

1 CAUTIONS IN USING A REALTIME PARTIALLY EDITED TRANSCRIPT

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3 IN A REALTIME PARTIALLY EDITED TRANSCRIPT, YOU MAY  
4 SEE THE REPORTER'S RAW SHORTHAND NOTES. CONSEQUENTLY, YOU  
5 MAY SEE ERRORS IN CAPITALIZATION AND PUNCTUATION,  
6 MISSPELLINGS, SMALL WORDS MISSING (SUCH AS "THE," "IT,"  
7 "A"), TRANSPOSED WORDS, DOUBLE WORDS, CONTEXTUAL HEARING  
8 MISTAKES, HEARING MISTAKES OF SOUND-ALIKE WORDS, POSSIBLE  
9 INCORRECT SPEAKER IDENTIFICATION, AND AT TIMES STENO  
10 OUTLINES THAT HAVE NOT BEEN TRANSLATED.

11 BE ASSURED THAT IN THE FINAL EDITED VERSION OF THE  
12 TRANSCRIPT, ALL ERRORS ARE CORRECTED. AN UNEDITED OR  
13 PARTIALLY EDITED TRANSCRIPT REPRESENTS A FIRST DRAFT AND  
14 SHOULD BE USED ACCORDINGLY.

15 THEREFORE, IT IS NOT RECOMMENDED YOU RELY ON THE  
16 UNEDITED VERSION AS YOU WOULD A FINAL EVIDENTIARY CERTIFIED  
17 TRANSCRIPT. ALTHOUGH AN UNEDITED OR PARTIALLY EDITED  
18 TRANSCRIPT WILL BE VERY READABLE AND MOSTLY ACCURATE, IT  
19 SHOULD BE USED WITH GREAT CARE.

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1 GABRIELINO-TONGVA TRIBE VS. STEIN  
2 TRIAL TESTIMONY OF ARTHUR MARGOLIS

3 10:25 AM.

4 THE COURT: Gabrielino versus Stein, BC361307.  
5 Good morning counsel, make your appearances.

6 MS. IBARRA: Good morning, Delia Ibarra on behalf  
7 of plaintiff Gabrielino-Tongva Tribe.

8 MR. FORDYCE: Good morning Your Honor Niall  
9 Fordyce on behalf of Mr. Stein and law offices of Jonathan  
10 Stein.

11 MR. STEIN: Jonathan Stein on behalf of SMDC and  
12 the Crane Group and there is just a smut approximately of  
13 procedure that might be helpful to clarify.

14 THE COURT: Maybe, what is it.

15 MR. STEIN: Mr. Margolis is testifying today,  
16 where we left off was the cross-examination which was not  
17 completed and then the redirect which was not yet begun and  
18 re also understand the court has ruled -- has already ruled  
19 in the past informally that Mr. Margolis is welcome to be a  
20 rebuttal witness.

21 THE COURT: Right.

22 MR. STEIN: For Mr. Mills. In light of all that  
23 to figure out the most efficient way of going, we should  
24 figure out which order of questioning is best suit the  
25 court.

26 THE COURT: Wherever we left off is where we are  
27 going to pick up.

28 MS. IBARRA: So we left off with the cross by Mr.

1 Stein but Mr. Stein had done a whole lot of time and the  
2 court had indicated if he was going to do more cross of Mr.  
3 Margolis that he would pay for Mr. Margolis and then the  
4 court indicated not so.

5 THE COURT: No we're going to -- rather than just  
6 do that, let's just limit the amount of time right.

7 MR. STEIN: And that's the chair for discussion.

8 THE COURT: I'm not going to do that, so Mr.  
9 Margolis come forward, stand behind the court reporter, we  
10 have another half hour with Mr. Margolis.

11 MR. STEIN: And then Your Honor I would  
12 cross-examine on rebuttal portion of his testimony.

13 THE COURT: Of course.

14 MR. STEIN: Very good.

15 THE COURT: You're talking about when he comes  
16 back for rebuttal.

17 MR. STEIN: Yeah.

18 THE COURT: Of course.

19 MR. STEIN: Well he's here --.

20 THE COURT: No when I say rebuttal I mean when  
21 they come back and want to rebut your case, they call him  
22 in your rebuttal case, he's being presented now as -- in  
23 case in chief, you are cross-examining, if they want to  
24 bring him back for rebuttal, they can bring him back for  
25 rebuttal, okay.

26 MR. STEIN: Very good.

27 THE COURT: And then you will have the opportunity  
28 to do examination at that time as well.

1 MR. STEIN: Then I will finish by 11:00 o'clock.

2 THE COURT: Okay.

3 MR. STEIN: And then Ms. Ibarra would have a  
4 chance to redirect.

5 THE COURT: I have think that's how it goes,  
6 right.

7 MS. IBARRA: When I do redirect can I call tore  
8 expediency.

9 THE COURT: Pardon.

10 MS. IBARRA: For expediency when I call him back  
11 for redirect or rebuttal of the milliliters mills  
12 testimony.

13 THE COURT: Well rebuttal is in the rebuttal case  
14 so if he's going to come back -- is he prepared to do that.

15 MS. IBARRA: He is.

16 THE COURT: Well then okay. Are you prepared to  
17 respond to the rebuttal to mills because if you have I'll  
18 give you more time.

19 MR. STEIN: Well very good Your Honor, if I may  
20 answer that indirectly I don't mean to --.

21 THE COURT: Yes.

22 MR. STEIN: So the idea is he has a certain set of  
23 opinions that were very much limited by his preparation on  
24 the case, Mr. Mills prepared differently on the case and  
25 had a different set of opinions. The question is whether  
26 he's going to jump into the new opinions that Mr. Mills'  
27 gave.

28 THE COURT: Right.

1 MR. STEIN: And therefore, change or add to his  
2 original testimony.

3 THE COURT: Right because He's going to rebut what  
4 your expert said.

5 MR. STEIN: Had and that's the key question that I  
6 thought just to bring to the court's attention however the  
7 court wishes to have handle it.

8 THE COURT: Well what's Ms. Ibarra is saying he's  
9 ready to do his rebuttal now which means I'm going to allow  
10 you to question him about his rebuttal today and I'll give  
11 you more time than the half an hour so you could do that.

12 MR. STEIN: Well I would have to -- I've never  
13 heard -- you said -- he has a bunch of new things that he  
14 hasn't said before.

15 THE COURT: Of course that's what rebuttal is  
16 because you put in some evidence that they hadn't seen so  
17 now they're going to rebut it.

18 MR. STEIN: And so in light of that and just so  
19 further discussion and counsel and I have actually tried to  
20 make it for efficient the use of the court's time, we had  
21 talked about maybe Delia beginning with the rebuttal and  
22 my --.

23 THE COURT: No no no we're going to proceed this  
24 way.

25 MR. STEIN: Very good.

26 THE COURT: You'll have an opportunity once she  
27 examines him to go back and talk about it, I usually let  
28 you go back and forth until everybody has had a chance to

1 explore everything so let's just get started and if you  
2 need surrebuttal or something like that I'm more than happy  
3 to let you have it.

4 MR. STEIN: Oh good and then maybe we'll just see  
5 where we are time wise and --.

6 THE COURT: So let's start now.

7 MR. STEIN: Very good.

8 THE COURT: Mr. Margolis you understand you're  
9 still under oath right.

10 A. Yes.

11 THE COURT: Thank you.

12 Q. BY MR. STEIN: Mr. Margolis thank you very much  
13 for coming back, you were here on the afternoon of July  
14 15th and then you were here for cross-examination on July  
15 the 20th, do you recall those dates?

16 A. I don't remember the dates but I remember the  
17 events.

18 Q. Very good. So I'm going to begin by just making  
19 sure that in the long time since then that we've got  
20 certain things correctly so you'll hear me refer to the  
21 rough transcript which we have available on Mr. Fordyce's  
22 computer as well. So my understanding is that your -- you  
23 spent 44 years either 13 years with the state bar and then  
24 29 years defending attorneys accusing of misconduct in  
25 state bar disciplinary proceedings is that still the case  
26 as you sit here today?

27 A. Yes among other things but that's been primarily  
28 what I've done.

1 Q. Right. And then was -- you have done no work  
2 advising private corporations on daily matters between the  
3 board and general counsels?

4 A. That's correct.

5 Q. And you've done nor work advising unincorporated  
6 associations?

7 A. That's correct.

8 Q. And you've done no work advising Indian tribes?

9 A. That's correct.

10 Q. And I didn't get a chance to ask you at the time,  
11 but have you taken the same approach to look at this as  
12 perhaps a state bar disciplinary case instead of a civil  
13 case?

14 A. I've looked at it from the point of view of what  
15 the ethical rules are and state bar acting rules of  
16 professional conduct and other things.

17 Q. Is that a "yes"?

18 A. No, I haven't finished my thought yet. I have  
19 been looking at it as to what an attorney -- whether in the  
20 state bar context or in the civil context is required to  
21 do.

22 Q. On Page 12 to 17 in your rough transcript you went  
23 over a number of points of how far you prepared for this  
24 case, and I'd like to go over some of those points to see  
25 if they've changed -- if you've done more preparation in  
26 the six months since then. In particular on Page 17 you  
27 said that you accepted that you -- you accepted that your  
28 continues --.

1 THE COURT: When you say Page 17 you're referring  
2 to a rough transcript right.

3 MR. STEIN: Yes.

4 THE COURT: Just so it's clear that the pages and  
5 line numbers may change once the final is done, so when you  
6 refer to Page 17 it may actually be something different  
7 once the fine is done just so it's clear.

8 MR. STEIN: Thanks for that, helping me on the  
9 record.

10 Q. Zero on Page 17 of the rough transcript, you  
11 accepted that your opinions may be based on facts different  
12 from this case, is that still the case today?

13 A. I believe I have said if the facts that I'm  
14 assuming to be true are wrong, it could affect my opinion.

15 THE COURT: I have want you to bring that  
16 transcript up so you can share it with the witness, you're  
17 holding it up, bring it up.

18 MR. STEIN: No these are my notes, we only have an  
19 electronic copy of the transcript and if the court would  
20 like to give me guidance how to refer to it, I don't want  
21 to put the witness to re: Disadvantage at all but if  
22 there's a question you need to read from it.

23 THE COURT: What you have need to have say is is  
24 it true that your prior testimony was X but there can't be  
25 any reference to the transcript, I'd rather the witness and  
26 the court see the transcript for your questioning and since  
27 we don't have that ability you can ask him if your prior  
28 testimony was X but it can't be in reference to the



1 transcript nobody has the opportunity to see it.

2 MR. STEIN: Very good.

3 THE COURT: Unless the Plaintiffs have a copy  
4 somehow.

5 MR. STEIN: Well they were free to get a copy the  
6 same way we got one.

7 MS. IBARRA: I do have say copy I don't have it  
8 with me right now but I do have a copy.

9 THE COURT: Yeah.

10 MR. STEIN: And the court can perhaps as my  
11 questioning unfolds, the court can give me further guidance  
12 I'll try to follow --.

13 THE COURT: But just ask him was your prior  
14 testimony X, but in terms of the transcript, I don't have  
15 the transcript nor do you see the witness apparently so.

16 MS. IBARRA: Yeah.

17 Q. BY MR. STEIN: The reason I asked you whether your  
18 opinion is based on facts different from this case is you  
19 indicated that your review --.

20 THE COURT: No did you -- did you indicate.

21 MS. IBARRA: Objection.

22 Q. BY MR. STEIN: Did you indicate that your review  
23 was based on the summary judgment papers and  
24 representations made by Ms. Ibarra and Mr. Polanco?

25 A. I don't recall what I testified to. I know I  
26 listed a bunch of material, I had a long list of material  
27 that I read and I did say that I spoke to Ms. Ibarra and I  
28 spoke to Mr. Polanco.

1 Q. And to your preparation was still limited only to  
2 the summary judgment papers?

3 A. No whatever I listed, if you have want I'll go  
4 through what I listed.

5 Q. Please do. And it's also in the transcript Page  
6 12 to 15.

7 THE COURT: Well we don't know what's in the  
8 transcript because we don't have it Stein.

9 MR. STEIN: Very good.

10 THE COURT: And that's the problem.

11 MR. STEIN: Very good.

12 THE COURT: If you can give us a copy of the  
13 rough, he may be able to look at we won't have to go  
14 through unfortunately what we he has to go through in and  
15 out.

16 MR. STEIN: And if this should go beyond one day  
17 I'll bring in copy of the rough.

18 THE COURT: I don't think it's going to go beyond  
19 one day, at least-er this portion but why don't you  
20 continue.

21 MR. STEIN: Okay?

22 A. I have read the Plaintiffs notice of motion and  
23 motion for summary judgment dated February 9, 2016,  
24 Plaintiffs index of declarations and exhibits in support  
25 for the motion for summary judgment, all of the documents  
26 and that was of February 9, 2016; Plaintiffs separate  
27 statement of undisputed facts in support of the summary  
28 adjudication and I read all the documents attached to that,

1 that was dated I think February 10, 2016, I read Plaintiffs  
2 request for judicial notice in support of summary  
3 adjudication February 10, 2016, Plaintiffs index of  
4 declarations and exhibits in support for the summary  
5 adjudication dated February 8, 25016, I read all the  
6 documents.

7 Q. So this is -- again these are all just the summary  
8 judgment papers?

9 A. Let's me finish.

10 Q. Please do.

11 A. Defendants SMDC and Stein's response to the  
12 Plaintiffs motion for summary judgment dated April 18,  
13 2016, the Defendants supporting statement -- separate  
14 statement I'm sorry of disputed facts and additional facts,  
15 April 18th, 2016. Defendants table of declarations in  
16 support of the response to the motion for summary judgment  
17 and all the documents, Defendants table of exhibits in  
18 support of respondent to motion for summary judgment April  
19 18th, 2016; request for judicial notice in support of  
20 Defendants and cross complainants response to motion for  
21 summary adjudication April 18, 2016, I read the fiduciary  
22 duties report of 9/19, 2016, the declaration of Kevin  
23 Washburn.

24 Q. The IGRA expert?

25 A. Excuse me?

26 Q. The IGRA expert?

27 A. I don't know what IGRA means but the Indian law  
28 expert, yeah. And also discussions with Delia Ibarra and

1 Richard Polanco that's what I said last time.

2 Q. And so you have not other than the documents that  
3 might have been the summary judgment that are now in the  
4 case, you in fact have not reviewed any cases -- any of the  
5 exhibits admitted into evidence in this matter?

6 A. I don't know what was admitted into evidence.

7 Q. And you haven't reviewed any any rough transcripts  
8 in this matter?

9 A. I did. I read Mr. Sulzer's testimony. And I read  
10 I think most of Mr. Mills' testimony. I think those are  
11 the transcripts that I read.

12 Q. Did you read those transcripts?

13 A. I just said I did, yes.

14 Q. Very good you said it in a way I thought I should  
15 ask another question?

16 A. Actually Lee you're right, the way I said it you  
17 should have asked me.

18 Q. Nobody's trying to do anything to you today other  
19 than get answers from you?

20 A. Yeah.

21 Q. So you did not read Rae Lamothe's testimony?

22 A. I did not read her testimony.

23 Q. And do you recall that you opined that Rae Lamothe  
24 was not an independent counsel and that all of your  
25 opinions depended on the fact that she was not an  
26 independent counsel?

27 A. I didn't see all of my opinions, no. And all of  
28 my opinions are not based upon that. And I don't recall my

1 testimony but I do believe she was not independent counsel.

2 Q. Then can we go back to your testimony because we  
3 have had the benefit of Rae Lamothe's testimony and your  
4 opinions, do you recall saying that one of your opinions  
5 was that there must be an independent attorney to approve  
6 the SMDC agreement rather than just the opportunity for  
7 advise of an independent attorney?

8 A. I don't remember -- okay. When you say must be,  
9 are you talking about in order to meet the requirements of  
10 3-300?

11 Q. Yes.

12 A. No you don't need an independent, you have to  
13 advise them that they have an independent or an the  
14 opportunity to have app independent attorney.

15 Q. So it does the matter whether Rae Lamothe was an  
16 independent attorney or not just that they had the  
17 opportunity to get an independent attorney?

18 A. When you say it doesn't matter, I don't understand  
19 the question, I'm sorry. I'm not trying to be difficult I  
20 just don't understand.

21 Q. What you're saying is for purposes of rule  
22 3-300?

23 A. Yes.

24 Q. You only need the opportunity to get an attorney,  
25 you don't actually have to have one; is that correct?

26 A. For an attorney to satisfy the requirements of  
27 3-300, there need not be actually an independent attorney,  
28 what you need to do is the attorney must advise the client

1 that he has the right to an independent attorney, yeah.

2 Q. I see. And --.

3 THE COURT: So the issue is the attorneys conduct,  
4 they have in advising them?

5 A. That's right.

6 THE COURT: They have to do the advice?

7 A. That's right.

8 THE COURT: Not that the client actually goes out  
9 and gets somebody?

10 A. That's right.

11 THE COURT: Just that the advice has to be given  
12 that they have the right to go out and get an attorney is  
13 that -- am I have understanding that right?

14 A. That's correct.

15 THE COURT: Okay I want to be clear too.

16 Q. BY MR. STEIN: Because in your prior testimony had  
17 you stated that the SMDC agreement would be void if Rae  
18 Lamothe was not an independent attorney but today you seem  
19 to be indicated that no it's just the opportunity.

20 THE COURT: Is that correct.

21 MR. STEIN: Is that correct.

22 THE COURT: Is that correct did you testify to  
23 that?

24 A. I don't remember my words at that time. I can  
25 tell that you my opinion is that there was a violation of  
26 3-300.

27 Q. BY MR. STEIN: Why would that be?

28 A. Because -- because at the time that the agreement

1 was signed you, Jonathan Stein, were representing the tribe  
2 and at the same time you were representing SMDC and  
3 yourself. Just a minute. Yes okay.

4 Q. So --?

5 A. Oh no no I'm sorry. The reason I hesitated is I'm  
6 trying to remember what I said and I can't. I can tell  
7 you --.

8 Q. What's your opinion now?

9 A. Okay all right. My opinion now is that that there  
10 was a violation of 3-300 in part because you did not advise  
11 them of the conflict.

12 Q. That's 3-310?

13 A. Also 3-300.

14 Q. Why would that be 3-300 if they had independent  
15 counsel of Rae Lamothe or if they had opportunity to get  
16 independent counsel?

17 A. Because you still required to advise them that  
18 there is the existence of a conflict and to describe it.

19 Q. And it's not clear from a 40 page SMDC agreement  
20 that there would be a conflict?

21 A. No. To lay people, no it has to say there is a  
22 conflict. The only thing that's added by having --  
23 actually having independent counsel under case law and I  
24 will certainly get to this, is that if there's independent  
25 counsel then independent counsel relieves the attorney  
26 who's offering the contract of the responsibility of  
27 discussing the pros and cons of the client taking the  
28 case -- I mean the transaction but it does not relieve the

1 attorney of having to describe that in fact there's a  
2 conflict there.

3 Q. And it wasn't apparent from the SMDC agreement  
4 that SMDC and Mr. Stein were adverse to the tribe?

5 A. No, it was not clear, it has to be spelled out for  
6 a client. There has to be full disclosure during the Bury  
7 case and under Yazpan. In fact there is a conflict, you  
8 have to alert the client, you have to warn the client  
9 here's -- here's a conflict, that's part of full  
10 disclosure, that's part of --

11 Q. Why would you say --

12 A. I haven't finished, that's part of fiduciary duty,  
13 full and un biased disclosure. If there is independent  
14 counsel then the attorneys only relieved from having to  
15 advise him of the pros and cons of actually entering into  
16 the transaction.

17 THE COURT: Can I ask you a question, what if --  
18 you said they had to describe the conflict, what if there  
19 is a description of a potential conflict, I'm not saying  
20 there is but just assume there is one and a different  
21 conflict arises during the course of the relationship, what  
22 happens then?

23 A. Oh if during the course of the relationship there  
24 are other transactions that involve other conflicts, the  
25 attorney must point it out.

26 THE COURT: Okay. So if it didn't exist at the  
27 time or it was missed somehow.

28 A. Yes.



1 THE COURT: Maybe the attorney didn't recognize  
2 it?

3 A. Right.

4 THE COURT: Maybe it was too complex or  
5 circumstances change what is the attorneys obligation at  
6 that point?

7 A. Must tell -- got a fiduciary relationship of full  
8 unbiased disclosure and must -- and must disclosure it in a  
9 way that's understandable and the very fact that they  
10 started out with one contract does not absolve the attorney  
11 of the obligation of having to fully disclose conflicts as  
12 they arise in the relationship.

13 Q. BY MR. STEIN: Even if the attorney never agreed  
14 to the relationship or doesn't know that it exists?

15 A. I don't understand the question. What --.

16 Q. Well what -- you saw nothing that indicated Mr.  
17 Stein agreed to the relationship, the relationship is only  
18 based on contract is that correct?

19 A. I have saw that he did agree to it by offering  
20 legal advice all the way through which was accepted bit  
21 Indian tribe.

22 Q. So that's --?

23 A. I have haven't finished it's an implied contract,  
24 implied understanding based conduct.

25 Q. Well can I read to you a section from Mr. Mills'  
26 first opinion, do you have Mr. Mills' first opinion by the  
27 way in front of you?

28 A. Yeah, not in front of me.

1 MS. IBARRA: Objection if he's going to do  
2 rebuttal, if he's going to do Mr. Mills that's for.

3 THE COURT: Yeah I thought you were going to do  
4 that after they've listed it so --.

5 MR. STEIN: Okay sure.

6 Q. This point however is very relevant and it's --  
7 you cited to responsible citizens V Superior Court?

8 A. Yeah.

9 Q. On how an attorney-client agreement is formed, you  
10 agreed -- is that correct?

11 A. I believe so, yeah.

12 Q. Okay. And I'll read you the quote in a second but  
13 you agreed that it's only formed by way of contract, in  
14 other words you can imply a contract but if you don't have  
15 a contract, you don't have an attorney-client relationship?

16 A. It's formed by an implied contract based upon the  
17 conduct, yes.

18 Q. Okay. So can I read this quote and see if this is  
19 what you're referring to so whether you agree with it?

20 A. All right.

21 THE COURT: You're reading from what?

22 MS. IBARRA: From Responsible Citizens V Superior  
23 Court 16 Cal.App.4th 1717, it's a quote that he cites.

24 THE COURT: Okay let's find the case, do you have  
25 a copy of the case? Do you have a copy of the case?

26 A. I don't have a copy of the case, buff it's  
27 possible I don't need it right now.

28 THE COURT: Well, I might need it though.

1           A.     Okay.

2           THE COURT:   Does anybody have a copy of that case.

3           MS. IBARRA:   I don't have a copy of that case.

4           MR. FORDYCE:   Your Honor -- oh actually hang on,  
5 the Internet might be backup.

6           THE COURT:   Why don't you share with Ms. Ibarra  
7 and we can follow along.

8           MR. STEIN:   Yes.

9           THE COURT:   What page and what line?

10          MS. IBARRA:   Page 1732 to -33, it's cited by the  
11 expert, except for those --

12          THE COURT:   Wait he's still looking?

13          A.     The expert being Mr. Mills, right?

14          MR. STEIN:   No, you.

15          MR. FORDYCE:   Unfortunately, Your Honor, the  
16 court -- the Internet is just spinning its wheels.

17          THE COURT:   Well unless you can provide the case  
18 to the court and the witness we shouldn't be using it, just  
19 quoting from cases -- does somebody have a copy of it.

20          MR. STEIN:   I have a copy it sure.

21          MS. IBARRA:   What was the citation just for the  
22 record so we can have.

23          MR. STEIN:   It is 16 Cal.App.4th, 17 17, 173 two  
24 to 33, it is the heart of both experts testimonies.

25          THE COURT:   Why don't you give us the case so we  
26 can look at it, thank you.

27          MR. STEIN:   I have the case in PDF form, what  
28 would you like done with it.

1 THE COURT: What do you mean PDF form?

2 MR. STEIN: I have a PDF on my computer of that  
3 case.

4 THE COURT: And you can pull it up.

5 MR. STEIN: Yes.

6 THE COURT: All right. Bring it up here and put  
7 it in front of --.

8 MR. STEIN: Sure that would be fine.

9 THE COURT: Actually why don't you give it to Mr.  
10 Fordyce and they can follow along while had you read.

11 MR. STEIN: Very good.

12 THE COURT: Unless there's something.

13 MR. STEIN: If the court would like it up there or  
14 down here.

15 THE COURT: No just so they can see it because  
16 they're the attorneys, let's them d if there's something  
17 inn accurate or they want to have quote something else they  
18 can do that so give both your attorney and Ms. Ibarra  
19 access to it.

20 MR. STEIN: Very good.

21 THE COURT: Thank you that works.

22 MR. STEIN: 173 two to 33, this is normal jump  
23 cites in west law. And can I begin reading.

24 THE COURT: Well let's wait until they find it.

25 MR. FORDYCE: Jonathan was of the pinpoint again.

26 MR. STEIN: It's 32 33 and it's accept for  
27 situations where an attorney.

28 THE COURT: Wait a minute are why are they

1 waiting.

2 MR. STEIN: To help him find it.

3 MR. FORDYCE: I've got 32 to 33.

4 THE COURT: Well go over there and help them Mr.  
5 Stein that way they can find it.

6 MS. IBARRA: 173 two to 33.

7 MR. STEIN: And here we go in green.

8 MR. FORDYCE: Okay we're there, Your Honor.

9 THE COURT: Okay. Good.

10 MR. STEIN: And you're following the part that's  
11 highlighted in green, Mr. Fordyce.

12 MR. FORDYCE: Yes.

13 MR. STEIN: Except for those situations where an  
14 attorney is appointed by the court, and attorney-client  
15 relationship if it's created by some form of contract  
16 express or implied, formal or informal. There are  
17 citations, we skip a portion and go to a quote, an implied  
18 contract is one, the existence and terms of which are  
19 manifested by conduct, Civil Code section 16 21. The  
20 distinction between express and implied in fact contracts  
21 relates only to manifestation of assent, both types are  
22 based on expression or apparent intention of the parties.  
23 Skip a part, for that reason, we believe that in  
24 determining who an attorney-client relationship exists in  
25 cases like this, primary attention should be given to the  
26 totality of the circumstances. Now there's another piece  
27 that I'll read that's not important for here but I just  
28 don't want to pretend that it doesn't exist. And that they

1 then jump cite to Freedman, the creation of attorney-client  
2 relationships, a Cal western law review article, suggesting  
3 that one of the most important facts involved in finding an  
4 attorney-client relationship is quote the expectation of  
5 the client based on how the situation appears to a  
6 reasonable person in the clients position. Now my question  
7 to you is is that the test that you're using to find an  
8 implied-in-fact assent on both the part of the GT Tribe and  
9 SMDC?

10 A. Yeah pretty much, yeah. And also that the  
11 attorney provides legal services and the person symptoms  
12 them, yeah sure.

13 Q. Well hold on a second he just said something very  
14 different, here is a totality of the circumstances test?

15 A. Yes.

16 Q. That's based on objectionable -- on active  
17 reasonable person?

18 A. Yeah.

19 Q. You're then adding a new test that says well wait  
20 a second, instead of all that, just say if you provide  
21 attorney services, that's sufficient?

22 A. Oh okay. I would add to the definition that you  
23 wrote -- that you quoted that it doesn't matter what  
24 they're called, if the client thinks these are not legal  
25 services, that is not determinative if the client knows  
26 he's getting advice and if the client -- whether the client  
27 calls it legal services or not and whether then it's still  
28 legal services, it's still an attorney-client relationship.

1 Q. So you're saying that an attorney-client  
2 relationship can be formed without the manifestation of  
3 assent and regardless of the totality of the circumstances?

4 A. No.

5 Q. All you need.

6 MS. IBARRA: Misstates I testimony.

7 MR. STEIN: Give forgive me I'm not finished with  
8 the question.

9 Q. All you need is the provision of legal advice and  
10 the receipt of legal advice?

11 A. Yeah.

12 Q. Thank you?

13 A. No I.

14 Q. Thank you?

15 A. No, I haven't finished.

16 Q. Thank you you've answered of the question?

17 A. I have haven't finished the answer to the.

18 THE COURT: There was around objection too?

19 A. What.

20 THE COURT: I have guess the objection was  
21 withdraw.

22 MS. IBARRA: No the objection was misstated his  
23 testimony and he can clarify.

24 THE COURT: Yeah sustained so why don't you  
25 explain.

26 MR. FORDYCE: It was a yes or no question and he  
27 answered yes?

28 A. I agree with the definition and the statement in

1 the case -- what was your statement that I was answering  
2 when you interrupted me and walked away and said that's it  
3 thank you, what was that, if I could have.

4 THE COURT: Would you have it read back.

5 (Record read.)?

6 A. The acceptance of legal advice, yes, the  
7 acceptance of it.

8 Q. BY MR. STEIN: So you're -- so rather than  
9 following responsible citizens which I say you're following  
10 you're using a different standard?

11 A. No it's the same standard.

12 Q. So it is a totality of the circumstances?

13 A. Yes.

14 Q. And it requires the assent of both parties,  
15 manifestation of the assent of both parties?

16 A. I don't know what you mean by assent, I can tell  
17 you that if there's legal advice provided and it's accepted  
18 and understood as being accepted by the client that is a  
19 client and those are legal services and it's an  
20 attorney-client relationship at that point, you don't have  
21 to have Anna isn't that we're both calling this  
22 attorney-client relationship.

23 Q. And you said --.

24 THE COURT: So you think even if there's -- even  
25 if there's a writing that the client says you're not my  
26 attorney or I'm not -- or the lawyer says I'm not your  
27 attorney, if the conduct is otherwise, what does that mean,  
28 because that's a conflict, right?



1 A. No let me explain.

2 THE COURT: Okay?

3 A. Yeah, if really depends on the context. If  
4 under -- the Evidence Code I think is 56 two, the attorney  
5 says I'm not your attorney and then the person starts  
6 talking to him, then all of that talk can be spelled  
7 because it's not attorney-client and so 56 two deals only  
8 with whether certain evidence can be compelled and so that  
9 person is considered a client for that purpose. However if  
10 the attorney says I'm not your attorney and then gives  
11 advice.

12 THE COURT: Right?

13 A. Then he's the attorney under the standard that  
14 he's providing legal advice that's accepted by the person,  
15 that is take then as legal advice.

16 Q. BY MR. STEIN: But what happens if the totality of  
17 the circumstances indicated that both parties knew that he  
18 was not the attorney.

19 MS. IBARRA: Objection.

20 MR. STEIN: That he was in fact adverse, he's  
21 adverse financially to them?

22 A. I would have --.

23 MS. IBARRA: Objection vague totality of the  
24 circumstances.

25 A. I would have to know the circumstances.

26 THE COURT: Sustained.

27 Q. BY MR. STEIN: Well, you don't know the  
28 circumstances of this case because you did not bother

1 talking to any of the witnesses or looking at the rough  
2 transcripts, did you?

3 A. I do know the circumstances, but that's beside the  
4 point you asked me a general question and I answered it.

5 Q. And then --?

6 A. And also you gave me a hypothetical that's so  
7 general I needed more facts.

8 Q. And turning to Resolution 46 can you get volume  
9 one please, you'll find Resolution 46 there?

10 A. Which volume did you say, which volume.

11 Q. Volume one, the white.

12 THE COURT: Rough sure it's not the blue, it's the  
13 white.

14 MR. FORDYCE: Yes Your Honor, it's been renumbered  
15 exhibit 1548?

16 A. 1548.

17 MR. STEIN: Yeah do you see on the tabs there?

18 A. Oh I see what you're saying.

19 THE COURT: What was it originally labeled because  
20 he's been referring.

21 MR. FORDYCE: It was in 569 Your Honor.

22 MR. STEIN: And it you could just get the Bates  
23 stamp page Niall.

24 MR. FORDYCE: Yeah the Bates is 0520.

25 THE COURT: 569.

26 MR. FORDYCE: Yes Your Honor formerly 569 now 1548  
27 and I think the most re vent Bates number is so 520?

28 A. Okay 1548. Okay. And I got it.

1 Q. BY MR. STEIN: Now Resolution 46 passes a  
2 modification agreement that is an exhibit to it and that's  
3 labeled as Exhibit 15 49 do you see the amendment and  
4 modification agreement on that.

5 THE COURT: Stop until I get it.

6 MR. STEIN: Very good. Okay I have Resolution 46  
7 in front of me, do you have it?

8 A. I have it, yeah.

9 MR. STEIN: Okay.

10 Q. And if you can now go to Exhibit 15 49 which is  
11 the amendment that's passed by Resolution 46?

12 A. Okay.

13 Q. And I'll refer you to sections six and seven?

14 A. Okay got it.

15 Q. Can you read section legal advice, the change made  
16 and approved by the tribal council on that date?

17 A. I'm sorry what are you asking me to look at.

18 Q. Legal advice?

19 A. I'm looking at legal advice.

20 MS. IBARRA: Can you point out the section.

21 MR. STEIN: It's Page 5 26 and it states if you'd  
22 rather me rather it?

23 A. No does two say the language of section 25 of the  
24 agreement shall be modified?

25 Q. Yes.

26 A. So let me read it.

27 Q. Uh-huh?

28 A. Okay.

1 Q. Does it say in here that Rae Lamothe reviewed the  
2 agreement, found it valid, binding, and enforceable  
3 obligation of the tribal council?

4 A. It says what it says, yes, it does.

5 Q. But you don't agree with that?

6 A. I didn't -- no, I didn't say that why do you see I  
7 don't agree with that.

8 Q. Because you're complaining?

9 A. What.

10 Q. Okay so.

11 MS. IBARRA: Objection?

12 A. What what was that.

13 MS. IBARRA: I don't understand the question.

14 THE COURT: The comment is stricken.

15 Q. BY MR. STEIN: In addition tribal general counsel  
16 has drafted the 2003 amendment do you see that?

17 A. Yes.

18 Q. Your earlier testimony said Mr. Stein your opinion  
19 was based on that Mr. Stein drafted the 2003 amendment?

20 A. I don't remember what I said before if you're  
21 asking me what I said I don't remember it, and I'm sure I  
22 didn't see it's based entirely on the fact that Mr. Stein  
23 drafted it.

24 Q. And that the tribal general counsel found that it  
25 is valid, binding, and enforceable obligation of the tribal  
26 council on its own behalf and on behalf of the tribe?

27 A. Okay.

28 Q. Okay? And in addition the agreement was as

1 amended and found that -- as mend amended the 2003 and  
2 found that the agreement as amended is valid, binding, and  
3 enforceable obligation, do you see that?

4 A. Yeah.

5 Q. Is it your testimony that as of September 2003  
6 this -- the SMDC agreement was not valid, binding, and  
7 enforceable for any reason?

8 A. Yes.

9 Q. Why?

10 A. Because when it was first put together, there  
11 wasn't the warning that there's a conflict by you, you  
12 should have warned the tribe because you were their  
13 attorney and as their attorney -- the reason I say you were  
14 their attorney is that you were giving legal advice and you  
15 advised them that it would be best to sign that agreement.  
16 Now here we are and you're saying that Rae Lamothe -- Rae  
17 Lamothe has looked at it and has confirmed it and everyone  
18 says everything is okay, does that fix it? No, it doesn't  
19 fix it, they don't have independent -- independent counsel  
20 and I'm not sure that even --.

21 Q. Well wait a second I'm going to stop you there.

22 THE COURT: No let him finish.

23 MR. STEIN: Go ahead, you're --?

24 A. And I'm not sure that -- even if they had  
25 independent counsel that wouldn't necessarily make the  
26 first agreement or the agreement actually binding, all  
27 you're saying is this is what everyone thinks and this is  
28 what we're agreeing to, as to the legal effect of that

1 that's one thing, as to whether in fact under ethics rules  
2 and fiduciary principles it is binding that's something  
3 else.

4 Q. So it's impossible to create a binding agreement  
5 once you made a mistake, you can't come back later and  
6 ratify the agreement or modify it and make it binding?

7 A. Yes you can. We --.

8 Q. So why not this, if you can why does not not  
9 comply --?

10 A. I just explained to you why.

11 Q. Because Rae Lamothe was not an independent counsel  
12 in your view?

13 A. That's right.

14 Q. Because --.

15 THE COURT: What about if you --?

16 A. Well excuse me.

17 THE COURT: Okay go ahead?

18 A. It isn't just that she wasn't independent counsel,  
19 you still here did not point out what the conflict was.

20 THE COURT: What's that I was going to ask was,  
21 but what if you did do that, if you don't to it it's not  
22 valid but what if you do do that, what if you explain the  
23 conflict, would you it then make the original agreement  
24 binding and enforceable, I don't think that's what happened  
25 here but it --?

26 A. I don't know. It's beyond my expertise.

27 THE COURT: Okay but if they don't and they like  
28 this circumstance, then it's not valid is what you're

1 saying?

2 A. Yeah in essence what they're doing is entering  
3 into a new agreement which has -- which takes into account  
4 the Old one and says okay now here's a new agreement, now  
5 everything is okay, it doesn't make the Old agreement okay,  
6 it simply says here's a new one and here's going to fix  
7 whatever the problem is.

8 THE COURT: What if it said you have know we find  
9 it valid, binding, and enforceable and there is no  
10 conflict, it doesn't say that but what if it said that,  
11 would that be a sufficient description?

12 A. No that would be -- that would be -- that would be  
13 a concealment of the fact that there is a conflict.

14 THE COURT: No if they said there's a conflict?

15 A. Yeah.

16 THE COURT: But we still find this valid,  
17 enforceable?

18 A. Oh I see.

19 THE COURT: It doesn't say that but I'm saying  
20 what if it did say that or it said that somewhere else?

21 A. I see. If it discloses the conflict are you suing  
22 independent counsel.

23 THE COURT: I'm assuming the attorney who gave the  
24 legal advice let's assume that and they say -- the client  
25 says this is a valid enforceable agreement and there's a  
26 conflict but we're going to go ahead and find this valid  
27 and enforceable anyway, is that a sufficient disclosure of  
28 the conflict and a sufficient waiver or --

1           A.    I think that that probably meets the standards of  
2    3-300 if you have all those elements, you layout what the  
3    the terms are, you've got independent counsel and you're  
4    describing a conflict, you're alerting of the client to a  
5    conflict, there is no need to advise the client of the pros  
6    and cons because supposedly they have independent counsel  
7    if they do.

8           THE COURT:   Oh I see, okay.

9           Q.    BY MR. STEIN:   And then read pair graphs Section 7  
10   please entitled approval and ratification of agreement?

11          A.    Okay.

12          Q.    Okay.   And it says here the tribal council on  
13   behalf of the tribe reviewed the agreement as amended and  
14   hereby approve and ratify the agreement adds amended,  
15   you're saying that's still not good enough to fix any  
16   mistake in the past?

17          A.    No because --.

18          Q.    Even a hyper technical mistake?

19          A.    Why would you call it a hyper technical mistake,  
20   to describe to have a client -- to disclose to a client  
21   that you have a conflict, that's not a hyper technical that  
22   goes to the heart of the agreement.

23          Q.    This is an agreement that was all over -- Five or  
24   different points saying there's no attorney-client  
25   relationship, you're assuming there's an attorney-client  
26   relationship when this agreement that they signed said  
27   there is no such relationship and you're saying that based  
28   on that relationship you are then going to find a breach of



1 duty and void out the agreement, that's a circular logic  
2 isn't it sir?

3 A. No.

4 Q. Why is it not circular?

5 A. There is so much in your question, let me break it  
6 down, I'm saying yes I'm assuming there is an  
7 attorney-client relationship and I am saying that as the  
8 attorney he had certain obligations, if he was not the  
9 attorney then the statements I'm making about the rules of  
10 professional conduct don't apply, however -- however, there  
11 was still the question of a fiduciary relationship based  
12 upon trust and based upon that there would be the rules of  
13 professional conduct.

14 Q. What fiduciary --?

15 A. Oh --.

16 Q. You have an adverse person, SMDC and Jonathan  
17 Stein, you have an agreement that says six different times  
18 he's not the attorney, you have their signature saying we  
19 agree not once, but they did it six different times the  
20 most recently being this Resolution 46 and then you're  
21 saying well that all doesn't matter because if there's  
22 something that I can say is legal advice that's enough to  
23 overcome the totality of the circumstances?

24 A. No.

25 Q. That they signed this agreement that says there's  
26 no attorney-client relationship?

27 A. No. Here's what's happening, you're referring to  
28 the writings which were constructed to immunize you from

1 the responsibilities of being an attorney, you're referring  
2 to this contract as the totality of the circumstances. No  
3 we have to refer to the totality of circumstances and as  
4 I've explained before, the totality of the circumstances  
5 were you were the attorney, you were giving advice they  
6 were relying upon you and that was legal -- I'm not  
7 finished -- and they were relying upon you as someone who  
8 was providing legal advice, they knew you were an attorney,  
9 you held yourself out as an expert and all the way through  
10 it you were drafting documents, you were negotiating for  
11 them, all of that legal advice.

12 Q. Even if --?

13 A. I haven't finished yet.

14 THE COURT: Let him finish?

15 A. And so you can point point to this one document  
16 the way someone might want to prove the truth of the Bible  
17 by keeping referring to the Bible instead of what's  
18 happening in the world and say oh but here's what the Bible  
19 says you've seen that before and instead your Bible is this  
20 document which you have constructed, you aren't taking into  
21 account the totality of the circumstances, I am taking into  
22 account the totality of the circumstances.

23 Q. Which you know nothing about because you did not  
24 look at any of the exhibits in this case you have did not  
25 look at.

26 MS. IBARRA: Objection.

27 MR. STEIN: Any of the witness testimony in this  
28 case you looked at a summary judgment motion and then you

1 talked to counsel orally.

2 MS. IBARRA: Objection that's --?

3 A. I'll willing to bet that's not even a question.

4 Q. BY MR. STEIN: Can I refer you to exhibit 569.

5 THE COURT: That's the last -- it's now 11 10 and  
6 we started at 10:30.

7 THE CLERK: 10 25.

8 THE COURT: Oh 10 25 so you are now and I'm giving  
9 you have the little extra time balls I asked some questions  
10 but you need to finish in five minutes.

11 MR. STEIN: Very good.

12 THE COURT: You had hours and hours and hours with  
13 Mr. Margolis before.

14 MR. STEIN: That's right.

15 Q. BY MR. STEIN: In the agreement they ratified is  
16 section 14 entire agreement on page 49 two at Section 19  
17 limitations of liability?

18 A. I have no idea what section we're looking at.

19 MS. IBARRA: What's the Bates.

20 MR. STEIN: Page 492?

21 A. Of what.

22 MR. STEIN: Of the same document you're looking  
23 at.

24 THE COURT: Why don't you come up and show him and  
25 show him what document you're looking at and that way  
26 people aren't fumbling around and you have more time.

27 MR. STEIN: Very good.

28 Q. Section 14 I'm asking going to ask you about?

1 A. Stop, stop, let me just take a look.

2 Q. And I'm going to ask you about Section 19?

3 A. Let me just take a look at what you're taking  
4 about, page 249 is that what we're looking at. Can I put  
5 this up here.

6 THE COURT: Sure.

7 A. (Indicating.).

8 Q. BY MR. STEIN: Mr. Margolis I'm not amused by your  
9 testimony forgive me?

10 A. I'm not amused. I was being friendly if you don't  
11 mind but you wouldn't recognize it here.

12 MS. IBARRA: Counsel that's argue. .

13 THE COURT: Yeah counsel don't argue?

14 A. Here you go.

15 THE COURT: Do you need that Mr. Stein.

16 MR. STEIN: I will take that Then In 2000 get this  
17 out of your way.

18 Q. So talking in the totality of the circumstances,  
19 14 says that the writing will be the entire agreement  
20 covering the subject matter and you had agreed that Mr.  
21 Stein's conduct that you were familiar with was within that  
22 subject matter when you previously testified?

23 A. Uh-huh. Well no. No that's a misstatement of my  
24 opinion.

25 Q. Let me refer -- let's find the rough transcript,  
26 it's going to be a lot of changing around. Page 5 one to  
27 52 Niall.

28 MR. FORDYCE: Uh-huh.

1 MR. STEIN: Cuff find where he says he agrees.

2 THE COURT: Well you have the transcript there.  
3 Hold on we're not using the transcript unless you can  
4 provide everybody with the transcript.

5 MS. IBARRA: But not with me.

6 MR. STEIN: Well that's her problem that she  
7 didn't bring with had her we brought it with us.

8 THE COURT: Well if you have it share it.

9 MR. FORDYCE: I am sharing it.

10 MR. STEIN: We'd be happy to do that.

11 THE COURT: Okay very good.

12 Q. BY MR. STEIN: And section 14?

13 A. Yes.

14 Q. This agreement contains the entire agreement of  
15 the party and it integrates the agreement, is that your  
16 understanding of section 14?

17 A. Integrate what do you mean by that.

18 Q. It integrates when you integrate it you can't have  
19 oral or implied agreement outside of it?

20 A. Wait a second, okay.

21 Q. How do you have find assent by GT Tribe the  
22 organization if they had just signed an integrated  
23 agreement saying that there are no other -- that  
24 representing and agreeing that there are no other  
25 agreements such as assent to an attorney-client  
26 relationship?

27 A. No you haven't said the whole thing, relating to  
28 this subject matter is what it says, and this subject

1 matter is is the relationship between SMDC and Jonathan  
2 Stein as the manager of SMDC on the one side and the tribe  
3 on the other. Outside of that would be Mr. Stein as an  
4 individual acting as an attorney with the tribe providing  
5 legal services that are accepted and relied upon, that's  
6 number one. And two, no matter what this says, even if it  
7 said -- even if we rely upon this as what is being said in  
8 part of the agreement, the fact that Mr. Stein actually  
9 provided legal services supersedes that. So whatever this  
10 says, your Bible, doesn't necessarily reflect the reality.

11 Q. So what you're saying is you can sign a document  
12 saying there's no attorney-client relationship, you can  
13 have it be an integrated document saying there are no other  
14 agreements, you can have independent counsel the  
15 opportunity for independent counsel and actually have Rae  
16 Lamothe sitting there and it is all not good enough if the  
17 other person happens to have a law degree?

18 A. No that's exactly what I didn't say.

19 THE COURT: Well times up.

20 MR. STEIN: Very good Your Honor.

21 THE COURT: All right let's have redirect. And  
22 you're starting at 11 16.

23 MS. IBARRA: Yes.

24 Q. BY MS. IBARRA: Mr. Margolis can you look at  
25 Exhibit 32, which is going to be in the Blue Book?

26 A. Yeah I have to put this back, just a minute.

27 Q. Yeah I know?

28 A. Which volume is it in, do you know.

1 Q. It should be the first volume?

2 A. I have the first volume here.

3 Q. That's Defendants so it's going to be the blue  
4 books.

5 THE COURT: The blue binders are Plaintiffs  
6 binders do you have them there.

7 A. Oh they're down there. I'll just shuffle through  
8 these. You said it's going to be volume one you say.

9 MS. IBARRA: Volume one, yeah, Exhibit 32.

10 THE COURT: Madam clerk while he's going through  
11 that, I'm going to give this back to you and you can place  
12 it back in there so it doesn't get lost.

13 THE CLERK: Thank you?

14 A. These are -- oh binder one, okay.

15 Q. BY MS. IBARRA: Yeah binders one?

16 A. Orange what is the exhibit.

17 Q. Exhibit 32?

18 A. Okay I've got it.

19 Q. Can you identify the document?

20 A. Yeah it's a meeting with Attorney General Bill  
21 Lockyer, just a minute, right, yes. And it's dated April  
22 6, 2004.

23 THE COURT: Your Honor I'm going to take a  
24 10-minute break, we're going to go to 11:30, the break  
25 until 11:30 and then we're going to go to 12, just I've  
26 been going all morning and I know my court reporter has  
27 been.

28 MS. IBARRA: Thank you.

1 MR. STEIN: Thank you Your Honor.

2 THE COURT: Thank you.

3 (Break taken.) 11:18 AM to 11:27 AM.

4 THE COURT: Gabrielino versus Stein, BC361307, you  
5 may continue.

6 MS. IBARRA: Okay.

7 Q. BY MS. IBARRA: Mr. Margolis can you look at  
8 Exhibit 32?

9 A. Yes.

10 Q. Do you recall that Mr. Stein asked you about this  
11 letter over the summer when you were testifying?

12 A. Yes.

13 Q. Do you recall what he asked you?

14 A. He showed me the front page and said does that  
15 indicate to you that he had an attorney-client relationship  
16 with the tribe.

17 Q. What was your opinion at that time?

18 A. Based upon the just that page, no you can -- based  
19 upon that page you cannot show that he was an attorney for  
20 the tribe.

21 Q. Is that still your opinion?

22 A. Yes.

23 Q. Are you reviewed the entire document?

24 A. Yes, I have.

25 Q. What is your opinion now?

26 A. Well based upon the entire document, he was -- he  
27 was the attorney for the tribe he at the end it says on  
28 behalf of the tribe Jonathan Stein Esquire, president Saint



1 Monica development agreement and inside -- the content of  
2 the letter is a legal argument being made on behalf of the  
3 tribe. How can that not be legal services as an attorney  
4 for the tribe.

5 Q. Would it be lobbying services?

6 A. It would be lobbying services.

7 Q. If it it's lobbying services does that make it not  
8 legal services?

9 A. No.

10 Q. Both be -- both can exist at the same time. If an  
11 attorney is doing work that a non attorney can also do but  
12 he's doing it -- holding himself out as an attorney then  
13 those are legal services, so he could be a lobbyist and an  
14 attorney. An example of that by the way is the re vent  
15 avalanche of cases where attorneys were engaged in loan  
16 modification, mortgage loan modification and the argument  
17 that they used was -- in other states and in California, we  
18 can do this because a non attorney can do it but these are  
19 not legal services. But the state bar made very clear that  
20 as long as you're also holding yourself out as an attorney  
21 then you are providing legal services, even though a lay  
22 person can perform the same services without there being --  
23 without those services being considered legal services?

24 Q. So you said if you're holding yourself out as an  
25 attorney?

26 A. Yes he said the Esquire here and he made legal  
27 arguments.

28 MR. STEIN: What are you referring to -- what is

1 being referred to Your Honor, Page 4.

2 A. Yes.

3 THE COURT: The signature page.

4 A. Yes.

5 THE COURT: Well the entire document I guess is  
6 being referred to.

7 MR. STEIN: And you said the Esquire here.

8 A. Yes.

9 MR. STEIN: The ESQ.

10 A. Yes.

11 MR. STEIN: So you're saying that ESQ is what  
12 tells you that.

13 MS. IBARRA: Excuse me objection, misstates his  
14 testimony and.

15 THE COURT: And Mr. Stein you're not asking the  
16 questions it's not your turn yet.

17 MR. STEIN: Yes Your Honor.

18 THE COURT: When it's your turn you can ask  
19 questions.

20 MR. STEIN: Yes Your Honor.

21 MS. IBARRA: Mr. Margolis so back to the letter,  
22 do you recall that you were asked if you had reviewed it  
23 before your testimony in the summer of 2006?

24 A. I believe -- I believe I was.

25 MR. STEIN: Objection leading.

26 THE COURT: Overruled?

27 A. I believe I was asked that.

28 Q. BY MS. IBARRA: What was your answer at the time?

1 A. I don't remember what my answer was at the time.

2 Q. What is your answer now?

3 A. Oh I read it before testifying and before forming  
4 my entire opinion.

5 Q. Okay.

6 A. I understand that there's an issue on that that I  
7 said or indicated that possibly if I didn't read it, if  
8 that's what I said I was wrong.

9 Q. And how did you --?

10 A. Because I had read it.

11 Q. And how do you know that you read it?

12 A. Oh because it was part of -- it went into the  
13 category of materials that I -- that I listed as having  
14 reviewed, I just at the time that I was asked originally I  
15 probably didn't remember that particular one.

16 Q. Okay. Moving on to exhibit 30?

17 A. Okay.

18 Q. Do you recall that you were asked about this  
19 document over the summer?

20 A. Yes.

21 Q. And what is your testimony about this document?

22 A. I don't understand -- okay. I don't remember what  
23 I was asked about it and now if you're asking me what is my  
24 testimony, I don't remember anything so you have to ask me  
25 a document.

26 Q. It's a short document. What is your opinion today  
27 about this document?

28 A. My opinion as to what, as to whether it shows him

1 as an torn.

2 Q. Yes.

3 A. Abbott's to whether this was an indication as to  
4 whether he was an attorney?

5 Q. Why don't we describe it?

6 A. No it's --.

7 Q. Let's begin with describing it, can you describe  
8 this document?

9 A. Hang on let me read it. Okay. Well law offices  
10 of Jonathan -- well I'm talking, I shouldn't you talking  
11 you should be asking the question.

12 Q. Yes. So can you describe this letter please?

13 A. Well it looks like a cover letter to Senator  
14 Escutia and it describes a legal brief, it provides a legal  
15 conclusion that it's -- that the arguments are good at or  
16 least convincing and then it's signed law offices of  
17 Jonathan Stein by Jonathan Stein and he's got the  
18 Gabrielino letterhead on it, so if the question is is this  
19 the practice of law, yes I think so.

20 Q. Is this also -- is this lobbying services?

21 A. It to be lobbying services, yes it's both I said.

22 Q. One other question it's the third topic so what is  
23 your opinion regarding Mrs. Rae Lamothe acting as  
24 independent lawyer for the tribe on the SMDC agreement?

25 A. Yes.

26 Q. For purposes of rule 3-300?

27 A. Yeah. She -- I don't believe -- my opinion is  
28 that she was not an independent attorney because she -- in

1 her retainer agreement with the tribe she had a  
2 compensation provision in there that was similar to Mr.  
3 Stein's and Mr. Stein's compensation agreement was part of  
4 what the conflict was about. So it was to her interest to  
5 further the same interests and the same approach that he  
6 was interested in even if that was not to the tribes  
7 benefit. So because she had an economic interest of the  
8 kind that she did, that made her not independent. An  
9 independent attorney would have been someone from the  
10 outside that had no relationship like that or economic  
11 interest in the matter of that kind.

12 Q. So just so I understand your testimony, are you  
13 referring to the fact that she was getting a percentage  
14 interest on the revenue of the casino?

15 A. Yes.

16 Q. And is that similar to what Mr. Stein had in the  
17 SMDC -- not Mr. Stein but SMDC and Mr. Stein as a principle  
18 of SMDC had a percentage interest in the future revenue of  
19 the casino?

20 A. Yes.

21 MR. STEIN: Objection?

22 A. That's what I'll referring to.

23 MR. STEIN: O leading and objection facts not in  
24 evidence.

25 THE COURT: Overruled.

26 MR. STEIN: And objection vague.

27 THE COURT: Overruled.

28 Q. BY MS. IBARRA: Are you referring to casino

1 revenue?

2 A. Yes.

3 Q. Are you referring to -- is there casino revenue if  
4 both Mrs. Rae Lamothe Mr. Stein's agreements?

5 A. Yes.

6 Q. And it's the same transaction.

7 MR. STEIN: Objection -- objection vague and  
8 ambiguous she's --.

9 THE COURT: No not vague but it does appear to be  
10 leading.

11 MS. IBARRA: Okay?

12 A. If you have want, I mean.

13 Q. Yes Mr. Margolis?

14 A. Is it okay if I talk.

15 Q. Yes you can talk?

16 A. Yes.

17 Q. You can explain?

18 A. Yes the problem was they both had a percentage  
19 interest in the casino profits and in order to get the  
20 casino going it would have to be done in a way that didn't  
21 have those provisions because of the federal law, and so  
22 therefore, they were pursuing yes nominally, the word  
23 nominally does come up, the federal recognition but instead  
24 they were looking to the state recognition which was real  
25 problematic, unrealistic.

26 MR. STEIN: Objection nonresponsive, strike as  
27 nonresponsive?

28 A. I'm explaining the conflict.

1 MR. STEIN: This was not explaining. This is the  
2 tribe's casino and he's now talking about federal Indian  
3 law.

4 THE COURT: What is your objection?

5 MR. STEIN: Nonresponsive, motion to strike.

6 THE COURT: Motion denied.

7 Q. BY MS. IBARRA: Mr. Margolis what is the conflict?

8 A. So instead of pursuant hard the federal  
9 recognition, which would have precluded their getting their  
10 share of the profits they behind stead pursued the state  
11 recognition which wouldn't have the same problem for their  
12 profits but pursuing the state recognition one was  
13 problematic and unrealistic and based upon the very  
14 questionable law, that's number one, and Number 2, the  
15 tribe was to a very great extent very interested in federal  
16 recognition which would have been bled into their profits.

17 MR. STEIN: Objection, again objection  
18 nonresponsive motion to strike.

19 THE COURT: Motion is denied?

20 A. So those were conflicts that both Mr. Stein and  
21 Rae Lamothe had therefore, she was not an independent  
22 attorney.

23 Q. BY MS. IBARRA: Okay do you have anything more to  
24 add about that?

25 A. No that's it.

26 Q. All right.

27 THE COURT: So Lamothe needed to go through kind  
28 of her own conflict disclosure and signed waiver kind of

1 process?

2 A. That's -- that's a great question because then the  
3 question is can someone who's not an independent attorney  
4 then still qualify as someone who's going to protect the  
5 tribe in a 3-300 agreement.

6 THE COURT: Well you were saying that --?

7 A. She would have to do that, yes at the very  
8 least -- okay, I got it.

9 THE COURT: That's what I'm saying?

10 A. Yes.

11 THE COURT: In other words she happens the same  
12 conflict because she has the same problem?

13 A. She absolutely happens the same problem and she  
14 should have talked about the conflict, she should have of  
15 laid out what the conflict was and in her case since there  
16 was no independent attorney looking out for her contract,  
17 she would have had to not only lay out the terms which  
18 apparently she did but she would have had to advise them to  
19 get behind counsel and she would have had to describe the  
20 conflict and on top of that, she would have had to describe  
21 the pros and cons of entering into that agreement. I  
22 understand your question, though.

23 THE COURT: Yeah, so what I'm trying to do is when  
24 you say she's had not independent it isn't necessarily tied  
25 to Mr. Stein allegedly having control over her but just  
26 looking at her agreement you can say -- I mean this is what  
27 I'm?

28 A. Oh I understand.



1           THE COURT: What I'm trying to get from the  
2 testimony because you're saying that's what Stein's  
3 conflict was, she has the same problem, because allege --  
4 at least there's been other allegations that Stein is  
5 controlling Lamothe so she's not independent, but I thought  
6 I heard you say, well, no, her agreement itself indicates  
7 she's not independent because she didn't go through those  
8 steps. She has this monetary interest, didn't disclose it,  
9 she was in a conflict so that's why she's not independent.  
10 Go ahead.

11           A. Everything you said was right except for one thing  
12 I did not discuss before what I discussed before because it  
13 wasn't in the context but you're right, what I did discuss  
14 before because I thought she wasn't independent because he  
15 had control over her, so there's at question of control and  
16 therein the conflict also.

17           Q. BY MS. IBARRA: So are you saying that that's  
18 still a part of your testimony?

19           A. Yes.

20           Q. So Stein having control over Ms. Lamothe?

21           A. Yes.

22           Q. And you've added another aspect to it.

23           MR. STEIN: Your Honor this was brand new  
24 opinions, this was not in his written materials, this is  
25 not in his original opinions, these are brand new opinions  
26 that were never in the packet that he gave the court that  
27 were 28 pages long on handwritten notes. These are brand  
28 new opinions and I'd like to cross-examine him on it.

1 THE COURT: You're going to have that opportunity.  
2 Remember this is rebuttal. Your expert gave certain  
3 opinions, so he's allowed to rebut that. We talked about  
4 that.

5 MR. STEIN: This is not rebuttal. My expert  
6 didn't give opinions about state versus federal Indian law  
7 and that's exactly what he's talking about and he's acting  
8 as if the state casino doesn't have the same revenues as a  
9 federal casino has and he's going into --

10 THE COURT: You can cross-examine him.

11 MR. STEIN: -- Ms. Lamothe's agreement.

12 THE COURT: You can cross-examine him on that.

13 MR. STEIN: I has never ever seen that  
14 agreement.

15 THE CLERK: Counsel.

16 THE COURT: Don't talk over me.

17 MR. STEIN: You're right. Sorry. I'm very upset;  
18 I'm very upset about this. This is a miscarriage of  
19 justice if I've ever seen one and this is the kind of  
20 expert testimony that --

21 THE COURT: Mr. Stein, you are out of order.

22 MR. FORDYCE: Sit, sit.

23 THE COURT: You have my clerk trying to address  
24 you and calm you down, you have my court assistant trying  
25 to address you and calm you down. I can give you break if  
26 you'd like one.

27 MR. STEIN: I would like one.

28 THE COURT: We're close to noon anyway. Would you

1 like to adjourn today?

2 MR. STEIN: That might be a good idea.

3 THE COURT: Like I said you will have an  
4 opportunity, I told you I will let you go back and forth  
5 until we have exhausted this. Mr. Mills is also going to  
6 rebut your experts testimony so you will have an  
7 opportunity to talk to him about that, Mr. Margolis.

8 MR. STEIN: And the court has been very  
9 understanding except that's not the issue I'm raising, so  
10 the court did being very understanding and very patient  
11 with my.

12 MS. IBARRA: Your Honor.

13 MR. STEIN: Forgive me for -- my apologies to the  
14 court and the court staff, but I'm a little upset.

15 THE COURT: All right.

16 MR. STEIN: However he was not asked here as an  
17 Indian law expert and that is what his opinion is. He's  
18 saying that the state law was problematic and the federal  
19 law was the way to go, it would be better to wait 30 years.  
20 That's opinions on Indian law. He is not qualified as the  
21 expert. They had an expert here that could have said the  
22 same thing.

23 MS. IBARRA: Yes, he did say that.

24 MR. STEIN: That's not what he was saying, he has  
25 not reviewed any of this testimony, he said he did not  
26 review her retainer agreement, and now he's saying in her  
27 retainer agreement it says.

28 THE COURT: Okay.

1 MR. STEIN: And he specifically said he did not  
2 agree.

3 THE COURT: Mr. Stein this sounds like things  
4 you've going to raise on cross-examination, unfortunately  
5 you've you've tipped him off as to what your  
6 cross-examination is going to be.

7 MS. IBARRA: For the record Your Honor --

8 MR. STEIN: Again, the motion --

9 MS. IBARRA: Can I be heard?

10 MR. STEIN: is nonresponsive testimony.

11 THE CLERK: Stop.

12 MS. IBARRA: Can I be heard, Your Honor? For the  
13 record the issue about Ms. Lamothe's retainer agreement  
14 happened during the course of the trial just two weeks ago,  
15 this is why it is now an issue that he will address.

16 THE COURT: It's continuing issue, Mr. Mills  
17 addressed it. I'm sorry?

18 A. Mr. Margolis.

19 THE COURT: Mr. Margolis addressed it, everyone  
20 has been asking questions about Lamothe as well to it is an  
21 open question, both sides will be allowed to ask Mr.  
22 Margolis about it it's fair game.

23 MS. IBARRA: Thank you.

24 THE COURT: I just think we need to do it one at a  
25 time, if you have an objection, state objection, state your  
26 ground and yes you will have an opportunity to go over this  
27 Mr. Stein, I told you that, okay.

28 MR. FORDYCE: And Your Honor as far as scheduling

1 goes on Monday I believe Lamothe Ms. Lamothe was going to  
2 no Ms. Aronson.

3 MS. IBARRA: Ms. Aronson was coming back Ms.  
4 Barrett can come back on Tuesday, I don't know how long  
5 she's going to be but Ms. Barrett's can come back.

6 MR. STEIN: I have suppose the question is Mr.  
7 Margolis.

8 MS. IBARRA: And Mr. Margolis has a full -- you  
9 know, he needs to be before the state bar?

10 A. Well let me.

11 MS. IBARRA: Why don't you tell?

12 A. I have a calendar just to it appears I have things  
13 to do but let me see. Next week I am available all days  
14 except Monday.

15 MR. FORDYCE: And I think Ms. Aronson as you said  
16 so on Monday.

17 MS. IBARRA: So Ms. Aronson on Monday, I could  
18 push back Ms. Barrett until the end of the week what do you  
19 want to do.

20 THE COURT: So Aronson on Monday.

21 MS. IBARRA: Or can he would have Ms. Barrett on  
22 Tuesday and then.

23 A. On Thursday.

24 MS. IBARRA: On Thursday?

25 A. No no is that what you're saying.

26 MS. IBARRA: I don't know what you're saying.

27 MS. IBARRA: Do.

28 THE COURT: When are you available?

1           A.    I can do it Tuesday Wednesday Thursday or Friday.

2           THE COURT:   How about Wednesday then.

3           MS. IBARRA:   Wednesday that's good.

4           MR. STEIN:   And Ms. Aronson may take more than one  
5 day with the Court's permission.

6           THE COURT:   I don't know in that's the case I  
7 think at most two hours for your side remember I said you  
8 could have the morning.

9           MR. STEIN:   Searing.

10          THE COURT:   Because I think the plaintiff had that  
11 about that time a full morning with her but not beyond that  
12 so, okay.

13          MR. STEIN:   And may we start Monday at 9:30 Your  
14 Honor.

15          THE COURT:   I don't know can you check my  
16 calendar?  I'm sorry I haven't had an opportunity to look  
17 at what Monday looks like.

18          MR. STEIN:   And Marilyn Barrett would be Tuesday.

19          THE COURT:   Yes I think she's --.

20          MS. IBARRA:   She's been here before Your Honor.

21          THE COURT:   Right but I thought had you said it  
22 was limited though.

23          MS. IBARRA:   It was a discreet issue which is  
24 whether she had an attorney-client relationship were Mr. --  
25 with SMDC and whether she was dismissed on that basis  
26 rather than on behalf of the tribe, that's the discreet  
27 issue.

28          THE COURT:   So my question is Barrett, sounds like

1 she's not going to take the whole morning, right.

2 MR. STEIN: Right.

3 MS. IBARRA: No, she's not.

4 MR. FORDYCE: Correct.

5 THE COURT: Maybe Aronson -- well I'm thinking if  
6 Mr. Stein -- if I'm giving him two hours, if you have  
7 redirect you might have to bring Aronson back for part of  
8 Tuesday and she's not going to be happy about that.

9 MS. IBARRA: She won't.

10 THE COURT: Buff you better give her a heads up.

11 MS. IBARRA: She won't.

12 THE COURT: 10 years worth I understand why she  
13 doesn't want to come back but hopefully this is the last  
14 time.

15 MS. IBARRA: Yes.

16 THE COURT: Okay. And then Mr. Margolis of course  
17 you have to finish and then Mr. Stein is going to have an  
18 opportunity to address the rebuttal, the new rebuttal  
19 that's coming up.

20 MS. IBARRA: So it makes more sense for expediency  
21 if I can just go from here directly to rebuttal because I  
22 think he's ready to do rebuttal of the mills testimony?

23 A. \*Yes\*.

24 MS. IBARRA: So we'll start this there when you  
25 come back?

26 A. Okay that's fine.

27 THE COURT: Yeah 9:30 I think will work, so 9:30  
28 on Monday.

1 MR. STEIN: Well if Aronson -- very good, if  
2 Aronson is coming back on Tuesday then we could start at  
3 10.

4 THE COURT: Well I don't know, that's what I'm  
5 saying I don't know what's going to happen so let's go  
6 ahead and start at 9:30.

7 MR. STEIN: I just want to make sure to put on the  
8 record we are not planning -- SMDC and Stein are not  
9 planning to go forward on Tuesday should Plaintiffs run  
10 out, we would expect Plaintiffs would fill up Tuesday and  
11 Wednesday and Margolis and finish their case am I mistaken  
12 about that.

13 MS. IBARRA: The Court's indicated Ms. Aronson  
14 would come back.

15 MR. FORDYCE: On Tuesday.

16 THE COURT: I'm sorry? Yeah Aronson may come back  
17 on Tuesday. Are you concerned that far they won't be done  
18 Wednesday or.

19 MR. STEIN: I'm concerned that there would be a  
20 gap and be turned to and say put something on when in fact  
21 we're trying to wait to plaintiff to finish their case.

22 THE COURT: Oh I see. No we may if we're lucky to  
23 adjourn early on Tuesday I won't look to you for a witness.

24 MR. FORDYCE: Thank you Your Honor.

25 THE COURT: That's a fair question.

26 MR. FORDYCE: Have a good weekend.

27 THE COURT: You too.

28 MS. GOAD: Have a nice weekend.



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THE COURT: Thank you. 11:49 AM.