

1 IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
2 IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA

3
4 CIRCUIT CIVIL NO. **REDACTED**
5 -----

6)
7 **Plaintiff Name Redacted**,
8)
9)
10 Plaintiff,
11)
12)
13 vs.
14)
15)
16 **Billion Dollar Corp Name Redacted**,
17)
18)
19 Defendant.
20)
21)
22 -----

23
24
25 BEFORE:
26 The Honorable William L. **JUDGE NAME REDACTED**
27 Circuit Judge

28
29 DATE:
30 **EXACT DATE REDACTED** 1994

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32 PLACE:
33 Courtroom A
34 Pinellas County Courthouse
35 315 Court Street
36 Clearwater, FL 34616

37
38 REPORTED BY:
39 Michele Luckenbill
40 Deputy Official Court Reporter

41
42
43 EXCERPT FROM JURY TRIAL
44 TESTIMONY OF **Witness Name Redacted**
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48 ORIGINAL
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1 P R O C E E D I N G S

2 _____(The following is an excerpt from the jury
3 trial, as requested.)

4 THE COURT: Call your next witness.

5 MR. **Opp Atty 1 Redacted**: **Witness
6 Name Redacted**.

7 THE BAILIFF: Stand here, raise your right
8 hand, face the clerk, and be sworn.

9 THEREUPON,

10 **Witness Name Redacted**
11 was called as a witness and, after having been first duly
12 sworn on oath, was examined and testified as follows:

13 THE BAILIFF: Please take a seat in the
14 witness box and speak in a loud and clear voice.

15 THE COURT: Good afternoon.

16 Witness is now sworn and seated.

17 You may proceed, Mr. **Opp Atty 1
18 Redacted**.

19 MR. **Opp Atty 1 Redacted**: Thank you,
20 your Honor.

21 DIRECT EXAMINATION

22 BY MR. **Opp Atty 1 Redacted**:

1 Q Please state your name.

2 A **Witness Name Redacted**.

3 Q Mr. **Witness Name Redacted**, have you ever
4 worked for H and W Site Development?

5 A Yes.

6 Q And how long did you work for H and W Site
7 Development before the accident to **Decedent Name
8 Redacted**?

9 A I don't know. Quite a while.

10 Q How long have you worked, overall, in the
11 construction industry?

12 A About twenty years.

13 Q And after the accident occurred, did you
14 continue working for H and W Site Development?

15 A For a little while.

16 Q For several years afterwards?

17 A No.

18 Q Shorter than that?

19 A Less than a year.

20 Q And did you know **Decedent Name Redacted**
21 before this accident occurred?

22 A Not personally. I know who he was, to see him.

1 Q He was a coworker of yours?

2 A Right.

3 Q Did you socialize with him?

4 A No.

5 Q What was your function at H and W at the time
6 this accident happened?

7 A I was loader operator.

8 Q Front-end loader operator?

9 A Yes.

10 Q And on the date of this accident, what exactly
11 was it that you all were doing to the site?

12 A We were clearing the site.

13 Q And what did you have to do?

14 A Stripping the trees and the underbrush and
15 basically clearing.

16 Q Do you recall about what time you arrived at
17 the site on the date of the accident?

18 A It was a little after eight, I think, something
19 like that.

20 Q Did you drive in your own truck?

21 A Yes.

22 Q Pickup truck?

1 A Yes.

2 Q And what did you do when you got to the site?

3 A Well, we went ahead and did your normal
4 procedures of working and stuff, clearing.

5 Q Had you been to another site earlier in the day
6 so you were entitled to a break?

7 MR. GOODMAN: Objection. Leading.

8 THE COURT: Sustained.

9 Q (By Mr. **Opp Atty 1 Redacted**:) Were you
10 entitled to a break when you arrived?

11 A **Redacted**?

12 Q You.

13 A We worked first, then we were entitled to a
14 break.

15 Q When Mr. **Redacted** drove in, were you on
16 break?

17 A Yes.

18 MR. GOODMAN: Objection. Leading.

19 THE COURT: Sustained.

20 Q (By Mr. **Opp Atty 1 Redacted**:) Were you on
21 break when Mr. **Redacted** drove in?

22 A Yes.

1 MR. GOODMAN: Objection.

2 THE COURT: Sustained.

3 Q (By Mr. **Opp Atty 1 Redacted**:) What were
4 you doing when Mr. **Redacted** drove up?

5 A Sitting on the back of my truck, eating a
6 sandwich.

7 Q Who was with you?

8 A **Co-Worker Name Redacted**.

9 Q Did Mr. **Redacted** come up to you and Keith?

10 MR. GOODMAN: Objection. Leading.

11 THE COURT: Sustained.

12 Q (By Mr. **Opp Atty 1 Redacted**:) What did Mr.
13 **Redacted** do?

14 A Pulled his truck in and backed up to the
15 loader.

16 Q To the front-end loader?

17 A Yes.

18 MR. GOODMAN: Objection.

19 May we approach?

20 THE COURT: Overruled.

21 Q (By Mr. **Opp Atty 1 Redacted**:) What
22 happened next, sir?

1 A I was eating my sandwich. He talked to Keith,
2 I think, and asked for something.

3 Q Who talked to Keith?

4 A **Redacted**.

5 Q Then what happened next, sir?

6 A They went back to the truck, and I continued
7 eating my sandwich.

8 Q At some point in time, did **Decedent Name
9 Redacted** talk to you again?

10 A I don't think so.

11 Q Okay. Did he ever come and ask you for any
12 assistance or anything?

13 A He came and borrowed something.

14 Q Okay. What did he borrow from you?

15 A A pair of pliers, I think.

16 Q Do you know what he was going to do with the
17 pair of pliers?

18 A He said something about taking a pin out --
19 Keith told me. Keith was the one who came, actually, and
20 borrowed it.

21 Q What did Keith say about that?

22 A They was going to do something to the truck. I

1 didn't pay no attention. I just gave them pliers, and
2 they went on.

3 Q At any point in time, were you asked to operate
4 the front-end loader?

5 A Not until he yelled at me.

6 Q Who yelled at you?

7 A **Redacted**.

8 Q What did he say to you?

9 A He asked me something about was I going to take
10 a break all day.

11 Q What did you do in response?

12 A I finished my sandwich, then went off break and
13 went and got on the loader.

14 Q Did Mr. **Redacted** indicate at all what he
15 wanted to do with you on the loader?

16 A Yes, he said something about taking the
17 tailgate off.

18 Q And what did you do on the loader?

19 A I was sitting on the loader, and I asked him
20 wasn't he going to get up inside and take the pins out.

21 Q Where was Mr. **Redacted** standing at this
22 time?

1 A Almost in front of the loader.

2 Q Okay. Was he between the loader and the
3 tailgate?

4 A Yes.

5 Q I would like to show you some photographs at
6 this time, previously marked into evidence. Start with
7 Defendant's Exhibit Number Four.

8 Do you recognize this photograph, sir?

9 A Yes. It's a truck and loader and tailgate on
10 it.

11 Q Is that the way that the scene looked after the
12 accident?

13 A This is after the accident?

14 Q Right. Is this the way the scene looked after
15 the accident?

16 A I guess.

17 Q Now, would you please show the jury where it
18 was that **Decedent Name Redacted** was standing when he
19 was talking to you.

20 A This wasn't like this. It was back. And this
21 was down, and the tailgate was up on the truck, and there
22 was about three or four feet between the truck.

1 Q At the time he was standing there talking to
2 you, the tailgate had not fallen?

3 A Correct.

4 Q Was he standing between the tailgate and the
5 scoop of the front-end loader?

6 MR. GOODMAN: Objection. Leading.

7 THE COURT: Sustained.

8 Q (By Mr. **Opp Atty 1 Redacted**:) Where was he
9 standing, sir?

10 A Right in front of it, between me and him and
11 the truck and the loader.

12 Q And where was he facing?

13 A Sort of like towards me, and he had ahold of a
14 chain in his hand.

15 Q What direction -- in other words, was his back
16 facing towards the tailgate?

17 A Yes.

18 Q And was he facing then --

19 MR. GOODMAN: Objection. Leading.

20 THE COURT: Sustained.

21 Q (By Mr. **Opp Atty 1 Redacted**:) Where was he
22 facing?

1 A Towards me.

2 Q And did he attach anything at all to the
3 tailgate?

4 A If he did, it was prior to my knowledge.

5 Q Okay. Was anything attached to the tailgate at
6 that point in time?

7 A There was a chain attached to it.

8 Q Where was the chain attached to?

9 A Top of the tailgate.

10 Q Now, what did **Decedent Name Redacted** do
11 next?

12 A I asked him was he going to get back up inside
13 and kick it out, and he said he knew what he was doing.
14 And I just sit there, and he went towards the loader, and
15 I guess he pulled the chain, and it fell on his head.

16 MR. GOODMAN: Objection. Speculation.

17 THE COURT: You can cross-examine.

18 Q (By Mr. **Opp Atty 1 Redacted**:) Could you
19 please tell the jury exactly what it is that **Decedent
20 Name Redacted** told you after you asked him about
21 getting back in the bed to take the pins out?

22 A He said he knew what the fuck he was doing.

1 Q How long was it after he said that the tailgate
2 fell?

3 A Two seconds. Because I was still arguing with
4 him. I was sitting there, and the loader was in Neutral,
5 and the brake was on.

6 Q Did you move the scoop of the loader at all?

7 A No.

8 Q Did the loader move at all?

9 A Loader didn't move at all.

10 Q In the past, had you ever had a chance to
11 observe anyone removing a tailgate from a dump truck?

12 A Yes.

13 Q How did H and W remove tailgates from dump
14 trucks?

15 A Well, you get inside and take the pins out and
16 push the tailgate down while you are inside.

17 Q Inside the bed?

18 A Right, up inside the bed. Then you push it
19 out.

20 Q Is there any way for the tailgate to fall into
21 the bed area?

22 A No, no way.

1 Q And that is the way H and W had instructed its
2 employees to remove tailgates?

3 A Yes.

4 Q Do you know what the chain was attached to that
5 **Decedent Name Redacted** had in his hand?

6 A Top of the tailgate.

7 Q Do you know what was at the top of the tailgate
8 that he hooked it to?

9 A Another chain or tailgate, something; I don't
10 know.

11 Q Had you ever seen a tailgate removed in the
12 manner in which Mr. **Redacted** was going about it on
13 that day?

14 A Not particularly, no.

15 Q Okay. Would you stand underneath the tailgate
16 with the pins removed?

17 A No, sir.

18 Q On any prior time to this occasion, did you
19 ever see **Decedent Name Redacted** under a tailgate with
20 the pins out before this accident?

21 A Once in the yard at the company, I seen him
22 walk around behind it after he took the pins out of it.

1 Q Did you say anything to him?

2 A I told him that wasn't safe, and he said he
3 knew what he was doing. He said it wouldn't fall. And I
4 said, "You never know. The wind could come and blow it
5 down."

6 Q Did H and W have safety meetings?

7 A Yes.

8 Q How often?

9 A Once a month, I think.

10 Q Okay. And was the general safety of
11 construction sites and using dangerous pieces of
12 machinery discussed?

13 A Yes.

14 Q And was it known to the employees if they saw a
15 dangerous condition they should correct it or report it?

16 MR. GOODMAN: Objection. Leading.

17 THE COURT: Sustained.

18 Q (By Mr. **Opp Atty 1 Redacted**:) Did H and W
19 Site Development ever suggest to its employees --

20 MR. GOODMAN: Objection. Leading.

21 THE COURT: Sustained.

22 MR. GOODMAN: Your Honor, he continues to

1 tell him what the answer is.

2 THE COURT: Sustain the objection.

3 Q (By Mr. **Opp Atty 1 Redacted**:) Did H and W
4 Site Development give any instructions to its employees
5 pertaining to dangerous conditions?

6 A Yes.

7 Q What were those instructions, sir?

8 A Not to put yourself in different situations
9 that something might happen like that.

10 Q Last question I have for you, sir, is you have
11 given testimony in this case previously, haven't you?

12 A Yes.

13 Q And on a couple of occasions, right?

14 A I don't remember.

15 Q On a couple of occasions, you have given
16 testimony, correct?

17 A Yes.

18 Q After one particular occasion when you gave
19 testimony, did Mrs. **Redacted** say anything to you?

20 MR. GOODMAN: Objection, your Honor.

21 Irrelevant.

22 THE WITNESS: I don't remember.

1 MR. **Opp Atty 1 Redacted**: Thank you,
2 your Honor.

3 MR. GOODMAN: If it pleases the Court, I
4 have some cross-examination.

5

1 CROSS-EXAMINATION

2 BY MR. GOODMAN:

3 Q Mr. **Witness Name Redacted**, did anyone ever
4 tell you that you are never supposed to remove this
5 tailgate in the field?

6 A No.

7 Q Is there any warning anywhere on the truck that
8 said you should never remove this tailgate in the field?

9 A Not to my knowledge.

10 Q Isn't it true, sir, that tailgates are removed
11 by construction companies in the field on a regular
12 basis?

13 A Depends on the company, I guess.

14 Q You have seen them remove them that way?

15 A Yes, I have removed them.

16 Q Isn't it also true that you, in fact, do not
17 know who attached the chain to the tailgate?

18 A Right.

19 Q Okay. And, in fact, you don't even know
20 whether or not a metal strap was attached to the top of
21 the tailgate, do you?

22 A What for?

1 Q You don't know that, do you?

2 A No. Why should they attach a strap?

3 Q I've got to ask the questions, Mr. **Witness
4 Name Redacted**. I'm the lawyer. You are the witness.
5 You just answer.

6 Isn't it true that your employer, in fact --
7 H and W Site Development Company -- instructed you in two
8 different methods of removing tailgates from dump trucks?
9 Isn't that true?

10 MR. **Opp Atty 1 Redacted**: Your Honor,
11 I request that counsel at least give a definition of
12 the time period, because there is prestrap
13 attachment and post-strap attachment.

14 THE COURT: I think that's a fair
15 objection.

16 Q (By Mr. Goodman:) Isn't it true that, prior to
17 this incident, your employer, H and W Site Development,
18 instructed you in two different methods of removing
19 tailgates from dump trucks?

20 A I only know one.

21 Q Do you recall your testimony on April 8, 1992?

22 A No.

1 Q And I refer to page five, Line Seventeen to
2 Twenty-five -- I'm sorry -- page eight, lines Nine to
3 Twelve, when I asked you the question: "Now, in fact,
4 were you instructed in two different ways of taking off
5 tailgates by your employer?"

6 And your answer was: "Yes. Yes, sir."

7 Did you say that?

8 MR. **Opp Atty 1 Redacted**: Again, your
9 Honor, we don't have a definition of the time,
10 whether preattachment or --

11 THE COURT: Well, that goes to the
12 question.

13 Q (By Mr. Goodman:) Did you, in fact, say that,
14 sir?

15 A I don't remember saying that.

16 Q Isn't it true, sir, that you were instructed in
17 two different methods of removing tailgates?

18 A I only know of one way, the right way. That's
19 to get inside and kick it out.

20 Q You don't recall being instructed in two
21 different methods of removing tailgates?

22 A No.

1 Q Then would you have been lying on your
2 deposition on April 8, 1992?

3 MR. **Opp Atty 1 Redacted**: Objection,
4 your Honor.

5 THE COURT: Sustained. That's the
6 improper way to ask a question.

7 Q (By Mr. Goodman:) Can you tell me two ways in
8 which you were instructed in taking off tailgates prior
9 to this accident?

10 A No.

11 Q Do you recall your testimony on April 8, 1992?
12 And I refer to page nine, Line Eight, where you state,
13 under -- do you remember you were under oath at that
14 time? Do you have the transcript with you, sir?

15 A Yes.

16 Q Are you referring to the transcript as I'm
17 giving you the page and line number?

18 A Yes.

19 Q See Line Eight?

20 A Yes.

21 Q Would you read me the question and then your
22 answer, please.

1 MR. **Opp Atty 1 Redacted**: Your Honor,
2 that's not proper, if he's attempting to do this.

3 THE COURT: You are the interrogator. Ask
4 the questions, please.

5 Q (By Mr. Goodman:) The question reads: "All
6 right. Now, would you please tell us, what are the two
7 ways that you were instructed in taking off this tailgate
8 prior to this accident?"

9 And your answer: "One was to get inside, take
10 the pins out, and push the tailgate off, which was the
11 normal procedure. And the other was to get inside and
12 take the pins out and lift it off with the loader or
13 something."

14 Do you recall saying that?

15 A Yes.

16 Q So you were instructed in two different ways in
17 taking off a tailgate?

18 A That wasn't the way we were instructed to take
19 it off. That's just another way of doing it. There is a
20 lot of ways of doing things, but that don't make them the
21 right way.

22 Q Uh-huh. Can you read -- do you deny that

1 that's what the --

2 MR. **Opp Atty 1 Redacted**: Your Honor,
3 I'm going to object. This is improper.

4 THE COURT: Sustained. Question is asked
5 and answered.

6 Q (By Mr. Goodman:) Have you been talking to the
7 defense team here prior to testifying in this court
8 today?

9 A No.

10 MR. **Opp Atty 1 Redacted**: Your Honor,
11 this is irrelevant and immaterial.

12 MR. GOODMAN: I think it's very material,
13 your Honor, when the answers are so vastly changed.

14 THE COURT: Approach the bench.

15 (The following is a side-bar conference held out of
16 the hearing of the jury.)

17 MR. **Opp Atty 2 Redacted**: We move to
18 strike counsel's comments from the record.

19 THE COURT: Let's not get into a mistrial
20 at this stage of the game.

21 MR. DORE: We unfortunately have to move
22 for a mistrial. We ask that it be stricken from the

1 record and the jury be asked to disregard some of
2 the comments.

3 MR. **Opp Atty 1 Redacted**: I move for
4 mistrial first and foremost.

5 MR. GOODMAN: The comments are certainly
6 not important. I certainly stated what the record
7 said, your Honor.

8 THE COURT: That isn't what you did or are
9 doing. Basically, I'm just going to tell them to
10 ignore the question and strike that and deny your
11 motion for mistrial.

12 (Thereupon, the proceedings at side-bar were
13 concluded, and the trial resumed before the jury as
14 follows.)

15 THE COURT: Jury will disregard the
16 question. It's stricken.

17 And continue with your questioning.

18 MR. GOODMAN: Thank you, your Honor.

19 Q Isn't it true, sir, that you have personally
20 seen tailgates removed by attaching one end of a chain to
21 a tailgate and one to the front end of a scoop or loader?

22 A Yes, but that don't make it right.

1 Q Isn't it true you have seen that?

2 A Normally, that's just to put it back on.

3 Q Isn't it true that you have seen tailgates
4 removed by doing that method?

5 A Not very often.

6 Q But you have seen it?

7 A Correct. I can't remember when I seen it.

8 Q Do you recall your deposition that was taken on
9 June 23 of 1988? And I refer to page seventy-six, Line
10 Twelve to Eighteen. The question being: "You have seen
11 people remove tailgates by attaching one end of the chain
12 to the tailgate and one end of the chain to a scoop from
13 a payloader?"

14 Your answer: "Yes.

15 "Question: How many times did you see this
16 happen?

17 "Answer: Couple. I've seen them remove it a
18 couple of times like that."

19 Is that what you said?

20 A I can't remember.

21 Q Who gave you those depositions that you are
22 reading from?

1 A They came in the mail.

2 Q From whom did they come in the mail, sir?

3 A I suppose Mr. **Opp Atty 1 Redacted**.

4 Q You suppose Mr. **Opp Atty 1 Redacted**?

5 A Yes.

6 Q Do you know it was Mr. **Opp Atty 1 Redacted**?

7 A No, I don't. It might have been the secretary.

8 Q I'm sorry?

9 A It might have been his secretary; I don't know.

10 Q Now, isn't it true that you saw tailgates

11 removed that way at H and W?

12 MR. **Opp Atty 1 Redacted**: Your Honor,

13 this is an ambiguous question. In what way and at

14 what point in time?

15 THE COURT: Let's pin down the way.

16 Q (By Mr. Goodman:) Isn't it personally true

17 that you have seen them personally removed by one end of

18 the chain to a tailgate and one end of the chain to a

19 scoop at H and W?

20 A That's the way they are put back on.

21 Q Isn't it true that you saw them removed that

22 way, sir?

1 A Not very often.

2 Q But you did see it?

3 A Well, a lot of people do a lot of things wrong.

4 Q Do you remember when you were under oath on
5 June 23 of 1988, sir?

6 A No.

7 Q Could you refer to page seventy-six of your
8 sworn testimony on that day, sir, Line Twelve.

9 A It doesn't go that far. Page forty is as far
10 as it goes.

11 Q Are you looking at your deposition dated
12 June 23, 1988, sir?

13 A No, I don't have it. I don't remember.

14 Q All right. The question was: "Have you seen
15 people remove tailgates by attaching one end of the chain
16 to the tailgate and one end of the chain to a scoop from
17 a payloader?

18 "Answer: Yes.

19 "Question: How many times did you see this
20 happen?

21 "Answer: Couple. I seen them remove them a
22 couple of times like that.

1 "Question: On that day?

2 "Answer: No.

3 "Question: These times you saw these removed,
4 were these during the times you were working for H and W?

5 "Answer: Correct."

6 Was that your testimony on that day?

7 MR. **Opp Atty 1 Redacted**: That was the
8 same things he read a minute ago.

9 MR. GOODMAN: No, I added H and W, because
10 they insisted on clarification.

11 THE COURT: Objection is overruled.

12 Q (By Mr. Goodman:) That was your testimony on
13 that day, was it not?

14 A I don't remember.

15 Q And, in fact, not only have you seen those
16 removed at H and W that way, isn't it also true that you
17 have seen them removed that way in companies you have
18 worked at in addition to H and W? Isn't that correct?

19 A I don't remember that, either.

20 Q Do you remember your sworn testimony on the
21 same day that I stated before, which was June 23, 1988,
22 sir?

1 A No.

2 Q I refer to page seventy-seven, lines Two to
3 Three. And I'll be happy to read preceding paragraphs if
4 defense wishes me to.

5 I'll start with page seventy-six, Line Twenty-
6 five: "So they were removed in the manner by employees
7 at H and W?

8 "Answer: Right. I worked at other companies
9 that they removed them that way, too."

10 Remember saying that?

11 A No.

12 Q Isn't it true, sir, that under -- other than
13 standing underneath the tailgate, **Decedent Name
14 Redacted**'s tailgate removal was exactly as the company
15 instructed you to do?

16 A No. I argued with him to get inside the
17 tailgate and kick it out, and he said he knew what the
18 fuck he was going. And then, in a split-second, it fell
19 on his head.

20 Q Do you remember your testimony on the same day
21 that I just noted, on page fifty-two, lines Nine to
22 Thirteen: "What is it about the way that **Decedent Name

1 Redacted** removed that tailgate which is different from
2 the way that you were instructed to remove tailgates with
3 chains and payloaders, as you described?

4 "Answer: He stood under it.

5 "Question: That's the only difference?

6 "Answer: Basically, yes."

7 Was that your testimony on that day?

8 A I think so. I don't remember.

9 Q Do you recall, on page fifty two, when I asked
10 you: "Other than the fact that he stood under the
11 tailgate, the procedure he was using was exactly what the
12 company had instructed you?"

13 MR. **Opp Atty 1 Redacted**: Your Honor,
14 there was no response to that because there was a
15 series of objections lodged in the deposition back
16 in 1988, and there is no response to that.

17 I object to this improper procedure.

18 MR. GOODMAN: I'll skip that, your Honor.

19 Q (By Mr. Goodman:) Let's move on to page fifty-
20 three, Line Fourteen: "Now, I ask you again, the basic
21 thing that you think different from the way the company
22 told you to remove this tailgate is in one respect only,

1 and that is that he stood behind the truck. Is that
2 right?

3 "Answer: Basically."

4 MR. **Opp Atty 1 Redacted**: In the
5 deposition back in 1988, there is an interposing
6 objection from a number of attorneys, and that was
7 done at that point in time, and there is not a
8 response until sometime later in the deposition. It
9 was objected to at that point in time.

10 MR. GOODMAN: I will skip over that, your
11 Honor, and go to page seventy-seven.

12 THE COURT: I will strike the question.

13 MR. GOODMAN: You can strike that
14 particular reference, your Honor.

15 THE COURT: Be stricken. Jury, ignore.

16 Q (By Mr. Goodman:) Do you recall page seventy-
17 seven, on Line Four, when the question was: "Okay. And
18 the basic difference between -- the only difference
19 between the times you have mentioned and this particular
20 time -- and I know I have asked you before; I want you to
21 confirm it in my mind -- was on this particular time, the
22 person removing the tailgate was behind the tailgate?

1 "Answer: Right. Because, see, I thought all
2 he was going to do was hook the chain to the loader. I
3 didn't know all the pins were gone or anything."

4 Is that your testimony?

5 A That's correct.

6 Q Now, where were you positioned with regard to
7 the loader at the time the tailgate fell?

8 A Well, that's obvious. I was sitting in the
9 seat -- the loader.

10 Q It's not obvious to me.

11 MR. **Opp Atty 1 Redacted**: I object to
12 the gratuitous counsel's comments.

13 THE COURT: Counsel's comments will be
14 stricken. The jury will ignore it.

15 MR. **Opp Atty 1 Redacted**: Thank you,
16 your Honor.

17 Q (By Mr. Goodman:) Isn't it true that you claim
18 to have been sitting up in this seat throughout the time
19 that he was removing this tailgate?

20 A Correct. The Park was on and break was on, and
21 it was in Neutral.

22 Q All right. And from the way you described the

1 position of the loader and the dump truck to Mr. **Opp
2 Atty 1 Redacted** in your earlier testimony, you would
3 have had to be looking at the rear of the dump truck at
4 all times, is that not correct?

5 A That's correct.

6 Q And yet, in spite of the fact that you were
7 looking at the back of the dump truck at all times, you
8 didn't know whether the chain was attached to a hook at
9 the top of the tailgate, is that correct?

10 A That's correct.

11 Q Now, you stated that **Decedent Name Redacted**
12 indicated that he did not want to kick the tailgate off
13 because he did not want to get his truck dirty. Is that
14 correct?

15 A That's correct.

16 THE COURT: I think that was an erroneous
17 statement with the tailgate as opposed to the truck.

18 MR. GOODMAN: Perhaps the witness can
19 correct the statement.

20 MR. **Opp Atty 1 Redacted**: He didn't
21 make the statement; you did, counselor. You need to
22 rephrase your question, please.

1 THE COURT: It may or may not be. It
2 seemed to me it was a mistake, because you said
3 "truck," as opposed to "tailgate."

4 MR. GOODMAN: Did I? I'm sorry.

5 Q (By Mr. Goodman:) Did you say he didn't want
6 to kick the tailgate off because he didn't want to get
7 his tailgate dirty?

8 A That's what he was arguing about.

9 Q I would like you to take a look at what we have
10 marked as Plaintiff's Exhibit Nine A. Would you take a
11 look at that, sir.

12 Is that an accurate depiction of what the --
13 what the position of the vehicles were and the area
14 around --

15 A No.

16 Q That's not an accurate depiction of it?

17 A No. That's after the fact.

18 Q Did it change in any way from the way it looked
19 before the fact? Are the vehicles in any different
20 places?

21 A The tailgate was up, and the loader was back,
22 and the bucket was down.

1 Q But was there any dirt on the ground just like
2 this (indicating)?

3 A There's just dirt everywhere. It's out in the
4 field.

5 Q Exactly.

6 MR. **Opp Atty 1 Redacted**: I move to
7 strike the gratuitous --

8 THE COURT: Counsel's remark will be
9 stricken, and the jury will ignore it.

10 Q (By Mr. Goodman:) Isn't it true that you
11 invented this story after the accident?

12 A I beg your pardon?

13 THE COURT: You can answer that yes or no.

14 THE WITNESS: No, I did not invent
15 nothing.

16 Q (By Mr. Goodman:) Isn't it true that on the
17 day of the incident, you never, in fact, saw **Decedent
18 Name Redacted** remove any of the hinge pins?

19 A I didn't see him take nothing off the truck,
20 no.

21 Q The truth is, you never saw him remove even one
22 hinge pin, is that right?

1 A I was eating my sandwich; that's correct.

2 Q Isn't it true that you personally saw
3 **Decedent Name Redacted** enter the dump body in order
4 to fix one of these?

5 A No.

6 Q Isn't it true that he --

7 THE COURT: Counsel, approach the bench,
8 please.

9 (The following is a side-bar conference held out of
10 the hearing of the jury.)

11 THE COURT: Do you have any evidence?

12 MR. GOODMAN: He states in his deposition,
13 and I'm about to move on to that, your Honor.

14 MR. **Opp Atty 2 Redacted**: He already
15 said in his deposition and here in court today he
16 didn't see anything about the pins.

17 THE COURT: Do you have some deposition
18 testimony that he previously stated that he saw this
19 or anything?

20 MR. GOODMAN: Yes, that he saw him fix the
21 pin, your Honor.

22 MR. **Opp Atty 1 Redacted**: Judge, he

1 testified in his deposition and here today that he
2 did not see the decedent do anything to the truck.

3 MR. GOODMAN: Should I show you the
4 deposition?

5 THE COURT: Show it to them.

6 MR. GOODMAN: "Question: How do you know
7 he went to remove them?

8 "Answer: He climbed in the truck to
9 do that.

10 "Question: So you are saying --

11 "Answer: He went to fix it. That's
12 what he told us."

13 MR. **Opp Atty 1 Redacted**: He didn't
14 see it.

15 MR. GOODMAN: "Question: He went to fix
16 what?

17 "Answer: The pin that holds -- the
18 pin at the top. There is a little cotter key, and
19 to remove it, you have to take the cotter key out.
20 And he broke the cotter key."

21 MR. **Opp Atty 1 Redacted**: This is all
22 what **Decedent Name Redacted** told him.

1 THE COURT: They said -- he didn't say he
2 saw it. This statement is incorrect from that
3 standpoint. You can ask him about that, but -- the
4 conversation with the decedent -- but that isn't his
5 statement as to what he saw, and that's a big
6 difference.

7 MR. **Opp Atty 1 Redacted**: Thank you,
8 your Honor.

9 (Thereupon, the proceedings at side-bar were
10 concluded, and the trial resumed before the jury as
11 follows.)

12 Q (By Mr. Goodman:) Isn't it true that he told
13 you that he went to fix the pivot pin?

14 A Keith did.

15 Q Mr. **Witness Name Redacted**, this is a pivot
16 pin, is it not?

17 A I don't know.

18 Q Let me get closer.

19 A Last time you showed me a nail and told me it
20 was a cotter key.

21 Q This is a pivot pin. And I'm referring, for
22 the record, to Plaintiff's Exhibit Twenty-two.

1 A Usually, they are a lot longer.

2 Q Is that basically the arrangement?

3 A Yes.

4 Q Is that a cotter key?

5 A Yes, that's a cotter key.

6 Q Now --

7 A That won't come out unless you pull it out.

8 Even if the cotter key is gone, you have to drive them in
9 and out with a hammer.

10 Q This fits in like this?

11 A Could go the other way.

12 Q Or the other way -- either way -- and that
13 holds the pin in, right?

14 A No.

15 Q That doesn't hold the pin in?

16 A No.

17 Q What does it do?

18 A Just sits there.

19 Q For no reason?

20 A That's right.

21 Q Thank you, sir.

22 A It's a safety pin. I guess that would be the

1 only reason it sits in there.

2 Q Would you agree with me that, if you wanted to
3 remove one of these hinge pins, you would have to remove
4 the cotter key?

5 A The first step of it, yes.

6 Q And certainly, if you wanted to remove a hinge
7 pin, you would not want to put a nail in here instead of
8 the cotter key, right?

9 A That would hold it.

10 Q That would hold it in, right? That wouldn't
11 facilitate the moving of it?

12 A No. It wouldn't fall out, either. You have to
13 beat them out with a hammer.

14 Q You mentioned that **Decedent Name Redacted**
15 asked if he could borrow a pair of pliers from you, is
16 that right?

17 A Keith did.

18 Q Mr. **Witness Name Redacted**, did **Decedent
19 Name Redacted** attempt to fix a broken cotter key on
20 that day?

21 A No, he took it out. He broke it taking it out.

22 Q Do you recall your testimony given on April 8

1 of 1992?

2 A No.

3 Q Page twelve, Line Three, sir -- I'm sorry --
4 page eleven -- no, sorry -- page twelve, Line Three.

5 "Question: Uh-huh. Did **Decedent Name
6 Redacted** attempt to fix that broken cotter key, sir?

7 "Answer: As far as I know."

8 Do you remember saying that? Is that what you
9 said?

10 A I suppose. I don't remember.

11 Q And isn't it true that **Decedent Name
12 Redacted** came to you and borrowed a nail like this one?

13 A Keith did.

14 Q Refer you to page eleven of your testimony of
15 April 8, 1992, Line Twenty-four.

16 "Question: Isn't it true that **Decedent Name
17 Redacted** came to you and borrowed the nail?"

18 And I refer you to page twelve, Line One and
19 Two: "Answer: One of them. I don't remember. He also
20 borrowed a pair of pliers, too."

21 Do you remember saying that?

22 A Yes, I remember that.

1 Q So he borrowed a nail to put in the pivot pin,
2 to put it back together, isn't that true?

3 MR. **Opp Atty 1 Redacted**: Objection,
4 your Honor.

5 THE COURT: Sustain that.

6 Counsel, approach the bench.

7 (The following is a side-bar conference held out of
8 the hearing of the jury.)

9 THE COURT: That's not an accurate
10 statement of his testimony. His testimony says that
11 one of them did.

12 MR. **Opp Atty 1 Redacted**: Correct.

13 MR. GOODMAN: Well, I have more testimony
14 from the deposition that I'm going to bring up.

15 THE COURT: And you asked him, "Isn't that
16 true," and he said, "One of them did," before.

17 MR. GOODMAN: I will go directly to the
18 deposition and ask a question from that.

19 THE COURT: You have to be careful.

20 MR. GOODMAN: Okay.

21 (Thereupon, the proceedings at side-bar were
22 concluded, and the trial resumed before the jury as

1 follows.)

2 Q (By Mr. Goodman:) Didn't **Decedent Name
3 Redacted** come over to you and say he was going to
4 repair a pivot pin or a hinge pin?

5 A I don't remember. I just remember Keith
6 coming over. The nail wasn't to repair the pin, anyway;
7 it was to put in after he took it out. You can't repair
8 it with a nail.

9 Q Do you recall your testimony of June 23, 1988,
10 page six -- and I'm going to start on Line Seven, your
11 Honor, because I need to establish a chain as to who we
12 are talking about as it refers.

13 "Question: Was it before the break that you
14 were made aware by **Decedent Name Redacted** of his
15 intent to remove the tailgate?

16 "Answer: Yes.

17 "Question: And how did he say that to you?"

18 MR. **Opp Atty 1 Redacted**: Excuse me,
19 counselor. Where are you reading?

20 MR. GOODMAN: Page sixty-six, starting on
21 Line Seven.

22 MR. **Opp Atty 1 Redacted**: You said

1 "page six" a moment ago.

2 MR. GOODMAN: I'm sorry.

3 THE COURT: Go ahead.

4 Q (By Mr. Goodman:) Okay. "Question: Was it
5 before the break that you were aware of **Decedent Name
6 Redacted**'s intent to remove the tailgate?

7 "Answer: Yes.

8 "Question: How did he say that to you?

9 "Answer: Well, he said he had to do something
10 with his truck to take a break. After we got off break,
11 we would remove it.

12 "Question: Meaning the tailgate?

13 "Answer: Yes. He stated, 'Go take your
14 break,' and he would go do what he had to do.

15 "Question: Is it your understanding he went to
16 go remove the tailgate?

17 "Answer: Right. See, we thought he was going
18 over there to push it out.

19 "Question: And at some point in time, I take
20 it, the next discussion you had with him was when he was
21 making a comment about you guys coming off your break, is
22 that right?

1 "Answer: Yes.

2 "Question: All right. And at the time he made
3 that comment, what was he doing?

4 "Answer: Just standing.

5 "Question: Was he up in the truck?

6 "Answer: No, he was away from the truck. He
7 came back over towards us.

8 "Question: At any point before this accident
9 occurred, were you aware that the pins on the tailgate
10 had been removed?

11 "Answer: No. He came over and said he was
12 going to repair one. That's why he borrowed a nail, to
13 put in the pin, to put it back together again."

14 Did you say that, sir?

15 A I guess. I don't remember.

16 Q And isn't it true that he borrowed that nail
17 from you and not **Co-Worker Name Redacted**?

18 A I don't remember. The nail doesn't do
19 anything, anyway. It doesn't matter who you borrow a
20 nail from.

21 Q Perhaps I can refresh your recollections. Page
22 thirteen, Line Two --

1 MR. **Opp Atty 1 Redacted**: Objection.

2 If he's going to try to impeach this witness, no
3 matter how feeble the attempt, so far he needs to
4 establish some kind of))

5 THE COURT: The remark about "feeble" will
6 be stricken.

7 MR. **Opp Atty 1 Redacted**: I'm sorry.
8 It's late in the day.

9 THE COURT: Let's get questions and
10 answers going.

11 Q (By Mr. Goodman:) Did you give him that nail,
12 sir?

13 A I don't remember.

14 Q Would you refer to your deposition from
15 April 8, 1992, page thirteen, Line Two, sir.

16 "Question: Okay. And did you give him that
17 nail?

18 "Answer: Yes."

19 Did you say that?

20 A I don't remember.

21 MR. **Opp Atty 1 Redacted**: And, your
22 Honor, may we approach on that, please?

1 THE COURT: Yes.

2 (The following is a side-bar conference held out of
3 the hearing of the jury.)

4 MR. **Opp Atty 1 Redacted**: I move for a
5 mistrial at this point in time. Opposing counsel
6 has made this last misstatement of fact because, if
7 you read the line preceding that, it says,
8 "Question: Mr. **Witness Name Redacted**, did
9 **Decedent Name Redacted** ask you for a nail to
10 replace the cotter key that was broken?

11 "Answer: One of them did, Keith or
12 him. One of them did. Somebody asked me for
13 something.

14 "Question: Did you give him that
15 nail?

16 "Answer: Yes."

17 Opposing counsel has now
18 mischaracterized and completely misled the jury with
19 regard --

20 THE COURT: We'll let you read those
21 questions and answers.

22 MR. **Opp Atty 1 Redacted**: The point is

1 that he has now made another misstatement of
2 evidence and another misstatement of what the true
3 facts are, and he has failed to -- he is
4 mischaracterizing the testimony.

5 And we move for mistrial. We have
6 cumulative error.

7 THE COURT: Just to clarify, I'll let you
8 go ahead and read the complete set of questions and
9 answers.

10 MR. **Opp Atty 1 Redacted**: Right now?

11 THE COURT: Yes.

12 (Thereupon, the proceedings at side-bar were
13 concluded, and the trial resumed before the jury as
14 follows.)

15 THE COURT: For the record, I'll let Mr.
16 **Opp Atty 1 Redacted** read further in the
17 deposition at this time. Just a matter of
18 clarification.

19 MR. **Opp Atty 1 Redacted**: For the
20 record, I'm reading from the prior testimony dated
21 April 8, 1992, starting on page eleven.

22 "Question: Who borrowed a nail?

1 "Answer: I think it was **Co-Worker
2 Name Redacted**. He came by and got one.

3 "Question: Who?

4 "Answer: **Co-Worker Name
5 Redacted**.

6 "Question: **Co-Worker Name
7 Redacted**?

8 "Answer: Yes.

9 "Question: And isn't it true that
10 **Decedent Name Redacted** came to you and borrowed
11 a nail?

12 "Answer: One of them. I don't
13 remember. He also borrowed a pair of pliers, too.

14 "Question: Uh-huh. Did **Decedent
15 Name Redacted** attempt to fix that broken cotter
16 key, sir?

17 "Answer: As far as I know."

18 And then, going on to what we were
19 mentioning a few moments ago, page twelve, Line Two.

20 "Question: Mr. **Witness Name
21 Redacted**, did **Decedent Name Redacted** ask you
22 for a nail to replace the cotter key that had

1 broken?

2 "Answer: One of them did, Keith or
3 him. Somebody asked me for something.

4 "Question: Okay. Did you give him
5 that nail?

6 "Answer: Yes.

7 "Question: All right. Did you see
8 him put the nail in the hole?

9 "Answer: No.

10 "Question: Did you see him replace
11 the broken cotter key and put the nail into the
12 hole?

13 "Answer: No.

14 "Question: Did **Decedent Name
15 Redacted** tell you that he intended to repair the
16 pivot pin by putting the nail into the hole?

17 "Answer: No. He said he was going
18 to work on his truck."

19 THE COURT: Okay.

20 MR. **Opp Atty 1 Redacted**: Thank you,
21 your Honor.

22 Q (By Mr. Goodman:) Isn't it true that the only

1 time you saw **Decedent Name Redacted** get inside that
2 dump body was when he went over in the beginning, and you
3 saw him on the side to put that nail into the pin? Isn't
4 that true?

5 A I don't know. I don't remember that.

6 Q I'm going to refer you to page twenty-seven of
7 your deposition, starting --

8 MR. **Opp Atty 1 Redacted**: Counsel,
9 which date?

10 MR. GOODMAN: Dated June 23, 1988,
11 starting on page twenty-seven, Line Nine.

12 "Question: So the time in which he
13 said, 'I know what the fuck I'm doing' and the time
14 in which the tailgate fell, how long a period was
15 that?

16 "Answer: Seconds.

17 "Question: Was he doing anything
18 during that period of time?

19 "Answer: He had the chain in his
20 hand and was going to attempt to grab ahold of it,
21 went over to get in the front of my bucket to get
22 into the bucket" --

1 MR. **Opp Atty 1 Redacted**: Counselor,
2 I'm looking at page twenty-seven on both of the
3 testimonies, and there is nothing on that. Are you
4 on page twenty-seven?

5 MR. GOODMAN: Page twenty-seven of the
6 deposition of June 23, 1988.

7 MR. **Opp Atty 1 Redacted**: What line?

8 MR. GOODMAN: Line Nine, sir.

9 MR. **Opp Atty 1 Redacted**: Thank you.

10 THE COURT: Go ahead.

11 Q (By Mr. Goodman:) "Question: Had he climbed
12 on the truck at all at this point?

13 "Answer: He was on the ground.

14 "Question: Did you ever see him climb onto the
15 truck to hook anything on it?

16 "Answer: No, except when he went over in the
17 beginning, and I seen him up on the side to put that nail
18 in the pin."

19 Did you say that, sir?

20 A I don't remember that. See, I was sitting on
21 the back of my tailgate, you know. I figured he did what
22 he did, whatever he was going to do.

1 Q Isn't it a fact that the only thing you saw him
2 do was replace a broken cotter key with a nail?

3 A No.

4 Q And isn't it true that on that day, immediately
5 after the incident, you were approached by a sheriff's
6 deputy -- specifically, Deputy Anderson and Detective
7 Rhodes -- who asked you questions about what happened on
8 that day?

9 A I don't remember.

10 Q You don't remember? Isn't that true, sir, that
11 on June 3 of 1993, you made no mention whatsoever of
12 Mr. **Co-Worker Name Redacted** to the sheriff's
13 deputies, even though you knew he had taken out one of
14 the hinge pins that held the tailgate in place?

15 A What for? No, I just answered whatever they
16 asked me. That's all I remember.

17 Q Isn't it true you made no mention of **Co-
18 Worker Name Redacted**?

19 A For what?

20 Q Isn't it true that you informed the deputy that
21 you and **Decedent Name Redacted** together removed the
22 hinge pins on the dump truck?

1 A No.

2 Q Isn't it true that, after the incident, you
3 went around telling people that you had seen **Decedent
4 Name Redacted** take out both of the pivot pins?

5 MR. **Opp Atty 1 Redacted**: Can we
6 approach? We have a problem.

7 (The following is a side-bar conference held out of
8 the hearing of the jury.)

9 THE COURT: Do you have something to back
10 that up?

11 MR. GOODMAN: Yes, I do. I've got a
12 statement that was taken by --

13 MR. **Opp Atty 1 Redacted**: Your case in
14 chief is over.

15 MR. **Opp Atty 2 Redacted**: None of this
16 has been marked for ID. None of this has been
17 marked for ID.

18 MR. GOODMAN: Would you like to see the
19 statement, your Honor?

20 THE COURT: That's not the question.

21 MR. **Opp Atty 2 Redacted**: This is not
22 the evidence.

1 MR. GOODMAN: I'm trying to impeach him on
2 his statement.

3 THE COURT: You can't, on somebody else's
4 statements.

5 MR. GOODMAN: It's his statement.

6 MR. **Opp Atty 2 Redacted**: It's not the
7 evidence.

8 MR. GOODMAN: It's going to come in
9 evidence.

10 MR. **Opp Atty 2 Redacted**: How is that?
11 Your case is over.

12 MR. GOODMAN: I'll recall Mr. Walton. He
13 took the statement.

14 MR. **Opp Atty 1 Redacted**: Judge,
15 remember back when opposing counsel tried to have --
16 do you remember back when opposing counsel gave Mr.
17 **Boss Name Redacted** a document, and I objected on
18 the grounds that it was improper refreshment of his
19 recollection because -- and he tried to introduce a
20 document that was excluded by your Honor -- a
21 handwritten document? That's what he's talking
22 about.

1 MR. GOODMAN: It was marked for admission
2 into evidence, and we discussed the fact that they
3 had agreed --

4 MR. **Opp Atty 1 Redacted**: The point
5 is, it was inadmissible then, and it's inadmissible
6 now. You can only use a deposition for --

7 MR. GOODMAN: Your Honor, this is a prior
8 statement.

9 THE COURT: If he's got a prior written
10 statement --

11 MR. **Opp Atty 1 Redacted**: Then he
12 needs to lay a proper predicate and go at it the
13 right way. But he hasn't done that so far.

14 MR. GOODMAN: I'm about to, your Honor.

15 MR. **Opp Atty 1 Redacted**: He's asking
16 about sheriff's deputies and other things, and we're
17 getting really close to that mistrial, because he's
18 trying to implicate him in a criminal investigation
19 in the matter, and there is no shred of evidence
20 that there is any culpable negligence.

21 THE COURT: This is a statement from the
22 guy to the company.

1 MR. **Opp Atty 1 Redacted**: But the last
2 question was regarding sheriff's deputies.

3 THE COURT: Well, let's deal with this
4 statement right now. If he signed a statement,
5 generally it's admissible to impeach.

6 MR. **Opp Atty 1 Redacted**: Fine. If
7 it's inconsistent. But it isn't.

8 MR. GOODMAN: It is.

9 MR. **Opp Atty 1 Redacted**: Let's do it.

10 MR. GOODMAN: We are going to.

11 THE COURT: Let get to it. Go ahead.

12 (Thereupon, the proceedings at side-bar were
13 concluded, and the trial resumed before the jury as
14 follows.)

15 THE COURT: Go ahead. Just hand him the
16 document and question him about it, Mr. Goodman.

17 Q (By Mr. Goodman:) I would like to show you a
18 statement here. Could you identify --

19 THE COURT: It's a document. Let's call
20 it that.

21 Q (By Mr. Goodman:) I would like to show you a
22 document, sir. Do you recognize that?

1 A Yes. It's the same thing you tried to do last
2 time. It wasn't mine. I told you no, I didn't sign it.
3 If I signed it, there was nothing on the top of it.

4 But, no.

5 Q There was nothing on the top of this statement?

6 A I didn't sign it.

7 Q You didn't sign this statement? You just said,
8 "If I did sign it, there was nothing on the top of it."

9 A I didn't sign it.

10 Q You never signed this?

11 A No.

12 THE COURT: Mr. Goodman, do you have a
13 question?

14 MR. GOODMAN: I am looking for something.

15 MR. **Opp Atty 1 Redacted**: The bailiff
16 informed me, just so the bench knows, that my
17 witness has got to go.

18 THE COURT: We've got a problem. I'm
19 going to have to take a break at five o'clock, and -
20 -

21 MR. **Opp Atty 1 Redacted**: I need to
22 get my witness out, because he has to go to work at

1 six o'clock, and I need to put **NEXT WITNESS NAME
2 REDACTED** on before he leaves because he's not
3 available tomorrow morning, and I'm ready to wrap
4 the case up right now.

5 MR. GOODMAN: Your Honor, I have a few
6 more questions.

7 THE COURT: Let's proceed. Ask him a
8 question, please.

9 MR. GOODMAN: Yes, your Honor. I simply
10 would like to find a point in the deposition.

11 THE COURT: Ask the question. Let's get
12 to it.

13 Q (By Mr. Goodman:) Mr. **Witness Name
14 Redacted**, do you remember when I handed you a document
15 on April 8, 1992?

16 A No.

17 Q Refer to page seventeen, Line Eight.

18 "Question: Was" -- well, perhaps Line two, same page.

19 "Question: Mr. **Witness Name Redacted**, you
20 stated here today that you never saw **Decedent Name
21 Redacted** remove the pins. Is that what you said the
22 day of the accident?

1 "Answer: I don't know. I can't remember.

2 "Question: Uh-huh.

3 "Answer: Probably.

4 "Question: Well, perhaps I can refresh your
5 recollection, sir. I have here a document here which
6 appears to hold the date 6/4/86. That is your
7 handwriting, is it not, sir?

8 "Answer: No, sir.

9 "Question: That is not your handwriting?

10 "Answer: No, sir. I signed that. Somebody
11 else wrote it."

12 Do you recall that?

13 MR. **Opp Atty 1 Redacted**: May we
14 approach?

15 THE COURT: Yes.

16 (The following is a side-bar conference held out of
17 the hearing of the jury.)

18 MR. **Opp Atty 2 Redacted**: That's
19 exactly what we just said, your Honor. You can't do
20 that. It's a statement that's not in his
21 handwriting. His signature appears on some
22 photocopy in somebody else's handwriting.

1 THE COURT: If he said he signed it --

2 MR. **Opp Atty 2 Redacted**: He said it
3 was his signature, but he never signed the
4 statement. He said his signature appeared on the
5 photocopy.

6 MR. GOODMAN: Is that a signature?

7 THE COURT: Yes.

8 MR. **Opp Atty 1 Redacted**: But he
9 didn't write it.

10 THE COURT: He can question him about it.
11 The witness has denied signing it, and if it's the
12 same document --

13 MR. **Opp Atty 1 Redacted**: There is
14 nothing here that links that document to this.

15 MR. GOODMAN: If we go on through --

16 THE COURT: Well, the problem is, does the
17 deposition identify this document?

18 MR. GOODMAN: I have to look through it.

19 MR. **Opp Atty 1 Redacted**: Judge, I
20 need to get my next witness on.

21 MR. GOODMAN: This is the document in
22 evidence, your Honor.

1 THE COURT: That document may be -- is
2 that document connected with the deposition in any
3 way?

4 MR. GOODMAN: Yes, your Honor.

5 THE COURT: How?

6 MR. GOODMAN: At one point, I said --

7 THE COURT: You are waving me a document.
8 Is there anything that shows that that's the
9 document that's in that deposition?

10 MR. GOODMAN: Yes, your Honor. But,
11 unfortunately, I've lost the cite. That's why I was
12 taking time.

13 THE COURT: Where is the document in
14 connection with the deposition?

15 MR. GOODMAN: This was offered during the
16 deposition. This was offered at the time. And then
17 the Judge said, "Okay, let the jury see it."

18 THE COURT: Let's wait on him.

19 MR. GOODMAN: This is where it is. It's
20 in this.

21 THE COURT: What does it say about the
22 document?

1 He says this is trial testimony, and
2 this is connected with the trial. And then he
3 admitted this was his signature on this document at
4 trial. That's the point he's trying to make.

5 MR. **Opp Atty 2 Redacted**: He read the
6 section of his testimony at trial, and all he says
7 is, "That's my signature. That's not my statement.
8 I didn't sign that."

9 We have a photocopy and his
10 signature, and something purporting to go along with
11 it appears on the same page. And he specifically
12 denies he signed anything like this.

13 There is no foundation.

14 THE COURT: The testimony is it's his
15 signature.

16 MR. **Opp Atty 2 Redacted**: That appears
17 on this photocopy of something that isn't even an
18 original document.

19 THE COURT: He can read the testimony, and
20 you are going to have to argue about it.

21 MR. **Opp Atty 2 Redacted**: Well, if he
22 reads this or if this comes into evidence, we're

1 talking about marked for ID as Plaintiff's Sixteen.

2 We are going to have to move for
3 mistrial.

4 THE COURT: Are you telling me this was
5 trial evidence?

6 MR. GOODMAN: Yes.

7 THE COURT: It was in trial?

8 MR. GOODMAN: Yes.

9 MR. **Opp Atty 2 Redacted**: No.

10 THE COURT: He's saying absolutely not.

11 MR. GOODMAN: Check with the clerk.

12 MR. **Opp Atty 2 Redacted**: It's been
13 marked.

14 THE COURT: It looks like it was received.

15 MR. **Opp Atty 2 Redacted**: I don't know
16 if this note means it was received or not.

17 MR. **Opp Atty 1 Redacted**: That was not
18 in evidence today, Judge -- not today or not
19 yesterday.

20 THE COURT: Not yesterday or today, but
21 he's trying to use it to impeach. He didn't get
22 this in at any other time. This is a clerical

1 error. He didn't get that in through Bill **Boss
2 Name Redacted**.

3 MR. GOODMAN: It was in. It was in at the
4 first of this trial.

5 THE COURT: This says 9/4, and now you are
6 talking about the last trial.

7 MR. GOODMAN: Well, the clerk can confirm
8 that it was in evidence at the last trial.

9 THE COURT: But where does -- where did
10 this tag come from?

11 MR. GOODMAN: It's in this transcript,
12 your Honor. That's why I'm looking for the cite,
13 your Honor.

14 But she has evidence that this was
15 admitted during this --

16 THE COURT: Only thing I got is this. How
17 did it get in -- how did it get different numbers?
18 Only thing I got on this is the one for this trial,
19 but I don't have -- this doesn't show --

20 MR. GOODMAN: We can look over here. I'll
21 go to the court clerk and get --

22 THE COURT: This is way too much time on

1 attendance?

2 MR. **Opp Atty 1 Redacted**: He is
3 excused.

4 (Witness excused.)

5 -----

6 (THEREUPON, THE REQUESTED EXCERPT FROM THE
7 PROCEEDINGS WAS CONCLUDED.)

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1 STATE OF FLORIDA)

2 COUNTY OF PINELLAS)

3 I, Michele Luckenbill, Deputy Official Court Reporter,
4 Sixth Judicial Circuit,

5 DO HEREBY CERTIFY that the foregoing proceedings were
6 had at the time and place set forth in the caption
7 thereof; that I was authorized to and did
8 stenographically report the said proceedings; and that
9 the foregoing pages, numbered 1 through 56, inclusive,
10 constitute a true and correct transcription of my said
11 shorthand report.

12 IN WITNESS WHEREOF, I have hereunto affixed my official
13 signature this 12th day of January, 1994, at Clearwater,
14 Pinellas County, Florida.

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Michele Luckenbill
Deputy Official Court Reporter

25 Sworn to and subscribed to before me by MICHELE
26 LUCKENBILL, who is personally known to me, this 12th day
27 of January, 1994, in Pinellas County, Florida.

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