

EXHIBIT B

(to Statement of Facts)

Michael Bay Vol I
January 27, 2016

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE No. 1:15-CV-22129-UNGARO

MARC SCHILLER,

Plaintiff,

-vs-

VIACOM, INC., et al,

Defendants.

VOLUME I

VIDEOTAPED DEPOSITION OF MICHAEL BAY

Wednesday, January 27, 2016
11:00 a.m. - 6:00 p.m.

100 Northeast Third Avenue
Suite 1050
Fort Lauderdale, Florida 33301

Stenographically Reported By:
Randi Ginsberg, Court Reporter
U.S. Legal Support, Inc.

1 APPEARANCES:

2 On behalf of the Plaintiff:

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10 On behalf of the Defendants:

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17 On behalf of the Defendant, Paramount:

18 KAREN MAGID, ESQUIRE
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22 Phone: 323-956-4502
23 karen_magid@paramount.com

24 ALSO PRESENT: JOE ROVNER, U.S. LEGAL SUPPORT
25

1 other than what you were told, do you know any of the
2 allegations in the complaint?

3 A No. I just heard it's about a guy thinking
4 that -- that we used him in the movie, he thought, and I
5 think he thinks it's slander.

6 Q Do you know his name?

7 A Schiller guy.

8 Q Do you know his first name?

9 A Marc.

10 Q Is the movie Pain & Gain about the story of
11 what occurred to Marc Schiller?

12 A It's a parody of a crime.

13 Q What does that mean, it's a parody of a crime?

14 A In movie terms, it's you take something
15 that's -- you take a story and you heighten it for
16 comedic effect.

17 Q What do you mean by "comedic effect"?

18 A Well, we made a black comedy. If you go to
19 the DVD section, Blu-ray section, it says black comedy.

20 Q And while we're on that, what's the difference
21 between a dark comedy and a black comedy?

22 A Same thing, really.

23 Q Just so we're clear, you do agree the story of
24 Pain & Gain, at least a good part of it, is about what
25 occurred to Marc Schiller, correct?

1 A That's not my handwriting.

2 Q Do you know who made that?

3 A No, but it says "M. Bay" -- "MB Visual," so
4 it's someone else other than me.

5 Q Would that be somebody in your --

6 A No.

7 Q -- control?

8 A (No response.)

9 Q Can you explain why it was that you thought it
10 was a good idea to say that this is a true story?

11 A Just some marketing ploy. We did it in a
12 movie of mine that I produced years ago. It obviously
13 wasn't a true story, called Friday the 13th.

14 Q Did you defame anybody in that movie?

15 A No, nor did we defame anybody in Pain & Gain.

16 Q Do you think that you can defame someone in a
17 movie?

18 A I'm sure you could. I don't know what -- I
19 don't know what movie to point to, but I'm sure you
20 could.

21 Q Well, would you think that if you didn't
22 change the name of the character to Victor Kershaw and
23 you left the name as Marc Schiller, and people believed
24 that Marc Schiller was depicted accurately, would you
25 agree that that was defamatory?

1 bought the story.

2 BY MR. DAVIS:

3 Q If you don't know, that's fine.

4 A Okay.

5 Q But you don't get to ask questions.

6 MR. PETRICH: Just go with your memory. He
7 wants to know what you remember.

8 THE WITNESS: The writers took the -- took
9 the -- we got the story, the writers wrote for
10 probably about four months and they handed a draft.
11 The draft sat on a shelf collecting dust for ten
12 years.

13 BY MR. DAVIS:

14 Q So is it fair to say that the name Marc
15 Schiller remained in the screenplay until 2012?

16 A The name only, not the character, not the --

17 Q Do you agree that it wasn't until March of
18 2012 that the idea of changing the name from Marc
19 Schiller to another name was brought up?

20 A Well, I will go back to how movies work.

21 Q First answer my question, and then you can
22 tell me whatever you want.

23 Do you agree that it wasn't until March of
24 2012 that discussions began about changing Marc
25 Schiller's name to another name?

1 Q During the interviews, did you say it was a
2 true story?

3 A It's a marketing tool.

4 Q Is the answer yes?

5 A I don't know. I don't recall. I don't
6 recall.

7 Q Why is it that Marc Schiller's -- strike that.
8 Why is it that the character that has
9 previously been labeled as Marc Schiller in the
10 screenplays become Victor Pepe Kershaw?

11 A Why?

12 Q Yes.

13 A Because we weren't doing a story about
14 Mr. Schiller. We created our character.

15 Q And what was the purpose of the word "Pepe"?

16 A It's funny.

17 Q The character was a Jewish man, correct?

18 A A half.

19 Q And the other half was what?

20 A Colombian.

21 Q Did Pepe relate to either one of that?

22 A Do you want to know how Pepe came about?

23 Q Sure.

24 A Tried to clear a name with an initial. I
25 think there was a Victor Kershaw -- there are several

1 Is it your understanding that the writers
2 spoke to Pete Collins about the substance of the facts
3 surrounding the kidnapping and extortion of Marc
4 Schiller?

5 A I don't know. I have no idea.

6 Q Have you read the depositions of your writers?

7 A No.

8 Q Have you spoken to Mr. Markus or McFeely?

9 A No.

10 Q Do you consider Victor a Hispanic name?

11 A Not really.

12 Q Do you consider Kershaw a Hispanic name?

13 A I don't know what I consider it. I don't
14 know.

15 Q Do you consider Pepe a --

16 A Pepe I think is somewhat Latin, yes.

17 Q Was it your idea to change the place of birth
18 of the character whose name was Marc Schiller for the
19 first ten years of the screenplay from Argentina to
20 Colombia?

21 A I don't know if it was me, but just living
22 down in Miami so much, being a resident here, there's a
23 lot of Colombians here. And just like we do everything
24 for it's tone and fun, Victor Pepe Kershaw, half Jew,
25 half Colombian has a funny ring to it. It's a tone.

1 It's got a musical thing to it. It sounds funny when
2 you say it.

3 Q So just so I'm clear, why is it that you
4 changed the place of birth from Argentina to Colombia?

5 A Because a half Jew Colombian is funny.

6 Q And half Jew Argentinian is not?

7 A When you say it, it's not funny at all.

8 Q Let me say half Jew Colombian. Is it funny
9 now?

10 A Yeah, that's funny. It's funny. You're
11 making the videographer laugh. It's just comedy, you
12 know.

13 Q Well, can you explain why you didn't -- if
14 it's just -- let me ask you: Did you have any concern
15 for Marc Schiller at all when you were producing this
16 show?

17 A We were not doing a story about Marc Schiller.
18 We were creating our character, and he -- he was not
19 part of our thinking. He was not even named in this
20 thing, and we were creating bits from Victor Kershaw.
21 Basically, we were creating Victor Kershaw.

22 Q So it sounds like your answer is no, we didn't
23 have any concern for Marc Schiller when we were
24 producing the movie?

25 A No, no, no. We didn't -- we didn't want to --

1 Q Yes.

2 A I have no idea.

3 Q I apologize, I know I asked you, were you
4 aware that Mr. Schiller wanted to be involved in the
5 writing, producing or acting in the movie Pain & Gain?

6 A The only thing I was aware, midway through the
7 movie, was Mr. Schiller contacted somebody on the
8 production wanting to be an extra, and the Miami-Dade
9 Police, the head guy said he comes -- that bad guy comes
10 here, we walk. So all my real cops were going to leave,
11 so that was never an option.

12 So, obviously, there must be some ill-will
13 with the Miami-Dade Police and this Mr. Schiller. So I
14 never actually entertained it.

15 Q Would you agree with the following: Michael
16 Bay and Mr. Shalhoub concocted a version of Marc
17 Schiller that would best serve the picture?

18 A No, we were not making -- we were not making a
19 story about Marc Schiller. We were making our
20 character, Kershaw.

21 Q So earlier, you talked about how the movie
22 doesn't say "this is a true story," that, in fact, it
23 says, "Unfortunately, this is a true story." Do you
24 remember that testimony?

25 A Uh-huh.

1 He's sweet to people. He's -- Ed DuBois: You're a very
2 difficult victim, Victor. That's how you create layers
3 of character.

4 Q Do you know of any research done by any of the
5 actors relative to the events involving the criminal
6 activity that took place in Miami?

7 A I have no idea.

8 Q Would you agree with the following: The guy,
9 referring to Victor Kershaw, was such a bastard and he's
10 such a bad guy?

11 A Where does that come from?

12 Q Well, I'm asking you --

13 A Is that you?

14 Q -- do you agree with the statement? Would you
15 agree with the following: Victor Kershaw was such a
16 bastard and he's such a bad guy?

17 A I think you're -- you're -- you're commenting
18 on a character, Mark Wahlberg, Lugo, what his thought
19 is, but the audience -- you see, there's something
20 called the audience being ahead of it. We know Kershaw
21 is not a bad guy. We've seen he's not a bad guy. He's
22 done nothing illegal, all right? He's not a bad guy.
23 The audience is ahead of it.

24 So one character can say whatever he wants.
25 He can give his own opinions. So you're stating an

1 opinion of another character.

2 So if you watch what the director does in a
3 movie, I made a character who, in the end, he's a good
4 guy. Victor Kershaw is a good guy. Turns out to be the
5 hero of the movie.

6 Q What makes him turn out to be the hero of the
7 movie?

8 A He takes the bad guys down. He takes the
9 thugs -- he gets even with the thugs.

10 Q That happened in true life, didn't it?

11 A I don't know. I don't know.

12 Q You don't know whether --

13 A I don't know.

14 Q Okay.

15 A Long time ago.

16 MR. PETRICH: Now you're arguing about how the
17 movie is here.

18 MR. DAVIS: I withdrew it. I withdrew it. I
19 stopped.

20 THE WITNESS: Did -- did -- I don't know what
21 happened to Schiller. Did he drive a car into
22 Lugo?

23 MR. PETRICH: That's okay. Let him ask the
24 question.

25 THE WITNESS: I don't think he did, but I'm

Michael Bay Vol II
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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VOLUME II

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23 karen_magid@paramount.com

24 ALSO PRESENT: JOE ROVNER, U.S. LEGAL SUPPORT
25

1 Q I think you've made that very clear.

2 And would you think that it is rude to say
3 something along the lines of "you migrant workers suck"?

4 A Of course. It's terribly bad PC. But we have
5 people say stuff that is rude, like grandfathers or
6 uncles we have that say things, and it's, like, you know
7 they're really -- deep in their heart, they're not bad
8 people. They just say things ill-timed. We have it
9 right now with Mr. Trump. People still like him.

10 Q Would you agree that the average person would
11 think less of someone who speaks the way that Victor
12 Kershaw does in the movie?

13 MR. PETRICH: Vague and ambiguous, lacks
14 foundation.

15 THE WITNESS: People cannot take this movie
16 for truth. It's a comedy.

17 BY MR. DAVIS:

18 Q Sir, I'm not asking that question.

19 A I know, but your questions are just -- it's a
20 comedy. If we were doing a documentary, then
21 potentially, but we're not doing a documentary. It's a
22 comedy.

23 Q Let me ask you, if you were doing a
24 documentary and Victor Kershaw said the things that he
25 did, would you agree that if a person believed it was

1 Marc Schiller, that that would defame Marc Schiller?

2 A No, I do not. I do not.

3 Q You don't?

4 A No, I don't.

5 Q Why not?

6 A Everyone says -- everyone in bad timing will
7 say bad things and not polite things. It's just -- it's
8 not going to make you like the person less.

9 Q Do you know the difference between someone
10 saying something and having someone saying something
11 about them? I mean, I'm confused by your example.
12 You're suggesting to me that most people --

13 A We're not talking -- we're not talking about
14 your client. Your client is not named. The audience
15 watching the movie, they don't know, they have no idea
16 to know anything other than what we're showing them in
17 the movie.

18 Q Are you suggesting to us that when people
19 watch the movie Pain & Gain, none of them ever said to
20 themselves, oh, I remember that story about that guy?

21 A A 22-year-old case? Honestly. I've shown
22 this article to people. They've never heard of this
23 case. No one has ever heard of this case.

24 Q You show that to people in Miami or people in
25 LA?

1 A Vaguely, vaguely. Vague, vague. I don't
2 know. I don't know what people remember.

3 Q Okay. Well, would it be fair to extrapolate
4 that you would have the same opinion as to whether or
5 not people remembered being convicted --

6 A I do remember. There are a lot of people that
7 don't -- talking about this case in Florida when we were
8 shooting here, many people did not know. A few people
9 that we used as extras knew Lugo, but most people didn't
10 know.

11 Q Would it be fair to say that people wouldn't
12 remember the Medicare felony also?

13 A Would they remember the Medicare? I have no
14 idea. I haven't even thought two seconds about it.

15 Q And just so I'm not mistaken, I think earlier
16 you said that the Miami-Dade police officers that were
17 on set didn't want Mr. Schiller coming to the set. Was
18 that accurate?

19 A That's correct, yes. Said by Roy something.
20 That's their job, to know cases.

21 Q Were you aware that the judge in the criminal
22 case involving the criminals that kidnapped and tortured
23 Mr. Schiller appeared at Mr. Schiller's criminal case on
24 his behalf?

25 A I think I heard something like that.

1 BY MR. DAVIS:

2 Q Is 'wink' a term of art in your industry?

3 A It's a -- it's a -- it is a term. It is a
4 definitive term.

5 Q I apologize. Let me say it differently.

6 Is "wink" a word that you use to refer to the
7 winking to an audience or is that something used by
8 other directors and producers?

9 A It's a commonly known thing in Hollywood.

10 Q Thank you. I would call that a term of art.
11 Thank you.

12 Was Pete Collins present for the production?

13 A Pete Collins, I think he might have come for
14 one day.

15 Q Was he used as a consultant?

16 A I never spoke to Pete until he got there.
17 Matt might have spoken to him a couple of times, but I
18 don't think so much. Oh, you know what? He might have
19 been paid some money just because, I don't know, just to
20 be nice to him.

21 Q Did you ever hire an attorney with regard to
22 Pain & Gain prior to being sued?

23 A I don't -- I don't do any of the legal work on
24 this. If Paramount did, they would have done it. I
25 don't know.

1 Q Do you ever concern yourself with the
2 possibility of defamation when producing or directing a
3 movie?

4 A I've never -- I let the Paramount people
5 decide what I can do, what I can't do.

6 Q Have you ever been an employee of Paramount?

7 A Am I an employee?

8 MR. PETRICH: Vague and ambiguous, calls for a
9 legal conclusion.

10 THE WITNESS: I'm an independent contractor.

11 BY MR. DAVIS:

12 Q Can you tell me everyone that's ever been
13 involved in approving the use of the term "this is a
14 true story"?

15 A Green -- Josh Greenstein. Maybe some
16 copywriters, marketing copywriters that I don't know
17 personally.

18 Q And I apologize, you've said it a couple of
19 times, McFeely said it, but what's the name of the term
20 used for the words that appear on the screen?

21 A Kyron you mean?

22 Q Kyron. Who decided to use the kyrons?

23 A Me.

24 Q Do you know of any standards in the industry
25 with regard to using terms like "inspired by, true

1 BY MR. DAVIS:

2 Q That's all.

3 A Okay.

4 Q Actually, why don't we do that first.

5 Can you explain to me what your role is versus
6 what Don De Line's role is in making Pain & Gain?

7 A He has no say in the movie. I can do whatever
8 I want. He was the one that bought the rights to the
9 story and I take the movie from there. He can make
10 suggestions. He kind of helps the writers get stuff
11 going. He can make suggestions, see what sticks. I
12 don't know what suggestions he made to the writers
13 because I'm not privy to his notes.

14 Q You were the director of the movie Pain &
15 Gain?

16 A Yes.

17 Q Are you considered the producer of the movie
18 Pain & Gain?

19 A I think I'm a producer. I think I am.

20 Q So you were the director and the producer?

21 A Yeah.

22 Q What was Don De Line's role or position in the
23 movie --

24 A Producer.

25 Q -- Pain & Gain?

1 recognize it. That's what producers do: They churn up
2 a lot of pages and stuff and ideas.

3 Q Would you agree that Marc -- sorry.

4 Would you agree that Victor Kershaw's
5 character was allegedly born in Colombia in order to
6 relate it to drug dealing?

7 A I don't -- I don't agree that that's why they
8 did it. I think the writer -- I thought Colombia was
9 funny and the writer had his cop character infer that.

10 Q Can you read for me from De Line Picks 92 the
11 highlighted part?

12 A "Hint further that Schiller" --

13 Q Can you say it louder so that the --

14 A "Hint further that Schiller is dirty. Also,
15 let's decide he's Colombian for drug dealer shorthand."

16 Q Do you remember ever reading that?

17 A No.

18 Q Do you agree that there was an intention to
19 have Marc -- I'm sorry.

20 Do you agree that there was an intention to
21 have Victor Kershaw look dirty so that he couldn't go to
22 the police?

23 A Would I agree that --

24 Q The movie depicts Victor Kershaw as someone
25 who was dirty?

1 A That's completely false.

2 Q In what regard?

3 A Your question, again, is?

4 MR. DAVIS: Could you read it back?

5 (Whereupon, the record was read back as
6 requested.)

7 THE WITNESS: This is where you're wrong,
8 because the audience is watching the movie. They
9 know Kershaw and the audience is then watching the
10 police come in later in the story. They know he is
11 not a drug dealer or involved in drugs or anything
12 illegal because he said he's fantasized about being
13 a drug dealer.

14 So the audience understands our character as
15 we go.

16 We go to the hospital, he's misinterpreted as
17 a drug guy, because a new guy, new element, new
18 character comes in, the policeman.

19 The audience -- so you're saying the movie is
20 depicting him. No, the movie is not depicting him.
21 The movie is very precise in saying he's a good guy
22 who might be a touch abrasive, but in that hospital
23 bed, they feel bad for this guy being tortured,
24 okay.

25 We can go through this as much as you want.

1 wants. I wasn't there when he said it. That might be
2 his intention. That wasn't my intention, and that's not
3 my intention, so I don't agree because it's -- we are
4 doing our own character.

5 MR. DAVIS: I'm going to say thank you very
6 much.

7 MR. PETRICH: I'm going to have a few
8 questions.

9 MR. DAVIS: I'm sure you will.

10

11

CROSS-EXAMINATION

12

BY MR. PETRICH:

13

Q I want to focus on the question whether the
14 character Victor Kershaw was ever depicted in the movie
15 as a criminal, and I think you've already told us
16 several reasons why he wasn't.

17

But do you recall the dialogue in which
18 Kershaw says, "Now I'm the criminal here? It's a secret
19 stash. You're telling me you don't have a secret
20 stash?"

21

What was the intention of that dialogue?

22

A The intention, the audience has gone on the
23 ride. They've gone on the ride with our character
24 Kershaw. They know that this is a guy that got abused,
25 who is fighting for his rights, who is not a bad guy.

1 And DuBois said, where do you think he could
2 be going? And he said, I think he could be going to the
3 islands or whatever. Going to the Bahamas or something.
4 It's like, I've got a secret stash.

5 And he says, well, why didn't you tell us 20
6 minutes ago? And you're a very difficult victim,
7 Victor.

8 He coolly looks, "Now I'm the criminal?" He
9 says it calmly, confidently. The audience obviously
10 knows from everything they've been told up to that point
11 he's not a criminal or doing anything illegal.

12 The secret stash, my inference was he was just
13 hiding it from his wife.

14 Q Okay. You were asked about some changes, some
15 differences -- let me back up.

16 You were asked about the movie 13 Hours and
17 whether or not there were materials in the movie that
18 were not accurate with real life.

19 Was it still your intention to make the movie
20 as accurate as possible -- back up.

21 What did you think was the heart of the movie
22 13 Hours?

23 A The heart of the movie is the emotion of the
24 guys and the honor that they fought with and the
25 brotherhood of what these operators, special operators

Michael Bay Vol II
January 27, 2016

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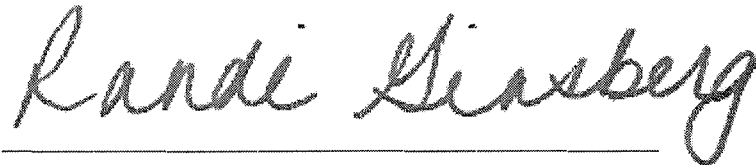
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CERTIFICATE OF OATH

STATE OF FLORIDA
COUNTY OF BROWARD

I, Randi Ginsberg, Court Reporter, Notary
Public, State of Florida, certify that MICHAEL BAY
personally appeared before me on the 27th day of
January, 2016, and was duly sworn.

Signed this 28th day of January, 2016.



Randi Ginsberg
Notary Public - State of Florida
My Commission Expires: 3/12/2018
My Commission No.: FF 10139

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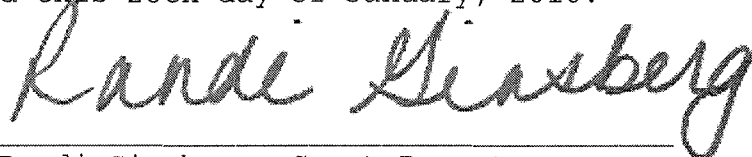
CERTIFICATE OF REPORTER

STATE OF FLORIDA
COUNTY OF BROWARD

I, Randi Ginsberg, Court Reporter, certify that I was authorized to and did stenographically report the deposition of MICHAEL BAY, pages 1 to 223; that a review of the transcript was requested; and that the transcript is a true record of my stenographic notes.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 28th day of January, 2016.



Randi Ginsberg, Court Reporter

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WITNESS NOTIFICATION LETTER

January 28, 2016

MICHAEL BAY
C/O LOUIS PETRICH, ESQUIRE.
LAW OFFICES OF LEOPOLD, PETRICH & SMITH, P.A.
2049 Century Park East, Suite 3110
Los Angeles, California 90067

IN RE: SCHILLER VS. VIACOM
Deposition taken on January 27, 2016
U.S. Legal Support Job No. 1367853

The transcript of the above-referenced proceeding has been prepared and is being provided to you for review by the witness.

We respectfully request that the witness complete their review within a reasonable amount of time, (i.e. 30 days, unless otherwise directed) and return the errata sheet to our office.

Sincerely,

Randi Ginsberg, Court Reporter
U.S. Legal Support, Inc.
100 Northeast Third Avenue, Suite 1050
Fort Lauderdale, Florida 33301
954-463-2933

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C E R T I F I C A T E

- - -

THE STATE OF FLORIDA

COUNTY OF BROWARD

I hereby certify that I have read the foregoing deposition by me given, and that the statements contained herein are true and correct to the best of my knowledge and belief, with the exception of any corrections or notations made on the errata sheet, if one was executed.

Dated this ____ day of _____,
2016.

MICHAEL BAY

