

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 30, 1988  
9:04 a.m.

TRIAL VOLUME 23

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.

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(602) 266-2601

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

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I N D E X

<u>WITNESS</u>	<u>DIR</u>	<u>CR</u>	<u>REDIR</u>	<u>RECR</u>	<u>VOIR DIRE</u>
CHRISTMAN, LEILA	5023	5033	5075		
MANGUM, JOHN K.	5097, 5102	5130	5140		5101

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>IN EVIDENCE</u>
122	Transcript	5140

Phoenix, Arizona  
March 30, 1988  
9:04 a.m.

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THE PRESIDING OFFICER: Thank you, ladies and gentlemen. The Court of Impeachment will reconvene.

Show the presence of a majority of the Board of Managers, their counsel, and counsel for the respondent.

The clerk will now call roll.

THE CLERK: Senator Alston?

SENATOR ALSTON: Present.

THE CLERK: Senator Brewer?

SENATOR BREWER: Present.

THE CLERK: Senator Corpstein?

SENATOR CORPSTEIN: Here.

THE CLERK: Senator De Long?

SENATOR DE LONG: Present.

THE CLERK: Senator Gabaldon?

SENATOR GABALDON: Here.

THE CLERK: Senator Gutierrez?

Senator Hardt?

SENATOR HARDT: Here.

THE CLERK: Senator Hays?

SENATOR HAYS: Here.

THE CLERK: Senator Henderson?

Senator Henderson?

1 SENATOR HENDERSON: Here.  
2 THE CLERK: Senator Higuera?  
3 SENATOR HIGUERA: Here.  
4 THE CLERK: Senator Hill?  
5 Senator Kay?  
6 SENATOR KAY: Here.  
7 THE CLERK: Senator Kunasek?  
8 SENATOR KUNASEK: Here.  
9 THE CLERK: Senator Lunn?  
10 Senator Macdonald?  
11 SENATOR MACDONALD: Present.  
12 THE CLERK: Senator Mawhinney?  
13 SENATOR MAWHINNEY: Present.  
14 THE CLERK: Senator Osborn?  
15 SENATOR OSBORN: Present.  
16 THE CLERK: Senator Pena?  
17 SENATOR PENA: Here.  
18 THE CLERK: Senator Rios?  
19 SENATOR RIOS: Present.  
20 THE CLERK: Senator Runyan?  
21 Senator Sossaman?  
22 SENATOR SOSSAMAN: Here.  
23 THE CLERK: Senator Steiner?  
24 SENATOR STEINER: Here.  
25 THE CLERK: Senator Stephens?

1 SENATOR STEPHENS: Here.  
2 THE CLERK: Senator Stump?  
3 SENATOR STUMP: Present.  
4 THE CLERK: Senator Taylor?  
5 SENATOR TAYLOR: Present.  
6 THE CLERK: Senator Todd?  
7 SENATOR TODD: Here.  
8 THE CLERK: Senator Usdane?  
9 SENATOR USDANE: Here.  
10 THE CLERK: Senator Walker?  
11 SENATOR WALKER: Here.  
12 THE CLERK: Senator West?  
13 SENATOR WEST: Present.  
14 THE CLERK: Senator Wright?  
15 SENATOR WRIGHT: Here.  
16 THE CLERK: Senator Gutierrez?  
17 SENATOR GUTIERREZ: Present.  
18 THE CLERK: Senator Hill?  
19 SENATOR HILL: Here.  
20 THE CLERK: Senator Lunn?  
21 THE PRESIDING OFFICER: Senator Usdane?  
22 SENATOR USDANE: Mr. Presiding Officer, I move that  
23 Senators Runyan and Lunn be excused from attending today's  
24 proceeding.  
25 THE PRESIDING OFFICER: Under Rule 19, that

1 requires a two-thirds majority of the Senators to grant  
2 those excuses.

3 All those in favor signify by saying "aye."  
4 All opposed say "no." The ayes appear to have it. They  
5 do have it, and it's so ordered.

6 The roll indicates that 28 Senators are  
7 present, two absent and excused.

8 The respondent has rested subject to filing  
9 any additional exhibits that might have been omitted, and  
10 Mr. Leonard, have you discussed or found any other  
11 exhibits you wish to offer at this time?

12 MR. LEONARD: None, Your Honor.

13 THE PRESIDING OFFICER: There are none offered.

14 All right. I would now give the Board of  
15 Managers an opportunity to call rebuttal witnesses.

16 MR. FRENCH: Thank you, Mr. Presiding Officer.  
17 Yesterday I told the Presiding Officer that we had one  
18 witness, that is Lee Christman, and we still do have that  
19 witness, but due to testimony yesterday, Mr. John Mangum  
20 has come forward as a witness, and he will be a witness in  
21 this part of the case.

22 MR. LEONARD: Mr. Presiding Officer, if I might, I  
23 don't see Lee Christman on the Board of Managers' list of  
24 witnesses. We were told this I think sometime during the  
25 day yesterday. I object to calling her, as she's a total

1 and complete surprise to us, and not on their list of  
2 witnesses.

3 MR. FRENCH: Mr. Presiding Officer, Mr. Eckstein  
4 advised counsel for the respondent on Monday, which is the  
5 time that we first interviewed this lady. She called our  
6 office sometime Friday or Saturday. We returned the call  
7 on Sunday, talked to her, Paul and I, and at that time we  
8 found out what her position was.

9 She's the controller and bookkeeper and  
10 manager for Mecham Pontiac at the critical time, and at  
11 that point in time, she disagreed with testimony of Dennis  
12 Mecham, and we think that she is right on point as far as  
13 a witness at this point in time.

14 THE PRESIDING OFFICER: How about the other  
15 witness?

16 MR. FRENCH: Mr. Mangum is listed, always has been  
17 listed.

18 THE PRESIDING OFFICER: Has been listed, all right.

19 MR. LEONARD: I don't have any problem with Mr.  
20 Mangum. I just point out that counsel for the Board of  
21 Managers have known about Leila Christman since they began  
22 their investigation. I believe their investigator at  
23 least talked to her. She's mentioned in the -- in  
24 exhibit -- well, it's the Stava letter, which they've had  
25 in their possession for a considerable period of time.

1           If Your Honor please, we attempted to -- yes,  
2 Exhibit 69. Certainly they weren't surprised by the fact  
3 that she might have had potential evidence to give in this  
4 matter, and for some many months, they've made no attempt  
5 to talk to her until, by counsel's own admission, she  
6 called them on Friday. Now, that comes as a complete  
7 surprise to us.

8           Our investigators have been trying to find  
9 her to talk to her, to interview her, have been unable to  
10 reach her, and I think it is grossly unfair to allow the  
11 Board of Managers to call a witness that they've known  
12 about for many months, and I really vigorously object to  
13 this as it is a surprise to us.

14           We did not know about it until Monday, and I  
15 think it was Monday noon or Monday afternoon when I was  
16 told about it. Our investigators have had no opportunity  
17 to talk to this witness.

18           She's a former employee of the dealership.  
19 She was -- my understanding is she was discharged from the  
20 dealership, and obviously any testimony she gives is going  
21 to be detrimental to the respondent without any  
22 opportunity to prepare, to have the the proper records, to  
23 have an opportunity to investigate her, or at least to  
24 discuss her testimony with her. And I think it is  
25 prejudicial to the rights of the respondent.

1           MR. FRENCH: Mr. Presiding Officer, as far as this  
2 particular witness is concerned, there was no reason to  
3 consider any of her testimony material until such time as  
4 we heard Mr. Dennis Mecham testify. And her testimony  
5 will be in direct opposition to his testimony in two  
6 material respects.

7           THE PRESIDING OFFICER: All right. It is the  
8 opinion of the Court that -- or the Presiding Officer,  
9 that just cause and due cause has been shown, and it's  
10 proper rebuttal to bring on matters of this nature, so I  
11 will allow both of the witnesses -- I understand there is  
12 no objection to Mr. Mangum, but Ms. Christman will also be  
13 allowed as a rebuttal witness.

14                       You may call your first witness.

15           MR. FRENCH: We call Lee Christman.

16  
17                               LEILA CHRISTMAN,  
18 a witness herein, after having been first duly sworn, was  
19 examined and testified as follows:

20

21           THE PRESIDING OFFICER: Would you pull that  
22 microphone up in front of you, please.

23

24

25

(Next page, please.)

## DIRECT EXAMINATION

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BY MR. FRENCH:

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

Would you please state your full name for the record.

A. Leila Christman.

Q. You're going to have to speak in that mike.

A. Leila Christman.

Q. Thank you. In what city do you reside?

A. Cottonwood, Arizona.

Q. Were you subpoenaed to be here today?

A. Yes.

Q. Where are you currently employed?

A. Verde Valley Ford, Lincoln-Mercury.

Q. And who is the owner of that company?

A. Ford Motor Company Dealer Development, Monroe  
Bange.

Q. And how long have you been so employed?

A. I called Ford Motor Company Dealer  
Development on the 4th of February and set the appointment  
for interview on the 9th with Monroe, and was hired and  
started on the 1st of March.

Q. What are your duties and responsibilities?

A. My title would be secretary-treasurer,  
business manager. My duties would encompass all the  
accounting and books of the company.

1 Q. Now, immediately prior to your present job,  
2 where were you employed?

3 A. Mecham Pontiac.

4 Q. Here in Phoenix?

5 A. Yes, Glendale.

6 Q. The Valley, Glendale?

7 A. Yes.

8 Q. How long were you employed with Mecham  
9 Pontiac?

10 A. Fourteen months.

11 Q. And what period of time did that cover?

12 A. November, '86, through February, '88.

13 Q. In what position were you employed by Mecham  
14 Pontiac?

15 A. Controller, office manager.

16 Q. And what were your duties?

17 A. The same, the books, keeping --  
18 responsibility for the books and records at the company.

19 Q. And did you have people working under you?

20 A. Yes.

21 Q. Under what circumstances did you leave the  
22 employment of Mecham Pontiac?

23 A. Dennis called me over to his office. He had  
24 hired another man who could troubleshoot the computer  
25 better than I could, and we left on a friendly note. He

1 gave me a tremendous letter of reference, and that was it.  
2 I would not have attempted to do anything with that  
3 computer.

4 Q. So you were employed by Mecham Pontiac during  
5 the month of July, 1987?

6 A. Yes.

7 Q. And you were manager-controller, correct?

8 A. Yes.

9 Q. Would you tell the Court, please, how long  
10 you have worked in the car business?

11 A. Since 1967. I worked initially as  
12 bookkeeper, payable -- payroll, and in running out of  
13 work, I ended up auditing and reconciling all the various  
14 schedules, going to General Motors' account training, and  
15 then replacing the office manager when he had time off or  
16 went on vacation, and such. And from there, I moved into  
17 management.

18 Q. Have you had experience with car flooring  
19 lines?

20 A. Yes, since 1967.

21 Q. Would you define for the Court your  
22 understanding of the meaning of the term "out of trust"?

23 A. In my opinion, technically "out of trust"  
24 would be you have 24 working hours after the car has  
25 rolled over the curb, but normally you have a three or

1 four-day grace period in there to collect your dollars in  
2 and then pay at that time.

3 Q. Now, when you say "rolled over the curb," is  
4 that a term of art in the business?

5 A. Yes, it's a terminology that the customer has  
6 taken delivery and the car has rolled.

7 Q. And it's customary for what? How many days?

8 A. Usually three to four.

9 Q. If I told you that Dennis Mecham had  
10 testified that dealership is not out of trust if the  
11 lender brings the hammer down, would you agree with that  
12 statement?

13 A. Absolutely not.

14 Q. I would now like you to direct your attention  
15 to the month of July, 1987. Did you have occasion during  
16 that month to have a conversation with Dennis Mecham  
17 concerning cash flow?

18 A. Yes, I did.

19 Q. Would you tell the Court what that  
20 conversation was, please?

21 A. I gave him the information, and I believe it  
22 was written on a cash requirement type format, the dollars  
23 that we had to pay the out-of-trust units, the lien  
24 pay-offs that had not be released, the accounts payables,  
25 and our standard rent and normal expenses.

1 Q. Did you tell him what your cash needs were in  
2 July of 1987?

3 A. It was approximately \$497,000.

4 Q. And you told Dennis Mecham that?

5 A. Yes.

6 Q. Did he refute your analysis?

7 A. No.

8 Q. This \$497,000, what was it needed for?

9 A. Well, we had lien pay-offs where people had  
10 traded in vehicles that we had not been able to release  
11 the checks. We had the accounts payable. The checks were  
12 typed, but we could not release them to pay the vendors,  
13 and we had the out-of-trust units, the cars that had been  
14 sold, collected, and not paid for.

15 Q. Was Dennis Mecham -- did he express any  
16 concern to you at that time about the cash flow problem?

17 A. Rather than he would secure funds, or he was  
18 going to try to get the money, of course.

19 Q. In July of 1987, did you become aware of an  
20 \$80,000 loan from the protocol fund?

21 A. Yes. Dennis called me to his office, and I  
22 went over to the building, and he handed me an \$80,000  
23 check, and I don't recall the exact conversation, but it  
24 was of a confidential nature.

25 Q. Did he use the term "protocol fund"?

1 A. Yes, he did.

2 Q. Do you recall in October of 1987 a repayment  
3 of the loan?

4 A. Yes, I do.

5 Q. Do you recall the circumstances concerning  
6 the repayment?

7 A. You mean where we got the money from?

8 Q. Yes. Were you involved in it?

9 A. Yes. Willard -- I was called to Dennis'  
10 office, and Willard wrote I believe it was three checks,  
11 and I had taken the deposit slip and stamp over with me to  
12 Dennis' office.

13 Q. Wait a minute. Excuse me.  
14 Willard wrote three checks?

15 A. Yes.

16 Q. At the same time?

17 A. Yes.

18 Q. On the same account?

19 A. Yes.

20 Q. And gave you the three checks?

21 A. Right.

22 Q. Do you know why he wrote three checks instead  
23 of one?

24 A. No, I don't. In addition, we borrowed other  
25 money at that time, also.

1 Q. Did Wayne contribute to that?

2 A. Yes, we had -- and I don't remember the exact  
3 figure. I think it was 30,000, or something, from Wayne,  
4 and there was another 10,000 from Constituent -- whatever  
5 it is, and I am not really fresh on all of the monies that  
6 we did borrow to pay it back.

7 Q. Was this pay-back at the time it was paid  
8 back something that had been planned?

9 A. No, not at all.

10 Q. Was this something that came up quickly?

11 A. Yes, it was very quickly.

12 Q. Did Dennis tell you anything about having to  
13 pay back?

14 A. I don't understand.

15 Q. Was this brought to your attention by Dennis?

16 A. Yes, it was.

17 Q. Now, what was the standard procedure for  
18 Mecham Pontiac in dealing with car flooring checks in July  
19 of '87?

20 A. Well, when the deal came from the finance  
21 office into the office, the deal was billed, and at that  
22 point in time the billing clerk typed a check to pay off  
23 the flooring. If there was a trade-in, he typed the check  
24 to pay off the lien on the traded vehicle.

25 Then the checks for the lien pay-offs were

1 held on John's desk, the billing clerk, and the other  
2 checks were passed over to the gal who handled the  
3 receipts, Donna, and she held them in a file, and when  
4 funds were available, we released them.

5 Q. Would you hold the checks until you were sure  
6 that they wouldn't bounce?

7 A. Yes.

8 Q. Is this a common practice for car  
9 dealerships --

10 A. No.

11 Q. -- in the ones that you've worked?

12 In July of 1987, was Mecham Pontiac out of  
13 trust with its car financing line?

14 A. Yes, it was.

15 Q. Can you tell us from your recollection  
16 approximately how many units --

17 A. Approximately 21.

18 Q. Twenty-one. And when we say "units," we're  
19 talking about cars?

20 A. Talking about cars that have been sold and  
21 not paid at the bank.

22 Q. Are you talking about a situation where the  
23 car had been paid for by the consumer but the money had  
24 not been paid to the bank?

25 A. Yes.

1 Q. Based upon your position with Mecham Pontiac,  
2 was there an immediate need for cash in July of 1987?

3 A. Yes, there was.

4 Q. Did you know if Wayne Mecham and Willard  
5 Mecham had encumbrances on the Mecham Pontiac property in  
6 July of '87?

7 A. Yes, they did.

8 Q. How do you know that?

9 A. We made payments on them every month.

10 Q. That is to the brothers?

11 A. To the brothers. And then in July, when  
12 money really got tight, we would hold their payments and  
13 pay them in late or -- months later, or whatever.

14 Q. In July of '87, had Mecham Pontiac already  
15 attempted to sell portions of its used car inventory in  
16 order to get cash?

17 A. Yes.

18 Q. Is there a down side to raising money in this  
19 fashion?

20 A. Yeah, I believe the last thing you want to do  
21 is wholesale your used car line. Normally it's a buyer's  
22 market at that point, and the wholesalers will offer  
23 anywhere from 500 to a thousand under book value. You  
24 could sell ten cars and lose \$10,000 very quickly.

25 Q. During the time you were there, the 14

1 months, did you know whether or not Governor Mecham was  
2 provided with monthly reports, financial reports?

3 A. Yes, he was. His mail basket as such was in  
4 my office. I would fold them and seal them in an envelope  
5 and write his name, "confidential and personal," and put  
6 them in there. His mail was picked up by Willard. I  
7 believe Eric Mecham took it to him one time, but the mail  
8 was picked up from my office.

9 Q. Did you ever have occasion to talk to Evan  
10 Mecham about the Tacoma property?

11 A. Yes, in February of '87.

12 Q. What did Mr. Mecham tell you?

13 A. We had gotten a letter from them about our  
14 delinquent payment on the Tacoma property, and I asked him  
15 if he would give me the address, should we mail January  
16 and February's payment. And he said, "No, let them sue."

17 Q. Let's go back to July of '87. At that point  
18 in time were there discussions about making payments on  
19 the Tacoma property?

20 A. Yes, there was -- they had -- there was more  
21 correspondence, and I believe they were planning on  
22 selling. I don't know if it's a trust deed, or whatever.  
23 And there was \$20,000 into it, and it had to be paid.

24 Q. Did anyone ever advise you as to the value of  
25 the Tacoma property?

1 A. Yes.

2 Q. Who was that?

3 A. Mr. Heslop.

4 Q. Who is he?

5 MR. LEONARD: Objection, objection. That's clearly  
6 hearsay.

7 THE PRESIDING OFFICER: What is your objection?  
8 I'm sorry. Hearsay?

9 MR. LEONARD: Hearsay.

10 THE PRESIDING OFFICER: Sustained.

11 BY MR. FRENCH:

12 Q. Knowing the financial condition of Mecham  
13 Pontiac in July of 1987, was there need for the \$80,000  
14 loan?

15 A. Yes, there was.

16 Q. If Dennis Mecham testified in front of this  
17 Court that Mecham Pontiac was not out of trust in July of  
18 1987, would you agree with that testimony?

19 A. No, no, I would not.

20 MR. FRENCH: No further questions.

21 THE PRESIDING OFFICER: You may cross-examine.

22

23 CROSS-EXAMINATION

24 BY MR. LEONARD:

25 Q. Ms. Christman, my name is Jerris Leonard.

1 I'm one of the Governor's attorneys.

2 A. Good morning.

3 Q. Good morning.

4 MR. LEONARD: Would you hand the witness, please,  
5 Exhibit 63, 63 --

6 THE WITNESS: Thank you.

7 BY MR. LEONARD:

8 Q. Ms. Christman, the clerk has just handed you  
9 Exhibit 63-G, and I'd ask you if you recognize what that  
10 document is purported to do.

11 A. Yes.

12 Q. Well, what's the purpose of that document?

13 A. This document lists the units that were sold  
14 and not paid and that we were out of trust on in the  
15 period of time that we were out of trust.

16 Q. Would you tell me where on that document  
17 there's an indication of when the dealership received  
18 payment for the particular unit?

19 A. On this particular document, there is none.  
20 In the accounting office, there would be.

21 Q. Is it possible from that document, Ms.  
22 Christman, to tell whether or not the unit is actually out  
23 of trust?

24 A. Not from this document, I don't believe.

25 Q. So the document would be valueless with

1 respect to a demonstration of how many units at the  
2 dealership were actually out of trust; is that correct?

3 A. No. Had I prepared this as out of trust for  
4 Dennis --

5 Q. No, no, excuse me.

6 A. I'm sorry.

7 Q. Look at the document itself. The question  
8 is: Isn't it true that the document is valueless to show  
9 the number of units at Mecham Pontiac which were out of  
10 trust during the period of time that the document covers?

11 A. No.

12 Q. Well, let me ask you this: How can you  
13 determine whether the unit is out of trust if you don't  
14 know when it's paid?

15 A. From May the 6th of '87 through July the 9th  
16 of '87, 64 days is the exception to the rule.

17 Q. Ms. Christman, you're not focusing on my  
18 question.

19 A. I'm sorry.

20 Q. You already said that you can't determine  
21 whether or not a unit is out of trust.

22 A. I'm sorry. You asked about payment of the  
23 unit, if that was recorded on here, and it is not.

24 Q. Then isn't it true that that document is  
25 valueless in order to determine whether or not the unit is

1 in fact out of trust?

2 A. No, it really isn't. If the unit was sold on  
3 May the 6th, you would not wait 64 days for payment.

4 Q. What if you hadn't been paid for the unit?

5 A. Then you would have gone and retrieved the  
6 unit and brought it back into the store.

7 Q. Well, who makes that decision?

8 A. That would come from Dennis or the sales  
9 managers.

10 Q. Isn't it true, Ms. Christman, that during the  
11 time that the unit is away from the dealership but is not  
12 paid, the title is still in, in this case, in the bank?

13 A. It's -- the MCO is to Mecham Pontiac showing  
14 F.I.B., or First Interstate Bank on it.

15 Q. So the ownership is in the bank?

16 A. Yes.

17 Q. So the unit has not been sold, has it?

18 A. It has been sold, but legally the paperwork  
19 has not been done on it.

20 Q. Title to the vehicle is in the bank?

21 A. So therefore, you're out -- you have a  
22 problem with the state, because you haven't done your  
23 title work properly.

24 Q. Can you do the title work until the unit is  
25 paid for?

1           A.     Yes, you -- normally you have a three or  
2 four-day period before your monies are in.

3           Q.     Who would you show the lien to?

4           A.     To whomever they borrowed the money from.

5           Q.     And who would you show the title to the  
6 automobile to be in?

7           A.     To whoever purchased the vehicle.

8           Q.     Even though the vehicle has not been paid  
9 for?

10          A.     The vehicles are usually paid within a three  
11 or four-day period.

12          Q.     Ms. Christman, I'm not asking you what's  
13 usual. I'm asking you whether or not it isn't a fact that  
14 you cannot tell from that document whether or not the  
15 dealership has been paid for the automobile.

16          A.     You cannot tell if it has been paid, but if  
17 you have the rest of the records, you can tell, though.

18          Q.     But you don't have the rest of the records,  
19 do you?

20          A.     Well, looking at this document, after the  
21 years that I've been doing this, if someone handed this to  
22 me, I would say they were in big trouble.

23          Q.     How can you tell if you don't know whether or  
24 not the unit was paid for?

25          A.     Because 64, 63, 62, 62, 44 days, if you were

1 in business in an auto dealership, and you waited that  
2 long to collect your money, you'd be shutting your doors  
3 very quickly.

4 Q. Let me ask you this question: Let's assume  
5 that you have a woman who owns her own business, and she  
6 comes in and she wants to lease a car from Mecham Pontiac.

7 A. Okay.

8 Q. Do you know the fact situation?

9 A. I know the facts in it.

10 Q. Isn't it true in that instance that it took  
11 103 days --

12 A. That was the exception --

13 Q. Let me finish the question.

14 A. I'm sorry.

15 Q. Isn't it true that it took 103 days for the  
16 paperwork to clear and for the bank to be paid?

17 A. For the dealership, yes.

18 Q. So it is possible, is it not, for a  
19 considerable period of time in some instances to elapse  
20 before the paperwork is cleared and the dealership gets  
21 its money, and if there's a trade-in, the trade-in gets  
22 paid off, and the bank gets paid, and all the title work  
23 is done? Isn't it fair to say that that can happen?

24 A. It can happen occasionally.

25 Q. But more importantly, during that period of

1 time, Ms. Christman, isn't it true that the ownership of  
2 the vehicle is in the bank?

3 A. When you say "ownership," the MSO, or the MCO  
4 shows Mecham Pontiac, and it also lists F.I.B. on there.

5 Q. Listen, we've got enough problems in this  
6 trial with gobbledygook.

7 Isn't it true that the title to the  
8 automobile remains in the bank? If the bank said, "We  
9 want that automobile right now," they could go and pick it  
10 up? Isn't that a fact?

11 A. Yes.

12 Q. Whew!

13 What is your education, Ms. Christman?

14 A. I have high school, and I have various  
15 nonaccredited accounting classes, and I have General  
16 Motors' accountant training, and I have UCS computer  
17 training. I have Reynolds & Reynolds APD all relating to  
18 the auto industry.

19 Q. Do you consider yourself to be an accountant?

20 A. Yes, I do.

21 MR. LEONARD: Would you show the witness Exhibit  
22 63-I, please. I'm sorry, not "I".

23 (Discussion off the record.)

24 BY MR. LEONARD:

25 Q. Exhibit 71. You will note, Ms. Christman,

1 that this document relates to the financial condition of  
2 Mecham Pontiac at the end of June of 1987. You were  
3 employed by the dealership at that time; is that correct?

4 A. Yes.

5 Q. You'll notice that in the right-hand column,  
6 the person who prepared this document is attempting to  
7 show that there was an adjustment made to the new car  
8 inventory, to "parts and accessories," down under "other  
9 current assets" to "factory receivables," and then finally  
10 to other investments on the "assets" side of the books?

11 A. That's right.

12 Q. And if you'll turn the paper over, you'll  
13 notice that there was an adjustment totaling -- adjustment  
14 to the liabilities totaling an amount equal to the assets  
15 on the cash?

16 A. That's right.

17 Q. Isn't it true, Ms. Christman, that the reason  
18 that that adjustment had to be made was because it was  
19 your practice of writing out checks as bills were received  
20 from vendors and logging the checks and putting the checks  
21 in the files?

22 A. No.

23 Q. Isn't it true, Ms. Christman, that that's  
24 what your daughter, who was one of your sub-bookkeepers,  
25 did?

1 A. No. If I may explain?

2 Q. No. You'll have an opportunity when the  
3 other lawyers ask you questions.

4 A. Okay.

5 Q. Isn't it true, Ms. Christman, that there were  
6 occasions when cash shortages resulted from a question in  
7 your mind about the bank's own bookkeeping and accounting  
8 practices?

9 A. No.

10 Q. Never?

11 A. I don't recall that there was.

12 Q. You're under oath, Mrs. Christman.

13 A. I don't recall. When you say the bank's --

14 Q. Isn't it true that in July of 1987, that you  
15 had a meeting with the people from First Interstate Bank?

16 A. Yes, July 22nd, I believe it was.

17 Q. You've looked at those documents?

18 A. I listened to testimony and -- yes.

19 Q. You've looked at the Stava letter?

20 A. Right.

21 Q. Excuse me. You've listened to the testimony?

22 A. From -- I listened -- listened to as much as  
23 I can, yes, on the hearing.

24 Q. How do you do that?

25 A. At work we have a TV.

1 Q. So while you're at work, you're watching  
2 these proceedings?

3 A. Periodically.

4 Q. Did you see all of Dennis Mecham's testimony?

5 A. No, just parts of it.

6 Q. Isn't it true that in July, July 22nd of  
7 1987, that you had a meeting with the bank officials from  
8 First Interstate, or whatever it is?

9 A. Right.

10 Q. And isn't it true that part of the problem  
11 that you were complaining about with the bank was the  
12 bank's own recordkeeping, bookkeeping, and paperwork  
13 system?

14 A. I pointed out to First Interstate that their  
15 current flooring interest statement -- not the flooring,  
16 the interest statement that came every month was to be  
17 current, and in the center of the body, if you will look  
18 at their document, it says "due next cycle." We discussed  
19 this area. The bottom of their interest statement clearly  
20 states "interest due." We did not discuss the amount of  
21 interest or how to determine to pay it.

22 What we discussed, I felt that they should  
23 do -- next cycle was rather -- you know, you don't need  
24 that next month. You need to know what's due this month,  
25 not next month in that period.

1 Q. So the answer to my question is yes?

2 A. Your question was did I disagree with their  
3 statement? Then it would be yes.

4 Q. Isn't it true, Ms. Christman, that there was  
5 also discussion during that period of time about the fact  
6 that Mecham Pontiac books were not being kept in proper  
7 order?

8 A. They had not been when I came.

9 Q. Can you answer that question yes or no?

10 A. No.

11 Q. All right. If you can't answer it yes or no,  
12 just say, "I can't answer it yes or no."

13 A. You're talking about -- I don't understand  
14 the question, then.

15 Q. All right. Isn't it true that during the  
16 course of the meeting with Mr. Stava and the other people  
17 from the bank, that they were critical of the manner in  
18 which the Mecham Pontiac books were being maintained?

19 A. No, actually they were critical of the way  
20 they had been kept. We were still in the transition  
21 period of trying to get them straightened out, and this  
22 was also discussed.

23 Q. They were a mess, weren't they?

24 A. Oh, they sure were. You wouldn't believe  
25 what I walked into there.

1 Q. And isn't that because of the fact that the  
2 dealership was using two methods of doing its accounting,  
3 a computer system and hand method?

4 A. Not at that time.

5 Q. What was the cause of the mess at that time?

6 A. The cause of the mess at that time, to be  
7 quite honest, was the computer, and inefficient help in  
8 the office in the past.

9 Q. And isn't it true, Ms. Christman, that you  
10 were actually asked to leave the dealership this last  
11 February because you and the computer couldn't get along?

12 A. Well, the computer and I had separated  
13 company as of September.

14 Q. And you didn't like the computer, did you?

15 A. I didn't like the misinformation and lack of  
16 information that it gave us, no.

17 Q. Isn't it true, Ms. Christman, that you  
18 weren't able to properly keep the books and records of  
19 Mecham Pontiac because you couldn't adapt to the computer  
20 system?

21 A. As far as adapting to the computer system --

22 Q. Can you answer that question yes or no?

23 A. Well, I gave several things to enhance the  
24 system --

25 Q. Can you answer the question?

1           A.     The system was not sophisticated enough for  
2 an auto dealership, so I'd have to answer your question  
3 yes, I could not get along with the computer.

4           Q.     Isn't it true, Miss Christman, that on  
5 occasions when Dennis Mecham -- when you would bring to  
6 Dennis Mecham's attention that there were cash shortages,  
7 that he would take steps necessary to meet those  
8 shortages?

9           A.     Yes, that would have to be true.

10          Q.     Is there any occasion on which that didn't  
11 happen?

12          A.     Not that I'm aware of.

13          Q.     And isn't it true that he would borrow money  
14 from different sources?

15          A.     Oh, we had a big borrowing in July and we had  
16 a big borrowing in October.

17          Q.     Please, please try to bear with me. Try to  
18 listen to the question.

19                    Isn't it true that he would borrow the money  
20 from various sources?

21          A.     In reference to what -- what period are you  
22 talking about?

23          Q.     During the period of time that you were --  
24 how long were you there? 14 months?

25          A.     Fourteen months.

1 Q. That's not a long period of time, so let's  
2 talk about the 14 months. How many times during the 14  
3 months, Ms. Christman, did Mecham Pontiac borrow money  
4 from some source, bank, personal, Paulin, whoever?

5 A. Probably three to four times. When we had  
6 additional revenues coming in, is this what you're asking  
7 me?

8 Q. No. I'm asking you, please, to focus on the  
9 question that I ask you.

10 A. Okay.

11 Q. Do you know how many times during the 14  
12 months that you were at Mecham Pontiac that the agency  
13 borrowed money? Not floor plan money, but money from  
14 other sources for working capital.

15 A. I can think of at least four times, three to  
16 four times where large monies came in.

17 Q. Now, think a little harder. Could it have  
18 been more than that?

19 A. Could have possibly been five.

20 Q. And in each instance, did either Dennis  
21 Mecham or the Governor arrange for that financing?

22 A. I'm sure they did.

23 Q. How long did it take them to get the  
24 financing?

25 A. I have no idea.

1 Q. Well, from the time you pointed out to  
2 management at the agency that there was need for cash,  
3 from that point on, how long would it take to get the  
4 money?

5 A. Well, the one time they sold property in  
6 Mesa, and that brought in a large deposit, and I don't  
7 know if, when they made the deposits, had they secured  
8 loans elsewhere other than when we got a note in there to  
9 pay back.

10 Q. Isn't it true, Miss Christman, that when you  
11 brought to the attention of management at Mecham Pontiac  
12 that there was need for funds, that those funds were there  
13 and available within a matter of days?

14 A. Not all the time, no.

15 Q. Well, give me the instance in which that  
16 didn't happen.

17 A. From November -- primarily they were in that  
18 position when I went there in November of '86, and it  
19 continued through February when I left. It's an  
20 unfortunate thing, but it's true.

21 Q. What was the longest period of time that it  
22 took management to secure funds for the cash needs of the  
23 agency after you advised them that there was need for  
24 cash?

25 A. When we secured funds in July, we had trouble

1 through May and June, so that would be what? A 60-day  
2 period that it really got critical that funds had to be  
3 brought in.

4 Q. Isn't it true that the agency borrowed a  
5 substantial amount of money in July?

6 A. Yes, it is.

7 Q. And other than the loan from the Mecham  
8 Inaugural Committee, how much was borrowed in July?

9 A. From the Inaugural Committee or from  
10 protocol --

11 Q. I said other than the Inaugural Committee.

12 A. There was 50,000, I believe, from merchants,  
13 another 150,000 -- and who was that from? I've hit a  
14 mental block on it, but I know that we -- we were looking  
15 at about 350,000, \$400,000, I believe, at that point that  
16 came in.

17 Q. In answer to a question by counsel, you said  
18 you were subpoenaed here; is that correct?

19 A. Yes.

20 Q. Isn't it true that you called counsel for the  
21 Board of Managers last Friday?

22 A. I did not personally place the call. Someone  
23 placed it for me.

24 Q. But somebody called them on your behalf?

25 A. Yes. They had tried to reach me prior to

1 that and were unable to.

2 Q. When were you subpoenaed?

3 A. Monday.

4 Q. When you came down here?

5 A. Yes.

6 Q. So when you walked into their office, they  
7 handed you a subpoena?

8 A. Yes.

9 Q. So you're only technically under subpoena?  
10 You're here voluntarily, aren't you?

11 A. Regardless --

12 MR. FRENCH: Objection, Counsel. That calls for a  
13 legal conclusion.

14 THE PRESIDING OFFICER: Sustained.

15 BY MR. LEONARD:

16 Q. You would have testified whether you were  
17 subpoenaed or not; isn't that true?

18 A. No.

19 Q. You told them that you wouldn't testify  
20 without a subpoena?

21 A. That's correct.

22 Q. But you went to their office before you were  
23 served with a subpoena?

24 A. No.

25 Q. You were in contact with them before --

1 A. I spoke to them on the phone.

2 Q. Excuse me. Let me finish the question.

3 You were in contact with them and you took  
4 the effort to contact them before you were subpoenaed;  
5 isn't that true?

6 A. Yes, when I heard Dennis lie.

7 MR. LEONARD: Well, now I move that the last part  
8 of that question be stricken. It's not responsive to my  
9 question, and I would ask the Court, ask the Chief  
10 Justice, who has admonished other witnesses, including  
11 with the gavel, to instruct this witness to answer the  
12 questions. If she can't answer them yes or no, she can  
13 say so.

14 MR. FRENCH: Mr. Presiding Officer, he asked the  
15 question and she gave him the answer, and the answer  
16 should stand. That's why she came forward.

17 THE PRESIDING OFFICER: I will agree that the  
18 witness went beyond what the question called for. And I  
19 will admonish you, ma'am, I don't want to be too formal  
20 that way, because every time I admonish a witness I get my  
21 picture in the paper.

22 However, one of the important parts here is  
23 that you are to be answering questions, only those that  
24 are asked of you, and if the opposing side wishes to  
25 straighten anything up that your answers might cause, they

1 will do so by subsequent questions. So, don't interrupt  
2 the questions and don't give answers beyond that which the  
3 question calls for. So, pay close attention to the  
4 questions.

5 THE WITNESS: Thank you.

6 BY MR. LEONARD:

7 Q. Isn't it true, Miss Christman, that in July  
8 of 1987, your battle with the computer accounting system  
9 was resulting in management not having proper accounting  
10 information?

11 A. No, that is not true.

12 Q. Isn't it true, Ms. Christman, that on one  
13 occasion -- let me withdraw that.

14 Isn't it true, Ms. Christman, that all of the  
15 managers at Mecham Pontiac, except for one, complained to  
16 you about the lack of information that you were producing  
17 for them to manage their departments?

18 A. That is not true.

19 Q. Isn't it true that the only manager, Ms.  
20 Christman, who didn't complain was a manager who you were  
21 overpaying because your accounting system wasn't properly  
22 computing his pay?

23 A. I don't understand -- the only one  
24 complaining?

25 MR. LEONARD: Yes. Read the question back.

1 (Question read.)

2 THE WITNESS: I don't know who you're referring to,  
3 and I can't relate to the circumstances.

4 BY MR. LEONARD:

5 Q. Is it your testimony, Ms. Christman, that  
6 there was not one of the managers at Mecham Pontiac who  
7 was being overpaid because you were not properly computing  
8 his payroll?

9 A. I think the key there is "computing."

10 Q. No. Can you answer that question yes or no?  
11 Do you understand the question?

12 A. I don't really understand where you're going  
13 to, so I can't answer it.

14 Q. Ma'am, where I'm going is, frankly, none of  
15 your concern. Your concern is to answer the question yes  
16 or no.

17 Can you answer it?

18 A. No, I don't know of the circumstances off the  
19 top of my head. I'd have to have more detail.

20 Q. So you have no recollection of the fact that  
21 there was one of the managers -- let me withdraw that.

22 Isn't it true that the managers of the  
23 various departments get paid on the basis of the  
24 production of their departments?

25 A. That's correct.

1 Q. They're all individual profit centers in a  
2 dealership; isn't that correct?

3 A. That is correct.

4 Q. Now, isn't it true that you had miscalculated  
5 the payments due to one of the managers because your  
6 bookkeeping system didn't properly account for the --

7 A. I had not miscalculated anything.

8 Q. Please, please.

9 THE PRESIDING OFFICER: Please, ma'am, wait before  
10 the question is asked before you start your answers.

11 THE WITNESS: I'm sorry. I thought he was  
12 finished.

13 BY MR. LEONARD:

14 Q. Isn't it true, Ms. Christman, that your  
15 system of accounting resulted in the overpayment of one of  
16 the managers of the Mecham Pontiac profit center?

17 A. My system did not, no.

18 Q. Is it true that one of the managers was in  
19 fact overpaid?

20 A. I believe there was one.

21 Q. Now, is that helping to refresh your  
22 recollection? You don't need to give his name, but is it  
23 helping to refresh your recollection about the incident of  
24 overpayment?

25 A. I'm not really -- no, in answer to that, no.

1 Q. It's your testimony that it wasn't your  
2 system of accounting that resulted in the overpayment?

3 A. Those were calculated from the computer, the  
4 grosses.

5 Q. So it was the computer system that was wrong?

6 A. Yes, in July, definitely.

7 Q. Do you recall early in your tenure at Mecham  
8 Pontiac when there were files on automobile sales  
9 transactions that were missing?

10 A. Those were prior to my time.

11 Q. Ma'am, please, please answer yes or no.

12 A. No, then, not during my time.

13 Q. After you arrived at Mecham Pontiac, do you  
14 recall discussions with respect to the fact that there  
15 were files on automobile sales that were missing?

16 A. Yes.

17 Q. How many were there?

18 A. I believe there were 80 to a hundred in 1986.

19 Q. And do you recall what employees were  
20 assigned to the task of trying to reconcile or rectify  
21 that situation?

22 A. Yes, there was Maurita Jackson and Deborah  
23 Ray, title clerks.

24 Q. And were those files eventually  
25 reconstructed?

1 A. Yes, they were.

2 Q. Now, would it surprise you, Ms. Christman, if  
3 Maurita Jackson -- let me withdraw that.

4 Did you consider Maurita Jackson to be a  
5 valuable employee?

6 A. Yes, she was.

7 Q. And did she do a good job in reconstructing  
8 the files?

9 A. Yes, they -- they did.

10 Q. And did they also assist you in  
11 any way in trying to solve the problems between the  
12 computer system and the hand bookkeeping system?

13 A. Not in the title department, no.

14 Q. Did Maurita Jackson do a good job in  
15 reconstructing all of those files?

16 A. Yes, they did.

17 Q. Would it surprise you to know, Ms. Christman,  
18 that Maurita Jackson, that one of the reasons that she  
19 left was because of her inability to get along with you?

20 A. Yes, it would surprise me.

21 Q. Would it surprise you to know that part of  
22 the inability of her to get along with you was the fact  
23 that you refused to adapt to the modern computerized  
24 bookkeeping system?

25 A. Well, that would have to be wrong.

1 Q. But --

2 A. It would surprise me if that were her  
3 reaction.

4 Q. But you did fight the system, didn't you?

5 A. After six months, yes.

6 Q. Isn't it true, Miss Christman, that during  
7 your entire tenure as the office manager and chief  
8 bookkeeper or accountant for this dealership, that not  
9 once did a department head at Mecham Pontiac receive a  
10 daily operating report on a timely basis?

11 A. This is true. They -- may I --

12 Q. No.

13 A. Okay.

14 Q. You'll get a chance. Mr. French is sitting  
15 there just waiting to ask all these questions that you  
16 want answered.

17 To what would you attribute the failure of  
18 the department heads to get daily operating reports on a  
19 timely basis?

20 A. They were only requested once a week, on  
21 Friday.

22 Q. I'm sorry. I didn't hear that.

23 A. They did not get daily operatings. It was  
24 once a week that they got the gross profit statement from  
25 the computer.

1 Q. Is it your testimony that under the Mecham  
2 Pontiac operating procedure, that the department head was  
3 not to receive a daily operating report?

4 A. When I went to Mecham Pontiac, they were set  
5 on a once-a-week basis to receive their gross profit  
6 statement, yes.

7 Q. So the answer to my question is no?

8 A. No.

9 Q. Well, let's take a look at the weekly  
10 reports. Did you get those to them on a timely basis?

11 A. On the -- the young fellow ran those off, ran  
12 them off on Friday, and I have to? Elaborate or I can't  
13 answer your question. At times we were unable to get them  
14 from the computer.

15 Q. It's that computer, wasn't it? That's the  
16 problem?

17 A. No, there is always human error involved,  
18 too.

19 Q. Would you admit that with respect to the  
20 question of generating the company's general journals,  
21 that the computer was more accurate than your hand system?

22 A. When you're referring to journals, what are  
23 you referring to?

24 Q. General ledger.

25 A. General ledger. No, in most instances not.

1 Q. So it's your testimony that your handwritten  
2 system was more accurate than the computer system in  
3 generating the general ledgers of the company?

4 A. Yes.

5 Q. Isn't it true, Miss Christman, that during  
6 your tenure, that there was never an accurate used car  
7 inventory?

8 A. That's right.

9 Q. And isn't it true that the agency was  
10 required on many occasions to take a physical inventory of  
11 used cars in order to determine what that used car  
12 inventory actually was?

13 A. All agencies take a physical once a month,  
14 and then the accounting office verifies with it, so yes,  
15 they did take physicals.

16 MR. LEONARD: Would you read that question back to  
17 the witness, please.

18 (Question read.)

19 THE WITNESS: Yes, monthly -- or, yes, that would  
20 suffice, but yes.

21 BY MR. LEONARD:

22 Q. Isn't it true that because your accounting  
23 system, the Leila Christman accounting system didn't  
24 properly account for the inventory, that the agency was  
25 required --

1 A. I'm listening. I'm not answering.

2 Q. -- required to take extraordinary inventories  
3 in order to determine what the used car inventory was?

4 A. No.

5 Q. All right. Isn't it correct, Ms. Christman,  
6 that you were unable to reconcile from your books and  
7 records the used car inventory of the agency?

8 A. When you speak of my books, we're talking  
9 about when I started with the computer. Yes, I was not  
10 able to reconcile.

11 Q. And isn't that why you had to take a separate  
12 used car inventory to determine what it was, because you  
13 couldn't reconcile it?

14 A. No.

15 Q. All right. Isn't it true, Ms. Christman,  
16 that one of the reasons you were asked to leave the  
17 dealership was because you abused employees and showed  
18 favoritism to others?

19 A. No.

20 Q. Isn't it true, Ms. Christman, that there was  
21 a criticism of you in the office that you generally showed  
22 a lack of fairness to employees?

23 A. No.

24 Q. Why did you leave?

25 A. Because of the computer. A man was hired to

1       troubleshoot the computer.     Me and my computer, right?

2             Q.     You were asked to resign, were you not?

3             A.     Yes.

4             Q.     And Mr. Mecham, Dennis Mecham, gave you a  
5 favorable letter of reference?

6             A.     Yes, rather than Paragraph 2.   I'm sorry.

7             Q.     Was it favorable or was it unfavorable?

8             A.     It was favorable, yes.

9             Q.     It didn't hurt you in trying to get another  
10 job, did it?

11            A.     It could have, in Paragraph 2 in reference to  
12 the computer.

13            Q.     Do you have it?

14            A.     I didn't bring it with me, no.

15            Q.     Did he refer to the fact that you and the  
16 computer didn't get along?

17            A.     He referred to the fact that I couldn't  
18 troubleshoot the computer.

19            Q.     Well, was that honest or wasn't it?

20            A.     Well, there was no need for me to  
21 troubleshoot the computer.

22            Q.     Because there wasn't any need for the  
23 computer?

24            A.     Because Eric Mecham was on our payroll, and  
25 he was the programmer for the computer.

1 Q. Ms. Christman, wasn't the letter and the  
2 caveat with respect to the computer a nice way of saying  
3 this is very nice lady, but she can't handle our system?

4 A. No, I expect honesty or I don't want a letter  
5 of reference.

6 Q. Well, did you point out to him at the time  
7 that he gave it to you that you didn't think it was an  
8 honest letter?

9 A. Yes, I did. He and I talked about it.

10 Q. And what did you want him to say?

11 A. Whatever he felt like he should say was what  
12 he put into the letter. I disagreed with it.

13 Q. Well, because you disagreed with it, does  
14 that mean it's dishonest?

15 A. No, the prior week he told me what a great  
16 job I was doing.

17 Q. No. Can you answer the question?

18 Just because you disagreed with it, does that  
19 mean it's dishonest?

20 A. I didn't say he was dishonest.

21 Q. Well, I think you did. You implied it.

22 Now, was the letter honest or was it  
23 dishonest?

24 A. In my opinion, it was inaccurate.

25 Q. Was it honest or dishonest?

1           A.     I would assume -- I don't know what Dennis'  
2 intentions were.

3           Q.     Ms. Christman, is it true that if you  
4 disagree with somebody, you feel they're lying?

5           A.     No.

6           Q.     When the checks from the Mechams were  
7 received by you in October of 1987, did you know what the  
8 purpose of those checks was?

9           A.     Yes.

10          Q.     What was it, as far you knew?

11          A.     To repay the protocol loan.

12          Q.     And did you know that the night before, that  
13 Dennis Mecham had written a check for some \$70,000 to  
14 repay the balance of the loan?

15          A.     No.

16          Q.     Well, then how did you know the checks you  
17 were receiving were for the repayment of the protocol  
18 loan?

19          A.     I don't know that he wrote the check the  
20 night before we got the money. I can't answer that.

21          Q.     So you don't know when he wrote the check to  
22 repay the loan?

23          A.     It would be in that time frame. I cannot  
24 give you the exact date. If the dollars came into our  
25 bank first or he wrote the check first, I'm not sure of

1 the sequence.

2 Q. When the deposit was received in July of  
3 1987, how did you enter it on the books of Mecham Pontiac?

4 A. I believe she receipted it -- I'm trying to  
5 think. I don't -- I'd have to look, it's been so long  
6 ago, explicitly how the receipt was written.

7 Q. I'm sorry. I didn't understand.

8 Do you know how the \$80,000 check was  
9 recorded on the books of Mecham Pontiac in July of 1987?

10 A. I don't recall how it was receipted or to  
11 what time frame, or anything. Is that what you're asking?

12 Q. No. How was it carried?

13 A. I went over to Dennis' office. He gave me  
14 the check. I brought it back over, made a copy of it, and  
15 handed it to Donna, who then wrote the receipt, and it was  
16 put on a deposit slip. Is that what you're asking?

17 Q. What I'm trying to determine, Ms. Christman,  
18 is whether or not you know how the \$80,000 was classified  
19 on the books and records of Mecham Pontiac.

20 A. Yes. You're talking about the account?

21 Q. The account.

22 A. Okay. We used 294-D for all the --

23 Q. I don't need the number. Just tell me. Was  
24 it an asset, liability? What was it?

25 MR. FRENCH: I object. He's badgering the witness.

1 She's trying to answer the question.

2 THE PRESIDING OFFICER: It's argumentative.

3 Sustained.

4 BY MR. LEONARD:

5 Q. Go ahead, ma'am.

6 A. We used -- 294-D is an account to bring money  
7 in and out. This was a standard account, and it's in the  
8 trial balance, and it's labeled "Mecham Investment." It  
9 was a simple clearing account for us to maintain and  
10 control this record.

11 Q. Ma'am, do you know the difference between an  
12 asset and a liability?

13 A. Well, I do, yes.

14 Q. When you classified the \$80,000 deposit on  
15 the books, you classified it as an asset because it was  
16 cash?

17 A. Debited cash and credited to 294, yes.

18 Q. What did you credit?

19 A. We credited 294-D, which --

20 Q. Was that a loan account?

21 A. General Motors' accounting 200 are the  
22 assets.

23 Q. And 294 is what? The liabilities?

24 A. No, anything beginning with 200 on General  
25 Motors is an asset.

1 Q. Yes, ma'am. You classified the \$80,000 in  
2 the 290 category because it was a cash receipt, so you  
3 debited it to cash; is that correct?

4 A. Debited cash.

5 Q. What did you credit?

6 A. Mecham Investment.

7 Q. How did you classify it? As a loan payable?

8 A. No, Mecham Investment is set up in the books  
9 with 294-D. Any transactions, whether debit or credit,  
10 went through that.

11 Q. Is it your testimony, Ms. Christman, that in  
12 July of 1987, you did not show the \$80,000 deposit as a  
13 loan payable to someone?

14 A. I'm trying to remember. I know we would have  
15 owed it and I'm trying to remember the account and how it  
16 transacted. We maintain a file on anything like that. If  
17 you would show me, I could verify it.

18 Q. I can't. I don't have anything to show you.  
19 I have to rely on your memory.

20 A. This would have been --

21 Q. Like all your testimony here today is relying  
22 on your memory, isn't it?

23 A. Okay -- yes. There would have been a  
24 liability. When we received cash, there's always  
25 liability to it. The net makes the liability, if that's

1 what you're asking.

2 Q. Who would have made the determination as to  
3 what account that \$80,000 would have been credited to as a  
4 liability?

5 A. All of the -- my odd money outside of normal  
6 business we ran through 294-D.

7 Q. Ma'am, my question is: Who? Who would have  
8 made the determination as to where to put the \$80,000 on  
9 the liability side of the books?

10 A. Okay. This procedure was set in the  
11 accounting prior to when I came, and I just followed  
12 through on what was there, yes. So I would have been  
13 ultimately, I guess, the one that decided that.

14 Q. So you ultimately would have made the  
15 decision as to how to classify it as a liability?

16 A. Yes.

17 Q. Now, you would have classified it as loan  
18 payable --

19 A. Yes.

20 Q. -- on the Governor's Inaugural Fund?

21 A. Mecham Inaugural Committee? Yeah.

22 Q. Did you ever see the check?

23 A. Yes, I did. Well, I had it in my hands. I  
24 made copy of it.

25 Q. So you knew where the money was coming from?

1 A. Yes.

2 Q. And you knew it was a loan?

3 A. Yes.

4 Q. So there's no question about the fact that on  
5 the books of the dealership, it was listed as a loan  
6 payable?

7 A. Right, it was a liability on the stores.

8 Q. Okay. Whew!

9 Now, counsel asked you some questions about  
10 the Willard and Wayne Mecham loans. I don't remember the  
11 amounts, but they were fairly substantial; isn't that  
12 right?

13 A. Yes, they were.

14 Q. Was there any period of time -- sorry.

15 Was there any time during the period of time  
16 that you were with the dealership that those loans weren't  
17 carried on the books?

18 A. No, they would have been carried on the  
19 books.

20 Q. And they were never taken off the books, as  
21 far as you know?

22 A. You're talking about money we borrowed from  
23 them?

24 Q. Right.

25 A. Yes.

1 Q. And you made payments to them?

2 A. No. We apparently are talking two different  
3 loans here.

4 Q. I'm talking about the two large loans that  
5 were made to Willard and to -- by Willard and Wayne to the  
6 dealership.

7 A. Yes, we paid those every month.

8 Q. And if you were a little short of cash, you  
9 waited for a month?

10 A. We didn't pay them, right.

11 Q. Paid them the next month, or maybe the month  
12 after?

13 A. Right, and we had signed a note for that  
14 month that we couldn't pay.

15 Q. So that if you couldn't make the payment to  
16 Willard or Wayne, you signed a separate note for that  
17 payment?

18 A. Yes.

19 Q. So there wasn't any question that the  
20 dealership owed the money?

21 A. No.

22 Q. And with Wayne and Willard, they wanted to  
23 have -- if the payment wasn't made, they wanted to have  
24 another piece of paper evidencing the fact that that  
25 wasn't paid; is that right?

1           A.     Not initially, but it became such habit that  
2 it was decided, and I don't know whether it was Willard  
3 and Wayne and Dennis or Evan that decided that, yes, there  
4 should be something there.

5           Q.     But were the payments eventually made?

6           A.     We were still in arrears when I left. So I  
7 can't say if they've been caught up. I assume they have.

8           Q.     How many months in arrears? Do you recall?

9           A.     We were sitting like two to three months at  
10 one point.

11          Q.     And you don't know -- you don't have any  
12 information at all with respect to whether or not there  
13 were recorded deeds of trust behind the Willard and Wayne  
14 Mecham loans, the big loans?

15          A.     Yes.

16          Q.     You do?

17          A.     Yes.

18          Q.     Do you know when they were recorded?

19          A.     No. They're in a file in my old office desk.

20          Q.     Do you have any information as to whether or  
21 not those deeds of trust were ever released?

22          A.     Not that I'm aware of. I have no knowledge.

23          Q.     So if they were released in March of 1987,  
24 you wouldn't know that?

25          A.     No.

1 Q. Or the circumstances of their release?

2 A. No.

3 Q. And if in fact the deeds of trust were not  
4 encumbrances against the real estate in July of 1987, you  
5 wouldn't know that, either?

6 A. No.

7 Q. But they were on the books?

8 A. They were on the books.

9 Q. And looking at Exhibit 71, if you would,  
10 please, as far as you know, are those two loans reflected  
11 in the total liabilities line which, under "General  
12 Motors," shows \$6,950,000?

13 A. Yes, they would be included in there.

14 Q. Now, with respect to that exhibit, Ms.  
15 Christman, let me ask you to look at the total net worth  
16 line. In your opinion as the office manager and  
17 accountant for Mecham Pontiac in June of 1987, does the  
18 number \$4,267,437 accurately reflect the net worth of  
19 Mecham Pontiac at the --

20 A. Yes.

21 Q. Let me finish.

22 A. I'm sorry.

23 Q. -- at the end of June, 1987?

24 A. Yes, it would.

25 Q. Now, let me just ask you -- I think I have

1 just one more question. When you had the discussion with  
2 the Governor about the late payment on the Tacoma  
3 property, you recall that you testified he said -- when  
4 you asked him about the payment, he said, "No, let them  
5 sue"?

6 A. Yes, he did.

7 Q. Did you know that the Governor had been  
8 having a dispute with the Sturgeon Group in Tacoma at that  
9 time?

10 A. No.

11 Q. You didn't know anything about the  
12 circumstances which led up to his saying, "No, let them  
13 sue"?

14 A. Until that Sunday, I didn't even know  
15 anything about Tacoma.

16 Q. Okay. And did he explain to you why he made  
17 that statement?

18 A. Not really.

19 Q. So to your knowledge, did the Sturgeon  
20 people, the people you were making the payment to -- by  
21 the way, do you remember the name of the entity you were  
22 making the Tacoma payments to?

23 A. I believe we sent them to Sturgeon when we  
24 had to -- it was an -- I believe an attorney or some agent  
25 named Len.

1 Q. Now, to your knowledge, did -- was a lawsuit  
2 ever started?

3 A. There were papers that came in. I would have  
4 taken it for a lawsuit, but I'm not a lawyer. You know,  
5 when I saw it, had it been against me, I would have really  
6 been concerned.

7 Q. I'm not trying to get into an area that you  
8 may not know anything about, but might it be what you saw  
9 was a letter saying that there was a notice of default  
10 that had been filed? Well, let me not -- that's not a  
11 fair question.

12 As far as you know, you never saw any papers  
13 which said Sturgeon versus Mecham Pontiac?

14 A. Yes, I did, and I -- but I don't remember the  
15 terminology.

16 Q. Was it a letter?

17 A. It was actually a legal type document that  
18 had -- and there again, I don't remember what it was.

19 Q. Could it have been a notice of default?

20 A. Could have been.

21 Q. You're not sure exactly what it was?

22 A. No.

23 MR. LEONARD: If the Court please, Mr. Craft says  
24 he's got -- what? Could we take our break now? I think  
25 I'm just about finished.

1 THE PRESIDING OFFICER: Yes. We'll stand at recess  
2 now until 10:30.

3 (Recessed at 10:14 a.m.)

4 (Reconvened at 10:32 a.m.)

5 THE PRESIDING OFFICER: Thank you, ladies and  
6 gentlemen. The Court of Impeachment will reconvene. Show  
7 the presence of a majority of the Board of Managers, their  
8 counsel, counsel for the respondent.

9 We will now have Ms. Christman return on  
10 cross-examination.

11 I'll remind you, Ms. Christman, you're still  
12 under oath.

13 THE WITNESS: Okay.

14

15 CONTINUED CROSS-EXAMINATION

16 BY MR. LEONARD:

17 Q. Ms. Christman, did you, during the recess,  
18 talk with counsel for the Board of Managers?

19 A. Yes.

20 Q. Did you talk about your testimony?

21 A. I talked about having a cigarette.

22 Q. You didn't talk about your testimony?

23 A. No -- well, I guess we did generally, but not  
24 in the sense of -- how do you mean that?

25 Q. Did you have any discussion with him about

1 what questions they were going to ask you on redirect  
2 examination?

3 A. No.

4 Q. Isn't it true, Mrs. Christman, that there was  
5 a time when you had complaints from the salesmen at Mecham  
6 Pontiac because you were shorting them on their commission  
7 checks?

8 A. Not -- I didn't do that, no.

9 Q. Who did it?

10 A. I didn't calculate commissions. If we had a  
11 complaint, we verified it.

12 Q. Do you recall a time when the salesmen at  
13 Mecham Pontiac, as a group of people, complained about the  
14 fact that you were shorting them on their commission  
15 checks?

16 A. No, I don't.

17 Q. You have no recollection of that?

18 A. None.

19 Q. You have no recollection of the fact that Mr.  
20 Dennis Mecham had to referee a dispute between you and the  
21 salesmen because of the fact that their commission checks  
22 were being shorted?

23 A. You're talking about sales managers?

24 Q. I'm talking about salesmen.

25 A. I don't recall.

1 Q. So your testimony is that there was never a  
2 time while you were the office manager and head accountant  
3 of Mecham Pontiac when the salesmen were being shorted on  
4 commissions on their checks?

5 A. No, I didn't say that. I said I don't  
6 recall.

7 Q. From your experience in the automobile  
8 business, Ms. Christman, isn't it true that you usually  
9 take a car inventory once a month?

10 A. Yes.

11 Q. Isn't it true, Ms. Christman, that because of  
12 the inadequacy of the way in which you kept the Mecham  
13 Pontiac books, that it was necessary for Mecham Pontiac to  
14 take car inventories as often as three and four times a  
15 month?

16 A. The way you're asking that, I can't answer  
17 it.

18 MR. LEONARD: Thank you.

19 THE PRESIDING OFFICER: Redirect.

20 MR. FRENCH: Could the clerk hand the witness  
21 Exhibit 71. Thank you.

22

23 REDIRECT EXAMINATION

24 BY MR. FRENCH:

25 Q. Now, this is the exhibit that Mr. Leonard

1 asked you about, is it not?

2 A. Yes.

3 Q. Take a look at the second page on the back of  
4 that exhibit. Under cash and bank credit balance, it  
5 shows \$750,000 difference. Do you see that?

6 A. Yes.

7 Q. Can you explain why that difference exists?

8 A. Yes. We were holding checks, and at the end  
9 of the month, we had not been able to release the checks  
10 that were issued for paying off flooring or lien releases,  
11 or whatever, and in closing the books, I made the entry to  
12 bring it back -- the cash and bank back to a realistic  
13 figure.

14 Q. So why were you holding the checks?

15 A. We didn't have the money.

16 Q. Counsel asked you a number of questions. I  
17 want to ask you this question: Has any of the questions  
18 that Mr. Leonard asked you caused you to change your  
19 testimony that Mecham Pontiac had a cash need of \$497,000  
20 in July of 1987?

21 A. No.

22 Q. Has any of the questions that Mr. Leonard  
23 asked you caused you to change your testimony that there  
24 were 21 cars out of trust in July of 1987?

25 A. No.

1 Q. Mr. Leonard asked about your contacting us.  
2 Would you tell the Court why you contacted us?

3 A. I was upset with Dennis.

4 Q. Why were you upset?

5 A. Because he had used a time frame which did  
6 not apply to me and said his past office manager, which  
7 reflected on the time period that I was there.

8 Q. Why did you come forward to talk to us?

9 A. I felt the truth should be known.

10 MR. FRENCH: That's all the questions I have.

11 THE PRESIDING OFFICER: Questions by Senators?

12 Senator Hill.

13 SENATOR HILL: Thank you, Mr. Presiding Officer.

14 Ms. Christman, in your capacity at Mecham  
15 Pontiac, were you involved with preparations of the  
16 various federal reports for employees, et cetera?

17 THE WITNESS: No. I had an employee that did that.  
18 I generally looked at them after she completed them.  
19 Sometimes I did get them mailed out before I checked them,  
20 though.

21 SENATOR HILL: All right. Thank you.

22 You mentioned that there were a number of  
23 notes from the various Mechams, and et cetera, the  
24 inaugural fund. Were those notes interest-bearing?

25 THE WITNESS: Some of them were, yes.

1           SENATOR HILL: All right. The ones that were  
2 interest-bearing, were the necessary documents prepared  
3 for the IRS showing how much interest was paid on those  
4 notes in 1987?

5           THE WITNESS: The interest, to my knowledge, was  
6 not paid in 1987, so therefore, it would not have been  
7 necessary to do a 1099.

8           SENATOR HILL: We had testimony on a number of  
9 those documents that the loan was paid off in '87, had a  
10 couple of payments before that of \$1,000 and \$5,000, and  
11 we were told that there was a miscalculation of a hundred  
12 and some dollars interest. That was in '87.

13          THE WITNESS: Are you discussing the \$80,000 loan?

14          SENATOR HILL: That's the one.

15          THE WITNESS: I'm sorry. That would have been done  
16 at year-end as of December, when we closed the books, and  
17 that 1099 would have been issued. We had not closed the  
18 books in January yet.

19          SENATOR HILL: I understand the closing of the  
20 books. So the 1099 was issued on the interest paid on  
21 that loan?

22          THE WITNESS: It would have been interest and  
23 included in part of the year-end in January. I believe  
24 they have to be out by January 1st. We did not make that  
25 deadline.

1           SENATOR HILL: Did you ever file the documents on  
2 any deadline?

3           THE WITNESS: I left October 2nd, so that would  
4 have gone to my predecessor.

5           SENATOR HILL: So you were not aware of the notes  
6 being filed as far as the interest is concerned? Well, if  
7 you do not know that, were you aware of how the notes were  
8 held on your books or what was the principal, who was the  
9 payee? Was it the Mecham Inaugural Fund? How was that  
10 captioned on your notes?

11           THE WITNESS: It would have been however the check  
12 was issued from what account it was drawn from. If it  
13 said Mecham Inaugural Fund, the receipts would be written  
14 that way and the note would have actually been drawn that  
15 way.

16           SENATOR HILL: In other words, there was no note in  
17 there to the State of Arizona or a subsidiary agency, the  
18 state treasury, or anything like that?

19           THE WITNESS: No.

20           SENATOR HILL: Thank you very much.

21           THE PRESIDING OFFICER: Senator Higuera is next.

22           SENATOR HIGUERA: Thank you, Mr. Presiding Officer,  
23 Judge.

24                       Ms. Christman, you mentioned the 294-D  
25 account, which is Mecham Investments. Can you elaborate

1 what those loans are used for as far as investments?

2 THE WITNESS: It really isn't an investment account  
3 on the Mecham Pontiac books. It's just merely a holding  
4 account. Anything unique that did not apply to the auto  
5 business itself we receipted money in the there and paid  
6 back out of that account. It was simpler to track  
7 maintaining everything in one account.

8 SENATOR HIGUERA: All right. Thank you.

9 You also, I -- I guess you were somewhat  
10 blocked from elaborating further on Dennis' testimony when  
11 you used the word "lying." Were there any other instances  
12 of maybe either Dennis or Evan Mecham not telling the  
13 truth on the stand?

14 THE WITNESS: I think the dates and that, they were  
15 misstating various facts which would lead one to believe  
16 that the inefficiencies were in the accounting office  
17 rather than the fact there was a lack of money.

18 SENATOR HIGUERA: All right. Thank you.

19 THE PRESIDING OFFICER: Next is Senator Walker, and  
20 then Senator Stephens.

21 SENATOR WALKER: Mr. Presiding Officer, Ms.  
22 Christman, good morning. I have one question.

23 On the delivery of cars, is it a normal  
24 process that a customer's credit must be verified and the  
25 loan must be approved before the car is delivered or

1 rolled?

2 THE WITNESS: Yes, as a general rule, it is.

3 SENATOR WALKER: So would you say that the majority  
4 of vehicles sold by a dealership have been approved for  
5 payment before the car is delivered?

6 THE WITNESS: Yes, as a general rule.

7 SENATOR WALKER: Would that have been the case with  
8 the vehicles sold out of trust with Mecham Pontiac?

9 THE WITNESS: Yes.

10 SENATOR WALKER: Thank you.

11 THE PRESIDING OFFICER: Senator Stephens.

12 SENATOR STEPHENS: Thank you, Mr. Presiding  
13 Officer.

14 Ms. Christman, you testified that you had  
15 some experience in working at dealerships in the past?

16 THE WITNESS: Yes.

17 SENATOR STEPHENS: What would you -- how would you  
18 classify the status of Mecham Pontiac from a financial  
19 standpoint during the time that you worked there? Were  
20 they in constant need or relatively in constant need of  
21 cash?

22 THE WITNESS: I would have to answer yes to that.

23 SENATOR STEPHENS: Would you characterize them as  
24 perhaps not having a good year in 1987?

25 THE WITNESS: They were having a bad year. It was

1 due partially to the Arizona Republic, the negative  
2 advertising and just general business was off. The sales  
3 were off a bit.

4 SENATOR STEPHENS: You mentioned that there were  
5 big borrowings in July and October. I think we are aware  
6 of some of the loans in July, and we have seen at least  
7 for a period of a few days the dates that monies came into  
8 Mecham Pontiac in October.

9 Were there any other large infusions of cash  
10 in October?

11 THE WITNESS: Without checking back, I wouldn't  
12 remember the specifics of any, no.

13 SENATOR STEPHENS: Thank you.

14 THE PRESIDING OFFICER: Senator Taylor is next.

15 SENATOR TAYLOR: Mr. Presiding Officer. Ms.  
16 Christman, it seemed that from your testimony, that as I  
17 received it, that the two Mechams, Willard and Wayne, had  
18 money up on a regular basis down there. Was that floor  
19 plan money? Was it kept on a monthly basis?

20 THE WITNESS: I don't understand the question when  
21 you say they had the money up.

22 SENATOR TAYLOR: You said that sometimes that you  
23 would pay the Mechams if you were able to --

24 THE WITNESS: That's right.

25 SENATOR TAYLOR: -- on a monthly basis, but if you

1 didn't have the money, you had to postpone it a month or  
2 two. How much money did they have up in that floor plan?

3 THE WITNESS: Well, it wasn't in the floor plan. I  
4 think the buy -- when Evan bought the store, I think the  
5 documents and the loans were set up at that point in time,  
6 and I think, like Wayne's was 700,000, and I believe  
7 Willard's was like 500,000, but this was the original note  
8 and the deed --

9 SENATOR TAYLOR: Excuse me. Those checks were in  
10 payment of some of the original. What kind of interest  
11 was Mecham Pontiac paying at that time to those people?

12 THE WITNESS: I don't really know.

13 SENATOR TAYLOR: You don't know?

14 THE WITNESS: Oh, to most people -- we would have  
15 been, of course, trying to get the best rate, and I'm  
16 trying to remember the interest rates at that time,  
17 probably nine-and-a-half, or something like that.

18 SENATOR TAYLOR: When they borrowed the Mechams' --  
19 Wayne and Willard, when they loaned them the money in the  
20 beginning, what kind of rate was that?

21 THE WITNESS: In the beginning, I don't know what  
22 the rate was.

23 SENATOR TAYLOR: You don't know. Okay. In your  
24 position, Ms. Christman, as an accountant, bookkeeper,  
25 management, were you charged with the responsibility of

1 making the payments to the Sturgeon Group in Tacoma on  
2 that property? Was that part of your job?

3 THE WITNESS: Yes, it was ultimately.

4 SENATOR TAYLOR: You were accused by one of the  
5 witnesses that you failed to make the payments. Is  
6 that -- did you do that? Did you fail to make payment?

7 THE WITNESS: Well, we didn't make the payment  
8 because I wasn't aware of it until after the fact. I was  
9 not aware of the loan until the end of February, and I  
10 think it had already been stated that I had overlooked  
11 paying it, or something.

12 SENATOR TAYLOR: But that wasn't one of the duties  
13 of your job?

14 THE WITNESS: Yes, it would have been.

15 SENATOR TAYLOR: And I remember your testimony that  
16 you were told by I believe by one of the Mechams that you  
17 should not send in a check on a particular time?

18 THE WITNESS: Yes.

19 SENATOR TAYLOR: And what was the reason for that?

20 THE WITNESS: He apparently was upset with them. I  
21 don't know his reasoning. I just know that Evan on that  
22 Sunday said -- when I asked should I send the checks, he  
23 said, "No, let them sue." And I didn't question his -- he  
24 was the dealer. You don't question the man and why he's  
25 doing so.

1           SENATOR TAYLOR: But he told you not to send the  
2 check in on that particular occasion?

3           THE WITNESS: Right.

4           SENATOR TAYLOR: Thank you very much.

5           THE PRESIDING OFFICER: Senator Hays is next.

6           SENATOR HAYS: Mr. Presiding Officer. Ms.  
7 Christman, Senator Taylor referred in part, but I'm not  
8 quite sure I understood the reference to interest rates.  
9 Can you recall offhand what interest rates that Mecham  
10 Pontiac was paying to the loans that they had from the  
11 various banks in June, July, and August?

12           THE WITNESS: Okay. This varies. I think we were  
13 a point over prime. I now believe this is accurate. I  
14 didn't look at the contract, or prime with First  
15 Interstate, or at prime. So as it fluctuated, then our  
16 interest would have fluctuated with it.

17           SENATOR HAYS: Miss Christman, was there any  
18 difference in interest rates between bank loans and Mecham  
19 family loans?

20           THE WITNESS: They were pretty close. There wasn't  
21 too much variance.

22           SENATOR HAYS: Thank you.

23           THE PRESIDING OFFICER: Senator Kay?

24           SENATOR KAY: Thank you, Mr. Presiding Officer.

25                   Ms. Christman, you mentioned that due to

1 political considerations, and perhaps other factors, the  
2 business of Mecham Pontiac was in kind of a downhill slope  
3 the last several months?

4 THE WITNESS: Yes.

5 SENATOR KAY: And you understand that the Board of  
6 Managers has put on a case which they are trying to show  
7 that the business was only worth about \$3,300,000, but  
8 that there was outstanding indebtedness to Prudential of  
9 two-and-a-half million, and \$1 million-two to the Mecham  
10 brothers, or outstanding indebtedness of \$3 million-seven,  
11 so there was a difficiency of net worth of about 100,000  
12 back at the time of the loan of this money.

13 My question to you is, since it appears that  
14 the business was sold for \$4 million, how would you  
15 account for this appreciation of around 20 percent as the  
16 business declined? How would you account for the apparent  
17 appreciation of net worth of the business?

18 THE WITNESS: Well, any time you sell a business of  
19 any kind, you get something for the privilege of buying  
20 it. You get something for the assets, the solid, liquid  
21 assets, the property, the vehicles, the vehicles on  
22 flooring, the furniture, the fixtures.

23 In addition to that, when you buy, you're  
24 buying a franchise, and Pontiac is probably one of the  
25 hottest GM lines, I would imagine, going.

1                   It's unfortunate, and I go back to the  
2 adverse publicity. It did have its effect on Mecham  
3 Pontiac sales. So therefore, when Biddulph -- is that in  
4 fact who bought it? I heard on the news that he had, he's  
5 buying -- some of it would be blue sky. I guess you could  
6 call it that. But if buying, they're entitled to a profit  
7 above their actual cost, or their actual values.

8                   SENATOR KAY: Well, then when you consider the net  
9 worth -- good will of course is an intangible. When you  
10 consider the net worth of the corporation, you include all  
11 these things. And so when evaluating the net worth of a  
12 corporation for a loan, whether it's Prudential or private  
13 loan, or something like that, you take all the assets into  
14 consideration.

15                   And it just struck me that perhaps the \$4  
16 million valuation might be more valid than either the  
17 three-seven or the three-three or the Governor's  
18 valuation. I think the Governor evaluated it at a couple  
19 million dollars higher than what it sold for.

20                   THE WITNESS: I think what you're talking about,  
21 that three-two, that's the appraisal of the physical  
22 property, the ten acres. So if you take the three-two  
23 appraisal and you add the buildings, and like I say,  
24 furniture, fixtures, equipment, some of the shop  
25 equipment, is very expensive, the parts and so forth.

1 SENATOR KAY: Thank you very much.

2 THE PRESIDING OFFICER: Other questions by  
3 Senators?

4 Yes, Senator De Long.

5 SENATOR DE LONG: Thank you, Mr. Presiding Officer.

6 Ms. Christman, for the last several  
7 witnesses, I've been puzzling over an audit trail which I  
8 think which you can solve for me in some of the exhibits  
9 that we've been given. Were you the person in charge of  
10 the checks, the deposits, and the receipts on the 21st day  
11 of September, 1987?

12 THE WITNESS: I would have been ultimately in  
13 charge of them, even though I didn't physically make the  
14 deposits.

15 SENATOR DE LONG: Fine. Then I think you can  
16 probably help me clear up this little dilemma. It has to  
17 do with something that Mr. Dennis Mecham said when he was  
18 on the stand. I believe his testimony was that he had  
19 loaned \$15,000, I believe he said, to MP Advertising. MP  
20 Advertising, was that a division of Mecham Pontiac?

21 THE WITNESS: Well, most dealerships have an  
22 advertising association some way, whether it's MP, Mecham  
23 Pontiac, or -- because when they advertise, they get a  
24 discount if they're classed as an advertising agency,  
25 where the store as Mecham Pontiac would not get a

1 discount. So it's always to the dealers advantage to have  
2 an advertising agency attached to them.

3 SENATOR DE LONG: And would it be safe to say that  
4 that's a dba, a Mecham Pontiac corporation doing business  
5 as MP Advertising?

6 THE WITNESS: I don't know if it's actual -- you  
7 know, if it's listed as a separate business or that was  
8 just a separate department that they set up. I feel  
9 confident that that it is a separate business, but that's  
10 just a guess on my part. I don't know.

11 SENATOR DE LONG: You did not control the  
12 bookkeeping of that separate business?

13 THE WITNESS: No. There would not have been any  
14 books on it as such.

15 SENATOR DE LONG: What I'm trying to solve then,  
16 and I'll be as brief as I can, is it's a fact that  
17 Constituent Communications issued a check to Dennis Mecham  
18 of 15,048.62. And on that same day, the Mecham Inaugural  
19 Committee deposited to their account an exact amount, and  
20 on that same day, the Mecham Inaugural Committee issued a  
21 check to MP Advertising in that same exact amount, and on  
22 the back of that check it was deposited to Mecham Pontiac.

23 Do you recall that check, ma'am?

24 THE WITNESS: Yes, I do.

25 SENATOR DE LONG: Would you tell me what it was

1 for?

2 THE WITNESS: All of the prior came about -- once  
3 it came into the accounting office, we had placed -- or we  
4 had used MP Advertising through Mecham Pontiac to place  
5 the ads. I think they were business or government-type  
6 ads that they were running for the Governor, and we placed  
7 the ads, so therefore, we were getting the business from  
8 the TV spots, and that. And that was to pay us so that we  
9 could release checks and to pay for the advertising.

10 SENATOR DE LONG: And whose checks had paid or the  
11 advertising?

12 THE WITNESS: Mecham Pontiac, as far as --

13 SENATOR DE LONG: The corporation?

14 THE WITNESS: Right.

15 SENATOR DE LONG: Thank you very much, ma'am.

16 THE PRESIDING OFFICER: Senator Usdane.

17 SENATOR USDANE: Ms. Christman, just a couple of  
18 brief questions. I thought I heard during your testimony  
19 this morning that there was a deposit made or a coded  
20 number within the books for purposes of Mecham Investment?

21 THE WITNESS: Yes.

22 SENATOR USDANE: Ms. Christman, was Mecham  
23 Investment under the corporate shell of Mecham Pontiac, to  
24 your knowledge?

25 THE WITNESS: Yes, it was. I don't believe it

1 exists now, but there again, I don't know.

2 SENATOR USDANE: Specifically that deposit, Ms.  
3 Christman, came in, and that's what I think you were  
4 talking about in terms of payment either on a loan to pay  
5 back the protocol fund or for some other purpose?

6 THE WITNESS: Yes. We isolated any odd monies into  
7 that account for tracking purposes. If someone would ask,  
8 Dennis or Evan and/or someone, we needed a fast track. So  
9 it was simpler to designate, "Okay." That was the old  
10 Mecham Investment Company, still on the old computer,  
11 still on the general ledger, and this was my choice to do  
12 that.

13 SENATOR USDANE: Ms. Christman, did you do the work  
14 with an agency, a CPA agency or any other in terms of  
15 filing of taxes?

16 THE WITNESS: Yes, Murray & Murray.

17 SENATOR USDANE: Ms. Christman, did that account  
18 post separately or did it post under the corporate shell?

19 THE WITNESS: It went under the corporate shell.

20 SENATOR USDANE: Thank you.

21 THE PRESIDING OFFICER: Other questions by  
22 Senators?

23 Senator Kunasek.

24 SENATOR KUNASEK: Mr. Presiding Officer, Ms.  
25 Christman, there's a couple of unrelated things I would

1 like to clear up, and I just -- you might be the last one  
2 we have the opportunity to ask.

3 Do you recognize the name M. Kent Mecham?

4 THE WITNESS: Yes.

5 SENATOR KUNASEK: And who is M. Kent Mecham?

6 THE WITNESS: Kent Mecham is the attorney.

7 SENATOR KUNASEK: Is he another one of Evan

8 Mecham's sons?

9 THE WITNESS: I'm not sure.

10 SENATOR KUNASEK: I see.

11 THE WITNESS: It's either a son or a nephew.

12 SENATOR KUNASEK: Or a brother, or you don't know?

13 THE WITNESS: I think it's actually a son of  
14 Willard or Wayne, but I really don't know.

15 SENATOR KUNASEK: My notes indicate that your  
16 answer to a question by Senator Hill was that you left  
17 October 2nd?

18 THE WITNESS: February 2nd.

19 SENATOR KUNASEK: With regard to Exhibit 71, if you  
20 could take a look at 71, it's a very small or very minor  
21 item, but I'd like to determine the background for the  
22 error, and it might be just a transposition of figures. I  
23 don't know. We show in the totaling receivables, parts  
24 and accessories, a deficit of \$49,983, yet when you add  
25 the two figures together, you get a mistake of one dollar.

1 Were you -- was that a result of the computer error or  
2 hand-entered error?

3 THE WITNESS: If you're rounding, you can have a  
4 dollar. You can actually run a total and you can be off a  
5 dollar or small dollars. Are you talking about rounded  
6 figures?

7 SENATOR KUNASEK: No, ma'am. If you would look at  
8 Exhibit 71.

9 THE WITNESS: Okay.

10 SENATOR KUNASEK: If you would look at "parts and  
11 accessories" under title "receivables," do you see a  
12 deficit of \$49,983? See that?

13 THE WITNESS: I'm -- apparently I am not looking in  
14 the right area. You're talking about page 1?

15 SENATOR KUNASEK: First page, file name "GMGLJUB,  
16 Mecham Pontiac, summary of General Motors and general  
17 ledger."

18 THE WITNESS: Okay.

19 SENATOR KUNASEK: About a fourth of the way down,  
20 "parts and accessories."

21 THE WITNESS: Yes.

22 SENATOR KUNASEK: You see a deficit in the  
23 right-hand column, \$49,983?

24 THE WITNESS: Oh, yes, I'm sorry. I was reading  
25 from -- okay.

1           SENATOR KUNASEK: Like I say, it's just a minor  
2 question, but I'm trying to determine where the error may  
3 have been. When you add that total, \$49,983,000 -- or  
4 excuse me, \$49,983 to 500,000, you get a difference of a  
5 dollar at the bottom. Whose error is that?

6           THE WITNESS: Well, the difference of a dollar  
7 could be in the rounding on the computer.

8           SENATOR KUNASEK: We're adding figures already  
9 rounded.

10          THE WITNESS: Okay. I did not add this sheet, so  
11 I --

12          SENATOR KUNASEK: Okay. I was trying to figure out  
13 if this was a computer error or hand-entered error.

14          THE WITNESS: It could be either at this point. I  
15 don't know where these figures came from without seeing  
16 them.

17          SENATOR KUNASEK: Now if we refer to I believe it's  
18 63-I, and this is a summary of deposits of over \$2500 for  
19 the period October 20th to October 30th, and we show about  
20 two-thirds of the way down there the very last entry under  
21 the 23rd of the October, "Mecham Pontiac, payroll account,  
22 \$15,000." Do you see that?

23          THE WITNESS: Yes, I do.

24          SENATOR KUNASEK: Did this cause any impact on any  
25 other accounts payable out of the payroll account?

1 THE WITNESS: Well, to answer that, the payroll  
2 account is just a wash account. We put it in and take it  
3 out. But when we deposit, we end up with money in there,  
4 and we would take it back out, put it in the operating  
5 account, but we apparently took too much out.

6 SENATOR KUNASEK: So this would not have had any  
7 affect on any other deposits that should have been made  
8 out of a payroll account?

9 THE WITNESS: It could affect the payroll checks  
10 clearing if we took too much out.

11 SENATOR KUNASEK: You have no idea if it had any  
12 effect on any other tax withheld or FICA deposits?

13 THE WITNESS: It should not have had on the tax and  
14 FICA deposits, no.

15 SENATOR KUNASEK: All right. Thank you.

16 THE PRESIDING OFFICER: Senator Higuera?

17 SENATOR HIGUERA: Mr. Presiding Officer, Judge, I'd  
18 like to apologize for not asking this question previously.

19 Ma'am, you mentioned that you had a  
20 conversation with Dennis Mecham regarding the cash flow?

21 THE WITNESS: Yes.

22 SENATOR HIGUERA: I guess you had that kind of a  
23 conversation several times, but I'm trying to, I guess,  
24 pinpoint it to what the reason of the loan really was.  
25 When did this conversation take place?

1 THE WITNESS: You're talking about July's  
2 conversations?

3 SENATOR HIGUERA: Yes, ma'am.

4 THE WITNESS: Well, actually it revolved around a  
5 meeting with First Interstate, because we had so many  
6 units which we had to pay for, and we needed the cash very  
7 fast.

8 SENATOR HIGUERA: Was this conversation prior to  
9 the corporation receiving the loan from the state protocol  
10 fund?

11 THE WITNESS: I believe we already received the  
12 money, but I could be wrong on my dates because we had  
13 talked about the money during the whole month, in June and  
14 May, and such, and to say that we had this conversation  
15 after the \$80,000, I'm sure it was before, but I couldn't  
16 give you an exact date.

17 SENATOR HIGUERA: The \$80,000 loan did pull you out  
18 of a critical cash flow situation?

19 THE WITNESS: Yes, we did.

20 SENATOR HIGUERA: Thank you.

21 THE PRESIDING OFFICER: Other questions by  
22 Senators?

23 If not, may this witness be excused subject  
24 to being recalled later if she is needed?

25 All right. You're excused, ma'am. And if

1 you have to leave the state, don't do so until after you  
2 get the permission of the attorneys. Thank you.

3 Your next witness?

4 MR. ECKSTEIN: The Board of Managers calls as its  
5 next witness Mr. John Mangum.

6

7 JOHN K. MANGUM,  
8 a witness herein, after having been first duly sworn, was  
9 examined and testified as follows:

10

11 DIRECT EXAMINATION

12 BY MR. ECKSTEIN:

13 Q. Good morning.

14 A. Good morning, Paul.

15 Q. Mr. Mangum, if you could pull that mike very  
16 close to you and speak directly into it, I think everyone  
17 in the chamber will be able to hear you. If you don't,  
18 people will not be able to hear you.

19 Would you state your full name for the  
20 record.

21 A. My name is John K. Mangum.

22 Q. Do you reside in Phoenix?

23 A. I do.

24 Q. Are you a member of the Bar of the State of  
25 Arizona?

1 A. I am.

2 Q. Are you practicing with a law firm?

3 A. I am.

4 Q. Which law firm?

5 A. John K. Mangum and Associates, P.C.

6 Q. I take it that is your own law firm?

7 A. It is.

8 Q. You're a graduate of college and law school;  
9 is that correct?

10 A. I graduated in 1965 from the University of  
11 Arizona, did a year of graduate work in finance and  
12 economics at Arizona State University. I did not receive  
13 a degree. I graduated from the University of Arizona Law  
14 School in 1969.

15 Q. Have you been practicing law in the State of  
16 Arizona since 1969?

17 A. I have.

18 Q. Have you served in any governmental capacity  
19 as an employee of any governmental unit during that time?

20 A. Yes, sir.

21 Q. Would you tell us about that?

22 A. In 1969, when I was admitted to the Bar, I  
23 was employed by the Maricopa County Attorney's office as a  
24 prosecutor. As I recall, I stayed there approximately two  
25 years, perhaps a little less. When I left, I was a senior

1 trial attorney in the criminal division.

2 After that time, I joined a law firm,  
3 Carmichael, McClue & Stephens. I left about two years  
4 after and set up my own practice. At that time I was  
5 appointed as a judge pro tem in Superior Court,  
6 Commissioner for Maricopa County on a part-time basis,  
7 held that appointment for a couple of years.

8 Thereafter, in 1974, I believe, I was  
9 retained by the Arizona House of Representatives to serve  
10 as the counsel to the speaker of the House of  
11 Representatives. I maintained that relationship through a  
12 succession of three speakers, Stanley W. Akers, Frank  
13 Kelly, and now Senator James Sossaman.

14 Q. When did you terminate that relationship with  
15 the House of Representatives?

16 A. In December of 1985.

17 Q. Would you describe the nature of your private  
18 practice as it exists today?

19 A. It's primarily a business and corporate  
20 practice. I also do substantial amount of administrative  
21 law, and I also practice before this body and the one  
22 across the mall as a legislative lobbyist for a number of  
23 clients here in Arizona.

24 Q. Are you a registered voter?

25 A. I am.

1 Q. Are you registered with any particular party?

2 A. I'm registered as a Republican.

3 Q. Did there come a time in late 1986 when you  
4 began attending meetings of a committee known or known to  
5 you as the Mecham Finance Committee?

6 A. Mr. Eckstein, in late November of 1986, I  
7 learned from the newspaper that Governor Mecham had been  
8 elected and he had a substantial deficit, like a number of  
9 people. I made it known to people I knew that I would be  
10 willing to attempt to help him retire it, because I  
11 thought it was unseemly for the Governor of Arizona to  
12 have loans of that amount.

13 Q. When you made that known, did someone get  
14 back to you and ask you to assist in reducing that debt?

15 A. Yes.

16 Q. Who was that?

17 A. I can't recall specifically who contacted me,  
18 but I began to be invited to meetings of a group of  
19 individuals who I think were loosely called the Mecham  
20 Finance Committee, and attended several meetings through  
21 November and December, January, and even into February of  
22 1987.

23 Q. Did a person by the name of William Long  
24 attend any of those meetings?

25 A. He did.

1 Q. And did you get to know him at least casually  
2 at those meetings?

3 A. Yes, I did.

4 Q. At one of those meetings, was there any  
5 discussion about an investigation being conducted or  
6 anticipated by the Arizona Attorney General's office of  
7 the Mecham Inaugural Committee's activities?

8 MR. LEONARD: Objection, if I might. Might I voir  
9 dire the witness with respect to these meetings and who he  
10 was representing, just briefly?

11 THE PRESIDING OFFICER: Yes, you may.

12

13 VOIR DIRE EXAMINATION

14 BY MR. LEONARD:

15 Q. Mr. Mangum, when you were attending those  
16 meetings, and specifically, the reason I raise the  
17 question at this moment is because counsel is now  
18 beginning to ask you about discussions, did you consider  
19 William Long to be a client of yours at any time?

20 A. I believe that in his capacity as what I  
21 understood to be the Mecham Inaugural Committee, that Mr.  
22 Long was a client.

23 Q. Have you had any discussions, counsel, with  
24 Mr. Long with respect to your testimony that you're going  
25 to give here today?

1           A.     Mr. Leonard, if you're asking me if I have  
2 Mr. Long's permission to testify before the Arizona Senate  
3 in this proceeding, you can rest assured that I do.

4           MR. LEONARD: That's all I have. Thank you.

5

6

CONTINUED DIRECT EXAMINATION

7

BY MR. ECKSTEIN:

8

Q.     I'm not sure I quite remember the question,

9

but --

10

A.     Nor do I, Mr. Eckstein.

11

Q.     Let me try it again. Was there a meeting

12

sometime in January at which there was some discussion

13

about a pending investigation of activities of the Mecham

14

Inaugural Committee?

15

A.     As I recall, there was a couple of meetings,

16

Mr. Eckstein.

17

Q.     I'm referencing some particular meeting, and

18

the first instance where you learned of that, and can you

19

tell us approximately when that was?

20

A.     It was sometime in January, and since I

21

didn't make notes about the meetings at the time, because

22

in that particular event, I was just a participant and in

23

a fund-raising effort, it was sometime in the middle of

24

January, a discussion was held generally about the fact

25

that a complaint had been made to the office of the

1 Attorney General concerning the potential disposition of  
2 funds which had been raised by a group which I understood  
3 to be the Mecham Inaugural Committee.

4 Q. Was it mentioned who made the complaint?

5 A. As I recall, and I don't recall that it was  
6 mentioned in the meeting, but the newspaper accounts at  
7 the time suggested that Representative Reid Ewing of  
8 Tucson made the complaint.

9 Q. Were you asked to do anything with respect to  
10 this pending investigation or anticipated investigation?

11 A. My recollection is that Mr. Long and I and a  
12 lawyer in Phoenix named Michael Brophy visited for a few  
13 minutes after the meeting, and Mr. Long asked us if we  
14 would approach the Attorney General's office to ascertain  
15 what the status of their investigation was, and assist  
16 them in attempting to resolve whatever problem the  
17 Attorney General felt might have occurred.

18 Q. And did you, in fact, go to the Attorney  
19 General's office at some time to meet with him with  
20 respect to this matter?

21 A. I did.

22 Q. Do you recall when that was?

23 A. Mr. Eckstein, I can't frame the date, but I  
24 can frame it in terms of a particular event. I had a  
25 meeting late one afternoon with Bob Corbin and Steve

1 Twist, the Attorney General, and his chief deputy. During  
2 that meeting, which was requested by me to discuss this  
3 matter, they informed me that that day they had delivered  
4 a letter to Tom Collins, the Maricopa County Attorney,  
5 requesting that he handle any further matters related to  
6 the investigation because of what they believed might be  
7 the appearance of a conflict of interest, which, as I  
8 recall, arose out of the fact that there had been an  
9 allegation made by a member of the staff of the Attorney  
10 General's office who had given legal advice to one or more  
11 of the entities that was functioning at that time,  
12 principally as I understood it, the Mecham Finance  
13 Committee.

14 MR. ECKSTEIN: I would ask the clerk to show the  
15 witness Exhibit 48 in evidence.

16 THE WITNESS: You're going to have to excuse me,  
17 Mr. Eckstein. As I grow older, my eyes grow dimmer.

18 MR. ECKSTEIN: I have the same problem, probably  
19 worse.

20 BY MR. ECKSTEIN:

21 Q. Does that refresh your recollection as to the  
22 date that you met with Mr. Twist and Mr. Corbin?

23 A. In that I've only seen this letter once  
24 before, I presume it's the letter that they referred to in  
25 the meeting, because it does indicate a referral of the

1 investigation we were speaking of.

2 Q. I take it neither Mr. Corbin nor Mr. Twist  
3 showed you the letter during your meeting?

4 A. No, of course not.

5 Q. Prior to your meeting with Mr. Corbin and Mr.  
6 Twist, had you undertaken or begun your own investigation  
7 of the facts to determine whether there was any violations  
8 by the Mecham Inaugural Committee of election laws?

9 A. I believe I had made a preliminary inquiry of  
10 Mr. Long regarding the circumstances, but at that time I  
11 was not prepared to make any statements. I just wanted to  
12 know what the status of things was with the Attorney  
13 General's office.

14 Q. Could you tell us what you did in making any  
15 preliminary inquiry?

16 A. I talked to Mr. Long.

17 Q. And what did you talk to him about?

18 A. Basically what had occurred. At that time  
19 we -- I don't recall specifically, having recovered or  
20 received any information from his files, or anything like  
21 that, but my inquiry to the Attorney General was intended  
22 only to be a status, not to be a disposition of the  
23 matter. I wanted to know whether or not in fact they were  
24 investigating it, because basically we were operating on  
25 newspaper accounts.

1 Q. Sometime after a meeting with the Attorney  
2 General on February 2nd, did you continue your  
3 investigation of the facts involving alleged violations of  
4 the campaign finance laws by the Mecham Inaugural  
5 Committee?

6 A. Yes, I did.

7 Q. And what did you do in that regard?

8 A. Well, I spoke at some length with Mr. Long.  
9 I talked with Mrs. Downey, who was the treasurer, as I  
10 recall, ascertained who she had spoken to, and to the best  
11 of my recollection, what discussions had occurred. I  
12 requested and received a copy of all of the paper  
13 documents that were from the position of Mrs. Downey  
14 relating to the committee.

15 Q. Did you review those items?

16 A. Of course.

17 Q. And did you make any determinations as to  
18 whether there had been any violations of the campaign  
19 finance laws?

20 A. Mr. Eckstein, it would be less than clear if  
21 I didn't point out the fact that there were two lawyers  
22 involved, both Mr. Brophy and I, and at some point, at or  
23 about this time, Mr. Warner Lee examined the documents.  
24 We had several discussions both by telephone and otherwise  
25 to attempt to ascertain what the factual background that

1 that we were working in was.

2 Q. Mr. Brophy is a partner of Mr. Lee's; is that  
3 correct?

4 A. I don't know what his status with the firm  
5 is. I assume he is.

6 Q. They are from the same law firm?

7 A. Yes.

8 Q. Ryley, Carlock & Applewhite?

9 A. Yes.

10 Q. So as I understand your testimony, after you  
11 met with Mr. Corbin and Mr. Twist, the three of you, Mr.  
12 Brophy and Mr. Lee and you, conducted an investigation of  
13 the records of the Mecham Inaugural Committee; is that  
14 correct?

15 A. We did that.

16 Q. And you had several discussions?

17 A. We did.

18 Q. And did the three of you reach any  
19 conclusions as to whether there had been violations of the  
20 campaign finance laws?

21 A. Mr. Eckstein, I don't believe it would be  
22 fair to characterize the determinations that I reached as  
23 the determination that they reached. I would suggest to  
24 you that perhaps the judgment that we came to shared by me  
25 and articulated by them was that there was enough here for

1 us to be concerned about a potential problem.

2           The potential problems as I understood them  
3 to be was the possibility that the committee had  
4 unwillingly involved itself in a violation of several  
5 sections of the election code.

6           In particular, I was concerned about the fact  
7 that a substantial number of corporate contributions had  
8 been made to the Mecham Inaugural Committee, and although  
9 an attempt was made to keep certain monies separate, that  
10 is, the monies that came from the corporate accounts,  
11 separate from a fund, which I believe was known as the  
12 reception account, or the ticket sales account, which was  
13 really involved with ticket sales to a fund raising  
14 reception that was to be held parallel to the events.

15           The concern that I had was that I discovered  
16 in my examination, as did the other two lawyers, that the  
17 reception expenses, the mailing costs, the printing  
18 charges for all of the events had been paid for with the  
19 funds that had been received from corporations. Under  
20 Arizona law, corporate contributions for political  
21 campaign purposes are illegal. We were concerned about  
22 that aspect of it.

23           In a related way, there was some potential  
24 applicability of what has been known as Proposition 200,  
25 which specifically is Section 16-905 of the Arizona

1 Revised Statutes, in that if the entire committee were  
2 characterized as a political campaign committee, there was  
3 some possibility that some of the contributions, because  
4 they were larger than the individual contribution limits,  
5 might be characterized as illegal contributions.

6 To say that I came to a legal judgment that a  
7 violation of law occurred would not be fair. I think the  
8 issues that we were concerned about were framed in that  
9 respect.

10 Q. Would it be fair to say that you had concerns  
11 about whether the laws had been complied with?

12 A. I'm sorry. I didn't understand your  
13 question.

14 Q. Would it be fair to say that you had concerns  
15 as to whether the election laws had been complied with by  
16 the Mecham Inaugural Committee?

17 A. I think that would be a fair  
18 characterization.

19 Q. Did you reach these determinations or have  
20 these concerns prior to meeting with Mr. Howard Schwartz?

21 A. Most assuredly.

22 Q. Did you share these concerns with Mr. Bill  
23 Long prior to meeting with Mr. Howard Schwartz?

24 A. As I recall, we either had a meeting with  
25 Bill or a telephone conversation, or I did have a phone

1 conversation with Bill. And I believe I outlined my  
2 concerns, my concerns being, and the way it was expressed  
3 to him, as I recall, that there was some possibility that  
4 what he perceived to be purely political contributions may  
5 be taken in the sense that they were raised with a subsidy  
6 from what were called corporate contributions. I believe  
7 we reflected those concerns to him, and the possibility  
8 that depending on what Proposition 200 provided in this  
9 respect, that there might potentially be a violation here,  
10 too.

11 Q. Did there come a time in 1987 when you met  
12 with Mr. Howard Schwartz?

13 A. As a part of a larger meeting including  
14 myself, Warner Lee, Tom Collins of the Maricopa County  
15 Attorney's office.

16 Q. Do you recall how many times you met with  
17 Howard Schwartz in 1987 with respect to this matter?

18 A. I met with him physically twice in Mr.  
19 Collins' office.

20 Q. There has been testimony in this case that  
21 the first such meeting occurred on March 23rd.

22 A. I don't have any specific recollection of the  
23 date this morning, Mr. Eckstein, but that's consistent  
24 with the time frames involved.

25 Q. The testimony to date is that that meeting

1 took place in Mr. Collins' office. Is that consistent  
2 with your memory?

3 A. Yes, it did take place in Mr. Collins'  
4 office.

5 Q. And that you and Mr. Schwartz and Mr. Collins  
6 were there in the meeting. Is that consistent with your  
7 memory?

8 A. That's correct.

9 Q. Do you recall anyone else being at that  
10 meeting?

11 A. No. A secretary may have come and offered us  
12 coffee, but that's the extent of it.

13 Q. I think the testimony is that the meeting  
14 lasted a half hour to an hour?

15 A. At the outside.

16 Q. Would you relate to us as best you can what  
17 was said at that meeting by the various parties attending  
18 the meeting?

19 A. Mr. Eckstein, I don't have any clear -- I  
20 don't have any clear recollection of who said what and how  
21 it was said, but generally the meeting was an exchange of  
22 information. I believe at that time we had provided  
23 certain information to Mr. Schwartz because he had  
24 requested it of us. We talked about the situation. He  
25 outlined for us the concerns that he had.

1 I have a recollection that at that time he  
2 indicated to us that he didn't believe that there was any  
3 criminal intent involved here, that at best, these were  
4 unwitting violations.

5 I also have a recollection that he indicated  
6 to us that if they chose to litigate the matter, that he  
7 wouldn't even be inclined to pursue the treble damage  
8 aspects of 905, if there was in fact a violation of that  
9 statute.

10 Q. Do you recall how that meeting ended?

11 A. I think we indicated at that time that we  
12 were unwilling to resolve the issue, that we hadn't come  
13 there to resolve the issue, that there was some lack of  
14 clarity as to the true applicability of Section 16-1905,  
15 Proposition 200.

16 It's my understanding that at that time -- or  
17 it's my recollection at that time that Howard said that he  
18 was uncomfortable reaching a judgment in absence of having  
19 an opportunity to review the text, of what we thought to  
20 be an impending opinion of the Attorney General  
21 concerning, I don't know whether -- I don't know, 19 or 21  
22 questions that had been asked by the Secretary of State  
23 some months before, and I think all of us agreed that it  
24 would provide us with a better opportunity of resolving  
25 the matter if we had an opportunity to review the Attorney

1 General's opinion.

2 Q. After the meeting, did you call Mr. Long and  
3 advise him of what transpired at the meeting?

4 A. At some point later we did, yes. I don't  
5 recall that it was exactly after the meeting.

6 Q. The testimony before this body is that  
7 another meeting took place on April 20. Does that comport  
8 with your recollection of when the next meeting took  
9 place?

10 A. It does.

11 Q. And I believe the testimony is that the  
12 meeting also took place in Mr. Collins' office, and the  
13 same parties that attended the first meeting attended the  
14 second meeting.

15 A. That's correct.

16 Q. And that that meeting lasted perhaps a little  
17 longer, perhaps an hour. Is that consistent with your  
18 recollection?

19 A. That's correct.

20 Q. Do you recall whether the Attorney General's  
21 opinion regarding the various issues on Proposition 200  
22 had been issued prior to the date of the second meeting?

23 A. As I recall, it was issued immediately after  
24 the first meeting, within a day or two.

25 Q. Did you have occasion to read that opinion

1 between the two meetings?

2 A. Mr. Eckstein, I've read that opinion probably  
3 50 or 60 times since then, most assuredly read it several  
4 times, have read all the cases that they cited and a  
5 number of other things.

6 Q. In between the two meetings on March 23 and  
7 April 20, did you have occasion to meet with Mr. Lee  
8 and/or Mr. Brophy to discuss various options that were  
9 available to the Mecham Inaugural Committee?

10 A. We met with Bill, Warner and I and Mike --

11 Q. When you say you met with Bill, you mean Bill  
12 Long?

13 A. I'm sorry, Bill Long, the chairman of the  
14 committee. We tried to outline for him what I thought and  
15 what we thought his options -- it wouldn't be fair to  
16 characterize me as the person that said it, but among the  
17 three lawyers, we outlined what we thought to be three or  
18 four options.

19 Option one was, I think, "Damn the torpedoes  
20 and full speed ahead," Warner said this, "and let the  
21 County Attorney or the Attorney General sue us if he  
22 wants, and let's do what we want with the money."

23 The other possibility was that we would  
24 attempt to frame and file a declaratory action in the  
25 Maricopa County Superior Court that would adjudicate once

1 and for all the applicability of 905 and/or any other  
2 applicable Arizona -- provision of the Arizona Election  
3 Code to those funds, and hopefully clarify them with a  
4 view toward using them to retire Governor Mecham's debts  
5 from that election.

6 Another alternative that we suggested to him  
7 that I believe had been suggested to us by either Mr.  
8 Schwartz or Mr. Collins in our initial meeting was the  
9 possibility that we give the money to a charity. I think  
10 we also discussed the possibility of returning the money.

11 Q. Returning the money to whom?

12 A. To the contributors.

13 The other possibility that we suggested to  
14 him was a utilization of Section 41-1105, a statutory  
15 provision which has received no little notice in this  
16 proceeding, which I believe has come to be known as the  
17 protocol fund statute. I think we outlined for Mr. Long  
18 the alternatives.

19 The refund seemed difficult at best because  
20 there were some widely disparate contributions, as I  
21 recall, three and \$4,000, down to 25 or so. I think the  
22 conclusion that we reached was that if there was some way  
23 that we could carry out at least the spirit of the donors  
24 of the money, which was to put it to the use of the  
25 Governor of Arizona, that that would be a preferable

1 result.

2           It came down basically to two choices,  
3 actually three, but the first was not reasonable. I don't  
4 believe in subjecting clients to the risk of lawsuits when  
5 you know they will be filed. You always try to resolve  
6 the situation. The only two that seemed reasonable to me  
7 was to file a declaratory action and/or to propose a  
8 disposition under 41-1105.

9           I believe that the sense of that meeting was  
10 that based on the public environment at the time, the  
11 press, the coverage -- the Governor at that time was  
12 having some political difficulties, as I recall. The  
13 conclusion was that litigation was probably not the best  
14 disposition, and perhaps I would say that that was a  
15 political decision more than a legal decision.

16           The end result of that meeting was that Mr.  
17 Long authorized us to approach the County Attorney with a  
18 proposal to transfer the funds pursuant to 41-1105.

19           Q.     And this was prior to your meeting with Mr.  
20 Schwartz on April 20?

21           A.     Of course it was.

22           Q.     Did you believe that Mr. Long had authority  
23 to speak on behalf of the Mecham Inaugural Committee at  
24 that time?

25           A.     Mr. Long was, as I understood it, the

1 chairman of the committee. I had spoken with the  
2 treasurer, who confirmed to me that he was the chairman of  
3 the committee. I had also spoken with several other  
4 people who I understood to be a part of the administration  
5 of Governor Mecham, and the political campaign of Mr.  
6 Mecham, who also indicated to me that he was the chairman  
7 of the committee.

8 I recall asking him in the meetings with --  
9 the first meeting with Mike Brophy and Warner Lee if he  
10 felt that he had the authority to make a disposition of  
11 the funds. And he indicated to us that he did.

12 Q. Do you recall how much before your meeting  
13 with Mr. Schwartz and Mr. Collins on April 20 you and Mr.  
14 Brophy and Mr. Lee met with Mr. Long?

15 A. Mr. Eckstein, I have a vague recollection  
16 that it was a week or two before. I don't honestly  
17 recall. Bill is in and out of town a lot. As I  
18 understand it, he's pretty much retired from active  
19 business life, and he travels a great deal. And I know we  
20 tried to fit it into a meeting and then in order to get  
21 the people together, it's sometimes very difficult to get  
22 four lawyers in the same room at the same time. I'm  
23 pretty busy, and Warner is, too, and I know that Mr.  
24 Collins is.

25 Q. Moving to the meeting on April 20 that we

1 have referenced but not discussed, would you tell us as  
2 best you can now recall what was said by each of the  
3 parties at that meeting?

4 A. At that point in time, I think we presented  
5 Mr. Collins and Mr. Schwartz with two -- or three  
6 alternatives. One alternative was that we would agreeably  
7 litigate the matter. A declaratory judgment action would  
8 be filed, and we would go through that process.

9 I recall that we presented to him the  
10 possibility of doing what I will call an accounting of the  
11 funds, and what I mean by that is that there were two  
12 accounts. There was no clear intent to utilize the  
13 corporate funds, to raise the money to retire the debts.  
14 I'm not altogether sure that anybody really understood the  
15 problem, and it certainly didn't surface for us until  
16 afterwards, that we would present to them an accounting of  
17 the fund, that we would reimburse from what we could call  
18 the ticket sales account, or the political fund, all of  
19 the expenditures that had been made from the inaugural  
20 fund, and we would use the balance of the money and put it  
21 to the use and disposition of the Mecham Finance  
22 Committee. The balance of the inaugural funds would be  
23 remained -- and we didn't offer a solution at that time.  
24 We simply said, I'm sure we can work out something.

25 I recall at that time we also proposed for

1 the first time the possibility of transferring these funds  
2 for the use of the office of the Governor under a code  
3 section known as 41-1105. We had a discussion as to what  
4 it was. I have this vague recollection of Howard pulling  
5 one of the statutory books down and sitting down and  
6 reading the statute, and we had a discussion as to what  
7 uses such a fund might be put to. We talked about gifts,  
8 receptions, travel arrangements, awards or rewards for  
9 citizen public service, various kinds of things.

10 At the conclusion of that meeting, I think we  
11 had pretty well agreed that it would be acceptable to the  
12 County Attorney's office to make a disposition. My  
13 present recollection was that we indicated to Tom and to  
14 Howard that the deal was not yet done, that we wanted to  
15 go back and explain to our client that they had accepted  
16 this proposal regarding 41-1105, and we would get back to  
17 him.

18 I have a recollection that we did that, and I  
19 don't recall if it was either by phone or in person. It  
20 seems to me that at that point Warner called Bill --

21 Q. Could I interrupt here? You say you had a  
22 recollection of doing that.

23 Do you have a recollection of talking with  
24 Mr. Long? Is that the recollection you have, the  
25 recollection of getting back to Mr. Collins or Mr.

1 Schwartz, or both of those recollections?

2 A. Mr. Eckstein, you're going to have to reframe  
3 your question. It's too broad for me to answer.

4 Q. Let me back up and try it again.

5 The meeting ended on April 20 with the  
6 understanding that you would get back to your client and  
7 then get back to the County Attorney as to whether the  
8 settlement was acceptable to your clients. Is that a fair  
9 summary of how the meeting ended?

10 A. That is my recollection of the meeting.

11 Q. After the meeting on April 20, did you in  
12 fact have a meeting or a discussion with Mr. Long about  
13 the settlement that had been tentatively agreed to at the  
14 April 20 meeting?

15 A. My present recollection is that that  
16 conversation, if it took place, was between Warner Lee and  
17 Bill Long.

18 Q. You don't have a recollection of having  
19 spoken with Mr. Long directly?

20 A. Not a specific recollection.

21 Q. Did you get back to the County Attorney to  
22 tell him the settlement was acceptable?

23 A. Substantially all of the telephone  
24 conversations between the County Attorney's office and our  
25 group of attorneys was between Warner Lee and Howard

1 Schwartz. And I presume that Howard and Warner spoke. I  
2 don't have any clear recollection of having spoken to  
3 Howard thereafter.

4 Q. Did there come a time sometime after April 20  
5 when you had a discussion with Mr. Lee or Mr. Long as to  
6 whether the settlement had been effected in any way?

7 A. I have a recollection of discussing the  
8 matter with both Mike Brophy and Warner Lee to the effect  
9 that we were going to go ahead with the settlement, and at  
10 that point in time, as I distinctly recall, the Arizona  
11 Legislature was going into a final throes of adjournment,  
12 and as a relatively busy lobbyist, I was out here more  
13 than I was at the office. I didn't do anything  
14 specifically at that point until we had another meeting  
15 about it later.

16 Q. When did you have your next meeting about it?

17 A. As I recall, either Warner or I got a  
18 telephone call from Howard Schwartz. If it was I, I  
19 probably passed it to Warner, relative to a further  
20 inquiry. We had promised to give him some further  
21 information, and we did that, as I recall.

22 At another point in time, and I don't recall  
23 whether it was telephone conversation or personal  
24 conversation between Warner and I, I suggested to him that  
25 we ought to try to wind the thing up. This was sometime

1 in June at this point. And I think I recall making an  
2 appointment with Jim Colter, who was the chief staff  
3 assistant to the Governor.

4 MR. ECKSTEIN: Would you show the witness Exhibit  
5 49, please.

6 BY MR. ECKSTEIN:

7 Q. Exhibit 49 is a copy of a letter from Warner  
8 Lee to Bill Long dated June 23 with a draft of a letter  
9 attached. You're listed as one of the recipients of that  
10 letter. Do you recall receiving that letter?

11 A. Yes, I did.

12 Q. Do you recall reviewing it at or about the  
13 time you received it?

14 A. I assuredly reviewed it, and as I recall, had  
15 a telephone conversation with Warner about it.

16 Q. Did you make any suggested changes in the  
17 letter?

18 A. I don't know whether I made the suggestions  
19 or whether Warner made the suggestions. I don't recall  
20 what the suggestions -- the changes were, but I do know  
21 there were a couple of relatively minor wording changes  
22 that I would call cosmetic for purposes of discussion.

23 MR. ECKSTEIN: Would you show the witness Exhibit  
24 No. 50, please, and Exhibit 47.

25 BY MR. ECKSTEIN:

1 Q. Exhibit 50 is a copy of a letter from Warner  
2 Lee to Bill Long dated June 26. You're not listed as a  
3 person receiving copies of this.

4 Do you recall receiving copies of this  
5 letter?

6 A. Oh, I assuredly received copies of the  
7 letter.

8 Q. And you have in your hand Exhibit 47, which  
9 is a letter dated June 26th, 1987, from Bill Long to Tom  
10 Collins.

11 Do you recall receiving that letter?

12 A. I did not receive a copy of this letter. I  
13 received a copy of this particular document unsigned.  
14 This one is signed.

15 Q. Was that an office copy that you received?

16 A. Yes.

17 Q. And did you receive it on or about June 27,  
18 28?

19 A. It would be concurrent with the time that it  
20 was sent, as I recall.

21 Q. You made reference to setting up a meeting  
22 with Jim Colter. Did you in fact have a meeting with Jim  
23 Colter?

24 A. I had a meeting with Jim Colter. Also  
25 attending with us was Warner Lee and Michael Brophy.

1 Q. And was that in Mr. Colter's office?

2 A. It was.

3 Q. Can you tell us approximately when that  
4 meeting was?

5 A. It was about this time. I think it's been --  
6 unfortunately, I've read the newspaper on a relatively  
7 regular basis, and I think testimony suggests that it's  
8 the 26th of June, or thereabouts. It's consistent with my  
9 recollection.

10 Q. Do you recall whether Governor Mecham  
11 attended any portion of that meeting?

12 A. At the end of the meeting -- or not at the  
13 end of the meeting. During the meeting, as I recall, the  
14 Governor came in from another meeting. We exchanged some  
15 pleasantries. Mr. Colter introduced us as -- I don't  
16 think it was necessary to introduce us, as I think the  
17 Governor knew all of us -- introduced us as people who had  
18 been working on the problem with the Mecham Inaugural  
19 Committee fund, and indicated that we had reached a  
20 resolution, expressed his appreciation for our help. The  
21 Governor did the same.

22 We exchanged pleasantries. I don't recall  
23 what they were, but it was a very short meeting, and as I  
24 recall, the Governor thanked us, excused himself, because  
25 he had people in the protocol office that needed attending

1 to.

2 Q. You called the meeting with Mr. Colter; is  
3 that correct?

4 A. Mr. Eckstein, I don't recall whether it was I  
5 who called it or Mr. Colter who called it.

6 Q. Can you tell us what was discussed at that  
7 meeting?

8 A. Mr. Eckstein, again, I don't have any clear  
9 recollection of the exact nature of the conversation, but  
10 I have a recollection of the sense of meeting, and it was  
11 a relatively lengthy meeting, as I recall, a half an hour  
12 to a hour, or something like that. We went through a  
13 fairly careful analysis of what we had done to get to the  
14 point we were at that time.

15 Q. And if you could, be more specific. You went  
16 through a careful analysis as to what you had done to get  
17 to where you were. With respect to what?

18 A. Well, as I recall, we outlined for Mr. Colter  
19 our concerns about nature of the funds, the fact that the  
20 corporate contributions had been -- had mixed in a sense  
21 with the ticket sales accounts, not specifically, but  
22 because the ticket sales account was sourced in a  
23 function, the expenses of which were paid from the  
24 corporate funds. We indicated to him a substantial  
25 concern with that.

1           I think we indicated to him that there was  
2 the possibility of litigation. We thought that that was  
3 probably an inappropriate resolution because of the --  
4 because of the publicity and the political environment  
5 that we were in.

6           I think at that point in time, there had also  
7 been some press accounts indicating that the chairman of  
8 the Mecham Finance Committee had announced that the money  
9 was not going to be used for political purposes, that it  
10 was going to be transferred to the Governor's office.

11           I think we had a discussion about the -- or  
12 as I recall, we had a discussion. It wasn't a thing. I  
13 know we had a discussion about the statutory provision  
14 known as 41-1105. I think we had a discussion at some  
15 length about the permissible uses of it.

16           One of the inquiries that Mr. Colter made  
17 related to the question of what other uses might be made  
18 of the fund, and I recall talking about scholarship funds.  
19 At that time I recall that we were concerned about and  
20 discussed with Jim the fact that we had not resolved the  
21 question of whether these funds, as transferred to the  
22 Governor, would be public or private funds. It was not,  
23 as I perceived it and as the other lawyers perceived it,  
24 material to our client's interest to make a determination  
25 as to whether they were public funds or private funds, but

1 that we were concerned about it and felt that some  
2 consideration should be given to that issue.

3 Part of the reason why I was unwilling, and I  
4 think both of the other lawyers were unwilling to make any  
5 judgment on it, is that I perceived that our client at  
6 that time was the Mecham Inaugural Committee, a separate  
7 entity from the Governor or the Governor's office.

8 Number one, I perceived it would be a  
9 conflict of interest for us to advise both of them, but  
10 more importantly, as I've had a good deal of experience in  
11 public law, and I'm aware of a body of law that offers  
12 protection to public officers and public employees who  
13 undertake actions in reliance upon opinions given them by  
14 the counsel that's designated to them by the state, in  
15 this case, the Arizona Attorney General's office. And I  
16 didn't want to put us or me in the position of advising  
17 Mr. Colter as to an appropriate disposition of those funds  
18 because I did not represent him, and I certainly had no  
19 capacity as an official lawyer for the Governor's office.  
20 And my advice, whatever it was, would offer him no benefit  
21 whatever.

22 Q. But you did raise the issue as to whether  
23 these funds were public or private funds; correct?

24 A. Mr. Eckstein, when we left that meeting, we  
25 had a commission. It was one further thing that we were

1 asked to do by Jim Colter, for him, and that was to draft  
2 a couple of questions that would be submitted, or  
3 potentially submitted to the Attorney General for  
4 consideration.

5 Q. Let me show you Exhibit 51 in evidence. This  
6 is a letter from Warner Lee to Jim Colter dated June 30,  
7 1987.

8 Do you recall receiving a copy of the letter  
9 with the two questions shortly after June 30, 1987?

10 A. I recall receiving a copy of this letter.

11 Q. Did you participate in the actual drafting of  
12 this letter or the questions that are attached to them?

13 A. Not in the drafting, Mr. Eckstein. We talked  
14 about it on our way down in the elevator. Mr. Lee is an  
15 inordinately competent lawyer who's had years of  
16 experience in public life, and indeed was a former  
17 Attorney General. And he agreed to draft the question,  
18 and I was quite comfortable with whatever question he  
19 framed. After I saw them, I was happy with what he had  
20 asked.

21 Q. So that the record is clear, you did not  
22 review them before they were sent; is that correct?

23 A. I don't believe so.

24 Q. But you did see them shortly after June 30,  
25 if that is, indeed, the date that they were sent?

1           A.     I did receive them shortly after June 30th.

2           Q.     Did you hear from Mr. Colter again after this  
3 letter was sent?

4           A.     No, Mr. Eckstein, I did not.

5           Q.     Directing your attention to the letter of  
6 June 26, 1987, Exhibit 47, from William Long to Tom  
7 Collins, does that letter accurately reflect the agreement  
8 that Mr. Long authorized you to make with the County  
9 Attorney?

10           MR. LEONARD: Object to that. There's no  
11 foundation that this witness had any agreement at all with  
12 Mr. Long.

13           THE PRESIDING OFFICER: Sustained.

14           BY MR. ECKSTEIN:

15           Q.     Mr. Mangum, did you meet with Mr. Long  
16 between the meetings of March 23rd and April 20?

17           A.     I did.

18           Q.     And did you discuss a solution to the problem  
19 that you were authorized to make at the April 23rd  
20 meeting?

21           A.     I did.

22           Q.     And does the -- and as I understand your  
23 testimony, Mr. Long authorized you and the others to  
24 propose a disposition of the problem by transferring the  
25 funds pursuant to A.R.S. 41-1105; is that correct?

1           A.     He authorized us to do that.

2           Q.     And does the letter that is marked as Exhibit  
3 47 reflect that authorization?

4           A.     Mr. Eckstein, I'm not sure I can answer the  
5 question. I -- it -- it reflects the sense of what he  
6 authorized us to do.

7           Q.     And there's no doubt in your mind that  
8 that -- that he had authority on behalf of the Mecham  
9 Inaugural Committee at that time to sign that letter on  
10 June 26, 1987, is there?

11          A.     From all of the facts in my possession at  
12 that time, I believe he had the authority to sign it, yes.

13          MR. ECKSTEIN: I have no further questions.

14          THE PRESIDING OFFICER: You may cross-examine.

15

16                                   CROSS-EXAMINATION

17          BY MR. LEONARD:

18          Q.     Mr. Mangum, I'm going to try to be brief so  
19 that you can get away to lunch and go back to your clients  
20 this afternoon.

21          A.     Thank you, Mr. Leonard. I'll appreciate  
22 that.

23          Q.     You understand that I didn't ask that  
24 question earlier on voir dire to embarrass you? I just  
25 wanted the record to be clear that you had your client's

1 approval to give the testimony?

2 A. Oh, Mr. Leonard, I can't imagine that you  
3 asked it for that reason.

4 Q. I do need to ask you whether or not you were  
5 paid for any of the services that you rendered for the  
6 period of time that covered your testimony.

7 A. You have to be kidding.

8 Q. I take it you were not?

9 A. I was not.

10 THE PRESIDING OFFICER: Would you move that  
11 microphone closer to your face? Thank you.

12 THE WITNESS: I'm sorry, Mr. Presiding Officer.

13 BY MR. LEONARD:

14 Q. You indicated that you had a meeting on April  
15 20th, I believe, with Mr. Schwartz, and yourself, and Mr.  
16 Brophy, Mr. Lee, in which you considered these various  
17 alternatives, and I think you testified that you agreed  
18 that the 41-1105 approach was the way to go at that  
19 meeting, and you said, however, or somebody said, the deal  
20 was not yet done because you needed to discuss that  
21 resolution of the problem with your client; is that  
22 correct?

23 A. Mr. Leonard, let me try to answer the three  
24 or four questions. One, Mr. Brophy was never a part of  
25 any meetings with Mr. Collins. It is true that we

1 discussed a potential resolution of 41-1105. I believe  
2 what I indicated was that Mr. Schwartz and Mr. Collins  
3 indicated to us that they felt that the outline we  
4 suggested would be acceptable to them, and if our client  
5 would approach it, it would be an acceptable disposition  
6 of the problem.

7 Q. I thought I wrote this down as a quote. The  
8 only point I was trying to make was that as a result of  
9 that meeting, as far as you were concerned, the deal was  
10 not yet done because you had not had an approval of it  
11 from Mr. Long as chairman of the Mecham Inaugural  
12 Committee? Is that a fair --

13 A. That's my recollection.

14 Q. Now, at the very end of your testimony, you  
15 indicated that subsequent to April 20th, and I believe the  
16 time frame was sometime prior to the June 26th letter,  
17 Exhibit 47, you did have a meeting with Mr. Long?

18 A. I think I indicated that I either had a  
19 meeting or a telephone conversation, but it's possible  
20 that the telephone conversation or meeting was only  
21 between Warner Lee and Bill. I have a recollection of  
22 such a meeting, but I can't testify without -- without  
23 that qualification.

24 Q. Mr. Mangum, that's a real important  
25 recollection, and I certainly don't want to have any

1 argument with you, because it's your recollection. But  
2 would you agree with me that whether you had the  
3 conversation personally with Mr. Long is an important  
4 fact?

5 A. I think that would be an important fact, but  
6 I'm certainly not going to testify that I have a specific  
7 recollection of that personal conversation when I don't  
8 have a specific recollection of it.

9 Q. I'm sorry. I thought your testimony on  
10 direct was that you did recall having some conversation  
11 with Mr. Long prior to the April 20th meeting with Mr.  
12 Schwartz and the June 26th letter. And if I'm mistaken  
13 about that, then I just heard you wrong.

14 A. Mr. Leonard, it's only in your  
15 characterization. I do have a recollection that a  
16 conversation may have occurred. I don't have a specific  
17 recollection that the conversation did occur.

18 Q. Is it possible that -- I suppose anything is  
19 possible. What I'm trying to get at is the certainty that  
20 you had a conversation, either telephone or personally,  
21 with Mr. Long, and I take it your testimony is that you're  
22 not certain that you had such a conversation?

23 A. After the April 20th meeting and before the  
24 June 26th meeting, that's a fair characterization.

25 Q. Now, after your meeting with Jim Colter, did

1 you personally have a telephone conversation or a personal  
2 conversation with Mr. Long in which you reported to him  
3 the results of the Colter meeting?

4 A. I did not.

5 Q. In summary, therefore, is it fair to say that  
6 you have no specific recollection of having communicated  
7 to Mr. Long, specifically you communicating to Mr. Long,  
8 the resolve that you reached at the April 20th meeting  
9 with Mr. Schwartz and Mr. Lee?

10 A. I'm sorry, Mr. Leonard. I lost track of the  
11 question.

12 MR. LEONARD: Maybe it was poorly worded. Could  
13 the reporter read it? Then let me see if we have to amend  
14 it.

15 (Question read.)

16 THE WITNESS: I don't think I could answer that  
17 question affirmatively. I think what I said was, is that  
18 I do have a vague recollection that a conversation may  
19 have occurred. The thing that I can say, Mr. Leonard, is  
20 that I don't have any specific recollection that it did  
21 occur.

22 BY MR. LEONARD:

23 Q. And would it be fair to say that you have  
24 then no specific recollection as to whether or not you and  
25 Mr. Long talked about the applicability of 41-1105 to the

1 Mecham Inaugural Committee fund from April 20th until  
2 after your meeting with Jim Colter?

3 A. I don't have any way to respond to the  
4 question, because I don't recall specifically whether we  
5 had a conversation at all.

6 Q. Would you look at the letter that Mr. Lee  
7 sent to Mr. Colter that has the two suggested questions to  
8 the Attorney General. Is it fair to say -- I don't know  
9 what that exhibit number is.

10 A. It's Exhibit 51.

11 Q. Is it fair to say that looking at that letter  
12 and the questions that are posed by the two alternative  
13 questions, the issues that are posed by those questions, (  
14 that there's nothing in any of those documents that would  
15 indicate that there is any focus being asked, or that the  
16 questions don't address the issue of public versus private  
17 funds?

18 A. Mr. Leonard, that was the objective, I think,  
19 of the second question. I don't know that it matters,  
20 though.

21 Q. Well, I'm -- I guess I'm trying to ask your  
22 opinion, Mr. Mangum, as -- and I probably shouldn't be  
23 doing that.

24 As I read the question, is it fair to say  
25 that it isn't clear that that is the thrust of what's

1 being asked for, that is, an opinion with respect to  
2 whether or not these are clearly public funds or private  
3 funds?

4           A.     Mr. Leonard, unfortunately you have to  
5 understand that the judgment that we were trying to  
6 reflect is against a tapestry of many years of public  
7 service -- I call it public service. Others might call it  
8 other things -- that both Warner and I have had. And when  
9 you ask a question of the Attorney General's office, you  
10 have to be very specific in terms of making sure that  
11 you're asking a question that is susceptible of his  
12 disposition under his responsibility to respond to public  
13 questions by public officers.

14                     And if you lay it against that tapestry, I  
15 think the answer that would have come back by the Attorney  
16 General's office would have assuredly addressed the  
17 question of whether the funds were public or private and  
18 how they ought to be held by the Governor's office, and,  
19 indeed, whether or not that statute permitted such uses.

20           Q.     Mr. Mangum, isn't it true, though, that the  
21 use of the funds for scholarship purposes could have been  
22 answered in the affirmative even if the funds were private  
23 funds being held in a private account?

24           A.     Most assuredly.

25           Q.     And isn't it also true that the question

1 could have been answered in the affirmative even if the  
2 funds weren't subject to 41-1105?

3 A. I think that's possible, but in order to get  
4 the answer to the question that really needed to be asked,  
5 we would have had to ask him if the statute was  
6 constitutional. And it's been the practice of the  
7 Attorney General's office for a good many years that they  
8 don't answer questions like that.

9 Q. Well, I appreciate that. It's the job of the  
10 Attorney General to defend the statute; isn't that  
11 correct?

12 A. That's the problem.

13 Q. Therefore, when you get a question of  
14 constitutionality, it never does you any good to ask for  
15 help from the Attorney General, correct?

16 A. There's no question about that.

17 Q. So somebody else has to litigate --

18 A. No question.

19 Q. -- out of a \$90,000 fund?

20 A. No question about that.

21 Q. And that was part of you problem? You only  
22 had \$92,000 to fight over, and it would have been  
23 expensive to litigate it?

24 A. Mr. Leonard, I would have anticipated  
25 handling that matter for free.

1 Q. I wish you would have said that and we might  
2 not be here.

3 A. I'm not sure it's true because the issue, as  
4 you will recall, was disposition of the question of  
5 whether it was politically advisable to engage in  
6 litigation over those funds.

7 Q. I understand, but in trying to focus on the  
8 public versus private, and I'm not being critical of  
9 counsel, because we're all looking at this with perfect  
10 20/20 hindsight, but the two questions that were framed do  
11 not clearly focus on the issue of: Are these public  
12 funds, Mr. Attorney General, subject to 41-1105, or are  
13 they not, and that's logical because, Mr. Mangum -- Mr.  
14 Lee felt they were subject to 41-1105 because he drafted  
15 Exhibit 47?

16 A. Mr. Leonard, I can't answer the question that  
17 way. I felt that the two questions, the way they were  
18 framed, would elicit a response from the Attorney General  
19 that would address the issues that we were concerned  
20 about.

21 Q. Did you, in your conversation with Jim  
22 Colter, focus on the question of whether it was the intent  
23 of the donors of the funds for these funds to become  
24 public funds?

25 A. I don't recall focusing on that discussion.

1 THE PRESIDING OFFICER: Counsel, with all good  
2 intent, I know we're not going to be able to conclude your  
3 cross and redirect and questions by Senators in time for  
4 this witness to return to his practice.

5 So, we'll stand at recess at this time until  
6 2:00 p.m.

7 MR. LEONARD: I apologize.

8 (Recessed at 12:05 p.m.)

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

10 THE PRESIDING OFFICER: Thank you, ladies and  
11 gentlemen. The Court of Impeachment will reconvene. Show  
12 the presence of a majority of the Board of Managers, their  
13 counsel, and counsel for the respondent.

14 We will have Mr. Mangum resume the stand on  
15 cross-examination.

16 MR. LEONARD: Mr. Presiding Officer, I have no  
17 further questions on cross-examination.

18 MR. ECKSTEIN: Mr. Presiding Officer, before I ask  
19 one or two questions on redirect, we have had marked as  
20 Exhibit No. 122 reporter's transcript of proceedings from  
21 Volume 10 of the Special House Select Committee hearing.  
22 These are excerpts of the testimony of Evan Mecham, and we  
23 are offering these pursuant to stipulation with the  
24 understanding that counsel may supplement the record with  
25 testimony of Evan Mecham that would bring this into

1 context on the assumption that we would review that.

2 THE PRESIDING OFFICER: There being no objection,  
3 and under those conditions, 122 is admitted in evidence.

4 THE PRESIDING OFFICER: Mr. Mangum, the respondent  
5 has said that they have no further questions of you on  
6 cross-examination, so we will now proceed to redirect.

7 And I'll remind you you are still under oath.

8

9

REDIRECT EXAMINATION

10 BY MR. ECKSTEIN:

11 Q. Good afternoon, Mr. Mangum.

12 A. Mr. Eckstein.

13 Q. Directing your attention to the meeting with  
14 Jim Colter that was held in late June of 1987, do you  
15 recall suggesting to Mr. Colter at that meeting that the  
16 money transferred from the Mecham Inaugural Committee to  
17 the Office of the Governor should be treated as public  
18 money, until the issue was resolved by the Attorney  
19 General?

20 A. Mr. Eckstein, I don't have any specific  
21 recollection of saying that, but I do have a recollection  
22 that it was said that a great deal of care should be  
23 exercised with regard to those funds, and probably they  
24 should treat them as public funds until a resolution of  
25 the question was achieved.

1 MR. ECKSTEIN: I have no further questions.

2 THE PRESIDING OFFICER: Questions by Senators.

3 Senator Kay.

4 SENATOR KAY: Mr. Presiding Officer, Mr. Mangum,  
5 would it be fair to characterize that the Governor had  
6 either a legal or an equitable interest in the money that  
7 the inaugural fund had?

8 THE WITNESS: Mr. Presiding Officer, am I to go  
9 through the Chair?

10 THE PRESIDING OFFICER: You don't have to go  
11 through the Chair.

12 THE WITNESS: Thank you.

13 Senator Kay, I don't know that I have an  
14 opinion on that. I have not researched that question.

15 SENATOR KAY: Well, the next question, you see my  
16 concern with this particular Article is tying in the  
17 Governor with actual knowledge of the agreement or the  
18 understanding or the letter of 6/26 by Mr. Long.

19 Now, you went to see Mr. Colter. I am going  
20 to ask you the same question that I asked Mr. Lee. Do you  
21 have any evidence, direct evidence, can you give us any  
22 direct evidence that the Governor knew that you were  
23 negotiating in behalf of the Inaugural Committee, or that  
24 he knew of what one side says is an agreement and the  
25 other side says it is not agreement? Do you have any

1 direct knowledge that the Governor knew what you were  
2 doing?

3 THE WITNESS: Not of my own knowledge, no, sir.

4 SENATOR KAY: Was there anything that Mr. Colter  
5 said or did that would lead you to believe that he was  
6 communicating with the Governor as to what you were  
7 talking about?

8 THE WITNESS: Senator Kay, I don't recall any  
9 comments like that from Mr. Colter at that time.

10 SENATOR KAY: Thank you.

11 THE PRESIDING OFFICER: Other Senators' questions?

12 Senator Sossaman.

13 SENATOR SOSSAMAN: Mr. Presiding Officer,  
14 Mr. Mangum, following along the questions of Senator Kay,  
15 would you pick up Exhibit 47, please.

16 Looking on page 2 of that, there has been a  
17 great deal of discussion about the large paragraph in the  
18 middle of the page, and particularly the last sentence in  
19 that paragraph, where it talks about what these funds  
20 should be used for in relationship to A.R.S. 41-1105.

21 I know that many times attorneys use words  
22 that non-attorney -- we pass over, but those words mean  
23 something to attorneys.

24 Now, I can understand in the last sentence or  
25 the last line of that paragraph that these funds would be

1 used within the purview and pursuant to the provisions of  
2 A.R.S. 41-1105. But they have added another set of words  
3 in there "and the spirit."

4 Do you have any idea, as an attorney,  
5 although you did not write the letter, but as an attorney,  
6 why that, "and the spirit" was put in there?

7 THE WITNESS: Senator Sossaman, I don't have any  
8 specific recollection of why it is in there.

9 SENATOR SOSSAMAN: You talked a little bit about  
10 these two funds. One was made up of corporate monies, one  
11 was made up of individual donations, as I understand it,  
12 is that correct?

13 THE WITNESS: Senator Sossaman, to be more accurate  
14 to say that one of the accounts was the ticket sales  
15 account, and as I recall, all of the money that went into  
16 it was sourced out of the ticket sales to the inaugural  
17 fund-raising reception, as distinct from the other  
18 account, which included funds that were solicited from  
19 corporate and other donors to help pay for the events of  
20 the inaugural.

21 It might be easier if the one was called the  
22 ticket sales account and the other one was all the other  
23 money that came in.

24 SENATOR SOSSAMAN: Was it your understanding that  
25 that was corporate monies in the ticket sales, or only

1 individual monies?

2 THE WITNESS: To the best of my knowledge, in the  
3 ticket sales account there was no corporate funds. There  
4 were PAC contributions, but there were no corporate funds.

5 SENATOR SOSSAMAN: Now, can you enlighten me and  
6 others here, it is my understanding that it would have  
7 been legal under the campaign laws, and also under the new  
8 Proposition 200, to accept at least individual monies into  
9 this fund if they were under \$200, is that your  
10 understanding? Or were there some other problems?

11 THE WITNESS: Senator Sossaman, if this was a  
12 statewide race, if memory serves me, the statewide  
13 individual campaign contribution limit is \$500.

14 SENATOR SOSSAMAN: So anything under \$500, would  
15 that have been legal for coming into the ticket sales to  
16 be used for, to pay off campaign expenses, if they were  
17 not needed for the ball?

18 THE WITNESS: Senator Sossaman, this answer is  
19 going to be longer than you ordinarily like, but I'll go  
20 ahead since we got some history together.

21 There certainly was a way that the events  
22 surrounding the inaugural could have been managed which  
23 would have allowed them to conduct a fund-raising  
24 reception unrelated to the other events that were  
25 subsidized by corporate or other donations, and the monies

1 could have been received and used to retire the campaign  
2 debt or for any other political purpose.

3           The problem as the attorneys, myself  
4 included, viewed it, was that the costs of the  
5 fund-raising reception were defrayed by money that was  
6 sourced from corporations, and as such, it probably -- I  
7 am not sure if this concept has any meaning, but it maybe  
8 simplifies the answer -- it was tainted by the fact that  
9 the corporate donations were used to raise it.

10           In other words, they paid for the cost of the  
11 food and the room charges and the invitations and the  
12 mailing costs for the fund-raising reception with  
13 corporate funds, and as such the question in our minds  
14 was: Is the whole thing a political campaign activity or  
15 could you account for it like we suggested at one point to  
16 the County Attorney.

17           SENATOR SOSSAMAN: You didn't feel you could  
18 reconstruct the monies that had been taken out of the  
19 corporate account to pay off the ticket sales bills and  
20 refund that, and whatever was left in the ticket sales  
21 from donors of \$500 or less and use that money to pay off  
22 campaign expenses; you didn't, you, the attorneys, didn't  
23 want to go through that exercise or the campaign committee  
24 didn't want to, do you know?

25           THE WITNESS: Senator Sossaman, this is going to

1 sound like a flip comment; it is not meant to be. It is  
2 very difficult to unring a bell.

3 What had happened, what happened, what I  
4 think in the previous question was, yes, had someone  
5 understood what the problem was, it could have been  
6 operated differently.

7 What we were faced with was a given set of  
8 facts. And you can't change the facts; there was no way  
9 to go back and undo that. We argued, I think at the time,  
10 that it would be certainly consistent with the spirit and  
11 intent of everybody that was involved in it not to create  
12 an illegal act, and to go ahead with an accounting of the  
13 funds. Unfortunately, the County Attorney didn't see fit  
14 to agree with that.

15 SENATOR SOSSAMAN: Just one final question. When  
16 you were talking about the alternatives, Mr. Mangum, you,  
17 I think, quote, said "One of the alternatives was to put  
18 the use of these monies in the Governor's office."

19 Did you feel that this was the use of  
20 Governor Mecham or the use of the office?

21 THE WITNESS: Pretty difficult for me to separate  
22 that in my mind. I understood it to be a disposition that  
23 was acceptable under 41-1105, and to the extent that  
24 that's true, it is difficult to separate the man from the  
25 office.

1           SENATOR SOSSAMAN: Well, are you saying that if for  
2 whatever reason Governor Mecham had not been there a week  
3 after that had been transferred, that the property would  
4 have been at the disposition of the new Governor or  
5 another Governor or another person in that office?

6           THE WITNESS: You are past the ability I have to  
7 answer it, because I simply haven't researched the  
8 question. I think it is a very ornate and very difficult  
9 legal question.

10          SENATOR SOSSAMAN: Thank you.

11          THE PRESIDING OFFICER: Senator Stephens.

12          SENATOR STEPHENS: Thank you, Mr. Presiding  
13 Officer.

14                     Just a couple questions, Mr. Mangum.

15                     Number one, in your opinion was Bill Long the  
16 chairman of the Mecham Inaugural Committee at the time  
17 that the agreement in the form that we see in the Exhibit  
18 No. 47 the letter to the County Attorney was implemented?

19           THE WITNESS: Senator Stephens, I certainly thought  
20 he was.

21          SENATOR STEPHENS: Secondly, Mr. Mangum, have you,  
22 in your discussions or meetings with Mr. Long where this  
23 issue was discussed, was it ever conveyed that the uses of  
24 the money would be, would only be restricted as far as two  
25 things, at least as described by Governor Mecham, number

1 one, that you couldn't use it for politics or you couldn't  
2 use it for living expenses?

3 THE WITNESS: I don't have any present recollection  
4 of making any statements like that, and I don't have any  
5 present recollection of having any statements or hearing  
6 any statements like that.

7 SENATOR STEPHENS: So, Mr. Mangum, then from -- to  
8 your recollection or to your memory, that Mr. Long, at  
9 least in meetings that you had with Mr. Long where  
10 Mr. Long participated in discussion of this issue, it was  
11 never conveyed to him that that in fact the only two  
12 things that this money could be used to, if it was to be  
13 used in a spirit and pursuant to the provisions of  
14 41-1105, was the only prohibitions then would be politics  
15 and living expenses?

16 THE WITNESS: Senator Stephens, I don't have any  
17 clear recollection of all the discussions. You have to  
18 realize we were discussing a set of alternatives. And  
19 there was a lot of discussion there, but I don't think he  
20 would have been left with an impression different from the  
21 fact that it had to be a usage that was acceptable under  
22 41-1105.

23 SENATOR STEPHENS: Sir, you are an attorney, aren't  
24 you?

25 THE WITNESS: Yes, sir.

1           SENATOR STEPHENS: You are somewhat familiar with  
2 41-1105, since you were involved in discussions, would I  
3 be correct?

4           THE WITNESS: Yes, I am familiar with the statute.

5           SENATOR STEPHENS: In your opinion, would you see a  
6 loan to a corporation outside of government as a use  
7 under -- that is permissible under 41-1105?

8           THE WITNESS: I think if someone asked me whether  
9 or not that would be a recommended use of the funds, I  
10 would have to advise them against it.

11          SENATOR STEPHENS: Well, sir, would you see it as  
12 allowable under 41-1105?

13          THE WITNESS: Senator Stephens, I am not trying to  
14 be evasive. I have not researched that issue. I am not  
15 prepared to render a legal opinion based on what I would  
16 call a horseback reaction to a question. It simply never  
17 came up in the context of our representation of the  
18 Inaugural Committee.

19          SENATOR STEPHENS: That is fair enough. Thank you.

20          THE PRESIDING OFFICER: Senator Wright is next.

21          SENATOR WRIGHT: Mr. Presiding Officer, Mr. Mangum,  
22 looking at House Bill 2412, Mr. L'Ecuyer referred to  
23 yesterday which was passed in 1978, this is a non-germane  
24 amendment to a retirement bill. And I recall you were in  
25 the House at the time I was, and I have a faint

1 recollection, but not a clear one, and wondered if you  
2 have a better recollection than I do as to why  
3 specifically that amendment was put on the bill?

4 THE WITNESS: It has been a good many years ago,  
5 Senator Wright, but my present recollection is that a  
6 promise was made to some kids who had performed  
7 conservation work for the State Parks Board, and the  
8 promise was that if they did their jobs or performed, that  
9 they would get some patches or something like that, or  
10 some certificates, and someone at a particular point in  
11 that process had the presence of mind to ask whether that  
12 would be an appropriate use of state appropriated funds.  
13 And they asked the Attorney General, and as I recall, they  
14 were advised it was inappropriate.

15 A solution to the problem was requested. I  
16 can't recall whether it was directed at me from a  
17 legislator, or whether it was as a part of the ongoing  
18 discussion that senior staff members of these two bodies  
19 and the Governor's office have from time to time to see if  
20 we could not resolve the situation. The situation was  
21 resolved by the adoption of that statute which would have  
22 allowed the Governor's office to use undesignated general  
23 appropriated funds for such functions.

24 SENATOR WRIGHT: Thank you, Mr. Mangum. I think  
25 sometimes, because I did have that faint recollection of

1 this, I think the legislative intent needs to be taken in  
2 context too.

3 Thank you.

4 THE PRESIDING OFFICER: Senator Usdane.

5 SENATOR USDANE: Thank you, Mr. Presiding Officer.

6 Mr. Mangum, based upon your testimony today,  
7 and trying to be brief, as I understand it you and Mr. Lee  
8 and Mr. Brophy at one time had gone over this and had  
9 arrived at the conclusions that you have now testified to,  
10 and you spoke to Colter, so for all intents and purposes,  
11 by having Mr. Long sign the statement, he had obliged what  
12 your recollections were at that time?

13 THE WITNESS: Senator Usdane, the letter is  
14 consistent with what my understanding of the agreement  
15 was.

16 SENATOR USDANE: And to your -- you may have  
17 testified to this, but I guess I didn't pick it up -- to  
18 your knowledge, the County Attorney representing through  
19 Mr. Schwartz representing the state, had also complied so  
20 there was a contractual agreement by that letter?

21 THE WITNESS: A settlement was worked out in a  
22 disputed situation between two lawyers, and the  
23 principals, as I understood it, agreed. I presume that  
24 that was an agreement.

25 SENATOR USDANE: I think I heard you testify to the

1 fact this morning or this afternoon, maybe, briefly, that  
2 it should be researched to see if they were public funds  
3 or not before anybody spent them or used them since they  
4 were under 41-1105; is that correct?

5 THE WITNESS: Senator Usdane, with one caveat. I  
6 think what we said was is that you shouldn't use the funds  
7 for a purpose outside of the purview of that statute until  
8 you had specific legal advice to the contrary.

9 SENATOR USDANE: Okay.

10 My last question, Mr. Mangum, is: Would you  
11 please give us your opinion of whether there is a  
12 difference between the use of those funds in a manner of  
13 payment versus loaning them to someone and having it  
14 repaid?

15 THE WITNESS: Senator Usdane, I don't have a legal  
16 opinion, not an expert legal opinion.

17 SENATOR USDANE: Would you care to comment?

18 THE WITNESS: It certainly seems questionable to  
19 me.

20 SENATOR USDANE: Thank you.

21 THE PRESIDING OFFICER: Senator Gutierrez.

22 SENATOR GUTIERREZ: Mr. Chairman, Senator Stephens,  
23 I guess, asked part of the question that I was meaning to  
24 inquire of Mr. Mangum, but let me pursue it just a little  
25 bit more.

1           You were involved from the beginning in one  
2 role or another with the development of this agreement  
3 between the Inaugural Committee and the County Attorney  
4 acting in the capacity or in the place of the Attorney  
5 General; is that correct?

6           THE WITNESS: That is correct.

7           SENATOR GUTIERREZ: To the best of your knowledge,  
8 the document that was sent, and I believe it is Exhibit  
9 No. 47, is consistent with what your idea of that  
10 agreement before was put into writing; is that correct?

11          THE WITNESS: Yes, Senator, it is.

12          SENATOR GUTIERREZ: Now, was the loaning of that  
13 money to Mecham Pontiac outside the purview of 41-1105?

14          THE WITNESS: I don't know the answer to that  
15 question, Senator, because I haven't researched it.

16          SENATOR GUTIERREZ: Well, how about a gut feeling?  
17 I am not even asking for a legal opinion, how about just a  
18 gut feeling?

19          THE WITNESS: I think I heard it said best by  
20 Warner Lee. It certainly is not within the contemplation  
21 that I thought the money would be used for.

22          SENATOR GUTIERREZ: Lending money to Mecham Pontiac  
23 is a little bit different than buying Kachina dolls, is it  
24 not, or patches or seals of the State of Arizona to give  
25 out to school kids?

1 THE WITNESS: I think that's reasonable.

2 SENATOR GUTIERREZ: Thank you, sir.

3 THE PRESIDING OFFICER: Other questions by  
4 Senators?

5 Senator Steiner.

6 SENATOR STEINER: Mr. Mangum, in Mr. L'Ecuyer's  
7 testimony yesterday he talked about the agreement being  
8 signed in order to resolve a hassle. And very carefully,  
9 I think, Mr. Leonard used the term, technique, extortion,  
10 not suggesting real extortion, but just in the area of  
11 developed under duress.

12 Would you comment on that? Did you feel that  
13 that was the tone of the development of this agreement?

14 THE WITNESS: Senator Steiner, I didn't hear all of  
15 Bob's, Mr. L'Ecuyer's testimony yesterday.

16 But if I understood the question, I've known  
17 Tom Collins for a good many years. He is a nice fellow.  
18 I grew to know Howard Schwartz. Neither of them frighten  
19 me in any way shape or form.

20 We had a difficult legal issue and some  
21 innocent people involved, innocent because they didn't do  
22 what they should have done. But they didn't do it with  
23 what I would call an evil intent.

24 Mr. Schwartz and Mr. Collins agreed with  
25 that. They indicated to us in the first meeting, as I

1 recall, that unless the material that we were going to  
2 supply them afterwards -- which they already had a great  
3 deal of the information -- unless the information that  
4 they were supplied afterwards materially changed their  
5 opinion of the facts as they existed at that time, that  
6 they, number one, were not going to file criminal charges,  
7 and number two were not going to seek treble damages.

8           It simply was a question of whether or not  
9 the money would be put to the use at least remotely within  
10 the concept of what I understood the donors to want to  
11 give it to, or as an alternative, it was going to be given  
12 to charity, or -- this perhaps was the worst possibility  
13 in my mind -- given over to the state. People's taxes are  
14 high enough.

15           Our feeling was that if we could get it to  
16 some point -- and I think Bill Long felt the same way --  
17 to some point the Governor's office could use it for a  
18 legitimate state purpose in the interest of the Governor,  
19 then that was an appropriate disposition, instead of long  
20 litigation, two or three years worth of that.

21           SENATOR STEINER: Is it clear in your mind that  
22 Bill Long, as a non-lawyer, signed the letter, signed the  
23 agreement, fully understanding the ramifications and the  
24 implications and the subtleties of what the letter meant,  
25 and what the restrictions was in the letter went?

1           THE WITNESS:  Senator Steiner, I believe so.  I  
2 have a practice in my daily law practice, and that is,  
3 that I try to make my clients understand why I am making  
4 recommendations.

5           There are people around here that will tell  
6 you that I have a tendency to be a little bit lengthy in  
7 terms of explanations.

8           I believe that Bill Long understood what we  
9 were trying to accomplish.  We did spend a fairly long  
10 period of time with him over the course of that.  I  
11 believe he understood it.  If I thought he didn't at the  
12 time, you can rest assured I would have talked more or  
13 tried to explain it in a different way, and I am sure  
14 Warner and Mike feel the same way.

15           SENATOR STEINER:  The point has been made,  
16 Mr. Mangum, and there has been some previous questions,  
17 around the issue of the public-private money.  I guess I  
18 was surprised this morning to hear you say that there was  
19 a question in your mind and you didn't want to step  
20 forward and express a legal opinion in that, and you  
21 explained the issue of conflict of interest and why you  
22 did not go to the Governor's office, you would have rather  
23 have that litigated.

24           I heard you say that you believed that the  
25 agreement was binding in the sense there was an official

1 transfer of the money from the Inaugural Committee to the  
2 Office of the Governor; is that correct?

3 THE WITNESS: I believe that the letter reflects  
4 what my understanding of our agreement was. Mrs. Steiner,  
5 again, I haven't researched the issue which you are  
6 asking, and that is what is at the core of these  
7 proceedings. And if I had an opinion, I would have  
8 clearly expressed it. I haven't researched it.

9 SENATOR STEINER: You said you didn't want to  
10 answer; you already advised the Governor they should go to  
11 the AG or somebody else to test it.

12 I guess the question in my mind is: Did the  
13 restrictions that were within the letter of agreement,  
14 Exhibit No. 47, you said to Senator Usdane's question you  
15 advised that the money should not be spent in any other  
16 manner until it was tested, is that right?

17 THE WITNESS: Uh-huh.

18 SENATOR STEINER: Assuming the restrictions apply  
19 whether or not the conclusion has been public or private,  
20 is the answer still you can't answer that, would the  
21 restrictions of the letter of agreement have applied  
22 whether or not the conclusion was that they were public or  
23 private funds?

24 The case here has been built on the basis  
25 that they had to be public funds for the specific

1 restrictions to apply, I believe.

2 THE WITNESS: Senator Steiner, if the letter stands  
3 as an agreement whether the funds were public or private,  
4 it still could have been given force and effect. It still  
5 would suggest to me that whether they were public or  
6 private, that an agreement had been made to hold and  
7 expend them within the purview of that statutory  
8 provision.

9 SENATOR STEINER: Mr. Mangum, one other point: Am  
10 I correct -- and you know you are a lawyer talking to a  
11 non-lawyer legislator -- the term, when we use the term  
12 "private," many people think it belongs to an individual,  
13 like private dollars. But do you use the term "private"  
14 because you also use the term private to include dollars  
15 in trust? Mr. L'Ecuyer used some language in relation to  
16 that yesterday, but either private to an individual or to  
17 the office, to an individual, or to consider them in  
18 trust, is that -- could that be included in that?

19 THE WITNESS: Senator Steiner, if I understand the  
20 import of your question, I'll answer it with an  
21 explanation and see if I do.

22 I believe that state officials under certain  
23 circumstances, and probably within this statute, can hold  
24 private funds and also can convert private funds into  
25 public funds.

1                   There are different kinds of public funds.  
2 This state has many funds that are in the hands of various  
3 state agencies that may indeed be private funds. They  
4 talked, as I recall, a couple of times about bail bond  
5 monies; there are monies at various universities which are  
6 private non-encumbered funds; there are foundation funds  
7 that are the custody of public officials.

8                   Exactly what the characterization of each of  
9 those funds or funds as to whether they are private or  
10 public, you really have to get down and analyze the  
11 specific fund. And it is not possible, I think, to sit  
12 here, without having done any research, to say to you  
13 these were private individual funds owned by Evan Mecham  
14 or they were private funds in the hands of the Office of  
15 the Governor that had been given to the Office of the  
16 Governor subject to a restriction on their use.

17                   I just don't know the answer to that question  
18 because I have not researched it.

19                   SENATOR STEINER: Okay.

20                   THE PRESIDING OFFICER: Senator Mawhinney.

21                   SENATOR MAWHINNEY: Mr. Presiding Officer,  
22 Mr. Mangum, I think you just touched on what to me is  
23 extremely key to the whole argument here, and I would like  
24 to go over it.

25                   Mr. Steiger talked about dancing on the head

1 of a pin. This is a very, very important pin, so I would  
2 like to dance a little more.

3 I believe you just said -- and you correct me  
4 if I am wrong --

5 THE WITNESS: I will, Senator.

6 SENATOR MAWHINNEY: I know you have never failed in  
7 the past.

8 -- if they were public funds, if they were  
9 private funds, if they were Girl Scout cookie monies, it  
10 doesn't matter, as long as there was a valid agreement  
11 that said that because there was a threat that we were  
12 going to lose that money, we voluntarily agreed to place  
13 the following restrictions on that money; not that it is  
14 now public funds, but that it will be treated in  
15 accordance with 41-1105.

16 Is that accurate?

17 THE WITNESS: If we leave out the Girl Scout cookie  
18 money, I think that's a fair characterization of what my  
19 understanding of the situation was.

20 SENATOR MAWHINNEY: Thank you.

21 Senator Kunasek.

22 SENATOR KUNASEK: Mr. Presiding Officer,  
23 Mr. Mangum, the account, where is the money now?

24 THE WITNESS: Mr. President, I have no idea.

25 SENATOR KUNASEK: It is not with the state

1 treasurer, is it, is the money with the state treasurer?

2 THE WITNESS: Mr. President, the last discussion I  
3 had with anybody regarding these funds occurred a couple  
4 of days after our meeting with Jim Colter, when I talked  
5 to Warner Lee. And until that time I never advised  
6 anybody or talked to anybody about those funds.

7 Honestly, I have no idea where they are; I  
8 don't even know which bank the account is now.

9 SENATOR KUNASEK: There has been evidence presented  
10 here that they are in a Valley Bank at Camelback, I  
11 believe someplace, 29th, someplace, and that the  
12 signatories on that account are, I think, Mr. Colter and  
13 Mrs. Richardson. I would have to go back and look at the  
14 exhibit to make sure.

15 But if that is the case, if those funds are  
16 in that account and the signatories are in fact Colter and  
17 Richardson, and the Governor is at least temporarily not  
18 the Governor, we have a new acting Governor, who would  
19 have access to those funds?

20 THE WITNESS: Mr. President, that calls for a legal  
21 conclusion that I am not prepared to draw. I don't  
22 honestly have any idea. It is an interesting question,  
23 though.

24 SENATOR KUNASEK: And then the next extension would  
25 be: If we would have a new Governor, say, after 1990, or

1 perhaps sooner, who would have access to those funds?

2 THE WITNESS: Mr. President, again, that is an  
3 interesting question. I have no idea. No research that I  
4 have done would allow me to express an opinion on it.

5 SENATOR KUNASEK: If they were turned over to  
6 Mr. Mecham as Governor, Mr. Mecham is no longer Governor,  
7 yet he still is in control of the funds, how does that fit  
8 in to the public funds-private funds scenario?

9 THE WITNESS: Mr. President, if someone ultimately  
10 is to determine- - probably a court will end up doing  
11 it -- that those funds are public funds, and they are in  
12 the Office of the Governor, and subject to disposition  
13 under 41-1105, I would presume that they would stay with  
14 the Office of the Governor.

15 If it is ultimately determined that they are  
16 private funds and they were given over to the use of Evan  
17 Mecham as the then occupant of the office, for his  
18 personal use, then I suspect that they would go with him.

19 But I can't answer the question because I  
20 don't know the answer to the question.

21 SENATOR KUNASEK: So I would assume -- is it  
22 correct for me to assume from your answer that we don't  
23 know if they are public funds or private funds at this  
24 point?

25 THE WITNESS: I have not researched the question

1 and therefore I can't express an opinion.

2 SENATOR KUNASEK: Thank you.

3 THE PRESIDING OFFICER: Other questions by  
4 Senators?

5 If not, may this witness be excused?

6 MR. LEONARD: Yes.

7 THE PRESIDING OFFICER: Mr. Mangum, you are excused  
8 subject to being recalled if we change our mind. Please  
9 don't leave the state without the permission of counsel.

10 THE WITNESS: Thank you.

11 Mr. Presiding Officer, I may indeed leave the  
12 state this weekend, but it will only be on either Lake  
13 Powell or Lake Mead, if that is permissible.

14 THE PRESIDING OFFICER: Could we come and find you?

15 THE WITNESS: My wife may have some discussion  
16 about that.

17 THE PRESIDING OFFICER: Thank you, Mr. Mangum.

18 Your next witness, or are there any other  
19 witnesses?

20 MR. FRENCH: The Board of Managers rest the  
21 rebuttal case.

22 MR. LEONARD: Mr. Presiding Officer --

23 THE PRESIDING OFFICER: Just a minute.

24 Senator Mawhinney.

25 SENATOR MAWHINNEY: Mr. Presiding Officer, if that

1 concludes the presentation on this Article, I wonder, I  
2 would like to move at this time for an approximately  
3 30-minute recess so that the Senate members of this Court  
4 could meet with their counsel to discuss where we are at  
5 in the proceedings and see about potential alternatives  
6 about how to proceed.

7 MR. LEONARD: Mr. Presiding Officer, might I ask  
8 that the Senator would yield for just a moment so I can  
9 make a technical motion, so the Presiding Officer can deny  
10 it, but the record will at least be clear.

11 THE PRESIDING OFFICER: Would you yield, Senator?

12 SENATOR MAWHINNEY: Yes.

13 MR. LEONARD: Mr. Presiding Officer, I understand  
14 by your previous rulings that you will not entertain the  
15 motion, but I would at least like to put on the record  
16 that if the Presiding Officer would entertain the motion,  
17 I would at this time move for a directed verdict of  
18 dismissal of the case or such other dispositive motion  
19 that might dispose of this Article III.

20 THE PRESIDING OFFICER: Consistent with my prior  
21 rulings concerning motions concerning the sufficiency of  
22 the evidence, I consider it to be out of order and  
23 therefore deny it.

24 Senator Mawhinney.

25 SENATOR MAWHINNEY: Same motion.

1 THE PRESIDING OFFICER: Is that a request for a  
2 conference for request or a recess?

3 SENATOR MAWHINNEY: Request for a recess. I don't  
4 want to use the word "conference" for a number of reasons,  
5 but in the course of discussing why we would have  
6 conferences, we suggested that one of the important things  
7 that it was necessary for this body to be able to do was  
8 to consult with our legal advice. I put it in the form of  
9 a motion, not in a request, for the Presiding Officer to  
10 demand a recess so that I can sense there are more than a  
11 majority of the Senators who would comply, and would like  
12 to meet with their counsel and discuss alternatives.

13 THE PRESIDING OFFICER: There is a motion before  
14 the body.

15 Senator Kunasek.

16 SENATOR KUNASEK: Mr. Presiding Officer, I would at  
17 this time then respectfully ask that under our Rule 22 for  
18 your counsel, the advisability of a conference as to what  
19 the procedure would be with regard to the actions taken by  
20 the Court or the, I guess the order in which those actions  
21 would come up. I would like to have any of your  
22 background and your experience on the advisability of such  
23 a conference, and as well as its propriety.

24 Also, I would like to clearly state that it  
25 would be my opinion that we do not discuss or in any way

1 take any kind of a poll or a vote during this conference.

2 THE PRESIDING OFFICER: Senator, as I understand  
3 it, you are asking about what would happen if -- or  
4 whether I feel that it should be, that you as a body  
5 should recess and consider and deliberate on the  
6 allegations and the sufficiency of the evidence. That  
7 would presume, of course, that all the evidence is in, and  
8 your rules would allow you to deliberate, closing  
9 arguments were made, and everything of that nature and you  
10 are actually in a position of deliberating. Is that the  
11 posture of the case that you are posing the question to  
12 me?

13 SENATOR KUNASEK: Yes, Mr. Presiding Officer.  
14 Plus, as I understand the ordinary court procedures, once  
15 closing arguments are made there is no further opportunity  
16 for the -- in this case the Senators, to question counsel  
17 for either side. And with that in mind and in view of the  
18 fact that there might be questions posed or questions left  
19 unanswered in the minds of the Senators, since they will  
20 not have the opportunity to question either counsel, is it  
21 proper for us to question our own counsel in conference on  
22 those questions of law that might arise?

23 THE PRESIDING OFFICER: Senator West.

24 SENATOR WEST: Mr. Presiding Officer, if you would,  
25 before we go into conference or perhaps after we come out,

1 under Rule 22, if you could give us some advice if in fact  
2 we follow the normal course of action and go into Article  
3 II, and Article II, the proceedings here at Article II  
4 start to interfere with the criminal trial of Governor  
5 Mecham at the courthouse downtown, would you be in a  
6 position, not as a Presiding Officer of this Court but  
7 either in that position or as a Chief Judge of the Arizona  
8 State Supreme Court to ask Judge Ryan or whichever judge  
9 is hearing that at that time for a continuance or delay  
10 until the impeachment hearings are over, number one, and  
11 two, obviously, if that is a proper course of action?

12 THE PRESIDING OFFICER: Before I answer Senator  
13 Kunasek's question, I would answer yours, Senator West. (

14 I would not feel it appropriate for me in my  
15 position as a Presiding Officer of this body or as the  
16 Chief Justice of the Arizona Supreme Court to ask the  
17 Presiding Judge of the Superior Court to take any action  
18 one way or the other in the criminal case. I would just  
19 feel that would be inappropriate, so I would not be asking  
20 that.

21 Back to the question of whether or not to  
22 meet and consider and debate the sufficiency of the  
23 evidence and the applications of the statutes privately,  
24 when you can consult with your attorneys, I feel you folks  
25 have a rather unique situation. I realize there is

1 tremendous pressure on you as members of the Court to  
2 deliberate in public. I also realize that those calling  
3 for public deliberations honestly believe that the public  
4 should know that the Senate will reach its decision, how  
5 the Senate will reach its decision in these proceedings.

6           Although I agree there is much merit to  
7 government out in the open and in the sunshine, the  
8 Senators would be on firm ground and acting in accordance  
9 with what my understanding of an Arizona precedent is, if  
10 while acting as judges and jurors in this kind of a case  
11 you did opt to deliberate in private.

12           Juries in the United States deliberate in  
13 private. They are afforded this privilege because they  
14 may at that time freely and openly discuss the issues that  
15 are before them and the sufficiency of the evidence.

16           I remember one of the instructions they used  
17 to give juries is when you retire to deliberate, it is  
18 easy for you to make a position and take a firm position,  
19 but then when you do so it is hard to retreat from it, it  
20 is hard without losing your sense of dignity. It is not  
21 very good to take a firm position at the very beginning of  
22 their deliberations until you have had an opportunity to  
23 fully discuss with the other members of your deliberative  
24 body what their opinions of the weight and sufficiency of  
25 the evidence is.

1                   So sometimes by the very nature of these  
2 proceedings, being in public and with the television on  
3 you, there is a natural tendency for you to stand and make  
4 a position, and then really decide that you will not  
5 retreat from that position because you have made your  
6 statement, and therefore it would be strange if somebody  
7 else said that later on you had changed your mind, and  
8 they couldn't understand that perhaps they would feel  
9 deals had been made and things like that.

10                   I know that it would be perceived by some  
11 that if you go into the room in private and you discuss  
12 that, people would feel that you might be making a deal,  
13 but to me, that is not necessary, it shouldn't be, and I  
14 would see that if you deliberate you are not to come to  
15 any agreements there, you could announce and have your own  
16 format that your deliberations and your questions to your  
17 counsel are to be done in private, but without coming to  
18 an agreement or counting votes or counting noses or  
19 anything else, but just to be able to discuss the matters.  
20 You would not be receiving evidence, you would not be  
21 taking votes, you would be required to come out in public  
22 after your discussions and make your votes.

23                   That would be, as I say, within the precedent  
24 of the law in Arizona, because in 1964 when this very body  
25 met and deliberated in the case involving Senators, rather

1 Commissioners Williams and Buzzard, they retired and  
2 deliberated in private. They did not at that time in  
3 1964, as a body, have to deal with the open meeting law  
4 because there was none at the time.

5           However, I feel that this body, even with the  
6 open meeting law -- and I might be quick to remind you I  
7 am only one person of a five-person court in Arizona,  
8 Arizona Supreme Court, and I have not discussed this with  
9 other members of my court -- we have not had the matter  
10 presented to it, but I would say that if I were a justice  
11 on the Court myself, I could see, as in other cases, that  
12 this is an administrative agency or a legislative agency  
13 acting in a quasi-judicial capacity, and it legitimately  
14 should and could be able to go into private and discuss  
15 and deliberate in private, discussing the sufficiency of  
16 the evidence. This gives an opportunity for everybody to  
17 freely exchange their thoughts and to change their  
18 position if they feel it would be correct to do so.

19           So that is why I say to you that I think that  
20 you would have the right, and it would be within your  
21 precedent, to deliberate in private, assuming that your  
22 rules allow you to do so at the point that you choose to  
23 do so.

24           Of course, the members of your Court of  
25 Impeachment can never really be truly isolated from public

1 pressure. The members of this Court are elected officials  
2 who must in the final analysis answer to their  
3 constituents. But you should decide, if you should decide  
4 to deliberate in public, I suspect that you will engage in  
5 candid discussions on the evidence that you have heard in  
6 this trial.

7 Now, I am a judge and obviously not a  
8 politician. I realize that politically it might be  
9 impossible for members of this Court to deliberate  
10 privately. Through my remarks, I only mean to suggest  
11 that if you do opt to deliberate in private, your  
12 decisions would be in keeping with our Anglo-American  
13 legal tradition, and I think that is about the best answer  
14 I can give you, Senator Kunasek.

15 Senator Steiner.

16 SENATOR STEINER: Mr. Presiding Officer, I guess I  
17 assumed when I heard Senator Mawhinney's motion that the  
18 primary purpose of his motion was to have this body talk  
19 about whether or not we should take a vote on Articles I  
20 and III at this time.

21 If I may, Mr. Presiding Officer, if Senator  
22 Mawhinney would yield, am I correct in my understanding of  
23 the primary purpose of his motion is rather than the  
24 discussion on the legal issues that you and Senator  
25 Kunasek have referred to at this time, if I may,

1 Mr. Presiding Officer?

2 THE PRESIDING OFFICER: Senator Mawhinney, would  
3 you state what it is, the purpose of your recess?

4 SENATOR MAWHINNEY: Yes, sir. But I would first I  
5 would like to yield to Senator questions.

6 SENATOR STEINER: The question is, Mr. Presiding  
7 Officer, Senator Mawhinney, what was your intent when you  
8 made the motion? What did you picture happening while we  
9 had this recess/conference?

10 SENATOR MAWHINNEY: Well, Mr. Presiding Officer,  
11 Senator Steiner, with what I visualize happening was most  
12 of us, and hopefully all of us, would go and sit and  
13 consult with our legal advisor whom we pay to sit here  
14 with us and to try to keep us on the straight and narrow  
15 about the potential damage to the Governor's criminal case  
16 were we to continue on to Article II, the impact of  
17 perhaps asking that perhaps the counsel would prepare to  
18 close on the other Articles and trying to see if it was  
19 the wisdom of the body to try to continue or whether we  
20 wanted to stop now, come back in, make them close it out  
21 and vote, or whether we had just decided that there is  
22 insufficient grounds to do that and that we ought to go  
23 ahead right away with Article II.

24 And I wanted to ask our advisor, our legal  
25 advisor, about the effects of each of those courses, where

1 the dangers are, what the opportunities are, et cetera, so  
2 we would go ahead in some kind of an appropriate fashion  
3 rather than trying to resolve it out of this formal  
4 setting where we can't debate back and forth comfortably.

5 SENATOR STEINER: I assumed that was your intent.  
6 I think it is very important that we understand that that  
7 is the focus, and not discuss in detail what has been  
8 presented from the standpoint of the evidence before the  
9 Court.

10 THE PRESIDING OFFICER: Senator Kay.

11 SENATOR KAY: Mr. Presiding Officer, first we have  
12 been debating for 10 or 15 minutes a motion to recess, and  
13 that is not a debatable motion, that is number one.

14 Number two, if we're having a conference  
15 under Rule 24, I would, as I raised about a month ago, ask  
16 the Presiding Officer whether it is incumbent upon all  
17 Senators present to attend the conference, because that is  
18 what Rule 24 says.

19 Number three, it would seem to me that as  
20 long as we are debating and no one has raised a point of  
21 order on debating a motion to recess, that it is a  
22 circumvention of invoking Rule 24, which is asking for a  
23 conference. And if there are members here that are  
24 insecure about what may or may not develop in the form of  
25 a motion to vote on Articles I and III, then they should

1 either privately, without calling for a conference, or  
2 just go to whomsoever they wish to go to, but I think it  
3 is incumbent upon the public out there to hear whatever  
4 debate there is rather than back there on the question of  
5 voting. This is a public issue.

6 THE PRESIDING OFFICER: As I understand it, this  
7 isn't a normal recess that was being asked for, and so I,  
8 without taking issue, with my help or the parliamentarian,  
9 and I think there is a little more to it than a request  
10 for a half an hour recess, there is a motion for a half an  
11 hour recess under the conditions that Senator Mawhinney  
12 has stated.

13 I'll ask for all those in favor signify by  
14 saying "aye." All those opposed say "no."

15 THE PRESIDING OFFICER: The "ayes" appear to have  
16 it, they do have it, and it is so ordered.

17 We will recess for a period of a half an  
18 hour.

19 (Recessed at 2:50 p.m.)

20 (Reconvened at 3:50 p.m.)

21 THE PRESIDING OFFICER: Thank you, ladies and  
22 gentlemen. The Court of Impeachment is reconvened. Show  
23 the presence of a majority of the Board of Managers, their  
24 counsel, and counsel for the respondent.

25 Senator Kay, did you have a matter you wanted

1 to mention?

2 SENATOR KAY: Yes, Mr. Presiding Officer. For the  
3 record, I advised both counsel and you through one of your  
4 clerks that before we met, I had received an anonymous  
5 contribution of \$5.00 for Mr. Leonard as defense counsel  
6 for Governor Mecham. And just for the record, I wanted to  
7 state that I had turned over the \$5.00 and the letter to  
8 him, and for the further record if anyone else gives me  
9 any more money, I am going to keep it myself.

10 THE PRESIDING OFFICER: Senator Kunasek.

11 SENATOR KUNASEK: Mr. Presiding Officer, I wish  
12 Senator Kay well.

13 I would like to, Mr. Presiding Officer, just  
14 to further clarify the instructions and your advice with  
15 regard to conferences.

16 I think that we just held a very proper,  
17 productive conference. As you can see we ran to 20  
18 minutes over time from the 30 we were allotted, but I would  
19 like to clarify for the record, and for anybody else who  
20 has any interest in it, that there were lawyers there,  
21 they were our staff attorneys, our staff counsel; there  
22 were no lawyers from the Board of Managers and there were  
23 no lawyers from the respondent in attendance at any time  
24 throughout the conference. I want to make that perfectly  
25 clear.

1                   We have received a large number of calls  
2                   accusing us of meeting with the respondent, accusing us of  
3                   meeting with the Board of Managers' counsel. Once again,  
4                   there were no lawyers from either side there. The only  
5                   attorneys there were our own staff attorneys, and they  
6                   were in attendance to answer our questions.

7                   Thank you.

8                   THE PRESIDING OFFICER: Thank you, Senator Kunasek.  
9                   Senator Stephens.

10                  SENATOR STEPHENS: Thank you, Mr. Presiding  
11                  Officer. I would like to move a 42-line amendment which  
12                  has been distributed to each member. And, Mr. Presiding  
13                  Officer, that is the same amendment which was proposed,  
14                  amendment to the rules in regards to amending Rule No. 13  
15                  of Procedure, to allow closing arguments to be made at the  
16                  conclusion of evidence presented on each Article through a  
17                  majority vote of Senators, and also an amendment to Rule  
18                  23, which would allow for a vote to be taken if a majority  
19                  of Senators agreed after those closing arguments were  
20                  made.

21                  Mr. Presiding Officer, this is the same  
22                  amendment which was proposed by Senator Walker, I think,  
23                  sometime last week, and was withdrawn after there was a  
24                  request made by several Senators for that motion to be  
25                  withdrawn at that time.

1           Mr. Presiding Officer, Members, I think it is  
2 appropriate to bring this amendment up at this time  
3 because we are at the conclusion of the evidence presented  
4 in respect to Article III, now, the second Article that we  
5 have heard. And I think there is something like 5,000  
6 pages of testimony now that is on the record in regards to  
7 both Articles, and I for one would like to hear the  
8 closing arguments while the evidence is still fresh in my  
9 mind.

10           I would like to remind the members that the  
11 amendment to Rule No. 13, that being the change in  
12 procedure to allow for a majority or allow for closing  
13 arguments at the end of each Article is very similar to  
14 what was proposed the first day of this trial by both  
15 counsel in terms of, I think something that makes sense  
16 when you present evidence in a case in regards to a  
17 charge, you want to try to present a closing argument to  
18 sum up the pros and cons in regards to that evidence while  
19 it is still fresh in the minds of the jurors, and in this  
20 case the Senators of the Court.

21           In regards to the proposed amendment to Rule  
22 23 to allow a vote as an option to the Senate open to the  
23 Court, if a majority of Senators agree to vote at the end  
24 of, after those closing arguments have been heard in  
25 respect to each Article, it is not a mandate, it is not a

1 mandate that we vote, it is an option, if a majority  
2 support it, after they have heard the closing arguments in  
3 regard to that particular charge.

4           Many people say that we ought to hear all the  
5 evidence in respect to all the charges before we vote on  
6 any one charge. I for one very frankly can't fathom how  
7 evidence in Article III is going to influence my vote in  
8 regards to Article I.

9           All you have to do is listen to the evidence;  
10 all you have to do is read the articles and the charges  
11 that are made contained in those articles that have been  
12 sent over from the House. Article I really has nothing to  
13 do with Article III, and Article III has nothing to do  
14 with Article II. I think they all stand on their own.  
15 And the evidence we hear and the judgments we make are  
16 going to be made on the evidence in respect to that  
17 particular Article, not to -- not after all the evidence  
18 has been accumulated and all the Articles. We shouldn't  
19 allow, in my opinion, allow the accumulation of evidence  
20 to influence us in respect to any one Article. I think we  
21 ought to live up to our oath and make a judgment based on  
22 the evidence that has been presented in respect to that  
23 Article that we are voting on at that time.

24           The way the rules stand right now we would be  
25 voting on Articles one by one at the conclusion of all the

1 evidence presented in respect to all Articles, so at some  
2 point we do vote Article by Article. The question is:  
3 Should we do that when the evidence is still fresh in our  
4 mind, allow the closing arguments to be made when the  
5 evidence is still fresh in our mind? This would simply  
6 just allow the closing arguments to be made and then the  
7 option for the Senate to vote. And if Governor Mecham is  
8 to be acquitted, why deny him that? Why keep the suspense  
9 building on that particular Article?

10 Adversely, if he is to be convicted on that  
11 Article, why keep the suspense in the state going and  
12 continue the Constitutional crisis?

13 I think it would be fair to the Governor,  
14 fair to the Court, and fair to the people of Arizona to at  
15 least have the option in this Court to vote after the  
16 evidence is presented in respect to each Article.

17 THE PRESIDING OFFICER: Senator West was next, then  
18 Senator Taylor.

19 SENATOR WEST: Mr. Presiding Officer, the  
20 distinguished Senator from District 6 would yield?

21 SENATOR STEPHENS: Be glad to.

22 SENATOR WEST: Senator Stephens, on the assumption  
23 that the rules are changed and your motion passes and  
24 closing arguments are made, what is your vision as to then  
25 voting on Articles I and III? Do you see that that then

1 being an occurrence on Articles I and III?

2 SENATOR STEPHENS: I think that would take a  
3 majority. If some Senator decided that they wanted to  
4 vote at that time, they would then make a motion. And if  
5 16 Senators supported that, then the vote would be taken  
6 at that time.

7 SENATOR WEST: Senator Stephens, I understand the  
8 procedure. I am asking, though, specifically, what your  
9 vision would be?

10 SENATOR STEPHENS: I think that's difficult for me  
11 to say until I have heard the closing arguments.

12 Right now, I need to be refreshed on Article  
13 I, because it has been almost two weeks now since we heard  
14 testimony in regards to Article I, five weeks since we  
15 heard Frank Martinez' testimony. So I would hope that we  
16 would, once we got the closing arguments, we will refresh  
17 our minds and we would make the decision realizing what  
18 the evidence was, again having our minds refreshed about  
19 whether we should vote at that time or not.

20 SENATOR WEST: Thank you.

21 Would Mr. Presiding Officer, if I could,  
22 would either the lead counsel for the Board of Managers,  
23 would they yield?

24 THE PRESIDING OFFICER: I am sorry, I was writing  
25 down a name here, Senator West. Would you ask your

1 question again, please.

2 SENATOR WEST: Whoever is going to argue Article  
3 II, Mr. French, could you give us an idea, not how many  
4 people you have on your witness list, but how many people  
5 you will anticipate calling for the prosecution and  
6 approximately how long you think it will take you to  
7 present your case?

8 MR. FRENCH: Senator West, I would anticipate  
9 calling anywhere from 10 to 18 witnesses. There will be a  
10 number of exhibits that we are trying to settle ahead of  
11 time. We haven't gotten into those yet as to all of them.  
12 As to our case, I would suggest it be probably anywhere  
13 from two to two and a half weeks.

14 SENATOR WEST: Thank you.

15 Mr. Leonard or Mr. Craft, who is going to  
16 present Article II?

17 Mr. Leonard, the same question for the  
18 defense: How long, how many witnesses would you  
19 anticipate calling, and how long do you anticipate  
20 time-wise you will need for defense?

21 MR. LEONARD: Senator, Mr. Craft will be lead  
22 counsel in the case, but I can advise you that it would be  
23 about the same length of time and the same number of  
24 witnesses.

25 SENATOR WEST: Two-and-a-half weeks, ten to 18

1 witnesses.

2 MR. LEONARD: Correct.

3 SENATOR WEST: Thank you.

4 Mr. Presiding Officer, members of the Court,  
5 I have a tremendous respect for Senator Stephens, and I  
6 think he and every person here has really put their best  
7 effort forward in these proceedings.

8 However, had this rule been made or this rule  
9 change been made when we originally adopted our rules, I  
10 think it appropriate. However, now, because we are in the  
11 sixth inning of a nine-inning game, it would be  
12 inappropriate for us to change our rules. I think we will  
13 be and correctly criticized for doing that without a  
14 significant reason or rationale to do so, and it is my  
15 personal belief that it would be an abrogation of our own  
16 Constitutional charge not to hear that evidence in Article  
17 II that has been brought to us by the Board of Managers.

18 And so I guess with those ideas, looking at  
19 another four to five weeks of trial, recognizing how  
20 painful it is for all concerned, both physically,  
21 emotionally and psychologically, that the best interests  
22 of the Governor and the best interests of the State of  
23 Arizona are served, and our Constitutional mandates are  
24 best served, by us proceeding as we have, denying this  
25 motion, and going into and hearing Article II.

1 Thank you.

2 THE PRESIDING OFFICER: Senator Taylor is next.

3 SENATOR TAYLOR: Mr. Presiding Officer, I would  
4 like to request a roll call vote on this.

5 THE PRESIDING OFFICER: Do we have a concurrence of  
6 five?

7 We do. Thank you, sir.

8 THE PRESIDING OFFICER: All right.

9 Senator, Kunasek is next.

10 SENATOR KUNASEK: Mr. Presiding Officer, would  
11 Senator Stephens yield?

12 SENATOR STEPHENS: Yes.

13 SENATOR KUNASEK: Senator Stephens, I am not very  
14 absolutely clear on the second part of your proposed  
15 amendment. What I understand you to say is that you would  
16 have, if your amendment passes, the opportunity to have  
17 closing argument now, but then the possibility of not  
18 taking a vote now; is that correct?

19 SENATOR STEPHENS: Yes, that is correct.

20 SENATOR KUNASEK: Well, then, your comment as to  
21 having the testimony in some cases five weeks old now  
22 could be compounded if we failed to take a vote at the end  
23 of closing argument by another time period, which would  
24 even be then further compromised by not having the  
25 opportunity of a second closing argument to refresh our

1 recollection, memories, at the time just before we voted,  
2 is that the way you envision it happening?

3 SENATOR STEPHENS: That is a possibility, I am  
4 sure, that might weigh in the minds of people making a  
5 decision about whether they wanted to vote at the end of  
6 the closing argument.

7 I also suspect there might be an opportunity  
8 to perhaps ask for a summation, that was at one time a  
9 proposal that was going to be made, was not made, that a  
10 summation of the information be presented at a specific  
11 point, and perhaps, if the body decided not to vote at the  
12 end of the closing arguments on that specific Article,  
13 that basically a second closing argument could be made at  
14 the time when the Article was going to be voted upon.

15 SENATOR KUNASEK: Mr. Presiding Officer, it might  
16 be. I don't want to advise counsel and other parties, but  
17 I think if Senator Stephens' amendment passes, they might  
18 well review the last two sentences in Rule 13 to extend  
19 the time for closing argument, maybe until such time as  
20 the vote would be taken or have an opportunity to recap  
21 their closing argument at that time.

22 Thank you.

23 THE PRESIDING OFFICER: Senator Rios was next.

24 SENATOR RIOS: Yes, thank you, Mr. Presiding  
25 Officer. And if Senator Stephens would yield, I just want

1 to make sure that I and other Senators on the floor  
2 understand the scenario here, and in terms of trying to  
3 see if I do understand it, I would like to go through a  
4 brief synopsis on his proposed rule amendment and ask  
5 Senator Stephens if that is correct.

6 So that if we adopt the rules amendment in  
7 order to adopt the rule, we would require and need 20  
8 votes. If that is achieved, then, Senator Stephens, then  
9 a simple majority of the Senators, which would be 16,  
10 could then require after closing arguments a vote after  
11 that particular Article. Is that correct?

12 SENATOR STEPHENS: Yes, very similar to how many  
13 votes are required for dismissal. And we have had that  
14 proposal, of course, presented to the body a number of  
15 times; this body can dismiss any charge by a simple  
16 majority. In this case that would allow this change,  
17 would allow for that same majority to call for a vote  
18 after that closing argument.

19 SENATOR RIOS: Then in terms of the scenario,  
20 Mr. Presiding Officer, Senator Stephens, we are looking at  
21 20 to change the Rule, 16 to be able to vote after a  
22 closing argument on a particular given Article, then we  
23 are looking at, again, 20 votes in order to convict on  
24 that particular Article, and if it is less than 20 on that  
25 given Article, then we have for all intents and purposes

1 acquitted on that Article; is that correct?

2 SENATOR STEPHENS: Senator, this in no way affects  
3 the Constitution, which would require 20 votes to convict  
4 on any charge; short of that results in automatic  
5 acquittal in that particular Article.

6 SENATOR RIOS: I just wanted to clear up any  
7 confusion that there may arise as a result of this in  
8 terms of the numbers. So we are looking at 20 -- 16 to  
9 bring it to a vote, and then back to 20 if we're to  
10 convict.

11 Thank you.

12 THE PRESIDING OFFICER: Senator Walker was next.

13 SENATOR WALKER: Well, Mr. Presiding Officer, I  
14 rise to support Senator Stephens' motion. I think it is  
15 an excellent motion, as a matter of fact, it used to be  
16 the Walker motion, so I certainly am supportive of that,  
17 in counter argument to Senator West's argument.

18 I don't think there is anything in the  
19 Articles of Impeachment that says we must absolutely hear  
20 all the Articles of Impeachment. I think it serves us all  
21 well, both the Board of Managers and the respondent's  
22 attorneys, to be able to summarize each Article at the  
23 conclusion of the Article. I don't think there is  
24 anything wrong with it, and I certainly don't think it  
25 would take any of the Governor's Constitutional rights

1 away.

2 As I stated before, if the Governor is  
3 exonerated, then he ought to know that, so that he can go  
4 on to other things. If he is convicted, the state  
5 shouldn't have to suffer through this trial another day  
6 longer than it has to.

7 Thank you.

8 THE PRESIDING OFFICER: Further debate.

9 Senator Stephens, do you wish to close?

10 SENATOR STEPHENS: I would like to close. In  
11 regards to Senator West's --

12 THE PRESIDING OFFICER: Excuse me.

13 SENATOR KUNASEK: Senator Stephens, he would like  
14 to close. There are other Senators who would like to  
15 speak.

16 THE PRESIDING OFFICER: I hadn't seen hands.

17 Senator Stump then Senator Kunasek.

18 SENATOR KUNASEK: I don't want to --

19 SENATOR STUMP: I am sorry, I don't wave very high.

20 Mr. Presiding Officer, I want to offer a  
21 substitute motion and explain it before I do it. I have a  
22 feeling that Article II has a certain element that I would  
23 call a quasi double jeopardy, and that is the conviction  
24 of it here costs the Governor his job; conviction for the  
25 same things down at Superior Court costs him his job, in

1 addition to any criminal judgements that come from  
2 conviction there.

3           So consequently I move that this Court finds  
4 that Article II of Impeachment, when taken along with the  
5 present criminal proceedings in the Superior Court of  
6 Maricopa County concerning the same or similar matters as  
7 contained in Article II, do in fact place the respondent  
8 in a position that is quasi double jeopardy, therefore,  
9 Article II is dismissed with prejudice.

10           Now, if that were adopted, it would  
11 accomplish what the Stephens' amendment wants to do in the  
12 fact that we would be through and we would start final  
13 arguments.

14           THE PRESIDING OFFICER: Senator Stump, I may have  
15 missed part of your motion. Are you making a substitute  
16 motion to dismiss Article II?

17           SENATOR STUMP: Yes, with prejudice. I got it  
18 written here. I can hand it to the clerk.

19           THE PRESIDING OFFICER: There is a substitute  
20 motion before the body.

21           Senator Usdane is next.

22           SENATOR USDANE: Mr. Presiding Officer, not  
23 understanding that Senator Stump was going to move a  
24 substitute and wishing to speak on the Stephens' motion, I  
25 would waive my rights at this time unless Senator Stump's

1 motion is passed.

2 THE PRESIDING OFFICER: I think it is appropriate  
3 to take care of the substitute motion at this time.

4 Is there any other debate on the substitute  
5 motion?

6 There is no further debate. We will then  
7 have a vote by the Senators on whether to sustain or grant  
8 the substitute motion by Senator Stump, which is to  
9 dismiss Article II, which would be the next article to be  
10 presented for the reasons he stated.

11 All those --

12 Senator Stephens?

13 SENATOR STEPHENS: Mr. Presiding Officer, could I  
14 ask a question under Rule 22?

15 THE PRESIDING OFFICER: Yes, you may, sir.

16 SENATOR STEPHENS: In terms of the issue that  
17 Senator Stump brought up about prejudicing this  
18 proceeding, and a verdict, assuming it would be conviction  
19 on Article II which is known as the Wolfson loan, I have  
20 heard various interpretations, part of which we asked our  
21 attorney for some advice in that regard, in terms of the  
22 likelihood of this proceeding delving into Article II, the  
23 likelihood that that would prejudice the criminal  
24 proceeding that is going on about the same time, or three  
25 or four weeks from now, and I know it's unprecedented in

1 terms of what we are getting into.

2           Could you give us a little legal instruction  
3 about that issue and the likelihood of this process  
4 prejudicing that process?

5           THE PRESIDING OFFICER: Senator Stephens, I believe  
6 early on, several weeks ago, right at the very beginning  
7 of this trial, I think it was Senator West that asked me  
8 whether I would comment on the legal effect of this body  
9 trying Article II at a time when there is a pending charge  
10 against the Governor. And I mentioned at that time that I  
11 felt that my answering that would be in fact talking about  
12 substance in the case, and I would rather you relied on  
13 your own counsel, because when we talk about whether or  
14 not these proceedings would in fact affect the due process  
15 rights of the Governor is a legal conclusion which I  
16 really don't feel it would be appropriate for me to  
17 comment on.

18           I think I might say that I don't think it is  
19 beyond anyone's understanding to realize that in the  
20 picking of a jury, with the evidence that would be  
21 presented here on Article II, I don't think it is hard for  
22 anyone to understand that it would be very -- it would  
23 materially affect his ability to be able to pick a jury  
24 that would be uninfluenced by evidence presented in this  
25 matter, and would be difficult to find a group, more

1 difficult to find a group of jurors who had not been  
2 influenced to some extent. But beyond that, I would  
3 hesitate to give you any opinion with regard to whether or  
4 not other due process rights of the Governor in the  
5 criminal trial would in fact be affected.

6 So I would hesitate to give you that answer.

7 Senator Steiner.

8 SENATOR STEINER: Mr. Presiding Officer, to that  
9 point, without commenting on this particular case, can you  
10 comment on, under Rule 22 -- and do not if you feel it is  
11 inappropriate, sir -- comment on the basic Constitutional  
12 right for every citizen to have a fair trial? In other  
13 words of what happens in relation to Governor Mecham or  
14 whatever happens in relation to the actions of our trial,  
15 what happens in relation to this impeachment trial and  
16 which Articles we feel it is our obligation to consider?  
17 Could you just -- is that a fair question?

18 THE PRESIDING OFFICER: I don't know what possible  
19 rights the Governor might claim might be affected by this.  
20 I would hate to try and parse for the defense a suggested  
21 list of rights that they might claim are violated or might  
22 be violated by these proceedings. That is why I feel the  
23 substantive matter or many legal conclusions that counsel  
24 would be -- rather this body would be asking me to answer  
25 in the hypothetical, not knowing exactly what the

1 respondent, Governor Mecham, would raise, and I don't want  
2 to be the one to obligate him to my opinion about which  
3 ones I feel are involved, and which ones might be  
4 violated. And I don't want him to feel that I am  
5 commenting on those, so I would respectfully leave that to  
6 you in discussion with your counsel and have them advise  
7 you as to the potential that might be out there.

8           Senator West, did you have additional  
9 comments?

10           SENATOR WEST: Mr. Presiding Officer, because of  
11 the significance of the vote and perhaps because if the  
12 vote were to pass, basically would terminate this trial  
13 and we would get into closing arguments on the first two  
14 Articles we have heard. I would respectfully request a  
15 roll call vote.

16           THE PRESIDING OFFICER: We need five Senators to  
17 concur in the request for roll call.

18           I see two standing. Are there any more that  
19 are standing?

20           I do not see five concurring Senators in that  
21 request for roll call.

22           SENATOR KUNASEK: Mr. Presiding Officer, since the  
23 motion is, as I understand it, a motion to dismiss with  
24 prejudice, since our rules do not address a motion to  
25 dismiss, the closest thing to it that I am aware of in our

1 rules is the Rule 11 on sufficiency.

2 Rule 11 indicates that the argument on the  
3 sufficiency of Articles of Impeachment shall not -- excuse  
4 me. Perhaps my question is -- and I thought it was Rule  
5 11; it might not be there.

6 My question is the number of votes required  
7 for this motion to pass. It is my understanding it is a  
8 majority of the Senators present. Is my interpretation or  
9 my understanding correct?

10 THE PRESIDING OFFICER: I believe Rule 16 is the  
11 one that we should refer to, and that talks about all  
12 objections, motions, pleas and procedural questions made  
13 by the parties or their counsel shall be addressed to the  
14 Presiding Officer, who may decide the question or refer  
15 the question to a vote of the majority of the Senators  
16 present.

17 In addition, if any Senator requests, the  
18 Presiding Officer shall submit the question to be decided  
19 by a vote of the majority of the Senators present.

20 On motion of any Senator and a vote of a  
21 majority of the Senators present or at the request of the  
22 Presiding Officer, the parties shall commit the motion to  
23 writing. Except as otherwise provided, arguments by  
24 parties or their counsel on motion shall be permitted only  
25 with a vote of the majority of the Senators present, and

1 shall not exceed 15 minutes unless further extended by a  
2 majority vote. Roll call may be requested by a Senator  
3 and shall be taken if five additional Senators concur.

4 Senator Osborn -- I am sorry, Senator  
5 Kunasek.

6 SENATOR OSBORN: I would like to comment on the  
7 question he raised.

8 SENATOR KUNASEK: Let me get one further question.  
9 One further question, Mr. Presiding Officer.  
10 The last sentence, Paragraph 11 or Rule 11, if the  
11 objection to the sufficiency of the Articles of  
12 Impeachment is not sustained in a roll call vote by a  
13 majority of the Senators who heard the argument, the trial  
14 shall proceed.

15 Again, I would like a ruling on whether it is  
16 the Senators present or a majority of the Senators  
17 elected.

18 THE PRESIDING OFFICER: It is my interpretation,  
19 Senator Kunasek, it is not governed by Rule 11, because  
20 these would not be a ruling on the sufficiency of the  
21 evidence. It is a motion by a Senator to dismiss the  
22 charges, and I don't really think it is contemplated by  
23 the rules at all. I would think that if the rules don't  
24 provide for it, it either would be by a vote of the  
25 majority of the Senators present.

1 Senator Osborn, can you help me on that?

2 SENATOR OSBORN: If Senator Kunasek is through with  
3 the floor, then, very well, Mr. Presiding Officer, I would  
4 simply point out on March the 9th we voted by a simple  
5 majority vote to dismiss Subparagraph F of Article I. We  
6 struck it, we dismissed it by a simple majority vote. 17  
7 to 12.

8 THE PRESIDING OFFICER: We have precedent for that.  
9 Senator Kay.

10 SENATOR KAY: Well, Mr. Presiding Officer, I was  
11 also going to refer to Rule 20, which provides that the  
12 Rules of the Senate would apply if they are not covered by  
13 the Impeachment Court rules. So that without the  
14 precedent that Senator Osborn spoke about, we would then  
15 go to the Senate rules in which event would require 16  
16 votes.

17 THE PRESIDING OFFICER: Would require what? I am  
18 sorry.

19 SENATOR KAY: A majority of the body, 16  
20 affirmative votes.

21 THE PRESIDING OFFICER: I would like to have  
22 Senator Stump restate his motion at this point,  
23 substitution motion.

24 SENATOR STUMP: This Court finds that Article II of  
25 impeachment when taken along with the present criminal

1 proceedings in the Superior Court of Maricopa County  
2 concerning the same or similar matters as contained in  
3 Article II, do in fact place the respondent in a position  
4 that is quasi double jeopardy; therefore, Article II is  
5 dismissed with prejudice.

6 THE PRESIDING OFFICER: That is a substitute  
7 motion.

8 Senator Stephens.

9 SENATOR STEPHENS: Mr. Presiding Officer, I am  
10 sorry, but going back to the issue that was raised by  
11 Senator Kay, my understanding is that any motion can  
12 receive a majority of the Senators present, which doesn't  
13 require 16 if there are not 30 Senators present. If there  
14 are 22 present it would require 12, so on, so forth. That  
15 is Rule 16 under motions, which I would think would take  
16 precedent over the issue of sufficiency which is the issue  
17 that was raised when the subsection of Article I was  
18 dismissed.

19 THE PRESIDING OFFICER: Senator Stephens, now are  
20 you referring to Rule 15 of the Senate rules?

21 SENATOR STEPHENS: I am sorry Rule 16 of the Court  
22 of Procedure which --

23 THE PRESIDING OFFICER: My problem with that is  
24 that it specifically refers to objections, motions, pleas  
25 and procedural questions made by the parties or their

1 counsel shall be addressed, and yet we did go through this  
2 exercise once for Subsection F of Article I. I believe  
3 that was done, though, at the request of counsel, unless I  
4 am mistaken.

5 MR. LEONARD: It was.

6 THE PRESIDING OFFICER: So I believe Senator Kay is  
7 correct on his ruling that it would be on Senators' motion  
8 it would require a majority of the Senators present.

9 Is there any question about the substitute  
10 motion as stated?

11 The question is called. Under this motion  
12 then it would require a majority of the Senators present  
13 to carry.

14 Senator Kay, it is being pointed out to me  
15 that you stated this would require 16 votes or a majority  
16 present; 16 votes is what you say and Senator Osborn says  
17 a majority present. Is that correctly stated for both of  
18 you?

19 SENATOR OSBORN: Mr. Presiding Officer, I was  
20 looking quickly again at Rule 16. If that prevails, that  
21 is by a vote of the majority of the Senators present, if  
22 that is the ruling that we are proceeding under, the last  
23 sentence there.

24 THE PRESIDING OFFICER: I see it.

25 Senator Kay, which rule did you cite us to

1 with regard to the Rules of the Senate?

2 SENATOR KAY: Well, the Rules of the Senate are not  
3 in dispute at all. The Rules of the Senate require a  
4 majority of the body, which is 16 votes. If the Rules of  
5 the Senate under Rule 20 are not applicable, then it would  
6 be just a majority.

7 Now, the Presiding Officer had indicated the  
8 reasons why Rule 16 was not applicable when speaking to  
9 Senator Stephens.

10 The motion on Article I, Section F that was  
11 made about a month ago was made by Senator West; it  
12 carried 17 to 12, as I recall, so the issue didn't come  
13 up.

14 THE PRESIDING OFFICER: Senator Kunasek.

15 SENATOR KUNASEK: Mr. Presiding Officer, would  
16 Senator Osborn yield?

17 SENATOR OSBORN: I yield.

18 SENATOR KUNASEK: I believe your point was one of  
19 precedent, was it not?

20 SENATOR OSBORN: That is correct.

21 SENATOR KUNASEK: The precedent set by this Court?

22 SENATOR OSBORN: That is correct. On March 9th.

23 THE PRESIDING OFFICER: All right. I guess it is  
24 up to me then.

25 Senator Usdane, did you wish to comment?

1           SENATOR USDANE: I may comment, Mr. Presiding  
2 Officer, longer than the Chair may like.

3                   What we find ourselves in is a dilemma in  
4 which the Senate rules would prevail except for this  
5 precedent-setting situation, in which we may remove an  
6 Article with less than a simple majority of the whole  
7 body, and I think that is an error.

8                   We have the ability to call in the other two  
9 Senators that are absent, which will raise it to need 16,  
10 and that would take the time to do that, and which case,  
11 there would be no opportunity for less than a simple  
12 majority of this body to rule.

13                   So if the Senate, if the Chair rules in favor  
14 of Senator Kay, it will take 16; if he rules in favor of  
15 Senator Osborn, I think we will find ourselves in debate  
16 until we can bring the other two members in.

17           THE PRESIDING OFFICER: Senator West.

18           SENATOR WEST: Mr. Presiding Officer, maybe under  
19 Rule 22 you can ask me for my help.

20           THE PRESIDING OFFICER: Could I reverse that and  
21 ask for your help, Senator. Please, please do.

22           SENATOR WEST: I have a feeling that it may be just  
23 a moot question. Why don't we just take the vote, see how  
24 it shakes out? If in fact there is a tie, you are through  
25 with this thing, we come back tomorrow and we start anew.

1 THE PRESIDING OFFICER: I sure wish we could just  
2 use plain old court rules. It would be a lot easier.

3 But I think, Senator West, you have a very  
4 good point, because it might be that there will not be  
5 enough votes that you wouldn't need to raise the question.

6 Senator Usdane.

7 SENATOR USDANE: Mr. Presiding Officer, I see the  
8 wisdom that you see in Senator West; I find a hole in it,  
9 however. If 14 or 15 members would vote, and less than  
10 the simple majority of the whole body, it would be  
11 dilatory unless somebody on the wrong side -- on the  
12 winning side was willing to reconsider. And if that  
13 wouldn't confuse the public I don't know what would.

14 So the fact of the matter is that it is an  
15 error, in my opinion, to take a vote, unless the Chair  
16 rules that at least a simple majority of 16 of this body  
17 have to vote for it in order for it to pass. And so I  
18 would ask for your decision.

19 THE PRESIDING OFFICER: Maybe you can answer for  
20 me, Senator Usdane, whether the decision this body made to  
21 strike Subsection F of Article I was done. And I really  
22 just don't remember whether it was done on motion of  
23 counsel or a motion of a member of the body.

24 SENATOR USDANE: Done by the body, sir.

25 THE PRESIDING OFFICER: Then in that event there is

1 in fact precedent for that, that the body has chosen to  
2 allow it to vary its own rules, at least has done it in  
3 consistence with Rule 16. So I would rule at this time  
4 that it would be as a majority of those present rather  
5 than a majority -- because that was done in the past.

6 SENATOR USDANE: Mr. Presiding Officer, if the  
7 floor wishes to continue without debate, I would then rise  
8 and ask for a roll call so that a vote can be switched,  
9 you can't switch a vote if there is no roll call, because  
10 there is no vote on the prevailing side so I would ask for  
11 a roll call vote, roll call on the substitute motion,  
12 Mr. Presiding Officer.

13 THE PRESIDING OFFICER: Are there five Senators in  
14 concurrence?

15 Those standing are considered to be  
16 concurring.

17 Senator West are you standing in concurrence  
18 to the motion?

19 SENATOR WEST: No. I am standing for recognition,  
20 because I believe Senator Usdane is now -- which Senator,  
21 and others chose not to stand.

22 THE PRESIDING OFFICER: I am sorry, I could not  
23 hear you, Senator West. Would you repeat it for me  
24 slower. The acoustics in here are something else.

25 SENATOR WEST: Mr. Presiding Officer, I am sure it

1 is my rate of speech. I'll be glad to slow it down.

2 I believe Senator Usdane's motion is now  
3 dilatory, that very motion to Senator Stump's or that very  
4 request to Senator Stump's motion was just made within the  
5 last 10 minutes, and it failed for lack of five Senators  
6 standing to support it, Senator Usdane being one of those  
7 who failed to stand to support it.

8 THE PRESIDING OFFICER: Senator Kay.

9 SENATOR KAY: Mr. Presiding Officer, Senator Usdane  
10 did not make a motion. He made a request for a roll call,  
11 and I don't know if a roll call request can be dilatory.

12 THE PRESIDING OFFICER: Senator Pena.

13 Shirley has brought to my attention that in  
14 Rule 13 of the Senate rules, when a question subject to  
15 reconsideration has been decided by the Senate by a  
16 non-recorded vote, any Senator may on the same day or the  
17 next day or the next day of actual session thereafter move  
18 a reconsideration.

19 And I don't know if that is considered a  
20 motion for reconsideration of your roll call vote.

21 SENATOR KAY: Mr. Presiding Officer, there was no  
22 motion.

23 THE PRESIDING OFFICER: I would consider, Senator  
24 Kay, that you are correct in this matter, that a person  
25 before there has been a vote on a motion could ask again

1 for a concurrence for a roll call.

2 So I would ask now at the request of Senator  
3 Usdane for a roll call, if there are five concurring  
4 Senators for the request for roll call vote.

5 Those standing please will be considered as  
6 concurring.

7 Thank you. There is sufficient for a roll  
8 call vote.

9 Senator Mawhinney.

10 SENATOR MAWHINNEY: It has been a long afternoon,  
11 Mr. Presiding Officer.

12 THE PRESIDING OFFICER: They get longer after 4:00  
13 all the time.

14 SENATOR MAWHINNEY: I move that we table the  
15 substitute motion.

16 THE PRESIDING OFFICER: Motion to table the  
17 substitute motion.

18 Is that, Senator Kay, an appropriate motion?

19 SENATOR KAY: That is a proper motion. It is not  
20 debatable, sir.

21 THE PRESIDING OFFICER: I can understand that.  
22 Because I would like to go over in my own mind and read  
23 the transcript on what happened on Subdivision F of  
24 Article I, because I am not sure now just what I ruled on  
25 based upon which motion was made, I would like to check

1 that myself before I -- and I might even move to  
2 reconsider my own decision. I am not debating it, no.

3 But at this time there is a motion to table  
4 the substitute motion. That is not debatable and would  
5 require only a majority rule. So all those in favor  
6 signify by saying "aye." All opposed say "no."

7 The "ayes" appear to have it, division is  
8 requested. All those in favor of the motion stand,  
9 please.

10 THE CLERK: Eleven.

11 THE PRESIDING OFFICER: Eleven are standing.

12 All those opposed stand, please.

13 THE CLERK: Sixteen.

14 THE PRESIDING OFFICER: Sixteen are standing in  
15 opposition. Therefore the motion to table is denied.

16 Senator Steiner.

17 SENATOR STEINER: Very respectfully may I very  
18 carefully, very respectfully, may I present a point that I  
19 feel wasn't emphasized enough in the discussion related to  
20 whether it should be the impeachment rules related to a  
21 majority of the body or Senate rules related to -- wait a  
22 minute- - majority of those present versus majority of the  
23 body.

24 It seems to me on the previous action which  
25 we deleted one section, Senator Osborn has pointed out

1 that it passed by 17 to 12, that is, a majority of 16 of  
2 the body. We did not discuss the question as to whether  
3 or not, what form that vote would take, whether or not it  
4 would be impeachment rules or Senate rules.

5           You have pointed out that you feel that Rule  
6 16 of the impeachment rules, of the impeachment trial, do  
7 not apply; therefore, we should be on Senate rules since  
8 the issue wasn't raised when we voted on Senator West's  
9 motion and it passed by 17, why can't we, why isn't it  
10 more logical to say it takes 16 to vote on Senator Stump's  
11 motion?

12           SENATOR KAY: Mr. Presiding Officer.

13           THE PRESIDING OFFICER: Senator Kay.

14           SENATOR KAY: Speaking on the Stump motion, it  
15 appears abundantly clear that people are going to use the  
16 substitute motion to circumvent the change in rules, which  
17 is the primary motion made by Senator Stephens which would  
18 require a two-thirds vote, whereas this vote would have  
19 the effect of accomplishing the same thing that the  
20 majority vote would. I hope the members of the Court  
21 understand what is going on.

22           With that in mind I would ask the Majority  
23 Leader if he wished to recess the Court until 8:45  
24 tomorrow morning.

25           SENATOR USDANE: Before I reply, sir.

1 (Pause in the proceedings.)

2 SENATOR USDANE: Mr. Presiding Officer, to attempt  
3 to resolve this, and let's let some people think about it  
4 over the evening because it is 25 minutes to 5:00, I would  
5 move, Mr. Presiding Officer, that the Court of Impeachment  
6 stand at recess until Thursday March 31st, 1988 at 9:00  
7 a.m.

8 THE PRESIDING OFFICER: That requires a majority in  
9 order to pass.

10 All those in favor signify by saying "aye."  
11 A motion to recess is not debatable, I have been told.

12 Senator West. Are you wishing to debate the  
13 motion for recess?

14 SENATOR WEST: Yes.

15 THE PRESIDING OFFICER: I am sorry, I have been  
16 told it is not debatable. Sir, I am sorry. It is out of  
17 order.

18 I have had it pointed out there is a motion  
19 pending on the floor, and it would be inappropriate to  
20 recess with a motion pending.

21 SENATOR USDANE: Mr. Presiding Officer, I'll  
22 withdraw the motion that I just made and let the vote  
23 carry out.

24 THE PRESIDING OFFICER: Thank you. The motion is  
25 withdrawn.

1                   Let me point out what I did say, I have had  
2 it now brought to my attention on the day that we voted on  
3 Subsection F in Volume 8, Page 1698, the Presiding  
4 Officer: Are there five Senators willing to stand and  
5 concur in that request for that roll call? There appear  
6 to be. All right. The roll will be called. And now the  
7 vote is on the motion to strike or dismiss Subparagraph F  
8 of Article I of the Articles of Impeachment. And then I  
9 said: And the motion will be, would be, would require a  
10 majority vote of the Senators to strike or dismiss that  
11 subparagraph of Article I.

12                   I actually didn't say whether it was Senators  
13 present or the body.

14                   I think in fairness and to be absolutely  
15 fairest to the Governor, I think it ought to require that  
16 the Senate rules comply, because I don't think Rule 16 of  
17 the rules of the Court of Impeachment apply, so I'll  
18 reverse my position and say that I believe it requires a  
19 majority of the body to sustain the substitute motion.

20                   Senator Higuera.

21                   SENATOR HIGUERA: Mr. Presiding Officer, without  
22 going to a debate, I believe that we also have, and it is  
23 in order to bring up the fact that it is up to you to  
24 accept Mr. Usdane's motion or not, since you are the Chair  
25 of this body.

1 THE PRESIDING OFFICER: I am sorry, sir. I  
2 couldn't hear you. Would you please say it.

3 SENATOR HIGUERA: It is dilatory.

4 Thank you.

5 THE PRESIDING OFFICER: Can we get this thing  
6 together for the purpose of voting on the substitute  
7 motion? I have now said it requires a majority of the  
8 body which would be 16, and there would be a roll call  
9 vote.

10 MR. LEONARD: Mr. Presiding Officer, I realize I am  
11 not a member of this body, but I clearly heard the  
12 Presiding Officer say that that was out of fairness to the  
13 Governor.

14 THE PRESIDING OFFICER: I think it is out of  
15 fairness to the Governor that there be -- I am sorry, you  
16 are pointing out it requires a larger vote?

17 MR. LEONARD: Yes. And, Mr. Presiding Officer, the  
18 members who are not here have not heard any of the debate  
19 today, which the rules require. I think I would  
20 respectfully suggest to the Presiding Officer the motion  
21 ought to carry or fail by a majority of the members  
22 present.

23 THE PRESIDING OFFICER: Well, Senator Stump?

24 SENATOR STUMP: Mr. Presiding Officer, if there are  
25 more than three votes for this I'll be greatly surprised.

1 And I think it is totally ridiculous. 16 votes is fine  
2 with me and I made the motion.

3 THE PRESIDING OFFICER: Thank you, Senator Stump.  
4 I do appreciate your cooperation in this matter.

5 I think it is the proper decision to make,  
6 regardless of the fact of the fairness of this, I think it  
7 is fair to this body to have the rules construed in favor  
8 of a majority of the body, so that is my ruling.

9 We will now have a roll call in favor of the  
10 substitute motion. The roll will be called.

11 THE CLERK: Senator Alston.

12 SENATOR ALSTON: Aye.

13 THE CLERK: Senator Brewer.

14 THE PRESIDING OFFICER: The substitute motion.

15 Senator Stump's substitute motion to dismiss.

16 SENATOR BREWER: No.

17 THE CLERK: Senator Corpstein.

18 SENATOR CORPSTEIN: No.

19 THE CLERK: Senator DeLong.

20 SENATOR DE LONG: No.

21 THE CLERK: Senator Gabaldon.

22 SENATOR GABALDON: Aye.

23 THE CLERK: Senator Gutierrez.

24 SENATOR GUTIERREZ: Aye.

25 THE CLERK: Senator Hardt.

1 SENATOR HARDT: Aye.

2 THE CLERK: Senator Hays.

3 SENATOR HAYS: No.

4 THE CLERK: Senator Henderson.

5 SENATOR HENDERSON: Aye.

6 THE CLERK: Senator Higuera.

7 SENATOR HIGUERA: Aye.

8 THE CLERK: Senator Hill

9 SENATOR HILL: Pass.

10 THE CLERK: Senator Kay.

11 SENATOR KAY: No.

12 THE CLERK: Senator Kunasek

13 SENATOR KUNASEK: No.

14 THE CLERK: Senator Lunn?

15 Senator MacDonald.

16 SENATOR MacDONALD No.

17 THE CLERK: Senator Mawhinney

18 SENATOR MAWHINNEY: No.

19 THE CLERK: Senator Osborn.

20 SENATOR OSBORN: Mr. Presiding Officer, I would  
21 like to explain my vote.

22 THE PRESIDING OFFICER: You may do so.

23 SENATOR OSBORN: Mr. Presiding Officer, I believe  
24 that this Court should be extremely, extremely careful of  
25 not prejudicing the proceedings in criminal court in

1 Maricopa County Superior Court downtown.

2 I fear that if we proceed with Article II  
3 with the unparalleled and unprecedented publicity that  
4 statewide, according to my mail, people in the four  
5 corners of the state are watching this proceeding and  
6 reading about it, it is in the newspapers, it is in the  
7 magazines, it is everywhere, I think that if we proceed in  
8 this Court to try the Governor on substantially the same  
9 set of facts, that it cannot help but have a prejudicial  
10 effect on the trial.

11 Now, if we err, if we make a mistake in this  
12 Court, I would hope that we would make it on the side of  
13 fairness. And I am afraid that if we proceed in this  
14 Court while the criminal trial is underway or about to  
15 start -- we have already heard evidence that it will take  
16 five weeks -- we are going to be right up against the  
17 criminal trial.

18 In addition to that, of course, Senator Stump  
19 has pointed out there is a principle involved, and it is  
20 the principle of double jeopardy. Both the United States  
21 Constitution and the State Constitution make it clear that  
22 persons should not be put in double jeopardy.

23 Now, I know this is not, strictly speaking, a  
24 criminal trial. Nevertheless, it seems to me the  
25 principle is very nearly the same: That we should not

1 place Governor Mecham or any other person in double  
2 jeopardy. And I believe that is what we would be doing if  
3 we proceeded on Article II. I believe that we ought to  
4 let the American system of juris prudence decide Article  
5 II, and let us lay it aside. And that is why I am voting  
6 in support of Senator Stump's motion.

7 Thank you.

8 THE PRESIDING OFFICER: Thank you, sir.

9 THE CLERK: Senator Pena.

10 SENATOR PENA: Aye

11 THE CLERK: Senator Rios.

12 SENATOR RIOS: Mr. Presiding Officer, I would like  
13 to briefly explain my vote, if I may. I also do not wish  
14 to prejudice the criminal trial for Governor Mecham, and  
15 therefore I do support dismissing Article II. And I think  
16 as far as the impeachment trial goes, we ought to judge  
17 the Governor's behavior on the other two Articles.  
18 Therefore, I vote aye.

19 THE CLERK: Senator Runyan.

20 Senator Sossaman.

21 SENATOR SOSSAMAN: Aye.

22 THE CLERK: Senator Steiner.

23 SENATOR STEINER: No.

24 THE CLERK: Senator Stephens.

25 SENATOR STEPHENS: Aye.

1 THE CLERK: Senator Stump.

2 SENATOR STUMP: Aye.

3 THE CLERK: Senator Taylor.

4 SENATOR TAYLOR: No.

5 THE CLERK: Senator Todd.

6 SENATOR TODD: Mr. Presiding Officer, I wish to  
7 explain my vote.

8 THE PRESIDING OFFICER: You may, sir.

9 SENATOR TODD: I think it is very important that we  
10 stick with the rules that we established at the start of  
11 this. And it is supposed to take 20 votes of this Senate  
12 to change the rules, and I think to do that with a  
13 majority vote today is a wrong step. And so therefore, I  
14 vote no.

15 THE CLERK: Senator Usdane.

16 SENATOR USDANE: No.

17 THE CLERK: Senator Walker.

18 SENATOR WALKER: Aye.

19 THE CLERK: Senator West.

20 SENATOR WEST: Pass.

21 THE CLERK: Senator Wright.

22 SENATOR WRIGHT: Yes.

23 THE CLERK: Senator Hill.

24 SENATOR HILL: Aye.

25 THE CLERK: Senator Taylor.

1 SENATOR TAYLOR: No.

2 THE CLERK: Senator West.

3 SENATOR WEST: No.

4 THE CLERK: Senator Wright.

5 SENATOR WRIGHT: Mr. Presiding Officer, I would  
6 like to change my vote from no to aye.

7 THE PRESIDING OFFICER: Senator West, I think you  
8 called it right to begin with. The roll call indicates  
9 that 16 votes are aye, 12 are no, and two not voting.  
10 Therefore even though a majority of the body was required,  
11 a majority of the body in fact voted aye in favor of the  
12 dismissal; therefore, the substitute motion carries. And  
13 the motion is that Article II of the impeachment Articles  
14 be and is hereby dismissed with prejudice.

15 Senator Higuera.

16 SENATOR HIGUERA: Point of clarification, then:  
17 Our next process would be to proceed with closing  
18 arguments on I and III?

19 THE PRESIDING OFFICER: I am sorry, would you state  
20 it over again.

21 SENATOR HIGUERA: Yes. Then our next step would be  
22 to have closing arguments on Articles I and III, am I  
23 correct?

24 THE PRESIDING OFFICER: It is my understanding that  
25 the evidence is over on the two counts that this Court has

1 to consider.

2 Senator Usdane.

3 SENATOR USDANE: Mr. Presiding Officer, I would  
4 like to ask for a 15-minute recess, to resume at 5:00  
5 p.m., in order to have counsel meet with the Presiding  
6 Officer to decide, so that we don't wind up voting whether  
7 there are closing arguments or on anything that might  
8 happen on this floor this afternoon.

9 THE PRESIDING OFFICER: There is a request for a  
10 15-minute recess. I'll be glad to grant that. We will  
11 stand at recess for 15 minutes.

12 (Recessed at 4:50 p.m.)

13 (Reconvened at 5:35 p.m.)

14 THE PRESIDING OFFICER: Thank you, ladies and  
15 gentlemen. The Court of impeachment is reconvened. Show  
16 the presence of a majority of the Board of Managers, their  
17 counsel, and counsel for the respondent.

18 I think the record should show that the  
19 Presiding Officer and members of the leadership and  
20 counsel for both sides, as well as counsel for the Senate,  
21 were present in chambers and were discussing the procedure  
22 that would be followed in this case from this time  
23 forward.

24 It is the suggestion, and I agree  
25 whole-heartedly with this procedure, that we will recess

1 until tomorrow morning at 10:00 a.m. Then I'll explain  
2 what will be happening from that point on.

3           Prior to that time, or at least at 10:00 in  
4 the morning, counsel for both sides will submit proposed  
5 legal memoranda which will be used in the preparation of  
6 the instructions or instructions on the law that will be  
7 given to each Senator.

8           Then this will be submitted, I mean, the  
9 procedure there is to submit, both counsel will be  
10 submitting their memoranda to Mr. Lundin on behalf of the  
11 Senate staff counsel. Mr. Lundin, during the process of  
12 the day with the cooperation of Senate counsel, will be  
13 preparing the actual form of instruction or memoranda that  
14 will be given to each of the Senators individually at 4:30  
15 in the afternoon.

16           At 10:00 in the morning members of the Senate  
17 can discuss and deal with any other matters that they need  
18 to tomorrow. But then, when we reconvene at 4:30 in the  
19 afternoon, the legal memoranda will be distributed to each  
20 Senator. We will thereupon recess until 9:00 a.m. on  
21 Monday, which is the 4th of April, and will at that point  
22 hear oral argument by both counsel, and after the close of  
23 oral argument the Senate will have the opportunity to vote  
24 or to decide to delay their vote, should they choose,  
25 whatever is their choice.

1 I am sorry, I failed to mention that the  
2 Board of Managers were also present during our discussions  
3 with the leadership in Senator Kunasek's office.

4 I want to make sure that I have covered  
5 everything.

6 We would at this point recess until 10:00 in  
7 the morning. The counsel on both sides will present their  
8 proposed instructions to Mr. Lundin on behalf of counsel  
9 by 10:00 in the morning. We will reconvene at 10:00 in  
10 the morning and discuss whatever matters the Court of  
11 Impeachment wishes at that time to discuss, and thereafter  
12 will recess until 4:30 in the afternoon when the final  
13 product of the instructions will be distributed to each  
14 Senator.

15 Thereupon we will recess until 9:00 a.m. on  
16 Monday, April 4th, to hear oral argument by counsel on  
17 both of the Articles of Impeachment. They are to be  
18 followed thereafter with the vote or the voting of the  
19 Senators.

20 We will be discussing along that line the  
21 forms of voting. Hopefully we will be able to have for  
22 the Senators, before tomorrow afternoon, some input on the  
23 method and format of the voting at that time.

24 Senator Usdane, have I covered everything  
25 that I was supposed to in the instructions that I was

1 given at this time?

2 SENATOR USDANE: Mr. Presiding Officer, I believe  
3 so. But I think Senator Mawhinney wished to get the floor  
4 before I make the motion.

5 THE PRESIDING OFFICER: Senator Mawhinney.

6 SENATOR MAWHINNEY: I didn't have the benefit, as  
7 many of us did not, to have an opportunity to join the  
8 conference. And I do understand in Court why lengthy  
9 citations of legal precedent are important, and it takes  
10 time to deliver all the legal memoranda and briefs for  
11 both sides and to prepare them.

12 I wonder, if we talked about the need for  
13 doing that, we are not trained in the law, we are not  
14 going to sit and read citation after citation, we are not  
15 going to be impressed by the language of other courts in  
16 other states; we are going to try to rule on the facts and  
17 evidence as presented here. And I wonder if we may not be  
18 building into the system an extraordinary waste of time  
19 and energy on the part of both parties in preparing  
20 extensive briefs for the Senators to try to wade through  
21 over the weekend.

22 First of all, I would say I hope that the  
23 form of the instructions will not take the form of  
24 ponderous legal briefs, but will be in the form that will  
25 be able to give you some idea of what the law means, what

1 the elements of each crime that are alleged are, what  
2 malfeasance in office means, and that you may in the  
3 definitional parts of those instructions be able to take  
4 with you and study over the weekend, if you wish, and have  
5 that information available as you are then listening to  
6 closing arguments on Monday. That was the reason why we  
7 were discussing that, so that many of the leadership felt  
8 that it would be helpful to the Senators to have in  
9 advance the copies of the instructions and legal  
10 memoranda, although we call them, that it actually be  
11 somewhat along the line of instructions that are given to  
12 jurors so that you will know what they are, know what the  
13 format of voting will be at the time when you hear oral  
14 argument, and hopefully they will not be so ponderous that  
15 it will be overwhelming to you.

16 Any other discussion, Senator Usdane?

17 SENATOR USDANE: Mr. Presiding Officer, I move that  
18 the Court of Impeachment stand at recess until Thursday,  
19 March 31st, 1988 at 10:00 a.m.

20 THE PRESIDING OFFICER: All those in favor signify  
21 by saying "aye." Any opposed say "no."

22 The "ayes" appear to have it, they do have  
23 it, and it is so ordered.

24 (Recessed at 5:40 p.m.)

25



