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LAWYER'S NOTES

PAGE

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

2

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THE SYNANON CHURCH,

)

4

PLAINTIFF,

)

5

- v -

)

Civil Action

)

82-2303

6

UNITED STATES OF AMERICA,

)

7

DEFENDANT.

)

8

\* \* \* \* \*

)

9

10

Monday, November 28, 1983

11

Washington, D. C.

12

The above-entitled matter came on for a status call

13

before the HONORABLE CHARLES R. RICHEY, United States District

14

Judge, Courtroom No. 11, commencing at approximately 10:00 a.m.

15

APPEARANCES:

16

GEOFFREY P. GITNER, Esq.

PHILIP C. BOURDETTE, Esq.

17

On behalf of the Plaintiff

18

THOMAS M. LAWLER, Esq.

FRANCIS G. HERTZ, Esq.

19

On behalf of the Defendant

20

THIS TRANSCRIPT WAS PRODUCED BY C.A.T.  
(COMPUTER AIDED TRANSCRIPTION)

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MINDI L. COLCHICO

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WASHINGTON, D. C. 20001

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# LAWYER'S NOTES

PAGE	LINE	
1		RECEIVED.
2		DEPUTY CLERK: Civil Action 82-2303, the Synanon
3		Chambers versus United States of America, Mr. Gitter and Mr.
4		Houderette for the plaintiff; Mr. Lawler and Mr. Hertz for the
5		defendant.
6		The court, all right, today, the court has before it
7		a series of motions. Some came in as late as Friday, I
8		believe, the papers. The court thought that probably what we
9		would do is go down each of them, other than the substantive
10		motion, unless you lawyers, on both sides, feel differently.
11		Of course, we have had the cross motion for summary
12		judgment and then the motion to suppress the affidavits of the
13		three people, Fleishman, Arbitor and Mullen, and the defendant's
14		reply and plaintiff's response to that; plaintiff's
15		supplemental memo regarding the motion to suppress, the
16		defendant's response to that; the plaintiff's second
17		supplemental memo, defendant's reply to Synanon's second
18		supplemental memo; and then the plaintiff's request for order
19		for discovery in support of its motion to suppress, the
20		government's opposition, plaintiff's reply; plaintiff's motion
21		to dissolve order staying discovery, defendant's opposition;
22		defendant's second motion for summary judgment and to dismiss
23		with prejudice, which I believe is based in part on Judge
24		Walsh's decision and finding of fact and conclusions of law



1 request for extension of P R O C E E D I N G S. to the defendant's  
2 second motion. DEPUTY CLERK: Civil Action 82-2303, the Synanon last,  
3 Church versus United States of America. Mr. Gitner and Mr.  
4 Bourdette for the plaintiff; Mr. Lawler and Mr. Hertz for the  
5 defendant.

6 THE COURT: All right, folks, the Court has before it  
7 a whole series of motions. Some came in as late as Friday, I  
8 believe, the papers. The Court thought that probably what we  
9 ought to do is go down each of them, other than the substantive  
10 motions, unless you lawyers, on both sides, feel differently.

11 Of course, we have had the cross motions for summary  
12 judgment and then the motion to suppress the affidavits of the  
13 three people, Fleishman, Arbiter and Mullen, and the defendant's  
14 reply and plaintiff's response to that; plaintiff's a number of  
15 supplemental memo regarding the motion to suppress, the  
16 defendant's response to that; the plaintiff's second  
17 supplemental memo, defendant's reply to Synanon's second  
18 supplemental memo; and then the plaintiff's request or motion  
19 for discovery in support of its motion to suppress, the  
20 government's opposition, plaintiff's reply; plaintiff's motion  
21 to dissolve order staying discovery, defendant's opposition;  
22 defendant's second motion for summary judgment and to dismiss  
23 with prejudice, which I understand is based in part on Judge  
24 Braman's decision and findings of fact and conclusions of law  
25 which he dictated from the bench; and then the plaintiff's

1 request for extension of time to respond to the defendant's  
2 second motion for summary judgment or to dismiss, and now, last,  
3 as of November 22nd, plaintiff's motion for an extension of  
4 time to respond to defendant's motion for summary judgment and  
5 to dismiss. and but from various other sources.

6 And if I am not mistaken, I am told, by my staff,  
7 basically, you want discovery to respond to the government's  
8 motion on the plaintiff's side. relevant to the suppression but  
9 evidence. MR. GITNER: Yes, Your Honor. would go to the bad  
10 faith claim. THE COURT: pl You want me to grant immunity?

11 MR. GITNER: nt No, Your Honor, that is not correct. nts,  
12 many of wh THE COURT: t All right. na Before we begin, how would  
13 you like to handle this this morning? nal Revenue Service based

14 upon the MR. GITNER: na Your Honor, I think there is a number of  
15 essential points. gion, and that certain other organizations of  
16 a similar THE COURT: be Did I outline? prosecuted and had their tax  
17 exempt sta MR. GITNER: I think you have done that very well,  
18 Your Honor. THE I think also there is the motions that you have at  
19 stated, I have the same motions. tory prosecution?

20 Your Honor, our position is that the essential in  
21 question is whether or not we will be permitted to have  
22 discovery, number one, on the motion to suppress; and second,  
23 whether the Court will dissolve its order staying discovery so  
24 that we may get on with the discovery on our complaint. na If I  
25 can address the motion to suppress first, Your Honor. hat these



1 particular Your Honor, since the filing in July of the  
2 declarations of Fleishman, Arbiter and Mullen and later the  
3 filing of the declaration by Mr. Farnsworth, information has  
4 come into our possession, not only through the deposition of  
5 Ms. Fleishman but from various other sources.  
6 THE COURT: You want to strike that.

7 MR. GITNER: Yes, Your Honor, we do. Also, Your  
8 Honor, I think it is not only relevant to the suppression but  
9 evidence may come out of discovery that would go to the bad  
10 faith claims by the plaintiff. re established religious. That  
11 would be our complaint, Your Honor, raises a number of counts,  
12 many of which allege that there has been a discriminatory  
13 prosecution of this case by the Internal Revenue Service based  
14 upon the fact that Synanon has sought to declare itself a  
15 church and a religion, and that certain other organizations of  
16 a similar vein have been similarly prosecuted and had their tax  
17 exempt status revoked. He was the Internal Revenue Service  
18 agent who THE COURT: If that is so, the latter, how does that  
19 entitle you to assert discriminatory prosecution?

20 MR. GITNER: If, for example, Your Honor, certain  
21 organizations have been screened out because they are at Synanon's  
22 essentially what is called the "New Religions" and the  
23 government has, for reasons of its own, or reasons of its own  
24 members, let's say, in the higher echelons of the Internal  
25 Revenue Service, decided that for their own reasons that these

1 particular religions are not entitled to the same status as the  
 2 more established religions, and this is an arbitrary decision,  
 3 without any foundation or basis, other than the belief that  
 4 they should not be treated the same as the more established  
 5 religions, then I think that is a discriminatory handling or  
 6 classification of the new religions. It is that caused Mr. Brandin's  
 7 superiors. And it appears that the Internal Revenue Service does  
 8 have a policy and is promulgating a policy to screen out what  
 9 it considers to be the new religions and has imposed greater  
 10 conditions on them than the more established religions. That  
 11 would be the basis for the discriminatory handling of Synanon.  
 12 ability to further, Your Honor, in this particular case, when we  
 13 were allowed to take Mr. Brandin's deposition, which the Court  
 14 allowed us to do, Mr. Brandin, on page 143 of his deposition --  
 15 THE COURT: Refresh the Court's recollection. Who is  
 16 Mr. Brandin? claims of a bad faith institutional decision, which  
 17 under the MR. GITNER: He was the Internal Revenue Service  
 18 agent who was in charge of the Synanon audit. LaSalle National  
 19 Bank, which THE COURT: I remember. the proposition that if the  
 20 Internal MR. GITNER: He was there for almost two years that  
 21 they worked on the audit. He came to a conclusion that Synanon's  
 22 tax-exempt status should be kept in place, and he recommended a  
 23 no-change to his superiors, which was confirmed and concurred  
 24 in by his Branch Chief. It is based on the premise of the Yick Wo  
 25 case. When asked at his deposition why he was replaced and



1 why he was taken off the audit, Mr. Brandin said, "I believe I  
 2 was replaced because of the result that I reached in the case."  
 3 seminal question: "Because you came to a no-change result?"  
 4 believe, Mr. Brandin's answer was, "Yes." execution of Chinese  
 5 laundrymen Ever since this case has begun, Your Honor, we have  
 6 been attempting to find out what was it that caused Mr. Brandin's  
 7 superiors to take him off the case? What was it that caused  
 8 Mr. Brandin's superiors to reject his findings that were based  
 9 on some 45 visits to Synanon, some 18 months of investigation?  
 10 instituted And ever since the beginning of this case, they are  
 11 government has built basically a wall and a fortress around our  
 12 ability to question the gentlemen that were involved in that de  
 13 decision, the gentleman in the national office and the  
 14 gentleman out in San Francisco.

15 We have yet to be able to take any discovery to  
 16 support our claims of a bad faith institutional decision, which  
 17 under the LaSalle case, which we have quoted to the Court on  
 18 numerous occasions, the United States versus LaSalle National  
 19 Bank, which basically stands for the proposition that if the cor  
 20 Internal Revenue Service states a reason for what could be  
 21 generally called institutional bad faith grounds, for some files,  
 22 reason other than what is provided by law, that a court will th  
 23 not enforce--the Genser case, I think even, Your Honor,  
 24 possibly THE COURT: It is based on the premise of the Vick Wo  
 25 case: to allegations of bad faith, especially against the

1 government MR. GITNER: Exactly, Your Honor, that the taxpayer,  
2 or the plaintiff THE COURT: Which was the first one and is the  
3 seminal case, the basic case that arose out in California, I  
4 believe, San Francisco, involving the prosecution of Chinese  
5 laundrymen under a city ordinance. They have the information

6 which we MR. GITNER: That is correct, Your Honor. That would  
7 be a case that we rely on, I believe the case that is the  
8 underlying premise for all the cases that follow.

9 Your Honor, for 15 months now since this case was  
10 instituted, we have been unable to do any discovery. We are  
11 facing a trial date -- have been able to put before this court

12 some of the THE COURT: Now, don't say you have been unable to do  
13 any discovery. That is not fair, nor is it accurate. There

14 was a joint MR. GITNER: That is true, Your Honor.

15 THE COURT: Because this court has given you some  
16 discovery. Now, I don't know if the Court has had the

17 opportunity MR. GITNER: We have been allowed to take Mr. Brandin's  
18 deposition and Ms. Fleishman's deposition.

19 THE COURT: You had discovery in the Braman case, too.

20 MR. GITNER: Not on these issues, Your Honor. We  
21 have yet to be able to see the Internal Revenue Service's files,  
22 which the cases that we have cited to the Court, especially the  
23 Cortese case, the Genser case, I think even, Your Honor,  
24 possibly in the Schultz case, recognizing the fact that when it  
25 comes to allegations of bad faith, especially against the IRS



1 government or the Internal Revenue Service, that the taxpayer,  
 2 or the plaintiff, when there are issues of motive and intent,  
 3 until it is allowed to see the files, it really is at a  
 4 disadvantage because all of the evidence lies within the hands  
 5 of the government in this case. wa They have the information  
 6 which we do not have access to, and until we are able to obtain  
 7 access to that information, there is really no way that we can  
 8 obtain meaningful discovery. not have been here at that time.

9 I think, Your Honor, that is equally applicable to  
 10 the discovery that we need on the motion to suppress. and Since  
 11 August, Your Honor, we have been able to put before this court  
 12 some of the things that have occurred, and some of the things  
 13 that have occurred is that Ms. v Fleishman testified that there  
 14 was a joint investigation, a joint investigation. Revenue Code.

15 I would ask the Court to look at the case of United  
 16 States versus Weiss, I don't know if the Court has had the  
 17 opportunity to read our brief on that. I just filed it last  
 18 week. MR. GITNER: Yes, sir. and

19 THE COURT: I have not. out that there had been a  
 20 joint crim MR. GITNER: That was a 1983 case in the Central here  
 21 District of California, District Court. I might be mistaken  
 22 but I believe it was Judge Hawk. I will get the case for Your  
 23 Honor. held that there had been essentially institutional bad  
 24 faith, that in that case, Your Honor, it is exactly the same as  
 25 the one here. The government in that case stood up and said if

1 a taxpayer -- a situation is basically obtaining a  
2 disproportionate. THE COURT: You told me this had to be exclusively  
3 within my court when I first got it and wanted to send it to  
4 Los Angeles. the particular defendant in that case.

5 MR. GITNER: Did you want to send to it Los Angeles?  
6 THE COURT: You remember that, don't you?

7 MR. LAWLER: Yes, Division.

8 MR. GITNER: I may not have been there at that time.

9 THE COURT: Yes, you were here. So was yours, you  
10 colleague. You all informed me there was a statute and I  
11 looked at it and it had to be exclusively in this court, as so  
12 many statutes provide. Is that right? correct.

13 MR. GITNER: I believe so, under the 7428 Statute.

14 THE COURT: That is it, of the Internal Revenue Code.

15 MR. GITNER: Your Honor, in the Weiss case, there was  
16 a prosecution of a taxpayer, posed to the Civil Division.

17 THE COURT: It was a criminal prosecution? on that.

18 MR. GITNER: Yes, sir, and corrected, Your Honor.

19 In that case, it turned out that there had been a  
20 joint criminal and civil investigation, much the same as there  
21 has been here, as the government has stood up and said there is  
22 a joint investigation going on. In that case, Your Honor, the  
23 Court held that there had been essentially institutional bad  
24 faith, that you cannot have a joint investigation going on  
25 because there is a recognition of the fact that what you are



1 doing in such a situation is basically obtaining a  
 2 disproportionate or an unequal strength of one of the litigants  
 3 in the case. The government was put in a much stronger  
 4 position than the particular defendant in that case.

5 In this case, Your Honor, what we are alleging is  
 6 that the Civil Division, by its --

7 THE COURT: Tax Division.

8 MR. GITNER: Yes, Your Honor, but in this case --

9 THE COURT: You don't mean the Civil Division, you  
 10 mean the Tax Division, in this case?

11 MR. GITNER: It is the Tax Division of the Civil  
 12 Division of the Department of Justice, correct.

13 THE COURT: Is there a Tax Division of the Civil  
 14 Division? I never heard of that.

15 MR. LAWLER: We are with the Tax Division of the  
 16 Department of Justice as opposed to the Civil Division.

17 THE COURT: That is right. You are wrong on that.

18 MR. GITNER: I will stand corrected, Your Honor.

19 THE COURT: There is a Civil Division in the  
 20 Department of Justice, which is one of the largest. There is a  
 21 Tax Division of the United States, the Department of Justice.  
 22 There is a Criminal Division of the Department of Justice.  
 23 There is a Civil Rights Division. I don't know how many others.  
 24 But there is an assistant Attorney General at the head of or,  
 25 apex of each one. So this didn't arise out of the Civil

1 Division in any respect so far as I know.

2 Furthermore, it has been represented to me, by Mr.  
3 Lawler, in your presence, here in open court, that they have  
4 insulated themselves within the Tax Division from any criminal  
5 investigation that might be going on, if any, of your client.  
6 That is what he told me. Is that right?

7 MR. LAWLER: That is correct, Your Honor, yes.

8 THE COURT: So I don't know anything about that.

9 Now, I do know that you went to my chief judge to ask  
10 for some relief. I forget what it was, but I do know that it

11 was denied. MR. GITNER: Your Honor, they accompanied and

12 interviewed the witnesses together. They interviewed Mr.  
13 Plaintiff for 40 hours in the presence of Mr. Goodwin. They

14 were there. THE COURT: Yes, on the ground of lack of standing,  
15 among other things? Who is Mr. Goodwin?

16 MR. GITNER: It was denied on the ground of lack of  
17 standing, correct. Justice Department.

18 THE COURT: Yes.

19 MR. GITNER: Your Honor, in the Weiss --

20 THE COURT: Go ahead.

21 MR. GITNER: In the Weiss case, that is exactly what  
22 the Court was confronted with. There it wasn't the Tax  
23 Division, it was the Civil Division, but in this case, the Tax  
24 Division is required to abide by the Civil Rules of Procedure,  
25 and this is a --



1 documents THE COURT: There is no question about that. aged to  
2 Ms. Fleish MR. GITNER: There is a civil proceeding. In that  
3 case, Your Honor, the judge said, "You are saying to me that  
4 there is a joint investigation. There is no such thing as a  
5 joint investigation. What you essentially have is a criminal  
6 investigation which is being conducted and you are also using  
7 the civil processes at the same time." the stand, and we asked  
8 to see the In this case, Mr. Lawler has also stood up and said  
9 that there has been a joint investigation. he testified with,  
10 Mr. Farnsworth THE COURT: No, he hasn't said that. Mr. Goodwin's  
11 office, MR. GITNER: Your Honor, they accompanied and active  
12 interviewed the witnesses together. They interviewed Ms.,  
13 Fleishman for 40 hours in the presence of Mr. Goodwin. They  
14 were there the--as that we have talked to in this case, Your  
15 Honory in THE COURT: Who is Mr. Goodwin? have told us that  
16 they have MR. GITNER: Mr. Goodwin is from the Criminal and Mr.  
17 Division of the Justice Department. time, unannounced, uninvited  
18 and have THE COURT: Isn't it Godwin? is proceeding. And it is  
19 our assertion MR. GITNER: It is the same person from Goodwin  
20 versus Briggs. supply in quotes, I think, a good way to  
21 it is, "THE COURT: That is Goodwin."  
22 MR. GITNER: All right. Mr. Goodwin in the presence  
23 of Mr. Lawler and Mr. Hertz, for some 40 hours, interviewed  
24 Fleishman, Arbiter and Mullen. During an Arizona statement is  
25 taken of Ms. Fleishman, I believe in July of 1983, the hat the

1 documents that we requested from this court that belonged to,  
 2 Ms. Fleishman that she had taken with her from Synanon, Mr. an'  
 3 Goodwin subpoenaed those records under a federal grand jury the  
 4 subpoena so that they could not come into the possession of  
 5 Synanon. to employ criminal processes in civil cases under what  
 6 the Sells During the motion to dismiss hearing in front of  
 7 Judge Braman, when Mr. Farnsworth took the stand, and we asked  
 8 to see the calendars that he had used in putting together the  
 9 dates and the names of all the people that he testified with,  
 10 Mr. Farnsworth testified that an attorney from Mr. Goodwin's  
 11 office, the Criminal Division, had come and taken protective  
 12 custody of his diaries, protective custody of his diaries,  
 13 during the hearing that we had in Judge Braman's courtroom.  
 14 Witnesses that we have talked to in this case, Your  
 15 Honors, in preparation for this proceeding, have told us that  
 16 they have been approached by Mr. Goodwin and Mr. Hertz and Mr.  
 17 Lawler at the same time, at the same time, unannounced, uninvited  
 18 and have been asked to cooperate in this proceeding. to And it is  
 19 our assertion Your Honor, that the only reason Mr. Goodwin was  
 20 present was to supply in quotes, I think, a good way to phrase  
 21 it is, "The muscle of the Criminal Division." I believe it is  
 22 clear. of These people have been asked to cooperate under jury  
 23 threats of either grand jury subpoena or criminal prosecution in  
 24 this case, and under Sells, Your Honor, I don't think that is  
 25 permitted. No I think the Supreme Court has recognized that the



1 Civil Division or civil attorneys from the Justice Department,  
2 or any other agency of the United States Government, it doesn't  
3 have to be the Justice Department. I don't think the SEC or the  
4 Nuclear Regulatory Commission or any other agency would be  
5 allowed to employ criminal processes in civil cases under what  
6 the Sells case stands for. Plaintiff's Supplemental Memo in regard  
7 to the Mot. There is also another issue which has been put  
8 before this Court. I think it is a very important issue and  
9 one of first impression for this court and this circuit, and  
10 that is the use of grants of civil immunity. In this starting  
11 particular case, we know of at least four grants of civil  
12 immunity under the Witness Immunity Act of 1970. The Witness  
13 Immunity Act was passed as THE COURT: By whom? Crime Control Act of 1970, some  
14 13 years ago. MR. GITNER: By the United States Government. That  
15 is why we were trying to find out -- Court in the Middle  
16 District of THE COURT: Don't they have to have court approval  
17 for that? conted with the issue, of whether, in a specifically,  
18 let's call MR. GITNER: Yes, and that is why we went to Judge  
19 Robinson, because we didn't know whether or not the government  
20 had gotten those immunity grants based on grand jury  
21 investigation, under a criminal process, which I believe it is  
22 clear, of course, that immunity can be granted for a grand jury  
23 process or proceeding, or whether they had sought those if the  
24 immunity grants purely for a civil proceeding. on cases in  
25 which the. Now, I think, Your Honor, we have filed a motion with

1 then Court. ~~It is called a Second Supplemental Memorandum in~~  
 2 support of our motion to suppress. ~~en come close to saying~~  
 3 whether or THE COURT: ~~us~~ Yes, you did.

4 MR. GITNER: ~~I That raises that for some 13 years until~~  
 5 this--the legislative history is clear that the immunity  
 6 statute -- THE COURT: ~~no~~ Plaintiff's Supplemental Memo in regard  
 7 to the Motion to Suppress, is that what you are talking about?

8 being conf MR. GITNER: ~~a~~ Yes, Your Honor.

9 THE COURT: That was filed on October 26th. ~~ion of~~  
 10 abuse of MR. GITNER: ~~ut~~ What is amazing, Your Honor, ~~ino~~ starting  
 11 to research this and looking into this and reading the statute,  
 12 that although the Act was passed, the Witness Immunity Act was  
 13 passed as part of the Organized Crime Control Act of 1970, some  
 14 13 years ago, Your Honor, some 13 years ago, it was not until  
 15 this year, very recently, a District Court in the Middle  
 16 District of Pennsylvania held, for the first time, where it was  
 17 even confronted with the issue, of whether, in a specifically,  
 18 let's call it, a purely civil matter, the government was ~~are~~ in  
 19 entitled to employ the Witness Immunity Act to grant immunity  
 20 to a civil witness. ~~y~~ what you said, what the Criminal Division  
 21 is doing. THE COURT: ~~g~~ So what did they do?

22 MR. GITNER: That court held, Your Honor, that they  
 23 could do it. ~~US~~ But I believe that decision, Your Honor, if the  
 24 Court would read the Mahler decision, relies upon cases in  
 25 which the issue was never specifically confronted. ~~on~~ It relies



1 upon three Seventh Circuit decisions, and that appears to be  
 2 the only other circuit that has even come close to saying  
 3 whether or not such use was proper.

4 Your Honor, if you look at the legislative history, I  
 5 think the legislative history is clear that the immunity  
 6 statute -- and I am not asking you to rule on this, Your Honor,  
 7 I am just trying to show you what an important issue you are  
 8 being confronted with at this point. Yes here, Your Honor.  
 9 Farnsworth THE COURT: V. Any issue of selective prosecution or the  
 10 abuse of their prosecutorial discretion, which are almost  
 11 synonymous, is important to this court. It ought to be  
 12 important to every judge, and I believe it is. I have no  
 13 knowledge, except your assertions, and their denials, that they  
 14 have misused their prosecutorial power in the criminal field,  
 15 in connection with this civil case, which you brought as a  
 16 result of the Treasury Department's action in taking away your  
 17 tax-exempt status. Is it criminal or civil. Do you?

18 Now, as to immunity, I would presume that we are in  
 19 kind of a no-man's-land, in a sense, because I don't have any  
 20 knowledge, except by what you said, what the Criminal Division  
 21 is doing, if anything. On them, they are doing their job, but  
 22 when they MR. GITNER: Pardon me? Mr. Farnsworth's office, who  
 23 is a govt. THE COURT: I don't have any direct knowledge of what  
 24 the Criminal Division is doing, if anything, of the Department  
 25 of Justice, or the United States Attorney. I can only infer or

1 presume that possibly something is going on in Arizona or when  
2 perhaps Los Angeles, which has never been mentioned, as I at  
3 recall it.

4 MR. GITNER: No. Is the skeleton? And who is he

5 again? THE COURT: The only thing I remember that you  
6 lawyers have told me on either side is that it has happened in  
7 Arizona, where Ms. Fleishman comes from or lives or resides. I  
8 he left in MR. GITNER: Farnsworth lives here, Your Honor. took  
9 Farnsworth lives in Virginia and is a government employee with  
10 an office here and he has been interviewed jointly. He also  
11 was interviewed jointly by Mr. Goodwin, Mr. Hertz and Mr. Lawler  
12 in July of -- that he had put together when he was a

13 computer THE COURT: Supposing he was? Mr. Goodwin was  
14 described in the Briggs case as an investigator. I don't know  
15 if there is anything that prevents the Justice Department from  
16 going out and interviewing witnesses for possible violations of  
17 the law, whether it be criminal or civil. Do you?

18 MR. GITNER: Your Honor, I think it is the way in  
19 which it is done, whether there is intimidation. When the  
20 three lawyers from the Department of Justice, and I am not  
21 casting any aspersions on them, they are doing their job, but  
22 when they show up unannounced at Mr. Farnsworth's office, who  
23 is a government employee, and they are introduced as Mr. Goodwin  
24 from the Criminal Division, Mr. Hertz and Mr. Lawler  
25 from the Tax Division, and we would like to talk to you, and



1 there is a skeleton in the closet of this man Farnsworth when  
 2 he was employed by another division of the government, that,  
 3 that I use-- blame you for it. But off the top of my head, I  
 4 don't think THE COURT: What is the skeleton? And who is he  
 5 again? MR. GITNER: Your Honor, I think the Weiss case, the  
 6 judge in MR. GITNER: Mr. Farnsworth is a computer specialist  
 7 with HUD. When he was with the Bureau of Census-- apparently,  
 8 he left in 1976, and when he left in 1976, he apparently took a  
 9 computer program with him. For some number of years there was  
 10 a question of whether or not he had taken unauthorized material,  
 11 that was the government's, and had used it for his own profit.  
 12 He took a program that he had put together when he was a  
 13 computer specialist, possible violations of the criminal law.  
 14 The government later decided that he had done nothing  
 15 wrong but my understanding is they had not decided there was  
 16 anything wrong until very recently, until 1983, when this man  
 17 had left in 1976. The findings are pretty devastating. And it  
 18 would put me in Mr. Farnsworth's shoes, if I had  
 19 something to worry about, and basically he had this hiding in  
 20 the back of my mind all this time, and was approached by a  
 21 Criminal Division attorney from the Department of Justice, I  
 22 might cooperate or intend to cooperate a little bit more readily  
 23 with the Civil Division or the Tax Division attorneys that are  
 24 also present. COURT: But it wouldn't prevent them from doing  
 25 what you If there is no criminal investigation going on, Your

1 Honor, then, why was Mr. Goodwin there? as I know,

2 THE COURT: I understand what you are, trying to do,

3 and I don't blame you for it. But off the top of my head, I

4 don't think there is anything wrong with that. It might very

5 well be so MR. GITNER: ur Your Honor, I think the Weiss case, the

6 judges in the Weiss case, had a contrary opinion, and I would --

7 detriment THE COURT: I am not bound by that Weiss case.

8 indicted, MR. GITNER: I know that, Your Honor. I would just

9 ask that you take a look at it.

10 THE COURT: You can be assured that I will take a

11 look at it. But I tell you, what you are in effect asking this

12 court to do is to prevent the government of the United States

13 from investigating possible violations of the criminal law.

14 need here, Your own co-counsel there took the Fifth Amendment.

15 I read the findings of Judge Braman. He wouldn't even testify

16 in that case. He claimed the Fifth Amendment, as he had every

17 right to do. Those findings are pretty devastating. And it

18 would perhaps, again I am not ruling, justify the Criminal

19 Division from taking a look at this case, involving a lady who

20 is about Now, that is not to say it would justify them in

21 their defense of this lawsuit, which you brought, from abusing

22 the civil process in order to obtain "criminal discovery".

23 She is in MR. GITNER: Right. court and also in the Eastern

24 District THE COURT: But it wouldn't prevent them from doing

25 what you have accused them of doing, which they have denied,



1 from working in tandem either, as far as I know. covered the  
 2 major cases. Now, to the extent that they had gone, such as Lawler  
 3 going out with Fleishman or somebody, to interview some of  
 4 these witnesses, suppose they had done that? It might very the  
 5 well be said, and accurately so, that it could be misfeasance  
 6 if they didn't do it, even though such might be to theying  
 7 detriment of your client in the sense that they might get  
 8 indicted, or anybody else might get indicted under the same or  
 9 similar circumstances. seen and we think this is only the tip of  
 10 the iceberg. MR. GITNER: Your Honor, really I strongly recommend  
 11 the Weiss case. THE COURT: It may be. I don't know. The question  
 12 is whether THE COURT: I am going to look at it, in deference to  
 13 you, Mr. Gitner, but I am just telling you, off the top of my  
 14 head here, based on what I have read, and I have done some  
 15 reading on this--as a matter of fact, I just issued an  
 16 opinion very recently, involving this issue of selective  
 17 prosecution. It is a matter of public record. I can tell you  
 18 all about it. You can go look at it, which is cited in our  
 19 brief. It deals with the Black Hebrews, involving a lady who  
 20 is about to go to trial who they claim to be a Black Hebrew, or  
 21 at least the government claims she is, who has, alleged, as I  
 22 recall it, falsified her application for a passport to Israel.  
 23 She is indicted here in this court and also in the Eastern  
 24 District of New York. in response to my question, have gotten up  
 25 and argued They asked the Court to consider the same issue, and

1 it did, and ruled on it, a short opinion, but it covered the  
2 major cases. I have known that for years, long before I became  
3 a judge. Your Honor, if I could.

4 MR. GITNER: Your Honor, all we are asking for is the  
5 ability to conduct some discovery. Now, Your Honor, that I  
6 think I know. THE COURT: I know that. That is the underlying thing  
7 that you really want. You want discovery.

8 MR. GITNER: We think we have really only fallen into  
9 the evidence we have seen and we think this is only the tip of  
10 the iceberg. trial date, we are rapidly running out of time. I  
11 am also in THE COURT: It may be. I don't know. The question  
12 is whether you are entitled to it, too. It is going to take all  
13 of this. Now, you say the witness, what do you call that, the  
14 Witness -- THE COURT: Is that how you are going to pay for your  
15 honeymoon? MR. GITNER: The Witness Immunity Act, Your Honor?

16 THE COURT: Yes. be the results of the case will  
17 justify it. MR. GITNER: The Witness Immunity Act is part of the  
18 Organized Crime Control Act, Your Honor, which is cited in our  
19 brief.

20 THE COURT: I know it is. I went down to the  
21 Honestead MR. GITNER: It was filed, on Tuesday, I believe. In  
22 that case, Your Honor, also, I think -- I'd be able to pay the  
23 bill that THE COURT: I want to know what we can do to proceed  
24 this morning. You, in response to my question, have gotten up  
25 and argued. I don't blame you for it, but you said that the of



1 Court--standing questions.

2 MR. GITNER: I would like to give you a specific  
3 answer, Your Honor, if I could. It is to allow me to prepare  
4 this case, THE COURT: or Yes, to address these issues.

5 MR. GITNER: One other point, Your Honor, that I  
6 think I have to bring to the Court's attention is, I am getting  
7 married December 17th. That is correct, Your Honor.

8 THE COURT: Congratulations. led a motion for  
9 extension MR. GITNER: Thank you, Your Honor. But with a  
10 January 9th trial date, we are rapidly running out of time. I  
11 am also involved in a case that started today with one of my  
12 partners. It is a malpractice case that is going to take all  
13 of this week and probably much of next week. and to their second  
14 motion for THE COURT: Is that how you are going to pay for your  
15 honeymoon? MR. GITNER: Not only discovery, Your Honor, but

16 there is MR. GITNER: Maybe the results of the case will  
17 justify it. I don't know. We will have to wait and see how  
18 that case turns out. That will depend on where we go on a  
19 honeymoon. do we use?

20 THE COURT: Mrs. Richey and I went down to the  
21 Homestead 34 years ago. I remember, after three or four days,  
22 we got so worried whether or not we would be able to pay the  
23 bill that we decided to come home.

24 MR. GITNER: Maybe you had a case to try, Your Honor,  
25 and that limited you to three or four days. But that is one of

1 the outstanding questions, is being abused, that it is going  
2 beyond any Your Honor, a specific reply to your question, what I  
3 would like on behalf of my client is to allow me to prepare, of  
4 this case, prepare for trial, to address these issues.

5 THE COURT: You say you can't even respond to their  
6 latest motion for summary judgment without further discovery.

7 effective MR. GITNER: That is correct, Your Honor. For  
8 lawyers. THE COURT: Now, you have filed a motion for type  
9 extension of time, on November 22nd, to respond to that. taken

10 away with MR. GITNER: Yes, Your Honor. those kinds of sanctions.

11 THE COURT: But intertwined with that, what you  
12 really want is the opportunity for further discovery, to take  
13 your word, so that you can effectively respond to their second  
14 motion for summary judgment or, in the alternative, to dismiss.

15 Honor, we MR. GITNER: Not only discovery, Your Honor, but  
16 there is-- in an informal manner. I hope that we can.

17 THE COURT: Now, how do we manage such a thing, if  
18 the Court should grant it? How do we manage it? What  
19 standards do we use? "together"? You said that about them or  
20 they said. Now, if the deposition of Ms. Fleishman is any  
21 example, that isn't going to get us very far, because of the  
22 litigious nature of the case, the parties and so on, and so  
23 forth. to the relief we were requesting. Even on the

24 continuance MR. GITNER: Your Honor, the United States Government,  
25 as any other party, has the right to file a protective order, if



1 they feel that the discovery is being abused, that it is going  
 2 beyond any possible bounds of relevancy. The Court is well  
 3 aware of the new Federal Rules of Procedure, 26C, et cetera, et  
 4 cetera. stance to see if we could resolve this in an informal  
 5 manner. THE COURT: You don't have to tell me about it. Rule  
 6 77, 11, 37, 28 U.S.C. 1927, all of this panorama of new changes  
 7 effective August 1, 1983, are very, very significant for  
 8 lawyers and their clients who lose motions, discovery-type  
 9 motions. And in many instances our discretion has been taken  
 10 away with respect to the imposition of those kinds of sanctions.

11 conduct. MR. GITNER: Both parties are bound by that. The  
 12 attorneys are bound by that. be able to get the documents from  
 13 the Federal THE COURT: That is right. In this case.

14 MR. GITNER: We know them. I have read them. Your  
 15 Honor, we have attempted, and we will attempt, to work out  
 16 these things in an informal manner. I hope that we can. to  
 17 this process. THE COURT: I told you that from the outset. Wasn't  
 18 there some paper filed with me months ago that said, "We failed  
 19 couldn't even get them together"? You said that about them or  
 20 they said that about you.

21 MR. GITNER: Before we filed every motion with this  
 22 court, we have called them up and asked them if they would  
 23 agree to the relief we were requesting. Even though they are unable  
 24 continuance. I called Mr. Lawler and asked him is it possible  
 25 that we can continue this matter and not have to come to court.

1 The government's position was, I am not sure it was  
 2 Mr. Lawler's fault, maybe one of his superiors felt a hard-line  
 3 approach was necessary in this case, but we have attempted on  
 4 each instance to see if we could resolve this in an informal  
 5 manner. ~~inside the government.~~ But the best evidence of the

6 government Your Honor, what we would like is essentially 60 to  
 7 90 days for discovery. For discovery, that is allowed by the  
 8 Rules of Procedure. You filed the lawsuit. You have to prove

9 it. THE COURT: Of whom?

10 MR. GITNER: Your Honor, we would like to be able to  
 11 conduct discovery of those persons that we have named in our  
 12 pleadings. We would like to be able to get the documents from  
 13 the Federal Government, their file in this case. ~~body would~~  
 14 ~~deny that,~~ THE COURT: What authority do you have for that?

15 MR. GITNER: Your Honor, I think Rule 26 of the  
 16 Federal Rules of Civil Procedure, anything that is relevant to  
 17 this proceeding. And there is also the Cortese case that says  
 18 specifically in a case where you are questioning the good faith  
 19 of the government, that where the information lies within the  
 20 government's hands -- Your Honor, let me pose a hypothetical

21 THE COURT: Supposing all that falls by the wayside,  
 22 supposing I rule against you on that, then where are you?

23 MR. GITNER: I think, Your Honor, then we are unable  
 24 to have a fair chance to litigate our case, I really do.

25 THE COURT: All right. I mean on the selective



1 prosecution prong, of your attack. particular selective  
2 prosecution MR. GITNER: I think, Your Honor, we would not be  
3 denied a fair opportunity to try our case, and the only asked  
4 evidenced that we could bring in would be sources that would be  
5 from outside the government. But the best evidence of the our  
6 government's intent and the government's policy, of course, is  
7 the government. government, if it felt it wasn't relevant, has  
8 the power THE COURT: You filed the lawsuit. You have to prove  
9 it. me show you why it is not relevant.  
10 MR. GITNER: That is correct, Your Honor. But we are  
11 entitled to, as any litigant, and I am entitled as any attorney,  
12 to use the rules of the Court. proper. I think under the  
13 Federal R THE COURT: No question about that. Nobody would  
14 deny that, not in my courtroom, but by the same token, I don't  
15 know whether I am going to let you rummage through the the --  
16 government's files. You have the burden of proof. You are  
17 either a church or you are not, that is the bottom line of it.  
18 Maybe we don't have to reach that question, in view of these  
19 pending motions. very. We are not the ones who brought the  
20 motions MR. GITNER: Your Honor, let me pose a hypothetical  
21 question to you. If your assertion is that only the new  
22 religions are being prosecuted and they are being prosecuted in  
23 a very aggressive manner, and they are willing to employ the  
24 use, whether it is correct or not, of Criminal Division  
25 attorneys and the grants of immunity, which is questionable.

1 under the statute, and that these particular selective  
 2 prosecutions were started for reasons more of a political or,  
 3 nature than of a governmental enforcement nature, and we asked  
 4 for any documents that promulgated that particular policy, I  
 5 think that this court might find that that is relevant to our  
 6 complaint, and I am not going to let them -- if we ever get to  
 7 that point. The government, if it felt it wasn't relevant, has  
 8 the power to say, "Jeff, Mr. Gitner, we don't agree with you.  
 9 Let me show you why it is not relevant." But, if you don't know  
 10 that, you If I don't agree that it is not relevant, they have a  
 11 right to bring a protective order. They have a right to put it  
 12 before this court why it is not proper. I think under the  
 13 Federal Rules of Civil Procedure and under the new amendments,  
 14 I think the idea is to try and get the Court out of basically  
 15 being an umpire or referee about discovery, try and get the --  
 16 or you are THE COURT: The very first time you came in my court  
 17 you heard my speech but it hasn't done a bit of good.

18 MR. GITNER: We are not the ones who have asked for  
 19 the stay of discovery. We are not the ones who brought the  
 20 motions for summary judgment and the motions to dismiss. We  
 21 are the ones that have only been allowed to take but two of your  
 22 depositions. That's true, we did get two depositions. But of  
 23 those have not been on our complaint, Your Honor. Those have  
 24 been totally defensive depositions.

25 This whole case we have been put on the defensive.



1 We filed a complaint. We have yet to be able to do any  
 2 discovery on our complaint. I think essentially, Your Honor,  
 3 have made as many points -- motion for summary judgment and  
 4 THE COURT: You told me you had about 150 witnesses  
 5 you wanted to testify at the trial, which I am never going to  
 6 let you do, and I am not going to let them -- if we ever get to  
 7 that point, I am not going to let them put on all the jillions  
 8 of witnesses they told me about in their trial certification  
 9 sheet. That is absolute folly, in my court. If you don't know  
 10 that, you aren't as smart as I give you credit for.

11 MR. GITNER: Your Honor, give us a chance to conduct  
 12 some discovery and give us a chance to narrow the issues and I  
 13 promise you we won't put on any 100 witnesses in this case. We  
 14 won't have to put on a hundred witnesses in this case.

15 THE COURT: You can either prove you are a religion  
 16 or you are not, it seems to me. But I don't think a court, under  
 17 the Witness MR. GITNER: That is one of the issues.  
 18 THE COURT: Well, that's the basic issue. That's the  
 19 bottom line, isn't it?

20 MR. GITNER: I think it is becoming that issue. That is  
 21 right. THE COURT: That is the bottom line. It goes to your  
 22 selective prosecution argument. It goes to the bottom line of  
 23 your complaint, when you really boil it down to its bare  
 24 essentials. Judge every time Judge Robinson leaves and I  
 25 handle a MR. GITNER: The First Amendment is a very important

1 issue and I know this court is responsive to those issues.  
 2 be Judge Your Honor, there is one other point, though, why we  
 3 can't respond to the second motion for summary judgment and  
 4 that is the immunity issue. We have written Mr. Harris and  
 5 requested that he grant certain witnesses immunity that can  
 6 respond to the -- they, in this particular proceeding,

7 THE COURT: Why don't you advise the Court of those  
 8 things? I didn't know that. immunity grants. What we are

9 MR. GITNER: It is in the papers. It has been in a  
 10 number of them. We have attached -- where they got them, how

11 THE COURT: Does he have that power, without court  
 12 approval? this court, but I don't know. they are

13 MR. GITNER: He has to make the application to the  
 14 Court. Judge Robinson, Your Honor. We have

15 THE COURT: Right. you know they got them from Judge

16 Robinson? MR. GITNER: Right, but I don't think a court, under  
 17 the Witness Immunity Statute, has the power, without an Court  
 18 application from the United States Attorney, approved by the  
 19 Attorney General. provide the Court with that information, as

20 THE COURT: There is no question about that. That is  
 21 right. THE COURT: We've been able to get it where?

22 MR. GITNER: Right. been able to get it from Mr. Musico's  
 23 attorney. THE COURT: Because, as you probably know, I am  
 24 Acting Chief Judge every time Judge Robinson leaves and I  
 25 handle a lot of these matters. too's attorney.



1 MR. GITNER: We have written to Judge Harris, soon to  
2 be Judge Harris, Mr. Harris -- is one of four people who  
3 were granted THE COURT: Judge-Designate, Harris. He has been  
4 confirmed for this case, under the immunity in a civil case,  
5 again under MR. GITNER: Right. And we have yet to receive a  
6 response of whether they, in this particular proceeding,  
7 because they have already used immunity grants, would likewise --  
8 the government has used four immunity grants. What we are  
9 asking them is that we be permitted -- that I think flies in the  
10 face of THE COURT: I have no idea where they got them, how  
11 they got them, and I am very doubtful if they got them out of  
12 anybody in this court, but I don't know, say he erred or  
13 something. MR. GITNER: The government got the immunity grants  
14 from Judge Robinson, Your Honor. Chief Judge Robinson --  
15 well, he THE COURT: How do you know they got them from Judge  
16 Robinson? MR. GITNER: As the Court knows, sitting as the chief  
17 judge, the MR. GITNER: Your Honor, I will file with the Court a  
18 pleading that will show that they were granted under civil  
19 immunity. I will provide the Court with that information, as  
20 we have been able to get it. capacity because we are reviewing  
21 documents. THE COURT: We've been able to get it where? of that  
22 application. MR. GITNER: I've been able to get it from Mr. Musico's  
23 attorney. THE COURT: From whom? MR. GITNER: Mr. Musico's attorney.  
24 THE COURT: From whom? MR. GITNER: Mr. Musico's attorney.  
25

1 THE COURT: Who is Mr. Musico? were.

2 MR. GITNER: Mr. Musico is one of four people who  
3 were granted immunity in June of 1983, in this case, for this  
4 purpose, for this case, under the immunity in a civil case,  
5 again under the Witness Immunity Act?

6 THE COURT: Yes. Your Honor, if I can use the Sells case

7 MR. GITNER: That is what I am saying, you are being  
8 confronted with a case of first impression in this circuit,  
9 never been resolved before, and one that I think flies in the  
10 face of the legislative history of the act totally. From them  
11 under the THE COURT: So you are asking me to overrule, if it  
12 was chief Judge Robinson, my chief judge, say he erred or  
13 something in granting immunity? Your Honor.

14 MR. GITNER: I don't think chief Judge Robinson --  
15 well, he certainly was not confronted with any issue of whether  
16 it was proper use. As the Court knows, sitting as the chief the  
17 judge, the Court receives the application basically in a to  
18 semi-ministerial capacity.

19 THE COURT: We are in a quasi-judicial capacity. Or  
20 we are acting in a judicial capacity because we are reviewing  
21 documents, affidavits, the required things in support of that  
22 application for immunity or whatever it happens to be, under  
23 these various laws. Not by her, did you?

24 MR. GITNER: Chief Judge Robinson, Your Honor, held  
25 that we were not a party to those immunity grants. All



1 the declar THE COURT: I don't think you were.

2 MR. GITNER: However, here we are a party, because't  
3 those immunity grants are basically being used as a litigation  
4 tool against my clients. first we thought, well, I guess they

5 are getting THE COURT: In what respect? want to a grand jury

6 investigate MR. GITNER: Your Honor, if I can use the Sells case.

7 petitions THE COURT: Just tell me. If You say the government has  
8 obtained immunity for certain witnesses. were being raised in a

9 civil case MR. GITNER: Right. est with you, we had never seen

10 that before THE COURT: They have obtained information from them,  
11 under the guise of civil immunity under this Witness Immunity  
12 Act. nity grants and we had no standing, and he held that they

13 should not MR. GITNER: Correct, Your Honor.

14 THE COURT: Which you claim is improper. Musico's

15 attorney, MR. GITNER: Correct. It is, ex parte discovery, Your  
16 Honor, that is exactly what it is. It is saying that we, as the  
17 United States Government have a tool that is not available to  
18 other litigants. We can go outly--again confirms what Mr.

19 Lowler told THE COURT: You learned this from one of the  
20 attorneys of one of those witnesses?

21 MR. GITNER: We learned from Ms. Fleishman that she  
22 was granted immunity. estigation Division.

23 THE COURT: Not by her, did you? for Mr. Goodwin to

24 be along, MR. GITNER: Yes, it says the United States District  
25 Court in District of Columbia, in her first paragraph of all

1 the declarations. ~~of the criminal law. Wouldn't that be~~

2 just as possible? THE COURT: I see. I had forgotten. Maybe I didn't

3 notice it. MR. GITNER: Your Honor, during the course of the

4 Synanon motion. MR. GITNER: At first we thought, well, I guess they

5 are getting these immunity grants pursuant to a grand jury and

6 investigation. So we asked Judge Robinson to unseal the Hertz.

7 petitions for immunity to either confirm that fact or find out

8 exactly how it was that immunity grants were being raised in a

9 civil case, because to be honest with you, we had never seen

10 that before. See, a private civil case. There is a little smoke

11 here. Your Judge Robinson held that we were not a party to those

12 immunity grants and we had no standing, and he held that they

13 should not be unsealed. The government has come in on the second motion

14 for summary judgment. Subsequent to that, I obtained, from Mr. Musico's

15 attorney, Mr. Musico's immunity papers, which showed that they

16 had been specifically obtained for this civil proceeding, that

17 they had not been obtained for a grand jury investigation. do.

18 THE COURT: That merely again confirms what Mr.

19 Lawler told the Court -- obtains the declarations of Farnsworth,

20 Fleishman. MR. GITNER: Yes. and files them in July of 1983.

21 In this case. THE COURT: -- that they weren't working in tandem

22 with the Criminal Investigation Division.

23 THE COURT: Why was there a need for Mr. Goodwin to

24 be along, that is my question? which the government said was

25 going to be. THE COURT: He might have been along to find out if



1 there was any violation of the criminal law. Wouldn't that be  
2 just as possible? It would to me. ~~ernment felt compelled to put~~  
3 ~~before this~~ MR. GITNER: Your Honor, during the course of the  
4 Synanon motion to dismiss hearing in front of Judge Braman, we  
5 also heard from some potential witnesses that Mr. Goodwin and  
6 two FBI agents visited them, without Mr. Lawler and Mr. Hertz.  
7 But my point THE COURT: So what? the government have to file those  
8 papers before MR. GITNER: Seeking their cooperation in their  
9 Bernstein case, Your Honor, seeking their cooperation in the  
10 Bernstein case, a private civil case. There is a little smoke  
11 here, Your Honor. There is a little smoke here when the  
12 government goes out and -- wait, let me try and make this clear,  
13 how I see it. The government has come in on the second motion  
14 for summary judgment and asked this court to hold, by hearing,  
15 collateral estoppel, that Judge Braman's findings are if you  
16 dispositive. Well, Your Honor -- let's say you would have ruled  
17 against it. THE COURT: That is exactly what they want me to do.  
18 motion for MR. GITNER: Right. The government was correct and  
19 you grant it. The government obtains the declarations of Farnsworth,  
20 Fleishman, Arbiter and Mullen and files them in July of 1983,  
21 in this court. COURT: Yes.  
22 THE COURT: I know they did. would not have gotten  
23 his previous MR. GITNER: Before this court resolved the first  
24 motion for summary judgment, which the government said was  
25 going to be dispositive and was going to take care of this

1 whole case. Before you ruled on that motion for summary  
2 judgment, for some reason, the government felt compelled to put  
3 before this court some new issues, some more issues.

4 be. THE COURT: But they are like you, they never quit.

5 MR. GITNER: Well, I have to defend this case,  
6 although I am the plaintiff, I am trying to defend this case.  
7 But my point is this, why did the government have to file those  
8 papers before the Court had resolved the first motion for  
9 summary judgment? Because the idea was to provoke a hearing,  
10 it was to provoke a hearing, I believe instigated by Mr.  
11 Goodwin, before this court ruled dispositively on the first  
12 motion for summary judgment.

13 THE COURT: Provoke a hearing? of it, there was no

14 MR. GITNER: Provoke a hearing, instigate a hearing,  
15 either in this case or in the Bernstein case. Because if you  
16 would have ruled, Your Honor -- let's say you would have ruled  
17 against Synanon. Let's say you would have ruled that the  
18 motion for summary judgment by the government was correct and  
19 you granted it, this case would have been over. That would  
20 have been the end of it.

21 THE COURT: Yes.

22 MR. GITNER: But Mr. Goodwin would not have gotten  
23 his preview of what Synanon's defenses were to possible  
24 criminal indictments. That is what Mr. Goodwin is doing in  
25 this case, and that is why Mr. Goodwin was so active in the



1 Bernstein case. He was going out to solicit witnesses to get  
 2 them to testify in the Bernstein case, because he wanted to see  
 3 what would happen. He wanted to see what their response would  
 4 be. THE COURT: You filed plenty of papers, though, on  
 5 behalf of And I think if the Court takes a look at the timing  
 6 of all of this, you know, why was this going on? These  
 7 witnesses, Your Honor, were contacted, I believe during the  
 8 first weeks of the Bernstein motions to dismiss hearing in front  
 9 of Judge Braman, by Mr. Goodwin and two FBI agents, asked to  
 10 come and cooperate in that case, and I think the reason why, on  
 11 Your Honor, is because they wanted a preview of what Synanon's  
 12 defenses were. their job, but what they filed with this court  
 13 really is. And when you look at the timing of it, there was no  
 14 need for the government to file those declarations in July of  
 15 1983, while this court had before it the first motion for  
 16 summary judgment. You hadn't ruled yet one way or the other.  
 17 You could have ruled one way or the other and then the  
 18 government could have brought up these declarations, in its  
 19 second motion to dismiss. raises factual issues?   
 20 Remember, they also filed a motion to dismiss with  
 21 those declarations. Now they filed another motion to dismiss  
 22 and another motion for summary judgment. So now we have four  
 23 of them hanging out there, and yet we are the ones that are  
 24 being accused of bringing in all the motions. All we are  
 25 trying to do is start our discovery on our complaint.

1 THE COURT: I haven't accused you of anything, sir.

2 MR. GITNER: All know you haven't. I am just trying to  
3 make my points. We go from here.

4 THE COURT: You filed plenty of papers, though, on  
5 behalf of your client. You are welcome, Your Honor.

6 MR. GITNER: The government filed a rather large  
7 motion for summary judgment that they told the Court was going  
8 to be dispositive. And I think the Court understood them to  
9 mean, basically on the legal issues, that this is something we  
10 could take care of legally. Again, I am not casting aspersions  
11 on the government attorneys. I think they are fine attorneys,  
12 they are doing their job, but what they filed with this court  
13 really raised literally hundreds of factual issues, unsupported  
14 by any affidavits. He has represented to the Court that Mr.

15 Goodwin. The Court has read their papers and they put the  
16 burden on Synanon to respond to their motion for summary  
17 judgment, and Synanon did and they did it in the proper way.

18 They filed counter affidavits. What else could they do, Your  
19 Honor, especially when one raises factual issues? this building,  
20 refer to. So I know that we have burdened the Court and we have

21 filled up Your Honor's court chambers with hundreds and  
22 hundreds of papers, but again, Your Honor, we didn't file the  
23 motion for summary judgment. I talk about it, to refer to him as

24 THE COURT: You filed the lawsuit, though, but you  
25 have a right to do that. Your Honor, Mr. Gitner represented to



1 the Court MR. GITNER: We did file the lawsuit, Your Honor's,

2 visited the COURT: All right. Let me hear from Mr. Lawler

3 and see where we go from here. in the Bernstein case.

4 Thank you very much.

5 MR. GITNER: You are welcome, Your Honor. that that

6 is incorrect MR. LAWLER: Good morning, Your Honor. with Mr.

7 Goodwin. THE COURT: Good morning, Mr. Lawler. unsel, who

8 accompany MR. LAWLER: If I may, Your Honor, I would like to

9 begin by clearing up a few misstatements by Mr. Gitner's testimony

10 from those THE COURT: We better get Mr. Gitner to listen, if

11 you are going to charge him with making misstatements. particular

12 lawsuit. MR. LAWLER: I am sure they weren't intentional no

13 misstatements. sure testimony.

14 Mr. Gitner has represented to the Court that Mr. what

15 Goodwin, or was he identified at all?

16 THE COURT: Is it Goodwin and not Godwin? fied himself

17 as an attorney. MR. LAWLER: I believe it is Mr. Goodwin. all. I

18 think the THE COURT: All right. You can't tell Mr. Goodwin that

19 some of the members of the courts, both courts in this building,

20 refer to it as Goodwin. I am sure he must have said his name.

21 MR. LAWLER: Did understand that. vision of the

22 department THE COURT: So I will inform my colleagues to call,

23 when we cite that case or talk about it, to refer to him as

24 Briggs versus Goodwin not Godwin. reflect he was there as a

25 represent MR. LAWLER: Your Honor, Mr. Gitner represented to

1 the Court that Mr. Goodwin, in the company of two FBI agents,  
2 visited two people, actually one person, down in Florida, for  
3 purposes of procuring testimony in the Bernstein case.

4 nothing to THE COURT: Yes. Bernstein case, nothing to do whatsoever

5 with the MR. LAWLER: I can represent to the Court that that  
6 is incorrect because there were not two FBI agents with Mr.

7 Goodwin. It was myself and Mr. Hertz, my co-counsel, who

8 accompanied Mr. Goodwin to Miami, and there was no Mullen and

9 representation and indeed we were not there to elicit testimony

10 from those witnesses for use in the Bernstein case. We were

11 there to develop testimony for our purposes in this particular

12 lawsuit. So there were not two FBI agents and there was no

13 attempt to procure testimony and to account for materials.

14 THE COURT: How was Mr. Goodwin identified, from what

15 division, or was he identified at all? haven't complied with the

16 Court's or MR. LAWLER: I believe Mr. Goodwin identified himself

17 as an attorney. I am not sure he was identified at all. I

18 think he showed his credentials and said that he would like to

19 talk to those witnesses. I believe he might have said his name

20 but I don't recall that. I am sure he must have said his name.

21 THE COURT: Did he say what division of the

22 department he came from?

23 MR. LAWLER: If he did not say the Criminal Division,

24 certainly his credentials would reflect he was there as a

25 representative of the Criminal Division.



THE COURT:: Okay. basic point is this, Your Honor --

MR. LAWLER: But I think the important point I want to leave with the Court is that that visit had absolutely nothing to do with the Bernstein case, nothing to do whatsoever with the Bernstein case. Is very much --

Now, Mr. Gitner represents to the Court that it is Mr. curious how it is that the government came, in July of 1983, to file these affidavits from Bette Fleishman, Rodney Mullen and Naya Arbiter, which so graphically demonstrate Synanon's violent activities and this systematic effort to destroy the evidence relevant to those violent activities. It is clear why we filed that, because we also filed a motion requiring Synanon to produce hidden materials and to account for materials. You know, Your Honor THE COURT: And I ordered them to do so. to apply

this case MR. LAWLER: And they still haven't complied with the Court's order. So we are before Your Honor this morning to suggest that this litigant is entitled to no relief whatsoever from this court. COURT: You withdrew the appeal, I know that.

THE COURT: Under Rule 37, is that what you are this saying? and before the Court today a litigant who.

intention MR. LAWLER: Under Rule 41, Your Honor, we believe.

We believe the United States --

THE COURT: You also at one time were asking me for Rule 37 relief, as in Schultz, Center for Corporate Litigant Responsibility. led to no relief.

1 MR. LAWLER: Our basic point is this, Your Honor--

2 five minutes. THE COURT: You people never appealed from that  
3 decision, now you want to turn around and use it. ke a short

4 recess, MR. LAWLER: Your Honor, that decision is a correct

5 decision. We believe it is very much a-- discovery on the

6 motion to THE COURT: I will tell you something. You know, Mr.

7 Lawler, Mr. Gitner, the longer you're here, the more fun it is.

8 You see, I wouldn't be surprised to see Mr. Lawler over there

9 on your side of the table some day, like a lot of ex-assistant

10 United States attorneys and people from the department who have

11 screamed at me and said that I was a terrible judge and

12 terribly wrong on the law and so on and so forth and then they

13 leave the government and then they come back and say, "You know,

14 Your Honor, you were absolutely right. I want you to apply

15 this case and so on and so forth." us off or not on another

16 track, and MR. LAWLER: We believe that is a correctly decided

17 case, Your Honor. can give you a copy of my opinion on the

18 selective THE COURT: You withdrew the appeal, I know that.

19 As I say, MR. LAWLER: But in any event my basic point is this,

20 there stands before the Court today a litigant who, during the

21 intentionally has failed to comply with two direct orders from

22 this court. MR. LAWLER: Thank you, Your Honor.

23 Now, if I may briefly just summarize the context in

24 which those orders arose and why we believe now this litigant

25 should be entitled to no relief., if I may, I would like to



1 THE COURT: I am going to let you do that in about  
 2 five minutes. But I want you to talk to Mr. Gitner, if you  
 3 would be good enough to, because I am going to take a short  
 4 recess, as to what you think we ought to do -- the basic  
 5 question, as he points out, is they want discovery on the request  
 6 motion to suppress. They want a dissolution of the stay order  
 7 entered by this court, I have forgotten the date, it is on this  
 8 big list, and thus impliedly because of his marriage and "inability  
 9 to get discovery", he wants an extension in the trial date  
 10 beyond January 9th, and presumably the pretrial date of January  
 11 6th.

THE COURT: Am I right?

12 He is correct, we do have a lot of discovery problems,  
 13 in addition to your dispositive motions, but there is this  
 14 additional problem of discovery and really a new issue of  
 15 selective prosecution that may get us off or not on another,  
 16 track, and I want to hear from you about it. estoppel arise as a  
 17 result of Maybe I can give you a copy of my opinion on the  
 18 selective prosecution, which I ruled in favor of the government.  
 19 As I say, there is no secret about it, United States versus,  
 20 Napper. We will try to get that for you, if we can, during the  
 21 recess. court that this case is over.

22 MR. LAWLER: Thank you, Your Honor.

23 (Recess)

24 THE COURT: Mr. Lawler, you may proceed.

25 MR. LAWLER: Your Honor, if I may, I would like to

1 indicate to the Court why it is the United States believes  
 2 there should be no discovery in this case, because we believe  
 3 that this case is now ripe for decision on the government's  
 4 second motion for summary judgment. to have been dispositive of  
 5 the fact. Now, if I may, as I understand what Synanon's request  
 6 is, is that they believe they need discovery in order to defend  
 7 against the government's second motion for summary judgment.

8 alleged. THE COURT: That is their position as outlined by Mr.  
 9 Gitner. It alleged that no evidence was concealed or hidden

10 from the MR. LAWLER: That is correct, Your Honor. denied  
 11 that in the THE COURT: Am I right?

12 MR. GITNER: Yes, Your Honor. erred to the United

13 States. MR. LAWLER: The problem with that position is very  
 14 simple. The government's second motion for summary judgment  
 15 presents but one issue, and it is a legal issue, Your Honor,  
 16 whether or not the principles of collateral estoppel arise as a  
 17 result of Judge Braman's factual findings and are such now that  
 18 this litigant may no longer relitigate those issues finally  
 19 found and determined against it by Judge Braman. If indeed,  
 20 Your Honor, collateral estoppel applies, I respectfully submit  
 21 to this court that this case is over. March 21, 1983, Mr.

22 Bourdette The result of Judge Braman's opinion would be that  
 23 Synanon has perpetrated not only a fraud on his court but, in  
 24 addition, a fraud on this court also, Your Honor. result of  
 25 Judge Braman THE COURT: In what respect have they committed any



1 fraud on this court? Your Honor, Mr. Bourdette has tendered to  
 2 this court MR. LAWLER: During the course of the audit by the  
 3 Internal Revenue Service, Synanon intentionally destroyed every  
 4 evidence, which Judge Braman found to have been dispositive of  
 5 the fact that Synanon was not a tax-exempt organization. facts.  
 6 Nonetheless, after having destroyed that evidence, Synanon  
 7 filed this lawsuit, and in its very complaint, Your Honor, it  
 8 alleged, and that complaint was signed by Mr. Bourdette, in its  
 9 complaint it alleged that no evidence was concealed or hidden  
 10 from the Internal Revenue Service. The United States denied  
 11 that in the complaint. That it was not a tax-exempt  
 12 organization. Whereupon, Mr. Bourdette tendered to the United  
 13 States a request for admission. And I am quoting, "No single  
 14 document or piece of information requested by Agents Brandin or  
 15 Chui, the revenue agents, was ever denied to them by Synanon."  
 16 Again, we now know, an intentional misstatement. Synanon Judge  
 17 destroyed evidence before they came to this court instead of  
 18 making it available to the Internal Revenue Service.  
 19 Synanon's fraud to this court did not stop there. In  
 20 a colloquy in this very court between Mr. Bourdette and Your  
 21 Honor, and that colloquy occurred on March 21, 1983, Mr.  
 22 Bourdette states to Your Honor, and I am quoting, "There was  
 23 never, ever, any situation where the, the revenue agent, was  
 24 denied any access to anything," again, as a result of  
 25 Judge Braman's factual findings. Your Honor, Synanon could not

1 maintain Finally, Your Honor, Mr. Bourdette has tendered to by  
2 this court an affidavit in opposition to the government's first  
3 motion for summary judgment where once again he states, "Every  
4 request from the Internal Revenue Service for information  
5 received a prompt and a complete response. No relevant facts  
6 or documents were ever concealed or misrepresented." testimony  
7 by one St. We now know, Your Honor, that each of those Braman  
8 representations were wrong; simply put, they were lies. We  
9 know, as a result of Judge Braman's opinion, that before The  
10 Synanon, filed this lawsuit it intentionally destroyed evidence  
11 dispositive of the fact that it was not a tax-exempt  
12 organization, and as we have outlined in our second motion for  
13 summary judgment, Synanon now seeks to put the United States at  
14 peril by litigating the question of whether or not it is a  
15 tax-exempt organization when itself, before it got here, but he  
16 destroyed evidence indicating it was not, evidence which Judge  
17 Braman found demonstrated that Synanon was a violent and a found  
18 militaristic cult. testified falsely when he denied having that  
19 conversation. It adopted a policy of violence, in contravention of  
20 Bob Jones University. That policy of violence was adopted in  
21 during the very years before this court, 1977 and 1978. of  
22 Pursuant to that policy of violence, Synanon's executives  
23 undertook attempted murders of attorney Paul Morantz, attempted  
24 murder of Phil Ritter, vicious beatings on one Tom Cardineau.  
25 minute, if In the face of that, Your Honor, Synanon could not



1 maintain that it was a tax-exempt organization. So as found by  
 2 Judge Braman, it set about to destroy evidence, principally  
 3 tape recordings, evidence which clearly demonstrated the fact  
 4 that it was a violent cult. I believe he is.

5 Then what did it do in order to conceal the fact that  
 6 it destroyed that evidence? It procured perjurious testimony  
 7 by one Steven Simon, a high Synanon official. Judge Braman  
 8 found that to be a fact. Judge Braman found that Mr. Simon  
 9 committed perjury in his courtroom, and he found more. The  
 10 perjury, according to Judge Braman, was suborned by Mr. me?

11 Bourdette. MR. LAWLER: I believe the answer to that is yes,

12 Your Honor. THE COURT: I thought he took the Fifth Amendment.

13 Blonder-T. MR. LAWLER: He took the Fifth Amendment, Your Honor,  
 14 with respect to denying a conversation he had with George  
 15 Farnsworth, he took the stand for that limited purpose, but he  
 16 took the Fifth Amendment with respect to everything else. These  
 17 issues that I might say incidentally that Judge Braman also found  
 18 that Mr. Bourdette testified falsely when he denied having that  
 19 conversation with Mr. Farnsworth. Question is, was there a

20 judicial. So we suggest to the Court, as we have outlined in  
 21 our second motion for summary judgment, if the principles of  
 22 collateral estoppel, which is a legal question, apply to Judge  
 23 Braman's opinion, this case is over. On which court.

24 THE COURT: All right. Let's just take that for a  
 25 minute, if I may. This: Our circuit court, United States Court

1 of Appeal. MR. LAWLER: Yes, Your Honor. circuit, in the  
2 Schneider THE COURT: Judge Braman is an Article I judge, is  
3 think, is he not? That the principles of offensive collateral  
4 estoppel MR. LAWLER: I believe he is.

5 THE COURT: Appointed by the president, confirmed by  
6 the United States Senate for a term of 15 years, not an Article  
7 III judge. Does the principle of offensive collateral estoppel  
8 apply or is it binding upon an Article III judge of a different  
9 court when the findings were entered and made by an Article I  
10 judge? I don't know the answer to that. Can you tell me?

11 MR. LAWLER: I believe the answer to that is yes, on  
12 Your Honor. The Supreme Court, in Parklane Hosiery, in the  
13 Blonder-Tongue decision, in United States versus Montana, all  
14 of which I believe we have cited in our second motion for  
15 summary judgment, states that there is but one criteria. Did  
16 the litigant have a full and fair opportunity to litigate those  
17 issues that were found against them? To my knowledge, the  
18 Court does not draw a distinction between the forum in which  
19 that matter was litigated. The question is, was there a  
20 judicial decision by a court. Institution, was sold pursuant to  
21 a contract THE COURT: Of competent jurisdiction. I don't get out,  
22 nor would MR. LAWLER: Of competent jurisdiction. I don't try to  
23 believe there is a distinction between which court. I don't see  
24 it? THE COURT: The second question I have for you that  
25 comes to mind is this: Our circuit court, United States Court



1 of Appeals for the District of Columbia circuit, in the  
 2 Schneider case involving the so-called Vietnam air crash cases  
 3 in Saigon, held that the principles of offensive collateral  
 4 estoppel did not apply in that instance.--

5 Now, I admit to you that that is a different factual  
 6 situation than is perhaps extant here, but there is a profit  
 7 discussion of the principles of collateral estoppel, which  
 8 incidentally I ruled on, too, in the AT&T case. I don't know  
 9 whether you have had a chance to examine it. Mr. Gitner?

10 MR. LAWLER: Not yet, Your Honor. has to be a non-profit

11 THE COURT: I will tell you both that I did write on  
 12 it. As I recall it:--I wish you wouldn't talk. It is  
 13 disturbing to me, Mr. Bourdette, and I am not going to tolerate  
 14 it. ing regulations, there is a separate definition for private  
 15 club in the MR. BOURDETTE: Co I apologize, Your Honor. club

16 THE COURT:--that in order for the doctrine to be  
 17 invoked and to apply, it must involve substantially the same  
 18 issues. Now, you are saying that the issue in this building up  
 19 on Massachusetts Avenue, as I recall your previous description  
 20 of it, next to the Brookings Institution, was sold pursuant to  
 21 a contract, to the Synanon Church. Then they wouldn't get out,  
 22 nor would they close on the deal, because of their inability to  
 23 occupy it as a residence or an office building. Which way was  
 24 it? under the zoning regulations, SP, you have to be a  
 25 non-profit MR. LAWLER: Is Your Honor posing a question to me?

1 THE COURT: Yes. defended on the ground that you

2 MR. LAWLER: I believe the issue there was under the  
3 zoning provisions, if Synanon wanted to occupy the property as  
4 both a residence and an office building --

5 THE COURT: They couldn't do so? zoning change, while

6 MR. LAWLER: It had to be a tax-exempt, non-profit  
7 organization. So the issue was identical to the substantive  
8 issue before Your Honor. So he allowed pre-settlement

9 occupancy. THE COURT: Do you agree with that, Mr. Gitner? 1st,

10 MR. GITNER: The statute says it has to be a non-profit  
11 organization for the SP zone.

12 THE COURT: I know that. Zoning Adjustment?

13 MR. GITNER: It doesn't say tax-exempt. Under the  
14 zoning regulations, there is a separate definition for private  
15 club in the District of Columbia, and the private club then,  
16 definition talks about tax-exempt. So there is an open  
17 question of whether or not tax-exempt is synonymous with  
18 non-profit under the zoning regulations. the permission of the  
19 Board of Judge Braman found, Your Honor, that the issue before  
20 him was non-profit. He never said a word about tax-exempt. I  
21 think when the Court reads Judge Braman's -- and says that  
22 caused. THE COURT: I did read it but I can't remember. that  
23 is basic. MR. GITNER: Judge Braman only talks about non-profit.  
24 Because under the zoning regulations, SP, you have to be a  
25 non-profit organization. longer could occupy it as a matter of



1 right. THE COURT: You defended on the ground that you  
2 couldn't get an occupancy permit because your organization  
3 wanted to occupy and intended to occupy the premises for those  
4 dual purposes, is that correct? *re: after, the zoning inspectors*

5 sent a letter. MR. GITNER: Well, there was a zoning change, while  
6 Synanon was in the property. Synanon put a contract in on  
7 April 28th, 1978. Mr. Bernstein wanted to delay settlement  
8 until 1979, for tax reasons. So he allowed pre-settlement  
9 occupancy. They occupied the building approximately May 1st,  
10 1978. June 8th, 1978, the Board of Zoning, the Zoning  
11 Commission -- *to obtain all certificates necessary for*

12 government. THE COURT: The Board of Zoning Adjustment? *in to*

13 obtain the MR. GITNER: The Zoning Commission, promulgated a  
14 change to the zoning regulations.

15 THE COURT: It would be the zoning commission then,  
16 you are right. *occupancy. That is when Synanon asked that its*

17 contract MR. GITNER: Right, that said a non-profit *its*  
18 organization would first have to obtain the permission of the  
19 Board of Zoning adjustment if it was going to utilize offices  
20 in an SP zone, whereas before, it was a matter of right. So it  
21 was this intervening zoning change in the amendments that *the*  
22 caused Synanon not to be able to occupy the building and that  
23 is basically where that dispute arose, as to who had a  
24 responsibility for the zoning change and Synanon couldn't go to  
25 closing because they no longer could occupy it as a matter of

1 right. MR. GITNER: No. Judge Braman ruled that the  
 2 complaint THE COURT: Go ahead. I am concentrating and -- we  
 3 listening. allowed to really bring the suit for rescission.  
 4 Judge Braman MR. GITNER: Soon thereafter, the zoning inspectors  
 5 sent a letter to Bernstein, Mr. Bernstein, owner of the  
 6 building, and to Synanon, saying, "You are using the Boston  
 7 House for offices. You don't have a certificate of occupancy.  
 8 You can no longer use those for offices."

9 Under the sales agreement between Bernstein, Mr.  
 10 Bernstein, and Synanon, there was a clause that Mr. Bernstein  
 11 was required to obtain all certificates necessary for have gone  
 12 governmental authorization. or Synanon asked Mr. Bernstein to  
 13 obtain the certificate of occupancy to allow the office use.  
 14 with a fine THE COURT: Denied? not tax-exempt.  
 15 MR. GITNER: Mr. Bernstein never applied for the  
 16 certificate of occupancy. That is when Synanon asked that its  
 17 contract be rescinded and asked Mr. Bernstein to return its  
 18 deposit because the building could no longer be used for the  
 19 purpose. MR. GITNER: Very well, Your Honor.  
 20 THE COURT: Then what happened? institution that would  
 21 prevent the MR. GITNER: Then Mr. Bernstein refused to return the  
 22 deposit, a quarter of a million dollars deposit, and Synanon  
 23 filed suit for rescission. only point I am trying to make, Your  
 24 Honor, is THE COURT: And the ruling was you were not entitled  
 25 to rescission? institution, but all he held was that there was



1 evidence MR. GITNER: No. Judge Braman ruled that the id. and  
 2 complaint was dismissed. They never reached the question -- we  
 3 were not allowed to really bring the suit for rescission. were  
 4 Judge Braman dismissed the complaint. to the issue of whether  
 5 Synanon was THE COURT: Brought by? tion under the zoning regs."

6 He never MR. GITNER: Synanon, for rescission of the contract  
 7 and for return of the deposit. not be used synonymously because  
 8 Judge Bram THE COURT: So you lost? ue before him.

9 MR. GITNER: We lost the case, correct. What Mr. and  
 10 Lawler is saying is he is saying to the Court that Judge Braman,  
 11 ruling that evidence had been suppressed, which would have gone  
 12 to the question of whether or not Synanon was a non-profiters  
 13 organization under the D.C. zoning regulations, is synonymous  
 14 with a finding that Synanon is not tax-exempt. like to have.  
 15 Your Honor THE COURT: It doesn't have to be synonymous. It has  
 16 to be substantially the same. That is the rule that is ady  
 17 involved in invoking the doctrine of offensive collateral  
 18 estoppel, Mr. Gitner. respond to their latest motion.

19 MR. GITNER: Very well, Your Honor. t, Your Honor.

20 THE COURT: Maybe there is a distinction that would  
 21 prevent the Court from finding or holding that it was any  
 22 substantially the same issue. as a matter of law, the  
 23 doctrine.

24 MR. GITNER: The only point I am trying to make, Your  
 25 Honor, is that Judge Braman did not hold that Synanon was not a  
 non-tax exempt institution. but all he held was that there

1 evidence that had been suppressed, and that is all he said, and  
2 I know the words because they are very important to me, "Would  
3 have probably gone to the issue," "Would have probably," were by  
4 his words, "Would have probably gone to the issue of whether  
5 Synanon was a non-profit organization under the zoning regs."  
6 He never got to any issue about tax exemption, Your Honor.  
7 Action and those words should not be used synonymously because  
8 Judge Braman did not have that issue before him. *pleadings,*  
9 Your Honor. THE COURT: ex You don't need any discovery to respond  
10 to that. THE COURT: You haven't responded to their latest  
11 motion for MR. GITNER: As far as? dismiss on the ground that  
12 you want. THE COURT: co Their latest motion. so I don't see where  
13 you need any discovery to respond to that. *ence, at this moment*  
14 that I believe MR. GITNER: The discovery we would like to have, *at*  
15 Your Honor -- *findings in that case are sufficient for this*  
16 court to. THE COURT: so I know what it is. co You have already  
17 outlined that. *But you don't need any discovery, as your*  
18 motion suggests, *to respond to their latest motion. if there*  
19 had not been MR. LAWLER: *That is our basic point, Your Honor.*  
20 Braman's. THE COURT: You don't need any discovery to respond  
21 to what Judge Braman's decision held. *th You don't need anyment*  
22 discovery to determine whether, *as a matter of law, the Mr.*  
23 doctrine of offensive collateral estoppel should apply. *g You*  
24 don't need that one whit. *And you have ten days, under the*  
25 rules, *to respond to it. Obviously, as Mr. Lawler says, Mr.*



1 Gitner, and I have great respect for you, it is a pure question  
2 of law.ely nothing.

3 MR. GITNER: However, Your Honor, if that decision by  
4 Judge Braman was obtained through the use of bad faith efforts  
5 by the government, or if the government was involved in some  
6 untoward manner in obtaining that decision, then they should  
7 not be allowed to use that decision by Judge Braman to their  
8 benefit, and that is what we have outlined in our pleadings,  
9 Your Honor, that is exactly --r 17th.

10 THE COURT: You haven't responded to their latest  
11 motion for summary judgment or to dismiss on the ground that  
12 you want further discovery, and I think I must tell you at  
13 least tentatively, but with a strong inference, at this moment  
14 that I believe that he has presented solely a legal question as  
15 to whether the findings in that case are sufficient for this  
16 court to invoke the doctrine of offense collateral estoppel.  
17 That is a question of law.ould like the opportunity to file a

18 reply brief. MR. GITNER: I would agree with the Court if there  
19 had not been any government involvement in obtaining Judge  
20 Braman's decision. ER: I can do it in seven days.

21 THE COURT: We will see whether there was government  
22 involvement or not, but that doesn't occasion the need, Mr.  
23 Gitner, for discovery on that question. You are talking about  
24 government involvement in this case, not necessarily government  
25 involvement in that case. That had nothing to do with

1 selective prosecution in violation of Yick Wo and its progeny,  
2 absolutely nothing. Yes, sir.

3 MR. GITNER: Your Honor, there is one other point--

4 THE COURT: Isn't that right? to have until next

5 Monday to MR. GITNER: You are correct, Your Honor.

6 THE COURT: Of course I am correct. Monday.

7 So respond to their motion. Your Honor.

8 When are you getting married again? Minute. Monday?

9 MR. GITNER: December 17th.

10 THE COURT: You have time to respond to that in a  
11 timely fashion. I will give you a ruling on it in a timely  
12 manner, too. all this time since it was filed. Their motion

13 was filed MR. GITNER: Your Honor, when would you like us to do  
14 that? what they talked about in there, and you know that they

15 filed with THE COURT: I don't know whether you addressed in it  
16 your motion the Schneider case. I didn't read it as

17 sufficient MR. LAWLER: I would like the opportunity to file a  
18 reply brief to Mr. Gitner. clear through it, to be honest with  
19 you.

20 THE COURT: Under our new rules you have seven days.

21 MR. LAWLER: I can do it in seven days. us to respond

22 to the leg THE COURT: All right. But that is all.

23 Now, this business of surreplies and surrebuttals and  
24 so on and so forth is going to stop, and the first side that  
25 does it is going to get in trouble with the Court. I am  
telling you both that. I give you an extension until the 29th to



1 respond MR. GITNER: Your Honor -- excuse me, Mr. Lawler.

2 order. THE COURT: Yes, sir. time within which to do that.

3 gave you MR. GITNER: Your Honor, our response is due the 29th.

4 Your Honor, would it be possible for us to have until next

5 Monday to file that? Your Honor, we had the outstanding issue

6 of whether THE COURT: I will give you until Monday.

7 had the MR. GITNER: Thank you, Your Honor. involvement of the

8 government THE COURT: Wait a minute, wait a minute. Monday?

9 You mean next Monday? That doesn't have anything to do with

10 this. MR. GITNER: Yes, sir.

11 THE COURT: I don't think you need that much time.

12 You have had all this time since it was filed. Their motion

13 was filed on November 9th and here it is the 28th. You have

14 known what they talked about in there, and you know that they

15 filed with the Court Judge Braman's findings, because when it

16 came in, I read it. Obviously, I didn't read it as

17 sufficiently so that it is emblazoned in my mind like it is you

18 gentlemen, but I did read clear through it, to be honest with

19 you. THE COURT: Go ahead now.

20 MR. GITNER: Yes, Your Honor. You want us to respond

21 to the legal issues, the purely legal issues? is suitable to the

22 government THE COURT: I want you to respond to their motion for

23 summary judgment or in the alternative to dismiss with

24 prejudice filed herein on November 9th. fully will be able to

25 demonstrate Now, I did give you an extension until the 29th to

1 respond thereto. I think that we ought to adhere to the Court  
2 order. You have had plenty of time within which to do that.  
3 gave you one extension. I see no need to give you another  
4 extension on that motion. It was an anti-

5 MR. GITNER: Your Honor, we had the outstanding issue  
6 of whether or not we could even really respond to it until we  
7 had the immunity question cleared up and the involvement of the  
8 government. don't recall. It is a growing

9 THE COURT: That doesn't have anything to do with  
10 this. always being applied as easily as some

11 MR. GITNER: May we have until Thursday, Your Honor?  
12 I think we could file -- understand that, Your

13 THE COURT: I will give you until Wednesday afternoon  
14 at 4:00. sition, irrespective of whether the

15 MR. GITNER: Thank you, Your Honor.

16 MR. LAWLER: Might I file a reply by Monday?

17 THE COURT: Yes. say these findings

18 MR. LAWLER: Thank you, Your Honor.

19 THE COURT: Go ahead now. Let be

20 MR. LAWLER: Your Honor, I believe, if the Court  
21 wishes to have the matter remain there, that is suitable to the  
22 government. I think the government's basic position is that it  
23 is entitled to summary judgment with respect to its second  
24 motion for summary judgment, and I hopefully will be able to  
25 demonstrate that to the Court through the briefs that will be



1 filed. on, which Judge Braman in fact found

2 THE COURT: Well, I think you ought to look at the  
3 issues that I have raised, I am speaking to both sides. I  
4 remember the Parklane case. It was an antitrust case.

5 MR. LAWLER: I believe it was, Your Honor, yes.

6 THE COURT: I know it was, but I don't remember it in  
7 the context of this case, and I haven't read the facts in so  
8 long that I don't recall. It is a growing doctrine that is  
9 being given greater support, sophistication, dignity, but it  
10 isn't always being applied as easily as some of the lawyers  
11 would urge it upon the courts.

12 MR. LAWLER: I understand that, Your Honor. I  
13 believe with respect to the collateral estoppel question, our  
14 basic position, irrespective of whether the substantive issue  
15 before Judge Braman was identical to that here, namely, whether  
16 Synanon is a tax-exempt organization --

17 THE COURT: You say those findings support --

18 MR. LAWLER: Yes, sir.

19 THE COURT: Wait a minute. Let me see if I am  
20 correct. What you are saying is that those findings really  
21 support your statement of material facts that were not in  
22 dispute in large part that you filed in conjunction with your  
23 original motion for summary judgment.

24 MR. LAWLER: That is correct with respect to the  
25 issue as to whether or not Synanon violated the Bob Jones



1 decision, which Judge Braman in fact found that they did.

2 THE COURT: Yes, they contend they did, if he is  
3 right that there is a two-pronged test. I have read and  
4 re-read the Bob Jones case, and I must say I have trouble with  
5 that, some trouble with it. That is all tied up in the  
6 mini-trial problem, too, that I think you suggested.

7 MR. LAWLER: Yes, I did. I told them to me, clearly, that

8 THE COURT: Which they vigorously opposed, because  
9 they said it didn't apply. In respect to the issue of whether or

10 not the UnMR. LAWLER: Just to mention to the Court, we wouldn't  
11 also -- seq. of Title 18, we, on Friday, have submitted to Your

12 Honor, a THE COURT: I haven't decided that question either.

13 MR. LAWLER: I understand that, Your Honor. We would  
14 also, to the extent that our motions for summary judgment are  
15 denied, be prepared to prove at a mini-trial those matters  
16 contained in our second supplemental statement of material  
17 facts, namely, that Synanon intentionally diverted huge sums of  
18 money to the private use of certain individuals, and we have  
19 also suggested that as a basis for a mini-trial to the Court.

20 But, however, we do believe our primary position is  
21 that we are entitled to summary judgment.

22 THE COURT: Do you want to address this argument that  
23 Mr. Gitner made about the Witness Immunity Act?

24 MR. LAWLER: Indeed I do, Your Honor, yes.

25 THE COURT: You haven't



1 issue of selective prosecution and possibly abuse of process.  
 2 Your Honor MR. LAWLER: Surely, Your Honor.

3 THE COURT: That is what he is talking about, bottom  
 4 line, isn't it? abler decision which is reported

5 Supp. 82 MR. GITNER: Yes, sir. Court was, and

6 "That the MR. LAWLER: Your Honor, if I may take them in the  
 7 order which Your Honor has given them to me, clearly that

8 the govern THE COURT: All right. r case could grant

9 a civil MR. LAWLER: With respect to the issue of whether or  
 10 not the United States can grant immunity arising under Section  
 11 6001 et seq of Title 18, we, on Friday, have submitted to Your

12 Honor, a brief of some nine pages, which basically sets forth  
 13 our position. And our position very clearly is immunity can  
 14 indeed be awarded to witnesses by the United States upon  
 15 application to the Court, for use in a civil case.

16 United Sta In fact, Your Honor, there is absolutely no law to  
 17 the contrary, and the immunity provision itself --

18 States Tax THE COURT: He says there is, at least by analogy,  
 19 from the Federal District Court in the Middle District of  
 20 Pennsylvania, I think he said. Did he not? by Courts.

21 MR. GITNER: That held against us. at the United

22 States can THE COURT: But you said by analogy some of the cases  
 23 were not properly interpreted. Court by the express terms of the

24 statute if MR. GITNER: Correct, Your Honor. perhaps absurd to  
 25 argue that THE COURT: And, therefore, that

1 District MR. GITNER: I question the basis of that decision,  
2 Your Honor. Indeed, the legislative history, as we have outlined  
3 on page 5 MR. LAWLER: Nonetheless, Your Honor, Mr. Gitner  
4 refers to the Mahler decision which is reported at 367 Fed.  
5 Supp. 82 where the holding of the Court was, and I am quoting,  
6 "That the government may not grant immunity in a civil  
7 proceeding is without merit." Judge Conavoy clearly held that  
8 the government in that particular case could grant immunity in  
9 a civil case. in the Seventh Circuit, the Capetto case in the  
10 Seventh Circuit. More importantly, the statute itself authorizes the  
11 United States to make application to a court for a grant of  
12 immunity in a civil case. Section 6003 of Title 18 says that  
13 the United States may award immunity to any witness at any  
14 proceeding before or ancillary to a court of the United States.  
15 United States Section 6001, subparagraph 4, defines a court of the  
16 United States as not only the United States District Courts but  
17 also the Superior Court of the District of Columbia, the United  
18 States Tax Court, which has exclusive civil jurisdiction, the  
19 United States Court of Claims, which has exclusive civil  
20 jurisdiction, and the United States Bankruptcy Courts.  
21 So there can be no question but that the United  
22 States can award immunity in the Tax Court, in the Court of  
23 Claims, and in the Bankruptcy Court by the express terms of the  
24 statutes itself. Therefore, we suggest it is perhaps absurd to  
25



1 District Court. ~~to~~ belabor the point but there is no question  
2 that if ~~th~~ Indeed, the legislative history, ~~as~~ we have outlined  
3 on page ~~5~~ of our memo, clearly indicates that the United States  
4 may make an application for immunity in a deposition arising  
5 under the Federal Rules of Civil Procedure. ~~so~~ And we have cited,  
6 Your Honor, uniformly the courts which have addressed the issue  
7 have found that immunity may properly be given in a civil case.  
8 That, of course, is the Ryan case in the Seventh Circuit, the  
9 Patrick case in the Seventh Circuit, the Capetto case in the  
10 Seventh Circuit. COURT: Why did you go to the chief judge? Not  
11 that I have. So we suggest to the Court not only the statute  
12 itself -- MR. LAWLER: If I may, Your Honor might recall that  
13 the immunity. THE COURT: Did any of those cases apply for cert,  
14 the parties, and what happened in the Supreme Court of the admi-  
15 United States? COURT: Radner? Rainer. MR. LAWLER: Yes, the Ryan case cert was denied.  
16 That is the Third Circuit case, which incidentally is a civil  
17 tax case. It is 568 Fed. 2nd 531. Your Honor asked whether or not  
18 it was civil. THE COURT: That is in your brief? of a grand jury  
19 investigation. MR. LAWLER: Yes. It is on page 15 of our brief. ~~for~~  
20 those circuits. THE COURT: None of the Seventh Circuit cases was or  
21 there an application for certiorari? those applications, and Mr  
22 Radner was. MR. LAWLER: Yes, there was, in the Capetto case  
23 which is a Seventh Circuit case. Cert was denied at 420 U.S.

1 Not to belabor the point but there is no question  
 2 that if this 7428 case were filed in the Tax Court by Synanon,  
 3 as it could have been, or were filed in the United States Court  
 4 of Claims, as it could have been, the United States could award  
 5 civil immunity there. There is certainly no reason why it  
 6 can't award civil immunity here, simply because it was filed in  
 7 this United States District Court. The statute clearly  
 8 indicates that it is entirely proper for the United States to  
 9 award civil immunity in a Federal District Court.

10 THE COURT: Why did you go to the chief judge? Not  
 11 that I have any objection, but why did you do that? You or the  
 12 other side?

13 MR. LAWLER: If I may, Your Honor might recall that  
 14 the immunity applications initially were made to this court.  
 15 Your Honor was on vacation. Your Honor's law clerk, Mr. Radner,

16 THE COURT: Radner? Rainer. of the Justice Department  
 17 and any. MR. LAWLER: Rainer, I am sorry. Made a telephone  
 18 call to Your Honor advising Your Honor that we were there for  
 19 our applications for immunity. Your Honor asked whether or not  
 20 it was civil immunity or immunity arising out of a grand jury  
 21 investigation. We indicated it was civil immunity and under  
 22 those circumstances you indicated that it would be proper for  
 23 us to go to the chief judge to make those applications, and Mr.  
 24 Radner was kind enough to take us over there and the chief  
 25 judge signed the orders. Is that Synanon filed this lawsuit,  
 and it was THE COURT: Rainer.



1 MR. LAWLER: Rainer. And the chief judge signed  
2 those immunity orders. section. Our duties have been  
3 exclusively THE COURT: You say I was sick or away? case. We

4 are defend MR. LAWLER: You were on vacation. I believe it was  
5 June of this year. I could get the exact date, if you like. the

6 bald ass THE COURT: Bear in mind, I don't want to show any  
7 displeasure about going to the Chief. You just wanted to know  
8 why and I didn't remember that. All of those applications  
9 should come back to me -- to, believe me, we have been quite

10 busy in do MR. LAWLER: We thought that they would, Your Honor.

11 THE COURT: -- if there are any more, by you or the  
12 other side MR. LAWLER: Now, Synanon makes much of the fact that

13 with respect MR. LAWLER: In Your Honor, if I may, I believe Your  
14 Honor's next question to me was in regard to this alleged  
15 commingling, between the Tax Division of the Justice Department  
16 and any Criminal Division activity. Again, Your Honor --

17 THE COURT: Have you addressed that in any of your  
18 papers? I don't recall that. as I believe we had a duty to

19 do, to find MR. LAWLER: We did at length, Your Honor, we did go  
20 indeed. If I may, I can refer the Court to those papers. out in

21 Arizona why Yes, Your Honor, principally we rely upon our  
22 memorandum which was filed on November 4, 1983, in response to

23 Synanon's supplemental memorandum to suppress. The simple fact,  
24 as we have outlined there, is that Synanon filed this lawsuit,  
25 and it was assigned to the Tax Division for defense. unseal



1 advised that this is a civil case. Where I work, where Mr. Hertz  
2 works, is a civil trial section. Our duties have been  
3 exclusively civil from day one with respect to this case. We  
4 are defending a civil lawsuit. We are not involved in a  
5 criminal investigation to any extent. We have, contrary to the  
6 bald assertion Synanon makes, we have received no grand jury  
7 information whatsoever. Our duties, Your Honor, are totally to  
8 defend this case, and in view of the papers Synanon generates  
9 here that we have to reply to, believe me, we have been quite  
10 busy in doing just that. You sure put it forth in your statement  
11 of material. THE COURT: That is obvious. Not be in dispute in  
12 support of MR. LAWLER: Now, Synanon makes much of the fact that  
13 with respect to certain witness interviews, the United States  
14 has been accompanied by Mr. Goodwin of the Criminal Division,  
15 and I think, Your Honor, it is time that I indicate to the  
16 Court just exactly why that is. It would have to be approved, as  
17 Your Honor. After the United States filed its first motion for  
18 summary judgment, it is set about, as I believe we had a duty to  
19 do, to find witnesses to the extent that case was going to go  
20 to trial. In doing that, we came across three witnesses out in  
21 Arizona who tell that incredible story about Synanon's violence  
22 and illegal activities, those being Bette Fleishman, whose  
23 deposition was taken here, Rodney Mullen and Naya Arbiter.  
24 That is why Your Honor, as a condition for those witnesses to  
25 testify for the United States in this case, their counsel as a



1 advised that it would be necessary for those witnesses to  
2 obtain immunity. I knew nothing about immunity. Mr. Hertz  
3 knew nothing about immunity. We are civil lawyers.

4 We spoke with our superiors, what should we do? We  
5 believe we need the testimony of these witnesses, indeed, the  
6 public requires that this story of violence be told, that this  
7 is not a tax-exempt organization. It is a violent cult that  
8 attempts to murder people. We thought that was pretty relevant  
9 to the issues before Your Honor here, and in that context -- of

10 my report. THE COURT: You sure put it forth in your statement  
11 of material facts that were alleged to not be in dispute in  
12 support of your original motion for summary judgment.

13 MR. LAWLER: We tried to, Your Honor. It is an  
14 important story that needs to be told. In any event, in  
15 conjunction with our superiors, the Criminal Division, who, if  
16 immunity was to be awarded it would have to be approved, as  
17 Your Honor knows, it is Title 18 immunity, it has to be  
18 approved by the Criminal Division of the Justice Department,  
19 the Assistant Attorney General.

20 For that reason, a determination needed to be made  
21 whether or not immunity could be granted, whether or not it was  
22 in the public interest to be granted, and that is when Mr. Earl  
23 Goodwin accompanied Mr. Hertz and myself to those interviews.  
24 That is why he was there. was going on in front of Judge Brannan,  
25 I think that Now, what if anything

1 result of that, I think it is a matter that I need not address  
 2 because I am not involved in it. But that is how Mr. Goodwin  
 3 got involved. On Mr. Goodwin, Mr. Lawler and Mr. Hertz were down  
 4 in Florida. THE COURT: What about his allegation that the FBI  
 5 and Mr. Goodwin were involved in the Bernstein case? We thought  
 6 the Schiff. MR. LAWLER: Absolutely wrong. Mr. Gitner indicated  
 7 to the Court that Mr. Goodwin and two FBI agents visited one  
 8 Len Schiff in Miami. Oh, we knew that, we knew that Sybil  
 9 Schiff was. THE COURT: You better spell that for the benefit of  
 10 my reporter. Len Schiff. When the testimony was elicited in the  
 11 Bernstein. MR. LAWLER: I believe it is S-C-H-I-F-F, and we  
 12 learned that. THE COURT: Lynn or Len? We thought they were still  
 13 in Synanon. MR. LAWLER: I believe it is Len. to get the Schiffs  
 14 to cooperate. THE COURT: A woman? That is in this case at that time  
 15 solely for. MR. LAWLER: No, your Honor, in fact, there  
 16 were not two FBI agents present. Mr. Hertz and I were present  
 17 with Mr. Goodwin. was no direction to the Schiffs by Mr.  
 18 Goodwin or. THE COURT: You said that in Florida, but you were  
 19 talking about some place up here. I'd be further from the truth.  
 20 MR. LAWLER: I believe in Florida is so-called  
 21 surprise. THE COURT: Mr. Goodwin, Mr. Hertz and myself made to  
 22 Mr. George. MR. GITNER: Both. Washington in July of this year,  
 23 Mr. Farnsworth and then in September of this year, while the  
 24 motion to dismiss hearing was going on in front of Judge Braman,  
 25 I think that is when Mr. Goodwin, the witness described it to



1 me, unfortunately they thought they were FBI agents but, I  
2 apparently Mr. Lawler is correct in that, during the Bernstein  
3 hearing is when Mr. Goodwin, Mr. Lawler and Mr. Hertz were down  
4 in Florida. Stein case, and I think he called us up and he said,  
5 "I think y MR. LAWLER: ou Exactly, Your Honor, because we thought  
6 the Schiffs, who we knew were implicated in the destruction of  
7 evidence that was dispositive of the fact Synanon was not a  
8 tax-exempt organization, we knew that, we knew that Sybil  
9 Schiff was implicated in those destruction efforts, she being  
10 the wife of Len Schiff. When the testimony was elicited in the  
11 Bernstein case that the Schiffs were out of Synanon, and we  
12 learned that for the first time -- we thought they were still  
13 in Synanon -- we went to Florida to, attempt to get the Schiffs  
14 to cooperate with the United States in this case at that time  
15 solely for this case, and certainly not for the Bernstein case.  
16 I can represent to this court, as an officer of this  
17 court, that there was no direction to the Schiffs by Mr.  
18 Goodwin or anyone else that we were there for the purposes of  
19 the Bernstein case. Nothing could be further from the truth.  
20 should be Now, Mr. Gitner again mentioned this so-called  
21 surprise visit that Mr. Goodwin, Mr. Hertz and myself made to  
22 Mr. George Farnsworth. And according to Mr. Gitner, we cajoled  
23 Mr. Farnsworth into cooperating with the United States in the  
24 face of confronting him with some prior potential criminal  
25 conduct that apparently had arose in 1976. the United States

1 Again, Your Honor, as an officer of this court, I  
 2 didn't know anything about any potential criminal conduct by  
 3 Mr. Farnsworth until the day before his testimony was elicited  
 4 in the Bernstein case, and I think he called us up and he said,  
 5 "I think you fellows ought to know something. I was once under  
 6 investigation by the FBI." And that is the first we learned  
 7 about it. But we had his testimony. We had his declaration  
 8 before he even told us that. I like to talk to you fellows. Do  
 9 you think what is more important? Mr. Gitner complains that we  
 10 have abused and harassed Mr. Farnsworth, but Mr. Gitner asked  
 11 Mr. Farnsworth that in the Bernstein case under oath on the Mr.  
 12 witness stand. It is, on pages 177 and 178, I am quoting, the  
 13 Question, by Mr. Gitner: "Did they," myself, Mr. Hertz, Mr.  
 14 Goodwin, "put any pressure on you, Mr. Farnsworth, concerning  
 15 these allegations?" that program, that Mr. Simon testified  
 16 falsely, "They did not." admitted that to Ms. Fleishman and  
 17 that Mr. S. Question: "Were you concerned about these, trial  
 18 allegations?"  
 19 "I expected they might come up. I thought they every  
 20 should know about them. And we have heard a great deal about  
 21 our mission." Did you tell them about your concern that it might  
 22 come up on the first visit on July 16th? I sense of this case.  
 23 What, if a "No."ing, other branches of the Federal Government may  
 24 or may not Mr. Farnsworth went on to testify that he was  
 25 cooperating fully, freely and willingly with the United States.



1           Indeed, Synanon complains that the United States  
2           somehow forced Bette Fleishman, who testified on that witness  
3           stand for two days, we cajoled her, pressured her, through some  
4           form of mysterious misconduct in cooperating with the United  
5           States. Nothing can be further from the truth.

6           I was at an interview with another witness who said  
7           to me, "Listen, there is this lady whose name is Bette  
8           Fleishman outside. She would like to talk to you fellows. Do  
9           you think you want to talk to her?"

10          That is how we got Bette Fleishman's cooperation.  
11          Indeed, she did require immunity because she testified, at Mr.  
12          Bourdette's direction, along with the direction of some other  
13          high executives of Synanon, that she intentionally destroyed  
14          subpoenaed evidence, that Mr. Steve Simon, the Synanon  
15          archivist, directed that program, that Mr. Simon testified  
16          falsely, perjurally, he admitted that to Ms. Fleishman and  
17          that Mr. Simon's testimony was suborned by Mr. Bourdette, trial  
18          counsel here.

19          So, Your Honor, the government has sat back at every  
20          hearing before this court and we have heard a great deal about  
21          our misconduct. None exists. The United States, Mr. Hertz and  
22          I, are involved totally in the civil defense of this case.  
23          What, if anything, other branches of the Federal Government may  
24          or may not be doing is something that is not relevant here.

25          THE COURT: He makes the charge, let's call it a



1 charge, the allegation that you are using the civil rules,  
2 particularly the discovery rules, to develop a criminal case  
3 against the officers in the organization known as Synanon.

4 MR. LAWLER: Simple answer, Your Honor. We have  
5 conducted no discovery. We have not taken one deposition.

6 THE COURT: You participated in the deposition of Ms.  
7 Fleishman. You got their declarations.

8 MR. LAWLER: We obtained her declaration because she  
9 freely gave it to us. Now, as a condition she required  
10 immunity, and that immunity was given, as Your Honor knows, for  
11 the specific purpose of this case and for no other reason. But  
12 Your Honor must, and I believe Your Honor does, understand that  
13 when this case started, here we had an organization which calls  
14 itself a church, a rehabilitation organization. It files this  
15 lawsuit seeking the support and the subsidy of the American  
16 taxpayers. It comes here and says, "We demand the support of  
17 the other taxpayers of this country." We took away their  
18 tax-exempt status. And as that lawsuit is progressing, the United States  
19 discovers this incredible story told by Bette Fleishman, Rodney  
20 Mullen, Naya Arbiter, of attempts to procure professional  
21 assassins, of a Synanon hit list with 10 to 15 people who are  
22 named on it, of directions from Synanon's founder to murder  
23 Paul Morantz, to murder Phil Ritter, both of whom almost died.  
24 To say that the United States did not have some form of duty,  
25 it seems to me, in those circumstances, to procure that recall.



1 testimony for the benefit of this court, at the expense of  
2 granting civil immunity, I submit to the Court, it would have  
3 been misfeasance had we not done that. In fact was taken. Mr.  
4 Brandin: We acted properly. It is a story that needed to be  
5 told. It is a story of an organization which certainly does  
6 not deserve the support and the subsidy of the taxpayers of  
7 this country. At this is a violent, militaristic cult, he was  
8 never shot. THE COURT: And it is not being singled out because  
9 it is a sect or a cult?

10 MR. LAWLER: Nothing could be further from the truth.

11 THE COURT: That is distinguishable from a "something that  
12 established religion"?

13 MR. LAWLER: We didn't file this lawsuit. Synanon  
14 filed this lawsuit. We are defending it.

15 THE COURT: I think they might say, "You took away  
16 our tax-exempt status and you forced us to file it." can let me  
17 know.

18 MR. LAWLER: For good reason we took away their  
19 tax-exempt status. MR. Brandin: Fine, Your Honor. In any event, Mr.

20 THE COURT: How do you answer his allegation, which  
21 is not dispositive but it is informative, at the very minimum,  
22 that the man who did the audit, and his immediate superior, and  
23 approved their position, that they should not be denied in did  
24 tax-exempt status? were destroyed, and intentionally

25 destroyed. MR. LAWLER: Mr. Brandin himself, who was the initial  
Revenue agent, answered that question. Your Honor will recall,

1 Your Honor allowed Synanon to take Mr. Brandin's deposition.  
 2 there is THE COURT: I did. here was, and there is not, but  
 3 even if MR. LAWLER: That deposition in fact was taken. To Mr.  
 4 Brandin testified that the documents, which support the United  
 5 States' first motion for summary judgment, were never made  
 6 available to him. He never saw them, 3,000 pages of documents,  
 7 which show that this is a violent, militaristic cult, that was  
 8 never shown. The only thing he saw is what Synanon was willing  
 9 to give to him. in three cities throughout the United States,  
 10 of IRS. The only thing he heard--ric Director of Internal  
 11 Revenue. THE COURT: I think Mr. Gitner read me something that  
 12 he got everything.  
 13 MR. LAWLER: That is not what Mr. Brandin testified  
 14 to, Your Honor. I think that that is true, but if the Internal  
 15 Revenue THE COURT: All right. Show me where it is in the  
 16 record. You don't have to do it this minute but you can let me  
 17 know. MR. LAWLER: Synanon. And even if, as a matter of  
 18 law, we do MR. LAWLER: Fine, Your Honor. In any event, Mr. Jones  
 19 Brandin certainly did not see the 100 tape recordings that  
 20 Judge Braman found were destroyed during the very period of the  
 21 audit in 1979 and 1980, which showed dispositively that Synanon  
 22 was not a tax-exempt organization. Certainly Mr. Brandin did  
 23 not see those. They were destroyed, and intentionally  
 24 destroyed. Congress has specifically outlined in Section  
 25 501(c)(3). Now, if I may, Your Honor, I am happy to address this



1 question of Internal Revenue Service bad faith. Of course, an  
 2 there is none, but even if there was, and there is not, but  
 3 even if there was, it has no impact on the issues before Your  
 4 Honor. in the statute and in the Bob Jones' decision.

5 And if I may, we have set forth, Your Honor, in our  
 6 memorandum of law in opposition to Synanon's motion to dissolve  
 7 Your Honor's order, staying discovery, our position with respect  
 8 to this alleged IRS bad faith upon which Synanon wishes to take  
 9 ten depositions in three cities throughout the United States,  
 10 of IRS officials, including the district director of Internal  
 11 Revenue in San Francisco, California. Their position is very  
 12 clear. certainly know of none, but whatever remedy may exist, if  
 13 there was If the Internal Revenue Service does not like us, and  
 14 there is no evidence that that is true, but if the Internal  
 15 Revenue Service does not like us -- and the support of the  
 16 American THE COURT: Who is us?, would be the ultimate  
 17 absurdity. MR. LAWLER: Synanon. And even if, as a matter of  
 18 law, we do not qualify under Section 501(c)(3) or the Bob Jones'  
 19 case to be a tax-exempt organization, which is equally true,  
 20 they certainly do not, then, in any event, we should be somehow  
 21 treated as a tax-exempt organization, even if we don't fit  
 22 within the Congressional mandate of Section 501(c)(3). That is  
 23 the absurd argument that Synanon foists upon this court.  
 24 Your Honor Congress has specifically outlined in Section  
 25 501(c)(3), and we submit the Supreme Court added a further

1 limitation in the Bob Jones' decision, those criteria which an  
2 organization has the burden to prove in order to be declared a  
3 tax-exempt organization. The tests are clear. They are set  
4 forth in the statute and in the Bob Jones' decision. We done.

5 Synanon's position is, "Even if we don't meet those  
6 tests, and the Internal Revenue Service is filled with bad  
7 people who hate us, nonetheless we are entitled to be treated  
8 as a tax-exempt organization." Don't recall any, and I have had  
9 occasion to submit to Your Honor the argument on its face is  
10 bizarre, unprecedented and absurd. Whatever remedy may exist,  
11 if there was some bad faith by the Internal Revenue Service,  
12 and I certainly know of none, but whatever remedy may exist, if  
13 there was some bad faith by the Internal Revenue Service, the  
14 remedy is not to allow this violent, militaristic cult the  
15 benefit of a federal tax exemption and the support of the  
16 American public. That, we submit, would be the ultimate  
17 absurdity. MR. LAWLER: Nothing for the government, Your Honor.

18 THE COURT: It just occurs to me, as the -- are you  
19 finished? MR. GITNER: Your Honor, I have a bit of response, if  
20 you would MR. LAWLER: Yes. it.

21 THE COURT: Has the Yick Wo doctrine ever been said  
22 applied to a civil case? this morning?

23 MR. LAWLER: I don't know the answer to that question,  
24 Your Honor. I would be happy to look into it. as told us what

25 MR. Goodwin: THE COURT: Answer it for me. Goodwin was there.



1 because Do you know whether it has ever been applied to a  
 2 civil case, Mr. Gitner? necessary to have Mr. Goodwin along on each  
 3 one of the MR. GITNER: I am thinking, Your Honor. I don't know  
 4 off hand. I am trying to think of the research I have done.  
 5 it necessary THE COURT: I don't think it has. for 40 hours in  
 6 Arizona; MR. GITNER: I will take that back. I don't know,  
 7 Your Honor. D.C., in Florida with Mr. Schiff; and in New York  
 8 with Mr. THE COURT: I just don't recall any, and I have had  
 9 occasion to look into it, both as a private practitioner and as  
 10 a lawyer. Since you have raised it so vigorously this morning,  
 11 I wish you would let me know when you respond Wednesday, and  
 12 you might let me know, too. I don't believe you really do,  
 13 either -- MR. LAWLER: We certainly will, Your Honor. going to  
 14 stand up THE COURT: By next Monday in your response. y that  
 15 two lawyers MR. LAWLER: We will, Your Honor, indeed. accompanied to  
 16 witness in THE COURT: Is there anything else, gentlemen? the  
 17 United States MR. LAWLER: Nothing for the government, Your Honor.  
 18 violation THE COURT: Anything else from the plaintiff? ss or  
 19 anything MR. GITNER: Your Honor, I have a bit of response, if  
 20 you would like to hear me on it. my head.  
 21 THE COURT: Well, is it something you haven't said  
 22 already in your papers or this morning? w and as a judge, well  
 23 know that MR. GITNER: Your Honor, I think it came up for the  
 24 first time. Mr. Lawler, for the first time, has told us what  
 25 Mr. Goodwin was doing with him. If Mr. Goodwin was there and,

1 because they didn't know how to obtain immunity, I would  
2 question why it was necessary to have Mr. Goodwin along on each  
3 one of these visits, or why wasn't he able just to call up the  
4 Criminal Division and ask them what they should do and why was  
5 it necessary for Mr. Goodwin to be with them for 40 hours in  
6 Arizona; for two or three visits to Mr. Farnsworth in  
7 Washington, D.C.; in Florida with Mr. Schiff; and in New York  
8 with Mr. Musico? I think the statements by the government are  
9 very enlightening. I think that Mr. Lawler --  
10 there for THE COURT: I don't have any reason to question that.  
11 Supposing all of that is true, I don't think that necessarily  
12 supports the conclusion, and I don't believe you really do,  
13 either -- you are not, as an officer of this court, going to  
14 stand up in my court or any other judge's court and say that  
15 two lawyers defending a civil lawsuit, who are accompanied to a  
16 witness interview by a member of the Criminal Division of the  
17 United States Department of Justice, is tantamount to a  
18 violation of the Yick Wo doctrine, or an abuse of process or  
19 anything else. I just don't see where you can make that  
20 tremendous leap, off the top of my head.  
21 MR. GITNER: Your Honor, the realities of the  
22 situation, as you, who has practiced law and as a judge, well  
23 know, that laymen, a citizen, when confronted with a law  
24 enforcement authority, as opposed to maybe just a civil  
25 attorney, that individual is going to be possibly frightened,



1 possibly intimidated. And I can't see what purpose Mr. Goodwin  
2 was doing there other than to provide what I call the "muscle".  
3 prosecution. If Mr. Lawler was uncertain about how to get immunity  
4 for witnesses in this case, they could have done it, they could  
5 have called up anybody in the Criminal Division. They could  
6 have gotten into the statutes and done a little research, and  
7 there certainly wasn't a need for Mr. Goodwin to be along time  
8 after time after time after time after time. He has.

9 THE COURT: Suppose he was, and supposing he was  
10 there for the purposes you suggest, namely, to obtain  
11 information for possible use in connection with a criminal  
12 prosecution. In view of the allegations the Civil Division  
13 makes in defense of this suit, maybe Mr. Lawler is right, maybe  
14 you will have to say yourself, I am going to ask you to now,  
15 subsequently that he was right, that it might be tantamount to  
16 misfeasance for them not to have called in the Criminal  
17 Division, and for the Criminal Division not to have pursued  
18 these leads to be provided by these witnesses, and to pursue  
19 these allegations that they have made in the Civil Division in  
20 response to your lawsuit, because you would be the first to  
21 admit with me they aren't very pleasant, when you talk about  
22 kidnaping, attempted murder and hiring hit men and stuff like  
23 that, that is pretty rough, and you know it, Mr. Gitner, just  
24 as well as I do. I am a human being and so are you, as well as  
25 a judge and a lawyer, and so are you, a lawyer. first so-called



1 finding of So I want you to answer the bottom line question when  
 2 you address me in writing on Wednesday, does this selective  
 3 prosecution argument of yours apply to a civil case? And does  
 4 it apply in this kind of a situation wherein these people have  
 5 uncovered, through ex-members of your client's organization,  
 6 some allegations that are very, very serious violations of the  
 7 law, of the highest order, criminal law, if true, and Judge  
 8 Braman has found a lot of them to be true. He has.

9 MR. GITNER: Your Honor, no one has ever found them  
 10 guilty of these things yet. was that evidence had been  
 11 suppressed THE COURT: He found them to be true. They haven't  
 12 been charged with any crime so far as I know. You lawyers  
 13 haven't told me about that.

14 MR. GITNER: Mr. Lawler has sat up here and talked  
 15 about how violent they were and a militaristic cult.

16 THE COURT: I know that. He put that in his first  
 17 statement of material facts, allegedly not in dispute, in this  
 18 Rule 19(h) statement in support of his original motion for  
 19 summary judgment. That is about 147 pages, if I am not final  
 20 mistaken. Is that right? made allegations, and they are  
 21 allegation MR. LAWLER: It is about that. and Synanon has made  
 22 allegation MR. GITNER: He has made the statement but they have  
 23 not proved anything yet. Your Honor, all we are asking is that  
 24 the day THE COURT: They have a little help from Judge Braman.  
 25 I think you would have to say that that is the first so-called



1 finding of fact, and conclusion of law.

2 MR. GITNER: Your Honor, Judge Braman found that --

3 THE COURT: He found a lot of facts that are very

4 consistent with what they said in their Rule 19(h) statement,

5 isn't that true? at litigation involving CBS and --

6 MR. GITNER: No.

7 THE COURT: Wait a minute. Don't try to dodge that

8 question. I am going to make you answer that one.

9 MR. GITNER: I know you are and I am trying to answer

10 it. What Judge Braman found was that evidence had been

11 suppressed that would have been relevant to these questions but

12 he did not hold that, indeed they had been guilty of these

13 things. THE COURT: Were some of the same or similar

14 allegation? THE COURT: All right. Well, I won't argue with you.

15 MR. GITNER: Your Honor, if I may just make --

16 THE COURT: By saying that, I don't mean that I

17 disagree with you or agree with you. You will find out at the

18 appropriate time, and so will the government.

19 MR. GITNER: Your Honor, if I just may make one final

20 point. The government has made allegations, and they are

21 allegations, against Synanon's conduct, and Synanon has made

22 allegations about the government's bad faith and whether or not

23 there is commingling. Your Honor, all we are asking is that

24 the daylight of day be allowed to be cast upon whether these

25 are true or not, that we be given the ability to conduct some



1 discovery. If we are wrong, than so be it, at least let them  
 2 be shown to be in the light and not swept under the carpet.  
 3 That is all we are asking, Your Honor about that case.

4 THE COURT: Let me ask you, something, are you  
 5 familiar with that litigation involving CBS and ABC out in San  
 6 Francisco? tied and settled under seal, didn't you ever tell  
 7 somebody? MR. GITNER: The Synanon litigation?

8 THE COURT: Yes. Yes. The libel case, I did.

9 MR. GITNER: Somewhat. Now and I don't need to know

10 THE COURT: I don't know whether you participated or  
 11 not. My trial date be continued?

12 MR. GITNER: No, I didn't. And I am going to try to

13 pierce the THE COURT: Were some of the same or similar intent  
 14 allegations made that led to that libel suit, that were made  
 15 here in their Rule 19(h) statement? necessary. That is not

16 say that MR. GITNER: The plaintiff in that case was Synanon,  
 17 Your Honor. less they are meritorious. It is merely to say that

18 I want to THE COURT: well I know it was. if this case properly and

19 correctly MR. GITNER: I believe it was defended in a manner of  
 20 casting the same terrorist, militaristic aspersions against  
 21 Synanon. That case was settled, Your Honor, I believe right,  
 22 favorably towards Synanon. to have a decision in their favor,

23 too. THE COURT: Well, if I listen to you lawyers, I get  
 24 two different interpretations. you for letting us come in this

25 morning, MR. GITNER: That is my understanding of that case,



1 Your Honor. I believe it has been covered quite extensively in  
2 the legal press, in the Legal Times and the American Lawyer.  
3 There have been a number of articles about that case.

4 THE COURT: So be it. I just merely wondered whether  
5 these same allegations had been made there, but I guess since  
6 it was settled and settled under seal, didn't you once tell me,  
7 somebody?

8 MR. BOURDETTE: Yes, Your Honor, I did.

9 THE COURT: So I don't know and I don't need to know.

10 MR. GITNER: Your Honor, one last thing. Will the  
11 January trial date be continued?

12 THE COURT: Yes, it will be, and I am going to try to  
13 pierce through these motions as quickly as I can, consistent  
14 with my other duties, to see if there is some way we can avoid  
15 extending this case any longer than necessary. That is not to  
16 say that I am going to look for a way to grant the government's  
17 motions unless they are meritorious. It is merely to say that  
18 I want to find some way to dispose of this case properly and  
19 correctly according to the law, and the Court's oath.

20 If you are right, in the arguments you make, you will  
21 be found right by the Court. But if the government is right,  
22 they are going to be found to have a decision in their favor,  
23 too.

24 MR. GITNER: Thank you for letting us come in this  
25 morning, Your Honor.



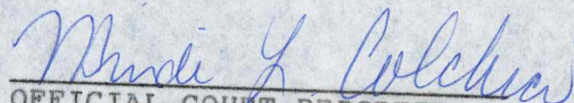
1 MR. LAWLER: Thank you, Your Honor.

2 (Whereupon, at 12:30 p.m. the status call in the  
3 above-entitled case was recessed.)

4 \* \* \*

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7  
8 REPORTER'S CERTIFICATE

9 This record is certified by the undersigned to be the  
10 official transcript in the above-entitled case.

11  
12   
13 OFFICIAL COURT REPORTER