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**TRANSCRIPT OF WITNESS TESTIMONY**

**STATEWIDE GRAND JURY**

**WITNESS:** Barry Warner  
**QUESTIONER:** Attorney General Prosecutors  
**DATE:** June 4, 2003  
**RE:** The Station Nightclub Fire  
**SIDE A OF TAPE #70 (475-623)**

Q. Good morning. Would you tell the members of the Statewide Grand Jury what your name is please sir?

A. My name is Barry Warner W-A-R-N-E-R.

Q. Would you raise your right hand please?

Q. **FOREPERSON** – Do you solemnly swear that the testimony you are about to give, before this Grand Jury, touching on any crime or misdemeanor you may be inquired about, shall be the truth, the whole truth and nothing but the truth, so help you God?

A. Yes

Q. You may be seated. We're here on June 4<sup>th</sup> with the Statewide Grand Jury, a quorum of the Statewide Grand Jury and assistant Attorneys General White, Ferland and Daly and our witness Mr. Warner, who's just been sworn. Mr. Warner, where do you live?

A. I live at

Q. And how long have you lived at ?

1 A. Approximately 16 or 17 years.

2 Q. And are you familiar with a nightclub, now burned and destroyed, called

3 The Station?

4 A. Yes I am.

5 And could you tell the members of the Jury where your home at

6 is in relation to where The Station was?

7 A. It's quite close. I don't know, is that a map over there?

8 Q. It's a diagram of the club.

9 A. Well and my house is, um if you were looking from the road

10 Q. From Cowesett Avenue?

11 A. Cowesett Avenue and you're looking at where the club used to be,

12 there are basically two houses that are immediately behind it. Mine

13 would be the right-hand house next to the band end of the building.

14 It's a brown house.

15 Q. As you faced, what was The Station, on Cowesett Avenue, was

16 near where The Station was?

17 A. is on the left-hand side. If you are facing The Station,

18 runs on the left-hand side.

19 Q. And did it separate what was the nightclub and Knight's Garage?

20 A. Yes it does.

21 Q. And it ran perpendicular to Cowesett right?

22 A. Correct

23 Q. And then did your driveway run parallel to Cowesett?

24 A. Yes my driveway runs parallel.

1 Q. And so your house,

2 where the nightclub was, right?

3 A. Yes, yeah . The band entered the building a little  
4 further to the right.

5 Q. And you see the diagram that you mentioned. Up there. Can you see  
6 That? Alright On the right hand side of the diagram, there's a place that's  
7 been marked on the diagram is the drummer alcove. Do you, remembering  
8 the footprint of the nightclub, do you remember a Jutt Out like that?

9 A. Yes I do.

10 Q. And can you show us or tell us in your words where your house would  
11 have been? I assume \_\_\_\_\_

12 A. I'll show you.  
13 to the top of the diagram.

14 Q. The house, ah, probably is this way over here; sets up high like here.  
15 Um, this is the back of the building, there's my fence, here's my road, the  
16 road comes here, my road runs here, that's my garage, my garage is  
17 here, my house is here so I'm this way say up in this area.

18 A. Ok and is there any build, was there any building between The Station and  
19 your house?

20 A. Trees and maybe a fence, cause at some part the fence actually stops  
21 and, ah, so part of the fence is behind The Station, part of the fence stops  
22 and then it's just trees between my house and the building,

23 Q. Ok

24 A. The Station and my house.

1 **SIDE B OF TAPE #70 (623-773)**

2 Q. Now The Station was, um, pretty much on the same grade and level as  
3 Cowesett Avenue, correct?

4 A. Correct.

5 Q. You just said in describing where your house was, it was up high, did  
6 was house higher, up on a higher grade than where The Station was?

7 A. Most definitely.

8 Q. Approximately how many feet up

9 A. Higher than, say like the foundation of The Station and the foundation of  
10 my house?

11 Q. Yeah

12 A. Um, I've never been asked that question before. Let me think just for a sec-  
13 ond.

14 Q. Roughly

15 A. I would guess ah 30 feet no problem,

16 Q. Ok

17 A. 25, 40 feet.

18 Q. And is the grade gradual or was there like a bank behind the, ah, behind The  
19 Station?

20 A. Well, it's easier for me, start from my house, my house is here, my lawn  
21 goes, chu, down like 7 feet and then my driveway in front of my house, which  
22 is mostly driveway extends out several feet and then there's another drop-off  
23 of several more feet or more down to The Station level, so it's a step.

- 1 Q. Now when you first, ah, moved to , um, was the  
2 house built by you or for you?
- 3 A. I built the house myself. I
- 4 Q. Ok, was the building that housed The Station there
- 5 A. Yes
- 6 Q. when you built your house?
- 7 Q. What was it doing business as when you built your house?
- 8 A. It was a restaurant.
- 9 Q. Do you remember the name of the restaurant?
- 10 A. I believe it was. Well there was 2 or 3 restaurants during the restaurant  
11 period when I first moved or built my house there. There was Papa  
12 Brillo's, then I believe it went to Glen's Pub and may have been another res-  
13 taurant sometime in there, but we're going back a few years.
- 14 Q. Ok, and, ah, the place already existed as a
- 15 A. A restaurant.
- 16 R. restaurant when you built your house, correct?
- 17 A. Correct
- 18 Q. When it was a restaurant either as Papa Brillo's or the other two that you  
19 named, were there any problems that you experienced as a neighbor once  
20 your house was built?
- 21 A. No there was none whatsoever.
- 22 Q. Um, do you owned Papa Brillo's or any of the other incarnations as a restau-  
23 rant that the building had?
- 24 A. I don't know who owned Papa Brillo's no.

1 Q. Did there come a time, after you built your house, that the use of the  
2 building changed from a restaurant to something else?

3 A. When it became a nightclub.

4 Q. And approximately when was that if you remember?

5 A. It was approximately late 80's early 90's.

6 Q. When that happened, um, were you, as a neighbor, put on notice by either  
7 the prospective owner or the town that the use would change?

8 A. Yes I was.

9 Q. And what were you told that the restaurant would become?

10 A. A notice came to the people in the neighborhood, me being one of them,  
11 that the notice clearly stated and I clearly remember it saying "It would be  
12 a Sports Pub". At that time there were a lot of sport pubs that were  
13 popular meaning a pub with TV's and so on where you watch Larry Bird shoot  
14 jump shots and so again back in the late 80's early 90's so it was gonna  
15 be a sports pub.

16 Q. Ok, and um, did, ah, did it in fact become a sports pub?

17 A. Absolutely not.

18 Q. What did it become if not a sports pub?

19 A. A very loud rock nightclub with loud music.

20 Q. What was the name of the first business that ran as a nightclub if you  
21 Remember?

22 A. Ah, there's been a number of them, I believe it was called Cracker Jack's.

1 Q. Now how soon after Cracker Jack's came into existence did you realize or  
2 conclude that it wasn't a sports bar as you thought and was instead a night-  
3 club? Was it a gradual realization?

4 A. No, no, no. It wasn't probably a week or two that the place changed  
5 hands and then I heard terribly loud music coming from the place.

6 Q. Did you meet the owner of Cracker Jack's when the place first came  
7 into existence?

8 A. I don't recall meeting him. I probably called the police because I  
9 complained about the loud noise because they used leave the door  
10 opened quite frequently. This is very very initialed stages of the loud rock  
11 music and the next song, they, we were told at some point to shut  
12 the door, keep the door shut. That was the first issue. And I complained  
13 to the police. I did have a short meeting with the owner or one of the  
14 owners, I believe it was partners, but I don't know. It was not a meeting, it  
15 was ah, we met next to the building and he was up to no good down there  
16 and they were, ah, dumping on the property.

17 Q. What was the name of the owner do you remember?

18 A. Can I guess? I'm pretty sure I know. I think, I'm pretty sure there were  
19 two owners, I remember the names being Ustick (phonic) and Usee (phonic)  
20 something like that might have been their last names. But we're going back a  
21 long ways.

22 Q. OK so you complained to the police and then there was at least one time  
23 when you had a meeting at the site of the building outside with these  
24 owners you say Usee (phonic)?

1 A. Well we went down there to inspect the dumping that they were doing. It  
2 was in the morning, probably like a Sunday morning. Nobody was around. I  
3 was there. Another property owner, who abuts the property who was there  
4 and we talked about, because we saw dump trucks coming over there dump-  
5 ing and so the next thing you know the owner comes around the  
6 corner.

7 Q. Dumping fill or dumping trash or what?

8 A. Wood, trash, miscellaneous stuff, all kinds of things?

9 Q. Between the club and your house?

10 A. If you look at the club on the right hand side where the band area is, um,  
11 there's a pocket over in there and they were dumping over in that pocket  
12 and or to the right of that.

13 Q. What was other neighbor's name that abutted that went with you to  
14 Observe?

15 A. (phonic) was there.

16 Q. Ok

17 A. He owns the property right, right abuts the (inaudible) but that at that time did  
18 anyways.

19 Q. So with Cracker Jacks you had two concerns. One was noise and one  
20 was this dumping, correct?

21 A. Right, but the dumping was on this property, my neighbor's property and  
22 I told him about it and I thought it kinda. I didn't want a dumper on there.

23 Q. How long did Cracker Jacks stay in existence?

24 A. Two to three years about.

1 Q. During that two to three years, can you estimate how many times you  
2 called the police about the noise.

3 A. A guess estimate 40 to 60 times.

4 Q. And did you deal with the, a particular police officer? When you called  
5 the police would it be as the event was occurring as the noise was  
6 bothering you or to complain the next day that you hadn't been able to  
7 sleep the night before?

8 A. Most of all the complaints were when it was happening late at night.

9 Q. Did you call any particular person or did you just call the station?

10 A. We'd call the station. We'd get the person who was, would pick up the  
11 phone. I forgot the terminology but anyways. There's a person who picks up  
12 the phone and says hi, what's the complaint and I would complain and so on  
13 and after a while they knew who I was.

14 Q. And what, if any, physical response did you observe in response to your  
15 calls?

16 A. Um, Police Officers came, um, and seldom in a hurry but they got there.

17 Q. Would they come see you or they come to The Station that you complained  
18 about, I mean the, the nightclub that you complained about?

19 A. They used to come see me. This is the very beginning of the complaint  
20 process. So they used to come see me and we'd talk about it and they'd  
21 say well we'll go down and talk to them and, ah, that was about it and nothing  
22 major was ever done.

1 Q. Over the course of the two or three years that the place was called

2 Cracker Jacks, um; did the noise problem ever lessen?

3 A. Very little. It was erratic but there was always a problem. It was really

4 bad the first month so I had to say something but it was always

5 moderately bad. They were one of the worst of the noisemakers.

6 Q. Did either of the, to your knowledge, um, other than direct response to your

7 several calls, um, presumably when the police arrived, something was done

8 that night at that time to try eliviate or appease your concern, correct?

9 A. The police officer tried to go into the building and talk to the owner and,

10 um, ah, and try to ah, you know, get them to turn the music down. What

11 happened, ah, generally speaking was, they would turn it down for a little

12 while. The police officer leaves after 10 minutes and they inch it up and the

13 volume and the problem is there and it's aggravating.

14 Q. Now during that ownership as Cracker Jacks, are you aware of any, um,

15 remedial measures that were taken more than what you just described,

16 turning it down temporarily while the police were there? Was there any

17 construction that happened or anything inside or any trips to see you

18 or anything that dealt with the situation?

19 A. Very little.

20 Q. After Cracker Jacks existed, what was the next existence? What was

21 the place called after Cracker Jacks?

22 Q. I believe it was called the there's Cracker Jacks, the guy that took it over

23 and I believe it was called the Filling Station.

1 Q. What did the Filling Station operate as?

2 A. Same thing. A loud hard rock nightclub playing venue.

3 Q. And when, when the Filling Station first came into existence, did you have  
4 anything to say publicly either at a town council forum or a town meeting fo-  
5 rum or any other place to express yourself in the experiences you'd had with  
6 Cracker Jacks?

7 Q. I remember in the early 90's writing a letter and contacting the authorities  
8 in the town and they told me what to do. They said I had to write copies  
9 and make sure those copies went to a certain person or persons and so I  
10 wrote a letter and I, and um, I explained what was happening and I did a little  
11 research myself and I found out that loud, prolong, prolonged loud noise is  
12 against the law. Noise, not music, not a chainsaw, noise in general and  
13 I read this legal definition from a book I had found and so I thought I had  
14 some, something to stand on besides getting no response or very little re-  
15 sponse. So I tried that approach and I properly wrote the letter, sent it out. It  
16 was distributed I believe to all the members of the town council. I came to  
17 a meeting. My father-in-law, I believe was at that meeting.

18 Q. What's his name?

19 A. \_\_\_\_\_(phonic)

20 Q. Where did he live?

21 A. He lives\_\_\_\_\_.

22 Q. So he's \_\_\_\_\_?

23 A. He's \_\_\_\_\_the club, \_\_\_\_\_More at the middle kitchen end of the  
24 club.

1 Q. And he came to the meeting with you? This is, this is before, ah, the Filling  
2 Station came into existence?

3 A. Ah, I don't know whether it was the Filling, during the Filling Station. I, I  
4 believe, I believe, just a little while back, I believe it's the Filling Station  
5 timetable.

6 Q. Ok so you and your father-in-law go to a meeting. You think you've got  
7 something cause you've seen it in a book. What happens?

8 A. Um, well, they, if you, those meetings last a long time. They finally got to us  
9 and um, um, you know, I talked, pled my case, said what I had to say. They  
10 all had the letter and ah, I would hear stories like well, we're gonna have to  
11 watch the place. We gonna check the license. If they don't behave, you  
12 know, we'll, we'll do something to their license and warnings were issued  
13 maybe that was about it.

14 Q. Did, ah, were there any problems with the nightclub, the Filling Station, when  
15 it existed?

16 A. Similar, ah, I guess the best way to describe it is they were a hair better but  
17 they loud, or they were still loud.

18 Q. Did you ever meet the owner of the Filling Station?

19 A. I remember meeting him once.

20 Q. Do you know his name?

21 A. Ah I think, like everybody called him Skip. I called him Skip. I remember  
22 what he looked like and um.

23 Q. Ok, when you met him did you talk about your concerns?

24 A. Yes

1 Q. About the noise?

2 A. Yes, I had met him. He was quite noisy one night. I went down there and  
3 because I had called the police so many times and not really gotten any,  
4 didn't make any, ah, progress so I went to see him one night and I walked in.  
5 I asked to see Skip and ah, Skip came out to see me and he brought me a  
6 back room somewhere, which I thought maybe was the kitchen or something  
7 and he had a little makeshift office in there and we sat down and we tried to  
8 talk and ah.

9 Q. Was there a band playing when you went to see Skip?

10 A. Yes I believe so.

11 Q. Do you know whether or not that band was using special effects while you  
12 there seeing Skip?

13 A. I wouldn't know that.

14 Q. OK, ah, what's the next thing that happened in the progression of your being  
15 a neighbor of this club? You had a talk with Skip. Did anything change after  
16 that?

17 A. No, Skip didn't see things eye to eye to me at all.

18 Q. Did you call the police during Skip's ownership?

19 A. A number of times, yes.

20 Q. As often as you had under the Cracker Jack?

21 A. Well I would say pretty close, maybe a little bit less, cause he was a hair  
22 less quieter, but not much.

23 Q. A hair less loud you mean?

24 A. Yeah a hair less loud. Sorry and ah, and we were getting used to it a little bit

1 after a while. Nothing gets done and there's only so much you can do.

2 Q. Was there a point after the Filling Station and Skip that a new owner came  
3 in?

4 A. Yes, there was a new owner and it was more or less a continuation,  
5 same story basically.

6 Q. Was it still called the Filling Station?

7 A. No I think they dropped the Filling Station, changed it to The Station .

8 Q. Now whose that that took over from Skip?

9 A. I believe I realized his name Julian Howard or something like  
10 that there. I'm not great on names.

11 Q. Did you ever meet him?

12 A. Yes I did.

13 Q. Did you have complaints about noise under his watch?

14 A. Same thing. He was about the same. He was little more professional, a  
15 more of a businessman type person, a hair better but not much. He was  
16 not much different than Skip.

17 Q. Did you have occasion to call the police when this person owned it?

18 A. I believe we called a number of times, me and people in my family.

19 Q. And now under both Skip and this person Julian Howard, did the police  
20 come?

21 A. Yes

22 Q. And was at least a temporary turn it down kinda deal?

23 A. Yeah, they got better and better at it all the time. It became the game.

24 Q. Are you aware of anything that either Skip or, um, Mr. Howard did to, um,

1 physically change the club to address your problems?

2 A. Um, all I know is, um, that they were trying to do some things but I don't know  
3 specifically. I'm not positive what they did.

4 Q. Were there any other problems you had when Julian Howard owned the  
5 place other than the noise?

6 A. No, that was all the problems, it was primarily noise.

7 Q. After this last person we talked to about, who was the next owner?

8 A. The next owners to my knowledge was the Derderians.

9 Q. Were you aware that the Derderians took over when they did that over?

10 A. I might have been vaguely aware but I'm not positive.

11 Q. How did you become aware?

12 A. I was ah, sitting on my porch with my youngest son \_\_\_\_\_ and it was

13 Q. How old is he now?

14 A. Ah, he's nineteen or twenty. Nineteen, he just finished his first year at  
15 \_\_\_\_\_.

16 Freshman going to be a sophomore.

17 Q. How, um, what year was this and what time of year do you know?

18 A. Yes it was around Mayish. It was warm out and I was on my back  
19 porch. It was on a weekend.

20 Q. Do you remember what year it was?

21 A. Yeah it was around year 2000.

22 Q. Ok, what happened? You were out there with \_\_\_\_\_ and

23 A. I was out there with \_\_\_\_\_ just enjoying the sunshine doing absolutely  
24 nothing. It was kinda like mid to late afternoon and around the corner

1           come two people that I've never seen before. They walked up to my  
2           porch, knocked on the door and says hi, and they introduced themselves  
3           as, um, their names and.

4    Q.    Do you remember their names?

5    A.    They're the Derderians, I think they were Mike and Jeff and um.

6    Q.    Had you ever met them before that visit?

7    A.    Never met them before, never seen them before to my knowledge.

8    Q.    Were they alone on that visit?

9    A.    The two of them, just them two.

10   Q.    Did you know they were coming?

11   A.    No

12   Q.    Did, what did they say when they arrived?

13   A.    They said the chief of police had sent them up through the neighborhood  
14       to talk to the neighbors.

15   Q.    Do you know who the chief of police was then?

16   A.    I believe it was Peter Brousseau at that time but there were, there've been  
17       chiefs.

18   Q.    In the, ah, years that you've been experiencing what you've described as a  
19       neighbor with the noise problems, ah, under Cracker Jack's and the Filling  
20       Station, had you dealt with the chief yourself before?

21   A.    Ah, this particular chief?

22   Q.    Any chief?

23   A.    I've dealt with chiefs before.

24   Q.    Have you ever dealt with Chief Brousseau?

1 A. A little bit. My dealings with Chief Brousseau, ah, I remember taking  
2 some time out of work, going down there and talking to him and now he,  
3 at that time may not have been the Chief, he may have been soon to be  
4 the Chief, um, during that time period, and I went down there and I was talk-  
5 ing about the noise and he was in the room and he talked to me and it was,  
6 not much was accomplished and it was done in a very unorganized approach  
7 to anything and I just remember him saying, well, it takes time, keep trying,  
8 blah, blah, blah and so on.

9 Q. Back to this visit, um, two, two people who identified themselves as Jeffrey  
10 and Michael Derderian come to your house. You and \_\_\_\_\_ were  
11 outside. It's May 2000. What do they say? The chief sent them and....

12 A. The chief sent us to go through the neighborhood to talk to the neighbors  
13 and I was one of the neighbors so I wanted to cooperate with the Chief,  
14 that's for sure, and so I invited them on my porch and I was a little  
15 apprehensive because these guys make a lot of noise. Previous club  
16 owners have and these are more club owners gonna make noise, but  
17 I was more than glad to let them in. I was polite. We sat down, the  
18 four of us at my table and we had a conversation and. Do you want  
19 me to continue?

20 Q. Sure, tell us what the conversation was about.

21 A. Well the conversation was mostly about the Derderians were gonna be  
22 good neighbors.

23 Q. Who said that, them or you?

24 A. They did.

1 Q. Ok

2 A. I didn't say probably anything,

3 Q. Ok

4 A. especially the first major part of the conversation and they wanted to be good  
5 neighbors. They were a little excited about their new business venture. They  
6 seemed like pro-active type people and they were selling me on the idea that  
7 they were gonna do this, this, this and that.

8 Q. Did they say what the this, this and that was?

9 A. Well they talked about doing some construction to the building, but it was  
10 very general. They talked about (inaudible) I remember there was hole  
11 in the back of the building and they were gonna correct that because they  
12 felt that was leaking noise and they were gonna do something to the back  
13 of the building to make the sound situation better and they were very, you  
14 know, outspoken and selling me on the idea that they were gonna do  
15 everything they could do. They were keep an owner on the premises all  
16 the time. There were two owners I assumed and so that, they said

17 Q. You mean one of them

18 A. One of the two brothers.

19 Q. would be there all the time?

20 A. Right and so that they could, you know, wouldn't just leave the club there to  
21 make a lot of noise and go out of control.

22 Q. So is it, I take it if you didn't say much when they first arrived and they  
23 said we're gonna be good neighbors, here's what we're gonna do, it  
24 appears that they were aware that you had had historical problems with

1 noise. Right?

2 A. Right, yes, that was.

3 Q. So they set forth all these things they were gonna do and then, what if  
4 anything else was said?

5 A. Well, um, let me think, um, things that I remember that they said, ah, they  
6 were, ah, they were both gonna be on, ah, you know, on, on, on the prem-  
7 ise all the time. They told me to call them and um, if there was any prob-  
8 lems whatsoever and we exchanged phone numbers. They said call the  
9 club. Please contact me and we exchanged phone numbers and they were  
10 very adamant about that there. They wanted to know if the noise was going  
11 to be better. They were gonna, they were gonna keep doing things to im-  
12 prove the club, the noise quality and that we were supposed to communicate.  
13 They really wanted to communicate and I listened and we were talking about  
14 the club just in general. I spoke up and I said, ah, but wait a minute now, I  
15 says, you know, and here's some ideas for you because I had been  
16 listening a long time. And I said, um, why don't you put up a false wall along  
17 this side of the building that faces me

18 Q. Now that would be that

19 A. right over in there.

1 Q. That whole end of the building?

2 A. Yes, I just thought a false wall there cause I'd, I'd seen that in carpentry  
3 books where that's what carpenters do. I just thought it was a good idea  
4 and just threw it out. And I said, oh, you can put curtains up like they do on  
5 stage. That's an idea I threw out and I also said what about using foam? I  
6 said I work at American Foam Company and I know people that purchase  
7 foam and people do purchase foam for sound deadening. And I told them  
8 there are different qualities and levels of foams that you can use.

9 Q. Ok, when you mentioned the first couple of options, um, did they say any-  
10 thing in response to your idea that a false wall might do the trick?

11 A. No

12 Q. Did they say anything in response to curtains might help?

13 A. No

14 Q. Um, did you say anymore about what the options in foam were other than that  
15 there were different options in foam?

16 A. I said there were options or levels available and that's all I said.

17 Q. Did they ask any questions or was there any further discussion about what  
18 the levels were and what the options were?

19 A. No, they didn't ask me any questions. I was surprised that they didn't.

20 Q. Was there anything generally that they said in response to your suggestion  
21 that foam might be a sound deadening or assist in the sound problem.

1 A. No

2 Q. Ok so they um

3 B. they did not elaborate on that.

4 Q. During this visit, um, beside the things you've already told us, were there any  
5 other things that got discussed about on your end, the things that they sug-  
6 gested you might do or how they might help you at your house?

7 A. I, I recall one time is they offered me to buy me an air conditioner and I just  
8 said no I wasn't interested. It was a very, very simple wasn't interested.  
9 It was no big deal.

10 Q. Was this, um, ah, offer of an air conditioner made to your memory on the  
11 same trip, first trip to your porch with your son?

12 A. I believe it was.

13 Q. Was it clear to you that the offer of the air conditioner was as a, a improve  
14 the sound option?

15 A. Yeah

16 Q. It wasn't just here, we're, we're nice guys, let us buy you an air conditioner?

17 A. No

18 Q. It was, it was to help

19 A. Right

20 R. help with the sound somehow?

21 A. I think they thought that well, if your windows are closed and you have the  
22 air conditioner running, you won't hear the noise as much. Um, well I did that  
23 anyways. I had an air conditioner. I used to close it in the summertime.

24 Cause in the summertime; people open their windows. It was just related

1 to that. That's all it was.

2 Q. And did you tell them on the spot whether you were interested in their  
3 offer.

4 A. Yeah, I said no, I wasn't really interested.

5 Q. Ok, now how long were they there on that particular visit?

6 A. Approximately 20 minutes to a half-hour, 35 minutes.

7 Q. To your memory was there anything, um, left open at the end of that visit  
8 about

9 the issue of foam? For example, was there any, any question that was gonna  
10 be answered or follow-up to be done or did it seem to you that the topic was  
11 over?

12 A. Very little was said about that and as far as I can recall, at that particular  
13 conversation, nothing else was said about the foam. It's the best I can  
14 recollect but very little was discussed period about the foam at that  
15 conversation.

16 Q. Now, ah, did you have conversations with either Jeffrey or Michael Derderian  
17 after that visit about the foam?

18 A. Yes

19 Q. Do you remember how long it was after that May visit that you spoke to a  
20 Derderian again and which one was it if you know?

21 A. I don't know. I can't tell the difference at that time, I can't, couldn't  
22 anyways and, um, one of them drove up the driveway while I was raking  
23 my yard or doing some yard work cause it was Springtimeish and we  
24 had a long talk.

1 Q. Now this is after the visit with your son?

2 **SIDE A OF TAPE #71 (773-895)**

3 A. After the first visit. This would be, this was the only other second visit  
4 that I can recall, when there was one of them in the car, stayed in the car.  
5 I stood up with my rake and just chit chatted and basically I remember  
6 him wanting to know if the noise was any better, if the noise was quieter  
7 and ah, that was his basic visit. I don't specifically recall anything other than  
8 that there and it was just a social chitchat.

9 Q. And did foam come up during that drop-by?

10 A. It may or may not have but I don't recall if it did.

11 Q. Was there a time after that that you had a either an encounter with or some  
12 interaction with the Derderians or the club about foam?

13 A. Um, yes there was. Ah, they contacted me frequently. They called my  
14 house. The main reason for contact was they would call and most of the time  
15 it was voice mails left on my home phone. They would say hi Barry, blah,  
16 blah, blah. What's going on? Is the noise any better? Are we doing a better  
17 job? And, ah, and that's what happened. That happened several times and  
18 they kinda wanted me to call them back and I may have called them once or  
19 twice but they called me quite a few times. Um, at some point in time they  
20 asked me for a sample. That's all I recall.

21 Q. Ok

22 A. But little discussion was other than; can you show me a sample? Whether it  
23 was a voice mail or there was, one of the, one of the few times that I did pick  
24 up the phone and hear a Derderian I don't recall.

1 Q. Do you remember whether or not at that time or anytime before that time  
2 whether there had been any discussion about a sample of what, a sample of  
3 foam, I take it, right?

4 A. That's it.

5 Q. But anymore discussion about what kind of foam?

6 A. Absolutely not.

7 Q. Ok, when you got this communication, assuming it was a voice mail, did you,  
8 did you comply? Was there a time after that, that you did in fact provide  
9 somehow, somebody with a sample of foam?

10 A. I complied, not like right away, but I complied. Um, I

11 Q. How did you go about that?

12 A. Ah, while I was at work, I grabbed a piece of foam. I put it in my ah, briefcase  
13 or my hand and on my way home, um, I go by the club every night. I walked  
14 into the club and I looked for the owners. They weren't there. I walked up to  
15 the bartender. I put a sample of foam on the bar. I said please give this to  
16 the owners and I walked out.

17 Q. Now you had told the Jury a while ago that back, under a prior owner, you'd  
18 walked in and tried to make peace, so to speak, about the noise. You found  
19 yourself in the back office. Did you go into the club a lot? You've now men-  
20 tioned two times.

21 A. Ah, I didn't go into the club a lot. I didn't stay very long. It was, um, I went  
22 into, I remember going into Skip's office, which was kind of at the other end of  
23 the club in the back and we had a ten-minute conversation. We couldn't  
24 agree eye to eye about the noise being quieter. That was (inaudible)

1 Q. So I take it while Skip owned it, you did not go in as a patron to watch the  
2 bands or, um, be entertained?

3 A. No, I like music. I just don't like hard rock music.

4 Q. And you didn't do that under the Julian ownership either, right?

5 A. The only time I went to see the Julians, I recall, is, Howard Julian I think his  
6 name is, I walked in the front door. He was there or I asked to see the owner.  
7 He come out right away or I walked in a few feet and he was there. He met  
8 me and ah, we got nowhere. The conversation was, you know, we were at  
9 opposite ends and so I left.

10 Q. When you left the sample under the Derderians now to the bartender, did you  
11 know who, who that was?

12 A. No. There was a bartender there and then there was maybe very few people  
13 in the place. It was around five to six o'clock, which is the time I get out to  
14 work. I didn't make a special trip down there. I was just driving by the place  
15 so I, here's the piece of foam.

16 Q. How big was the piece of foam that you left?

17 A. A little piece like this here. It's a tiny piece, medium-small.

18 Q. It's 12:30 and the Jurors customarily break for lunch now. I think this might  
19 be an appropriate time to break and have you come back after lunch cause I  
20 think there's quite a bit more to talk about, about quarter to two if you can  
21 come back.

22 A. A quarter to two, ok.

23 Q. Ok?

24 A. Ah, we can leave the premises?

1 Q. Oh of course, go have

2 Q. Good afternoon members of the Statewide Grand Jury. We, um, are back  
3 here on the afternoon of June 4<sup>th</sup> at Fogarty with a quorum of the Jurors and  
4 Assistant Attorney's General Randy White, Bill Ferland and Paul Daly and our  
5 witness has rejoined us. Mr. Warner, I remind you, your under oath from your  
6 appearance before lunch. We had finished, I think, at the break when you  
7 were describing having dropped off a sample piece of foam to the club. Do  
8 you recall that?

9 A. Um, hum, yes.

10 Q. And, um, after you dropped off the sample, by the way, you said you got the  
11 sample from your home or from your shop?

12 A. Shop

13 Q. And, um, when you got the sample from the shop, did you look for a particular  
14 kind of foam?

15 A. No

16 Q. What did you get?

17 A. I just got a grey piece of foam, a little sample.

18 Q. Ok

19 A. That's all I did. It was a random sample of foam.

20 Q. How many different kinds of foam did American Foam sell?

21 A. Ah, we sell many foams, ah, because ah, we can buy from other foam com-  
22 panies and we can buy their stock and then we just cut it up and slice it up.

23 Q. Is there, was, you don't work there anymore, right?

24 A. No I don't.

1 Q. When did you last work there?

2 A. About ten or eleven months ago.

3 Q. So last ah,

4 A. June, Junish, July.

5 Q. And how long had you worked there?

6 A. For approximately 26 years.

7 Q. And during the 26 years that you worked there as...move closer to the micro-  
8 phone sir.

9 A. Me?

10 Q. Um, during your 26 years with American Foam, were you always a sales-  
11 man?

12 A. Yes

13 Q. And did American Foam deal with a particular kind of foam more often than it  
14 dealt with other types?

15 A. Yes

16 Q. Did you have a standard kind?

17 A. Well we had foams that we sold more of and we sold more polyurethane  
18 foam and we sold more flocked foam.

19 Q. What's flocked mean?

20 A. Flocked is a um, when you put a velvet coating on a foam. That's what  
21 flocked foam means. We sold, we sold a lot of that and we sold regular ure-  
22 thane foams. Other times we sold a flocked foam on top of the ure  
23 thane as a combination.

1 Q. Ok and ah, was there a particular, um, type of foam that you most, be most  
2 likely to see at the company?

3 A. Um, polyurethane foams.

4 Q. And of all the same description and grade or different?

5 A. No, they're, they're different, I mean, there's some that are more popular.

6 Q. What's the most popular foam?

7 A. The most popular foam, I'd say there's two and it's white 1.2 ether foam or  
8 charcoal 1.2 ether foam. Those were generally speaking the most popular  
9 two types.

10 Q. Now white is self-evident. That's a color.

11 A. White

12 Q. Does charcoal, I mean it's color or does it mean anything else?

13 A. Charcoal is just a color as opposed to blue foam or whatever.

14 Q. Ok anything, so you can get polyurethane in any either white or charcoal?

15 A. Yes and other colors but these are the popular, the most popular types of  
16 foams of the types of foams we had.

17 Q. And what's the 1.2 mean?

18 A. 1.2 means it's a 1.2 density, which is a relatively medium to soft density.

19 Q. Ok, um, what's this, do you know?

20 A. This is a 1.2 or a 1.5 or somewhere in that neighborhood. It's very hard to tell  
21 the exact densities because there's hair differences but it's a 1.2 or a 1.5  
22 density or somewhere in there.

23 Q. And that's Grand Jury #32 that you're making reference to?

24 A. Yes

1 Q. Now do you know from memory what kind of foam you dropped off?

2 A. No

3 Q. Ok, do you know if it was white or charcoal?

4 A. I think it was charcoal. It was a random piece. That's all I recall three years  
5 ago.

6 Q. Do you remember how big it was?

7 A. It's relatively small, little piece.

8 Q. Your holding up your hands as if it was inches, six to eight inches square?

9 A. That's about what it was. It was just a little piece.

10 Q. Um, did you hear from anyone from the club after dropping off the foam sam-  
11 ple?

12 A. No

13 Q. No?

14 A. None whatsoever as far as we like the sample, we don't like the sample,  
15 nothing like that at all.

16 Q. Now ah, what's the next thing you remember in the chronological progression  
17 of things that relate to you, foam and The Station nightclub?

18 A. The only other foam things, and this happened over a course of weeks, the  
19 only other foam thing is sometime during one of their voice mails to me or  
20 phonecall that we talked about whatever, then he asked me well, how do you  
21 put this stuff up? And I simply told him well any glue works. We sell a spray  
22 glue if you want to buy it.

23 Q. Ok

24 A. That was it.

1 Q. What kind of spray glue did American Foam sell?

2 A. Ah, basically a 3M type of spray glue. We bought it and we were like a dis-  
3 tributor for 3M spray glue.

4 Q. Was that a liquid or an aerosol or what?

5 A. It's an aerosol can. You just spray it up and the glue sticks right to it. You  
6 can use that or any type. Most types work.

7 Q. Now does 3M, were you familiar with 3M77?

8 A. Yes

9 Q. Is there any other number besides 77 that you're familiar with?

10 A. Yeah there's 77, there's 74, there's 76. These are different types of glues.

11 Q. Do you know why one would be used as opposed to another?

12 A. Um, we use, my, me or a sample maker would use them, say if you want to  
13 make a sample piece of foam. Sample makers use them mostly. Some peo-  
14 ple bought the stuff but not that much. 74 was a yellowish glue. It seemed to  
15 be a little stronger. When you spray it would be yellowish looking. It's like a  
16 spray of can paint. And then, um, 77 was white, clear and kinda misty if you  
17 didn't want to see glue and you didn't want a big messy glue.

18 Q. Um, hum.

19 A. You used that. That's 77. Then now I think 76 was a kind, a hybrid. I think it  
20 was a white glue, but that's all I know.

21 Q. So on one of the voice mails they asked how do you put, stick this stuff up  
22 and you answered by calling them back?

23 A. Um, I've, I was either talking to them during one of the, it's a voice mail or  
24 voice mail where they reached me or maybe it was when he drove up in my

1 driveway the second time. I don't recall which one. I remember the question,  
2 how do you put it up? I said you can buy spray glue or any glue will work.

3 Q. Ok and did you

4 A. It was a very brief conversation and there was no elaboration.

5 Q. Did you mention specifically 3M?

6 A. I don't know if I did or not.

7 Q. Did you mention that your company sold it?

8 A. I mentioned, we have a spray glue that you can use.

9 Q. Ok, now was there ever, however it may have happened, either voice mail,  
10 drive up, while you're raking or on the porch or any other contact, was there  
11 ever any discussion between you and any representative of the club, includ-  
12 ing of course especially the Derderians, about how the, um, foam product  
13 came. Like is it, um, if you dropped off a square of 8" to me, being unedu-  
14 cated about it, I might say (inaudible) how many of these 8" squares will I  
15 need to do my job, like tiles on a floor? How would they know how it was, first  
16 of all, how did it come? Did it come in any 8" squares or some other way?

17 A. Well, if you want to know how it comes, um, it originally comes, most of the  
18 time, from a foam factory that manufactures it and it comes in buns. A bun is  
19 a large block of foam like a small square automobile about that size or a large  
20 refrigerator.

21 Q. Ok

22 A. That's a bun. That's how American Foam would get it. Um, but nobody ever  
23 asked me anything like that at all, or the Derderians or The Station or the  
24 management.

1 Q. Ok

2 A. That conversation never happened with me.

3 Q. Was the piece that you dropped off to the Derderians like this one, Grand  
4 Jury #32, um, flat on all sides?

5 A. I don't recall it. I'm not positive.

6 Q. And this one, as you can see, is split and convoluted, right? Do you know  
7 whether you dropped off a convoluted piece or not?

8 A. I'm not positive.

9 Q. Did you have any discussion with the Derderians about the convolution of the  
10 foam?

11 A. No

12 Q. Now, ah, after your company, American Foam, got the big refrigerator or car  
13 size blocks of the stuff, um, how did you then sell it to customers that way and  
14 expect them to cut it up as they might or how did that happen?

15 A. Well, I, um, I sold packaging foam. Um, and I primarily, that's about all I sold.  
16 Ninety-Nine percent or more of my sales were to public corporations or other  
17 packaging companies that are in the packaging industry and they would  
18 sometimes send a blueprint in or they would (inaudible) sometimes give me a  
19 sample. Like this pen say, I want this pen protected, stabilized and inside a  
20 box and we'd have to design a package or it could be a little computer piece  
21 or a piece of jewelry or whatever and, and we would go through a process of  
22 designing them a sample, showing them the sample. They would change it,  
23 adjust it, pick out a color. Sometimes we would make several samples for  
24 them. Um, we would price it out at some point in time or re-price it out. We

1 would often make a tool, sometimes a sample tool, go to a production tool  
2 and then they would order 25,000 pieces of foam or we wouldn't get the order  
3 and this was, ah, just (inaudible)

4 Q. Sir were you a, um, a designer, so to speak, in addition to being a salesman?

5 A. I'm more designer than salesman but it's hand in hand. You know, ah, my  
6 sales, my real description is, is I become a packaging designer and I sell  
7 foam interiors of boxes. That's what I did for a living.

8 Q. So, if I understand you right, based on your example, if somebody came to  
9 you and said I want, I need a little box cradle for this pen, you'd design the lit-  
10 tle piece with the indentation for the pen and once you had negotiated

11 A. Right

12 Q. an agreed upon, ah, sample or model then you pump out a jillion of these  
13 things that size?

14 A. Right, this is the factory

15 Q. You'd actually send them?

16 A. The factory would do that, right.

17 Q. Ok, um, wh, did, ah, in the very small percentage of your business that  
18 wasn't, um, packaging, what was that? What other business was there?

19 A. Ah, it's odds and ends, like I don't know.

20 Q. What would an odd and end (inaudible)

21 A. I could give you maybe, I mean, there's odds and ends. I'm trying to think of  
22 an odds and ends situation. Um,

23 Q. Do you remember, ah, you and I have met before today and do you remem-  
24 ber telling me and others in an interview about, ah, a possible application for

1 personal use like someone's kid in their basement wants to play the drums

2 but not want to drive mom and dad crazy. Is that, is that an example?

3 A. Well not really because

4 Q. Ok give me one then?

5 A. Well, I'll explain on that one if you'd like.

6 Q. Ok sure.

7 A. Um, what that one is, is we had a wholesale retail division of our company,  
8 which I did not get involved in. Um, ah, and people would come there and  
9 they would buy things like you just spoke of and they could buy cash and  
10 carry type right out the back door. And upholsterers would buy a little bit of  
11 foam or they'd buy foam for some, for a loud situation if they wanted to. But I  
12 didn't get involved in that. If I did receive that phonecall I would just send,  
13 send it downstairs to that division. Ah, so that's what that was, um, people  
14 who come off the street and buy foam. Ah, an odd use of foam, um, so much  
15 of mine was dealt with around a case or a piece of foam or sheets or protec-  
16 tion or wrapping things or if you were going to ship a piece of crystal and they  
17 didn't want it to break, they'd wrap it up and they'd want a piece of foam sheet  
18 to wrap. But these are all packaging. I'm trying to think of a non-packaging.

19 Q. Well, what I guess

20 A. If I think long enough I'll come up with (inaudible)

21 Q. Well, switching topics slightly, but, ah, the point I'm trying to get at, you said  
22 that when they came to visit you on your porch, one of your suggestions, in  
23 addition to the interior wall and the curtains was, why don't you just put, I sell  
24 foam. Put foam up on that wall that separates your club from me?

1 A. Correct

2 Q. What did you have in mind in your own brain, whether you talked about it or  
3 not, what did you expect to sell them, to, to, have them, if they had asked? If  
4 they had asked, what were you going to tell them?

5 A. Well they didn't ask but, ah, if they asked, asked, and this was on a Saturday  
6 afternoon. I was in my jeans and shirt or whatever, but, ah, had they had  
7 asked and I wish they had, um, like I said, there were different levels of  
8 soundproofing foams and there, there's some soundproof a little better than  
9 others. Some are flame retardant. Some are very flame retardant and  
10 there's different items on the market that my company can buy. We had a  
11 small inventory of

12 Q. Thank you for that and I'll explore it more in a minute. What I'm talking about  
13 is just how, what they would get. Do they get the refrigerator block and  
14 they're on their own to figure out how to cut it up and put it up on the wall?  
15 Do you cut it up and sell it for them? How would you have advised them, re-  
16 gardless of the grade or the fire-retardant issue, just what are they getting?

17 A. Well, all these things you have to discuss but what they're getting is, they  
18 have to say to me, ok I have, they have to tell me something or I have to say  
19 well how much do you want? Like do you want enough for this wall? Do you  
20 want enough for that suitcase?

21 Q. Ok, well, in this case you told them that your idea was that they would want  
22 enough for the wall.

23 A. I said

1 Q. Without talking about the dimensions of the wall, it's just put it up, put it up in  
2 the wall that's between me and you.

3 A. No, I just said. I never said they could put it on a wall. I just said they could  
4 buy foam for soundproofing.

5 Q. Ok

6 A. The wall was a false wall on my side of the building. They could buy foam for  
7 soundproofing and to improve the sound situation. That's all I told them.  
8 There was no reaction.

9 Q. Regardless of the density of foam or the, um, whether it's fire-retardant or not,  
10 if I wanted to put up soundproofing foam on this wall right here, what, what  
11 dimensions of the product would you sell me?

12 A. (Inaudible)

13 Q. What size sheets, little blocks, big blocks?

14 A. You would have to say, ah, Barry, I have a wall that's eight feet tall by twenty-  
15 two feet long.

16 Q. And you'd cut me one piece to cover the whole thing?

17 A. And I want to cover that.

18 Q. Ok

19 A. And Ok I would say, well, ah, we'll cut it out of a bun.

20 Q. Ok

21 A. And the bun is so many inches by so many inches

22 Q. And

23 A. And, and what I would do is I would write the dimensions this guy wants to  
24 buy, oh, so many square feet of foam. Let's say that's two hundred square

1 feet of foam. I'd buy two hundred square feet of foam. I would give it to my  
2 estimating department. I did no pricing.

3 Q. Were the buns about the same size as each other when they

4 A. All different size buns.

5 Q. Ok

6 A. Depending on the manufacturer or the type of foam and so on.

7 Q. If I wanted to soundproof a place and asked you that question about here  
8 would you tell me to get a, um, convoluted foam or a flat foam or wouldn't it  
9 matter?

10 A. Either one would have helped. The industry seems to use the convoluted  
11 and I'm not a, I'm not an expert but I think the conv, I think the convoluted  
12 does a better job and most people use that.

13 Q. And since you don't, didn't specialize in that kind of foam, is it fair to say you  
14 don't know why the convoluted does better than the flat?

15 A. I can only think that, um, because of all the, the dimples, you have that piece  
16 of foam please?

17 Q. Yup, #32 again.

18 A. I think because, ah, I think when sound comes into a piece of foam it'll hit in  
19 here and these, this foam is open celled so the sound will go into the foam  
20 just like it would go into a piece of carpet and tend to deaden, where as op-  
21 posed to this here, it doesn't have as much surface so I think this has more  
22 surface. This is why you see this stuff more commonly used like in studios  
23 and so on.

1 Q. Ok, if I understand your testimony correctly, no such conversation ever oc-  
2 curred between you and the nightclub representatives including the Derderi-  
3 ans?

4 A. Correct

5 Q. Ok and no conversation occurred between you and the Derderians about the  
6 dimensions of the job they had in mind?

7 A. Correct

8 Q. Ok, and after you dropped off the foam, what's the next thing you remember?

9 A. Well, a while went by and I wasn't really thinking much about the foam any-  
10 ways. It wasn't the subject that it is here today. I sell foam everyday, um, but  
11 I remember at the end of the month or the beginning of the next month, which  
12 would be the end of June, beginning of July, July 4<sup>th</sup>, July 4<sup>th</sup>, I get a commis-  
13 sion report and I noticed on the report that that there was a sale there and I  
14 was startled because I know my customers. I've been doing this a long time  
15 and there was a new name there, The Station nightclub and I said when did  
16 that happen? When did that sale take place? And I said humph, but I have a  
17 lot of customers and a list of customers quite long and I go humph and I keep  
18 going. I have hundreds of customers and that's all I did. I went

19 Q. You couldn't have been too surprised though, I mean, you, you, they came  
20 up, you wanted the sound to go down and they said give me some sugges-  
21 tions. You say. Well, they didn't ask for suggestions. You gave them to him.  
22 One of them was foam. You said you sold it. The fact that they bought some  
23 from you doesn't, it can't be that shocking, hunh?

24 A. I wasn't shocking, I was surprised they bought it. Cause you don't forget, um,

1 Q. So, what you're trying to communicate is you didn't know until you got the  
2 commission sheet that they had actually bought it and followed through?

3 A. Right because if we're talking about it for a long time, right here. Um, there  
4 was, there was any, there was little or no discussion with the Derderians on  
5 the phone.

6 Q. Ok

7 A. And usually when I sell foam I have discussions.

8 Q. Now after you got the notice from reviewing your own commissions, by the  
9 way what, do you remember what the commission was?

10 A. Yeah, it was small. It's \$15 to \$20.

11 Q. Ok, now I assume the commission is a percentage of the purchase price, cor-  
12 rect?

13 A. Right

14 Q. So could you estimate backwards if, do you get to see on your commission  
15 report what size sale your commission relates to or do you have to figure that  
16 out on your own?

17 A. I figure it out on my own. I get about 3% commission on, on a sale like that  
18 and that's what they gave me.

19 Q. So about how much foam would they have purchased for you to get \$15?

20 A. Well that's around \$500 or \$600, around \$500 worth of foam so.

21 Q. Ok

22 A. But the commission might have been \$18 but I, I, it's not a lot of money either  
23 way.

1 Q. After you got the notice from the commission report that you had, that a sale  
2 had been made and you had been credited the commission, ah, did you have  
3 any contact with the nightclub owners after that about foam?

4 A. The only contact I had was I started getting, um, voice mails again and it was  
5 from one of the Derderians I believe.

6 Q. Do you know which one?

7 A. No and ah, they called and they, again they were trying to say Barry, is it qui-  
8 eter? Why don't you come down here and see what I've done and I believe  
9 that phonecall, I received that more than once. I don't know how many times  
10 and they called once, twice, three times whatever and I says ok, ah, I'll go  
11 down and see it.

12 Q. Talking to someone or to yourself?

13 A. I was talking to myself.

14 Q. Ok

15 A. They said Barry, come see what we've done with the nightclub.

16 Q. How long after the, ah, May of 2000 was this that you're being asked to come  
17 down?

18 A. Well, I'm guessing it's like sometime in July, the end of July.

19 Q. Did you follow-up and go down to the club?

20 A. Well they called and I wanted to stop them from calling so I went down to ap-  
21 pease them and I went inside the club. I walked in. I didn't

22 Q. Before you, before you get into that, the phone message you received, did it  
23 say anymore than come see what we've done?

24 A. That's all I recall.

WARNER TAPE 70 A of 114 Side A (475-623) Side B (623-773) TAPE 71 Side A (773-895) Side B (895-1018) TAPE 72 Side A (1018-1133) Side B (1133-1240) SWGJ 2003-07 SW 1691 Heard June 4, 2003

1 Q. Ok

2 A. I, I don't know, come see what we've done, come see what we've done. I

3 don't recall that. (inaudible)

4 Q. Ok so, did they know you were coming when you went?

5 A. No

6 Q. Describe what happened when you did go.

7 **SIDE B OF TAPE #71 (895-1018)**

8

9 A. Um, I walked in the club and there were five to ten people maybe in the whole  
10 club. I took a right on the dancefloor I could see the foam. I went across the  
11 dancefloor. I walked up, looked at the foam. I barely stopped. I touched it  
12 looked down. Somebody yelled at me, get off the stage cause I was a  
13 stranger.

14 Q. What time of day was this?

15 A. I don't even recall what time of day it was for sure.

16 Q. Was there a crowd there as if there was going to be entertainment?

17 A. There was not a crowd there.

18 Q. Ok

19 A. There was a limited amount of people there. The Derderians were not there.

20 Q. Can I impose upon you again to, um, as you did earlier this morning to go up  
21 to the diagram and show us, show the Jurors, um, by tracing your path and  
22 show us where you saw foam if you did? Mr. Warner if you could keep your  
23 voice up so the microphones can pick you up for the recorder?

1 A. Ok, um, let's see now. Dancefloor, drummer, (inaudible), that's the drummer  
2 right? This I believe is the stage. Um, I come in these doors. I recall them  
3 being something like this here. I recall going to this side, like there was an  
4 area to get up here, like a little step or something. I went up here. I was  
5 somewhere around in here. I remember touching around in here, getting  
6 yelled at by somebody. I had my back to the person who yelled at me.

7 Q. Now where did you recall seeing foam?

8 A. Well I believe I saw foam in here and on the sides, but I, that's all I recall. I  
9 didn't like calculate anything. I wasn't thinking like how much foam they  
10 bought or anything. I just looked at the foam, touched it. I touched in here  
11 and someone yelled at me and I walked out here.

12 Q. Ok the place you're point, just for the record, the place you're pointing at  
13 where you think you touched is?

14 A. Right around in this area

15 Q. It would be the cor, the corner of the drummer alcove furthest away from  
16 Cowesett Avenue, where the drummer alcove meets the back wall.

17 A. I remember going like this pattern, like this here and I stopped here, touched  
18 the foam

19 Q. Ok

20 A. In the foam business you touch foam all the time.

21 Q. How about that wall that would be, I guess, according to the compass on the  
22 diagram, the south wall, um, actually, um

23 A. Is that it?

24 Q. that exterior wall right there where you have your finger now

1 A. Right

2 Q. Do you recall whether or not you observed or touched foam there?

3 A. No I do not recall if there was foam there, um,

4 Q. Now do you recall anything about, ah, the foam that you did touch, how it  
5 looked, how it felt? And you can, I think you can come back to your seat now  
6 too if you want?

7 A. Ok, alright, um, all I recall is, ah, um, I touched the foam with the back of my  
8 hand or the front of my hand whatever. I remember feeling some hard foam,  
9 which is not polyurethane foam. Somebody stuffed it there for whatever rea-  
10 son. I don't even know why but that's up to them.

11 Q. Was the foam you saw convoluted?

12 A. Yes

13 Q. What color was it?

14 A. It was charcoal. I, I congo, I touched the convoluted foam. I felt out some  
15 hard foam. It took me about two seconds to do this. It was very quick and  
16 then I, I peer, I looked in the drum, drum riser area and it appeared to be an  
17 older shade of foam. Foam tends to fade with time. It gets grey and dingyish  
18 and the other foam looked fairly new and so.

19 Q. I'm sorry to have dragged you back to your seat but where was the newer  
20 stuff and where was the faded stuff?

21 A. I was in this area and, ah, I recall a greyish foam in here, older foam in this  
22 area.

23 Q. So inside the wall, on the walls of drummer, which is labeled as the drummer  
24 alcove is the faded stuff?

1 A. That's where I believe I saw old grey foam here and I just moved quick and  
2 from looking at foam all these years it would appear to be older and dingyer  
3 like foam gets and then I saw darker, newer foam, ah, and the newer foam  
4 was other places, it was aroundish most like on the sides and the top what-  
5 ever, but I didn't.

6 Q. On the west wall of the building?

7 A. All I know is there was foam here. I could feel like there was foam around me  
8 and I knew there was foam in there. I didn't calculate it (inaudible) a lot more  
9 foam. I didn't design the job and I wasn't, you know, particular of all the  
10 things that were going on.

11 Q. Was both the old and the new, or what you thought was old and new all con-  
12 voluted?

13 A. Yes it was all convoluted except for that little square of foam I felt over in  
14 here, which was odd foam. (inaudible) language it's probably not even of any  
15 consequence.

16 Q. Ok, and that was just a little piece. Was that hard stuff?

17 A. Yes some of that stuff, the hard piece of foam, the size of a book it felt like or  
18 whatever in there. Maybe a previous owner had done a patch job. I'm just  
19 guessing.

20 Q. What color was that foam?

21 A. I don't remember what color it was.

22 Q. Ok

23 A. It was dark in this area.

1 Q. Thanks. Now when you went in beside being advised to get off the stage, did  
2 you have any interaction with anyone in the club that visit?

3 A. No, ah, I may have asked for the Derderians cause they weren't there. I  
4 looked around and I left quickly.

5 Q. And how long did you spend in the club all together on that visit?

6 A. Twenty seconds, thirty seconds.

7 Q. After that, did you have any conversation with the Derderians to confirm that  
8 you had taken them up on their offer to come see the place?

9 A. No

10 Q. To this, to this day have you ever confirmed with them that you went to see  
11 the place?

12 A. I don't recall ever telling them I saw it or, or anything.

13 Q. Now I think you've answered this by suggesting that your first notice that the  
14 sale had occurred was when you got the commission sheet, but, ah, I'll try it  
15 anyway. After the drop-off of the sample to the Derderians, did you ever hear  
16 from anyone in your company in the estimating department or anywhere else,  
17 um, about a prospective purchase by The Station?

18 A. Um, I don't recall it. We, um, do this on a routine regular basis. We quote  
19 hundreds of jobs every week but I do not recall doing it.

20 Q. Ok. Do you have the exhibits from this morning? Mr. Warner I'm gonna  
21 show you what's been marked Grand Jury #33. It's two pages and it's a fax  
22 cover sheet from Investors Service Group and a letter directed to you, to your  
23 attention dated June 9<sup>th</sup>, 2000. Did you see those earlier today?

24 A. Somebody showed them to me earlier today.

1 Q. Had you ever seen them before today?

2 A. I do not recall seeing those pieces of paper?

3 Q. Ok, now the second page, the letter from Michael Derderian says attention  
4 Barry Warner to American Foam Corporation. Dear Barry, please accept our  
5 order for 25 blocks of sound foam. Do you what a bl, um, what that letter  
6 would be referring to in, if it's asking for a block of soundfoam?

7 A. No there's no standard block. It's cut to size generally speaking. We carried  
8 some sheets of foam, um, in a stock situation cause convoluted foam is a  
9 common foam, um.

10 Q. Now what would a sheet of convoluted common foam consists of? Would  
11 this, would the two halves together constitute a sheet?

12 A. It's a block.

13 Q. This is a block?

14 A. Take that apart and it would be a sheet.

15 Q. So this is one block, two sheets?

16 A. Correct

17 Q. Correct?

18 A. Positive.

19 Q. Ok, now in a standard, I realize you've made it clear that there are different  
20 kinds of foam, different sizes, etc., but if there's a standard size block, what is  
21 it, roughly?

22 A. 6' X 39" I believe is the standard we used to keep on the floor.

23 Q. 39" X 72"?

1 A. I think so. That's a standard size number and, and ah, but it's a, I'd say a  
2 semi-standard product, you know. It's not like this cup is the standard size  
3 cup. This cup, that convoluted should be made a little shorter, a little smaller.  
4 It can be cut to different sizes.

5 Q. Now, I don't know if you can relate to this, cause you worked with foam all  
6 these years and I haven't, but I don't think until you told me what you just did  
7 that I would have known that this was a block and these two were sheets.

8 A. Very good, excellent.

9 Q. But reading this letter, Michael Derderian whose knowledge of foam I'm un-  
10 familiar with, um, has written to you asking for 25 blocks.

11 A. Correct

12 Q. My question is does that help refresh your memory about whether you would  
13 have had conversations with him about what a block is, what a sheet is. Oth-  
14 erwise how would he know how to order 25 blocks?

15 A. He must have had a conversation with somebody other than me.

16 Q. Ok so, bringing that up, you're, are you confident that you didn't have a con-  
17 versation? I mean are, are you, is it

18 A. I'm confident.

19 Q. Ok. Is it that you don't remember it and may have had a conversation or  
20 you're positive you didn't have such a conversation?

21 A. Um, I don't remember having a conversation with him and I wouldn't have  
22 been surprised at my commission. If I had had the conversation, if I had sat  
23 down with him and say, ok you may need so many blocks, here's the price,  
24 blah, blah, blah fax me

1 Q. Ok so you don't remember the conversation that you're concluding that be-  
2 cause you do remember being surprised at the commission and that was way  
3 back then

4 A. Right

5 Q. when you got the commission that you don't think you had such a conversa-  
6 tion?

7 A. I don't believe I had the conversation. I don't believe I talked to anybody.

8 Q. Um, have you ever seen the, um, an actual purchase order or order form for  
9 the foam that was purchased by The Station?

10 A. Right, it was shown to me.

11 Q. Have you seen this before what's been marked Grand Jury #34?

12 A. Um, hum.

13 Q. Do you recognize the handwriting on that sheet?

14 A. It's not my handwriting.

15 Q. Do you know Desiree?

16 A. Yes I know Desiree.

17 Q. Did you ever, from all your years at the company come to recognize Desiree's  
18 handwriting?

19 A. Ah, no.

20 Q. Ok, do you recognize whose handwriting that is, if not yours?

21 A. It's not my handwriting. I'm not positive. It looks like there's more than one  
22 persons' handwriting here.

23 Q. Do you recognize any of it?

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1 A. I recognize the entire purchase order. Um, if I study each corner but I do not  
2 recognize who wrote these. You'd have to ask them.

3 Q. Ok, now this purchase order talks about the purchase of 25 convoluted cer-  
4 tain dimensions, 37" X 85" standard blocks CHAR HD. Do you know what  
5 HD means?

6 A. HD means high-density foam.

7 Q. Ok

8 A. 1.2 foam is not high-density foam.

9 Q. Ok, char HD 1.2 convoluted ether, no dye. Do you remember ever having a  
10 conversation with anyone about this particular order?

11 A. I do not.

12 Q. Ok, um, based on your knowledge of, um, foam sales and design and your  
13 trip to the nightclub after you were asked to come down and see what they'd  
14 done, did you see what, did you see this kind of foam up in the club?

15 A. Um, I saw charcoal grey convoluted foam. I'm positive of that. That's all I  
16 know. Looking at the foam, I couldn't tell if there was anything special done  
17 to it.

18 Q. Ok

19 A. Cause, ah, foam is pretty generic when you look at it.

20 Q. Showing you what's been marked Grand Jury #37, which is general letter with  
21 American Foam's heading, it says, Dear Customer. It doesn't and it's not  
22 signed. Do you recognize? Have you ever seen ah, a form like that before?

23 A. Yes this is an MSDS safety sheet.

24 Q. Ok is that the safety sheet itself or is that a cover sheet for the safety sheet?

- 1 A. This is ah, somebody took this sheet and, ah, they took our letterhead, put it  
2 on the top of it and copied it onto it.
- 3 Q. Ok
- 4 A. That's what it appears like. That's from what I can see.
- 5 Q. Now did you, um, did you ever use a sheet like this in your practice as a  
6 salesman for American Foam?
- 7 A. Occasionally I did. Um.
- 8 Q. What would dictate whether you used it or not?
- 9 A. The company would ask me, please send your MSDS safety sheet.
- 10 Q. The company you were selling to?
- 11 A. The company that would call me. Usually there are more professional com-  
12 panies. They're professional purchasing agents and they would call up and  
13 say, ah, I'm gonna buy foam from you or I'm thinking of it. I want your MSDS  
14 sheet and you would have one of the girls do it or you would do it yourself  
15 and they would fax it off to the person and that would be it.
- 16 Q. Ok, so this would not ordinarily accompany your filling the order?
- 17 A. Correct (inaudible)
- 18 Q. Unless it was asked for?
- 19 A. It would usually happen when it was asked for.
- 20 Q. Ok, um, showing you Grand Jury #34, which looks in many respects like  
21 Grand Jury, oops, do they both say #34?
- 22 Q. **Juror** – Yeah there's three.

1 Q. There's three sheets. Oh, I'm sorry, yeah another portion of the three sheets  
2 of Grand Jury #34. Do you know, recognize what those? What's the differ-  
3 ence between these two documents?

4 A. It says 37" X 85". 37" X 85". It's backwards right?

5 Q. Yeah

6 A. They've written it backwards, for whatever reason, cause I thought it was 85"  
7 or 35". It's 35" X, it's 37" X 85", and so it's written backwards.

8 Q. By 2.5?

9 A. 2-1/2" thick, 2-1/2" thick, that's the block.

10 Q. Is this 2-1/2" thick when it's together in sheets like that? I mean in blocks like  
11 that?

12 A. This is 2-1/2, 2-3/4" thick to my guess. I don't have a ruler.

13 Q. I mean #32 we looked at. Rather than get into the substance of the differ-  
14 ence between these two look-alike similar exhibits of #34, my question is do  
15 you recognize them as different parts of the ordering process that American  
16 Foam used?

17 A. What they may be is, I didn't bother with the paperwork much. The girls took  
18 care of that, but one of

19 Q. For any, for any sale? I know you didn't, you don't have a memory of this  
20 sale but you never got involved in the paperwork?

21 A. We had girls that would do each part of the paperwork, you know. One girl  
22 took care of billing. One girl took care of the invoices. One girl took care of  
23 this. I would get involved but only if there was a special problem or question.

24 Q. Was Desiree one of the employees who did that?

1 A. Yes

2 Q. Ok

3 A. Ah, well one of these might be the purchase order that went to the factory and  
4 one of these is an invoice, which is a billing item ok, and this might have been  
5 the item that went to the factory so the production people would have, know  
6 what they want and it would go out into the factory and the production man-  
7 ager, I believe, would have this, and this probably as a work, it's a work order.  
8 Ok?

9 Q. Ok

10 A. And then this here is an invoice saying this business took place, um, it may  
11 be sent to the customer or we wait to see if it was properly paid, etc., etc.

12 Q. Ok and when you say the factory, you mean, American Foam in Johnston?

13 A. Right

14 Q. Cause although you didn't make the foam there, you did do some cutting and  
15 designing that we've talked about, right?

16 A. That's what we do, yes. We were a converter.

17 Q. Now you started to mention, um, what I had asked you before about, um, if  
18 the Derderians had asked, you ran through a list of things, including varying  
19 densities. You talked about flame-retardant, right?

20 A. Um, hum.

21 Q. Did, in the Spring of 2000, American Foam offer a flame-retardant product?

22 A. My best answer is I imagine we had it in inventory or we could buy it from  
23 somebody else.

1 Q. Ok, did your business of 26 years to, for packaging ever involve requests for  
2 flame retardant material?

3 A. Rarely, very rarely but occasionally it did.

4 Q. Can you remember an instance where it would? I'm trying to think of an ex-  
5 ample of where, why somebody using this stuff for packaging would care  
6 about or ask you about flame retardancy?

7 A. Well, occasionally people bought something other than packaging, but, um,  
8 usually packaging was not considered to be flame-retardant. If somebody  
9 faxed, ah, sent in a blueprint and it said, we want a price quote on 10 thou-  
10 sand pieces of fire-retardant foam, well we would use fire-retardant foam. Or  
11 if someone specifically talked to you in depth and say hey I have a house or a  
12 building or blah, blah, blah and I want fire-retardant foam there, blah, blah,  
13 blah and this and that and so then you would supply them or quote them with  
14 fire-retardant foam. That was a very, very small part of our business. I have  
15 trouble remembering, ah, doing much business at all like that.

16 Q. Do you know whether there was, um, were there grades even within the fire-  
17 retardant options?

18 A. There are, there are grades on the market in fire-retardancy foams.

19 Q. Were, were there in 2000?

20 A. At American Foam?

21 Q. Anywhere.

22 A. Oh yes, there, there have always been grades.

23 Q. And would American Foam, presumably, have access to them, if not, have  
24 them in stock?

1 A. Well, to my knowledge, we might carry one grade because the business was  
2 not a lot of business.

3 Q. And would that grade of, um, fire-retardant foam otherwise be, um, 1.2 den-  
4 sity, um, ether polyurethane foam just with the fire-retardant quality to it?

5 A. It could well be but I'm not positive. It could have been a, a 1.5, a 1.2.  
6 They're all very similar. I'm not positive.

7 Q. Ok but the, my point is that when you, um, when the foam becomes fire-  
8 tardant, it's not a completely different animal. It looks just like

9 A. Right

10 Q. the stuff you've identified several times in (inaudible).

11 A. It's very difficult to tell it apart to be sure.

12 Q. Now, um, you, you walked into the nightclub. You knew that the, that the  
13 nightclub had been, not only a nightclub when you walked in, but a nightclub  
14 before and a nightclub before that and a restaurant before that and a restau-  
15 rant before that. Is it fair to say there were people smoking when you walked  
16 in?

17 A. I didn't notice.

18 Q. Ok, um, when you told the Derderians about the, um, foam, when you were  
19 on your porch, you knew, when you were suggesting to them, here are some  
20 soundproofing or sound-deadening options, false wall, curtains, foam. I sell  
21 foam. Did, did you tell them about there being a fire-retardant option?

22 A. Um, I'm trying to recall the conversation. All I know it says there are sound-  
23 proofing foams available and you have different options available and I re-  
24 member them like waiting for me to say. I'm waiting for them to say, but what

1 are our options. You know, I'm waiting for them to come back cause they  
2 were carrying the conversation and they never came back. Like, at that point,  
3 I didn't know if they were going to do anything at all. You don't understand,  
4 this was not like, this was like, I was saying do this, do this, or do this, what  
5 do you think? And they went on, the next conversation happened, they were  
6 back to um, we're gonna do a lot of this stuff on the inside. We're gonna do  
7 all this. They were pro-active. They were gonna do what they wanted to do.  
8 They weren't much interested in what I was saying so the conversation just  
9 stopped.

10 Q. In other words, when you, when you said you've got, you got your false wall,  
11 you got your curtain option and you got options in foam.

12 A. Right

13 Q. It never got beyond that?

14 A. I may have elaborated and say well there's different sound-proofing that's a  
15 little better or a little worse, a little of this, that's it. It was like very limited.  
16 They never jumped in. There was never any interaction. They went back to,  
17 they were pro-active. They were excited about doing what they were gonna  
18 do to the club and it was their club. And I said Ok. If you don't want me. I  
19 mean, I felt, do you want to know what I think? I felt they weren't interested in  
20 what I was saying.

21 Q. At that time on your porch?

22 A. At that time on my porch, which the major conversation that I had.

23 Q. Are there any questions from the Jurors?

1 Q. I have some questions. Sir, you described the foam as open-cell foam and if  
2 you could, not being in the industry, could you use this, ah, exhibit, which  
3 we've identified as Grand Jury #32 to elaborate on what you mean by open-  
4 cell foam?

5 A. Um, this is open-cell foam. The cells are very tiny. There might be 80 to 110  
6 cells per square inch here.

7 Q. What is a cell?

8 A. A cell's a cell, um, just this little tiny cells, the tiny cell like, almost micro-  
9 scopic.

10 Q. An opening, is that what you mean?

11 A. Yes. If you look at this you can see cells. You gotta look at this carefully,  
12 slowly, just like little cells if you look at it. See those tiny cells?

13 Q. They look like little holes.

14 A. Yeah, those are cells.

15 Q. Ok

16 A. Ok? Foam when it's manufactured, um, it's in a big trough. They put in  
17 chemicals, they apply heat and water, or heat and air and it rises up a lot like  
18 a loaf of bread.

19 Q. Ok

20 A. Ok? And when you put air in it, the air makes the chemicals bigger and the  
21 item becomes a solid unit and there's a lot of air in this and that's where you  
22 get your cell structure so this is very commonly known as open-cell foam.

23 Q. The open-cells are both on the nipple side of it and the flat side of it, correct?

24 A. Right, ok.

1 Q. And open-cells, meaning that things can just simply lodge themselves in  
2 there. It's open, to, to retaining things, correct?

3 A. That's exactly what it means.

4 Q. Ok, now and there's closed foam too, right?

5 A. There's close-cell foam, um, I rarely, rarely ever got involved in close-cell  
6 foam. It's other foam that we use and I'm not even positive why not. I, I  
7 didn't have, we had very little demand for close-cell foam in a urethane foam.  
8 Now just, just so you understand, this is the real a, b, c's of foams, so, over  
9 here, there are like styrofoam. That's a close-cell foam and there's other hard  
10 foams that are close-cell foams like gym mats where they look almost like  
11 plastic. That's close-cell foam. This is open-cell foam.

12 Q. Ok now you have described for us very, very briefly because your experience  
13 in the club with the foam was brief. But I wanted to see if these photographs  
14 comportant with your recollection of the stage area. This is a Statewide  
15 Grand Jury #9. I'd like you to take a look at that. Do you recognize that pho-  
16 tograph?

17 A. Well, I can, ah, I only assume it's the inside of the club. That's all I can do.

18 Q. Ok

19 A. And it looks like grey foam on the back there and it looks like they've pieced it  
20 together and, ah, I, I, I, I'm guessing is the drum box over here. Is that the  
21 drum riser there? Like where, I don't see the drummer riser.

22 Q. Ok, let me use another photo, no problem. This is Statewide Grand Jury #7.  
23 Does that help you out at all?

1 A. Ok, well, this looks like this might be a drum box but I don't see, to me in my  
2 mind the drum box went back a ways just like it went back 3 to 6 feet, 3 to 8  
3 feet into like a little cube, like a square closet.

4 Q. Ok

5 A. I don't know. Is that happening here or just, am I not catching it? I only see a  
6 small lip there. See that?

7 Q. That's fine. Let me try another photo. Does this photo help? This is #10.

8 A. I can't make out. Maybe this is. I don't know if I'm looking into the drum,  
9 drum riser or not, but I can clearly, you know, I see the drum riser. I don't see  
10 that up here. It looks like, this looks like a flat wall to me.

11 Q. Ok

12 A. That's all I can tell you, I don't know if that goes in. I can't see that.

13 Q. That's fine. This is a similar photograph, perhaps with a greater clarity,  
14 Statewide #8.

15 A. Ok, this appears that the drummer is set back into what's called the drum  
16 riser area, cause this wall looks like it's forward. This wall looks like it's back  
17 a few feet or so and this looks like, ah, you know, the drum riser area.

18 Q. Ok so does that photo comport with your recollection of the club on that inci-  
19 dent when you went in?

20 A. Right

21 Q. Yes?

22 A. Yes I believe I was looking for it from this side. You know I was over here,  
23 which would and this one looking at it from the right-hand side.

1 Q. Ok and the foam, does that appear to be the convoluted foam that we've  
2 been talking about throughout the presentation?

3 A. Yes it appears convoluted.

4 Q. Ok, Mr. Daly?

5 **SIDE A OF TAPE #72 (1018-1133)**

6 Q. Mr. Warner, when, ah, you discussed the first meeting that you had with the  
7 Derderians where they arrived at your house when your son was present?

8 A. Un, hum.

9 Q. You said that the conversation ensued and they discussed with you some  
10 modifications they were going to make to the building, ah, to alleviate the  
11 noise and, for example, you said that there was a hole in the back and they  
12 said they were going to correct it, is that right?

13 A. I remember them saying that.

14 Q. Ok and you said that they, they also indicated they were going to do some-  
15 thing to the back of the building to help with the noise problem and then later,  
16 I think you said, my memory is that you said that they indicated they were go-  
17 ing to do this and that to the back of the building to help alleviate the noise.  
18 Do you recall any of the specifics about what they said they were going to do  
19 to the back of the building to help alleviate the noise?

20 A. No I don't. Um, I just remember them being very pro-active about we were  
21 going to do a good job and they had ideas and they were like, like, like people  
22 standing or sitting around a table and throwing up ideas, we should do this,  
23 we're gonna try to do this, we're gonna do this, but I don't remember the ex-  
24 act things that they said they were going to do.

1 Q. Ok, at any point in time during that conversation, um, or at any subsequent  
2 conversation that you had with the Derderians or during a subsequent con-  
3 versation that you had with the Derderians, did they ever offer you, um, tick-  
4 ets to a show, a concert, something to go out, ah, on a particular night where  
5 they thought there might be a show, which might cause, ah, some excessive  
6 noise?

7 A. They may have but, they may have but I don't recall or I wasn't interested,  
8 one or the other.

9 Q. You said that after the, ah, that first meeting with both brothers at the home,  
10 one of the two brothers drove up into the driveway and I think you said you  
11 were out doing yardwork, had a rake in your hand that day, is that right?

12 A. I believe so, correct.

13 Q. Ok um, you've indicated, ah, throughout your testimony you refer to the Der-  
14 derian brothers as they and then at times you'll say he, maybe referring to  
15 one of the Derderians, but I think it's become clear that you have a problem  
16 distinguishing between the two brothers, is that right?

17 A. I'm not positive who, which is which.

18 Q. Ok

19 A. I mean, I mean if you have them side by side I can guess but it's just a guess.

20 Q. Ok but in any event one of the two drove up in a motor vehicle while you were  
21 out in the yard, um, working and raking, is that fair to say?

22 A. One of them was in my yard yes.

23 Q. Do you recall the, um, the make of the motor vehicle they came up in?

24 A. No I don't.

1 Q. Do you, can you describe anything about it whether it was a sedan, SUV,  
2 wagon?

3 A. No I, I'm not a big car buff.

4 Q. Ok maybe you got the color of the car?

5 A. I'd be guessing so I don't want to say.

6 Q. Ok, in any event, ah, there follows, ah, after that first meeting and after the  
7 meeting in the driveway, there follows a series of phonecalls which you de-  
8 scribe as frequent phonecalls and often voice mails are left asking how  
9 they're doing with the noise, is that fair to say?

10 A. Correct

11 Q. Despite the fact that you may not be able to distinguish between the two, can  
12 you tell us whether the voice mails came from two different people or the  
13 phonecalls came from two different people or did they all come from one of  
14 the two?

15 A. I don't recall.

16 Q. After the first meeting, after the first meeting that you had with them, ah, with  
17 the two brothers together, do you notice any reduction in the noise coming  
18 from the club?

19 A. Um, sometime after the first meeting or I don't know if was two months or was  
20 it two weeks or four weeks later the club appeared to be quieter. I don't know  
21 if it's because of the foam or them just simply turning the music down, which I  
22 thought was the best approach of all but I don't know. It just seemed to be  
23 better. There was some improvement.

1 Q. Do you know, do you recall a particular night where you said, tonight is the  
2 night, it seems different?

3 A. No, just generally it was quieter.

4 Q. Ok, um, when you say generally, it's quieter and you slide your hand across  
5 implies that there was sort of a gradual reduction, um, in the noise. Was it an  
6 abrupt cut-off one day or was there a gradual reduction throughout a period of  
7 time?

8 A. No, um, I didn't monitor the noise that closely anyways. I just know like, um,  
9 it was a little quieter in general.

10 Q. After the first appearance by the two Derderian brothers at your home, did  
11 you ever contact the police in order to make a complaint about noise?

12 A. Um, I can't recall cause I called so many times over the ten year period that if  
13 I did call, I know I can state to say this to help you out that I got used to the  
14 noise after a while. You just do and I called so many times and I know the  
15 Derderians were a little quieter so in my mind, ah, I probably, I call less or  
16 maybe I didn't call. Um, especially in the first year or so, but I can't say for  
17 sure whether I called once, twice or a few times or never.

18 Q. After the appearance by the Derderians at your home that day did you ever,  
19 ah, return to the Town Council to make a complaint about the noise coming  
20 from the club?

21 A. Um, I returned to the Town Council with my father-in-law and around January  
22 of this Winter, January, December, January of this Winter.

23 Q. And what was the specific reason for going there?

1 A. Ah, my father-in-law said it was getting noisier and I agreed it was getting  
2 noisier for the past six months. We noticed the noise levels going up. Like,  
3 we didn't complain everytime we heard a noise but if we heard a lot of noise  
4 for weeks and, you know, it's like, you know, it's not like that. It's like it's get-  
5 ting noisier and noisier and we didn't complain everytime somebody hiccu-  
6 ped. So my father-in-law complained. I noticed it. I think one of my sons  
7 said something so I says well, before it gets worse like it really used to be,  
8 um, let's go down to a meeting so we did. My father-in-law wanted to go. My  
9 father-in-law is, doesn't usually do things like that. He'll sit and be abused  
10 almost, so to speak, before he would say anything.

11 Q. The gradual in noise that you referenced just now, um, you say that had, um,  
12 developed over a period of about six months. Would that push the beginning  
13 of that increase back sometime around the Summer of 2002?

14 A. Right

15 Q. And it increases up till December of 2002, January 2003 at which time you go  
16 back to the Town Council?

17 A. Yes we noticed for several months getting louder so we said well let's go to  
18 the Town Council and, you know, and my, ok my father-in-law was interested  
19 in doing this and he rarely was interested in doing things. He's elderly and so  
20 I says I'll go with you cause I don't want to have any noise come back like to  
21 extreme or louder levels like we have had from previous owners.

22 Q. Were the Derderians present that evening at the, either of the Derderians or  
23 both present that evening at the Town Council?

24 A. I don't recall seeing them.

1 Q. Did you speak with them, sometime between the increase in the noise and  
2 your appearance before the Town Council, did you speak with either of the  
3 brothers to address the problem that was developing?

4 A. No

5 Q. Did you, um, do you know whether there was notice to them that this issue  
6 was gonna be at the Town, heard by the Town Council?

7 A. Say that one again, I'm sorry.

8 Q. Do you know whether there was notice to the Derderians that this issue was  
9 gonna be addressed by the Town Council in either December or January?

10 A. My issue of the noise?

11 Q. Yes

12 A. I don't think anybody knew about us coming down there.

13 Q. Was this, is it, I'm not familiar with the West Warwick Town Council Meetings.  
14 Is this sort of an open forum where you can just stand and raise your issue  
15 before the Town Council or does it have to be noticed before hand or?

16 A. I think a little bit of both. Ah, my father-in-law said he knows better. I think  
17 they meet like a Tuesday or Thursday night or whatever, um, and you, and  
18 ah, it depends what you want to do and he says well they meet every Tues-  
19 day night I think at 7 o'clock at The Town Hall. And so we went down there.  
20 We were down there, we went down there at quarter of seven, whenever, and  
21 we sat down and, ah, I think if it's a formal complaint, like I did one time, you  
22 have to write them a letter, but um, but I'm not a regular down there and our  
23 plan was to sit there and hopefully stand up at some point towards the end of

1 the meeting and say it's getting louder down there, can we have some con-  
2 trol?

3 Q. Is that, is that how it happened?

4 A. No, they, they ah, they had an agenda and something went wrong and there  
5 was, The Station nightclub was an issue about, something was going on with  
6 The Station nightclub. Whether is was a license transfer or there was some-  
7 thing else or whatever and that's what brought us down there and we said  
8 well, it's a good time to go down and hopefully we can, ah, be heard. The is-  
9 sue got cancelled, ah, forty-five minutes into the meeting so we walked out of  
10 the meeting.

11 Q. How did you know that there was going to be an issue involving The Station  
12 nightclub to be heard at that Town Council Meeting?

13 A. I don't know why I found out but I think it was my father-in-law that told me.

14 Q. The, um, the noise that was developing for six months prior to your appear-  
15 ance before the Town Council, can you trace it to any particular source?

16 A. The noise? No, like noises from The Station came from, ah, the music, spe-  
17 cifically a lot of times the base, guitar base drum or just general a lousy noise  
18 or people partying after hours and way after hours.

19 Q. The six-month escalation that you refer to, was there any particular source for  
20 that noise?

21 A. No

22 Q. Ok at any point in time did you, um, during those six months, as this is devel-  
23 oping, did you walk into the parking lot, um, of the club just to sorta listen and  
24 get a feel for the problem and try to figure out what it was?

1 A. No

2 Q. From your property could you see, ah, could you see through the trees and  
3 the fence to The Station nightclub?

4 A. Depending on the time of the year. You can see it better in the Winter when  
5 the leaves fall but I have, ah, pine trees that block a lot of it in the Summer-  
6 time. It's almost always blocked. It's like 95% blocked.

7 Q. After the issue developed in, ah, the Fall and Winter of 2002, did you ever go  
8 outside and, and in your yard and just take a look over there and try to see if  
9 there was any particular problem?

10 A. No I was used to noise coming from that place anyways so.

11 Q. Ok let me ask you a couple of questions about the, the, ah, sample of the  
12 foam that you gave to the Derderians. You indicated, ah, that, that American  
13 Foam sells many kinds of foam and, ah, including foam in different colors,  
14 white and grey, is that right?

15 A. Correct

16 Q. Did you communicate to the Derderians that there was both white and grey  
17 foam available?

18 A. I don't believe I did.

19 Q. Ok, um, is the same, is the price the same for both the white and charcoal  
20 grey?

21 A. Um, usually white is a hair cheaper because there's no color pigment into it,  
22 but (inaudible) white because, ah, it turns yellowish very fast.

23 Q. Ok, I want you to focus for a minute on what you referred to as the hard piece  
24 of foam that was stuck in the wall as you, as you ran your hand across the

1 wall, when you visited The Station nightclub, after getting the phonecall from  
2 one of the Derderians. Ah, you indicated it was a hard piece. It was distinct  
3 from the rest of the polyurethane foam that, that was on the wall, is that right?

4 A. Correct

5 Q. About how big was that piece that you touched?

6 A. I don't really know but, um, cause it felt like this here and it was like wedged  
7 in there somehow or stuck in there almost like a plug or it might have been  
8 this big. It could have been bigger but I don't know. I just remember touching  
9 it and I, in the foam business you touch foam, and it tells you a lot with your  
10 feel and I could tell it was, it felt like a polyethylene foam, which is just a hard  
11 plasticky-like foam.

12 Q. When you say it's this big, you're holding your hand maybe twelve inches  
13 apart, is that, is that (inaudible)

14 A. Something like this. It felt that big but it was dark and I couldn't tell how big it  
15 was and I was not that curious anyways.

16 Q. The, um, you saw the pictures that Mr. Ferland showed you that the foam on  
17 the wall looks to be kinda wide long strips, is that fair to say?

18 A. Yeah, those are big pieces of foam (inaudible). It looks like they cut, they  
19 must have had the original sheets for my, ah, which were 4 by, 37" X 85" and  
20 they must have cut those up and placed them in different places where they  
21 wanted them.

22 Q. Ok, the piece that you felt, the hard piece of foam that you felt, was that in ah,  
23 was that in a space between a couple of these large sheets or was there a  
24 piece of one of the large sheets cut out?

1 A. I believe that was stuck behind a piece, almost like there was a seam of foam  
2 here and a seam of foam here and I put my hand like on the seam and my  
3 fingers and I, I dug deep and I felt this hard stuff. I says what's that doing  
4 there? Maybe, I'm just speculating, maybe somebody did some work before  
5 and stuck some old junky foam in there. They did a so-so job.

6 Q. The um, after you went to The Station nightclub, saw the foam there, got a  
7 look around, did you make any complaints after that to the police about the  
8 noise in the club?

9 A. Again that was when, um, the Derderians were taking over and I noticed it  
10 quieter and, again they owned it for about two and a half years and the first  
11 year and a half to two years it was reasonably better than previous owners so  
12 I definitely called less. I don't know how many times, if at all I called. I just,  
13 you know, this was a ten-year period and maybe somebody else in my family  
14 called occasionally but we definitely did not call as much.

15 Q. Ok and finally you're familiar with MSDS, ah, sheet, correct?

16 A. Um, I'm basically familiar with it yes.

17 Q. You're basically familiar with it at least? Um, did you at any point in time dis-  
18 cuss with the Derderians any facts or figures from an MSDS sheet for poly-  
19 urethane foam?

20 A. Absolutely not.

21 Q. Ok, thank you. Mr. Warner, did you ever complain during the Derderians  
22 ownership about anything else beside noise?

23 A. Did I ever complain about the Derderians on anything besides noise? Um,  
24 noise was most of it, um.

1 Q. Was there ever any concern about the, ah, parking or spillover of, ah, patrons  
2 outside or crowds or anything like that?

3 A. Yeah, over the years, and I'm sure during the Derderian's two and a half  
4 years, people would park all over the place and sometimes they would park in  
5 our driveway and, ah, we'd have to have the police or the club, my son would  
6 go in and have somebody move. I remember, like they'd be parked right in  
7 front of our driveway like we couldn't get out, and they'd drive in and just park.

8 Q. Do you remember ever talking about that with the police?

9 A. Ah, no I don't think so but

10 Q. Is it fair to say that the more, um, people that were at the nightclub on a par-  
11 ticular night, the more likely the parking problem would occur?

12 A. Yes, yes, definitely. They were erratic in their crowds. Some nights they had  
13 very big crowds and people would park everywhere and get out of hand, you  
14 know, and, ah, that was often enough. Um, and then often they just had a  
15 modest crowd. It would depend on the band and how much they promoted  
16 their business.

17 Q. Did you ever bring up, anywhere along the way, including especially when the  
18 Derderians owned the club, anything about the capacity of the place?

19 A. Let me think. Um, I called the police station going back four, five, six years,  
20 say five years, round figures and, um, um, probably just before the Der-  
21 derian's owned it and I called the police station say 1998, 1999 and I says,  
22 um, what's the capacity of that place. Um, I've called in the past and they  
23 knew who I was cause I was probably the most frequent caller in the past  
24 several years and I didn't get any straight forward answers and almost like

1 avoidance and then but I think I got out of them that that's up for the Fire De-  
2 partment. And then, um, so, ah, I believe I called the Fire Department and,  
3 ah, the gentleman I was supposed to talk to, I asked for whom he would be  
4 the person in charge. He wasn't there. I think I called back and I may have, I  
5 may or may not have contacted that person but I was inquiring about the ca-  
6 pacity of The Station nightclub.

7 Q. Ok did you ever talk to Chief Brousseau on that issue?

8 A. I don't think I ever talked to Chief Brousseau on that particular issue but I in-  
9 quired and it was like, ah, they weren't interested in talking to me or answer-  
10 ing to me or they wanted me to go away. That's the impression I felt, but  
11 that's just my personal impression.

12 Q. Do you remember who you asked for at the Fire Department?

13 A. They gave me a name. I asked for the person who they told me to but I don't  
14 recall what his name was.

15 Q. And this is at the end of 1998 into 1999 just before the Derderians' took over?

16 A. Correct. It was around that time that I was (inaudible) um, cause my thinking  
17 was, you know, I've been polite, I've been, ah, straight forward, I've been a lit-  
18 tle arrogant at times for many, many years and I've gotten nowhere and then I  
19 started to think, maybe it's the capacity they'll listen to if I take another angle  
20 and so I made a few phonecalls. A lightbulb went on and, ah, but I didn't get  
21 very far and I didn't get very quick answers and I, I don't have, I only have  
22 one life and I can only make so many phonecalls.

23 Q. Did you make, go to any, ah, public or private meetings about capacity back  
24 at that time?

1 A. I didn't.

2 Q. Did you know anybody who did it?

3 A. Um, ah

4 Q. What about Steven and Barbara \_\_\_\_\_ (phonic)?

5 A. I don't know if they did or not.

6 Q. Do you know anybody else who was actively involved in the concern about  
7 the club to the extent that you were that they might have been?

8 A. Yes, I have, um, more information about that, but, um, I have the letter that I  
9 can give you that will state more, but it's, I didn't have much to do with this let-  
10 ter.

11 Q. It's a letter drafted by someone other than you?

12 A. Yes

13 Q. Was it a letter that's been drafted since the fire occurred or back?

14 A. Before the fire occurred.

15 Q. Back around the time you're talking about?

16 A. Correct

17 Q. Could you tell me who the author is?

18 A. I believe it's the Chief of Police, Chief Peter Brousseau.

19 Q. Ok and where did you get the letter?

20 A. Um, I got the letter from my father-in-law.

21 Q. And how did he get the letter?

22 A. I'm not positive, but he called somebody because he was complaining about  
23 the noise and he somehow thought about the crowds cause the crowds both-  
24 ered him because his property saw the crowds more than mine and he must

1 have called somebody and tried to say, hey what can you do about this, ah,  
2 blah, blah, blah and he received a letter from that was signed by the Chief.

3 Q. And he still has that?

4 A. I have the letter.

5 Q. Do you have it with you?

6 A. That's Leon Piasick (phonic).

7 Q. And, um, do you, you said when the Derderian's first chanced into your life by  
8 showing up at your porch where your son and you were, it was clear to you  
9 that even though you didn't have much to say at the beginning, that they  
10 knew you were a historic complainant about the noise cause they said you're  
11 gonna be happy cause we're gonna take these measures, right?

12 A. Correct, they were

13 Q. Was there any discussion by then or by you at that porch visit about the ca-  
14 pacity of the place?

15 A. I don't recall any. If there was I don't recall.

16 Q. Have you ever had any conversation with either Michael or Jeffrey Derderian  
17 or anyone in their employ when they owned the club about it's capacity?

18 A. Ah, I don't recall any.

19 Q. Refreshing your memory with a, a statement you gave to Brian Casilli of the  
20 State Police, do you remember getting together with Brian Casilli and others,  
21 including me and Mr. Ferland and Mr. Daly on March 12<sup>th</sup>?

22 A. Correct

23 Q. In that conversation, you were asked many of the same things you've been  
24 asked here today and one exchange was question Brian Casilli asks, Barry,

1 we left off with you describing where you recall the old foam being, and he  
2 was talking about your trip to the nightclub to watch (inaudible) get what they  
3 done. And to the best of your recollection I think what you're saying is that it  
4 was around where the drummer or the drum riser was in that club. Is that  
5 right? And then your answer was that's where I noted the older greyer foam  
6 that had faded, so to speak, and then I looked up and I saw the darker foam,  
7 which I presume was a newer color and that extended like up to the ceiling  
8 and to the sides, the best I can recollect. Do you remember saying to Brian  
9 Casilli the part of that answer that had to do with, I remember the newer color  
10 foam extended like up to the ceiling and to the sides?

11 A. Correct, I believe that to be accurate.

12 Q. And is that, is that what you do remember from your visit to the club?

13 A. That's what I remember.

14 Q. Ok and do you remember saying to Mr. Casilli, Trooper Casilli in response to  
15 the next question. Along the back wall, that wall would have faced your  
16 house, meaning that the south wall that you were asked about, um, ah, do  
17 you recall foam being placed along that wall. Answer: Not specifically, I just  
18 remember seeing the dark foam being the bigger part of the foam. Is that ac-  
19 curate?

20 A. It's as accurate as I can recall.

21 Q. The sense, do I understand it correctly that there's more dark new foam than  
22 there is old fading foam?

23 A. Definitely

24 Q. Ok are there other questions from Jurors? Sir in the shirt.

1 Q. **Juror** – Um, you stated that the American Foam had a retail department deal-  
2 ing with public sales?

3 A. Correct

4 Q. **Juror** – If someone from the public came in and ordered some foam and  
5 mentioned your name, would you get the commission for that sale?

6 A. Um, it rarely ever happened. Um, they may or may not, if there was an in-  
7 consistent issue there I think. And number 1 and number 2, um, ah, usually  
8 they were smaller sales and it's not the sales that I chased, per se, as a  
9 salesman. I chased a certain market and I did not chase that market and  
10 99.9% of the time I would not get a commission but it's possible if somebody  
11 came in and mentioned my name they may give it to Barry, you know, out of  
12 that there but I didn't make that decision.

13 Q. Mam in the back.

14 Q. **Juror** – When you entered the club to, ah, check out the foam cause you kept  
15 getting phonecalls, you didn't specifically make it known who you were to  
16 anyone there?

17 A. No

18 Q. **Juror** – No?

19 B. I don't. I may have walked in and said, are the owners here and someone  
20 may have said no, um, but they weren't there I know that for sure and I just  
21 walked out quickly. Someone yelled at me a little bit, then I walked out and,  
22 you know, and there was no one there to talk to anyways that I wanted to talk  
23 to.

1 Q. **Juror** – Well you said (inaudible) that you wanted to go there so you would  
2 stop getting calls.

3 A. Right, he was very pro-active.

4 Q. Did the calls stop after you went?

5 A. Um, yes, he, for whatever reason he stopped. I, I don't recall why he  
6 stopped, um, or, or, or whatever, but he didn't call me, um, after that, I don't  
7 know, maybe he did but I, I don't recall that if he called me much after that in-  
8 cident.

9 Q. **Juror** – He probably figured

10 A. Yes

11 Q. **Juror** - that you were that person that

12 A. Maybe the person that yelled at me said there was a guy up here looking at  
13 the foam and he looked like I look like and they ceased calling much le,  
14 much, much less often. They may have called two or three months later and  
15 said is it any better but I can't recall.

16 Q. **Juror** – Ok now also was the foam painted or was it altered in any way from  
17 the foam that you, your company would have sold?

18 A. When I saw it, um, which was right after it was sold or purchased, it looked  
19 like it wasn't altered at that time. I didn't see any, anything on it other than  
20 regular foam.

21 Q. **Juror** – And you only looked at that portion. You didn't look around to see  
22 (inaudible)

23 A. No I, I really, no I didn't, I didn't go in and look at details that much.

1 Q. **Juror** – Yeah, even though you knew your commission how much foam they  
2 had bought.

3 A. (inaudible) not even on my mind this much foam. I, I foam is like, you know, I  
4 see foam everyday, or at least I did in my old job and foam is like looking at  
5 paint. It's not interesting to me, you know, I've seen it for years but I quickly  
6 gathered that this, this much foam.

7 Q. **Juror** – Did you check that back wall that you were concerned about before?

8 A. Ah, I really don't recall if there was foam there. I did not remember the detail  
9 or and I wasn't looking for that type of detail. I was trying to appease the  
10 owner who kept calling me.

11 Q. **Juror** – Thank you.

12 Q. Sir

13 Q. **Juror** – Does foam as it ages, does the density or do the cells fill up. I mean,  
14 you're talking about a place that had a lot of smoke, you know.

15 A. Right

16 Q. **Juror** – Would that do anything to the foam in time?

17 **SIDE B OF TAPE #72 (1133-1240)**

18 A. Yes it depends, ah, but, over a long period of time the particles could get in  
19 there, but I mean, if you painted something, that's thick. That would cover up  
20 the cells. Smoke would cover up the cells less or take a lot of tar I guess or  
21 nicotine whatever to cover up the cells, but ah, the cells are very tiny and  
22 something could cover it up with time, dust.

23 Q. **Juror** – And, and no way would this in time, would it get crusty, right? It  
24 would always stay basically soft?

1 A. Yes, um, it generally gets softer. What it gets is drier. Drier and brittlely, flaky  
2 drier, like old. Like if you ever take an old cushion apart and you see that ure-  
3 thane type of foam, which is an inexpensive (inaudible) gets brittleier and so  
4 on and so forth.

5 Q. **Juror** - So you noticed the last say six months prior to the fire, the noise  
6 started to get louder again, right? Didn't you, didn't you mention that?

7 A. Right, I don't think the foam had anything to do with it.

8 Q. **Juror** – You don't think the foam had anything to do with it?

9 A. That's just my opinion.

10 Q. Sir

11 Q. **Juror** – Can I, ah, see the Grand Jury exhibit relating to the order that was  
12 placed at American Foam?

13 Q. Sure

14 Q. **Juror** – Actually I have a question related to that, um, who would of, if that fax  
15 came into the office, who would have handled it?

16 Q. Can I see the fax? Which one?

17 Q. **Juror** – For example there's some handwriting on the next page.

18 Q. State, Grand Jury #33.

19 A. Well what happens usually is I have a secretary and her name is, it doesn't  
20 matter because she wasn't there during this period, um, I'm quite sure the en-  
21 tire period. Her daughter was sick and um, so she can prove that with doc-  
22 tor's records so we had a floater, a girl who knew a lot about a lot of different  
23 departments and she would come become my secretary and handled my in-  
24 side phonecalls. Her name was Desiree. It's a very good chance it would go

1 to Desiree but I wasn't there so these are just my, I'm assuming this is where  
2 it went.

3 Q. What's Desiree's last name?

4 A. Desiree \_\_\_\_\_.

5 Q. Does she still work at American Foam to your knowledge?

6 A. To my knowledge yes.

7 Q. **Juror** – Now that somehow got turned into an order so who would have taken  
8 care of that? Would Desiree have (inaudible) she could have looked at that  
9 and said

10 A. Yes

11 Q. **Juror** - this is, this gets turned into this order. She would know how to do  
12 that?

13 A. Yes Desiree would bring this to the, an inquiry. She would either talk to the  
14 person, get more information or if she had it, or if enough information was  
15 here, depending on, um, there's more information I believe that is needed.

16 Q. **Juror** – Somebody wrote on there, something on the bottom, right?

17 A. Right

18 Q. **Juror** – ether

19 A. Right now this would be taken and given to an estimating department. They  
20 would look at it. They in turn would give it to probably the Vice President of  
21 Sales. This is generally how it would happen and they would handle it from  
22 there.

23 Q. Who was the Vice President of Sales?

1 A. It's Chad Martin. Chad Martin oversaw, ah, the Sales Department. He was,  
2 he would buy the foam. He was knowledgeable about foam and he might get  
3 involved in something like this here, especially because it was COD. Chad  
4 Martin would say, he'd set the terms cause he was the boss. Ah, he's the  
5 boss right under Aram DerManouelian and so this means Aram, Chad proba-  
6 bly had some or a lot to do with this job here. Salesman can give no authority  
7 to say cash, 60 days, 30 days or nothing. It was to the contrary. They would  
8 tell us it's not our business but.

9 Q. **Juror** – Thank You

10 A. Ok

11 Q. Yes sir.

12 Q. **Juror** – How did, how did sales that you generated from out in the field get  
13 back to American Foam?

14 A. Well it's not a direct way. It's ambiguous but um, I would visit a customer.  
15 They would either, ah, sometimes call me back but I was on the road a lot  
16 and ah, sometimes I was in the office a lot. I have no designated schedule.  
17 You go where you're called or you're needed and ah, so sometimes they  
18 would call up when I'm not around. It would often happen so someone like  
19 Desiree or my secretary that was out with her sick daughter, would take the  
20 call or/and if it was a technical question it would go higher up to someone like  
21 Chad Martin or the estimator. The estimator (inaudible) is basically an esti-  
22 mate that she would put pricing on from. Different people had different areas  
23 that they would take care of. Everybody had their job, so to speak.

24 Q. **Juror** – So the, the customer would call

1 A. And, and say is Barry there and they'd say no, Barry's, ah, in Massachusetts,  
2 whatever, visiting a customer. I'll take the information from you. Um, and  
3 then, ah, I'll give, and they were, they were trained to. Different ones had dif-  
4 ferent, would take it and run with the ball, so to speak. They would ask ques-  
5 tions. They would go, and if they had more questions they would call her  
6 back. Sometimes they would give it to me and ask me questions. Some-  
7 times they wouldn't. Often I would go out to the next customer. I was the  
8 outside man per say, even though I spent time inside and out cause I had  
9 many customers would call me and I would never get outside. They preferred  
10 the salesmen to be on the outside doing the outside job.

11 Q. **Juror** – And that phonecall would generate an order, could, could generate  
12 an order that someone at the office would handle or did you take, generate  
13 orders and (inaudible)

14 A. No I didn't generate an order from outside. I would tell the customer to call  
15 the order in, fax the order in, ah, cause I want a written hard copy cause you  
16 just don't order \$4,000 or \$10,000 worth of foam. You make sure you put  
17 something on a piece of paper cause it has to be accurate and it's custom cut  
18 sometimes so I wouldn't take verbal orders anyways. It's just not, ah, you  
19 know, because a verbal order makes no sense today. People make mistakes  
20 and then you throw the foam away and there's \$4,000 sitting there and  
21 there's a fight so send us in what you want. It's always a paper trail so we  
22 can document what you want and we can quote it and send it back to you and  
23 then you can send it back in as an order and so on and so forth and that's  
24 what the girls were trained to do. Sometimes I would do that but most of the

1 time the girls did the paperwork. My main job was to talk to new customers or  
2 solve packaging problems out in the field or go to packaging shows and travel  
3 to packaging shows.

4 Q. **Juror** – So you didn't tell the Derderians to fax over to fax in that order?

5 A. I don't believe I did but I told people fax numbers a hundred thousand times in  
6 my life. I was there 26 years.

7 Q. **Juror** – Did you ever give him your card?

8 A. I don't recall. I know we exchanged telephone numbers because they defi-  
9 nitely wanted me to call them and tell them and they wanted my phone num-  
10 bers (inaudible). I was on a week, it was like a Saturday or Sunday. I may  
11 not have had my business card on me. I might have just wrote my number on  
12 a piece of paper to them. I don't believe that, I don't believe I gave them my  
13 business card cause they called my house most of the time but I don't recall  
14 that.

15 Q. Sir

16 Q. **Juror** – If they came to you and told you that they wanted to buy this foam  
17 and what they were gonna do with it, would you try and deter them because  
18 it's not flame retardant or anything?

19 A. I wish they had came to me and discussed it with me. I'd just come to me  
20 and half listen and do what they wanted to do. I would, I explained to them  
21 there are different levels of foams and I would have given them different op-  
22 tions and talk to them and price. This is what I do all the time anyways. I  
23 would say well this costs this, this does this. This costs this, this does this  
24 and so on and so forth. I would have given them options. There are different

1 levels of foams. They never pursued me towards that and I felt a little, ah,  
2 like I don't know, like why they didn't ask me that, you know. I didn't want,  
3 and again, I wasn't there selling. I was sitting in my back porch on a Saturday  
4 and here I am with 26 years experience and all they can talk about is what  
5 they're going to do to the club so I guess they're not interested in foam or lis-  
6 ten to what I have to say. That was my personal opinion and, ah, I wish they  
7 had, had talked to me but you can't make people do what they don't want to  
8 do. I can't tell you to buy a pick-up truck if you're gonna buy a Volkswagen  
9 Beetle or whatever, you know.

10 Q. Mr. Warner you spoke to the two Derderians when they were at your house  
11 that first day. You spoke to one of the two Derderians when they drove up in  
12 the car while you were doing yard work. Are there any other times when you  
13 were actually in the company of either of the two Derderian brothers?

14 A. I don't recall.

15 Q. Did you ever meet a guy named Tim Arnold relative to The Station nightclub  
16 I'm talking about, being an employee or agent or representative of The Sta-  
17 tion?

18 A. I just, I remember reading that name in the newspapers but that's all I know  
19 about Tim Arnold. If I met him I don't recall.

20 Q. Ok, yes

21 Q. **Juror** – That drum alcove, when the building was a restaurant, was that a  
22 drum alcove sticking up there like that?

23 A. It was there for a long time, yes. To my knowledge there was a drum alcove  
24 there. It was very old. I believe it was part of the old part of the building. Ah,

1 they probably had old bands there from years and years ago and that's where  
2 the bands used to stay. They used to put them in a little square box with  
3 saxophones and the drums. There was a little tiny band, band area, that's  
4 what that was. The good old days.

5 Q. **Juror** – I was just wondering though, when you touched the foam, could you  
6 tell if it was flame retardant and not just by touching it or?

7 A. No, you can't really tell.

8 Q. **Juror** – How would they know?

9 A. You can't really tell. It's kind of ah, that foam could be fire retardant and I  
10 couldn't tell.

11 Q. **Juror** – (inaudible)

12 A. Hum?

13 Q. **Juror** – They couldn't have know when they purchased it that?

14 A. No and I didn't know when I touched it whether it was fire-retardant or not ei-  
15 ther. I didn't know what they purchased and cause they put a chemical in it  
16 when they make it that makes it fire retardant or give it fire-retardant degrees.  
17 This is what is explained to me and it's just in the foam. It's a characteristics  
18 of the foam, maybe a little darker, maybe the same color, but you really can't  
19 tell unless you ask somebody or specify it.

20 Q. Yes

21 Q. **Juror** – Um, you said that one of the Derderians called and asked what type  
22 of glue to use, ah, on the foam.

23 A. They either called or at some point asked me that like maybe when the  
24 driveway. One of those times I know somebody asked me.

1 Q. **Juror** – Ok and you told him that your company, American Foam, sold 3M  
2 spray glue.

3 A. Right, we sold 3M spray glue for many years. We were a distributor of 3M  
4 spray glue. They asked me a question. I gave them an answer but you can  
5 glue foam very easily to walls with most glues.

6 Q. **Juror** – Ok and that

7 A. I always give people options.

8 Q. **Juror** – So at that time your company was selling.

9 A. We were selling 3M at that time I believe, yes, or we had sold 3M for many,  
10 many years.

11 Q. Now the 2.1, um, charcoal,

12 A. 1.2

13 Q. 1.2 I'm sorry.

14 A. That's alright.

15 Q. That's dyslexia I think. The foam that we're talking about, that basic foam is  
16 less expensive than the flame-retardant foam, correct?

17 A. Yeah, it's quite a bit, quite a bit of difference. I know that much definitely.

18 Q. Ok so that the, how much more expensive do you think are the flame-  
19 retardant foams?

20 A. I don't know but, I mean, um, it's considerably more.

21 Q. Any other questions from anyone? No? If not, thank you very much for your  
22 appearance Mr. Warner.

23 A. Thank you. Good luck to you.