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**SUPERIOR COURT STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

JOSEPH HUNT,	)	Case No.: _____
	)	
Petitioner,	)	Fmr. Crim. No.: A090435
	)	
vs.	)	<b>EXHIBITS IN SUPPORT OF</b>
	)	<b>PETITION FOR WRIT OF HABEAS</b>
ROBERT BURTON,	)	<b>CORPUS – VOL. II</b>
	)	
Respondent,	)	
	)	
	)	
On Habeas Corpus.	)	
	)	
_____	)	

### **Table of Exhibits**

EXHIBIT E	Excerpts from Testimony of Tom May
EXHIBIT F	Excerpts from Testimony of Jack Friedman
EXHIBIT G	Excerpts from Testimony of Steve Taglianetti
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1 TOM FRANK MAY,  
2 CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND TESTIFIED  
3 AS FOLLOWS:

4 THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY  
5 YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL  
6 BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH,  
7 SO HELP YOU GOD.

8 THE WITNESS: I DO.

9 THE CLERK: IF YOU WILL BE SEATED THERE IN THE WITNESS  
10 STAND.

11 NOW WOULD YOU STATE YOUR NAME FOR THE RECORD,  
12 PLEASE?

13 THE WITNESS: TOM FRANK MAY.

14 THE CLERK: THANK YOU.  
15

16 DIRECT EXAMINATION

17 BY MR. WAPNER:

18 Q MR. MAY, DO YOU KNOW THE DEFENDANT IN THIS CASE?

19 A YES, I DO.  
20  
21  
22  
23  
24  
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28

1 Q HOW DO YOU KNOW HIM?

2 A I HAD MET HIM IN HIGH SCHOOL.

3 Q WHAT HIGH SCHOOL WAS IT?

4 A HARVARD HIGH SCHOOL.

5 Q WHERE WAS THAT HIGH SCHOOL LOCATED?

6 A ON COLDWATER CANYON, LOS ANGELES.

7 Q DID YOU GRADUATE FROM HARVARD HIGH SCHOOL?

8 A YES, I DID IN '77.

9 Q 1977?

10 A YES.

11 Q AND DID MR. HUNT GRADUATE THE SAME YEAR?

12 A YES, HE DID.

13 Q AND WHAT WAS THE NATURE OF YOUR RELATIONSHIP

14 OR FRIENDSHIP WITH HIM, IF ANY, IN HIGH SCHOOL?

15 A NONE.

16 Q DID MR. HUNT HAVE ANYTHING THAT HE PARTICIPATED

17 IN IN HIGH SCHOOL AT WHICH HE EXCELLED?

18 A YES, HE DID.

19 HE WAS AN EXCELLENT DEBATER AND SPEAKER.

20 MR. BARENS: EXCUSE ME, YOUR HONOR. RELEVANCY ON THAT

21 AND I BELIEVE THAT GOES TO CHARACTER EVIDENCE.

22 THE COURT: OVERRULED.

23 MR. BARENS: THANK YOU, YOUR HONOR.

24 Q BY MR. WAPNER: AS A STUDENT AT HARVARD HIGH

25 SCHOOL, WERE YOU REQUIRED TO TAKE DEBATE?

26 A YES -- WELL, YOU ARE REQUIRED TO TAKE SPEECH

27 AND I ALSO TOOK DEBATE.

28 Q AND DID YOU ALSO KNOW A PERSON AT HARVARD HIGH



1 THAT HE HAD BEEN TRADING FOR RON LEVIN AND THAT THE ACCOUNT  
2 WAS DOING VERY WELL.

3 IT WAS THE FIRST TIME THAT HE SAID IT WAS DOING  
4 WELL. IT WAS A COUPLE OF DAYS LATER, THAT I ACTUALLY SAW  
5 THE CLAYTON BROKERAGE TRANSACTIONS, WHERE HE SHOWED ME HOW  
6 WELL IT HAD BEEN DOING. HE PROVED IT.

7 Q WHEN YOU SAW THE CLAYTON BROKERAGE -- YOU SAID  
8 THAT YOU SAW TRANSACTIONS. WHAT DID YOU SEE?

9 A TRADING -- WHAT I THOUGHT WAS TRADING TRANSACTIONS,  
10 THE TYPE OF STUFF THEY SEND YOU, THAT THE BROKERAGE HOUSE  
11 WRITES DOWN WHAT HAPPENED DURING CERTAIN DAYS. THAT IS WHAT  
12 HE SHOWED ME. IT WAS A THICK STACK OF THOSE TRADING  
13 DOCUMENTS.

14 MR. WAPNER: YOUR HONOR, I HAVE HERE A DOCUMENT WHICH  
15 I WOULD LIKE TO HAVE MARKED AS PEOPLE'S 83 FOR IDENTIFICATION.  
16 IT SAYS, "IN ACCOUNT WITH CLAYTON BROKERAGE COMPANY," AND  
17 IT ALSO HAS THE NAME OF RONALD G. LEVIN, 9701 WILSHIRE BOULEVARD,  
18 ON IT.

19 MAY THAT DOCUMENT -- MAY THOSE DOCUMENTS  
20 COLLECTIVELY BE 83 FOR IDENTIFICATION?

21 THE COURT: SO MARKED.  
22  
23  
24  
25  
26  
27  
28

1 Q BY MR. WAPNER: MR. MAY, SHOWING YOU DOCUMENTS  
2 THAT WE HAVE MARKED AS PEOPLE'S 83 FOR IDENTIFICATION; DO  
3 THOSE APPEAR TO BE SIMILAR TO THE DOCUMENTS, THE STATEMENTS  
4 THAT YOU WERE SHOWN?

5 A THE STATEMENTS THAT I SAW WERE IN XEROX, BUT THESE  
6 APPEAR TO BE THE SAME DOCUMENTS EXCEPT NOT XEROXED. THEY  
7 APPEAR TO BE THE ORIGINALS.

8 SOME OF THE XEROX PART WAS CROSSED OUT. I THINK  
9 "CLAYTON BROKERAGE HOUSE" WAS CROSSED OUT.

10 MR. WAPNER: MAY I HAVE JUST A MOMENT, YOUR HONOR?

11 (PAUSE IN PROCEEDINGS.)

12 Q BY MR. WAPNER: WHAT YOU SAW APPEARED TO BE A  
13 XEROX OF THE STATEMENTS THAT YOU HAVE IN FRONT OF YOU?

14 A YES, THEY WERE.

15 Q AND WHO SHOWED THEM TO YOU?

16 A JOE HUNT.

17 HE NEVER LET THEM OUT OF HIS SIGHT.

18 Q AND THE DOCUMENTS THAT HE SHOWED YOU, WHAT WERE  
19 THE FIGURES THAT YOU SAW ON THOSE DOCUMENTS?

20 A THE COVER PAGE LOOKED LIKE AN INITIAL INVESTMENT  
21 OF ABOUT \$5 MILLION AND THE ENDING, THE LAST PAGE WAS  
22 14 MILLION, 13 MILLION, RIGHT AROUND IN THERE.

23 Q DID JOE HUNT TELL YOU HOW MUCH OF THAT HE WAS  
24 ENTITLED TO?

25 A HE WAS ENTITLED TO HALF OF THE PROFITS BETWEEN  
26 THE FIVE AND FOURTEEN.

27 Q AND WHEN HE SAID THAT HE WAS GOING TO PAY YOU  
28 OUT OF THE LEVIN -- THE PROFITS THAT HE MADE FOR LEVIN, WHAT

Chin Conflict

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1 DID YOU THINK?

2 A I WAS BETWEEN A ROCK AND A HARD PLACE. I THOUGHT  
3 THAT WAS VERY NICE OF HIM TO DO THAT, CONSIDERING HE HAD LOST  
4 EVERYTHING BEFORE.

5 Q DID HE SAY HE WAS JUST GOING TO GIVE YOU BACK  
6 THE MONEY YOU LOST OR HE WAS GOING TO GIVE YOU SOME MORE?

7 A NO.

8 HE SAID HE WAS GOING TO GIVE ME MORE. HE SAID  
9 HE WAS GOING TO GIVE US \$300,000 EACH.

10 Q AND YOU OWED THE BROKERAGE HOUSE, YOU SAID WAS  
11 SUING YOU FOR EIGHTY PLUS?

12 A HE SAID HE WAS GOING TO HANDLE ALL OF THAT, TOO,  
13 THE LAWSUIT AND EVERYTHING ELSE.

14 Q THAT HE WAS GOING TO GIVE YOU THE \$300,000?

15 A RIGHT.

16 Q AND HE IS GOING TO TAKE CARE OF THE LAWSUIT?

17 A THE LAWSUIT, RIGHT.

18 Q THAT SOUNDS PRETTY GOOD.

19 A YES, IT SOUNDED PRETTY GOOD TO ME.

20 MR. BARENS: YOUR HONOR, WE WOULD HAVE AN OBJECTION  
21 TO THE PROSECUTION CHARACTERIZING THE EVIDENCE.

22 THE COURT: YES, I WILL STRIKE THAT.

23 Q BY MR. WAPNER: DID THAT SOUND PRETTY GOOD TO  
24 YOU WHEN HE SAID THAT?

25 A YES, HE DID.

26 Q OKAY. AFTER HE SAID THAT, DID YOU HAVE ANY  
27 DISCUSSION WITH HIM ABOUT WHAT YOU WANTED TO DO --

28 MR. BARENS: WE WOULD LIKE TO APPROACH THE BENCH,

1 YOUR HONOR.

2 THE COURT: WHAT FOR?

3 MR. BARENS: WE WOULD LIKE TO EXPAND ON AN OBJECTION  
4 WE HAVE AS TO THE RELEVANCE OF THIS TESTIMONY.

5 THE COURT: YOU CAN DO THAT AT THE END OF THE  
6 EXAMINATION WHEN YOU CROSS-EXAMINE.

7 MR. BARENS: I WOULD LIKE YOUR HONOR TO HEAR THE  
8 ARGUMENT NOW IN HOPES IT MIGHT HAVE SOME IMPACT ON THE CASE,  
9 YOUR HONOR.

10 THE COURT: THAT SUGGESTION CAME FROM YOUR ASSOCIATE.

11 MR. BARENS: NO. THAT SUGGESTION CAME FROM MYSELF.

12 THE COURT: ALL RIGHT.

13 (THE FOLLOWING PROCEEDINGS WERE HELD

14 AT THE BENCH:)

15 THE COURT: YES?

16 MR. BARENS: YOUR HONOR, YESTERDAY I EXPRESSED SOME  
17 CONCERN ABOUT WHAT IS BELIEVED TO BE CHARACTER TESTIMONY  
18 PURE AND SIMPLE.

19 THE FACT THAT MR. HUNT AND MR. MAY LOST \$80,000  
20 IN THE COMMODITIES MARKET APPROXIMATELY AUGUST OR SO, I GUESS,  
21 OF 1983, I DON'T SEE HAVING ANY RELEVANCY TO THE ALLEGED  
22 DEATH OF RON LEVIN OR THE MICROGENESIS TRANSACTION INVOLVING  
23 RON LEVIN.

24 I THINK IT IS UNFORTUNATE THAT THE MONEY WAS LOST  
25 BUT I DON'T SEE WHERE THIS GOES TO PROVE A MURDER.

26 SECONDARILY, THE FURTHER INQUIRY INTO THE FACT  
27 THAT THE COMMODITIES HOUSE WOULD BE SUING THIS WITNESS, I  
28 BELIEVE IN A NAKED SENSE OBVIOUSLY, AS YOUR HONOR IS PROBABLY

1 AWARE, A LOT OF OTHER PARTIES ARE INVOLVED IN THAT LITIGATION  
2 AND THE IMPLICATION TO THE JURY IS THAT HUNT IS A BAD GUY  
3 OR MADE MISREPRESENTATIONS ABOUT HIS INVESTMENTS. THAT WHOLE  
4 THING ABOUT GIVING HIM \$300,000 BACK, ET CETERA, ALTHOUGH  
5 THAT CERTAINLY PORTRAYS HUNT AS A BAD MAN --

6 THE COURT: IT MIGHT SHOW THE DEFENDANT WAS DESPERATE  
7 IN CONNECTION WITH THESE VARIOUS LAWSUITS AND THE MONEY HE  
8 APPARENTLY OWED AND PROMISED OTHER PEOPLE AND DESPARATE ENOUGH  
9 TO GET THE MONEY SO THAT HE MIGHT VERY WELL HAVE GONE -- THIS  
10 IS WITHIN THE LIMITS OF -- WITHIN THE PARAMETERS, I THINK,  
11 OF THE POSSIBILITIES AND PROBABILITIES. THE JURY HAS A RIGHT  
12 TO HEAR THAT.

13 DO YOU HAVE ANYTHING TO ADD?

14 MR. WAPNER: NO, YOUR HONOR.

15 I THINK IT PAINTS A COMPLETE PICTURE OF THE MANNER  
16 IN WHICH THE DEFENDANT DEALT, NOT ONLY WITH THIS WITNESS,  
17 BUT WITH SUBSEQUENT PEOPLE WHO INVESTED WITH HIM IN THE  
18 COMMODITIES SCHEME.

19 THE COURT: THE DEFENSE SAYS IT HAS NOTHING TO DO, THE  
20 FACT THAT OTHER PEOPLE LOST MONEY, HAS NOTHING TO DO WITH  
21 THE MURDER, ALLEGEDLY, OF LEVIN.

22 MR. WAPNER: THE FACT THAT THE DEFENDANT TOOK MONEY  
23 FROM LOTS OF INVESTORS AND OWED LOTS OF MONEY TO INVESTORS  
24 AT THE TIME THAT MR. LEVIN WAS ALLEGEDLY KILLED IS PART OF  
25 A MOTIVE FOR THE MURDER.

26 THE MANNER IN WHICH HE DEALT WITH THOSE INVESTORS  
27 AND WHAT HE DID WITH THEIR MONEY IS PART OF A PATTERN THAT  
28 BEGAN WITH THE INVESTMENT THAT HE TOOK FROM THIS WITNESS AND

1 HOW HE DEALT WITH THOSE INVESTORS, TRIED TO DEAL WITH THEM,  
2 IS SIMILAR, VERY SIMILAR TO EXACTLY THE PATTERN THAT THIS  
3 WITNESS IS DESCRIBING.

4 AND THE WHOLE PURPOSE OF THIS IS TO SHOW THAT  
5 FROM THE BEGINNING, ALL OF THIS INVESTING STUFF WAS BASICALLY  
6 A CON SCHEME.

7 THE COURT: IT IS PART OF THE PHILOSOPHY, YOU MEAN?

8 MR. WAPNER: YES.

9 MR. BARENS: YOUR HONOR, I HAVE VERY IMPORTANT POINTS  
10 ON THIS, YOUR HONOR.

11 FIRST OF ALL, THE EXPRESSION THAT THE GOVERNMENT --  
12 THAT THE PEOPLE USED TO THE EFFECT THAT HE OWED MONEY TO THESE  
13 INVESTORS, THERE HAS NEVER, EVER BEEN A SHOWING THAT MR. HUNT  
14 OWED MONEY TO THE INVESTORS.

15 THERE IS NO SHOWING WITH THIS WITNESS HERE THAT  
16 HE OWED HIM THE MONEY.

17 YOUR HONOR TAKES NOTICE, I AM SURE, OF THE FACT  
18 THAT A BROKER CAN LOSE ALL YOUR MONEY AND HE DOESN'T OWE YOU  
19 A DIME.

20 THE COURT: BUT THE TESTIMONY WAS THAT HE MADE A  
21 PROMISE TO HIM OF SO MUCH MONEY HE WAS GOING TO MAKE ON IT,  
22 DIDN'T HE?

23 MR. BARENS: IT IS A GRATUITOUS PROMISE HUNT MAKES TO  
24 HIM WITHOUT LEGAL OBLIGATION.

25 THE COURT: I THINK IT IS PART OF THE ENTIRE PICTURE  
26 AND I WILL ALLOW IT TO COME IN.

27 MR. BARENS: YOUR HONOR, IF I MIGHT JUST MAKE A FURTHER  
28 INQUIRY, BECAUSE WE ARE GOING TO GET INTO THIS AGAIN SHORTLY,

1 I FEEL, THAT THE PEOPLE ARE GOING TO COME FORWARD WITH A LOT  
2 OF CUMULATIVE WITNESSES THAT ARE GOING TO COME IN HERE AND  
3 SAY "I INVESTED MONEY WITH JOE HUNT AND I LOST MY MONEY".  
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1 THIS IS CERTAINLY NOT A FRAUD CASE OR A CIVIL  
2 ACTION HERE FOR RECOVERY OF FUNDS.

3 THE PEOPLE, IN TRYING TO ESTABLISH THAT HE OWED  
4 INVESTORS MONEY, DON'T YOU THINK IT WOULD BE BETTER IF WE  
5 START OUT ON SOME BASIS TO PROVE THE OBLIGATION, BEFORE WE  
6 PROVE THE LOSS?

7 MR. WAPNER: MR. BARENS, IF YOU WANT TO TRY MY CASE  
8 FOR ME, YOU CAN. I AM GOING TO TRY THE CASE THE WAY I SEE  
9 FIT. IF YOU HAVE A MOTION IN LIMINE TO PRECLUDE SOME WITNESSES  
10 FROM TESTIFYING, YOU SHOULD MAKE IT BEFORE THEY TESTIFY. I  
11 DON'T THINK THIS IS THE TIME OR THE PLACE TO DO IT.

12 THE COURT: YOU CAN GO AHEAD.

13 (THE FOLLOWING PROCEEDINGS WERE HELD IN  
14 OPEN COURT:)

15 Q BY MR. WAPNER: MR. MAY, AFTER THE DEFENDANT  
16 PROMISED YOU THAT HE WAS GOING TO GIVE YOU \$300,000, WERE  
17 YOU FAIRLY SATISFIED WITH THAT STATEMENT?

18 A YEAH. I HAD NO CHOICE.

19 Q OKAY. AND DID YOU HAVE SOME DISCUSSION WITH  
20 HIM AT THAT TIME ABOUT WHAT YOU WANTED TO DO WITH REGARD TO  
21 THE BBC?

22 A YES, WE DID.

23 Q ALL RIGHT. WHAT WAS THE DISCUSSION YOU HAD?

24 A MOSTLY AROUND THE RESEARCH AND DEVELOPMENT THAT  
25 WE HAD BEEN DOING WITH THE CYCLATRON, WHICH WAS A NEW TYPE  
26 OF GRINDING MACHINE.

27 Q WHAT DID YOU TELL MR. HUNT YOU WANTED TO DO WITH  
28 REGARD TO THE CYCLATRON?



1           A       I WAS INTERESTED IN THE TECHNOLOGY. SO I DECIDED  
2 IT MIGHT BE FUN TO WORK ON THAT FOR A WHILE.

3           Q       AND DID YOU BEGIN TO DO SOME WORK ON THAT AS  
4 A PART OF YOUR DUTIES AT THE BBC?

5           A       IT WAS ESSENTIALLY -- ALL I DID WAS NEGOTIATE  
6 BETWEEN PEOPLE UP IN LAS VEGAS, WHO HAD A GRIND SITE, THAT  
7 HAD SOME --

8           Q       WHO WAS THAT IN LAS VEGAS?

9           A       BILL NALLIN. HE HAD A GRIND SITE IN LAS VEGAS,  
10 WHERE HE THOUGHT HE HAD A LOT OF GOLD ORE THAT CAME DOWN OUT  
11 OF THE MOUNTAINS AND BUBBLED UP THROUGH THE EARTH AND ALL  
12 KINDS OF DIFFERENT STORIES THAT HE TOLD ME.

13                   BUT, HE TOLD ME IF HE COULD GRIND IT FINELY ENOUGH,  
14 HE COULD USE IT -- USE A CYANIDE LEACHING PROCESS AND EXTRACT  
15 THE GOLD OUT OF --

16           Q       A CYANIDE LEACHING PROCESS?

17           A       YES, THAT'S --

18           Q       I DON'T WANT TO GET INTO THE SPECIFICS OF MR.  
19 NALLIN AND HOW HE WAS GOING TO GET THE GOLD OUT.

20                   BUT CAN YOU PUT IN POINT OF TIME FOR US, WHEN  
21 THAT WAS THAT YOU FOUND OUT THAT YOUR MONEY HAD BEEN LOST?

22           A       IT WAS ABOUT EARLY AUGUST. YEAH, EARLY AUGUST.

23           Q       1983?

24           A       1983.

25           Q       AND AFTER THAT CONVERSATION AND THE CONVERSATION  
26 YOU HAD ABOUT THE \$300,000, THAT WAS RIGHT AT THE SAME TIME?

27           A       YES. IT WAS.

28           Q       AT SOME POINT AFTER THAT AND YOU WERE GOING TO

1 THE OFFICES AND CONTINUING TO WORK ON THE GRINDING MACHINE,  
2 WAS THERE SOME DISCUSSION ABOUT WHAT WAS GOING TO HAPPEN WITH  
3 THE PROFITS FROM RON LEVIN'S -- THAT JOE HUNT HAD MADE FOR  
4 RON LEVIN?

5 A WELL, YES. HE SAID HE WAS GOING TO DIVIDE IT  
6 UP.

7 Q WHO SAID HE WAS GOING TO DIVIDE IT UP?

8 A JOE SAID THAT HE WAS GOING TO DIVIDE IT UP AMONG  
9 THE MEMBERS OF THE BBC.

10 Q WHAT DID HE SAY?

11 A WELL, INITIALLY, HE THOUGHT THAT HE WAS GOING  
12 TO GET THE PROFITS FROM RON LEVIN.

13 Q PROFITS, MEANING CASH?

14 A MEANING CASH, MONEY. AND THEN RON SAID THAT  
15 THE MONEY WAS NOT AVAILABLE TO HIM.

16 Q HOW DO YOU KNOW THAT?

17 A THAT THERE WAS NO CASH. WELL, JOE LATER TOLD  
18 US THAT THE MONEY HAD BEEN TRANSFERRED FROM THE ACCOUNT AT  
19 CLAYTON TO A SHOPPING CENTER THAT RON LEVIN HAD INVESTED THE  
20 MONEY IN.

21 Q WHO DID HE TELL THAT TO?

22 A HE TOLD THAT TO ME.

23 Q WAS THAT JUST THE TWO OF YOU IN A CONVERSATION  
24 OR WERE YOU WITH SOME OTHER PEOPLE?

25 A WELL, HE SAID IT TO EVERYBODY IN THE OFFICE AT ONE  
26 TIME OR ANOTHER. SO, EVERYBODY KNEW.

27 Q AND DO YOU HAVE ANY WAY OF FIXING IN POINT OF  
28 TIME WHEN IT WAS THAT HE TOLD YOU ABOUT THE SHOPPING CENTER?

1 A JUNE, THE END OF JUNE, JULY.

2 Q WAS THIS BEFORE YOUR MONEY WAS LOST OR AFTER?

3 A AFTER THE MONEY WAS LOST.

4 Q ALL RIGHT. THE MONEY WAS NOT LOST UNTIL AUGUST,

5 RIGHT?

6 A YEAH.

7 Q SO IT WAS SOMETIME AFTER THAT?

8 A RIGHT.

9 Q DO YOU KNOW HOW LONG AFTER?

10 A THREE OR FOUR WEEKS.

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1 Q AND AFTER HE TOLD YOU ABOUT THE SHOPPING CENTER,  
2 INITIALLY TOLD YOU ABOUT THE SHOPPING CENTER, WHAT HAPPENED?  
3 DID YOU SEE ANY DOCUMENTATION OF THAT RIGHT AWAY?

4 A I NEVER SAW ANY DOCUMENTATION PERIOD, ON THE  
5 SHOPPING CENTER.

6 Q WAS THERE SOME DISCUSSION ABOUT WHAT WAS GOING  
7 TO HAPPEN WITH THE SHOPPING CENTER?

8 A WELL, ACCORDING TO JOE, THE SHOPPING CENTER HAD  
9 MADE -- WAS WORTH MORE THAN THE INITIAL INVESTMENT, SO THAT  
10 HE SAID THAT THE SHOPPING CENTER WAS WORTH LIKE, TEN MILLION  
11 BUCKS TO HIM.

12 IT WAS LIKE, A 30 MILLION DOLLAR SHOPPING CENTER  
13 OR SOMETHING LIKE THAT. HIS PERCENTAGE WAS GOING TO BE ABOUT  
14 TEN MILLION BUCKS. AND HE SAID WHEN THAT WAS LIQUIDATED,  
15 THAT HE WAS GOING TO DIVIDE IT UP AMONG THE BBC MEMBERS AND  
16 HE CALLED A MEETING TO DO THAT.

17 Q AND WHERE WAS THAT MEETING HELD?

18 A IT WAS HELD IN THE OFFICES.

19 Q WHO WAS THERE?

20 A THERE WERE ABOUT -- AT LEAST 15 BBC MEMBERS THERE,  
21 INCLUDING MY BROTHER AND BEN DOSTI AND DEAN KARNY AND JOE  
22 HUNT --

23 Q AND WHO RAN THE MEETING?

24 A JOE RAN THE MEETING. AND ALEX GAON. AND JOE  
25 RAN THE MEETING, JOE RAN EVERYTHING.

26 Q AND WHAT DID HE SAY AT THE MEETING?

27 A HE SAID THAT HE WAS GOING TO -- THAT HE HAD THE  
28 SHOPPING CENTER, THAT IT WAS WORTH TEN MILLION DOLLARS AND

1 THAT HE WAS GOING TO DIVIDE UP PORTIONS OF THE PROFITS THAT  
2 HE WOULD RECEIVE EVENTUALLY FROM THE SHOPPING CENTER AMONG  
3 THE BBC MEMBERS WHO WERE THERE.

4 AND THAT HE WAS GOING TO GIVE OUT, ACCORDING  
5 TO HIS PHILOSOPHY, THE MOST MONEY TO THE PEOPLE WHO HAD PUT  
6 THE MOST TIME AND THE MOST EFFORT INTO THE BBC.

7 Q AND WAS THAT A PHILOSOPHY YOU HAD HEARD BEFORE,  
8 DIVIDING UP THE PROFITS BASED ON PEOPLE PUTTING IN THE MOST  
9 TIME AND WORK?

10 A YES, IT WAS.

11 Q SO THAT IS SOMETHING YOU HEARD ALMOST FROM THE  
12 VERY BEGINNING, RIGHT?

13 A YES.

14 Q WHAT DID HE DO AFTER HE SAID HE WAS GOING TO  
15 DIVIDE UP THE PROFITS OF THE SHOPPING CENTER?

16 A THEN HE WENT AROUND THE ROOM AND PICKED ON  
17 EVERYBODY AND SAID, "YOU GET THIS MUCH OF IT AND YOU GET THAT  
18 MUCH OF IT."

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1 Q THAT IS A BLACK, BMW 3.0?

2 A YES.

3 Q WHOSE CAR WAS THAT? DID YOU KNOW SOMEBODY IN  
4 THE BBC WHO OWNED THAT CAR AND WAS SELLING IT?

5 A YES.

6 Q WHO WAS THAT?

7 A WHAT WAS THE GUY'S NAME? LOPEZ.

8 Q STEVE LOPEZ?

9 A STEVE LOPEZ.

10 Q AND AT SOME POINT, YOU SAW MR. PITTMAN DRIVING  
11 THAT CAR?

12 A YES I DID. HE DROVE IT QUITE FREQUENTLY.

13 MR. BARENS: OBJECTION, AS TO RELEVANCY AS TO WHICH  
14 CAR HE DROVE AT SOME UNKNOWN POINT IN TIME.

15 THE COURT: OVERRULED.

16 Q BY MR. WAPNER: AND AT SOME POINT AFTER YOU HAD  
17 THAT MEETING TO DIVVY UP THE PROCEEDS OF THE SHOPPING CENTER,  
18 DID YOU FIND OUT THAT THERE WASN'T GOING TO BE A SHOPPING  
19 CENTER?

20 A WELL, IT TOOK SEVERAL WEEKS. BUT EVENTUALLY,  
21 JOE CAME TO THE REALIZATION THAT RON LEVIN HAD CONNED HIM  
22 ALL ALONG.

23 Q HOW DO YOU KNOW THAT?

24 A BECAUSE HE SAID THE SHOPPING CENTER WASN'T REAL,  
25 THAT IT NEVER EXISTED.

26 Q OKAY. AND JOE HUNT TOLD YOU THAT?

27 A HE FINALLY ADMITTED IT, YES.

28 Q HOW DID HE SEEM TO BE WHEN HE SAID THAT HE

A-4  
1 ADMITTED IT WAS NOT REAL?

2 A DETERMINED, DETERMINED IN THE RESPECT THAT HE  
3 DID BELIEVE THAT THE MONEY HE HAD MADE FOR RON LEVIN WAS REAL.

4 Q HE DID BELIEVE IT WAS REAL?

5 A YES. HE SAID HE WAS GOING TO GET THE MONEY OUT  
6 OF RON, NO MATTER WHAT IT TOOK.

7 Q DID YOU CONTINUE GOING TO WORK AT THE OFFICES  
8 OF THE BBC?

9 A YES I DID.

10 Q AND DURING THE TIME THAT YOU WERE GOING TO WORK  
11 THERE, DID MR. HUNT USUALLY COME IN EARLY TO TRADE THE  
12 COMMODITIES?

13 A IN THE EARLIER MONTHS, HE ALWAYS CAME IN. HE  
14 WAS THE FIRST ONE IN THE OFFICE, HIM AND BEN OR THEY WERE  
15 TRADING AT THE BROKERAGE HOUSE EARLY IN THE MORNING.

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1 Q AND DID YOU AT SOME POINT -- AT SOME POINT, DID  
2 THAT STOP?

3 A YES IT DID.

4 Q HOW DID YOU NOTICE THAT THAT HAD STOPPED?  
5 WHAT DID YOU NOTICE?

6 A THEY WERE NO LONGER GOING TO THE BROKERAGE HOUSE.  
7 THEY WERE COMING IN LATE, SOMETIMES 10:00, 11:00 O'CLOCK IN  
8 THE EARLY MORNING, I MEAN EARLY IN THE MORNING.

9 Q WHEN YOU SAY "THEY", WHO ARE YOU REFERRING TO?

10 A BEN AND JOE.

11 Q AND DID THAT SEEM SOMEWHAT UNUSUAL TO YOU?

12 A YEAH BECAUSE ACCORDING TO THEM, EVERYTHING IN  
13 THE COMMODITIES MARKET WAS DOING VERY WELL, ALL OF THE  
14 INVESTORS' MONEY WAS DOING VERY WELL, EVERYTHING COULDN'T  
15 HAVE BEEN GOING BETTER.

16 Q WERE THOSE STATEMENTS THAT MR. HUNT MADE?

17 A YES THEY WERE AND DEAN AND BEN.

18 Q DID YOU AT SOME POINT -- WAS THERE A TIME WHEN  
19 THE TRADING SEEMED TO STOP SOMETIME IN THE SPRING OF 1984?

20 A YES THERE WAS.

21 Q AND WERE YOU STILL WORKING IN THE OFFICES AT THAT  
22 TIME?

23 A YES I WAS.

24 Q AT SOME POINT, IN JUNE OF 1984, DID YOU SEE JOE  
25 HUNT AT YOUR APARTMENT OR JUST OUTSIDE OF YOUR APARTMENT?

26 A HE CAME BY.

27 Q AND WHAT HAPPENED WHEN HE CAME BY?

28 A HE WAS VERY, VERY EXCITED. HE RACED UP TO OUR



1 APARTMENT DOOR, KNOCKED ON IT AND SAID TO COME DOWN TO THE  
2 CAR.

3 WE CAME DOWN TO THE CAR. INSIDE THE CAR, WAS  
4 BEN DOSTI AND HE PULLED OUT A CONTRACT THAT HE HAD GOTTEN  
5 SIGNED WITH RON LEVIN.

6 Q DID HE SHOW IT TO YOU?

7 A YES. HE SHOWED IT TO US.

8 Q ALL RIGHT. SHOWING YOU WHAT WE HAVE MARKED AS  
9 PEOPLE'S 58 FOR IDENTIFICATION, DO YOU RECOGNIZE THAT?

10 A YES I DO. THAT'S THE CONTRACT.

11 Q AND THAT IS THE ONE THAT HE SHOWED YOU?

12 A THAT IS THE ONE THAT HE SHOWED ME.

13 Q AND SIGNED BY MR. HUNT AND ALSO BY RON LEVIN?

14 A YES IT IS.

15 THE COURT: WHEN WAS THAT THAT YOU HAD THAT TALK WITH  
16 HIM? TAKE A LOOK AT THE CONTRACT AND SEE IF IN REFERENCE  
17 TO THAT DATE, WHAT DATE IT WAS HE TALKED TO YOU.

18 Q BY MR. WAPNER: ARE THERE TWO DATES ON THE  
19 CONTRACT?

20 A THE CONTRACT IS DATED 6/5/84 AND 6/6/84.

21 Q DID MR. HUNT ALSO HAVE A CHECK WITH HIM?

22 A YES HE DID.

23 Q AND SHOWING YOU A COPY OF PEOPLE'S -- I BELIEVE  
24 IT IS 57 FOR IDENTIFICATION, DO YOU RECOGNIZE THAT?

25 A YES. HE HAD THIS CAREFULLY FOLDED UP IN HIS  
26 POCKET AND HE PULLED IT OUT VERY SLOWLY AND HE SAID, "RON  
27 LEVIN SIGNED THIS."

28 HE SAID, "THAT'S HIS SIGNATURE, SEE? THAT'S HIS

SIGNATURE."

Q AND MR. HUNT SAID --

THE COURT: YOU MEAN ON THE RIGHT-HAND SIDE OF IT?  
THAT SCRIBBLING?

THE WITNESS: YES, RIGHT HERE. THE SIGNATURE.

THE COURT: ALL RIGHT.

Q BY MR. WAPNER: DID HE SAY ANYTHING ABOUT RON  
LEVIN'S SIGNATURE ON THE CONTRACT?

A YES. HE ALSO SAID THAT IT WAS RON LEVIN'S  
SIGNATURE ON THE CONTRACT.

Q DO YOU REMEMBER THE WORDS HE USED WHEN HE SAID  
THAT IT WAS HIS SIGNATURE ON THE CONTRACT?

SA A HE SAID HE HAD SIGNED A DEAL WITH RON LEVIN AND  
THAT RON HAD SIGNED OVER THIS CHECK FOR \$1.5 MILLION.

HE Q THE CHECK IS DATED JUNE THE 6TH, IS THAT RIGHT?

A YES IT IS.

Q WHAT TIME OF THE DAY WAS IT THAT MR. HUNT SHOWED  
UP AT YOUR HOUSE WITH THE CONTRACT AND THE CHECK?

A EARLY MORNING.

MR. BARENS: WHAT DAY ARE WE AT?

MR. WAPNER: I AM GETTING THERE.

THE COURT: EARLY MORNING?

Q BY MR. WAPNER: AT WHAT TIME? WHEN YOU SAY "EARLY  
MORNING" WHAT TIME ARE YOU TALKING ABOUT?

A 8 O'CLOCK.

Q AND WHAT IS YOUR RECOLLECTION OF THE DATE? WAS  
IT THE DAY AFTER THE CHECK, THE DAY OF THE CHECK?

A IT WAS THE DAY AFTER THE CHECK.

1 Q IT SEEMED LIKE HE WAS TRYING TO MAKE -- NOT ONLY  
2 MAKE YOU WHOLE BUT TO MAKE YOU BETTER THAN WHOLE AT THAT POINT  
3 IN TIME, SIR?

4 A YES.

5 Q AND DID YOU FEEL WELL DISPOSED TOWARDS MR. HUNT  
6 AT THAT POINT?

7 A YES, I DID.

8 Q AND WERE YOU UPSET WITH HIM BEFORE WHEN YOU FIRST  
9 HEARD HE HAD THIS BIG LOSS AND WIPED OUT ALL OF YOUR MONEY,  
10 WERE YOU UPSET WITH HIM?

11 A SURE.

12 Q AND AFTER HE TOLD YOU HE WOULD REPLACE ALL OF  
13 THIS MONEY, YOU WERE LESS UPSET WITH HIM OR NOT UPSET AT ALL?

14 A THAT'S TRUE.

15 Q HE HAD GAINED YOUR CONFIDENCE AGAIN, HAD HE NOT,  
16 SIR?

17 A YES, HE HAD.

18 Q NOW, WHEN YOU SAW THE LEVIN PAPERWORK, WHEN DID  
19 THAT OCCUR FOR THE FIRST TIME, THE PAPERWORK FROM LEVIN THAT  
20 HE HAD WITH ANOTHER BROKERAGE HOUSE?

21 A CLAYTON BROKERAGE HOUSE?

22 Q YES, SIR.

23 A A COUPLE OF DAYS AFTER THIS MEETING.

24 Q WITH MR. HUNT?

25 A WITH MR. HUNT, CONCERNING THE LOSSES.

26 Q IN OTHER WORDS, THE DAY AFTER YOU GET THE CALL --  
27 I BELIEVE YOU LOST YOUR MONEY ON AUGUST 1ST?

28 A YES.

Q IN 1983?

AND THEN THE NEXT DAY, AUGUST 2ND, YOU SEE MR. HUNT AND HAVE THIS DISCUSSION ABOUT \$300,000 HE VOLUNTEERED, AND THEN WHAT, TWO DAYS LATER NOW WE ARE AT AUGUST 5TH, YOU SEE THE CLAYTON BROKERAGE ACCOUNT?

A I AM NOT SURE ON THE EXACT DATES. BUT IT WAS SOMETIME AFTER THAT WE -- THAT I SAW THE CLAYTON BROKERAGE ACCOUNT FOR THE FIRST TIME, THE XEROX COPIES.

Q AND WAS THE PURPOSE THAT YOU WERE ABLE TO DISCERN IN MR. HUNT'S SHOWING THOSE DOCUMENTS TO YOU, TO CONFIRM TO YOU THAT YOU HAD AN EXPECTANCY TO RECEIVE THE \$300,000 THAT HE HAD DISCUSSED WITH YOU?

A THAT AND TO LAY A FOUNDATION FOR HIS PERCENTAGE, YOU KNOW, TO PROVE THAT HE HAD ACTUALLY BEEN TRADING LEVIN'S ACCOUNT.

1 Q RIGHT. AND MR. HUNT BELIEVED AS FAR AS YOU COULD  
2 OBSERVE, THAT HE HAD AN EXPECTANCY IN THESE MONEYS FROM LEVIN?

3 A YES.

4 Q AND HE SEEMED TO BE CONFIDENT IN THAT SENSE,  
5 SIR?

6 A HE SEEMED POSITIVE HE WAS GOING TO GET THE MONEY.

7 Q RIGHT. DID HE EVER EXPRESS TO YOU HOW LONG IT  
8 WOULD TAKE TO GET THAT MONEY?

9 A NO, HE DIDN'T.

10 Q DID YOU ASK HIM?

11 A I ASKED HIM.

12 Q AND WHAT DID HE TELL YOU?

13 A HE SAID HE WAS NOT SURE.

14 Q OKAY. DID YOU EVER ASK HUNT TO CONFIRM THIS  
15 \$300,000 REPRESENTATION TO YOU BY MAYBE, PUTTING IT IN A  
16 LETTER OR WRITING OR ANYTHING TO THAT EFFECT?

17 A NO.

18 Q WHEN YOU HAD THE MEETING WITH HUNT AND YOU WERE  
19 SHOWN PEOPLE'S 83, THIS CLAYTON BROKERAGE DOCUMENTATION,  
20 DID YOU ASK HIM ANY QUESTIONS ABOUT THIS DOCUMENT?

21 MR. WAPNER: OBJECTION ONLY IN THAT IT MISSTATES THE  
22 EVIDENCE TO THE EXTENT THAT THE WITNESS SAID HE WAS SHOWN  
23 A XEROX OF THE DOCUMENTS THAT APPEAR TO BE THE SAME OR  
24 SIMILAR TO IT.

25 MR. BARENS: BEGGING YOUR PARDON.

26 Q IT WAS A XEROX RATHER THAN THE ORIGINAL? WHEN  
27 YOU WERE SHOWN A XEROX OF THESE DOCUMENTS, DID YOU ASK THEM  
28 ANY QUESTIONS ABOUT IT?

1 A WHERE DOES IT START? WHERE DOES IT END? THAT  
2 WAS REALLY ABOUT THE ONLY QUESTION I HAD.

3 Q DID HE TELL YOU ANYTHING ABOUT THAT?

4 A HE SAID THAT IT STARTED ON THIS PAGE AND IT ENDS  
5 HERE. HERE IS THE FIVE MILLION AND HERE IS THE FOURTEEN  
6 MILLION.

7 Q DID YOU LOOK AT THAT?

8 A YES, I DID.

9 Q AND DID THE NUMBERS SHOW YOU THAT?

10 A YES, IT DID.

11 Q WHERE DID THIS MEETING TAKE PLACE?

12 A IN BEN DOSTI'S OFFICE.

13 Q WAS ANYBODY ELSE THERE?

14 A I DON'T REMEMBER.

15 Q YOU DON'T REMEMBER WHETHER IT WAS ANYBODY BESIDES  
16 YOU AND MR. HUNT THERE AT THE TIME?

17 A NO. I REMEMBER THAT I WAS WALKING OUT OF  
18 DOSTI'S OFFICE AND JOE CAME UP WITH THE PAPER WORK.

19 Q DID HE COME UP TO YOU WITH THIS PAPER WORK AND  
20 ATTEMPT TO REASSURE YOU BY SHOWING YOU THAT PAPER WORK?  
21 THAT WAS YOUR SENSE OF IT?

22 A YES.

23 Q WERE YOU REASSURED?

24 A YES.

25 Q WAS THAT THE ONLY TIME YOU EVER SAW THOSE DOCU-  
26 MENTS?

27 A THERE WERE SEVERAL COPIES OF THEM LYING AROUND  
28 THE OFFICE. DEAN KARNY HAD A COPY I BELIEVE AND BEN DOSTI.

1 Q THEN THERE WAS A COPY IN THE FILE THERE AT THE  
2 OFFICE, WASN'T THERE?

3 A I DON'T REMEMBER.

4 Q ALL RIGHT. SO THE TWO FELLOWS HAD THE COPIES,  
5 DID THEY?

6 A YES.

7 Q AND DID ANYBODY ELSE HAVE A COPY OF THEM?

8 A JOE.

9 Q DID YOU EVER SEE BEN DOSTI OR DEAN KARNY SHOWING  
10 THEIR COPIES OF THE CLAYTON BROKERAGE HOUSE DOCUMENTS TO  
11 ANYBODY?

12 A YES.

13 Q AND WHO WERE THEY SHOWING THEM TO?

14 A OTHER PEOPLE IN THE BBC.

15 Q OKAY. THIS MORNING, YOU TESTIFIED THAT JOE NEVER  
16 LET THOSE OUT OF HIS SIGHT. ARE YOU CHANGING YOUR TESTIMONY  
17 NOW, WHEN YOU TELL ME THAT OTHER PEOPLE HAD COPIES OF THE  
18 CLAYTON BROKERAGE DOCUMENTATION?

19 A NO. THE COPY THAT HE HAD, HE NEVER LET OUT OF  
20 HIS SIGHT.

21 Q BUT OTHER PEOPLE HAD XEROX OF THE SAME THING?

22 A OTHER PEOPLE HAD XEROXES. THE COPY THAT HE HAD  
23 WAS NOT WHITED OUT.

24 Q WHITED OUT?

25 A YES. THERE WERE CERTAIN PARTS OF THE COPY THAT  
26 WAS WHITED OUT.

27 Q COULD YOU TELL US WHAT PARTS THOSE WERE, SIR?

28 A AT THE TOP. THAT IS ALL I CAN SAY.

1 Q AT THE TOP WHERE THE NAME WOULD BE?

2 A WHERE THE NAME WOULD BE.

3 THE COURT: WHAT DO YOU MEAN BY "WHITED OUT"?

4 THE WITNESS: THEY WERE BLANKED OUT SO YOU COULD NOT  
5 READ THEM.

6 THE COURT: WITH SOME CHEMICAL PUT ACROSS IT?

7 THE WITNESS: IT IS CALLED "WHITE OUT."

8 THE COURT: WHITE OUT?  
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1 Q BY MR. BARENS: IT IS A THING THAT YOU PAINT  
2 ON?

3 A YES.

4 Q WAS THE NAME LEVIN OBSERVABLE TO YOU ON THE TOP  
5 OF THE COPY YOU COULD SEE?

6 A YES, IT WAS.

7 Q HOW ABOUT THE TOP OF THE COPY THAT DOSTI AND  
8 KARNY HAD?

9 A YES.

10 Q COULD YOU SEE THAT?

11 A SURE.

12 Q COULD YOU TELL US WHAT IT WAS THAT WAS WHITED  
13 OUT ON THE TOP? WAS IT MAYBE THE PART THAT SAYS "CLAYTON  
14 BROKERAGE COMPANY" WITH THE ADDRESS ON THERE?

15 A YES. THAT WAS THE PART THAT WAS WHITED OUT.

16 Q BUT YOU COULD SEE THE LEVIN PART AND ALL OF THE  
17 NUMBERS AND EVERYTHING ELSE ON THERE?

18 A YES.

19 MR. BARENS: COULD I JUST WALK THAT IN FRONT OF THE  
20 JURY, JUDGE?

21 THE COURT: SURE. AREN'T YOU GOING TO HAVE SOMEONE  
22 TESTIFY AS TO THAT?

23 MR. BARENS: I WOULD LIKE HIM TO SEE IT KIND OF NOW,  
24 IF I COULD, JUDGE.

25 THE COURT: GO AHEAD.

26 (PAUSE.)

27 MR. BARENS: ALL RIGHT. I WILL SHOW IT TO THE WITNESS,  
28 TOO. PERHAPS HE CAN AFFIRM TO ME BY POINTING TO WHAT APPEARED

1 TO BE WHITED OUT. MR. MAY?

2 THE WITNESS: AS I RECALL, THIS PART (INDICATING).

3 Q BY MR. BARENS: THE PART IN THE BLUE BLOCK, IF  
4 WE COULD CALL IT THAT? WOULD THAT BE ACCURATE?

5 A YES.

6 Q OKAY, NOW DID YOU EVER DO ANYTHING TO INDEPENDENTLY  
7 INVESTIGATE THE CLAYTON BROKERAGE ACCOUNT?

8 A NO.

9 THE COURT: WHICH ACCOUNT ARE YOU TALKING ABOUT?

10 MR. BARENS: THE ONE I AM REFERRING TO IS --

11 THE COURT: THIS ONE OR HIS?

12 MR. BARENS: THE OTHERS ARE NOT CLAYTON, YOUR HONOR.  
13 WE HAVE AN ACCOUNT AT CANTOR-FITZGERALD THAT THE GENTLEMAN  
14 WAS INVOLVED WITH. THIS IS THE ONLY CLAYTON ACCOUNT THAT  
15 I AM DEALING WITH AT THIS TIME.

16 THE COURT: YES.

17 Q BY MR. BARENS: YOU NEVER DID ANYTHING TO VERIFY  
18 THE DEPOSITS OF MR. LEVIN OR THE ACCOUNT ACTIVITIES THERE,  
19 SIR?

20 A NO.

21 Q ALL RIGHT. DID YOU EVER TELL ANYBODY THAT HUNT  
22 HAD PROMISED TO GIVE YOU \$300,000 FROM THE CLAYTON ACTIVITY  
23 WHEN LEVIN'S MONEY WAS CASHED IN?

24 A WELL, MY BROTHER AND I DISCUSSED IT.

25 Q YOU TOLD YOUR BROTHER THAT HUNT HAD TOLD YOU  
26 THIS ABOUT COVERING YOUR LOSS?

27 A YES.

28 Q DID YOU TELL HIM THAT YOU THOUGHT HUNT WAS A

1 GOOD GUY BECAUSE HE WAS GOING TO DO THAT?

2 A YES.

3 Q AND DID YOUR BROTHER THINK HE WAS A GOOD GUY  
4 BECAUSE HE WAS GOING TO DO THAT?

5 A YES.

6 Q AND WHEN WAS THAT IN POINT OF TIME, SIR?

7 A LATE AUGUST.

8 Q 1983?

9 A OF 1983.

10 Q NOW, TIME WENT BY. YOU NEVER SAW THE COMING  
11 TO FRUITION OF THE \$300,000 PROFIT. DID YOU EVER ASK MR.  
12 HUNT ABOUT WHERE IS MY \$300,000?

13 A I NEVER DID IN TERMS OF "WHERE IS MY \$300,000?"  
14 I ASKED HIM WHAT WAS GOING ON WITH RON LEVIN.

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1 Q AND HE SAID?

2 A AND HE SAID HE IS WORKING ON IT. NOT TO WORRY.

3 Q AND HE SAID NOT TO WORRY, AND YOU DIDN'T WORRY,  
4 DID YOU?

5 A NO, I DIDN'T.

6 Q AND HE WAS REASSURING AGAIN?

7 A UH-HUH.

8 MR. WAPNER: IS THAT YES?

9 THE WITNESS: YES.

10 Q BY MR. BARENS: AND HOW MUCH LATER THAN AUGUST  
11 OF '83 DID YOU FIRST HEAR ABOUT A SHOPPING CENTER IN THIS  
12 CONTEXT, SIR?

13 A HOW MUCH LATER?

14 Q YES, SIR.

15 A THE EXACT DATE, IT WAS ABOUT A MONTH, A LITTLE  
16 OVER A MONTH AFTER, AFTER THE AUGUST INCIDENT.

17 Q IN SEPTEMBER OF 1983?

18 A YES, SEPTEMBER.

19 Q DO YOU KNOW WHETHER YOU WERE THE FIRST ONE TO  
20 HEAR ABOUT THE SHOPPING CENTER DEAL OR DID SOMEBODY HEAR ABOUT  
21 IT BEFORE YOU DID?

22 A I DON'T REMEMBER.

23 Q OKAY, BY THE WAY, FROM THE LEVIN MONEY THAT WAS  
24 GOING TO BE REALIZED FROM THE CLAYTON TRADES, YOU WEREN'T  
25 THE ONLY GUY ASSOCIATED WITH BBC THAT WAS GOING TO RECEIVE  
26 SOMETHING FROM THAT, WERE YOU?

27 A NO.

28 Q WHO ELSE WAS GOING TO BENEFIT FROM THE MONEYS

1 TO BE REALIZED FROM THE CLAYTON BROKERAGE HOUSE?

2 A PROBABLY EVERYBODY WHO WAS INVOLVED IN THE BBC.

3 Q RIGHT.

4 SO EVERYBODY AT THE BBC COUNTED ON RECEIVING SOME  
5 MONEY OUT OF THAT LEVIN ACCOUNT AT CLAYTON; IS THAT TRUE,  
6 SIR?

7 A I DON'T KNOW IF YOU COULD SAY THAT THEY COUNTED  
8 ON IT.

9 Q WELL, WAS EVERYONE EXPECTING TO RECEIVE SOME MONEY  
10 OUT OF THAT?

11 A WELL, JOE WAS EXPECTING.

12 MR. WAPNER: OBJECTION. CALLS FOR SPECULATION ON THE  
13 PART OF THIS WITNESS.

14 THE COURT: WE ARE TALKING ABOUT YOU ONLY. WERE YOU  
15 EXPECTING IT?

16 THE WITNESS: I THOUGHT IT MIGHT COME TRUE, YES.

17 Q BY MR. BARENS: DO YOU KNOW IF ANYONE ELSE, TO  
18 YOUR KNOWLEDGE, SIR, THOUGHT THEY WERE GOING TO GET MONEY  
19 OUT OF THAT?

20 MR. WAPNER: OBJECTION. AGAIN --

21 MR. BARENS: I SAID, "TO HIS KNOWLEDGE."

22 MR. WAPNER: HE IS ASKING THIS WITNESS TO SPECULATE  
23 WHAT WAS IN SOMEBODY ELSE'S MIND.

24 MR. BARENS: I DIDN'T ASK HIM TO SPECULATE. I ASKED  
25 HIM IF HE KNEW.

26 THE COURT: LET HIM ANSWER THE QUESTION.

27 THE WITNESS: JOE HUNT.

28 Q BY MR. BARENS: NO.

1 I AM ASKING, SIR, TO YOUR KNOWLEDGE, DO YOU KNOW  
2 IF ANYBODY ELSE AT THE BBC GROUP OF PEOPLE EXPECTED TO  
3 RECEIVE MONEYS FROM THE CLAYTON ACCOUNT WHEN THE MONEYS WERE  
4 REALIZED?

5 A YES.

6 Q WHO ELSE WAS IT?

7 A BEN DOSTI, DEAN KARNY. EVERYBODY -- JUST  
8 EVERYBODY THAT WAS INVOLVED, LIKE I SAID.

9 Q SO EVERYONE WAS EXPECTING MONEY, SIR?

10 A YES.

11 Q NOW, IN SEPTEMBER YOU HEARD ABOUT A SHOPPING  
12 CENTER --

13 PRIOR TO YOUR HEARING ABOUT THE SHOPPING CENTER,  
14 HAD YOU HEARD ANYBODY ASK MR. HUNT "WHAT IS GOING ON WITH  
15 THE MONEY WE ARE SUPPOSED TO GET FROM THE LEVIN PROCEEDS AT  
16 CLAYTON?"

17 A HAD I HEARD ANYBODY ASK ABOUT IT?

18 Q YES.

19 A NOT THAT I REMEMBER.

20 Q HAD ANYONE TOLD YOU THAT THEY HAD DISCUSSED IT  
21 WITH MR. HUNT, AS FAR AS WHAT WAS HAPPENING ON GETTING THE  
22 MONEY OUT OF CLAYTON?

23 A YES.

24 Q WHO TOLD YOU THAT?

25 A DEAN AND BEN.

26 Q WHAT DID THEY TELL YOU?

27 A THEY TOLD ME THAT LEVIN HAD INVESTED THAT MONEY  
28 INTO A SHOPPING CENTER.

-4  
1 Q ALL RIGHT. SO YOU FIRST HEARD THE SHOPPING  
2 CENTER STORY FROM DEAN AND BEN BEFORE YOU HEARD IT FROM  
3 MR. HUNT?

4 A YES.

5 Q OKAY. AND WHAT DID THEY TELL YOU?

6 A THEY TOLD ME THAT THE MONEY HAD BEEN INVESTED  
7 INTO A SHOPPING CENTER AND THAT IT WAS WORTH MUCH MORE THAN  
8 THE ORIGINAL PROFIT DISTRIBUTION THAT HUNT WAS GOING TO GET  
9 WAS WORTH.

10 Q AND DID YOU EVER GO AND TALK TO MR. HUNT ABOUT  
11 THAT?

12 A I ASKED HIM ABOUT IT, SURE.  
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1 A NOT THAT I KNOW OF.

2 Q ALL OF YOU GUYS HAD BEEN TO THE SAME PLACE PRIOR  
3 TO 6-24-84; IS THAT CORRECT?

4 A YES.

5 Q AND HUNT, OBVIOUSLY, WAS AWARE ALL OF YOU HAD  
6 BEEN TO THAT SAME PLACE BEFORE 6-24; IS THAT CORRECT?

7 A I WOULD THINK SO. HE WAS THERE.

8 Q OKAY. YOU ONLY MADE ONE TRIP WITH DETECTIVE  
9 ZOELLER UP THERE?

10 A YES.

11 Q DID ANYBODY ELSE YOU KNOW GO UP THERE?

12 A NOT THAT I KNOW OF.

13 Q EXCEPT FOR STEVE?

14 A STEVE.

15 Q OKAY. WHEN YOU MENTIONED EARLIER THAT JOE HAD  
16 LET PITTMAN DRIVE A CAR, WAS IT A WESTCARS?

17 A NO, I DON'T THINK SO.

18 Q WHOSE CAR WAS IT?

19 A IT WAS STEVE LOPEZ' -- IT WAS JOE HUNT'S CAR.

20 Q AND HE LET PITTMAN DRIVE HIS CAR?

21 A I THINK HE GAVE HIM THE CAR.

22 Q WELL, DID HE TRANSFER TITLE TO THE CAR?

23 A NOT THAT I KNOW OF. I DON'T KNOW.

24 Q SO AS FAR AS YOU KNOW, HE APPEARED TO JUST BE  
25 DRIVING THE CAR?

26 A YEAH, I THINK --

27 AS A MATTER OF FACT, I RECALL JIM SAYING A COUPLE  
28 OF TIMES THAT IT WAS HIS CAR NOW AND I RECALL JOE SAYING THAT



1 IT WAS HIS CAR.

2 Q SURE, BUT YOU DIDN'T EVER SEE ANYBODY PASS TITLE  
3 TO THAT CAR, DID YOU?

4 A NO.

5 Q OKAY. NOW, YOU MADE A REFERENCE EARLIER WHEN  
6 THE SHOPPING CENTER THING DIDN'T COME THROUGH, YOU SAID THAT  
7 HUNT REALIZED LEVIN HAD CONNED HIM AND YOU USED THE  
8 EXPRESSION, QUOTE "FINALLY ADMITTED THIS" CLOSE QUOTES. WHAT  
9 DID YOU MEAN "FINALLY ADMITTED THIS."

10 A IT JUST SEEMED LIKE HE WAS CONVINCED THAT IT WAS  
11 ALL REAL, THAT THE SHOPPING CENTER WAS REAL, THAT THE MONEY  
12 WAS REAL, THAT EVERYTHING WAS REAL. AND IT SEEMED LIKE HE  
13 FINALLY CAME TO GRIPS THAT IT MIGHT NOT BE.

14 Q YOU MEAN THAT HE FINALLY BECAME WILLING TO ADMIT  
15 TO HIMSELF THAT HE HAD BEEN CONNED?

16 A THAT IS WHAT IT APPEARED TO BE.

17 Q HAD HE BEEN PRESSED ON THIS POINT BY ANY OF THE  
18 BBC PEOPLE, TO YOUR KNOWLEDGE, PRIOR TO THE TIME HE FINALLY  
19 ADMITTED THAT HE HAD BEEN CONNED?

20 A NO.

21 Q DID ANYBODY AT BBC EVER SAY TO HIM, "COULD BE LEVIN  
22 IS CONNING YOU" OR WORDS TO THAT EFFECT?

23 A NOT THAT I RECALL.

24 Q NONE OF YOU --

25 WHAT DID ALL OF YOU FELLOWS THINK ABOUT PRIOR  
26 TO APRIL OR MAY OF '84, WHAT DID YOU THINK ABOUT MR. LEVIN?

27 A I HAD READ A NEWSPAPER ARTICLE STATING THAT HE  
28 WAS A CON MAN SO I DIDN'T THINK HE WAS THE MOST REPUTABLE

1 GUY IN THE WORLD.

2 Q YOU DIDN'T?

3 A NO.

4 Q WHY NOT, OTHER THAN THE NEWSPAPER ARTICLE.

5 A THAT WAS MY FOUNDATION.

6 Q JUST THAT?

7 A JUST THAT.

8 Q WHAT ABOUT THE FACT THAT YOU HADN'T GOTTEN ANY  
9 MONEY OUT OF THE BROKERAGE ACCOUNT ON THE COMMODITIES, YOU  
10 DIDN'T THINK ANYTHING ABOUT HIM AS A RESULT OF THAT, DID YOU?

11 A JOE WAS HANDLING THAT ENTIRELY. HE WAS VERY CLOSE  
12 TO RON.

13 Q WHAT DID THEIR RELATION, TO YOU, SEEM TO BE  
14 DURING MAY OF 1984?

15 A WELL, THEY SEEMED VERY CLOSE. HE WOULD GO OVER  
16 THERE A LOT, TALK WITH HIM.

17 AFTER HE FOUND OUT THAT THE SHOPPING CENTER WASN'T  
18 REAL, HE SWORE UP AND DOWN HE WOULD STILL GET THE MONEY OUT  
19 OF RON. HE SAID "NO MATTER" --

1 Q WHEN --

2 THE COURT: LET HIM FINISH UP.

3 MR. BARENS: I AM SORRY.

4 THE WITNESS: NO MATTER WHAT IT TOOK, HE WOULD GET THIS  
5 MONEY BECAUSE HE FELT THAT THAT MONEY STILL BELONGED TO HIM.

6 Q BY MR. BARENS: BELONGED TO HIM OR BELONGED TO  
7 BBC PEOPLE?

8 A BELONGED TO HIM.

9 Q SO EVEN THOUGH HE SAID TO YOU THAT YOU GUYS WERE  
10 ALL GOING TO GET THIS MONEY AT THE BBC, LATER ON HE WOULD  
11 SAY "ALL OF THAT MONEY REALLY BELONGS TO ME."

12 A WELL, HE SAID HE EARNED IT.

13 Q WELL, YOU SAID HE SAID TO YOU THAT ALL OF THAT  
14 MONEY BELONGS TO YOU.

15 A WELL, HE SAID HE EARNED IT AND HE WAS ENTITLED  
16 TO IT.

17 Q BUT HAD HE NOT ALSO SAID THAT THE MONEY WAS GOING  
18 TO GO TO ALL OF YOU BBC PEOPLE IN RELATIVE PROPORTIONS?

19 A THAT WAS MONTHS BEFORE, MONTHS BEFORE.

20 Q AND WHEN HE SAID "ALL THAT MONEY BELONGS TO ME,"  
21 DID YOU SAY ANYTHING TO HIM, "WELL, WHAT ABOUT ME"?

22 A NO.

23 Q WHY NOT?

24 A I WAS WORKING ON THE CYCLATRON AND IF HE WAS GOING  
25 TO GET MONEY OUT OF LEVIN, HE WAS GOING TO GET MONEY OUT OF  
26 LEVIN.

27 Q IF HE GOT MONEY OUT OF LEVIN, WERE YOU GOING TO  
28 PARTICIPATE IN THAT, DID YOU BELIEVE, SIR?

Case: Over the top of the money

VSB

1 A I DON'T KNOW.

2 Q YOU DIDN'T KNOW?

3 A AT THAT TIME, I DIDN'T KNOW.

4 Q BUT IT NEVER OCCURRED TO YOU TO ASK HIM, "WHAT  
5 IS GOING TO HAPPEN TO MY MONEY"? YOU ARE OUT EITHER EIGHTY  
6 OR THREE HUNDRED OR SEVEN HUNDRED THOUSAND DOLLARS, A LOT,  
7 AND YOU NEVER ASKED WHAT IS GOING TO HAPPEN TO MY MONEY?

8 A I ASSUMED THAT IF HE --

9 WELL, HE KEPT PROMISING THAT HE WAS GOING TO GET  
10 THE MONEY OUT OF LEVIN.

11 Q AND GIVE IT TO ALL OF YOU PEOPLE?

12 A SO I ASSUMED HE WAS, YOU KNOW, GOING TO MAKE GOOD  
13 HIS PREVIOUS --

14 THE COURT: GIVE ALL OF IT TO YOU?

15 THE WITNESS: NOT GIVE, NO.

16 HE WAS GOING TO KEEP A PRETTY GOOD CHUNK OF IT  
17 FOR HIMSELF, I AM SURE.

18 THE COURT: COUNSEL'S QUESTION WAS, GIVE IT ALL TO YOU.

19 THE WITNESS: NO.

20 MR. BARENS: NO. I SAID GIVE IT TO ALL OF THE PEOPLE,  
21 ACTUALLY, SIR.

22 THE COURT: GO AHEAD.

23 Q BY MR. BARENS: IN ANY EVENT, AS WE GO ALONG HERE,  
24 HE SAYS TO YOU "I WILL DO ANYTHING", TELL ME THAT SENTENCE  
25 AGAIN, WHAT DOES HE SAY ABOUT GETTING THE MONEY FROM LEVIN?

26 A "I WILL GET THE MONEY OUT OF LEVIN, NO MATTER  
27 WHAT IT TAKES."

28 Q DID HE SAY THAT TO A BUNCH OF YOU GENTLEMEN?

1 A HE SAID IT TO ME.

2 Q ANYBODY ELSE?

3 A HE SAID IT TO ME AND HIM -- WHEN WE WERE STANDING  
4 IN THE ROOM AND THEN I THINK AT LEAST DOSTI AND KARNY MUST  
5 HAVE OVERHEARD IT.

6 Q WHEN HE SAID THAT TO YOU, DID THAT SEEM SOMETHING  
7 FEROCIOUS TO YOU, SOMETHING UNUSUAL TO HEAR SOMEBODY USE THE  
8 EXPRESSION "I WILL GET IT NO MATTER WHAT IT TAKES"?

9 A IT DIDN'T OCCUR TO ME AT THE TIME. IT SEEMED  
10 LIKE HE WAS JUST TENACIOUS ABOUT GETTING THE MONEY OUT OF  
11 LEVIN.

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1 Q SO AT THAT PARTICULAR POINT IN TIME AT LEAST SIR,  
2 THAT COMMENT SEEMED LIKE SOMETHING SOMEONE WOULD SAY UNDER  
3 THOSE CIRCUMSTANCES? THAT IS, THAT WAS TENACIOUSLY ORIENTED?

4 A YES. YOU WANTED TO GET -- HE WAS GOING TO GET  
5 CLOSER TO LEVIN. HE WAS GOING TO DO WHATEVER IT TOOK TO GET  
6 THE MONEY OUT OF HIM.

7 Q OKAY. WHEN WAS THAT COMMENT MADE TO YOU, SIR?

8 A MAY.

9 Q MAY? AND AFTER THAT, HE KEPT SEEING LEVIN?

10 A YES.

11 Q NOW, YOU MENTIONED THAT TO YOUR KNOWLEDGE, THAT  
12 LEVIN WAS NOT A WEALTHY CON MAN. IT WAS A STATEMENT THAT  
13 YOU MADE EARLIER TODAY. YOU HAD SEEN --

14 A I SAID THAT I THOUGHT THAT LEVIN WAS NOT A  
15 WEALTHY MAN.

16 Q IT WAS AN OPINION OF YOURS?

17 A IT WAS AN OPINION.

18 Q AFTER YOU HAD SEEN THE CLAYTON ACCOUNT THAT SHOWED  
19 HE HAD \$14 MILLION --

20 MR. WAPNER: OBJECTION, ASSUMES FACTS NOT IN EVIDENCE.

21 THE COURT: SUSTAINED. YOU MEAN THE APOCRYPHAL  
22 \$14 MILLION?

23 MR. BARENS: WHY DO YOU SAY APOCRYPHAL? I THINK THAT  
24 IS WHAT COUNSEL SAID IN HIS OPENING AND --

25 THE COURT: WELL, IN ANY EVENT, ALL THAT WE HAVE NOW  
26 IS A PAPER WITH SOME NUMBERS ON IT. UNTIL THERE IS OTHER  
27 EVIDENCE --

28 MR. BARENS: WE DON'T HAVE ANY FACTS --

1 THE COURT: WELL, LET'S GET ON, WILL YOU PLEASE? YOU  
2 ARE ASSUMING THERE IS \$14 MILLION. THAT IS WHY I OBJECTED  
3 TO THE QUESTION. BECAUSE THERE IS NO SUCH PROOF HERE THAT  
4 THERE WAS \$14 MILLION IN THE ACCOUNT.

5 MR. BARENS: WELL, THERE IS BY THE SAME TOKEN, NO  
6 CONTRARY PROOF OF --

7 THE COURT: WELL THEN, COUNSEL WILL SHOW YOU WHAT IT  
8 IS LATER ON. OR YOU WILL.

9 MR. BARENS: SOMEONE WILL, IN ANY EVENT.

10 Q WHAT I AM ASKING YOU SIR IS, ABOUT YOUR STATE  
11 OF MIND. HAVE YOU SEEN PAPERS ON THE FACE OF WHICH, SHOWED  
12 THAT LEVIN HAD AT THAT TIME, A PURPORTED \$14 MILLION  
13 IN A CLAYTON BROKERAGE ACCOUNT? HAD YOU NOT, SIR?

14 A YES.

15 Q AND WAS YOUR STATE OF MIND THAT YOU BELIEVED THAT  
16 HE DID AT THAT PARTICULAR TIME?

17 A I THOUGHT SO.

18 Q LATER, YOU CHANGED YOUR MIND?

19 A IT SEEMED LIKE HE WAS GIVING JOE THE RUNAROUND.

20 Q AND DO YOU KNOW WHY HE WAS GIVING HIM THE  
21 RUNAROUND?

22 A NO IDEA.

23 Q OKAY. THAT RUNAROUND SEEMED TO CONTINUE INTO  
24 MAY OF 1984?

25 A YES.

26 Q NOW, IN JUNE OF 1984, YOU TESTIFIED I BELIEVE  
27 THAT ON THE 7TH OF JUNE, YOU SAW MR. HUNT IN POSSESSION OF  
28 AN OPTION AGREEMENT AND A CHECK IN THE AMOUNT OF \$1.5 MILLION?

1 A YES.

2 Q AND THAT WAS AT ABOUT WHAT TIME OF THE DAY, SIR?

3 A IT WAS IN THE MORNING.

4 Q 8 A.M.?

5 A I AM NOT SURE OF THE EXACT TIME. BUT IT WAS IN  
6 THE EARLY MORNING.

7 Q THIS MORNING, YOU SUGGESTED 8 A.M., MR. MAY. ARE  
8 YOU NOW TELLING ME THAT IT WAS EARLIER OR LATER THAN THAT?  
9 OR ARE YOU TELLING ME IT WAS 8 A.M.?

10 A AROUND 8 A.M.

11 Q WERE YOU UP WHEN HE GOT TO YOUR HOUSE?

12 A I DON'T REMEMBER. I WAS PROBABLY ASLEEP.

13 Q WHERE DID YOU LIVE AT THAT TIME, WITHOUT GIVING  
14 ME THE STREET ADDRESS, SIR?

15 A IN BRENTWOOD.

16 Q AND IT WAS JUST A FEW MOMENTS AWAY FROM WHERE  
17 MR. HUNT LIVED?

18 A YES. IT WAS VERY CLOSE.

19 Q WAS IT A WEEKDAY, SIR?

20 A YES IT WAS.

21 Q AND WHEN MR. HUNT APPEARED, WAS HE DRESSED LIKE  
22 HE NORMALLY DRESSED FOR WORK?

23 A SUIT AND TIE.

24 Q YES, SIR.

25 A YES, SUIT AND TIE.

26 Q YES, SIR. AND WHEN HE CAME UP, YOU DESCRIBED  
27 THAT HE WAS EXCITED?

28 A EXTREMELY EXCITED.



1 BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING. BUT THE TRUTH,  
2 SO HELP YOU GOD.

3 THE WITNESS: I DO.

4 THE CLERK: PLEASE TAKE THE STAND AND STATE AND SPELL  
5 YOUR NAME FOR THE RECORD.

6 THE WITNESS: JACK FRIEDMAN, F-R-I-E-D-M-A-N.

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8 DIRECT EXAMINATION

9 BY MR. WAPNER:

10 Q MR. FRIEDMAN, WHAT IS YOUR OCCUPATION?

11 A I AM A REGISTERED STOCK AND COMMODITIES BROKER.

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1 Q HOW LONG HAVE YOU HAD THAT OCCUPATION?

2 A ABOUT TEN, ELEVEN YEARS, TWELVE YEARS.

3 Q IN MAY AND JUNE AND JULY OF 1984, WERE YOU WORKING  
4 IN THAT CAPACITY?

5 A YES, I WAS.

6 Q AND WHAT COMPANY WERE YOU WORKING FOR?

7 A CLAYTON BROKERAGE COMPANY, ST. LOUIS.

8 Q WHERE WAS YOUR OFFICE LOCATED?

9 A WILSHIRE BOULEVARD, 10900 WILSHIRE BOULEVARD.

10 Q SO THE MAIN OFFICE OF CLAYTON IS LOCATED IN  
11 ST. LOUIS AND YOU WERE WORKING AS ONE OF THEIR REPRESENTATIVES  
12 IN LOS ANGELES?

13 A YES.

14 Q AND WHAT KIND OF OUTFIT WAS CLAYTON BROKERAGE  
15 COMPANY?

16 A CLAYTON WAS A COMMODITIES SPECIALTY FIRM.

17 Q WHAT IS A COMMODITIES SPECIALTY FIRM?

18 A THAT ITS PRIMARY BUSINESS WAS TO DO BUSINESS IN  
19 COMMODITIES AND ADDED SECURITIES AS A SERVICE, VERSUS A FIRM  
20 LIKE MERRILL LYNCH OR PAINE WEBBER WHICH ITS PRIMARY FUNCTION  
21 IS SECURITIES AND HAS COMMODITIES AS A SERVICE.

22 Q AND WHAT ARE COMMODITIES? WHEN YOU TALK ABOUT  
23 INVESTING IN COMMODITIES, WHAT ARE WE TALKING ABOUT?

24 A COMMODITIES ARE RAW MATERIALS LIKE GOLD, SILVER,  
25 PORK BELLIES, COWS.

26 Q OKAY. DOES IT ALSO OR CAN IT ALSO INVOLVE TRADING  
27 IN FINANCIAL INSTRUMENTS?

28 A YES, IT DOES.

1 Q AND WHAT KIND OF FINANCIAL INSTRUMENTS ARE  
2 TRADED ON THE COMMODITIES EXCHANGE?

3 A THEY TRADE TREASURY BILLS AND TREASURY BONDS AND  
4 AT THE S&P INDEX.

5 THE COURT: WHAT DOES THAT MEAN, S&P?

6 THE WITNESS: STANDARD & POORS.

7 STANDARD & POORS IS A RATING SERVICE AND THEY  
8 HAVE COMPILED A LIST OF STOCKS. THERE IS THE S&P 100. THE  
9 S&P 500.

10 WHEN A MUNICIPALITY IS GOING TO HAVE A BOND  
11 OFFERING TO RAISE FUNDS, THEY WILL RATE THE QUALITY OF THE  
12 OFFERING. SO THEY PUT TOGETHER A LIST OF COMPANIES CALLED  
13 THE S&P 500 AND THAT IS TRADED ON THE CHICAGO MERCANTILE  
14 EXCHANGE OR THE IMM, WHICH IS PART OF THE CHICAGO MERCANTILE  
15 EXCHANGE.

16 Q BY MR. WAPNER: CAN YOU ALSO TRADE IN DIFFERENT  
17 FOREIGN CURRENCIES ON THE COMMODITIES EXCHANGE?

18 A YES.

19 THEY TRADE THE SWISS FRANC, JAPANESE YEN, THE  
20 POUND, DEUTSCHE MARK, CANADIAN DOLLAR.

21 Q DO THEY ALSO TRADE SOMETHING CALLED THE EURO-  
22 DOLLARS?

23 A YES.

24 Q CAN YOU EXPLAIN WHAT THOSE ARE?

25 A THE EURO-DOLLAR IS A -- IT IS LIKE A FIDUCIARY  
26 CURRENCY THAT WAS TRADED AS A BASKET OF EUROPEAN CURRENCIES  
27 WHERE IT IS NOT LIKE A DOLLAR BILL OR A \$10 BILL, BUT IS A  
28 CURRENCY THAT IS TRADED. YOU CAN INVEST IN IT FOR EXCHANGE

1 RATE PURPOSES AND INTEREST RATE PURPOSES.

2 Q IN JUNE OF 1984, WERE YOU CONTACTED BY A PERSON  
3 BY THE NAME OF RON LEVIN?

4 A YES, I WAS.

5 Q WAS THAT FIRST CONTACT WITH MR. LEVIN ON THE  
6 TELEPHONE?

7 A YES.

8 THE COURT: JUNE OF 1984?

9 THE WITNESS: NO. EXCUSE ME. IT WAS --

10 MR. WAPNER: EXCUSE ME. I AM SORRY. JUNE OF 1983.

11 THE WITNESS: I DIDN'T LISTEN TO THE DATE.

12 MR. WAPNER: CAN WE GO HOME NOW AND START AGAIN ON  
13 MONDAY? I AM TIRED.

14 MR. BARENS: I WAS MENTIONING IT TO HIM, JUDGE. BIG  
15 POINT.

16 THE WITNESS: IT WAS JUNE OF '83.

17 Q BY MR. WAPNER: YOU HAVE SOME RECORDS THERE THAT  
18 SAY JUNE OF '83?

19 A RIGHT.

20 I AM GOING TO LISTEN TO THE QUESTION NEXT TIME  
21 BEFORE I ANSWER.

22 MR. WAPNER: I ALMOST HAD A HEART ATTACK.

23 Q WHAT TIME IN JUNE OF 1983 WAS IT YOU WERE  
24 CONTACTED BY MR. LEVIN?

25 A IT WAS AROUND JUNE 28TH.

26 Q DID YOU AT SOME POINT SHORTLY THEREAFTER MEET  
27 THE PERSON WHO HAD CONTACTED YOU ON THE PHONE BY THE NAME  
28 OF RON LEVIN?

1 A YES, I DID.

2 Q DO YOU RECOGNIZE THE PERSON DEPICTED IN  
3 PEOPLE'S 6 FOR IDENTIFICATION?

4 A THAT LOOKS LIKE HIM, YES.

5 Q WHEN YOU WERE FIRST CONTACTED BY MR. LEVIN ON  
6 THE TELEPHONE, WERE YOU AT YOUR OFFICE?

7 A YES, I WAS.

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1 Q WHAT DID HE SAY TO YOU WHEN HE CALLED?

2 A HE SAID THAT HE WAS DOING A STORY ON COMMODITIES  
3 TRADING FOR, A FOUR OR FIVE-PART STORY AND THAT THEY HAD  
4 MODEL ACCOUNTS -- HE REPRESENTED NETWORK NEWS.

5 Q ALL RIGHT. NOW WAS THAT THE FIRST THING HE SAID  
6 WAS THAT HE REPRESENTED NETWORK NEWS?

7 A YES, RIGHT. HE SAID HE WAS WITH NETWORK NEWS.

8 Q WHAT DID THAT MEAN TO YOU WHEN HE SAID THAT, WHAT  
9 DID YOU THINK IN YOUR MIND THEN?

10 A I THOUGHT THAT MEANT HE WAS WITH, I THOUGHT IT  
11 WAS INDEPENDENT NETWORK NEWS.

12 Q WHICH IS?

13 A A NEWS SERVICE THAT SELLS STORIES TO CHANNEL 13,  
14 CHANNEL 5, WCGN IN CHICAGO. THAT IS WHAT I THOUGHT. I ASSUMED  
15 THAT.

16 Q AND WHEN HE SAID THAT HE WAS WITH NETWORK NEWS,  
17 WHAT DID HE TELL YOU THE REASON HE WAS CALLING?

18 A HE WAS DOING A STORY ON COMMODITIES TRADING, A  
19 FOUR- OR FIVE-PART STORY AND THAT HE HAD SIMULATED TRADING  
20 ACCOUNTS AT FOUR OR FIVE OTHER FIRMS, ONE BEING MERRILL LYNCH,  
21 SHEARSON LEHMAN AND RAUSCHER PIERCE.

22 THE COURT: WHAT DID YOU THINK HE MEANT BY SIMULATING  
23 TRADING ACCOUNTS?

24 THE WITNESS: SIMULATED. WHERE YOU SET UP A PAPER  
25 ACCOUNT, A PAPER TRADE. YOU SET UP AN ACCOUNT FOR THE PURPOSE  
26 OF PAPER TRADING TO TRADE ON A REAL TIME BASIS WITH NO REAL  
27 FUNDS OR NO REAL ORDERS GOING IN.

28 THE COURT: AND NO REAL PROFIT?

1 THE WITNESS: OR NO REAL LOSSES.

2 THE COURT: THAT IS RIGHT.

3 (LAUGHTER IN COURTROOM.)

4 THE WITNESS: AS OPPOSED TO WHERE SOMEBODY HAS A  
5 TRADING SYSTEM AND THEY GO BACK AND THEY LOOK AT THE PRICES  
6 AND THEY SAY THAT WE WOULD HAVE BOUGHT THIS, HERE WE WOULD  
7 HAVE SOLD THIS, WE WOULD HAVE BOUGHT HERE AND WE WOULD HAVE  
8 SOLD THERE AND IT IS HARD TO SAY WHAT SOMEBODY WOULD HAVE  
9 DONE AFTER THE FACT BUT WHILE SOMETHING IS ONGOING, YOU SAY,  
10 WELL, I HAD THIS SYSTEM AND MY SYSTEM SAYS "BUY HERE SO WE  
11 WILL BUY HERE." AND THEN TWO DAYS LATER WE WILL SAY "NOW  
12 THE SYSTEM SAYS SELL HERE, SO WE WILL SELL HERE."

13 SO THAT IS A REAL TIME SITUATION AS OPPOSED TO  
14 GOING BACK AFTER THE FACT WHERE PEOPLE SAY "THIS SYSTEM MADE  
15 2,000 PERCENT IN TWO DAYS"

16 THE COURT: THERE WERE NO ACTUAL TRANSACTIONS, HOWEVER,  
17 WERE THERE? ACTUALLY, WHATEVER IT WAS, IT WAS NEVER ACTUALLY  
18 SOLD OR BOUGHT, WAS IT?

19 THE WITNESS: ARE WE TALKING ABOUT IN GENERAL OR --

20 THE COURT: SIMULATED.

21 THE WITNESS: SIMULATED MEANS NO ACTUAL TRANSACTIONS  
22 ARE ACTUALLY DONE. IT IS SIMULATED.

23 Q BY MR. WAPNER: NOW IN THAT SETTING, IF A PERSON  
24 HAD A SYSTEM, HE COULD TEST IT OUT AND FIND OUT WHETHER IT  
25 WORKED OR NOT?

26 A THAT IS CORRECT.

27 Q AND IN THIS CASE, MR. LEVIN SAID HE WAS WITH  
28 NETWORK NEWS, HE WAS DOING THIS FIVE-PART STORY AND THAT HE

1 Q WHAT DID HE SAY?

2 A HE WOULD CALL ME UP AND GIVE ME THE ORDERS. THEN  
3 LATER ON, HE WOULD HAVE A TRADING ADVISER, WHO WAS JOE HUNT,  
4 CALL ME UP AND GIVE ME THE ORDERS.

5 Q SO, THE INDEPENDENT TRADING ADVISER HE TOLD YOU  
6 WAS SUPPOSED TO BE JOE HUNT?

7 A YES.

8 Q AT THE TIME, DID HE GIVE YOU ANY INSTRUCTIONS  
9 ABOUT WHETHER YOU WERE SUPPOSED TO TELL JOE HUNT WHETHER  
10 THIS WAS A REAL OR FICTITIOUS ACCOUNT?

11 A HE TOLD ME TO MAKE SURE THAT HE WAS NOT AWARE  
12 THAT IT WAS NOT A REAL ACCOUNT.

13 Q WHY DID HE TELL YOU THAT?

14 A BECAUSE IF THE ACCOUNT WAS NOT REAL, THEN THE  
15 TRADING DECISIONS WOULD NOT BE THE SAME AS IF IT WAS REAL.

16 Q WHAT DID HE SAY?

17 A THE EMOTIONAL -- IF, YOU KNOW, IT IS NOT REAL,  
18 YOU ARE NOT GOING TO MAKE THE EMOTIONAL DECISIONS -- THE  
19 EMOTIONAL DECISION PATTERN WOULD NOT BE THE SAME.

20 Q AND DID YOU HAVE SOME AGREEMENT WITH MR. LEVIN  
21 IN THE BEGINNING ABOUT WHAT THE INDEPENDENT TRADING ADVISER  
22 WOULD BE TOLD AT SOME POINT THAT IT WAS NOT REAL?

23 A WE AGREED THAT AS SOON AS IT WAS OVER, HE WOULD  
24 BE TOLD. THAT IS, AS SOON AS THE ACCOUNTS -- THEY WERE GOING  
25 TO BE TRADED FOR ABOUT FOUR TO EIGHT WEEKS. AND AS SOON  
26 AS THE TRADE WAS OVER, HE WOULD BE TOLD. AND HE WOULD  
27 DEFINITELY BE TOLD WHEN THE STORY WAS DONE.

28 Q WHEN YOU SAY THE "TRADING" OVER AND OVER, YOU



1 ARE TALKING ABOUT THE SIMULATED TRADING?

2 A YES, SIMULATED TRADING.

3 Q DID YOU AGREE WITH MR. LEVIN NOT TO TELL MR.  
4 HUNT THAT THE TRADING WAS IN FACT A SIMULATION AND NOT REAL?

5 A YES. I AGREED TO THAT.

6 Q AT SOME POINT, DID YOU MEET WITH MR. LEVIN?

7 A YES, IN THE VERY BEGINNING.

8 Q WHEN YOU FIRST TALKED TO HIM, WHAT WAS THE DATE?

9 A IT WAS AROUND THE 28TH. IT WAS PERHAPS A COUPLE  
10 OF DAYS BEFORE THAT DATE. I AM NOT SURE.

11 Q THE 20TH OF JUNE?

12 A JUNE OF '83.

13 Q AFTER TALKING TO HIM ON THE TELEPHONE, DID YOU  
14 GO TO HIS HOUSE?

15 A YES.

16 Q THAT WAS A DUPLEX, THE BOTTOM OF A DUPLEX ON  
17 PECK DRIVE IN BEVERLY HILLS?

18 A IT WAS IN BEVERLY HILLS. IT WAS DOWN THE STREET  
19 FROM SAKS. I CAN'T REMEMBER WHAT STREET IT WAS.

20 Q AND WHEN YOU WENT TO MR. LEVIN'S DUPLEX, WHAT  
21 WAS THE PURPOSE IN GOING THERE?

22 A WELL, TO MEET, TO SEE THE, YOU KNOW, HE WAS THERE  
23 AND HE WAS REAL AND TO HAVE HIM FILL OUT THE ACCOUNT PAPERS.

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1 Q WHY WERE YOU GOING TO HAVE HIM FILL OUT THE  
2 ACCOUNT PAPERS?

3 A WELL, WE WERE GOING TO SIMULATE. IF WE ARE GOING  
4 TO SIMULATE EVERYTHING, I THOUGHT WE SHOULD JUST FILL IT OUT.  
5 I DON'T KNOW, IT SEEMED LIKE A GOOD IDEA AT THE TIME.

6 Q THAT WAS GOING TO BE PART OF THE STORY?

7 A YEAH.

8 Q OKAY. AND WHEN YOU WENT TO HIS HOUSE, DID YOU  
9 GIVE HIM SOME ACCOUNT PAPERS TO FILL OUT?

10 A YES, I DID.

11 Q AND DID YOU ALSO PROVIDE HIM WITH AN AUTHORIZATION  
12 FOR THE OUTSIDE TRADING ADVISOR?

13 A NOT AT THAT TIME.

14 I HAD SOMEBODY GO DOWN LATER AND HAVE HIM FILL  
15 THAT OUT. IT WAS ONE OF MY -- I HAD TWO ASSISTANTS AND THEY  
16 WENT DOWN AT A LATER DATE TO HAVE JOE HUNT SIGN THE  
17 AUTHORIZATION.

18 Q SHOWING YOU A DOCUMENT THAT I WOULD LIKE TO HAVE  
19 MARKED AS PEOPLE'S 88 FOR IDENTIFICATION, IT SAYS "CLAYTON  
20 BROKERAGE COMPANY" AND IT HAS AN ADDRESS IN CLAYTON, MISSOURI  
21 AND IT SAYS ON THE FIRST PAGE IN BOLD TYPE, "TRADING  
22 AUTHORIZATION LIMITED TO PURCHASE AND SALES OF COMMODITIES";  
23 MAY THAT BE PEOPLE'S 88 FOR IDENTIFICATION?

24 THE COURT: SO MARKED.

25 Q BY MR. WAPNER: SHOWING YOU PEOPLE'S 88, WHAT  
26 IS THAT?

27 A I AM SORRY. WHAT IS THE QUESTION?

28 Q WHAT IS THE DOCUMENT THAT IS MARKED PEOPLE'S 88?

1           A       WELL, THIS IS A LIMITED POWER OF ATTORNEY TO MAKE  
2 TRADING DECISIONS ON AN ACCOUNT.

3           Q       AND WHO ARE THE PEOPLE WHO SIGNED THAT DOCUMENT?

4           A       IT SAYS "JOE HUNT" AND I GUESS IT IS "RON LEVIN."  
5           I CAN'T READ IT BUT I GUESS IT IS HIS SIGNATURE.

6           THE COURT: YOU MEAN THAT SORT OF SCRIBBLE?

7           THE WITNESS: YES.

8           MR. BARENS: I AM SORRY. I DIDN'T HEAR YOUR HONOR'S  
9 REMARK.

10          THE COURT: I SAID SORT OF A SCRIBBLE FOR RON LEVIN'S  
11 SIGNATURE.

12          MR. BARENS: THAT KIND OF AN "R" THING.

13          THE WITNESS: I WILL TELL YOU IN A SECOND.

14                 IT LOOKS LIKE THE SAME SIGNATURE ON THIS OTHER  
15 COPY THAT WE HAVE.

16          Q       BY MR. WAPNER: AND DID YOU HAVE HIM FILL OUT  
17 SOME --

18                 DO YOU HAVE THE ORIGINAL ACCOUNT PAPERS THAT HE  
19 FILLED OUT?

20          A       I HAVE SOME THAT HE TYPED UP BUT I -- I AM NOT  
21 SURE WHAT I DID WITH THE ACCOUNT COPIES.

22          Q       AND WHEN YOU WENT TO HIS HOUSE, DID YOU ASK HIM  
23 TO PROVIDE YOU WITH SOME PROTECTION BECAUSE YOU WERE GOING  
24 INTO THIS SCHEME WITH HIM, SO TO SPEAK?

25          A       YES.

26                 WE ASKED HIM TO INDEMNIFY US AGAINST ANY PROBLEMS  
27 THAT OCCURRED AND HE WROTE US A LETTER SAYING THAT HE WOULD  
28 INDEMNIFY CLAYTON BROKERAGE FROM ALL LOSS OF ANY KIND WITH

1 Q YOU ARE REFERRING TO A YELLOWISH-COLORED  
2 DOCUMENT IN FRONT OF YOU; CAN YOU TELL US WHAT THAT WAS?

3 A THIS IS A RECORD THAT I KEPT OF THE TRANSACTION.  
4 IT IS A BROKER'S SHEET, HAS THE BUYS AND SELLS. THE BUYS  
5 ON THIS SIDE AND THE SELLS ON THAT SIDE.

6 SO, YOU KNOW, WHAT DATE -- WHAT WAS ENTERED, IT  
7 HAS WHAT WE DID, THE DATE, THE QUANTITY, THE PRICE AND THEN  
8 THE SAME THING FOR THE SELL SIDE.

9 SOMETIMES YOU SELL FIRST AND BUY IT BACK, SO IT  
10 SHOWS THAT ON 6-28, WE BOUGHT 500 -- A TOTAL OF 900 CONTRACTS  
11 OF SEPTEMBER SWISS FRANC AT FORTY-EIGHT EIGHTEEN AND 500 AT  
12 FORTY-EIGHT TWENTY-FIVE.

13 Q NOW I THINK THAT I PROBABLY SKIPPED AHEAD ON  
14 SOMETHING, BEFORE YOU GET INTO BUYING AND SELLING, ON THE  
15 SIMULATED ACCOUNT, DON'T YOU HAVE SOME SIMULATED MONEY TO GO  
16 INTO THE SIMULATED ACCOUNT?

17 A USUALLY YOU DO.

18 BUT WE DIDN'T SIMULATE THE MONEY UNTIL JULY.  
19 NOT ON THE 28TH.

20 THE COURT: BEFORE WE GO INTO THAT ANY FURTHER, LET'S  
21 HAVE A RECESS.

22 MR. WAPNER: THANK YOU.

23 THE COURT: LADIES AND GENTLEMEN OF THE JURY, WE WILL  
24 TAKE A 15-MINUTE RECESS AT THIS TIME.

25 THE SAME ADMONITION I GAVE YOU WOULD STILL APPLY.

26 MR. BARENS: I WOULD HAVE TO CALL MY BROKER, JUDGE.

27 (RECESS.)  
28

1 THE COURT: ALL RIGHT. YOU MAY CONTINUE.

2 Q BY MR. WAPNER: MR. FRIEDMAN, THE FIRST FEW TRADES  
3 THAT WERE MADE ON THAT SIMULATED TRADE, MADE ON THAT ACCOUNT,  
4 WHO MADE THEM?

5 A RON LEVIN.

6 Q AND HOW WAS THAT DONE?

7 A HE CALLED ME ON THE PHONE AND SAID THAT HE WANTED  
8 TO BUY 500 SWISS FRANC AT THE MARKET. AND THEN HE GAVE ME  
9 THE PRICE. I DON'T REMEMBER. HE GAVE ME THE PRICE OR HE  
10 TOLD ME TO BUY THEM AT THE MARKET.

11 Q WHAT DID YOU DO WHEN HE DID THAT?

12 A I WROTE UP A TICKET. I PUT ON IT NEWARK NEWS  
13 AND WROTE UP AN ORDER TICKET WHICH LOOKS LIKE THIS (INDICATING)  
14 I MIGHT HAVE THAT TICKET HERE. I WROTE UP A  
15 TICKET. ON THE TOP IT IS TO BUY AND ON THE BOTTOM IT IS  
16 SELL.

17 AND I TIME STAMPED IT. WE HAVE A TIME STAMP  
18 MACHINE. I WAITED ABOUT THREE TO FIVE MINUTES.

19 WE HAD A MACHINE THAT IS CALLED A VIDEOCOM. THAT  
20 IS PLUGGED INTO THE EXCHANGE FLOORS.

21 ALL OF THE TRANSACTIONS THAT ARE MADE ARE RECORDED  
22 ON THAT MACHINE. AND I GAVE THEM THE WORST PRICES IN THAT  
23 TIME PERIOD.

24 Q WHY DID YOU GIVE THEM THE WORST PRICES?

25 A IN CASE AFTER THIS WAS ALL OVER, ANYBODY HAD  
26 ANY QUESTIONS REGARDING THE TRADING.

27 I WANTED TO GIVE THE BENEFIT OF THE DOUBT, THAT  
28 WE DID EVERYTHING WE COULD TO SIMULATE IT AS ACCURATELY AS

-2

1 WE COULD.

2 Q SO, HE WAS GOING TO STAND OR FALL ON THE WORST  
3 PRICES THAT WERE AVAILABLE AT THE TIME?

4 A LIKE IT WAS A BUY. LIKE IN THE SWISS FRANC,  
5 IF THE PRICE WAS 48.20, WAS THE HIGH IN A THREE-MINUTE PERIOD  
6 AND THE LOW WAS 48.10, AND I WAS BUYING THEM, I GAVE HIM  
7 THE 48.20 PRICE.

8 THE COURT: THAT IS THE HIGHEST PRICE?

9 THE WITNESS: I THINK -- WE DO IT IN NO LESS THAN  
10 THREE MINUTES USUALLY. THIS WAS NO MORE THAN FIVE MINUTES.  
11 THE RULE IS THREE MINUTES.

12 BUT I WANTED TO TRY TO -- IN CASE THERE WAS ANY  
13 DOUBT THAT WE FUDGED THE TRADING IN FAVOR OF THE ACCOUNT.

14 A AND DID YOU MAKE UP THE TICKETS THE SAME WAY  
15 YOU WOULD IF IT WERE A REAL ACCOUNT?

16 A YES, I DID.

17 Q FOR THE FIRST THREE TRADES, WAS MR. LEVIN MAKING  
18 THE TRADES?

19 A I THINK IT WAS THE FIRST THREE TRADES. I KNOW  
20 IT WAS THE FIRST DAY OR TWO. I THINK IT WAS THE FIRST TWO  
21 DAYS.

22 I KNOW THAT HE DEFINITELY CALLED ME ON THE FIRST  
23 FEW TRADES.

24 Q AND WHAT HAPPENED AFTER THOSE FIRST FEW TRADES  
25 WERE MADE?

26 A THEN JOE HUNT CALLED UP AND STARTED TO PUT IN  
27 ORDERS.

28 Q WHEN HE FIRST CALLED, WHAT DID HE SAY?

1 A HE SAID, "HI, I'M JOE HUNT."

2 Q WHAT DID YOU DO?

3 A "RON LEVIN TOLD ME TO CALL YOU."

4 I SAID, "HI, JOE. HOW ARE YOU DOING? WHAT DO  
5 YOU KNOW?"

6 Q DID HE ASK IF YOU HAD BEEN EXPECTING HIS CALL?

7 A NO.

8 Q AND WHAT DID HE SAY AFTER HE TOLD YOU THAT?

9 A I MIGHT HAVE JUST -- I MUST HAVE SAID, "HI, JOE."  
10 AND HE ASKED ME WHAT THE EQUITY FIGURE WAS. I  
11 DIDN'T HAVE THAT RIGHT AWAY BECAUSE WE HAD NOT SET UP THE  
12 ACCOUNT YET.

13 WE WERE DOING IT ON A MANUAL BASIS.

14 THE COURT: WHAT IS AN EQUITY FIGURE? WHAT DOES THAT  
15 MEAN?

16 THE WITNESS: THAT IS THE POINT -- THE MONEY IN THE  
17 ACCOUNT, THE BOTTOM LINE FIGURE. THAT IS THE CASH BALANCE.

18 THE COURT: DID YOU TELL HIM?

19 THE WITNESS: I COULDN'T TELL HIM RIGHT AWAY.

20 Q BY MR. WAPNER: WHY COULDN'T YOU TELL HIM RIGHT  
21 AWAY?

22 A BECAUSE I DIDN'T KNOW. WE HAD NOT SET THE ACCOUNT  
23 UP.

24 Q WHERE DID YOU GET THE INFORMATION FROM, AS FAR  
25 AS SETTING THE ACCOUNT UP?

26 A WELL, WE USED AT THE END OF THE DAY -- WE WOULD  
27 TAKE ALL OF THE TRADES THAT WE DID AND SEND THEM ON A WIRE.  
28 WE HAD A WESTERN UNION LINE. AND WE WOULD WIRE

8-4  
1 THAT INFORMATION TO THE HOME OFFICE IN ST. LOUIS.

2 THEY WOULD PUT IT INTO A SPECIAL COMPUTER SYSTEM  
3 AND SET UP THE ACCOUNT THAT WAY AND THEN WIRE THAT INFORMATION  
4 TO ME THE NEXT MORNING.

5 AFTER THE FIRST WEEK OR SO, AFTER WE GOT IT SET  
6 UP, I HAD THAT INFORMATION ACCURATELY BUT NOT RIGHT AWAY.

7 Q WHO GAVE YOU THE FIGURE AS TO HOW MUCH WAS  
8 SUPPOSED TO GO IN?

9 A WHO GAVE ME WHAT? WHAT DO YOU MEAN?

10 Q HOW WAS IT DETERMINED HOW MUCH SIMULATED MONEY  
11 WAS GOING TO GO INTO THAT SIMULATED ACCOUNT?

12 A WELL, WE TOOK THE STATEMENT FROM RAUSCHER PIERCE.  
13 THE COURT: FROM WHOM?

14 THE WITNESS: THE ACCOUNT WAS ORIGINALLY SIMULATED  
15 AT A COMPANY CALLED RAUSCHER PIERCE.

16 Q BY MR. WAPNER: THAT IS ANOTHER BROKERAGE HOUSE?

17 A IT IS A COMPANY BASED IN DALLAS, THAT USED TO  
18 HAVE AN OFFICE HERE WHICH NO LONGER HAS AN OFFICE IN L.A.

19 Q HOW DO YOU KNOW THAT IT WAS ORIGINALLY SIMULATED  
20 AT RAUSCHER PIERCE?

21 A BECAUSE RON LEVIN TOLD ME. HE GAVE ME THE STATE-  
22 MENT. IT HAS RAUSCHER PIERCE ON IT WITH THE FIGURE.

23 IT WAS \$5,141,437.80.

24 Q WHEN HE GAVE THAT TO YOU, DID YOU THINK IT WAS --

25 A ACTUALLY, THEY HAD A SIMULATED OPEN POSITION.  
26 SO, WE JUST CLOSED IT OUT. HERE IS THE CLOSING.

27 THE CLOSING BALANCE WAS \$5,225,187.80.

28 Q THAT WAS THE SIMULATED CLOSING BALANCE?



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1           A       YES, SIMLULATED BALANCE AND WE ENTERED THAT INTO  
2 OUR COMPUTERS ON JULY 1ST OR JULY 2ND.

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1 Q AND WHAT HAPPENED AFTER MR. HUNT STARTED CALLING  
2 YOU AND ASKING YOU -- HE CALLED YOU AND ASKED YOU ABOUT THE  
3 POSITIONS IN THE MARKET?

4 A WELL, I GAVE HIM THE QUOTES AND WE DISCUSSED THE --  
5 YOU KNOW, THE MONEY MANAGEMENT POSITIONS AND THE DIRECTION.

6 Q WHAT DID YOU DISCUSS WITH HIM?

7 A WELL, I DISCUSSED WHETHER THE MARKET WAS GOING  
8 TO GO UP OR DOWN OR I THINK WE SPENT A LOT OF TIME TALKING  
9 ABOUT MONEY MANAGEMENT AS TO THE AMOUNT OF POSITIONS WE HAD  
10 IN RELATION TO THE AMOUNT OF CAPITAL, THAT IF THE MARKET FELL  
11 OFF SHARPLY, THE ACCOUNT -- IT WOULD BE ADVERSE AND THE  
12 ACCOUNT COULD BE WIPED OUT.

13 SO AT SOME POINT, WE STARTED LIQUIDATING  
14 POSITIONS.

15 Q WERE YOU GIVING MR. HUNT ADVICE SIMILAR TO WHAT  
16 YOU WOULD HAVE GIVEN AN ACTUAL CUSTOMER?

17 A YEAH.

18 Q WAS THAT FOR THE PURPOSE OF MAKING THIS AS REAL  
19 A SIMULATION AS YOU COULD POSSIBLY MAKE IT?

20 A TO TRY TO DO IT AS REAL AS I COULD.

21 Q WHAT WAS THE REASON THAT YOU ADVISED HIM TO SELL  
22 OFF POSITIONS?

23 A WELL, WE HAD 100 PERCENT OF THE CAPITAL IN MARGIN  
24 AND IF THE MARKET -- SINCE THE MARGIN REPRESENTED A SMALL  
25 PORTION OF 5 TO 10 PERCENT OF ACTUALLY WHAT WAS PURCHASED,  
26 THAT IF THE MARKET PRICE OF WHAT HE BOUGHT, SOLD OFF 10 OR  
27 20 PERCENT IN VALUE, THAT COULD WIPE OUT THE ENTIRE CAPITAL.

28 SO WHAT WE DID WAS TO LIQUIDATE. SAY, IF YOU

1 BOUGHT A HOUSE WORTH \$100,000. YOU PUT \$5,000 DOWN AND  
2 SOMETHING HAPPENED TO THE HOUSE AND IT WAS WORTH \$80,000,  
3 YOU ARE STILL RESPONSIBLE FOR THE MORTGAGE OF \$95,000.

4 SO, SOMEHOW YOU HAVE TO MAKE UP THE DIFFERENCE  
5 BETWEEN THE \$5,000 IN CASH. REAL ESTATE DOESN'T USUALLY WORK  
6 THAT WAY. BUT IN OTHER MARKETS, THE PRICE CAN GO DOWN.

7 SO, YOU HAVE TO HAVE MORE GOOD FAITH MONEY OR  
8 YOU WILL GET LIQUIDATED. IT IS CALLED A MARGIN CALL.

9 Q SO YOU WOULD BASICALLY ADVISE HIM TO SELL OFF  
10 SOME OF THE POSITIONS SO THAT HE WOULD HAVE SOME MONEY IN  
11 RESERVE IN CASE HE HAD A MARGIN CALL?

12 A YES.

13 Q DID HE TAKE THAT ADVICE?

14 A YES HE DID.

15 Q AND WHAT HAPPENED WHEN YOU SOLD OFF THE POSITIONS?

16 A THE MARKET DROPPED. AND WE WERE OKAY BECAUSE  
17 WE HAD LIQUIDATED SOME POSITIONS.

18 Q THE MARKET DROPPED BECAUSE YOU LIQUIDATED POSITIONS  
19 AND YOU HAD MONEY TO MEET THE MARGIN?

20 A IT DIDN'T DROP BECAUSE WE LIQUIDATED. BUT WHEN  
21 WE LIQUIDATED, THE ACCOUNT WAS IN A BETTER POSITION.

22 Q ALL RIGHT. AND --

23 THE COURT: WERE YOU GIVING HIM ADVICE AS TO WHAT TO  
24 BUY AND WHEN TO SELL?

25 THE WITNESS: YES. I WAS GIVING HIM SOME GENERAL ADVICE  
26 ABOUT MONEY MANAGEMENT AND THE QUANTITIES OF POSITIONS AND --

27 THE COURT: ARE YOU TALKING ABOUT MR. HUNT?

28 THE WITNESS: YES.

3  
1 Q BY MR. WAPNER: AND WHAT HAPPENED AFTER THOSE  
2 FIRST POSITIONS WERE LIQUIDATED AND THE ACCOUNT WAS OKAY?  
3 DID HE CONTINUE TO CALL YOU AND TO TRADE?

4 A YES. THEN THE MARKET RALLIED BACK AND ULTIMATELY,  
5 MOST OF THE POSITIONS -- NOT MOST, BUT ULTIMATELY, THE BOTTOM  
6 LINE IN THE ACCOUNT APPRECIATED AND WE MADE MONEY IN THAT  
7 ACCOUNT.

8 Q WHEN HE CONTINUED TO CALL YOU, DID YOU CONTINUE  
9 TO GIVE HIM THIS ADVICE AS TO WHAT TO DO AND HOW TO MANAGE  
10 THE ACCOUNT?

11 A WE DISCUSSED THE ACCOUNT FROM TIME TO TIME.

12 Q GENERALLY, WHEN HE WOULD CALL TO MAKE THE TRADES,  
13 HOW WOULD HE DO IT?

14 A HE WOULD USUALLY CALL ME UP AND ASK ME FOR A QUOTE.  
15 THEN WE WOULD TALK ABOUT THE DIRECTION OF THE MARKET. HE  
16 SAID WHAT HE WANTED TO DO.

17 I TOLD HIM WHAT I THOUGHT. AND THEN HE WOULD  
18 MAKE THE FINAL DECISION.  
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1. Q WHEN HE MADE THE FINAL DECISION --

2 A WHETHER TO BUY OR SELL.

3 Q WHEN HE MADE THE FINAL DECISION TO BUY OR SELL,  
4 HOW DID YOU HANDLE THAT? WHAT DID YOU DO?

5 A I TOOK A TICKET OUT AND I WROTE DOWN WHAT WE WANTED  
6 TO DO.

7 Q YOU DID THE SAME THING WITH HIM, TIME STAMPING  
8 IT AND GIVING HIM THE WORST PRICE WITHIN THE THREE TO FIVE-  
9 MINUTE PERIOD?

10 A THAT'S CORRECT.

11 Q YOU KEPT A RECORD OF ALL OF THOSE TRADES?

12 A YES I DID.

13 Q YOUR AGREEMENT WITH MR. LEVIN WAS THAT THIS WAS  
14 GOING TO GO ON FOR EIGHT WEEKS, IS THAT RIGHT?

15 A THAT'S CORRECT.

16 Q HOW LONG DID IT ACTUALLY CONTINUE?

17 A IT STARTED 6/28/83 AND ENDED 8/17/83 WHICH I  
18 BELIEVE, IS SIX OR SEVEN WEEKS.

19 Q WHAT HAPPENED TO END IT ON AUGUST THE 17TH, 1983?

20 A WHAT DO YOU MEAN WHAT HAPPENED?

21 Q HOW DID IT COME TO AN END AT THAT POINT?

22 A RON LEVIN CALLED ME UP AND SAID THAT WE WERE GOING  
23 TO STOP TRADING.

24 AND THEN JOE HUNT CALLED UP AND SAID THAT WE WERE  
25 GOING TO STOP TRADING BECAUSE WE ARE GOING TO USE THE MONEY  
26 FOR A REAL ESTATE TRANSACTION.

27 Q JOE HUNT TOLD YOU THAT?

28 A YES.

1 Q AND WHEN HE SAID THAT, DID YOU CONTINUE TO ADVISE  
2 HIM AS TO HOW MUCH MONEY WAS IN THE ACCOUNT AND WHETHER IT WAS  
3 MAKING OR LOSING MONEY?

4 A YES. I GAVE HIM THE FIGURES, ONCE WE GOT IT ON  
5 THE COMPUTER RUN. I GIVE HIM THE DAILY INFORMATION.

6 Q WERE THE STATEMENTS OR THE CONFIRMS, AS YOU CALL  
7 THEM, BEING GENERATED ON THAT ACCOUNT?

8 A YES.

9 Q DID YOU HAVE SOME ARRANGEMENT WITH THE PEOPLE  
10 AT CLAYTON BROKERAGE AS TO HOW THAT WAS SUPPOSED TO BE DONE,  
11 WHETHER BY COMPUTER OR OTHERWISE?

12 A IT WAS DONE BY HAND.

13 Q WHY WAS THAT?

14 A BECAUSE IT WAS NOT IN THE REAL SYSTEM AND IT  
15 COULDN'T BE DONE IN THE REAL WAY. SO, THEY TOOK THE  
16 CONFIRMS AND TYPED THEM UP AND SENT THEM OUT TO RON LEVIN.

17 Q AND THAT WAS TO THE ADDRESS WHICH HE HAD ON THE  
18 ORIGINAL ACCOUNT DOCUMENTS?

19 A YES.

20 Q WHICH WAS 9701 WILSHIRE BOULEVARD, 8TH FLOOR?

21 A YES.

22 Q AND DID YOU HEAR FROM RON LEVIN SHORTLY AFTER  
23 THE FIRST CONFIRM WAS SENT OUT?

24 A I HEARD FROM HIM. THE FIRST CONFIRMS WENT OUT  
25 AND IT SAID, "THIS IS A TEST SERIES," ON THE CONFIRM. IT  
26 SHOWED THAT THE ACCOUNT WAS SIMULATED AND NOT A REAL ACCOUNT.

27 AND HE CALLED ME UP AND HE WAS SCREAMING AND  
28 YELLING THAT WE WERE RUINING THE INTEGRITY OF HIS STORY AND

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1 WE WERE GOING TO RUIN THE WHOLE STORY.

2 I WAS NOT REAL CLEAR ON HOW IT WAS GOING TO RUIN  
3 THE WHOLE STORY. BUT HE SAID THAT IT WOULDN'T SHOW UP WELL  
4 ON THE CAMERA OR I CAN'T REMEMBER EXACTLY WHAT HE SAID BUT  
5 HE WAS VERY UPSET ABOUT IT.

6 Q SHOWING YOU ONE OF THE DOCUMENTS THAT IS PART  
7 OF PEOPLE'S 83, DO YOU SEE AT THE TOP THERE WHERE IT SAYS  
8 "TEST SERIES"?

9 A YES.

10 Q AT THE VERY TOP?

11 A AT THE TOP, IT SAYS "TEST SERIES, CLAYTON  
12 BROKERAGE." YES.

13 Q AND AFTER THIS STATEMENT WENT OUT, MR. LEVIN  
14 CALLED YOU UP?

15 A YEAH. AFTER HE HAD GOTTEN THIS -- THERE IS A  
16 TIME DELAY BETWEEN WHEN THE TRANSACTION IS DONE AND WHEN THEY  
17 GET THE STATEMENT.

18 IT MIGHT -- PROBABLY THE STATEMENT MIGHT HAVE  
19 BEEN MAILED OUT THE FIRST. HE MIGHT NOT HAVE GOTTEN THEM  
20 UNTIL THE FIFTH OR THE SEVENTH.

21 Q NOW, THE FIRST OF --

22 A JULY.

23 Q JULY OF 1983?

24 A JULY OF 1983.

25 Q NOW, WHEN MR. LEVIN CALLED YOU AND TALKED TO YOU  
26 ABOUT THE FACT THAT IT SAID "TEST" ON THERE, HOW WOULD YOU  
27 DESCRIBE HIS DEMEANOR?

28 A I WOULD SAY LIVID, VERY ANGRY.

1 Q AND WHAT DID HE WANT YOU TO DO ABOUT THAT?

2 A HE WANTED ME TO TAKE THAT OFF, TO HAVE NO "TEST  
3 SERIES" ON IT. HE SAID THAT IT WOULD VIOLATE THE INTEGRITY  
4 OF THE STORY.

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1 Q AFTER HE TOLD YOU THAT, WHAT DID YOU DO?

2 A WELL, I CALLED UP OUR COMPLIANCE PEOPLE IN ST.  
3 LOUIS AND THEY RELUCTANTLY AGREED TO DO IT.

4 Q AND SO THE STATEMENTS THAT WENT OUT AFTER THAT  
5 ONE DID NOT THEN HAVE THE STATEMENT "TEST SERIES" ON THEM?

6 A THAT'S CORRECT.

7 Q AND ON AUGUST THE 17TH AT THE TIME MR. HUNT SAID  
8 THAT THE MONEY WAS GOING TO BE USED IN A REAL ESTATE TRANS-  
9 ACTION, WHAT WAS THE BALANCE IN THE ACCOUNT?

10 A THE BALANCE IN THE ACCOUNT WAS \$13,997,448.86.

11 Q SO THERE WAS A PROFIT IN THAT ACCOUNT OF EIGHT  
12 MILLION DOLLARS?

13 A \$8,320,649.

14 THE COURT: YOU MEAN SIMULATED PROFIT, DON'T YOU?

15 THE WITNESS: THAT'S RIGHT.

16 (LAUGHTER IN THE COURTROOM.)

17 THE WITNESS: IT WAS ALL SIMULATED.

18 THE COURT: IF I USE THE WORD APOCRYPHAL, THAT WOULD  
19 BE CORRECT?

20 THE WITNESS: WELL, SIMULATED. AS LONG AS YOU DON'T  
21 SAY PHONY.

22 MR. WAPNER: THERE WEREN'T ANY REALLY -- THE ONLY  
23 COMMISSIONS ON THIS ACCOUNT WERE SIMULATED OR APOCRYPHAL.

24 THE WITNESS: SIMULATED COMMISSIONS. I DID NOT GET  
25 PAID ANY REAL COMMISSION. ALL SIMULATED, YES.

26 Q BY MR. WAPNER: ON THE 17TH OF AUGUST OF 1983,  
27 AT THAT TIME DID YOU TELL JOE HUNT THAT IT WASN'T A REAL  
28 ACCOUNT?

1 Q WHAT HAPPENED AFTER HE SAID THAT IT PLAYED BACK  
2 EAST?

3 A WELL, YOU KNOW, I SAID THAT AT THAT POINT, THAT  
4 YOU KNOW, THAT THE MONEY IS NOT REAL, DON'T YOU KNOW?

5 Q WHAT DID HE SAY?

6 A HE SAID YEAH, I KNOW.

7 THE COURT: WHEN DID HE SAY THAT, NOW?

8 THE WITNESS: THAT WAS -- I AM NOT SURE EXACTLY WHEN  
9 IT WAS. IT WAS AFTER THAT -- IT WAS AT LEAST TWO TO FOUR  
10 WEEKS AFTER THE ACCOUNT WAS TRADED. IT WAS SEPTEMBER OR  
11 OCTOBER.

12 I AM PRETTY SURE IT WAS BEFORE THANKSGIVING.

13 THE COURT: 1983?

14 THE WITNESS: 1983. WE ARE STILL IN 1983. I CAN'T  
15 REMEMBER THE EXACT DATE.

16 Q BY MR. WAPNER: AND AFTER YOU SAID THAT TO  
17 MR. HUNT, DID YOU HEAR FROM MR. LEVIN?

18 A I HEARD FROM MR. LEVIN THAT NIGHT.

19 Q THAT SAME NIGHT?

20 A I WAS IN MY OFFICE WORKING LATE. I HEARD FROM  
21 LEVIN.

22 HE SAID THAT JOE HUNT WAS OVER THERE. HE WAS  
23 SCREAMING AND YELLING AT ME.

24 Q WHO WAS SCREAMING AND YELLING AT WHO?

25 A RON LEVIN WAS SCREAMING AND YELLING AT ME.

26 Q WHAT WAS HE SCREAMING ABOUT?

27 A HE SAID HE WANTED TO KNOW WHAT RIGHT I HAVE TO  
28 VIOLATE HIS CONFIDENTIALITY.

2A-3  
1 Q TO VIOLATE LEVIN'S CONFIDENTIALITY?

2 A HE WANTED TO KNOW WHAT RIGHT DID I HAVE TO  
3 VIOLATE HIS CONFIDENTIALITY AND TALK ABOUT HIS BUSINESS AND  
4 HIS MONEY WITH JOE HUNT.

5 Q WHAT DID YOU SAY?

6 A I SAID FIRST OF ALL, I DIDN'T VIOLATE ANYBODY'S  
7 CONFIDENTIALITY BECAUSE IN ORDER TO VIOLATE CONFIDENTIALITY,  
8 THERE HAS TO BE REAL MONEY AND A REAL ACCOUNT.

9 AND I SAID THAT SINCE THIS MONEY WAS NOT REAL,  
10 IT WAS NOT A REAL ACCOUNT AND I DIDN'T VIOLATE HIS  
11 CONFIDENTIALITY.

12 SECONDLY, THAT IT WAS OUR AGREEMENT THAT WHEN  
13 THE TRADING WAS OVER, I AM SUPPOSED TO TELL HIM THAT IT IS  
14 NOT REAL. IT WAS STRICTLY FOR THE PURPOSES OF TRADING AND  
15 THAT IS WHAT I SAID.  
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1 Q AND WHAT DID HE SAY?

2 A WELL, HE STILL WAS SCREAMING AND YELLING ABOUT  
3 HOW I VIOLATED HIS CONFIDENTIALITY AND I HAD NO RIGHT TO TALK  
4 ABOUT IT, YOU KNOW.

5 BUT WE GOT VERY -- THE LANGUAGE GOT VERY BASE.  
6 HE CALLED ME A FEW NAMES. I CALLED HIM A FEW  
7 NAMES. AND HE THREATENED ME.

8 I SAID -- I TOLD HIM, I SAID, "PLEASE DON'T  
9 THREATEN ME."

10 I SAID THAT AS FAR AS I WAS CONCERNED, MY BUSINESS  
11 WITH HIM IS THROUGH AND COMPLETED.

12 I SAID THAT I HAD NOTHING TO TALK TO HIM ABOUT.  
13 HE SAID THAT I WOULD BE HEARING FROM HIS ATTORNEYS.

14 Q DID YOU HAVE ANY FURTHER CONTACT WITH HIM AFTER  
15 THAT?

16 A I NEVER HEARD FROM HIM AGAIN.

17 THE COURT: THE LAST TIME, WHEN WAS THIS NOW, THE LAST  
18 TIME YOU SPOKE TO HIM?

19 THE WITNESS: IT WAS BEFORE THANKSGIVING. I BELIEVE  
20 IT WAS IN OCTOBER.

21 IT COULD HAVE BEEN SEPTEMBER. I AM REALLY NOT  
22 SURE.

23 I AM SORRY TO BE SO VAGUE. I JUST CAN'T REMEMBER.  
24 I KNOW IT WAS BEFORE THANKSGIVING. THAT IS THE ONLY THING  
25 I CAN REMEMBER.

26 I KNOW THAT IT WAS AFTER THE TRADING WAS DONE,  
27 AT LEAST TWO TO THREE WEEKS AFTER THE TRADING WAS DONE AND  
28 BEFORE THANKSGIVING.

1                    THAT IS THE BEST OF MY RECOLLECTION THAT I CAN  
2 SAY. IT WAS DEFINITELY IN THE FALL, THOUGH.

3                    Q        AND THE DAY THAT YOU HAD THIS CONVERSATION OR  
4 THE EVENING THAT YOU HAD THIS CONVERSATION WITH MR. LEVIN,  
5 IT WAS THE EVENING OF THE SAME DAY THAT YOU HAD TOLD JOE HUNT  
6 THAT THE MONEY WAS NOT REAL?

7                    A        YES.

8                    Q        AND HOW MUCH TIME ELAPSED BETWEEN THE TIME YOU  
9 TOLD HUNT THAT THE MONEY WAS NOT REAL AND YOU HEARD FROM  
10 MR. LEVIN?

11                   A        IT IS HARD TO SAY. IT WAS A GOOD PERIOD OF TIME.  
12 IT WAS AT LEAST FOUR OR FIVE HOURS AND MAYBE MORE.

13                   Q        AND ARE THOSE STATEMENTS, THESE CONFIRMS THAT  
14 ARE PEOPLE'S 83, THE STATEMENTS THAT WERE GENERATED ON THE  
15 ACCOUNT THAT YOU TOLD US ABOUT?

16                   A        THEY LOOK LIKE THE STATEMENTS.

17                   Q        AND THOSE ARE IN FACT, TYPED, IS THAT CORRECT?

18                   A        YES THEY ARE.

19                   MR. WAPNER: I THANK YOU. NOTHING FURTHER.

20                   MR. BARENS: I AM A LITTLE BREATHLESS FROM ALL THIS  
21 MONEY, YOUR HONOR.

22  
23                                   CROSS-EXAMINATION

24 BY MR. BARENS:

25                   Q        MR. FRIEDMAN, WE'LL TRY TO GO IN THE SAME ORDER  
26 WHICH WE DID BEFORE.

27                   DID LEVIN TELL YOU HOW HE HAPPENED TO CONTACT  
28 YOU IN THE FIRST INSTANCE?

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1 Q THE REST OF THEM APPEAR TO BE ALL NORMAL LOOKING,  
2 LEGITIMATE APPEARING STATEMENTS?

3 A THAT'S RIGHT.

4 THE COURT: DID YOU EVER SEND ANY OF THOSE STATEMENTS  
5 TO MR. HUNT?

6 THE WITNESS: NO.

7 THE COURT: HE NEVER SAW WHETHER IT HAD "TEST SERIES"  
8 ON IT OR NOT?

9 THE WITNESS: AS FAR AS I KNOW, HE NEVER SAW IT.

10 THE COURT: LET'S GET ON, WILL YOU PLEASE?

11 MR. BARENS: THANK YOU.

12 Q THE VERY POINT IS THAT MR. HUNT NEVER DID SEE  
13 THOSE WORDS "TEST SERIES"?

14 A I DON'T KNOW THAT.

15 Q YOU NEVER MAILED MR. HUNT ANYTHING THAT SAID  
16 "TEST SERIES" OR "TEST" ON ANYTHING?

17 THE COURT: YOU DIDN'T MAIL HIM ANYTHING?

18 THE WITNESS: I NEVER MAILED HIM ANYTHING.

19 Q BY MR. BARENS: OKAY. NOW, WHEN LEVIN CALLED  
20 YOU TO PROTEST THE EXPRESSION ON THERE ABOUT THE TEST SERIES,  
21 DID HE SAY WHY HE WAS PROTESTING?

22 A YES.

23 Q AND THE REASON THAT HE AT LEAST SAID, WAS --

24 A IT WOULD RUIN THE INTEGRITY OF THE STORY.

25 Q WHAT DID THAT MEAN TO YOU?

26 A HE FELT THAT IT WOULDN'T -- WHAT HE FIRST TOLD  
27 ME WAS THAT IT WOULDN'T SHOW UP GOOD ON THE CAMERAS.

28 AND HE DIDN'T WANT TO RUIN THE EMOTIONALISM OF

-6  
1 THE TRADING, WHILE IT WAS GOING ON.

B  
2 Q DID IT EVER OCCUR TO YOU THAT BY DELETING THAT  
3 REFERENCE ON THE PAGE -- ON THE PAGE, THAT ANY THIRD PERSON  
4 LOOKING AT THE STATEMENTS LEVIN CAME INTO POSSESSION OF,  
5 WOULD BELIEVE THAT THEY WERE LEGITIMATE?

6 A IT IS POSSIBLE. IT IS POSSIBLE THAT THAT WOULD  
7 HAPPEN.

8 AND THAT IS WHY WE ASKED HIM TO INDEMNIFY US  
9 AGAINST ANY LOSS, IF SOMETHING DID HAPPEN.

10 Q THE INDEMNITY --

11 A AND HE WAS SUPPOSED TO CLEAR THAT UP AT THE END  
12 OF THE TRADING FOR THIS STORY.

13 Q BUT THEN IN BETWEEN TIMES, YOU REALIZED THAT  
14 THE FIRM RAN A RISK THAT A THIRD PARTY VIEWER OF THAT PAPER  
15 WORK, COULD BELIEVE THAT IT WAS TRUE?

16 A I DON'T KNOW WHAT THE RISK WOULD BE.

17 Q IS THAT WHY YOU SOUGHT AN INDEMNIFICATION, HOWEVER?

18 A WE SOUGHT AN INDEMNIFICATION IF, LIKE FOR  
19 INSTANCE, HE CALLED UP AND HE GAVE AN ORDER TO SOMEBODY AND  
20 THEY PUT IT IN FOR REAL ONE DAY AND THEN WE WERE ACTUALLY  
21 LONG 500 CONTRACTS IN AN ACCOUNT THAT HAD NO MONEY IN IT  
22 OR IF PEOPLE OPEN UP AN ACCOUNT BASED ON THIS AND THE TRADING  
23 WAS DONE AND MONEY WAS LOST, BASED UPON THIS ACCOUNT MAKING  
24 MONEY, THAT IS WHY I TRIED TO KEEP THE INTEGRITY OF THE  
25 SIMULATION REAL, SO IF THERE HAD BEEN REAL MONEY, THAT THE  
26 ACTUAL TRADING -- THIS IS THE ACTUAL TRADING THAT WOULD HAVE  
27 OCCURRED.

28 Q AND --

6-3

1 NETWORK NEWS WAS THE COMPANY THAT WAS INDEMNIFYING  
2 US AND HE WAS REPRESENTING THEM.

3 Q DID YOU CHECK THE FINANCIAL ASSETS OF NETWORK  
4 NEWS?

5 A NO. I THOUGHT THAT THEY WERE NETWORK NEWS.  
6 JUST LIKE RIGHT NOW OUTSIDE IN THE CORRIDOR,  
7 THE GUY WAS SITTING THERE WITH A CART THAT SAID "STOLEN FROM  
8 NETWORK NEWS," ON HIS CART.

9 SO, I DON'T KNOW IF THAT WAS RON LEVIN'S CART.  
10 I ASKED HIM IF HE WAS FROM THE POOL HERE AND  
11 I ASKED WHERE IS THAT CART FROM?

12 HE SAID THAT IT WAS FROM NETWORK NEWS.

13 I SAID -- I ASKED WHAT IS NETWORK NEWS AND HE  
14 SAID THAT IT WAS ABC.

15 BUT, I SAW THE CART AND THE MAN AND I CAN LOOK  
16 AT IT AND I ASKED HIM.

17 SO TO ME, NETWORK NEWS AS I HAVE SAID BEFORE --  
18 I ADMIT THAT I WAS COMPLETELY CONNED AND FOOLED. I ABSOLUTELY  
19 WAS CONNED BY RON LEVIN INTO BELIEVING THAT HE WAS INDEPENDENT  
20 NETWORK NEWS, WHICH IS WHAT I SEE ON CHANNEL 13 AND CHANNEL  
21 5. THAT IS WHO I THOUGHT IT WAS.

22 Q AND AGAIN, THE APPEARANCE OF RON LEVIN AND WHO  
23 HE WAS AND WHAT HE WAS AND WHO HE WAS IN REALITY, YOU GOT  
24 CONNED?

25 A RIGHT NOW I UNDERSTAND IT, YEAH, I UNDERSTAND  
26 THAT NOW.

27 Q OKAY. BUT YOU WERE TOTALLY CONNED IN THE TIME  
28 YOU ENTERED INTO THIS TRANSACTION, THAT HE WAS FOR REAL?



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1 A HE APPEARED FOR REAL, YEAH.

2 Q HE APPEARED TO BE? THAT IS INTERESTING.

3 ALL RIGHT. NOW, DID YOU EVER TRADE ON THE FLOOR  
4 IN NEW YORK IN COMMODITIES?

5 A NO.

6 Q OR CHICAGO?

7 A NO.

8 Q YOU HAD NO FLOOR EXPERIENCE, SIR?

9 A NO.

10 Q THE TIME STAMP WHEN YOU HAVE A CUSTOMER CALL  
11 IN -- STRIKE THAT.

12 WHEN YOU HAVE FOR INSTANCE, HUNT CALLING IN AND  
13 DOING THAT TRADE ACTIVITY WITH YOU, YOU HIT A TIME STAMP  
14 SIMULTANEOUSLY, DO YOU NOT, ALMOST?

15 A WELL, THERE ARE ACTUALLY TWO STAMPS.

16 THE FIRST ONE IS WHEN YOU GET THE ORDER. AND  
17 THE SECOND ONE IS WHEN YOU PUT THE ORDER IN.

18 Q AND YOU HAVE THIS TIME STAMP DEVICE IN CLOSE  
19 PROXIMITY TO YOUR TELEPHONE, DO YOU NOT, SIR?

20 A YES, SIR.

21 Q AND SO WHILE THE REPRESENTATIVE OR MR. HUNT  
22 IS ON THE PHONE TALKING TO YOU, THEY ACTUALLY HEAR THAT TIME  
23 STAMP CLICKING IN THE -- OR CLICK MAY NOT BE THE RIGHT WORD,  
24 BUT IT GOES BOOM IN THE BACKGROUND?

25 A YES.

26 Q OKAY. SO AGAIN, WHEN I AM CALLING UP TRANSACTING  
27 WITH YOU AND I SAY, "GIVE ME 1,000 CONTRACTS OF SWISS FRANCS,"  
28 AND YOU SAY OKAY, WHILE WE ARE ON THE PHONE, I HEAR IT BOOMING?

1 A RIGHT.

2 Q OKAY. AND DID YOU DO THAT IN THAT INSTANCE,  
3 DID YOU NOT, SIR?

4 A RIGHT.

5 Q A FURTHER ENHANCEMENT OF REALITY, SIR?

6 A YES.

7 Q NOW, YOU MADE REFERENCE TO THE RAUSCHER PIERCE  
8 ACCOUNT. THAT WAS WHAT FORMED THE BASIS FOR THE ACCOUNT  
9 YOU OPENED?

10 A I DON'T UNDERSTAND WHAT YOU MEAN.

11 Q WELL, YOU TOLD US THAT YOU -- WHAT I AM GOING  
12 TO CALL THE FIGURES THAT YOU GOT FOR THE INCEPTION OF THIS  
13 ACCOUNT, CAME FROM RAUSCHER PIERCE?

14 A NO. RON LEVIN HANDED ME A STATEMENT FROM RAUSCHER  
15 PIERCE.

16 Q DID YOU EVER CALL THOSE FOLKS?

17 A NO.

18 Q HOW DO YOU KNOW THAT THAT WAS A SIMULATED ACCOUNT  
19 AT RAUSCHER PIERCE?

20 A WELL, I DID CALL THEM. BUT I DIDN'T CALL THEM  
21 THEN AND THERE.

22 Q LATER, YOU CALLED THEM AND ASKED THEM ABOUT THEIR  
23 SIMULATION?

24 A RIGHT.

25 Q AND WHAT DID THOSE FOLKS TELL YOU?

26 A THEY SAID THAT IT WAS NOT -- IT WAS SIMULATED.  
27 IT WAS NOT REAL.

28 Q AND DID THEY TELL YOU THEY WERE DOING A MOVIE

1 Q SO IT WAS EVIDENT TO YOU THAT LEVIN HAD BEEN DOING  
2 THIS ACTIVITY SOMEWHERE ELSE AND NOW WAS DOING THIS ACTIVITY  
3 WITH YOU?

4 A WHAT LEVIN TOLD ME WAS THAT WHEN HE BOUGHT, HE  
5 MADE HIS BUY AND SELL DECISIONS OVER THERE, THEY WOULD GIVE  
6 HIM VARIOUS PRICES. THEY WOULD SAY YOU BOUGHT 50 AT THIS  
7 PRICE, 20 AT THIS PRICE, 30 AT THIS PRICE AND WOULD GIVE HIM  
8 VARIOUS PRICES. AND HE WOULD SAY, "ALL I WANT IS ONE PRICE"  
9 AND THEY WOULD SAY "IT IS NOT REALISTIC BECAUSE YOU PUT IN  
10 THE ORDER AND YOU GET VARIOUS PRICES."

11 SO I SAID, "OKAY, I WILL GIVE YOU ONE PRICE BUT  
12 I AM GOING TO GIVE YOU THE WORST PRICE."

13 Q NOW YOU ARE MENTIONING THAT YOU GAVE REAL ADVICE  
14 TO MR. HUNT WHEN HE CALLED?

15 A YES.

16 Q DID YOU GENTLEMEN ACTUALLY HAVE DEALINGS TOGETHER  
17 WHERE HE WOULD GIVE INPUT IN THE CONVERSATION AND YOU WOULD  
18 GIVE INPUT IN THE CONVERSATION?

19 A YES.

20 Q DID HE SEEM TO BE WILLING TO LISTEN TO YOUR INPUT?

21 A YES, HE WAS WILLING. HE TALKED. HE WAS WILLING  
22 TO LISTEN TO MY CONVERSATION.

23 Q IT WAS KIND OF AN EQUAL EXCHANGE?

24 A YES.

25 Q DID YOU EVER HAVE ANY DISAGREEMENTS?

26 A I DON'T -- I DON'T KNOW WHAT YOU MEAN BY  
27 DISAGREEMENTS.

28 Q WHERE HIS OPINION ON AN INVESTMENT OR A POTENTIAL

-2  
1 INVESTMENT WOULD DIFFER FROM YOUR OWN?

2 A YES.

3 Q AND WHEN YOU HAD THOSE DIFFERENCES OF OPINION,  
4 WOULD SOMETIMES YOU FOLLOW YOUR POINT OF VIEW AND SOMETIMES  
5 YOU WOULD FOLLOW HUNT'S POINT OF VIEW?

6 A I SAID BASICALLY THAT MOST OF THE INPUT THAT I  
7 GAVE HIM RELATED TO MONEY MANAGEMENT MORE THAN ACTUAL MARKET  
8 DECISIONS.

9 Q WHEN YOU WOULD DISAGREE ON AN OPINION, WOULD HE  
10 KIND OF FORCE YOU DOWN AND --

11 A WE DIDN'T DISAGREE IN THAT RESPECT.

12 I WOULD SAY "LOOK, YOU HAVE SO MUCH MARGIN HERE.  
13 IF THE MARKET DROPS, YOU ARE GOING TO GET WIPED OUT SO YOU  
14 OUGHT TO LIQUIDATE OR MAYBE YOU OUGHT TO SELL SOME OFF OR  
15 MAYBE YOU OUGHT TO WAIT BEFORE YOU BUY."

16 Q DID HE --

17 A I DIDN'T CALL UP AND SAY "PORK BELLIES LOOK LIKE A  
18 GOOD BUY TODAY," BECAUSE HE WAS TRADING TREASURY BILLS AND  
19 EURO-DOLLARS AND HE WAS DOING A CERTAIN WAY OF TRADING SO  
20 I WAS TRADING TO ENHANCE A CERTAIN WAY OF TRADING, RATHER  
21 THAN BE IN COMPETITION WITH HIM.

22 Q SURE.

23 IN ANY INSTANCES WHERE YOU HAD A POSITION OF  
24 DIFFERENCE WITH MR. HUNT, WOULD MR. HUNT SEEM OPEN-MINDED  
25 IN LISTENING TO YOUR POINT OF VIEW?

26 A YEAH.

27 THE COURT: PARDON ME. WILL YOU BE MUCH LONGER?

28 MR. BARENS: I WOULD BE, YOUR HONOR.

3  
1 MR. WAPNER: COUNSEL, MAY WE HAVE AN AGREEMENT ON THESE,  
2 AS WE HAD WITH THE OTHER DOCUMENTS, THAT COPIES MAY BE MADE  
3 AND ORIGINALS RETURNED TO THE WITNESS?

4 MR. BARENS: YES.

5 (PAUSE.)

6 MR. WAPNER: WE HAD MR. FRIEDMAN ON THE STAND.

7 THE COURT: GET HIM BACK IN.

8  
9 JACK FRIEDMAN,  
10 CALLED AS A WITNESS BY THE PEOPLE, HAVING BEEN PREVIOUSLY  
11 SWORN, RESUMED THE WITNESS STAND AND TESTIFIED FURTHER AS  
12 FOLLOWS:

13 THE CLERK: YOU HAVE BEEN PREVIOUSLY SWORN. YOU ARE  
14 STILL UNDER OATH. JUST HAVE A SEAT AND STATE YOUR NAME AGAIN  
15 FOR THE RECORD.

16 THE WITNESS: JACK FRIEDMAN, F-R-I-E-D-M-A-N.

17  
18 CROSS-EXAMINATION (CONTINUED)

19 BY MR. BARENS:

20 Q MR. FRIEDMAN, YOU LEFT OFF I BELIEVE WHEN WE WERE  
21 TALKING ABOUT THE EXCHANGES YOU HAD WITH MR. HUNT IN PROVIDING  
22 INVESTMENT COUNSELING OR PARTICIPATION IN DECISION-MAKING  
23 FOR THE BUSINESS MANAGEMENT OF THE ACCOUNT AT CLAYTON  
24 BROKERAGE, IS THAT CORRECT?

25 A YES, SIR.

1 Q AND IN THOSE DISCUSSIONS, WERE YOU GIVING MR. HUNT  
2 REAL ADVICE?

3 A THE ADVICE I GAVE HIM PERTAINED TO MONEY MANAGEMENT  
4 AND WHAT I THOUGHT ABOUT A PARTICULAR MARKET THAT HE WAS IN  
5 OR THINKING OF GETTING INTO.

6 IN OTHER WORDS, I DIDN'T STRAY AWAY FROM ANYTHING  
7 THAT HE WASN'T ALREADY IN.

8 THE MARKETS HE WAS IN WAS THE TREASURY BOND  
9 MARKET, AND SWISS FRANCS.

10 IF HE WAS THINKING OF BUYING THE BONDS, WE WOULD  
11 TALK ABOUT THAT AND SAY, "MAYBE THIS IS NOT A GOOD TIME TO  
12 BUY THEM."

13 OR IF HE WAS LONG ON THE BONDS, I WOULD SAY "MAYBE  
14 IT IS TIME TO SELL THEM."

15 AND SOMETIMES HE TOOK MY ADVICE. SOMETIMES, HE  
16 DIDN'T.

17 BUT MY PARTICULAR -- MY REALLY STRONG ADVICE THAT  
18 I GAVE HIM WAS TO THE NATURE OF HIS MONEY MANAGEMENT WHICH  
19 WAS -- THE ACCOUNT WAS TREMENDOUSLY OVER-MARGINED MOST OF  
20 THE TIME.

21 Q AND WHEN YOU GAVE HIM THE INPUT THAT YOU PROVIDED  
22 IN THOSE DIALOGUES, YOU WERE GIVING HIM REAL ADVICE RATHER  
23 THAN SIMULATED ADVICE, LET'S SAY?

24 A WELL, IT WAS REAL ADVICE ON SIMULATED MONEY.

25 Q RIGHT.

26 AND THE ADVICE YOU WERE PROVIDING WASN'T SOMETHING  
27 YOU WERE MAKING UP. YOU WERE DOING IT TYPICALLY LIKE YOU  
28 WOULD HAVE IN ANY ANALOGOUS SETTING, YOU WERE GIVING REAL

1       ADVICE OR REAL WORLD ADVICE, LET'S SAY?

2           A       RIGHT. I HAD A REAL INTEREST IN THIS ACCOUNT  
3       MAKING MONEY. I DIDN'T WANT TO GO ON TELEVISION AND SAY "WE  
4       JUST LOST \$5 MILLION." IF YOU WANT TO TRADE THE MARKET --

5                   I DIDN'T THINK THAT THAT WOULD BE IN MY BEST  
6       INTEREST SO I WAS PLAYING TO WIN.

7           Q       YOU BET.

8           A       SO WE COULD GET UP THERE AND SAY THAT WE MADE  
9       MONEY TRADING THE MARKET.

10          Q       YOU BET.

11                   LATER ON, YOU TESTIFIED THAT WHEN THE TRANSACTION  
12       CAME TO AN END SOMETIME IN AUGUST OF 1983 THAT HUNT INDICATED  
13       TO YOU THAT THE MONEY WAS GOING TO BE INVESTED IN A REAL  
14       ESTATE TRANSACTION?

15          A       YES.

16          Q       DID HE SAY WHERE HE GOT THE INFORMATION OR DID  
17       HE JUST SAY THAT?

18          A       HE SAID A COUPLE OF DIFFERENT THINGS AT DIFFERENT  
19       TIMES.

20                   YOU KNOW, I DIDN'T PAY A LOT OF ATTENTION TO IT  
21       BECAUSE I MEAN I KNEW THERE WASN'T ANY MONEY TO INVEST.SO  
22       IT DIDN'T REALLY MATTER.

23          Q       YOU DIDN'T CORRECT HUNT WHEN HE MADE THAT REMARK,  
24       DID YOU?

25          A       NOT AT THAT TIME.

26          Q       SO WHEN HE SAID TO YOU, WHEN HE EXPRESSED A BELIEF  
27       THAT THE MONEYS WERE TO BE INVESTED IN REAL ESTATE, YOU JUST  
28       SHINED IT ON, MR. FRIEDMAN?

1 Q SURE. AFTER THAT, SHORTLY THEREAFTER, LEVIN CALLED  
2 YOU UP SCREAMING?

3 A YES. THAT NIGHT.

4 Q AND THAT WAS IN A MATTER OF HOURS OF YOUR  
5 DISCUSSION WITH HUNT?

6 A IT WAS ON THE SAME DAY FROM THE AFTERNOON TO  
7 THE EVENING. YES.

8 Q AND HE WAS SCREAMING OSTENSIVELY BECAUSE YOU  
9 HAD TOLD HUNT THE TRUTH ABOUT THE NATURE OF THE ACCOUNT?

10 A YES.

11 Q AND WHAT WAS HE SAYING TO YOU IN THAT CONVERSATION,  
12 SIR?

13 A WHAT HE SAID WAS THAT I HAD NO RIGHT TO VIOLATE  
14 HIS CONFIDENTIALITY. THAT IS ALMOST EXACTLY WHAT HE SAID.

15 Q AND THAT IN CONTEXT, HE WAS MAKING REFERENCE  
16 TO -- IT WAS YOUR SENSE; TO YOUR HAVING TOLD HUNT THAT THE  
17 ACCOUNT WAS LESS THAN WHAT IT APPEARED TO BE?

18 A YES.

19 Q AND HE WAS UPSET WITH YOU BECAUSE YOU HAD DONE  
20 THAT?

21 A YES.

22 Q YOU SAY THAT HE THREATENED YOU DURING THAT  
23 CONVERSATION?

24 A WELL, HE DIDN'T THREATEN ME PHYSICALLY. HE  
25 THREATENED THAT HIS LAWYERS WERE GOING TO COME IN AND HE  
26 WAS GOING TO COME AFTER ME FOR VIOLATING HIS CONFIDENTIALITY.

27 Q WAS HE GOING TO FILE A SIMULATED LAWSUIT OR WHAT  
28 DID HE SAY?



1 NOT DO THAT, WOULD YOU NOT USE 50 PERCENT OF THE MONEY FOR  
2 A MARGIN ACCOUNT THIS SIZE, YOU WOULDN'T PUT MORE THAN 10  
3 OR 20 PERCENT IN ANY ONE PARTICULAR MARKET.

4 Q BY MR. WAPNER: MEANING YOU WOULDN'T PUT MORE  
5 THAN 10 TO 20 PERCENT IN SWISS FRANCS AS OPPOSED TO SOMETHING  
6 ELSE?

7 A RIGHT.

8 BUT THERE ARE SOME PEOPLE THAT DON'T DO THAT.

9 IT IS CUSTOMARY GOOD MONEY MANAGEMENT AND THESE  
10 WERE SOME OF THE THINGS THAT WE DID DISCUSS.

11 Q AND APPARENTLY THAT DISCUSSION FELL ON DEAF EARS?

12 A NO. HE WAS RESPONSIVE.

13 IT PROBABLY SAVED THE ACCOUNT ON THE 20TH WHEN  
14 WE LIQUIDATED THE SWISS FRANCS, IT WAS ON THE 15TH AND THE  
15 20TH AND THE SWISS FRANCS COLLAPSED RIGHT AFTER THAT. WE  
16 STAYED LONG ABOUT 50 CONTRACTS AND IF WE HADN'T DONE THAT,  
17 THE ACCOUNT WOULD HAVE BEEN WIPED COMPLETELY OUT BECAUSE IT  
18 STARTED OUT AT 5 MILLION AND DROPPED TO UNDER A MILLION.

19 Q IT STARTED OUT WITH 5 MILLION IN THIS ACCOUNT?

20 A YES, AND BY THE END OF JULY THE ACCOUNT HAD  
21 ACTUALLY GONE DOWN UNDER A MILLION DOLLARS.

-1  
1 Q IT DROPPED FROM \$5 MILLION TO A MILLION DOLLARS?

2 A AS I WAS LOOKING, IT HAS BEEN A WHILE SINCE I  
3 LOOKED AT IT SO I WENT OVER THE STUFF THIS WEEKEND.

4 THE COURT: WHAT DO YOU MEAN, UNDER A MILLION?

5 THE WITNESS: WELL, THE VALUE OF THE ACCOUNT, IT WENT  
6 FROM \$5 MILLION TO UNDER A MILLION DOLLARS TO UP TO \$13 MILLION.

7 THE COURT: WHAT DO YOU MEAN UNDER A MILLION, LESS THAN  
8 A MILLION?

9 THE WITNESS: YES, LESS THAN A MILLION DOLLARS.

10 IF YOU LIQUIDATED THE ACCOUNT AT CERTAIN POINTS,  
11 IT CAME CLOSE TO BEING WIPED OUT COMPLETELY.

12 Q BY MR. WAPNER: AND GOING FROM 5 MILLION -- HOW  
13 LONG DID IT TAKE TO GO FROM THE 5 MILLION TO UNDER A MILLION?

14 A I THINK IT WAS RIGHT AROUND THE BEGINNING OF JULY,  
15 LET'S SEE, ON JULY 25TH, THE ACCOUNT VALUE WAS -- IT IS HARD  
16 TO SAY BECAUSE WE HAD SOME OPTION PREMIUMS -- BUT IT WAS AROUND  
17 A MILLION THREE HUNDRED EIGHTY-SIX THOUSAND DOLLARS.

18 Q AND THE ACCOUNT HAD BEEN OPERATING APPROXIMATELY  
19 A MONTH THEN AT THAT POINT?

20 A YES.

21 Q BECAUSE IT STARTED ON JUNE 28, RIGHT?

22 A THAT'S CORRECT.

23 AND THEN ON THE 27TH, THE EQUITY WAS ABOUT  
24 992,095.

25 Q ON THE 27TH OF JULY?

26 A JULY.

27 Q AND HOW DID IT GO BACK UP FROM THERE UP TO THE  
28 13 MILLION?

1 A AND IT STARTED COMING BACK, I THINK, ON AUGUST  
2 THE 2ND, IT WAS \$462,000 -- IT IS A LITTLE MORE THAN THAT,  
3 BECAUSE WE HAD SOME OPTION PREMIUMS.

4 WHEN YOU BUY OPTIONS, IT IS NOT COUNTED IN YOUR  
5 EQUITY AND THEN HE PUT ON A LOT OF BONDS AND THE ACCOUNT  
6 STARTED TO COME BACK.

7 I THINK ABOUT AUGUST THE 11TH, IT WAS WORTH ABOUT  
8 2 MILLION AGAIN. THEN FROM AUGUST THE 11TH TO THE 12TH, IT  
9 JUMPED FROM 2 MILLION TO 5 MILLION.

10 Q IN ONE DAY?

11 A OVERNIGHT.

12 Q WOULD YOU SAY THAT COMMODITIES ARE FAIRLY  
13 VOLATILE; IS IT A FAIRLY VOLATILE MARKET?

14 A IT IS DEFINITELY NOT FOR THE FAINTHEARTED. I MEAN  
15 IT IS NOT FOR THE FAINTHEARTED, NO DOUBT ABOUT THAT.

16 AND THEN ON THE 15TH, IT JUMPED TO -- WHICH WAS  
17 THE WEEKEND -- I THINK THE 12TH WAS A FRIDAY. IT WENT FROM  
18 \$4,899,000 TO \$9 MILLION. IT HAD A BIG JUMP IN THOSE TWO,  
19 THREE DAYS.

20 THAT IS WHAT I WAS TRYING TO EXPLAIN WHEN I PUT  
21 THOSE POSITIONS ON THE MARKET FOR LEVIN THAT DAY, YOU KNOW,  
22 THE NEXT DAY I COULD HAVE BEEN WIPED OUT, YOU KNOW, WITH THAT  
23 BAD CHECK.

24 Q YOU ARE NOW USING THE EXAMPLE OF MR. LEVIN?

25 A RIGHT.

26 Q HIS QUOTE, UNQUOTE REAL ACCOUNT?

27 A HIS --

28 Q THE REAL ACCOUNT AT THE END?

1           A       HIS REAL ACCOUNT VERSUS THE ACCOUNT THAT WASN'T  
2 REAL.

3           Q       AS AN EXAMPLE OF WHAT COULD HAVE HAPPENED TO YOU?

4           A       THAT'S CORRECT.

5                SO THEN ON THE 16TH, IT WAS \$9,600,000.

6                ON THE 17TH, IT JUMPED TO 15 MILLION.

7                WE HAD A PRETTY GOOD SURGE IN THE MARKET SO IT  
8 WENT FROM --

9                I THINK I REMIND HIM OF HIS BROKER.

10               IT WENT FROM 5 MILLION DOWN AND ALL THE WAY BACK  
11 AGAIN UP TO THIRTEEN, SO IT WAS A PRETTY WILD SWING.

3  
1 A YES. THE CHANGES ARE STRONGER BECAUSE IF YOU  
2 SEE BARIUM AND ANTIMONY CAME TOGETHER AND THE INCREASED THE  
3 NUMBER, THEN IT CHANGES THAT ARE STRONG.

4 MR. BARENS: THAT WAS MY QUESTION. THANK YOU.

5 THE COURT: ARE WE FINISHED? THANK YOU VERY MUCH,  
6 DOCTOR. YOU WILL BE EXCUSED.

7 MR. WAPNER: PEOPLE CALL STEVE TAGLIANETTI.  
8

9 STEPHEN TAGLIANETTI,  
10 CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND TESTIFIED  
11 AS FOLLOWS:

12 THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY  
13 YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL  
14 BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH,  
15 SO HELP YOU GOD.

16 THE WITNESS: I DO.

17 THE CLERK: BE SEATED. STATE AND SPELL YOUR NAME FOR  
18 THE RECORD.

19 THE WITNESS: STEVE TAGLIANETTI.

20 THE CLERK: SPELL BOTH NAMES.

21 THE WITNESS: STEPHEN, S-T-E-P-H-E-N, TAGLIANETTI,  
22 T-A-G-L-I-A-N-E-T-T-I.

23 THE COURT: YOU DON'T PRONOUNCE IT AS THE ITALIANS  
24 DO? THE "G" IS SILENT?

25 THE WITNESS: YES.  
26  
27  
28



DIRECT EXAMINATION

BY MR. WAPNER:

Q DO YOU KNOW THE DEFENDANT IN THIS CASE?

A YES.

Q HOW DO YOU KNOW HIM?

A I KNOW MR. HUNT FROM HIGH SCHOOL.

Q WHERE DID YOU GO TO HIGH SCHOOL?

A HARVARD HIGH SCHOOL.

Q WERE YOU IN THE SAME GRADUATING CLASS AS MR.  
HUNT?

A YES, I WAS.

Q HOW WELL DID YOU KNOW MR. HUNT IN HIGH SCHOOL?

A NOT WELL AT ALL.

Q WERE YOU ON THE DEBATE TEAM IN HIGH SCHOOL?

A YES, I WAS.

Q YOU WERE THE OTHER HALF OF THAT FAMOUS TEAM WE  
HAVE ALREADY HEARD ABOUT, CALLED THE MAY-TAG TEAM?

A YES. THAT'S CORRECT.

Q AND OTHER THAN TAKING THE DEBATE WITH MR. HUNT,  
DID YOU SOCIALIZE WITH HIM AT ALL AT THAT TIME?

A NO, I DID NOT.

Q YOU GRADUATED WHAT YEAR FROM HIGH SCHOOL?

A 1977.

Q WHEN YOU LEFT HARVARD HIGH SCHOOL, DID YOU HAVE  
ANY CONTACT WITH MR. HUNT IMMEDIATELY AFTER YOU LEFT?

A NO, I DID NOT.

Q WHEN DID YOU NEXT SEE HIM AFTER YOU LEFT HIGH  
SCHOOL?

7

1 THAT YOU STARTED WORKING IN THE OFFICES, DID YOU EVER HEAR  
2 MR. HUNT TALK ABOUT HAVING MADE MONEY FOR A PERSON NAMED  
3 RON LEVIN?

4 A YES, I HAVE.

5 Q DID YOU IN FACT, EVER MEET MR. LEVIN?

6 A YES, I DID.

7 Q DO YOU RECOGNIZE THE PERSON DEPICTED HERE?

8 A YES, I DO.

9 Q WHO IS THAT?

10 A RON LEVIN.

11 Q WHEN YOU FIRST MET MR. LEVIN, WHEN WAS THAT?

12 A APPROXIMATELY A MONTH PRIOR TO BECOMING ASSOCIATED  
13 AND EMPLOYED WITH WESTCARS, NORTH AMERICA.

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Q IS THAT A MONTH BEFORE YOU ACTUALLY STARTED WORKING  
2 THERE?

3 A YES, IT IS.

4 Q AND YOU STARTED WORKING SOMETIME IN NOVEMBER OF  
5 1983?

6 A CORRECT.

7 Q SO THAT WOULD BE APPROXIMATELY OCTOBER OF 1983,  
8 RIGHT?

9 A CORRECT.

10 Q AND IN OCTOBER OF 1983, HOW WAS IT THAT YOU CAME  
11 TO MEET MR. LEVIN?

12 A I WAS INVITED TO ATTEND A DINNER AT HIS RESIDENCE.

13 Q MR. LEVIN'S RESIDENCE?

14 A THAT'S CORRECT.

15 Q WHO INVITED YOU?

16 A I BELIEVE IT WAS DAVE AND TOM MAY.

17 Q AND WHO WENT TO THIS DINNER?

18 A IT WAS DAVE AND TOM MAY AND JOE HUNT AND DEAN  
19 KARNY AND I BELIEVE EVAN DICKER.

20 Q SO ALL PEOPLE WHO ARE MEMBERS OF THE BBC AT THAT  
21 TIME?

22 A CORRECT.

23 Q AND WAS THAT BASICALLY JUST A SOCIAL DINNER AT  
24 MR. LEVIN'S HOUSE?

25 A YES, IT WAS.

26 Q AND AFTER GOING TO THAT --

27 WELL, BEFORE YOU WENT TO THAT DINNER, HAD YOU  
28 EVER HEARD OF MR. LEVIN?



2  
1 A NO, I HAD NOT.

2 Q AFTER YOU WENT TO THE DINNER, DID YOU EVER HEAR  
3 MR. HUNT TALK ABOUT MR. LEVIN AND WHETHER OR NOT HE HAD EVER  
4 HAD ANY BUSINESS DEALINGS WITH HIM?

5 A YES, I HAD.

6 Q AND WHAT DID MR. HUNT SAY?

7 A THAT HE WAS GOING TO INVEST A SUBSTANTIAL AMOUNT  
8 OF MONEY FOR MR. LEVIN.

9 Q IS THIS THAT HE WAS GOING TO DO IN THE FUTURE  
10 OR THAT -- THAT HE WAS PLANNING --

11 A PLANNING TO.

12 Q WHO WAS INVESTING MONEY WITH WHO, WAS JOE HUNT  
13 GIVING RON LEVIN MONEY OR WAS RON LEVIN GIVING JOE HUNT MONEY?

14 A RON LEVIN WAS GIVING JOE HUNT MONEY TO INVEST.

15 Q AND DID JOE HUNT SAY WHAT FORM THAT MONEY WAS  
16 TO TAKE, WAS IT GOING TO BE CASH OR WAS IT GOING TO BE --

17 A HE DID NOT SAY.

18 Q DID YOU EVER HEAR MR. HUNT TALK ABOUT MAKING MONEY,  
19 THE FACT THAT HE HAD MADE MONEY FOR MR. LEVIN?

20 A YES, I DID.

21 Q WHEN WAS THAT?

22 A APPROXIMATELY JANUARY, FEBRUARY.

23 Q AND WHAT DID THE DEFENDANT SAY ABOUT MAKING MONEY  
24 FOR MR. LEVIN?

25 A THAT HE MADE A SUBSTANTIAL AMOUNT OF MONEY, PROFIT  
26 FOR MR. LEVIN.

27 Q DID HE SAY WHAT SUBSTANTIAL AMOUNT OF MONEY MEANT?

28 A FROM WHAT I RECALL, SOMEWHERE IN THE NEIGHBORHOOD

3  
1 OF AROUND \$9 MILLION.

2 Q DID HE TELL YOU HOW MUCH OF THAT MONEY HE WAS  
3 ENTITLED TO OR SUPPOSEDLY WAS ENTITLED TO?

4 A NO, HE DID NOT.

5 Q WHEN YOU HEARD HIM SAY THAT, WAS THIS IN THE OFFICE  
6 ON THIRD STREET?

7 A YES, I BELIEVE THAT WAS.

8 Q HOW DID HE SAY IT? DID HE SEEM HAPPY, EXCITED?

9 A HE SEEMED VERY EXCITED THAT HE HAD MADE THAT MUCH  
10 MONEY FOR MR. LEVIN.

11 Q AND DURING THAT PERIOD OF TIME, DID HE TALK ABOUT  
12 LEVIN FAIRLY FREQUENTLY?

13 A YES.

14 Q IN JANUARY OF 1984?

15 A YES, HE DID.

AF  
16

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28

1 Q AND WAS THERE A PERIOD OF TIME AFTER THAT, THAT  
2 TALK ABOUT MR. LEVIN WAS EITHER DIFFERENT OR NONEXISTENT?

3 A YES, THERE WAS.

4 Q WHAT HAPPENED?

5 A FROM A PERIOD OF TIME AFTER THE POINT IN WHICH  
6 I WAS TOLD THAT A SUBSTANTIAL AMOUNT OF MONEY WAS MADE FOR  
7 MR. LEVIN, THAT THERE WAS NO -- NO MENTION OF RON LEVIN'S  
8 NAME AMONGST THE OFFICE.

9 Q HOW LONG DID THAT GO ON?

10 A APPROXIMATELY THREE MONTHS, TWO TO THREE MONTHS.

11 Q THEN DID YOU AT SOME POINT HEAR MR. LEVIN'S NAME  
12 AGAIN?

13 A YES I DID.

14 Q WHERE WERE YOU WHEN YOU HEARD THAT?

15 A I WAS IN THE THIRD STREET OFFICES.

16 Q AND WHOM DID YOU HEAR IT FROM?

17 A I DON'T RECALL.

18 Q WHAT DID YOU HEAR?

19 A THAT RON WAS GOING TO BE INVESTING IN MICROGENESIS  
20 OF NORTH AMERICA.

21 Q DID YOU HEAR ANYTHING MORE SPECIFIC OTHER THAN  
22 HE WAS GOING TO BE INVESTING IN MICROGENESIS?

23 A NOT SPECIFICALLY.

24 Q AND WHEN YOU SAY THAT YOU DON'T RECALL WHO YOU  
25 HEARD THAT FROM, WAS IT JUST KIND OF GENERAL TALK AROUND THE  
26 OFFICE AT THAT POINT?

27 A YES, IT WAS.

28 Q AND AT SOME POINT AFTER YOU HEARD THAT, DID YOU

-2  
1 EVER SEE MR. LEVIN?

2 A I AM SORRY?

3 Q AT SOME POINT AFTER YOU HEARD THIS GENERAL TALK  
4 IN THE OFFICE THAT HE MIGHT BE INVESTING IN MICROGENESIS,  
5 DID YOU EVER SEE MR. LEVIN IN THE OFFICE?

6 A YES, I DID.

7 Q ALL RIGHT. CAN YOU TELL US ABOUT THAT?

8 A THE LAST TIME IN WHICH I SAW MR. LEVIN IN OUR  
9 OFFICES, I SAW HIM ENTER THE OFFICE WITH JOE HUNT.

10 Q WHAT DID HE DO AFTER HE ENTERED THE OFFICE WITH  
11 JOE HUNT?

12 A HE PROCEEDED INTO, I BELIEVE HIS OFFICE, JOE'S  
13 OFFICE.

14 Q AND WAS IT JUST THE TWO OF THEM THAT CAME IN?

15 A YES, IT WAS.

16 Q JOE HUNT AND RON LEVIN?

17 A YES, IT WAS.

18 Q HOW DID THEY WALK INTO MR. HUNT'S OFFICE, WAS  
19 IT A NORMAL PACE, QUICKLY OR SLOWLY?

20 A I REALLY DON'T RECALL.

21 Q WHEN THEY WENT INTO MR. HUNT'S OFFICE, WHAT  
22 HAPPENED?

23 A I DON'T RECALL WHAT HAPPENED WITH THEM.

24 Q WAS THE DOOR CLOSED, DO YOU KNOW?

25 A I DON'T KNOW.

26 Q WHAT HAPPENED AFTER THAT?

27 A I SAW RON LEVIN EXIT THE OFFICES.

28 Q HOW LONG WAS MR. LEVIN THERE ALTOGETHER?

-3  
1 A APPROXIMATELY NO MORE THAN 15, 20 MINUTES.

2 THE COURT: DO YOU KNOW WHEN THIS WAS, YOUR BEST  
3 ESTIMATE AS TO THE TIME AND DATE, THE MONTH?

4 THE WITNESS: APPROXIMATELY MAY.

5 THE COURT: MAY?

6 THE WITNESS: AROUND THERE.

7 MR. WAPNER: MAY I HAVE JUST A MOMENT, PLEASE, YOUR  
8 HONOR?

9 THE COURT: ALL RIGHT.

10 Q BY MR. WAPNER: AND AFTER MR. LEVIN LEFT THE.  
11 OFFICE AT THAT TIME, DID ANYTHING UNUSUAL HAPPEN OR DID HE  
12 JUST LEAVE?

13 A NO. HE JUST LEFT, AS I RECALL.

14 Q AT THE TIME HE CAME INTO THE OFFICE, DID YOU NOTICE  
15 THAT FOR ANY PARTICULAR REASON?

16 A YES, I DID.

17 Q WHY?

18 A I WAS SURPRISED THAT RON LEVIN WAS IN OUR OFFICES.  
19  
20  
21  
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28

A-1

1 Q WHY?

2 A FROM WHAT I OVERHEARD AMONGST THE OFFICES --  
3 WITHIN THE OFFICES RATHER, THAT THERE WAS A DEAL IN WHICH  
4 RON LEVIN INVESTED MONEY TO GIVE JOE TO INVEST, THAT EITHER  
5 RON LEVIN DID NOT PAY A COMMISSION OR JOE HAD NEVER RECEIVED  
6 SOME TYPE OF A PROFIT FROM THAT TRANSACTION THAT HE WAS DUE.  
7 AND I WAS QUITE SURPRISED TO SEE RON LEVIN'S APPEARANCE IN  
8 OUR OFFICE.

9 Q WERE YOU TOLD OR DID YOU KNOW HOW MR. HUNT  
10 REACTED TO THAT WHOLE SITUATION OF NOT BEING PAID THE MONEY  
11 THAT HE WAS DUE?

12 A I DON'T KNOW.

13 Q AND DID YOU REMARK AT THAT TIME THAT MR. LEVIN  
14 WAS IN THE OFFICE? DID YOU SAY ANYTHING TO ANYBODY?

15 A YES I DID.

16 Q WHAT DID YOU SAY?

17 A I AGAIN, WAS IN THE LEGAL ROOM. AND JERRY  
18 EISENBERG WAS IN THAT ROOM. AND I MADE MENTION, I SAYS, "DID  
19 YOU SEE WHO JUST ENTERED THE OFFICE?"

20 Q AND WHAT DID YOU SAY THAT?

21 A BECAUSE ALL OF US HAD HEARD OF THAT TRANSACTION  
22 THAT OCCURRED BETWEEN RON LEVIN AND JOE HUNT WITH REGARD TO  
23 THE MONEYS THAT WERE DUE JOE AND WERE QUITE SURPRISED TO SEE  
24 RON LEVIN IN OUR OFFICES WITHOUT HAVING, FROM OUR UNDERSTANDING,  
25 REPAID JOE.

26 Q AND DID MR. LEVIN SPEND HIS TIME IN MR. HUNT'S  
27 OFFICE?

28 A I BELIEVE HE DID.



-1  
1 Q THAT WAS AT 144 SOUTH PECK IN BEVERLY HILLS?

2 A I DON'T KNOW THE EXACT ADDRESS.

3 Q IT WAS IN BEVERLY HILLS?

4 A YES.

5 Q AND THIS WAS PRIMARILY A SOCIAL OCCASION?

6 A YES, IT WAS.

7 Q EVERYBODY -- WAS HUNT FRIENDLY WITH LEVIN?

8 A YES. HE WAS.

9 Q DID THEY SEEM IN YOUR OPINION, PRIMARILY SOCIAL  
10 FRIENDS AT THAT PARTICULAR TIME?

11 A YES.

12 Q WHAT DID YOU GENTLEMEN TALK ABOUT THAT NIGHT AT  
13 DINNER?

14 A THE DISCUSSION -- RON LEVIN WAS DISCUSSING HIS  
15 INVESTMENTS IN REAL ESTATE.

16 Q AND WHAT WAS HE SAYING?

17 A FROM WHAT I RECALL, THAT HE HAD INVESTED QUITE  
18 HEAVILY IN REAL ESTATE IN CERTAIN AREAS.

19 Q DID HE SAY -- DID HE TALK ABOUT ANY OTHER  
20 INVESTMENTS HE HAD?

21 A PERHAPS. I DON'T REALLY RECALL.

22 Q AND AFTER THAT, DID YOU HEAR MR. HUNT MAKE REFERENCE  
23 TO LEVIN AGAIN, AFTER THE OCTOBER DINNER?

24 A YES I DID.

25 Q AND WHEN WAS THAT THE VERY NEXT TIME?

26 A THE NEXT TIME WAS PERHAPS IN DECEMBER SOMETIME.

27 Q OF 1983?

28 A CORRECT.

2  
1 Q AND WHAT WAS THE NATURE OF THE DISCUSSION THEN?

2 A AT THAT TIME, THAT MR. LEVIN WAS GOING TO INVEST  
3 SOME MONEY.

4 Q AND MR. HUNT WAS GOING TO MANAGE THAT FOR HIM?

5 A CORRECT.

6 Q DID THEY DISCUSS WITH YOU THAT BY DECEMBER, 1983,  
7 THEY HAD ALREADY HAD AN INVESTMENT IN CLAYTON BROKERAGE?

8 A NO THEY DID NOT.

9 Q BUT IN ANY EVENT, IN DECEMBER, '83, YOU ARE TOLD  
10 THAT HUNT IS GOING TO INVEST MONEY FOR LEVIN?

11 A CORRECT.

12 Q WAS THAT IN A SHOPPING CENTER?

13 A I DON'T REALLY RECALL TO WHAT EXTENT THE MONEY  
14 WAS GOING TO BE INVESTED IN.

15 Q WHEN IS IT THAT YOU ARE TOLD THAT HUNT MADE  
16 \$9 MILLION FOR HIM?

17 A I HEARD THAT APPROXIMATELY IN FEBRUARY OR MARCH  
18 OF THE SAME YEAR.

19 Q FEBRUARY OR MARCH OF 1984?

20 A '84, RATHER.

21 Q SO, IN JANUARY OR DECEMBER, I THINK YOU SAID THEY  
22 WERE STILL TALKING ABOUT MAKING INVESTMENTS BUT THEN IN MARCH  
23 OR APRIL, IT HAS COME TO FRUITION?

24 A SORRY? COME TO FRUITION?

25 Q COME TO FRUITION? HE MADE \$9 MILLION BY THEN?

26 A CORRECT.

27 Q THAT IS THE SEQUENCE YOU REMEMBER?

28 A CORRECT.



-3

1 Q OKAY. NOW, LATER ON, YOU SAY THAT YOU HEARD TALK  
2 IN THE BBC OFFICES I BELIEVE YOU SAID, DURING MAY, THAT LEVIN  
3 WAS CONSIDERING AN INVESTMENT IN THE MICROGENESIS TECHNOLOGY?

4 A THAT'S CORRECT.

5 Q AND THEN AFTER HEARING THAT IN MAY, YOU SAY THAT  
6 YOU SAW LEVIN IN THE OFFICES, SIR?

7 A YES, I DID SEE HIM.

8 Q NOW, I BELIEVE YOUR TESTIMONY IS THAT YOU SAW  
9 LEVIN IN THE OFFICES A COUPLE OF DAYS, UP TO ONE WEEK PRIOR  
10 TO THE TIME THAT YOU SAW HUNT WITH THE MILLION FIVE CHECK?

11 A THAT'S CORRECT.

12 Q OKAY. NOW, WHEN LEVIN COMES IN THE OFFICE, WHY  
13 DON'T WE WALK THAT THROUGH? MR. LEVIN AND MR. HUNT COME IN  
14 THROUGH THE FRONT DOOR?

15 A CORRECT.

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1 THE COURT: WELL, AT THE BREAK YOU CAN TALK TO HIM.

2 MR. BARENS: THAT IS ALL WE ARE TALKING ABOUT.

3 THANK YOU.

4 (THE FOLLOWING PROCEEDINGS WERE HELD

5 IN OPEN COURT:)

6 MR. WAPNER: JERRY EISENBERG.

7  
8 JEROME EISENBERG,

9 CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND TESTIFIED  
10 AS FOLLOWS:

11 THE CLERK: IF YOU WOULD RAISE YOUR RIGHT HAND TO BE  
12 SWORN.

13 YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY YOU MAY  
14 GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL BE THE  
15 TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP  
16 YOU GOD?

17 THE WITNESS: I DO.

18 THE CLERK: PLEASE BE SEATED.

19 NOW IF YOU WOULD STATE YOUR NAME FOR THE RECORD,  
20 PLEASE.

21 THE WITNESS: JEROME J. EISENBERG.

22 THE CLERK: SPELL YOUR FIRST AND LAST NAME, PLEASE.

23 THE WITNESS: JEROME, J-E-R-O-M-E E-I-S-E-N-B-E-R-G.

24  
25 DIRECT EXAMINATION

26 BY MR. WAPNER:

27 Q MR. EISENBERG, WHAT IS YOUR PROFESSION?

28 A I AM AN ATTORNEY.

1 Q AND YOU ARE LICENSED TO PRACTICE LAW IN THE STATE  
2 OF CALIFORNIA?

3 A AND THE U.S. FEDERAL COURT, CENTRAL DISTRICT.

4 Q AND WHEN DID YOU BECOME A LAWYER?

5 A 1982, DECEMBER.

6 Q AND THAT IS WHEN YOU WERE ADMITTED TO PRACTICE  
7 LAW?

8 A YES.

9 Q DO YOU KNOW THE DEFENDANT IN THIS CASE?

10 A YES, I DO.

11 Q HOW DO YOU KNOW HIM?

12 A I WORKED WITH HIM OR FOR ENTITIES THAT HE WORKED  
13 WITH FROM APPROXIMATELY OCTOBER, 1983 THROUGH AUGUST, 1984.

14 Q HOW DID YOU FIRST MEET HIM?

15 A I WAS INTRODUCED THROUGH A MUTUAL FRIEND, A  
16 GENTLEMAN NAMED FARHAD NOVIAN, N-O-V-I-A-N.

17 MR. BARENS: EXCUSE ME JUST ONE MOMENT. COULD I SPEAK  
18 TO COUNSEL JUST FOR A MOMENT?

19 THE COURT: YES.

20 (UNREPORTED COLLOQUY BETWEEN COUNSEL.)

21 MR. BARENS: COULD WE APPROACH THE BENCH? I THINK WE  
22 WILL SAVE TIME IN THE LONG RUN.

23 THE COURT: ALL RIGHT, COME AHEAD.

24 (THE FOLLOWING PROCEEDINGS WERE HELD  
25 AT THE BENCH:)

26 THE COURT: YES?

27 MR. BARENS: I BELIEVE THIS WITNESS WILL NOW PROCEED  
28 TO TESTIFY ABOUT VARIOUS CORPORATE AND BUSINESS ENTITIES FOR

1 LEFT IN OCTOBER?

2 A WELL, WHEN I FIRST STARTED, THERE WERE A LOT  
3 OF PEOPLE AROUND, IN AND OUT, ESPECIALLY THE FIRST MEETING.  
4 THERE WERE ABOUT 40 PEOPLE.

5 BY THE TIME I GOT BACK IN JANUARY, IT WAS ABOUT  
6 10 TO 12 PEOPLE IN TOTAL COMPRISING THE BBC.

7 Q SO A LOT OF THE PEOPLE THAT HAD BEEN AT THAT  
8 MEETING WERE NO LONGER AROUND?

9 A CORRECT.

10 MR. WAPNER: ALL RIGHT. THIS WOULD BE AN APPROPRIATE  
11 TIME.

12 THE COURT: OKAY. LADIES AND GENTLEMEN OF THE  
13 JURLY, WE'LL TAKE A 15-MINUTE RECESS. THE SAME ADMONITION  
14 THAT I GAVE YOU PREVIOUSLY WILL STILL APPLY.

15 (RECESS.)  
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1 THE COURT: ALL RIGHT, YOU MAY PROCEED.

2 Q BY MR. WAPNER: DURING OCTOBER OF 1983, IN THE  
3 THREE WEEKS OR SO THAT YOU SPENT THERE, DID YOU HEAR ANY TALK  
4 IN THE OFFICE ABOUT A PERSON NAMED RON LEVIN?

5 A YES.

6 Q WHO DID YOU HEAR IT FROM?

7 A JUST ABOUT EVERYBODY.

8 Q INCLUDING JOE HUNT?

9 A INCLUDING JOE HUNT.

10 Q WHAT WAS THE TALK IN THE OFFICE ABOUT MR. LEVIN  
11 AT THAT TIME?

12 A WELL, TO THE BEST OF MY RECOLLECTION, THAT JOE  
13 HAD TRADED SOME COMMODITIES OR TRADED -- ACTED AS A POWER  
14 OF ATTORNEY OVER A COMMODITY ACCOUNT WHERE MR. LEVIN HAD PUT  
15 HIS MONEY, AND HAD TAKEN THAT ACCOUNT FROM \$6 MILLION TO  
16 APPROXIMATELY \$12 MILLION AND WAS ENTITLED TO HALF THOSE  
17 PROFITS ACCORDING TO AN AGREEMENT THAT HE HAD WITH MR. LEVIN.

18 AND THAT INITIALLY --

19 THEY NEVER RECEIVED THE ACTUAL DOLLARS BUT THAT  
20 RON LEVIN HAD CONVERTED THAT MONEY INTO A SHOPPING CENTER  
21 IN ILLINOIS SOMEWHERE.

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1 Q AND WAS THERE ANY TALK IN THE OFFICE ABOUT WHAT  
2 HAPPENED OR WHAT WAS GOING TO HAPPEN WITH THE SHOPPING CENTER?

3 A NO. AT THAT TIME THERE WAS A LOT OF OPTIMISM  
4 THAT THIS IN FACT, HAD OCCURRED AND THAT WELL --

5 Q WHAT?

6 A THEY HAD MADE ALLOCATIONS TO CERTAIN PEOPLE,  
7 BASED ON THIS SUM OF MONEY THEY WERE TO RECEIVE AND  
8 CONCURRENTLY, PEOPLE RECEIVED THAT PROPORTION OF THE SHOPPING  
9 CENTER FOR THOSE ALLOCATIONS.

10 Q SO WHEN YOU WERE THERE IN OCTOBER, WERE YOU TOLD  
11 ABOUT THE MONEY THAT MR. HUNT SUPPOSEDLY HAD MADE TRADING  
12 FOR MR. LEVIN?

13 A YES.

14 Q BUT THAT TRADING HAD GONE ON BEFORE YOU ACTUALLY  
15 CAME THERE?

16 A CORRECT.

17 Q AND AS FAR AS THE SHOPPING CENTER IS CONCERNED,  
18 WAS THAT -- HAD MR. LEVIN PURPORTEDLY TOLD MR. HUNT ABOUT  
19 THE SHOPPING CENTER ALSO BEFORE YOU GOT THERE OR DID THAT  
20 HAPPEN WHILE YOU WERE THERE?

21 A IT WAS ABOUT THE SAME TIME, MAYBE A LITTLE BIT  
22 PRIOR. BUT IT WAS AROUND THAT TIME.

23 Q AND AS FAR AS THE ALLOCATIONS OF THE SHARES OF  
24 THE SHOPPING CENTER IN PROPORTION TO THE SHARES OF THE MONEY  
25 THAT BBC MEMBERS WERE SUPPOSED TO RECEIVE, WHEN DID THAT  
26 HAPPEN?

27 A THAT HAPPENED BEFORE I ARRIVED.

28 Q AND DURING THE TIME THAT YOU WERE THERE IN OCTOBER,

-2  
1 YOU SAID THERE WAS A GREAT DEAL OF OPTIMISM IN THE OFFICE  
2 REGARDING THE SHOPPING CENTER?

3 A WELL, TO GET BACK THOSE MONEYS OR THE SHOPPING  
4 CENTER WOULD BE RECEIVED.

5 Q SO THAT GENERALLY, PEOPLE BELIEVED THAT THE  
6 SHOPPING CENTER WAS GOING TO BE FORTHCOMING?

7 A CORRECT.

8 Q WAS THERE ANYTHING GOING ON AT THAT TIME, TO  
9 ATTEMPT TO PIN DOWN THE FACT THAT THERE WAS A SHOPPING CENTER?

10 A I WAS NOT MADE PRIVY TO THAT FACT, IF THERE WAS  
11 OR IF THERE WAS NOT.

12 Q DID YOU DO ANYTHING AS FAR AS ASKING MR. HUNT  
13 ABOUT THAT?

14 A NO.

15 Q DID YOU DO ANYTHING -- DID YOU EVER ASK MR. HUNT  
16 ABOUT THAT AT ANY TIME LATER?

17 A NOT TO MY RECOLLECTION.

18 Q AND WHAT HAPPENED WHEN YOU CAME BACK TO WORK THERE  
19 IN JANUARY? WAS THERE STILL THIS OPTIMISM IN THE OFFICE?

20 A NO ONE HAD SEEN THEIR MONEY OR THEIR SHOPPING  
21 CENTER. SO I MEAN, IT REALLY WAS NOT DISCUSSED MUCH AT THAT  
22 TIME. THE OPTIMISM THOUGH, WAS NOT THE SAME.

1 Q SO IT WAS KIND OF A DIFFERENCE IN THE MOOD IN  
2 THE OFFICE?

3 A CORRECT.

4 Q AND UP TO THAT POINT, HAD YOU EVER MET MR. LEVIN?

5 A NO.

6 Q WHEN YOU CAME BACK TO THE BBC IN JANUARY, MOST  
7 OF THE 40 OR 50 PEOPLE WHO HAD BEEN AT THIS MEETING IN  
8 OCTOBER WERE NOT THERE, RIGHT?

9 A CORRECT.

10 Q WHAT WAS YOUR WORK IN JANUARY OF 1984?

11 A BASICALLY, JUST A CONTINUATION OF THINGS I HAD  
12 STARTED PRIOR TO MY ILLNESS, AND WORKING ON A FEW THINGS FOR  
13 THE COMMODITY TRANSACTION, SETTING UP A LEGAL OFFICE.

14 Q AND DID YOU CONTINUE TO WORK THERE FROM JANUARY  
15 OF 1984 THROUGH THE SPRING AND PART OF THE SUMMER OF 1984?

16 A CORRECT.

17 Q WHEN YOU WERE WORKING THERE IN JANUARY, WHAT WAS  
18 THE APPEARANCE OF HOW THE BUSINESSES THAT THE BBC WAS  
19 OPERATING?

20 A IN WHICH --

21 MR. BARENS: OBJECTION AS VAGUE AND AMBIGUOUS.

22 THE COURT: SUSTAINED.

23 MR. WAPNER: IT DIDN'T COME OUT RIGHT.

24 THE COURT: REPHRASE IT, PLEASE.

25 MR. WAPNER: I WILL, YOUR HONOR.

26 Q DID THE BBC OPERATE SEVERAL DIFFERENT CORPORATIONS  
27 OUT OF THE OFFICES ON THIRD STREET?

28 A YES, IT DID.



1 Q AND ONE OF THEM HAD TO DO WITH MICROGENESIS, WHICH  
2 WAS A BUSINESS THAT WAS TRYING TO DEVELOP THIS GRINDING MACHINE  
3 OF DR. BROWNING'S, CORRECT?

4 A CORRECT.

5 AT THAT TIME, I DON'T KNOW IF IT WAS MICROGENESIS.  
6 IT STILL MAY HAVE BEEN CYCLATRONICS AND LATER CHANGED TO  
7 MICROGENESIS.

8 Q BUT IT IS THE SAME BUSINESS?

9 A THE SAME BUSINESS BY A DIFFERENT NAME.

10 Q A ROSE IS A ROSE IS A ROSE.

11 A CORRECT.

12 THE COURT: IT IS "A ROSE BY ANY OTHER NAME SMELLS AS  
13 SWEET".

14 (LAUGHTER IN COURTROOM.)

15 MR. WAPNER: OR A GRINDING MACHINE BY ANY OTHER --  
16 ANYWAY.

17 A WHAT WAS THE BUSINESS CLIMATE IN THE OFFICE AS  
18 FAR AS HOW THESE BUSINESSES WERE DOING IN JANUARY OF 1984?

19 A DID THEY GENERATE ANY MONEYS? NO.

20 WERE THEY SPENDING MONEY, YES.

21 Q WAS THAT GENERALLY THE PATTERN WHILE YOU WERE  
22 THERE?

23 A THE ENTIRE TIME.

24 Q DID ANY OF THE BUSINESSES, TO YOUR KNOWLEDGE,  
25 GENERATE MONEY WHILE YOU WERE THERE?

26 A WESTCARS DID WHEN THEY LIQUIDATED ITS INVENTORY  
27 AND THAT WAS ABOUT THE ONLY, THE ONLY ITEM THAT GENERATED  
28 MONEY.

1 Q AND HE TOLD YOU THAT HE WAS DOING THAT BECAUSE  
2 HE WAS ENTERING A CONTRACT WITH MR. LEVIN?

3 A HE WAS MEETING RON LEVIN.  
4 HE NEEDED THIS IN A HURRY.

5 Q AND DID HE TELL YOU WHAT THE TERMS OF THE DEAL  
6 WERE?

7 A THEY WERE ALREADY LAID OUT.

8 Q AND TYPED?

9 A TYPED.

10 Q DID HE HAVE ANY HANDWRITTEN NOTES WITH HIM, HE  
11 MEANING MR. HUNT?

12 A I DON'T REMEMBER.

13 Q WAS HE REFERRING TO ANY NOTES WHEN HE SPOKE TO  
14 YOU?

15 A NO.

16 Q WHEN YOU MADE YOUR AMENDMENTS OR ADDITION TO THE  
17 CONTRACT, WOULD YOU PLEASE TAKE ME THROUGH WHAT WORK YOU DID  
18 ON IT.

19 A TO MY RECOLLECTION, I ADDED THE FOURTH PARAGRAPH  
20 TALKING ABOUT DIRECT LABOR COSTS AND, TRUTHFULLY, JUST CHANGED  
21 A FEW OF THE WORDS. THE PRECISE MEANING AND THE PRECISE WORDS,  
22 I DON'T REMEMBER.

23 I KNOW I MADE A FEW MODIFICATIONS AND I KNOW I  
24 ADDED THIS PARAGRAPH IN BECAUSE I WAS TAKING THAT AT THAT  
25 TIME AT MANAGEMENT SCHOOL SO I INCORPORATED THAT IN.

26 Q OKAY. THERE WAS NO MENTION IN THIS CONTRACT AS  
27 TO THE OPTION PRICE, SIR?

28 A AT THE TIME I RECEIVED IT IN?

1 Q YES.

2 A YES, THE FIGURE EIGHT AND A HALF MILLION DOLLARS  
3 WAS IN THE CONTRACT WHEN I -- IT MAY HAVE BEEN EIGHT OR EIGHT  
4 AND A HALF MILLION DOLLARS AT THE TIME I GOT THE CONTRACT.

5 Q HOW ABOUT A FIGURE OF \$1.5 MILLION IN TERMS OF  
6 AN INITIAL PAYMENT TO BE MADE, WAS THAT THERE?

7 A TO MY RECOLLECTION, YES, THAT WAS THERE.

8 Q AND THAT WAS ALREADY TYPED IN?

9 A AT THE FIRST TIME, YES, THAT WAS THERE.

10 Q OKAY. WHEN HE GAVE YOU THE AGREEMENT, TO DO YOUR  
11 WORK, DID HE LEAVE AT THAT POINT?

12 A HE WENT BACK TO HIS OFFICE AND A FEW MINUTES LATER --  
13 I MEAN THERE WAS NOT MUCH TO DO --

14 MY ADVICE WAS TO REDRAFT THE WHOLE AGREEMENT AND  
15 MAKE IT A MORE COHERENT LEGAL DOCUMENT, AND HE SAID THAT WASN'T  
16 NECESSARY.

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1 Q AND HE LEFT AND THEN YOU DID YOUR WORK AND HOW  
2 LONG WAS HE GONE BEFORE YOU GAVE HIM BACK THE WORK?

3 A TEN OR FIFTEEN MINUTES.

4 Q WHO TYPED IT?

5 A TO MY RECOLLECTION, JOANN MELTZER TYPED IT.  
6 IT MAY HAVE BEEN EVAN DICKER WHO MODIFIED IT. I DON'T  
7 KNOW.

8 Q IN OTHER WORDS, THE WORK THAT YOU PREPARED IN  
9 ADDING THE FOURTH PARAGRAPH, YOU -- DID YOU LONGHAND IT AND  
10 HAND IT TO SOMEBODY TO TRANSCRIBE OR HOW DID YOU DO THAT?

11 A I MADE THE CHANGES ON THE AGREEMENT.

12 Q IN HANDWRITING?

13 A IN HANDWRITING.

14 Q WHO DID YOU HAND THAT TO?

15 A I THINK I HANDED IT BACK TO JOE.

16 Q NOW, DID YOU HAVE AN ORIGINAL, TYPEWRITTEN  
17 AGREEMENT THAT YOU MADE YOUR NOTATIONS ON?

18 A TO MY RECOLLECTION, YES. I AM NOT SURE.

19 Q AND THEN YOU HANDED IT IN THAT FORMAT BACK TO  
20 HUNT, RATHER THAN IN A FORMAT WHERE A SECRETARY HAD  
21 PREPARED IT OR SOMEONE ELSE?

22 A YES.

23 Q OKAY. AND THE ENTIRE FOURTH PARAGRAPH WAS  
24 ADDED?

25 A TO MY RECOLLECTION, YES. IT MIGHT HAVE BEEN  
26 ON A SEPARATE SHEET OF PAPER THAT I PUT A LITTLE ASTERISK  
27 ON THE AGREEMENT AND WROTE SOMETHING LIKE THAT FOURTH  
28 PARAGRAPH ON A SMALL PIECE OF PAPER AND SAID TO INSERT IT

1 (THE FOLLOWING PROCEEDINGS WERE HELD  
2 IN OPEN COURT IN THE PRESENCE AND  
3 HEARING OF THE JURY, WITH MR. CHIER NOT  
4 BEING PRESENT:)

5 THE COURT: ALL RIGHT. GOOD MORNING, LADIES AND  
6 GENTLEMEN. LET'S PROCEED.

7 MR. WAPNER: THANK YOU.

8  
9 DEAN KARNY,  
10 THE WITNESS ON THE STAND AT THE TIME OF ADJOURNMENT, RESUMED  
11 THE STAND AND TESTIFIED AS FOLLOWS:

12  
13 DIRECT EXAMINATION (CONTINUED)

14 BY MR. WAPNER:

15 Q MR. KARNY, JUST AS FAR AS SOME OF THE CHRONOLOGY  
16 FROM YESTERDAY IS CONCERNED, WHEN DID YOU GRADUATE FROM  
17 HIGH SCHOOL?

18 A 1977.

19 Q IN JUNE?

20 A JUNE.

21 Q AND YOU STARTED UCLA IN THAT FALL?

22 A SEPTEMBER, 1977/78, THE SAME YEAR.

23 Q OKAY. AND WHEN DID YOU GRADUATE FROM UCLA?

24 A DECEMBER, 1980.

25 Q SO IT TOOK YOU LESS THAN THE FULL FOUR YEARS  
26 TO FINISH?

27 A THREE AND A HALF.

28 Q IT WAS ALSO AT THE END OF 1980, THAT MR. HUNT

1 WENT TO CHICAGO TO TRADE COMMODITIES, RIGHT?

2 A THAT'S RIGHT.

3 Q DURING THE TIME THAT HE WAS IN CHICAGO, WOULD  
4 YOU SPEAK TO HIM ON THE PHONE?

5 A YES, I DID.

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1 PHONE NUMBER IN A JOKING MANNER.

2 Q SO THAT HE, MEANING RON LEVIN, WANTED HIS PHONE  
3 NUMBER?

4 A THAT'S RIGHT.

5 Q DID HE MAKE ANY COMMENT ABOUT HOW MUCH MONEY  
6 HE THOUGHT HE COULD GET OUT OF MR. DOW?

7 A WELL, AS I SAID BEFORE, HE SAID "IF I HAD HIS  
8 PHONE NUMBER, I WOULD GET A MILLION DOLLARS FROM HIM."

9 Q AT SOME POINT AFTER THAT, DID YOU BECOME AWARE  
10 THAT THERE WAS AN ARRANGEMENT BETWEEN MR. HUNT AND MR. LEVIN  
11 REGARDING THE TRADING OF COMMODITIES?

12 A YES.

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1 Q AND WHEN DID THAT TAKE PLACE?

2 A IN, I THINK, AT THE END OF THE SUMMER OF --  
3 SOMETIME DURING THE SUMMER OF '83.

4 Q AND IF AND WHEN WAS IT -- WHAT WAS IT THAT YOU  
5 FIRST LEARNED ABOUT THAT?

6 A JOE SAID TO ME THAT RON HAD AGREED TO PUT SOME  
7 MONEY IN A BROKERAGE ACCOUNT AND GIVE JOE THE RIGHT TO  
8 INSTRUCT THE BROKER HOW TO TRADE IT AND THAT IT WAS ABOUT  
9 \$5,000,000 THAT WAS GOING TO ORIGINALLY BE PUT IN THE  
10 ACCOUNT AND THAT THEY WOULD SPLIT THE PROFITS.

11 Q AND WHEN AND WHERE -- WHERE DID YOU HAVE THAT  
12 CONVERSATION WITH JOE HUNT?

13 A I DON'T REMEMBER WHERE IT WAS.

14 Q THAT WAS A CONVERSATION THAT YOU HAD WITH MR.  
15 HUNT?

16 A THAT I HAD AND I WAS, AND OTHER PEOPLE WERE  
17 PRESENT ALSO.

18 IT WAS PRETTY BIG NEWS AROUND THE BBC.

19 Q WHO ELSE WAS THERE?

20 A AS I SAY, I DON'T RECALL THE SPECIFIC CONVERSATION,  
21 BUT IT WAS DISCUSSED PRETTY FREQUENTLY AS SOON AS THE NEWS  
22 WAS OUT.

23 Q DID THE DEFENDANT SEEM PRETTY EXCITED ABOUT  
24 THAT?

25 A YES.

26 Q AND WAS HE TRADING THE, OR OSTENSIBLY TRADING  
27 COMMODITIES FOR MR. LEVIN AT THE SAME TIME THAT HE WAS DOING  
28 TRADING AT CANTOR-FITZGERALD UNDER THE ACCOUNTS THAT HAD



1 YOUR NAME AND THE MAY BROTHERS' NAMES ON THEM?

2 A THAT'S RIGHT.

3 Q AND WAS IT YOUR UNDERSTANDING THAT HE WOULD DO  
4 THE ALLEGED TRADING ON THE LEVIN ACCOUNT WHILE HE WAS AT  
5 CANTOR-FITZGERALD, ACTUALLY PHYSICALLY THERE AND MAKING THE  
6 CALLS FROM THERE?

7 MR. BARENS: OBJECTION. CALLS FOR A CONCLUSION BY  
8 THE WITNESS. EITHER HE KNOWS OR HE DOESN'T. HIS UNDER-  
9 STANDING ISN'T RELEVANT BUT WHAT DOES HE KNOW.

10 THE COURT: ASK HIM IF HE KNEW THAT.

11 Q BY MR. WAPNER: DID YOU EVER GO TO CANTOR-  
12 FITZGERALD WITH JOE HUNT?

13 A A COUPLE OF TIMES.

14 Q AND ON EITHER OF THOSE OCCASIONS, DO YOU KNOW  
15 WHETHER HE MADE CALLS TO DO TRADING ON THE SO-CALLED LEVIN  
16 ACCOUNT?

17 A I DON'T KNOW.

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1 Q DID HE EVER TELL YOU WHERE IT WAS THAT HE DID THE  
2 TRADING ON THE LEVIN ACCOUNT?

3 A I THINK HE SAID THAT IT WAS AT CLAYTON BROKERAGE  
4 HOUSE.

5 Q DID HE TELL YOU WHETHER HE ACTUALLY WENT THERE  
6 OR WHETHER THIS WAS ALL DONE ON THE TELEPHONE?

7 A IT WAS DONE ON THE TELEPHONE, HE SAID.

8 Q AND DID HE MAKE REPORTS PERIODICALLY AS TO HOW  
9 HE WAS DOING IN THE TRADING WITH MR. LEVIN?

10 A YEAH. HE DID.

11 Q AND WAS IT ALL SMOOTH SAILING FROM THE BEGINNING?

12 A NO. IT WAS NOT.

13 Q WHAT HAPPENED?

14 A AT ONE POINT, HE SAID THAT THE ACCOUNT HAD GONE  
15 WAY DOWN TO SOMETHING AROUND A MILLION DOLLARS AND THAT IN  
16 ORDER FOR THE BROKERAGE HOUSE TO KEEP THE POSITIONS ON, THAT HE  
17 HAD TO GO ASK RON LEVIN TO PUT MORE MONEY IN THE ACCOUNT. AND  
18 HE SAID THAT HE HAD TALKED RON INTO DOING THAT.

19 Q AND WHAT EVENTUALLY HAPPENED WITH THE ACCOUNT,  
20 AS FAR AS YOU WERE TOLD BY MR. HUNT?

21 A AS FAR AS I WAS TOLD, THE ACCOUNT ULTIMATELY MADE  
22 A PROFIT OF SEVEN MILLION DOLLARS.

23 Q AND DID HE EVER SHOW YOU ANY STATEMENTS INDICATING  
24 THAT IN FACT, THE ACCOUNT HAD MADE A PROFIT OF APPROXIMATELY  
25 SEVEN MILLION DOLLARS?

26 A HE SHOWED ME A PHOTOCOPY OF HIS STATEMENT, I THINK.

27 Q SHOWING YOU WHAT APPEARS TO BE ORIGINALS WHICH  
28 HAVE BEEN MARKED AS PEOPLE'S 83 FOR IDENTIFICATION, WOULD YOU

1 LOOK AT THOSE AND TELL ME IF THEY APPEAR TO BE SIMILAR TO WHAT  
2 YOU SAW?

3 A YES THEY DO.

4 Q ALL RIGHT. AND THE CONCLUDING -- THE LAST DATE  
5 THAT IS ON THE FRONT PAGE OF PEOPLE'S 83, WHAT IS THE DATE?

6 A IT IS 8-31-83.

7 Q AND DID MR. HUNT TELL OTHER PEOPLE IN THE BBC ABOUT  
8 HOW THE PROFITS THAT HE HAD MADE TRADING FOR -- OR ALLEGEDLY  
9 TRADING FOR MR. LEVIN --

10 A YES.

11 Q AND WHERE DID HE MAKE THAT STATEMENT? WAS IT IN  
12 THE OFFICES?

13 A IT WAS DISCUSSED ALL OVER THE PLACE. I DON'T  
14 REALLY REMEMBER ALL OF THE SPECIFIC PLACES.

15 BUT IT WAS A GREAT DEAL OF MONEY AND WE TOLD  
16 EVERYONE.

17 Q NOW, WHAT ELSE WAS GOING ON AT THE BBC IN TERMS  
18 OF OTHER BUSINESSES AT THE TIME THAT MR. LEVIN WAS TRADING --  
19 OR EXCUSE ME, MR. HUNT WAS SUPPOSEDLY TRADING THOSE ACCOUNTS  
20 FOR MR. LEVIN?

21 A WELL, THE CYCLATRON CONTINUED TO BE DEVELOPED.  
22 AND OF COURSE, THERE WAS THE OTHER COMMODITIES ACCOUNTS AT  
23 CANTOR-FITZGERALD AND THERE WAS A BUSINESS THAT WAS STARTED  
24 FOR IMPORTING CARS FROM EUROPE AND CONVERTING THEM TO THE U.S.  
25 EMISSION STANDARDS AND THEN RESELLING THEM.

26 THERE WERE A COUPLE OF OTHER IDEAS FLOATING AROUND,  
27 SOME PROJECTS IN THE EARLY STAGES. NOT MUCH ELSE, REALLY,  
28 THOUGH.

1 Q WERE ANY OF THE OTHER BUSINESSES THAT WERE GOING  
2 ON AT THE BBC AT THIS TIME IN 1983, MAKING ANY MONEY?

3 A NO. WELL, I SHOULD CORRECT THAT. THAT ONE  
4 TRANSACTION WITH THE CYCLATRON, ABOUT A YEAR BEFORE, WITH  
5 MR. DOW. THAT IS MAKING MONEY.

6 Q ALL RIGHT. BESIDES THAT TRANSACTION WITH MR. DOW,  
7 WAS THERE ANY OTHER MONEY THAT APPEARED TO BE COMING IN AT  
8 THAT TIME?

9 A NO.

10 Q AND WAS THIS A PRETTY BIG EVENT IN THE BBC, THE  
11 FACT THAT YOU MADE ALL THIS MONEY TRADING OR OSTENSIBLY MADE  
12 THIS MONEY TRADING COMMODITIES FOR MR. LEVIN?

13 A IT WAS A VERY BIG EVENT.

14 Q AND AT SOME POINT -- WELL, WERE YOU TOLD BY  
15 MR. HUNT WHY IT WAS THAT HE HAD STOPPED TRADING FOR MR. LEVIN?

16 A HE DIDN'T SPECIFY WHY HE HAD STOPPED TRADING.

17 Q AND HAD HE SAID WHAT PORTION OF THE PROFITS HE  
18 WAS ENTITLED TO FROM THIS TRADING?

19 A YES.

20 Q WHAT DID HE SAY?

21 A HALF OF THE PROFITS.

22 Q AND WAS THERE ANY MEETING HELD AT THE BBC WITH  
23 RESPECT TO WHAT WAS GOING TO BE DONE WITH THESE PROFITS?

24 A THERE WERE A LOT OF DISCUSSIONS. BUT THE IDEA  
25 WAS JUST EXPRESSED THAT WE WERE GOING TO HAVE ENOUGH MONEY  
26 TO DO ALL OF THE OTHER THINGS WE WANTED TO DO.

27 Q DID YOU EVER SEE ANY OF THAT MONEY?

28 A NO.

1 Q NOW, DID A PERIOD OF TIME PASS AFTER THE TRADING  
2 STOPPED WHERE MR. HUNT WAS ATTEMPTING TO GET THAT MONEY FROM  
3 MR. LEVIN?

4 A YES.

5 Q WHAT WAS HE DOING?

6 A HE WAS TALKING TO HIM ON THE PHONE. A COUPLE OF  
7 TIMES, WE WENT TO RON'S HOUSE.

8 JOE WENT THERE MORE THAN ANYONE ELSE. BUT I  
9 REMEMBER BEING THERE SOMETIMES AND --

10 Q WHEN YOU REMEMBER BEING AT RON'S HOUSE WITH JOE  
11 HUNT, WHAT DID MR. HUNT ASK RON LEVIN ABOUT THE MONEY?

12 A WHEN WE WERE GOING TO GET IT. RON HAD GIVEN THE  
13 EXPLANATION THAT IT WAS IN AN ACCOUNT BACK EAST OR SOMETHING  
14 LIKE THAT AND IT WAS GOING TO TAKE SOME TIME TO BE LIQUIDATED  
15 AND SENT OVER. THAT WAS THE FIRST THING THAT HE SAID.

16 Q DID HE GIVE ANOTHER EXCUSE AFTER THAT?

17 A AFTER A WHILE, HE SAID THAT A GREAT DEAL CAME UP  
18 IN ILLINOIS, TO INVEST IN A SHOPPING CENTER. AND THAT HE HAD  
19 USED THE \$13 MILLION TO INVEST IN THE SHOPPING CENTER AND THAT  
20 EVEN THOUGH HE COULDN'T GIVE US THE MONEY RIGHT THEN AND THERE,  
21 HE SAID THAT WE HAD AN INTEREST WORTH MUCH MORE THAN THE  
22 ACTUAL MONEY, IN THE SHOPPING CENTER.

23 Q WERE YOU PRESENT WHEN HE ACTUALLY TOLD JOE HUNT  
24 THAT?

25 A AT ONE TIME THAT HE TALKED ABOUT IT, I WAS THERE.  
26 YES.

27 Q HOW DID JOE HUNT REACT?

28 A WELL, THE FIRST THING THAT HE DID WAS, HE TOLD  
29 ME ABOUT WHEN -- AFTER HE HEARD ABOUT IT FOR THE FIRST TIME.

1 Q WHEN HE TOLD YOU ABOUT IT, WHAT WAS HIS DEMEANOR?

2 A HE WAS VERY EXCITED.

3 Q AND WHEN YOU SAW RON LEVIN EXPLAIN THIS ABOUT  
4 THE SHOPPING CENTER IN THE PRESENCE OF JOE HUNT, HOW DID  
5 JOE HUNT REACT?

6 A WE WERE ALL ENTHUSIASTIC. WE WERE ASKING HIM  
7 QUESTIONS REALLY ABOUT THIS CENTER, WHERE IT WAS, HOW BIG  
8 IT WAS, ET CETERA, SO RON TOLD US SOME THINGS ABOUT THE  
9 CENTER.

10 Q WHAT DID HE SAY?

11 A HE SAID THAT IT HAD ALMOST FULL OCCUPANCY, WHICH  
12 IS A GOOD THING FOR A SHOPPING CENTER, AND HE SAID THAT --  
13 I DON'T REMEMBER EXACTLY HIS EXPLANATION BUT, BASICALLY HE  
14 SAID THAT HE HAD BEEN ABLE TO GET A VERY GOOD DEAL ON THE  
15 CENTER SO THAT THOUGH A PORTION OF CASH THAT HE HAD INVESTED  
16 ON OUR BEHALF, WHICH WAS, I GUESS HALF OF \$7,000,000 PROFIT,  
17 THE THREE AND A HALF MILLION DOLLARS THAT OUR INTEREST WAS,  
18 WAS ACTUALLY WORTH MORE LIKE \$13,000,000.

19 AND HE SAID THAT -- WE ASKED HIM ABOUT THE PAPER  
20 WORK RELATING TO TITLE AND --

21 Q WHO ASKED WHO ABOUT THAT?

22 A I WAS THERE.

23 I DON'T REMEMBER WHETHER I ASKED HIM OR JOE ASKED  
24 HIM BUT --

25 Q WHAT DID HE SAY?

26 A HE SAID THAT THOSE WERE BEING GONE OVER BY HIS  
27 ATTORNEYS AND THEY WERE ALL IN BOXES AND HE COULDN'T GET  
28 TO THEM.



1 Q OVER WHAT PERIOD OF TIME DID YOU HAVE THESE  
2 DISCUSSIONS WITH MR. LEVIN ABOUT THE SHOPPING CENTER?

3 A I THINK OVER ABOUT A MONTH, MAYBE MORE, AND THEN  
4 LATER --

5 Q WHAT HAPPENED AFTER YOU HAD THE DISCUSSIONS ABOUT  
6 THE SHOPPING CENTER?

7 A A LOT OF THINGS HAPPENED.

8 Q WHEN YOU SAY "THEN LATER," WHAT HAPPENED?

9 A WHAT I WAS GOING TO SAY IS THAT LATER, HE SAID  
10 THAT THE CENTER HAD BEEN -- THAT THEY HAD ACCEPTED AN  
11 OFFER TO BUY THE CENTER FROM SOMEONE ELSE, FROM SOME JAPANESE  
12 COMPANY, HE SAID, AND THAT WE WERE GOING TO BE ABLE TO SELL  
13 IT AT A GREAT PROFIT SO THAT OUR \$13,000,000 WAS GOING TO  
14 BE PERHAPS A \$30,000,000 INTEREST.

15 Q AND HOW ABOUT HUNT, HOW DID HE REACT TO THAT?

16 A WE WERE ALL VERY EXCITED ABOUT IT, INCLUDING  
17 JOE.

18 Q AND WAS THIS A WHILE LATER WHEN HE SAID THAT  
19 THE SHOPPING CENTER HAD BEEN OR WAS GOING TO BE SOLD AND  
20 YOU WERE GOING TO GET \$30,000,000 INSTEAD OF THIRTEEN?

21 A AS I SAY, THE DISCUSSIONS CONTINUED FOR ABOUT  
22 A MONTH AND A HALF, MAYBE A LITTLE LONGER.

23 Q AND DID YOU EVER SEE ANY INTEREST IN THE SHOPPING  
24 CENTER?

25 A NEVER DID.

26 Q AFTER THAT MONTH AND A HALF OF DISCUSSIONS ABOUT  
27 THE SHOPPING CENTER GOING FROM 13,000,000 TO 30,000,000,  
28 WHAT HAPPENED WITH RESPECT TO JOE HUNT TRYING TO GET THE

1 INTEREST IN THE SHOPPING CENTER OR THE MONEY FROM MR. LEVIN?

2 A WELL, HE SAID THAT HE FINALLY PINNED RON DOWN  
3 AND RON LEVIN -- THAT THERE WAS ACTUALLY NO SHOPPING CENTER  
4 AND NO MONEY. BUT HE SAID THAT RON HAD GIVEN HIM A NEW  
5 EXPLANATION, WHICH WAS THAT THOUGH THERE WAS NO REAL MONEY  
6 IN THE COMMODITIES ACCOUNT THAT HE SAID JOE WAS TRADING,  
7 HE SAID THAT HE HAD USED THE STATEMENTS.

8 Q THOSE ARE THE STATEMENTS, PEOPLE'S 83?

9 A YEAH, THOSE STATEMENTS. HE HAD USED THOSE  
10 STATEMENTS TO GO TO OTHER BROKERAGE HOUSES AND HAVE CREDIT  
11 EXTENDED TO HIM AND THAT HE HAD ACTUALLY MANAGED TO CON ABOUT  
12 A MILLION AND A HALF DOLLARS OUT OF THESE OTHER BROKERAGE  
13 HOUSES OR BANKS, OR WHATEVER IT WAS.

14 Q IS THIS A CONVERSATION THAT YOU WERE PRESENT  
15 AT OR IS THAT WHAT MR. HUNT RELATED TO YOU?

16 A IT IS ONE THAT MR. HUNT RELATED TO ME.

17 Q WHEN HE TOLD YOU THIS, WAS HE RELATING SOMETHING  
18 THAT APPARENTLY MR. LEVIN HAD JUST TOLD HIM?

19 A YES.

20 Q AND WHEN JOE HUNT TOLD YOU --

21 MR. BARENS: I MOVE TO STRIKE THAT. IT IS COMPOUND  
22 HEARSAY.

23 THE COURT: I DON'T THINK IT IS COMPOUND. I WILL LET  
24 IT STAND.

25 MR. BARENS: WE HAVE TWO LEVELS OF HEARSAY AT ONE TIME,  
26 SIR.

27 THE COURT: I WILL LET IT STAND.

28 Q BY MR. WAPNER: AND WHEN JOE HUNT SAID THAT LEVIN



1 HAD TOLD HIM THAT HE MANAGED TO SCAM UP A MILLION AND A HALF  
2 DOLLARS, DID JOE HUNT APPEAR TO YOU TO BELIEVE THAT?

3 A YES, HE DID.

4 Q AND WHEN HE RELATED THIS CONVERSATION TO YOU,  
5 DID HE SAY WHAT MR. LEVIN HAD SAID ABOUT GIVING JOE HUNT  
6 OR THE BBC ANY PORTION OF THAT MILLION AND A HALF DOLLARS?

7 A YES, HE DID.

8 Q WHAT DID HE SAY?

9 A HE SAID THAT RON WAS GOING TO STILL GIVE HIM ABOUT  
10 \$300,000 OUT OF THAT MILLION AND A HALF.

11 Q AND DID HE SEEM -- WELL, WHAT DID HE SAY TO YOU  
12 WHEN HE TOLD YOU THAT LEVIN SAID HE WAS GOING TO GIVE THE  
13 BBC ABOUT \$300,000?

14 A OH, HE SAID THAT HE WAS GOING TO TRY AND GET  
15 IT.

16 Q AND DID YOU SEE HIM MAKE ANY EFFORT TO ATTEMPT  
17 TO GET THAT PORTION OF THE MONEY?

18 A HE JUST TOLD ME THAT HE HAD BEEN BUGGING RON  
19 ABOUT IT OVER AND OVER AGAIN.

20 I DIDN'T SEE HIM ACTUALLY -- ACTUALLY TALK TO  
21 HIM ABOUT IT.

22 Q ALSO, DURING THIS TIME, DID MR. HUNT TELL YOU  
23 ABOUT A CONVERSATION THAT HE HAD WITH JACK FRIEDMAN, THE  
24 BROKER AT CLAYTON BROKERAGE?

25 A YEAH, HE DID.

26 Q AND WHAT DID HE TELL YOU ABOUT THAT CONVERSATION?

27 A HE TOLD ME THAT HE HAD -- I AM NOT SURE EXACTLY  
28 WHY HE HAD CALLED HIM, BUT THAT HE HAD SOMEHOW GOTTEN IN

1 CONTACT WITH THIS BROKER AND THE BROKER HAD TOLD HIM THAT --  
2 MR. BARENS: OBJECTION. COMPOUND HEARSAY, YOUR HONOR.  
3 THE COURT: WELL, THIS IS A CONVERSATION WHICH HE HAS  
4 BEEN RELATING WITH THE DEFENANT. EVEN IF IT IS COMPOUND,  
5 IF THERE ARE 14 DIFFERENT PEOPLE TALKING ABOUT IT, IT IS  
6 THIS ONE CONVERSATION. IT IS NOT COMPOUND HEARSAY. GO AHEAD.

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1 THE WITNESS: HE SAID THAT THE BROKER HAD TOLD HIM THAT  
2 THERE WAS NOT REALLY FIVE MILLION DOLLARS IN THE ACCOUNT AND  
3 THAT THERE WAS NO MONEY IN THE ACCOUNT AND THAT RON LEVIN HAD  
4 TOLD THE BROKER THAT THERE WAS A MOVIE THAT HE WAS MAKING  
5 CALLED "THE TRADER" AND THAT THIS FELLOW NAMED JOE HUNT WAS  
6 GOING TO CALL HIM UP AND THAT HE SHOULD ACT JUST LIKE THIS  
7 WAS A REAL ACCOUNT. OTHERWISE, THE EMOTION WOULDN'T BE REAL  
8 OR SOMETHING LIKE THAT.

9 Q BY MR. WAPNER: NOW, THIS CONVERSATION THAT JOE  
10 HUNT IS TELLING YOU THAT HE HAD WITH THE COMMODITIES BROKER,  
11 WAS THAT BEFORE OR AFTER MR. LEVIN ACTUALLY ADMITTED TO JOE  
12 HUNT THAT THERE WAS NO MONEY?

13 A I AM PRETTY SURE IT WAS BEFORE BECAUSE JOE  
14 CONFRONTED RON WITH THAT NEWS. HE TOLD ME.

15 Q JOE TOLD YOU THAT HE CONFRONTED RON LEVIN WITH  
16 THE NEWS THAT HE HAD GOTTEN FROM THE BROKER?

17 A YES.

18 Q WHAT DID JOE HUNT SAY THAT RON LEVIN TOLD HIM WHEN  
19 HE CONFRONTED HIM WITH THE FACT THAT THERE WAS REALLY NO  
20 TRADING?

21 A HE SAID THAT RON DENIED IT INITIALLY. AND  
22 EVENTUALLY, AS I SAID BEFORE, HE ADMITTED IT.

23 Q WHEN JOE HUNT SAID THAT LEVIN DENIED THE BROKER'S  
24 STATEMENT, DID MR. HUNT MAKE ANY STATEMENT TO YOU ABOUT HIS  
25 OPINION AS TO WHAT HAD HAPPENED?

26 A YEAH. HE DID.

27 Q WHAT DID HE SAY?

28 A HE SAID THAT HE DIDN'T BELIEVE RON. HE BELIEVED

6-2  
1 THAT THERE WAS REALLY THE MONEY THERE AND RON WAS JUST TRYING  
2 TO GYP HIM OUT OF HIS PORTION.

3 Q AND IT WAS SOME TIME AFTER THAT CONVERSATION, THAT  
4 HE WAS STILL TRYING TO GET THE MONEY OUT OF THE SHOPPING  
5 CENTER AND THEN LATER, THE TWO HUNDRED THOUSAND OR THREE  
6 HUNDRED THOUSAND DOLLARS, RIGHT?

7 A SORRY. I WAS NOT CONCENTRATING ON YOUR QUESTION.

8 Q OKAY. IT IS ALMOST TIME FOR LUNCH.

9 AFTER THE CONVERSATION THAT JOE HAD WITH FIRST,  
10 THE COMMODITIES BROKER AND THEN RON LEVIN, WAS THERE STILL  
11 AN ATTEMPT ON MR. HUNT'S PART TO TRY AND GET EITHER HIS PORTION  
12 OF THE SHOPPING CENTER OR LATER, THE \$300,000 THAT RON LEVIN  
13 PROMISED HIM?

14 A YEAH. HE STILL WAS TRYING TO GET THE MONEY OUT  
15 OF RON LEVIN.

16 Q AND IN AN ATTEMPT TO -- WHAT DID MR. HUNT DO OR  
17 SAY IN AN ATTEMPT TO GET THE \$300,000?

18 A WELL, AS I SAID BEFORE, I DON'T KNOW EXACTLY WHAT  
19 HE DID. I WOULD ASK HIM, "DID RON COME UP WITH THE \$300,000?"

20 HE WOULD SAY, "I HAVE BEEN BUGGING HIM BUT HE IS  
21 DELAYING."

22 ALL I COULD SAY IS I GUESS HE WAS BUGGING HIM ABOUT  
23 IT.

24 Q AT SOME POINT, DID MR. HUNT TELL YOU THAT HE HAD  
25 GIVEN UP ON THE IDEA OF TRYING TO GET THE \$300,000 OR  
26 SOMETHING TO THAT EFFECT?

27 A YES.

28 Q WHAT DID HE SAY?

1 Q WHERE DID YOU GO?

2 A I THINK I STAYED WHERE I WAS.

3 Q AND DID YOU SEE HIM LEAVE?

4 A I DON'T REMEMBER.

5 Q WELL, DO YOU KNOW HOW LONG HE WAS THERE ON THAT  
6 OCCASION?

7 A TO THE BEST OF MY RECOLLECTION, IT WAS A BRIEF  
8 VISIT. I DON'T REMEMBER. I AM REPLAYING IN MY MIND EXACTLY  
9 WHAT I SAW. I REMEMBER SEEING HIM COME IN BUT I DON'T HAVE  
10 A SPECIFIC RECOLLECTION OF WHEN HE LEFT.

11 Q SO, HOW IS IT THAT YOU SAY IT WAS A BRIEF VISIT,  
12 IF YOU DON'T KNOW WHEN HE LEFT?

13 A IT IS JUST MY SENSE, FROM WHAT I REMEMBER.

14 Q ALL RIGHT. IN TERMS OF JOE'S RELATIONSHIP WITH  
15 LEVIN, WHEN JOE SAW THE SAVINGS PASSBOOKS THAT YOU REFERRED  
16 TO IN EARLIER TESTIMONY, DID HE APPEAR TO YOU TO THINK THAT  
17 THEY WERE REAL OR LEGITIMATE?

18 A YES. HE DID.

19 Q AND WHEN JOE SAW THESE SWISS CASHIER'S CHECKS OF  
20 LEVIN'S DID HE THINK THOSE WERE REAL OR LEGITIMATE?

21 A YES. HE DID.

22 Q AND WHEN RON TOLD HIM THAT HE HAD PUT FIVE MILLION  
23 DOLLARS INTO AN ACCOUNT AND LET JOE TRADE IT IN THE SUMMER  
24 OF 1983, JOE BELIEVED THIS, DIDN'T HE?

25 A I THINK SO.

26 Q AND WHEN RON SAID THAT HE WOULD GIVE JOE  
27 50 PERCENT OF THE PROFITS FROM THAT TRADING, JOE SEEMED TO  
28 BELIEVE THAT TOO, DIDN'T HE?

1 A YES. HE DID.

2 Q AND WHEN RON TOLD JOE THAT HE HAD INVESTED THE  
3 MONEY IN A SHOPPING CENTER, HUNT SEEMED TO BELIEVE THAT?

4 A YES. HE DID.

5 Q AND WHEN HE SAID THAT -- WHEN RON TOLD HIM THEY  
6 WERE GOING TO GET A SHOPPING CENTER INTEREST WORTH THIRTEEN  
7 MILLION DOLLARS AND THEN MAYBE THIRTY MILLION DOLLARS, HUNT  
8 SEEMED TO BELIEVE THAT, TOO, DIDN'T HE?

9 A YES.

10 Q AND WHEN RON SAID THAT THE TRADING WASN'T REAL  
11 BUT THAT HE GOT CREDIT OF ONE POINT FIVE MILLION EXTENDED FROM  
12 OTHER SOURCES BECAUSE OF THIS STATEMENT THAT HE WAS ABLE TO  
13 SHOW PEOPLE, JOE BELIEVED THAT TOO, DIDN'T HE?

14 A I THINK SO.

15 Q WHY DID JOE HUNT STOP BELIEVING RON LEVIN, IF HE  
16 DID STOP BELIEVING HIM?

17 MR. WAPNER: OBJECTION, CALLING FOR SPECULATION.

18 Q BY MR. BARENS: IF YOU KNOW.

19 THE COURT: SUSTAINED.

20 Q BY MR. BARENS: TO THE EXTENT THAT YOU KNOW.

21 MR. WAPNER: SAME OBJECTION, CALLING FOR SPECULATION  
22 ABOUT WHY SOMEBODY ELSE WOULD BELIEVE OR DO SOMETHING.

23 THE COURT: WELL, PUT IT IN THE FORM OF A QUESTION.  
24 DIDN'T JOE TELL YOU --

25 MR. BARENS: QUITE SO.

26 THE COURT: GO AHEAD.

27 Q BY MR. BARENS: DID MR. HUNT EVER TELL YOU WHY  
28 HE STOPPED BELIEVING RON LEVIN?



1           A       HE DIDN'T ACTUALLY SAY THAT HE STOPPED BELIEVING  
2   RON LEVIN. SO THEREFORE, HE DIDN'T EXACTLY TELL ME WHY HE  
3   STOPPED.

4           Q       DID YOU THINK THAT JOE HUNT SEEMED TO BE GULLIBLE  
5   IN TERMS OF RON LEVIN?

6           A       YEAH. HE DID. I THINK SO.

7           Q       DID JOE HUNT HAVE A POOR MEMORY?

8           THE COURT: HAVE A WHAT?

9           Q       BY MR. BARENS: DID JOE HUNT HAVE A POOR MEMORY?

10          THE COURT: DO YOU KNOW?

11          THE WITNESS: I DON'T KNOW ABOUT THE STATE OF HIS MEMORY.

12          Q       BY MR. BARENS: DID YOU EVER OBSERVE HIM IN WHAT  
13   YOU THOUGHT THAT HE WAS SOMEWHAT OF A FORGETFUL -- WAS HE  
14   FORGETFUL OR WOULD YOUR ASSESSMENT BE THAT HE HAD A GOOD  
15   MEMORY?

16          A       I THINK HE HAD A GOOD MEMORY.

17          Q       YOU TESTIFIED I BELIEVE THAT AT SOME POINT, HUNT  
18   WENT BACK TO LEVIN'S APARTMENT AFTER 6-6-84?

19          A       I THINK I TESTIFIED THAT HE TOLD ME HE HAD GONE  
20   BACK.

21          Q       YOU DIDN'T KNOW THAT AS A FACT?

22          A       I DIDN'T GO WITH HIM. I JUST OPERATED ON WHAT  
23   HE TOLD ME.

24          Q       AND YOU WERE TOLD THAT HUNT DIDN'T HAVE THE DOOR  
25   CODE ACCESS SCENARIO FOR THAT APARTMENT, DID HE?

26          A       RIGHT.

27          Q       DID HE TELL YOU THAT HE HAD GONE IN?

28          A       YEAH. HE DID TELL ME THAT HE HAD GONE IN.

1 SANTA MONICA, CALIFORNIA; TUESDAY, APRIL 14, 1987; 10:40 A.M.  
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE  
3 (APPEARANCES AS NOTED ON TITLE PAGE.)  
4

5 THE COURT: ALL RIGHT, GOOD MORNING, LADIES AND  
6 GENTLEMEN.

7 YOU MAY PROCEED.  
8

9 ARGUMENT (CONTINUED)

10 BY MR. WAPNER:

11 THANK YOU.

12 YOU PROBABLY THINK, ALL RIGHT, YOU HAVE TALKED  
13 ENOUGH YESTERDAY. WELL, I HAVE A LITTLE MORE TO SAY ABOUT  
14 A FEW MORE THINGS. I WANT TO TALK TO YOU A LITTLE BIT ABOUT  
15 THE LAW AND THEN I WILL CONCLUDE.

16 ONE OF THE THINGS THAT I TALKED ABOUT YESTERDAY  
17 WAS THE TESTIMONY OF BROOKE ROBERTS AND LYNNE ROBERTS. THE  
18 ONLY THING I HAVE LEFT TO SAY ON THAT SUBJECT ABOUT MRS.  
19 ROBERTS IS TO ASK YOU TO DO WHAT I HAVE ASKED YOU TO DO WITH  
20 ALL OF THE TESTIMONY IN THE CASE AND THAT IS, ANALYZE IT  
21 IN TERMS OF YOUR COMMON SENSE, BECAUSE THE TESTIMONY ABOUT  
22 HER GOING ON THE VACATION AND WHEN SHE WAS GOING TO RETURN  
23 AND WHAT SHE DID, YOU JUST HAVE TO ASK YOURSELF IF IT MAKES  
24 SENSE TO YOU IN TERMS OF YOUR COMMON SENSE.

25 SUPPOSEDLY, SHE HAS HAD THIS JURY DUTY POSTPONED  
26 SEVERAL TIMES AND SHE MAKES PLANS TO GO TO ALASKA AND THE  
27 NATURE OF THE TESTIMONY WOULD LEAD YOU TO BELIEVE THAT KIND  
28 OF AT THE LAST MINUTE, THE PLANS WERE CUT SHORT BECAUSE THEY



1 NOTIFIED HER ABOUT THE JURY DUTY AND SHE HAD TO CHANGE THE  
2 PLANS ABOUT WHEN SHE WAS COMING BACK. WELL, SHE WENT TO  
3 THE TROUBLE TO TELL HER KIDS WHEN SHE WAS GOING TO RETURN.  
4 YOU KNOW THAT SHE KNEW BEFORE SHE LEFT THAT THIS TRIP WAS  
5 GOING TO BE CUT SHORT AND THAT THE JURY CLERK DIDN'T CALL  
6 HER AT THE AIRPORT AND SAY, "BY THE WAY, CUT YOUR TRIP SHORT  
7 A FEW DAYS BECAUSE YOU HAVE TO COME BACK FOR JURY DUTY."

1 SO IF ALL OF WHAT SHE SAYS IS ACCURATE, SHE  
2 CERTAINLY WOULD HAVE CALLED HER KIDS. SHE TOOK THE TROUBLE  
3 TO TELL THEM AHEAD OF TIME WHEN SHE WAS GOING TO COME BACK.  
4 SHE WOULD TAKE THE TROUBLE TO CALL THEM AND SAY THAT THE PLANS  
5 HAVE BEEN CHANGED AND I AM COMING BACK ON SUCH AND SUCH A  
6 DATE.

7 BUT EVEN IF SHE DIDN'T DO THAT, NOW SHE COMES BACK  
8 A WEEK EARLY AND DO YOU MEAN TO TELL ME THAT SHE STAYS IN TOWN  
9 FOR A WEEK AND DOESN'T TELL ANYBODY HEY, I AM BACK? NOT HER  
10 KIDS? NOT ANYBODY?

11 THAT DOESN'T MAKE ANY SENSE, EITHER. IF YOU JUST  
12 ANALYZE THESE THINGS IN TERMS OF YOUR COMMON SENSE, NONE OF  
13 THESE THINGS ADD UP. AND THERE HAS GOT TO BE SOME REASON WHY  
14 SHE IS TELLING YOU THIS STORY AND THE ONLY REASON IS TO BACK  
15 UP HER DAUGHTER WITH THIS SUPPOSED STORY THAT THE CALL SHE  
16 RECEIVED WAS ON THE 6TH OF JUNE.

17 LET'S TALK A LITTLE BIT ABOUT CARMEN CANCHOLA AND  
18 JESUS LOPEZ, THE TWO PEOPLE WHO CLAIM TO HAVE SEEN SOMEONE  
19 LOOKING LIKE RON LEVIN IN THE GAS STATION IN TUCSON.

20 I CHOSE THOSE WORDS CAREFULLY BECAUSE WHEN THEY  
21 ORIGINALLY CAME TO THE POLICE AND THEY WERE INTERVIEWED, NOT  
22 ONCE DID THEY EVER SAY, "I SAW RON LEVIN IN A GAS STATION."

23 IF YOU WILL RECALL THE TESTIMONY OF MISS CANCHOLA  
24 ON THE WITNESS STAND, SHE WAS ASKED IN FACT, THAT PRECISE  
25 QUESTION ABOUT BEING QUESTIONED IN TUCSON.

26 AND SHE SAID NO, I NEVER SAID WHEN I SAW THAT  
27 PHOTO LINEUP THAT THAT PERSON WAS THE ONE I SAW IN THE GAS  
28 STATION.

1           SINCE THEN, THEIR IDENTIFICATIONS HAVE BECOME  
2 MORE SOLIDIFIED. AND THE REASON FOR THAT, YOU CAN ASK  
3 YOURSELVES. WE'LL TALK A LITTLE BIT LATER ABOUT IT.

4           BUT THE WITNESSES FROM ARIZONA POINT UP ONE OF  
5 THE THINGS THAT WE TALKED ABOUT IN JURY SELECTION. THAT IS,  
6 THE DIFFERENCE BETWEEN DIRECT AND CIRCUMSTANTIAL EVIDENCE.  
7 DO YOU REMEMBER WE TALKED ABOUT EYEWITNESS IDENTIFICATION DURING  
8 JURY SELECTION AND MOST PEOPLE -- I THINK PROBABLY MOST OF  
9 YOU, WHEN YOU CAME INTO THE COURT, FELT THAT WELL, IF THEY  
10 CAN HAVE GOOD, STRONG, DIRECT EVIDENCE, IT IS MUCH BETTER THAN  
11 THIS OLD CIRCUMSTANTIAL EVIDENCE STUFF. DON'T GIVE ME ANY  
12 OF THAT CIRCUMSTANTIAL EVIDENCE.

13           WELL, I THINK MAYBE IN THIS CASE, YOU COULD  
14 JUXTAPOSE THOSE TWO THINGS AND ONCE AND FOR ALL, PUT TO REST  
15 THE NOTION THAT DIRECT EVIDENCE IS BETTER THAN CIRCUMSTANTIAL  
16 EVIDENCE.

17           BECAUSE WHAT DO WE HAVE FROM CARMEN CANCHOLA AND  
18 JESUS LOPEZ IN CONTRAST TO THE LIST FOUND IN MR. LEVIN'S HOUSE  
19 AND ALL OF THE TESTIMONY FROM ALL OF THE WITNESSES IN THE BBC  
20 AND ALL OF THE THINGS FOUND MISSING FROM MR. LEVIN'S HOUSE  
21 AND ALL OF THE CIRCUMSTANCES SURROUNDING HIS DISAPPEARANCE  
22 AND ALL OF THE THINGS THAT HE WAS DOING PRIOR TO JUNE 6TH,  
23 CARRYING ON A NORMAL LIFE PATTERN AND ALL OF THE PHONE CALLS  
24 THAT HE MADE TO HIS MOTHER AND FRIENDS? AND ALL OF THIS IS  
25 WHAT I CONSIDER TO BE EXTREMELY STRONG CIRCUMSTANTIAL EVIDENCE.  
26 WHAT DO YOU HAVE IN CONTRAST TO THAT?

27  
28

1 AND THE SEVEN PAGES OF PAPER FOUND IN HIS APARTMENT.

2 THIS IS WHAT IT COMES DOWN TO, A SKETCH IN A  
3 MAGAZINE ARTICLE THAT IS THE GENESIS OF EVERYTHING THAT  
4 HAPPENED IN ARIZONA, THAT IS WHERE IT ALL STARTED FROM, WAS  
5 THAT SKETCH.

6 AND WHEN YOU CONTRAST THE TWO PEOPLE IN ARIZONA  
7 SAYING, "WELL, I SAW SOMEONE IN THE GAS STATION," WITH ALL  
8 OF THAT CIRCUMSTANTIAL EVIDENCE, I DON'T THINK THERE IS ANY  
9 CONTEST.

10 BUT LET ME TELL YOU, FIRST OF ALL, IN TERMS OF  
11 VIEWING THE TWO PEOPLE WHO TESTIFIED IN ARIZONA, I DON'T  
12 THINK THEY ARE LYING BECAUSE THERE IS A BIG DIFFERENCE BETWEEN  
13 SOMEONE WHO IS LYING AND SOMEONE WHO IS TELLING THE TRUTH  
14 AND JUST MISTAKEN AND I THINK THAT THAT IS EXACTLY WHAT  
15 HAPPENED WITH BOTH OF THESE PEOPLE. THEY SAW SOMEONE IN  
16 A GAS STATION IN ARIZONA THAT THEY THINK RESEMBLES -- INITIALLY,  
17 CARMEN FELT RESEMBLED THE SKETCH IN THIS ARTICLE AND THEN  
18 THEY FELT TO A CERTAIN DEGREE, RESEMBLED -- AND I SAY ONLY  
19 "RESEMBLED", THE PICTURE THAT -- THE PICTURES THAT THEY WERE  
20 SHOWN AT THE TUCSON POLICE DEPARTMENT.

21 THE ONLY REASON TO CHANGE ANY OF THAT VIEW THAT  
22 NEITHER ONE OF THEM ARE LYING -- I DON'T THINK THAT THEY  
23 ARE LYING -- BUT ONE OF THE THINGS YOU WILL BE ASKED TO DO  
24 IN EVALUATING THE CREDIBILITY OF WITNESSES, THAT IS HOW TO  
25 TREAT THEIR TESTIMONY, IS TO EVALUATE THE DEMEANOR OF THE  
26 WITNESSES AND WHETHER OR NOT THEY HAVE ANY BIAS OR INTEREST  
27 IN THE CASE.

28 AND THEY SEEM AT FACE VALUE TO BE PRETTY MUCH

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1 UNBIASED WITNESSES, AND I THINK MR. LOPEZ PROBABLY IS.

2 I AM NOT SUGGESTING TO YOU THAT MS. CANCHOLA  
3 WAS BOUGHT OR PAID FOR OR ANYTHING LIKE THAT OR KNEW ANY  
4 OF THE PARTIES AHEAD OF TIME, BUT ONE OF THE THINGS THAT  
5 IS IMPORTANT IS TO EXAMINE THE DEMEANOR OF WITNESSES THAT  
6 TESTIFY. NOW NORMALLY, YOU WOULD EXPECT FROM AN UNBIASED  
7 EYEWITNESS THAT THEY WOULD COME IN, LET'S SAY IT WAS SOMEONE  
8 WHO SAW A ROBBERY ON THE STREET AND THEY DIDN'T KNOW THE  
9 PERSON WHO GOT ROBBED, THEY DIDN'T KNOW THE ROBBER AND THEY  
10 ARE STANDING ON THE STREET AND THEY ARE MINDING THEIR OWN  
11 BUSINESS AND THEY SEE THE ROBBERY AND THEY GO TO THE POLICE  
12 AND THEY GIVE A DESCRIPTION, "THIS IS THE PERSON I SAW" AND  
13 THEY ARE SHOWN A PHOTOGRAPHIC LINEUP OR AN IN-PERSON LINEUP  
14 AND THEY SAY, "THAT IS THE PERSON" OR "THAT IS NOT THE PERSON."

15 "I DON'T HAVE ANY STAKE IN IT, GUILTY, NOT  
16 GUILTY, EITHER WAY. IF YOU BELIEVE ME, THAT IS FINE. IF  
17 YOU DON'T BELIEVE ME, THAT IS FINE."

18 RIGHT, AND THAT WOULD BE THE DEMEANOR THAT YOU  
19 WOULD EXPECT FROM SOMEONE WHO IS TESTIFYING IN THAT CAPACITY  
20 AND THAT WOULD BE THE DEMEANOR THAT YOU WOULD EXPECT FROM  
21 THESE TWO PEOPLE FROM ARIZONA AND THAT WAS, IN ESSENCE, THE  
22 DEMEANOR THAT YOU GOT FROM MR. LOPEZ AND I THINK HE WAS A  
23 LITTLE BIT UPSET THAT HE HAD BEEN CONTACTED SO MANY TIMES  
24 BUT, IN ESSENCE, THAT WAS HIS FEELING.

25 BUT MS. CANCHOLA, ON THE OTHER HAND, DID SEVERAL  
26 THINGS THAT REALLY DIDN'T RING TRUE FOR SOMEONE WHO YOU WOULD  
27 THINK WOULD THINK OF THEMSELVES AS AN UNBIASED EYEWITNESS.

28 IT IS VERY DIFFICULT FOR ANYONE, ANY LAWYER IN

1 THIS POSITION, AND PROBABLY ANY OF YOU, TO WATCH A WITNESS  
2 CRY ON THE WITNESS STAND AND NOBODY LIKES IT BUT THERE ARE  
3 TIMES WHEN CRYING AND GETTING CHOKED UP ARE APPROPRIATE.

4 YOU HEARD, FOR EXAMPLE, DEAN KARNY TESTIFY ABOUT  
5 JOE HUNT TELLING HIM ABOUT THE KILLING OF RON LEVIN AND  
6 DESCRIBING IN SOME DETAIL THE BRAINS JUMPING OUT AND HOW  
7 HE GOT CHOKED UP AT DESCRIBING THAT AND HE GOT A LITTLE BIT  
8 CHOKED UP ABOUT SEEING THE PICTURE OF SOMEONE IN THE POLICE  
9 REPORTS FROM THE BEVERLY HILLS POLICE DEPARTMENT OF A PERSON  
10 WHOSE MURDER HE HAD PARTICIPATED IN. THOSE THINGS ARE  
11 APPROPRIATE.

12 BUT CARMEN CANCHOLA CRIED SEVERAL TIMES ON THE  
13 WITNESS STAND. WHAT DID SHE HAVE TO BE CRYING ABOUT? IT  
14 REALLY IS NOT CLEAR TO ME. SHE IS THERE TO SAY, "THIS IS  
15 WHAT I SAW" AND THAT IS IT. "TAKE MY WORD FOR IT ONE WAY  
16 OR THE OTHER," SO THAT DOESN'T MAKE ANY SENSE.

17 AND THEN THE OTHER THING THAT WAS . SOMEWHAT  
18 STRANGE, I THOUGHT, WAS SHE SAID, "SINCE ALL OF THIS HAS  
19 BEEN HAPPENING, PEOPLE HAVE BEEN TRYING TO BREAK INTO MY  
20 HOUSE. PEOPLE ARE TRYING TO KIDNAP THE KIDS NEXT DOOR OR  
21 DOWN THE STREET AND JOGGERS ARE COMING DOWN," AND SHE HAS  
22 TO GO TO THE POLICE DEPARTMENT.

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1 WELL, IF ALL OF THAT IS TRUE, WHO COULD SHE  
2 POSSIBLY BE SUGGESTING IS DOING THAT? I MEAN, WHAT IS SHE  
3 TELLING YOU? THAT THE D.A.'S OFFICE AND APPARENTLY THE TUCSON  
4 POLICE WERE TREATING HER BADILY AND TRYING TO DISSUADE HER  
5 FROM COMING FORWARD AND TRYING TO TELL HER DON'T COME AND  
6 TESTIFY?

7 WELL, THE ONLY INFERENCE THAT YOU COULD POSSIBLY  
8 BE ASKED TO DRAW FROM HER TELLING YOU THAT PEOPLE ARE TRYING  
9 TO BREAK INTO MY HOUSE SINCE THIS HAPPENED AND PEOPLE ARE  
10 TRYING TO KIDNAP THE NEIGHBOR'S KIDS SINCE THIS HAPPENED, IS  
11 THAT THE D.A.'S OFFICE AND THE POLICE DEPARTMENT ARE  
12 RESPONSIBLE.

13 NOW, IT SOUNDS LUDICROUS BUT WHY ELSE WOULD SHE  
14 BE TELLING US THESE THINGS, IF SHE IS EQUATING THESE THINGS  
15 TO THIS CASE?

16 SINCE SHE CAME FORWARD IN THIS CASE, THOSE THINGS  
17 HAVE BEEN HAPPENING. SO THOSE THINGS JUST DON'T RING TRUE  
18 IN TERMS OF A PERSON WHO IS AN UNBIASED EYEWITNESS.

19 SHE SAID ONE THING THAT WAS ALSO VERY INTERESTING  
20 IN TERMS OF INDICATING HER POSSIBLE COMING FORWARD. THAT IS,  
21 WHEN SHE READ THE ARTICLE, WHAT DID SHE DO? SHE DIDN'T GO  
22 STRAIGHT TO THE TUCSON POLICE DEPARTMENT.

23 HER FIRST THOUGHT WAS WHAT? HER FIRST THOUGHT  
24 WAS GOING TO THIS NEWS REPORTER THAT SHE KNEW IN TUCSON AND  
25 TALKING TO HER. LET ME TELL HER. LET ME GIVE HER THE STORY.

26 IT WAS NOT, LET'S SEE THAT JUSTICE IS DONE. BUT,  
27 LET'S MAKE SOME BIG DEAL OUT OF THIS. THEN SHE TALKED TO A  
28 FRIEND OF HERS AT SCHOOL. AND IT WAS ONLY AFTER THE FRIEND

1 SAID, "I THINK YOU SHOULD GO TO THE POLICE," THAT SHE DID IN  
2 FACT, GO TO THE TUCSON POLICE DEPARTMENT.

3 KEEPING ALL OF THAT IN MIND ABOUT HER DEMEANOR  
4 WITH WHICH SHE TESTIFIED AND THE FACT THAT SHE OBVIOUSLY HAS  
5 ALL OF THOSE THINGS HAVING BEEN SAID BY WAY OF SHOWING SHE  
6 HAS TAKEN SOME INTEREST IN THIS CASE, FOR WHATEVER REASON.

7 AND IT HAS KIND OF BECOME A CAUSE FOR HER. AND  
8 I THINK THAT ACCOUNTS FOR THE CRYING AND THAT ACCOUNTS FOR  
9 THE WANTING TO GO TO THE PRESS FIRST, BEFORE GOING TO THE  
10 POLICE. SO KEEP ALL OF THOSE THINGS IN MIND.

11 THE NEXT THING THAT IS IMPORTANT, IS THAT  
12 INSTANCES OF MISTAKEN IDENTIFICATION ARE EXTREMELY COMMON.  
13 AND THEY HAVE HAPPENED TO EVERY ONE OF YOU. WE TALKED ABOUT  
14 THAT DURING JURY SELECTION.

15 EVERY ONE OF YOU ON THE JURY HAS HAD SEVERAL  
16 EXPERIENCES WITH EITHER SEEING PEOPLE THAT YOU THOUGHT YOU  
17 RECOGNIZED AND IT TURNS OUT IT WAS NOT THEM OR PEOPLE COMING  
18 UP TO YOU AND HAVING THEM SAY, "I RECOGNIZE YOU," AND THEN  
19 IT TURNS OUT THAT THEY DON'T KNOW YOU AT ALL.

20 EVERYONE IN THE WORLD HAS HAD THOSE EXPERIENCES.  
21 EVERYONE, EXCEPT TWO PEOPLE, CARMEN CANCHOLA AND IT HAS NEVER  
22 HAPPENED TO HER AND JESUS LOPEZ.

23 MAYBE SHE SAID THAT ONCE SHE SAW SOME CLOTHING  
24 ON SOMEONE FROM THE BACK BUT SHE THOUGHT THAT SHE RECOGNIZED  
25 THE CLOTHING. THIS IS A PERSON WHO IS TRYING TO TELL YOU THAT  
26 SHE CAN'T POSSIBLY BE WRONG.

27 WELL, THAT JUST DOESN'T RING TRUE. YOU KNOW THAT  
28 COULDN'T BE TRUE. IT HAS HAPPENED TO HER IN HER LIFETIME THAT



1 SHE HAS MISTAKEN SOMEONE FOR SOMEONE ELSE OR SOMEONE HAS  
2 MISTAKEN HER FOR ANOTHER PERSON. BUT SHE IS NOT GOING TO ADMIT  
3 THAT TO YOU.

4 JUST SINCE THE EVIDENCE STARTED IN FEBRUARY, I  
5 JUST MADE A LITTLE, MENTAL NOTE WHEN THINGS HAPPENED TO ME.  
6 I DIDN'T CREATE THE SITUATIONS. THE FIRST ONE, I WENT TO LUNCH  
7 WITH SEVERAL OF THE WITNESSES IN THIS CASE AND WE WENT WITH  
8 THE PEOPLE FROM THE NEW YORK POLICE DEPARTMENT AND THE PLAZA  
9 HOTEL.

10 WE WERE SITTING AT A RESTAURANT OVER HERE AT THE  
11 MALL WITH ROBERT JORDAN, THE FORMER POLICE OFFICER FROM  
12 NEW YORK. WE WERE EATING LUNCH.

13 AND SOMEBODY ELSE THAT I KNOW FROM THE COURTHOUSE  
14 WAS IN THE RESTAURANT. SHE WAS LEAVING. SHE COMES UP TO HIM  
15 AND PUTS HER ARMS AROUND HIM AND SAYS, "TONY!" SHE GIVES HIM  
16 A BIG KISS.

17 SHE STEPS BACK. SHE LOOKS AT HIM AND SHE TURNS  
18 BRIGHT RED. "OH MY GOD, YOU ARE NOT TONY." AND IT JUST  
19 HAPPENS ALL OF THE TIME.

20 I THOUGHT TO MYSELF, WELL, I WILL SAVE THIS. THIS  
21 IS GOING TO BE IMPORTANT LATER. THAT WAS THE FIRST THING THAT  
22 HAPPENED, JUST SINCE THIS TRIAL STARTED.

23 THEN, I HAD AN INSTANCE, ANOTHER ONE THAT HAPPENED  
24 TO ME. I WAS SITTING OUTSIDE OF A RESTAURANT WAITING FOR  
25 SOMEONE AND SOMEBODY WALKS BY AND LOOKS AT ME AND SAYS "ROGER!"  
26 IT WAS THIS NICE, ATTRACTIVE YOUNG LADY.

27 I SAID, "NO. I WISH I WAS, BUT IT IS NOT ROGER."  
28 IT HAPPENS ALL OF THE TIME.

1 ONE OF THE MOST RECENT ONES -- AND I COULDN'T  
2 BELIEVE THIS WAS HAPPENING. JUST BEFORE ARGUMENT, I WENT TO  
3 GET MY HAIR CUT LAST SATURDAY AND MY BARBER IS TELLING ME THAT  
4 SHE IS READING A MAGAZINE AND SHE SEES A PICTURE IN THERE OF  
5 STEVE WOZNIAK WHO IS THE MAN WHO INVENTED APPLE COMPUTERS.

6 AND SHE SAID THAT THE PICTURE IS IDENTICAL TO A  
7 FRIEND OF MINE. MY FRIEND HAS GOT A VERY UNUSUAL FACE. I  
8 SAW THAT AND THERE, BUT FOR THE GRACE OF GOD, WAS MY  
9 FRIEND.

10 THE ONLY REASON SHE KNEW THAT IT WAS NOT WAS BECAUSE  
11 IT HAD A CAPTION SAYING THAT IT WAS STEVE WOZNIAK.

12 SO, THAT HAPPENS ALL OF THE TIME. NOT ONLY DID  
13 SHE SEE THAT PICTURE IN A MAGAZINE, BUT I HAD ANOTHER  
14 EXPERIENCE OF GOING BY A MAGAZINE RACK DURING THE TRIAL IN  
15 THE MARKET AND I AM LOOKING AND THERE ARE THESE MAGAZINES.

16 I SEE THIS PICTURE ON THE FRONT OF A MAGAZINE.  
17 I SAID THAT IT IS PAT QUINN ON THAT MAGAZINE. IT IS A SKIING  
18 MAGAZINE.

19 IT COULDN'T BE. I HAVE GOT TO GET THE MAGAZINE.  
20 NOT ONLY IS NOT JUST THE FACE, BUT WE ARE TALKING ABOUT A TALL,  
21 ATHLETIC-LOOKING GUY WITH SKIS. I KNOW PAT RUNS AND WORKS  
22 OUT. HE RUNS MARATHONS. I GET THIS MAGAZINE AND I SAY THAT  
23 IT IS PAT QUINN. I BRING IT IN.

24 (DISPLAYING MAGAZINE TO THE JURY.)

25 I TALK TO PAT QUINN. IT IS NOT PAT QUINN. BUT,  
26 IF YOU HAD TO COME INTO COURT AND GET ON THE WITNESS STAND  
27 AND SAY YOU SAW PAT QUINN ON THE COVER OF A MAGAZINE, WHAT  
28 WOULD YOU SAY? THAT'S HIM. YOU ARE TALKING ABOUT DEAD RINGERS.

1                   AND IF THOSE INSTANCES ARE NOT ENOUGH, THEY ARE  
2 JUST THINGS THAT HAPPENED SINCE WE STARTED TAKING TESTIMONY  
3 IN THIS CASE ON FEBRUARY 2ND OR RIGHT AROUND FEBRUARY 2ND.  
4 BUT THAT IS NOT THE FIRST TIME. I MEAN, YOU ALL KNOW YOU HAVE  
5 HAD IT IN YOUR COMMON EXPERIENCE AND COURTS AND JUDGES HAVE  
6 WRITTEN LOTS OF THINGS ABOUT IT.

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1 LET ME JUST READ YOU SOME OF THE THINGS THAT  
2 HAVE BEEN SAID BY COURTS IN THE UNITED STATES ABOUT THIS:

3 "THE VAGARIES OF EYEWITNESS IDENTIFICATION  
4 ARE WELL-KNOWN. THE ANNALS OF CRIMINAL LAW ARE RIFE  
5 WITH INSTANCES OF MISTAKEN IDENTIFICATION. THE HIGH  
6 INCIDENCE OF MISCARRIAGE OF JUSTICE CAUSED BY SUCH  
7 MIS" --

8 "THE COURT NOTED 'THE HIGH INCIDENCE  
9 OF "MISCARRIAGES OF JUSTICE", CAUSED BY MISTAKEN  
10 IDENTIFICATION. JUDGE LOMBARD OBSERVED THAT, QUOTE,  
11 'CENTURIES OF EXPERIENCE IN THE ADMINISTRATION OF  
12 CRIMINAL JUSTICE HAVE SHOWN THAT CONVICTIONS BASED  
13 SOLELY ON TESTIMONY THAT IDENTIFIES A DEFENDANT  
14 PREVIOUSLY UNKNOWN TO THE WITNESS IS HIGHLY  
15 SUSPECT.

16 "ALL OF THE VARIOUS KINDS OF EVIDENCE"--  
17 EXCUSE ME -- "OF ALL OF THE VARIOUS KINDS OF  
18 EVIDENCE THAT IS THE LEAST RELIABLE, ESPECIALLY  
19 WHERE UNSUPPORTED BY CORROBORATING EVIDENCE."

20 THAT LAST PART IS PARTICULARLY TELLING, "UNSUPPORTED  
21 BY CORROBORATING EVIDENCE."

22 YESTERDAY, I PUT UP TWO CHARTS FOR YOU OF  
23 INSTANCES OF CORROBORATION OF TESTIMONY OF DEAN KARNY. I  
24 DIDN'T COUNT THE NUMBER OF THINGS ON THOSE LISTS. THERE  
25 WERE PROBABLY 20 DIFFERENT ITEMS ON THERE.

26 DID YOU HEAR ANYTHING AT ALL TO CORROBORATE THE  
27 TESTIMONY OF EITHER OF THESE WITNESSES? NOTHING. NOT A  
28 WORD. NOT A CAR. NOT ANYTHING.

1 WE WENT AND WE SENT PEOPLE TO TUCSON. THEY SAID  
2 "IT IS A HORNET. IT IS A CLASSIC, AND IT IS KIND OF PINKISH  
3 BEIGE." WE WENT TO TUCSON AND WE FOUND A HORNET.

4 HOW MANY HUDSON HORNETS CAN THERE BE IN TUCSON?  
5 AND PINKISH BEIGE?

6 AT THAT POINT, CARMEN IS ALREADY GETTING HER  
7 I.D. CEMENTED IN HER MIND AND SHE SAYS "NO, THAT IS NOT THE  
8 CAR."

9 WE FOUND A HORNET MATCHES EXACTLY THE SAME, IT  
10 IS ALMOST THE IDENTICAL CAR THAT SHE DESCRIBED AND SHE SAYS,  
11 "NO, THAT IS NOT IT."

12 AND THIS IS THE CAR HERE, THIS IS MR. HERMAN'S  
13 CAR, MR. HERMAN WHO LIVES IN TUCSON. IN THE BOTTOM, I GUESS,  
14 IT IS THE LEFT-HAND CORNER.

15 IN ADDITION TO ALL OF THESE INSTANCES, THE MANY  
16 INSTANCES OF MISTAKEN IDENTIFICATION, LET ME TELL YOU THE  
17 REASONS WHY THE PERSON THAT SHE SAW IN TUCSON WAS NOT RON  
18 LEVIN.

19 FIRST OF ALL, THE MAIN REASON IS BECAUSE, AS  
20 I SPENT THE DAY YESTERDAY TELLING YOU, JOE HUNT KILLED RON  
21 LEVIN ON THE NIGHT OF JUNE 6TH IN BEVERLY HILLS, SO WHOEVER  
22 IT WAS IN THE GAS STATION, THAT WASN'T RON LEVIN.

23 AND SECOND OF ALL, AND WHAT YOU HAVE TO DO BASICALLY  
24 IS SAY, "WELL, IN ORDER TO BELIEVE THEM, THROW OUT THE LIST,  
25 THROW OUT EVERYTHING ELSE THAT YOU HAVE HEARD."

26 WELL, TAKE A LOOK AT THAT SKETCH, START WITH  
27 THE TESTIMONY OF CARMEN CANCHOLA, WHO SAYS, "WELL, I LOOKED  
28 AT THAT SKETCH AND I REMEMBERED THE DESCRIPTION AND I SAID,

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1 "I SAW THAT MAN AT A GAS STATION SIX OR EIGHT WEEKS AGO."

2 WELL, IF YOU ANALYZE THAT IN LIGHT OF YOUR COMMON  
3 SENSE, YOU PROBABLY DON'T HAVE TO GO ANY FURTHER, COUPLING  
4 THAT WITH THE FACT THAT SHE HAD NEVER MET RON LEVIN AND  
5 NEITHER HAD MR. LOPEZ MET RON LEVIN.

6 AND INCIDENTALLY, IF YOU THINK THAT THAT SKETCH  
7 ISN'T VAGUE ENOUGH, THE DESCRIPTION THAT SHE READ IN THE  
8 MAGAZINE, HERE IT IS: "TALL AND SLENDER. ALWAYS EXPENSIVELY  
9 DRESSED."

10 THIS IS A MAN WHO WAS WEARING DESIGNER JEANS  
11 AT THE GAS STATION AND THAT QUALIFIES, I GUESS, FOR EXPENSIVELY  
12 DRESSED.

13 "FINE SILVER HAIR, AN IMMACULATE  
14 WHITE BEARD, A SMILE. THAT IS AN AFFRONT TO SOME  
15 AND IRRESISTIBLE TO OTHERS."  
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1                   AND THEN SHE SAYS, KEEP IN MIND THAT SHE SAYS,  
2     "IT WAS THE EYES." REMEMBER SHE SAID TO DETECTIVE EDHOLM,  
3     "IT WASN'T SO MUCH THAT THAT WAS HIM, IT WAS THE EYES."

4                   WELL, THIS IS HOW THEY DESCRIBE THE EYES:  
5     "PIERCING, ONE ACQUAINTANCE THOUGHT, SHIFTY, ACCORDING TO  
6     ANOTHER."

7                   SO PIERCING OR SHIFTY EYES, TALL, SLENDER,  
8     EXPENSIVELY DRESSED AND IMMACULATE WHITE BEARD AND 42 YEARS  
9     OLD AND THAT IS THE ENTIRE DESCRIPTION SHE HAD IN ADDITION  
10    TO THAT SKETCH.

11                  SO IN ORDER TO BELIEVE THAT SHE SAW RON LEVIN,  
12    YOU BASICALLY HAVE TO RELY ON THAT DESCRIPTION, THE SKETCH  
13    THAT SHE SAW AND THROW OUT EVERYTHING ELSE THAT YOU HEARD  
14    HERE FOR ABOUT SEVEN WEEKS.

15                  SECOND OF ALL, I THINK THAT THIS HAS ALWAYS BEEN  
16    THE MOST TELLING FOR ME IS SHE -- THEY BOTH SAY THAT "HERE  
17    IS A MAN IN A GAS STATION," AND IS HE HIDING? IS HE TRYING  
18    TO BE INCONSPICUOUS? NO. HE IS BEING VERY OPEN, VERY  
19    NOTORIOUS. HE IS OUT THERE FOR ALL OF THE WORLD TO SEE,  
20    RIGHT?

21                  AND IF WE BELIEVE HER, HE HASN'T CHANGED HIS  
22    APPEARANCE AT ALL FROM WHAT SHE SEES IN THIS SKETCH THAT  
23    APPEARED IN A MAGAZINE.

24                  SO HERE IS A MAN WHO, ACCORDING TO HER, WHO IS  
25    LIVING THIS OPEN AND NOTORIOUS LIFE IN TUCSON. HE IS NOT  
26    HIDING. HE IS NOT TRYING TO AVOID ANYBODY. AND IF THAT  
27    IS THE CASE, IF THAT IS HOW THIS PERSON IS ACTING AND IF  
28    THAT PERSON WERE IN FACT RON LEVIN -- AND THIS IS THE PART

1 THAT IS THE MOST TELLING TO ME -- HE WOULD HAVE CALLED HIS  
2 MOTHER.

3 IF THAT IS HOW HE IS ACTING IN TUCSON AND HE  
4 DOESN'T CARE THAT ALL OF THE WORLD SEES HIM, WHY DOESN'T  
5 HE CALL AND SAY, "MOM, I AM HERE. I AM FINE."

6 OR CALL AND SAY, "MOM, I AM FINE," AND NOT TELL  
7 HER. BUT IF HE IS ACTING ALL THIS WAY FOR EVERYBODY IN TUCSON  
8 TO SEE HIM, WHY DOESN'T HE LET HIS MOTHER KNOW HE IS ALL  
9 RIGHT? IT DOESN'T MAKE ANY SENSE AT ALL. IT IS COMPLETELY  
10 INCONSISTENT WITH THE TESTIMONY THAT YOU HAVE HEARD BEFORE.

11 A FEW OTHER THINGS, BASED ON WHAT YOU KNOW OF  
12 RON LEVIN, THE MAN WHO LIKED TO BE CATERED TO AND SERVED,  
13 WHO LIKED TO GO TO THE BEVERLY HILLS HOTEL AND BE SURROUNDED  
14 AND ORDER ALL OF THIS FOOD AND EVERYTHING. RON LEVIN WOULD  
15 NOT PUMP HIS OWN GAS. SMALL THING. BUT RON LEVIN IS NOT  
16 GOING TO PUMP HIS OWN GAS IN TUCSON OR ANY PLACE ELSE.

17 ANOTHER THING IS, YOU HAVE HEARD LOTS OF TESTI-  
18 MONY, STARTING WITH CAROL LEVIN AND INCLUDING ALL OF THE  
19 FRIENDS OF RON LEVIN, ANYBODY WHO KNEW HIM, KNEW THAT HE  
20 WAS HYPERACTIVE. AND EVEN IN THIS ARTICLE, AFTER IT SAYS,  
21 AFTER IT DESCRIBES HIS EYES, IT SAYS:

22 "BUT NO ONE WHO MET LEVIN FORGOT THE  
23 HIGH NASAL VOICE THAT POURED FORTH IDEAS, OBSER-  
24 VATIONS, PROMISES AND PROPOSITIONS AT A RATE THAT  
25 LEFT HIS LISTENERS EITHER DAZZLED OR DUMBFOUNDED."

26 DO YOU REMEMBER THE TESTIMONY THAT HE IS CONSTANTLY  
27 MOVING AND TALKING AND GESTICULATING? THAT WAS NOT THE MAN  
28 WHO WAS DESCRIBED TO YOU AT THE GAS STATION AT ALL. IT WAS



1 A MAN WHO WAS KIND OF COOL, HANGING OUT. THAT IS INCONSISTENT  
2 WITH WHAT WE KNOW ABOUT RON LEVIN.

3 THE OTHER THING, OR ONE OF THE THINGS THAT CARMEN  
4 SAID TO SOLIDIFY HER IDENTIFICATION WAS THE PICTURE OF RON  
5 LEVIN WITH HIS MOTHER AND YVONNE BLAKE. WELL, THAT IS AN EIGHT-  
6 YEAR-OLD PICTURE, EIGHT YEARS FROM THE TIME SHE CLAIMS TO  
7 HAVE SEEN HIM, TAKEN IN 1978 SOMETIME WHEN HE WAS WORKING  
8 ON HER CAMPAIGN. IT WAS NOT A CURRENT PICTURE.

9 SHE SAYS, "WELL, I AM NOT REALLY SURE. I AM  
10 NOT REALLY SURE." AND THEN SHE GETS THIS EIGHT-YEAR-OLD  
11 PICTURE AND SHE SAYS "OH, YEAH, THAT IS THE GUY."

12 THE OTHER THING OR ONE OF THE OTHER THINGS IS  
13 THAT MR. LOPEZ IS SUCCESSFUL IN DOING THIS IDENTI KIT, THIS  
14 COMPOSITE SKETCH DRAWING, WHATEVER YOU WANT TO CALL IT, AND  
15 HE SAYS, "THIS IS THE PERSON EXCEPT HIS CHIN IS A LITTLE  
16 MORE SCULPTURED AND HIS HAIR IS PUSHED STRAIGHT BACK."

17 TO ME, THIS HAIR LOOKS LIKE IT IS PUSHED STRAIGHT  
18 BACK, BUT THAT IS KIND OF BESIDE THE POINT. THE POINT IS  
19 THAT THEY SHOW THIS PICTURE TO CARMEN AND SHE SAYS, "NO,  
20 THAT IS NOT THE PERSON AT ALL."

21 AND NOW THEY COME INTO COURT AND WANT TO SAY  
22 THAT THEY ARE BOTH EXACTLY SURE IT WAS EXACTLY THE SAME  
23 PERSON, SO THAT DOESN'T MAKE SENSE.

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1 AND ANOTHER THING THAT I THINK IS PARTICULARLY  
2 TELLING, IS THAT JESUS LOPEZ -- THERE WERE A COUPLE OF THINGS.  
3 ONE HAD TO DO WITH THE WAY HE TESTIFIED, WHICH IS TRYING TO  
4 MAKE SURE THAT NOBODY QUESTIONS HIM AND PAD THE THINGS THAT  
5 HE SAID TO MAKE SURE THAT HE LOOKS RIGHT.

6 I MEAN, YOU REMEMBER SOME OF THE INCONSISTENCIES  
7 IN HIS TESTIMONY ABOUT NOT BEING ABLE TO SEE THE GUY AT THE  
8 CASHIER BECAUSE AFTER ALL, HE HAD HIS BACK TO HIM, HE HAD TO  
9 ADMIT.

10 BUT THE OTHER THING I THOUGHT WAS INTERESTING IN  
11 TERMS OF TRYING TO PAD WHAT WAS GOING ON, WAS THAT HE SAID  
12 THAT HE COULDN'T ESTIMATE THE HEIGHT BECAUSE ONE OF THOSE  
13 PEOPLE WAS STANDING ON THE ISLAND AT THE COKE MACHINE, REACHING  
14 IN TO GET A COKE.

15 WELL, YOU MAY NOT BE ABLE TO SEE IT NOW, BUT WHEN  
16 YOU LOOK AT THIS PICTURE PEOPLE'S 233 IN THE JURY ROOM, IF  
17 YOU LOOK CAREFULLY AT THE COKE MACHINE WHICH IS IN THE CENTER  
18 AISLE, IT IS NOT THE KIND OF A COKE MACHINE THAT WE ARE  
19 FAMILIAR WITH IN CALIFORNIA. IT IS MORE LIKE A REFRIGERATOR  
20 THAT YOU JUST REACH INTO AND GET SOMETHING OUT OF.

21 IT TAKES UP THE WHOLE WIDTH OF THE ISLAND. NOBODY  
22 IS GOING TO STAND THERE TALKING. SO THAT WAS INCONSISTENT  
23 WITH HIS TESTIMONY AND WITH WHAT HE HAD TO SAY.

24 AND THERE WERE A LOT OF THINGS, INCONSISTENCIES  
25 BETWEEN WHAT HE ORIGINALLY TOLD THE POLICE AND THE WAY THAT  
26 HE TESTIFIED IN COURT. THE MOST TELLING THING THOUGH, ABOUT  
27 WHAT HE SAID, WAS WHEN HE TALKED ABOUT THE PERSON THAT HE SAW  
28 LOOKING LIKE HE HAD WORKED OUT, THAT HE FILLED OUT THE T-SHIRT

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1 AND JEANS VERY WELL, THAT HE HAD LOTS OF DEFINITION IN HIS  
2 CHEST AND IN HIS ARMS LIKE A PERSON WHO WORKED OUT.

3 KEEP IN MIND THAT WHEN THAT STATEMENT WAS FIRST  
4 MADE TO DETECTIVE EDMONDS, THAT WAS FIRST MADE AFTER DETECTIVE  
5 EDMONDS GOT HIM OUT OF A WRESTLING GYM WHERE HE WAS HELPING  
6 WITH A WRESTLING MATCH. SO THIS IS A GUY WHO WORKS OUT  
7 HIMSELF AND WHO KNOWS WHAT PEOPLE LOOK LIKE WHO WRESTLE AND  
8 WHO WORK OUT.

9 RON LEVIN WAS THE ANTITHESIS OF THE WORDS "WORK  
10 OUT" AND "DEFINITION".

11 THIS WAS A MAN WHO AS WE SAID YESTERDAY, HIS DAILY  
12 EXERCISE CONSISTED OF TALKING TO LEN MARMOR ON THE TELEPHONE.  
13 HE WAS NOT GOING TO GO NEAR A BARBELL OR A WEIGHT MACHINE OR  
14 A GYM OR ANYTHING OF THAT NATURE. SO WHOEVER THAT PERSON WAS  
15 IN THAT GAS STATION, WAS NOT RON LEVIN.

16 I WANT TO TALK TO YOU NOW A LITTLE BIT ABOUT THE  
17 LAW THAT YOU ARE GOING TO HAVE TO APPLY TO THIS CASE. FIRST,  
18 I WANT TO TALK TO YOU ABOUT THE TWO CRIMES CHARGED HERE. THE  
19 SECOND ONE WE HAVE KIND OF ALL FORGOTTEN IN THE MASS, HERE.

20 THAT IS A ROBBERY. THERE IS A MURDER CHARGE AND  
21 A ROBBERY CHARGE. AND THEN, THERE ARE SPECIAL CIRCUMSTANCES  
22 ATTACHED TO THE CHARGE OF MURDER WHICH INCLUDE SPECIAL  
23 CIRCUMSTANCES THAT THE MURDER IS IN THE COURSE OF A ROBBERY.

24 SO IT IS KIND OF ALL MESHED TOGETHER. AND THE  
25 COURT IS GOING TO TELL YOU THAT A MURDER IS THE UNLAWFUL  
26 KILLING OF A HUMAN BEING WITH MALICE AFORETHOUGHT. WELL, THE  
27 COURT IS ALSO GOING TO EXPLAIN WHAT MALICE OF AFORETHOUGHT  
28 MEANS. WHAT IT MEANS IS ONE OF TWO THINGS.

1           EITHER IN THIS CASE, THE KILLING DURING THE COURSE  
2 OF A ROBBERY, AN INTENTIONAL KILLING, AN INTENT TO KILL. THE  
3 REASON I SAID YESTERDAY THAT THE FACTS ARE GOING TO BE WHAT  
4 IS IMPORTANT HERE, IS BECAUSE BASICALLY, IF YOU BELIEVE THE  
5 TESTIMONY OF THE WITNESSES THAT WERE PRESENTED BY THE  
6 PROSECUTION IN THIS CASE AND YOU BELIEVE THAT RON LEVIN WAS  
7 KILLED BY JOE HUNT, MURDERED, THEN THERE IS NOT GOING TO BE  
8 ANY QUESTION THAT IT IS GOING TO FALL INTO THE DEFINITION THE  
9 COURT GIVES YOU.

10           THAT IS, THAT RON LEVIN WAS KILLED. HE WAS SHOT  
11 BY JOE HUNT. IT WAS DONE OBVIOUSLY, WITH AN INTENT TO KILL  
12 AND THAT IS WHAT THIS LIST WAS ALL ABOUT. IT WAS DELIBERATE.

13           THE WORD "PREMEDITATED" THE COURT WILL TELL YOU  
14 JUST MEANS THAT YOU HAVE TO DO IT AHEAD OF TIME. YOU CAN'T  
15 THINK ABOUT IT ON THE SPUR OF THE MOMENT. YOU HAVE TO THINK  
16 ABOUT IT AT SOME POINT AHEAD OF TIME. THERE IS NOT GOING TO  
17 BE ANY QUESTION THAT IF YOU BELIEVE JOE HUNT KILLED RON LEVIN,  
18 IT FALLS IN THE DEFINITION OF THE CRIME OF MURDER.

B-1

1                    LIKEWISE, WHAT IS A ROBBERY? THE COURT IS GOING  
2 TO GIVE YOU THE DEFINITION. BUT WHAT IT COMES DOWN TO IS,  
3 THE THEFT OF PROPERTY FROM A PERSON OR HIS IMMEDIATE PRESENCE  
4 BY THE USE OF FORCE.

5                    AND IN THIS CASE, WHAT THAT TRANSLATES INTO IS  
6 THE PUTTING OF THE GUN TO RON LEVIN AND SAYING, "SIGN THIS  
7 CONTRACT AND SIGN THE CHECK."

8                    AND YOU HAVE TO TAKE THE PROPERTY OF SOME VALUE  
9 FROM THE PERSON. WHAT THEY TOOK FROM RON LEVIN AT GUNPOINT  
10 WAS A CHECK. IT WAS THE CHECK FOR \$1.5 MILLION.

11                    AGAIN, AS I SAID BEFORE, NOT TO LOOK AT THESE  
12 THINGS IN THE HYPERTECHNICAL SENSE, BUT IF YOU WANT TO GET  
13 HYPERTECHNICAL ABOUT IT, WHAT PROPERTY OF VALUE DID THEY TAKE  
14 FROM RON LEVIN?

15                    THE CHECK WAS NOT ANY GOOD. WELL, THE ANSWER IS,  
16 WHAT THEY TOOK WAS NOT ONLY THE CHECK, BUT THE INFORMATION  
17 THAT THEY LATER USED WHEN THE CHECK WAS NOT GOOD, TO SEND JIM  
18 PITTMAN TO WASHINGTON TO TRY TO GET OTHER CHECKS.

19                    IT TURNS OUT, THEY WEREN'T SUCCESSFUL. BUT WHAT  
20 THEY GOT IN FACT, WAS THE CHECK AND THE INFORMATION CONTAINED  
21 ON THE CHECK. SO IF YOU BELIEVE THAT JOE HUNT WAS THERE AT  
22 RON LEVIN'S PLACE ON THE NIGHT OF THE 6TH OF JUNE AND  
23 COMMITTED THIS CRIME, THEN IT IS BOTH A ROBBERY AS DEFINED  
24 IN COUNT II AND A MURDER AS DEFINED IN COUNT II.

25                    THAT WILL GIVE YOU TWO DIFFERENT WAYS TO GET TO  
26 WHAT THE COURT IS GOING TO GIVE YOU AS DEGREES OF MURDER.  
27 AND BASICALLY, A FIRST DEGREE MURDER IS EITHER A MURDER  
28 COMMITTED IN THIS CASE, DURING A ROBBERY OR A DELIBERATED AND

PREMEDITATED MURDER.

EITHER WAY, YOU GET THE FIRST DEGREE MURDER. THEN  
THE ONLY THING LEFT IS TO DECIDE WHETHER OR NOT THE SPECIAL  
CIRCUMSTANCES ARE TRUE. AND THAT AGAIN, COMES BACK TO THE  
DEFINITION OF ROBBERY. THAT IS, A MURDER DURING THE COURSE  
OF A ROBBERY, THAT IF YOU BELIEVE THAT HE WAS THERE AND DID  
THESE THINGS, THEN YOU ARE NOT GOING TO HAVE ANY TROUBLE  
FINDING IT WAS A MURDER DURING THE COURSE OF A ROBBERY.  
THERE WILL BE SOME INSTRUCTIONS THAT TALK ABOUT HOW YOU CAN'T  
FIND THE SPECIAL CIRCUMSTANCES TRUE IF IT TURNS OUT THAT IT  
WAS A ROBBERY DURING THE COURSE OF A MURDER, IF THE ROBBERY  
WAS JUST KIND OF AN AFTERTHOUGHT.



1 BUT IN THIS CASE, WE KNOW THAT THE ROBBERY HAD  
2 TO COME FIRST, BECAUSE HE HAD TO SIGN THE CHECK AND SIGN THE  
3 CONTRACT BEFORE HE WAS KILLED.

4 SO I DON'T THINK THAT THE LEGAL HURDLES ARE GOING  
5 TO BE VERY GREAT IN THIS CASE.

6 ONE OF THE THINGS THAT I WANT YOU TO KEEP IN MIND  
7 IS, EXAMINE CAREFULLY ALL OF THE EVIDENCE IN THE CASE, ALL  
8 OF THE EVIDENCE THAT HAS BEEN PRESENTED OVER THE COURSE OF  
9 THE LAST TWO AND A HALF MONTHS, WHATEVER IT HAS BEEN. LOOK  
10 AT IT CAREFULLY IN THE LIGHT OF YOUR COMMON SENSE, IN THE LIGHT  
11 OF REASON.

12 I THINK THAT THE MORE CAREFULLY YOU SCRUTINIZE  
13 THIS EVIDENCE, THE MORE CONVINCED THAT YOU ARE GOING TO BE  
14 THAT ALL OF THE EVIDENCE POINTS TO ONE INESCAPABLE, REASONABLE  
15 CONCLUSION, AND THAT IS, THAT ON THE NIGHT OF JUNE THE 6TH  
16 OF 1984, JOE HUNT AND JIM PITTMAN MURDERED RON LEVIN.

17 THANK YOU.

18 THE COURT: ALL RIGHT.

19 MR. BARENS: YOUR HONOR, MIGHT WE TURN THE AIR  
20 CONDITIONING DOWN A BIT?

21 THE COURT: TURN IT DOWN A BIT?

22 MR. BARENS: IT IS CLOSE IN HERE, IT SEEMS.

23 THE COURT: DO YOU FEEL COMFORTABLE, LADIES AND  
24 GENTLEMEN?

25 MR. BARENS: TO MAKE IT A LITTLE COOLER THAN IT IS.

26 JUROR NO. 4: IT IS AN ICEBOX.

27 THE COURT: DO YOU WANT THE TEMPERATURE TO GO DOWN?

28 MR. BARENS: I MAY BE IN A MINORITY ON THAT, YOUR HONOR.

1 MR. WAPNER: I GUESS EITHER WAY IS FINE. IT DOESN'T  
2 MATTER.

3 THE COURT: IS THAT ALL RIGHT? PUT IT "GUILTY OF FIRST  
4 DEGREE MURDER" IN THERE?

5 OR YOU CAN PUT IT ANYWHERE YOU WANT.

6 MR. BARENS: IT LOOKS BETTER SCRIPT DOWN THERE.

7 MR. WAPNER: THEY DON'T HAVE TO MAKE A FINDING.

8 THE COURT: "WE FURTHER FIND IT TO BE MURDER IN THE  
9 FIRST DEGREE."

10 DO YOU WANT IT THAT WAY?

11 ANY WAY YOU WANT IT, I DON'T CARE.

12 MR. BARENS: I HAVE A REQUEST THEN. ANYTHING?

13 THE COURT: YOU DON'T WANT ANY VERDICT FORM AT ALL?

14 MR. BARENS: ANYTHING?

15 THE COURT: WHAT DO YOU WANT, JUST ADD THAT IN THERE  
16 FIRST?

17 MR. WAPNER: YES.

18 MR. BARENS: THAT IS FINE.

19 (THE FOLLOWING PROCEEDINGS WERE HELD IN  
20 OPEN COURT IN THE HEARING AND PRESENCE  
21 OF THE JURY:)

22  
23 JURY INSTRUCTIONS

24 BY THE COURT:

25 LADIES AND GENTLEMEN OF THE JURY:

26 NOW THAT YOU HAVE HEARD THE EVIDENCE,  
27 WE COME TO THAT PART OF THE TRIAL WHERE YOU ARE  
28 INSTRUCTED AS TO THE APPLICABLE LAW.



1 I AM REQUIRED TO READ THE INSTRUCTIONS  
2 TO YOU IN OPEN COURT AND, IN ADDITION, YOU WILL  
3 HAVE THESE INSTRUCTIONS IN THEIR WRITTEN FORM IN  
4 THE JURY ROOM FOR USE DURING YOUR DELIBERATIONS.

5 WHETHER THE DEFENDANT IS TO BE FOUND  
6 GUILTY OR NOT GUILTY DEPENDS UPON BOTH THE FACTS  
7 AND THE LAW.

8 AS JURORS, YOU HAVE TWO DUTIES TO PERFORM.  
9 ONE DUTY IS TO DETERMINE THE FACTS OF THE CASE FROM  
10 THE EVIDENCE RECEIVED IN THE TRIAL AND NOT FROM ANY  
11 OTHER SOURCE.

12 THE WORD "FACT" MEANS SOMETHING THAT IS  
13 PROVED DIRECTLY OR CIRCUMSTANTIALLY BY THE EVIDENCE  
14 OR BY AGREEMENT OF COUNSEL.

15 YOUR OTHER DUTY IS TO APPLY THE RULES  
16 OF LAW THAT I STATE TO YOU TO THE FACTS AS YOU  
17 DETERMINE THEM TO EXIST AND IN THIS WAY, TO ARRIVE  
18 AT YOUR VERDICT.

19 IT IS MY DUTY IN THESE INSTRUCTIONS  
20 TO EXPLAIN TO YOU THE RULES OF LAW THAT APPLY TO  
21 THIS CASE AND YOU MUST ACCEPT AND FOLLOW THE RULES  
22 OF LAW AS I STATE THEM TO YOU.

23 AS JURORS, YOU MUST NOT BE INFLUENCED  
24 BY PITY FOR THE DEFENDANT OR BY PREJUDICE AGAINST  
25 HIM.

26 YOU MUST NOT BE BIASED AGAINST A  
27 DEFENDANT BECAUSE HE HAS BEEN ARRESTED FOR THESE  
28 OFFENSES OR BECAUSE HE HAS BEEN CHARGED WITH CRIMES

1 OR BECAUSE HE HAS BEEN BROUGHT TO TRIAL. NONE OF  
2 THESE CIRCUMSTANCES IS EVIDENCE OF HIS GUILT AND  
3 YOU MUST NOT INFER OR ASSUME FROM ANY OR ALL OF  
4 THEM THAT HE IS MORE LIKELY TO BE GUILTY THAN  
5 INNOCENT.

6 YOU MUST NOT BE SWAYED BY MERE  
7 SENTIMENT, CONJECTURE, SYMPATHY, PASSION, PREJUDICE,  
8 PUBLIC OPINION OR PUBLIC FEELING.  
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1           BOTH THE PEOPLE AND THE DEFENDANT HAVE  
2 A RIGHT TO EXPECT THAT YOU WILL CONSCIENTIOUSLY  
3 CONSIDER AND WEIGH THE EVIDENCE AND APPLY THE LAW  
4 OF THE CASE AND THAT YOU WILL REACH A JUST VERDICT,  
5 REGARDLESS OF WHAT THE CONSEQUENCES OF SUCH VERDICT  
6 MAY BE.

7           IF ANY RULE, DIRECTION OR IDEA IN THESE  
8 INSTRUCTIONS HAS BEEN REPEATED OR STATED IN VARYING  
9 WAYS, NO EMPHASIS IS INTENDED AND YOU MUST NOT DRAW  
10 ANY INFERENCES BECAUSE OF ITS REPETITION.

11           YOU ARE NOT TO SINGLE OUT ANY CERTAIN  
12 SENTENCE OR ANY INDIVIDUAL POINT OR INSTRUCTION AND  
13 IGNORE THE OTHERS.

14           YOU ARE TO CONSIDER ALL OF THE INSTRUCTIONS AS A WHOLE AND ARE TO CONSIDER EACH IN THE  
15 LIGHT OF ALL OF THE OTHERS.

16  
17           THE ORDER IN WHICH THE INSTRUCTIONS IS  
18 GIVEN HAS NO SIGNIFICANCE AS TO THEIR RELATIVE  
19 IMPORTANCE.

20           STATEMENTS MADE BY ATTORNEYS DURING  
21 THE TRIAL ARE NOT EVIDENCE.

22           HOWEVER, IF COUNSEL FOR THE PARTIES HAVE  
23 STIPULATED TO ANY FACT, YOU WILL REGARD THAT FACT  
24 AS BEING CONCLUSIVELY PROVED AS TO THE PARTY OR  
25 PARTIES MAKING THE STIPULATION.

26           A STIPULATION IS AN AGREEMENT BETWEEN  
27 ATTORNEYS AS TO MATTERS RELATING TO THE TRIAL.

28           AS TO ANY QUESTION TO WHICH AN OBJECTION

1 WAS SUSTAINED, YOU MUST NOT GUESS WHAT THE ANSWER  
2 MIGHT HAVE BEEN OR AS TO THE REASON FOR THE  
3 OBJECTION.

4 YOU MUST NEVER ASSUME TO BE TRUE ANY  
5 INSINUATION SUGGESTED BY A QUESTION ASKED A WITNESS.

6 A QUESTION IS NOT EVIDENCE AND MAY BE  
7 CONSIDERED ONLY AS IT SUPPLIES MEANING TO THE  
8 ANSWER.

9 YOU MUST NOT CONSIDER FOR ANY PURPOSE  
10 ANY EVIDENCE THAT WAS STRICKEN OUT BY THE COURT.  
11 SUCH MATTER IS TO BE TREATED AS THOUGH YOU HAD NEVER  
12 HEARD OF IT.

13 FOR THE SAKE OF CONVENIENCE, THE  
14 MASCULINE PRONOUN IS USED IN THESE INSTRUCTIONS AND  
15 APPLIES EQUALLY TO ALL PERSONS.

16 EVIDENCE CONSISTS OF TESTIMONY OF  
17 WITNESSES, WRITINGS, MATERIAL OBJECTS OR ANYTHING  
18 PRESENTED TO THE SENSES AND OFFERED TO PROVE THE  
19 EXISTENCE OR NON-EXISTENCE OF A FACT.  
20  
21  
22  
23  
24  
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26  
27  
28

1 EVIDENCE IS EITHER DIRECT OR CIRCUMSTANTIAL.

2 DIRECT EVIDENCE IS EVIDENCE THAT DIRECTLY  
3 PROVES A FACT, WITHOUT THE NECESSITY OF AN INFERENCE,  
4 AND WHICH BY ITSELF, IF FOUND TO BE TRUE, ESTABLISHES  
5 THAT FACT.

6 CIRCUMSTANTIAL EVIDENCE IS EVIDENCE  
7 THAT, IF FOUND TO BE TRUE, PROVES A FACT FROM WHICH  
8 AN INFERENCE OF THE EXISTENCE OF ANOTHER FACT MAY  
9 BE DRAWN.

10 AN INFERENCE IS A DEDUCTION OF FACT  
11 THAT MAY LOGICALLY AND REASONABLY BE DRAWN FROM  
12 ANOTHER FACT OR GROUP OF FACTS ESTABLISHED BY THE  
13 EVIDENCE.

14 IT IS NOT NECESSARY THAT FACTS BE PROVED  
15 BY DIRECT EVIDENCE. THEY MAY BE PROVED ALSO BY  
16 CIRCUMSTANTIAL EVIDENCE OR BY A COMBINATION OF  
17 DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE. BOTH  
18 DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE ARE  
19 ACCEPTABLE AS A MEANS OF PROOF. NEITHER IS  
20 ENTITLED TO ANY GREATER WEIGHT THAN THE OTHER.

21 HOWEVER, A FINDING OF GUILT AS TO ANY  
22 CRIME MAY NOT BE BASED ON CIRCUMSTANTIAL EVIDENCE  
23 UNLESS THE PROVED CIRCUMSTANCES ARE NOT ONLY  
24 (1) CONSISTENT WITH THE THEORY THAT THE DEFENDANT  
25 IS GUILTY OF THE CRIME, BUT (2) CANNOT BE  
26 RECONCILED WITH ANY OTHER RATIONAL CONCLUSION.

27 FURTHER, EACH FACT WHICH IS ESSENTIAL  
28 TO COMPLETE A SET OF CIRCUMSTANCES NECESSARY TO

5A-0  
1 ESTABLISH THE DEFENDANT'S GUILT MUST BE PROVED  
2 BEYOND A REASONABLE DOUBT. IN OTHER WORDS, BEFORE  
3 AN INFERENCE ESSENTIAL TO ESTABLISH GUILT MAY BE  
4 FOUND TO HAVE BEEN PROVED BEYOND A REASONABLE  
5 DOUBT, EACH FACT OR CIRCUMSTANCE UPON WHICH SUCH  
6 INFERENCE NECESSARILY RESTS MUST BE PROVED BEYOND  
7 A REASONABLE DOUBT.

8 ALSO, IF THE CIRCUMSTANTIAL EVIDENCE  
9 AS TO ANY PARTICULAR COUNT IS SUSCEPTIBLE OF TWO  
10 REASONABLE INTERPRETATIONS, ONE OF WHICH POINTS  
11 TO THE DEFENDANT'S GUILT AND THE OTHER TO HIS  
12 INNOCENCE, IT WOULD BE YOUR DUTY TO ADOPT THAT  
13 INTERPRETATION WHICH POINTS TO THE DEFENDANT'S  
14 INNOCENCE AND REJECT THAT INTERPRETATION WHICH  
15 POINTS TO HIS GUILT.

16 IF, ON THE OTHER HAND, ONE INTERPRETATION  
17 OF SUCH EVIDENCE APPEARS TO YOU TO BE REASONABLE  
18 AND THE OTHER INTERPRETATION TO BE UNREASONABLE,  
19 IT WILL BE YOUR DUTY TO ACCEPT THE REASONABLE  
20 INTERPRETATION AND TO REJECT THE UNREASONABLE.

21 THE SPECIFIC INTENT WITH WHICH AN ACT  
22 IS DONE MAY BE SHOWN BY THE CIRCUMSTANCES  
23 SURROUNDING THE COMMISSION OF THE ACT. BUT YOU  
24 MAY NOT FIND THE DEFENDANT GUILTY OF THE OFFENSES  
25 CHARGED IN COUNTS I AND II, COUNT I BEING MURDER  
26 AND COUNT II BEING ROBBERY, UNLESS THE PROVED  
27 CIRCUMSTANCES NOT ONLY ARE CONSISTENT WITH THE  
28 THEORY THAT HE HAD THE REQUIRED SPECIFIC INTENT

1 BUT CANNOT BE RECONCILED WITH ANY OTHER RATIONAL  
2 CONCLUSION.

3 ALSO, IF THE EVIDENCE AS TO ANY SUCH  
4 SPECIFIC INTENT IS SUSCEPTIBLE OF TWO REASONABLE  
5 INTERPRETATIONS, ONE OF WHICH POINTS TO THE  
6 EXISTENCE OF THE SPECIFIC INTENT AND THE OTHER  
7 TO THE ABSENCE OF THE SPECIFIC INTENT, IT IS YOUR  
8 DUTY TO ADOPT THAT INTERPRETATION WHICH POINTS  
9 TO THE ABSENCE OF THE SPECIFIC INTENT. IF, ON  
10 THE OTHER HAND, ONE INTERPRETATION OF THE EVIDENCE  
11 AS TO SUCH SPECIFIC INTENT APPEARS TO YOU TO BE  
12 REASONABLE AND THE OTHER INTERPRETATION TO BE  
13 UNREASONABLE, IT WILL BE YOUR DUTY TO ADOPT THE  
14 REASONABLE INTERPRETATION AND TO REJECT THE  
15 UNREASONABLE.

16 IF YOU FIND THAT BEFORE THIS TRIAL  
17 THE DEFENDANT MADE WILLFULLY FALSE OR DELIBERATELY  
18 MISLEADING STATEMENTS CONCERNING THE CHARGES UPON  
19 WHICH HE IS NOW BEING TRIED, YOU MAY CONSIDER SUCH  
20 STATEMENTS AS A CIRCUMSTANCE TENDING TO PROVE A  
21 CONSCIOUSNESS OF GUILT BUT IT IS NOT SUFFICIENT  
22 OF ITSELF TO PROVE GUILT. THE WEIGHT TO BE GIVEN  
23 TO SUCH A CIRCUMSTANCE AND ITS SIGNIFICANCE, IF  
24 ANY, ARE MATTERS FOR YOUR DETERMINATION.

25 NEITHER SIDE IS REQUIRED TO CALL AS  
26 WITNESSES ALL PERSONS WHO MAY HAVE BEEN PRESENT  
27 AT ANY OF THE EVENTS DISCLOSED BY THE EVIDENCE  
28 OR MAY APPEAR TO HAVE SOME KNOWLEDGE OF THESE



A-4  
1 EVENTS, OR TO PRODUCE ALL OBJECTS OR DOCUMENTS  
2 MENTIONED OR SUGGESTED BY THE EVIDENCE.

3 NOW, THERE HAS BEEN EVIDENCE IN THIS  
4 CASE INDICATING THAT A PERSON OTHER THAN THE  
5 DEFENDANT WAS OR MAY HAVE BEEN INVOLVED IN THE  
6 CRIMES FOR WHICH THE DEFENDANT IS ON TRIAL.

7 YOU MUST NOT DISCUSS OR GIVE ANY  
8 CONSIDERATION AS TO WHY THE OTHER PERSON IS NOT  
9 BEING PROSECUTED IN THIS TRIAL OR WHETHER HE HAS  
10 BEEN OR WILL BE PROSECUTED.

11 EVIDENCE THAT ON SOME FORMER OCCASION  
12 A WITNESS MADE A STATEMENT OR STATEMENTS THAT WERE  
13 INCONSISTENT OR CONSISTENT WITH HIS TESTIMONY IN  
14 THIS TRIAL MAY BE CONSIDERED BY YOU NOT ONLY FOR  
15 THE PURPOSE OF TESTING THE CREDIBILITY OF THE  
16 WITNESS, BUT ALSO AS EVIDENCE OF THE TRUTH OF THE  
17 FACTS AS STATED BY THE WITNESS ON SUCH FORMER  
18 OCCASION.

19 IF YOU DISBELIEVE A WITNESS'S  
20 TESTIMONY THAT HE NO LONGER REMEMBERS A CERTAIN  
21 EVENT, SUCH TESTIMONY IS INCONSISTENT WITH A PRIOR  
22 STATEMENT OR STATEMENTS BY HIM DESCRIBING THAT  
23 EVENT.

24 EVERY PERSON WHO TESTIFIES UNDER OATH  
25 IS A WITNESS. YOU ARE THE SOLE JUDGES OF THE  
26 BELIEVABILITY OF A WITNESS AND THE WEIGHT TO BE  
27 GIVEN THE TESTIMONY OF SUCH A WITNESS.

28 IN DETERMINING THE BELIEVABILITY OF



25A-5  
1 A WITNESS YOU MAY CONSIDER ANYTHING THAT HAS A  
2 TENDENCY IN REASON TO PROVE OR DISPROVE THE  
3 TRUTHFULNESS OF THE TESTIMONY OF THE WITNESS,  
4 INCLUDING BUT NOT LIMITED TO ANY OF THE FOLLOWING:

5 THE EXTENT OF THE OPPORTUNITY OR ABILITY  
6 OF THE WITNESS TO SEE OR HEAR OR OTHERWISE BECOME  
7 AWARE OF ANY MATTER ABOUT WHICH THE WITNESS HAS  
8 TESTIFIED.

9 THE ABILITY OF THE WITNESS TO REMEMBER  
10 OR TO COMMUNICATE ANY MATTER ABOUT WHICH THE WITNESS  
11 HAS TESTIFIED.

12 THE CHARACTER AND QUALITY OF THAT  
13 TESTIMONY.

14 THE DEMEANOR AND MANNER OF THE WITNESS  
15 WHILE TESTIFYING.

16 THE EXISTENCE OR NONEXISTENCE OF A  
17 BIAS, INTEREST OR OTHER MOTIVE.

18 EVIDENCE OF THE EXISTENCE OR NON-  
19 EXISTENCE OF ANY FACT TESTIFIED TO BY THE WITNESS.

20 NOW, THE ATTITUDE OF THE WITNESS TOWARD  
21 THE ACTION IN WHICH TESTIMONY HAS BEEN GIVEN BY  
22 THE WITNESS OR TOWARD THE GIVING OF TESTIMONY.

23 A STATEMENT PREVIOUSLY MADE BY THE  
24 WITNESS THAT IS CONSISTENT OR INCONSISTENT WITH  
25 THE TESTIMONY OF THE WITNESS.

5B- 1 A WITNESS WILLFULLY FALSE IN ONE MATERIAL  
2 PART OF HIS TESTIMONY IS TO BE DISTRUSTED IN OTHERS.  
3 YOU MAY REJECT THE WHOLE TESTIMONY OF A WITNESS  
4 WHO WILLFULLY HAS TESTIFIED FALSELY AS TO A MATERIAL  
5 POINT, UNLESS, FROM ALL OF THE EVIDENCE, YOU SHALL  
6 BELIEVE THE PROBABILITY OF TRUTH FAVORS HIS TESTIMONY  
7 IN OTHER PARTICULARS.

8 HOWEVER, DISCREPANCIES IN A WITNESS'S  
9 TESTIMONY OR BETWEEN HIS TESTIMONY AND THAT OF  
10 OTHERS, IF THERE WERE ANY, DO NOT NECESSARILY MEAN  
11 THAT THE WITNESS SHOULD BE DISCREDITED. FAILURE  
12 OF RECOLLECTION IS A COMMON EXPERIENCE, AND INNOCENT  
13 MISRECOLLECTION IS NOT UNCOMMON. IT IS A FACT  
14 ALSO, THAT TWO PERSONS WITNESSING AN INCIDENT OR  
15 A TRANSACTION OFTEN WILL SEE OR HEAR IT DIFFERENTLY.  
16 WHETHER A DISCREPANCY PERTAINS TO A FACT OF  
17 IMPORTANCE OR ONLY TO A TRIVIAL DETAIL SHOULD BE  
18 CONSIDERED IN WEIGHING ITS SIGNIFICANCE.

19 YOU ARE NOT BOUND TO DECIDE IN  
20 CONFORMITY WITH THE TESTIMONY OF A NUMBER OF  
21 WITNESSES, WHICH DOES NOT PRODUCE CONVICTION IN  
22 YOUR MIND, AS AGAINST THE TESTIMONY OF A LESSER  
23 NUMBER OR OTHER EVIDENCE, WHICH APPEALS TO YOUR  
24 MIND WITH MORE CONVINCING FORCE. THIS DOES NOT  
25 MEAN THAT YOU ARE AT LIBERTY TO DISREGARD THE  
26 TESTIMONY OF THE GREATER NUMBER OF WITNESSES MERELY  
27 FROM CAPRICE OR PREJUDICE, OR FROM A DESIRE TO  
28 FAVOR ONE SIDE AS AGAINST THE OTHER. IT DOES MEAN

5R- 1 THAT YOU ARE NOT TO DECIDE AN ISSUE BY THE SIMPLE  
2 PROCESS OF COUNTING THE NUMBER OF WITNESSES WHO  
3 HAVE TESTIFIED ON THE OPPOSING SIDES. IT MEANS  
4 THAT THE FINAL TEST IS NOT IN THE RELATIVE NUMBER  
5 OF WITNESSES, BUT IN THE RELATIVE CONVINCING FORCE  
6 OF THE EVIDENCE.

7 TESTIMONY WHICH YOU BELIEVE GIVEN BY  
8 ONE WITNESS IS SUFFICIENT FOR THE PROOF OF ANY  
9 FACT. HOWEVER, BEFORE FINDING ANY FACT REQUIRED  
10 TO BE ESTABLISHED BY THE PROSECUTION TO BE PROVED  
11 SOLELY BY THE TESTIMONY OF SUCH A SINGLE WITNESS,  
12 YOU SHOULD CAREFULLY REVIEW ALL OF THE TESTIMONY  
13 UPON WHICH THE PROOF OF SUCH FACT DEPENDS.

14 EYEWITNESS TESTIMONY HAS BEEN RECEIVED  
15 IN THIS TRIAL.

16 IN DETERMINING THE WEIGHT TO BE GIVEN  
17 EYEWITNESS IDENTIFICATION TESTIMONY, YOU SHOULD  
18 CONSIDER THE BELIEVABILITY OF THE EYEWITNESS AS  
19 WELL AS OTHER FACTORS WHICH BEAR UPON THE ACCURACY  
20 OF THE WITNESS' ALLEGED IDENTIFICATION OF RON  
21 LEVIN INCLUDING, BUT NOT LIMITED TO, ANY OF THE  
22 FOLLOWING:

23 THE OPPORTUNITY OF THE WITNESS TO  
24 OBSERVE THE PERSON.

25 THE STRESS, IF ANY, TO WHICH THE  
26 WITNESS WAS SUBJECTED AT THE TIME OF THE OBSERVATION.

27 THE WITNESS' ABILITY, FOLLOWING THE  
28 OBSERVATION, TO PROVIDE A DESCRIPTION OF THE PERSON

25B-7  
1 HE OR SHE SAW.

2 THE EXTENT TO WHICH THE PERSON EITHER  
3 FITS OR DOES NOT FIT THE DESCRIPTION OF THE PERSON  
4 PREVIOUSLY GIVEN BY THE WITNESS.

5 THE CROSS-RACIAL OR ETHNIC NATURE OF  
6 THE IDENTIFICATION.

7 THE WITNESS' CAPACITY TO MAKE AN  
8 IDENTIFICATION.

9 EVIDENCE RELATING TO THE WITNESS'  
10 ABILITY TO IDENTIFY OTHER PEOPLE PRESENT AT THE  
11 TIME OF THE ALLEGED SIGHTING OF THE PERSON WHO  
12 IS THE SUBJECT OF THE IDENTIFICATION.

13 WHETHER THE WITNESS WAS ABLE TO IDENTIFY  
14 THE PERSON IN A PHOTOGRAPHIC OR PHYSICAL LINEUP.

15 THE PERIOD OF TIME BETWEEN THE ALLEGED  
16 SIGHTING AND THE WITNESS' IDENTIFICATION.

17 WHETHER THE WITNESS HAD PRIOR CONTACTS  
18 WITH THE PERSON ALLEGEDLY SIGHTED.

19 THE EXTENT TO WHICH THE WITNESS IS  
20 EITHER CERTAIN OR UNCERTAIN OF THE IDENTIFICATION.

21 WHETHER THE WITNESS' IDENTIFICATION  
22 IS IN FACT THE PRODUCT OF HIS OR HER OWN RECOLLECTION.

23 THE SUGGESTIVENESS OF ANY PROCEDURE  
24 USED TO OBTAIN AN IDENTIFICATION.

25 ANY OTHER EVIDENCE RELATING TO THE  
26 WITNESS' ABILITY TO MAKE ANY IDENTIFICATION.

27 MOTIVE IS NOT AN ELEMENT OF THE CRIMES  
28 CHARGED AND NEED NOT BE SHOWN. HOWEVER, YOU MAY

1           CONSIDER MOTIVE OR LACK OF MOTIVE AS A CIRCUMSTANCE  
2           IN THIS CASE.  ABSENCE OF MOTIVE MAY TEND TO  
3           ESTABLISH INNOCENCE.  YOU MAY, THEREFORE GIVE ITS --  
4           PRESENCE OF MOTIVE MAY TEND TO ESTABLISH GUILT.  
5           ABSENCE OF MOTIVE MAY TEND TO ESTABLISH INNOCENCE.  
6           YOU WILL THEREFORE GIVE ITS PRESENCE OR ABSENCE,  
7           AS THE CASE MAY BE, THE WEIGHT TO WHICH YOU FIND  
8           IT TO BE ENTITLED.

1 IT IS A CONSTITUTIONAL RIGHT OF A  
2 DEFENDANT IN A CRIMINAL TRIAL THAT HE MAY NOT BE  
3 COMPELLED TO TESTIFY. YOU MUST NOT DRAW ANY  
4 INFERENCE FROM THE FACT THAT HE DOES NOT TESTIFY.  
5 FURTHER, YOU MUST NEITHER DISCUSS THIS MATTER NOR  
6 PERMIT IT TO ENTER INTO YOUR DELIBERATIONS IN ANY  
7 WAY.

8 IN DECIDING WHETHER OR NOT TO TESTIFY,  
9 THE DEFENDANT MAY CHOOSE TO RELY ON THE STATE OF THE  
10 EVIDENCE AND UPON THE FAILURE, IF ANY, OF THE  
11 PEOPLE TO PROVE BEYOND A REASONABLE DOUBT EVERY  
12 ESSENTIAL ELEMENT OF THE CHARGES AGAINST HIM. AND  
13 NO LACK OF TESTIMONY ON THE DEFENDANT'S PART WILL  
14 SUPPLY A FAILURE OF PROOF OF THE PEOPLE SO AS TO  
15 SUPPORT A FINDING AGAINST HIM IN ANY SUCH ESSENTIAL  
16 ELEMENT.

17 A CONFESSION IS A STATEMENT MADE BY A  
18 DEFENDANT OTHER THAN AT HIS TRIAL IN WHICH HE HAS  
19 ACKNOWLEDGED HIS GUILT OF THE CRIMES FOR WHICH HE  
20 IS ON TRIAL. IN ORDER TO CONSTITUTE A CONFESSION,  
21 SUCH A STATEMENT MUST ACKNOWLEDGE PARTICIPATION IN  
22 THE CRIMES AS WELL AS THE REQUIRED CRIMINAL INTENT.  
23 A STATEMENT MADE BY THE DEFENDANT OTHER THAN AT HIS  
24 TRIAL IS NOT A CONFESSION BUT AN ADMISSION WHENEVER  
25 THE STATEMENT DOES NOT BY ITSELF ACKNOWLEDGE HIS  
26 GUILT OF THE CRIMES FOR WHICH HE IS ON TRIAL BUT  
27 WHICH TENDS TO PROVE HIS GUILT WHEN CONSIDERED WITH  
28 THE REST OF THE EVIDENCE.



1                   YOU ARE THE EXCLUSIVE JUDGES AS TO  
2           WHETHER THE DEFENDANT MADE A CONFESSION OR AN  
3           ADMISSION AND IF SO, WHETHER SUCH STATEMENT IS TRUE  
4           IN WHOLE OR IN PART. IF YOU SHOULD FIND THAT THE  
5           DEFENDANT DID NOT MAKE THE STATEMENT, YOU MUST  
6           REJECT IT. IF YOU SHOULD FIND THAT IT IS UNTRUE IN  
7           WHOLE OR IN PART, YOU MAY CONSIDER THAT PART WHICH  
8           YOU FIND TO BE TRUE.

9                   EVIDENCE OF AN ORAL CONFESSION OR ORAL  
10          ADMISSION OF THE DEFENDANT SHOULD BE VIEWED WITH  
11          CAUTION.

12                   AN ADMISSION IS A STATEMENT, ORAL OR  
13          WRITTEN, MADE BY THE DEFENDANT OTHER THAN AT HIS  
14          TRIAL, WHICH DOES NOT BY ITSELF ACKNOWLEDGE HIS  
15          GUILT OF THE CRIMES FOR WHICH HE IS ON TRIAL, BUT  
16          WHICH STATEMENT TENDS TO PROVE HIS GUILT WHEN  
17          CONSIDERED WITH THE REST OF THE EVIDENCE.

18                   YOU ARE THE EXCLUSIVE JUDGES AS TO  
19          WHETHER THE DEFENDANT MADE AN ADMISSION, AND IF SO,  
20          WHETHER SUCH STATEMENT IS TRUE IN WHOLE OR IN PART.

21                   IF YOU SHOULD FIND THE DEFENDANT DID  
22          NOT MAKE THE STATEMENT, YOU MUST REJECT IT. IF  
23          YOU SHOULD FIND THAT IT IS TRUE IN WHOLE OR IN PART,  
24          YOU MAY CONSIDER THAT PART WHICH YOU FIND TO BE  
25          TRUE.

26                   EVIDENCE OF AN ORAL ADMISSION OF THE  
27          DEFENDANT SHOULD BE VIEWED WITH CAUTION.

28                   NO PERSON MAY BE CONVICTED OF A CRIMINAL

1 OFFENSE UNLESS THERE IS SOME PROOF OF EACH ELEMENT OF  
2 THE CRIME INDEPENDENT OF ANY CONFESSION OR  
3 ADMISSION MADE BY HIM OUTSIDE OF THE TRIAL. THE  
4 IDENTITY OF THE PERSON WHO IS ALLEGED TO HAVE  
5 COMMITTED A CRIME IS NOT AN ELEMENT OF THE CRIME  
6 NOR IS THE DEGREE OF THE CRIME.

7 SUCH IDENTITY MAY BE ESTABLISHED BY AN  
8 ADMISSION OR CONFESSION.

9 THE TESTIMONY OF DEAN KARNY, WHO HAS  
10 BEEN IMMUNIZED FROM PROSECUTION IN THIS CASE, SHOULD  
11 BE VIEWED WITH GREATER CARE THAN THE TESTIMONY OF  
12 OTHER WITNESSES.

13 EVIDENCE HAS BEEN INTRODUCED IN THIS  
14 TRIAL SHOWING THE DEFENDANT AND THREE OTHER PEOPLE  
15 ARE CHARGED WITH MURDER IN SAN MATEO COUNTY. THIS  
16 EVIDENCE WAS RECEIVED FOR THE LIMITED PURPOSE OF  
17 PROVIDING A COMPLETE RECORD OF THE IMMUNITY AGREEMENT  
18 BETWEEN DEAN KARNY AND THE STATE OF CALIFORNIA.

19 YOU SHOULD CONSIDER THIS EVIDENCE ONLY  
20 FOR THIS LIMITED PURPOSE AND FOR NO OTHER PURPOSE.

21 A PERSON IS QUALIFIED TO TESTIFY AS AN  
22 EXPERT IF HE HAS SPECIAL KNOWLEDGE, SKILL, EXPERIENCE,  
23 TRAINING OR EDUCATION SUFFICIENT TO QUALIFY HIM AS  
24 AN EXPERT ON THE SUBJECT TO WHICH HIS TESTIMONY  
25 RELATES.

26 DULY QUALIFIED EXPERTS MAY GIVE THEIR  
27 OPINIONS ON QUESTIONS IN CONTROVERSY AT A TRIAL.  
28 TO ASSIST YOU IN DECIDING SUCH QUESTIONS, YOU



1 MAY CONSIDER THE OPINION WITH THE REASONS GIVEN FOR  
2 IT, IF ANY, BY THE EXPERT WHO GIVES THE OPINION.

3 YOU MAY ALSO CONSIDER THE QUALIFICATIONS  
4 AND CREDIBILITY OF THE EXPERT.

5 YOU ARE NOT BOUND TO ACCEPT AN EXPERT  
6 OPINION AS CONCLUSIVE, BUT SHOULD GIVE TO IT THE  
7 WEIGHT TO WHICH YOU FIND IT TO BE ENTITLED.

8 YOU MAY DISREGARD ANY SUCH OPINION IF YOU  
9 FIND IT TO BE UNREASONABLE.

10 IN DETERMINING THE WEIGHT TO BE GIVEN  
11 TO AN OPINION EXPRESSED BY ANY WITNESS, YOU SHOULD  
12 CONSIDER HIS CREDIBILITY, THE EXTENT OF HIS  
13 OPPORTUNITY TO PERCEIVE THE MATTER UPON WHICH HIS  
14 OPINIONS IS BASED AND THE REASONS, IF ANY, GIVEN FOR  
15 IT.

16 YOU ARE NOT REQUIRED TO ACCEPT SUCH AN  
17 OPINION, BUT SHOULD GIVE IT THE WEIGHT, IF ANY, TO  
18 WHICH YOU FIND IT TO BE ENTITLED.

19 IN EXAMINING AN EXPERT WITNESS, COUNSEL  
20 MAY PROPOUND TO HIM A TYPE OF QUESTION KNOWN IN THE  
21 LAW AS A HYPOTHETICAL QUESTION. BY SUCH A QUESTION,  
22 THE WITNESS IS ASKED TO ASSUME TO BE TRUE A SET OF  
23 FACTS AND TO GIVE AN OPINION BASED ON SUCH  
24 ASSUMPTION.

25 IN PERMITTING SUCH A QUESTION, THE  
26 COURT DOES NOT RULE, AND DOES NOT NECESSARILY FIND  
27 THAT ALL THE ASSUMED FACTS HAVE BEEN PROVED. IT  
28 ONLY DETERMINES THAT THOSE ASSUMED FACTS ARE WITHIN

1 THE PROBABLE OR POSSIBLE RANGE OF THE EVIDENCE. IT  
2 IS FOR YOU, THE JURY, TO FIND FROM ALL THE EVIDENCE,  
3 WHETHER OR NOT THE FACTS ASSUMED IN A HYPOTHETICAL  
4 QUESTION HAVE BEEN PROVED, AND IF YOU SHOULD FIND  
5 THAT ANY ASSUMPTION IN SUCH A QUESTION HAS NOT BEEN  
6 PROVED, YOU ARE TO DETERMINE THE EFFECT OF THAT  
7 FAILURE OF PROOF ON THE VALUE AND WEIGHT OF THE  
8 EXPERT OPINION BASED ON THE ASSUMED FACTS.

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1 A DEFENDANT IN A CRIMINAL ACTION IS  
2 PRESUMED TO BE INNOCENT UNTIL THE CONTRARY IS  
3 PROVED, AND IN CASE OF A REASONABLE DOUBT WHETHER  
4 HIS GUILT IS SATISFACTORILY SHOWN, HE IS ENTITLED TO  
5 A VERDICT OF NOT GUILTY. THE EFFECT OF THIS  
6 PRESUMPTION IS TO PLACE UPON THE STATE, THE  
7 BURDEN OF PROVING HIM GUILTY BEYOND A REASONABLE  
8 DOUBT.

9 A REASONABLE DOUBT IS DEFINED AS  
10 FOLLOWS: IT IS NOT A MERE POSSIBLE DOUBT BECAUSE  
11 EVERYTHING RELATING TO HUMAN AFFAIRS AND DEPENDING  
12 UPON MORAL EVIDENCE IS OPEN TO SOME POSSIBLE OR  
13 IMAGINARY DOUBT. IT IS THAT STATE OF THE CASE WHICH,  
14 AFTER THE ENTIRE COMPARISON AND CONSIDERATION OF  
15 ALL OF THE EVIDENCE, LEAVES THE MINDS OF THE JURORS  
16 IN THAT CONDITION THAT THEY CANNOT SAY THEY FEEL AN  
17 ABIDING CONVICTION TO A MORAL CERTAINTY OF THE TRUTH  
18 OF THE CHARGE.

19 THE DEFENDANT CONTENTS THAT RON LEVIN WAS  
20 ALIVE AT LEAST IN SEPTEMBER, 1986 AND WAS ALLEGEDLY  
21 SEEN IN TUCSON, ARIZONA. IF YOU HAVE A REASONABLE  
22 DOUBT THAT RON LEVIN IS DEAD, YOU MUST RESOLVE THAT  
23 DOUBT IN THE DEFENDANT'S FAVOR AND FIND HIM NOT  
24 GUILTY.

25 THE PERSONS CONCERNED IN THE COMMISSION  
26 OF A CRIME WHO ARE REGARDED BY LAW AS PRINCIPALS  
27 IN THE CRIME THUS COMMITTED AND EQUALLY GUILTY  
28 THEREOF, INCLUDE THOSE WHO DIRECTLY AND ACTIVELY

1 COMMIT THE ACTS CONSTITUTING THE CRIME OR THOSE WHO  
2 AID AND ABET THE COMMISSION OF THE CRIME.

3 ONE WHO AIDS AND ABETS IS NOT ONLY  
4 GUILTY OF THE PARTICULAR CRIME THAT TO HIS KNOWLEDGE,  
5 HIS CONFEDERATES ARE CONTEMPLATING COMMITTING, BUT  
6 HE IS ALSO LIABLE FOR THE NATURAL AND PROBABLE AND REASONABLE  
7 CONSEQUENCES OF ANY ACT THAT HE KNOWINGLY AND  
8 INTENTIONALLY AIDED OR ENCOURAGED.

9 A PERSON AIDS AND ABETS THE COMMISSION OF A  
10 CRIME WHEN HE (1) WITH KNOWLEDGE OF THE UNLAWFUL  
11 PURPOSE OF THE PERPETRATOR AND (2) WITH THE INTENT  
12 OR PURPOSE OF COMMITTING, ENCOURAGING OR FACILITATING  
13 THE COMMISSION OF THE OFFENSE, BY ACT OR ADVICE, AIDS,  
14 PROMOTES, ENCOURAGES OR INSTIGATES THE COMMISSION  
15 OF THE CRIME.

16 A PERSON WHO AIDS AND ABETS THE  
17 COMMISSION OF A CRIME NEED NOT BE PERSONALLY PRESENT  
18 AT THE SCENE OF THE CRIME. MERE PRESENCE AT THE  
19 SCENE OF A CRIME WHICH DOES NOT ITSELF ASSIST IN  
20 THE COMMISSION OF THE CRIME, DOES NOT AMOUNT TO  
21 AIDING AND ABETTING.

22 MERE KNOWLEDGE OF THE CRIME THAT IS  
23 BEING COMMITTED AND THE FAILURE TO PREVENT IT, DOES  
24 NOT AMOUNT TO AIDING AND ABETTING.

25 IN EACH OF THE CRIMES CHARGED IN COUNTS  
26 I AND II OF THE INFORMATION, NAMELY MURDER AND  
27 ROBBERY, THERE MUST EXIST A UNION OR JOINT OPERATION  
28 OF ACT OR CONDUCT AND A CERTAIN SPECIFIC INTENT IN

1 THE MIND OF THE PERPETRATOR AND UNLESS SUCH SPECIFIC  
2 INTENT EXISTS, THE CRIME TO WHICH IT RELATES IS  
3 NOT COMMITTED.

4 THE SPECIFIC INTENT REQUIRED IS INCLUDED  
5 IN THE DEFINITIONS OF THE CRIMES WHICH I WILL GIVE  
6 YOU.

7 THE DEFENDANT IN THIS CASE, HAS  
8 INTRODUCED EVIDENCE FOR THE PURPOSE OF SHOWING THAT  
9 HE WAS NOT PRESENT AT THE TIME AND PLACE OF THE  
10 COMMISSION OF THE ALLEGED OFFENSES FOR WHICH HE IS  
11 ON TRIAL. IF AFTER A CONSIDERATION OF ALL OF THE  
12 EVIDENCE, YOU HAVE A REASONABLE DOUBT THAT THE  
13 DEFENDANT WAS PRESENT AT THE TIME THE CRIME WAS  
14 COMMITTED OR THE CRIMES WERE COMMITTED, HE IS ENTITLED  
15 TO AN ACQUITTAL.

16 THE DEFENDANT IS CHARGED IN COUNT 1 OF  
17 THE INFORMATION WITH THE COMMISSION OF THE CRIME OF  
18 MURDER IN VIOLATION OF SECTION 187 OF THE PENAL CODE.  
19 THE CRIME OF MURDER IS THE UNLAWFUL KILLING OF A  
20 HUMAN BEING WITH MALICE AFORETHOUGHT OR THE UNLAWFUL  
21 KILLING OF A HUMAN BEING WHICH OCCURS DURING THE  
22 COMMISSION OR ATTEMPTED -- THE ATTEMPT TO COMMIT  
23 A FELONY INHERENTLY DANGEROUS TO HUMAN LIFE.

24 IN ORDER TO PROVE THE COMMISSION OF  
25 THE CRIME OF MURDER, EACH OF THE FOLLOWING ELEMENTS  
26 MUST BE PROVED: ONE, THAT A HUMAN BEING WAS KILLED;  
27 TWO, THAT THE KILLING WAS UNLAWFUL; THREE, THAT THE  
28 KILLING WAS DONE WITH MALICE AFORETHOUGHT.

1 MALICE MAY BE EITHER EXPRESS OR  
2 IMPLIED. MALICE IS EXPRESS WHEN THERE IS  
3 MANIFESTED AN INTENTION UNLAWFULLY TO KILL A  
4 HUMAN BEING.

5 MALICE IS IMPLIED WHEN THE KILLING  
6 RESULTS FROM AN INTENTIONAL ACT INVOLVING A HIGH  
7 DEGREE OF PROBABILITY THAT IT WILL RESULT IN DEATH,  
8 WHICH ACT IS DONE FOR A BASE, ANTISOCIAL PURPOSE AND  
9 WITH A WANTON DISREGARD FOR HUMAN LIFE.

4B  
1 WHEN IT IS SHOWN A KILLING RESULTED  
2 FROM AN INTENTIONAL DOING OF AN ACT WITH EXPRESS  
3 OR IMPLIED MALICE, NO OTHER MENTAL STATE NEED BE  
4 SHOWN TO ESTABLISH THE MENTAL STATE OF MALICE  
5 AFORETHOUGHT.

6 THE MENTAL STATE CONSTITUTING MALICE  
7 AFORETHOUGHT DOES NOT NECESSARILY REQUIRE ANY  
8 ILL-WILL OR HATRED OF THE PERSON KILLED. AFORETHOUGHT  
9 DOES NOT IMPLY DELIBERATION OR THE LAPSE OF A  
10 CONDISERABLE TIME. IT ONLY MEANS THAT THE REQUIRED  
11 MENTAL STATE MUST PRECEDE RATHER THAN FOLLOW THE  
12 ACT.

13 ALL MURDER WHICH IS PERPETRATED AND  
14 ANY KIND OF WILLFUL, DELIBERATE AND PREMEDITATED  
15 KILLING WITH MALICE AFORETHOUGHT, IS FIRST DEGREE  
16 MURDER. THE WORD "WILLFUL," AS USED IN THIS  
17 INSTRUCTION MEANS INTENTIONAL. THE WORD "DELIBERATE"  
18 MEANS FORMED OR ARRIVED AT OR DETERMINED UPON AS  
19 A RESULT OF CAREFUL THOUGHT AND THE WEIGHING OF  
20 CONSIDERATIONS FOR AND AGAINST THE PROPOSED COURSE  
21 OF ACTION.

22 THE WORD "PREMEDITATED" MEANS CONSIDERED  
23 BEFOREHAND. IF YOU FIND THAT THE KILLING WAS  
24 PRECEDED AND ACCOMPANIED BY A CLEAR, DELIBERATE  
25 INTENT ON THE PART OF THE DEFENDANT TO KILL, WHICH  
26 WAS THE RESULT OF DELIBERATION AND PREMEDITATION,  
27 SO THAT IT MUST HAVE BEEN FORMED UPON PRE-EXISTING  
28 REFLECTION, NOT UPON SUDDEN HEAT OF PASSION -- ,



24R-2

1 NOT UNDER A SUDDEN HEAT OF PASSION OR OTHER CONDITION  
2 PRECLUDING THE IDEA OF DELIBERATION, IT IS MURDER  
3 OF THE FIRST DEGREE.

4 THE LAW DOES NOT UNDERTAKE TO MEASURE  
5 IN UNITS OF TIME, THE LENGTH OF THE PERIOD DURING  
6 WHICH THE THOUGHT MUST BE PONDERED BEFORE IT CAN  
7 RIPEN INTO AN INTENT TO KILL WHICH IS TRULY  
8 DELIBERATE AND PREMEDITATED. THE TIME WILL VARY  
9 WITH DIFFERENT INDIVIDUALS UNDER VARYING  
10 CIRCUMSTANCES.

11 THE TRUE TEST IS NOT THE DURATION OF  
12 TIME, BUT RATHER THE EXTENT OF THE REFLECTION.  
13 A COLD, CALCULATED JUDGMENT AND DECISION MAY BE  
14 ARRIVED AT IN A SHORT PERIOD OF TIME, BUT A MERE  
15 UNCONSIDERED AND RASH IMPULSE, EVEN THOUGH IT  
16 INCLUDE AN INTENT TO KILL, IS NOT SUCH DELIBERATION  
17 AND PREMEDITATION AS WILL FIX AN UNLAWFUL KILLING  
18 AS MURDER OF THE FIRST DEGREE.

19 TO CONSTITUTE A DELIBERATE AND  
20 PREMEDITATED KILLING, THE SLAYER MUST WEIGH AND  
21 CONSIDER THE QUESTION OF KILLING AND THE REASONS  
22 FOR IT AGAINST SUCH A CHOICE AND, HAVING IN MIND  
23 THE CONSEQUENCES, HE DECIDES TO AND DOES KILL.

24 THE UNLAWFUL KILLING OF A HUMAN BEING  
25 WHETHER INTENTIONAL, UNINTENTIONAL OR ACCIDENTAL,  
26 WHICH OCCURS AS A RESULT OF THE COMMISSION OR  
27 ATTEMPT TO COMMIT THE CRIME OF ROBBERY AND WHERE  
28 THERE WAS IN THE MIND OF THE PERPETRATOR THE



1 SPECIFIC INTENT TO COMMIT SUCH CRIME, IS MURDER  
2 OF THE FIRST DEGREE. THE SPECIFIC INTENT TO COMMIT  
3 ROBBERY AND THE COMMISSION OR ATTEMPT TO COMMIT  
4 SUCH CRIME MUST BE PROVED BEYOND A REASONABLE  
5 DOUBT.

6 IF A HUMAN BEING IS KILLED BY ANYONE  
7 OF SEVERAL PERSONS ENGAGED IN THE PERPETRATION  
8 OF OR ATTEMPT TO PERPETRATE THE CRIME OF ROBBERY,  
9 ALL PERSONS WHO EITHER DIRECTLY AND ACTIVELY COMMIT  
10 THE ACT CONSTITUTING SUCH CRIME OR WHO WITH KNOWLEDGE  
11 OF THE UNLAWFUL PURPOSE OF THE PERPETRATOR OF THE  
12 CRIME AND WITH THE INTENT OR PURPOSE OF COMMITTING,  
13 ENCOURAGING OR FACILITATING THE COMMISSION OF THE  
14 OFFENSE, AID, PROMOTE, ENCOURAGE OR INSTIGATE BY  
15 ACT OR ADVICE ITS COMMISSION ARE GUILTY OF MURDER  
16 IN THE FIRST DEGREE WHETHER THE KILLING IS  
17 INTENTIONAL, UNINTENTIONAL OR ACCIDENTAL.

18 IF YOU FIND THE DEFENDANT IN THIS  
19 CASE GUILTY OF MURDER IN THE FIRST DEGREE, YOU  
20 MUST THEN DETERMINE IF THE MURDER WAS COMMITTED  
21 UNDER THE FOLLOWING SPECIAL CIRCUMSTANCES:  
22 COMMITTED DURING THE COURSE OF A ROBBERY.

23 A SPECIAL CIRCUMSTANCE MUST BE PROVED  
24 BEYOND A REASONABLE DOUBT. IF YOU HAVE A REASONABLE  
25 DOUBT AS TO WHETHER A SPECIAL CIRCUMSTANCE IS TRUE,  
26 IT IS YOUR DUTY TO FIND THAT IT IS NOT TRUE.

27 IF THE DEFENDANT HUNT WAS AN AIDER  
28 AND ABETTOR BUT NOT THE ACTUAL KILLER, IT MUST

1 BE PROVED BEYOND A REASONABLE DOUBT THAT HE INTENDED  
2 TO AID IN THE KILLING OF A HUMAN BEING BEFORE YOU  
3 ARE PERMITTED TO FIND THE ALLEGED SPECIAL  
4 CIRCUMSTANCE OF THAT FIRST DEGREE MURDER TO BE  
5 TRUE AS TO THE DEFENDANT HUNT.

6 IN ORDER TO FIND THE SPECIAL CIRCUMSTANCE  
7 CHARGED IN THIS CASE TO BE TRUE OR UNTRUE, YOU  
8 MUST AGREE UNANIMOUSLY.

9 YOU WILL INCLUDE IN YOUR VERDICT, ON  
10 A FORM THAT WILL BE SUPPLIED, YOUR FINDING AS TO  
11 WHETHER THE SPECIAL CIRCUMSTANCE IS TRUE OR NOT  
12 TRUE.

13 TO FIND THAT THE SPECIAL CIRCUMSTANCE  
14 REFERRED TO IN THESE INSTRUCTIONS AS MURDER IN  
15 THE COMMISSION OF A ROBBERY, IS TRUE, IT MUST BE  
16 PROVED: THAT THE MURDER WAS COMMITTED WHILE THE  
17 DEFENDANT WAS ENGAGED IN THE COMMISSION OF A  
18 ROBBERY.

19 (2) THAT THE DEFENDANT INTENDED TO  
20 KILL A HUMAN BEING OR INTENDED TO AID ANOTHER IN  
21 THE KILLING OF A HUMAN BEING.

22 (3) THAT THE MURDER WAS COMMITTED IN  
23 ORDER TO CARRY OUT OR ADVANCE THE COMMISSION OF  
24 THE CRIME OF ROBBERY OR TO FACILITATE THE ESCAPE  
25 THEREFROM OR TO AVOID DETECTION.

26 IN OTHER WORDS, THE SPECIAL CIRCUMSTANCE  
27 REFERRED TO IN THESE INSTRUCTIONS IS NOT ESTABLISHED  
28 IF THE ROBBERY WAS MERELY INCIDENTAL TO THE

1 COMMISSION OF THE MURDER.

2 YOU ARE NOT PERMITTED TO FIND THE SPECIAL  
3 CIRCUMSTANCES CHARGED IN THIS CASE TO BE TRUE BASED  
4 ON CIRCUMSTANTIAL EVIDENCE UNLESS THE PROVED FACTS  
5 ARE NOT ONLY: (1) CONSISTENT WITH THE THEORY THAT  
6 THE SPECIAL CIRCUMSTANCES ARE TRUE; BUT (2) CANNOT  
7 BE RECONCILED WITH ANY OTHER RATIONAL CONCLUSION.

8 EACH FACT WHICH IS ESSENTIAL TO COMPLETE  
9 A SET OF FACTS NECESSARY TO ESTABLISH THE TRUTH  
10 OF THE SPECIAL CIRCUMSTANCES MUST BE PROVED BEYOND  
11 A REASONABLE DOUBT. ALSO IF THE CIRCUMSTANTIAL  
12 EVIDENCE IS SUSCEPTIBLE OF TWO REASONABLE  
13 INTERPRETATIONS, ONE OF WHICH POINTS TO THE TRUTH  
14 OF THE SPECIAL CIRCUMSTANCES AND THE OTHER TO THEIR  
15 UNTRUTH, IT IS YOUR DUTY TO ADOPT THE INTERPRETATION  
16 WHICH POINTS TO THEIR UNTRUTH AND TO REJECT THAT  
17 INTERPRETATION WHICH POINTS TO THEIR TRUTH.

18 IF ON THE OTHER HAND, ONE INTERPRETATION  
19 OF SUCH EVIDENCE APPEARS TO BE REASONABLE AND THE  
20 OTHER TO BE UNREASONABLE, IT IS YOUR DUTY TO  
21 ACCEPT THE REASONABLE INTERPRETATION AND TO REJECT  
22 THE UNREASONABLE.

23 WE FORGOT 17.45, SO MAKE A NOTE OF IT, WILL YOU?

24 THE DEFENDANT IS CHARGED IN COUNT II  
25 OF THE INFORMATION --

26 SORRY FOR THE DELAY. BUT THERE IS ONE INSTRUCTION  
27 WHICH HAD NOT BEEN PULLED. PARDON ME.

28 THE DEFENDANT IS CHARGED IN COUNT II

4B-6  
CF  
1 OF THE INFORMATION WITH THE COMMISSION OF THE CRIME  
2 OF ROBBERY IN VIOLATION OF SECTION 211 OF THE PENAL  
3 CODE. THE CRIME OF ROBBERY IS THE TAKING OF  
4 PERSONAL PROPERTY IN THE POSSESSION OF ANOTHER  
5 FROM HIS PERSON OR IMMEDIATE PRESENCE AND AGAINST  
6 HIS WILL, ACCOMPLISHED BY MEANS OF FORCE OR FEAR  
7 AND WITH THE SPECIFIC INTENT PERMANENTLY TO  
8 DEPRIVE SUCH PERSON OF THE PROPERTY.

1 IN ORDER TO PROVE THE COMMISSION OF  
2 THE CRIME OF ROBBERY, EACH OF THE FOLLOWING ELEMENTS  
3 MUST BE PROVED: (1) THAT A PERSON HAD POSSESSION  
4 OF PROPERTY OF SOME VALUE, HOWEVER SLIGHT.  
5 (2) THAT SUCH PROPERTY WAS TAKEN FROM SUCH PERSON  
6 OR HIS IMMEDIATE PRESENCE. (3) THAT SUCH PROPERTY  
7 WAS TAKEN AGAINST THE WILL OF SUCH PERSON. AND  
8 (4) THAT THE TAKING WAS ACCOMPLISHED EITHER BY  
9 FORCE OR VIOLENCE OR BY FEAR OR INTIMIDATION OR  
10 BOTH. (5) THAT SUCH PROPERTY WAS TAKEN WITH THE  
11 SPECIFIC INTENT PERMANENTLY TO DEPRIVE SUCH PERSON  
12 OF HIS PROPERTY.

13 EACH COUNT CHARGES A SEPARATE AND  
14 DISTINCT OFFENSE. YOU MUST DECIDE EACH COUNT  
15 SEPARATELY.

16 THE DEFENDANT MAY BE FOUND GUILTY OR  
17 NOT GUILTY OF EITHER OR BOTH OF THE OFFENSES  
18 CHARGED. YOUR FINDING AS TO EACH COUNT MUST BE  
19 STATED IN A SEPARATE VERDICT.

20 I HAVE NOT INTENDED BY ANYTHING I HAVE  
21 SAID OR DONE OR ANY QUESTIONS THAT I HAVE ASKED  
22 OR BY ANY RULING THAT I MAY HAVE MADE TO  
23 INTIMATE OR SUGGEST WHAT YOU SHOULD FIND TO BE  
24 THE FACTS ON ANY QUESTION SUBMITTED TO YOU OR THAT  
25 I BELIEVE OR DISBELIEVE ANY WITNESS.

26 IF ANYTHING I HAVE DONE OR SAID HAS  
27 SEEMED TO SO INDICATE, YOU WILL DISREGARD IT AND  
28 FORM YOUR OWN OPINION. YOU ARE TO DISREGARD ANY

1 VERBAL EXCHANGE BETWEEN COUNSEL AND THE COURT OR  
2 ANY DIFFERENCES AMONG US ON RULINGS MADE BY THE  
3 COURT.

4 THE DECISION AS TO THE GUILT OR  
5 INNOCENCE OF THE DEFENDANT IS TO BE DECIDED SOLELY  
6 BY YOU ON THE EVIDENCE RECEIVED AND ON THE COURT'S  
7 INSTRUCTIONS. I EXPRESS NO OPINION AS TO THE GUILT  
8 OR INNOCENCE OF THE DEFENDANT.

9 THE PARTICIPATION BY THE COURT IN THE  
10 QUESTIONING OF WITNESSES IS ENCOURAGED BY OUR  
11 SUPREME COURT WHICH HAS STATED THAT THERE SHOULD  
12 BE PLACED IN THE TRIAL JUDGE'S HANDS MORE POWER  
13 IN THE TRIAL OF JURY CASES AND TO MAKE HIM A REAL  
14 FACTOR IN THE ADMINISTRATION OF JUSTICE IN SUCH  
15 CASES, INSTEAD OF BEING IN THE POSITION OF A MERE  
16 REFEREE OR AUTOMATON AS TO THE ASCERTAINMENT OF  
17 FACTS.

18 ALTHOUGH I AM VESTED WITH THE POWER  
19 TO COMMENT ON THE FACTS IN THE CASE AND TO EXPRESS  
20 MY OPINION ON THE MERITS OF THE CASE, I HAVE  
21 NONETHELESS REFRAINED AND DO REFRAIN FROM DOING  
22 SO, LETTING YOU BE THE FINAL AND SOLE JUDGES OF  
23 THE FACTS IN THE GUILT OR INNOCENCE OF THE  
24 DEFENDANT.

25 NOW, YOU HAVE BEEN INSTRUCTED AS TO  
26 ALL OF THE RULES OF LAW THAT MAY BE NECESSARY FOR  
27 YOU TO REACH A VERDICT. WHETHER SOME OF THE  
28 INSTRUCTIONS WILL APPLY WILL DEPEND UPON YOUR

1 DETERMINATION OF THE FACTS. YOU WILL DISREGARD  
2 ANY INSTRUCTION WHICH APPLIES TO A STATE OF FACTS  
3 WHICH YOU DETERMINE DOES NOT EXIST. YOU MUST NOT  
4 CONCLUDE FROM THE FACT THAT AN INSTRUCTION HAS  
5 BEEN GIVEN, THAT THE COURT IS EXPRESSING ANY OPINION  
6 AS TO THE FACTS.

7 BOTH THE PEOPLE AND THE DEFENDANT ARE  
8 ENTITLED TO THE INDIVIDUAL OPINION OF EACH JUROR.  
9 IT IS THE DUTY OF EACH OF YOU TO CONSIDER THE  
10 EVIDENCE FOR THE PURPOSE OF ARRIVING AT A VERDICT  
11 IF YOU CAN DO SO. EACH OF YOU MUST DECIDE THE  
12 CASE FOR YOURSELVES BUT SHOULD DO SO ONLY AFTER  
13 A DISCUSSION OF THE EVIDENCE AND THE INSTRUCTIONS  
14 WITH THE OTHER JURORS.

15 YOU SHOULD NOT HESITATE TO CHANGE AN  
16 OPINION IF YOU ARE CONVINCED THAT IT IS ERRONEOUS.  
17 HOWEVER, YOU SHOULD NOT BE INFLUENCED TO DECIDE  
18 ANY QUESTION IN ANY PARTICULAR WAY BECAUSE A MAJORITY  
19 OF THE JURORS OR ANY OF THEM FAVOR SUCH A DECISION.

20 THE ATTITUDE AND CONDUCT OF JURORS  
21 AT THE BEGINNING OF THEIR DELIBERATIONS ARE MATTERS  
22 OF CONSIDERABLE IMPORTANCE. IT IS RARELY PRODUCTIVE  
23 OF GOOD FOR A JUROR AT THE OUTSET, TO MAKE AN  
24 EMPHATIC EXPRESSION OF HIS OPINION ON THE CASE  
25 OR TO STATE HOW HE INTENDS TO VOTE. WHEN ONE DOES  
26 THAT AT THE BEGINNING, HIS SENSE OF PRIDE MAY BE  
27 AROUSED AND HE MAY HESITATE TO CHANGE HIS POSITION,  
28 EVEN IF SHOWN THAT IT IS WRONG.



1 REMEMBER, THAT YOU ARE NOT PARTISANS  
2 OR ADVOCATES IN THIS MATTER, BUT ARE JUDGES.

3 AS I ADVISED YOU AT THE TIME OF THE  
4 JURY SELECTION, IN YOUR DELIBERATIONS, THE SUBJECT  
5 OF PENALTY OR PUNISHMENT IS NOT TO BE DISCUSSED  
6 OR CONSIDERED BY YOU. THAT IS A MATTER WHICH MUST  
7 NOT IN ANY WAY AFFECT YOUR VERDICT IN THE GUILT  
8 PHASE OF THE TRIAL, WHICH WE ARE PRESENTLY IN.

9 AND SPEAKING OF VERDICTS, HAVE YOU  
10 GOT THEM? LET ME EXPLAIN THE VERDICT FORMS. YOU  
11 WILL REMEMBER THAT THERE ARE TWO COUNTS. THE FIRST  
12 COUNT IS MURDER. THE SECOND COUNT IS ROBBERY.

13 NOW, THERE ARE TWO VERDICT FORMS ON  
14 EACH COUNT. THE FIRST VERDICT FORM IS FOR EXAMPLE,  
15 A VERDICT OF GUILTY.

16 WE, THE JURY IN THE ABOVE-ENTITLED  
17 ACTION, FIND THE DEFENDANT, JOE HUNT, GUILTY OF  
18 MURDER IN VIOLATION OF PENAL CODE SECTION 187, A  
19 FELONY, AS CHARGED IN THE INFORMATION IN COUNT 1.

20 AND WE FURTHER FIND THE ABOVE OFFENSE  
21 TO BE MURDER IN THE FIRST DEGREE. AND WE FURTHER  
22 FIND THAT AS TO THE SPECIAL CIRCUMSTANCES, WE FIND  
23 THAT THE ALLEGATION THAT THE MURDER OF RONALD  
24 GEORGE LEVIN WAS COMMITTED BY THE DEFENDANT WHILE  
25 HE WAS ENGAGED IN THE COMMISSION OF ROBBERY WITHIN  
26 THE MEANING OF PENAL CODE SECTION 190.2(A)(17)  
27 TO BE TRUE OR NOT TRUE.

28 YOU ARE TO STRIKE ONE OF THE TWO OF

1           THEM, THAT YOU FIND THE SPECIAL CIRCUMSTANCES TO  
2           BE TRUE THEN YOU STRIKE OUT NOT TRUE.

3                   IF YOU FIND THE SPECIAL CIRCUMSTANCES  
4           OF ROBBERY IS TRUE, YOU STRIKE OUT NOT TRUE.

5                   AND ON COUNT I, THE SECOND VERDICT  
6           FORM, IS THE VERDICT OF NOT GUILTY.

7                   WE, THE JURY IN THE ABOVE-ENTITLED  
8           ACTION FIND THE DEFENDANT, JOE HUNT, NOT GUILTY  
9           OF MURDER IN VIOLATION OF SECTION 187 OF THE PENAL  
10          CODE, A FELONY AS CHARGED IN COUNT I OF THE  
11          INFORMATION.

12                   COUNT II HAS TO DO WITH THE ROBBERY  
13          CHARGE.   THERE ARE TWO FORMS FOR THAT, TOO.   THE  
14          FIRST FORM IS THE VERDICT OF GUILTY.

15                   WE, THE JURY IN THE ABOVE-ENTITLED  
16          ACTION FIND THE DEFENDANT, JOE HUNT, GUILTY OF  
17          ROBBERY IN VIOLATION OF SECTION 211 OF THE PENAL  
18          CODE, A FELONY, AS CHARGED IN COUNT II OF THE  
19          INFORMATION.

20                   THE SECOND VERDICT FORM FOR THAT COUNT  
21          IS THE VERDICT OF NOT GUILTY.

22                   WE, THE JURY IN THE ABOVE-ENTITLED  
23          ACTION FIND THE DEFENDANT, JOE HUNT, NOT GUILTY  
24          OF ROBBERY IN VIOLATION OF PENAL CODE SECTION 211  
25          A FELONY AS CHARGED IN COUNT II OF THE INFORMATION.

26                   THE WRITTEN INSTRUCTIONS WHICH I HAVE  
27          BEEN GIVING YOU WILL BE MADE AVAILABLE IN THE  
28          JURY ROOM DURING YOUR DELIBERATIONS.   THEY MUST

1 NOT BE DEFACED IN ANY WAY.

2 YOU WILL FIND THAT THE INSTRUCTIONS  
3 MAY BE EITHER PRINTED, TYPEWRITTEN OR HANDWRITTEN.  
4 SOME OF THE PRINTED OR TYPEWRITTEN INSTRUCTIONS  
5 MAY BE MODIFIED BY TYPING OR HANDWRITING. BLANKS  
6 IN THE WRITTEN INSTRUCTIONS MAY BE FILLED IN BY  
7 TYPING OR HANDWRITING.

8 ALSO, PORTIONS OF THE PRINTED OR  
9 TYPEWRITTEN INSTRUCTIONS MAY BE DELETED BY LINING  
10 OUT. DON'T TRY TO READ THE LINED OUT PORTIONS  
11 OF THE INSTRUCTIONS. THAT HAS NOTHING TO DO WITH  
12 THIS CASE. YOU SHOULDN'T DO IT.

13 YOU ARE NOT TO BE CONCERNED WITH THE  
14 REASONS FOR ANY MODIFICATIONS THAT HAVE BEEN MADE.  
15 ALSO, YOU MUST DISREGARD ANY DELETED PART OF AN  
16 INSTRUCTION AND NOT SPECULATE EITHER WHAT IT WAS  
17 OR WHAT WAS THE REASON FOR ITS DELETION.

18 EVERY PART OF AN INSTRUCTION, WHETHER  
19 IT IS PRINTED, TYPED OR HANDWRITTEN IS OF EQUAL  
20 IMPORTANCE. YOU ARE TO BE GOVERNED ONLY BY THE  
21 INSTRUCTION IN ITS FINAL WORDING, WHETHER PRINTED,  
22 TYPED OR HANDWRITTEN.

1                   YOU SHALL NOW RETIRE AND SELECT ONE  
2                   OF YOUR NUMBER TO ACT AS FOREMAN WHO WILL PRESIDE  
3                   OVER YOUR DELIBERATIONS -- OR FORELADY. IN ORDER  
4                   TO REACH A VERDICT, ALL 12 JURORS MUST AGREE TO THE  
5                   DECISION AND TO ANY FINDING THAT YOU HAVE BEEN  
6                   INSTRUCTED TO INCLUDE IN YOUR VERDICT.

7                   AS SOON AS ALL OF YOU HAVE AGREED UPON  
8                   A VERDICT, YOU SHALL HAVE IT DATED AND SIGNED BY  
9                   YOUR FOREMAN OR FOREPERSON AND THEN SHALL RETURN WITH  
10                  IT TO THIS COURTROOM.

11                  I WOULD SUGGEST LADIES AND GENTLEMEN,  
12                  THAT YOU MIGHT WANT TO SELECT YOUR FOREPERSON WHEN  
13                  YOU RETIRE TO THE JURY ROOM AND THEN YOU CAN GO HOME  
14                  AND COME BACK ON MONDAY DIRECTLY INTO THE COURTROOM.  
15                  GO DIRECTLY INTO THE JURY ROOM AND BEGIN YOUR  
16                  DELIBERATIONS. HAVE A WONDERFUL HOLIDAY.

17                  THANK YOU VERY, VERY MUCH FOR SERVING IN  
18                  THIS CASE. ALL RIGHT. YOU MAY RETIRE NOW.

19                  JUROR SHELBY: WHAT TIME DO WE COME BACK ON MONDAY?

20                  THE CLERK: YOU DO SOLEMNLY SWEAR TO TAKE CHARGE OF  
21                  THE JURY AND KEEP THEM TOGETHER UNLESS OTHERWISE DIRECTED  
22                  BY THE COURT. YOU WILL NOT SPEAK TO THEM YOURSELF NOR ALLOW  
23                  ANYONE ELSE TO SPEAK TO THEM ON ANY MATTER CONNECTED WITH  
24                  THIS CASE OR UNLESS OTHERWISE INSTRUCTED BY THE COURT.

25                  WHEN THEY HAVE ARRIVED UPON A VERDICT, YOU SHALL  
26                  RETURN THEM INTO THIS COURTROOM. FURTHER, YOU WILL TAKE  
27                  CHARGE OF THE ALTERNATE JURORS AND KEEP THEM APART FROM THE  
28                  JURY WHILE THEY ARE DELIBERATING ON THE CAUSE AND UNLESS

1 SANTA MONICA, CALIFORNIA; WEDNESDAY, APRIL 22, 1987; 1:35 P.M.  
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE  
3 (APPEARANCES AS NOTED ON TITLE PAGE.)

4  
5 (THE FOLLOWING PROCEEDINGS WERE HELD  
6 IN OPEN COURT IN THE PRESENCE OF THE  
7 JURY:)

8 THE COURT: ALL RIGHT, THE RECORD WILL INDICATE THE  
9 PRESENCE OF THE DEFENDANT AND COUNSEL AND THE JURORS.

10 AND LADIES AND GENTLEMEN OF THE JURY, HAVE YOU  
11 REACHED A VERDICT IN THIS CASE?

12 THE FOREPERSON: YES, WE HAVE, YOUR HONOR.

13 THE COURT: DR. JANIS, WILL YOU PLEASE HAND THE VERDICTS  
14 TO THE BAILIFF?

15 (THE VERDICTS WERE HANDED TO THE BAILIFF,  
16 WHO IN TURN HANDED THEM TO THE COURT.)

17 (PAUSE IN PROCEEDINGS.)

18 THE COURT: WILL YOU PLEASE READ THE VERDICTS?

19 THE CLERK: TITLE OF COURT AND CAUSE:

20 "WE, THE JURY IN THE ABOVE-ENTITLED  
21 ACTION FIND THE DEFENDANT JOSEPH HUNT GUILTY OF  
22 MURDER IN VIOLATION OF PENAL CODE SECTION 187,  
23 A FELONY, AS CHARGED IN THE INFORMATION IN COUNT I.

24 "WE FURTHER FIND THE ABOVE OFFENSE TO  
25 BE MURDER IN THE FIRST DEGREE.

26 "AND WE FURTHER FIND THE ALLEGATION  
27 THAT THE MURDER OF RONALD GEORGE LEVIN WAS COMMITTED  
28 WHILE THE DEFENDANT WAS ENGAGED IN THE COMMISSION OF

1 ROBBERY WITHIN THE MEANING OF PENAL CODE SECTION  
2 190.2, SUB A, SUB 17, TO BE TRUE.

3 "THIS 22ND DAY OF APRIL, 1987.

4 "JUEL JANIS, FOREMAN."

5 LADIES AND GENTLEMEN OF THE JURY, IS THIS YOUR  
6 VERDICT, SO SAY YOU ONE, SO SAY YOU ALL?

7 (THE JURY ANSWERED AFFIRMATIVELY IN  
8 CHORUS.)

9 THE CLERK: TITLE OF COURT AND CAUSE:

10 "WE, THE JURY IN THE ABOVE-ENTITLED  
11 ACTION, FIND THE DEFENDANT JOE HUNT GUILTY OF  
12 ROBBERY IN VIOLATION OF PENAL CODE SECTION 211,  
13 A FELONY, AS CHARGED IN THE INFORMATION IN COUNT II.

14 "THIS 22ND DAY OF APRIL, 1987.

15 "JUEL JANIS, FOREMAN."

16 LADIES AND GENTLEMEN OF THE JURY, IS THIS YOUR  
17 VERDICT, SO SAY YOU ONE, SO SAY YOU ALL?

18 (THE JURY ANSWERED AFFIRMATIVELY IN  
19 CHORUS.)

20 THE COURT: DO YOU DESIRE TO HAVE THE JURY POLLED,  
21 MR. BARENS?

22 MR. BARENS: YES, YOUR HONOR.

23 THE COURT: ALL RIGHT, POLL THE JURY.  
24  
25  
26  
27  
28



-1

1 THE CLERK: LADIES AND GENTLEMEN OF THE JURY,  
2 AS I CALL YOUR NAMES, WOULD YOU TELL ME IF THIS IS YOUR GUILTY  
3 VERDICT ON COUNT 1 -- IS YOUR COUNT -- OR IS NOT YOUR VERDICT.  
4 EXCUSE ME.

5 MISS KEENAN?

6 JUROR KENNAN: YES.

7 THE CLERK: MISS KING?

8 JUROR KING: YES.

9 THE CLERK: MISS SHELBY?

10 JUROR SHELBY: YES.

11 THE CLERK: MISS ROBLES?

12 JUROR ROBLES: YES.

13 THE CLERK: DR. JANIS?

14 JUROR JANIS: YES.

15 THE CLERK: MISS OSBORNE?

16 JUROR OSBORNE: YES.

17 THE CLERK: MISS BURNS?

18 JUROR BURNS: YES.

19 THE CLERK: MISS GHAEMMAGHAMI?

20 JUROR GHAEMMAGHAMI: YES.

21 THE CLERK: MISS MICKELL?

22 JUROR MICKELL: YES.

23 THE CLERK: MISS DEEG?

24 JUROR DEEG: YES.

25 THE CLERK: MISS GRALINSKI?

26 JUROR GRALINSKI: YES.

27 THE CLERK: MR. RUTHERFORD.

28 JUROR RUTHERFORD: YES.



-2

1 THE CLERK: LADIES AND GENTLEMEN, IF THIS IS YOUR GUILTY  
2 VERDICT AS TO COUNT 1, WOULD YOU PLEASE INDICATE AS I CALL  
3 YOUR NAME? MISS KEENAN?

4 JUROR KEENAN: YES.

5 THE CLERK: MISS KING?

6 JUROR KING: YES.

7 THE CLERK: MISS SHELBY?

8 JUROR SHELBY: YES.

9 THE CLERK: MISS ROBLES?

10 JUROR ROBLES: YES.

11 THE CLERK: DR. JANIS?

12 JUROR JANIS: YES.

13 THE CLERK: MISS OSBORNE?

14 JUROR OSBORNE: YES.

15 THE CLERK: MISS BURNS?

16 JUROR BURNS: YES.

17 THE CLERK: MISS GHAEMMAGHAMT?

18 JUROR GHAEMMAGHAMT: YES.

19 THE CLERK: MISS MICKELL?

20 JUROR MICKELL: YES.

21 THE CLERK: MISS DEEG?

22 JUROR DEEG: YES.

23 THE CLERK: MISS GRALINSKI?

24 JUROR GRALINSKI: YES.

25 THE CLERK: MR. RUTHERFORD?

26 JUROR RUTHERFORD: YES.

27 THE COURT: LADIES AND GENTLEMEN, AS I TOLD YOU AT  
28 THE TIME OF THE TRIAL, LADIES AND GENTLEMEN, IF YOU FOUND

Chier

V85

1 THE DEFENDANT GUILTY OF FIRST DEGREE MURDER WITH SPECIAL  
2 CIRCUMSTANCES, WE THEN START THE PENALTY PHASE OF THE TRIAL.

3 I TOLD YOU WHAT THE PENALTY PHASE WAS AND WHAT  
4 IT IS THAT YOU WOULD BE EXPECTED TO RULE ON, ULTIMATELY.  
5 I WILL SEEK FIRST, THE OPINION OF COUNSEL AS TO WHEN THEY  
6 WANT THE PENALTY PHASE TO START.

7 MR. WAPNER: MAY WE APPROACH THE BENCH?

8 THE COURT: YES.

9 (THE FOLLOWING PROCEEDINGS WERE HELD AT  
10 THE BENCH OUT OF THE PRESENCE AND HEARING  
11 OF THE JURY:)

12 MR. WAPNER: YOUR HONOR, BECAUSE OF THE TIME NEEDED  
13 TO GET READY AND ALSO BECAUSE I HAVE DISCUSSED THIS WITH  
14 MS. BRACKE, WHO IS PROSECUTING THE LIVADITIS CASE AND YOU  
15 WILL BE ENGAGED IN SELECTING A JURY IN THAT CASE, MY THOUGHT  
16 IS TO TAKE TWO WEEKS TO GET READY.

17 THE COURT: TWO WEEKS TO GET READY?

18 MR. WAPNER: MAYBE A WEEK. BUT MY THINKING WAS THAT  
19 BY THE TIME I GET READY TO GO, YOU WOULD PROBABLY HAVE A  
20 JURY OR BE CLOSE TO HAVING A JURY IN LIVADITIS.

21 YOU COULD BREAK THAT CASE AND START OUR CASE.  
22 SO IF WE SHOT FOR EITHER TWO WEEKS FROM TODAY OR TWO WEEKS  
23 FROM NEXT MONDAY, WHICH WOULD BE AROUND MAY THE 11TH, THAT  
24 WOULD BE AN APPROPRIATE TIME.

25 I HAVE NOT DISCUSSED THIS WITH COUNSEL.

26 MR. CHIER: I AM NOT PREPARED UNTIL I GET PAID FOR  
27 THE GUILT PHASE.

28 THE COURT: WE DON'T NEED YOU ANYMORE. YOU ARE FIRED

1 AS OF TODAY. WE'LL GET ANOTHER COUNSEL FOR YOU TO ASSIST  
2 YOU.

3 MR. BARENS: YOUR HONOR, I WOULD LIKE TO HAVE THREE  
4 WEEKS. THAT WOULD BE MY --

5 THE COURT: I THINK THREE WEEKS IS TOO MUCH.

6 MR. BARENS: COULD WE THEN --

7 THE COURT: TWO WEEKS FROM NEXT MONDAY?

8 MR. BARENS: YES, YOUR HONOR.

9 THE COURT: TWO WEEKS FROM NEXT MONDAY.

10 MR. WAPNER: YES, MAY THE 11TH.

11 THE COURT: WE WILL GET YOU OTHER COUNSEL. YOU NAME  
12 IT AND I WILL HAVE THEM FOR YOU.

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1 MR. WAPNER: YOUR HONOR, MAY WE DISCUSS --

2 THE COURT: YOU ARE DISCHARGED AS OF NOW.

3 MR. BARENS: THIS IS ON ANOTHER SUBJECT, MR. WAPNER?

4 MR. WAPNER: I WAS JUST THINKING, AS FAR AS HAVING,  
5 ASSOCIATING IN ANOTHER COUNSEL AT THIS POINT, IT SEEMS TO ME --

6 THE COURT: IF HE NEEDS OTHER COUNSEL, WHY I HAVE NO  
7 OBJECTION.

8 MR. BARENS: COULD WE DISCUSS THIS IN CHAMBERS, PLEASE?

9 THE COURT: ALL RIGHT.

10 MR. WAPNER: YOUR HONOR, THAT IS ALL RIGHT.

11 NOW ARE WE GOING TO DISCHARGE THE JURY?

12 THE COURT: DID YOU ASK HIM WHETHER HE HAD MY TELEPHONE  
13 NUMBER? I HAVE BEEN GETTING CALLS IN THE MIDDLE OF THE NIGHT.

14 MR. BARENS: I BEG YOUR PARDON?

15 THE COURT: COULD YOU FIND OUT WHO HAS MY TELEPHONE  
16 NUMBER? BECAUSE I HAVE BEEN GETTING CALLS IN THE MIDDLE OF  
17 THE NIGHT, SOMEBODY HANGING UP AND I AM GOING TO CHECK ON IT.

18 MR. BARENS: COULD WE PROCEED IN CHAMBERS, YOUR HONOR?

19 THE COURT: YES.

20 MR. WAPNER: I HAVE ONE OTHER MATTER OUTSIDE OF THE  
21 PRESENCE OF THE JURY BEFORE --

22 THE COURT: FIRST, I HAVE TO TELL THE JURY WHEN TO COME  
23 BACK.

24 MR. BARENS: FIRST WE HAVE TO DISCUSS OTHER PROCEDURES.

25 THE COURT: YOU MEAN THE DATE.

26 MR. WAPNER: I HAVE ONE OTHER MATTER, AFTER THE JURY  
27 IS DISCHARGED AND BEFORE WE GO INTO CHAMBERS.

28 THE COURT: IS THAT A MOTION TO REMAND THE DEFENDANT?

To: Captain Hill; Correctional Counselor Yamamoto;  
Inmate Classification Committee (I.C.C.);  
and to the Warden and Staff of CSP-Sac.  
From: Chaplain William Goeke

November 5, 2005

Re: **\*\*\*REQUEST TO RETAIN I/M JOSEPH HUNT (D-61863) AT C-FACILITY;  
SPECIAL RECOGNITION FOR HIS MANY CONTRIBUTIONS \*\*\***

I want to make a record of why it would serve our institutional goals to retain three inmates assigned to the C-Facility Chapel. This memorandum will focus on one of them, I/M Joseph Hunt.

I/M Hunt has been a Chapel Clerk at C-Facility since March of 1998. He has outstanding clerical and English composition skills.

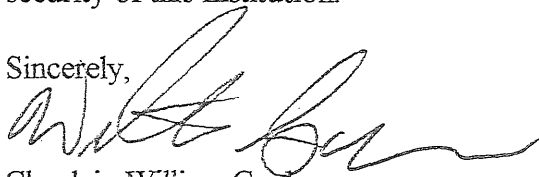
From an institutional perspective, what makes I/M Hunt worth retaining is his ability to function as a 'junior minister' -- or, if you will, as a 'deacon' to our Chapel program. Over the years he has put thousands of hours into specialized training programs. Those courses have equipped him to lead chapel programs -- including Men's Group circles, meditation groups, and Christian programs -- and to be of service to prisoners in need of spiritual counsel.

I/M Hunt was present for the founding of the Men's Group at B-Facility. When he was transferred to C-Facility, he was assigned the task of recruiting for the program. For the next five years, he was the 'lead-man' on the project, helping host hundreds of Men's Group meetings. With eight years of experience in the Men's Group, I/M Hunt is able to serve as an "elder" in the Circle. His is a voice of healing and compassion. The other men look to him for direction and encouragement. Along with I/M Rick Misener, he is one of the two inmates capable of ensuring the program's continued vitality on this yard.

I/M Hunt has distinguished himself through hard work, initiative, and loyalty to institutional goals as expressed through the Chapel programs. In a normal week, over 700 ducats are issued for the Chapel. Chapel programs have been instrumental in reducing the incidence of violence and suicide among the C-Facility population, while channeling energies toward spiritual goals and reintegration with society.

Please take our seven-year investment in I/M Hunt, his unusual skill set, and his honest effort to be of service at C-Facility, when deciding whether or not to transfer him. I would appreciate it if he was retained. In my judgment he makes an unusually positive contribution to the safety and security of this Institution.

Sincerely,



Chaplain William Goeke,  
Catholic Programs, CSP-Sac.

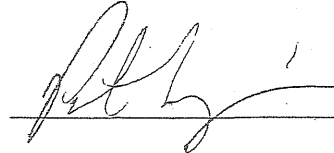
NAME &amp; CDC #: HUNT, D61863

HOUSING: B5-224

This informational chrono is being written to acknowledge I/M HUNT for performing above and beyond during his employment as an Inmate Library Worker. I/M HUNT performed duties and responsibilities normally spread through three different clerks for a prolonged time. His organization skills and knowledge of pertinent legal matters was most helpful to his fellow inmates. I/M HUNT is to be commended for his job performance.



D. Brunk, Senior Librarian, PVSP



P. Longoria, Vice Principal, PVSP

cc: C-File

CCI

Inmate

Date: October 3, 2017

INFORMATIONAL CHRONO

11/10/2017

GOVERNOR JERRY BROWN  
1315 10<sup>th</sup> STREET  
SACRAMENTO, CA. 95814

Re: Joseph Hunt

Dear Governor Brown,

As the Catholic Chaplain at California State Prison – Sacramento I journeyed with Joseph Hunt on his path of self-discovery. I have known Joseph Hunt for over 15 years. He was my Catholic Clerk in C Facility at California State Prison – Sacramento for approximately 3 years.

I found him to be an asset to the Catholic Program and to myself. He fulfilled his duties with commitment and integrity. I had complete confidence in him. I also was able to observe him interact with other prisoners on the yard. He always made himself available to their needs. He has been a model prisoner for many years. He exuded a non-threatening personality to everyone.

I am not a Pollyanna. I was held hostage as a young man, at knife point, by a desperate youth. Due to this unbelievable traumatic experience I developed an attitude of “Lock all the Bastards Up and throw away the key; kill all of them on death row”. There was a time in my life where I would “bet my life” I would never work in a prison. Yet God has such a profound sense of humor. My work in the prison was the most challenging and rewarding experience of my life. I only tell you this so as to give you a bench mark for qualifying what I am saying.

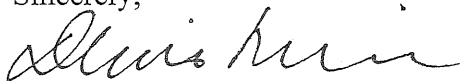
Joseph Hunt made my ministry and work in prison worthwhile.

He participated in the Inside Circle Men’s Group meetings in C Facility. This is an ongoing journey in Self-discovery. It takes real courage, in a maximum security prison, to belong to this group. Violent men, outside the group, do not understand what goes on inside these circles. We’ve had gang members drop out of gangs when given the chance to grow and discover who they are. We’ve also had gang members drop out of the group due to outside yard pressures and threats to their life. It took real courage for Joseph to stay in the group, but he would not be denied. What happens in the group is transformational and not every man is capable of having their feet “Held to the Fire”. There are no games played. The men themselves determine what man is capable and mature enough to weather the maelstrom the group dynamic creates for each man. Men develop a keen awareness that these groups are lifesaving and will not do anything to jeopardize this gift. Over 40 men have paroled who have committed to these groups. We have a recidivism rate of less than 1 %.

I pray that you would truly consider his commutation application.

If you would like further information you may contact me at: [dmerino@mccpros.com](mailto:dmerino@mccpros.com).

Sincerely,



Dennis Merino, Deacon, Catholic Chaplain (Retired)  
California State Prison - Sacramento



# CERTIFICATE OF SERVICE

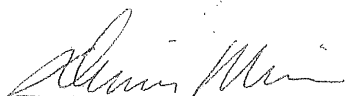
AWARDED TO

JOSEPH HUNT

*MEN'S SUPPORT GROUP TRAINING  
CSP-SACRAMENTO C-FACILITY*

*PRESENTED BY*  
**INSIDE CIRCLE FOUNDATION**

**OCTOBER 29, 30 & 31, 2004**



**DENNIS MERINO**



**ROB ALLBEE**

# CERTIFICATE OF SERVICE

Awarded to

**JOE HUNT**

*MEN'S SUPPORT GROUP TRAINING  
CSP-SACRAMENTO C-FACILITY*

*Presented by*

**INSIDE CIRCLE FOUNDATION**

**MARCH 3-7, 2004**

  
DENNIS MERINO

  
ROB ALLBEE

NAME and NUMBER

HUNT

D-61863

BFB5-224L

This laudatory chrono is being generated in regards to inmate Hunt, D-61863. During Hunt's time at Pleasant Valley State Prison (PVSP), Facility B, I have worked as a Security Patrol Officer in the Program Office for 3 years, and as a Second Watch Building Floor Officer for almost a year in the building to which Hunt is assigned. In addition, I have worked as a Correctional Officer for about 15 years. My overall experience, and these assignments at PVSP, have put me in a position to have access to information bearing on Hunt's conduct and affiliations, and has given me an opportunity to observe Hunt's daily conduct. In my opinion, Hunt has no inclinations to re-offend. All of his activities appear directed towards positive goals. He has a reputation for helping others in ways consistent with institutional policies. I would place him solidly in the top one percent as far as suitability for reintegration with society. He has a calm and affable bearing, responds to orders without hesitation, and exhibits absolutely no interest in drugs, pruno, or affiliations that are associated with prison violence.

C

CC: C-FILE (Original)

Writer

Inmate

CCI

DATE: 10/31/17

(Laudatory Chrono)



M. Saesee, Correctional Officer  
Facility B  
Pleasant Valley State Prison

GENERAL CHRONO

**NAME and NUMBER****HUNT, D-61863****CDCR-128B (REV. 7/05)**

Inmate Hunt is currently assigned as a Lead Clerk for Central Services. Hunt is currently living in the Permanent Work Crew (PWC) Building on Facility A and has been housed here at CHCF since December 2017. I have known Hunt since 1999. I was assigned to buildings where Hunt was housed while I was a Correctional Officer at CSP-SAC from 1999-2006. I have also interacted with Hunt multiple times due to him being housed on the Facility that I supervise since his arrival at CHCF.

Inmate Hunt has demonstrated a positive attitude and a willingness to assist Custody staff in any way he can. In all my interactions with Hunt over the past twenty (20) years he has always remained respectful and demonstrated a level of integrity not normally seen in a prison setting. Hunt is very intelligent and has a very productive work history during his incarceration. In his many years incarcerated, Hunt has managed to have a minimal amount of disciplinary issues. To be able to live on a Level 4 yard for as long as Hunt did and manage to not get into the politics or any trouble should speak volumes about the character he has. Hunt has managed to stay away from gang activities not to mention he has never been cited for any drug or alcohol violations.

I believe that Hunt, if given the opportunity, can definitely reintegrate back into society with no issues. I believe that Hunt has done everything possible during his 33 years of incarceration to demonstrate his ability to be successful outside of prison.



K. KENDALL  
Facility A Program Lieutenant  
California Health Care Facility

Original: CENTRAL FILE-SOMS

Cc: CCI  
Records  
Inmate

**DATE: 08/10/2020**

**CHCF LAUDATORY CHRONO**

---

NAME and NUMBER, **HUNT, JOE D-61863**

I would like to take a moment to provide this Laudatory Chrono on behalf of inmate HUNT, J. CDC# D-61863. HUNT has been housed here at CHCF since 12/07/2017, he is recently been assigned to the position of recreational clerk here at CHCF in PWC. I am the Officer assigned to the building Hunt lives in. HUNT demonstrates a level of integrity and responsibility far beyond the expectations of his duties and his behavior is indicative of someone who strives to be a productive member of society. HUNT has been incarcerated within CDCR for many years, it should be noted he does not participate in any gang related activities. Hunt has good work ethics and self-motivated I believe he has the ability to support himself and reenter back into society as a productive member of his community. HUNT has proven as an ideal candidate for parole under Penal code 1170(d)(1). I also believe, if given the opportunity, HUNT would become a productive and law abiding citizen



**J.MURPHY**  
**CORRECTIONAL OFFICER**  
**CALIFORNIA HEALTH CARE FACILITY**

Date: 08-11-20

**LAUDATORY CHRONO**

GENERAL CHRONO



NAME AND NUMBER, **HUNT, JOE D61863**

This CDC 128-B is being written in support of Inmate HUNT, J. CDC# D61863 . Inmate Hunt has been housed here since 2017. I've been HUNT'S housing Officer for approximately 3 years. Inmate HUNT is assigned as the recreational housing clerk and performs his duties with professionalism and with excellent work ethic. While working and programming in the housing unit he has always maintained a positive attitude, and is very respectful to staff. He has shown his ability to maintain a great standard of programming at California Health Care Facility (CHCF). He has earned the respect of the staff and his peers while conducting his duties in the building. He has shown his respect for authority and assists staff on various levels. Hunt is self- motivated and I believe he has the ability to support himself and reenter himself back into society as a productive member of his community. I believe if given the opportunity, Hunt would become a productive and law abiding citizen.



**O. FLORES**

**CORRECTIONAL OFFICER**

**CALIFORNIA HEALTH CARE FACILITY**

**Date: 05/27/2021**

**LAUDATORY CHRONO**

**GENERAL CHRONO**

NAME and NUMBER, **HUNT, JOE****D-61863**

This CDCR 128-B is being written in support of Joe Hunt D61863 PWC-214L. In the 12 months that I have worked in PWC amid the pandemic, the ups and downs of the unit being confined to quarters and limited dayroom and yard restrictions, Hunt by far had the best attitude in the building and possibly the entire prison. Hunt has spent 34 years to date incarcerated in state prison there's not one blemish in his central file. In my 14 years of state service I've only encountered one more California state inmate with a similar demeanor and central file, and he served 14 years of his 46 year sentence before being found suitable for parole. Hunt serves as a positive and model inmate under extreme circumstances dropping from a level four inmate to a level two dodging all the negativity that prison has to offer. Hunt is a man worthy of a chance at freedom and should be given a chance to show his county, state and country his worth as a free man bettering his immediate community.

**Original:** *C-File*  
**CC:** Counselor  
Inmate

**P. BROWN**  
**CORRECTIONAL OFFICER**  
**CALIFORNIA HEALTH CARE FACILITY**


**Date: 04-29-21****LAUDATORY CHRONO**

GENERAL CHRONO



## SPECIAL DIRECTIVE 20-14

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: GEORGE GASCÓN   
District Attorney

SUBJECT: RESENTENCING

DATE: DECEMBER 7, 2020

This Special Directive addresses issues of the Bureau of Prosecution Support Operations in Chapter 1.07.03 and Probation and Sentencing Hearings in Chapter 13 and Postconviction Proceedings in Chapter 17 of the Legal Policies Manual. Effective **December 8, 2020**, the policies outlined below supersede the relevant sections of Chapter 13 and Chapter 17 of the Legal Policies Manual.

### INTRODUCTION

Today, California prisons are filled with human beings<sup>1</sup> charged, convicted and sentenced under prior District Attorneys' policies. Effective today, District Attorney George Gascón has adopted new charging and sentencing policies.

Justice demands that the thousands of people currently serving prison terms imposed in Los Angeles County under earlier, outdated policies, are also entitled to the benefit of these new policies. Many of these people have been incarcerated for decades or are serving a "[virtual life sentence](#)" designed to imprison them for life. The vast majority of incarcerated people are members of groups long disadvantaged under earlier systems of justice: Black people, people of color, young people, people who suffer from mental illness, and people who are poor. While resentencing alone cannot correct all inequities inherent in our system of justice, it should at least be consistent with policies designed to remedy those inequities.

The new Resentencing Policy is effective immediately and shall apply to all offices, units and attorneys in the Los Angeles County District Attorney's Office (hereinafter "Office"). While particular attention will be paid to certain people as discussed herein, every aspect of existing sentencing or resentencing policy will be subject to examination. The intent of this Resentencing Policy is that it will evolve with time to ensure that it reflects the values of the District Attorney, and by extension, the people of Los Angeles County.

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<sup>1</sup> We will seek to avoid using dehumanizing language such as "inmate," "prisoner," "criminal," or "offender" when referencing incarcerated people.

## LENGTH OF SENTENCE

The sentences we impose in this country, in this state, and in Los Angeles County are far too long. Researchers have long noted the high cost, ineffectiveness, and harm to people and communities caused by lengthy prison sentences; sentences that are longer than those of any comparable nation. DA-elect Gascón campaigned on stopping the practice of imposing excessive sentences.

With regard to resentencing, the Model Penal Code recommends judicial resentencing hearings after 15 years of imprisonment for all convicted people:

The legislature shall authorize a judicial panel or other judicial decision maker to hear and rule upon applications for modification of sentence from prisoners who have served 15 years of any sentence of imprisonment.

(American Law Institute (2017) Model Penal Code Sentencing, Proposed Final Draft, p. 681.)

National parole experts Edward Rhine, the late Joan Petersilia, and Kevin Reitz have endorsed this recommendation, adding: “We would have no argument with a shorter period such as 10 years.” ... These time frames correspond with criminological research showing that people age out of crime, with most “criminal careers” typically lasting less than ten years.” (Rhine, E. E., Petersilia, J., & Reitz, R. 2017. “The Future of Parole Release,” pp. 279-338 in Tonry, M. (Ed.) *Crime and Justice*, Vol, 46, p. 294.)

**Accordingly, this Office will reevaluate and consider for resentencing people who have already served 15 years in prison.** Experts on post-conviction justice recommend that resentencing be allowed for all people (not just those convicted as children or as emerging adults) and some experts recommend an earlier date for reevaluating continued imprisonment.

## APPLICATION OF SENTENCE ENHANCEMENT POLICY FOR OPEN/PENDING CASES

For any case that is currently pending, meaning that judgment has not yet been entered, or where the case is pending for resentencing, or on remand from another court, the Deputy District Attorney in charge of the case shall inform the Court at the next hearing of the following:

“At the direction of the Los Angeles County District Attorney, in accordance with Special Directive 20-08 concerning enhancements and allegations, and in the interest of justice, the People hereby

1. join in the Defendant’s motion to strike all alleged sentence enhancement(s); or
2. move to dismiss all alleged sentence enhancement(s) named in the information for all counts.

### **FURTHER DIRECTIVES FOR OPEN/PENDING CASES**

The following rules apply to any case where a defendant or petitioner is legally eligible for resentencing or recall of sentence, including but not limited to:

- Habeas corpus cases.
- Cases remanded to Superior Court by the Court of Appeal or Supreme Court.
- Cases referred to the Superior Court under Penal Code section 1170(d)(1).
- Cases pending resentencing under Penal Code sections 1170.126, 1170.127, 1170.18, 1170.91, and 1170.95.
- Cases pending under Penal Code section 1170(d)(2).
- All cases where the defendant was a minor at the time of the offense.
- Any other case that may be the subject of resentencing not specified here.

Any Deputy District Attorney assigned to a case pending resentencing or sentence recall consideration under any valid statute shall comply with the following directives until further notice.

- 1) If the defendant or petitioner is serving a sentence that is higher than what he/she would receive today, due to operation of law or by operation of the District Attorney's new Sentencing Policy, the deputy in charge of the case shall withdraw any opposition to resentencing or sentence recall and request a new sentence that complies with current law and/or the District Attorney's new Sentencing Policy. This policy applies even where enhancements were found true in a prior proceeding. This policy shall be liberally construed to achieve its purposes.
- 2) If the defendant or petitioner is seeking relief under Penal Code section 1170.95, the DDA may concede that the petitioner qualifies for relief. If the assigned DDA does not believe that the petitioner qualifies for relief, the DDA must request a 30 day continuance, during which time the assigned DDA shall review the case in light of the Office's specific Penal Code 1170.95 Policy, *see below*. If the DDA continues to oppose relief, the DDA shall submit the reasons in writing to the Head Deputy. The Head Deputy shall then seek approval from the District Attorney or his designee in order to determine whether the Office will continue to oppose relief.
- 3) If a defendant or petitioner would not qualify for a reduced sentence by operation of law if convicted today or under the Office's new Sentencing Policy, then the DDA in charge of the case may seek a 30-day continuance. During that time, the deputy shall evaluate whether to support or oppose the resentencing (or sentence recall) request. If the deputy believes that compelling and imminent public safety concerns justify opposition to revisiting the sentence, then the deputy must submit those concerns in writing to her Head Deputy who shall then seek approval from the District Attorney or his designee.
- 4) All laws concerning victim notification and support shall be honored.

## **PENAL CODE § 1170.95/SB 1437 RESENTENCING POLICY**

1. We start with a position of respect for our co-equal branch of government, the legislature. Like the courts, we presume that laws passed by the legislature are constitutional. “[U]nder long-established principles, a statute, once enacted, is presumed to be constitutional.” (*Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1119.) We will no longer seek to delay implementation of laws by making arguments that laws that provide retroactive relief are unconstitutional.
2. The Office’s position is that defense counsel should be appointed when the petition is filed and there should be no summary denials by the court. (*People v. Cooper* (2020) 54 Cal.App.5th 106; *People v. Tarkington* (2020) 49 Cal.App.5th 892, 917, review granted Aug. 12, 2020, S263219 [dis. opn. of Lavin, J.] )
3. Many people accepted plea offers to manslaughter, made by this Office in order to avoid a conviction for murder. It is this Office’s policy that where a person took a plea to manslaughter or another charge in lieu of a trial at which the petitioner could have been convicted of felony murder, murder under the natural and probable consequences doctrine, attempted murder under the natural and probable consequences doctrine, or another theory covered by Senate Bill 1437, that person is eligible for relief under section 1170.95. Such a position avoids disparate results whereby a person who this Office has already determined to be less culpable -- as evidenced by allowing a plea for manslaughter -- serves a longer sentence than a similarly situated person who is now eligible for relief under section 1170.95.
4. Section 1170.95 (d)(2) states, “[I]f there was a prior finding by a court or jury that the defendant did not act with reckless indifference to human life or was not a major participant in the felony, the defendant is entitled to have his or her murder conviction vacated.” This prior finding includes cases where a magistrate found that there was insufficient evidence of major participation in a felony or reckless indifference to human life following a preliminary hearing, or at any stage in the proceedings.
5. The Office’s position is that, consistent with the definition of “prima facie,” the court must not engage in fact finding at the prima facie stage. (*People v. Drayton* (2020) 47 Cal. App. 5th 965.)
6. The Office’s position is that if the person was an accomplice to the underlying felony, and had a special circumstance finding that was decided before *People v. Banks* (2015) 61 Cal 4th 788 or *People v. Clark* (2016) 63 Cal. 4th 522, then the filing of a Penal Code section 1170.95 petition is adequate to trigger the section 1170.95 process. There is no requirement that the petitioner file a separate habeas petition first. (*People v. York* (2020) 54 Cal. App. 5th 250, 258.) The next stage is an evidentiary hearing.
7. The Office’s position is that if allegations pursuant to Penal Code section 190.2 (a) (17) were dismissed as part of plea negotiations and the petitioner was not the actual killer, this Office will not attempt to prove the individual is ineligible for resentencing. This Office will stipulate to eligibility per section 1170.95(d)(2).

8. The Office's position is that, consistent with *People v. Medrano* (2019) 42 Cal. App. 5th 1001, 1008, rev. granted, that a person who was convicted of attempted murder under the natural and probable consequences doctrine is eligible for resentencing under section 1170.95. Among other reasons, this avoids the great disparity that arises when one who was convicted of murder under the now abolished natural and probable consequences doctrine is able to be resentenced but one who was convicted of attempted murder is not.
9. If the client has previously won relief under *People v. Chiu* (2014) 59 Cal. 4th 155, the Office will not attempt to argue that the petitioner is ineligible for resentencing, or could be convicted as a direct aider and abettor.
10. If the jury was never instructed on direct aiding and abetting, implied malice murder, or any other intent-to-kill theory, or if the trial prosecutor never argued one of these theories, this Office will not argue that the petitioner can now be convicted under one of these theories during 1170.95 proceedings. Theories must remain consistent.
11. Relatedly, if a jury was not even instructed on implied malice murder or some other theory of homicide not covered by section 1170.95, the prosecution cannot now meet our burden of proof beyond a reasonable doubt that the petitioner is ineligible for resentencing.
12. If the petitioner was convicted of murder and the petitioner's jury was instructed on the natural and probable consequences theory doctrine and/or a first or second degree felony murder instruction at trial, then it may have been possible that petitioner was convicted under one of these theories and this Office will not seek to rebut petitioner's prima facie showing. The case must proceed to the evidentiary hearing.
13. Because jury deliberations are secret, in the absence of special findings, it is not possible to determine the actual basis of a jury verdict when multiple theories were before the jury. Therefore, at an evidentiary hearing, if the petitioner was convicted of murder and the petitioner's jury was instructed with a felony murder or a natural and probable consequences doctrine instruction along with other theories, there is a reasonable doubt that the jury convicted petitioner under the old felony murder rule or the now abolished doctrine of natural and probable consequences. Because the statute allows for the introduction of "new or additional evidence," the deputy district attorney may introduce evidence to show, for example, that the petitioner was the actual killer, or acted as a major participant with reckless indifference to human life, or was convicted under a still-valid theory on which the jury was instructed. See below for this Office's position on evidence that we will and will not seek to admit.
14. At an evidentiary hearing pursuant to section 1170.95 (d)(3), the prosecution must prove beyond a reasonable doubt that the petitioner is ineligible for resentencing. A deputy district attorney may not argue that the standard for the court to determine whether a petitioner is ineligible for resentencing is whether there is "sufficient evidence" to uphold the conviction. This is a standard of proof for an appellate court affirming a conviction. It is not the standard of proof for a trial court in a section 1170.95 proceeding. (*People v. Lopez* (2020) 56 Cal.App. 5th 936, 949-950.)

15. It is this Office's position that the Evidence Code applies to any evidentiary hearing pursuant to section 1170.95. Statements made after promises of leniency or threats of punishment (express or implied) are unreliable. A parole hearing is a coercive environment and therefore statements made in them are unreliable and involuntary. This Office will not seek to introduce statements by a petitioner made in parole hearing transcripts into court for any purpose.
16. As a matter of due process, it is this Office's policy that a petitioner has a right to confrontation at a hearing under section 1170.95. Accordingly, this Office will not seek to admit statements of a declarant when the petitioner did not have an opportunity to cross-examine the declarant or when a purported expert's opinion is based on inadmissible hearsay. (See *People v. Sanchez* (2016) 63 Cal.4th 665.)
17. The Office will comply with all of our obligations under *Brady v. Maryland* and its progeny during resentencing procedures.
18. The Office's position is that any defendant who was under the age of 25 when the crime occurred is entitled to present mitigation documents pursuant to *People v. Franklin* and Penal Code section 3051.
19. The Office's position is that a person's age and the "diminished culpability of youth," a person's mental illness, or cognitive impairment, or a person's intoxication is relevant to the determination whether a petitioner meets the standard of "reckless indifference to human life."
20. On resentencing, this Office will dismiss enhancements consistent with our current enhancement policies and otherwise not seek a sentence that is inconsistent with this Office's current sentencing policies.

### **RESENTENCING UNIT**

This Office declares that new Sentencing, Enhancement and Juvenile policies must apply with equal force to sentences where the judgment is final. Accordingly, this Office commits to a comprehensive review of cases where the defendant received a sentence that was inconsistent with the charging and sentencing policies in force after Tuesday, December 8, 2020, at 12:01 AM.

In such cases, this Office shall use its powers under Penal Code section 1170(d)(1) to recommend recall and resentencing. While priority shall be given to the cases enumerated below, the ultimate goal shall be to review and remediate every sentence that does not comport with the new Sentencing, Enhancement and Juvenile Policies.

Specifically, this Office commits to an expedited review of the following categories of cases, which are themselves a subset of a universe of 20,000-30,000 cases with out-of-policy sentences:

- People who have already served 15 years or more;
- People who are currently 60 years of age or older;
- People who are at enhanced risk of COVID-19 infection;
- People who have been recommended for resentencing by CDCR;

- People who are criminalized survivors;
- People who were 17 years of age or younger at the time of the offense and were prosecuted as an adult.

In formulating this policy, we rely on current statistical data from the California Department of Corrections and Rehabilitation (CDCR). (See Appendix.) Over time, the data may be subject to change; the urgency of our mission will not be. In seeking resentencing under 1170(d)(1), this Office shall argue that resentencing is necessary to eliminate disparity of sentences and to promote uniformity of sentencing.

At all types of resentencing hearings, filing deputies shall assist the Resentencing Court by setting forth any and all postconviction factors that support resentencing, including, but not limited to: mitigation evidence; CDCR disciplinary records and record of rehabilitation and positive programming while incarcerated; evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the risk for future violence; evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice; and post-release reentry plans, demonstrating any family or community support that is available upon release. (See e.g. Assembly Bill 1812, Pen. Code § 1170, subd. (d).)

### **LIFER PAROLE HEARINGS**

This Office recognizes that parole is an effective process to reduce recidivism, ensure public safety, and assist people in successfully rejoining society. The CDCR's own statistics show that people paroled from life terms have a recidivism rate of less than four percent.

We are not experts on rehabilitation. While we have information about the crime of conviction, the Board of Parole Hearings already has this information. Further, as the crime of conviction is of limited value in considering parole suitability years or decades later, (see *In re Lawrence* (2008) 44 Cal.4th 1181; *In re Shaputis* (2008) 44 Cal. 4th 1241, 1255), the value of a prosecutor's input in parole hearings is also limited. Finally, pursuant to Penal Code section 3041, there is a presumption that people shall be released on parole upon reaching the Minimum Eligible Parole Date (MEPD), their Youth Parole Eligible Date, (YEPD), or their Elderly Parole Date (EPD). Currently, sentences are being served that are much longer than the already lengthy mandatory minimum sentences imposed. Such sentences are constitutionally excessive. (See *In re Palmer* (2019) 33 Cal.App.5th 1199.)

This Office's default policy is that we will not attend parole hearings and will support in writing the grant of parole for a person who has already served their mandatory minimum period of incarceration, defined as their MEPD, YEPD or EPD. However, if the CDCR has determined in their Comprehensive Risk Assessment that a person represents a "high" risk for recidivism, the DDA may, in their letter, take a neutral position on the grant of parole.

This Office will continue to meet its obligation to notify and advise victims under California law, and is committed to a process of healing and restorative justice for all victims.



## **YOUTH AND CHILDREN<sup>2</sup>**

Currently, there are thousands of people from Los Angeles County serving sentences in the CDCR for crimes they committed as children. As recent developments in adolescent brain science teach us, young people are uniquely capable of rehabilitation and can lead productive lives as contributing members of society without serving long sentences.

Under new Juvenile Directives, available here, people who are 17 or younger at the time of their offense, will not be transferred to adult court and will remain committed to the youth system until they are mature enough to reenter society. Accordingly, any person who was a minor at the time of the offense and meets the eligibility requirements for recall and/or resentencing in adult court, including but not limited to actions pursuant to Penal Code sections 1170(d)(2), or 1170(d)(1), falls within this Office's policy to oppose transfer of minors to adult court. In such cases, DDAs shall join in any defense motion seeking to transfer the person to juvenile court for further proceedings, and the deputy on the case shall state the reasons for supporting such transfer, consistent with this Office's policies, on the record.

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<sup>2</sup> We will refer to "youth," "child," or "children" instead of "juvenile(s)." The word "juvenile" is used almost exclusively as a way to describe children who are in the criminal legal system or as police descriptors. As a result, it has become a way to mark certain children as "other." To the extent possible, we will refer to the children in the criminal legal system as we would to all children, as "young person(s)" or "children." In accordance with Penal Code § 3051, we will refer to persons age 18 to 25 as "youths."

## **APPENDIX**

### **A. Current CDCR Population from Los Angeles County**

***Table A.1: Descriptive Statistics for Demographic and Other Data***

<b>Variable</b>	<b>Level</b>	<b>Number</b>	<b>Percentage</b>
Total CDCR Prison Population Originating in Los Angeles County = 29,556* (*excluding LWOP and condemned cases)			
<i>Gender</i>			
	Female	1,078	3.65%
	Male	28,478	96.35%
<i>Race/Ethnicity</i>			
	Black	11,139	37.69%
	Latinx/Hispanic	14,683	49.68%
	White	2,263	7.66%
	Other	1,471	4.98%
<i>Age Group</i>			
	Less than 20	31	0.10%
	20-29	5,945	20.11%
	30-39	9,098	30.78%
	40-49	6,489	21.95%
	50-59	5,043	17.06%
	60+	2,950	9.98%
<i>Offense Category</i>			
	Crimes Against Persons	25,391	85.91%
	Drug Crimes	461	1.56%
	Property Crimes	2,230	7.54%
	Other Crimes	1,474	4.99%
<i>Time Served</i>			
	Less than 5	8,307	28.11%
	5 to less than 10	6,762	22.88%
	10 to less than 15	5,123	17.33%
	15 to less than 20	3,446	11.66%

	20+	5,918	20.02%
<i>Sentence Type</i>			
	2nd Strike	8,106	27.43%
	3rd Strike	2,395	8.10%
	Determinate Sentence	9,841	33.30%
	Life with Parole	9,214	31.17%

***Table A.1: Time Served, Age at Time of Offense, Current Age, Classification Scores, and Serious Rules Violation Reports (RVRs) Received in Past 3 Years***

	<b>Count/ Percentage of Total LAC Prison Population</b>
Served 20 Years or More	5,918 (20.02%)
Served 15 Years or More	9,364 (31.68%)
Served 10 Years or More	14,487 (49.02%)
Served 7 Years or More	18,206 (61.60%)
Currently 60 Years or Older	2,950 (9.98%)
Currently 65 Years or Older	1,367 (4.62%)
Age 25 or Younger at Time of Offense	13,410 (45.37%)
Age 18 or Younger at Time of Offense	3,291 (11.13%)
Age 17 or Younger (Under 18) at Time of Offense	1,557 (5.27%)

Age 16 or Younger at Time of Offense	778 (2.63%)
Age 15 or Younger at Time of Offense	255 (0.86%)
Classification Score of 25 or Below	12,297 (41.61%)
Classification Score of 19 or Below	10,700 (36.20%)
No Serious RVRs in Past 3 Years	25,501 (86.28%)
CS of 25 or Below with No Serious RVRs in Past 3 Years	12,016 (40.66%)
CS of 19 or Below with No Serious RVRs in Past 3 Years	10,490 (35.49%)

**Table A.3: Eligibility by Offense Type and Time Served (mix of lower-level offenses)**

Offense Type	Served 10 Years or More		Served 7 Years or More		All	
	Frequency	Percentage of Total Prison Population Originating in LAC*	Frequency	Percentage of Total Prison Population Originating in LAC*	Frequency	Percentage of Total Prison Population Originating in LAC*
Drug Offenses	132	0.45%	158	0.53%	461	1.56%
Residential Burglaries	476	1.61%	688	2.33%	1,643	5.56%
Robberies	2,045	6.92%	2,828	9.57%	5,297	17.92%
Residential Burglaries & Robberies	2,521	8.53%	3,516	11.90%	6,940	23.48%
Non-Sex Offenses	12,393	41.93%	15,618	52.84%	26,029	88.07%
Non-Murder & Non-Sex Offenses	5,731	19.39%	7,937	26.85%	17,048	57.68%
All Non-Violent, Non-Serious, Non-Sex Crimes	527	1.78%	644	2.18%	2,236	7.57%
All Non-Non-Non Crimes (with Residential Burglaries)	1,003	3.39%	1,332	4.51%	3,879	13.12%
All Non-Non-Non Crimes (with Res. Burglaries & Robberies)	3,048	10.31%	4,160	14.07%	9,176	31.05%
All Incarcerated*	14,463	48.93%	18,167	61.47%	29,556	100.00%

\*The total prison population originating in LAC in this table excludes all LWOP and condemned cases.

## **B. Background on Our Incarceration Crisis**

Our ballooning prison population [did not result from an increase in crime](#). In fact, our crime rate has declined dramatically since the early 1990's. Rather, [harsher sentencing laws like](#) Life Without the Possibility of Parole, an increase in mandatory minimum sentences for indeterminate sentences, Three Strikes sentencing, and requirements that that restrict people to complete 85% of their imposed time now keep people in prison for longer than ever before, long after they pose any safety risk to their community.

There are currently [more people serving life sentences](#) in America than were locked up in prison at all during the 1970s. [One in seven](#) people behind bars is serving a life sentence.

California has led the way in this explosion. We had [23,000 people](#) incarcerated in 1980. By 2000, [we had over 160,000](#) people. By 2010 we had 164,000. In the last 10 years, spurred by a [United States Supreme Court decision](#) holding that California's overcrowded prisons constituted cruel and unusual punishment, as well as by a growing public awareness that we are incarcerating too many people for too long, we have moved to reduce our prison population. However, we have five times as many people incarcerated as we had in 1980.

California spent [a shocking \\$15.7 billion on prisons in 2019-2020](#). This represents 7.4% of all state funds. This is occurring while people are sleeping in our streets, our parks are trash-ridden, our schools are in need of repair, our once-free public universities are underfunded and tuition rises, people are hungry, and we need major infrastructure repair to even do things like provide clean water to the people of California.

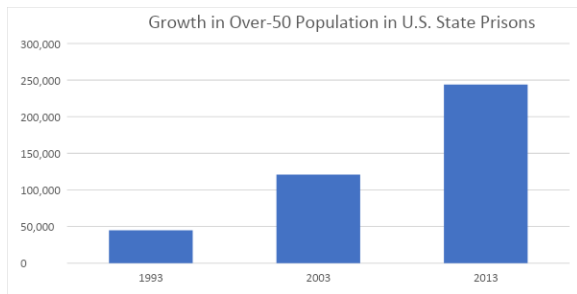
In Los Angeles County alone we currently have almost 30,000 people in CDCR.

Nationally, our criminal justice policies have disproportionately impacted minority populations. 60% of people in prison are Black, despite making up just 13% of the population. One out of every five Black persons behind bars has a life sentence.

**Almost 93% of people sent to prison from Los Angeles County are Black people and people of color.** Black people are approximately 9% of Los Angeles's population. They constitute 38% of Los Angeles's state prison population. We can no longer deny that our system of hyper-criminalization and incarceration is anything other than racist.

The incarceration rate of women [is also on the rise](#). In 1980, there were 13,206 women in prison; in 2017, there were 111,360.

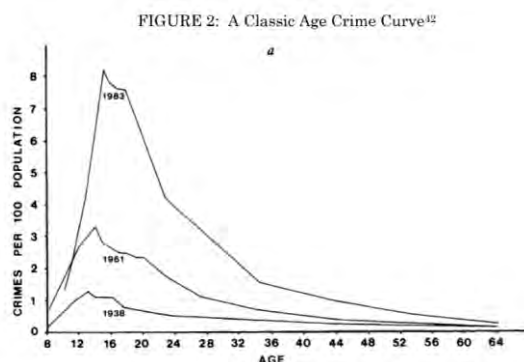
Harsh sentencing laws have also meant that the prison population is old. If we continue at current rates, [one in three people behind bars](#) in state prisons will be over 50 by 2030. In 1993, there were 45,000 people over 50 in U.S. state prisons. Twenty years later, there were 243,800. The growth in the aging prison population has continued. Since 1999, New York has decreased its prison population by 30 percent [but during that same time span saw a doubling](#) of its over 50 population. Between 2001 and 2014, [29,500 people over 55](#) died in federal and state prisons.



Current estimates show that the U.S. spends upwards of \$16 billion a year to care for its elderly population. In 2013 in Virginia, **nearly half of the Department of Corrections budget** for prisoner health care went to caring for the elderly.

### **Recidivism and the Age-Crime Curve**

Research consistently shows that individuals age out of crime, even those convicted of the most serious offenses. By the time individuals reach their thirties, their odds of committing future crimes drop dramatically. Much of this is due to neurological changes, which take place in profound ways up until an individual turns 26. The prefrontal cortex, which is highly involved in executive functioning and behavior control, continues to develop until age 26, making it harder for young people to make what adults consider logical and appropriate decisions.



Given these changes, it makes little sense to sentence children and adolescents to lengthy terms of incarceration without any meaningful opportunity for review, as the odds are extremely high that those children can be rehabilitated and reenter society.

Likewise, incarcerating an aging population makes little penological sense. Those aged 50-64 have [far lower recidivism rates](#) than the national average: seven percent compared to 43.3 percent. And those over 54 have just a four percent recidivism rate. In other words, we are spending billions to lock up people, 96% of whom will not even commit a technical violation once released.

### **Jurisdictions that allow for a “second look” or increased parole opportunities**

“Look back” provisions allow sentenced individuals to petition for a reduced sentence after they have shown meaningful signs of rehabilitation that indicate an ability to return to society. While several jurisdictions have parole eligibility, only California has enacted a robust “look back” Act thus far. Delaware has implemented one to address those sentenced under habitual offender laws.

**Federal:** Los Angeles Congresswoman Karen Bass and United States Senator Cory Booker introduced a bill for people serving in federal prison to reevaluate cases involving people [over 50 years old and for those who have served at least ten years of a sentence](#), creating a rebuttable presumption of release for those over 50.

**District of Columbia:** Recently, the District of Columbia passed Second Look Sentencing for youths. This month, the Council [is poised to expand this second look resentencing](#) to all who were under the age of 25 at the time of the crime.

**Oregon:** in January 2020, [Oregon's Second Look Resentencing](#), for minors [SB 1008](#) goes into effect.

**Florida:** Florida allows a second look for children who were sentenced as adults for offenses committed before their 18<sup>th</sup> birthday.

**Delaware:** People convicted before their 18th birthday of a first-degree murder may petition for modification after 30 years, and after 20 years for any other offense.

**Colorado:** Senate Bill 16-180 requires the Department of Corrections (DOC) to create a program for kids sentenced as adults for a felony and presumes release upon participation after 3 years.

**California:** has made many of its recent changes retroactive, including resentencing for those convicted of a third strike, Proposition 47, SB 1437, Penal Code section 1170, subsection (d), among others. California also [provides automatic parole review](#) when a person commits the crime before the age of 26 and has served 15, 20, or 25 years, depending on the controlling offense. California has also expanded elderly parole this year with [AB 3234](#) so that people who are 50 and have served at least 20 years are eligible for parole consideration.

***The policies of this Special Directive supersede any contradictory language of the Legal Policies Manual.***

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