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SEP 29 1992

FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE

Federal Communications Commission

In the matter of:

Docket Number 92-119

MARINA DEL RAY, CALIFORNIA

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FEDERAL COMMUNICATIONS COMMISSION
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DATE: September 18, 1992

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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

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In the matter of: : Docket Number 92-119

MARINA DEL RAY, CALIFORNIA :

- - - - - X

The above-entitled matter came on for
Conference, pursuant to Notice before Joseph Chachkin,
Administrative Law Judge, at 2000 L Street N.W.,
Washington, D.C., in Courtroom Number 4, on Friday,
September 18, 1992, at 9:00 a.m.

APPEARANCES:

On behalf of Sandra V. Crane & Charles P. Pascal:

GEORGE L. LYON, JR., Esquire
Lukas, McGowan, Nace & Gutierrez
1819 H Street, N.W.
Washington, D.C. 20006

On behalf of The Chief, Private Radio Bureau:

THOMAS D. FITZGIBBON, Esquire
ERIC MALINEN, Esquire
Federal Communications Commission
Private Radio Bureau
2025 M Street, N.W.
Washington, D.C. 20554

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PROCEEDINGS ^{FEDERAL COMMUNICATIONS COMMISSION}
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[Time Noted: 9:00 a.m.]

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JUDGE CHACHKIN: On the record. This proceeding concerns the matter of the revocation of the license of Sandra V. Cane, who holds Amateur Radio Station N6TFO and the suspension of her license as an amateur extra class radio operator license, and also the revocation of the license of Charles P. Pascal, who holds Amateur Radio Station WB6CIY, and the suspension of his license as amateur extra class radio operator license.

The matters involved in this proceeding are set forth in the Order to Show Cause and Suspension Order which was released April 24th, 1992.

May I have the appearances on behalf of the parties. On behalf of Sandra V. Crane.

MR. LYON: Yes. On behalf of Sandra V. Crane and Charles P. Pascal, George Lyon with the law firm of Lukas, McGowan, Nace & Gutierrez.

JUDGE CHACHKIN: And on behalf of the Chief, Special Services Division, Private Radio Bureau?

MR. FITZGIBBON: On behalf of the Chief, Private Radio Bureau, Thomas D. Fitzgibbon and Eric Malinen.

JUDGE CHACHKIN: In my order released August

1 31st, 1992, I set forth a procedural schedule we're
2 going to follow with respect to the hearing and with
3 respect to objections to witnesses for cross
4 examination.

5 That schedule provided that September 14th,
6 1992, would be the date for filing requests for cross
7 examination by the Bureau and Respondents, and that
8 September 18th, 1992, we would hold a conference to
9 rule on all requests for cross examination including
10 any rebuttal witnesses of the Bureau.

11 Before I ask the parties as to which
12 witnesses they wish for cross examination and listen to
13 any objections, are there any preliminary matters to be
14 taken up?

15 MR. FITZGIBBON: Mr. Lyon filed two documents
16 late yesterday afternoon, and I think we should address
17 those.

18 JUDGE CHACHKIN: What are those documents
19 you're referencing?

20 MR. FITZGIBBON: He filed a memorandum in
21 support of objection to admission of testimony from
22 Christine McElwaine, and he filed Respondent's
23 submission of second supplement to responsive case-in-
24 chief, which consisted of new declarations that had not
25 been submitted previously.

1 JUDGE CHACHKIN: Were these declarations of
2 persons who had previously given statements, given
3 declarations?

4 MR. LYON: In the case of Mr. Ferrante, yes,
5 Your Honor. In the case of Mr. Quinn, no.

6 JUDGE CHACHKIN: All right. Let's take up
7 first the memorandum in support of objection to
8 admission of testimony of Christine McElwaine.

9 MR. LYON: Your Honor, if I can be heard
10 briefly on that.

11 JUDGE CHACHKIN: Yes.

12 MR. LYON: I'm not sure that the memorandum
13 is properly before you at this point because we haven't
14 discussed the objections I intend to make to
15 Ms. McElwaine's testimony. I think it would be most
16 appropriate to discuss the memorandum and its contents
17 at that time.

18 I don't know Mr. Fitzgibbon's concern
19 regarding it, but I'm certainly willing to hear it.

20 JUDGE CHACHKIN: Mr. Lyon has suggested we
21 take this up at the time that we take up the question
22 of cross examination of Ms. McElwaine, or do you want
23 to take up the matter now, Mr. Fitzgibbon?

24 MR. MALINEN: If I may, Your Honor.
25 Mr. Malinen. We note that in the covering -- initial

1 language here by Mr. Lyon, he indicated, in fact, he
2 would bring it up at this pre-hearing conference. We
3 received this last night at 4:26. We would
4 respectfully submit that we have not had sufficient
5 time to brief this issue. It's a long issue with
6 numerous attachments.

7 We would, however, be willing to argue it
8 today if Your Honor would consider the following; that
9 if our arguments prove insufficient, that then we have
10 time to brief it. In other words, we've tried to patch
11 something together in the eleventh hour on the express
12 notion here given by Mr. Lyon that this would be
13 brought up this morning.

14 JUDGE CHACHKIN: Well, I certainly would give
15 you an opportunity to state your position and, if I
16 feel there is a need for you to brief it, I'll
17 certainly give you that opportunity.

18 Well, how do we want to proceed? First, do
19 we want to proceed with the -- Mr. Lyon, which
20 witnesses do you want for cross examination of the
21 Bureau? Perhaps there isn't going to be any problem on
22 that score.

23 MR. FITZGIBBON: Well, I think we need to
24 address his new declarations that he just served on us
25 yesterday.

1 JUDGE CHACHKIN: Well, we'll get to that, but
2 let's do something in some order.

3 MR. FITZGIBBON: Well, it's related to the
4 question of who is to be cross examined because we --
5 having only received those declarations yesterday, late
6 yesterday afternoon, we haven't had sufficient time to
7 analyze them and determine whether we need to cross
8 examine those witnesses.

9 MR. LYON: They are very brief but, Your
10 Honor, if I may make a suggestion. We may not need to
11 get to those declarations if you sustain some of the
12 objections that I intend to make today.

13 My suggestion is that we go through the
14 Bureau's case-in-chief, handle objections to it, handle
15 objections to my responsive case and, at that point,
16 after we know what testimony is likely to be admitted -
17 - of course, subject to whatever voir dire you might
18 think would be appropriate at the hearing -- at that
19 point, we would have a much better idea of whether the
20 witnesses for cross examination will, in fact, be
21 needed.

22 JUDGE CHACHKIN: Well, first of all, I don't
23 intend to rule on the evidence, whether it's relevant
24 or not. What I intend to rule on today is your request
25 for cross examination and the Bureau's request for

1 cross examination and rule on any objections to any
2 such requests for cross examination.

3 MR. LYON: So, it is not your intent at this
4 point to deal with objections to proposed exhibits?

5 JUDGE CHACHKIN: That's correct.

6 MR. LYON: I must have misunderstood your
7 order, Your Honor.

8 JUDGE CHACHKIN: We have an admission session
9 scheduled for that purpose in which I will consider the
10 exhibits. The parties, at that time, will identify the
11 exhibits and offer them, and I will rule on that, but
12 that, I believe, is scheduled for -- I don't think
13 we've established a date for that, for an admission
14 session. I believe we were going to do that at the
15 time of the hearing, pre-hearing and hearing, under the
16 stipulated procedure of the parties. Is that correct?

17 MR. MALINEN: Your Honor, we would suggest
18 that we have, much like this, another conference with
19 regard to that issue because, otherwise, the hearing
20 might be delayed into a second or third day, and we
21 have witnesses -- as things stand now, witnesses flying
22 in from out of town.

23 JUDGE CHACHKIN: Well --

24 MR. MALINEN: We were to suggest that later.
25 If you wish to discuss that now --

1 JUDGE CHACHKIN: Are the parties prepared to
2 entertain objections to the exhibits themselves on the
3 grounds of relevance?

4 MR. FITZGIBBON: No.

5 MR. MALINEN: Not at this time.

6 MR. LYON: Your Honor, I am prepared to make
7 objections to the Bureau's exhibits and to defend mine.
8 I must have misunderstood your order, Your Honor, and I
9 apologize.

10 JUDGE CHACHKIN: It simply says request for
11 cross examination, and I would rule on requests for
12 cross examination including rebuttal witnesses.

13 MR. LYON: I understand it now.

14 JUDGE CHACHKIN: I didn't indicate that I was
15 going to, at this time, consider the exhibits
16 themselves, the evidence themselves, but I'm agreeable
17 to an admission session if the parties want to proceed
18 in that fashion.

19 MR. LYON: Does the Bureau have an objection
20 to considering objections to its exhibits at this time?
21 I realize --

22 MR. FITZGIBBON: Yes.

23 MR. MALINEN: Yes. It was not contemplated
24 by any of the agreements among the parties, including a
25 telephone conversation.

1 MR. LYON: I understand it's not
2 contemplated, but do you submit you'd be prejudiced
3 thereby?

4 MR. MALINEN: Yes.

5 MR. LYON: Okay.

6 JUDGE CHACHKIN: But, I'm prepared to
7 schedule an admission session for next week if the
8 parties want, in which we will -- at that time, as I
9 suggest, the parties will have their exhibits with
10 them. They'll have them marked for identification, and
11 I'll rule on the relevance, if there are any relevance
12 or hearsay objections, whatever the objections are.

13 MR. LYON: I would be agreeable and, in fact,
14 favorable toward that, Your Honor.

15 JUDGE CHACHKIN: We could do it sometime next
16 week. Do the parties want any particular day? For
17 instance, next Wednesday?

18 MR. MALINEN: Would this be an a.m. session?

19 JUDGE CHACHKIN: Yes.

20 MR. FITZGIBBON: That's okay with me.

21 JUDGE CHACHKIN: What date is that?

22 MR. MALINEN: The 23rd.

23 JUDGE CHACHKIN: 23rd? All right. I'll
24 order a conference for that purpose on the 23rd.

25 MR. LYON: Given that you are ordering that

1 conference for that date, I think that probably moots
2 out Mr. Fitzgibbon's concern regarding the memorandum I
3 filed with respect to Christine McElwaine because that
4 matter will be discussed at that time.

5 JUDGE CHACHKIN: Well, I want to hear the
6 parties' arguments with respect to that and,
7 Mr. McElwaine, in the meantime, can brief it if he
8 wishes, but I think it's something -- well, it deals
9 with questions of objection to cross examination of a
10 witness.

11 As I say, I'd like to hear the parties'
12 arguments and, if Mr. McElwaine needs time to brief the
13 matter, if I feel that will be useful, we can do that,
14 but I certainly feel it's important enough that we try
15 to thrush it out as much as we can today.

16 Let's get to the persons who you wanted for
17 cross examination. Obviously, if I rule either today
18 or on Wednesday that an exhibit, to reject an exhibit
19 then, obviously, there won't be a need to cross examine
20 that witness.

21 But this is one case where, before I even got
22 the case, the parties themselves had stipulated as to
23 procedure, and I had no chance to make changes. So,
24 we're stuck with what the parties basically
25 established. Now we're modifying it, it seems to me,

1 in a sensible way, and that's why I think an admission
2 session would be very useful, particularly in light of
3 the extensive exhibits which both of the parties are
4 proffering.

5 But let's start initially with the Bureau's
6 witnesses and who you want for cross examination.
7 Perhaps there may not be any problem.

8 MR. LYON: Your Honor, as I submitted in my
9 September 8th, 1992, submission, at this time, from the
10 Bureau's case-in-chief, we would request Christine
11 McElwaine, Mr. Fred Maia, Mr. John B. Johnston and
12 Mr. Ramsey, whose first name escapes me at the moment.

13 Subject to my objections that I intend to
14 make next with with respect to the testimony of Mr.
15 Georgias, I had not initially noticed Mr. Georgias for
16 cross examination.

17 In light of a rebuttal exhibit that the
18 Bureau submitted, I would have to reconsider and
19 request Mr. Georgias for cross examination in the event
20 that his testimony was not excluded.

21 JUDGE CHACHKIN: Well, I indicated you could
22 orally request cross examination of the Bureau's
23 rebuttal witnesses. You could do that this morning.

24 MR. LYON: Yes. I would also request with
25 respect to rebuttal witnesses -- bear with me for a

1 second while I track that down -- I would request cross
2 examination of each of the Bureau's rebuttal witnesses,
3 although, actually, Mr. Johnston I don't see a need
4 for, but I've already asked for cross examination of
5 him with respect to the Bureau's case-in-chief.

6 JUDGE CHACHKIN: So, you want McElwaine,
7 Johnston, Maia, Georgias and who else?

8 MR. LYON: David Morse.

9 JUDGE CHACHKIN: Anyone else?

10 MR. LYON: And I believe it's Mr. Ramsey. Is
11 it Curt Ramsey? I don't see his first name in front of
12 me right now, but Mr. Ramsey, who is purporting to give
13 expert testimony on behalf of the Bureau.

14 JUDGE CHACHKIN: Now, the Bureau had
15 indicated that certain of these witnesses they were
16 going to produce; is that correct?

17 MR. FITZGIBBON: Yes. We see no problem with
18 producing Ms. McElwaine, Mr. Ramsey or Mr. Johnston.

19 JUDGE CHACHKIN: Do you oppose producing
20 Mr. Maia and Georgias and Morse?

21 MR. FITZGIBBON: Also, we would have no
22 objection to producing Mr. Georgias.

23 JUDGE CHACHKIN: But Mr. Maia and Mr. Morse
24 you would oppose?

25 MR. FITZGIBBON: Yes.

1 JUDGE CHACHKIN: All right. Let's take that
2 up.

3 MR. FITZGIBBON: Okay. The only purpose of
4 Mr. Maia's direct testimony is to authenticate
5 documents; yet, the Respondent's proposed cross
6 examination doesn't even touch upon the subject of
7 authentication.

8 It consists of matters that are beyond the
9 scope of the direct testimony, and I think what they
10 really want to do is have Mr. Maia testify as an
11 adverse witness and, if Mr. Lyon would like to call
12 Mr. Maia as an adverse witness at this stage of the
13 proceeding, even though he hasn't given notice of this
14 fact, we wouldn't have any objection, and we would
15 agree to his testifying by speakerphone in order to
16 avoid the expense of transporting him.

17 JUDGE CHACHKIN: You're saying the only
18 purpose of Mr. Maia's testimony is just to --

19 MR. FITZGIBBON: The only purpose of his
20 direct testimony is the authentication of documents
21 and, in the Respondent's proposed cross examination, it
22 lists many subjects that they want to cross examine him
23 on, but it doesn't include the authentication of the
24 documents.

25 Mr. Maia's rebuttal affidavit concerns a

1 single subject, and that is an allegation in
2 Mr. Pascal's testimony, that Mr. Maia suggested that
3 Mr. Pascal form a radio school partnership with Gordon
4 West.

5 This would be within the scope of Mr. Maia's
6 testimony as an adverse witness if he were called as an
7 adverse witness, but I think the whole thrust of the
8 proposed cross examination is that they want Mr. Maia,
9 in effect, as an adverse witness.

10 JUDGE CHACHKIN: Mr. Lyon?

11 MR. LYON: Well, Your Honor, the Bureau's
12 calling of Mr. Maia as a rebuttal witness in order to
13 refute testimony that Mr. Pascal will give directly
14 changes Mr. Maia's proposed testimony for the Bureau
15 from merely an authenticator of documents to a witness
16 who's directly attacking the character of my client.

17 And as I indicated in the request for cross
18 examination of Mr. Maia, we intend to show that
19 Mr. Maia has a long-time bias against Mr. Pascal. We
20 intend to show that he has conspired with Mr. Morse and
21 Mr. Ordway, Mr. Ordway being a fired instructor from
22 the school, in order to attempt to get -- to run
23 Mr. Pascal out of amateur radio.

24 And I know these are serious charges, but you
25 look at this case, and there's a vendetta against my

1 client, and I hate to say that, but I can't come to any
2 conclusion about it.

3 I think he should be here. I think he should
4 be testifying in front of you, so that you can see his
5 demeanor and his credibility, and you can get his
6 answers to the amount of correspondence that's gone
7 around here; that you can see his relationship with
8 Gordon West, the fact that Mr. Maia has had an on-
9 again/off-again relationship with Mr. Pascal, depending
10 upon whether Mr. Pascal was willing to entertain being
11 involved with Mr. West. I think you need to see all of
12 that.

13 And if the Bureau was offering this
14 individual as a witness and they're putting his
15 credibility on line before you, I think that I'm
16 entitled to cross examine him and show that this man is
17 not credible; that this man has an ax to grind against
18 Mr. Pascal, and that he's used this proceeding and he
19 began the complaint or participated in formulating this
20 complaint to -- basically, to get Mr. Pascal, to get
21 his license.

22 JUDGE CHACHKIN: We have specific issues in
23 this case, and I don't see how what you're talking
24 about has anything to do with the issues. Either the
25 Bureau can prove their case or they can't prove their

1 case.

2 MR. LYON: But, the Bureau's case --

3 JUDGE CHACHKIN: The question is, will
4 Mr. Maia -- let's just limit it to the direct case, the
5 affidavit of Fred Maia. Do you want to cross examine
6 him with respect to any of the matters in the direct
7 case?

8 MR. LYON: Your Honor, I want to prove that
9 this witness has no credibility.

10 JUDGE CHACHKIN: What does credibility have
11 to do with it if all he's doing here --

12 MR. LYON: He's a witness on behalf of the
13 Bureau, Your Honor.

14 JUDGE CHACHKIN: I understand that, but if
15 all he's doing here is just identifying documents and
16 he himself apparently didn't take part in this
17 investigation --

18 MR. LYON: That's not true, Your Honor.

19 JUDGE CHACHKIN: Well, there's nothing here
20 indicating where he made any statements with respect to
21 the issues here.

22 MR. LYON: Your Honor --

23 JUDGE CHACHKIN: As far as the direct case is
24 concerned.

25 MR. LYON: Well, that may be true in the

1 Bureau's direct case, but it's not true in the
2 depositions, Your Honor.

3 JUDGE CHACHKIN: Well, I don't know --

4 MR. LYON: Mr. Maia has been in constant
5 contact with the Private Radio Bureau. The Private
6 Radio Bureau and Mr. Maia have coordinated with respect
7 to examinations that have been given. Mr. Morse, who
8 instituted this investigation, he and Mr. Maia have
9 been in extensive contact.

10 There are letters going back from Mr. Morse
11 to Mr. Maia indicating that Mr. Maia should decertify
12 any volunteer examiner who tests for Mr. Pascal and
13 Ms. Crane to run them out of business. In fact, I
14 think a document proposed by the Bureau itself
15 indicates that. I don't have my finger on it now but,
16 if you give me a couple of minutes, I can find it.

17 MR. FITZGIBBON: Can you identify this?

18 MR. LYON: Yeah. It was his letter of August
19 5th to Mr. Morse, a letter that tracked very closely
20 the letter that was sent to the FOB person in Cerritos,
21 but which conveniently omitted the indication that he
22 wanted to drive Mr. Pascal out of business.

23 MR. MALINEN: Your Honor, if I may.

24 JUDGE CHACHKIN: Yes.

25 MR. MALINEN: It appears that there's not a

1 great question as to whether Mr. Maia should testify,
2 and we're aware of Mr. Lyon's theories.

3 The issue is whether Mr. Lyon should have to
4 denominate Maia as an adverse witness, or whether he
5 will remain our witness and nonetheless be open to this
6 entirely new line of cross examination.

7 We've noted him for authenticating documents.
8 I don't think there's any question that he is credible
9 for authenticating those documents, and our direct case
10 here only indicates that that's what he's been
11 requested to do.

12 MR. LYON: Your Honor, the rebuttal case does
13 indicate to the contrary that he is being noticed by
14 the Bureau to attack the credibility of Mr. Pascal.

15 So, without respect to what the direct case
16 may say, and I would submit to you, in any event, that
17 I'm entitled to attack the credibility of a witness
18 who's merely authenticating documents because I think
19 Your Honor has -- is entitled to know the information
20 regarding his credibility.

21 But without respect to that, given his
22 rebuttal testimony, he's not being presented merely to
23 authenticate documents.

24 Let me go on to point out one more thing. He
25 is the Bureau's witness. Given that he's the Bureau's

1 witness, I have a right to cross examine him, and I --

2 JUDGE CHACHKIN: No. Let's start from the
3 premise that you don't have the right. You have to
4 establish that there's a need for cross examination.
5 The Commission has made that clear.

6 You don't have the right to cross examine
7 every witness unless you can demonstrate justification
8 for it.

9 MR. LYON: That may be true in the case of an
10 initial application proceeding, but this is a
11 revocation proceeding.

12 JUDGE CHACHKIN: I disagree with you. Even
13 in a revocation proceeding, you have to demonstrate
14 justification to cross examine a witness.

15 Now, if you believe there's something in
16 these documents that he is not in a position to
17 authenticate these documents, or what is your reason
18 for cross examining him?

19 Apparently, you have a theory of the case
20 that there was a conspiracy and, apparently, Mr. Maia
21 was at the head of the conspiracy, but that's your
22 theory. You want to explore it and, it seems to me,
23 the Bureau is right.

24 If you want to explore that theory, you can't
25 do so under the guise of cross examination, but you

1 have to call him as a hostile witness and present him
2 as your own witness.

3 MR. LYON: Your Honor, he is being proposed
4 as a rebuttal witness to attack Mr. Pascal's
5 credibility, and the argument that the Bureau posits
6 may have some validity if it were merely with respect
7 to the direct case.

8 But now they've also made him a rebuttal
9 witness, and they've made him a rebuttal witness as to
10 credibility, Your Honor.

11 JUDGE CHACHKIN: Well, insofar as the
12 rebuttal matter is concerned, that's an entirely
13 different matter. The Bureau may choose, on the basis
14 of cross examination of Mr. Pascal, not to call
15 Mr. Maia as a rebuttal witness.

16 It's only a very minor point that he was
17 going to testify to, and I don't know what difference
18 it would make if the only purpose he's being offered in
19 his direct examination is to authenticate documents,
20 and -- in other words, if Mr. Maia was presenting some
21 direct evidence involving the issues in this case;
22 namely, he was there and he said he overheard or saw
23 something, but he's not being used for that purpose.
24 He's being used merely to authenticate documents.

25 So, under those circumstances -- you want to

1 use him for an entirely different purpose, and it would
2 seem to me then the burden is on you to present him as
3 your own witness. You can't use cross examination of
4 his affidavit as a basis to go into all kinds of other
5 matters.

6 His credibility is not involved here if all
7 he's being used for is to authenticate documents.

8 MR. LYON: Your Honor, I disagree.

9 JUDGE CHACKIN: Unless you feel something
10 about these documents that somehow his credibility has
11 something to do with authenticating these documents,
12 but you haven't demonstrated to me up to now how
13 credibility has any bearing on his authenticating
14 documents.

15 MR. LYON: Your Honor, I would beg to differ
16 with you. I believe the witness' credibility is always
17 an issue.

18 JUDGE CHACKIN: It has to have a bearing.
19 If a person is being called merely to authenticate
20 documents and presents no evidence other than that, and
21 there's no dispute about the documents, what does
22 credibility have to do with it?

23 MR. LYON: Again, Your Honor --

24 JUDGE CHACKIN: Credibility would only have
25 a bearing if he says something differently than someone

1 else says, and I have to determine who's telling the
2 truth but, if all he's being used is to authenticate
3 documents, how is credibility a factor? I don't quite
4 understand what you mean that credibility is always an
5 issue.

6 MR. LYON: Your Honor, again, that argument
7 may have validity except that he is not being proposed
8 merely to authenticate documents. His rebuttal
9 affidavit has been tendered, and unless the Bureau is
10 willing to say they're going to withdraw that; that
11 they're not going to propose that, I have to ask for
12 his cross examination.

13 JUDGE CHACKIN: Well, then you're asking for
14 his cross examination solely on the basis of his
15 rebuttal statement. What is the Bureau's response to
16 that?

17 MR. MALINEN: Your Honor, our rebuttal
18 document follows directly from Mr. Pascal's case, his
19 responsive case, which brought up these new theories.

20 If, as a result of this conference today, he
21 were brought in as an adverse witness, we should be
22 permitted to follow up on their line of examination,
23 and the proper time to have put that before the Court
24 was when we submitted that rebuttal affidavit. So,
25 that would, in fact, be what we intend to follow up on,

1 and we were asked to reduce to writing how we would
2 follow up, and that's what we've tendered.

3 If, in fact, these additional theories, which
4 we did not bring up in our direct case, were not in the
5 case because of Mr. Lyon's action, we would not have
6 tendered that last affidavit.

7 MR. LYON: Your Honor, I'm sorry. Maybe I'm
8 stupid, but I don't understand what Mr. Malinen is
9 saying.

10 JUDGE CHACKIN: Let me just state this very
11 simply, that following the direct case, if the Bureau
12 wishes to present Mr. Maia -- how do you pronounce his
13 name?

14 MR. MALINEN: Maia.

15 JUDGE CHACKIN: Maia -- rebuttal, then we
16 will have to get to the question of whether or not you
17 have a right to cross examine him on his rebuttal, but
18 that will depend on Mr. Pascal's examination, and the
19 Bureau will have to make a decision at that time, and I
20 will reserve ruling on the rebuttal, as far as the
21 rebuttal statement of Mr. Maia until after, when we get
22 to that point.

23 The Bureau felt it was beholden on them to
24 put you on notice that Mr. Maia had a contrary version
25 of the facts with respect to that one matter, but we

1 don't have to concern ourselves with whether Mr. Maia
2 is going to testify as a rebuttal witness at this
3 stage.

4 MR. LYON: Your Honor, I'm confused. I
5 thought that today was the time to rule on requests for
6 cross examination of rebuttal witnesses.

7 JUDGE CHACHKIN: I understand that, and the
8 Bureau is now put on notice that if they want to put
9 Mr. Maia on for a rebuttal witness with respect to this
10 point, they may have to produce Mr. Maia if we get to
11 that, since they'll have a right to cross examine
12 Mr. Maia on that point, the one sentence or two that he
13 testified to.

14 The Bureau may choose, decide that this is a
15 peripheral matter, and it doesn't matter since Mr. Maia
16 is not being offered here to present any direct
17 evidence, merely used to authenticate documents, and it
18 doesn't matter what Mr. Pascal thinks or doesn't think
19 about some of the things that Mr. Maia might have done
20 or might not have done because it's irrelevant to
21 Mr. Maia's testimony which is limited solely to
22 authenticating documents, but that's something the
23 Bureau will have to decide when and if Mr. Pascal
24 testifies.

25 MR. LYON: Just so I understand, Your Honor,