

I have kept my records in the same manner for years, and I have amassed a large positive net worth. Also, I run a successful business. What records does the staff Gettysburg say I need to run my business more efficiently and why?

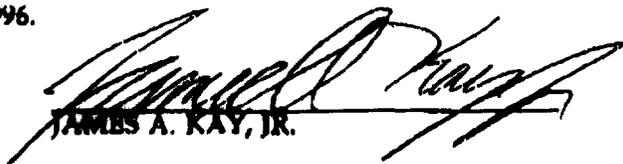
Subsequent events in this case indicate, I believe, that my interests were prejudiced unfairly by this investigation. I believe that selective leaking by the Bureau has continued during the conduction of this case. While I was negotiating the M.O.U. with the Bureau, it was clear that information regarding the negotiations were being leaked to prospective buyers. During the negotiations, Nextel seemed to have a direct pipeline, I believe, into the Commission. In response to information received from the Commission, they reduced the offer for my stations.

Since the Bureau has once again called for the ultimate sanction to be rendered against me in the Supplement, namely the loss of all my licenses, I believe that it is important that the ALJ understand the extreme seriousness of this sanction. Radio is both my career and my hobby. I have been involved in electronics and radio communications essentially all of my adult life. To lose these licenses would bankrupt me and leave me without employment, a business, or a career. I have used my best efforts to answer Interrogatory No. 4. If I had any further information or better information, I would have provided it long before this point. I point out that with the exception of certain historical data ,which I do not have, I have provided literally everything requested in this Interrogatory. I am genuinely at a loss to determine what information the Bureau wants in response to the Interrogatory. The Interrogatory required me to link a call sign with a customer, and a mobile count. This was done. I point out that I have not, nor do I wish to be seen as obstructing discovery in this case. I also point out that after the filing of my answer to this Interrogatory, the Bureau did not make any effort to "meet and confer", nor did the Bureau take any formal or informal steps to either clarify the information which it wanted, or to resolve any discovery dispute.

I understand that an issue raised by the ALJ and the staff is whether in light of my alleged failure to produce information, this case can go forward. I point out that the information and documents produced since the filing of the HDO, together with the answer to Interrogatory No. 4, and the other Interrogatories collectively provide much more information regarding my licenses than were ever requested in the 308 (b) letter. The Bureau has had all of my customer information for nearly one year. They have had the information in Interrogatory No. 4 for almost five months. As of this date, the Bureau has submitted no evidence of any kind of any wrongdoing in the conduct of my affairs, nor have they linked a single impropriety to any license application. In summary, my resistance to the January 31, 1994 letter has in no way limited their ability to investigate my affairs. Their failure to produce any evidence of wrongdoing must therefore be held against the Bureau.

As can be seen, the Bureau's final pleadings indicate very strongly that this case is far more complicated than the Bureau has suggested, and that each of the issues must be discussed individually. As I have reviewed the HDO and all of the matters which have been actually presented against me, I note that there is absolutely no evidence of any kind that has been offered against me. I state unequivocally that all of the charges against me are false and groundless, and that I have acted responsibly and professionally to provide good service to radio customers for many years. I am a person of good character who was forced by the wrongful actions of the Bureau to fight, with all available resources, for his rights under the law.

I declare under penalty of perjury that the foregoing is true and correct.
Executed at Van Nuys, California on this 15th day
of March, 1996.


JAMES A. KAY, JR.

07/27/92 18:44 212020585363

LEWIS GOLDMAN PC

LAW OFFICES
LEWIS H. GOLDMAN, P. C.
 SUITE 1080
 1850 M STREET, N.W.
 WASHINGTON, D. C. 20038

TELEPHONE
 (202) 694-2378

July 27, 1992

Mr. Charles R. Wells
 Mobile U.H.F., Inc.
 11892 Cardinal Circle
 Garden Grove, California 92643

BY FACSIMILE

Dear Chuck:

It was very nice to have that unexpected meeting with you on Friday afternoon to discuss the James Kay situation. I appreciate your coming all the way from Orange County, particularly when you have indicated that you have no direct interest in the matter yourself.

I think that the participation of the other dealers, including perhaps those who did not attend the luncheon, would be very helpful, not only in spreading the costs but in providing a united front which would gather information against the adversary that I could use in presenting the case to the Commission.

I hope that Alan Kaitz will be able to organize the group into some semblance of order so that we can proceed very quickly. If not, then I will simply limit my efforts to being on behalf of Jim Doering.

Sincerely,



Lewis H. Goldman

20 0300 0302 123 112 15-21 001 11 00W

AFFIDAVIT

I, Gail Thompson, am the wife of Ralph Thompson. Ralph was licensed to operate Business Radio Service--Conventional station W11275. One day in April, 1994, I received a telephone call from a woman who identified herself as Anne Marie Wypijewski of the Federal Communications Commission. Ms. Wypijewski called regarding my husband's station which was target of a Finder's Preference Request filed by James A. Kay, Jr. My husband had written a letter to the FCC on April 5, 1994, opposing the Finder's Preference Request.

Ms. Wypijewski said that the license for the station was going to be cancelled regardless of the Finder's Preference Request. She indicated that she was trying to help, and she wasn't cancelling the license just to take it away. She informed me that once the license cancelled, it would be "up for grabs" and anyone, including my husband, could apply for it. She made it sound like it would not be very long before all this happened.

Ms. Wypijewski called again on Friday, April 29, 1994 and left a message on our answering machine. I did not have an opportunity to return her call.

I declare, under penalty of perjury, that the foregoing statement is true and correct.


Gail Thompson

Dated: 12-12-94

DECLARATION OF WILLIAM I. MULLINS

I, WILLIAM I. MULLINS, state and declare:

1. I am an adult over the age of 18 years. My present residence address is 5145 West 134th Place, Hawthorne, California 90250. I have lived at that location for 27 years.

2. The following statements are made of my own personal knowledge.

3. From the beginning of 1992 through January, 1995, I sporadically used the services of CCS in the operation of my own businesses. I had significant direct contact with the company.

4. From approximately June, 1994 to December, 1994, I worked for the business known as CCS as a salesperson. My job duties included sales of two-way radio equipment, two-way radios systems, and marketing of two-way radio equipment and market research. While working as a salesperson, I spent most of the time working at the business address of 5310 West Century Boulevard, Los Angeles, California 90045. During the time that I worked for CCS, "CCS" meant at various times, I cannot recall, Computer Consultants & Systems or Communications Consultants & Systems. In recent times, the same company used the name Century Communications Systems.

5. I was hired to work for CCS by GERARD PICK and HAROLD PICK. I was supervised primarily by HAROLD PICK, and had only incidental contact with GERARD PICK.

6. During the course of my employment with CCS, it became quite apparent that HAROLD PICK, GERARD PICK and ANN PICK, all had considerable animosity towards a person they identified as JAMES A. KAY, JR, (hereinafter "KAY"). Even prior to my employment, when I was dealing with CCS in the capacity as a customer, HAROLD PICK, in particular, spoke to me frequently concerning KAY.

7. Prior to working for CCS, in 1993, I generally would have contact with HAROLD PICK fifteen times on average in the course of a month. In each and every instance, HAROLD PICK would discuss at length KAY with me. He generally would ask me to help him to interfere with KAY's business operations. Specifically, he asked me to speak to each of my customers and be sure that I stated that KAY was a "crook", "criminal", and was someone not to be trusted in business.

8. I do not recall any specific dates or customers, but during 1993, while I was present at the CCS business located at 5310 West Century Boulevard, in my presence, HAROLD PICK repeatedly spoke to customers who came in off the street concerning the character of KAY. While I was present, PICK would, as a matter of course, inquire of TWO-WAY RADIO customers, who provided their two-way radio repeater service. If the customers responded that such service was provided by LUCKY'S TWO-WAY RADIO or SOUTHLAND COMMUNICATIONS, HAROLD PICK would immediately warn the customer that they were dealing with a dishonest person in KAY, and that "they better watch their back".

I specifically recall at least six instances in which HAROLD PICK told, what appeared to be complete strangers to him, that KAY, was a criminal involved in theft of FCC frequencies and that he swindled his customers. He also told each and every customer that KAY was unfair in his business practices and as a common business practice overcharged his customers. At this time, I knew that HAROLD PICK and CCS were in direct competition with KAY and his business.

9. Regularly, in 1993, and thereafter, whenever HAROLD PICK discussed KAY, with me, one of the subjects discussed was his wish to cause physical harm to KAY. Another goal which HAROLD PICK specifically described to me was that it was his intention to obtain as many FCC frequencies as possible, after the demise of KAY. He stated to me that he would go to any lengths to accomplish that goal. I recall HAROLD PICK specifically telling me that he was going to have KAY beaten up, that he was going to have KAY shot, that he was going to disrupt KAY's business as much as he possibly could.

10. During 1993, I also had occasion to speak with GERARD PICK many times. Also in each and every one of those instances, GERARD PICK would raise the subject of KAY. GERARD PICK stated to me specifically that it was his goal to put KAY out of business. GERARD PICK additionally told me he wished that KAY was "out of the picture" and that he wanted to kill him.

11. In 1994, prior to the time I began to work for CCS, HAROLD PICK continued to, in my presence, repeatedly issue

threats concerning what he wished to do to KAY. HAROLD PICK continued to issue threats against the person of KAY in my presence, and further, informed me that it was his belief that not only was KAY dishonest in his business practices, but that he further had stolen repeater equipment from mountain top locations, that he had committed fraud in order to obtain title to Federal Communication Commission licenses, and that KAY was involved in the murder of a former employee who would not cooperate with him regarding FCC matters. He told me specifically that KAY had strangled her.

12. Beginning in approximately, June, 1994, I began to work regularly at the West Century Boulevard location of CCS. In my capacity as a sales person, I generally had contact with customers of CCS, both out in the field and at the business address. My job was to find as many customers to utilize the two-way radio communication systems operated by CCS. I was given specific instructions that if I ran across any customer who was, at that time, using the two-way radio communication systems of LUCKY'S TWO-WAY RADIO or SOUTHLAND COMMUNICATIONS that I was to make every effort to take that customer from those companies. If a customer was using a LUCKY'S TWO-WAY RADIO or SOUTHLAND COMMUNICATIONS two-way radio system, I was authorized to waive the connection fee and to offer free equipment and/or service to entice the customer off of a KAY system. I was never authorized to offer such inducements if I was trying to sign up a customer who operated on another competitor's system. I was given

specific instructions that I was to concentrate on taking customers from LUCKY'S TWO-WAY RADIO or SOUTHLAND COMMUNICATIONS. Those instructions came directly from HAROLD PICK.

13. On repeated occasions from 1993 to the present, HAROLD PICK has spoken to me repeatedly of causing damage to the business of KAY. In June or July, 1995, I accompanied HAROLD PICK to a customer, Magic Mountain, to perform service on radios and telephone lines at that location in Valencia, California. We drove in a green Chevrolet Suburban. On the trip back from Magic Mountain, HAROLD PICK exited the San Diego freeway and drove by the business location of SOUTHLAND COMMUNICATIONS in Van Nuys, California. We stopped at about 10:00 p.m. at night. HAROLD PICK explained that this was the business location for KAY and that KAY drove a blue Ford Explorer. At this time, he told me that this was where KAY worked and that he wanted to "firebomb the place", "set the place on fire", "put a bomb in the business", and otherwise destroy the building.

14. On another occasion, I accompanied HAROLD PICK to the Oat Mountain mountain top repeater site to service HAROLD PICK's repeaters at that location. There were at least seven or more buildings at that mountain top location. HAROLD PICK and I entered one of the buildings and HAROLD performed service on a repeater owned by ProComm. After he completed service, he locked the door to the repeater building and then said he would give me a tour of the other buildings at that location. PICK went to his truck and removed a large key ring, then we walked down the hill

to the other repeater buildings. During the course of this tour which occurred around midnight, sometime during the summer of 1995, HAROLD PICK and I entered almost every other building on Oat Mountain. HAROLD PICK had a key on his key ring for almost every door in every building. We entered those buildings and toured the equipment present there. Other than the first building where HAROLD PICK performed services on the repeaters, he did not indicate that he had any equipment in any other building.

15. In my presence, during 1994 and 1995, I have accompanied HAROLD PICK on many instances when he utilized keys to obtain access to buildings to which I do not believe he had any right to enter. I have specifically seen him in possession of keys to gain access to the Meridian building located at Oat Mountain. It is my understanding, that the key that is necessary to gain access to the Meridian building at Oat Mountain are General Telephone property. He has discussed with me the damage he could cause General Telephone based upon his possession of their keys, without their knowledge.

16. At the end of the tour at Oat Mountain, HAROLD PICK showed me the building which contained the radio repeater equipment used by KAY. He told me that he would like to damage that equipment by cutting a hole in the roof of the building and introducing water to damage the contents. He spoke in detail about the fact that a normal garden hose would not provide sufficient amount of water to do such damage and consequently

stated that he believed that he must utilize a fire hydrant and hose to that end.

17. While on Oat Mountain and "inspecting" the LUCKY'S TWO-WAY RADIO building, HAROLD PICK made a point of examining each lock on the outside of the building in my presence.

18. While in the employ of CCS, between the months of approximately June, 1994 through January, 1995, I had occasion to utilize a Toshiba lap top computer. I used that computer to program standard 800LTR radios for use on 800 MHz two-way radio systems. Such programming was a common practice for programming new customers to use the CCS two-way radio systems. The purpose of the programming was to initialize the individual radio communications equipment with identification codes on LTR so that they could operate.

19. While performing that standard function for customers, I had occasion to review the main directory of the Toshiba computer. That computer contained programs such as STX- Stand Alone Field programmer-Lab Use Only. I used the directory to review the contents of this program and in booting up the program, a warning flashed on the screen stating that the program was for Motorola lab use only. I had, before this time, seen HAROLD PICK, program Motorola STX radios. When HAROLD PICK was programming these radios, he told me that a full line Motorola dealer was not allowed by Motorola to use this program and alter their equipment without authority. He knew that his actions in programming the radios was illegal and told me so.

20. Also kept on the Toshiba computer was a Motorola program entitled Lab Tools. I do not know the function of Lab Tools but observed HAROLD PICK repeatedly using that program while working on Motorola STX, MTX, 800 and possibly Spectra radios. I also noted there was a program entitled MASS 800 kept on the Toshiba computer. I understand that this program is used to initialize and alter Motorola trunking radios.

21. HAROLD PICK has also been involved in a dispute with Motorola, Inc. In one instance in my presence, using a modem, HAROLD PICK told me that he was logging onto the Motorola Trunking controller located at Mt. Lukens, or possibly Oat Mountain. He told me that the purpose for his call was to sabotage the Motorola Radio Trunking system by shutting down as many codes as possible. In my presence, PICK logged on with a WYSE terminal and modem, and utilizing a password, appeared to gain access to the system. Once logged on, PICK attempted through accessing the different fields of the control program to deactivate customer's radios thus disconnecting customers from their radio systems. This occurred while I was a CCS employee and PICK used the computer in my office.

22. During the course of my employment with CCS, on many occasions, FRANK DE MARZO came to the West Century Boulevard business. In most instances, DE MARZO came to CCS because CCS was working on radios for DE MARZO. When DE MARZO came to CCS, he would regularly speak to HAROLD PICK when I was present. They would often talk about marketing plans and improving their

respective customer base and in the context of such discussions would discuss plans to put KAY "out of business."

23. Among things discussed between HAROLD PICK and DE MARZO concerning KAY were plans to kill KAY, which were discussed in detail including, "shooting KAY in the head", "going after his customer base", "jamming his two-way radio communication system", and "blowing up his business". I specifically recall HAROLD PICK asking DE MARZO to go after specific FCC licensees who had assigned their licenses to KAY. In my presence, I saw HAROLD PICK hand DE MARZO FCC database print-out information and told him to contact current customers of KAY and try to take them away from KAY and get them to file complaints against KAY with the FCC and the U.S. Inspector's General Office. I saw this specific plan exercised at least five times. Specific customers which were involved in these plans included the Fullerton School District, Cal Western Termito and Van Diest Brothers.

24. I recall a specific instance in late 1995 when PICK and DE MARZO were congratulating themselves on their successful interference with KAY's relationship with the Fullerton School District.

25. On repeated occasions, I was told by both PICK and DE MARZO, that they had "jammed" KAY's customer's communications. In my presence, on many occasions, HAROLD PICK would use his service monitor, his IFR service monitor, IFR booster and another 100 watt amplifier to jam KAY's customers.

26. On another occasion, I witnessed PICK setting up and jamming the NEXTEL radio system operating on frequency 863.7625, utilized by NEXTEL around the Los Angeles International Airport. It is my understanding that this is a control channel of NEXTEL which PICK told me he was trying to cause to "crash" so that the NEXTEL's reputation regarding communication around LAX would be damaged.

27. On many occasions, PICK asked me to assist him in his campaign against KAY. He told me that when the campaign was successful, and KAY no longer had FCC licenses, that he would notify the FCC of my help and arrange for me to get a FCC license which I could then sell for a huge profit. PICK repeatedly bragged to me that the FCC had told him that he would be rewarded for his cooperation in their actions against KAY. He specifically stated that there had been a meeting at his home with representatives from the FCC and the U.S. Inspector General's Office in which a plan was discussed as to how to best attack KAY. I am aware that prior to his death, GERARD PICK claimed a close relationship with someone named ANNEMARIE at the FCC.

28. I have had mentioned to me by GERARD PICK, many times, and have seen boxes containing gifts directed to ANNEMARIE at the FCC by GERARD PICK. GERARD told me on many occasions that he would often speak German to ANNEMARIE and took great pleasure in those discussions.

29. In another instance, in 1993, I was told by HAROLD PICK that he was going to "get" someone named KIRK FYBEL of MOTOROLA, INC. He said he wanted to know where FYBEL lived in Orange County, so that he could pay him back for not helping him sell an FCC license. He told me that he wanted to kill FYBEL. He later told me that someone had made a death threat against FYBEL and seemed pleased that such a threat had been made.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on January 31, 1996, at Encino, California.


WILLIAM I. MULLINS

MULLINS.BTM

In The Matter Of:

*James A. Kay, Jr. v.
Harold Pick*

*Charles E. Smith
November 30, 1995*

*Coleman, Haas, Martin & Schwab, Inc.
6222 Wilshire Boulevard
Suite 204
Los Angeles, CA 90048
(213) 480-1234 FAX: (213) 480-0381*

Original file mc3198.asc, 77 Pages

Word Index included with this Min-U-Script®

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES JAMES A. KAY, JR.) Plaintiff,) vs.) No. LC 023 386 HAROLD PICK, GERARD PICK,) Individually, and doing business) as COMPUTER CONSULTANT AND) SYSTEMS,) Defendants) ABBREVIATED CAPTION) DEPOSITION OF CHARLES EDWARD SMITH Encino, California November 30, 1995 MICHELLE R. OLSEN RPR, CSR #10172 JOB NO. 95-3198

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES JAMES A. KAY, JR.,) Plaintiff,) vs.) No. LC 023 386 HAROLD PICK, GERARD PICK,) Individually, and doing business) as COMPUTER CONSULTANT AND) SYSTEMS, and doing business as) COMMUNICATION CONSULTANT AND) SYSTEMS, and doing business as) CCS, and doing business as LANCE) HARDY BEST ADVERTISING, and DOES) 1 through 26, Inclusive,) Defendants.) Deposition of CHARLES EDWARD SMITH, taken on behalf of the Plaintiff, at 16055 Ventura Boulevard, Suite 1130, Encino, California, commencing at 11:20 a.m. on Thursday, November 30, 1995, before MICHELLE R. OLSEN, Certified Shorthand Reporter No. 10172, pursuant to Notice.

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APPEARANCES: For Plaintiff: LAW OFFICES OF MICKELSON & PAVONE BY: JEFFREY L. COHEN 16055 Ventura Boulevard Suite 1130 Encino, California 91436 For Defendants: BABAK NAMAZI Attorney at Law One Wilshire Building 624 South Grand Avenue Penthouse, Suite 2900 Los Angeles, California 90017 Also Present: JAMES KAY, JR.

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(1) Encino, California, Thursday, November 30, 1995 (2) 11:20 a.m. (4) CHARLES EDWARD SMITH, (5) produced as a witness by and on behalf of the (6) Plaintiff, and having been first duly sworn, was (7) examined and testified as follows: (9) EXAMINATION (10) BY MR. COHEN: (11) Q: Would you please state your full name for (12) the record, please. (13) A: My name is Charles Edward Smith.

(14) Q: Could you state your date of birth. (15) A: 2/27/51. (16) Q: Mr. Smith, have you ever had your (17) deposition taken before? (18) A: No, I have not. (19) Q: In that case, I would like to give you (20) some instructions and direction regarding the purpose (21) of a deposition and what your rights, duties and (22) obligations are during the course of the deposition; (23) is that okay? (24) A: Yes. (25) Q: First thing that you have to understand

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(1) is that you have been placed under oath by the court (2) reporter, and that even though we are in the informal (3) surroundings of an attorney's office, the testimony (4) that you provide here is the same that you would have (5) to give before a judge and a jury, and, therefore, is (6) of the same importance; do you understand that? (7) A: Yes, I do. (8) Q: The same rules that would govern your (9) testimony before a judge or a jury including a law (10) that governs perjury applies here just as it would in (11) front of a judge and a jury; do you understand that? (12) A: Yes, I do. (13) Q: Therefore, even though we are in informal (14) surroundings, your testimony still must be given with (15) with the same accuracy, truthfulness and solemnity of (16) testimony that would be in a trial or in front of a (17) jury; do you understand that? (18) A: Yes.

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(19) Q: Everything that is going to be said in (20) this room today will be taken down verbatim, that is, (21) just the way it is said by anyone who speaks on the (22) record, by the court reporter who's present. After (23) this deposition is completed, the deposition will be (24) typed up into a booklet form about the size of a Time (25) magazine. The booklet form will be made available to (1) you to review and make any changes to the deposition (2) if you desire to do that; do you understand that? (3) A: Yes, I do. (4) Q: You have the right, once the deposition (5) transcript is made available, to make changes to it (6) that you feel are appropriate. However, I must (7) caution you, you can change only your answers, you may (8) not change the questions. (9) Please understand if you choose to make (10) any changes, modifications, or

additions, to your (11) deposition, or, for that matter, should you give an (12) answer at the time of trial and you gave a different (13) answer in the deposition, you are going to give me or (14) any other attorney the right to cross-examine you (15) regarding that and possibly that might embarrass you. (16) So it is important that you give your very best (17) testimony here today. Do you understand that?

(18) A: Yes, I do. (19) Q: In order to make sure our record is (20) clear, during the course of the deposition it is (21) important that we follow the ground rules that only (22) person speak at a time. It makes the job of the court (23) reporter much easier and also makes for a clear (24) record. Therefore, I would request that during the (25) course of the deposition that you would allow me or

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(1) any other person asking you questions to complete (2) their question before you begin your answer. Do you (3) understand that? (4) A: Yes, I do. (5) Q: Please understand that once you begin to (6) answer a question, that it will be presumed that you (7) heard the question and you understood the question (8) and, therefore, are answering. It is very important, (9) because we don't want you guessing or doing anything (10) during the course of the deposition that is not based (11) upon your own personal knowledge; therefore, please be (12) sure to ask me or any other person asking you (13) questions to clarify any question you do not fully (14) understand. Do you understand that? (15) A: Yes.

(16) Q: Will you ask me to clarify a question you (17) do not fully understand? (18) A: Yes, I will. (19) Q: Do understand that if you answer a (20) question, and at a later time you wish to make changes (21) during the course of this deposition, you need to let (22) me know and we can let you, during the course of the (23) deposition, change your answer or clarify your answer, (24) if you need to. Do you understand that? (25) A: Yes, I do.

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(1) Q: Please understand that if you answer a (2) question during the course of the deposition and then (3) later claim that you did not understand it, that I'm (4) going to try to hold you to the best answer that I can (5) get out of you. Do you understand? (6) A: Yes, I do.

(7) Q: Have you had any drugs or alcohol in the (8) last 24 hours?
 (9) A: No, I have not.
 (10) Q: Is there any reason, physically, why you (11) can't go forward with your deposition today?
 (12) A: No, there is not.
 (13) Q: If at any time during the course of the (14) deposition you would like to take a break for whatever (15) reason, simply let me know and we'll adjourn the (16) deposition for a short while to allow you to deal with (17) anything that you desire.
 (18) A: Yes, I will.
 (19) Q: Will you ask me to let you take a break (20) during the course of deposition?
 (21) A: Yes, I will.
 (22) Q: Do you know of any reason, as you sit (23) here today, why the deposition cannot go forward?
 (24) A: I do not.
 (25) Q: Will you testify to the best of your

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(1) ability?
 (2) A: Yes.
 (3) Q: What is your present address?
 (4) A: 1006 East Fondale Street, P-o-n-d-a-l-e, (5) in Azusa, California.
 (6) Q: Do you have a California driver's (7) license, sir?
 (8) A: It is lost.
 (9) Q: Do you know what the number is?
 (10) A: Yes, it is B0155132.
 (11) Q: Do you have a social security number?
 (12) A: 566-84-9893.
 (13) Q: Are you presently employed?
 (14) A: Yes, I am.
 (15) Q: Where do you work?
 (16) A: I am employed by two companies: One is (17) Portable Clinic, the exact address I'm not sure of. (18) It is in the 13000 block of Washington, Culver City.
 (19) I believe the address is 13015.
 (20) Q: Washington Boulevard?
 (21) A: Yes.
 (22) Q: What is the work number there?
 (23) A: (310) 821-5244.
 (24) Q: Where else are you presently employed?
 (25) A: Southland Communications. The street

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(1) number, I don't recall. It is in Van Nuys.
 (2) Q: What are your job duties at Portable (3) Clinic?
 (4) A: I'm a two-way land mobile technician.

(5) Q: What are your duties at Southland (6) Communications?
 (7) A: The same.
 (8) Q: When did you start work at Portable (9) Clinic?
 (10) A: June of '95.
 (11) Q: Prior to June of '95, where were you (12) employed?
 (13) A: I was employed by Communications (14) Consultants and — Communications Consultants, and (15) there is another title to it I don't remember right (16) now.
 (17) Q: Do you know the address of that employer?
 (18) A: The exact address, I don't know. It is (19) on Century Boulevard near the freeway.
 (20) Q: When did you first start working at (21) Communications Consultants and Systems?
 (22) A: The best I can recollect it was probably (23) the second week of December '94.
 (24) Q: You worked at Communications Consultant (25) Systems through June of 1995?

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(1) A: I believe to the end of May to probably (2) the beginning of June, but I know for sure until the (3) end of May.
 (4) Q: What were your job duties?
 (5) A: I was a two-way land mobile, radio repair (6) technician.
 (7) Q: Where did you work before December of (8) 1994?
 (9) A: I've worked at Raycom, R-a-y-c-o-m.
 (10) Q: Where are they located?
 (11) A: On Vermont Avenue in the city of (12) Paramount.
 (13) Q: Who is your supervisor at Portable (14) Clinic?
 (15) A: Dan Magrin.
 (16) Q: Who was your supervisor at Communications (17) Consultant Systems?
 (18) A: Harold Pick.
 (19) Q: Who was your supervisor at Raycom?
 (20) A: Dan — John Black, excuse me. John (21) Black.
 (22) Q: Do you know the telephone number at (23) Raycom?
 (24) A: No, I do not.
 (25) Q: On what day did you begin work at Raycom?

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(1) A: When at Raycom? I believe in November of (2) '93.
 (3) Q: How long did you work there?
 (4) A: Approximately a year.

(5) Q: So to approximately November of 1994?
 (6) A: Correct.
 (7) MR. COHEN: At this point, I would like to (8) attach the Notice of Taking Deposition of Chuck Smith (9) to the deposition transcript as Exhibit Number 1.
 (10) (Plaintiff's Exhibit 1 was marked (11) for identification and is attached hereto.)
 (12) MR. COHEN: I would like to also attach a Proof (13) of Personal Service of the notice of taking deposition (14) of Chuck Smith on oral examination on Frank Vito De (15) Marzo, which was served on November 17th of 1995. (16) This will be attached as Exhibit 2 to the deposition (17) transcript.
 (18) (Plaintiff's Exhibit 2 was marked (19) for identification and is attached hereto.)
 (20) MR. COHEN: Let the record reflect that (21) Mr. De Marzo is an individual defendant in this (22) matter, but there is no appearance on his behalf even (23) though he has been given notice of the deposition.
 (24) Q: Mr. Smith, one other matter I want to (25) clarify regarding your duties at the deposition. I

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(1) earlier mentioned that I don't want you to guess at (2) any of your questions, but I didn't clarify what I (3) meant by that, and I want to make sure that is (4) understood.
 (5) During the course of the deposition you (6) may be asked questions regarding time, measurements, (7) conversations, matters that you may have some (8) recollection of but not have a perfect recollection (9) of. During the course of the deposition, I am (10) entitled to your best estimate or your best (11) recollection of information, but it is a recollection (12) that I am entitled to, meaning that you are to provide (13) your best testimony of what you know, or, if it is a (14) conversation, what you remember about the subject of (15) the conversation even though you may not remember the (16) words verbatim. Do you understand that?
 (17) A: Yes, I do.
 (18) Q: This also means that you are not here to (19) guess, surmise, question or do anything else. You are (20) here to answer questions and to do so from your (21) personal knowledge to the best of your ability. So if (22) during the course of the deposition a question is (23) asked of you where your answer is that you don't know, (24) that is a perfectly adequate answer. Be sure that (25) during the course of the deposition that you are not

[1] guessing at anything. If you are guessing, let us [2] know. We may be able to ask you questions that may be [3] able to enhance your memory. But we want to make sure [4] that you give us your best estimate or recollection, [5] but do not guess at anything. Do you understand that?

[6] A: Yes, I do.

[7] Q: Where did you work prior to Raycom?

[8] A: Prior to Raycom I worked part-time for [9] Frank De Marzo. Also, prior to Raycom, I had [10] purchased test equipment of my own and was in the [11] process of setting up my own business. I also worked [12] part-time for a company called Rockwell [13] Communications.

[14] Q: You're going a little too fast. Let's [15] break this down. From what date to what date did you [16] work part-time for Mr. De Marzo?

[17] A: That was broken up into two periods of [18] time. The first time would — the best as far as time [19] is concerned, I would say within the summer months of [20] 1993.

[21] Q: That is the first time. You indicated [22] that there were two time periods?

[23] A: Yes.

[24] Q: What is the other time period?

[25] A: For a couple of months — I would say

[1] October, November and maybe part of December of 1994. [2] That is the best that I can recall.

[3] Q: So that while you were working part-time [4] for Mr. De Marzo, about the same time that you were [5] working or just prior to the time — while you were [6] working with Raycom and about the time you were [7] starting with CCS; is that correct?

[8] A: Yes, there are periods of time where they [9] overlapped and I was working two jobs.

[10] Q: And the other company was Ray Don?

[11] A: I'm sorry, Raycom.

[12] Q: So during the time period of 1993 you [13] were working for Mr. De Marzo part-time during the [14] summer, you were setting up your own business with [15] your own test equipment and there was a third company [16] that you were also working with?

[17] A: No, that was just prior to those in [18] between times of working for Frank De Marzo, I worked [19] for a company

called Rockwell Communications in San [20] Dimas.

[21] Q: What dates did you work for Rockwell [22] Communications?

[23] A: I would say winter months of '93, on and [24] off. I apologize, I just —

[25] Q: This is not a test, this is just the best

[1] information you can provide. Where did you work prior [2] to that time?

[3] A: With a business partner in another [4] business venture called BST Engineering.

[5] Q: How long did the business, BST, operate?

[6] A: Approximately a year.

[7] Q: Mr. Smith, I'm counsel for James Kay in [8] the lawsuit in which he is seeking damages from Harold [9] Pick, Ann Pick, Gerard Pick and Frank Vito De Marzo. [10] I would like to ask you some questions regarding [11] issues that might relate to that lawsuit. Do you know [12] Harold Pick?

[13] A: Yes, I do.

[14] Q: How did you first meet him?

[15] A: I met Harold Pick through Frank De Marzo.

[16] Q: When did you first meet Harold Pick?

[17] A: Well, I carried on a telephone [18] relationship with him for quite some time, asking him [19] technical questions on repairs for particular radios.

[20] Q: When was your very first contact with [21] him?

[22] A: I would have to say in '93.

[23] Q: Do you recall the month?

[24] A: It was probably in the summer months.

[25] Q: That first contact was person to person

[1] or by telephone?

[2] A: By telephone.

[3] Q: Did you call him or did he call you?

[4] A: I called him.

[5] Q: The reason for that call was?

[6] A: To answer technical questions on repair [7] of a radio.

[8] Q: At any time prior to Frank De Marzo [9] introducing you to Mr. Pick, did you ever meet him [10] face to face?

[11] A: No.

[12] Q: After the first contact with him in 1993, [13] did you — when was the next contact, first contact by [14] telephone, when was your next contact with him?

[15] A: Probably within a few days. He was very [16] helpful in fixing and repair-

ing the particular type of [17] radio I was repairing. So, several days a week for [18] two or three weeks he kind of tutored me over the [19] telephone on repair of these radios.

[20] Q: When was your next contact after this [21] time where he was tutoring you regarding working on [22] the radios?

[23] A: One afternoon Frank was going to go down [24] to the airport where his shop was located and I asked [25] to go along because I wanted to meet him.

[1] Q: Do you recall when this occurred?

[2] A: Again, it would have been in the summer [3] months, but it is very difficult for me to —

[4] Q: Summer of 1993?

[5] A: Yes.

[6] Q: At that time, what company were you [7] working for?

[8] A: At that time I was working for Frank, in [9] particular.

[10] Q: Did something suggest to you call [11] Mr. Pick with regard to repair of these radios?

[12] A: Frank did.

[13] Q: So Frank suggested that you call Harold [14] up?

[15] A: Harold was repairing these types of [16] radios for Frank and Frank wanted me to become [17] familiar with him so that I would be the one doing the [18] repairs.

[19] Q: So you went down with Frank at that time [20] and you met Harold Pick in the summer of 1993?

[21] A: Yes.

[22] Q: Again, allow me to complete my questions [23] before you respond. Did you meet Mr. Pick?

[24] A: Yes, I did.

[25] Q: What was the subject of the conversation

[1] when he spoke to you?

[2] A: Basically, I was looking at his shop and [3] an introduction and then asked him about technical [4] questions that two technicians would talk about. [5] Mostly it was all of that subject matter, radio [6] communications and radio equipment, test equipment.

[7] Q: Did any subject matter other than radio [8] test equipment come up during the course of that first [9] meeting?

[10] A: No.

[11] Q: During the course of the first meeting, [12] did Mr. Pick mention the name James Kay?

[13] A: No.

(14) Q: During the first meeting did he mention (15) the company Southland Communications?

(16) A: No.

(17) Q: When was the next time that you met with (18) Harold Pick face to face after this initial meeting?

(19) A: Probably two or three weeks later.

(20) Q: What was the purpose for that meeting?

(21) A: Again, Frank was going down there and I (22) just wanted to go along.

(23) Q: Did you speak with Harold Pick during the (24) course of that meeting?

(25) A: Yes, I did.

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(1) Q: Was anyone else present during that time?

(2) A: Just Frank.

(3) Q: What was the subject matter of that (4) conversation?

(5) A: The best I can recall, again, it was just (6) technical stuff. Again, I found him to be extremely (7) knowledgeable and intelligent in the field, and (8) basically I wanted to go down there to pick his brains (9) as much as possible.

(10) Q: Did the name James Kay come up at all (11) during the course of that conversation?

(12) A: I don't recall. I believe it did.

(13) Q: Did the name of Lucky's Two-way Radio (14) come up during the course of that conversation?

(15) A: No, I don't believe so.

(16) Q: Did Southland Communications come up (17) during the course of that conversation?

(18) A: No.

(19) Q: When was the next time that you met with (20) Harold Pick after that meeting?

(21) A: Within a month.

(22) Q: What was the purpose for that meeting?

(23) A: Again, I was working with Frank and we (24) were going from job site to job site and I believe he (25) went down to pick up some equipment for me.

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(1) Q: Did you have a conversation with Harold (2) Pick during that meeting?

(3) A: Very little, if I recall.

(4) Q: Approximately when would you estimate (5) that this conversation occurred, this meeting (6) occurred?

(7) A: In the latter part of the summer.

(8) Q: I want to take you back to when you were (9) working with Mr. De Marzo. When did you first meet (10) Frank De Marzo?

(11) A: My actual first meeting with him was (12) either in late '92 or early '93. I was employed by a (13) company called Future Communications in Santa Ana. I (14) was actually not so much employed but as an (15) independent contractor. He came in one day and wanted (16) to sell some equipment that he had purchased at an (17) auction. That was my very first meeting with him and (18) I really did not have too much contact with him. The (19) individuals who owned the company are the ones who (20) dealt with him.

(21) Q: When was the next time you had contact (22) with Frank De Marzo?

(23) A: He called me on the phone and found out (24) that Future Communications went out of business and he (25) wanted to know if I was interested in working for him.

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(1) Q: When did this phone call occur?

(2) A: Probably in the spring of '93, I would (3) say.

(4) Q: Did you tell him you were interested in (5) working for him?

(6) A: Yes, I told him that we might be able to (7) work something out.

(8) Q: Were you able to work something out?

(9) A: Yes.

(10) Q: You became an employee of Frank De Marzo?

(11) A: I don't know if it would be a direct (12) employee. I was more as a contractor. I came in to (13) work on a piecework time basis.

(14) Q: Did you, at any time when you worked with (15) Frank De Marzo, ever do anything other than work on (16) piecework?

(17) A: No.

(18) Q: Did you ever go with him on any trips to (19) deliver equipment?

(20) A: Only if it was peripheral. There were (21) certain sites that I would go to do work on jobsites (22) where I would go on the site to set up equipment and (23) repair radios on the site and sometimes on the way (24) there he would drop equipment off at various places.

(25) Q: What jobsites would you go to work at?

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(1) A: Mostly that I recall, the large one was (2) called Dewey's Rubbish, which I believe is now Western (3) Waste in Irvine.

(4) Q: Any other location where you would go to (5) work at?

(6) A: There were some instances where I (7) wouldn't so much do work but if the respective client (8) may want a contract, a service contract, Frank would (9) have

me go along and evaluate or do a quick evaluation (10) of the equipment and try to set up a rate.

(11) Q: To what potential customers did you do (12) that service for Frank?

(13) A: As far as names of customers, I really (14) don't recall too many of them.

(15) Q: Do you recall any of them?

(16) A: I recall an exterminator company in, I (17) believe, Arcadia or Monrovia.

(18) Q: Might that company be called Western (19) Termite?

(20) A: Yes.

(21) Q: Did you go with Frank De Marzo on a call (22) in which you were trying to evaluate equipment that (23) was held by Western Termite?

(24) A: Yes, we were trying to get a service (25) contract.

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(1) Q: Is the name of the company called Cal (2) Western Termite instead of Western Termite?

(3) A: I believe so.

(4) Q: Approximately when did you go on this (5) venture to Cal Western Termite?

(6) A: It again would have been in that time (7) period of '93. Late, maybe in the summer.

(8) Q: Do you recall about what time of day you (9) arrived?

(10) A: Early afternoon.

(11) Q: Did you arrive there in a vehicle?

(12) A: At that time, yes, we did. The location (13) of the company was within a mile or mile and a half of (14) where Frank had his shop set up.

(15) Q: So you went over there in a car?

(16) A: Yes.

(17) Q: Whose car?

(18) A: His.

(19) Q: Mr. De Marzo drove?

(20) A: Yes.

(21) Q: Do you know whether you had an (22) appointment ahead of time before you went to the (23) meeting?

(24) A: That, I don't know.

(25) Q: When you arrived at Cal Western Termite,

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(1) what was the first thing that Mr. De Marzo did?

(2) A: If I recall correctly, he spoke to a (3) couple of the employees there and then asked to speak (4) to the man who was the owner.

(5) Q: Did he appear, when he spoke to those (6) employees, to have an appointment?

17) A: It would be difficult for me to say. He 18) spoke to them on very friendly terms, as though he 19) knew them by name.

110) Q: Prior to the time that you went to Cal 111) Western Termite did Mr. De Marzo speak to you about 112) what you were going to do while you were there?

113) A: Yes, he wanted me to look at their radio 114) equipment, the vehicles that they would be in.

115) Q: Do you know whether Mr. De Marzo did 116) anything to prepare for this meeting with Cal Western 117) Termite?

118) A: No, I don't.

119) Q: When he arrived there, did he have any 120) documents with him?

121) A: I don't recall. I don't believe so, but 122) I don't know.

123) Q: Did he have a contract already prepared 124) at the time that he arrived there?

125) A: I don't believe so.

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11) Q: After Mr. De Marzo initially spoke to the 12) employees, you indicated he asked to speak to the 13) owner, was he able to speak to the owner?

14) A: Yes, he was.

15) Q: Do you know who the owner is?

16) A: Not by name. I mean, I don't recall his 17) name.

18) Q: Could you describe him, please.

19) A: It looked like he was in his late 50s, 110) early 60s, grayish hair. He looked a little bit 111) tanned and like he spent a lot of time outdoors.

112) Q: Do you know how tall he was?

113) A: No.

114) Q: Did he wear glasses?

115) A: I don't recall.

116) Q: Did he have any facial hair?

117) A: I don't recall.

118) Q: You indicated that Mr. De Marzo was able 119) to speak to the owner of the company, where did that 120) conversation take place?

121) A: In the owner's office.

122) Q: So inside the owner's office in the Cal 123) Western Termite facility?

124) A: Yes.

125) Q: Did you accompany Mr. De Marzo into the

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11) owner's office?

12) A: Yes, I was.

13) Q: Were you present during the time they 14) were having conversations?

15) A: Yes, I did.

16) Q: Did you overhear what was said during the 17) course of the conversation?

18) A: Yes, I did.

19) Q: Did you participate in the conversations?

110) A: No.

111) Q: What was said by Mr. De Marzo to the 112) owner of Cal Western Termite during the course of that 113) conversation?

114) A: Their conversation consisted of Frank -- 115) excuse me. He and the owner were very angry because 116) they felt that Jim Kay had either stolen a license or 117) an actual frequency. I really don't know exactly what 118) it was. Frank was very --

119) Q: You said that he and the owner were both 120) angry. Who first brought up the topic?

121) A: Frank, if I recall.

122) Q: Do you recall what he said when he first 123) brought up the topic?

124) A: I believe it was something of "What have 125) you heard about your license?" Something like that.

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11) Q: Was it your impression, during the course 12) of this conversation, that the owner of Cal Western 13) Termite was not concerned about his license until 14) Frank De Marzo mentioned or questioned him about it?

15) A: I couldn't say.

16) Q: What was the response of the owner of Cal 17) Western Termite when Frank asked him what he heard 18) about his license?

19) A: Just very angry.

110) Q: Was he angry immediately or was he angry 111) after Frank -- strike that.

112) Did Frank explain anything to him about 113) his FCC license, during the course of that 114) conversation?

115) A: The gist of the conversation that I 116) recall was that Frank was accusing Jim Kay of stealing 117) his license and misrepresenting some type of contract 118) that was presented to the owner of Cal Western. 119) Details of the conversation are very vague.

120) Q: During the course of the conversation, 121) did Mr. De Marzo and the owners of Cal Western look at 122) any documents?

123) A: I don't recall. I don't believe so.

124) Q: Do you recall if Mr. De Marzo showed any 125) documents to the owner of Cal Western Termite?

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11) A: I don't recall.

12) Q: Prior to this meeting in the office, had 13) Frank De Marzo ever talked to you about Jim Kay?

14) A: Yes.

15) Q: Let's break this down. When was the 16) first time that he had talked to you about Jim Kay?

17) A: Probably a couple of weeks prior. He was 18) upset about something one day, very angrily throwing 19) things around the office, and Jim Kay's name came up, 110) and at that time I did inform him that I was a former 111) employee of Jim Kay.

112) Q: What did he say when you told him that?

113) A: He was not unhappy about it, but he 114) disliked Jim Kay very much and was calling him names.

115) Q: What kind of names was he calling him?

116) A: Asshole, motherfucker, thief, liar.

117) Q: Did he ever tell you why he was angry at 118) Jim Kay?

119) A: Something to do with Jim stealing 120) frequencies and licenses.

121) Q: Did he ever talk to you specifically 122) about any frequencies or licenses that he claimed Jim 123) Kay had stolen?

124) A: Not at that time, but later he did say 125) that he directly misrepresented the information to the

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11) owner of Cal Western and then subsequently stole his 12) license.

13) Q: When did he tell you this?

14) A: I would say within a week before going 15) over there.

16) Q: So prior to the time that you went to Cal 17) Western, Mr. De Marzo was already telling you that he 18) knew that Jim Kay had made some misrepresentation and 19) stolen the license from the owner of Cal Western?

110) A: Yes.

111) Q: Did he tell you how he knew that?

112) A: Apparently he had read the contract 113) after, you know, the owner of Cal Western showed him 114) that, you know, the contract.

115) Q: So you're saying that sometime prior to 116) the meeting that you attended, Frank De Marzo had seen 117) the Cal Western Termite contract with Jim Kay?

118) A: Yes.

119) Q: How do you know that?

120) A: This is what he told me.

121) Q: Have you ever seen that contract?

122) A: I did not see the contract.

(23) Q: Prior to the meeting at Cal Western, did (24) Mr. De Marzo explain to you what the purpose of your (25) meeting with Cal Western would be?

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(1) A: My impression in the meeting that I was (2) to go there for was that we were attempting to (3) persuade the owner to give us a service contract with (4) his vehicles, and I was there, essentially, to (5) evaluate the on-site equipment so that we could place (6) a dollar value on the service contract.

(7) Q: During the time period that you were (8) affiliated with Mr. De Marzo, did you ever go to any (9) other potential customer or customer to review their (10) radio equipment?

(11) A: Yes.

(12) Q: Do you recall the names of any other (13) customers?

(14) A: The Dewey's, at that time I believe it (15) was Western, and just a couple of others.

(16) Q: During the course of any of those (17) meetings, did Mr. De Marzo ever talk to you ahead of (18) time about the fact that Mr. Kay was involved in (19) taking the FCC license from these people?

(20) A: No.

(21) Q: So is the only time that instance (22) occurred was with Cal Western Termite?

(23) A: Yes.

(24) Q: Have you ever heard of a company called (25) R & S Exterminators?

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(1) A: I heard of them.

(2) Q: Did you ever go on any visitations to any (3) potential customer of Frank De Marzo that was named R (4) & S Exterminators?

(5) A: Not that I can recall.

(6) Q: Let's take you back to this meeting with (7) Cal Western Termite. How long did the meeting last?

(8) A: Under an hour.

(9) Q: Was anything discussed in the meeting, (10) other than the fact that Cal Western Termite and Frank (11) De Marzo were angry because of Jim Kay taking the FCC (12) license from Cal Western Termite?

(13) A: Well, I believe that Frank was trying to (14) persuade the owner to get involved legally against Jim (15) Kay.

(16) Q: What makes you think that?

(17) A: Because he was saying, "Well, we should (18) get a lawyer and sue him for this. You should not (19) stand for this. He stole this from you and you should (20) not take that kind of thing." That kind of a (21) conversation.

(22) Q: Was there anyone else present at this (23) meeting, other than you, Frank De Marzo, and the owner (24) of this company?

(25) A: Other than maybe a secretary coming in

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(1) and out, I don't believe so.

(2) (Discussion off the record.)

(3) BY MR. COHEN:

(4) Q: Is the owner of the company John Lennu?

(5) A: That is a familiar name. That may have (6) been true.

(7) Q: Did Mr. De Marzo provide the owner of the (8) company any telephone number that he should call to (9) deal with this problem?

(10) A: Not that I can recall.

(11) Q: Did you give him any advice other than (12) the fact that he should hire a lawyer and take action (13) against Mr. Kay?

(14) A: Not that I recall.

(15) Q: Did the name Harold Pick come up at any (16) time during course of the conversation between (17) Mr. De Marzo and the owner of Cal Western Termite?

(18) A: Not that I recall.

(19) Q: At any time prior to the meeting with Cal (20) Western Termite, do you know whether Mr. De Marzo had (21) spoken with Harold Pick about Cal Western Termite?

(22) A: I recall some telephone conversations (23) with — and I believe he mentioned it and they were (24) talking about it, but —

(25) Q: This was prior to the meeting at Cal

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(1) Western Termite?

(2) A: I think the conversations were both prior (3) and after.

(4) Q: Regarding — these are telephone (5) conversations that occurred prior to the meeting at (6) Cal Western Termite?

(7) A: Yes.

(8) Q: Do you recall anything specifically that (9) Mr. De Marzo said over the phone to Mr. Pick about Cal (10) Western Termite?

(11) A: No, most of the conversations that I (12) recall were basically like he was venting a great deal (13) of anger. There was a lot of name calling, again, (14) same names as before, and "he can't do this" and — (15) you know, I mean these are just the bits I recall. It (16) is very vague.

(17) Q: During the time that you worked with (18) Frank De Marzo did he have any employees, other than (19) the work that

— assuming that you are simply (20) affiliated with him either as an independent (21) contractor or employer, was there anybody else working (22) for him at that time?

(23) A: Yes, he had a person named Jeff, and I (24) don't recall the last name.

(25) Q: What does Jeff look like?

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(1) A: Jeff is a Mexican-American. He's maybe (2) 5'7" or 5'8", kind of a stocky build. He was kind of (3) in and out. He was having some difficulties.

(4) Q: What would be Jeff's approximate age?

(5) A: In his 30s.

(6) Q: The color of his hair?

(7) A: Black.

(8) Q: Any facial hair?

(9) A: Not that I recall, I don't believe so.

(10) Q: Did he have a beard, big sideburns?

(11) A: No.

(12) Q: Did he wear glasses?

(13) A: I don't recall seeing glasses.

(14) Q: Any scars or tattoos?

(15) A: Not that I saw.

(16) Q: Was this person Jeff also present when (17) Frank was having these conversations with Harold Pick?

(18) A: I don't believe so.

(19) Q: Is there anything else about the meeting (20) that occurred with the owner of Cal Western Termite (21) that you have not already told me?

(22) A: Not that I can recall.

(23) Q: That's perfectly okay. Again, this is (24) not a test, I just want your best recollection. You (25) indicated that the meeting lasted about an hour. Do

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(1) you know what happened after — strike that.

(2) At any time while you were at the Cal (3) Western facility, did you inspect their vehicles and (4) radios?

(5) A: No. Actually, I never got around to it. (6) By the time they were done, we just — Frank just said (7) "let's go" and left, and I never got to do that.

(8) Q: When you left you went out to Frank's (9) vehicle?

(10) A: Yes.

(11) Q: Where did you go from there?

(12) A: Back to the shop.

(13) Q: Did Frank converse with you about what (14) had occurred after you left?

(15) A: Yes.

(16) Q: What did he say to you?

[17] A: Basically, that again, James Kay [18] misrepresented what was going on and stole this [19] contract — excuse me, stole this frequency or [20] license, and that he just ranted is the best way to [21] put it.
[22] Q: Do you recall anything else specifically [23] that he said?
[24] A: No, not at this time.
[25] Q: What was his demeanor after he left?

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[1] A: He was upset.
[2] Q: Did he make any comment at all about what [3] the effects of meeting with the owner of Cal Western [4] Termite would have upon James Kay or his company?
[5] A: No.
[6] Q: Does any other emotion come to your mind, [7] other than upset, about how he acted after you left [8] the meeting?
[9] A: I did get the impression that because of [10] the meeting, I guess you could say that he was out to [11] get him, to get Jim, to get something on Jim.
[12] Q: Why do you get that impression?
[13] A: Just by the general conduct, his general [14] attitude.
[15] Q: Specifically, what about his general [16] attitude?
[17] A: He seemed satisfied that the owner was [18] upset and maybe going to be doing something legally.
[19] Q: At any point after this initial meeting, [20] did you and Mr. De Marzo ever go back to Cal Western [21] Termite together?
[22] A: Not together, no.
[23] Q: Did you ever go back to Cal Western [24] Termite?
[25] A: I do not think so.

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[1] Q: Do you know when De Marzo ever went back [2] to Cal Western Termite?
[3] A: I wouldn't know.
[4] Q: Do you know whether Mr. De Marzo obtained [5] Cal Western Termite as a customer for his business [6] after this meeting?
[7] A: After the meeting, I don't recall working [8] any on any radios, so I really don't know.
[9] Q: After the meeting, do you know whether [10] Mr. De Marzo communicated with Harold Pick about the [11] fact that the meeting occurred?
[12] A: I do know that they talked about it on [13] the phone. I don't know if it was immediately [14] afterwards.
[15] Q: How do you know that they talked about it [16] on the phone?

[17] A: Because I remember conversations on the [18] phone that they had where the name came up.
[19] Q: How many conversations?
[20] A: I really could not say, two or three [21] times.
[22] Q: Let's take a break for a minute and go [23] off the record.
[24] (Recess taken.)

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BY MR. COHEN:

[1] Q: Mr. Smith, you indicated that there were [2] several telephone conversations between Mr. De Marzo [3] and Mr. Pick that occurred after the meeting at Cal [4] Western in which the subject of what occurred there [5] came up; is that correct?
[6] A: Yes.
[7] Q: How do you know those conversations were [8] with Harold Pick?
[9] A: Because a lot of times he would say did I [10] have any questions for Harold, and a lot of times his [11] mother — excuse me — Harold's mother or father would [12] be there and they would be the ones that answered the [13] telephone, and he would say, "I would like to speak to [14] Harold." If it was Harold's father they usually [15] engaged in some type of banter. It was a recognized [16] routine.
[17] Q: At any point after the meeting at Cal [18] Western Termite, prior to the time that you were [19] employed by Harold Pick, did you ever meet face to [20] face with Mr. Pick where the subject of Cal Western [21] Termite came up?
[22] A: No, I don't believe so.
[23] Q: While you were affiliated with [24] Mr. De Marzo, did you ever go with him to mountaintop

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[1] locations as far as servicing any type of radio [2] frequency relay equipment?
[3] A: No, I did not.
[4] Q: Do you know what jamming is?
[5] A: Yes, I do.
[6] Q: What is jamming, sir?
[7] A: Jamming is an intentional disruption of a [8] legitimate signal or system by an illegitimate [9] user — or frequency of the system.
[10] Q: During the time that you were affiliated [11] with Mr. De Marzo did you ever witness him jamming [12] anyone?
[13] A: No.
[14] Q: At any time during the time period you [15] were affiliated with Mr. De Marzo did he ever complain [16] to you about other people jamming?
[17] A: No.

[18] Q: I want to take you up to the time period [19] when you left the employ or left the affiliation with [20] Mr. De Marzo. Do you recall that you stopped working [21] with him?
[22] A: Yes.
[23] Q: Why did you stop working with him?
[24] A: The work that I was getting was rather [25] sporadic, though it did pay well. I needed to obtain

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[1] a full-time job so I went and I gained employment at [2] Raycom. I told him that I was more than willing to [3] work at Raycom, get off at 5:00 and drive to his place [4] and work for three or four hours at night and continue [5] our relationship, but he felt that I was abandoning [6] him and that I wasn't going to be there and he became [7] very upset. In fact, he had the locks changed on all [8] the stuff and I had tools and stuff up there. It was [9] not a pleasant, shake-hands type of good-bye [10] situation.
[11] Q: Were you ever able to absolve your [12] problems and obtain your tools?
[13] A: He was just angry. And he settled down. [14] He has quite a temper, and when he settles down you [15] can usually reason with him.
[16] Q: After the meeting at Cal Western Termite, [17] other than conversations with Harold Pick, did the [18] name James Kay ever come up again?
[19] A: Could you state that again?
[20] Q: Sure. After the meeting at Cal Western [21] Termite and disregarding any conversations with Harold [22] Pick, did the name James Kay ever come up again in a [23] conversation with Mr. De Marzo?
[24] A: Yes, many times because he knew that he [25] was a former employee, so he would always come up with

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[1] things like, "What's wrong with this guy?" And [2] basically, he was of frequent — his name came up [3] frequently, yes.
[4] Q: Did Mr. De Marzo ever tell you at any [5] time that he had ever met James Kay prior to or ever [6] met James Kay at all?
[7] A: No, he didn't say when he met him.
[8] Q: Did he ever tell you specifically why he [9] was so adamant against him, other than the fact that [10] he was misleading people about these FCC licenses, as [11] he says?
[12] A: Jim Kay is an extremely aggressive [13] businessman, and he is either appreciated as that or [14] he is hated as that. There are many people in this [15]

industry that I am in who have a strong dislike of him (16) because of his aggressiveness. He will go out and he (17) will pursue things in a very tough manner and gain (18) ground where other people will not. So he has (19) developed a reputation in business as being — at (20) least to the losers in the arrangement as being — (21) usually the term "asshole" and "James Kay" go hand in (22) hand when you speak to these people.

(23) Q: Was Mr. De Marzo engaged in any business (24) where he was competing with Jim Kay?

(25) A: If you are in the two-way radio business

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(1) In Southern California, you are in one way or another (2) either competing with James Kay; or, if you are in the (3) trunking or if you sell trunking radios and (4) individuals who have trunking systems, you will be (5) doing business with James Kay.

(6) Q: What was Mr. De Marzo's business, what (7) did he do?

(8) A: Essentially he sold two-way radios, radio (9) systems and installed them in vehicles.

(10) Q: When you say "radio systems," what do you (11) mean?

(12) A: More than one radio, a base station and (13) mobile radios, hand-held radios.

(14) Q: Did Mr. De Marzo operate any radio (15) frequencies where he leased the radio time to people (16) to use?

(17) A: I don't believe he did, no, at least not (18) to my knowledge.

(19) Q: Did he hold any FCC licenses?

(20) A: Not to my knowledge.

(21) Q: So what Mr. De Marzo did was to sell (22) radios, repair radios, and sell radio systems?

(23) A: Right.

(24) Q: Where were most of his customers located (25) as far as those that you did repairs for?

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(1) A: In the San Gabriel Valley, mostly. At (2) that time the office was in Arcadia, and most of them (3) were in that general area, Arcadia, Pasadena, (4) Irwindale, although we do have the trash company in (5) Irvine. We did have a trash company. I went with him (6) one time way out in the middle of nowhere, I don't (7) know where it was. I want to say Hemet.

(8) Q: After this time period you were employed (9) at Raycom for a while. Did you have any associations (10) with Mr. De Marzo during that time period?

(11) A: No, I did not.

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(12) Q: Did you speak to him at all during that (13) time period?

(14) A: Yes, once. He called and I had a (15) frequency counter that belonged to him and he wanted (16) it back; so he called me and said he wanted it (17) returned and I returned it to him.

(18) Q: At any time period during the time period (19) when you were working at Raycom did you have any (20) communication with Harold Pick?

(21) A: I don't recall any.

(22) Q: At some point, you previously testified (23) in approximately December of 1994 you became (24) affiliated with Communications Consultant Systems; do (25) you recall that?

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(1) A: Yes.

(2) Q: Harold Pick, you indicated, was your (3) supervisor. How did you obtain that position?

(4) A: Well, I became dissatisfied with working (5) for Raycom, and I went one time down to Harold's (6) business and I asked him if he needed any help; and he (7) said that he was very unhappy with the individual that (8) he had and that more than likely I could come in and (9) replace this other technician.

(10) Q: Who was the other technician?

(11) A: His name was Ray. I don't know his last (12) name.

(13) Q: Mitchell?

(14) A: Excuse me?

(15) Q: Ray Mitchell?

(16) A: That may have been it, I don't recall.

(17) Q: You indicated earlier that sometime in (18) December of 1994 you began working for Communications (19) Consultants and Systems; is that correct?

(20) A: That's correct.

(21) Q: Did you receive a paycheck from that (22) company?

(23) A: Yes, I did.

(24) Q: Was it a paycheck that had itemizations (25) on it for taking taxes and FICA and SSI?

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(1) A: No, it was not. Basically, I was (2) contracted.

(3) Q: So you were an independent contractor for (4) him?

(5) A: Right.

(6) Q: During 1995 did you receive a 1099 form (7) from them?

(8) A: Yes, I did.

(9) Q: Where was your work located?

(10) A: At his shop on Century Boulevard.

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(11) Q: Were there any other employees or (12) independent contractors working with him other than (13) you at that time?

(14) A: He had some form of a business (15) relationship, which I was never — it was never (16) clarified to me — with another company located on (17) the same premises called McDermott Communications.

(18) Q: Tell me all the names of the people that (19) worked for McDermott?

(20) A: First name, there was Mike McDermott of (21) course; the salesman by the name of Steve.

(22) Q: Is that Steve Morse?

(23) A: I don't know the last name, I'm sorry. (24) His daughter was working there and I don't recall his (25) daughter's name, Steve's daughter. There was a woman

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(1) who did the accounting, she was a Filipino woman, and (2) I don't remember her name.

(3) Q: Anyone else?

(4) A: From McDermott, I don't recall anyone (5) else.

(6) Q: Was anyone else working for Harold Pick (7) at that time?

(8) A: Initially his mother and his father were (9) there a lot. Mostly his mother. Later on, they had a (10) girl named Bonnie who came in as kind of like a (11) secretary and she organized the office and stuff like (12) that. Later they had a technician by the name of (13) Larry Hirsch come in, and my understanding is Larry (14) came in as an independent contractor also.

(15) Q: Do you recall when Bonnie came in to (16) work?

(17) A: No, I don't.

(18) Q: Do you recall the month when Larry came (19) in to work?

(20) A: No, I think Larry came in first.

(21) Q: But they all came to work prior to the (22) time you left in May of 1995?

(23) A: Yes, probably within six weeks.

(24) Q: So they were working by February of 1995?

(25) A: February or March. I really can't be

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(1) sure of that.

(2) Q: When you worked as a technician, did you (3) work on a piece-by-piece basis?

(4) A: No. The arrangement was that I would (5) come in and just work at a flat rate, a weekly rate.

(6) Q: How many hours a week did you come in and (7) work?

(8) A: Usually 40 hours a week.

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101 Q: Was that for every week during the time 110 you were affiliated with him?

111 A: No, there were periods of time when it 112 was less.

113 Q: What time of day would your normal 114 workday entail?

115 A: I was usually there by 7:30 and I would 116 usually leave about 3:30 or 4:30. I had a key and the 117 alarm code and I was usually there early.

118 Q: When you performed your work, I presume 119 you had a work table someplace?

120 A: Yes, I had a workbench.

121 Q: Where was the workbench located in the 122 building?

123 A: Across from the offices in an area 124 similar to like a garage. They had a special room 125 built that had the workbench and the test equipment.

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126 Q: When work came in, were invoices 127 generated for the work?

128 A: Sometimes. It was very loose until 129 Bonnie came there.

130 Q: Were work orders generated for work that 131 came in?

132 A: Well, yes.

133 Q: Was there any type of document generated 134 to identify one piece of equipment?

135 A: Yes.

136 Q: When Bonnie came in, what happened? You 137 indicated something changed.

138 A: Well, there was no real procedure with 139 Harold, he was very sloppy in this area. He would 140 take a handful of radios, and this is this customer's 141 radios, and throw them on the bench and I would repair 142 them, and at that time I would take the job sheet and 143 I would write the serial number and customer name with 144 and wrap it around the radio. When Bonnie came all 145 the radios would go to her and she would generate 146 paperwork prior to it coming back to me for repair.

147 Q: Prior to the time that Bonnie came in, 148 was there anyone there to handle telephone calls as 149 they came in?

150 A: Mostly his mother or him.

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151 Q: Did they keep any type of message pads?

152 A: No, not until Bonnie came.

153 Q: During the time that you worked at CCS, 154 did the name James Kay, was it ever mentioned by 155 Harold Pick?

156 A: During the time that I worked for Harold, 157 a day did not go by when

James Kay's name was not 158 mentioned.

159 Q: Did Mr. Harold Pick have any specific 160 conversations with you about James Kay?

161 A: Many.

162 Q: Was Mr. Pick aware that you had 163 previously worked for James Kay?

164 A: Yes, he was.

165 Q: Can you tell me the subject matter of one 166 of these conversations that you had?

167 A: Well, the kind of -- if you talk about 168 one conversation, you are really talking about them 169 all. They all kind of flow together like if it was 170 one continuous conversation. I know there was -- they 171 were having legal problems, the details of which I 172 never got the exact information on. I mean, I 173 remember him showing me legal documents that would 174 come down from the FCC and, "Look what the FCC is 175 going to do against James Kay."

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176 MR. NAMAZI: I have to object. It calls for a 177 narrative.

178 BY MR. COHEN:

179 Q: Go ahead, you can still answer the 180 question.

181 A: It was just, for the four or five months 182 that I was there, the main topic of conversation in 183 the office was James Kay. Nothing nice was ever said, 184 let's put it that way.

185 Q: Do you recall any specific statements 186 that were made about Mr. Kay?

187 A: Specifically? How can I say this?

188 Q: Did they ever accuse Mr. Kay of 189 dishonesty?

190 A: Oh, yes.

191 Q: How do you know they accused Mr. Kay of 192 dishonesty?

193 A: Because everything that the conversations 194 entailed would be that he lied about this, or he was 195 trying to steal this and they were going to get him. 196 It is very difficult for me to explain.

197 Q: When you say that they were going to get 198 him, why would you say a thing like that?

199 A: They hated or he hated -- I have never 200 seen such hate for an individual as Harold had for

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201 James Kay. He wished him ill to the maximum. He 202 wanted to -- I know that he wanted -- I don't know if 203 he had but I know that he wanted to file lawsuits 204 against him. He wanted the FCC to go after him. 205 There were conversations, I recall, where they were 206 talking about the Department of Justice

going after 207 him for some of the things that he supposedly had 208 done, the stealing of licenses, business practices.

209 Q: Did Harold Pick ever show you any 210 documents indicating that James Kay had ever stolen 211 licenses from anybody?

212 A: No, not that.

213 Q: During the course of the time period that 214 you worked at CCS, at any time, did you ever see 215 Harold Pick speaking to anyone else about James Kay?

216 A: Yes.

217 Q: Who else did he speak to James Kay about?

218 A: Anyone and everyone.

219 Q: Now, does this include -- do you mean 220 just the employees of CCS?

221 A: If he was on the phone speaking to 222 someone, usually the conversation would be about James 223 Kay and the lawsuits that were going on. The 224 customers there, he would hang up the phone and say 225 "I'm sorry," you know, I'm -- this -- he would go

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226 over and say things like "this asshole, Jim Kay, is -- 227 we're suing," or something like that "we have 228 lawsuits," and just generally like that.

229 Q: Let me understand your testimony. During 230 the course of the time period that you worked at CCS, 231 did you ever witness Harold Pick talking to customers 232 in which the name James Kay was raised?

233 A: Yes.

234 Q: How often did you see that occur?

235 A: Several times.

236 Q: You say several, can you quantify it to a 237 number?

238 A: I was in and out of the office from my 239 bench and back and forth, and I hesitate to say it was 240 a daily occurrence, but if you wanted me to quantify 241 it, I would most be assured that it happened. I would 242 say he either carried on conversations with me, his 243 mother or one of the employees in front of customers 244 talking about Kay, or would talk directly to a 245 customer about Kay, or anyone who was in the office at 246 the time, at least once a week.

247 Q: Do you recall any specific customers to 248 which he spoke about James Kay?

249 A: No, because I never really knew the 250 customers per se. They might be like drivers for a

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