

Yes, dear reader, I have Federal Grand Jury testimony that was given to me at my first indictment. The non-legal background reader needs to know that this is EXTREMELY RARE!

I know exactly why this happened. I was being sent a message by the prosecutor, more on this in the 4/11/2013 chapter. Be sure and ask yourself (page 9) why the government asked Armin to bring tax returns and MBUSA employment papers with him to the Grand Jury hearing. Perhaps they were sending a message to Armin also?

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
FEDERAL GRAND JURY

* * * * *
IN THE MATTER OF: *
*
UNITED STATES OF AMERICA * NO. 12-12-49
*
VERSUS *
*
RAINER WITTICH *
* * * * *

TESTIMONY OF **ARMIN NICKEL** TAKEN BEFORE
THE FEDERAL GRAND JURY ON THURSDAY, THE 11TH DAY
OF APRIL, 2013, COMMENCING AT 9:19 A.M.

APPEARANCES:

JORDAN GINSBERG
NOLAN PAIGE
ASSISTANT UNITED STATES ATTORNEYS

MEMBERS OF THE DECEMBER 2012 GRAND JURY

1 (Whereupon, the witness, Armin Nickel,
2 entered the grand jury room.)

3 MR. GINSBERG: Sir, if you wouldn't
4 mind just standing right here for a second. You
5 can go ahead and set your stuff down.

6 THE FOREPERSON: Please, could you
7 state and spell your name for us, please?

8 THE WITNESS: Armin Nickel,
9 A-R-M-I-N N-I-C-K-E-L.

10 THE FOREPERSON: Raise your right
11 hand, please. Raise your right hand. Do you
12 solemnly swear to tell the truth, the whole
13 truth and nothing but the truth in this and
14 related cases so help you God?

15 THE WITNESS: I do.

16 THE FOREPERSON: Thank you. You can
17 have a seat.

18 ARMIN NICKEL
19 having been first duly sworn, was examined and
20 testified as follows:

21 EXAMINATION

22 BY MR. GINSBERG:

23 Q. Good morning, Mr. Nickel.

24 A. Hi.

25 Q. Again, my name is Jordan Ginsberg.

1 I'm an assistant United States attorney. We met
2 for the first time out in the hallway a little
3 bit ago, about an hour or so ago; did we not?

4 A. Yes, sir.

5 Q. Can you hear me okay?

6 A. Yes.

7 Q. All right. If for some reason you
8 can't, let me know but I'll -- I tend to walk
9 around, because otherwise my feet will fall
10 asleep and I'll fall over.

11 I just want to give you an
12 understanding about what's all going on in here.
13 Now, you mentioned outside that you had
14 previously testified in front of a grand jury
15 before, right?

16 A. Uh-huh.

17 Q. Okay. So this is old hat for you.
18 A couple of quick rules. First, if you answer a
19 yes or no, it's important to say so verbally,
20 because the person on your left is the court
21 reporter, who's typing everything, and she can't
22 take down head nods or shakes. Do you
23 understand?

24 A. Yes.

25 Q. Okay. The men and women sitting

1 around this U-shaped table are the men and women
2 of the grand jury. Again, I'm an assistant
3 United States attorney, and my colleague is
4 sitting immediately to my right.

5 As I mentioned to you out in the
6 hallway, you as any witness in the grand jury
7 have certain rights. You've got a right to an
8 attorney. You have not exercised that right; is
9 that correct?

10 A. Yes.

11 Q. All right. Now, in the event that
12 you wanted to have an attorney, he or she could
13 not be in here, but they could be outside and
14 you could correspond with them. You could take
15 a break if you needed them at any time. Do you
16 understand that?

17 A. Yes.

18 Q. And you're prepared to proceed?

19 A. Pardon?

20 Q. You're prepared to proceed?

21 A. Yes.

22 Q. Great. Second right you have is the
23 right to remain silent. That means that any
24 testimony you give is under oath, and if you
25 make any deliberate false statement about an

1 important fact, you can be prosecuted for
2 perjury. Do you understand that?

3 A. Yes.

4 Q. The final right you have is the
5 right against self incrimination. In fact, I
6 think that was the one I was forgetting out
7 there when I was talking to you; although,
8 that's probably the most important one, and
9 that's a constitutional right to refuse to
10 answer any question if you think that by
11 answering it you could get yourself in trouble.
12 Do you understand?

13 A. Yes.

14 Q. All right. Now, your status is not
15 that of a target or a subject. We believe you
16 only to be a witness. Do you understand?

17 A. Uh-huh. Yes.

18 Q. Are you prepared to proceed?

19 A. Yes.

20 Q. Good deal. Mr. Nickel, could you,
21 please, tell us how old you are?

22 A. Um, I'm 61.

23 Q. You can't take the fifth on that
24 one.

25 A. I really did.

1 Q. Where do you live, please?

2 A. I'm sorry?

3 Q. Where do you live?

4 A. I live in, uh, Pocono Pines,
5 Pennsylvania.

6 Q. And are you currently employed?

7 A. I am retired.

8 Q. Do you have any side jobs or side
9 income, or are you completely and fully and
10 luckily retired?

11 A. Fully retired.

12 Q. All right. Prior to being retired,
13 what kind of work did you do?

14 A. Uh, from 1985 till 2006, I worked
15 for Mercedes-Benz USA in Montville, New Jersey.

16 Q. Okay, and that's a good ways. In
17 coming here today, you received a subpoena from
18 the men and women of this grand jury; did you
19 not?

20 A. Yes, sir.

21 Q. And you've got the subpoena. Do you
22 have the first page?

23 A. Yes.

24 Q. And you were asked to bring some
25 documents with you?

1 A. Yes. I brought some documents
2 according to what was requested on the subpoena.

3 Q. Okay. And there were seven
4 categories of documents; is that correct?

5 A. Uh, yes, sir.

6 Q. And the first category was
7 correspondence with a number of companies,
8 Brinson Company, Beckmann Technologies, LMV
9 Industries and their employees?

10 A. Yes.

11 Q. And have you looked for those
12 records?

13 A. I did look at those.

14 Q. You've looked for them in your
15 files?

16 A. I looked for them, but, uh, I only
17 have things to do with Brinson Company.

18 Q. Okay. And you brought whatever you
19 had with you?

20 A. Yes, sir.

21 Q. All right. Second category is
22 records of any payments to and from that same
23 list of entities and individuals?

24 A. Right.

25 Q. Did you look for those?

1 A. Yes.

2 Q. Did you bring what you had?

3 A. I brought what I had.

4 Q. And that's in your yellow --

5 A. Yes.

6 Q. -- folder?

7 A. Yes. We looked at that together
8 just a while ago.

9 Q. Yes. No. 3, records of
10 correspondence, meeting or technology -- or
11 discussions with that same set of companies?

12 A. Yes.

13 Q. Concerning the Mercedes-Benz SDS
14 systems, including parts and software and the
15 sale of non-Mercedes created SDS systems; is
16 that correct?

17 A. Right. I brought what I have.

18 Q. Thank you. And the fourth category
19 is records of any involvement that you may have
20 had in the sale, creation, manufacture, or
21 possession of non-Mercedes created SDS systems?

22 A. Yes. I brought that along.

23 Q. Okay. No. 5, any materials,
24 including records, communications, and documents
25 in your possession concerning Mercedes-Benz's

1 familiarity, awareness, knowledge of, or concern
2 or objection about the production and sale of
3 these non-Mercedes systems. You looked for
4 those?

5 A. Yes, sir.

6 Q. You brought what you had?

7 A. I brought what I had.

8 Q. No. 6, we asked for some tax returns
9 for you?

10 A. Yes.

11 Q. And seven, documents related to your
12 former employment with Mercedes-Benz?

13 A. Yes, sir.

14 Q. Okay. You've looked for that, and
15 you brought all that?

16 A. I brought it, yes.

17 Q. Thank you. Okay. So recognizing we
18 have a limited amount of time today, would you
19 mind going through briefly the -- your job
20 history? You said that you worked with
21 Mercedes-Benz for 21 years?

22 A. Yeah, 22.

23 Q. Twenty-two years, all right. Would
24 you mind starting and tell briefly the men and
25 women of the grand jury what kind of work you

1 did for Mercedes?

2 **A.** From, uh, when I was hired at
3 Mercedes in 1985, I was a staff engineer, uh,
4 and I was responsible for particular portions of
5 the automobile. I was one of about five staff
6 engineers. We each controlled or we were each
7 responsible for technical, uh, issues on our
8 automobiles, and I was responsible for groups
9 like, uh, air conditioning and, uh, radios and
10 internal parts to the car.

11 So from 1989 until 1996, I was, uh,
12 promoted to the manager of our test and service
13 center, uh, which encompassed the responsibility
14 of taking care of our company cars and test
15 programs with our colleagues from, uh, from our
16 parent company in Germany, and I also took over
17 the responsibility of our, uh, Mercedes-Benz
18 special tool program and our Mercedes-Benz
19 standard service equipment program, which was
20 dealer equipment or tools specific to
21 Mercedes-Benz.

22 Then 1996 to 2006 until I retired,
23 uh, I just retained those last two areas of
24 responsibility, which were the Mercedes-Benz
25 special tool program and the Mercedes-Benz's

1 equipment program, the dealer equipment program.

2 Q. Thank you. And in your 22 years of
3 working for Mercedes, were you involved in or
4 responsible for work related to the Star
5 Diagnostic System or SDS?

6 A. Uh, yes, and in the sense that I was
7 directly involved with the predecessor that led
8 up to the development of the Star Diagnosis
9 System, the SDS.

10 Q. Okay. And what was the name of the
11 predecessor device?

12 A. Uh, it was simply called the
13 Handheld Tester, the HHT.

14 Q. Perfect. And the HHT, what time
15 period were you involved in the developing of
16 the HHT?

17 A. Uh, the HHT was developed with the
18 input of all the different markets in the -- not
19 just the needs of the United States but all the
20 other markets from around the country, like MB
21 Canada, MB Japan, all of the other Mercedes-Benz
22 affiliates around the world, and the, uh, the
23 device they came up with was the HHT.

24 Q. And when was the HHT released?

25 A. It came to us in the US, uh, in

1 1992.

2 Q. Can you at a very high level explain
3 what the HHT did?

4 A. The HHT was, uh, a device that read
5 trouble codes. It was part of our on-board
6 diagnosis system. So that if there were things
7 that were malfunctioning in the car, that the
8 HHT could read the code. It would help direct
9 the technician to what system was failing, and
10 then he could go to the literature and learn of
11 -- or get the special tool and go to the
12 literature to learn how to test that system to
13 find out what the defect was and repair it.

14 Q. All right. And I'm guessing that
15 something called a handheld testing device is
16 something you hold in your hand?

17 A. It was -- yeah, you could basically
18 hold it in one hand.

19 Q. And you plug it into a -- you plug
20 it into the car somehow?

21 A. It had, uh, it had a series of
22 cables with it, which were used to connect with
23 the different kinds of cars that we had.

24 Q. And how long was the HHT used? You
25 said from 19 -- it came to the United States in

1 1990 --

2 **A.** Two, is when it was launched, and we
3 got most all of our units probably by 1994, '95,
4 '96, and then it was retired. Uh, I shouldn't
5 say retired. We stopped supporting it in about
6 2001.

7 **Q.** Okay. And did that -- when you say
8 you stopped supporting it in 2001, is that about
9 the time that the SDS or Star Diagnostic System
10 --

11 **A.** Right.

12 **Q.** -- was launched?

13 **A.** Yes. It was -- that was the new
14 system that was taking over from the HHT for the
15 new model car as of model year 2000 and beyond.

16 **Q.** And you said that you were
17 responsible for the HHT but not the SDS. Who
18 was responsible at Mercedes for the SDS?

19 **A.** The hand --

20 **Q.** And I mean, I'm sorry, Mercedes-Benz
21 United States.

22 **A.** Yes. Uh, the HHT was under the
23 technical area under service engineering, the
24 department to which I belonged, and the SDS
25 belonged to the literature department, which at

1 the time also belonged to a service engineering
2 but was later then split off to a different
3 department.

4 So SDS was considered a literature
5 item, even though it encompassed hardware,
6 cables and software, and the HHT was considered
7 a special tool, and, uh, the software for the
8 HHT came from literature.

9 Q. All right. And what was, generally
10 speaking, the difference between the HHT and the
11 SDS?

12 A. Uh, the HHT was a unique device made
13 specifically for our, for our diagnostic
14 purpose. The SDS was, uh -- we had hoped it to
15 be a PC based, uh, laptop unit to interface with
16 cars driven by software, and when the final
17 configuration came out, it was a laptop sitting
18 on a microprocessor controlled docking bay with
19 a series of cables to interface with the cars,
20 and, uh, it was driven by software, by software
21 disks.

22 Q. Okay. So HHT is sort of a stand-
23 alone handheld device?

24 A. Yes.

25 Q. With relatively limited, if any,

1 software installed on it?

2 **A.** Right. It just had replaceable
3 cartridges on it.

4 **Q.** Okay. Kind of like eight-tracks?

5 **A.** They were much smaller. More like

6 --

7 **Q.** Same sort of idea?

8 **A.** More like, yeah, more like a
9 cassette size, very small data cartridge.

10 MR. GINSBERG: How many men and
11 women of the grand jury don't know what an
12 eight-track is? Okay. Just dating myself.
13 That's really embarrassing, okay.

14 BY MR. GINSBERG:

15 **Q.** But the SDS, more high tech, more --
16 it's a computer. It's got a bunch of software
17 on it?

18 **A.** Yes. It was a microprocessor
19 controlled -- it was a PC driven device.

20 **Q.** Now, when the SDS was -- and I
21 understand that this was not your area of
22 responsibility, but are you familiar with the
23 SDS system in general terms?

24 **A.** Yes, sir.

25 **Q.** All right. When Mercedes-Benz first

1 developed it and released it, how much did they
2 charge for it, approximately?

3 **A.** How do you mean?

4 **Q.** Well, when they released it, did
5 they sell it, the SDS?

6 **A.** No. The SDS units to our dealers
7 were on a lease basis.

8 **Q.** Okay. And do you know approximately
9 how much a lease would cost?

10 **A.** Uh, I don't know exactly, but it was
11 between one and two thousand a month.

12 **Q.** Okay. When we were out in the hall,
13 you had mentioned something costs about \$20,000.
14 What was that?

15 **A.** Okay. Uh, the company -- well, we
16 as MBUSA had convinced our parent company that
17 we had to make units available to the
18 aftermarket, which is the same thing we had to
19 do with the HHT, and what our parent company
20 finally came up with was a stand-alone Star
21 Diagnosis unit, which could be sold to
22 aftermarket dealers, in other words, anyone
23 outside of our dealer network.

24 **Q.** Okay. And can you explain these
25 words like aftermarket and dealer network? What

1 are we talking about here?

2 A. Okay. Uh.

3 Q. We're talking like maw and paw
4 shops?

5 A. Yes.

6 Q. We're talking about cars outside --
7 Mercedes-Benz cars outside the warranty period?

8 A. And primarily those are the cars
9 that went to those shops, yes.

10 Q. And so, so I'm understanding, MBUSA
11 was able to sell Star Diagnosis -- SDS systems
12 for aftermarket cars outside of the dealer
13 network, outside of the Mercedes-Benz dealers,
14 for \$20,000?

15 A. Those were the, those were the first
16 units that were available, yes.

17 Q. Okay.

18 A. They were the, the large version
19 with everything.

20 Q. And who at Mercedes-Benz, if you
21 know, was responsible for selling them?

22 A. That was my team leader, who was
23 Will Vetter.

24 Q. Will, W-I-L-L V-E -- two Ts?

25 A. T-T-E-R, two Ts, yes.

1 Q. Okay. Was it Mercedes' practice to
2 -- let me rephrase that. So it costs \$20,000 a
3 piece?

4 A. Uh-huh.

5 Q. Did they give them away for free?

6 A. Uh, how do you mean give them away?

7 Q. Well, were there, were there
8 mechanisms by which people could obtain them --
9 individual maw and paw shops could get them for
10 less than \$20,000?

11 A. No, not that I know of.

12 Q. Okay. Are you familiar with --
13 between 2001 and when you retired in 2006; is
14 that right?

15 A. Yes.

16 Q. Are you familiar with any, anybody
17 else manufacturing SDS systems other than, other
18 than Mercedes?

19 A. The way that -- you mean SDS, the
20 way that we had it configured or something that
21 they simulated the function of what SDS did?

22 Q. Why don't you explain the, the
23 difference and --

24 A. Okay.

25 Q. -- go ahead and answer both of

1 those.

2 **A.** Okay. Well, because Star Diagnosis
3 was a -- like I said, it was basically a laptop,
4 which was the input/output device, and sitting
5 on top of a docking station, a microprocessor
6 controlled docking station, and cables that
7 would interface with the car. Uh, the
8 aftermarket was building either whatever they
9 had, whatever platform they had. They would put
10 Mercedes-Benz information in it and make cables
11 to interface with our cars. That was one way.
12 Uh, some of the companies had a more elegant
13 solution. They used PCs and then an interface
14 box with, uh, cables to interface with our cars.
15 So that was the real difference.

16 **Q.** Okay. Those PCs, though, they would
17 -- would they have had access to the
18 Mercedes-Benz software that Mercedes-Benz put on
19 the units that Mercedes was making?

20 **A.** Not that I'm aware of. Usually,
21 they made their own software from our, from our
22 documentation, from our software.

23 **Q.** And to your knowledge, did
24 Mercedes-Benz ever say here's our software, take
25 it and run with it?

1 **A.** Uh, yes.

2 **Q.** Could you, please, explain that?

3 **A.** Okay. This goes back to, uh --

4 **Q.** Let me stop. I'm talking about only
5 with respect to the SDS.

6 **A.** Oh, okay. Uh, the software, because
7 it was so interconnected, was very difficult for
8 people to read and to extract what they needed,
9 but, uh, Mercedes-Benz was following the rules
10 of the EPA and the California Air Resources
11 Board that said you had to provide any kind of
12 information like this to the aftermarket.

13 So, uh, we had two, two active
14 vendors at the time, three active vendors at the
15 time, two of which were actually given Star
16 Diagnosis units so they could replicate the
17 function of SDS.

18 **Q.** And when you say replicate the
19 function, I guess what I'm trying to figure out
20 is if -- how can I put this? The, the software
21 that you're talking about, was that proprietary
22 to Mercedes-Benz?

23 **A.** It was Mercedes-Benz created, yes.

24 **Q.** And if somebody would have obtained
25 that software without Mercedes-Benz's

1 authorization, do you know if that ever
2 happened?

3 A. Oh, I'm sure.

4 Q. Okay. When I talk about SDS units
5 for aftermarket cars --

6 A. Uh-huh.

7 Q. -- that had Mercedes-Benz software
8 put onto it without Mercedes-Benz authorization,
9 I'm going to refer to that --

10 A. Okay.

11 Q. -- generally as counterfeit units.

12 A. Okay.

13 Q. Okay? I know we had a discussion
14 outside about the word aftermarket versus
15 counterfeit but --

16 A. Okay.

17 Q. Are you okay if I use the word
18 counterfeit or black market? Is that --

19 A. That's, that's fine. I would
20 consider, like I said, aftermarket would have
21 been my term I would have chosen, but I
22 understand what you mean by counterfeit, also.

23 Q. Okay. Well, I guess we should
24 really clarify that before we go any further.
25 Aftermarket simply means for Mercedes that are

1 outside of the warranty; is that right?

2 **A.** Well, outside the warranty and
3 anything that was done outside of our dealer
4 organization, whether it's equipment or tools
5 and businesses that were outside. If it wasn't
6 within our network, it was considered
7 aftermarket.

8 **Q.** Okay. But Mercedes could itself and
9 did in fact sell SDS for aftermarket, right?

10 **A.** They did, yes.

11 **Q.** All right. What I want to focus in
12 on are companies other than Mercedes-Benz that
13 manufactured SDS, put Mercedes-Benz software on
14 it and then sold it aftermarket.

15 **A.** Okay.

16 **Q.** Okay? So it's going to be different
17 than aftermarket.

18 MR. GINSBERG: Ladies and gentlemen,
19 do you understand that, that that's going to be
20 --

21 THE WITNESS: Okay.

22 MR. GINSBERG: -- kind of important
23 a little bit later.

24 BY MR. GINSBERG:

25 **Q.** So that's what I want to focus on.

1 Are you familiar with or have you heard of these
2 black market or counterfeit SDS being sold in
3 the United States?

4 A. Yes.

5 Q. What do you know about -- what have
6 you heard? What are you familiar with?

7 A. Just you'd find on, uh -- we had a
8 group that sort of monitored that sort of thing
9 on the internet, and every now and then you'd
10 see a, uh, like a Chinese unit being -- or a
11 unit for sale, you know, coming out of Taiwan or
12 somewhere else, and those we would consider -- I
13 guess we would consider that term counterfeit.

14 Q. Okay. Would you call them -- did
15 you actually use the term aftermarket for those,
16 the Taiwanese ones on E-Bay or whatever?

17 A. Well, they were for, they were for
18 aftermarket, but, you know, we didn't know them
19 because we'd never seen them other than what you
20 would see on pictures and --

21 Q. You didn't authorize them?

22 A. Oh, no. No.

23 Q. Okay. Was that a -- in the course
24 of the, the life span of the SDS, are you aware
25 whether Mercedes ever authorized the manufacture

1 and sale of those devices?

2 A. Of aftermarket devices?

3 Q. No, not aftermarket, counterfeit,
4 which is going to be a --

5 A. Oh, building counterfeit units? No.

6 Q. But it happened anyhow?

7 A. Sure. We assume it did, because
8 they were, like I say, on E-Bay.

9 Q. And the ones on E-Bay, if a, if a
10 legitimate one from Mercedes-Benz costs about
11 \$20,000 -- is that number correct, about
12 \$20,000?

13 A. The aftermarket, the ones that were
14 made for the aftermarket were about 20, 21
15 thousand, yes.

16 Q. Okay. How much would the ones that
17 were on E-Bay, how much would they sell for?

18 A. Substantially less. I have no idea
19 the number, but it was -- they were cheap.

20 Q. Couple of thousand dollars?

21 A. A few thousand, yes, certainly.
22 Very attractive to someone who was interested.

23 Q. And who was usually -- who was
24 typically buying these aftermarket devices?

25 A. That I don't know. Uh, it probably

1 would be someone who didn't know better or
2 someone who didn't, uh, really focus on, you
3 know, Mercedes-Benz and taking care of the car
4 properly.

5 Q. Why do you say that? What was the
6 difference to your knowledge between these
7 counterfeit units and the \$20,000 units that
8 were Mercedes-Benz manufactured and sold?

9 A. Probably, the biggest thing I would
10 say is, uh, the support for the product.

11 Q. What do you mean by that?

12 A. The, the after sale support of the
13 product. Once you buy a tool or a piece of
14 equipment like that, uh, it's great until the
15 first time it breaks or you need some support or
16 you don't know how something works and something
17 breaks. If there's no after sale support,
18 you've wasted your money.

19 Q. Now, the legitimate unit, though,
20 the Mercedes-Benz manufactured unit --

21 A. Uh-huh.

22 Q. -- it was regularly updated; is that
23 correct?

24 A. Right.

25 Q. As new cars came out or new fixes

1 and patches --

2 **A.** Yes.

3 **Q.** -- and changes to the software came
4 out, that would be distributed to legitimate
5 owners or holders or lessees of these devices;
6 is that correct?

7 **A.** Right. You're talking just
8 aftermarket?

9 **Q.** Yes.

10 **A.** Okay. For aftermarket, I think the,
11 uh, the brochure said that basically they gave
12 you updates for one year, and then if you wanted
13 to buy updates after that, you had to apply and,
14 you know, rebuy those.

15 **Q.** And the updates were in the form of
16 software?

17 **A.** Software, yes.

18 **Q.** And do you know was it software
19 created by Mercedes-Benz?

20 **A.** Yes. It would have come from the
21 same people that made the original units.

22 **Q.** Do you know how -- and I know we're
23 a little bit outside of your area of expertise,
24 but do you know how Mercedes-Benz distributed or
25 updated those patches?

1 **A.** No, I don't, other than I know they
2 were originally CDs and they were working on
3 trying to do it on-line at the time that I was
4 leaving so that they can get out of this
5 business of, you know, CDs, you know, CD
6 hardware.

7 MR. GINSBERG: Ladies and gentlemen,
8 do you understand the update process? Do you
9 have any questions at this point?

10 MR. GRAND JURY: (No Response).

11 BY MR. GINSBERG:

12 **Q.** All right. Do you know a man by the
13 name of Rainer Wittich?

14 **A.** Yes.

15 **Q.** How -- who, who is he? How do you
16 know who he is?

17 **A.** Uh, I've known Rainer probably since
18 the early 70's, and he is, uh -- his business
19 here was called the Brinson Company. They were
20 a part supplier for European cars, and I first
21 met him when, uh, they were selling -- he and
22 his father, Mr. Wittich, were selling parts to
23 my father who owned a Mercedes-Benz repair shop
24 in Denver, Colorado.

25 **Q.** And in your interactions -- well,

1 did you have interactions with him once you
2 joined Mercedes-Benz in 1985 or so?

3 **A.** Yes, sir.

4 **Q.** And between 1985 and 2006, did you
5 have professional dealings with Mr. Wittich? Is
6 it Wittich (pronounced Wit-tich) or Wittich
7 (pronounced Wit-tick)?

8 **A.** Wittich (pronounced Wit-tick),
9 uh-huh. Professional dealings, uh, I would say
10 no. We were, we were personal friends. We were
11 car people. Uh, my father and I were very
12 interested in old classic Mercedes-Benz and BMW
13 and so was Rainer, and we always were interested
14 in helping one another with our car part
15 problems.

16 **Q.** Are you familiar with a man by the
17 name of Tom Gaffney?

18 **A.** Yes, sir.

19 **Q.** Who's Tom Gaffney?

20 **A.** Tom is a, uh, person who works for
21 Brinson, and he was our, he was our, basically
22 our Mercedes-Benz person from whom we ordered
23 Mercedes parts.

24 **Q.** When you say we, who do you mean?

25 **A.** Uh, this was the time when my father

1 had his shop. I used to work at my father's
2 shop on weekends and holidays and summers, and
3 so I got to know the whole Brinson people.

4 Q. Well, once you joined Mercedes, you
5 weren't buying Mercedes-Benz parts from --

6 A. Oh, when I needed Mercedes-Benz
7 parts, I went to our own company because we had
8 a great deal.

9 Q. Okay. And to be clear you in your
10 job on behalf of Mercedes did not have
11 professional interactions with Brinson,
12 Mr. Wittich, or Tom Gaffney; is that correct?

13 A. Right. I mean, we talked about
14 whatever was going on in the company, and, for
15 example, with Star Diagnosis, he wanted -- you
16 know, he always knew about what we were doing
17 because he was very interested in, uh, you know,
18 how he could help his customer base.

19 Q. What kind of discussions did you
20 have about the -- but this was in a personal
21 friendly capacity, right?

22 A. Yeah. Right, exactly.

23 Q. You weren't, you weren't manager
24 Nickel talking to --

25 A. No.

1 **Q.** -- a customer? This was Armin and
2 Rainer?

3 **A.** No, sir.

4 **Q.** Okay. But it was friendly
5 discussion/chat between friends?

6 **A.** Sure. Just things that were going
7 on.

8 **Q.** Okay. What kind of conversation did
9 you have about the SDS units with Rainer?

10 **A.** Well, he had told me that they were
11 -- he was working with some people to, to try to
12 do something along the lines of making an SDS,
13 and, uh, basically, I -- at that time, he, he
14 had never gotten involved with the HHT before,
15 but he saw that this was something that for the
16 future he had to probably get into, and at that
17 time, I told him to just, you know, come and,
18 you know, become one of the suppliers or
19 equipment suppliers that wanted to do this and,
20 you know, come on board.

21 **Q.** Do you know if he did that?

22 **A.** He never did that, no. He, uh, said
23 no, uh, they have other, they have other ideas.

24 **Q.** Did he specify what those other
25 ideas were?

1 A. No.

2 Q. Do you know if he ended -- if he
3 ultimately -- if Rainer or Brinson ended up
4 selling SDS units?

5 A. Oh, yes. He said -- he told me
6 that, that, yes, they've actually sold units,
7 and they were out in the field.

8 Q. Did he talk to you about that a lot,
9 or was this just sort of in passing?

10 A. No. It was just, you know, we
11 finally -- you know, we finally got to the point
12 where we're selling S -- we're selling units.

13 Q. Yeah. Did you, again, did you guys
14 have discussions about where those units came
15 from?

16 A. No. I just assumed they built them.

17 Q. And the -- because the SDS is a
18 computer, did you have discussions about the
19 software that was being loaded onto the units?

20 A. No. That was, that was above my
21 expertise.

22 Q. So you didn't have any idea about
23 where that software was coming from?

24 A. No.

25 Q. I'm sorry?

1 A. Uh, no, I didn't. I'm sorry.

2 Q. Do you know when he started selling
3 the SDS units?

4 A. I can't tell when that was. It was
5 just sometime in the summer between 2003, four,
6 five, somewhere in that area. I don't know.

7 Q. Did you discuss the difference in
8 price between the aftermarket SDS units that
9 Mercedes sold for approximately \$20,000 you said
10 and the price for which the Brinson Company was
11 selling theirs?

12 A. I have no idea what they sold them
13 for.

14 Q. Do you know whether Mercedes-Benz
15 USA as a corporate entity was aware about
16 Brinson Company selling SDS?

17 A. Yes, they were.

18 Q. How do you know that?

19 A. Um, because he was one of the people
20 that, uh, we could point to whenever compliance
21 came to be an issue, and if, uh, Mercedes-Benz
22 USA was viewed or looked at as not being in
23 compliance, then we could at least report to the
24 EPA and to the California Air Resources Board,
25 here are a list of people that are building and

1 distributing to the aftermarket, uh, items that
2 can do the function of our, our machines. So
3 whether it was a Snap-on, Hussinlocker
4 (phonetic), Bound (phonetic), Brinson, he was
5 thrown into that mix as he's helping keep us
6 compliant.

7 Q. When those reports had to happen,
8 when Mercedes-Benz had to --

9 A. Uh-huh.

10 Q. -- discuss compliance issues with
11 respect to the SDS, who at Mercedes was
12 responsible for making that representation to
13 the Environmental Protection Agency or other
14 people?

15 A. That would have been somebody in our
16 literature department, uh. It would have been
17 under Mike Kunz, the manager. He had one
18 person.

19 Q. How do you spell --

20 A. Or two people that did it.

21 Q. I'm sorry. How do you spell his
22 last name?

23 A. K-U-N-Z, and, uh, there was one, one
24 person who used to have yearly meetings with EPA
25 when they had their -- uh, when EPA had a

1 meeting with all of the car manufacturers so
2 that they could, you know, look at whatever
3 complaints the car manufacturers had against
4 them, and the fellow that went was -- his first
5 name was Derrick. He would be our point man.
6 He was the point man to go to those meetings.

7 Q. And this is where the distinction
8 between aftermarket SDS and quote, unquote,
9 counterfeit SDS comes in?

10 A. Yes.

11 Q. You understand what I mean by the
12 word counterfeit?

13 A. Yes. I understand your term for
14 that, yes.

15 Q. Okay. Did you ever authorize or
16 permit Brinson or Rainer Wittich to sell
17 counterfeit SDS?

18 A. No.

19 Q. Did you ever discuss with Brinson,
20 any representatives of Brinson or Mr. Wittich,
21 did you ever discuss with them selling
22 counterfeit SDS?

23 A. Uh, not other than the fact that I
24 knew he was doing that but --

25 Q. Counterfeit, not aftermarket,

1 counterfeit.

2 A. Oh, oh, oh. Oh, okay. Uh, as far
3 as counterfeit, no. That, that part never came
4 up. I just assumed that they were developing
5 their own.

6 Q. Did you ever give an opinion to
7 Mr. Wittich or any Brinson representative, did
8 you ever give an opinion about selling
9 counterfeit SDS?

10 A. No. If it would have been
11 counterfeit, you know, something like if he was
12 buying something from, you know, offshore or
13 something, I would have advised him against it.

14 Q. Why is that?

15 A. Because, again, for the same reason
16 we talked before, after sale support would have
17 been -- I think that would have probably hurt
18 that product and hurt the end user.

19 Q. And also presumably these
20 counterfeit systems didn't have access to the
21 updates?

22 A. Yeah. I wouldn't know where they
23 would get their information, that's true,
24 wherever they would get their software updates
25 or even what version it is or what it is or --

1 and, again, that, that's not something that we
2 as a company would probably have, uh, have
3 monitored, because the aftermarket people who
4 bought it, if they were happy with it, they'd
5 continue. If they weren't happy with it,
6 they'd, they'd stop. They'd look for something
7 else.

8 Q. But just so we're clear, your
9 testimony is you didn't know -- you knew he was
10 selling aftermarket SDS units?

11 A. Right.

12 Q. But you don't know where he got
13 them, how he got them? Whether they were,
14 quote, unquote, counterfeit or legitimate, you
15 just don't know?

16 A. I don't know where they sourced
17 them, no.

18 Q. Sir, I would like to show you a
19 couple of documents. We don't have very much
20 time left at all, but I'd like to review just a
21 couple of materials with you, please. I'm
22 showing you what's been marked as Government's
23 Exhibit 1.

24 Do you need some water by the way?
25 I've had you talking for a while.

1 A. Uh, yeah. That would be great.

2 Q. Sure. While I grab that, if you
3 wouldn't mind just reading through Government's
4 Exhibit 1, and if you could, please, tell me if
5 you recognize it.

6 A. Yep. I do.

7 Q. What is that, sir, please?

8 A. That is a, uh, e-mail that I had
9 sent to him.

10 Q. I'm sorry. Who did you send it to?

11 A. I sent that to Tom.

12 Q. Tom Gaffney?

13 A. Tom Gaffney, yes, uh-huh.

14 Q. Okay.

15 A. And that was in regard to back in
16 the, in the 2000 wherever days, uh, Brinson sent
17 -- I had asked Rainer to send us a demo of what
18 he was doing so that I could keep it with the
19 rest of the demos that I had for display, and
20 when I left the company, those things -- whoops.
21 All of our demo units I tried to give back to
22 the original companies, and so they told me to
23 keep this one.

24 So I was using this as a laptop,
25 because it had WIS, the Work Shop Information

1 System on it, and, uh, I went to use it one day,
2 hardly ever used it, but once I -- I used it one
3 day. The display went crazy. So I called Tom,
4 said, here, I want to send this thing back to
5 you, and, you know, he said, oh, well, we can
6 fix that. So I sent it to him, and, uh, he, uh,
7 couple of weeks later or a few weeks later he
8 sent me a replacement unit, not a repaired unit,
9 but another laptop with an undated version of
10 what they were doing, was showing me what they,
11 uh, what they had accomplished.

12 Q. Okay. And this was -- and this
13 e-mail is dated July 16, 2009?

14 A. Yep. Uh-huh.

15 Q. And that's your e-mail address?

16 A. That's my address at home.

17 Q. Okay.

18 A. Yep.

19 Q. And this is after you were retired?

20 A. Yes, sir.

21 Q. And it says third line, this laptop,
22 this laptop contained the SDS system; is that
23 correct?

24 A. It contained a demo unit of SDS,
25 yes. Yes, it did.

1 Q. Okay. And it says I'd like to get
2 it, the laptop, fixed, but I do not want to send
3 it to a local computer shop. They might
4 compromise the Star Diagnosis System program you
5 installed for me.

6 A. Right.

7 Q. Okay.

8 A. Right, exactly, because I didn't
9 want them to mess up what was there.

10 Q. Okay. And this laptop, remind us
11 again where you got that laptop from?

12 A. This is a laptop that he supplied to
13 us with a demo.

14 Q. Who's he?

15 A. Uh, I'm sorry. We had sent him a
16 laptop.

17 Q. Who is we?

18 A. Me, Armin Nickel.

19 Q. Okay. Retired Armin Nickel, not
20 Mercedes-Benz?

21 A. No. At that time, I was still at
22 the company.

23 Q. In 2009?

24 A. No, no, no. This laptop refers to
25 something that happened back like 2004 or five.

1 Q. Okay.

2 A. This was the laptop that we acquired
3 at that time, because I was still keeping laptop
4 -- demo units for display for visitors,
5 whatever, and, uh, we sent him a laptop. He put
6 it on, and he sent it back up to us, and then we
7 had that. We had our, our Hussinlocker
8 (phonetic) unit, our Snap-On unit, our Bound
9 (phonetic) unit, so that we could show people
10 what was being done in the outside world.

11 Q. Okay. Why did -- if you weren't
12 involved with the SDS, the development of the
13 SDS, why would he have sent this laptop to you?

14 A. Because I encouraged him to do that,
15 because my involvement with the handheld tester
16 flowed -- the compliance part of that flowed
17 into SDS because I was most familiar and I still
18 had the primary contact with all of our
19 equipment vendors. So I was sort of the point
20 person to all of those equipment vendors
21 outside. So he was folded into that, into that
22 group.

23 Q. And then you, obviously, hung on to
24 that laptop, because when you retired, you took
25 it with you?

1 A. Exactly. He had -- he said he had
2 no use for it, keep it.

3 Q. And did Mercedes have any more use
4 for it?

5 A. No. No.

6 Q. So, and I'm not trying to catch you
7 in anything --

8 A. No, no. I understand. No. That's
9 fine.

10 Q. So there were some professional
11 dealings that you had, or was this personal?

12 A. This was -- other than the display
13 and showing that there was work being done on
14 the outside, that was really it. Yeah. The
15 rest is, you're right, the rest is personal.

16 Q. But he sent you a laptop when you
17 were still working for Mercedes --

18 A. Yes.

19 Q. -- in your capacity as a Mercedes
20 employee?

21 A. Right.

22 Q. That was a professional interaction?

23 A. That would, that would be
24 professional, yes. Okay. True.

25 Q. All right. And then you kept it.

1 You took it home with you when you retired?

2 A. Right.

3 Q. And you wanted to get it fixed after
4 you had retired?

5 A. Exactly.

6 Q. So you sent it back to Mr. Gaffney?

7 A. Yes.

8 Q. And did he fix it?

9 A. Uh, a few weeks later, I, I got a
10 replacement laptop. It was not the one I had
11 sent in but a different one with the updated
12 version of what he had done.

13 Q. I'm sorry. Go ahead.

14 A. He wanted me to -- basically wanted
15 me to see what progress they had made. That was
16 a personal -- you know, he wanted to show me how
17 well he had done in the, in the past.

18 Q. Do you still have that laptop?

19 A. I do.

20 Q. Please don't throw that out.

21 A. I won't.

22 MR. GINSBERG: You had a question?

23 GRAND JUROR 2: Once the EPA
24 released the information on the SDS system,
25 people -- like if I'm -- if I own a mom and pop

1 shop --

2 THE WITNESS: Uh-huh.

3 GRAND JUROR 2: -- I could get those
4 schematics and build my own system?

5 THE WITNESS: Yes.

6 GRAND JUROR 2: Would that be
7 considered -- I don't know. Would that be
8 considered counterfeit if I'm taking -- as long
9 as I'm not selling it, can I build --

10 THE WITNESS: Even if you were
11 selling it, we would not have considered that
12 counterfeit, because we encouraged, uh,
13 companies to do that on our behalf so that the
14 aftermarket was satisfied.

15 GRAND JUROR 2: And that's what you
16 thought Mr., uh, Wittich and Mr. Gaffney did, is
17 that they got the schematics and built their
18 own?

19 THE WITNESS: I have no idea how
20 they got their information. They never
21 requested it from us, and early on, I told
22 Rainer just, you know, to become one, one of the
23 group, you know, to get it officially, and
24 that's fine. He would have gotten it from us
25 directly.

1 BY MR. GINSBERG:

2 Q. So to be clear, and this is -- there
3 will be additional witnesses that can talk about
4 this, but is it your understanding that if I
5 build my own, something comparable to an SDS or
6 I say to Mercedes-Benz can I please have the
7 schematics, I want to build something similar,
8 nothing wrong with that?

9 A. At the time when I was still there,
10 that's correct, yes.

11 Q. But if I were, and I'm not saying
12 anybody did this, but if I were to hack into
13 the, hack into the Mercedes-Benz system and
14 steal the software somehow, that would not have
15 been cool? That would not have been okay; is
16 that correct?

17 A. Yeah, and Mercedes-Benz would
18 probably not have liked that at all, no.

19 Q. And I'm not trying to suggest that
20 at this point --

21 A. No, no.

22 Q. -- that somebody did one or the
23 other. I'm just trying to figure out that the
24 method in which you get the information was
25 relevant.

1 **A.** Well, you say hacked into the
2 system. I know that now, of course, they are
3 on-line, and they do a lot of this updating on
4 the internet, and if you hacked into it, yeah, I
5 think Mercedes-Benz would really try to do
6 something about that, absolutely.

7 **MR. GINSBERG:** Oh, I'm sorry.

8 **GRAND JUROR 2:** I'm sorry. And if I
9 built my own system, would I be then able to buy
10 the updates from Mercedes-Benz as long as my
11 system was compatible so that I could --

12 **THE WITNESS:** If you had a
13 compatible system with Mercedes-Benz, you would
14 be, uh, a Bill Gates I think.

15 **GRAND JUROR 2:** Okay.

16 **THE WITNESS:** Because it was, it was
17 a very, very difficult system.

18 **GRAND JUROR 2:** Okay.

19 **THE WITNESS:** Because of the
20 architecture. I don't know the details, but I
21 know it was, it was a really tough system, a
22 very, a very elegant system I should say.

23 **BY MR. GINSBERG:**

24 **Q.** And we're talking about the SDS?

25 **A.** The SDS, yes. Yes, sir.

1 GRAND JUROR 18: We're kind of
2 revolving around something that, that I'm trying
3 to, to get my head around, is the difference and
4 the distinguishing between counterfeit versus
5 aftermarket, and where does, where does the line
6 get crossed, if, if a company is allowed to, to
7 write and create software and build a device if
8 that's proper or if it's just put on a laptop
9 to, to, to read the diagnostics and all this and
10 then sell that as an aftermarket, what makes
11 something a counterfeit? Is it because they've
12 stolen the actual software, or, or, or what?
13 That's what I don't understand yet. Where does
14 the distinguishing line get crossed?

15 MR. GINSBERG: I guess my suggestion
16 to you is since counterfeit is a term that I'm
17 using as a placeholder --

18 GRAND JUROR 18: Right.

19 MR. GINSBERG: -- because I wanted
20 to distinguish between aftermarket, and correct
21 me if I'm wrong, Mr. Nickel --

22 THE WITNESS: Uh-huh.

23 MR. GINSBERG: -- aftermarket is
24 simply a system designed for a particular type
25 of automobile, which is to say an older

1 automobile.

2 THE WITNESS: No, not a specific
3 automobile. It's a whole range of cars.

4 BY MR. GINSBERG:

5 Q. Older cars?

6 A. Older -- well --

7 Q. As opposed to new cars.

8 A. It was targeted for cars that were
9 out of our warranty period, basically. We --
10 that's where we sort of drew that line.

11 Q. Okay. So aftermarket means cars
12 outside the warranty period?

13 A. The ones that would most typically
14 be going to the aftermarket repair shops, yes.

15 Q. And so to answer your question, sir,
16 because that's more of a question for me I
17 think, the term aftermarket, again, Mr. Nickel,
18 correct me if I'm wrong, I believe has to do
19 with a device targeted to a particular category
20 of cars and a particular category of repair
21 shops.

22 A. Uh-huh.

23 Q. Which is to say cars out of warranty
24 that go to the maw and paw shops?

25 A. Right.

1 Q. As opposed to my term of a
2 placeholder counterfeit, which is the black
3 market or whatever you want to say, which has
4 something to do -- my intent in using that term
5 is the method in which the information in the
6 software that's on the machine, the way that
7 that information was obtained, and I think Mr.
8 Nickel had testified that he wasn't directly
9 involved in safety and security and wasn't in
10 the literature department, and I don't believe,
11 sir, you're not a lawyer?

12 A. Pardon?

13 Q. You're not a lawyer?

14 A. No.

15 Q. Okay. Lucky you.

16 MR. GINSBERG: That's, that's not
17 something that he should answer, but that is
18 something to go ahead and put a star and then a
19 circle and then another star around that
20 question, and that will be something that's
21 addressed as we continue on.

22 GRAND JUROR 2: Just one more
23 followup. Does that, does what we just
24 discussed say that there is no, there is no,
25 I'll just call it legitimate aftermarket device

1 that can read trouble codes on a, a, a more
2 recent version Mercedes? Is that the case?

3 THE WITNESS: No. That's not true
4 because --

5 GRAND JUROR 2: Okay.

6 THE WITNESS: -- with, uh, with OBD2
7 --

8 BY MR. GINSBERG:

9 Q. What's OBD2?

10 A. I'm sorry. Okay OBD2 is the
11 government mandated trouble codes that you could
12 read, and it's a very specific set of trouble
13 codes that every automobile manufacturer has to
14 make available, and it has to be able to be read
15 by anybody's device.

16 Q. Okay.

17 A. But where, where it goes from there
18 is here's -- you have to make it available to
19 everyone and then here's everything else. When
20 you want to get into the more details or other
21 systems, and, remember, OBD2 was meant for
22 emissions-related items, and with our cars that
23 meant engines, everything with the engine,
24 transmission, because it influenced the engine,
25 uh, the drive train, and as we spoke earlier,

1 even something as innocuous as the air
2 conditioning system, because the air conditioner
3 put an additional load, changed the emissions;
4 therefore, it was emissions related. So it was
5 a pretty wide spectrum of things that were
6 covered.

7 Q. But I want to be, I want to be
8 clear, and I've just got two more questions. I
9 want to be clear that if I build my own
10 aftermarket device, is there a -- and I'm
11 re-asking the question just so I understand, is
12 there a mechanism for me to get the software
13 updates to put onto my own aftermarket device if
14 I'm not, as you said, Bill Gates?

15 A. The -- you mean the specifications
16 for the cars?

17 Q. Right.

18 A. Okay. Uh --

19 Q. Or you said updates in the patches.

20 A. Yes, and that was basically the
21 updates for, you know, whatever the new cars
22 were and the repair procedures for the new car,
23 and you could -- if you had a device and you
24 just needed the information, you could buy a
25 workshop information disk, a WIS disk. That

1 would give you, you know, the car that they
2 released last year, okay, and you could get the
3 specs for that, and if you had the resources to
4 go, you know, pull all that out and put it in
5 your device, that was that.

6 Q. And that is where the Bill Gates
7 part comes in?

8 A. Of what?

9 Q. I think you said in answer to a
10 question you'd have to be Bill Gates in order to
11 --

12 A. You'd have to have a lot of
13 resources to do that, absolutely, yeah.

14 Q. So it wouldn't be as simple as just
15 whip together a device, go to Home Depot --

16 A. No.

17 Q. -- get some hammer and nails and
18 then load up some software and then bing, bam,
19 boom?

20 A. No.

21 Q. No, okay.

22 A. In my opinion, no.

23 Q. And then for clarification sake,
24 we've talked about aftermarket, and we've talked
25 about how I'm using this term counterfeit, and I

1 think you said, you said counterfeit is sort of
2 like these things you could buy on E-Bay that
3 came from China or Taiwan or --

4 A. Right.

5 Q. -- Russia, right? What's the
6 difference between a legitimate aftermarket
7 device and an illegitimate one like the one that
8 came from China or Russia?

9 A. I think you could -- we could put a
10 term on legitimate to any one of them, because
11 none of them did everything that SDS did, okay,
12 but we did encourage companies and support
13 companies to build those kinds of devices, and
14 as long as they served the needs of those
15 customers in the aftermarket and there were no
16 complaints, we were generally okay with that.
17 We did not, of course, want anything being built
18 and then, you know, sold to our Mercedes-Benz
19 dealers. That was, that was a, that was a big
20 no-no. The dealer base was off limits period.

21 Q. But as a follow-up, is it your
22 understanding that a legitimate aftermarket
23 device, an aftermarket device that was
24 manufactured by somebody other than
25 Mercedes-Benz --

1 A. Yes.

2 Q. -- would not be able to do all of
3 the things and have all of the bells and
4 whistles that an aftermarket device that was
5 actually manufactured by Mercedes and had all
6 the updates was able to do?

7 A. That is correct.

8 Q. It would fall short of that?

9 A. They always fell short, yes, always.

10 MR. GINSBERG: Thank you. Ladies
11 and Gentlemen, do you have any questions?

12 GRAND JURY: (No response).

13 MR. GINSBERG: Madam Foreperson, at
14 this time, may we be able -- may the government
15 be able to retain the documents that Mr. Nickel
16 has provided today to continue further
17 investigation?

18 THE FOREPERSON: Yes. Yes, you can.

19 MR. GINSBERG: Thank you, and may
20 Mr. Nickel please be excused?

21 THE FOREPERSON: Yes, he may.

22 MR. GINSBERG: Thank you very much.

23 (Whereupon, the witness was excused and
24 left the grand jury room 10:14 a.m.)

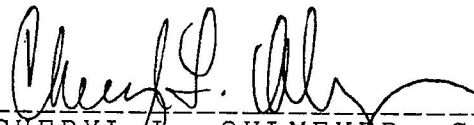
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CERTIFICATE

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I do hereby certify that the foregoing is a true and accurate transcript, to the best of my skill and ability, from my stenographic notes of this proceeding.

April 11, 2013



CHERYL L. OHLMEIER, CCR
Certified Court Reporter (#84110)

