

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

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9/30/98 9:00 AM

45505

LOVE FIELD SERVICE
INTERPRETATION PROCEEDING :

Docket OST-98-4363 - 76

MOTION OF CITY OF FORT WORTH FOR LEAVE TO FILE AN
UNAUTHORIZED DOCUMENT AND MOTION TO SUPPLEMENT RECORD

CITY OF FORT WORTH

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Dated: October 19, 1998

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

LOVE FIELD SERVICE

INTERPRETATION PROCEEDING :

Docket OST-98-4363

**MOTION OF CITY OF FORT WORTH FOR LEAVE AND MOTION TO
SUPPLEMENT RECORD WITH DEPOSITION OF ALLAN McARTOR**

The City of Fort Worth hereby moves for leave to file an unauthorized document. Fort Worth does so in order to supplement the administrative record by filing a copy of the transcript of the deposition of Allan McArtor taken on October 15, 1998 in the state court litigation pertaining to Love Field. A true and correct copy of that deposition is enclosed.

The testimony of Mr. McArtor confirms, in detail, the extensive behind-the-scenes contacts which Mr. McArtor and other representatives of Legend have had for many months with DOT decisionmakers. These contacts addressed the merits of the very issues the Department is considering in this proceeding. Moreover, the deposition shows that these contacts did not cease after the Department commenced the public stage of this proceeding.

The DOT should allow this filing in the interest of fairness and a complete administrative record. The extensiveness of these Legend contacts with DOT -- and their highly prejudicial nature -- as documented by this

deposition transcript, bear directly on the question of whether the Department has prejudged this matter and is biased in this proceeding.

When the Department first announced the public stage of this proceeding, the City of Fort Worth promptly filed a Request asking the Department to disclose all prior contacts with other on the issues the DOT was examining. DOT refused. Fort Worth resorted to discovery in the civil litigation because the state court judge was being asked by Legend, Continental, and the City of Dallas, to defer to any ruling of DOT in this docket. In that discovery, we have learned that the ex parte contacts have been pervasive .

Fundamental fairness -- indeed, due process -- demand that the Department afford Fort Worth the opportunity for discovery of DOT officials, and an oral hearing at which we can develop the record on the issues of bias and prejudgment.

Respectfully submitted,

KELLY, HART & HALLMAN, P.C.

Dee J. Kelly

Bar No. 11217000

E. Glen Johnson

Bar No. 10709500

Marshall M. Searcy, Jr.

Bar No. 17955500

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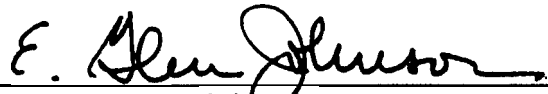
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By:



E. Glen Johnson

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Motion on the following persons first class mail on this the 19th day of October, 1998:

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E. Glen Johnson

DEPOSITION OF T. ALLAN MCARTOR

OCTOBER 15, 1998

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CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:

MERIT COURT REPORTERS
600 OIL & GAS BUILDING
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FORT WORTH, TX 76102
Phone: 817-336-3042
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1 NO. 48-171109-97
 2 CITY OF FORT WORTH, , IN THE DISTRICT COURT OF
 3 TEXAS ,
 4 Plaintiff,)
 5 AND)
 6)
 7 AMERICAN AIRLINES,)
 8 INC.,)
 9 Plaintiff Intervenor,))
 10 VS.)
 11)
 12 CITY OF DALLAS,) TARRANT COUNTY, TEXAS
 13 TEXAS, THE DALLAS)
 14 FORT WORTH)
 15 INTERNATIONAL AIRPORT)
 16 BOARD, JEFFREY P.)
 17 FEGAN, LEGEND)
 18 AIRLINES, INC., MESA)
 19 AIRLINES, INC.,)
 20 ASTRAEA AVIATION)
 21 SERVICES, INC. D/B/A)
 22 DALFORT AVIATION,)
 23 CONTINENTAL AIRLINES,))
 24 INC. AND CONTINENTAL)
 25 EXPRESS, INC.)
 Defendants.) 48TH JUDICIAL DISTRICT
 DEPOSITION OF T. ALLAN MCARTOR
 Taken for City of Fort Worth

(Continued)

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20 REPORTED BY: Gloria Carlin, CSR, RMR
 21 DATE TAKEN: October 15, 1998
 22 JOB NUMBER: 981576
 23
 24
 25

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 6 By: Mr. Powell 210,274
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1 NO.48-171109-97
 2 CITY OF FORT WORTH,) IN THE DISTRICT COURT OF
 3 TEXAS)
 4 Plaintiff,)
 5)
 6 AND)
 7)
 8 AMERICAN AIRLINES,)
 9 INC.,) TARRANT COUNTY, TEXAS
 10 Plaintiff Intervenor,)
 11)
 12 VS.)
 13)
 14 CITY OF DALLAS,)
 15 TEXAS, ET AL)
 16 Defendants.) 48TH JUDICIAL DISTRICT
 17 - - -
 18 ANSWERS AND DEPOSITION OF T. ALLAN MCARTOR, a
 19 witness produced on behalf of the City of Fort Worth,
 20 taken in the above-styled and numbered cause on the
 21 15th day of October, A.D. 1998, commencing at 9:00
 22 A.M., before Gloria Carlin, a Certified Shorthand
 23 Reporter, in and for the State of Texas, at the offices
 24 of Jenkins & Gilchrist, located at 1445 Ross Avenue,
 25 Suite 3200, in the City of Dallas, County of Dallas,
 State of Texas, pursuant to the Texas Rules of Civil
 Procedure, Notice and stipulation of counsel.

(Continued)

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Houston, Texas 77002-5096

20
 21
 22
 23
 24
 25

Page 4

1 APPEARANCES:
 2 For City of Fort Worth:
 3 E. GLEN JOHNSON, ESQ.
 4 KELLY, HART & HALLMAN
 5 201 Main Street, Suite 2500
 6 Fort Worth, Texas 76102
 7
 8 For Legend Airlines, Inc.:
 9 PAUL C. WATLER, ESQ.
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 19 Dallas, Texas 75201
 20 For Dallas Fort Worth Airport Board:
 21 JONATHAN G. KERR, ESQ.
 22 SHANNON, GRACEY, RATLIFF & MILLER
 23 500 Throckmorton, Suite 1600
 24 Fort Worth, Texas 76102-3899
 25
 26 For Continental Airlines, Inc. and
 27 Continental Express, Inc.:
 28 RANDALL WILSON, ESQ.
 29 SUSMAN GODFREY L.L.P.
 30 1000 Louisiana, Suite 5100

Page 5

1 APPEARANCES CONTINUED:
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 3 MIKE POWELL, ESQ.
 4 GAYLE E. ROSENSTEIN, ESQ.
 5 LOCKE PURNELL RAIN & HARRELL
 6 2200 Ross Avenue, Suite 2200
 7 Dallas, Texas 76201-6776
 8 -and-
 9 BILL BOGLE, ESQ.
 10 HARRIS, FINLEY & BOGLE
 11 500 Throckmorton, Suite 1300
 12 Fort Worth, Texas 76102
 13
 14 THE COURT REPORTER: Any stipulation?
 15 MR. JOHNSON: I don't believe so. It's taken
 16 pursuant to Notice.
 17 T. ALLAN MCARTOR,
 18 the witness hereinbefore named, being first duly sworn
 19 to testify the truth, the whole truth and nothing but
 20 the truth, testified under oath as follows:
 21 EXAMINATION
 22 BY MR. JOHNSON:
 23 Q. What is your full name, please, sir?
 24 A. **Trusten Allan McArtor.**
 25 Q. And what's your residence address?
 A. **I have a residence in Dallas at 2504 State
 Street.**

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- 1 Q. Do you have other residence?
 2 A. **I have residence in Memphis, Tennessee.**
 3 Q. Which state do you consider to be your legal
 4 residence?
 5 A. **In Memphis, Tennessee.**
 6 Q. All right, sir. What is your business
 7 position?
 8 A. **I am the President and Chief Executive**
 9 **Officer of Legend Airlines, Incorporated.**
 10 Q. Do you hold any other business positions at
 11 this time?
 12 A. **I'm on the board of several companies, but I**
 13 **am an officer only in Legend.**
 14 Q. All right. And how long have you held that
 15 position with Legend?
 16 A. **Since '96.**
 17 Q. Is this the first time you've been deposed?
 18 A. **No, it is not.**
 19 Q. What other occasions if you could just
 20 briefly describe them for me?
 21 A. **As I recall, when I was in Federal Express,**
 22 **running the airline, I was deposed.**
 23 Q. All right. Now, my name is Glen Johnson, and
 24 I'm going to be representing the City of Fort Worth
 25 today and asking you questions on the record under

Page 7

- 1 oath. Do you understand that?
 2 A. **Yes.**
 3 Q. If I ask you a question that for any reason
 is confusing to you or during the deposition, on
 reflection, you feel you've given an incomplete or
 inappropriate answer to a previous question, will you
 advise me of those instances so we can go back and try
 to correct them at this time?
 9 A. **I will do my best to advise you at the time.**
 10 **I would certainly like to have the right to review my**
 11 **answers in the record --**
 12 **I'm sure --**
 13 A. **-for accurateness.**
 14 Q. All right, and you understand for
 15 accurateness in reporting; correct?
 16 A. **Right.**
 17 Q. Now, conversely, if I don't understand one of
 18 your answers I may ask you to explain that as well,
 19 because this will be my shot at making sure I don't
 20 take advantage of you in use of a confusing answer; all
 21 right?
 22 A. **I'm sure you will.**
 23 Q. All right. Now, have you had a chance to
 24 review the First Amended Notice of Oral Deposition for
 25 this deposition today?

Page a

- 1 A. **You're using titles that I don't keep track**
 2 **of, so if you'll show that to me I'll tell you whether**
 3 **it's the first amended.**
 4 Q. I'm showing you a document entitled First
 5 Amended Notice of Oral Deposition of T. Allan McArtor
 6 and subpoena duces tecum that's been filed in this
 7 case.
 8 MR. WATLER: Are you marking that?
 9 MR. JOHNSON: Not yet.
 10 BY MR. JOHNSON:
 11 Q. Just look through that and tell me if you've
 12 seen it before. That's all I'm interested in right
 13 now.
 14 **(Discussion off record between the witness**
 15 **and Mr. Watler.)**
 16 THE WITNESS: I've discussed this document.
 17 BY MR. JOHNSON:
 18 Q. All right. That's a perfect example of what
 19 I was talking about. I asked you if you had seen it
 20 before, and you answered you had discussed. That
 21 confuses me, so I'm going to ask the question --
 22 A. **I don't recall whether I have actually read**
 23 **this document or not.**
 24 Q. Do you recall whether you've seen the
 25 document --

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- 1 A. **No.**
 2 Q. -- whether you've read it or not?
 3 A. **No, I don't recall whether I've seen this**
 4 **document prior to now.**
 5 Q. That's -- one other mechanical thing is I
 6 will try not to interrupt your answers, and if you can
 7 just wait for me to finish, it will make the record a
 8 lot fairer to both of us so that the Court Reporter can
 9 get your response in -- on the record to a completed
 10 question; okay?
 11 A. **Yes.**
 12 Q. All right. Thank you. Now, you say you've
 13 discussed the Notice. Can you tell me with whom you
 14 discussed it?
 15 A. **Counsel.**
 16 Q. All right, and can you tell me what you mean
 17 by the term counsel?
 18 A. **My legal counsel.**
 19 Q. And who is that?
 20 A. **Jenkins & Gilchrist.**
 21 Q. What individual?
 22 A. **There are -there are more than one counsel**
 23 **at Jenkins and Gilchrist with whom I communicate.**
 24 Q. All right. With regard to this document that
 25 I've just put in front of you what individual did you

Page 10

1 discuss it with?

2 A. My **recollection I discussed the content** of

3 this **document** with Mr. Edwards and Mr. **Watler**.

4 Q. All right, sir. Did you make any effort --

5 I'm **talking** about personally now, not through someone

6 else, but did you **personally** make any effort to search

7 for any document to be **produced** in connection with your

8 deposition today?

9 A. Yea.

10 Q. All right. &an you tell me what that effort

11 was, your personal effort?

12 A. The **documents** that **were in my possession that**

13 **were responsive in my files, 1 looked for and gave them**

14 **to counsel**.

15 Q. All right, sir. When did you do that?

16 A. Over the **last** several weeks on a number of

17 **different days**.

18 a. Okay. So there was more than one effort

19 made?

20 A. Right.

21 Q. How many **different** days would you say you

22 were involved in that?

23 A. Three or four.

24 Q. Okay, and where were these records that you

25 **searched**?

Page 11

1 A. **My office**.

2 Q. And where is that office?

3 A. **7555 Lemmon Avenue**.

4 Q. Here in Dallas?

5 A. Correct.

6 Q. Did you have **anything** in writing to guide you

7 in that search, or was this as a result of your

8 **conversations**?

9 A. **We had a --we had documents from the Court,**

10 **discovery documents from the Court, and conversations**.

11 Q. All right. I'll try to be a little bit

12 clearer. In response to the subpoena duces tecum that

13 is **attached** to this Notice of Deposition -- and that's

14 what I'm asking about at this point -what did you

15 utilize, I'm **talking** about you **personally** now, either

16 **written communication**, oral communication to guide you

17 in your search for **documents** to be responsive for your

18 deposition today?

19 A. **Primarily my discussion** with counsel.

20 Q. All right. Did you ever have in front of you

21 or **provided** to you the subpoena duces tecum **attached** to

22 the Notice by copy or **summary**, in writing?

23 A. Is this what you refer to?

24 Q. Yes, sir, Exhibit A.

25 A. Yes.

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1 Q. You did, you had that **available** to you?

2 A. Yes.

3 Q. All right. And can you tell me what

4 documents you located that were **responsive** at least in

5 your view in the search to these requests, just general

6 **categories** at this point?

7 A. The ones that had been **submitted** to you, 1

8 had many of those **documents** in my **file**.

9 Q. All right, and you're **talking** about **documents**

10 that had been **provided** in discovery?

11 A. Right.

12 Q. t-tow-did you find any other **documents** that

13 would be **responsive** to any of these **categories** that had

14 not already been **provided** in discovery to the City of

15 Fort Worth?

16 A. No.

17 Q. All right.

18 MR. JOHNSON: I'll mark this, since it looks

19 like we're going to have to talk about it at

20 length, as **Exhibit 1**.

21 **(EXHIBIT(S) NO. 1 MARKED.)**

22 BY MR. JOHNSON:

23 Q. Mr. **McArtor**, this copy of the First Amended

24 Notice of **Oral Deposition** and **attached** duces tecum has

25 now been marked as **Exhibit 1**, and I will refer to it in

Page 13

1 the following questions by that number; all right, sir?

2 A. Yes.

3 Q. Okay. Now, **attached** to Exhibit 1 is Exhibit

4 A, and on page 6 of Exhibit A, down at the bottom there

5 is a letter -- a No. 1 and a paragraph that requests

6 **all documents** referring to, relating to or showing

7 travel to **Washington, D.C.**, during the period October

8 10, 1997, through the date of this deposition. Do you

9 see that, sir?

10 MR. WATLER: Mr. Johnson, so the record is

11 clear, prior to the **beginning** of the deposition we

12 served you with written **objections** to the duces

13 tecum that you're **referring** to as **Exhibit 1**, so

14 those have been served on you, and there are

15 **objections** to that -that **particular** request, so

16 1 want that to be clear on the record.

17 MR. JOHNSON: Well, I will add for the record

18 that 1 have -- I mean I haven't even had a chance

19 to read that **document**, and so I don't know what's

20 in it. It was **provided** to us as we walked into

21 the room, and 1 don't know what-what it has to

22 do with the question that I had asked Mr. **McArtor**,

23 **anyway**, and I'll go back to that question.

24 BY MR. JOHNSON:

25 Q. I'm just asking you at this point are you

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1 with me on paragraph, or subparagraph numeral 1 at the
 2 bottom of page 6 of Exhibit A to Exhibit 1?
 3 **A. Am I with you?**
 4 **Q.** Are you reading it with me, sir?
 5 **A. Yes.**
 6 **Q.** Now, did you make -- and I'm talking about
 7 you personally -- make any effort to locate documents
 8 fitting that description?
 9 **A. No.**
 10 **Q.** Did you ask anyone else to make that effort
 11 on your behalf?
 12 **A. No.**
 13 **Q.** Do such documents exist in your recollection?
 14 **A. Some documents that show travel would exist.**
 15 **Q.** All right, sir. Have you assembled those
 16 documents for any purpose at this point in connection
 17 with this notice or this litigation?
 18 **A. No.**
 19 **Q.** Have you provided originals or copies of
 20 those documents to anyone at this point in connection
 21 with this deposition or this litigation?
 22 **A. No.**
 23 **Q.** All right, sir. And I will make the request
 24 for you to provide them to me at this point. Do you
 25 have them available for me to review now?

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1 **MR. WATLER:** We stand on our written
 2 objections.
 3 **BY MR. JOHNSON:**
 4 **Q.** My question to you, sir, is do you have those
 5 available for me to review as we sit here in Dallas
 6 this morning, yes or no?
 7 **A. No.**
 8 **Q.** Now, let's take a look at paragraph No. 2,
 9 all documents referring to, concerning or reflecting
 10 communications, discussions, meetings or conversations
 11 between you and DOT pertaining to the litigation
 12 currently pending involving Love Field; do you see
 13 that, sir?
 14 **A. Yes.**
 15 **Q.** Now, did you personally make any effort to
 16 assemble documents that would fit that description?
 17 **A. Yes.**
 18 **Q.** And when did you do that, sir?
 19 **A. Over the last few weeks.**
 20 **Q.** All right. And did you have anyone assisting
 21 you in that effort?
 22 **A. Yes.**
 23 **Q.** Who?
 24 **A. Counsel.**
 25 **Q.** Once again, can you give me the names of

Page 16

1 those -- those lawyers that were assisting you in that
 2 effort?
 3 **A. Counsel to Legend would include the Jenkins &
 4 Gilchrist firm and the Ungaretti & Harris firm.**
 5 **Q.** Who at Jenkins Gilchrist was assisting you?
 6 **A. Primarily Mr. Edwards and Mr. Watler.**
 7 **Q.** Who at Ungaretti was assisting you?
 8 **A. Primarily Mr. Faberman.**
 9 **Q.** And were documents collected that were at
 10 least in your understanding responsive to that request?
 11 **A. Yes.**
 12 **Q.** I'd like to see those documents now if I may.
 13 **MR. WATLER:** They've been produced to you.
 14 **MR. JOHNSON:** I would like specifically to
 15 see the originals of those documents. Oh, I'm
 16 sorry, what is this?
 17 **MR. WATLER:** There's one additional document
 18 that's responsive that we're producing now. Do we
 19 have a Bates number?
 20 **MR. JOHNSON:** All right. I've just been
 21 handed a document with Bates No. TAM 0001, which
 22 I'll ask to be marked as Exhibit No. 2 Is it
 23 all right if I mark that copy?
 24 **MR. WATLER:** Sure. For the record, as you go
 25 through all the document or the duces tecum of the

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1 Deposition Notice we stand on our written
 2 objections, so I don't want anything that we say
 3 in this to be construed, it's not intended as any
 4 waiver of those objections we previously asserted.
 5 **MR. JOHNSON:** If those objections have any
 6 effect, given the way they were prepared and the
 7 way that they were filed they will obviously have
 8 that effect, and, you know, the record will just
 9 stand for what it stands for, so I don't think
 10 there's any need to discuss that further, because
 11 I haven't read it and I don't know what it says.
 12 **MR. WATLER:** I'm going to make clear on the
 13 record that we stand on those objections.
 14 **MR. JOHNSON:** Sure.
 15 **MR. WATLER:** Doesn't need to be understood in
 16 any other fashion.
 17 **(EXHIBIT(S) NO. 2 MARKED.)**
 18 **BY MR. JOHNSON:**
 19 **Q.** Now, Mr. McCartor, we've marked as Exhibit No.
 20 2 the document Bates stamped TAM 0001. Do you have
 21 that in front of you?
 22 **A. Yes.**
 23 **Q.** And describe for me what that document is,
 24 sir?
 25 **A. That's a copy of two business cards.**

Page 18

- 1 Q. All right. Do you -were these business
2 cards that you had in your possession?
3 A. Yes, they were.
4 Q. All right, and they are the -- I'm just going
5 to read here one business card is Nancy E. McFadden and
6 the other is Nancy Deamer LoBue?
7 A* LoBue.
8 a. LoBue, all right. Tell me, sir, when you
9 obtained these business cards?
10 A. I obtained these business cards on June 12th,
11 1998.
12 Q. All right. And where were you when these
13 cards -when you received these cards?
14 A. I was at a meeting at the Department of
15 Transportation, Office of the General Counsel.
16 Q. Where is the Department of Transportation,
17 Office of General Counsel physically?
18 A. Washington, D.C.
19 Q. Do you know the building?
20 A. I know the building well.
21 Q. All right. What's the name of the building?
22 A. It's called -- it's the Department of
23 Transportation Building.
24 Q. All right, sir. Now, let me ask you --just
25 a small divergence from the document inquiries here.

Page 19

- 1 On June 12th, I believe you said, when you obtained
2 these cards were you physically in anyone's office at
3 the time of obtaining these cards, or were you simply
4 in an open area or a conference room?
5 A. I was in a meeting room in the Office of the
6 General Counsel.
7 Q. All right, sir. Now, I take it you had to
8 enter the office building that day in order to get to
9 the office; correct?
10 A. Correct.
11 Q. Now, do you have any special privileges with
12 regard to the ability to enter that building without
13 going through the normal check-c-in and security
14 procedures that are in place for entering the
15 Department of Transportation?
16 A* No.
17 Q. All right, so that day then, in order to
18 attend this meeting you went through the ordinary
19 sign-in and security clearance procedures that are in
20 place before you can go up to the DOT, General Counsel
21 floor; correct?
22 A. Correct.
23 Q. All right, sir. Now, who was with you at the
24 time that you signed in, if you will, for that meeting?
25 A. Counsel for Legend Airlines.

Page 20

- 1 a And who was that, sir?
2 A. Mr. Watler and Mr. Faberman.
3 Q. Okay. What time of the morning was this,
4 please, sir?
5 A. I don't recall.
6 Q. Just generally? I've assumed it's the
7 morning. Maybe I'm in error. Was it in the morning?
8 A. I don't recall.
9 Q. You don't recall whether it was in the
10 morning or in the afternoon of that day at all?
11 A. My recollection is that it was the afternoon.
12 Q. All right, sir. Now, just because you and I
13 have never had a chance to visit before, do you keep a
14 calendar in your business in order to keep track of
15 appointments like this?
16 A. Sometimes.
17 Q. In this instance how did you note this
18 appointment?
19 A* I don't believe I did.
20 Q. All right, sir. How long before the meeting
21 had you learned that the meeting would take place?
22 A. I don't recall.
23 Q. Well, can you give me any general parameters,
24 was it hours before the meeting, days before the
25 meeting or a week or more before the meeting?

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- 1 A. Would have been days before the meeting.
2 Q. All right, sir. Do you remember the day of
3 the week that June the 12th was?
4 A. No.
5 Q. If I tell you it was a Friday, and assume
6 with me that it was a Friday, would you have found out
7 about the meeting then sometime Monday through
8 Thursday, do you think?
9 A. I don't recall.
10 Q. Do you have any recollection at all whether
11 it would have been that same week or the week before?
12 A. No.
13 Q. All right, sir. Did you travel to Washington
14 specifically for this meeting?
15 A. I don't recall that.
16 Q. Do you remember where -- how long you had
17 been in Washington prior to the time of the meeting on
18 the 12th of June?
19 A. No.
20 Q. Do you remember where you stayed while you
21 were in Washington?
22 A. No.
23 Q. Where do you routinely stay when you go to
24 Washington for things like this meeting with the DOT,
25 Nancy McFadden and Nancy LoBue on the 12th of June?

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1 MR. WATLER: Objection, assumes there's a
 2 routine.
 3 BY MR. JOHNSON:
 4 Q. Well, sir, point well taken. Do you have a
 5 routine place that you stay when you go to Washington?
 6 A. **Cheapest room available.**
 7 Q. Where was that cheapest room available the
 8 week of June the 12th, 1998?
 9 A. **I don't know.**
 10 Q. You don't remember where you stayed?
 11 A. **No.**
 12 Q. Okay. How did you get to the Department of
 13 Transportation Building that morning?
 14 A. **Again, I don't recall whether it was the**
 15 **morning or the afternoon.**
 16 Q. Oh, correct, thank you. I'm sorry.
 17 A. **By taxicab.**
 18 Q. Do you remember from where you started that
 19 trip to your arrival at the -- at the DOT?
 20 A. **As I recall, I departed from the Ungaretti &**
 21 **Harris office.**
 22 Q. All right, sir, and you've already told me
 23 that Mr. Watler and Mr. Favor --
 24 MR. WATLER: Faberman.
 25 BY MR. JOHNSON:

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1 Q. -- Faberman were with you on that -- at the
 2 time that you signed in for the meeting, but was there
 3 anybody else who had been with you on the way to the
 4 meeting?
 5 A. **Not that I recall.**
 6 Q. All right. Had you had a meeting at the
 7 Ungaretti firm before going to the DOT for the June
 8 12th meeting?
 9 A. **Yes.**
 10 Q. All right. Who was at that meeting and where
 11 was it?
 12 A. **That was at the Ungaretti firm.**
 13 Q. All right, sir, and who attended that
 14 meeting?
 15 A. **My recollection is was it was Mr. Faberman,**
 16 **Mr. Watler and myself.**
 17 Q. Was there an agenda, to your understanding,
 18 for this meeting?
 19 MR. WATLER: Which meeting are you talking
 20 about, the meeting before?
 21 BY MR. JOHNSON:
 22 Q. I'm talking about the meeting with the DOT on
 23 the 12th of June?
 24 A. **No.**
 25 Q. Okay. Who had requested that the meeting

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1 take place, to your knowledge?
 2 A. **Counsel for Legend.**
 3 Q. Which one?
 4 A. **Mr. Faberman.**
 5 Q. All right. And had Mr. Faberman done that at
 6 your request?
 7 MR. WATLER: Well, counsel, I think you're
 8 getting into attorney/client matters, which are
 9 the sort of things we anticipated.
 10 MR. JOHNSON: Let me see if I can get at it
 11 this way.
 12 BY MR. JOHNSON:
 13 Q. Did you have any understanding of the reason
 14 for the meeting of June 12th with the DOT?
 15 A. **Yes.**
 16 Q. What was your understanding?
 17 A. **It's my understanding that Legend Airlines**
 18 **was going to update the Department of Transportation on**
 19 **the litigation issues in Tarrant County and to appeal**
 20 **to the Department of Transportation to intervene in the**
 21 **lawsuit both at the State level and the Federal level.**
 22 Q. All right, sir. When you use the word
 23 update, had there been any other meeting at which the
 24 Department of Transportation had received updates
 25 previous to June 12th of 1998?

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1 A. **That's the only meeting I personally**
 2 **participated in for the expressed intent of updating**
 3 **them on the lawsuit.**
 4 Q. Whether you participated in it or not, are
 5 you aware of any other meetings where representatives
 6 of Legend Airlines, I'm talking about before June 12th,
 7 updated the Department of Transportation on litigation
 8 in Fort Worth or any other matters involving Love Field
 9 and the dispute over the use of Love Field by Legend
 10 and Continental Airlines?
 11 A. **Yes.**
 12 Q. Okay. Just if you could give me your
 13 recollection of what those meetings were, by general
 14 date, time, if you have anything specific?
 15 A. **Legend Airlines, as I'm sure you know, has**
 16 **applied for a 401 Fitness Review with the Department.**
 17 **We've had meetings for the express purpose of**
 18 **discussing the 401 application. At those meetings**
 19 **comments sometimes are made how is it going in the**
 20 **lawsuit, so there's been some expression of how is it**
 21 **going in the lawsuit. I also had a meeting with the**
 22 **Deputy Assistant Secretary of Transportation and with**
 23 **one of the Assistant Secretaries of Transportation**
 24 **over the Wright Amendment at Love Field, in the**
 25 **probably '96 time frame. I participated in a meeting**

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with **Secretary Slater** with other **representatives in Dallas, at the Dallas/Fort Worth Hyatt, where we briefly discussed areas of competition in the airline industry and very briefly talked about the lawsuit.**

Q. All right, sir. Let's go back in order, then. If you did not attend these meetings how is it that you are aware that the **Department of Transportation** was asking how goes it with regard to the **litigation**?

A. **I didn't** say I didn't attend the **meetings**.

Q. All right I misunderstood you. What **meetings** were you present at where the **Department of Transportation**, in conjunction with other things that were going on at the **meeting**, added how goes it with the **litigation in Fort Worth**?

A. **Those are the meetings I just described.**

Q. Okay. And when did this **meeting** in Dallas with the **Secretary** take place?

A. It was in **December of '97**.

Q. When did the **meetings** with the **Undersecretary** and the **Assistant Undersecretary** take place?

A. **My recollection is that the meeting to discuss the Wright Amendment in general was in the '96 time frame, mid '96, and the 401 application meetings were -- went late winter to spring of this year.**

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Q. All right, sir. Now, in mid 1996 Legend, I don't believe, even existed, did it?

A. NO.

Q. What was your capacity then in discussing the **Wright Amendment** with the **Secretary** or the **Undersecretary** in '96?

A. **I was just an interested party. interested in a possible Business Plan.**

a. Okay. Who else attended that meeting, for instance?

A. **I believe Mr. Faberman attended that meeting as well.**

a. Okay. Who -what were the names of the gentlemen from -- or all of the people from the **Department** who either attended that meeting or who dropped in from time to time during that meeting where you were just an interested party discussing a **Business Plan** with the **Department of Transportation**?

A. **Mr. Hunnicutt.**

Q. Do you know his first name?

A* **Charles Hunnicutt.**

Q. And what is his position with the **DOT**?

A. **Assistant Secretary of Transportation.**

Q. All right, sir. Anyone else?

A. **Mr. Murphy, who is Deputy Assistant Secretary**

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of **Transportation**.

Q. What is Mr. Murphy's first name?

A. **Patrick, I believe.**

Q. All right, sir. Anyone else?

A. **I recall there was probably one, possibly two others, I don't know who they were.**

Q. Okay. How long did that meeting last?

A. **Approximately 30 minutes, 40 minutes.**

Q. Okay. Would it be fair to say that at that time then when you were an interested party discussing a potential **Business Plan** that that was the precursor or one of the precursor steps to the formation of **Legend Airlines** as an airline to fly out of **Love Field**?

A. Yes.

Q. Okay, sir. And had Mr. Faberman been retained as an attorney to represent somebody at that meeting?

A. Yes.

Q. And who was Mr. Faberman representing at that meeting?

A. **He was representing ourselves, or myself and whatever we would end up calling the company as we formed it.**

Q. Right, okay. And that, whatever we would call the company, ultimately was called **Legend**

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Airlines?

A. **Ultimately.**

MR. WATLER: In baseball it's a player to be named later.

BY MR. JOHNSON:

Q. And who besides you constituted the group of -- or if there was a group, constituted the persons who were interested in this **Business Plan** in the private sector?

A. **In addition to us was Astraea, Inc., Astraea Company, whatever they call themselves=**

Q. All right. Did anyone with **Astraea** in 1996 attend the meeting we're discussing right now?

A. **No, I don't think so.**

Q. Who were the individuals that you would identify as being associated with **Astraea** as of 1996 that were also, to your knowledge, involved in the interest in business plans for the future that would come under the **Wright Amendment**?

A. **The principal of Astraea is Mr. Ledbetter.**

Q. All right, Mr. Ledbetter's first name known to you is?

A. **Bruce.**

Q. Was Mr. Faberman representing Mr. Ledbetter or **Astraea** at the same time at this meeting?

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- 1 A. I don't know.
 2 Q. All right, sir. Has Mr. Faberman ever, to
 3 your knowledge, represented any members of what
 4 ultimately became the Astraea Group or what is the
 5 Astraea Operation, Company, whatever you want to call
 6 it today?
 7 A. My recollection is he has.
 8 Q. What is that recollection?
 9 A. That he has represented Astraea on occasion.
 10 Q. Okay. Now, what was discussed in this 1996
 11 meeting about the Wright Amendment?
 12 A. The wording of the Wright Amendment and the
 13 Department's interpretation of the Wright Amendment.
 14 Q. With particularity as to what portion,
 15 interpretation of what portion of it or portions, if
 16 you can recall?
 17 A. There are four permitted uses of Love Field,
 18 it was all four permitted uses.
 19 Q. Okay. Did you have an interpretation of your
 20 own that you proposed to the Department of
 21 Transportation at this meeting in 1996?
 22 A. Yes.
 23 Q. And what did you propose, sir?
 24 A. That the Wright Amendment be interpreted
 25 according to the plain language of the statute.

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- 1 Q. Which, in your opinion, was what?
 2 A. That an aircraft with a passenger capacity of
 3 56 passengers or less was just that.
 4 Q. Okay. Any airplane?
 5 A. Any airplane so certificated by the FAA.
 6 Q. Do you recall anything else being discussed
 7 at the meeting, other than what you've already told me?
 8 A. Yes.
 9 Q. What, sir?
 10 A. We discussed the decline of competition in
 11 the airline industry. We discussed the predatory
 12 behavior of major airlines against smaller airlines and
 13 the need for, in our opinion, the need for the
 14 Department's aggressive action to try to control that.
 15 We talked about airports, the need for airports in the
 16 country. We talked about the development and progress
 17 of DFW Airport. I don't recall other topics that we
 18 may have talked about.
 19 Q. All right. Did you submit any documentary
 20 information, or did anyone at the meeting on your
 21 behalf submit documentary information to the
 22 representatives of the Department of Transportation at
 23 this meeting in 1996?
 24 A. Not that I recall.
 25 Q. All right. Did you have a business -- a

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- 1 written Business Plan at that time?
 2 A. No.
 3 Q. Do you recall the month, and I apologize if
 4 you've already told me, I don't remember, do you recall
 5 the month or the date when this occurred in 1996?
 6 A. No.
 7 Q. Did you request the meeting or someone on
 8 your behalf request the meeting or did the DOT contact
 9 you or one of your representatives to --
 10 A. We requested the meeting.
 11 Q. All right, sir. Now, if you can -- I know
 12 it's a little bit difficult sometimes to go back to the
 13 point in time, but I'm really trying to figure out why
 14 in 1996 you felt it was, as part of your Business Plan,
 15 advisable to have such a meeting with the Department of
 16 Transportation?
 17 A. The Department had been requested to
 18 interpret the permitted uses under the Wright
 19 Amendment.
 20 Q. All right. And that request had come from
 21 whom?
 22 A. The request was originally made by Astraea.
 23 Q. How did you find out about it?
 24 A. The principal of Astraea advised me about it.
 25 Q. Mr. Ledbetter?

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- 1 A. Correct.
 2 Q. And how did he advise you about it?
 3 A. Is your question how he advised me, by phone
 4 or by meeting? What is your question?
 5 Q. Yes, I'm actually just trying to get the
 6 mechanics of whether he sent you a letter, you all had
 7 a conference, he telephoned you?
 8 A. It was verbally, but I don't recall whether
 9 it was by meeting or by telephone.
 10 Q. All right, and did you or anyone on your
 11 behalf at that time make a similar request of the
 12 Department, similar to the one Astraea, to your
 13 knowledge, had made?
 14 A. No.
 15 Q. Did you ever at any time make such a similar
 16 request?
 17 A. No, not that I recall.
 18 Q. All right. Did the Department respond to any
 19 of your observations in any way that you can recall,
 20 through these individuals that were in the meeting?
 21 MR. WILSON: Objection, did the Department
 22 respond or these individuals respond?
 23 MR. JOHNSON: I'll rephrase the question.
 24 BY MR. JOHNSON:
 25 Q. Did any of the individuals that you've

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1 identified who were with the Department of
 2 Transportation respond at that meeting to any of the
 3 observations that you had made on the subjects we've
 4 discussed?
 5 A. No.
 6 Q. All right, sir. What did you believe or
 7 understand would take place following the meeting,
 8 either conduct on your behalf or conduct that you
 9 understood the Department would engage in as a
 10 result of this meeting?
 11 A. That the Department would respond to
 12 Astraea's letter.
 13 Q. Did you have any indication at the time of
 14 the meeting or as you left the meeting what that
 15 response would be?
 16 A. No.
 17 Q. Did you offer to assist in preparation of
 18 that response?
 19 A. No.
 20 Q. Did you offer to provide information in
 21 connection with that response?
 22 A. Not that I recall.
 23 Q. Did anyone on your behalf make such an offer?
 24 A. As I recall, there was the -the courtesy
 25 comment, if you need anything from us or if we can be

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1 A* So what was to become Legend --
 2 Q. Yes, sir.
 3 A. -- yes, I made the Department aware of what
 4 I thought was a viable Business Plan that could conform
 5 to Federal law operating out of Love Field.
 6 Q. All right. So Love Field specifically was
 7 discussed at the meeting in 1996 with these
 8 representatives of the Department of Transportation?
 9 A. Yes.
 10 Q. Okay. And your plans, regardless of whether
 11 Legend had a name yet or not, were to utilize the 56
 12 seat provision of the Wright Amendment as part of your
 13 Business Plan that included operations from Love Field?
 14 A. That's correct.
 15 Q. Okay, sir. Was there ever any follow-up
 16 following that meeting in 1996 by the Department, to
 17 your knowledge, requesting any other information from
 18 Mr. Faberman?
 19 A. As a follow-up to that meeting?
 20 Q. Yes, sir.
 21 A. No. Not that I'm aware.
 22 Q. Did Mr. Faberman, to your knowledge, provide,
 23 whether it was solicited or unsolicited, any further
 24 information to the Department of Transportation or to
 25 those individuals who were at that meeting?

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1 of any help, please let us know.
 2 Q. All right, sir. And did you contact Mr. --
 3 is it Letterer, I've already forgotten, Letterer?
 4 A. Ledbetter.
 5 Q. -- Ledbetter with regard to what had happened
 6 at the meeting following the meeting?
 7 A. Yes.
 8 Q. And when did that happen, when did that
 9 occur?
 10 A* Sometime following the meeting.
 11 Q. All right. Had Mr. Ledbetter met with the
 12 Department on this issue, on these issues, to your
 13 knowledge?
 14 (Discussion off record between the witness
 15 and Mr. Watler.)
 16 THE WITNESS: I believe Mr. Ledbetter told me
 17 he had met one time with -with the Department.
 18 BY MR. JOHNSON:
 19 Q. All right, sir. Did you, at this meeting,
 20 and I'm just where we are in 1996, make the Department
 21 aware of Legend's plans with regard to the use of the
 22 56 seat provision in the Wright Amendment?
 23 A. As you pointed out, Legend did not exist at
 24 the time.
 25 Q. That's correct.

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1 A. In what time frame?
 2 Q. I'm talking about within two to three weeks
 3 following that meeting?
 4 A. Not that I'm aware.
 5 Q. When was the very next contact that you can
 6 recall that involved you or someone representing this
 7 concept that ultimately became Legend, contact with the
 8 Department of Transportation or anyone at the
 9 Department of Transportation?
 10 A. As I recall, it was the response or the
 11 letter issued by the General Counsel's Office as a
 12 rule, rule making, interpreting the Wright Amendment,
 13 Q. Okay. And one last question that just
 14 occurred to me on the '96 meeting, do you know why the
 15 individuals from the Department of Transportation that
 16 attended that meeting were the ones chosen to attend
 17 the meeting?
 18 A. Yes.
 19 Q. All right. Tell me why.
 20 A. We requested the meeting with them.
 21 Q. All right, so you made the -you
 22 individually or through Mr. Faberman made a specific
 23 request to meet with the individuals you've identified?
 24 A. That's correct.
 25 Q. Now, why did you choose those individuals?

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- 1 A. Those individuals are tasked with the
2 creation of public policy and the -- and the stimulus
3 of airline competition in the United States or
4 globally, actually, and we felt that what we were
5 proposing had the potential to significantly enhance
6 competition and to further the objectives of airline
7 deregulation.
8 Q. How did you know that those were the
9 individuals involved in those areas?
10 A. That's common knowledge.
11 Q. How was it common knowledge to you?
12 A. That is the Assistant Secretary in charge of
13 that area, of policy and international.
14 Q. All right, I see. And that once again was
15 who?
16 A. Mr. Hunnicutt.
17 Q. Hunnicutt, all right. As of this meeting in
18 1996, was Ms. McFadden even there at the Department?
19 A. Yes.
20 Q. Did you know Nancy E. McFadden --
21 A. No.
22 Q. -- on a personal basis?
23 A. No.
24 Q. When did you first know -- come to know who
25 Nancy E. McFadden, so that you could recognize her or

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- 1 identify her as a person you had met at the Department?
2 MR. WATLER: I'm sorry, I'm totally confused.
3 Are you asking when did he first meet Nancy
4 McFadden? I think that's what you're asking.
5 BY MR. JOHNSON:
6 Q. Well, whether you actually met her or not,
7 when did you first become aware that Nancy E. McFadden
8 was with the Department and who she was and you could
9 recognize who she was?
10 MR. WATLER: Recognize her physical likeness?
11 MR. JOHNSON: Physical likeness.
12 MR. WATLER: Or her name, and her name was --
13 MR. JOHNSON: Exactly.
14 MR. WATLER: Your question is very unclear.
15 MR. JOHNSON: Okay. Thank you for helping
16 define it.
17 THE WITNESS: First time I met Ms. McFadden
18 was June 12th of 1998.
19 BY MR. JOHNSON:
20 Q. All right. Was that also the first time you
21 met Nancy Deamer LoBue or LoBue, however you pronounce
22 it?
23 A. No. I recognized her from before, from
24 sometime before.
25 Q. All right. Had she been in some other

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- 1 meeting?
2 A. No. I had not had a meeting with her on
3 these matters.
4 Q. Well, all right. In what context then had
5 you encountered Ms. LoBue, if you hadn't had a meeting,
6 but somehow you had previous contact with her?
7 A. My recollection is that she has been with the
8 Federal Aviation Administration for some time.
9 Q. All right. Oh, yeah, she's with the FAA, I
10 see her card is a little different.
11 Now, why was -- do you know why a
12 representative of the Federal Aviation Administration
13 was at this June 12th, 1998 meeting?
14 A. Yes.
15 Q. All right. Why?
16 A. The Federal Aviation Administration oversees
17 the Federal funding of airports and receiving Federal
18 funds for airports requires airports to adhere to
19 certain obligations. Love Field is one such airport,
20 as is DFW.
21 Q. Okay. Who had requested, if you know, that
22 the FAA be represented at the June 12th meeting?
23 A. I don't know.
24 Q. Did you -- at the meeting did you ever come
25 to understand why Ms. LoBue was there?

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- 1 A. Yes.
2 Q. All right. Tell me about how you came to
3 that understanding.
4 A. The FAA, and in particular the Counsel's
5 Office of the Airport Division has a very keen interest
6 in what's going on at Love Field.
7 Q. How did you become aware of that?
8 A. As part of the discussions of that day.
9 Q. Okay. Tell me about what part of the
10 discussion you're referring to, what the content was
11 that gave you that impression?
12 A. We talked about the Federal law governing
13 Love Field, the Wright and Shelby Amendments. We
14 talked about the litigation in Tarrant County and the
15 Federal litigation. We talked about the primary
16 jurisdiction of the Department of Transportation in the
17 interpretation and enforcement of Interstate Commerce
18 laws, and what we felt was not only their duty but
19 their public trust to intervene in the lawsuit.
20 Q. Okay. This might be a good time to try and
21 throw a rope around just exactly who during this June
22 12th date attended or dropped in on or called in on or
23 in any way participated in the meeting; all right? And
24 we've already got Nancy McFadden and we've got Ms.
25 LoBue and we've got you and we've got Mr. Watler and

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we've got Mr. Faberman. Can you tell me who else in any way participated either by physical presence, telephone or in any other fashion participated in that meeting at any time during the meeting or during breaks that occurred in the meeting?

A* I recall Mr. Tom Ray was present at the meeting. He is of the General Counsel's Office at DOT. There were two or maybe three additional individuals, and I do not know their names.

Q. Do you know who they were with?

A. I believe one individual was with Ms. LoBue from FAA, and I think there were one or two other individuals from the General Counsel's Office at DOT.

Q. All right. I'm going to go through some -- you say you can't remember who they were. You can remember them physically being there, but you don't remember their names; is that it?

A. That's correct.

Q. Okay. Let me just go through some names and see if you do know these people and see -- so we can eliminate who they might have been, You know Steven Okun, don't you, or Okun?

A* I've met him, but I don't think I could identify him. Apologize.

Q. All right. Was he one of these three people

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Q. Does that name ring a bell with you in connection with these matters?

A. NO.

Q. Okay. Now, was there any kind of a sign-up sheet or anything like that that was passed around? You know, sometimes at these meetings in order to keep track of there they'll pass around a sheet of paper. Do you remember whether or not that was done?

A. I don't recall.

Q. Do you remember whether during the meeting or during a break or anything like that you or anyone else made any telephone calls to penons outside the meeting of June 12th?

A. I recall Ms. McFadden was called away to take a phone call once or twice during the meeting.

Q. All right. Did she reveal to the group with whom she had been speaking on those calls?

A. No.

Q. Did you come to any understanding through any other source as to whom -- about the identity of the individual she spoke with?

A. She only excused herself and said it was important and she had to go bke the phone call.

Q. All right. Very good. Now, did anyone participate in the meeting telephonically?

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that --

A. I don't recall.

Q. All right. How about Samuel Podberesky, do you know him?

A. No, sir,

Q. Do you know Paul Geier?

A. I've met Paul Geier.

Q. Was he one of the three?

A. I don't recall.

Q. All right. You've already indicated you know Patrick Murphy?

A. That's correct.

Q. Was he one of the three?

A* NO.

Q. All right. Did Mr. Murphy at any -- did any of these people I've named so far at any point in time, to your knowledge, participate in the meeting of June 12th?

A. Again, Mr. Murphy did not. I don't know whether the other gentlemen were there or not.

Q. And you know Charles Hunnicutt, was he one of the people?

A* He was not.

Q. All right. Who is Paul Olson?

A. Paul Olson? I don't know.

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A. No.

Q. And specifically I'm just asking whether or not someone who could not physically be present conferenced into the meeting through a conference speaker or anything like that?

A. No.

Q. Was anyone at this June 12th meeting that we're talking about now from -- representing Continental or Continental Express?

A* NO.

Q. Was anyone there representing Astraea, other than possibly Mr. Faberman?

A. NO.

Q. All right. Did you have an understanding as to whether or not Mr. Faberman was representing Astraea at the meeting of June 12th?

A. lie was not representing Astraea at the June 12th meeting.

Q. Who was he representing?

A. Legend Airlines.

Q. Who was Mr. Watler representing?

A. Legend Airlines.

Q. Okay. Was anyone from the City of Dallas at the meeting?

A* NO.

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- 1 Q. Do you remember the floor on which the
2 meeting took place?
3 A. Tenth floor, I believe it is.
4 Q. Do you remember the room?
5 A. No.
6 Q. They've got those goofy numbering systems up
7 there. All right. How long did the meeting last?
8 A. Less than an hour.
9 Q. Was there any documentation displayed by
10 anyone or used by anyone at the meeting?
11 A. Not that I recall.
12 Q. Was there any documentation exchanged at the
13 meeting?
14 A. I collected two business cards.
15 Q. That's it?
16 A. Yes. And I gave out my business card.
17 Q. Okay. Is there any reason you didn't get
18 business cards from the people you can't identify?
19 A. Those are the only two that slid across the
20 table.
21 Q. All right. Other than Ms. McFadden, now, was
22 there anyone else that you can identify that you knew
23 to be from the DOT that participated at any time in any
24 way in the meeting or events surrounding the meeting on
25 June 12th?

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- 1 A. Other than what we've just talked about?
2 Q. Yes. Yes, sir.
3 A. No.
4 Q. Okay. Now, when you left the meeting on June
5 the 12th did you and Mr. Faberman and Mr. Watler all
6 leave together?
7 A. Yes.
8 Q. Did anyone leave with you?
9 A. The meeting broke up at that time.
10 Q. All right, but I mean, you know, sometimes
11 folks just walk out together, and that's really what
12 I'm asking. Did you leave with anyone, any of these
13 individuals that you can identify?
14 A. No.
15 Q. Okay, because, you know, I don't want to
16 leave out the possibility, for instance, that after the
17 meeting broke up, if you left with someone else that
18 you just continued to discuss matters that the meeting
19 had concerned or other matters and that's what I'm
20 trying to get at, so --
21 A. I understand.
22 Q. Okay. Now, was there any understanding as
23 the meeting -- after the meeting broke up with regard
24 to information you would get from the DOT or
25 information that would be provided either by you or

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- 1 those acting on Legend's behalf to the DOT?
2 A. Your question is whether there was any
3 information --
4 Q. Any understanding about any subsequent
5 information exchange, regardless of which way it
6 flowed?
7 A. Yes.
8 cl. Okay. What was that, sir?
9 A. We committed to provide them any and all
10 information that they might request in the future that
11 might be helpful to them to understand the Love Field
12 issues, the Tarrant County lawsuit issues, the Federal
13 Court issues, or the Department's primary
14 jurisdictional issues, if it would be helpful.
15 Q. All right. What did you -- what was your
16 impression about what the Department intended to do
17 following the meeting?
18 A. It was not clear.
19 Q. All right. What alternatives were discussed
20 as to what they might do following the meeting?
21 A. We impressed upon them our --our opinion
22 that it was absolutely essential that the Department of
23 Transportation intervene in the Court proceedings.
24 Q. And why would that be essential?
25 A. If they didn't it would set a horrible

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- 1 precedent in the United States and wreak havoc among
2 the Air Transportation System if local courts could
3 regulate Interstate Commerce and restrict the use of
4 their airports.
5 Q. Was that position explained to the DOT?
6 A. Yes.
7 Q. Who explained it?
8 A. I did.
9 Q. And tell me how you explained it to them?
10 A. Very much the same way I just did.
11 Q. All right, sir, and to whom did you direct
12 those comments?
13 A. To the entire meeting.
14 Q. And did your presentation or your comments
15 elicit any response at all from either the FAA
16 representatives or the DOT representatives?
17 A. Yes.
18 Q. Can you tell me about that, please, sir?
19 A. Yes.
20 Q. All right. What response was elicited?
21 A. They said they had been tracking the events
22 in the Tarrant County Court and the Federal cases very,
23 very closely since its filing.
24 Q. Who said that?
25 A. The representatives at the meeting. I don't

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1 recall from whom it came directly.
 2 Q. All right. And was there any indication as
 3 to how they had been tracking, to use your words, those
 4 matters?
 5 A. No. They did make one comment that they had
 6 -they had been following all the news reports.
 7 Q. All right. Now, Mr. Faberman, of course, had
 8 been sending -- I mean among these documents that had
 9 been produced, had been sending a pretty steady stream
 10 of information to various persons at the Depa-ment of
 11 Transportation during the period of time since the
 12 lawsuit had been filed and up to this June 12th
 13 meeting; do you recall those, just generally recall
 14 those letters, sir?
 15 A. Yes.
 16 Q. And there were attachments of news stories
 17 and pleadings and things like that; do you recall that,
 18 sir, just generally?
 19 A. Yes.
 20 Q. Did you receive copies of those, by the way,
 21 those things that Mr. Faberman would send to the
 22 Department of Transportation representatives as they
 23 were sent?
 24 A. Yes.
 25 Q. Because you're not indicated as receiving

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1 copies on any of the copies we have. I just wondered
 2 if they were mailed to you at or about the same time
 3 you understood they were either mailed or delivered to
 4 the DOT?
 5 A. Yes.
 6 Q. All right. Had you requested that Mr.
 7 Faberman keep you advised of those things in that
 8 manner?
 9 MR. WATLER: Well, that's getting pretty
 10 close to the line on attorney/client
 11 communications.
 12 BY MR. JOHNSON:
 13 Q. I don't want to get into anything you
 14 necessarily told Mr. Faberman unless it was in front of
 15 somebody else, so let me rephrase the question. Had
 16 you -- had you ever received any response or copies of
 17 any response made by the DOT to any of Mr. Faberman's
 18 mailings or delivery to the Department?
 19 A. I'm not aware of any.
 20 Q. Why was Mr. Faberman sending these things to
 21 the Department during the period of time from December
 22 up to and including June the 12th?
 23 MR. WATLER: Well, I think, again, you're
 24 getting into matters of attorney work product,
 25 attorney/client communication.

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1 BY MR. JOHNSON:
 2 Q. I'm just asking for your understanding.
 3 MR. WATLER: No. I think his understanding
 4 invades the area of attorney work product.
 5 MR. JOHNSON: Well, are you instructing him
 6 not to answer that one?
 7 MR. WATLER: I will that question. You may
 8 be able to rephrase it.
 9 BY MR. JOHNSON:
 10 Q. All right. Was Mr. Faberman, to your
 11 knowledge, sending those solicited or unsolicited by
 12 the Depa-ment of Transportation?
 13 A. I don't know that.
 14 Q. Okay. Did you have any presumption about
 15 that?
 16 A. Presumption?
 17 Q. Yeah, did you ever think about it one way or
 18 the other?
 19 A. As to whether the Depa-ment had requested
 20 anything?
 21 Q. As to whether or not these documents were
 22 being sent in response to their open interest or
 23 expressed interest in receiving information?
 24 A. And your question is?
 25 Q. Had you ever thought about whether --

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1 A. No.
 2 Q. Okay. And what I'm really trying to get at
 3 is did you think this was just some crazy lawyer
 4 fogging everything in the world he could think of up to
 5 the DOT with no purpose or did you understand that
 6 there was some sort of reason these things were going
 7 up there?
 8 (Discussion off record between the witness
 9 and Mr. Watler.)
 10 THE WITNESS: Yes, there was a reason.
 11 BY MR. JOHNSON:
 12 Q. What was this?
 13 MR. WATLER: We object to that. It's in the
 14 nature of attorney work product, attorney/client
 15 communication.
 16 BY MR. JOHNSON:
 17 Q. Okay, so you're telling me that the reason
 18 that you know of was something that you were told by a
 19 lawyer, your lawyer; is that what you're telling me?
 20 A. Yes.
 21 Q. All right. When did you learn that Nancy
 22 McFadden would be present at the meeting of June 12th?
 23 A. When I showed up at the meeting.
 24 Q. Okay, so before you actually showed up in the
 25 offices there at the Depa-ment of Transportation with

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1 Mr. Faberman and Mr. Watler in tow you didn't have any
 2 understanding about who from the Department's side
 3 would be there; is that right?
 4 **A. We were hopeful that she would be in**
 5 **attendance.**
 6 **Q. Why were you hopeful, sir?**
 7 **A. She is the General Counsel of the Department**
 8 **of Transportation.**
 9 **Q. All right, and why was that important to you?**
 10 **A. Because she is the -- is the principal, the**
 11 **main principal, we felt, who would need to move to**
 12 **intervene in the lawsuit.**
 13 **Q. Okay. And was it your goal then to try to**
 14 **influence her in that decision as a result of what you**
 15 **intended to present at the meeting?**
 16 **A. Absolutely.**
 17 **Q. Okay. And why did you want that**
 18 **intervention?**
 19 **A. Because the -the concept of Federal law**
 20 **being interpreted and Interstate Commerce being**
 21 **regulated by a State Court in Fort Worth, Texas, I feel**
 22 **is totally inappropriate, and since it is the**
 23 **Department of Transportation who should be the primary**
 24 **jurisdiction over the interpretation of Federal law and**
 25 **the enforcement of Federal Interstate Commerce laws, we**

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1 felt they had a duty to do their job.
 2 **Q. All right, sir. Now, did Ms. McFadden**
 3 **respond with regard to her beliefs as to whether or not**
 4 **she agreed or disagreed with that position?**
 5 **MR. WATLER: I think it's asked and answered,**
 6 **but go ahead.**
 7 **THE WITNESS: No.**
 8 **BY MR. JOHNSON:**
 9 **Q. She didn't say anything one way or the other**
 10 **on that point?**
 11 **A. On that point, no.**
 12 **Q. Okay. What about the FAA, what, if anything,**
 13 **could they do as a result of this presentation, as you**
 14 **understood it?**
 15 **A. What could they do?**
 16 **Q. What could they do, yeah. In other words,**
 17 **you've got -- you've painted a scenario here to Ms.**
 18 **McFadden about your belief of the role of the DOT and**
 19 **the importance of their taking some action to preserve**
 20 **their position and their authority, to summarize your**
 21 **answer, I'm just summarizing.**
 22 **MR. WATLER: I object to that as a**
 23 **mischaracterization.**
 24 **MR. JOHNSON: Yeah, I'm sure you will.**
 25 **BY MR. JOHNSON:**

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1 **Q. I'm asking you if with regard to the FAA you**
 2 **had any understanding as to what effect, influence,**
 3 **purpose such a plea might have pertaining to that**
 4 **agency?**
 5 **A. I have an understanding, yes.**
 6 **Q. All right. What is that understanding, sir?**
 7 **A. The FAA under its Federal grants of funding**
 8 **to airports may, if it chooses to, to withhold those**
 9 **Federal grants if they feel airports are not complying**
 10 **with the terms of their grant assurances.**
 11 **Q. Did you express as part of your presentation**
 12 **your belief and Legend's belief that that was the case**
 13 **in the Love Field instance?**
 14 **A. No.**
 15 **Q. All right. Did you request the FAA to take**
 16 **any action with regard to Love Field funding or other**
 17 **airport funding based upon what was happening in the**
 18 **litigation?**
 19 **A. No.**
 20 **Q. All right. Did you make any request or plea**
 21 **of the FAA at all?**
 22 **A. No.**
 23 **Q. Did you -- I think we've already covered**
 24 **this. Were you kind of surprised to see that the FAA**
 25 **was even there?**

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1 **A. I wasn't aware that they would attend, but**
 2 **I'm not surprised.**
 3 **Q. Okay. Did the FAA representatives say**
 4 **anything during that meeting that you can remember?**
 5 **A. Not that I remember.**
 6 **Q. All right. Now, what did Mr. Watler say, if**
 7 **anything, during that meeting of June 12th, 1998?**
 8 **A. Mr. Watler described the current status of**
 9 **the litigation.**
 10 **Q. Do you remember how he described it?**
 11 **A. Very well.**
 12 **Q. All right. Tell me about that.**
 13 **A. I don't recall exactly what he said.**
 14 **Q. Well, just generally how did he describe the**
 15 **current status of the litigation as of June 12th, 1998,**
 16 **to the Department of Transportation and to the Federal**
 17 **Aviation Administration representatives of that**
 18 **meeting?**
 19 **A. He went through the chronology of events. He**
 20 **described the events leading to the TRO and the**
 21 **injunction hearing, the issues being presented before**
 22 **the Court and just a general summary of the facts**
 23 **regarding the litigation.**
 24 **Q. All right, sir. And did Mr. Faberman say**
 25 **anything that you can remember?**

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1 A. Yes.
 2 Q. What did he say?
 3 A. Mr. Faberman talked about the impact of this
 4 litigation on the Federal Air Transportation System,
 5 the precedent that it might set, the roles and
 6 responsibilities of the Federal Government, the Wright
 7 and Shelby Amendments and the obligation as we saw it
 8 of the Department of Transportation to aggressively
 9 assert their authority in the -- in this particular
 10 matter.
 11 Q. All right, sir. With regard to that last
 12 category do you remember what Mr. Faberman said to the
 13 representatives of the DOT and the FAA about the rights
 14 and obligations to assert their authority in this
 15 matter might be?
 16 A. Yes, to **intervene** in the lawsuit.
 17 Q. Anything else?
 18 A. **No. Both the State and the Federal lawsuits.**
 19 Q. Now, you indicated that Ms. McFadden in this
 20 meeting -- correct me if I'm wrong in this
 21 recollection, but you indicated that Ms. McFadden had
 22 said that they were **aware or up-to-date on** things as a
 23 result of what they read in the news and things like
 24 that, and you knew that Mr. Faberman had been **sending**
 25 information to the DOT by virtue of **getting** copies of

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1 his correspondence and enclosures. Did the -- did the
 2 DOT indicate any other source of information with
 3 regard to what was happening with regard to Love Field
 4 and the litigation in Fort Worth?
 5 A. Yes.
 6 Q. All right. Tell me about that, please, sir.
 7 A. **They said they had had other meetings with**
 8 **parties to the lawsuit.**
 9 Q. Did they --
 10 A. **Including yourselves.**
 11 Q. Did they give you any details of those
 12 meetings?
 13 A*. No.
 14 Q. Who did they say those meetings had been
 15 with?
 16 A. I think they **identified** them at that meeting
 17 **only as the other parties.**
 18 Q. Okay. If that is the case did they -- they
 19 didn't mention any specific party?
 20 A. **I don't recall how they stated it.**
 21 Q. All right. Did they mention any specific
 22 meeting?
 23 A. **They mentioned they had a -- recently had had**
 24 **a meeting with one of the other parties.**
 25 Q. All right. Did they identify that party?

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1 A. **I don't recall if they did or not.**
 2 Q. Okay, and did Ms. McFadden indicate to you
 3 that she personally had had that meeting?
 4 A. **No.**
 5 Q. All right. Did the other two DOT people that
 6 you can't identify for me indicate they had been
 7 involved in such a meeting?
 8 A. **That was my impression.**
 9 Q. Okay. And you got that impression as a
 10 result of something those individuals said?
 11 A. **That's correct.**
 12 Q. All right. Now, did Mr. Watler specifically
 13 provide any written information to either the FAA or
 14 the DOT representatives at that meeting?
 15 A. **No.**
 16 Q. Did Mr. Faberman do that?
 17 A. No.
 18 Q. All right. Did the DOT provide you any --
 19 either you personally or either one of the lawyers
 20 anything in writing at that meeting?
 21 MR. WATLER: Asked and answered, but go
 22 ahead.
 23 THE WITNESS: I collected two business cards.
 24 BY MR. JOHNSON:
 25 Q. That's it, okay. Now, when Mr. Watler was

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describing the status of the litigation did he
 specifically characterize the Court and what he thought
 of the Court and the Court's actions?
 A. **I don't recall that he did.**
 Q. Did Mr. Faberman?
 A. Yes.
 Q. What did Mr. Faberman say about that?
 8 A. **Mr. Faberman indicated that he felt that the**
lawsuit was an attempt by American Airlines to
eliminate competition and was an abuse of the Court
system in order to try to eliminate competition for
itself and its DFW hub.
 13 Q. All right. Did Mr. Faberman elaborate on why
 14 he held that belief?
 15 A*. **By elaborate --**
 16 Q. Well, I mean that's a pretty general
 17 statement and obviously coming from a lawyer it has no
 18 backup, just a man's opinion, did he try -- did he try
 19 to elaborate or give details as to why he had that
 20 opinion?
 21 MR. WATLER: Object to counsel's side-bar.
 22 THE WITNESS: Please repeat the question.
 23 BY MR. JOHNSON:
 24 Q. Sure. Did Mr. Faberman provide any facts or
 25 information to the DOT or to the FAA in support of that

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1 belief?
 2 A. I can't quote exactly what Mr. Faberman said
 3 at the meeting.
 4 Q. I'm not asking you to quote exactly. What
 5 general recollection do you have with regard to any
 6 facts or details that Mr. Faberman may have provided
 7 bearing on that general opinion that he expressed to
 8 the DOT and the FAA?
 9 A. It was Mr. Faberman's impression of what was
 10 being -what was being conducted within the Tarrant
 11 County Court process.
 12 Q. All right. I think you've seen his letter
 13 where he refers to "that circus in Fort Worth." Do you
 14 remember that? Do you remember that part of the
 15 letter, one of his letters to the DOT?
 16 MR. WATLER: Do you have a copy to show the
 17 witness?
 18 BY MR. JOHNSON:
 19 Q. No. I'm just asking if you recall that?
 20 A. I don't recall that.
 21 Q. Did he use any kind of similar pejorative
 22 terminology with regard to the events in the Fort Worth
 23 litigation in his reports and discussions?
 24 A. Yes.
 25 Q. Tell me what those were, please, sir?

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1 A. I'd have to refer to the documents
 2 themselves.
 3 Q. Okay. I mean I'm just talking about now his
 4 comments that day, June 12th.
 5 A. I don't recall what adjectives he might have
 6 used.
 7 Q. Okay. Did you, yourself, attempt to
 8 characterize your feelings about -- in your -- in this
 9 report to the DOT and the FAA, your personal feelings
 10 about the court or the actions of the Court or the
 11 litigation or the motivations of the litigation?
 12 A. Yes.
 13 Q. Tell me about that, please.
 14 A. I think it's a sham, and I told the
 15 Department of Transportation that it was a sham.
 16 Q. Did you explain or offer any kind of facts or
 17 detail to the Department of Transportation
 18 representatives with regard to that belief or in
 19 support of that belief?
 20 A. I think I described the competitive
 21 environment in the Dallas area, the control over DFW
 22 Airport, both market and operational control of
 23 American Airlines, the Wright Amendment, the history of
 24 the Wright Amendment, the attempts to keep Southwest
 25 from flying, the administrative and legal victories

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1 that Southwest had won, the newly invented argument of
 2 proprietary powers that Fort Worth and American
 3 Airlines were espousing, and the fact that--that this
 4 lawsuit in a Tarrant County Court was senseless, would
 5 provide no finality to the issue and that the
 6 Department of Transportation could put an end to it,
 7 and I felt it was their duty to do so.
 8 Q. Did the Department of Transportation provide
 9 any response at all to those comments, and I'm talking
 10 about through the representatives there?
 11 A. They listened very intently.
 12 Q. All right. Did they respond?
 13 A. They expressed their very deep concern.
 14 Q. Tell me how they did that, sir?
 15 A. They said, "We're very concerned."
 16 Q. Did they use those words or words to that
 17 effect?
 18 A. As I recall, they used the words "very
 19 concerned."
 20 Q. Was that Ms. McFadden?
 21 A. No.
 22 Q. Who was it?
 23 A. I don't recall.
 24 Q. Was there any elaboration on the level of
 25 concern, the degree of concern, reasons for concern, or

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1 the areas of concern?
 2 A. Not that I recall.
 3 Q. Did you attempt to follow up in any way on
 4 what those concerns might be at that meeting?
 5 A. No.
 6 Q. Now, was there any indication given that the
 7 Department intended to follow up on any of its
 8 concerns?
 9 MR. WATLER: Asked and answered.
 10 THE WITNESS: No.
 11 MR. JOHNSON: I'm going to have to request a
 12 break. Little too much coffee.
 13 MR. WATLER: Sure.
 14 (A recess was taken from 10:56 a.m. until
 15 11:06 a.m.)
 16 BY MR. JOHNSON:
 17 Q. Mr. McArtor, did you take any prepared notes
 18 or texts to read from or to refer to at the meeting of
 19 June the 12th, for your comments?
 20 A. No.
 21 Q. This was just off the cuff, whatever you --
 22 spontaneous presentation?
 23 A. Yes.
 24 Q. And did Mr. Watler read from anything when he
 25 made his comments?

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1 A. No.
 2 Q. How about Mr. Faberman?
 3 A. No.
 4 Q. You said you didn't know Ms. McFadden before.
 5 Did you know any of these other individuals, and I'll
 6 just go through the list of names, I'm talking about
 7 before these events regarding Love Field, really, you
 8 know, if you have any kind of history with any of these
 9 people is what I'm after, And I'll ask you with regard
 10 to Tom Ray?
 11 A. I had -- I have met Tom Ray before.
 12 Q. Under what circumstance, just generally?
 13 A. I really couldn't tell you. I just -- he's a
 14 familiar face.
 15 Q. How about Steven Okun, I think you just
 16 recognize his name, you don't really know him?
 17 MR. WATLER: I believe counsel, earlier when
 18 you read that name he couldn't tell you whether or
 19 not he was at the meeting.
 20 BY MR. JOHNSON:
 21 Q. That's the reason I'm asking this. Do you
 22 have any association --
 23 MR. WATLER: For the record I object to it as
 24 mischaracterization, if you're trying to
 25 characterize Mr. Okun or any of these others were

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1 at the meeting that's a mischaracterization of his
 2 prior testimony.
 3 MR. JOHNSON: I didn't mean to imply Mr. Okun
 4 was at the meeting. Sorry if there was some
 5 misunderstanding there.
 6 BY MR. JOHNSON:
 7 Q. With regard to just general associations or
 8 any kind of history with these folks did you have any
 9 kind of history, association or previous interaction
 10 with Mr. Okun at all?
 11 A. Not that I'm aware.
 12 Q. Podberesky, same question?
 13 A. Not that I'm aware.
 14 Q. Mr. Geier?
 15 A. His name was familiar to me from the -- I
 16 mean Paul Geier's name is familiar to me.
 17 Q. Do you know why? & can you tell me why it is?
 18 A. His name, as I recall, was first -- I became
 19 aware of his name during the DOT, call it Wright
 20 Amendment Interpretation Ruling in '96.
 21 Q. All right. Did you have any discussions or
 22 interaction with him as a result -- in connection with
 23 that matter?
 24 A. No.
 25 Q. All right. How about Mr. Murphy, Patrick

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1 Murphy, do you have any personal, social, professional
 2 associations with Mr. Murphy?
 3 A. Mr. Murphy has been at the Department for
 4 many years. I knew who he was.
 5 Q. Did you know him in any way other than just
 6 to recognize his name or see him routinely around the
 7 Department?
 8 A. I had worked with Mr. Murphy, although I
 9 can't tell you in what capacity he was at the
 10 Department, 10 years earlier.
 11 Q. All right. How about Charles Hunnicutt, do
 12 you know Mr. Hunnicutt other than as Assistant
 13 Secretary for Aviation and International Affairs of the
 14 Department of Transportation?
 15 A. No.
 16 Q. Have you had any personal or private
 17 associations with Mr. Hunnicutt?
 18 A. No.
 19 Q. Have you ever had any business relations or
 20 business arrangements or business contacts with anyone
 21 at -- now or previously -- at the DOT?
 22 A. No.
 23 Q. Okay.
 24 (Discussion off record between the witness
 25 and Mr. Watler.)

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1 BY MR. JOHNSON:
 2 Q. Has the Ungaretti firm represented you or any
 3 of your business activities other than the Legend and
 4 Legend related matters?
 5 A. No.
 6 Q. Has Mr. Faberman ever represented you or any
 7 of your business activities before?
 8 A. My personal?
 9 Q. Yeah, personal or business?
 10 A. No.
 11 Q. How about your litigation history just for a
 12 second, since I'm thinking about it. Other than this
 13 litigation involving -- the litigation matters
 14 involving Legend, have you ever been involved in other
 15 business litigation, personal investment business?
 16 A. No.
 17 Q. Okay. I know you were with Federal Express,
 18 and I'm sure they've been sued more than once, and I'm
 19 excluding that kind of thing, but any kind of personal
 20 or business litigation you may have been in either as a
 21 Defendant or a Plaintiff that you can tell me about
 22 today. Has there been any?
 23 A. NO.
 24 Q. Now, at the June 12th meeting, and I can't
 25 remember if I've asked this before, did the Department

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- 1 bring -- Department representatives or FAA
 2 representatives bring anything to the meeting, whether
 3 or not they showed it to you? Do you remember them
 4 coming there with any files or anything is really what
 5 I'm asking?
- 6 **A. They took notes.**
- 7 **Q. Did you take notes?**
- 8 **A. No.**
- 9 **Q. But you remember Ms. McFadden taking notes?**
- 10 **A. I don't recall if she took notes.**
- 11 **Q. Do you remember whether or not the FAA**
 12 **representative took notes?**
- 13 **A. Yes.**
- 14 **Q. Okay. And how about the other two people**
 15 **with the DOT that you can't remember?**
- 16 **A. Yes.**
- 17 **Q. They took notes as well?**
- 18 **A. Yes.**
- 19 **Q. Have you ever seen those notes?**
- 20 **A. No.**
- 21 **Q. Following the meeting of June 12th did you,**
 22 **or to your knowledge, anyone else at the meeting**
 23 **prepare any kind of summary of what had occurred at the**
 24 **meeting?**
- 25 **A. Not that I recall.**

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- 1 **Q. Have you ever seen any kind of document**
 2 **purporting to be a summary or bullet point memo or**
 3 **anything like that with regard to that meeting?**
- 4 **A. No.**
- 5 **Q. Now, you wrote a letter to Ms. McFadden**
 6 **following that meeting, didn't you?**
- 7 **A. That's correct.**
- 8 **Q. Why did you do that?**
- 9 **A. I thanked her for her time and courtesy for**
 10 **meeting with us.**
- 11 **Q. Why did you do that?**
- 12 **A. That's a common courtesy to thank somebody**
 13 **for taking their time, so I was thanking her for her**
 14 **time.**
- 15 **Q. Did Ms. McFadden or any other persons at the**
 16 **meeting write a letter to you?**
- 17 **A. No.**
- 18 **Q. Have you ever, since June 12th, had any**
 19 **personal contact with Nancy McFadden in any capacity?**
- 20 **A. Yes.**
- 21 **Q. More than one occasion?**
- 22 **A. No.**
- 23 **Q. All right. What was the occasion following**
 24 **June 12th, then?**
- 25 **A. Department of Transportation hosted a 20th**

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- 1 **Anniversary of Airline Deregulation Conference. She**
 2 **was in attendance at the lunch speech by Secretary**
 3 **Slater, and I said hello to her after the meeting or**
 4 **after the speech.**
- 5 **Q. All right. Where was this and when was this?**
- 6 **A. This was approximately three weeks ago, and**
 7 **the conference was -- I'm trying to think of the hotel.**
 8 **It was in Washington, D.C., at a hotel in Washington,**
 9 **D.C.**
- 10 **Q. Did you meet any or run into any other DOT**
 11 **people there?**
- 12 **A. Yes.**
- 13 **Q. Who?**
- 14 **A. Mr. Murphy was in attendance, Mr. Hunnicutt**
 15 **was in attendance. That's all I recall saying hello to**
 16 **at the conference.**
- 17 **Q. All right. Give me the substance of your**
 18 **conversation with Ms. McFadden at that meeting, please,**
 19 **sir.**
- 20 **A. I said hello. She said hello. She said**
 21 **thank you for participating in the panel or something**
 22 **like that. We exchanged pleasantries about the**
 23 **Secretary's speech.**
- 24 **Q. Was anything mentioned with regard to the**
 25 **activities of the DOT on Love Field issues?**

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- 1 **A. No.**
- 2 **Q. Was anything mentioned with regard to the**
 3 **litigation in Fort Worth or the litigation in Dallas?**
- 4 **A. No.**
- 5 **Q. Who was with you at that meeting, if anyone?**
- 6 **A. Nobody else.**
- 7 **Q. All right. Now, you say you participated in**
 8 **some sort of panel?**
- 9 **A. That's correct.**
- 10 **Q. What was the panel?**
- 11 **A. The panel was billed as industry leaders, and**
 12 **I was asked to participate with my comments regarding**
 13 **the successes and yet to be decided success of airline**
 14 **deregulation.**
- 15 **Q. All right. Did you have any prepared remarks**
 16 **in connection with that or...**
- 17 **A. I had some back of the envelope themes that I**
 18 **wanted to make sure that I said.**
- 19 **Q. All right. Did any of those themes deal with**
 20 **the Legend Airlines experiences you had had?**
- 21 **A. Yes.**
- 22 **Q. What were they, please, sir?**
- 23 **A. The -- I talked about the difficulty of**
 24 **putting together a new airline in today's deregulated**
 25 **environment.**

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- 1 Q. What did you say about that to the crowd
2 which included these DOT people?
- 3 MR. WATLER: I don't think you've established
4 that. I think without establishing that you're
5 pretty far afield.
- 6 MR. JOHNSON: Maybe I assumed something.
- 7 BY MR. JOHNSON:
- 8 Q. Was there a crowd?
- 9 MR. WATLER: You haven't established that
10 there were any DOT officials there.
- 11 MR. JOHNSON: I'm working on this.
- 12 BY MR. JOHNSON:
- 13 Q. Was there a crowd there?
- 14 A* I wouldn't describe it as a crowd, but there
15 were attendees.
- 16 Q. All right, sir. This took place in some sort
17 of a meeting room or ballroom at the hotel?
- 18 A. That's right. That's right
- 19 Q. Usually when there's a Secretary of
20 something, there's a crowd, rented or otherwise.
21 Strike that. But we'll -- were DOT personnel among the
22 attendees at the time you made your remarks?
- 23 A. Yes.
- 24 Q. And was Ms. McFadden and these other folks
25 that you -- Mr. Hunnicutt and -- gosh, I've already

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- 1 forgotten who you said the other one was -- Mr. Murphy
2 also among those assembled when you made your remarks?
- 3 A. I don't think any of those -- you referred to
4 three?
- 5 Q. Yeah.
- 6 A. I don't think any of the three were present.
- 7 Q. What other DOT people other than Ms. McFadden
8 and the Secretary of Transportation were there that you
9 can recall at the time you made your remarks?
- 10 A. The Secretary was not there.
- 11 Q. Oh, I'm sorry. All right. Anybody else
12 other than Ms. McFadden you can recall associated with
13 the Department of Transportation?
- 14 A. Ms. McFadden was not there.
- 15 Q. Ms. McFadden was not there, either?
- 16 A. No.
- 17 Q. f-tow did it come that you go to a meeting,
18 make some remarks and run into Ms. McFadden who wasn't
19 there when you made your remarks?
- 20 A. I thought I explained Secretary Slater had
21 given a lunch speech and it was at the lunch speech, at
22 the close of the lunch speech, exiting the room, that I
23 said hello to Ms. McFadden.
- 24 Q. And Ms. McFadden made remarks thanking you
25 for being on this panel?

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- 1 A. On the panel, right.
- 2 Q. As a participant in the panel you made
3 remarks?
- 4 A. Yes.
- 5 Q. Those were the remarks we were discussing.
6 Are you telling me now Ms. McFadden was congratulating
7 you for participating -- or thanking you for
8 participating on a panel discussion that she did not
9 attend?
- 10 A. I was on the agenda. It hadn't occurred yet.
- 11 Q. All right. Did anyone from the Department of
12 Transportation remain in the -- among the attendees at
13 the time you made your remarks that you can identify?
- 14 A. Not that I can identify.
- 15 Q. Did you --well, do you know if these remarks
16 were in any way transcribed or otherwise recorded?
- 17 A. I suspect that they may have been recorded.
- 18 MR. WATLER: Don't guess or speculate.
- 19 THE WITNESS: I don't know.
- 20 MR. WATLER: If you know, tell him. If you
21 don't, tell him you don't know.
- 22 THE WITNESS: I don't know.
- 23 BY MR. JOHNSON:
- 24 Q. Who was it that invited you to participate in
25 this panel?

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- A. The organizers of the event.
- Q. And who was that?
- A* I don't recall the company name. They're
event organizers.
- Q. Well, I mean was it a private company?
- A. Yes.
- Q. In the Transportation industry?
- A. In the event organizing business.
- Q. Oh, all right. Do you remember the name of
the event, or the name given to the event?
- A. It was the 20th Anniversary Of Airline
Deregulation Conference.
- Q. I guess you would have some sort of
correspondence probably in your records about how you
wound up there; right?
- A. Right.
- Q. Now, following the meeting of June the 12th
did you have any other personal contact with Nancy
LoBue?
- A. No.
- Q. Did you write Ms. LoBue a letter thanking her
for her time and attention like you did to Ms.
McFadden?
- A. No.
- Q. Why didn't you write a thank you letter to

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1 Ms. LoBue?
 2 A. Why didn't I write a letter?
 3 Q. Right. I mean you've indicated to me it's
 4 just a common courtesy to thank people for attending a
 5 meeting like that, that's why you wrote Ms. McFadden.
 6 Why didn't you exercise that same common courtesy to
 7 Ms. LoBue?
 8 A. Ms. McFadden was the ranking attendee.
 9 Q. Okay. Have you had any follow-up contact
 10 with either of the other two individuals that you can't
 11 name for me from the Department of Transportation that
 12 attended the meeting?
 13 A. I have not.
 14 Q. Have you had any contact with anyone from the
 15 Department of Transportation following June the 12th?
 16 MR. WILSON: Other than, I assume, the
 17 conference?
 18 BY MR. JOHNSON:
 19 Q. Right, that you haven't already identified
 20 for me.
 21 MR. WATLER: I'm sorry, would you repeat the
 22 question? I wasn't following the question. I'm
 23 sorry.
 24 BY MR. JOHNSON:
 25 Q. Starting, let's say, after your meeting on

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1 June the 12th with these DOT folks and the FAA
 2 representative and excluding these meetings that you
 3 have already described for us that took place at the
 4 20th Anniversary of Flight whatever that was, have you
 5 ever had any other contacts with any representatives of
 6 the Department of Transportation?
 7 A. Yes.
 8 Q. All right. Can you characterize those for me
 9 and tell me what they were?
 10 A. With regard to our 401 Fitness Application.
 11 Q. Have those been meetings?
 12 A. No.
 13 Q. Have they been correspondence?
 14 A. Yes.
 15 Q. Have they also been telephone calls?
 16 A. Not that I recall.
 17 Q. All right. Has anyone on your behalf or on
 18 Legend's behalf, subsequent to June the 12th, had any
 19 meetings, telephone calls or conferences with
 20 representatives of the Department of Transportation or
 21 the Federal Aviation Administration?
 22 A. Yes.
 23 Q. All right. Can you tell me what you know
 24 about those meetings, contacts, telephone calls,
 25 conferences?

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1 A. One is part of the 401 Application.
 2 Q. All right. Any other?
 3 A. Communications of counsel.
 4 Q. Which counsel?
 5 A. Of Mr. Faberman.
 6 Q. Allright, and who has Mr. Faberman met
 7 with --
 8 MR. WATLER: Assumes facts not in evidence.
 9 BY MR. JOHNSON:
 10 Q. -- subsequent to, if he has met, subsequent
 11 to June 12th, at the Department of Transportation?
 12 A. I don't know.
 13 Q. All right. Do you know if he's actually had
 14 any meetings?
 15 A. No.
 16 Q. Has he had correspondence, is that what
 17 you're referring to?
 18 A. Yes.
 19 Q. How about telephone calls?
 20 A. Yes.
 21 Q. All right. And tell me what you know about
 22 telephone calls that Mr. Faberman has had with the
 23 Department of Transportation, subsequent to June 12th,
 24 representatives, that is?
 25 A. I'm aware of his calls as part of the

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1 follow-up to our 401 Application process.
 2 Q. All right. Anything with regard to this
 3 litigation in Fort Worth or Dallas or the Love Field
 4 disputes?
 5 A. I'm not aware of any.
 6 Q. Okay. Now, you remember Ms. McFadden's
 7 letter that was sent to Continental, don't you?
 8 A. I'm aware of it, yes.
 9 Q. The one in the litigation?
 10 A. Right.
 11 Q. I think you've said in your answers to
 12 interrogatories that the first time you saw that letter
 13 was the day that it was produced in Court by the
 14 Continental lawyers; is that right?
 15 A. That's correct.
 16 Q. My questions to you are more in line of when
 17 you knew anything about it, and I'll be more specific
 18 in the following line of questions. When did you learn
 19 that -- anything about the letter, whether you saw it
 20 or not, when did you first learn about the letter or
 21 the existence of the letter or the existence of drafts
 22 of the letter?
 23 A. The morning that I saw it in Court.
 24 Q. So are you telling me then that when it was
 25 produced in Court is the first time that you even knew

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- 1 this letter was in the works?
 2 A. **That's** correct.
 3 Q. All right. And that prior to that time you
 4 had not -you had **absolutely** no information that such
 5 a letter was being sought by **Continental**; is that
 6 correct?
 7 A. **That's correct.**
 8 Q. Had you ever had **conversations** with any
 9 **representatives** of **Continental**, the **substance** of which
 10 was that if they were to ask these **questions** if was
 11 your belief the **Department of Transportation** would
 12 respond **promptly** and in a given **fashion**?
 13 A. No.
 14 Q. Did you have any knowledge that **Continental**
 15 was seeking information or seeking a **position** or a
 16 letter from the **FA** -- from the **DOT**?
 17 A. No.
 18 Q. All right. Did you **actually** obtain a copy of
 19 the letter that morning in Court?
 20 A. **Obtain --**
 21 Q. Were you given a copy?
 22 A. I was **shown** a copy. I don't **recall whether I**
 23 **retained it.**
 24 Q. All right. Who showed it to you?
 25 A. My counsel.

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- 1 a. Which one?
 2 A. I don't recall.
 3 Q. All right, sir. Now, did you have a chance
 4 to read the letter at that point?
 5 A. Briefly.
 6 a. I mean did you make it through the whole
 7 letter in your -- in that first opportunity?
 8 A. I don't recall.
 9 Q. All right. If you didn't get a copy of if
 10 that morning in the **courtroom** -- I fake that back. If
 11 you didn't **initially** have a copy **provided** to you at
 12 some time **during** that day did you receive a **copy**?
 13 A. **Yes.**
 14 Q. All right. Where is that copy?
 15 A. I don't know.
 16 Q. From whom did you receive that copy?
 17 A. From counsel.
 18 Q. Now, after you read -- after you **obtained**
 19 that copy did you fake any action that -- well, let me
 20 restart that question.
 21 Did you contact anybody with regard to the
 22 letter?
 23 A. Yes.
 24 Q. Who?
 25 A. **My staff.**

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- 1 Q. Who's that?
 2 A. **I told my staff about the letter.**
 3 Q. **Yeah. Who on your staff?**
 4 A. **I don't recall precisely who the --who the**
 5 **people were that I called.**
 6 Q. Okay, well, who do you consider your staff,
 7 that might be something we ought to get out of the way
 8 now.
 9 MR. WATLER: Mr. Johnson, I think you're
 10 getting info an area of party communications.
 11 Discussions he had --
 12 MR. JOHNSON: I just want to know who you
 13 consider to be your staff.
 14 MR. WATLER: Tell him names. Don't tell him
 15 content of any communication.
 16 MR. JOHNSON: Yeah, that's it.
 17 THE WITNESS: Scott McArtor, Matt Fajack,
 18 Kevin Ogilby, typically the people that I would
 19 call from -- about litigation matters.
 20 BY MR. JOHNSON:
 21 Q. All right. Have any of these staff members,
 22 to your knowledge, ever been involved in providing
 23 information to the Department of Transportation with
 24 regard to **matters** involved in the litigation over the
 25 -- over the efforts at Legend to operate out of Love

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- 1 Field?
 2 A. **No.**
 3 Q. Did you ever **attempt** to contact Nancy
 4 McFadden regarding this letter that she wrote in
 5 response to **Continental's** letter?
 6 A. **No.**
 7 Q. Did you ever **attempt** to contact anyone at the
 8 Department of Transportation with regard to that
 9 letter?
 10 A. No.
 11 Q. Have you ever been in a meeting where a
 12 Department of Transportation representative was present
 13 and there was also a representative of **Continental**
 14 **Airlines** present?
 15 A. **No.**
 16 Q. Or a **meeting** where there was a **Continental**
 17 **Express** representative present?
 18 A. **No.**
 19 **(Discussion off record between the witness**
 20 **and Mr. Watler.)**
 21 THE WITNESS: I have no idea whether anybody
 22 from **Continental** or **Continental Express** was at the
 23 20th Anniversary of Airline Deregulation
 24 Conference.
 25 BY MR. JOHNSON:

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- 1 Q. I hear you, okay. Have you ever been at a
2 meeting where a Department of -- we'll just exclude
3 that public forum from these follow-on questions, okay,
4 sir?
- 5 A. Thank you.
- 6 Q. I appreciate you being that conscientious,
7 but have you ever been at a meeting where a Department
8 of Transportation representative was present and there
9 was also a representative of Astraea present?
- 10 MR. WATLER: Now you're excluding earlier in
11 his deposition he talked about a meeting in mid
12 '96.
- 13 BY MR. JOHNSON:
- 14 Q. Right, I'm excluding that '96 meeting.
- 15 A. No.
- 16 Q. When did you first learn that the Department
17 of Transportation was opening a docket on the Love
18 Field Service Interpretation proceeding?
- 19 A. On the 25th of August.
- 20 Q. How did you learn about that?
- 21 A. I was told that the Department had begun such
22 a proceeding.
- 23 Q. Who told you?
- 24 A. Counsel, my counsel.
- 25 Q. Which one?

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- 1 A. Mr. Faberman.
- 2 Q. All right. Where were you at that time?
- 3 A. I was in Washington, D.C.
- 4 Q. Okay. Physically where were you in
5 Washington?
- 6 A. I was in the Department of Transportation
7 Building.
- 8 cl. Where?
- 9 A. In a conference room, one of the large
10 meeting rooms.
- 11 Q. What floor?
- 12 A. Either the fourth or the tenth, wherever it
13 had been originally scheduled was moved. I don't
14 remember which floor it ended up on.
- 15 Q. Sure. Who were you meeting with?
- 16 A. I was participating in a meeting with DOT
17 officials, small airlines, State Attorneys General and
18 a couple of airports were represented.
- 19 Q. Was Mr. Faberman in that meeting with you?
- 20 A. Yes.
- 21 Q. All right. And that was the 25th of August,
22 I believe you said?
- 23 A. Yes.
- 24 Q. Was it in the morning or the afternoon?
- 25 A. Afternoon.

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- 1 Q. Who from the Department of Transportation was
2 present?
- 3 A. Mr. --Assistant Secretary Hunnicutt,
4 representatives from the General Counsel's Office,
5 representatives from the Policy Office.
- 6 Q. Can you give me names --
- 7 A. Six or seven or eight DOT people.
- 8 Q. Can you give me the names of any of these DOT
9 people other than Assistant Secretary Hunnicutt?
- 10 A. Yes. One representative was Ms. Knapp from
11 the Counsel's Office.
- 12 Q. K-N-A-P-P?
- 13 A. Yes.
- 14 Q. Do you remember her first name?
- 15 A. I believe it's Rosalyn.
- 16 Q. All right. Who else from the DOT was at this
17 August 25th meeting?
- 18 A. Mr. Murphy was there.
- 19 Q. Anyone else?
- 20 A. Like I say, seven or eight were there. I
21 don't know who they --who they were.
- 22 Q. Right. I'm just asking you if you can
23 identify those folks that you --
- 24 A. Those are the only ones that I can recall the
25 names.

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- 1 Q. All right. And who were other airline, you
2 know, other airline representatives or Attorney General
3 representatives that were there that you can remember?
- 4 A. There were several states represented. There
5 were a number of small airlines, Spirit Airlines was
6 represented.
- 7 Q. What other airlines?
- 8 A. I'm not sure. I could not be positive who
9 the other small air carriers that were represented, who
10 they were.
- 11 Q. What was the purpose of this meeting again?
- 12 A. This meeting was to get comments from the
13 industry on the competition guidelines that the
14 Department of Transportation is contemplating issuing
15 regarding predatory practices of the major air carriers
16 against smaller air carriers.
- 17 Q. How were you invited to this meeting? By
18 mail, phone call, what?
- 19 A. I was asked if I would like to attend.
- 20 Q. Who asked you?
- 21 A. Counsel of Legend Airlines.
- 22 Q. Faberman?
- 23 A. That's correct.
- 24 Q. Okay. Was he putting the meeting together?
- 25 A. No.

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- 1 Q. Let me ask it this way, maybe. Was Legend
2 the only nonflying airline at this meeting?
3 A. **To the best of my recollection, yes.**
4 Q. All right. Did Mr. Faberman represent any of
5 the other small airlines that were at this meeting?
6 A. As counsel?
7 a. Well, that, too, but I mean in any capacity?
8 A* Yes.
9 Q. Okay. Which ones did you understand that he
10 also represented?
11 A. I'm afraid my memory doesn't allow me to list
12 all the airlines.
13 Q. Right, I gotcha. First of all, did he
14 represent Spirit? That's the one you named so far?
15 A. **Spirit is a member of the Air Carrier**
16 **Association.**
17 Q. Is that the full name of that group? It
18 isn't, is it?
19 A. **It's think it's Air Carrier Association of**
20 **America, ACAA.**
21 Q. Is Legend a member of that association?
22 A. I don't know.
23 Q. Okay. Does Mr. Faberman represent that
24 association?
25 A. He is the Executive Director.

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- 1 Q. He is, okay. What states were represented by
2 their, you know, Attorney General or representatives of
3 the Attorney General Offices?
4 A* **I recall Iowa was. I don't recall who else.**
5 Q. And was it -- I don't think we tied this
6 down. Did the meeting start in the morning or
7 afternoon or when?
8 A. **Afternoon.**
9 a. Afternoon. Did you and Mr. Faberman show up
10 there together, or did you meet him there?
11 A* We went **together.**
12 Q. From his office over there?
13 A. Yes.
14 Q. Okay. And you get to this meeting and had
15 the meeting started before you learned about the Love
16 Field Service Interpretation procedure starting?
17 A. Yes.
18 Q. At what point in the meeting then did you
19 learn about this?
20 MR. WATLER: Assumes facts not in evidence.
21 BY MR. JOHNSON:
22 Q. Well, you know, I don't know that I'm
23 assuming anything. At what point during the day then
24 after the meeting started did you learn about it?
25 A. At the **conclusion** of the meeting,

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- 1 Q. Okay. When did the meeting end?
2 A. **Sometime before 5:00.**
3 Q. All right. And were you present when Mr.
4 Faberman learned about this?
5 A. No.
6 Q. Okay. So you know how Mr. Faberman learned
7 about this?
8 A. No.
9 Q. He just came up to you after the meeting and
10 said, wow, you're not going to believe what I just
11 heard, something to that effect?
12 MR. WATLER: Object to inquiry as to what Mr.
13 Faberman said to Mr. McCartor.
14 BY MR. JOHNSON:
15 Q. Let me ask you this, was Mr. Faberman acting
16 as your lawyer at that meeting?
17 MR. WATLER: He is counsel and was counsel
18 for Legend and was during -- throughout that time
19 I object to it.
20 MR. JOHNSON: This man is a virtual hatrack.
21 I'm trying to determine which one he's wearing.
22 MR. WATLER: Objection. You know, Mr.
23 Johnson, you've been fairly polite, I won't give
24 you a very high grade on that mark, but you
25 haven't been bad today, don't start heading down

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- 1 that road.
2 MR. JOHNSON: You're a tough grader.
3 BY MR. JOHNSON:
4 Q. Let me ask you this, was Mr. Faberman
5 representing you or Legend as a lawyer at that meeting?
6 MR. WATLER: I believe the question is at the
7 time that Mr. Faberman told you about an order,
8 was he representing --
9 MR. JOHNSON: I stated my question, and I
10 want a yes or no on that one. I'm entitled to an
11 answer.
12 MR. WATLER: Well, go ahead.
13 THE WITNESS: Yes.
14 BY MR. JOHNSON:
15 Q. All right, sir. And why did -- in your own
16 words, why did Legend need a lawyer at that meeting?
17 A. **What conclusion are you looking for,**
18 **counselor?**
19 Q. I wonder why did Legend need legal
20 representation at a meeting with the DOT an issues
21 concerning possible competition guidelines the DOT
22 was --
23 A. **It's not required.**
24 Q. Okay. Had Legend submitted anything with
25 regard to competition guidelines to the DOT prior to

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the meeting?

A. Not that I'm aware of.

Q. Subsequently has Legend submitted anything to the DOT on that subject?

A. I don't recall.

Q. Okay. Now, at the time that you had this conversation with Mr. Faberman about where you learned that the DOT had opened this docket on Love Field are you telling me it's your belief you got that information as an attorney/client communication?

A. Yes.

Q. All right. Can you tell me who at the DOT provided the information?

A. To Mr. Faberman?

Q. Yes.

A. No.

Q. Has Legend provided any information either directly or through Mr. Faberman to the Department of Transportation in connection with the docket regarding Love Field?

A. Yes.

Q. All right. What?

A. We filed our comments and responses to comments and responses to the comment du jour of Fort Worth.

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Q. Have you had any personal contact with anyone at the Department of Transportation on those matters?

A. No.

Q. Have you personally made any submission to the Department of Transportation regarding the docket that they've opened on Love Field issues?

A. Personally?

Q. Yeah.

A. No.

Q. All right. Have you signed anything that has gone to the DOT that you can recall that has been submitted on Legend's behalf pertaining to that docket?

MR. WATLER: Has he signed anything that's been submitted?

MR. JOHNSON: Yeah, uh-huh.

(Discussion off record between the witness and Mr. Watler.)

THE WITNESS: I think my name may appear on some of the pleadings, but I have not personally signed any.

BY MR. JOHNSON:

Q. Okay. What do you have recollection of that your name is on?

A. I have no recollection.

Q. Okay. You just think your name may have been

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used in connection with some of those submissions that have generally been made, is that it?

MR. WATLER: Counsel, if it's helpful, I know

his name is on the service list, in his individual

name as well as a couple of other people

representing Legend, appears on the service list.

It may have appeared that way that Legend has filed with the DOT.

BY MR. JOHNSON:

Q. Now, Mr. McCartur, just to get some context

here, it's becoming apparent to me that you have

contacts with the DOT on a variety of matters, such as

this Air Carrier Association of America, competition

guidelines thing, participating in some sort of panel,

et cetera, et cetera and, you know, we could probably

be here for a week trying to run down by specifics

everything that you have done that involved a contact

with the DOT on any matter, but I would like to try and

cover that by saying let's just take one basket here

and put all of this Love Field related matters,

litigation, Legend operations out of Love Field,

disputes with Fort Worth, you know, put all of those

related matters in, and I would like to ask you then if

you can tell me since 1966 on how many occasions, for

whatever reason, have you had any other contacts with

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the Department of Transportation in any capacity for

any reason other than those things that we have

stumbled upon and discussed already in this deposition?

MR. WATLER: Counsel, you said 1966.

MR. JOHNSON: 1996, excuse me.

MR. WATLER: I thought you may have misspoke.

Before you answer, I object to that as global and

vague and ambiguous, but give it your best shot.

THE WITNESS: Make sure I understand your question.

BY MR. JOHNSON:

Q. Right. I'm trying to find out how many other

ways you have been in contact with the Department of

Transportation for any reason, regardless of whether it

specifically and only involved the litigation in Fort

Worth and the disputes over Legend's flying out of Love

Field?

MR. WATLER: I thought I understood you originally to be essentially putting aside the 401 application?

MR. JOHNSON: That's right.

MR. WATLER: Am I understanding you correctly?

MR. JOHNSON: That's right. I'm putting aside the 401 application.

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MR. WATLER: And the other things he testified to previously?

MR. JOHNSON: That he's mentioned, that we mentioned.

BY MR. JOHNSON:

Q. I'm just trying to get a complete list of all of your other contacts, for whatever reason, whether they contacted you, whether Faberman was contacting you, you know, anything that had to do with the Department of Transportation, 1996 forward?

MR. WATLER: Answer it as best you can, but I repeat my earlier objection.

THE WITNESS: I was involved with the Department in the context of the clarification first and then the appeal of the department's interpretive ruling of the Wright Amendment, which was appealed by Astraea to the Fifth Circuit Court. There was some communication written, I think primarily written or verbal between counsel and the Department regarding that.

MR. WATLER: He's asking you unrelated to Love Field and disputes over Love Field.

MR. JOHNSON: No, this is --

THE WITNESS: I thought that's what you wanted.

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BY MR. JOHNSON:

Q. Right. That's it. When did that occur, sir?

A. That was in the fall of '96.

Q. All right. Okay. And that was in connection -- was that done -- was that done because you felt like those actions might impact what you had in mind as a Business Plan? Okay. You're thinking there.

A. Excuse me.

Q. Sure.

(A discussion was had off the record between the witness and Mr. Watler.)

BY MR. JOHNSON:

Q. Yes, sir, Mr. McArtor?

A. I think I have already discussed this with you, but in two meetings with the Department on our 401 Application they asked, "How is it going in the lawsuit?" That was not the purpose of the meetings, but it was brought up at the meetings.

Q. Right. That's why I'm interested in these contacts, just because whether it was the original purpose or not, you never know what folks are going to be saying, and you never know what folks are going to be asking for that might relate to these matters. And that's a perfect example of the reason that I'm after it.

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MR. WATLER: Object to counsel's side-bar.

BY MR. JOHNSON:

Q. So when did this occur, this contact?

A* My recollection is we had a meeting in roughly the February time frame of this year on the 401, and later in the spring, say March, April time frame.

MR. WATLER: Asked and answered. He testified this morning to this.

MR. JOHNSON: Right. I think we have covered this.

BY MR. JOHNSON:

a. Do you know David Bonderman?

A. No.

Q. Have you ever met David Bonderman?

A. Not that I'm aware of.

Q. Okay. Do you know -- by that I mean more than -- when I use that term, I'm meaning more than just a grip and grin at a dinner function or something like that, but in some fashion --

A. No.

Q. --the ability to call him up and he would know who you were, in your expectation?

A* No.

Q. Okay. Do you know Trent Lott?

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A. I'll have to ask you what you mean by know him. I think the entire country knows him.

Q. I mean not just know of him, but I mean in that same context, would Trent Lott, in your expectation, if you were to call him up, know who you were?

A. Yes.

Q. Okay. Why? I mean what's your relationship there?

A. The Majority Leader is aware of my name through the Business Plan and efforts of Legend Airlines. I believe he recalls when I was Administrator of the FAA.

Q. Okay. Have you ever met with Trent Lott on matters pertaining to Legend Airlines or the Business Plan that ultimately became the Legend Airline effort?

A. Yes.

Q. When?

A* The summer, early summer of '97 and June or July of this year.

Q. All right. Now, at the time was Mr. Lott Senate Majority Leader?

A. Yes.

Q. And what was your purpose in meeting with the Senate Majority Leader in 1997, in the summer of 1997?

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- 1 A. To seek his support for the clarification of
2 the language of the Wright Amendment.
3 Q. And what support could he give you, in your
4 expectation?
5 A. His endorsement.
6 Q. Well, what good would that be with the
7 Department of Transportation, in your expectation?
8 A. I wasn't asking him to do anything with the
9 Department of Transportation.
10 Q. Well, I mean his endorsement, you know, I'm
11 trying not to be facetious here. I'm wondering, most
12 folks who are thinking about starting an airline, I
13 don't conceive them as going to the Senate Majority
14 Leader to kind of explain the Business Plan. I'm
15 wondering why, in your own words, would the support of
16 the Senate Majority Leader be helpful in the effort to
17 start a Business Plan for an airline at Love Field.
18 MR. WILSON: Objection to side-bar of
19 counsel.
20 BY MR. JOHNSON:
21 Q. My question is to you -- my question to you
22 is what, in your mind, was to be gained for your
23 Business Plan by achieving the support of the Senate
24 Majority Leader, Trent Lott, in the summer of 1997?
25 A. Legend was seeking Congressional

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- 1 clarification of the Wright Amendment.
2 Q. Okay. From whom was it seeking that?
3 A. Congress,
4 Q. Who in Congress, the whole Congress?
5 A. Yes.
6 Q. Did you contact every member of Congress?
7 A. No.
8 Q. What members of Congress were contacted?
9 (A discussion was had off the record between
10 the witness and Mr. Watler.)
11 THE WITNESS: To the best of my recollection
12 it was Senator John McCain, Senator Richard
13 Shelby, Senator -- I believe the Senator from
14 Kansas.
15 BY MR. JOHNSON:
16 Q. Do you remember that Senator's name?
17 A. I'm working on it.
18 Q. All right.
19 A. Senator Hutchison.
20 Q. Is that the Kansas Senator?
21 A. No. That's Texas.
22 Q. Oh, our Senator, okay, sure. I'll come back
23 to the Senate here in a minute.
24 A. I recall in the House, Congressman Shuster,
25 Congressman Duncan, Senator Frist.

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- 1 Q. From Tennessee?
2 A. Yes. Congressman Barton, Congressman
3 Johnson, Congressman Delay, Congressman Oberstar,
4 Congressman Hyde, Congressman Jackson. That's all I
5 recall for right now.
6 Q. All right. Now, did you personally make all
7 of these contacts?
8 A. Yeah.
9 Q. And why did, out of the entire Senate, did
10 you choose Senators McCain, Shelby, the Senator from
11 Kansas, Senator Hutchison from Texas and Senator Frist
12 from Tennessee?
13 A. I thought they would be important to our
14 initiative in Congress.
15 Q. And why did you determine that?
16 A. They're part of the Senate leadership.
17 Q. All right. And did they have any special
18 committee memberships that in any way pertained to the
19 oversight or any other matters relating to the
20 Department of Transportation?
21 A. No. The Department of Transportation is an
22 Executive Branch.
23 Q. How about the Federal Aviation
24 Administration?
25 A. The FAA is part of the Executive Branch.

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- 1 Q. Okay. What about the House of Representative
2 Members that you've identified, why were they chosen by
3 you?
4 A. Because of their, either their committee
5 memberships or their states.
6 Q. Allright. And what about committee
7 memberships would have been important to you in making
8 this decision in 1997?
9 A. What's your question?
10 Q. What committees were important to you in 1997
11 in the House?
12 A. The Aviation Subcommittees, Transportation
13 Committees and Appropriations Committees.
14 Q. Specifically as part of this Business Plan
15 then that was proceeding in the summer of '97, what
16 interpretation did you feel Legend needed or your
17 Business Plan needed from these individuals as part of
18 this interpretation you needed from Congress?
19 A. Legend was seeking clarification of the 56
20 passenger provision of the Wright Amendment.
21 Q. All right. Now, in connection with this
22 litigation, and I'm talking about the litigation in
23 Fort Worth, the litigation in Dallas over Legend's
24 actual efforts, qua Legend to operate out of Love
25 Field, have you been in contact with any of these folks

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1 that you just listed?

2 A. Yes.

3 Q. Which ones?

4 (A discussion was had off the record between

5 the witness and Mr. Watler.)

6 THE WITNESS: 'four question, as I understand

7 it, is who did I speak to about the litigation

8 with Fort Worth?

9 BY MR. JOHNSON:

10 Q. No, actually it was a little broader than

11 that. I'm asking you, and I'm trying to start, you

12 know, at the wide end of the funnel and move down.

13 A* I understand. I'm trying to make sure I

14 understand your question.

15 Q. Right. That was our deal and I appreciate

16 you asking me to clarify. I'm asking you now that in

17 relation to any of the issues that pertain to Legend's

18 efforts to operate out of Love Field, any of the issues

19 that are in the litigation in Dallas or in Fort Worth,

20 the various litigations, or -- and I'll add to it any

21 of the matters that are currently pending at the DOT

22 which includes that docket that we discussed earlier,

23 have you been in contact with any of these individuals?

24 A. Yes.

25 Q. Ail right. Which ones?

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1 MR. WATLER: Let me object to the question.

2 That was compound, the way you proposed it.

3 BY MR. JOHNSON:

4 Q. Okay. Which individuals have you been in

5 contact with, and then we'll get to on what matters

6 after you identify them for me, please, sir.

7 A. I've met with Senators Lott, McCain, Shelby,

8 Grassley.

9 a. All right. Any other Senators?

10 A. Not that I recall.

11 Q. Ail right. How about members of the House of

12 Representatives?

13 A. I've met with Chairman Shuster, Duncan, Hyde,

14 Barton. That's all that I recall.

15 Q. Ail right, sir. Has anyone accompanied you

16 on any of these meetings at -you know, to any of

17 these meetings?

18 A. Yes.

19 Q. Ail right. Can -- in every instance or just

20 in some instances?

21 A. In every instance.

22 Q. Ail right. And who accompanied you on every

23 instance of meeting with the people you've identified

24 in the Congress?

25 A. They weren't the same people in every

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1 instance.

2 Q. Ail right. Just give me the list of who

3 that's been and then we'll try to match them up.

4 A. I'm just trying to understand your question.

5 Q. No. That's fair enough. I'm trying to find

6 out who --

7 A. You said in every instance.

8 Q. Right. Who has accompanied you at any time

9 in any of these meetings?

10 A. Mr. Faberman.

11 Q. Ail right. Who else?

12 A. Mr. Hall.

13 Q. Mr. Hall, which Hall are we talking about

14 here?

15 A. Mr. Stuart Hall.

16 Q. Ail right. Anybody else?

17 A. Not that I recall.

18 Q. Who is Stuart Hall?

19 A. He's a consultant.

20 Q. Well, what kind of consultant?

21 A. He's a government affairs consultant.

22 Q. Does he have a business?

23 A. Yes.

24 Q. What's it called?

25 A. G. Stuart Hall & Associates.

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1 Q. Does he actually have anybody else with him,

2 or is it one of those deals where it's just one guy who

3 has associates?

4 A. I don't know the structure of his office.

5 Q. G. Stuart Hall & Associates, government

6 affairs consultant, based in Washington, D.C.

7 A. That's correct.

8 Q. Have you ever had any other business dealings

9 with Mr. Hall?

10 A. Other than?

11 Q. Other than using him as a person that went

12 along in meetings with members of Congress that we're

13 getting ready to talk about?

14 A. No.

15 Q. When did your association with Mr. Hall

16 start, and by yours I'm including Legend at this point,

17 okay, far this series of questions?

18 A. We retained him in this year, this calendar

19 year.

20 Q. Sometime in '98?

21 A. Yeah. I don't recall when it started.

22 a. Okay. Why did you retain him?

23 A. For his consulting services.

24 Q. Okay. Well, what -- I mean what is it about

25 his consulting services that led you to retain him?

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1 MR. WATLER: Well, I think you might be
2 getting into areas of strategy and work product
3 type matters.
4 MR. JOHNSON: I don't know yet. I think you
5 can --
6 MR. WATLER: Answer generally.
7 BY MR. JOHNSON:
8 Q. Yeah, can you just give me an explanation of
9 why him?
10 A. I think he's very effective.
11 Q. Okay. Why do you think he's effective?
12 A. He's impressed me as being effective.
13 Q. All right. Now, which meetings did Mr.
14 Faberman accompany you on?
15 A. Senators Lott, McCain, Shelby. Be faster if
16 you run the tape.
17 Q. Did he accompany you on the Grassley meeting?
18 A. No.
19 Q. Shuster?
20 A. No.
21 Q. Duncan?
22 A. Yes.
23 Q. Hyde?
24 A. Yes.
25 Q. And Barton?

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1 A. Yes.
2 Q. All right. Now, which meetings did Hall
3 accompany you on, and I'll go through that list again.
4 A. Thank you.
5 Q. Lott?
6 A. Yes.
7 Q. All right. McCain?
8 A. Yes.
9 Q. Shelby?
10 A. Excuse me. No.
11 Q. All right. Shelby?
12 A. Yes.
13 Q. Grassley?
14 A. Yes.
15 Q. Shuster, am I pronouncing that right?
16 Shuster?
17 A. Yes.
18 Q. Duncan?
19 A. I don't know.
20 Q. Hyde?
21 A. I don't know.
22 Q. Okay. Barton?
23 A. Yes.
24 Q. All right. When did you last meet with
25 Senator Lott?

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1 A. It was in the June, July time frame.
2 Q. All right. When did you last meet with
3 Congressman Shuster?
4 A. Mid September. I don't recall the date.
5 Q. Two or three weeks ago?
6 A. Three or four weeks ago.
7 Q. Three or four, okay. All right. Now, I'm
8 informed that Mr. Hall, Stuart Hall used to be an aide
9 to Senator Shelby; is that right?
10 A. He was on the Senator's staff.
11 Q. Okay. And did you know Mr. Hall prior to
12 meeting Senator Shelby?
13 A. Yes.
14 Q. How did you first meet up with Mr. Hall?
15 A. He was introduced to me in Washington. I
16 don't recall the date.
17 Q. All right. Now, you're aware that Senator
18 Lott and Representative Shuster have sent letters, and
19 I can't remember whether it's two letters or a joint
20 letter or whatever, to Secretary of Transportation,
21 Rodney Slater, aren't you?
22 A. That's what I'm told.
23 Q. Yeah, and that letter -- well, who told you
24 that?
25 A. Well, the Department's proceedings mentioned

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1 those two letters.
2 Q. Right. Is that the first time you knew these
3 folks were going to be -- these two gentlemen were
4 going to be writing the Secretary of Transportation?
5 A. No.
6 Q. All right. When did you first know that they
7 were going to do that?
8 A. Sometime prior to that, to that date we were
9 advised of that.
10 Q. Who advised you of that?
11 A. Counsel to Legend.
12 Q. Which one?
13 A. Mr. Faberman.
14 Q. Mr. Faberman. As part of your meetings with
15 just these two gentlemen, Senator Lott and
16 Representative Shuster, had you requested them on
17 Legend's behalf to do anything or take any action of
18 any sort?
19 A. Yes.
20 Q. What had you requested them to do?
21 A. We had requested them to contact the
22 Department of Transportation.
23 Q. For what purpose?
24 A. I think I explained to you we believe that
25 the Department has an obligation to not sit on the

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sidelines and allow a State Court to regulate Interstate Commerce, and if they agreed with that premise, to do whatever they thought was appropriate to encourage the Department of Transportation to intervene in the lawsuits.

Q. Or to take whatever action the Department thought would be appropriate; is that right?

MR. WATLER: Objection, mischaracterization of his testimony.

BY MR. JOHNSON:

Q. I'm just asking, wasn't that also included?

MR. WATLER: Objection to mischaracterization.

THE WITNESS: That's not what I asked them.

BY MR. JOHNSON:

Q. The only thing you specifically asked them to do was to get the Department of Transportation to intervene in the Fort Worth lawsuit?

A. That's correct.

Q. And it was just their own idea, as far as you know, to get the Department of Transportation to this docket to investigate the Love Field matter; right?

MR. WATLER: Objection, facts not in evidence, mischaracterization of the record.

BY MR. JOHNSON:

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the witness and Mr. Watler.)

MR. WATLER: I think your inquiry necessarily requires -- inquires into, you know, conversations that he's had with counsel, so we object to it on that basis.

MR. JOHNSON: AH right. Let me ask you -- are you instructing him not to answer?

MR. WATLER: Yeah.

BY MR. JOHNSON:

Q. What do you mean by intervene? When you go to all these offices, the RUT, Senators' offices, House of Representatives' offices, the FAA representative, you know, and you trot out this theory about intervening, what do you mean that the Department should do?

A. Actually intervene in the lawsuit.

Q. Physically get involved or just somehow intervene in the process?

A. Physically intervene in the legal action.

Q. And become a party?

A. Yes.

Q. And for what purpose, influencing the outcome of the litigation?

A. To put it in a proper venue, among other things.

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Q. You can answer.

A. Your question?

Q. My question to you is, sir, did you in any way encourage Senator Lott or Representative Shuster to request the Department of Transportation to get involved in the Love Field matters in ways other than intervening in the Fort Worth lawsuit?

A. No.

Q. Why not?

MR. WATLER: If you had a reason why not. You're not required to formulate one here today. If you had one at the time.

THE WITNESS: I think intervention is the most appropriate way for the Department to exert and assert their authority.

BY MR. JOHNSON:

Q. Why do you believe intervention is the most appropriate way?

A. Are you asking for my legal opinion?

Q. I don't -- whatever it's based on. I'm just asking you why -- I mean why you feel that that is their most appropriate, you know, role at this point?

A. That's my impression.

Q. Well, why, though?

(A discussion was had off the record between

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Q. And influencing the outcome; correct?

A. As a party.

Q. Would that be correct?

A. Yes.

Q. Now, in this last meeting you had in September with Congressman Shuster, where did that take place?

A. It was a social event that he was present.

Q. Okay. What kind of social event?

A. A dinner.

Q. Where was it?

A. Of some kind. At the Capitol Grill, I think it was.

Q. How large was the group, I guess, we'll start there, that were involved in this?

A. 20, 25 perhaps.

Q. Okay. How did you wind up there?

A. I was invited.

Q. Who invited you?

A. The Conservative Action -- something -- I don't know. The host was the Conservative Action something, some part of the name.

Q. Are you a member?

A. NO.

Q. Do you know why you're on their list?

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- 1 A. I don't believe I'm on their list.
 2 Q. Okay. Well, I mean -- all right, I get back
 3 to how -- do you have any understanding or belief as to
 4 why you would be invited to a function by an
 5 organization you can't remember the name of at the
 6 Capitol Grill, which was also attended by Congressman
 7 Shuster?
 8 A. Yes.
 9 Q. All right. Why?
 10 A. I think they thought I'd write a check.
 11 Q. Did you?
 12 A. Yes.
 13 Q. Did you or Legend write the check?
 14 A. Me, personally.
 15 Q. Okay. And what was the check for?
 16 MR. WATLER: Are you talking about dollar
 17 amount or what?
 18 BY MR. JOHNSON:
 19 Q. No. What was the purpose?
 20 A. This was a fund raiser.
 21 Q. Raising funds for?
 22 A. The Conservative Action --
 23 Q. Whatever the name of it is?
 24 A. Whatever PAC it is, some type of PAC.
 25 Q. What's your money going to be -- I mean why

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- 1 would you give money to a PAC that you don't know the
 2 name of? I'm curious.
 3 A. Well, for the conservative, Republican
 4 conservative causes.
 5 Q. Okay. And did you know in advance that
 6 Congressman Shuster was going to be there?
 7 A. Yes.
 8 Q. All right. And were any other Congressmen
 9 there?
 10 A. Yes.
 11 Q. Any of the other Congressmen with whom you
 12 had visited regarding Legend matters?
 13 A. No.
 14 Q. Did you have as part of your purpose in
 15 attending that dinner the opportunity to discuss Legend
 16 matters with Congressman Shuster?
 17 A. Yes.
 18 Q. All right. And what did you intend to
 19 discuss with Congressman Shuster at this dinner at the
 20 Capitol Grill in mid September?
 21 A. The chairman has always been very interested
 22 in the progress of our Business Plan and my intent was
 23 to update him on the progress that Legend was making.
 24 Q. How often would you say you have updated
 25 Congressman Shuster on the progress of the Business

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- 1 Plan of Legend?
 2 A. My recollection is three times.
 3 Q. All right. And describe those occasions for
 4 me, please, sir.
 5 A. I met with him in his office and saw him at
 6 one other social function.
 7 Q. And where was that social function?
 8 A. That was at the -- actually, it was at the
 9 Capitol Grill.
 10 Q. All right. When was it?
 11 A. It was in the June, July time frame.
 12 Q. Of '98?
 13 A. '98.
 14 Q. Who else was there?
 15 A. There were some Government Affairs people
 16 from other corporations that were there. I was -- I
 17 was not invited to their dinner, but I saw him at the
 18 event.
 19 Q. All right. Were you at the Capitol Grill for
 20 the specific purpose of seeing him?
 21 A. No.
 22 Q. This was a chance meeting?
 23 A. That's correct.
 24 Q. By the way, do you call him Bud?
 25 A. No.

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- 1 Q. What do you call him?
 2 A. Mr. Chairman.
 3 Q. And he is the Chairman of the House
 4 Transportation and Infrastructure Committee; correct?
 5 A. That's correct.
 6 Q. What does that have to do with Legend
 7 Airlines ultimately?
 8 A. He is, in fact, in charge of the -- he is the
 9 Chairman of the Authorizing Committee that oversees
 10 aviation matters.
 11 Q. Now, this PAC that you gave the money to, do
 12 you have any understanding as to whether or not it is a
 13 PAC that supports or makes contributions to Congressman
 14 Shuster?
 15 A. Not that I'm aware.
 16 Q. Who do they make political contributions to,
 17 this PAC that you gave money to in mid September?
 18 A. To Congressional races.
 19 Q. All right. Any particular ones that you're
 20 aware of?
 21 A. No.
 22 Q. All right. Have you ever, or has Legend ever
 23 made any political contributions to Congressman
 24 Shuster?
 25 A. Legend has not.

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1 Q. Have you?
 2 (A discussion was had off the record between
 3 the witness and Mr. Watler.)
 4 THE WITNESS: I don't recall.
 5 BY MR. JOHNSON:
 6 Q. You don't recall? How about anybody ever
 7 whom you have any influence or with whom you have any
 8 close relationship, and I'm talking about now family
 9 members, pets, whatever? I don't mean to be facetious.
 10 A. It just is coming naturally?
 11 Q. That's right.
 12 A. Ask your question, please.
 13 Q. Have you ever encouraged anyone else to make
 14 any political contribution to Congressman Shuster?
 15 A. No.
 16 Q. Now, did you or anyone working with you or on
 17 your behalf or on Legends behalf ever suggested or
 18 provided language to be incorporated in any
 19 communication from Congressman Shuster to the
 20 Department of Transportation?
 21 A. Not that I'm aware.
 22 Q. Specifically, did Legend, Legends lawyers,
 23 government affairs specialist Stuart Tall or you draft
 24 any portion of the letter Congressman Shuster wrote to
 25 the Secretary of the Department of Transportation and

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1 matters impacting Love Field?
 2 A. Not that I'm aware.
 3 Q. When you say not that you're aware of, is it
 4 possible and you're just not aware of it?
 5 (A discussion was had off the record between
 6 the witness and Mr. Watler.)
 7 MR. WILSON: Objection calls for speculation
 8 as to whether something is or is not possible.
 9 MR. WATLER: I join the objection.
 10 THE WITNESS: Your question again, sir?
 11 BY MR. JOHNSON:
 12 Q. Well, my question to you, and I'll break it
 13 down a little bit, is you tell me that you're not aware
 14 of any of the efforts I inquired about; all right? And
 15 I want to know whether or not you are -- are aware of
 16 actions or intentions on the part of any representative
 17 of Legend to encourage or influence communications
 18 between Congressman Shuster and the Department of
 19 Transportation on Love Field and the operations of
 20 Legend out of Love Field?
 21 MR. WILSON: Objection, repetitive.
 22 MR. WATLER: And also global. It's a very
 23 different question than what you were asking
 24 before.
 25 MR. JOHNSON: I'm breaking it down.

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1 MR. WATLER: Here's the problem. He told you
 2 he had a meeting with Congressman Shuster.
 3 MR. JOHNSON: That's right.
 4 MR. WATLER: He told you about conversations
 5 with that meeting, at that meeting.
 6 MR. JOHNSON: That's right.
 7 MR. WATLER: The way you phrased the question
 8 I think it would comprehend those conversations
 9 that he's already testified to, but I think
 10 naturally in answering it he probably wouldn't
 11 include that. So the way you broadened it and I
 12 understand what you're trying to do, but I think
 13 if you go back to your original question you're
 14 going to get the answer that you're really looking
 15 for.
 16 BY MR. JOHNSON:
 17 Q. Well, when you say, "I'm not aware of it,"
 18 what I'm really trying to get down to is whether
 19 anybody has actually told you that they sent a draft to
 20 Congressman Shuster?
 21 A. No.
 22 MR. WATLER: Start with that
 23 THE WITNESS: No.
 24 BY MR. JOHNSON:
 25 Q. Has anybody ever told you that they intended

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1 to try to get Congressman Shuster to write a letter to
 2 the Department of Transportation regarding its
 3 investigation of Love Field matters?
 4 A. Yes.
 5 Q. Who?
 6 A. Me.
 7 Q. All right. And is this the meeting, the last
 8 meeting that you, and every meeting, I guess, that
 9 you've had with him that you've already described with
 10 him?
 11 A. Not the last meeting.
 12 Q. Which meeting?
 13 A. In the June, July meeting at his office.
 14 Q. All right. Let me put it to you this way.
 15 When you met with him in mid September, all right, you
 16 had this -- three to four weeks ago, were you aware at
 17 that time that Congressman Shuster had written a letter
 18 to the Department of Transportation on Love Field
 19 matters?
 20 MR. WATLER: Counsel, the DOT order that
 21 refers to was issued August 25th and he's
 22 testified that this more recent meeting with
 23 Congressman Shuster happened, I believe he said
 24 mid September.
 25 MR. JOHNSON: That's right.

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1 THE WITNESS: The answer is yes.
 2 BY MR. JOHNSON:
 3 Q. Before the letter was written is it your
 4 belief someone -- whether or not you saw the effort,
 5 saw the draft, is it your belief someone representing
 6 Legend encouraged the Senate -- the Representative
 7 Shuster to write the letter that he wrote in August to
 8 the DOT?
 9 A. Yes.
 10 Q. And are you referring back to your own
 11 efforts?
 12 A. Yes.
 13 Q. Since the DOT investigation began or docket
 14 began August 25th, has any contact been made on
 15 Legend's behalf with Representative Shuster by you
 16 other than the meeting you've already described?
 17 (A discussion was had off the record between
 18 the witness and Mr. Watler.)
 19 THE WITNESS: No.
 20 BY MR. JOHNSON:
 21 Q. Since August the 25th of 1998 has any contact
 22 been made by Mr. Hall with Congressman Shuster?
 23 A. I'm not aware of any.
 24 Q. Well, do you believe that Mr. Hall makes you
 25 aware of all the contacts he makes on Legend's behalf?

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1 MR. WILSON: Objection, calls for
 2 speculation.
 3 BY MR. JOHNSON:
 4 Q. Is that your belief?
 5 A. On Legend's behalf?
 6 Q. Yes.
 7 A. Yes.
 8 Q. All right. Is Mr. Hall working for any other
 9 airline other than Legend that you know of?
 10 A. No.
 11 Q. For instance, is he working for Astraea?
 12 A. No.
 13 Q. Is he working for Continental?
 14 A. I'm not aware of Mr. Hall's client base.
 15 Q. Is it -- all right. Do you know if he's
 16 working for Continental Express?
 17 A. No. I da know that.
 18 Q. Okay. And you know -- I just got a little
 19 help here. I guess I'm too naive. I've been talking
 20 about Congressman Shuster, and I guess it is true that
 21 these folks have all kinds of staff members and
 22 assistants and secretaries and aides and interns and
 23 everything else working in their offices, Congressmen
 24 do; right?
 25 A. Right.

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1 Q. And so I would like to include your knowledge
 2 about contacts with any of those persons related to or
 3 on the staff of Congressman Shuster and repeat my
 4 questions. Have you had any contact subsequent to
 5 August the 25th --
 6 A. Excuse me --
 7 MR. WATLER: Listen to his question.
 8 BY MR. JOHNSON:
 9 Q. -- of 1998 with anyone associated,
 10 affiliated, working with or working for or on the staff
 11 of Congressman Shuster regarding the DOT docket being
 12 pursued on Love Field matters?
 13 A. No.
 14 Q. Has anyone --
 15 MR. WATLER: You're unduly suspicious.
 16 BY MR. JOHNSON:
 17 Q. Has anyone on behalf of Legend, other than
 18 yourself, including Mr. Hall, anyone on Mr. Hall's
 19 staff, any lawyer, any other lobbyist, any other
 20 representative at all had any contact subsequent to
 21 August 25th, 1998, on matters pertaining to the DOT
 22 docket regarding Love Field?
 23 A. Not that I'm aware of.
 24 Q. When you say not that you're aware of, do you
 25 believe that it might have happened?

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1 A. No.
 2 Q. Or could have happened?
 3 A. No, I da not believe it happened.
 4 cl. All right. Now, let's talk about Senator
 5 Lott, okay, and I'll go through that, and when I talk
 6 about Senator Lott I'm talking about the Senator and
 7 his staff and assistants, aides, interns, et cetera;
 8 okay? Are you going to include -- agree with me we'll
 9 include that as the world of Senator Lott for these
 10 questions?
 11 A. All right.
 12 Q. Have you made any contact with Senator Lott
 13 subject -- or his staff or anyone affiliated or related
 14 or working for or with him since August the 25th of
 15 1998?
 16 A. I have not.
 17 Q. Has Mr. Hall or anyone working with Mr. Hall,
 18 to your knowledge?
 19 A. I don't know.
 20 Q. How about anyone working with Mr. -- what is
 21 that guy -- Faberman or the Ungaretti Law Firm,
 22 whatever the hell that is, to your knowledge, had any
 23 contact with Lott or any member of his staff or anyone
 24 affiliated or associated with the Senator since August
 25 25th of 1998?

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1 A. I don't know the answer to that. I'll
2 correct what I believe I said just earlier. I believe
3 Mr. Hall has had conversations with staff.
4 Q. Or?
5 A. Of the Majority Leader's staff.
6 Q. Okay. Representing Legend, I mean Mr. Hall
7 was representing Legend when he had conversations?
8 A. Yes.
9 Q. Okay. What were those conversations?
10 A. I don't know precisely what they were.
11 Q. Well, generally what were they?
12 A. They were follow-up calls.
13 Q. Okay. How did you learn about them?
14 A. Mr. Hall told me.
15 Q. What did he tell you?
16 A. Told me he was going to try to get ahold of
17 staff.
18 Q. Of Senator Lott's staff?
19 A. Correct.
20 Q. For what purpose?
21 A. To follow up on the Senator's inquiry to the
22 Secretary.
23 Q. Of the Department of Transportation?
24 A. Correct.
25 Q. And what would be -- what did you understand

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1 A. I read the Shuster letter.
2 Q. And when did you do that, sir?
3 A. I don't recall the exact date.
4 Q. Have you got a rough approximation for me?
5 A. Probably in late August, mid, mid August.
6 Q. Okay, and where were you when you read it?
7 A. Actually, it was read to me.
8 Q. Where were you when it was read to you?
9 A. In my office.
10 Q. Here in Dallas?
11 A. That's correct.
12 Q. Who read it to you?
13 A. Washington counsel.
14 Q. Faberman?
15 A. That's correct.
16 Q. Okay. In a telephone call?
17 A. That's correct.
18 Q. Was anyone else on that call?
19 A. No.
20 Q. Just you and him?
21 A. Yes.
22 Q. Did you ever make any attempt to contact
23 Senator Lott or Congressman Shuster either personally,
24 on the phone, by correspondence or in any other fashion
25 following their writing these two letters to express

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1 the purpose of follow-up to be?
2 A. The Majority Leader had asked the Secretary
3 to get back to him, I believe, if my memory is correct,
4 and whether that's happened or not.
5 Q. Oh, I see, okay. Find my list here of all
6 these names. Now, did you write -- you've been making
7 a lot of effort to get somebody, either at the DOT or
8 in the Senate or the House to -- to work with Legend on
9 this -- on this matter of these operations in Love
10 Field, and finally Lott and Shuster write these two
11 letters to the Department of Transportation?
12 MR. WATLER: Object to counsel's side-bar and
13 characterization.
14 MR. JOHNSON: I was just setting the
15 background for this.
16 MR. WATLER: That's all it is then, side-bar.
17 BY MR. JOHNSON:
18 Q. Now, were you pleased or displeased that
19 those letters were written to the Department -- to the
20 Secretary of Transportation by Senator Lott and
21 Representative Shuster?
22 A. Was I pleased that they did that?
23 Q. Yeah.
24 A. Yes.
25 Q. Did you read the letters?

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1 your pleasure with the fact that they had been written?
2 A. No.
3 MR. WATLER: Essentially it's been asked and
4 answered. You asked him essentially the same
5 question previously at a time frame that would
6 have comprehended that. We're getting a bit
7 repetitive is why I'm pointing it out.
8 BY MR. JOHNSON:
9 Q. Why not? I mean you had made all these
10 efforts and these guys finally came through for you.
11 Why didn't you try to thank them for it?
12 MR. WATLER: Object to the side-bar and
13 counsel's testimony.
14 THE WITNESS: I didn't.
15 BY MR. JOHNSON:
16 Q. Do you know whether or not any other Senator
17 or Congressman or members of a Senator or Congressman's
18 staff has contacted the Secretary of Transportation or
19 anybody at the Department of Transportation with regard
20 to the docket that is pending on Love Field at the DOT?
21 A. I'm not aware of any contact.
22 Q. Have you made any efforts to get others to do
23 that, other members of Congress or the Senate, House or
24 the Senate?
25 A. Time frame, please? Time frame?

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1 Q. Since August of 1998.
 2 A. No.
 3 Q. Previous to August of 1998 that you haven't
 4 already told us about?
 5 A. Not that I haven't already told you about.
 6 Q. Now, why have you halted your efforts -- why
 7 have you not made any efforts since August of -- August
 8 25th of 1998 to get these Congressmen to continue to
 9 contact the Department of Transportation and the
 10 Secretary of Transportation?
 11 A. Congress has been pretty busy lately, as I
 12 believe you know.
 13 Q. All right. When do you think their schedule
 14 will permit you to resume your efforts?
 15 A. Efforts to what?
 16 MR. WATLER: Well, I'm going to object.
 17 BY MR. JOHNSON:
 18 Q. Get them to contact the Department --
 19 MR. WATLER: I'm going to object to inquiry
 20 what future plans, what future strategies he may
 21 have. We're not going to get into that.
 22 BY MR. JOHNSON:
 23 Q. Well, do you have any plans to continue to
 24 try to get Congress to contact the Secretary of
 25 Transportation or the Department of Transportation with

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1 regard to Legend's position on the use of Love Field?
 2 MR. WATLER: That's a yes or no question.
 3 THE WITNESS: Yes.
 4 BY MR. JOHNSON:
 5 Q. And what are those plans?
 6 MR. WATLER: I object to asking him to
 7 disclose future plans or strategies in regard to
 8 these matters.
 9 BY MR. JOHNSON:
 10 Q. He's got the objection. You can give me the
 11 answer.
 12 MR. WATLER: I'm going to instruct him not to
 13 answer. You may be able to rephrase it. There
 14 may be ways to get some of that information. What
 15 his strategy is in dealing with this information
 16 is work product in nature, probably necessarily
 17 attorney/client privilege. So we object.
 18 MR. JOHNSON: For the record, you're
 19 instructing him not to answer the pending
 20 question?
 21 MR. WATLER: Yes, that question. If you want
 22 to try to rephrase it. There may be other
 23 questions that you could ask that would not be
 24 objectionable or would not inquire into privileged
 25 matters.

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1 BY MR. JOHNSON:
 2 Q. How many times did you meet with Senator
 3 Lott?
 4 A. Time frame, sir?
 5 Q. On matters pertaining to Legend at any time.
 6 MR. WATLER: I believe that's asked and
 7 answered.
 8 MR. JOHNSON: I think I asked with regard to
 9 Shuster.
 10 MR. WATLER: I think you first asked in
 11 regard to Senator Lott. I may be mistaken. Yeah,
 12 my notes show that you previously asked him. He
 13 said in the summer of '97, June, July of '98, so
 14 you've been down that road.
 15 BY MR. JOHNSON:
 16 Q. Three times?
 17 A. Are you excluding social encounters, social
 18 events?
 19 Q. No, not really. I mean if there was any
 20 social encounter or social event at which you ran into
 21 him and took the opportunity to discuss the Legend
 22 matters, then I'd like to know about that as well.
 23 A. All right. Then there were no social events
 24 where I was able to discuss any Legend matters.
 25 Q. All right. Have there been any social events

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1 that you can recall where you have had -- other than
 2 the time when you appeared on the program or attended
 3 this luncheon that had to do with the 20th anniversary
 4 of unregulated air travel have there been any social
 5 functions at which you had the opportunity to discuss
 6 Legend matters with people associated with the
 7 Department of Transportation?
 8 A. No.
 9 Q. Or with the Secretary of Transportation or
 10 his staff?
 11 A. No.
 12 MR. WATLER: Those were asked and answered,
 13 too.
 14 MR. POWELL: All this talk about the Capitol
 15 Grill is making me hungry. Are we going to break
 16 for lunch?
 17 MR. JOHNSON: We're at a good break point.
 18 MR. WATLER: Off the record.
 19 (A discussion was had off the record.)
 20 (A recess was taken from 1:02 p.m. until 1:11
 21 p.m.)
 22 BY MR. JOHNSON:
 23 Q. Since August 25th of 1998, have you had any
 24 -- let me do it this way. Get a little definition
 25 going. I'm going to ask you a series of questions here

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where I would like to inquire of contacts made on behalf of Legend Airlines, whether by you, some lawyer, Mr. Hall or anybody, you know, even somebody we haven't identified, but that would be on behalf of Legend Airlines with any of these folks that I'm about -- I'm about to name; do you understand that?

A. Yes.

Q. All right. Now, and I'll go down, and for this series of questions I'll limit the time period to August the 25th of 1998; all right?

A. Excuse me.

[A discussion was had off the record between the witness and Mr. Watler.]

BY MR. JOHNSON:

Q. Have there been any meetings with Senator McCain?

A. No.

Q. Senator Shelby?

A. Not that I'm aware of.

Q. Okay. Why do you say no to some and not that I'm aware of to others? I mean what's the purpose of not that I'm aware of in your parlance?

A. Mr. Hall, for example, has other clients. He may or may not have talked to staff or a member of Congress directly. When he's in talking about some

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A. No.

Q. Congressman Duncan?

A. No.

Q. Barton?

A. I'm not aware of any contact with Barton's office.

Q. Johnson?

A. No.

Q. Delay?

A. No.

Q. Oberstar?

A. No.

Q. Hyde?

A. I don't know.

Q. Jackson?

A. No.

Q. All right. Other than Stuart Hall, has Legend Airlines ever had -- ever employed or utilized the services of any other lobbyist in Washington?

A. No.

Q. Have you ever personally used a lobbyist in Washington?

A. Personally?

Q. Yeah.

A. No.

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other client's business, I have no idea whether he's mentioned Legend or not, so I'm not aware.

Q. Oh, I see, but you might be aware that he actually met with them on behalf of some other client, you just don't know whether he brought up Legend?

A. I am not aware that he's met or not met with any of them.

Q. Okay. Now, Mr. Hall is a lobbyist, isn't he?

A. That's correct.

Q. When you say government affairs specialist, I mean is he registered as a lobbyist for Legend Airlines?

A. That's correct.

Q. And when did he register first as a lobbyist for Legend Airlines?

A. When we retained him as a lobbyist.

Q. All right. I think I understand a little bit. I'm not sure that that was helpful, but how about -- did I ask you about the Senator from Kansas or his staff, and I'm including their staffs on these questions? Is that when you said you weren't aware of?

A. NO.

Q. He didn't, okay. Senator Hutchison?

A. NO.

Q. Senator Frist?

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Q. All right.

A. You're excluding my previous employers, I'm assuming?

Q. I'm not including Fed Ex. I don't even know who else you worked for. Maybe I ought to ask. Who other than Fed Ex and the United States taxpayer have you worked for, anybody else?

A. Yes.

MR. WATLER: Not in the last 20 years.

BY MR. JOHNSON:

Q. Yeah, the last 15, 20 years.

THE WITNESS: No.

MR. WATLER: Approximately.

BY MR. JOHNSON:

Q. Let's get back to the subpoena duces tecum, Exhibit 1, and Exhibit A to Exhibit 1. I think we were down to paragraph 3 with regard to documents pertaining to DOT contacts. Have you got any new documents for me on that?

A. No.

Q. All right. Where are the original -- originals of the documents that have been produced already by your lawyers in connection with the Request For Production pertaining to these matters and the other discovery pertaining to these matters?

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- A. Are you talking about the communications with the DOT?
- Q. Well, there's some, you know, communications with the DOT. There's some of Faberman's letters and things like that. I'm just wondering where these documents, where the originals of those copies are?
- A. Well, normally you send a document to somebody, they have the original.
- Q. That's right.
- A. So they would be at the DOT.
- Q. When I say original, I'm talking about your original. You may get a copy of it, but, you know, where is the specific document that Legend Airlines or you received from Faberman when he sent you copies of letters that he had written to people over at the Department of Transportation? Where is the actual physical paper you received or Legend received is what I'm asking?
- (A discussion was had off the record between the witness and Mr. Watler.)
- THE WITNESS: My copies were given to counsel.
- BY MR. JOHNSON:
- Q. Which counsel?
- A. To Mr. Watler's office.

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- Q. All right. And were they -- who gave them to your lawyers? Did you give them or did you entrust somebody else at Legend to pull the stuff together and actually give it to the lawyer?
- A. I gave them.
- Q. You did. And when did you --
- MR. WATLER: Just to be clear, I mean we -- Mr. Faberman's office also provided us, as you noticed, and you've noted, among the documents we produced are letters from Mr. Faberman to various people and Mr. Faberman provided those to Jenkins and Gilchrist.
- BY MR. JOHNSON:
- Q. Well, and that's my question. Where are your copies of the letters Mr. Faberman copied you on that he sent to the Department of Transportation?
- A. Copies I had I gave to Mr. Watler.
- Q. All right.
- MR. JOHNSON: Have you given us copies of those?
- MR. WATLER: Yes. Now, we haven't given you duplicates, you know. We haven't given you -- if we had the same letter, we haven't given you a copy of each copy of the letter that we had.
- MR. JOHNSON: Well --

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- MR. WATLER: I mean if you care to have that we'll certainly endeavor to do so.
- MR. JOHNSON: Certainly if there is any difference at all, for instance, if Faberman faxed a copy, you know, to Legend here in Dallas of a letter he had sent that day or dispatched by messenger, as some of them were, I need to see that faxed copy, because it would be different and it would have fax legends and other things on it.
- MR. WATLER: I have not endeavored to do a comparison, but I believe what you've been provided is the documents that are responsive. There may be a stray mark in the margin or something like that.
- MR. JOHNSON: That's exactly what I'm interested in, yeah. So we're entitled --
- MR. WATLER: I didn't understand that you wanted or expected to see that today.
- MR. JOHNSON: Oh, yeah.
- MR. WATLER: We'll make arrangements to provide that to you.
- MR. JOHNSON: Appreciate it.
- MR. WATLER: If that's what you want.
- BY MR. JOHNSON:
- Q. When Faberman would send you copies of these

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- letters that he was either mailing or having delivered to the Department of Transportation representatives did he also send you the attachments?
- A. No.
- Q. All right. Have you ever seen the attachments that were included with these letters?
- A. I guess it depends on what attachments you're referring to.
- Q. Well, any of the attachments, because nearly every letter he wrote refers to attachments.
- A. Well, I can't answer that question, then, because I don't -- I don't know specifically which ones you're talking about.
- Q. All right. Do you recall getting any letters from Faberman which contained attachments that were copies of letters he was sending to the Department of Transportation?
- A. No.
- Q. Who is the custodian of documents at Legend here in Dallas?
- A. Depends on the documents.
- Q. All right. How is that broken out?
- A. Between leases and contracts and --what do you mean, broken out?
- Q. All right. How many custodians of documents

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1 of any kind do you have there at Legend, people you
 2 would consider custodians?
 3 **A. Seven, about seven people.**
 4 **Q. All right. Who would those seven people be?**
 5 **A. With respect to FAA and certification**
 6 **documents it would be primarily Mr. Bob Young. For --**
 7 **(A discussion was had off the record between**
 8 **the witness and Mr. Watler.)**
 9 THE WITNESS: Custodians of documents would
 10 be Mr. Bob Young, Ms. Lois Oller, Scott McCartor,
 11 Kevin Ogilby, Matt Fajack, Mickey Cohen and
 12 myself.
 13 BY MR. JOHNSON:
 14 **Q. What category of documents, I think Ms.**
 15 **Oller, what is she responsible for?**
 16 **A. Is this in the context of the DOT proceeding?**
 17 **Q. No. If it includes DOT matters, but right**
 18 **now I'm just trying to break down what they would be**
 19 **each responsible for.**
 20 MR. WATLER: If it doesn't relate to the Love
 21 Field --
 22 MR. JOHNSON: That's what I'm trying to find
 23 out.
 24 MR. WATLER: But if it doesn't relate you may
 25 not be entitled to find it out. I think you can

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1 preface your question, as you may be entitled to,
 2 who are custodians of records related to the DOT
 3 proceedings or related to the litigation or that
 4 sort of thing, because otherwise I think you're
 5 inquiring into proprietary confidential business
 6 information.
 7 MR. JOHNSON: Well, I'm going to let you make
 8 that objection then to each one of those
 9 questions, because I think I'm entitled to go --
 10 to learn the functions of various document
 11 custodians and then to inquire whether or not
 12 these folks, if any of them, had anything that
 13 would be related to documents we've requested,
 14 whether or not they were contacted or utilized in
 15 the search.
 16 MR. WATLER: Certainly you can ask him if
 17 these people that he's named have the documents
 18 that are within the scope of what this inquiry is
 19 about.
 20 MR. JOHNSON: If this company -- company's
 21 business success depends on the secrecy of who is
 22 custodian of which documents then I'm going to be
 23 really be surprised. God, Almighty.
 24 BY MR. JOHNSON:
 25 **Q. And I will ask my question to you, can you**

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1 tell me which documents Ms. Oller is responsible for
 2 over there at Legend?
 3 **A. Documents other than anything that has to do**
 4 **with litigation and government communications.**
 5 **Q. All right. And I would include in government**
 6 **communications anybody who has responsibility for**
 7 **documents relating to PACs, political contributions,**
 8 **you know, political matters and things that are**
 9 **unrelated to --**
 10 MR. WATLER: Why don't you ask who is
 11 responsible for the filing of those kind of
 12 materials? That's the direct way to go from point
 13 A to point B.
 14 MR. JOHNSON: Thank you, Mr. Watler, I
 15 appreciate that help.
 16 MR. WATLER: You apparently need it.
 17 BY MR. JOHNSON:
 18 **Q. What category of documents is Mr. McCartor,**
 19 **your son, responsible for?**
 20 **A* Documents other than the categories that**
 21 **you've mentioned,**
 22 **Q. All right. What about Mr. Fajack or Ms.**
 23 **Fajack, whichever it is?**
 24 **A. Categories other than the documents that you**
 25 **requested.**

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1 **Q. What about Cohen?**
 2 **A. Documents other than the documents that**
 3 **you've spoken of.**
 4 **Q. What about you?**
 5 **A. I am the sole custodian of the documents that**
 6 **have to do with the litigation or the Love Field --**
 7 **Love Field matters or Congressional contacts or PACs or**
 8 **-- I can't remember how broad you made your category.**
 9 **Q. Okay. Who opens the mail at your shop?**
 10 **A. Could be one of several people.**
 11 **Q. All right. You don't open the mail, do you?**
 12 **A. Oftentimes, yes.**
 13 **Q. When you're not there others do; right?**
 14 **A. Depends on the correspondence, to whom it's**
 15 **addressed.**
 16 **Q. Then that person has some discretion in how**
 17 **that mail gets distributed; correct?**
 18 **A. Generally not.**
 19 **Q. My question to you is, did you make anybody**
 20 **else at your company, Legend Airlines, aware of the**
 21 **request for documents being made in the subpoena duces**
 22 **tecum attached to your Deposition Notice Exhibit 1?**
 23 **A. Yes.**
 24 **Q. Who?**
 25 **A. The entire company.**

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- 1 Q. So is it your testimony then that everyone
2 was requested to respond with the production of
3 documents at the company that they felt would come
4 within any of the description of documents attached to
5 the subpoena?
6 A. No.
7 Q. To the -- all right. What instructions did
8 you give them on what they were to do with this
9 request?
10 A. I asked them if they had any documents that
11 would be responsive to the documents that we were going
12 to produce.
13 Q. Did anybody come up with a document in
14 response?
15 A. No.
16 Q. Not one single document?
17 A. No.
18 Q. So all the documents that were produced were
19 produced by you as custodian?
20 A. That's right.
21 Q. No. 4, requesting all documents referring to,
22 concerning or reflecting communications, discussions.
23 Being meetings or conversations between you and the
24 DOT, pertaining to the DOT's opinion, if any, that the
25 service Legend proposed to offer at Love Field is

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- 1 permissible under the Wright and Shelby Amendments. Do
2 you see that, sir?
3 A. Right.
4 Q. Were there any documents responsive to that
5 request?
6 A. I think you've gotten all the documents
7 responsive.
8 Q. Let me ask you, did you make any effort to
9 segregate these documents out with regard to any
10 request, or did you just lump them all together?
11 A. I lumped them all together.
12 Q. Why did you do that?
13 A. There weren't that many.
14 Q. Can you recall any document that fit that
15 description?
16 A. I'd have to go through the documents
17 submitted to you.
18 Q. Do you know what we got?
19 A. Yes, I believe so.
20 Q. How do you know that?
21 A. I was shown copies of what you got.
22 Q. Okay. No. 5, all documents referring to,
23 concerning or reflecting communications, discussions,
24 meetings or conversations between you and the DOT
25 pertaining to the DOT's opinion, if any, that the 1986

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- 1 --
2 A. '68.
3 Q. '68, excuse me. -- Regional Airport
4 Concurrent Bond Ordinance is unenforceable because of
5 Federal law. Was there any such document?
6 A. Not that I'm aware.
7 Q. No. 6, all documents which you request -- in
8 which you request any public official to contact the
9 DOT with respect to the Love Field litigation. Was
10 there any such document?
11 A. I don't recall any documents.
12 Q. All right. Did you ever write a letter to --
13 you know, to -- containing the same or similar request
14 that you made orally to all these Senators and
15 Congressmen?
16 A. No.
17 Q. No. 7, all documents in which any public
18 official has requested the DOT to participate or to
19 become involved in the Love Field litigation. All
20 right. Now, you will agree with me, sir, that that
21 would include the letters that were written by Senator
22 Lott and Representative Shuster; correct?
23 A. Right.
24 Q. And is it your testimony here today that you
25 have never possessed a copy of either of those letters?

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- 1 A. I thought I had a copy of the Shuster letter.
2 I could not find it.
3 Q. Have you ever seen a copy of the Lott letter?
4 A. No.
5 Q. Have you ever had that read to you?
6 A. No.
7 Q. Do you know what it says?
8 A. No.
9 Q. In your search for documents did you locate
10 the copy of the letter that -- from Ms. McFadden that
11 you received on the day it was produced in Court in
12 Fort Worth?
13 A. This is the McFadden letter to Mr. Siegel?
14 Q. Yes.
15 A. No.
16 MR. WATLER: Counsel, I don't believe that
17 was called for in the scope of the documents.
18 MR. JOHNSON: I didn't say it was.
19 MR. WATLER: You've been asking him about
20 documents that are within the scope of it, so I
21 wanted to clarify that.
22 MR. JOHNSON: I'm going to mark something as
23 Exhibit 3.
24 (EXHIBIT(S) NO. 3 MARKED.)
25 BY MR. JOHNSON:

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1 Q. Take a look at that Exhibit 3 and tell me if
 2 you recognize that letter?
 3 A. Question?
 4 Q. Do you recognize that letter, sir?
 5 A. Yes.
 6 Q. Okay. Is that a letter -- is that your
 7 signature at the bottom?
 8 A. No.
 9 Q. Whose signature is it?
 10 A. I don't know.
 11 Q. Did you write the letter?
 12 A* I reviewed the letter.
 13 Q. Well, there you go. Did you write the
 14 letter?
 15 MR. WATLER: Object to counsels side-bar.
 16 BY MR. JOHNSON:
 17 Q. I'm asking you did you write this letter?
 18 A. NO.
 19 Q. Who did?
 20 A* I don't know that for sure.
 21 Q. Where was it prepared?
 22 A. It was prepared at -- in Washington counsel's
 23 office.
 24 Q. Mr. Faberman?
 25 A. His office.

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1 Q. All right. Is that Legend stationery?
 2 A. That's correct.
 3 Q. All right. That is the stationery Legend
 4 uses today?
 5 A* That's correct.
 6 Q. All right. When did you first learn that the
 7 letter that has been marked as Exhibit 3 had actually
 8 been prepared?
 9 A. Probably -- I don't know that.
 10 Q. When did you first see a copy of Exhibit 3?
 11 A* I don't know that exact date.
 12 Q. Well, give me the approximate date, sir?
 13 A. Approximately the date it was sent.
 14 Q. And what were the circumstances under which
 15 you saw that copy?
 16 A. My office, I reviewed my stack of read file,
 17 when I got back to my office.
 18 Q. Okay. Would this be back to your office
 19 after your meeting in Washington on the 12th; is that
 20 it, or some other time?
 21 A. I don't know that for sure.
 22 Q. Well, is this the first time that you're
 23 aware of that someone typed a letter purporting to be
 24 sent by you on Legend stationery and sent it without
 25 you seeing it with a signature on it that was not your

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1 signature?
 2 A. I was aware of the letter.
 3 Q. Yeah, but I'm trying to get at more than
 4 that. Is this the only time that you're aware of that
 5 somebody sent out a letter purporting to be from you
 6 that actually wasn't from you?
 7 A. NO.
 8 Q. Okay. How often has that happened in the
 9 past?
 10 A. Would you rephrase that question? I'm not
 11 sure I understood what your question was.
 12 Q. Is this the first time that someone has sent
 13 out a letter purporting to be from you that was not
 14 actually your letter?
 15 A. This was my letter.
 16 Q. Well, you didn't dictate it, you didn't write
 17 it, you didn't sign it, and you didn't send it. What
 18 makes it your letter?
 19 A. I was aware of the words in the letter, and I
 20 authorized it to go.
 21 Q. All right. When did you authorize it?
 22 A. Before it was sent.
 23 Q. When was that?
 24 A. Would have been on or about June 16th.
 25 Q. What were the circumstances of you giving

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1 that authority?
 2 A. Through telephone conversation.
 3 Q. With whom?
 4 A. I don't recall that.
 5 Q. Well, who is it --
 6 MR. WATLER: Counsel, is there some issue
 7 about the authenticity of that letter? He said
 8 it's his letter, he authorized it. Why are we
 9 belaboring this?
 10 MR. JOHNSON: There are a whole host of
 11 questions about this.
 12 MR. WATLER: I'm sure I could probably think
 13 of 50 or SO to help you out. If your purpose is
 14 prolonging the deposition, obviously you can think
 15 of many, many questions to ask him about that
 16 letter.
 17 MR. JOHNSON: I can assure you --
 18 MR. WATLER: Where does it advance the issues
 19 in this litigation today, you know, to around the
 20 fifth hour of the deposition --
 21 MR. JOHNSON: Well, let me just give you an
 22 example of the problem that I have upon learning
 23 these things about this letter. I have spent as
 24 much time and tried to be as careful as I could
 25 possibly be to cover all bases on all kinds and

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1 manners of communications that could have occurred
 2
 3 MR. WATLER: He has answered every question
 4 you had for him today.
 5 MR. JOHNSON: I did not cover in any of the
 6 areas that I asked questions, at least in my own
 7 mind, circumstances where people were sending
 8 letters out purporting to be from this witness
 9 that were not actually from this witness. And,
 10 you know, and I--
 11 MR. WATLER: You're saying it's foreign to
 12 you in the world of business that occasionally an
 13 executive has a letter prepared and sent out over
 14 his signature with his authorization, and that's
 15 some sort of surprise to you today? And that's
 16 some sort of necessity to conduct this extensive
 17 discovery?
 18 BY MR. JOHNSON:
 19 Q. Mr. McArtor, let me ask you this question.
 20 MR. WATLER: A point that I daresay will
 21 never come into evidence at the trial of this
 22 case, nor is it likely or calculated to lead to
 23 the discovery of evidence that will come into
 24 evidence at the trial of the case.
 25 MR. BOGLE: Is that your objection?

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1 MR. WATLER: Yes, my objection is that this
 2 is absurd, it is burdensome, this is harassing and
 3 I wish you would get it over with.
 4 MR. JOHNSON: Do you have a legal objection?
 5 MR. WATLER: My legal objection is just as I
 6 said.
 7 BY MR. JOHNSON:
 8 Q. Now, Mr. McArtor, my question to you is how,
 9 on how many occasions have people in the Law Office of
 10 Ungaretti or whatever that -- I think that's it -- sent
 11 out letters, Ungaretti & Harris, sent out
 12 correspondence on Legend stationery over your signature
 13 or what purports to be your signature?
 14 A. I'm not aware that they have.
 15 Q. This is the only time?
 16 A. I don't think that went from Ungaretti &
 17 Harris.
 18 Q. Who did it come from? Who sent it?
 19 A. I believe it came from my office.
 20 Q. Your office where?
 21 A. In Dallas.
 22 Q. Who do you think prepared it in your office
 23 in Dallas?
 24 A. I suspect my secretary typed it.
 25 Q. Who was your secretary at that time?

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1 A. Ms. Harris.
 2 Q. What's her first name?
 3 A. Leza.
 4 Q. Okay. Is she still your secretary?
 5 A. That's correct.
 6 Q. Is a copy of that maintained in your records
 7 on these matters in your offices here in Dallas?
 8 A. Yes.
 9 Q. Where did this copy that I have in front of
 10 me come from?
 11 A. Came from our files.
 12 Q. You got it out of a file and produced it in
 13 connection with this subpoena duces tecum?
 14 A. That's correct.
 15 Q. And what file was that?
 16 A. In the correspondence file that had to do
 17 with DOT correspondence.
 18 Q. So who -- if you think your secretary
 19 prepared it, do you think that she also signed your
 20 name to it?
 21 A. It's possible she did. I don't recognize
 22 that. I gave the authorization to sign it and send it.
 23 Q. Is it possible other people in your office
 24 have prepared letters that went to the Department of
 25 Transportation that you didn't actually sign?

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1 A. No.
 2 Q. Why is that not possible, if this happened?
 3 A. It's not possible.
 4 Q. Did you tell somebody, "Write a letter to
 5 Nancy McFadden for me and sign my name and send it off
 6 thanking her for the meeting"?
 7 A. No, I did not.
 8 Q. So somebody just did this on their own?
 9 A. Somebody suggested it to me.
 10 Q. Who suggested it to you?
 11 A. It is my recollection that Mr. Faberman's
 12 office suggested that I write this letter.
 13 Q. All right. Suggested to you that it be
 14 written?
 15 A. Correct.
 16 Q. All right.
 17 MR. JOHNSON: Mark this as Exhibit 4, please.
 18 (EXHIBIT(S) NO. 4 MARKED.)
 19 BY MR. JOHNSON:
 20 Q. Mr. McArtor, take a look at what's been
 21 marked as Exhibit 4.
 22 A. (Witness complied.)
 23 Q. Now, that on its face appears to be dated
 24 June the 24th of 1998 on Ungaretti & Harris stationery,
 25 addressed to Nancy McFadden at the DOT and signed by

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1 Edward Faberman, doesn't it?
 2 A* That's right.
 3 Q. And it also has an attachment to it?
 4 A. That's right.
 5 Q. The entire first paragraph has been whited
 6 out in this production; all right, sir?
 7 A. That's right.
 8 Q. Have you seen this document in its unredacted
 9 form?
 10 A* Yes.
 11 Q. All right. Is it in your files in its
 12 unredacted form?
 13 A. No longer. I mean I've given these to
 14 counsel.
 15 Q. All right. And can you tell me whether you
 16 recall what was in that paragraph that has been
 17 obliterated from the letter, the copy that was given to
 18 us?
 19 MR. WATLER: That's a yes or no question.
 20 THE WITNESS: No.
 21 BY MR. JOHNSON:
 22 Q. Do you know why that paragraph was redacted?
 23 MR. WATLER: That's yes or no also.
 24 THE WITNESS: Yes.
 25 BY MR. JOHNSON:

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1 Q. Why?
 2 MR. WATLER: Well --
 3 **(A discussion was had off the record between**
 4 **the witness and Mr. Watler.)**
 5 MR. WATLER: I'll just state for the record
 6 the redactions were pursuant to the written
 7 objections that have been filed with the Court.
 8 MR. JOHNSON: Which ones?
 9 MR. WATLER: The written objections that were
 10 served on you this morning.
 11 MR. JOHNSON: Which objection?
 12 MR. WATLER: Well, attorney/client,
 13 proprietary information.
 14 MR. JOHNSON: Any others?
 15 MR. WATLER: What's included within those
 16 objections.
 17 MR. JOHNSON: All right.
 18 BY MR. JOHNSON:
 19 Q. Let me ask you this. Has Nancy E. McFadden
 20 ever represented you or Legend Airlines as a lawyer?
 21 A. No.
 22 Q. Have you ever relied on the Depa-ment of
 23 Transportation lawyers for legal counsel?
 24 A. No.
 25 Q. Have you ever sat down or been involved in

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1 litigation planning and strategy sessions with
 2 Department of Transpo-ation lawyers?
 3 A. No.
 4 Q. Are you aware of your lawyers ever engaging
 5 in such activity with Depa-ment of Transportation
 6 lawyers?
 7 A. No.
 8 Q. Have you ever instructed anyone on behalf of
 9 Legend Airlines to engage in common litigation strategy
 10 or planning sessions on behalf of Legend Airlines with
 11 lawyers from the Depa-ment of Transportation?
 12 **(A discussion was had off the record between**
 13 **the witness and Mr. Watler.)**
 14 THE WITNESS: Are you also referring to the
 15 June 22th meeting where we encouraged them to
 16 intervene in the lawsuit?
 17 BY MR. JOHNSON:
 18 Q. My question stands on its own. Have you ever
 19 instructed your lawyers to engage, and I'm talking
 20 about Legends lawyers, to engage in litigation
 21 strategy and planning sessions with Depa-ment of
 22 Transportation Department, you know, DOT lawyers?
 23 A. Other than the June 12th meeting, no.
 24 Q. What common litigation and strategy planning
 25 session took place at the meeting of June 12, 1998?

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1 A. None that I'm aware of.
 2 Q. Okay. At the meeting of June 12th, 1998, at
 3 that meeting did you give your lawyers some instruction
 4 with regard to their participation in common litigation
 5 strategy and planning with lawyers from the Depa-ment
 6 of Transpo-ation?
 7 A. I don't know that I know the definition of
 8 your terms well enough to answer that question,
 9 Q. Well, let me -- I can usually give you my
 10 definition of it. At that meeting did conversations
 11 take place where you, Legend and your lawyers agreed to
 12 participate with the Depa-ment of Transportation in
 13 drafting common litigation strategy?
 14 A. No.
 15 Q. Or in developing common litigation strategy?
 16 A. No.
 17 Q. All right. To your knowledge have any
 18 lawyers ever representing Legend Airlines engaged in
 19 common litigation planning or strategy sessions with
 20 lawyers from the Depa-ment of Transportation?
 21 A. No.
 22 Q. Are you aware of any private law firm
 23 representing the Depa-ment of Transportation in
 24 matters that pertain to Legend operations at Love Field
 25 or the intervention of the DOT in litigation in Fort

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1 Worth?
 2 **A. No.**
 3 MR. WATLER: I'm sorry, what was that last
 4 question?
 5 THE COURT REPORTER: "QUESTION: Are you
 6 aware of any private law firm representing the
 7 Department of Transportation in matters that
 8 pertain to Legend..."
 9 MR. JOHNSON: Well, given all that I have to
 10 insist that the full document be produced --
 11 MR. WATLER: Counsel --
 12 MR. JOHNSON: -- or I mean we're just going
 13 to have to come back and discuss this when we
 14 finally get it with this witness.
 15 MR. WATLER: Perhaps so, and I don't mean to
 16 be exhaustive in our objections to it, but it's
 17 irrelevant, it's outside the scope of the Order
 18 regarding this deposition, it includes proprietary
 19 information and for all those reasons and the
 20 reasons set forth in our written objections we've
 21 objected to it. So we have a disagreement over
 22 it.
 23 BY MR. JOHNSON:
 24 Q. Let me ask you this, Mr. McArtor, in your
 25 communications, correspondence, yours and those acting

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1 on behalf of Legend Airlines, have you ever given the
 2 Department of Transportation information that you
 3 considered secret, not to be disclosed by the
 4 Department of Transportation?
 5 **A. Yes.**
 6 Q. On what occasions did you do that?
 7 **A. On the occasion of our 401 Application.**
 8 Q. Was that orally or in writing?
 9 **A. Both.**
 10 Q. Have you ever done that in connection with
 11 any matter pertaining to this litigation?
 12 **A. No.**
 13 Q. Take a look at the next exhibit, if you
 14 would, which is Exhibit No. 5.
 15 **(EXHIBIT(S) NO. 5 MARKED.)**
 16 BY MR. JOHNSON:
 17 Q. I will agree with you that that's probably
 18 the best legal work Ungaretti & Harris ever did on page
 19 1.
 20 MR. WATLER: Object to counsel's side-bar,
 21 pathetic attempt to be clever.
 22 BY MR. JOHNSON:
 23 Q. Have you ever seen the letter and attachments
 24 that have been marked as Exhibit 5 before today?
 25 **A. Yes.**

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1 Q. And that's a letter from Ungaretti & Harris
 2 dated November 19, 1997, to Nancy McFarland (sic;
 3 McFadden), Esquire at the Department of Transportation;
 4 correct?
 5 **A. Correct.**
 6 Q. The entire first page has been taken out;
 7 right?
 8 **A. Correct.**
 9 Q. Do you have any recollection of what the
 10 first -- what that first page said?
 11 **A. Not precisely, no.**
 12 Q. So you would have -- well, generally do you?
 13 **A. No.**
 14 Q. So you'd have to see the document, yourself,
 15 to know whether or not it would have bearing on your
 16 testimony here today and the subjects we've been
 17 inquiring about; correct?
 18 **A. I did.**
 19 Q. You did?
 20 **A. Correct.**
 21 Q. When did you last see this document in its
 22 unredacted form?
 23 **A. Within the week.**
 24 Q. Okay. So this is Thursday, so that would be
 25 Monday, Tuesday or Wednesday?

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1 **A. If you remind me when they were delivered to**
 2 **you I could probably be more precise.**
 3 Q. I don't know, because they weren't given
 4 directly to me.
 5 MR. JOHNSON: When did y'all deliver them?
 6 MR. EDWARDS: Friday under the order.
 7 BY MR. JOHNSON:
 8 Q. Last Friday?
 9 **A. Sometime immediately prior to Friday.**
 10 Q. Can you tell me that the information that has
 11 been redacted relates to Legend's application for
 12 operating certificate?
 13 **A. I don't recall that it did.**
 14 MR. JOHNSON: We would ask that the full
 15 letter be produced.
 16 MR. WATLER: Same objection.
 17 MR. JOHNSON: What is your objection?
 18 MR. WATLER: The ones I enumerated earlier.
 19 MR. JOHNSON: Specifically with regard to
 20 this Exhibit 5.
 21 MR. WATLER: It's not within the scope of
 22 discovery for this deposition. It's proprietary.
 23 BY MR. JOHNSON:
 24 Q. All right. Well, Mr. McArtor, we may have to
 25 see you back on some of these matters once we get a

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i look at them, because I mean obviously, I don't know
 2 whafs in there that might spark some line of
 3 questioning.
 4 Did you meet with anybody to prepare for your
 5 deposition today?
 6 A. I met with counsel.
 7 Q. All right. Who was that?
 8 A. Mr. **Watler**, Mr. Edwards.
 9 Q. And when did you meet?
 10 A. This week.
 11 Q. Okay. And was anybody else present?
 12 A. No.
 13 Q. Where did the meeting take place?
 14 A. The **office** of counsel.
 15 Q. All right. And were you shown anything to
 16 refresh your recollection?
 17 A. **I reviewed the interrogatory answers and the**
 18 **correspondence file that was presented to you.**
 19 Q. All right. Did it refresh your recollection?
 20 A. I suspect so.
 21 Q. All right. In any -- were you shown any
 22 documents that were removed from the file and not
 23 produced to us?
 24 A. No.
 25 Q. Other than reviewing full versions of

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1 Q. Mr. McArtor, I'll try to be as quick as I
 2 can. How long have you known Mr. Faberman?
 3 A. **11 years.**
 4 Q. Has he also **performed** -- do you want to take
 5 a break?
 6 A. **No.**
 7 Q. Has he also **performed** lobbying work for you
 8 or for Legend, in addition to legal work he **performs**?
 9 A. Yes.
 10 Q. What was the most recent occasion for his
 11 assisting Legend with lobbying work or government
 12 affairs work?
 13 A. **Setting up -setting up the meeting with**
 14 **Senator McCain, I think was the last that you might**
 15 **consider lobbying.**
 16 Q. Give me the time frame on that.
 17 A. **That was in the June, July time frame.**
 18 Q. And you get bills from Mr. Faberman's office,
 19 that law firm that **we've** been -the Ungaretti & Harris
 20 law firm?
 21 A. **That's right.**
 22 Q. And those bills come to you or do they come
 23 to Legend?
 24 A. **They come to my attention at Legend.**
 25 Q. How often do you get billed by the Ungaretti

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Exhibits 4 and 5, I take it; right?
 2 MR. WATLER: That mischaracterizes his
 3 testimony.
 4 BY MR. JOHNSON:
 5 Q. Did you, in fact, review **unredacted** versions
 6 of Exhibit 4 and 5 in preparation for your testimony
 here today?
 8 A. No.
 9 Q. So the only versions you were given were the
 10 redacted versions of Exhibits 4 and 5?
 11 A. **That's** correct.
 12 Q. Do you **currently** have any meetings **scheduled**
 13 with any Senators, Congressmen or **personnel** at the
 14 Federal Aviation Administration or the Department of
 15 Transportation?
 16 A. Yes.
 17 Q. Tell me what those are, sir.
 18 A. **It's my understanding we have a meeting with**
 19 **the Dallas Flight Standard District Office next week as**
 20 **part of our certification process. That's FAA.**
 21 Q. Any other meetings scheduled?
 22 A. **Not that I'm aware.**
 23 MR. JOHNSON: I'll pass the witness.
 24 EXAMINATION
 25 BY MR. KERR:

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1 & Harris law firm?
 2 **(A discussion was had off the record between**
 3 **the witness and Mr. Watler.)**
 4 THE WITNESS: Generally monthly.
 5 BY MR. KERR:
 6 Q. When you say generally monthly, is there a
 specific exception in your mind when you didn't get a
 bill?
 8 A. **No.**
 10 MR. WATLER: Not so lucky these days.
 11 BY MR. KERR:
 12 Q. **What's** the last -- do you remember the
 13 approximate date of the last bill you got?
 14 A. **No, I don't. Approximate did you say?**
 15 Q. Approximate, sure. Was it a couple of weeks
 16 ago or a month ago or six weeks ago?
 17 A. **Approximately a couple of weeks ago.**
 18 Q. How do you tell in those bills when Mr.
 19 Faberman is acting as a lobbyist and when he's acting
 20 as a lawyer?
 21 A. **His work is -- is exclusively billed as a**
 22 **lawyer.**
 23 Q. He doesn't bill you for his time when he
 24 performs government services or lobbying for Legend?
 25 A. **We don't really use him as a lobbyist.**

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Q. Well, you at least did when he set up the meeting for you, you said, with Senator McCain, that's the last time you recall him acting as a lobbyist for you, you just told me that under oath about two minutes ago, didn't you, sir?

A. That's correct.

Q. Well, did he bill you for that?

A. Not that I'm aware.

Q. That's just as a courtesy?

A. Yes.

Q. Well, how do you tell when he's working as a lobbyist and when he's working as a lawyer, how do you tell?

A. He works as counsel for Legend.

Q. Yes, sir, I understand that.

A. That's how I tell.

Q. So how do you tell when he works as counsel for Legend as opposed to when he works as a lobbyist?

MR. WATLER: He said he doesn't work as a lobbyist.

THE WITNESS: I already told you we don't ask him to be a lobbyist.

BY MR. KERR:

Q. Except for the one time he set up something for Senator McCain with you?

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MR. WATLER: Which he said was a courtesy.

BY MR. KERR:

Q. You're distinguishing what he does as courtesy and what he does as work? Is everything he does for Legend as a lobbyist, is it a courtesy?

A. He doesn't do anything really as a lobbyist since the McCain meeting.

Q. What did he do before that as a lobbyist, before the McCain meeting?

A. I don't consider him to be a lobbyist.

Q. What did he do for Legend Airlines before the McCain meeting as a lobbyist, whether you paid him for it or whether he did it as a courtesy?

A. Nothing that I'm aware of.

Q. That's the only time, is that your testimony under oath, the only time that Mr. Faberman has acted as a lobbyist on behalf of Legend Airlines is when he arranged a meeting with Senator McCain, is that your testimony?

A. Then I want you to describe for me what you mean by lobbyist.

Q. Performing work other than working as a legal counsel for Legend Airlines, we'll start with that.

MR. WATLER: Your questions presume that those are mutually incompatible roles.

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BY MR. KERR:

Q. Sometimes does he work as a lobbyist while he's working as a lawyer, is your counsel right? Are they indistinguishable to you?

A. You haven't defined for me, counselor, your term for lobbyist, as anything other than a lawyer. I can't answer your questions.

Q. Can you determine in your own mind the distinction between Mr. -- when Faberman acts as a lobbyist and when he acts as a lawyer for Legend, can you make that distinction in your own mind?

A. No.

Q. I forget the name of the outfit, it was the --

MR. JOHNSON: Hall?

BY MR. KERR:

Q. Yeah, Air Carrier Association of America, the day that you were up at the DOT, and he was -- he's the executive director, Faberman is, right, the Air Carrier Association of America?

A. Yeah.

Q. So he was in this meeting. How many people were in that meeting?

A. It was probably 40.

Q. And Faberman was acting as a executive

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director of the organization; correct; is that correct, during that meeting?

A. He is the executive director.

Q. I presume if he is the executive director then at the meeting he was acting as the executive director for purposes of the meeting, was he, sir?

A. Not necessarily.

Q. What other roles did he have there?

A. He was counsel for Legend.

Q. And counsel to other -- to other airlines or other entities in the room; is that correct?

A. I don't know if he's legal counsel to anybody else.

Q. Okay. Well, how did you distinguish for example, in that meeting when he was acting as the executive director for the Air Carrier Association of America and when he was giving legal advice to Legend or acting on behalf of Legend, how did you distinguish those two things?

A. That was easy for me to distinguish those things.

Q. How? Just explain that to me.

A. Ask your question again.

Q. I want you to explain to me how it was easy for you to distinguish Mr. Faberman's role as the

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1 executive director of the organization and his role as
 2 your counsel or Legend's counsel?
 3 A. From his **comments** at the meeting it was easy
 4 **for me to determine.**
 5 Q. Okay. Well, give me an example of a comment
 6 at the **meeting** where he acted as the executive
 7 director?
 8 A. **He made some opening remarks, or some**
 9 **comments with respect to the predicament that small air**
 10 **carriers find themselves in the area of deregulation**
 11 **and the predatory behavior of major air carriers**
 12 **against smaller air carriers.**
 13 Q. And he did that as the executive director as
 14 opposed to counsel for Legend?
 15 A. Yes.
 16 Q. And then what did he do in the course of the
 17 meeting where he said **something** where he was acting on
 18 behalf of counsel for Legend?
 19 A* During the **meeting?**
 20 Q. Yes.
 21 A. **Nothing I'm aware of.**
 22 Q. So he didn't act for Legend during the
 23 meeting; is that your testimony?
 24 A. **He made no comments that I'm aware of acting**
 25 **as counsel for Legend.**

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1 Q. And then maybe I didn't quite understand
 2 this, at some time right after the **meeting** is when he
 3 notified you on August 25th **that there had been --**
 4 **what's the proper phrase, a docket opened for the Love**
 5 **Field matter, Love Field investigation; is that**
 6 **correct?**
 7 A. **That's correct.**
 8 Q. And by immediately after the meeting, do you
 9 mean were you still in the room when he gave you that
 10 piece of **information**, in the meeting room where you had
 11 been with the 40 people?
 12 A. **No.**
 13 Q. How far had you gotten from the **meeting** room
 14 when he told you there had been a DOT investigation
 15 opened?
 16 A. Somewhere **near the elevator bank.**
 17 Q. So you were walking to the elevator bank with
 18 Mr. **Faberman** and with whom else when he told you this
 19 information that there had been a docket opened about
 20 the Love Field matter?
 21 A. **There was another attorney from his firm, I**
 22 **believe, that was with us at this.**
 23 Q. Who else was walking out with you towards the
 24 elevator?
 25 A. The entire meeting'

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1 Q. Well, were there other people around when Mr.
 2 **Faberman** made this announcement to you that the DOT had
 3 decided to open an investigation?
 4 A. **There were several people around.**
 5 Q. Well, what was your **reaction** when you found
 6 out that the DOT had opened an investigation?
 7 A. **I wanted to get a copy.**
 8 Q. Did **Faberman** have a copy?
 9 A. No.
 10 Q. Did you go get a copy then?
 11 A. Yes.
 12 Q. Right there in the DOT's offices?
 13 A. **That's correct.**
 14 Q. Where did you go -- when you got in the
 15 elevator, I guess you got in the **elevator** with
 16 **Faberman?**
 17 A. **Yes.**
 18 Q. Okay. And did you go then to another floor
 19 there in the DOT and just pick up a copy of the order
 20 that they had just -the docket entry they had just
 21 made?
 22 A. No.
 23 Q. Well, what did you do to get the docket order
 24 that opened this investigation?
 25 A. **Mr. Faberman and I returned to his office.**

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1 Q. So you went to **Faberman's** office to get it
 2 rather than --
 3 A. No.
 4 Q. Then I'm confused. Tell me how you got it.
 5 You went to **Faberman's office** and then came back?
 6 A. No.
 7 Q. Tell me how you got the docket, the document
 8 that opened the investigation?
 9 A. **Mr. Faberman's firm got the -- got the**
 10 **information from the docket.**
 11 Q. What do you mean, from the docket?
 12 A. **From the DOT.**
 13 Q. From the DOT?
 14 A. Rep --
 15 Q. Were you with him?
 16 A. **No, I was not with him.**
 17 Q. Well, when did they get the docket, as you
 18 say, from the DOT?
 19 A. **That afternoon.**
 20 Q. When did you first see it?
 21 A. At Mr. **Faberman's** office.
 22 Q. At approximately what time?
 23 A* **Approximately 6:00 p.m.**
 24 Q. And you said the meeting ended sometime
 25 before 5:00, I think that's your testimony?

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- 1 A. That's right.
 2 Q. How long before 5:00 did the meeting end?
 3 A. I don't know.
 4 Q. Well, between 4:00 and 5:00?
 5 A. Between 4:00 and 5:00.
 6 Q. Did you have any conversations -- well, let
 7 me put it this way. With whom did you talk about this
 8 docket entry between the time you found out about it
 9 from Mr. Faberman walking to the elevator after the
 10 meeting and the time you actually saw the docket
 11 materials, the document that opened the investigation?
 12 Tell me everybody you spoke with about the DOT
 13 investigation during that time frame?
 14 A. I'm not sure I understand your question.
 15 Q. Let me establish the end of the time frame.
 16 When you found out about it, the first time you found
 17 out the DOT was going to, as I understand it, was going
 18 to open an investigation on Love Field, was when you
 19 were walking to the elevator after the meeting at the
 20 Air Carrier Association of America?
 21 A. It was not a meeting of them.
 22 Q. It wasn't?
 23 A. No.
 24 Q. Then I've got my meetings mixed up. What
 25 meeting was it where you found out about the DOT

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- 1 investigation?
 2 A. It was a Department of Transportation
 3 meeting. It was a fact finding meeting.
 4 Q. Okay. And that's not the same meeting where
 5 he was acting as a air carrier -- he was acting as
 6 Executive Director of the Air Carrier Association?
 7 A. That is the same meeting.
 8 Q. And it was while you were walking to the
 9 elevator when you found out and that was sometime
 10 between 4:00 and 5:00; correct?
 11 A. That's right.
 12 Q. And then you saw the actual document sometime
 13 approximately 6:00, in round numbers?
 14 A. That's my recollection.
 15 Q. I want to know everybody you talked to
 16 between the time you found out about it and the time
 17 you saw the docket.
 18 A. I talked to several of the meeting
 19 participants. I talked to a couple of the States
 20 Attorneys General, I talked to our counsel.
 21 Q. Which counsel is that?
 22 A. Mr. Faberman. I talked to a cab driver.
 23 Q. About the DOT proceedings?
 24 A. No. That wasn't your question.
 25 Q. Then I apologize. I meant to just limit it

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- 1 to discussions of the opening of the DOT proceedings.
 2 A. I talked to my office to get messages,
 3 advised them that I had been advised that the DOT had
 4 initiated its proceeding.
 5 Q. Anybody else?
 6 A. That's it. No.
 7 Q. You didn't talk to anybody at the Department
 8 of Transportation while you were in the building that
 9 day right after you found out they had opened the
 10 document, is that your testimony?
 11 A. About the proceeding?
 12 Q. Yes, sir. Or about the opening of the
 13 proceeding or anything in connection with the Love
 14 Field matter?
 15 A. No.
 16 Q. Well, did you talk to anybody at the DOT
 17 between the time you found out on the way to the
 18 elevator that the proceeding had been opened and the
 19 time -- and the end of the day?
 20 A. Yes.
 21 Q. Who did you talk with?
 22 A. I talked to, as I recall, Mr. Hunnicutt on
 23 the way out. I don't recall who was with Mr.
 24 Hunnicutt. He had one or two other people with him.
 25 Q. Anybody else?

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- 1 A. Not that I'm aware.
 2 Q. What did you say to Hunnicutt that afternoon
 3 of August 25th?
 4 A. I thanked him for conducting the meeting,
 5 told him how important I thought it was for the
 6 Department to issue their competition guidelines, that
 7 there were clear examples of predatory behavior in the
 8 airline industry, that he didn't really need guidelines
 9 to enforce the Department's authority, but if -- but
 10 not to delay the issuance of any of those guidelines.
 11 Q. What did he say to you?
 12 A. He thanked me for my participation and
 13 thought that the meeting was very helpful, fact finding
 14 meeting for the Department.
 15 Q. What else did you two say to each other that
 16 August 25th afternoon?
 17 A. That's all that I recall.
 18 Q. You don't recall speaking with anybody else
 19 associated with or employed by the Department of
 20 Transportation, let me broaden it to the FAA as well,
 21 between the time on August 25th, between the time you
 22 found out about the investigation and the time you read
 23 the document back in your lawyer's office?
 24 A. No.
 25 Q. That's correct? My statement is correct, you

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1 mean no, yes, I've talked to other people? Your answer
 2 is going to be a little --
 3 A. **Ask your question again.**
 4 Q. Did you talk to anybody else other than --
 5 A. **No.**
 6 Q. What was Mr. Faberman's role in arranging the
 7 June 12 meeting?
 8 A. **Mr. Faberman had made the initial request for**
 9 **the meeting.**
 10 Q. Was that acting as a lobbyist or a lawyer, or
 11 do you know?
 12 A. **Acting as a lawyer.**
 13 Q. t-tow do you know that?
 14 A. **Mr. Faberman is counsel to Legend Airlines.**
 15 Q. Yes, sir, I understand that, but how do you
 16 know that the arranging the meeting was done as an act
 17 of practicing law, representing Legend Airlines, rather
 18 than being a lobbyist?
 19 MR. WATLER: Objection, asked and answered.
 20 BY MR. KERR:
 21 Q. Do you know, can you distinguish?
 22 MR. WATLER: He answered that he's counsel to
 23 Legend Airlines. That's how he knows.
 24 MR. KERR: Are you instructing him not to
 25 answer?

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1 MR. WATLER: No, objecting as asked and
 2 answered.
 3 BY MR. KERR:
 4 Q. I want to know if you can tell the difference
 5
 6 MR. WATLER: Mr. Kerr, excuse me, you asked
 7 that exact question, he gave you a responsive
 8 answer. If you have a problem with his answer you
 9 can object as nonresponsive and take it up with
 10 the Court.
 11 MR. KERR: I wilt object to nonresponsive and
 12 let me re-ask the question.
 13 MR. WATLER: I object at this late hour to
 14 asking these ridiculous minutia questions that
 15 serve no purpose other than prolonging this
 16 deposition. Particularly when you're repetitive
 17 in asking your questions, repetitive of questions
 18 that have already been asked by Mr. Johnson
 19 earlier in the day and questions that you just had
 20 already asked.
 21 BY MR. KERR:
 22 Q. Mr. McCartor, I think we could have probably
 23 communicated on this in the time it took your lawyer to
 24 make that objection. All I'm asking is if when Mr.
 25 Faberman arranged the meeting, whatever he did to

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1 arrange the meeting on June 12th, the meeting on June
 2 12th, do you know whether he was acting as a lawyer or
 3 as a lobbyist?
 4 MR. WATLER: Objection, asked and answered,
 5 Repeat your answer. I'm not instructing him not
 6 to answer. I am noting at this late hour --
 7 MR. POWELL: It's only 2:15.
 8 MR. WATLER: We've been going since 9:00 this
 9 morning.
 10 MR. JOHNSON: No, we haven't.
 11 BY MR. KERR:
 12 Q. How do you know?
 13 A. **He was acting as a lawyer for Legend**
 14 **Airlines.**
 15 Q. Yes, sir. I understand that's your opinion
 16 and that's your belief. I want to know the basis for
 17 your opinion.
 18 MR. WATLER: He said he was counsel for
 19 Legend Airlines.
 20 MR. KERR: I know that, but how does he know
 21 that? f-low does he know that he was acting as
 22 counsel rather than a lawyer?
 23 MR. WATLER: He testified earlier in the day
 24 that he hired Mr. Faberman to be counsel for
 25 Legend Airlines, and you know that and you were

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1 here for that testimony.
 2 BY MR. KERR:
 3 Q. And he's worked as a lobbyist, isn't that
 4 correct, sir, for Legend Airlines?
 5 A. **I was trying to be responsive to one of your**
 6 **questions, counselor. He is a lawyer, legal counsel**
 7 **for Legend Airlines.**
 8 Q. I understand that and I understand that when
 9 he arranged the June 12 meeting that you believe he was
 10 acting as a lawyer on behalf of Legend Airlines when he
 11 did that. I've got that. I understand it. I want to
 12 know the basis for your belief in thinking that he was
 13 acting on that occasion in arranging the meeting as a
 14 lawyer and not a lobbyist. Do you have any basis other
 15 than what you've already told me?
 16 A. **Yes.**
 17 Q. **What's the basis for that?**
 18 A. **I asked him as counsel for Legend Airlines to**
 19 **arrange the meeting.**
 20 Q. And what did he say?
 21 A. **He said he would.**
 22 Q. Okay. The -what was the purpose for the
 23 meeting, as you understood it in talking with your
 24 lawyer?
 25 MR. WATLER: This is ground that was already

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1 plowed this morning by Mr. Johnson.
 2 BY MR. KERR:
 3 Q. What did you think the purpose of the meeting
 4 was?
 5 A. The purpose of the meeting was to bring the
 6 general counsel's office up-to-date on the chronology
 7 of events surrounding the Fort Worth litigation and to
 8 impress upon the Department of Transportation's Office
 9 of the General Counsel what our opinion was with
 10 respect to the duty, as we saw it, of the Department of
 11 Transportation to intervene in the lawsuit.
 12 BY MR. KERR:
 13 Q. And is it your testimony that by Mr. Faberman
 14 arranging that meeting and then participating in the
 15 meeting that he was acting as a lawyer on behalf of
 16 Legend?
 17 A. That's correct.
 18 Q. What legal services, what as a lawyer did he
 19 do in that meeting? What did he do as a lawyer?
 20 A. He represented Legend Airlines.
 21 Q. Well, he explained, I think, that the
 22 history, is that what you told us earlier, he gave a
 23 historical view?
 24 A. Mr. Watler and Mr. Faberman --
 25 Q. Both?

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1 A. -- both gave historical views.
 2 Q. And was his description of his view of the
 3 history of Love Field, was he acting as a lawyer then,
 4 talking to the DOT that day to get them to intervene?
 5 A. That's correct.
 6 Q. Who is Mark Singleton?
 7 (A discussion was had off the record between
 8 the witness and Mr. Watler.)
 9 THE WITNESS: What's your question?
 10 BY MR. KERR:
 11 Q. Do you have something you need to qualify
 12 here or explain?
 13 A. No.
 14 Q. Who is Mark Singleton?
 15 A. I don't know Mark Singleton.
 16 Q. Or Marvin Singleton, do you know Marvin
 17 Singleton?
 18 A. Marvin Singleton.
 19 Q. Who is Marvin Singleton?
 20 A. He's an employee of Legend Airlines.
 21 Q. What does he do for Legend?
 22 A. He does a number of things.
 23 Q. Well, name those things, please.
 24 A. Marvin Singleton assists with public
 25 relations. He assists with community relations, with

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1 the coordination of news releases.
 2 Q. Does he work with lobbyists?
 3 A. When you say work with lobbyists --
 4 Q. Well, is he the liaison between the lobbyists
 5 for Legend and Legend Airlines?
 6 A. The answer is sometimes.
 7 Q. Sometimes you do it yourself and sometimes
 8 Singleton does it; correct?
 9 A. That's correct.
 10 Q. And why was Marvin Singleton at the meeting
 11 with the DOT on June the 12th?
 12 MR. WATLER: That's a total
 13 mischaracterization.
 14 BY MR. KERR:
 15 Q. Well, was he at the meeting on June 12th?
 16 A. No. Not that I recall.
 17 Q. Well, let me show you --
 18 MR. KERR: Would you mark that?
 19 (EXHIBIT(S) NO. 6 MARKED.)
 20 MR. KERR: If my paralegal will hand me the
 21 document.
 22 BY MR. KERR:
 23 Q. Deposition Exhibit 6 indicates that it was
 24 planned that he would come to the meeting, doesn't it,
 25 sir?

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1 A. I don't think I ever planned to have him
 2 there, no.
 3 Q. Well, Mr. Faberman apparently understood he
 4 was going to be there, because that's what Mr.
 5 Faberman's letter, Exhibit 6 says, isn't it, sir?
 6 MR. WATLER: Document speaks for itself, go
 7 ahead
 8 BY MR. KERR:
 9 Q. Isn't that what the document says?
 10 A. That's what the document says.
 11 Q. Did he show up or not?
 12 A. No.
 13 Q. Why not?
 14 A. There was no reason for him to be in the
 15 meeting or make the trip.
 16 Q. Well, what's your best judgment on why Mr.
 17 Faberman thought he was going to be in the meeting?
 18 Did you tell Mr. Faberman he was going to be in the
 19 meeting?
 20 A. No.
 21 Q. Mr. Singleton must have told Mr. Faberman he
 22 was going to be in the meeting?
 23 MR. WATLER: Objection, calls for speculation
 24 BY MR. KERR:
 25 Q. You don't know?

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- 1 A. I don't know.
 2 Q. Did Mr. Faberman ever help you with your 401
 3 Application?
 4 A' Yes.
 5 Q. What did he do? What was his role in
 6 assisting with the 401 Fitness Application?
 7 MR. WATLER: If you can answer that in
 8 general, otherwise, it gets into attorney/client.
 9 BY MR. KERR:
 10 Q. I want general. What is his expertise that
 11 would assist you?
 12 A. 401 Application is an official regulatory
 13 procedure of the Department of Transportation.
 14 Q. Yes, sir. What did Mr. Faberman do to assist
 15 in preparing that?
 16 A. Assisting us in being compliant with the
 17 regulatory procedures of the DOT.
 18 Q. He wasn't -- he didn't help you gather and
 19 present information; he was just giving you advice on
 20 what the regulations required; is that a fair
 21 statement?
 22 MR. WATLER: Well, I object on the basis of
 23 attorney/client privilege. I think he's given you
 24 as much information as we can without being
 25 invasive of the privilege.

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- airline Legend?
 A. It's a great name.
 Q. Any other reason?
 A. American and Continental and United were all
 taken.
 Q. Did you want to name your airline American?
 MR. WATLER: Counsel...
 8 BY MR. KERR:
 9 Q. Do you have airline envy? Really, is there
 10 -- do you have an answer other than just it was a good
 11 name? Is there a serious answer, I mean is there a
 12 reason behind naming it Legend Airlines?
 13 MR. WATLER: How is this within the scope?
 14 MR. KERR: I'm sorry, we'll take it up in
 15 another deposition. That's fine.
 16 BY MR. KERR:
 17 Q. When you were talking about the meeting with
 18 Ms. McFadden and the letter that followed up on the
 19 meeting, the June 16 meeting, do you think that the
 20 letter that you have in front of you that you didn't
 21 write, Exhibit No. 3, accurately reflects your
 22 sentiments about the meeting?
 23 A. Well, first I'll take issue with your-with
 24 your question. You said this is a letter I didn't
 25 write.

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- 1 BY MR. KERR:
 2 Q. See if we can shortcut it. What's the status
 3 of the 401 Application?
 4 A. We expect it to be issued any day now.
 5 Q. When did you start the 401 Application
 6 process? My recollection from your earlier testimony
 7 this morning was sometime in the spring of this year.
 8 Is that accurate?
 9 A. That's correct.
 10 Q. So in November of '97 Mr. Faberman would not
 11 have been assisting you with your application, 401
 12 Application process; is that right?
 13 A' I'm not sure I understand your question of
 14 assisting us with the 401 Application process.
 15 Q. You didn't start the 401 Application till the
 16 spring of '98; right?
 17 A. We didn't formally submit it to the
 18 Department of Transportation.
 19 Q. So there wouldn't have been any
 20 communications from Mr. Faberman to Ms. McFadden or
 21 anybody else at the Department of Transportation about
 22 the 401 Application in November of 1997?
 23 A. It's possible.
 24 Q. Look at Exhibit No. 3. By the way, why --
 25 just as an aside, why did you decide to name your

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- 1 Q. All right.
 2 A. This letter was approved word for word by me.
 3 Q. Mr. Faberman drafted it, faxed it to your
 4 office, you approved it and it went out, is that the
 5 way it worked?
 6 A. I think Mr. Faberman had a role in drafting
 7 it, yes, sir.
 8 Q. Who else at Mr. Faberman's office had a role
 9 in drafting it?
 10 A. I have no idea.
 11 Q. How do you know Faberman had a role in
 12 drafting it?
 13 A. I was told that.
 14 Q. Who told you?
 15 A. I believe my office said that Ed had sent a
 16 draft letter for my consideration.
 17 Q. Did you -- okay. Ed sent it and how did you
 18 look at it. t-tow did you first see it in order to
 19 approve it?
 20 A. It was read to me.
 21 Q. Did you make any changes in what Ed did that
 22 he faxed to your office?
 23 A. I don't recall if I did or not.
 24 Q. But I guess the question is does this
 25 accurately reflect your view, your sentiments about the

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1 meeting?
 2 MR. WATLER: Asked and answered.
 3 THE WITNESS: Yes.
 4 BY MR. KERR:
 5 Q. Was it -- was it -- has it ever been, let me
 6 put it this way, has it ever been your purpose to bring
 7 down DFW Airport?
 8 A. No.
 9 Q. Was it your purpose in meeting with the
 10 Department of Transportation on June 16 for you or
 11 anybody else acting on behalf of Legend Airlines to
 12 convey information to DOT for the purpose of bringing
 13 down American -- DFW Airport?
 14 A. No.
 15 MR. WATLER: For the record, I'll object to
 16 the term bringing down. That's vague and
 17 ambiguous. Undefined.
 18 BY MR. KERR:
 19 Q. Have you ever used that term to describe --
 20 to introduce yourself, have you ever used that term to
 21 introduce yourself?
 22 A. Used that term bring down?
 23 Q. Yes, sir.
 24 A. No, sir.
 25 Q. Well, have you ever used a term similar to

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1 that that would be roughly equivalent to that to
 2 introduce yourself, like, for example, "Hi, I'm Allan
 3 McArtor. I'm the man that's going to bring down the
 4 Dallas/Fort Worth International Airport." Have you
 5 ever made a statement like that?
 6 (A discussion was had off the record between
 7 the witness and Mr. Watler.)
 8 THE WITNESS: I recall meeting with a group
 9 and introducing myself as, "I'm the man Bob
 10 Crandall says will drive a stake in the heart of
 11 American Airlines and destroy DFW Airport."
 12 BY MR. KERR:
 13 Q. When did Bob Crandall supposedly say that?
 14 A. I guess he first -- or it's my recollection
 15 he said it first in 1996 and probably several times
 16 after that.
 17 Q. Who told you he said that?
 18 A. I believe he was quoted in the press.
 19 Q. So somewhere in your files, or you have seen
 20 a press clipping that purports to quote Mr. Crandall to
 21 that effect; is that correct?
 22 A. That's correct.
 23 Q. Have you ever introduced yourself as Allan
 24 McArtor or Mr. McArtor, the man who is going to bring
 25 the Dallas/Fort Worth Airport or Dallas/Fort Worth

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1 International Airport to its knees?
 2 A. No.
 3 MR. WATLER: How does this relate to DOT
 4 content.
 5 MR. KERR: Well, because --
 6 MR. WATLER: You've asked him, you've already
 7 been down the road of did you ever introduce
 8 yourself to people at DOT in that fashion.
 9 BY MR. KERR:
 10 Q. Have you ever introduced yourself to anybody
 11 in that fashion?
 12 A. No.
 13 Q. I think it's related, I clearly think it's
 14 related. I'm entitled to investigate your motives in
 15 approaching the DOT and if you say your motive is not
 16 to bring down the Dallas/Fort Worth International
 17 Airport and that's your testimony under oath; correct?
 18 A. Correct.
 19 Q. If there's information you might have
 20 introduced yourself somewhere as a man who's going to
 21 bring the DFW Airport to its knees I guess that would
 22 be inconsistent with your testimony, would it?
 23 A. I've never used that term.
 24 MR. WATLER: Hold it.
 25 BY MR. KERR:

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1 Q. You've never used that term; is that right?
 2 MR. WATLER: I don't think that's a question.
 3 If you have a question --
 4 MR. KERR: I'll withdraw.
 5 MR. WATLER: I object to counsel's side-bar
 6 and all the self-serving stuff that he had in
 7 there.
 8 MR. KERR: I'll withdraw it.
 9 MR. WATLER: If you've got a question, give
 10 him a question.
 11 BY MR. KERR:
 12 Q. Is it your testimony that you don't ever
 13 recall using a phrase like bringing down the Airport or
 14 bringing the Airport to its knees or are you saying
 15 under oath you would just never use a term like that
 16 because that is not, in fact, your intention, which is
 17 it?
 18 MR. WATLER: Objection, asked and answered.
 19 Compound.
 20 BY MR. KERR:
 21 Q. Pick one of the two, you just don't recall it
 22 or is it something that you would never say because
 23 that clearly is not your intention, which is it?
 24 MR. WATLER: Objection, asked and answered.
 25 BY MR. KERR:

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1 a. He hasn't answered that.
 2 A. I do not recall it. It is not my **intention**,
 3 and I have the **highest** regard, respect and **confidence**
 4 **in DFW Airport**.
 5 Q. Why? What's the basis for your respect for
 6 DFW Airport?
 7 A' It's a great **Airport**.
 8 Q. I understand that. That's wound up in what
 9 you just said, but what about it makes it great? What
 10 makes it a great airport?
 11 A. In a **country** where **it's airport poor, where**
 12 **airport capacity is at a premium**, any airport that **can**
 13 **help with the national air transportation system, in my**
 14 **mind, is a great airport**.
 15 Q. So any airport is a great Airport?
 16 A. **Any airport that positively contributes to**
 17 **the national air transportation system**.
 18 Q. That's the only way in which you think DFW is
 19 a great airport?
 20 A. No, it is not the only way.
 21 Q. Well, you told me it was a good airport. You
 22 made a little speech about why. What's the basis for
 23 that?
 24 A. It's got seven **runways**, it's got **SO million**
 25 people **enplanements** a day. **It's supposed** to grow to **85**

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1 **percent, increase its traffic to over 100 million**
 2 **enplanements in the next 10 to 15 years, three air**
 3 **traffic control towers, ifs bursting at the seams**
 4 **gate-wise, it can't construct itself fast enough to**
 5 **meet demand. It is a major cargo hub, it is --**
 6 Q. Is it a major passenger hub?
 7 A. **It's a major passenger hub**.
 8 Q. Any other reasons you think it's a great
 9 airport?
 10 MR. WATLER: If you give him a chance, I
 11 think he's listing them for you, counsel.
 12 THE WITNESS: It's got one of the most
 13 sophisticated, albeit complex, but sophisticated
 14 air traffic control environments.
 15 BY MR. KERR:
 16 Q. Anything else?
 17 A. **That's great enough**.
 18 Q. Anything else you can think of?
 19 A' **I think that answers the question**.
 20 Q. Have you ever had any, ever had any
 21 conversations with members of the Dallas/Fort Worth
 22 International Airport Board?
 23 A. **Yes**.
 24 Q. With whom?
 25 A' **If you recall, we had some board settlement**

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1 **conference efforts --**
 2 Q. Other than **settlement**. I'm sorry, other than
 3 **settlement**.
 4 A. **Conversations with the Dallas Mayor**.
 5 Q. Mr. Kirk?
 6 A. **Mr. Kirk. Mr. Colmer when he was on the**
 7 **board**.
 8 Q. How many times have you talked with Mayor
 9 Kirk about Love Field, your airline or plans to fly out
 10 of Love?
 11 **(A discussion was had off the record between**
 12 **the witness and Mr. Watler.)**
 13 MR. FOSTER: Court Reporter, was that last
 14 question regarding Mayor Kirk?
 15 MR. KERR: Yes.
 16 THE WITNESS: Question again, please?
 17 BY MR. KERR:
 18 Q. When is the last time you talked to Mayor
 19 Kirk about-when is the last time you talked to Mayor
 20 Kirk?
 21 A. **Three months ago**.
 22 Q. What was the occasion?
 23 A. He was **giving a lunch speech**.
 24 Q. How long was your conversation with him?
 25 A. **17, 18 seconds**.

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1 Q. Just exchanged pleasantries, but nothing of
 2 substance about Love Field?
 3 A. **No. I raised a question from the floor**.
 4 Q. What was your question?
 5 A. **Said, "I hope you'll work with us, Mr. Mayor,**
 6 **to increase the jobs and competition at Love Field."**
 7 Q. By the way, are you for opening up Love Field
 8 for competition from everybody?
 9 A. **Everybody that's legally qualified to fly in**
 10 **Love Field**.
 11 Q. How do you characterize legally qualified,
 12 what do you mean by that?
 13 A. **If they abide by Federal law that governs**
 14 **Love Field and -and are a certified air carrier,**
 15 Q. In your view they can come in and compete
 16 with you and Southwest at Love Field?
 17 A. **Love Field is not an exclusive Southwest**
 18 **Airport, by any means**.
 19 Q. I want to understand what you mean by
 20 competition when you use that phrase, you mean you want
 21 to open up Love Field for anybody that the DOT says by
 22 certifying, the certifying process &an come in
 23 and fly, is that what you're saying?
 24 A. **If they comply with Federal law**.
 25 Q. That was implicit in being certificated by

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1 the DOT. If they comply with Federal law --
 2 A. I think that's what this lawsuit is over.
 3 Q. What do you mean by if they comply with
 4 Federal law? I want to make sure we're communicating
 5 A. The Federal law, the Airline Deregulation Act
 6 as amended is the governing Federal law.
 7 Q. So you want anybody to be able to compete,
 8 any airline to be able to compete at Love Field as long
 9 as they comply with Federal law?
 10 A. It's a case by case basis.
 11 Q. Well, what would be an example of a factor
 12 that would determine an airline on a case by case
 13 basis, whether they would be able to compete out of
 14 Love Field?
 15 MR. WILSON: Objection, calls for legal
 16 conclusion, calls for speculation.
 17 BY MR. KERR:
 18 Q. Let me see if I can rephrase the question.
 19 MR. WATLER: John, how does this have to do
 20 with DOT? We're getting really far afield. Been
 21 here a long time.
 22 MR. KERR: I think I can wrap it up in one
 23 question.
 24 MR. WATLER: Please do.
 25 BY MR. KERR:

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1 Q. I want to make sure we're on the same wave
 2 length and you're not trying to say something that I am
 3 too ignorant of the law or facts to appreciate. When
 4 you say that somebody -- an airline needs to comply
 5 with Federal law in order to fly out of Love Field,
 6 what do you mean by that?
 7 MR. WATLER: Asked and answered.
 8 THE WITNESS: If they comply with the Airline
 9 Deregulation Act as amended by the Wright
 10 Amendment and Shelby Amendment or any other follow
 11 on Federal law that might amend the Airline
 12 Deregulation Act, then that airline would be
 13 eligible to at least try to fly out of Love Field.
 14 BY MR. KERR:
 15 Q. I know they would be eligible to try to do
 16 that, but in your view you wouldn't have objection to
 17 competition from those airlines who did that?
 18 A. No.
 19 Q. You had said earlier that when you were
 20 making a speech at the anniversary of the 20th -- 20th
 21 anniversary of deregulation you suspected that there
 22 was a recording made. Why do you suspect that there
 23 was a recording made?
 24 A. It's often the way these conferences are run,
 25 sometimes they provide transcripts later on, and there

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1 were a lot of microphones and they were using
 2 microphones for questions from the audience, that's
 3 typically what they do if there's an attempt to record
 4 it.
 5 Q. Have you been offered a transcript or a
 6 recording from that?
 7 A. No.
 8 Q. You were talking about Mayor Kirk, and the
 9 question that you asked and his response immediately
 10 prior to that. What was the other occasion that you
 11 talked to Mayor Kirk, anything concerning Love Field?
 12 A. I met with the Mayor in his office.
 13 Q. Approximately when?
 14 A. 1996 or early '97.
 15 Q. Tell me what y'all talked about?
 16 A. We talked about the Wright Amendment, Love
 17 Field, jobs, competition, the impact that I felt Legend
 18 Airlines could make on the -- on the community.
 19 Q. I've got a fairly good idea of what you said.
 20 What did he say about those matters?
 21 A. He listened very intently to what I had to
 22 say.
 23 Q. Other than the contact with Mayor Kirk -- but
 24 did he say anything other than listening intently, by
 25 the way?

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1 A. Oh, yes.
 2 Q. What did he say, in general terms, what did
 3 he say?
 4 A. In general terms, to the best of my
 5 recollection, the Mayor said that the Airport issues
 6 were complex issues, he was all for jobs, he wanted to
 7 make sure that any activity was lawful and that if it
 8 was lawful then --can't remember whether he said he or
 9 the city would support it.
 10 Q. Did he give you his view of what he thought
 11 lawful was?
 12 A. No.
 13 Q. Other than your conversations that -- the two
 14 we've talked about, there may have been others prior to
 15 the '96 conversation with Mayor Kirk, have you talked
 16 to any other member of the Dallas/Fort Worth
 17 International Airport Board?
 18 A. I'm not sure I know all the members of the
 19 Board.
 20 Q. Have you knowingly communicated with --
 21 A. No.
 22 Q. -- any members of the Dallas/Fort Worth
 23 Airport board? Has anyone done so on your behalf?
 24 A. No.
 25 MR. KERR: I'll pass the witness. Thank you.

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EXAMINATION

BY MR. POWELL:

Q. Mr. McArtor, I'll have just a few questions just to make sure we've got a clear record here as best we can.

We were furnished, or I guess Fort Worth was furnished documents LA 1 through LA 164. You said you reviewed those before you came here today?

A. If those are the complete set, yes.

Q. I believe they are.

MR. POWELL: Am I correct, counsel?

MR. WATLER: I think so.

MR. EDWARDS: I believe it's LAI.

MR. POWELL: LAI 1 through 164.

BY MR. POWELL:

Q. Is it correct that those are the only documents that Legend Airlines has in its possession, custody or control that are responsive to the Deposition Notice served on Legend by the City of Fort Worth?

MR. WATLER: This additional document that was produced this morning, I think it was marked as an exhibit.

MR. POWELL: We will add to that Exhibit 1.

MR. WATLER: I'm not sure that's Exhibit 1.

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documents described as Deposition Exhibit 2, plus Exhibit LAI 1 through 164; do you understand what I'm saying?

A. Yes.

Q. Is Exhibit 3 the only letter, the only memorandum, the only e-mail, the only document that you have written of any kind or character whatsoever addressed to anyone at the Depa-ment of Transportation that has to do in any way with the subject matter of the docket that is now open up there in the Depa-ment of Transportation, which is No. 4363, that being the Love Field interpretation proceeding?

A. Yes.

Q. So there's no other document by Mr. McArtor whatsoever except Exhibit 3?

A. That is correct.

MR. WATLER: Let me object to the characterization of your earlier question, is that this letter relates to those administrative proceedings. I object and disagree with that characterization, but his answer stands.

MR. POWELL: Okay. I didn't mean to the proceeding.

BY MR. POWELL:

Q. I mean to the subject matter of the

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MR. JOHNSON: Exhibit 2.

MR. POWELL: I need to see the exhibits anyway. Would you hand me those? Let me amend my question.

BY MR. POWELL:

Q. Exhibits LAI 0001 through LAI 00164, plus Exhibit 2 to your deposition, is it your testimony that those were the only documents within the possession, custody or control of Legend Airlines, Incorporated, that fall within the documents requested by the Notice of Deposition with a Request For Production attached to it?

A. Yes.

Q. Do you know of any documents that have been withheld and not produced?

A* No.

Q. As I understand it, Exhibit 3, we've been over this time and time again, is the only document in that entire pile that has your name on it?

MR. WATLER: Well, I think that's a mischaracterization.

MR. POWELL: No, I don't think it is.

BY MR. POWELL:

Q. Exhibit 3 is the only document that purports to be signed by T. Allan McArtor among that class of

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proceedings, Love Field, Legend flying at Love Field, all that sort of thing, I'm not talking about your certification proceeding, which is a different proceeding, that's No. 3667, but the subject matter of the five issues that are pending in the current Love Field interpretation proceeding, which is docket 4363, Exhibit 3 as I understand your testimony is the only document of any kind or character whatsoever that Mr. McArtor has forwarded or signed or delivered to the Depa-ment of Transportation; is that correct?

A. I'm trying to replay your question.

Q. Do you want me to try it again?

A. Yeah.

Q. What I'm trying to find out is can we have a complete record that Exhibit 3 to your deposition is the only letter or document of any kind that you have prepared and sent to the Depa-ment of Transportation with your name on it that has anything to do with the five issues that are currently pending before the Department?

MR. WATLER: You have prepared with your name on it. Once again, I believe the --

BY MR. POWELL:

Q. I'll break it down if you want me to.

MR. WATLER: Well, what I'm thinking of that

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1 may be problematic is the official pleadings, if
 2 you will, for lack of a better word, that have
 3 been filed, because his name is on those.
 4 MR. POWELL: I see your point. It's a good
 5 point.
 6 MR. WATLER: I don't mean to.
 7 BY MR. POWELL:
 8 Q. I'm not talking about documents that have
 9 been filed in the docket that we can all go on the
 10 Internet and look at or go up there and look at --
 11 (A discussion was shad off the record between
 12 the witness and Mr. Watler.)
 13 MR. WATLER: I need one of y'all to hang on a
 14 minute.
 15 MR. POWELL: I'll be quiet.
 16 (A discussion was had off the record between
 17 the witness and Mr. Watler.)
 18 (A discussion was had off the record.)
 19 BY MR. POWELL:
 20 Q. Okay. Do you want me to try another question
 21 or do you want to try to respond to one of my earlier
 22 questions?
 23 A. Best of my knowledge that's the only
 24 document.
 25 Q. Everything else that's gone up there, as I

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1 understand it, that you felt was in any way responsive
 2 to the Notice is something Mr. Edward Faberman has
 3 prepared and sent?
 4 A. That's correct.
 5 Q. This other fellow, what's his name, the
 6 lobbyist, former -- Hall, he hasn't sent anything up
 7 there?
 8 A. No.
 9 Q. He hasn't written any letters to any
 10 Congressmen that he wanted forwarded on to the DOT or
 11 anything like that?
 12 A. Not that I'm aware of.
 13 cl. Let's talk a little bit about Mr. Faberman.
 14 As I understand it, Legend is involved in two dockets
 15 pending before the DOT right now; is that right? Let's
 16 count --
 17 A. No.
 18 Q. Let's don't count out. Let's -- except for
 19 the American Airlines, British Airways documents that
 20 Legend has involved itself in, let's put that aside.
 21 You've got your certification, which is 3667; right?
 22 A. Correct, right.
 23 Q. And you've got this Love Field interpretation
 24 proceeding which is 4363?
 25 A. That's right.

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1 Q. Do you have another docket pending up there?
 2 A. The Airline Competition Guidelines, I
 3 believe, is a docket that's open.
 4 Q. Okay, that's one. Anything else you can
 5 think of?
 6 A. No.
 7 Q. Okay. The documents that are sent here LAI 1
 8 through 163, which docket were they supposed to be
 9 pertaining to?
 10 A. They're not necessarily intended to be part
 11 of the docket.
 12 Q. Were they sent up there as a part of your
 13 certification proceeding by Mr. Faberman? He's your
 14 lawyer in that -- Mr. Faberman is your lawyer in the
 15 certification proceeding, is he not?
 16 A. He's one lawyer.
 17 Q. He is one who has entered an appearance
 18 before the DOT for Legend Airlines in 3667, the
 19 certification proceeding?
 20 A. Yes.
 21 Q. And he's also entered an appearance for
 22 Legend Airlines in the Love Field interpretation
 23 proceeding.
 24 A. That's correct.
 25 MR. WILSON: Off the record

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1 (A discussion was had off the record.)
 2 BY MR. POWELL:
 3 Q. Did you review Mr. Faberman's letters of 1
 4 through 164 before he sent them out?
 5 A. I don't know that I have reviewed all of
 6 those letters before they went out.
 7 Q. Is it generally your practice to review what
 8 Mr. Faberman writes and submits to the Department of
 9 Transportation?
 10 A. That's correct.
 11 Q. Before he sends them?
 12 A. That's correct.
 13 Q. So you have reviewed it and approved it in
 14 most cases then before it's sent?
 15 A. Yes.
 16 Q. And do you think that on most of these 1
 17 through 164 you did review and approve them before they
 18 were sent?
 19 A. Yes.
 20 Q. What's in there is the official statement and
 21 improved statement by Legend Airlines?
 22 A. The letters speak for themselves.
 23 Q. But I'm asking whether they were sent with
 24 authority by you as the chief man at Legend Airlines?
 25 A. Yes.

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1 Q. They were? The answer is yes, they were?
 2 A* I just said yes.
 3 Q. Okay. I want to come back to that, but let
 4 me ask a few questions about Continental so Mr. Wilson
 5 can leave. Has there been a meeting between Legend and
 6 Continental Express or Continental Airlines for the
 7 purpose of coordinating contacts or efforts with the
 8 Department of Transportation?
 9 MR. WATLER: I believe that question has been
 10 asked and answered, but answer it again.
 11 THE WITNESS: No.
 12 BY MR. POWELL:
 13 Q. Has there been a meeting between Legend
 14 Airlines and anyone at Continental Airlines for the
 15 purposes of coordinating efforts with Congressional
 16 persons or staffs?
 17 A. No.
 18 Q. Have there been any joint strategy type
 19 meetings or agreements cut between Legend Airlines and
 20 Continental or Continental Express?
 21 A. No.
 22 Q. How about the same questions with Southwest,
 23 have you had any meetings or strategy sessions with
 24 Southwest Airlines or anybody representing Southwest
 25 Airlines about how to approach the Department of

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1 Transportation?
 2 A. No.
 3 MR. WATLER: If y'all hadn't kicked them out
 4 of the City we might have had some.
 5 BY MR. POWELL:
 6 Q. Have you had any meetings with the City of
 7 Dallas or any of their lawyers or representatives.
 8 MR. FOSTER: I object to that to the extent
 9 it invades the common interest privilege.
 10 BY MR. POWELL:
 11 Q. I'm just asking if you had such meetings?
 12 A. Have I?
 13 Q. Has anyone on behalf of Legend?
 14 A. Not that I'm aware of.
 15 Q. Got kind of an interesting environment here.
 16 Do you know whether any of your lawyers have met with
 17 the lawyers for the City of Dallas for the purpose of
 18 doing anything with respect to the Department of
 19 Transportation?
 20 A. I'm not aware of any meetings.
 21 MR. POWELL: Randy, I think that's all I have
 22 on that.
 23 MR. WILSON: Appreciate the courtesy, Mike.
 24 BY MR. POWELL:
 25 Q. Is it your testimony --

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1 MR. KERR: Have you got much on Continental?
 2 MR. JOHNSON: No.
 3 BY MR. POWELL:
 4 Q. Is it your testimony, Mr. McCartor, that the
 5 letters that we've been furnished as Exhibits 1 through
 6 164 were not pertinent to either of the dockets we've
 7 described, either your certification docket or the Love
 8 Field interpretation docket?
 9 A* I don't believe I said that.
 10 Q. Okay. What is your testimony about that
 11 subject?
 12 A. I believe I said I wasn't -- I didn't
 13 necessarily think that those letters were intended to
 14 be a part of dockets.
 15 Q. I understand they were not intended to be
 16 filed as a part of dockets, were they?
 17 A. Depends on the letter. That's not our
 18 decision.
 19 Q. Well, did you -- do you know whether any of
 20 these letters, 1 through 164, have been filed as a part
 21 of either the certification docket or the Love Field
 22 interpretation docket?
 23 A. I don't know that.
 24 Q. Do you know -- do you think that some of them
 25 might have been intended by your counsel to be put in

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1 one of those two dockets?
 2 MR. WATLER: The letters or the substance of
 3 the letters?
 4 MR. POWELL: The letters themselves.
 5 THE WITNESS: Whether they were intended to
 6 go to a docket?
 7 BY MR. POWELL:
 8 Q. Right, right.
 9 A. I'm not aware of any intent to go to a
 10 docket.
 11 Q. in fact, your counsel, as I read the letters
 12 that we were furnished, did not send copies of any of
 13 these letters 1 through 164 to any of the other lawyers
 14 for any of the other parties in any of those dockets,
 15 did it?
 16 A. I'm not aware that any copies were sent.
 17 MR. WATLER: Objection, also calls for
 18 speculation.
 19 BY MR. POWELL:
 20 Q. I am curious about the copies of the letters
 21 we got, Exhibits 1 through 164. None of them shows any
 22 carbon copies to anyone, including yourself. The
 23 letter that you got, that you have at your office, or
 24 that you've now turned over to counsel, did it show
 25 that -- any of these letters show that carbon copies

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1 were sent to anyone?
 2 **A. I can't answer that question.**
 3 **Q.** What I'm getting to and I'll just ask you
 4 right outright, have the cc's been redacted off these
 5 documents we've been furnished, Exhibits 1 through 164?
 6 **A. I believe so, yes.**
 7 **BY MR. POWELL:**
 8 **Q.** When was that done?
 9 **A. When the documents were redacted.**
 10 **Q.** What else was redacted from these documents,
 11 besides the obvious redactions from two or three of
 12 them that have been marked here, Exhibit 5, we've got
 13 some redactions and Exhibit 4 we've got some
 14 redactions, and you say the cc's were redacted from all
 15 the documents, you believe?
 16 **A. I don't know if they were redacted from all**
 17 **the documents or not.**
 18 **Q.** Was it the intention to do it to all of them?
 19 **A. I don't know the answer to that.**
 20 **Q.** Except for the cc's and the obvious
 21 redactions on Exhibits 4 and 5, what else was redacted
 22 from LAI 1 through 164 before they were turned over to
 23 the City of Fort Worth?
 24 **A. Nothing that I'm aware.**
 25 **Q.** Why were the cc's redacted?

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1 **A. I don't think cc's are responsive to --to**
 2 **the document request.**
 3 **Q.** Who were the cc's on these letters?
 4 **A. Have to be on a letter by letter basis.**
 5 **Q.** Let's do it that way if we need to.
 6 **A. I don't know the answer to it.**
 7 **MR. KERR:** I don't want to interrupt you, but
 8 on behalf of my client I want to make the demand
 9 on the record you produce them.
 10 **MR. POWELL:** Let's get them right now.
 11 **MR. JOHNSON:** Paul, there's no way you can
 12 justify removing cc's off of these things.
 13 **MR. WATLER:** We'll take it under advisement.
 14 **MR. KERR:** Go get them.
 15 **MR. WATLER:** Since when did you put on a
 16 black robe, Mr. Kerr?
 17 **MR. KERR:** I didn't. I want you to go get
 18 them.
 19 **MR. WATLER:** Well, you don't speak to me like
 20 that.
 21 **MR. KERR:** Well, I apologize, Mr. Watler, but
 22 I've never had anybody make a claim of --
 23 **MR. WATLER:** I've never had anybody that
 24 asked nothing but protracted questions for the
 25 purpose of prolonging a deposition on a bunch of

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1 minutia that doesn't matter, as all three of you
 2 gentlemen have been doing this afternoon.
 3 **MR. KERR:** Will you please go get the
 4 redacted portions of those documents?
 5 **MR. WATLER:** We will take it under
 6 advisement.
 7 **MR. POWELL:** We'll take a break.
 8 **MR. JOHNSON:** Take a break, because --
 9 **MR. POWELL:** I haven't asked any protracted
 10 questions.
 11 **MR. WATLER:** You've just only gotten going,
 12 Mike.
 13 **MR. POWELL:** I was just going to finish until
 14 I got to the cc.
 15 **MR. JOHNSON:** Thank God somebody was sharp
 16 enough to figure out that --
 17 **MR. WATLER:** Well, I object to counsel's
 18 side-bar.
 19 **MR. POWELL:** Why don't y'all take a break?
 20 **MR. WATLER:** Are we off the record?
 21 **MR. KERR:** Let's go off.
 22 **(A recess was taken from 2:59 p.m. until 3:05**
 23 **p.m.)**
 24 **BY MR. POWELL:**
 25 **Q.** Just some very background type information,

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1 Mr. McArtor. What other companies are you on the Board
 2 of Directors of, just so we'll know who you are?
 3 **A. I'm on the board of Excel Communications.**
 4 **I'm on the board of Pilkington Aerospace.**
 5 **THE COURT REPORTER:** I'm sorry?
 6 **THE WITNESS:** Pilkington Aerospace, Inc. I'm
 7 on the board of Angel Technologies, Inc.
 8 **BY MR. POWELL:**
 9 **Q.** Okay. As I read your biography or
 10 biographical information, you left Federal Express in
 11 1994?
 12 **A. That's right.**
 13 **Q.** What did you do right after you left Federal
 14 Express?
 15 **A. Attempted to develop a number of**
 16 **entrepreneurial type activities, consulting.**
 17 **Q.** Were you associated with any other company?
 18 **A. No.**
 19 **cl.** Did you have a business name, like Mr.
 20 McArtor Consultants or something like that?
 21 **A. I called myself McArtor Enterprises for a**
 22 **while.**
 23 **Q.** Was that in Memphis?
 24 **A. That's right.**
 25 **Q.** When did you first get involved with Legend,

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i or the idea that has now become Legend?
 2 A. In 1996.
 3 Q. And **was** that from your conversation with Mr.
 4 Ledbetter, or how did that happen? Just tell me how it
 5 came about.
 6 A. That's where the **idea began to germinate**.
 7 a. What contact had you had with Dallas Love
 8 Field prior to that 1996 conversation you had with Mr.
 9 Ledbetter?
 10 A. **Well, as FAA Administrator I was very**
 11 **familiar with Dallas Love Field, as I was with DFW**
 12 **Airport**.
 13 Q. So you became **familiar** with Dallas Love Field
 14 at the time you were the FAA Administrator, which was
 15 in '87 to '89?
 16 A. That's correct.
 17 Q. Besides what you learned as FAA
 18 Administrator, what other **information** did you have or
 19 had you **obtained** about the legal structure **pertaining**
 20 to Dallas Love Field or the **history** of Dallas love
 21 Field or **anything** of that nature?
 22 A. **In 1996 is when I began to research that**.
 23 Q. Okay. So you **testified** earlier that you told
 24 Ms. McFadden and others about the Southwest litigation
 25 and the history of Dallas Love Field. Is that based on

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1 with respect to Alliance Airport when you were the FAA
 2 Administrator?
 3 A. **It was -- it was I who made the decision to**
 4 **federally sponsor the development program at Alliance**.
 5 Q. All right. So during the '87 to '89 time
 6 frame you had as much **contact** and as much **familiarity**
 7 with **DFW Airport** and Dallas Love Field as you did other
 8 airports in the country?
 9 A. **That's correct**.
 10 Q. And **starting** in '96 you began to research
 11 Dallas Love Field?
 12 A. **That's correct**.
 13 Q. And then by 1998 you were in a **position** to
 14 brief the **Department of Transportation** on the history
 15 of Dallas Love Field?
 16 A. In part, yes.
 17 Q. **When** --when did you first meet -- you said
 18 **11 years ago, Mr. Faberman**?
 19 A* **Yes**.
 20 Q. So that would have been in 1988?
 21 A. '7.
 22 Q. 1987. How did you meet Mr. Faberman for the
 23 first time?
 24 A. **He was at the FAA**.
 25 Q. He was a lawyer at the FAA?

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1 research you've done since 1996?
 2 A. **That's correct**.
 3 Q. You weren't involved at any time back in the
 4 '79, '80, '81 time frame in any of the **activities** that
 5 went on back then, were you?
 6 A. **No**.
 7 a. While you were the FAA Administrator did you
 8 have any specific **actions** with respect to Dallas Love
 9 Field that would give you intimate knowledge of the
 10 situation at Love Field and how it had been **structured**
 11 legally and how DFW came to pass and that sort of
 12 thing?
 13 A. Yes.
 14 a. What did you do then? What happened?
 15 A. **I was very familiar with DFW Airport**.
 16 a. And how did you gain that **familiarity**?
 17 A. **It was one of the airports under the FAA**
 18 **control**.
 19 Q. Were you more **familiar** with it than you were
 20 with any other airport in the **United States**?
 21 A. **Not necessarily**.
 22 Q. Did you get involved in **Alliance Airport** when
 23 you **were** the FAA Administrator?
 24 A. Yes.
 25 Q. What were your duties and responsibilities

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1 A* **Yes**.
 2 Q. What was his job duty? What were his duties
 3 at the FAA?
 4 A. He **was, I believe his title was Associate**
 5 **General Counsel**.
 6 Q. Did he have **responsibilities** with respect to
 7 the **perimeter** rule at **National Airport**?
 8 A. **He was very much involved in that**.
 9 Q. **Were** you also **involved** in that?
 10 A. Yes.
 11 Q. Was the perimeter rule at **National Airport**
 12 imposed during your 10 years as FAA Administrator?
 13 A. No.
 14 Q. Was it before or after?
 15 A. **Before**.
 16 Q. Mr. Faberman was involved in the original
 17 regulations **pertaining** to that **perimeter** rule, was he
 18 not?
 19 A. I can't answer that **question**.
 20 Q. Have you **discussed** that time frame with him
 21 at all?
 22 A. Yes.
 23 Q. **When** did y'all have that discussion?
 24 A. **From '96 forward**.
 25 Q. So you first knew him **when you were at the**

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1 FAA from 1987 to '89. Then did you continue in contact
 2 with him after that time period?
 3 **A. No.**
 4 **Q. When did you --**
 5 **A. I saw him at functions, industry functions,**
 6 **if that answers your question.**
 7 **MR. WATLER:** Excuse me a second.
 8 **(A discussion was had off the record between**
 9 **the witness and Mr. Watler.)**
 10 **BY MR. POWELL:**
 11 **Q. Do you need to say something?**
 12 **A. (Witness shakes head.)**
 13 **Q. Trace for me what you think his history has**
 14 **been since 1987?**
 15 **A. My recollection?**
 16 **Q. Yeah, what you know.**
 17 **A. He was employed as VP Government Affairs for**
 18 **American Airlines.**
 19 **Q. When did you first learn that?**
 20 **A. Whatever year that occurred.**
 21 **Q. When did he cease being a vice-president of**
 22 **American Airlines?**
 23 **A. Either '95 or '96, I'm not sure which.**
 24 **Q. Did you learn about that when it happened,**
 25 **that he was no longer employed by American Airlines?**

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1 **A. I'm sure I did.**
 2 **Q. So in 1995 or 1996 you learned that Mr.**
 3 **Faberman was no longer associated with American**
 4 **Airlines?**
 5 **A. That's correct.**
 6 **Q. Had you -- at that point in time did you**
 7 **decide to try to hire him for Legend?**
 8 **A. At what time?**
 9 **Q. 1995, 1996?**
 10 **A. No.**
 11 **Q. When did you employ him first to be in any**
 12 **way an advisor or consultant, a lawyer for Legend**
 13 **Airlines, or for the idea that became Legend Airlines?**
 14 **A. '96.**
 15 **Q. Can you give me a date?**
 16 **A. Summertime.**
 17 **Q. Did you call him or did he call you?**
 18 **A. I called him.**
 19 **Q. Did you go visit with him then, get an**
 20 **appointment with him?**
 21 **A. I don't recall when we first talked.**
 22 **Q. What do you know about the circumstances**
 23 **under which he left American Airlines?**
 24 **A. Very little.**
 25 **Q. What do you know?**

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1 **A. That he resigned from legend -- or from**
 2 **American Airlines.**
 3 **Q. Have you asked him that question, why he left**
 4 **American Airlines?**
 5 **A. No.**
 6 **Q. Has he volunteered any information to you**
 7 **about the circumstances under which he left American**
 8 **Airlines?**
 9 **A. Yes.**
 10 **Q. What has he told you?**
 11 **A. Said he and Bob Crandall could no longer get**
 12 **along, and he left.**
 13 **Q. That's what he said?**
 14 **A. That's correct.**
 15 **Q. Has he ever discussed with you anything about**
 16 **American Airlines?**
 17 **MR. WATLER:** Well, I object to that. I mean
 18 you're talking about a man who was counsel for
 19 Legend Airlines in contested matters -- excuse me
 20 -- counsel for Legend Airlines in contested
 21 matters that American is also a party to. So I
 22 think you're necessarily inquiring into
 23 attorney/client privileged matters and I'll
 24 instruct him not to answer on that basis.
 25 **BY MR. POWELL:**

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1 **Q. Has he ever discussed with you any fact or**
 2 **thing he knew about American Airlines prior to the time**
 3 **you hired him as counsel?**
 4 **MR. WATLER:** Same instruction, if it was in
 5 context within contemplation of hiring him as
 6 counsel.
 7 **THE WITNESS:** State your question.
 8 **BY MR. POWELL:**
 9 **Q. In connection with your decision to hire Mr.**
 10 **Faberman as counsel, did he discuss with you any of his**
 11 **experiences or knowledge about American Airlines?**
 12 **A. No.**
 13 **Q. Have you ever seen any documents that Mr.**
 14 **Faberman has with him that he got as a result of his**
 15 **employment by American Airlines?**
 16 **A. No.**
 17 **Q. Has he ever shown you any American Airlines**
 18 **business plans or legal strategies or memorandums of**
 19 **law or anything like that?**
 20 **A. No.**
 21 **Q. Has he ever told you that he has such things?**
 22 **A. No.**
 23 **Q. Have you been in meetings where Mr. Faberman**
 24 **says what we might characterize as unkind things about**
 25 **American Airlines?**

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1 MR. WATLER: Objection, I think you're
2 getting into attorney/client privileged
3 discussions.
4 BY MR. POWELL:
5 Q. Where other people were present. You said, I
6 wrote down earlier you said in the meeting with Ms.
7 McFadden, Mr. Faberman said a number of things about
8 American. I believe you said that they were engaged in
9 predatory practices, that American was attempting to
10 misuse the Texas Court system, to abuse the Court
11 system, to eliminate competition for itself and to
12 eliminate competition for its DFW hub. Have you been
13 in meetings where Mr. Faberman said things like that?
14 A. Yes.
15 Q. What other things that might be considered to
16 be disparagements of American Airlines have you heard
17 Mr. Faberman say?
18 MR. WATLER: Objection, calls for
19 speculation, number one; number two, in what
20 context are you talking about? Talking about June
21 12th meeting, are you talking about private
22 conversations Mr. McArtor has had?
23 MR. POWELL: I'll try to do better. I'll try
24 to do better.
25 BY MR. POWELL:

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1 Q. Have you been in the presence of Mr. Faberman
2 and third persons when Mr. Faberman said disparaging
3 things about American Airlines?
4 MR. WATLER: What do you mean by disparaging?
5 MR. POWELL: It's a common word.
6 THE WITNESS: Not common in the course of
7 this deposition. Define disparaging for me.
8 BY MR. POWELL:
9 Q. Disparaging is that they're violating the
10 law, that they're attempting to engage in unlawful
11 behavior, that they are attempting to do things that
12 they're not permitted to do under the law or under DOT
13 regulations or under DOT policy.
14 A. No.
15 Q. He has never accused American of any of that?
16 A. No.
17 Q. What have you heard him accuse American of?
18 A. Unfair competition, among other things.
19 MR. WATLER: Hold on. I object. I mean
20 that's global, object on the basis of
21 attorney/client, don't disclose anything that's
22 attorney/client.
23 MR. POWELL: I'm talking about when he's in
24 the conversation with Mr. Faberman and there was
25 some third person.

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1 MR. WATLER: That wasn't apparent from your
2 question.
3 BY MR. POWELL:
4 Q. I'll make that apparent to the question.
5 Where you have been with Mr. Faberman -- let's just
6 talk about this DOT -- in the presence of some employee
7 or officer of the Department of Transportation, what
8 have you heard Mr. Faberman say about American
9 Airlines?
10 MR. WATLER: Counsel, I think we've been over
11 all those meetings today.
12 MR. POWELL: I seriously doubt we have.
13 MR. WATLER: Well, I don't at this point.
14 BY MR. POWELL:
15 Q. You've been in the presence of Mr. Faberman
16 in the Department of Transportation on numerous
17 occasions, have you not?
18 A. No.
19 Q. You and Mr. Faberman haven't been over there
20 meeting about your 401 Application on the --
21 MR. WATLER: Objection. Asked and answered.
22 We've been down all this road before.
23 THE WITNESS: No.
24 BY MR. POWELL:
25 Q. Would you agree with me Mr. Faberman has a

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1 very negative view about American Airlines?
2 MR. WATLER: Objection, calls for
3 speculation.
4 MR. POWELL: I can read the papers and see
5 that.
6 MR. WATLER: They speak for themselves, then.
7 You're asking him to characterize someone else's
8 state of mind.
9 BY MR. POWELL:
10 Q. You know Mr. Faberman pretty well, don't you?
11 MR. WATLER: That's yes or no.
12 THE WITNESS: Yes.
13 BY MR. POWELL:
14 Q. Talk to him a lot?
15 A. Yes.
16 Q. Visit his offices frequently?
17 A. Yes.
18 Q. Does he come down here some?
19 A. Some.
20 Q. How often does Mr. Faberman come to Dallas
21 County, Texas?
22 A. I don't recall the last time.
23 Q. Have you seen him in Dallas County, Texas?
24 A. I don't know.
25 Q. When you say he comes down here --

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- 1 A. I don't know if he's been here.
2 Q. Does he have a regular ongoing business
3 relationship with Legend Airlines?
4 A. Yes.
5 Q. And as a result of that relationship he sends
6 communications in to Dallas County, Texas, quite
7 frequently, does he not?
8 A. Yes.
9 Q. And you did testify that he comes down here
10 sometimes, you know he's been in Dallas County, Texas,
11 or in Tarrant County, Texas, even better?
12 A. I testified he has infrequently. You asked
13 me when, and I can't recall when he's been here.
14 Q. Has he come down for the purpose of meeting
15 with Legend Airlines personnel?
16 A. Yes.
17 Q. Where do those meetings take place?
18 A. Since I can't recollect when he's been here
19 I'll change my answer to say I don't know if he's been
20 here or not.
21 Q. When he comes down here does he fly into DFW
22 Airport?
23 A. Are we making an assumption that he's been
24 here now?
25 Q. No, I'm going by what you said.

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- 1 MR. WATLER: Mr. Powell, what does this have
2 to do with the stated purpose of this Deposition
3 Notice?
4 MR. POWELL: I'm trying to find out the
5 connection between --
6 MR. WATLER: I know what you're trying to
7 find out.
8 MR. POWELL: Trying to find out connections
9 between Mr. Faberman and this gentleman and the
10 DOT and Legend Airlines.
11 MR. WATLER: Why don't you ask? You know
12 those direct questions have been answered. You've
13 got an obvious other purpose for asking these
14 questions. You're pursuing an agenda that's
15 completely unrelated to what the stated purpose of
16 this deposition is and what the real reason for
17 discovery in this lawsuit. It apparently is a
18 personal agenda and --
19 MR. POWELL: No, it's not a personal agenda.
20 MR. WATLER: It's personal to American
21 Airlines. If American Airlines has a beef with --
22 with Mr. Faberman, I'm sure they can address it
23 without having to take up all the parties' time,
24 including Mr. McArtor's time in this deposition
25 here today.

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- 1 MR. POWELL: Well, I'm kind of waiting to get
2 a verdict on whether you're going to produce the
3 documents.
4 MR. WATLER: Are you ready to get to that?
5 We'll get to that? Are you ready to move on?
6 MR. POWELL: I'm ready to know that anytime.
7 I wanted to know that 10 or 15 minutes ago. What
8 have y'all decided?
9 MR. WATLER: We can go off the record and
10 talk about it.
11 MR. POWELL: No, I want it on the record. I
12 want to know whether y'all are going to produce
13 the documents.
14 MR. WATLER: I told you we have it under
15 review. I have not looked at the information that
16 you've asked for. We're making efforts to pull
17 the documents together in a fashion that I can
18 review them and make a determination of handing
19 them to you. The documents are not here in the
20 room available at this time for us to do that. I
21 expect it to be momentarily.
22 MR. POWELL: You told me a few minutes ago
23 that Joe was going to go look and he's now back
24 sitting in here, so I thought maybe that was
25 finished.

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- 1 MR. WATLER: Well, do you want me -- first
2 off, this is not my deposition today, but as a
3 courtesy to you guys, because you made the
4 request, we have gathered the documents, we have
5 endeavored to copy them with the information that
6 you're looking for, not redacted, so that they
7 would be available. I intend to review those
8 before I hand them to you. The copying process
9 has not been done and I have not reviewed them.
10 Okay. That's where we are exactly.
11 MR. POWELL: I tell you what, let's do this,
12 let's try to short-circuit this. Let's have you
13 go get the documents, we'll look at these
14 documents I've got here, these redacted documents,
15 we'll go through and let the witness tell me who
16 the cc's and the bcc's were on each of those
17 papers.
18 MR. WATLER: Be happy to check on the status
19 of the copying. Believe me, I have no purpose to
20 belabor this today. So any suggestion or thought
21 that we're trying to belabor this is completely
22 afield here. As we speak I think they may be
23 walking in the room.
24 MR. JOHNSON: Yeah, here they come.
25 MR. POWELL: They came in a little bit, then

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they turned around and went back out.
(Brief pause for Mr. Watler to review documents.)

MR. WATLER: Here is a set of the documents that include the cc's in unredacted form, LAI Of through 164.

(A discussion was had off the record.)

BY MR. POWELL:

Q. Mr. McArtor, first took at LAI 0001. Lets mark that as an exhibit. Let's mark the one thafs got...

(EXHIBIT(S) NO. 7 MARKED.)

BY MR. POWELL:

Q. Marked as Exhibit 7 McArtor, a letter dated September 18th, 1998, to Ms. McFadden with Mr. Faberman's signature with a carbon copy to Tom Ray who is a lawyer at the Department of Transportation; correct?

A. That's correct.

Q. Were there any bcc's on here that were not shown to us?

MR. WATLER: No.

BY MR. POWELL:

Q. I guess the answer is no. This letter, Exhibit 7, is after the docket No. 4363 was started,

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MR. WATLER: Objection, the document speaks for itself.

MR. POWELL: No, I'm not looking at the document. I'm looking at the intent with which the document was sent.

MR. WATLER: Document speaks for itself.

MR. POWELL: It doesn't speak for itself.

MR. WATLER: Okay.

BY MR. POWELL:

Q. Is it correct to say that all these documents that did not have a DOT docket number on them were sent to the Department of Transportation as sort of not an official act on behalf of the Department of Transportation or Legend Airlines? That's a bad question.

MR. WATLER: Objection, calls for speculation.

BY MR. POWELL:

Q. What I'm trying to find out, I'm trying to find out why these documents were sent to the DOT, Exhibits 1 through 164. Can you just answer that question?

A. They're an attempt to inform.

Q. Inform the DOT?

A. That's correct.

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was it not?

A. That's correct.

Q. Was that letter intended to be a part of docket 43637

A. That's the Department's decision.

Q. Well, but normally when you file something up there you put a docket number on it and that helps them make that decision, does it not?

A. What's your question?

Q. My question is this. Was that letter Exhibit 7 sent up there for the purpose of having some impact on Mr. Ray and Ms. McFadden in docket 4363 or was it not?

A. No.

Q. It was not sent up there as a part of an official proceeding going on then in the DOT, was it?

A. No,

Q. It was just a private communication from Mr. Faberman to Ms. McFadden?

A. On behalf of Legend Airlines.

Q. So Legend Airlines, through Mr. Faberman, sent Exhibit 7 up to the DOT, not for the purpose of any legal proceeding that was going on in the DOT, not for the purpose of doing anything official; is my statement correct?

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Q. For what purpose?

A. Attempt to inform the DOT of matters important to Legend Airlines and things to which we think their attention should be called.

Q. But they are not a part of an official docket up there?

A. They may or may not be.

Q. What I'm saying, I said Exhibits 1 through 164. I meant pages 1 through 164; do you understand that?

A. I understood.

Q. You are -- let me take just a minute to look through some of these here. I really find very few additional cc's on these than --than I saw on the others, but here's one, let's see, let's mark this one.

(EXHIBIT(S) NO. 8 MARKED.)

BY MR. POWELL:

Q. Here's Deposition Exhibit 8 McArtor. This is a letter July 7th, 1938, this is the "I wanted to make sure you had a report an the Fort Worth Circuit's" letter that Mr. Faberman sent, there's a lot of carbon copies on there. Can you identify that as a true and correct copy of the letter that was sent by Mr. Faberman on behalf of Legend Airlines?

A. Go ahead.

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1 Q. Can you?

2 A. Yes.

3 Q. What was the purpose of sending that letter

4 to all of those carbon copy people?

5 MR. WATLER: Objection, calls for

6 speculation.

7 BY MR. POWELL:

8 Q. Can you answer?

9 A. What's your question?

10 Q. What was the purpose of sending that letter?

11 A. To inform.

12 Q. What was the purpose of sending it to all the

13 people who are shown as carbon copies?

14 A. To inform all the people.

15 Q. To inform them to what end?

16 A. To inform them of matters important to Legend

17 Airlines that we felt should be brought to their

18 attention.

19 Q. To what end?

20 MR. WATLER: The document speaks for itself.

21 BY MR. POWELL:

22 Q. What were you wanting them to do for you?

23 A. I want the Department of Transportation to

24 intervene in the lawsuit.

25 Q. So you were sending them a letter, or your

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1 counsel was, Exhibit 8, for the purpose of inducing

2 them to take some action in a pending lawsuit; is that

3 right?

4 A. To inform them about the matters, yes.

5 Q. And were you trying to give them information

6 just so they'd be better informed citizens, or were you

7 trying to induce them to take some particular action?

8 A. This letter was an attempt to inform.

9 Q. And Exhibit 7, was this an attempt to inform?

10 A. That's correct.

11 Q. To what end?

12 A. To inform the Department of what was going on

13 in the lawsuit and the events surrounding the lawsuit.

14 Q. At that time they had already taken some

15 action, did they not, had they not, by the time Exhibit

16 7 was sent?

17 A. That's correct.

18 Q. You knew that there were not supposed to be

19 ex parte contacts with the Department after the time

20 the docket was commenced, did you not?

21 MR. WATLER: Objection, mischaracterization.

22 BY MR. POWELL:

23 Q. You knew that, didn't you?

24 A. No.

25 Q. You -- as the FAA Administrator, you weren't

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1 familiar with the Department's rules on ex parte

2 contacts?

3 A. Yes.

4 Q. All right. Did you know that there were not

5 supposed to be ex parte contacts about matters

6 pertaining to the docket once the docket was commenced

7 or did you not know that?

8 A. If you'll -- if you'll check it, this could

9 have been put into the docket depending whether the

10 Department chose to or not.

11 Q. Could have been, but it was sent to Ms.

12 McFadden, who's the General Counsel of the agency that

13 is administering this docket and was going to be the

14 decision maker; correct?

15 A. I don't know that she's to be the decision

16 maker.

17 Q. I'm not saying -- somebody in the Department

18 will be; correct?

19 A. Correct.

20 Q. It was sent by a lawyer representing Legend

21 Airlines, Inc., was it not?

22 A. Right.

23 Q. It was copied to another lawyer in the

24 Department of Transportation, was it not, Mr. Tom Ray?

25 A. Right.

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1 Q. But not to any other party who was

2 participating in the matters pending before the

3 Department of Transportation; is that correct?

4 A. That's correct.

5 Q. Did you see this letter, Exhibit 7, before it

6 went?

7 A. Yes.

8 Q. Did you approve the sending of it to Ms.

9 McFadden and Mr. Ray without serving it on any of the

10 other parties to the docket?

11 A. I approved the sending of the letter to Ms.

12 McFadden.

13 Q. Can you answer the rest of my question? Did

14 you approve sending a copy to Mr. Tom Ray?

15 A. Yes.

16 Q. Did you approve not sending copies to any

17 other party or the counsel for any other party who were

18 participating in the matters pending before the DOT?

19 A. No.

20 Q. That's Mr. Faberman's decision?

21 A. No.

22 Q. Whose decision was that?

23 A. To my knowledge, it wasn't discussed.

24 Q. Well, somebody made a decision not to do it,

25 did they not?

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1 A. **Yes.**
 2 Q. And who was that person?
 3 A. To not send it to **somebody**?
 4 Q. **Right**, to not do **something** is just as much a
 5 decision as to do **something**.
 6 MR. WATLER: If it's been made. If a person
 7 has a present sense thought process regarding it.
 8 MR. POWELL: That's nonsense.
 9 BY MR. POWELL:
 10 Q. Did you approve not **putting** a docket number
 11 on that letter, **Exhibit 7**?
 12 A. I did **not** approve that.
 13 Q. Did you **disapprove** of it and it was done
 14 anyway?
 15 A. No.
 16 Q. Did Mr. **Faberman** recommend to you that you
 17 not put a docket number on it?
 18 A. No.
 19 Q. Have there been any letters since **September**
 20 **18th**, 1998, to Ms. **McFadden** from Mr. **Faberman**?
 21 A* No.
 22 Q. Have there been any letters since **September**
 23 **18th**, 1998, to-from Mr. **Faberman** to anyone at the
 24 DOT that you know about, that have not been filed in
 25 the docket-with a docket number on it and **a style**,

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1 see what I'm talking about, here's a motion Legend
 2 filed in docket No. 3667, the motion of Legend
 3 Airlines, Inc., for leave to file a redacted form of
 4 document.
 5 A. Correct.
 6 Q. That's what you do pursuant to DOT
 7 regulations when you want to file a document that you
 8 don't want the whole world to see, because you've got
 9 some **confidential** information in there; right?
 10 A. Right.
 11 Q. You're **familiar** with that **procedure**?
 12 A. **Yes.**
 13 Q. Ifs a **procedure** under 14 CFR 302.39 C.
 14 You've used that?
 15 A. Yes.
 16 Q. And in your **certification** docket you've filed
 17 some **things** that, because they **contain** trade secrets or
 18 **confidential** information, as you see it for Legend, you
 19 have not put it as **public** record?
 20 A. That's correct.
 21 Q. In connection with **Exhibit 9** did Legend
 22 Airlines in any **way** file any sort of a motion, request
 23 or other effort to try to get the **Department** of
 24 Transportation to hold what's been redacted from that
 25 document **confidential** pursuant to the DOT's

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1 case number and all that sort of thing?
 2 A* **Not that I'm aware.**
 3 Q. Did anybody from the DOT contact you or Mr.
 4 **Faberman** about **Deposition Exhibit 7** and say you can't
 5 do that anymore?
 6 A. Not that I'm aware.
 7 Q. Did anybody from the DOT contact you or Mr.
 8 **Faberman** and say don't send us any more documents that
 9 you don't serve on other parties to these proceedings?
 10 A. **Not that I'm aware.**
 11 Q. Who is **Dave Bennett**?
 12 A. I **don't** believe I know **Dave Bennett**.
 13 (**EXHIBIT(S) NO. 9 MARKED.**)
 14 BY MR. POWELL:
 15 Q. **Exhibit 9**, please, another letter from Mr.
 16 **Faberman**. This is one of the redacted letters that --
 17 I guess **Exhibit 9** was not sent up there as an **official**
 18 part of any docket pending before the DOT; is that
 19 correct?
 20 A. That's correct.
 21 Q. is it correct that Legend Airlines did not
 22 file a motion for leave to file a redacted document
 23 with the **Department**?
 24 A. Legend did not **do what, please**?
 25 Q. Let me show you, just for you--just so you

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1 regulations?
 2 A. No.
 3 Q. So you did not tell the DOT that anything in
 4 **Exhibit 9** is **confidential**?
 5 A. That's correct.
 6 Q. Did you not expect the DOT to file **Exhibit 9**
 7 in a docket?
 8 A. I **didn't expect** nor not expect.
 9 Q. So as far as you were **concerned** the DOT could
 10 have taken **Exhibit 9** and put it in a docket and printed
 11 it out on the Internet?
 12 A. They always have that option.
 13 Q. So it wasn't really anything you were worried
 14 about the DOT **keeping confidential** in **Exhibit 9**, was
 15 there?
 16 A. **There was information that we believed the**
 17 **Department would keep confidential.**
 18 Q. Did you have some reason to believe that?
 19 A. Yes.
 20 Q. What reason did you have?
 21 A. **The Department has asked for information from**
 22 **the industry on a number of topics regarding**
 23 **competition within the industry.**
 24 Q. Did the **Department** ask you for the
 25 information that's in paragraph 1 of **Exhibit 9**?

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1 A. They've asked the entire industry.
 2 Q. So Exhibit 9 was in response to some -- some
 3 request that the Department had made to the industry?
 4 A. I don't recall specifically what was
 5 redacted, so I can't answer that question.
 6 Q. Well, looks to me like you attached a
 7 Continental Airlines press release, that wouldn't be
 8 confidential, would it?
 9 A. No.
 10 Q. You've attached a picture of a big gorilla
 11 sitting on top of Reunion Arena down there. That's not
 12 confidential, is it?
 13 A. No.
 14 Q. And you have attached something that you got
 15 off of either Lexis or some sort of a publicly
 16 available database, didn't you?
 17 A. Right.
 18 Q. So just give me the nature of what was
 19 confidential in paragraph 1.
 20 A. I don't recall what it was.
 21 Q. You don't know who Dave Bennett is down
 22 there?
 23 A. No.
 24 Q. Nancy LoBue, she's the lady with the FAA?
 25 A. That's correct.

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1 Q. And Tom Ray is the other lawyer with the
 2 Department of Transportation?
 3 A. That's correct.
 4 Q. You didn't have any problem -- did you send
 5 them redacted copies or did they get the full-blown
 6 letter?
 7 A. They got the full letter.
 8 Q. So if I sent an FOIA up there to Ms.
 9 McFadden, I could probably get the full-blown letter,
 10 too, couldn't I?
 11 A. That's correct.
 12 Q. So there's not anything confidential about
 13 that letter, is there?
 14 A. I don't determine confidential as necessarily
 15 identical to what you get under FOIA.
 16 (EXHIBIT(S) NO. 10 MARKED.)
 17 BY MR. POWELL:
 18 Q. Mr. Faberman here in Exhibit No. 10 -- is
 19 this another letter you sent up to Department of
 20 Transportation or Legend did -- strike that.
 21 Is this another letter, Exhibit 10, that
 22 Legend sent to the Department of Transportation to
 23 inform them?
 24 A. That's correct.
 25 Q. And would everything in there be accurate?

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1 A. Certainly intended to be.
 2 Q. Mr. Faberman is telling the Department on
 3 June 22nd, "Make no mistake about it, the outcome of
 4 Thursday's hearing is predetermined." Was that an
 5 accurate statement?
 6 A. We believe so.
 7 Q. And how did you know that? On what basis
 8 were you telling the Department of Transportation that
 9 the State Courts in the State of Texas, hearings in
 10 those courts were predetermined?
 11 A. We gave our opinion. The document speaks for
 12 itself.
 13 Q. Was this an opinion or is this a statement of
 14 fact?
 15 A. Those are --
 16 Q. That you were informing the Department of,
 17 trying to keep them advised?
 18 A. That's correct.
 19 Q. You were able to advise them of what's going
 20 to happen, as well as what has happened, is that
 21 something Legend can do?
 22 MR. WATLER: That's argumentative.
 23 MR. POWELL: It's a fair question.
 24 MR. WATLER: I think it's argumentative. I
 25 object.

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1 BY MR. POWELL:
 2 Q. Can you not answer?
 3 (A discussion was had off the record between
 4 the witness and Mr. Watler.)
 5 THE WITNESS: What's your question, please?
 6 BY MR. POWELL:
 7 Q. My question is, is Legend not only advising
 8 the Department about what has happened in the Fort
 9 Worth litigation as it sees it, but it is also able to
 10 predict what will happen in the Fort Worth litigation?
 11 A. Gave them our opinion.
 12 Q. All right. Let me ask you a couple of
 13 things. This document here, 65, has something attached
 14 to it that wasn't attached to the original version we
 15 got. Tell me what that is.
 16 A. I don't know what that's from originally.
 17 Q. I notice that has a different numbering
 18 system on it. LAI 66.001. Do you know what that
 19 numbering system means?
 20 MR. WATLER: That was a page that was not
 21 originally attached that was inadvertently
 22 omitted.
 23 MR. POWELL: I'm asking him.
 24 MR. WATLER: I think it will speed it up,
 25 counsel, in that when Mr. Kelly inquired about

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1 that we were able to locate that attachment that
 2 hadn't been originally produced. It was
 3 subsequently produced to Mr. Kelly, I believe
 4 served on other counsel.
 5 MR. EDWARDS: We were able to show where it
 6 goes with the rest of the production.
 7 BY MR. POWELL:
 8 Q. You don't know where this page 66.001 came
 9 from?
 10 A. No.
 11 Q. Is it something Legend wrote?
 12 A. I have no idea.
 13 Q. Who is Paul Olsen?
 14 MR. WATLER: Asked and answered.
 15 MR. POWELL: I missed it.
 16 BY MR. POWELL:
 17 Q. O-L-S-E-N?
 18 A. I don't know Paul Olsen.
 19 (EXHIBIT(S) NO. 11 MARKED.)
 20 BY MR. POWELL:
 21 Q. Deposition Exhibit 11. I notice a carbon
 22 copy of Deposition Exhibit 11 was sent to Mr. Paul
 23 Olsen.
 24 A. Correct.
 25 a. You don't know who he was?

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1 A. Yes.
 2 Q. And who is -- I mean you're the senior man
 3 there, so I take it that the practice is your practice?
 4 A. That's correct.
 5 Q. You approve the practice?
 6 A. That's correct.
 7 Q. Tell me when it is the practice of Legend
 8 Airlines to approve or to communicate with the
 9 Department officially and when it is the practice of
 10 Legend Airlines to communicate with the Department
 11 unofficially?
 12 A. Well, I'd like for you to define official and
 13 unofficial for me.
 14 Q. You told me you had a practice of doing it,
 15 just however you break it down.
 16 A. We communicate with Department of
 17 Transportation as all airlines do an dozens of matters
 18 from time to time, in whatever form we think is
 19 appropriate at the time.
 20 Q. But how do you decide whether to address a
 21 communication to a particular docket or whether to send
 22 it personally in sort of a Dear Tom or Dear Nancy
 23 letter? How is that decision made?
 24 A. That decision is made on a case by case basis
 25 at the time we choose to send a communication.

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1 A. No.
 2 Q. Who he is? Did you approve sending him a
 3 copy?
 4 A. No.
 5 a. Do you communicate with Mr. Faberman by
 6 e-mail?
 7 A. No.
 8 Q. Does Mr. Faberman send e-mails to you, do you
 9 know?
 10 A. No.
 11 Q. Is it your testimony that Mr. Faberman sent a
 12 copy of each of the documents 1 through -the last one
 13 we had there -- 164, to you in Dallas, Texas?
 14 A. Copied me in Dallas, Texas?
 15 Q. Yes, sir.
 16 A* That's correct.
 17 a. And I noticed on some of them he copied Mr.
 18 Watler also in Dallas, Texas.
 19 A. Yes.
 20 Q. Is there a policy within Legend Airlines to
 21 communicate with the Department officially from time to
 22 time but also to communicate with them unofficially
 23 from time to time?
 24 A. There's no policy.
 25 a. Is it a practice?

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1 Q. What are the guidelines? What are the rules?
 2 A. I have no published rules.
 3 Q. I don't care whether they're published or
 4 not. What are the rules?
 5 A. We don't have a set of rules.
 6 Q. How is the decision made then? If you don't
 7 do it by rules, is it done randomly?
 8 A. It's on a case by case basis when the
 9 communication is prepared.
 10 Q. What are the factors that you take into
 11 account as you approve these communications and
 12 determine whether they should be what I will call
 13 official or what I might call back channel
 14 communications?
 15 A. I disagree with your term of back channel.
 16 Q. You know what back channel means in the
 17 government, don't you?
 18 A. Yes. It's certainly not in letter form.
 19 Q. How does it happen?
 20 A. In any number of other communication forms.
 21 Q. Have you had any back channel communications
 22 with the Department of Transportation?
 23 A. No.
 24 Q. On any subject ever?
 25 A. Any subject ever?

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- 1 Q. Right.
 2 A. No.
 3 Q. So you've never had a back channel
 4 communication with DOT?
 5 A. **Excuse me, I thought your answer -- or your**
 6 **question was the reverse. Yes, I've had back channel**
 7 **communications with the DOT.**
 8 Q. Have you had them in connection with the Love
 9 Field interpretation proceeding?
 10 A. No.
 11 Q. Have you had them in connection with your
 12 certification proceeding?
 13 A. No.
 14 Q. Have you ever had one with Ms. McFadden?
 15 A. No.
 16 Q. Any with Ms. Nancy Deamer LoBue?
 17 A. No.
 18 Q. With whom?
 19 A. **Well, it was the head of the Department's**
 20 **Budget Office in the '87 to '89 time frame.**
 21 Q. No, I don't want to talk about '87 or '89.
 22 A. **Your question included that. I think you**
 23 **said ever.**
 24 Q. Right. I did. Have you had any since '96?
 25 A. No.

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- 1 Q. Have you had any communications that you did
 2 not intend to -- have you ever asked the Department not
 3 to put any of your communications into the public
 4 record except by formal motion such as what we've
 5 looked at here in docket 983667?
 6 A. No.
 7 Q. So as far as you're concerned, any of these
 8 letters marked 1 through 164 could be filed in the
 9 public records?
 10 A. **That's always a chance.**
 11 Q. So you would not have put anything in there
 12 that you did not want exposed to the public?
 13 A. **No, I didn't say that.**
 14 Q. Well, have you asked the Department on any of
 15 these letters that are before us today in any way,
 16 shape, form or fashion, or has anyone on Legend's
 17 behalf asked the Department not to release any of this
 18 information to the public?
 19 A. **Not that I'm aware.**
 20 Q. Has anybody asked the Department not to file
 21 these letters in the docket?
 22 A. **Not that I'm aware.**
 23 Q. Are you aware that none of these letters are
 24 filed in the docket, in either of these two dockets, in
 25 either your certification proceeding or in the Love

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- 1 Field interpretation proceeding?
 2 A. No.
 3 Q. You would agree with me that these letters
 4 pertain to matters that are in the Love Field
 5 interpretation proceeding, do they not?
 6 A. I'd have to review that one last letter.
 7 Q. Look at Exhibit 8, for example.
 8 A. **This was dated July 7th.**
 9 Q. I guess that was before the docket. Look at
 10 Exhibit 7 is what I meant. In fact, the first
 11 paragraph starts off about an action taken by the
 12 Department in the Love Field interpretation docket,
 13 does it not?
 14 A. **That's correct.**
 15 Q. Have you instituted a policy at Legend
 16 Airlines prohibiting the filing of matters pertaining
 17 to this Love Field interpretation docket that are not
 18 captioned correctly and sent up and served on
 19 everybody?
 20 A. No.
 21 Q. So there may be another one happening today
 22 as far as we know?
 23 A. **Not that I'm aware.**
 24 Q. When you received any of these letters that
 25 we have here that you produced for us today and we've

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- 1 been through a number of them, 1 through 164, what is
 2 your practice, what do you do with them?
 3 A. **I read them and put them in an appropriate**
 4 **file.**
 5 Q. Do you circulate them to anyone?
 6 A. **Sometimes.**
 7 Q. And to whom do you sometimes circulate them?
 8 A. **To staff.**
 9 Q. There within Legend Airlines?
 10 A. **That's correct.**
 11 Q. How about Mr. -- is Mr. Ledbetter still
 12 involved in somewhat --
 13 A. **Involved in?**
 14 Q. Legend Airlines?
 15 A. **He's a director.**
 16 Q. Do you send them to him?
 17 A. **Not generally.**
 18 Q. In some way have you given any of these
 19 letters to any representative or member of the press?
 20 A. **No, not that I'm aware.**
 21 Q. Has your -- I've forgotten what your press
 22 man's name is. Does he hand out letters like this to
 23 members of the press?
 24 A. No.
 25 Q. Do you know of any persons who have been

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1 given a set of these letters or copies of any of these
 2 letters other than persons who are named on the
 3 letters?
 4 A. I think I said I circulate them sometimes to
 5 Staff.
 6 Q. Okay. Besides staff within your company, do
 7 you know of any persons who have been given a complete
 8 set or a partial set or individual ones of these
 9 letters?
 10 A. No.
 11 Q. Have any of these letters Exhibits 1 through
 12 -- not Exhibits, but pages 1 through 164, I believe it
 13 is, have any of them been sent to any Congressional
 14 staff person?
 15 A. Not that I'm aware.
 16 Q. Have you sent any of the materials in this
 17 stack that your counsel gave us today to any member of
 18 any Congressional staff?
 19 A* No.
 20 Q. Do you know whether Mr. Faberman has sent
 21 communications to the DOT other than those that have
 22 been served on the other counsel or those that have
 23 been furnished to us today?
 24 A. Sent communications to the DOT -- excuse me,
 25 will you say that again?

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1 Q. I've got -- before me here I've got exhibits
 2 -- I've got pages 1 through 164, so that's one stack of
 3 documents that Mr. Faberman has sent to the DOT?
 4 A. Right.
 5 a. And then there's another group of documents
 6 that have been done officially, where he's put a style
 7 on them, served them on all the parties to the
 8 proceedings, so I've got that stack of documents. Now,
 9 besides those two stacks of documents, do you know of
 10 any other documents of any kind whatsoever Mr. Faberman
 11 has sent to the DOT in his capacity as an attorney for
 12 Legend Airlines?
 13 A. I'm not aware of any.
 14 MR. POWELL: I think I'll pass the witness.
 15 MR. FOSTER: No questions.
 16 FURTHER EXAMINATION
 17 BY MR. JOHNSON:
 18 Q. When you were Administrator of the Federal
 19 Aviation Administration did you have any policy with
 20 regard to the treatment of unsolicited correspondence
 21 that you might receive from parties on matters that
 22 were before your agency but for which no dockets had
 23 been designated?
 24 A. I don't know the answer to that.
 25 Q. Well, you know, to try and put it in this

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1 context, I mean you were a government official at one
 2 time; right?
 3 A. That's correct.
 4 Q. Charged with some measure of responsibility
 5 that dealt with public trust and public matters;
 6 correct?
 7 A. That's correct.
 8 Q. And if you received letters like the letters
 9 we have seen here that Ed Faberman sent without docket
 10 numbers and without sharing with any other member of
 11 the public, what would you do with them?
 12 A. By the time the letters got to me they had
 13 already been through the General Counsel's office, so I
 14 can tell you I don't know what the policy was. You'd
 15 have to ask the General Counsel.
 16 Q. So the policy for how to treat letters such
 17 as this you believe is set at the General Counsel level
 18 of the Department of Transportation?
 19 A. That's right.
 20 Q. Is that policy in writing?
 21 A. I don't know.
 22 MR. JOHNSON: I don't have any other
 23 questions.
 24 (EXHIBIT(S) NO. 12 MARKED.)
 25 FURTHER EXAMINATION

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1 BY MR. KERR:
 2 Q. Let me hand you Exhibit 12, Mr. McArtor.
 3 It's a two page document. It's a fax cover sheet from
 4 Ungaretti & Harris, from Edward Faberman to Thomas L.
 5 Ray and there's a second page that's an attachment
 6 entitled Love Field Action Plan. Tell me what the Love
 7 Field Action Plan page is.
 8 A. Those are two --two actions that Legend
 9 Airlines feels either or both are appropriate ways for
 10 the Department of Transportation to officially
 11 intervene in the lawsuit.
 12 Q. Obviously, you've seen this Love Field Action
 13 Plan before today?
 14 A. That's correct.
 15 Q. When did you see it?
 16 A. About the time it was drafted.
 17 Q. By your lawyers?
 18 A. By the lawyers.
 19 Q. Which lawyers?
 20 A. I'm not sure who participated in that.
 21 Q. It has a computer file &ode down at the
 22 bottom here.
 23 A. Right.
 24 Q. Is that coded to your machine or is it coded
 25 to something else that you recognize?

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1 A. That's not something I recognize, nor is it
 2 something in our machine.
 3 Q. Looks like LITDAL?
 4 A. That's right.
 5 Q. But you're sure your lawyers prepared this
 6 page, Love Field Action Plan?
 7 A. Yes.
 8 Q. Would it have been the lawyers at Jenkins &
 9 Gilchrist?
 10 MR. WATLER: Don't guess or speculate.
 11 THE WITNESS: I don't know.
 12 BY MR. KERR:
 13 Q. Did Mr. Faberman transmit the Love Field
 14 Action Plan that had been prepared by your lawyers to
 15 Mr. Ray with your permission?
 16 A. Yes.
 17 Q. Did you discuss any aspects of your Action
 18 Plan, the content of your Action Plan with anybody at
 19 the DOT either on July 12 when you were there or any
 20 other time?
 21 MR. EDWARDS: I think you mean June 12.
 22 BY MR. KERR:
 23 Q. June 12.
 24 A. Yes.
 25 Q. What did you tell them? Well, who did you

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1 have a conversation with about your Love Field Action
 2 Plan?
 3 A. No. Excuse me. I misspoke. Say the
 4 question again.
 5 Q. Well, did you discuss the Love Field Action
 6 Plan or anything in the Love Field Action Plan with
 7 anyone at the Department of Transportation?
 8 A. Outside of this communication?
 9 Q. Outside of this communication.
 10 A. I'm not aware of any discussion.
 11 Q. You're not aware of any discussion either by
 12 you or on your behalf by your lawyers or lobbyists?
 13 A. That's correct.
 14 Q. Is that correct?
 15 A. That's correct.
 16 Q. Is this all of the Action Plan, does it just
 17 consist of two points?
 18 A. That's all that I'm aware.
 19 Q. Do you know -- well, first of all, what do
 20 you refer to -- what do you call what I call the
 21 computer file indicator down at the bottom of the page,
 22 what phrase do you use?
 23 A. That's good enough.
 24 Q. Have there been any computer file indicators
 25 that have been redacted from any of these documents?

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1 A. I'm not aware of any.
 2 Q. Approximately how many times would you say
 3 you've been in the offices of the Office of
 4 Transportation in the last 90 days?
 5 A. Once, July, August, September.
 6 Q. Let's say since June 1 if that makes it
 7 easier?
 8 A. We had the June 12 meeting that you're aware.
 9 Q. Right. How many others?
 10 A. The August 25th conference that they hosted.
 11 Q. Yes, sir, I'm really not asking you about
 12 meetings. I'm asking you how many times you've been in
 13 the offices of the Department of Transportation since
 14 June 1. I'm not restricting it to meetings.
 15 MR. WATLER: I think this is how he's
 16 recalling it.
 17 THE WITNESS: That's what I'm trying to do.
 18 BY MR. KERR:
 19 Q. That's fine.
 20 A. So outside the June and the August time, I
 21 think that's the only time.
 22 Q. The only two times?
 23 A. (Witness nods head.)
 24 Q. On the first page of Exhibit 12, Mr. Faberman
 25 writes to Mr. Ray as a follow-up to our discussion.

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1 What discussion is Mr. Faberman referring to?
 2 MR. WATLER: Don't guess or speculate.
 3 THE WITNESS: I don't know.
 4 BY MR. KERR:
 5 Q. Were you aware that Mr. Faberman was having
 6 conversations with Mr. Ray about alternative legal
 7 actions that could be taken by the DOT? You were aware
 8 he was having conversations, that Mr. Faberman was
 9 having conversations with Mr. Ray about alternative
 10 legal actions, weren't you?
 11 A. Yes.
 12 Q. You just don't know which specific
 13 conversation this one refers to?
 14 A. No.
 15 Q. Exhibit 12 refers to. How many conversations
 16 do you think Mr. Faberman has had with Mr. Ray about
 17 the alternative legal actions that could be taken by
 18 the DOT?
 19 MR. WATLER: Objection, calls for
 20 speculation.
 21 BY MR. KERR:
 22 Q. I'm not asking you to make wild speculation.
 23 Based on all the conversations you've had and what you
 24 know about this entire proceeding how many times do you
 25 think they've talked about the legal alternatives that

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(Deposition concluded at 4:12 p.m.)

1 the DOT could take?
 2 MR. WATLER: Same objection.
 3 BY MR. KERR:
 4 Q. How many, what's your best estimate?
 5 A. I have no idea.
 6 MR. KERR: I'll pass the witness.
 7 FURTHER EXAMINATION
 8 BY MR. POWELL:
 9 Q. What is the status of the Love Field Action
 10 Plan?
 11 A. Apparently not very good. We had hoped that
 12 they would intervene, and they haven't done that.
 13 Q. Is your understanding that the Love Field
 14 Action Plan is a plan to get them to intervene?
 15 A. That's correct.
 16 Q. Says, "DOT files new suit for declaratory
 17 judgment in the U.S. District Court," naming Fort
 18 Worth, American and DFW, Legend not named as a
 19 Defendant. Legend joined as an original Plaintiff or
 20 intervenes as a Plaintiff immediately after filing. Do
 21 you think that's intervention?
 22 MR. WATLER: Mischaracterization, Mr. Powell.
 23 Rule of optional completeness. Read the rest of
 24 the paragraph.
 25 BY MR. POWELL:

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1 CHANGES AND/OR CORRECTIONS
 2 PAGE LINE REASON
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8
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 11
 12 T. ALLAN MCARTOR
 13 STATE OF TEXAS)
 14)
 15 COUNTY OF _____)
 16 Subscribed and sworn to before me by the said
 17 witness, T. ALLAN MCARTOR, on this the _____ day of
 18 _____, A.D. 1998.
 19

20 Notary Public in County,
 21 for the State of Texas.
 22 My Commission expires _____
 23
 24
 25

1 Q. Alternatively DOT seeks the relief -- Mr.
 2 Watler knows this pretty well. Alternatively DOT seeks
 3 the relief outlined herein by moving to intervene as
 4 Plaintiff in Continental Airlines.
 5 MR. WATLER: Object to counsel's side-bar.
 6 BY MR. POWELL:
 7 Q. That's your understanding of intervention,
 8 what's listed in that document?
 9 A. Yes.
 10 Q. Have you had any -- of any kind, any further
 11 communications and I'm speaking of Legend itself, with
 12 the DOT about the Love Field Action Plan?
 13 A. Not that I'm aware.
 14 Q. Have there been any discussions of a plan
 15 after or when the DOT issues an interpretive ruling?
 16 A. No.
 17 Q. What is -- has Legend proposed any plan to
 18 DOT pertaining to that subject matter?
 19 A. Which subject?
 20 Q. What to do if and when the DOT issues an
 21 interpretive ruling?
 22 A. No.
 23 MR. POWELL: I have no further questions.
 24 MR. FOSTER: No questions.
 25 MR. WATLER: We reserve our questions.

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1 NO. 48-171109-97
2 CITY OF FORT WORTH,) IN THE DISTRICT COURT OF
3 TEXAS)
4 Plaintiff)
5 AND AMERICAN AIRLINES,)
6 INC.)
7 Plaintiff Intervenor,) TARRANT COUNTY, TEXAS
8 VS.
9 CITY OF DALLAS,)
10 TEXAS, ET AL)
11 Defendants) 48TH JUDICIAL DISTRICT
12 ORAL DEPOSITION OF T. ALLAN MCARTOR
13 Taken October 15, 1998

14 I, Gloria Carlin, Certified Shorthand Reporter in
15 the State of Texas, do hereby certify that the
16 transcript of the oral deposition of the above named
17 witness is a true record of the testimony given by said
18 witness, after the witness was first duly sworn by me.
19 I further certify that the original deposition
20 transcript was submitted on the date below to the
21 witness, or his attorney of record, for examination and
22 signature of the witness before any notary public, to
23 be returned by 11-9-98, and that the attorney asking
24 the first question appearing in the transcript is in
25 possession of a true and correct copy of any
accompanying exhibits, in the event the original is not
timely returned to him for safekeeping and use at
trial.
I further certify that the charge for the
preparation of the completed deposition transcript and
any copy of exhibits is \$_____ to be paid by
Plaintiff City of Fort Worth, represented by Kelly,
Hart & Hallman.
I further certify that a copy of this certificate
was served on all parties to the suit pursuant to
Tex. R. Civ. P. 21a, and a copy of this certificate was
filed with the Clerk of the Court.
Certified on this the 16th day of October, 1998.

22 _____
23 Gloria Carlin, CSR No. 498
24 Merit Court Reporters
25 600 Oil & Gas Building
Fort Worth, Texas 76102
(817) 336-3042 Metro 654-4006
Job No. 981576 My Certification Expires 12/31/98

Concordance Report

Unique Words: 2,467

Total Occurrences: 15,505

Noise Words: 384

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Single File Concordance

Case Sensitive

Noise Word List(s): NOISE.NOI

CoverPages= 4

Includes ALL Text Occurrences

Dates ON ---

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Possessive Forms O N

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CAUSE NO. 48-171109-97

CITY OF FORT WORTH, TEXAS

PLAINTIFF,

AND

AMERICAN AIRLINES, INC.,

PLAINTIFF INTERVENOR,

V.

CITY OF DALLAS, TEXAS, THE
DALLAS FORT WORTH
INTERNATIONAL AIRPORT BOARD,
JEFFREY P. FEGAN, LEGEND
AIRLINES, INC., MESA AIRLINES,
INC., ASTRAEA AVIATION
SERVICES, INC. D/B/A DALFORT
AVIATION, CONTINENTAL
AIRLINES, INC. AND CONTINENTAL
EXPRESS, INC.

DEFENDANTS.

N THE DISTRICT COURT OF

TARRANT COUNTY, TEXAS

48TH JUDICIAL DISTRICT

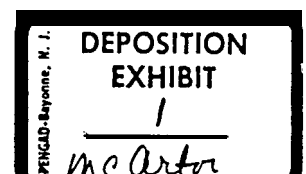
FILED
TARRANT COUNTY
1998 OCT 30 P 4 21
THOMAS A. GILCHRIST
DISTRICT CLERK

FIRST AMENDED NOTICE OF ORAL DEPOSITION
OF T. ALLAN MCARTOR AND SUBPOENA DUCES TECUM

TO: ALL COUNSEL OF RECORD:

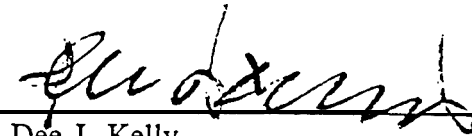
PLEASE TAKE NOTICE THAT the City of Fort Worth, Plaintiff herein, will take the oral deposition of T. Allan McArtor at 9:00 a.m. on October 15, 1998 at the offices of Jenkins & Gilchrist, P.C., 1445 Ross Avenue, Suite 3200, Dallas, Texas. The deposition will be taken in accordance with the Texas Rules of Civil Procedure and shall continue day to day until completed. The deposition will be stenographically recorded by a certified court reporter and may be used as evidence in this Cause.

Deponent is directed to bring to the deposition all documents described in Exhibit "A," attached hereto.



Respectfully submitted,

By:



Dee J. Kelly

Bar No. 11217000

Marshall M. Searcy, Jr.

Bar No. 17955500

Brian S. S. tagner

Bar No. 24002992

KELLY, HART & HALLMAN, P. C.

201 Main Street, Suite 2500

Fort Worth, Texas 76102

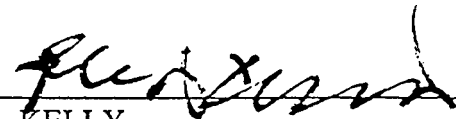
Telephone: (817) 332-2500

Telecopy: (817) 878-9280

ATTORNEYS FOR CITY OF FORT WORTH

CERTIFICATE OF CONFERENCE

I hereby certify that a conference was held with the attorney for opposing party to agree on a date, time, place and materials to be furnished. An agreement could not be reached so the deposition is being taken pursuant to this notice.



DEE J. KELLY

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September 1998, a true and correct copy of the foregoing document was sent by facsimile to all counsel of record, as follows:

Paul C. Watler
JENKENS & GILCHRIST, P.C.
1445 Ross Avenue, Suite 3200
Dallas, Texas 75202

William J. Albright
FIGARI & DAVENPORT, L.L.P.
901 Main Street, Suite 4800
Dallas, Texas 75202

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LEVINE AND MAJORIE LTD.
12750 Merit Drive, Suite 1000
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Bill Bogle
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Randall Wilson
SUSMAN GODFREY L.L.P.
1000 Louisiana, Suite 5100
Houston, Texas 77002-5096

E. Lawrence Vincent, Jr.
SUSMAN GODFREY L.L.P.
2323 Bryan Street, Suite 1400
Dallas, Texas 75201-2663



DEE J. KELLY

EXHIBIT "A"

A. Definitions

1. "You," "your," and "yours" means deponent T. Allan McArtor, any agent or representative of T. Allan McArtor, and each person acting or authorized to act on his behalf.
2. "Legend" means Legend Airlines, Inc. and all agents or representatives acting on its behalf.
3. "DOT" means the Department of Transportation, its related agencies, and all agents or representatives acting on its behalf.
4. The term "document" is used with the fullest meaning recognized by the Texas Rules of Civil Procedure and Texas Rules of Evidence and includes any and all manner of written, typed, printed, handwritten, electronically recorded or stored, reproduced, photographed, filmed, e-mailed, or recorded materials, and all plans, drawings, models or other representations of any kind of anything pertaining, describing, referring or relating, directly or indirectly, in whole or in part, to the subject matter of each document request. Moreover, the term includes, but is not limited to the following items:
 - (a) originals and all other copies not absolutely identical to originals; and
 - (b) all drafts and notes (whether typed or handwritten or otherwise) made or prepared in connection with such document, whether used or not.
5. The terms "and," "or," "and/or" shall be construed as conjunctive or disjunctive to ensure the provision of additional information or more complete responses and to avoid the questions herein being considered ambiguous, inaccurate or confusing.
6. The term "identify" for persons means to provide the name, last known business address, last known residence address, last known business telephone number and last known personal telephone number. For documents and/or communications, "identify" means to provide the date, the identity of participants and witnesses, and a brief statement of the substance.
7. The terms "relate(s)," "refer(s)," "regarding," "relating to" or "concerning" mean relating to, referring to, concerning, regarding, describing, discussing, reflecting, mentioning, constituting and/or supporting, directly or indirectly.

8. The word “person” shall mean any individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, or any other business entity, United States **government, state, county,** municipality, commission, specific district, or any other subdivision of the federal, state or local government.
9. Public official shall mean any officer, agent or representative, employee, staff member or other personnel affiliated with the White House, the Department of State, the Department of Commerce, the Department of Justice, members of Congress, the Democratic National Committee *or the* Republican National Committee.
10. The term “Love Field litigation” refers to the litigation pending in the 48th Judicial District of Tarrant County (Cause No. 48-171109-97, *City of Fort Worth, Texas, et al v. City of Dallas, the Dallas Fort Worth International Airport Board, Jeffrey P. Fegan, Legend Airlines, Inc., Astraea Aviation Services, Inc. d/b/a Dalfort Aviation, Mesa Airlines, Inc., Continental Airlines, Inc. and Continental Express, Inc.*) and in the Dallas Federal District Court for the Northern District of Texas (Cause No. 3:98-CV-1187-R, *Continental Airlines, Inc. et al v. City of Dallas, Texas and City of Fort Worth, Texas, Dallas-Fort Worth International Airport Board, Jeffrey P. Fegan; and American Airlines, Inc.*).

B. Instructions

1. Comply with the Definitions provided in Exhibit A.
2. In producing the requested documents, furnish all non-privileged information in your possession, custody or control, including information in the possession of your attorneys, investigators, auditors, accountants, and all persons acting or purporting to act on your behalf and not merely such documents in your possession.
3. Pursuant to Rule 167(l)(f) of the Texas Rules of Civil Procedure, you are instructed to produce the documents as they are kept in the usual course of business or the documents shall be organized and labeled to correspond with the categories in this Request. In addition, documents are to be produced in full and expurgated form; redacted documents will not constitute compliance with this Request.
4. If any document described in this Request was, but no longer is, in your possession, or subject to your custody or control, or in existence, state whether:
 - (a) It is missing or lost;
 - (b) It has been destroyed;

- (c) It has been transferred, voluntarily or involuntarily, to others; or
 - (d) It has been disposed of otherwise, and state when and how.
5. If any document falling within any description contained in this Request is privileged or is withheld for any reason:
- (a) Identify its title and general subject matter;
 - (b) State its date;
 - (c) Identify all persons who participated in its preparation;
 - (d) Identify the persons for whom it was prepared or to whom it was sent;
 - (e) Identify all persons to whom it or any copy of reproduction thereof was ever directed, addressed, sent, delivered, mailed, given or in any manner disclosed;
 - (f) State the nature of the privilege claimed; and
 - (g) State in detail each and every fact upon which you base your claim for privilege.
6. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, and a plural noun shall be construed as a singular noun and a singular noun shall be construed as a plural noun, as necessary to bring within the scope of any request all responses which might otherwise be construed as outside its scope.

C. Relevant Time Period

Unless otherwise noted, the relevant time period of the documents requested in this subpoena duces tecum shall be from October 10, 1997 to the present, and shall include all documents which refer to or relate to that period, even though prepared or published prior or subsequent to that period.

D. Documents to be Produced

Deponent is hereby directed to produce for inspection and copying the documents described below that are in your possession, custody, or control, including those documents in the possession of your agents, attorneys, or others acting at your direction or on your behalf:

1. All documents referring to, relating to or showing travel to Washington D. C. during the period October 10, 1997 through the date of this deposition.

2. All documents referring to, concerning or reflecting communications, discussions, meetings or conversations between you and the DOT pertaining to the litigation currently pending involving Love Field.
3. All documents referring to, concerning or reflecting communications, discussions, meetings or conversations between you and the DOT pertaining to your desire to have the DOT participate in proceedings to resolve all or part of the litigation currently pending involving Love Field.
4. All documents referring to, concerning or reflecting communications, discussions, meetings or conversations between you and the DOT pertaining to the DOT's opinion, if any, that the service Legend proposed to offer at Love Field is permissible under the Wright and Shelby Amendments.
5. All documents referring to, concerning or reflecting communications, discussions, meetings or conversations between you and the DOT pertaining to the DOT's opinion, if any, that the 1968 Regional Airport Concurrent Bond Ordinance is unenforceable because of federal law.
6. All documents in which you request any public official to contact the DOT with respect to the Love Field litigation.
7. All documents in which any public official has requested the DOT to participate or to become involved in the Love Field litigation.



Nancy E. McFadden
General Counsel

400 7th Street, S.W.
Washington, D.C. 20590

Tel: (202) 366-4702
Fax (202) 366-3388



NANCY DEAMER LOBUE
Assistant Chief Counsel
Airports and Environmental Law

Federal Aviation Administration
Office of Chief Counsel
800 Independence Ave., S.W.
Washington, DC 20591

Tel: (202) 267-3 199
Fax: (202) 267-5769



TAM 00001



June 16, 1998

Ms. Nancy E. McFadden
General Counsel
Department of Transportation
400 Seventh Street, S.W.
Washington, DC 20590

Dear Nancy:

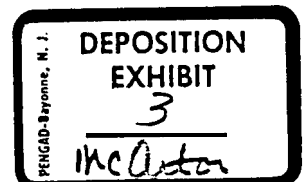
Thank you for taking time out of your schedule to meet with us concerning efforts under-taken in the Dallas-Fort Worth area to preclude competition and new entry.

As I mentioned, the Department and Secretary Slater should be congratulated for aggressively addressing matters that impact competition. As the Department has increased international opportunity for U.S. carriers, it should continue to open domestic opportunity. By speaking out on these issues, the Secretary has improved opportunities for new entrants and start-ups.

I support your efforts and would be delighted to discuss these issues further with you and the Secretary.

Sincerely,

T. Allan McArtor
President and CEO



UNGARETTI
& HARRIS

June 24, 1998

Ms. Nancy E. McFadden
General Counsel
Department of Transportation
400 Seventh Street, S.W.
Washington, DC 20590

Dear Nancy:

WASHINGTON

1747 Pennsylvania Ave. N.W. Suite 900
Washington, DC 20036-4604
Telephone 202 872 4310
Fax 202 331 1446

CHICAGO

3500 Three First National Plaza
Chicago, Illinois 60602 4283
Telephone 312 977 4400
Fax: 312 977 4405

<http://www.uhlaw.com>

As to support for American in Fort Worth and the likelihood of a balanced hearing before Judge McCoy, I call to your attention a recent statement by one of the Judge's fellow judges. "American and DFW are synonymous, one for the other," Tarrant County Judge Tom Vandergriff said. "We built the airport for them." [*Fort Worth Star Telegram*, April 22, 1998, "American wants flights at Love Field.] I also thought that you would be interested in the attached documents from Continental.

Finally, I call your attention to the attached article from the June 18, 1998 *Bond Buyer*. The headline says it all -- "DFW Airport ignores suit in favor of overhaul." The article notes that DFW is going ahead with its \$6.3 billion in airport upgrades and that Love Field operations will have no impact on DFW and its future growth.

Sincerely,



Edward P. Faberman

Attachment



LAI 00057

LEVEL 1 - 2 OF 54 STORIES

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The Bond Buyer

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HEADLINE: Dallas-Fort Worth Airport **Ignores** Suit In Favor of Overhaul

BYLINE: By Darrell Preston

DATELINE: DALLAS

BODY:

Deciding not to be halted by litigation swirling over Dallas' Love Field, Dallas-Fort Worth International Airport is **forging** ahead this month with plans for a \$6.3 billion overhaul funded **mainly** with bonds.

Earlier this month DEW's Airport Board named a new **18-member** underwriting team, and **airport officials** last week unveiled their latest proposal for \$6.3

billion of improvements **during the next 20 years**. Enhancements include \$2.3 billion of terminal upgrades and \$2.1 billion for a new **automated** people mover system to get passengers to their gates **more** quickly.

Board officials could **sign** off on the plan as early as next month. Though no **final timetables** for **financing** or bond **issuance** are available, **airport** officials hope to begin **some** of the work this year. **Planning documents** list 9753 million of **immediate** projects targeted to get under way in 1998, and another \$1.97 billion of work between 1999 and 2001.

Planning, which began last year, continued this spring despite a whirlwind of litigation spurred by Congress' decision last fall to lift **some** flight restrictions at Love Field, a city-owned airport near downtown Dallas. **Six** lawsuits have **been** filed by Dallas and Fort Worth, several airlines, and DFW itself to determine **which** airlines can fly out of Love and to where.

Previously, flights out of Love could only go to **states** adjacent to Texas under the Wright **Amendment**, passed by Congress in **the** 1970s to protect **DFW** from competition. But last year **Congress** allowed flights to two other states, and **some members promised** to lift restrictions still further.

Fort Worth sued Dallas last fall to prevent flights to **more** destinations, alleging that would violate bond covenants in place since the cities agreed to jointly build the airport. Those covenants were intended to protect bondholders by concentrating flights at **DFW**. The airport has about 31.8 billion of bonds outstanding.

The **possibility** of expanding service at Love has enticed three airlines wanting to compete with the airport's only **commercial** carrier, Southwest Airlines Co. **Those three are Legend Airlines Inc.**, a start-up carrier that lobbied to **lift** flight restrictions and announced plans Tuesday to build a new terminal at Love; **Continental Express**, which began limited **service** last week; and **American Airlines Inc.**, **DFW's** largest carrier.

When the controversy erupted last fall, **DFW** executive director Jeffrey Fegan said work on airport **improvements** and bonds would likely be delayed. But **since** then, the Board and **other** officials have decided to forgo ahead.

"The **litigation** is **obviously** affecting the **planning**, but you can't just sit still," said Angel **Blasatti**, an airport spokeswoman.

Some airport analysts predict **DFW** may lose a few flights to Love. But there are **few credit concerns** about the **impact** on **DFW** bonds **given other restrictions**

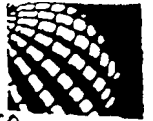
at Love, including **limited terminal** space and parking, as **well as** pressure to **minimize** car traffic and airplane noise in neighborhoods **near** the **inner-city** airport.

Only 90 additional **flights** per **day** are **planned** by the three airlines **wanting** to serve Love. With Southwest's 270 flights **per day**, the ³⁶⁰**flights a day** at Love would pale in **comparison** to DEW's 2,800.

Also, DEW, **already** the world's second-busiest **airport** as measured by passenger traffic, is predicated its overhaul on the **assumption** that usage **will** grow from 57 million passengers **a** year now to about 100 **million** by the **middle** of the next century. Considering that forecast and **the** obvious **need** to **update terminals** Arid ground transportation, analysts think it is reasonable to **proceed** with **the capital plan even** if **some** flights **are lost** to Love.

"DEW is a hub airport and no one is going **to** run a hub out of Love Field," said Mary Francoeur, vice president and senior credit **officer** at **Moody's Investor3 Service**. "I don't see anyone **walking away** from DEW."

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**CONTINENTAL EXPRESS DEFENDS
TRAVELERS' RIGHT TO NEW CHOICE
AT LOVE FIELD: LAUNCHES CAMPAIGN**

DALLAS, June 23, 1998 – Continental Express today charged that by trying to block fair and legal competition at Love Field, the DFW Airport Board and the City of Fort Worth are needlessly depriving Metroplex travelers of increased convenience, flexibility and consumer choice.

At issue are three daily flights between Love Field and Cleveland that Continental Express plans to start on July 1. The Board, the City of Fort Worth and American Airlines are parties to numerous lawsuits involving Continental Express' planned Cleveland service. The Board and Fort Worth have filed in state court for a temporary restraining order that would prevent the airline from flying its newly announced Cleveland service.

"When elephants fight, it's the grass that suffers," said David Siegel, president of Continental Express, quoting an ancient proverb. "In this instance, the elephants – DFW, Fort Worth and American – are trampling all over the rights of Metroplex travelers."

-more-

DALLAS LOVE FIELD/PAGE 2

Siegel said Continental Express will launch an advertising campaign this week to directly tell travelers what's at stake in the lawsuit. The ads are cartoon-like in nature. One depicts an enormous gorilla atop Reunion Tower, a popular Dallas landmark, swatting at the three Continental Express commuter flights. Another features an armada of several dozen large DFW-based jets in a face-off with the three 50-seat regional jet flights.

"It's a classic case of David and Goliath. They're raising a hullabaloo over a mere 150 daily seats, less than two-tenths of a percent of American's more than 82,000 seats a day out of DFW," Siegel said- "We're trying to add a modest and reasonable amount of competition out of Love Field. There's no reason why the people of North Texas should be denied this added choice."

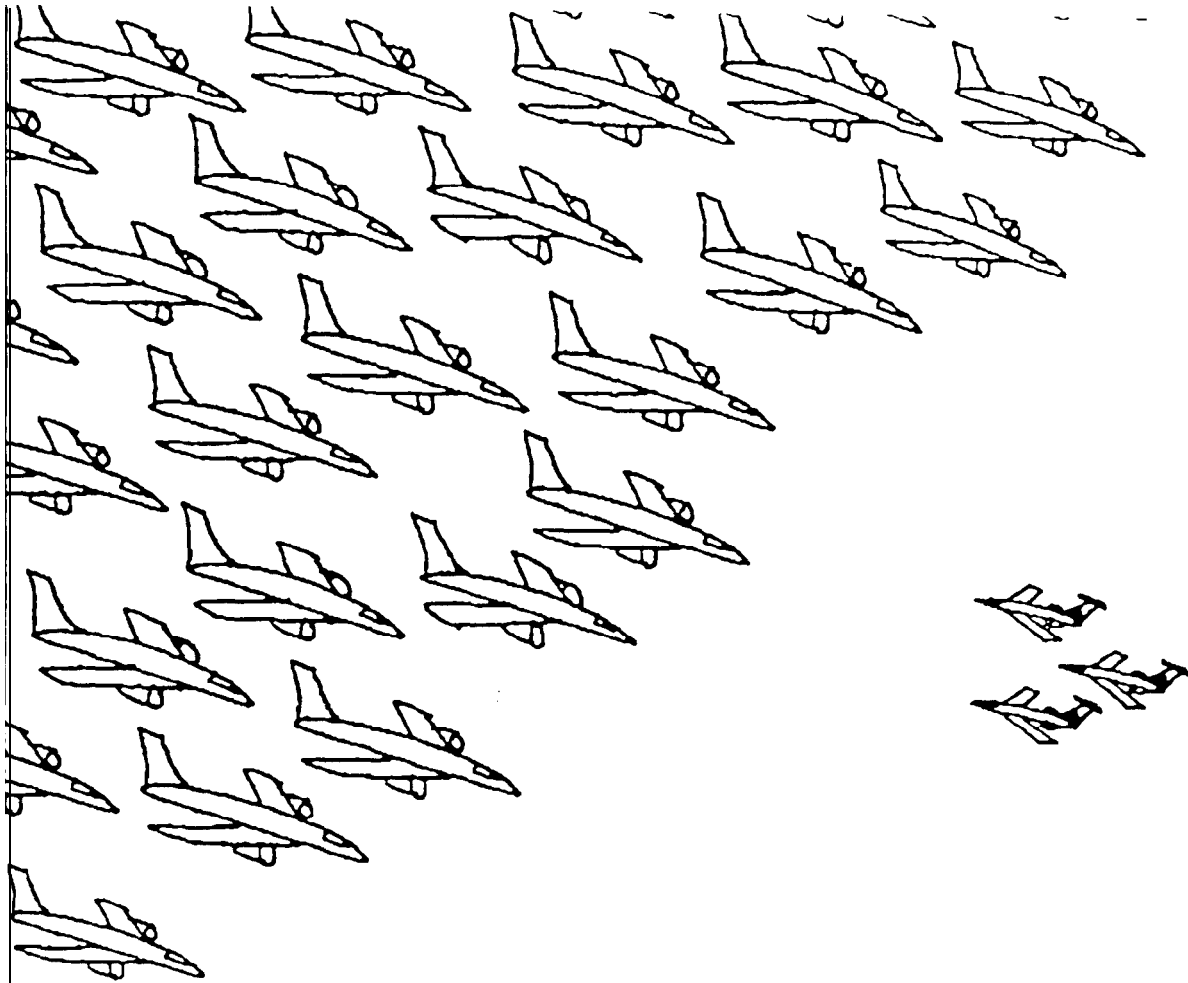
Continental Express has designed the new service to be in strict compliance with all laws and contracts governing flights from Love Field. Continental Express already started service June 11 between Love and George Bush Intercontinental Airport in Houston.

"Our customers say they want to fly out of Love Field on modern 50-seat regional jets flown by Continental Express," Siegel said- "We're simply trying to provide them with that service."

-more

Continental Express serves more than four million customers annually. As a regional air carrier owned by Continental Airlines, Express offers more than 800 daily departures from its hubs in Houston., Newark and Cleveland. Continental Express offers advance seat assignments and OnePass frequent flyer miles which can be redeemed anywhere in the world Continental and its partner airlines fly,

###



THREE **LITTLE** FLIGHTS.

WHAT'S THE BIG DEAL?

American Airlines® has over 700 flights a day from here. And they're trying to stop us from adding 3 flights a day to Cleveland from Love Field. 3 flights. 50 seats each. To Cleveland. We're just trying to give customers a little more choice. So, we have to ask—What's really going on here?

Continental
Express





DO THREE FLIGHTS TO CLEVELAND SOUND SCARY TO YOU?

One airline has over 700 flights a day from here. And they're trying to stop us from adding 3 flights a day to Cleveland from Love Field. 3 flights. 50 seats each. To Cleveland. We're just trying to give customers a little more choice.

So, we have to ask—
What's really going on here?

Continental
Express



UNGARETTI
& HARRIS

November 19, 1997

Nancy McFadden, Esquire
Office of the General Counsel
Department of Transportation
400 Seventh Street, S.W., Room 10428
Washington, DC 20590

Dear Nancy:

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UNGARETTI
& HARRIS

Nancy McFadden, Esquire

November 20, 1997

Page 2

As you know, Bob Crandall stated that he will sue everyone in American to close Love Field if the Wright Amendment is changed in any way. Consistent with his promise, on Friday, October 10, 1997 the City of Fort Worth sued the City of Dallas, Dallas/Ft. Worth Airport Board, Legend, Dalfort and others to prohibit additional Love Field operations.¹ As part of American (and its "friends") efforts to maintain its dominance over the DFW market,² on November 7, American joined the City of Fort Worth in this suit. In another interesting move, the DFW Airport Board opposed the City of Dallas' request to change venue from state to federal court. It is difficult to believe that DFW -- a named defendant -- is willing to allow the case to remain in state court. Even though a named defendant, DFW supports Fort Worth's position.

Several days after joining the Fort Worth litigation, Bob Crandall once again issued a public threat. He proclaimed that if Love Field is opened "we will go to Love Field." Company officials stated that they could operate as many as 200 flights a day. Of course, Crandall added that he would not shift all of these flights to Love if "Fort Worth and Dallas agree to limit any Love Field passenger flights to only Texas and the four adjoining states." In other words, American will double activity at Love Field unless Crandall gets what he wants -- no competition.³

¹ It is interesting to note that although the plaintiffs sued Legend -- a company that is not flying and does not have DOT or FAA certificates -- they did not sue Southwest that has announced it will use the new authority contained in the Appropriations Act -- and Continental Airlines that is modifying two Love Field gates for jet operations.

² Counsel for the City of Fort Worth also represents American and Dee Kelley, lead partner in the firm, is on American's Board of Directors.

³ If American added 200 departures per day, it would operate as many flights as Southwest *and* about 10 times the number to be operated by Legend.

UNGARETTI
& HARRIS

Nancy McFadden, Esquire

November 20, 1997

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American has now taken this threat to the next level. While admitting that it doesn't think that the city should allow expanded service at Love Field, it has requested gates so that it can "institute a substantial schedule of interstate service from Love Field" if additional authorities are permitted. Any action by the City of Dallas to prevent new operations from Love Field would wipe out the language in the Appropriations Bill and would be more restrictive than the original Wright Amendment.

All of this comes at a time that American is increasing its share of the Dallas-Fort Worth market and has once again announced record breaking profits.

American and its surrogates are attempting to force Dallas officials to slow down any actions that would permit Legend or other carriers to operate at Love Field. They know that by delaying the start-up of a new carrier and increasing its costs that the carrier may be driven out of the marketplace. They also are using all of their resources to threaten and coerce Dallas officials into taking steps to prevent Legend or any other new entrant from operating. This type of collusion and anti-competitive behavior should not be tolerated.

As you can see from the attached ads in the Dallas papers, Bob Crandall and American are demanding that the parties prevent the competition allowed by the Transportation Bill or they will bombard Love Field with multiple flights. The cost of advertisement and litigation is worth it to American if it enables them to stop or slow down any possible competition.

I urge the Department to review all actions taken by American and their partners on closing Love Field to competitive service.

Sincerely,

A handwritten signature in black ink, appearing to be 'Ed' with a stylized flourish.

Edward P. Faberman

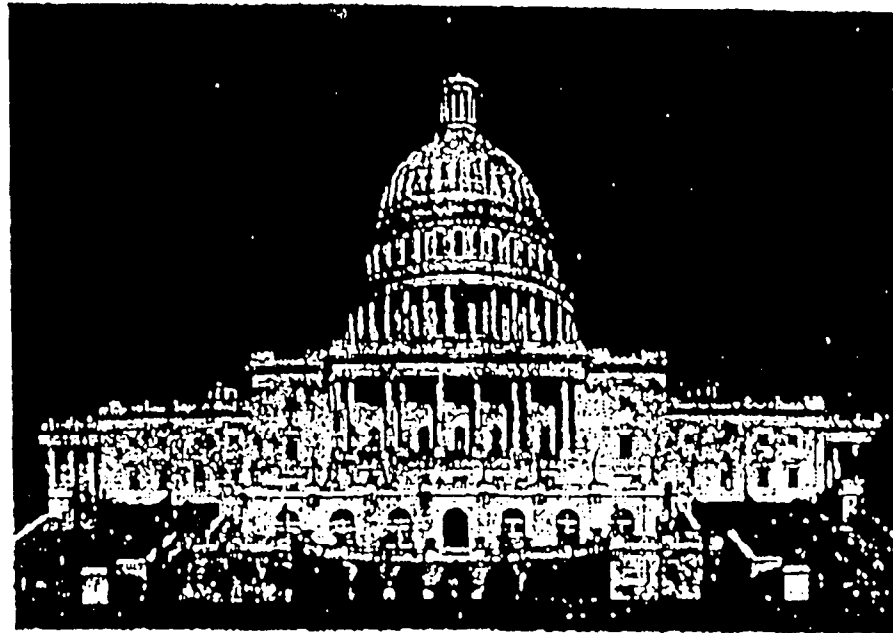
**COMMERCIAL AIR PASSENGER SERVICE
IN THE DALLAS/FORT WORTH AREA**

**FORT WORTH'S POSITION
AND
SUPPORTING DOCUMENTS**

November **18, 1997**

FORT WORTH'S POSITION

- **The** Cities of **Dallas** and **Fort Worth**, through the 1968 **Regional Airport Concurrent Bond Ordinance**, have given **the D/FW Airport Board** the authority to determine the level of decentralized **air passenger service** from **airports owned** by both cities.
- The City of **Dallas is** not **required** by any congressional action or federal regulation to permit air **passenger** service to points outside of the State of Texas-
- The City of **Dallas** can not permit air passenger service from Love Field to the three States mentioned in the Shelby Amendment without the approval of the **D/FW Airport Board**.
- The City of Fort Worth **expects** the City of Dallas to uphold its commitment to the **1968 Regional Airport Concurrent Bond Ordinance** and not **allow** expanded air **passenger** service from Love **Field** without the approval of **the D/FW Airport Board**.



LET'S NOT LET
WASHINGTON SHRINK
DFW AIRPORT.

Thirty years ago the cities of Dallas and Fort Worth agreed to end competition between their airports and to work together-to develop and support the Dallas/Fort Worth Airport..

It was a great decision. The agreement produced the second largest domestic airport in the U.S., an economic development machine that has made the Metroplex one of the fastest-growing economies in the world,

Having airports in Dallas and Fort Worth compete with each other and DFW is just as bad an idea now as it was in 1968.

Multiple airports only a few miles apart will create congestion in the air, and pollution and delays on the ground. Even worse- three small airports won't offer the Metroplex nearly as many total flights, nor anywhere near as many nonstop destinations as DFW.

There is no reason to cripple DFW. Every city in America has “proprietary power” to decide how its airport should be used. New York, Washington, D.C., Kansas City, Orange County and lots of other cities make their own rules about their own airports – and Dallas is entitled to do the same.

*It doesn't matter ~~what Washington thinks~~. How we ~~use~~
our airports is a local issue. It can – and should- be resolved
by the city councils of Dallas and Fort Worth.*

This isn't about the Wright Amendment.

It isn't about fares.

It's about sticking with a commitment that built one of the world's
great airports. It's about keeping the economic engine that is driving
North Texas running on all cylinders.

And it's about deciding – for ourselves – what's best for the Metroplex.

IT'S NOT BROKEN. DON'T FIX IT

A Message From American Airlines

CLEARING THE AIR ON THE AIRPORT DEBATE.

A MESSAGE TO THE CITIZENS OF THE METROPLEX FROM
ROBERT L. CRANDALL, CHAIRMAN AND CEO, AMERICAN AIRLINES.

As many of you know, Dallas/Fort Worth International Airport faces a serious threat. Some members of the U.S. Congress are intent on expanding service at Dallas Love Field. As a result, lawsuits have been filed, more lawsuits have been threatened, and a great deal of misinformation has been bandied about.

The real issues are getting lost in the clutter.

The debate is not about the Wright Amendment. The Airline Deregulation Act of 1978 makes clear that local airports are controlled by local operators. The City of Dallas is the operator of Love Field, and Dallas officials, conjunctively with their partners in Fort Worth, have every right to make appropriate rules regarding the use of airports in the Metroplex.

The debate is not about fares. Various studies have demonstrated that fares at DFW are fully competitive with fares at the nation's other major cities. DFW is intensely competitive, with more than two dozen airlines offering flights to more than 200 destinations. Many low-cost airlines operate at DFW and every low-cost airline is free to do so. A shopper who buys in advance will find plenty of low fares at DFW.

The real issue is what will happen if it becomes possible for airlines to offer service to many more places from Love Field. The answers are clear:

1. Since more than 90% of Dallas residents, and more than 50% of Metroplex residents, live closer to Love Field than to DFW, airlines will add service at Love and reduce service at DFW. In the long term, DFW - without the support of local customers - will not be able to compete with hubs like O'Hare, Denver International and Atlanta. DFW will become a second-tier hub.
2. There will be intense congestion in the airspace above the Metroplex, which is utilized by both Love Field and DFW. There will be lots of delays at both airports.
3. DFW's diminished status will make the Metroplex a less attractive alternative for new and relocating business firms.
4. There will be more aircraft noise, more traffic congestion and more pollution in the neighborhoods surrounding Love Field.
5. The North Texas economy will be less vigorous than it is today.

The limitations on Love Field were imposed by the bond ordinance and covenants that were agreed to by both Dallas and Fort Worth when they decided, back in 1968, to abandon their airport rivalry and build a world-class international airport. DFW has surpassed everyone's expectation; the bond covenants made sense in 1968 and they make sense today.

American Airlines and AMR, its parent company, employ 37,000 people in the Metroplex. Hundreds of thousands of area residents work for the companies that sell goods and services to American, other DFW air carriers and our passengers. We have invested hundreds of millions of dollars at DFW and billions of dollars in the airplanes that operate our flights to and from the airport. Thus, we have a clear stake in the outcome of this debate.

Many business and community leaders understand that opening Love Field to more service will be a major public policy mistake that will damage Dallas and the entire Metroplex in the long term. To date, their voices have been largely drowned out by those who seek to undo the community's commitment to DFW.

Now, that's going to change. American Airlines will join with others to oppose those who seek to weaken DFW. We've made a major commitment to the Metroplex, and we think we're entitled to participate in the debate. We have too much invested at DFW, and in the Metroplex, to do otherwise.

We think decisions regarding DFW and Love Field should be made locally by the people of the Metroplex, not by Washington politicians. And the law is clear. Dallas is the operator of Love Field and its officials, conjunctively with their partners in Fort Worth, are entitled to decide how Love Field is used.

We hope you'll join us in our efforts to ensure a strong and competitive DFW.

American Airlines

LAI 00137

American applies for Love gates

American Airlines renewed its threat to move flights from Dallas/Fort Worth Airport to Love Field in Dallas if flight limits at Love are eased. And to drive its point home, the airline on Tuesday applied to Dallas for permission to use at least six gates at Love.



Crandall

Robert Crandall, the airline's chief executive, repeated his warning Monday that the airline would move flights to Love. The limits on Love, imposed by the Wright Amendment, were intended to protect D/FW. This year, Congress eased some of the restrictions, permitting nonstop flights from Love to three more states. Fort Worth is now fighting the change.

Crandall said that if the limits are eased, it would weaken the D/FW hub, and eventually hurt Fort Worth.

The airline said the application for gates was simply laying the groundwork to move the flights if Dallas doesn't impose limits on Love Field.

Meanwhile, U.S. District Court Judge John McBryde ordered representatives of Fort Worth and Dallas to meet face-to-face in an effort to settle the legal fight over Love. McBryde also said that he wants individuals at the negotiating table "who shall have unlimited settlement authority" and that they will "make a good-faith effort to settle."

The Dallas Morning News

Tuesday, November 11, 1997

American warns flights may move to Love'

Airline urges protection of D/FW, but council members question motives

By Terry Maxon
Staff Writer of The Dallas Morning News

American Airlines will immediately begin flying out of Dallas Love Field if any competitor — including upstart carrier Legend Airlines — launches new service from the Dallas airport, American chairman Robert L. Crandall said Monday.

"If Love Field opens up, we will go to Love Field," Mr. Crandall said. "End of discussion."

Mr. Crandall argued at a briefing for reporters Monday that would be bad news for the area's economy, which thrives in part because of a large number of U.S. and foreign flights serving the Dallas/Fort Worth International Airport.

If rivals start offering new service from Love Field, American would be forced to shift many flights from D/FW Airport and shrink its connecting hub there, he said.

To head that off, he urged the cities of Fort Worth and Dallas to agree to limit any Love Field passenger flights to only Texas



The Dallas Morning News: Brian Thompson.

American Airlines chairman Robert L. Crandall says American could be forced to shift flights from D/FW.

and the four adjoining states — rules that are more restrictive than what the federal government dictated in recent legislation.

The American Airlines executive's strong
Please see AMERICAN on Page 6A.

Continued from Page 1A.

words drew a quick response from some.

Dallas Mayor Ran Kirk and Fort Worth Mayor Kenneth Barr declined to comment, but some Dallas City Council members criticized Mr. Crandall's assertions that what's best for American is best for the entire region.

"American is not looking out for the good of the metroplex," said council member Bob Stimson, chairman of the council's Business and Commerce Committee. "They're looking out for the good of American Airlines."

Legend Airlines' chief executive, T. Allan McArtor, who conducted a news conference later Monday, blasted what he called a "barrage of misinformation" from opponents of increased service at Love Field.

The real issue is how much competition American Airlines will tolerate, Mr. McArtor said.

"It's about protecting the profit margins of American Airlines. . . . The whole issue here is trying to eliminate Legend Airlines from ever becoming an airline," he said.

And in large part, American officials didn't disagree Monday that competition is an issue.

Mr. Crandall and American Airlines president Donald J. Carty said American will do whatever is necessary to hang on to its local passengers. Mr. Crandall at times during the last decade has threatened to move flights from D/FW to Love Field to protect American's market share.

Most people will use the airport closest to them. D/FW Airport is most convenient to only 18 percent of the area's population, with Fort Worth's Meacham Airport closer to only 26 percent, they said.

But more than half of the area's population and 90 percent of Dallas residents live closest to Love, Mr. Carty said.

"What it means is our best customers won't be in our store anymore," Mr. Carty said. "So we'll have to move

our store."

But, they added, that would have implications for the region.

"The whole debate is, does the metroplex want to have one of the primary airport hubs in the United States or not?" Mr. Crandall said.

He said the airline had recently suspended plans for a new terminal on D/FW Airport's west side and a train system to connect that terminal to the airport's other terminals.

However, construction will continue on 10 gates already being built on the west side, he said.

American put full-page ads in the Dallas and Fort Worth daily newspapers Monday explaining its position opposing new service at Love Field. It also intervened Friday on Fort Worth's side in that city's lawsuit against Dallas, Legend Airlines and the D/FW Airport board challenging any new service from Love Field.

Since 1979, a federal law known as the wright amendment has limited service from Love to Texas and the four adjoining states. Only Southwest Airlines offers scheduled passenger flights from Love.

The amendment also allowed longer flights for commuter airplanes with no more than 56 seats. Legend plans flights using older aircraft reconfigured to 56 seats and recently persuaded Congress to rewrite the Wright amendment to allow that.

At the same time, Congress also permitted flights from Love Field to Mississippi, Alabama and Kansas.

Mr. Crandall said that American's hub at D/FW wouldn't disappear if Love was opened but that it would become much smaller. There wouldn't be enough local customers at D/FW to justify the 500-plus departures a day provided by American, he said.

"Frequency of service would decline, and the airport would become a second-tier hub," Mr. Crandall said. "It won't vanish, but it will not be one of the world's great aviation centers. . . . That's what this debate is about."

Mr. Stimson, the Dallas City Council member, said American officials were hypocritical in suggesting that the cities hash out a new local agreement restoring old Love Field restrictions.

"If they were concerned about keeping the status quo of 1962, they would have never supported opening Alliance Airport in Fort Worth," he said.

Dallas council member Donna Blumer rejected the idea that Dallas and Fort Worth would be condemned to being second-tier cities.

"I think that's ridiculous," she said.

Colleague Alan Walne said he doesn't think Dallas' council has the power to regulate the length of flights from Love Field.

"I think the council plans on dealing with proprietary issues we do have control over: traffic, noise and how many flights an airport can handle," he said.

And Dallas council member John Loza, whose district includes some neighborhoods near Love Field, said it may not be possible to keep the old restrictions in place at the airport.

"I don't know how we're supposed to supersede congressional action," said Mr. Loza, a lawyer.

The D/FW Airport board filed a motion Monday opposing the city of Dallas' request to move Fort Worth's lawsuit from state court to federal court. The filing said the board doesn't agree that federal law preempts the city's right to exercise "proprietary powers" over Love Field.

Betty Culbreath, chairwoman of the D/FW Airport board, said she thinks Dallas can regulate the length of flights from Love Field and a host of other issues.

"Dallas indeed has the ability to manage its own airport," Ms. Culbreath said. "That includes anything, just like they can't smoke in there."

Staff writers Christopher Lee, Andy Dworkin, Robert Ingrassia and Dianna Hunt contributed to this report.

The Dallas Morning News

Saturday, November 8, 1997

American backs FW airport suit

It says Love Field flights
would harm company

By Christopher Lee
Staff Writer of The Dallas Morning News

American Airlines formally sided with Fort Worth on Friday in that city's lawsuit against Dallas over Love Field, making official an alliance that some observers had suspected for months.

In an 11-page filing in state District Court, American seeks to intervene in the case, arguing that the company would be harmed if Dallas permits newly authorized nonstop flights from the city-owned airport.

Also Friday, Dallas officials filed a motion asking that the Tarrant County case be moved to federal court since it springs, in part, from congressional changes in federal law governing Love Field.

"We obviously have a pretty huge vested interest in D/FW Airport and in all these recent developments," said Andrea Rader, a spokeswoman for American. "So we thought it was prudent from a legal standpoint to position ourselves in this particular lawsuit."

LAI 00741

Fort Worth-based American alleges that proposed new long-haul flights at Love Field would violate a 29-year-old agreement between Dallas and Fort Worth to protect Dallas/Fort Worth International Airport, where American is the largest air carrier.

The company asks the court to force Dallas to limit passenger service from Love Field to Texas and its neighboring states and require all other flights to take off from D/FW Airport.

Dallas Mayor Ron Kirk was out of town Friday and could not be reached for comment. Dallas City Attorney Sam Lindsay said he wasn't surprised by American's move.

"At least I have to give American Airlines credit for finally stepping up to the plate," Mr. Lindsay said, "because they've been behind. this whole matter the entire time, I don't know who they thought they were fooling.

"American was the moving force and the initial catalyst behind the lawsuit, and what took place

Please see AMERICAN on Page 29A.

S

Fort Worth

SATURDAY, NOVEMBER 8, 1997

Tarrant Co

Star-Telegram

County, Texas ★ "Where The West Begins"

50 CENTS

American asks to join lawsuit over Love Field

BY MAX B. BAKER AND DAN REED
Star-Telegram Staff Writers

FORT WORTH.- American Airlines asked a state district judge yesterday to let it join Fort Worth in suing Dallas to block the expansion of interstate passenger services at Dallas Love Field.

American said it has invested hundreds of millions of dollars on terminals, hangars and support facilities at Dallas/Fort Worth Airport based on agreements Fort Worth and Dallas signed in 1968 to move all interstate
(Mom on D/FW on Page 21)

D/FW

From Page 1A

passenger service to the international airport.

The airline contends that to allow expansion of long-haul flights at Love Field would violate those landmark pacts — which are in the form of contracts and bond covenants — and jeopardize American's investment in D/FW Airport, where the aviation giant operates its largest hub.

American has 530 flights a day at D/FW Airport, and its commuter affiliate, American Eagle, offers 251 daily departures. Additionally, AMR Corp., American's parent, employs about 33,000 people in North Texas and is the region's largest employer.

"We, too, have done an awful lot in this community in reliance on the promises in the bond covenants and the ordinances," said Andrea Rader, a spokeswoman for the Fort Worth-based airline. "We moved our headquarters here. We've hired close to 40,000 people here. . . .

"So we have an important stake in ensuring that Dallas can make the decision on this issue regarding Love Field service, that they do have local control," she said.

American Chairman Robert Crandall, long an outspoken opponent of increased service at Love, plans to meet with reporters Monday to explain the airline's position and its plans to defend its local market share.

An American affiliate has obtained lease rights to the old 18-gate east concourse at Love, and American officials have threatened to move some flights from D/FW to the Dallas airport if Love Field's service limits are widened or removed.

The head of a start-up carrier proposing long-haul services from Love Field said he is not surprised that American joined the air war over expanded services at Love Field.

"I'm pleased that the charade is over and that American's obvious involvement is quite visible," said Alan McArtor, president of Legend Airlines. McArtor and others have accused American of orches-

trating Fort Worth's opposition to Legend's plans.

McArtor, a former administrator of the Federal Aviation Administration, said it is clear that federal law has determined what services should be allowed at Love Field.

"It is a federal issue. It should be determined in federal court," McArtor said. "States and municipalities cannot pre-empt federal law."

On Thursday, Dallas filed a countersuit in federal court, saying it is powerless to stop federally imposed expansion of service at Love Field. The countersuit was filed in a federal court in Dallas.

The suit asks the federal court to determine the city's rights and obligations since Congress changed the Wright Amendment and eased federal flight restrictions on nonstop commercial service at the Dallas airport.

It also asks the federal court to declare that Dallas does not have the unilateral power or the obligation to close Love Field to avoid expanding commercial passenger service.

American's bid to join the lawsuit with Fort Worth came the same day that Dallas, along with Legend, asked that Fort Worth's state lawsuit be transferred into a federal court in Fort Worth. U.S. District Judge John McBryde will now handle the case and American's request to become a co-plaintiff with Fort Worth.

Additionally, state District Judge Bob McCoy set a hearing yesterday for Nov. 14 on the D/FW Airport board's motion seeking court-ordered, nonbinding mediation of the long-standing disputes between the cities over aviation. The airport board also called an emergency meeting for 3 p.m. Monday to discuss the legal developments.

The legal jousting stems from a lawsuit that Fort Worth filed Oct. 10, the day after Congress eased federal flight restrictions at Love Field.

After months of squabbling, Congress made changes in the Wright Amendment — the law that has for 18 years allowed service at Love Field to cities only in Texas, Louisiana, Arkansas, Oklahoma and New

Mexico.

In addition to expanding that service zone to include Alabama, Mississippi and Kansas, Congress said larger jets modified to carry 56 or fewer passengers can fly from Love Field to any point in the nation.

In its lawsuit, Fort Worth said if Dallas allows expanded service at Love Field, it would violate the 1968 agreements the two cities signed to protect their investment in D/FW Airport:

In its federal lawsuit, -Dallas contends that it cannot prohibit any carrier from providing service at Love Field that federal law would permit.

"It is Congress that passed the law that Fort Worth complains about . . .," Dallas said in its suit. "It is the federal government that has the power to regulate flights, not Dallas."

Legend, which lobbied Congress to change the Wright Amendment, and Dalfort Aviation joined Dallas' request to move Fort Worth's state court lawsuit into federal court.

Dalfort owner Bruce Lead-

better is the lead investor behind Legend. Dalfort would also modify and maintain the jets Legend plans to use.

Leadbetter and McArtor have criticized American's close relationship with Fort Worth and its financial support of a Dallas neighborhood group's campaign to prevent the opening of Love Field.

They also have questioned the role of prominent Fort Worth attorney Dee Kelly, who is lead counsel for Fort Worth and is an AMR board member.

"The people who keep bringing this up, what's their point?" Rader said. "Fort Worth filed a separate lawsuit, which we did not have a role in until our petition" was filed yesterday.

"Dee Kelly is an honorable man," she said, adding that "if a point of conflict" between Fort Worth's and America's positions "ever arises, he will do the right thing."

Fort Worth Mayor Kenneth Barr would not comment yesterday but has said the issue of Kelly's involvement is a "red herring."

the
INSIDER
report

Meanwhile, back in Huntsville . . .

The city of Dallas' countersuit, filed in a federal court in Big D last week, was expected to include Fort Worth Alliance Airport. It did, but just barely. Aside from a brief mention, Alliance was not a major component of the lawsuit. Although there may be many reasons for that, some observers suggest that Dallas may have soft-pedaled Alliance because the millionaire who developed the cargo airport in north Fort Worth is the same man who-wants to build that city's new sports arena: **Ross Perot Jr.**

Speculated Councilman Duncan: "We have two separate situations we have to deal with, which may well be Fort Worth's motive in the first place, They sued us, they started this fight at a very sensitive time."

CLEARING THE AIR ON THE AIRPORT DEBATE.

A MESSAGE TO THE CITIZENS OF THE METROPLEX FROM
ROBERT L. CRANDALL, CHAIRMAN AND CEO, AMERICAN AIRLINES.

As many of you know, Dallas/Fort Worth International Airport faces a serious threat. Some members of the U.S. Congress are intent on expanding service at Dallas Love Field. As a result, lawsuits have been filed, more lawsuits have been threatened, and a great deal of misinformation has been bandied about.

The real issues are getting lost in the clutter.

The debate is not about the Wright Amendment. The Airline Deregulation Act of 1978 makes clear that local airports are controlled by local operators. The City of Dallas is the operator of Love Field, and Dallas officials, conjunctively with their partners in Fort Worth, have every right to make appropriate rules regarding the use of airports in the Metroplex.

The debate is not about fares. Various studies have demonstrated that fares at DFW are fully competitive with fares at the nation's other major cities. DFW is intensely competitive, with more than two dozen airlines offering flights to more than 200 destinations. Many low-cost airlines operate at DFW and every low-cost airline is free to do so. 'A shopper who buys in advance will find plenty of low fares at DFW.

The real issue is what will happen if it becomes possible for airlines to offer service to many more places from Love Field. The answers are clear:':

1. Since more than 90% of Dallas residents, and more than 50% of Metroplex residents, live closer to Love Field than to DFW, airlines will add service at Love and reduce service at DFW. In the long term, DFW - without the support of local customers - will not be able to compete with hubs like O'Hare, Denver International and Atlanta. DFW will become a second-tier hub.
2. There will be intense congestion in the airspace above the Metroplex, which is utilized by both Love Field and DFW. There will be lots of delays at both airports.
3. DFW's diminished status will make the Metroplex a less attractive alternative for new and relocating business firms.
4. There will be more aircraft noise, more traffic congestion and more pollution in the neighborhoods surrounding Love Field.
5. The North Texas economy will be less vigorous than it is today.

The limitations on Love Field were imposed by the bond ordinance and covenants that were agreed to by both Dallas and Fort Worth when they decided, back in 1968, to abandon their airport rivalry and build a world-class international airport. DFW has surpassed everyone's expectation; the bond covenants made sense in 1968 and they make sense today.

American Airlines and AMR, its parent company, employ 37,000 people in the Metroplex. Hundreds of thousands of area residents work for the companies that sell goods and services to American, other DFW air carriers and our passengers. We have invested hundreds of millions of dollars at DFW and billions of dollars in the airplanes that operate our flights to and from the airport. Thus, we have a clear stake in the outcome of this debate.

Many business and community leaders understand that opening Love Field to more service will be a major public policy mistake that will damage Dallas and the entire Metroplex in the long term. To date, their voices have been largely drowned out by those who seek to undo the community's commitment to DFW.

Now, that's going to change. American Airlines will join with others to oppose those who seek to weaken DFW. We've made a major commitment to the Metroplex, and we think we're entitled to participate in the debate. We have too much invested at DFW, and in the Metroplex, to do otherwise.

We think decisions regarding DFW and Love Field should be made locally by the people of the Metroplex, not by Washington politicians. And the law is clear. Dallas is the operator of Love Field and its officials, conjunctively with their partners in Fort Worth, are entitled to decide how Love Field is used.

We hope you'll join us in our efforts to ensure a strong and competitive DFW.

American Airlines®

FW WEEKLY

October 30 - November 6, 1997 **FREE!**

Food Fight

Friday Night at the Red
can be sloppy but it's fun

Schwilling!

Boogie Night in one area
pump through the 70s/80s

No Sissies

The Dambuilders have some
serious respect for guitar



FLYING BELOW RADAR



How
Robert Grandall,
Kay Granger
and Dee Kelly
have piloted
Fort Worth's
ill-conceived
night plan over
D/FW Airport



HABITAT HOME DESIGN SECTION INSIDE

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FLYING BELOW RADAR



[Top-bottom]: Dee Kelly, Robert Crandall and Kay Granger

HOW ROBERT CRANDALL, KAY GRANGER AND DEE KELLY HAVE PILOTED FORT WORTH'S ILL-CONCEIVED FLIGHT PLAN OVER D/FW AIRPORT — BY J.D. ARNOLD

128 EW Weekly October 24-November 1, 1987

LAI 00150

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An early fog cleared by the late morning, but an ugly haze still lingered. Around 11 a.m., more than a dozen of Fort Worth's most powerful citizens came in from out of the heat, which would rise to 91, nearly a record for May 11. A light wind came from the south, but the threat was from the east.

This 1992 gathering, in a conference room at the Chamber of Commerce, away from the prying eyes of the public and press, was entitled "Mayor Granger's Meeting." The agenda contained but one line: Wright Amendment. Like the temperature outside, frustrations were increasing.

Kay Granger — her future run for Congress only a glint in her eye — called the group to order. Gazing around the room, she saw former mayors Bob Bolen and Bayard Friedman, chamber president Terry Ryan and past board chairman Rice Tilley, American Airlines vice president Ted Tedesco and lawyer David Keltner. Also in attendance was Dee Kelly, in Keltner's words "a personal advisor to Granger," as well as lawyer to Fort Worth's richest and most powerful. Kelly was also a director for American Airlines.

Memories vary today on how official the power conference was. Some identify it as a meeting of the chamber's aviation committee. Others recall it as a chamber board meeting. Ryan employs words like "informal" and "nothing official."

The purpose of the group is far clearer. The occasion was not lacking in urgency. The city of Dallas stood accused of violating its own charter within a marriage reconciliation that spawned D/FW Airport. It

was indulging itself with un-
— advocating repeal of the
Wright Amendment promoting expansion
of Love Field, an old flame for
whom many in D still carried a torch.

Fort Worth had filed a lawsuit that, in
effect, charged Dallas with public adultery.
Dallas, the suit alleged, had violated both

its marriage vows and the terms of a trou-
bled reconciliation forced on the two cities
by the federal legislation. Keltner was han-
dling Fort Worth's legal claim.

From Granger's room came a new
— the suit could be dropped. The city would
not. "This is a difficult situation,"

Keltner said. "We're going to need sig-
nificant money." Keltner proposed that
the Wright Amendment be a marriage

— Dallas — the suit alleged — within a joint
marriage. The suit was known as the 1968
suit. The suit was — and wait to see what
Dallas would be.

— Keeping the lawsuit in place,
— they sided with the American
Airlines director. "I recommend against
dropping the suit," Tilley said. "Dallas

does not live up to anything they say."

Mayor Granger positioned herself — and
the City Council — at Kelly's side. "This
will not be a problem for the Fort Worth
City Council," she promised. American's

Tedesco may have chanced a brief smile.

Half a decade later, the aviation marriage partners are again in their own War of the Runways, estranged as partners but joined at the airport. Politicians have come and gone, but the domestic spat remains the same, and American Airlines still doesn't want a divorce. Pious Fort Worth, meanwhile, appears to have a dalliance or two of its own (called Meacham and Alliance), making the Cowtown suitor seem nothing but a slutty hypocrite.

IT WAS THE FEDERAL GOVERNMENT that ordered Dallas and Fort Worth to the altar in a shotgun marriage of convenience in 1968, and many blame the feds for all of the marital discord since that time. Uncle Sam forced the cities to cooperate in establishing a regional airport, threatening to intervene if they could not cohabit at a neutral site and close their competing airfields. Dallas bond attorney Ray Hutchison devised a scheme. The cities would jointly operate a regional airport and fund its completion and future expansion by floating joint revenue bonds. Fort Worth's Greater Southwest Airport would be closed completely to make room for the new Dallas-Fort Worth International. Dallas would lose its competing Love

Field to commercial airline service once D/FW was operating. Fort Worth would operate Meacham Field only as a general aviation airport, just as Dallas promised to do with Love Field.

The cities vowed to refrain from any activities — including the operation or promotion of any other airports — that might challenge D/FW's monopoly. These promises to limit commercial aviation activity at other sites are the essence of the 1968 bond covenants.

A unique aspect of Hutchison's plan was D/FW's revenue base, which for the most part comes from the airline companies. Rather than rely on pre-set fees from the airlines, the D/FW Board assesses its charges to the users on a cooperative basis. The airlines promise to cover the airport's expenses in proportion to their usage. The larger airlines with more flights pay a larger share.

The more flights an airline operates at D/FW, the less it pays in landing fees, since the airport's costs — including bond retirement — are amortized on a usage basis. The fewer flights it operates, the more it pays in fees per flight.

Today, the American Airlines of CEO Robert Grandall has more than 800 flights a day at D/FW, bringing from 70 percent of the commercial passenger traffic. With the

advent of federal airline deregulation in 1979, American set out to pioneer the hub-and-spoke system — now used by most major airlines — as it moved its headquarters and many of its flights from New York City to D/FW. With deregulation, Southwest had the freedom to fly anywhere in the country from Love, posing a major threat to American and all other airlines at D/FW.

This was when Jim Wright stepped in. The legislation bearing his name brokered a peace treaty among the cities, the airports and the airlines by forcing Southwest to terminate all its flights within a five-state area. When Braniff Airlines collapsed four years later, American's D/FW foothold grew substantially, but pesky Southwest was winning the battle to attract passengers on the short hauls.

Through this domination at the bigger airport and in the long-haul market, American has grown to control the rates paid by D/FW passengers. American's monopoly has continued primarily because of the Wright Amendment.

Delta, once the only airline operating a hub and competing with American on its home ground, effectively abandoned D/FW in the early '90s. Having moved most of its domestic traffic and all its international flights to other cities, Delta now controls only 20 percent of the D/FW market, leaving the crumbs to other carriers.

IN POWER CIRCLES, DEE KELLY WAS known for his close association with former Rep. Jim Wright, author of subsequent legislation designed to contain Love's re-emer-

gence and muffle her siren songs to airline passengers. It was Wright's 1979 handiwork that allowed Dallas to maintain Love like a mistress on the side while preserving the union with Fort Worth. The arrangement — crafted when Dallas seemed ready for legal separation — allowed the larger city partial relief from its marriage vows, but required Love to stay in the background.

Wright's strong-arm efforts brought the cities back together on, supposedly cordial, if not intimate, terms. Dallas could continue to enjoy the charms of Love but only on limited basis. Dallas' Love affair would be tolerated as long as the relationship didn't blossom further.

While neither city was really satisfied by the dictated terms of reconciliation in 1979, the federal action stopped the cities' public bickering for more than a decade.

Like other power brokers in Fort Worth, Kelly showed delight at Wright's selection as House majority leader and was surely tickled pink by Wright's power-play passage of the amendment, which served also to protect American Airlines from the prevarications of Love Field and Southwest Airlines.

Named to American Airlines' board of directors in 1983, Kelly was pleased even more when Wright was elected House Speaker in 1986. Kelly was bitterly disappointed by Wright's fall from grace and resignation from Congress in 1989. Both his airline and the city over which he lorded had lost a guardian at the gate.

It was only then that Dallas could begin nipping away in earnest at the Wright Amendment. But in 1992 Kelly had a new

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political protégé in the form of Granger. As mayor and later congresswoman, she would defend Fort Worth's honor by protecting D/FW and American Airlines in tandem with U.S. Senator Kay Hutchison, by then Ray's wife, as Congress considered undoing Wright's clever deed.

It was in 1992 that Dallas once again fanned the flames of its Love affair, prompting the first Fort Worth lawsuit to enforce the marriage vows despite whatever indulgences the courts and federal agencies had granted to Dallas, an eager practitioner of the new morality.

The Wright Amendment limits the range of your indiscretions, said Fort Worth to Dallas. Try to evade or weaken it and we'll have you in court to enforce the original vows under the covenants.

More recently, the two Kays have failed in their duties. Congress gutted the Wright Amendment's protections this past month and Dallas is facing the wrath of scorned Fort Worth once again as it prepares to indulge itself more fully with Love's charms. This was not for lack of trying on American's part. Since 1995, the airline's PAC and its executives and spouses have been generous to members of the U.S. House and Senate who opposed gutting the Wright Amendment. The PAC contributed \$8,000 to Kay Bailey Hutchison, \$7,000 to Phil Gramm, \$13,000 to Granger, and \$12,000 to Martin Frost. American executives and their spouses contributed another \$9,350 to Gramm, \$4,500 to Granger and \$4,000 to Hutchison. Crandall and his wife, both Dallas residents, gave \$4,000 to Hutchison in 1996 alone, even though she was not up for re-election. American also gave \$249,999 to Democratic Party soft-money funds.

Despite protection by Gramm, Hutchison, Frost, Granger and the Clinton administration, however, the new-breed Republicans controlling Congress began dismantling Wright's legislation.

THE PURPORTEDLY CLEAN HANDS WITH which Fort Worth would beg the court to hold Dallas to the original covenants — despite what Congress, the courts, and federal agencies have allowed Big D — may be soiled. Fort Worth's reputation may be sullied by its own aviation affairs — a matter clearly on the minds of the powers that gathered on that sultry May morning in 1992.

Dallas was then suspicious it was not the only party whose other airport crowded the marriage. Many believe this to be the case in 1997. Fort Worth's decision-making is proceeding behind those same, closed doors where Kelly, et al., gathered in 1992.

During the 1992 strategy session, Granger warned the group: "Dallas is very concerned about Alliance and WC offered to restate that we have no intention to violate the ordinance with operations at Alliance Airport — and make that part of the agreement."

Keltner also was troubled that Fort Worth's development of Alliance Airport might make its position vulnerable. "A settlement agreement could lay to rest the Alliance issue. Dallas seems to feel that Alliance takes way from D/FW Airport," he advised. "We could reaffirm our commitment tomorrow and wait and see what

Dallas' response is. There is some fear that the bond holders may become concerned and that the value of the bonds will drop.

"I ... keep hearing that Dallas may sue because of Alliance Airport. We need to make sure that this issue will not need to be addressed again. We should have the D/FW Board take a look at Alliance and have it approve Alliance."

(The D/FW Board has never voted either to sanction or object to Alliance or the new jet service operating out of Meacham Field since May of this year, either of which is within the board's purview under the covenants to identify "action detrimental to D/FW by either of the partner cities.")

Granger, exhibiting her occasional penchant for smugness, focused the gathering's attention on the jealousies involved. "Through meetings it has become obvious that Dallas sees that they have an airport without development," she said. "We have development [at Alliance], they do not." As usual, she declined to return a phone call from *FW Weekly*.

Keltner is not representing Fort Worth in its new suit against Dallas, but did represent Fort Worth in a dispute with Mesa Airlines over the carrier's recently inflated service at Meacham that is similar to Southwest Airlines' struggle to fly out of Love Field more than 20 years ago — a saga that ended in the first violation of the cities' common vows under the 1968 bond covenants.

This time, it is Kelly filing Fort Worth's suit against Dallas, although his official role a bit unclear. His firm filed the lawsuit the very day after Congress voted to cripple the Wright Amendment.

Fort Worth City Attorney Wade Atkins confirms that Kelly had not been formally retained by the city in the matter when he filed the action. The City Council met in executive session late in the afternoon October 9, minutes after the vote in Washington and authorized legal action about 5 p.m., but did not take a vote regarding the hiring of Kelly. Kelly's fee is yet to be determined by the council. But the 32-page lawsuit was ready for filing the next morning, Friday.

City Attorney Atkins says Kelly's hourly fee will be set and his formal hiring by the council will happen later. If the council only first met to authorize a lawsuit Thursday and Kelly was not yet on retainer for this case, how and when did work on the voluminous lawsuit begin?

Word on specifics of the hated plan to open up Love Field came on October 7, two days before the actual vote in Washington and three days before the lawsuit was filed. Indications that the Wright Amendment was in deep trouble came in September, however.

How long would it take the best of lawyers to prepare such a lawsuit for filing? Weeks, many days at the least, is the best estimate from several legal sources. Was American Airlines director and purported city special counsel Kelly already at work? Kelly isn't talking and has not returned repeated calls from *FW Weekly*.

Why was Kelly handed the portfolio this time? Atkins says Kelly has a particular expertise in the matter and that the two

have discussed the possibility of a suit "off and on" for some time.

As for any conflict given Kelly's role as director of, and, legal representation for American and his past representation of D/FW Airport, which was also named in the suit. "That issue may need to be addressed," Atkins said.

When asked if Kelley had filed any paperwork formally disclosing possible conflict to his presumed client in the matter, i.e., the city, under Texas Bar Association rules, Atkins said, "not as yet."

The issue of a conflict due to Kelly's multiple roles involving the litigants and D/FW's biggest tenant, American, is clearly debatable.

Although not a formal party to the action, American is the 800-flight-a-day gorilla sitting silently at the conference table. American's Crandall has threatened, in a widely published quote, to "sue everybody in America" to close Love Field in the event Congress tinkered with the special protection unique to D/FW and his airline. Crandall was unavailable to comment for this article.

Section 1.06(b)(2) of the Texas Bar Association disciplinary rules regarding conflicts of interest waves a red flag. This rule prohibits attorneys from representing a client in the event the attorney's ability to adequately represent his client might be impaired by other loyalties such as his own interests or association with a third party, which need not necessarily be another client for the conflict to be evident.

American Airlines corporate public relations manager Tim Smith, however, said there is no conflict between Kelly's role as Fort Worth's lawyer and his role as an American director. "Not if their interests are the same. The city's position is very close to our thoughts."

ONE MIGHT ARGUE THAT KELLY'S ROLE

as an American Airlines director could impede him from offering Fort Worth the best independent advice or representation possible, regardless of how American's interests might be affected by the city's action or inaction.

"This lawsuit raises a number of issues, including conflict of interest issues," Dallas City Attorney Sam Lindsay said. All Lindsay would say publicly was that possible conflicts of interest involving the lawsuit are "a problem" and that his as-yet-undisclosed legal maneuvers in the future regarding conflicts will touch "certain individuals."

"We're going to hit the city of Fort Worth with everything they hit us with and even more," Lindsay said in describing Big D's pending answer to the lawsuit, which is due in court by November 3.

Also at the ready at Fort Worth City Hall the day the lawsuit was authorized — a Thursday — was Roger Rienstra, president of the Witherspoon advertising agency which counts among its clients the Fort Worth Chamber of Commerce. Rienstra booked full-page ads in both Dallas and Fort Worth dailies to run the following Sunday.

The ads were bannered "An Open Letter to Mayor Ron Kirk, Members of the Dallas City Council and Citizens of Dallas" and

proposed that the declaration of war on Dallas by Fort Worth is "in the best interest of all of the citizens of the Metroplex."

Artwork for one of the ads — representing Fort Worth city stationery with signatures of Mayor Ken Barr and all eight council members — was in the hands of *The Dallas Morning News* the same day the lawsuit was filed on Friday. Who actually authorized Witherspoon to run the ads? "I'm not sure," Rienstra said. "Talk to (City Hall spokesman) Pat Svacina."

A tag line on the original ad copy delivered to both dailies says: "Ad Paid for by Citizens and Businesses of Fort Worth." But in the *Morning News* version, the word "Political" is inserted at the beginning of the tag line. The added designation was news to Svacina. "It doesn't say that on my copy," he moaned. How come the change? Is there a political action committee at work?

"We put it there at the suggestion of the *Morning News*," Rienstra said. DMN advertising vice president Sergio Salinas said the Witherspoon agency paid up front for the ad. That's true, said Rienstra, who also says the total bill paid out of his pocket for both dailies is \$20,000, but as for who's paying Witherspoon, "Talk to Terry Ryan at the Chamber of Commerce," Rienstra said.

"No, it's not some PAC," exclaimed Ryan, describing the ad as "educational" and giving assurances that Rienstra will not be stuck with the \$20,000 tab. Ryan also said the city PR department (Svacina) actually produced the ad copy and Witherspoon simply booked the space and handled technical details.

So, who's actually going to reimburse Witherspoon? "I'll get the money, don't worry about that," said Ryan. "But as to who it is — that's private." Several days before the newspaper ads ran American Airlines was caught with its flaps down when the DMN disclosed that radio ads by Love Field area residents opposing the new liberties for the airport were actually funded by the airline.

American Airlines' Smith said, however, that the airline did not pay for the newspaper ads. He said American had no direct role in the ads' preparation, but added, "Our people do talk quite often with the mayor. Clearly, his position is the same as ours."

ALL THE FRETTING AT GRANGER'S 1992

meeting implied that Fort Worth is vulnerable due to its operations at Meacham and Alliance. Fort Worth takes the position that the city did not "solicit" Mesa, of Farmington, N.M., to begin service at Meacham and, therefore is in compliance with restrictive language of the 1968 bond covenants, according to Fort Worth Meacham International Airport Manager Gary Curtis.

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Last year a "start-up" carrier, SkyTeam, proposed full-size jet commercial service out of Meacham to cities in Texas and as far away as Atlanta. Still struggling with its financing, SkyTeam has yet to fly, but maintains offices at Meacham. One of the SkyTeam principals is former Southwest Airlines executive Jess Coker.

Coker says he was forced by city officials to agree to a lease at Meacham that would restrict the carrier to flights to points in Texas. Assistant City Manager Ramon Guajurado says the city did so under the

provisions of the 1968 band covenants.

As for the court action voiding those covenants in the original Southwest case involving Dallas' Love Field, Guajurado said the Southwest court victory involving Love Field only involved its Texas routes. Southwest's later entry into interstate service was addressed by the Wright Amendment.

Yet, Southwest's successful fight to begin interstate service from Love came before the Wright Amendment became law. "There was no final ruling by the courts,"

Guajurado explained. "Before that could be decided, WC got the Wright Amendment."

Even though Mesa and SkyTeam are confident they can offer service anywhere they please from Meacham, Guajurado still insists the city didn't encourage these carriers to begin service at Meacham. "The city was wary of violating the covenants prohibiting the promotion of commercial service at their airports other than D/FW. We couldn't ask them in, but then we couldn't say 'no' once they asked," said Guajurado.

"Bullshit," said C o k u regarding

Guajurado's position on interstate service. "The city can't do it. We'll beat them in court if we challenge it." Asked why he agreed to the lease restrictions, Coker responded that there was no point in expending time and legal fees on the issue since the original SkyTeam plan was to fly only to points in Texas, at least for the present.

"Once we're ready to fly from Fort Worth outside of Texas, then we'll file an FAA complaint," Coker said, predicting service by April.

Regional FAA officials based in Fort Worth and elsewhere agree with Coker. They said the city cannot limit flights from Meacham since the airport has received substantial federal construction money. The only way to limit flights from Meacham to points in Texas or any geographic perimeter would be federal legislation similar to the now-crippled Wright legislation.

Mesa Airlines initiated regional jet service at Meacham last May. Mirroring the original SkyTeam plan, Mesa offers six daily flights each way (four on weekend days) to and from San Antonio and Hobby Airport. In November Mesa plans to begin service to Austin.

Mesa's lease at Meacham contains the same restriction regarding service beyond points in Texas. Mesa did file an FAA complaint over the restriction, but later withdrew it. Peter Otradovec, Mesa's president now living part time in Fort Worth since the carrier began service here, gives the same explanation for Mesa's temporary back down as does SkyTeam for its tactical retreat.

"We have a niche market — Fort Worth to Hobby and San Antonio with RJs (regional jets)," he said. "When we get stronger and want to fly further, then we'll litigate."

Mesa has already indicated in its current annual report and materials sent to potential investors that it plans to offer interstate service from Meacham sometime in the future.

That position is confirmed by corporate attorney Gary Risley. "They've never told me where I'm wrong," he said referring to city officials' insistence on the restrictive language in the terminal-space lease despite his objection based on the law and legal precedents.

"The emperor has no clothes," he mocks in reference to the city position. "We haven't waived any of our rights. We're just waiting."

Mesa's lease agreement is unique compared to similar arrangements at other airports, says Otradovec. Mesa is paying for all of its terminal improvements, but they then revert to city ownership and the amounts expended are credited against the normal rent.

"Already, Mesa has spent or contracted over \$1.1 million in improvements at Meacham including three new jetway bridges linking the concourse to the RJs on the tarmac. These devices are designed for RJs only and would not be used by larger jets. Mesa has taken all the risk," says Otradovec. "We're here for the long haul."

Meacham now has a baggage carousel, metal detectors, rental car counters, a restaurant and all the other caste marks of a serious player, albeit small, in the world of commercial airports.

While Mesa officials clearly see their niche is in the smaller-capacity jets,

SkyTeam's Coker believes Fort Worth is ripe for the same size jets as major airlines fly such as the 737. "Thirty-five percent of the (Metrolplex) market lives west of Highway 360" in Arlington, he said.

Coker believes substantial numbers of Fort Worth passengers are already bypassing D/FW and traveling to Love Field to take advantage of Southwest's lower fares and frequent jet service. He believes SkyTeam can capture some of that market and gain new customers with flights to secondary cities or airports across the nation with little non-stop service from D/FW or Love such as seasonal ski destinations and the music-Mecca of Branson, Mo.

But both Mesa officials and Coker admit that legal challenges to Fort Worth's restrictions on their service out of Meacham will be financially difficult. They are worried about the deep pockets of others who might join in any legal fight to keep the lease restrictions in place.

But the city could be contemplating increased service — perhaps beyond the boundaries of Texas — from Meacham. Especially if Kelly's lawsuit is beaten back, Cowtown would be in a position to revive Meacham in a serious way. "We have discussed many options," Guajurado said. When asked exactly what options city officials have discussed, Guajurado said he "can't disclose them." Guajurado had no comment about how long have city officials been talking about any of these options.

If the cautious and possibly untenable city position regarding Meacham may be in compliance with the shaky language of the 1968 bond covenants, regardless of Southwest's legal victories defeating the analogous restrictions at Love Field over the years, what then about Alliance?

Fort Worth owns the new non-passenger (commercial) airport capable of handling any jet flying today, but leases the operation to Ross Perot Jr. who in turn sublease's industrial and commercial freight space adjacent to the runways. Big tenants are American Airlines' maintenance facility and FedEx. D/FW sought both facilities, but failed because both companies got a better deal at Alliance. American's concern about D/FW's viability only goes so far.

City officials take the position that Alliance does not compete with or hinder development at D/FW since Alliance does not handle passenger service and Meacham limits passenger flights to points in Texas. Others say this position is just plain wrong.

It was an application by Legend Airlines, an upstart seeking to fly out of Love Field, to points beyond the five-state limit that initiated the latest attack on the Wright Amendment. Legend is a prime beneficiary of new legislation in Washington that prompted Fort Worth's rage. "Fort Worth can't have it both ways," Bruce Leadbetter, Legend's founder, said. "I think Alliance and Meacham are great for Fort Worth and the region. I'm all for it. But they do compete with D/FW for both freight and passengers."

It was on that hot and hazy May day in 1992 when Keltner warned Granger, Kelly and the others that Fort Worth was extremely vulnerable on exactly this point: From that, the divorce may finally come.

DALLAS Observer

Oct. 30 - Nov. 5, 1987
Volume 765 FREE

Letters

You're Wright, Rita

First the good news: I loved Ann Zimmerman's concise (albeit long, but no longer than necessary to tell the full story), informative, and extremely well-written article on the saga of Legend Airlines ["The (W)right to fly," October 16].

Part II: Whoever edits your calendar needs to get the facts straight; i.e., your entry of October 19 describing the upcoming production by Jubilee Theatre in Fort Worth of George C. Wolfe's *The Colored Museum*. The calendar says, "Given its first full-length run in North Texas." Not! I recall seeing a wonderfully done, full-length production of this play at Theatre Three during their 1988-'89 season.

Rita Faye Smith

.. Dallas ..

You're wrong, Jerry

You did the best job on this subject of anyone who ever tackled it in a comprehensive way ["The (W)right to fly"].

You have one glaring error, and that is that I am not cranky. I am a lot of fun, even sometimes when there's a war going on...not cranky. The word a friend used some time ago is *relentless*...that may be wrong, but I know that cranky is.

Anyway, other than that, it is a great tie.

Jerry Bartos .

Dallas

Making noise

Ann Zimmerman's *The (W)right to Fly* has me totally confused with one **exception**—it clearly outlines an alleged conspiracy on the behalf of American Airlines.

I'm confused **because** the article **states** that there are no noise problems **related** to Love Field today, and **that** there won't be any tomorrow with increased air traffic. If there is no **noisc** problem, then why must **all** air traffic **take** FAA-mandated routes **between** the hours of 10 p.m. and 6 a.m.? Why was the fact printed that Legend Airlines planned to lease six jets and overhaul them, adding engines with the quietest noise level, if **noise is** not a consideration? Why have Dallas taxpayers been stuck **with** a school sound-proofing bill for students attempting to study in the Love Field area? Why must I, residing 12,672 feet from the busiest Love Field runway, **yearn** for the day that I can conduct an **uninterrupted** conversation with my neighbor in my own yard?

As for former city councilman [Jerry] Bartos (a staunch supporter for "repeal" of the Wright Amendment) building a home a half-mile from Love Field as a statement about the noise **fac-**tor, this **is** blatantly misleading! How much noise is **there** **parallel** to airport runways as compared to **actual flight** paths? It is far different when you live **under** the flight path, like I do. Even though I live 2.4 miles from the busiest runway at Love Field, I'll still trade locations with Mr. Bartos. In **fact**, Mr. Bartos could **save** a lot of money building his new house in our area where the **real estate** gets cheaper by the decibel. **Then** to print the Wright Amendment opinions of Congressman Joe Barton (I will never forget his scare-tactic TV commercials in his unsuccessful bid for a U.S. Senate seat), it's really scraping the bottom of the barrel of controversy.

You printed the claim of Legend's president, McArtor, that there is no safety problem (in spite of the ever-increasing congestion relating to both commercial and residential communities surrounding Love

Field—plus the presence of public schools). This all reminds me of the politician who will promise anything to get in, and the jailbird who will promise anything to get out.

Too many speak in terms of "convenience" and 'price,' yet none speak in terms of general welfare—because thousands upon thousands of human beings are adversely affected by Love Field's presence. Should you part the curtains of fact, you will doubtlessly see a gold-plated cash register!

Ed Frick
Dallas

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June 3, 1998

Writer's Direct Dial (202) 773-4460

Ms. Nancy E. McFadden
General Counsel
Department of Transportation
400 Seventh Street, S.W.
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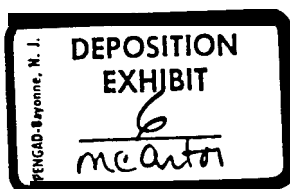
Dear Nancy:

On behalf of Legend Airlines, we look forward to meeting with you on Friday, June 12, 1998 at 3:00 p.m. Joining me will be Allan McArtor, Legend's President, Marvin Singleton, also of Legend, and Paul Watler of Jenkins & Gilchrist, Legend's Dallas counsel.

Sincerely,



Edward P. Faberman



LAI 00089

September 18, 1998

Ms. Nancy E. McFadden
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Writer's Direct Dial
202.278 4460

Dear Nancy:

Recent developments in the Tarrant County, Texas, Proceeding regarding Love Field have serious potential to circumvent and undermine the Department of Transportation's ("Department") Love Field Interpretation Proceeding as well as *other* proceedings before the Department. The integrity and effectiveness of the Department's authority and procedures may suffer if these issues are not addressed.

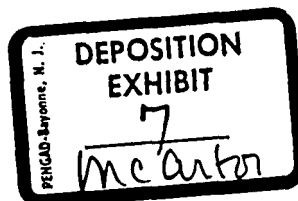
On September 3, 1998, the Department issued a procedural order in the Love Field Service Interpretation Proceeding in response to several motions made by the City of Fort Worth, the DFW Board and American Airlines. Fort Worth filed three motions, including a Motion for Disclosure by the Department. As you well know, this motion requested all information pertaining to your letter to David Siegel and other related matters. The Department denied this motion, stating:

We will not grant Fort Worth's motion for disclosure at this time. Disclosure of the type of information sought by Fort Worth would be an extraordinary step in this kind of proceeding....Thus, at this time we see no basis for granting Fort Worth's request for disclosure regarding the letter's preparation.

[OST-98-4363, Order 98-9-5]

Since the Department's decision was unacceptable to American, DFW and Fort Worth, they have chosen to defy the tenets of civil procedure and have turned back to the state court to obtain their desired outcome.¹

¹ Following Fort Worth's line of logic, if they fail at the state court level, presumably they will turn to a justice of the peace for relief.



Ms. Nancy E. McFadden
September 18, 1998
Page Two

At a hearing on September 11 before Judge *McCoy* in Texas state court, Fort Worth once again called into question the Siegel letter's authenticity, questioned the integrity of the Department and challenged its authority to render a binding declaratory ruling.

The American parties continued to push the **court** to allow discovery that the Department has refused. The following are excerpts from the hearing:

It's what we call the miraculous D.O.T. letter, . . . Miraculously, Mr. Segal somehow overcame what we would normally experience as bureaucratic impairmentia and received a response to that letter the very next day which was signed by someone who had a signature very similar to Mr. Segal's.

We want to know what's been going on up there, and so we have asked a simple set of requests for them to produce a deponent who will explain to us the miraculous letter and explain to us what is happening behind the scenes with the Department of Transportation.²

[Marshall M. Searcy, Jr., Co-Counsel for Fort Worth, p. 49]

As expected, the court acquiesced to the American parties' requests to allow discovery of the "*sua sponti* notice of administrative proceeding" in order to determine the existence of "agency bias."

The American parties are seeking to establish "agency bias" so that the court will discount any decision made by the Department in the Love Field Proceeding. They contend that the issue of "agency bias" is for Judge McCoy to decide. As explained by Fort Worth attorney Dee Kelly, "Your Honor, if there's agency bias in this case, no matter what the issue, it'd be worthless." (Hearing transcript, September 11, 1998, p 67).

Dee Kelly again raised the likelihood of "agency bias" on September 15th:

² Spelling as it appears in City of Fort Worth v. City of Dallas hearing transcript, September 11, 1998.

Ms. Nancy E. McFadden
September 18, 1998
Page Three

If there's agency bias here, it may have a bearing on your ruling, because if they try to get you to defer to that ruling in some manner, and we can satisfy you that the case is -- that the agency had made a predetermination of their ruling, it has no effect whatever.

The motive for raising this pseudo-legal argument has *been made* clear:

... we don't anticipate a favorable **ruling** from the D.O.T.
I think the D.O.T. has basically prejudged the outcome of this proceeding.

We think they're going to come before you and -- and have some sort of an administrative ruling which they'll ask you to defer to in your summary judgment proceeding, and then if not you, then the Court of Appeals and the Supreme Court.

[Dec Kelly, Hearing Transcript, September 15, 1998]

Not only is the state court about to reverse the Department's discovery order, but it has also permitted the Department to be effectively put on trial in absentia. The discovery requests that have ensued are extremely broad, even requesting documents that are under seal by the Department. Fort Worth explains in a letter to Judge McCoy that it seeks discovery in a state court procedure because it "has previously sought this information **from** the DOT and has been turned down . . . Because this information is in the public domain, Legend should have no problem and no excuse for not producing it." (September 17, 1998).

This burdensome "discovery" is nothing more than harassment used to distract Legend and Continental Express **from** both the litigation and the administrative proceeding. The following excerpts from a Deposition on Written Questions is illustrative:

2. Describe each communication which **Allan McArtor** has had with any DOT Representative during the relevant time period which referred or related to Love Field by stating the: (a) the name(s) of **all** persons involved in the communication; (b) the date, time and place such communication occurred; and (c) the substance of the communication.

3. Describe each communication which any other Legend Representative has had with any DOT Representative during the relevant time period which referred or related to Love Field by stating the (a) the

Ms. Nancy E. McFadden
September 18, 1998
Page Four

name(s) of all persons involved in the communication; (b) the date, time and place such communication occurred; and (c) the substance of the communication.

6. Please list and describe all documents provided by DOT Representatives to Legend Representatives pertaining to, or referring in any manner to, the Litigation or the DOT Proceeding, including, without limitation, any drafts of the order ultimately issued by DOT on August 25, 1998 in the DOT Proceeding.

11. Please list and describe all documents identifying, or providing any means of identifying (such as fax address or fax number), the author or authors of the text of the McFadden letter.

14. Please list and describe all documents of which any Legend Representative has knowledge pertaining to, or referring in any manner to, the request or desire of Legend or of Continental Airlines that the DOT initiate proceedings to address all or part of the issues in the Litigation.³

These expansive requests relate 'to several Department proceedings. The same parties that ask the Department to hold information in confidence in other proceedings (including AA/BA) have now engineered a way for a state judge to review every document submitted by Legend in determining "agency bias."

In addition, the American parties are rushing the court to render a summary judgment decision before the Department issues a ruling in the Love Field Interpretation Proceeding.

To ensure the race to summary judgment is not halted by an unfavorable Department order, these parties argue that the Department will not be able to render a timely decision, due in part to their plans to inundate the docket with comments.

I seriously wonder if the D.O.T. knows now -- I mean, if they're going to give careful consideration to what's being submitted to them, I'm not sure they could know how long it's going to take them to rule because I think the D.F.W.

³ Continental Express was served similar discovery requests.

UNGARETTI
& HARRIS

Ms. Nancy E. McFadden

September 18, 1998

Page Five

Board's going to send them a good deal of reading material to look at. I know there are other parties who are not named in that order who have already indicated that they intend to weigh in on the issue.

[Counsel for DFW Airport, pp 33-34]

Consequently, they have succeeded in convincing Judge McCoy that he should not halt the proceedings until an order is issued.

. ..I just don't want to sit around here waiting and tapping our toe and wondering if and when the D.O.T. will rule. That's not -- that's just not the way we're going to operate here.

[Judge McCoy, p 36]

This flagrant disregard for the Department and legal procedure threatens to undermine federal authority, the future of competition and multiple issues before the Department. As the Department is not restricted by the Anti-Injunction Act, it is crucial for the Department to step into this matter through the U.S. District Court and seek to enjoin the state proceeding. It is imperative that the Department directly address this issue and halt a process that could set a precedent for all Departmental orders and investigations.

Sincerely,



Edward P. Faberman

cc: Tom Ray

LAI 00005

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Writer's Direct Dial
202 778 4460

July 7, 1998

Ms. Nancy E. McFadden
General Counsel
Department of Transportation
400 Seventh Street, S.W.
Washington, DC 20590

Dear Nancy:

I wanted to make sure that you had a report on the Fort Worth circus. In an incredible ruling, Judge McCoy held that your letter to David Siegel at Continental Express, Inc. was hearsay and thus kept it out of evidence. Counsel for Fort Worth (lead partner, Dee Kelly, is on the Board of Directors of American Airlines) and counsel for DFW Airport challenged the authenticity of the letter as well as the motives for its issuance, stating:

[the letter] on its face indicates that no study was done and nothing was -- nothing was officially undertaken by the agency . . .

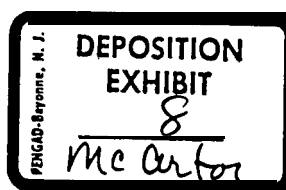
Attorney for Fort Worth, p. 136

I mean I just don't believe that you can send them [DOT] in a letter one day, get a response to the letter back the next day, and say, well, they did an investigation in response to my letter and here's the report on it.

Judge McCoy, p. 146

You know, don't you, that O'Melveny & Meyers worked on this letter [David Siegel to DOT], don't you? . . . And you know that this Nancy McFadden, who is the General Counsel of the DOT, formerly worked at O'Melveny & Meyers, don't you?

Attorney for Fort Worth, p. 155



LAI 00048

Ms. Nancy E. McFadden
Department of Transportation
July 7, 1998
Page Two

And you wouldn't recognize Nancy McFadden's signature
on a bet, would you?

*Attorney for Fort Worth, p. 155,
cross examining David Siegel*

(See Attachments)

The statements made by those counsel are disturbing, yet even more alarming is the fact that the hearing is being conducted without any consideration of DOT data. This highlights the absurdity of the proceeding as well as the judge's apparent decision to prevent airline competition.

Most of the trial is being conducted as if it were a hearing before the Civil Aeronautics Board. Evidence was presented on the impact of the three proposed Continental Express flights to Cleveland on American and the other DFW carriers and on DFW Airport. Completely ignoring your letter and previous DOT studies and statements, the attorneys for *Fort Worth, American and DFW argued that these few flights would impact safety and would be detrimental to DFW and "destabilize the Metroplex market."

Why do you feel it [Continental Express flights from Love
Field] would have a negligible impact on the DFW hub?
(p. 269)

Q: I just want you to make that assumption.

A: The assumption that it [Love Field] radically destabilizes
the D/FW aviation market?

Q: Right.

Attorney for Fort Worth, p. 319

. . . the list of things you've heard: the loss of unique
markets, the loss from international flights, the delay in
development, the atrophy of the hub -- all of those things
you've heard described you don't think are going to happen
. . . Can you guarantee that none of those things are going
to happen at Love -- at Love Field, and, hence the effect on
DFW?

Attorney for DFW Airport, p. 213

Ms. Nancy E. McFadden
Department of Transportation
July 7, 1998
Page Three

It is clear that Judge McCoy has bought these arguments. He stated:

. . . wouldn't you expect that all of the airlines around the country are watching American and Delta and Southwest to see how they respond to lessening of their market share to see if they do retaliate? And so, if for no other reason than to set an example, don't carriers retaliate even if sometimes it wouldn't make economic sense?

Despite the claims that this case is limited to the issue of the Use Agreement, the parties have raised far broader issues. In fact, American Airlines, recognizing the far-reaching implications of this case, argued in its brief that even those carriers not signatories to the Use Agreement should be prohibited from operating at Love Field since it:

. . . strongly resist any decision that the Use Agreement bar "signatory airlines" from conducting operations at Love or Meacham Fields that non-signatory airlines may lawfully offer. Such a double standard would be legally wrong, unreasonable, inequitable, and illegal. . . .

American 's Statement and Reservation of Rights, p. 4

Ironically, the City of Fort Worth barely touches on the Use Agreement in its brief, focusing instead on the Joint Bond Ordinance between Dallas and Fort Worth. Fort Worth claims that it is the Joint Bond Ordinance which established this "undefined" perimeter rule at Love Field (that confines interstate traffic to Texas and the four contiguous states) -- an amorphous rule that seems to change depending on the threat.

There have been other issues raised in this court, such as airline retaliation, that strongly suggest the need for close government scrutiny. As Mr. Siegel stated in response to a question as to whether he has seen anti-competitive responses:

The only competitive reaction I've seen so far is American Airlines flying point-to-service between Hobby Airport and LaGuardia three times a day on Super 80s.

UNGARETTI
& HARRIS

Ms. Nancy E. McFadden
Department of Transportation
July 7, 1998
Page Four

The anti-competitive behavior by American against Continental is only the tip of the iceberg. We are witnessing local parties funded by the major competitor in Dallas attempting to overturn federal law, emasculate Departmental findings, and control interstate commerce. It is time for the Department to take control.

Sincerely,

A handwritten signature in black ink, appearing to be 'Ed' with a stylized flourish.

Edward P. Faberman

Attachments

cc: Paul Geier
Patrick Murphy
Steve Okun
Samuel Podberesky
Tom Ray

UNGARETTI
& HARRIS

June 24, 1998

Ms. Nancy E. McFadden
General Counsel
Department of Transportation
400 Seventh Street, S.W.
Washington, DC 20590

Dear Nancy:

As to support for American in Fort Worth and the likelihood of a balanced hearing before Judge McCoy, I call to your attention a recent statement by one of the Judge's fellow judges. "American and DFW are synonymous, one for the other," Tarrant County Judge Tom Vandergriff said. "We built the airport for them." [*Fort Worth Star Telegram*, April 22 1998 "American wants flights at Love Field.] I also thought that you would be interested in the attached documents from Continental.

Finally, I call your attention to the attached article from the June 18, 1998 *Bond Buyer*. The headline says it all -- "DFW Airport ignores suit in favor of overhaul." The article notes that DFW is going ahead with its \$6.3 billion in airport upgrades and that Love Field operations will have no impact on DFW and its future growth.

Sincerely,



Edward P. Faberman

Attachment

cc: Tom Ray
Dave Bennett
Nancy LoBue



LAI 00057

LEVEL 1 - 2 OF 54 STORIES

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The Bond Buyer

June 18, 1998, Thursday

SECTION: Pg. 1

LENGTH: 662 words

HEADLINE: Dallas-Fort Worth Airport Ignores Suit In Favor of Overhaul

BYLINE: By Darrell Preston

DATELINE: DALLAS

BODY:

Deciding not to be halted by litigation swirling over Dallas' Love Field, Dallas-Fort Worth International Airport is forging ahead this month with plans for a \$6.3 billion overhaul funded mainly with bonds.

Earlier this month DFW's Airport Board named a new 18-member underwriting team, and airport officials last week unveiled their latest proposal for \$6.3

billion of improvements during the next 20 years. Enhancements include \$2.3 billion of terminal upgrades and \$2.1 billion for a new automated people mover system to get passengers to their gates more quickly.

Board officials could sign off on the plan as early as next month. Though no final timetables for financing or bond issuance are available, airport officials hope to begin some of the work this year. Planning documents list \$753 million of immediate projects targeted to get under way in 1998, and another \$1.97 billion of work between 1999 and 2004.

Planning, which began last year, continued this spring despite a whirlwind of litigation spurred by Congress' decision last fall to lift some flight restrictions at Love Field, a city-owned airport near downtown Dallas. Six lawsuits have been filed by Dallas and Fort Worth, several airlines, and DFW itself to determine which airlines can fly out of Love and to where.

Previously, flights out of Love could only go to states adjacent to Texas under the Wright Amendment, passed by Congress in the 1970s to protect DFW from competition. But last year Congress allowed flights to two other states, and some members promised to lift restrictions still further.

Fort Worth sued Dallas last fall to prevent flights to more destinations, alleging that would violate bond covenants in place since the cities agreed to jointly build the airport. Those covenants were intended to protect bondholders by concentrating flights at DFW. The airport has about \$1.9 billion of bonds outstanding.

The possibility of expanding service at Love has enticed three airlines wanting to compete with the airport's only commercial carrier, Southwest Airlines Co. Those three are Legend Airlines Inc., a start-up carrier that lobbied to lift flight restrictions and announced plans Tuesday to build a new terminal at Love; Continental Express, which began limited service last week; and American Airlines Inc., DFW's largest carrier.

When the controversy erupted last fall, DFW executive director Jeffrey Fegan said work on airport improvements and bonds would likely be delayed. But since then, the Board and other officials have decided to forge ahead.

"The litigation is obviously affecting the planning, but you can't just sit still," said Angel Biasatti, an airport spokeswoman.

Some airport analysts predict DFW may lose a few flights to Love. But there are few credit concerns about the impact on DFW bonds given other restrictions

at Love, including limited **terminal** space and parking, as well as pressure to **minimize** car **traffic** and airplane noise in neighborhoods near the **inner-city** airport.

Only 90 **additional** flights per day are planned by the three airlines **wanting** to **serve** Love. With **Southwest's** 270 flights per day, the 360 flights a day at Love would pale in comparison to **DFW's** 2,800.

Also, **DFW**, already the world's second-busiest **airport** as measured by passenger traffic, is predicated on the assumption that usage **will** grow from **57** million passengers a year now to about 100 **million by the middle of** the next century. Considering that forecast and the obvious **need** to update **terminals** and ground transportation, analysts think it **is** reasonable to proceed with the capital plan even if **some** flights are lost to Love.

"**DFW** is a hub airport and no one is **going to** run a hub out of Love Field," said **Mary Francoeur**, vice president and senior credit officer at **Moody's** Investors Service. "I don't see anyone walking away from **DFW**."

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**CONTINENTAL EXPRESS DEFENDS
TRAVELERS' RIGHT TO NEW CHOICE
AT LOVE FIELD: LAUNCHES CAMPAIGN**

DALLAS, June 23, 1998 – Continental Express today charged that by trying to block fair and legal competition at Love Field, the DFW Airport Board and the City of Fort Worth are needlessly depriving Metroplex travelers of increased convenience, flexibility and consumer choice.

At issue are three daily flights between Love Field and Cleveland that Continental Express plans to start on July 1. The Board, the City of Fort Worth and American Airlines are parties to numerous lawsuits involving Continental Express' planned Cleveland service. The Board and Fort Worth have filed in state court for a temporary restraining order that would prevent the airline from flying its newly announced Cleveland service.

"When elephants fight, it's the grass that suffers," said David Siegel, president of Continental Express, quoting an ancient proverb. "In this instance, the elephants – DFW, Fort Worth and American – are trampling all over the rights of Metroplex travelers."

-more-

DALLAS LOVE FIELD/PAGE 2

Siegel said **Continental Express** will launch an advertising campaign **this week** to directly **tell travelers what's at stake** in the lawsuit. The **ads are cartoon-like in nature**. One **depicts an enormous gorilla** atop Reunion Tower, a popular **Dallas landmark**, **swatting at the three Continental Express commuter flights**. **Another features** an armada of several **dozen** large DPW-based jets in a **face-off with the three 50-seat regional jet flights**.

"**It's** a classic case of David and Goliath They're **raising a hullabaloo** over a mere 150 daily **seats**, **less than two-tenths** of a **percent of American's** more than 82,000 seats a day **out** of DFW," Siegel said- "We're trying to add a **modest** and **reasonable** amount of competition out of Love Field. There's no reason why **the** people of North Texas should be denied **this** added choice."

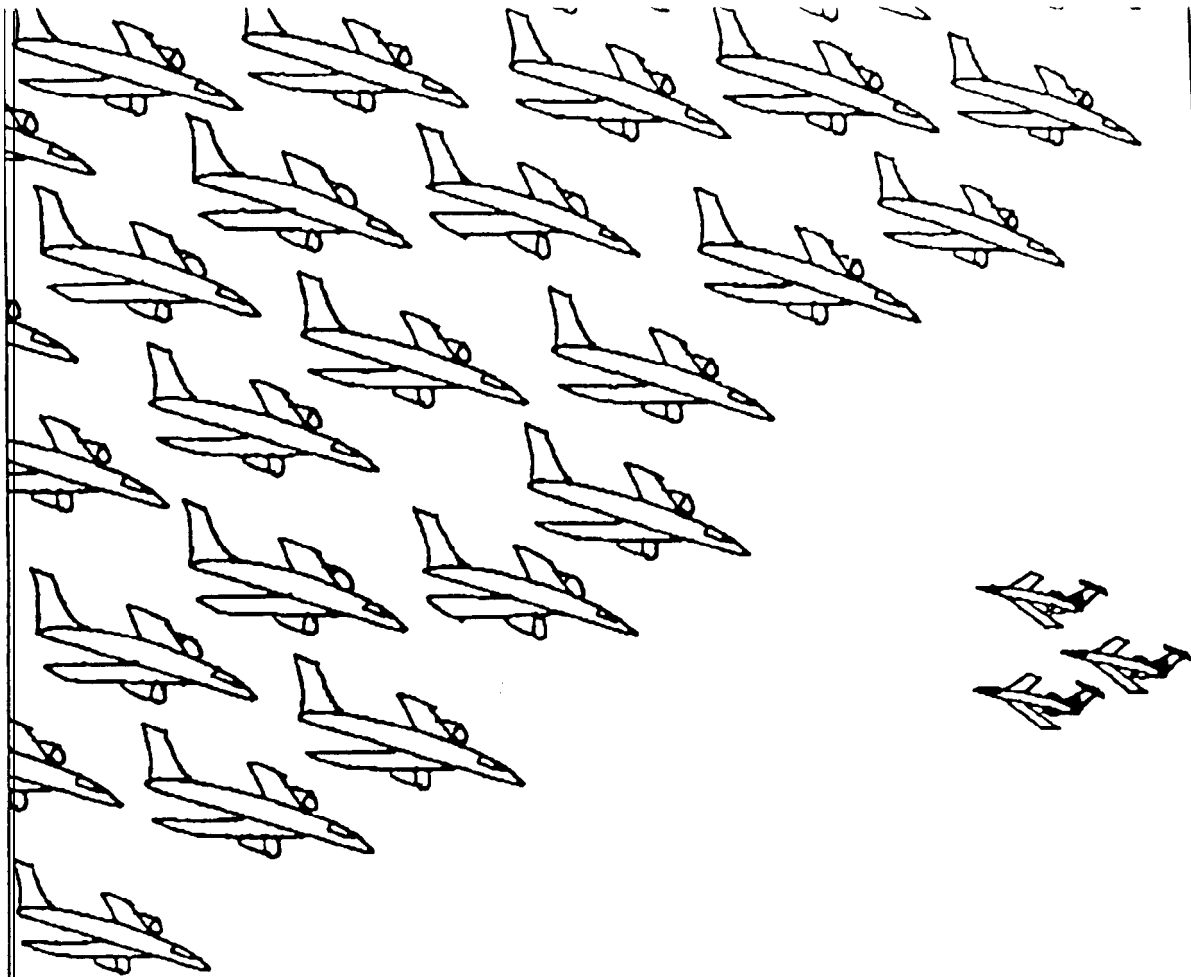
Continental Express has **designed the new service** to be in strict compliance with **all** laws and **contracts** governing **flights** from Love **Field**. Continental **Express** **already** started **service** June 11 **between Love** and **George Bush Intercontinental Airport in Houston**.

"Our **customers** say **they** want to fly out of Love Field on **modem 50-seat regional jets** flown **by Continental Express**," Siegel said- "We're simply trying to provide them with that **service**."

-more-

Continental Express serves more than four million customers annually. As a regional air carrier owned by Continental Airlines, Express offers more than 800 daily departures from its hubs in Houston, Newark and Cleveland. Continental Express offers advance seat assignments and OnePass frequent flyer miles which can be redeemed anywhere in the world Continental and its partner airlines fly.

###



THREE **LITTLE** **FLIGHTS.**

WHAT'S THE BIG DEAL?

American Airlines® has over 700 flights a day from here. And they're trying to stop us from adding 3 flights a day to Cleveland from Love Field. 3 flights. 50 seats each. To Cleveland. We're just trying to give customers a little more choice. So, we have to ask—What's really going on here?

Continental
Express





DO THREE FLIGHTS
TO CLEVELAND
SOUND SCARY TO YOU?

One airline has over 700 flights a day from here. And they're trying to stop us from adding 3 flights a day to Cleveland from Low Field. 3 flights. 50 seats each. To Cleveland. We're just trying to give customers a little more choice.

So, we have to ask—
What's really going on here?

Continental
Express 

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& HARRIS

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June 22, 1998

VLA MESSENGER

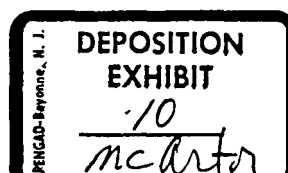
Ms. Nancy E. McFadden
General Counsel
Department of Transportation
400 Seventh Street, S.W.
Washington, DC 20590

Dear Nancy:

I wanted to give you the latest update on the litigation in Fort Worth. To no one's surprise, Judge McCoy has decided to start the TRO hearing on Thursday, June 26. He was concerned that he would not have enough time to consider the issuance of a TRO against Continental's proposed start of nonstop Love Field-Cleveland service scheduled for July 1. It is clear from the Judge's comments that he will likely issue a TRO and then schedule a longer hearing to consider a more permanent injunction. As cited in Saturday's *Dallas Morning News*, he stated: "If needed, we need to issue something as soon as possible to benefit the flying public. We need to make sure that it's not a surprise for those who expect to fly out for July 4." He seems not to be interested in the facts and the impacts on interstate commerce.

He is apparently ready to find that Continental's initiation of three roundtrips per day in the Cleveland market -- with 50 seat regional jets -- would cause irreparable harm to Fort Worth and to DFW.¹ Of course, there is simply no basis for any suggestion that additional operations at Love Field could in any way impact DFW, particularly with the lack of gate availability at Love Field. Testifying before the Senate Subcommittee on Transportation on October 21, 1997, Pat Murphy stated:

¹ Continental has not proposed to drop any flight-s from DFW.



LAI 00064

Ms. Nancy McFadden
Department of Transportation
June 22, 1998
Page Two

As for our study of the Wright Amendment, this was completed by an interdepartmental task force in July 1992. The report showed that a change in the Wright Amendment would result in more airline service and competition at Love Field. This would result in lower fares for Dallas and the south-central region of the United States.

Pat added that he could not imagine the scenario under which DFW would be harmed.

If any other carrier decides to add flights at Love, Southwest would have to give up gates! I also note that American is in the process of adding additional flights at DFW, including international flights. Since American and its surrogates are pretending that DFW is likely to collapse as a hub, the Department should reconsider the recent international authorities given to it.

The absurdity of the arguments about the demise of DFW is demonstrated by previous claims in this regard. In 1992, the American parties filed suit against Dallas to foreclose through ticketing by Southwest. (See attached brief.) They noted that such through ticketing was not allowed by the Wright Amendment and that to allow such a change would destroy the agreement between the two cities and cause irreparable harm to DFW. That litigation was dropped because Dallas and Southwest dropped its plans. Five years later, as a result of the authority contained in the SHELBY AMENDMENT, Southwest is now operating through ticketing at Love Field, and Continental is selling connecting tickets from Love Field through Houston. American and its partners have now announced that such service is not prohibited by their ever changing bond agreement. Apparently, it is American that wants to make all decisions as to what is permitted by federal law.

Make no mistake about it, the outcome of Thursday's hearing is pre-determined. A local state judge is going to rule that federal law does not apply, he can control interstate commerce, and that three flights a day will destroy the world's largest airport. The judge has not yet decided whether Legend's counsel will be able to participate by offering evidence because the injunctive relief does not apply to Legend, although if the judge rules that this mythical agreement supersedes the Shelby Amendment, Legend's capital efforts will be impacted. When Legend's counsel raised the possible implications of such

UNGARETTI
& HARRIS

Ms. Nancy McFadden
Department of Transportation
June 22, 1998
Page Three

a decision, the judge simply advised that he would consider the request. Counsel for Fort Worth smiled and said, "exactly."

I hope that the Department will address the issues involved in all of the ongoing litigation. I have attached issues for the Department to address that will eliminate this threat to the future of competition in Dallas and the country. These actions -- driven by American Airlines -- are foreclosing initiation of low cost service to parts of the country that have been hit the hardest over the last several years, including Alabama, Mississippi, and Kansas.

Please call me if you would like any additional information or copies of any of the documents referenced.

Sincerely,

A handwritten signature in black ink, appearing to be 'Ed' with a stylized flourish.

Edward P. Faberman

Consistent with its authority to regulate interstate commerce, Congress adopted the Wright Amendment (~~International Air~~ Transportation Act of 1979, Public Law 96-192, Section 29) to ~~permit~~ certain operations at Love Field and later modified the Wright Amendment through the Shelby Amendment (Department of Transportation and Related Agencies Appropriations Act of 1998, Public ~~Law 105-66~~, Section 337). The City of Dallas and other parties have taken the position ~~that~~ certified air carriers at Love Field that have not signed an agreement to ~~refrain from~~ such operations, may operate non-stop service from Love Field to the states of Louisiana, Oklahoma, New Mexico, Alabama, Mississippi and Kansas, and may operate jet ~~aircraft reconfigured~~ to accommodate 56 or fewer passengers, except for aircraft ~~exceeding 300,000~~ pounds gross ~~aircraft~~ weight, ~~from~~ Love Field to any destination.

Dallas and those same parties further believe that whatever airport owner proprietary powers do or do not exist with respect to the ~~Airline~~ Deregulation Act, that in Light of the Wright and Shelby Amendments, Dallas does not have the power to reverse those Amendments and ~~further~~ restrict air carrier operations at Love field that are otherwise compliant with federal law. Specifically, Dallas may not impose perimeter rules, slot controls, or regulate the routes, rates, or class of service of airlines serving Love Field.

UNGARETTI
& HARRIS

October 15, 1997

VLA MESSENGER

Mr. Tom Ray
Senior Trial Attorney
Office of the General Counsel, C-30
Department of Transportation
400 Seventh Street, S.W.
Washington, DC 20590

Dear Tom:

This is a follow-up to your discussion with Paul Olsen. Over the last several months, there has been numerous statements by various parties threatening litigation over any new service at Love Field whether permitted by DOT interpretation or by statute.

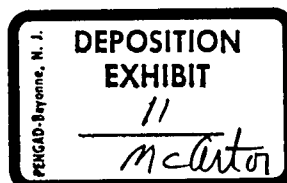
During the last year American has made it clear that it will protect its dominance in the marketplace. If there is any question as to whether American and its surrogates would take all possible steps to block Love Field service, I note the following:

1. Bob Crandall has publicly stated that he will sue everyone in America to close Love Field if the Wright Amendment is changed in any way
2. Ray Hutchison, as DFW bond counsel, has advised City of Dallas officials that bond holders would sue if Legend was allowed to operate as proposed.
3. Fort Worth City officials have stated that they will challenge the City of Dallas' right to allow operations beyond the existing perimeter States in any size jet.
4. American has been subsidizing various civic and corporate entities to generate opposition to new service (see attached article).

Crandall, Hutchison and Fort Worth officials were true to their words -- they have sued to close Love Field.* On Friday, October 10, 1997 the City of Fort Worth sued the City of Dallas, Dallas/Ft. Worth Airport Board, Legend, Dalfort and others to stop any additional competition at Love Field (a copy of the papers they filed is attached). This suit is another attempt to close

¹ In 1992, Ft. Worth sued Dallas when the Dallas City Council entertained a plan to propose modifying the Wright Amendment. Dallas got the message! When Dallas dropped the idea, Ft. Worth withdrew its court action.

ray.ltr



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October 15, 1997
Page 2

Love Field. If successful, the litigation could also be a fatal blow to Southwest Airlines and close Meacham Airport and Alliance Field.

Bob Crandall's statement, "If the Wright Amendment is ever changed, we'll sue everybody to close Love Field," was a call to action and they have been ready to tie this issue up in court for years. It is interesting to note how the Fort Worth parties and American officials have been making similar threats for the past several months. Considering that they have been meeting, working together and are represented by the same parties, it is not surprising that they have an identical interest -- maintaining American's dominance over the DFW market. Counsel for the City of Fort Worth also represents American (filed brief in Fifth Circuit) and Dee Kelley, lead partner in the firm is on American's Board of Directors.

By filing against the City of Dallas, American and its surrogates may hope to force Dallas officials to slow down any actions that would permit Legend or other carriers to operate at the airport. They know that by delaying the start-up of a new carrier and increasing its costs that the carrier may be driven out of the marketplace. This type of collusion and anti-competitive behavior should not be tolerated, particularly at a time in which there are few new carriers in the system.

I hope that the Department will carefully review these and other actions taken by those that will do what it takes to eliminate competition in a market already among the nation's most concentrated. These practices are contrary to competition and the effort of this Administration to enhance competitive airline service.

We will not make a decision on the Fifth Circuit case until we have completed our review of the Fort Worth litigation.

Please call if you have any questions.

Sincerely,

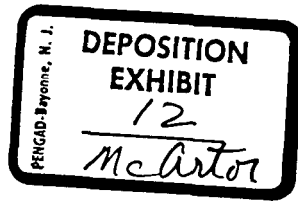


Edward P. Faberman

Attachments

cc: Paul Olsen
Allan McArthur

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TIME:

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SPECIAL INSTRUCTIONS OR COMMENTS

As a follow-up to our discussion, attached are alternative legal actions that can be taken by DOT to address the City of Fort Worth/American Airlines' attempt to eliminate competition and control interstate commerce. Please let me know if you have any questions.

Attachment

IMPORTANT: THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND PROHIBITED FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via the US Postal Service. THANK YOU.

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LOVE FIELD ACTION PLAN

1. DOT files new suit for declaratory judgment in the U.S. District Court, Northern District of Texas, Dallas Division, naming Fort Worth, American and DFW Airport Board as defendants, asserting primacy of federal agency jurisdiction and that federal law preempts the proprietary powers that FW/AA/DFW contend Dallas has exercised or must exercise to exclude interstate service at Love Field under the 1968 Bond Ordinance. Legend joins as original plaintiff or intervenes as plaintiff immediately after filing; Legend not named as defendant. Alternatively, DOT seeks the relief outlined herein by moving to intervene as a plaintiff in *Continental Airlines, Inc. v. City of Fort Worth et al.*, case no. 3:98-CV1187-R in the N.D. Texas, Dallas Division. [Legend's motion to intervene in this suit is pending, opposed by FW/AA].

2. DOT seeks anti-suit injunction restraining FW/AA/DFW from prosecuting *City of Fort Worth v. City of Dallas*, cause no. 48-171109-97, in the 48th District Court of Tarrant County, Texas. The Anti-Injunction Act, 28 U.S.C. Sec. 2283, is inapplicable to stays sought by the United States or its agencies. *NLRB v. Nash-Finch Co.*, 404 U.S. 138, 143-44 (1971); *Letter Minerals I' v. U.S.*, 352 U.S. 220, 226-27 (1957).