

1 A That is correct.

2 Q And you put these boxes in the copy room of the 12th
3 floor at the direction of Mr. Roberts, did you not?

4 A I want to be careful here. Because he didn't
5 explicitly state, tell me to take them to the 12th floor. I
6 mean that was my decision.

7 Q Okay. So Mr. Roberts basically said store these.

8 A Right.

9 Q And you decided to take them to the 12th floor copy
10 room.

11 A Correct.

12 Q Did you at any point --

13 JUDGE SIPPEL: Now, now I want to be a little bit
14 careful here. When you say your, is your -- again, you're
15 paraphrasing what he said. When he said that Mr. Roberts said
16 to store these, what are the these that Mr. Roberts was
17 referring to?

18 WITNESS: The original documents.

19 JUDGE SIPPEL: Thank you. I want you to be very
20 careful about not using, about not using pronouns when we're
21 talking about things that mean a lot to this case.

22 MR. MASTERS: Okay. Very good, Your Honor. Thank
23 you.

24 BY MR. MASTERS:

25 Q At the time that these boxes of original documents

1 | were placed up in the 12th floor copy room, how many boxes of
2 | original documents were there?

3 | A I think there were four or five.

4 | Q Now am I correct that at some point thereafter these
5 | original documents, originals of the documents produced to
6 | Four Jacks, were moved out of boxes and put into a filing
7 | cabinet?

8 | A That's correct.

9 | Q Did -- when did this happen?

10 | A At the same time as they'd go to the 12th floor.

11 | Q And this was still in 1993.

12 | A I, I believe so.

13 | Q Now I believe when we talked at your deposition, you
14 | told me that a set of original documents that were not
15 | produced to Four Jacks were kept in a separate box. Is that
16 | correct?

17 | A That's correct.

18 | Q Were these documents labeled?

19 | A No.

20 | Q Were these documents indexed?

21 | A No.

22 | Q And is it correct to say that this box of original
23 | non-produced documents were not placed in the 12th floor files
24 | until some point after you placed the first few boxes there?

25 | A Correct.

1 Q And was this box given to you by Mr. Roberts?

2 A That's correct.

3 Q And was it Mr. Roberts who instructed you to put
4 this box in the files with the other original documents?

5 A That's correct.

6 Q Were you told by Mr. Roberts what these documents
7 were?

8 A I didn't have to be told. I mean I, I knew what
9 they were. Because they were -- it said on the, on the box
10 that they were documents not produced.

11 Q Okay. So there was a label on the box. Correct?

12 A Correct.

13 Q And did that label read documents sent by station
14 but not produced because outside time period or because work
15 product?

16 A That's correct.

17 Q And I believe that was a handwritten label, was it
18 not?

19 A That's correct.

20 Q And the handwriting on that label was that of Mr.
21 Roberts. Is that correct?

22 A That's correct.

23 Q Did you ever at any point in 1993 look in that box
24 of non-produced documents?

25 A No.

1 Q Did you ever make copies of any of the non-produced
2 documents in the box?

3 A Ever or just in '93?

4 Q In '93.

5 A No.

6 Q To your knowledge, between the time that you placed
7 these original non-produced documents in the 12th floor filing
8 cabinet and February 10th, 1994, were these non-produced
9 documents looked at by anyone?

10 A Not to my knowledge.

11 Q Were any of these documents, and now we're talking
12 about that same period, were any of these documents taken out
13 of the box?

14 A Not to my knowledge.

15 Q Is it possible that someone could have looked
16 through or taken out these documents?

17 MR. ZAUNER: Objection. Anything is possible.

18 JUDGE SIPPEL: Sustain that objection. These, these
19 documents were not locked in a room alone you wouldn't have
20 the key to, were they?

21 WITNESS: (INAUDIBLE).

22 JUDGE SIPPEL: Okay. I'll sustain the --

23 MS. SCHMELTZER: I'm not sure the witness's answer
24 came across. He just nodded.

25 WITNESS: I said no.

1 JUDGE SIPPEL: Did you get that, Madam Reporter?
2 That come through --

3 COURT REPORTER: Yes.

4 BY MR. MASTERS:

5 Q Now let's take you forward to February 10th, 1994.
6 Am I correct that on that date you were requested to look for
7 certain documents related to this case?

8 A Yes.

9 Q And who asked you to conduct this search?

10 A Ruth Amanajo (phonetic sp.).

11 Q And who is Ms. Amanajo?

12 A She is Ken Howard's secretary.

13 Q And I believe you testified at your deposition that
14 she stopped you in the hallway to ask you to make this search.

15 A That's correct.

16 Q You had just returned from the FCC I believe?

17 A That's correct.

18 Q And I believe you testified that this request was
19 made probably about 3 o'clock on the afternoon of the 10th.
20 Is that correct?

21 A That's correct.

22 Q And is it correct that on February 10th you were
23 asked to search for two documents, a memorandum from Emily
24 Barr and for notes made by Janet Covington in 1992.

25 A That's correct.

1 MR. HOWARD: Objection. That's not his testimony as
2 I recall it from the deposition. Is that --

3 MS. SCHMELTZER: Well, don't testify for the
4 witness, counsel.

5 MR. HOWARD: But it's, it's a misleading question if
6 he's saying that's the, what you were asked to do. And it, it
7 may be used -- he's saying isn't that correct as what you, you
8 said. And my recollection is that's not what he said at his
9 deposition.

10 MR. MASTERS: Well, he answered the question yes.

11 JUDGE SIPPEL: Well, yeah. I'm going to have to
12 leave the, I'm going to have to leave the record the way it
13 is. And you can certainly -- you can proceed on redirect
14 but --

15 MR. HOWARD: It's a minor point. But if it's going
16 to lead to impeachment --

17 JUDGE SIPPEL: Well, you can --

18 MR. HOWARD: -- down the --

19 JUDGE SIPPEL: Well, yeah but --

20 MR. HOWARD: -- it doesn't make any difference.

21 JUDGE SIPPEL: Mr. Howard, you got to be a little
22 bit careful. I mean, you know, you can't be stepping over the
23 line of prompting the witness. Now I'm not --

24 MR. HOWARD: I --

25 JUDGE SIPPEL: -- saying that you had. But you'll

1 | be -- you'll have your chance to try and clean this up if you
2 | feel that it's been misled. Another, another approach would
3 | be try and get the objections up on the table a little bit
4 | earlier. But --

5 | MR. HOWARD: I tried that, Your Honor.

6 | JUDGE SIPPEL: That's --

7 | MR. MASTERS: Let me show you a document, Mr.
8 | Kilbourne.

9 | JUDGE SIPPEL: I want to again caution Mr. Masters.
10 | Be sure that you frame your questions very carefully for this
11 | witness.

12 | MR. MASTERS: Okay. I'm showing you a two-page
13 | document entitled "Declaration of Brett W. Kilbourne". It
14 | reflects as being executed on February 15th, 1994. And for
15 | the record I'll state that this was appended to a letter from
16 | Mr. Howard to the Judge also dated February 15, 1994.

17 | JUDGE SIPPEL: Are you going to introduce this in as
18 | evidence or seek to introduce it as evidence?

19 | MR. MASTERS: Yeah, I believe so, Your Honor. So I
20 | would ask that this document be marked as Four Jacks Exhibit
21 | 29.

22 | JUDGE SIPPEL: Reporter will so mark this exhibit as
23 | Four Jacks No. 29 for identification.

24 | (Whereupon, the document referred to as
25 | Four Jacks Exhibit No. 29 was marked for

1 identification.)

2 BY MR. MASTERS:

3 Q Mr. Kilbourne, have you looked at what's been marked
4 as Four Jacks Exhibit 29?

5 A Yes.

6 Q Do you recall giving this declaration and executing
7 it on February 15, 1994?

8 A Yes.

9 Q And is this declaration correct and accurate?

10 A Yes.

11 MR. MASTERS: Your Honor, at this point I would move
12 Four Jacks Exhibit 29 into evidence.

13 JUDGE SIPPEL: Any objection?

14 UNIDENTIFIED SPEAKER: I have no objection.

15 JUDGE SIPPEL: All right. I want to go off the
16 record just a minute before I rule on this.

17 (Off the record. Back on the record.)

18 JUDGE SIPPEL: Four Jacks No. 29 for identification
19 is received at this time.

20 (Whereupon, the document referred to as
21 Four Jacks Exhibit No. 29 was received
22 into evidence.)

23 BY MR. MASTERS:

24 Q So Mr. Kilbourne, we're up to February 10th. And
25 Ms. Amanajo has asked you to look for a memorandum from

1 Emily L. Barr and notes made by Janet Covington in 1992. How
2 did Ms. Amanajo describe the memorandum from Emily L. Barr
3 that you were to look for?

4 A I think I had the date of the memo to search by.

5 Q And Ms. Amanajo provided you with the date of the
6 memo?

7 A We had a rough date.

8 Q The rough date?

9 A I mean I don't know if she gave me the exact date.
10 I can't recall.

11 Q Did she provide you with a copy of this memorandum
12 from Ms. Barr?

13 A No.

14 Q At the time of Ms. Amanajo's request, did you know
15 what the 1992 Covington notes were?

16 A No.

17 Q Did Ms. Amanajo give any indication where you should
18 look for these two documents?

19 A No.

20 Q And so I take it that you undertook your search for
21 these documents right away. Is that correct?

22 A That's correct.

23 Q And I believe you told me at your deposition that
24 the first place you went was to the files on the 11th floor
25 containing copies of the documents produced to Four Jacks. Is

1 that correct?

2 A That's correct.

3 Q And these documents were in files in standing file
4 cabinets. Is that correct?

5 A That's correct.

6 Q Why did you go to these files?

7 A Because I assumed that this was the document that
8 was produced.

9 Q And I take it that you did not find either of the
10 documents you were looking for in these 11th floor files. Is
11 that correct?

12 A That's correct.

13 Q Did you go through every single document in these
14 files?

15 A I can't recall. I mean I think so.

16 Q At the time of your search, was there some sort of
17 indexing system in these files that maybe would have shortened
18 your search?

19 A No.

20 Q How much time did it take you to go through these
21 11th floor files?

22 A I think it took me a half an hour.

23 MR. ZAUNER: Another point of information. Are you
24 talking about the 11th floor files that included the documents
25 that had been produced? Or are you talking about all of the

1 files of documents on the 11th floor pertaining to this case
2 maintained by Baker & Hostetler through him?

3 MR. MASTERS: Well, I -- yeah. I meant my question
4 to pertain to the 11th floor files containing the documents
5 produced to Four Jacks.

6 BY MR. MASTERS:

7 Q Is that your understanding?

8 A That's my understanding.

9 Q And I believe you told me at your deposition you
10 next went to where the original documents were on the 12th
11 floor of the building. Is that correct?

12 A That's correct.

13 Q And is it correct that all of the original documents
14 provided by WMAR-TV whether produced to Four Jacks or not
15 produced to Four Jacks were in filing cabinets in that 12th
16 floor copy room?

17 A That's correct.

18 Q And so you started looking through these filing
19 cabinets containing the originals, correct?

20 A That's correct.

21 Q How long did it take you before you found what you
22 were looking for?

23 A Less than 15 minutes.

24 Q And where did you find the documents you were
25 looking for?

1 A I found it in this box that was clearly marked
2 documents not produced because of outside the time period.

3 Q Okay. So you found it in the box labeled non-
4 produced documents.

5 A That's correct.

6 Q I'm paraphrasing.

7 A Thank you.

8 Q Is it correct to say that that was the only box in
9 the filing cabinet?

10 A At that point it was, yes.

11 Q All the other original produced documents had been
12 lifted out of the boxes and placed in stacks in the filing
13 cabinet, right?

14 MR. HOWARD: Objection. That statement suggests
15 that these documents have been -- he says the other produced
16 documents. It's the --

17 MR. MASTERS: Okay. But --

18 MR. HOWARD: -- produced documents, not the other
19 produced documents.

20 MR. MASTERS: -- it's like the other, the produced
21 documents.

22 JUDGE SIPPEL: Sustain the objection. Rephrase that
23 question.

24 BY MR. MASTERS:

25 Q Okay. The, the produced documents had been lifted

1 | from the boxes and placed in stacks in the filing cabinet. Is
2 | that correct?

3 | A Correct.

4 | Q Was this box of non-produced documents in the first
5 | drawer that you opened up in the filing cabinet?

6 | A Yes.

7 | Q And it was right on top, correct?

8 | A Correct.

9 | Q Had you known previously where this box of non-
10 | produced documents was relative to the filing cabinet?

11 | A I suppose since I put it there.

12 | Q Now how big was this box of non-produced documents?

13 | A It's about the size of -- it was a box that, that
14 | would have held a ream of paper.

15 | Q So it was about 8-1/2 X 11 X 2 inches tall?

16 | A Correct.

17 | Q How many pages of documents were contained in this
18 | box?

19 | A I believe there were 30 to 40 pages of documents.

20 | Q Was this memorandum from Emily L. Barr that you had
21 | been instructed to find on top of this file?

22 | A No.

23 | Q To your recollection, about how deep into the file
24 | was it?

25 | A It was in the middle.

1 Q And so you located the memorandum from Ms. Barr.
2 Let me have you look at what's been admitted as Four Jacks
3 Exhibit 29 and have you look at Exhibit 1, the second page of
4 that document. And this is a memo on WMAR-TV letterhead dated
5 June 25th, 1993 to Dave Roberts from Emily Barr. And my
6 question to you is is this the memorandum that you located in
7 this box of non-produced documents?

8 A My recollection it is.

9 Q Now you knew you had found the document you were
10 looking for because it had the correct date on it, correct?

11 A Pretty much.

12 Q And you also knew you had found this memorandum
13 because there weren't that many memos going back and forth.
14 Is that correct?

15 JUDGE SIPPEL: Well, that's -- you're asking the
16 witness to speculate along your lines. Ask him the question
17 straight up.

18 MR. MASTERS: Well, let's do this. Let me show you
19 a copy of your deposition of July 28th, 1994.

20 JUDGE SIPPEL: You just handed the witness his
21 deposition, a copy of his deposition. Is that correct?

22 MR. MASTERS: That's correct, Your Honor.

23 BY MR. MASTERS:

24 Q Let me point you to line 3 on page 42 of your
25 deposition. And on line 3, we were talking about the location

1 of this June 25th, 1993 memo. And I ask you the question,
2 "How did you know that you found the correct memo?"

3 A Um-hum.

4 Q Answer, "Because it had the proper date on it."

5 A Question, "And in your mind there was only one memo
6 to Mr. Roberts from Ms. Barr dated June 25th, 1993?" Answer,
7 "In my mind, yeah. There weren't that many going back and
8 forth." Do you recall those questions and answers at your
9 deposition?

10 A Yeah, I, I recall them.

11 Q Were they correct answers?

12 A They're correct impressions that I have of the, you
13 know, the situation.

14 Q Okay, that's fine. So once you found this
15 memorandum from Ms. Barr to Mr. Roberts dated June 25th, what
16 did you do next?

17 A At that point, I took it to Ken Howard.

18 Q At this point, did you locate the Covington notes in
19 the same box?

20 A No. At that point, I wasn't looking for the
21 Covington notes.

22 Q You weren't looking for the Covington notes.

23 A I was just looking for the memo.

24 Q But Ms. Amanajo had asked you to look for two
25 separate documents. Did she not?

1 A I think at that point, you know, what she had asked
2 me to get was a memo, you know, with the, with the following
3 date. And I think that she may or may not -- and I, I can't
4 recall whether she actually described the Covington notes at
5 that point.

6 Q But in your mind as you were finding this memorandum
7 from Ms. Barr in the non-produced document box, you weren't
8 looking for the Covington notes. Is that correct?

9 A No. I didn't, I didn't even know what the Covington
10 notes were.

11 Q So you didn't even look for the Covington notes in
12 this, at this particular point in time. Is that correct?

13 JUDGE SIPPEL: Yeah, he's, he's answered that
14 question. Can we move on to something else?

15 MR. MASTERS: Sure.

16 BY MR. MASTERS:

17 Q Okay, so you took this memo and brought it down to
18 Mr. Howard. Is that correct?

19 A That's correct.

20 Q And Mr. Howard was in his office?

21 A Yes, he was.

22 Q What happened next?

23 A I presented him with the memo. He asked me where I
24 had gotten it. I told him that I had gotten it out of a box.
25 And he asked me to retrieve that box.

1 Q And so that's what you did. Is that correct?

2 A That's correct.

3 Q You went back up to the 12th floor, and you got the
4 entire box of non-produced documents --

5 JUDGE SIPPEL: Now wait a minute -- he said that's
6 what he did. Now, now come on. Ask him another question.

7 MR. MASTERS: Okay.

8 BY MR. MASTERS:

9 Q And is it correct that the Covington notes were
10 discovered in the same box in Mr. Howard's office. Is that
11 correct?

12 A The correct statement would be the, the Covington
13 notes were found in the box when I returned it --

14 Q Okay. I'm not trying to imply --

15 A Okay.

16 Q -- that the box was in Mr. Howard's office to start
17 with. They were found in the box that you had brought down to
18 Mr. Howard's office --

19 A Okay.

20 Q -- right?

21 A Yes.

22 Q Did -- at this point in time when you brought the
23 box down, is it correct to say that you and Mr. Howard were
24 the only persons in Mr. Howard's office at the time?

25 A I can't recall.

1 Q Who actually discovered the Covington notes in this
2 box?

3 A I think, I think Mr. Howard did.

4 Q And is it correct that what was found in that box
5 was not a copy of the Covington notes but the original
6 Covington notes?

7 A That's correct.

8 Q Let me show you another document.

9 MR. MASTERS: I'll represent for the record that the
10 document I'm showing Mr. Kilbourne is one of the tabs, I
11 believe it's tab D, to Ms. Barr's direct case testimony.

12 JUDGE SIPPEL: All right. I'll expect we'll see
13 this tomorrow. But do you want this marked as an exhibit for
14 this witness?

15 MR. MASTERS: I don't think so, Your Honor. I think
16 I just have one question for him on it.

17 JUDGE SIPPEL: Do you have any objection to
18 proceeding that way? We know that it's attachment D to Emily
19 Barr's testimony. No problem?

20 MR. HOWARD: No objection.

21 MR. GREENEBAUM: No objection.

22 JUDGE SIPPEL: Go ahead, Mr. Masters.

23 BY MR. MASTERS:

24 Q And my question to you, Mr. Kilbourne, is when the
25 original Covington notes were discovered, was the post-it note

1 reproduced on this document discovered with them?

2 A I can't recall.

3 Q Had you ever seen the Covington notes before?

4 A No.

5 Q So do you have any knowledge of when these notes
6 were placed in the box in which they were discovered?

7 A No.

8 Q What happened then after the notes were discovered?

9 A My involvement pretty much at that point ended.

10 I --

11 Q You left Mr. Howard's office? Is that correct?

12 A That's correct.

13 Q And Mr. Howard remained in his office with the
14 notes. Is that correct?

15 A That's correct.

16 JUDGE SIPPEL: I think that's about as far as we
17 need to go on the time sequence. We know what, you know, we
18 were all advised quite soon after that event as to the
19 existence of these notes.

20 MR. MASTERS: That's all I was intending to ask
21 anyway.

22 JUDGE SIPPEL: All right.

23 MR. MASTERS: Just I think one more question for
24 you. When the Covington notes were discovered in this box
25 while you and Mr. Howard were in Mr. Howard's office, about

1 | what time of day was it?

2 | WITNESS: I would guess that it was 3:45, 4 o'clock,
3 | based on the time it took me to search for the documents.

4 | MR. MASTERS: I have no further questions, Your
5 | Honor.

6 | JUDGE SIPPEL: All right. Does --

7 | MR. ZAUNER: Your Honor, I --

8 | JUDGE SIPPEL: -- Scripps want to ask any -- Mr.
9 | Zauner, you want to have some clarifying questions?

10 | MR. ZAUNER: Well, I have just one question really.
11 | And that's on the Four Jacks Exhibit 29, Exhibit 1. I notice
12 | there that that memo to Dave Roberts from Emily Barr begins
13 | with the statement, "Attached please find the original
14 | documents you requested earlier this week." When you found
15 | this memo, were there any documents physically attached to it?

16 | WITNESS: I can't recall.

17 | MR. ZAUNER: That's the only question, Your Honor.

18 | JUDGE SIPPEL: Mr. Howard, do you --

19 | MR. HOWARD: Could I have a couple minutes, Your
20 | Honor, off the record --

21 | JUDGE SIPPEL: -- do you want to go off, do you want
22 | to go off the record a while --

23 | MR. HOWARD: -- just, just a very brief time.

24 | JUDGE SIPPEL: I'll be back in 5 minutes.

25 | MR. HOWARD: Thank you.

1 JUDGE SIPPEL: Off the record.

2 (Off the record. Back on the record.)

3 JUDGE SIPPEL: All right. We're on the record.

4 REDIRECT EXAMINATION

5 BY MR. HOWARD:

6 Q Mr. Kilbourne, a question was raised in cross-
7 examination about the security with respect to the 12th floor
8 of Baker & Hostetler. And I just want to ask a couple of
9 questions to, to address that. Would you describe the 12th
10 floor as part of Baker & Hostetler's law firm?

11 A Yes.

12 Q There are Baker & Hostetler lawyers on that floor?

13 A Yes.

14 Q Secretaries?

15 A Yes.

16 Q And so while there's not a locked room, there is the
17 kind of security you'd expect in a law firm on that floor.

18 A That's correct.

19 Q To your knowledge, did anyone else know the location
20 of the box of non-produced documents?

21 A No.

22 Q Mr. Masters asked you to rephrase one of your
23 answers with respect to the, the role that other attorneys may
24 or may not have played in the preparation of or in the
25 gathering of documents and retaining documents for production.

1 | You had said that you did not know. And then he asked you
2 | again to your knowledge did anyone else participate. Is --
3 | would you just explain which of those would be a more accurate
4 | statement about the Baker & Hostetler's attorneys'
5 | participation in the review of documents, that you, you don't
6 | know the extent of other attorneys' participation in that or
7 | that to your knowledge no one else participated in that except
8 | Dave Roberts and --

9 | A Okay. The, the first would be more accurate which
10 | would be the, I don't know the extent to which other attorneys
11 | were involved.

12 | (Pause.)

13 | MR. HOWARD: No further questions.

14 | JUDGE SIPPEL: Mr. Masters?

15 | MR. MASTERS: No questions.

16 | JUDGE SIPPEL: Mr. Kilbourne, I have no questions.

17 | You're excused as a witness.

18 | WITNESS: Thanks.

19 | JUDGE SIPPEL: We're in recess then until 9:30
20 | tomorrow morning. I'm going to go off the record. I want to
21 | just do some administrative things off the record.

22 | (Whereupon, the hearing was adjourned until
23 | 9:30 a.m. on Thursday, September 8, 1994.)

24 |

25 |

CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

IN RE APPLICATION BALTIMORE, MD.

Name

MM DOCKET NO. 93-94

Docket No.

WASHINGTON, D.C.

Place

SEPTEMBER 7, 1994

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 1507 through 1552, inclusive, are the true, accurate and complete transcript prepared from the reporting by Paula McNulty in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

9/6/94

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