

1 FILES?

2 A I DID.

3 Q AND IS THAT ONE OF THE FILES, THAT IS GOVERNMENT'S 129, IS  
4 THAT ONE OF THE FILES THAT YOU MAINTAINED CUSTODY OF?

5 A YES, IT IS.

6 Q AND WAS IT -- HAS IT BEEN YOUR PRACTICE TO MAINTAIN THE  
7 FILES OF THE PREVIOUS FIRM, FISHMAN AND WOLF?

8 A YES.

9 MR. MOYE: THANK YOU, MR. FISHMAN.

10 I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

11 MR. MORRISON: NO QUESTIONS.

12 MR. ROSEN: NO QUESTIONS.

13 THE COURT: MR. ABBOTT?

14 MR. ABBOTT: NO QUESTIONS, JUDGE.

15 MR. ROSEN: NO QUESTIONS.

16 THE COURT: ALL RIGHT, MR. FISHMAN, YOU MAY STEP DOWN  
17 AND BE EXCUSED, IF YOU LIKE.

18 (WITNESS EXCUSED FROM THE STAND)

19 MR. MOYE: CALL MR. S.T. ELLIS, PLEASE.

20 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

21 DO YOU SOLEMNLY SWEAR THAT THE EVIDENCE YOU SHALL  
22 GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT TO BE THE  
23 TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU  
24 GOD?

25 THE WITNESS: I DO.

1 THE CLERK: BE SEATED PLEASE, AND STATE YOUR NAME FOR  
2 THE RECORD.

3 THE WITNESS: MY NAME IS S.T. ELLIS.

4 - - -

5 S.T. ELLIS

6 BEING DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MR. MOYE:

9 Q MR. ELLIS, HOW ARE YOU PRESENTLY EMPLOYED, SIR?

10 A I HAVE BEEN A PRACTICING ATTORNEY SINCE THE BEGINNING OF  
11 1952.

12 Q AND WHERE HAD --

13 A AND I'M STILL EMPLOYED, STILL SELF-EMPLOYED, ALTHOUGH I DO  
14 TRY TO WORK JUST PART OF THE TIME NOW.

15 Q ALL RIGHT, MR. ELLIS, WHERE IS YOUR PRACTICE?

16 A MCDONOUGH, GEORGIA. MY OFFICE IS 35 GRIFFIN STREET.

17 Q MR. ELLIS, LET ME ASK YOU, IN THE COURSE OF YOUR PRACTICE  
18 HAS REAL ESTATE BEEN A SIGNIFICANT PORTION OF THAT PRACTICE?

19 A IT CERTAINLY HAS.

20 Q OVER THE COURSE OF, I GUESS, 41 YEARS NOW, HAVE YOU DONE A  
21 FEW REAL ESTATE CLOSINGS?

22 A SEVERAL THOUSAND.

23 Q AND YOU ARE FAMILIAR WITH HOW THEY ARE DONE?

24 A YES, I AM.

25 Q MR. ELLIS, LET ME ASK YOU IF YOU BROUGHT WITH YOU TODAY

1 PURSUANT TO SUBPOENA A FILE RELATED TO A PIECE OF PROPERTY AT  
2 3776 PANOLA ROAD?

3 A I DID.

4 Q MAY I HAVE THE FILE, PLEASE, SIR.

5 NOW I HAND YOU WHAT I HAVE MARKED FOR IDENTIFICATION  
6 AS GOVERNMENT EXHIBIT 106 AND I ASK YOU, SIR, TO IDENTIFY THAT  
7 FOR THE RECORD?

8 A THIS IS MY FILE ON THIS REAL ESTATE TRANSACTION.

9 Q ALL RIGHT, SIR.

10 NOW, MR. ELLIS, AND YOU MAY REFER TO YOUR FILE IF IT  
11 WOULD REFRESH YOUR RECOLLECTION, CAN YOU TELL US WHO WERE THE  
12 PARTIES TO THE TRANSACTION INVOLVING 3776 PANOLA ROAD?

13 A THE PARTIES TO THE TRANSACTION WERE JEFFREY J. DUREN AS  
14 THE EXECUTOR UNDER THE WILL OF HARRY L. DUREN, THE SELLER.  
15 SIMS M. JINKS WAS THE PURCHASER. THE REAL ESTATE COMPANY  
16 INVOLVED IS HIGH REALTY.

17 Q WHAT FUNCTION DID YOU SERVE IN REGARD TO THIS MATTER?

18 A I WAS THE CLOSING ATTORNEY. I REPRESENTED THIS ESTATE AND  
19 I WAS ASKED TO CLOSE IT ON BEHALF OF THE ESTATE.

20 Q WERE YOU FAMILIAR WITH THE PROPERTY?

21 A NO, I WAS NOT. I HAVE NEVER SEEN THE PROPERTY.

22 Q NOW, THE CLOSING OF THIS TRANSACTION, WHERE DID IT TAKE  
23 PLACE?

24 A IT TOOK PLACE IN MY OFFICE IN MCDONALD AT 35 GRIFFIN  
25 STREET.

1 Q CAN YOU TELL US ON WHAT DATE IT TOOK PLACE?

2 A IT TOOK PLACE ON JUNE THE 22ND, 1989.

3 Q AND FROM -- EITHER FROM YOUR MEMORY OR AS REFRESHED BY THE  
4 DOCUMENTS, CAN YOU TELL US WHO WAS PRESENT FOR THE CLOSING?

5 A WELL, FROM THE DOCUMENTS MR. DUREN WAS PRESENT, MR. JINKS  
6 WAS PRESENT. MR. HIGH, I DON'T KNOW EXACTLY, IS IT GEORGE --  
7 WELL, I DON'T KNOW. HIS WRITING IS ABOUT LIKE MINE. I CAN'T  
8 READ HIS SIGNATURE, BUT I BELIEVE IT IS GEORGE HIGH.

9 Q I TAKE IT YOU WERE PRESENT?

10 A YES.

11 Q DO YOU RECALL WHETHER ANYONE ELSE WAS PRESENT?

12 A I DO NOT RECALL WHETHER OR NOT ANYONE ELSE WAS PRESENT.

13 Q NOW, OTHER THAN YOURSELF, DO YOU SEE ANYONE IN THE  
14 COURTROOM WHO WAS PRESENT IN THAT CLOSING?

15 A I DO NOT RECOGNIZE ANYONE.

16 Q TO YOUR KNOWLEDGE, DID -- HAVE YOU EVER HAD ANY DEALINGS  
17 WITH ANY OF THE PARTIES TO THIS CLOSING ON ANY OTHER OCCASION?

18 A NOT THE REAL ESTATE AGENT NOR MR. JINKS, BUT OF COURSE  
19 MR. DUREN I HAVE.

20 Q NOW, HOW LONG DID THE CLOSING TAKE, MR. ELLIS?

21 A IT WAS A VERY SIMPLE CLOSING, REALLY. IT PROBABLY DIDN'T  
22 TAKE OVER TEN OR 15 MINUTES.

23 Q ALL RIGHT, SIR. DO YOU HAVE IN YOUR FILE GOVERNMENT'S  
24 106, A SETTLEMENT STATEMENT?

25 A YES, I DO.

1 Q IS THE SETTLEMENT STATEMENT A SIGNED STATEMENT?

2 A YES, IT IS.

3 Q IS IT AN ORIGINAL SIGNED STATEMENT?

4 A IT IS -- I BELIEVE IT IS AN ORIGINAL SIGNED STATEMENT.

5 THERE ARE TWO OF THEM. WELL, THEY COULD BE COPIES.

6 Q ALL RIGHT, SIR.

7 A THEY COULD BE, VERY WELL BE COPIES. SOMETIMES I CAN'T

8 TELL AN ORIGINAL FROM A COPY, REALLY.

9 Q ALL RIGHT, SIR. I'M GOING TO HAND YOU FIRST A PACKAGE OF  
10 DOCUMENTS.

11 A ALL RIGHT.

12 Q AND ASK YOU TO RETURN THAT TO YOUR FILE. AND THEN I'M  
13 GOING TO HAND YOU A SINGLE DOCUMENT THAT I HAVE IDENTIFIED BY  
14 MARKING AS GOVERNMENT EXHIBIT 106-A AND ASK YOU, SIR, IF THAT  
15 IS THE SETTLEMENT STATEMENT?

16 A THAT IS THE SETTLEMENT STATEMENT.

17 Q ARE THERE SIGNATURES REFLECTED ON THE STATEMENT WHETHER OR  
18 NOT THEY MAY BE ORIGINAL?

19 A THE SIGNATURES ARE REFLECTED BUT I DON'T SEE TOO WELL  
20 ANYMORE AND A LOT OF TIMES I HAVE TO, EVEN AN ORIGINAL DEED I  
21 HAVE TO SEE WHETHER OR NOT THE SEAL OF THE NOTARY IS ON IT TO  
22 DETERMINE WHETHER OR NOT IT IS AN ORIGINAL. THAT COULD VERY  
23 WELL BE A COPY BUT IT WAS -- THE ORIGINAL WAS SIGNED IN MY  
24 PRESENCE.

25 Q ALL RIGHT. MR. ELLIS, IS THE DOCUMENT, IF IT IS NOT AN

1 ORIGINAL, AN ACCURATE COPY OF THE ORIGINAL?

2 A IT CERTAINLY IS.

3 Q ALL RIGHT, SIR. LET ME ASK YOU WHAT THE SALES PRICE WAS  
4 FOR THE PIECE OF PROPERTY ON PANOLA ROAD THAT YOU SOLD?

5 A SEVENTY-NINE THOUSAND NINE HUNDRED DOLLARS.

6 Q AND CAN YOU TELL US HOW THE TRANSACTION WAS HANDLED, WAS  
7 IT A CASH TRANSACTION OR WAS THERE ANY FINANCING INVOLVED?

8 A NO, IT WAS NOT. IT WAS OWNER FINANCED. FORTY-FOUR  
9 THOUSAND NINE HUNDRED DOLLARS WAS EVIDENCED BY A NOTE SECURED  
10 BY A DEED TO SECURE DEBT TO THE PROPERTY.

11 Q NOW, MR. ELLIS, HOW MUCH WAS, HOW MUCH IN MONEY OR FUNDS  
12 WERE TRANSFERRED AT THE CLOSING?

13 A THE SUM OF \$35,000.

14 Q DID YOU DISBURSE THAT FROM YOUR ESCROW ACCOUNT?

15 A I DISBURSED THAT FROM MY ESCROW ACCOUNT.

16 Q CAN YOU TELL US HOW YOU RECEIVED THE FUNDS THAT YOU  
17 DISBURSED?

18 A THE FUNDS THAT I DISBURSED, I BELIEVE ALL OF THEM WERE  
19 OFFICIAL BANK CHECKS.

20 Q DO YOU HAVE IN YOUR FILE COPIES OF ANY OF THOSE CHECKS?

21 A I DON'T KNOW THAT I -- THAT I HAVE COPIES OF TWO CHECKS,  
22 BUT I'M NOT SURE THAT THEY ARE ACTUALLY CHECKS THAT WE USED AS  
23 PART OF THE PURCHASE PRICE. THEY MIGHT VERY WELL HAVE BEEN  
24 OTHER CHECKS FOR OTHER PURPOSES. I DON'T KNOW. THEY DIDN'T --  
25 THESE CHECKS MIGHT NOT HAVE GONE THROUGH MY TRUST ACCOUNT. I

1 DON'T KNOW.

2 Q MR. ELLIS, LET ME ASK THIS, WAS THERE ANY MONEY PAID DOWN  
3 AS EARNEST MONEY IN THIS CASE?

4 A YOU MEAN CASH?

5 Q NO, FUNDS OF ANY DENOMINATION OR STYLE.

6 A YES, THE SUM OF \$35,000.

7 Q BUT AS EARNEST MONEY, WAS THERE ANY EARNEST MONEY PUT UP  
8 ONCE THE CONTRACT WAS SIGNED?

9 A THE CONTRACT INDICATED THAT THE SUM OF \$15,000 WAS PAID AS  
10 EARNEST MONEY.

11 Q DO YOU HAVE A COPY IN YOUR FILE, GOVERNMENT'S 106, DO YOU  
12 HAVE A COPY OF THE CONTRACT?

13 A YES, I DO.

14 Q NOW I'M GOING TO HAND YOU, MR. ELLIS, WHAT I HAVE MARKED  
15 FOR IDENTIFICATION AS GOVERNMENT'S 106-B AND ASK YOU, SIR, WHAT  
16 THAT DOCUMENT IS?

17 A THAT IS THE CONTRACT THAT WAS BROUGHT TO ME BY SOMEONE, I  
18 DON'T KNOW -- I DON'T RECALL WHO BROUGHT IT TO ME.

19 Q ALL RIGHT.

20 A BUT IT WAS WHERE SIMS M. JINKS SIGNED AS PURCHASER,  
21 JEFFREY R. DUREN AS EXECUTOR UNDER THE WILL OF HARRY L. DUREN  
22 AS PURCHASER, AND IT'S HIGH REALTY COMPANY AND I THINK IT IS  
23 GEORGE W. HIGH.

24 Q ALL RIGHT.

25 A I WOULD ASSUME. I DON'T KNOW WHETHER THAT MIDDLE INITIAL

1 IS "W" OR NOT, REALLY.

2 Q NOW, MR. ELLIS, THE SIGNATURES ON THE BACK OF THIS  
3 DOCUMENT, GOVERNMENT'S 106-B, DO THOSE APPEAR TO BE ORIGINAL  
4 SIGNATURES?

5 A THEY APPEAR TO BE ORIGINAL SIGNATURES.

6 MR. MOYE: YOUR HONOR, I WOULD TENDER GOVERNMENT'S  
7 106-B.

8 THE COURT: ANYBODY OBJECT TO IT?

9 MR. ABBOTT: NO OBJECTION.

10 MR. ROSEN: NO OBJECTION.

11 THE COURT: LET IT IN.

12 BY MR. MOYE:

13 Q LET ME ASK YOU TO LOOK AT THE PARAGRAPH NUMBER THREE AND  
14 TELL US WHAT WAS THE EARNEST MONEY THAT WAS SUPPOSED TO BE PAID  
15 WITH THIS?

16 A FIFTEEN THOUSAND DOLLARS.

17 Q NOW, DID YOU RECEIVE \$15,000 IN SOME FASHION?

18 A NOW, YOU SEE I WAS NOT INVOLVED IN THE -- IN THE  
19 PREPARATION OF THE CONTRACT AND I DO NOT KNOW WHETHER OR NOT  
20 THE EARNEST MONEY WAS EVER PAID. MY CLOSING STATEMENT SHOWS  
21 THAT THE EARNEST MONEY WAS REFUNDED.

22 Q MR. ELLIS, DO YOU HAVE IN YOUR FILE COPIES OF TWO  
23 CASHIER'S CHECKS?

24 A I DO.

25 Q I HAND YOU GOVERNMENT EXHIBIT 106-C AND ASK YOU IF THESE



1 COPIES OF CASHIER'S CHECKS WERE PART OF YOUR CLOSING FILE?

2 A THEY ARE PART OF OUR -- MY CLOSING FILE.

3 Q ALL RIGHT, SIR. AND THOSE CHECKS ARE IN THE AMOUNT OF HOW  
4 MUCH?

5 A TWO CHECKS, BOTH OF THEM DATED 5-10-89, IN THE AMOUNT OF  
6 \$7,500 EACH.

7 Q AND THESE ARE COPIES?

8 A THESE ARE COPIES.

9 MR. MOYE: ALL RIGHT. TENDER GOVERNMENT'S 106-C,  
10 YOUR HONOR.

11 THE COURT: ANY OBJECTION?

12 MR. ROSEN: NO OBJECTION.

13 THE COURT: LET THEM IN.

14 BY MR. MOYE:

15 Q THE SETTLEMENT STATEMENT, I THINK YOU STILL HAVE, 106-A,  
16 THE ONE THAT WAS MARKED --

17 A YES, THE ONE THAT WAS MARKED I STILL HAVE IT.

18 MR. MOYE: YOUR HONOR, I TENDER GOVERNMENT'S EXHIBIT  
19 106-A.

20 THE COURT: ANY OBJECTION TO THAT?

21 MR. ROSEN: NO OBJECTION.

22 MR. ABBOTT: NO.

23 THE COURT: LET IT IN.

24 BY MR. MOYE:

25 Q NOW, MR. ELLIS, THE FUNDS THAT YOU RECEIVED REGARDLESS OF

1 WHAT FORM THEY CAME TO YOU IN, DID YOU DEPOSIT THOSE FUNDS IN  
2 SOME ACCOUNT?

3 A YES, I DID, IN MY TRUST ACCOUNT.

4 Q AND WHEN YOU DEPOSITED THOSE FUNDS INTO YOUR TRUST  
5 ACCOUNT, DID YOU PREPARE A DEPOSIT SLIP?

6 A YES, I DID.

7 Q DID YOU BRING THAT DEPOSIT SLIP WITH YOU?

8 A I BROUGHT A COPY OF IT.

9 Q MAY I SEE, PLEASE, SIR?

10 THE DEPOSIT SLIP THAT YOU BROUGHT, THIS APPEARS TO BE  
11 A BOOK?

12 A THAT IS A DEPOSIT BOOK AND I ALWAYS MAKE A COPY OF ANY  
13 DEPOSIT INTO A TRUST ACCOUNT OR ANY OTHER ACCOUNT THAT I HAVE  
14 ANYTHING TO DO WITH.

15 Q IS THIS A CARBON COPY OF THE DEPOSIT SLIP THAT YOU WROTE?

16 A THAT IS A CARBON COPY OF THE DEPOSIT SLIP, BUT THIS WAS  
17 ENTERED ON IT LATER. THAT IS WHEN I -- WHEN I MAKE A COPY, MY  
18 FEE THAT I RECEIVE ON THAT PARTICULAR TRANSACTION, I ALWAYS  
19 MARK THE AMOUNT OF MY FEE --

20 Q ALL RIGHT, SIR.

21 A -- ON IT.

22 Q SO THE OTHER --

23 A THE ORIGINAL DEPOSIT SLIP DID NOT HAVE THAT ON IT.

24 Q THE HANDWRITTEN NOTATION ON THIS DEPOSIT SLIP, IS THAT IN  
25 YOUR HANDWRITING?

1 A YES, IT IS.

2 Q AND THE REFERENCE THAT IT MAKES, SALE, DUREN TO JINKS,  
3 FEE, IS THAT SIMPLY YOUR FEE?

4 A THAT IS CORRECT.

5 Q ALL RIGHT.

6 A AND THAT IS THE SAME AMOUNT AS SHOWN BY THE CLOSING  
7 STATEMENT.

8 Q MR. ELLIS, MAY I ASK YOU TO REMOVE THAT PAGE FROM THE  
9 BOOK?

10 A OKAY.

11 Q NOW I HAND YOU WHAT I HAVE MARKED FOR IDENTIFICATION AS  
12 GOVERNMENT'S 106-D AND ASK YOU, SIR, WHAT THAT IS?

13 A THIS IS A COPY OF THE DEPOSIT SLIP WHEN I -- WHERE I  
14 DEPOSITED THE SUM OF \$35,000 THAT I RECEIVED AS A PAYMENT ON  
15 THIS HOUSE.

16 Q IS THAT THE PROPERTY AT 3776 PANOLA ROAD?

17 A I DON'T KNOW WHETHER THERE IS ANYTHING IN MY FILE THAT  
18 SAYS IT IS 37 -- I MEAN THAT NUMBER. NOW I UNDERSTAND THAT  
19 THAT'S --

20 Q LET ME ASK IT THIS WAY RATHER THAN SEARCHING FOR THE  
21 ADDRESS, MR. ELLIS. IS THIS THE DEPOSIT OF FUNDS THAT RELATE  
22 TO THE CLOSING ABOUT WHICH YOU HAVE BEEN TESTIFYING?

23 A IT IS.

24 MR. MOYE: I TENDER GOVERNMENT'S 106-D, YOUR HONOR.

25 THE COURT: ANY OBJECTION?

1 MR. ROSEN: NO OBJECTION.

2 THE COURT: LET IT IN.

3 MR. MOYE: MAY I HAVE JUST A MOMENT, YOUR HONOR?

4 THE COURT: ALL RIGHT.

5 MR. MOYE: MR. ELLIS, THANK YOU.

6 YOUR HONOR, I HAVE NO FURTHER QUESTIONS OF MR. ELLIS.

7 THE COURT: ANYBODY WANT TO TALK TO MR. ELLIS?

8 CROSS-EXAMINATION

9 BY MR. MORRISON:

10 Q MR. ELLIS, MY NAME IS BILL MORRISON AND I REPRESENT GEORGE  
11 HIGH IN THIS PARTICULAR CASE.

12 I TAKE IT THAT YOU HAVE HAD A CHANCE TO LOOK AT YOUR  
13 ENTIRE FILE IN THIS CASE?

14 A YES, I HAVE.

15 Q AND REVIEW IT?

16 NOW, AT THE TIME THAT THIS TRANSACTION WAS CLOSED,  
17 YOU SAY THAT MR. JINKS WAS PRESENT AND A MR. HIGH WAS PRESENT,  
18 AND THEN, OF COURSE, YOUR FORMER CLIENT, SOMEBODY THERE  
19 REPRESENTING THE ESTATE?

20 A JEFF DUREN, THE EXECUTOR OF HIS FATHER'S ESTATE.

21 Q DO YOU REMEMBER WHAT MR. JINKS LOOKED LIKE?

22 A REALLY I DON'T.

23 Q HOW ABOUT MR. HIGH?

24 A I DON'T REMEMBER WHAT HE LOOKED LIKE.

25 Q SO WOULD IT BE A FAIR STATEMENT TO SAY THAT THERE WASN'T

1 ANYTHING EXTRAORDINARY LOOKING ABOUT MR. JINKS, HE DOESN'T  
2 STICK IN YOUR MIND AS HAVING ANY PARTICULAR APPEARANCE, DID HE?

3 A NO.

4 Q DID HE LOOK LIKE A DRUG DEALER OR ANYTHING OF THAT NATURE  
5 TO YOU?

6 A WELL, I DON'T KNOW WHETHER OR NOT I HAVE EVER SEEN A DRUG  
7 DEALER, REALLY. I DON'T KNOW WHAT A DRUG DEALER LOOKS LIKE.

8 Q AND YOU HAVE DONE, WHAT, SEVERAL THOUSAND REAL ESTATE  
9 CLOSINGS?

10 A YES, I HAVE OVER THE YEARS AND I CANNOT REMEMBER FACES  
11 OR -- ESPECIALLY WHEN YOU GET AS OLD AS I AM.

12 Q NOW, THE FACT THAT THE DOWN PAYMENT WAS MADE BY USING FIVE  
13 CASHIER'S CHECKS, YOU DIDN'T FIND THAT TO BE UNUSUAL, DID YOU?

14 A NO, I DID NOT.

15 Q NOW, ONE OF THE CASHIER'S CHECKS THAT WAS USED WAS  
16 PURCHASED BY SIMS JINKS AND IT WAS MADE PAYABLE TO HIGH REALTY.  
17 DO YOU REMEMBER THAT CHECK?

18 A I BELIEVE THAT CHECK IS THE FIRST CHECK IN THE SUM OF  
19 \$15,000. THAT IS THE ONE YOU ARE TALKING ABOUT, ISN'T IT?

20 Q WELL THERE IS --

21 A ON MY DEPOSIT SLIP THERE IS ONE CHECK THERE FOR 15,000,  
22 AND THEN THERE IS FOUR, FIVE THOUSAND DOLLAR CHECKS, AS I  
23 RECALL.

24 Q DO YOU REMEMBER, DOES YOUR DEPOSIT SLIP, DOES IT SHOW WHO  
25 PURCHASED THOSE CHECKS?