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THE WHITE HOUSE
WASHINGTON

Date: 12/16/88

TO: Nick Rostow

FROM: **BENEDICT S. COHEN**
Associate Counsel
to the President

Over the years I've gotten a stream of crank letters from this guy about his disputes with Maxwell Labs, most of which we don't answer; this was another one of them. In closing out my files, though, it occurred to me that it might fall within your jurisdiction because it refers to an "intrusion into the [Maxwell] weapons research." If his prior letters are any guide, it is completely worthless and requires no response or action on your part.

See: 578493CW

Albert O. O'Rourke

Attorney at Law

7949 Lowry Ter., La Jolla, Calif. 92037
(619) 459-7510

July 26, 1988


Mr. Benedict S. Cohen, Esq.
Associate Counsel to the President
The White House
1600 Pennsylvania Ave.
Washington, D. C. 20500

Dear Mr. Cohen:

I have not heard back from you since my letter of June 8, 1988. Nevertheless such letter was accurate in its predictions that there would be a "disinformation event" to cover up the obvious intrusion into the weapons research at Maxwell Laboratories in San Diego, and collaterally through S.A.I. in La Jolla (Science Applications Industries) and transactionally to Los Alamos itself. I am of course referring to the public remarks of last week of Russian professor Sagdeev (*"Cazub"*) about the supposed "backwardness" of Russian research programs in the nuclear physics field of ELF, EMP, Tesla Waves, etc. Anyone taking such remarks as being anything but the most pure form of disinformation, would be extremely naive.

May I remind you further that Professor Sagdeev is intimately familiar and has visited Maxwell numerous times, and I believe S.A.I. as well. I still await a response from you about these matters.

Sincerely,


Attorney Al O'Rourke

AO:m

CC - Mr. P. A. Kouris, Esq.
- S.A.I., La Jolla, Cal. 92037
- Mr. Karl Samuelian, Esq.
Maxwell Laboratories Inc.

1 Albert O. O'Rourke
2 Attorney at Law
3 7949 Lowry Terrace
4 La Jolla, Ca. 92037
5 Phone: (619) 459-7510

*No action
needed*

6 Attorney for Plaintiffs Albert
7 O. O'Rourke, Raymond C. O'Rourke,
8 RORACK (Raymond C. O'Rourke and
9 Alan C. Kolb), Raymond C. O'Rourke
10 and Associates, (Computrad, Inc.,
11 Lattice Electromagnetics, Inc.,
12 Yacht Charters Limited Inc.)

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15 ALBERT O. O'ROURKE, RAYMOND C.
16 O'ROURKE, RORACK (RAYMOND C.
17 O'ROURKE AND ALAN C. KOLB),
18 RAYMOND O'ROURKE AND ASSOCIATES,
19 (COMPUTRAD, INC., LATTICE
20 ELECTROMAGNETICS, INC., YACHT
21 CHARTERS LIMITED INC.),

22 Plaintiffs,

23 v.

24 MAXWELL LABORATORIES, INC.,
25 a Delaware Corporation, S-CUBED,
26 A Division of Maxwell Laboratories,
27 Inc., KARL SAMUELIAN, FRANK CLARK,
28 PARKER, MILLIKEN, CLARK, O'HARA
AND SAMUELIAN, a California corpor-
ation, MYRNA JARO, individually and
as Executive Secretary of Maxwell
Laboratories, Inc., KARL SAMUELIAN,
individually and as an Agent of
Maxwell Laboratories, Inc., MONSON
HAYES, individually and as an Agent
of Maxwell Laboratories, Inc.,
SEAN MALOY, both individually and
as an Agent of Maxwell Laboratories,
Inc., PETER SACCCERDOTE, both indi-
vidually and as an Agent for
Maxwell Laboratories, Inc.,
ADMIRAL THOMAS HAYWARD,

Case No. 88-1127 G(M)

PLAINTIFFS' OPPOSITION AND
REPLY TO DEFENDANTS' MO-
TION TO DISMISS, MOTION
FOR SANCTIONS, MOTION FOR
MORE DEFINITE STATEMENT,
MOTION TO STRIKE (?), ETC.
PLAINTIFFS' MOTION FOR AN
ORDER OF THE COURT FOR DE-
FENDANTS TO RETAIN SEPARA-
TE COUNSEL, PLAINTIFFS'
MOTION TO COMPEL ARBITRA-
TION OR A PROPER REPORT TO
THE COURT ABOUT THE ISSUES
IN THIS CASE, PLAINTIFFS'
OPPOSITION TO DEFENDANTS'
REMOVAL OF THE STATE COURT
ACTION TO FEDERAL COURT
AND MOTION FOR AN ORDER RE-
MANDING CASE BACK TO STATE
COURT. PLAINTIFFS' MOTION
FOR A CONSTRUCTIVE TRUST
PURSUANT TO 31 U.S.C. 3927.
DECLARATION OF ALBERT O'ROU-
RKE, POINTS AND AUTHORITIES.
EXHIBITS.
DATE: November 7, 1988
TIME: 10:30 a.m.
Courtroom 7

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III PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR A MORE DEFINITE STATEMENT.. . . . 73 to 88

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TABLE OF AUTHORITIES CITED

42 U.S.C. 1983. cited variously throughout

31 U.S.C. 3927 cited variously throughout

UNITED STATES SECURITIES ACT-1934, Section 10 B-5

28 U.S.C., 1446 (b) cited variously throughout

. cited variously throughout

Federal Rule of Civil Procedure, 12 (b) (6)

Federal Rule of Civil Procedure, Rule 9 (b)

Federal Rules of Civil Procedure, 12 (e) and 12 (f) cited variously throughout

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California Codes of Civil Procedure, or CCP, Sections 337, 338, 340.6, 340.6 (3) and 339. . . . cited variously throughout.
CCP, 585 and 585.5. . . . cited variously throughout. particularly at page 92.

TABLE OF CASES

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<u>Fairyland Amusement Co. v. Metromedia Inc.</u> , 413 F. Supp. 1290, 1293 (E.D. Mo. 1976).	91
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<u>McDougall v. Donovan</u> , 552 F.Supp. 1206, 1208 (N.D. III.1982).	92

Please see also the series of Cases (Northrop Case) contained in Exhibit MM.

EXHIBITS

Plaintiffs' Exhibits attached herein run in two series. The first is in Capital letters (Capital A, B, C, etc.) The second is in small letters (small a, b, c, etc.)

1 individually and as an Agent of)
Maxwell Laboratories, Inc., and)
2 DOES 1-100, inclusive,)
3)
Defendants.)
4 _____)

5 COMES NOW PLAINTIFFS THROUGH THEIR ATTORNEY ALBERT O.
6 O'ROURKE AND HEREBY OPPOSES AND REPLIES TO THE MOTION TO DISMISS
7 PURSUANT TO RULE 12 (b) (6) OF THE FEDERAL RULES OF CIVIL PROCE-
8 DURE, MOTION FOR SANCTIONS PURSUANT TO RULE 11 OF THE FEDERAL
9 RULES OF CIVIL PROCEDURE, MOTION FOR A MORE DEFINITE STATEMENT
10 PURSUANT TO RULES 9 (b) AND 12 (e), AND MOTION TO STRIKE PURSUANT
11 TO RULE 12 (f) OF THE FEDERAL RULES OF CIVIL PROCEDURE (?).

12 COMES FURTHER PLAINTIFFS THROUGH THEIR ATTORNEY ALBERT
13 O. O'ROURKE AND FURTHER MOVES THE COURT AT THE TIME OF THE HEARING
14 OF PLAINTIFFS' MOTIONS, TO ORDER DEFENDANTS INDIVIDUALLY TO RETAIN
15 SEPARATE COUNSEL ON THE GROUNDS THAT DEFENDANT PARKER, MILLIKEN,
16 CLARK, O'HARA AND SAMUELIAN AND DEFENDANTS FRANK CLARK AND KARL
17 SAMUELIAN ARE REPRESENTED BY ATTORNEY MICHAEL KIRBY OF POST, KIRBY,
18 NOONAN AND SWEAT, AND ARE ADVERSE TO THE INTERESTS AND ATTORNEY/
19 CLIENT RELATIONSHIP OF THE OTHER DEFENDANTS.

20 COMES FURTHER PLAINTIFFS THROUGH THEIR ATTORNEY ALBERT
21 O'ROURKE AND FURTHER MOVES THE COURT AT THE TIME OF THE HEARING OF
22 PLAINTIFFS' MOTIONS FOR AN ORDER COMPELLING ARBITRATION OR A RE-
23 PORT TO THE COURT BY A COURT REFEREE ABOUT THE ISSUES IN THIS CASE
24 SINCE THEY ARE SO COMPLEX THEY COULD NEVER BE PROPERLY ADDRESSED
25 IN A ROUTINE MOTION HEARING(A CONSTRUCTIVE TRUST UNDER 31 U.S.C.
3927).

26 COMES FURTHER PLAINTIFFS THROUGH THEIR ATTORNEY ALBERT
27 O'ROURKE AT THE TIME OF THE HEARING OF PLAINTIFFS' MOTION AND
28 MOVES THE COURT FOR AN ORDER REMANDING THE CASE BACK TO STATE

1 COURT.

2

3

INTRODUCTION

4 Plaintiffs for clarity's sake^{*} propose to set up their
5 Responsive Pleadings to Defendants' Motions and Pleadings, as well
6 as Plaintiffs' own Motion and Pleadings in five (I - V) sections
7 which are (I) a factual statement of the facts at issue in this
8 Case, (II) Plaintiffs' Opposition to Defendants' Motion to Dis-
9 miss pursuant to Rule 12 (b)(6), (III) Plaintiffs' Opposition to
10 Defendants' Motion for a more Definite Statement, (IV) Plaintiffs'
11 Opposition to Defendants' Motion for sanctions pursuant to Rule 11
12 and ^{**}(?) Motion to Strike pursuant to Rule 12 (f) (?), (V) Plain-
13 tiffs' own Motions to compel Defendants to retain separate counsel
14 and for Compulsory Arbitration or a Report to the Court by a
15 Court Referee as to the exceedingly complex nature of this Case,
16 and Plaintiffs' Opposition to Defendants' claimed removal of this
17 Case from State Court to Federal Court and for an Order remanding
18 back to State Court. Also, the Constructive Trust issue of 31 U.S.C.
19 3927.

20 *Nevertheless, since this Case is so extremely complex,
Plaintiffs forewarn the Court and ask the Court's indulgence.

21

I

22

FACTUAL STATEMENT

23

24 Plaintiffs bring to the Court's attention the following
25 facts (which are only addressed in part by that certain Declaration
26 of Alan C. Kolb filed in connection with this Case, by Defendants)
27 and mis-stated by Dr. Alan C. Kolb in any event, due to/lack of ^{his}
28 ^{legal} proper/competence about the legal issues and facts in this Case.

** The (?) here above and hereinafter are due to Alan C. Kolb's re-
questing Motions under the wrong Federal Rules of Civil Procedure.

1 Dr. Kolb has absolutely no conception whatsoever of
2 what a Declaration^{**} attached to a Motion means, subjects him to
3 personally, or any of the technical terms, i.e. Motion to Strike
4 or Motion to Dismiss, Federal Removal of State Actions, etc.

5 In fact, as Dr. Kolb well knows, he has simply signed
6 legal papers placed in front of him by Post, Kirby, Noonan and
7 Sweat because he thinks that somehow his name in the Plaintiffs'
8 Caption, i.e. RORACK (Raymond O'Rourke and Alan C. Kolb) will
9 somehow be "stricken", and that he will avoid all liabilities not
10 only to the named Defendants in this Action, but also to other
11 Maxwell shareholders, the Securities and Exchange Commission and
12 the Department of Defense.

13 Both Raymond O'Rourke and Albert O'Rourke, Esq. have in-
14 cluded his name in these Pleadings because he has been, and remains
15 an equal partner in RORACK and all of its assets, claims, and
16 liabilities because under the terms of the partnership (i.e.,
17 Section 9 of such RORACK Partnership) "...neither partner shall do
18 any act detrimental to the best interests of the partnership or
19 which would make it impossible to carry on the ordinary business
20 of the partnership ", See Exhibit A attached.

21 At the present time all of RORACK's assets (except a few
22 thousand Maxwell shares still at Bateman, Eichler, Hill, Richards
23 in Account #LJ26593-9560 (currently 3,725 shares but which may
24 be increased through Maxwell stock dividends) are at Maxwell.
25 These include at least 22,000 shares of Maxwell (plus a 5% stock
26 dividend, i.e., around an additional 1,000 shares) wrongfully
27 converted, defrauded, stolen, and wrongfully withheld by Maxwell.
28 Further, wrongfully withheld are all the stock option (whether
80,000 or 40,000 or any part thereof) shares of Maxwell

*Such being a 40,000 share option split two for one, i.e., 80,000.

**The Court need only look at Exhibit Z, which is Alan's own letter
of April 11, 1983, which contradicts Alan's sworn Declarations
about RORACK being terminated, to see what Plaintiffs endure.

1 stock promised to Dr. Raymond C. O'Rourke by Maxwell's former
2 president Terrence Gooding and Defendants Frank Clark, Esq. and
3 Karl Samuelian, Esq. These represent capital contributions to
4 RORACK by Dr. Raymond C. O'Rourke pursuant to Section 5 (b) of the
5 Partnership. Further, all of the business papers, records, etc.
6 of RORACK have been wrongfully withheld for nearly ten years or
7 more by Maxwell (Dr. Kolb has stated to "pick up the Records" from
8 his secretary, but such records as he is willing to give only repre-
9 sent part of RORACK's full business records, i.e., the balance
10 has always been wrongfully withheld by Maxwell and Karl Samuelian
11 and Frank Clark as, such would support Plaintiffs' claims against
12 Maxwell and the other Defendants).

13 Further still, such business entities as Computrad,
(Please see Exhibit a)
14 **Montgomery St. Associates**, and Yacht Charters Limited have
15 always been under the "RORACK" umbrella, and indeed both Frank Clark and
16 Samuelian and Alan Kolb have been either Directors, and Officers
17 of such companies in the past to some degree of participation
18 (except for Lattice Electromagnetics Inc.) or been responsible for
19 such companies' impairment because of their breach of contractual
20 support for such, or even their "bad mouthing" and negative in-
21 fluences against such companies (which they themselves help set up
22 as they themselves well know), and which were their own legal clients.

23 In short, having created a "nightmarish" maze of inter-
24 connected companies with promised support and promised legal
25 work, they now place the burden upon the O'Rourkes to unscramble
26 these legal problems, face an irate Internal Revenue Service, and
27 other State and Federal agencies about these companies' status
28 and liabilities.

*As noted on the previous pages note in regard to Exhibit Z, it
was Alan who began the unending "contradictions" and "obfusca-
tions" about RORACK's existence. When Attorney Al O'Rourke
mentioned to Alan that Alan's methods were "illegal", Alan be-
came upset and has remained so. 5

1 (and when Attorney Al O'Rourke uses the word "arguably", he does
2 not mean absolutely or for certain, as mistated by Post, Kirby,
3 Noonan and Sweat in regard to Statutes of Limitations mentioned
4 by Attorney Al O'Rourke as "arguably about to expire").

5 As Alan Kolb well knows, the first potential/^{RORACK}liabilities
6 were Alan's corporate mistatements and deliberate deceptions
7 about Maxwell's participation in S.D.I. (Strategic Defense Init-
8 iative) projects dating back to the middle and late 1970's.
9 Neither S.D.I. or any of the high energy physics, Directed Energy
10 Beams, X-ray Lasers, Electromagnetic Pulse, Extreme Low Frequency
11 Weapons, "Stealth" projects, Blue Green Laser Projects, sprang
12 out of the head or mind of President Ronald Reagan in his Spring,
13 1983 "Star Wars" speech. In fact, such had been going on since
14 the late 1940's, and in fact Vice President George Bush (when he
15 was Director of the Central Intelligence Agency in the 1970's)
16 implemented many of these space related programs or "Black"
17 programs. Moreover, Dr. Kolb's and Karl Samuelian's and Frank
18 Clark's relationships to George Bush also date from such period
19 even if only by correspondence or through intermediaries.*

20 As Alan, Karl, and Frank well know, Maxwell was created
21 to serve as a "Black" program" company as well as a commercial
22 enterprise in the mid 1960's.

23 Dr. Kolb had been Dr. O'Rourke's unofficial partner
24 at Naval Research Lab since the early 1950's involving numerous
25 nuclear physics projects and nuclear weapons tests and other
26 programs involving "National Security issues". Such relationship
27 continued when Dr. O'Rourke went to E.G. & G. Corporation in
28 Boston and worked there with N.R. L. up until the middle 1960's.

* Alan has always refused to talk about his "Black Projects" con-
nections either to his partner, Ray, or Attorney Al O'Rourke and
yet we are both bound by such covert actions, i.e. See Exhibit
B, which is the "loop-letter" referring to Alan's connections.

1 (Approximately 1967 to 1968). Around 1965 or 1966, Alan Kolb*
2 first met with either or both Frank Clark and Karl Samuelian and
3 their clients to establish Maxwell in San Diego, California.

4 About the same time, S-Cubed (Systems, Sciences and
5 Software, Inc.) was also formed, and operated jointly with Maxwell
6 or Maxwell personnel on government contract proposals and projects.

7 The members of Parker, Milliken, Clark, O'Hara and
8 Samuelian, their legal clients (i.e., the May family) and others
9 owned stock in both companies.

10 In the late 1960's, when Raymond O'Rourke had already
11 come to Maxwell as Vice President and Member of the Board of Di-
12 rectors, transferring the RORACK and Computrad files and business
13 projects to Parker, Milliken, Clark, O'Hara from Attorney Paul
14 Brontas' office in Boston, and with the stipulation or commitment
15 from Frank Clark, Esq. that Dr. O'Rourke would have all of his
16 business interests taken care of by Parker, Milliken, Clark,
17 and O'Hara (Karl Samuelian was not yet a partner). Both Frank
18 Clark, Alan Kolb, and Ray O'Rourke agreed that Ray should
19 "just^{do} your physics"... "leave the business to us".

20 Immediately Parker, Milliken, Clark and O'Hara did in
21 fact begin a number of business interests with RORACK, Computrad,
22 Yacht Charters Limited, etc. including setting up Commodity
23 Funds with other Parker, Milliken, Clark and O'Hara clients to use
24 Computrad in programmed or computerized stock and commodities
25 trading. At this time such use of computers was completely origi-
26 nal, new and the "first on the market". Even Yacht Charters Ltd.
27 was supposed to "wine and dine" clients on San Diego Bay.

28 No O'Rourke ever had any problems with Frank Clark
*At this time Alan was Ray's unofficial partner, and then in 1967
Alan's attorney, Phil Ryan, formed RORACK in connection with
establishing RORACK as a principal shareholder of Maxwell.

1 personally in these days. Everything seemed to be proceeding to
2 everyone's best interests.

3 However, in the late 1960's (i.e. 1969 or possibly
4 even 1970) Frank Clark informed everyone that he had a "conflict
5 of interest" between his representation of Maxwell and S-Cubed
6 jointly or his business interests in both. Hence, he declared
7 that his junior partner, Karl Samuelian, Esq., would take over the
8 legal affairs involving Maxwell, RORACK, Computrad, Lincolnwood
9 Fund, Yacht Charters Ltd., etc. (Frank Clark may have had only
10 a fleeting awareness of Yacht Charters Ltd.)

11 Immediately the corporate atmosphere at Maxwell
12 and the business relationship of Raymond O'Rourke and Alan Kolb
13 deteriorated. To Karl, Ray O'Rourke was "hopelessly" non-business
14 like.

15 Both Alan and Karl wanted to head up the Board of
16 Directors and "reorganize" Maxwell, its personnel, projects, etc.
17 In spite of the fact that it was Dr. O'Rourke and Terrence Gooding
18 (Maxwell's^{first} Chairman of the Board) who had begun the actual govern-
19 ment contracts of Maxwell, i.e., supplied the hard cash to keep
20 the company afloat^{*}, with Dr. Raymond O'Rourke even personally
21 liable to Union Bank on numerous bank loans and notes, Karl simply
22 wanted both of them removed from Maxwell. In spite of the fact
23 that Karl owed an attorney/client relationship to Dr. Raymond
24 O'Rourke, he and Alan continually "behind the scenes" denigrated
25 and manipulated Ray O'Rourke. Alan told Ray that he didn't need
26 to be on the Board of Directors at Maxwell because Alan, his
27 partner, would loyally protect him and RORACK's interests. Ray
28 O'Rourke then resigned from the Board. They then placed Ray in
what may politely be described as a "janitor's changing room".

*Please see Exhibit (b) i.e., Alan's own letter of Jan. 12, 1967.
Alan now seems to have even forgotten his own acts with Ray and
Terrence Gooding.

1 which was supposed to be his office for the next couple of years.
2 They also cut his salary by \$5,000, even though they knew that he
3 was spending almost all of his \$25,000. to \$30,000. salary cover-
4 ing interest on loans to RORACK, Alan C. Kolb, and Maxwell by
5 Union Bank.

6 They finally succeeded in removing Terrence Gooding from
7 his positions (with Terry laughing all the way to the Bank and
8 making himself a millionaire with other business companies), and
9 then proceeded further against Ray. Alan Kolb would come to Ray
10 with stories "You've got to stop your physics...you're scaring
11 everyone with these theories of yours".

12 Finally, with Alan and Karl (at least with Alan's claiming
13 Karl had said such) making representations that "Maxwell is
14 going into bankruptcy...you're going to have to go over to
15 Science Applications Inc. in La Jolla and arrange a "bail-out
16 merger" to save all of us", that Ray would have to have a "fire
17 sale on his home", etc. Alan and Ray got drunk and into a phone
18 booth to call Karl Samuelian with "Ray has agreed to resign from
19 Maxwell...and go over to S.A.I."... "He'll sign the papers," etc.

20 Naturally the S.A.I. "job" was nothing more than another
21 trick or manipulation of Alan's and Karl's and only lasted a
22 few months.*

23 Hence, a legal client of Parker, Milliken, Clark, and
24 O'Hara (and Samuelian) such as Ray O'Rourke, who had been placed
25 in the/impossible position of owing numerous debts of RORACK and Maxwell
26 and other companies to Union Bank for several hundreds of thou-
27 sands of dollars without any means of paying for such, due to the
28 manipulations of his partner, Alan Kolb, and his lawyers.

* Such merger in fact was only a "hoax" of Alan's, with Ray there-
after becoming a "disgruntled former and insignificant sharehold-
er of Maxwell."

1 Hilariously, as if this wasn't bad enough by itself,^{*}
2 since Ray had picked up Alan Kolb's debts and loaned him money for
3 some twenty years already and never been repaid (such remains a
4 "charge" against Alan's RORACK account according to Alan), Alan
5 demanded that Ray sell his house to pay off "legal expenses" to
6 Parker, Milliken, Clark, O'Hara!

7 Putting on his best "crocodile tears" yet once again,
8 Alan repeatedly begged Ray to settle up all these financial
9 matters concerning the debts of RORACK, Ray O'Rourke, and Alan
10 Kolb. Ray O'Rourke had no ability to do such except by selling
11 off his personal shares of Maxwell back to Karl Samuelian, Esq.'s
12 other clients at preposterously low prices. Additionally, Alan
13 sold off a huge block of 4,260 ³(?) Shares of Optical Radiation
14 stocks through RORACK at a fraction of their later worth (i.e.,
15 a couple of dollars vs. ^(?2-4)fifty to a hundred dollars per share).

16 In spite of the fact that he was clearly being finan-
17 cially abused with the full knowledge and participation of his
18 own attorney(Karl Samuelian, Esq.) such was allowed to continue
19 because Alan and Karl were supposedly going to implement or assist
20 Dr. Ray O'Rourke with his "new physics" in applying such both to
21 Maxwell's nuclear physics projects and other defense company
22 nuclear physics projects (today Alan and Karl "can't recall" such).

23 Up until the late 1970's perhaps all of the above could
24 just be considered a "controversy" involving Raymond O'Rourke, Dr.
25 Alan Kolb, Karl Samuelian, and Frank Clark, and their law firm.
26 Certain "political events" however changed this Private quarrel into
27 something far bigger.

28 Hopefully the Court will recall when Stansfeld Turner
*The fact that such was a violation of Rules 2-111 and 5-101 of
the Rules of Professional Conduct (Exhibit W and U) was "over-
looked" since Karl Samuelian is "so busy with Gov. Deukmejian.

1 became Director of the Central Intelligence Agency in George
2 Bush's old job. Admiral Turner, operating under President Jimmy
3 Carter's personal order, immediately "purged" several thousand
4 of the C.I.A.'s "old boys", "Black Operations personnel", and
5 those persons among whom were the "German Connection" or former
6 members of the O.S.S. (the C.I.A.'s predecessor) during World War
7 II, and the German Abwehr Intelligence Agency transplanted to the
8 C.I.A. after World War II (i.e. Reinhard Ghelen's successors).
9 In short, there was a "Spook Sweep".

10 Such wailing and gnashing of teeth from these "Germans"
11 (many of whom are known personally and were friends of Dr. Alan C.
12 Kolb's) did not last long, since it was replaced by their vindic-
13 tive designs to "get even" with Jimmy Carter.

14 President Carter had become a "mindless idiot" not to
15 be trusted with "Black Operations" or other technical intelligence
16 and nuclear weapons secrets. These people simply started to
17 create covert weapons systems on their own through a variety of
18 domestic and foreign corporations, including Maxwell^{*}. Dr. Alan
19 Kolb, Dr. O'Rourke, Sam Surloff, Esq., and a Mr. Carnes or Cairns
20 (a C.P.A. of RORACK's) even had a meeting out at Maxwell in the
21 late 1970's or 1980ish where this precise issue of covert weapons
22 programs and Maxwell's involvement and Kolb's/involvement was
23 put to Alan Kolb in point blank^{language}/by Al O'Rourke, Esq. Alan Kolb
24 denied any such participation, either personally or by Maxwell
25 in any Directed Energy, X-ray Laser, Particle Beam, or any other
26 such "Secret Weapon Program". Moreover, Alan Kolb denied any
27 knowledge of or involvement with any "German Group" or "Kolb's
28 German friends", etc. Attorney Al O'Rourke was simply "nuts".

* Including among others, Global Analytics, Inc., Helionetics Inc.,
General Microelectronics, etc.

1 However, this was just one more example of Alan Kolb's
2 deliberate disinformations, which he later tried to excuse by stat-
3 ing that such were "not really a lie or disinformation", but merely
4 statements made to someone "who had no need to know" about "National
5 Security matters" which were "classified anyway" and which Alan Kolb
6 "could not talk about in any event." **

7 At this time, both Attorney Al O'Rourke and Dr. Raymond
8 O'Rourke informed Alan and Sam Surloff, Esq. (another junior lawyer
9 for Karl Samuelian) that Maxwell had absolutely no ability whatso-
10 ever to get involved with such projects because the "In House"
11 physics capacity of Maxwell was either nonexistent or based upon
12 incorrect laws of physics. Moreover, this was no mere selfserving
13 statement, but something known personally to Alan, as both he and
14 Ray for the last few years had both tried to come up with "the New
15 Physics".*

16 Nevertheless, just a few months after this meeting,
17 the first of an unending series of articles in the San Diego Union
18 and other publications began to occur. Supposedly ultra top secret
19 "breakthroughs" in Directed Energy, Pulse Power, X-ray Laser, etc.
20 had miraculously been discovered at Maxwell and in Germany by Alan
21 Kolb and other German scientists (Guenther Hoffman[?]). There was
22 "no doubt about it", "super weapons of all time" had been discovered
23 and the country saved!

24 Numerous publications attributed this "success" to Alan
25 Kolb, Karl Samuelian, various employees of DARPA, the Department
26 of Energy, the Pentagon, etc.

27 The fact that this was an absolute hoax and known to
28 be a hoax is self evident. But what was the purpose of this hoax?

*Apparently Alan now believes his physics have been justified by Maxwell's 32 mega-joule Checmate "Rail Gun", i.e., Alan's "super weapon".
Moreover, other Maxwell shareholders were disturbed. See Exhibit (c).

1 The answer is in the public stock offering of Maxwell prepared in
2 the 1981 to '83 period (Maxwell went public within weeks of Presi-
3 dent Reagan's "Star Wars speech") which was deliberately arranged
4 by Karl Samuelian, Esq. (with Frank Clark's knowledge), to "balloon"
5 Maxwell's stock price to around \$30. per share from \$3. to \$5.
6 make a bundle of cash, and a second bundle on the "non-arms-length
7 transaction" merger of S-Cubed into Maxwell with a one for one
8 (approximate) stock swap in late 1983.*

9 Several million dollars was made by the Maxwell Insiders
10 and the S-Cubed Insiders, Parker, Milliken, Clark, O'Hara and
11 Samuelian, Frank Clark and Karl Samuelian, the May Company bro-
12 thers, etc. (Including Peter Saccerdote and Goldman Sachs).

13 Out of this "financial warchest", it was understood
14 that everyone would contribute to Governor George Deukmejian's
15 campaign (1982) bills, caused by the last minute television adver-
16 tisement blitz which had won the governorship from Mayor Tom
17 Bradley on the strength of this secret financial arrangement.
18 Such "warchest" has only continued to grow both for Governor Deukme-
19 jian and Vice-President George Bush as well! Such includes numer-
20 ous phony stock transactions of Maxwell stock by Goldman Sachs
21 and Peter Saccerdote, member of Maxwell's Board of Directors, and
22 known to Karl Samuelian personally. In fact, Karl Samuelian and
23 Alan Kolb even promised to stop such transactions of Peter Saccer-
24 dote and Goldman Sachs on numerous occasions when such was pointed
25 out and objected to by the O'Rourkes in their RORACK meetings
26 with all the parties at Maxwell!

27 * In support of this contention, Plaintiffs refer the Court to
28 Exhibit C, a Kolb letter of ^{early} ~~late~~ 1983, where Alan refused to allow
any Maxwell stock of RORACK to be sold, because he knew the pub-
lic stock offering was only a few months away at many times the
price in 1982 of Maxwell, i.e., something like \$5. to \$6. vs.
\$25. to \$30.

(1984-87)

1 The RORACK meetings between Dr. Alan Kolb, Karl Samuel-
2 ian, Esq., Albert O'Rourke, Esq. and Dr. Raymond C. O'Rourke/ ^{occurred} either
3 at Maxwell, at Parker, Milliken, Clark, O'Hara and Samuelian,
4 other locations (i.e., before Board of Directors meetings and
5 Shareholder meetings at San Diego hotels), restaurants, and by
6 telephone.

7 In spite of Attorney Al O'Rourke's and Raymond O'Rourke's
8 demands that the S-Cubed merger be called off, or that the lang-
9 uage in the Exhibit No. D (only the Cover Sheet is supplied by
10 Alan Kolb in his September 9, 1988 Declaration,!) which is the
11 Proxy Statement in regard to such merger sent by Dr. Alan Kolb
12 and Karl Samuelian, Esq. and the other Maxwell Directors and Offi-
13 cers (including all of the Defendants except Admiral Thomas Hay-
14 ward who did not come to Maxwell until around 1987 (?)), ^{Alan and Karl} refused.*

15 This is specifically referred to by Dr. Kolb in Para-
16 graph No. 10 of his Declaration of September 9, 1988. Moreover,
17 Paragraph No. 8 to 12 even admit the source of dispute about this
18 merger's propriety and "as further indicated...I had a beneficial
19 interest in 40,490 shares of Maxwell stock which includes 13,500
20 shares of record by RORACK, a partnership in which Dr. Kolb has
21 a 50% interest". (On page 31 of the Proxy Statement).

22 However, this language did not identify what RORACK was
23 and remains, the fact that Dr. Raymond C. O'Rourke was the other
24 partner, the fact that both Dr. O'Rourke and Albert O'Rourke had
25 told both Karl Samuelian and Alan Kolb to call off the
26 "non-arms-length" merger of S-Cubed into Maxwell, been refused,
27 and further the fact that none of this was being related to the
28 other Shareholders in the Proxy Statement.

* Alan and Karl supposedly maintain that they can't be liable except
for what they put in the Proxy (and not what they ^{om}itted). Att-
orney Al O'Rourke's warnings about "material omissions" under
10B 5 of the 1934 Securities Act, were dismissed as "nonsense".

1 What does the Court^{*} believe would have been the
2 effect if Shareholders had seen language in the Proxy Statement
3 that Dr. Kolb's own partner, Raymond O'Rourke (and the latter being
4 a Client of Karl Samuelian, Esq.) was Filing for Shareholders
5 Dissenter Rights for the full 13,500 shares of RORACK-Maxwell
6 stock because the merger was an obvious hoax, manipulation, non-
7 arms-length and even fraudulent transaction? Quite clearly the
8 entire merger would have collapsed with all of the shareholders
9 claiming Shareholder Dissenter Rights. Furthermore, the share-
10 holders would have been informed to seek out the Company's records
11 on RORACK and would have discovered all of the years of prior stock
12 manipulation of Maxwell (called "puffery" i.e. puffing up the
13 stock price prior to the public stock offering and the merger).

14 Attorney Al O'Rourke even objected to Latham and Watkins,
15 Attorneys for S-Cubed, and received no reply addressing these pre-
16 cise issues. See Exhibit E.

17 All of this is detailed in Plaintiffs' Superior Court
18 Action and Complaint which Defendants do not even dare to reply to,
19 because such is verified and true, and totally binding upon them!

20 As predicted, within days of the S-Cubed merger becoming
21 official(i.e. around April, 1984) Maxwell's stock price totally
22 collapsed as the insiders of Maxwell and Parker, Millken, Clark
23 O'Hara and Samuelian (including Karl Samuelian, Esq!) had all sold
24 off their stock either prior to the merger, or shortly thereafter.
25 Peter Saccerdote and Goldman Sachs had done the same, thereby "ruin-
26 ing" other stock brokerages such as First Albany Corporation and
27 their clients who had relied on the Proxy Statement, the merger
28 and the support of such by both Maxwell's insiders, Parker,

* Or what does the Court think would have been the effect on share-
holders of Maxwell, had they seen Exhibit (h), i.e., "the warning
letter" of October 18, 1983 which was entirely accurate.

1 Milliken's insiders, S-Cubed insiders, Latham and Watkins insiders
2 and Ernst & Whinney (C.P.A.'s) insiders.

3 Obviously, those persons related to S-Cubed, who be-
4 fore the merger had held only S-Cubed stock worth supposedly \$3
5 (even this is questionable) were suddenly getting stock worth any-
6 where from \$25. to \$30 in exchange almost one for one (one share
7 of Maxwell stock for every 1.3 shares of S-Cubed)! Naturally,
8 there was a stampede to sell. Maxwell's daily volume soared to
9 something like ten times its normal daily or even weekly volume,
10 i.e., suddenly hundreds of thousands of shares of Maxwell were
11 trading on the "sell side" chasing the price downward. Moreover,

12 the insiders went a step further, i.e. "short-selling" Max-
13 well while knowing that Maxwell's price would collapse as a direct
14 result of this merger. ^{This} instead of "going up" as blithly claimed by
15 both management of Maxwell (and especially "Dragon Lady" ^{Defendant} Myrna Jaro
16 personal secretary of Dr. Alan Kolb's and familiar with all the
17 RORACK papers). Ms. Jaro was repeatedly contacted by Shareholders
18 since Dr. Kolb was "unavailable" and Ms. Jaro repeatedly mistated
19 to them that Maxwell's stock decline was just a "temporary"
20 or "freak" occurrence and that they had nothing to be worried
21 about (while all the while the Insiders continued their selling).

22 Prior to the "Dragon Lady", RORACK had Gerri Razor as
23 its secretary and joint-secretary to Dr. Alan Kolb. Ms. Razor
24 was always cooperative with Attorney Al O'Rourke. Moreover, Attor-
25 ney Al O'Rourke repeatedly warned Ms. Jaro to cease her statements
26 and she did not do such, apparently always assuming that Attorney
27 Al O'Rourke was "nuts" and didn't have to be listened to. Frankly,
28 this is what Karl Samuelian, Alan Kolb, and others had always

1 informed her, while all the while allowing her to keep the Share-
2 holders of Maxwell disinformed, stupid: ^{**} etc.

3 In regard to the merger(as noted in the Complaint it-
4 self) Karl Samuelian, Esq. had declined either to honor the 13,500
5 shares of RORACK-Maxwell claimed for Shareholder Dissenter Rights,
6 put into the Proxy Statement the nature of the RORACK dispute, or
7 call off the merger. In a meeting with Attorney Al O'Rourke at
8 his law firm in Los Angeles during the merger period(i.e. around
9 late 1983 to early 1984) Karl Samuelian even stated "You know I
10 can't do that, Al...I'd have Rule 144 problems". This was refer-
11 ring to Rule 144 of the Securities Exchange Act and Federal
12 Securities Laws i.e. "Insider Trading Laws".

13 Moreover, Karl had "other concerns" as he well knows. He
14 still had to cover the 1982 Campaign of Governor George Deukmejian
15 and its outstanding debts as well to continue building the "finan-
16 cial warchest" for 1986 and even for George Bush's presidential
17 election campaign of 1988. Karl claims such statements by Attor-
18 ney Al O'Rourke are untrue, unfounded, and all the other legal
19 language when something is true, but must be "legalistically" denied.

20 Moreover, ever since 1984 the partners of RORACK and
21 Karl Samuelian, Esq. and Albert O'Rourke, Esq. have continued to
22 have private meetings about these matters as Karl well knows.
23 Attorney Al O'Rourke has even suggested to Karl that Karl should
24 sue Goldman Sachs for stock manipulation to get back the original
25 \$21.25 or even higher price of Maxwell stock (\$25. to \$30.) before
26 such merger. Karl has declined to do this because of his own in-
27 volvement. Any objective or neutral lawyer retained by Maxwell
28 Shareholders, would have long since filed such suit.

* Exhibit F of Plaintiffs, Karl's April 26, 1983 letter addresses
some of these issues about Securities Laws involving RORACK.
** Ms. Jaro refused to tell the shareholders about Exhibit (h)

1 Throughout the 1984 to 1988 period, Karl Samuelian
2 has always refused to properly inform the Shareholders about these
3 controversies or to supply Attorney Al O'Rourke and Raymond O'Rou-
4 rke with all the information in his Files even though both they
5 and RORACK are Clients of Karl's and can demand all such papers,
6 documents, telephone messages, recordings, notes, etc.!' *

7 This is why the Statute of Limitations cannot possibly
8 have run (this legal issue will be taken up in more detail later)
9 because CCP, Section 340.6 does not limit any actions to one year
10 or even four years as claimed by Post,^{Kirby,}Noonan, and Sweat but quite
11 clearly states that any Cause of Action pursuant to CCP, Section
12 340.6 is "tolled" in regard to any Statute of Limitations issue,
13 until Full Disclosure and non-concealment are made by the attor-
14 ney.

15 Karl Samuelian, Frank Clark, and other members of
16 Parker, Milliken have numerous communications to the California
17 Corporations Commissioner, the Securities and Exchange Commission,
18 the Internal Revenue Service, Governor Deukmejian, Governor Duka-
19 kis, President Reagan (most likely to the Presidential Counsel's
20 Office or Presidential Science Advisor).

21 Alan knows all about these and refers to such himself
22 in part in his paragraph No. 25 on his page 9 of his Declaration
23 of September 9, 1988, even though he only refers to "the 100
24 letters of Albert O'Rourke...". In fact, many of these letters
25 were in response to letters and statements made by Karl Samuelian
26 and Alan Kolb to the above Third Parties that there were no prob-
27 lems at Maxwell and that Attorney Al O'Rourke either "did not
28 know what he was talking about," was having "fantasies", or worse.

* Supposedly to protect Alan, Maxwell, the "loop" of National Security Projects and personnel, etc. It is well understood to Karl that Attorney Al O'Rourke intends to sue all of these "Republican" bigwigs, no matter who they are, including George Bush or Gov. Deukmejian, etc. under 42 U.S.C. 1983 and 31 U.S.C. 3729.

1 In regard to the substance of some of the letters, they
2 were warnings that Maxwell was pulling the same stock manipulation
3 and "stock puffing" as Helionetics Inc. Helionetics (literally
4 down the street from Maxwell and run by the same "German" crowd
5 previously referred to) had also run their stock up to \$30 per
6 share or more on the strength of their "Blue Green Laser". Such
7 was supposed to be the "Super death weapon" of all times. Natur-
8 ally, huge blocks of the stock were owned and sold by members of
9 the White House, the Presidential Science Advisor's Office, and
10 even members of the Helionetics Board such as Dr. Edward Teller
11 and Admiral Thomas Hayward (the first closely connected with Dr.
12 Alan Kolb at Maxwell and the second later made Maxwell Director
13 himself).

14 Actually the Blue Green Laser was nothing more than a
15 communications device which didn't work under certain atmospheric
16 conditions, i.e. like when there is a cloud in the sky. Natural-
17 ly, Alan Kolb, Karl Samuelian, and the others also let the whole
18 world know that Maxwell had Blue Green Lasers equal if not better
19 than Helionetics.

20 This obvious stock scam was "gently" referred to even by
21 Don Bauder in the San Diego Union, i.e., around 1984 to 1985.
22 Naturally, by 1986, Helionetics declared bankruptcy and all the
23 shareholders lost their entire life savings. This did not trouble
24 any of the Presidential Counsel's Staff, the S.E.C., or Vice Presi-
25 dent Bush or Governor George Deukmejian! They had already made
26 their bundle off Helionetics, were in the process of repeating
27 such through Maxwell (and probably other companies as well).

28 Now, when everything is in ruins including the entire
*Plaintiffs assert that it makes no difference that such money
ended up in the campaign contributions funds, even without the
direct knowledge of Gov. Deukmejian or George Bush. They should
know what is going on in their own house. i.e. 31 USC 3729

1 Office of the Strategic Defense Initiative, the SDI contracts and
2 funding and numerous companies threatened with bankruptcy*, i.e.,
3 Maxwell, IRT, Titan Corporation, Mitek Systems, General Micro Elec-
4 tronics, etc. (all based within a stone's throw of Maxwell and
5 all inter-related to Maxwell or its staff), Alan and Karl and
6 Post, Kirby, Noonan and Sweat either state or imply that such was
7 caused at least in part by Attorney Al O'Rourke's "100 letter
8 campaign" to the White House and Governor's Office.

9 In regard to President Reagan, the only communication the
10 O'Rourkes have, are personal letters from a kind Nancy Reagan suppor-
11 ting Ms. Mary O'Rourke and vice versa. Attorney Al O'Rourke has
12 never blamed President Reagan for a thing, but admits that Presi-
13 dent Reagan would have been well advised to listen to Maureen
14 Reagan several years ago and "court-martial and fire" his entire
15 collection of "Kiss and tell" advisors, who continue working for
16 Vice President Bush and Gov. Deukmejian. Worst of all, these
17 people even planned to establish an "Executive Committee" through
18 Kenneth Adelman (the arms control negotiation advisor), Pat
19 Buchanan, etc. (who are personal friends of Karl Samuelian's and
20 Alan Kolb's) to run the White House as "quasi-presidents" because
21 President Reagan could not "understand" their Defense policy.
22 In fact, they were serving no higher purpose than to pull off
23 more fraudulent stock schemes with new bogus SDI related companies.

24 The O'Rourkes have never had any problems with any Irish
25 Presidents or future presidents, i.e., see Exhibit (1) series.

26
27
28

*See Exhibit ^{FF} on S.D.I. Collapse.

**Alan denies any "political" involvement and this may be true to some extent, i.e., letting Karl do "the politics".

1 Returning specifically to Alan Kolb's own September 9,
2 1988 Declaration about how RORACK's Maxwell stock was supposedly
3 equally split up and "properly reported to the SEC and the other
4 Maxwell shareholders (i.e., on his/page 8, Paragraphs No. 21 to
5 24), such is again totally deceptive, newly fraudulent, and full
6 of material nondisclosure and concealments!

7 Specifically(as Alan well knows)he had no right(nor did
8 Karl Samuelian as RORACK's lawyer)to insist on the "splitting up
9 of RORACK's/^{13,500}Maxwell shares into two 6,750 blocks owned by Raymond
10 O'Rourke and Alan Kolb separately, with only Raymond O'Rourke 's
11 block entitled to Shareholder Dissenter Rights. This was done
12 to avoid the SEC Rule 144 problem referred to previously and to
13 prevent the other Maxwell Shareholders from being properly advised
14 about the S-Cubed merger.

15 Karl simply made an "either/or" proposition. He would
16 not give a \$143,000 check to Raymond C. O'Rourke unless Raymond
17 O'Rourke "agreed" that the second half would belong to Dr. Alan
18 Kolb and would not be entitled to Shareholder Dissenter Rights.
19 The fact that the full 13,500 shares had been irrevocably trans-
20 ferred to RORACK by Alan Kolb, and then the full 13,500 shares
21 had been properly claimed by RORACK for Shareholder Dissenter
22 Rights was somehow to be revoked by a half.

23 In the first place, Attorney Al O'Rourke is unaware of
24 how an attorney such as Karl representing a Client such as RORACK
25 can refuse to carry out his Client's instructions and in fact
26 destroy such and cause his Client injury thereby, without sustain-
27 ing CCP 340.6 liability. In the second place the March 9, 1984
28 (referred to as May 9, 1984 because Dr. O'Rourke signed such then)

* See Exhibit G, the irrevocable transfer of 13,500 shares of Max-
well stock to RORACK by Alan.

** Karl, therefore, violating Rule 2-111 and 5-101 of the Rules
of Professional conduct. 2 2

H, Ar¹
(Plaintiffs' Exhibit H)
2

1 which is Exhibit E in Alan Kolb's September 9, 1988 Declaration,
2 was made under fraud and coercion in the first place (due to Karl),
3 and in the second place, such agreement is only an agreement be-
4 tween Raymond O'Rourke and Dr. Alan Kolb, which even if the Court
5 ruled hypothetically was not agreed to under fraud or coercion,
6 is still denied and breached by Dr. O'Rourke. The subtle point
7 being how can Dr. Alan Kolb complain? Instead of ^{Alan's having} 6,750 shares of
8 Maxwell, there would be something like ^{another} 19,500 shares in addi-
9 tion to the 19,500 shares purchased by Raymond O'Rourke with his
10 \$143,000 check. Obviously there are no damages, and any Arbitra-
11 tor or Third Party or the Court should think that Attorney Al
12 O'Rourke was not simply a "nut", but was entirely accurate and
13 lawyer-like.*

14 Moreover, this agreement is not made in Privity of Contract
15 or any obligation, covenant, or condition with Maxwell. Maxwell
16 is still under agreement with RORACK to credit RORACK with
17 13,500 shares at \$21.25 plus the legal rate of interest compounded
18 for the last four years since the agreement was made or Maxwell's
19 offer was accepted by RORACK.

20 To my knowledge and Dr. O'Rourke's, ^{Maxwell} no formal/letter has
21 ever come to us or to RORACK (remember RORACK's records and mail-
22 ing address is still with Alan Kolb out at Maxwell), disputing this. **

23 The only party not living up to their agreement is Maxwell.
24 Further, no Statute of Limitations could have yet run even argu-
25 ably, because Plaintiffs Filed their Action on on May 5, 1988,
26 clearly within the four year Statute of Frauds on written contra-
27 cts, and for any claimed rescission of any ^{May 9, 1984} agreement (i.e. dating
28 from May 9, 1984 to May 5, 1988).

* i.e., with Alan owning 50% of RORACK, he would have three times as many RORACK shares of Maxwell, or Maxwell shares as before.
**Disputing any Privity of Contract claims to Maxwell.
23

1 These Statute of Limitations problems will be addressed
2 later, but at this point this issue is raised because Dr. Kolb
3 and Post, Kirby, Noonan and Sweat are simply mistating what I in-
4 formed Alan Kolb (^{And} why, when, and what it had to do with any of
5 the issues). ^{Now} They are claiming this May 9, 1984 letter is in "privity
6 of contract directly to Maxwell.
7 Obviously, Alan's March 9, 1984 agreement for Dr. Ray
8 O'Rourke made no kind of "business sense" whatsoever, i.e. why
9 would anyone on earth want 6,750 shares of Maxwell stock instead
10 of around 19,500? In spite of the fact that such letter is merely
11 on Alan Kolb's personal stationary, such was in fact prepared and
12 dictated to him by Parker, Milliken, Clark, O'Hara and Samuelian
13 as Alan well knows. The reason such letter agreement was not on
14 Parker, Milliken, Clark, O'Hara and Samuelian stationary, was to
15 avoid any personal liability to the law firm or to Karl. Obvious-
16 ly no attorney in his right mind would advise a Client to take
17 6,750 shares worth approximately \$70,000 as opposed to 19,500
18 shares worth close to \$200,000. Lawyers would get sued for such
19 "advice". Obviously, there was an ulterior motive, and that was
20 to avoid the S.E.C. Rule 144 problem, the Proxy Statement prob-
21 lems, the S-Cubed merger problems, ^{etc.} to the other shareholders,
22 and even the disclosure of Governor Deukmejian's campaign finan-
23 ces managed by Karl Samuelian, which have been "rolled over" into
24 George Bush's campaign.*

25 On March 10, 1984 to show Alan Kolb how ridiculous his
26 March 9, 1984 letter or agreement was, Attorney Al O'Rourke sent
27 Alan a hasty rough draft copy (Attorney Al O'Rourke did not know
28 what Alan Kolb might be doing unilaterally) warning Alan of his
actions and requesting that both Alan and Ray sign such .

*Again, it is George Bush's responsibility to find out where his
campaign contributions are coming from, and how the initial money
was created in the first place.

1 Attorney Al O'Rourke did not want to be held liable by
2 any creditors of Alan Kolb's at a subsequent time due to Karl
3 Samuelian's actions. Such document is Exhibit F of Alan Kolb's
4 September 9, 1988 Declaration, and here Plaintiffs' Exhibit I.

5 In response there came a total silence and as the Court
6 will clearly note such document is unsigned by Alan Kolb or Ray
7 O'Rourke and not agreed to any manner. Nevertheless, Alan's
8 Declaration refers to this as some kind of "formal Agreement" between
9 RORACK, Dr. Ray O'Rourke, Dr. Kolb, and myself, directly to Maxwell.

10 Further, Exhibit G of Alan Kolb's September 9, 1988
11 Declaration was Alan's sole "response". That is to say that after
12 almost one month of keeping me in the dark as to his intentions
13 and refusing numerous telephone inquiries, Alan sent me this
14 letter. Again such is not on Parker, Milliken, Clark, O'Hara and
15 Samulian's stationary, nor Maxwell's, nor does it bind either Ray-
16 mond O'Rourke or Dr. Kolb to Maxwell under any agreement, nor does
17 it address the liabilities raised in the March 10, 1984 letter
18 Exhibit F, ^{Plaintiffs' Exhibit I,} or deny any of Attorney Al O'Rourke's legal warnings.
_(Plaintiff's Exhibit I₂)

19 In fact such clearly states "I would like to acknowledge
20 to you that you endeavored to perfect "Dissenters Rights" on be-
21 half of RORACK with respect to all of said shares with the view
22 of protecting my interests..."

23 This from someone who is now claiming that Attorney Al
24 O'Rourke has acted improperly against him and his family's inter-
25 ests!

26 In regard to Exhibit ~~MI~~ ^{Plaintiffs'} i.e., that letter of May 9, 1984,
27 referred to by Alan Kolb on his page 8, paragraph No. 21 of the
28 September 9, 1988 Declaration, Alan once again mistates the

1 nature of the Bateman Eichler Hill Richards Account No. LJ265993-
2 9560 which was established to hold the \$143,000. check, convert
3 such into Maxwell shares, i.e., around 19,500 shares. Mr. Dave
4 Evans (the stock broker) simply set up an account separate from
5 the O'Rourke Family account (LJ 265906-1983) which also contained
6 Maxwell stock and still does.*

7 Alan Kolb would not establish a new RORACK account, al-
8 though at one time Dave Evans even had the original 13,500 shares
9 of Maxwell, another RORACK account or accounts from the early
10 1970's, and had done any number of RORACK stock trades made by
11 Alan in regard to RORACK. Alan himself had stated to me that all
12 of his RORACK and Maxwell stock or monies was going into a
13 "Family Trust". Hence, I created the same thing for RORACK.**

14 Therefore, Attorney Al O'Rourke simply did the next
15 best thing, i.e., establishing this Bateman Eichler account. Both
16 Ray O'Rourke and I told Alan Kolb that such would remain untouched
17 as a RORACK joint possession and that we would keep his half,
18 and any new Rights to a half of any additional Maxwell or monies,
19 in such account (i.e., had Maxwell subsequently sent the second
20 \$143,000. check, new Maxwell securities, notes, options, etc.).

21 All of this is known perfectly well to Alan Kolb who
22 further knows that Attorney Al O'Rourke has never cheated anyone
23 let alone Dr. Kolb's family or Dr. Kolb.

24 Dr. Kolb even supplies the appropriate Exhibit in his
25 Plaintiffs' Exhibit J also
26 Exhibit J/where it quite clearly states Attorney Al O'Rourke's
27 concern for both Alan and Amalia and Alana and Carla and Christo-
28 pher Kolb future financial condition and possible need for such
one half of RORACK's assets or the \$143,000.

* Even though Alan may have told Dave Evans that such was not
a RORACK account. Such merely "transformed" RORACK's old accounts.
**Alan now claims I had no right to do this.

1 Nevertheless, even this is turned around by Alan Kolb
2 and Post, Kirby, Noonan and Sweat to state that Attorney Al O'Rou-
3 rke should even be "sanctioned" for Filing a lawsuit "when the
4 Statue of Limitations had run" and was "admitted to have run" by
5 Attorney Al O'Rourke in this February 3, 1985 Western Union
6 mailagram.

7 This mailagram quite clearly states that Dr. Kolb
8 and Amalia might be barred from any legal action personally. It
9 does not state that Attorney Al O'Rourke agrees that RORACK is
10 barred (or obligated to Maxwell in any manner whatsoever). What the
11 mailagram is talking about quite clearly is an action of conversion
12 (in tort) by Dr. Kolb and Amalia Kolb ^{directly} against Maxwell, i.e.,
13 your standard one year ^{personal} tort statute of limitations.

14 Furthermore, as Post, Kirby, Noonan and Sweat know
15 perfectly well (although they have not stated such to Alan) the
16 Statute of Limitations must be plead as a Defendant's affirmative
17 defense (as ^{i.e.} part of his answer to the Complaint). A Plaintiff
18 is not "barred" from Filing a Complaint or held "sanctioned"
19 because some Statute of Limitations "may" have run on part of his
20 Complaint. Dr. Kolb is simply legally incompetent to make such
21 statements in a Declaration. Worse still, even against himself he
22 makes constant "Declarations against interest" which any Third
23 Party or other Maxwell shareholders could use in their own sepa-
24 rate lawsuit as binding upon Dr. Kolb! *see :

25 Attorney Al O'Rourke has repeatedly tried to have Dr.
26 Kolb get a neutral, objective or other party to represent Dr. Kolb
27 and to prevent him from making such stupid statements. Clearly,
28 Dr. Kolb is simply signing legal papers thrust in front of his
*And since RORACK, Ray O'Rourke and Albert O'Rourke had the obliga-
tion to defend Alan, under RORACK's specific terms, Alan makes us
liable as well.

1 face without any knowledge or competence as to the issues, and with
2 repeated misstatements of fact.

3 Furthermore, factually even in regard to legal dates of
4 Statute of Limitations, assuming hypothetically that any action
5 or recovery was barred by the Statute of Limitations in regard to
6 the 1984 Shareholder Dissenter Rights, such is not the case with
7 the fraudulent stock manipulations, conversion, breach of contract
8 for Implied Good Faith, etc. in regard to the acts of Karl Samuel-
9 ian, Esq..under CCP, Section 340.6, nor to the October, 1987^{Defendants'} acts
10 against RORACK, the other Plaintiffs in this Action, and even
11 other Maxwell shareholders (i.e., in regard to the "constructive
12 trust"^{*} allegations and claims of the Superior Court Action).

13 This is because this "other half" of the Superior Court
14 Complaint was clearly Filed within any one year statute, i.e., way
15 before October, 1988, i.e., on May 5, 1988.

16 All of this is mistated, confused, or even concealed by
17 Dr. Kolb's Declaration. This is because Dr. Kolb simply does not
18 know what he is talking about, and simply signing prepared (by Post,
19 Kirby, Noonan, and Sweat) Declarations.

20 Furthermore, even allowing for argument's sake that the
21 bulk of the Superior Court Complaint was somehow hypothetically a
22 "partnership" dispute as claimed by Dr. Kolb, such would not affect
23 the other Plaintiffs in this Action. Attorney Al O'Rourke has been
24 damaged, Dr. Ray O'Rourke separately has been damaged, and the
25 non-RORACK other Plaintiffs have also been damaged in their sepa-
26 rate stock of Maxwell or their business committments based upon
27 the value and liquidity of Maxwell stock.

28 As Dr. Kolb and Mr. Samuelian and Ms. Jaro and Monty
*And the Court should remember that there is sufficient grounds for
a Constructive Trust to protect even the U.S. Government's assets
at Maxwell pursuant to 31 U.S. C. 3729.

1 Hayes and Sean Maloy, etc. well know, even any quoted value of
2 Maxwell stock since the ¹⁹⁸⁴ merger has been entirely suspect or bogus
3 due to Peter Saccerdote's actions and those of Godman Sachs.

4 The Defendants allowed Mr. Saccerdote and Goldman Sachs
5 to become the exclusive or controlling "market maker" of the stock
6 of Maxwell, deliberately "squeezing out" such other stock brokerage
7 firms as Bateman Eichler, Hill, Richards, First Albany, Shearson,
8 American Express, San Diego Securities, etc.

9 Peter Saccerdote would simply "set the price" of Maxwell
10 and everyone else had to deal through him and Goldman Sachs. As
11 an example, let's say Maxwell was at supposedly bid \$13., asked
12 \$14. Normally when a price above \$13. was made by another broker-
13 age, i.e. Bateman Eichler, Hill, Richards say \$13.75, it would be
14 understood that the selling client of Goldman Sachs or Peter Saccerdote
15 would really only be getting \$13. with the \$.75 going to
16 Bateman, Eichler, Hill, Richards as a "market maker" or at least
17 splitting such with Goldman Sachs. In fact, the latter simply
18 "hogged up" this \$.75, thereby creating no desire for Bateman
19 Eichler, Hill, Richards to purchase Maxwell stock (or any other
20 stock brokerage) because all they were making was the buyer's
21 commission and not the whole or the substantial part of the "market
22 maker's" fee. This is extremely important as it is the only way
23 to profitably run a stock brokerage, i.e., the commission alone
24 is absorbed in costs and overhead.

25 Peter Saccerdote and Goldman Sachs knew all this, and
26 such was specifically addressed to Alan Kolb and Karl Samuelian re-
27 peatedly at the RORACK meetings at Maxwell by Plaintiffs.

28 Specifically further, both Ray O'Rourke and Albert

1 O'Rourke addressed these issues and made warnings about the grow-
2 ing difference or "gap" in the bid price vs. the asked price of Max-
3 well. Alan/^{Kolb}and Karl Samuelian know all about this in great detail
4 and they promised to recify such but never did.

5 Therefore, the non-Goldman Sachs, non-Peter Saccerdote
6 stock broker or brokerage house, had to "make up" this missing
7 \$.75 or part of such, one-half, two-thirds, etc.(their operating
8 margin of profit) by purchasing the Maxwell stock at say \$13. and
9 further lowering the actual sale price to their own seller by the
10 \$.75. Hence, the seller was only getting \$12.25 less commission
11 on a stock he would see in the paper as being around \$14.

12 As the sellers increased and the sell volume of Maxwell
13 increased, conditions got even worse i.e. sometimes in the above
14 \$13 to \$14. example, should there be a seller on a "down tick",
15 i.e., a drop from \$14. for example to \$13.50, this caused a
16 "ripple effect" with the stock now down to \$11.75 less commissions
17 to the seller!

18 Plaintiffs admit this is only a "simplification" of a
19 complex process to some degree, but the fact remains that Maxwell's
20 entire credibility as a stock was going "right down the tubes" due to
21 Peter Saccerdote's and Goldman Sachs' manipulations known to Karl
22 Samuelian, Alan Kolb, and the other Defendants.

23 This entire process degenerated throughout the 1986 and
24 1987 period prior to the October, 1987/^{stock market} crash. Sometimes the
25 spread between the bid and asked price was as much as \$2 or more
26 which is the classic sign of a stock in extreme peril.

27 All of this came to a head during the October "black
28 Monday" (October 19, 1987 to around November 1, 1987) stock

1 market collapse. Since Peter Saccerdote and Goldman Sachs had cut
2 off all the other stock brokerages from Maxwell, there were no
3 "safety nets" of price support. The difference between the bid
4 and asked price became something like \$4 to \$6! Such was abso-
5 lutely crazy for a company with spectacular earnings increases,
6 Government contracts, a book value of around \$14. to \$15. per
7 share.

8 Attorney Al O'Rourke immediately got on the telephone
9 with both Karl Samuelian, Myrna Jaro (for Alan Kolb), Monty Hayes,
10 Sean Maloy, etc. On around October 21, 1987, or October 22, 1987,
11 Attorney Al O'Rourke demanded that Maxwell institute a share re-
12 purchase plan of Maxwell as a "safety net" on Maxwell stock. Such
13 would have cost only a couple of million dollars in any event.

14 The entire Maxwell Board of Directors met upon this
15 issue around October 24, 1987 and refused such, with Karl Samuelian
16 claiming on behalf of the Board back to Attorney Al O'Rourke that
17 there was "no money" and that such action was not necessary in any
18 event. When Attorney Al O'Rourke threatened to sue the Board of
19 Directors of Maxwell both over this, Maxwell's prior stock market
20 manipulations, and the material mistatement of Maxwell's still
21 quoted price of around \$10. to \$11. (when it was really going to
22 around \$6. to \$8.), there was a "emergency" telephonic second
23 Maxwell Board of Directors meeting some time either on or around
24 the October 25, 1987 or October 26, 1987 period. Karl Samuelian
25 contacted Attorney Al O'Rourke on the 26th of October, 1987 and
26 stated that the Board had now reversed itself and would support
27 Maxwell by repurchasing Maxwell shares.

28 On such telephone call as Karl well knows, Attorney Al

* I. e., see the "Man who saved Maxwell series", Exhibit (g).

1 O'Rourke demanded that the Board announce that it was buying Max-
2 well still at a double-digit price, i.e. \$10 or above and make
3 such announcement immediately. Karl Samuelian stated that such
4 had already been made, and that everything was back under control.

5 Attorney Al O'Rourke had even told other stock brokers in
6 La Jolla and San Diego not to liquidate their Maxwell stock po-
7 sitions for the absurd \$6 or less being offered, since the com-
8 pany would be buying back above \$10 per share.

9 Incredibly, both Mr. Karl Samuelian and the other Maxwell
10 Directors ^{*} did not even seem to know or care that if Maxwell stock
11 hit \$5 on the bid side, all margin calls would have been made
12 automatically and the stock would have collapsed to \$.25 or some
13 other totally absurd price as the ^{Goldman Sachs} computers kept on selling Max-
14 well stock to cover the margins.

15 This is why Attorney Al O'Rourke proclaimed himself
16 "the man who saved Maxwell" at the December, 1987 Maxwell Share-
17 holders Meeting. Please see Exhibit(g), given to a few sharehold-
18 ers attending such meeting.

19 However, even though the Board of Directors had supposed-
20 ly instituted the Shareholders' Repurchase Plan on October 26,
21 1987 or October 27, 1987, such did not happen! Incredibly, the
22 Directors did not make such announcement "official" until several
23 days later and even then totally mistated their position in the
24 San Diego Union newspaper, i.e., claiming that they would be
25 buying back millions of shares of Maxwell or millions of dollars
26 ready for Maxwell repurchase. **

27 All of this was supposed to have been done through the
28 Los Angeles Office of Goldman Sachs. Repeated calls to the
29 institutional trader (one, Mr. Abrahms ^{Stan} both by Attorney Al

* Except Mr. Peter Sacerdote.

** By around November 1, 1987 only a few thousand Maxwell shares had
been repurchased by Maxwell.

1 O'Rourke and other Maxwell shareholders, customers, would-be pur-
2 chasers, stock brokerages, etc. were met with the answer, "No,
3 no one has yet instituted the repurchase".

4 Far from the above simply being a "O'Rourke Family prob-
5 lem" as claimed by Dr. Alan Kolb, such afflicted both the
6 O'Rourkes, RORACK, ^{and} other Maxwell shareholders, etc.

7 Indeed, both the O'Rourkes and other Maxwell shareholders
8 had part of their accounts liquidated on "margin calls" at a
9 time when there should have been no margin call liability (i.e.
10 since Maxwell had committed itself to the share repurchase, there
11 was no danger or liability to any of the margin or collateral to
12 any stock broker or stock brokerage, since Maxwell had committed
13 itself to protecting such collateral far above the "danger zone" of
14 \$5 to \$6 by the \$10 amount) .

15 However, these Maxwell Directors simply wanted to "get
16 even" with the "trouble making" O'Rourkes. By not making official
17 this share repurchase of Maxwell, the brokers simply claimed that
18 this was "another Maxwell hoax" and started to liquidate all or part
19 of Maxwell stock accounts on margin. And this was fine with Peter
20 Saccerdote and Goldman Sachs, since they would only have to now
21 buy back for \$5 or \$6 (or even less) from the selling stock broker-
22 ages (i.e., Bateman Eichler, Hill Richards, San Diego Securities,
23 ^{discounted} etc) Maxwell stock and then turn such over to Maxwell and be paid
24 \$10 or above. Nothing more fraudulent and manipulative could
25 possibly have occurred, and such was occurring with the full
26 knowledge and blessing of Maxwell's entire Board of Directors.*

27 Attorney Al O'Rourke did not know and still does not know
28 of any corporate purpose served by a Company's ruining its own

* See Exhibit (m).

1 shareholders. This is clearly "ultra vires" and unlawful.

2 Attorney Al O'Rourke sent mailgrams, letters, and
3 telephone calls to Maxwell to stop such, but to no avail. Dr.
4 Kolb deliberately mistates and trivializes the entire background
5 situation in this October "crash" period, as if the O'Rourkes'
6 damages (and RORACK's damages) occurred in "isolation" due to the
7 fault of the O'Rourkes alone. This is patent nonsense, as the
8 O'Rourkes were relying on the statements made by Maxwell officials
9 about the share repurchase, as were other Maxwell shareholders.

10 Further, the only margin call Attorney Al O'Rourke or
11 Raymond O'Rourke received in regard to their own personal stock of
12 Maxwell or RORACK's Maxwell stock (around 25,500 shares on margin
13 reflecting RORACK's original 13,500 shares of Maxwell, plus a
14 6,000 share block purchased to cover the 40% dilution when Max-
15 well went public and merged with S-Cubed (i.e., 40% of 13,500
16 being roughly 6,000 shares) and an additional 6,000 shares bought
17 to minimize Dr. Kolb's liability under mitigation of damages to
18 the RORACK Partnership^{*}), was a Bateman Eichler, Hill Richards
19 margin call on RORACK for \$60,000. which Attorney Al O'Rourke
20 promptly covered by instructing Bateman Eichler, Hill Richards to
21 sell 6,000 shares at the market price of around \$10 per share bid
22 or \$11 asked.

23 Subsequently, the margin call was even "corrected" to
24 \$40,000 and Bateman Eichler, Hill Richards stated that they had
25 simply sold 4,000 shares of Maxwell to cover such.

26 However, due to the actions of Peter Sacerdote, Karl
27 Samuelian, Alan Kolb, etc. in fact Bateman Eichler, Hill, Richards
28 then TOTALLY liquidated 22,000 shares of this RORACK-Maxwell stock with a

* Alan was repeatedly informed by Attorney Al O'Rourke that RORACK was mitigating his liability to RORACK by buying such shares.

1 value of around \$220,000 or more, by selling such to Goldman Sachs
2 with Peter Saccerdote acting as the agent or one of the agents in
3 a further resale to Maxwell.*

4 Hence, RORACK's Maxwell stock (or Raymond O'Rourke's
5 account No. LJ 26 5993-9560 at Bateman Eichler, Hill Richards)
6 was almost totally liquidated and converted to Maxwell's own
7 treasury.

8 While all this was occurring, Attorney Al O'Rourke let
9 Alan Kolb know that he would sue to regain such stock if such
10 occurred (and if Alan and Karl allowed such to occur, which they
11 did), In fact, priority number one at Maxwell became to make
12 certain that this RORACK account or Raymond O'Rourke Account of
13 Maxwell was "killed off" once and forever, and that the "trouble-
14 making O'Rourkes" were finally "out of the hair" of the Maxwell
15 Directors. In short, Alan and Karl and Peter Saccerdote and
16 Goldman Sachs and Bateman Eichler, Hill Richards and the other
17 Maxwell Directors who are Defendants have wrongfully defrauded,
18 manipulated, and converted RORACK's Maxwell stock and have now
19 been sued to recover such (with other shareholder lawsuits coming
20 as well due to such fraudulent manipulations by the Board of Di-
21 rectors of Maxwell against its own shareholders). They have no
22 one to blame but themselves. Further, all attempts to negotiate
23 or arbitrate these controversies have been refused by Maxwell.
24 Attorney Al O'Rourke, Dr. O'Rourke, and RORACK even offered to pay
25 Maxwell its purchase cost of the 22,000 Maxwell shares taken from
26 RORACK, and the Company has refused even this! Once again quite
27 clearly and certainly, the Defendants are simply acting "ultra
28 vires" and fraudulently and so have been sued.

* All this was subsequently (around November 1, 1987) presented to Attorney Al O'Rourke as a "Fait Accompli", with Dave Evans left to tell Al that such had been "done over my protestations".

1 Moreover, what kind of Chairman of the Board of a public
2 company or any lawyer representing it or the Chairman would make
3 a statement in a Pleading such as that on page 5, lines 22 to 27
4 of Defendants' Memorandum of Points and Authorities that Plaintiffs
5 being Maxwell shareholders and buying Maxwell stock ^{were} "poor
6 investments"?

7 These are the same people who were informing the share-
8 holders that Maxwell was an "excellent investment opportunity" in
9 any number of public pronouncements throughout the 1980's and in-
10 cluding "Black Monday" of October 19, 1987 and thereafter.

11 Moreover, what kind of responsible partner and Trustee
12 and Executor of Raymond C. O'Rourke's Will and Trust, incorporating
13 RORACK, and prepared by Parker, Milliken, Clark, and O'Hara would
14 secretly conspire against their own fiduciary duties and attempt
15 to ruin the "trouble making" O'Rourkes "once and for all" and be
16 over and done with them?

17 Furthermore, as Defendants well know, even they and their
18 fellow Maxwell Board of Directors (i.e. principally Peter Sacer-
19 dote) bought up hundreds of thousands of Maxwell shares at the
20 low "post Crash, 1987" Maxwell share price (i.e. \$10. or so) as an
21 investment for the future, and for "trading purposes". These "cor-
22 porate games" of Maxwell and its Directors are simply incredible,
23 fraudulent, and unending, and against the best interests of the
24 shareholders.

25 Another example is the Guenther Hoffman and Eve Morris
26 situation, which was created by Alan Kolb in a "fit of pique", with
27 Alan "losing his cool" at a meeting of German physicists in
28 Germany and tirading and defaming against Guenther Hoffman.

1 The gist of this was that Guenther Hoffman["] had broken all of his
2 promises to Alan (and to Maxwell?) as an employee and having suppos-
3 edly not given Maxwell certain patents owned by BTX/^{Company} and Guenther
4 Hoffman and Eve Morris. Alan told all of their joint German
5 friends, business acquaintances, etc. that Guenther was dishonest
6 and irresponsible, etc.

7 Alan and Maxwell proceeded to sue BTX Company, Guenther,
8 and Eve Morris, who counter-sued. Nor did Alan tell Guenther about
9 the \$21.25 Shareholder Dissenter Rights. Such lawsuit was hare-
10 brained, cost Maxwell hundreds of thousands of dollars if not more
11 in legal expense (which naturally enriched Karl Samuelian and Parker
12 Milliken, Clark, O'Hara and Samuelian).

13 None of this was told to any of the Maxwell Shareholders
14 in the 1984 to 1987 period. When the subject came up at one of
15 the private RORACK meetings, Alan merely stated "well, you know
16 there are always two sides to the story." Attorney Al O'Rourke
17 even specifically warned Alan that he could be sued on a "ultra
18 vires" basis, for taking what was essentially a private tiff be-
19 tween him and Guenther (as to who was the "better" physicist) and
20 making it something that had to be endured by the Maxwell share-
21 holders.

22 This ridiculous BTX situation with Maxwell finally came
23 to light at the December, 1987 Shareholders Meeting with Karl
24 Samuelian attempting to disinform the Shareholders and cover up
25 for Alan. Subsequently, Mr. Samuelian had to correct his disin-
26 formation, mistatements, and concealments when challenged by news
27 reporters about it. As if this wasn't bad enough, Eve Morris was
28 preparing a Shareholders' Formal Complaint to the State Bar of

1 California on grounds of fraud to a Client, i.e. a Shareholder.
2 As Karl well knows, he was "in a pickle". This was around Decem-
3 ber, 1987 to March, 1988 (?). A "saving angel" appeared to protect
4 his legal career at this time, i.e., Attorney Al O'Rourke. I got
5 Eve Morris not to File a Complaint with the State Bar and contacted
6 Karl to tell him to settle this Case. Karl bombastically stated
7 "Go ahead, let Eve go to the Bar...I haven't got a thing to hide".
8 This was of course ridiculous and a short time later, i.e. (proba-
9 bly a few days) this lawsuit was concluded with Maxwell having to
10 pay enormous legal fees and settlement costs to the Hoffman,
11 Morris, and BTX Plaintiffs supposedly (Maxwell has yet to release
12 any information about this).

13 As Karl further knows, Attorney Al O'Rourke then offered
14 to settle up the RORACK situation. Karl and Alan refused to have.
15 any more RORACK meetings and Attorney Al O'Rourke was left in no
16 other position than to file suit, which he did.

17 Attorney Al O'Rourke apologizes to the Court for this
18 long and "rambling" (as claimed by Defendants) Complaint, and this
19 Pleading as well, but Attorney Al O'Rourke wanted to place as
20 many of the relevant details on Record and before the Court as
21 possible. Attorney Al O'Rourke may even be mistaken about some
22 of the dates, because he is trying to recall events over the last
23 20 years, without the full RORACK notes, which naturally are still
24 with Alan Kolb and Karl Samuelian.

25 Nor is this Case simply a "disgruntled shareholder"
26 claim about losing money. As Alan well knows, both Ray and he
27 started out 20 years ago to set up Maxwell to do a number of
28 nuclear physics, physics, weapons control, etc. projects on

* In fact, Karl could not leave well enough alone, but apparently
this ethics issue has flared up again with the State Bar.

1 behalf of the United States Government, which were not being done
2 properly either at Naval Research Lab, E.G. & G., Los Alamos,
3 or Lawrence Livermore Radiation Laboratory.

4 Over the last dozen years or more, numerous mutual
5 friends and fellow physicists have come up to Raymond O'Rourke or
6 even Attorney Al O'Rourke with comments about "what the hell is
7 going on with Alan at Maxwell?"

8 To give one other example besides the Blue Green Laser
9 project referred to previously, there is the entire X-ray Laser
10 Program of Dr. Edward Teller's ^{***} which Dr. Kolb and Maxwell were in-
11 tegrally related to through the Presidential Science Advisor's
12 Office, i.e. Frank Press during the Carter administration, and
13 Dr. George Keyworth during the Reagan administration, and the De-
14 partment of Energy (John Farber) as well.*

15 This entire project was always known to be scientificall-
16 ly impossible at best and a financial disaster and hoax. There
17 was never any need for \$100,000,000 or more "a shot" nuclear wea-
18 pons tests, when all that was needed was a ten cent piece of chalk,
19 a blackboard, and the X-ray results from the 1960's "Flashlight" ^{***}
20 nuclear test series worked on by both Dr. O'Rourke and Dr. Kolb
21 jointly. Even worse, when Dr. ^{Roy} Woodruff and others ^(Dr. Hugh De Witt) started to com-
22 plain about such (late 1970's and early 1980's) tests as being
23 "faked", scurrilous charges of "treason" were even made against
24 Dr. Woodruff and others by Dr. Kolb's friend Dr. Lowell Wood,
25 and other "Republican friends" (i.e., Kenneth Adelman, Pat Buchan-
26 an, etc) of Dr. Kolb's and Mr. Samuelian's.

27 Obviously, any corporate shareholder or any United States
28 citizen has a perfect right to complain about "scientific hoaxes"

* See Plaintiffs' Exhibits

"FF", "LL", "MM" and "SS"

** Both Alan and Presidential Science Advisors Keyworth and
Frank Press knew all about this and now blame Dr. Teller.
i.e., "Super Excalibur".

1 involving the company's Board of Directors, its legal counsel, and
2 even the Government contracting agents in Washington, D.C. allow-
3 ing such hoaxes and frauds upon the taxpayer. Dr. Kolb and Mr.
4 Samuelian, apparently disagree, especially since a sizable amount
5 of such money eventually ends up as "donations" to Republican
6 candidates and political friends including Governor Deukmejian
7 and Vice President George Bush.

8 Today no one even is quite sure what Dr. Kolb, Dr. Wood,
9 Dr. Teller, Dr. Keyworth, or others even have in mind for this
10 X-ray Laser program, having now cost something like a billion or
11 more dollars. Dr. Teller's own public statements recently have
12 been that such project was "pre-mature perhaps" and that other
13 S.D.I. systems should probably be pursued in the near future in-
14 stead. What these may or may not be at least in large part will
15 be determined by what Alan Kolb decides they will be, along with
16 Governor Deukmejian, George Bush, and Karl Samuelian among others.

17 Even though the O'Rourke's are shareholders and entitled
18 to some kind of "generalized" (non-classified) information or
19 briefing, Dr. Kolb refuses to do such and Karl as well citing
20 "need to know" and "National Security" and "classified" as a rea-
21 son not to so inform us or other Maxwell shareholders. This same
22 stuff or "convenient excuse" was used by Dr. Kolb and the other
23 Defendants for such prior Maxwell debacles as the Bendix Precipi-
24 tator Project, the Blue Green Laser, the "Rail Gun", etc. which
25 were all claimed to be "breakthroughs" and simply turned into
26 predictable (i.e., with chalk and blackboard once again) failures.

27 As far as any shareholder at Maxwell can discern, Alan
28 or the Board of Directors' current intentions involving this
*I.e., "Super Excalibur", the "Hollywoodish" official name .
**
See Exhibit (j).

1 X-ray Laser or S.D.I. program (whether Maxwell participation will
2 be in the kinetic, electromagnetic, X-ray, nuclear or non-nuclear
3 areas), seems to be using enhanced plutonium or tritium, supplied
4 (See Exhibit (k))
5 by Gulf General Atomic, miniature fusion reactors, etc. and work-
6 ing with such people as General Alexander Haig, the Blues brothers
7 of Gulf General Atomic, Dr. Ramy Shanny, Dr. Marshall Rosenbluth,
8 Dr. Herb York, Dr. Nierenberg, or others who have been friends of
9 Raymond's and Alan's for numerous years into some kind of new
10 proposal. All this has been in the newspapers(i.e., San Diego
11 Union and La Jolla Light among others) so there is hardly anything
12 "ultra secret" about such project except its specifics.

13 Just as Dr. Kolb is not competent to be a lawyer, Attor-
14 ney Al O'Rourke does not claim to be a nuclear physicist and per-
15 haps has some of the technical details incorrect. Nevertheless,
16 this does not excuse Dr. Kolb, Karl Samuelian or the other Maxwell
17 Directors including especially Admiral Thomas Hayward*, for taking
18 the company down "dark and distant paths" without any warning or
19 explanation to the shareholders.

20 In conclusion, the above is believed to be true and
21 correct at least in general, even if some of the dates or technical
22 descriptions are in error. This completes the factual section of
23 this Brief.

24 *Admiral Hayward, as a young captain in the early 1950's was con-
25 sidered a nuclear weapons expert by some in the military.

26 DECLARATION

27 I, Attorney Al O'Rourke do hereby declare that the fore-
28 going is true and correct to the best of my knowledge and belief
29 and that such is sworn to be such under penalty of perjury at
30 La Jolla, California 92037 this ^{12th} day of ^{October} ~~September~~, 1988.


ATTORNEY ALBERT O'ROURKE

1 II

2 PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS
3 PURSUANT TO RULE 12 (b) (6) OF THE FEDERAL RULES OF
4 CIVIL PROCEDURE.

5 Prior to addressing the issues in the Pleadings of Post,
6 Kirby, Noonan, and Sweat in detail, Plaintiffs bring to the Court's
7 attention the following indisputable facts and legal issues.

8 (a) Post, Kirby, Noonan, and Sweat is already using RORACK's
9 personal Files and materials and Partner Dr. Alan C. Kolb, without
10 any authorization from RORACK, Dr. O'Rourke, Attorney Al O'Rourke,
11 etc!^{*} What an absurd situation, where none of Plaintiffs have
12 access to their own Files (i.e., such are under the control of
13 Dr. Alan Kolb, Myrna Jaro, Karl Samuelian, etc.) and yet without
14 any authorization, Post, Kirby, Noonan, and Sweat simply use such
15 material for their own purposes, and then proceed to disinform the
16 Court about the content of such material as shown hereinafter.

17 (b) Post, Kirby, Noonan and Sweat are free to use any mater-
18 ial in any Declaration or Declarations that belongs to them or the
19 Declarants.

20 (c) If Post, Kirby, Noonan, and Sweat want to make use of
21 the RORACK material, they know the proper method, i.e., Discovery
22 or even Stipulation between the Parties.

23 (d) Post, Kirby, Noonan and Sweat are terribly misusing Dr.
24 Kolb in any event. They have had him sign any number of state-
25 ments in his Declaration that he alone is responsible for any
26 Causes of Legal Action involving Maxwell stock, Securities fraud,
27 etc. Obviously, these are binding upon him and can be used by
28 other Maxwell shareholders or Third Parties to sue Dr. Kolb!

* And therefore, themselves violating Rule 5-101 of the Rules of Pro-
fessional Conduct, i.e., further, they cannot be retained by Alan
to ruin Dr. O'Rourke and RORACK. Alan being a partner in RORACK.

42

1 (e) Any Third Party suit against Dr. Kolb, will not only
2 be in his name, but in the name of RORACK as a Defendant as well.
3 Hence, Post, Kirby, Noonan and Sweat, without any authorization to
4 do so from RORACK or Plaintiffs, have released RORACK material and
5 obtained a Declaration from Dr. Alan Kolb which he was not entitled
6 to make and Post, Kirby, Noonan, and Sweat know he was not entitled
7 to make (i.e., Section 9 of the Partnership Agreement which is
8 Exhibit A of Post, Kirby, Noonan, and Sweat's own Pleading).

9 (f) As the Court will note, Post, Kirby, Noonan and Sweat
10 do not attach any other Parties' Declaration except Dr. Kolb's.
11 Hence, their Motions are not supported by Declarations and can
12 therefore have no legal effect against Plaintiffs' verified Com-
13 plaint or verified Pleadings.

14 (g) Furthermore, Post, Kirby, Noonan, and Sweat's use of
15 Dr. Kolb's Declaration is legally impossible in any event since
16 on its page 2 it quite clearly states that it is only being made by
17 Dr. Kolb as a "Motion to Strike" and for Sanctions pursuant to
18 Rule 11 (i.e., lines 4 to 13 or Paragraph 1). Such is not made
19 in regard to any Motion to Dismiss. Further, it does not state
20 what it seeks to strike, give legal notice of such (i.e. with a
21 separate Notice of Motion to Strike) or any basis whatsoever en-
22 titling Dr. Kolb to any sanctions pursuant to Rule 11.

23 (h) Furthermore, as the Court is well aware, Rule 11 involves
24 Motions to Strike unsigned or "sham" Pleadings. Dr. Kolb does not
25 declare such to be the case, and such in fact is not the case.
26 Plaintiffs' Superior Court Complaint in State Court is verified
27 and is in no manner whatsoever a "sham".

28 * Bizarrely, Dr. Kolb is supposedly asking for legal sanctions for
his wrongful acts against his own partner, which are clearly in
violation of RORACK's Section 9, of Exhibit A.

1 (i) As the Court must certainly be aware, Dr. Kolb is not a
2 lawyer and has simply signed this legal Declaration thrust in front
3 of his face by Post, Kirby, Noonan, and Sweat, without any indepen-
4 dent consultation with a lawyer besides Post, Kirby, Noonan, and
5 Sweat or Karl Samuelian or Parker, Milliken, Clark, O'Hara, and
6 Samuelian even though Attorney Al O'Rourke and Dr. Raymond O'Rourke
7 have repeatedly told Dr. Kolb to do such.*

8 (j) Such statements in paragraph No. 43 of Dr. Kolb's Decla-
9 ration could only be made by a lawyer, i.e., making legal judg-
10 ments about the jurisdiction and venue, parties to the action,
11 claims of supposed "frivolousness" on a legal basis, claims for
12 attorneys' fees pursuant to Rule 11 and sanctions pursuant to
13 Rule 11, etc.

14 Furthermore, as any lawyer would tell Dr. Kolb, the party
15 Defendants in this Action are all the Defendants named by Plain-
16 tiff and not Dr. Kolb who is a partner of RORACK and Plaintiffs.
17 As Dr. Kolb knows perfectly well (and so do Post, Kirby, Noonan,
18 and Sweat) Dr. Kolb is only making a Declaration to "strike out"*
19 his name from the Plaintiffs' caption because of embarrassment,
20 even though Plaintiffs had every right (and indeed obligation) to
21 name him (i.e., this lawsuit might have been attacked for not
22 having an indispensable Party as a Plaintiff).

23 In spite of Dr. Kolb's Declaration that he could "testify
24 competently" (i.e., as a lawyer) he obviously could not, and his
25 entire Declaration is incompetent.

26 (k) Post, Kirby, Noonan, and Sweat have misplead erroneously
27 ^{and} late filed their Petition for Removal of the Superior Court Action
28 (i.e., San Diego Superior Court No. 598 861 to this supposed

* In yet one more "fit of pique" acts, just as with Guenther Hoffman
for which Alan is "legendary".