer or this Court
16 what the intent of the parties were.
17 I think he'll analyze the documents in order
18 to draw certain legal conclusions.
19 As far as Proposition 200 is concerned, I
20 think that issue is clearly before us from a foundational
21 point of view. I don't think this body is going to decide
22 whether Proposition 200 is constitutional or not
23 constitutional. The Board of Managers has opened the door
24 on the question by asking other lawyers, I think Mr. Lee
25 was asked, I am not sure if Mr. LaSota was asked or not,

1 but their opinion, I believe Mr. French specifically asked
2 Mr. Lee whether or not he believed Proposition 200 was
3 constitutional.
4 Now, whether it is or not is going to be
5 decided by this body, but this witness has an opinion
6 which goes only to the foundation, and foundation of his
7 discussions with the Governor and others relating to the
8 question of the concern that as to what the funds could be
9 used for.
10 We are not proposing here to try to convince
11 anybody that Proposition 200 is or is not constitutional,
12 but the fact that there is substantial doubt raises a
13 foundational issue, because it colored the use of the
14 funds, the proposed use of the funds.
15 THE PRESIDING OFFICER: You are not suggesting that
16 Exhibit No. 47 is invalid as a result of the expert's
17 opinion concerning the effect of Proposition 200?
18 MR. LEONARD: No, Your Honor. His testimony is
19 only going to go to the status of the funds, not the
20 intent of the parties, not as to whether or not Exhibit 47
21 might have been enforced in some other action.
22 Now, there will be an opinion expressed by
23 him with respect to whether or not Exhibit 47 was the
24 result, the authority which the County Attorney has, but I
25 would ask, Your Honor, to withhold his ruling on that

1 until Mr. L'Ecuyer gets to that point in his testimony. I
2 think his testimony will be pointed and direct enough so
3 that it will be at least relevant as it deals with the
4 issue of the status of the funds. That I believe is a
5 terribly relevant issue in this trial.
6 THE PRESIDING OFFICER: All right. At this point I
7 do not see any reason to grant the motion in limine. I'll
8 reserve my right, of course, to rule upon any specific
9 objection that comes within the parameters as they are now
10 framed.
11 As I understand, we are not involved in the
12 intent, which is one of the reasons in the motion in
13 limine; the intent of the parties will not be gone into,
14 and the only question then as to whether or not the actual
15 agreement, what it stands for and what the statute did to
16 it. You may proceed, Mr. Leonard.
17
18 ROBERT A. L'ECUYER,
19 a witness herein, after having been first duly sworn, was
20 examined and testified as follows:
21
22 DIRECT EXAMINATION
23 BY MR. LEONARD:
24 Q. Mr. L'Ecuyer, would you state and spell your
25 full name, please.

1 A. Robert A. L'Ecuyer, L apostrophe E-c-u-y-e-r.
2 Q. Are you a resident of the State of Arizona
3 and Maricopa County?
4 A. I am.
5 Q. Tell the Court your educational background
6 beyond high school.
7 A. Well, I am not sure, given the current
8 basketball status, that I should admit this, but I
9 attended the University of Kansas several times over a
10 number of years between working spells.
11 I came to Arizona in 1960, and in 1963 I
12 enrolled in the University of Arizona, College of Law.
13 After having received a bachelors -- pardon me, I received
14 a bachelor's degree in business and public administration
15 from the University of Arizona as a result in enrolling to
16 complete my degree in 1963, and in 1966 I received a law
17 degree from the University of Arizona.
18 Q. During the periods of time that you were in
19 and out of post high school education, did you serve in
20 the military?
21 A. I served in the United States Army on active
22 reserve time for six months in the mid-1950s, and
23 completed my tour of duty in both the National Guard and
24 the U.S. Army Reserves.
25 Q. Were you honorably discharged from the

1 reserves?
2 A. I was.
3 Q. During your college and the undergraduate
4 days, did you also pursue certain employment?
5 A. I at various periods up through the years
6 worked in management positions, first for B.F. Goodrich
7 Company in Kansas, and I was an office and credit manager
8 for the northeast Kansas wholesale-retail division
9 headquartered in Atchinson, Kansas.
10 When I came to Arizona in 1960 I was employed
11 by the Firestone Rubber and Tire Company as office and
12 credit manager at their wholesale-retail operation at
13 Sixth and Sixth in Tucson.
14 Q. You indicated that you graduated in 1963 with
15 a bachelor of science in business and public
16 administration from the University of Arizona.
17 A. That is correct.
18 Q. What was your ranking in class?
19 A. In the summer graduating class of 1963 I was
20 first.
21 Q. And you were admitted to the Bar of Arizona
22 in what year?
23 A. September, 1966.
24 Q. Now, from 1966 until September of 1967, what
25 was your employment?

1 A. I was a law clerk with the Arizona Court of
2 Appeals.
3 Q. And subsequent to that, in September of '67,
4 what was your employment?
5 A. I joined the law firm of Goddard, Ginn,
6 Henshaw and Gianas.
7 Q. Was Mr. Goddard a political figure in the
8 state?
9 A. Most assuredly. It was Sam Goddard who was a
10 former Governor of Arizona and is currently state chairman
11 of the Democratic Party of Arizona.
12 Q. And that started, your relationship with that
13 firm started in September of 1967?
14 A. That is correct.
15 Q. And did Mr. Goddard run for office in 1968?
16 A. He ran again for Governor in 1968.
17 Q. Did you play in any part in that campaign?
18 A. I was the director of field operations for
19 the Goddard for Governor campaign.
20 Q. What was your party affiliation at the time?
21 A. I was a rabid Democrat at that point.
22 Q. In 1969 what was your professional calling?
23 A. In 1969, well, my career goes in three
24 tracks, almost simultaneously from 1967 to '80.
25 Q. Let's take one at a time. What was your

1 professional calling?
2 A. I was a partner in Goddard, Sofie and
3 L'Ecuyer, which later became Goddard, Sofie, L'Ecuyer and
4 Ahearn.
5 Q. Was that one track?
6 A. That was the practice of law.
7 Q. What was the second track?
8 A. The second track was a political consulting
9 and campaign management.
10 Q. To whom?
11 A. Well, a variety of candidates over the years.
12 As a result of my experience in the Goddard campaign, I
13 made myself available through what was called the state
14 Democratic legislative trust fund to any Democrat that was
15 running for the Arizona state legislature.
16 Q. And that was a period 1966 to '69?
17 A. Well, it began right after the 1968 election,
18 and continued either in that form or a similar form until
19 the mid-1970s.
20 Q. I am sorry, I was getting you to the third
21 track. The third track was what?
22 A. The third track was working as a legislative
23 lawyer.
24 Q. For whom?
25 A. First I was a volunteer for both the

1 Democrats in the State House of Representatives and the
2 Democrats in the State Senate. That was 1966, '67 and
3 '68. At that point the, there were no staff members
4 provided --
5 Q. Excuse me, before we get to that point.
6 A. Yes, sir.
7 Q. You said you were a volunteer. What did you
8 volunteer to do?
9 A. I volunteered to perform legal and research
10 duties for the members of the Democratic caucuses in the
11 House and the Senate. They were in the minority in both
12 the House and the Senate.
13 Q. That lasted until, I believe you said, 1968?
14 A. On a volunteer status through 1968.
15 Q. What happened in 1969?
16 A. In 1969 I was hired by the then speaker John
17 Haw to be the professional staff member for the minority
18 in the Arizona House of Representatives.
19 Q. How long did you serve as minority counsel to
20 the House?
21 A. I served to the House one year, and then
22 moved to the Senate the following year and served in that
23 capacity in the Senate as minority counsel until the
24 Democrats won control of the Senate in the election of
25 1974. And in 1975 I became the counsel to the President

1 of the Senate and to the majority. That continued for one
2 year, and at that point I was hired for the 1976
3 legislative year as a contract consultant and worked on
4 specific projects.
5 Q. And how long did your career as a staff
6 consultant to the legislature continue?
7 A. I had terminated in 1976 because the
8 President of the Senate, Bob Stump, was elected to
9 Congress, and then in 1977 as he began his first term in
10 Congress, he asked me if I would join his Congressional
11 staff.
12 THE PRESIDING OFFICER: Counsel, it is 3:15. Let's
13 take our afternoon recess at this time until 3:30.
14 (Recessed at 3:18 p.m.)
15 (Reconvened at 3:35 p.m.)
16 THE PRESIDING OFFICER: Thank you, ladies and
17 gentlemen. The record will show the presence of -- Do we
18 have a majority of the Board of Managers? I am sure they
19 are on their way. We now have two.
20 MR. LEONARD: Mr. Presiding Officer, is the third
21 member of the Board of Managers, I think is in the area --
22 I don't want to set any precedent, but if in fact
23 Mr. Evans or his colleague can tell us whether they are
24 in, the third member is in the area, why I have no
25 objection to proceeding.

1 THE PRESIDING OFFICER: If you have no objection, I
2 see no reason why we cannot proceed. It seems a little
3 silly to have a rule that makes us wait for the majority
4 of the Board of Managers, when a majority of the Senators
5 could not be here and we could proceed with the majority
6 of the managers.
7 All right. There being no objection --
8 Senator Kunasek.
9 SENATOR KUNASEK: I do believe we should adhere to
10 our rules and just wait until we do have the requirements
11 in place.
12 THE PRESIDING OFFICER: All right, Senator Kunasek,
13 we will do that.
14 (Pause in the proceedings.)
15 THE PRESIDING OFFICER: The third member of the
16 Board of Managers has arrived. The counsel for the Board
17 of Managers is present, counsel for the respondent is
18 present.
19 We will now proceed with Mr. L'Ecuyer on
20 direct examination. I'll remind you, Mr. L'Ecuyer, you
21 are still under oath.
22 MR. LEONARD: Mr. Presiding Officer, I wonder if I
23 might ask counsel for the Board of Managers if they would
24 focus for just a minute on what our proposed exhibits,
25 respondent's Exhibits 89 through 115, those are all either

1 statutes or cases and whether or not they have any
2 objection to those so that we might get them distributed.
3 MR. ECKSTEIN: Mr. Presiding Officer, I do object
4 to the relevancy and materiality of many of them. I don't
5 have them by number, but one, for example, relates to a
6 case State v. Evans, and on the front there is a summary
7 prepared by someone, perhaps Mr. L'Ecuyer, which is not
8 part of the opinion. So there are some problems in that
9 regard.
10 But many go, for example, to issues relating
11 to the constitutionality of Proposition 200, I would
12 believe. I think they are irrelevant and immaterial. I
13 would think that if there were materials, legal materials,
14 to be handed out, they ought to be handed out in the form
15 of a memorandum such as we did, but I can't stipulate to
16 these en masse because they are irrelevant, immaterial,
17 and more than the official report or the official statute.
18 THE PRESIDING OFFICER: Perhaps counsel could be
19 given an opportunity at some later point this evening to
20 go over them on an individual basis and let me know
21 specifically which ones you do object to.
22 I don't see any relevance to the exhibits
23 that would be involved in this group that would deal with
24 the constitutionality of Proposition 200. How would that
25 be material?

1 MR. LEONARD: If the Presiding Officer please,
2 Mr. L'Ecuyer is going to express his opinion with respect
3 to Proposition 200 as a matter of foundation for his
4 testimony as to the options which were available to the
5 Mecham Inaugural Committee and as relevant to the transfer
6 of the funds from the committee to the Governor.
7 THE PRESIDING OFFICER: Not necessarily taking a
8 position whether that invalidates the agreement, but just
9 setting the stage for what in fact the committee did as a
10 result of his direction or advice, was he involved in
11 advising the committee?
12 MR. LEONARD: He was involved in advising the
13 Governor and he was involved in research on Proposition
14 200. And, Mr. Presiding Officer, I think his testimony
15 will be consistent with the question that was raised in
16 the Attorney General's opinion itself with respect to the
17 constitutionality, and he was involved in the process
18 prior to that opinion and subsequent to the opinion with
19 respect to the status of the funds and the way in which
20 they were used.
21 THE PRESIDING OFFICER: Mr. Eckstein.
22 MR. LEONARD: Let he me just add this: Counsel is
23 correct, there is apparently a summary page on Exhibit
24 110, and I would ask the clerk to remove that summary
25 page. That was attached somehow erroneously. It must

1 have been in the file. So that Exhibit 110 is simply a
2 copy of the decision in State vs. Evans, and that's all
3 that should be in there.
4 MR. ECKSTEIN: Again, I urge that any detailed
5 explication of the constitutionality of Proposition 200 is
6 beyond the scope of this proceeding and what has been
7 presented.
8 There has been testimony about the fact that
9 the Attorney General issued an opinion with respect to
10 Proposition 200, and that that prompted the counsel for
11 the Inaugural Committee and the chairman of the Inaugural
12 Committee to enter into an agreement. One, the agreement
13 had been entered into for the reasons they gave that they
14 had a reasonable belief that there were some problems,
15 whether in fact there is a constitutional problem with
16 Proposition 200 and the full force and effect of
17 Proposition 200 is not relevant to this proceeding, and
18 I'll continue to object to any evidence beyond mere
19 foundation evidence with respect to that.
20 MR. LEONARD: If I might just address that for just
21 one more moment. The foundation with respect to this
22 witness' opinions and the advice that he gave is at least
23 in part based on the research that he did on the issue of
24 the constitutionality of Proposition 200.
25 The Presiding Officer may recall -- and I

1 don't have the opinion in front of me -- the opinion of
2 the Attorney General, but it is in evidence, that when the
3 Attorney General got to the question of the applicability
4 of the statute to the 1986 election, the opinion itself
5 suggests that there is a question, and that issue and the
6 question of the applicability to the '86 election and the
7 debts of the Mecham for Governor committee was a part of
8 this witness' dealings with the individuals involved and
9 is part of his opinion.
10 We are not going to spend a great deal of
11 time on the issue or try to answer, as I said earlier,
12 answer the question of whether it is in fact
13 unconstitutional.
14 THE PRESIDING OFFICER: The reason I am concerned
15 is because regardless of who is right or wrong concerning
16 the constitutionality of Proposition 200, at the time
17 whenever Exhibit 47 was entered into, that issue no longer
18 is material, because even if one side or the other was
19 correct or wrong, they had an arguable position at that
20 time. They formed an agreement. The agreement is extant.
21 Whether it is or isn't truly constitutional at this point
22 is immaterial to the proceedings, unless it is just to set
23 the stage, as I say, as to how the parties dealt with this
24 problem.
25 If we're going to get into a long discussion

1 on whether it is constitutional in the future or to other
2 transactions, I certainly would agree with Mr. Eckstein
3 that it is not material. I don't know how it is going to
4 come up in context.
5 I am going to give Mr. Eckstein the
6 opportunity for the Board of Managers to review the stack
7 of documents that have been given just today, as I
8 understand, for you to be able to look at them and form
9 specific objections on the individual exhibits as they
10 come, because under our rules, we were supposed to have
11 been given advance notice of those.
12 I do understand that sometimes it is
13 difficult to get all of the documents together, but at
14 least we should have a day or two for opposing counsel to
15 look at exhibits before they are offered. I think that
16 the rules call for three days, or my letter did.
17 All right. You may proceed.
18
19 CONTINUED DIRECT EXAMINATION
20 BY MR. LEONARD:
21 Q. Mr. L'Ecuyer, I believe your last question
22 related to the fact that in 1976 you began a relationship
23 with Congressman Bob Stump?
24 A. The relationship actually began in probably
25 1967, but in 1975 I was his attorney when he was President

1 of the State Senate. 1976 he was elected to Congress, and
2 I began a relationship with him as a member of his
3 Congressional staff in 1977.
4 Q. How long did you serve as a staff member for
5 Congressman Stump?
6 A. Until September, 1983.
7 Q. Was your service with the Congressman on a
8 full-time basis?
9 A. It was.
10 Q. I take it, then, or tell us what happened to
11 the other two parallel tracks of practicing law and
12 campaign consulting?
13 A. Well, I found that I became a legal advisor
14 on a variety of things at the direction of the
15 Congressman, both for his use on Congressional work and
16 constituent work, but also in relation to sometimes
17 problems that constituents had in helping them get to the
18 proper place to get legal problems resolved.
19 As related to the political, I assisted a
20 number of other candidates for other offices at his
21 direction, or at least with his consent, in most of the
22 elections, in fact, of all of the elections during the
23 time that I worked on his staff.
24 He made me make sure that I had completed 40
25 hours every week, though, and could document it before I

1 did that kind of work.
2 Q. Did there then come a time in 1983 when you
3 changed employment?
4 A. I did. I left the Congressman's staff,
5 opened a law office, opened a public affairs consulting
6 office, and attempted to rejoin the private sector.
7 Q. Tell us briefly what you did between 1983 and
8 1986?
9 A. I did a variety of political consulting. I
10 suppose most noteworthy during that period, I acted first
11 informally through one Senator as a consultant to the
12 Republicans running for Senate offices, State Senate
13 offices in the state in 1984, and in 1986 I was retained
14 as a consultant for the Arizona Senate Republican Campaign
15 Committee and was directed by that committee to work on a
16 number of campaigns for Republicans running for the State
17 Senate.
18 Q. That was in what year?
19 A. 1984 and 1986.
20 Q. Did you change your party affiliation at any
21 time during that lengthy period from 1975 to 1986?
22 A. I suspect most of the members of the Senate
23 recognize that Congressman Stump is one of a select group
24 of people who were Democrats, and in the early 1980s after
25 Ronald Reagan was elected President, changed parties.

1 I had became convinced, in the words of
2 Marcus Childs, the late political columnist of a prior
3 generation, that one becomes more conservative as one
4 becomes older --
5 MR. ECKSTEIN: Objection; the question was whether
6 Mr. L'Ecuyer changed parties, Marcus Childs and all of
7 that learning is arcane, but irrelevant and not responsive
8 to the question. I object.
9 THE PRESIDING OFFICER: Sustained.
10 Just answer the question, please.
11 THE WITNESS: I did. About six months before
12 Congressman Stump changed parties, I reregistered as a
13 Republican.
14 BY MR. LEONARD:
15 Q. Did you do any arcane research which caused
16 you, in addition to the Congressman's change, to come to
17 the conclusion you should change parties?
18 A. I did. As I became more conservative myself,
19 I came to the conclusion that there was very little room
20 for conservatives in the Democratic party, at least on the
21 Washington scene -- they were mostly mavericks -- and that
22 if one wanted to be a constructive conservative, you
23 probably ought to be a Republican. And so I made that
24 change and attempted to persuade the Congressman to do
25 likewise.

1 Q. When did that occur?
2 A. I believe in time for the 1982 election. So
3 it -- I changed I believe in December, 1981, and he
4 changed about May of 1982, as I recall.
5 Q. Now, Mr. L'Ecuyer, during the period of time
6 that you practiced law, and particularly or specifically
7 in the period from 1973 to 1979, did there come a time
8 when you had a discipline problem with the State Bar of
9 Arizona?
10 A. I did.
11 Q. And you and I have talked about that at some
12 length, have we?
13 A. We have.
14 Q. Did I ask you to prepare a written statement
15 so that you would be able to tell this body specifically
16 your view of what that problem was?
17 A. Yes.
18 MR. LEONARD: Would the clerk hand the witness
19 Exhibit No. 116.
20 THE CLERK: (Handing)
21 BY MR. LEONARD:
22 Q. Does that exhibit, Mr. L'Ecuyer, set out
23 fully and completely, the best of your recollection, as to
24 the background and the disposition of that Bar complaint?
25 A. It does.

1 Q. Did you prepare this exhibit yourself?
2 A. I did.
3 MR. LEONARD: I offer Exhibit 116 into evidence.
4 MR. ECKSTEIN: We object, Your Honor. Number one
5 is, it is clearly hearsay, out-of-court statement prepared
6 by the witness. It is self-serving.
7 If counsel wishes to bring out on question
8 and answer the nature of the Bar complaint and the
9 response and things that are related to that, he is
10 entitled to do so, and I would encourage him to do so.
11 But to allow this witness to testify through a piece of
12 paper that he prepared, perhaps over the weekend,
13 whenever, and offer that as an explanation, is beyond the
14 scope of any rule that I know. I object.
15 MR. LEONARD: If the Court please, I think this is
16 an important matter. It has to do with a disciplinary
17 action against a lawyer who is now a witness. I believe
18 that it is appropriate under the Rules of Evidence to
19 allow a witness in this situation to prepare a written
20 statement as to his best recollection of what happened.
21 He can be cross-examined about the statement,
22 but I don't -- the reason I asked Mr. L'Ecuyer to prepare
23 it in writing is so that there would be no question as to
24 what, no misunderstanding, no question as to what his best
25 recollection was.

1 I think that in view of the unusual
2 circumstances of a Bar disciplinary action, that it is
3 perfectly within the discretion of the Court, the
4 Presiding Officer, to allow it to be presented in the form
5 of a written statement.
6 I was going to have, of course, once it was
7 admitted, I was going to have Mr. L'Ecuyer read it, and on
8 cross or voir dire, if Mr. Eckstein wants to, he can voir
9 dire the document, he can cross-examine the witness about
10 the incident, he can produce the Bar documents.
11 The witness has given his permission, too,
12 for the Bar to make the file available to Mr. Eckstein.
13 And we are not trying to hide anything. We just don't
14 want to have any question about what the witness' position
15 is. That is the purpose.
16 THE PRESIDING OFFICER: The objection is sustained.
17 It is a hearsay document. You will have to proceed by
18 questions and answers.
19 BY MR. LEONARD:
20 Q. Mr. L'Ecuyer, did you in 1979 have an
21 occasion in which there was a reprimand of you by the
22 Arizona Bar?
23 A. I did. I received an informal letter of
24 reprimand which was placed in my file at the State Bar.
25 Q. Did you receive a copy of that informal

1 letter of reprimand?
2 A. I believe my attorney did. I do not have a
3 copy currently in any file, so --
4 Q. At the time that the proceeding by the Bar
5 terminated, did you, in fact, were you, in fact, informed
6 by counsel and by the Bar that that was the disposition of
7 the case?
8 A. I was. I saw the letter. I just don't seem
9 to have a copy of it.
10 Q. Did that reprimand involve in any way your
11 being inhibited from practicing law for any period of
12 time?
13 A. It did not.
14 Q. Counsel for the Board of Managers doesn't
15 seem to be interested in the background, so we will let
16 him ask you that on cross-examination.
17 You have previously testified that you acted
18 as a consultant in the 1986 campaign to various members of
19 the Arizona Senate through the Arizona Republican Senate
20 Campaign Committee?
21 A. That's correct.
22 Q. Did you take part in any other campaigns in
23 the 1986 election?
24 A. A variety of other campaigns, including a
25 number of campaigns for Republican candidates for the

1 State House of Representatives and some for some other
2 offices.
3 Q. Were you involved in 1986 in the Republican
4 primary for Governor?
5 A. To the extent that I actively supported
6 Burton Barr I was involved. That was in a volunteer
7 capacity.
8 Q. Subsequent to the primary, did you take any
9 part in the general election campaign in 1986?
10 A. I did not. I had been an opponent of Evan
11 Mecham throughout my political career; in addition, I was
12 extraordinarily angry with him because he had, through his
13 tabloid newspaper, attacked the reputation of my wife.
14 Q. When you say "he," you mean the campaign
15 committee and one of its publications?
16 A. That's correct.
17 Q. Would you tell us just briefly what that was
18 all about?
19 A. My wife works for Arizona State University in
20 their community relations department. She was accused in
21 a New Times newspaper story of having solicited funds for
22 Burton Barr's campaign using university time and
23 university resources, something I knew from personal
24 experience to be absolutely untrue. And the facts of
25 those stories were repeated in the tabloid put out by the

1 Mecham Campaign Committee, and created a great deal of
2 professional difficulty for her.
3 Q. And when were you first asked to assist in
4 any way in the Mecham campaign?
5 A. I was first asked in late 1986, and probably
6 in late November, by Ralph Watkins, who was chairman of
7 the Mecham Finance Committee and who was an old friend,
8 and who I had advised when he was a candidate for Congress
9 in 1968.
10 Q. So that you did not involve yourself in the
11 Mecham campaign prior to the election?
12 A. I did not.
13 Q. What was the purpose of Mr. Watkins' call to
14 you after the election was over?
15 A. He and the Mecham Finance Committee, and by
16 inference, the Governor, needed advice on the effect of
17 Proposition 200 which had been recently enacted. And he
18 knew that I had done significant research -- by that time
19 over 200 hours -- on what the potential effect might be,
20 and so he asked me to attend Mecham Finance Committee
21 meetings in November and December for the purpose of
22 helping guide the Mecham Finance Committee as to their
23 actions in the light of Proposition 200.
24 Q. And how many meetings did you hold with
25 members of the Mecham Finance Committee or officers of

1 that committee?

2 A. Well, there were probably three in November

3 and December, one very large one in which Assistant

4 Attorney General John Shadegg also appeared to advise on

5 Proposition 200 and other matters.

6 I might say parenthetically that Bill Long

7 was also a member of that Mecham Finance Committee and

8 attended meetings.

9 Q. Was the large meeting the first meeting you

10 attended?

11 A. It was.

12 Q. And you have mentioned that Mr. Shadegg from

13 the Attorney General's Office was there, and that part of

14 the discussion at least was with respect to Proposition

15 200; is that correct?

16 A. That's correct.

17 Q. What other issues were addressed at that

18 meeting?

19 A. All fund raising issues, including the, some

20 aspects of what might be done in relation to the inaugural

21 ball.

22 Q. Was there focus at that meeting also on the

23 retirement of the campaign debt?

24 A. That was, I would say, a very heavy issue in

25 that meeting. They were almost totally concerned with it

1 except that they -- well, even in regard to the inaugural
2 ball, because this was not the Inaugural Committee, this
3 was the finance committee, and their job was to raise
4 money to retire the debt. They weren't focusing on
5 anything else.
6 Q. And did that discussion include the question
7 of whether or not Proposition 200 created any limitation
8 on the issue of funds raised after the election to retire
9 debt?
10 A. That was a very large issue, and I was asked,
11 as was Mr. Shadegg, a number of questions on that
12 particular issue.
13 Q. Do you recall whether or not Mr. Shadegg
14 provided any opinion to the finance committee at that
15 time?
16 A. He provided a number of observations about
17 the effect of the statute, answered a number of questions.
18 And the effect of his answers was --
19 MR. ECKSTEIN: Objection; what Mr. Shadegg may or
20 may not have said, number one, is hearsay, but more
21 significantly, I think goes beyond the scope of what is
22 truly material in this proceeding.
23 I think the witness has gone beyond what his
24 background is necessary to set the stage, and is beginning
25 to get into material that relates directly to the

1 constitutionality and application of Proposition 200.
2 I fear that this line of questioning and this
3 line of testimony really goes well beyond what is
4 foundation and what is necessary to set the stage.
5 THE PRESIDING OFFICER: Sustained.
6 BY MR. LEONARD:
7 Q. Did you, Mr. L'Ecuyer, prior to this meeting,
8 begin to do research and gather information with respect
9 to the applicability of Proposition 200 to the 1986
10 election?
11 A. I had about ten days before the election at
12 the request of one of the State Senators that I was
13 helping, I appeared, too, in a debate on Proposition 200
14 and began my research at that point, and continued rather
15 intensely as soon as the matter passed for the entire
16 month of November and December on doing that research.
17 Q. Were you, as part of your research,
18 interested in the views of members of the Attorney
19 General's staff?
20 A. I made a number of calls to Mr. Shadegg of
21 the Attorney General's staff to discuss what their view
22 might be on the applicability of various parts of that
23 statute.
24 Q. And did the views expressed by Mr. Shadegg in
25 his phone calls, and at the meeting you were referring to

1 just a few moments ago, assist you in formulating your
2 views with respect to Proposition 200?
3 A. They did.
4 Q. Did you also do legal research with respect
5 to the issue?
6 A. I think my wife would testify that I spent
7 most nights and weekends for the better part of six weeks
8 doing nothing else but legal research.
9 Q. As part of your legal research, Mr. L'Ecuyer,
10 did you review the opinion of the Attorney General of
11 March of 1987?
12 A. I did.
13 MR. LEONARD: Would you hand the witness Exhibit
14 No. 52, please.
15 THE CLERK: (Handing)
16 BY MR. LEONARD:
17 Q. Did you also review various state and federal
18 decisions?
19 A. I read every reported decision from any
20 jurisdiction in the United States, federal and state, from
21 the year 1966 on, relating to campaign finance.
22 Q. Would you hand the witness Exhibit No. 110,
23 please.
24 Might I ask you, Mr. L'Ecuyer, to just
25 identify what that is?

1 A. That is a reported case from the State of
2 Washington, State vs. Dan J. Evans Campaign Committee.
3 Q. Did you rely on that decision in formulating
4 your opinions with respect to Proposition 200?
5 A. I thought this was one of the most --
6 MR. ECKSTEIN: Mr. Presiding Officer --
7 MR. LEONARD: Just let me --
8 MR. ECKSTEIN: -- I think there is a question
9 pending. Again, we are going well beyond what is
10 foundational. This involves questions relating to the
11 constitutionality and appropriateness of Proposition 200.
12 We are talking about cases from other jurisdictions. It
13 is absolutely immaterial to this proceeding and is
14 absolutely immaterial to the use of the funds that are the
15 issue of Article III of the Articles of Impeachment.
16 THE PRESIDING OFFICER: Counsel, I think other than
17 the fact that this witness may in fact have a strong
18 opinion that Proposition 200 was either unconstitutional
19 on its face, affecting all of its articles or subparts or
20 that it was unconstitutional as applied to the way that
21 these funds were collected and disbursed or to be
22 disbursed, that beyond that it really is immaterial.
23 If we're going to spend a lot of time getting
24 in all the exhibits that he relied on just to form the
25 basis for his simple opinion, "I believe Proposition 200

1 is unconstitutional," we are just going to be spending a
2 lot of time here.
3 MR. ECKSTEIN: I am prepared to stipulate if
4 Mr. L'Ecuyer, if called upon, would testify that he
5 disagreed with the Attorney General's opinion in whole or
6 in part as expressed in Exhibit 52 and that he believes
7 that Proposition 200 is unconstitutional. I'll stipulate,
8 if called upon to testify, Mr. L'Ecuyer would give those
9 opinions.
10 MR. LEONARD: May I be heard?
11 THE PRESIDING OFFICER: Yes, you may.
12 MR. LEONARD: If the Court please, I've got about
13 six, seven exhibits which are nothing more than
14 foundational. They relate to an opinion which this
15 witness, I believe, is going to testify to, which simply
16 agrees with a statement in the Attorney General's opinion.
17 I believe that this Court ought to understand
18 the background under which the committee, the Mecham
19 Inaugural Committee --
20 THE PRESIDING OFFICER: This isn't the Mecham
21 Inaugural Committee, this is Mr. L'Ecuyer's opinion that
22 he is about to give.
23 MR. LEONARD: But he is advising them. I am trying
24 to lay the foundation for the advice he gives and the
25 eventual conclusion that he draws that these are private

1 and not public funds.

2 THE PRESIDING OFFICER: Perhaps you could even

3 stipulate it took him 250 hours to come to that

4 conclusion; I wouldn't care. Are we going to have to go

5 through all the 250 hours research before he comes to that

6 conclusion?

7 MR. LEONARD: I think if you will let me get the

8 documents in, I think his conclusion can be stated by him

9 and his opinion can be stated by him in less than five

10 minutes.

11 I am simply trying to get the documents in to

12 show to this Court why there was legitimacy to his opinion

13 that the statute was vague, the Proposition 200 was vague,

14 and therefore, of questionable constitutionality, which is

15 what really the Attorney General's opinion says. If you

16 ever let him get to that point where he can say I agree

17 with the Attorney General, I think there is a vagueness

18 question as to the constitutionality. This Court,

19 Proposition 200, if the Court please, is an important part

20 of the pre-decision-making to turn these funds over and

21 the restrictions which were placed on him.

22 THE PRESIDING OFFICER: I have no argument with

23 that. I think that is proper. I think it is being

24 offered to be stipulated that he came to that conclusion

25 however laboriously he might have done so, and that the

1 committee, based upon his advice, felt so if he wished,
2 and beyond that everything else is immaterial. The
3 objection is sustained.
4 MR. LEONARD: If the Court please, may I argue this
5 to the Court, to the body? I would like to appeal the
6 Presiding Officer's decision.
7 THE PRESIDING OFFICER: All right.
8 Does anybody agree with his request?
9 Senator Usdane.
10 SENATOR USDANE: I was hoping we wouldn't come to
11 this. We are talking about, evidently about 26 exhibits
12 of which we don't have any, that haven't been reviewed by
13 anybody on either side of those that most would understand
14 those exhibits. And I think that it would be an error for
15 not against him arguing the position, but I would ask for
16 a decision regarding Rule 22 as it relates to 89 through
17 115, specifically in order to have this Court decide
18 whether or not you are correct, sir.
19 THE PRESIDING OFFICER: I would be happy to do so
20 had I even seen any of those exhibits, which I have not.
21 Perhaps, in all fairness to the Senators we
22 ought to have them distributed and have you look at them
23 in order to see whether you wish to appeal my ruling on
24 it. So I think we ought to have them distributed, and if
25 the Senators, tomorrow morning, after an opportunity to

1 look at them wishes, anyone wishes to appeal my ruling,
2 they ought to be able to be given that opportunity to do
3 so.
4 But right now I just feel that the basis for
5 his opinion, of course, is that he has done research on
6 it, he feels Proposition 200 was at that time
7 unconstitutional, he advised the committee, the committee
8 agreed, they agreed how they were going to deal with the
9 funds, they entered into some sort of agreement, they
10 compromised, they did something, each side had valid
11 considerations, they took a position, and as a result of
12 that we move on to what the parties did pursuant to that,
13 not what was the underlying reason for it, because there
14 is no question in my mind you could take Proposition 200
15 and come to two arguable positions on it as to whether or
16 not it was or was not constitutional, and it has not yet
17 been decided by any court in Arizona.
18 But regardless of that, the parties entered
19 into some sort of an agreement based upon it, and I think
20 from that point on, the underlying opinions of the two
21 conflicting attorneys is immaterial from that point on.
22 Senator Stephens?
23 SENATOR STEPHENS: Mr. Presiding Officer, I rise to
24 ask a question under Rule 22, legal instruction.
25 THE PRESIDING OFFICER: Yes, sir.

1 SENATOR STEPHENS: Mr. Presiding Officer, if the
2 respondent in his testimony testified that he understood
3 the money could be not be used for campaign purposes as a
4 result of Proposition 200, why should we even look at
5 exhibits in regards to the question about whether this
6 fund did come under Proposition 200, the constitutionality
7 of Proposition 200, whether the Attorney General's opinion
8 was proper or not? It seems to me as totally irrelevant
9 if the respondent, as he testified, accepted the fact that
10 he couldn't use these funds for campaign purposes. That
11 is one of the two areas that he himself testified to
12 several times, that he knew that he couldn't use the funds
13 in regards to any kind of campaign purposes.
14 THE PRESIDING OFFICER: The only answer I can give
15 you, Senator Stephens, I don't know what kind of list of
16 questions I am opening up by just, "Well, all right, if
17 you are going to answer just this one question, go ahead."
18 Under the rules, normally you rule on each
19 objection individually. I don't know if he is going to
20 say "Yes, I agree with the Attorney General." I have
21 heard there may be such a suggestion, but I don't know
22 what his answer is going to be.
23 Senator Kay.
24 SENATOR KAY: Mr. Presiding Officer, before the
25 Court goes to the expense of duplicating all these

1 documents, no Senator has made a motion to appeal, and
2 while counsel has requested that, without such a motion it
3 is not necessary to go further.
4 THE PRESIDING OFFICER: I might also explain that
5 normally these are not the kind of documents that I feel
6 that the Senate would need to read in order to make a
7 decision as to whether or not to overrule my decision,
8 although I can't be sure, because I myself have not read
9 them all.
10 If they are merely court documents, copies of
11 decisions or rulings or articles, or Law Review articles
12 or things of that nature that are on the basis of
13 research, other people's legal research, opinions
14 concerning the constitutionality of these types of
15 statutes, this all just goes to the basis for his opinion,
16 which counsel for the Board of Managers is willing to
17 stipulate to that, that he had the opinion in his own,
18 that it was, Proposition 200 was unconstitutional, and he
19 so advised the committee.
20 But I agree there is no motion to appeal at
21 this point, but I get from Senator Usdane, as he always
22 does, that he would like to be able to see the documents
23 before he makes his mind up. And I can't argue that,
24 although I would say that if I had seen them all I might
25 be able to better tell you what kind of documents they

1 are.

2 SENATOR USDANE: Mr. Presiding Officer, in order

3 not to cause the Court to feel that I had any meaning, I

4 would go with Senator Kay on the fact that unless a

5 Senator wishes to stand to make that motion, that it is

6 not appealed.

7 THE PRESIDING OFFICER: There is no Senator that

8 stands. My ruling is upheld.

9 MR. LEONARD: Mr. Presiding Officer, does that mean

10 this body is not going to give me even two or three

11 minutes to state to the body my reason for asking that

12 they overrule the ruling of the Presiding Officer?

13 THE PRESIDING OFFICER: No. Certainly. Go ahead,

14 state your reasons, sir. Go ahead. You may make an

15 argument to the Senators concerning your request.

16 MR. LEONARD: With the permission of the Presiding

17 Officer, I think I'll withhold making my argument on that

18 subject until a short period of time passes.

19 May I continue to examine the witness?

20 THE PRESIDING OFFICER: Yes, go ahead.

21 BY MR. LEONARD:

22 Q. Mr. L'Ecuyer, did you rely on various

23 decisions of state and federal courts -- I believe you

24 said that you did -- various state and federal courts,

25 with respect to the constitutionality and applicability of

1 campaign finance laws?

2 A. I did.

3 Q. Did you, in your research, find that both

4 federal and state laws had a certain parallelism to

5 Proposition 200?

6 MR. ECKSTEIN: Objection; this is another way at

7 coming at the same problem. Indeed, I don't think it is

8 even a very subtle other way of coming at the same

9 problem.

10 Counsel is persisting in attempting to go

11 with the underlying basis for an opinion of the witness

12 that I have stipulated he had and that he advised to the

13 Inaugural Committee. It is irrelevant, it is immaterial,

14 and at this point I think it is becoming dilatory.

15 THE PRESIDING OFFICER: I am going to sustain the

16 objection. I think that's enough on that point, counsel.

17 MR. LEONARD: Do I understand the Presiding Officer

18 to say that I am not allowed to ask whether or not he

19 relied on certain federal and state decisions relating to

20 comparable statutes to Proposition 200 in formulating his

21 opinion?

22 THE PRESIDING OFFICER: No, I am not precluding you

23 from doing that. I am merely saying you go ahead and ask

24 him his opinion and ask him what he relied on. I don't

25 think it is necessary to have all the documents in

1 evidence to prove that.

2 MR. LEONARD: If the Court please, I haven't tried

3 to introduce any other documents. Don't I have a right to

4 ask him what he relied on before I ask him what his

5 opinion is? That's all I asked him.

6 THE PRESIDING OFFICER: Well, I think it can be

7 done, it can be done on a short basis without going into

8 the individual contents of each of the things that he

9 relies on. Ask him what he relied on.

10 MR. LEONARD: If the Court please, that is what I

11 asked him.

12 Let me try it a different way, Mr. L'Ecuyer.

13 BY MR. LEONARD:

14 Q. Do you have an opinion as to whether or not

15 the statutory enactment which came about because of

16 Proposition 200 when compared to federal, comparable

17 federal and state statutes from other states is subject to

18 attack, legal attack, because of vagueness?

19 A. I do.

20 Q. Do you have an opinion as to whether or not

21 the statute which became law by virtue of Proposition 200

22 when compared to both the federal statute and state

23 statutes and based on decisions with respect to those

24 statutes may be constitutionally flawed because of the

25 criminal applicability of the sanctions retroactively?

1 A. I do.
2 Q. What is that opinion?
3 A. The opinion is that in that particular effect
4 on the 1986 election and solicitation for contributions to
5 pay debts arising from the 1986 election Proposition 200
6 is unconstitutional.
7 Q. And with respect to your opinion as to
8 vagueness.
9 A. The standard for vagueness is that a
10 reasonable or common man should be able to understand the
11 conduct that is being proscribed, and in this case I do
12 not think that a common ordinary man reading the statute
13 could understand that.
14 Q. And can you be a little more specific in what
15 way is it vague?
16 A. May I refer to the Arizona statutes?
17 Q. Yes.
18 MR. ECKSTEIN: Mr. Presiding Officer, I stipulated,
19 I offered a stipulation, and I think the record will
20 reflect it, some five to ten minutes ago, that the
21 witness' opinion was that the proposition was
22 unconstitutional. Now, we have gone beyond that,
23 considerably beyond that, and we are talking about the
24 reasons as to why it was constitutional.
25 Given the subject matter that's involved

1 here, that is, the underlying constitutionality of
2 Proposition 200 well before the transaction or agreement
3 or stipulation was made, it is irrelevant and immaterial.
4 I thought we had short-cutted this.
5 THE PRESIDING OFFICER: I am going to let him
6 answer the question as to the reason why he feels it is
7 vague comparing the actual Arizona statute, because I do
8 feel that that may be a basis for explaining to the
9 committee why they could or couldn't handle it the way
10 they proposed to.
11 BY MR. LEONARD:
12 Q. Go ahead.
13 A. One needs to refer an A.R.S. 16-1901, the
14 definition of campaign committee. Because the campaign
15 finance laws do not apply to any two or more people who
16 are associated together unless that definition applies,
17 and this, of course, the Mecham Inaugural Committee and
18 the Mecham Finance Committee are two or more people.
19 I go to line four of that, "Combined for the
20 purpose of influencing the result of any election in this
21 state."
22 So that definition doesn't apply unless that
23 statement applies. The 1986 election was over. It could
24 not be influenced before Proposition 200 even was
25 proclaimed law on December 16th, 1986.

1 So the law simply did not apply as to
2 campaign debts resulting from the 1986 election, because
3 contributions for those would not be for the purpose of
4 influencing the election. The election simply didn't
5 exist when the solicitation was made or when the
6 contributions were received.
7 Q. Now, with respect to the criminal sanctions,
8 Mr. L'Ecuyer, do you have an opinion as to whether or not
9 the criminal sanctions could have been applied, even if
10 the Mecham inaugural fund monies had been used to retire
11 the Mecham campaign debt?
12 MR. ECKSTEIN: Mr. Presiding Officer, again this is
13 irrelevant. Mr. Schwartz testified that he had reached
14 the conclusion that there was no criminal intent. Given
15 that testimony, and particularly given the tangential
16 nature of this whole line of questioning, I find it highly
17 irrelevant and highly immaterial.
18 THE PRESIDING OFFICER: The objection is overruled.
19 You may answer.
20 THE WITNESS: I am sorry, I lost track of the
21 question.
22 MR. LEONARD: Would the reporter read it back,
23 please.
24 (Pending question read.)
25 THE WITNESS: I do.

1 BY MR. LEONARD:

2 Q. What is that opinion?

3 A. That opinion is that the application of the
4 criminal sanctions is in an area that is so vague that
5 they could not be constitutionally applied, and that's the
6 implication, if not the statement, in the March 24
7 Attorney General opinion.

8 Q. Now, with respect to that issue, that is the
9 application of the criminal sanctions to the Mecham
10 Inaugural Committee fund in early 1987, was it appropriate
11 in your opinion, Mr. L'Ecuyer, for that issue to even have
12 been raised?

13 A. Unfortunately, at that point I had made a
14 statement, as had John Shadegg, but particularly my
15 statement, since I made it several times, that people who
16 knew that they were potentially violating this statute
17 could be guilty of a crime and could go to jail. And I
18 heard that opinion restated a number of times by a number
19 of people, so I'm afraid I'm the person responsible for
20 creating the fear in the Inaugural Committee members and
21 in the Mecham Finance Committee members that in fact if
22 they attempted to do anything in contrast with what
23 Proposition 200 might say, that they could well go to
24 jail.

25 Q. You are now confessing error, is that the

1 idea?

2 A. Well, that's hard for lawyers to do, but yes.
3 I do not believe, after I did further research, that that
4 conclusion was true, and I arrived at the conclusion about
5 the same time that the Attorney General did; that it
6 should not apply because it simply was so vague; the
7 criminal penalities were so vague that there was no way to
8 advise anybody.

9 Q. In light of that vagueness, would they have
10 been applicable to a contribution made to retire a debt
11 from the 1986 campaign?

12 A. They would not have been.

13 Q. Now, let's focus on the civil penalities for
14 just a moment that are contained in the statute created by
15 Proposition 200.

16 What do you understand the civil penalities
17 to be?

18 A. Well, the standard is one of strict
19 liability, and that is, that one would not even have to
20 know that the act occurred to be guilty of a civil
21 violation, and that the result could be a civil penalty.
22 And I want to make this very clear, because Mr. Schwartz,
23 I think, made a serious error of up to three times the
24 amount of the illegal contribution.

25 Q. In your research with respect to civil

1 penalities applicable to violations of similar statutes,
2 what has that research resulted in with respect to the
3 application of the penalty?
4 A. I was startled when Mr. Schwartz --
5 MR. ECKSTEIN: Objection; irrelevant, immaterial,
6 for the same reasons that any testimony with respect to
7 the criminal penalities was irrelevant and immaterial.
8 MR. LEONARD: If the Court please, Mr. Schwartz'
9 testimony was that his position to the committee, to the
10 chairman of the committee and the counsel for the
11 committee, was that he could have forfeited up to three
12 times the amount of the contributions. This testimony is
13 going to show that no such penalty is contemplated by this
14 statute.
15 THE PRESIDING OFFICER: But how is that material,
16 once the agreement was entered into?
17 MR. LEONARD: Because there is a dispute, if the
18 Court please, as to the character of the money, the
19 character of the money irrespective, and this witness is
20 going to testify with respect to Exhibit 47, that there is
21 a conflict embodied within that exhibit.
22 THE PRESIDING OFFICER: The objection is overruled.
23 BY MR. LEONARD:
24 Q. Go ahead.
25 A. Mr. Schwartz talked about forfeiture, and in

1 none of my research had the term forfeiture come up.
2 I did some further research on Arizona
3 statutes, and found that the RICO statute provided for
4 treble damages and uses the term forfeiture.
5 It appears to me that Mr. Schwartz confused a
6 statute with which he probably often worked relating to
7 treble damages with this statute, which is materially
8 different in its reference to treble damages.
9 Q. And RICO is an acronym for Racketeering,
10 Influence, Corrupt Organization, which is in force by the
11 criminal section of the County Attorney's office?
12 A. That is correct.
13 Q. Which he heads?
14 A. That is correct.
15 Q. Did you find in Proposition 200 in the
16 statute in which embodies it, embodied by it, any
17 forfeiture?
18 A. There is no forfeiture at all. The Court
19 would have absolute discretion to set any penalty up to
20 treble damages, that would, I presume, include no penalty
21 at all.
22 Q. So that the penalty which might be assessed
23 by the Court could be anything from zero to three times
24 the amount of the contributions?
25 A. That's correct.

1 Q. In your research with respect to penalities
2 assessed under similar statutes, what did you find?
3 A. I found that in the 1984 federal Presidential
4 election Jesse Jackson --
5 MR. ECKSTEIN: Mr. Presiding Officer, what happened
6 in 1984 with respect to Jesse Jackson again may be arcane
7 and interesting, but is irrelevant to this proceeding.
8 THE PRESIDING OFFICER: Sustained.
9 MR. LEONARD: If the Court please, is not the
10 history of what courts have actually done in applying the
11 penalty provisions under a similar statute relevant to
12 whether or not the people who were discussing the issue of
13 how to dispose of this problem in the County Attorney's
14 Office, if they were just simply dead wrong, isn't that a
15 material mistake of fact that these lawyers simply didn't
16 know about and weren't properly advising their clients
17 about?
18 THE PRESIDING OFFICER: Counsel, didn't I ask you
19 at the beginning of this discussion whether or not you
20 intended to attack the validity of the agreement and
21 Exhibit No. 47, and you said no?
22 MR. LEONARD: I don't intend to attack the validity
23 of the agreement. It is a signed letter from one person
24 to another. But I certainly intend to attack the way in
25 which the opinion as to what the funds are was reached.

1 THE PRESIDING OFFICER: I said I would allow this
2 witness to testify that his, in his opinion, what the
3 agreement stood for and how he arrived at that opinion.
4 But I just don't see going into every piece of research
5 he's done on it.
6 MR. LEONARD: If the Court please, isn't the
7 paucity of legal understanding by the lawyers who gathered
8 to decide on Exhibit 47 and the mistake, the mistake that
9 these lawyers perpetrated in the drafting of the letter,
10 doesn't that go to the basic issue of the nature and the
11 character of the funds, if they were mistaken with respect
12 to what the law says?
13 And we have already heard one mistake, there
14 is not a forfeiture in this statute; there is a civil
15 penalty up to three times. Isn't it relevant as to what
16 courts do in order to determine whether the lawyers
17 themselves were properly schooled in order to even address
18 the issue?
19 THE PRESIDING OFFICER: Counsel, I believe it
20 doesn't make any difference even if both sides were dead
21 wrong in their opinion.
22 I cite to you an Arizona case, which is
23 Shelton vs. Grubbs. No, it is Brecht vs. Hammond, 35
24 Arizona 383. It is a 1929 case. The Court said the
25 settlement of a controversy is valid and binding, not

1 because it is the settlement of a valid claim, but because
2 it is the settlement of controversy. And when the
3 settlement is characterized by good faith, the court will
4 not look into the question of law or fact in dispute
5 between the parties and determine which is right.
6 So unless there is some showing that
7 Mr. Schwartz acted in bad faith, the underlying reasons
8 for the dispute whether one side was right and the other
9 side was wrong is just not material in this case, absent
10 some bad faith.
11 So that is my ruling, and that is where I
12 stand on it.
13 MR. LEONARD: If I understand the Chief Justice,
14 you are going to apply a ruling from a civil case of some
15 30, 40 years ago, to the situation involving the
16 impeachment of the Governor of the State of Arizona?
17 THE PRESIDING OFFICER: Counsel, I haven't seen any
18 cases later than that that makes it any clearer, and
19 perhaps that fact means it is still good law.
20 MR. LEONARD: But it isn't good law to compare what
21 courts are actually doing under a similar campaign statute
22 in order to, for this witness to show that the lawyers who
23 gathered to try to solve this problem simply didn't know
24 what they were doing?
25 THE PRESIDING OFFICER: That's right.

1 And, counsel, I think it has been a long day.
2 I think right now is a good time to take an extra
3 half-hour recess. I am going to give you a chance to kind
4 of collect yourself now and think what is going to happen.
5 This will give also counsel an opportunity to look at
6 those exhibits.
7 We are going to stand at recess, and I would
8 like to have a motion for recess at this point until 9:00
9 tomorrow morning.
10 SENATOR USDANE: Mr. Presiding Officer, I move that
11 the Court of Impeachment stand at recess until Tuesday
12 March the 29th, 1988 at 9:00 a.m.
13 THE PRESIDING OFFICER: All those in favor signify
14 by saying "aye," opposed say "no."
15 The "ayes" appear to have it, they do have
16 it, and it is so ordered.
17 (Recessed at 4:35 p.m.)
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STATE OF ARIZONA)
) ss.
DISTRICT OF ARIZONA)

I HEREBY CERTIFY that I am a duly appointed, qualified and acting Official Court Reporter before the Senate of the State of Arizona sitting as a Court of Impeachment.

I FURTHER CERTIFY that the foregoing printed pages, numbered 4576 to 4799, inclusive, constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction.

DATED at Phoenix, Arizona, this 28th day of March, 1988.

David R. Minder

Robert M. Ferrara