

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE
4 RICHARD BOEKEN,)
5 PLAINTIFF,)
6)
7) CASE NO. BC226593
8 VS.)
9 PHILIP MRRIS,)
10 INCORPORATED, A)
11 CORPORATION; INTERNATIONAL)
12 HOUSE OF PANCAKES)
13 INCORPORATED, A)
14 CORPORATION.)
15)
16 DEFENDANTS.)
17)
18)
19)
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22)
23)
24)
25)
26)
27)
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REPORTER' S DAILY TRANSCRIPT OF PROCEEDINGS
THURSDAY, APRIL 12TH, 2001
FRIDAY, APRIL 13, 2001

APPEARANCES:
(FOR PLAINTIFF) LAW OFFICES OF
MICHAEL J. PIUZE
11755 WILSHIRE BLVD.
SUITE 1170
LOS ANGELES, CA 90025
(FOR DEFENDANTS) ARNOLD & PORTER
BY: MAURICE A. LEITER
JOHN CARLTON
777 S. FIGUEROA ST.
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1 LOS ANGELES, CALIFORNIA; THURSDAY, APRIL 12TH, 2001

2 9:00 A.M

3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE

4

5 (THE FOLLOWING PROCEEDINGS
6 WERE HELD IN OPEN COURT OUT
7 OF THE PRESENCE OF THE JURY:)

8

9 MR. LEITER: GOOD MORNING, YOUR HONOR.

10 THE COURT: WE ARE ON THE RECORD OUTSIDE
11 THE PRESENCE.

12 MR. LEITER: GOOD MORNING, YOUR HONOR, I
13 HAD A 30-SECOND REQUEST, SUGGESTING THAT IT MIGHT
14 BE A GOOD TIME, ONCE AGAIN, TO REMIND THE JURY
15 ABOUT STAYING AWAY FROM NEWSPAPER ARTICLES,
16 TELEVISION STORIES AND NOW THAT THEY SEE
17 REPORTERS --

18 THE COURT: SEE THEM IN THE HALLWAYS.

19 MR. LEITER: YES.

20 THE COURT: I WILL SAY SOMETHING.

21 MR. LEITER: THANK YOU, YOUR HONOR.

22 MR. PIUZE: GOOD MORNING.

23 MR. LEITER: THAT WAS IT.

24 THE COURT: GOOD MORNING, GOOD COUNSEL.

25 ALL RIGHT, LET'S BRING OUR JURY IN,
26 PLEASE.

27 ALSO, AT SOME POINT, I AM GOING TO
28 HAVE TO SAY SOMETHING TO THE JURY ABOUT WHY THEY

1 ARE SEEING THE VIDEO TAPE AND NOT MR. BOEKEN IN
2 PERSON. WE WILL TAKE CARE OF THIS LATER ON WHEN
3 THEY COME INTO THE COURTROOM SO COUNSEL MIGHT
4 THINK ABOUT WHAT IS AN APPROPRIATE THING TO SAY ON
5 THAT ISSUE.

6

7

(THE FOLLOWING PROCEEDINGS

8

WERE HELD IN OPEN COURT IN

9

THE PRESENCE OF THE JURY.)

10

11 THE COURT: ALL RIGHT, OUR JURY PANEL IS
12 WITH US. COUNSEL ARE PRESENT AS WELL.

13

LADIES AND GENTLEMEN, YOU MAY, FROM

14

TIME TO TIME, SEE REPORTERS OUT IN THE HALLWAY.

15

PROBABLY ALL OF YOU HAVE SEEN ONE OR MORE REPORTERS

16

OUT THERE.

17

REMEMBER THE RULED THAT YOU AND I
18 WILL FOLLOW YOU NOTICE, I AM NOT REALLY
19 INTERESTED, AND YOU CAN'T BE EITHER, AND ALSO
20 REMEMBER THE FACT THAT YOU MIGHT THINK IN YOUR
21 MIND, WELL, LET'S SEE, IF THERE'S REPORTERS IN THE
22 HALLWAY, MAYBE THEY ARE WRITING SOMETHING IN THE
23 NEWSPAPERS OR THEY ARE PUTTING SOMETHING ON
24 TELEVISION. AND JUST REMEMBER, WE ARE NOT GOING TO
25 PARTICIPATE IN THAT, WE ARE GOING TO PARTICIPATE IN
26 WHAT IS GOING ON IN THIS COURTROOM AND WE ARE GOING
27 TO MAKE OUR EVALUATION ABOUT THIS CASE BASED ON THE
28 EVIDENCE WE SEE HERE AND NOT BE INFLUENCED BY

2475

1 ANYTHING THAT GOES ON BITE OUTSIDE WORLD IN THIS
2 PROCESS.

3 GOOD MORNING, GOOD COUNSEL.

4 GOOD TO SEE YOU ALL AS WELL. LET' S
5 PROCEED WTH OUR TESTIMONY OF MR. BOEKEN FROM THE
6 VIDEO TAPE.

7

8 (VIDEO TAPE PLAYED)

9

10 (AT 12 NOON, THE LUNCH
11 RECESS WAS TAKEN TO
12 1:30 P. M OF THE SAME DAY.)

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1 LOS ANGELES, CALIFORNIA; THURSDAY, APRIL 12TH, 2001

2 1:30 P.M

3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE

4

5

6 (THE FOLLOWING PROCEEDINGS
7 WERE HELD IN OPEN COURT IN
8 THE PRESENCE OF THE JURY.)

9

10 (VIDEO TAPE PLAYED)

11

12 (AT 4:00 P.M., THE PROCEEDINGS
13 WERE CONTINUED TO FRIDAY, APRIL
14 13, 2001 AT 9:00 A.M.)

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1 LOS ANGELES, CALIFORNIA; FRIDAY, APRIL 13TH, 2001
2 9:00 A.M
3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE

4

5 (THE FOLLOWING PROCEEDINGS
6 WERE HELD IN OPEN COURT IN
7 THE PRESENCE OF THE JURY.)

8

9 THE COURT: COUNSEL, WE ARE ON THE
10 RECORD.

11 WE HAVE COMPLETED, AND OUR JURY IS
12 WITH US. BY STIPULATION, WE HAVE NOT RECORDED INTO
13 THE RECORD THE VIDEO TAPED DEPOSITION. BUT IT WILL
14 BECOME PART OF THE PERMANENT RECORD OF THIS TRIAL.

15 LADIES AND GENTLEMEN, I JUST WANT
16 TO LET YOU KNOW THAT WHAT YOU HAVE SEEN, JUST SEEN,
17 IS A COMPILATION OF SEVERAL DAYS, AND I THINK YOU
18 OUGHT TO KNOW HOW MUCH TIME WAS DEVOTED TO THIS.

19 MR. PIUZE'S PLAINTIFF'S DIRECT OF
20 MR. BOEKEN OCCURRED ON DECEMBER 18TH OF LAST YEAR
21 AND WENT FROM 11:48 A.M TO 2:58 P.M , WHICH WAS
22 ABOUT 3 HOURS AND TEN MINUTES. AND THEN ON
23 DECEMBER 19TH, THE NEXT DAY, IT WENT FROM 10:33
24 A.M TO 2:14 P.M , WHICH WAS THREE HOURS AND 45
25 MINUTES.

26 AND THEN ON --

27 MR. PIUZE: EXCUSE ME, YOUR HONOR,
28 COULD --

1 THE COURT: THAT WAS WITH BREAKS.

2 MR. PIUZE: COULD WE PUT IN THE LOCATIONS
3 ALSO. I JUST WANTED TO ALERT YOU, IT'S IN THE LEFT
4 MARGIN.

5 THE COURT: OH, THE NAME MEANS WHERE IT
6 WAS?

7 MR. PIUZE: YES, SIR.

8 THE COURT: OKAY. SO THOSE FIRST TWO
9 DAYS WERE TAKEN AT MR. PIUZE'S OFFICE. SO THAT
10 WOULD BE THE FIRST MATERIAL THAT YOU SAW

11 THE NEXT DEPOSITION WAS TAKEN AT
12 THE LAW OFFICES OF ARNOLD & PORTER, WHICH, OF
13 COURSE, WOULD BE THE OFFICES OF MR. LEITER AND MR.
14 CARLTON.

15 AND IT OCCURRED ON DECEMBER THE
16 20TH AND WENT FROM 10:54, A.M., TO 12:57, P.M.,
17 WHICH LASTED FOR TWO HOURS.

18 THEN THERE WAS ANOTHER DEPOSITION,
19 THE NEXT DAY, ON DECEMBER THE 21ST. IT WENT FROM
20 10:24 A.M. TO 12:43 P.M., AT THE SAME PLACE, YES,
21 AT COUNSEL'S OFFICE FOR THE DEFENSE. AND THAT
22 LASTED FOR TWO HOURS AND 20 MINUTES.

23 AND THEN ON DECEMBER THE 27TH, A
24 DEPOSITION WAS TAKEN AT MR. BOEKEN'S HOME, AND
25 THAT'S, I THINK, WHERE WE HEARD THE DOG, I WOULD
26 IMAGINE. I WASN'T THERE, BUT I WOULD IMAGINE
27 THAT'S WHERE THAT OCCURRED. THAT HAPPENS ON
28 DECEMBER 27TH AND I WENT FROM 9:50 A.M. TO 1:12

1 P. M , THREE AND A HALF HOURS.

2 THEN ON DECEMBER 28TH, THE NEXT
3 DAY, AT MR. BOEKEN' S HOME, FROM 8: 47 A. M UNTIL
4 10: 10 A. M , ONE HOUR AND 20 MINUTES.

5 AND THEN FINALLY, BACK AT THE
6 OFFICE OF THE DEFENSE COUNSEL, ON FEBRUARY 10TH OF
7 THIS YEAR, FROM 11: 00 -- CORRECTION -- 10: 11 A. M
8 UNTIL 12: 45 P. M , WHICH IS TWO AND A HALF HOURS.

9 NOW, ALL THOSE TIMES THAT I TOLD
10 YOU INCLUDED BREAKS, BECAUSE YOU NOTICE, FROM TIME
11 TO TIME, MR. BOEKEN, FOR EXAMPLE, WOULD ASK FOR A
12 BREAK, AND THEY WOULD TAKE BREAKS.

13 SO THE TOTAL PLAINTIFF' S DEPOSITION
14 TIME, AND THAT IS THE TIME IN WHICH MR. PIUZE WAS
15 ASKING QUESTIONS, AND I BELIEVE THIS TIME INCLUDES
16 BREAK TIMES.

17 MR. LEITER: YES, YOUR HONOR.

18 THE COURT: WAS 6 HOURS AND 45 MINUTES.
19 AND THE TOTAL AMOUNT OF TIME IN WHICH DEFENSE
20 COUNSEL TOOK THE DEPOSITION, AND THIS INCLUDES
21 BREAK TIMES AS WELL, WAS 11 HOURS AND 40 MINUTES.

22 MR. BOEKEN HAS NOT TESTIFIED HERE
23 LIVE IN FRONT OF YOU. WE ALL MADE THE DECISION,
24 TOGETHER, THAT WE THOUGHT IT WAS BETTER THAT IT BE
25 BROKEN UP LIKE THIS, SO HE COULD GIVE HIS
26 DEPOSITION AND THAT IT BE DONE SO THAT YOU COULD
27 SEE IT ON VIDEO TAPE. SO THAT IS WHAT HAS BEEN
28 DONE AND THAT IS SOMETHING THAT' S BEEN DONE BY

1 AGREEMENT OF ALL THE PARTIES.

2 MR. PIUZE, YOU MAY CALL YOUR NEXT
3 WITNESS.

4 MR. PIUZE: YES, YOUR HONOR.

5 DAVID PETRALLI.

6 THE COURT: SIR, WOULD YOU PLEASE STEP
7 FORWARD.

8 IF YOU WOULD PLEASE FACE OUR CLERK,
9 RAISE YOUR RIGHT HAND TO BE SWORN AS A WITNESS IN
10 THIS MATTER.

11

12

13 DAVID PETRALLI,
14 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN
15 AND TESTIFIED AS FOLLOWS:

16 THE CLERK: YOU DO SOLEMNLY STATE THE
17 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING
18 BEFORE THIS COURT, SHALL BE THE TRUTH, THE WHOLE
19 TRUTH AND NOTHING BUT PETRALLI, SO HELP YOU GOD.

20 THE WITNESS: YES.

21 THE CLERK: THANK YOU. PLEASE BE SEATED.

22 SIR, PLEASE STATE AND SPELL YOUR
23 NAME FOR THE RECORD.

24 THE WITNESS: DAVID PETRALLI, LAST NAME
25 IS P-E-T-R-A-L-L-I, DAVID, D-A-V-I-D.

26 THE CLERK: THANK YOU.

27 /// /// ///

28 /// /// ///

DIRECT EXAMINATION

1

2

3 BY MR. PIUZE:

4 Q. GOOD MORNING.

5 A. GOOD MORNING.

6 Q. AS YOU WERE WALKING IN THE DOOR
7 JUST THEN, DID I ASK YOU, ARE YOU NERVOUS?8 A. YES, I AM I AM ALWAYS NERVOUS,
9 ESPECIALLY IN THIS CASE.10 Q. HOW DO YOU KNOW -- DO YOU KNOW
11 RICHARD BOEKEN?

12 A. YES, I DO.

13 Q. HOW?

14 A. HE IS MY STEP-FATHER.

15 Q. HOW LONG HAVE YOU KNOWN HIM?

16 A. SINCE I WAS 7, AND I AM 30 NOW

17 Q. WHERE DO YOU LIVE?

18 A. I LIVE IN HAWAII RIGHT NOW

19 Q. HOW LONG HAVE YOU LIVED IN HAWAII?

20 A. 11 YEARS.

21 Q. WHY ARE YOU HERE?

22 A. IN CALIFORNIA?

23 Q. YES.

24 A. VISITING FAMILY.

25 Q. YOU DIDN'T COME HERE FOR THIS
26 TRIAL?

27 A. NO.

28 Q. DO YOU HAVE A FAMILY?

- 1 A. YES.
- 2 Q. JUST VERY BRIEFLY, DESCRIBE YOUR
3 FAMILY, PLEASE.
- 4 A. MY MDM IS JUDY AND MY STEP DAD IS
5 RICK AND I HAVE A BROTHER DAMIEN AND, RICK, YOU
6 KNOW, CAME INTO OUR LIVES --
- 7 Q. HANG ON. I WAS GOING TO YOUR
8 FAMILY.
9 YOU GOT KIDS?
- 10 A. YES, I DO.
- 11 Q. LET' S GO WITH THAT.
- 12 A. I HAVE A WIFE AND CHILD -- AND
13 THREE KIDS, 8, 5 AND 2.
- 14 Q. SLOW DOWN.
- 15 A. OKAY.
- 16 Q. RELAX. MAKE BELIEVE YOU ARE IN
17 HAWAII.
- 18 WHERE DID YOU GET THE PANTS THAT
19 YOU ARE WEARING TODAY?
- 20 A. FROM RICK.
- 21 Q. OVER IN HAWAII, DO YOU USUALLY WEAR
22 LEVI' S ALMOST ALL THE TIME AND SHORTS?
- 23 A. ACTUALLY, YEAH, JUST TANK TOPS AND
24 SHORTS.
- 25 Q. WHEN YOU COME TO VISIT HERE, DO YOU
26 USUALLY COME WITH ONLY LEVI' S AND SHORTS?
- 27 A. UH-HUH, YES.
- 28 Q. AND DID MR. BOEKEN BUY YOU A PAIR

1 OF PANTS THAT WEREN' T LEVI' S SO YOU COULD COME TO
2 COURT AND TESTIFY?

3 A. YES.

4 Q. NOW, WHAT DO YOU DO IN HAWAII?

5 A. I DEAL WITH AQUARIUMS AND PONDS,
6 DOING AQUA CULTURE AND TAKING CARE OF SALT WATER,
7 MARINE FISH.

8 Q. HOW LONG HAVE YOU BEEN DOING THAT?

9 A. ABOUT 15 YEARS.

10 Q. WHAT YEAR DID YOU MOVE OUT OF
11 CALIFORNIA AND GO TO HAWAII?

12 A. 89.

13 Q. DID YOU GET OUT OF HIGH SCHOOL?

14 A. YES.

15 Q. WHAT YEAR DID YOU GET OUT OF HIGH
16 SCHOOL?

17 A. ' 89.

18 Q. CAN YOU REMEMBER THE YEAR, THE
19 APPROXIMATE YEAR, WHEN YOU FIRST MET RICHARD
20 BOEKEN?

21 A. ABOUT ' 77, ' 78.

22 Q. TELL THE JURY, YOU KNOW, WITHOUT
23 GETTING INTO TOO MUCH DETAIL, THE GENERAL
24 CIRCUMSTANCES OF HOW YOU MET MR. BOEKEN.

25 A. MY PARENTS GOT DIVORCED AND MY MOM
26 WENT TO A. A. AND SHE MET RICK THERE. AND HE CAME
27 INTO OUR LIVES AND HE JUST, YOU KNOW, HE WAS A
28 GREAT FATHER FROM THE BEGINNING, YOU KNOW, HE

1 WASN' T ONLY INTERESTED IN MY MDM --

2 Q. LET ME STOP YOU. SLOW DOWN,
3 PLEASE.

4 A. OKAY.

5 Q. YOUR FIRST RECOLLECTION OF MEETING
6 MR. BOEKEN HAD SOMETHING TO DO WITH YOUR MDM BEING
7 IN A. A. ?

8 A. YES.

9 Q. DID, WHEN SHE INTRODUCED YOU TO
10 MR. BOEKEN, WAS IT YOUR TAKE THAT HE WAS IN A. A.
11 TOO?

12 A. YES.

13 Q. WHEN YOU MET MR. BOEKEN, HOW WAS HE
14 INTRODUCED TO YOU? BOYFRIEND?

15 A. UH-HUH, YES.

16 Q. AFTER YOUR -- I DON' T WANT TO GET
17 TOO PERSONAL HERE, NOW, BUT AFTER YOUR MDM AND DAD
18 HAD GOTTEN DIVORCED, HAD YOUR MOTHER HAD OTHER
19 BOYFRIENDS?

20 A. YES.

21 Q. WAS MR. BOEKEN DIFFERENT IN SOME
22 WAYS THAN HER OTHER BOYFRIENDS?

23 A. YES.

24 Q. TELL US.

25 A. JUST THAT HE TOOK AN INTEREST IN ME
26 AND MY BROTHER, YOU KNOW, AND, FROM THE BEGINNING,
27 YOU KNOW, HE GOT ME A SNAKE AND A BIRD AND A DOG,
28 YOU KNOW AND JUST --

- 1 Q. WAS YOUR DOG' S NAME MUFFY?
2 A. MUFFY, NO.
3 MUGGSY.
4 Q. MUGGSY.
5 YOU ARE INTO ANIMALS?
6 A. AND WHEN YOU ARE 8 THAT' S A BIG
7 DEAL. WHEN YOUR MDM MEETS SOMEONE AND THEY STEP
8 INTO YOUR LIFE AND THEY BECOME A FATHER FIGURE, YOU
9 KNOW, IT' S IMPORTANT.
10 Q. YOU ARE INTO ANIMALS; RIGHT?
11 A. UH-HUH, YES.
12 Q. TO THIS DAY?
13 A. YES.
14 Q. SO RICHARD BOEKEN BOUGHT YOU A
15 BIRD, A SNAKE AND A DOG, SO HE WAS A GOOD GUY?
16 A. YEAH.
17 Q. AFTER YOUR MDM GOT DIVORCED FROM
18 YOUR DAD, DID YOU LIVE WTH WHO, PLEASE.
19 A. I LIVED WTH MY FATHER FOR ABOUT
20 THREE YEARS.
21 Q. AND WHEN YOU WERE INTRODUCED TO
22 RICHARD BOEKEN, WERE YOU STILL LIVING WTH YOUR
23 DAD?
24 A. I MET RICK RIGHT AWAY, BUT I LIVE
25 WTH MY FATHER.
26 Q. SO FOR A COUPLE YEARS, AFTER YOU
27 MET RICHARD BOEKEN, WERE YOU LIVING WTH YOUR DAD?
28 A. YES.

1 Q. WHEN YOU WERE A LITTLE KID, TELL
2 US, AGAIN, YOU WERE SEVEN WHEN YOU MET WITH HIM?

3 A. YES.

4 Q. WHEN YOU WERE A LITTLE KID, 7,
5 LET'S CALL IT, FOR THE SAKE OF ARGUMENT, 7 TO 10, 7
6 TO 12, IN THAT AREA, DID YOU SOMETIMES GO TO A. A.
7 MEETINGS?

8 A. YES.

9 Q. TELL THE JURY HOW IT WAS THAT YOU
10 WENT TO A. A. MEETINGS?

11 MR. LEITER: OBJECTION, RELEVANCE.

12 MR. PIUZE: I WILL MAKE IT RELEVANT.

13 THE COURT: OKAY, FOUNDATION.

14 MR. PIUZE: EXCUSE ME.

15 Q BY MR. PIUZE: DID YOU GO WITH
16 RICHARD AND YOUR MOM?

17 A. TO A. A. MEETINGS?

18 Q. YES.

19 A. YES, I DID.

20 Q. WHY?

21 MR. LEITER: OBJECTION, RELEVANCE.

22 THE COURT: I AM GOING TO ALLOW A LITTLE
23 FOR FOUNDATION AND THEN WE WILL GO TO SIDE BAR IF I
24 DON'T SEE IT.

25 PROCEED.

26 Q BY MR. PIUZE: JUST TELL US WHY
27 YOU WERE GOING TO A. A.

28 A. MY PARENTS, THERE WAS ALWAYS --

1 A. A. MEETINGS ARE HELD, USUALLY, LIKE AT A CENTER
2 OR CHURCH, SOMEWHERE WHERE THERE'S A PARK OR PLACE
3 TO PLAY. SO WHEN YOU GO, YOU CAN, SHE TOOK US.
4 SHE DIDN'T HAVE A BABYSITTER. SHE TOOK ME AND MY
5 BROTHER AND WENT TO THE MEETINGS. AND THAT'S WHERE
6 WE SPENT SOME TIME WHEN THEY WENT TO A MEETING.

7 Q. DID YOU GO TO MANY?

8 A. YEAH, YOU KNOW, ABOUT, I'D SAY
9 ABOUT THREE OR FOUR A WEEK.

10 Q. FOR YEARS?

11 A. FOR YEARS, YES.

12 Q. DID YOU MAKE SOME OBSERVATION, EVEN
13 AS A LITTLE KID, CONCERNING CIGARETTES AND
14 CIGARETTE SMOKE AT A. A. MEETINGS?

15 A. YES. IT'S EVERYONE --

16 Q. HANG ON FOR A SECOND.

17 YES?

18 A. YES.

19 Q. WHAT?

20 A. JUST THAT EVERYONE THERE IS SMOKING
21 AND DRINKING COFFEE.

22 Q. DID YOU MAKE SOME INTERNAL
23 OBSERVATIONS TO YOURSELF ABOUT, THERE WERE THESE
24 PEOPLE WHO USED TO DRINK --

25 MR. LEITER: OBJECTION.

26 THE COURT: YES OR NO?

27 MR. PIUZE: WELL, I HADN'T FINISHED THE
28 QUESTION.

1 Q BY MR. PIUZE: DID YOU GIVE IT ANY
2 THOUGHT ABOUT PEOPLE AT A. A. MEETINGS AND SMOKING?

3 A. YES.

4 Q. WHAT?

5 MR. LEITER: OBJECTION, RELEVANCE.

6 THE COURT: OVERRULED.

7 THE WITNESS: MY FEELINGS ARE ABOUT
8 CIGARETTES, THAT IT'S JUST THAT I HAVE NEVER LIKED
9 THEM, I DON'T LIKE THEM, I AM IRRITATED BY THEM
10 AND BACK THEN, IT'S JUST SMOKING-FILLED ROOM AND,
11 YOU KNOW, IT'S JUST THAT, YOU KNOW

12 THESE ARE PEOPLE WHO ARE TRYING TO
13 STRAIGHTEN UP, GETTING OFF DRUGS AND ALCOHOL, AND
14 THEY ARE SITTING IN THIS ROOM BUT THE FIRST THING
15 YOU NOTICE IF YOU GO TO AN A. A. MEETING, IN THE
16 EARLY '70'S, ESPECIALLY, THAT SMOKE WAS POURING OUT
17 OF THOSE ROOMS, YOU KNOW, AND THAT'S ANNOYING.

18 Q. THAT'S WHAT I WAS GOING FOR WAS
19 YOUR OBSERVATION. SO YOU TOLD US YOUR OBSERVATION?

20 A. OKAY.

21 Q. THAT'S A QUESTION. HAVE YOU TOLD
22 US YOUR OBSERVATION?

23 A. YES.

24 Q. AND WHEN YOU SAY THAT'S ANNOYING,
25 WHAT DO YOU MEAN BY THAT?

26 MR. LEITER: OBJECTION, FOUNDATION.

27 THE COURT: OVERRULED, I SEE IT.

28 Q BY MR. PIUZE: WHAT DID YOU MEAN

1 BY THAT?

2 A. THAT ALMOST ALL THE MEETINGS THAT I
3 WENT TO, TO THOSE TIMES, IT WAS NORMAL TO SEE
4 PEOPLE SMOKING CIGARETTES ON A REGULAR BASIS, JUST
5 ABOUT EVERYONE, IT'S -- YEAH.

6 Q. I AM SWITCHING SUBJECTS, NOW
7 READY?

8 A. YEAH.

9 Q. I WANT YOU TO PICTURE RICHARD
10 BOEKEN WHEN YOU FIRST MET HIM CAN YOU?

11 A. YES.

12 Q. PHYSICALLY, DID YOU HAVE ANY
13 IMPRESSIONS ABOUT HIM PHYSICALLY?

14 A. PHYSICALLY? YES, HE WAS STRONG.
15 HE WAS FIT. TAN. HE WAS A CONSTRUCTION WORKER.
16 HE WENT TO THE GYM AND TOOK GOOD CARE OF HIMSELF,
17 YOU KNOW.

18 Q. WHAT DO YOU MEAN, HE WAS A
19 CONSTRUCTION WORKER? LET'S SPEND A MINUTE OR TWO
20 THERE, PLEASE.

21 A. WHEN I FIRST MET HIM, LIKE, '77,
22 '78, AND HE RODE A HARLEY, HE WAS A CONSTRUCTION
23 WORKER AND HE WAS AN OUTDOORS TYPE GUY. HE TOOK US
24 TO THE BEACH AND TO THE PARK, AND --

25 Q. SO FAR I AM JUST ON YOUR PHYSICAL
26 IMPRESSION OF MR. BOEKEN WHEN YOU MET HIM

27 A. PHYSICAL IMPRESSION OF MR. BOEKEN
28 WHEN I MET HIM, A PERSON WHO WENT TO A GYM ON A

1 REGULAR BASIS, WAS TANNED, WORKED EVERY DAY, AND
2 WAS A REGULAR FAMILY MAN. THAT'S MY IMPRESSION OF
3 HIM, PHYSICAL IMPRESSION OF HIM FULL HEAD OF
4 HAIR, TAN, STRONG MAN.

5 Q. YOU MENTIONED SOMETHING ABOUT
6 HARLEY. LET'S HEAR THAT, PLEASE.

7 A. WHEN I FIRST MET HIM, HE RODE A
8 HARLEY. AND THAT'S, AGAIN, INTERESTING, AGAIN, AT
9 A YOUNG AGE, JUMP ON A MOTORCYCLE AND GO.

10 Q. THOUGHT THAT WAS KIND OF COOL?

11 A. UH-HUH.

12 Q. SO HOW LONG CAN YOU REMEMBER
13 RICHARD BOEKEN BEING A CONSTRUCTION WORKER WHO RODE
14 A HARLEY?

15 A. MAYBE ABOUT THREE OR FOUR YEARS.

16 Q. NOW, LET'S -- AS THE YEARS WENT ON,
17 DID HE CHANGE HIS BUSINESS?

18 A. YES.

19 Q. AND AS THE YEARS WENT ON, DID HE
20 GET OFF OF THE HARLEY?

21 A. YES.

22 Q. AND AS THE YEARS WENT ON, DID YOU
23 SEE FINANCIAL SUCCESS, YOU KNOW, A LITTLE MORE
24 STUFF AROUND THE HOUSE?

25 A. YES.

26 Q. HERS' S ANOTHER NEW SUBJECT. TALK
27 TO US, JUST A LITTLE BIT ABOUT THE AMOUNT OF TIME
28 HE SPENT AT HOME, PLEASE.

1 A. THE AMOUNT HE SPENT AT HOME, HE
2 WORKED FROM -- HE HAD A HOME OFFICE AND HE PRETTY
3 MUCH WORKED FROM, YOU KNOW, WELL, 6:00 TO 5:00.
4 AND -- I AM SORRY, ASK THE QUESTION AGAIN. THERE'S
5 A TIMEFRAME, I AM THINKING, AGAIN, FROM THE AGE OF
6 EIGHT TO THE PRESENT. SO AT WHICH TIME ARE WE
7 TALKING ABOUT? I AM SORRY.

8 Q. STILL NERVOUS?

9 A. YES, I AM NERVOUS. THIS IS A
10 COURT, I AM GOING TO BE NERVOUS.

11 Q. I AM DOING MY BEST TO CHILL YOU
12 OUT.

13 A. NOT GOING TO HAPPEN. SORRY.

14 Q. DID RICHARD BOEKEN SPEND, COMPARED
15 TO WHAT YOU COULD SEE, OTHER FATHERS DID WITH THEIR
16 KIDS, A GOOD AMOUNT OF TIME AT HOME WITH YOU GUYS?
17 THAT'S THE QUESTION.

18 A. YES. WE LIVED IN -- IN SANTA
19 MONICA, WHERE I LIVED THERE FOR ABOUT TEN YEARS IN
20 THE SAME APARTMENT. AND AT THAT POINT, YEAH, HE
21 WAS A GREAT FATHER, YOU KNOW, HE HELPED ME WITH,
22 YOU KNOW, HOMEWORK AND BASEBALL AND SOCCER AND HE
23 SPENT A LOT OF TIME AT HOME AND JUST A NORMAL
24 FAMILY LIFESTYLE.

25 Q. DID YOU DO A LOT OF PHYSICAL
26 THINGS, YOU, HIM, YOU, YOUR BROTHER AND RICHARD?

27 A. BEACH AND THE PARK, YOU KNOW, AND
28 SPORTS, YES.

1 MR. PIUZE: YOUR HONOR, GIVE ME, JUST
2 GIVE ME AN IDEA WHAT I SHOULD BE DOING NOW I AM
3 LOOKING AT THE CLOCK AND I DON'T KNOW WHAT YOU WANT
4 ME TO DO.

5 THE COURT: YOU HAVE TO WRAP IT UP.

6 DOES HE HAVE TO FLY BACK?

7 MR. PIUZE: HE'S GOING BACK TUESDAY. I
8 CAN HAVE HIM IN HERE MONDAY AFTERNOON.

9 THE COURT: ALL RIGHT. JUST A FEW MORE
10 QUESTIONS AND WRAP IT UP.

11 Q BY MR. PIUZE: TELL US A LITTLE
12 BIT, PLEASE, ABOUT WHEN YOU WOULD GO ON VACATION OR
13 WHEN, AS A FAMILY, YOU'D GO AWAY FROM HOME. I WANT
14 TO KNOW IF THE THINGS YOU DID INVOLVED OUTSIDE,
15 INVOLVED PHYSICAL, THAT KIND OF THING.

16 A. YEP. WE WOULD GO CAMPING AND WHEN
17 WE WENT CAMPING, WE WOULD GO FISHING, GO HIKING
18 AND, AGAIN, THAT'S IT. SORRY.

19 Q. YOUR JUST GENERAL IMPRESSION, EVEN
20 WHEN MR. BOEKEN STOPPED BEING A CONSTRUCTION
21 WORKER, AND WHEN HE GOT OFF OF A HARLEY, WAS HE A
22 PHYSICAL KIND OF GUY?

23 A. YEAH. HE ALWAYS HAD A PRETTY GOOD
24 SHAPE. HE LIFTED WEIGHTS FOR A VERY LONG TIME IN
25 HIS LIFE SO HIS MUSCLE WAS ALWAYS THERE WHEN HE
26 STARTS UP AGAIN OR COMES BACK.

27 Q. OKAY. LET'S JUST JUMP RIGHT UP TO
28 NOW THEN.

1 HOW LONG HAVE YOU BEEN BACK IN
2 SOUTHERN CALIFORNIA NOW?
3 A. SINCE APRIL 5TH.
4 Q. WHERE HAVE YOU BEEN STAYING?
5 A. MY MDM S HOUSE, RICK' S HOUSE,
6 TOPANGA, CALIFORNIA.
7 Q. WITH RICHARD?
8 A. UH-HUH.
9 Q. AND YOUR MDM?
10 A. YES.
11 Q. I' D LIKE YOU JUST TO TELL THE JURY
12 A LITTLE BIT ABOUT YOUR OBSERVATIONS OF HIS
13 PHYSICAL CAPACITIES. AND LET' S START WITH THAT.
14 A. HIS PHYSICAL CAPACITIES NOW IS,
15 HE' S WEAK AND HE HAS OPEN, YOU KNOW, HE' S NOT DOING
16 TOO GOOD. HE HAS OPEN WOUNDS, YOU KNOW, HIS SKIN
17 IS ALL MESSED UP AND HE NODS OFF WHEN YOU ARE
18 TALKING TO HIM A COUPLE TIMES WITHIN THE HOUR. HE
19 HAS NO HAIR. AND BASICALLY, HE, YOU KNOW, HE USED
20 TO BE ABLE TO WORK THROUGHOUT THE WHOLE DAY AND
21 THEN HANDLE THE FAMILY AND HANDLE HIS WIFE AND
22 HANDLE EVERYBODY, EVERYTHING. NOW, HE CAN' T EVEN,
23 WITHIN AN HOUR, YOU KNOW, HE' S SHOT.
24 Q. HE' S A NEW QUESTION, AND I AM
25 ALMOST DONE HERE. AS A MATTER OF FACT, YOUR HONOR,
26 IT' S FIVE MINUTES AFTER 12:00. I AM DONE HERE FOR
27 TODAY.
28 THE COURT: ALL RIGHT. LADIES AND

1 GENTLEMEN, WE ARE GOING TO TAKE OUR BREAK FOR THE
2 WEEKEND. YOU WILL BE BACK, AND THIS TIME I WON'T
3 FORGET, YOU WILL BE BACK AT 1:30 MONDAY MORNING AND
4 I WILL DO WHAT I HAVE TO DO STARTING AT 8:30 THAT
5 MORNING.

6 JUROR: 1:30 MONDAY MORNING?

7 THE COURT: YOU KNOW, I CAN ONLY THINK
8 THAT'S WHEN I COME HERE IS IN THE MORNING. I CAN'T
9 THINK IN ANY OTHER TERMS.

10 ALL RIGHT, BUT ANYWAY, LADIES AND
11 GENTLEMEN, WE WILL SEE YOU ON MONDAY AT THE
12 DESIGNATED TIME. DON'T DISCUSS THE CASE WITH
13 ANYONE AND REMEMBER OUR THING ABOUT TELEVISION AND
14 RADIO AND NEWSPAPERS.

15 THANK YOU.

16

17 (THE FOLLOWING PROCEEDINGS
18 WERE HELD IN OPEN COURT OUT
19 OF THE PRESENCE OF THE JURY:)

20

21 THE COURT: THERE HAS BEEN A PENDING
22 MOTION IN LIMINE REGARDING FELONY CONVICTIONS.

23 WE DO NEED TO TAKE THIS SUBJECT UP.

24 MR. LEITER: AND I HAVE A SUGGESTION TO
25 MAKE, YOUR HONOR. OBVIOUSLY WE HAVE COMPLETED THE
26 PLAYING OF THE VIDEO TAPE FOR THIS TIME. IT
27 APPEARS THAT THE PLAINTIFF PLANS TO TRY TO
28 INTRODUCE SOME CHARACTER EVIDENCE ABOUT THE

1 PLAINTIFF. AND I WONDER, WHILE I AM HAPPY TO
2 DISCUSS THIS ISSUE NOW, SHOULD WE DEFER IT UNTIL
3 CHARACTER EVIDENCE HAS COME IN WHICH MIGHT BE
4 ANOTHER ISSUE RELATED TO THE ADMISSIBILITY OF THE
5 CONVICTION.

6 THE COURT: AT THIS TIME, WHAT I WILL DO
7 IS I WILL GRANT THE MOTION IN LIMINE IN ITS
8 ENTIRETY AS TO THE FELONY CONVICTIONS AND THEY WILL
9 NOT BE ADMITTED FOR ANY PURPOSE, NOR WILL COUNSEL
10 REFER TO IT IN ANY WAY, EITHER DIRECTLY OR
11 INDIRECTLY, THROUGH COUNSEL OR THROUGH ANY
12 WITNESSES THAT MAY TAKE THE STAND.

13 IT'S WITHOUT PREJUDICE.

14 IF WE GET VERY FAR INTO ANY
15 CHARACTER ISSUES --

16 MR. LEITER: AND BY SUGGESTING WE DEFER
17 IT, I HADN'T ANTICIPATED YOUR HONOR WAS GOING TO
18 RULE.

19 THE COURT: I KNOW YOU DID.

20 MR. LEITER: OBVIOUSLY, CREDIBILITY OF
21 THE PLAINTIFF IS A KEY ISSUE IN THE CASE. INCOME
22 IS A KEY ISSUE IN THE CASE. AND THE CONVICTION
23 GOES TO BOTH. AND WE WOULD LIKE TO BE HEARD ON
24 BOTH OF THOSE ISSUES, EITHER NOW OR AT THE
25 APPROPRIATE TIME.

26 THE COURT: ALL I CAN SAY TO YOU IS THAT
27 I AM CERTAINLY WILLING TO LISTEN. BUT BASED ON THE
28 INFORMATION THAT I HAVE AT THE PRESENT TIME THAT'S

1 BEEN PRESENTED TO ME IN THIS MOTION IN LIMINE, I
2 LOOKED AT IT, I THOUGHT ABOUT IT LONG AND HARD,
3 BALANCED THE 352 ISSUES, IT TURNS OUT FROM WHAT I
4 HAVE SEEN SO FAR, I AM SATISFIED THAT I MADE --
5 THAT MY INSTINCTS LED ME IN THE RIGHT DIRECTION AND
6 IT WAS CORRECT NOT TO ADMIT THIS EVIDENCE AND THAT
7 IT WOULD HAVE BEEN THE VERY EFFECTS THAT 352 IS
8 DESIGNED TO PREVENT OCCURRING IN A TRIAL.

9 BUT AT THE SAME TIME, I HAVEN'T
10 SEEN EVERYTHING, AND THERE MUST BE A CERTAIN AMOUNT
11 OF OPENNESS. BUT AT THE PRESENT TIME, THIS MOTION
12 IS GRANTED.

13

14 (AT THIS TIME, THE PROCEEDINGS
15 IN THE ABOVE-ENTITLED MATTER
16 CONTINUED TO MONDAY, APRIL 16,
17 2001 AT 1:30 P.M.)

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