

# EXHIBIT 105

Nelson, et al. v. Cuban, et al.  
United States District Court, Northern District of California  
Case No. 3:09-CV-682 PJH

*Exhibit 105 to Supplemental Declaration of John D. O'Connor in Opposition to Defendant's Special Motion to Strike*



# Oral Deposition of **Mark Cuban**

**Date:** May 20, 2009

**Volume:**

**Case:** Richard Roe, et al. v. John Doe, Mark Cuban, et al.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN CALIFORNIA

RICHARD ROE, RICHARD ROE II, DON )  
A. NELSON, Individuals, )

Plaintiffs, )

vs. )

CASE NO:  
3:09-CV-682 PJH

JOHN DOE, MARK CUBAN, an )  
individual; and DALLAS )  
BASKETBALL, LTD., a partnership, )  
and DOES 1 through 10, )

Defendants. )

\*\*\*\*\*

ORAL DEPOSITION OF  
MARK CUBAN  
May 20th, 2009

\*\*\*\*\*

ANSWERS AND DEPOSITION of MARK CUBAN,  
taken at the instance of the Plaintiffs, on the 20th  
day of May, A.D., 2009, between the hours of 9:40 a.m.  
and 2:35 p.m., in the above styled and numbered cause  
at the offices of Jackson Walker, L.L.P., 901 Main  
Street, Suite 6000, in Dallas, Dallas County, Texas,  
before Jerry L. Callaway, RDR, a Certified Shorthand  
Reporter in and for the State of Texas, pursuant to the  
Federal Rules of Civil Procedure and the provisions  
stated on the record.

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1  
2  
3  
4  
5  
6 **APPEARANCES**  
7  
8  
9 **APPEARING FOR THE PLAINTIFFS:**  
10 **Mr. John D. O'Connor**  
11 **O'CONNOR AND ASSOCIATES**  
12 **One Embarcadero Center**  
13 **Tenth Floor, Suite 1020**  
14 **San Francisco, California 94111**  
15  
16 **APPEARING FOR THE DEFENDANTS:**  
17  
18 **Ms. Amanda L. Bush**  
19 **JACKSON WALKER, L.L.P.**  
20 **100 Congress Avenue**  
21 **Suite 1100**  
22 **Austin, Texas 78701**  
23  
24 **Also Present:**  
25 **Mr. Robert Hart**

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1 **MARK CUBAN,**  
2 **having been first duly sworn, testified as follows:**  
3 **EXAMINATION**  
4 **BY MR. O'CONNOR:**  
5 **Q. Could you state your full name for us?**  
6 **A. Mark Cuban.**  
7 **Q. You have been deposed before, I think?**  
8 **A. Yes, sir.**  
9 **Q. Okay. Good. Mr. Cuban, we've been through, I**  
10 **think, an arbitration and a deposition in a related**  
11 **case, correct?**  
12 **A. Yes, sir.**  
13 **Q. Okay. So some of the things we are going to**  
14 **be talking about here today relate to the same set of**  
15 **facts. So I'll try not to repeat questions that have**  
16 **been asked before, but there is going to be some cases**  
17 **where I am going to have to establish certain facts, if**  
18 **nothing else, for a predicate for the next one. You**  
19 **understand that? So I am not going to try to**  
20 **unnecessarily waste your time here today, but I am**  
21 **going to be going over some of the same things. You**  
22 **understand that?**  
23 **A. Yes, sir.**  
24 **Q. And you understand that I have the right to**  
25 **get from you your best understanding and remembrance of**

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1 **things, correct?**  
2 **A. Yes, sir.**  
3 **Q. There may be some things I ask you where you**  
4 **say to yourself, well, gee, Robert Hart could answer**  
5 **this better because it's a legal matter or Floyd Jahner**  
6 **could answer it better because it's an accounting**  
7 **matter, but you understand I have a right to get from**  
8 **you what you think about a certain matter, even if your**  
9 **understanding's imperfect or you don't remember. You**  
10 **understand that?**  
11 **A. I believe so.**  
12 **Q. Okay. So I may ask your understanding of an**  
13 **accounting procedure, for example. You may say, Floyd**  
14 **knows that better than I, but I still have the right to**  
15 **your understanding, however limited or fuzzy it might**  
16 **be. You understand that?**  
17 **A. Yes, sir.**  
18 **Q. Okay. So with that in mind, I may ask you**  
19 **some things that are better answered by someone else,**  
20 **but I am deposing you today. Okay?**  
21 **A. Yes, sir.**  
22 **Q. Okay. Good. I like being called "sir," but**  
23 **you don't need to call me "sir," but that's fine. I'll**  
24 **try to be very respectful to you.**  
25 **Let's go back, Mr. Cuban, to this -- the**

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1 **consulting portion of the contract with Don Nelson that**  
2 **we have been talking about over the last couple of**  
3 **years. You are familiar with the provision in**  
4 **Mr. Nelson's contract whereby he was to provide**  
5 **consulting services for five years from June 30th,**  
6 **2006, to June 30th, 2011?**  
7 **A. Yes, sir.**  
8 **Q. Okay. That consulting portion of the contract**  
9 **was something that was your idea when you first**  
10 **negotiated a contract with Coach Nelson, right?**  
11 **A. Yes, sir.**  
12 **Q. Okay. Am I correct that one of the reasons**  
13 **you did this was because you thought that by 2006**  
14 **Coach Nelson would be retired?**  
15 **A. Yes, sir.**  
16 **Q. Okay. It was a sign of friendship in your**  
17 **view to make a gesture to him to keep him around?**  
18 **A. No, sir.**  
19 **Q. It was not?**  
20 **A. No, sir.**  
21 **Q. Okay. Well, you did consider it a bargain to**  
22 **get Coach Nelson for \$200,000 for each of five years,**  
23 **right?**  
24 **A. No, sir.**  
25 **Q. Why did you -- why did you sign him up to**

1 that -- well, first let me ask you, was it your idea to  
 2 sign him up to that consulting agreement?  
 3 A. Yes, sir.  
 4 Q. Okay. And why did you want to do that?  
 5 A. I felt it was a good idea not to have him have  
 6 an ability to compete with us after having been with  
 7 the organization for so long.  
 8 Q. Did you tell him that, that that's why you  
 9 wanted this agreement to lock him up so he couldn't get  
 10 another job?  
 11 A. I don't recall, sir.  
 12 Q. Now, at the time you made this agreement with  
 13 Coach Nelson, you believed Nellie at that point in time  
 14 when he said, "this is my last deal, I don't want to  
 15 coach after this," right?  
 16 A. Yes, sir. I believed he thought it was his  
 17 last deal.  
 18 Q. Okay. Let me read from page 540 and 541,  
 19 lines 23 to --  
 20 MS. BUSH: I am sorry, are you in --  
 21 whose deposition are you in?  
 22 MR. O'CONNOR: I am going to give you,  
 23 Amanda, if I can get my hands on a copy of the  
 24 arbitration transcript.  
 25 MS. BUSH: I just didn't know what you

1 greatest offensive minds of all time, one of the  
 2 greatest coaches around, and make him available."  
 3 Does that testimony accurately reflect  
 4 your state of mind?  
 5 A. Which contract extension -- which contract are  
 6 we talking about? Because there were multiple times  
 7 when we negotiated a consulting agreement. There was  
 8 the original point in time back, I think, in 2000 when  
 9 we added, initially added the five years. And then  
 10 there was again when we did the extension when it was a  
 11 little bit more contentious when we added the five  
 12 years.  
 13 Q. Right. Right. This is the third amendment to  
 14 the employment contract. This is when you are -- this  
 15 is your first negotiation with him. If you go to 539,  
 16 this is your own lawyer asking you questions about the  
 17 third amendment to the employment contract.  
 18 A. Which is which year?  
 19 Q. That would have been 2000.  
 20 A. Okay.  
 21 Q. Okay. And when you came to the Mavericks,  
 22 Coach Nelson did not have a five-year consulting  
 23 agreement; that was your -- that was something you put  
 24 in.  
 25 A. Yes, sir.

1 were reading from.  
 2 MR. O'CONNOR: Yeah. I'm reading from  
 3 the arbitration transcript. Let me do this, let me get  
 4 you a copy of the arbitration transcript just for your  
 5 review and Mr. Cuban. From time to time I may refer to  
 6 it.  
 7 Q. (BY MR. O'CONNOR) Okay. Starting at page  
 8 540, lines 6 to 10.  
 9 "Question: Share with Judge Ashworth how  
 10 that played a role in your negotiations with him.  
 11 "Answer: Well, I mean, I believed Nellie  
 12 at that point in time when we said this is my last  
 13 deal, you know, I don't want to coach after this."  
 14 So let me stop right there, Mr. Cuban.  
 15 At the time that Nellie said that this was going to be  
 16 his last deal, you believed him, right?  
 17 A. Yes, sir.  
 18 Q. Okay. And at the bottom of the page within  
 19 the same answer, picking up at line 23 on 540 and going  
 20 to the next page at line 4.  
 21 "And so with the understanding that  
 22 Nellie would coach, you know, a couple more, three more  
 23 years, I think it was, I said, okay. I want to have  
 24 his voice of experience around. And so for me \$200,000  
 25 a year was an inexpensive way to keep one of the

1 Q. Okay. Okay. So we are referring to the third  
 2 amendment which was signed in 2000 on your watch.  
 3 A. Okay.  
 4 Q. And by the way, he didn't have a lawyer  
 5 negotiate the terms for it; you two sat down and worked  
 6 it out, didn't you?  
 7 A. I don't recall specifically. When it came to  
 8 the contract, we had an initial discussion, but from  
 9 there the lawyers took over.  
 10 Q. Right. Your practice was when you had a legal  
 11 matter, you yourself would not talk to a lawyer like  
 12 me; you would have Robert or some other lawyer talk to  
 13 the coaches or the player's lawyer, right?  
 14 A. It depends.  
 15 Q. Is that your practice?  
 16 A. It just depends.  
 17 Q. Okay. Do you recall testifying in this case  
 18 that that's your practice, that you don't generally  
 19 talk to lawyers, you have your lawyers talk to lawyers,  
 20 and you talk to the individuals?  
 21 A. Again, it depends. I don't recall my specific  
 22 testimony, no.  
 23 Q. Okay. In any case, let's get back to this.  
 24 And at page 541, line 18 to 20, same answer.  
 25 "And so it was like, you know, at that

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1 point relatively speaking, it was a de minimis amount  
 2 relative to what I could get. And so Nellie didn't ask  
 3 for the consulting agreement. I put it on the table  
 4 and said, here you go, Nellie."  
 5 Does that fairly accurately reflect the  
 6 fact that you thought you were paying a de minimis  
 7 amount for this talent?  
 8 A. In the year 2000 that would have reflected.  
 9 Q. Okay. I believe you used the word "bargain"  
 10 here as well. You thought it was a bargain, right?  
 11 A. In the year 2000 when the stock market was at  
 12 about -- NASDAQ was at 5,000.  
 13 Q. At that time \$200,000 to you was -- was a  
 14 rounding error, wasn't it?  
 15 A. Less than it is now.  
 16 Q. Yes. Yes. \$200,000 means something today.  
 17 All right. I want to get to that state in life where  
 18 \$200,000 isn't that significant, but --  
 19 A. It is significant.  
 20 Q. -- sometime maybe I'll get there in another  
 21 life.  
 22 All right. Let's go to the bottom of  
 23 page 541, lines 24, and then go to the top of 542.  
 24 "And to me it was a bargain, it was a  
 25 great opportunity, and it was a sign of friendship."

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1 Do you see that?  
 2 A. Yes, sir.  
 3 Q. Does that refresh your recollection now,  
 4 Mr. Cuban, that part of your motive in signing Nellie  
 5 to this deal for a consultancy was as a sign of  
 6 friendship?  
 7 A. In the year 2000 at that point in time for  
 8 that contract, yes, sir.  
 9 Q. Yeah. You two were getting along well then,  
 10 weren't you?  
 11 A. Yes, sir.  
 12 Q. He was excited to have an energetic owner with  
 13 resources; you were excited to have a very good coach;  
 14 is that a fair summary?  
 15 A. Well, I can't speak for him. At that point in  
 16 time, yes, I felt positive about Nellie.  
 17 Q. Okay. And you did enjoy success together,  
 18 didn't you, for a number of years?  
 19 A. Depending on how you define success, but we  
 20 improved, things certainly improved.  
 21 Q. Okay. Certainly before you got to the  
 22 franchise, the Dallas Mavericks were not known as being  
 23 one of the premier teams in basketball, true?  
 24 A. Yes, sir.  
 25 Q. Okay. And after a while, both with

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1 Coach Nelson coaching and you as the owner, the  
 2 Mavericks did become a premier franchise, true?  
 3 A. We certainly improved.  
 4 Q. Okay. Now, over the years, and especially as  
 5 we get to 2003, there were some parts of your  
 6 relationship that were not positive, correct?  
 7 A. From my perspective, yes, sir.  
 8 Q. I mean, you -- in no particular order,  
 9 sometimes you did not trust his instincts regarding  
 10 trades, right?  
 11 A. It depends.  
 12 Q. You didn't like his trade where he tried to  
 13 get rid of Jason Terry for Gordon Giricek, for example?  
 14 A. That -- that was a hypothetical, never took  
 15 place.  
 16 Q. I understand. But you wouldn't -- you  
 17 wouldn't have wanted -- he wanted to do that trade, and  
 18 you didn't want it?  
 19 A. It couldn't work under the salary cap's  
 20 constraints.  
 21 Q. But you didn't want it, did you? Whether it  
 22 could work or not, you didn't think that was a good  
 23 trade?  
 24 A. It wasn't my final decision. All decisions  
 25 along those lines were made jointly, so --

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1 Q. I really wasn't asking whether it was your  
 2 decision. I am really asking whether --  
 3 A. Honestly, I don't recall. I don't recall.  
 4 Q. And you don't -- do you recall telling Judge  
 5 Ashworth you didn't like that trade?  
 6 A. I -- I'd have to review the transcripts. I  
 7 don't know.  
 8 Q. Okay. Okay. Certainly you had a -- something  
 9 of a dispute over the issue of whether Dirk Nowitzki  
 10 could play with his knee injury, fair enough?  
 11 A. No, sir.  
 12 Q. You wanted Coach Nelson to put Nowitzki in  
 13 uniform.  
 14 A. Yes, sir.  
 15 Q. Okay. Coach Nelson said you'd have to fire  
 16 him before he would do that, right?  
 17 A. I don't recall.  
 18 Q. Okay. Your -- the Nowitzki incident happened  
 19 in the playoffs of 2003, right, against San Antonio?  
 20 A. I don't -- I don't like the characterization  
 21 incident. Dirk got hurt during that series.  
 22 Q. All right. There was some contentiousness in  
 23 the negotiations over the renewal of his contract,  
 24 fifth amendment, in 2003, the summer of 2003, correct?  
 25 A. Depends on how you define "contentiousness,"



1 but, yeah, there were some disagreements.  
 2 Q. The negotiation of that contract was not as  
 3 smooth as the negotiation for the contract you-all put  
 4 together in 2000 at the beginning.  
 5 A. Yes, sir.  
 6 Q. Okay. And whether or not -- let me put it  
 7 this way.  
 8 You were not completely 100 percent sold  
 9 on the notion that you should re-up Coach Nelson, that  
 10 is to say, sign him to a new deal, right?  
 11 A. No, sir. I think we are -- I was -- yes, sir,  
 12 you know, I was all for re-signing Nellie just to be  
 13 clear. It was just a question of the circumstances.  
 14 Q. But you had some reservations about doing it,  
 15 right?  
 16 A. No, sir.  
 17 Q. Didn't have any reservations about that?  
 18 A. No, it was just a question of terms.  
 19 Q. Okay. You looked at it as a question of  
 20 hiring the devil you knew versus the devil you didn't  
 21 know, fair enough?  
 22 MS. BUSH: Objection, form.  
 23 A. Depends, I mean --  
 24 Q. (BY MR. O'CONNOR) Do you recall testifying  
 25 before Judge Ashworth that in 2003 that the choice as

1 A. I don't recall.  
 2 Q. I am not going to keep going back to your  
 3 other testimony. If you testified to that earlier, you  
 4 have no reason to disagree with that testimony today.  
 5 A. Correct.  
 6 Q. Okay. Did you feel that Coach Nelson's heart  
 7 was not in his coaching job starting in the 2003/2004  
 8 year?  
 9 A. I don't recall.  
 10 Q. How about the 2004/2005 year, you felt that  
 11 his heart was not in his job.  
 12 A. I don't know how to characterize it, but I  
 13 didn't think we were getting a hundred percent of his  
 14 focus.  
 15 Q. All right. You were dissatisfied with his  
 16 effort, weren't you?  
 17 A. Yes, sir.  
 18 Q. You didn't think you were getting what you  
 19 paid for.  
 20 A. Yes, sir.  
 21 Q. And you got upset with Coach Nelson because he  
 22 said that he would keep coaching with less than full  
 23 effort unless you agreed to pay him.  
 24 A. Yes, sir.  
 25 Q. Okay. You considered that a wrong thing to

1 to whether to hire Coach Nelson again was a choice  
 2 between the devil you knew versus the devil you didn't  
 3 know?  
 4 A. Yes, sir.  
 5 Q. Okay. Certainly after Coach Nelson signed  
 6 that 2003 extension, you were not happy about some of  
 7 his actions; isn't that true?  
 8 A. I'm sure there were some things, but I  
 9 don't -- yeah, I won't characterize that across the  
 10 board.  
 11 Q. Well, you thought he had elective surgery, for  
 12 example, when he didn't need to have elective surgery,  
 13 when he could have put that surgery off to the end of  
 14 the season?  
 15 A. No, sir.  
 16 Q. You didn't have any objections to that?  
 17 A. The objection was that I didn't know he was  
 18 going to have it until the day before he had it.  
 19 Q. And wasn't one of your objections that he  
 20 could have put it off; it was elective?  
 21 A. I didn't know until after the fact, so it  
 22 wasn't an objection at that point in time, no.  
 23 Q. Later on you found out it was elective and you  
 24 questioned whether he needed to have it during the  
 25 season, true?

1 do.  
 2 A. Yes, sir.  
 3 Q. Finally, after speaking with Del Harris, you  
 4 agreed to have Coach Nelson step down and continue  
 5 paying him.  
 6 A. Yes, sir.  
 7 Q. Okay. But you only had about a five-minute  
 8 conversation with Coach Nelson about the terms, fair  
 9 enough?  
 10 A. No, sir.  
 11 Q. Okay. How long was your conversation with  
 12 Coach Nelson?  
 13 A. I don't recall specifically.  
 14 Q. Okay. One thing is -- you would agree with,  
 15 is that you didn't discuss the consultant's contract at  
 16 all when you were talking to Coach Nelson about the  
 17 terms of him stepping down?  
 18 A. Correct, sir.  
 19 Q. Okay. Okay. Now, just let me see if this  
 20 refreshes your memory about the length of the meeting.  
 21 I'm reading now from your deposition in the Nelson  
 22 versus Dallas Basketball case, in the arbitration case,  
 23 January 18, 2008. And the conversation now is about  
 24 your knowledge of the contract, in June of 2006 your  
 25 memory of the March 19 conversation of 2005. And --

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1 A. Could I take a look at that, sir, just to  
 2 confirm dates?  
 3 Q. Sure. Sure. Let me make sure you have that  
 4 deposition in front of you.  
 5 THE WITNESS: Was that in June 2006?  
 6 MS. BUSH: In January.  
 7 THE WITNESS: Right, he just said the  
 8 deposition was in June 2006, right?  
 9 Q. (BY MR. O'CONNOR) No, it was a January -- to  
 10 make clear, you were asked on January 18th, 2008, about  
 11 your state of mind in June of 2006.  
 12 A. Okay. I thought --  
 13 Q. You remember in June of 2006 you and Floyd  
 14 were discussing whether you owed Nelson consultant's  
 15 money.  
 16 A. Okay. I thought I heard you say that when I  
 17 gave my deposition in June 2006, so that's why I was  
 18 unsure.  
 19 Q. Okay. Okay. To be clear, you gave a  
 20 deposition in this case January 18th, 2008.  
 21 A. Okay.  
 22 Q. All right? And one of the issues in that case  
 23 was your state of mind in June of 2006 when you and  
 24 Floyd Jahner are discussing whether you owe Nelson  
 25 consultant's money.

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1 A. Okay.  
 2 Q. All right? And the discussion in June of 2006  
 3 went back to your March 2005 conversation with Nelson  
 4 when you agreed that he would step down and you would  
 5 pay him.  
 6 A. Okay.  
 7 Q. All right? You with me so far?  
 8 A. Yes, sir.  
 9 Q. There was a conversation in May -- in March --  
 10 around March 19th, 2005, in which you and Coach Nelson  
 11 agreed that he would step down as coach, right?  
 12 A. Yes, sir.  
 13 Q. And you did agree that you would pay him,  
 14 continue to pay him his coaching salary, correct?  
 15 A. Yes, sir.  
 16 Q. And that coaching salary was going to go until  
 17 June 30, 2006.  
 18 A. Coaching salary, yes, sir.  
 19 Q. Okay. But as we talked about before, one of  
 20 the things you did not discuss in that conversation was  
 21 what your obligations were regarding consultant's  
 22 salary, true?  
 23 A. True.  
 24 Q. Okay. You didn't have discussions one way or  
 25 the other also about his obligations under the

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1 consultant's contract, true?  
 2 A. Yes, sir.  
 3 Q. Okay. So the contract -- so the conversation  
 4 you had back in March of '05 did not deal with the  
 5 Mavericks' obligation to Nelson regarding the  
 6 consultant's contract and Nelson's obligations to the  
 7 team regarding the consultant's contract.  
 8 A. Correct.  
 9 Q. Okay. And to refresh -- I know this was a  
 10 year and a half ago you were deposed on this,  
 11 Mr. Cuban, so let me see if this refreshes your memory,  
 12 and I'll go down to the bottom of page 211 and 212 to  
 13 see if this helps you. The question, let's say line  
 14 15.  
 15 "When he stepped down in March as head  
 16 coach --  
 17 "Answer: Right.  
 18 "Question: -- and you said you had your  
 19 e-mail that the contracts are unchanged, still have  
 20 eleven-year contract, do you take the position that --  
 21 that you did or did not want to keep him as a  
 22 consultant after --  
 23 "Answer: I take the position --  
 24 "Question: -- June 30th, 2006?  
 25 "Answer: I take the position we had a

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1 five-minute conversation and that at that point in time  
 2 in my mind set coming out we didn't contemplate --  
 3 that we hadn't contemplated -- there wasn't a reason  
 4 for us to contemplate all the possibilities that could  
 5 go right or wrong as we move forward."  
 6 Does this help refresh you that your  
 7 conversation back in March of 2005 was about five  
 8 minutes?  
 9 A. Yes, sir.  
 10 Q. Okay. And you two in that agreement -- in  
 11 that meeting agreed that you would support one another,  
 12 you hugged and moved on, right?  
 13 A. Yes, sir.  
 14 Q. Okay. After March 19th, 2005, you continued  
 15 to pay Coach Nelson his regular salary as it became due  
 16 every two weeks, correct?  
 17 A. I don't -- I believe so.  
 18 Q. Okay. But, obviously, you delegate those  
 19 functions of paying payroll to Floyd Jahner and Lisa  
 20 Tyner, correct?  
 21 A. To the appropriate people at the Mavericks,  
 22 yes.  
 23 Q. Right. But as you are sitting here today, you  
 24 have no reason to quarrel with the notion that Coach  
 25 Nelson was paid fully his contractual salary through

1 June 30, 2006?  
 2 A. No, sir.  
 3 Q. So what happened in June of 2006 is you  
 4 express to Floyd Jahner that you weren't sure what --  
 5 what your obligations were going forward on this  
 6 consultant's deal, fair enough?  
 7 A. I don't recall.  
 8 Q. Okay. Certainly you felt there was complete  
 9 uncertainty in what the deal was regarding the  
 10 consultant's contract.  
 11 A. Don't recall.  
 12 Q. Let's go to the bottom of page 153, line 23 of  
 13 your deposition in January 18th, go to the top.  
 14 "Question: And the question I am saying,  
 15 you will agree with me that there was no basis for the  
 16 Mavericks not to make -- not making the payment under  
 17 the Fifth Amendment for the July 15th consultant  
 18 payment, no reason at all?  
 19 "Answer: I can think of a thousand  
 20 reasons, but, again, we were having the discussion here  
 21 as to what the actual agreement was, or they were  
 22 trying to get confirmation of what I thought the  
 23 agreement was is what it comes down to. Because they  
 24 wanted to know where I stood, and so I obviously wasn't  
 25 completely certain, and we went through the dialogue."

1 You weren't certain what the agreement  
 2 was for --  
 3 A. Honestly, I'm not certain of the context of  
 4 the question or the response here. I'd have to go back  
 5 and reread it all just to get a better understanding.  
 6 Q. Okay. Well, let me go to page 135, lines 4 to  
 7 9 of your deposition. This may be a better Q and A,  
 8 Mr. Cuban, for you.  
 9 "Question:" --  
 10 And now we are referring to e-mails of  
 11 June 27, 2006.  
 12 "Question: But when you got this e-mail,  
 13 when you wrote this e-mail, your recollection was that  
 14 when he stepped down as head coach, when he got his  
 15 last payment as head coach and general manager on June  
 16 30, 2006, that was the end of the contract.  
 17 "Answer: I wasn't sure."  
 18 Does that question and answer, does that  
 19 correctly reflect your state of mind in June of 2006 as  
 20 to whether or not June 30, 2006, would be the end of  
 21 Nelson's contract?  
 22 A. Again, I'm not sure. I'd have to go through  
 23 and reread everything and understand the context.  
 24 Q. Okay. Let's go to page 505 of your -- of the  
 25 arbitration transcript. And I believe this is your

1 lawyer questioning you on direct examination, I  
 2 believe. I may be wrong. I don't know who is  
 3 questioning you. So let me -- let me take that back  
 4 because I am uncertain. All right. 505.  
 5 "Question: No, you won't tell the court  
 6 in light of this e-mail that you just said -- I just  
 7 read to you, your own e-mails, that in your mind back  
 8 at the end of June 2006 you thought the contract was  
 9 over, you thought it was terminated, you thought that  
 10 you didn't agree to pay him a penny after July 1.  
 11 "Answer: I thought I didn't know."  
 12 Does that question and answer correctly  
 13 reflect your state of mind as to what you thought about  
 14 your obligation of paid consultant's salary?  
 15 A. Again, without reading more and getting a  
 16 better understanding of the context, I don't know.  
 17 Q. Okay. Okay. Now, again, talking about the  
 18 July 15 payment that was coming up for the first  
 19 consultant's payment. You would agree that after the  
 20 end of the June 30 contract year when Nelson finished  
 21 his coaching contract, that under the Mavericks' normal  
 22 payroll practices employees get paid every two weeks?  
 23 A. Yes, sir.  
 24 Q. Okay. So around July 15th would have been the  
 25 first date upon which a consultant's payment would have

1 been due to Nelson if, in fact, he was -- a  
 2 consultant's salary was owed to him?  
 3 A. Yes, sir.  
 4 Q. Okay. So now you are being questioned on page  
 5 511 about whether or not you needed to make the July  
 6 15th payment. And I'll go to page 510 to make sure  
 7 that you know that I'm accurate in my reference to July  
 8 15th. Page -- or line 24, July 15 -- line 24, page  
 9 510.  
 10 "Question: July 15th, 2006, the date the  
 11 first installment's due under the consultant part of  
 12 the contract, the Mavericks don't pay it. Will you  
 13 agree with me, and you tell the court, that the  
 14 Mavericks did not have one single reason based on the  
 15 contract or based on Nelson's conduct that they didn't  
 16 make the payment, not one single reason?  
 17 "Answer:" Which you asked a question,  
 18 "The Mavericks did not have one single reason not to  
 19 make the payment?  
 20 "Question: Right.  
 21 "Answer: No, sir. Let me rephrase.  
 22 Yes, we had reason not to make the payment, but we --  
 23 there was just complete uncertainty as to what it was.  
 24 As you can see here, it just reflects what I said in  
 25 the previous e-mails that -- that thread that we had

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1 earlier, I just didn't know, and Nellie obviously is  
 2 saying he didn't know, and so we are trying to figure  
 3 it out."  
 4 As I'm reading these bits of testimony to  
 5 you, Mr. Cuban, does this refresh your recollection  
 6 that in June of 2006 prior to the July 15 payroll date,  
 7 that you were uncertain as to whether you owed Nelson  
 8 consultant's salary?  
 9 A. I don't know. You've taken me through a lot  
 10 here.  
 11 Q. Yeah.  
 12 A. I was trying to put all the pieces together.  
 13 Q. I mean, you didn't pay, you didn't pay him the  
 14 July 15th consultant's salary, right? We've been  
 15 through this for the last several years, right?  
 16 A. I will defer to whatever.  
 17 Q. Well, that's your memory here today that there  
 18 was a period of time when you weren't paying, that is  
 19 to say you, the Mavericks, were not paying Nelson his  
 20 consultant's salary, right?  
 21 A. I don't recall the details.  
 22 Q. This doesn't refresh your memory at all that  
 23 you didn't pay Nelson his consultant's salary?  
 24 A. Not the details, no, sir.  
 25 Q. I'm not asking you about the details. Let's

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1 put the details aside. Was there a period of time in  
 2 which the Mavericks did not pay Nelson his consultant's  
 3 salary?  
 4 A. I don't want to make any assumptions, so I'll  
 5 just say I don't recall.  
 6 Q. So are you testifying here today that the  
 7 Mavericks did pay Nelson his consultant's salary?  
 8 A. I just don't recall.  
 9 Q. Okay. Are you testifying today that you  
 10 actually -- you did not have uncertainty about what the  
 11 consultant's contract was?  
 12 A. No, sir.  
 13 Q. You have no reason to disagree with the  
 14 testimony I've read to you to the effect that in your  
 15 mind there was uncertainty as to what -- what and  
 16 whether the consultant's agreement was?  
 17 A. I don't know, sir.  
 18 Q. So as you are sitting here right now, you  
 19 can't tell me whether you were uncertain or not about  
 20 whether or not the Mavericks owed Nelson a consultant's  
 21 salary?  
 22 A. Whether -- yes, sir.  
 23 Q. Okay. And what is that testimony, were you  
 24 uncertain -- in June of 2006 were you uncertain about  
 25 whether or not you owed Nelson consultant's salary?

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1 A. I don't recall.  
 2 Q. Okay. You certainly recalled that in March of  
 3 '05 when you had this conversation with Nelson about  
 4 stepping down, you did not talk one way or the other  
 5 about the consultant's agreement, fair enough?  
 6 A. Yes, sir. Fair enough.  
 7 Q. All right. Now, after March 19 of 2005, was  
 8 there anything about Coach Nelson's conduct that you  
 9 found unfavorable?  
 10 A. Yes, sir.  
 11 Q. Okay. Tell me some of the things that you  
 12 thought were unfavorable about his conduct.  
 13 A. I don't recall a lot -- I mean, I can give  
 14 you, the one thing that comes to mind is that he didn't  
 15 show up for practices.  
 16 Q. Okay. He didn't show up for practices while  
 17 he was coaching, right?  
 18 A. Yes, sir.  
 19 Q. Now, after he steps down, you felt that Nelson  
 20 was bad-mouthing Avery, didn't you?  
 21 A. No, sir.  
 22 Q. Didn't you have him removed from the tunnel  
 23 because you -- because Avery Johnson had heard that he  
 24 was bad-mouthing Avery in the tunnel?  
 25 A. Yes, sir.

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1 Q. Okay. You didn't appreciate that, did you,  
 2 hearing those reports about Coach Nelson?  
 3 A. I didn't know what to think at that point in  
 4 time, sir.  
 5 Q. You certainly had Coach Nelson removed from  
 6 the tunnel, true?  
 7 A. At Avery's request, yes, sir.  
 8 Q. Okay. And in your words, and I'll use your  
 9 words, you felt that after Nelson stepped down, he was,  
 10 quote, talking shit, unquote, about the team?  
 11 MS. BUSH: Objection, form.  
 12 A. Was -- no, sir.  
 13 Q. (BY MR. O'CONNOR) You didn't think he was?  
 14 A. I was -- I was told he was as opposed to  
 15 thinking he was.  
 16 Q. Okay. You also heard that he was not  
 17 returning phone calls to Avery, true?  
 18 A. That's what I was told, sir.  
 19 Q. Okay. Most of your knowledge as an owner  
 20 comes from someone else reporting to you, right?  
 21 A. It depends.  
 22 Q. Sure. So you often rely on reports of your  
 23 subordinates in order to make business decisions, true?  
 24 MS. BUSH: Objection, form.  
 25 A. Depends.

1 Q. (BY MR. O'CONNOR) Yeah. And some of the  
2 reports you were receiving after March 19th, 2005, were  
3 that Nelson was bad-mouthing the team and Avery, and  
4 that he wasn't returning calls to Avery, true?

5 A. No, sir.

6 Q. Did you hear that Mr. Nelson was not returning  
7 phone calls to Avery?

8 A. Yes, sir.

9 Q. You didn't like that when you heard that, did  
10 you?

11 A. I didn't know what to think, sir.

12 Q. Okay. After the 2005 season, you had a  
13 debriefing with the press about the season, true?

14 A. I don't recall, sir.

15 Q. It's common for you, it's your practice to  
16 have a debriefing with the press at the end of the  
17 season, isn't it?

18 A. No, sir.

19 Q. Okay. In 2005, did you have an off-the-record  
20 meeting with local reporters such as Eddie Sefco, Randy  
21 Galloway, Jeff Kaplan, and the other people who covered  
22 the Mavericks?

23 A. I don't recall, sir.

24 Q. Okay. Do you recall having about an hour  
25 meeting with the local reporters in the summer of 2005

1 in which you talked negatively about Coach Nelson and  
2 what he had done to you in the past, that is to say,  
3 his lack of effort, his lack of integrity and the like?

4 A. I don't recall.

5 Q. Okay. Do you deny that you had that?

6 A. No, sir.

7 Q. Okay. Certainly as of the summer of 2005,  
8 your relationship with Coach Nelson was not as close as  
9 it had been at the beginning of your tenure together.

10 A. Yes, sir.

11 Q. Okay. After March 19, 2005, when Coach Nelson  
12 stepped down as coach and before June 30th of 2006 when  
13 his coaching salary stopped, you had heard rumors that  
14 Nelson was sending out feelers around the league to  
15 coach again, true?

16 A. Yes, sir.

17 Q. Okay. And then in mid-July of 2005 you heard  
18 further rumors that Nelson was close to -- let me  
19 strike that.

20 Around mid-July of 2005 you heard rumors  
21 that Nelson was actively looking for a coaching job.

22 A. I don't recall.

23 Q. But certainly you had heard those rumors  
24 before July 15th, before mid-July, let's say?

25 A. Of which year?

1 Q. 2006, after his coaching salary --

2 A. I thought you said 2005.

3 Q. No. My original question was whether you  
4 heard rumors between March of 2005 and June 30, 2006;  
5 and I think you answered that you had heard some  
6 rumors, right?

7 MS. BUSH: Actually, you said 2005.

8 MR. O'CONNOR: Oh, did I?

9 THE WITNESS: Yes, sir.

10 Q. (BY MR. O'CONNOR) Okay. Okay. You heard the  
11 rumors between March of 2005 and June of 2005. Fair  
12 enough?

13 A. Yes, sir, I believe.

14 Q. Okay. After June of 2005, you also heard  
15 rumors, didn't you?

16 A. Yes, sir.

17 Q. Okay. And even when you had your parting with  
18 Coach Nelson in March of 2005, after Coach Nelson told  
19 you that he didn't have it in himself anymore to coach,  
20 you didn't believe that, did you?

21 A. I didn't know, sir.

22 Q. Okay. Going to your arbitration testimony on  
23 page 567, lines 2 to 15. Do you have it? Okay.

24 "Question: Okay. So" --

25 And this is referring to the March 19th

1 meeting.

2 "Question: Okay. So how did the -- how  
3 did the negotiation with Mr. Nelson go?

4 "Answer: It was very friendly. We both  
5 realized that we had to do something quickly, that's  
6 not something that you could drag out and that it was  
7 an opportunity for -- again for us to try to, you know,  
8 to recapture our lost love. And, you know, we both  
9 tried to take the high road. And I thought we very  
10 much -- and I thought very much so that we did. I also  
11 was cognizant of the fact that he said he was -- once  
12 again he said he was finished, you know, that he didn't  
13 have it in him anymore, but I -- you know, I wasn't  
14 necessarily buying that part of it. I see Nellie as a  
15 coach now forevermore."

16 As of March 19th, you weren't necessarily  
17 buying that Nellie wasn't going to coach anymore,  
18 right.

19 A. I don't -- even with that, I don't recall  
20 whether I was thinking head coaching, consultant, or  
21 whatever the deal was. I mean, it was hard for me to  
22 know.

23 Q. But Nellie's often told you he is a lifer,  
24 right? He has used that expression to you, hasn't he?

25 A. No. Exact opposite.

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1 Q. Certainly after this, after March 19th, you  
 2 heard the rumors that we talked about, right?  
 3 MS. BUSH: March 19th of which year?  
 4 Q. (BY MR. O'CONNOR) 2005, I am sorry.  
 5 A. Yes, sir.  
 6 Q. Okay. What I'd like to do is give you some  
 7 exhibits, and I've got 20 exhibits here that are marked  
 8 as exhibits to my declaration in this case. And I'm  
 9 going to keep those marked as -- in the same numerical  
 10 order here for this deposition as they are marked here.  
 11 In other words, Exhibit 1 to the declaration of  
 12 O'Connor in this case will be Exhibit 1 to the  
 13 deposition.  
 14 Now, to confuse things, some of these  
 15 exhibits also bear exhibit stamps of other depositions,  
 16 but -- so not to confuse things, we'll use the same  
 17 numbering we have on the tabs here. All right?  
 18 MS. BUSH: Got it.  
 19 MR. O'CONNOR: Got it. Okay.  
 20 Q. (BY MR. O'CONNOR) So just -- Mr. Cuban, just  
 21 for example, if you go to tab 6, --  
 22 A. Yes, sir.  
 23 Q. -- we are going to call tab -- Exhibit -- tab  
 24 6 is Exhibit 6 to the O'Connor declaration. That's  
 25 what we will be referring to as Exhibit 6, even though

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1 tab 6 refers to the Fifth Amendment to Employment  
 2 Agreement --  
 3 A. Yes, sir.  
 4 Q. -- which was marked as Deposition Exhibit 9  
 5 when you were deposed in the previous case. Okay? Do  
 6 you understand?  
 7 A. Yes, sir.  
 8 Q. Okay. Just so we are clear, and I just want  
 9 to make sure we don't get confused, we'll use the tabs  
 10 that I've got here to my declaration. All right?  
 11 Okay. Let's go to Deposition Exhibit 7,  
 12 if you would. And this is a string of e-mails between  
 13 you and Floyd Jahner, correct, if you could examine  
 14 this?  
 15 A. Yes, sir.  
 16 Q. Okay. Now, starting on the second page, that  
 17 looks like the first of a string. It's an e-mail from  
 18 Floyd Jahner to you of June 26, 2006, at 1:56 p.m.,  
 19 subject Nellie. Do you see that in front of you,  
 20 Mr. Cuban?  
 21 A. Yes, sir.  
 22 Q. Okay. The e-mail states, "We are cutting all  
 23 of Nellie's benefits effective 6/30/06. He will get  
 24 the consultant's salary and no benefits."  
 25 I'll stop right there. You then return

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1 an e-mail to Floyd at 6:15 that evening at the bottom  
 2 of page 1 of this deposition, going to the top of page  
 3 2, where you say, "Actually, he can keep the ticks if  
 4 he pays for them and he no long gets the consultant's  
 5 salary, if I remember correctly, that was part of the  
 6 termination deal."  
 7 Okay. I take it when you say "he no long  
 8 gets the consultant's salary," you mean "he no longer  
 9 gets the consultant's salary"; is that a typo there?  
 10 A. Yes, sir.  
 11 Q. Okay. Okay. So your memory as Floyd Jahner's  
 12 e-mail got to you was that he no longer gets also  
 13 consultant's salary, correct?  
 14 A. I was uncertain, which is why I said if I  
 15 remember correctly.  
 16 Q. Yeah.  
 17 A. Which is my indication to Floyd to check it  
 18 further.  
 19 Q. Okay. That was going to be my next question.  
 20 Your memory was not rock solid, correct?  
 21 A. Yes, sir.  
 22 Q. And as we discussed earlier, you had not  
 23 discussed the consultant's salary with Nellie on March  
 24 19.  
 25 A. Again, I can't recall, but -- yeah, I just

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1 can't recall.  
 2 Q. Okay. Then the next e-mail from Floyd the  
 3 next day says, second paragraph, "on the consultant's  
 4 salary, I waited to check my file this morning, but I  
 5 have an e-mail from you back in March 2005 that states  
 6 his dollars stay the same and no changes in the  
 7 contract. This would have us pay him 2,000 (sic) per  
 8 year for the next five years as a consultant."  
 9 Okay. You respond to him at 9:11 a.m.  
 10 about an hour and a half later, "I might have left it  
 11 out of the e-mail, but we didn't agree that we would  
 12 pay the 200K, so let's not pay it." All right.  
 13 Right now you understand that Floyd  
 14 Jahner is telling you that he's reviewed the -- he's  
 15 reviewed an e-mail from you that says that the dollars  
 16 stayed the same and no changes to the contract,  
 17 correct?  
 18 A. Could you repeat that?  
 19 Q. You knew as of 9:11 a.m. on the 27th that  
 20 Floyd had told you of an e-mail from you, Mark Cuban,  
 21 back in March of 2005 that stated that his dollars  
 22 stayed the same and no changes to the contract, right?  
 23 A. That's what the e-mail says.  
 24 Q. Right. But you still felt there was  
 25 uncertainty as to whether or not you had really agreed



1 to pay the \$200,000, correct?  
 2 A. I just didn't know. I don't know.  
 3 Q. That's right. You felt there was uncertainty,  
 4 right?  
 5 A. I don't know.  
 6 Q. Well, you say, "but we didn't agree that we  
 7 would pay the \$200,000, so let's not pay it." That  
 8 reflected your state of mind at the time, correct?  
 9 A. My state of mind at the time was to have Floyd  
 10 to -- I can't recall my specific state of mind at the  
 11 time.  
 12 Q. Okay.  
 13 A. This is just my way of saying, okay, Floyd,  
 14 you know, do your job, let's find out more.  
 15 Q. You say, "But we didn't agree that we would  
 16 pay the 200,000, so let's not pay it." That was your  
 17 state of mind at the time you wrote this, wasn't it,  
 18 that you didn't agree to pay the 200,000?  
 19 A. I don't recall.  
 20 Q. Do you have any reason to disagree with the  
 21 statement I just read of your e-mail of June 27, 2006,  
 22 as being reflective of your state of mind at the time?  
 23 A. Yes, sir.  
 24 Q. Okay. And what's that?  
 25 A. I whip out a lot of e-mails really, really

1 Do you have any reason to disagree but  
 2 that this was your state of mind at the time?  
 3 A. I said actually I think so. I don't know. I  
 4 don't know specifically what my state of mind was at  
 5 the time. We had just lost in the finals, and I was  
 6 getting over a thousand e-mails a day. So I don't -- I  
 7 don't recall specifically. It could have been a  
 8 scenario where I was rushing through e-mails. You  
 9 know, I don't recall specifically.  
 10 Q. Okay. It's not your habit to lie to your CFO,  
 11 is it?  
 12 A. It depends.  
 13 Q. Sometimes you do lie to your CFO.  
 14 A. It depends. We might be talking about girls;  
 15 we might be talking about --  
 16 Q. Okay. You can lie about girls, Mr. Cuban,  
 17 that's part the rules; but as to consultant's salary,  
 18 is it something you would normally lie about?  
 19 A. It depends.  
 20 Q. When you talk about "termination deal," you  
 21 are talking here about your March 19th conference with  
 22 Nellie, right?  
 23 A. Yes, sir.  
 24 Q. Okay. You considered the March 19th, 2005,  
 25 conference with Nelson to be your termination deal,

1 fast, and so it could have been just a quick response  
 2 to have Floyd do a further investigation. I don't  
 3 recall specifically.  
 4 Q. And I've read the previous testimony to you  
 5 before about there being complete uncertainty. In your  
 6 mind, because you and Nelson had not discussed the  
 7 consultant's obligations, it was uncertain in your mind  
 8 as to whether or not you owed this \$2,000 (sic).  
 9 A. No, sir.  
 10 Q. Okay. Was it certain that you didn't owe it?  
 11 A. You said \$2,000.  
 12 Q. \$200,000.  
 13 A. I don't recall specifically my state of mind  
 14 at the time.  
 15 Q. Okay. You would agree, wouldn't you, that you  
 16 called in your e-mail of June 26th that you said, and  
 17 go back to page 2, "that was part of the termination  
 18 deal." If I can use --  
 19 A. Please repeat the question?  
 20 Q. Okay. In your e-mail of June 26th in Exhibit  
 21 7, and I'll use the word "longer" where you say "long."  
 22 A. Right.  
 23 Q. Okay. You say, "He no longer gets the  
 24 consultant's salary, if I remember correctly. That was  
 25 part of the termination deal."

1 true?  
 2 A. No, sir.  
 3 Q. What termination deal are you talking about,  
 4 if not the March 19, 2005, meeting?  
 5 A. Well, a deal is different than a meeting.  
 6 Q. Okay. What are you referring to when you say  
 7 "termination deal"?  
 8 A. My under -- my understanding of what we  
 9 discussed, Nellie and I discussed during our meeting.  
 10 Q. Okay. And that was what you called the  
 11 termination deal.  
 12 A. Yes, sir.  
 13 Q. Okay. And it was your memory, at least at  
 14 this time, that part of that deal was that he would no  
 15 longer get the consultant's salary.  
 16 A. As I said, I think, but I wasn't certain.  
 17 Q. Okay. And that's because one interpretation  
 18 of your -- of your meeting with Nelson back in March of  
 19 2005 would be that since you agreed to pay coaching  
 20 salary, but you didn't mention consultant's salary, one  
 21 interpretation of that could be that your obligations  
 22 ended as soon as you quit paying coaching salary,  
 23 right?  
 24 MS. BUSH: Objection, form.  
 25 A. It depends.

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1 Q. (BY MR. O'CONNOR) Isn't that one of the  
 2 things that you were thinking?  
 3 A. I am sorry?  
 4 Q. Isn't that one of the possibilities that  
 5 existed in your mind stemming from your March 19th  
 6 meeting?  
 7 A. One of the possibilities would be what?  
 8 Q. That your obligations ended when you quit  
 9 paying the coach's salary June 30, 2006?  
 10 A. You are asking what I was thinking at that  
 11 point in time?  
 12 Q. Yes.  
 13 A. I don't recall.  
 14 Q. Okay. Now I'm asking what you are thinking  
 15 today. Okay. You know today and you do remember today  
 16 that you did not discuss the consultant's obligations  
 17 during your meeting with Nellie in March of 2005,  
 18 correct?  
 19 A. Yes, sir.  
 20 Q. Okay. That means to you as you are sitting  
 21 here today that at least one possibility, one  
 22 interpretation of your meeting would be that you didn't  
 23 owe anything to Nellie after June 30, 2006?  
 24 A. Just depends.  
 25 Q. That's one possibility, isn't it?

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1 A. Just depends.  
 2 Q. It could be, it could not be, right?  
 3 A. It depends.  
 4 Q. Well, I am asking you, is that one possibility  
 5 or not? You tell me.  
 6 A. I -- anything's possible.  
 7 Q. When you talked about there being uncertainty  
 8 as to this termination deal, what are you talking  
 9 about, then? I've read to you about five passages  
 10 where you say you weren't sure whether the contract had  
 11 ended; there was complete uncertainty. What  
 12 uncertainty, Mr. Cuban, was there in your mind about  
 13 your termination deal with Nellie?  
 14 A. There were a lot of things I just didn't know.  
 15 It just all depended on a lot of different variables.  
 16 Q. Right. There were a lot -- there were some  
 17 vague terms, right?  
 18 A. I don't recall.  
 19 Q. So you couldn't say with certainty that you  
 20 owed Nellie consultant's salary after June 30, 2006.  
 21 A. It just depends.  
 22 Q. Could you say with certainty or not, yes or  
 23 no? Can you answer that question?  
 24 A. No.  
 25 Q. You can't answer the question?

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1 A. You asked me can I answer the question with  
 2 certainty, and the answer is no.  
 3 Q. I didn't ask that. Maybe I did, and I'll  
 4 rephrase it.  
 5 Can you tell us that part of your  
 6 termination deal with Nellie was that you owed him  
 7 consultant's salary with certainty?  
 8 A. Can I tell you that part of -- I don't know.  
 9 Q. Okay. And that's because the consultant's  
 10 part of the arrangement you had with Nellie was  
 11 uncertain?  
 12 A. No.  
 13 Q. Okay. You tell me what you and Nellie talked  
 14 about regarding your consultant's obligations in March  
 15 of 2005.  
 16 A. I don't recall specifically.  
 17 Q. All right. So the consultant's part of your  
 18 termination deal was uncertain.  
 19 A. I am not trying to be belligerent on this.  
 20 What I am saying is that there was quite a bit  
 21 undiscussed and uncertain and contingencies and so that  
 22 to characterize one part of it, I don't know. You can  
 23 characterize all of it as having an uncertainty, but to  
 24 characterize one part of our discussion, I don't recall  
 25 specifics.

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1 Q. One of the things you had decided to do was  
 2 not pay the consultant's salary on July 15th and see  
 3 what Nellie said.  
 4 A. Yes, sir.  
 5 Q. Okay. And you were starting to -- you  
 6 intended to start a process of discussion and  
 7 engagement where you would discuss with Nellie what  
 8 your obligations were regarding the consultant's salary  
 9 and what his obligations were.  
 10 A. First let me be clear, when I say "I  
 11 discussed," me and the Mavs are interchangeable so we  
 12 are clear there.  
 13 Q. Right. Because you weren't going to be  
 14 speaking with Nellie directly, true?  
 15 A. It depends.  
 16 Q. You did not speak with Nellie directly on this  
 17 subject, did you?  
 18 A. Depends on the dates. We did have an exchange  
 19 at one point in time.  
 20 Q. Okay. Between June of 2006 and August 30  
 21 of -- well, at some point he told you he was leaving,  
 22 he left you a voice mail that he was leaving for the  
 23 Warriors?  
 24 A. I don't recall how he communicated it.  
 25 Q. Okay. From June of 2006, let's say June 1,



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1 until say August 15, 2006, did you have any  
 2 conversations with Don Nelson?  
 3 A. I don't recall.  
 4 Q. And you right now cannot say that you had a  
 5 conversation with him, true?  
 6 A. I cannot say that I did have a conversation  
 7 with him. I don't recall.  
 8 Q. I am here to get your best memory. Are you  
 9 telling me that you had a conversation with Nelson on  
 10 this consultant's issue? I'd like know now if you have  
 11 one.  
 12 A. I don't recall. I don't recall.  
 13 Q. Do you have any reason to believe that you  
 14 had -- you had any dealings negotiating with Nelson on  
 15 this?  
 16 A. Do I have any reason -- there was an e-mail  
 17 exchange, and you are asking me to recall dates, and I  
 18 don't recall relative to what the dates were.  
 19 Q. What e-mail exchange did you have with Nelson?  
 20 A. Nellie said let's put -- be bygones be  
 21 bygones, pay me my money, and we will leave as friends.  
 22 He really appreciated everything I did. He apologized  
 23 for everything he did, and he was sorry if I took  
 24 exception and wasn't happy about some of the things,  
 25 and would I be please pay him his money so that, again,

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1 I don't recall specifically what the dates were. But  
 2 he was very, very clear that, you know, he would like  
 3 get paid, and he was upset that he upset me.  
 4 Q. All right. And this was after he had taken  
 5 the Warriors' job, and you were not paying him the  
 6 deferred compensation, true?  
 7 A. Yes, sir.  
 8 Q. He was asking you to pay him his deferred  
 9 compensation, correct?  
 10 A. I don't recall. There was no specifics, just  
 11 to pay him. I don't recall. I don't recall  
 12 specifically the e-mail.  
 13 Q. You recall that the issue that was -- that we  
 14 were litigating for the last -- litigating and  
 15 discussing for the last three years in this  
 16 arbitration, what became this arbitration, was the  
 17 issue of whether the Mavericks owed Nelson deferred  
 18 compensation?  
 19 A. Yes, sir.  
 20 Q. All right. That was the \$6 million plus item,  
 21 correct?  
 22 A. Yes, sir.  
 23 Q. Okay. So does that refresh you that the  
 24 e-mail exchange you had with Nelson dealt with deferred  
 25 compensation?

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1 A. No, sir.  
 2 MR. O'CONNOR: Let's take a break. We've  
 3 been going at it a while here. It's about a quarter to  
 4 11:00, maybe take 15.  
 5 MS. BUSH: Okay.  
 6 (Recess for 18 minutes.)  
 7 Q. (BY MR. O'CONNOR) All right. Now, going back  
 8 to Exhibit 7, Floyd responds to you on June 27th, "I  
 9 will remove the 200K consultant's pay from the schedule  
 10 for the next five years. If Nellie doesn't remember  
 11 this, can I have him e-mail/discuss with you? Thanks,  
 12 Floyd."  
 13 You knew then that Floyd was not going to  
 14 pay him the 200,000 consultant's pay, right, at least  
 15 as of the next payday he was not going to pay?  
 16 A. That's what it says there.  
 17 Q. Okay. And then you say, "Just see what he  
 18 comes back with. If he questions, we can go from  
 19 there." Do you see that?  
 20 A. Yes, sir.  
 21 Q. Was it your state of mind at the time that you  
 22 were using this not paying Nellie as a device to see  
 23 what he came up with to determine what your obligations  
 24 and duties were?  
 25 A. I don't recall.

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1 Q. Okay. Were you waiting to see whether Nellie  
 2 agreed with your interpretation?  
 3 A. I don't recall.  
 4 Q. You did interpret -- you would agree, looking  
 5 at these e-mails, that you had said that he no longer  
 6 gets a consultant's salary, if I remember correctly,  
 7 right?  
 8 A. That's what the e-mail says, yes, sir.  
 9 Q. All right. And were you waiting to see  
 10 whether he had a different version?  
 11 A. I was creating the opportunity for Floyd to  
 12 further engage with him. I don't recall my state of  
 13 mind, no.  
 14 Q. Okay. So let me go to page 147 of your  
 15 deposition regarding this decision, line 16 to 19.  
 16 Make that 11 to 19.  
 17 "Question: You just said let's not pay  
 18 him, and you've got Jahner saying we are taking off the  
 19 \$200,000, and you say, just see what he comes back  
 20 with. If he questions we can go from there.  
 21 "Answer: Right.  
 22 "Question: You are going to say that's  
 23 not a decision not to pay him?  
 24 "Answer: No, we were going to see where  
 25 his recollection is in case it was different than

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1 ours."

2 Does that question and answer that I just

3 read to you correctly reflect your state of mind when

4 you decided not to pay Nelson on the 15th of July?

5 MS. BUSH: Object to the form.

6 A. The testimony speaks for itself, but I don't

7 recall my state of mind.

8 Q. (BY MR. O'CONNOR) You don't know one way or

9 the other as you are sitting here what you thought

10 about then?

11 A. I don't recall, no, sir.

12 Q. Okay. As you are sitting here now, you can't

13 tell us whether you thought the consultant's contract

14 was over in its entirety, true?

15 A. I don't recall.

16 Q. You can't say that, correct?

17 A. I can't say what?

18 Q. You can't say that today, you can't tell us

19 whether you thought the consultant's contract was over?

20 A. I can't tell you whether or not the

21 consultant's -

22 Q. Whether you thought the consultant's contract

23 was over.

24 A. I don't recall.

25 Q. Okay. So you can't tell me today; is that

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1 "yes"?

2 A. I don't recall what I thought.

3 Q. Okay. So you can't tell me, then, you can't

4 tell me what you thought. You cannot tell me today

5 what you thought in June of 2006 about whether or not

6 the consultant's contract was over, true?

7 A. I do not recall what I thought in June of

8 2006.

9 Q. Okay. So one possibility is that the

10 consultant's contract was over.

11 MS. BUSH: Objection, form.

12 A. It just depends.

13 Q. (BY MR. O'CONNOR) Did you have -- all right.

14 Is one of the ways you do business, Mr. Cuban, to

15 engage in e-mail dialogue?

16 A. It depends.

17 Q. That's one of the things you do sometimes,

18 isn't it?

19 A. It depends.

20 Q. Well, do you ever do it?

21 A. Yes, sir.

22 Q. Let me read you from your arbitration

23 testimony about your way of doing business,

24 specifically in regard to this, and ask you not -- ask

25 you whether or not you agree with this. Page 502, line

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1 22 to line 18, 503.

2 "Question: What did you want him to come

3 back with, Mr. Cuban? You have a contract, you have a

4 contract that says you owe him money. You've admitted

5 to me that the contract never changed. You have told

6 the court at length all this consultant thing was so

7 important to me because it had the noncompete in it.

8 Now you have your contract, now you have your CFO

9 telling you twice quoting you the language, and you say

10 let's pay it. Let's see what he comes back with. What

11 were you doing? What did you want him to come back

12 with?

13 "Answer: I wanted him to find further

14 information. I was having a conversation with my CFO

15 to try and ascertain what the specific situation was."

16 Let me stop right there. I take it right

17 at the time that you e-mail Floyd to say see what he

18 comes back with, you did know what the specific

19 situation was regarding the consultant's contract,

20 true?

21 A. I don't recall.

22 Q. Do you have any reason to disagree with your

23 testimony of January 2008?

24 A. No, sir.

25 Q. Okay. You are under oath in this arbitration.

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1 A. Yes, sir.

2 Q. You tried to tell the truth?

3 A. Yes, sir.

4 Q. Okay. I'll continue on with the same answer

5 at line 9.

6 "The way I do business with anybody who

7 works with me is anybody can tell you is I have an

8 exchange of e-mails. They'll know that way -- they'll

9 know that's the way I document things is through the

10 use of e-mail, which is exactly why Floyd went back and

11 got the e-mail from over a year earlier because that's

12 the way I work, you know. That's why I retained all

13 these e-mails."

14 One of the things you do try to do,

15 Mr. Cuban, is to document your thoughts by e-mail,

16 isn't it?

17 A. It depends.

18 Q. Was there anything that you disagree with in

19 the testimony I just read?

20 A. The testimony should stand -- speaks for

21 itself.

22 Q. But you disagree with this sentence, "They'll

23 know that the way I document things is through the use

24 of e-mail," is that statement true or not?

25 A. Again, the testimony speaks for itself.

1 Q. I didn't ask whether it speaks for itself. I  
2 will ask whether that statement is true as you are  
3 sitting here today. Do you agree or disagree with that  
4 statement you made?

5 A. Could you repeat that, please?

6 Q. They'll know that the way I document things is  
7 through the use of e-mail.

8 A. And what are you asking me to agree or  
9 disagree with, at what point?

10 Q. That statement, "they will know that the way I  
11 document things is through the use of e-mail." Is that  
12 true or not?

13 A. In which context? I am not quite  
14 understanding.

15 Q. I just read it to you, "They'll know the way I  
16 document things is through the use of e-mail"; is that  
17 a true statement or not?

18 A. They will know -- again, are you asking to  
19 take it in isolation, or as part of how big -- of what  
20 level of context?

21 Q. Let me ask you, let's go to line 9. I'll read  
22 this.

23 Quote, "The way I do business with  
24 anybody who works with me is anybody can tell you is  
25 I'll have an exchange of e-mails. They'll know that's

1 All right. Do you recall that now that  
2 Mr. Jahner told you that Nellie had called him  
3 regarding the missing money?

4 A. I don't recall it, but I see that it -- that  
5 that's the case here.

6 Q. Okay. I'll continue reading. "He states that  
7 this was not" -- he being Nellie. "He states that this  
8 was not discussed in the negotiations at the time of  
9 the departure." Okay. This is a statement by  
10 Mr. Jahner relating to Nelson's -- Nelson's memory of  
11 the negotiations.

12 As you are sitting here today, you agree  
13 with this, that the subject of the consultant's salary  
14 was not discussed in the negotiations at the time of  
15 his departure?

16 A. I don't -- I don't recall.

17 Q. Okay. You can't tell me whether you would  
18 agree with this statement, "He states that this was not  
19 discussed in the negotiations at the time of his  
20 departure"? Would you agree or disagree with that  
21 statement?

22 A. Do I disagree -- I don't know.

23 Q. Are you telling me now that there was a  
24 discussion at the time of his departure about his  
25 consultant's salary?

1 the way I document things is through the use of  
2 e-mails, from e-mail."

3 Let's stop right there.

4 A. Yes, sir.

5 Q. Is that a correct statement that I just read  
6 to you?

7 A. I am not sure I quite understand the context.

8 Q. I am just asking you whether that's true.  
9 When you testified under oath, was that true, that the  
10 way I do business with anybody who works with me is  
11 anybody can tell you is I'll have an exchange of  
12 e-mails," is that statement true or not, Mr. Cuban?

13 A. Taken in isolation, it depends.

14 Q. You can't tell me whether that's a true  
15 statement or not?

16 A. It really depends, because, I mean it just  
17 depends.

18 Q. Okay. Now, you know that after Mr. Jahner did  
19 not pay Mr. Nelson on the 15th, he had a further  
20 conversation with Mr. Nelson, correct?

21 A. I don't recall.

22 Q. Okay. Go to Exhibit 8. Okay. Do you see on  
23 the last page, July 26, 2006, "I got a call from Nellie  
24 regarding his check and the 200,000 that we did not  
25 include in his compensation."

1 A. I don't -- I don't recall specifics of the  
2 discussion to include or exclude anything.

3 Q. I thought you told me earlier today that in  
4 your March 19th, 2005, meeting with Mr. Nelson, you did  
5 not discuss consultant's salary.

6 A. I don't recall. I don't recall discussing it,  
7 but I'll stand by whatever is in the transcripts.

8 Q. Okay. Now, at some point if you look at the  
9 second-to-last page, you see there is a redacted -- a  
10 redaction?

11 A. Yes, sir.

12 Q. Okay. Do you have any reason to disagree but  
13 that Floyd discussed this matter with Robert Hart?

14 A. I don't --

15 MS. BUSH: Objection, form. I am sorry.

16 THE WITNESS: Would you repeat the  
17 question, please?

18 Q. (BY MR. O'CONNOR) Yeah. Mr. Jahner has  
19 testified elsewhere that he discussed the contract, the  
20 issue of the contract with Mr. Robert Hart who is your  
21 general counsel. Is Mr. Hart your general counsel  
22 today?

23 A. Yes, sir.

24 Q. And was he back in June of 2006?

25 A. Yes, sir.

1 Q. Okay. Do you have any disagreement -- do you  
 2 know one way or the other whether Mr. Jahner actually  
 3 consulted with Mr. Hart about whether or not the  
 4 contract had been amended?  
 5 A. I don't know.  
 6 Q. Okay. Now, going to the bottom of page -- the  
 7 first page of Exhibit 8, there is a statement here, "We  
 8 did not amend the contract. Per e-mails in March of  
 9 2005, copied below, we left the contract as is." Do  
 10 you see that?  
 11 A. Yes, sir.  
 12 Q. Okay. Floyd then asks you above in the e-mail  
 13 of July 26, I think the time is 2132.  
 14 A. Uh-huh.  
 15 Q. It says, "Correct that we would end up owing  
 16 it to him." Then he says at the end, "Do you still me  
 17 to push it?" Do you see that?  
 18 A. Yes, sir.  
 19 Q. Then you respond, "No, pay him the blood  
 20 money." Do you see that, at the top of the page?  
 21 A. Yes, sir. I just -- I am just trying to  
 22 confirm whether or not that's a response to that or  
 23 not.  
 24 Q. Okay.  
 25 A. Yes, sir, I see it.

1 A. Okay.  
 2 Q. All right? Is there something that's happened  
 3 to your memory since June of 2008?  
 4 A. No, sir.  
 5 Q. Okay. Is there something that has caused you  
 6 to lose your memory of your thinking about the Nelson's  
 7 contractual situation?  
 8 A. Is there something that's caused me to lose my  
 9 memory?  
 10 Q. Yeah.  
 11 A. No, sir, other than I spent a lot of time  
 12 preparing at that point in time and reading and  
 13 reviewing and haven't done so at this point in time.  
 14 Q. Okay. Just to make clear, I should have asked  
 15 you this at the beginning. Have you had any kind of  
 16 physical trauma since then that has affected your  
 17 ability to think or to remember?  
 18 A. No, sir.  
 19 Q. Okay. Are you on any kind of medication or  
 20 drugs that has affected your memory?  
 21 A. No, sir.  
 22 Q. And I say this advisedly. I have been in  
 23 cases where people have chemotherapy, they get  
 24 chemobrain, they can't remember anymore. You haven't  
 25 had chemotherapy, if I may ask you, since June of 2008?

1 Q. Okay. By "pay him the blood money," you were  
 2 referring to the consultant's salary?  
 3 A. I am not sure. I don't recall.  
 4 Q. Okay. Were you using the term "blood money"  
 5 with some humor?  
 6 A. I don't recall, sir.  
 7 Q. Okay. Let me ask you, Mr. Cuban, is there  
 8 something that has happened to your memory about this  
 9 case since the arbitration of last summer?  
 10 A. No, about this case, just time.  
 11 Q. Yeah. You testified under oath in the  
 12 arbitration, correct?  
 13 A. Yes, sir.  
 14 Q. And you -- and you questioned -- and you  
 15 answered questions truthfully, didn't you?  
 16 A. Yes, sir.  
 17 Q. You gave us your best memory you had at the  
 18 time of the arbitration, right?  
 19 A. Yes, sir.  
 20 Q. And that was in June of 2008, correct?  
 21 THE WITNESS: Is that when we did that  
 22 deposition?  
 23 Q. (BY MR. O'CONNOR) Well, the deposition you  
 24 took was January of 2008, and the arbitration occurred  
 25 in June of 2008.

1 A. No, sir.  
 2 Q. Okay. Did you -- let's go to page 10, or  
 3 Exhibit 10, first page, it's a one-page exhibit. And  
 4 let's go to the e-mail at the bottom of Exhibit 10.  
 5 This is an e-mail from Floyd Jahner to you after you've  
 6 said "pay him his blood money." Floyd says to you, "I  
 7 called him back and took one shot at negotiating  
 8 something less than \$2,000 -- \$200,000 per year. He  
 9 wouldn't agree to anything less but was open to a lump  
 10 sum payment."  
 11 My question is, did you authorize  
 12 Mr. Jahner to go back and negotiate with Mr. Nelson  
 13 whether or not you needed to pay him \$200,000 per year?  
 14 A. I don't recall.  
 15 Q. Okay. But you would agree that it was  
 16 Mr. Jahner who brought up the negotiations, not Nelson?  
 17 A. I don't recall. I don't know.  
 18 Q. Okay. Let's go to page 174 of your  
 19 deposition. Line 13, a question by Mr. Davenport, "I  
 20 am going to stay right on this one because it is pretty  
 21 important. In this track of e-mails, if I'm reading it  
 22 correctly, it was Mr. Jahner that suggested to  
 23 Mr. Nelson, would you like to negotiate something less  
 24 than the \$200,000 paid out -- paid out per month at --  
 25 that we owe you. He brought it up not Nelson, yes?

1 "Answer, correct.  
 2 "Question: According to these e-mails?  
 3 "Answer: According to these e-mails.  
 4 "Question: Correct. Nelson said I'll  
 5 listen to what you say or we'll negotiate. I could do  
 6 a lump sum payment if you want to, you know, and they  
 7 are negotiating.  
 8 "Answer: That's right."  
 9 Okay. This e-mail that I just showed  
 10 you, Mr. Cuban, is that when you first learned that  
 11 Mr. Jahner was negotiating with you -- with Nelson for  
 12 a lump sum payment?  
 13 A. I don't recall.  
 14 Q. Okay. You were not involved in any of these  
 15 negotiations regarding possible buyout, were you?  
 16 A. I don't specifically recall, no.  
 17 Q. Okay. Let me ask you if you disagree with  
 18 this question and answer regarding to this -- these  
 19 negotiations that Mr. Jahner's describing. Page 176,  
 20 line 20 to line 22.  
 21 "Question: Did you get involved in any  
 22 of the negotiations concerning this possible buyout?  
 23 "Answer: No."  
 24 Right now as you sitting here now, do you  
 25 have any memory of negotiating with Nelson over this

1 A. I don't know of any -- I don't know.  
 2 Q. So you can't testify about any knowledge,  
 3 true?  
 4 A. I don't know.  
 5 Q. You don't know of any knowledge, right?  
 6 A. I don't know of any knowledge. Could you  
 7 repeat the question?  
 8 Q. I have just shown you an e-mail of Mr. Jahner  
 9 that purports to talk about negotiating something less  
 10 than \$200,000 per year and talks about a 500,000 lump  
 11 sum settlement. Do you see that subject in the e-mail  
 12 that I just showed you, Exhibit 10?  
 13 A. Yes, sir.  
 14 Q. Can you testify to any knowledge about these  
 15 negotiations between Mr. Jahner and Mr. Nelson other  
 16 than as contained in this e-mail?  
 17 A. I don't recall any, no.  
 18 Q. So is the answer you don't have any knowledge  
 19 other than is in this e-mail?  
 20 A. The answer is I don't recall.  
 21 Q. You can't testify to any knowledge, true?  
 22 A. I don't recall.  
 23 Q. Then if you can't recall, then you don't have  
 24 any knowledge; isn't that right?  
 25 MS. BUSH: Objection, form.

1 issue of consultant's salary?  
 2 A. I don't recall.  
 3 Q. Was Nelson -- let me ask you this: Did you  
 4 get any other information about the settlement  
 5 negotiations than the e-mail you have right in front of  
 6 you?  
 7 A. I don't recall.  
 8 Q. Can you sit here now and identify any  
 9 conversation that you've had -- you had with Floyd  
 10 further discussing the negotiations you had -- that he  
 11 had with Nelson?  
 12 A. Will you repeat the question, please?  
 13 Q. Today as I am sitting here now questioning you  
 14 under oath, do you have any memory of having talked  
 15 with Mr. Jahner or communicated in any way about the  
 16 negotiations with Nelson, other than in the e-mail I  
 17 have just shown you?  
 18 A. I don't recall.  
 19 Q. Okay. You can't testify to any other  
 20 knowledge of what those negotiations were, true?  
 21 A. Can't testify as to any other knowledge to  
 22 what?  
 23 Q. Can you testify to any other knowledge about  
 24 the negotiations other than as I have shown you right  
 25 here?

1 A. If I can't recall, because --  
 2 Q. (BY MR. O'CONNOR) I want to know what  
 3 knowledge you have.  
 4 A. I guess it depends, I mean, on the context in  
 5 this -- I don't know.  
 6 Q. A I-can't-recall answer may mean I vaguely  
 7 know of some conversations I had with Jahner, I just  
 8 can't recall the specifics, or it may mean you just  
 9 have no knowledge.  
 10 A. Yes, sir.  
 11 Q. I have no knowledge of what's going on in  
 12 Capetown, South Africa, today. I can tell you that I  
 13 have no knowledge of it. It's not that I can't recall.  
 14 It's that I have no knowledge.  
 15 Can you tell me, as I am sitting here  
 16 now, come to Dallas to depose you, I would like know  
 17 whether or not you have any other knowledge than is  
 18 contain in this e-mail. If you have it, I'd like to  
 19 know it. If you don't have any knowledge, I can move  
 20 on.  
 21 A. I don't recall -- do I -- I don't recall.  
 22 Q. Do you have any other knowledge, then, no, you  
 23 don't have knowledge?  
 24 A. I don't recall. Again, I am not trying to be  
 25 belligerent on this. It's just that I don't have a

1 reference of a recollection one way or the other.  
 2 Q. Okay. As far as you know, it was Mr. Jahner  
 3 who first brought up the idea with Mr. Nelson that  
 4 there would be a lump sum settlement, true?  
 5 A. I don't -- I don't know. I don't recall.  
 6 Q. Okay. Let me read a question and answer from  
 7 your deposition of January 18th, 2008, see if this  
 8 refreshes your memory at all. Line 1 to line 8.  
 9 MS. BUSH: I am sorry, what page are you  
 10 on, John?  
 11 MR. O'CONNOR: 190, I am sorry.  
 12 "Question: Well, you know, I saw the --  
 13 I saw that allegation in this counterclaim that you-all  
 14 filed, and that's why I was particularly interested --  
 15 particularly interested in reading the e-mail traffic  
 16 which shows clearly that the person that first brought  
 17 up this lump sum payment was not Mr. Nelson who had  
 18 just wanted his contract to be honored, it was  
 19 Mr. Jahner, don't you remember --  
 20 "Answer: No question.  
 21 "Question: -- when he did that.  
 22 "Answer: Yeah, Floyd definitely brought  
 23 it up."  
 24 Let me stop right there. Do you have any  
 25 reason to disagree with your testimony here that it was

1 Floyd who brought up the idea of the lump sum  
 2 settlement?  
 3 A. No, sir.  
 4 Q. Okay. Okay. Let's go to the top of page 209.  
 5 I'll read line 1 to 6. "Now in light of what I have  
 6 just developed in the case here, we know that the idea  
 7 of the lump sum payment was initiated by Mr. Jahner.  
 8 You don't dispute that, do you?  
 9 "Answer: Not from what the e-mail said,  
 10 no."  
 11 You have no reason to disagree with that  
 12 testimony today, do you, Mr. Cuban?  
 13 A. No, sir.  
 14 Q. Thank you. So going back to Exhibit 10,  
 15 Mr. Jahner says, "I think he will agree to a \$500,000  
 16 lump sum settlement." Do you see that?  
 17 A. Yes, sir.  
 18 Q. Okay. Did you receive any information from  
 19 Mr. Jahner to the effect that Nelson wanted to end the  
 20 relationship with the Warriors, wanted to walk away  
 21 with this \$500,000?  
 22 A. I don't recall.  
 23 Q. Certainly \$500,000 is less than the million  
 24 dollars you owed him over five years, correct, if -- if  
 25 the five-year consultant's contract was actually in

1 force?  
 2 A. It depends.  
 3 Q. Okay. Certainly in this e-mail Mr. Jahner  
 4 says, "If you agree, this would be a good deal for us  
 5 as the PV." Let me stop right there. "PV" to you  
 6 means present value, doesn't it?  
 7 A. Yes.  
 8 Q. "This would be a good idea for us if the PV of  
 9 \$200,000 over five years at 6 percent would be  
 10 approximately \$875,000 versus a one-time payment of  
 11 \$500,000."  
 12 So at least in terms of the way the  
 13 Mavericks value money, you were getting -- if this lump  
 14 sum settlement went through, you would pay \$500,000 for  
 15 an obligation that would be worth present value 875,  
 16 right?  
 17 A. Yes, sir.  
 18 Q. Okay. Now, was one of the things Nelson was  
 19 looking for here to end his relationship with you?  
 20 MS. BUSH: Objection, form.  
 21 A. I don't know.  
 22 Q. (BY MR. O'CONNOR) Okay. You would have no  
 23 knowledge other than what is here in this e-mail, true?  
 24 A. I would have no knowledge -- it depends.  
 25 Q. Okay. Can you see anything in this e-mail,

1 Mr. Cuban, as you are sitting here, that indicates  
 2 whether Nelson wants to end the relationship completely  
 3 on the one hand or on the other hand wants to continue  
 4 working for five years for you? Can you tell that from  
 5 this e-mail?  
 6 A. What's the question?  
 7 Q. Yeah. Can you tell, if you would look at this  
 8 e-mail of July 27th, 2006, from Mr. Jahner talking  
 9 about his settlement negotiations, do you have that in  
 10 front of you?  
 11 A. Yes, sir.  
 12 Q. Okay. I want you to take your time and read  
 13 it. Okay? Let me just wait a minute here and while  
 14 you read it, digest it.  
 15 (Pause.)  
 16 Q. (BY MR. O'CONNOR) Have you had a chance to  
 17 read it?  
 18 A. Yes, sir.  
 19 Q. Okay. Can you tell from this whether this  
 20 \$500,000 lump sum settlement that Jahner says that  
 21 Nelson will agree to would involve a walk-away  
 22 termination of the contract? Can you tell?  
 23 A. I don't know, sir.  
 24 Q. Okay. As far as you knew from reading this,  
 25 Nelson wanted to take -- take this \$500,000, settle



1 his -- his contract with you, and go get another job,  
2 true?

3 MS. BUSH: Objection, form.

4 A. I don't know.

5 Q. (BY MR. O'CONNOR) You had already heard in  
6 mid-July that Nelson was looking for another job, true?

7 A. I don't recall.

8 Q. Okay. Certainly one of the possibilities that  
9 you see from this e-mail is that Nelson wanted to  
10 settle the matter and walk away, true?

11 MS. BUSH: Objection, form.

12 A. I don't know.

13 Q. (BY MR. O'CONNOR) A settlement -- you think a  
14 settlement, Mr. Cuban, do you understand that term to  
15 be a compromise of some dispute?

16 A. No, sir.

17 Q. Okay. You don't look at a settlement that  
18 way?

19 A. No, sir.

20 Q. Okay. What meaning do you give to settlement?

21 A. An agreement.

22 Q. An agreement for what? Is a settlement just  
23 any agreement?

24 A. I don't see why it couldn't be.

25 Q. You don't look at settlement as being a

1 Q. Have you yourself ever entered into contracts  
2 regarding your own termination of employment?

3 A. No, sir.

4 Q. Okay. Have you ever entered into contracts  
5 with any of your employees regarding termination of  
6 employment?

7 A. I don't recall.

8 Q. You understand in the business world that  
9 sometimes employees leave businesses, and they strike  
10 termination deals, right?

11 MS. BUSH: Objection, form.

12 A. It depends.

13 Q. (BY MR. O'CONNOR) What did you mean by the  
14 term "termination deal"?

15 A. Referenced where?

16 Q. Well, the -- when you used "termination deal,"  
17 I'd like to know in Exhibit 7 --

18 A. Yes, sir.

19 Q. -- what are you referring to when you say the  
20 "termination deal."

21 A. I don't recall specifics.

22 Q. The termination deal that you are referring to  
23 would have been whatever you discussed with Don in  
24 March of 2005, correct?

25 A. I don't recall.

1 settlement of a dispute?

2 A. Not necessarily, no, sir.

3 Q. Okay. So when you saw this reference to a  
4 \$500,000 lump sum settlement, you didn't look at that  
5 as being -- as referencing a settlement of a dispute?

6 A. No, sir.

7 Q. Okay. One of the things you were unclear of  
8 on when you originally talked to Mr. Jahner was whether  
9 or not you owed Mr. Nelson any consultant's salary at  
10 all, right?

11 A. I don't recall.

12 Q. Well, going back to Exhibit 7, your e-mail to  
13 Jahner, you say, "He no longer gets the consultant's  
14 salary. If I remember correctly, that was part of the  
15 termination deal."

16 Was one of the things that was in dispute  
17 at the time or uncertainty whether or not he got  
18 consultant's salary as part of the termination deal?

19 A. I don't recall.

20 Q. Okay. You used the phrase "termination deal,"  
21 Mr. Cuban. You have employed many people over the  
22 course of your business career; isn't that true?

23 A. Yes, sir.

24 Q. You also have been an employee, haven't you?

25 A. Yes, sir.

1 Q. Do you know of any other termination deal you  
2 would have had with Mr. Nelson other than March of  
3 2005?

4 A. No, sir.

5 Q. You knew that one of the -- one of the  
6 uncertainties in the contract was whether or not, in  
7 fact, there are any obligations on you to pay  
8 consultant's salary and any obligations on Nelson's  
9 part to provide consultant's services, true?

10 A. Yes, sir.

11 Q. And when Mr. Jahner in Exhibit 10 is talking  
12 about negotiating a lump sum settlement, is he  
13 negotiating a settlement over the -- dealing with the  
14 uncertainty as to whether you owe Nelson consultant's  
15 salary and whether he owes you consultant's services?

16 A. Could you repeat that?

17 Q. Yes. Do you know whether when Mr. Jahner is  
18 referring to a lump sum settlement, that that  
19 settlement deals with the issue of whether or not you  
20 owed -- you owed Nelson consultant's salary and whether  
21 he owed you consultant's services?

22 A. I don't know.

23 Q. Certainly that's one possibility, isn't it?

24 A. Don't know.

25 Q. Okay. This was essentially Floyd's

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1 negotiation; he was the one who brought this up, right,  
 2 not you?  
 3 A. Don't know.  
 4 Q. Okay. Mr. Cuban, you saw the e-mail from  
 5 Mr. Jahner in Exhibit 7 where he said that the contract  
 6 had not been amended, right?  
 7 A. Excuse me. If you will point me to it, I can  
 8 tell you yes or no.  
 9 Q. Yeah. He said to you, if you go to Exhibit 7,  
 10 "I have an e-mail from you back in March 2005 that  
 11 states his dollars stay the same and no changes to the  
 12 contract." Do you see that? That's at the bottom of  
 13 the page, first page of Exhibit 7. Do you see that?  
 14 A. Exhibit 7.  
 15 Q. At the bottom, the bottom e-mail, bottom full  
 16 e-mail of Floyd Jahner to you at 7:36 a.m.? Do you see  
 17 that?  
 18 A. No.  
 19 Q. This -- I have an e-mail, do you see --  
 20 A. I see that. Okay.  
 21 Q. "I have an e-mail from you back in March of  
 22 2005 which states his dollars stay the same and no  
 23 changes to the contract. This would have us pay him  
 24 \$200,000 per year for the next five years as a  
 25 consultant." Do you see that?

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1 A. Yes, sir.  
 2 Q. Okay. You weren't sure that that was really  
 3 the termination deal, though, were you?  
 4 A. I don't recall.  
 5 Q. Okay. You did tell him -- you did say in the  
 6 e-mail above, "I might have left it out of the e-mail,  
 7 but we didn't agree that we would pay the 200,000, so  
 8 let's not pay it." You said that, right?  
 9 A. That's what the e-mail says, yes.  
 10 Q. Okay. Okay. Even though your CFO was telling  
 11 you the contract wasn't changed, you thought your oral  
 12 agreement might be different than Mr. Jahner is telling  
 13 you the written contract says, right?  
 14 A. I don't recall.  
 15 Q. Okay. You had told Mr. Jahner not to pay the  
 16 \$200,000 as it became due, though; you would agree with  
 17 that?  
 18 A. Told him -- I don't recall.  
 19 Q. You knew that Mr. Jahner was not going to make  
 20 the July 15th payment, true?  
 21 A. I am not sure. I don't recall.  
 22 Q. Were you trying to be nefarious or underhanded  
 23 or deceitful in not paying Nelson?  
 24 A. I don't recall.  
 25 Q. You can't say whether you were trying to

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1 defraud him or not?  
 2 A. I can't say whether or not I was trying to  
 3 defraud him or not. No, I wasn't trying to defraud  
 4 him.  
 5 Q. And why do you say that?  
 6 A. That's not my nature.  
 7 Q. Okay. Well, here you are -- your CFO was  
 8 saying that there were no changes to the contract, and  
 9 that would have us pay him \$200,000 per year. And you  
 10 say, "let's not pay him." Were you trying to be  
 11 dishonest in any way?  
 12 A. No, sir.  
 13 Q. And you weren't being dishonest because you  
 14 thought there was some uncertainty about what you had  
 15 agreed to back in March of 2005, correct?  
 16 A. I don't recall.  
 17 Q. You looked at this as simply a negotiation,  
 18 didn't you, your not paying him?  
 19 A. I don't recall.  
 20 Q. You are trying to see what he came back with,  
 21 right?  
 22 A. I don't recall.  
 23 Q. Okay. Let's go to page 522 of the arbitration  
 24 starting at line 18.  
 25 MR. O'CONNOR: Do you have it, Amanda?

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1 Do you have it, Mr. Cuban? Okay.  
 2 Q. (BY MR. O'CONNOR) "Question: You are not  
 3 saying the payment of the consulting contract wasn't  
 4 material. It was money, it was \$800,000, that's a lot  
 5 of money, isn't it?  
 6 "Answer: No, I think you crossed --  
 7 "Question: Huh?  
 8 "Answer: You mixed your scenarios there,  
 9 \$200,000 is a lot of money, \$8,333 relative to the  
 10 entire span, you know, to define the breach is relative  
 11 to the total amount, again particularly since we are  
 12 having ongoing discussions. This is just Business 101.  
 13 You discuss. You go back and forth. You interact.  
 14 There is no animosity. It's a discussion. It's very,  
 15 very simple. There was no animosity. There was  
 16 nothing nefarious. There were no negatives. There was  
 17 no trying to get over it. There were no games being  
 18 played. This is just simple stuff.  
 19 "Question: Business 101 is that what you  
 20 said?  
 21 "Answer: Yes, sir."  
 22 Do you have any reason to disagree with  
 23 that testimony?  
 24 A. I don't know.  
 25 Q. You gave it under oath, do you see anything in



1 there, I just read it to you, anything in here you  
 2 disagree with?  
 3 A. If that's what -- if that's what the  
 4 transcript states.  
 5 Q. Okay. Today can you even tell me whether  
 6 that's true or false?  
 7 A. There is quite a bit of context before and  
 8 after, so I don't know in what context you are  
 9 referring to.  
 10 Q. So you can't answer that question, then, can  
 11 you?  
 12 A. Correct, sir.  
 13 Q. You state here that there is no animosity,  
 14 there is nothing nefarious, there are no negatives, no  
 15 games being played. Do you have any indication that  
 16 Mr. Nelson in responding to your failure to pay him his  
 17 consulting salary, do you have any knowledge that  
 18 anything Mr. Nelson was doing was nefarious?  
 19 A. I don't know.  
 20 Q. Okay. So as you are sitting here now, you  
 21 don't know that Mr. Nelson was trying to defraud you in  
 22 these negotiations, true? You don't know that?  
 23 A. I don't know.  
 24 Q. Okay. And do you have any knowledge, I am  
 25 here now at your deposition asking you as to whether or

1 A. I said "it depends."  
 2 Q. When you say "it depends," you mean, depending  
 3 on the circumstances, it can provide you protection,  
 4 right?  
 5 A. Yes, sir.  
 6 Q. Okay. It was your testimony in the  
 7 arbitration that you felt that the -- and let's be  
 8 clear about a noncompete clause. You are aware that  
 9 there are noncompete clauses that purport to bind an  
 10 employee after he terminates employment? You are aware  
 11 of that type of noncompete, aren't you?  
 12 A. I am aware of the noncompete that binds -- you  
 13 are getting into legal terminology. I don't know.  
 14 Q. Okay. But the noncompete that you are talking  
 15 about in this case was a clause that kept the employee,  
 16 in this case Coach Nelson, from competing with the club  
 17 during the term of the contract, correct?  
 18 MS. BUSH: Object to the form.  
 19 A. I don't know.  
 20 Q. (BY MR. O'CONNOR) Okay. Let's go to Exhibit  
 21 5 in front of you, and I'll let you tell me where the  
 22 noncompete is that you refer to. And I'm showing you  
 23 the employment agreement here that -- to which various  
 24 amendments were made, but it was still operative as of  
 25 the summer of 2006, arguably.

1 not you have any knowledge of any fraud or deceit by  
 2 Mr. Nelson in these negotiations; do you have any?  
 3 A. I don't know.  
 4 Q. You can't testify to any today, can you?  
 5 A. Depends.  
 6 Q. Tell me anything you know about fraud and  
 7 deceit of Mr. Nelson in the negotiations that occurred  
 8 in the summer of 2006.  
 9 A. As it reflects -- as it reflects July of 2006,  
 10 I don't know.  
 11 Q. Okay. Now, sometimes you refer to a  
 12 noncompete clause. Are you familiar with a noncompete  
 13 clause?  
 14 A. Yes, sir.  
 15 Q. Okay. That's an important clause to you,  
 16 isn't it?  
 17 A. Depends.  
 18 Q. Okay. One of the things a noncompete clause  
 19 can do for you is it can provide protection for the  
 20 club, can't it?  
 21 A. It depends.  
 22 Q. Okay. It can in some circumstances, then?  
 23 A. It depends.  
 24 Q. Depending on the circumstances, it can provide  
 25 protection, you agree with that?

1 A. I am sorry, what did you say prior to that?  
 2 Q. I said arguably.  
 3 A. Prior to that?  
 4 Q. Yes, in other words, that the -- this  
 5 employment agreement had been amended several times;  
 6 you would agree with that, Mr. Cuban, true?  
 7 A. This employment -- I don't -- I don't know.  
 8 Q. Okay. If you go to page 5 of the agreement  
 9 where it says competition, paragraph 7, page 5, Exhibit  
 10 5.  
 11 A. Page 5, paragraph 7, okay, "Competition."  
 12 Q. Okay. Will you read that paragraph? Don't  
 13 need to read it out loud, but just read that paragraph.  
 14 Have you read it?  
 15 A. Yes, sir.  
 16 Q. Okay. Is this the clause that you mean to  
 17 refer to when you talk about the noncompete?  
 18 A. I don't know.  
 19 Q. What is your understanding of the noncompete  
 20 that you told us earlier today was important?  
 21 MS. BUSH: Objection to form.  
 22 A. That's a question for my lawyers.  
 23 Q. (BY MR. O'CONNOR) Okay.  
 24 A. I am not an expert on that.  
 25 Q. Okay. Did you consider that this noncompete,

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1 that if Mr. Nelson breached this competition covenant,  
 2 paragraph 7, let me read it to you, "During the term,  
 3 employee shall not perform directly or indirectly any  
 4 duties or provide any consultative or related services  
 5 for any professional or amateur basketball organization  
 6 or related entity nor directly or indirectly control or  
 7 otherwise be involved in any business which is  
 8 competitive with the club or the team."  
 9 Do you see that?  
 10 A. Yes, sir.  
 11 Q. This competition covenant you would agree  
 12 relates to during the term; do you see the first three  
 13 words in the --  
 14 A. I see the words, yes, sir.  
 15 Q. Okay. So at least during the term of the  
 16 employment contract, employee can't compete with the  
 17 club; is that the way that you understand it?  
 18 A. I don't know.  
 19 Q. Okay. Do you have any understanding as you  
 20 are sitting here today in your own mind as to what this  
 21 clause means to you?  
 22 A. No.  
 23 Q. Okay. You have referred on occasion,  
 24 Mr. Cuban, in this case to a noncompete. Do you have  
 25 any understanding of what noncompete Mr. Nelson was

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1 obligated to adhere to?  
 2 A. What noncompete -- depends. I'm not sure. I  
 3 am not sure.  
 4 Q. Do you have any understanding of what  
 5 Nelson's -- however lay or imperfect your understanding  
 6 might be, do you have any understanding right now of  
 7 the noncompete clause as it relates to Nelson?  
 8 A. Yes.  
 9 Q. Okay. Tell us what you understand by  
 10 noncompete as it relates to Coach Nelson.  
 11 A. That he can't take a job with anybody else  
 12 in -- that's basketball related or maybe even beyond  
 13 that.  
 14 Q. Okay. At least while he is still employed by  
 15 the club, correct?  
 16 MS. BUSH: Objection, form.  
 17 A. I don't know.  
 18 Q. (BY MR. O'CONNOR) Okay. You don't know  
 19 whether a noncompete applies beyond the term or not?  
 20 A. I don't know.  
 21 Q. Okay. And I just read to you the paragraph 7  
 22 that talks about the covenant being during the term,  
 23 that doesn't in any way refresh your recollection that  
 24 a noncompete only applies during the term of the  
 25 employment of the employee?

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1 A. I don't know.  
 2 MS. BUSH: Objection, form.  
 3 A. I don't know.  
 4 Q. (BY MR. O'CONNOR) Okay. Have you ever heard  
 5 or seen Mr. Hart or anyone else in this dispute you  
 6 have with Mr. Nelson talk about his contract having a  
 7 bad boy provision or a claw back or a forfeiture  
 8 provision?  
 9 A. Heard or seen? No, sir.  
 10 Q. Let me read to you from your testimony in  
 11 arbitration.  
 12 MS. BUSH: Do you have a page number?  
 13 MR. O'CONNOR: Yeah, 533.  
 14 Q. (BY MR. O'CONNOR) "Can you give the court" --  
 15 Question -- we are now at line 5.  
 16 "Can you give the court, as we wrap up  
 17 your examination, I've heard your attorneys talk about  
 18 a bad boy provision or a forfeiture provision or a claw  
 19 back provision in these documents, but I've never once  
 20 been able to find it. Do you know what provision might  
 21 do that?  
 22 "Answer: The noncompete provision, from  
 23 what I understand."  
 24 Let me stop right there. What noncompete  
 25 provision are you referring to?

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1 A. I don't know.  
 2 Q. Okay.  
 3 Question, line 13: "So in your  
 4 provision, the provision of the original contract that  
 5 says you shall not compete during the course of the  
 6 contract or whatever entities (sic) -- whatever  
 7 entities the club to forfeit, what is the amount of the  
 8 deferred?"  
 9 "MR. COLLELUORI: 6.5.  
 10 Question continues. "6.5 million in  
 11 deferred compensation that was earned as of July (sic)  
 12 30.  
 13 "Answer: As I understand it, yes, sir."  
 14 Oh, I read the question wrong. Let me go  
 15 back, Mr. Cuban, I'm sorry. I read "entities" when I  
 16 meant "entitles" and so it was very illiterate. Let me  
 17 reread this. Starting at line 13.  
 18 "So in your provision, the provision in  
 19 the original contract that says you shall not compete  
 20 during the course of the contract or whatever entitles  
 21 the club to forfeit 6.5 million in deferred  
 22 compensation that was earned as of June 30th.  
 23 "Answer: As I understand it, yes, sir."  
 24 Now, as you understood it, this  
 25 noncompete provision entitled you to declare a

1 forfeiture of the 6.5 million in deferred compensation  
 2 that was scheduled in the contract to Mr. Nelson; is  
 3 that your understanding?  
 4 MS. BUSH: Objection, form.  
 5 A. I don't recall.  
 6 Q. (BY MR. O'CONNOR) Okay. Does this refresh  
 7 your memory at all that the position you were taking in  
 8 the arbitration was that Nelson violated the noncompete  
 9 covenant by going to the Warriors?  
 10 A. No, sir.  
 11 Q. Did you think Nelson violated the contract by  
 12 going to the Warriors?  
 13 A. Did I think Nelson violated the contract? I  
 14 don't recall.  
 15 Q. Okay. Did you think Nelson violated the  
 16 noncompete clause in the contract?  
 17 A. I don't recall.  
 18 Q. Did Nelson ever agree with the Mavericks in  
 19 the summer of 2006, let's talk about June through  
 20 August of 2006, did he ever agree or represent that he  
 21 would adhere to the noncompete covenant through 2011?  
 22 A. During which period?  
 23 Q. During the summer of 2006, June through August  
 24 2006, did he ever represent to your organization, any  
 25 employee of your organization, that he would adhere to

1 represented to you that he would provide consulting  
 2 services for five years.  
 3 A. The multiple times when he said he was going  
 4 to be the godfather for the Dallas Mavericks  
 5 organization.  
 6 Q. Okay. Now certainly he made that  
 7 representation to you in 2000 when you originally  
 8 signed the agreement.  
 9 A. No, sir.  
 10 Q. Okay. I mean, he made the representation  
 11 then, that's one of the times he did it, wasn't it?  
 12 A. To be the godfather of the organization? No,  
 13 sir.  
 14 Q. Okay. When did he represent to you that he  
 15 was the godfather, was going to be the godfather of the  
 16 organization?  
 17 A. March 19th and thereof of 2005.  
 18 Q. Okay. March 19, 2005, he represented to you  
 19 that he would be the godfather of the organization?  
 20 A. As I recall, yes, sir.  
 21 Q. And was that in your conversation?  
 22 A. I'm sorry?  
 23 Q. Was that in your five-minute conversation  
 24 March 19th of 2005?  
 25 A. That was the premier point of the

1 a noncompete covenant for the next five years?  
 2 A. Did he ever represent to our organization that  
 3 he would --  
 4 Q. That he would adhere to a noncompete covenant  
 5 for the next five years.  
 6 A. I don't recall.  
 7 Q. Did he ever represent that he would adhere to  
 8 the noncompete clause for any length of time?  
 9 A. Any length of time, I don't recall.  
 10 Q. Did he ever represent to the organization that  
 11 he was intending to provide consulting services through  
 12 2011?  
 13 A. Yes, sir.  
 14 Q. And when did he do that?  
 15 A. I don't recall.  
 16 Q. And to who did he make that representation?  
 17 A. To me, sir.  
 18 Q. And when did he do that?  
 19 A. I don't recall.  
 20 Q. Was it during the summer of 2006?  
 21 A. I don't recall.  
 22 Q. Are you saying under oath that Mr. Nelson even  
 23 talked to you in 2006?  
 24 A. In 2006? I don't recall.  
 25 Q. Give me the circumstances when Mr. Nelson

1 conversation, yes, sir.  
 2 Q. Okay. So he said he was going to be the  
 3 godfather?  
 4 A. Yes, sir.  
 5 Q. Okay. Is there anything else he said other  
 6 than he was going to be the godfather?  
 7 A. Yes, sir. As I recall it, he said he wanted  
 8 to be there like Red Auerbach, meaning lifetime with  
 9 the Mavericks, that he -- that part of the deal he  
 10 wanted was that if and when the Mavericks ever won a  
 11 ring, that I would give him a championship ring like to  
 12 all the other players and staff got, that we would  
 13 smoke a cigar. That's silly, but that's what I  
 14 remember.  
 15 Q. Okay. And how long did that obligation to be  
 16 the godfather go on? Did you say how long -- did he  
 17 say how long it would be?  
 18 A. I presumed it to be forever. I mean, that's  
 19 the whole concept of being a godfather and that's why  
 20 the reference to Red Auerbach in terms of how difficult  
 21 it is to win a championship rings. There are  
 22 organizations who have never won championship rings.  
 23 So it wasn't like there was just a one- or two-year  
 24 timeline on it. You would think that would suggest  
 25 that it could go on forever, and that was important to

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1 me at the time.  
 2 Q. All right. So it was your understanding, for  
 3 example, that if Coach Nelson were still live in 2020  
 4 and you finally won a ring, that he would get a ring?  
 5 A. Yes, sir.  
 6 Q. And he felt that he had -- he expressed to you  
 7 that he put a lot into building up this club, correct?  
 8 A. What period are you talking about?  
 9 Q. Well, at various times up through March 19th  
 10 of 2005.  
 11 A. Yes, sir.  
 12 Q. He drafted Dirk Nowitzki, didn't he?  
 13 A. I don't know, sir.  
 14 Q. You don't know whether he did?  
 15 A. No, sir.  
 16 Q. You are not getting credit for that, huh?  
 17 A. Not it at all. The draft room operates in  
 18 weird ways, and so I've heard a lot of different  
 19 stories about who wanted him, who didn't want him, who  
 20 made the trade, why the trade was made, because realize  
 21 we traded for him. We didn't draft him specifically.  
 22 So when you ask who drafted him, we did not draft Dirk.  
 23 Q. Well, all you did was trade picks 6 and 9  
 24 because Nellie knew he could get him at 9 and not 6.  
 25 You made the trade for Tractor Trailer. You weren't

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1 drafting Tractor Trailer. You could have drafted  
 2 Nowitzki at 6. Nellie dropped down so he would pay him  
 3 less at 9. That's what happened, wasn't it?  
 4 A. I don't know, sir.  
 5 Q. The -- but this, being the godfather of the  
 6 Mavericks was not -- was something that extended as far  
 7 as you were concerned as long as Nelson was alive?  
 8 A. Yes, sir.  
 9 Q. Okay. And certainly it also extended as long  
 10 as you were the owner of the club, true?  
 11 A. Yes, sir.  
 12 Q. He might want to be godfather after you -- if  
 13 you sell the club, but certainly it related to a time  
 14 when you and he could interrelate, right?  
 15 A. You'd have to ask him. I don't know, sir.  
 16 Q. All right. You never made a promise in  
 17 writing about the championship rings, did you?  
 18 A. No, sir.  
 19 Q. That was something you just discussed orally,  
 20 true?  
 21 A. And shook on, yes, sir.  
 22 Q. Okay. And so you knew that there was an oral  
 23 agreement that you had with Nellie in March of 2005  
 24 that wasn't necessarily the same as the written  
 25 contract, true?

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1 A. I don't know, sir.  
 2 Q. Well, you knew you didn't put in writing the  
 3 championship ring part, didn't you?  
 4 A. That's correct.  
 5 Q. And the championship ring that you shook on,  
 6 that's something that you could -- could give Nellie as  
 7 I say 15 years down the line, right?  
 8 A. Depends.  
 9 Q. Yeah. So if you were to give Nellie a ring in  
 10 2020, that wouldn't necessarily mean he is still an  
 11 employee of the club, true?  
 12 A. It depends.  
 13 Q. You didn't ever agree with Nelson that you  
 14 would employ him through 2020, did you?  
 15 A. It depends.  
 16 Q. You can't -- can you tell me that you did make  
 17 that agreement?  
 18 A. I'm sorry, sir?  
 19 Q. When you say "it depends," what depends?  
 20 A. I am not a lawyer. I don't know what -- you  
 21 know, what is considered to be an offer or -- I don't  
 22 know all employment law. All I can say it depends.  
 23 Q. Well, when you say "it depends," wouldn't you  
 24 know whether you agreed to hire Nelson past 2006?  
 25 A. There is a lot of things I thought I knew in

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1 this scenario, in this situation that didn't turn out  
 2 to be the case.  
 3 Q. Right.  
 4 A. So I don't know.  
 5 Q. One of the things that you first remembered,  
 6 however imperfectly, you thought that part of your  
 7 termination deal was that he got no consultant's  
 8 salary, true?  
 9 MS. BUSH: Objection, form.  
 10 A. I don't recall.  
 11 Q. (BY MR. O'CONNOR) Because this deal -- let me  
 12 go back, this deal you were striking with Nelson in  
 13 2005, March of 2005, was a termination deal, true?  
 14 A. I don't recall.  
 15 Q. Okay. Going to Exhibit 7, let me reread your  
 16 e-mail. "Actually, I think he can keep the ticks if he  
 17 pays for them." Let me stop you right there. There  
 18 was an issue as to whether or not Nelson kept his  
 19 tickets and whether he paid for them, correct?  
 20 A. Yes, sir.  
 21 Q. Okay. Let me go back. "Actually, I think he  
 22 can keep the ticks if he pays for them, and he no  
 23 longer gets the consultant's salary if I remember  
 24 correctly. That was part of the termination deal."  
 25 So you considered your conversation with

1 Nelson to be -- in March 19 of 2005 to be part of the  
 2 termination deal.  
 3 A. No, sir.  
 4 MS. BUSH: Objection, form.  
 5 Q. (BY MR. O'CONNOR) Okay. Okay. Where else  
 6 would the termination deal have been made other than  
 7 your March 19th, 2005, conversation?  
 8 A. I don't know, sir.  
 9 MS. BUSH: Hey, John, sorry to interrupt,  
 10 we've been going over an hour.  
 11 MR. O'CONNOR: Yeah, I am almost through  
 12 with this session.  
 13 MS. BUSH: Okay. Do you want to go  
 14 through --  
 15 MR. O'CONNOR: No, I am almost through  
 16 for the present purposes.  
 17 (Pause.)  
 18 Q. (BY MR. O'CONNOR) Other than that March 19  
 19 meeting, do you know of any other place or any other  
 20 time where you may have made a termination deal with  
 21 Nelson?  
 22 A. I don't recall.  
 23 Q. Okay. And by "termination deal,"  
 24 "termination" referred to termination of employment,  
 25 true?

1 that he would fulfill this noncompete covenant after  
 2 June 30 of 2006?  
 3 A. Anything I can specifically recall that  
 4 suggests --  
 5 Q. Yeah, anything you can point to.  
 6 A. As I mentioned earlier, the conversation we  
 7 had with him becoming the godfather and the times he  
 8 brought that up. I don't really remember any other  
 9 specifics beyond that.  
 10 Q. Okay. And did he bring up the godfather idea  
 11 anytime after March of 2005?  
 12 A. Yes, sir.  
 13 Q. And what do you remember in that regard?  
 14 A. I don't remember the specifics, again, but I  
 15 remember that it -- it came up as we were winning --  
 16 heading towards the finals, and we were exceeding  
 17 expectations that it just came up multiple times as we  
 18 would cross in the hallway, that type of thing.  
 19 Q. And this is the finals when you were against  
 20 Miami?  
 21 A. Yes, and I think it also came up if I  
 22 remember -- you know, I am not a hundred percent  
 23 certain, but it came up in the media several times as  
 24 well that was referenced.  
 25 Q. And so he would -- he would remind you that he

1 MS. BUSH: Objection, form.  
 2 A. I don't know.  
 3 MR. O'CONNOR: Let's take a break for  
 4 lunch.  
 5 (Recess for 16 minutes.)  
 6 Q. (BY MR. O'CONNOR) Mr. Cuban, you had  
 7 mentioned before that Coach Nelson had talked about  
 8 being a godfather, being a Red Auerbach type godfather  
 9 in your March 19, 2005, meeting. Do you recall that  
 10 testimony?  
 11 A. Yes, sir.  
 12 Q. Okay. Other than that reference, is there any  
 13 other time, and let's start there going forward, any  
 14 time in that conversation or after that conversation  
 15 where he represented to you that he would provide  
 16 consultant services to you between 2006 and 2011?  
 17 A. Not that I specifically recall.  
 18 Q. Okay. Anytime in that conversation or after  
 19 that conversation when he represented to you that he  
 20 would fulfill a noncompete covenant between 2006 and  
 21 2011?  
 22 A. I don't specifically recall.  
 23 Q. Okay. Anything you can point to today, I am  
 24 here in Dallas taking your deposition, anything you can  
 25 point to today suggesting that he represented to you

1 gets a ring if you guys win is one of things he would  
 2 do?  
 3 A. I don't recall that specifically, but --  
 4 Q. Okay. But he would mention something along  
 5 the lines, I'm the godfather here?  
 6 A. Again, it was something to the effect of  
 7 didn't forget your godfather, who the godfather is,  
 8 that type of thing.  
 9 Q. Okay. Anything other than you've already told  
 10 me about the subject of, you know, his duties from 2006  
 11 to 2011?  
 12 A. I don't recall the specific dates, but he did  
 13 reference something about being available to Avery for  
 14 phone calls.  
 15 Q. Okay.  
 16 A. But again, I don't remember -- I don't recall  
 17 specifics.  
 18 Q. Okay. One of the things you understood from  
 19 your March 19, 2005, conference was he would be  
 20 available and supportive for Avery, right?  
 21 A. He could be consulted, yes, sir.  
 22 Q. And one of the reasons that you were upset  
 23 with him come June of 2006 is that, according to Avery,  
 24 he hadn't returned his phone calls?  
 25 A. Yes, sir.

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1 Q. That is to say, to make the record clear,  
 2 Nelson had not returned Avery Johnson's phone calls,  
 3 correct?  
 4 A. Yes, sir.  
 5 Q. Okay. Anything else you can recall about this  
 6 subject we are talking about?  
 7 A. No, sir.  
 8 Q. All right. Now, let's go back to Exhibit 10,  
 9 if you would, and this is Floyd's e-mail to you  
 10 about -- about his negotiations. When Floyd says here,  
 11 "I called him back and took one shot at negotiating  
 12 something less than 200,000 per year," do you know what  
 13 Floyd was using as a negotiating tool, in other words,  
 14 what he was saying to Coach Nelson his position was or  
 15 the organization's position was in this negotiation?  
 16 A. I can only speculate.  
 17 Q. Okay. Speculate.  
 18 MS. BUSH: Objection, form.  
 19 A. Many times in the past Nellie had asked for  
 20 advances, and we had provided those advances multiple  
 21 times as well. So my under -- you know, my presumption  
 22 at the time was this was just one more example.  
 23 Q. (BY MR. O'CONNOR) Okay.  
 24 A. And at that point -- when that happened, it  
 25 didn't mean that there was any change to the

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1 contractual terms, it was just an advance, and that's  
 2 the way I understood this to be. Just like every other  
 3 time, this was just one more example of Nellie asking  
 4 for an acceleration or advance of his money.  
 5 Q. Okay.  
 6 A. And we were considering paying him.  
 7 Q. Okay.  
 8 A. And in this particular time he was asking for  
 9 it at a discount which was unique.  
 10 Q. Okay. Yeah, let me ask you about that. In  
 11 the past when Nelson had asked for an acceleration, he  
 12 asked for an acceleration of the full principal amount?  
 13 A. Yes, sir.  
 14 Q. In other words, if you owed him a million  
 15 dollars, over time he asked for the million dollars up  
 16 front?  
 17 A. We -- we offered him at a discounted present  
 18 value; but, yeah, we usually just paid him the full  
 19 amount.  
 20 Q. So the fact that he was seeking -- the  
 21 principal amount here is a million dollars over five  
 22 years, correct?  
 23 A. Yes, sir.  
 24 Q. Okay. And he was seeking a \$500,000 lump sum  
 25 settlement. Did that suggest to you that he was doing

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1 something other than merely accelerating a payment?  
 2 A. Actually, it says here that he wouldn't agree  
 3 to anything less, so, no, it didn't -- it didn't  
 4 suggest anything.  
 5 Q. And I think you said before this was a  
 6 speculation or presumption on your part as to what he  
 7 was meaning here?  
 8 A. Yes, sir.  
 9 Q. Okay. You didn't have any actual knowledge  
 10 that that's what Nelson wanted?  
 11 A. I didn't know.  
 12 Q. Okay. Now, later on your general counsel  
 13 Robert Hart -- well, let me -- I am skipping a step  
 14 here.  
 15 After Mr. Jahner tells you that he thinks  
 16 that Nelson will agree to a 500,000 lump sum  
 17 settlement, you tell Jahner, agree, do it, right?  
 18 A. Yes, sir.  
 19 Q. Again, this is July 27th, you tell Jahner to  
 20 go ahead and do up the 500,000 lump sum settlement,  
 21 right?  
 22 A. Just to clarify the terminology "settlement,"  
 23 I wasn't agreeing on a settlement per se. I was  
 24 agreeing that, again depending on how you define  
 25 settlement, and obviously we had our -- you had asked

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1 me about that, but I was just looking -- I just  
 2 perceived this -- again, my perception, as I remember  
 3 it, and I don't fully remember, is that this is just  
 4 one more acceleration by Nellie. I didn't see it as a  
 5 settlement. Based off of the questions you -- I know  
 6 convoluted, but I don't want this to come across that I  
 7 am agreeing with you based off of your definition of  
 8 settlements.  
 9 Q. Okay. Okay. You looked at this as not a  
 10 settlement but an acceleration, correct?  
 11 A. Yes, sir.  
 12 Q. And you presumed that based upon the fact that  
 13 you had paid Nelson in advance in the past?  
 14 A. Yes, sir.  
 15 Q. Then you say here, "agree, do it," right?  
 16 A. Yes, sir.  
 17 Q. So you know that it's going to be some  
 18 write-up of this \$500,000 lump sum settlement as -- at  
 19 least as Jahner describes it, a \$500,000 lump sum  
 20 settlement in Jahner's words, right?  
 21 MS. BUSH: Objection, form.  
 22 A. No, sir.  
 23 Q. (BY MR. O'CONNOR) Okay. You didn't think  
 24 that he would be writing up a \$500,000 lump sum  
 25 settlement; you thought he would be writing up a



1 \$500,000 acceleration?  
 2 A. No, sir. We never did anything in writing in  
 3 previous times when we did accelerations.  
 4 Q. Okay. In any case, you -- you said, "agree,  
 5 do it," right?  
 6 A. Yes, sir.  
 7 Q. Okay. Did you contemplate that an agreement  
 8 would be drawn up for this?  
 9 A. No, sir.  
 10 Q. Okay. Did you learn later that an agreement  
 11 had been drawn up?  
 12 A. I don't recall.  
 13 Q. Okay. Let's go to Exhibit 11. This is an  
 14 e-mail from Floyd Jahner to Nellie. It says here,  
 15 "Robert just got off the plane and had some family  
 16 function he needed to attend tonight. He stated he  
 17 would review the draft ASAP which would hopefully be  
 18 tomorrow sometime." Let me just stop right there.  
 19 Other testimony suggests that this is  
 20 Robert Hart he was referring to, that Floyd had done a  
 21 draft on his own and gotten one to Robert Hart. Do you  
 22 recall having any input during this time into any draft  
 23 that either Floyd or Robert Hart was working on at that  
 24 time?  
 25 A. No, sir.

1 acceleration and not a termination or buyout of the  
 2 contract.  
 3 Did you see this contract before it was  
 4 sent to Coach Nelson?  
 5 A. Not that I am aware of, no.  
 6 Q. Okay. Did you know that -- that this \$500,000  
 7 lump sum settlement that Floyd was referring to was  
 8 written up as an acceleration?  
 9 A. Not that I am aware of, no.  
 10 Q. Okay. At any point were you told by Floyd  
 11 that Nelson refused to sign this Sixth Amendment?  
 12 A. At any point? I don't recall.  
 13 Q. Okay. At any point do you recall Floyd or  
 14 anyone else telling you or Robert telling you that  
 15 Nelson's lawyer, I'll refer to him in the third person  
 16 as John O'Connor for purposes of the record, that  
 17 Nelson's lawyer O'Connor had gotten involved?  
 18 A. The question --  
 19 MS. BUSH: Objection, I am sorry. To the  
 20 extent that you have -- any conversations that you had  
 21 with Robert Hart I would direct you not to answer  
 22 those. Any conversations that you had with Floyd  
 23 Jahner or any other person not counsel for the Mavs,  
 24 you can answer the question with that direction.  
 25 MR. O'CONNOR: Fair enough.

1 Q. Okay. Let's go to Exhibit 12. This is a --  
 2 an e-mail now three days later where Floyd is writing  
 3 Nellie on Monday, a weekend has passed, and on Monday  
 4 Floyd is telling Nelson, "Robert completed the  
 5 amendment this morning, and I have attached that file."  
 6 Again, did you have any input into the  
 7 process as of this point?  
 8 A. Not that I recall.  
 9 Q. Okay. So at this point you didn't know what  
 10 would be in the -- what was in the draft that either --  
 11 that Floyd put together or in the draft that Robert  
 12 reviewed and got to Floyd?  
 13 A. I didn't know there was a draft.  
 14 Q. Okay. Let's go to Exhibit 13. This is a  
 15 Sixth Amendment to the -- proposed Sixth Amendment to  
 16 the employment agreement?  
 17 A. Which exhibit?  
 18 Q. This is now Exhibit 13.  
 19 A. Okay.  
 20 Q. This is a Sixth Amendment to the Employment  
 21 Agreement that was provided to Coach Nelson,  
 22 essentially accelerating the consultant's payment on  
 23 page 2. It says, "The club shall make a one-time  
 24 payment in the amount of \$500,000 to employee." I  
 25 think we all agree that this contract involves an

1 Q. (BY MR. O'CONNOR) And let's now stick to the  
 2 time period here, and I'll go -- I'll stick with around  
 3 July 31st, and let's say three days following, let's  
 4 say August 3rd of '06. Did Floyd ever tell you that  
 5 Nelson's lawyer had gotten involved?  
 6 A. I don't recall.  
 7 Q. Okay. At some point did you learn that Nelson  
 8 was not -- was not agreeing to the -- to an  
 9 acceleration, that he wanted a walk away or  
 10 termination?  
 11 A. At some point, yes, but I don't think it was  
 12 until long after -- afterwards.  
 13 Q. Okay. Certainly when -- when this dispute  
 14 blew up, Robert Hart and Nelson's lawyer exchanged  
 15 correspondence which you read, correct?  
 16 A. When this dispute blew up, I don't know that I  
 17 read it until the arbitration or until it became a  
 18 lawsuit.  
 19 Q. Okay. Tell me when it was that you first  
 20 found out that Nelson was not signing the amendment  
 21 that Robert had drawn up.  
 22 A. I don't think I found out a lot -- about a lot  
 23 of this, the details of the interactions, until we took  
 24 the depositions.  
 25 Q. Okay. Let's maybe try to give you some

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1 time -- time frame here. At some point you learned  
 2 that Nelson was going to the Warriors, correct?  
 3 A. Yes, sir.  
 4 Q. Up to that point in time, what was your  
 5 understanding of the state of the negotiations on this  
 6 lump sum settlement between the club and Nelson?  
 7 A. That we had offered to accelerate, that I  
 8 thought he had said yes, and then he took the job.  
 9 That was generically my understanding.  
 10 Q. Okay. Did anybody ever tell you that Nelson  
 11 and his counsel had been telling the Mavericks since  
 12 around August 1st that they wanted a termination of the  
 13 contract as opposed to a continuing five-year  
 14 obligation to provide consulting services?  
 15 A. Not until all of this came to a head as a part  
 16 of the lawsuit.  
 17 Q. Certainly -- certainly Robert Hart was -- had  
 18 general delegation to act as your general counsel,  
 19 correct?  
 20 A. Yes, sir.  
 21 Q. Okay. And Floyd -- you knew Floyd was  
 22 negotiating with Nelson, didn't you, on this -- on this  
 23 issue of whether and how much he was owed for his  
 24 consultant services?  
 25 A. That he was discussing with them about an

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1 acceleration, that's what I knew.  
 2 Q. Well, even beyond the -- before the  
 3 acceleration happened, you knew that Floyd had taken,  
 4 as he says, one shot at negotiating less than 200,000 a  
 5 year; you knew Floyd had done that, right?  
 6 A. I don't recall now, sir.  
 7 Q. Okay.  
 8 A. Most of these e-mails I didn't reread until  
 9 long afterwards.  
 10 Q. Let's go to page 10, or Exhibit 10, rather.  
 11 In Exhibit 10 Floyd gives you at 2:17 p.m. a snapshot  
 12 of the fact that he was negotiating, trying to  
 13 negotiate something less than the \$200,000 per year; do  
 14 you see that?  
 15 A. Yes, sir.  
 16 Q. Okay. Would you agree with me that you read  
 17 the e-mail that Floyd sent to you because you responded  
 18 to it at 6:02 that evening?  
 19 A. Yes, sir.  
 20 Q. Okay. So you at least knew that he was  
 21 negotiating, right, with Nelson?  
 22 A. During what period -- when you say I knew,  
 23 this was one of any number of thousands of e-mails, so  
 24 while I responded and made a judgment at that point in  
 25 time, there is a very good chance that I didn't recall

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1 it or remember it at all until what turned out to be  
 2 years later.  
 3 Q. But certainly you would not disagree that at  
 4 least as of July 27th you knew that Floyd was  
 5 negotiating the -- this deal?  
 6 A. As of July 27th, 2006, at 6:02 p.m., I knew  
 7 that they were in discussions.  
 8 Q. Okay. Exactly. And you knew that if you  
 9 wanted to get any further information about what  
 10 transpired in these negotiations, you could talk  
 11 further to Floyd, right?  
 12 A. Depends.  
 13 Q. Well, you knew that Floyd was the person to  
 14 talk to if you wanted information about this, true?  
 15 A. Not necessarily, no.  
 16 Q. Who else do you know of as of July 27th was  
 17 negotiating with Nellie?  
 18 A. I don't recall specifically who was  
 19 negotiating on July 27th.  
 20 Q. Okay. You can't -- can you tell us now at  
 21 what point you learned that Nelson would not agree  
 22 to -- to be a consultant for five years?  
 23 A. I'm not a hundred percent certain, but I think  
 24 it was several years later.  
 25 Q. You certainly heard Nelson testify in the

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1 arbitration, didn't you?  
 2 A. Yes, sir.  
 3 Q. Okay. You heard him testify that what he  
 4 wanted was to split the sheets or end the relationship,  
 5 as he put it, when he talked to Floyd.  
 6 A. I believe so, yes, sir.  
 7 Q. Okay. You can't recall how much in advance of  
 8 the arbitration it was where you learned that was  
 9 Nelson's intention, right?  
 10 A. Actually, it was not in advance of the  
 11 arbitration. It was during the arbitration.  
 12 Q. That's the first time you learned that  
 13 Nelson -- that Nelson did not wish to provide  
 14 consultant services for those five years? He wanted to  
 15 split the sheets or end the relationship?  
 16 A. Whenever I read the depositions, and I'm not  
 17 clear where the depositions were time frame wise versus  
 18 the actual arbitration, so I don't, you know --  
 19 whenever the information was made available, because I  
 20 don't know, you know, when you took Nellie's  
 21 deposition, and, you know, when I read it and all that.  
 22 But that was the first time, whenever I was able --  
 23 there was a lot of things that I had absolutely no  
 24 knowledge about at all until that point in time.  
 25 Q. Okay. Let's go to Exhibit 14. Okay. To put



1 this in context, this is a -- an e-mail that was  
2 produced in the arbitration litigation, and it's an  
3 e-mail from Robert Rowell of the Warriors to Nelson's  
4 lawyer O'Connor. Do you see this?

5 A. Yes, sir.

6 Q. And you reviewed this at least sometime in the  
7 arbitration, correct, Mr. Cuban?

8 A. Sometime during the arbitration?

9 Q. At any point, sometime during or before the  
10 arbitration you would have seen this?

11 MS. BUSH: Objection, form.

12 A. I believe so.

13 Q. (BY MR. O'CONNOR) Okay. Now, we had just  
14 seen an e-mail from Floyd dated July 31 of '06 in which  
15 he is telling Nelson that Robert's draft is coming to  
16 him. This is now three, four days later, August 3rd,  
17 at 5:54 p.m. And it says here, "John, it was not nice  
18 meeting with you this afternoon."

19 A. It was not nice?

20 Q. No, "it was not nice." No, did I read that  
21 wrong? "John, it was nice meeting with you this  
22 afternoon." You heard testimony about this e-mail,  
23 didn't you, Mr. Cuban?

24 A. I believe, but I don't specifically recall.

25 Q. Okay. My question to you is this: This

1 Mullins within the context of the NBA culture and  
2 environment, it's six of one, half dozen of the other,  
3 it's a direct violation of NBA bylaws. And so you  
4 wouldn't go through and violate those bylaws, at least  
5 with every example that we have seen previous to that  
6 with -- you know, unless there was some intent. I  
7 mean, it's -- it's just not something that's done.

8 Q. So you presume that there were discussions  
9 about the coaching job?

10 A. If they were meeting, they were meeting, yeah.  
11 You -- one team doesn't help another with their draft  
12 with the presumption that there wasn't some further  
13 involvement.

14 Q. Well, there are calls all over the league  
15 right now in which various GMs that are friends with  
16 each other and various player personnel people are  
17 trying to get information from other clubs; isn't that  
18 correct?

19 A. Not with the -- not when you are outside of --  
20 of the confines of your office. I mean, you don't --  
21 you don't go and talk with somebody else about their  
22 draft and not report back what you found. That's about  
23 as strong a violation of NBA etiquette as you could  
24 ever possibly find.

25 Q. Tell me if I am wrong. I've been to draft

1 reflects, you would agree, some meeting between  
2 O'Connor and Rowell on the afternoon of August 3rd,  
3 2006?

4 A. I don't know.

5 Q. Okay. My question to you is, do you know of  
6 any discussions before the afternoon of August 3rd,  
7 2006, in which Nelson or his representatives talked  
8 about a job with the Warriors?

9 A. Yes, sir.

10 MS. BUSH: Objection, form.

11 Q. (BY MR. O'CONNOR) Okay. And what's that?

12 A. Again, just based off of what I heard in  
13 Nellie's testimony that he met with Chris Mullins and  
14 discussed their draft and acted as a consultant to  
15 them. And prior -- well, the draft is in June.

16 Q. Right. So you know that Nelson talked to  
17 Mullins about the draft that year.

18 A. Yes, sir.

19 Q. Okay. And now I am asking more specifically  
20 if you know of any conversations before the meeting  
21 referenced in the -- in Exhibit 14, if you know of any  
22 meetings in which there was discussion of a potential  
23 coaching job for Nelson at Golden State, in other  
24 words, any negotiations of any kind?

25 A. Again, just based off of the discussions with

1 camps, and I've been to one the Warriors had with 14  
2 teams in attendance, and I saw Jeff Petrie talk to  
3 Mitch Richmond and someone else talk to someone else on  
4 different teams about who they like and who they don't  
5 and maybe half of what they talked about was lies and  
6 half was the truth. Isn't that a common thing,  
7 Mr. Cuban?

8 MS. BUSH: Objection, form.

9 A. In public when there is multiple teams, yes,  
10 sir; in private where there's no one else present, no,  
11 sir.

12 Q. (BY MR. O'CONNOR) Okay. But essentially --  
13 essentially in terms of let's -- let's -- do you know  
14 of anyone with the Warriors who negotiated this  
15 contract on their behalf other than Rowell?

16 A. I don't know specifically, no, sir.

17 Q. Okay. At what point, can you put a point in  
18 time on it when you learned that Nelson wanted to walk  
19 away that summer, that is to say wanted to terminate  
20 his contract as part of this \$500,000 lump sum  
21 settlement, as opposed to continuing to be obligated  
22 for five years as a consultant?

23 A. I'm not a hundred percent certain of the date,  
24 but it was during -- whenever I saw the transcripts or  
25 during the arbitration, it was years later.

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1 Q. All right. Let's go to the arbitration  
 2 transcript. Now, you didn't believe that you were  
 3 authorizing, when you told -- to Floyd when you said to  
 4 Floyd, "agree, do it," regarding the lump sum  
 5 settlement, you didn't think you were authorizing a  
 6 buyout or termination of Nelson's covenants, did you?  
 7 A. I don't recall specifically, no, sir.  
 8 Q. Okay. The keeping Nelson on the hook for his  
 9 consulting obligations was important to you, wasn't it?  
 10 A. I don't recall specifically.  
 11 Q. Okay. Did you yourself make any effort to  
 12 tell Nelson that those consulting obligations were  
 13 important to you, they were important that they  
 14 continue?  
 15 A. Not that I recall, no, sir.  
 16 Q. And you don't know what Floyd said to him  
 17 regarding that, do you?  
 18 A. No, sir.  
 19 Q. Okay. Now, let me see if this helps refresh  
 20 you in terms of timing. 573, line 24 of the  
 21 arbitration.  
 22 "Question: All right. So when did you  
 23 first hear rumors that Mr. Nelson was going to be  
 24 coaching another team in the NBA?  
 25 "Answer: I think mid-July.

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1 "Question: Tell us about those rumors.  
 2 "Answer: You know, you hear various  
 3 things, agents call you, players tell you, you know,  
 4 and honestly, I didn't believe them. You know, I  
 5 just -- you know, we had a deal, we had a contract, you  
 6 know, and I just -- I didn't believe it."  
 7 You knew at the time that Floyd was  
 8 negotiating this lump sum settlement, you had already  
 9 heard rumors at that point in mid-July that Nelson was  
 10 interested in coaching, true?  
 11 MS. BUSH: Objection, form.  
 12 A. I am not following the question.  
 13 Q. (BY MR. O'CONNOR) In mid-July you heard  
 14 rumors that Nelson was going to be coaching another  
 15 team or might be coaching either team, right?  
 16 A. Yes, sir.  
 17 Q. Okay. So you knew when Floyd was negotiating  
 18 this lump sum settlement, that you knew that Nelson  
 19 would likely want out of his contract, true?  
 20 MS. BUSH: Objection, form.  
 21 A. No, not that I recall, no, sir?  
 22 Q. (BY MR. O'CONNOR) I mean, you had a  
 23 noncompete in it, right?  
 24 A. Yes, sir.  
 25 Q. And you knew that if Nelson wanted to coach

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1 another team while the contract with you was still in  
 2 force, that -- that he would want a buyout or  
 3 termination of the agreement, true?  
 4 MS. BUSH: Objection, form.  
 5 A. Not necessarily, no, sir.  
 6 Q. (BY MR. O'CONNOR) Okay.  
 7 A. He could just choose to violate the contract.  
 8 Q. Well, of course, as you said in the testimony  
 9 here, if he chose to do that, you could withhold six  
 10 and a half million dollars from him as a bad boy or  
 11 claw back, correct?  
 12 A. I am not a hundred percent certain. I don't  
 13 know, sir.  
 14 Q. Okay. I mean, you testified to it under oath,  
 15 didn't you, that you felt that the -- that the  
 16 noncompete covenant allowed you to claw back \$6.5  
 17 million?  
 18 A. If that's what the testimony says. I'll stand  
 19 by the testimony, yes, sir.  
 20 Q. Page 533 of the transcript.  
 21 "Can you give the court as we wrap up  
 22 your examination, I've heard your attorneys talk about  
 23 a bad boy provision or forfeiture provision a or  
 24 claw-back provision in those documents, but I have  
 25 never once been able to find it. Do you know what

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1 provision would do that?  
 2 "Answer: The noncompete provision from  
 3 what I understand."  
 4 And then later on you say, "So in your  
 5 provision, the provision in the original contract that  
 6 says you shall not compete during the course of the  
 7 contract or whatever entitles -- or whatever entitles  
 8 the club to forfeit \$6.5 million in deferred  
 9 compensation that was earned as of June 30th.  
 10 "Answer: As I understand it, yes, sir."  
 11 That was your understanding back in -- in  
 12 the summer of 2006, wasn't it?  
 13 A. I'll stand by what the testimony says.  
 14 Q. Okay.  
 15 MS. BUSH: John, lunch is here, whenever  
 16 you are hungry.  
 17 MR. O'CONNOR: Let's take about five  
 18 minutes, and I don't want to talk while I eat.  
 19 (Recess for 16 minutes.)  
 20 Q. (BY MR. O'CONNOR) We had talked before,  
 21 Mr. Cuban, about the issue of acceleration versus a  
 22 buyout in the negotiations that Jahner was having with  
 23 Nelson in July of 2006. You recall that discussion?  
 24 A. Yes, sir.  
 25 Q. You personally never talked to Nelson about

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1 that issue, did you?  
 2 A. No, sir.  
 3 Q. Okay. He never told you whether he wanted a  
 4 buyout and a walkaway or he wanted acceleration or what  
 5 he wanted, right?  
 6 A. Not that I recall.  
 7 Q. All right. Now, right around the time of the  
 8 Nelson -- of the Mavericks and the Warriors being in  
 9 the playoffs in '07, the arbitration proceedings began,  
 10 true?  
 11 A. I don't recall specific dates.  
 12 Q. Okay. At some point around September of '07,  
 13 you were planning on dancing in Dancing With the Stars,  
 14 correct?  
 15 A. Yes, sir.  
 16 Q. Okay. You were doing some sort of a  
 17 promotional trip for Dancing With the Stars?  
 18 A. I did multiple of those, yes, sir.  
 19 Q. Okay. Flew your plane around the country,  
 20 went to television and radio stations and tried to pump  
 21 up things?  
 22 A. No, sir.  
 23 Q. Okay. Tell me what you did.  
 24 A. Just the promotional tours which is usually  
 25 they set up 20 phone cause in a row, and you did your

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1 20 phone calls from 6:00 in the morning until whatever  
 2 time it was finished.  
 3 Q. Okay. You did a radio interview with Murph  
 4 and Mac on KNBR radio in San Francisco, correct?  
 5 A. Yes, sir.  
 6 Q. Okay. And we've marked this deposition  
 7 exhibit as a 1001 to distinguish it from our Exhibit 1  
 8 here. This 1001 is also Exhibit 1 of the Amanda Bush  
 9 declaration filed in the motions we're engaged in now.  
 10 So the record is clear, there will be something here  
 11 marked Exhibit 1, but Deposition Exhibit 1001, and let  
 12 me show you that now, which is a transcript that  
 13 Ms. Bush had prepared and submitted in this case. Can  
 14 you look at that, Mr. Cuban?  
 15 A. Yes, sir.  
 16 Q. And let's go to page 10 of 1001.  
 17 A. Yes, sir.  
 18 Q. They start asking --  
 19 MS. BUSH: John, I am sorry, are you  
 20 referring to page 10 of 18 at the top or 10 of the  
 21 transcript?  
 22 MR. O'CONNOR: I mean ten of the  
 23 transcript. It's page 11 of 18 at the top, page 10 of  
 24 the transcript.  
 25 MS. BUSH: Okay.

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1 Q. (BY MR. O'CONNOR) Okay. And I'm on the page  
 2 that starts with Murph saying "Tuesday on ABC, it's  
 3 Mark Cuban." Do you see that?  
 4 A. Uh-huh. Yes, sir.  
 5 Q. All right. Now, you go down to line 12, and  
 6 it says, "Murph, we love the guy, everybody loves  
 7 Nellie here. You hate Nellie. Give us some  
 8 Cuban/Nellie updates. Are you guys still battling it  
 9 out in the courts right now?" Do you see that  
 10 question?  
 11 A. Yes, sir.  
 12 Q. Okay. As of this point, and this -- first  
 13 does it refresh you that you would have given this  
 14 interview around September of '07?  
 15 A. Around September?  
 16 Q. Of '07, yes.  
 17 A. I thought we had a -- there is a specific --  
 18 this was September 21st.  
 19 Q. Okay. September 21st. All right. And in  
 20 answer to the question you say, "Yeah, and you know  
 21 what, I will give you guys the scoop here." Do you see  
 22 that?  
 23 A. Yes, sir.  
 24 Q. Okay. When you say "the scoop," you are  
 25 purporting to tell the listeners on KNBR what the facts

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1 are, right?  
 2 A. No, sir.  
 3 Q. What did you mean by the word "scoop"?  
 4 A. Just the quick version of the situation as I  
 5 understood it.  
 6 Q. Yeah. You are purporting to tell what you  
 7 know about the situation, right?  
 8 A. Just the way -- just what I had understood  
 9 about what was going on at the time.  
 10 Q. Okay. Now, let me read this, "You know what,  
 11 I will give you guys the scoop here. We are still --  
 12 it's kind of calmed down. We haven't heard from him,  
 13 but let me tell you why. Everybody thought I was a  
 14 jerk for doing it, but I'll give you the -- I'll tell  
 15 you why because imagine you guys get a bonus, Christmas  
 16 bonus every year, and you went in and said, boss, I  
 17 know I have a five-year deal and I get a Christmas  
 18 bonus of 200K every year, I'll tell you what, if you  
 19 pay me half of that just up front in cash, then you  
 20 won't have to pay me anymore, and we are all set. You  
 21 don't have to pay me any Christmas bonuses the next  
 22 five years. And then I find out you are getting ready  
 23 to take that money and quit your job. Would you be  
 24 mad?"  
 25 Do you see that -- did I read that

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1 correctly, Mr. Cuban?  
 2 A. I believe so, yes.  
 3 Q. Okay. Did you mean that statement to be  
 4 analogous to what your and Nellie's situation was?  
 5 MS. BUSH: Objection, form.  
 6 A. It was my understanding at the time of what  
 7 was going on between the Mavericks and Nellie.  
 8 Q. (BY MR. O'CONNOR) Okay. So now later on now  
 9 that we are dealing with page 11 of the transcript.  
 10 Murph says at line 11, "I got you. I got you. It's a  
 11 labor management dispute as --"  
 12 Then at line 13 you say, "No, it's not  
 13 even. He tried to rip me off."  
 14 Did you see that?  
 15 A. Yes, sir.  
 16 Q. Okay. By ripping somebody off, do you mean by  
 17 that that Nelson tried to defraud you?  
 18 A. I don't know exactly how I'd characterize it.  
 19 Q. Would you say he was trying to steal something  
 20 from you?  
 21 A. Again, I don't know exactly how I would  
 22 characterize it, other than I wasn't happy with the  
 23 circumstances as I understood them.  
 24 Q. Well, when you used the term "rip me off," did  
 25 you mean by that something that was -- is ethically or

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1 morally repugnant to you?  
 2 A. No, sir.  
 3 Q. Okay. What do you mean by the term "rip me  
 4 off"?  
 5 A. Again, based off my understanding of the  
 6 circumstances, we had a less than -- a less than  
 7 positive business experience.  
 8 Q. Okay. But I'm talking generally about the way  
 9 you used the word "rip me off" before I get into the  
 10 specifics about Nellie. When you say somebody tried to  
 11 rip me off, what do you mean by "rip me off"?  
 12 A. Just depends.  
 13 Q. Okay. It can be -- when somebody tries to  
 14 defraud you, that could be ripoff, true?  
 15 A. Just depends.  
 16 Q. Stealing can be a ripoff, true?  
 17 A. I don't know.  
 18 Q. Okay. Pauly, one of the hosts, at line 16 and  
 19 17, says, "Like you feel like you were being deceived?"  
 20 You answered, "Oh, yeah." Did you mean to convey that  
 21 Nelson tried to deceive you?  
 22 MS. BUSH: Objection, form.  
 23 A. That was my understanding of the interaction  
 24 that Nellie was having with my -- with the Mavericks.  
 25 Q. (BY MR. O'CONNOR) Okay. And I'll ask you

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1 about that, but you meant to convey to Murph and Mac  
 2 and to the listeners that Nellie deceived you?  
 3 A. No, sir.  
 4 MS. BUSH: Objection, form.  
 5 Q. (BY MR. O'CONNOR) Okay. What?  
 6 A. No, sir.  
 7 Q. You didn't mean to say that you were being  
 8 deceived?  
 9 A. Didn't mean to say that -- no, sir.  
 10 Q. It says here, Pauly says "Like you feel like  
 11 you were being deceived?" And you say, "Oh, yeah."  
 12 Weren't you agreeing with Pauly that you were being  
 13 deceived?  
 14 MS. BUSH: Objection, form.  
 15 A. I was characterizing the interactions that had  
 16 occurred as I understood them with the Mavericks.  
 17 Q. (BY MR. O'CONNOR) You thought those  
 18 interactions involved deception on Nellie's part.  
 19 MS. BUSH: Objection, form.  
 20 A. I wasn't sure, but as I understood them, they  
 21 potentially could have, yes.  
 22 Q. (BY MR. O'CONNOR) All right. Let me finish  
 23 the answer where you say "Oh, yeah." After "Oh, yeah,"  
 24 are you explaining how he deceived you?  
 25 MS. BUSH: Objection, form.

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1 A. I am not sure I understand the question.  
 2 Q. (BY MR. O'CONNOR) Okay. Let me read your  
 3 answer here. First I will go to the question.  
 4 "Pauly: Like you feel you are being  
 5 deceived?  
 6 "Answer by Mark Cuban: Oh, yeah. He  
 7 came in and said, you know what, Mark, you know, pay  
 8 me. You owe me a consulting fee of 200,000 a year for  
 9 the next five years. Give me half of it up front,  
 10 we'll call it even, and, you know, we'll go on and that  
 11 will -- and everybody will still be friends, and we'll  
 12 do -- the consulting deal with stay in force with its  
 13 noncompete clause and everything."  
 14 So my first question to you is, were you  
 15 referring -- first of all, did you, in fact, have any  
 16 kind of conversation with Nelson about this consulting  
 17 fee?  
 18 A. When I say Mark, I mean the Mavericks, so the  
 19 Mavericks are Mark, Mark are the Mavericks. So, yes,  
 20 the Mavericks representing me had interactions with  
 21 Nellie on this financial deal.  
 22 Q. You would agree with me that you never had a  
 23 conversation with Nelson about this, that is to say you  
 24 personally?  
 25 A. I'll repeat that, you know, the Mavs -- I used

1 the Mark and the Mavericks interchangeably.  
2 Q. Okay. He didn't come in to see you to talk  
3 about this, then, true?

4 MS. BUSH: Objection, form.

5 A. Again --

6 Q. (BY MR. O'CONNOR) You Mark -- I want to make  
7 sure. I'll say it again just so we respect your  
8 distinction. He never came in to see you personally  
9 and suggest this, true?

10 A. I will just repeat what I answered before, you  
11 know, in the context of what's going on here, using the  
12 word "Mark," using "Mavericks" are interchangeable. So  
13 when he came in to see -- whenever there was an  
14 exchange with Floyd or whoever he spoke to then -- or  
15 however he corresponded or whether it was through his  
16 lawyers rather than him personally, it's one and the  
17 same.

18 Q. Okay. I understand your position on this.  
19 Let me make it clear, though, for the record, if I can,  
20 one step at a time. Nelson never came to see you and  
21 talk to you personally, true?

22 A. I don't know that Nelson went and saw anybody.  
23 Again, I don't know. But I'll just stick by, you know,  
24 what I was saying that, you know, when I say "Mark" and  
25 it's interchangeable with the Mavs.

1 you?

2 A. Actually, my understanding is, because the  
3 people working for the Mavericks represented me, yes,  
4 there were interactions. I just wasn't aware of all of  
5 them.

6 Q. Okay. So you are saying there are  
7 interactions with you; you just didn't know anything  
8 about them?

9 A. As I said earlier, "Mark," "the Mavericks" are  
10 interchangeable, and when people working for me were  
11 having those discussions, they were having them for me  
12 with me.

13 Q. Did you feel you were conveying to Murph and  
14 Mac and their listeners that you had had a personal  
15 conversation with Nelson?

16 A. No, sir.

17 MS. BUSH: Objection, form.

18 Q. (BY MR. O'CONNOR) Okay. And you, in fact,  
19 didn't have personal knowledge of what had occurred in  
20 the negotiations regarding the consulting fees?

21 A. Could you repeat the question?

22 Q. You yourself did not have personal knowledge  
23 of what had transpired in the consultant fee  
24 negotiations?

25 A. Could you repeat the question again? I want

1 Q. Can you answer the question as to whether you  
2 and Nelson had a conversation, that is to say you, Mark  
3 Cuban, a human being, had a conversation with Don  
4 Nelson, a human being, on this subject?

5 A. Again, I'll -- you know, any conversations  
6 that were had with the Mavericks were the equivalent of  
7 having them with me. So, you know, it's all  
8 interchangeable.

9 Q. You would agree that Nelson did not talk to  
10 you, Mark Cuban, a human being, correct, an individual?

11 A. We've talked many times.

12 Q. On this subject here is what I am asking you  
13 about.

14 A. I don't recall specifically.

15 Q. Well, I believe you told me earlier in this  
16 deposition that you didn't do any of the negotiations  
17 on this -- on this buyout issue.

18 A. Well, you --

19 MS. BUSH: Objection, form.

20 A. You asked specifically about a lot of things.  
21 It was an open-ended question, so I wasn't quite sure  
22 exactly.

23 Q. (BY MR. O'CONNOR) Well, the fact is you  
24 didn't -- you didn't deal with Nelson on these  
25 negotiations to -- over this consultant's salary, did

1 to make sure I answer it correctly.

2 MR. O'CONNOR: Yeah, reread it.

3 (The pending question was read.)

4 A. Consultant fee negotiations. I am not sure.

5 Q. (BY MR. O'CONNOR) Okay. Okay. I'll go to  
6 Exhibit 13, and I'll read from Exhibit 13. Floyd is  
7 e-mailing to you, "I called him back and took one shot  
8 at negotiating something less than the 2,000 --  
9 \$200,000 per year."

10 MS. BUSH: I am sorry, did you say  
11 Exhibit 13?

12 MR. O'CONNOR: Yeah, Exhibit -- I'm  
13 sorry, Exhibit 10, Exhibit 10, I'm sorry. I'll  
14 rephrase the question.

15 Q. (BY MR. O'CONNOR) Looking at Exhibit 10,  
16 Mr. Jahner is relating to you, "I called him back and  
17 took one shot at negotiating something less than the  
18 \$200,000 per year."

19 You knew that it was Mr. Jahner that was  
20 negotiating this -- this lump sum settlement.

21 MS. BUSH: Objection, form.

22 A. Again, you are characterizing it as a  
23 settlement. I knew that Floyd and Nellie were -- had  
24 had -- two things, one, the radio show was a year  
25 later, so all I had was a basic remembrance and

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1 understanding of what had happened before. There was  
 2 no reason for me to do any homework. There was no  
 3 reason to do any preparation. This was a Dancing With  
 4 the Stars thing. So I didn't know what questions to  
 5 expect. So I just had a very simple basic  
 6 understanding, remembrance of what had occurred. And I  
 7 remembered that -- as I remembered it, you know, Nellie  
 8 had asked for an acceleration. And Floyd had  
 9 interacted with Nellie or his representatives about  
 10 that request for an advance.  
 11 Q. (BY MR. O'CONNOR) Okay. I've read this to  
 12 you before, and I'll read it to you again from page 176  
 13 of your depositions -- deposition, lines 19 to 22,  
 14 starting with line 20.  
 15 "Question: Did you get involved in any  
 16 of the negotiations concerning this possible buyout?  
 17 "Answer: No."  
 18 Am I correct that you were not involved  
 19 in negotiations with Nelson over this buyout?  
 20 MS. BUSH: Objection, form.  
 21 A. Just to be clear, when Floyd and Robert or  
 22 whoever were having negotiations, they were having  
 23 negotiations for the Mavericks which in turn were for  
 24 me.  
 25 Q. (BY MR. O'CONNOR) Okay. You would agree that

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1 to the extent that your statement can be understood to  
 2 imply a direct conversation between Nellie and you,  
 3 that the conversation is false?  
 4 MS. BUSH: Object to the form.  
 5 A. No, sir.  
 6 Q. (BY MR. O'CONNOR) Okay.  
 7 A. I do it -- it's the exact same type of  
 8 conversation I have all the time. When I interchange  
 9 the word -- my name or the Mavericks in talking  
 10 about -- I'll say "we" all the time when it's not  
 11 necessarily me personally involved. So there is no  
 12 reason for anybody to believe otherwise that I was  
 13 representing the Mavericks.  
 14 Q. I'll ask it another way. To the extent this  
 15 purports to be a conversation with you personally an  
 16 individual, it's a fabricated conversation, isn't it?  
 17 MS. BUSH: Object to form.  
 18 A. To the extent -- I don't know how to answer  
 19 that.  
 20 Q. (BY MR. O'CONNOR) Well, you see this  
 21 statement, you are talking -- a reader could understand  
 22 this to mean that Nelson was talking to you. You even  
 23 used the word "Mark." You know what, Mark, you know,  
 24 pay me. Don't you think someone would understand this  
 25 to mean that Nelson was having a discussion with you,

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1 Mark, about this?  
 2 MS. BUSH: Objection to the form.  
 3 A. Well, I can tell you that no one's reading  
 4 this. It was over the radio, and so I would -- I would  
 5 say given any interviews I've done, I use "Mark" and  
 6 "Mavericks" interchangeably often.  
 7 Q. (BY MR. O'CONNOR) Okay.  
 8 A. Just like Nellie would use "Mavericks" and  
 9 "Nellie" and "we" interchangeably quite often.  
 10 Q. Did you understand when you were making this  
 11 remark that the listeners would understand your remark  
 12 to convey that you, Mark Cuban, had a personal  
 13 conversation with Don Nelson?  
 14 MS. BUSH: Object to the form.  
 15 A. I don't know. I can't speak to what they  
 16 would think.  
 17 Q. (BY MR. O'CONNOR) Okay. In this  
 18 conversation, you have Nellie saying to you, "Give me  
 19 half of it up front, and we'll call it even." By that  
 20 are you referring to what Jahner is telling you on page  
 21 10 is the -- which Jahner refers to as the \$500,000  
 22 lump sum settlement?  
 23 A. No, sir. I am just referring to my general  
 24 understanding of the circumstances.  
 25 Q. Okay. But is that referring to a potential

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1 \$500,000 settlement when you say give me half of it up  
 2 front?  
 3 MS. BUSH: Objection, form.  
 4 A. No, sir.  
 5 Q. (BY MR. O'CONNOR) Okay. It doesn't refer to  
 6 the 500,000 lump sum settlement?  
 7 A. It refers to a general understanding I have of  
 8 the circumstances.  
 9 Q. If it doesn't refer to what Jahner is talking  
 10 about in Exhibit 10, what else can it refer to?  
 11 A. It can refer to an acceleration of the  
 12 payments, but I'm not specifically referring to any  
 13 given e-mail. This is a year later, and there is no  
 14 way that I remember one given e-mail out of the hundred  
 15 thousand plus that I had gotten between then in July of  
 16 2006 or whenever it was from Floyd to September 21st,  
 17 2007. So I wasn't -- I wasn't referring to any  
 18 specific e-mail. I was just referring to my general  
 19 understanding and remembrance of what had happened over  
 20 a year ago.  
 21 Q. Okay. Let me go to the end of this answer  
 22 where you have Nellie telling you, quote, I'll pick it  
 23 up, pick up the quote here, "We'll do -- the consulting  
 24 deal will stay in force with its noncompete clause and  
 25 everything." Do you see those words at the end of this



1 quote at the bottom of page 11?

2 A. Yes, sir.

3 Q. Okay. Do you know of any time, any instance,  
4 whether it's to you Mark Cuban or someone in your  
5 organization in which Nelson said anything to the  
6 effect of, the consulting deal would stay in force with  
7 its noncompete clause and everything?

8 A. I don't recall one way or the other. All I  
9 remember is the general -- my general understanding of  
10 the circumstances.

11 Q. Beyond what you testified earlier was your  
12 presumption and speculation that Nelson wanted an  
13 acceleration as opposed to a buyout, do you have any  
14 other basis to say that Nelson ever represented that  
15 the consulting deal will stay in force with its  
16 noncompete clause?

17 A. Yes, sir.

18 Q. And what's that?

19 A. My general understanding of the circumstances  
20 as I remember them.

21 Q. Okay. Refer me to some circumstances, other  
22 than Floyd's e-mail.

23 A. I am just saying -- I am just referring to how  
24 I understood the scenario as of September 21st, 2007.

25 Q. Okay. Describe for me any representations you

1 knew of at the time you were making this interview  
2 where Nelson said, "the consulting deal will stay in  
3 force with its noncompete clause"?

4 A. All I can tell you, the only thing I can tell  
5 you is that based off of a year later off -- off of my  
6 remembrance and understanding of the circumstances at  
7 that point, that's what I remember. That's why we were  
8 in a dispute. And, you know, my remembrance of the  
9 scenario was in one manner, and, you know, that's the  
10 best -- that was my best recollection.

11 Q. Okay. And I'm asking you for your best  
12 recollection as to any instance that you know of other  
13 than this e-mail of Exhibit 10, any instance in which,  
14 first of all, the consulting deal was discussed in  
15 terms of a buyout or a settlement.

16 A. Any instance in which the --

17 Q. Let me rephrase it. That's a bad question.

18 Can you give me any instance where Nelson  
19 told anyone with the Mavs, to your knowledge, that the  
20 consulting deal will stay in force with its noncompete  
21 clause?

22 A. I don't recall.

23 Q. Okay. To you the noncompete clause meant that  
24 he couldn't work with another team, right?

25 A. Yes, sir.

1 Q. All right. So you were saying that Nelson was  
2 representing that he was going to follow the noncompete  
3 clause, right?

4 A. No, sir.

5 MS. BUSH: Objection, form.

6 Q. (BY MR. O'CONNOR) Did you understand this  
7 statement you are making here to be telling the  
8 listeners of the Murph and Mac Show that Nellie had  
9 represented that he would honor a noncompete clause?

10 MS. BUSH: Objection, form.

11 A. Could you ask that again?

12 Q. (BY MR. O'CONNOR) Yeah. You were saying here  
13 that Nellie was representing that he would -- that a  
14 noncompete clause would stay in force, right?

15 MS. BUSH: Objection, form.

16 A. No, sir.

17 Q. (BY MR. O'CONNOR) When you say the consulting  
18 deal will stay in force with its noncompete clause,  
19 what do you mean by that?

20 A. I am saying that, as best as I can recall at  
21 that point in time, that we had a disagreement and, you  
22 know, I was conveying my understanding of the  
23 circumstances at the time.

24 Q. Okay. We had already talked before in June of  
25 2006, you thought that it was possible that the

1 consulting deal may have ended --

2 MS. BUSH: Objection, form.

3 Q. (BY MR. O'CONNOR) -- as a result of your  
4 March '05 deal.

5 MS. BUSH: Objection, form.

6 A. I don't recall that.

7 Q. (BY MR. O'CONNOR) Yeah. In other words, one  
8 of the things you knew was is that you Mark Cuban had  
9 been taking the position that the consultant's  
10 agreement wasn't even in force in the summer of 2006,  
11 right?

12 MS. BUSH: Objection, form.

13 A. Not that I recall, sir.

14 Q. (BY MR. O'CONNOR) Okay. You were telling --  
15 you were telling Floyd that, if you remembered  
16 correctly, you didn't have to pay \$200,000 a year,  
17 right?

18 A. That was in 2006 at one point in time in  
19 response to an e-mail.

20 Q. Okay. Now let's get back to Nellie. There  
21 was never a time during these negotiations that we've  
22 been talking about in the summer of 2006 in which  
23 Nelson ever told you that the consulting deal will stay  
24 in force; isn't that true?

25 A. I don't know.

1 Q. Okay. And there was never a time when he  
 2 represented to anyone that he would comply with a  
 3 noncompete clause; isn't that true?  
 4 MS. BUSH: Objection, form.  
 5 Q. (BY MR. O'CONNOR) And again, I am referencing  
 6 the summer of '06 when these settlement negotiations  
 7 were going on.  
 8 A. There is never a point in time when he  
 9 represented to anyone, I don't know.  
 10 Q. Okay. So when you are talking about this  
 11 subject here to Murph and Mac, you are talking about  
 12 stuff you don't know about?  
 13 MS. BUSH: Objection, form.  
 14 A. I'll give you my best recollection of the  
 15 circumstances as I understood them at that point in  
 16 time.  
 17 Q. (BY MR. O'CONNOR) Okay. And can you give me  
 18 any of those circumstances upon which you were relying  
 19 in making these statements about Nelson?  
 20 A. Circumstances upon which I was relying. I was  
 21 relying on just the general understanding of what I  
 22 remembered about the circumstances.  
 23 Q. Okay. And you can't point to any facts today,  
 24 other than you've just testified to?  
 25 A. I was just relying on my general understanding

1 understanding that you have just told us about, yes or  
 2 no?  
 3 A. Can I recall any other circumstances other  
 4 than the general understanding that I just gave you,  
 5 yes or no? I honestly -- I am not sure how to answer  
 6 the question. I'm sorry. I am slow...  
 7 Q. Can you relate any specific circumstances?  
 8 You have given me your general understanding. Can you  
 9 relate any specific circumstances, yes or no?  
 10 A. I don't recall.  
 11 Q. Okay. Now, continuing with this same answer  
 12 on the top of page 12 in Exhibit 1001, you say, "And  
 13 the next thing I know he's taking a job with the  
 14 Warriors."  
 15 Now, if he's agreed to a noncompete  
 16 clause and he's taking a job with the Warriors, that  
 17 would be a violation, right?  
 18 MS. BUSH: Objection, form.  
 19 A. Can you ask the question again, if he's taking  
 20 the job --  
 21 Q. (BY MR. O'CONNOR) You just talked about the  
 22 noncompete clause --  
 23 A. Right.  
 24 Q. -- in the previous sentence, right? You would  
 25 agree with that?

1 of the circumstances.  
 2 Q. Okay. But once again, I am here to try to get  
 3 as much detail as I can, as much factual background as  
 4 I can. You understand that?  
 5 A. Yes, sir.  
 6 Q. Okay. Can you tell me anything other than you  
 7 have already testified to about the basis for your  
 8 statement that Nelson said the consulting deal will  
 9 stay in force with its noncompete clause?  
 10 A. I was relying on my general understanding of  
 11 the circumstances that had occurred over a year ago and  
 12 just was general memory. That was it.  
 13 Q. No circumstances you can -- you can specify  
 14 any further than that answer you just gave me?  
 15 A. Again, I was relying on my general  
 16 recollection, general understanding of the  
 17 circumstances.  
 18 Q. So is the answer, no, you can't, you can't  
 19 give me anything more than this answer you just gave?  
 20 A. I can't give you my more than the answer I  
 21 just gave. So I could say yes, or I could just repeat  
 22 the same answer. They would be the same, right?  
 23 Q. No. It wouldn't be the same. Yes or no, it's  
 24 a yes-or-no question. Can you recall any  
 25 circumstances, other than this so-called general

1 A. Yes, sir.  
 2 Q. Okay. Now the next thing you say is, quote,  
 3 "And the next thing I know, he is taking a job with the  
 4 Warriors," unquote. Do you see that sentence?  
 5 A. Yes, sir.  
 6 Q. Okay. Did you mean to convey by that next  
 7 sentence that by taking a job with the Warriors, that  
 8 Nelson was violating the noncompete clause?  
 9 MS. BUSH: Objection, form.  
 10 A. No, sir. I was just saying that, you know,  
 11 based off of my understanding of the situation, that he  
 12 took a job. Obviously, literally, it wasn't the next  
 13 thing, so I was just conveying my understanding of the  
 14 circumstances.  
 15 Q. (BY MR. O'CONNOR) Well, if he's bound by a  
 16 noncompete clause, he can't take a job with the  
 17 Warriors, can he?  
 18 MS. BUSH: Objection, form.  
 19 A. You would have to ask the lawyers.  
 20 Q. (BY MR. O'CONNOR) That's nothing you can  
 21 answer, huh?  
 22 A. I don't know.  
 23 Q. You don't have an understanding as to whether  
 24 taking a job with the Warriors would violate a  
 25 noncompete clause?



1 MS. BUSH: Objection, form.  
 2 A. I am -- my understanding of noncompete laws is  
 3 there is a lot of nuances as I have learned, so -- I  
 4 don't know.  
 5 Q. (BY MR. O'CONNOR) You are accusing him of  
 6 violating a noncompete clause, aren't you?  
 7 MS. BUSH: Objection, form.  
 8 A. No, sir.  
 9 Q. (BY MR. O'CONNOR) Okay. You are accusing him  
 10 of misrepresenting his intention to honor a noncompete  
 11 clause, true?  
 12 MS. BUSH: Objection, form.  
 13 A. No, sir.  
 14 Q. (BY MR. O'CONNOR) You say here you are more  
 15 than a little bit pissed, right?  
 16 A. Yes, sir.  
 17 Q. Okay. Why are you more than a little bit  
 18 pissed?  
 19 A. Because based off of the circumstances as I  
 20 remember them there -- I didn't feel that I was treated  
 21 equitably or the Mavs -- let me rephrase. I didn't  
 22 feel like the Mavs were treated equitably.  
 23 Q. Okay. Was there something that was  
 24 inequitable about him taking a job with the Warriors  
 25 after telling you that the consulting deal will stay in

1 Q. (BY MR. O'CONNOR) You can't answer that  
 2 question, then?  
 3 A. It just depends.  
 4 Q. Okay. Now, you say here, quote, "Now we ended  
 5 up not paying him that because I heard about the job  
 6 before I wrote the check."  
 7 The check you are referring to here is  
 8 the check for \$500,000, correct?  
 9 A. I am not referring to anything specific as a  
 10 specific check. I am just trying to convey my  
 11 understanding of the circumstances as best I can.  
 12 Q. Okay. Let's go to page 11, the same answer,  
 13 where you have Nelson saying to you, "You know what,  
 14 Mark, you know, pay me. You owe me a consulting fee of  
 15 \$200,000 a year for the next five years. Give me half  
 16 of it up front." Okay. Let me stop right there.  
 17 Half of \$200,000 a year for five years is  
 18 \$500,000, correct?  
 19 A. Yes, sir.  
 20 Q. Okay. You know that Jahner was talking to  
 21 Nelson that summer in July of '06 about what Jahner  
 22 termed a \$500,000 lump sum settlement, correct?  
 23 A. No, sir.  
 24 Q. Well, you -- I read the e-mail to you. You  
 25 saw the e-mail about the \$500,000 lump sum settlement.

1 force with its noncompete clause?  
 2 MS. BUSH: Objection, form.  
 3 A. After telling me that the... Would you repeat  
 4 the question?  
 5 MR. O'CONNOR: Sure. Reread it.  
 6 (The pending question was read.)  
 7 A. After telling me that the consulting deal  
 8 would stay in force with its noncompete clause. I am  
 9 not sure how to answer the question, but I can tell you  
 10 that I felt it was inequitable simply because he just  
 11 didn't call and ask, that we had a relationship -- I  
 12 thought we had a relationship at that point in time.  
 13 And I think I go on to say later that if he would have  
 14 just called me and asked me to take another job, I  
 15 would have let him. And so it was kind of -- you know,  
 16 again, this is how I understood the circumstances, that  
 17 he just didn't present the circumstances to me for us  
 18 to discuss.  
 19 Q. (BY MR. O'CONNOR) You would agree that if  
 20 Nelson had a contract with the Mavericks, the  
 21 noncompete clause would prevent him during the term  
 22 from taking a job with the Warriors; you would agree  
 23 with that, wouldn't you?  
 24 MS. BUSH: Objection, form.  
 25 A. It depends.

1 A. Yes, sir, but that was over a year earlier  
 2 than this. I don't -- I don't imagine that I would  
 3 recall a single e-mail when I really didn't have  
 4 occasion to read or discuss those e-mails between then  
 5 and now.  
 6 Q. Okay. Whether it refers to this specific  
 7 e-mail or the subject of the \$500,000 lump sum  
 8 settlement, the check that you didn't write was for  
 9 \$500,000, right?  
 10 A. No, sir.  
 11 Q. Half of -- we have established that half of a  
 12 million dollars is 500,000; you would agree with that.  
 13 A. Every day, yeah.  
 14 Q. Okay. Good. You've always been good at math?  
 15 A. Not always.  
 16 Q. All right. When you say, "Now we ended up not  
 17 paying that because I heard about the job before I  
 18 wrote the check." The check you are talking about is  
 19 the one for \$500,000?  
 20 MS. BUSH: Objection, form.  
 21 A. No, sir. I am not referring to a specific  
 22 check. I am just trying to characterize the  
 23 circumstances as I remember them as best I can.  
 24 Q. (BY MR. O'CONNOR) What's the amount of the  
 25 check that you -- that you didn't write?

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1 A. The amount of the check I didn't write?  
 2 Q. Yeah, a check you were intending to write. It  
 3 says you heard about the job before you wrote the  
 4 check. How much was the check going to be for that you  
 5 are referring to here?  
 6 A. Again, I'm not referring to anything specific.  
 7 I am just giving the general recollection of my  
 8 understanding of what happened over a year earlier.  
 9 Q. Can you give any circumstances, any detail  
 10 about what you are referring to here when you talk  
 11 about I heard about the job before I wrote the check,  
 12 what check are you talking about?  
 13 A. Again, I don't recall specifically. I am just  
 14 giving my best recollection, best understanding of what  
 15 happened over a year ago. I couldn't point to  
 16 specifics.  
 17 Q. Okay. Look at page -- in fact, let me go back  
 18 to this phrase at the top of page 11. The -- Jahner's  
 19 e-mail to you about the lump sum settlement was July  
 20 27th, '06, per Exhibit 10, correct?  
 21 A. Yes, sir.  
 22 Q. Okay. Now, if you go to page -- or  
 23 paragraph -- Exhibit 16. Can you go to 16, Mr. Cuban?  
 24 A. Yes, sir.  
 25 Q. Okay. Attached to Exhibit 16 is an August 29,

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1 2006, contract of -- of Nelson with the Warriors; do  
 2 you see that?  
 3 A. Yes, sir.  
 4 Q. Okay. That's about a little over a month  
 5 after Jahner writes you about the potential \$500,000  
 6 lump sum settlement on July 27th; you would agree with  
 7 that?  
 8 A. Yes, sir.  
 9 Q. Okay. When you say "We ended up not paying  
 10 him that because I heard about the job before I wrote  
 11 the check," the job you are talking about is this job  
 12 in Exhibit 16, the one of August 29th, right?  
 13 A. I am guessing this is where he signed as  
 14 coach, but I wouldn't know for certain.  
 15 Q. Okay. Okay. You got some message from Don  
 16 about two days before he signed?  
 17 A. Yes, sir.  
 18 Q. Okay. You wouldn't have -- you would have  
 19 heard about Don's job with the Warriors around August  
 20 29th, then, maybe a day or two before?  
 21 A. No, sir.  
 22 Q. When would you have heard about Don's job with  
 23 the Warriors?  
 24 A. It was being reported in the media on an  
 25 ongoing basis.

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1 Q. Okay. Now, when you say "because I heard  
 2 about the job before I wrote the check," are you  
 3 referring something -- to something other than Don's  
 4 giving you a phone call? Let me ask it another way.  
 5 What are you referring to when you say,  
 6 "I heard about the job before I wrote the check," what  
 7 are you talking about there?  
 8 A. Media speculation that Nellie was taking a job  
 9 somewhere else.  
 10 Q. Okay. And is it media speculation around the  
 11 time that he actually took the job?  
 12 A. It was well before it.  
 13 Q. What month?  
 14 A. Again, I don't recall specifically, but it  
 15 was -- it wasn't the end of August.  
 16 Q. Was it in July?  
 17 A. I don't recall specifically.  
 18 Q. Are you telling us now that the reason you  
 19 didn't write a \$500,000 check to Nellie was because you  
 20 had heard about him taking another job?  
 21 A. Basically I didn't write a 500,000 -- I think  
 22 we are mixing apples and oranges here. I am not quite  
 23 sure how to answer the question.  
 24 Q. Well, the check that you didn't write is a  
 25 \$500,000 check, right?

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1 MS. BUSH: Objection, form.  
 2 A. The check that I didn't write was a \$500,000  
 3 check.  
 4 Q. (BY MR. O'CONNOR) When you say "I heard about  
 5 the job before I wrote the check," before you wrote the  
 6 check for \$500,000, right?  
 7 A. If you are referring --  
 8 MS. BUSH: Objection, form.  
 9 A. If you are referring to the transcript of the  
 10 radio show.  
 11 Q. (BY MR. O'CONNOR) Right.  
 12 A. It wasn't -- I wasn't literally talking about  
 13 a check. I was just trying to convey my understanding  
 14 of the circumstances as best I could.  
 15 Q. Okay. Now you say right below that on page  
 16 12 --  
 17 A. Okay. Page 12 of 18.  
 18 Q. Page 12 of 1001, 1001, you got that?  
 19 MR. O'CONNOR: We are off the record.  
 20 (Pause.)  
 21 MS. BUSH: Okay. Sorry.  
 22 Q. (BY MR. O'CONNOR) You say at lines 8 and 9,  
 23 in answer to Murph's question, "Hey, did you sue him  
 24 for inside knowledge," you state, "Well, no, see, what  
 25 happened, I sued him for the noncompet." Do you see

1 that?

2 A. Yes, sir.

3 Q. Okay. You, of course, were telling Murph that  
4 you had sued Nelson for violating the noncompete  
5 covenant in his contract, correct?

6 MS. BUSH: Objection, form.

7 A. I was conveying my understanding of the  
8 lawsuit based off of what others had told me as best I  
9 could.

10 Q. (BY MR. O'CONNOR) Okay. Now, up above what  
11 you say is that, "He said the consulting deal will stay  
12 in force with its noncompete clause and everything."  
13 When you put these statements together, would you  
14 agree, Mr. Cuban, that you are accusing Nelson of  
15 making a promise to honor the noncompete clause and  
16 then violating it?

17 MS. BUSH: Objection, form.

18 A. No, sir. I am just conveying my understanding  
19 and recollection as best I could.

20 Q. (BY MR. O'CONNOR) Any particular  
21 circumstances you'd want to convey there when you talk  
22 about his representations regarding the noncompete?

23 A. I am not sure I understand you.

24 Q. Okay. Let's go down to line 19 to 21.

25 A. Uh-huh.

1 Q. Okay. All you knew as far as we've learned  
2 here today is what's in Exhibit 10, right?

3 A. That was my general understanding of the  
4 circumstances.

5 Q. Okay. Okay. So when you talk about advance  
6 bonus payments, do you know of any advance bonus  
7 payments other than as reflected in Exhibit 10?

8 A. Other than as reflected -- not that I'm aware  
9 of.

10 Q. Okay. So when you talk here about advance  
11 bonus payments, are you talking about this same  
12 \$500,000 that is reflected in Exhibit 10?

13 A. On the show I'm not being literal about any  
14 specific payments. I was just giving a general --  
15 trying to convey a general understanding of the  
16 circumstances as I knew them.

17 Q. Okay. And that you considered, if you go to  
18 page 13, line 6, you say, "I thought he tried to rip me  
19 off," right, line 6, page 13?

20 A. That's what the transcript says.

21 Q. Okay. You don't have any reason to doubt the  
22 transcript that your lawyers prepared, right?

23 A. No, sir.

24 Q. Okay. You intended to convey that you were  
25 ripped off by Nelson -- Nellie, right?

1 Q. Let me start at line 18. You say, "You know,  
2 I would really appreciate it if you would let me go, I  
3 would let him go. But instead, he tried to get his  
4 advance bonus payments and take off with them, and that  
5 really made me mad."

6 By "advance bonus payments" are you  
7 talking about the \$500,000?

8 A. I wasn't talking about any specific amounts at  
9 all.

10 Q. Okay. You knew that Floyd had at least  
11 tentatively reached some sort of understanding about a  
12 \$500,000 lump sum settlement using Floyd's words,  
13 correct?

14 A. Again and again and again, I was just  
15 conveying my understanding of the situation as best I  
16 could. You are asking me about e-mails, a single  
17 e-mail out of days when I get thousands that happened  
18 over a year earlier.

19 Q. Okay. I am not asking -- I am not asking you  
20 right now about the transcript on page 12, and not even  
21 a specific e-mail. You know that there were  
22 discussions with -- between Floyd and Nelson about a  
23 \$500,000 lump sum settlement, right?

24 A. I don't recall if at that point in time  
25 September 1st, 2007, that I knew the specifics.

1 MS. BUSH: Objection, form.

2 Q. (BY MR. O'CONNOR) That he tried to rip you  
3 off?

4 MS. BUSH: Objection, form.

5 A. I was trying to convey my understanding of the  
6 circumstances and that there was a disagreement.

7 Q. (BY MR. O'CONNOR) Okay. Okay. Do you  
8 consider a disagreement the same thing as ripping  
9 someone off?

10 A. Depends.

11 Q. You thought you were being deceived?

12 MS. BUSH: Objection --

13 Q. (BY MR. O'CONNOR) You told Pauly that, right?

14 MS. BUSH: Objection, form.

15 Q. (BY MR. O'CONNOR) He asked you like, "You  
16 feel you are being deceived," you say, "Oh, yeah,"  
17 right?

18 A. That's what the transcript says.

19 Q. Okay. And tell me now, if you can, any other  
20 specifics about why, quote, "He tried to rip me off,"  
21 why you thought you were deceived, other than you've  
22 already told me about these general circumstances?

23 A. It was a year later. I was doing my best to  
24 quickly convey my general understanding of what had  
25 happened, and this was prior to reading any of the --

1 you know, it was just my general understanding.  
 2 Q. Okay. You are making these statements, then,  
 3 without any knowledge of what you are talking about?  
 4 MS. BUSH: Objection, form.  
 5 A. I had a general knowledge, but it was just a  
 6 general understanding.  
 7 Q. (BY MR. O'CONNOR) Okay. And I think your  
 8 general understanding, as you have said before, is  
 9 represented by Exhibit 10, right?  
 10 A. My general understanding is represented by --  
 11 no, sir.  
 12 Q. Anything else you knew about regarding a  
 13 settlement of the consulting fee of 200,000 a year for  
 14 the next five years, other than the e-mail that Jahner  
 15 sent you on -- that's reflected in Exhibit 10?  
 16 A. In terms of when?  
 17 Q. As of the date of this radio interview. I  
 18 mean, I'd like to know what you knew, other than what  
 19 Jahner's telling you in Exhibit 10.  
 20 A. All I had was a general understanding of the  
 21 circumstances that occurred based off of, you know,  
 22 just things I've been told, you know, in -- over a year  
 23 ago.  
 24 Q. Okay. And I'm now trying to get at those, and  
 25 I don't mean to badger you or harass you or anything.

1 A. No, sir.  
 2 Q. (BY MR. O'CONNOR) You say you were more than  
 3 a little bit pissed; is that fair?  
 4 A. It was just a general recollection of my  
 5 understanding of what had occurred in the past.  
 6 Q. Okay. You say, "That really made me mad,"  
 7 right? That's a fair quote, isn't it?  
 8 A. Again, it was just a general recollection of  
 9 my -- it was a recollection of my personal  
 10 understanding of what had happened over a year ago.  
 11 Q. Okay. And what really made you mad where you  
 12 thought he was deceiving you, where you thought he was  
 13 trying to rip you off was by telling you that the  
 14 consultant deal will stay in force with its noncompete  
 15 clause and then going ahead and violating that  
 16 noncompete clause?  
 17 MS. BUSH: Objection, form.  
 18 A. No, sir.  
 19 Q. (BY MR. O'CONNOR) Did the ripping off have to  
 20 do with the noncompete clause?  
 21 MS. BUSH: Objection, form.  
 22 A. Again, I was just conveying my recollection  
 23 and general understanding of the circumstances as I  
 24 remembered them.  
 25 Q. (BY MR. O'CONNOR) Okay. When you say he

1 I am here to try to get details because that's my job.  
 2 I'm trying to get my details as to what it is that you  
 3 based these comments on where you accused Nellie of  
 4 trying rip you off.  
 5 MS. BUSH: Objection, form.  
 6 A. It's just a general understanding.  
 7 Q. (BY MR. O'CONNOR) Let me ask you this,  
 8 Mr. Cuban. Do you think it is a favorable comment or  
 9 an unfavorable comment when somebody says you tried to  
 10 rip somebody off?  
 11 MS. BUSH: Objection, form.  
 12 A. It just depends. You were talking earlier  
 13 about Nellie and golf and tennis, and basically said  
 14 the same thing, but you said you loved the guy. You  
 15 know, it really depends.  
 16 Q. (BY MR. O'CONNOR) Ripping somebody off  
 17 accuses somebody essentially of fraud or deception,  
 18 right?  
 19 MS. BUSH: Objection, form.  
 20 A. It depends.  
 21 Q. (BY MR. O'CONNOR) You were accusing Nellie of  
 22 deceiving you in a very important matter involved in  
 23 his contract which was so upsetting to you that you  
 24 said you got pissed off, right?  
 25 MS. BUSH: Objection, form.

1 tried to rip you off, what was it that you thought was  
 2 the attempt to rip off? Was it him violating the  
 3 noncompete clause, or was it something else?  
 4 A. I wasn't being literal. I was trying to  
 5 convey my general understanding of what had happened  
 6 over a year ago.  
 7 Q. Anything -- can you point to anything today,  
 8 Mr. Cuban, other than you have testified to, that you  
 9 can point to where Mr. Nelson represented to you or  
 10 anybody in your organization that the consulting deal  
 11 will stay in force with its noncompete clause? And I'm  
 12 now talking about the summer of 2006 from June through  
 13 August 2006.  
 14 A. June through August, June through August 2006,  
 15 I don't know.  
 16 Q. You had your deposition taken around January  
 17 18th of 2008; is that a fair estimation of when you had  
 18 your deposition taken?  
 19 A. I'll trust you on that one.  
 20 Q. Okay. Did you authorize your lawyers to keep  
 21 the -- to attempt to keep the media from publicizing  
 22 your deposition?  
 23 MS. BUSH: Objection, form.  
 24 A. I don't recall.  
 25 MS. BUSH: Any conversations that you had

1 with your lawyers --  
 2 A. My lawyers, yeah. Strike that.  
 3 Q. (BY MR. O'CONNOR) Did you know, did you know  
 4 that Dallas Basketball -- Dallas Basketball, Ltd., had  
 5 made a motion to keep your -- to keep your deposition  
 6 confidential?  
 7 A. No.  
 8 Q. Okay. Did you know that the -- that Nelson  
 9 wanted to have the ability to refute publicly the  
 10 statements you made publicly on Murph and Mac?  
 11 A. Not that I am aware of, no.  
 12 Q. Can you point to any case, any situation where  
 13 Nelson has specifically refuted these statements that  
 14 you have made? Let me strike that.  
 15 Do you know of any instance in which  
 16 Nelson has released to the media your deposition for  
 17 publication?  
 18 A. I don't recall specifically.  
 19 Q. Isn't it true, Mr. Cuban, that you attempted  
 20 to -- let me -- you attempted to keep your deposition  
 21 confidential so that the public would not know that  
 22 what you said in the Murph and Mac show was false?  
 23 MS. BUSH: Objection, form.  
 24 A. No, sir.  
 25 Q. (BY MR. O'CONNOR) Okay.

1 A. Yes, sir.  
 2 Q. Okay. Now, if you go to page 11, after --  
 3 after the transcript has been repeated of the Murph and  
 4 Mac show, it says, "Of course, these statements are  
 5 contrary to Cuban's own sworn testimony, and so the  
 6 true purpose of the motion is revealed to prevent  
 7 public knowledge of facts that not only demonstrate the  
 8 Mavericks' unjustifiable breach of the employment  
 9 agreement, but also contradicts Cuban's previous false  
 10 and defamatory statements about Nelson."  
 11 My question to you is, Mr. Cuban, were  
 12 you trying to prevent dissemination of your deposition  
 13 so that Nelson could not refute the statements you made  
 14 on the Murph and Mac show?  
 15 MS. BUSH: Objection, form.  
 16 A. This is the first time I've ever seen this.  
 17 Q. (BY MR. O'CONNOR) Okay. But without having  
 18 seen this, is it, as you say, general circumstances,  
 19 did you try to prevent your deposition's release in  
 20 order to prevent the public from knowing the truth  
 21 about the defamatory statements you made about Nelson?  
 22 MS. BUSH: Objection, form.  
 23 A. I didn't even know we did this. I don't  
 24 remember this happening at all.  
 25 Q. (BY MR. O'CONNOR) Okay.

1 MR. O'CONNOR: Let's take a five-minute  
 2 break.  
 3 (Recess for 8 minutes.)  
 4 Q. (BY MR. O'CONNOR) Let me show you, we will  
 5 mark this as Exhibit 21.  
 6 (Deposition Exhibit 21 marked.)  
 7 Q. (BY MR. O'CONNOR) Exhibit 21 I'm showing you  
 8 is a Response to Dallas Basketball, Ltd., d/b/a The  
 9 Dallas Mavericks' Emergency Motion to Prevent  
 10 Disclosure of Discovery Materials. This is in response  
 11 of Nelson to Dallas Basketball's trying to keep your  
 12 deposition in the arbitration case away from the  
 13 public. And it says here, front page, I'll read from  
 14 it, "The Mavericks are attempting to shield the  
 15 franchise's owner Mark Cuban from the embarrassment of  
 16 public awareness of the true facts regarding the  
 17 Mavericks' breach of their contractual obligations."  
 18 If you go to page 9 of this, it says at  
 19 the middle of the page, "Moreover, after the Mavericks'  
 20 lawyers complained about trial publicity, Cuban gave a  
 21 radio interview in Oakland in September 2007 in which  
 22 he describes specific terms of Nelson's contract,  
 23 discussed his views of the dispute, and per se  
 24 slandered Nelson."  
 25 Did I read that correctly?

1 MR. O'CONNOR: In deference to  
 2 Mr. Cuban's schedule, I think I am going to cut this  
 3 short here.  
 4 THE WITNESS: Thank you, Lord.  
 5 MR. O'CONNOR: And -- but I would -- the  
 6 way this is going, it's fairly obvious that Mr. Cuban  
 7 does not have a -- it's a slow-going deposition where  
 8 Mr. Cuban's memory, I would assert is not good about  
 9 the facts --  
 10 MS. BUSH: I'll object --  
 11 MR. O'CONNOR: -- and need more time.  
 12 MS. BUSH: I would object to the sidebar  
 13 of that.  
 14 MR. O'CONNOR: Sure. I understand. I am  
 15 just stating our position. I appreciate your  
 16 objection, but I just want to state for the record that  
 17 I need more time. Right now I feel we have no choice.  
 18 Mr. Jahner I have been informed by counsel cannot  
 19 appear tomorrow, has a limited time horizon today. I  
 20 have to depose him, and right now I think I must tell  
 21 you that I'm through with this deposition, unless you  
 22 have objections, Mr. Cuban, to me ending this?  
 23 THE WITNESS: As much as I love you and  
 24 want to stay.  
 25 MR. O'CONNOR: Yeah, and I would like to

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1 talk to you some more, too, let me tell you that. Let  
 2 me take about two minutes to look at my notes, and I  
 3 think I am through. Let me keep it open for a couple  
 4 of minutes.  
 5 (Recess for 2 minutes.)  
 6 MR. O'CONNOR: With the caveats I've  
 7 stated, I'll adjourn the deposition for now. All  
 8 right?  
 9 MS. BUSH: We have no questions.  
 10  
 11  
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 14  
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 16  
 17  
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 19  
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 22  
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 24  
 25

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1 I, MARK CUBAN, have read the foregoing  
 2 deposition and hereby affix my signature that same is  
 3 true and correct, except as noted above.  
 4  
 5  
 6 MARK CUBAN  
 7 THE STATE OF \_\_\_\_\_ )  
 8 COUNTY OF \_\_\_\_\_ )  
 9 Before me, \_\_\_\_\_, on this  
 10 day personally appeared MARK CUBAN, known to me (or  
 11 proved to me under oath or through \_\_\_\_\_ )  
 12 (description of identity card or other document) to be  
 13 the person whose name is subscribed to the foregoing  
 14 instrument and acknowledged to me that they executed  
 15 the same for the purposes and consideration therein  
 16 expressed.  
 17 Given under my hand and seal of office  
 18 this \_\_\_\_ day of \_\_\_\_\_, 2009.  
 19  
 20  
 21  
 22 NOTARY PUBLIC IN AND FOR  
 23 THE STATE OF \_\_\_\_\_  
 24  
 25

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1 CHANGES AND SIGNATURE  
 2 WITNESS: MARK CUBAN DATE OF DEPO: 5/20/2009  
 3 PAGE LINE CHANGE REASON  
 4 \_\_\_\_\_  
 5 \_\_\_\_\_  
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 25 \_\_\_\_\_

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1 COUNTY OF DALLAS )  
 2 STATE OF TEXAS )  
 3 I, Jerry L. Callaway, RDR, certified  
 4 shorthand reporter in and for the State of Texas, do  
 5 hereby certify that the facts as stated by me in the  
 6 caption hereto are true; that there came before me the  
 7 aforementioned named person, who was by me duly sworn  
 8 to testify the truth concerning the matters in  
 9 controversy in this cause; and that the examination was  
 10 reduced to writing by computer transcription under my  
 11 supervision; that the deposition is a true record of  
 12 the testimony given by the witness.  
 13 I further certify that I am neither  
 14 attorney or counsel for, nor related to or employed by,  
 15 any of the parties to the action in which this  
 16 deposition is taken, and further that I am not a  
 17 relative or employee of any attorney or counsel  
 18 employed by the parties hereto, or financially  
 19 interested in the action.  
 20 Given under my hand and seal of office on  
 21 this, the 27th day of May, A.D., 2009.  
 22  
 23 Jerry L. Callaway, RDR, CSR 948  
 24 Expiration Date: 12/31/2010  
 25 Firm Registration No. 209  
 5220 Renaissance Tower  
 1201 Elm Street  
 Dallas, Texas 75270  
 (214) 855-5300

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EXHIBITS

Ex #	Description	Pg	Ln
5	Employment Agreement	80	21
6	Fifth Amendment to Employment Agreement	34	24
7	E-mail string most recent dated 6/27/2006 to Jahner from Cuban, Re Nellie	35	11
8	E-mail string most recent dated 7/26/2006 to Jahner and Hart from Cuban, Re Nellie	55	22
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