Witness: Martin G. Laffer

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Called by: Defense

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Examinations: Direct – Mark Geragos

Day 1 of 2 for this witness

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Direct Examination by Mark Geragos

GERAGOS: Mr. Laffer, what is it that you do?

LAFFER: I'm a certified public accountant.

GERAGOS: Okay. And who are you employed by?

LAFFER: Our firm is Laffer and Gottlieb CPAs.

GERAGOS: Could you tell me a little bit about your background and experience.

LAFFER: Yes. When I graduated from Pace University in New York with an accounting degree, I worked for KPMG in Los Angeles. And I was an auditor for approximately two years. And then in 1971 I became employed by the Internal Revenue Service Criminal Investigation Division in Los Angeles, where I conducted financial investigations of tax fraud, money laundering, different types of tax investigations along those lines. I worked with the U.S. Attorneys Office prosecuting cases. And I did that as a special agent and as a supervisory special agent for nine years. Then I left and went into real estate syndication business for two years, and in 1982 I started the accounting practice under my own name to do primarily forensic or litigation accounting.

GERAGOS: How long did you work for the IRS?

LAFFER: For 0 years.

GERAGOS: And what did you do?

LAFFER: I was a criminal investigator.

GERAGOS: Okay. And was that as a special agent?

LAFFER: Special agent and group manager, yes.

GERAGOS: Okay. After you left and did the syndication firm, you then started your own accounting practice?

LAFFER: Yes.

GERAGOS: Okay. And specifically was that as a forensic accountant?

LAFFER: Well, forensic accounting is really a term of art. I'm a CPA. And, if anything, our practice emphasizes litigation accounting and tax controversy matters, primarily.

GERAGOS: Okay. In connection with what you do as a CPA, could you tell me what your area of expertise is?

LAFFER: The area of expertise is tax fraud. We do a lot of white collar criminal defense. We've been involved in securities fraud cases. Bankruptcy fraud, tax fraud. And we also have a small tax practice where we actually prepare tax returns. And I probably spend about 90 percent or so of my time doing either litigation or controversy work.

GERAGOS: Have you ever testified as an expert?

LAFFER: Yes.

GERAGOS: Approximately on how many occasions?

LAFFER: I have no idea. 75, 100, maybe more.

GERAGOS: Okay. Have you done that both for the prosecution and the defense?

LAFFER: Yes.

GERAGOS: Okay. And in connection with your expertise, is it in connection with your expertise as an accountant?

LAFFER: Yes.

GERAGOS: And what do you primarily do in terms of, can you give me the definition of what you do when you're testifying as an expert?

LAFFER: I don't understand your question.

GERAGOS: Do you analyze financial documents?

LAFFER: Well, yeah. We do lot of different things. We do damage analysis. We trace funds. We trace assets. Analyze books and records. Oftentimes we're trying to reconstruct transactions or reconstruct books and records without the books and records. Creating databases. Things like that.

GERAGOS: Okay. Have you ever authored any professional articles?

LAFFER: Yes.

GERAGOS: Approximately how many?

LAFFER: Probably several dozen times.

GERAGOS: Do you have any, hold any licenses besides, or memberships in any professional societies?

LAFFER: Yes. Aside from my CPA license, I'm also recognized as a Certified Fraud Examiner and a member of the American Institute of CPAs, California Society of CPAs, and also the Association of Fraud Examiners.

GERAGOS: I would offer him as an expert, your Honor.

JUDGE: Any, any cross-examination?

HARRIS: No questions. We'd accept him.

JUDGE: All right. We'll accept Mr. Laffer as an expert in the field of accounting and accounting litigation and fraud. Go ahead.

GERAGOS: Thank you. Now, you were retained by my office, is that correct?

LAFFER: Yes.

GERAGOS: And specifically to address three different areas, is that correct?

LAFFER: I don't know how specific it was initially. It was really to look at the expert's report or testimony. I guess report, prior to his testimony here sometime, I guess, at the beginning of August.

GERAGOS: Okay. And what did you review before coming in here to testify today?

LAFFER: Today? Well, I reviewed, I reviewed the document, well, it's too loud here. I reviewed the documents that were given to me either the end of July or the beginning of August. That Mr. Nienhius had relied upon.

GERAGOS: That's the gentleman from the City of Modesto, the internal auditor?

LAFFER: Yeah, the city auditor for Modesto. So I looked at his report. I looked at the exhibits that were associated with his report. I looked at, it was a Experian, Experian credit reports, some records on TradeCorp. Some of Mr. Peterson's tax returns, some financial information. And, and then last week, in anticipation of testifying last week, I looked at some transcripts of the testimony from Brent Rocha and from Douglas Mansfield and some others. Brian Ullrich.

GERAGOS: Okay. And as part of the preparation for taking a look at this, did you review a stack of documents that apparently were supplied to Mr. Nienhius?

LAFFER: Yes, I did.

GERAGOS: Okay. And did you also do some independent research as to a company called SAPEC?

LAFFER: Yes.

GERAGOS: Okay. Can you tell me what you did in terms of this company called SAPEC?

LAFFER: Well, I went on the Internet.

GERAGOS: And what did you determine?

LAFFER: Well, I went on the Internet and I downloaded from the web site their 2002 annual report. And they had different highlights of financial information that were on the web site, so I downloaded the various information and looked at it. And I used that in my analysis.

GERAGOS: Okay. What did you determine SAPEC to be?

LAFFER: SAPEC is a Portuguese family investment company. It's been around since 1926. That has subsidiary companies that it manages, primarily in Spain. And there's a number of divisions in the fertilizer, industrial chemicals, and agricultural and shipping area. The subsidiary Espana TradeCorp Inc. is a Spanish company that's wholly owned by SAPEC, and it was that company that tried to establish a market in North America by opening an office in Modesto.

GERAGOS: Okay. And can you tell me is the, is the Espana Inc. is the subsidiary of SAPEC?

LAFFER: I believe it's Espana TradeCorp Inc. Is the title. Can I get some water?

JUDGE: I'll get you some.

LAFFER: Thank you, Judge.

GERAGOS: The Espana TradeCorp Inc., who is that owned by?

LAFFER: It's a wholly owned subsidiary of TradeCorp, SAPEC. A Portuguese company.

GERAGOS: Does Scott Peterson have any ownership interest, as far as you were able to determine from your review of the documents, in TradeCorp Inc.

LAFFER: No, not at all.

GERAGOS: Specifically the, what, what, you described it as a family owned company. SAPEC. Specifically could you tell me what the size of that company is?

LAFFER: Well, I think it was, it's a family owned company, but it's also on the Brussels stock exchange, so it's actually a public, publicly held company. I think it was started by a Portuguese family in 1926. The company, in 2002, the company reported sales of approximately 444 million

Euros, which is at a conversion rate of approximately 1.25 would be over 500 million dollars of gross sales, gross revenue.

GERAGOS: Would you consider this to be a large company?

LAFFER: Yes, I would.

GERAGOS: Okay. I'm going to show you what's been previously marked as D 5 G. Is this a portion of the financial statement that you were able to locate on the Internet?

LAFFER: Yes, it is.

GERAGOS: Okay. Is that, did some of the figures that you retrieved come off of that document?

LAFFER: Yes.

GERAGOS: Okay. Now, in terms of the corporate structure, Espana TradeCorp is owned by SAPEC?

LAFFER: That's correct.

GERAGOS: And what is the relationship between Espana TradeCorp and Scott Peterson?

LAFFER: Espana TradeCorp Inc., the Spanish company, in trying to form a startup company in the U.S. or North America formed a corporation called Espana TradeCorp USA Inc., and it was started in Modesto. It's wholly owned by Espana TradeCorp Inc., the Spanish parent. And Scott Peterson was one of the Incorporators and a corporate officer slash employee who had helped get the company started. He retained counsel, did whatever legal requirements there were to form the corporation. And as far as I know that was his only relationship was as an employee.

GERAGOS: Okay. Now, was there some kind of a business plan that was in place that you were able to take a look at?

LAFFER: Yes.

GERAGOS: And what, what was, what was that, what was the business plan?

LAFFER: As I understand it from notes from the attorneys, and also from some projections that were in the discovery materials that I looked at, it looked to me like there was, as a startup company, there was an anticipation of about a four year negative cash flow.

GERAGOS: What does that mean?

LAFFER: Oh, in other words, in order to, to get started as a company or as a business, they were going to need to spend more money than they were going to be generating in revenue. So they had an expectation that for the first four years or so they were going to be losing money. They would have a net loss as opposed to a net profit. In fact, I think the first year there was no revenue at all. There was no sales.

GERAGOS: Okay. Is that part of the business plan that you saw that that was an expectation that there was going to be a loss for a period of time?

LAFFER: Yes.

GERAGOS: Is that loss something that, based upon your expertise, that Scott Peterson would have to shoulder in any way, shape or form?

LAFFER: Absolutely none.

GERAGOS: Why?

LAFFER: Because it's a corporation. It's a separate entity from Scott Peterson. As an employee, as a corporate officer, even as a shareholder, and I don't think he was a shareholder, but assuming that he was, he would have no responsibility for any of the liabilities of the corporation.

GERAGOS: Did the, did the financial plan or the business plan that was used in this case for, to start up TradeCorp, did it make some provision that the parent company was going to subsidize this loss for a period of time?

LAFFER: Yes. In fact, if you look at the, at the accounts payable, which was the largest liability on the balance sheet of the subsidiary of the,

GERAGOS: Let's just take it. When you say accounts payable, what TradeCorp owes?

LAFFER: Yes.

GERAGOS: Okay.

LAFFER: The liabilities of TradeCorp, of Espana TradeCorp USA Inc. In other words, the entity that was in Modesto, that company on its financial statements reflected debt, reflected an account payable. An account payable is a liability that's generated from operations, as opposed to a bank loan or a shareholder loan, or something like that.

GERAGOS: That mean that the money that was used to run this business while it was a start-up was being placed in by SAPEC?

LAFFER: Well, SAPEC or the Spanish parent, the Espana TradeCorp Inc., capitalized the business.

GERAGOS: That means they put the money in?

LAFFER: They put the money in, but, but the payables, from looking at the accounts payable, the liability of the Modesto company, it looked like all of the supplies, the fertilizer that was coming in, was coming in from the Spanish parent. So the debt from the subsidiary was really owed to the parent corporation, as opposed to third parties.

GERAGOS: Is it a fair way to say it is what's happening here is a start-up business, that the product that is being sold by TradeCorp is coming from the parent company?

LAFFER: That's exactly right, yes.

GERAGOS: And, so, if you've got a loss of a hundred thousand dollars, all that is, in any one particular year, other than the salary for Mr. Peterson, the rest of it is the product that is being delivered or being sold for the parent company, correct?

LAFFER: Yes.

GERAGOS: Okay.

LAFFER: In fact, on a consolidated basis, they would just wash out.

GERAGOS: Now, is there anything that would indicate in any way, shape or form based on your review of the documents, that Scott Peterson had any liability, financial liability for this corporation whatsoever?

LAFFER: None at all.

GERAGOS: Okay. Did you find anything to indicate that the parent corporation seemed to be satisfied with the performance?

LAFFER: I believe I mentioned at the first year there was no revenue generated. There were expenses, the start-up expenses. And I believe that Mr. Peterson actually received a bonus from the company for his performance.

GERAGOS: Okay. Now, was one of your conclusions that, that you drew from your financial investigation, that the TradeCorp and Scott Peterson, tell me what your conclusion is.

LAFFER: Well, in reviewing Mr. Nienhius's report, it appeared to me that he was indicating that this was Mr. Peterson's business, that it was generating negative cash flow, that it was in

bankruptcy, that it was, the company was having all kinds of financial problems. And I concluded after reviewing the documents that the company was not having financial problems. It was a well-capitalized company, start-up. Mr. Peterson had no ownership interests. He had no responsibility or liability for any of the debts of the company. He shouldered no responsibility for any of the losses of the company. It was a totally and separate and distinct entity.

GERAGOS: And did you see, as far as you could tell, no financial obligations on his part to the company to assume any kind of debt?

LAFFER: That's correct. In fact, some of the initial incorporation expenses were actually paid by him personally, and then he was reimbursed later. So it's clearly the obligations of the company.

GERAGOS: And did you see, when you say some of the responsibilities were assumed by him, you mean in terms of fronting monies?

LAFFER: Yes. He advanced some monies on behalf of the company.

GERAGOS: Okay. And then that would be, based upon your review of the documents, he would be reimbursed?

LAFFER: That's correct.

GERAGOS: Okay. And that would also account for his credit card purchases, if it was in connection with the business?

LAFFER: Yes.

GERAGOS: Okay. You saw some of the testimony, or I guess all of the testimony of Mr. Nienhius, is that correct?

LAFFER: Yes. I was present in the courtroom.

GERAGOS: Okay. When you saw that, you, you remember that there was also a, some testimony about Mr. Peterson and Laci Peterson's debt load? Do you remember that?

LAFFER: Yes, I do.

GERAGOS: Okay. Specifically did you review the TRW documents, maybe it wasn't TRW but Experian documents, I think. Credit?

LAFFER: Yes, Experian.

GERAGOS: Okay. And specifically I'm going to show you D 5 E, which has already been marked. Did you, have you had a chance to go through D 5 E before you testified today?

LAFFER: Again, I looked at this back in early August.

GERAGOS: All right. Based upon the payment history and, well, how is the payment history, in looking at that?

LAFFER: Well, the payment history is replete with statements like "paid, never late." I think that that was almost all of the notations. Or in some cases it was "inactive, never late." But the payment history shows that the payments were timely and no problem.

GERAGOS: Okay. Now, does there, does there also show that there are credit limits that he can resort to on, in the credit report?

LAFFER: Yes.

GERAGOS: And what does that mean if there's credit limits that he can resort to?

LAFFER: Well, a credit limit is when you, when somebody obtains a credit card or a line of credit or a loan from a bank, the bank or the credit card company will give you a limit as to how much they will let you charge or how much debt they'll let you incur. And so the credit limit refers to that. So in some cases it's either the credit limit or the highest balance that was carried on the

account. And I think that's what Mr. Nienhius had used as basically a projection of the debt when, in fact, most of the cards were closed.

GERAGOS: When you say that's what Mr. Nienhius used as a reflection of the debt, what do you mean by that?

LAFFER: Well, in his report he reported that the Peterson's had, I don't remember, two or three hundred thousand dollars' of liabilities based upon this credit report. And in looking at the credit report, it shows a credit limit or the high balance, but in a lot of cases it shows that the account was, was either closed out, or it could be an active account but that would have been the highest balance. That doesn't mean that that's the current balance.

GERAGOS: Did you also notice that the, one of the portions of the debt was the mortgage on the house?

LAFFER: Yes.

GERAGOS: Okay. And did you also notice that one of the credit card accounts with a balance running on it was used in part, or if not in full, to pay for TradeCorp expenses?

LAFFER: Yes, I did.

GERAGOS: And based upon that and the fact that there was a car payment, did you also review the testimony of I think it was Special Agent Mansfield?

LAFFER: Yes, I did.

GERAGOS: Okay. When you reviewed the testimony of Mansfield, he had done an analysis or a breakdown of the financial situation of the Petersons, did he not?

LAFFER: He looked at the monthly income and monthly obligations of the Petersons.

GERAGOS: Okay. Now, having reviewed this credit report, does that appear, the credit report seem to reflect similar kinds of numbers that Agent Mansfield went through?

LAFFER: Yeah, it does.

GERAGOS: Okay. And did you prepare something in connection with that, a summary of Mansfield's testimony?

LAFFER: Yes, I did.

GERAGOS: Do you have that with you?

LAFFER: I don't have a copy in my file.

GERAGOS: The, did you come to a, certain calculations as to numbers based on Mansfield's?

LAFFER: Yes.

GERAGOS: Okay. What, did that include monthly, monthly salary?

LAFFER: Yes.

GERAGOS: The monthly salary was from TradeCorp?

LAFFER: Yes, it was.

GERAGOS: Okay. Is there also some deductions that you went through as well?

LAFFER: Well, there was the monthly salary. There was mileage allowance from the company, from the employer. And then there were his estimated or his monthly obligations, according to Mansfield. There was a house payment, a mortgage, there was a truck payment, some utility expenses, food, there was some country club monthly fees that were included. And cell phone.

GERAGOS: Okay. Based upon that, in your review of Mansfield's testimony, did you draw a conclusion as to whether Scott, what Scott and Laci Peterson's financial condition was? Just

based on that information?

LAFFER: Just based on the monthly income and expenses, it looked like they were spending less money than they were making.

GERAGOS: Okay. Is there anything regarding the way that you treated the tax consequences of the monthly salary that would impact that?

LAFFER: Well, what Mansfield used was the gross monthly salary, but as we all know, there's taxes that are withheld: Social security, Medicare tax, federal and state withholding. I didn't factor that in, but it would be less than the excess that I'm showing on my chart.

GERAGOS: Okay. Now, does that, even with factoring that in as you sit here now, does that still show they were living within their means?

LAFFER: Yes, it does.

GERAGOS: Okay. Now, you also, I assume, reviewed, or at least in connection with your investigation, learned that they, Laci and Scott also had a inheritance that was coming to Laci, is that correct? At least there was an inheritance that was designated for Laci?

LAFFER: Yes.

GERAGOS: Based upon the testimony of Brent Rocha, was it your understanding that the trust, if Conner was born alive, would vest with Laci?

LAFFER: Well, it would, it would vest with Conner.

GERAGOS: Okay. And what would that have done, essentially, to their financial condition?

LAFFER: Well, as I understand from the testimony, there was a, there were proceeds of about $485,000 from the sale of Laci's grandparents' home that was going to be divided up shortly between the three beneficiaries. The three heirs. One being Laci. And then there was also testimony, I believe, from Robin Rocha, her aunt, that the total estate was approximately $2.4 million. And then on the death of the grandfather, that that would be shared between the three heirs as well. And what Brent testified to is that if anything happened to Laci, then it would pass to her son, to Conner.

GERAGOS: And if something happened to Laci, and Conner, then it would not go to Scott Peterson at all, is that your understanding?

LAFFER: My understanding is it would go to the remaining two beneficiaries.

GERAGOS: Right. So there would be absolutely, well, what's your opinion? Is there any absolute financial motive that you can figure out from your review of all the documents for Scott Peterson to want Laci and Conner not to be alive?

LAFFER: Not at all.

GERAGOS: And why?

LAFFER: Because there was all of this money that was sitting out there, and with one or both of their demise those funds would not be available to them.

GERAGOS: Okay. Now, the insurance policy, did you have a chance to review Brian Ullrich's testimony?

LAFFER: Yes, I did.

GERAGOS: Okay. And did you have an opinion as to the, the insurance policy as well?

LAFFER: Well, from reading his testimony, it appeared that he contacted the Petersons, wanted to sell Scott an insurance policy. I guess it was done under the guise of financial planning, which is oftentimes how insurance policies are sold. But it was his suggestion that Mr. Peterson have a

$250,000 dollar insurance policy. And then, from the testimony, I believe he said that he thought it would be appropriate for Laci to have a hundred thousand dollar policy, and then he testified that it was Laci who wanted the same policy as Scott. And that was the evolution of the two insurance policies.

GERAGOS: The, is there anything regarding that policy that would financially make any sense for somebody to do away with Laci and/or Conner that was better from a financial standpoint than if they had lived another two months and vested with the inheritance?

LAFFER: No.

GERAGOS: And based upon his, is one of the other facts or factors that was not calculated by either Mansfield nor Nienhius the inheritance of the jewelry?

LAFFER: As I understand it from the jeweler, whose name is escaping me as I sit here right now, as I look at my notes, he testified that he appraised jewelry from Laci's grandmother, that she had that was valued somewhere in excess of a hundred thousands, and that Laci was working with him in trying to put together a new wedding ring. And he said that the value of that ring would be approximately 55 thousand dollars.

GERAGOS: Okay. Was there, obviously whatever the value of the jewelry, less that wedding ring, would be potentially $45,000, or in excess of $40,000?

LAFFER: According to the testimony, it would have been in excess of $45,000.

GERAGOS: Now, the, do you have a conclusion as to whether or not there was any financial motivation, based upon your review of the records, for Scott Peterson to see any harm come to Laci or Conner?

LAFFER: No. I concluded just the opposite.

GERAGOS: Why?

LAFFER: Well, from a financial standpoint he would have been better off if they were alive.

GERAGOS: And why is that?

LAFFER: Because of the inheritance, because of the proceeds that were getting ready to be distributed from the sale of the grandparents' residence.

GERAGOS: The, there's been a suggestion in some of the testimony that the sale of the grandparents' residence, that money would be in the offing in a couple of months yet the inheritance itself might not be until she turned 30. Does that affect your conclusion at all?

LAFFER: No. It's the same thing. It's just money that was out there.

GERAGOS: Okay. Does the, and I would ask this question of, of one, I think it was Mr. Nienhius. If there is an inheritance that sits out there, that vests when she turns 30, does that make it any less of an asset?

LAFFER: No, it's just a future asset.

GERAGOS: And if the, if she had taken the, Laci had inherited the 160 thousand dollars that was the one third share of the proceeds from the sale of the house, how would that have affected Scott and Laci's financial condition in terms of their debt load, if you will?

LAFFER: Well, I didn't really see that unusual a debt load. Mr. Nienhius was going through all kinds of analyses on debt ratios, which I'm not exactly sure what the purpose was, but they were paying their monthly expenses. In fact, in a lot of months they were paying more than the mortgage. I think the mortgage was 1250 and I think he was paying like 1300 dollars a month many times. So I, I didn't see any kind of financial problems. I didn't see any indication that there was any financial suffering. In fact, I think that Brent Rocha in his testimony said that he

and his wife often talked, after leaving the PEtersons' house, how nicely they lived. And there was no indication that they were living beyond their means.

GERAGOS: Why is it significant that they were paying down the principal at a higher rate than what the monthly obligation was for the house?

LAFFER: Well, it just shows that he had disposable funds available, and instead of making minimum payments, he was making a payment to amortize the mortgage at a little faster rate.

GERAGOS: Based upon all of the financial analysis and investigation that you did, do you have, do you have a conclusion as to whether or not there was any financial motivation whatsoever for Mr. Peterson to see harm come to Laci?

LAFFER: Again, I didn't see that.

GERAGOS: Thank you. Is this a good place to stop?

JUDGE: Yes, we'll take the evening recess.