

1 decision to have a meeting to talk about it further.

2 Q Do you know whether or not Mr. Keating had called
3 Senator DeConcini prior to March 19th about having such a
4 meeting

5 A I don't know if he called specifically about a
6 meeting. I know he had certainly talked to him about the
7 problems he was having with the audit, the related problems.
8 I think he probably, yes, I know he did talk to him about a
9 meeting because I know early on, Senator DeConcini had said,
10 I'm not the right person to have a meeting because there's
11 no love lost between me and Gray.

12 But I don't know the timing of that.

13 Q Could you tell us what the substance, with as
14 much detail as you can recall, of the meeting between the
15 Senators on March 19, 1987.

16 A We went down to Senator McCain's office. The
17 talk largely focused on whether or not a meeting with Ed
18 Gray was going to be productive and whether Ed Gray was
19 likely to misrepresent -- I recall specifically Senator
20 McCain saying that he had talked to a friend of his who was
21 a prominent republican woman. I don't remember who. And
22 that she had said that something along the lines, and I
23 don't remember the exact words, but that he was paranoid and
24 likely to misrepresent. And that was of great concern to
25 the Senators.

1 Q Did Senator DeConcini suggest that this meeting,
2 you've heard Ms. VanPaasschen's testimony or read it on this
3 point.

4 A Yes.

5 Q Did Senator DeConcini, at any time, suggest that
6 they go to Ed Gray's office?

7 A Yes, they did. And that's common practice with
8 Senator DeConcini.

9 Q But Senator DeConcini did suggest that?

10 A That's correct.

11 Q Did Senator DeConcini suggest, in any way, that
12 if that didn't work, that they fly out to San Francisco to
13 meet the regulators?

14 A No, he did not.

15 Q At any time during that meeting, did Senator
16 McCain ever appear to be uncomfortable with any of the
17 conversation coming from Senator DeConcini?

18 A No.

19 Q What, if anything, did Senator McCain say about
20 the issue about being circumspect, or words to that effect,
21 because of Mr. Gray?

22 A I don't know that there was anything about being
23 circumspect, but --

24 Q Well, you talked about someone saying that Gray
25 was paranoid.

1 A Right. That seems to me was one of the major
2 thrusts of the meeting, discussing whether or not a meeting
3 with Gray was going to be useful, and if he would fairly
4 represent it, or if it might be misrepresented in the press.

5 Q To the best of your recollection, at this
6 meeting, did Senator McCain at any time object to any of the
7 suggestions being made by Senator DeConcini?

8 A No.

9 Q Did Ms. VanPaasschen?

10 A No.

11 Q Was there anything said at that meeting which
12 caused you discomfort?

13 A No.

14 Q How was the meeting left?

15 A I came out of it with a feeling that they were
16 going to have a meeting, but I don't think they necessarily
17 made a final decision. But my feeling was that was the way
18 it was progressing.

19 Q You indicated that Senator DeConcini had
20 indicated that he might be the right guy for this job.

21 What was your basis for saying that?

22 A Well, he had called for his resignation in 1985
23 and I don't think that was a secret. And I think it was
24 fairly clear that he was no great fan of Mr. Gray's. And so
25 it's not necessarily always useful to have a meeting with

1 someone who comes into it knowing you don't like them.

2 Q To your knowledge, did anyone else refuse to have
3 that meeting?

4 A No.

5 Q Would you be kind enough to look at Special
6 Counsel Exhibit 140.

7 (Handing document to witness.)

8 Can you identify this?

9 A Yes. It's a memo from me to Senator DeConcini.

10 Q This was done, I take it, in preparation for the
11 meeting of April 2nd?

12 A No.

13 Q What was this done for?

14 A The Senator had received a large amount of
15 information from ACC about their problems. The Senator gave
16 it to me and asked me to summarize it.

17 Q Is that what this is?

18 A It's a summary plus some editorial comments of
19 mine, some information I got from news accounts.

20 Q Would you be kind enough to -- this is the only
21 one of any length that I'd ask you to read into the record,
22 but would you please read this.

23 I have a few questions about it.

24 A "Confidential: March 19, 1987

25 "To Senator DeConcini .

1 "From Laurie A. Sedlmayr

2 "Re: American Continental

3 "The following is in follow up to our earlier
4 conversation.

5 "What American Continental wants from Gray for
6 concessions.

7 "1. Correction of incorrectly appraised
8 assets. AC would be willing to have an
9 independent third party Arizona appraiser do the
10 work.

11 Example. Phoenician Country Club appraised
12 by FHLBB at \$120 million. AC appraises at \$200
13 million. Because these assets are undervalued,
14 AC's net worth decreases. FHLBB requires a net
15 worth of 3 percent.

16 "2. The Capital Regulation, which determines
17 capital net worth requirements, has a provision
18 on direct investment. The Capital Regulation
19 requires direct investments in excess of the
20 FHLBB limit of ten percent? [I wasn't certain]
21 made after December 10, 1984, be partially
22 included in net worth requirements. The Capital
23 Regulation stated that direct investments had to
24 be made, legally committed to be made, or that
25 there be a definite plan to make such direct

1 investments.

2 "AC has \$600 million in disputed direct
3 investments with FHLBB. AC states they qualify
4 for grandfather; FHLBB says they do not. Under
5 the Capital Reg, ten percent of the not permitted
6 direct investments (10 percent of \$600 million
7 minus \$60 million) will be added to the net worth
8 requirement. For AC, that means increasing their
9 net worth requirement from 3 percent, about \$74
10 million, by an additional \$60 million, total of
11 \$134 million.

12 "The problem works out like this: On the one
13 hand, the FHLBB is lowering AC's net worth by low
14 appraisal values for property. On the other
15 hand, they are raising AC's net worth
16 requirements through the direct investment
17 section of the Capital Regulation.

18 "[Note. The issue for which Lee Henkel --

19 Q Excuse me. Just in fairness. Is this when
20 you're saying, editorializing, is this what you're --

21 A Yes. There's some others, but the "note" is
22 definitely, and I'm sorry, the "Note's" in brackets.

23 "[Note. The issue for which Lee Henkel has
24 gotten in so much trouble is a separate issue,
25 but nonetheless a related issue. Henkel sought

1 to clarify a definition in the direct investment
2 regulation as distinct from the direct investment
3 section of the Capital Regulation. Under the
4 Direct Investment Regulation, S&Ls must seek a
5 waiver of the FHLBB's Ten Percent Direct
6 Investment Regulation if they exceed the ten
7 percent limit. Because of the dispute of the
8 meaning of the grandfather date, AC is in
9 violation. Henkel sought to clarify the Direct
10 Investment Regulation so as to benefit AC.
11 While this would not have changed the Capital
12 Regulation, certainly it could be expected that
13 after changing the Direct Investment Regulation,
14 the Board would move to put the Direct Investment
15 section of the Capital Regulation in harmony with
16 it.]"

17 "What American Continental is willing to do.
18 The major thing that AC is willing to do is
19 remove itself from its status as a federally-
20 insured institution over a ten-year period.
21 While AC argues that they are thereby giving up a
22 \$50 million charter they paid for, I am not sure
23 that the FHLBB will see it that way. AC has made
24 a great deal of money through Lincoln and I am
25 frankly doubtful that the FHLBB (Gray) will see

1 this as a great triumph. AC feels that this is a
2 major concession.

3 "Other items.

4 "1. As noted, Lincoln does not make home
5 loans, the ostensible primary purpose of
6 Federally-insured S&Ls. Lincoln is setting up a
7 home loan program in Southern California
8 beginning April, 1987. Fifty-five percent of new
9 deposits, about \$75 million will be used for the
10 home loan program. All loans will be resold on
11 the secondary market.

12 "2. Lincoln has already improved the
13 condition of their books and recordkeeping to be
14 in accord with Accepted FHLBB practices.

15 "3. Lincoln invests heavily in junk bonds.
16 They would agree to limit that to 15 percent of
17 assets (presently they're at about 11 percent).
18 The FHLBB allows federally chartered only ten
19 percent and feels that more than that is risky.
20 At this time, Lincoln does not invest in hostile
21 takeover junk, but Grogan indicates that they
22 would not be willing to make that permanent.

23 "4. Lincoln could agree to limit or curtail
24 further land investments."

25 Q. Now, where did you get all the information? Was

1 that the stuff they sent you in the --

2 A Most of it is material that the Senator gave me
3 and asked me to summarize. Some of it obviously comes from
4 newspaper articles. Some of it's just my own impressions.

5 Q And where did the Senator get the material?

6 A I understand he got it from ACC.

7 Q Now, you'll note it's dated March 19, 1987.

8 Did you write this, if you know, before or after
9 the meeting with Senator McCain and Ms. VanPaasschen?

10 A I think before, because I think that meeting was
11 late in the day. I don't remember but that would be my best
12 guess since the meeting was late in the day with them. And
13 I don't recall having been there real late that night.

14 Q If you remember, did you or Senator DeConcini
15 bring this memo with you to that meeting?

16 A I'm not certain. I expect I did.

17 Q Would you be kind enough to look at Exhibit 136,
18 please?

19 Now, the memo which you previously have just
20 read, Exhibit 140, is dated March 19, 1987. This Exhibit
21 136 is dated two days earlier.

22 Have you seen this before?

23 A Yes, I have.

24 Q Would you tell us what this is?

25 A Well, the first two pages are a letter to Senator

1 DeConcini from Mr. Keating. Then there's an exhibit marked
2 Exhibit 2, which is a schedule of the FHLBB examination of
3 Lincoln. That's two pages. Then there's a long quote from
4 E. Gerald Corrigan, President of the Federal Reserve Bank of
5 New York. Then there's two pages entitled "Appraisal of
6 Assets Issue." Then there's a page on explanation of
7 Capital Regulations, history of Direct Investment debacle,
8 the Henkel Story. That's it.

9 Q Would it be fair to say, and correct me if you
10 don't think it's fair to say, that the attachment that says
11 Schedule is there's a listing of what obviously Mr. Keating
12 perceives as being FHLBB concerns and his, Mr. Keating's
13 responses.

14 A That's the way it appears.

15 Q I mean, that's what it says there, right?

16 A Right.

17 Q Did you use this, at all, if you remember, the
18 Keating letter to the Senator, in preparation of the March
19 19th memo?

20 A I believe I did along with probably some other
21 information.

22 Q Would you be kind enough to turn to Special
23 Counsel Exhibit 200?

24 Let me ask you if you can identify that?

25 A I think, and I'm not absolutely certain, but I

1 think this was something else I had along with that other
2 material, because it appears that some of the material in
3 here was in my memo.

4 Q There's no doubt, is there, that this Exhibit was
5 prepared for purposes of the meeting with Ed Gray? It says
6 so right on top.

7 A Right.

8 Q Would you be kind enough to read this into the
9 record?

10 A This whole page?

11 Q Yes.

12 A "Talking points for meeting with Ed Gray.

13 "1. FHLBB examination activities must stop
14 now. If Chairman Gray attempts to argue that he
15 is not involved with the examination, the point
16 must be made aggressively that:

17 "a) Lincoln has been told
18 on numerous occasions that its
19 exam is being directed out of
20 Washington, that it is being
21 continued because of orders
22 from Washington, and that San
23 Francisco personnel are very
24 sensitive because of the
25 involvement of Washington; and

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"b) The purpose of this meeting is to get him involved, as the Chairman of the FHLBB, and to resolve the exam in a fair and equitable manner as follows:

"2. Lincoln is willing to:

"a) withdraw its lawsuit attacking the Board's authority to issue the Direct Investment Regulation;

"b) withdraw its motion for recusal by Ed Gray;

"c) divest itself of all insured deposits over a ten-year period in accordance with policies espoused by E. Gerald Corrigan, President of the Federal Reserve Bank of New York (see Exhibit 1); and

"d) comply with additional concessions previously outlined (see Exhibit 2.)

"3. The FHLBB must disengage immediately, put a hold on all exam-related letters and

1 activities, and simply structure a settlement in
2 accordance with the terms described above. The
3 settlement must include specific FHLBB
4 recognition that the current direct investments
5 are grandfathered for purposes of both the Direct
6 Investment Regulation and the Net Worth
7 Regulation. The settlement must not be in the
8 form of a supervisory agreement or cease and
9 desist order. Rather, the FHLBB's final
10 examination letter and Lincoln's response should
11 serve as a basis for the settlement."

12 Q Now, as far as you know, who prepared this?

13 A I don't have specific knowledge. I assume
14 somebody at AC.

15 Q Now, you'll notice in the upper left hand corner,
16 next to where it says "talking points for meeting with Ed
17 Gray," there's a handwritten note "won't use"?

18 A Yes, sir.

19 Q That's not your writing?

20 A No, it isn't.

21 Q Ms. VanBaasschen, you'll recall, has testified
22 that it was her note.

23 Did you discuss this document with her?

24 A I don't recall specifically discussing it, no.

25 Q You might have or you might not have, is that?

1 A It's certainly possible. I don't recall it.

2 Q Did you ever discuss this memo with Senator
3 DeConcini?

4 A I don't recall a specific discussion. I think
5 this was probably in the material he gave me to summarize,
6 which was the April 19th memo.

7 Q Were you, as a key banking staff, if I may refer
8 to you in --

9 A The only.

10 Q The only, the one and only banking staffer,
11 aren't you troubled, as an experienced banking staffer, at
12 some of the points that ACC were advocating in this memo,
13 such as FHLBB examination activities must stop?

14 A I think it's typical of the way they would write
15 things. It's overly dramatic. It's certainly stronger than
16 what showed up in my memo.

17 Q The FHLBB must disengage immediately, and that's
18 in caps.

19 A Often times people send us things that are much
20 stronger than the way we would put it. I mean, I don't know
21 that it particularly offended me. I think it's just sort of
22 typical of the way they wrote things, dramatically.

23 Q In this Exhibit 200, it says "Lincoln is willing
24 to a) withdraw its lawsuit attacking the Board's authority,
25 and b) is willing to withdraw its motion to recuse Gray."

1 Do you see that?

2 A Yes, I do.

3 Q So your office was, prior to the meeting with Ed
4 Gray, your office was well aware of the fact that both a
5 lawsuit had been filed against the Board, and that there had
6 been a filing to recuse Ed Gray?

7 A Yes. I think that's in my April 1st memo.

8 Q Did you ever discuss with Senator DeConcini,
9 those issues of meeting with Mr. Gray, the Chairman of the
10 Board, when this lawsuit is pending and the petition to
11 remove is pending?

12 A I don't remember discussing the lawsuit or the
13 petition.

14 Q Do you remember discussing it with anyone,
15 expressing concerns at all about it?

16 A I don't think so.

17 Q Prior to the filing of a motion to recuse Ed
18 Gray, did your office ever receive a copy of that petition
19 to recuse?

20 A We could have. ACC used to send us tons of
21 material, and most of it I didn't read and threw away,
22 because I just didn't have the ability to get through it
23 all. They could have. I don't remember it specifically,
24 but they sent us a lot of paper.

25 Q But that would be, I mean, you just wouldn't