



UTAH HOUSE OF REPRESENTATIVES

REPORT OF THE
SPECIAL INVESTIGATIVE COMMITTEE

APPENDIX
VOLUME I

INDEX OF EXHIBITS

VOLUME I

Exhibit 1 1

VOLUME II

Exhibit 1 (Cont.) 333

VOLUME III

Exhibit 2.....	691	Exhibit 21.....	854
Exhibit 3.....	693	Exhibit 22.....	917
Exhibit 4.....	697	Exhibit 23.....	919
Exhibit 5.....	699	Exhibit 24.....	921
Exhibit 6.....	701	Exhibit 25.....	923
Exhibit 7.....	703	Exhibit 26.....	946
Exhibit 8.....	717	Exhibit 27.....	949
Exhibit 9.....	728	Exhibit 28.....	952
Exhibit 10.....	733	Exhibit 29.....	954
Exhibit 11.....	756	Exhibit 30.....	956
Exhibit 12.....	758	Exhibit 31.....	959
Exhibit 13.....	760	Exhibit 32.....	965
Exhibit 14.....	762	Exhibit 33.....	968
Exhibit 15.....	764	Exhibit 34.....	970
Exhibit 16.....	766	Exhibit 35.....	972
Exhibit 17.....	774	Exhibit 36.....	975
Exhibit 18.....	844	Exhibit 37.....	978
Exhibit 19.....	850	Exhibit 38.....	981
Exhibit 20.....	852		

VOLUME IV

Exhibit 39.....	1130	Exhibit 53.....	1328
Exhibit 40.....	1133	Exhibit 54.....	1332
Exhibit 41.....	1137	Exhibit 55.....	1334
Exhibit 42.....	1139	Exhibit 56.....	1337
Exhibit 43.....	1145	Exhibit 57.....	1339
Exhibit 44.....	1282	Exhibit 58.....	1341
Exhibit 45.....	1305	Exhibit 59.....	1343
Exhibit 46.....	1308	Exhibit 60.....	1345
Exhibit 47.....	1310	Exhibit 61.....	1347
Exhibit 48.....	1313	Exhibit 62.....	1349
Exhibit 49.....	1315	Exhibit 63.....	1351
Exhibit 50.....	1320	Exhibit 64.....	1360
Exhibit 51.....	1324	Exhibit 65.....	1362
Exhibit 52.....	1326	Exhibit 66.....	1366

Exhibit 67.....	1369	Exhibit 83.....	1467
Exhibit 68.....	1371	Exhibit 84.....	1469
Exhibit 69.....	1383	Exhibit 85.....	1471
Exhibit 70.....	1390	Exhibit 86.....	1474
Exhibit 71.....	1393	Exhibit 87.....	1477
Exhibit 72.....	1407	Exhibit 88.....	1500
Exhibit 73.....	1425	Exhibit 89.....	1530
Exhibit 74.....	1437	Exhibit 90.....	1533
Exhibit 75.....	1446	Exhibit 91.....	1537
Exhibit 76.....	1450	Exhibit 92.....	1547
Exhibit 77.....	1452	Exhibit 93.....	1552
Exhibit 78.....	1454	Exhibit 94.....	1559
Exhibit 79.....	1456	Exhibit 95.....	1563
Exhibit 80.....	1458	Exhibit 96.....	1566
Exhibit 81.....	1460	Exhibit 97.....	1568
Exhibit 82.....	1464		

VOLUME V

Exhibit 98.....	1590	Exhibit 126.....	1749
Exhibit 99.....	1592	Exhibit 127.....	1751
Exhibit 100.....	1596	Exhibit 128.....	1754
Exhibit 101.....	1599	Exhibit 129.....	1756
Exhibit 102.....	1601	Exhibit 130.....	1838
Exhibit 103.....	1603	Exhibit 131.....	1857
Exhibit 104.....	1607	Exhibit 132.....	1885
Exhibit 105.....	1624	Exhibit 133.....	1887
Exhibit 106.....	1630	Exhibit 134.....	1889
Exhibit 107.....	1635	Exhibit 135.....	1891
Exhibit 108.....	1637	Exhibit 136.....	1896
Exhibit 109.....	1642	Exhibit 137.....	1899
Exhibit 110.....	1644	Exhibit 138.....	1902
Exhibit 111.....	1647	Exhibit 139.....	1953
Exhibit 112.....	1650	Exhibit 140.....	1955
Exhibit 113.....	1677	Exhibit 141.....	2036
Exhibit 114.....	1682	Exhibit 142.....	2038
Exhibit 115.....	1684	Exhibit 143.....	2041
Exhibit 116.....	1687	Exhibit 144.....	2043
Exhibit 117.....	1689	Exhibit 145.....	2045
Exhibit 118.....	1691	Exhibit 146.....	2056
Exhibit 119.....	1694	Exhibit 147.....	2062
Exhibit 120.....	1697	Exhibit 148.....	2066
Exhibit 121.....	1701	Exhibit 149.....	2069
Exhibit 122.....	1705	Exhibit 150.....	2071
Exhibit 123.....	1711	Exhibit 151.....	2073
Exhibit 124.....	1744	Exhibit 152.....	2075
Exhibit 125.....	1747	Exhibit 153.....	2077

Exhibit 154.....	2080	Exhibit 159.....	2116
Exhibit 155.....	2083	Exhibit 160.....	2118
Exhibit 156.....	2104	Exhibit 161.....	2120
Exhibit 157.....	2111	Exhibit 162.....	2135
Exhibit 158.....	2114	Exhibit 163.....	2142

VOLUME VI

Exhibit 164.....	2171
------------------	------

VOLUME VII

Exhibit 164 (Cont.)	2854	Exhibit 165.....	2903
---------------------------	------	------------------	------

VOLUME VIII

Exhibit 166.....	3491	Exhibit 179.....	3701
Exhibit 167.....	3494	Exhibit 180.....	3705
Exhibit 168.....	3497	Exhibit 181.....	3711
Exhibit 169.....	3500	Exhibit 182.....	3716
Exhibit 170.....	3503	Exhibit 183.....	3724
Exhibit 171.....	3665	Exhibit 184.....	3726
Exhibit 172.....	3672	Exhibit 185.....	3730
Exhibit 173.....	3674	Exhibit 186.....	3733
Exhibit 174.....	3676	Exhibit 187.....	3735
Exhibit 175.....	3680	Exhibit 188.....	3737
Exhibit 176.....	3691	Exhibit 189.....	3744
Exhibit 177.....	3695	Exhibit 190.....	3747
Exhibit 178.....	3698		

EXHIBIT 1

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

IN RE: THE SPECIAL	)	Videotaped
INVESTIGATION OF	)	Deposition of:
ATTORNEY GENERAL JOHN)	
E. SWALLOW,	)	<u>JOHN E. SWALLOW</u>
)	
	)	Volume 1
)	
	)	Case No. 130905293
)	
	)	Honorable Vernice Trease

October 15, 2013 * 2:02 p.m.

Location: Snell & Wilmer
15 West South Temple -- Suite 1200
Gateway Tower West
Salt Lake City, Utah

Reporter: Denise M. Thomas, CRR/RPR
Notary Public in and for the State of Utah

Videographer: Ryan Reverman, CLVS

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A P P E A R A N C E S

SPECIAL COUNSEL TO THE LIEUTENANT GOVERNOR OF THE STATE OF UTAH:

Matthew L. Lalli
Stewart O. Peay
Jeremy Stewart
SNELL & WILMER
Attorneys at Law
Salt Lake City, Utah 84101-1004
Telephone: 801.257.1900
Fax: 801.257.1800
E-mail: mlalli@swlaw.com
speay@swlaw.com
jstewart@swlaw.com

FOR THE ATTORNEY GENERAL JOHN E. SWALLOW:

Rodney G. Snow
Jennifer A. James
CLYDE SNOW & SESSIONS
Attorneys at Law
201 South Main Street -- Suite 1300
Salt Lake City, Utah 84111
Telephone: 801.322.2516
Fax: 801.521.6280
E-mail: rgs@clydesnow.com
jaj@clydesnow.com

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17
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19
20
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22
23
24
25

I N D E X

<u>JOHN E. SWALLOW</u>	<u>PAGE</u>
John E. Swallow	7
Examination By Mr. Lalli	8

E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
1	8-20-13 Subpoena Duces Tecums served on John Swallow; I-Aware Products, LLC; John Swallow as Registered Agent for Swallow & Associates; P-Solutions, LLC; Suzanne Swallow; SSV Management, LLC; and Lauren M. Reed, Trustee	20
2	Two P-Solutions Invoices with attached two 4-8-11 e-mails to Richard Rawle from John Swallow, Bates Nos. JS000065-68, "Confidential"	67
3	April 19 and 20, 2011, e-mail exchange between John Swallow and Richard Rawle, Bates No. SCM00608	85
4	E-mail series beginning with a 6-11-12 e-mail to John Swallow and Jason Powers from Richard Rawle, Bates No. SCM01557	86
5	E-mail series beginning with an 10-24-11 e-mail to Richard Rawle from John Swallow, Bates Nos. SCM01695-1700	88
6	11-11-11 e-mail to Richard Rawle from John Swallow, Bates No. SCM01694	91

	<u>E X H I B I T S (Continued)</u>		
	<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
1			
2			
3	7	E-mail series beginning with a	92
4		12-1-11 e-mail to Richard Rawle	
5		from John Swallow, Bates Nos.	
6		SCM00666-667	
7			
8	8	6-15-12 e-mail to John Swallow	94
9		from Richard Rawle, Bates No.	
10		SCM01524	
11			
12	9	3-8-13 e-mail to Tyler Young from	95
13		John Swallow, Bates No. SCM01961	
14			
15	10	9-15-09 The Super Seven Trust	113
16		documents, Bates Nos. JS000311-339	
17			
18	11	John and Suzanne Swallow Estate	116
19		Planning Diagram, Bates No.	
20		JS000349, "Confidential"	
21			
22	12	9-16-09 Mountain America Federal	119
23		Credit Union Business Account	
24		Application & Signature Card and	
25		attached Utah Department of	
		Commerce Business Entity Search	
	13	3-15-12 State of Utah Department	121
		of Commerce, Division of	
		Corporations & Commercial Code	
		Summary of Online Changes	
	14	Mountain America Credit Union	125
		Statements of Account for SSV	
		Management, LLC, for 2011, Bates	
		Nos. JS000164-175, "Confidential"	
	15	Mountain America Credit Union	126
		Statements of Account for SSV	
		Management, LLC, for 2012, Bates	
		Nos. JS001093-176, "Confidential"	
	16	SSV Management check register	127
		entries, Bates No. JS000176,	
		"Confidential"	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E X H I B I T S (Continued)

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
17	Mountain America Credit Union October 2012 Statement of Account for John E. Swallow and Suzanne M. Swallow, "Confidential"	130
18	9-15-09 Purchase Agreement between John E. Swallow and I-Aware Products Enterprises, LLC, Bates Nos. JS000102-108	134
19	3-15-12 State of Utah Department of Commerce, Division of Corporations & Commercial Code, Summary of Online Changes	135
20	September 2010 Statement of Account for I-Aware Products Enterprises, LLC	138
21	September 2010 check register entry, Bates No. JS000133, "Confidential"	138
22	September 2010 Statement of Account for John E. Swallow and Suzanne M. Swallow	140
23	State of Utah Department of Commerce, Division of Corporations & Commercial Code, Summary of Online Changes for P-Solutions, LLC	143
24	Mountain America Credit Union 2011 Statements of Account for P-Solutions, LLC, Bates Nos. JS000031-42, "Confidential"	148
25	P-Solutions, LLC canceled checks and check register entries, Bates Nos. JS000055-64, "Confidential"	148

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E X H I B I T S (Continued)

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
26	Mountain America Credit Union 2012 Statements of Account for P-Solutions, LLC, Bates Nos. JS000043-54, "Confidential"	156
27	Copy of 4-8-11 RMR Consulting, LLC, canceled check 105 for \$15,000	160
28	2011 Schedule C, Profit or Loss From Business, for John E. Swallow, Bates Nos. JS000835 and JS000866, "Confidential"	161

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4
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P R O C E E D I N G S

THE VIDEOGRAPHER: We are now on the record. The time is approximately 2:02 p.m.

This is the videotaped deposition of John E. Swallow In Re: The Special Investigation of Attorney General John E. Swallow, being held at the offices of Snell & Wilmer in Salt Lake City, Utah, on October 15, 2013.

My name is Ryan Reverman, Certified Legal Videographer, with the firm of CitiCourt. The court reporter is Denise Thomas, also with the firm of CitiCourt.

Counsel will now state their appearances for the record and the witness will be sworn.

MR. LALLI: Matt Lalli representing the Lieutenant Governor. I'm here with Stewart Peay and Jeremy Stewart.

MR. SNOW: Rod Snow for the Attorney General, John Swallow. With me is Jennifer James.

JOHN E. SWALLOW,

having been first duly sworn to tell the truth, was examined and testified as follows:

EXAMINATION

BY MR. LALLI:

Q. Good afternoon, Mr. Swallow. Again, I'm Matt Lalli, and together with my colleagues we represent the Lieutenant Governor in this investigation, and we have some questions for you today.

Would you please give us your full name to begin with?

A. John Edward Swallow.

Q. And I know you're an attorney, and I'm sure you're familiar with the process of sworn testimony; is that correct?

A. That is right.

Q. Okay. Have you -- other than speaking with your counsel, have you spoken with anyone else in preparation for the questioning today?

A. Well, I've spoken with my wife.

Q. Anyone else?

A. Yes. Not specifically. I've spoken to many people over the last several weeks, but not specifically in preparation for this deposition.

Q. Have you spoken with anyone who we have previously interviewed in this investigation?

A. I've spoken with Lee McCullough, who is my

1 attorney. I've spoken with Jason Powers, I've spoken
2 with Cort Walker.

3 Q. Anyone else you can recall?

4 A. I'm trying to remember if there's anyone
5 else I've spoken with, but to my recollection right
6 this moment, I don't recall having spoken with anyone
7 else.

8 Q. When did you speak with Lee McCullough?

9 A. I spoke with him yesterday afternoon.

10 Q. And did you initiate the call or did he?

11 A. Actually, I spoke with him yesterday
12 afternoon and several days ago as well. He initiated
13 the call to me a few days ago, and I spoke with him
14 yesterday with Jennifer James yesterday afternoon,
15 and I initiated that call. We initiated our call
16 together.

17 Q. Do you consider that to be privileged?

18 MR. SNOW: Well, yes.

19 Q. (By Mr. Lalli) So is Mr. McCullough
20 representing you in connection with this
21 investigation?

22 THE WITNESS: How would you answer that,
23 Rod?

24 MR. SNOW: No.

25 THE WITNESS: No.

1 MR. LALLI: It's our position that
2 Mr. Swallow's communications with Lee McCullough, to
3 the extent they are privileged, have been waived.

4 Are you contesting that?

5 MR. SNOW: I think they've been waived
6 with respect to the advice Lee provided Mr. Swallow
7 in March of 2012 regarding the disclosure forms that
8 he filed.

9 With respect to your inquiries of him, I
10 think we treat him still as his counsel for purposes
11 of estate planning, and we are obviously his counsel,
12 and so I consider that privileged.

13 MR. LALLI: Okay. I'll move on then.

14 Q. (By Mr. Lalli) When did you speak with
15 Jason Powers?

16 A. Let me also add one more thing to that. I
17 did speak with Grant Sumsion last night as well.

18 Q. When did you speak with Jason Powers?

19 MR. SNOW: Well, they interviewed Grant.

20 THE WITNESS: I thought that Grant had
21 said that --

22 MR. SNOW: I don't know.

23 THE WITNESS: -- Mr. Lalli had interviewed
24 him, but maybe not.

25 Q. (By Mr. Lalli) When did you speak with

1 Jason Powers?

2 A. I've spoken with Jason Powers at least
3 once a week for the last six months, so I spoke with
4 him as recently as last night.

5 Q. Have you spoken with him about the
6 questioning that we made of him?

7 A. I believe a few weeks ago he mentioned
8 that you had spoken, and he mentioned to me that you
9 had requested some kind of a statement, but those are
10 the only details I really remember talking with him
11 about.

12 Q. Do you recall discussing any of the issues
13 with him, whether that's conversations or meetings or
14 fact circumstances?

15 A. I don't recall specifically the issues we
16 spoke about because he continues to consult on public
17 relations matters. I speak with him enough that it's
18 hard for me to remember exactly what topic I spoke
19 about with him -- to him with respect to a certain
20 time or day.

21 Q. When you say that Jason Powers continues
22 to consult on public relations matters, is he a
23 consultant for you personally, for the Attorney
24 General, in some other capacity?

25 A. I believe he's a consultant on my public

1 relations team as coordinated through my legal
2 counsel.

3 Q. Mr. Snow?

4 A. Right. And would I be able to ask for a
5 glass of water?

6 Q. Absolutely.

7 A. Thank you.

8 Q. We also have juice or sodas if you prefer
9 something else.

10 A. Water's great. Right from the tap is
11 fine.

12 MR. SNOW: It's still warm in here, Matt.

13 MR. LALLI: That's true. We usually have
14 the opposite problem.

15 THE WITNESS: Thank you.

16 MR. SNOW: How old is this building?

17 MR. LALLI: Probably 15-20 years.

18 MR. SNOW: Oh, so they just had a
19 makeover?

20 MR. LALLI: No.

21 MR. SNOW: It's really 15 years old? Time
22 flies when you're an old guy.

23 Q. (By Mr. Lalli) When did you speak with
24 Cort Walker?

25 A. Approximately two weeks ago.

1 Q. Do you know if it was before or after we
2 had interviewed him?

3 A. I believe it was after you had interviewed
4 him.

5 Q. And did you discuss the subject of either
6 his interview or yours?

7 A. We didn't discuss the subject of my
8 interview. We discussed the subject -- a little bit
9 of the subject of his interview.

10 Q. And do you recall what issues were
11 discussed?

12 A. He mentioned -- he mentioned that you had
13 asked him a question about some gold I had resold or
14 sold to Richard Rawle. I remember talking about that
15 very briefly with him.

16 Q. Any other issues you recall?

17 A. Not that I recall.

18 Q. And is it just the once that you've spoken
19 with Mr. Walker recently?

20 A. Right. The real reason we spoke was
21 because I had been trying to get access to my
22 NetSpend prepaid debit card that Check City provided
23 to me in consideration of the gold I sold a couple --

24 MR. SNOW: Now, John, did he ask you about
25 that?

1 THE WITNESS: No, but he did ask me about
2 what we talked about.

3 MR. SNOW: Right, but not why he called.

4 THE WITNESS: Okay.

5 MR. SNOW: But you can tell him. I mean,
6 I'm sure he's going to get to that.

7 THE WITNESS: Okay.

8 MR. SNOW: But I just want to caution you
9 to just answer the question.

10 THE WITNESS: Sure.

11 MR. SNOW: He knows what he's doing --

12 THE WITNESS: That was the context of our
13 discussion.

14 MR. SNOW: -- that would be my guess.

15 Q. (By Mr. Lalli) Did you initiate the call
16 or did Mr. Walker?

17 A. I believe he did earlier in the day.

18 Q. Do you have an ongoing relationship with
19 Cort Walker or with the Check City companies?

20 A. Not an ongoing business relationship,
21 though I still consider myself to be a very good
22 friend of people in the company.

23 Q. So would you describe your relationship
24 with the people such as Cort Walker or the Rawle
25 brothers or Greg Callister personal as opposed to

1 your business relationships?

2 A. I would describe it as personal at this
3 point.

4 Q. Do you have any working relationship with
5 those individuals or the Richard Rawle companies,
6 which would include Check City?

7 A. No, not presently.

8 Q. Okay. And you say you spoke to
9 Mr. Sumsion last night?

10 A. I did.

11 Q. And did he call you?

12 A. I believe he called me.

13 Q. What did he say?

14 MR. SNOW: Well, I don't know the
15 substance of the conversation, but Grant Sumsion has
16 represented John on a number of matters.

17 Q. (By Mr. Lalli) Is Grant Sumsion your
18 counsel in connection with this investigation?

19 A. Currently, no.

20 Q. Did he speak to you of this investigation?

21 A. I don't think it was about this
22 investigation per se.

23 Q. Do you recall what he mentioned -- why he
24 called?

25 A. I'm just thinking. Do you remember what

1 he was talking about? I'm trying to remember.
2 Someone had called him and asked about -- and I think
3 it was you -- about a settlement agreement he had
4 prepared while working for Richard Rawle, an
5 agreement between Mr. Rawle and Mr. Scott Leavitt,
6 and I believe he was calling to let me know that he
7 had had that discussion with you or someone from your
8 firm, and that was the context, the sum and substance
9 of our conversation.

10 Q. How long did it last?

11 A. Approximately five to seven minutes.

12 Q. What is your relationship with
13 Grant Sumsion?

14 A. I would say it's personal and
15 professional.

16 Q. And describe the professional part, if you
17 would, please.

18 A. Well, we were in law school together.
19 We've tried a case together when I was in private
20 practice, and he -- I retained him as a lawyer for my
21 campaign, originally in connection with the lawsuit
22 filed by Sean Reyes against me personally and my
23 campaign, and he also -- I also engaged him to
24 provide personal counsel to me regarding
25 communications I'd had with Mr. Jeremy Johnson. -

1 Q. And what time frame was that last part,
2 the communications with Jeremy Johnson?

3 A. It was sometime in the spring of 2012.
4 Probably, to narrow it, maybe April to June or July
5 of 2012.

6 Q. And what services did Mr. Sumsion perform
7 for you in connection with these April to July 2012
8 issues?

9 A. Well, I don't want to waive any privilege.

10 Q. Well, let me try and ask a better
11 question.

12 A. Sure.

13 Q. Did he -- did you engage him as counsel?

14 A. Yes.

15 Q. Did you engage him to do any specific
16 task, such as respond to a letter, appear in a
17 meeting, appear in court?

18 A. Well, I engaged him, among other things,
19 to interface with Mr. Jeremy Johnson on my behalf.
20 He was engaged to analyze the lawsuit filed by my
21 primary opponent, Sean Reyes. I believe -- I believe
22 those two things were the scope of my engagement of
23 him at that time.

24 Q. Does the date April 30, 2012, stand out in
25 your mind?

1 A. If that's the date I met with
2 Jeremy Johnson, then that does stand out in my mind.

3 Q. That's the date, as I understand it, of
4 the meeting you and Mr. Johnson had at the
5 Krispy Kreme shop in Orem.

6 A. Okay. If you say it, that's the date. I
7 knew it was towards the end of April.

8 Q. Can you say whether you engaged
9 Mr. Sumsion before or after that meeting with
10 Mr. Johnson?

11 A. I would have to guess that it was after
12 that meeting.

13 Q. Was it as a result of that meeting or as a
14 result of something that had been going before that
15 meeting?

16 A. As I recall, Mr. Johnson continued to try
17 to reach out to me and talk to me, and I was not
18 interested in having any further discussions with
19 him, and so I engaged Mr. Sumsion to interface with
20 Mr. Johnson on my behalf.

21 Q. And do you know if Mr. Sumsion, in fact,
22 did interface with Mr. Johnson?

23 A. I believe he did, yes.

24 Q. Do you know what, if any, resolution they
25 came to?

1 A. Yes.

2 Q. What was the resolution?

3 A. Well, I understand they had a
4 conversation -- at least one conversation, and then
5 following that I believe that Mr. Sumsion was also
6 engaged by Mr. Rawle to represent him or his company
7 with respect to the arrangement between Mr. Rawle and
8 Mr. Johnson relative to the FTC.

9 Q. In preparation for your testimony today,
10 did you review any documents?

11 A. I did.

12 Q. Can you recall what they were?

13 A. I reviewed basically all of the filings
14 that were provided to the Lieutenant Governor by my
15 attorneys and me earlier this year. I reviewed -- I
16 refreshed my recollection of different interviews
17 I've had and discussions I've had with my lawyers in
18 preparing for other investigations which are ongoing
19 against me at the time -- at this time. I've
20 reviewed the Subpoenas that were served by you and
21 your counsel and by the special investigator for the
22 House of Representatives, and I have reviewed those
23 documents that we produced to you.

24 Q. Okay. Have you spoken with Sam Elma?

25 A. I haven't spoken with him in at least six

1 months.

2 MR. LALLI: Exhibit 1.

3 (EXHIBIT 1 WAS MARKED.)

4 Q. (By Mr. Lalli) Exhibit 1 is a collection
5 of Subpoenas, and I should say that they're not the
6 full Subpoenas. They're the first two pages, and
7 then they are pages of the Subpoenas that identify
8 the specific documents that were requested, and the
9 Subpoenas are respectively for yourself personally,
10 I-Aware Products, LLC, Swallow and Associates,
11 P-Solutions, LLC, Suzanne Swallow, SSV Management,
12 LLC, and Lauren M. Reed, Trustee of the Super Seven
13 Trust.

14 Are these the Subpoenas that you reviewed,
15 or some of them?

16 A. I believe they are.

17 Q. And you may have told me this, but when
18 did you review them?

19 A. Well, I reviewed them when they were first
20 served upon me, and I have referred to them
21 periodically over the last several weeks as I have
22 tried to comply with the Subpoenas.

23 Q. Have you been the person responsible for
24 reviewing and responding to these Subpoenas?

25 A. Well, I have been one of the people who's

1 been responsible. I know my wife and I have worked
2 together on the issues that pertain to her role as
3 current manager of the companies owned by the trust.
4 I have not reviewed the Subpoenas with my daughter,
5 Lauren.

6 Q. With respect to your wife, do you know if
7 she has done any work in response to these Subpoenas
8 that's been independent of or different from what
9 you've done?

10 A. I don't believe she has. She and I met
11 together and went over the Subpoenas together
12 and then --

13 MR. SNOW: So the answer's no.

14 THE WITNESS: No. Thank you.

15 Q. (By Mr. Lalli) Can you tell us what you
16 and your wife did procedurally? That is, did you
17 look in certain files? Did you go to certain places
18 to gather documents?

19 A. Well, so she and I met together, and we
20 talked about the requests relative to the companies
21 where she's the manager, and she directed me to go to
22 the banks and get the financial documents that were
23 requested in the Subpoena.

24 She is the person who looked for account
25 ledgers on our personal bank accounts that you

1 requested and provided those to me, which I provided
2 to my counsel. I believe it was me that went and --
3 I know I got the text messages from my phone and
4 printed those out and gave them to my counsel, and I
5 have been the primary person looking through e-mails
6 and tried to gather other information.

7 I don't believe that Suzanne had any other
8 involvement other than involvement related to helping
9 me with the Discover Card statements, the ledgers and
10 the entities of which she's the manager.

11 Q. Did you or, to your knowledge, did she
12 look at any files in your home or office or anywhere
13 else, and I'm talking about hard copy files of --

14 A. I don't think she did.

15 Q. Do you know if there are any files in hard
16 copy that are maintained that contain documents
17 responsive to the Subpoena?

18 A. The only files I'm aware of that would be
19 responsive to the Subpoena would be the computer
20 files and the checkbooks for each of the three
21 entities that have checking accounts and the estate
22 planning booklet that is in the possession of my
23 attorney, which I believe you have copies of the
24 estate planning documents. I'm not sure we have any
25 other files at home dealing with the things that were

1 requested under the Subpoena.

2 Q. Do you have a filing cabinet or a credenza
3 or some other filing system at home where you keep
4 hard copy files?

5 A. We do.

6 Q. And what generally is maintained in those
7 files?

8 A. Well, generally speaking, we have our tax
9 returns in those files, we have life insurance
10 account statements in those files, we have our
11 Utah Educational Savings Plan files in those files, I
12 have church-related files in those two drawers, I
13 have old -- a couple of old campaign files. Suzanne
14 has things I'm sure in those files I'm not aware of.

15 MR. SNOW: He didn't ask you what files
16 you kept, just if you kept hard copy files in the
17 filing cabinet.

18 THE WITNESS: Oh, I thought he asked me
19 what we kept.

20 MR. SNOW: Just try and listen to his
21 answers and answer that, and it will move a lot
22 faster.

23 THE WITNESS: Okay.

24 Q. (By Mr. Lalli) Do you have files in your
25 filing cabinets at home relative to the entities who

1 are identified in the Subpoenas? For example --

2 A. No.

3 Q. -- P-Solutions, SSV --

4 A. Not in my filing cabinet, no.

5 Q. So you don't maintain any hard copy files
6 for SSV Management, for example?

7 A. Well, no. You asked me about if I kept
8 them in the file cabinet. I keep the information
9 relative to those companies in a big checkbook that
10 are associated with the accounts for each of those
11 entities, and I keep copies in the -- of information
12 in the binder that has my estate plan in it, and
13 these companies have been so -- there has been hardly
14 any business done in these companies, and so there
15 just really is not that much to keep in a file.

16 Q. But what there is I'm understanding you to
17 say is kept with the checkbooks for each company; is
18 that correct?

19 A. That's correct.

20 Q. And when you say "big checkbook," I'm
21 envisioning something like an eight and a half by
22 eleven type business checkbook; is that right?

23 A. That's what I mean, yes.

24 Q. Okay. Do you maintain any computer at
25 home?

1 A. Yes.

2 Q. And do you have computer files on that
3 computer that pertain to the entities identified in
4 the Subpoenas?

5 A. I don't believe I do.

6 Q. Do you have more than one computer at
7 home?

8 A. Well, not that we use as a home computer.

9 Q. Do you use a computer for something other
10 than a home computer?

11 A. Oh, yes. I have a personal laptop that
12 belongs to my campaign. It's a laptop. It's a
13 Microsoft Air, and then I have a phone that is kind
14 of a computer. It's an iPhone and a Droid. My wife
15 has an iPhone.

16 Q. You have an iPhone and a Droid?

17 A. I do. I have a State iPhone and a
18 personal Droid.

19 Q. Do you also maintain a computer at your
20 work?

21 A. I do.

22 Q. So I'm counting three computers, your
23 laptop, your home computer and your office computer?

24 A. Well, I have an office desktop. I also
25 have an office laptop and I have an office iPad.

1 Q. Okay.

2 A. So I have three computers at the office,
3 and I've got a desktop at home and a personal laptop
4 at home, which belongs to my campaign, and I have two
5 cell phones which are PDAs, and my wife has a cell
6 phone as well, and I think that those are all the
7 computers we have at our household.

8 Q. I'm just wondering how you keep track of
9 them.

10 A. I don't. That's the problem.

11 Q. Do any of the computers, including cell
12 phones, that you just mentioned, are there any files
13 related to the entities in the Subpoenas on any of
14 those computers?

15 A. I would have to check, but I don't think
16 so.

17 Q. Do you receive bank statements, either
18 personally or for the entities, through the mail or
19 electronically?

20 A. I don't think I receive them.

21 Q. Do you maintain e-mail accounts?

22 A. I do.

23 Q. How many e-mail accounts do you have?

24 A. I have two primary e-mail accounts. One
25 is a State issued e-mail account that I try to

1 conduct simply State business on, and then the other
2 is a personal e-mail account that I try to conduct
3 all my personal business on.

4 Q. I want to go back for a minute to the
5 computers.

6 I believe you were answering my question
7 about computers in the present tense; that is, what
8 you maintain today, correct?

9 A. That's correct.

10 Q. Has that changed over the past two years?

11 A. Yes.

12 Q. Tell me how your use or access to
13 computers and cell phones has changed since, let's
14 say, the beginning of 2011?

15 A. Well, my Droid I got -- the current Droid
16 I have I got I think in October or November of 2011.
17 Before that, my prior personal phone crashed.

18 The iPhone I have I received I think in
19 November 2012 after I won the election. I've
20 upgraded to the latest technology. The desktop
21 computer I have I received sometime in November or
22 December of last year.

23 Q. That's the desktop at your office?

24 A. At work, right. The home computer I had,
25 the hard disk failed in January of 2012 or so, and I

1 had that hard disk replaced in the computer in
2 January or so of 2012.

3 The laptop and the -- the campaign laptop
4 was purchased in June of July of 2012. The office
5 laptop and iPad, which I rarely use, was purchased, I
6 think, in November or December of 2012, but I rarely
7 use those.

8 Q. Okay. And with respect to your e-mail
9 addresses, you've got your work e-mail address and a
10 personal?

11 A. Right.

12 Q. And what's the personal?

13 A. What is the actual e-mail address?

14 Q. Yes.

15 A. It is Johneswallow@gmail.com.

16 Q. How long have you had that e-mail address?

17 A. Probably for three years, or maybe longer.

18 Q. Prior to -- we've seen some e-mail
19 addresses that you had prior to joining the Attorney
20 General's office, and I believe that was December of
21 2009.

22 A. (Witness nodding head affirmatively.)

23 Q. A Softwise account, for example?

24 A. Yes.

25 Q. You don't still maintain that?

1 A. No. I don't think I've used that since I
2 joined the Attorney General's office.

3 Q. Have you used --

4 A. I could be wrong on that, but right about
5 that time.

6 Q. Okay. Using that as a time frame,
7 December 2009 when you joined the Attorney General's
8 office, have you used other e-mail addresses other
9 than the one for your work and the Gmail account?

10 A. Yeah. There's another one that I used a
11 lot more than I do now, even use it now. It's a Mac
12 account it's called. It's John.swallow -- he didn't
13 ask me the address, but I'll give it to him.
14 John.swallow1@me.com. I haven't used that regularly
15 for a year and a half or two years probably.

16 Q. Okay. For what purpose did you use that
17 when you did?

18 A. Just as a personal e-mail account.

19 Q. Did you use that and the Gmail account
20 simultaneously?

21 A. For a period of time I did.

22 Q. In responding to the Subpoenas, did you
23 look through or at least think through all of the
24 electronic sources we've been discussing, computers,
25 phones, e-mail addresses?

1 A. Well -- yes.

2 Q. Did you find anything?

3 A. Well, so I'm not a technology person, but
4 there's a -- there's a function in the Macintosh
5 system I believe called iCloud. I don't know if
6 you've heard of iCloud, but somehow my Gmail account
7 and I believe my ME account, which I don't use
8 anymore, funnel into an iCloud domain or account or
9 whatever they call it.

10 So what I did was I went to iCloud, which
11 whenever I sent a Gmail e-mail it goes into that, and
12 that is what I've been using to respond to the
13 discovery requests.

14 Q. When you went into the Cloud --

15 A. Right.

16 Q. -- can you recall the volume of files or
17 e-mails in that --

18 A. I believe -- yes, I can recall that. I'm
19 trying to behave.

20 Q. And what was the volume?

21 A. I believe that there are more than 10,000
22 e-mails in the iCloud account.

23 Q. Do you know what the time frame
24 approximately was?

25 A. The time frame for my e-mails is -- most

1 of them are June of 2012 and more current, because --
2 well, periodically it's been my custom and practice
3 to go through a document retention policy, an e-mail
4 retention policy, and the last time I did that was in
5 the summer of 2012.

6 Q. Was there an occasion in the summer of
7 2012 that caused you to go through and purge e-mails?

8 A. Well, that's your word, not mine, but my
9 document retention policy. But, yes, I was released
10 as a Bishop from my church in June of 2012, and I
11 just was wrapping up a primary and felt like it was a
12 good time to go through and go through that process
13 that I go through about once every year or year and a
14 half, and I've done that consistently through my
15 career.

16 Q. Did threats made by Jeremy Johnson have
17 anything to do with you deleting e-mails in the
18 summer of 2012?

19 A. No, not really at all. If you want to
20 know the reason for that, it's because I hadn't
21 retained e-mails from the time period I had been
22 working with Jeremy Johnson following 2011, so I
23 don't recall having any e-mails that would have been
24 relevant to Jeremy Johnson at the time I went through
25 my latest document retention exercise.

1 Q. In responding to the Subpoenas, did you
2 use some kind of search mechanism to go through the
3 10,000 or so e-mails to find responsive ones?

4 A. The only search mechanism I used was on
5 the browser itself where you just plug in a name and
6 then hit enter, and then it gives you all the e-mails
7 that are related to that person.

8 Q. So did you search by people?

9 A. By people.

10 Q. And can you recall by which people you
11 searched?

12 A. Well, I would have to look at the
13 Subpoena, because what I did is I went through the
14 Subpoena and looked that way, and I've got to say I
15 believe I'm still in the process of that.

16 Q. That was my next question.

17 A. So if I can just share something.

18 Q. Sure.

19 A. Rod, you'll appreciate this, but I'm
20 having no problem searching on my Gmail for that.
21 I'm having a problem searching on my iCloud for that,
22 and I don't know if it's an iCloud issue or if it's a
23 computer issue, so I'm working through that still.

24 Q. Are there other places where you are
25 continuing to look for documents responsive to the

1 Subpoenas?

2 A. I'm trying to figure out how to get some
3 documents off my iPhone, but other than that, I can't
4 think of anywhere else I would look. I mean, let me
5 look at the Subpoena and just make sure I'm not --
6 well, for example, yes. Let me just say yes.

7 I've had a dickens of a time getting my
8 debit card statement from NetSpend, and if you want
9 to know why, I can tell you.

10 Q. Tell me why.

11 A. My NetSpend prepaid debit card was issued
12 to me sometime in the summer of 2011, and I used it
13 for about nine months and I lost it, I lost the card,
14 and so I had replacement cards sent to my -- to my
15 address, and they were rejected for some reason, and
16 that happened twice, and so they locked down my
17 account, and so I haven't even been able to access my
18 account for a year and a half.

19 I didn't have a lot of money in there. I
20 didn't really care about it at that point in time so
21 I didn't worry about it, but I've been trying to get
22 that account reopened because they put it on
23 lockdown, and just finally yesterday I was able to
24 get through to someone who said they could get that
25 information for me, at least part of the information

1 for me, so I could get some records to produce to you
2 on that particular card.

3 Q. Okay.

4 A. I expect some of those records, as much as
5 they can get for me, to be available the next seven
6 to ten business days.

7 Q. Okay. Thank you.

8 A. But you asked if I had checked other
9 places. That's one place. I haven't been successful
10 yet in getting that information.

11 Q. And what I'm wondering is are there other
12 sources from which other documents may be coming
13 pursuant to our Subpoenas?

14 A. Not that I'm aware of.

15 Q. Okay.

16 A. I don't remember at least. Well, yes. I
17 mean, I don't know how -- I don't know how serious
18 you are about all the communications issued by my
19 campaign and my office to the press in the last year
20 or whatever it was, year or two years. That is
21 voluminous information, and so that's probably going
22 to take us quite a bit of time to get to just because
23 it's so document intensive, and I've got people
24 working at the office, I've got, you know, things
25 I've got to do on my own and my campaign staff's got

1 to do, but my campaign staff is not with me anymore
2 because we're not in campaign mode anymore, so that's
3 another source of information. To the extent that
4 you need that information, it will be coming at some
5 point in time. It hasn't come yet.

6 Q. Well --

7 A. I think you asked for all communications
8 between my office and the press and my campaign and
9 the press over an extended period of time, like four
10 years.

11 MR. SNOW: Forget that.

12 MR. LALLI: We did ask for that and we are
13 serious about it, but perhaps we can talk off the
14 record about a way of narrowing it down.

15 THE WITNESS: Okay. That would be great.
16 I appreciate it.

17 MR. SNOW: It would have to be narrowed
18 really considerably for us to even consider that.

19 MR. LALLI: We obviously don't have the
20 perspective that you do, but that didn't seem like it
21 would be a voluminous request, and so --

22 MR. SNOW: Oh, it's huge.

23 MR. LALLI: -- we'll talk about that off
24 the record, if that's all right.

25 Q. (By Mr. Lalli) I just want to go through

1 some things that we noted and see if you have any
2 information on them specifically.

3 A. Okay.

4 Q. Does the trust; that is, the Super Seven
5 Trust, have bank accounts?

6 A. No.

7 Q. Does it have any sort of files or
8 documentation, financial information other than the
9 trust document?

10 A. I don't think so.

11 Q. We've noted transfers going among the
12 various entities, such as P-Solutions, SSV
13 Management, some to your personal bank accounts.

14 Are there any -- anything other than the
15 checks or transfers themselves that describe the
16 purpose of these transfers, such as e-mails,
17 authorizations, things like that?

18 A. Well, I don't think so. I think that what
19 you see in the documents we provided, the
20 transactional documents, the banking documents is
21 everything that there is.

22 So when you said transfers from one of the
23 entities owned by the trust to our personal bank
24 account, that would only have happened through a
25 check written to my wife.

1 Q. Exactly. And what I'm wondering is, is
2 there a note or an e-mail or something that describes
3 the purpose for the transfer?

4 A. I don't believe there is.

5 Q. We received text messages from a period of
6 time, roughly November or so of 2012 or maybe
7 February of 2013.

8 Were you able to retrieve text messages
9 from other periods of time?

10 A. Well, I would think that you received text
11 messages from 2012 through the present time. I mean,
12 I don't know why they would have cut off early in
13 2013. Now, maybe you're talking about the phone
14 records.

15 Q. No. I'm talking about text messages. I'm
16 talking about text messages. I don't believe we have
17 anything before November of 2012 or after February of
18 2013.

19 A. I can tell you that I don't understand why
20 not.

21 Q. Okay. You were able to get them?

22 A. I believe -- yeah, I believe I saw e-mails
23 that -- or text messages that were current through
24 the Subpoena, but, I mean, that's what I recall, so I
25 don't know why you don't have more text messages.

1 Q. Let's go back to January of 2011.

2 Do you still have the cell phones that you
3 were using at that time?

4 A. No. No.

5 Q. That would have been the Droid that
6 crashed?

7 A. That crashed, yeah. That Droid crashed in
8 Miami when I was on a trip there, and I believe I
9 turned it in and received a new one and recorded over
10 all of the information.

11 Q. And that was in the fall of '11?

12 A. Fall of '11.

13 Q. So the Droid that you still have would
14 have been the one you got to replace that?

15 A. That's right, two years old now.

16 Q. So basically, yeah, it would have gone
17 through the last month or two of 2011, all of 2012 to
18 where we are in '13?

19 A. Right.

20 Q. Okay. And your understanding is that you
21 were able to get text messages from that phone for as
22 long as you've had it?

23 A. No, I don't know that. I don't know that,
24 but I do know that all the text messages that I have
25 on that phone are probably at least a year old, but I

1 don't know how far back it goes. I don't know -- I
2 don't recall if I, you know, have erased any of those
3 text messages up until a certain amount of time
4 awhile ago. I don't know. It wouldn't surprise me
5 if I did.

6 Q. Okay.

7 A. But you should have -- it's probably been
8 a year -- almost a year since I've, you know, deleted
9 any text messages.

10 Q. With respect to phone records now for your
11 cell phones --

12 A. Uh-huh (yes).

13 Q. -- were you able -- how far back were you
14 able to go with this --

15 A. Well, so here's the thing: I've gone back
16 as far as I can go back online. In fact, I've talked
17 to the Verizon store. I have personal service
18 through Verizon. They've told me that's as far back
19 as I can go, and I've given those to my lawyers. I
20 think it goes back a year.

21 My State account is different. I haven't
22 done much to try to find out what I have on my State
23 account. So, for example, when I replaced my State
24 iPhone, it was in November after the election. I
25 don't know where that phone is that I had before.

1 Someone at IT probably has it or has used it or done
2 something with it.

3 But as far as my State phones, I haven't
4 yet recovered the text messages on my State phone.
5 I'm trying to figure out how to do it, and I'm sure I
6 could get that done. I just haven't done it, so I
7 have text messages currently on my State phone.

8 Q. Sure. This may be a difficult question to
9 answer, but can you describe how and when you use
10 your personal cell phone as opposed to your State
11 phone?

12 A. Since I joined the office in December of
13 '09, I've tried to kind of draw a line between State
14 business and personal business, and so I try to take
15 all my State calls on my State phone and to use my
16 State phone simply for State e-mail issues and my
17 personal phone for everything else. That's why I
18 carry two phones wherever I go.

19 Q. So, for example, with respect to your
20 campaign, would that have been on your personal
21 phone?

22 A. Yeah. I would say 99 and a half percent
23 of all my calls and e-mails were done on my personal
24 phone versus my State phone.

25 Q. And would the same be true with respect to

1 communications with Jeremy Johnson?

2 A. That's correct.

3 Q. And what about Jason Powers?

4 A. That is correct. Now, there are probably
5 a few e-mails where someone maybe sent me an e-mail
6 on my State account and I replied or something, but
7 other than that, yeah, the lion's share of everything
8 is done personal or State. I try not to combine the
9 two.

10 The policy at the office allows a
11 combination of those, and most people I know at the
12 office just have one phone and one computer, but I've
13 tried religiously on my phones since I joined the
14 office to keep the two separate, and for a period of
15 time on my computers I did keep them separate like
16 most people, but I've tried in the last year to keep
17 them completely separate.

18 Q. All right. Did SSV or I-Aware file tax
19 returns?

20 A. No.

21 Q. Do you have any -- and we do have some
22 text messages between you and Lee McCullough.

23 Do you have any other correspondence,
24 whether it's e-mail or letters, with him?

25 A. I don't know.

1 Q. Not that you've seen?

2 A. Not that I've seen, no. I mean, that's
3 quite a broad statement, so let me make sure I'm
4 accurate.

5 Are you talking about since the first time
6 I met him to the present time? Are you talking about
7 relative to any particular time frame?

8 Q. Well, when did you first meet him?

9 A. I believe it was in the fall of 2008.

10 Q. And I note that he set up your trusts,
11 correct, and then he helped set up some entities in
12 your trust, correct?

13 A. Right. When you say my trust, I'm
14 assuming you're not using a legal term, you're just
15 referencing generally --

16 Q. I'm referring to the Super Seven Trust.

17 A. Right, yeah.

18 Q. For which you were the grantor?

19 A. Right.

20 Q. And you set that up, correct?

21 A. Right. I mean, for example, he
22 corresponded with my attorneys and may have
23 corresponded with me relative to the filing by the
24 people who brought the petition to remove me from
25 office. I just couldn't say as I sit here whether I

1 have anything related to that in my e-mail accounts.

2 Q. Do you maintain a calendar?

3 A. I'm really a poor calendar management
4 person. I don't -- I don't retain a physical paper
5 calendar, so the answer is my secretary keeps a
6 calendar for me on my office issues, and then I will
7 plug in personal appointments on either my Droid
8 phone or on my iPhone.

9 Q. Does your office system use the Outlook
10 calendaring program?

11 A. I couldn't tell you. I can look. Here's
12 my --

13 MR. SNOW: I assumed you'd lost one of
14 them.

15 THE WITNESS: That's a private joke.
16 Okay. Can you tell me what system that is
17 (indicating)?

18 Q. (By Mr. Lalli) That looks like Outlook to
19 me.

20 A. Is it Outlook? Okay. That's all kept at
21 the office.

22 Q. Do you use Microsoft Office?

23 A. No. I'm on a Macintosh system.

24 Q. Okay. But do you use an office product
25 for Macintosh, or is it just the Apple system? You

1 don't know?

2 A. Gosh, I really couldn't tell you.

3 Q. Well, in any event, the calendaring system
4 you have at work is an electronic calendaring --

5 A. It is.

6 Q. -- system, I take it?

7 A. It is.

8 Q. How far back -- and did you start using
9 that when you began work for the Attorney General's
10 office --

11 A. I did.

12 Q. -- in 2009?

13 A. I did.

14 Q. Okay. And same system since then?

15 A. Yes.

16 Q. Okay. Does that office system sync with
17 either of your two cell phones?

18 A. Yes, it does.

19 Q. Does it sync with both of them?

20 A. It syncs with one of them, my iPhone.

21 Q. Okay. Do you have a separate calendaring
22 system on your Droid phone that's for personal
23 issues?

24 A. I do, and sometimes I use it and sometimes
25 I don't. You'll see I'll have one appointment in a

1 month, but I normally try to go with one calendaring
2 system, and so if I have a personal appointment, I
3 will normally plug it in to my State phone and just
4 go off the one calendar.

5 Q. Did you have a calendaring system in place
6 during your campaign for Attorney General?

7 A. Yes, I did.

8 Q. And was that -- how well maintained was
9 that calendaring system?

10 A. It was very well maintained. It was
11 maintained by my campaign.

12 Q. And was that synced to your Droid phone?

13 A. I believe it was to my Droid phone, and it
14 may have been synced to my State phone. I don't
15 know.

16 Q. Do you have the calendars for that period
17 of time?

18 A. I have not checked. Campaign calendars.

19 Q. And I'm thinking 2011, 2012.

20 A. I can check with my campaign people and
21 see if they've got that and get that produced.

22 Q. Let me make sure I understand what your
23 bank accounts are.

24 The bank accounts that we've -- that we've
25 received, account information from a joint account

1 with you and your wife?

2 A. Right.

3 Q. Do you have more than one account, a
4 personal account?

5 A. One joint account?

6 Q. Yeah.

7 A. I may have a savings account and a joint
8 account, but it may be -- my wife handles all the
9 finances for our family --

10 Q. That wasn't my question.

11 A. -- and she's very good at it. She's very
12 detailed about it, and she has a lot of subaccounts.
13 She has a subaccount for our missionary, she has a
14 subaccount for college savings, she has a subaccount
15 for her settlement. She had a personal injury in a
16 settlement in that account. They're all tied into
17 the same big account, but she has those subaccounts.

18 Q. Are they all at the Mountain America
19 Credit Union?

20 A. Yes, as I understand it.

21 Q. As far as personal accounts you use, is it
22 just one?

23 A. Well, now. I mean, I did have a personal
24 account at Zions Bank. Swallow & Associates had
25 their account, and I had a personal John Swallow

1 account as well, and I think I provided you the
2 documents on that.

3 Q. Are those still open?

4 A. The John Swallow account is not open, and,
5 no, the Swallow & Associates account is no longer
6 open either.

7 Q. We also have accounts -- other than your
8 individual, your joint account with your wife, we
9 have an account for SSV Management, for P-Solutions
10 and for I-Aware Products.

11 A. That's correct.

12 Q. Are there any other accounts that you have
13 access to or signature authority for?

14 A. The only other account is an E Trade
15 account. That's our investment account, and it's
16 just -- it's just a cash account that feeds into
17 my -- our investments with E Trade, and we've just
18 withdrawn about all of that.

19 Q. It's a brokerage account, I take it?

20 A. Brokerage account, yes.

21 Q. And does the account -- is it just cash or
22 are there securities as well?

23 A. Well, there are securities in an IRA, and
24 there are -- I think there's a very, very minimal
25 balance other than that.

1 Q. Whose IRA is it?

2 A. There's one for my wife, there's one for
3 me -- there are two for me, I think, and one for my
4 wife.

5 Q. Do you know who's the manager of those
6 IRAs?

7 A. I think it's me. It could be my wife and
8 me.

9 Q. Is there a company that -- like I've got
10 an IRA --

11 A. E Trade.

12 Q. E Trade?

13 A. E Trade.

14 Q. I believe the credit card statements we
15 have for you is a Discover Card?

16 A. Yes.

17 Q. And that's all I'm recalling.

18 Is there any other credit card you have?

19 A. I think that's all we use. We may have
20 another card account. I don't think we do anymore.
21 We consolidated. We had a Home Depot card we got rid
22 of, and I think she has a debit card that's on our
23 personal bank account at the credit union, but I
24 believe those are the only two cards we carry.

25 Q. Do you have a personal debit card as well?

1 A. That's hooked into Mountain America Credit
2 Union, I think so. Yeah, I do. I carry that in my
3 wallet.

4 Q. And what about any kind of work credit
5 card? Do you have a corporate --

6 A. I do.

7 Q. -- American Express or something?

8 A. I have a couple of State issued credit
9 cards. One is a purchasing card, and there was
10 another credit card that I can use on trips and
11 things and be reimbursed for.

12 Q. And what kinds of cards are those?

13 A. Visa. They're both State Visa cards. One
14 I can put -- well, actually, I just got a fuel card
15 as well.

16 Q. And is that a State issued card?

17 A. It's a State issued card on their fleet
18 system, and I only use those cards for State issues,
19 State purchases.

20 Q. Do you have an expense account at work?

21 A. No.

22 Q. What about the campaign, did you have a
23 separate card for that?

24 A. I have a Friends of John Swallow credit
25 card, or debit card, that I maybe used twice since

1 the campaign. I had it during the campaign, but I
2 rarely used it because my campaign staff was always
3 with me and they'd always pay for meals, fundraiser
4 meals or constituent meals or anything else we had
5 concerning the campaign, or a hotel room if we had to
6 go to St. George and stay or something, and then
7 towards the end of the campaign they also had some
8 prepaid debit cards through Green Dot, and that's
9 what the campaign used.

10 Q. Do you know where the account information
11 on the campaign cards is stored?

12 A. That would be through my campaign
13 treasurer, who is named Cory Chung or Chun, and I can
14 get you her name and her number.

15 Q. Okay.

16 A. She's a professional treasurer, and she is
17 the person who did all of our accounting work,
18 received all the fundraising checks and authorized
19 all the -- well, I don't know if she authorized
20 expenditures, but certainly ran the expenditures of
21 our campaign.

22 Q. Okay. You mentioned a NetSpend debit
23 card.

24 A. Right.

25 Q. Tell me the origin of that.

1 A. Okay. Well, in the spring of 2011, as I
2 recall, I sold some gold coins to Richard Rawle, and
3 he, in consideration of the sale of those coins,
4 loaded the sales price on a NetSpend card
5 periodically as I would give him a coin or a few
6 coins, and then he would load that amount, the value
7 of that, on a prepaid debit card. It's tied in to my
8 Social Security number. It was just all straight up.

9 Q. How many coins did you sell to him?

10 A. I sold him 12 coins, I believe.

11 Q. And tell me about these coins. How did
12 you get them? What kind of coins were they?

13 A. Well, he gave them to me before I joined
14 the AG's office, and along about two years later or
15 two and a half years later, when I wanted to have a
16 little bit of extra expense money, I talked to
17 Cort Walker, and I said where do I sell these coins,
18 and he said, well, you can go to a coin shop or just
19 go to Richard, maybe he'll buy them from me.

20 He'd given them to me. It was a little
21 awkward, but I went to him. I said I'm trying to
22 sell these coins. He said I'd be happy to buy them
23 back from you. He'd given them to me, and so I sold
24 them to him.

25 Q. And why did he give them to you?

1 A. He gave them to me just as a gift, you
2 know, in 2008 and '9 or 2009 before I left his
3 employment.

4 Q. So it was like the gold watch you get
5 before you move on to a new job or something like
6 that?

7 A. I don't know. It was really nice. I
8 really appreciated that.

9 Q. And what kinds of coins were they? Were
10 they American currency, some, you know, gold blooms?

11 A. No. I think they were -- as I recall, I
12 couldn't tell if they were Canadian maple leaves or
13 if they were -- I'm not a coin person, but they were
14 one ounce pure gold coins, and there were 12 of them.

15 Q. So 12 ounces?

16 A. Right.

17 Q. And when he bought them back, when did he
18 buy them back?

19 A. Well, he bought them back over a period of
20 time, but I think we settled on a price of \$1300 an
21 ounce or so, and what I would do is I would give them
22 to him periodically as he would load more money on
23 the card, so as I -- as I went to him and said I'd
24 like to sell a couple of coins, or a coin, then he
25 would load more of the -- more money on the card, and

1 I would just use that card as I would a regular debit
2 card, put gas in my car, go to lunch, buy a gift, you
3 know, go on a trip, those kinds of things.

4 Q. Why was that the mechanism of exchange,
5 this preloaded debit card, as opposed to a check or a
6 wire or --

7 A. Well, he could have done the other way. I
8 think the reason was is because I didn't know how
9 much gold I wanted to sell, and so it was kind of
10 a -- kind of a progressive thing, and he suggested,
11 you know, I can pay you a check or I can just put it
12 on a card, and I liked the thought of a card that I
13 could just take to a gas station and plug it in and
14 buy gas or go to a store and use a card, and that's
15 why it was.

16 Q. Was the NetSpend card you had, was that
17 something that you had while you were working with
18 Richard Rawle before you went to the AG's office?

19 A. No, it wasn't.

20 Q. Did you have any kind of an expense
21 account while you were working with him?

22 A. I did.

23 Q. But not the NetSpend card?

24 A. No. It was just a regular American
25 Express card, and I certainly -- if I had company

1 related expenses, then I would certainly turn in a
2 receipt. Then they would pay the bill.

3 Q. Where did you keep your gold coins?

4 A. I kept them in my safe at home.

5 Q. So he gave them to you just -- as you
6 wanted to sell one, you'd take one out, you'd give it
7 to him, he'd load the money on your card --

8 A. It was usually two or three at a time. It
9 probably happened three or four times over the course
10 of nine months.

11 Q. And did you ultimately sell all of them or
12 do you still have some left?

13 A. No. I sold them all.

14 Q. Can you recall the time period during
15 which you sold them?

16 A. It would have been probably July-ish of
17 '11 probably through February or March of '12, as I
18 recall.

19 Q. Do you remember the total consideration?

20 A. It was around \$16,000 or \$17,000. It was
21 the value of the coins.

22 Q. And --

23 A. Less about 10 percent, because I think the
24 value of the coins was more than what he paid for
25 them because he's in the business of buying coins for

1 a little less than he sells them for, and I wanted to
2 be honest with him about that.

3 Q. Not being an accountant, I'm not sure what
4 the tax consequence of this is, but did you consider
5 any tax consequence of either the gift of the gold
6 coins or the sale of them?

7 A. I did.

8 Q. And did you consult with an accountant
9 about that?

10 A. I did.

11 Q. And tell me what you learned.

12 A. Well, I paid a capital gains on the coins
13 when I sold them. I think I put them all in the
14 2012 year, even though I sold some during the last
15 part of 2011, or the mid part or last part, but I
16 included them on my 2012 tax returns.

17 Q. It was the sale that you --

18 A. The sale, right. As I understand from
19 talking to my accountant, it's the sale. The gift is
20 on the giver if they give more than a certain amount
21 in a year. The sale is on the capital gains.

22 Q. I'd like to switch gears a little bit and
23 ask you -- by the way, if you need to take a break at
24 any time, just let me know.

25 A. Do we need to take a break?

1 MR. SNOW: Go ahead.

2 THE WITNESS: We're okay.

3 Q. (By Mr. Lalli) I understand that you
4 performed some work on a cement company in Nevada.

5 A. I did.

6 Q. And I've been told that the name of that
7 is Chaparral.

8 A. That's right.

9 Q. Tell me the circumstances under which you
10 first became involved in that.

11 A. Well, it's hard to remember when I first
12 was told by Richard about his interest in the cement
13 project. I want to say it was even before I left his
14 employment as general counsel, and I remember a
15 conversation I had with him about the price of gold,
16 or the price of cement in Mexico and how he had an
17 idea with a couple of friends of his to find a quarry
18 in Nevada and maybe get a way to provide cement --
19 limestone and create cement to Las Vegas. He was
20 very intrigued by that. This friend of his had
21 actually, I think, done that before with respect to a
22 different mineral, sand or something, in the Tooele
23 area, and so periodically over the course of the next
24 several months after I left his employment he would
25 update me and say we're moving forward and things are

1 looking good, and I was curious.

2 Sometime in the late summer or early fall,
3 August or so time frame, of 2010, so I'd been with
4 the AG's office about eight months, we were at lunch,
5 and he said I'd like to have you help me on this
6 project. It's getting more serious. He said what
7 I'd like you to do is really be involved on the
8 political side with the Paiute Indian tribe it turns
9 out in Moapa Valley, Nevada, where I played baseball
10 as a boy, and I was very interested and said what can
11 I do to help, and so he wanted me to get up to speed
12 on the process and the marketing and what would make
13 it valuable in preparation for me having a
14 responsibility with him in trying to open up doors to
15 the Paiute Indian tribe, because I guess part of the
16 deposited limestone, part of the mountain actually
17 went into the reservation area, and they thought that
18 if they could get more of the land and more of the
19 deposit, then it would be a bigger project and would
20 sell for more. The plan was to develop it, get
21 permits and then sell it off to a big company, a big
22 cement manufacturer, and then turn it and make a lot
23 of money.

24 Q. And do you know why it was that caused
25 Richard Rawle to turn to you for this? Did you have

1 some Indian experience or connections or something?

2 A. I think -- I think that -- frankly, I
3 think that he knew I was politically connected. I
4 think he trusted me, and I think he wanted
5 involvement in something that could be beneficial to
6 me and to him.

7 Q. What political connections did you have
8 that were relevant to this assignment?

9 A. Well, I think he -- from our discussions,
10 he felt like I understood the lay of the land
11 politically. When I say "politically," I don't
12 necessarily mean Republican/Democrat. I mean that
13 this Paiute tribe obviously was involved politically
14 nationally, and I think that he felt like I would be
15 a good person to develop a relationship with the
16 tribe just with my experience in politics.

17 I also had told him I think earlier that I
18 had a good friend who was the general counsel for the
19 Las Vegas Paiute tribe, so I think a few of those
20 relationships were things that he thought could be
21 helpful to him, and I also believe at some point I've
22 heard, and I don't know if I remember at the time,
23 that he was getting sick, and he didn't feel like he
24 could do all the work that he felt like he needed to
25 do on his end with his partners on his own, so he

1 wanted to get someone involved that he trusted, and I
2 think I was that person.

3 Q. And he trusted you I presume because of
4 your historical relationship with him?

5 A. I would assume so, yeah.

6 Q. Okay. So just to make sure I've got the
7 chronology here, sometime in 2009 he began talking
8 about this project, and then some time later in 2010
9 he asked you to become involved with it?

10 A. That's my -- that's my recollection.

11 Q. The part that occurred in 2010 where he
12 asked you to become involved with it, did you enter
13 into some kind of a contract or formalize your role
14 in some way?

15 A. You know, we didn't, and Richard was that
16 way. He was more of a handshake person.

17 Q. In your mind, did there come a point in
18 time when this project turned from something about
19 what you were hearing for information purposes only
20 to something where you were going to actually be
21 working on it?

22 A. Yeah.

23 Q. And that was in --

24 A. That would have been in the fall of 2010.

25 Q. Okay. And do you associate that change to

1 a meeting, a conversation or some other event?

2 A. I can't put my finger on the exact
3 conversation, but it was a conversation we had where
4 he asked me to get involved, and he asked me to get
5 involved to the level where he said if we can make
6 this work and we can get the Paiutes involved, I'd
7 like to give you a piece of whatever it is that my
8 percentage would give me in the company.

9 Q. So part of his equity share, part of that
10 he would give to you?

11 A. Right.

12 Q. Okay. In exchange for what? For your
13 services?

14 A. For my services.

15 Q. And how -- well, you've told me that there
16 wasn't a contract.

17 Were there terms that you discussed with
18 any more specificity than you might get a piece of
19 the equity?

20 A. I don't know if that's a laugh or if
21 that's a --

22 MR. SNOW: That's a cough.

23 THE WITNESS: A cough, okay.

24 Actually, no. That may seem ridiculous,
25 but, no, there was not -- there weren't terms. He

1 didn't promise me ten percent or three percent or
2 five percent. I felt like he'd be generous, and I
3 felt like I wanted to help him, and I felt that there
4 was enough promise that I decided that it would be
5 good to form a company that would be owned by my
6 family's trust, P-Solutions, to hold the interest
7 that I would perform the services through. That was
8 why I formed P-Solutions in the fall of 2010.

9 Q. (By Mr. Lalli) Okay. What I'm
10 understanding is you didn't sit down and formalize a
11 specific percentage of equity that you received?

12 A. Right.

13 Q. But was it clear in your mind that he
14 intended and you intended that if this project became
15 successful you would receive a piece of the equity?

16 A. Only to the extent that the services I
17 provided added value to the property, so my
18 understanding was that if I couldn't, for example,
19 help the Paiutes open up and do a joint venture with
20 Richard's company, Chaparral company, that I wouldn't
21 be receiving a percentage of the company.

22 So there was risk there for me as well,
23 and, also, I kind of felt like the amount that I
24 would receive would depend on the level of my
25 contribution in terms of the impact of what I was

1 doing, so --

2 Q. That was your understanding?

3 A. That was my understanding. That is why we
4 didn't really come up with a number, nor did I push
5 him for a number, nor did he offer a number.

6 Q. How did your services turn from a
7 potential equity contribution to an hourly fee?

8 A. Well, that's a very good question.

9 It's been a long time, but along about
10 October -- middle of October or early November --

11 Q. Which year?

12 A. -- of 2010. 2010. There was kind of a
13 contemporaneous project that Richard was working on
14 with Jeremy Johnson. I don't know if you know that.
15 You probably do know that.

16 Q. This is the lobbying effort?

17 A. The lobbying effort, right.

18 Q. Okay.

19 A. So Richard suggested to me that if that
20 lobby effort was going to work out, that I might be
21 paid for that, and I said no, I wasn't interested in
22 paying for that. He was kind of pushy on that, and I
23 said why don't you just do this. Why don't you --
24 why don't you pay me hourly for my cement work, and
25 he said that would be fine, and so I was able to --

1 I'd done a lot of work to that point on that part of
2 the project, the first part of the project, which was
3 mostly getting up to speed on the cement industry,
4 the marketing of cement, where the profit margin
5 would come in terms of proximity to Las Vegas, you
6 know, the site, air quality type things, just kind of
7 general education.

8 At that point in time I'd probably spent
9 30 hours or so of my time, and I said why don't you
10 just pay me for my time thus far, and then on the
11 back end if I earn a percentage, you can subtract
12 that, and he was fine with that, happy to do that.

13 Q. So if I'm following you, the fact that you
14 got paid the hourly rate started with Richard wanting
15 to pay you in connection with the Jeremy Johnson
16 lobbying effort?

17 A. I think that's where -- that is where --
18 he was interested in paying me for that. I was not
19 interested in being paid for that, but at that point
20 in time, after several weeks on the project, I was
21 interested in getting paid something on the project,
22 so it kind of came at about that same time. I'm not
23 saying it was because of that, but it was about the
24 same time that I said to Richard why don't you pay me
25 hourly.

1 Q. Why did you not want to be paid for the
2 lobbying effort?

3 A. More than anything it was because I had
4 put Jeremy Johnson and Richard together, and I felt
5 like that if I were to get paid for putting them
6 together, even though it wasn't State related and I
7 felt it was legal, I felt like I would create a
8 conflict with my recommendation to Jeremy Johnson if
9 I were to be paid a value for putting him into a
10 situation with Richard Rawle.

11 Q. You mean a conflict with your job?

12 A. No, a conflict with my recommendation to
13 him. In other words, I'd be in a position of saying
14 why don't you go ahead and work with Richard and then
15 getting something of value out of putting that
16 relationship together. I felt like I owed more to
17 Jeremy than to accept money for encouraging him to
18 spend money with Richard Rawle.

19 Q. And why did you feel that you owed
20 something to Jeremy?

21 A. I don't feel like I owed him anything
22 other than friendship. I felt like I was introducing
23 a friend to someone who might be able to help him
24 professionally, and maybe it's the lawyer part of me
25 where I didn't feel like I really wanted -- it's

1 almost like a neighbor coming to you and saying do
2 you know a good lawyer and saying yes, I know a good
3 lawyer, why don't you hire Grant Sumsion to do a
4 divorce for you and then taking a referral fee on
5 referring a friend to a lawyer.

6 Q. So when Richard agreed to pay you the
7 hourly fee --

8 A. Right.

9 Q. -- was that in place of the equity, or did
10 you still have a prospect of getting equity if things
11 turned out well?

12 A. We talked about that, and I said to him if
13 it's okay with you, you can pay me hourly for the
14 work I'm doing, and then if and to the extent you
15 decide to offer an equity piece, then let's subtract
16 what you pay me from whatever you give me in the
17 equity piece.

18 Q. And did you -- so I take it from this
19 entire conversation, that when you first began
20 working on the cement project you were not doing so
21 understanding I'll get X number of dollars per hour?

22 A. Right.

23 Q. That came later?

24 A. That did.

25 Q. Okay. And did you have any sort of

1 discussion with Richard or come to an agreement about
2 what the hourly rate would be?

3 A. I don't think -- well, when we decided to
4 go hourly we did, but not before, obviously. We
5 talked about \$250 an hour.

6 Q. Okay. And had you been keeping track of
7 your time?

8 A. Loosely. Loosely. It was more of an
9 estimate, but he and I talked about that and came to
10 an agreement that it was 34 hours. I think it was
11 34 hours that I'd spent and invoiced him \$8500 for
12 34 hours.

13 Q. Suffering under the occupational hazard of
14 a time sheet --

15 A. Right.

16 Q. -- I'm programmed to think in terms of
17 what I would do in logging time.

18 I take it you didn't do that?

19 A. I didn't keep track of every hour, but I
20 had an idea of the time I'd spent and had enough of
21 an idea of the time I'd spent that I could go to
22 Richard and say this is what I've done, this is the
23 time I've spent and felt good and comfortable
24 recommending that he pay me for the time I --

25 Q. Was that idea in your head or had you

1 written it down in notes or --

2 A. No. I'd kept track of some of the things
3 I'd done on a notepad, and so it wasn't just in my
4 head. It was also on a notepad. I don't have that
5 pad. I don't know where it is. I've probably thrown
6 it away.

7 MR. SNOW: Can we take a break now, if
8 it's all right?

9 MR. LALLI: Sure.

10 THE VIDEOGRAPHER: Going off record.
11 3:19 p.m. is the time.

12 (Recess from 3:19 p.m. to 3:30 p.m.)

13 (EXHIBIT 2 WAS MARKED.)

14 THE VIDEOGRAPHER: Returning on the
15 record. 3:30 p.m. is the time. Counsel.

16 Q. (By Mr. Lalli) Mr. Swallow, I've handed
17 you Exhibit 2, which is two invoices and two e-mails.
18 Did you prepare these documents?

19 A. It looks like I did, yeah.

20 Q. And if you look at the third page, which
21 is Bates page 67, it looks like a note to
22 Richard Rawle from you that is the same thing that is
23 attached to the Bates page 68 e-mail.

24 Do you know what's different between them?
25 Do you recall if you wrote him an e-mail and a

1 separate note?

2 A. No. I think it's just simply a matter of
3 a printing difference.

4 Q. Okay.

5 A. That's my guess. I was having a hard time
6 knowing how to print an e-mail off my computer.

7 Q. Okay.

8 A. By the way, speaking of computers,
9 Jennifer corrected me. I said that my hard disk
10 crashed on my home computer in January of 2012. I
11 meant to say January of 2013, just this past January.

12 Q. Okay.

13 A. But, no, I think that those are the same
14 e-mail, but just simply a different program printed
15 them.

16 Q. Okay. Let me direct your attention to the
17 two invoices then, if I could. The first page is the
18 \$15,000 one.

19 Is that the one you have?

20 A. That's correct.

21 Q. Okay. And this would have been, as we
22 were describing before the break, you went to Richard
23 and suggested that he pay you on an hourly rate
24 sometime in the fall of 2010?

25 A. That's correct.

1 Q. Okay. And do you recall when you provided
2 him with this invoice? I mean, was it simultaneous
3 with the e-mails attached, which would have been
4 around April 8th of 2011?

5 A. No. No. Actually, the answer to that is
6 no. These two -- these two detailed invoices were
7 created after the meeting I had with Jeremy Johnson
8 at the doughnut shop, so --

9 Q. So these two e-mails were prepared some
10 time after April 30, 2012?

11 A. These two documents. They're not e-mails,
12 but documents, yes, they were prepared some time
13 after April 30th of 2012.

14 Q. Can we refer to the first two pages as the
15 invoices?

16 A. Sure.

17 Q. Because you're right, they're not e-mails,
18 and I misspoke.

19 A. Okay.

20 Q. What you're telling me is the two
21 invoices, Bates pages 65 and 66, were prepared after
22 April 30, 2012?

23 A. That's correct.

24 Q. Why did you prepare them at that point in
25 time?

1 A. Well, in the meeting I had with
2 Jeremy Johnson, he brought up an issue that concerned
3 me. He intimated that I might have gotten paid for a
4 transaction between him and Richard, and the tone of
5 the meeting made me feel that he could very well make
6 up a story that would be intended to injure me or
7 hurt me, and so following that meeting I telephoned
8 Richard. I asked him if I'd been paid from the same
9 account as he'd received money from Jeremy Johnson,
10 and I sent him a letter -- I don't remember if I sent
11 him a letter or hand delivered a letter to him, but I
12 created a letter telling him that I was concerned
13 about that and wanting to get with him about it.

14 I don't remember exactly what the letter
15 says, but I also took steps at that point in time to
16 try to document as best as I could the work I'd done
17 for him on the cement project.

18 So I went back and tried to document the
19 work I had done, the time frames I'd done the work
20 in, and then I met with him to verify with him his
21 recollection of what I'd done and when. Then I
22 finalized these invoices and gave them to him at that
23 time.

24 Q. Okay.

25 A. The purpose was to document, though,

1 because I was concerned that Jeremy Johnson might try
2 to create a false reality, and I was concerned about
3 that.

4 Q. Okay. Looking at the time frames
5 identified in each of the two invoices --

6 A. Uh-huh (yes).

7 Q. -- December 15, 2010, to April 15, 2011,
8 which is on the first one, and August to mid October
9 2010 is on the second page, which I guess actually in
10 time would have been the first period of time, right?

11 A. Right.

12 Q. And Richard Rawle, in fact -- and I'll get
13 to this document later, but I believe it was in late
14 2010 paid you \$8500?

15 A. Paid P-Solutions \$8500.

16 Q. Right.

17 A. (Witness nodding head affirmatively.)

18 Q. And he paid P-Solutions \$8500 for the work
19 that you had done with respect to the Chaparral
20 project?

21 A. Right.

22 Q. And the reason he paid you that, if I'm
23 following you, was because of a conversation you had
24 where you suggested that rather than paying you for
25 introducing Jeremy Johnson, he pay you for the cement

1 work?

2 A. No, those are not the words I intended. I
3 don't know if those are your words or what. This is
4 work I'd actually done. These are fees I'd actually
5 earned. He decided to pay me rather than -- money on
6 an hourly basis rather than a percentage to that
7 extent for the work I had done.

8 In other words, he had been wanting me to
9 take a referral fee from Johnson, and I declined a
10 referral fee from Johnson, but I wouldn't say that
11 this payment was in substitution for a referral fee.
12 This payment was for the work I had done.

13 I had just suggested about the same time
14 that he pay me on an hourly rate rather than pay me
15 on a commission for this work to that point and that
16 if he still wanted to give me a percentage of the
17 company at some point, that he'd simply deduct what
18 he'd paid me for my hourly work from what he'd pay me
19 in a percentage.

20 Q. Okay. Well, the way I'm understanding
21 this is that two things came together at once. One
22 was his desire to pay you some kind of a fee for the
23 Jeremy Johnson; two is your desire not to receive
24 that fee but, rather, to be paid on an hourly rate at
25 least in part for work you'd done on the cement

1 project?

2 A. Yeah, as long as we're clear that in my
3 mind and I believe in Richard's mind the payments
4 made were not for a referral fee.

5 Q. That was the whole point as I understand
6 your testimony for having him pay you for the cement
7 work.

8 A. What was the whole point?

9 Q. Well, that you didn't want to be paid a
10 referral fee for the Jeremy Johnson introduction.

11 A. Well, whatever you understand my testimony
12 to have been with respect to that, I want to make it
13 very clear that by the time Richard and I decided on
14 an hourly rate for me, it was very clear to both of
15 us that I wouldn't receive any compensation at all
16 for the referral of Jeremy Johnson.

17 Q. Right, and I'm understanding you to say
18 exactly that.

19 A. Okay.

20 MR. SNOW: Okay.

21 THE WITNESS: Am I being paranoid about
22 that, because --

23 MR. SNOW: No. It wasn't clear what you
24 were saying. At least it wasn't to me.

25 THE WITNESS: From the question it wasn't

1 clear to me that you understood that. I want to make
2 sure that's perfectly crystal clear.

3 Q. (By Mr. Lalli) I hear what you're saying.

4 A. Okay.

5 Q. Did that all happen in the same
6 conversation, and that is Richard saying he wanted to
7 pay you for the Jeremy Johnson, you saying you didn't
8 want to and then the two of you reaching an agreement
9 that you would just be paid hourly for the cement
10 work?

11 A. I don't think it was the same
12 conversation, and I say that because I remember going
13 home after me telling him I didn't want to be paid
14 for the referral and thinking, you know what, I could
15 use a little -- you know, our family could use a
16 little money for Christmas or, you know, this would
17 be good for, you know, P-Solutions to have a little
18 money earlier than waiting on the risk. I think I'll
19 just ask Richard to pay me an hourly for the work
20 I've done and see if he'd be amenable to that, and,
21 frankly, at the time if he'd said no, I would have
22 been fine, and if he'd said yes, but that takes the
23 commission off the table, I would have been fine, and
24 since we've never really come to, I guess, a clear
25 enforceable understanding on the percentage, to me it

1 really didn't make much difference and I was happy to
2 have him pay P-Solutions for the work I had done at
3 that point.

4 Q. Was there a time in 2010 where you and
5 Richard agreed that he would pay you \$8500 for the
6 work on the cement project you'd done to that point
7 in time?

8 A. Yes, there was a time in 2010 where he
9 agreed to that and actually did, in fact, pay
10 P-Solutions for that work.

11 Q. And that was your idea that you approached
12 him with and he agreed?

13 A. I believe so, as I look back on it.

14 Q. And the idea that you had and the
15 conversation that resulted in you getting the \$8500
16 was at a point in time after Richard had said he
17 wanted to pay you for the Johnson introduction and
18 you declined?

19 A. When I say he wanted to pay me, I think he
20 was willing to pay me for that, and let me just give
21 you an example of Richard Rawle. Later on I'm sure
22 we'll get to this.

23 He and I had a conversation about a refund
24 of the \$23,500 that P-Solutions had received from
25 him, and he said -- and I'll kind of quote him.

1 "Hell, I'll just double down. I'll just pay you
2 another \$23,500." How attractive that would have
3 been, but of course I said, "No, that's not how it
4 works in the real world, Richard. I know you're very
5 generous, and I appreciate you're kind and like me,
6 but, no, I'll have the money returned, and then you
7 please pay P-Solutions out of another account."

8 So it's not -- it's not unheard of in my
9 relationship with Richard for him to be very generous
10 with me, and so I don't know what the point of that
11 statement is except that he did agree to pay the
12 \$8500 to P-Solutions. I did suggest that to him, and
13 he was more than willing to make that payment --

14 Q. Okay.

15 A. -- on those terms.

16 Q. But how did you arrive at the \$8500
17 figure?

18 A. Well, it was simply a matter of, you know,
19 the hours that I'd invested in the project the best I
20 could estimate and talk to him and defend and talk
21 with him about times at the hourly rate of \$250 an
22 hour.

23 Q. Did you provide him with something similar
24 to Exhibit 2, Bates page 66, in 2010?

25 A. You know, I just can't remember. I

1 haven't found anything like that, and I can't
2 remember.

3 Q. Do you recall if you provided him with
4 something similar to either of the last two pages of
5 Exhibit 2; that is, an e-mail or a memo saying I'd
6 like to invoice you in the amount of \$8500?

7 A. I haven't been able to find anything like
8 that and I don't recall.

9 Q. Can you recall if the \$8500 figure was
10 arrived at without paper; that is, just in a
11 conversation with Richard?

12 A. I don't recall.

13 Q. Okay. All right. So that tells me how
14 you got paid the \$8500 in late 2010.

15 A. Right.

16 Q. Now I want to ask similar questions about
17 the second payment, which came in April of 2011,
18 right, \$15,000?

19 A. (Witness nodding head affirmatively.)

20 Q. Was there a similar conversation that you
21 had with Richard, or was it simply resulting from
22 these notes or e-mails that you sent him?

23 A. Well, we talked regularly. We met
24 regularly on the project. I kept him up updated
25 regularly on what I was doing.

1 The difference between the second invoice
2 and the first invoice -- so when I say the second
3 invoice, I mean my chronology, so that would be 65
4 versus 66 -- is that in the second invoice I
5 estimated about 20 hours in addition to the hours I'd
6 actually worked at the time, so I'd worked about
7 40 hours up until the point in time of April 5th of
8 2011, and the rest of the time I worked after and
9 estimated that I worked another 20 hours.

10 I told him that, and I said I won't bill
11 you the time I spent on the project, for any other
12 time I've spent, so the 60 hours was really an
13 estimate of the time I'd be spending.

14 Now, this invoice was created after the
15 fact to document what we had done, but I wanted to be
16 as accurate as I could on it and not extend the date
17 of the invoice beyond April 5th, so what our
18 understanding was was that he'd pay me for 60 hours
19 when I'd only worked 40 with the promise that I would
20 work at least another 20 hours and not bill him. I
21 ended up working probably much more than that on the
22 project through the end of July or whenever it was I
23 finished.

24 Q. And why did you want to do that; that is,
25 estimate 20 additional hours into the future rather

1 than just send him another bill after you'd worked
2 the 20 or more hours?

3 A. Yeah, that's a good question. I'm trying
4 to remember why that was. I don't know if it was
5 because it was close to the tax season and, you know,
6 I know that -- I know that within a month and a half
7 of receiving the payment I had a distribution made to
8 Suzanne, my wife, and she used that to buy new
9 appliances for the kitchen. I don't know if it was a
10 combination of that, but for some reason it was
11 important to us to try to have a bill of \$15,000
12 instead of \$10,000, and that's all I can explain.

13 I just know that he and I discussed it, he
14 was comfortable with it, and I felt like I had
15 honored that and was able to give him the value for
16 what he paid me in April throughout the rest of the
17 summer.

18 Q. And the check was made to P-Solutions,
19 correct?

20 A. That's correct.

21 Q. And how did he know to make the check to
22 P-Solutions?

23 A. I don't know if I told him that or if
24 that's what the e-mail says. I don't recall, but he
25 knew I was working through P-Solutions the whole

1 time.

2 Q. Did he make the payment to P-Solutions at
3 your request?

4 A. I'm sure he did. He knew that I had set
5 up P-Solutions for the consulting work on this cement
6 project. That was the truth -- that was the case
7 from the very beginning, so he knew that I had set up
8 a family trust and that I was doing this work and
9 donating my time to the family trust on behalf of the
10 family.

11 Q. And he knew that because you told him
12 that?

13 A. Oh, yes, he knew because I told him that.

14 Q. I look at the two invoices, and the \$1500
15 one, the introductory sentence says, "For Project
16 Consulting Service for Richard Rawle personally or
17 for the Chaparral Company."

18 The second one says, "Project Consulting
19 Services for Richard Rawle personally."

20 Was that an intentional difference?

21 A. I couldn't answer your question. I can
22 only speculate that I'm trying to be consistent with
23 what I knew at the time. I'm not sure I was in the
24 loop fully about Chaparral, the LLC, when I made the
25 first invoice versus the second, but that's the only

1 explanation I can think of. Otherwise, it would just
2 simply be something that was unintentional.

3 Q. As you were doing the work --

4 A. Right.

5 Q. -- who did you view to be doing it for?
6 Were you doing it for Richard personally? Were you
7 doing it for his company, for Chaparral, something
8 else?

9 A. Looking back on it three years later, I
10 really believe I was doing the first phase of the
11 work, which was getting myself up to speed, for
12 Richard personally. The second phase where the
13 \$15,000 voice comes into play I interacted a lot more
14 with Richard's team. I made introductions of
15 David Colvin, a former classmate of mine who's
16 general counsel for the Paiute Indian tribe in
17 Las Vegas. I introduced him to the team. We had a
18 lot of joint phone calls and discussions with him and
19 with the team, and then I introduced Dennis Ekes also
20 to the team. So I did a lot more work for the
21 Chaparral team, but I always considered myself
22 working with Richard.

23 Q. And did Richard -- he paid you out of his
24 personal funds, correct, as opposed out of
25 Chaparral's?

1 A. Yes, yes. I understand.

2 Q. Was the \$15,000 payment agreed to be a
3 credit against any future equity you might receive as
4 the \$8500 payment was?

5 A. I believe so.

6 Q. And what's the current --

7 A. When you say "you" -- I want to make sure
8 that we understand in this deposition I'm assuming
9 that when you say "you," you're referring to
10 P-Solutions and/or me and not just me personally
11 because that could be an issue, and I don't want
12 to -- I don't want to blur that line.

13 So when you're asking a question, are you
14 referring to me personally or are you referring to
15 the company that did the consulting work?

16 Q. Well, as I understand your testimony, you
17 personally performed the work, and your testimony is
18 that you did it for an entity called P-Solutions.

19 A. Yeah, much like your legal work for your
20 law firm you do personally, but you do it on behalf
21 of Snell & Wilmer. I don't know if that's --

22 MR. SNOW: Just answer his question. You
23 don't need to give him analogies.

24 THE WITNESS: Okay. I think what you said
25 is accurate. Thank you. I just want to be very

1 clear.

2 Q. (By Mr. Lalli) Other than Richard
3 Rawle -- well, I guess this is a question that -- let
4 me back up a bit.

5 We talked about the gold coins a bit ago,
6 and did you cash in some of those gold coins after
7 Richard's death?

8 A. No.

9 Q. They were all before his death?

10 A. (Witness nodding head affirmatively.)

11 Q. And did you give the coins to him
12 personally or to Cort or somebody else?

13 A. To him personally.

14 Q. I was going to make a comparison, but
15 you've answered it in a way that does not allow me to
16 do that.

17 With respect to the Chaparral work, did
18 there -- did the equity potential exist after
19 Richard's death?

20 A. I assumed that when I finished the work
21 and they didn't go forward with the Paiute project
22 that I was done with Chaparral and with Richard's
23 project. In other words, I felt like I didn't --
24 that my efforts didn't result in the expansion of the
25 project to the Paiute Indian tribe, so I didn't feel

1 like I had any kind of claim on Richard for any
2 percentage of the project.

3 Q. And did that point in time come before
4 Richard's death?

5 A. Yes.

6 Q. So his heirs, whoever would succeed to his
7 interest in this cement project, have you had any
8 discussions with them about the equity interest that
9 Richard had agreed to give you if your work --

10 A. I have not had any discussions with the
11 family members.

12 Q. Do you know if any of the family members
13 or any members of the Chaparral venture knew about
14 Richard's agreement with you that he would extend
15 some of the equity to you?

16 A. I don't know.

17 Q. Have you ever talked to Allen Young or
18 anybody -- I'm blanking on the Downs guy's first
19 name, but either of them -- Drew Downs.

20 Have you talked to either of them about
21 that?

22 A. No.

23 Q. And you haven't talked with the Rawle
24 brothers about that?

25 A. No.

1 Q. Okay. I want to just -- I've got some
2 documents here.

3 You did introduce the group to David
4 Colvin, right?

5 A. I did.

6 Q. And he was a law school classmate of
7 yours?

8 A. Right.

9 MR. LALLI: Let's mark this as Exhibit 3.

10 (EXHIBIT 3 WAS MARKED.)

11 Q. (By Mr. Lalli) Exhibit 3 is an e-mail, or
12 series of e-mails April 19 to 20 of 2011, and I want
13 to focus your attention on the top one, April 20,
14 2011, 6:44 a.m. It sounds like you're arranging a
15 meeting with the Chairman.

16 Is that the Chairman of the tribe?

17 A. Right.

18 Q. And how did you know the Chairman of the
19 tribe?

20 A. I didn't know him.

21 Q. How did you arrange the meeting?

22 A. Well, let's read the e-mail. "Yes, I
23 think so. He needs to get the Chairman a write up of
24 our proposal. Unless that is done we need to have
25 some input on that. We need to take a good shot at

1 it. I'll call him today."

2 So the "him," sounds to me like I'm
3 referencing David Colvin.

4 Q. But you didn't have a personal
5 relationship with the Chairman of the tribe?

6 A. No. I never knew him. I may have known
7 his name, but I did not have a personal relationship
8 with him.

9 Q. Can you identify the time frame during
10 which you performed your services for the cement
11 project, and was there a beginning and an end, or is
12 the beginning and end a little blurred?

13 A. The end's a little blurred. The beginning
14 was, like I said before, the fall of 2010. The end
15 would have been -- I mean, I think I remember reading
16 an e-mail about a meeting I had with Dennis Ekes as
17 late as August or September or October, maybe
18 November of 2011. There would be no reason for me to
19 meet with Dennis Ekes if it wasn't about the project,
20 but it really petered out after June or July of 2010.
21 When I say -- well, okay.

22 MR. LALLI: Four.

23 (EXHIBIT 4 WAS MARKED.)

24 Q. (By Mr. Lalli) Exhibit 4 is a series of
25 e-mails June 8 to 11, 2012. The one on the top is an

1 e-mail from Richard to you and Jason Powers
2 referencing "information on the cement project that
3 John has been working with me on."

4 Do you know what this is in regard to?

5 A. I'm only inferring from the language. It
6 sounds to me like an Executive Summary that was put
7 together by Allen Young and his team.

8 Q. Did you have a hand in preparing that
9 Executive Summary?

10 A. I don't think so directly. Maybe some of
11 the information that I'd researched got into the
12 Executive Summary, but that was not done by me.

13 Q. Did you produce any written work product
14 during your consulting effort on the cement project
15 in Nevada?

16 A. I gave some notes to Richard, and I
17 highlighted studies that I'd researched and found on
18 the Internet for Richard and discussed those with
19 Richard. That would be considered work product. I
20 delivered that all to Richard and didn't keep copies
21 of that, and then I did have input into contracts,
22 proposed contracts, that they were working on between
23 the consultants and Chaparral, and I believe I did
24 have input into the Executive Summary, but that would
25 be -- that would consist of -- that would be the work

1 product I provided to the company.

2 Q. Okay. Do you know why Richard was
3 forwarding this e-mail to you and Jason Powers in
4 June of 2012?

5 A. I don't know why he was forwarding it to
6 Jason Powers, but I would assume he forwarded it to
7 me because he wanted my input on the Executive
8 Summary.

9 Q. Just the tense that Richard has used in
10 this indicates to me that the work is ongoing.

11 Is that inaccurate?

12 A. Well, like I said to you or you said to
13 me, it was kind of a blurry line about how long the
14 work went, and so I would assume that I was still
15 working with Richard on this at this point in time.

16 MR. LALLI: Five.

17 **(EXHIBIT 5 WAS MARKED.)**

18 Q. (By Mr. Lalli) Okay. Exhibit 5 is
19 another series of e-mails. The one at the top of the
20 first page is October 24, 2011, from you to
21 Richard Rawle, and it's with reference to a Chinese
22 investor.

23 Do you recall what that was?

24 A. Well, I don't know who the Chinese
25 investor was or might have been. I didn't have that

1 relationship.

2 Randy Park is a friend of mine, a neighbor
3 of mine, who had some contacts in China with people
4 with substantial means, and he and I had a discussion
5 about who he might know that might be interested in
6 investing in the cement project or buying a cement
7 project like this, so I think that's the context of
8 this communication.

9 Q. And was this -- I mean, it looks like
10 you're passing this along to Richard concerning a
11 potential Chinese investor, correct?

12 A. That would be correct.

13 Q. And I take that to mean a potential
14 investor in the Chaparral cement project?

15 A. Correct.

16 Q. Okay. So is this part of the extra
17 20 hours that you were being paid for; that is, the
18 20 hours that you'd estimated prior to April of 2011?

19 A. So I guess the question is: Is this part
20 of my consulting arrangement with Richard?

21 Q. Well, that wasn't the question, but I'll
22 take an answer to that one if you have one.

23 MR. SNOW: Why don't we have the reporter
24 read back --

25 THE WITNESS: Yeah, read back the

1 question.

2 MR. SNOW: -- the question.

3 THE COURT REPORTER: "Question: Okay.

4 So is this part of the extra 20 hours that
5 you were being paid for; that is, the 20 hours that
6 you'd estimated prior to April of 2011?"

7 THE WITNESS: And the answer is I don't
8 think so, but I feel like Richard and the group were
9 trying to find a way to market the company and were
10 interested in relationships and being introduced to
11 people that would have an interest in buying the
12 company, and one of the things Richard had said to me
13 was that if you could find a purchaser, that would be
14 another way for you to earn an interest in the
15 company.

16 Q. (By Mr. Lalli) An equity interest?

17 A. An equity interest in the company, or an
18 equity interest or some other type of an interest in
19 the company, assuming an equity interest in the
20 company.

21 Q. Okay. So how did you differentiate in
22 your mind between consulting services that you were
23 providing for Richard, which included the post-April
24 2011 estimate of 20 hours, and making introductions
25 for people who may finance the project which would

1 give you an equity interest?

2 A. And that's a good question that I don't
3 know if I can answer.

4 Q. Well, I mean, it may be that you just
5 didn't make that distinction at the time you were
6 doing this.

7 A. I just don't recall. I think I mentioned
8 the project to two or three close friends that I
9 thought might have relationships that might be of
10 interest to Richard Rawle. I don't know when the
11 last such introduction I tried to make for Richard.

12 MR. LALLI: Okay. That's Exhibit 6.

13 **(EXHIBIT 6 WAS MARKED.)**

14 Q. (By Mr. Lalli) Exhibit 6 is a
15 November 11, 2011, e-mail from you to Richard Rawle
16 referencing John McIntire. This appears from the
17 subject line to be in connection with the Chaparral
18 project.

19 Can you explain that, whether it was or
20 not?

21 A. I can't. It could have been simply, you
22 know, a reply, reply, reply. I don't know.
23 John McIntire is not, in my understanding, related at
24 all to the cement project, so -- you know, I don't
25 know if I can give background or should give

1 background, but John McIntire is involved in the
2 National Payday Lending Association, and I had served
3 as a proxy for Richard when I was in private practice
4 on a few occasions with the national association, so
5 when he said sorry you're not coming, I don't know
6 why he would have said that, except that maybe --
7 maybe they were going somewhere fun. I don't know.

8 Q. I take it from that answer that you do not
9 associate John McIntire with the Chaparral cement
10 project?

11 A. No, I don't.

12 MR. LALLI: Okay. Seven.

13 (EXHIBIT 7 WAS MARKED.)

14 Q. (By Mr. Lalli) Okay. Exhibit 7 is some
15 e-mails November 22 to December 1 of 2011. It looks
16 like there is more dialogue going back and forth
17 between you and Richard Rawle concerning a China
18 contact.

19 Do you see that?

20 A. Yeah, I do. I don't see from me to
21 Richard. "Met this morning with China contact"?

22 Q. Right.

23 A. Oh, that must have just been my friend,
24 Randy Park.

25 Q. And then in the e-mail at the top of the

1 page you say that you are checking and you'll have a
2 report when you see Richard tomorrow.

3 A. Right.

4 Q. And it looks like you're checking on the
5 subject of Richard's e-mail there, which is "Any
6 leads on selling the cement property and is Ekes
7 coming up with a proposal?"

8 A. Right, yeah.

9 Q. Is this like the last one we talked about
10 where at this point in time you can't differentiate
11 between this communication as being in furtherance of
12 the extra 20 hours post-April 2011 as opposed to you
13 continuing to work in the hope of an equity interest
14 or introducing someone to the project?

15 A. Well, I think that by now, by this
16 point -- I mean, I'm just speculating, but by this
17 point I'm putting far more than 20 hours into the
18 project from the time I last invoiced him.

19 Q. And this gets back to one of the questions
20 I asked earlier.

21 Was there ever an intention at this point
22 in time, for example, December of 2011, of invoicing
23 Richard again?

24 A. No.

25 Q. So your purpose here was for a potential

1 equity piece?

2 A. Well, that certainly wasn't something I
3 would walk away from if I'd earned it.

4 Q. Sure.

5 A. You know, again, I'm also at this point in
6 time still a very close friend of Richard's and
7 trying to help him be as successful as he can
8 possibly be, but certainly I believe at this time if
9 I made an introduction to someone that actually
10 purchased the company that I would be compensated for
11 it, but I didn't consider it to be part of the
12 20 hours.

13 MR. LALLI: Understood. Eight.

14 (EXHIBIT 8 WAS MARKED.)

15 Q. (By Mr. Lalli) Okay. This is another
16 e-mail June 15, 2012, referring to a contact in the
17 Nevada Office of Economic Development in the mining
18 division.

19 Can you recall what you were doing in this
20 respect?

21 A. Let me think. I think Richard -- I'm just
22 trying to remember. Richard, I think, had a question
23 about any State of Nevada subsidies that might be
24 available for the development of a cement project,
25 and, as I recall, through a friend of mine I found a

1 contact in the Economic Development office. I wasn't
2 necessarily looking for the contact, but we talked
3 about it, and I mentioned to Richard that I'd found a
4 contact. That's all I remember about that.

5 Q. Do you know what, if anything, came of it?

6 A. I don't. I don't recall.

7 MR. LALLI: Nine.

8 **(EXHIBIT 9 WAS MARKED.)**

9 Q. (By Mr. Lalli) Exhibit 9 is an e-mail
10 from you to Tyler Young March 18, 2013, and it looks
11 like you were seeking a recent copy of the Executive
12 Summary for Chaparral?

13 A. Uh-huh (yes).

14 Q. Did you inquire what the purpose of that
15 was?

16 A. I had a friend who had some contacts in
17 Mexico who was interested in learning more about the
18 cement company, and he asked me for an Executive
19 Summary, so I asked Tyler for a copy of it.

20 Q. And do you recall who the friend was?

21 A. I think his name was Evan Bybee.

22 Q. And do you know if anything came of that?

23 A. I don't think anything did. I don't even
24 think I received a copy of the summary. I don't
25 recall receiving a copy of the summary.

1 Q. Do you know what the status of the
2 Chaparral project is today?

3 A. I talked to Allen Young a couple of months
4 ago, and he told me that he thought they had some
5 interest in someone from Brazil, and he seemed pretty
6 excited about it.

7 Q. Even though Richard's passed on, are you
8 continuing to keep an eye out for someone, and if you
9 found a potential buyer or something, would you refer
10 them to Allen or someone else?

11 A. Well, if something dropped in my lap --

12 Q. Yeah.

13 A. -- I would probably refer it to them, but
14 I'm not looking for anything. I'm not actively in
15 that, and I haven't even researched it to know what
16 legally or lawfully I could do or receive if that
17 were to happen as Attorney General. I'd have to look
18 at all those issues before...

19 Q. Would that be different from what you
20 could legally or lawfully do as the Chief Deputy?

21 A. I don't know. I know I had a lot of
22 latitude as Chief Deputy. I haven't even thought
23 about or researched the issue as Attorney General.
24 I've just tried to stay away from those types of
25 things.

1 Q. What was the latitude that allowed you to
2 do this as you were working as the Chief Deputy? Was
3 there a policy or something?

4 A. Well, I was a non-merit employee, so I
5 didn't have -- I didn't have any restrictions except
6 to the extent that the Utah Code provided for
7 conflict of interest restrictions.

8 Q. And what was the nature of those conflict
9 of interest restrictions?

10 A. Well, if I had something -- a project that
11 was regulated in the State of Utah that I had
12 supervisory authority over, then that would be
13 something I'd have to look at very carefully and
14 perhaps even disclose and make certain types of
15 conflict disclosures before I could participate.

16 Q. But as far as you understood, doing
17 consulting work on a project out of state was not
18 that -- not a conflict of interest?

19 A. Right.

20 Q. And before undertaking this Chaparral
21 work, did you clear that through the then
22 Attorney General or some other way?

23 A. You know, I recall talking with him about
24 it, briefly speaking orally with him. I've since
25 talked to him, and he doesn't recall the

1 conversation, and I don't know if he was on
2 medication at the time or what. I remember where it
3 was, but it wasn't required, and he's actually made a
4 statement to that effect since this story broke.

5 Q. What is the conversation you recall? What
6 are the circumstances?

7 A. Right. It was in his office, and I
8 basically said Richard Rawle has an out of state
9 project that he'd like me to consult with him on. Do
10 you have a problem with that, do you have a concern
11 about that, and he said something like, well, does it
12 concern any issues with the State of Utah, and I said
13 no, and he said I don't see a problem with that.

14 Q. Prior to the fall of 2009, did you have a
15 trust or an estate plan?

16 A. Prior to the formation of the Super Seven
17 Trust?

18 Q. Yes.

19 A. I did not.

20 Q. What prompted you to form that?

21 A. Well, prior to joining the AG's office in
22 the fall of 2008, so about a year before I joined the
23 AG's office, I began working on a project that I
24 thought could become very successful, and I was
25 interested in forming a vehicle where I could grow

1 the value of a business inside the vehicle rather
2 than outside the vehicle for estate planning and tax
3 purposes, so as I understood it, if you developed
4 significant wealth and then transferred it into a
5 trust it would be a taxable event, but if you built
6 it within a trust, then you could have the family
7 hold it in perpetuity and not have any transfer
8 issues and tax issues when you transferred the assets
9 into the trust, and I'd known that for quite awhile.
10 I've known several people who were very successful,
11 and so when I had this opportunity, I felt like it
12 was time to set up that kind of a trust, which is
13 what we did.

14 Q. Okay. The knowledge that you just
15 described having, how did you form that? Did you
16 practice in the area of estate planning?

17 A. I didn't practice in that area, but I had
18 clients who had significant wealth who had those
19 types of trusts. Richard Rawle was one of those, for
20 example. He and I talked about that.

21 Q. Okay.

22 A. In fact, Lee McCullough was his attorney
23 and had developed his own estate planning documents.

24 Q. Is that what led you to Lee McCullough?

25 A. I believe so.

1 Q. Lee McCullough's not a law school
2 classmate --

3 A. No.

4 Q. -- or anything like that?

5 Did you have any prior relationship with
6 Mr. McCullough --

7 A. No.

8 Q. -- before engaging him to do your estate
9 plan?

10 A. No.

11 Q. Did someone refer you to Mr. McCullough?

12 A. I believe so. I think it was Richard.
13 May have been Paul Ewing.

14 Q. Who is Paul Ewing?

15 A. Paul is a person that I was associated
16 with before I came into the AG's office.

17 Q. In what capacity?

18 A. He's a businessman. I'd done a little bit
19 of legal work for him.

20 Q. And so somehow you got referred to
21 Lee McCullough?

22 A. Right.

23 Q. Okay. But it sounds to me like before you
24 went to Mr. McCullough you had in mind the type of
25 trust you wanted to form?

1 A. Right.

2 Q. Do you recall meeting with Mr. McCullough
3 to engage him to form your trust?

4 A. I do.

5 Q. And where was that?

6 A. In his office.

7 Q. And did you tell him that you wanted to
8 form the kind of trust you've described?

9 A. I did.

10 Q. And is there a name that you call that
11 kind of a trust?

12 A. I don't remember. It was some kind of a
13 name, like a majestic trust or a grantor trust or
14 something of that sort.

15 Q. Grantor trust is something where I've
16 heard characterized as that.

17 Without either of us being estate planning
18 lawyers, can we agree to use that term --

19 A. Sure.

20 Q. -- for the sake of convenience here?

21 A. (Witness nodding head affirmatively.)

22 Q. And by the grantor trust, I mean where you
23 put a business within a trust before the business
24 actually grows, but you're expecting it to be very
25 valuable?

1 A. Right.

2 Q. Okay. And you had such a business already
3 in mind, correct?

4 A. I did.

5 Q. And tell me what that business was.

6 A. It was a software project with a piece of
7 software that I planned to market on the Internet
8 that related to cell phones, and it would let people
9 install the software on their phone and find it if it
10 was lost and wipe it clean if it was lost remotely.

11 We can see now that it's a pretty good
12 idea because every phone has that now, but that was
13 the software. We had a license from the software
14 developer to be able to sell that and sell it in high
15 volume, and because it was a software project that I
16 think you could download online, it was very
17 transportable, so you could basically sell it online
18 and people could download it off the Internet.

19 Q. Did you have a name for that --

20 A. I think it was called Infolock.

21 Q. Infolock?

22 A. (Witness nodding head affirmatively.)

23 Q. I've seen that name.

24 Where did the idea come from? Was it
25 yours? Were you the technological genius or --

1 A. No, no, I wasn't. I wish I could remember
2 the name of the inventor, but it was the software
3 manager of a very good friend of mine named
4 Brad Pelo. Brad Pelo is a serial entrepreneur. He
5 formed Folio Corporation back in the late eighties/
6 early nineties. Next Page was sold to LexisNexis,
7 and now he has a company called i.TV. It's one of
8 his programmers who developed this technology.

9 Q. Okay. And what interest did you have in
10 it, in Infolock?

11 A. About a 50 percent interest, I believe.

12 Q. You bought a 50 percent interest?

13 A. Well, no. It was a startup, so the
14 company that secured the license to market the
15 product was able to start out with very few
16 resources. The value would come from the marketing
17 of the product that was under a license.

18 In other words, we had obtained and
19 secured the rights to sell it, and then we would pay
20 on a per sale basis a licensing fee, a royalty, to
21 the developer of the software, so it was all on a
22 contingency basis.

23 Q. Did you have partners or co-shareholders
24 in this --

25 A. Yes. My partner on that was Jason Powers.

1 Q. Was this an idea you brought to Jason or
2 vice versa?

3 A. He brought it to me, as I recall.

4 Q. And did the two of you form a company
5 called Infolock?

6 A. I don't think so. I think that that was a
7 company he formed. I can't be a hundred percent
8 sure. I don't think I was involved in that company
9 per se, but I do believe that an interest in that
10 company or an interest in the product was purchased
11 by I-Aware Products, which was the company that I
12 established within the trust to be the vehicle for
13 this opportunity.

14 Q. Okay. When you set up the trust, was it
15 for this sole purpose; that is, to house this
16 business opportunity?

17 A. Primarily, yes. What I wanted to do was
18 take all the assets that my family was going to
19 develop over time and have them gifted to the trust
20 and then grown within the trust. That was my -- that
21 was my goal.

22 Q. Okay. But at the time were there other
23 opportunities or interests besides the Infolock?

24 A. I don't think so. I had Swallow &
25 Associates, which was my firm, Swallow law firm, but

1 I wasn't -- I hadn't -- again, that was as mature as
2 it was going to be, so I didn't think that that would
3 be something I'd want to put within the trust. I
4 didn't have any other technology or other business
5 opportunities that I was planning on putting within
6 the trust at that time.

7 Q. And I haven't seen from the documents I
8 have that you funded the trust with any other assets;
9 is that correct?

10 A. No.

11 Q. So you didn't put any life insurance
12 policies or anything --

13 A. I didn't put my house in there or
14 anything, no.

15 Q. And was that intentional, that you didn't
16 put your house or life insurance or something?

17 A. Well, I don't recall. I recall
18 specifically the trust was set up for this big
19 opportunity, and so, as I understood it, and, again,
20 I don't practice in this area, but I already had
21 equity in my house, so I -- and I did talk to Lee
22 about this, but I kind of thought in my mind that I
23 still had a mortgage on my house, which I still have,
24 and I just didn't want to go through the process of
25 transferring it subject to a mortgage to a trust

1 deed, and it already had equity and value, and that
2 would be a taxable event, so I really thought this
3 was going to be an opportunity for this company and
4 other companies going forward if those companies came
5 into play.

6 Q. But you didn't have anything in mind at
7 the time in 2009 of other companies going forward?

8 A. I don't recall I did, no.

9 Q. Okay. As I understand it, the trust was
10 formed with two trustees.

11 A. Right.

12 Q. And it was also formed in Nevada; is that
13 right?

14 A. That's what I recall.

15 Q. And what was your understanding of the
16 reason for forming it in Nevada?

17 A. Lee McCullough just said this type of
18 trust works best in Nevada. It was his suggestion,
19 and he was the one that talked to me about different
20 types of trustees and that this is just how it
21 worked, so I just basically followed his advice.

22 Q. And when you say "this type of trust,"
23 you're referring to this grantor trust which is going
24 to house a significant business opportunity?

25 A. Right. Lee was a very creative -- he

1 explained it in a very creative way to me in terms of
2 the tax consequences and the ability of consultants,
3 for example, to do work within the trust.

4 MR. SNOW: All right.

5 THE WITNESS: I'm not talking too much.

6 MR. SNOW: Just let him ask his questions.

7 THE WITNESS: Okay.

8 Q. (By Mr. Lalli) What did Mr. McCullough
9 tell you were the advantages of this kind of a trust?

10 A. Well, for one thing, he said that in this
11 type of a trust the entities owned by the trust would
12 not need to file individual tax returns, that all of
13 the income would flow directly to the bottom line of
14 the trustor and would be -- and the taxes would be
15 paid by the trustor, and there were some tax
16 advantages to that, that this would be a vehicle
17 through which -- it would be an irrevocable trust,
18 and so it would be a trust I wouldn't have control
19 of, but there were tax advantages to that upon my
20 death that might not be available in a revocable
21 instrument, and it had the capacity to hold a lot of
22 different companies, and so it would be the kind of
23 vehicle that could expand as much as I ever needed to
24 expand, and so I felt like it was an investment I
25 would only make one time and then it would be -- it

1 would fully serve whatever needs I might have, and I
2 expected this company to be very successful.

3 Q. If the company were very successful and
4 made a lot of money --

5 A. Right.

6 Q. -- you're saying that you would have paid
7 the taxes for that?

8 A. I think that's how it worked, that they
9 would flow right to -- those are the income taxes.
10 I'm not talking about the estate taxes. There's a
11 distinction between the two.

12 Q. And I understood you to say estate taxes.
13 What I'm wondering is if the company made
14 a lot of money, where would you -- let's say it made
15 \$20 million.

16 Where would you get the money to pay the
17 taxes for that?

18 A. Lee told me that the company could pay the
19 taxes.

20 Q. How?

21 A. Through the ability to pay taxes -- the
22 trust could pay the taxes that were incurred through
23 the success of the business, or the business could
24 pay the taxes, but the point is that the money could
25 come out of the trust to pay for those taxes.

1 Q. And do you know how the money would come
2 out to pay for the taxes?

3 A. I don't know. I couldn't tell you.
4 Unfortunately, I don't have that problem.

5 Q. Okay.

6 A. But Lee seemed very confident that he knew
7 how that worked.

8 Q. All right. And one of the trustees was a
9 guy named Cahill, a Nevada attorney?

10 A. Michael Cahill, yeah.

11 Q. Did you ever meet him?

12 A. No.

13 Q. Did you ever speak to him?

14 A. I may have spoken to him on the phone.

15 Q. Do you recall the substance of that
16 conversation?

17 A. Well, it may have been -- and I'm just
18 saying I may have spoken to him -- in connection with
19 his fee, because he had a \$2,000 a year fee, and when
20 it turned out that the I-Aware Products opportunity
21 wasn't what I thought it was, that became a very
22 expensive investment for myself and my wife to pay
23 that fee, and so he agreed to reduce his fee to \$750
24 a year instead of \$2,000 a year for a small type of
25 an operation, which is currently what he's charging

1 now.

2 Q. So you're still paying the \$750 fee a
3 year?

4 A. Well, I owe it. It was due on
5 October 15th. I owe it, but I haven't paid it yet
6 this year, but, yes, he's still the trustee and I'm
7 still paying the fee.

8 Q. Do you intend to pay it as opposed to
9 closing the trust down?

10 A. My wife wants me to close it down, and we
11 haven't made a final decision about that.

12 Q. And what are the pros and cons of closing
13 it down versus not?

14 MR. SNOW: With all due respect, I'm not
15 sure where -- though it's interesting, whether this
16 discussion of trusts and estates and what he and his
17 wife want to do with this trust has anything to do
18 with the Lieutenant Governor's petition.

19 MR. LALLI: I think the operation and
20 management of this trust is at the heart of the
21 Lieutenant Governor's investigation.

22 MR. SNOW: Well, you've covered that in
23 some detail. I just want to know if -- we were
24 hoping to move this along.

25 MR. LALLI: I'm sure you're hoping to move

1 it along.

2 MR. SNOW: But there's no assets in it to
3 operate or manage. You know that. That's clear --

4 MR. LALLI: So what are you saying?

5 MR. SNOW: -- unfortunately. I'm saying I
6 think this is irrelevant.

7 MR. LALLI: All right.

8 MR. SNOW: And it's wasting time:

9 MR. LALLI: Okay.

10 MR. SNOW: I'm just trying to be a little
11 more polite about it, but that's what I'm saying.

12 MR. LALLI: Well, I --

13 MR. SNOW: I know you don't mean to be
14 wasting time, and I'm sure you have your theories I'm
15 not seeing.

16 MR. LALLI: Well, I think I have an
17 interest and an obligation to being thorough, as I
18 told you I did, and I am simply doing that.

19 I don't remember the question. Will you
20 find it for me?

21 MR. SNOW: The question was what are the
22 pros and cons of closing the trust, for which I
23 object as being totally irrelevant to this
24 investigation.

25 THE WITNESS: We haven't decided what to

1 do. The pros and cons -- I mean, I can just
2 speculate what the pros and cons are. One of the
3 cons is it's expensive to maintain.

4 Q. (By Mr. Lalli) Okay. Do you anticipate
5 future businesses that would be appropriate for this
6 type of trust?

7 A. Well, hopefully some day. I mean, I think
8 that I have the right to keep the trust if I want to
9 keep the trust, and, frankly, and I don't want to be
10 rude, but it's really our personal business about
11 whether or not we want to keep the trust or not keep
12 the trust. I've told you my wife would like to
13 dissolve the trust, but we haven't made a final
14 decision yet.

15 Q. Okay. The investment trustee was or is
16 your daughter, correct?

17 A. That's right.

18 Q. Her name is Lauren Reed?

19 A. That's right.

20 Q. Can you describe what, if anything, she
21 has done in the function of the investment trustee?

22 A. She has not done very much, if anything.

23 Q. Can you think of anything she has done?

24 A. I can't. She signed the document that
25 authorized her to be the trustee.

1 Q. Has she been involved in -- albeit it not
2 very many, but there have been a few transfers,
3 payments into and out of SSV and P-Solutions and
4 I-Aware.

5 Has she been involved in those decisions?

6 A. She has not been.

7 Q. Okay. Has she been paid anything?

8 A. No.

9 Q. Are you aware of the distribution
10 provisions of the trust?

11 A. I was made aware of one I think yesterday
12 in my conversation with Lee McCullough, but before
13 that I was not.

14 Q. And what are you today aware of as far as
15 distribution?

16 A. I just know that the paragraph number I
17 think he said was 2.1. I haven't read it.

18 **(EXHIBIT 10 WAS MARKED.)**

19 Q. (By Mr. Lalli) All right. Can you verify
20 this as a copy of the grantor trust that you
21 established with Lee McCullough's help?

22 A. It sure appears to be.

23 Q. Okay. And if you look at section 2.1,
24 which is on the second page, this is a provision --
25 first of all, you have not read this prior to today.

1 Is that your testimony?

2 A. I haven't read it -- I haven't read it at
3 all since the day it was signed, and I don't recall
4 if I even read it then.

5 Q. But you recall discussing this with
6 Mr. McCullough yesterday?

7 A. Very briefly. He referenced the
8 paragraph.

9 Q. And did he tell you anything about it?

10 A. I don't think in specific.

11 Q. Prior to making the transfers or
12 distributions from P-Solutions, SSV or I-Aware, I
13 take it from what you've told me that your daughter,
14 the investment trustee, did not exercise any
15 discretion about that?

16 A. That's correct. I did not talk -- I did
17 not speak with her about it, no.

18 Q. And she then wouldn't have made any
19 written communication to the trust protector about
20 those distributions?

21 A. I don't know how she could if I did not
22 talk to her, or my wife did not talk to her, so we
23 did not talk to her about it.

24 Q. All right. Is there a reason that the
25 trust doesn't have a bank account?

1 A. I think the only reason it doesn't have a
2 bank account is because shortly after the trust was
3 formed it became pretty clear that I-Aware Products
4 was not going anywhere, and so it was really, in my
5 view -- in my view, things changed dramatically after
6 the opportunity of I-Aware Products went away with
7 respect to the trust.

8 Even though it was still a very valid and
9 operating trust, I didn't see the urgency of creating
10 a bank account for the trust. It wasn't until
11 another year had passed when the P-Solutions
12 opportunity came into view.

13 Q. That what?

14 A. What was that?

15 Q. You said it wasn't until --

16 A. Another year --

17 Q. -- another year?

18 A. -- after the trust was formed that the
19 P-Solutions opportunity came into view, so basically
20 there was little, if any, activity in the trust for
21 more than a year after it was formed.

22 Q. So did you consider establishing a bank
23 account for the trust when the P-Solutions
24 opportunity arose?

25 A. You know, it just didn't cross my mind to

1 do it. Frankly, I may not have even remembered at
2 that time that it didn't have an account.

3 MR. LALLI: Eleven.

4 (EXHIBIT 11 WAS MARKED.)

5 Q. (By Mr. Lalli) Exhibit 11 is a diagram
6 that was produced by you or one of your companies.

7 Can you tell me what this diagram is?

8 A. Well, it looks like the John and Suzanne
9 Swallow Estate Planning Diagram.

10 Q. Do you know who prepared it?

11 A. I believe it was Lee McCullough, because I
12 didn't prepare it.

13 Q. Okay. And do you understand the
14 significance of this?

15 A. Enlighten me.

16 Q. Well --

17 A. I'd just say -- it looks like the company
18 SSV Management, LLC, is owned 100 percent by the
19 trust, and then SSV Management, LLC, owns 100 percent
20 of the company I-Aware Products Enterprises, LLC.

21 Q. Is that the way you understand your trust?

22 A. Yes.

23 Q. Okay. And what is the purpose of the
24 middle entity, SSV Management? Do you have an
25 understanding of that?

1 A. No, I really don't, except that it's a
2 management of the companies that it owns, and this is
3 how Lee suggested the entity be set up, and so I
4 simply followed his advice on that.

5 Q. Is SSV Management an operational company?

6 A. I wouldn't say so. I mean, define
7 operational. Is it a functioning company --

8 Q. Does it do any business? Does it have any
9 employees?

10 A. No.

11 Q. Does it generate any income?

12 A. No.

13 Q. None of those?

14 A. No.

15 Q. Okay. And do you know what its purpose
16 is -- well, is it a holding company?

17 A. Well, I would -- I mean, my understanding
18 is that to the extent -- define holding company. I
19 would say that's probably a fairly good description
20 of it, a holding company or a management company that
21 owns other -- manages other companies.

22 Q. Okay. And within the structure of the
23 trust, do you have an understanding of what that
24 management company allows you or the trust or the
25 entities to do?

1 A. Well, other than logic or common sense, I
2 don't have any expertise in what it allows it to do,
3 so if the company -- it owns another company, so as a
4 company that owns a company, I mean, logically has
5 some authority over the company that it owns, and I
6 don't know what you're looking for, but that's --

7 Q. Well, let me try and ask a better
8 question.

9 A. Sure.

10 Q. As I understood your explanation of this
11 grantor trust, it was to effectively house a
12 substantial business opportunity and obtain trust
13 protections by doing that.

14 A. Probably, among other things.

15 Q. Okay. And I understand from your
16 testimony that I-Aware Products is the -- or at least
17 through the initial business opportunity?

18 A. That is right.

19 Q. Okay. So what I'm wondering is if you
20 have an understanding of why SSV is put in there as a
21 holding or management company? In other words, why
22 doesn't the Super Seven Trust just own I-Aware
23 Products?

24 A. I don't have an understanding of that.
25 You'd have to ask my lawyer that question.

1 Q. And you never did have an understanding?

2 A. I don't think so. I mean, he probably
3 explained it to me at the time, but I don't recall
4 why it's significant.

5 Q. Now, you were, at least at formation and
6 until March of 2012, the manager of SSV Management,
7 right?

8 A. Right.

9 Q. Okay. And you were also the manager of
10 I-Aware Products?

11 A. That's what I understand.

12 MR. LALLI: Twelve.

13 (EXHIBIT 12 WAS MARKED.)

14 Q. (By Mr. Lalli) Exhibit 12 is a signature
15 card and organizational document information obtained
16 from Mountain America Federal Credit Union.

17 Do you recognize your signature there on
18 the second page and third page?

19 A. I do.

20 Q. Okay. And generally I understand this
21 document to be how you established the bank account
22 for SSV Management, and it allowed both you and your
23 wife to be signers on the account.

24 A. That's right.

25 Q. That's what happened? Okay.

1 And if you go to the third page, your name
2 is there twice. On the top part it says John E.
3 Swallow, manager, Suzanne M. Swallow, authorized
4 signer?

5 A. Right.

6 Q. And then down below her name is crossed
7 out as manager, correct?

8 A. Right, looks like it.

9 Q. So at least at the formation of this
10 account is it accurate to state that you were the
11 sole manager and your wife was not a manager?

12 A. You know, I don't -- I don't know. I
13 mean, I haven't read to see what it is above here.
14 Where it has us both here she's an authorized signer,
15 I'm a manager, but up here it says that she is a
16 managing member, so --

17 Q. That's why I'm asking the question.

18 A. So I do not -- I cannot explain as I sit
19 here why the difference or the contradiction.

20 Q. Okay. At the time you set up
21 SSV Management, did you intend your wife to be a
22 manager?

23 A. I don't recall. I don't remember. I will
24 say this: She is the manager of Swallow Associates
25 with me, but I don't recall. I just couldn't recall.

1 I couldn't speculate.

2 Q. Do you recall whether or not it was
3 important for you to be a manager of SSV?

4 A. I don't.

5 Q. Do you know whether being a manager would
6 give you investment authority over the entities held
7 by SSV, such as I-Aware and P-Solutions?

8 A. I couldn't say. I mean, certainly as
9 manager I think I would have investment authority.
10 The question would be would I have that authority if
11 I weren't manager? I would assume that I would not,
12 but I'm just assuming.

13 I mean, let's get right to the basics of
14 it. I mean, I don't know if I would have to be
15 required to be a manager of a company to make
16 investment decisions on behalf of the company. As a
17 matter of corporate law or partnership law, I don't
18 know if I'd have to be a manager to do that.

19 Q. Do you recall if Lee McCullough explained
20 to you at the time of setting up your trust the
21 authority and responsibility of a manager?

22 A. I don't recall that he did.

23 MR. LALLI: Thirteen.

24 (EXHIBIT 13 WAS MARKED.)

25 Q. (By Mr. Lalli) Okay. This is a document

1 demonstrating that -- at least it says to me that
2 your wife replaced you as manager of SSV Management
3 effective March 15, 2012; is that right?

4 A. Well, the document -- I don't want to be
5 difficult, but the document speaks for itself.

6 Q. Were you involved in documenting a change
7 in the manager position from you to your wife on or
8 about March 15 of 2012?

9 A. Well, I know I discussed it with
10 Lee McCullough, and I resigned as manager of
11 SSV Management, and I indicated to him that Suzanne
12 would accept the appointment as manager of
13 SSV Management.

14 Q. And was it your understanding that from
15 that time forward Suzanne became the manager of SSV
16 rather than you?

17 A. That's right.

18 Q. Okay.

19 A. That's my understanding.

20 Q. And that was your intention?

21 A. That was my intention, yeah.

22 Q. And what, to your knowledge, has your wife
23 done as manager of SSV Management?

24 A. Very little, because the company hasn't
25 done anything since she took over.

1 Q. Has the management of SSV changed from
2 before March 15 of 2012?

3 A. Well, for example, when we were preparing
4 our discovery responses, she and I sat together, and
5 I asked her what she'd like me to do, and she said go
6 to the bank and get the documents that are requested,
7 and she took the role as manager with respect to the
8 entities that are owned by the trust.

9 When we refunded the money to
10 Richard Rawle, she was involved in that decision with
11 me and approved that decision, so she has taken that
12 role in a very few transactions that have occurred
13 since the time she became the manager, and no income
14 has been received by the trust and no business has
15 been conducted by the trust or the companies since
16 she took over, so there has been very little to do.

17 Q. Before that time did you involve her in
18 discussions about the trust or the businesses owned
19 by the trust?

20 A. I involved her in discussions about
21 distributions as a beneficiary, but I don't recall
22 involving her in the management or in the consulting
23 decisions that I made as the consultant for
24 P-Solutions.

25 Q. And when you say that you didn't involve

1 her in consulting decisions, do you mean the actual
2 work with the tribe and so forth that you were doing
3 for the Chaparral?

4 A. I mean -- well, I mean that, but I also
5 mean in any other decisions relative to whether or
6 not I should consult for the companies. Those were
7 my decisions.

8 Q. Okay.

9 A. She was aware, though, of what I was
10 doing.

11 Q. You mentioned that your wife handles the
12 finances in your family.

13 Did I understand that correctly?

14 A. That's correct.

15 Q. And by that do you mean that she pays the
16 bills and keeps the checkbook and things like that?

17 A. She does, yes.

18 Q. Do you have any role in that?

19 A. Very little, if any.

20 Q. What about financial planning, such as
21 saving for college or for missions or things like
22 that, does she do that or is that a joint effort?

23 A. Well, it's a joint effort in that I earn
24 the income. She's the driver behind decisions to put
25 money away for college and to save for things like a

1 mission.

2 MR. SNOW: Same objection as I made
3 earlier. This is totally irrelevant basically, so
4 you can stop talking about it now.

5 THE WITNESS: Okay.

6 MR. SNOW: And why don't we take a break.
7 We've been going about another hour and 15 minutes.

8 MR. LALLI: We can take a break.

9 MR. SNOW: Okay.

10 THE VIDEOGRAPHER: Going off record.
11 4:50 p.m. is the time.

12 (Recess from 4:50 p.m. to 5:00 p.m.)

13 THE VIDEOGRAPHER: Going back on record.
14 The time is five o'clock p.m. Counsel.

15 (EXHIBIT 14 WAS MARKED.)

16 Q. (By Mr. Lalli) Exhibit 14 is a copy of
17 SSV Management's bank statements for the year 2011,
18 and these are documents that you were involved in
19 producing on behalf of SSV Management; is that
20 correct?

21 A. Right.

22 Q. Okay. I want turn to Bates page 172, and
23 in the middle of the page there there's a \$500
24 deposit transfer from P-Solutions, \$500.

25 A. Right.

1 Q. Do you see that? What was that for?

2 A. I don't recall. I'm guessing that it had
3 a negative balance in the account, and so that
4 transfer was made, I'm just guessing, to keep the
5 balance from going in the hole.

6 Q. Okay. And so at this point in time,
7 September of 2011, would that have been your
8 decision?

9 A. I'm assuming that it would have been, yes.

10 Q. Because at that time you were the manager?

11 A. Right.

12 Q. Do you have any recollection of consulting
13 anyone about that?

14 A. I don't.

15 MR. LALLI: Fifteen.

16 (EXHIBIT 15 WAS MARKED.)

17 Q. (By Mr. Lalli) Exhibit 15 is
18 SSV Management bank accounts for the year 2012, and
19 I'd like to direct your attention to Bates page 1102,
20 and I just want to ask you about, first of all, the
21 October 1st deposit by check for \$7,000.

22 Do you know where that money came from?

23 A. As I recall, it came from P-Solutions.

24 Q. And was this for the new appliances you
25 mentioned earlier?

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A. No.

Q. Do you recall what that was for?

A. I recall -- yes, I do.

Q. And tell me what.

A. I recall that it was simply a transfer from P-Solutions to the holding company, or to SSV Management.

Q. Do you recall the reason for the transfer?

A. I do not.

MR. LALLI: Keep that Exhibit 15, and I'm going to mark a new Exhibit 16 and cross-reference here for a minute. Sixteen.

(EXHIBIT 16 WAS MARKED.)

Q. (By Mr. Lalli) Exhibit 16 looks to me to be the check register for SSV Management. Can you verify that?

MR. SNOW: Just go ahead. Excuse me.

THE WITNESS: I don't know how I'd verify it. I don't want to be difficult, but the only thing I can see on it is SSV right here in handwriting, but I don't --

Q. (By Mr. Lalli) Is that your handwriting?

A. I don't know. I can't tell.

Q. Okay.

A. I don't have any reason to believe it's

1 not, but I just don't know. You asked me to verify
2 it. I just don't know if I can.

3 Q. Okay. Is it your handwriting?

4 A. Is what my handwriting?

5 Q. On Exhibit 16?

6 A. Well --

7 Q. The check register?

8 A. -- see, I'm not sure -- the SSV is my
9 handwriting, might be, but the other handwriting
10 looks like it is my handwriting.

11 Q. Okay. And during 2012 this would have
12 been -- at least these entries, September and October
13 of 2012, would have been after you withdrew as
14 manager, correct?

15 A. Yes. Yes, it would have been.

16 Q. But apparently you're still the one
17 keeping the checkbook and ledger; is that correct?

18 A. Well, looks like it. It's possible that
19 this Suzanne is in Suzanne's handwriting, but
20 certainly the answer to your question is yes, this
21 looks like my handwriting.

22 Q. Okay. And so if I'm cross-referencing
23 Exhibit 16 to Bates page 1102 of 15, I can see a
24 \$1,000 payment from SSV that went to Suzanne
25 Swallow --

1 A. Okay.

2 Q. -- for a distribution; is that right?

3 A. That looks like that's what it says.

4 Q. Okay. And in Exhibit 16 the deposit by

5 the 9-28-12 entry says \$7,000 was deposited.

6 A. I'm just trying to find it.

7 Q. On the other exhibit.

8 A. Oh, this one? 9-28-12 --

9 Q. Yeah.

10 A. -- it says distribution of \$1,000.

11 Q. Right.

12 A. Deposit of \$1,000. Okay.

13 Q. A deposit of \$7,000, distribution of

14 \$1,000 and then balance of \$6,000, right?

15 A. Right.

16 Q. And the \$7,000, your belief was that it

17 came from P-Solutions, and I think we'll see that.

18 A. Yes. That's my belief, yes.

19 Q. So basically what we have here in

20 Exhibit 16, which is cross-referenced with 15, is two

21 distribution payments to Suzanne in September and

22 October of 2012, one for \$1,000 dollars and one for

23 \$2,566, right?

24 A. That looks like that's right.

25 Q. And do you recall what those distributions

1 were for?

2 A. I do not know.

3 Q. And I'm interested in the word

4 "distribution."

5 Is that intended to be a distribution of
6 income or profit or is it --

7 A. I would assume it would be a distribution
8 of profits, and Suzanne and I both discussed these,
9 and she approved these as the manager.

10 Q. Okay. But do you recall what the purpose
11 for distributing this money to Suzanne was?

12 A. I don't recall.

13 Q. Was it compensation?

14 A. No.

15 Q. Do you know what the money was used for?

16 A. I do not recall, no.

17 MR. LALLI: All right. Let's put 15 away,
18 and I think we can put 16 away as well. Seventeen.

19 **(EXHIBIT 17 WAS MARKED.)**

20 Q. (By Mr. Lalli) I'm handing you
21 Exhibit 17, which is the October 2012 statement from
22 what I believe is your joint account with your wife.

23 Is that accurate?

24 A. It looks like it. What date did you say?
25 The October -- yeah, the October '12 statement, yes.

1 Q. So what I'm trying to do is to follow and
2 see if these payments from Suzanne that we looked at
3 in the Exhibit 16, if they went into your account --

4 A. Okay.

5 Q. -- into your joint account.

6 So if you look at the second page of
7 Exhibit 17 -- now, what I did is for two reasons,
8 really. One is to cut down on the volume of paper,
9 and the other one is to not put into this record
10 pages of your bank statements that really aren't
11 relevant.

12 A. That's kind of --

13 MR. LALLI: I mean, you've got the full
14 statements, Jennifer, if you want to look at them.

15 MS. JAMES: Right.

16 MR. LALLI: If you want them to be part of
17 the record, we can do that.

18 MS. JAMES: That's not necessary.

19 Q. (By Mr. Lalli) All right. I want to
20 direct your attention to the second page and just see
21 if you can help me understand some of the deposits
22 and withdrawals here.

23 Looking at the top of the page, on 10-1
24 there's a deposit by check of \$18,797.82.

25 Do you know what that was?

1 A. I don't.

2 Q. Okay. Do you know if part of that
3 included the two distributions that are identified on
4 Exhibit 16?

5 A. I do not know.

6 Q. Don't know. Okay. There are a couple of
7 withdrawals, one for \$5,000, one for \$10,500 from
8 Home Banking Transfer to Share 01.

9 Do you know what that's for?

10 A. I don't.

11 Q. Do you know if that has to do with the
12 reversal and repayment of the RMR Consulting payments
13 to P-Solutions?

14 A. I don't know. I mean -- I don't know.

15 Q. Okay. Finished with that one.

16 I have statements for SSV for 2013, but by
17 my observation they show no activity.

18 Would that be consistent with your
19 understanding, that there's been no money --

20 A. You'd have to ask the manager.

21 Q. Okay.

22 A. I'm not aware of any activity for 2013.

23 Q. Okay. What happened to I-Aware?

24 A. I don't know.

25 Q. Did you just miss the window of

1 opportunity, somebody beat you to it?

2 A. Oh, you're asking what happened to the
3 business opportunity?

4 Q. Yes.

5 A. I think that's what it was, we missed the
6 window.

7 Q. Okay. Is the opportunity ongoing? Does
8 it still exist?

9 A. With that product?

10 Q. Or any other product?

11 A. Well, I don't know how to answer that yes
12 or no. My plans as Attorney General are not to be
13 involved in outside business. That was what I
14 intended to make clear when I filed, and that's
15 certainly been the case since then, and my plan is to
16 have it be the same through the time I serve.

17 Q. And what's the difference between being
18 involved in an outside business as Attorney General
19 and Chief Deputy?

20 A. I don't know if there is, but it's
21 certainly the message I wanted to send to the public,
22 that I'm a 100 percent dedicated Attorney General.

23 Q. Okay. So does that mean that you are not
24 going to pursue the I-Aware business opportunity
25 while you're Attorney General?

1 A. Well, there really is no -- the answer is
2 that is correct.

3 Q. Is I-Aware still an existing company?

4 A. I don't know.

5 Q. Does it still have bank accounts?

6 A. It does.

7 Q. And does the existence of a bank
8 account -- is there any significance to that, such as
9 I intend to --

10 A. No. No.

11 MR. LALLI: All right.

12 **(EXHIBIT 18 WAS MARKED.)**

13 Q. (By Mr. Lalli) Exhibit 18 is a Purchase
14 Agreement between John E. Swallow as seller and
15 I-Aware Products Enterprises as buyer dated
16 September 15, 2009.

17 Do you see that?

18 A. Uh-huh (yes).

19 Q. And this was a Purchase Agreement that was
20 prepared simultaneous with the opening of the Super
21 Seven Trust; is that right?

22 A. That's right.

23 Q. And what I understand from this
24 transaction is that you sold the Infolock 50 percent
25 interest that you had to a company, I-Aware Products,

1 that you established simultaneous with the trust.

2 Is that accurate?

3 A. That's right.

4 Q. And there was a promissory note owing from
5 I-Aware to you of \$5,000; is that right?

6 A. That's what it looks like.

7 Q. Was that promissory note ever paid?

8 A. I don't know. There was a \$5,000
9 distribution from I-Aware to Suzanne or me, and I
10 don't recall if that was to pay off the promissory
11 note or what the purpose of that was. I don't recall
12 as I sit here today.

13 Q. Okay. Did the distribution come from
14 I-Aware?

15 A. I thought it did.

16 MR. LALLI: And I'm going to show you the
17 document here in a minute. Why don't we just do
18 that. Nineteen.

19 (EXHIBIT 19 WAS MARKED.)

20 Q. (By Mr. Lalli) Exhibit 19, again, is from
21 the State of Utah Department of Commerce showing a
22 change in manager from you to Suzanne effective
23 March 15, 2012. We talked about a similar document
24 with SSV Management.

25 As I understand it, this was the

1 time at which you withdrew as manager of I-Aware
2 Products as well as SSV?

3 A. Well, I believe I resigned as manager
4 prior to 3-15-2012 for I-Aware Products and SSV.

5 Q. Okay. When do you believe you withdrew?

6 A. I believe I resigned on or before
7 March 9th of 2012.

8 Q. Okay.

9 A. It was either March 9th or it was
10 March 8th, but I think it was March 9th before I
11 filed my initial disclosure.

12 Q. Okay. What did you do to withdraw on
13 March 8 or 9?

14 A. I informed my lawyer that I was resigning
15 and asked him to make the change immediately.

16 Q. Okay. Do you know if the change was made
17 on March 8 or 9?

18 A. Well, as far as I was concerned, it was
19 effective upon my communication to my lawyer. As far
20 as I was concerned, that's how it was.

21 Looks to me like it wasn't officially done
22 with the State until March 15th.

23 Q. Okay. And as far as you were concerned --
24 I'm not sure what you mean by that.

25 Is that just your understanding?

1 A. My communication to my lawyer was I
2 resigned immediately, and when I filed my
3 disclosures, it was with the assumption that I had
4 resigned as the manager of these companies.

5 Q. You understand that in order to withdraw
6 as a manager you've got to file a document with the
7 Department of Commerce?

8 A. Well, I'm just telling you my intent and
9 my belief at the time I filed was that I had resigned
10 already as the manager of P-Solutions and SSV and
11 I-Aware, the three companies.

12 Q. Okay. And do you have a belief or
13 understanding that, I mean, now that you've got this
14 document, differs from what the document says, which
15 is Suzanne Swallow effective 3-15-12?

16 A. Well, I certainly can see the date on this
17 document, and that is the date where she -- it
18 indicates the date of filing for her to be manager,
19 but I can tell you that I communicated my resignation
20 to my lawyer and assumed I'd been -- I had resigned
21 before I filed with the State of Utah.

22 Q. And would you agree with me that that
23 assumption appears to be incorrect with reference to
24 this document?

25 A. No, I'm not conceding any point on that.

1 I'm saying this document speaks for itself.

2 Q. Okay.

3 A. I'm just telling you what I --

4 Q. Does this document speak to you that you
5 were the manager until March 15, 2012?

6 A. Well, again, I'm not trying to be
7 argumentative. This document says what it says. I'm
8 just telling you that I resigned as the manager of
9 these three companies before I did my initial filing
10 with the State for Attorney General.

11 Q. You've made that quite clear, so let's
12 move on.

13 A. Thank you.

14 MR. LALLI: Twenty.

15 (EXHIBIT 20 WAS MARKED.)

16 MR. LALLI: Let's do 21 at the same time.

17 (EXHIBIT 21 WAS MARKED.)

18 Q. (By Mr. Lalli) Okay. Exhibits 20 and 21,
19 as I understand it, refer to a transaction, or
20 actually two transactions in late September of 2012.

21 A. You mean 2010?

22 Q. I do mean 2010. Referencing a \$5,000
23 deposit and then payment out, and a moment ago I
24 think you said that you knew there was a \$5,000
25 distribution.

1 Is this what you were referring to?

2 A. I believe it is, yes.

3 Q. Okay. And as you sit here today, you
4 don't recall where the deposit of \$5,000 came from;
5 is that right?

6 A. No. Without checking to see where it came
7 from, I wouldn't know.

8 Q. And where would you check to see where it
9 came from?

10 A. Well, I guess I could check on the check
11 that I -- of account received. That would tell me
12 where it came from.

13 Q. Do you have that check?

14 A. No, I don't.

15 Q. Because that was one of the things we
16 didn't get --

17 A. Okay.

18 Q. -- so I'd be interested in that.

19 With reference to Exhibit 21, is that your
20 handwriting?

21 A. It is my handwriting.

22 Q. Okay. The For line says draw or
23 distribution of profits.

24 Explain what that is, if you can?

25 A. I can't explain anything other than what

1 it says.

2 Q. You just don't recall?

3 A. No. I mean, a minute ago we talked about
4 a note for \$5,000, and so I wonder if that's just me
5 indicating the wrong thing for it. I don't know. As
6 I sit here today, it's been three years. Maybe it
7 was repayment of that note and I just wrote it down
8 wrong.

9 Anyway, it happened when, in September of
10 2010?

11 MR. LALLI: It did, according to these
12 records. Twenty-two.

13 (EXHIBIT 22 WAS MARKED.)

14 Q. (By Mr. Lalli) This Exhibit 22, again, I
15 just wanted to see if I'm tracing this money
16 correctly.

17 It looks like -- Exhibit 22 is the
18 joint John and Suzanne Swallow account, and if you
19 look at the second page, it looks as if \$5,000 was
20 deposited into the joint checking account on
21 September 29.

22 Do you see that?

23 A. I do.

24 Q. And do you know if that's the same \$5,000
25 that was written on an I-Aware check to John Swallow

1 or Suzanne as indicated in Exhibit 21?

2 A. I don't know.

3 Q. Do you have any reason to think it's not?

4 A. I'm just trying to go back to the other
5 exhibit and see the date.

6 So the date of the check -- it was
7 deposited on 9-27. It looks like it likely is
8 because of the dates.

9 Q. As is indicated, if it's the same check
10 put into the joint account, do you know how that
11 would have been used other than for just normal
12 household expenses?

13 A. I don't. I couldn't tell you.

14 Q. Would you presume that it would have just
15 been used for normal household expenses?

16 A. I couldn't tell you. My wife is very
17 compartmentalized, so I just can't tell you. She'll
18 take a check and she'll put it into a subaccount for
19 a specific purpose, so I just can't tell you as I sit
20 here the use of that money.

21 Q. And the subaccounts I think you described
22 earlier, such as education or savings and --

23 A. Right. She has a settlement account from
24 her personal injury settlement where she put some of
25 her personal money.

1 Q. Right. Okay. I want to ask you some
2 questions about P-Solutions now.

3 I gather from our conversation so far that
4 you formed P-Solutions basically a year after you
5 formed the trust; is that right?

6 A. Right.

7 Q. And was it your intent to use P-Solutions
8 as -- well, let me not put words in your mouth.

9 What was your intent in forming
10 P-Solutions?

11 A. Well, the reason I formed it was because
12 of the cement plant project opportunity, and it
13 became a -- it was intended to be a project company.
14 I don't believe I would have formed it had it not
15 been for the cement opportunity.

16 Q. What do you mean a project company?

17 A. Well, that was a project that I was
18 involved in, the cement project company. I could see
19 that it could possibly be used for other projects
20 down the road.

21 Q. So it wasn't just a one purpose entity?

22 A. Well, yes. I would say that, yes.

23 Q. Okay.

24 A. You don't know when you set up a company
25 what other opportunities might come that might fit

1 within that company.

2 Q. And at the time of formation, which would
3 have been late 2010, was that at a time when you
4 believed that your compensation for your work on
5 Chaparral was going to be an equity interest?

6 A. Right. Yes.

7 Q. And therefore this trust structure was for
8 significant business opportunities; is that right?

9 A. Yes.

10 Q. That's the logic of P-Solutions being in
11 here?

12 A. Right. Yes.

13 Q. If you'd known that you were going to get
14 only \$23,000 as opposed to, you know, a big piece of
15 equity, would you have still put it into P-Solutions
16 as an entity owned by your trust?

17 A. I don't know. I might have decided --

18 MR. SNOW: That calls for speculation.

19 THE WITNESS: Yeah. I don't know what I
20 would have done.

21 Q. (By Mr. Lalli) All right. You were the
22 manager of P-Solutions, right?

23 A. Right, originally.

24 (EXHIBIT 23 WAS MARKED.)

25 Q. (By Mr. Lalli) This is a summary of the

1 change in manager for P-Solutions, just as we've seen
2 with SSV and I-Aware.

3 Do you see that?

4 A. I do.

5 Q. I take it your testimony would be the same
6 for this as it was for the others?

7 A. Yes.

8 Q. What is the status of P-Solutions now?

9 A. I couldn't honestly tell you. I haven't
10 checked it in the last six months to see if it's
11 currently registered.

12 Q. Is there any activity in the company?

13 A. No.

14 Q. Did P-Solutions ever have any employees?

15 A. No.

16 Q. Did it ever have any work that was done
17 other than by you?

18 A. No.

19 Q. Your wife, for example, didn't perform any
20 work out of that company or --

21 A. No.

22 Q. You didn't hire any employees?

23 A. No.

24 Q. Other than the work for Chaparral, did you
25 do any consulting work through P-Solutions?

1 A. I assigned some receivables to
2 P-Solutions, but I did not do any consulting work
3 through P-Solutions other than the work I did for
4 Richard Rawle.

5 Q. What do you mean you assigned receivables?

6 A. Well, I carried some accounts receivables
7 from before I joined the AG's office. Then in 2010,
8 after I formed P-Solutions, I assigned those
9 receivables to P-Solutions.

10 Q. What were the receivables for?

11 A. The receivables were for campaign
12 consulting work that I did with Jason Powers before I
13 joined the AG's office.

14 Q. So this would have been pre-December 2010
15 you did work?

16 A. Yes, uh-huh, pre-December 2009.

17 Q. That's right. I'm sorry.

18 And when were the receivables collected by
19 P-Solutions?

20 A. Well, they weren't all collected. I
21 believe that the ongoing receivables are around
22 \$25,000, and P-Solutions was paid \$7,000 in May of
23 2011 from Guidant Strategies, which is Jason's
24 company.

25 Q. Is there any documentation noting the

1 assignment of receivables?

2 A. I believe that he has documentation that
3 shows a receivable -- a payable to P-Solutions dated
4 December of 2010. I did say yes.

5 MR. SNOW: Did you say 2010 or 2009?

6 THE WITNESS: 2010. I think that
7 P-Solutions wasn't created until 2010.

8 MR. SNOW: Right.

9 Q. (By Mr. Lalli) All right. You told me
10 you assigned receivables.

11 A. Right.

12 Q. And the receivables would have been owing
13 to who? Swallow & Associates?

14 A. No. Would have been probably owing to me
15 personally.

16 Q. Okay. So you personally made an
17 assignment of receivables --

18 A. Owing to me.

19 Q. -- owing to you, and you assigned them to
20 P-Solutions?

21 A. Right.

22 Q. And you did that when?

23 A. In December of 2010.

24 Q. Why December of 2010?

25 A. Well, that's when Jason Powers and I met

1 and we talked about the receivable that his company
2 owed me, and I said I'm going to assign that and
3 hereby assign that to P-Solutions.

4 Q. And is there any documentation assigning
5 the receivable --

6 A. No.

7 Q. -- from Swallow & Associates to
8 P-Solutions?

9 A. It wasn't from Swallow & Associates. It
10 was from me personally.

11 Q. I'm sorry. My mistake. You did say that.

12 A. No. I did a verbal or oral assignment.

13 Q. Okay. You're basically assigning it from
14 you as the --

15 A. As an individual.

16 Q. You as an individual to --

17 A. My family's trust.

18 Q. -- to your family's trust -- well,
19 actually to an entity --

20 A. Right.

21 Q. -- within the family's trust?

22 A. You're right, to an entity held by, owned
23 by my family's trust.

24 Q. To an entity where you were the only
25 person performing the services?

1 A. That's right.

2 MR. LALLI: Twenty-four.

3 **(EXHIBIT 24 WAS MARKED.)**

4 Q. (By Mr. Lalli) Exhibit 24 is P-Solutions'
5 bank account records for 2011, and if I could direct
6 your attention, first of all, to Bates page 34.

7 Let's cross-reference Exhibit 25.

8 **(EXHIBIT 25 WAS MARKED.)**

9 Q. (By Mr. Lalli) Okay. So Exhibit 24 is
10 the bank statements, Exhibit 25 is the checks.

11 With reference to Exhibit 24, Bates
12 page 34, there is a deposit -- excuse me. A check of
13 \$5,917, and there's a handwritten notation "Suzanne."

14 Do you see that?

15 A. I do.

16 Q. Do you know whose handwriting "Suzanne"
17 is?

18 A. I'm assuming it's mine.

19 Q. Well, in producing these documents, do you
20 recall putting explanatory notes on the bank
21 statements?

22 A. I don't recall that. I may have. I mean,
23 it looks like my handwriting. I'm not going to deny
24 it's my handwriting, but --

25 Q. All right.

1 A. I don't know who else it could have been,
2 let's put it that way.

3 Q. Okay. When you produced these documents,
4 I understood you earlier to say that you didn't have
5 any hard copy bank statements in your house.

6 Did I understand that correctly?

7 A. I believe that's correct.

8 Q. And your wife told you to go to the bank
9 to get the bank accounts, right?

10 A. Right.

11 Q. And I presume when you got it from the
12 bank it didn't have the handwritten note "Suzanne" on
13 it, did it?

14 A. I wouldn't think so.

15 Q. Okay. If we cross-reference that \$5,917
16 check to Exhibit 25, there is a check for the same
17 amount, although written several days earlier,
18 March 30, 2011, to Suzanne Swallow.

19 Do you see that check?

20 A. Yes.

21 Q. Number 1002?

22 A. (Witness nodding head affirmatively.)

23 Q. Is that your handwriting on check 1002?

24 A. Yes.

25 Q. Okay. And it says that the check is for

1 taxes, and it looks to me like something IRA
2 contribution.

3 A. Right.

4 Q. Do you know what the "something" is?

5 A. That looks like it says SEP.

6 Q. Yeah, that's what I thought, too, but it's
7 confusing because this is in March.

8 Would you have been making an IRA
9 contribution as of September?

10 A. No. So that could be -- SEP could be an
11 abbreviation for the type of contribution that the
12 IRA is. I don't think it was September. I don't
13 think SEP is short for September.

14 Q. Do you know what it's short for?

15 A. It's short for -- I don't know. I don't
16 know what SEP stands for.

17 Q. Okay. Do you know -- you said you have
18 three IRA accounts?

19 A. Yes.

20 Q. Do you know which of the three the
21 contribution was for?

22 A. I do not know.

23 Q. Do you know if it was for yours or your
24 wife's?

25 A. I don't know.

1 Q. The taxes referred to there, do you recall
2 what taxes were owed?

3 A. Those would be income taxes.

4 Q. Federal or state or both; do you know?

5 A. I don't know.

6 Q. And you and your wife filed jointly,
7 didn't you?

8 A. That's right.

9 Q. So that would have been for your joint
10 income taxes?

11 A. That's right.

12 Q. Okay. Turn the page on Exhibit 24, if you
13 would, please, and 25, and I want to ask you about
14 the check 1003, \$13,200, which, again, in the
15 Exhibit 24 there's a handwritten notation "Suzanne."

16 A. Okay.

17 Q. And that cross-references to the actual
18 check which is Suzanne Swallow --

19 A. Okay.

20 Q. -- for \$13,200.

21 A. Right.

22 Q. Okay. Is that your handwriting on the
23 check? You filled it out?

24 A. Yes.

25 Q. What was the \$13,200 for?

1 A. Well, it was a payment -- it was a
2 distribution or however you want to call it to
3 Suzanne Swallow.

4 Q. Well, that's what my question is.
5 What did you call it? What did you intend
6 it for?

7 A. A distribution.

8 Q. A distribution of?

9 A. Profits.

10 Q. And why was a distribution of profits
11 being made to Suzanne?

12 A. Because she was a beneficiary of the
13 trust.

14 Q. And was there a purpose? I mean, was
15 there some need for the money?

16 For example, was this related to the
17 appliance purchase you talked about?

18 A. Well, I think she used the money in part
19 to buy new appliances and in part for taxes.

20 Q. Okay. Well, I presume that you and your
21 wife would have talked about what you were going to
22 use the money for?

23 A. Right. It's just been two and a half
24 years.

25 Q. You just don't remember. Okay. Fair

1 enough.

2 But you did have a recollection, as I
3 understood it earlier, of some money that went out of
4 one of the entities in the trust was for the purchase
5 of new appliances?

6 A. Was for Suzanne's purchase of new
7 appliances, yes.

8 Q. What were the appliances for? I presume
9 your house?

10 A. For the kitchen.

11 Q. Yeah. Okay. Do you and your wife live
12 together?

13 A. We do.

14 Q. Okay. What is the \$7,000 deposit on
15 Exhibit 24?

16 MR. SNOW: That's a smart ass objection.

17 THE WITNESS: Which one you talking about?

18 Q. (By Mr. Lalli) I'm talking about
19 Exhibit 24.

20 A. Twenty-four, and which page?

21 Q. Thirty-five, Bates 35.

22 A. Oh, I'm sorry. Oh, \$7,000 deposit. I
23 believe that is the payment by Guidant Strategies to
24 P-Solutions on that account receivable I described.

25 Q. So the account, or the receivable was

1 generated or earned by you personally prior to
2 December of 2009, right?

3 A. That's right.

4 Q. And Jason Powers is paying this in May of
5 2011?

6 A. That's right.

7 Q. And he still owes you money?

8 A. He still owes P-Solutions money, yes.

9 Q. He still owes P-Solutions money?

10 A. That's right.

11 Q. For work that you personally assigned to
12 P-Solutions?

13 A. That's right.

14 Q. Are you going to send him to a collection
15 agency?

16 A. I haven't decided that yet. Don't tell
17 him I said that.

18 Q. Well, I assume you can refer yourself to a
19 good lawyer to collect on that money.

20 A. I sure can.

21 Q. Okay. Do you know of any other -- I mean,
22 is there another possibility of what that might have
23 been for, or are you pretty sure that this was the
24 \$7,000 that Powers --

25 A. No. I remember that because I've looked

1 at it recently.

2 Q. Okay. Let's turn to Bates page 39 in
3 Exhibit 24, and I want to draw your attention to the
4 \$500 check to SSV Management.

5 A. Okay.

6 Q. Do you see that?

7 A. Which one is it on, which exhibit?

8 Q. It's Bates page 39 on Exhibit 24.

9 A. Okay. And you're referring to the line
10 that says, "Withdrawal Transfer to SSV Management"?

11 Q. Yup, uh-huh.

12 A. Okay.

13 Q. And then \$500.

14 A. Okay.

15 Q. And if you recall when we were looking at
16 SSV's documents, there was -- it looked to me like
17 \$500 was transferred to SSV just so it could be --
18 there was money in there to keep up with the \$14 or
19 \$15 deduction each month.

20 A. Right.

21 Q. Is that your recollection?

22 A. I believe that's right, yeah.

23 Q. Okay. In Exhibit 24 please turn to the
24 last page, which is 42. The other one (indicating).

25 And that looks to be a Nevada trustee fee

1 that's paid?

2 A. Right.

3 Q. Why is the trustee fee being paid out of
4 the P-Solutions account?

5 A. Well, I can, I guess, explain it by saying
6 there was not a trust account, and since the company
7 is owned by the trust, the payment was made by the
8 company that had the money.

9 Q. So it was just a matter of expediency
10 because that's where the money was?

11 A. I believe that's correct.

12 MR. LALLI: Okay. You can put 24 away,
13 but keep 25 open. We'll mark Exhibit 26.

14 **(EXHIBIT 26 WAS MARKED.)**

15 Q. (By Mr. Lalli) Okay. Exhibit 26 is
16 P-Solutions' bank account statements for 2012, and on
17 the first page, which is Bates 43 --

18 A. Uh-huh (yes).

19 Q. -- there is a check written for \$250 and a
20 handwritten note "Charitable contribution."

21 A. Right.

22 Q. Is that your handwriting?

23 A. Yeah, it looks like it.

24 Q. And cross-reference that to Exhibit 25,
25 Bates page 57, and there is a check 1005 that I

1 believe cross-references --

2 A. Right.

3 Q. -- written to Sandy Honorary Colonels?

4 A. Right.

5 Q. And in the For line, is that dues?

6 A. It does.

7 Q. This is your handwriting, I take it?

8 A. That is, right.

9 Q. What are the Sandy Honorary Colonels?

10 A. It's an organization that supports the
11 local police department. It's a nonprofit company.

12 Q. Okay. And are you affiliated with that
13 company?

14 A. I am. I am a -- I'm a member of the
15 Colonels.

16 Q. And is that like annual dues or something
17 that you pay?

18 A. Yes.

19 Q. And so you paid your annual dues out of
20 the P-Solutions account; is that right?

21 A. That's right.

22 Q. Got it. Okay. In Exhibit 26 let's look
23 at Bates page 47, and there's a notation there "Loans
24 from John and Suzanne."

25 A. Right.

1 Q. What were those loans for?

2 A. Those were loans to P-Solutions so that
3 P-Solutions could refund the money to Mr. Rawle.

4 Q. Okay. And who made the decision to do
5 that?

6 A. Suzanne and I made it together.

7 Q. Whose idea was it?

8 A. Well, I gave the idea to Suzanne and
9 Suzanne concurred.

10 Q. Okay. Let's look in Exhibit 24 [sic] to
11 Bates page 51, and it looks like this -- the notation
12 is "New check from Rawle."

13 A. Right.

14 Q. Okay. I understand that.

15 And the next page, Bates page 52, would
16 you just explain those notations and transactions for
17 me?

18 A. Well, it looks like -- this is on the
19 Mountain America Credit -- I'm sorry. This is on the
20 P-Solutions account, right?

21 Q. Uh-huh (yes).

22 A. A check for \$16,000 looks like from my
23 notations here payable to John Swallow and Suzanne
24 Swallow, a repayment of the loan referenced in the
25 prior exhibit for the \$15,500 and the \$500 loan that

1 our family gave to P-Solutions, right?

2 Q. Right.

3 A. Okay. So do you want me to continue?

4 Q. The check to SSV, I think I already asked
5 you what that was for, and you said you didn't know.

6 A. Yeah, I don't know. Yeah, that's fine,
7 and the check to Rawle, that's, I guess, him
8 cashing -- I'm guessing that's him cashing the refund
9 check.

10 Q. Now, do I understand correctly that there
11 were two checks written to Rawle?

12 A. Right.

13 Q. What happened there?

14 A. We gave him a check earlier in the summer,
15 I think in May, and he never -- he'd never cash it,
16 so I kept calling him and saying please cash the
17 check, and he wouldn't cash the check, and some time
18 later he told me he'd lost the check. Assuming that
19 he knew what he was talking about, we went ahead and
20 wrote another check to him. That's why there were
21 two checks to him.

22 Q. And then he found the first one and
23 canceled the second one?

24 A. Well, he found the first one and cashed
25 it, and then his son cashed the second check, and

1 then we had nonsufficient funds in the account. That
2 was kind of what happened, as I recall.

3 Q. And I presume they paid it back?

4 A. Yeah. We probably paid a fee or whatever,
5 NSF fee, so it didn't go through.

6 MR. LALLI: Where are we?

7 THE COURT REPORTER: Twenty-seven.

8 MR. LALLI: Twenty-seven.

9 **(EXHIBIT 27 WAS MARKED.)**

10 Q. (By Mr. Lalli) Exhibit 27 is just a copy
11 of a check to P-Solutions of \$15,000. Looks like
12 it's dated April 8, 2011?

13 A. Right, it does.

14 Q. And the check is a check to RMR
15 Consulting, LLC --

16 A. Right.

17 Q. -- do you see that?

18 A. I do.

19 Q. What is that entity?

20 A. Well, I'm assuming that's Richard Rawle's
21 company. RMR probably stands for Richard M. Rawle.

22 Q. Is that the company you were doing
23 consulting work for with respect to the Chaparral
24 cement project?

25 A. Well, it looks like it was. I thought I

1 was doing consulting work for Richard Rawle, but he
2 paid me with an RMR Consulting, LLC, check, but looks
3 like that's the check he used to pay P-Solutions in
4 April of 2011 --

5 Q. Right.

6 A. -- for the consulting work that I had done
7 on behalf of P-Solutions for him.

8 Are you done with Exhibit 26 and 25?

9 Q. I'm done with that one (indicating). I
10 don't know if I'm done with Exhibit 25 yet.

11 A. Okay.

12 MR. LALLI: I want to mark as Exhibit 28,
13 this is Schedule C of the year 2011 tax returns.

14 **(EXHIBIT 28 WAS MARKED.)**

15 Q. (By Mr. Lalli) This is a Profit or Loss
16 From Business of a sole proprietorship, and it
17 identifies a net profit of \$14,294 from P-Solutions
18 for tax year 2011.

19 Do I understand that accurately?

20 A. It looks like that's what it is, yes.

21 Q. And I think this demonstrates what we
22 talked about earlier is that the income that
23 P-Solutions -- well, the \$15,000 that went to
24 P-Solutions, you personally paid taxes on it?

25 A. That's correct.

1 Q. Okay. And the second page of this is an
2 amended tax return.

3 Why did you -- why did you amend your 2011
4 tax return?

5 A. Because for some reason the \$7,000 paid by
6 Guidant Strategies -- as I went through this
7 production exercise earlier in the year, I noticed
8 that the \$7,000 from Guidant Strategies had not been
9 picked up on my taxes for 2011, so I wanted to not
10 cheat the IRS, and I wanted to refile my taxes, which
11 I did.

12 Q. And when did you refile your 2011 taxes?

13 A. What is the date on the document?

14 Q. I think I may have it right here.

15 A. Okay. It was within the last six months,
16 I think.

17 Q. So sometime in 2013?

18 A. Yes, as soon as I discovered the mistake.

19 Q. Who's your tax accountant?

20 A. His name is David Posey.

21 Q. And how long have you used him?

22 A. For probably eight or nine years.

23 MR. LALLI: Let's go off the record for a
24 moment.

25 THE VIDEOGRAPHER: We are off the record.

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The time is 5:54 p.m.

(Discussion held off the record.)

(Deposition adjourned at 5:54 p.m.)

* * *

1 Case: In re the Special Investigation of Attorney
 General John E. Swallow
 2 Case No.: 130905293
 Reporter: Denise M. Thomas
 3 Date taken: October 15, 2013

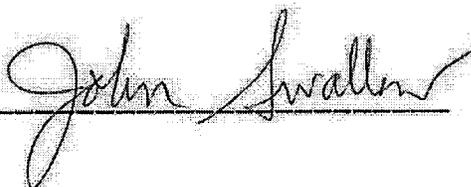
WITNESS CERTIFICATE

4
 5 I, JOHN E. SWALLOW, HEREBY DECLARE:
 That I am the witness in the foregoing
 6 transcript; that I have read the transcript and know
 the contents thereof; that with these corrections I
 7 have noted this transcript truly and accurately
 reflects my testimony.

8	PAGE-LINE	CHANGE/CORRECTION	REASON
9			
10	<u>25, 13</u>	<u>Macintosh Air</u>	<u>- Not Microsoft Air</u>
11	<u>28, 2</u>	<u>2013</u>	<u>instead of 2012</u>
12	<u>38, Lines 13-19</u>	<u>I did not recall that my current phone was a replacement of my</u>	<u>Nov. 2011 Droid which malfunctioned in mid-late 2012 and was replaced in contract.</u>
13	<u>38, Line 7</u>	<u>Blackberry crashed + the replacement was a Droid.</u>	
14	<u>39, Line 9</u>	<u>in bulk</u>	
15	<u>41, Line 15</u>		
16	<u>160, 14</u>	<u>unlike most people</u>	
17		<u>from Page</u>	
18			No corrections were made.

19 I, JOHN E. SWALLOW, HEREBY DECLARE UNDER THE PENALTIES
 OF PERJURY OF THE LAWS OF THE UNITED STATES OF
 20 AMERICA AND THE LAWS OF THE STATE OF UTAH THAT THE
 FOREGOING IS TRUE AND CORRECT.

21 WITNESS MY HAND this 14th day of Nov.,
 22 2013.

23
 24 
 25 _____ JOHN E. SWALLOW

1 Case: In re the Special Investigation of Attorney
 2 General John E. Swallow
 3 Case No.: 130905293
 4 Reporter: Denise M. Thomas
 5 Date taken: October 15, 2013

WITNESS CERTIFICATE

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 7 That I am the witness in the foregoing
 8 transcript; that I have read the transcript and know
 9 the contents thereof; that with these corrections I
 10 have noted this transcript truly and accurately
 11 reflects my testimony.

PAGE-LINE	CHANGE/CORRECTION	REASON
51, 1	<u>Summer</u>	
56, 15	<u>Cement, not gold.</u>	
62, 22	<u>Getting paid for that</u>	
88, 12-16	<u>upon reflection, Richard had proposed a finders fee if someone found a purchaser for the project. In late 2011-12, I introduced a few people to the project on that basis. It was not part of my earlier consulting work.</u>	
90, 14	<u>→ finders fee -- not equity interest.</u>	
90, 17	<u>→ finders fee -- not equity interest</u>	
94, 2	<u>No. Finders fee.</u>	

No corrections were made.

19 I, JOHN E. SWALLOW, HEREBY DECLARE UNDER THE PENALTIES
 20 OF PERJURY OF THE LAWS OF THE UNITED STATES OF
 21 AMERICA AND THE LAWS OF THE STATE OF UTAH THAT THE
 22 FOREGOING IS TRUE AND CORRECT.

23 WITNESS MY HAND this 14th day of Nov.,
 24 2013.

25 John Swallow JOHN E. SWALLOW

1 Case: In Re: Special Investigation of Attorney
 2 General John Swallow.
 3 Case No.: 130905293
 4 Reporter: Denise M. Thomas
 5 Date taken: October 25, 2013

6 WITNESS CERTIFICATE

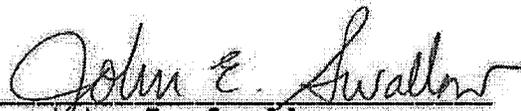
7 I, JOHN E. SWALLOW, HEREBY DECLARE:
 8 That I am the witness in the foregoing
 9 transcript; that I have read the transcript and know
 10 the contents thereof; that with these corrections I
 11 have noted this transcript truly and accurately
 12 reflects my testimony.

PAGE-LINE	CHANGE/CORRECTION	REASON
182-5	DEPARTMENT of Commerce	CORRECT NAME
218-15	EVER GET TO IT	ADD "TO"
219-1	TO THEM	NOT "US"
233-18	I WAS SURE	TENSE
262-25	HE HAD TO	NOT "WAS"
271-4	(MAKES NO SENSE)	
278-14	I WANTED TO BE CLEAR	TAKE OUT "HIM"
286-16	RECOLLECTION WAS	TENSE
280-24	TO WHEN I'D	CORRECT WORD
281-2	DELETE "PHONE"	NOT PHONE CONV.
286-23-25	NON RESPONSIVE - MISUNDERSTOOD QUESTION	
295	NOT SURE IT WAS EARLY IN THE	
300-8	DAY - MAY HAVE	
300-8	I THINK I VISITED WITH HIM	DONT THEM

16 No corrections were made.

17
 18
 19 I, JOHN E. SWALLOW, HEREBY DECLARE UNDER THE
 20 PENALTIES OF PERJURY OF THE LAWS OF THE UNITED STATES
 21 OF AMERICA AND THE LAWS OF THE STATE OF UTAH THAT THE
 22 FOREGOING IS TRUE AND CORRECT.

23 WITNESS MY HAND this 22 day of Nov,
 24 2013.

25 
 John E. Swallow

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

IN RE: THE SPECIAL	)	Videotaped
INVESTIGATION OF	)	Deposition of:
ATTORNEY GENERAL JOHN)	
E. SWALLOW	)	<u>JOHN E. SWALLOW</u>
)	
	)	Volume 2
)	
	)	Case No. 130905293
)	
	)	Honorable Vernice Trease

October 25, 2013 * 1:37 p.m.

Location: Snell & Wilmer
15 West South Temple -- Suite 1200
Gateway Tower West
Salt Lake City, Utah

Reporter: Denise M. Thomas, CRR/RPR
Notary Public in and for the State of Utah

Ryan Reverman, CLVS

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A P P E A R A N C E S

SPECIAL COUNSEL TO THE LIEUTENANT GOVERNOR OF THE STATE OF UTAH:

Matthew L. Lalli
Stewart O. Peay
SNELL & WILMER
Attorneys at Law
Salt Lake City, Utah 84101-1004
Telephone: 801.257.1900
Fax: 801.257.1800
E-mail: mlalli@swlaw.com
speay@swlaw.com
jstewart@swlaw.com

FOR THE ATTORNEY GENERAL JOHN E. SWALLOW:

Rodney G. Snow
Jennifer A. James
CLYDE SNOW & SESSIONS
Attorneys at Law
201 South Main Street -- Suite 1300
Salt Lake City, Utah 84111
Telephone: 801.322.2516
Fax: 801.521.6280
E-mail: rgs@clydesnow.com
jaj@clydesnow.com

* * *

I N D E XJOHN E. SWALLOWPAGE

Examination By Mr. Lalli	171
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E X H I B I T SNUMBERDESCRIPTIONPAGE

29	May 2012 Mountain America Credit Union Statement of Account for John E. Swallow and Suzanne M. Swallow, Bates Nos. JS000636-646, "Confidential"	189
30	4-5-11 e-mail exchange between Trista Gibson and Cort Walker, Bates No. SCM00603	203
31	6-29-11 e-mail to Kip from John Swallow, Bates No. SCM00623	204
32	2012 U.S. Individual Income Tax Return for John E. Swallow and Suzanne M. Swallow, Bates Nos. JS000880-904, "Confidential"	210
33	NetSpend Account History	215
34	9-29-10 e-mail series between John Swallow, Richard Rawle and Jeremy Johnson, Bates Nos. SCM00417-418	234
35	10-7-10 e-mail to Richard Rawle from Jeremy Johnson, Bates No. SCM00426	240
36	10-11-10 e-mail to Richard Rawle from John Swallow, Bates No. SCM00430	241
37	12-10-10 e-mail series between John Swallow, Richard Rawle, Bryce Payne and Cort Walker, Bates No. SCM00567	241

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E X H I B I T S (Continued)

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
38	3-4-11 letter to Richard Rawle from William I. Rothbard, Bates No. SCM00599	251
39	Transcript of Swallow/Krispy Kreme Meeting	254
40	5-2-12 letter to Richard Rawle from John Swallow, Bates Nos. JS000069-70	276
41	12-5-12 Declaration of Richard Rawle, Bates No. SCM05196-5199	282
42	Mountain America Credit Union Statements of Account of John E. Swallow and Suzanne M. Swallow, Bates Nos. JS000519, 524, 526, 536, 543, 545, 553, 560, 562, 600, 605, 608, 619, 624, 627, "Confidential"	287
43	3-9-12 2012 State Constitutional Office Declaration of Candidacy and related forms	292
44	3-9-12 2012 State Constitutional Office Declaration of Candidacy and related forms	308
45	1-12-13 e-mail to multiple people from John Swallow, Bates No. SCM01439-1441	325

INFORMATION REQUESTED

Page 257/Line 3: Second transcript of Krispy Kreme meeting

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P R O C E E D I N G S

THE VIDEOGRAPHER: We are now on the record. The time is approximately 1:37 p.m.

This is Volume II in the deposition of John Swallow, In Re: The Special Investigation of Attorney General John Swallow, being held at the offices of Snell & Wilmer in Salt Lake City, Utah, on October 25, 2013.

My name is Ryan Reverman, Certified Legal Videographer, with the firm of CitiCourt. The court reporter is Denise Thomas, also with the firm of CitiCourt.

Counsel will now state their appearances for the record and the witness will be sworn.

MR. LALLI: Matt Lalli and Stewart Peay representing the Lieutenant Governor.

MR. SNOW: Rod Snow and Jennifer James for the Attorney General.

JOHN E. SWALLOW,

having been first duly sworn to tell the truth, was examined and testified as follows:

EXAMINATION

BY MR. LALLI:

Q. One thing I didn't ask you last week when we met was whether you have social media accounts?

A. I don't think I have them any longer. I had a campaign account and a personal account, and I believe they've both been closed down.

Q. And which social media were they?

A. Facebook.

Q. Both Facebook accounts?

Do you recall the approximate beginning and end dates of the accounts?

A. The campaign page would have been in line with when the campaign started. I think that would be the late fall of 2011, but I couldn't be sure. I don't recall. The personal one I think started before then. I'm not sure how far back it went.

Q. And when did it end?

A. I know that my daughter, Catherine, closed down one, if not both, of my social accounts within the last month or so, or two months.

Q. Starting with the campaign Facebook account, can you describe how you or others used that?

A. Mostly -- almost exclusively it was done

1 and managed by my campaign.

2 Q. All right. And did you solicit, respond
3 to comments, or did they solicit or respond to
4 comments through Facebook?

5 A. Primarily they would respond to comments
6 on Facebook, and they were primarily, as I recall,
7 campaign oriented, and the way it worked was that --
8 well, I'll just answer your question.

9 Q. Well, that's kind of what I want to know
10 is how did it work? How was it used?

11 A. Well, I believe that we would post
12 important issues or events on the Facebook account,
13 and then when there were comments, the campaign staff
14 would generally respond to those comments, and if
15 there was a personal note, if a friend from college
16 or someone I had known in the past wrote in or
17 someone from politics wrote in that had a particular
18 question, I'd be fed that question and then would
19 either call that person or give a more personal
20 response.

21 Q. Did you spend time personally reading the
22 Facebook page for the campaign?

23 A. No.

24 Q. And did you spend --

25 A. When you say that, that's pretty

1 categorical, but normally, no.

2 Q. Okay. There may have been a random
3 occasion where you did, but not a lot?

4 A. Right.

5 Q. And same answer with respect to actually
6 sitting at a computer terminal and typing in
7 responses?

8 A. Same answer.

9 Q. Okay. Let's talk about your personal
10 Facebook account.

11 Can you describe how you used that?

12 A. It was done pretty much the same way. In
13 other words, I didn't spend much time at all on
14 Facebook. I'm not very conversant with Facebook.

15 Q. You and me both.

16 A. I hate to admit under oath, but that's the
17 truth.

18 Q. Well, I don't even have and never have had
19 a Facebook account, so no apology necessary for me.

20 What about any other social media,
21 LinkedIn or Twitter or anything like that?

22 A. I believe I have a Twitter account. I
23 haven't used it since I've been Attorney General, and
24 towards the end of the campaign they were trying to
25 get me to Tweet things out a little more frequently,

1 but I never have -- have not adopted it.

2 Q. I think you need to be in a different
3 generation.

4 When we broke off last time, I was asking
5 you some questions about P-Solutions, and so I'd like
6 to pick up there.

7 Following up on a point you made about the
8 work you did for Chaparral was not John Swallow
9 individually but John Swallow acting for P-Solutions.

10 Did I understand that accurately?

11 A. Right. That was the intent, to do that
12 through P-Solutions.

13 Q. And as I understand it, the consulting
14 services that were performed for Chaparral were by
15 you and you alone, correct?

16 A. Well, when you say Chaparral, I don't know
17 if you just mean Chaparral or you mean Richard Rawle.

18 Q. I mean with respect to the cement project
19 in Nevada for which you received -- or for which your
20 services garnered \$23,500.

21 A. Right.

22 Q. And I believe you told me that you were
23 the only person who performed services for
24 P-Solutions to earn that money.

25 A. That is correct.

1 Q. And there was no one else -- there were no
2 other employees or consultants or advisors to
3 P-Solutions other than yourself.

4 A. That is correct.

5 Q. Did you have some sort of arrangement with
6 P-Solutions about you providing services? Did you
7 get a fee? Was there terms to your relationship,
8 anything like that?

9 A. There was nothing formal.

10 Q. One of the things you did was analogize to
11 me doing work for Snell & Wilmer, and of course I do
12 work through Snell & Wilmer, but I get paid, and, you
13 know, there are terms to that arrangement.

14 Anything like that that you had with
15 P-Solutions?

16 A. No.

17 Q. Why did you assign -- well, let me ask
18 this and not assume.

19 Did you assign the income generated from
20 your personal services to P-Solutions?

21 A. Not in a formal assignment as you said,
22 not a written assignment.

23 Q. Okay. Well, I'm analogizing to what you
24 told me about Jason Powers, and you said that you had
25 performed some personal consulting services for him

1 before you went to work at the Attorney General's
2 office and then you subsequently assigned that to
3 P-Solutions.

4 A. Right.

5 Q. Did you do the same thing with respect to
6 the personal services you performed for the cement
7 project?

8 A. Well, it was my intention all along to be
9 doing all the work for P-Solutions through
10 P-Solutions and to have P-Solutions receive income
11 for that, and I don't know if that's a legal
12 description of how an assignment would work.

13 I'm not sure that it fits in the
14 definition of assignment, but certainly it was my
15 intent to have all of the income that was earned
16 through my work on the cement project go to the
17 benefit of my family and P-Solutions through its
18 ownership by the trust that belonged to my family.
19 That was my intention all along.

20 Q. And was that different -- and this may
21 sound facetious, but when I do work for
22 Snell & Wilmer, about 99 percent of what I earn goes
23 to the benefit of my family.

24 Was there some difference between this
25 work you were doing for P-Solutions as opposed to the

1 work you were doing for the benefit, or, excuse me,
2 for the Attorney General in terms of --

3 A. Well, my understanding was it was very
4 significant. That's when I met with my tax attorney
5 and set up my trust, my family's trust. I was the
6 trustor of that trust. The whole point was to donate
7 the opportunity to an entity owned by the trust so
8 that I would not have any legal right to any of the
9 proceeds of that work, and I've been told, and if
10 you've talked to an estate or a tax attorney you
11 probably understand this, that that is very legal and
12 it's very common in that type of an instrument, and
13 that is the basis for my forming that type of an
14 instrument and doing the work that way. That was the
15 whole plan for that, and that was long before I
16 decided to run for political office.

17 Q. When did you decide to run for
18 Attorney General?

19 A. Well, I think -- I mean, that's a very
20 tough question. I've been asked that question
21 before, and I don't think there was an exact moment
22 when my wife and I looked at each other when we said
23 we're in. It was more of a gradual process, but we
24 became very serious of it in the summer of 2011, and
25 I filed my campaign organization documents in the

1 fall of 2011, but I had talked about the possibility
2 and the likelihood of it for many, many months before
3 then.

4 Q. Do you recall with whom you spoke to when
5 you talked about it for the many months before?

6 A. Well, you have to -- do I recall? No, not
7 specifically.

8 Q. For example, did you talk to Jason Powers
9 about running for Attorney General --

10 A. Sure.

11 Q. -- the possibility of it?

12 A. Sure.

13 Q. And can you approximate when those
14 conversations first began?

15 A. It would have happened -- I mean, I can't
16 put my finger on when exactly that would have
17 happened, but --

18 Q. Let me try and give you some --

19 A. I'm not trying to be evasive. I'm trying
20 to be responsive to your question.

21 Q. I perfectly understand that you may not
22 remember, so let me try and give you a milestone to
23 try to gauge it.

24 Can you say whether you began considering
25 a run for Attorney General prior to the time you went

1 to work as Chief Deputy in December of 2009?

2 A. I knew that it would be a possibility if
3 it's something that I'd like to do, and I wanted to
4 actually work in the office before I gave it real
5 serious thought because I didn't know if I would like
6 working in the Attorney General's office. I didn't
7 know if I'd like to be Attorney General, but I knew
8 it was a possibility.

9 Q. I know you had been involved politically
10 prior to the time that you went to the Attorney
11 General's office.

12 When you went to the Attorney General's
13 office, did you still maintain political aspirations?

14 A. Sure. Yes.

15 Q. When we spoke last, you mentioned that you
16 had been in communication with Lee McCullough?

17 A. Yes.

18 Q. Did you discuss with him the witness
19 statement that we had asked him to sign?

20 A. Yes.

21 Q. Did you review a copy of that witness
22 statement?

23 A. I believe I did.

24 Q. Did you make suggestions about things to
25 add or delete?

1 A. You know, most of those discussions were
2 in the presence of my other attorneys here,
3 Jennifer James. What I recall saying to him was you
4 tell the truth and you tell things the way you
5 remember them, and I don't want to put words in your
6 mouth. Those are the types of things I said to him.

7 Q. I'm concerned particularly about adding or
8 deleting things from the summary of the witness
9 statement that we prepared.

10 Did you do that specifically?

11 A. I don't recall doing that specifically.

12 Q. Have you been involved in investigations
13 similar to this with the Attorney General's office?

14 A. No, I haven't.

15 Q. Are you aware of those having been
16 conducted?

17 A. "Similar to this," what do you mean by
18 that?

19 Q. Well, where the Attorney General is
20 investigating some party or parties?

21 A. No, actually, I haven't.

22 Q. Is that something that occurs in the
23 Attorney General's office?

24 A. Do we have investigators in the
25 Attorney General's office? Is that your question?

1 Q. Sure.

2 A. Yes, we do.

3 Q. Does your office conduct investigations?

4 A. Our office does conduct investigations.

5 Q. And do you do that prior to bringing
6 either civil or criminal enforcement proceedings?

7 A. Well, let me just say this: I was the
8 division chief over the civil divisions, and in the
9 civil divisions we didn't conduct investigations.
10 There was a very bright line between the criminal
11 investigations divisions and the civil side of the
12 office where I was involved, and so I can't speak
13 with a lot of authority in terms of how and what we
14 do as an office when we bring an investigation and
15 when we file charges against someone.

16 Q. And you haven't learned that in your
17 several months as the Attorney General?

18 A. I haven't been specifically involved in
19 very many of those types of things since I've been
20 involved, but I have been involved to a very limited
21 extent.

22 Q. Okay. Well, whether it's criminal or
23 civil, do you have knowledge of whether the
24 Attorney General's office conducts investigations of
25 people prior to the time a proceeding, whether civil

1 or criminal, is instituted?

2 A. Well, I'd say sometimes yes and sometimes
3 no, and I'm happy to give you an example of that.

4 Q. Sure.

5 A. In Utah, the Division of Public Commerce
6 has a Consumer Protection Division within it. In
7 that division the investigators who investigate
8 consumer complaints and issues and prepare cases,
9 they are all housed within the Department of
10 Commerce, which is under the Governor's authority and
11 not under the Attorney General's authority, so in
12 those cases investigation will be conducted by that
13 investigation team outside of our office, and then
14 the case will be prepared and then brought into the
15 Attorney General's office.

16 So without any or much further
17 investigation a case will be filed in that
18 circumstance. I believe it has to do with securities
19 issues as well, but there are other areas where our
20 office does the whole investigation and then brings
21 the charges.

22 Q. Do the investigators prepare witness
23 statements?

24 A. I don't have -- I'm assuming that they do,
25 but you're asking me for my testimony, and so I don't

1 want to speculate.

2 Q. If you don't know --

3 A. I'm assuming -- I'm assuming that they
4 would and that they do.

5 Q. And in your view, would it be appropriate
6 for the witness statements to be viewed and reviewed
7 by the subjects of the investigation and edited and
8 modified?

9 A. I'm not going to make a comment about that
10 because I don't want to speculate about that. I
11 think that's an issue for my attorney and for you
12 maybe to discuss.

13 MR. SNOW: If the investigator is talking
14 to the subject's attorney, it would be perfectly
15 appropriate for that attorney to communicate with his
16 client about it.

17 MR. LALLI: Okay.

18 MR. SNOW: That's a different situation
19 than the example you're trying to draw, in my
20 judgment.

21 Q. (By Mr. Lalli) Other than Mr. McCullough,
22 have you reviewed or made any efforts to add,
23 subtract to, edit or modify any other witness
24 statements that we have prepared and attempted to use
25 in this investigation?

1 MR. SNOW: I'll object to that to the
2 extent you're suggesting he added, subtracted or
3 modified the Declaration that you presented to
4 Lee McCullough.

5 While we're on the subject, we thought the
6 Declaration you presented to Lee McCullough was a
7 little twisted and one-sided. We thought it ought to
8 be more balanced, as counsel for Mr. Swallow. It's a
9 two edge -- it's a two-way street, Matt.

10 MR. LALLI: Well, it's not a two-way
11 street. All right? The two-way street would be for
12 us to now take out a witness statement that was
13 merely an attempt to factually summarize our
14 interviews with McCullough and now give it to
15 David Irvine and Allen Smith and let them review it
16 and argue, the very reason we didn't want you
17 participating in those interviews in the first place.
18 We don't want to turn this into an adversarial
19 proceeding. This is an investigation.

20 MR. SNOW: Well, we have our --

21 MR. LALLI: In our view, it's obstructed
22 and compromised our investigation to the point where
23 we probably now have to depose all of these people,
24 and we were trying not to do that out of expense
25 concerns.

1 MR. SNOW: Well, the only example we're
2 talking about here is Mr. McCullough.

3 MR. LALLI: Well, therefore --

4 MR. SNOW: He acted as his attorney --

5 Q. (By Mr. Lalli) Therefore, my question
6 is --

7 MR. SNOW: And he contacted us, by the
8 way. He had some concerns about what you drafted, so
9 I don't think he viewed it as being exactly what he
10 had told you, but that's an issue for another day.
11 If you want to depose him, that's fine.

12 MR. LALLI: We've been back and forth with
13 Mr. McCullough repeatedly in an effort to get his
14 testimony correct, and we have never inhibited him or
15 suggested that he not add or subtract to what we
16 wrote. To the contrary. What we do object to is
17 Mr. Swallow and you adding to and subtracting to that
18 witness statement.

19 MR. SNOW: To make it truthful and correct
20 and complete, you object to that?

21 MR. LALLI: Well, I object to the advocacy
22 that's contained in the Declaration.

23 MR. SNOW: Well, I'm arguing with you as
24 an advocacy.

25 MR. LALLI: We're not advocates.

1 MR. SNOW: Well, you may not be, but we
2 thought the Declaration is an advocacy.

3 MR. LALLI: Okay.

4 MR. SNOW: We only wanted the statement to
5 be accurate and truthful.

6 MR. LALLI: All right.

7 MR. SNOW: And Mr. Swallow, frankly, was
8 not involved in those discussions. I think
9 Mr. McCullough was perfectly within his rights to
10 contact us about the Declaration.

11 THE WITNESS: So with the understanding --

12 MR. SNOW: Is there a question pending?

13 MR. PEAY: Yes.

14 MR. LALLI: Yeah, there is.

15 MR. SNOW: I'm sorry. I lost it.

16 THE WITNESS: I remember the question, but
17 I had the same concerns my counsel expressed, but I
18 will say this: I haven't seen or discussed any other
19 witness statements from anyone that you've
20 interviewed besides --

21 MR. SNOW: Who have you interviewed?

22 THE WITNESS: Pardon me? But I believe I
23 was or you were contacted by Mr. McCullough with some
24 concerns.

25 MR. SNOW: That's my memory.

1 Q. (By Mr. Lalli) And did Mr. McCullough
2 tell you that we were attempting to limit his
3 testimony in any way?

4 A. I don't recall, but I do recall him, I
5 think, saying he drafted it --

6 Q. Okay.

7 A. -- and he had concerns about the content.

8 Q. Okay. You made a point last time we met
9 of saying that your intention was to withdraw as
10 manager of P-Solutions, SSV Management and I-Aware
11 prior to March 15, 2012, that is reflected in the
12 records that we showed you as exhibits.

13 Do you recall that?

14 A. Actually, I recall something a little
15 different from that.

16 Q. What do you recall?

17 A. I thought I recalled that on March 9th
18 when I discussed the issues with Mr. McCullough
19 before I filled out the forms, after he gave me the
20 advice he gave me, I told him I was going to be
21 resigning at that point and that I deemed it
22 effective upon my communication of that to him. I
23 believe that was my testimony.

24 Q. Okay. Why was the timing of the
25 withdrawal important to you?

1 A. Well, I certainly didn't want to
2 misrepresent on the forms what I was writing down on
3 the forms, because I had to sign something that said
4 this is true and accurate to the best of my
5 understanding and belief, something like that, and so
6 I wanted to make sure if I was not acknowledging the
7 position, that I no longer held the position out of
8 integrity.

9 Q. Okay. And I believe you told me that you
10 had the meeting with Mr. McCullough, you believe it
11 was on March 8 or 9, 2012; is that right?

12 A. You know, I've -- right, March 8 or 9, but
13 it was probably more likely on March 9th.

14 Q. Okay. And did you meet with
15 Mr. McCullough more than once?

16 A. Well, I spoke with him on the phone on
17 March 9th, and I believe I met with him personally
18 between March 9th and March 15th, but it was a very
19 busy time for me as the campaign was just getting
20 started, and it's hard for me to recall exactly when
21 I met with him, but I'm confident it was before the
22 15th when I met with him in person.

23 Q. Okay. We'll come back to that in a
24 minute.

25 MR. LALLI: Where did we leave off?

1 THE COURT REPORTER: Twenty-nine. We'll
2 start on 29.

3 MR. LALLI: Start on 29.

4 (EXHIBIT 29 WAS MARKED.)

5 Q. (By Mr. Lalli) Exhibit 29 is bank account
6 statements from the John and Suzette Swallow joint
7 bank account for periods in 2012, and I would like to
8 direct your attention, if I could, to Bates page 639,
9 and drawing your attention to the entry on May 1st,
10 about halfway -- maybe a little more than halfway
11 down the page there's a charge to Walmart for \$98.68.

12 Do you see that?

13 A. I don't see that. Assuming you're on
14 page 639, Bates stamp 639?

15 Q. Yes.

16 A. Okay. Oh, yes, I do see that. Yes.

17 Q. This would have been the day after you
18 spoke with Jeremy Johnson at the Krispy Kreme shop,
19 correct?

20 A. Well, you told me last time that I met
21 with him on April 30th, so taking that as the date,
22 then May 1st would have been the next day.

23 Q. I'm going to ask you some questions about
24 the transcript in a few minutes, but since we're here
25 on this account, one of the things Jeremy Johnson

1 said to you in that meeting, at least according to
2 the transcript, is that he encouraged you to go to
3 Walmart and get a phone, and I'm wondering if that's
4 what the \$98.68 charge was for?

5 A. No, it couldn't have been.

6 Q. And it couldn't have been because you
7 didn't go to Walmart and get a phone?

8 A. That's right.

9 Q. Let me draw your attention to Bates
10 page 642 in the same exhibit, and about two-thirds
11 the way down the page there are two entries on
12 May 18th that have the same or similar terminology.
13 Actually, there are three, but the first two say
14 Deposit Home Banking Transfer From Share 01 loan, and
15 then the next one is from Share 03 loan, and the
16 amounts are \$5,000 and \$10,500.

17 Do you know what those were for?

18 A. No.

19 Q. Do you know what a home banking transfer
20 refers to or what that means?

21 A. I'm assuming -- you asked me do I know.
22 No, but I can make an educated guess.

23 Q. What would your best guess be then?

24 A. Well, if you look at Bates stamp
25 page JS636, at the very middle of the page you'll

1 notice it has account summaries, so you'll see that
2 we had different accounts, subaccounts, within our
3 checking accounts, and so I'm just assuming -- my
4 guess would be that these are transfers from one of
5 these accounts into maybe a checking account, that's
6 my guess, so there would be more money to write a
7 check with. That's my guess.

8 Q. Do you recall making 16 and a half
9 thousand dollars worth of expenditures in that time
10 frame?

11 I mean, did you buy a car or pay for
12 college or something?

13 A. I don't know. I'm just, again, guessing.
14 I don't know if I'm supposed to guess.

15 Q. If you don't know --

16 A. At that time the family made a loan to
17 P-Solutions to repay what Richard Rawle had paid
18 P-Solutions from an account.

19 Is that about the same time frame?

20 Q. I think it would have been, yes.

21 A. That would be my best guess on that, Matt,
22 but I don't know that for sure.

23 Q. Okay.

24 A. That's my best guess, because I know that
25 Suzanne and I had decided to loan money to

1 P-Solutions so that P-Solutions could make that
2 refund, and that's about the amount we had to borrow
3 to make the loan to P-Solutions.

4 Q. Let me switch topics here.

5 Can you tell us when you first met
6 Richard Rawle?

7 A. No.

8 Q. Can you approximate or give me the
9 circumstance?

10 A. Sure. Yes. I believe it was either in
11 2002 or 2003 when I was in the middle of a run -- a
12 race for U.S. Congress, and he had made a donation to
13 my campaign account, and I believe that would have
14 been the context of my first meeting him because he
15 made a donation.

16 Q. And did you call him up to thank him or
17 did someone introduce you?

18 A. It's just been too long. I just couldn't
19 say.

20 Q. Did there come a point in time when you
21 went to work for Mr. Rawle?

22 A. Well, yes, my firm became general counsel
23 to his company and did a lot of work for him and for
24 his companies.

25 Q. And can you recall approximately when your

1 firm became general counsel?

2 A. Without looking at my notes, it would be
3 hard, but sometime in 2006 or 2007.

4 Q. Prior to the time the firm became general
5 counsel, did you perform any other legal work or
6 non-legal work for him?

7 A. I don't think so prior to the time.

8 Q. Can you describe the circumstances how
9 your firm became general counsel?

10 A. We -- it was probably a series of
11 meetings. Like I said --

12 MR. SNOW: John, I have no objection to
13 your answering his question in general. I'd just
14 caution you to be protective of the privilege. It's
15 Rawle's privilege. Mr. Rawle has been fairly testy
16 about it.

17 THE WITNESS: It was sometime in the fall
18 of either 2006 or 2007 that we had several
19 conversations.

20 Q. (By Mr. Lalli) And can you say whether it
21 was your idea or Richard's?

22 A. I don't recall today whose it was.

23 Q. Were you actively practicing law at that
24 time?

25 A. I was licensed, yes, and practicing law,

1 yes.

2 Q. What kind of practice did you have at that
3 point?

4 A. I had a commercial practice. I would -- I
5 actually had been general counsel for a company
6 called Basic Research for several years, and so I
7 continued to do some general counsel work for some of
8 the principals of that company and had just a general
9 practice, legal practice.

10 Q. Can you describe or give examples of the
11 types of legal work you performed as general counsel
12 to -- was it general counsel to Check City or some
13 other entity?

14 A. General counsel to Check City and their
15 entities. They had several different entities.

16 Q. Okay. I'll just call that the Check City
17 entities, if that's okay.

18 A. Uh-huh (yes).

19 Q. Can you give examples or otherwise
20 describe the type of legal work you did?

21 A. Sure. I would review contracts and I
22 would give him advice about litigation. My
23 experience in litigation had been -- I was a
24 litigation partner at Scalley and Reading, but I soon
25 learned that as general counsel it was very hard to

1 do litigation in-house, so a lot of times I would
2 manage outside litigation for companies.

3 Q. Was that a full-time job?

4 A. Full-time? My legal practice was pretty
5 much full time.

6 Q. Was your -- your general counsel for the
7 Check City companies, was that full time?

8 A. No, it wasn't full time. I had other
9 clients as well.

10 Q. Where did you office?

11 A. I officed at different places, but during
12 the time I was working as general counsel for the
13 Check City companies I officed in their offices.
14 They had a satellite office next to their primary
15 office, and I had an office in their satellite
16 office.

17 Q. And where was that located?

18 A. In Provo, Utah.

19 Q. How were you compensated?

20 A. I was compensated monthly on a retainer.

21 Q. And was the retainer by way of check or
22 wire or some other kind of --

23 A. It was paid by check to Swallow &
24 Associates.

25 Q. From?

1 A. From -- I think the holding company was
2 not Check City. They had a holding company.

3 Q. And that was --

4 A. And I believe it was Tosh.

5 Q. Tosh?

6 A. Tosh, Inc.

7 Q. Okay.

8 A. And I want to be careful and not get into
9 attorney-client-type things, so I want to be very
10 careful as I answer your questions about that
11 relationship.

12 Q. Okay. So this was -- you weren't a W-2 or
13 a K-1 type employee?

14 A. No. Never was.

15 Q. Did you have occasion to solicit political
16 donations from Mr. Rawle either for yourself or for
17 other candidates?

18 A. On occasion.

19 Q. And do you recall -- for example, you
20 mentioned that he contributed to your Congressional
21 campaign.

22 A. Right.

23 Q. Did he contribute to both of them?

24 A. I don't recall. I'm assuming he did, but
25 I don't recall.

1 Q. Do you recall soliciting his contributions
2 for other candidates?

3 A. Well, when you say for other candidates,
4 he and I -- he and I did counsel together about
5 political issues, and if you look at my filings, you
6 also know that I was a registered lobbyist for
7 Check City and their group of companies and for some
8 other companies as well, so part of my
9 responsibilities became helping him on political
10 decisions he had to make as well.

11 So back to your question, did I ever
12 solicit contributions from him, I was --

13 MR. SNOW: For other candidates?

14 THE WITNESS: Right. So I guess when you
15 say did I solicit, we discussed contributions that he
16 either did or didn't make for other candidates, yes,
17 but when you say did I solicit, I'm not sure what you
18 mean.

19 Was I paid, for example, by other people
20 to do that? The answer's no, but did I discuss it
21 with him? Yes, I did, many times.

22 Q. (By Mr. Lalli) Did you assist other
23 candidates for office in raising money?

24 A. Yes.

25 Q. And what candidates?

1 A. Well, Mark Shurtleff, for example, in his
2 run for Attorney General in 2008.

3 Q. Any others?

4 A. In his run for U.S. Senate, although he
5 didn't really get in that race, but he considered it
6 and raised some dollars for that.

7 Q. And you helped him raise money for that?

8 A. Yes.

9 Q. Okay. And similar to that --

10 A. That was all before I was in the AG's
11 office.

12 Q. Okay. Similar to that, have you helped
13 other candidates raise money?

14 A. I think that would be fair to say that.
15 I've tried to think about who it would have been, but
16 I was, you know, fairly active with members of the
17 legislature, for example.

18 Q. What about any federal offices, Congress
19 or Senate, did you help raise money for any candidate
20 there?

21 A. Well, I recall suggesting to Richard in --
22 the answer's yes.

23 Q. Okay. And in your capacity of raising
24 money, whether it's for Mark Shurtleff or for
25 candidates for state or federal office, did you ask

1 Richard Rawle to donate to those campaigns?

2 A. Well, I think I'd be safe to say on some
3 occasions I did.

4 Q. Was Mr. Rawle a frequent or generous
5 contributor to political campaigns in your
6 estimation?

7 A. It depended. I mean, sometimes he could
8 be very generous and sometimes he would just not do
9 it. It depended on the candidate and what they stood
10 for.

11 Q. Did he contribute to your Attorney General
12 campaign?

13 A. I think he did. I think he did directly
14 to my campaign or to a PAC that was associated with
15 my campaign or to a PAC that was associated with
16 Mark Shurtleff's campaign. I can't remember how he
17 contributed, but he contributed to a shotgun event
18 that we held in the fall of 2012.

19 Q. Okay. And if it had been contributed to a
20 PAC, would that have shown up on your campaign
21 disclosures?

22 A. Whatever the rules were they would have
23 been followed. I had a professional treasurer who
24 tracked all of that and reported all of that.

25 Q. So you don't know the answer?

1 A. Well, for example, if a campaign
2 contribution was made to Mark Shurtleff's PAC, for
3 example, and Mark Shurtleff later donated to my
4 campaign through his PAC, I don't know whether that
5 would have shown up as a contribution from
6 Richard Rawle to my campaign, so I'm not sure I can
7 answer your question without digging into things.

8 Q. Do you know how much money Mr. Rawle
9 contributed to your Attorney General campaign through
10 whatever means he used?

11 A. I don't know. And I would just say this.
12 I want to make sure we're very clear on this. You
13 just said to my campaign through whatever vehicle he
14 might have used.

15 A donation made to a PAC that's controlled
16 by Mark Shurtleff that has a certain amount of money
17 is not necessarily or even reasonably construed as a
18 donation to my campaign, so I don't want you to make
19 it look like I'm testifying that a donation to
20 Mark Shurtleff's PAC was a donation to me. I'm not
21 saying that.

22 Q. Well, really what I'm asking is whether
23 you're aware of any money that Richard Rawle gave to
24 anyone that ended up benefitting your campaign for
25 Attorney General?

1 A. Well, I think that question's way too
2 broad for me to answer, because if he made a donation
3 to the State Republican Party, for example, and they
4 did some kind of a brochure that had my name on it,
5 then that could be an answer, so I don't -- I want
6 you to be very specific, if you don't mind. You're
7 asking the questions, I'm not, but I want to make
8 sure I'm very careful with my answers because I'm
9 under oath.

10 Q. Okay. Well, you seem to have a sense that
11 he gave some money to your campaign --

12 A. Right.

13 Q. -- whether it was directly or through
14 a PAC.

15 A. Well, that's because I've raised over a
16 million dollars in my campaign, Matt, so I don't
17 remember, you know, exactly what or how Richard Rawle
18 may have contributed to my campaign. Okay? Because
19 I can't guess or speculate here on the witness stand.

20 Q. Okay. I was just thinking that, given
21 your relationship with him, you may have had a more
22 accurate recollection of his contribution than
23 perhaps other contributors, and what you're telling
24 me is that's not true.

25 A. Well, I know I had a lot of contributors,

1 Matt, and you're asking specific questions. I don't
2 recall exactly how much he may have contributed to my
3 campaign.

4 Q. Nor do you recall whether it was directly
5 or through a PAC?

6 A. Well, again, I don't want to say that the
7 campaign contributions or a contribution to a PAC is
8 a campaign contribution. A contribution to a PAC is
9 a contribution to a PAC. It's disclosed by the PAC,
10 and that PAC can then donate the money to another
11 candidate or to me, and that's all pursuant to State
12 law, so I don't want -- you're asking me a question
13 as if he's donating to one entity and really donating
14 to me, and my position is if you've donated to an
15 entity, you've donated to the entity. He didn't
16 donate to me.

17 Q. Do you know if he donated to a PAC?

18 A. I believe so, because he was at the
19 shotgun event and was a sponsor of that shotgun
20 event, so I believe he contributed to either the
21 Protect Utah PAC, which was a PAC that I was involved
22 with, or Mark Shurtleff's PAC -- I don't remember the
23 name of that -- or directly to Mark Shurtleff's
24 campaign or directly to my campaign. I just can't
25 remember.

1 Q. Okay. Did Mark Shurtleff's PAC ever
2 contribute to your PAC or to your campaign?

3 A. Yes.

4 Q. And you don't recall discussing with
5 Mr. Rawle the amount that he contributed at that
6 shotgun event?

7 A. Not specifically. Richard Rawle
8 contributed to that shotgun event every single year,
9 and the years kind of have a way of kind of merging
10 with one another.

11 MR. LALLI: Okay. Thirty.

12 (EXHIBIT 30 WAS MARKED.)

13 Q. (By Mr. Lalli) Exhibit 30 is two e-mails
14 Tuesday April 5, 2011. One of them, the one on the
15 bottom, is from Cort Walker to Trista Gibson. It
16 refers to you dropping off your daughter's taxes.

17 Do you know what this is referring to?

18 A. I just know that it's an e-mail from Cort
19 to Trista Gibson.

20 Q. Do you recall dropping off your daughter's
21 taxes for Cort or Trista Gibson to take care of?

22 A. I don't recall that, no.

23 Q. Do you know who Trista Gibson is?

24 A. I do. She is a store manager at
25 Check City.

1 Q. Okay. Did she prepare taxes?

2 A. Well, that is one of the services that
3 Check City provides, and I will say that two of my
4 daughters have worked for -- currently one of my
5 daughters is working for Check City, and it wouldn't
6 surprise me if my daughter was working for Check City
7 at the time, but I don't know, and I don't know which
8 daughter it is.

9 Q. Did Check City provide services for you or
10 your family, such as tax preparation?

11 A. Well, not normally, so this would be --
12 again, I don't know if this was in conjunction with
13 her employment or when it was, but, no, my taxes are
14 done by my accountant, which doesn't have anything to
15 do with Check City.

16 Q. And you don't have a recollection of
17 dropping off your daughter's taxes for preparation by
18 Trista Gibson?

19 A. No, but I'm not here to say I didn't, but
20 I don't recall.

21 MR. LALLI: Thirty-one.

22 (EXHIBIT 31 WAS MARKED.)

23 Q. (By Mr. Lalli) Exhibit 31 is a June 29,
24 2011, e-mail from you to Kip.

25 First of all, can you tell me who Kip is?

1 A. Kip Cashmore is the president of a company
2 called USA Cash Services.

3 Q. What kind of a company is that?

4 A. Well, he actually has other businesses as
5 well, but USA Cash Services is a deferred deposit
6 lender or payday loan company.

7 Q. And do you recall the purpose -- well,
8 first of all, do you recall this e-mail?

9 A. I don't recall drafting it, but it looks
10 like it was drafted by me.

11 Q. Do you recall with reference to the first
12 sentence giving Kip some suggestions about what he
13 might say concerning your candidacy for
14 Attorney General?

15 A. Yes.

16 Q. What was the purpose of giving Kip
17 information about your candidacy?

18 A. Kip was going to try to help raise money
19 for my campaign or -- yeah, for Attorney General.

20 Q. With reference to the date here, June 29,
21 2011, can you say whether you'd officially declared
22 your candidacy at that point?

23 A. I had not officially declared my
24 candidacy.

25 Q. Drawing your attention to Point No. 2

1 there, in the second sentence it says the race for AG
2 will be all about the nomination.

3 What do you mean by that?

4 A. Well, just that in Utah in a statewide
5 race the Republican nominee has a great chance of
6 winning.

7 Q. Did you know who or if there would be a
8 Republican contender for you at this point?

9 A. I don't recall if I knew at that point who
10 it would be, although I heard rumblings that
11 Sean Reyes was interested. I didn't know who else.
12 I also heard rumors that John Valentine would be
13 interested.

14 Q. Can you say -- well, you're obviously
15 raising money at this point in time, right?

16 A. Well -- I'm guessing you want to give me a
17 minute to read the whole e-mail letter here to
18 refresh my recollection.

19 Q. Sure.

20 (Witness examining document.)

21 THE WITNESS: Well, looks like I say here
22 that I'd already reached \$100,000, and I believe that
23 did happen in mid June of 2011, as I recall now.

24 Q. (By Mr. Lalli) If you'll look at
25 paragraph 7, "As much as possible, I would like to

1 raise money from companies and individuals
2 not tied to payday, so I do not make this a payday
3 race."

4 Explain to me what your concern was at
5 that point.

6 A. Well, I mean, I think it's fairly
7 self-explanatory. I was trying to get a broad base
8 of financial support from many industries, not just
9 one industry.

10 Q. Okay. And did you -- were you consistent
11 with that throughout your campaign about trying to
12 get non-payday loan money?

13 A. Well, I've raised a lot of money from many
14 different industries, and I've tried to keep things
15 as balanced as possible.

16 Q. Can you recall -- well, was there
17 something -- when you say you don't want to make this
18 a payday race --

19 A. Right.

20 Q. -- that suggests to me that you were
21 concerned about being labeled a payday loan-type
22 candidate.

23 Is that a correct inference?

24 A. Well, I think that I didn't want to be a
25 one issue candidate, and I know that the -- you know,

1 with my having been a lobbyist in the industry, I
2 felt like, you know, I need to have a breadth of
3 support from financial institutions, from real estate
4 institutions, from other industries so that I would
5 be known as more of a well-rounded candidate, so that
6 was my real purpose in asking him in paragraph 7 to
7 raise money from companies and individuals, not
8 simply tied to payday.

9 Q. The last, or the second to last thing you
10 say here is not to forward the e-mail.

11 What was your concern in that regard?

12 A. I think -- I think it's self-explanatory.
13 E-mails that are forwarded can be forwarded in
14 perpetuity. I don't have anything else to really say
15 about that.

16 Q. Was there something in the body of that
17 e-mail that you did not want to be disseminated more
18 broadly?

19 A. Well, I don't know. I mean, I do know
20 that the payday industry nationally was sensitive to
21 a lot of backlash they received, and PR was always a
22 big thing for them as well, so I can't explain more
23 than I have, that I wanted to be well-rounded, and
24 this was a person who had committed to raise some
25 money for me.

1 Q. Were there any other points you laid out
2 to Kip in this e-mail that you thought were not well
3 suited for public dissemination?

4 A. I think it's -- well, one thing. I think
5 it sounded pretty arrogant of me to say that I would
6 be the clear frontrunner right from the get go if I
7 announced. I think it was fairly interesting that I
8 said that the Republican is going to win this race by
9 30 points, so I was pretty bold.

10 Q. Anything else that you think you may have
11 wanted to just keep between you and Kip?

12 A. Well, I had my budget that would be a
13 million-one. I mean --

14 Q. Isn't that public, some of your campaign
15 contributions?

16 A. Not in June of 2011 my goals aren't
17 public. What I think I need to budget and spend on
18 my campaign is not public. That's more campaign
19 strategy.

20 So there are several things in this letter
21 as I look at it that, you know, I didn't want to have
22 it beyond my very close team or my finance team,
23 rather than have it distributed widely or put in a
24 forward and gone out to who knows who.

25 Q. And did you believe at that time that the

1 statements that you've got in this letter were
2 disseminated more broadly and that somehow may
3 negatively affect your campaign?

4 A. Well, look at what the *Tribune's* done with
5 the things that have been said about me now and how
6 they've attacked me for the most incredible
7 statements made by people, and I felt that anything I
8 said that would be, you know, bold or audacious would
9 be something that would be looked at by those who
10 wanted to hurt me or take me down or win a race.

11 MR. LALLI: Thirty-two.

12 (EXHIBIT 32 WAS MARKED.)

13 Q. (By Mr. Lalli) Exhibit 32 is a copy of
14 your and your wife's joint tax return for the year
15 2012, and I just want to ask you a couple of
16 questions about this.

17 First of all, on page 1, line 7, it lists
18 wages, salaries, tips, et cetera, \$195,320.

19 A. Right.

20 Q. Do you know what that consisted of?

21 A. I think it was -- I think all, if not most
22 of it, was my State wages.

23 Q. Do you recall what your annual salary for
24 the State was at that time?

25 A. I think around \$150,000.

1 Q. Okay. And do you know what the other
2 approximately \$45,000 was?

3 A. Yeah. What I think it was was when I
4 ended my employment at the end of the year,
5 transitioned from a non-merit employee to the
6 Attorney General, I was allowed to cash out a
7 substantial amount of sick leave time and/or vacation
8 time I hadn't used. I don't think it was the sick
9 leave. I think it was vacation. I think I lost my
10 sick leave. And so I received about 38 or \$39,000 I
11 believe in a lump sum at the end of the year.

12 I think that's probably the difference. I
13 don't know if I had any other income. I don't think
14 I had any other income.

15 Q. The W-2s -- the Attorney General, that's a
16 W-2 employee?

17 A. Yes. So is Chief Deputy.

18 Q. Right. And so I don't have those, so
19 that's why I'm asking you the question.

20 A. Yeah, that would explain it.

21 Q. Do you know, other than the salary
22 combined with the cash out of benefits, was there any
23 other employment that you had during the tax year for
24 2012?

25 A. I don't think so, no. No, I don't think

1 so. I don't think I had anything else.

2 MR. SNOW: You mean for 2011?

3 THE WITNESS: Yeah. No, this is for 2012.

4 This would have been filed this spring. We've got
5 the capital gain here.

6 No, Matt, I don't believe there was.

7 Q. (By Mr. Lalli) Okay. Let me --

8 MR. SNOW: He files in April.

9 THE WITNESS: Filed during April? I'm
10 just asking.

11 Q. (By Mr. Lalli) Let me draw your attention
12 to Bates page 887.

13 A. Oh, on the tax return?

14 Q. Yes.

15 A. Okay.

16 Q. And this is the capital gains tax
17 treatment for the 12 gold coins that we discussed.

18 A. Right.

19 Q. And just to get us back at the same point,
20 my understanding is that these were gold coins that
21 Richard Rawle gave to you at the time you left
22 Check City and went to work for the AG's office?

23 A. Before I left Check City, yes.

24 Q. And during 2011 and 2012 you sold those
25 back to Mr. Rawle?

1 A. Right.

2 Q. Do you recall what information you
3 provided to your accountant to aid him in computing
4 this capital gains treatment?

5 A. You know, I think I told him what I had
6 been told the basis was, or approximate basis was
7 from Richard Rawle and then the basic price I sold
8 them back to him for. I think it was \$800 and \$1300
9 on the two. It could be less than \$800, but I think
10 it was \$800 for the basis. So I gave that
11 information to my accountant, and he calculated the
12 capital gains.

13 Q. So by the basis, you're referring to
14 Richard Rawle's basis?

15 A. Right.

16 Q. Okay. And how did you get that
17 information?

18 A. I believe I talked to him about it at some
19 point in time before he passed away, and he just gave
20 me a rough estimate of what he thought it would be.

21 Q. Just orally? There is no documentation?

22 A. Right, there is no documentation.

23 Q. And so you provided no documentation to
24 your accountant?

25 A. Right. You know, I kind of -- well, he

1 died on me.

2 Q. Richard?

3 A. He passed away, and it was several months
4 after -- before that when I talked to him, and I
5 didn't have any documentation for it.

6 Q. Okay. So the \$10,800 notation in
7 Column (e), that would just be based on what
8 Richard Rawle told you, and you in turn reported it
9 to your accountant?

10 A. Yeah.

11 Q. Okay. And with respect to Column (d) --

12 A. What page we on again, because I lost the
13 page.

14 Q. 887.

15 A. 887. Column what?

16 Q. 887.

17 A. Yeah. Right. Column (e)?

18 Q. Sorry. Yeah, Column (e). Page 887,
19 Column (e).

20 The \$15,600 proceeds --

21 A. Right.

22 Q. -- how was that calculated?

23 A. That was a price per coin. I think it was
24 \$1300 per coin times 12. The math I think comes out
25 to 15-6.

1 MR. LALLI: Thirty-three.

2 (EXHIBIT 33 WAS MARKED.)

3 Q. (By Mr. Lalli) Exhibit 33 is an Account
4 History that we obtained from NetSpend through
5 Subpoena, and I just want to walk through this, if I
6 can, with you, and I want to focus on the third
7 column from the right, the Credit column.

8 A. Okay.

9 Q. And the way I'm reading this is that those
10 are the deposits or the credits to the debit card.

11 A. Okay.

12 Q. In other words, the amount of money that
13 was loaded onto the debit card.

14 A. Right.

15 Q. Okay. So it looks like, just going
16 through this quickly, on June 1st of '11 there was a
17 \$1500 amount loaded onto the card, correct?

18 A. Sure looks like it, yes.

19 Q. And then on 6-27-11 \$1900, and if you
20 continue through this you can see what the amounts
21 paid were.

22 A. Correct.

23 Q. My question is if these -- now, as I
24 understood your prior testimony, the payment for the
25 coins was the amount that Check City put on your

1 NetSpend debit card, right?

2 A. Right.

3 Q. Did you correlate the total of the amount
4 put on the NetSpend debit card to Column (d) of your
5 tax return?

6 A. Well, you know, the problem is that I lost
7 my debit card in the spring of 2011, and I knew there
8 was a little money left on that card, and like I told
9 you before, I was locked out. I couldn't get
10 information about my account because I was locked out
11 of my account, and so I thought that I might have
12 gotten paid -- I might have gotten more than the
13 value of the coins, and that's still in that debit
14 account, so my intention was if it was more than the
15 15-6, that I would refund that to the company, which
16 I haven't done yet.

17 Is that the answer to your question? My
18 intent was to correlate the payment for the coins to
19 the actual coins that I was selling.

20 Q. Would it be accurate to state that the
21 \$15,600 in Column (e) of your tax return was an
22 estimate?

23 A. Well, no, because -- I don't think it was.
24 I think that that was what I intended to sell the
25 coins for, \$1300 a coin, which would total 15-6, so

1 there was a difference between the 15-6 and I think
2 the total amount they put in that account, which I
3 think ended up being \$17,000 instead of 15-6. There
4 was about a \$1400 difference.

5 So I am just simply waiting to access that
6 account again to get that money back to them and to
7 pay them back the extra money that had been put in
8 that account which I didn't spend.

9 Q. Did that happen?

10 A. No. No, it hasn't happened yet. I
11 finally got a new debit card this last week, and I'll
12 be able to use that card to pay them back.

13 Q. And --

14 A. That was my plan.

15 Q. If you look at the last page of
16 Exhibit 33, it looks like the last debit on this card
17 was February 25 of 2012.

18 A. Okay.

19 Q. So you obviously didn't lose it before
20 then, right?

21 A. Well, I really couldn't tell you. I can't
22 tell you exactly when I lost the card because I just
23 don't remember.

24 Q. Okay.

25 A. But it was sometime in the spring of 2012

1 when I lost the card.

2 Q. And when you lost the card, what did you
3 do? I mean, did you contact someone? Did you --

4 A. Yes. I contacted NetSpend.

5 Q. And how did you contact them?

6 A. By telephone, or by Internet. I don't
7 remember. I contacted the company, though. I let
8 them know I lost my card.

9 Q. And what did they tell you?

10 A. They said that they would cancel the card
11 and send me out a new card.

12 Q. And I take it they weren't very prompt in
13 doing that?

14 A. Well, no. They did, but it was returned
15 for some reason, and I didn't ever get it until a
16 month later, and I believe by this time I was in the
17 middle of my campaign, so a lot of things were
18 hitting at that time and pretty busy. So when I got
19 around to it and noticed it hadn't come, I called
20 them back and said, "Where's my card?" And they
21 said, "Well, we sent the card and it was returned to
22 us, Return to Sender." I said, "Really? I didn't
23 get it, so would you please send me another card?"

24 And so I waited again for another month or
25 two and nothing happened. So I called them again,

1 and they said it was also returned to us. We're
2 closing your account and we're putting a hold or a
3 freeze or something on your account, and I just got
4 wrapped up with the campaign and just forgot it.

5 That's kind of what happened. Even as
6 recently as a month ago when I talked to them they
7 said, Mr. Swallow, we cannot get you that information
8 because you've been locked out of your account, and I
9 finally got ahold of someone about a week and a half
10 ago that said that they would close the account,
11 issue me a new card, transfer the money free of
12 charge into the new account, which would then let me
13 pay back Check City and we'll send you what we can of
14 your transactions.

15 Q. Okay. So at the time you struck the deal
16 with Richard Rawle to sell back these coins, did you
17 agree on a price?

18 A. Yes. It was \$1300 a coin.

19 Q. Okay. And so can you say whether -- with
20 reference to Exhibit 33, the times at which money was
21 loaded onto your card? Was that the exchange date
22 where you were giving him back a coin and he was
23 paying you?

24 A. No. It didn't happen that precisely. So
25 I would call him when the account got low. I said,

1 "I need another deposit. I'll bring some coins by,"
2 and sometime in the next few weeks we'd get together,
3 go to lunch or something, and I'd give him a few
4 coins, and that happened throughout the end of 2011
5 and into 2012.

6 Q. Okay.

7 A. By the time February or March of 2012 came
8 I'd given him all of the coins.

9 Q. What's confusing me is I'm not
10 understanding the math here.

11 A. Okay.

12 Q. When you say the coins, he was going to
13 buy them back for \$1300 apiece?

14 A. Right.

15 Q. But yet we've got, just on the first page,
16 the first deposit is \$1500, the second is \$1900.

17 A. Right.

18 Q. That's like one and some fraction of
19 another.

20 A. Yeah. We didn't do it -- the money that
21 was coming in we were keeping track of. The goal was
22 to -- I knew I had 12 coins to sell, and I didn't
23 know how much money I would need throughout the year
24 into the early part of next year, and so it was what
25 I need to sell I will sell. We'll keep track of

1 that, and then at the end when I'm done, if I sell
2 them all, then we'll make sure we have a
3 reconciliation.

4 So the amounts that I received were not
5 \$1300 every time I sold a coin, so that would be
6 \$1300 and \$2600, so I understand why you're
7 questioning what you're questioning, but that's not
8 how we did it. I would just say I need another --
9 what do you call it -- amount of money on the card,
10 and I'll bring you a couple of coins in a few weeks,
11 and we'd try to loosely kind of keep track as we went
12 the amount that I was receiving and the amount I was
13 giving him.

14 And another thing you'll notice is that
15 the tax return has all 12 coins on 2012 instead of on
16 2011 and 2012, and that's simply because, you know, I
17 thought I better take care of these capital gains on
18 this, and I got it taken care of in 2012.

19 Q. So who determined the amounts that were
20 loaded onto your card at these various intervals?

21 A. You know, I didn't -- I don't recall that.
22 I don't think I specifically said I need \$1500 now,
23 but it seems like a lot of them were \$1500, some were
24 \$1800.

25 I think I simply just said to Richard I

1 need some more on the card, and I think he would, as
2 I recall, call Cort or talk to Cort, and Cort would
3 load that amount on the card.

4 Q. So was it you who determined the amount or
5 Richard?

6 A. Richard.

7 Q. Okay. And do you know on what basis he
8 determined the amount?

9 A. I don't.

10 Q. When you did your tax return, did you know
11 at that time that the amount of money you'd received
12 on your NetSpend card was greater than \$15,600?

13 A. I don't know if I knew the exact amount it
14 was. I think I knew that I received a little more
15 than the value of the coins, but I didn't know how
16 much more.

17 Q. Did you ask Check City to run you a
18 report?

19 A. No, I didn't, and I actually -- I
20 actually -- the only way I can explain it is the
21 context of the busy season it was from about, you
22 know, March of 2012 through the time I won the
23 election in November. During that period of time I'd
24 lost -- not lost. I hadn't received the card twice.
25 I got busy with other things and just kind of forgot

1 about it and simply intended to reconcile any
2 difference when I got my cards resolved and got
3 things done, and then this happened.

4 You asked me if I decided how much I
5 received every time, and the answer is still no.
6 It's that I never knew going forward from the time we
7 decided I'd sell those coins back exactly how many
8 coins I'd end up selling, and so I didn't want to get
9 out too far ahead of myself in case I didn't feel
10 like I was going to use the whole value of the 12
11 coins, so I think that's why it was a minimal amount
12 every time rather than \$5,000 at a time, for example.
13 Richard just said as you need more let me know, we'll
14 keep track of the coins, leftover coins.

15 Q. When you testified previously a week or so
16 ago, you said that there were three or four occasions
17 where you gave him the coins.

18 A. Right.

19 Q. That it wasn't just one at a time, right?

20 A. Right.

21 Q. And eventually you gave him all 12, right?

22 A. Right.

23 Q. How did you first meet Jeremy Johnson?

24 A. I met him in California at his office. I
25 flew down there on a commercial plane. We met him in

1 Santa Monica at his offices.

2 Q. What was the purpose for the visit?

3 A. I wanted to meet him. I'd heard a lot
4 about him. I knew he knew Mark Shurtleff well, and I
5 wanted to get to know him for purposes of helping
6 Mark Shurtleff raise money for his campaign and also
7 for the rainmaking opportunities for me as a lawyer.

8 Q. So a business development kind of call?

9 A. Right. Both.

10 Q. Did you say what year this was?

11 A. I'm guessing now. It was probably
12 sometime in the end of 2008, the fall, fall of 2008,
13 early -- late 2008.

14 Q. Did someone make an introduction or did
15 you just cold call him?

16 A. I don't recall. I didn't just show up on
17 his doorstep. I let him know I'd be coming down, so
18 I may have talked with him on the phone. I may have
19 even met him earlier and had shaken his hand or
20 something. I don't recall, but he knew I was coming,
21 and I don't recall exactly when -- you know, what
22 occasion led me to meet him the first time or speak
23 with him on the phone for the first time.

24 Q. What, if anything, resulted from that
25 first meeting in his office?

1 A. We started to form a relationship. He was
2 a young entrepreneur, very successful in St. George.
3 I'd grown up in St. George, and my primary reason for
4 meeting with him was to get to know him as someone
5 who was helping Mark Shurtleff raise money for his
6 debt retirement campaign in 2008 and debt retirement
7 after that and then his Senate campaign in 2010.

8 Q. And how did the relationship grow from
9 that point with Jeremy Johnson?

10 A. Well, so it kind of just grew
11 incrementally as we spent more time together.

12 Q. And that's kind of what I want to get at
13 is did you form a friendship? Did you go to lunch
14 with him? Did you meet with him once a year? Once a
15 month?

16 Can you give me a sense of that?

17 A. Well, he worked pretty much full time in
18 California, and I was interested in getting to know
19 him and his company, so he actually arranged for me
20 to fly down to St. George on his jet. He flew his
21 jet up here to Salt Lake International and flew me
22 down for a day at his offices.

23 When I say his offices, the I-Works
24 offices were in St. George, and he had offices in
25 Santa Monica, and I really never understood, you

1 know, the real relationship, except I understand he
2 was the sole owner of I-Works.

3 Q. And so did you become social friends?

4 A. Well, we did go to dinner on occasion. I
5 wouldn't say that we were social friends. Like I
6 said, we had dinner. I went to his company. He
7 showed me everything that they worked on, they did.

8 I kind of just kicked the tires a little
9 bit for Mark Shurtleff that first meeting I was down
10 there, went to lunch with his CEO or president of the
11 company of I-Works. You know, I would say we were in
12 contact at least once a month, and if I was down in
13 St. George and he was in St. George, we'd go to
14 dinner. We became friends.

15 Q. Okay. And did you ever end up doing legal
16 work for him?

17 A. I ended up not doing any legal work for
18 him.

19 Q. Did you solicit campaign contributions
20 from him either for yourself or for other people?

21 A. I did for other people. I didn't for
22 myself.

23 Q. And why would you do it for other people
24 but not for yourself?

25 A. By the time I decided to run for

1 Attorney General, he already had his problems, and it
2 was obvious that he wouldn't be contributing any
3 money.

4 Q. Why? Because his assets had been seized
5 or --

6 A. Well, once he'd been sued by the FTC, you
7 know, not only were his assets seized, but it looked
8 like he had real problems. Before then it didn't
9 look like to me he had real problems. I thought he
10 was a straight up decorated businessman in Utah, had
11 done a lot of philanthropic things for people and was
12 very involved in the Haitian rescue on the earthquake
13 and was just a straight up businessman.

14 Once he got in trouble, he was someone
15 that I wasn't interested in raising money from, and I
16 don't think anybody else was either.

17 Q. Before he got in trouble -- I assume the
18 trouble you're referring to was the FTC
19 investigation?

20 A. Well, that's when it started, but now he's
21 been indicted.

22 Q. Right.

23 MR. SNOW: I think he said once he got
24 sued by the FTC.

25 THE WITNESS: Well, that was my intent.

1 MR. SNOW: Maybe there's not a difference
2 there.

3 Q. (By Mr. Lalli) How did you first learn
4 about the FTC investigation of Johnson and his
5 company?

6 A. I believe he told me.

7 Q. Do you recall the context of the
8 conversation?

9 A. I don't.

10 Q. Do you recall the time?

11 A. Just thinking back, it would have probably
12 been the fall of 2010.

13 Q. Now, I understand at some point you made
14 an introduction of Johnson to Richard Rawle, correct?

15 A. Yes.

16 Q. Was that the first time you'd heard about
17 his problems with the FTC or was there a prior
18 occasion?

19 A. I believe there was a prior occasion and
20 that, you know, the Attorney General and myself and
21 Orrin Hatch met with Jeremy Johnson I believe before
22 I made the introduction to Richard Rawle about the
23 FTC help, I believe, but it's been long enough that
24 I'm not quite sure.

25 Q. The meeting with you and Mark Shurtleff

1 and Orrin Hatch, where and when did that occur?

2 A. It happened sometime in August or
3 September of 2010 at the offices of Senator Hatch
4 here in Salt Lake.

5 Q. Who called that meeting?

6 A. I think Mark Shurtleff.

7 Q. What was the purpose of the meeting?

8 A. As I recall, Jeremy Johnson wanted to
9 explain to Senator Hatch the FTC was not listening to
10 him, that they didn't understand what his business
11 was doing, and he wanted someone like Senator Hatch
12 to maybe reach out to the FTC and ask them to at
13 least sit down with him and understand what his
14 company was doing, and he had just brick walls since
15 then -- prior to that point in time.

16 Q. In that meeting were you and Mr. Shurtleff
17 acting in an official capacity in behalf of the
18 Attorney General's office?

19 A. I don't believe so, no.

20 Q. In what capacity were you acting?

21 A. As friends of Jeremy Johnson.

22 Q. Can you recall how the referral request
23 came about, and by that I mean the referral to
24 Richard Rawle?

25 A. Well, I don't recall specifically.

1 Q. Can you recall whether it was your idea or
2 his?

3 A. I think it was mine.

4 Q. And do you recall, did you call him? Did
5 it happen at the meeting with Senator Hatch? Was
6 there some other event?

7 A. Well, so Jeremy -- Jeremy had had some
8 involvement with Check City prior to the time when I
9 suggested he give Richard Rawle a call and see if
10 they wanted to work together on the FTC project.
11 That happened even before I was employed by the
12 office of the Attorney General, so he had already had
13 some relationship with some of the members of that
14 company, and I don't recall the moment I talked to
15 Richard about that, but I recall sitting down with
16 Richard over lunch sometime, maybe talking about
17 something else.

18 It was about the time when I got started
19 on the cement project, so it wouldn't be unusual for
20 him and I to have spent time together and just said
21 I've got a friend, you know him, who is having a
22 problem getting his story in front of the FTC, and I
23 don't know much about the FTC and the lobbying of the
24 FTC and I can't do it myself.

25 He said that he had lobbyist relationships

1 that he thought might make a difference, he was going
2 to check it out, and he made some phone calls, and
3 then he got back to me and said we'd be interested in
4 talking to Jeremy, but it will be expensive, and it
5 went from there.

6 Q. Whose idea was it to try to reach out to
7 Senator Reid?

8 A. I think it was Richard Rawle's idea, and
9 it wasn't to Senator Reid. It was really to Senator
10 Reid's -- well, maybe it was indirectly through a
11 lobbyist friend Richard had, and I think his name was
12 Jay Brown in Las Vegas.

13 Q. But wasn't the ultimate goal to get
14 Senator Reid to try to assist Senator Hatch in
15 lobbying the FTC?

16 A. I think that that looked to Richard like
17 an avenue that could work for Jeremy because Jeremy
18 wanted a meeting with the FTC. He wanted them to
19 understand things, and I think that's what Richard
20 kind of strategized would work the best.

21 Q. When you had the idea to introduce
22 Jeremy Johnson to Richard Rawle, what was the full
23 idea? What did you think would come from that
24 introduction?

25 A. Well, again, I had a friend,

1 Jeremy Johnson, who was having some concerns with the
2 FTC. His statement to me was I've spent a million
3 dollars on lawyers that haven't gotten me anywhere,
4 and I said have you thought about, you know, maybe
5 hiring a lobbyist to see if you can maybe get in the
6 door that way, because all he wanted to do was tell
7 the story, and he wasn't getting anywhere. So I
8 don't know -- your question was?

9 Q. I'm just wondering -- well, what I've
10 understood you to say is that the idea to approach
11 Harry Reid was not yours.

12 A. Right.

13 Q. But you also told me it was your idea to
14 introduce him to Richard.

15 A. Yes.

16 Q. And so I'm trying to flush out the
17 fullness of your idea.

18 If your idea was not to have Richard
19 somehow get to Harry Reid, what was your idea? Did
20 it go beyond Richard or did you just --

21 A. No. Again, having worked with Richard for
22 a number of years, I knew that he at some point, if
23 not then, was the public affairs Chairman of the
24 National Payday Lending Association, so he had
25 interfaced quite a bit, and I'd actually interfaced

1 with some of the national lobbyists when I worked
2 with Check City through my firm, so I basically knew
3 Richard had contacts in Washington. I knew that
4 Jeremy was looking for someone and at least open to
5 the idea of looking for someone that could be maybe a
6 better resource to him than his attorneys were. So I
7 thought that those two should talk and see if they
8 could work out something that would work and solve
9 Jeremy's problems with the FTC.

10 Q. If not Senator Reid, who did you envision
11 would be lobbied by Richard and his contacts?

12 A. I think Richard had told me that he had a
13 good contact with Senator Reid, a good lobbyist for
14 Senator Reid, and I thought that was a great idea, so
15 I didn't really go much further than that.

16 There was a man named Tim Rupli that I
17 knew from my days working in the industry. I didn't
18 know exactly who Richard would be using, but I'm sure
19 he would have consulted with Mr. Rupli as well, who
20 was a paid lobbyist or full-time lobbyist for the
21 Payday Lending Association nationally.

22 Q. After making the introduction of Johnson
23 and Rawle, what, if anything, did you do in
24 furtherance of the lobbying effort?

25 A. Well, I simply -- I know I prepared an

1 e-mail, a note, either for Jeremy -- I think it was
2 for Jeremy, talking about how I would position his
3 attempt to get an audience with the FTC and what I
4 would talk about, so I know I had at least that
5 involvement. Again, that was -- that was to assist
6 Jeremy in his strategy.

7 MR. SNOW: It's been about an hour and a
8 half. Can we take a break?

9 MR. LALLI: Sure.

10 MR. SNOW: Okay.

11 THE VIDEOGRAPHER: Going off record. The
12 time is 3:01 p.m.

13 (Recess from 3:01 p.m. to 3:13 p.m.)

14 (EXHIBIT 34 WAS MARKED.)

15 THE VIDEOGRAPHER: Returning on the
16 record. 3:13 p.m. is the time. Counsel.

17 Q. (By Mr. Lalli) Exhibit 34 is a series of
18 e-mails, September 29, 2010, and I want to direct
19 your attention to the one that begins on the middle
20 of the first page from you to Jeremy Johnson.

21 Do you see that?

22 A. That's right.

23 Q. It says meeting with Harry Reid's contact?

24 A. Right.

25 Q. And it looks to me like by this point in

1 time the notion of connecting -- well, the notion of
2 the target of the lobbying effort being Harry Reid
3 had already been determined.

4 Is that accurate?

5 A. It's been so long, could I --

6 Q. Yes, please do.

7 A. Thanks.

8 (Witness examining document.)

9 THE WITNESS: Okay. Yes. So your
10 question was? By this time --

11 Q. (By Mr. Lalli) Sure. Looks like the
12 notion of Harry Reid being the target of the lobbying
13 effort had been determined.

14 That was the game plan by this
15 point in time?

16 A. Well, certainly, yeah. I mean, I know
17 that by this time I knew that Richard Rawle knew a
18 person close to Harry Reid and that Richard thought
19 it would be a good idea to go through Harry Reid,
20 yes.

21 Q. Right. And I want to make sure I get the
22 chronology correct and also who had what idea.

23 A. Sure.

24 Q. What I'm understanding you to say is when
25 you first had the idea of introducing Jeremy to

1 Richard for some kind of connections --

2 A. Right.

3 Q. -- you were somewhat vague about what
4 those connections might be. You didn't have in
5 mind --

6 A. No, I didn't have in mind Harry Reid.

7 Q. And Harry Reid, as best you can recall,
8 was somebody who was -- that was an issue raised by
9 Richard or someone, not you?

10 A. Right.

11 Q. Okay.

12 A. I believe it was raised by Richard.

13 Q. But by this point in time, which is late
14 September, obviously that had already happened.
15 Richard had raised the idea of Harry Reid?

16 A. Right.

17 Q. And you are proposing a narrative in this
18 e-mail that refers to Senator Reid and seeing if he
19 would be willing to encourage FTC investigators to
20 take a close look, correct?

21 A. Right. I believe that's correct.

22 Q. And so what I'm really trying to
23 understand here is what was your role here? I mean,
24 it appears to me that it's gone beyond merely making
25 an introduction to Richard Rawle to the point where

1 you're suggesting a narrative, but what was your role
2 as you understood it?

3 A. Well, my role, I was just Jeremy Johnson's
4 friend. I introduced him to Richard Rawle, and
5 having had experience myself as a lobbyist in my
6 prior practice and caring about Jeremy Johnson and
7 understanding how he's having a real problem getting
8 in front of the FTC, and knowing that I couldn't do
9 it myself because of my job, I wanted to help him
10 understand how I might position this if I were him as
11 a friend. But my role --

12 Q. Something something**?

13 MR. SNOW: I'm not sure if this was a
14 narrative for Harry Reid or a narrative -- a
15 narrative for the FTC. I'm not sure who that
16 narrative was for.

17 THE WITNESS: Right. Well, I know what it
18 was for.

19 MR. SNOW: All right.

20 THE WITNESS: It was simply my advice to
21 Jeremy as a friend. Here's how I would tell my story
22 if I had a chance to get in front of the FTC.

23 MR. SNOW: Yeah.

24 THE WITNESS: This was not intended to go
25 to Harry Reid. This was just advice to Jeremy as a

1 friend.

2 MR. LALLI: Okay. Maybe I'm
3 misunderstanding this.

4 Q. (By Mr. Lalli) The subject of the e-mail
5 is Harry Reid's contract, or meeting with
6 Harry Reid's contract, right?

7 A. The contact you mean?

8 Q. Contact. Sorry. And then the e-mail
9 begins: "I spoke with Richard Rawle about the
10 contact information for Harry Reid's guy.
11 Richard is traveling to Las Vegas tomorrow and will
12 be able to contact this person, who he has a very
13 good relationship with. He needs a brief narrative
14 of what is going on and what you want to happen," and
15 then if you skip down to the next paragraph, which is
16 just an introductory, it says, "Here is the narrative
17 I'd propose."

18 Do you see that?

19 A. Right.

20 Q. I'm understanding this as you proposing
21 what would be said to Harry Reid's guy.

22 Is that incorrect?

23 MR. SNOW: A lobbyist who knows
24 Harry Reid. I'm not sure what you mean by
25 "Harry Reid's guy."

1 MR. LALLI: That's not my terminology.

2 MR. SNOW: Harry Reid's guy?

3 MR. LALLI: That's his terminology. Look
4 at the first sentence.

5 THE WITNESS: Well, yeah, sure. I don't
6 see the big deal. I mean, I'm telling you that my
7 point in drafting this was to let Jeremy Johnson know
8 what I was thinking about how I would position a
9 story to get in front of the FTC. That's why I sent
10 this e-mail to Jeremy Johnson. That's why I didn't
11 just pick up the phone or send this e-mail to Richard
12 and say, Richard, why don't you just say this.

13 This was not my -- this was not my
14 project. This was me telling a friend through my
15 experience this is how I would approach this issue
16 with the FTC or with the person who's going to talk
17 with the FTC.

18 Q. (By Mr. Lalli) Did you give any advice or
19 take any action in connection with this lobbying
20 effort after this point in time, September 29, 2010?

21 A. I don't recall. So did I ever have a
22 conversation, for example, with Jeremy Johnson about
23 this after this point? I don't recall. I don't
24 remember.

25 Q. Okay. And do you recall speaking with

1 anyone else about it?

2 A. I don't recall.

3 MR. LALLI: Thirty-five.

4 (EXHIBIT 35 WAS MARKED.)

5 Q. (By Mr. Lalli) Exhibit 35 is an
6 October 7, 2010, e-mail from Jeremy Johnson to
7 Richard Rawle regarding Senator Reid, and you're not
8 copied on this, but it refers to a conversation
9 between Jeremy and you where at least Johnson is
10 saying, and I quote: "He said you might have some
11 connections to Reid that would be helpful to us."

12 Can you recall such a conversation with
13 Jeremy Johnson in which you said that Rawle may have
14 some connections to Reid that would be helpful to
15 Johnson?

16 A. I don't know why I wouldn't have had the
17 conversation. I don't recall this specific
18 conversation, but I -- you're asking me if I am
19 saying that Jeremy Johnson created this out of thin
20 air.

21 I think that I would have talked to Jeremy
22 at some point and said that, you know, Richard did
23 have some connections to Reid based on what Richard
24 told me, and that's very consistent with what this
25 prior e-mail says, 34.

1 Q. Okay.

2 A. But I don't remember the specific
3 conversation, no.

4 MR. LALLI: Thirty-six.

5 (EXHIBIT 36 WAS MARKED.)

6 Q. (By Mr. Lalli) Exhibit 36 is an e-mail,
7 October 11, 2010, simply you forwarding to Richard
8 Jeremy Johnson's contact information; is that right?

9 A. Looks like it.

10 Q. I'm just trying to track the dates of this
11 **. What I'm really interested in knowing overall is
12 what you did and when you did it --

13 A. Sure.

14 Q. -- and when it stopped.

15 A. Yeah.

16 Q. So just trying to establish a chronology
17 here.

18 (EXHIBIT 37 WAS MARKED.)

19 Q. (By Mr. Lalli) Exhibit 37 is a
20 September 10, 2010, e-mail from you to Richard Rawle
21 regarding FTC assistance, and let's start at the
22 bottom of the page with an e-mail from Johnson to
23 Richard Rawle, Bryce Payne, Cort Walker -- actually,
24 that's not where it starts. It starts even further
25 down.

1 It says on 12-10-10 at 11:21 a.m.
2 Richard Rawle wrote: "Jeremy." It looks like
3 they're talking about negotiating some kind of a
4 delay.

5 Do you see that?

6 A. Yeah. So which e-mail are you talking
7 about?

8 Q. The very bottom of the page.

9 A. Very bottom? Okay.

10 Q. It's from Richard to Jeremy.

11 A. Okay.

12 Q. All right. So looks like they're
13 discussing the possibility of a delay, and then if
14 you build your way up, Jeremy Johnson's response is:
15 "They are working on it, but I don't give it much
16 hope."

17 A. Okay. So Richard sent the e-mail to
18 Jeremy, Jeremy responds.

19 Q. Right. And then Bryce, Bryce Payne, says
20 moving it, which I presume is some sort of -- that's
21 kind of my question is do you know what was under
22 discussion here, what was being delayed? Was it the
23 meeting with the FTC or something else?

24 A. I remember getting a call from either
25 Richard or Jeremy, I don't remember who, saying they

1 were trying to decide if they kept the meeting or if
2 they postponed the meeting, but I'm not copied on
3 this stuff, so I don't know what's going on, but
4 Richard must have called me and asked me my opinion,
5 or Jeremy must have called me and asked me my
6 opinion. I don't know.

7 Q. It looks to me, if you look the -- about a
8 third of the way down the page there's an e-mail from
9 Richard Rawle to you.

10 A. Oh.

11 Q. It's being forwarded. I'm reading this as
12 Richard forwarding to you at that point everything
13 that's on the bottom of the page below that, and then
14 you responding to Richard based upon your reading --

15 A. Oh, okay.

16 Q. -- the bottom e-mail. Is that accurate?

17 A. Well, all I can do is read the page that
18 you're reading. It's been so long, I don't remember,
19 so it would be like I'm just reading it cold, but
20 that doesn't seem like an unreasonable explanation of
21 what you're asking.

22 Q. Okay. Let's go to what you wrote here,
23 and I won't read that into the record, but just read
24 it to yourself and see if that jogs your memory.

25 A. So what are you asking?

1 Q. Well, what I'm trying to understand is
2 what does your advice relate to? "You get one shot.
3 If someone has to have a heart attack, someone has to
4 sacrifice."

5 I'm not understanding the point you're
6 trying to make.

7 A. I don't either. Sometimes I speak in
8 riddles and analogies, and I don't know what that one
9 means either.

10 Q. Okay. One inference I might make is that
11 you are commenting on some kind of proposal to
12 negotiate a delay with the FTC.

13 Can you say if that's accurate?

14 A. Well, the first e-mail to Jeremy from
15 Richard says that "I think it more appropriate to
16 have your attorneys try to negotiate a delay. We
17 don't want to piss off the commissioners before we
18 have a chance to work with them. How did they react
19 to the last" -- so it sounds to me like there must
20 have been a delay before, they want to negotiate
21 another delay, and I think my thought was -- Richard
22 obviously forwarded this to me, looks like, that I'm
23 not -- I don't know the players, I don't know the
24 situation, but if you're not ready, you better not
25 move forward.

1 Q. Okay. Sounds like sound advice, and my
2 question doesn't so much concern the advice --

3 A. Sure.

4 Q. -- but, rather, the timing. It looks to
5 me like, you know, as late as December 10, 2010, you
6 are being asked for and giving your input on this
7 lobbying effort.

8 Is that a fair characterization of what
9 was going on?

10 A. Well, what was going on, you've got one
11 e-mail in December -- when's the last communication
12 he had? Was it October?

13 Q. October.

14 A. Yeah, so I don't think it would be
15 surprising to me that Richard would have a question,
16 or Jeremy would have a question based on my
17 experience and say what do you think, and I think
18 that that's what that was. I told him what I
19 thought.

20 Q. Okay. So can you recall being asked any
21 similar questions between October and December?

22 A. I don't remember.

23 Q. Can you recall providing any input to
24 Jeremy or Richard?

25 A. I honestly don't recall.

1 Q. And do you recall -- well, I guess you
2 just answered that.

3 You just don't have a recollection of
4 what, if anything, you did between October and
5 December of '10?

6 A. I really don't. I was good friends with
7 both of these people, and I wanted it to work out for
8 Jeremy.

9 Q. Can you recall if you were having
10 conversations with Jeremy with regard to this
11 lobbying effort?

12 A. I felt like the lobbying effort was really
13 between him and Richard as professionals, Richard as
14 a professional who knew those people.

15 Would I be surprised if he made a phone
16 call to me in the interim between October and
17 December and we discussed it? I wouldn't be
18 surprised at all.

19 Q. You just don't recall?

20 A. I just don't recall.

21 Q. Okay. Do you have any recollection of
22 being involved in negotiations or discussions about
23 what this lobbying effort would cost?

24 A. Not in negotiations. As I understand it,
25 the answer is -- it's do I recall being involved in

1 the negotiations?

2 Q. Or a discussion? I don't know if there
3 were negotiations.

4 A. Yeah.

5 Q. At some point somebody determined that an
6 amount of money would be paid --

7 A. Right.

8 Q. -- and was paid, and I just want to know
9 what, if any, involvement you had in that?

10 A. As I understand it -- I didn't have
11 involvement in that part of the arrangement between
12 them. As I understand it, they met together without
13 my being there and decided how they would work
14 together if they worked together, but I do recall
15 hearing later about what the price would be, and I
16 believe it was a quarter million dollars, and I
17 didn't know how far that would go.

18 Q. And from whom did you hear that?

19 A. I believe I heard that from Richard Rawle.
20 I don't recall for sure, though, if it came from
21 Jeremy or Richard, but...

22 Q. Can you say whether the object of the
23 lobbying effort was to prevent or at least delay the
24 filing of an FTC Complaint?

25 A. All I remember is that Jeremy thought that

1 if the FTC could hear his story, they wouldn't ever
2 sue him, and so when you say the object of the
3 arrangement, I wasn't in the meeting when they talked
4 about the details of what exactly Jeremy wanted to
5 accomplish, but I knew he didn't want to be sued, and
6 I believe that he felt like the way not to be sued
7 would be to have the FTC just really sit down and
8 understand his company, what they were doing and what
9 he was doing for the community.

10 Q. He thought he could convince them if
11 they'd just let him?

12 A. Yeah, I think that's a fair statement.

13 Q. Do you recall the date on which the FTC
14 Complaint was filed?

15 A. I've looked at it within the last year. I
16 think it was around the middle --

17 MR. SNOW: Well, that wasn't his question.

18 THE WITNESS: Yes.

19 MR. SNOW: Do you recall the date?

20 THE WITNESS: I think I recall the date.

21 Q. (By Mr. Lalli) And what do you recall?

22 A. The 16th or 17th or 18th of December.

23 Q. And I'm not -- I wasn't going to introduce
24 this as an exhibit, but I just pulled something off
25 the Internet. It says December 21st.

1 A. Oh, there you go.

2 Q. Would that -- and I don't think the
3 precise date really matters.

4 A. There you go, I try to guess and what
5 happens?

6 MR. SNOW: So you don't recall the date?

7 THE WITNESS: I don't recall the date.
8 How's that?

9 Q. (By Mr. Lalli) But somewhere toward the
10 middle of December sounds right to you?

11 A. Before Christmas.

12 Q. Yeah. Okay. After the FTC Complaint got
13 filed, did Jeremy call you or talk to you about that?

14 A. At some point I think he did.

15 Q. And do you recall when?

16 A. No, I don't.

17 Q. Do you recall the nature of the
18 conversation?

19 A. I don't.

20 Q. Do you recall him being disappointed or
21 frustrated that the lobbying effort had not been
22 successful at least insofar as preventing an FTC
23 Complaint from being filed?

24 A. At some point I believe that was the case.

25 Q. And do you recall what that point was?

1 A. I don't.

2 Q. Okay. Do you know what Richard Rawle or
3 any of his contacts did in an effort to lobby the FTC
4 or arrange a meeting with the FTC?

5 A. I don't. I mean, I've seen documents
6 since then, within the last six or eight months.
7 I've seen some e-mails, for example, that show me --
8 so you say do I know. I currently know more than I
9 did, like, for example, when I met with Jeremy
10 Johnson on April 30th of 2012.

11 Q. What do you currently know as far as what
12 lobbying efforts occurred?

13 A. Well, what I know is what I've read in
14 e-mails --

15 Q. Right.

16 A. -- between Jeremy -- between Richard Rawle
17 and the lobbyists he engaged.

18 Q. Right. And what is that?

19 A. That he asked Jeremy Johnson for some
20 information about his philanthropic contributions to
21 the community, that Jeremy Johnson sent that
22 information to Richard, that Richard forwarded that
23 information to his people, his lobbyists, as I
24 mentioned. They said in their e-mails that they had
25 got -- received the information and were starting to

1 go through that information. Those are the things
2 that I recall reading from the e-mails that I saw
3 about what Richard did.

4 Q. Do you know what lobbyists Richard was
5 using?

6 A. As I sit here now I do, yes.

7 Q. And who were they?

8 A. A man named Brown from Las Vegas and a man
9 named Rupli from Washington, D.C.

10 Q. And did you know that in 2010, or is that
11 information you learned only recently?

12 A. I learned that information shortly after
13 Richard Rawle passed away.

14 Q. And how did you learn that?

15 A. I'm trying to recall how I learned that.
16 I think that Mr. Alba told my attorney and my
17 attorney told me. I think that's how it happened.

18 MR. LALLI: Okay. Thirty-eight.

19 (EXHIBIT 38 WAS MARKED.)

20 Q. (By Mr. Lalli) Exhibit 38 is a March 4,
21 2011, letter written from William Rothbard, who
22 identifies himself as counsel to Scott Leavitt, to
23 Richard Rawle.

24 Have you ever seen this letter before?

25 A. I recall seeing it before.

1 Q. And when did you first see it?

2 A. I don't recall when I first saw it.

3 Q. Do you recall whether or not you saw this
4 in 2011?

5 A. I believe I did.

6 Q. Okay. Do you recall having a discussion
7 with Mr. Rawle about it?

8 A. I don't recall that, no.

9 Q. Okay. Do you recall having any sort of a
10 reaction to what's been stated in the letter?

11 A. May I read the letter?

12 Q. Yes, please.

13 (Witness examining document.)

14 THE WITNESS: Okay. What's your question?

15 Q. (By Mr. Lalli) My question is: Do you
16 recall what reaction you had when you first read
17 this?

18 A. And I want to go back and just correct my
19 testimony. I don't know as I sit here when I saw
20 this, if it was in 2011 or not.

21 I do know I received a phone call from
22 Mr. Rothbard sometime following December of 2010, and
23 he was asking me for contact information for
24 Mr. Rawle, and he told me he represented a man named
25 Scott Leavitt who had been involved in the

1 arrangement with Mr. Rawle. I recall being surprised
2 at the phone call and was surprised to hear about
3 Scott Leavitt.

4 Q. Did he tell you that Scott Leavitt had
5 paid money toward this lobbying effort?

6 A. I don't know if he told me that at the
7 time or if he told me that later or if Richard told
8 me that. I don't know.

9 Q. Okay. So after you get this call from
10 Rothbard seeking Mr. Rawle's contact information, did
11 you talk to Mr. Rawle about it?

12 A. I believe I did.

13 Q. And do you recall what the substance of
14 that conversation with Richard Rawle was?

15 A. I really don't. I just recall letting him
16 know I received a phone call from a lawyer and asking
17 Mr. Rawle if it was okay with him if I gave him
18 Mr. Rawle's contact information.

19 Q. Did you understand through that
20 conversation that this lawyer was being hired by
21 Scott Leavitt in an effort to try to get this
22 \$200,000 back?

23 A. I don't recall. It wouldn't surprise me
24 if that's what the purpose of the call was. I
25 assumed he had issues or he wouldn't have called me,

1 and I'm assuming that Jeremy Johnson gave him my
2 phone number, and I'm assuming that Jeremy Johnson
3 must have lost Richard's contact information, but I'm
4 not sure.

5 Q. Okay. And do you recall what, if
6 anything, came of this?

7 A. I don't recall. I mean, at some point
8 something came of it in 2012, but I don't recall what
9 happened in the near term, no.

10 Q. But you do -- you do think you talked to
11 Richard about the --

12 A. The phone call.

13 Q. -- Rothbard conversation?

14 A. I believe I talked to him about the phone
15 call.

16 Q. Was that the only time you talked with
17 Richard Rothbard?

18 A. I don't recall ever talking with him
19 again, but it wouldn't surprise me if I did, but I
20 just don't recall, and it was never anything of
21 substance. It was either I didn't talk to him again
22 or I gave him Mr. Rawle's contact information. I
23 don't recall, but it was never of any substance.

24 MR. LALLI: Okay. Thirty-nine.

25 (EXHIBIT 39 WAS MARKED.)

1 Q. (By Mr. Lalli) Exhibit 39 is a court
2 reporter's transcript that purports to be a
3 transcription of the Krispy Kreme meeting that
4 Jeremy Johnson recorded.

5 My question is: Have you ever seen this
6 transcript before?

7 A. I don't know if I've seen your transcript.
8 I have seen a transcript that was prepared by my
9 attorneys.

10 Q. Do you know if it's -- because I didn't
11 prepare this. We got this off the Internet, I think.

12 A. Yeah. As I recall, the one we had done
13 seemed a little more accurate to us than the one that
14 was on the Internet, provided by the *Tribune*, for
15 example.

16 MS. JAMES: If I could interject, I know
17 there were at least two transcripts. I believe one
18 was from Intermountain.

19 Actually, I recall that the two
20 transcripts were not identical, and there were some
21 areas of the tape where it was really hard to
22 understand and garbled, and so the two court
23 reporters had different interpretations. I don't
24 remember right now which one we thought was more
25 accurate.

1 MR. LALLI: Do you have both copies?

2 MS. JAMES: I do.

3 MR. LALLI: Can we get the other one?

4 MS. JAMES: Yes.

5 Q. (By Mr. Lalli) But you've read one
6 transcript. Whether it was this one, you're not
7 sure?

8 A. Right.

9 Q. Okay. And as you read through it, I mean,
10 did it seem accurate, or had it been too long for you
11 to be able to recall?

12 A. Well, in essence, it seemed pretty
13 accurate, I mean in total, but there were -- there
14 were some differences between the two transcripts. I
15 don't recall specifically what they were.

16 Q. Have you listened to the tape?

17 A. Yes.

18 Q. Okay. Well, I want to ask you some
19 questions about this, not necessarily -- well, let me
20 just ask the questions and we'll see where it takes
21 us.

22 If you'd go to page 4 here, and I'm just
23 picking up. This is toward the beginning of the
24 conversation on line 8 where Jeremy is purporting to
25 have said, "I talked to Scott. I think he's going to

1 have to have at least 175. But I think
2 what we've got to explain to Richard is he, you know,
3 I don't know how Richard looks at this, but there was
4 noth -- nothing happened. We got promised the world
5 and got zero in return."

6 My first question about this is: As I
7 read this, it appears as if there was something
8 that -- some dialogue that you and Johnson had had
9 before this. It looks to me like you're kind of
10 picking up a conversation. I talked to Scott, I
11 think he's going to have to have at least \$175,000.

12 So was there a prior discussion between
13 you and Johnson?

14 A. Well, there was. Yes, there was.

15 Q. Was there more than one prior discussion
16 with Johnson?

17 A. Well, are you talking about relative to
18 his concern that he expresses here about getting paid
19 back?

20 Q. Yes.

21 A. I believe there was just one, and that was
22 an in-person meeting.

23 Q. And where and when was that?

24 A. That would have been late in 2011, and it
25 would have been in St. George.

1 Q. Okay. Can you recall where in St. George?

2 A. Yeah. It was in a hotel room. I was down
3 in St. George in a hotel room attending a conference
4 down there, or a meeting down there.

5 Q. Do you recall which hotel?

6 A. I don't.

7 Q. All right. So you had a meeting with
8 Johnson in late 2011 in a hotel room, St. George?

9 A. Right.

10 Q. And what was the substance of that
11 meeting?

12 A. Well, it looked like -- Jeremy had called
13 me or somehow made it known he wanted to meet with me
14 about something urgent. I didn't want to meet with
15 him alone, so I invited one of my campaign
16 consultants to go down there and meet there with him,
17 which is what he did and what we did.

18 It seemed like the thrust of the meeting
19 was Jeremy was concerned that he hadn't gotten
20 everything he wanted out of the arrangement with
21 Richard, and he -- and I don't know if it was the
22 first time then. I think it was -- let me know that
23 there was someone else who had been involved in his
24 arrangement to get lobbyists hired, Scott Leavitt. I
25 may have heard that from earlier, on the phone or

1 something, but he was concerned and said that he was
2 concerned for Scott Leavitt and that he wanted to get
3 this resolved with Richard Rawle, and he acted pretty
4 angry about it.

5 Q. And why was he talking to you about it?
6 Did he say?

7 A. He didn't say, but he knew I had a
8 relationship with Richard Rawle.

9 Q. Did he ask you to intervene with
10 Richard Rawle to try to get the money back or to do
11 something else?

12 A. I think he assumed I would.

13 Q. Who was the campaign consultant?

14 A. Jason Powers.

15 Q. Jason Powers?

16 A. Yes.

17 Q. When Jeremy told you that someone else had
18 been involved; namely, Scott Leavitt, did you
19 associate that at that point with the prior
20 conversation you had with Rothbard?

21 A. Oh, no. I think by then I knew that he
22 had been involved with Scott Leavitt.

23 Q. Okay.

24 A. But that was, I think, the first time
25 Jeremy -- there, again, he may have talked to me

1 about it on the phone earlier. I don't recall, but
2 at some point I understood there was a person named
3 Scott Leavitt who was involved in helping pay
4 Richard Rawle. Again, I wasn't in the meetings when
5 they negotiated that, so I just didn't know about
6 that.

7 Q. Okay. But by this meeting in late 2011
8 you knew?

9 A. Yes.

10 Q. Because Jeremy was telling you, and you'd
11 had the conversation with Rothbard, and you'd talked
12 with Richard about it by that time, too --

13 A. Right.

14 Q. -- if I'm following you? So how long did
15 this meeting in the hotel room last?

16 A. I'd say 20 minutes to 25 minutes.

17 Q. And was there an end to the meeting in the
18 sense of action items or an agreement to discuss
19 further?

20 A. Not really. Like I said, I'd be happy to
21 call Richard and tell him that Jeremy was concerned
22 about it, and I had felt that Richard ought to work
23 it out with him, and I had told Richard that.

24 Q. Did you take a position on whether money
25 should or should not be refunded?

1 A. I didn't.

2 Q. Did either Jeremy or Richard ask your
3 opinion on that?

4 A. I don't recall.

5 Q. Okay. So between this late 2011 and
6 April 30th, if that is the accurate date of the
7 Krispy Kreme meeting, had you spoken with Johnson?

8 A. I don't -- I don't recall speaking with
9 Johnson between those two periods of time.

10 Q. I presume there was some conversation to
11 set up this meeting?

12 A. This meeting?

13 Q. Yes.

14 A. Well, it may have happened that morning.
15 I think that conversation happened that morning.

16 Q. Okay. And do you recall, did he call you?

17 A. He called me.

18 Q. And what was the -- was the location just
19 something that happened to be convenient for the both
20 of you?

21 A. It happened to be convenient for me. I
22 was down in Utah County at the time.

23 Q. Turn to page 7, if you would, please, and
24 beginning in paragraph -- paragraph -- on line 8,
25 this is Jeremy Johnson apparently saying "if you try

1 and talk to Richard he hangs up the phone. And so
2 I'm like -- and so Scott's just, you know, that's his
3 home."

4 Had Richard told you about efforts by
5 Johnson to contact him?

6 A. I don't recall hearing that from Richard.

7 Q. When you had this meeting in late '11, did
8 you already know by that point in time that Johnson
9 and/or Leavitt wanted to get money back from Rawle?

10 A. I don't remember.

11 Q. But if not before, at least in that late
12 '11 meeting you knew it then?

13 A. That he wanted to work something out with
14 Richard?

15 Q. Yes.

16 A. Yeah.

17 Q. Do you know what Richard's position was
18 with respect to any kind of refund?

19 A. Well, that's a -- I know Richard had told
20 me it was a nonrefundable contract with them, but I
21 also think Richard was -- was concerned that there
22 was some kind of receiver appointed or something, and
23 I don't know when I became aware of that concern,
24 that if he paid the money back to Jeremy Johnson that
25 there might be a third party who got it and we had to

1 pay twice.

2 Q. Look down at line 18 and then again on 20.
3 With reference to Scott, Johnson is saying that he's
4 mad at you and wanted to sue you.

5 Am I understanding that accurately?

6 A. That's what he seems to say.

7 Q. Maybe this is a question you were asking,
8 but why would Scott be mad at you?

9 A. That's the question I was asking myself
10 during this whole conversation, which I thought was
11 crazy.

12 Q. And was that ever answered in your mind?

13 A. No. I think he made the whole thing up.

14 Q. When Rothbard had spoken to you, whenever
15 this was, did he tell you that Scott Leavitt blamed
16 you?

17 A. No.

18 Q. Prior to Johnson saying this in this
19 meeting here that we have transcribed, had anyone
20 asserted that Scott Leavitt somehow blamed you?

21 A. I don't recall. I don't recall ever being
22 blamed for it prior to this point. I don't recall
23 that being the topic of the meeting we had in the
24 hotel room either; in other words, that there was any
25 animosity or even concern from Scott regarding my

1 introduction of Richard to Jeremy Johnson.

2 Q. Okay. You mentioned a moment ago that you
3 thought this was crazy.

4 Can you elaborate on that?

5 A. Well, looking back on the conversation, in
6 the middle of the conversation it seemed really
7 bizarre to me, and as I -- as I went through the
8 meeting, it seemed like Jeremy Johnson was trying to
9 scare me and trying to get me -- trying to extort me,
10 and in the context of just finishing the Republican
11 convention and going to a primary in just a few
12 months, it had a good effect, it really scared me, so
13 the whole meeting was me on the defense trying to
14 figure out where he was going and trying not to make
15 him so mad that he'd try to do what he did to me in
16 November and December, and that is blow me up before
17 the primary.

18 Q. Did you, when you had the meeting in late
19 '11 or at any time prior to Krispy Kreme, I guess,
20 did you get the sense that Johnson was trying to
21 extort you, to use your term?

22 A. I didn't get that sense at that time.

23 Q. Okay.

24 A. I felt like he was upset at Richard, but I
25 didn't get any sense that he was threatening me.

1 Q. Let me direct your attention to page 9,
2 and if you look at the statement attributed to
3 Johnson beginning on line 9 where he talks about
4 roasting a public official, et cetera --

5 A. Right.

6 Q. -- is that an example of what you mean
7 when you say you thought he was trying to extort you?

8 A. Yeah.

9 Q. And there are several other things in here
10 that sound a lot like that to me, so maybe I can
11 shortcut this.

12 If your view of this generally was he's
13 trying to extort you, he's threatening, how did you
14 interpret the threat?

15 A. What I think he had the ability to do; is
16 that what you mean?

17 Q. Yeah. What was the threat in your mind to
18 you?

19 A. That he would create a lie, an alternative
20 reality, that he would publish it before the primary,
21 and I'm experienced. I've seen campaigns before, and
22 I kind of envisioned the possibility of what happened
23 to me actually in January of 2013, that he could
24 create a lie.

25 I mean, he's talking here about bribes,

1 and I didn't have my e-mails from the period of time
2 any longer, and I wasn't closely enough connected to
3 what Richard had actually done to know what he'd
4 actually done. I had a lot of faith in Richard, but
5 I didn't know what Jeremy could come up with if he
6 wanted to two weeks before the election and
7 absolutely make it impossible for me to have any
8 success and ruin my reputation.

9 Q. When you say two weeks before the
10 election, you mean the primary?

11 A. Yeah, or three weeks before the primary or
12 month before the primary or the next day.

13 Q. So when you say the lie, what do you mean?
14 Do you mean that this was a bribery as opposed to
15 lobbying or something else? What was the lie?

16 A. Yeah, I think it's pretty clear from the
17 transcript that he created a scenario about -- and in
18 my mind he was talking about his ability to create a
19 fiction, and I think on page 7 more so where he said,
20 "It won't matter if it's even true, they'll do to you
21 what they did to me, you will become a pariah," and
22 later on in the conversation I believe somewhere it
23 says, believe me, the press will be all over it,
24 you'll be on TV, you'll be on radio, you'll be
25 everywhere, no one will touch you, you'll be a

1 pariah, and I took that as more than a veiled threat
2 of what he was willing to do to me to put pressure on
3 Richard to resolve things with them.

4 Q. Do you know if there was some impending
5 interview or conversation Johnson was going to have
6 with somebody where he might do what he was
7 threatening to do to you?

8 A. I felt like what he was threatening to do
9 was going to be done publicly with the media, so I
10 don't know of any impending interview, no.

11 Q. There's a reference in here to the FBI,
12 for example --

13 A. Right.

14 Q. -- and I'm wondering if part of, you know,
15 the unspoken context to this was that he was going to
16 be interviewed by the FBI or something.

17 Do you know about that?

18 A. I don't. I think he told me he had been
19 working with his lawyer and that the FBI was looking.
20 He'd been charged with one count already of mail
21 fraud, something like that.

22 MS. JAMES: Mail fraud.

23 THE WITNESS: So I was puzzled and curious
24 through the whole conversation as to why the FBI
25 would have any interest in me, and after I settled

1 down, when the conversation was over, and as a few
2 weeks passed I became convinced that he was just
3 trying to put pressure on me and scare me, and when I
4 continued forward in the primary and nothing
5 happened, I became more and more convinced he was
6 just trying to push my buttons.

7 Q. (By Mr. Lalli) After you got out of this
8 meeting and thought about it?

9 A. Well, yeah. I mean, I asked a question in
10 this interview. I said is there a paper trail? He
11 talked about the houseboat, and people have asked me
12 why did you say that, and it was because I was trying
13 to find some connection between anything I had done
14 with Jeremy Johnson, because I didn't see that he had
15 anything that would even lead the FBI to even ask --
16 have them wonder if there was any real relationship
17 or involvement between us.

18 So I spent the whole meeting trying to
19 figure out where he was going and trying to connect
20 dots to see if he was telling me the truth, and by
21 the time I'm halfway through this meeting I'm
22 thinking he's setting me up, he's trying to make me
23 nervous, he's trying to scare me, and I'm just trying
24 to hang on through the meeting and not make him upset
25 enough that he was going to storm out of there and do

1 something terrible to me and make up something.

2 Q. Okay.

3 A. So I was really trying to hang with him.

4 Q. Let me direct you to page 18, and
5 beginning on line 22 there's a statement where you
6 refer to -- well, I'm picking up on line 24.

7 "There's nothing wrong with anything that
8 I've done criminally. Now, politically I go whoa."

9 What did you mean by that?

10 A. Well, what I really meant there was
11 someone could really make up a story if they wanted
12 to lie about my relationship with Jeremy Johnson,
13 which is exactly what happened, so I was worried
14 about the impact of what he could say if he were to
15 lie about it on me politically.

16 Q. Okay. So was your -- the notion of
17 criminal suggests to me that your concern, at least
18 in that moment, may have been even deeper than
19 political.

20 Is that accurate?

21 A. No. No, I wasn't concerned that I had
22 done anything criminally wrong.

23 Q. Okay.

24 A. Not a thing. No, it was all about the
25 appearance, and this statement that I make here on

1 page 18 is in the context of the last 17 pages of
2 this guy acting crazy on me.

3 Prior to this, prior to this moment, it
4 had never crossed my mind that Jeremy Johnson would
5 be able to say those things or have an interest in
6 painting that kind of a picture with me.

7 Q. How would you describe the nature of your
8 concern as a result of this? Was it simply what you
9 said about it would hurt your political campaign a
10 month before the primary? Did it go beyond that?

11 A. So -- yes. The answer is that was the
12 concern for me was the campaign, because I think for
13 the first time ever I heard in prior moments of the
14 conversation his talking about a bribe attempt of all
15 things and putting this in an ugly context, rather
16 than an honorable context, and I started to see what
17 I've come to feel is the real Jeremy Johnson, which I
18 had never known that man before, and it scared me to
19 death.

20 Q. Was this a turning point in your
21 relationship with him?

22 A. Absolutely.

23 Q. Okay. How would you describe the level of
24 your concern about the political repercussions? I
25 mean, was this -- on one hand you've said he's crazy,

1 but I'm also getting the sense that you were taking
2 this seriously.

3 A. Well, I mean to say I wasn't taking it
4 seriously as not to read the transcript. I was
5 concerned. He had scared me to death. He'd become a
6 monster about what he'd be willing to do, and he
7 acknowledged on the one hand that I hadn't done
8 anything like what he was suggesting he could say I'd
9 done, while on the other hand he was saying I can get
10 it all over the papers, all over the news, you'll
11 become a pariah, and I understood campaigning well
12 enough to know that in a couple weeks that could be
13 very hard to recover from in just a short period of
14 time.

15 Q. Had you had this -- the concern you had as
16 a result of this meeting, had you had that prior?

17 I mean, for example, when you met with him
18 in late 2011, did you have concerns that Johnson may
19 somehow turn on you?

20 A. I didn't have any concerns about that.

21 Q. Had you talked with Jason Powers about
22 Johnson prior to this meeting?

23 A. I don't think so, not in that context at
24 all, and -- yeah. No. I wouldn't have met with
25 Jeremy Johnson if I'd felt like he had the capacity

1 to do what he did to me in this meeting. In fact,
2 that was the last time I ever met with him.

3 Q. Let me have you go to page 52. On line 21
4 you say, "I think I'm their target."

5 What did you mean by that?

6 A. I'd have to read -- I'd just have to read
7 the context.

8 Q. Sure.

9 (Witness examining document.)

10 THE WITNESS: So what's your question?

11 Q. (By Mr. Lalli) Well, I'm interested --
12 what was your concern was my question?

13 A. Well, by this time I think I'd been in
14 this conversation for an hour with this guy. I'm
15 trying to hold onto the conversation to the very end
16 so that he doesn't leave upset, and I think I'm just
17 trying to be as conciliatory as I can be, and I'm,
18 frankly, worried.

19 Q. Whose target and target for what?

20 A. I don't recall.

21 Q. Okay. Page 56, line 13, "I know. But at
22 the end of the day I don't want to be a felon."

23 A. Right.

24 Q. First of all, I mean, is that accurate?
25 Is that really what you said?

1 I mean, were you concerned --

2 MR. SNOW: Would you like to be a felon?

3 MR. LALLI: Well, I guess --

4 THE WITNESS: That's an honest statement.

5 I don't want to be a felon. You know, as I recall
6 from the transcript I've read, it seemed to make more
7 sense looking at it in the context of someone setting
8 me up, that it was more rhetorical.

9 Q. (By Mr. Lalli) Do you know -- this kind
10 of goes back to my question about the FBI.

11 A. Uh-huh (yes).

12 Q. You're talking about being someone's
13 target, you're talking about being a felon, and I'm
14 just wondering if there's some context to this
15 discussion that doesn't come from any transcript --

16 A. Well, except that --

17 Q. -- where you would be concerned about
18 being someone's target, particularly a criminal
19 target?

20 A. Well, I think that the only -- I think the
21 only way to look at the conversation is in the
22 context of the conversation, and I've got a guy who
23 looks like he's going off the reservation. I don't
24 know what he's saying to anybody, and I don't know
25 what he's willing to make up, and, you know, I'll

1 tell you maybe it was a premonition, because eight
2 months later I find myself what. You know, someone
3 alleges that I've tried to bribe a senator. I call
4 for an investigation, and I'm thoroughly turned
5 upside down and, you know, investigated for ten
6 months.

7 At some point I've probably become a
8 target, and so in the context of this whole emotional
9 meeting for me with a friend, after an hour and a
10 half I'm just hanging on trying to get through a
11 conversation, being as agreeable as I can be to get
12 it finished without him being so mad that he's just
13 going to go make up something and ruin my life.
14 That's the context of where I am at this point in
15 time in the conversation.

16 Q. Okay.

17 MR. SNOW: Five to 10 month investigation,
18 you mean the Department of Justice?

19 THE WITNESS: Right.

20 MR. SNOW: Where they told you you were a
21 witness?

22 THE WITNESS: Right.

23 Q. (By Mr. Lalli) What did you do after this
24 meeting with Jeremy Johnson?

25 A. Well, after the meeting, and I don't know

1 how quickly it was, but within a couple of days I
2 called Richard Rawle and had a conversation with him,
3 and then I worked on memorializing that conversation,
4 documenting that with a letter I sent to Richard, and
5 my basic advice to Richard was you probably want to
6 sit down with this person and see if you can work
7 something out, which was probably the right thing to
8 do anyway and get it resolved in some way, and by the
9 way, you ought to hire yourself a lawyer to negotiate
10 with his lawyer and just get the thing resolved,
11 decide if you're going to do something or not and get
12 it resolved.

13 Q. What did Richard say in response to that?

14 A. He said that's probably a good idea. It's
15 probably time.

16 Q. Did Richard indicate to you that there had
17 been some ongoing dialogue that he'd been having
18 either with Johnson or with Rothbard or Leavitt?

19 A. I don't recall that.

20 Q. Would it surprise you if he had been
21 having an ongoing dialogue with them?

22 A. I think it would. I think it would just
23 because I know Richard, and I just -- I think that he
24 felt justified in his arrangement with Mr. Johnson,
25 but I think that he needed to understand that

1 Mr. Johnson was not going away and that he had to
2 face the issue at some point and get it resolved.

3 Q. Well, earlier we looked at a March 4,
4 2011, letter that Rothbard had sent to Rawle.

5 A. Right.

6 Q. And by the time you're having this meeting
7 with Johnson and then with Rawle was more than a year
8 later.

9 A. Right.

10 Q. And I'm wondering if you know of anything
11 with respect to a demand for a refund transpired in
12 that year and two or three months?

13 A. I don't know. I don't remember.

14 MR. LALLI: Let's go to 40.

15 (EXHIBIT 40 WAS MARKED.)

16 Q. (By Mr. Lalli) Okay. Exhibit 40 is a
17 May 2, 2012, letter from you to Richard Rawle.

18 Is this the letter you were referencing a
19 moment ago?

20 A. It is.

21 Q. And the conversation you're referring to
22 with Richard was the telephone conversation you just
23 described?

24 A. Yes, uh-huh.

25 Q. Okay. And in the first paragraph the

1 conversation with Johnson was the Krispy Kreme
2 conversation, I take it?

3 A. Right.

4 Q. Okay. Again, what was your purpose in
5 sending this letter?

6 A. It was to document that he and I had had a
7 conversation and to document that I'd asked him about
8 the source of the funds for which I'd been paid for
9 the cement work, or P-Solutions had been paid for the
10 cement work, and to let him know that if he had paid
11 me from the same account, that my recommendation
12 would be to have that refunded and paid from a
13 different account so that it wouldn't be coming from
14 any source of funds that had been touched by
15 Jeremy Johnson.

16 Q. Okay. And when we met last and looked at
17 your invoices, the two invoices you prepared for work
18 on Chaparral --

19 A. Right.

20 Q. -- you said that you had prepared them in
21 the same time frame; is that correct?

22 A. Yes, the same time frame as this
23 (indicating), yeah.

24 Q. Okay. So was that -- the preparation of
25 those invoices, was that in furtherance of the same

1 objective as writing this letter?

2 A. Yes.

3 Q. And the refund of the money to RMR and
4 repayment from a different account, was that in
5 furtherance of the same objective?

6 A. Yes, although in the meantime, between the
7 time I drew up this letter and the time we did those
8 things, I brought my wife in the loop, and we decided
9 together to do this and to do it through P-Solutions.

10 Q. Who was the intended audience for the
11 letter or the invoices or the refund of the money?

12 A. I didn't know who would see this some day,
13 but I certainly wanted it to be clear that Richard
14 and I had talked. I wanted him to be clear that this
15 was a conversation I'd had with Mr. Johnson, that it
16 was important to me that he let me know about the
17 source of the funds and that this early I wanted
18 to -- I'll put it on the record that I wanted to
19 refund the money if the money had come from that
20 account.

21 So within a few days of my understanding
22 that it was possible that I'd been paid from that
23 account, that I wanted to make sure that I at least
24 had broached the subject with him that I was
25 interested in that type of a refund and a repayment.

1 Q. Okay. Well, let's start with the refund.
2 What would that accomplish? I'm not
3 following your logic on that.

4 A. Well, it wouldn't accomplish anything
5 legally, but certainly I wasn't worried about the
6 legality of what I'd done.

7 What I was interested in was making sure
8 that I was not benefitting from an introduction that
9 I'd made to Richard on behalf of Jeremy Johnson and
10 that, you know, I discussed it with my lawyer, and we
11 both agreed that legally it didn't make much of a
12 difference, but optically it would be better if I
13 returned that money and that there would be really no
14 way someone could say that the money I had retained,
15 that P-Solutions had retained, had somehow come from
16 a transaction between Richard Rawle and Jeremy
17 Johnson.

18 Q. And when you say optically, whose eyes are
19 you concerned about?

20 A. Well, again --

21 Q. Is it the press? Is it --

22 A. This is in the context of the conversation
23 that Jeremy Johnson and I had just gone through.

24 Again, as I said in the conversation, the
25 optics of the allegation that I had been involved in

1 a bribery involving a senator was something that
2 would be very hard to overcome, and so this was my
3 attempt to document and ask a question and then do
4 what I could to at least be able to say, well, if I
5 don't -- if I didn't know about it, certainly when I
6 found out about it I tried to make it right, and
7 that's really what that whole thing was about was
8 trying to make it right, optically at least.

9 Q. So were these efforts, the refunding of
10 the money, the writing of the letter, the creating of
11 the invoices, was that sort of an attempt to preempt,
12 or even if not preempt, explain to yourself if and
13 when this became public?

14 A. I think that what I wanted to do as soon
15 as I found out it could become an issue possibly,
16 while the recollection is as fresh on my mind and
17 Richard's mind as possible, knowing it was a year
18 later, without too much time going by to try to
19 document our relationship, the work I had done on the
20 project, which was hard enough going back a year, and
21 have things documented so that if I ever needed to go
22 back, if there was ever a question, I would have the
23 most contemporaneous recollection I could possibly
24 have, contemporaneous to the events and to what I'd
25 found out that the money had come from the same

1 account, because basically Jeremy Johnson in the
2 phone conversation said that he thought I might have
3 gotten paid on his other issue.

4 MR. SNOW: This is the Krispy Kreme
5 conversation?

6 THE WITNESS: The Krispy Kreme
7 conversation, and so I wanted to while Richard was
8 still alive, while it was fresh on my mind go back
9 and try to document exactly what we'd done, what I'd
10 done and what I got paid for.

11 Q. (By Mr. Lalli) So was the audience for
12 this message ultimately the voting public?

13 A. I wouldn't say it was just the voting
14 public. I think it was anybody who would be
15 interested at some point in time, including the
16 court, including anybody.

17 Q. And the nature of your concern from the
18 Krispy meeting, Krispy Kreme meeting, was that you
19 would be harmed politically in the impending primary
20 election?

21 A. Well, immediately at that time it was the
22 primary, but it was also about my reputation. It was
23 about casting what I had done legitimately in a false
24 light where Richard and I had had a relationship that
25 didn't require a lot of documentation in our

1 experience with each other.

2 Q. And in your mind writing the letter,
3 preparing the invoices, returning the money, that
4 accomplished your objective?

5 A. Well, no, but it certainly gave me a
6 reference point to document what we had done where
7 Richard and I could contemporaneously work together
8 to -- and that's what I've done in the invoices. I
9 think I may have talked about it earlier that I went
10 back to him, we went over what I had done and did the
11 best I could to document and reconstruct the
12 relationship that we had relative to those projects.

13 MR. LALLI: Okay. Forty-one.

14 (EXHIBIT 41 WAS MARKED.)

15 Q. (By Mr. Lalli) Exhibit 41 is the
16 Richard Rawle Declaration.

17 You've seen this, correct?

18 A. I have.

19 Q. How was this prepared; do you know?

20 A. Well, Richard was really getting sick and
21 taking a downturn, and I believe I prepared some
22 notes that I gave to my lawyer, and I believe he
23 prepared a draft, and I believe it was sent over to
24 Cort Walker. Cort Walker revised it extensively, I
25 believe, and finalized it and then presented it to

1 Richard through his attorney and reviewed it with
2 him. That's --

3 Q. Whose idea was it to have Richard do a
4 Declaration? Was that your idea?

5 A. No, I don't think it was my idea. I think
6 that the attempt was to preserve his testimony
7 because his death was imminent, but I don't know
8 whose idea it was. I don't think it was my idea.

9 Q. Preserve his testimony for what purpose?

10 A. Well, by that time I had been told by
11 Mark Shurtleff that Jeremy Johnson had gone to the
12 *Tribune*, and Jeremy Johnson had gone to Mark
13 Shurtleff, and Mark Shurtleff had gone to the FBI,
14 and Jeremy Johnson had been raising allegations --
15 this is in November 2012 after the election, and so
16 with the anticipation that someone might ask
17 questions about our relationship, based on what we
18 were hearing, I think the point of this was to
19 preserve Mr. Rawle's testimony in case he passed
20 away.

21 Q. Do you know what, if any, changes
22 Mr. Rawle made to the draft that your lawyer
23 prepared?

24 A. I don't. I don't know specifically what
25 changes there were.

1 By the way, did you say my lawyer prepared
2 or I prepared?

3 Q. I thought you told me your lawyer prepared
4 this.

5 A. Right. Well, I mean, I think this one...

6 MR. SNOW: If it went to his lawyer, yeah.

7 THE WITNESS: Something something**.

8 MR. SNOW: And I think Sam.

9 THE WITNESS: Okay. Something
10 something**.

11 Q. (By Mr. Lalli) Did you talk to Richard
12 about this Declaration, or did you just work through
13 your attorney and Cort Walker?

14 A. I don't believe I talked to him about the
15 Declaration. I believe it was run through
16 Cort Walker and his attorney.

17 Q. Did you see him in the hospital during
18 this time frame?

19 A. I did.

20 Q. But not discussing the Declaration?

21 A. That's right.

22 Q. And was your concern in preparing the
23 Declaration that you might end up in exactly the type
24 of investigations you've ended up in?

25 MR. SNOW: I don't think he testified he

1 prepared the Declaration, if that's what you're
2 suggesting.

3 THE WITNESS: Yeah, so tell me what
4 your --

5 Q. (By Mr. Lalli) You knew this Declaration
6 was being prepared, correct?

7 A. Right.

8 Q. And you agreed with that?

9 A. I wanted to make sure that -- I mean --

10 MR. SNOW: Yes or no?

11 THE WITNESS: Did I agree with that? Did
12 I agree with the fact that it was being prepared?
13 Yes --

14 Q. (By Mr. Lalli) Yes, and --

15 A. -- I thought it was a good idea.

16 MR. SNOW: We're trying to get out of here
17 by five-thirty.

18 Q. (By Mr. Lalli) And was your -- I mean,
19 really, it begs the question of preparation for what?

20 What is it that you were
21 anticipating would occur or might occur where you'd
22 need this Declaration?

23 A. Well, if I've got someone out there
24 telling lies about me and I've got a witness who's
25 about to die, I'm interested, and I was interested

1 in -- and my lawyer was interested in making sure
2 that his testimony would survive him.

3 Q. Was your concern specifically about being
4 involved in a bribery allegation or was it broader
5 than that?

6 A. I don't know. I don't recall. I will say
7 this: I'd already won the election at this point, so
8 I wasn't worried about winning an election. More
9 than anything, I was -- I thought it would be very
10 helpful to have someone who understood our
11 relationship be able to share what that was when I
12 was facing rumors that Mr. Johnson was creating a
13 false alternative, a false fact.

14 Q. If you go back to May of 2012 when you
15 were writing the letters and preparing the invoices
16 in the wake of the Krispy Kreme meeting, would it be
17 accurate to state that you were concerned about a
18 bribery allegation, or was the concern broader than
19 bribery?

20 A. It was broader than bribery.

21 Q. And how much broader? What else other
22 than bribery were you concerned about?

23 A. I think the interest that my lawyer and I
24 had at this point was just covering -- having Richard
25 talk about our relationship.

1 MR. LALLI: Forty-two.

2 (EXHIBIT 42 WAS MARKED.)

3 Q. (By Mr. Lalli) Exhibit 42 is some 2011
4 bank statements for your joint account, and I just
5 want to -- there are a number of deposits in here in
6 amounts of \$1,000 or more, and I'm just wondering if
7 you can identify what they were for, because they do
8 not appear to me to be your payroll.

9 A. Okay.

10 Q. So if you'd turn to the second page, which
11 is Bates 524, if you look at the top entry there,
12 it's got your payroll and then identifies the State
13 of Utah, correct?

14 A. Right.

15 Q. Okay. Then we've got on 4-26 on the same
16 page there's a deposit by check of \$1,032.85.

17 A. (Witness nodding head affirmatively.)

18 Q. Any idea what that was for?

19 A. It's possible. Yes, I think I have an
20 idea what that would be.

21 Q. And what would your idea be?

22 A. It would have probably been a
23 reimbursement.

24 Q. From?

25 A. I don't know.

1 Q. A travel reimbursement?

2 A. It could have been a campaign
3 reimbursement or it could have been a travel
4 reimbursement from the State.

5 Q. Go to Bates page 543. There's an entry
6 three-quarters of the way down. 6-28 is the date.
7 The amount is \$1,557.90.

8 Similar type of deposit, expense
9 reimbursement?

10 A. I'm assuming, yes.

11 Q. Going to Bates page 560, right in the
12 middle of the page there's a deposit for \$2,289.93.

13 Do you know what that was for?

14 A. I would make the same assumption.

15 Q. Okay. Page 605, about three-quarters of
16 the way down the page, January 24th there's a deposit
17 of \$4,850.36.

18 A. I don't recall.

19 Q. That seems a little high for a travel
20 reimbursement.

21 A. Yeah. I don't know. I will say this --
22 and I have no idea. I'd have to look and see, but
23 it's January 24th?

24 Q. Twelfth.

25 A. Yeah. So it could be a number of things.

1 It could have been a number of trips together, but I
2 can't explain it, no.

3 Q. Tell me how your campaign or Attorney
4 General reimbursements worked.

5 A. Well, I have a State card, and so we'll
6 put a hotel on it or a flight on it or meals on it or
7 a taxi on it or parking at the airport on it. I'll
8 keep those receipts and turn it into the State.

9 Q. It's a Visa card, right?

10 A. Yeah.

11 Q. So you pay the Visa card, and then you
12 turn in the receipts and get a reimbursement?

13 A. That's right. That's how it works.

14 Q. And with the campaign did it work the same
15 way?

16 A. Well, yes. I don't recall receiving a
17 whole lot of reimbursements from the campaign because
18 usually there was someone traveling with me who would
19 pay for the expense. That's logistically how it
20 usually worked, but if I did have an expense, that
21 would probably be how it happened.

22 MR. SNOW: I need to go off.

23 MR. LALLI: Sure. Do you need to take a
24 break?

25 MR. SNOW: Yes.

1 THE VIDEOGRAPHER: Going off record. The
2 time is 4:32 p.m.

3 (Recess from 4:32 p.m. to 4:45 p.m.)

4 THE VIDEOGRAPHER: Returning on the
5 record. The time is approximately 4:45 p.m.
6 Counsel.

7 Q. (By Mr. Lalli) I'd like to now turn to
8 the topic of your 2012 campaign financial disclosure
9 forms.

10 The first question is: Prior to
11 submitting your campaign forms in 2012, you had
12 previously submitted similar forms, had you not?

13 A. Well, when you say "previously," I had
14 submitted forms when I ran for the House of
15 Representatives in 1997 and '99 and 2001, and then
16 when I ran for Congress federal forms in 2002 and
17 2004, but I'm not sure how similar the forms were to
18 the ones I filed in 2012.

19 Q. Do you recall?

20 A. I don't.

21 Q. Okay. Before you filed the forms in 2012,
22 did you read the statute?

23 A. No.

24 Q. Have you ever read the statute?

25 A. I've read it since.

1 Q. But not before?

2 MR. SNOW: What statute? Which one?

3 THE WITNESS: Which statute? Yeah.

4 Q. (By Mr. Lalli) Well, they're --

5 A. 20A 11?

6 Q. The statute I'm referring to is 20A -- I
7 don't have the direct cite, but I'm looking at in
8 Title 20A there is a statute that says candidates
9 have to fill out the same financial disclosure as
10 people who are in office fill out.

11 A. Oh.

12 Q. And that refers you to Title 76-8-109.

13 A. I had not read that in the months
14 preceding my filing that. I don't know if I had ever
15 read it, but I certainly hadn't read it
16 contemporaneous with my filing, no.

17 Q. Okay. And why did you not read the
18 statute prior to filing your forms?

19 A. Well, because I didn't think I needed to.

20 Q. What led you to not think you needed to?

21 A. Well, I knew that the forms were on file
22 with the Lieutenant Governor's office, and my intent
23 was to go into the Lieutenant Governor's office and
24 fill out the forms truthfully and accurately and file
25 for candidacy. It also happened to be a very busy

1 time for us, but I simply felt like I would have the
2 information I needed at the Lieutenant Governor's
3 office.

4 MR. LALLI: Forty-three.

5 (EXHIBIT 43 WAS MARKED.)

6 Q. (By Mr. Lalli) Exhibit 43 is a copy of a
7 State Constitutional Office Declaration of Candidacy
8 and related forms dated March 9, 2012.

9 Do you see that?

10 A. I do.

11 Q. Now, in looking through this exhibit, can
12 you tell me if this is a complete set of the
13 documents you filed on March 9, 2012?

14 A. It appears to be.

15 Q. And did you read these forms in their
16 entirety before filing?

17 A. I believe I did.

18 Q. Can you describe the circumstances under
19 which you filled them out? For example, where you
20 were, how long it took?

21 A. Well, I was in the Lieutenant Governor's
22 office. I had my campaign manager with me. Name is
23 Jessica Fawson.

24 What I remember is reading the Candidate
25 Financial Disclosure Or Conflict of Interest form and

1 having some questions about the language I saw on the
2 form, stepping outside the office to call my attorney
3 about some of that language, because it related to
4 some of the entities owned by my family's trust.

5 I remember coming back in and asking the
6 officiator there, I think it was Mark Thomas, the
7 deputy, how they enforced the rules about the filings
8 in terms of when they needed to be finalized and
9 completed before they took effect.

10 In other words, my question was can I fill
11 out part of it now and come back later before the
12 filing deadline and complete the filing and have it
13 be as if I'd filed it when I filed it. In other
14 words, did that have any impact on the amendment if I
15 amended it before the filing deadline, and he told me
16 that as long as it was final and complete by the
17 filing deadline, it would be as if I had filed it
18 nunc pro tunc, or from the very beginning, and so I
19 filled out what I could, understood and knew, and
20 then came back on the 15th and finished my filing.

21 Q. Had you reviewed a copy of the form before
22 you walked into the Lieutenant Governor's office on
23 March 9th?

24 A. I don't believe I did.

25 Q. And can you approximate the amount of time

1 you were in the Lieutenant Governor's office filling
2 out the forms?

3 A. I believe it was around 20 minutes.

4 Q. And what portion of that, approximately,
5 was consumed by you calling your attorney?

6 A. Well, you said -- so let me just clarify.
7 You said I was in the office about 20 minutes. I
8 believe I was on the phone a good 15 or 20 minutes
9 with my lawyer in the middle of that situation.

10 Q. Okay. So maybe 35 minutes overall?

11 A. Uh-huh (yes).

12 Q. And by your lawyer, are you referring to
13 Lee McCullough?

14 A. I am.

15 Q. And so what was the significance of you
16 asking the officiator if you could file part of it
17 now and part of it later?

18 A. Well, I wanted to be accurate on the
19 disclosures I was making in terms of the
20 organizations I was involved in so that I didn't miss
21 anything, but I wasn't sure as I was there if I had
22 all the information I needed to make all of those
23 disclosures.

24 One option would have been for me to just
25 walk out and I'll come back later when I'm ready, but

1 my campaign staff wanted me to move forward and
2 declare early, and that's why I asked the question.
3 It was my decision, I own it, but I wanted to make
4 sure that we got an accurate -- I needed to make a
5 decision about whether I would start the process and
6 end it at the same time or if I could start the
7 process and end it later.

8 Q. Did you or, to your knowledge, your
9 campaign staff believe it would be somehow beneficial
10 for you to file a partially complete form on March 9
11 rather than just taking it home, get the information
12 you needed and file the form once before the 15th?

13 A. They felt it would be advantageous for me
14 to file it early, so this was the day after the
15 legislative session would have ended at midnight, on
16 the 8th, I believe.

17 The first thing the next morning, or at
18 least early in the day we went over there to do the
19 filing, and it was a busy time, and so they felt like
20 it would be important to get out of the chute early
21 and file, let people know I was running.

22 Q. Hadn't you already declared yourself as a
23 candidate?

24 A. I had, but there's a difference between
25 declaring as a candidate and actually paying the

1 money and filing, according to them.

2 Q. What did you -- can you recall more
3 specifically the questions you had about the form?

4 A. You bet. So if you look on -- these
5 aren't Bates stamped -- page 3 of Exhibit 43, I note
6 three-quarters of the way down the line says, "Name
7 of each entity that has paid \$5,000 or more in income
8 to the filer," and that is the phrase that caught my
9 eye when I was in there for the first time looking at
10 that language within the one year period ending
11 before the date of the disclosure form.

12 When I had filed for Congress, and as I
13 recall, it's been a long time, they seemed to want
14 income for the filer and his household, and I was
15 surprised when it just asked for income to the filer,
16 and in light of the entities that I had formed within
17 the trust, I had a question, a legal question, about
18 the limitation of that phrase "income to the filer,"
19 and I wanted to be truthful and accurate and I wanted
20 to get it right.

21 So I stepped out of the office and called
22 Lee McCullough. I was fortunate to reach him on the
23 phone, and I had a discussion with him about that
24 language and about the entities and about the
25 practice I had undergone, undertaken, within those

1 entities, specifically the payments from the entities
2 to my wife versus to me and if that would be
3 construed as income to the filer.

4 I told him that it didn't come from the
5 trust, it came from the trust entities to her as a
6 beneficiary under the trust, and I asked him if that
7 would be an issue, and he said no. He said you have
8 no legal right to that money and you cannot call it
9 income to the filer, and so then I was a little
10 confused about, well, how do I then accurately
11 represent it on this form, and I decided that the
12 more accurate way to do it would be to say none,
13 because I did not receive income from these entities,
14 and that was the logic behind my filling out this
15 form and signing it truthfully I believe this form is
16 true and accurate to the best of my knowledge.

17 That is what happened in the context of
18 that discussion, and we had a further discussion
19 about another question on here, but that was the
20 context of our conversation relative to that
21 particular line.

22 Q. So --

23 A. But -- I have more to explain later, but
24 go ahead and ask your question.

25 Q. Well, I was just going to say in addition

1 to calling your lawyer --

2 A. Yeah.

3 Q. -- to determine what income to the filer
4 meant, did you consider reading the statute?

5 A. Well, as I understood it at the time, as I
6 recall, the language was identical in the statute,
7 that this language was lifted from the statute. That
8 was my understanding, and, again, I went back to the
9 form I signed, which was I believe this form is true
10 and accurate to the best of my knowledge.

11 Q. Why did you think that your trust and
12 estate lawyer would know the answer to this question?

13 A. Well, I thought that -- at least
14 originally I thought that he would know as my tax
15 lawyer and as my estate planning lawyer, at least
16 have an idea of whether that was income, and I
17 listened to him, and he seemed very emphatic that it
18 wasn't even a close call, so I felt comfortable
19 enough having asked the question of Mark Thomas, you
20 know, about kind of a revolving disclosure that I
21 could feel comfortable filling out the form at this
22 point, do a little further research and come back and
23 amend it later, which I planned to do, because you
24 notice I left many blanks -- many lines blank at the
25 time, again with the understanding that this would

1 not vest or become final until the filing period
2 concluded. I would have that much time to make sure
3 I had it absolutely right.

4 Q. Other than the issue of income to the
5 filer, did you speak with Mr. McCullough on the phone
6 about any of the other items?

7 A. I did. I did. I talked to him about some
8 of the other items.

9 Let's see. There was one about management
10 or officers or directors of entities. Let's see
11 here. On page 2 -- of the exhibit I think page 4 --
12 let me go back.

13 What also struck my interest was the last
14 line of the first page of this conflict of interest
15 disclosure, which is page 3 of the exhibit. It said,

16 "Name of entity in which the filer holds
17 any stocks or bonds having a fair market value of
18 \$5,000 or more as of the date of the form -- this
19 form -- but excluding funds that are managed by a
20 third party, including blind trusts, managed
21 investment accounts, and mutual funds."

22 And that also triggered in my mind the
23 fact that my family had this trust and that the
24 legislature had contemplated at some point in time that
25 irrevocable trusts might be treated differently than --

1 irrevocable trust or non-trust held assets, but where
2 I -- and I believe I discussed that with him on the
3 phone as well at the time.

4 The other part would be "Name of
5 organization or entity for which the filer serves on
6 the board of directors or any type of formal advisory
7 capacity."

8 I don't think I visited with them about
9 that.

10 >Type of position held by the filer within
11 the organization." Let's see. Somewhere there's
12 something about interests in management or Board of
13 Directors. Okay. Yeah, so it would be name of the
14 organization or entity for which the filer serves on
15 the Board of Directors or any other type of formal
16 advisory capacity, and I think that's where I had a
17 discussion with Mr. McCullough about the different
18 entities that I had been involved in to see what
19 would qualify as that type of organization.

20 So my law firm Swallow & Associates would
21 qualify, other Boards of Directors that I might be
22 serving on, and then he raised the issue, as I
23 recall, about whether or not I was a manager of the
24 trust entities, and I said I think I am the manager
25 of the three trust entities, and my intent in the

1 spring of that year or the fall of the prior year was
2 to try to minimize the things I was involved in to
3 show the public as I ran for Attorney General that I
4 would be 100 percent focused on my role as Attorney
5 General as the Attorney General, and so I began in
6 the fall to resign from different organizations that
7 I was involved in.

8 Then I got busy during the session, and it
9 just became an opportunity, a decision point, about
10 whether or not I would continue to publicly be
11 involved in those business entities that were owned
12 by the trust. That was my thinking at the time.

13 Q. Why would you be concerned about an entity
14 like P-Solutions or SSV Management?

15 A. You know, that's a great question looking
16 back on it now because if I had any idea that this
17 would blow up this way I would have figured out -- I
18 probably would have stayed on and just disclosed it,
19 because, again, I was already publicly on the record
20 on those companies.

21 I mean, anybody who does a corporate
22 search under my name will see that at one point I was
23 the manager of P-Solutions, so it wasn't about hiding
24 that I was involved in P-Solutions. It was about
25 sending a message to me that going forward I'm not

1 involved in these companies anymore.

2 Q. Well, why -- and this is a disclosure form
3 about past activities, not a declaration of future
4 activities, so why would not disclosing P-Solutions
5 or SSV Management satisfy the objective of convincing
6 the voters that you wouldn't have outside interests?

7 A. Well, no, actually part of it is and part
8 of it isn't. I mean, the part about the \$5,000 or
9 more within the prior year, that is about the past,
10 but the part about name of the organization or entity
11 for which the filer serves on the Board of Directors
12 or in any other form of advisory capacity is about
13 the future. It's about the moment in time in the
14 future. That's --

15 Q. How have you reached that conclusion?

16 A. Well, because it doesn't say anything
17 about the past.

18 Q. Have you read the statute?

19 A. Well, since then I have. I think it
20 confirms what I'm saying.

21 Q. Okay.

22 A. Now, if it doesn't, then excuse me for not
23 reading the statute, but I'm assuming, as I sit here,
24 that this mirrors the statutory language, and I
25 believe it does. I've read it since then, and so my

1 thinking was, well, these companies have not really
2 been engaged in business for -- I-Aware, I-Aware for
3 a long time, and P-Solutions, I hadn't done any
4 consulting for P-Solutions for at least six months.
5 I had no plans to do future consulting with
6 P-Solutions, the cement project had gone away, and so
7 I felt like I can dissolve these companies, and if I
8 had dissolved these companies on the spot, the same,
9 it would have been a nondisclosure as well. I could
10 have dissolved them or I could resign as manager, and
11 my thinking was I don't want to just dissolve these
12 things because, who knows, some day I may want to get
13 back involved in things after I'm done with
14 Attorney General. I've spent the money to organize
15 these things, I've got the trust, and even though the
16 trust hadn't been utilized, and I'll say it, I mean,
17 you know, very carefully, and I went over that with
18 Lee as well.

19 I said I haven't followed all the
20 formalities on the trust. Does that make a
21 difference? He said absolutely not. This isn't a
22 distribution of the trust. He said it doesn't
23 matter. You're not legally entitled to that income;
24 therefore, this is not income to the filer, and I got
25 to tell you, Matt, I regret every single day, looking

1 back on it, that I didn't, you know, just stay on the
2 Board, stay as a manager and just disclose it,
3 because if I had any idea Jeremy Johnson was going to
4 do this, if I had any idea that P-Solutions was going
5 to become this embroiled -- I mean, you've seen the
6 numbers. This wasn't a big project. It wasn't like
7 for three years I conspired to do something crazy
8 with this thing.

9 And so that was the thought process I had
10 at the time I made these disclosures, and I testify
11 under oath that at the time I filed this form, my
12 intent was to be fully accurate and fully honest and
13 not to hide anything from the public in any kind of a
14 deceitful manner. That's my testimony, and that's
15 with the conviction of my heart, and so I want to be
16 careful, though, and do the right thing.

17 I talked to my lawyer, and that's not all
18 I did. I wanted to be very careful, and I went down
19 and saw him down in Provo with the forms, and he came
20 with the same conclusion as we really dug into it for
21 a little longer, and then because I wanted to be
22 extra careful before the 15th, and I don't know if it
23 was before or after, but I think it was before.

24 I don't know why I would have talked to
25 Tom Roberts after the 15th, because after I filed

1 this the last time I forgot about it and moved on. I
2 met with, I think, the preeminent election lawyer in
3 the State who represents the elections office, and I
4 think it was on the phone, but I described to him
5 what I'd done, what I had and the advice I'd got from
6 Lee McCullough, and the first thing he said to me was
7 this sounds a little funny, let me look into it.
8 Then he called me back or came back to me a few days
9 later or a little while later and he said you know
10 what, John, you're right. It says income to the
11 filer. That's a reasonable position to take.

12 So when I had my own lawyer tell me this,
13 when I read the language myself and then I had
14 Tom Roberts tell me that he thought that was a
15 reasonable interpretation, I was fine, I finished it
16 and I moved on, and that's just what happened, and it
17 wasn't till a month and a half later when I had that
18 meeting with Jeremy Johnson that I was concerned at
19 all about P-Solutions.

20 It was more about send a message to the
21 public that I was done with these things, it's on the
22 record that I was involved in these things and I'm
23 just moving on. I want to be the Attorney General a
24 hundred percent of my time for the public if I won.
25 That was my thinking at the time.

1 Q. Let me make sure I've got the chronology.

2 A. I know that was a long statement, Rod.

3 I'm sorry.

4 MR. SNOW: Yeah, I would say so.

5 Q. (By Mr. Lalli) The first visit to the
6 Lieutenant Governor's office was March 9.

7 A. Right.

8 Q. Which is the date that this Exhibit 43 is
9 stamped.

10 A. That's right.

11 Q. And the date you signed it.

12 You had a telephone conversation with
13 Lee McCullough on that day?

14 A. I believe so.

15 Q. Okay. And then subsequent to that --

16 A. Can I say it more emphatically? Yes.

17 Q. Okay. Subsequent to March 9 you went to
18 Provo to visit Lee McCullough?

19 A. That's the best of my recollection.

20 Q. And do you recall whether that was before
21 filing the second form on the 15th?

22 A. I believe it was.

23 Q. And did you ask Lee different questions
24 when you visited him in person from the questions
25 you'd asked over the phone?

1 A. I don't recall. I did show him the forms,
2 and we went over the forms together.

3 Q. What was your thinking about -- I mean, I
4 presume you wouldn't go visit him unless you thought
5 the phone call had somehow been insufficient.

6 Was there something missing from the phone
7 call that you needed satisfaction on?

8 A. As I sit here today, I can't recall what
9 it was. Maybe I just wanted to be very careful about
10 it.

11 Q. And your recollection is that you also
12 talked to Tom Roberts in this period of time?

13 A. I believe so. I talked to Tom Roberts,
14 and I believe it was during the period of time. I
15 say that because -- it's been so long. It's been a
16 year and a half, but I say that because once this was
17 filed the final time, I basically forgot the thing
18 and just moved forward with my campaign, so I don't
19 know why I would have talked to Tom Roberts
20 afterwards.

21 Q. Well, can you -- are you sure that you
22 talked to Tom Roberts in 2012 as opposed to 2013?

23 A. Yes. Good enough. I can give the reason
24 why, but...

25 Q. Tell me why you're sure of that.

1 A. Well, because a few months ago he reminded
2 me of our conversation, and he said I remember you
3 talking to me about this and I remember going and
4 looking at this, and then he said to me, John, this
5 statute looks like it was constructed specifically
6 for this type of a situation where it doesn't involve
7 the family, it's just income to the filer, and he
8 said something that just really was surprising to me.
9 He said someone really smart wrote this statute to
10 cover this type of a situation. That's what he said
11 to me just a few months ago, maybe a month ago, and
12 that reminded me of the fact that we had talked and
13 that he'd given me that advice before I filed my
14 final version of this.

15 **(EXHIBIT 44 WAS MARKED.)**

16 Q. (By Mr. Lalli) I've handed you
17 Exhibit 44.

18 Can you say if this is the
19 complete packet of documents you filed then on the
20 15th of March, 2012?

21 A. You know, it looks like it is, you know,
22 and it's interesting -- anyway, it looks like it is.
23 That's your question, so I'll answer the question it
24 looks like it is.

25 Q. When you spoke with Lee McCullough, did

1 you provide him any bank account information or did
2 you explain to him what had gone on with --

3 A. Yeah.

4 Q. -- the accounts?

5 A. I basically told him that -- I didn't -- I
6 didn't take any bank account information with me. I
7 don't recall taking bank account information with me.
8 I recall telling him that Suzanne, my wife, had been
9 paid from the entities owned by the trust and not by
10 the trust itself, and I also recall telling him that
11 the monies paid to my wife were then deposited into a
12 joint checking account, and I asked him if that made
13 any difference, so I felt very -- like I was very
14 thorough with him about exactly what we had done, and
15 his response was that makes no difference. You're
16 not entitled to that, and she's entitled to do
17 whatever she wants with that money. She can spend it
18 on her own or she can put it into your account or she
19 can buy furniture. She can do whatever she wants
20 with it. I was very clear with him and ** with him
21 on that point.

22 Q. I note in Exhibit 44 you have deleted
23 Swallow & Associates as an entity that you owned.

24 A. And what?

25 Q. You did not put Swallow & Associates as an

1 entity that you owned as you had in the --

2 A. Yeah, and I don't understand why that is,
3 but it was unintentional on my part, and I note, as
4 you probably do, too, that I disclosed Swallow &
5 Associates on the second page, and I disclosed myself
6 as a member and a manager, so an owner and a manager
7 of Swallow & Associates on that line, so I cannot
8 explain why I put it on there separate. It was just
9 an oversight.

10 Q. Okay. Were you intending in the second
11 form to change or correct anything from the first
12 form?

13 A. That's a good question. Without looking,
14 I do note that I have my full name on the second form
15 rather than the first form, which is just John
16 Swallow. This is John E. Swallow.

17 Q. Let me ask the question this way: A
18 moment ago you -- at least I understood you to say
19 the reason you filed the first form was because your
20 campaign staff wanted you to get the jump on the
21 filing, and you filed it knowing that it was
22 incomplete.

23 Did I understand that accurately?

24 A. Knowing that -- yeah, knowing that I'd
25 have the opportunity to finalize it before the 15th,

1 but yes.

2 Q. Well, I thought you said that there were
3 many blanks --

4 A. Right.

5 Q. -- in the first form.

6 A. Right.

7 Q. For example, you did not include in the
8 first form any of the -- well, I don't think you
9 included any of the information on the second page.

10 A. Right.

11 Q. Except for you've identified your wife and
12 mining.

13 A. Right. Right. And I believe -- Matt, I
14 believe I talked with Mark Thomas about that at the
15 time and told him that my intent was to fill it out
16 further before the end of the filing period.

17 Q. Why not just put in Friends of John
18 Swallow or Political for F of J's, et cetera, on the
19 first form?

20 A. I don't know. I can't explain it. I
21 must -- I mean, I can speculate, but I must have
22 thought, well, I'm going to come back here and
23 augment it anyway. Might as well just get it all
24 right at the same time, but I can't explain it.

25 By the way, you asked me a question

1 earlier about whether Exhibit 44 was the complete
2 filing. I think in combination with this one it was
3 a complete filing, with Exhibit 43 and 44 together,
4 so the complete filing -- I mean, I don't know if
5 legally you just substitute 44 for 43 or if you add
6 both of them together.

7 Q. Okay. Now, I know you've read the
8 Petitioner's allegations about nondisclosures --

9 A. Right.

10 Q. -- so I just want to ask you the questions
11 and make sure I've got your complete testimony, and I
12 want to start with the name of the entity owned. All
13 right?

14 You did not disclose P-Solutions, SSV,
15 I-Aware in that document, and explain to me your
16 reasoning why you didn't disclose them.

17 MR. SNOW: Well, it's been asked and
18 answered.

19 THE WITNESS: I think I have explained
20 that. Do you want me to explain it again?

21 MR. LALLI: Well, the question hasn't been
22 asked. It may have been answered in response to a
23 different question. I want to ask the specific
24 questions and get his direct testimony about specific
25 questions, and I would think you would want that,

1 too.

2 MR. SNOW: Well, I think you have the
3 answer then, let me just put it that way.

4 MR. LALLI: Well, then he can be more
5 specific this time.

6 MR. SNOW: That's all you asked?

7 MR. LALLI: No. I asked the question that
8 he gave a very lengthy explanation on, which I
9 appreciate and I'm not being critical of, but I want
10 to give you an opportunity and I want you to be
11 obligated to answer the direct questions that your
12 accusers have made of you.

13 Q. (By Mr. Lalli) And so my question is:
14 What was your logic for not disclosing P-Solutions,
15 SSV or I-Aware in the Name of entity owned box?

16 A. In which box is that?

17 Q. Name of entity owned.

18 A. Well, and I also disclosed the trust.
19 Because I did not consider myself to be an owner of a
20 trust or any of the companies that were owned
21 100 percent by the trust or by SSV. I did not
22 consider myself an owner of those entities.

23 Q. Okay.

24 MR. SNOW: You can adopt your previous
25 answer.

1 THE WITNESS: And I will adopt my previous
2 answer by reference if you want.

3 MR. LALLI: Okay.

4 MR. SNOW: Assuming he hadn't really asked
5 that question, which he may well be right.

6 MR. LALLI: No, I didn't ask that
7 question.

8 THE WITNESS: And I'll hear about it
9 later.

10 MR. LALLI: Rod, you were joking with him
11 about giving too long of an answer, so I'm surprised
12 you're making this objection.

13 MR. SNOW: Well, it was not an objection.

14 Q. (By Mr. Lalli) Let me direct your
15 attention to the box "Name of each entity that has
16 paid \$5,000 or more in income to the filer
17 within the one year period ending immediately before
18 the date of the disclosure form."

19 In that, you did not disclose RMR
20 Consulting or any of Richard Rawle's affiliates.

21 Why not?

22 A. Well, I didn't disclose those entities
23 because my belief was and is that those funds --
24 those funds were paid to an entity, not to me
25 personally. That was my belief and understanding at

1 the time I filed these documents.

2 Q. Okay. And that's --

3 A. Now, we've offered to amend these
4 documents if the Lieutenant Governor believes that
5 something is different, but we certainly have not
6 heard that from him, and we want to be fully
7 cooperative, but I think that answers the question,
8 and I, again, incorporate by reference my further --
9 my earlier answer in case that's needed, and let me
10 just say I don't want to have to continue unless it's
11 necessary to continue to incorporate that.

12 Q. It's not necessary.

13 A. Do you think it's necessary for us?

14 MR. SNOW: Not now.

15 THE WITNESS: Okay. Thank you.

16 MR. SNOW: It's agreed.

17 Q. (By Mr. Lalli) You also in that same box
18 did not disclose P-Solutions.

19 A. Right.

20 Q. And noting that there was more than \$5,000
21 transferred from P-Solutions to your wife and then
22 into your joint checking account.

23 A. That is right, and that's for the reasons
24 I've explained in my earlier responses.

25 Q. Because Mr. McCullough told you that it

1 was not your money?

2 A. Well, because after consulting with my
3 lawyer and Mr. Roberts, I believed that I was being
4 truthful and accurate by taking the position that I
5 as the filer had not been -- received income from an
6 entity such as P-Solutions within the one year period
7 prior.

8 Q. Did you consider disclosing P-Solutions in
9 that box simply to err on the side of caution?

10 A. You know, I wanted to be legally accurate
11 or I wouldn't have even made the phone call. When I
12 saw the language "income to the filer," it raised a
13 question in my mind about what that meant, and I
14 wanted a second and a third opinion about that. I
15 didn't see it as income to the filer, but I wanted to
16 confirm it, and I did with my experienced legal
17 counsel and with Tom Roberts.

18 Q. And I appreciate you wanting to be
19 accurate, but my question was: Given the question
20 arising in your mind that led you to consult with
21 multiple people and your testimony that you didn't
22 really care if the public knew about P-Solutions, why
23 not disclose P-Solutions to err on the side of
24 caution?

25 A. I didn't know enough about trust law and

1 about the future consequences of an admission that
2 might be inaccurate on a form like this to know what
3 the impacts would be on the tax plan, or the estate
4 plan.

5 I put together at great expense every
6 year, spending between \$2,000 -- \$750 and \$2,000 to
7 an independent trustee in Las Vegas. I didn't want
8 to contaminate or vitiate the purpose of that trust
9 that I had set up in the first place. As loosely
10 managed as it was, I wanted to make sure I got it
11 right.

12 Q. Okay. You also did not disclose in this
13 box Check City or the Richard Rawle companies related
14 to the purchase of the gold coins.

15 What was your thinking in that regard?

16 A. Are you talking about the same box, income
17 to the filer?

18 Q. Yes.

19 A. I didn't consider the sale of those coins
20 income to the filer.

21 Q. Okay. Was that something you talked to
22 Mr. McCullough about?

23 A. I don't recall talking to him about that.

24 Q. Did that even --

25 A. Didn't cross my mind.

1 Q. Okay.

2 A. Didn't even cross my mind.

3 Q. Okay. I want to direct your attention on
4 the next page to the question regarding service on
5 the Board of Directors or any other type of formal
6 advisory capacity.

7 A. Right.

8 Q. You did not disclose Richard Rawle,
9 Chaparral, RMR, P-Solutions, SSV, I-Aware.

10 What was your thinking in that regard?

11 A. Well, let me take them one at a time. I
12 don't believe I -- I don't believe I ever was on the
13 Board of Directors -- I was never on the Board of
14 Directors or in a formal advisory capacity in the
15 Chaparral company or for Richard Rawle, but this
16 statement is a present tense statement, so even if I
17 had been, at the moment I signed this I wasn't, so I
18 would see no reason and saw no reason to include
19 those companies or those relationships on this form.

20 Q. So was it your view you were not a formal
21 advisor to Richard Rawle or Chaparral?

22 A. Well, my point is I didn't serve on a
23 Board of Directors or any type of formal advisory
24 capacity, but, to me, that's just one point.

25 The second point is this did not talk

1 about reaching back a year. At the time I filed
2 this, I certainly wasn't doing any work and hadn't
3 done any work for those companies for at least six
4 months.

5 Q. For Chaparral?

6 A. For Chaparral or Richard -- or
7 Richard Rawle personally, and that's just dealing
8 with Richard Rawle and Chaparral.

9 As far as P-Solutions, I think I testified
10 last time that I indicated to Mr. McCullough on the
11 phone on the 9th before I signed the first form that
12 I was resigning and tendered my resignation as a
13 manager of P-Solutions and SSV and, I believe,
14 I-Aware all at the same time, so at the moment I
15 signed this it was my belief that I was no longer
16 managing those companies, and certainly by the time I
17 amended my filing by the 15th, when it was formalized
18 with the State, I certainly was not the manager in
19 the eyes of the State, although my belief at the time
20 was I wasn't at the time I first filed or I wouldn't
21 have signed the document.

22 Q. So I take it that even though you had
23 withdrawn as manager of P-Solutions and SSV, you also
24 did not consider yourself a formal advisor to
25 P-Solutions or SSV; is that correct?

1 A. Having resigned, I would say no.

2 Q. Did you ask Mr. McCullough or anyone else
3 what being a formal advisor meant?

4 A. I believe we discussed that, Matt. I
5 believe we did. We read the whole -- I read the
6 whole statement to him, and we discussed it in a
7 context of the various positions I had held with
8 these trust-owned companies, so I believe the answer
9 to that is yes.

10 Q. Did you do an independent evaluation or
11 analysis of what it meant to be a formal advisor?

12 A. I wouldn't say I did.
13 When you say independent, formal
14 independent analysis?

15 Q. Well, I'm just wondering if you thought
16 through what is a formal advisor as opposed to some
17 other kind of advisor?

18 A. Well, I look at the plain language.
19 Formal advisor is different than informal advisor.

20 My belief and understanding at the time
21 was when I was no longer a manager or had resigned as
22 manager, then I no longer held a formal advisory
23 capacity versus a casual or an informal advisory
24 capacity.

25 Q. So how would you describe your

1 relationship with P-Solutions after your withdrawal?

2 A. Well, I certainly didn't consider I had a
3 formal advisory capacity with P-Solutions after that
4 point --

5 Q. And why not?

6 A. -- or I would have ended -- because I
7 resigned as the manager. That was the only formal
8 role I had with the company.

9 Q. Well, you were keeping the checkbook and
10 the ledger and managing the finances.

11 A. For all four checks that were written from
12 that point forward? Matt, listen, this is a
13 contemporaneous filing. There is no way as I
14 understand it to go in a month later and amend this
15 filing and say, well, you know, on March 9th and
16 March 15th I resigned as the manager, but since then
17 I've written out a few checks and signed a few
18 checks -- because I still have signatory authority at
19 the credit union -- while I'm in the middle of a
20 campaign. I'm very, very busy and haven't given two
21 thoughts about it since the day I filed these
22 documents.

23 So it's easy to look back today and say,
24 my goodness, but certainly at the time when I signed
25 this document I believed it was true and accurate at

1 the time in good faith with good advice from counsel.
2 I made the decisions myself, I own those decisions,
3 but I really felt I was being honest with the State
4 and with the voting public at the time and I had no
5 reason not to disclose it, because I didn't even know
6 that Johnson was going to do what he did for another
7 month and a half after I filed these forms. That was
8 the mental state I was in at the time I made the
9 disclosures.

10 Q. Let me direct your attention down to the
11 box that -- it looks like it's third from the bottom.
12 It talks about the spouse's employment.

13 A. Yeah, uh-huh.

14 Q. You did not disclose P-Solutions, SSV or
15 I-Aware in there.

16 A. Right.

17 Q. Why not?

18 A. I didn't consider my wife an employee of
19 defunct companies. Those companies basically were
20 doing nothing, and maybe defunct is too strong of a
21 word, but they were basically -- the business side of
22 those companies had ended. SSV never had any
23 business, it was a holding company, and P-Solutions
24 hadn't done any consulting work for six months, and
25 I-Aware hadn't done any consulting work or any work

1 at all for more than a year, and I had no plans to do
2 any further work for those companies while I was
3 Attorney General.

4 So when I talked to -- when I talked to
5 Lee about who would replace me as manager, he said to
6 me it really doesn't matter if you're not doing any
7 kind of work in those companies, so my wife, I don't
8 consider her an employee of those companies. She is
9 never paid income with respect to her work with the
10 companies, they've all been intended by me,
11 inartfully, to make that a distribution of profits
12 from those companies.

13 Listen, we even paid the trustee fee for
14 the trust right out of P-Solutions. It wasn't just
15 that we paid, or I paid or Suzanne paid herself, or
16 whatever it was, distributions from P-Solutions and
17 nothing else. No. We paid trustee fees from that.
18 It was very informally done, I get you that, and I
19 talked about that with Lee, and Lee said it doesn't
20 matter. It doesn't matter in terms of these
21 disclosures. That is not your income. It is not
22 income to you. It's income to your wife. It is not
23 income to you. It was income through a distribution
24 of profits, not from employment. That is what I was
25 thinking at the time I filed these documents.

1 Q. Okay. I think I understand what your
2 answer is, but let me phrase the question so it can
3 be precise here.

4 Did you have -- in not disclosing any of
5 these entities, Richard Rawle, Chaparral,
6 P-Solutions, SSV, the gold coins, any of that,
7 that --

8 A. Just the cold coins not disclosing that
9 was income, for example, that's what your --

10 Q. Yeah.

11 A. Okay.

12 Q. Did you have -- was the nondisclosure
13 based in any part on a concern about how that might
14 be perceived politically?

15 A. I don't think so, Matt, no, not at the
16 time.

17 Q. Was it even a thought in your mind --

18 A. No.

19 Q. -- or a small factor?

20 A. No. I think -- no. I'll say no.

21 Q. Okay. And similarly with respect to the
22 withdrawal, was the reason for withdrawing as
23 manager -- you've said you wanted to tell the public
24 that you weren't going to have outside interests.

25 A. Right.

1 Q. Was a desire to prevent any investigation
2 into P-Solutions or Chaparral or Richard Rawle, was
3 that part of the analysis or decision making at all?

4 A. No. No, it wasn't.

5 Q. Not even a factor?

6 A. It wasn't a factor, Matt, and I knew that
7 because I know how campaigns work well enough to know
8 that any reporter, any candidate you run against is
9 going to just do a quick search on John Swallow's
10 business and they're going to pull everything I've
11 ever done.

12 I wasn't trying to hide it. It was
13 already public. I was trying to send a message that
14 I'm a committed Attorney General candidate and I'm
15 moving forward, and I hadn't done any work for almost
16 six months at the time.

17 Q. Okay. Just getting my notebook here.

18 (EXHIBIT 45 WAS MARKED.)

19 Q. (By Mr. Lalli) Exhibit 45 is an e-mail
20 purporting to be from you to a number of people
21 January 12, 2013.

22 A. Right.

23 Q. Is this a document you prepared?

24 A. I think I was involved with the
25 preparation of this document. Looks like there are

1 two parts to the document, right? There's an e-mail
2 cover letter to friends and then there's a statement,
3 right?

4 Q. Right.

5 A. Yes, I was involved. Certainly, I was
6 involved in this.

7 Q. Okay. Did you have assistance in
8 preparing this?

9 A. I don't recall if I had assistance from my
10 lawyer or if I had assistance from my person -- my PR
11 team or what, but I certainly had reviewed it and
12 approved it before it went out, if that's what you're
13 asking.

14 Q. And the addressees --

15 A. Yeah.

16 Q. -- many of them I recognize.

17 Was there, you know, some set of criteria
18 that you used to determine who would get a copy of
19 this?

20 A. These were all close -- people I
21 considered close supporters and friends.

22 Q. And I take it your purpose for writing
23 this was simply to respond to the allegations that
24 had been made by Jeremy Johnson?

25 A. It would be the first response. I mean,

1 January 12th was the date the first article broke,
2 so --

3 Q. Right.

4 MR. LALLI: Can you just give me a couple
5 of minutes to confer with --

6 THE WITNESS: You bet.

7 MR. LALLI: -- Captain Peay?

8 THE VIDEOGRAPHER: Going off record.
9 5:36 p.m. is the time.

10 (Recess from 5:36 p.m. to 5:37 p.m.)

11 MR. LALLI: Do we need to go on for me to
12 finish? I'm done, so if we need to make a record
13 that I'm finished.

14 THE VIDEOGRAPHER: Okay. Let's go back on
15 record. Stand by, please.

16 Going back on record. 5:38 p.m. is the
17 time. Counsel.

18 MR. LALLI: I have no further questions.

19 MR. SNOW: We have no questions.

20 MR. LALLI: Okay. We're done. Thank you.

21 THE VIDEOGRAPHER: This concludes the
22 deposition. Going off record. 5:38 p.m. is the
23 time.

24 (Deposition concluded at 5:38 p.m.)

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REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, Denise M. Thomas, Certified Real-Time Reporter, Registered Professional Reporter and Notary Public in and for the State of Utah, do hereby certify:

That prior to being examined, the witness, JOHN E. SWALLOW, was by me duly sworn to tell the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in stenotype on October 25, 2013, at the place therein named, and was thereafter transcribed and that a true and correct transcription of said testimony is set forth in the preceding pages;

I further certify that, in accordance with Rule 30(e), a request having been made to review the transcript, a reading copy was sent to MR. SNOW for the witness to read and sign under the penalties of perjury and then return to me for filing with MR. LALLI.

I further certify that I am not kin or otherwise associated with any of the parties to said cause of action and that I am not interested in the outcome thereof.

WITNESS MY HAND this 1st day of November, 2013.

Denise M. Thomas, CRR/RPR
Utah License No. 104113-7801