

**Direct Examinations**  
*Civil Perspective*

**PRESENTED BY:**  
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## **DIRECT EXAMINATION**

### **I. Objectives**

#### **A. Present case in a simple, logical, and orderly way**

1. Provide story/roadmap
2. Story from answers not questions
3. No legalese/big words
4. Order of witnesses

#### **B. Deal with/limit opponent's case**

#### **C. Persuade trier of fact/present case in compelling and memorable way**

1. Order of witnesses
2. Amount of detail (greater detail signals important fact)
3. Demonstrations, charts, visuals
4. Variations tone/pace/volume
5. Order of story (people retain what heard first and last)

D. Establish all elements of charged offense/claim

## **II. Preparation**

A. Theme/Theory of Case

B. What evidence proves case

1. What exhibits go with each witness

2. Stipulations

C. Witness preparation

1. Witness tell story

2. Establish training, experience, expertise, if applicable

3. Review all prior statements

4. Prepare for cross

5. Cover logistics (dress/courtroom)

6. Review exhibits

### **III. The Examination**

#### **A. Short/concise questions**

1. Witness is star, not you
2. Who, what, where, when, why

#### **B. Phases of direct**

1. Introduce witness (background/qualifications)
2. Establish why witness relevant
3. Substance of testimony
4. Bring out damaging cross on direct

#### **C. Techniques**

1. Slow witness down
2. Draw out important testimony
3. Cue witness
4. Looping

## 5. Topic sentences

DIRECT EXAMINATION OF RICHARD [REDACTED]

GOOD MORNING MR. [REDACTED], WOULD YOU PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND. [B.A. Princeton, J.D. Harvard]

ARE YOU A PRACTICING LAWYER? [Yes.]

WHERE DID YOU WORK IMMEDIATELY FOLLOWING LAW SCHOOL?  
[REDACTED]

WHAT TYPE OF LAW DID YOU PRACTICE? [Litigation.]

HOW LONG WERE YOU AT [REDACTED]?

WHY DID YOU LEAVE [REDACTED]? [To join the United States Attorney's Office for the Southern District of New York.]

HOW MANY YEARS WERE YOU AT THE U.S ATTORNEY'S OFFICE?

WERE YOU IN THE CRIMINAL DIVISION OR THE CIVIL DIVISION? [Criminal division.]

AS AN ASSISTANT IN THE CRIMINAL DIVISION, WHAT TYPES OF CASES DID YOU HANDLE? [Make sure to include money laundering and structuring cases.]

WHAT TYPE OF WORK DID YOU DO AT THE U.S. ATTORNEY'S OFFICE? [Investigated and prosecuted felony violations of the federal law; extensive experience in plea negotiations and trials.]

WHILE AT THE U.S. ATTORNEY'S OFFICE, HOW MANY TRIALS DID YOU CONDUCT?

HOW MANY OF THESE TRIALS WERE JURY TRIALS?

OF THE CASES THAT YOU TRIED, HOW MANY WENT TO VERDICT?

WHAT WERE THE VERDICTS? [REDACTED]  
[REDACTED]

IN THE CASES THAT YOU TRIED, WHAT WERE THE DEFENDANTS CHARGED WITH? [Perhaps a money laundering or structuring case.]

WHILE AT THE OFFICE, DID YOU RECEIVE ANY FORMAL TRAINING? [Yes.]

WHAT TYPE OF FORMAL TRAINING DID YOU RECEIVE? [Fill in.]

DID YOU EVER RECEIVE FORMAL TRAINING ON THE MONEY LAUNDERING LAWS? [Yes. I attended a seminar on money laundering.]

WAS THE CRIME OF STRUCTURING DISCUSSED AS PART OF THAT SEMINAR? [Yes.]

WHEN DID YOU LEAVE THE U.S. ATTORNEY'S OFFICE?

WHERE DID YOU GO? [Went to [REDACTED] as an associate.]

HOW LONG WERE YOU AN ASSOCIATE AT [REDACTED]?

WHAT TYPE OF WORK DID YOU DO? [In general litigation department, did fair amount of work with [REDACTED] special litigation group.]

DIRECTING YOUR ATTENTION TO DECEMBER 1992. DID THERE COME A TIME WHERE YOU LEARNED THAT [REDACTED] WAS UNDER INVESTIGATION BY THE FEDERAL GOVERNMENT? [Yes.]

HOW DID YOU LEARN OF THIS? [REDACTED] and [REDACTED] called me into a meeting.]

WHAT DID [REDACTED] SAY TO YOU? [Described a situation; told me about the videotape; told me that situation was bad.]

AFTER LEAVING MR. [REDACTED] OFFICE, DID YOU BEGIN TO WORK ON THE CASE? [Yes.]

WHAT DID YOU DO INITIALLY? [Researched the structuring statute and, the following day, I reached out to the assistant at the U.S. Attorney's office in New Jersey.]

WHEN YOU REACHED OUT TO THE U.S. ATTORNEY'S OFFICE, WITH WHOM DID YOU SPEAK? [The line assistant -- J. D. Larousellier.]

WHAT DID YOU SAY TO HIM AND WHAT DID HE SAY TO YOU? [I introduced myself and stated that Mr. [REDACTED] and I were representing Stuart and that we wanted to come in to discuss a pre-indictment resolution of the matter.]

WHAT DID HE SAY TO YOU? [He told me that he'd be willing to have Stuart come in for a "Queen for a Day" proffer session but that I had to act fast because indictment was imminent.]

MR. [REDACTED], WHAT IS A "QUEEN FOR A DAY" PROFFER SESSION? [It is a session in which under a limited grant of immunity, a putative defendant comes in to tell his story to the United States Attorney's office and for the U.S. Attorney's office to make a determination as to that defendant's credibility for the purposes of determining whether or not to charge and/or whether or not the defendant would be useful as a cooperator.]

DID YOU ULTIMATELY BRING STUART IN FOR A "QUEEN FOR A DAY" PROFFER? [Yes.]

WHEN WAS THAT? [12/17/92.]

WHERE DID THE PROFFER SESSION OCCUR? [At the United States Attorney's office for the District of New Jersey.]

AND WHO WAS PRESENT AT THE PROFFER SESSION? [In addition to Stuart, [REDACTED] and myself, Mr. Larousellier was present as was his two case agents, Ben Kukus [REDACTED].]

WHAT HAPPENED AT THE PROFFER SESSION? [Stuart was essentially debriefed by the government concerning his activities in Atlantic City (i.e., how he structured his winnings on three occasions and enlisted others to cash in chips for him) and discussed his interaction with Steven [REDACTED], a casino executive with whom Stuart had conversations about structuring.]

AFTER DEBRIEFING STUART, DID THE GOVERNMENT REPRESENTATIVES MEET WITH YOU AND STANLEY ALONE? [Yes.]

WHAT DID THEY SAY TO YOU? [They told me that the government was inclined to have him plead to a felony and cooperate with the government for a possible reduction in sentence. They explained that they intended to make an example out of Stuart because he was a partner in a major New York law firm.]



DID THERE COME A TIME WHERE STUART TOLD YOU THAT HE HAD RESIGNED FROM [REDACTED]? [Yes.]

WHEN WAS THAT? [Shortly after the "Queen for a Day" proffer.]

AS A CRIMINAL DEFENSE LAWYER, WAS THE FACT THAT STUART RESIGNED FROM THE FIRM HELPFUL TO YOU IN YOUR ABILITY TO NEGOTIATE WITH THE GOVERNMENT? [Yes.]

WHY? [It played into the theme of our plea for mercy that Stuart had already suffered enough because of his actions. Moreover, the fact that Stuart affirmatively resigned (i.e., as opposed to being expelled from the firm) is evidence of the fact that he accepted responsibility for his actions.]

DID YOU COMMUNICATE THE FACT OF STUART'S RESIGNATION TO THE GOVERNMENT? [Yes.]

WHEN WAS THE FIRST TIME YOU COMMUNICATED THIS FACT? [Shortly after the "Queen for a Day" proffer, I contacted J. D. Laroussellier to inform him that Stuart had resigned.]

WHAT WAS LAROUSSELLIER'S RESPONSE? [At the outset, he was not particularly impressed with the resignation. He expressed skepticism that this was a permanent situation and feared that in the event he received a favorable outcome from the government, he would then turn around and rejoin the firm.]

WHAT, IF ANYTHING, DID YOU SAY TO LAROUSSELLIER IN RESPONSE TO HIS STATED CONCERN ABOUT THE RESIGNATION? [I told him that the resignation was permanent and that Stuart was not coming back to the firm.]

DID YOU EVER DISCUSS WITH LAROUSSELLIER AGAIN THE PERMANENCE OF STUART'S RESIGNATION? [Yes.]

WHEN? [Stanley and I met with the United States Attorney's office in person in the beginning of January. At that time, we reiterated the fact that Stuart had resigned and that the resignation was permanent.]

WHEN THESE REPRESENTATIONS WERE MADE TO THE U.S. ATTORNEY'S OFFICE, WERE THEY MADE WITH STUART'S KNOWLEDGE AND CONSENT? [Yes.]

DID STUART AT ANY TIME EVER DISABUSE YOU OR [REDACTED] OF THE NOTION THAT HE HAD RESIGNED PERMANENTLY FROM THE FIRM? [No.]

[REDACTED] I'D LIKE TO TURN NOW TO A DISCUSSION OF THE GENERAL STRATEGY YOU AND [REDACTED] FOLLOWED ON STUART'S BEHALF. COULD YOU PLEASE DESCRIBE FOR US THE GENERAL STRATEGY THAT WAS EMPLOYED? [Based upon the evidence against Stuart, the fact that the government had indicated that it intended to pursue Stuart vigorously, and the fact that, based upon my first discussion with Larousellier, indictment was imminent, the only strategy to pursue was a "scorched earth" plea for mercy and an offer to cooperate with the authorities.]

WHAT DO YOU MEAN BY "SCORCHED EARTH" PLEA FOR MERCY? [Apart from cooperation which we offered to the government, we intended to argue to the authorities that Stuart's conduct was aberrational in an otherwise law-abiding life, that he and his family had already suffered great consequences in terms of reputation and the loss of income by virtue of the resignation from the firm, and that Stuart has fully accepted responsibility for his actions.]

HOW DID YOU AND [REDACTED] EFFECTUATE THIS "SCORCHED EARTH" POLICY? [In addition to the initial verbal pitches made both over the telephone and in person by us, we sent U.S. Attorney's office several written submissions detailing our plea.]

BEFORE WE GET TO WRITTEN SUBMISSIONS THAT YOU PREPARED, DID PART OF YOUR STRATEGY INCLUDE THE SUBMISSION OF CHARACTER REFERENCE LETTERS? [Yes. between the time that the agents visited Stuart on December 11 and December 30 of that same year -- approximately a two-week time period -- [REDACTED] and I coordinated the preparation of several character reference letters from Stuart's wife, rabbi, and close friends, attesting to Stuart's character, his remorsefulness and his acceptance of responsibility.]

DID ANY OF THE CHARACTER REFERENCE LETTERS SUBMITTED HIGHLIGHT THE FACT THAT STUART HAD ALREADY SUFFERED BY VIRTUE OF HIS RESIGNATION FROM THE FIRM? [Yes.]

INTRODUCE CHARACTER REFERENCE LETTERS AND HAVE [REDACTED] IDENTIFY IN [REDACTED]'S LETTER, [REDACTED]'S LETTER, AND LEVINE'S LETTER THE REFERENCE TO THE FORCED RESIGNATION.

DID YOUR PITCH ALSO INCLUDE THE SUBMISSION OF A FAMILY PHOTO ALBUM? [Yes.]

WHY? [Because it was both [REDACTED] and my intention to humanize Stuart in the eyes of the government and show that he was a man with a family, as opposed to someone who merely violated the law.]

WHAT WERE YOU HOPING TO ACHIEVE THROUGH YOUR EFFORT? [Ideally, we were seeking a complete declination of prosecution, but such a result was not really realistic to expect. In the realm of reality, we were seeking, as the best case, entry into the pre-trial diversion program, in which the government agrees to defer prosecution if the putative defendant complies with the terms of the pre-trial diversion agreement. The next best alternative was negotiating a plea to a tax misdemeanor and the last option -- which frankly seemed the most likely in December of 1992 and January of 1993 -- was a plea to a felony but a recommendation by the government for leniency.]

YOU MENTIONED A MOMENT AGO THAT AS PART OF THE OVERALL STRATEGY, YOU AND MR. [REDACTED] WOULD BE TENDERING MR. ROSENTHAL FOR POSSIBLE COOPERATION WITH THE AUTHORITIES. DID STUART ULTIMATELY COOPERATE WITH THE AUTHORITIES? [Yes.]

WHAT DID THAT COOPERATION ENTAIL? [It involved several trips to Atlantic City wearing a clandestine recording device as well as placing taped telephone calls to the casino executive in Atlantic City.]

I'D LIKE TO TURN NOW TO THE SUBSTANTIVE WRITTEN SUBMISSIONS THAT, YOU TESTIFIED, WERE SUBMITTED TO THE GOVERNMENT BY YOU AND [REDACTED] ON STUART'S BEHALF. CAN YOU PLEASE DESCRIBE FOR ME HOW THESE SUBMISSIONS WERE PREPARED. [I did the initial drafts and received comments from both Mr. [REDACTED] as well as Stuart and his

wife [REDACTED]. I then discussed the proposed changes with both [REDACTED] and the client and received the client's express authorization for sending each submission.]

[Show him 3/3/93 letter to Michael [REDACTED].]

MR. [REDACTED], DO YOU RECOGNIZE THIS DOCUMENT? WHAT DO YOU RECOGNIZE IT TO BE? WHY WAS THIS DOCUMENT PREPARED? WAS THIS DOCUMENT SUBMITTED, IN ITS CURRENT FORM, WITH MR. ROSENTHAL'S EXPRESS AUTHORIZATION? [Yes.]

[Introduce 4/20/93 letter to Tax Justice.] MR. [REDACTED], DO YOU RECOGNIZE THIS DOCUMENT?

WHAT DO YOU RECOGNIZE IT TO BE? [Letter written to Tax Justice.]

I'D LIKE TO DIRECT YOUR ATTENTION TO EXHIBIT \_\_\_\_ OF THIS DOCUMENT. DO YOU RECOGNIZE THIS EXHIBIT? [Yes.]

WHAT DO YOU RECOGNIZE IT TO BE? [The 12/30/92 memorandum to all personnel at [REDACTED] documenting Stuart's resignation from the firm.]

WHY WAS THIS LETTER SENT TO TAX JUSTICE? [It was sent because at this point in time, we were attempting to get approval to permit Stuart to plead to a misdemeanor as opposed to a felony. The U.S. Attorney's office had already signed off on our request, but they needed Tax Justice's approval under the applicable Department of Justice regulations.]

DID TAX JUSTICE ULTIMATELY GIVE ITS APPROVAL FOR STUART TO PLEAD TO A MISDEMEANOR? [No.]

DID [REDACTED] EVER VOICE AN OBJECTION TO THE INCLUSION AND INCORPORATION OF THIS DOCUMENT INTO THIS LETTER? [Absolutely not.]

DID YOU HAVE [REDACTED] AUTHORIZATION TO SUBMIT THIS LETTER IN ITS CURRENT FORM? [Yes.]

[REDACTED]

[REDACTED]

MR. [REDACTED], DID THERE COME A TIME WHEN YOU OBTAINED LEAVE FROM THE U.S. ATTORNEY'S OFFICE FOR STUART TO APPLY FOR ENTRY INTO THE PRE-TRIAL DIVERSION PROGRAM? [Yes.]

BEFORE WE GET TO THE APPLICATION ITSELF, I'D LIKE YOU TO TAKE A LOOK AT THE FOLLOWING DOCUMENT. [The 7/9/93 letter to [REDACTED] accompanying pre-trial diversion application.]

DO YOU RECOGNIZE THIS DOCUMENT? [Yes.]

WHAT DO YOU RECOGNIZE IT TO BE? [This is the letter I sent to the Chief of the Criminal division, Victor [REDACTED] in connection with Stuart's application for pre-trial diversion.]

DID STUART REVIEW THIS LETTER BEFORE IT WAS SUBMITTED? [Yes. As was true with all of the letters I submitted on behalf of Stuart to the government.]

DIRECTING YOUR ATTENTION TO EXHIBIT \_\_\_\_ OF THIS DOCUMENT, IS THIS EXHIBIT THE SAME MEMORANDUM TO ALL PERSONNEL DOCUMENTING STUART'S RESIGNATION THAT WAS ATTACHED TO THE LETTER TO TAX JUSTICE? [Yes.]

WAS THE ATTACHMENT TO THIS LETTER AUTHORIZED BY STUART? [Yes.]

WHAT WAS THE PURPOSE OF ANNEXING THIS MEMORANDUM? [To document Stuart's permanent resignation from the firm.]

NOW [REDACTED], I'D LIKE TO TURN YOUR ATTENTION TO EXHIBIT \_\_\_\_ FOR IDENTIFICATION. [The pre-trial diversion application.] DO YOU RECOGNIZE THIS DOCUMENT? [Yes.]

WHAT DO YOU RECOGNIZE IT TO BE? [The pre-trial diversion application submitted by Stuart.]

TURNING TO THE LAST PAGE OF THIS DOCUMENT, DO YOU RECOGNIZE THE SIGNATURE THAT APPEARS AT THE BOTTOM? [Yes.]

WHOSE SIGNATURE IS IT? [It's Stuart's.]

[REDACTED], IS IT YOUR UNDERSTANDING THAT BY SIGNING THIS DOCUMENT, STUART WAS CERTIFYING THE ACCURACY OF THE INFORMATION UNDER PENALTIES OF PERJURY? [Yes.]

DID YOU ADVISE [REDACTED] OF THE FACT THAT HE WAS CERTIFYING THIS INFORMATION UNDER THE PENALTIES OF PERJURY? [Yes.]

TURNING YOUR ATTENTION TO PAGE \_\_\_\_\_, AND SPECIFICALLY THE SECTION ENTITLED EMPLOYMENT HISTORY, COULD YOU READ ALOUD THAT PORTION OF THAT SECTION DEALING WITH [REDACTED]? [Is the statement "resignation announced effective 1/1/93 due to the current investigation" consistent with the representations that had been made to the U.S. Attorney's office to that point in time? [Yes.]

NOW [REDACTED] I'D LIKE TO SHOW YOU EXHIBIT \_\_\_\_\_, WHICH HAS BEEN IDENTIFIED BY MR. [REDACTED] AT THIS TRIAL AS HIS BIENNIAL REGISTRATION STATEMENT TO THE OFFICE OF COURT ADMINISTRATION IN THE STATE OF NEW YORK. CAN YOU SEE THE DATE ON THIS DOCUMENT? [Yes.]

WHAT IS THE DATE? [Insert.]

DIRECTING YOUR ATTENTION TO THAT PORTION OF EXHIBIT \_\_\_\_\_ THAT TALKS ABOUT STUART'S EMPLOYMENT AND SPECIFICALLY THAT PORTION THAT READS [REDACTED] ROAD, GREAT NECK, NY", IS THAT REPRESENTATION TO THE OFFICE OF COURT ADMINISTRATION CONSISTENT WITH THE REPRESENTATION MADE BY YOU AND MR. [REDACTED] IN THE WRITTEN SUBMISSIONS TO THE GOVERNMENT AND BY STUART IN HIS PRE-TRIAL DIVERSION APPLICATION? [No.]

WHY? [Because we had consistently been representing to the government that Stuart had resigned permanently from the firm and yet here, in the OCA registration statement, Stuart is informing OCA, also under the penalty of perjury, that he is still a member of [REDACTED].]

WERE YOU AWARE OF THE FACT THAT STUART WAS MAKING THESE REPRESENTATIONS TO OCA? [Absolutely not. If I did, not only would I have not permitted Stuart to submit the pre-trial diversion application he did, but I also would not have submitted letters and made

representations to the government in which I represented to them that Stuart had resigned.]

[REDACTED], WAS MR. [REDACTED] ULTIMATELY ACCEPTED INTO THE PRE-TRIAL DIVERSION PROGRAM? [Yes.]

IN YOUR EXPERIENCE AS A CRIMINAL DEFENSE LAWYER, WAS THIS RESULT A GOOD RESULT FOR STUART? [It was an outstanding result.]

WHY? [Because of the evidence that the government had against him; as well as because Stuart himself had taken certain actions that angered the U.S. Attorney's office and the case agents.]

WHAT WERE THOSE ACTIONS? [The extortion and the gambling.]

POTENTIAL LINES FOR CROSS-EXAMINATION

THE "KICKED OUT OF PARTNERSHIP" NOTE.

THE CONVERSATION AND DRAFT OF THE LETTER TO TAX JUSTICE.

THE FACT THAT [REDACTED] NEVER SAW THE VIDEOTAPE.

THE FACT THAT [REDACTED] IS PAYING FOR [REDACTED] REPRESENTATION AND INDEMNIFYING HIM IN THIS CASE.

OUTRAGE AT BEING TAPED AS MOTIVATING [REDACTED] TO PROVIDE DAMAGING TESTIMONY IN THIS MATTER.

Direct Examination of [REDACTED]: Table of Contents

- I. Background
- II. Community Involvement
- III. Education
- IV. Work History
- V. [REDACTED]
- VI. Relationship With [REDACTED]
- VII. [REDACTED]'s Move to Building 7/8
- VIII. 10/23/00 Meeting About Window Placement & Hollow Block
- IX. The Schematic



Direct Examination of [REDACTED]

I. Background

1. When were you born?  
?
2. What is your present address?  
?
3. Are you married?  
Yes.
4. Do you have any children?  
Yes.
5. What are their names and ages?  
?
6. Do you have any grandchildren?  
?
7. What are their names and ages?  
?

II. Community Involvement

1. Do you participate in any organizations outside of work?  
*Yes, I am a benefactor of the Yeshiva Chaim Berlin.*
2. How long have you been a benefactor of this yeshiva?  
?
3. Do you contribute to the yeshiva in other ways besides financially?  
*[I suspect he is on the board of directors, etc.]*
4. Do you participate in any other organizations?  
*[He is likely involved in a Synagogue or other organizations]*

III. Education

1. What is your highest level of education?  
?
2. From where did you obtain that degree?  
*I obtained a bachelor's degree in \_\_\_\_\_ from \_\_\_\_\_ in 19\_\_.*

3. Do you hold any other certifications or licenses?

IV. Work History

1. What is your current occupation?

*I am an Executive officer for [REDACTED] since \_\_\_\_.*

2. What are your responsibilities there?

*?, Essentially, I run the business. I also play a key role in running the [REDACTED] complex.*

3. For how long have you held that position?

*?? [The company began in 1998.]*

4. Where were you employed before that time?

*I was employed by [REDACTED], which was a predecessor entity to [REDACTED]*

5. How long were you employed by [REDACTED]?

*??*

6. What position did you hold there?

*? [It seems like he probably held the same position]*

7. Cumulatively, how long have those two entities been in existence?

*?? [It might pay to give a brief explanation as to why the company changed names, and if there are any differences between [REDACTED] and the predecessor entity.]*

8. Who are the principals of [REDACTED]?

*[REDACTED], [REDACTED] and [REDACTED]*

9. Are you related to these individuals?

*Yes. [REDACTED] is my brother, and \_\_\_\_\_.*

V. Terminal

1. How old is the [REDACTED] complex?

*?*

2. For how long has [REDACTED] owned [REDACTED]?

*We took over the complex in the 1980s. [pin down the date.]*

3. How many tenants rent space in the complex?

*?*

4. How many square feet of space are in the complex?  
?
5. Who are some of your larger tenants?  
*The United States Government, \_\_\_\_\_*
6. Does [REDACTED] own other commercial buildings?  
Yes.
7. How many tenants do you estimate [REDACTED] has in those buildings?  
??
8. You told me you play a key role in running the complex. Was this true in the 2000-2002 period?  
Yes.
9. How else played a key role in running the complex during that period of time? *[It might be helpful to make this seem like a family run business.]*  
*Well at that time, my nephew [REDACTED] was in charge of maintenance.*

*[REDACTED] is our Director of Real Estate. He is not part of our family, but he has been with [REDACTED] since its inception in 1998. Prior to that he was with its predecessor entity since 1993.*

*[REDACTED] was a maintenance Supervisor during this time, and he's been with [REDACTED] for \_\_\_\_ years.*

#### VI. Relationship With [REDACTED]

1. Do you know [REDACTED]?  
Yes.
2. How do you know Mr. [REDACTED]?  
*I know him from our neighborhood in Brooklyn. He is one of our neighbors in Flatbush. He's also a tenant of ours at [REDACTED].*
3. Do you recall when you met him?  
?
4. Do you know him in any other capacity?  
*[REDACTED] is also a member of the orthodox community in Flatbush, where my family has lived for many years.*

#### VII. [REDACTED]'s Move to Building 7/8

1. Do you recall where Mr. [REDACTED] rented space in [REDACTED]?  
*Yes. First he was in building 9. Then, we converted Building 9 from industrial use to telecommunications use. So we negotiated with [REDACTED]*

*to move from Building 9 to Building 7/8.*

2. Did you ultimately come to an agreement?  
*Yes, we agreed to pay his moving expenses and perform certain work in his new space in exchange for him moving.*
3. Was this agreement embodied in a document or documents?  
*Yes. We gave him a new standard lease for the Building 7/8 space. We also listed the work we had agreed to perform in an accompanying work letter.*
4. I'm going to show you a document. [Show him M-3/DX 11- the work letter.] Do you recognize this document?  
*Yes. This is the work letter that listed the work we agreed to perform in Building 7/8.*
5. Did there come a time when the work on the work letter was substantially completed?  
*Yes. All of the work was completed except for the installation of the windows (item 5) and the installation of the hollow block (item 4).*
6. Why were these items not completed?  
*[redacted] refused to give us feasible locations for the placement of the windows. He told us he wanted one window installed facing a handicapped ramp, and another window placed in front of a loading dock, where it would have been shattered on a routine basis. We explained to him that it was impossible to install windows in these locations.*

*The hollow block was to be installed on either side of the windows. So, we couldn't install the hollow block until we understood where we were going to install the windows.*

**VIII. 10/23/00 Meeting About Window Placement & Hollow Block**

1. Did you attend a meeting with Mr. [redacted] about the two outstanding issues in the work letter?  
*Yes.*
2. Who else was at the meeting?  
*[redacted] was there.*
3. Do you recall where the meeting was held?  
*It was held in Mr. [redacted]'s space.*
4. Do you recall when it took place?  
*I believe it was sometime in October of 2000.*

5. What was discussed at this meeting?

*We discussed the placement of the windows, and we discussed the horizontal block that needed to be placed in the existing openings.*

*My recollection is that [REDACTED] wanted windows in unfeasible locations. I explained that we could not install the windows where he wanted them. However, [REDACTED] refused to give us alternative suggestions for the placement of the windows. As I explained previously, his refusal to do so also prevented us from installing the hollow blocks.*

6. What happened after that meeting?

*I remember being troubled by the meeting. [REDACTED] wrote a letter summarizing the meeting, and requesting that [REDACTED] give us feasible locations for the installation of the windows. We needed these locations so that we could install the windows and the block, and comply with our obligations under the work letter.*

7. Did you read the letter before [REDACTED] sent it out?

*Yes.*

8. I'm going to show you a document [REDACTED] 4/DX 21). What is this document?

*This is the letter [REDACTED] sent to [REDACTED] summarizing the meeting we had with him in his space.*

9. Did you receive a response from [REDACTED]?

*No.*

10. Did you receive any communications from [REDACTED]'s attorneys in response to this letter?

*My understanding is that [REDACTED]'s attorneys responded to [REDACTED] our in-house counsel. They claimed that [REDACTED] had already agreed to put windows in very specific locations. They sent us a letter attaching a schematic that purportedly showed where we agreed to put the windows. [DX 27- is an 11/27/00 letter from [REDACTED] to [REDACTED]. It references an 11/14/00 letter from [REDACTED] to [REDACTED] that we don't have and that wasn't marked as an exhibit. We have DX 26, an 11/21/00 letter from [REDACTED]'s Assistant to [REDACTED] attaching the schematic.]*

#### **IX. The Schematic**

1. Have you ever seen this document before? [Show him M [REDACTED] 5/DX 12, [REDACTED] or M [REDACTED] 8/DX 13. Although there are two versions of the purported schematic we're going to only use one. The fact that there were two complicates things and gives us no advantage.]

*Yes. (62)*

2. When did you see this document?  
*When you showed it to me after the commencement of litigation.  
[REDACTED] & [REDACTED] also testified at their depositions that they hadn't  
seen it prior to litigation commencing. However, it seems like [REDACTED]  
would have shown them the letter attaching the schematic. Is this  
something we should worry about? ]*
3. Did you ever see it prior to that time?  
*No. [Addition]*
4. Did you ever see it without the initials on it?  
*No.*
5. What does this document purport to be?  
*It looks like a diagram indicating where windows and hollow block should  
be installed in [REDACTED]'s space.*
6. Did Mr. [REDACTED] show you this document at the meeting about the  
placement of the windows and hollow block that you have just testified  
about?  
*No.*
7. Did he ever refer to it?  
*No.*
8. Was it a part of the negotiations re: his moving to a new space?  
*No.*

Direct Examination of <sup>Expert</sup> [REDACTED]: Table of Contents

- I. Background/Education
- II. [REDACTED]'s Inspection of Premises
- III. [REDACTED]'s Appraisal Report
- IV. [REDACTED]'s Appraisal Report

**Direct Examination of** [REDACTED]

**I. Background/Education**

1. What is your name?

[REDACTED]

2. Where were you born?

\_\_\_\_\_, NY

3. What is your present address?

\_\_\_\_\_, \_\_\_\_\_, NY

4. What is the name of your company?

[REDACTED] (25)

5. Where is your company located?

[REDACTED] (25)

6. How long have you had your own company?

Over 25 years (25)

7. What is your title?

President and Senior Appraiser (25)

8. What is it that you do?

*I appraise items and personal property, meaning that I estimate and opine as to value. I usually prepare a written statement of my opinion of value along with a description of each item as of a specified date.*

9. How long have you been an appraiser?

Over 20 years



10. Please tell me about your background as an appraiser.  
How did you come to work in the industry?  
*I grew up in this industry. Both my father and grandfather were auctioneers. My father started appraising in the 1950s, and he would take me with him to various jobs.*
11. Do you have a specialty?  
*Yes, machinery*
12. Have you ever owned or worked in a factory?  
*Yes, I owned my own factory. When you work in a factory, something always needs repair. I was always working to repair the pieces of machinery in the factory and figuring out the cost of those repairs.*
13. Have you ever done appraisal work for a jewelry business?  
*Yes, Fortunoffs*
14. Please tell me a little bit about your educational background. Do you have a college degree?  
*I obtained a bachelor's degree in Business Administration from the University of Rochester in Rochester, NY. (25)*
15. Did you obtain any formal education post-college?  
*I obtained an MBA in International Business from the City College of New York; and I have completed post-graduate courses in accounting, law, and tax at Pace University in New York. (25)*
16. Has your formal education included coursework in appraisal?  
*Yes, I regularly attend and complete courses and seminars having to do with appraisal. I completed many courses through the International Society of Appraisers and the*

*American Society of Appraisers including Machinery & Technical Specialties Levels I, II, III, and IV. I continue to attend appraisal conferences and seminars to this day in order to stay current in the field. (25)*

17. Are you a member of any professional societies?

*The Appraisers Association of America, the American Society of Appraisers, the American Arbitration Association, and the Auctioneers Association (25)*

18. What is the American Society of Appraisers (ASA)?

*A multi-discipline society dedicated to the certification and education of appraisers*

19. How does one become a member of the ASA?

*Becoming a senior member of the ASA is a difficult process, it can take over 5 years.*

20. Are you a senior member of the ASA?

*Yes*

21. When did you become a senior member of the ASA?

*Approx. 1989*

22. Are you being compensated for your time here today?

*Yes*

23. At what rate are you being compensated?

*\$200 per hour*

24. Is your compensation in this case contingent upon the outcome of this litigation?

*No (1)*

25. Have you been paid for the work you have done to date?

*Yes*

26. As part of your responsibilities, did you prepare a report?

*Yes*

27. Are there standards that need to be followed in preparing an appraisal report?

*Yes*

28. Was this report prepared in accordance with those standards at the time that you prepared the report in 2003?

*Yes*

29. Was that document created in the ordinary course of business?

*Yes.*

30. It is your regular practice to create reports of this type?

*Yes.*

31. Was this report preliminarily created in or around the time of your inspection of Section D of [REDACTED]?

*Yes.*

32. Is there any difference between the preliminary report and the final report?

*None whatsoever*

33. Introduce [REDACTED]'s Appraisal Report into evidence

II. ██████'s Inspection of Premises

34. Did there come a time when you visited Section D of ██████?

*Yes.*

35. When did you visit Section D of ██████?  
*March 6, 2003 (1)*

36. What was the purpose of your visit?  
*To perform an appraisal as of October 2000 of the jewelry making machinery and related equipment on the premises to determine the diminution in value, if any, of the equipment as the result of water and moisture damage.*

37. Can you be more precise as to the types of machinery you were asked to appraise?  
*Light manufacturing, specifically jewelry manufacturing*

38. Over the course of your career as an appraiser, how many times have you been asked to appraise light manufacturing equipment?  
*50 times per year for the last 20 years*

39. What did you do during your visit to Section D of ██████?  
*I personally inspected every piece of equipment, inventoried them, and broke them down into categories to determine their value both before and after the alleged damage in order to determine the total loss. (1-2)*

40. Did you inspect every piece of equipment yourself?  
*Yes*

41. Based upon your inspection of the equipment, did you form an opinion as to the diminution in value of the equipment in Section D of the basement of building 7/8 of [REDACTED] as of October, 2000 due to water and moisture damage?

*Yes*

42. And what is your opinion?

*In my professional opinion, the damage to the equipment I appraised can be valued at \$287,823.*

43. How did you arrive at that value?

*I determined that the fair market value prior to the loss was \$1,225,225.00 and that the fair market value after the loss was \$937,402.00. In finding the total value of loss, I subtracted the value after the loss from the value prior to the loss. (1)*

44. What approach did you take in assessing the value?

*I used both the cost approach and the market comparison approach. (19)*

45. Can you explain the difference?

*I used the cost approach when no sales data was available (most of the items) and the market approach when sales data was available.*

46. Are there other recognized approaches in assessing value?

*Yes, a third approach is called the income approach, but that was not applicable in this situation. The income approach is used for a process, such as manufacturing a chemical from start to finish, not when assigning value to items individually such as here. (19)*

47. Did you consider all three?

Yes

48. What is fair market value?

*The estimated amount, expressed in terms of money, which may reasonably be expected in an exchange between a willing buyer and a willing seller. (16)*

49. How did you determine the fair market value?

*To the extent the item could be repaired, I deducted cost to fix the item multiplied by the number of items at issue and subtracted from the total value. In determining the cost of repair, I assessed the condition of the machinery using an established grading system in accordance with standards set by the American Society of Appraisers.*

50. Are you familiar with a concept called the highest and best use?

*Yes, it is the most probable and legal use of the property which is physically possible, appropriately supported, financially feasible and that which results in the highest value.*

51. Does your report show the highest and best use of each piece of equipment?

Yes

52. What does that mean?

*If a machine is still capable of functioning, its highest and best use is to use the machine.*

53. Did you assign conditions?

*Yes, assigning conditions is standard procedure and crucial in determining value. (21)*

54. What are those conditions?  
*"e" for excellent, "f" for fair, "g" for good, "p" for poor, and "s" for salvage or scrap. (21)*
55. Are there any rules that you can point to that mandate the use of conditions?  
*Yes, the ASA states that "conditions should be discussed." See ASA book, pg. 68 under heading "Definition of Conditions"*
56. Did you have to move anything in order to conduct your appraisal?  
*No*
57. Did you yourself take pictures of the premises?  
*Yes*
58. Are those pictures accurate depictions of the machinery?  
*Yes, they are fair and accurate depictions except the tint if off. As a result of the tint being off, yellows look more brown.*
59. Which pieces of equipment did you take pictures of?  
*I took pictures of the items with the worst damage, for reference.*
60. Why didn't you take pictures of everything?  
*Because I was actually there, looking at the equipment with my own eyes. If an item was not damaged, I did not need a picture. I wasn't reporting back to anyone.*
61. Are you aware of any ASA or USPAP rules which require taking pictures of each and every item appraised?

*No, there is no such rule.*

63. How else did you use the particular location of the items to determine their condition?

*I categorized the items based largely on location meaning that I ascertained the damage based on location. This was a large factory, not everything got wet. For instance, items on a high shelf with no exposure to water only had superficial rusting from the humidity whereas other items which were on the floor with more direct contact to the water had more hard rusting. You can't make a blanket assertion as to the damage of these items because they were in many different locations.*

64. You mentioned that you hold a MBA in International Business and that as an appraiser your specialty is machinery?

*Yes*

65. What can you tell me about the jewelry-manufacturing business in 2000-01?

*The jewelry making business was in retreat at that time. The economy was bad in 2000-01, and when the economy is bad the first thing people give up is jewelry.*



### III. [REDACTED]'s Appraisal Report

66. Did you have an opportunity to look at [REDACTED]'s appraisal report?

*Yes, actually there are 2 reports: one listing a fair market value and one listing a salvage of scrap value. (2)*

67. Did you form an opinion as to how Mr. [REDACTED] determined his value?

*It appears that he subtracted the salvage value from the market value to determine his total value of loss.*

68. In your expert opinion, is there a flaw in Mr. [REDACTED]'s methodology?

*Yes, there are several. First, he labeled his initial report "Fair Market Value- Installed." Because the machinery was not in fact installed this label is misleading. (2)*

69. How else was Mr. [REDACTED]'s report flawed?

*Comparing the initial fair market value to the salvage value is like comparing apples to oranges. To determine loss, you have to compare the same value: the fair market value both before and after the loss, not one value before and a different value after.*

70. How else was Mr. [REDACTED]'s report flawed?

*Mr. [REDACTED] listed each and every piece of equipment according to its salvage value. This is misleading.*

71. Why is it misleading?

*Because salvage value is a value assigned when the item is no longer able to perform the function for which it was designed or intended. (17) It assumes that the highest and best value of each and every item, out of thousands, was scrap. Not every item was scrap. To the contrary,*

*most were reparable or not damaged. It's like when you buy a house – just because the house is in need of repair doesn't mean you can write it off as a total loss. The purchase price of the house will be determined by its value minus the cost of repair. Most of these pieces of equipment were in perfectly good condition, they just needed some repairs. The value of machinery in need of repair is not scrap, but rather the value of the machinery minus the cost of repair.*