

1 SANTA MONICA, CALIFORNIA; FRIDAY, SEPTEMBER 27, 1985; 11:10 A.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 APPEARANCES:

4 THE DEFENDANT WITH COUNSEL, ARTHUR H. BARENS
5 AND RICHARD C. CHIER; FREDERICK N. WAPNER,
6 DEPUTY DISTRICT ATTORNEY OF LOS ANGELES
7 COUNTY, REPRESENTING THE PEOPLE OF THE
8 STATE OF CALIFORNIA.
9 (ROSEMARIE GOODBODY, OFFICIAL REPORTER.)

10
11 THE COURT: PEOPLE VS. HUNT.

12 MR. BARENS: GOOD MORNING, YOUR HONOR. ARTHUR BARENS
13 APPEARING WITH RICHARD CHIER ON BEHALF OF THE DEFENSE.

14 YOUR HONOR, WE ARE HERE THIS MORNING AFTER SOME
15 TOUR OF THE COURTHOUSE WHEN A 170 WAS FILED BY THE DEFENDANT
16 THIS MORNING IN DEPARTMENT F. WE THEN WENT TO A, TO B AND
17 TO HERE.

18 THIS IS A MOTION TO REDUCE BAIL FOR MR. HUNT
19 AND, FURTHER, WE HAVE THE SURETY PRESENT TO QUALIFY HIM FOR
20 THE BOND.

21 YOUR HONOR, THE DEFENSE IS TROUBLED BY THE FACT
22 THAT YOUR HONOR PREVIOUSLY WAS THE TRIAL JUDGE IN THE
23 CO-DEFENDANT'S CASE, MR. PITTMAN, IN JUNE.

24 THE COURT: WHY SHOULD THAT TROUBLE YOU?

25 MR. BARENS: WHAT TROUBLES ME, YOUR HONOR, IS WHAT MY
26 READING OF THE TRIAL TRANSCRIPT REVEALED TO ME. THE FIRST OF
27 THE TRIAL IN MAJOR PART WAS A TRIAL IN ABSENTIA OF MR. HUNT
28 AND, CERTAINLY, A MAJOR THEME OF THE DEFENSE WAS TO DUMP

1 THE GUILT DIRECTLY IN MR. HUNT'S LAP.

2 YOUR HONOR, BEING CANDID WITH YOUR HONOR AND I
3 HAVE BEEN IN THIS COURT MANY TIMES, WHAT CONCERNS ME IS THERE
4 WERE A VARIETY OF COMMENTS BY THE COURT DURING THAT TRIAL WHICH
5 WOULD INDICATE PREJUDICE, TO ME, TOWARDS MR. HUNT, AT LEAST IN
6 YOUR HONOR'S RESPONSES TO SOME OF THE TESTIMONY.

7 THE COURT: YOU ARE MISCONSTRUING THE ENTIRE THING. I
8 HAVE NO PREJUDICE AGAINST HIM. I NEVER SAW HIM BEFORE.

9 MR. BARENS: QUITE SO, YOUR HONOR.

10 THE COURT: HE HAD NOTHING TO DO WITH THAT TRIAL.

11 ALL WE HAD WAS THE OTHER DEFENDANT AND IF I HAD
12 ANY KIND OF FEELING AGAINST ANYBODY, IT WAS AGAINST THE
13 INCOMPETENCE OF THE LAWYER THAT REPRESENTED HIM; THAT WAS MY
14 ONLY FEELING IN THE ENTIRE CASE.

15 MR. BARENS: WE CERTAINLY SHARE THAT FEELING WITH YOUR
16 HONOR.

17 THE COURT: OF COURSE, THAT WAS THE ONLY REASON WHY I
18 WAS IRRITATED IN THAT CASE, WHICH WAS AGAINST THE TACTICS AND
19 CONDUCT OF THIS INCOMPETENT LAWYER AND THAT IS THE ONLY KIND
20 OF PREJUDICE THAT I MIGHT HAVE MANIFESTED IN ANY WAY. I DIDN'T
21 HAVE ANY PREJUDICE AGAINST THE DEFENDANT.

22 MR. BARENS: OBVIOUSLY, YOUR HONOR CAME TO THE ULTIMATE
23 CONCLUSION THAT --

24 THE COURT: I HAD THE SAME IMPRESSION YOU GOT FROM
25 READING THE TRANSCRIPT --

26 MR. BARENS: QUITE SO.

27 THE COURT: -- AND THAT WAS THE INCOMPETENCY OF COUNSEL.

28 MR. BARENS: I TOOK VIGOROUS EXCEPTION TO BOTH THE

1 TACTICS AND THE SUBSTANCE OF MR. YOUNG'S PRESENTATION TO THE
2 COURT.

3 THE COURT: I KNOW NOTHING ABOUT MR. HUNT AND HAVE
4 HEARD NOTHING ABOUT HIM. SURE, I HAVE HEARD ABOUT WHAT
5 HAPPENED IN THE CASE BUT I HAVE EXPRESSED NO FEELING ABOUT
6 MR. HUNT IN ANY WAY NOR WILL YOU HEAR ME DO SO.

7 MR. BARENS: THAT DOES GIVE ME CAUSE TO RECONSIDER
8 SOME OF THE TREPIDATION I MAY HAVE HAD.

9 MAY I HAVE A MOMENT, YOUR HONOR?

10 THE COURT: SURELY.

11 (UNREPORTED COLLOQUY BETWEEN
12 MR. BARENS AND THE DEFENDANT
13 AND MR. CHIER.)

14 MR. BARENS: YOUR HONOR, I HAVE A DIVERGENCE IN OPINION
15 BETWEEN MY CO-COUNSEL AND THE DEFENDANT AND, THUSLY, I WILL
16 TRUST MY OWN JUDGMENT AND REMAIN IN THIS COURT THIS MORNING.

17 THE COURT: PARDON ME?

18 MR. BARENS: I WILL REMAIN HERE THIS MORNING FOR THE
19 HEARING ON THE MOTION, YOUR HONOR.

20 THE COURT: ALL RIGHT, THANK YOU.

21 MR. BARENS: THAT BEING THE CASE, YOUR HONOR, I AM READY
22 TO ARGUE THE MOTION.

23 THE COURT: GO AHEAD.

24 MR. BARENS: YOUR HONOR, THERE ARE THREE BASES AT LEAST
25 THAT CONSTITUTE THE GROUNDS FOR REDUCTION OF BAIL IN THIS
26 INSTANCE.

27 THE COURT: HAS THIS MOTION EVER BEEN ARGUED BEFORE
28 JUDGE LIGHT?

1 MR. BARENS: NO, YOUR HONOR. THIS IS NOW A MATTER OF
2 FIRST ARGUMENT.

3 YOUR HONOR, BAIL AT THE PRELIMINARY HEARING HAD
4 BEEN SET BY JUDGE KIDNEY IN THE SUM OF \$500,000, PITTMAN HAVING
5 BEEN SET AT \$350,000.

6 DURING THOSE PROCEEDINGS, OSCAR BREILING, AN
7 INVESTIGATOR FOR THE JUSTICE DEPARTMENT, CAME FORWARD AND FILED
8 AN AFFIDAVIT IN CONJUNCTION WITH AN AFFIDAVIT OF ANA LOPEZ,
9 ASKING THAT BAIL BE INCREASED. THE THRUST OF THAT MOTION TO
10 INCREASE BAIL WAS TO THE EFFECT THAT THEY ALLEGEDLY HAD A
11 WITNESS WITH FIRSTHAND KNOWLEDGE AS TO THE CIRCUMSTANCES
12 SURROUNDING MR. LEVIN'S DEATH, THAT HE WOULD TALK ABOUT HOW
13 THE DEATH OCCURRED SPECIFICALLY, WHEN IT OCCURRED AND ALL OF
14 THE ATTENDANT DETAILS, AND WHERE MR. LEVIN WAS BURIED AND AT
15 LEAST IN BOTH DECLARATIONS OF BREILING AND LOPEZ THE WORDS
16 "FIRSTHAND KNOWLEDGE", INDICATING A PERCIPIENT WITNESS, WERE
17 DESCRIBED.

18 SECONDLY, THERE WAS AN ALLEGATION IN CASE
19 NO. F103660, WHICH WOULD BE THE SAN FRANCISCO CASE, THAT WAS
20 BEING FILED AS A CAPITAL CASE WITH SPECIAL CIRCUMSTANCES.

21 YOUR HONOR, SPECIFICALLY, BOTH OF THOSE
22 ALLEGATIONS WERE AND REMAIN FACTUALLY UNTRUE.

23 THE PEOPLE FILED A SIMPLE 187 WITH NO
24 ALLEGATIONS OF SPECIAL CIRCUMSTANCES IN THE SAN FRANCISCO
25 CASE AND SECONDARILY, THE ALLEGED WITNESS WITH FIRSTHAND
26 KNOWLEDGE TURNS OUT TO BE AN IMMUNIZED CO-DEFENDANT WITHOUT
27 FIRSTHAND KNOWLEDGE BUT, RATHER, ONLY HEARSAY KNOWLEDGE,
28 ONCE AGAIN ATTRIBUTING ALLEGED ADMISSIONS TO THE DEFENDANT.

1 AS THE COURT IS AMPLY AWARE, CORPUS DELECTI MAY
2 NOT BE ESTABLISHED SOLELY ON THE STATEMENTS OF THE ACCUSED NOR
3 CAN A CONVICTION BE HAD UPON TESTIMONY OF AN ACCOMPLICE UNLESS
4 IT CAN BE CORROBORATED BY INDEPENDENT EVIDENCE AND TO THAT
5 END, I CITE SECTION 1111 OF THE PENAL CODE. WHERE DOES THAT
6 TAKE US? ARTICLE I, SECTION 12 OF THE CALIFORNIA
7 CONSTITUTION PROVIDES IN THE "A" SECTION THAT BAIL MUST BE
8 PROVIDED IN CAPITAL CASES UNLESS, OF COURSE, THE FACTS ARE
9 EVIDENT AND THE PRESUMPTION GREAT. I SUBMIT THAT ON NEITHER
10 BASIS SHOULD THE DEFENDANT BE DENIED BAIL IN THIS CASE.

11 WE HAVE, AS YOUR HONOR IS AWARE, A "NO BODY"
12 CASE. THE ONLY EVIDENCE ALLEGED AGAINST MY CLIENT ARE HEARSAY
13 STATEMENTS. THERE HAS NEVER BEEN A PERCIPIENT WITNESS THAT WE
14 ARE AWARE OF BUT RATHER, THEY SEEK TO HOIST MY CLIENT ON A
15 CRUCIFIXION OF ALLEGED ADMISSIONS ATTRIBUTED TO HIM, INCLUDING
16 ADMISSIONS IN THE FORM OF A WRITTEN STATEMENT THAT SUPPOSEDLY
17 CONSTITUTES SOME RECIPE FOR MURDER, WHICH I SUBMIT IS ONLY
18 FILLED WITH AMBIGUITIES AND ONLY CONFUSES THE ISSUE RATHER
19 THAN CLARIFIES IT.

20 WE GET DOWN TO THE TYPICAL STANDARD AS TO HOW
21 BAIL SHOULD BE SET, THAT IS BASED ON THE CRIMINAL RECORD OF
22 THE DEFENDANT, THE PROBABILITY OF HIS OR HER APPEARING AT TRIAL
23 AND ANY POTENTIAL HARM TO THE PUBLIC, EVEN THOUGH I SUBMIT
24 THAT THE "A" SECTION UNDER SECTION 12, ARTICLE I, DOES NOT
25 DEAL IN A PUBLIC SAFETY CONSIDERATION. CAREFUL READING OF
26 THAT WOULD SHOW THAT ONLY APPLIES TO THE "B" AND "C" SECTIONS
27 WHICH I DISCRIMINATE FOR THE PURPOSES OF THIS ARGUMENT.

28 WE ARE PREPARED THIS MORNING TO HAVE THE

1 DEFENDANT TESTIFY THAT IF GRANTED REASONABLE BAIL WHICH WE
2 HAVE REQUESTED IN THE SUM OF \$250,000, THAT HE WILL BE LIVING
3 IN THE HOME OF BOBBY ROBERTS, WHO IS HERE TO TESTIFY. HE IS
4 ENGAGED TO MR. ROBERTS' DAUGHTER. THEY PLAN TO BE MARRIED
5 IMMEDIATELY UPON HIS RELEASE.

6 THE DEFENDANT IS AN EXTREMELY BRIGHT, ERUDITE
7 INDIVIDUAL AND WE WOULD LIKE AND I WOULD REPRESENT TO THE
8 COURT THAT HE WOULD BE WORKING IN MY LAW OFFICES FIVE OR SIX
9 DAYS A WEEK INVESTIGATING AND RESEARCHING MATERIALS ASSOCIATED
10 WITH HIS TWO CASES WHICH WE WERE RETAINED ON.

11 THE DEFENDANT HAS SIGNIFICANT TIES HERE.

12 THE COURT: YOU ARE TALKING ABOUT THE SAN FRANCISCO
13 CASE ALSO?

14 MR. BARENS: THE LOS ANGELES CASE. WE ARE PENDING
15 A HEARING PURSUANT TO A WRIT OF HABEAS CORPUS WE HAVE FILED
16 ON THE SAN FRANCISCO CASE TRYING TO ACTIVATE AND GET SOMETHING
17 GOING UP THERE.

18 THE DEFENDANT HAS SIGNIFICANT FAMILY TIES IN THE
19 COMMUNITY. HE HAS LIVED HERE IN EXCESS OF 20 YEARS. HE HAS
20 A FATHER AND MOTHER AND SISTER IN THE COMMUNITY. HE HAS NO
21 PRIOR FELONY CONVICTIONS, NO CRIMINAL CONVICTIONS, NO FELONY
22 CONVICTIONS. HE HAS LED AN EXEMPLARY LIFE, WE SAY, TO THE
23 PRESENT. THE PEOPLE MIGHT DISAGREE.

24 THE DEFENDANT IS WELL ABLE TO ASSIST COUNSEL IN
25 HIS DEFENSE. I MUST ALSO ADD, YOUR HONOR, WHEN HE WAS AT THE
26 HALL OF JUSTICE, JUST AS A PERSONAL ASIDE, AND I HAD ACCESS TO
27 HIM ON SATURDAYS AND SUNDAYS, IT MADE MY JOB A LOT EASIER DUE
28 TO THE SHORT STAFFING THEY HAVE AT THE COUNTY AND ALL OF THE

1 OTHER MYRIAD OF PROBLEMS THEY HAVE MAKING ACCESS TO THE CLIENTS
2 ON THE WEEKEND, WHICH IS VIRTUALLY IMPOSSIBLE AND DURING THE
3 WEEK IT IS SOMEWHAT ATTENUATED. IT CERTAINLY WOULD BE A
4 SIGNIFICANT ASSIST TO THE DEFENSE IN THIS EXTREMELY VOLUMINOUS
5 CASE TO HAVE MR. HUNT'S SERVICES AVAILABLE.

6 MR. ROBERTS IS HERE THIS MORNING AS A PROPERTY
7 SIGNER, PUTTING UP HIS FAMILY RESIDENCE WHERE HE RESIDES WITH
8 HIS WIFE AND CHILDREN AS COLLATERAL FOR THE BOND. I THINK THAT
9 SPEAKS OF ITSELF AS TO THE FEELINGS OF THE FAMILY CONCERNING
10 THE DEFENDANT'S AVAILABILITY TO PROCEED TO TRIAL.

11 WE WOULD SUBMIT THIS IS STATUTORILY AND FACTUALLY
12 A PROPER MATTER FOR REASONABLE BAIL TO BE SET AND SO WE WOULD
13 SUBMIT IT INITIALLY.

14 AS I SAY, WE RESERVE THE RIGHT TO CALL THE
15 DEFENDANT TO TESTIFY SO AS TO CORROBORATE WHAT I REPRESENTED
16 TO THE COURT.

17 THE COURT: ALL RIGHT, MR. WAPNER.

18 MR. WAPNER: THANK YOU, YOUR HONOR.

19 FIRST OF ALL, I CHECKED THE TRANSCRIPT OF THE
20 PRELIMINARY HEARING OVER AND AS OFTEN HAPPENS, THE PROCEEDINGS
21 REGARDING BAIL WERE NOT REPORTED IN THAT TRANSCRIPT. MY
22 RECOLLECTION AT THE TIME IS THAT THE PEOPLE OBJECTED TO HAVING
23 BAIL SET AND THE COURT LEFT BAIL SET AT WHERE IT WAS, NOT REALLY
24 WANTING TO MAKE WAVES.

25 THE QUESTION OF BAIL HAS ONLY COME UP ONCE BEFORE
26 IN THE SUPERIOR COURT AND THE PEOPLE DIDN'T HAVE ANY STRONG
27 OBJECTION TO WHERE THE BAIL WAS SET BECAUSE THERE WAS A
28 NO BAIL HOLD IN NORTHERN CALIFORNIA. THAT WAS PROBABLY AN

1 INCORRECT POSITION FOR US TO TAKE.

2 IN ANY EVENT, OUR POSITION AT THIS POINT IS THAT
3 THERE SHOULD BE NO BAIL BECAUSE THE CONSTITUTION SAYS THAT A
4 PERSON SHALL BE RELEASED ON BAIL BY SUFFICIENT SURETIES EXCEPT
5 FOR CAPITAL CRIMES WHEN THE FACTS ARE EVIDENT OR THE PRESUMPTION
6 GREAT AND THE PENAL CODE SAYS THE SAME THING, EXCEPT A
7 DEFENDANT CHARGED WITH A CRIME PUNISHABLE WITH DEATH WHERE THE
8 PROOF IS EVIDENT AND THE PRESUMPTION THEREOF GREAT SHOULD NOT BE
9 RELEASED FROM CUSTODY.

10 THAT TERM THAT "THE PROOF IS EVIDENT AND THE
11 PRESUMPTION IS GREAT" IS DEFINED IN A 1927 CALIFORNIA CASE,
12 IN RE PAGE AT 82 CAL. AP., 576, WHERE IT SAYS:

13 "IT IS NOT NECESSARY THAT THE EVIDENCE
14 SHOULD BE SO CONVINCING AS TO JUSTIFY A VERDICT
15 AGAINST THE ACCUSED, BUT IT IS SUFFICIENT IF
16 IT POINTS TO HIM AND INDUCES THE BELIEF THAT
17 HE MAY HAVE COMMITTED THE OFFENSE CHARGED."

18 THE COURT IS EXCEEDINGLY FAMILIAR WITH THE
19 UNDERLYING FACTS OF THIS CASE. THE VERDICT IN THE MISTRIAL
20 WAS A 10 TO 2 GUILTY SPLIT ON MR. PITTMAN, AGAINST WHOM THE
21 FACTS ARE MUCH WEAKER THAT MR. HUNT.

22 IN TALKING TO THE JURORS AFTER THE CASE, THERE
23 WAS NO QUESTION IN THE MINDS OF THE 10 WHO SAT ON THE PANEL,
24 AS WELL AS THE 2 WHO --

25 MR. BARENS: YOUR HONOR, REALLY, I OBJECT TO THAT KIND
26 OF ARGUMENT BY THE PEOPLE ABOUT HEARSAY CONVERSATIONS WHICH
27 ALLEGEDLY CAME FROM THE JURORS. THAT IS PATENTLY UNFAIR.

28 THE COURT: I WILL SUSTAIN THE OBJECTION TO THAT.

1 MR. WAPNER: ALL RIGHT. IN ANY EVENT THE COURT --

2 MR. BARENS: I MAKE A MOTION TO STRIKE THAT FROM THE
3 RECORD.

4 THE COURT: IT WILL BE STRICKEN.

5 MR. WAPNER: THE COURT HEARD THE FACTS IN THE CASE.

6 WE ARE PREPARED TO PUT ON THE INVESTIGATING
7 OFFICER TODAY TO TESTIFY BUT I THINK HE WOULDN'T ADD ANYTHING
8 TO WHAT THE COURT ALREADY KNOWS OF THE FACTS OF THIS CASE.
9 IT IS SUFFICIENT TO SAY THAT THE FACTS ARE EVIDENT AND THE
10 PRESUMPTION IS GREAT OF THE DEFENDANT'S GUILT.

11 FOR THE PURPOSES OF THIS MOTION, IT DOESN'T EVEN
12 HAVE TO BE ENOUGH TO PROVE HIM GUILTY BEYOND A REASONABLE
13 DOUBT AT A TRIAL FOR THE COURT TO DENY HIM BAIL AND I THINK
14 THAT HE SHOULD NOT IN FACT BE GRANTED ANY BAIL IN THIS MATTER.

15 HE HAS MADE CONFESSIONS OR STATEMENTS INDICATING
16 HIS GUILT OF THE CRIME TO ABOUT THREE DIFFERENT PEOPLE
17 INDIVIDUALLY AND AT ONE POINT, TO A WHOLE GROUP OF PEOPLE AT
18 A MEETING.

19 AS TO THE STATEMENT BY MR. BARENS THAT THE
20 DEFENDANT HAS LED AN EXEMPLARY LIFE, IF WE HAD A COMMUNITY
21 FULL OF PEOPLE WHOSE LIVES WERE AS EXEMPLARY AS MR. HUNT'S,
22 WE WOULD BE BACK IN THE WILD WEST WHERE PEOPLE WOULD HAVE GUNS
23 SHOOTING AT EACH OTHER. IT IS SO ABSURD ON ITS FACE THAT I
24 THINK THE COURT HAVING HEARD THE TRIAL OF MR. PITTMAN, THERE
25 NEED BE NO MORE SAID ABOUT THAT.

26 ALSO, THE SUGGESTION THAT IF MR. HUNT IS RELEASED
27 FROM CUSTODY HE IS GOING TO MARRY MISS ROBERTS, THAT ALSO
28 PRESENTS ANOTHER ISSUE IN THE CASE BECAUSE, AS THE COURT IS

1 AWARE, SHE WAS AT THE MEETING WHERE MR. HUNT IS ALLEGED TO
2 HAVE MADE ONE OF THE CONFESSIONS TO THE CRIME AND SHE IS A
3 POTENTIAL WITNESS IN THE CASE.

4 IN ANY EVENT, I THINK THAT FOR THE PURPOSES OF
5 THIS BAIL MOTION, THE FACTS ARE VERY EVIDENT AND THE
6 PRESUMPTION OF HIS GUILT OVERWHELMING AND THE COURT SHOULD
7 DENY HIM BAIL.

8 IF THE COURT DECIDES THAT IT IS NOT GOING TO
9 DENY HIM BAIL, THEN I WOULD STRENUOUSLY OBJECT TO ANY
10 REDUCTION IN THE BAIL AND ASK THE COURT IN FACT TO INCREASE
11 IT.

12 THE COURT: THE PRESENT BAIL IS FIXED AT \$500,000, IS
13 THAT IT?

14 MR. WAPNER: NO. \$750,000.

15 THE COURT: HOW ABOUT THE CO-DEFENDANT, IS THAT THREE
16 FIFTY?

17 MR. WAPNER: I DON'T KNOW.

18 MR. CHIER: THREE FIFTY, YOUR HONOR.

19 MR. BARENS: THREE FIFTY FOR MR. PITTMAN.

20 MR. WAPNER: I DON'T KNOW WHAT THE BAIL IS FOR
21 MR. PITTMAN. I THINK THAT IT IS LARGELY IRRELEVANT AT THIS
22 HEARING.

23 MR. BARENS: YOUR HONOR, WHAT WE HAVE IS MR. WAPNER
24 BAITING THE COURT TO TAKE A POSITION THAT THE COURT HAS FORMULATED
25 CERTAIN OPINIONS ABOUT MR. HUNT BASED ON THE HEARING IN THE
26 PITTMAN CASE, WHICH IS THE MATTER I ADDRESSED TO BEGIN WITH.

27 THE ONLY THING MR. WAPNER IS SAYING, "WELL, YOUR
28 HONOR, YOU HEARD THE PITTMAN CASE AND YOU MUST HAVE SOME

1 BELIEFS CONCERNING MR. HUNT'S LIKELIHOOD TO FLEE OR BE A
2 DANGER TO THE COMMUNITY."

3 HE MISSTATES AND CLAIMS THAT IT IS WELL
4 ESTABLISHED THAT BROOKE ROBERTS WAS PRESENT DURING A
5 CONVERSATION HE ALLEGEDLY HAD IN JUNE OF 1984 WITH THESE OTHER
6 PEOPLE. I SUBMIT THAT IS CATEGORICALLY UNTRUE. I HAVE TALKED
7 TO THAT ALLEGED WITNESS WHO DENIES THAT IN TOTO.

8 YOUR HONOR, AGAIN, I THINK WE HAVE TO LOOK AT
9 THE FACT THAT THE BAIL WAS INCREASED AT THE PRELIMINARY HEARING
10 BY JUDGE KIDNEY BASED ON DECLARATIONS FILED BY OSCAR BREILING
11 AND ANA LOPEZ THAT WERE NOT FACTUALLY SUSTAINED HISTORICALLY
12 ON WHAT HAPPENED ON THE INCIDENT IN SAN FRANCISCO AND WHAT
13 HAPPENED IN TERMS OF THE KARNEY WITNESS, WHO TURNED OUT NOT
14 TO BE A PERCIPIENT WITNESS THAT HE IS ALLEGED TO BE.

15 I THINK ALSO WE HAVE TO REMEMBER HERE THAT THE
16 FACT THAT THERE IS AN INDICTMENT DOES NOT ADD TO THE
17 PRESUMPTION AS BEING A GREATER PRESUMPTION, OR AN INDICTMENT
18 PER SE, JUST LIKE BEING BOUND OVER FOR A PRELIMINARY HEARING
19 HAS TO BE DISREGARDED FOR CIRCUMSTANCES OF SETTING BAIL. THAT
20 IS 1288 OF THE PENAL CODE.

21 MR. HUNT VOLUNTARILY SURRENDERED HIMSELF WHEN
22 HE KNEW THE ATTENTION OF THE LEVIN CASE WAS FOCUSED ON HIM.
23 THE MATTER WAS REJECTED. IT WAS A D.A. REJECT. DURING THAT
24 TIME -- THREE AND A HALF WEEKS LATER, HE WAS ARRESTED ON THE
25 CHARGE. WHAT DID HE DO DURING THE THREE AND A HALF WEEKS?
26 HE WAS TOLD BY HIS LAWYER THAT HE WAS GOING TO BE RE-ARRESTED
27 AND HE WAS TOLD BY SEVERAL OTHER WITNESSES THAT THE ATTENTION
28 WAS FOCUSED ON HIM, HE WAS GOING TO BE RE-ARRESTED. HE WAS

1 ALSO TOLD BY THE INVESTIGATING OFFICER HE WAS GOING TO BE
2 RE-ARRESTED. HE STAYED LIVING WHERE HE ALWAYS LIVED AND KEPT
3 THE SAME HOURS HE ALWAYS KEPT. HE WORKED AT THE SAME JOB HE
4 HAD ALWAYS WORKED AT. HE KEPT THE SAME ASSOCIATES HE HAD HAD.
5 HE HAD AMPLE OPPORTUNITY TO FLEE, WHICH HE DID NOT.

6 HIS WHOLE CONDUCT DEMONSTRATED HE WANTED TO
7 REMAIN TO CONFRONT AND CONTEST THE CHARGES AGAINST HIM. AT
8 ALL STAGES HE MADE HIMSELF AVAILABLE TO POLICE PERSONNEL AND
9 VOLUNTEERED HIMSELF TO GO DOWN TO THE LIEUTENANT AND DISCUSS
10 THE MATTER WITH HIM. CERTAINLY, HE MADE NO ATTEMPT TO ABSENT
11 HIMSELF.

12 HERE HE COMES IN, PLANNING TO GET MARRIED AND
13 WANTS TO ASSIST COUNSEL IN HIS OWN DEFENSE.

14 HE IS STATUTORILY ENTITLED TO A REASONABLE BAIL
15 AND THAT IS ALL WE CAN SEEK.

16 THE COURT: I WILL FIX BAIL AT \$500,000.

17 MR. BARENS: YOUR HONOR, WE HAD PLANNED TO POST A
18 PROPERTY BOND PURSUANT TO PROPOSITION 4.

19 THE COURT: YOU WANT TO DO WHAT?

20 MR. BARENS: PURSUANT TO THE PENAL CODE, WE WANT TO
21 ISSUE A PROPERTY BOND IN THIS CASE WITH THE COURT.

22 MR. CHIER: EXCUSE ME, YOUR HONOR. THERE IS AN
23 APPLICATION IN THE FILE TO HAVE A MR. BOBBY ROBERTS QUALIFY
24 AS A SURETY IN ORDER TO POST A PROPERTY BOND.

25 THE PENAL CODE PROVIDES FOR THE POSTING OF A
26 PROPERTY BOND BY A SUFFICIENT SURETY IN THE AMOUNT EQUAL, IF
27 HE CAN SHOW THAT HE HAS EQUITY IN REAL PROPERTY, EQUAL TO
28 DOUBLE THE AMOUNT OF THE BAIL.

1 MR. ROBERTS HAS OWNED THE SAME ESTATE IN BEL AIR
2 FOR ABOUT 17 YEARS AND WE ARE PREPARED WITH THE DOCUMENTS AND
3 ORAL TESTIMONY, DOCUMENTARY AND ORAL TESTIMONY TO QUALIFY
4 MR. ROBERTS ON THE PROPERTY BOND.

5 MR. WAPNER: WELL, IF COUNSEL IS SAYING THAT THE
6 PROPERTY IS SUPPOSED TO BE IN DOUBLE THE AMOUNT OF BAIL, THE
7 DECLARATION SAYS THE EQUITY IN THE PROPERTY IS \$500,000.

8 MR. BARENS: IN EXCESS OF.

9 MR. CHIER: IN EXCESS OF.

10 THE COURT: IS THERE ANY MORTGAGE OR TRUST DEED ON THE
11 PROPERTY?

12 MR. BARENS: YOUR HONOR, WE HAVE AN APPRAISAL WITH US
13 WHICH WILL SHOW THE PROPERTY IS WORTH IN EXCESS OF \$2,000,000.

14 THERE IS A \$500,000 FIRST TRUST DEED ON THE
15 PROPERTY.

16 MR. CHIER: IT IS ON BELLAGIO ROAD. THE COURT CAN TAKE
17 JUDICIAL NOTICE THAT IT IS A PROPERTY --

18 THE COURT: I WILL TAKE TESTIMONY ON THAT.

19 MR. BARENS: MR. CHIER WILL PROCEED TO EXAMINE HIM.

20 MR. ROBERTS, WOULD YOU COME FORWARD, PLEASE?

21 THE COURT: SWEAR THE WITNESS.

22 THE CLERK: WOULD YOU STAND BEHIND THE REPORTER.

23 MR. WAPNER: YOUR HONOR, BEFORE WE PROCEED WITH THIS,
24 MAYBE WE CAN DO IT BY WAY OF BIFURCATION, SINCE THERE IS NO
25 WAY AT THIS TIME FOR THE PEOPLE TO GET ANY KIND OF ANY
26 INDEPENDENT APPRAISAL OR IN ANY WAY REBUT THIS, I DON'T HAVE
27 ANY OBJECTION TO TAKING THIS TESTIMONY BUT I WOULD LIKE TO
28 IN SOME WAY BIFURCATE IT.

1 THE COURT: WHAT YOU MEAN IS TAKE WHATEVER TESTIMONY
2 WE HAVE AND THEN IF YOU WANT TO ENGAGE SOME REAL ESTATE BROKER
3 OR SOME APPRIASER OR EXPERT TO TESTIFY AS TO IN HIS OPINION
4 WHAT THE VALUE IS, YOU ARE AT LIBERTY TO DO THAT.

5 MR. WAPNER: THANK YOU, YOUR HONOR.

6 MR. BARENS: I WOULD SAY THE PEOPLE HAVE HAD AMPLE
7 NOTICE NOW FOR 10 DAYS AS TO THE LEGAL DESCRIPTION OF THE
8 PROPERTY AND THE CONTENTIONS AS TO THE VALUATION, ET CETERA.

9 THE COURT: AT ANY RATE, I WANT TO GIVE THEM AN
10 OPPORTUNITY TO PRESENT ANY PROOF AS TO THE INTRINSIC
11 VALUE OF THE REAL PROPERTY AND THE MARKET VALUE OF THE
12 PROPERTY. IF THERE IS ANY PROOF, I WOULD LIKE TO HAVE THAT.

13 THE CLERK: RAISE YOUR RIGHT HAND TO BE SWORN.

14 YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY YOU MAY
15 GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL BE THE
16 TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP
17 YOU GOD?

18 THE WITNESS: YES.

19
20 BOBBY ROBERTS,
21 CALLED AS A WITNESS BY THE DEFENDANT, WAS SWORN AND TESTIFIED
22 AS FOLLOWS:

23 THE CLERK: PLEASE TAKE A SEAT ON THE WITNESS STAND
24 AND STATE AND SPELL YOUR NAME FOR THE RECORD, PLEASE.

25 THE WITNESS: MY NAME IS BOBBY ROBERTS, R-O-B-E-R-T-S.

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DIRECT EXAMINATION

BY MR. CHIER:

Q GOOD MORNING, MR. ROBERTS.

WOULD YOU TELL THE COURT WHAT YOUR BUSINESS OR
OCCUPATION IS, SIR?

A I AM A FILM PRODUCER.

Q DO YOU RESIDE IN LOS ANGELES?

A YES.

Q WHERE DO YOU RESIDE, SIR?

A I RESIDE IN 10984 BELLAGIO ROAD, WHICH IS IN
BEL AIR, LOS ANGELES.

Q AND THAT IS A SINGLE-FAMILY RESIDENCE?

A YES.

Q WITH SOME GROUNDS ATTACHED?

A IT IS AT LEAST AN ACRE, YES.

Q HOW LONG HAVE YOU LIVED THERE?

A I HAVE LIVED THERE 20 YEARS.

Q WITH WHOM DO YOU RESIDE?

A I RESIDE WITH MY WIFE, MRS. ROBERTS, AND MY
FAMILY.

Q DO YOU OWN THAT PROPERTY IN FEE SIMPLE?

A YES.

Q ARE THERE ANY OTHER OWNERS OF RECORD BESIDES
YOURSELF ON THAT PROPERTY?

A NO, THERE IS NOT.

Q BUT MRS. ROBERTS?

A MRS. ROBERTS AND MYSELF OWN THE HOME.

Q YOU AND YOUR WIFE ARE THE SOLE OWNERS OF RECORD

1 OF THAT PROPERTY?

2 A YES.

3 Q DO YOU HAVE A MORTGAGE AGAINST THAT PROPERTY,
4 SIR?

5 A YES.

6 Q AND DO YOU KNOW THE APPROXIMATE AMOUNT OF THAT
7 MORTGAGE?

8 A \$500,000.

9 Q HAVE YOU HAD THE PROPERTY --

10 THE COURT: PARDON ME.

11 WHO HOLDS THE MORTGAGE, THE TRUST DEED?

12 THE WITNESS: THE MORTGAGE IS WITH CITY NATIONAL BANK.

13 Q BY MR. CHIER: HAVE YOU HAD THE 10984 BELLAGIO
14 ROAD PROPERTY APPRAISED IN THE LAST YEAR AND A HALF OR TWO?

15 A I HAVE HAD IT APPRAISED, I THINK, THREE YEARS AGO.

16 Q DO YOU HAVE A COPY OF THIS?

17 A YES.

18 MR. WAPNER: IS THAT FOR ME TO KEEP?

19 MR. CHIER: NO. THAT IS THE ONLY ONE WE HAVE. WE WILL
20 GIVE YOU A COPY OF IT.

21 MR. WAPNER: FOR THE RECORD, COUNSEL IS NOW PROVIDING
22 ME WITH AN APPRAISAL THAT I HAVE NEVER SEEN BEFORE WHICH
23 CONSISTS OF SOME 18 PAGES PLUS ATTACHMENTS, WHICH IS PRECISELY
24 WHAT I WAS REFERRING TO EARLIER IN TERMS OF NOTICE ABOUT THE
25 APPROPRIATE NOTICE ABOUT THE PROPERTY. THERE IS NO WAY THAT
26 I CAN BE EXPECTED --

27 THE COURT: YOU DON'T HAVE THE APPRAISER HERE, DO YOU?

28 MR. CHIER: NO. I AM SORRY. I DON'T.

1 MR. WAPNER: IF THE APPRAISER IS NOT HERE, THERE IS AN
2 OBJECTION TO THIS TESTIMONY AS HEARSAY, FIRST OF ALL.

3 MR. CHIER: THE RULES AND REQUIREMENTS OF THE CLERK OF
4 THE COUNTY OF LOS ANGELES MERELY PROVIDE FOR A WRITTEN
5 APPRAISAL BY A CERTIFIED REAL ESTATE APPRAISER.

6 THE COURT: WHOSE APPRAISAL IS THIS?

7 MR. CHIER: THIS IS RICHARD B. SULLIVAN, S R P A AND
8 I F A S, THOSE ARE HIS AFFILIATIONS.

9 THE COURT: WHAT IS HIS NAME?

10 MR. CHIER: RICHARD B. SULLIVAN.

11 THE COURT: ALL RIGHT, SULLIVAN.

12 MR. CHIER: I WOULD LIKE THIS MARKED AS DEFENDANT'S,
13 I GUESS, A.

14 THE COURT: IT MAY BE SO MARKED.

15 Q BY MR. CHIER: MR. ROBERTS, IS THIS A TRUE COPY
16 OF A WRITTEN APPRAISAL YOU HAD CONDUCTED OF YOUR PROPERTY?

17 A YES, IT IS.

18 Q AND WAS THIS APPRAISAL CONDUCTED AT YOUR
19 INSTANCE AND REQUEST?

20 A YES.

21 Q AND IS MR. SULLIVAN A CERTIFIED REAL ESTATE
22 APPRAISER?

23 A YES.

24 Q IN ADDITION TO THE APPRAISAL, DO YOU HAVE YOUR
25 LAST PROPERTY TAX BILL FROM THE COUNTY OF LOS ANGELES?

26 A YES.

27 Q IS THIS THE PROPERTY TAX BILL?

28 A YES, IT IS.

1 MR. CHIER: MAY THAT BE MARKED EXHIBIT B, YOUR HONOR?

2 THE COURT: SO MARKED.

3 Q BY MR. CHIER: YOU BROUGHT THAT TO COURT TODAY
4 AT THE REQUEST OF COUNSEL IN THIS CASE?

5 A THAT'S CORRECT.

6 Q AND HAVE YOU OBTAINED WITHIN THE LAST YEAR AND A
7 HALF OR TWO YEARS A LOAN APPRAISAL FOR THE INSTITUTION THAT
8 HOLDS YOUR MORTGAGE?

9 THE COURT: CITY NATIONAL BANK?

10 MR. CHIER: YES.

11 THE WITNESS: THE APPRAISAL THAT YOU HAVE GOT IS THE
12 APPRAISAL THAT WAS DONE FOR CITY NATIONAL.

13 Q BY MR. CHIER: THE DOCUMENT HERE IS THE CITY
14 NATIONAL BANK'S INTERNAL APPRAISAL REVIEW?

15 A THE APPRAISAL WAS DONE FOR CITY NATIONAL.

16 THE COURT: YOU MEAN THAT SULLIVAN APPRAISAL?

17 THE WITNESS: YES.

18 Q BY MR. CHIER: SO THIS ACTUALLY GOES WITH THE
19 SULLIVAN DOCUMENT?

20 A YES.

21 MR. CHIER: YOUR HONOR, THIS WOULD BE CITY NATIONAL BANK
22 DOCUMENT AS A-1.

23 THE COURT: ALL RIGHT, SO MARKED.

24 Q BY MR. CHIER: IN ADDITION, DO YOU HAVE A
25 PRELIMINARY TITLE REPORT?

26 A THAT'S CORRECT.

27 Q AND HAVE THERE BEEN ANY CHANGES OR AMENDMENTS
28 TO THE TITLE TO YOUR PROPERTY SINCE THIS TITLE REPORT WAS

1 ISSUED, SIR?

2 A NO, THERE HAS NOT BEEN.

3 MR. CHIER: THIS IS A TRANSAMERICA TITLE INSURANCE
4 DOCUMENT , WHICH I WOULD LIKE MARKED AS EXHIBIT C.

5 THE COURT: SO MARKED.

6 Q BY MR. CHIER: NOW, OVER AND ABOVE LIENS AND
7 ENCUMBRANCES ON THAT PROPERTY, WHAT, SIR, IS THE APPROXIMATE
8 VALUE OF YOUR EQUITY?

9 A IT WAS APPRAISED THREE YEARS AGO AT \$2,000,000,
10 IN EXCESS OF \$2,000,000.

11 THE COURT: HE WANTS TO KNOW WHAT IN YOUR OPINION,
12 SINCE YOU ARE AN OWNER OF THE PROPERTY YOU HAVE THE RIGHT TO
13 EXPRESS AN OPINION AS TO THE VALUE OF THE PROPERTY, WHAT IN
14 YOUR OPINION IS THE VALUE OF THIS PROPERTY?

15 THE WITNESS: \$2,000,000.

16 THE COURT: THAT IS OVER AND ABOVE THE MORTGAGE; IS THAT
17 RIGHT?

18 THE WITNESS: I WOULD SAY A MILLION AND A HALF OVER
19 AND ABOVE THE MORTGAGES.

20 Q BY MR. CHIER: CONSERVATIVELY?

21 A CONSERVATIVELY, YES.

22 Q ARE YOU WILLING TO UNDERTAKE TO BE THE SURETY
23 FOR MR. JOE HUNT HERE?

24 A YES, I AM.

25 Q DO YOU UNDERSTAND, SIR, THAT BY UNDERTAKING TO
26 BE HIS SURETY THAT YOU OBLIGATE YOURSELF AND YOUR PROPERTY IN
27 THE SUM OF TWICE THE AMOUNT OF BAIL OR \$1,000,000 IN THE EVENT
28 THAT MR. HUNT SHOULD BE RELEASED AND DOES NOT APPEAR?

1 A YES, I UNDERSTAND.

2 Q YOU HAVE A CLEAR UNDERSTANDING OF THAT?

3 A YES, I DO.

4 Q AND WITH THAT UNDERSTANDING ARE YOU, NEVERTHELESS

5 WILLING AND AGREEABLE TO USING YOUR PROPERTY AS BAIL FOR

6 MR. HUNT?

7 A YES, I AM.

8 MR. CHIER: LET ME LOOK AT THE CODE HERE, YOUR HONOR.

9 SECTION 1280 OF THE PENAL CODE PROVIDES THAT:

10 "THE BAIL MUST IN ALL CASES JUSTIFY BY

11 AFFIDAVIT TAKEN BEFORE THE MAGISTRATE" -- WHICH

12 IS ESSENTIALLY WHAT THIS IS -- "THAT THEY EACH

13 POSSESS THE QUALIFICATIONS PROVIDED IN THE

14 PRECEDING SECTION," WHICH IS THE EQUITY IN

15 THE FREE HOLDER.

16 IT SAYS:

17 "THE MAGISTRATE MAY FURTHER EXAMINE THE

18 BAIL UPON OATH CONCERNING THEIR SUFFICIENCY,

19 IN SUCH MANNER AS HE MAY DEEM PROPER."

20 I SUBMIT, IF YOU HAVE ANY FURTHER QUESTIONS OF

21 THIS GENTLEMAN --

22 MR. WAPNER: WHAT SECTION IS THAT, COUNSEL?

23 MR. CHIER: 1280 OF THE PENAL CODE, COUNSEL.

24 THE COURT: ANYTHING FURTHER?

25 MR. CHIER: NO, NOTHING FURTHER, YOUR HONOR.

26 THE COURT: ANY QUESTIONS, MR. WAPNER?

27 MR. WAPNER: YES. THANK YOU, YOUR HONOR.

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CROSS-EXAMINATION

BY MR. WAPNER:

Q MR. ROBERTS, WHAT WAS THE PURPOSE OF THIS APPRAISAL IN 1982?

A TO SECURE THAT \$500,000 LOAN FROM CITY NATIONAL BANK.

Q YOU HAVE NOT HAD THE PROPERTY APPRAISED SINCE THEN?

A NO, I HAVE NOT.

Q AND YOU SAID THAT YOU WERE A FILM PRODUCER; IS THAT CORRECT?

A CORRECT.

Q FOR WHOM DO YOU WORK?

A I AM AN INDEPENDENT FILM PRODUCER.

I HAVE MADE -- I HAVE WORKED FOR MOST ALL OF THE STUDIOS.

Q AND YOU RECENTLY WERE WORKING FOR LORIMAR?

A THAT'S CORRECT.

Q YOU DO NOT WORK FOR THEM ANYMORE, SIR?

A NO, I DO NOT.

Q WHEN DID YOU PURCHASE THIS PROPERTY?

A 20 YEARS AGO.

THE COURT: WHAT DID YOU PAY FOR IT AT THAT TIME?

THE WITNESS: A HUNDRED FIFTY THOUSAND, \$125,000.

Q BY MR. WAPNER: THE ASSESSED VALUE OF THE PROPERTY BY THE COUNTY ASSESSOR IS ON THIS TAX BILL?

MR. BARENS: YOUR HONOR, I WOULD SAY THAT THIS STATEMENT --

1 THE COURT: THE COUNTY ASSESSMENTS ARE NOT EVIDENCE
2 REALLY. THEY ARE SUPPOSED TO ASSESS IT AT FULL VALUE BUT
3 THEIR ASSESSMENTS DON'T GENERALLY EQUAL WHAT THE VALUE OF THE
4 PROPERTY IS.

5 MR. WAPNER: IT HAS BEEN SUBMITTED BY THE DEFENSE AS A
6 DEFENSE EXHIBIT.

7 THE COURT: THAT IS FOR THE ENTIRE RECORD.

8 MR. CHIER: ONLY BECAUSE THE CLERK'S REQUIREMENT FOR
9 THE PROPERTY BOND REQUIRES THAT I SUBMIT IT. IT IS ONLY IN
10 CONFORMANCE WITH THE CLERK'S MANUAL.

11 THE COURT: YES.

12 Q BY MR. WAPNER: SUFFICE IT TO SAY, THE COUNTY'S
13 ESTIMATES DIFFER SUBSTANTIALLY FROM YOURS.

14 MR. BARENS: OBJECTION AS IRRELEVANT.

15 THE WITNESS: I DON'T INTEND TO SELL IT TO THE COUNTY.

16 Q BY MR. WAPNER: HAVE YOU POSTED THIS PROPERTY
17 AS SECURITY FOR ANY OTHER EITHER LOAN OR BAIL FOR MR. HUNT?

18 A NO, I HAVE NOT.

19 Q AND IT IS YOUR INTENTION TO POST THIS PROPERTY
20 FOR MR. HUNT'S BAIL IN NORTHERN CALIFORNIA?

21 A YES, IT IS.

22 Q THE SAME PIECE OF PROPERTY?

23 A I AM NOT SURE YET.

24 I HAVE OTHER PROPERTY.

25 MR. BARENS: I WILL SUBMIT TO THE COURT THAT IT IS
26 IRRELEVANT, BUT I WOULD SUBMIT TO THE COURT THAT MR. ROBERTS
27 IS A SUBSTANTIAL INDIVIDUAL. HE HAS ANOTHER RESIDENCE OF
28 SUBSTANTIAL VALUE THAT IS FREE AND CLEAR IN PALM SPRINGS,
29 CALIFORNIA.

1 IF A DECISION IS MADE TO COMMIT TO A BAIL
2 HEARING IN SAN FRANCISCO, THAT OTHER PROPERTY MAY BE THE
3 SUBJECT OF A BOND IN THAT JURISDICTION, YOUR HONOR.

4 THE COURT: ALL RIGHT.

5 MR. WAPNER: I HAVE NOTHING FURTHER.

6 THE COURT: DOES THE FACT THAT THIS PROPERTY WOULD BE
7 PUT UP FOR BAIL, DOES THAT BECOME A MATTER OF PUBLIC NOTICE?

8 MR. CHIER: YES, THERE IS A TRUST DEED AND A PROMISSORY
9 NOTE EXECUTED JUST LIKE A LOAN FROM A BANK, JUDGE, WHICH ALL
10 OF THE DOCUMENTS ARE ON FILE EXCEPT FOR THE TRUST DEED AND
11 THE NOTE WHICH OBVIOUSLY, HAVE TO BE FILLED IN WITH THE
12 PROPER AMOUNT BUT IT IS JUST LIKE A LOAN.

13 THE COURT: A SECOND DEED OF TRUST IN THIS CASE?

14 MR. CHIER: IT IS A SECOND DEED OF TRUST, EXACTLY.

15 THE COURT: AT ANY RATE, THERE WILL BE NOTICE TO THE
16 WORLD.

17 MR. BARENS: IT IS A RECORDED INSTRUMENT.

18 THE COURT: SO THE COUNTY OR WHOEVER IT IS IS
19 GUARANTEED.

20 MR. BARENS: IT IS A RECORDED INSTRUMENT, YOUR HONOR.
21 IT WOULD BE JUST AS THOUGH IT WAS A CONVENTIONAL T.D.

22 THE COURT: IS THAT HOW IT HAPPENS?

23 Q BY MR. WAPNER: WHERE ON BELLAGIO ROAD IS THIS
24 PROPERTY, MR. ROBERTS?

25 A ON BELLAGIO ROAD AND BELLAGIO PLACE. ON THE
26 CORNER OF BELLAGIO ROAD AND BELLAGIO PLACE.

27 Q WHERE IS THAT IN RELATION TO ROSCOMARE ROAD?

28 A RIGHT AROUND THE CORNER.

1 MR. WAPNER: I HAVE NOTHING FURTHER, YOUR HONOR.

2 THE COURT: ANY FURTHER TESTIMONY?

3 MR. BARENS: NOTHING FURTHER.

4 I BELIEVE IT IS WELL ESTABLISHED THAT EVEN IF
5 THERE WERE SOME DOUBT, THAT THE PROPERTY SUBJECT TO THIS
6 HEARING IS WELL IN EXCESS OF TWICE THE AMOUNT, THE EQUITY IS
7 WELL IN EXCESS OF THE BAIL.

8 THE COURT: DO YOU PROPOSE TO HAVE ANOTHER APPRAISAL
9 OR ARE YOU SATISFIED WITH WHAT IS BEFORE THE COURT AT THIS
10 TIME FOR YOU TO ARGUE THE MATTER?

11 MR. WAPNER: MAY I JUST ASK A COUPLE OF OTHER
12 QUESTIONS?

13 THE COURT: ALL RIGHT.

14 Q BY MR. WAPNER: DO YOU KNOW MR. SULLIVAN, THE
15 PERSON WHO DID THIS APPRAISAL?

16 A I ONLY KNOW HIM AS THE PERSON WHO DID THE
17 APPRAISAL.

18 I DON'T KNOW HIM.

19 Q BUT WAS HE RETAINED BY YOU OR THE BANK?

20 A I DON'T RECALL, I REALLY DON'T. PROBABLY BY THE
21 BANK BUT I DON'T RECALL.

22 MR. WAPNER: MAY I HAVE JUST A MOMENT?

23 (PAUSE IN PROCEEDINGS.)

24 MR. WAPNER: NO, YOUR HONOR, WE DO NOT INTEND TO GET
25 AN INDEPENDENT APPRAISAL.

26 THE COURT: ALL RIGHT, THANK YOU VERY MUCH. YOU MAY
27 STEP DOWN.

28 ANY ARGUMENT, GENTLEMEN?

1 MR. BARENS: I BELIEVE THERE IS NO NECESSITY TO ARGUE
2 AT THIS POINT. I BELIEVE AS I COMMENTED A MOMENT AGO THAT THE
3 WITNESS HAS AMPLY DEMONSTRATED THAT THE PROPERTY HAS AN EQUITY
4 PROBABLY WELL IN EXCESS PROBABLY THREE TIMES THE AMOUNT OF
5 THE BAIL.

6 MR. CHIER: I WOULD ASK THAT HE BE DEEMED QUALIFIED AS
7 A SURETY, PROVIDED ALL OTHER DOCUMENTATION IS SATISFACTORY TO
8 THE COURT.

9 THE COURT: I WILL RULE THAT THE PROPERTY IS SUFFICIENT
10 TO SECURE THE BAIL.

11 ANYTHING FURTHER AT THIS TIME?

12 MR. CHIER: WILL YOU BE HERE THIS AFTERNOON? I AM
13 GOING TO SUBMIT THE DOCUMENTS WITH THE APPROPRIATE AMOUNT OF
14 BAIL. THERE IS SOMETHING IN THE FILE FOR YOUR HONOR TO SIGN.
15 I BELIEVE THERE IS JUSTIFICATION, AN ORDER JUSTIFYING SURETY.

16 THE COURT: I DON'T FIND ANYTHING IN THE FILE.

17 MR. CHIER: THERE SHOULD BE AN ORDER FOR RELEASE OF THE
18 DEFENDANT UPON GIVING EQUITY IN REAL PROPERTY. THERE SHOULD
19 BE A BAIL UNDERTAKING.

20 IS THERE A DOCUMENT ENTITLED "BAIL UNDERTAKING,"
21 YOUR HONOR?

22 THE COURT: NO.

23 MR. BARENS: IT WAS FILED ABOUT 10 DAYS AGO, YOUR HONOR.

24 MR. CHIER: MR. WAPNER HAS GRACIOUSLY CONSENTED TO ALLOW
25 ME TO TAKE HIS COPY OF THE UNDERTAKING. I WOULD LIKE TO HAVE
26 MR. AND MRS. ROBERTS EXECUTE THIS. THIS IS THEIR UNDERTAKING.
27 INSTEAD OF BEING CORPORATE SURETIES, THEY AS INDIVIDUALS
28 UNDERTAKE MR. HUNT'S BAIL AND SO IF I CAN FILL IN WITH \$500,000

1 AND ASK THEM TO EXECUTE THIS IN OPEN COURT. THIS IS JUST THE
2 DUPLICATE ORIGINAL, YOUR HONOR.

3 THE COURT: ALL RIGHT. I DON'T SEE THE ORIGINAL OF THAT
4 IN HERE AT ALL.

5 MR. CHIER: IT MUST HAVE BEEN LOST.

6 THE COURT: ALL RIGHT, THEY CAN EXECUTE WHATEVER HAS TO
7 BE EXECUTED BUT I DON'T HAVE ANY ORIGINAL DOCUMENTS HERE AT
8 ALL, NOT EVEN MOTION PAPERS.

9 HERE IT IS. IT WAS UNDERNEATH THAT. YES,
10 HERE IT IS. IT WAS UNDERNEATH THE TRANSCRIPT.

11 I HAVE THE ORDER HERE. IS THAT WHAT YOU WANT?
12 THERE IS AN ORDER FOR HIS RELEASE, IS THAT IT?

13 MR. CHIER: YES, UPON THE POSTING OF THE PROPERTY AND
14 THE NOTE SECURED BY THE DEED OF TRUST.

15 THE COURT: ALL RIGHT. HAVE YOU GOT A COPY OF THAT?

16 MR. WAPNER: I DON'T KNOW.

17 THE COURT: GIVE IT BACK TO HIM.

18 ALL RIGHT.

19 "APPLICATION HAVING BEEN MADE ON BEHALF
20 OF DEFENDANT JOE HUNT, PURSUANT TO PENAL CODE
21 SECTION 1298, FOR HIS RELEASE UPON DEPOSIT OF
22 EQUITY IN REAL PROPERTY AS SECURITY FOR BAIL
23 FIXED" --

24 TODAY'S DATE GOES IN THERE, DOESN'T IT?

25 MR. CHIER: YES, YOUR HONOR.

26 THE COURT: (READING)

27 "SEPTEMBER 27, 1985, IN THE SUM OF
28 \$500,000."

1 MR. CHIER: YES, YOUR HONOR.

2 THE COURT: LET'S SEE, THE EQUITY WAS WHAT? THE ONLY
3 OPINION EVIDENCE I HAVE IS EVIDENCE OF VALUE --

4 MR. CHIER: TWICE THE VALUE.

5 THE COURT: TWICE THE VALUE?

6 MR. CHIER: YES, YOUR HONOR.

7 THE COURT: (READING)

8 "THAT THE EQUITY OF BLANK DOLLARS IN
9 SAID PROPERTY EXCEEDS TWICE THE AMOUNT OF
10 CASH BAIL REQUIRED."

11 MR. CHIER: I GUESS YOU PUT IN \$1,000,000 THERE BECAUSE
12 IT IS A MINIMUM OF \$1,000,000.

13 THE COURT: THAT'S RIGHT.

14 AND THEY ARE EXECUTING THE PROMISSORY NOTE AND
15 DEED OF TRUST?

16 MR. CHIER: YES. THE PROMISSORY NOTE IS IN MY OFFICE
17 AND THEY WILL EXECUTE THAT THIS AFTERNOON.

18 THERE IS A DOCUMENT IN THERE ENTITLED
19 "BAIL UNDERTAKING" AND COULD I HAVE
20 MR. AND MRS. ROBERTS SIGN THAT DOCUMENT?

21 MR. BARENS: IF THE CLERK WOULD HAND THAT TO US, THE
22 UNDERTAKING PER SE.

23 MR. CHIER: THE AMOUNT SHOULD BE FILLED IN.

24 MR. BARENS: WHY DON'T WE USE MR. WAPNER'S UNDERTAKING,
25 YOUR HONOR?

26 MR. CHIER: I WILL REPLACE YOURS.

27 (PAUSE IN PROCEEDINGS.)

28 MR. BARENS: YOUR HONOR, WE ARE NOW HANDING YOU THE

1 BAIL UNDERTAKING EXECUTED BY THE PROPERTY OWNERS OF RECORD
2 AND RETURNING TO THE COURT FILE THE OTHER ASSOCIATED
3 DOCUMENTS.

4 MR. CHIER: WHAT REMAINS TO BE SUBMITTED, YOUR HONOR,
5 IS A NOTE SECURED BY A DEED OF TRUST AND I GUESS A RELEASE
6 ORDER, WHICH I WILL SUBMIT THIS AFTERNOON AT ABOUT 2:00 O'CLOCK.

7 THE COURT: IS IT ALL RIGHT WITH YOU IF IT IS SUBMITTED
8 MONDAY MORNING?

9 MR. WAPNER: I AM SORRY?

10 THE COURT: IS IT AGREEABLE TO YOU IF IT IS SUBMITTED
11 MONDAY MORNING?

12 MR. WAPNER: IT IS AGREEABLE TO ME. I DON'T THINK HE
13 IS GOING TO GET OUT THIS WEEKEND, IN ANY EVENT. THEY STILL
14 HAVE THE MATTER OF A NO BAIL HOLD IN NORTHERN CALIFORNIA.

15 THE COURT: ALL RIGHT, SUBMIT IT MONDAY.

16 MR. BARENS: RICHARD, THE JUDGE IS REQUESTING IT BE
17 SUBMITTED MONDAY MORNING. I DON'T EVEN THINK WE COULD PROCESS
18 HIM OUT SO PROMPTLY. WE ARE PREPARED TO DEAL WITH THE
19 SAN FRANCISCO MATTER.

20 MR. CHIER: THERE IS A HOLD ON HIM.

21 THE COURT: I KNOW THAT.

22 MR. WAPNER: YOUR HONOR, BEFORE WE END THE PROCEEDINGS,
23 I WOULD LIKE TO HAVE AN ORDER THAT THE DEFENDANT NOT CONTACT
24 OR CAUSE ANYONE TO CONTACT ANY OF THE WITNESSES IN THIS CASE
25 OR NOT THREATEN HIMSELF OR CAUSE ANYONE TO THREATEN ANY WITNESS.

26 THE COURT: I CAN'T PREVENT HIM FROM CONTACTING -- OR
27 RATHER, COUNSEL CONTACTING WITNESSES.

28 MR. BARENS: WE WILL STIPULATE THAT THE LAW WILL BE

1 OBSERVED IN ALL INSTANCES. THERE WILL BE NO HARASSMENT, NO
2 ANNOYANCES, NO MOLESTATIONS WHATSOEVER, SO STIPULATED BY THE
3 DEFENSE.

4 MR. WAPNER: I APPRECIATE THE STIPULATION AND I THANK
5 COUNSEL.

6 THE COURT: I WILL MAKE AN ORDER THAT HE IS NOT TO DO
7 THAT SO IT WILL BE A DISOBEDIENCE OF MY ORDER AND IT WILL GIVE
8 ME THE RIGHT ALSO TO REVOKE THE BAIL.

9 MR. BARENS: QUITE UNDERSTOOD, YOUR HONOR.

10 MR. WAPNER: IS COUNSEL GOING TO STIPULATE THE
11 DEFENDANT WILL NOT CONTACT ANY OF THE WITNESSES?

12 MR. BARENS: NO.

13 MR. WAPNER: THAT IS TO CALL THEM.

14 MR. BARENS: THE DEFENDANT THROUGH HIS COUNSEL, IN ALL
15 PROBABILITY, WILL BE CONTACTING WITNESSES.

16 MR. WAPNER: NO, OBVIOUSLY, I HAVE NO OBJECTION TO
17 COUNSEL.

18 MR. BARENS: HE WILL NOT PERSONALLY CONTACT THE
19 WITNESSES.

20 MR. CHIER: EXCEPT FOR BROOKE ROBERTS.

21 THE COURT: BECAUSE IT MIGHT BE CONSTRUED AS PRESSURE.

22 MR. BARENS: EXCEPT FOR BROOKE ROBERTS, WHO IS PRESENT
23 IN THE COURTROOM TODAY.

24 THE COURT: THAT IS THE ORDER OF THE COURT.

25 MR. WAPNER: THE DEFENDANT WILL NOT PERSONALLY CONTACT
26 ANY OF THE WITNESSES, YOUR HONOR?

27 THE COURT: YES.

28 MR. WAPNER: MAY I JUST HAVE A MOMENT WITH COUNSEL?

1 (UNREPORTED COLLOQUY BETWEEN COUNSEL.)

2 MR. WAPNER: I HAVE NOTHING FURTHER.

3 MR. BARENS: I BELIEVE WE ARE SATISFIED.

4 THE COURT: ALL RIGHT, I FIND THAT THE ORDER THAT HAS
5 BEEN PRESENTED TO ME FOR THE RELEASE OF THE DEFENDANT UPON
6 GIVING EQUITY IN THE REAL PROPERTY ON BAIL INSTEAD OF MONEY
7 AND THAT THE DEED OF TRUST IN THE SUM OF \$1,000,000 --

8 MR. CHIER: NO. I THINK THE DEED OF TRUST IS FOR
9 \$500,000.

10 THE COURT: \$500,000.

11 MR. CHIER: THE IMPORTANT PART IS THAT FOR PURPOSES OF
12 FORFEITURE THAT YOU HAVE FOUND THAT THE PROPERTY EXCEEDS BY
13 TWICE THE VALUE THE AMOUNT OF BAIL BUT THE DEED OF TRUST IS
14 FOR THE AMOUNT OF THE BAIL.

15 THE COURT: \$500,000?

16 MR. CHIER: YES, YOUR HONOR.

17 THE COURT: ALL RIGHT, VERY WELL.

18 NOW MY IMPRESSION WAS THERE HAD BEEN A MOTION
19 PENDING BEFORE JUDGE LIGHT FOR CONSOLIDATION OF THIS CASE WITH
20 THE OTHER ONE. I CAN'T RULE UPON THAT UNTIL WE HAVE --

21 WELL, WE HAVE COUNSEL FOR MR. PITTMAN HERE,
22 MR. DEMBY.

23 MR. WAPNER: YOUR HONOR, THAT MOTION WAS NEVER HEARD
24 BECAUSE ON THE DATE IT WAS TO BE HEARD, COUNSEL FOR MR. PITTMAN
25 WAS SUBSTITUTED OUT AND WAS REPLACED BY THE PUBLIC DEFENDER,
26 WHO OBVIOUSLY WAS UNPREPARED TO PROCEED ON THAT DATE. THE
27 MATTER WAS THEN CONTINUED AND BOTH DEFENDANTS ARE NOW SET FOR
28 TRIAL ON OCTOBER 23RD.

1 I HAVE TALKED TO MR. PITTMAN'S COUNSEL.
2 UNDERSTANDABLY, HE WILL NOT BE READY TO PROCEED ON THAT DATE
3 BUT I WOULD ASK THAT THAT CASE, AS WELL AS THIS ONE, REMAIN
4 SET ON OCTOBER 23RD, BOTH FOR TRIAL, AND THAT THE MOTION BE
5 HEARD ON THAT DATE.

6 THE COURT: WILL YOU BE READY?

7 MR. WAPNER: THE CASE DOESN'T GO TO TRIAL THEN.

8 THE COURT: WILL YOU BE READY TO GO TO TRIAL ON THAT
9 DATE, I MEAN TO ARGUE THE MOTION?

10 MR. BARENS: WE WILL LEAVE IT ALONE FOR TODAY.

11 MR. DEMBY: YOUR HONOR, I CANNOT REPRESENT EITHER WAY.
12 I DEFINITELY WILL NOT BE READY FOR THAT DAY, I WILL NOT BE
13 READY FOR TRIAL THAT DATE. I UNDERSTAND WE HAVE AN APPEARANCE
14 ON OCTOBER 2ND OR 3RD.

15 THE COURT: WHAT IS THAT FOR?

16 MR. WAPNER: THAT IS FOR A STATUS REPORT. JUDGE LIGHT
17 SET IT ON THAT DATE FOR COUNSEL TO APPEAR AND MAKE A STATEMENT
18 AS TO WHETHER THEY WOULD BE READY TO PROCEED ON THE 23RD.

19 MR. BARENS: I HONESTLY DON'T REMEMBER.

20 THE COURT: IS THAT STILL ON THE CALENDAR?

21 MR. BARENS: I DON'T REMEMBER THAT, YOUR HONOR.

22 MR. WAPNER: ACCORDING TO MY FILE IT IS ON THE CALENDAR
23 FOR THAT DAY. I HAVEN'T CHECKED THE COURT'S FILE. THAT IS
24 NOT AN APPEARANCE FOR HUNT.

25 MR. BARENS: I CERTAINLY COULD NOT MAKE THAT DATE,
26 YOUR HONOR.

27 MR. WAPNER: THAT IS NOT A DATE FOR MR. HUNT. IT IS
28 ONLY A DATE FOR MR. PITTMAN.

1 MR. BARENS: NO WONDER I AM NOT AWARE OF IT, YOUR HONOR.

2 MR. CHIER: I WOULD STATE AT THIS POINT, YOUR HONOR,
3 WITHOUT BELABORING IT, THAT, AS THE COURT WELL KNOWS, THAT THE
4 DEFENSES IN THIS CASE ARE CERTAINLY CONFLICTING AND THAT A
5 CONSOLIDATION WOULD BE A VERY UNWIELDY AFFAIR.

6 THE COURT: I DON'T WANT TO HEAR ARGUMENT NOW. I WANT
7 TO FIX A DATE SO WE CAN HAVE IT ARGUED,

8 MIKE, WILL YOU BE READY AT LEAST TO ARGUE THE
9 CASE AS TO THE CONSOLIDATION? YOU HAVE GOT PRACTICALLY A
10 MONTH.

11 MR. DEMBY: I CAN STATE AT THIS TIME I WILL BE OPPOSING
12 A CONSOLIDATION. I THINK IT IS CLEAR IT SHOULD NOT BE.

13 THE COURT: WHETHER YOU DO OR DON'T, I JUST WANT TO KNOW
14 IF YOU WILL BE READY THE ARGUE THE MOTION AT THAT TIME.

15 MR. DEMBY: AT THIS POINT I AM NOT READY. I HAVE NOT
16 COMPLETED MY REVIEW OF THE FULL CASE. I HAVE READ QUITE A BIT
17 OF IT. I KNOW PART OF THE GROUND I WILL BE ARGUING FOR THE
18 MOTION TO PREVENT CONSOLIDATION.

19 THE COURT: DO YOU HAVE TO READ THE ENTIRE TRANSCRIPT
20 OF THE TRIAL TO DETERMINE WHETHER OR NOT A CONSOLIDATION MIGHT
21 BE INDICATED OR OPPOSED?

22 MR. DEMBY: I HAVE TO MAKE A DETERMINATION AS TO
23 WHETHER IT WILL BE IN MY CLIENT'S BEST INTERESTS TO HAVE A
24 SEPARATE OR JOINT TRIAL.

25 THE COURT: WHAT DOES THAT REQUIRE FOR YOU TO REACH
26 THAT CONCLUSION?

27 MR. DEMBY: IT REQUIRES ME TO BE COMPLETELY FAMILIAR
28 WITH THE CASE, INCLUDING ALL THE EXHIBITS AND THE EVIDENCE AND

1 THE WITNESSES AND TO MAKE A TACTICAL DECISION AS TO WHETHER I
2 THINK IT IS IN MY CLIENT'S INTERESTS TO HAVE THE CASE TRIED
3 SEPARATELY OR JOINTLY.

4 INITIALLY, MY REACTION IS I THINK IT SHOULD BE
5 A SEPARATE TRIAL FOR A NUMBER OF REASONS.

6 I WILL MAKE EVERY EFFORT TO BE READY BY THE
7 23RD TO BE READY TO ARGUE THAT MOTION.

8 THE COURT: VERY WELL, THAT IS ALL I WANTED TO KNOW.
9 BOTH CASES ARE SET ON CALENDAR FOR THE 23RD, AREN'T THEY?

10 MR. BARENS: YES, YOUR HONOR.

11 MR. WAPNER: YES.

12 THE COURT: THAT MOTION THEN IS CALENDARED FOR THE 23RD.
13 BOTH SETS OF ATTORNEYS ARE AWARE OF THE FACT THIS MOTION IS ON
14 FOR THE 23RD FOR THE CONSOLIDATION OF THE TWO CASES.

15 MR. DEMBY: WELL, IT IS MY UNDERSTANDING THAT THE 23RD
16 WAS THE DATE SET FOR TRIAL FOR BOTH CASES. I HAVE INFORMED
17 MR. WAPNER ON A PREVIOUS OCCASION THAT I WILL NOT BE READY
18 FOR TRIAL ON THAT DATE.

19 THE COURT: I WOULD LIKE TO HAVE YOU READY TO ARGUE
20 THE MOTION, IF THERE IS SUCH A MOTION FOR CONSOLIDATION.
21 THAT IS A MATTER OF RECORD THEN, ISN'T IT, YOU HAVE MADE THE
22 MOTION, HAVEN'T YOU?

23 MR. WAPNER: YES, THE MOTION WAS FILED IN JULY.

24 THE COURT: ALL RIGHT, THAT IS THE MOTION.

25 MR. DEMBY: I AM NOT SURE WHEN THE MOTION WAS SET FOR,
26 WHETHER IT WAS SET FOR THE 23RD OR THE 2ND OR NOT PLACED ON
27 CALENDAR.

28 MR. BARENS: IT IS ACADEMIC. IT IS NOW SET FOR THE 23RD.

1 THE COURT: IT IS NOW SET FOR THE 23RD.

2 MR. DEMBY: IT IS NOW SET FOR THE 23RD, FINE.

3 THE COURT: I AM NOW MAKING AN ORDER THAT THE MOTION
4 FOR CONSOLIDATION OF BOTH MATTERS IS SET FOR THE 23RD OF
5 OCTOBER.

6 MR. DEMBY: I UNDERSTAND MR. PITTMAN STILL HAS AN
7 APPEARANCE ON THE 2ND OR 3RD.

8 MR. WAPNER: THE 2ND.

9 THE CLERK: MR. PITTMAN HASN'T BEEN TRANSFERRED BACK
10 HERE.

11 MR. WAPNER: AS IT STANDS RIGHT NOW, THE PITTMAN CASE
12 TECHNICALLY IS CALENDARED IN DEPARTMENT F, SINCE IT WAS SENT
13 DOWN THERE FOR THE MOTION TO CONSOLIDATE AND NOW AN AFFIDAVIT
14 HAVING BEEN FILED --

15 THE COURT: I WILL ORDER IT BACK HERE.

16 MR. CHIER: YOU WANT IT BACK IN HERE?

17 MR. WAPNER: IF THERE IS GOING TO BE A MOTION TO
18 CONSOLIDATE HEARD, OBVIOUSLY IT HAS TO BE HEARD IN THIS COURT
19 SINCE MR. HUNT CANNOT APPEAR IN DEPARTMENT F.

20 THE COURT: ALL RIGHT, SO IT IS GOING TO BE HEARD HERE
21 THEN, ALL RIGHT.

22 MR. DEMBY: I UNDERSTAND, HOWEVER, THE APPEARANCE ON
23 THE 2ND IS PROBABLY STILL IN DEPARTMENT F.

24 MR. WAPNER: IT IS.

25 THE COURT: YES, ALL RIGHT.

26 MR. BARENS: THANK YOU, YOUR HONOR.

27 THE COURT: JUDGE LIGHT WILL PROBABLY SEND IT HERE
28 ANYWAY.

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ALL RIGHT, THANK YOU.

(AT 12:05 P.M., AN ADJOURNMENT WAS
TAKEN UNTIL WEDNESDAY, OCTOBER 2, 1985.)

--000--

1 SANTA MONICA, CALIFORNIA; WEDNESDAY, OCTOBER 15, 1986; 9:30 A.M.

2 DEPARTMENT WEST C

HON. LAURENCE RITTENBAND, JUDGE

3 APPEARANCES:

4 THE DEFENDANT WITH HIS COUNSEL, RICHARD
5 CHIER, ESQ. AND ARTHUR BARENS; ESQ.;
6 FREDERICK WAPNER, DEPUTY DISTRICT ATTORNEY
7 OF LOS ANGELES COUNTY, REPRESENTING THE
8 PEOPLE OF THE STATE OF CALIFORNIA.

9 (SALLY YERGER, OFFICIAL REPORTER)

10
11 THE COURT: GOOD MORNING. THERE ARE SOME MOTIONS BEFORE
12 THE COURT. THE FIRST ONE WHICH I RECEIVED AND READ WAS A
13 NOTICE OF MOTION EXCLUDING EVIDENCE OF OUT-OF-COURT STATEMENTS
14 OF DEFENDANT, PRIOR TO THE DETERMINATION OF THE COURT OF THE
15 PRELIMINARY FACTS OF THE EXISTENCE OF THE CORPUS DELICTI.

16 THE SECOND MOTION IS FOR AN ORDER STRIKING THE
17 SPECIAL CIRCUMSTANCES IN THE ROBBERY.

18 MR. BARENS: THERE IS ALSO AN 1101(B) MOTION FILED
19 CONTEMPORANEOUSLY WITH THE CORPUS DELICTI MOTION. IT SHOULD
20 BE IN THE COURT'S FILE. I HAVE A CONFORMED, STAMPED DATE
21 SHOWING --

22 THE COURT: ALL RIGHT. YOU MAY PROCEED TO ARGUE.

23 MR. BARENS: GOOD MORNING. ARTHUR BARENS APPEARING
24 ON BEHALF OF THE DEFENDANT, ACCOMPANIED BY RICHARD CHIER
25 AND THE DEFENDANT WHO IS READY AND PRESENT.

26 YOUR HONOR, AS WE MAKE APPARENT --

27 THE COURT: BEFORE YOU BEGIN, MR. CHIER, EXCUSE ME.
28 CONDOLENCES ON THE DEATH OF YOUR MOTHER. I KNOW IT WAS A

1 TERRIBLE BLOW TO YOU.

2 MR. CHIER: THANK YOU.

3 THE COURT: THAT IS WHY I AGREED TO A CONTINUANCE
4 LAST TIME.

5 MR. BARENS: YOUR HONOR, WE ARE HERE THIS MORNING FOR
6 A RULING BY YOUR HONOR. THIS IS AS TO THE ADMISSIBILITY
7 OF EXTRAJUDICIAL STATEMENTS ATTRIBUTED TO MR. HUNT. BASICALLY
8 AND SPECIFICALLY, THOSE STATEMENTS GO TO THE SEVEN-PAGE
9 DOCUMENT ALLEGEDLY IN THE HANDWRITING OF THE DEFENDANT,
10 STATEMENTS ATTRIBUTED TO THE DEFENDANT, ALLEGEDLY MADE TO
11 DEAN KARNY AND STATEMENTS ATTRIBUTED TO THE DEFENDANT
12 ALLEGEDLY MADE TO MEMBERS OF THE B.B.C.

13 THE COURT: I DON'T KNOW HOW THAT SEVEN-PAGE THING
14 CONSTITUTES AN ADMISSION.

15 MR. BARENS: IT IS UNQUESTIONABLY A HEARSAY DOCUMENT
16 AND THE PEOPLE HAVE UNIFORMLY REFERRED TO THAT AS A RECIPE
17 FOR MURDER.

18 IT IS A STATEMENT IN WRITING, YOUR HONOR, WHICH
19 THE PEOPLE ARE GOING TO ALLEGE AND HAVE ALLEGED PREVIOUSLY,
20 DESCRIBING MR. HUNT'S STATE OF MIND IN PREPARATION FOR THE
21 DOING AWAY WITH, IF YOU WOULD, MR. LEVIN.

22 AND WE SEEK TO EXCLUDE IT ON THE BASIS THAT IT
23 IS CERTAINLY AN EXTRAJUDICIAL STATEMENT OF THE DEFENDANT.
24 IT IS CERTAINLY HEARSAY, AS MUCH HEARSAY AS ANY OTHER
25 STATEMENT WE COULD ATTRIBUTE TO THE DEFENDANT.

26 THE COURT: ALL RIGHT. YOU MEAN ADMISSIONS ON HIS PART?

27 MR. BARENS: YES, YOUR HONOR.

28 MR. CHIER: WOULD YOU LIKE AUTHORITY FOR THAT, YOUR HONOR?

1 MR. BARENS: YOUR HONOR, IN PROCEEDING, THERE IS NOTHING
2 TRICKY OR SOPHISTICATED THAT WE ARE HERE FOR THIS MORNING.
3 IT IS A TIME-HONORED TRADITION OF OUR LEGAL SYSTEM THROUGHOUT
4 THE HISTORY OF THE ANGLO-SAXON JUDICIAL SYSTEM, THAT
5 EXTRAJUDICIAL STATEMENTS OF A DEFENDANT MAY NOT BE INTRODUCED
6 AS AGAINST HIM, WITHOUT THE PEOPLE HAVING FIRST ESTABLISHED
7 A CORPUS DELICTI.

8 IT IS OUR POSITION THAT THERE IS NO EVIDENCE
9 BEFORE THE COURT WHICH WOULD RISE ABOVE THAT OF MERE
10 SPECULATION TO ESTABLISH THE THRESHOLD OF EVIDENCE SUFFICIENT
11 FOR A CORPUS DELICTI.

12 WHAT WE ARE CONCERNED ABOUT, WE ARE CONCERNED
13 ABOUT A DEFENDANT NOT BEING CONVICTED OF A CRIME THAT NEVER
14 OCCURRED, NOT BEING CONVICTED, BASED ON THE STATEMENTS THAT
15 MAY HAVE BEEN MISUNDERSTOOD BY THE PERSON HE SPOKE THEM TO,
16 MISCOMMUNICATED BY THE PERSON IN REITERATING THEM OR STATED
17 BY A PERSON BEARING FALSE WITNESS.

18 ALL OF THOSE PROBLEMS ARE APPARENT IN THE HUNT
19 CASE. WE ARE ALSO CONFRONTED, YOUR HONOR, IN THIS CASE,
20 WITH THE FACT THAT NO RECORDED PRECEDENT HAS BEEN ESTABLISHED
21 THAT A CORPUS DELICTI CAN BE MAINTAINED BY THE SOLE FACT THAT
22 A DEFENDANT HAS DISAPPEARED, LET ALONE AS WE HAVE, IN THIS
23 INSTANCE, A VICTIM, AN ALLEGED VICTIM HAS DISAPPEARED, LET
24 ALONE AS WE HAVE IN THIS CASE, AN ALLEGED VICTIM WHO HAD
25 MYRIAD REASONS FOR WISHING NOT TO BE PRESENT, FACING CRIMINAL
26 PROSECUTION, FACING HORRENDOUS CREDITOR PROBLEMS AND ALL
27 OF THE OTHER PROBLEMS LEVIN WAS CONFRONTED WITH.

28 THERE HAS BEEN NO BODY EVER DISCOVERED IN THIS

1 CASE. CERTAINLY, AS WE HAVE POINTED OUT TO THE COURT, THE
2 PRECEDENT UNIFORMLY ESTABLISHED IN A NO-BODY CASE, THERE
3 IS A HEIGHTENED CONCERN FOR THE PEOPLE HAVING ESTABLISHED
4 THE CORPUS DELICTI.

5 WHAT DO WE HAVE HERE? ALL I CAN RELY ON IN
6 BRINGING THIS MOTION IS THE EVIDENCE THAT THE PEOPLE HAVE
7 COMMUNICATED TO THE DEFENSE SO FAR, EVIDENCE COMMUNICATED
8 AT THE PRELIMINARY HEARING AND EVIDENCE PROVIDED US BY
9 MR. WAPNER'S OFFICE SUBSEQUENT THERETO. WHAT DO WE HAVE
10 THAT IS SALIENT, YOUR HONOR?

11 WE HAVE MR. LEVIN ALLEGEDLY NOT CALLING HIS
12 MOTHER. WELL, I SUBMIT THAT THAT DOESN'T PROVE ANYTHING
13 OTHER THAN RESTATING THE FACT THAT HE HAS DISAPPEARED IN
14 THE FIRST INSTANCE.

15 IN THE SECOND INSTANCE, WE HAVE GOT LEVIN JUMPING
16 BAIL AS THE RESULT OF HIS DISAPPEARANCE. IF HE HAD CALLED
17 HIS MOTHER, DOES YOUR HONOR REALLY BELIEVE THAT HIS MOTHER
18 WOULD WALK IN HERE AND SAY THAT RON CALLED ME TODAY FROM
19 BARBADOS? THERE IS NO GREAT LIKELIHOOD THAT THE ONLY WITNESS
20 HE HAS GOT, IF HE CALLED HER, SHE WOULD BE CANDID WITH THIS
21 COURT.

22 WE HAVE EVIDENCE THAT THE DOG URINATED IN THE
23 APARTMENT OF MR. LEVIN. WHAT DOES THAT ESTABLISH, YOUR
24 HONOR, OTHER THAN IN AND OF ITSELF THAT THE DOG URINATED
25 IN THE APARTMENT? DOES IT GO TO -- DOES ANY OF THIS GO TO
26 ESTABLISH THE TWO ELEMENTS FOR CORPUS DELICTI?

27 THE COURT: WELL, YOU DON'T WANT TO MENTION THE FACT
28 THAT I CAN'T BE BLIND TO IT. YOU DON'T MENTION FACTS WHICH

1 IN LEGAL PROCEEDINGS HAVE BEEN ESTABLISHED IN CONNECTION
2 WITH THE TRIAL OF PITTMAN. I CAN'T ELIMINATE THOSE FACTS
3 WHICH HAVE BEEN UNDER SWORN TESTIMONY IN A COURT AND A
4 TRANSCRIPT TAKEN OF ALL OF THE THINGS THAT HAPPENED, ALL
5 OF THE EVIDENCE THAT CAME OUT IN THAT PARTICULAR TRIAL.

6 SO, YOU HAVE GOT TO TAKE THOSE FACTORS INTO
7 CONSIDERATION, INCLUDING THE FACT THAT THERE WERE TWO
8 WITNESSES WHO WERE SUPPOSED TO HAVE LEFT WITH LEVIN ON
9 THE MORNING WHEN IT WAS DISCOVERED THAT HE HAD GONE, HAD
10 DISAPPEARED.

11 THEY WERE SUPPOSED TO GO TO NEW YORK WITH HIM.
12 A MAN DOESN'T MAKE ARRANGEMENTS WITH TWO PEOPLE TO LEAVE
13 FOR NEW YORK, ARRANGEMENTS ALL MADE AND THEN HAVE HIM COME
14 TO THE PLACE AND THEN DISAPPEAR WITHOUT GIVING THEM ANY WORD
15 OF IT.

16 MR. BARENS: YOUR HONOR, I DON'T KNOW WHAT LEVIN'S
17 TRUE INTENTIONS WERE, VIS-A-VIS THE TWO PEOPLE --

18 THE COURT: WELL, IT IS A FACT. IT IS A CIRCUMSTANCE
19 THAT HAS TO BE TAKEN INTO CONSIDERATION. IT HAS BEEN
20 DISCOVERED.

21 MR. BARENS: YOUR HONOR, EVEN IF YOU TAKE INTO
22 CONSIDERATION THE FACT THAT HE DOES NOT SHOW UP FOR AN
23 APPOINTMENT WITH TWO PEOPLE, ASSOCIATES OF HIS, DOES THAT
24 IN AND OF ITSELF GIVE EVIDENCE THAT THE COURT MUST --
25 ESTABLISH THAT HE IS DEAD AND DEAD BY CRIMINAL AGENCY?

26 THE COURT: IT ISN'T JUST A CASUAL APPOINTMENT. HE
27 IS SUPPOSED TO HAVE LEFT THAT PARTICULAR MORNING FOR NEW YORK
28 WITH THOSE TWO PEOPLE. THEY CAME ALL PREPARED TO LEAVE WITH

1 HIM. ARRANGEMENTS WERE MADE THE NIGHT BEFORE, TWO DAYS
2 BEFORE.

3 AND HE IS GONE WITHOUT ANY WORD TO ANYBODY.
4 THAT LEAVES THESE TWO PEOPLE WHO WERE INTIMATES OF HIS --
5 HE WOULD HAVE TOLD THEM IF HE INTENDED TO BLOW.

6 MR. BARENS: DOES YOUR HONOR FEEL WE ARE DEALING WITH
7 THE CONVENTIONAL INDIVIDUAL IN TERMS OF MR. LEVIN, THAT HE
8 WOULD NECESSARILY ACT AS YOUR HONOR MIGHT ACT OR AS I MIGHT
9 ACT IN TERMS OF OUR COMMITMENTS AND OBLIGATIONS?

10 YOUR HONOR, THIS MAN NEVER HONORED ANY OF HIS
11 COMMITMENTS TO PEOPLE. HE FILED A MILLION DOLLAR BANKRUPTCY
12 INVOLVING WELL IN EXCESS OF 100 PEOPLE HE HAD MADE PROMISES --
13 OR 700 PEOPLE HE HAD MADE PROMISES TO, TO MAKE PAYMENTS TO.

14 THE COURT: HE IS DOING PRETTY WELL. DON'T INTERRUPT
15 HIM.

16 MR. BARENS: THIS MAN, MR. LEVIN, I SUBMIT TO YOU,
17 THROUGHOUT HIS ENTIRE HISTORY, MISREPRESENTED EVERYTHING
18 HOLY AND UNHOLY TO EVERYONE AROUND HIM, HIS PARENTS, HIS
19 BUSINESS ASSOCIATES, EVERY COLLEAGUE HE EVER HAD, HE INTEN-
20 TIONALLY DECEIVED DURING HIS LIFETIME.

21 IF LEVIN WAS PLANNING TO SKIP BAIL, IF HE WAS
22 IN FACT PLANNING TO DISAPPEAR TO AVOID PROSECUTION AND
23 HIDE FROM HIS CREDITORS, IT IS CERTAINLY -- IT IS ABSOLUTELY
24 CREDIBLE TO ME THAT HE WOULD CHILL THE TRAIL BY SAYING, I
25 WILL MEET YOU AT SUCH-AND-SUCH A TIME TO GO TO NEW YORK.

26 THE COURT: ALL RIGHT. AND THEN WHAT ABOUT THE FACT
27 THAT IN CONNECTION WITH THIS MATTER, IN ORDER TO MAKE IT
28 APPEAR THAT HE HAD RUN AWAY FROM HIS CREDITORS OR FROM

1 PROSECUTION, HE GAVE PITTMAN THE CREDIT CARD OF LEVIN TO
2 GO TO NEW YORK AND REGISTER AT THE PLAZA HOTEL, AS LEVIN,
3 FOR THE PURPOSE OF DEMONSTRATING THAT LEVIN HAD NOT BEEN
4 MURDERED OR KILLED BUT HE WAS ACTUALLY RUNNING AWAY FROM
5 HIS CREDITORS, RUNNING AWAY FROM PROSECUTION. THAT IS A
6 FACT ALSO TO BE TAKEN INTO CONSIDERATION.

7 MR. BARENS: HOW, YOUR HONOR, DOES THAT PREJUDICE
8 MR. HUNT? MR. HUNT DOESN'T HAVE ANY CREDIT CARDS, YOUR HONOR.

9 THE COURT: NO. OF COURSE HE DOESN'T. BUT THE FACT
10 OF THE MATTER IS, THAT IS A CIRCUMSTANCE TO BE TAKEN INTO
11 CONSIDERATION, SINCE MR. PITTMAN WAS A SUBORDINATE OR EMPLOYEE
12 OF THE B.B.C. OR OF MR. HUNT.

13 AND THE INFERENCE CAN BE DRAWN BY A JURY FROM
14 THAT FACT THAT HE HAD GOTTEN PITTMAN TO GO TO NEW YORK AND
15 USING A CREDIT CARD BELONGING TO LEVIN, MAKE IT APPEAR AS
16 IF LEVIN WAS IN NEW YORK AT THAT PARTICULAR TIME AND HAD
17 NOT BEEN DONE AWAY WITH.

18 MR. BARENS: WELL, IT IS AN AWFULLY BIG REACH, IN MY
19 OPINION, YOUR HONOR.

20 THE COURT: NO, NOT AT ALL.

21 MR. BARENS: TO SHIFT GEARS FROM HAVING LEVIN
22 INSTRUCTING PITTMAN TO GO TO NEW YORK AND HAVING LEVIN
23 INSTRUCT PITTMAN --

24 THE COURT: NO, NO. NO, IT WAS HUNT GIVING PITTMAN
25 INSTRUCTIONS TO GO TO NEW YORK AND USE THAT CREDIT CARD TO
26 MAKE IT APPEAR AS IF LEVIN ACTUALLY WAS IN NEW YORK.

27 MR. BARENS: WELL, THE JURY COULD MAKE A FINDING OF
28 FACT THAT IT IS TRUE --

1 THE COURT: THE JURY COULD EASILY INFER FROM THAT
2 PARTICULAR CIRCUMSTANCE --

3 MR. BARENS: I PRESUME A JURY WOULD AS EASILY INFER
4 IF LEVIN WAS COOLING THE TRAIL, HE WOULD HAVE SENT PITTMAN.
5 HE CERTAINLY KNEW PITTMAN.

6 THE COURT: THE MAN HAD NOTHING TO DO WITH LEVIN.
7 HE WAS AN EMPLOYEE AND APPEARED WITH THE B.B.C. PEOPLE.

8 MR. BARENS: I BEG TO DIFFER. YOUR HONOR, LEVIN WAS
9 IN AN EXTREMELY HEAVY BUSINESS NEGOTIATION AND DEALING WITH
10 THE B.B.C. FOR WELL IN EXCESS OF A YEAR.

11 HE KNEW PITTMAN PERSONALLY PRIOR TO HIS DISAPPEARANCE.

12 THE COURT: WELL, I AM INDICATING TO YOU THAT THERE ARE
13 FACTS AND CIRCUMSTANCES. THERE ARE THE VERY CASES THAT YOU
14 CITED TO ME WHICH SUPPORT THE POSITION THAT YOU DON'T HAVE
15 TO CONCLUSIVELY PROVE OR EVEN BY OVERWHELMING EVIDENCE, PROVE
16 THE CORPUS DELICTI.

17 AND I REFER YOU TO THE SUPREME COURT CASE OF
18 PEOPLE V. CULLEN, 37 CAL.2D AT 614. THE COURT POINTS OUT
19 IN THAT CASE ON PAGE 624:

20 "HERE THE CORPUS DELICTI CONSISTS
21 OF TWO ELEMENTS, THE DEATH OF THE ALLEGED
22 VICTIMS AND THE EXISTENCE OF SOME CRIMINAL
23 AGENCY AS THE CAUSE, EITHER OR BOTH OF WHICH
24 MAY BE PROVED CIRCUMSTANTIALY OR INFERENTIALY."

25 THEN IT GOES ON TO SAY:

26 "PROOF OF THE CORPUS DELICTI
27 DOES NOT REQUIRE IDENTITY OF THE PERPETRATORS.
28 IT IS NOT NECESSARY THAT IT CONNECT THE

1 DEFENDANT WITH THE COMMISSION OF THE CRIME
2 ALTHOUGH IT MAY DO SO. NOR DOES MOTIVE FORM
3 ANY PART OF THE CORPUS DELICTI."

4 THE COURT GOES ON TO SAY:

5 "IT IS THE SETTLED RULE, HOWEVER,
6 THAT THE CORPUS DELICTI MUST BE ESTABLISHED
7 INDEPENDENTLY OF ADMISSIONS OF THE DEFENDANT.
8 CONVICTION CANNOT BE HAD ON HIS EXTRAJUDICIAL
9 ADMISSIONS OR CONFESSIONS WITHOUT PROOF OF
10 ALIUNDE OF THE CORPUS DELICTI. BUT FULL PROOF
11 OF THE BODY OF THE CRIME, SUFFICIENT TO
12 CONVINCED THE JURY OF ITS CONCLUSIVE CHARACTER,
13 IS NOT NECESSARY BEFORE THE ADMISSIONS MAY BE
14 RECEIVED. A PRIMA FACIE SHOWING THAT THE
15 ALLEGED VICTIMS MET DEATH BY CRIMINAL AGENCY
16 IS ALL THAT IS REQUIRED. THE DEFENDANT'S
17 EXTRAJUDICIAL STATEMENTS ARE THEN ADMISSIBLE,
18 THE ORDER OF PROOF BEING DISCRETIONARY, AND
19 TOGETHER WITH THE PRIMA FACIE SHOWING MUST
20 SATISFY THE JURY BEYOND A REASONABLE DOUBT."

21 THOSE ARE THE CRITERIA. YOU HAVE GOT TO APPLY
22 THEM IN THIS PARTICULAR CASE.

23 YOU DON'T HAVE TO PROVE CONCLUSIVELY OR
24 SUBSTANTIALLY THAT THE MURDER HAD TAKEN PLACE.

25 MR. BARENS: I AM NOT DISAGREEING WITH THAT, IN THE
26 LEAST. WE CITE THE SAME LOGIC FOR ARGUMENT IN OUR MOVING
27 PAPERS THIS MORNING, YOUR HONOR.

28 BUT, LET'S LOOK AT CULLEN. CULLEN IS BLOODSTAINS

1 ON THE FLOOR. THERE IS A SANDED AREA WHERE SOMEONE IS TRYING
2 TO DISGUISE THE BLOODSTAINS.

3 THERE IS SOME SUGGESTION THAT A HUMAN BEING HAS
4 DIED. WHAT I WAS SUBMITTING TO THE COURT THIS MORNING, YOUR
5 HONOR, IS THAT I CHALLENGE THE PEOPLE TO ARTICULATE THE
6 INFERENCES FROM WHICH THEY ARE PROCEEDING IN SOME COHERENT
7 FASHION TO SUPPORT THE CORPUS DELICTI.

8 IF YOU TAKE A DOG URINATING AND AN ALLEGED FAILURE
9 TO CALL A MOTHER, A PERSON NOT THIS DEFENDANT SHOWING UP IN
10 NEW YORK WITH A CREDIT CARD, HOW DO WE PROCEED LOGICALLY
11 AND CONSISTENTLY WITH REASONABLE INFERENCES THAT ARE NOT
12 SPECULATION BUT, RATHER, REASONABLE INFERENCES AT THIS POINT
13 LEADING TO A CONCLUSION?

14 AND, YOUR HONOR, WE GET BACK TO THE SAME TRAP
15 THAT IN ORDER TO MAKE ANY OF THAT MAKE SENSE, YOU HAVE TO
16 RELY ON THE STATEMENTS. YOU HAVE TO RELY ON THAT SEVEN PAGES.
17 YOU HAVE TO RELY ON THE STATEMENTS OF KARNY.

18 WHAT I AM SAYING IS THAT THERE IS NO QUESTION,
19 BASED ON WHAT THE JUDGE JUST READ INTO THE RECORD, THAT YOUR
20 HONOR IS OBLIGATED TO DROP A BLACK CLOTH OVER THOSE STATEMENTS
21 IN MAKING YOUR RULING ON HABEAS CORPUS, WHETHER IT IS THERE
22 OR NOT.

23 YOUR HONOR, THE GESTALT OF THIS SITUATION DOES
24 NOT PERMIT YOUR HONOR, IN MY OPINION, TO CONSIDER IN ANY
25 WAY, ANY KNOWLEDGE YOU HAVE AS A RESULT OF THE PITTMAN TRIAL
26 OR ANY OTHER EVIDENCE YOU HAVE SEEN CONCERNING EXTRAJUDICIAL
27 STATEMENTS ATTRIBUTED TO THIS DEFENDANT IN MAKING YOUR RULING
28 THIS MORNING. WE CAN'T BOOTSTRAP OFF OF THAT.

1 THE COURT: THE COURT PROCEEDINGS ARE A MATTER OF
2 RECORD. I CAN'T DISREGARD A MATTER OF RECORD AS TO WHAT
3 THE CIRCUMSTANCES ARE.

4 IT IS IN THIS VERY CASE, ALTHOUGH IT WAS A
5 SEVERED CASE. IT WAS IN THIS VERY CASE THAT THESE FACTS
6 HAVE BEEN ESTABLISHED.

7 MR. BARENS: YOUR HONOR, I BELIEVE THAT YOU ARE OBLIGATED
8 IN THIS CIRCUMSTANCE TO INTELLECTUALLY DISCRIMINATE YOUR
9 THOUGHT PROCESS AND EXCLUDE FROM YOUR THOUGHT PROCESS ANY
10 KNOWLEDGE OF THOSE STATEMENTS, AS A JURY MUST, IN MAKING
11 A RULING ON WHETHER A HABEAS CORPUS HAS BEEN ESTABLISHED.

12 THE COURT: THE JURY IS GOING TO GET ALL OF THE FACTS.
13 I PROPOSE -- I WILL TELL YOU NOW, I PROPOSE TO PERMIT, IF
14 THE PEOPLE WANT TO DO THIS, I PROPOSE TO PERMIT TESTIMONY
15 WITH RESPECT TO PITTMAN'S ACTIVITIES IN NEW YORK AND HIS
16 REGISTERING AT THE HOTEL IN THE NAME OF LEVIN, AS A PART
17 OF THE CONTINUING ACTIVITY IN THIS PARTICULAR CASE TO COVER
18 UP -- ALLEGEDLY COVER UP THE FACT OF THE DISAPPEARANCE OF
19 LEVIN AND THE CORPUS DELICTI.

20 MR. BARENS: AND ON THAT THEORY THAT THIS COMES IN
21 UNDER YOUR HONOR, IT IS --

22 THE COURT: THERE IS NO THEORY. IT IS NO THEORY. IT
23 IS ONE OF THE CIRCUMSTANCES THE PEOPLE ARE GOING TO ESTABLISH.

24 MR. BARENS: YOUR HONOR, AGAIN, I AM TALKING ABOUT
25 THE NECESSITY FOR THE COURT TO RULE ON THE CORPUS DELICTI
26 WITHOUT BENEFIT OF THESE STATEMENTS. THERE IS NO QUESTION
27 THAT CULLEN --

28 THE COURT: I HAVE NOT MENTIONED THE STATEMENTS; HAVE YOU?

1 MR. BARENS: NO.

2 THE COURT: THE CIRCUMSTANCES I HAVE NOT MENTIONED --
3 THOSE OTHER CIRCUMSTANCES INFERENTIALLY AND CIRCUMSTANTIALLY.

4 THE JURY HAS A RIGHT TO CONSIDER WHERE DID PITTMAN,
5 WHO IS AN ASSOCIATE OF THE DEFENDANT, WHERE DID PITTMAN GET
6 LEVIN'S CREDIT CARD? WHY DID PITTMAN GO TO NEW YORK AND
7 REGISTER AS LEVIN AT THE PLAZA HOTEL? WHY DID HE USE THAT
8 CREDIT CARD IN CONNECTION WITH IT?

9 THOSE ARE CIRCUMSTANCES THAT A JURY WOULD HAVE
10 THE RIGHT TO CONSIDER.

11 MR. BARENS: I AM NOT ADDRESSING OUR MOTION THIS
12 MORNING TO THAT SPECIFIC CIRCUMSTANCE. THE CIRCUMSTANCES --
13 AND I AGREE THAT WE HAVE TO CONSIDER THAT IN THE TOTALITY OF
14 THE FACTS.

15 THE COURT: THAT IS IN THE NEGATIVE, THE FACT THAT THERE
16 WAS -- THAT HE HAD ACTUALLY DISAPPEARED ON HIS OWN, VOLUNTARILY.
17 IT SHOWS THAT HE DIDN'T VOLUNTARILY LEAVE AND NOT TAKE HIS
18 CREDIT CARDS AND NOT TAKE ANY OF THE OTHER STUFF THAT HE HAD
19 HAD AND WHERE DID PITTMAN GET THAT.

20 OBVIOUSLY, HE MUST HAVE GOTTEN IT FROM LEVIN'S
21 POSSESSIONS IN THAT APARTMENT THAT NIGHT. THAT IS WHY THE
22 JURY WOULD HAVE A RIGHT TO CONSIDER THAT.

23 MR. BARENS: I WOULD BE MUCH MORE RESPONSIVE AND IN
24 AGREEMENT WITH YOUR HONOR IF I WAS REPRESENTING MR. PITTMAN.
25 HOWEVER, I AM REPRESENTING MR. HUNT.

26 THE COURT: EXACTLY. I KNOW THAT.

27 MR. BARENS: YOUR HONOR MAKES A GOOD CAUSE. IF I WAS
28 HERE ON A HABEAS CORPUS MOTION ON BEHALF OF MR. PITTMAN, I

1 WOULD FEEL SOMEWHAT SET BACK BY YOUR HONOR'S COMMENTS ABOUT
2 THE TRIP TO NEW YORK.

3 VIS-A-VIS MR. HUNT AND WHAT CAN BE DIRECTLY
4 ATTRIBUTED TO MR. HUNT IN TERMS OF WHETHER THEY HAVE GOT
5 A CORPUS DELICTI OR NOT, I AM UNIMPRESSED BY THAT, YOUR HONOR.

6 YOUR HONOR, THE FACT THAT WAS REFERENCED AT THE
7 PRELIMINARY HEARING WHICH BRINGS US TO THIS COURT, YOUR HONOR,
8 BASED ON THE EVIDENCE THAT I HAVE IN OUR FILE, YOUR HONOR,
9 I DON'T PRESUME TO BE PREJUDICED THIS MORNING BY THE FACT
10 THAT YOUR HONOR HEARD THE PITTMAN TRIAL.

11 AGAIN, I SUBMIT THAT YOU HAVE TO MAKE YOUR
12 DECISION INDEPENDENT OF THESE STATEMENTS.

13 ARE YOU SAYING, IF I AM CORRECT, THAT THE ONLY
14 FACT YOUR HONOR HAS THAT SWAYS YOU TOWARD THE PEOPLE'S POSITION
15 ON THIS MOTION IS THE TRIP TO NEW YORK?

16 THE COURT: NO. I AM SAYING THAT WE ARE TALKING ABOUT --
17 I READ THROUGH THE CASES. YOU DON'T HAVE TO PROVE THE CORPUS
18 DELICTI DIRECTLY. YOU CAN DO IT BY CIRCUMSTANTIAL EVIDENCE,
19 INFERENTIALLY.

20 I AM JUST TELLING YOU THAT THE JURY WOULD HAVE
21 A RIGHT TO CONSIDER INFERENTIALLY WHERE DID PITTMAN, WHO
22 WAS AN ASSOCIATE OF THE DEFENDANT, WHERE DID HE GET THIS
23 CREDIT CARD AND WHY DID HE GO TO NEW YORK AND WHY DID HE
24 USE THIS CREDIT CARD IN THE NAME OF LEVIN AND THE PURPOSE
25 OF IT.

26 THE JURY COULD CONCLUDE INFERENTIALLY THAT HE
27 DID IT FOR THE PURPOSE OF COVERING UP THE FACT THAT HE HAD
28 GONE, TO MAKE IT APPEAR AS IF MR. LEVIN WENT TO NEW YORK AND

1 HE WAS AT THE PLAZA HOTEL.

2 MR. BARENS: THIS IS --

3 THE COURT: I SUGGEST TO YOU THAT THIS IS A QUESTION
4 OF FACT WHICH A JURY WOULD HAVE A RIGHT TO CONSIDER AND
5 WOULD CONSIDER.

6 MR. BARENS: IT COULD CONSIDER IT, PROBABLY IF I HAD
7 MR. LEVIN'S CREDIT CARD IN MY POCKET. IT IS MORE LIKELY
8 THAT I KILLED HIM THAN SOMEBODY ELSE KILLED HIM AND GAVE ME
9 THE CARD, YOUR HONOR.

10 THE COURT: FINE. IF YOU HAD HIS CREDIT CARD, IT WOULD
11 BE A CIRCUMSTANCE TO BE CONSIDERED, WHERE YOU GOT IT.

12 MR. BARENS: THE CIRCUMSTANCE VIS-A-VIS PITTMAN --

13 THE COURT: WHERE DID YOU GET IT?

14 MR. BARENS: PROBABLY MR. LEVIN, NOT MR. PITTMAN.
15 WE SPECULATE THAT HE GOT IT FROM MR. HUNT.

16 THE COURT: ALL RIGHT. GO AHEAD AND FINISH YOUR
17 ARGUMENTS.

18 MR. BARENS: YOUR HONOR, I WOULD BE PLEASED TO INDULGE
19 IN THE SAME DIALOGUE, YOUR HONOR, VIS-A-VIS ANY OTHER ELEMENT
20 OF THE PEOPLE'S ALLEGED CASE. THE ONLY OTHER ELEMENT THAT
21 WE HAVE, WE RECITED IN OUR MOTION IN TERMS OF THE DOG, THE
22 MOTHER, THE CHECK AND THE FACT THAT NO ONE ELSE HAS SEEN HIM.

23 I AM SUBMITTING TO YOUR HONOR THAT ALL THAT
24 DOES IS RESTATE THE MERE FACT THAT LEVIN HAS DISAPPEARED.

25 THE COURT: ALL RIGHT. THAT IS ANOTHER FACT. A MAN
26 DOESN'T PAY OUT A MILLION FIVE HUNDRED THOUSAND DOLLARS ON
27 A VENTURE WITH -- WHAT WAS THE NAME? MICROGENICS? AND THEN
28 SIMPLY DISAPPEAR AND HAVING MADE AN INVESTMENT OF A MILLION

1 FIVE HUNDRED THOUSAND DOLLARS.

2 MR. BARENS: THE CHECK WAS NO GOOD.

3 THE COURT: ALL RIGHT. I KNOW IT WAS NO GOOD. BUT
4 IT WAS NO GOOD BECAUSE OF THE FACT THAT THE PEOPLE WILL CONTEND
5 IT WAS GOTTEN FROM HIM AT THE POINT OF A GUN.

6 MR. BARENS: YOUR HONOR, THE EVIDENCE WILL SUGGEST THE
7 CHECK WAS OBTAINED DAYS PRIOR TO HIS ALLEGED DISAPPEARANCE.

8 THE COURT: ALL RIGHT. THAT IS A CIRCUMSTANCE. THE
9 PEOPLE SAY THAT IT WAS OBTAINED THAT PARTICULAR NIGHT, THE
10 NIGHT OF HIS ALLEGED MURDER.

11 THE PEOPLE ARE CONTENDING THAT. NOW, THAT IS A
12 CIRCUMSTANCE THE JURY WOULD HAVE TO DETERMINE.

13 I CAN'T DO THIS ON A MOTION AND DECIDE THIS IN
14 YOUR FAVOR NOW, CAN I?

15 AS A MATTER OF FACT, I GRANTED YOUR MOTION ONLY
16 RELUCTANTLY BECAUSE THE PEOPLE AGREED TO IT, ON THE MATTER
17 OF SEVERANCE OF THE SPECIAL CIRCUMSTANCES. THERE WAS A CASE
18 THAT -- THERE WAS A CASE THAT CAME DOWN I SAW AFTER THAT
19 MOTION WHICH INDICATED THAT YOU DON'T DECIDE THESE MOTIONS
20 UNTIL AFTER THE GUILT PHASE HAS BEEN DECIDED.

21 I COULD HAVE EASILY DENIED YOUR MOTION. ANYWAY,
22 I DON'T INTEND TO GO BACK ON IT. IT IS ALREADY DENIED.
23 THE SPECIAL CIRCUMSTANCE OF FINANCIAL GAIN IS GONE.

24 NOW, WHAT YOU ARE ASKING ME TO DO IS GET RID
25 ALSO OF THE ROBBERY SO THAT THERE WOULDN'T BE ANY SPECIAL
26 CIRCUMSTANCES IN THE CASE, WHICH I WILL TAKE UP IN A MINUTE
27 WITH YOU.

28 ALL RIGHT. WELL, FINISH YOUR ARGUMENT IN THAT

1 RESPECT. IS THERE ANYTHING FURTHER YOU WANT TO ADD?

2 MR. BARENS: YOUR HONOR, I SUBMIT THAT BASED ON
3 THE TOTALITY OF THE MOTION WE HAVE FILED THIS MORNING AND
4 THE CASES CITED THEREIN, THAT ONCE AGAIN, THESE EXTRAJUDICIAL
5 STATEMENTS ARE NOT ADMISSIBLE AS TO THE CORPUS DELICTI AND
6 THAT THE PEOPLE HAVE GIVEN US MERE SPECULATION AND NOT FACTS
7 SUFFICIENT TO PASS THE THRESHOLD OF SPECULATION AND GET TO
8 THE CORPUS. THIS IS OUR POSITION.

9 THE COURT: LET ME SEE WHETHER THE D.A. CAN HELP YOU.

10 MR. BARENS: ANY HELP YOU DON'T PROVIDE, YOUR HONOR,
11 I AM SURE HE WILL.

12 MR. WAPNER: WELL, I WANT TO MAKE A TWO-PRONGED ARGUMENT.
13 FIRST OF ALL, MR. BARENS KEEPS TALKING ABOUT WHAT THE PEOPLE
14 HAVE ESTABLISHED AND WHAT WE HAVE NOT ESTABLISHED. BUT SINCE
15 WE HAVE NOT STARTED PUTTING ON THE EVIDENCE, WE HAVE NOT
16 EITHER ESTABLISHED OR PROVED ANYTHING.

17 THE RULE, AS I UNDERSTAND IT, IS THAT THERE MUST
18 BE SOME PROOF OF EACH ELEMENT OF THE OFFENSE INDEPENDENT OF
19 AN ADMISSION OR CONFESSION. AND PROOF IS DEFINED BY THE
20 EVIDENCE CODE AS ESTABLISHMENT BY EVIDENCE OR REQUISITE
21 DEGREE OF BELIEF CONCERNING A FACT IN THE MIND OF EITHER THE
22 TRIER OF FACT OR THE COURT.

23 AND EVIDENCE IS TESTIMONY, WRITINGS, MATERIAL
24 OBJECTS OR OTHER THINGS PRESENTED TO THE SENSES, OFFERED TO
25 PROVE THE EXISTENCE OR NONEXISTENCE OF A FACT.

26 WELL, WE HAVE NOT HAD ANY PROOF OR ANY EVIDENCE
27 IN THIS CASE YET, BECAUSE WE HAVE NOT STARTED TO PUT ON
28 OUR CASE.

1 NOW, IF THE PEOPLE DIDN'T THINK THEY COULD PROVE
2 A CORPUS DELICTI, OBVIOUSLY, WE WOULDN'T HAVE FILED THE
3 CASE. BUT THE POINT IS, YOU PROVE THE CORPUS DELICTI AT
4 TRIAL, WHICH I SUBMIT TO THE COURT WE DID AT THE PRELIMINARY
5 HEARING OF THE PITTMAN AND HUNT. WE DID IT AT THE TRIAL OF
6 MR. PITTMAN AND WE WILL DO IT AGAIN AT THE TRIAL OF MR. HUNT.

7 BUT MY POINT IS, THIS IS A MOTION TO BE MADE,
8 IF AT ALL, AFTER THE PEOPLE HAVE BEEN PUT TO THEIR PROOF
9 AT TRIAL AND WE EITHER PROVE THE CORPUS OR WE DON'T.

10 THE COURT: WELL, HE SAYS YOU CANNOT INTRODUCE PROOF OF
11 THESE EXTRAJUDICIAL STATEMENTS UNTIL YOU FIRST ESTABLISH THE
12 CORPUS DELICTI.

13 MR. WAPNER: BY PRIMA FACIE OR SLIGHT EVIDENCE. RIGHT.

14 THE COURT: AND WHICH IS THE EVIDENCE THAT YOU INTEND
15 TO PROVE?

16 MR. WAPNER: WELL, IF THE COURT -- THAT IS THE SECOND
17 PRONG OF THE ARGUMENT. IF THE COURT WANTS ME TO GO THROUGH
18 THE EVIDENCE WE INTEND TO PROVE, AND YOU WANT TO MAKE A
19 RULING ON WHAT WE EXPECT THE EVIDENCE TO BE, I WILL BE HAPPY TO
20 GO THROUGH THAT.

21 I DISAGREE VEHEMENTLY WITH MR. BARENS'
22 CHARACTERIZATION OF THE EVIDENCE. AND HE CAVALIERLY SAYS
23 WELL, MR. LEVIN FILED THIS BANKRUPTCY. WELL, THAT IS NOT IN
24 EVIDENCE. THERE IS NO EVIDENCE OF THAT. WHETHER THERE WILL
25 BE OR NOT, WE DON'T KNOW.

26 BUT THE POINT IS, THERE IS NOT ANY PROOF OF THAT.
27 HE PULLS THESE FACTS OUT OF THE AIR AS IF THEY HAD APPEARED
28 SOMEWHERE AND WE DON'T KNOW WHETHER THEY WILL COME INTO

1 EVIDENCE OR NOT.

2 THEN, HE SAYS DON'T CONSIDER THE PITTMAN CASE.
3 WELL, WHAT DOES HE WANT YOU TO CONSIDER? YOU CAN'T MAKE --
4 MY POINT ALL ALONG HAS BEEN THAT YOU HAVE TO MAKE THIS
5 DETERMINATION BASED ON THE FACTS THAT THE PEOPLE PROVE IN
6 THE TRIAL OF MR. HUNT.

7 BUT AS FAR AS WHAT WE EXPECT TO PROVE, IN SUMMARY,
8 THE COURT HAS ALREADY ALLUDED TO THE FACT THAT MR. LEVIN
9 WAS SUPPOSED TO GO TO NEW YORK ON JUNE -- THE MORNING OF
10 JUNE 7TH WITH TWO OTHER PEOPLE, MICHAEL BRODER AND DEAN FACTOR,
11 THAT THEY SHOWED UP ALONG WITH HIS MAID, WHO WAS SUPPOSED TO
12 TAKE HIM TO THE AIRPORT. HE WAS NOT THERE.

13 NOT ONLY WAS HE NOT THERE, BUT ALL OF THE
14 SUITCASES WERE IN THE HOUSE AND ALL OF HIS CLOTHES WERE IN
15 THE HOUSE AND HIS TOILETRY CASE THAT HE TOOK WITH HIM EVERYWHERE,
16 HIS BLACK TOILETRY CASE WAS STILL IN THE HOUSE.

17 NOT ONLY WERE THESE THINGS THERE, BUT WHAT WAS
18 NOT, WHAT WAS MISSING FROM THE HOUSE, WAS THE COMFORTER FROM
19 HIS BED, THE SHEET THAT WENT OVER THE COMFORTER, ONE PILLOW
20 AND THE REMOTE CONTROL DEVICE FROM HIS TELEVISION.

21 AND HIS CAR WAS STILL IN HIS HOUSE WITH THE
22 BRAND NEW CAR PHONE THAT HE HAD JUST HAD INSTALLED A DAY BEFORE.
23 AND THE EVIDENCE, I EXPECT, WILL SHOW THAT HE WAS NOT GOING
24 TO THE PLAZA HOTEL AS MR. HUNT AND MR. PITTMAN SURMISED, BUT
25 HAD RESERVATIONS INSTEAD AT THE MAYFAIR REGENT HOTEL AND
26 DID NOT APPEAR AT THE MAYFAIR REGENT HOTEL.

27 AS WE KNOW, MR. PITTMAN INSTEAD ARRIVED AT THE
28 PLAZA HOTEL THE NEXT DAY. ALSO, THE EVIDENCE WILL SHOW THE

1 VERY CLOSE RELATIONSHIP THAT MR. LEVIN HAD WITH HIS MOTHER.

2 I DISAGREE VERY STRENUOUSLY WITH MR. BARENS'
3 CHARACTERIZATION OF THE FACT THAT HE JUST MERELY RESTATES
4 THE FACT THAT HE IS GONE. IT DOESN'T MERELY RESTATE THE
5 FACT THAT HE IS MISSING BECAUSE HIS HABIT AND CUSTOM WAS
6 TO CALL HIS MOTHER TWO OR THREE TIMES A WEEK FROM WHEREVER
7 HE WAS.

8 AND THE EVIDENCE WILL SHOW THAT WHENEVER HE TOOK
9 TRIPS, HE ALSO CALLED HIS MOTHER. HE CALLED HIS MOTHER
10 BEFORE HE LEFT. HE CALLED HIS MOTHER WHEN HE GOT THERE
11 AND IF HE WAS GOING TO BE GONE FOR ANY EXTENDED PERIOD OF
12 TIME, HE WOULD CALL HER TWO OR THREE TIMES WHEN HE WAS GONE.

13 AND HE HAS NOT CALLED HIS MOTHER SINCE. NOW,
14 THE OTHER THING THAT REALLY GALLS ME IS MR. BARENS SAYING,
15 WELL, MR. LEVIN JUMPED BAIL AND THEREFORE, HIS MOTHER WOULDN'T
16 TURN HIM IN. MRS. LEVIN HAS BEEN AN INTEGRAL PART OF THIS
17 CASE, OBVIOUSLY, SINCE THE VERY BEGINNING. AND REGARDLESS
18 OF HOW SHE FEELS ABOUT HER SON AND WHETHER SHE WOULD TURN
19 HIM IN OR NOT, MRS. LEVIN KNOWS THAT TWO PEOPLE ARE BEING
20 CHARGED WITH MURDER, BASED ON THE FACT THAT HER SON IS DEAD.

21 AND IF NOTHING ELSE, IF NOTHING ELSE, SHE WOULD
22 NOT ALLOW -- THERE IS NO WAY IN THE WORLD -- THIS IS WHAT
23 OFFENDS ME SO MUCH -- THAT SHE WOULD ALLOW TWO PEOPLE TO BE
24 PROSECUTED FOR MURDER IF SHE KNEW THAT THE PERSON WHO WAS
25 KILLED, IN FACT HAD NOT BEEN KILLED, BUT WAS ALIVE.

26 IF SHE KNEW THAT, I WOULD BE THE FIRST ONE
27 PROBABLY THAT SHE WOULD TELL OR ELSE THE DETECTIVE FROM THE
28 POLICE DEPARTMENT. AND CERTAINLY, THE EVIDENCE WILL SHOW THAT

1 HER SON, WHILE BEING A LOVING AND DEVOTED SON, SHIELDED HER
2 ALMOST ENTIRELY FROM HIS AFFAIRS. AND I DON'T KNOW WHETHER
3 SHE KNEW OR NOT THAT HE HAD A CASE GOING ON.

4 BUT CERTAINLY, IF SHE KNEW HE WAS ALIVE ANYWHERE
5 IN THE WORLD, WE WOULD KNOW. ALSO, MR. BARENS FAILS TO
6 MENTION THE FACT THAT THERE ARE SEVERAL FRIENDS OF MR. LEVIN
7 WHO WILL TESTIFY TO THEIR RELATIONSHIP WITH HIM AND HOW CLOSE
8 THEY WERE TO HIM AND THAT HE TALKED TO THEM ALL OF THE TIME,
9 TWO OR THREE TIMES A WEEK, AND THAT IF HE WERE ALIVE ANYWHERE
10 IN THE WORLD TODAY, HE WOULD CALL THEM.

11 AGAIN, THAT DOESN'T JUST MERELY RESTATE THE FACT
12 THAT SOMEONE IS MISSING. THIS TELLS YOU THAT IF HE WAS ALIVE,
13 ANYWHERE, THAT HE WOULD CALL THEM. THAT WAS HIS HABIT AND
14 CUSTOM AND IT WAS WHAT HE WOULD DO. AND --

15 THE COURT: WELL, I THINK THAT YOU HAVE SUFFICIENTLY
16 ESTABLISHED FACTS WHICH, CIRCUMSTANTIALLY, ARE SUFFICIENT
17 I THINK FOR THE MATTER TO GO TO THE JURY. I WILL DENY THE
18 MOTION, THE FIRST MOTION WHICH WE HAD CONSIDERED TO EXCLUDE
19 THE EVIDENCE OF ANY OUT-OF-COURT STATEMENTS PRIOR TO THE
20 DETERMINATION OF CORPUS DELICTI.

21 MR. CHIER: WITHOUT PREJUDICE?

22 THE COURT: OF COURSE, OF COURSE. APPARENTLY, OSTENSIBLY,
23 THERE ARE THOSE FACTS WHICH SHOULD GO TO THE JURY, IF
24 ESTABLISHED THAT THEY INFER THE CORPUS DELICTI HAVING BEEN
25 ESTABLISHED.

26 THE SECOND MOTION I DON'T THINK I NEED ANY
27 ARGUMENT ON IT. I HAVE READ THE MEMORANDUM WHICH WAS
28 SUBMITTED ON THE MATTER OF STRIKING THE SPECIAL CIRCUMSTANCES

1 OF THE ROBBERY.

2 AS I SAID, I VERY RELUCTANTLY GRANTED THE MOTION
3 ON THE FINANCIAL GAIN. AND I WILL DENY THIS MOTION WITHOUT
4 ANY FURTHER ARGUMENT IN CONNECTION WITH IT.

5 MR. BARENS, YOUR THIRD MOTION WAS WHAT?

6 MR. BARENS: WELL, YOUR HONOR, OUR THIRD MOTION IS
7 AN 1101(B) MOTION WHICH, PURSUANT TO THE CRAIG CASE, WE
8 ARE REQUESTING YOUR HONOR TO ORDER THE PEOPLE TO STATE
9 WHAT EVIDENCE THEY PLAN TO PRESENT AT TRIAL AND THE PURPOSE
10 THEREOF.

11 THE PROBLEM WE HAVE GOT, YOUR HONOR, IS OUR
12 OFFICE HAS BECOME THE GREAT DUMPING GROUND OF A VARIETY OF
13 PROFFERED MATERIALS, WHICH MAY OR MAY NOT BE RECEIVED IN
14 EVIDENCE IN A COMPLEX CASE. IT IS VERY DIFFICULT FOR US TO
15 DISCERN WHAT ALL THIS -- WHAT THE RELEVANCY OF THIS GREAT
16 BODY OF MATERIAL IS.

17 IN THE INTEREST OF THE DEFENDANT OBTAINING A
18 FAIR TRIAL, CRAIG HAS GIVEN THE COURT DISCRETION TO REQUIRE
19 THE PEOPLE TO DISCLOSE WHAT SIMILAR ACTS, PRIOR AND SUBSEQUENT
20 TO THE ALLEGED OFFENSE, IT INTENDS TO INTRODUCE IN THE GUILT
21 PHASE AND THE PURPOSE FOR WHICH THE EVIDENCE IS GOING TO BE
22 OFFERED SO AS TO ENABLE THE DEFENSE TO PROPERLY PREPARE.

23 IT IS INTERESTING THAT MR. WAPNER RELIES THIS
24 MORNING FOR CORPUS DELICTI ON THE FACT THAT THEY HAVE NOT
25 STARTED TO PUT THEIR EVIDENCE ON YET. WELL, WE BELIEVE THEY
26 HAVE STARTED PUTTING EVIDENCE ON AT THE PRELIMINARY HEARING
27 AND THEY HAVE BEEN SENDING MATERIALS TO OUR OFFICES WHICH
28 WE PRESUME MUST HAVE SOME EVIDENTIARY CONNOTATION, AT LEAST

1 TO THE PEOPLE.

2 WE WOULD LIKE TO AVAIL THIS DEFENDANT OF THE
3 PROTECTION AND ORIENTATION THAT THE CRAIG CASE PROVIDES.
4 I BELIEVE THE CODE SECTION IS HERE FOR A REASON.

5 THE CRAIG CASE CERTAINLY WAS ADDRESSING THE
6 EXACT SITUATION.

7 THE COURT: GIVE ME THAT CITATION AGAIN, PLEASE?

8 MR. BARENS: CRAIG, YOUR HONOR, IS 54 CAL.APP.3D AT
9 416 ET.SEQ.

10 THE COURT: THE NAME OF THE CASE IS PEOPLE V. CRAIG?

11 MR. BARENS: YES, C-R-A-I-G. THE IMPORTANT PHRASE
12 USED IN CRAIG IS THE PHRASE, "INTERESTS OF JUSTICE."

13 THE INTERESTS OF JUSTICE ARE ONLY SERVED IN
14 MAKING THE ORDER REQUESTED BY THE DEFENDANTS, YOUR HONOR, SO
15 THAT WE CAN HAVE PROPER ORIENTATION AS TO WHAT THE PEOPLE ARE
16 DOING AND INTENDING TO DO.

17 THE COURT: AREN'T THEY ALMOST IN GREAT DETAIL TELLING
18 YOU EXACTLY WHAT IT IS THAT HE HAD WHICH THEY PUT ON IN THE
19 PITTMAN CASE AND ALL OF THE EVIDENCE IN THAT PARTICULAR CASE
20 WAS ALSO APPLICABLE TO HIM. I AM JUST ASKING YOU THAT.
21 I DON'T KNOW WHAT ELSE THEY HAVE.

22 MR. BARENS: YOUR HONOR, I DON'T WANT TO BE PREJUDICED
23 BY THAT BLOODY PITTMAN TRIAL, THAT ENDED IN A HUNG JURY.
24 YOUR HONOR, I AM HERE WITH THIS DEFENDANT WHO IS HERE ON
25 TRIAL BY HIMSELF.

26 THE COURT: I AM NOT ASKING YOU TO BE BOUND BY ANYTHING
27 THAT HAPPENED IN THE PITTMAN CASE. BUT THE EVIDENCE WHICH
28 HAS BEEN ADDUCED IN THAT CASE IS GOING TO BE ADDUCED IN THIS

1 CASE AGAINST YOUR CLIENT, AS I UNDERSTAND IT. IS THAT CORRECT?

2 MR. WAPNER: THAT IS SUBSTANTIALLY CORRECT.

3 THE COURT: ALL RIGHT. THERE WILL BE SOMETHING IN
4 ADDITION, MAYBE?

5 MR. WAPNER: WELL, THERE OBVIOUSLY WERE CERTAIN
6 STATEMENTS OF WHICH MR. BARENS IS WELL AWARE, BECAUSE OF HIS
7 PREVIOUS MOTION, THAT CAN COME IN AGAINST MR. HUNT, THAT --

8 THE COURT: DIDN'T COME IN AGAINST PITTMAN?

9 MR. WAPNER: DIDN'T COME IN AGAINST MR. PITTMAN. BUT
10 OTHERWISE, THE EVIDENCE AGAINST MR. PITTMAN AND MR. HUNT
11 IS SUBSTANTIALLY THE SAME.

12 THE COURT: WHAT IS IT THAT YOU WANT?

13 MR. BARENS: YOUR HONOR, WE EXPRESSED IN OUR MOTION
14 WHAT WE WANT, THAT THEY STATE THE EVIDENCE THEY PLAN TO
15 INTRODUCE AND THE PURPOSE OF THAT EVIDENCE.

16 IF YOU ARE TELLING ME THAT ALL OF THIS STUFF IS
17 THERE, THIS TESTIMONY IN PITTMAN WHERE THEY ARE TALKING ABOUT
18 HIM THROWING ACID AT PEOPLE AND RUNNING AROUND WITH MACHINE
19 GUNS AND CAROUSING AROUND LIKE THAT, YOUR HONOR IS ASSURING
20 ME THAT THAT WON'T BE PART OF OUR TRIAL?

21 THE COURT: THAT'S RIGHT. THAT'S RIGHT.

22 MR. BARENS: I AM SURE MR. WAPNER WILL JOIN WITH THAT.

23 THE COURT: IT WON'T BE.

24 MR. WAPNER: IF THAT WERE THE GENERAL STATEMENT --
25 I MEAN, I DON'T KNOW THAT -- WAS THAT A KIND OF GENERAL
26 REFERENCE TO SOME THINGS THAT MIGHT COME IN? I WON'T SAY
27 I WILL JOIN IN WITH SOMETHING WHEN I DON'T KNOW WHAT COUNSEL
28 IS REFERRING TO.

1 THE COURT: SPECIFICALLY, THE THINGS YOU MENTIONED, THE
2 THROWING OF ACID AND SO FORTH AND SO ON?

3 MR. WAPNER: IF THEY ARE STATEMENTS OF MR. HUNT THAT
4 MR. HUNT MADE, THEY COULDN'T COME UNDER 1101(B) OF THE
5 EVIDENCE CODE. SPECIFICALLY, 1101(B) TALKS ABOUT PRIOR ACTS
6 OF CONDUCT GOING TO SHOW CONDUCT ON THIS OCCASION.

7 TYPICALLY, M.O. EVIDENCE, FOR EXAMPLE, IN A
8 ROBBERY OR SOMETHING LIKE THAT. THERE IS NO M.O. TYPE OF
9 EVIDENCE THAT IS ANTICIPATED BEING USED IN THIS CASE.

10 IF THIS MOTION IS ADDRESSED -- AND I COULDN'T
11 TELL FROM READING IT -- TO WHETHER OR NOT THE PEOPLE INTEND
12 TO INTRODUCE EVIDENCE OF THE MURDER OF MR. ESLAMINIA IN
13 THEIR CASE IN CHIEF, WE DO NOT. OTHER THAN THAT --

14 MR. BARENS: THANK YOU. WE ARE SATISFIED.

15 THE COURT: ALL RIGHT. THAT'S ALL. THAT MOTION WILL
16 BE DENIED OR IS IT WITHDRAWN?

17 MR. BARENS: WE'LL WITHDRAW IT AND ONLY ASK YOUR HONOR
18 TO RECOLLECT MR. WAPNER'S STATEMENTS.

19 THE COURT: I WILL. I WILL. ALL RIGHT. WE HAVE A
20 TRIAL DATE, HAVE WE NOT?

21 MR. CHIER: YOUR HONOR --

22 THE COURT: MR. CHIER, JUST LET ME REMIND YOU, WILL
23 YOU PLEASE, THAT I HAVE BEEN COOPERATING WITH YOU IN EVERY
24 RESPECT ON CONTINUING THESE MATTERS. UNFORTUNATELY ALSO,
25 I WOULD RATHER NOT HAVE CONTINUED THE CASE THE LAST TIME.
26 BUT THERE WAS THE ILL HEALTH OF YOUR MOTHER. I HOPED SHE
27 WOULD BE IN PRISTINE HEALTH.

28 AND I HAVE A NOTE HERE FROM MY REPORTER THAT SHE

1 CHECKED HER NOTES ON THE CONTINUANCE WHICH WAS MADE ON
2 SEPTEMBER 22, 1986. AND AT THAT TIME I INFORMED COUNSEL
3 THAT THERE WOULD BE NO FURTHER CONTINUANCES IN THE MATTER.
4 THAT WAS ROSEMARIE. THAT IS MY ATTITUDE.

5 IT WAS MY ATTITUDE THEN AND IT IS MY ATTITUDE NOW.
6 IF YOU ARE SEEKING TO HAVE THE MATTER CONTINUED, I WON'T
7 GRANT YOUR MOTION.

8 MR. CHIER: PARDON ME?

9 THE COURT: IF YOU ARE SEEKING TO HAVE THE MATTER
10 FURTHER CONTINUED, I WON'T GRANT YOUR MOTION. THE MATTER
11 HAS BEEN PENDING LONG, LONG ENOUGH.

12 MR. CHIER: YOUR HONOR, I AM NOT ABLE AT THIS JUNCTURE
13 TO FUNCTION AS EFFECTIVE COUNSEL.

14 THE COURT: WELL, I AM TERRIBLY SORRY. YOU HAVE BEEN
15 EXTREMELY ABLE COUNSEL AND FUNCTIONING --

16 MR. CHIER: BUT THIS IS A CAPITAL CASE. MR. HUNT IS
17 ENTITLED TO EFFECTIVE COUNSEL.

18 THE COURT: LOOK AT THE VERY DETAILED MEMORANDUM THAT
19 YOU SIGNED. I READ IT ALL. IT SEEMS TO ME THAT YOU ARE
20 FUNCTIONING BEAUTIFULLY, IN PARTICULAR AS TO THIS MATTER --

21 MR. CHIER: I AM FUNCTIONING ABOUT ONE-THIRD OF MY
22 CAPACITY AT THIS TIME.

23 THE COURT: THIS DOESN'T INDICATE THAT YOU ARE
24 FUNCTIONING AT ONE-THIRD OF YOUR CAPACITY.

25 MR. CHIER: MOST OF THE WORK WAS DONE IN DRAFT BEFORE
26 THIS HAPPENED. I WOULD LIKE TO, FOR THE RECORD, IN CAMERA,
27 RECITE SOME OF THE DETAILS OF MY MOTHER'S PASSING.

28 I WISH I WERE NOT HERE USING MY MOTHER'S PASSING

1 AS A GROUNDS FOR CONTINUANCE. BUT IF I COULD MAKE CLEAR
2 TO YOUR HONOR --

3 THE COURT: I GRANTED A CONTINUANCE BECAUSE OF HER
4 ILLNESS AND BECAUSE OF THE FACT THAT SHE WAS APPROACHING
5 DEATH AND EVERYTHING ELSE. THAT IS OVER. IT HAS BEEN OVER
6 FOR SOME TIME.

7 MR. CHIER: IT HAS BEEN OVER TEN DAYS.

8 THE COURT: IT HAS BEEN OVER FOR SOME TIME. THIS MATTER
9 IS ON CALENDAR FOR TRIAL ON MONDAY, NEXT MONDAY. AND I AM
10 NOT GOING TO CONTINUE IT -- GRANT ANY FURTHER CONTINUANCES.

11 MR. CHIER: ONE OF MY INVESTIGATORS RESIGNED BECAUSE
12 OF CONFLICT, YOUR HONOR, DURING THIS SIEGE WITH MY MOTHER
13 AND --

14 THE COURT: MR. CHIER, I WON'T CONTINUE THE MATTER
15 ANY FURTHER.

16 MR. CHIER: MR. HUNT THEN IS TALKING ABOUT REPLACING
17 ME WITH COUNSEL THAT WOULD BE MORE EFFECTIVE, YOUR HONOR.

18 THE COURT: THERE WILL BE NO -- I WILL NOT GRANT ANY
19 MOTION TO CONTINUE THE MATTER ANY FURTHER. YOU ARE SEEKING
20 ANOTHER MONTH? IS THAT WHAT YOU ARE SEEKING?

21 MR. CHIER: I AM SEEKING WHATEVER AMOUNT OF TIME THE
22 COURT WILL ALLOW ME TO RECOVER FROM A RATHER --

23 THE COURT: WELL, I THINK YOU HAVE DONE A VERY FINE JOB
24 OF RECOVERING, BY EVIDENCE OF THE FACT OF THESE MOTIONS. THEY
25 ARE EXTREMELY WELL-DRAFTED AND RESEARCHED.

26 MR. CHIER: I HAVE BEEN BACK TO THE OFFICE AND ACTUALLY
27 ABLE TO WORK EVEN HALF DAYS, ONLY TWO DAYS, YOUR HONOR. I
28 AM ASKING FOR TWO WEEKS ADDITIONAL, IF YOUR HONOR WOULD --

1 THE COURT: DO YOU AGREE TO IT?

2 MR. WAPNER: WELL, THIS IS MY ONLY RELUCTANCE. I
3 TALKED TO COUNSEL AND I TOLD HIM THAT I WOULD ACCEDE TO
4 WHAT HE WAS TALKING ABOUT --

5 THE COURT: WELL, YOU ARE ACCEDING TO IT? I THOUGHT
6 THAT YOU INSISTED UPON GOING AHEAD WITH THE TRIAL IN THIS CASE.

7 MR. WAPNER: WHAT I AM CONCERNED ABOUT IS THAT EVERY
8 TIME WE PUT IT OVER, IT IS A FIRM DATE. WE GET TO THE DATE
9 AND THEN IT TURNS OUT NOT TO BE A FIRM DATE.

10 THE COURT: WELL, I PUT IT OVER THE LAST TIME ON
11 SEPTEMBER 22ND. IT WAS AGREED TO ON THAT PARTICULAR DATE,
12 THAT THERE WOULDN'T BE ANY FURTHER CONTINUANCES.

13 MR. WAPNER: IF WE ARE GOING TO GO TO TRIAL WITHIN
14 THE NEXT TWO WEEKS OF THE 20TH, THAT'S ALL RIGHT. THE ONLY
15 REASON I SAY THAT IS BECAUSE I TALKED TO THE JURY COMMISSIONER
16 AND WE WOULD HAVE A PROBLEM BY THE 20TH OF GETTING A FULL
17 COMPLEMENT OF JURORS. WE WOULDN'T BE ABLE TO GET THEM UNTIL
18 THE 27TH.

19 THE COURT: DO YOU WANT TO PUT IT OVER TWO ADDITIONAL
20 WEEKS, IS THAT RIGHT?

21 MR. WAPNER: YES.

22 THE COURT: ALL RIGHT. IS THAT WHAT YOU WANT, MR. CHIER?

23 MR. CHIER: TWO WEEKS WOULD BE ALL RIGHT. I WOULD LIKE
24 MORE THAN THAT. BUT IF TWO WEEKS IS WHAT I COULD GET, I
25 WILL TAKE WHAT I CAN GET.

26 THE COURT: YOU ARE GOING TO GET THE TWO WEEKS.

27 TRIAL IN THIS MATTER IS CONTINUED TO THE 3RD OF
28 NOVEMBER. IS THE 3RD OF NOVEMBER AGREEABLE TO YOU, MR. HUNT?

1 THE DEFENDANT: YES, IT IS, YOUR HONOR.

2 MR. WAPNER: YOUR HONOR, COULD WE PUT IT TO THE 4TH
3 BECAUSE THE 3RD, I HAVE TWO OTHER MATTERS THAT DAY. I WOULD
4 JUST AS SOON THAT IT BE THE 4TH.

5 MR. BARENS: THE 4TH IS AGREEABLE.

6 THE COURT: ALL RIGHT. IT WILL BE THE 4TH. THANK YOU
7 VERY MUCH.

8 (PROCEEDINGS CONCLUDED.)

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1 SANTA MONICA, CALIFORNIA, TUESDAY, NOVEMBER 4, 1986; 11 A.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 APPEARANCES:

4 THE DEFENDANT WITH COUNSEL, ARTHUR M. BARENS,
5 ESQ. AND RICHARD C. CHIER, ESQ.; FREDERICK N.
6 WAPNER, DEPUTY DISTRICT ATTORNEY OF LOS ANGELES
7 COUNTY, REPRESENTING THE PEOPLE OF THE STATE OF
8 CALIFORNIA.

9 (ROSEMARIE GOODBODY, OFFICIAL REPORTER.)

10
11 (WHEREUPON, THE FOLLOWING PROCEEDINGS
12 WERE HELD IN CHAMBERS WITHOUT THE PRESENCE
13 OF THE DEFENDANT:)

14 THE COURT: LET THE RECORD SHOW WE ARE PRESENTLY IN
15 CHAMBERS.

16 THE REPORTER FROM CHANNEL 7 MADE A REQUEST OF
17 ME AND I SAID I WOULD TAKE IT UP WITH COUNSEL. WHAT SHE WANTS
18 TO DO IS, AS BACKGROUND FOR THE CASE, IS TO LOOK AT THAT
19 EXHIBIT WHICH APPEARS RIGHT HERE AND THAT IS THAT SEVEN-PAGE
20 DOCUMENT. DO YOU REMEMBER -- OF COURSE, YOU DO.

21 MR. BARENS: YES, YOUR HONOR.

22 THE COURT: ALL RIGHT, I HAVE NO OBJECTION TO IT IF
23 YOU DON'T.

24 MR. CHIER: I HAVE A STRENUOUS OBJECTION.

25 MR. WAPNER: I CONCUR.

26 I JUST DON'T THINK WE SHOULD BE PUTTING OUR
27 EXHIBITS IN THE NEWSPAPER OR ON TELEVISION.

28 MR. CHIER: THERE IS A QUESTION AS TO WHETHER IT IS

1 EVEN ADMISSIBLE.

2 THE COURT: I KNOW.

3 MR. CHIER: I AM SORRY?

4 THE COURT: I WON'T DO ANYTHING AT ALL UNLESS I GET
5 YOUR APPROVAL.

6 MR. CHIER: I AM OBJECTING.

7 THE COURT: IF YOU DON'T WANT TO, I WILL TELL HER THAT
8 ALL COUNSEL HAVE AGREED IT WILL NOT BE MADE AVAILABLE.

9 ACTUALLY, IT WAS AN EXHIBIT IN THE OTHER CASE
10 AND A CLAIM MIGHT BE MADE THAT IT IS PART OF THE PUBLIC
11 RECORD.

12 MR. CHIER: WELL, I AM NOT GOING TO MAKE THAT CLAIM.
13 I DON'T THINK MR. WAPNER IS GOING TO EITHER.

14 MR. WAPNER: WELL, I AM NOT GOING TO MAKE THAT CLAIM.

15 IN FACT, MY UNDERSTANDING IS THAT MISS TUCKER,
16 WHO IS IN CHARGE OF THE SUPERIOR COURT EXHIBITS, DOES NOT
17 ALLOW ANYONE EXCEPT COUNSEL IN THE CASE TO VIEW THE EXHIBITS.

18 THE COURT: ALL RIGHT, I WILL TELL HER THAT IT CANNOT
19 BE MADE AVAILABLE TO HER, ALL RIGHT?

20 MR. BARENS: RICHARD, DO YOU WANT TO BROACH THE OTHER
21 ISSUE?

22 MR. CHIER: WE HAVE HAD A SLIGHT PROBLEM THIS MORNING.

23 MR. BARENS: A MECHANICAL PROBLEM, YOUR HONOR.

24 MR. CHIER HAS A MECHANICAL PROBLEM HE WANTS TO ADDRESS.

25 THE COURT: WHAT IS YOUR MECHANICAL PROBLEM? YOUR CAR
26 IS NOT RUNNING PROPERLY?

27 MR. CHIER: NO.

28 I AM LIKE ON THE 56TH OR 57TH DAY OF 60 IN A

1 MATTER IN DEPARTMENT 100 IN A CASE WHERE THE CLIENT IS IN
2 CUSTODY. SHE HAS NEVER WAIVED TIME AND --

3 MR. BARENS: I BELIEVE IT IS A SIX-DEFENDANT CASE.

4 MR. CHIER: IT IS A SIX-DEFENDANT CUSTODY CASE.

5 MR. BARENS: AND ALL SIX ARE IN CUSTODY.

6 MR. CHIER: AND JUDGE MUNOZ SAID, "THIS IS ELECTION
7 DAY AND I AM NOT GOING TO CONTINUE IT."

8 IT IS A THOUSAND-POUND COCAINE CASE WITH A BUNCH
9 OF COLUMBIANS IN CUSTODY AND I HAVE BEEN RETAINED ON THE CASE
10 SO I AM PRIVATELY RETAINED. I HAVE ALREADY SPENT THE MONEY.
11 WE BOUGHT A HOUSE. I CAN'T EVEN GIVE THE MONEY BACK EVEN
12 IF I WANTED TO.

13 MR. BARENS: MR. CHIER'S WIFE IS NOW PREGNANT, YOUR
14 HONOR.

15 THE COURT: MR. CHIER, YOU KNEW THAT YOU HAD THIS CASE.
16 YOU SHOULD NOT HAVE TAKEN ANY OTHER CASES WHICH WOULD POSSIBLY
17 INTERFERE WITH THIS CASE.

18 MR. CHIER: I DID NOT TAKE IT --

19 THE COURT: IF YOU ARE LOOKING FOR ME TO CONTINUE THE
20 CASE SO YOU CAN HANDLE THE OTHER ONE, THE ANSWER IS NO.

21 MR. CHIER: JUDGE, I HAVE TO MAKE A LIVING.

22 THE COURT: THIS CASE IS GOING AHEAD, COME HELL OR HIGH
23 WATER. THIS IS A DEATH PENALTY CASE AND IT HAS PRIORITY OVER
24 EVERY OTHER CASE.

25 MR. CHIER: YOUR HONOR, THE PRIORITIES ARE SET FORTH
26 IN PENAL CODE SECTION 1048 AND A CUSTODY CASE HAS PRIORITY
27 OVER THIS CASE.

28 THE COURT: NO, IT HAS NOT.

1 MR. CHIER: CAN WE TAKE A LOOK AT 1048, YOUR HONOR?

2 THE COURT: I AM NOT GOING TO LOOK AT IT. I AM TELLING
3 YOU THIS CASE HAS PRIORITY. IT HAS BEEN CONTINUED ANY NUMBER
4 OF TIMES BECAUSE OF YOU.

5 MR. CHIER: BECAUSE OF ME?

6 THE COURT: BECAUSE OF YOU.

7 MR. CHIER: BECAUSE MY MOTHER DIED?

8 THE COURT: EVEN BEFORE SHE DIED, YOU WANTED CONTINUANCES
9 AND I HAVE BEEN GIVING YOU CONTINUANCE AFTER CONTINUANCE.

10 THERE WILL BE NO FURTHER CONTINUANCE. WHY DID
11 YOU TRY ANOTHER CASE WHEN YOU WERE NOT SUPPOSED TO TRY THAT
12 CASE BECAUSE YOU KNOW THIS CASE WAS GOING TO TRIAL?

13 MR. CHIER: I HAVE TO MAKE A LIVING, JUDGE.

14 THE COURT: I DON'T GIVE A DAMN ABOUT THAT. THIS CASE
15 HAS TO GO FORWARD.

16 MR. CHIER: THERE IS ALSO A MOTION TO CONTINUE ON THE
17 BASIS OF THE PUBLICITY.

18 THE COURT: WELL, MAKE YOUR MOTION THEN.

19 MR. CHIER: PARDON ME, YOUR HONOR?

20 THE COURT: MAKE YOUR MOTION.

21 MR. CHIER: DO YOU WANT ME TO MAKE IT?

22 THE COURT: WHY DON'T YOU SAY IT NOW WHILE WE ARE HERE?
23 THERE IS NO SENSE BELABORING IT OUT IN THE COURTROOM.

24 MR. BARENS: OUR CONCERNS ON THIS, YOUR HONOR, REGARDS
25 THE TIMING OF THE LOS ANGELES TIMES ARTICLE THIS PAST SUNDAY
26 WHICH WE FEEL WILL SO INHERENTLY CORRUPT ANY PROSPECTIVE
27 JURY PANEL.

28 IF YOU WOULD HEAR ME ON THIS, YOUR HONOR. WE

1 ARE SIMPLY SEEKING, I FELT, TWO TO THREE WEEKS TO ALLOW A
2 PANEL TO BE SELECTED THAT WOULDN'T HAVE READ THIS ON A SUNDAY
3 MORNING.

4 THE LOS ANGELES TIMES CIRCULATION, I UNDERSTAND,
5 IS 1.5 MILLION PEOPLE IN SOUTHERN CALIFORNIA.

6 MR. CHIER: ON A SUNDAY.

7 MR. BARENS: ON SUNDAYS.

8 AND THE ARTICLE IS DAMNING IN MANY RESPECTS. THERE
9 ARE TWO PARTICULAR STATEMENTS THAT THE REPORTER MAKES THAT
10 ARE BOTH UNTRUE AND MISLEADING. THEY ARE NOT ATTRIBUTED AS
11 QUOTES TO ANYBODY. THEY ARE JUST SAYING THAT BECAUSE NO
12 AFFIRMATIVE DEFENSE -- I BELIEVE IN MY OWN MIND THAT BECAUSE
13 NO AFFIRMATIVE DEFENSE WAS PUT ON AT THE PRELIMINARY HEARING,
14 I BELIEVE THE TIMES FELT THEY HAD LICENSE TO SAY THAT THE
15 DEFENSE DOESN'T DENY THAT HUNT INTENDED OR WANTED -- I FORGET
16 THE EXACT WORDS THEY USED -- TO KILL MR. LEVIN.

17 THEY FURTHER GO ON TO SAY THAT THE DEFENSE DOESN'T
18 DENY THAT THE SEVEN PAGES ARE IN THE HANDWRITING OF MR. HUNT
19 AND THAT THERE IS, I BELIEVE, A FINGERPRINT OF HIS.

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1 THE COURT: WEREN'T YOU INTERVIEWED ON THIS THING?
2 DIDN'T YOU MAKE STATEMENTS TO THEM?

3 MR. BARENS: NOT ON THOSE SUBJECTS, YOUR HONOR.

4 THE COURT: WERE YOU INTERVIEWED BY THE PRESS?

5 MR. BARENS: ABSOLUTELY, YOUR HONOR.

6 THE COURT: IN CONNECTION WITH THIS ARTICLE?

7 MR. BARENS: YES.

8 THE COURT: AND YOU MADE CERTAIN STATEMENTS TO THEM,
9 DIDN'T YOU?

10 MR. BARENS: I DID MAKE CERTAIN STATEMENTS, YES, I DID.

11 THE COURT: DID YOU TELL THEM WHAT YOUR DEFENSE WAS
12 GOING TO BE?

13 MR. BARENS: NO, SIR.

14 THE COURT: YOU DIDN'T SAY A WORD ABOUT IT?

15 MR. BARENS: OTHER THAN TO SAY HE WAS NOT GUILTY AND THAT
16 THERE WOULD BE A DEFENSE. THERE WAS CERTAINLY NO PROOF THAT
17 MR. LEVIN WAS DEAD AND THAT STATEMENT I MADE AND IT SHOWS
18 THAT IN THE ARTICLE.

19 MR. CHIER: CAN I ADD SOMETHING BEFORE YOU HEAR FROM
20 MR. WAPNER?

21 THE COURT: GO AHEAD.

22 MR. CHIER: THE REAL EVIL IN THIS ARTICLE, AS I SEE
23 IT, JUDGE, IS THAT COUNSEL IN THIS CASE HAVE BEEN WORKING
24 VERY CLOSELY TO TRY TO MAKE SURE THAT THE GUILT PHASE HERE
25 IS PUT ON WITHOUT REFERENCE OR ADVERSION TO THE ESLAMINIA
26 CASE. MR. WAPNER HAS BEEN REALLY COOPERATIVE AND WE HAVE
27 ATTEMPTED TO COOPERATE IN THAT RESPECT BECAUSE OF THE INHERENT
28 DANGER AND THE POTENTIAL REVERSIBLE ERROR OF IT.

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1 THIS ARTICLE, COMING AS IT DOES ON THE EVE OF
2 THE TRIAL AND IN A PAPER WHICH IS THE MOST WIDELY READ PAPER
3 PROBABLY IN THE UNITED STATES, THE CONCENTRATION OF ITS READERS
4 BEING HERE IN THE WESTERN AREA, MAKES IT VIRTUALLY IMPOSSIBLE
5 TO ASSURE THAT WE ARE GOING TO GET AN UNTAINTED JURY IN THIS
6 CASE, PARTICULARLY WHEN A RATHER LARGE CALL, I AM SURE, MUST
7 HAVE GONE OUT FOR JURORS. NOW, JURORS WHO HAVING BEEN CALLED
8 FOR JURY DUTY WOULD HAVE THEIR ANTENNAE UP, PARTICULARLY
9 LOOKING AROUND FOR ANY KIND OF CLUE AS TO WHAT THEY MIGHT
10 BE DOING AND HERE IT IS, LAID OUT FOR THEM IN AN ARTICLE
11 CONTAINING, YOUR HONOR, EVIDENCE WHICH IS NOT EVEN NECESSARILY
12 ADMISSIBLE.

13 THE COURT: THEY ARE QUOTATIONS OF YOUR ASSOCIATE RIGHT
14 HERE. I WILL READ IT TO YOU IF YOU WANT ME TO.

15 IT SAYS:

16 "THE DEFENSE POSITION IS THAT LEVIN" --
17 WAIT A MINUTE NOW -- "THE DEFENSE POSITION IS THAT
18 LEVIN, WHO AT THE TIME OF HIS DISAPPEARANCE WAS
19 FACING GRAND THEFT CHARGES FOR RECEIVING \$1 MILLION
20 IN STOLEN COMPUTER GOODS, SKIPPED TOWN BEFORE HUNT
21 COULD CARRY OUT ANY PLAN HE MIGHT HAVE CONCOCTED.

22 "'I'LL STIPULATE THAT JOE HUNT'S GOT
23 A BIG MOUTH,' SAYS BARENS.

24 "'HE'S NOT THE ALL-AMERICAN BOY NEXT
25 DOOR. I'LL STIPULATE TO THAT. BUT THE ISSUE BEFORE
26 THE JURY IS, DID HE KILL RON LEVIN?'

27 "BARENS INSISTS THAT THERE IS NO
28 EVIDENCE AGAINST HUNT OTHER THAN WHAT HE ALLEGEDLY

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1 TOLD HIS ASSOCIATES AND WROTE ON HIS LEGAL PADS,
2 AND THAT IN THE ABSENCE OF CORROBORATION 'MY MAN
3 WILL WALK.'"

4 THE COURT: THAT GOES ON FURTHER.

5 WELL, YOU ARE TRYING YOUR CASE IN THE NEWSPAPER
6 BEFORE THEY START.

7 MR. CHIER: NO, NO, YOUR HONOR. THAT IS JUST GENERAL
8 TALK.

9 THE COURT: I AM GOING TO ADMONISH ALL OF YOU NOW THAT
10 THERE WILL BE NO -- OUTSIDE OF THE COURTROOM THERE WILL BE
11 NO TRIAL OF THIS CASE IN THE NEWSPAPERS OR ANY STATEMENTS
12 MADE BY COUNSEL OUTSIDE OF THIS COURTROOM.

13 I THINK IT IS A JOKE, AND I HAVE SEEN IT IN ANY
14 NUMBER OF CASES WHERE IT HAS BEEN HIGHLY PREJUDICIAL, THE
15 DELOREAN CASE AND IN OTHER CASES WHERE THE CASES ARE TRIED
16 ON THE --

17 MR. BARENS: THE DOORSTEP.

18 THE COURT: -- ON THE DOORSTEP OF THE COURTHOUSE. I
19 DON'T WANT THAT TO HAPPEN IN THIS CASE.

20 MR. BARENS: YOUR HONOR, TO REDIRECT YOUR ATTENTION
21 FOR A MOMENT, YOUR HONOR, WHAT I BELIEVE MR. CHIER IS TRYING
22 TO FOCUS YOUR HONOR ON ARE THE COMMENTS IN THIS ARTICLE
23 CONCERNING THE ESLAMINIA CASE.

24 THE COURT: I AM GOING TO ASK THE JURORS, ALL OF
25 THEM AND FIND OUT WHICH ONES HAVE READ THIS PARTICULAR
26 ARTICLE AND I WILL ASK THEM WHETHER OR NOT THEY FORMED ANY
27 KIND OF AN OPINION.

28 IF THEY HAVE FORMED AN OPINION, THEN I WILL FIND

1 OUT WHAT THAT OPINION IS AND IF IT IS AN OPINION WHICH WILL
2 CARRY OVER IN THEIR DELIBERATIONS ON THE CASE, THEN THEY ARE
3 NOT GOING TO SIT ON THE CASE.

4 MR. CHIER: WELL, JUDGE, YOU KNOW --

5 THE COURT: I WILL ADMONISH THEM AS STRONGLY AS I CAN
6 THAT ANYTHING THEY READ IN THE NEWSPAPERS EVEN BEFORE THE
7 TRIAL AND DURING THE TRIAL, THEY ARE NOT UNDER ANY
8 CIRCUMSTANCES, FIRST OF ALL, TO READ IT OR TO LISTEN TO ANYTHING
9 THAT MIGHT BE COMMENTED ON FROM ANY KIND OF MEDIA. THAT IS
10 THE BEST AND MOST I COULD DO AND I WILL DO IT.

11 MR. CHIER: WELL, JUDGE --

12 THE COURT: I WILL SEE THAT WE GET AN IMPARTIAL JURY
13 IN THIS CASE.

14 MR. CHIER: JUDGE, WITH ALL DUE RESPECT TO YOUR HONOR,
15 THAT IS ABOUT AS PROPHYLACTIC AS ASKING A JUROR WHETHER THERE
16 IS ANY REASON HE COULDN'T BE A FAIR JUROR. IN ALL OF MY
17 YEARS IN PRACTICE, I HAVE NEVER HEARD A JUROR SAY "NO, I DON'T
18 THINK I COULD BE FAIR".

19 THE COURT: IF THEY ARE GOING TO TELL THE TRUTH, THEY
20 CAN SAY THAT.

21 MR. CHIER: THEY DON'T ALWAYS TELL THE TRUTH.

22 THE COURT: WHAT DO YOU WANT TO DO, TRANSFER THIS CASE
23 TO ANOTHER COUNTY?

24 MR. CHIER: I THINK A LITTLE TIME SHOULD BE ALLOWED.

25 THE COURT: THE MOTION FOR A CONTINUANCE WILL BE DENIED
26 AND THE TRIAL WILL STAY HERE.

27 MR. CHIER: MR. HUNT IS ALLOWED TWO ATTORNEYS.

28 THE COURT: YOU WILL BE HERE.

1 MR. CHIER: I CANNOT BE IN TWO CASES AT THE SAME TIME.

2 THE COURT: YOU WILL BE HERE BECAUSE I AM ORDERING YOU
3 TO BE HERE. I WILL TELL JUDGE MUNOZ.

4 MR. CHIER: WELL, I AM LIKE A PAWN.

5 THE COURT: I ORDERED YOU TO BE READY ON THIS CASE,
6 TO BE READY TO TRY THIS CASE AND I WON'T COUNTENANCE ANY
7 FURTHER CONTINUANCES BECAUSE YOU UNDERTOOK AN APPOINTMENT
8 WHICH YOU HAD NO BUSINESS IN DOING.

9 MR. CHIER: I BEG TO DIFFER WITH YOUR HONOR, WHETHER
10 I HAD ANY BUSINESS DOING IT. THIS IS NOT ENGINEERED.

11 THE COURT: I DON'T CARE HOW MANY CASES OR WHAT
12 EMPLOYMENT YOU HAVE. I DON'T CARE IF YOU MAKE A MILLION
13 DOLLARS AND RECEIVE RETAINERS, BUT IT CANNOT INTERFERE WITH
14 THE TRIAL OF THIS CASE, I AM TELLING YOU THAT RIGHT NOW.

15 MR. CHIER: I THINK YOU HAD BETTER TALK TO JUDGE MUNOZ
16 BECAUSE HE HAS DIFFERENT IDEAS.

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1 THE COURT: I WILL TALK TO JUDGE MUNOZ AND I WILL TELL
2 HIM EXACTLY WHAT I TOLD YOU. YOU KNEW THIS CASE HAD TO GO
3 TO TRIAL. IT IS A DEATH PENALTY CASE. IT HAS BEEN CONTINUED
4 BECAUSE OF YOUR INSISTENCE ANY NUMBER OF TIMES AND I WON'T
5 COUNTENANCE ANY MORE.

6 MR. WAPNER: YOUR HONOR, I REALIZE THAT YOU NEED TO
7 TALK TO JUDGE MUNOZ AND WHAT I WOULD SUGGEST IS, I NEED TO
8 CALL CHARLES HORAN, WHO IS THE DEPUTY DISTRICT ATTORNEY WHO
9 IS PROSECUTING THE CASE THAT MR. CHIER IS INVOLVED WITH
10 DOWNTOWN, SO IF I MIGHT HAVE AN OPPORTUNITY TO DO THAT, CAN
11 WE RECONVENE HERE IN ABOUT FIVE MINUTES?

12 THE COURT: SURELY.

13 MR. WAPNER: ALL RIGHT, THANK YOU.

14 THE COURT: ASK HIM TO CONTINUE THE CASE THEN.

15 MR. WAPNER: THERE ARE FIVE OTHER DEFENDANTS AND FIVE
16 OTHER LAWYERS. I AM NOT GOING TO TELL MR. HORAN HOW TO TRY
17 HIS CASE ANY MORE THAN HE WANTS TO TELL ME HOW TO TRY MINE.

18 I WANT TO FIND OUT WHAT THE SITUATION IS AND SEE
19 IF I CAN HAVE SOME MORE INFORMATION.

20 THE COURT: I DON'T CARE WHAT YOU FIND OUT, FRED. THIS
21 CASE IS GOING TO TRIAL.

22 MR. WAPNER: WELL, WHY DON'T YOU TALK TO JUDGE MUNOZ?

23 THE COURT: YOU MAKE UP YOUR MIND TO DO THAT.

24 MR. WAPNER: WHY DON'T YOU TALK TO JUDGE MUNOZ?

25 THE COURT: I WILL TALK TO JUDGE MUNOZ IN THE MEANTIME.

26 THEN I WILL TAKE UP THE MOTIONS YOU GENTLEMEN
27 HAVE MADE OUTSIDE.

28 MR. BARENS: WE DO HAVE SOME MOTIONS. THANK YOU,

1 YOUR HONOR.

2 THE COURT: ALL RIGHT, I WILL TALK TO JUDGE MUNOZ.

3 WHAT IS THE NAME OF THAT CASE BEFORE JUDGE MUNOZ?

4 MR. CHIER: PEOPLE VERSUS CASTRILLON, C-A-S-T-R-I-L-L-O-N,
5 AND FIVE OTHERS.

6 THE COURT: ALL RIGHT. WHAT IS IT, A DRUG CASE?

7 MR. CHIER: IT IS A CASE INVOLVING A THOUSAND POUNDS
8 OF COCAINE, MORE OR LESS.

9 THE COURT: ONE OR A THOUSAND, IT DOESN'T MAKE ANY
10 DIFFERENCE, IT IS A DRUG CASE, ISN'T IT?

11 MR. CHIER: YES, IT IS A MAJOR DRUG CASE, YOUR HONOR.

12 THE COURT: ALL RIGHT, I WILL CALL HIM.

13 (RECESS.)

14 (WHEREUPON, THE FOLLOWING PROCEEDINGS
15 WERE HELD IN OPEN COURT WITHIN THE
16 PRESENCE AND HEARING OF THE DEFENDANT:)

17 THE COURT: WILL COUNSEL APPROACH THE BENCH?

18 MR. WAPNER: MAY WE HAVE THE REPORTER, PLEASE?

19 THE COURT: YES.

20 (WHEREUPON, THE FOLLOWING PROCEEDINGS
21 WERE HELD AT THE BENCH:)

22 THE COURT: I CALLED JUDGE MUNOZ AND HE AGREES THAT
23 THIS CASE HAS PRIORITY AND IT SHOULD PROCEED. HE WILL TAKE
24 CARE OF YOUR OTHER CASE AND CONTINUE THAT ONE.

25 MR. CHIER: I AM NOT ASKING FOR A CONTINUANCE, YOUR
26 HONOR.

27 THE COURT: I DON'T CARE IF YOU DO OR YOU DON'T. JUDGE
28 MUNOZ SAID THIS CASE SHOULD HAVE PRIORITY AND WE ARE

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1 PROCEEDING WITH THIS CASE FIRST.

2 MR. BARENS: THANK YOU, YOUR HONOR.

3 MR. WAPNER: MAY WE CLARIFY ONE THING WHILE WE ARE HERE
4 ABOUT SOMETHING THAT YOU SAID IN CHAMBERS AND THAT IS, AS
5 FAR AS TALKING TO THE PRESS, IS THAT AN ORDER THAT YOU MADE
6 THAT YOU DO NOT WANT US TO TALK TO THE PRESS?

7 THE COURT: I THINK IT IS HIGHLY DESIRABLE THAT THERE
8 BE NO FURTHER CONFERENCES WITH ANYBODY RELATING TO THE PRESS
9 EXCEPT ANYTHING THAT HAS BEEN REPORTED OR WILL BE REPORTED
10 FROM WHAT IS HEARD IN THIS COURTROOM ON THE RECORD.

11 MR. WAPNER: ALL RIGHT, THAT IS FINE.

12 THE COURT: THERE WILL BE NO EXTRA CURRICULAR
13 CONFERENCES WITH PEOPLE FROM THE PRESS UNLESS I AUTHORIZE
14 IT.

15 MR. WAPNER: ALL RIGHT.

16 MR. CHIER: YOUR HONOR, I WANT TO OBJECT TO THE
17 PRESENCE OF THE CAMERAS IN THIS COURTROOM ON THE GROUND THAT
18 IT CREATES A CIRCUS-LIKE ATMOSPHERE.

19 THE COURT: WELL, THEY WILL BE ALL TOGETHER WHEN WE START
20 THE TRIAL, WHEN WE START THE TRIAL WE WILL HAVE NO MORE THAN
21 ONE CAMERA IN THE COURTROOM.

22 MR. CHIER: I THINK IT HAS A PEJORATIVE IMPACT ON THE
23 JURY AND THE JURY SELECTION PROCESS.

24 THE COURT: IT HAS BEEN DONE TIME AND TIME AGAIN IN
25 EVERY KIND OF A CASE AND IT HAS BEEN UPHOLD AND ENCOURAGED
26 BY THE HIGH COURTS. ALL RIGHT, LET'S GET GOING.

27 (WHEREUPON, THE FOLLOWING PROCEEDINGS
28 WERE HELD IN OPEN COURT:)

1 THE COURT: PEOPLE VERSUS HUNT.

2 MR. BARENS: GOOD MORNING, ARTHUR BARENS APPEARING WITH
3 RICHARD CHIER, MY CO-COUNSEL, WITH MR. HUNT WHO IS PRESENT.

4 MR. CHIER: RICHARD CHIER, YOUR HONOR.

5 I AM NOT READY TO PROCEED.

6 THE COURT: WELL, YOU ARE GOING TO PROCEED. YOU DON'T
7 HAVE TO PUT IT ON THE RECORD AGAIN. YOU HAVE DONE IT ANY
8 NUMBER OF TIMES. LET'S PROCEED WITH THE CASE.

9 MR. BARENS: YOUR HONOR IS AWARE THE DEFENSE HAS LODGED
10 A VARIETY OF MOTIONS WITH THE COURT THIS MORNING WHICH I WOULD
11 LIKE TO PROCEED WITH, SAVE THE LIVESAY MOTION.

12 WE ONLY RECEIVED THE LIVESAY MATERIAL LATE
13 YESTERDAY AFTERNOON, A PORTION OF WHICH IS A BIT DIFFICULT
14 TO DISCERN BECAUSE OF THE COPYING PROCESS, WHICH MR. WAPNER
15 IS AWARE OF. I WOULD LIKE TO RESERVE THE LIVESAY MOTION FOR
16 A TIME SUBSEQUENT. I CAN'T IDENTIFY THAT TIME AT THIS
17 MOMENT.

18 THE COURT: DO YOU HAVE ANY REPLY TO THAT?

19 MR. WAPNER: ONLY THAT IT SEEMS TO ME WE SHOULD HEAR
20 THAT MOTION BEFORE WE START WITH JURY SELECTION BECAUSE IT
21 OBVIOUSLY BEARS ON WHETHER WE ARE GOING TO SELECT A JURY FOR
22 A DEATH PENALTY CASE OR NOT.

23 THE COURT: I WILL RESERVE MY DECISION ON THAT UNTIL
24 WE HEAR THE REST OF THESE MOTIONS.

25 MR. CHIER: IT MAY RENDER THE OTHER MOTIONS MOOT.

26 THE COURT: LET'S HEAR THE OTHER MOTIONS FIRST.

27 MR. BARENS: YOUR HONOR --

28 THE COURT: WHICH DO YOU WANT TO START WITH?

1 MR. BARENS: OF THE MOTIONS, YOUR HONOR, WE ARE CONCERNED
2 WITH THE MOTION TO QUASH THE PANEL OF PROSPECTIVE JURORS.

3 THE COURT: ALL RIGHT, I HAVE THAT BEFORE ME NOW.

4 MR. BARENS: WHICH I WILL REFER TO, TO WHAT IS GENERALLY
5 CALLED AN ARCE MOTION AT THIS POINT. BASICALLY, YOUR HONOR,
6 WE ARE CONCERNED THAT THE INFORMATION WE HAVE FROM A
7 TRANSCRIPT OF A HEARING INVOLVING MR. ARCE DURING THE MONTH
8 OF OCTOBER OF THIS YEAR --

9 THE COURT: YES, YOU MENTIONED SOMETHING IN YOUR MOTION
10 PAPERS, THAT IT HAS SOMETHING TO DO WITH SOME CASE OF PEOPLE
11 V. ERICKSON.

12 MR. BARENS: THAT IS CORRECT.

13 THE COURT: ALL I GOT IS JUST THIS TWO-PAGE DOCUMENT.

14 MR. CHIER: WE ARE GOING TO LODGE THIS PHONE BOOK WITH
15 YOUR HONOR. IT IS A VOLUME OF A HEARING CONDUCTED IN THE
16 SAN FERNANDO DISTRICT WHERE MR. ARCE TESTIFIED ON THE
17 23RD OF OCTOBER.

18 THE COURT: CAN'T YOU SUMMARIZE IT FOR ME?

19 MR. BARENS: YOUR HONOR, THE SALIENT PORTION OF THAT
20 DOCUMENT THAT I WILL ASK THE COURT TO TAKE JUDICIAL NOTICE
21 OF, AND THAT I AM GOING TO TRY TO ACCURATELY PORTRAY TO YOUR
22 HONOR, IS THAT IT APPEARS THE JURY SELECTION IN THIS
23 DISTRICT IS DONE BY A PROCESS BY WHICH PEOPLE ARE ONLY CALLED
24 THAT RESIDE WITHIN ONE TO TWO MILES OF THIS COURTHOUSE.

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1 THE COURT: PARDON ME. MY IMPRESSION WAS THAT IT WAS
2 WITHIN AN AREA OF 20 MILES.

3 MR. BARENS: NO, YOUR HONOR. OUR IMPRESSION IS THAT
4 IT IS WITHIN ONE TO TWO MILES, IN REALITY.

5 THE COURT: ALL RIGHT, GO AHEAD.

6 MR. WAPNER: BEFORE WE START TALKING ABOUT IMPRESSIONS,
7 IF WE ARE GOING TO HEAR A MOTION THAT IS BASED ALLEGEDLY ON
8 THE TESTIMONY OF MR. ARCE CONTAINED IN A DOCUMENT THAT APPEARS
9 TO CONTAIN SEVERAL HUNDRED PAGES, I DON'T THINK IT SHOULD
10 BE DONE ON ANYBODY'S SPECULATION ABOUT WHAT IS IN THERE OR
11 SPECULATION ABOUT WHERE THE JURORS COME FROM. WE SHOULD DECIDE
12 IT ON THE FACTS EITHER AS THEY ARE CONTAINED IN THAT DOCUMENT
13 OR BY CALLING THE JURY COMMISSIONER WHO IS HERE IN SANTA
14 MONICA OR BY CALLING MR. ARCE. BUT I DON'T WANT TO HEAR THIS
15 MOTION ON ANYBODY'S SPECULATION ABOUT WHERE THE JURORS COME
16 FROM. I CAN SPECULATE, TOO, AND MY UNDERSTANDING IS WE HAVE
17 A 20-MILE DRAW AND THAT IS MY UNDERSTANDING.

18 THE COURT: THAT IS MY IMPRESSION, TOO. BUT IMPRESSIONS,
19 AS I SAID, ARE NOT EVIDENCE IN THE CASE.

20 MR. BARENS: I AM WILLING TO SUBMIT IT, YOUR HONOR.

21 THE COURT: MAKE YOUR MOTION, WILL YOU, AND SUMMARIZE
22 IT ON ANYTHING YOU WANT.

23 MR. BARENS: I AM WILLING TO SUBMIT IT ON THE TRANSCRIPT
24 WE ARE LODGING WITH THE COURT.

25 THE COURT: TELL ME IN SUBSTANCE WHAT IT IS. GIVE ME
26 THE SALIENT POINTS, YOU SAID YOU WERE GOING TO DO THAT, DIDN'T
27 YOU?

28 MR. CHIER.: WELL, IT IS HARD. THESE ARE DEMOGRAPHICS.

1 THESE ARE PAGES AND PAGES OF DEMOGRAPHICS. WE WOULD LIKE
2 TO S.O.T. PLUS, TO SUBMIT THE TRANSCRIPT PLUS QUESTION MR.
3 ARCE WITH RESPECT TO MATTERS THAT ARE PECULIAR TO THIS
4 DISTRICT AS OPPOSED TO THE SAN FERNANDO COURT WHERE THAT CASE
5 WAS TRIED.

6 THE COURT: WELL, THAT CASE IS APPLICABLE TO SAN
7 FERNANDO, IS IT?

8 MR. CHIER: SOME PARTS ARE.

9 THE COURT: HOW MATERIAL IS THAT WITH RESPECT TO SANTA
10 MONICA?

11 MR. CHIER: THE DEMOGRAPHICS, THE COUNTYWIDE DEMOGRAPHICS.
12 THERE ARE NO QUESTIONS THAT I NOTED OR ANSWERS TO QUESTIONS
13 CONCERNING THE PROCEDURES IN THIS PARTICULAR DISTRICT BUT
14 THE DEMOGRAPHIC ASPECT OF IT IS WHAT IS IMPORTANT.

15 THE COURT: THAT CASE, DID THAT EVER GO UP ON APPEAL
16 IN ANY WAY? WAS ANY DETERMINATION MADE BY THE JUDGE AS TO
17 THE MOTION MADE IN THAT CASE?

18 MR. BARENS: THE HEARING WAS THE LAST WEEK OF OCTOBER,
19 YOUR HONOR, AND I DON'T BELIEVE THERE HAS BEEN ANY SUBSEQUENT
20 ACTION.

21 THE COURT: WHAT DECISION WAS MADE BY THE JUDGE IN THE
22 CASE?

23 MR. CHIER: I BELIEVE THERE HAS NOT BEEN A RULING ON
24 IT YET. IT IS PENDING RIGHT NOW.

25 AND THERE IS ALSO THE CASE OF PEOPLE V. WILLIAMS
26 WHICH IS PENDING IN THE CALIFORNIA SUPREME COURT WHICH, AS
27 YOUR HONOR KNOWS, FOUND THAT THERE WAS A CONSTITUTIONAL
28 INFIRMITY IN JURY SELECTION FOR THIS JURISDICTION.

1 THE COURT: YES, BUT I UNDERSTAND ALL OF THE JURORS
2 BEING SELECTED NOW ARE POST-WILLIAMS CASE, AREN'T THEY?
3 ISN'T THAT RIGHT?

4 MR. CHIER: WE CAN'T HAVE AN UNDERSTANDING LIKE THAT
5 WITHOUT MR. ARCE HERE TO CONFIRM THAT, YOUR HONOR.

6 THE COURT: ALL RIGHT.

7 MR. BARENS: IN ANY EVENT, YOUR HONOR, I AM GOING TO
8 DELAY FURTHER DISCUSSION OF THAT MOTION UNTIL YOUR HONOR
9 DECIDES IF THE DEFENSE CAN HAVE THE OPPORTUNITY TO EXAMINE
10 MR. ARCE ON THE SPECIFIC QUALIFICATIONS PROCESS AND SELECTION
11 PROCESS USED FOR JURORS IN SANTA MONICA. WE WOULD LIKE THE
12 OPPORTUNITY TO EXAMINE HIM IN THAT REGARD.

13 THE COURT: WHY DID YOU WAIT UNTIL NOW ON THE EVE OF
14 TRIAL? WHY DIDN'T YOU MAKE THOSE MOTIONS LONG BEFORE THIS?
15 WHY DO YOU DELAY IT UNTIL THE DATE OF TRIAL?

16 MR. CHIER: THE CODE SAYS TO MAKE THE MOTION BEFORE
17 THE PANEL IS SWORN, THAT IS WHAT THE CODE SAYS AND THAT IS
18 WHAT WE ARE DOING.

19 MR. BARENS: YOUR HONOR, THE CODE SEEMS TO DICTATE THAT.

20 THE COURT: YES, BUT THAT COULD HAVE BEEN DONE MONTHS
21 AGO.

22 MR. CHIER: IT COULD HAVE BEEN DONE BUT WE HAD OTHER
23 MOTIONS TO FILE, YOUR HONOR.

24 THE COURT: DO YOU HAVE ANYTHING TO SAY?

25 MR. WAPNER: YOUR HONOR, I THINK IF THEY WANT MR. ARCE
26 TO TESTIFY, THEY HAVE THE RIGHT TO HAVE HIM HERE AND PUT HIM
27 ON THE STAND UNDER OATH. I MEAN I DON'T --

28 MY UNDERSTANDING IS THAT ALL OF THE JURORS THAT

1 WE HAVE COUNTYWIDE NOW CONFORM TO THE WILLIAMS CRITERIA, THAT
2 THEY ARE DRAWN FROM A 20-MILE RADIUS.

3 THE COURT: WHAT POINT WILL THERE BE IN HAVING MR. ARCE
4 HERE? HE WILL TESTIFY TO EXACTLY JUST WHAT YOU ARE TELLING
5 ME NOW.

6 MR. WAPNER: WELL, IT EITHER HAS TO BE DONE BY HAVING
7 HIM HERE OR BY THE TRANSCRIPT.

8 BUT THE MOTION THEY FILED SAID THEY WERE GOING
9 TO PROVIDE THE TRANSCRIPT TWO DAYS AFTER THE MOTION THAT WAS
10 FILED WHICH, IN ANY EVENT, WOULD HAVE BEEN LAST WEEK SOMETIME
11 AND IT WASN'T FORTHCOMING UNTIL TODAY SO I DON'T THINK ANY
12 OF US SHOULD DECIDE THIS --

13 IT EITHER HAS TO BE DONE ON TESTIMONY OR IT HAS
14 TO BE DONE ON THE TRANSCRIPT, BUT I CAN'T EVEN TELL YOU I
15 WOULD AGREE TO SUBMIT IT ON THE TRANSCRIPT UNTIL I READ IT.
16 I WASN'T GIVEN EVEN ACCESS TO THE TRANSCRIPT UNTIL TODAY.

17 THE COURT: ALL RIGHT, I WON'T DECIDE THAT MOTION.
18 I CAN'T DECIDE THIS MOTION AT THIS PARTICULAR TIME; ISN'T
19 THAT TRUE?

20 MR. WAPNER: I THINK THAT IS TRUE.

21 THE COURT: ALL RIGHT. WHAT IS YOUR NEXT MOTION?

22 MR. BARENS: YOUR HONOR, WE ARE NOT AWARE -- AND PERHAPS
23 OUR NEXT MOTION CAN BE HANDLED RATHER SUMMARILY -- WE HAD
24 A MOTION FOR DISCOVERY OF PROSECUTORIAL INFORMATION ON
25 PROSPECTIVE JURORS. WE ARE WONDERING IF THEY MAINTAIN JURY
26 BOOKS AND IF SO, COULD WE HAVE ACCESS TO THE JURY BOOKS?

27 MR. WAPNER: WE DON'T HAVE ONE, YOUR HONOR.

28 I WAS QUITE AMUSED, ACTUALLY, BY THE ASSUMPTIONS

1 THAT WERE MADE IN THAT MOTION.

2 MR. BARENS: THAT TAKES CARE OF THAT MOTION, YOUR HONOR.

3 THE COURT: WAIT. LET ME JUST FIND THAT MOTION. ALL
4 RIGHT.

5 WHICH IS YOUR NEXT MOTION?

6 MR. BARENS: ALL RIGHT, YOUR HONOR, WE NOW GET INTO
7 OUR MOTION TO PROHIBIT VOIR DIRE ON THE DEATH PENALTY ON THE
8 GUILT PHASE, WHICH I WOULD REQUEST YOUR HONOR TO LOOK AT IN
9 A CUMULATIVE SENSE WITH OUR SUBSEQUENT MOTION FOR A SEPARATE
10 PENALTY PHASE JURY.

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1 BOTH OF THOSE MOTIONS, I SUBMIT, SINCE OBVIOUSLY
2 ONE HAS THE IMPLICATION OF INVOLVING THE OTHER, THEY SHOULD
3 BE LOOKED AT CONJUNCTIVELY.

4 THE COURT: NOW, THE TWO MOTIONS YOU WANT ME TO CONSIDER
5 CONJUNCTIVELY IS ONE: "NOTICE OF MOTION AND MOTION TO
6 PROHIBIT VOIR DIRE ON THE DEATH PENALTY" -- AND WHAT IS THE
7 OTHER TITLE?

8 MR. BARENS: "NOTICE OF MOTION AND MOTION FOR A SEPARATE
9 PENALTY PHASE JURY."

10 THE COURT: ALL RIGHT, YES, I WILL HEAR YOUR MOTION.

11 MR. BARENS: YOUR HONOR, AS WE POINT OUT IN THESE MOTIONS,
12 WE ARE TRYING TO MAKE THE GUILT PHASE OF THIS HEARING AS
13 ANTISEPTIC AS POSSIBLE IN ORDER TO INSURE THE CONSTITUTIONAL
14 GUARANTEES THAT MR. HUNT HAS TO A FAIR TRIAL.

15 THE STUDIES ARE ABSOLUTELY REplete WITH THE FACT
16 THAT A DEATH QUALIFIED JURY IN A GUILT PHASE SETTING SIMPLY
17 HAS BIASES THAT ARE SO INHERENT AS TO EXCLUDE A COGNIZABLE
18 GROUP AS CONSTITUTIONALLY REQUIRED FROM THE GUILT PROCESS,
19 I.E., JURORS THAT WOULD BE OPPOSED, WITHERSPOON TYPE PEOPLE
20 THAT WOULD BE OPPOSED TO THE DEATH PENALTY, ALTHOUGH THAT
21 MIGHT BE APPROPRIATE IN A SENTENCING PHASE, ARE SUMMARILY
22 EXCLUDED FROM THE GUILT PHASE, WHICH EXCLUDES THIS WHOLE BODY
23 OF PEOPLE WHICH, DEPENDING UPON WHOSE SURVEY YOU WANT TO READ,
24 COULD CONSTITUTE 40 PERCENT OR MORE IN THE POPULATION AT
25 LARGE IN THIS STATE OR IN THE UNITED STATES, EFFECTIVELY
26 EXCLUDING THE POSSIBILITY OF MR. HUNT HAVING A FAIR TRIAL.

27 THE WHOLE CONCEPT OF THE SYSTEM IS TO PROVIDE
28 A REPRESENTATIVE CROSS-SECTION OF THE COMMUNITY. EVERY CASE

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1 CITE THAT WE REFER TO IN THE MOTIONS ABSOLUTELY DICTATES THAT
2 THE CROSS-SECTION BE MAINTAINED AND THAT NO IDENTIFIABLE
3 GROUP BE SYSTEMATICALLY EXCLUDED FROM THE PANEL.

4 THE COURT: PARDON ME. IF I UNDERSTAND WHAT YOU MEAN,
5 THAT IS IF A JUROR CATEGORICALLY STATES THAT HE WILL NOT VOTE
6 FOR THE DEATH PENALTY BECAUSE HE DOESN'T BELIEVE IN IT AND,
7 THEREFORE, THAT MIGHT AFFECT HIM ON THE GUILT PHASE AND WILL
8 NOT VOTE TO FIND THE DEFENDANT GUILTY OF MURDER IN THE FIRST
9 DEGREE IF IT MIGHT LATER ON AFFECT HIS HAVING TO DETERMINE
10 THE DEATH PENALTY, SO FOR THAT REASON HE WOULD NOT VOTE FOR
11 A GUILTY VERDICT BECAUSE HE FEELS HE MIGHT BE CALLED UPON
12 AT THE END TO VOTE FOR THE DEATH PENALTY, IS THAT IT?

13 MR. BARENS: YOUR HONOR IS RIGHT TO A DEGREE.

14 THE COURT: TO WHAT DEGREE AM I NOT RIGHT?

15 MR. BARENS: WHAT I AM SAYING IS THAT IN DEATH
16 QUALIFYING A JUROR, HE IS EXCLUDED FROM PARTICIPATION IN THIS
17 TRIAL BECAUSE HE WOULD VOTE AGAINST THE DEATH PENALTY AND
18 HE IS SUMMARILY EXCLUDED FROM BEING A POTENTIAL JUROR.

19 THE COURT: AND FOR THAT REASON, HE WOULD NOT VOTE FOR
20 CONVICTION OF MURDER IN THE FIRST DEGREE?

21 MR. BARENS: I AM NOT EVEN SAYING THAT.

22 I AM SAYING THAT A JUROR WHO COULD VOTE GUILTY
23 ON A MURDER COUNT WHO IS EXCLUDED FROM THE ABILITY TO EVEN
24 VOTE BECAUSE HE HAS SAID DURING VOIR DIRE "I WON'T VOTE FOR
25 THE DEATH PENALTY, I AM A C.O., I AM A CONSCIENTIOUS OBJECTOR
26 TO THE DEATH PENALTY AND I WON'T VOTE FOR THE DEATH PENALTY
27 DURING THE PENALTY PHASE OF THIS CASE," THAT MAN WILL BE
28 EXCLUDED FROM THE GUILT PHASE OF THIS CASE.

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1 THE COURT: SUPPOSE HE SAYS "FOR THAT REASON I WILL
2 NOT VOTE FOR A VERDICT OF GUILTY ON THE GUILT PHASE"?

3 MR. BARENS: YOUR HONOR, I AM TALKING ABOUT NOT HOW
4 HE IS GOING TO VOTE ON A GUILT PHASE.

5 I AM TALKING ABOUT THE FACT WE NEVER GET TO THAT
6 QUESTION BECAUSE HE IS EXCLUDED FROM PARTICIPATING AS A JUROR
7 BECAUSE HE HAS SAID HE IS OPPOSED TO THE DEATH PENALTY.

8 THE COURT: I UNDERSTAND. GO AHEAD.

9 MR. BARENS: WE DON'T REACH THE SECOND QUESTION, YOUR
10 HONOR. THAT QUALIFICATION IN THE GUILT PHASE CATEGORICALLY
11 VIOLATES MR. HUNT'S SIXTH AMENDMENT RIGHTS TO A REPRESENTATIVE
12 JURY IN THIS COMMUNITY, PARTICULARLY SINCE WE ARE NOW DEALING
13 WITH AN ISSUE THAT AFFECTS, AT LEAST BY ANYBODY'S STUDY,
14 40 PERCENT OF THE PROSPECTIVE JURORS WE WOULD BE CALLING ON
15 FOR THE GUILT PHASE.

16 THE COURT: AND THERE ARE CASES WHICH SUSTAIN THAT
17 POSITION, ARE THERE?

18 MR. BARENS: WELL, YOUR HONOR, IN OUR MOTION WE PROVIDE
19 THEM TO THE COURT.

20 THE COURT: ARE THEY SUPREME COURT DECISIONS?

21 MR. BARENS: YES, YOUR HONOR. WE PROVIDE PETERS V.
22 KIFF, AMONG OTHERS, YOUR HONOR, THAT I BELIEVE ARE RIGHT ON
23 POINT. CERTAINLY, PETERS V. KIFF EXPLAINS, AND I AM QUOTING
24 FROM IT, "THAT THE EXCLUSION" -- WELL, THEY SPEAK ABOUT ALL
25 OF THE POINTS THAT I HAVE POINTED OUT, YOUR HONOR, AND IF
26 YOUR HONOR WILL TAKE A MOMENT TO REGARD THE MOTION, YOU WILL
27 SEE --

28 THE COURT: I HAVE READ YOUR MOTION PAPERS.

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1 MR. BARENS: YOU WILL SEE WE HAVE COMPLETELY DISCUSSED
2 THAT THROUGHOUT THE MOTION. THERE IS NO QUESTION THAT THAT
3 IS NOT EQUIVOCAL BUT, RATHER, VERY WELL LAID OUT IN THOSE
4 CASES ON THE SIXTH AND FOURTEENTH AMENDMENTS.

5 THE COURT: ALL RIGHT, GO AHEAD.

6 MR. BARENS: IN DISCUSSING ALL OF THE ISSUES OF
7 IDEOLOGY AND COMMUNITY VALUE SYSTEMS, ET CETERA, THAT WE LOSE
8 BY EXCLUDING THOSE JURORS, THERE IS NO QUESTION THAT
9 MR. HUNT COULD NOT GET A FAIR HEARING. YOU CANNOT EXCLUDE
10 SIMPLY THAT AMOUNT OF PEOPLE WITHOUT VIOLATING THE VERY RIGHTS
11 THAT ARE BEING EXPRESSED IN THE SYSTEM.

12 I AM LOOKING THROUGH HERE, YOUR HONOR, AND ALL
13 OF THE CASES SEEM TO REFLECT THAT POINT OF VIEW AND USE
14 PHRASES LIKE "IT IS INDISPENSABLE TO ASSURE -- TO INSURE HIS
15 RIGHTS THAT HE BE GIVEN JURORS OF THAT ALTERNATIVE
16 PERSUASION."

17 YOUR HONOR, I SIMPLY FIND IT INESCAPABLE HERE
18 THAT WE MUST PROVIDE MR. HUNT WITH A JURY REPRESENTATIVE OF
19 AN AMPLE CROSS-SECTION OF THE COMMUNITY IN THE GUILT PHASE
20 AND TO EXCLUDE FROM THE GUILT PHASE PEOPLE THAT ARE OPPOSED
21 TO THE DEATH PENALTY WILL SEVERELY COMPROMISE HIS RIGHTS,
22 WILL CONSTITUTE A JURY IN THIS COURTROOM THAT WILL BE BENT
23 TOWARDS CONVICTION, AND EVERY STUDY HAS SHOWN THAT JURORS
24 THAT ARE DEATH QUALIFIED ARE MORE PRONE FOR CONVICTION THAN
25 A CROSS-SECTION JURY.

26 I BELIEVE WE ARE LOOKING FOR A TRULY UNBIASED
27 JURY ON THE FRONT END, YOUR HONOR.

28 AND YOUR HONOR, WHAT RISK DOES THE COURT HAVE,

1 WHAT RISK DO THE PEOPLE HAVE IN HAVING TWO JURIES IN THIS
2 CASE? I SUBMIT NONE.

3 MR. CHIER: IT SAVES TIME.

4 MR. BARENS: THERE IS NO ECONOMIC LOSS TO THE STATE.
5 IT WILL ABSOLUTELY SAVE TIME IN THE JURY SELECTION PROCESS.

6 THERE IS SIMPLY NO REASON THAT I CAN FIND CREDIBLE
7 THAT WOULD NOT SUPPORT THIS MOTION, PARTICULARLY IN THIS CASE,
8 YOUR HONOR.

9 THE COURT: ALL RIGHT, I WILL HEAR FROM THE D.A.

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1 MR. WAPNER: THANK YOU, YOUR HONOR.

2 WHAT I WOULD LIKE TO DO IS TO CITE YOU CASES THAT
3 COUNSEL ACTUALLY CITED IN HIS MOTION, BECAUSE I THINK THAT
4 THE LAW IN THIS STATE IS ABSOLUTELY CLEAR THAT HAVING DEATH-
5 QUALIFIED JURORS SIT ON A GUILT PHASE TRIAL DOES NOT
6 CONSTITUTE EXCLUSION OF A COGNIZABLE CLASS OF PEOPLE AND IT
7 IS NOT THE LAW IN THIS STATE THAT YOU SHOULD HAVE SEPARATE
8 TRIALS FOR THE GUILT AND PENALTY PHASES. IN FACT, THE
9 STATUTORY LAW IS PURSUANT TO PENAL CODE SECTION 190.4(C) THAT
10 IT BE IN ONE TRIAL.

11 AND THE CASES THAT COUNSEL HAVE CITED, BUT THEN
12 NEGLECTED TO DISCUSS IN THEIR MOTION, ARE PEOPLE V. HOLT
13 AT 37 CAL. 3D, 426 AND PEOPLE V. FIELDS, 35 CAL. 3D, 329 AND
14 ALSO -- I DON'T KNOW IF IT IS IN THIS MOTION BUT IT MAY BE IN
15 ONE OF THE OTHERS -- HOVEY V. SUPERIOR COURT AT 28 CAL. 3D,
16 PAGE 1. AND ALL OF THOSE CASES CATEGORICALLY STATE THAT IT
17 IS PERMISSIBLE TO HAVE THE SAME JURY HEAR THE GUILT AND
18 PENALTY PHASE SECTIONS OF THE TRIAL AND IT IS NOT IN VIOLATION
19 OF THE DEFENDANT'S CONSTITUTIONAL RIGHT. I THINK THAT IS
20 THE CLEAR LAW THAT IS THE PROCEDURE THAT IS CURRENTLY BEING
21 FOLLOWED AND THAT IS THE PROCEDURE THAT I WOULD URGE YOU TO
22 FOLLOW.

23 THE COURT: WHAT IS YOUR ANSWER TO THE ARGUMENT MADE
24 THAT THIS JUROR WHO DOESN'T BELIEVE IN THE DEATH PENALTY SHOULD
25 NOT BE EXCLUDED FROM THE CASE ON THE GUILT PHASE?

26 MR. WAPNER: WELL, THE THRUST OF ALL OF THESE MOTIONS
27 IS THE SAME: THAT A JUROR WHO HAS CONSCIENTIOUS SCRUPLES
28 AGAINST THE DEATH PENALTY SHOULD, NEVERTHELESS, BE ALLOWED

1 TO SIT ON THE GUILT PHASE OF THE TRIAL. AND MY ANSWER TO
2 THAT IS THAT THESE THREE CASES, HOLT, FIELDS AND HOVEY SAY
3 IT IS PERMISSIBLE TO HAVE THEM ON THE JURY AND IT IS NOT A
4 VIOLATION OF THE DEFENDANT'S RIGHTS TO DO THAT.

5 AND ALSO, REMARKABLY, IT IS SUPPOSED TO SAVE TIME
6 IF WE DO IT THAT WAY. THEORETICALLY, THAT IS A REFERENCE
7 TO THE FACT THAT YOU DON'T HAVE TO GO THROUGH THE HOVEY
8 PROCEDURE IN DEATH-QUALIFYING A JUROR.

9 ON THE OTHER HAND, IF WE HAVE A SEPARATE JURY --
10 THE COURT: I AM NOT TALKING ABOUT SEPARATE JURIES.

11 I AM TALKING ABOUT THE CARDINAL POINT MADE THAT
12 YOU CANNOT DISQUALIFY A JUROR WHO SAYS HE HAS AN UNALTERABLE
13 OBJECTION TO THE DEATH PENALTY AND, THEREFORE, WILL NOT VOTE
14 FOR CONVICTION ON THE GUILT PHASE.

15 MR. WAPNER: I DON'T THINK THAT IS THE LAW IN THIS STATE
16 AND I THINK THAT THOSE CASES, HOLT, FIELDS AND HOVEY SUPPORT
17 THAT. I JUST DON'T THINK THAT IS AN ACCURATE STATEMENT OF
18 THE LAW.

19 THE COURT: ALL RIGHT.

20 MR. BARENS: YOUR HONOR, THERE IS NO QUESTION BUT THAT
21 THIS WHOLE ISSUE IS DISCRETIONARY WITH YOUR HONOR.

22 WHAT WE ARE INTERESTED IN HERE IS A FAIR TRIAL
23 THAT FINDS ITS GENESIS IN A FAIR JURY SELECTION.

24 YOUR HONOR, AGAIN WE SUBMIT THAT IT IS UNDENIABLY
25 TRUE THAT THE BIASES AND PREJUDICES OF A JURY THAT IS COMPOSED
26 OF PEOPLE THAT WILL ONLY VOTE FOR A DEATH PENALTY AND THAT
27 WE HAVE EXCLUDED ALL OF THOSE PEOPLE IN OUR POPULATION --
28 AND I AM SAYING NO LESS THAN FOUR OUT OF TEN PROSPECTIVE

1 JURORS YOU GET ARE GOING TO SAY THAT THEY HAVE PROBLEMS AND
2 WOULD NOT VOTE FOR THE DEATH PENALTY -- WE ARE GOING TO
3 EXCLUDE ALL OF THOSE PEOPLE FROM THAT JURY AND THEN SAY "MR.
4 HUNT, YOU GOT A FAIR TRIAL."

5 I FEEL IN YOUR HONOR'S HONEST EXERCISE OF YOUR
6 DISCRETION THAT YOU COULD NOT COUNTENANCE THAT TYPE OF TRIAL
7 WHEN WE ARE TRYING TO FIND OUT WHETHER THERE IS A REASONABLE
8 DOUBT AS TO WHETHER MR. HUNT COMMITTED A MURDER.

9 NOW, YOUR HONOR, WHAT IS TO BE LOST BY THIS?

10 THERE ARE TWO CHOICES AVAILABLE, IT SEEMS TO ME:
11 YOUR HONOR COULD TAKE THE POSITION THAT YOUR HONOR HAS
12 DISCRETION TO SAY THAT WE ARE NOT GOING TO SUMMARILY EXCLUDE
13 JURORS WHO ARE OPPOSED TO THE DEATH PENALTY, OR IT WOULD
14 FOLLOW THAT WE COULD HAVE THE PROCEDURE, WHICH IS CERTAINLY
15 WELL ESTABLISHED FOR A BIFURCATED TRIAL, WHEREBY WE WOULD
16 HAVE A GUILT PHASE TRIAL, A PENALTY PHASE TRIAL -- I AM
17 SORRY -- A PENALTY PHASE TRIAL SEPARATE FROM THE GUILT
18 PHASE WHERE THAT DETERMINATION COULD BE MADE AND WHEREBY WE
19 DON'T GET INTO HAVING TO VOIR DIRE THE JURY ON DEATH
20 QUALITY TO BEGIN WITH. YOUR HONOR HAS THOSE OPTIONS. YOUR
21 HONOR HAS THE DISCRETION TO ORDER ONE OR THE OTHER OF THOSE
22 RESULTS, WHICH ARE NECESSARY IF WE ARE GOING TO HAVE A FAIR
23 TRIAL HERE.

24 THE COURT: WELL, I HAVE CONSIDERED IT VERY, VERY
25 CAREFULLY AND I READ YOUR CASES AND I AM GOING TO DENY YOUR
26 MOTION.

27 MR. CHIER: MAY I AUGMENT THE MOTION TO QUASH THE ENTIRE
28 PANEL SOMEWHAT, YOUR HONOR?

1 THE COURT: YES.

2 MR. CHIER: I WISH TO ARTICULATE GROUNDS WHICH ARE NOT
3 PRESENTLY ARTICULATED AS TO THE GROUNDS FOR QUASHING THE
4 PANEL.

5 IN ADDITION TO THE GENERAL ALLEGATION OF
6 CONSTITUTIONAL INFIRMITY IN THE SELECTION OF THE PANEL, OF
7 THE VENIRE, THERE ARE OTHER GROUNDS AND THAT IS THAT THE
8 METHOD BY WHICH THESE PEOPLE ARE SELECTED TO COME HERE AND
9 ARE CONSCRIPTED INTO JURY SERVICE IS INFIRM IN THAT THEY USE
10 ONLY THE VOTER REGISTRATION AND THE CALIFORNIA DEPARTMENT
11 OF MOTOR VEHICLE'S DRIVER'S LICENSE REGISTRATION, STATISTICS,
12 DEMOGRAPHIC STUDIES AND OTHER STUDIES HAVE SHOWN THAT A LARGE
13 COGNIZABLE GROUP OF PEOPLE, WHO ARE OTHERWISE ELIGIBLE FOR
14 JURY SERVICE, NEITHER REGISTER TO VOTE NOR DRIVE WITH DRIVER'S
15 LICENSES. THESE ARE EITHER WORKING-CLASS PEOPLE, IN SOME
16 CASES POOR PEOPLE AND IN SOME CASES PEOPLE ON WELFARE, SO
17 THAT BY USING A METHOD OF SELECTION WHICH ELIMINATES FOREVER
18 EVEN THE APPEARANCES IN THE COURTHOUSE OF THESE COGNIZABLE
19 GROUPS IS CONSTITUTIONALLY INFIRM.

20 THE METHOD, IN MY JUDGMENT, IN ORDER TO PASS
21 CONSTITUTIONAL MUSTER, THE METHOD OUGHT TO RELY UPON PUBLIC
22 UTILITIES RECORDS SO THAT THE DEPARTMENT OF WATER & POWER
23 RECORDS, WELFARE RECORDS ARE USED SO THAT YOU HAVE A TRUE
24 CROSS-SECTION OF THE COMMUNITY THAT COMES IN TO REPORT FOR
25 JURY DUTY.

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1 IT IS NOT -- YOU DON'T NECESSARILY ELIMINATE
2 PEOPLE WHO ARE CONVICTED OF CRIMES OR OTHER TYPES OF
3 UNDESIRABLES BUT THERE ARE PEOPLE WHO DON'T DRIVE, YOUR HONOR,
4 I SUBMIT, AND THESE PEOPLE ARE IN LARGE PART EITHER POOR
5 PEOPLE OR PEOPLE ON WELFARE AND OUGHT TO BE ABLE TO COME IN
6 HERE AND DO JURY SERVICE, YOUR HONOR. AND I THINK MR. ARCE'S
7 TESTIMONY WILL ESTABLISH TO YOUR HONOR'S SATISFACTION THAT
8 THERE IS AN INFIRMITY WITH RESPECT TO THE SELECTION METHOD
9 HERE, AND INSTEAD, WHAT WE HAVE IS A BUNCH OF SANTA MONICA
10 BLUE-HAIRS, IF THE COURT PLEASE, THAT COME IN.

11 THE COURT: MY IMPRESSION IS THEY ARE TAKEN FROM A
12 20-MILE RADIUS.

13 MR. CHIER: THAT IS NOT CORRECT, YOUR HONOR.

14 THE COURT: IT IS CORRECT, BECAUSE I HAVE SEEN ANY
15 NUMBER OF JURORS HERE, WHICH WHEN I ASK THEM WHERE THEY LIVE,
16 VERY FEW LIVE IN SANTA MONICA, SO I KNOW BETTER THAN YOU DO
17 ABOUT IT. YOU ARE INCORRECT ON YOUR CONCLUSION. I DON'T
18 KNOW WHERE YOU GOT YOUR INFORMATION FROM THAT THERE ARE ONLY
19 SANTA MONICA LONG-HAIRS. THEY COME FROM ALL OVER. THEY COME
20 FROM A RADIUS OF 20 MILES. I TRY THESE CASES DAY AFTER DAY
21 AND I ALWAYS ASK THE JURORS WHERE THEY COME FROM AND THERE
22 ARE VERY FEW OF THEM WHO COME FROM SANTA MONICA. VERY FEW
23 OF THEM COME FROM SANTA MONICA.

24 MR. CHIER: WELL, OBVIOUSLY REASONABLE PEOPLE CAN DIFFER.

25 THE COURT: YOU ARE MAKING THESE CATEGORICAL STATEMENTS
26 AND I DON'T KNOW WHAT BASIS YOU HAVE FOR MAKING THEM.

27 MR. CHIER: THAT IS WHY WE HAVE HEARINGS SO WE CAN HAVE
28 EVIDENCE ON THESE THINGS. THESE ARE GROUNDS, YOUR HONOR,

1 THAT I AM ALLEGING.

2 THE COURT: YES, I KNOW, BUT I WANT THE GROUNDS
3 SUBSTANTIATED AND THEY ARE NOT.

4 MR. CHIER: WELL, WE CAN'T DO THAT WITHOUT A HEARING
5 AND FROM THE MASTER HIMSELF, THE VOICE OF THE MASTER.

6 THE COURT: WELL, I WILL TAKE A LOOK AT THAT AND SEE
7 WHAT ARCE SAID. IF YOU WANT ME TO TAKE JUDICIAL NOTICE OF
8 IT, I WILL READ THAT TRANSCRIPT THAT YOU HAVE AND THEN I WILL
9 MAKE A DETERMINATION ON IT.

10 MR. CHIER: IF YOUR HONOR IS SUGGESTING YOU WOULD MAKE
11 A DETERMINATION SOLELY ON THE BASIS OF THIS TRANSCRIPT, WE
12 WOULD THEN NOT ASK FOR JUDICIAL NOTICE.

13 WE WOULD ASK FOR A LIVE HEARING.

14 THE COURT: I AM NOT GOING TO GIVE YOU A LIVE HEARING.

15 MR. CHIER: WE ARE ENTITLED TO IT UNDER THE STATUTE,
16 YOUR HONOR. YOU HAVE TO GIVE US ONE.

17 MR. WAPNER: WHAT SECTION IS THAT?

18 MR. CHIER: JUST A SECOND.

19 THE COURT: YOUR MOTION IS PREDICATED UPON THE
20 TRANSCRIPT OF THAT HEARING THAT WAS HELD IN SAN FERNANDO,
21 ISN'T THAT WHAT YOU SAID?

22 MR. CHIER: NO.

23 WE SAID THAT WE WOULD LIKE TO SUBMIT THAT, YOUR
24 HONOR, IN ORDER TO SHORT-CUT THE PROCEDURE BUT NOT TO --

25 THE COURT: "SAID MOTION WILL BE BASED UPON
26 THE TESTIMONY OF RAY ARCE, THE LOS ANGELES COUNTY
27 JURY COMMISSIONER, CONTAINED IN VOLUME 9 OF THE
28 TESTIMONY RECORDED ON THURSDAY, OCTOBER 23, 1986."

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1 THAT IS YOUR MOTION, ISN'T IT?

2 THAT IS WHAT I AM WILLING TO LISTEN TO.

3 MR. CHIER: IT IS BASED IN PART ON THAT, YOUR HONOR.

4 THE COURT: YOU DIDN'T SAY "IN PART".

5 MR. CHIER: WELL, I HADN'T HAD A CHANCE TO READ IT AT
6 THE TIME I GOT IT. I FILED THIS MOTION ON THE 25TH AND THIS
7 HEARING DIDN'T TAKE PLACE --

8 THE COURT: WELL, I READ YOUR NOTICE OF MOTION WHICH
9 IS NOW BEFORE ME.

10 MR. CHIER: YOUR HONOR, LOOK, HERE IS THE CHRONOLOGY:
11 THIS HEARING WAS CONDUCTED ON THE 23RD, ALL RIGHT? ON THE
12 25TH OF OCTOBER, THIS MOTION WAS FILED OR PREPARED AND SENT
13 DOWN HERE. THIS DOCUMENT IS PROBABLY ABOUT 600 PAGES LONG,
14 500 OR 600 PAGES LONG. IT WAS HUMANLY IMPOSSIBLE TO DIGEST
15 AND ASSIMILATE THESE NUMBERS IN HERE. YOU NEED A PH.D. TO
16 UNDERSTAND THE DEMOGRAPHIC STUFF IN HERE.

17 CERTAINLY, IT WAS OUR INTENTION AT THE TIME TO
18 HAVE MR. ARCE HERE TO TESTIFY.

19 THE COURT: DID YOU CONDUCT THAT HEARING?

20 MR. CHIER: NO.

21 MR. CHALEFF CONDUCTED THAT HEARING.

22 THE COURT: IS THERE ANYTHING FURTHER THAT YOU THINK
23 MR. ARCE CAN PROVIDE THAN WHAT IS CONTAINED IN THAT PARTICULAR
24 TRANSCRIPT?

25 MR. CHIER: ABSOLUTELY. HE CAN PROVIDE INFORMATION,
26 HE WOULD TELL --

27 THE COURT: I DON'T UNDERSTAND YOU. YOU MAKE A MOTION
28 BEFORE ME AND THAT MOTION IS PREDICATED UPON THE TRANSCRIPT

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1 OF A HEARING OF THE TESTIMONY GIVEN BY MR. ARCE IN THAT
2 PARTICULAR CASE AND I AM WILLING TO LISTEN TO THAT.

3 MR. CHIER: WE MISSPOKE OURSELVES, YOUR HONOR.

4 I MEAN THERE ARE OBVIOUSLY OTHER BASES FOR THE
5 MOTION WHICH WE SHOULD NOT BE PRECLUDED FROM PUTTING ON IN
6 FRONT OF YOUR HONOR.

7 THE COURT: WHAT SECTION OF THE PENAL CODE, DID YOU
8 SAY, MANDATES A HEARING?

9 MR. CHIER: JUST A MOMENT.

10 THE COURT: YOUR MOTION PAPERS DON'T CITE ANY AUTHORITY
11 FOR THAT PROPOSITION IN ANY RESPECT. ALL IT SAYS IS "I WANT
12 TO MAKE A MOTION ON THE BASIS OF THE TESTIMONY OF MR. ARCE
13 IN SOME OTHER MATTER."

14 MR. CHIER: WE ARE TRYING TO ARTICULATE THE MOTION RIGHT
15 NOW, YOUR HONOR.

16 THE COURT: LET ME HAVE THE SECTION WHICH YOU SAY
17 MANDATES THAT I HAVE SUCH A HEARING IN ANY DEATH PENALTY CASE.

18 MR. CHIER: JUST A MOMENT.

19 1058, 1059, 1060.

20 THE COURT: WAIT A MINUTE. 1058?

21 MR. WAPNER: MAY I HAVE A MOMENT WITH COUNSEL?

22 MR. CHIER: 1060 IS THE MANDATORY LANGUAGE, YOUR HONOR,
23 THAT REQUIRES YOUR HONOR TO DO IT. IT SAYS "A CHALLENGE TO
24 THE PANEL MUST BE TAKEN BEFORE A JURY IS SWORN."

25 THE COURT: IT SAYS "MULTIPLE DEFENDANTS," IS THAT THE
26 ONE YOU MEAN?

27 MR. CHIER: NO.

28 THE COURT: YOU MEAN THE PENAL CODE?

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MR. CHIER: YES, YOUR HONOR.

THE COURT: TEN WHAT?

MR. CHIER: 1060.

THE COURT: ALL IT SAYS IS "A CHALLENGE TO THE PANEL
MUST BE TAKEN BEFORE A JUROR IS SWORN, AND MUST BE IN WRITING
OR BE NOTED BY THE PHONOGRAPHIC REPORTER, AND MUST PLAINLY
AND DISTINCTLY STATE THE FACTS CONSTITUTING THE GROUND OF
CHALLENGE."

HAVE YOU DONE THAT HERE?

MR. CHIER: WE HAVE ALLEGED THE BASIS.

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1 THE COURT: WHERE? WHERE HAVE YOU ALLEGED THAT IN YOUR
2 MOTION PAPERS?

3 MR. CHIER: HERE, WE HAVE JUST ARTICULATED IT.

4 THE COURT: NO, NO.

5 IT HAS TO BE IN WRITING. WHERE IN YOUR MOTION
6 PAPERS IS THAT SET FORTH?

7 MR. CHIER: IT SAYS, I BELIEVE, THAT --

8 THE COURT: LET ME READ IT TO YOU AGAIN SO YOU CAN BE
9 SURE OF WHAT I AM TALKING ABOUT:

10 "A CHALLENGE TO THE PANEL MUST BE
11 TAKEN BEFORE A JUROR IS SWORN, AND MUST BE IN
12 WRITING OR BE NOTED BY THE PHONOGRAPHIC REPORTER,
13 AND MUST PLAINLY AND DISTINCTLY STATE THE FACTS
14 CONSTITUTING THE GROUND OF CHALLENGE."

15 WHERE IN YOUR MOTION PAPERS IS THAT DONE?

16 MR. CHIER: IT SAYS THAT IT IS MADE ON THE GROUND THE
17 JURORS HAVE BEEN DRAWN IN A CONSTITUTIONALLY IMPERMISSIBLE
18 MANNER AND THAT IS IN WRITING.

19 NOW, WHAT IS ORAL STENOGRAPHICALLY REPORTED ARE
20 THE SUBCLASSES OF THE CONSTITUTIONAL INFIRMITIES ALLEGED.

21 THE COURT: AND THE FACTS CONSTITUTING THE CHALLENGE,
22 WHERE ARE THE FACTS CONTAINED IN THIS CONSTITUTING THE GROUNDS
23 OF THE CHALLENGE?

24 YOU HAVEN'T STATED ANY FACT. YOU HAVE STATED
25 CONCLUSIONS.

26 MR. CHIER: I WANT TO OFFER IN PART MR. ARCE'S TESTIMONY
27 AND THAT IS CONCLUSIVE.

28 THE COURT: I THOUGHT YOU WANTED SOMETHING MORE THAN

1 THAT.

2 MR. CHIER: I WANTED AN S.O.T. PLUS, THAT IS WHAT I
3 WANT, JUDGE.

4 THE COURT: WHERE DOES IT SAY THAT WE HAVE GOT TO HAVE
5 MR. ARCE PRESENT HERE AND TESTIFY WITH RESPECT TO HOW THE
6 PANEL IS CONSTITUTED?

7 MR. CHIER: WELL --

8 THE COURT: THAT MOTION WILL BE DENIED.

9 MR. WAPNER: YOUR HONOR, BEFORE --

10 MR. CHIER: IT SAYS THAT THE COURT MUST PROCEED TO TRY
11 THE SUFFICIENCY OF THE CHALLENGE.

12 THE COURT: I SAID THE MOTION WILL BE DENIED.

13 MR. WAPNER: BEFORE WE SUMMARILY DENY THAT MOTION, MAYBE
14 YOU SHOULD GIVE ME AN OPPORTUNITY TO TALK TO COUNSEL. I
15 DON'T KNOW HOW LONG IT WILL TAKE TO GET MR. ARCE HERE OR WHAT
16 KIND OF A HEARING THEY CONTEMPLATE, BUT I DO AGREE THAT IF
17 THEY WANT TO ATTEMPT TO CHALLENGE THE PANEL THAT THEY HAVE
18 THE RIGHT TO ATTEMPT TO DO THAT.

19 THE COURT: MR. WAPNER, I HAVE GOT THE MOTION PAPERS.
20 IT HAS TO BE IN WRITING. THE MOTION PAPERS ARE INSUFFICIENT
21 AND IF THEY ARE INSUFFICIENT, HE CAN'T CHALLENGE THE PANEL
22 ANYMORE BECAUSE THERE ARE NO FACTS ENUNCIATED IN THE MOTION
23 AS TO WHY HE IS DOING IT.

24 MR. WAPNER: WELL, WITH ALL DUE RESPECT TO THE COURT,
25 CERTAIN REASONS --

26 THE COURT: HE WANTS TO SUBMIT THE TRANSCRIPT OF MR.
27 ARCE'S TESTIMONY IN ANOTHER PROCEEDING.

28 MR. WAPNER: WELL, I HAVE ALREADY MADE MY OPINION ABOUT

1 THAT TRANSCRIPT CLEAR BECAUSE I HAVEN'T HAD AN OPPORTUNITY
2 TO REVIEW IT SO I DON'T KNOW WHAT IS IN IT AND THERE IS NO
3 WAY I CAN COMMENT ABOUT IT.

4 THE COURT: WHAT HAVE THEY DONE TO IMPLEMENT THIS? DID
5 THEY SUBPOENA MR. ARCE OR REQUEST HIM TO COME HERE AND HAVE
6 A HEARING?

7 THEY DIDN'T WANT THAT. ALL THEY WANTED ME TO
8 DO IN CONNECTION WITH THIS MOTION IS TO READ WHAT HE SAID
9 IN ANOTHER PROCEEDING AND THAT, I AM PERFECTLY WILLING TO
10 DO.

11 IF THAT IS THE BASIS FOR THE MOTION, WHAT DO WE
12 HAVE TO HAVE HIM HERE FOR, TO DUPLICATE WHAT HE SAID IN THE
13 OTHER CASE? WE ARE JUST WASTING AN AWFUL LOT OF TIME. TOO
14 MUCH TIME HAS BEEN WASTED ANYWAY.

15 MR. WAPNER: AT THE VERY LEAST, THE COURT, I THINK,
16 SHOULD CONSIDER MR. ARCE'S TESTIMONY IN THE OTHER CASE.

17 THE COURT: WELL, I TOLD THEM I WOULD LOOK AT THE
18 TRANSCRIPT OF THAT AND CONSIDER IT.

19 MR. BARENS: YOU APPEAR TO HAVE ALREADY DENIED THE
20 MOTION.

21 THE COURT: IF YOU WANT ME TO DO IT BUT I DON'T THINK
22 THERE IS ANY BASIS FOR IT.

23 MR. CHIER: I WOULD LIKE YOUR HONOR TO LOOK AT 1061
24 OF THE PENAL CODE AND READ THE LAST SENTENCE OF THAT SECTION.

25 IF THE PEOPLE DON'T AGREE THAT THE JURY IS
26 SELECTED IN A CONSTITUTIONALLY INFIRM MANNER THEN, YOUR
27 HONOR, THE CODE REQUIRES THE COURT AS FOLLOWS:

28 "AND THEREUPON, THE COURT MUST PROCEED

1 TO TRY THE SUFFICIENCY OF THE CHALLENGE, ASSUMING
2 THE FACTS ALLEGED THEREIN TO BE TRUE."

3 THE COURT: IT SAYS:

4 "IF THE SUFFICIENCY OF THE FACTS
5 ALLEGED AS GROUND OF THE CHALLENGE IS DENIED."

6 THERE ARE NO FACTS BEFORE ME.

7 MR. CHIER: WELL, WE ARE TRYING TO --

8 THE COURT: YOU HAVEN'T ALLEGED ANY FACTS.

9 MR. CHIER: WE DON'T WANT TO BE CORNERED HERE BY SAYING
10 THAT WE WANT THE MOTION TO DEPEND ENTIRELY ON MR. ARCE'S
11 TESTIMONY IN THIS TRANSCRIPT.

12 WE ARE TRYING TO EXPEDITE IT BY ALLOWING THIS
13 TO BE CONSIDERED AS HIS DIRECT TESTIMONY IN PART, AUGMENTED
14 BY HIS LIVE TESTIMONY IN FULL PART.

15 THE COURT: I AM GOING TO DENY YOUR MOTION.

16 MR. BARENS: ALL RIGHT, YOUR HONOR.

17 NOW, YOUR HONOR, JUST SO I CAN MAKE SURE WHERE
18 I AM AT THIS POINT BEFORE WE PROCEED WITH OUR NEXT MOTION.
19 YOUR HONOR IS DENYING THE MOTION BEFORE YOU READ MR. ARCE'S
20 TESTIMONY?

21 THE COURT: NO.

22 IT HASN'T BEEN PROPERLY MADE. THE LAW SAYS HE
23 HAS GOT TO STATE ALL OF THE FACTS ON THE BASIS WHICH HE WANTS
24 THIS MOTION HEARD. THERE AREN'T ANY FACTS BEFORE ME AND THE
25 MOTION DOESN'T STATE THE FACTS BEFORE ME.

26 MR. BARENS: WELL, THE MOTION REFERENCES MR. ARCE'S
27 TESTIMONY.

28 THE COURT: DO YOU WANT ME TO LOOK AT THE TESTIMONY

1 THEN?

2 MR. BARENS: I THINK IT WOULD BE APPROPRIATE IF YOUR
3 HONOR WOULD AT LEAST LOOK AT IT BEFORE YOU DENY THE MOTION.

4 THE COURT: I WILL LOOK AT IT.

5 MR. BARENS: YOUR HONOR, SO IF YOU WOULD RESERVE ON
6 THE MOTION BEFORE YOU DENY IT?

7 THE COURT: I WILL RESERVE IT ON THE MOTION.

8 MR. BARENS: THANK YOU, YOUR HONOR.

9 YOUR HONOR, NEXT THE DEFENSE MAKES A MOTION TO
10 LIMIT VOIR DIRE OF THE PROSPECTIVE JURORS ON THE DEATH
11 QUALIFICATION.

12 (UNREPORTED COLLOQUY BETWEEN COUNSEL.)

13 MR. BARENS: COULD I HAVE A MOMENT ON THAT, YOUR HONOR?

14 THE COURT: SURELY.

15 MR. BARENS: COULD I HAVE FIVE MINUTES ON THE MOTION,
16 YOUR HONOR?

17 THE COURT: SURELY.

18 MR. BARENS: I WANT TO ASK THE CLIENT'S OPINION ON THIS
19 BEFORE I PROCEED WITH THIS MOTION.

20 THE COURT: ALL RIGHT.

21 MR. BARENS: I WOULD LIKE TO FINISH WITH THIS MOTION
22 BEFORE LUNCH.

23 THE COURT: GO AHEAD.

24 MR. BARENS: JUST GIVE US FIVE MINUTES.

25 (RECESS.)

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1 MR. CHIER: MAY WE PUT THIS --

2 MR. BARENS: HOLD ON ONE SECOND, IF YOU WOULD, PLEASE.

3 (UNREPORTED COLLOQUY BETWEEN COUNSEL.)

4 MR. CHIER: COULD I HAVE A BODY ATTACHMENT ISSUED FOR
5 MR. OSTROVE, THE CONSERVATOR OF LEVIN'S ESTATE? HE HAS NOT
6 RESPONDED.

7 THE COURT: WHY DON'T WE WAIT UNTIL THE TRIAL STARTS?

8 MR. CHIER: I HAVE SUBPOENAED HIM FOR TODAY. WE NEED
9 SOME RECORDS.

10 THE COURT: OH, REALLY?

11 MR. CHIER: YES, IT IS AN S.D.T.

12 THE COURT: IS HE A CONSERVATOR OF THE ESTATE?

13 MR. CHIER: THAT'S CORRECT.

14 THE COURT: AND YOU SUBPOENAED HIM FOR TODAY?

15 MR. CHIER: YES.

16 THE CLERK: WELL, THIS SHOWED UP AND SOMETHING ELSE
17 SHOWED UP, TOO, THIS MORNING.

18 MR. CHIER: MAY I OPEN IT UP?

19 THE COURT: ALL RIGHT.

20 MR. BARENS: COULD WE APPROACH THE BENCH, YOUR HONOR?

21 THE COURT: SURELY.

22 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE
23 HELD AT THE BENCH:)

24 MR. BARENS: YOUR HONOR, WHAT I AM ASKING FOR AT THIS
25 POINT, WE NEED TO GO OVER THE PROPOSED JURY QUESTIONNAIRE
26 WITH MR. WAPNER SO WE CAN AGREE UPON THE QUESTIONNAIRE. WE
27 HAVE A QUESTIONNAIRE PREPARED.

28 THE COURT: YES.

1 MR. BARENS: IT IS REGARDING HARDSHIP QUESTIONNAIRES
2 AND A VARIETY OF OTHER ISSUES THAT WE WILL GO INTO AND IT
3 WILL SAVE A LOT OF OUR TIME HERE.

4 SECONDARILY, IN MY OWN MIND, I WANT TO MAKE SURE
5 THAT MR. HUNT TOTALLY UNDERSTANDS WHAT I AM ASKING FOR IN
6 A MOTION TO LIMIT VOIR DIRE TO THE SIX QUESTIONS. I BELIEVE
7 I STATED THAT ON THE MOTION.

8 AND WE HAVE AVARIETY OF OTHER HOUSEKEEPING OR
9 PROCEDURAL MATTERS TO GO OVER WITH YOUR HONOR, NOT MOTION
10 MATTERS BUT JUST HOW WE ARE GOING TO DO THINGS.

11 THE COURT: THAT IS WHAT YOU INTEND TO DO?

12 MR. BARENS: WHAT I WOULD LIKE IS TO HAVE THIS AFTERNOON
13 TO GO OVER MY MOTION WITH MR. HUNT AND HAVE MR. CHIER WORK
14 WITH MR. WAPNER ON THE QUESTIONNAIRE AND COME BACK HERE
15 TOMORROW MORNING AT 9:00 O'CLOCK AND WE WILL PROCEED.

16 THE COURT: THAT IS ALL RIGHT WITH ME.

17 MR. BARENS: AND THAT WAY, I JUST WANT TO PUT THIS ON
18 THE RECORD AND I WANT TO MAKE SURE IN MY OWN HEART THAT MR.
19 HUNT IS TOTALLY COGNIZANT OF HIS ALTERNATIVES.

20 THE COURT: I UNDERSTAND THAT. YOU ARE PERFECTLY RIGHT
21 ABOUT THAT, I AGREE.

22 MR. BARENS: THANK YOU.

23 THE COURT: YOU WANT TO HAVE A CONTINUANCE UNTIL
24 TOMORROW?

25 MR. BARENS: JUST TRAIL IT UNTIL TOMORROW.

26 MR. WAPNER: THAT IS FINE.

27 MR. BARENS: I DON'T WANT TO USE THE WORD "CONTINUANCE",
28 YOUR HONOR.

1 THE COURT: ALL RIGHT, I CAN UNDERSTAND.

2 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE
3 HELD IN OPEN COURT:)

4 THE COURT: YOU MOVE TO TRAIL THIS MATTER UNTIL TOMORROW
5 MORNING?

6 MR. BARENS: THAT IS CORRECT, YOUR HONOR.

7 THE COURT: TOMORROW MORNING AT 10:30?

8 MR. BARENS: 10:30, YOUR HONOR.

9 THE COURT: YES.

10 MR. BARENS: THANK YOU, YOUR HONOR.

11 THE COURT: YOU CAN MAKE IT EARLIER IF YOU LIKE.

12 MR. WAPNER: YOUR HONOR, THERE IS ONE OTHER MATTER.

13 COUNSEL HAVE SUBPOENAED SOME RECORDS FROM THE BEVERLY HILLS
14 POLICE DEPARTMENT AND DETECTIVE ZOELLER BROUGHT THEM TO COURT
15 AND MAY THE RECORD REFLECT THAT HE HAS JUST -- THEY SHOULD
16 BE TURNED OVER TO THE COURT AND I HAVE NO OBJECTION THAT THEY
17 ARE OPENED AND COPIED BUT THE ORIGINALS SHOULD PROBABLY BE
18 LEFT WITH THE CLERK.

19 THE COURT: ALL RIGHT, THEY WILL BE LODGED WITH THE
20 CLERK AND COUNSEL WILL HAVE AN OPPORTUNITY --

21 MR. CHIER: HOW CAN I COPY THEM IF I DON'T HAVE
22 POSSESSION OF THEM?

23 THE COURT: COUNSEL WILL HAVE AN OPPORTUNITY TO MAKE
24 COPIES OF THEM.

25 MR. CHIER: COULD I HAVE TODAY TO COPY THEM AND THEN
26 LODGE THE ORIGINALS BACK WITH THE COURT?

27 THE COURT: IF THAT IS ALL RIGHT WITH YOU, IT IS ALL
28 RIGHT WITH ME.

1 MR. CHIER: THERE IS NO OTHER WAY I CAN THINK OF
2 LOGISTICALLY TO DO THAT.

3 THE COURT: THERE ARE FACILITIES DOWNSTAIRS TO DO IT.

4 MR. CHIER: AT FIFTY CENTS A PAGE?

5 MR. WAPNER: I HAVE NO OBJECTION IF HE HAS THEM TODAY.

6 THE COURT: WELL, LODGE THEM FIRST WITH THE CLERK AND
7 THEN I WILL PERMIT YOU TO TAKE THEM.

8 MR. CHIER: ALL RIGHT.

9 MR. WAPNER: THERE IS ONE OTHER MATTER I WOULD LIKE
10 TO JUST TAKE UP BRIEFLY AND THAT IS, WE HAVE SUBPOENAED SOME
11 RECORDS FROM THE BANK OF AMERICA WHICH ARE IN THE POSSESSION
12 OF THE CLERK AND IF COUNSEL WILL STIPULATE THAT THOSE RECORDS
13 MIGHT BE UNSEALED AND PROVIDED TO THE PEOPLE SO THAT I CAN
14 MAKE ONE COPY -- EXCUSE ME -- THREE COPIES, KEEP ONE FOR
15 MYSELF AND PROVIDE ONE TO COUNSEL FOR MR. HUNT AND ONE ALSO
16 TO COUNSEL FOR MR. PITTMAN.

17 THE COURT: ALL RIGHT, THAT WILL BE AGREEABLE?

18 MR. BARENS: YES, YOUR HONOR.

19 THE COURT: ALL RIGHT, FINE.

20 MR. BARENS: THANK YOU, YOUR HONOR.

21 (PROCEEDINGS WERE ADJOURNED AT 12:10 P.M.)
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SANTA MONICA, CALIFORNIA

THURSDAY, DECEMBER 4, 1986

1 DEPARTMENT WEST C

HON. LAURENCE J. RITTENBAND, JUDGE

2 (APPEARANCES AS HERETOFORE NOTED.)

3 (FOLLOWING IS A TRANSCRIPT OF PREVIOUSLY-SEALED PROCEEDINGS:)

4 MR. BARENS: YOUR HONOR, THE DEFENSE IS FILING THIS
5 MORNING A NOTICE OF MOTION FOR PRETRIAL DISCOVERY CONCERNING
6 THE ALLEGED INVOLVEMENT OF DEAN KARNY IN A HOMICIDE IN
7 HOLLYWOOD, WHICH WAS PREVIOUSLY DISCUSSED THIS WEEK.

8 OUT OF AN ABUNDANCE OF CAUTION, COUNSEL IS ASKING
9 THE COURT HOW TO PROCEED IN THIS REGARD. I AM HANDING THE
10 ORIGINAL -- I HAVE NOT FILED THIS, AS I NORMALLY WOULD BECAUSE
11 OF THE GAG ORDER IN THIS MATTER, NOR AM I GOING TO SERVE IT
12 ON THE VARIOUS DEPARTMENTS THAT HAVE TO BE SERVED UNTIL I
13 GET ADVICE FROM YOUR HONOR AS TO HOW TO PROCEED WITH CAUTION,
14 HERE.

15 THERE ARE A VARIETY OF ENTITIES, POLICE DEPARTMENTS
16 AND COUNSEL THAT NEED TO BE SERVED WITH THIS DOCUMENT.

17 WHAT I WOULD PROPOSE TO DO, IS TO GIVE THE ORIGINAL
18 TO YOUR HONOR AND AGAIN, OUT OF ABUNDANCE OF CAUTION, ASK
19 MR. WAPNER TO SERVE THE VARIOUS PARTIES THAT HE IS AFFILIATED
20 WITH, THAT WOULD BE SUBJECTS OF THE NOTED MOTION.

21 ALTERNATIVELY, I WOULD BE PLEASED TO FOLLOW
22 CONVENTIONAL CHANNELS OF MAILING THE DOCUMENT TO THE VARIOUS
23 PARTIES WHO ARE BEING NOTICED.

24 THE COURT: WELL, LET ME SAY THIS. OF COURSE, I
25 ANTICIPATE -- I SUPPOSE THAT KARNY WILL BE A WITNESS,
26 OBVIOUSLY, IN THIS PARTICULAR CASE.

27 NOW, NONE OF THIS INFORMATION COULD POSSIBLY BE
28 USED IN FRONT OF A JURY UNLESS HE WERE CONVICTED OF THE

1 OFFENSE FOR WHICH HE IS BEING CHARGED, WHATEVER THE OFFENSE.

2 YOU CAN'T USE THAT IN ANY WAY IN YOUR CROSS-
3 EXAMINATION OF KARNY. I DON'T KNOW THE MATERIALITY OF IT
4 AT THIS STAGE.

5 MR. BARENS: YOUR HONOR, WE WOULD LIKE THE OPPORTUNITY
6 TO PROVIDE A BRIEF TO THE COURT. WE HAVE COMMENCED OUR
7 RESEARCH ON THE VERY SUBJECT YOUR HONOR IS REFERENCING.
8 ALTHOUGH I AM NOT GOING TO ARGUE WITH YOUR HONOR ON THAT
9 POINT THIS MORNING, I WOULD LIKE THE OPPORTUNITY TO FILE THIS
10 SPECIFIC MATERIAL.

11 THE COURT: I DO NOT SEE ANY REASON -- WELL, YOU CAN
12 GIVE ME ANYTHING THAT YOU HAVE ON HOW THIS IS MATERIAL IN
13 THIS PARTICULAR CASE. I WOULD VERY SERIOUSLY CONSIDER IT,
14 OBVIOUSLY. DO WHATEVER YOU THINK.

15 IF YOU WANT TO FILE THE PAPERS, YOU MAY FILE THE
16 PAPERS AND HAVE THEM MARKED SECRET. IT IS ALL RIGHT WITH
17 ME.

18 BUT INSOFAR AS DELAYING THE TRIAL BECAUSE YOU
19 WANT ME TO GET SOMETHING ON KARNY, UNLESS THE MAN IS
20 CONVICTED, I CAN'T SEE THE MATERIALITY OF ANYTHING YOU WANT
21 TO GET BECAUSE OF ANYTHING THAT HE MIGHT HAVE DONE.

22 MR. BARENS: YOUR HONOR, I HAVE NOT ASKED TO DELAY THE
23 TRIAL. I HAVE MERELY ASKED TO FILE A NOTICED DISCOVERY
24 PROCEEDING. I HAVE NOTICED A 20-MINUTE HEARING TIME ESTIMATE
25 ON HERE, WHICH WE COULD DO PART OF THE TIME WE WOULD NORMALLY
26 START WITH THE JURORS.

27 I BELIEVE THAT THE DEFENSE IS CATEGORICALLY
28 ENTITLED TO MATERIAL AND WE CAN'T EVEN MAKE AN INTELLIGENT

1 OPENING STATEMENT REGARDING MR. KARNY, UNTIL WE ARE APPRISED
2 OF THESE MATERIALS.

3 LET ME TELL YOU THE DEFENSE CONCERN IN A VERY
4 CANDID, FORTHRIGHT MANNER, YOUR HONOR. WE BELIEVE THAT THE
5 PROSECUTION IS GOING TO DELAY PROSECUTING MR. KARNY ON THIS
6 OTHER HOMICIDE IN ORDER TO AVOID ANY TAIN'T THAT COULD BE
7 CAST ON MR. KARNY DURING THIS TRIAL.

8 MR. KARNY IS AN IMMUNIZED WITNESS. HE IS GOING
9 TO BE THE PIVOTAL, LEAD WITNESS FOR THE PEOPLE. WE BELIEVE
10 THAT THE PEOPLE HAVE BEEN AWARE OF THE PENDENCY OF THIS OTHER
11 MURDER ALLEGATION FOR A MONTH BEFORE BRINGING IT TO THE
12 DEFENSE ATTENTION.

13 WE WOULD LIKE TO COMPEL THEM TO ACT IN AN
14 APPROPRIATE AND RESPONSIBLE MANNER IN THIS RECORD.

15 WE WOULD LIKE TO COMPEL THEM TO GIVE US THE
16 INFORMATION THAT THEY HAVE DEVELOPED TO DATE CONCERNING
17 MR. KARNY'S INVOLVEMENT.

18 THE COURT: MR. WAPNER?

19 MR. WAPNER: YOUR HONOR, I HAVE NOT SEEN THE MOTION.
20 I WOULD LIKE FIRST OF ALL, TO HAVE AN OPPORTUNITY TO SEE THE
21 MOTION BEFORE I RESPOND TO IT.

22 IF I COULD JUST TAKE A LOOK AT IT FOR A MOMENT
23 RIGHT NOW, TO FIND OUT WHO IT IS MR. BARENS IS ANTICIPATING
24 SERVING WITH THIS MOTION.

25 (PAUSE.)

26 MR. BARENS: I HAVE WITNESSED A DECLARATION FOLLOWING
27 THE MOTION.

28 THE COURT: WHICH CONFIDENTIAL INFORMANT?

1 MR. BARENS: WE ARE ADVISED THAT THIS MATTER WAS BROUGHT
2 TO THE ATTENTION OF THE POLICE DEPARTMENT THROUGH A
3 CONFIDENTIAL INFORMANT.

4 THE COURT: THAT THERE WAS THIS PENDING INVESTIGATION,
5 YOU MEAN?

6 MR. BARENS: YES.

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1 MR. WAPNER: YOUR HONOR, I THINK THAT IT IS, FIRST OF
2 ALL, TOO EARLY TO HAVE A HEARING ON THIS. I HONESTLY NEED
3 SOME TIME TO LOOK AT THIS AND HAVE AN OPPORTUNITY TO RESPOND
4 TO THIS MOTION.

5 MR. BARENS: THIS IS SET FOR DECEMBER 11 AS REQUIRED
6 BY LAW. WE ARE GIVING YOU THE TIME TO RESPOND.

7 MR. WAPNER: AS FAR AS SERVICE ON THE PARTICULAR AGENCIES
8 INVOLVED, I WILL BE HAPPY TO SEE THAT THAT IS DONE IN A
9 CONFIDENTIAL MANNER SO THAT INFORMATION IS NOT DISCLOSED TO
10 ANY THIRD PARTIES.

11 AND AS FAR AS THE MOTION BEING FILED WITH THE
12 COURT, I THINK WE CAN MARK IT FILED AND HAVE THAT SEALED AND
13 PUT IN AN ENVELOPE SOMEWHERE SEPARATE FROM THE FILE BECAUSE
14 VARIOUS MEMBERS OF THE MEDIA HAVE BEEN GOING THROUGH THE
15 COURT FILE ON AN ALMOST DAILY BASIS.

16 THE COURT: IT WILL BE SEALED AND IT WILL NOT IN ANY
17 WAY BE AVAILABLE TO ANYBODY.

18 MR. BARENS: I THINK, YOUR HONOR --

19 THE COURT: -- LET ME TELL YOU ONE LITTLE DIFFICULTY
20 THAT OCCURS TO ME. SINCE YOU CLAIM THAT THERE IS THIS
21 PENDING CRIMINAL INVESTIGATION AND YOU ARE SEEKING A LOT OF
22 DOCUMENTS, AND SO FORTH, AND THESE STATEMENTS AND SO FORTH
23 THAT HE SUPPOSEDLY HAS MADE, IF A FUNDAMENTAL RIGHT OF KARNY
24 IS GOING TO BE AFFECTED BY IT, HE HAS A RIGHT TO HAVE AN
25 ATTORNEY ON THIS MATTER TO HAVE DISCOVERY TO HAVE HIS INPUT
26 AS TO WHETHER OR NOT THESE DOCUMENTS, WHICH YOU SUGGEST SHOULD
27 BE DISCLOSED, SINCE HE IS THE SUBJECT OF THE PARTICULAR
28 INQUIRY, I THINK THAT SINCE HIS RIGHTS ARE BEING AFFECTED,

1 ANY ORDER THAT I MAKE WILL EFFECT HIS RIGHTS AND ANYTHING
2 HE HAS DONE OR SAID OR STATEMENTS HE HAS MADE AND ANYTHING
3 ELSE WHICH MIGHT POINT TO HIM AND EFFECT HIM IN ANY WAY, HIS
4 LAWYER OUGHT TO BE PRESENT AND HAVE INPUT INTO THIS.

5 MR. BARENS: I HAVE TWO POINTS TO MAKE, YOUR HONOR.
6 ONE, I TRUST YOUR HONOR UNDERSTANDS THAT THE REASON I CAME
7 IN TO CHAMBERS THIS MORNING TO DO THIS WAS TO SOLICIT
8 MR. WAPNER'S COOPERATION, BECAUSE I WAS SENSITIVE TO THE PRESS
9 GOING THROUGH THIS AND WE APPRECIATE MR. WAPNER'S COOPERATION.

10 THE COURT: I AM NOT OBJECTING TO YOUR MAKING THE MOTION.
11 I AM NOT OBJECTING TO YOUR FILING THE MOTION AND I AGREE WITH
12 YOU THAT IT SHOULD BE SECRET AND SEALED AND SO FORTH BUT
13 BEFORE ANYTHING IS DONE WITH RESPECT TO DETERMINING THIS
14 MOTION OR GRANTING ANYTHING THAT YOU WANT TO HAVE GRANTED,
15 THE MAN WHO IS EFFECTED BY THIS SHOULD HAVE HIS REPRESENTATIVE
16 HERE.

17 MR. BARENS: YOUR HONOR, I DON'T BELIEVE BY ANY STRETCH
18 OF THE IMAGINATION THAT MR. KARNY HAS ANY PRIVILEGE OR RIGHTS
19 WHICH COULD BE EXPRESSED THROUGH COUNSEL AS TO ANY POLICE
20 REPORTS THAT WERE PREPARED TOTALLY INDEPENDENT OF HIM BY THIRD
21 PARTY POLICE OFFICERS.

22 THE COURT: WELL, I AM NOT REPRESENTING KARNY. WE SHOULD
23 HAVE SOMEBODY PRESENT WHO SHOULD REPRESENT HIM AND MAKE HIS
24 POSITION CLEARLY KNOWN.

25 MR. BARENS: YOUR HONOR, I BELIEVE MR. WAPNER IS EITHER
26 AWARE AS TO THE IDENTITY OF MR. KARNY'S COUNSEL OR COULD
27 IMMEDIATELY BECOME AWARE. I WILL PROVIDE HIM WITH AN EXTRA
28 COPY OF THE NOTICED MOTION FOR PURPOSE OF SERVING MR. KARNY'S

1 COUNSEL AND PROVIDING HIM WITH SAME.

2 THE COURT: VERY GOOD. YOU STUDY THIS MR. WAPNER, IF
3 YOU WILL, PLEASE.

4 WE WILL SET IT DOWN FOR A 9:30 TIME ON A DATE
5 SOMETIME BEFORE WE START WITH THE JURY.

6 MR. BARENS: WE HAVE ASKED FOR THE 11TH AT 9:30 A.M.
7 THAT IS WHAT IT SAYS ON THE CAPTION.

8 THE COURT: WHAT IS THAT DAY? IS THAT TUESDAY?

9 MR. BARENS: THAT IS THURSDAY, A WEEK FROM YESTERDAY,
10 YOUR HONOR. WE THOUGHT THAT WAS AMPLE TIME.

11 THE COURT: THAT IS FINE WITH ME.

12 MR. WAPNER: IT IS NOT THE TEN DAYS BUT I THINK PROBABLY
13 MR. BARENS IS RIGHT, WE COULD BE READY TO HEAR IT BY THAT
14 DATE.

15 MR. BARENS: THE DEFENSE WOULD ACTUALLY CONDONE A
16 BRIEF EXTENSION FOR THE PEOPLE TO RESPOND IF IT IS NECESSARY.

17 IN THAT REGARD, MR. WAPNER, I AM GOING TO GIVE
18 YOU -- I HAVE GIVEN YOU ONE -- I AM NOW TENDERING YOU AN
19 ADDITIONAL SIX COPIES OF THE MOTION, ALONG WITH MY DECLARATION
20 AND POINTS AND AUTHORITIES IN SUPPORT THEREOF.

21 THE COURT: WELL, TELL ME AS A MATTER OF INTEREST, HOW
22 YOU PROPOSE -- SUPPOSE YOU GET A LOT OF THIS MATERIAL THAT
23 YOU ARE SEEKING, HOW DO YOU PROPOSE TO USE THAT IN THIS CASE?

24 MR. BARENS: YOUR HONOR, UNTIL I SEE WHAT IT IS, I DON'T
25 KNOW.

26 I BELIEVE, YOUR HONOR, IF MR. KARNY WERE IN FACT
27 ARRESTED FOR THIS MURDER AND CHARGED WITH THIS MURDER --

28 THE COURT: YES.

1 MR. BARENS: -- I BELIEVE THAT WE COULD PROVIDE YOUR
2 HONOR WITH A BASIS IN LAW THAT WOULD PERMIT THE DEFENSE TO
3 INTRODUCE THIS TO IMPEACH MR. KARNY DURING HIS TESTIMONY.

4 THE COURT: WELL, SHOW ME AUTHORITY AT THAT TIME. MY
5 IMPRESSION HAS ALWAYS BEEN THROUGH ALL OF THE YEARS THAT
6 UNLESS THERE IS A CONVICTION, YOU CANNOT INTRODUCE ANYTHING
7 UNTIL HE HAS BEEN CONVICTED. SHOW ME THE AUTHORITIES, HOWEVER,
8 AND I WILL READ THEM.

9 MR. BARENS: YOUR HONOR, THAT IS WHY I AM SIMPLY
10 ASKING THE COURT TO GIVE US AN OPPORTUNITY TO DO SO.

11 THE COURT: I WILL DO THAT.

12 SO WE WILL HEAR THIS ON THURSDAY, NEXT THURSDAY
13 A WEEK FROM TODAY AT 9:30. WILL THAT BE ALL RIGHT?

14 MR. BARENS: THANK YOU, YOUR HONOR.

SANTA MONICA, CALIFORNIA WEDNESDAY, MARCH 4, 1987
DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE

(THE FOLLOWING IN CAMERA PROCEEDINGS

WERE HELD AT THE BENCH OUTSIDE THE

PRESENCE OF MR. WAPNER.)

JOSEPH HUNT,

THE DEFENDANT HEREIN, CALLED AS A WITNESS ON HIS OWN BEHALF,

IN THE IN CAMERA PROCEEDINGS, WAS SWORN AND TESTIFIED AS

FOLLOWS:

THE CLERK: RAISE YOUR RIGHT HAND TO BE SWORN.

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

MR. HUNT: YES.

THE CLERK: STATE AND SPELL YOUR NAME FOR THE RECORD.

THE DEFENDANT: JOSEPH HUNT, H-U-N-T.

MR. BARENS: COULD I JUST ADMONISH ALL OF YOU TO PLEASE
KEEP YOUR VOICES TO A MINIMUM DURING THIS DISCUSSION.

MR. CHIER: MR. HUNT, WOULD YOU DESCRIBE FOR THE COURT,
THE DOCUMENT WHICH WAS TENTATIVELY NUMBERED AS EXHIBIT 37?
WOULD YOU TELL THE COURT WHAT IT WAS?

THE DEFENDANT: IT WAS AN EIGHT AND A HALF BY ELEVEN
PIECE OF WHITE PAPER, SUCH AS IS USED FOR TYPING. IT WAS
DATED -- THE ENTIRE DOCUMENT WAS IN SCRIPT IN KARNY'S
HANDWRITING. IT WAS DATED JULY 27, 1984.

IT SAID AT THE TOP, "JOE." AND THEN THERE WAS
A PARAGRAPH BELOW IT WHICH STARTED, "AS YOU KNOW, I HAD THE
MEETING WITH HADAYET AND HADAYET ..." THIS IS THE ESLAMINIA

1 ISSUE, UP NORTH.

2 "AS REZA SAYS, HE BELIEVES HIS LIFE
3 IS IN IMMINENT DANGER."

4 IT ACTUALLY SAYS THAT HE "FEELS HIS LIFE IS IN
5 IMMINENT DANGER AND HE BELIEVES THAT HE IS UNDER CONSTANT
6 SURVEILLANCE."

7 THE COURT: WHO SAID THAT, KARNY?

8 THE DEFENDANT: KARNY IS WRITING THIS.

9 THE COURT: HE SAYS THAT HIS LIFE IS IN DANGER?

10 THE DEFENDANT: NO. HE SAYS:

11 "AS YOU KNOW, I HAD THE MEETING WITH
12 HADAYET ..."

13 THE COURT: WHAT?

14 THE DEFENDANT: REZA, THAT IS HADAYET'S SON. HE SAID
15 THAT HE, REFERRING TO HADAYET, FEELS HIS LIFE IS IN IMMINENT
16 DANGER AND BELIEVES THAT HE IS UNDER CONSTANT SURVEILLANCE.

17 THE COURT: WHO SAYS HIS LIFE IS IN DANGER?

18 THE DEFENDANT: IT IS REFERRING TO --

19 THE COURT: TO WHOM?

20 THE DEFENDANT: TO HADAYET ESLAMINIA.

21 THE COURT: YES?

22 THE DEFENDANT: THE NEXT SENTENCE IS, "OUR PLAN IS
23 A GOOD ONE." AND THE "OUR" IS IN QUOTES. BUT HE IS STILL
24 WORRIED, THEN.

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1 THE COURT: STILL WORRIED ABOUT WHAT?

2 THE DEFENDANT: WORRIED, PERIOD.

3 THEN THE NEXT SENTENCE IS HE ALSO -- "WE ALSO
4 TALKED ABOUT BIZ," B-I-Z LIKE BUSINESS. "I WILL FILL YOU
5 IN LATER."

6 AND THEN IT SAYS "YOUR FRIEND, DEAN."

7 AND THEN THERE IS "P.S.: I HAVE GONE TO DO SOME
8 SHOPPING."

9 AND THAT IS THE DOCUMENT. IT IS ALL IN HANDWRITING.

10 THE COURT: WHAT IS THERE ABOUT THAT DOCUMENT THAT IS
11 SO CRITICAL?

12 MR. BARENS: I AM NOT ARGUING -- I WOULD JUST LIKE TO
13 SAY FOR THE RECORD, YOUR HONOR, DURING THE PROCEEDINGS IN
14 THE ESLAMINIA PRELIMINARY IN SAN MATEO THERE WAS TESTIMONY
15 TO THE EFFECT THAT MR. ESLAMINIA AT ALMOST ALL TIMES WAS UNDER
16 SURVEILLANCE BY VARIOUS GOVERNMENTAL RELATED AGENCIES.

17 THE COURT: ESLAMINIA?

18 MR. BARENS: YES, GOVERNMENTAL- AND POLITICAL-TYPE
19 AGENCIES AND ENTITIES.

20 AND I WILL NOW DEFER TO MR. CHIER.

21 THE COURT: WHAT IS THE RELEVANCE IN THIS PARTICULAR
22 CASE TO HAVE THAT PARTICULAR DOCUMENT?

23 MR. BARENS: I WILL DEFER TO MR. CHIER, IF I MIGHT.

24 THE COURT: THAT HAS TO DO WITH THE ESLAMINIA CASE.

25 MR. BARENS: I WILL DEFER TO MR. CHIER ON THAT.

26 THE COURT: GO AHEAD.

27 MR. CHIER: YOUR HONOR HAS INDICATED THAT IF MR. KARNY
28 IS QUESTIONED ABOUT THE SCOPE OF HIS GRANTED IMMUNITY, THAT

1 IN YOUR HONOR'S OPINION, IT WILL OPEN THE DOOR TO RECEIPT
2 OF --

3 THE COURT: I TOLD YOU AT THAT TIME IF THERE ARE ANY
4 INQUIRIES OR ANYTHING WITH RESPECT TO HIS HAVING MADE A DEAL
5 OR GOTTEN IMMUNITY AND YOU GO INTO THE QUESTION OF HIS IMMUNITY,
6 IF YOU GO INTO THE QUESTION OF HIS HAVING COMMITTED A CRIME
7 OR PARTICIPATED IN THE CRIME IN ESLAMINIA, YOU WILL BE OPENING
8 UP THE DOOR. IF YOU OPEN UP THE DOOR TO THAT, THEN EVERYTHING
9 COMES IN.

10 MR. CHIER: THEN OBVIOUSLY, IT BECOMES MORE IMPORTANT
11 THAN EVER TO IMPEACH MR. KARNY.

12 THE COURT: THEN YOU CAN IMPEACH MR. KARNY WITH THIS
13 PARTICULAR LETTER. LET HIM WRITE IT OUT AND SAY "DIDN'T YOU
14 WRITE THIS LETTER" AND SO FORTH AND THEN YOU WILL HAVE A RIGHT
15 TO IMPEACH HIM.

16 MR. CHIER: THE IMPEACHMENT, THE VALUE OF THE IMPEACHMENT
17 IS DILUTED CONSIDERABLY BY NOT HAVING THE PHYSICAL DOCUMENT.

18 THE COURT: OH, THAT IS ALL RIGHT.

19 MR. CHIER: BECAUSE IT ENABLES THE WITNESS TO DENY THE
20 MAKING OF SUCH A STATEMENT, YOUR HONOR, WITHOUT BEING --

21 THE COURT: YOU LET HIM WRITE IT OUT IN EXACTLY THE
22 FORM IN WHICH HE PARTICIPATED AND THEN YOU ASK HIM, AND THEN
23 THERE IS NO PROBLEM.

24 MR. BARENS: YOUR HONOR, JUST A MOMENT.

25 THE DEFENDANT: COULD WE TALK FOR ONE SECOND?

26 THE COURT: SURE.

27 MR. BARENS: I DON'T WANT TO LATER ON HAVE A
28 MISUNDERSTANDING.

1 THE COURT: SURE.

2 (UNREPORTED COLLOQUY BETWEEN MR. BARENS,
3 MR. CHIER AND THE DEFENDANT.)

4 MR. CHIER: YOUR HONOR --

5 MR. BARENS: IF WE COULD JUST CONCLUDE THE STATEMENT
6 WE ARE MAKING.

7 THE COURT: GO AHEAD.

8 MR. CHIER: WE APPRECIATE YOUR HONOR'S EFFORT TO WORK
9 OUT WHAT SEEMED TO BE A COMPROMISE IN THE SITUATION.

10 THE COURT: I AM NOT COMPROMISING ANYTHING.

11 MR. CHIER: ALL RIGHT.

12 THE COURT: IF THE DOCUMENT IS MISSING AND YOU CLAIM
13 IT WAS TAKEN, IT WON'T GO BEFORE THE JURY BECAUSE THERE IS
14 NO EVIDENCE HERE THAT THEY HAVE TAKEN IT.

15 MR. CHIER: WE WOULD ASK YOUR HONOR TO MAKE A FINDING.

16 THE COURT: I WILL NOT MAKE A FINDING. UNDER NO
17 CIRCUMSTANCES, WOULD I MAKE A FINDING.

18 YOU MAY HAVE HIM TESTIFY THERE WAS SUCH A
19 DOCUMENT AND WHAT IT CONTAINED.

20 I AM NOT GOING TO MAKE A RULING THAT KARNY CAN'T
21 TESTIFY IN THIS CASE BECAUSE A DOCUMENT IS MISSING. HE HAD
22 NOTHING TO DO WITH IT.

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1 MR. BARENS: THAT IS NOT BEING SOUGHT, YOUR HONOR.

2 THE DEFENDANT: YES, IT IS.

3 HOLD ON A SECOND ART, COME HERE.

4 THE COURT: I SAID THAT KARNY CAN BE CROSS-EXAMINED
5 ABOUT WHETHER OR NOT HE HAD WRITTEN A LETTER. THE LETTER
6 IS MISSING. YOU DON'T KNOW WHERE IT IS. YOU DON'T HAVE
7 TO SAY IT WAS. YOU DON'T HAVE TO TELL THE JURY. THE JURY
8 DOESN'T HAVE TO KNOW THAT THERE WAS A WARRANT, A SEARCH
9 WARRANT AND THAT PAPERS WERE ALLEGEDLY TAKEN BY THE AUTHORITIES.

10 THERE HAS BEEN A CATEGORICAL DENIAL BY THE
11 AUTHORITIES FOR THE STATE, THE ATTORNEY GENERAL'S OFFICE
12 THAT NOTHING WAS TAKEN EXCEPT THAT WHICH APPEARED IN THAT
13 PARTICULAR BOX.

14 MR. CHIER: WELL, YOUR HONOR --

15 THE COURT: IF HE WANTS TO TESTIFY THAT THERE WAS SUCH
16 A LETTER, LET HIM TESTIFY AS TO THE LETTER. YOU CAN CROSS-
17 EXAMINE KARNY AS TO WHETHER OR NOT HE WROTE SUCH A LETTER
18 AND WHAT THE CONTENTS OF THE LETTER WAS AND LET HIM ANSWER
19 IT.

20 THE FACT THAT THE ORIGINAL ISN'T PRESENT DOESN'T
21 MAKE ANY DIFFERENCE TO ME BECAUSE I WILL PERMIT HIM TO TESTIFY
22 ORALLY AS TO WHAT THAT STATEMENT CONTAINED. IT ACCOMPLISHES
23 THE SAME PURPOSE.

24 MR. CHIER: THE DIFFICULTY, YOUR HONOR, WITHOUT THE
25 ACTUAL DOCUMENT IN HIS OWN HANDS --

26 THE COURT: HE DOESN'T HAVE THE ACTUAL DOCUMENT. I
27 HAVEN'T GOT IT.

28 MR. CHIER: I UNDERSTAND. BUT THE FACT THAT THE PEOPLE

1 ARE SPONSORING HIM AS A WITNESS AND HAVE TAKEN THIS DOCUMENT,
2 YOUR HONOR --

3 THE COURT: THAT HAS NOTHING TO DO WITH HIM. HE DIDN'T
4 DO ANYTHING ABOUT THAT.

5 MR. CHIER: THEY ARE PROTECTING THIS WITNESS.

6 THE COURT: THERE IS NO EVIDENCE THEY ARE PROTECTING
7 THIS WITNESS. THERE IS NO EVIDENCE THEY TOOK THE DOCUMENT
8 EVEN.

9 ALL RIGHT, I TOLD YOU WHAT I AM GOING TO DO.
10 I WILL PERMIT HIM TO TESTIFY AS TO THAT PARTICULAR DOCUMENT.
11 I WILL PERMIT YOU TO CROSS-EXAMINE KARNY ABOUT WHETHER OR
12 NOT HE WROTE SUCH A LETTER AND THE CONTENTS OF IT.

13 THE CLERK: I HAVE ANOTHER POINT.

14 MR. BARENS: COME IN WITH ANY POINT YOU HAVE.

15 THE CLERK: THIS WILL WAIT UNTIL YOU FINISH.

16 THE DEFENDANT: CAN I SPEAK TO COUNSEL FOR A MINUTE?

17 THE CLERK: THEIR CLERK WALKED IN THE COURTROOM AND
18 I WALKED HIM OUT.

19 THE COURT: I DON'T WANT HIM IN THIS COURTROOM.

20 THE CLERK: APPARENTLY HE HAD NOT BEEN TOLD TO KEEP
21 OUT.

22 THE COURT: I TOLD THEM TO KEEP HIM OUT.

23 DID YOU TELL HIM TO STAY OUT?

24 THE CLERK: YES, I DID. I TOLD HIM THAT THERE WAS
25 AN ORDER FOR HIM TO BE OUT.

26 (UNREPORTED COLLOQUY BETWEEN MR. BARENS,
27 MR. CHIER AND THE DEFENDANT.)

28 MR. CHIER: BEFORE WE DEAL WITH THIS CLERK THING, YOUR

1 HONOR, COULD WE FINISH THIS MATTER?

2 THE COURT: THERE IS NOTHING TO DO.

3 AND THE CLERK, I SHUT HIM OUT OF THE COURTROOM
4 BECAUSE HE HAS BEEN TALKING TO THE PRESS AROUND HERE AND
5 MAKING REMARKS ABOUT THIS. I DON'T WANT HIM IN HERE.

6 MR. CHIER: HE IS PART OF THE DEFENSE TEAM.

7 THE COURT: I DON'T WANT HIM IN HERE. I TOLD YOU THAT.
8 THAT IS THE END OF IT.

9 MR. CHIER: WE WOULD LIKE A HEARING.

10 THE COURT: THAT IS THE END OF IT. I DON'T WANT HIM
11 IN HERE.

12 MR. BARENS: COULD YOUR HONOR --

13 THE COURT: HE HAS BEEN TALKING TO THE PRESS AND MAKING
14 REMARKS ABOUT THE FACT THAT MR. WAPNER'S FATHER AND I ARE
15 FRIENDS AND THAT IS THE REASON WHY I AM RULING AGAINST HIM,
16 I DON'T WANT HIM HERE.

17 MR. BARENS: COULD I MAKE A COMMENT?

18 THE COURT: I DON'T WANT YOU TO MAKE ANY COMMENT FURTHER.
19 I DON'T WANT HIM IN HIS COURTROOM.

20 MR. BARENS: WHAT IF IT WASN'T TRUE?

21 THE COURT: I DON'T WANT HIM IN THIS COURTROOM, OKAY?
22 THAT IS ALL THERE IS TO IT.

23 GO AHEAD. WHAT DO YOU WANT TO SAY?

24 MR. CHIER: THERE HASN'T BEEN A HEARING, YOUR HONOR.

25 THE COURT: DO YOU HEAR WHAT I SAID?

26 NOW GO ON.

27 MR. CHIER: WE ARE PREPARED TO PROVE BY CIRCUMSTANTIAL
28 EVIDENCE THE EXISTENCE OF THIS DOCUMENT AND TO SHOW THAT

1 THE DOCUMENT WAS MISSING AS A RESULT OF THE SEARCH.

2 THE COURT: WELL, SHOW IT IF YOU WANT.

3 MR. CHIER: IT WILL REQUIRE US TO SUMMON THE ENVELOPE,
4 THE SEALED ENVELOPE CONTAINS --

5 MR. BARENS: IT IS A BOX.

6 MR. CHIER: THE SEALED BOX CONTAINING THE MATTER.

7 THE COURT: I TOLD YOU WHAT YOU CAN DO AND THAT IS
8 THE END.

9 NUMBER ONE, HE CAN TESTIFY AS TO WHAT THE CONTENTS
10 WAS AND I WILL PERMIT HIM TO DO THAT, EVEN IF IT ISN'T SHOWN.

11 LET THE JURY KNOW THE DOCUMENT IS MISSING WITHOUT
12 GOING INTO HOW IT IS MISSING AND WHY IT IS MISSING AND THEN
13 YOU CAN CROSS-EXAMINE KARNY ABOUT IT AND THAT IS ALL.

14 MR. CHIER: YOUR HONOR --

15 MR. BARENS: YOUR HONOR, WE GET TO A POINT WHERE I
16 THINK I UNDERSTAND THE JUDGE'S RULING.

17 WAIT A MINUTE, GENTLEMEN.

18 MR. CHIER: THE MOTION IS THEN DENIED?

19 THE COURT: NO, IT HAS NOT BEEN DENIED.

20 MR. BARENS: IT HAS BEEN ORDERED, HE HAS MADE A RULING
21 BASED ON THE JUDGE'S PERCEPTION OF HOW THE MATTER SHOULD
22 BE HANDLED AND I UNDERSTAND THE RULING.

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1 THE COURT: I WOULD SUGGEST SINCE YOU UNDERSTAND IT,
2 THAT YOU WILL DO THE ARGUMENT BEFORE THE COURT RATHER THAN
3 COUNSEL.

4 MR. BARENS: THIS MOTION -- I THINK I UNDERSTAND WHAT
5 YOUR HONOR IS SAYING.

6 THE COURT: NOW WE WILL HEAR THE OTHER MOTION.

7 MR. BARENS: THANK YOU.

8 (END OF IN CAMERA PROCEEDINGS.)

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1 SANTA MONICA, CALIFORNIA; MONDAY, APRIL 20, 1987; 4:23 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 CHAMBERS:)

7 MR. WAPNER: GOOD AFTERNOON, YOUR HONOR. I APOLOGIZE
8 FOR BEING LATE.

9 THE COURT: ALL RIGHT. WHAT IS IT ALL ABOUT?

10 MR. WAPNER: THERE IS ANOTHER PERSON BY THE NAME OF
11 ROBERT ROBINSON, WHO CAME TO MY OFFICE ON FRIDAY MORNING. HE
12 SAYS THAT HE KNEW LEVIN BECAUSE HE, ROBINSON, WORKS FOR CITY
13 NEWS SERVICE AND WORKS IN THE PRESS ROOM AT THE LOS ANGELES
14 POLICE DEPARTMENT AND SINCE LEVIN RAN THIS STRINGER SERVICE,
15 THAT HE HAD OCCASION TO RUN INTO LEVIN AT THE PRESS ROOM AT
16 PARKER CENTER.

17 AND MR. ROBINSON CLAIMS THAT HE SAW MR. LEVIN WHILE
18 HE, MR. ROBINSON, WAS STANDING IN LINE FOR THE MOVIE
19 "CROCODILE DUNDEE" IN WESTWOOD. HE SAYS, HE, ROBINSON, IN
20 JUNE OF 1986, HE THINKS IT WAS THE SUMMER, HE THINKS IT WAS
21 EARLY SUMMER BECAUSE IT WAS WARM -- THE TIME, BASICALLY IS
22 IRRELEVANT, EXCEPT THAT "CROCODILE DUNDEE" DIDN'T COME OUT
23 UNTIL SEPTEMBER OF 1986.

24 FOR LOTS OF REASONS, WE BELIEVE THIS TO BE
25 FRAUDULENT INFORMATION.

26 BUT IN ANY EVENT, WE ASKED MR. ROBINSON TO COME
27 TO THE POLICE DEPARTMENT AT BEVERLY HILLS THIS MORNING TO TAKE
28 A POLYGRAPH, WHICH HE CONSENTED TO DO.

1 THE COURT: HE CONSENTED?

2 MR. WAPNER: YES, AND HE DID TAKE THE POLYGRAPH
3 EXAMINATION.

4 AND ON THE QUESTION OF WHETHER HE HAD SEEN
5 MR. LEVIN WHILE HE WAS STANDING IN LINE FOR "CROCODILE DUNDEE,"
6 THE OPINION OF THE POLYGRAPHER IS THAT HE WAS STRONGLY
7 DECEPTIVE.

8 AND ON THE QUESTION OF WHETHER HE WAS DOING THIS
9 TO GET RECOGNITION, THE POLYGRAPHER AGAIN FORMED THE OPINION
10 THAT HE WAS STRONGLY DECEPTIVE.

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1 THAT POLYGRAPH WAS DONE THIS MORNING AND TAPE
2 RECORDED FROM APPROXIMATELY 10:00 UNTIL NOON. THAT TAPE
3 IS AVAILABLE.

4 WE CAN HAVE IT COPIED I THINK TOMORROW AND IF
5 THEY CAN DO IT ON A RUSH BASIS, PROBABLY WE CAN HAVE IT TO
6 THE DEFENSE BY TOMORROW AFTERNOON, I HOPE AS WELL AS A COPY
7 OF THE TAPE OF THE INTERVIEW THAT DETECTIVE ZOELLER AND I
8 SUBSEQUENTLY DID WITH MR. ROBINSON THIS AFTERNOON, WHICH
9 IS WHY I WAS LATE. BECAUSE THAT INTERVIEW RAN OVER A LITTLE
10 BIT.

11 MR. CHIER: THE POLYGRAPH RECEDED THE INTERVIEW?

12 MR. WAPNER: YES. AND ON FRIDAY --

13 THE COURT: YOU DON'T SEEM TOO SURPRISED, EITHER ONE
14 OF YOU LAWYERS AT ALL.

15 MR. WAPNER: SORRY?

16 THE COURT: WHY IS IT THAT THE PEOPLE FROM THE PRESS
17 HAVE BEEN HERE AND CALLING UP AND EVERYTHING ELSE ABOUT THIS
18 MATTER? WHY DID THEY DO THAT? WHERE DID THEY GET THE WORD
19 FROM?

20 MR. WAPNER: WELL, THAT IS ANOTHER THING THAT IS GOING
21 ON WHICH IS THAT THIS MR. ROBINSON WORKS FOR CITY NEWS SERVICE.

22 AND APPARENTLY, ORIGINALLY HE TOLD ME ON FRIDAY
23 THAT HE DIDN'T KNOW ANYTHING ABOUT THE CASE. HE COVERS THE
24 POLICE BEAT NEWS BUT DIDN'T KNOW ANYTHING ABOUT THIS CASE,
25 UNTIL HE READ THE ARTICLE IN THE L.A. TIMES ON FRIDAY.

26 (MR. CARROLL ENTERS CHAMBERS.)

27 MR. WAPNER: THIS IS A REPORT THAT WAS PREPARED BY
28 DETECTIVE ZOELLER OF HIS TELEPHONE CONVERSATION WITH

1 MR. ROBINSON ON THE TELEPHONE ON FRIDAY.

2 AND TO ANSWER THE COURT'S QUESTION FURTHER ABOUT
3 HOW THE PRESS GOT TO KNOW, I THINK THE BASIC ANSWER IS THAT
4 IT WAS THROUGH MR. ROBINSON BECAUSE HE HAS A FRIEND WHO IS
5 AN INDEPENDENT STRINGER -- AS AN INDEPENDENT STRINGER, WHO
6 APPARENTLY TOOK SOME VIDEOTAPE OF THIS.

7 THE COURT: VIDEOTAPE OF WHAT?

8 MR. WAPNER: OF A STATEMENT OF MR. ROBINSON.
9 APPARENTLY, UNBEKNOWNST TO MR. ROBINSON, THE CAMERA WAS ON
10 AND IT WAS BEING TAPED, TO MAKE THIS WHOLE STATEMENT ON TAPE.

11 I BELIEVE THAT IT WAS THROUGH THEM THAT THE
12 ASSOCIATED PRESS WAS NOTIFIED BECAUSE WE WERE TOLD BY MR.
13 ROBINSON'S FRIEND, THE ONE WHO HAD THE VIDEO CAMERA -- WELL,
14 LET ME PUT THIS IN MORE CONTEXT.

15 WE DIDN'T TELL ANYONE ABOUT THAT. WE DIDN'T
16 TELL ANYONE MR. ROBINSON WAS TAKING THE POLYGRAPH. WHILE
17 IT WAS GOING ON, MR. ARNOTE -- I THINK THAT IS A-R-N-O-T-E,
18 CALLED THE POLICE STATION TO SAY, "HAS HE FINISHED THE
19 POLYGRAPH YET?"

20 I THINK THAT IT IS MR. ROBINSON AND MR. ARNOTE
21 WHO HAVE BEEN GIVING THIS INFORMATION TO THE PRESS BECAUSE
22 MR. ARNOTE SAID THAT THE A.P., ASSOCIATED PRESS ALREADY KNOWS
23 AND THAT IS BECAUSE MR. WAPNER TOLD A LAWYER AND THAT LAWYER
24 TOLD THE A.P.

25 WELL, THAT IS NOT CORRECT. I DIDN'T TELL ANYONE.
26 SO, MY ONLY CONJECTURE IS THAT THE PRESS KNOWS BECAUSE THEY
27 HAVE BEEN LEAKING IT OUT. BUT I CAN'T PROVE THAT.

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1 ONE OF THE OTHER REASONS THAT I BELIEVE
2 MR. ROBINSON TO BE DECEPTIVE IS THAT HE TOLD US, THAT IS,
3 DETECTIVE ZOELLER AND MYSELF THIS AFTERNOON, THAT IN FACT WHEN
4 HE CAME ON FRIDAY TO TALK TO ME THAT AT FIRST HE SAID -- FIRST,
5 HE APOLOGIZED FOR SAYING HE HADN'T READ ABOUT THIS BEFORE AND
6 THEN HE SAID, "WELL --"

7 THE COURT: WHAT DO YOU MEAN HE APOLOGIZED?

8 MR. WAPNER: HE APOLOGIZED TO ME, HE DIDN'T WANT TO GIVE
9 ME THE WRONG IMPRESSION.

10 AND THEN HE JUST FLAT OUT SAID, WHEN HE WAS
11 CONFRONTED WITH IT, THAT HE WAS LYING AND, IN FACT, HE HAD
12 READ AN ARTICLE IN THE L.A. TIMES, THE FEATURE ARTICLE ABOUT
13 THIS CASE THAT LAID OUT THE WHOLE CASE, THAT HE BELIEVED WAS
14 IN MARCH, AND I BELIEVE AND COUNSEL CAN PROBABLY CONFIRM THAT
15 THIS FEATURE ARTICLE LAYING OUT THE ENTIRE CASE CAME OUT, I
16 BELIEVE, THE WEEKEND BEFORE WE STARTED TRIAL, WHICH WOULD HAVE
17 BEEN IN THE BEGINNING OF FEBRUARY.

18 BUT IN ANY EVENT, HE KNEW THE WHOLE STORY OF THE
19 CASE LONG BEFORE LAST FRIDAY.

20 AND INITIALLY, HE SAYS HE DIDN'T COME FORWARD
21 EARLIER BECAUSE HE JUST DIDN'T WANT TO GET INVOLVED AND HE
22 DIDN'T REALIZE HOW SERIOUS THE WHOLE CASE WAS BUT ADMITS TO
23 HAVING READ THE ENTIRE FEATURE ARTICLE WITH SOME INTEREST AND
24 ALSO ADMITS --

25 THE COURT: THE NAME OF THE VICTIM WAS MENTIONED, OF
26 COURSE?

27 MR. WAPNER: YES, THE NAME OF THE VICTIM WAS MENTIONED.

28 AND HE ALSO THEN SAYS THAT HE READ THE ARTICLE

1 WITH SOME INTEREST BECAUSE HE HAPPENED TO HEAR THINGS ABOUT
2 THE BBC ON TELEVISION, BUT THEN WHEN PRESSED FOR THE DETAILS
3 OF WHAT HE HEARD ON TELEVISION HE SAID, "WELL, I READ
4 MAGAZINES WHILE I WATCH TV SO I DIDN'T REALLY LISTEN THAT
5 CAREFULLY."

6 MR. BARENS: COULD I ASK A QUESTION? MR. WAPNER, DID
7 THIS GENTLEMAN COMMENT WHY HE HAD NOT COME FORWARD UNTIL THIS
8 POINT IN TIME?

9 MR. WAPNER: I AM JUST TRYING TO EXPLAIN THAT TO YOU.

10 THE COURT: HE SAID HE DIDN'T WANT TO BECOME INVOLVED.

11 MR. WAPNER: HE SAID HE DIDN'T WANT TO BECOME INVOLVED.

12 HE SAID HE DIDN'T REALIZE HOW SERIOUS THE CASE
13 WAS.

14 BUT HE ADMITS TO HAVING READ THE FEATURE ARTICLE
15 ABOUT THE CASE AND I THINK, I AM FAIRLY CONFIDENT, IF WE GO
16 BACK IN THE RECORD, WE WILL FIND OUT THAT THIS FEATURE ARTICLE
17 WAS AN ARTICLE DONE BY LOIS TIMNICK, TO KIND OF KICK OFF THE
18 CASE, AND IT WAS DONE AT THE VERY BEGINNING OF THE CASE JUST
19 BEFORE WE STARTED PUTTING ON EVIDENCE SO HE WOULD HAVE KNOWN
20 AT THAT POINT.

21 HE CLAIMS THAT HE DIDN'T REALIZE FROM READING THE
22 FIRST ARTICLE THAT IT WAS A DEATH PENALTY CASE, WHICH DOESN'T
23 EXPLAIN WHY HE DIDN'T THINK IT WAS SERIOUS IF IT WAS A MURDER.

24 BUT IN ANY EVENT, I THINK WE WILL ALSO FIND IF
25 WE READ THE FIRST ARTICLE THAT IT MENTIONS IN THERE THAT THE
26 PROSECUTION WAS SEEKING THE DEATH PENALTY.

27 MR. CARROLL: CAN I INTERRUPT FOR JUST A SECOND? THERE
28 ARE TWO PEOPLE OUT IN THE HALL, ONE LOOKS LIKE HE IS CARRYING

1 A RECORDING DEVICE. I DON'T KNOW WHICH ONE IS THIS GENTLEMAN,
2 MR. ROBINSON, SO IF HE IS IN THE HALL -- HE WASN'T IN OUR
3 OFFICE -- IF HE IS IN THE HALL, IT LOOKS LIKE HE IS THERE WITH
4 A FRIEND WITH SOME KIND OF A RECORDING DEVICE.

5 THE COURT: IS HE HERE?

6 MR. WAPNER: WELL, I GAVE HIM A SUBPOENA AT THE POLICE
7 DEPARTMENT TO ASK HIM TO COME HERE TODAY BECAUSE I AM VERY
8 CONCERNED ABOUT THIS STORY HITTING THE PAPERS AND A DELIBERATING
9 JURY BEING EXPOSED TO IT.

10 I WAS HOPING, WITH COUNSEL'S CONSENT, TO GET THE
11 COURT TO ORDER HIM NOT TO MAKE ANY STATEMENTS TO THE PRESS.

12 THE COURT: IT IS PROBABLY TOO LATE NOW.

13 MR. CARROLL: NO FURTHER STATEMENTS, ANYWAY.

14 MR. WAPNER: NO FURTHER STATEMENTS.

15 THE COURT: IS HE HERE?

16 MR. WAPNER: IF I CAN JUST GO OUT AND CHECK FOR A MINUTE,
17 I WILL LET YOU KNOW.

18 THE COURT: ALL RIGHT.

19 MR. WAPNER: IF HE IS HERE, WOULD YOU LIKE ME TO ASK
20 HIM TO COME INTO CHAMBERS?

21 THE COURT: ALL RIGHT. FURTHER, I WOULD LIKE TO TELL
22 HIM TO KEEP QUIET UNTIL THIS THING IS INVESTIGATED.

23 MR. BARENS: YOUR HONOR, I MIGHT STATE FOR THE RECORD --

24 THE COURT: WAIT UNTIL THEY COME BACK.

25 MR. BARENS: YES, SIR.

26 (MR. WAPNER AND MR. CARROLL EXIT CHAMBERS.)

27 (PAUSE IN PROCEEDINGS.)

28 (MR. WAPNER AND MR. CARROLL RE-ENTER CHAMBERS.)

1 MR. WAPNER: HE IS ON HIS WAY. HE IS GONE INTO THE
2 RESTROOM AND AS SOON AS HE GETS OUT, THEY ARE GOING TO SEND
3 HIM DOWN. HE JUST ARRIVED.

4 MR. CHIER: WELL, THIS IS MR. ROBINSON?

5 MR. WAPNER: YES.

6 MR. CHIER: WE WOULD LIKE TO INTERVIEW HIM BUT NOT
7 NECESSARILY IN THE PRESENCE OF THE COURT OR THE DISTRICT
8 ATTORNEY.

9 THE COURT: IT WILL BE IN MY PRESENCE. I WANT TO ASK
10 HIM SOME QUESTIONS MYSELF.

11 MR. CHIER: WHAT?

12 THE COURT: BECAUSE I AM GOING TO DECIDE.

13 MR. CHIER: NOT BEFORE WE DO, YOUR HONOR.

14 THE COURT: YOU KEEP QUIET. I HAVE TOLD YOU A DOZEN
15 TIMES, I WILL ONLY HEAR FROM THE RECOGNIZED COUNSEL, YOU.

16 MR. BARENS: I UNDERSTAND.

17 THE COURT: I DON'T WANT TO HEAR A WORD FROM HIM.

18 MR. CHIER: I AM RECOGNIZED BY THE STATE BAR, YOUR HONOR.

19 THE COURT: I DON'T WANT TO HEAR A WORD FROM YOU, DO
20 YOU UNDERSTAND THAT? YOU GO AHEAD AND YOU MAKE MOTIONS, IN
21 WHICH YOU STATE EVERYTHING YOU WANT TO TELL THE PRESS IN THE
22 MOTIONS AND DISTRIBUTE IT AMONG THE PRESS. YOU STAY OUT OF
23 THIS NOW. I WILL DEAL WITH YOU AT SOME FUTURE TIME.

24 MR. BARENS: YOUR HONOR, I AM JUST TRYING TO UNDERSTAND
25 WHAT WE ARE DOING HERE PRESENTLY.

26 THE COURT: YOU DON'T NEED ANY ADVICE FROM HIM.

27 MR. BARENS: NO. I AM TALKING TO YOUR HONOR. I AM
28 ASKING YOUR HONOR PROPERLY WHAT WE ARE DOING NOW. I UNDERSTAND
29 YOUR HONOR WANTS TO SPEAK TO THE ALLEGED WITNESS.

1 THE COURT: I WANT TO WARN HIM NOT TO SAY ANYTHING
2 TO ANYBODY UNTIL THIS MATTER IS --

3 MR. BARENS: I WOULD LIKE THAT. I WOULD STIPULATE
4 FROM THE DEFENSE POINT OF VIEW, THAT WE WOULD LIKE A COMPRE-
5 HENSIVE ORDER ADMONISHING THIS PERSON NOT TO SPEAK TO ANYONE,
6 HOWEVER, EXCEPTED FROM THAT ORDER WOULD BE DEFENSE COUNSEL.

7 THE COURT: WELL, WHEN THE TIME COMES I WILL TELL HIM
8 TO TALK TO YOU. HE WILL TALK TO YOU IF HE IS GOING TO BE
9 A WITNESS IN THIS CASE.

10 MR. BARENS: AND I AM NOT SAYING TO THE COURT THAT
11 I DESIRE HIM AS A WITNESS OR NOT UNTIL I HAVE A CHANCE TO
12 INTERVIEW THIS PERSON AND SEE WHAT DISCOVERY THE PEOPLE CAN
13 MAKE.

14 THE COURT: THAT YOU HAVE A RIGHT TO DO.

15 MR. BARENS: THAT IS ALL I AM ASKING.

16 MR. WAPNER: THE OTHER THING IS THAT WE TOLD MR.
17 ROBINSON WE WOULD LIKE TO TALK TO HIM OURSELVES FOR A SHORT
18 TIME AGAIN TOMORROW BECAUSE WE WERE CONSTRAINED TODAY BY
19 THE FACT THAT WE HAD TO GET BACK HERE AT 4:00 O'CLOCK AND
20 WE DIDN'T GET TO QUITE COMPLETE THE INTERVIEW THAT WE DID.

21 MR. BARENS: COULD I ASK THEN THAT MR. WAPNER WOULD,
22 BEFORE I SPEAK TO THE WITNESS -- I THINK IT IS APPROPRIATE
23 THAT MR. WAPNER AND MR. CARROLL OR DETECTIVE ZOELLER COMPLETE
24 THEIR INTERVIEWS SEQUENTIALLY.

25 AND THEN IF MR. WAPNER WOULD NOTIFY MY OFFICE
26 AND MR. CHIER'S OFFICE AS TO THE AVAILABILITY OF MR. ROBINSON
27 AT THAT TIME.

28 MR. CHIER: THEY HAVE HAD THE MAN FOR FOUR HOURS. DON'T

1 YOU THINK IT IS OUR TURN?

2 MR. BARENS: WELL, I THINK --

3 THE COURT: I ADMONISHED YOU TO KEEP YOUR MOUTH SHUT.

4 MR. CHIER: I AM TALKING TO HIM.

5 THE COURT: WHISPER TO HIM. DON'T PUT IT ON THE RECORD.

6 TALK TO HIM IF YOU WANT TO.

7 MR. BARENS: WELL, WE WILL DISCUSS IT FURTHER AFTER

8 THE JUDGE HAS AN OPPORTUNITY TO SPEAK TO THE WITNESS.

9 THE COURT: I SUGGEST THAT YOU USE YOUR OWN JUDGMENT,
10 MR. BARENS.

11 MR. BARENS: YES, YOUR HONOR.

12 (UNREPORTED COLLOQUY BETWEEN MR. CHIER
13 AND MR. BARENS.)

14 MR. WAPNER: YOUR HONOR, BASED ON WHAT I EXPLAINED
15 TO THE COURT BEFORE AND THE CONVERSATIONS THAT WE HAVE HAD
16 WITH MR. ROBINSON, IT IS OUR BELIEF THAT THE STATEMENTS --
17 MANY OF THE STATEMENTS HE HAS MADE ARE UNTRUTHFUL AND THAT
18 ANY STATEMENTS HE MAY MAKE TO THE COURT MAY BE UNTRUTHFUL
19 AND MAY NECESSITATE THE COURT APPOINTING COUNSEL FOR HIM
20 BEFORE THAT INQUIRY.

21 SO, PERHAPS THE BEST THING TO DO AT THIS POINT,
22 IS TO ORDER HIM NOT TO MAKE ANY STATEMENTS TO THE PRESS AND
23 AFTER WE HAVE COMPLETED OUR INTERVIEWS OF HIM AND DEFENSE
24 COUNSEL HAS, IF COUNSEL DECIDES THAT THEY WANT TO MAKE ANY
25 MOTIONS WITH REGARD TO THIS TAPE, THEN IT WILL BECOME AN
26 ISSUE.

27 IF THEY DON'T, THEN THE WHOLE THING WOULD JUST
28 KIND OF FALL BY THE WAYSIDE.

1 THE COURT: WAS HE UNDER OATH AT THE TIME THAT YOU
2 SPOKE TO HIM?

3 MR. WAPNER: NO.

4 THE COURT: AT ANY TIME?

5 MR. WAPNER: NO.

6 MR. BARENS: COULD I INQUIRE BEFORE HE COMES IN, DO
7 WE HAVE ANY BACKGROUND ON THIS PERSON?

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1 MR. WAPNER: NOT REALLY, OTHER THAN THE FACT THAT HE
2 WORKS FOR CITY NEWS SERVICE.

3 MR. BARENS: IS HE A REPORTER?

4 MR. WAPNER: ALL OF THAT WILL BECOME CLEAR WHEN YOU
5 GET THE TAPES. BUT, HE SAYS HE HAS WORKED AS A REPORTER
6 SINCE 1972.

7 AT ONE TIME, HE WORKED FOR THE HERALD EXAMINER
8 AND AS I UNDERSTAND IT FROM HIS STATEMENT TODAY, THEY FIRED
9 HIM. HE DIDN'T SAY WHY.

10 AND HE HAS COVERED POLICE BEAT NEWS FOR CITY
11 NEWS SERVICE.

12 MR. CHIER: YOUR HONOR, WE DON'T CONSENT TO YOUR READING
13 THAT REPORT.

14 THE COURT: SHUT UP. GO AHEAD.

15 MR. BARENS: SORRY.

16 THE COURT: JUST LEAVE THIS ROOM, WILL YOU PLEASE?
17 I DON'T WANT YOU IN HERE. GET OUT.

18 WE HAVE COMPETENT COUNSEL HANDLING THIS MATTER.
19 I DON'T WANT YOU IN HERE. OUT.

20 DID YOU HEAR WHAT I SAID?

21 MR. CHIER: YOU ARE GOING TO HAVE TO ARREST ME.

22 THE COURT: DID I SAY TO YOU TO GET OUT OF HERE?

23 MR. CHIER: YOU DID SAY THAT. BUT I HAVE A RIGHT TO
24 BE HERE IN THIS MATTER CONCERNING MY CLIENT'S LIFE.

25 THE COURT: YOU ARE NOT THE LAWYER IN THE CASE. I
26 DON'T RECOGNIZE YOU AS THE LAWYER IN THIS CASE.

27 (THE CLERK ENTERS CHAMBERS.)

28 THE COURT: GET PAT, PLEASE.

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THE CLERK: YES. HE IS WITH THE JURORS.

(THE CLERK EXITS CHAMBERS.)

(THE BAILIFF ENTERS CHAMBERS.)

THE COURT: REMOVE THE GENTLEMAN. HE DOESN'T WANT TO LEAVE VOLUNTARILY.

MR. CHIER: I WANT THE RECORD TO REFLECT THAT I AM BEING FORCED -- I AM BEING FORCIBLY REMOVED BY THE BAILIFF.

THE COURT: YOU ARE NOT BEING FORCIBLY REMOVED. I WOULD LIKE TO HAVE YOU FORCIBLY REMOVED, THOUGH.

(MR. CHIER AND THE BAILIFF EXIT CHAMBERS.)

MR. BARENS: YOU WERE MAKING A POINT, MR. WAPNER?

MR. CARROLL: THE HISTORY OF WHAT WE KNOW ABOUT THIS GENTLEMAN.

MR. BARENS: DID YOU DO ANY -- DID YOU PULL ANY POLICE FILES OR ANYTHING LIKE THAT?

MR. WAPNER: NO. WE HAVE NOT RUN A RAP SHEET.

MR. BARENS: IT WOULD PROBABLY BE AN EASY THING FOR YOU GUYS TO DO.

MR. WAPNER: WE INTEND TO DO THAT. WE DID NOT HAVE HIS DATE OF BIRTH UNTIL WE BEGAN THE INTERVIEW AT APPROXIMATELY 2:15 THIS AFTERNOON.

SINCE DETECTIVE ZOELLER AND I WERE IN THAT INTERVIEW UNTIL A QUARTER OF 4:00, HE MAY HAVE DONE THAT SINCE I LEFT. BUT HE DIDN'T HAVE AN OPPORTUNITY TO DO THAT, AT LEAST UNTIL A QUARTER TO 4:00 THIS AFTERNOON, BECAUSE WE DIDN'T HAVE THE GENTLEMAN'S DATE OF BIRTH.

MR. BARENS: FOR THE RECORD, I THINK YOUR OFFICE HAS PROCEEDED LEGITIMATELY THROUGHOUT THIS MATTER.

1 I AM NOT SEEKING TO MAKE AN ISSUE. BUT, OTHER
2 THAN TO SEE --

3 (THE BAILIFF ENTERS CHAMBERS.)

4 THE COURT: HE IS NOT TO TALK TO ANYBODY.

5 THE BAILIFF: WHO ARE YOU REFERRING TO?

6 THE COURT: I AM TALKING ABOUT THAT ALLEGED LAWYER.

7 THE BAILIFF: WHO IS HE NOT SUPPOSED TO TALK TO?

8 THE COURT: ANYBODY.

9 (THE BAILIFF EXITS CHAMBERS.)

10 MR. BARENS: I AM TRYING TO SATISFY MY OBLIGATION TO
11 THE DEFENDANT RESPONSIBLY. I AM NOT SEEKING TO MAKE AN ISSUE,
12 IF YOU ARE TELLING ME THAT YOU AND PERHAPS HIS HONOR HAS
13 SOME MISGIVINGS ABOUT THE BONA FIDES OF THIS PERSON AND HIS
14 ORIENTATION.

15 THE COURT: I HAVE NOT GOT ANY MISGIVINGS. I DON'T
16 KNOW ANYTHING ABOUT IT.

17 MR. BARENS: I DON'T EITHER. I DON'T WANT THE D.A.'S
18 OFFICE TO THINK I AM TRYING TO MAKE AN ISSUE OUT OF THIS
19 GUY OR ANYTHING ELSE UNTIL WE HAVE SOME OPPORTUNITY TO UNDER-
20 STAND WHETHER THIS IS FISH OR FOWL OR WHAT WE HAVE GOT HERE,
21 OTHER THAN SOMETHING THAT APPEARS DISCONCERTING AT THIS
22 JUNCTURE.

23 MR. WAPNER: COUNSEL, WE WILL PROVIDE YOU WITH EVERY
24 BIT OF INFORMATION WE HAVE GLEANED ABOUT THIS GENTLEMAN,
25 INCLUDING THE REPORT THAT I HAVE GIVEN YOU, THE TAPE OF THE
26 POLYGRAPH EXAMINATION, THE TAPE OF THE INTERVIEW THAT WAS
27 DONE THIS AFTERNOON.

28 MR. CARROLL: AND THE RESULTS OF THE POLYGRAPH, AS

1 WELL.

2 MR. WAPNER: CORRECT.

3 MR. BARENS: I APPRECIATE THAT. I THINK THE IDEA OF
4 LIMITING THE CONTACT RIGHT NOW TO A CAVEAT -- I THINK HE
5 SHOULD BE REPRESENTED BY COUNSEL.

6 THE COURT: ABSOLUTELY. IF HE IS GOING TO MAKE A
7 STATEMENT, THAT STATEMENT WOULD HAVE TO BE UNDER OATH. HE
8 WOULD BE ADVISED ABOUT THE PENALTY OF PERJURY IF IT TURNS
9 OUT HE IS NOT TELLING THE TRUTH. HE SHOULD BE REPRESENTED
10 BY COUNSEL.

11 WHAT HAPPENED TO HIM?

12 MR. WAPNER: I DON'T KNOW.

13 THE COURT: DO YOU THINK HE RAN AWAY?

14 MR. BARENS: THIS MAN GETS ME HERE ON A MONDAY
15 AFTERNOON AND IF HE RUNS AWAY, I WILL BE AFTER HIM.

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1 MR. CARROLL: YOUR HONOR, THIS IS MR. ROBINSON.

2 MR. ROBINSON: THAT IS ALL RIGHT.

3 MR. CARROLL: WOULD YOU HAVE A SEAT OVER HERE?

4 MR. WAPNER: MR. ROBINSON, THIS IS DEFENSE COUNSEL WHO
5 REPRESENTS MR. HUNT, MR. BARENS.

6 MR. BARENS: YES.

7 THE COURT: HAVE YOU EVER BEEN IN THIS COURTHOUSE BEFORE?

8 MR. ROBINSON: FRIDAY, WHEN I SAW THE ATTORNEY.

9 THE COURT: HAVE A SEAT.

10 MR. CARROLL: MR. ROBINSON, JUST FOR THE RECORD, WILL
11 YOU SPELL YOUR NAME FOR THE REPORTER?

12 MR. ROBINSON: R-O-B-I-N-S-O-N.

13 MR. WAPNER: AND YOUR FIRST NAME?

14 MR. ROBINSON: ROBERT.

15 MR. WAPNER: YOUR HONOR, I THINK THE COURT SHOULD AT
16 THIS POINT ADMONISH MR. ROBINSON NOT TO SPEAK WITH ANY MEMBERS
17 OF THE MEDIA CONCERNING THIS WHICH WOULD, I GUESS, IN THIS
18 CASE, INCLUDE HIS EMPLOYERS, WHICH ARE THE CITY NEWS SERVICE.

19 THE COURT: YOU ARE EMPLOYED BY THE CITY NEWS SERVICE?

20 MR. ROBINSON: LOS ANGELES CITY NEWS SERVICE, YES.

21 THE COURT: HAVE YOU TALKED TO ANY REPORTER OR MEDIA
22 ABOUT THIS CASE?

23 MR. ROBINSON: I HAVE BEFORE TODAY.

24 THE COURT: WHOM DID YOU TALK TO?

25 MR. ROBINSON: I TALKED TO A REPORTER FOR THE A.P.,
26 JUDY FARAH.

27 THE COURT REPORTER: HOW DO YOU SPELL THAT?

28 MR. ROBINSON: I THINK IT IS F-A-R-A-H.

1 I TALKED TO A FREE-LANCE CAMERAMAN NAMED GARY
2 ARNOTE, WHICH IS, I THINK, A-R-N-O-T-E.

3 THE COURT: WHEN DID YOU TALK TO HIM?

4 MR. ROBINSON: I TALKED TO JUDY SATURDAY AT ABOUT
5 10 A.M. OVER THE TELEPHONE.

6 THE COURT: AFTER YOU TALKED TO MR. WAPNER?

7 MR. ROBINSON: RIGHT.

8 HE HADN'T TOLD ME NOT TO TALK TO ANYBODY.

9 I SHOULD HAVE REALIZED I SHOULDN'T HAVE, BUT SHE
10 CALLED ME UP ON THE TELEPHONE.

11 THE COURT: HOW DID SHE CALL YOU? HOW DID SHE KNOW
12 ANYTHING ABOUT THIS?

13 MR. ROBINSON: SHE SAID A LAWYER FRIEND OF HERS HAD CALLED
14 HER.

15 I HAVE TO ASSUME THAT IS TRUE BECAUSE I CERTAINLY
16 HADN'T CALLED HER.

17 THE COURT: A LAWYER FRIEND OF HERS CALLED HER?

18 MR. ROBINSON: THAT IS WHAT SHE SAID.

19 THE COURT: WHY DID HE CALL HER?

20 MR. ROBINSON: SHE SAID HE SAID I HAD SEEN ATTORNEY
21 WAPNER ABOUT THE CASE.

22 THE COURT: HOW DID THEY KNOW THAT?

23 MR. ROBINSON: I DON'T KNOW. I AM MERELY TELLING YOU
24 WHAT SHE SAID. I HAVE TO ASSUME IT IS CORRECT BECAUSE I DON'T
25 KNOW ANY OTHER WAY SHE WOULD HAVE KNOWN ABOUT IT.

26 THE COURT: WELL, MR. WAPNER SAYS HE CALLED NOBODY AND
27 TOLD NOBODY ABOUT IT.

28 MR. ROBINSON: ALL I CAN SAY IS WHEN JUDY CALLED, SHE

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1 SAID A LAWYER FRIEND OF HERS HAD CALLED HER.

2 THE COURT: PARDON ME. WHY DIDN'T YOU GO DIRECTLY,
3 WITHOUT TELLING ANYBODY ABOUT IT? OR DID YOU GO DIRECTLY TO
4 MR. WAPNER?

5 MR. ROBINSON: YES. IN FACT --

6 THE COURT: DID YOU GO DIRECTLY TO MR. WAPNER AND NOT
7 TALK TO ANYBODY ABOUT IT AT ALL?

8 MR. ROBINSON: BEFORE THEN, RIGHT.

9 THE COURT: YOU DID?

10 MR. ROBINSON: BEFORE I WENT --

11 I MEAN I WENT TO WAPNER BEFORE I TOLD ANYBODY I
12 WAS GOING TO HIM BUT, LIKE OTHER REPORTERS, I KNEW ABOUT THE
13 CASE, YOU KNOW, TO A CERTAIN EXTENT AND TALKED TO, LIKE GARY
14 ARNOTE ABOUT IT. WE WERE BOTH FAMILIAR.

15 THE COURT: THAT IS BEFORE YOU SAW MR. WAPNER?

16 MR. ROBINSON: OH, YES, RIGHT.

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1 MR. WAPNER: BEFORE WE GET INTO ANYTHING FURTHER, I THINK
2 PERHAPS THE BEST THING TO DO IS JUST TO ADMONISH MR. ROBINSON
3 NOT TO SPEAK WITH ANY MEMBERS OF THE MEDIA, INCLUDING
4 REPRESENTATIVES OF --

5 THE COURT: THE CAT IS OUT OF THE BAG ALREADY.

6 MR. WAPNER: I KNOW THAT.

7 BUT TO THE EXTENT WE CAN PROHIBIT ANY FURTHER
8 INTERVIEWS THEY ARE GOING TO WANT.

9 THE COURT: AS A NEWSPAPERMAN, YOU KNOW THAT THIS IS
10 A HOT TOPIC.

11 MR. ROBINSON: RIGHT.

12 AND SO I ASKED JUDY NOT TO -- NOT TO DO ANY STORY
13 ON IT.

14 THE COURT: PARDON ME?

15 MR. ROBINSON: I ASKED JUDY NOT TO DO A STORY AND SHE
16 SAID SHE WOULDN'T.

17 THE COURT: AT ANY RATE, ALTHOUGH THE JURY HAS BEEN
18 ADMONISHED NOT TO TALK TO ANYBODY ABOUT IT OR READ ANYTHING
19 IN ANY MEDIA --

20 MR. ROBINSON: RIGHT.

21 THE COURT: -- OR LISTEN TO IT ON TELEVISION OR RADIO
22 OR READ ANYTHING IN THE PAPER, THEY DO IT ANYWAY, WHICH THEY
23 ARE NOT SUPPOSED TO DO.

24 SO THAT ANYTHING THAT HAS BEEN TOLD, WE WILL
25 PROBABLY HEAR ABOUT IT FROM OUTSIDE SOURCES AND THAT IS WHY
26 WE WANT TO MAKE SURE NOBODY HEARS ANYTHING ABOUT IT.

27 SO ANYTHING YOU SAY TO ANY OF THE MEDIA MIGHT
28 POSSIBLY BE READ BY ANYBODY, IN THE MEDIA; DO YOU UNDERSTAND

1 THAT?

2 MR. ROBINSON: I UNDERSTAND THAT.

3 THE COURT: WHAT I AM GOING TO DO IS ORDER YOU NOT TO
4 TALK TO ANYBODY.

5 MR. ROBINSON: I WON'T TALK TO ANYBODY EXCEPT --

6 THE COURT: EXCEPT IF I GIVE YOU PERMISSION TO DO SO.
7 IT MAY BE I WILL GIVE YOU PERMISSION LATER ON TO TALK TO THE
8 LAWYERS IN THE CASE. UNTIL THEN, YOU ARE NOT TO SAY ANYTHING
9 TO ANYBODY; DO YOU UNDERSTAND THAT?

10 MR. ROBINSON: YES, SIR.

11 MR. CARROLL: MAY I INQUIRE IF HE IS PERMITTED TO TALK
12 TO THE BEVERLY HILLS POLICE?

13 THE COURT: YES.

14 YOU HAVE ALREADY TALKED TO THEM FULLY, HAVEN'T
15 YOU?

16 MR. ROBINSON: YES, OF COURSE.

17 THE COURT: WELL, YOU CAN FINISH TALKING TO THEM. AFTER
18 YOU GET THROUGH TALKING TO THEM, THEN THE COURT WILL DECIDE
19 WHETHER OR NOT OR WHEN YOU CAN TALK TO THE ATTORNEYS IN THE
20 CASE.

21 MR. ROBINSON: YES, SIR.

22 MR. BARENS: YOUR HONOR, SO I WOULD BE ADVISED, YOUR
23 HONOR WOULD HAVE A SYSTEM IN MIND WHEREBY YOU WOULD NOTIFY
24 DEFENSE COUNSEL TO ACCESS HIM?

25 THE COURT: YES, YOU HAVE TO MAKE A MOTION.

26 YOU HAVE TO READ EVERYTHING THERE IS. YOU HAVE
27 TO DECIDE FIRST WHETHER OR NOT YOU WANT TO HAVE HIM AS A
28 WITNESS.

1 MR. BARENS: I COULD NOT MAKE THAT DECISION, YOUR HONOR,
2 BEFORE WE INTERVIEW THE WITNESS.

3 THE COURT: THAT IS CORRECT. ALL RIGHT, UNTIL YOU GET
4 EVERYTHING THAT THE PEOPLE HAVE, WHICH IS THEY HAVE TAKEN DOWN
5 THIS --

6 MR. CARROLL: WE WILL FURNISH THAT AS SOON AS IT IS
7 AVAILABLE, WHICH IS WHEN, THIS AFTERNOON OR TOMORROW?

8 MR. WAPNER: I THINK --

9 THE COURT: YOU UNDERSTAND, MR. ROBINSON, YOU WILL BE
10 PUT UNDER OATH AT SOME TIME?

11 MR. ROBINSON: YES, SIR.

12 THE COURT: AND YOU OUGHT TO CONSULT A LAWYER IN THE
13 EVENT IT TURNS OUT THAT WHAT YOU SAY IS NOT CORRECT, IT MAY
14 VERY WELL BE THAT THERE MIGHT BE SOME PENALTIES INVOLVED IN
15 THAT; DO YOU UNDERSTAND THAT?

16 MR. ROBINSON: OKAY.

17 THE COURT: ALL RIGHT.

18 MR. BARENS: YOUR HONOR, JUST SO I MAKE SURE I UNDERSTAND
19 WHAT I AM DOING HERE. AFTER THE PEOPLE HAVE COMPLETED THEIR
20 ACTIVITY LEVEL, IS THAT MATERIAL THEN TO BE TURNED OVER TO
21 YOUR HONOR TO EVALUATE BEFORE A DECISION IS MADE TO ACCESS
22 DEFENSE COUNSEL TO THE WITNESS?

23 MR. WAPNER: YOUR HONOR, WE WILL GIVE DIRECTLY TO COUNSEL,
24 WE WILL GIVE HIM COPIES OF THE TAPES, COPIES OF THE REPORTS,
25 AS WE DO IN ANY OTHER CASE.

26 THE COURT: IF ANYTHING, WHATEVER YOU WANT TO DO
27 ULTIMATELY IS, IF YOU WANT TO MAKE A MOTION TO REOPEN THE
28 CASE --

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1 MR. BARENS: I AM NOT SAYING THAT.

2 THE COURT: I KNOW. IF YOU DO, I WILL HAVE TO HAVE
3 EVERYTHING THAT IS AVAILABLE IN ORDER TO PASS UPON THAT
4 MOTION; IS THAT RIGHT?

5 MR. BARENS: I AM NOT OBJECTING TO YOUR HONOR SEEING
6 THE MATERIAL.

7 WHAT I AM ASKING YOUR HONOR ABOUT DELIBERATIONS
8 GOING ON ON ONE END OR IN CASE THE DEFENSE IS OBLIGED TO BRING
9 A MOTION AT SOME POINT, I DON'T KNOW HOW TO -- DO I JUST CALL
10 YOUR HONOR AND SAY AFTER I HAVE READ THE MATERIAL?

11 THE COURT: NO, YOU MAKE A FORMAL MOTION.

12 MR. BARENS: NO. I MEAN DO I ACCESS THE WITNESS?

13 THE COURT: YOU WILL HAVE AN OPPORTUNITY TO TALK TO HIM.
14 I THINK IT IS ONLY FAIR THAT THIS WITNESS BE MADE AVAILABLE
15 TO THEM.

16 MR. WAPNER: I AGREE.

17 AND ALL THAT COUNSEL IS SAYING, SINCE YOU ORDERED
18 THE WITNESS NOT TO TALK TO DEFENSE COUNSEL, HE WANTS TO KNOW
19 WHETHER HE SHOULD CALL THE COURT AND SAY "I WANT TO TALK TO
20 HIM NOW, IS IT ALL RIGHT?" AND I ASSUME THE PHONE CALL WOULD
21 SUFFICE.

22 THE COURT: ALL RIGHT. AFTER YOU HAVE SEEN THE MATERIAL,
23 IF YOU WANT TO TALK TO HIM --

24 MR. BARENS: YES, YOUR HONOR.

25 MR. CARROLL: IF I MAY, YOUR HONOR, I WOULD LIKE TO
26 ADDRESS THE COURT. I WOULD LIKE TO CLARIFY ONE OTHER THING
27 FOR MY OWN OFFICE DOWNTOWN.

28 DOES THE ORDER NOT TO TALK TO THE PRESS INCLUDE

1 THE DISTRICT ATTORNEY AND THE DEFENSE? I WOULD IMAGINE IT
2 DOES BUT I WOULD WANT TO CLARIFY IT.

3 THE COURT: NOT TALKING TO THE PRESS OR ANY THIRD PARTIES.

4 HE CAN TALK TO THE DISTRICT ATTORNEY AND
5 ULTIMATELY, IF IT IS INDICATED, TO TALK TO COUNSEL. OBVIOUSLY,
6 THEY ARE HAVING --

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1 MR. CARROLL: THIS IS A DIFFERENT ISSUE. WHAT I AM
2 TALKING ABOUT IS PEOPLE LIKE MR. ARNOTE.

3 MR. ROBINSON: THAT IS A-R-N-O-T-E.

4 MR. CARROLL: HE IS A NEWS PHOTOGRAPHER?

5 MR. ROBINSON: HE IS A VIDEOTAPE MAN.

6 MR. CARROLL: HE HAS A VIDEOTAPE OF HIM MAKING A STATEMENT
7 ABOUT THIS CASE?

8 MR. ROBINSON: THAT'S CORRECT.

9 MR. CARROLL: MY QUESTION IS THIS. IF THE PRESS CALLS
10 US, WHICH SOMETIMES HAPPENS IN THE COURSE OF OUR BUSINESS,
11 YOUR ORDER IS FOR US NOT TO DISCUSS THIS WHILE THE JURY IS
12 DELIBERATING?

13 THE COURT: THAT'S CORRECT.

14 MR. CARROLL: AND THAT WOULD APPLY TO THE DEFENSE?

15 MR. BARENS: THE DEFENSE SO STIPULATES TO THAT.

16 MR. CARROLL: I JUST WANTED IT CLARIFIED. THANK YOU,
17 YOUR HONOR.

18 MR. WAPNER: THERE IS NOTHING ELSE.

19 MR. CARROLL: NOTHING ELSE.

20 MR. BARENS: I WILL CALL YOU TOMORROW.

21 THE COURT: DO YOU UNDERSTAND OF COURSE, THAT IT IS
22 AN ORDER OF THIS COURT THAT YOU ARE NOT TO DISCUSS THIS WITH
23 ANYBODY EXCEPT THE DISTRICT ATTORNEY AND WHEN I GIVE YOU
24 PERMISSION TO DO SO, TO TALK TO COUNSEL?

25 MR. BARENS: I WOULD ASK THE GENTLEMAN HIS PHONE NUMBER
26 AT THIS POINT, WHERE I COULD REACH HIM.

27 THE COURT: SURELY.

28 MR. BARENS: SIR, WHAT IS YOUR PHONE NUMBER?

1 MR. ROBINSON: 465-4071.

2 MR. BARENS: IS THERE ANY OTHER NUMBER FOR YOU?

3 MR. ROBINSON: WELL, THAT IS WHERE I WOULD NORMALLY
4 BE. MY OTHER NUMBER IS MY BUSINESS. I WORK AT THE PRESS
5 ROOM AT PARKER CENTER. I DON'T THINK YOU WANT TO CALL ME
6 THERE.

7 THE COURT: THE REASON I ASKED YOU IS BECAUSE I THINK
8 I HAVE SEEN YOU AROUND HERE.

9 MR. ROBINSON: NOT BEFORE FRIDAY. IN POINT OF FACT,
10 WHEN I CAME HERE ON FRIDAY, I CAME TO TALK TO YOU.

11 THE COURT: MAYBE IT IS SOMEBODY ELSE, THEN. YOU CAME
12 TO SEE ME?

13 MR. ROBINSON: YES, BECAUSE I WANTED TO TALK TO THE
14 JUDGE, AS OPPOSED TO EITHER SIDE OF THE CASE.

15 AND I WAS TOLD BY THE SHERIFF'S DEPUTY THAT YOU
16 WEREN'T HERE AND TO SEE THE DEPUTY DISTRICT ATTORNEY. SO
17 I SAID OKAY.

18 THE COURT: ALL RIGHT. FRIDAY AFTERNOON, WAS THAT
19 IT?

20 MR. ROBINSON: I THINK IT WAS IN THE MORNING.

21 MR. WAPNER: FRIDAY MORNING?

22 THE COURT: OKAY. FRIDAY MORNING I WAS HERE.

23 MR. CARROLL: THANK YOU. WE WILL OPEN AN INVESTIGATION
24 ABOUT THAT.

25 THE COURT: OKAY. DON'T FORGET.

26 MR. ROBINSON: I WON'T TALK TO ANYBODY.

27 (AT 4:50 P.M. PROCEEDINGS WERE CONCLUDED.)

28

1 SANTA MONICA, CALIFORNIA; TUESDAY, APRIL 21, 1987; 9:43 A.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS NOTED ON TITLE PAGE
4 EXCEPT MR. CHIER IS NOT PRESENT.)

5
6 (THE FOLLOWING PROCEEDINGS WERE HELD
7 IN CHAMBERS:)

8 MR. BARENS: GOOD MORNING.

9 MR. WAPNER: GOOD MORNING.

10 THE COURT: GOOD MORNING.

11 I UNDERSTAND THAT THIS ROBINSON WAS ON TELEVISION
12 LAST NIGHT AFTER HE WAS ADVISED NOT TO TALK ABOUT THE CASE
13 IN ANY WAY.

14 MR. WAPNER: I DIDN'T SEE HIM ON TELEVISION. I SAW
15 STORIES THAT REFERRED TO IT, OR A STORY, AND HEARD ABOUT
16 SEVERAL OTHERS.

17 I DON'T KNOW, I AM NOT SAYING HE WASN'T.

18 THE COURT: I THINK HE WAS ON CNN. HE WAS INTERVIEWED
19 BY LAMONT LATE LAST NIGHT.

20 MR. WAPNER: DID HE MAKE ANY STATEMENTS OR DID HE SAY
21 THERE WAS A GAG ORDER?

22 THE COURT: I HAVE NO IDEA. I DIDN'T HEAR IT.

23 MR. WAPNER: WELL, I GUESS THAT IS A SEPARATE ISSUE WE
24 WILL HAVE TO DEAL WITH.

25 I GOT A CALL FROM GREG LAMONT THIS MORNING THAT
26 I HAVEN'T HAD A CHANCE TO RETURN SO WHEN I RETURN IT, I WILL
27 ASK HIM.

28 BUT IT WAS ON KNX SEVERAL TIMES THIS MORNING. IT

1 IS IN ALL OF THE NEWSPAPERS.

2 THE COURT: I KNOW, IT IS IN ALL OF THE NEWSPAPERS.

3 MR. WAPNER: IT IS ON THE WIRE SERVICES.

4 THE COURT: I HAVE BEEN GETTING CALLS AND I TOLD THEM
5 I HAVE NO COMMENT TO MAKE.

6 MR. WAPNER: DESPITE OUR BEST EFFORTS TO PROTECT THIS
7 JURY, I THINK THAT -- AND I HAVE DISCUSSED IT WITH MR. BARENS
8 THIS MORNING -- WHAT SHOULD BE DONE AT THIS POINT, AND I THINK
9 THAT WE HAVE AGREED, WHAT WE THOUGHT SHOULD BE DONE IS TO CALL
10 THEM BACK IN AND GIVE THEM ANOTHER ADMONITION NOT TO READ OR
11 LISTEN TO ANYTHING, AND TO MAKE A STATEMENT TO THEM, TRYING
12 TO TAKE THE ONUS OFF OF THEM, AND NOT MAKE THEM LOOK LIKE
13 GUILTY PARTIES IF INADVERTENTLY THEY HAPPENED TO HEAR SOMETHING
14 OR INADVERTENTLY A FRIEND OR A MEMBER OF THEIR FAMILY STATED
15 SOMETHING TO THEM ABOUT IT, THAT THEY ARE TO DISREGARD THAT
16 AND DECIDE THE CASE ONLY ON THE EVIDENCE THAT HAS BEEN
17 PRESENTED TO THEM.

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1 I DON'T KNOW WHAT GOOD THAT DOES BUT THE ONLY
2 OTHER OPTION IS TO POLL THE JURY AND ASK THEM SPECIFICALLY.

3 I THINK WE HAVE DECIDED NOT TO DO THAT BECAUSE
4 IF THEY READ IT, THEY ARE NOT GOING TO ADMIT IT, ANYWAY.

5 MR. BARENS: I THINK WE SHOULD NOT MAKE THEM LOOK LIKE
6 WE THINK THEY ARE THE BAD GUYS OR SOMETHING.

7 MR. WAPNER: AGREED.

8 MR. BARENS: I THINK IF YOUR HONOR WOULD JUST MAKE
9 A STATEMENT THAT THEY ARE NOT TO READ ANYTHING --

10 THE COURT: I WILL TELL THEM THAT THERE HAS BEEN SOME-
11 THING ABOUT THIS CASE IN THE PRESS OR ON RADIO AND/OR
12 TELEVISION AND WHAT I WANT TO DO IS AGAIN, ADMONISH THE JURORS
13 NOT TO TALK ABOUT THE CASE OR READ OR HEAR ANYTHING OR DISCUSS
14 IT WITH ANY THIRD PARTY.

15 MR. BARENS: YOUR HONOR, I HAVE ONE OTHER CONCERN I
16 WOULD LIKE TO PROCEED WITH STRAIGHT AWAY.

17 I DON'T HAVE MR. HUNT HERE THIS MORNING. I WOULD
18 LIKE TO BE EXCUSED DURING THE ADMONITION BECAUSE I DON'T
19 WANT THE JURY SPECULATING WHY HE IS NOT HERE. IF THEY DON'T
20 SEE HIM AT THE COUNSEL TABLE, THEY MIGHT WONDER SOMETHING.

21 THE COURT: WHAT IF THEY DON'T SEE HIM?

22 MR. BARENS: YES, YOUR HONOR.

23 THE COURT: WELL, WHY DON'T I SAY --

24 MR. BARENS: IT IS JUST THAT --

25 THE COURT: IT WAS NOT NECESSARY FOR HUNT TO BE PRESENT.

26 MR. BARENS: COULD YOU SAY THAT, SIR? ALL RIGHT. COULD
27 WE DO THAT?

28 I LEFT DEPARTMENT 112 TO COME HERE FOR THIS,

1 YOUR HONOR.

2 MR. WAPNER: OBVIOUSLY, THERE WON'T BE ANYTHING --

3 THE COURT: WHERE DO WE GO FROM HERE?

4 MR. WAPNER: WELL, I WILL GET ALL OF THE INFORMATION
5 TO MR. BARENS, HOPEFULLY BY NOON OR 1:00 O'CLOCK TODAY AND
6 GET HIM COPIES OF THE TAPES.

7 I WOULD HOPE THAT HE WOULD HAVE A CHANCE TO REVIEW
8 THAT STUFF AND MAKE A DECISION TO EITHER TALK TO THIS GUY
9 OR NOT.

10 THE COURT: DO YOU WANT TO TALK TO ROBINSON?

11 MR. BARENS: WELL, I AM NOT SAYING THAT, YOUR HONOR.
12 YOUR HONOR, COULD WE SPEAK OFF THE RECORD?

13 THE COURT: YES.

14 (OFF THE RECORD COLLOQUY BETWEEN COURT
15 AND COUNSEL.)

16 MR. WAPNER: I UNDERSTAND MR. BARENS' CONCERN BUT I
17 AM QUITE CONCERNED ABOUT BEING ON THE RECORD.

18 THE COURT: PARDON ME. WHAT ARE YOU CONCERNED ABOUT?

19 MR. WAPNER: I --

20 MR. BARENS: LET'S JUST SAY FOR THE RECORD THAT THE
21 DEFENSE WILL MAKE INQUIRY AND DO ALL THINGS INCUMBENT UPON
22 THE DEFENSE TO INVESTIGATE THIS MATTER.

23 AND THEN, WE'LL ADVISE THE COURT AS TO ANY FURTHER
24 INTEREST WE MIGHT HAVE IN MR. ROBINSON.

25 THE COURT: VERY GOOD.

26 MR. WAPNER: WELL, THE OTHER THING IS THAT I WOULD
27 HOPE THAT IT IS DONE AS SOON AS POSSIBLE BECAUSE I HAVE CERTAIN
28 FEELINGS ON THIS.

1 AND DESPITE WHAT WE ARE SAYING TO THE JURORS,
 2 I THINK ALL OF US HAVE FELT FROM THE BEGINNING THAT THEY
 3 READ THE PAPERS, THEY LISTEN TO THE NEWS AND I WILL TELL
 4 YOU THAT IT IS A GREAT FEAR -- MY GREAT FEAR THAT IF ONLY
 5 ONE OUT OF THESE 12 PEOPLE HEARS THIS, THEY DON'T HAVE TO
 6 SAY ANYTHING TO THE OTHER PEOPLE. IT COULD CAUSE A HUNG
 7 JURY OR WORSE.

8 AND IF AFTER COUNSEL DOES HIS INVESTIGATION AND
 9 HE DECIDES HE DOESN'T WANT TO CALL THIS WITNESS, I WANT TO
 10 BE NOTIFIED BECAUSE I MAY MAKE A MOTION TO THE COURT TO
 11 ALLOW -- TO ASK THAT THE CASE BE REOPENED FOR THE PURPOSE
 12 OF CALLING THIS PERSON TO THE STAND. BECAUSE -- ON THE
 13 THEORY -- I WILL TELL YOU EXACTLY WHAT THE THEORY IS. THE
 14 THEORY IS -- IT IS BETTER TO HAVE THIS MAN -- HAVE THE JURY
 15 SEE THIS MAN IN THE FLESH AND SEE HIM EXAMINED AND CROSS-
 16 EXAMINED, THAN IT IS TO HAVE THEM READING SOME NEWSPAPER
 17 ARTICLE AND SPECULATING ABOUT THE FACT THAT SOMETHING HAPPENED.

18 THE COURT: WELL, THAT IS PART OF THE DEFENSE. THAT
 19 ISN'T A PART OF YOUR CASE. THE DEFENSE IS THE ONE THAT IS
 20 SUPPORTING HIS ALIBI THAT HE IS STILL ALIVE. WHAT HAS THAT
 21 GOT TO DO WITH YOU?

22 MR. WARNER: SO FAR AT THIS POINT, IT IS MY POSITION --

23 THE COURT: IF YOU DECIDE NOT TO CALL HIM, YOU WILL
 24 OBJECT?

25 MR. BARENS: I WILL OBJECT.

26 THE COURT: I WILL SUSTAIN THE OBJECTION.

27 MR. BARENS: BECAUSE NOW THAT COMPELS ME THAT I WOULD
 28 HAVE TO DO AN INTERVIEW WITH THIS MAN AND A BACKGROUND CHECK

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1 WITH THIS MAN AND SPEND A LOT OF TIME WITH THIS MAN AND
2 DIGNIFY THIS MAN IN A MANNER THAT I MAY NOT CHOOSE TO DO
3 SO.

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1 AND TO ENCOURAGE HIM FURTHER BY BEING ABLE TO
2 TELL PEOPLE HE HAS MET WITH DEFENSE COUNSEL AND ALL OF THAT
3 SORT OF THING, IF I DON'T CHOOSE TO MEET WITH HIM, AND THEN
4 IF I DON'T MEET WITH HIM, THEN THE PEOPLE ARE IN A POSITION
5 TO SAY, "WELL, SEE, BARENS DIDN'T MEET WITH HIM AND HE DIDN'T
6 DO HIS DUTY."

7 THE COURT: WELL, IN ANY EVENT, AS I UNDERSTAND THE
8 PRESENT POSTURE OF THE CASE, YOU DON'T PROPOSE TO CALL HIM,
9 DO YOU?

10 MR. BARENS: NOT BASED ON THE INFORMATION I HAVE, YOUR
11 HONOR.

12 THE COURT: ALL RIGHT. I THINK THE THING TO DO IS
13 ADMONISH THE JURY IN VERY STRONG TERMS.

14 MR. WAPNER: WITHOUT, OBVIOUSLY, TELLING THEM ANYTHING
15 SPECIFIC ABOUT IT.

16 THE COURT: I WON'T SAY ANYTHING ABOUT A GUY NAMED
17 ROBINSON. WHO CAME IN AND WAS INTERVIEWED, OF COURSE NOT.

18 I WILL TELL THE JURY SOMETHING IS APPEARING IN
19 THE PRESS WHICH IS ABOUT THE CASE AND --

20 MR. BARENS: TO DISREGARD IT.

21 THE COURT: AND THE PRESS IS MAKING A BIG THING ABOUT
22 IT.

23 MR. BARENS: IT SHOULD BE DISREGARDED.

24 THE COURT: AND DISREGARD IT COMPLETELY.

25 MR. WAPNER: OKAY.

26 MR. BARENS: I DON'T EVEN KNOW IF I WOULD GO THAT FAR,
27 TO SAY THE PRESS IS MAKING A BIG DEAL.

28 JUST ADMONISH THEM NOT TO READ ANYTHING OR HEAR

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1 ANYTHING OR IF THEY READ OR HEAR ANYTHING, DISREGARD IT.

2 THE COURT: ALL RIGHT, I WILL DO THAT.

3 MR. BARENS: YOU WANT TO PROCEED WITH THAT NOW?

4 THE COURT: YES.

5 (RECESS.)

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1 (AT 11:13 A.M. THE FOLLOWING PROCEEDINGS
2 WERE HELD IN OPEN COURT THE DEFENDANT AND
3 MR. CHIER NOT BEING PRESENT:)

4 MR. BARENS: YOUR HONOR WILL MAKE REFERENCE CONCERNING
5 DEFENDANT'S PRESENCE?

6 THE COURT: YES, YOU WANT ME TO TELL THEM THAT.

7 (FURTHER PAUSE IN PROCEEDINGS.)

8 (THE FOLLOWING PROCEEDINGS WERE HELD
9 IN OPEN COURT IN THE PRESENCE OF THE
10 JURY AND ALTERNATE JURORS:)

11 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.

12 THE COURT AND COUNSEL HAVE AGREED THAT THE
13 DEFENDANT NEED NOT BE PRESENT DURING THIS PARTICULAR MATTER
14 THAT I AM GOING TO EXPLAIN TO YOU.

15 AND THE COURT AND COUNSEL HAVE BECOME AWARE OF
16 A REFERENCE IN THE NEWS AND THE MEDIA TO A STORY CONCERNING
17 THIS PARTICULAR CASE.

18 I STRONGLY ADMONISH YOU THAT IF, BY ANY CHANCE,
19 YOU HAVE READ ANYTHING ABOUT THE MATTER, AND IT IS
20 CONSPICUOUS IN THE PRESS TODAY, THAT YOU ARE TO DISREGARD IT
21 COMPLETELY. IT IS NOT EVIDENCE IN THIS CASE AND MUST NOT BE
22 CONSIDERED BY YOU.

23 AND FURTHER, IF THE MEDIA PRINT OR BROADCAST
24 ANYTHING FURTHER ABOUT THE MATTER, THAT YOU ARE NOT TO LISTEN
25 TO IT, GIVE IT ANY CREDENCE OR GIVE ANY ATTENTION TO IT IN
26 ANY WAY.

27 AND BOTH SIDES HAVE AGREED TO THIS ADMONITION.

28 I THOUGHT IT WOULD BE NECESSARY THAT I TELL YOU ABOUT

1 IT SO THAT YOU AVOID ANY KIND OF KNOWLEDGE OR TRY TO GET ANY
2 INFORMATION, AND SO FORTH, OR ANY INFORMATION BROUGHT TO YOUR
3 ATTENTION ABOUT THIS PARTICULAR MATTER. THAT IS ALL I HAVE
4 TO SAY TO YOU.

5 NICE SEEING YOU AND YOU GO BACK AGAIN AND RESUME
6 YOUR DELIBERATIONS. THANK YOU.

7 (AT 11:15 A.M. JURORS RESUMED DELIBERATIONS.)
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1 SANTA MONICA, CALIFORNIA; FRIDAY, APRIL 24, 1987; 9:40 A.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE

3 (APPEARANCES AS NOTED ON TITLE PAGE
4 EXCEPT MR. CHIER AND THE DEFENDANT
5 NOT PRESENT.)
6 (THE FOLLOWING PROCEEDINGS WERE HELD
7 IN CHAMBERS:)

8 THE COURT: I UNDERSTAND YOU WANT TO HAVE THE PRESS IN ON
9 THIS, IS THAT WHAT YOU WANT TO DO?

10 MR. BARENS: WELL, YOUR HONOR --

11 THE COURT: I THINK FOR YOUR SAKE, YOU HAD BETTER NOT
12 HAVE THE PRESS IN HERE BECAUSE IF YOU WANT ME TO GO PUBLIC
13 WITH THE THINGS THAT CHIER HAS DONE, I WILL.

14 THE THINGS I AM GOING TO GO PUBLIC WITH ARE
15 REPEATED VIOLATIONS OF THE GAG ORDER.

16 I WILL GO PUBLIC WITH THE FACT THAT HE DELIBERATELY,
17 UNPROFESSIONALLY DISTORTED AND MISREPRESENTED TO THE COURT
18 OF APPEAL AND TO THE SUPREME COURT WHAT THE PROCEEDINGS IN
19 THIS CASE WERE WITH RESPECT TO THE MOTIONS MADE SO HE CAN
20 BECOME THE LAWYER IN THE CASE AND HE DID NOT --

21 THE MEMORANDUM OF THE DISTRICT ATTORNEY SENT TO
22 THE SUPREME COURT INDICATED THAT HE HAD MISREPRESENTED AND
23 OMITTED CRITICAL PORTIONS OF THE TRANSCRIPT WITH RESPECT TO
24 THE MOTION THAT WAS MADE.

25 I WILL ALSO PUT ON THE RECORD AS TO WHY I DON'T
26 WANT HIM: THE FACT THAT HE MAKES A MOTION, DOESN'T GIVE A
27 COPY TO THE DISTRICT ATTORNEY OF THE MOTION. HE MAKES A MOTION
28 WHICH IS INTENDED ONLY FOR THE PURPOSE OF GIVING THE PRESS

1 COPIES. HE GAVE COPIES TO THE PRESS WITHOUT EVEN GOING THROUGH,
2 IN GOOD FAITH, A HEARING ON THE MOTION. NOT ONLY WAS IT NOT
3 ARGUED BUT A COPY WAS NEVER GIVEN TO THE DISTRICT ATTORNEY.

4 IF YOU WANT ME TO GO PUBLIC WITH ALL OF THAT, I
5 WILL BUT I THINK FOR YOUR SAKE AND FOR THE SAKE OF CHIER, I
6 HAD BETTER NOT DO THAT IN OPEN COURT.

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1 MR. BARENS: YOUR HONOR, I AM EXTREMELY TROUBLED THIS
2 MORNING --

3 THE COURT: I UNDERSTAND. THERE IS NO CRITICISM OF YOU
4 IN THE SLIGHTEST EXCEPT THAT ONE LAPSE THAT YOU HAD MADE WHEN
5 YOU WENT ON NATIONAL TELEVISION AND MADE REMARKS ABOUT ME.

6 NO, ALL THIS GUY CHIER HAS BEEN DOING IS JUST
7 VILIFYING THE JUDGE IN THE CASE AND THE ERRORS I SUPPOSEDLY
8 MAKE AND MY MISCONDUCT.

9 HE KNOWS THAT THE PRESS PICKS THAT UP AND THEY
10 PUBLISH IT AND HE KNOWS THAT THE JURORS ALTHOUGH THEY ARE
11 ADMONISHED NOT TO TALK ABOUT ANY OF THOSE THINGS, THEY ACTUALLY
12 DO AND THEY READ IT.

13 I DON'T THINK IT IS FOR THE BENEFIT OF THE
14 DEFENDANT OR THE COURT OR FOR YOU AS A MATTER OF FACT, THAT
15 THESE THINGS ARE ALWAYS PUBLISHED. AND THAT IS WHY I DON'T
16 WANT TO HAVE THE PRESS IN ON THIS BECAUSE I WILL GO PUBLIC
17 IF YOU WANT ME TO, AS TO WHY I DON'T WANT CHIER IN THE CASE.

18 HOWEVER, I THOUGHT ABOUT IT OVERNIGHT. I DON'T
19 LIKE THE IDEA OF PAYING HIM FOR SERVICES THAT I DON'T THINK
20 ARE NECESSARY.

21 BUT IF YOU FEEL THAT YOU WANT HIM IN HERE, IF YOU
22 FEEL THAT YOU WANT HIM AND YOU THINK HE IS NECESSARY TO YOU
23 BECAUSE HE HAS DONE -- FRANKLY, YOU HAVE DONE MUCH BETTER
24 WITHOUT HIM. THERE ARE MANY TIMES WHEN HE WAS NOT PRESENT
25 AT ALL IN COURT AND YOU WEREN'T HANDICAPPED IN THE SLIGHTEST.

26 AS A MATTER OF FACT, I THINK YOU DID A BETTER JOB
27 BECAUSE YOU WEREN'T INTERRUPTED BY THE CONSTANT WHISPERS AND
28 HANDING YOU NOTES.

1 HOWEVER, THAT IS YOUR BUSINESS AND THE DEFENDANT'S
2 BUSINESS. IF YOU THINK YOU WANT HIM, I WILL PERMIT HIM TO
3 SERVE ONLY ON ONE CONDITION, THAT HE OBEYS MY INJUNCTION TO
4 NEVER TALK TO THE PRESS ABOUT IT IN ANY WAY, SHAPE OR FORM
5 OR BY ANY KIND OF SUBTERFUGE AS HE DID IN THIS MOTION OF
6 APRIL THE 13TH, THIS NOTICE OF MOTION, OMNIBUS MOTION FOR
7 MISTRIAL.

8 THE HEARING WAS SUPPOSED TO BE HELD AT 1:30. IT
9 WAS NEVER HEARD. YOU NEVER GOT A COPY OF IT, DID YOU?

10 MR. WAPNER: NOT THAT I RECALL. I DON'T EVER REMEMBER
11 SEEING IT. MY RECOLLECTION IS THAT WHEN PEOPLE ASKED ME ABOUT
12 IT, WAS THAT I DIDN'T KNOW THERE WAS ANY SUCH MOTION PENDING.

13 THE COURT: NOW, IF I HAVE YOUR ASSURANCE THAT AS A
14 LAWYER -- THAT HE WILL CONFORM STRICTLY TO MY ORDER NOT TO
15 TALK TO THE PRESS OR IN ANY WAY COMMUNICATE WITH THEM DIRECTLY
16 OR INDIRECTLY DURING THE COURSE OF THE HEARING, I WILL
17 RELUCTANTLY PERMIT HIM TO SIT NEXT TO YOU AND BUZZ YOUR EAR
18 AND DISTURB WHAT YOUR THOUGHTS ARE IN CONNECTION WITH THIS
19 ENTIRE THING.

20 BELIEVE ME, HE DOESN'T HELP YOU IN THE SLIGHTEST.

21 MR. BARENS: THE DEFENSE IS EXTREMELY GREATFUL FOR YOUR
22 HONOR'S RULING THIS MORNING AND RELIEVED.

23 YOUR HONOR, MR. CHIER WOULD BE PERMITTED TO
24 PARTICIPATE IN THE DIALOGUE CONCERNING LEGAL MOTIONS AND --

25 THE COURT: THE SAME AS HE HAS BEEN DOING, EXCEPT THAT --
26 LET HIM OBEY MY ORDERS.

27 MR. BARENS: YES, YOUR HONOR.

28 THE COURT: ALL RIGHT. I DON'T WANT ANY OUTBURSTS OF

1 ANY KIND THAT HE HAD BEFORE. TELL HIM TO RESTRAIN HIMSELF.
2 YOU ARE A MUCH BETTER MOUTHPIECE THAN HE IS. I THINK THAT
3 I WOULD RATHER LISTEN TO YOU AND SO WOULD EVERYONE ELSE.

4 MR. BARENS: I WILL INDEED, YOUR HONOR. YOUR HONOR,
5 COULD I INQUIRE AS TO WHETHER I WILL PAID DURING THE PENALTY
6 PHASE OF THE TRIAL?

7 THE COURT: HERE IS THE DIFFICULTY I HAVE ALSO. NORMALLY,
8 I KNOW WHAT THEY DO DOWNTOWN. NORMALLY, IF YOU MAKE AN
9 ARRANGEMENT WITH A CLIENT -- IN THIS PARTICULAR CASE YOU MADE
10 AN ARRANGEMENT FOR \$50,000 PLUS EXPENSES. THAT IS WHAT YOU
11 TOLD ME.

12 ALTHOUGH YOU HAVE ALSO TOLD ME THAT IT WAS SUBJECT
13 TO REVISION IF MORE TIME WAS NEEDED.

14 MR. BARENS: SUBSEQUENTLY --

15 THE COURT: JUST A MINUTE. UP TO THIS POINT, I THINK
16 THAT YOU HAD GOT \$35,000 FROM YOUR CLIENT OR THROUGH YOUR
17 CLIENT FROM SOMEBODY ELSE AND ABOUT ANOTHER \$22,000 OR
18 SOMETHING LIKE THAT FROM THE COURT.

19 MR. BARENS: THAT HAS BEEN SUBMITTED. I HAVE ONLY
20 RECEIVED --

21 THE COURT: I HAVE APPROVED IT.

22 MR. BARENS: I SEE.

23 THE COURT: I APPROVED IT EXACTLY AS YOU GAVE IT TO ME.

24 MR. BARENS: I SEE, YOUR HONOR.

25 THE COURT: HIS BILL, I HAVE NOT APPROVED BECAUSE AS
26 I SAID, THERE ARE THESE FRIVOLOUS, SCURRILOUS MOTIONS. I AM
27 NOT GOING TO APPROVE SOMETHING HE SAID ABOUT ME. THEY WEREN'T
28 NECESSARY.

1 I HAVE CONSULTED OTHER JUDGES. THEY HAVE ADVISED
2 ME THAT MOTIONS THAT ARE DELIBERATELY MADE AND FRIVOLOUS AND
3 DEMONSTRABLY FRIVOLOUS, THE ATTORNEY IS NOT ENTITLED TO ANY
4 COMPENSATION. THAT IS, HE IS VENTING HIS SPLEEN ON ME IN THE
5 FORM OF THESE MOTIONS THAT HE MAKES. I WILL NOT COUNT THOSE
6 THINGS.

7 I MAY APPROVE A SUBSTANTIAL PART OF THE BILL. I
8 AM TRYING TO GO THROUGH IT AND FIND OUT WHICH PARTS RELATE
9 TO THE FRIVOLOUS MOTIONS THAT HE HAS MADE.

10 I WILL APPROVE THAT. I WILL CONTINUE TO GIVE HIM --
11 I WILL CONTINUE TO APPROVE \$35 AN HOUR FOR HIM DURING THE
12 PENALTY PHASE.

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MR. BARENS: AND FOR MYSELF, YOUR HONOR.

THE COURT: YOU, I WILL PAY.

MR. BARENS: ALL RIGHT, THEN I WILL BE ABLE TO SUBMIT MY BILL.

THE COURT: ALL RIGHT. ACTUALLY, I SHOULD NOT PAY THE COUNTY MONEY BUT I WILL DO IT IN THIS PARTICULAR CASE BECAUSE OF THE UNUSUAL CIRCUMSTANCES AND THE FACT THAT THIS PENALTY TRIAL MIGHT INVOLVE DEATH.

MR. BARENS: YOUR HONOR, THE TIME AND EFFORT I HAVE PUT IN DURING THE MONTHS OF MARCH AND APRIL, WHICH I HAVEN'T BILLED, IS UNBELIEVABLE, THE TIME WE SPENT.

THE COURT: THERE IS A LIMIT OF HOW MUCH I CAN APPROVE FOR THAT, IN VIEW OF THE FACT YOU MADE A CONTRACT AND YOU WOULD HAVE BEEN STUCK WITH THAT CONTRACT WOULDN'T YOU? ANY OTHER JUDGE WOULD SAY YOU MADE YOUR BED, THEN LIE IN IT. WE ARE NOT GOING TO RELIEVE YOU AS IF YOU HAD BEEN APPOINTED BY A JUDGE AND HAD BEEN APPOINTED AT THAT RATE.

MR. BARENS: YOUR HONOR, THE DEFENDANT IS INDIGENT.

THE COURT: I WILL GIVE YOU A SUBSTANTIAL AMOUNT OF MONEY, DON'T WORRY ABOUT IT, WILL YOU?

MR. BARENS: ALL RIGHT.

THE COURT: YOU CAN TRUST MY JUDGMENT IN THIS CASE.

MR. BARENS: QUITE SO.

THE COURT: I WANT NOTHING DISCUSSED WITH THEM OUTSIDE BECAUSE I TOLD YOU I DON'T WANT TO GO PUBLIC. I DON'T THINK IT WOULD HELP HIS REPUTATION IN THE COMMUNITY IF IT IS KNOWN ABOUT THE TACTICS AND THE KIND OF MOTIONS HE MADE AND THE DELIBERATE SUPPRESSION AND MISREPRESENTATION OF THE FACTS IN

1 THE MOTIONS THAT HE MAKES TO THE SUPREME COURT.

2 MR. BARENS: WILL YOUR HONOR JUST MAKE A STATEMENT THAT
3 YOU HAVE DEEMED IT AGREEABLE THAT HE PARTICIPATE ON THE SAME
4 BASIS?

5 THE COURT: TELL THEM THAT YOU MADE A VERY PASSIONATE
6 APPEAL ON BEHALF OF CHIER AND THAT I HAD, FOR YOUR SAKE AND
7 FOR THE SAKE OF THE DEFENDANT, NOT FOR HIS SAKE, AGREED TO
8 PERMIT HIM TO CONTINUE ON THE CASE.

9 MR. BARENS: THANK YOU VERY, VERY MUCH.

10 THE COURT: IS THAT ALL RIGHT?

11 MR. WAPNER: THAT IS FINE.

12 THE COURT: NOW WHERE ARE WE? ANYTHING FURTHER?

13 MR. WAPNER: NO, THAT IS FINE.

14 THE COURT: ALL RIGHT. ANYTHING ELSE YOU WANT TO DISCUSS
15 ABOUT ANY HOUSEKEEPING MATTERS WE HAVE TO TAKE CARE OF AS TO
16 THE PENALTY PHASE?

17 ALL RIGHT, YOU TELL THAT TO THEM. YOU KEEP OUT
18 ANY QUESTION AS TO WHY I DIDN'T WANT HIM, AS TO WHY I THOUGHT
19 IT WOULD BE BEST FOR YOU AND CHIER NOT TO HAVE THE PRESS IN
20 HERE ON THIS PARTICULAR DISCUSSION.

21 DO YOU BLAME ME FOR NOT WANTING THEM?

22 MR. BARENS: NO.

23 THE COURT: SERIOUSLY?

24 MR. BARENS: NO. I THANK YOUR HONOR.

25 THE COURT: I DON'T WANT TO DO WHAT HE IS DOING, TALK
26 TO THE PRESS AND SO FORTH.

27 MR. BARENS: I THINK YOUR HONOR ACTED PROPERLY.

28 THE COURT: THE FIRST SUGGESTION BY HIM -- AND I KNOW

1 HE LOVES TO GET HIS NAME IN THE PAPERS AND TO ANY MEMBER OF
2 THE PRESS ON THINGS THAT HAVE NOTHING TO DO WITH IT, BUT WHERE
3 THE GAG ORDER IS DEPARTED FROM IN THE SLIGHTEST, HE IS OUT
4 OF THE CASE DEFINITELY AND YOU CAN TELL HIM THAT.

5 MR. BARENS: YES, YOUR HONOR.

6 THE COURT: ONE OTHER THING, BEFORE HE MAKES ANY MOTION,
7 SEE THAT YOU APPROVE OF IT, WILL YOU?

8 MR. BARENS: YES, YOUR HONOR.

9 THE COURT: IT HAD YOUR NAME ON IT BUT YOU KNEW NOTHING
10 ABOUT IT.

11 MR. BARENS: I WILL READ THEM NEXT TIME, YOUR HONOR.

12 MR. WAPNER: THANK YOU, YOUR HONOR.

13 THE COURT: YOU ARE THE GOOD GUY AND HE IS THE BAD GUY.

14 MR. BARENS: IT IS NOT INTENTIONAL. IT IS NOT
15 CONTRIVED.

16 THE COURT: YOU MUST APPROVE OF EVERY MOTION HE MAKES
17 SO YOU WILL BE HELD RESPONSIBLE FOR IT.

18 MR. BARENS: I UNDERSTAND IT, YOUR HONOR.

19 THE COURT: ALL RIGHT.

20 MR. WAPNER: THANK YOU, YOUR HONOR.

21 THE COURT: YOU UNDERSTAND WHAT YOU ARE GOING TO TELL
22 THE PRESS?

23 MR. BARENS: I AM JUST SIMPLY GOING TO SAY, FOR THE
24 BENEFIT OF THE DEFENDANT AND UPON MY URGING, AS A COURTESY
25 TO MYSELF AND OUT OF CONCERN TO THE DEFENDANT, YOUR HONOR
26 AGREED TO --

27 THE COURT: IT IS MORE THAN A COURTESY TO YOU.

28 THAT YOU THINK IT IS NECESSARY.

1 MR. BARENS: YES, I FELT IT ABSOLUTELY NECESSARY, YOUR
2 HONOR.

3 THE COURT: AND THAT IS ALL YOU HAVE TO SAY.

4 MR. BARENS: THAT IS ALL I WILL SAY.

5 MR. WAPNER: IF THEY ASK ME, WHICH I ASSUME THEY WILL --

6 THE COURT: WHAT?

7 MR. WAPNER: IF THEY ASK ME WHAT MY POSITION IS --

8 THE COURT: YOUR POSITION IS YOU ARE IN ACCORD WITH WHAT
9 THE COURT HAS DONE --

10 MR. WAPNER: THANK YOU.

11 THE COURT: -- IN VIEW OF THE APPEAL MADE BY MR. BARENS.

12 MR. WAPNER: ALL RIGHT, THANK YOU.

13 MR. BARENS: THANK YOU.

14 (COUNSEL EXIT CHAMBERS.)

15 (PAUSE IN PROCEEDINGS.)

16 (COUNSEL RETURN TO CHAMBERGS.)

17 THE COURT: INCIDENTALLY, I WANTED TO ADD ONE MORE THING.

18 IT HAS BEEN CALLED TO MY ATTENTION A NUMBER OF
19 TIMES WHEN I MADE AN UNFAVORABLE RULING, IT WAS DIRECTED TO
20 MY ATTENTION THAT CHIER MADE THE MOST VENOMOUS LOOKS ANYBODY
21 HAS EVER SEEN AND IT WAS SO DEMONSTRATIVE, I THINK THE JURORS
22 MUST HAVE SEEN THAT SO I WOULD SUGGEST YOU TELL HIM TO CONTROL
23 HIS FACIAL EXPRESSION.

24 IT ISN'T MY GRIMACES AND ANYTHING ELSE THAT HE
25 FOUND SUCH OBJECTION TO, BUT HE HIMSELF HAS BEEN GUILTY OF
26 THE MOST TERRIBLE THINGS. I NEVER WANTED TO SAY ANYTHING ON
27 THE RECORD BUT THE JURY HAS NOTICED THAT.

28 JUST TELL HIM TO BEHAVE HIMSELF, WILL YOU?

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MR. BARENS: YES, YOUR HONOR.

THE COURT: HAVE HIM LOOK AT YOU, NOT ME.

MR. BARENS: YES, YOUR HONOR. THANK YOU.

THE COURT: OR HIM.

MR. WAPNER: THANKS. HE CAN DIRECT THE VENOMOUS LOOKS
AT ME?

THE COURT: YES.

MR. WAPNER: THANK YOU.

(AT 9:43 P.M. AN ADJOURNMENT WAS TAKEN.)

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1 SANTA MONICA, CALIFORNIA; FRIDAY, MAY 8, 1987; 11:20 A.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 CHAMBERS WITH DEFENDANT HUNT BEING
7 PRESENT, MR. CHIER AND MR. BARENS
8 PRESENT. DEPUTY DISTRICT ATTORNEY
9 WAPNER NOT BEING PRESENT:)

10 THE DEFENDANT: HELLO.

11 THE COURT: ALL RIGHT, THE RECORD WILL INDICATE THE
12 DEFENDANT IS PRESENT WITH HIS COUNSEL.

13 MR. BARENS: YOUR HONOR, WE ARE HERE THIS MORNING
14 PURSUANT TO A REQUEST BY THE DEFENDANT TO ACCESS THE COURT
15 AND, ACCORDINGLY, WE ARE PRESENT.

16 I BELIEVE MR. HUNT WISHES TO ADDRESS YOUR HONOR.

17 THE DEFENDANT: JUST GIVE ME A COUPLE OF SECONDS TO
18 GET MYSELF TOGETHER HERE.

19 I SUPPOSE YOUR HONOR HAS SOME FORESHADOWING OF
20 THE ISSUES THAT I WANTED TO ADDRESS TODAY WITH YOU.

21 THE COURT: I HAVE JUST AN IDEA. I WAS TOLD THAT YOU
22 WANT TO MAKE SOME STATEMENT HERE, SOME MARSDEN MOTIONS, THEY
23 CALL IT.

24 THE DEFENDANT: AS I UNDERSTAND IT, THAT IS A MOTION
25 THAT ALLOWS ME TO DISCUSS THE PREPAREDNESS.

26 THE COURT: PARDON ME?

27 THE DEFENDANT: THE PREPAREDNESS OF MY ATTORNEYS.

28 THE COURT: THE PREPAREDNESS OF YOUR ATTORNEYS, WHAT

1 DOES THAT MEAN?

2 THE DEFENDANT: WOULD YOU ALLOW ME TO CONTINUE JUST
3 A MOMENT, SIR?

4 FOR THE PURPOSE OF THE PENALTY PHASE COMING UP,
5 I WANT TO MAKE IT KNOWN TO YOUR HONOR THAT I DON'T FEEL THAT
6 WE ARE ADEQUATELY PREPARED AT THIS TIME TO BE ABLE TO GO
7 FORWARD. SPECIFICALLY, NONE OF THE WITNESSES THAT I FEEL
8 SHOULD BE CALLED FOR THIS HEARING, FOR THE PENALTY PHASE
9 HEARING, HAVE BEEN SUBPOENAED AND NEITHER OF MY ATTORNEYS
10 HAVE BEEN ABLE TO INTERVIEW OR ARRANGE TO INTERVIEW SOME OF
11 THE INDIVIDUALS THAT I HAVE SPECIFIED TO THEM DIRECTLY.

12 AND ABOUT TWO MONTHS AGO, THE PENALTY PHASE
13 INVESTIGATOR WITHDREW FROM THE CASE.

14 THE ONLY OTHER PENALTY PHASE INVESTIGATOR THAT
15 I KNOW OF IS WORKING FOR JIM PITTMAN.

16 SO WE HAVE AN ISSUE OF PREPAREDNESS. DUE TO THE
17 GRAVITY OF THAT PARTICULAR HEARING, I AM EAGER TO SEE --

18 THE COURT: I DON'T UNDERSTAND. WHAT IS IT YOU WANT
19 ME TO DO? DO YOU WANT ME TO THROW OUT YOUR LAWYERS? AND
20 DO YOU WANT TO GET OTHER LAWYERS, IS THAT WHAT YOU WANT TO
21 DO?

22 THE DEFENDANT: YES.

23 THE COURT: WHAT DO YOU WANT TO DO THAT FOR?

24 THE DEFENDANT: FOR THE SECOND REASON, THERE IS A
25 SERIOUS DISAGREEMENT BETWEEN MY COUNSEL AND MYSELF CONCERNING
26 THE TACTICAL WAY TO PROCEED, WHICH WITNESSES TO CALL.

27 THE COURT: WHAT ARE THE TACTICAL DIFFERENCES YOU HAVE
28 WITH THEM?

1 THE DEFENDANT: AS TO WHICH WITNESSES SHOULD BE CALLED,
2 YOUR HONOR, AND WHETHER I SHOULD BE CALLED OR NOT, AS A
3 WITNESS.

4 THE COURT: WHAT DO YOU MEAN?

5 THE DEFENDANT: I AM VERY MUCH IN FAVOR OF BEING CALLED.

6 THE COURT: DO YOU WANT TO BE CALLED AS A WITNESS?

7 THE DEFENDANT: AS A WITNESS.

8 THE COURT: YOUR LAWYERS DON'T WANT YOU TO?

9 THE DEFENDANT: AS OF THIS PARTICULAR POINT AND TIME,
10 THEY HAVE EXPRESSED SOME APPREHENSIONS ABOUT ME BEING A
11 WITNESS ON MY OWN BEHALF IN THE PENALTY PHASE HEARING.

12 THE COURT: WELL, YOU ARE THE ONE ON THE GUILT PHASE
13 THAT SAID YOU DIDN'T WANT TO TAKE THE STAND AND I GOT A
14 PERSONAL WAIVER FROM YOU, DIDN'T I?

15 THE DEFENDANT: WELL, PERHAPS IT WOULD BE ILLUMINATING
16 FOR YOUR HONOR TO DISCUSS THAT WITH YOU FOR A MOMENT, BECAUSE
17 IN A WAY SOME OF THE ISSUES THAT EXIST BETWEEN MY LAWYERS
18 AND MYSELF AT THIS POINT HAD THEIR GENESIS DURING THE GUILT
19 PHASE OF THE TRIAL, BECAUSE IT WAS A CONCATENATION OF
20 CIRCUMSTANCES WHICH STARTED WITH YOUR HONOR'S SILENCING
21 RICHARD CHIER.

22 RICHARD CHIER WAS THE ATTORNEY THAT HAD PREPARED
23 THE DEFENSE PORTION OF THE CASE PREDOMINANTLY AND ARTHUR
24 BARENS WAS CONNECTED WITH ISSUES REGARDING THE DEFENSE AND
25 CROSS-EXAMINATION ISSUES AND RICHARD AND I ARE THE TWO PEOPLE
26 WHO PREPARED MY TESTIMONY, I HAD WORKED WITH HIM ON IT.

27 THE COURT: THAT IS WATER OVER THE DAM. THAT IS WATER
28 OVER THE DAM.

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ON THE APPEAL ON THIS CASE, WHEN IT IS TAKEN UP
ON APPEAL, WHAT I HAD DONE IN CONNECTION WITH THAT MATTER,
THAT WILL BE DISCUSSED WITH THE HIGH COURT.

THE DEFENDANT: IT IS MY UNDERSTANDING, YOUR HONOR --

THE COURT: IT HAS NOTHING TO DO WITH YOUR MOTION AT
THIS TIME.

THE DEFENDANT: I DON'T WISH TO TRY YOUR HONOR'S PATIENCE.
HOWEVER, THERE IS SOME RELEVANCY HERE.

IT IS MY UNDERSTANDING THAT RICHARD WILL NOT BE
ALLOWED TO SPEAK IN THE PENALTY PHASE EITHER.

THE COURT: IT HAS NOTHING TO DO WITH THIS MOTION THAT
YOU ARE MAKING NOW.

1 THE DEFENDANT: WELL, IT GOES TO THE ISSUE OF
2 PREPAREDNESS OF MY ATTORNEYS TO BE ABLE TO COPE WITH THE DIRECT
3 EXAMINATION OF ME DURING THE GUILT PHASE OF THE TRIAL.

4 THE COURT: LET ME ASK YOU A QUESTION BEFORE YOU GO
5 ANY FURTHER.

6 THE DEFENDANT: YES.

7 THE COURT: LET ME ASK YOU THIS QUESTION: YOU KNOW
8 THAT MR. BARENS MADE A MOTION BEFORE ME ON WEDNESDAY, DID
9 YOU NOT, TO CONTINUE THIS CASE?

10 THE DEFENDANT: YES, I WAS INFORMED OF THAT.

11 THE COURT: YOU KNEW THAT, DIDN'T YOU?

12 THE DEFENDANT: UH-HUH.

13 THE COURT: YOU KNEW I DENIED THAT MOTION, DIDN'T YOU?

14 THE DEFENDANT: YES, THAT IS WHAT I HEARD, YOUR HONOR.

15 THE COURT: IS THIS MOTION NOW YOU ARE MAKING FOR THE
16 PURPOSE OF CIRCUMVENTING THAT PARTICULAR THING?

17 THE DEFENDANT: I WOULD BE MAKING THIS MOTION HERE IN
18 ANY CASE.

19 THE COURT: WHY DID YOU WAIT UNTIL THE LAST MINUTE TO
20 MAKE THE MOTION? WHY DO YOU WAIT UNTIL NOW, AFTER I DENIED
21 THE MOTION FOR CONTINUANCE?

22 THE DEFENDANT: I HAVE CONTINUED TO MAKE MY FEELINGS
23 KNOWN TO THE ATTORNEYS THROUGHOUT.

24 MR. BARENS: YOUR HONOR, I WILL, FOR THE RECORD, VERIFY
25 WE HAD A BREAKDOWN IN RELATIONS TWO DAYS AFTER THE VERDICT.

26 THE COURT: I KNOW.

27 THE DEFENDANT: YOUR HONOR, I AM NOT DOING THIS FOR
28 ANY TACTICAL PURPOSES TO GAIN A DELAY.

1 IT IS JUST MY INTEREST TO SEE THAT ALL OF THE
2 WITNESSES THAT ARE AVAILABLE ARE HERE.

3 THE COURT: WHAT YOU WANT TO DO IS GET ANOTHER LAWYER,
4 IS THAT IT?

5 THE DEFENDANT: YES, I WOULD LIKE TO BRING IN ANOTHER.

6 THE COURT: WHO DO YOU WANT TO GET?

7 THE DEFENDANT: I HAVE BEEN INTERVIEWING VERY
8 AGGRESSIVELY, ATTORNEYS.

9 THE COURT: WHO?

10 THE DEFENDANT: I HAVE INTERVIEWED A FELLOW NAMED RICHARD
11 MAZER, ANOTHER ONE NAMED LINDQUIST. I AM IN THE PROCESS OF --
12 MR. FISHER HAS INDICATED THAT HE WOULD BE WILLING TO TAKE
13 THE CASE ON.

14 I AM TRYING TO PREPARE. I AM TRYING TO MAKE A
15 DETERMINATION WITH HIM AND SEE WHAT SORT OF ARRANGEMENTS CAN
16 BE MADE.

17 THE COURT: WELL, HAVE YOU GOT ANY MONEY TO PAY THEM?

18 THE DEFENDANT: WELL, THERE HAS BEEN AN OUTPOURING OF
19 SENTIMENT BY PEOPLE THAT ARE INTERESTED IN SUPPORTING ME AFTER
20 THE VERDICT.

21 THE COURT: FORGET ABOUT THE SENTIMENT. I AM TALKING
22 ABOUT DOLLARS.

23 THE DEFENDANT: THEY ARE INTERESTED.

24 THE COURT: HAVE YOU GOT ANY MONEY TO HIRE THESE LAWYERS?

25 THE DEFENDANT: I HAVEN'T FINALIZED THAT ARRANGEMENT
26 BUT THERE ARE SOME PEOPLE THAT INDICATED.

27 THE COURT: WHERE ARE YOU GOING TO GET THE MONEY TO HIRE
28 THESE LAWYERS?

1 BECAUSE WE HAVE BEEN PAYING NOW THESE LAWYERS
2 BECAUSE YOU PLED INDIGENCY.

3 THE DEFENDANT: I AM INDIGENT, SIR, THAT IS ABSOLUTELY
4 TRUE, I AM INDIGENT. I HAVE ABSOLUTELY NO RESOURCES.

5 THE COURT: WHERE WOULD YOU GET THE MONEY TO PAY THEM?

6 THE DEFENDANT: I WOULD BE RELYING ON THE GOOD WILL
7 OF FRIENDS.

8 THE COURT: WHAT FRIENDS?

9 THE DEFENDANT: I HAVE FRIENDS, YOUR HONOR.

10 THE COURT: WHICH FRIENDS ARE GOING TO PUT UP MONEY
11 FOR YOU?

12 THE DEFENDANT: I COULD GIVE YOU, YOUR HONOR, THE NAMES
13 ON THE RECORD. HOWEVER, INSASMUCH AS I DID NOT INDICATE TO
14 THEM THAT I WOULD BE DOING THAT, I WOULD JUST LIKE TO CLEAR
15 IT WITH THEM PERSONALLY.

16 IF YOU COULD ALLOW ME TO USE THE PHONE OR
17 SOMETHING LIKE THAT, THEN I COULD DO IT.

18 OR IF I COULD TALK TO MY ATTORNEYS AND THEY WOULD
19 TELL ME THAT I SHOULD GIVE YOU THEIR NAMES RIGHT NOW, I WOULD
20 BE HAPPY TO DO IT.

21 ONCE AGAIN, I DON'T WANT TO BE CONTUMACIOUS WITH
22 THE COURT.

23 THE COURT: HAVE YOU MADE YOUR FULL PRESENTATION TO
24 ME?

25 THE DEFENDANT: NO, I HAVEN'T.

26 THERE ARE SEVERAL OTHER ISSUES WITH RESPECT TO
27 RICHARD CHIER. SINCE HE IS SILENCED, HE WON'T BE MUCH GOOD
28 TO ME WITH RESPECT TO PERSUADING THE JURY.

1 THE COURT: WITH RESPECT TO WHAT?

2 THE DEFENDANT: AND WITH ARTHUR, THERE IS AN ISSUE --

3 THE COURT: LOOK, THE POSITION I TOOK IN THIS PARTICULAR
4 CASE IS THAT MR. BARENS IS INFINITELY SUPERIOR AS A TRIAL
5 LAWYER TO CHIER AND IT IS FOR YOUR SAKE, REALLY, THAT I THOUGHT
6 THAT MR. BARENS HANDLING THE MATTER WOULD BE THE ONLY ONE
7 THAT SHOULD BE DOING IT AND NOT MR. CHIER.

8 THE DEFENDANT: I APPRECIATE YOUR HONOR'S SOLICITUDE.
9 HOWEVER --

10 THE COURT: BECAUSE I NOTICED HOW ANTAGONISTIC HE WAS
11 TO THE PROSPECTIVE JURORS AT THE TIME OF THE HOVEY HEARINGS
12 AND HE ALIENATED THEIR INTEREST AND EVERYTHING ELSE.

13 AND IT WOULD BE IN YOUR BEST INTERESTS NOT TO
14 HAVE HIM APPEAR BEFORE THE JURY OR QUESTION ANYBODY BEFORE
15 THE JURY. HE, UNFORTUNATELY, HAS AN ATTITUDE WHICH
16 ANTAGONIZES PEOPLE, INCLUDING THE COURT. CONSEQUENTLY, IT
17 WOULDN'T BE FOR YOUR BEST INTERESTS TO HAVE HIM.

18 THE DEFENDANT: I APPRECIATE YOUR HONOR'S SOLICITUDE
19 ON MY BEHALF. HOWEVER, I RESPECTIVELY DISAGREE AS TO THERE
20 BEING AN INFINITE DISPARITY BETWEEN THE TWO.

21 THE COURT: DO YOU WANT HIM TO HANDLE THE PENALTY PHASE
22 OF THE CASE?

23 THE DEFENDANT: IF I COULD BRING OUT A SECOND ISSUE.

24 THE COURT: I AM ASKING YOU A QUESTION: DO YOU WANT
25 HIM NOW TO HANDLE THE PENALTY PHASE OF YOUR CASE?

26 THE DEFENDANT: THERE IS A SECOND ISSUE THAT BEARS ON
27 THAT, THEN I WOULD BE ABLE TO ANSWER YOUR HONOR'S QUESTION.

28 THE COURT: GO AHEAD.

1 THE DEFENDANT: I WAS DISCUSSING IT EARLIER, WHICH
2 IS AS A RESULT OF CERTAIN OF YOUR ACTIONS -- AND I AM
3 NOT IN ANY POSSESSION OF ANY LEGAL KNOWLEDGE TO BE ABLE
4 TO QUESTION PER SE BUT ARTHUR AND RICHARD, IN MY FEELING,
5 HAVE BEGUN TO RESPOND TO ISSUES IN THE CASE IN REACTION
6 TO YOU. THERE HAS BEEN A SORT OF CHILLING EFFECT ON THEIR
7 ABILITY TO PRESENT THIS CASE IN AN OBJECTIVE FASHION,
8 I FEEL.

9 RICHARD AND ARTHUR BOTH HAVE TALKED TO ME
10 ABOUT THE FACT THAT THEY ARE QUITE INTIMIDATED BY YOUR
11 CONDUCT.

12 I AM JUST REPEATING VERBATIM ABOUT MY EXPERIENCE
13 MYSELF AND WHAT THEY HAVE SAID TO ME.

14 WHEN IT GETS TO ANY ISSUE ABOUT TAKING THE
15 STAND, SOME OF YOUR RULINGS ABOUT THE NORTHERN CALIFORNIA
16 SITUATION AND CHARACTER EVIDENCE, AND A VARIETY OF OTHER
17 THINGS, LED THEM TO BELIEVE THAT IT MAY NOT BE ADVISABLE
18 OR IN MY BEST INTERESTS TO TAKE THE STAND.

19 I WOULD LIKE TO HAVE THE OPPORTUNITY TO HAVE
20 COUNSEL WHO I WOULD BE ABLE TO SEE EYE-TO-EYE ON WITH
21 SOME OF THESE ISSUES.

22 THERE REALLY ARE IRRECONCILABLE DIFFERENTS
23 BETWEEN THEIR PHILOSOPHY AND MINE ON HOW IT SHOULD BE
24 HANDLED.

25 THE COURT: WHAT ARE YOUR IRRECONCILABLE DIFFERENCES,
26 DO YOU MEAN WHETHER YOU SHOULD TAKE THE STAND?

27 THE DEFENDANT: WHETHER I SHOULD TAKE THE STAND
28 AND WHETHER SPECIFIC WITNESSES SHOULD BE CALLED.

1 THE COURT: WHICH WITNESSES ARE YOU TALKING ABOUT?

2 THE DEFENDANT: WELL, THERE ARE A VARIETY OF WITNESSES
3 THAT WEREN'T CALLED DURING THE GUILT PHASE.

4 THE COURT: WEREN'T YOU THERE EVERY TIME? DIDN'T
5 YOU CONSULT WITH THEM EVERY MINUTE OF THE TIME AND HAVE
6 A SAY AS TO WHO SHOULD BE CALLED AND WHO SHOULDN'T BE
7 CALLED?

8 DID YOU EVER MAKE A COMPLAINT ONCE -- ONCE
9 TO THE COURT THAT YOU WANTED TO HAVE CERTAIN WITNESSES
10 CALLED AND THEY REFUSED TO DO IT AND IT WAS PREJUDICING
11 YOUR CASE? DID YOU ONCE DO THAT?

12 THE DEFENDANT: I WAS BOUND BY THEIR DECISION. I
13 VERY FREQUENTLY --

14 THE COURT: DID YOU ONCE DO THAT?

15 THE DEFENDANT: AS YOUR HONOR WILL NOTICE, THE RECORD
16 REFLECTS NO ASSERTION OF ANY SUCH FACT BY ME DURING THE
17 COURSE OF THE TRIAL.

18 HOWEVER, AT THIS POINT, THIS PROBLEM ALSO
19 TAINTS THE PENALTY PHASE HEARING.

20 I WANT TO MAKE A RECORD WITH YOUR HONOR THAT
21 IT DID EXIST PRIOR, AND PRIOR TO THIS PARTICULAR IN CAMERA
22 DISCUSSION AND IT CONTINUES TO BE A PROBLEM WITH RESPECT
23 TO THE THREE OF OUR ORIENTATION. WE ARE SIMPLY NOT IN
24 AGREEMENT AS TO HOW TO PROCEED.

25 AND SINCE THEY ARE VERY MATERIAL ISSUES, I
26 AM TRAPPED IN A CONUNDRUM, YOUR HONOR. I DON'T KNOW WHETHER
27 RICHARD AND ARTHUR'S STANCE IS IN REACTION TO THE WAY
28 THEY HAVE BEEN TREATED BY THIS COURT.

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THE COURT: OH, COME ON, WILL YOU? THEY HAVE ACTED THE WAY THEY WANTED TO ACT FOR YOUR BEST INTEREST. IT DIDN'T MAKE ANY DIFFERENCE WHAT MY ATTITUDE WAS ALL THROUGHOUT THIS TRIAL. DON'T HAND ME ANY OF THAT STUFF, WILL YOU? I DON'T BELIEVE IT.

IS THERE ANYTHING FURTHER YOU WANT TO SAY?

MR. BARENS: YOUR HONOR --

THE COURT: IF THERE IS ANYTHING FURTHER YOU WANT TO SAY, GO AHEAD AND SAY IT.

INCIDENTALLY, DID YOU HAVE A LONG CONFERENCE WITH MR. BARENS BEFORE YOU CAME INTO MY CHAMBERS?

THE DEFENDANT: DOWNSTAIRS, I DID, YOUR HONOR.

THE COURT: YES.

THE DEFENDANT: I MET WITH HIM A COUPLE OF TIMES IN THE COUNTY JAIL.

THE COURT: DID YOU DISCUSS WITH HIM WHAT YOU WERE GOING TO SAY TODAY?

THE DEFENDANT: I HAVE BEEN DISCUSSING THESE POINTS WITH HIM ALL ALONG.

THE COURT: DID YOU DISCUSS THEM WITH HIM BEFORE YOU CAME INTO THIS COURTROOM AS TO WHAT YOU WERE GOING TO SAY?

THE DEFENDANT: OH, YES. THIS IS A REITERATION OF WHAT VARIETY OF THINGS I HAVE SAID.

THE COURT: IS THERE ANYTHING ELSE YOU WANT TO ADD?

THE DEFENDANT: YES, THERE IS.

ONCE AGAIN, I WANT TO STATE THAT BOTH COUNSEL STRONGLY INDICATED TO ME THAT I SHOULDN'T TAKE THE STAND

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BECAUSE OF INVOLVEMENT IN THE COURTROOM. I DON'T KNOW THAT THAT NECESSARILY HAS SUCH A BEARING ON THE ISSUE TO BE DETERMINATED AND THAT I BELIEVE, GIVEN THE STATE OF MIND THAT THESE LAWYERS HAVE, THAT ARTHUR AND RICHARD HAVE, THEY ARE NOT ABLE TO EFFECTIVELY PROTECT ME IN THE EVENT I DO TAKE THE STAND NOR ARE THEY PREPARED TO DO IT.

THE COURT: WHEN DID YOU REACH THE CONCLUSION THAT THEY ARE NOT COMPETENT TO PROTECT YOUR INTEREST?

THE DEFENDANT: IT WAS ACTUALLY DURING THE GUILT PHASE.

THE COURT: PARDON ME?

THE DEFENDANT: IT WAS ACTUALLY DURING THE GUILT PHASE, WHICH IS ONE OF THE REASONS I DIDN'T TAKE THE STAND.

1 THE COURT: WELL, FOR THE RECORD, I TOLD MR. BARENS
2 THAT I THOUGHT YOU HAD BEEN REPRESENTED BY PROBABLY ONE
3 OF THE MOST COMPETENT ATTORNEYS. I HAVE NEVER KNOWN A
4 LAWYER IN ALL OF MY EXPERIENCE WHO REPRESENTED A CLIENT
5 AS FAITHFULLY AND DILIGENTLY AND COMPETENTLY AS HE DID.

6 THE DEFENDANT: I AM NOT SAYING THAT ARTHUR AND
7 RICHARD ARE INCOMPETENT, PER SE.

8 THE COURT: WHAT?

9 THE DEFENDANT: I AM NOT SUGGESTING THAT ARTHUR
10 AND RICHARD ARE INCOMPETENT, PER SE, BUT ONLY IN THIS
11 PARTICULAR SETTING. THE FACT THAT MY COUNSEL WAS SPLIT,
12 ONE WAS PREPARED FOR THE DEFENSE POSITION AND HE CONTINUES
13 TO BE SILENCED.

14 THE COURT: ALL RIGHT, ON ANY APPEAL, YOU CAN BRING
15 UP THESE POINTS OF MY CONDUCT DURING THE COURSE OF THE
16 TRIAL. IT HAS NOTHING TO DO WITH THE APPLICATION YOU
17 ARE MAKING TO ME NOW.

18 THE DEFENDANT: CAN I MAKE ONE LAST PARENTHETICAL?

19 THE COURT: GO AHEAD.

20 THE DEFENDANT: I APPRECIATE YOUR HONOR GRANTING
21 THIS IN CAMERA HEARING.

22 I DON'T MAKE THESE POINTS UNNECESSARILY BUT
23 BECAUSE IT IS A MATTER OF LIFE AND DEATH AT THIS POINT,
24 IT WAS DONE IN ALL SINCERITY AND IT WAS NOT TO PLAY WITH
25 THE COURT IN ANY FASHION.

26 THE COURT: IN THIS PARTICULAR CASE, YOUR COUNSEL
27 OUGHT TO STAY IN THE CASE. THEY ARE THOROUGHLY FAMILIAR
28 WITH IT AFTER YEARS AND YEARS --

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THE DEFENDANT: ABSOLUTELY.

THE COURT: -- OF STUDY IN THIS PARTICULAR CASE AND FOR YOU TO GET ANOTHER LAWYER ON SHORT NOTICE --

WHAT DO YOU WANT ME TO DO WITH THE JURY WE HAVE NOW? PUT IT OFF FOR ANOTHER YEAR OR SO? WHAT DO YOU WANT ME TO DO WITH THEM?

THE DEFENDANT: OH, BY NO MEANS, NOT ANOTHER YEAR, I DON'T THINK.

THE COURT: WHAT DO YOU WANT ME TO DO WITH THIS JURY?

THE DEFENDANT: I AM NOT FAMILIAR WITH WHAT CAN BE DONE WITH RESPECT TO THAT.

THE COURT: HOW LONG A CONTINUANCE WOULD YOU WANT FOR THE PURPOSE OF HAVING ANOTHER LAWYER OR LAWYERS FAMILIARIZE THEMSELVES WITH THIS CASE?

THE DEFENDANT: I DON'T KNOW PRECISELY HOW LONG THAT TAKES, YOUR HONOR.

THE COURT: YOU WANT ME TO CONTINUE THE CASE, TELL ME HOW LONG YOU WANT ME TO CONTINUE IT?

THE DEFENDANT: THIS IS A MATTER OF FIRST IMPRESSION FOR ME. I AM NOT PREPARED TO DISCUSS THE ADMINISTRATION OF IT.

THE COURT: YOU WANT ANOTHER JURY, DON'T YOU?

THE DEFENDANT: I AM NOT PREPARED TO BE ABLE, WITHOUT COUNSEL, TO SUGGEST WHAT IS APPROPRIATE IN THE CIRCUMSTANCES. I HAVE A VERY DIFFICULT TIME.

THE COURT: WELL, IT TAKES MONTHS FOR COUNSEL TO PREPARE, TO KNOW THE ENTIRE CASE, TO PRESENT THE EVIDENCE

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AND READ THE ENTIRE RECORD OF IT.

THE DEFENDANT: I DON'T THINK IT WILL BE A MATTER OF MONTHS, PLURAL, BUT I THINK IT MIGHT BE AS MUCH AS TWO MONTHS.

THE COURT: WHAT AM I GOING TO DO WITH THE JURY? START ALL OVER AND GET A NEW JURY?

THE DEFENDANT: ONCE AGAIN, I AM NOT PREPARED TO SAY WHAT WOULD BE THE PROPER WAY TO PROCEED.

THE COURT: YOU HAVE GOT TO TELL ME RIGHT NOW. HOW LONG DO YOU WANT ME TO CONTINUE THE TRIAL, TELL ME.

THE DEFENDANT: WE HAVE 12 JURORS AND TWO ALTERNATES, PERHAPS IF WE TALK TO THEM, WE MIGHT BE ABLE TO SEE WHETHER THEY CAN STAY WITH US AND THAT PERHAPS MIGHT REFLECT ON YOUR HONOR'S DECISION.

THE COURT: WAIT TWO MONTHS, YOU MEAN?

THE DEFENDANT: IF IT DOES, WE COULD ASK, IT IS POSSIBLE TO FIND OUT.

THE COURT: WHAT DO YOU WANT?

MR. BARENS: NUMBER ONE, I WANT TO MAKE IT ABUNDANTLY CLEAR TO THE COURT, BECAUSE OF THE QUESTION THE COURT MADE TO THE DEFENDANT, DID HE DISCUSS WITH US WHAT HE WAS GOING TO SAY HERE THIS MORNING, HE ABSOLUTELY DID TELL US WHAT HE WAS GOING TO TELL THE COURT.

THE COURT: YOU KNEW BEFORE YOU TALKED TO HIM THIS MORNING THAT HE WAS GOING TO MAKE THIS MOTION, DIDN'T YOU?

MR. BARENS: HE TOLD US THIS LAST NIGHT, YOUR HONOR.

I DO NOT WANT THERE TO BE ANY IMPLICATION

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OR BELIEF BY THIS COURT THAT IN ANY WAY DEFENSE COUNSEL SHAPED OR SUGGESTED TESTIMONY BY THIS DEFENDANT IN MAKING A MARSDEN MOTION THIS MORNING. THAT WAS NOT THE CASE.

BUT THE DEFENDANT HAS REPRESENTED HIS SINCERE BELIEFS.

YOUR HONOR, I THINK IN A MATTER WHERE THE DEFENDANT'S LIFE IS ON THE LINE, IN THE MOST LITERAL SENSE, THAT THE MAN IS ENTITLED BY LAW AND BY ETHICS AND BY MORALITY TO COUNSEL THAT HE IS COMFORTABLE WITH AND FEELS COMPETENT IN. IF HE IS NOT CONFIDENT IN HIS COUNSEL AT THIS POINT IN A MATTER OF A DECISION IF HE IS GOING TO LIVE OR DIE THROUGH OUR SYSTEM, I BELIEVE THE SYSTEM IS SUCH THAT HE SHOULD BE ENTITLED TO LAWYERS HE IS COMFORTABLE WITH.

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1 THE COURT: WELL, I THINK THIS IS A PLOY AND A STRATEGEM
2 IN ORDER TO GET RID OF THIS JURY WE HAVE NOW IN ORDER
3 TO CONTINUE THIS PARTICULAR TRIAL. AND I WILL NOT COUNTENANCE
4 IT. I WILL DENY ANY MOTION UNDER MARSDEN. I DON'T THINK
5 THERE IS ANY BASIS FOR IT. IN FACT, I THINK HIS REPRESENTATION
6 ABOUT HE DOESN'T AGREE WITH YOU, HOW HE DISAGREED WITH YOU
7 ON HOW YOUR CONDUCT DURING THE COURSE OF THE TRIAL WAS
8 BLAMEWORTHY IN SOME RESPECTS AND YOU DIDN'T REPRESENT
9 HIM TO THE BEST OF YOUR ABILITY IS A LOT OF NONSENSE.

10 THE DEFENDANT: YOUR HONOR, COULD I MAKE A COUPLE
11 OF OBSERVATIONS, PLEASE?

12 MR. BARENS: YOUR HONOR --

13 THE DEFENDANT: COULD I SAY SOMETHING, ARTHUR, BEFORE --

14 MR. BARENS: COULD HE? BECAUSE I DO WANT MR. HUNT TO
15 MAKE HIS FULL RECORD.

16 THE DEFENDANT: YOUR HONOR, THERE ARE JUST A COUPLE
17 OF OTHER THINGS.

18 YOUR HONOR, I HAVE GATHERED THROUGH THE COURSE
19 OF THE TRIAL THAT YOU ARE VERY WELL READ. MY FEELINGS
20 PERSONALLY ABOUT THE SITUATION I AM IN COULD BE RELATED --
21 AND I DON'T WANT TO CAST ANY ASPERSIONS ON SOCRATES BECAUSE
22 HE WAS A SAINT, BUT BY ALL COUNTS, YOU REMEMBER THE POSITION
23 SOCRATES WAS IN WHEN THEY WERE ASKING HIM TO TAKE THE
24 HEMLOCK.

25 THE COURT: YES, I AM THOROUGHLY FAMILIAR WITH IT.

26 THE DEFENDANT: I AM SURE YOU ARE, SIR.

27 AND HE SAID IN THAT, IN HIS FINAL ADDRESS
28 THAT SINCE HE LIVED IN ATHENS, HE WAS GOVERNED BY THE

10
1 LAWS OF ATHENS AND IF HE WANTED TO LEAVE, HE COULD HAVE
2 LEFT AND HE CERTAINLY HAD THAT CHOICE BECAUSE IT WAS A
3 FREE COUNTRY. I FEEL THE SAME WAY.

4 THIS COUNTRY ALLOWS PEOPLE TO IMMIGRATE OR
5 CHOOSE WHERE TO LIVE. IF I FEEL -- I AM INNOCENT OF THIS
6 PARTICULAR OFFENSE BUT I FEEL THAT IF THIS COUNTRY HAS
7 CHOSEN TO PUNISH ME FOR THIS CRIME, THEN I AM BOUND BY
8 ITS PROCEDURES AND ITS RULES, AND I KNOW THAT IS WHY I
9 CONTINUED TO COME ON BAIL AND WHY I WAS HONORING SORT
10 OF AN AGREEMENT THAT I MADE WITH THE COURT.

11 HOWEVER, AND AS A RESULT OF THAT, YOUR HONOR,
12 YOU KNOW, I FEEL -- AND SOCRATES STATED IT VERY CLEARLY,
13 WHEN YOU LIVE IN A FREE COUNTRY, YOU ALWAYS HAVE THE CHOICE
14 TO LEAVE. YOU HAVE TO BE GOVERNED BY THEIR RULES, NO
15 MATTER WHAT, AND IF THEY CHOOSE TO EXECUTE YOU, THAT IS
16 WHAT THEY CHOOSE TO DO. EVEN IF I WAS OUT ON BAIL AND
17 I HAD TO MAKE THE DATE OF MY EXECUTION, I WOULD SHOW UP
18 FOR THAT PARTICULAR THING. I AM NOT TRYING TO AVOID PUNISHMENT.
19 I KNOW THAT IT IS INEXORABLE THAT I WILL EITHER BE SENTENCED
20 TO LIFE OR DEATH. I DO NOT HAVE ANY PARTICULAR ISSUE
21 WITH THIS PARTICULAR JURY.

22 I AM MERELY SEEKING TO MAKE SURE THAT ALL
23 OF THE FACTS ARE ON THE RECORD.

24 AS TO THE COMPETENCY OF MY ATTORNEYS, I FEEL
25 BOTH OF THEM ARE EXTREMELY INTELLIGENT MEN, THAT THERE
26 IS NO QUESTION THAT THEY ARE COMPETENT PER SE. BUT IN
27 ALL SINCERITY, YOUR HONOR, I FEEL THERE WAS AN ATMOSPHERE
28 IN THE COURTROOM THAT PERVADED THEIR THINKING, WHICH

1 BIASED AND PREJUDICED THEIR THINKING TO THIS TIME AND
2 THAT RICHARD, FROM ALL OF THE TIMES HE WAS THROWN OUT
3 AND ALL OF HIS ATTEMPTS --

4 AS YOU KNOW, THERE HAS BEEN CONSIDERABLE DICHOTOMY
5 BETWEEN THE TWO OF YOU, YOUR THINKING ON CERTAIN ISSUES,
6 AND HE HAS BEEN VERY VIGOROUS, AS YOUR HONOR HAS. I AM
7 NOT A LEGAL LOGISTICIAN OR A LEGAL THEORETICIAN SUFFICIENT
8 TO KNOW WHO IS RIGHT OR WHO IS WRONG BUT I KNOW THAT RICHARD
9 DOESN'T FUNCTION WELL IN THIS COURTROOM AND I KNOW ARTHUR
10 HAS EXPRESSED TO ME PERSONALLY DURING THE GUILT PHASE
11 THAT HE WAS HONESTLY CONFUSED BECAUSE OF SOME THE THINGS
12 THAT WERE UNPRECEDENTED IN HIS VIEW IN YOUR CONDUCT OF
13 THIS CASE.

14 AND ONCE AGAIN, I AM NOT COMING FROM BEING
15 PEJORATIVE ABOUT YOUR HONOR BECAUSE, YOUR HONOR, WITH
16 ALL OF YOUR EXPERIENCE, IS FAR MORE GIFTED AND ABLE TO
17 MAKE THESE JUDGMENTS THAN I AM. I AM JUST COMING FROM
18 A POSITION OF AN INGENUE IN THE SITUATION. IT IS A MATTER
19 OF FIRST IMPRESSION FOR ME AND I AM SPEAKING TO YOU SINCERELY.

20 THE COURT: ALL RIGHT.

21 MR. BARENS: YOUR HONOR, I DON'T WANT TO FEEL EVER
22 THIS MAN'S BLOOD IS ON MY HANDS, YOUR HONOR, AND I SAY
23 TO YOU IN THE MOST SINCERE WAY I CAN --

24 THE COURT: THEN I WOULD SUGGEST VERY STRONGLY THAT
25 YOU STAY ON IN THE CASE. YOU KNOW MORE ABOUT IT THAN
26 ANYBODY ELSE. YOU ARE BETTER ABLE TO HANDLE IT THAN ANYBODY
27 ELSE. IF THERE IS ANY HOPE FOR HIM, IT WILL BE THROUGH
28 YOU AND THAT IS WHY I WANT YOU IN THE CASE, FOR HIS SAKE.

1 MR. BARENS: YOUR HONOR, COULD I RESPECTFULLY REQUEST,
2 IF WE ARE BOUND TO CONTINUE, THAT MR. CHIER BE PERMITTED
3 TO TESTIFY (SIC) ON A FULL BASIS WITH COUNSEL DURING THE
4 PENALTY PHASE?

5 THE COURT: WHAT DO YOU MEAN BY TESTIFY?

6 MR. BARNES: I DIDN'T MEAN TO SAY THE WORD "TESTIFY."
7 I MEANT TO SAY TO PARTICIPATE AS COUNSEL BEFORE THE BENCH.

8 THE COURT: HE WILL BE IN THE SAME POSITION THAT
9 HE WAS ALL THROUGHOUT THIS TRIAL. I TOLD YOU I THINK
10 THAT HIS ATTITUDE WOULD BE REPUGNANT TO THE JURY, I AM
11 POSITIVE OF THAT. HIS UNFORTUNATE PERSONALITY IS SUCH
12 THAT I THINK IT WOULD BE TO THE DISADVANTAGE OF THE DEFENDANT
13 TO HAVE HIM ACTIVELY PARTICIPATE IN CROSS-EXAMINATION
14 OF ANY WITNESSES OR ADDRESSING THE JURY IN ANY WAY.

15 MR. BARENS: YOUR HONOR, THE DEFENDANT WISHES HIM
16 TO PARTICIPATE.

17 THE COURT: WELL, I CONTROL WHO IS COUNSEL HERE,
18 RIGHT?

19 MR. BARENS: YOUR HONOR, I THINK IT WOULD BE BEST
20 ADVISED THAT THE DEFENDANT, WITH HIS LIFE ON THE LINE
21 HERE, HAVE HIS -- IF HE DIDN'T HAVE NEW COUNSEL OF HIS
22 CHOOSING, THAT HE BE ABLE TO HAVE HIS PRESENT COUNSEL
23 EXERCISE CONTROL, ACCORDING TO WHAT HE WISHES, WITH HIS
24 LIFE ON THE LINE.

25 THE COURT: DO YOU WANT HIM TO DO THAT?

26 THE DEFENDANT: YES, I DO.

27 THE COURT: DO YOU WANT HIM TO PARTICIPATE?

28 THE DEFENDANT: YES, YOUR HONOR.

1 THE COURT: I AM TELLING YOU NOW I THINK IT WOULD
2 BE TO YOUR DISADVANTAGE. BUT IF YOU WANT HIM TO AND YOU
3 ASK ME TO DO THAT, I WILL PERMIT HIM TO PARTICIPATE.
4 BUT HE HAS TO CONFORM TO ALL OF THE RULES. YOU KNOW THAT,
5 DON'T YOU? CONFORM TO ALL OF THE RULES AND HIS CONDUCT
6 TOWARDS THE COURT SHOULD BE ONE LIKE A LAWYER SHOULD BE,
7 ALL RIGHT?

8 THE DEFENDANT: YES, YOUR HONOR.

9 THE COURT: I WILL PERMIT HIM TO DO THAT FOR YOUR
10 SAKE.

11 MR. BARENS: THANK YOU FOR YOUR COURTESY, YOUR HONOR.

12 THE COURT: I AM TELLING YOU THAT IF YOU DO IT YOURSELF,
13 YOU WOULD BE MUCH BETTER OFF.

14 MR. BARENS: YOUR HONOR, WE HAVE A CONTINUANCE MOTION
15 WE ARE ASKING TO BE RECONCILED.

16 THE COURT: LET'S GO OUT AND GET MR. WAPNER AND
17 MAKE THAT MOTION FORMALLY.

18 MR. BARENS: THANK YOU, YOUR HONOR.

19 (RECESS.)
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(THE FOLLOWING PROCEEDINGS WERE HELD
IN OPEN COURT OUTSIDE THE PRESENCE AND
HEARING OF THE JURY WITH ALL COUNSEL
BEING PRESENT:)

THE COURT: THE RECORD WILL INDICATE THE PRESENCE OF
COUNSEL AND THE DEFENDANT. FOR THE RECORD, A MORRISSEY
MOTION WAS MADE AND DENIED BY THE COURT.

MR. BARENS: THANK YOU.

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SANTA MONICA, CALIFORNIA

FRIDAY, MAY 8, 1987

DEPARTMENT WEST C

HON. LAURENCE J. RITTENBAND, JUDGE

(APPEARANCES AS NOTED ON TITLE PAGE.)

(THE FOLLOWING PROCEEDINGS WERE HELD
IN OPEN COURT OUTSIDE THE PRESENCE AND
HEARING OF THE JURY WITH ALL COUNSEL
BEING PRESENT.)

* * *

MR. CHIEF: YOUR HONOR, I BELIEVE THAT IT IS INCUMBENT
UPON ME AS AN OFFICER OF THE COURT, TO REVEAL TO THE COURT,
THAT WITHIN THE LAST FEW DAYS, I HAVE BEEN PROVIDED WITH A

1 COPY OF A DOCUMENT WHICH IS GOING TO BE THE SUBJECT OF A
2 MOTION, WHICH SUGGESTS THE POSSIBILITY OF JUROR MISCONDUCT.

3 THIS DOCUMENT IS A RECIPE WRITTEN BY ONE OF THE
4 JURORS IN A SARDONIC, CYNICAL, SOMEWHAT FEEBLE ATTEMPT AT
5 MAKING HUMOR OF THE DEFENDANT'S SITUATION AND THE DEFENDANT'S
6 BACKGROUND IN THE COMMODITIES MARKET.

7 THIS RECIPE IS CALLED I THINK, A RECIPE OF THE
8 WEEK FOR INVERTED BUTTERFLIES.

9 THE COURT: WHEN DID YOU KNOW ABOUT THAT?

10 MR. CHIER: I FOUND OUT ABOUT IT ABOUT A WEEK AGO AND
11 I HAVE SINCE --

12 THE COURT: WHY DIDN'T YOU CALL IT TO THE COURT'S
13 ATTENTION AND MAKE A MOTION TO DISQUALIFY THE PARTICULAR
14 JUROR?

15 MR. CHIER: BECAUSE I HAD MY INVESTIGATOR --

16 THE COURT: WE HAVE TWO ALTERNATES.

17 MR. CHIER: YOUR HONOR --

18 THE COURT: WHY DO YOU WAIT UNTIL NOW TO TELL ME ABOUT
19 THIS?

20 MR. CHIER: BECAUSE I WAS IN THE HOSPITAL WITH MY WIFE
21 AND --

22 THE COURT: THAT'S RIGHT. BUT YOU CAN TELL MR. BARENS.
23 THERE ARE TELEPHONES. YOU CAN CALL HIM.

24 MR. CHIER: MY INVESTIGATOR WAS IN TENNESSEE, KENTUCKY
25 AND TEXAS INVESTIGATING OTHER MATTERS RELATIVE TO THIS CASE.

26 IT WAS NECESSARY THAT I HAVE NO CONTACT WITH THE
27 POTENTIAL WITNESSES MYSELF.

28 THEREFORE, I INTERFACED WITH THE INVESTIGATOR.

1 THE INVESTIGATOR DID NOT MAKE CONTACT WITH THE
2 PERSON WHO PROVIDED US WITH THIS DOCUMENT UNTIL SOME THREE
3 DAYS AGO, YOUR HONOR.

4 NOW, THIS DOCUMENT WAS DELIVERED BY THE JUROR
5 IN QUESTION TO --

6 THE COURT: WHY DIDN'T YOU TELL ME THIS IN CAMERA INSTEAD
7 OF WAITING TO HAVE A REPORTER HERE, KNOWING THAT IT IS GOING
8 TO BE PUBLISHED?

9 MR. CHIER: THESE ARE PART OF THE --

10 THE COURT: WHY DIDN'T YOU ASK ABOUT THAT MATTER IN
11 CAMERA INSTEAD OF MAKING IT IN OPEN COURT, IN THE WAY THAT
12 YOU HAVE?

13 MR. BARENS: WELL, WE CAN DO IT IN CHAMBERS NOW.

14 THE COURT: WELL, IT IS A LITTLE TOO LATE TO DO IT NOW.

15 MR. BARENS: WELL, WE COULD PROCEED WITH IT IN CHAMBERS.

16 THE COURT: WHAT IS THE MATTER WITH YOU? DON'T YOU
17 HAVE ANY SENSE AT ALL? YOU ARE IN OPEN COURT. YOU HAVE A
18 REPORTER SITTING THERE.

19 MR. CHIER: I AM CONCERNED ABOUT THE PRESS --

20 THE COURT: WELL, YOU SHOULD HAVE ASKED FOR THE MATTER
21 TO BE TAKEN UP IN CAMERA IN CHAMBERS.

22 YOU ARE ATTACKING A JUROR AND EVERYTHING ELSE
23 THAT YOU ARE SAYING ABOUT THE PARTICULAR JUROR IS INDECENT.

24 MR. BARENS: WE ARE NOT ATTACKING A JUROR.

25 THE COURT: YES YOU ARE. THESE ARE REMARKS MADE ABOUT
26 A PARTICULAR JUROR AND SOMETHING THAT SHE WROTE. WHAT DID
27 YOU CALL IT?

28 MR. BARENS: WE ARE ADVISING THE COURT SO THAT IT CAN

1 COME TO YOUR ATTENTION THAT --

2 THE COURT: WHY DIDN'T YOU ADVISE ME IN CAMERA?

3 MR. CHIER: MR. WAPNER WAS NOT THERE AND --

4 THE COURT: WHY DIDN'T YOU ASK TO HAVE MR. WAPNER COME
5 IN?

6 MR. WAPNER: CAN WE NOW PROCEED IN CHAMBERS? AT LEAST,
7 WE CAN CONTROL THE EXTENT OF THE DAMAGE AND --

8 THE COURT: I WILL MAKE A REQUEST OF YOU -- I WILL MAKE
9 A SERIOUS REQUEST OF YOU NOT TO SAY ANYTHING AT ALL ABOUT
10 THIS BECAUSE IT MIGHT BE HIGHLY PREJUDICIAL.

11 MR. OSTROFF: ALL I CAN SAY IS THAT I WILL BRING IT
12 TO MY EDITOR'S ATTENTION. IT IS MY --

13 THE COURT: YOU WILL DO WHAT?

14 MR. OSTROFF: ALL I CAN SAY IS THAT I WILL BRING IT
15 TO MY EDITOR'S ATTENTION. IT IS THEIR DECISION, NOT MINE.

16 THE COURT: BRING IT TO WHOSE ATTENTION?

17 MR. OSTROFF: BRING IT TO MY EDITOR'S ATTENTION.

18 THE COURT: LET ME TELL YOU AND TELL YOUR EDITOR THAT
19 THIS IS AN IMPROPER WAY OF BRINGING THIS MATTER UP. I WOULD
20 VERY STRONGLY RECOMMEND THAT IT IS IN THE INTEREST OF JUSTICE
21 THAT THIS MATTER NOT BE PUBLISHED.

22 THIS IS AN INSTANCE -- THIS IS WHY I TOLD YOU
23 I DIDN'T WANT THIS MAN ON THIS CASE, DIDN'T I? YOU WOULDN'T
24 LISTEN TO ME, WOULD YOU?

25 MR. WAPNER: LET'S GO INTO CHAMBERS.

26 THE COURT: PLEASE, I AM MAKING A REQUEST OF YOUR EDITOR
27 NOT TO MENTION ANYTHING ABOUT IT BECAUSE IT MIGHT BE HIGHLY
28 PREJUDICIAL.

1 MR. OSTROFF: I CAN'T TELL YOU THAT HE WILL DO IT.
2 I WILL MAKE THE REQUEST.

3 THE COURT REPORTER: PLEASE SPELL YOUR NAME FOR THE
4 RECORD.

5 MR. OSTROFF: O-S-T-R-O-F-F. THE FIRST NAME IS RON.

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(THE FOLLOWING IN CAMERA PROCEEDINGS
WERE HELD IN CHAMBERS:)

THE COURT: ALL RIGHT. THE RECORD WILL REFLECT
WE ARE IN CHAMBERS. WHO IS THIS JUROR?

MR. CHIER: LINDA MICKELL, MRS. LINDA MICKELL.

MR. WAPNER: I THINK THE APPROPRIATE INQUIRY TO
MAKE OF MR. CHIER IS, WHERE DID HE GET THIS INFORMATION
FROM?

THE COURT: WELL, I HAVE AN IDEA AS TO WHERE HE
MIGHT HAVE GOTTEN IT. IT WAS ONE OF THE PROSPECTIVE JURORS
THAT WAS NOT PERMITTED -- WAS CHALLENGED IN THIS CASE
AND WHO HAS BEEN FRATERNIZING WITH SOME OF THE JURORS.

MR. BARENS: THAT IS NOT CORRECT, YOUR HONOR.

THE COURT: WHO DID YOU GET IT FROM?

MR. BARENS: IT WAS PROVIDED TO US BY A FORMER JUROR
WHO HAD CONTACTED US.

THE COURT: A FORMER JUROR?

MR. BARENS: YES, YOUR HONOR.

THE COURT: IN THIS CASE? IS SHE A BLACK WOMAN?

MR. BARENS: NO, A WHITE WOMAN, YOUR HONOR.

MRS. BECKING. MRS. BECKING, YOUR HONOR.

THE COURT: THAT WOMAN THAT WAS EXCUSED?

MR. BARENS: YES, YOUR HONOR.

THE COURT: WELL, I THINK WE HAVE NO ALTERNATIVE
BUT TO ASK MRS. MICKELL TO COME IN AND TAKE A STATEMENT
FROM HER.

MR. WAPNER: WELL, FIRST WE HAVE TO FIND OUT WHAT
IT IS AND GET THIS NOTE. I AM NOT SURE THAT IT REQUIRES

1 ANY ACTION AT ALL.

2 THE COURT: WHERE IS THE COMMUNICATION?

3 MR. CHIER: THE COMMUNICATION IS IN MY OFFICE, YOUR
4 HONOR. I WAS --

5 THE COURT: WHAT DO YOU MEAN IN YOUR OFFICE? YOU
6 DON'T HAVE IT WITH YOU KNOWING YOU WERE GOING TO BE MAKING
7 A MOTION OF THIS KIND?

8 MR. CHIER: I WAS GOING TO MAKE A WRITTEN MOTION,
9 AS IS MY PRACTICE AND I --

10 THE COURT: YOU HAVE IT IN YOUR OFFICE?

11 MR. CHIER: YES. IT IS MY OFFICE. I'M SORRY. I
12 DIDN'T EXPECT IT TO COME UP AT THIS TIME.

13 THE COURT: WHAT DO YOU MEAN YOU DIDN'T EXPECT IT
14 TO COME UP? YOU BROUGHT IT UP. WHY DID YOU BRING IT
15 UP?

16 MR. CHIER: I THOUGHT IT WAS APPROPRIATE TO DO SO,
17 SINCE WE ARE GOING TO BE DEALING WITH THIS JUROR ON MONDAY,
18 IT WOULD APPEAR.

19 THE COURT: WELL, MR. WAPNER?

20 MR. WAPNER: WELL, I DON'T SEE HOW I CAN RESPOND
21 WITHOUT SEEING THE NOTE AND KNOWING WHAT WE ARE TALKING
22 ABOUT.

23 MR. BARENS: IT IS NOT A NOTE. IT IS A RECIPE,
24 LITERALLY.

25 THE COURT: WHERE IS IT?

26 MR. CHIER: IT IS IN THE OFFICE, YOUR HONOR.

27 MR. BARENS: IT WAS DISTRIBUTED TO ALL OF THE JURORS,
28 YOUR HONOR. IT WAS DONE EARLY ON IN THE TRIAL, MY UNDERSTANDING

1 IS, SOMEWHERE AROUND 30 DAYS INTO THE TRIAL.

2 I THINK YOUR HONOR WILL BE LESS THAN AMUSED
3 WHEN YOUR HONOR SEES THE --

4 THE COURT: THERE IS NO QUESTION OF BEING AMUSED.
5 WHY WAIT UNTIL THE LAST MINUTE? IT SHOULD HAVE BEEN BROUGHT
6 UP A LONG TIME AGO.

7 MR. BARENS: WELL, I DIDN'T KNOW ABOUT IT.

8 THE COURT: WELL, HOW LONG AGO DID SHE TELL YOU
9 ABOUT THAT, THE JUROR?

10 MR. BARENS: YOUR HONOR, THE INVESTIGATOR DIDN'T
11 GET TO THE JUROR, I THINK, UNTIL MONDAY.

12 THE COURT: HOW DID HE GET TO THE JUROR? WHAT REASON
13 WOULD HE HAVE TO GO TO THE JUROR?

14 MR. BARENS: I WILL TELL YOUR HONOR. MRS. BECKING
15 HAD CONTACTED MY OFFICE AND I TOLD MRS. BECKING THAT I
16 THOUGHT IT APPROPRIATE THAT SHE TALK TO AN INVESTIGATOR.

17 THE COURT: HOW LONG AGO WAS THAT?

18 MR. BARENS: THIS WAS LAST WEEK, YOUR HONOR.

19 THE COURT: ONLY LAST WEEK?

20 MR. BARENS: YES, YOUR HONOR.

21 THE COURT: WHAT DAY OF THE WEEK?

22 MR. BARENS: I DON'T RECALL WHAT DAY OF THE WEEK,
23 YOUR HONOR. WHEN SHE CONTACTED ME, I TOLD MR. CHIER ABOUT
24 IT. MR. CHIER TOLD THE INVESTIGATOR ABOUT IT. I TOOK
25 HER TELEPHONE NUMBER.

26 I GAVE THE TELEPHONE NUMBER AND HER NAME TO
27 MR. CHIER. MR. CHIER GAVE IT TO THE INVESTIGATOR. THE
28 INVESTIGATOR WENT TO MRS. BECKING'S HOUSE, I BELIEVE,

1 ON MONDAY NIGHT OF THIS WEEK.

2 THE ONLY REASON I KNOW THAT IS THAT THE INVESTIGATOR
3 CALLED ME FROM MRS. BECKING'S HOUSE, LOOKING FOR MR. CHIER'S
4 TELEPHONE NUMBER MONDAY NIGHT.

5 THAT WAS MAYBE 7:00 OR 6:30.

6 THE COURT: WHAT TIME IS THE JURY COMING IN? 10:00
7 OR 10:30?

8 MR. WAPNER: 10:30.

9 THE COURT: ALL RIGHT. SUPPOSE YOU COME HERE AT
10 9:00. LET'S HAVE THIS COMMUNICATION THAT YOU HAVE AND
11 WE WILL DECIDE WHAT TO DO AFTER MR. WAPNER SEES IT AND
12 I SEE IT. ALL RIGHT?

13 THEN, THERE WON'T BE ANY ALTERNATIVE BUT TO
14 TALK TO MRS. MICKELL AND FIND OUT ABOUT IT, DEPENDING
15 ON WHAT THE COMMUNICATION IS.

16 MR. BARENS: WELL, YOUR HONOR, YOU WILL MAKE THE
17 DECISION THAT YOU THINK IS APPROPRIATE --

18 THE COURT: ALL RIGHT. I THINK THAT IT SHOULD HAVE
19 BEEN CALLED TO MY ATTENTION IMMEDIATELY UPON HAVING BEEN
20 DONE.

21 MR. BARENS: THIS IS IMMEDIATE.

22 THE COURT: WE HAVE THIS MRS. -- THE 74-YEAR-OLD
23 LADY, ISN'T THAT THE ONE THAT --

24 MR. BARENS: YES.

25 THE COURT: ALL RIGHT. BECKING. OKAY, SEE YOU
26 THEN ON MONDAY.

27 MR. BARENS: THANK YOU.

28 (AT 12:06 P.M. PROCEEDINGS WERE ADJOURNED
UNTIL MONDAY, MAY 11, 1986 AT 9:00 A.M.)

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(THE FOLLOWING FORMERLY-NUMBERED PAGES
13360 - 13365 AND 13377 - 13380 WERE
FORMERLY SEALED AND ARE NOW BEING
UNSEALED PER ORDER OF THE COURT:)

1 SANTA MONICA, CALIFORNIA; MONDAY, MAY 11, 1987; 9:50 A.M.

2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE

3 (APPEARANCES AS HERETOFORE NOTED

4 EXCEPT MR. CHIER AND THE DEFENDANT

5 ARE NOT PRESENT.)

6 THE COURT: ALL RIGHT, FOR THE RECORD, I ASKED
7 MRS. BECKING TO COME IN. SHE CAME IN THIS MORNING AND
8 GAVE ME A COPY OF WHAT YOU SAY CONSTITUTES IMPROPER CONDUCT
9 ON THE PART OF MRS. MICKELL.

10 HAVE YOU READ IT?

11 MR. WAPNER: I HAVE NOT READ IT. BUT MR. BARENS
12 READ IT TO ME OVER THE PHONE, AND UNLESS I MISSED SOMETHING,
13 TO ME, MY IMPRESSION OF IT WAS THAT IT WAS VERY CLEVER,
14 IT WAS VERY HUMOROUS BUT IT IN NO WAY INDICATED MISCONDUCT.

15 IT SEEMS TO ME THAT THE ONLY GROUND FOR MISCONDUCT
16 WOULD BE IF IN THIS RECIPE, THE JUROR HAD EXPRESSED AN
17 OPINION ABOUT THE FACTS OF THE CASE OR AN OPINION OF THE
18 DEFENDANT AND, THEREFORE, HAD VIOLATED THE ADMONITION
19 OF THE COURT THAT THEY NOT FORM OR EXPRESS ANY OPINION
20 ON THE CASE.

21 TO ME, IT NEITHER EXPRESSES AN OPINION ON
22 THE FACTS OF THE CASE OR OF THE DEFENDANT.

23 THE COURT: YOU THINK IT IS A CLEVER PIECE OF WORK,
24 DON'T YOU?

25 MR. WAPNER: THAT IS WHAT I THINK.

26 THE COURT: I WILL HEAR FROM YOU.

27 MR. BARENS: THANK YOU, YOUR HONOR.

28 YOUR HONOR, THE CONCERN THE DEFENSE HAD RELATIVE

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TO THE DOCUMENT WAS THE MIND SET THAT THE AUTHOR HAD TO
HAVE HAD IN WRITING, WHAT I WOULD ALSO CONCUR WITH YOU
GENTLEMEN, IS A CLEVER PIECE OF PENMANSHIP.

ESSENTIALLY, THE COMMENTARY IN THE RECIPE
IS SOMEWHAT OF WHAT WE MIGHT CALL A LAMPOON AND SATIRE
ON VARIOUS PIECES OF EVIDENCE PRESENTED TO THE COURT,
AND AS WELL AS UTILIZING THE DEFENDANT'S NAME PER SE IN
A MANNER WHICH COULD BE VIEWED AS PEJORATIVE.

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1 THE UTILIZATION OF THE PHRASES AND THE SAYING
2 THAT THE PERSONS WHO MIGHT PARTICIPATE IN THIS RECIPE
3 NEED NOT BE FAINT OF HEART OR WORDS TO THAT EFFECT, WE
4 FELT THAT IF THE PERSON WRITING THAT NECESSARILY HAD A
5 PEJORATIVE MIND SET TOWARD THE DEFENSE CASE AND THE DEFENDANT
6 PER SE.

7 AND WE SUBMIT THAT IT SHOWED A PREJUDGMENT
8 EARLY ON IN THE TRIAL TOWARD THE EVIDENCE AND THE DEFENDANT.

9 THE COURT: ANYTHING FURTHER?

10 (MR. CHIER ENTERS CHAMBERS.)

11 MR. WAPNER: MAY I JUST HAVE THE COPY, JUST TO LOOK
12 AT IT?

13 MR. BARENS: MAY I JUST HAVE A MOMENT, YOUR HONOR?

14 (PAUSE.)

15 MR. WAPNER: NOW I HAVE READ THE DOCUMENT.

16 THE COURT: WHAT SURPRISES ME IS THAT YOU DIDN'T
17 MAKE A SIMILAR MOTION AT THE TIME MS. MICKELL WAS SATIRIZING
18 YOUR ANALOGY WHEN YOU WERE TALKING ABOUT DIRECT AND CIRCUM-
19 STANTIAL EVIDENCE.

20 AND SHE BROUGHT IN THE CAKE WITH THE SLICE
21 MISSING AND THE COCA-COLA AND THAT WOULD SEEM TO SATIRIZE
22 YOUR EXAMINATION.

23 THAT WOULD BE, SIMILARLY, A GROUND IF YOU
24 WANTED TO MOVE TO HAVE HER DISQUALIFIED. THAT MIGHT BE
25 SOMETHING THAT SHOWS SHE IS PREJUDICED AGAINST THE PROSECUTION.
26 DO YOU THINK THAT THAT WOULD BE ANALOGOUS?

27 MR. WAPNER: WELL, I MEAN, I THINK THE TWO ARE ANALOGOUS
28 ONLY IN THE SENSE THAT THEY ARE BOTH HUMOROUS.

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1 BUT THEY DON'T EXPRESS ANY OPINION ABOUT THE
2 CASE. THE PERSON WHO PROFFERED THESE THINGS, WHETHER
3 IT BE ABOUT ME OR MR. HUNT --

4 THE COURT: I QUITE AGREE. I DON'T THINK THERE
5 IS ANY BASIS FOR ANY KIND OF A MOTION FOR MISTRIAL OR
6 ANY KIND OF A MOTION FOR DISQUALIFICATION OF WITNESSES.

7 I THINK THAT IT IS A CLEVER PIECE OF WRITING
8 AND IT DOESN'T IN ANY WAY SHOW ANY BIAS.

9 MR. WAPNER: I THINK THAT IT SHOULD BE MARKED AS
10 A COURT'S EXHIBIT FOR THE RECORD.

11 MR. CHIER: MAY I BE HEARD?

12 THE COURT: NO. HE DID VERY, VERY WELL IN YOUR
13 ABSENCE. YOU WERE NOT HERE. YOU SAID THAT YOU WOULD
14 BE HERE AT 9:30.

15 MR. CHIER: I APOLOGIZE. MY CHILD ARRIVED ABOUT
16 TWO WEEKS EARLY. I DIDN'T HAVE ARRANGEMENTS MADE.

17 THE COURT: ALL RIGHT. ANYTHING FURTHER?

18 MR. BARENS: YOUR HONOR, I WOULD LIKE TO CONFIRM
19 FOR MY PEACE OF MIND THAT WE ARE ON THE SAME SCHEDULE
20 WE HAVE ALWAYS BEEN ON?

21 THE COURT: WHAT DO YOU MEAN?

22 MR. BARENS: YOUR HONOR, WE ARE 10:30 TO 4:30, ROUGHLY?

23 THE COURT: IS THAT WHAT YOU WANT?

24 MR. BARENS: YES, YOUR HONOR. MONDAY THROUGH THURSDAY.

25 THE COURT: WELL, I HAVE GOT THE OTHER CASE STARTING
26 TWO WEEKS FROM TODAY.

27 MR. BARENS: WELL, YOU SEE, WHAT I HAVE DONE IS,
28 I HAVE --

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THE COURT: YOU MEAN YOU NEED THE EXTRA DAYS TO PREPARE?

MR. BARENS: WE NEED FRIDAYS.

THE COURT: ALL RIGHT. I WILL DO IT MONDAY THROUGH THURSDAY.

MR. BARENS: THANK YOU, YOUR HONOR.

THE COURT: DO YOU WANT TO ADD SOMETHING?

MR. CHIER: IS YOUR HONOR GOING TO TALK TO MRS. MICKELL?

THE COURT: NO. I DON'T THINK THERE IS ANY NECESSITY FOR IT.

MR. CHIER: WELL, WE WANT TO SEE WHAT CAUSED HER TO WRITE THIS --

THE COURT: WHEN THIS IS ALL OVER, I WILL DO IT. I DON'T THINK IT IS THE PROPER TIME.

I THINK IT MIGHT BE PREJUDICIAL TO THE DEFENDANT. FOR THAT REASON, I WON'T ASK HER ANYTHING ABOUT IT.

MR. BARENS: YES, YOUR HONOR.

THE COURT: ALL RIGHT. THE QUESTION IS, IN A DEATH PENALTY CASE, WHO COMES FIRST, THE DEFENSE OR THE PROSECUTION TO PRESENT THEIR RESPECTIVE CASES. WHAT IS YOUR THOUGHT ON THE SUBJECT? DO YOU WANT TO GO FIRST?

MR. WAPNER: I ASSUMED THAT I WAS GOING TO GO FIRST. I HAVE SCHEDULED WITNESSES AND ESPECIALLY IN LIGHT OF THE PROBLEMS THAT COUNSEL STATED. THEY SAID THEY NEEDED TIME TO GET READY.

THE COURT: ALL RIGHT. OKAY. FINE. THEN WE WILL PROCEED THEN AT 10:30. ANY OTHER QUESTIONS WE HAVE TO

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DECIDE?

MR. BARENS: COULD I JUST HAVE ONE MOMENT, YOUR HONOR?

THE COURT: YES.

(PAUSE.)

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THE COURT: FINE.

MR. BARENS: MR. HUNT NOW ADVISES ME OF SOME ADDITIONAL MATTERS HE WOULD LIKE TO DISCUSS THAT MAY BE PRESENTED TO THE COURT, AS WELL THAT WE HAVE COME IN WITH THIS MORNING.

THE COURT: DO YOU WANT TO DISCUSS IT?

MR. BARENS: WE DO NEED TO DISCUSS IT.

THE COURT: GO AHEAD.

MR. CHIER: COULD WE JUST WRAP UP, WHILE WE ARE ON THE MATTER OF THE JUROR, THE THINGS THAT I UNDERSTAND YOUR HONOR --

THE COURT: THE JUROR THING?

MR. CHIER: YES.

THE COURT: THE RECORD WILL ALREADY INDICATE EVERYTHING ABOUT THAT. MR. BARENS WILL TELL YOU WHAT WAS DISCUSSED.

MR. BARENS: WOULD YOU JUST PERMIT ME MR. CHIER TO MAKE JUST A VERY BRIEF STATEMENT OF THE DEFENSE POSITION FOR THE RECORD? THAT IS ALL WE ARE ASKING.

THE COURT: YES.

MR. CHIER: WE ARE NOT QUARRELING WITH YOUR HONOR BECAUSE YOU ARE THE ULTIMATE ARBITER IN THIS CASE. WE ARE ASKING, THOUGH, AND WE WOULD LIKE THE RECORD TO REFLECT THAT IT IS THE DEFENSE POSITION WITH RESPECT TO THIS MATTER THAT FIRST, THAT THE COURT INQUIRE OF MRS. MICKELL CONCERNING THE CIRCUMSTANCES OF THE COMPOSITION OF THIS, THE TIMING OF IT INSOFAR AS WHEN IT HAPPENED DURING THE TRIAL, WHAT WAS HAPPENING DURING THE TRIAL TO EITHER PROVOKE THIS OR AT THE TIME THAT THIS HAPPENED SIMULTANEOUSLY.

SECOND OF ALL, PLEASE INQUIRE OF HER AS TO

1 THE CIRCUMSTANCES OF ITS CIRCULATION AMONG THE REST OF
2 THE JURORS AND THAT YOU DETERMINE FROM AN INQUIRY OF THE
3 OTHER JURORS IF THERE WAS ANY DISCUSSION ABOUT THIS THING.
4 IT SEEMS IT MUST HAVE BEEN ACCOMPANIED BY SOME DISCUSSION,
5 YOUR HONOR.

6 IT REPRESENTS, I MIGHT JUST SAY, A LEVITY
7 WHICH I THINK IS INAPPROPRIATE IN THIS CASE -- IN A CASE
8 OF THIS TYPE. AND IT MAY BE HARMLESS AND IT MAY NOT.
9 I THINK THAT --

10 THE COURT: YOUR INVESTIGATOR TALKED TO MRS. BECKING.
11 HE CAME OVER AND SPOKE TO HER. YOUR INVESTIGATOR ASKED
12 HER ABOUT THE REACTIONS OF ALL OF THE JURORS AND THEIR
13 IMPRESSIONS AND EVERYTHING ELSE ABOUT THIS PARTICULAR
14 MATTER, AS WELL AS OTHER MATTERS.

15 SO, YOU ARE FULLY FAMILIAR NOW AS TO WHAT
16 THE REACTIONS OF THE JURORS WERE AT THE TIME BECAUSE YOU
17 ASKED MRS. BECKING ABOUT IT BECAUSE YOUR INVESTIGATOR
18 ASKED HER.

19 I THINK THAT IT WOULD MILITATE AGAINST THE
20 INTEREST OF THE DEFENDANT, WERE I TO CALL HER IN AT THIS
21 TIME BECAUSE SHE WILL KNOW IT IS A MOTION MADE BY THE
22 DEFENDANT AND THE FIRST IMPULSE WOULD BE TO RESENT ANYTHING,
23 ANY QUESTIONS ON THIS PARTICULAR THING AND IT WOULDN'T
24 BE ANY GOOD FOR YOU.

25 SO, WHAT I AM GOING TO DO IS TO RESERVE THIS
26 UNTIL THE CASE HAS BEEN COMPLETED. AND THEN AFTER, I
27 WILL HAVE HER IN BECAUSE THAT MIGHT BE A POSSIBLE BASIS
28 WHICH YOU WOULD WANT TO EXPLORE AS TO WHETHER OR NOT THERE

1 HAS BEEN ANY JUROR MISCONDUCT AFTER IT HAS BEEN DONE.
2 I DON'T WANT TO PREJUDICE HER AGAINST YOU AT THIS TIME.

3 MR. WAPNER: FOR THE RECORD, I DON'T THINK THAT
4 THERE IS ANY BASIS FOR BRINGING MRS. MICKELL OR ANY OF
5 THE OTHER JURORS IN, UNLESS THERE IS SOME PRELIMINARY
6 SHOWING THAT THERE WAS ANY MISCONDUCT, WHICH THERE HAS
7 NOT BEEN.

8 THIS IS A THING THAT SHE WROTE THAT IS HUMOROUS
9 AND AS MR. CHIER POINTS OUT, REPRESENTS SOME LEVITY IN
10 THE TRIAL. GOD KNOWS THERE WAS A LOT OF THAT ON BOTH
11 SIDES IN THE COURTROOM DURING THE TRIAL.

12 BUT TO BRING A JUROR IN AND THEN ALL OF THE
13 JURORS, BASED ON THIS "RECIPE" THAT SHE WROTE, I THINK
14 WILL BE WHOLLY INAPPROPRIATE.

15 THERE IS NO BASIS FOR IT.

16 THE COURT: I AGREE WITH YOU. ALL RIGHT. I WILL
17 TELL YOU WHAT I WILL DO. I WILL DO IT AT THE CONCLUSION
18 OF THE CASE.

19 THE DEFENDANT: COULD I HAVE A COUPLE OF MINUTES?

20 THE COURT: WELL, CERTAINLY. CAN'T YOU BRING THEM
21 SOMEWHERE, TO THE ATTORNEY INTERVIEW ROOM DOWNSTAIRS?

22 THE DEFENDANT: IT IS VERY DIFFICULT TO TALK IN
23 THERE, YOUR HONOR. SIR --

24 THE BAILIFF: WELL, THAT IS THE ONLY PLACE WE CAN
25 DO IT, MR. HUNT, UNLESS YOU HAVE A BETTER SUGGESTION.

26 THE DEFENDANT: CERTAINLY. PERHAPS WE COULD USE
27 THE ROOM WHERE I WAS SITTING WITH THE REFRIGERATOR, WHERE
28 YOU HAVE THREE CHAIRS.

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THE BAILIFF: YOU CAN SIT IN THERE. THAT IS FINE.

THE COURT: BRING HIM DOWN THERE.

THE BAILIFF: THAT IS FINE.

MR. WAPNER: WE WILL RECONVENE AT 10:30?

MR. BARENS: WE WOULD LIKE TO DO THIS AND THEN PROBABLY
LIKE TO MEET WITH YOUR HONOR TO DISCUSS THE VARIOUS MOTIONS.
I DON'T CARE. IT CAN EITHER BE IN OPEN COURT OR IN HERE.
BUT WE WILL HAVE TO, AT THAT MOMENT, DECIDE.

THE COURT: OKAY.

(RECESS.)

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(UNREPORTED COLLOQUY BETWEEN DEFENSE
COUNSEL.)

MR. BARENS: WELL, WE WILL LEAVE IT UP TO THE DEFENDANT.
I THINK MY CONSCIENCE CAN REST BETTER ALL THE WAY THROUGH
THIS MATTER IF WE DO THE PENALTY PHASE THE WAY THE DEFENDANT
WANTS IT.

(DEFENDANT ENTERS CHAMBERS.)

THE DEFENDANT: GOOD MORNING, YOUR HONOR.

FO.

1 MR. BARENS: YOUR HONOR --

2 THE COURT: IS THERE ANY WAY HE CAN BE DRESSED A LITTLE
3 MORE APPROPRIATELY INSTEAD OF DOWN TO HIS BELLY BUTTON ON
4 THE SHIRT?

5 THE DEFENDANT: THAT IS WHAT THEY GIVE US AT THE COUNTY,
6 SIR.

7 THE BAILIFF: WE DON'T CARRY JAIL BLUES HERE IN THE
8 COURTHOUSE, JUDGE. THEY DRESS THEM DOWNTOWN. IT IS ONLY
9 JAIL CLOTHES UNLESS HE WANTS TO GET CIVILIAN CLOTHES. I WILL
10 DO THE BEST I CAN.

11 MR. BARENS: YOUR HONOR, THE DEFENDANT HAS JUST MENTIONED
12 TO ME TWO THINGS. ONE, THAT HE WOULD PREFER TO BE DRESSED
13 AS HE IS. TWO, THAT HE HAS A VARIETY OF PREHEARING MOTIONS
14 HE WANTS TO DISCUSS WITH COUNSEL, THAT COUNSEL MAY OR MAY
15 NOT WISH TO PRESENT THIS MORNING.

16 THE COURT: YOU HAVE GOT UNTIL 10:30. WHY DON'T YOU
17 DISCUSS IT NOW?

18 MR. BARENS: I WOULD LIKE TO SAY THAT WE WOULD LIKE
19 TO RESERVE NOW. COUNSEL HAS MOTIONS --

20 THE COURT: I WILL TELL THE JURY THAT HE PREFERS TO
21 BE DRESSED THE WAY HE IS. SO THAT IT IS AT HIS CHOICE THAT
22 HE IS DRESSED THE WAY HE IS. THE REASON FOR THAT IS BECAUSE
23 THEY MIGHT THINK THAT WE ARE FORCING HIM TO BE DRESSED THE
24 WAY HE IS. THAT MIGHT BE ONE ASPECT OF --

25 MR. BARENS: DOES THE LAW -- I AM NOT SURE. I WOULD
26 OBJECT TO THE PROPRIETY --

27 THE COURT: WELL, YOU CAN OBJECT TO IT AS MUCH AS YOU
28 LIKE. BUT I WANT TO SEE THE PROPER IMPRESSION LEFT WITH THE

1 JURY, THAT HE AT HIS OWN ELECTION, PREFERS TO BE DRESSED THE
2 WAY HE IS RATHER THAN IN STREET CLOTHES.

3 MR. CHIER: COULD WE GIVE THE REASONS --

4 THE COURT: I DON'T HAVE TO GIVE YOU MY REASONS.

5 MR. CHIER: PLEASE, YOUR HONOR --

6 THE COURT: I DO NOT HAVE TO TELL YOU WHAT MY REASONS
7 ARE. I SAID THAT I --

8 MR. CHIER: I AM NOT TALKING ABOUT YOUR REASONS --

9 THE COURT: I SAID THAT IT MAY GIVE AN UNFAVORABLE
10 IMPRESSION TO THE JURY THAT HE IS BEING FORCED TO COME IN
11 THE WAY HE IS. HE HAS A CHOICE AS TO WHETHER HE WILL COME
12 IN ONE WAY OR THE OTHER.

13 MR. CHIER: EXCUSE ME, YOUR HONOR. YOU MISUNDERSTOOD
14 ME. I WAS TALKING ABOUT THE DEFENDANT'S REASON FOR CHOOSING
15 TO WEAR THIS --

16 THE COURT: IT IS HIS CHOICE. I DON'T CARE WHAT HIS
17 REASONS ARE.

18 MR. CHIER: THERE ARE MORE REASONS --

19 THE COURT: GO AHEAD. PUT IT ON THE RECORD.

20 THE DEFENDANT: I THINK THAT YOUR HONOR IS MAKING AN
21 ASSUMPTION THAT SOMEONE HAS BROUGHT ME CIVILIAN CLOTHES WHICH
22 I AM REFUSING TO WEAR AND IT IS AN UNWARRANTED ASSUMPTION.

23 THE COURT: WELL, YOUR LAWYER TOLD ME THAT HE TOLD YOUR
24 GIRLFRIEND OR THE FAMILY --

25 MR. BARENS: THE FAMILY --

26 THE COURT: TO BRING CLOTHES FOR YOU SO YOU COULD BE
27 DRESSED TODAY.

28 THE DEFENDANT: BUT WHETHER THEY HAVE OR NOT AT THIS

1 POINT, IS AN OPEN QUESTION.

2 THE COURT: WELL, I WILL GET YOU OTHER CLOTHES.

3 THE DEFENDANT: I SAW THE CLOTHES THAT YOU DRESSED
4 MR. PITTMAN IN. I THINK THAT THAT WAS A CLOWN'S OUTFIT.

5 THE COURT: YOU ARE NOT PITTMAN.

6 THE DEFENDANT: THOSE CLOTHES FOR ME AT THIS TIME WOULD
7 BE --

8 THE COURT: DO YOU WANT TO HAVE OTHER CLOTHES,
9 CIVILIAN CLOTHES?

10 THE DEFENDANT: I WOULD JUST AS SOON WEAR THESE.

11 THE COURT: YOU PREFER TO WEAR THESE? YOU DON'T WANT
12 ANY OTHER CLOTHES?

13 THE DEFENDANT: TOMORROW I MAY WEAR A SUIT. IT JUST
14 DEPENDS ON --

15 THE COURT: I AM TALKING ABOUT NOW. WHAT DO YOU WANT
16 TO WEAR NOW?

17 THE DEFENDANT: RIGHT NOW, THIS IS FINE UNLESS I AM
18 BROUGHT SOME CLOTHES FROM MY FAMILY.

19 THE COURT: IF YOU WANT TO --

20 THE DEFENDANT: IF I AM BROUGHT SOME CLOTHES, I WOULD
21 BE HAPPY TO WEAR THEM.

22 THE COURT: IF THEY DO NOT, WE HAVE GOT --

23 THE DEFENDANT: I SAW WHAT YOU GAVE MR. PITTMAN AND --

24 THE COURT: I AM NOT TALKING ABOUT PITTMAN --

25 THE DEFENDANT: I THINK THAT IT WOULD BE -- I AM SIX-FEET-
26 FOUR INCHES TALL. I THINK THAT ANYTHING THAT YOU HAVE WOULD
27 BE VERY UNLIKELY TO FIT ME ANYTHING BETTER THAN THIS. THIS
28 IS PANTS AND THIS IS A SHIRT.

1 IF YOU WOULD LIKE, I CAN WEAR THIS AROUND REVERSE,
2 SO THAT THIS V NECK DOESN'T SHOW ALL --

3 THE COURT: YOU WON'T WEAR ANY CLOTHES WHICH I GIVE
4 YOU? IS THAT THE IDEA? YOU PREFER TO BE WEARING THOSE
5 CLOTHES?

6 THE DEFENDANT: THESE ARE FINE, YOUR HONOR.

7 THE COURT: ALL RIGHT. IF YOUR FRIEND OR FAMILY BRINGS
8 OTHER CLOTHES, YOU WILL WEAR THEM? IS THAT WHAT YOU WANT
9 TO DO?

10 THE DEFENDANT: ABSOLUTELY. IF I AM BROUGHT SOME
11 ADDITIONAL CLOTHES, I WILL BE HAPPY TO WEAR THEM. BUT, THIS
12 IS --

13 MR. BARENS: I TOLD HIM AND WE MADE A REPRESENTATION
14 THAT WE WOULD HAVE HIM DRESSED IN WHATEVER THEY BROUGHT. I
15 TOLD THEM --

16 THE COURT: DO YOU WANT TO CALL THEM?

17 MR. BARENS: I AM GOING TO. I NEED A FEW MINUTES.

18 THE COURT: WHY DON'T YOU TALK TO THEM?

19 CAN THEY CONFER IN PRIVATE?

20 MR. BARENS: THE DEFENSE --

21 THE COURT: THEY NEED TO DISCUSS WITH HIM. YOU ARE
22 TALKING ABOUT THE MOTIONS AND NOT THE DEFENDANT'S --

23 MR. BARENS: I UNDERSTAND. WHAT I AM SAYING, YOUR HONOR,
24 IS THAT THE DEFENDANT PER SE, HAS SOME MOTIONS FOR YOUR HONOR
25 THIS MORNING.

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1 (AT 10:45 A.M. THE FOLLOWING PROCEEDINGS
2 WERE HELD IN CHAMBERS WITH ALL COUNSEL
3 AND THE DEFENDANT PRESENT:)

4 THE COURT: THE RECORD WILL INDICATE WE ARE PRESENTLY
5 IN CHAMBERS.

6 MR. BARENS: YOUR HONOR, AS THE DEFENSE MENTIONED, THERE
7 ARE TWO MATTERS I WANT TO ADDRESS GENERALLY AND THOSE ARE
8 THE ONES THAT I WANT TO ADDRESS NOW. THERE ARE SOME 402(B)
9 TYPE MOTIONS THE DEFENSE HAS COME PREPARED TO MAKE ORALLY
10 AT THIS POINT TO YOUR HONOR.

11 ADDITIONALLY, MR. HUNT ADVISES US THAT HE HAS
12 A SERIES OF MOTIONS THIS MORNING TO EXPRESS TO THE COURT.

13 THE COURT: YOU OUGHT TO MAKE ALL OF THE MOTIONS. I
14 CAN'T HEAR FROM HIM. YOU ARE THE LAWYER IN THE CASE.

15 MR. BARENS: OKAY, YOUR HONOR. I HAD, AS A PRACTICAL
16 MATTER, A SUGGESTION TO MAKE TO THIS EXTENT, BECAUSE THEY
17 DON'T HAVE VISITING HOURS AT THE JAIL OVER THE WEEKEND, WE
18 HAVEN'T BEEN ABLE TO ACCESS THE DEFENDANT FOR THE PRODUCT
19 OF WHAT HE HAS PUT TOGETHER.

20 I WAS EITHER GOING TO ASK YOUR HONOR IF YOUR HONOR
21 WOULD LET THE DEFENDANT RECITE TO YOUR HONOR THE MATERIALS
22 HE HAS PUT TOGETHER OR I WOULD NEED, ACCORDING TO WHAT HE
23 TELLS ME, ABOUT 30 MINUTES TO GET HIM TO GIVE IT TO ME SO
24 I COULD GIVE IT TO THE COURT. SATURDAYS AND SUNDAYS NOW
25 BECAUSE OF THEIR BUDGETARY PROBLEMS, THEY DON'T HAVE A WAY
26 FOR US --

27 THE COURT: DIDN'T YOU HAVE A CHANCE TO TALK TO HIM
28 FOR THE LAST HALF HOUR?

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MR. BARENS: WE HAD 12 MINUTES, YOUR HONOR, BETWEEN
10:10.

NO, I AM NOT, YOUR HONOR. TO BE VERY CANDID WITH
YOUR HONOR --

1 THE COURT: WHAT MOTIONS DO YOU WANT TO MAKE?

2 MR. BARENS: WELL, I WILL DEFER TO MR. CHIER. WE
3 MENTIONED TO THE COURT ON FRIDAY THAT WE HAD SOME MOTIONS
4 THAT TIME DID NOT PERMIT US TO PREPARE IN A WRITTEN FORMAT.
5 WE ARE BRINGING THEM ORALLY.

6 MR. CHIER: YOUR HONOR, I WOULD JUST LIKE TO SAY
7 PRELIMINARILY THAT I FEEL IT INCUMBENT UPON ME TO MAKE THESE
8 MOTIONS. I HOPE THAT YOUR HONOR WON'T TAKE THIS PERSONALLY.
9 I WANT TO --

10 THE COURT: DON'T GIVE ME THE -- DON'T SOFT-SOAP ME.
11 JUST GIVE ME THE MOTION.

12 MR. CHIER: WE WANTED TO MAKE A MOTION FOR MISTRIAL,
13 BASED ON THE JUROR THING.

14 THE COURT: ALL RIGHT. MOTION DENIED. GET ON TO
15 SOMETHING ELSE.

16 MR. CHIER: WE WOULD ALSO LIKE TO MAKE A MOTION FOR
17 ADDITIONAL VOIR DIRE OF THIS GUILT PHASE JURY WITH RESPECT
18 TO THE MATTERS WHICH THE PEOPLE ARE GOING TO ATTEMPT TO OFFER
19 IN AGGRAVATION.

20 THE GROUNDS FOR THE ADDITIONAL VOIR DIRE CAN BE
21 BRIEFLY STATED AS FIRST, TO DETERMINE WHAT THEIR MIND SETS
22 ARE WITH RESPECT TO THIS NEW EVIDENCE CONCERNING WHICH THEY
23 HAVE NEVER BEEN VOIR DIRED.

24 THE COURT: WHAT IS THAT NEW EVIDENCE?

25 MR. CHIER: WELL, EVIDENCE CONCERNING THE ESLAMINIA
26 PATRICIDE. THE BUSINESS CONCERNING SWARTOUT, THE MATTER
27 CONCERNING THE -- JUST THE THREE MAIN ITEMS OF AGGRAVATING
28 EVIDENCE THAT MR. WAPNER INTENDS TO INTRODUCE.

1 SECOND OF ALL YOUR HONOR, IT HAS BEEN SEEN IN
2 THE PAST, THAT WITH RESPECT TO SOME JURIES AND JURORS, THAT
3 RETURNING A GUILT VERDICT IN THE GUILT PHASE, THAT THEY
4 DEVELOP A MIND SET AND THEY BECOME KIND OF HARDENED CONCERNING
5 THE GUILT VERDICT SO THAT THEY ARE NOT -- THEY ARE NO LONGER
6 NEUTRAL AND OPEN INSOFAR AS BEING RECEPTIVE TO --

7 THE COURT: DO YOU WANT TO MOVE TO DISCHARGE THIS JURY
8 AND TO HAVE ANOTHER JURY? IS THAT WHAT YOU ARE ASKING FOR?

9 MR. CHIER: I WOULD LIKE TO DO ADDITIONAL VOIR DIRE
10 OF THIS JURY, YOUR HONOR. THERE ARE CASES --

11 THE COURT: ANYTHING ELSE? THERE ARE CASES THAT WHAT?

12 MR. CHIER: THERE IS CASE AUTHORITY FOR THIS TYPE OF --

13 THE COURT: WHAT CASE HAVE YOU GOT THAT SAYS THAT YOU
14 CAN HAVE A SECOND VOIR DIRE?

15 MR. BARENS: COULD MR. HUNT JUST SAY THE NAMES OF THE
16 CASES? HE IS THE ONE THAT HAS THEM.

17 THE COURT: I THOUGHT YOU WERE THE ONE DOING THE
18 RESEARCHING.

19 MR. CHIER: I WOULD LIKE FOR THE COURT TO REALLY
20 UNDERSTAND THAT I HAVE NOT BEEN ABLE TO DO ADDITIONAL RESEARCH
21 SINCE I WAS HERE ON FRIDAY. I WILL TELL THE COURT SPECIFICALLY
22 WHY I HAVE NOT DONE IT, IF YOU WISH TO KNOW. I AM JUST AS
23 UNPREPARED TODAY AS I WAS ON FRIDAY, YOUR HONOR.

24 I MUST NECESSARILY DEPEND UPON MR. HUNT FOR SOME
25 OF THIS.

26 MR. BARENS: AS WE HAVE THROUGHOUT THE TRIAL, NOT JUST
27 NOW.

28 THE COURT: HAVE YOU FINISHED YOUR MOTION IN THE MEANTIME?

1 MR. BARENS: NO.

2 THE COURT: SHALL I HEAR FROM HIM?

3 MR. BARENS: WELL, WE STILL HAVE OUR MOTIONS ON THE --

4 MR. CHIER: YES. THERE ARE THE 402 MOTIONS.

5 THE COURT: WHAT 402 MOTIONS?

6 MR. CHIER: 402 MOTIONS, LIKE PRELIMINARY HEARINGS TO
7 DETERMINE THE ADMISSIBILITY OF THIS AGGRAVATING TYPE OF
8 EVIDENCE, THIS UNCHARGED MISCONDUCT WHICH IS BEING --

9 THE COURT: BUT THE LAW IS CLEAR THAT THEY HAVE A RIGHT
10 TO SHOW ANY OTHER CONDUCT OF THE DEFENDANT WHICH INVOLVES
11 FORCE AND VIOLENCE, EVEN THOUGH THE MATTER HAS NOT BEEN TRIED
12 AND EVEN THOUGH HE HAS NEVER BEEN TRIED OR CONVICTED OR
13 ACQUITTED OF IT.

14 MR. CHIER: I DON'T DISAGREE WITH THAT, YOUR HONOR.
15 BUT THERE IS A NEXUS WHICH MUST BE ESTABLISHED AND THAT IS,
16 OF PROBABLE CAUSE TO BELIEVE THAT HE IS THE PERSON WHO HAS
17 BEEN INVOLVED IN THIS.

18 IF IT DOESN'T RESULT IN AN ARREST OR A FILING
19 OF A CRIMINAL COMPLAINT AT THE VERY MINIMUM, HE WOULD BE
20 ENTITLED TO REQUIRE THE PEOPLE TO ESTABLISH --

21 THE COURT: YOU ARE TALKING ABOUT ESLAMINIA?

22 MR. CHIER: THE OTHER INCIDENTS, YOUR HONOR WHERE THERE
23 IS NO INDICATION OF THE EXISTENCE OF A PROBABLE CAUSE WITHOUT
24 A HEARING.

25 THE COURT: ALL RIGHT, MR. WAPNER?

26 MR. WAPNER: AS FAR AS THE ADDITIONAL VOIR DIRE, FIRST
27 OF ALL, I AM NOT AWARE OF CASE AUTHORITY. BUT SECOND OF ALL,
28 THE REQUEST IS MADE, BASED ON THE ASSUMPTION THAT THERE IS SOME
29 MATERIAL, NEW MATERIAL THAT HAS COME TO LIGHT.

1 AS I POINTED OUT TO THE COURT ON FRIDAY, TWO
2 YEARS AGO, TWO YEARS AGO TO THE DAY, AS OF LAST FRIDAY,
3 MAY 8, 1985, I SENT A LETTER TO MR. BARENS INDICATING
4 WHAT THE FACTORS IN AGGRAVATION WERE AND WHAT WE WERE
5 SEEKING TO INTRODUCE AND SENDING HIM COPIES OF THE POLICE
6 REPORTS, SO FOR TWO YEARS NOW THEY HAVE BEEN AWARE OF
7 WHAT IT IS THAT WE INTENDED TO INTRODUCE BY WAY OF AGGRAVATION
8 AND IF THEY WANTED TO VOIR DIRE THE JURY ON THAT DURING
9 THE GENERAL VOIR DIRE OR THE HOVEY VOIR DIRE, THEY HAD
10 AN ADEQUATE OPPORTUNITY TO DO THAT AND DID NOT AVAIL THEMSELVES
11 OF IT.

12 TO NOW PERMIT VOIR DIRE OF JURORS WHO ARE
13 ESSENTIALLY IN THE MIDDLE OF THE CASE, IS SOMETHING --
14 UNLESS I AM SHOWN TO THE CONTRARY -- THAT IS UNPRECEDENTED
15 AS FAR AS I AM CONCERNED AND WHOLLY IMPROPER.

16 BASICALLY WHAT THEY ARE GOING TO DO, IS TO
17 ASK "WHY DID YOU DECIDE THE WAY YOU DID? AND "DON'T HOLD
18 IT AGAINST MY CLIENT THAT YOU FOUND HIM GUILTY." TO ME,
19 IT IS COMPLETELY IMPROPER.

20 AND SECOND OF ALL, THE NOTION THAT IT IS NEWLY
21 DISCOVERED MATERIAL IS INCORRECT, IT IS COMPLETELY INCORRECT.

22 MR. CHIER: IF I MIGHT RESPOND, YOUR HONOR.

23 THE COURT: SURELY.

24 MR. CHIER: THE DEFENSE' POSITION ABOUT THIS NOTICE
25 IS THAT THE NOTICE WAS INADEQUATE. MR. WAPNER SAID THAT
26 HE WAS ENTITLED TO INTRODUCE EVIDENCE IN AGGRAVATION CONSISTING
27 OF INCIDENTS INVOLVING MR. SWARTOUT, THIS DRIVE-BY BUSINESS
28 AND ESLAMINIA AND THE ATTACHED POLICE REPORTS.

1 I BELIEVE THAT THE PEOPLE ARE REQUIRED TO
2 PROVIDE THE DEFENDANT WITH A STATEMENT OF SPECIFIC WITNESSES,
3 THE SPECIFIC THEORY ON WHICH IT IS BEING OFFERED AND BASICALLY,
4 A BILL OF PARTICULARS.

5 THE COURT: WHAT AUTHORITY DO YOU HAVE FOR THAT?
6 GIVE ME THE CASE THAT YOU HAVE GOT THAT YOU HAVE TO BE
7 TOLD SPECIFICALLY WHO THE WITNESSES ARE AND THAT HE GIVES
8 YOU NOTICE AS TO THE AGGRAVATING CIRCUMSTANCES THAT HE
9 INTENDS TO ADDUCE, LET ME HAVE THE CASE.

10 MR. BARENS: WE ARE, YOUR HONOR. I JUST HAVE TO
11 GET IT FROM MR. HUNT. HE IS LOOKING FOR IT. GIVE ME
12 THE CITE.

13 THE DEFENDANT: I KNOW. I AM LOOKING IN MY NOTES.

14 MR. CHIER: WHILE HE IS LOOKING THROUGH HIS NOTES,
15 MAY I CONTINUE, YOUR HONOR?

16 THE COURT: WAIT A MINUTE. I WANT TO GET THE CASE.

17 (PAUSE IN PROCEEDINGS.)

18 THE COURT: WHILE HE IS LOOKING AT THEM, HAS THERE
19 BEEN ANY REQUEST MADE OF YOU FOR ANY OF THESE SO-CALLED
20 WITNESSES, WHO THEY ARE AND WEREN'T THEY FURNISHED A TRANSCRIPT
21 OF THAT ESLAMINIA PRELIMINARY HEARING?

22 MR. WAPNER: A TRANSCRIPT? THEY WERE AT THE ESLAMINIA
23 PRELIMINARY HEARING, EXAMINING THE WITNESSES, AND THEY
24 HAD ALL OF THE DISCOVERY IN THAT CASE.

25 MR. BARENS: YOUR HONOR, I WANT TO INDICATE FOR
26 THE RECORD THAT --

27 THE COURT: GIVE ME THE CASE.

28 THE DEFENDANT: HOLMAN V. SUPERIOR COURT, IT IS

1 A 1981 CASE AT 29 CAL.3D, 480.

2 THE COURT REPORTER: HOW DO YOU SPELL IT?

3 THE DEFENDANT: H-O-L-M-A-N.

4 THE COURT: THAT IS 29 CAL.3D, WHAT PAGE?

5 THE DEFENDANT: 483 AND 484. THE CASE STARTS AT
6 PAGE 480.

7 THE COURT: THAT IS AFTER PAGE 480?

8 THE DEFENDANT: UH-HUH, AND THE SPECIFIC ISSUE IS
9 ADDRESSED ON PAGE 483 TO 484.

10 THE COURT: IT HAS NOTHING TO DO WITH THIS CASE.

11 I WILL READ IT TO YOU:

12 "THE SUPERIOR COURT HAD DENIED
13 A MOTION FOR WRIT OF MANDATE BY WHICH THE
14 DEFENDANT IN A CRIMINAL PROCEEDINGS SOUGHT
15 TO COMPEL A MAGISTRATE TO GRANT THEIR MOTION
16 FILED IN MUNICIPAL COURT PRIOR TO THEIR PRE-
17 LIMINARY HEARING SEEKING DISCLOSURE AND
18 INSPECTION OF VARIOUS MATERIALS OR INFORMATION
19 IN THE POSSESSION OF THE PEOPLE OR ITS AGENTS.

20 "THE PROSECUTOR HAD SUCCESSFULLY
21 RESISTED A MOTION ON THE BASIS THAT THE
22 MAGISTRATE DIDN'T HAVE JURISDICTION OVER ANY
23 PRETRIAL DISCOVERY."

24 THAT WAS REVERSED. WHAT HAS THAT GOT TO DO
25 WITH THE QUESTION WE HAVE NOW?

26 THE DEFENDANT: IT WAS A BRIEF ON A WRIT OF MANDATE.

27 THE COURT: WHAT PAGE IS THAT?

28 THE DEFENDANT: THIS IS THE CONTEXT OF THE ARGUMENT.

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I AM JUST READING --

MR. CHIER: HE IS READING FROM THE APPELLANT'S OPENING BRIEF.

THE COURT: I AM NOT INTERESTED IN THE APPELLANT'S OPENING BRIEF. I AM INTERESTED IN WHAT THE COURT SAID.

FO.

1 THE DEFENDANT: IT SAYS "IT IS CLEAR UNDER THE
2 STATUTORY LANGUAGE --"

3 THE COURT: WHAT PAGE IS THAT?

4 THE DEFENDANT: THIS IS A PARAPHRASATION OF HOLMAN V.
5 SUPERIOR COURT.

6 THE COURT: WHAT PAGE IS THAT, 483?

7 THE DEFENDANT: IT SAYS THAT UNDER THE STATUTORY LANGUAGE,
8 NOTICE IS REQUIRED.

9 THE COURT: I DON'T FIND IT IN HERE.

10 MR. WAPNER: HE IS NOT QUOTING FROM THE CASE ITSELF.

11 MR. BARENS: MAY WE HAVE THE BOOK? WE WILL TRY TO FIND
12 THE PASSAGE HE IS CITING.

13 THE COURT: LOOK AT IT. IT REFERS TO COMPELLING A
14 MAGISTRATE TO FURNISH INFORMATION AND IT HAS NOTHING TO DO
15 WITH THE ISSUES HE IS TALKING ABOUT.

16 MR. BARENS: LET ME SEE IF I CAN LOCATE THE LANGUAGE
17 WE ARE TALKING ABOUT.

18 THE DEFENDANT: AND THE OTHER CASE THAT IS CITED IS
19 KEENAN V. SUPERIOR COURT AND THE COURT OF APPEAL ISSUED A
20 WRIT OF MANDATE REQUIRING THAT NOTICE BE GIVEN PRIOR TO THE
21 TRIAL OF HOLMAN.

22 THE COURT: WHAT IS THAT CASE?

23 THE DEFENDANT: IT IS KEENAN V. SUPERIOR COURT, 126
24 CAL.APP.3D.

25 THE COURT: WHAT PAGE?

26 THE DEFENDANT: AT 581.

27 IT TALKS ABOUT THE FACT THAT WHERE A DEFENDANT
28 IS CHARGED WITH SPECIAL CIRCUMSTANCES JUSTIFYING THE

1 IMPOSITION OF THE DEATH PENALTY, THE DEFENDANT SHALL BE
2 INFORMED OF THE EVIDENCE TO BE USED IN AGGRAVATION WITHIN
3 A REASONABLE PERIOD BEFORE THE TRIAL COMMENCES IN ORDER TO
4 PROPERLY PREPARE FOR THE PENALTY PHASE.

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1 WHAT WE USE HOLMAN V. SUPERIOR COURT TO SHOW
2 IS THAT CLEAR STATUTORY LANGUAGE. THE FUNCTION OF THE
3 NOTICE APPEARS TO BE NOT SIMPLY THAT OF INFORMATION OR
4 INDICTMENT RECITING THE ALLEGED OFFENSE BUT MORE IN THE
5 NATURE OF A WITNESS LIST OR PROFFER OF SPECIFIC TESTIMONY
6 WHICH IS TO BE PRESENTED.

7 THE COURT: (READING)

8 "THE DEFENDANT CHARGED WITH
9 MURDER AND AGAINST WHOM SPECIAL CIRCUM-
10 STANCES JUSTIFYING THE DEATH PENALTY WERE
11 ALLEGED, PETITIONED THE COURT OF APPEAL FOR
12 A WRIT OF MANDATE AFTER THE TRIAL COURT DENIED
13 THE DEFENSE MOTION, SEEKING DISCOVERY OF
14 PROSECUTORIAL STANDARDS FOR CHARGING SPECIAL
15 CIRCUMSTANCES.

16 "THE COURT OF APPEAL ISSUED
17 A WRIT DIRECTING THE TRIAL COURT TO VACATE
18 THE ORDER DENYING THE REQUEST FOR NOTICE OF
19 EVIDENCE TO BE USED IN SUPPORT OF THE CHARGE
20 OF AGGRAVATING CIRCUMSTANCES AND DENIED THE
21 PETITION IN ALL OTHER RESPECTS.

22 "THE COURT HELD THAT THE
23 DEFENDANT'S DISCOVERY MOTION WAS PROPERLY
24 DENIED AND THAT THE EXERCISE OF PROSECUTORIAL
25 DISCRETION IN DECIDING WHETHER OR NOT TO
26 CHARGE SPECIAL CIRCUMSTANCES DOES NOT DEPRIVE
27 THE DEFENDANT ACCUSED OF A CAPITAL OFFENSE
28 OF CONSTITUTIONAL RIGHTS.

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"THE COURT ALSO NOTED THE
RESTRICTIONS PLACED ON DEFENSE TESTING OF
PHYSICAL EVIDENCE AGAINST HIM WERE PROPER."

WHAT HAS THAT GOT TO DO WITH THE ISSUE?

THE DEFENDANT: WELL, IT SAYS AFTER THAT OCCURRED,
THE COURT OF APPEALS LATER ISSUED A WRIT OF MANDATE REQUIRING
NOTICE BE --

THE COURT: ALL RIGHT. ANYTHING FURTHER THAT YOU
WANT TO TELL ME?

MR. BARENS: WELL, YOUR HONOR, LET'S TRY NOT TO
GET OUT OF SEQUENCE HERE WITH WHAT WE ARE DOING.

MR. CHIER: I WANTED TO JUST RESPOND TO MR. WAPNER.

THE OTHER ASPECT OF THE RESPONSE IS TO SAY
THAT DURING THE HOVEY VOIR DIRE, PARTICULARLY IT IS MY
RECOLLECTION THAT YOUR HONOR DID NOT WISH US TO DELVE
INTO THE ESLAMINIA MATTER. THERE WERE A COUPLE OF TIMES
WHEN IT WAS BROACHED AND YOUR HONOR PREFERRED THAT WE
NOT GO INTO IT.

SO THAT WITH RESPECT TO THE ESLAMINIA MATTER,
WHILE IT IS TRUE THAT WE DO HAVE A PRELIMINARY HEARING
TRANSCRIPT AND WHILE IT MIGHT BE TRUE THAT WE WERE THERE
IN PERSON AT THE PRELIMINARY HEARING, WITH RESPECT TO
THE OTHER MATTERS WHICH THE PEOPLE INTEND TO OFFER IN
AGGRAVATION WHICH ARE NOT CHARGED, HAVE NEVER BEEN CHARGED
AND NEVER BEEN THE SUBJECT OF AN ARREST, WE ARE ENTITLED
TO HAVE THE PEOPLE, THROUGH A HEARING OUTSIDE THE PRESENCE
OF THE JURY, ESTABLISH A PROBABLE CAUSE TO BELIEVE THAT
MR. HUNT -- THAT ANY OF THIS CONDUCT IS ASCRIBABLE TO

1 MR. HUNT AND THAT THE EVIDENCE IS OTHERWISE ADMISSIBLE
2 FOR THE PURPOSE WHICH THE PEOPLE SEEK TO HAVE IT RECEIVED.

3 MR. WAPNER: THE MOTION IS IN THE NATURE OF SAYING
4 THAT WE ARE ENTITLED TO A PRELIMINARY HEARING FOR EACH
5 CRIME THAT IS ALLEGED IN THE AGGRAVATING CIRCUMSTANCES
6 IN THE PENALTY PHASE. THERE IS NO LAW TO THAT EFFECT
7 THAT I KNOW OF.

8 AND IN ESSENCE, WHAT THEY ARE SAYING IS, LET'S
9 PUT THE WITNESSES UP ONCE OUTSIDE THE PRESENCE OF THE
10 JURY AND THEN WE'LL PUT THEM UP AGAIN IN THE PRESENCE
11 OF THE JURY. THERE IS NO AUTHORITY FOR THAT.

12 THE COURT: ALL OF THE MOTIONS WILL BE DENIED. WE'LL
13 PROCEED NOW WITH TRYING THE CASE. WHERE ARE THE JURORS?

14 MR. BARENS: NOW, YOUR HONOR --

15 THE BAILIFF: IN THE JURY ROOM.

16 MR. BARENS: WE HAVE THE OTHER MATTER THAT MR. HUNT
17 HAS COME UP WITH.

18 THE COURT: I THOUGHT HE GAVE ME EVERYTHING THAT
19 HE WANTED --

20 MR. BARENS: NO, YOUR HONOR. HE ONLY RESPONDED
21 TO YOUR INQUIRY.

22 THE COURT: WELL, WHAT IS IT THAT YOU WANT TO SAY?

23 MR. BARENS: WOULD YOU LET HIM PROCEED?

24 THE COURT: GO AHEAD.

25 MR. BARENS: THANK YOU, YOUR HONOR.

26 THE DEFENDANT: THESE ARE THE FOLLOWING ISSUES WHICH
27 ARE IN THE NATURE OF A MOTION TO EXCLUDE THE UNADJUDICATED
28 CRIMES OR EVIDENCE OF THAT. THE UNADJUDICATED CRIMES WOULD

1 INCLUDE ALL OF THE THREE THINGS THAT MR. WAPNER HAS CITED.

2 WE WOULD ASK FIRST THAT IT BE EXCLUDED BASED
3 ON A VIOLATION OF DUE PROCESS. THE EVIDENCE IS NOT EITHER
4 RELEVANT OR RELIABLE.

5 WE ASK THE COURT TO LOOK AT STATE V. MC CORMACK
6 AN INDIANA CASE, 1979 AND STATE V. BARTHOLOMEW.

7 WE ALSO ASK THE COURT THAT THE SUPREME COURT
8 OF THE UNITED STATES HAS NOT SPECIFICALLY ADDRESSED THE
9 QUESTION OF WHETHER THE INTRODUCTION OF SUCH EVIDENCE
10 IN AGGRAVATION VIOLATES THE FEDERAL CONSTITUTION.

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1 IF YOU DON'T WANT TO EXCLUDE IT, WE WOULD ASK
2 IN THE ALTERNATIVE THAT A DIFFERENT JURY BE IMPANELED OR AN
3 ADVISORY JURY TO DETERMINE WHETHER THE COMMISSION OF
4 UNADJUDICATED OFFENSES HAS BEEN PROVEN BEYOND A REASONABLE
5 DOUBT.

6 THE COURT: ALL RIGHT. THAT MOTION IS DENIED.

7 THE DEFENDANT: THANK YOU. THE NEXT ISSUE IS THAT WE
8 WOULD ALSO ASK TO EXCLUDE THE SAN FRANCISCO CASE, WHICH IS
9 THE ESLAMINIA MATTER, THE SWARTOUT MATTER AND THE FCA
10 DRIVE-BY SHOOTING ON A CONFLICT BETWEEN THE FIFTH AND EIGHTH
11 AMENDMENTS THAT IT PUTS THE DEFENDANT IN. SPECIFICALLY TO
12 THAT END -- WOULD IT BE POSSIBLE TO FREE MY OTHER HAND?

13 MR. BARENS: I DON'T THINK HE IS GOING ANYWHERE.

14 THE COURT: I HAVE NO OBJECTION.

15 THE DEFENDANT: THANK YOU. IF THE STATUTE OF LIMITATIONS
16 ON THE UNADJUDICATED OFFENSES DOES NOT EXPIRE, WHICH IN THIS
17 CASE IT HAS NOT AND THE DEFENDANT IS THEREFORE STILL SUBJECT
18 TO PROSECUTION FOR OTHER CRIMES, THE STATE AND FEDERAL
19 CONSTITUTIONAL PRIVILEGE AGAINST SELF-INCRIMINATION MAY
20 PROVIDE ADDITIONAL ARGUMENTS. I THINK IT DOES IN THIS CASE,
21 FOR THE EXCLUSION OF THE EVIDENCE. THERE IS A DEFENSE TO
22 THE OTHER CRIME OR CRIMES WHICH IS UNIQUELY WITHIN THE
23 KNOWLEDGE OF THE DEFENDANT BUT THAT IN ORDER TO TESTIFY
24 REGARDING THE OTHER CRIMES, I WOULD HAVE TO WAIVE MY
25 PRIVILEGE AGAINST SELF-INCRIMINATION WITH RESPECT TO THOSE
26 CRIMES.

27 EFFECTIVELY, I BELIEVE I AM BEING FORCED TO WAIVE
28 MY PRIVILEGE AGAINST SELF-INCRIMINATION OR THE EIGHTH

1 AMENDMENT RIGHT TO PRESENT MITIGATING EVIDENCE, IN OTHER
2 WORDS, EVIDENCE WHICH NEGATES THE PRESENCE OF OTHER CRIMES,
3 REQUIRING ME TO MAKE A CHOICE WHICH IS CONSTITUTIONALLY
4 IMPERMISSIBLE OR INTOLERABLE, OF ONE CONSTITUTIONAL RIGHT
5 BEING SURRENDERED IN ORDER TO ASSERT ANOTHER. AND I WOULD
6 CITE SIMMONS V. U.S. 309 U.S. 377 AT 394.

7 MR. BARENS: WELL YOUR HONOR --

8 THE DEFENDANT: UNDER THE CIRCUMSTANCES, I WOULD ARGUE
9 THAT THE OTHER CRIMES MUST BE EXCLUDED UNLESS THE DEFENDANT
10 IS GIVEN SOME SORT OF USE IMMUNITY REGARDING UNADJUDICATED
11 OFFENSES.

12 IF THE DEFENDANT IS GOING TO BE GIVEN USE
13 IMMUNITY REGARDING THE OTHER OFFENSES, I WOULD LIKE TO HAVE
14 AN OPPORTUNITY TO LITIGATE IN LIMINE, THE PERMISSIBLE SCOPE
15 OF CROSS-EXAMINATION OF THE DEFENDANT.

16 AND I WOULD CITE PEOPLE V. TEALER --

17 THE COURT REPORTER: PLEASE SPELL THAT.

18 THE DEFENDANT: T-E-A-L-E-R, AT 48 CAL.APP.3D 598 AT
19 604 TO 606. YOUR HONOR --

20 MR. BARENS: I WOULD LIKE TO ADD TO THAT MOTION, YOUR
21 HONOR, THAT IT IS A PARTICULARLY ONEROUS POSITION FOR COUNSEL
22 TO BE IN, WHEN, KNOWING THAT HE HAS A TRIAL TO DO IN
23 SAN FRANCISCO IN THE ESLAMINIA CASE YET, THEY SEEK TO
24 ASSERT IT DOWN HERE.

25 IN TERMS OF FAIRNESS AND PROPORTIONALITY, IN TERMS
26 OF THE UTILIZATION OF HIS CONSTITUTIONAL RIGHTS, THE
27 DEFENSE IS IN AN INEXTRICABLE TRICK BAG --

28 THE COURT REPORTER: A WHAT?

1 MR. BARENS: A TRICK BAG.

2 MR. CHIER: A CONUNDRUM.

3 MR. BARENS: A CONUNDRUM OF SORTS, IF HE TAKES THE STAND
4 IN HIS OWN --

5 THE COURT: CATCH 22?

6 MR. BARENS: CATCH 22 INDEED, YOUR HONOR. THANK YOU,
7 YOUR HONOR.

8 IF HE TAKES THE STAND IN HIS OWN DEFENSE DURING
9 THE PENALTY PHASE HERE, HE IS VIRTUALLY SUBJECT TO CROSS-
10 EXAMINATION ON THE ESLAMINIA CASE.

11 YET, THE ESLAMINIA CASE IN SAN FRANCISCO HAS YET
12 TO UNFOLD AND THE DEFENSE UP THERE WILL BE A PRODUCT BETWEEN
13 THE FOUR AT LEAST, COUNSEL THAT ARE INVOLVED IN THAT CASE
14 AND WHICH MR. HUNT HAS NOT HAD AN OPPORTUNITY TO PREPARE FOR
15 THAT TRIAL BECAUSE HE HAS BEEN DOING THIS TRIAL DOWN HERE.

16 AND THIS IS A VERY UNFAIR SETTING TO BE IN,
17 YOUR HONOR. THAT MATTER HAS TO STAND OR FALL ON ITS OWN.

18 BUT NOW, FOR THE DEFENDANT TO PROTECT HIMSELF
19 DOWN HERE, HE WOULD HAVE TO WAIVE ALL OF HIS CONSTITUTIONAL
20 RIGHTS UP THERE.

21 MR. CHIER: COULD I ADD SOMETHING TO THAT?

22 THE COURT: WELL, ONE OF YOU IS ENOUGH. I DON'T THINK
23 WE NEED ANYTHING FURTHER.

24 MR. CHIER: JUST A SLIGHT GLOSS, I WOULD LIKE TO ADD.
25 THE WAY OUT, THE SOLUTION TO THIS CATCH 22 SITUATION IS I
26 SUBMIT YOUR HONOR AND THE WAY OUT OF THE PROBLEM WITH RESPECT
27 TO COUNSEL'S PREPAREDNESS WOULD BE TO DISCHARGE THIS JURY
28 AND IMPANEL A SEPARATE PENALTY PHASE JURY, THEREBY GIVING
29 THE DEFENDANT THE RIGHT TO A DEFENSE IN THE CASE.

1 THE COURT: I KNOW THAT YOU HAVE BEEN WANTING THAT
2 SINCE YOU STARTED THIS MATTER AFTER THE CONVICTION. I
3 AM NOT GOING TO DISCHARGE THE JURY AND GET ANOTHER JURY.

4 DO YOU HAVE ANYTHING TO REPLY TO THE SUGGESTION
5 ABOUT HIS INCRIMINATING HIMSELF IF HE IS GOING TO TESTIFY
6 IN THIS CASE BECAUSE HE HAS THIS OTHER CHARGE AGAINST
7 HIM, THE SAME CHARGE AGAINST HIM IN ANOTHER COUNTY?

8 ARE YOU WILLING TO GIVE HIM USE IMMUNITY?

9 MR. WAPNER: I AM NOT WILLING TO GIVE HIM ANY KIND
10 OF IMMUNITY.

11 THE COURT: YOU MEAN THE LAW GIVES YOU THE RIGHT
12 TO ADDUCE THIS TESTIMONY, IS THAT RIGHT, TO PRESENT THIS
13 TESTIMONY TO THIS JURY?

14 MR. WAPNER: RIGHT. HE CAN DO BASICALLY AS HE SEES
15 FIT.

16 THE COURT: HE CAN TESTIFY BASICALLY THE SAME AS
17 HE TESTIFIES UP THERE, HE CAN INTRODUCE THE SAME KIND
18 OF EVIDENCE.

19 MR. CHIER: HE HAS A DIFFERENT LAWYER REPRESENTING
20 HIM UP THERE. HE HASN'T HAD A CHANCE TO PREPARE HIS TESTIMONY
21 WITH THAT LAWYER IN THAT CASE.

22 THE COURT: WELL, WE HAVEN'T REACHED THAT STAGE
23 YET. LET ME RESEARCH IT AND SEE WHETHER OR NOT WE CAN
24 WORK OUT SOME FORMULA BY WHICH HE CAN TESTIFY HERE AND
25 NOT HAVE ANYTHING HE SAYS HERE PREJUDICE THAT CASE UPSTATE.

26 MR. BARENS: THAT WOULD BE APPRECIATED.

27 THE COURT: YES, I UNDERSTAND YOUR PROBLEM.

28 MR. BARENS: IT IS A TERRIBLE PROBLEM.

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THE COURT: WELL, WE WILL HAVE THE DISTRICT ATTORNEY
EXPLORE THAT POSSIBILITY. YOU DON'T HAVE TO BE FACED
WITH IT RIGHT THIS MINUTE.

MR. BARENS: CAN WE CROSS THIS BRIDGE TOGETHER,
YOUR HONOR, BEFORE HE DOES SO?

THE COURT: ABSOLUTELY.

MR. CHIER: WHAT ABOUT THE OPENING STATEMENT?

MR. BARENS: NOW WE GET TO THE OPENING STATEMENT.

THE COURT: WELL, YOU MADE A MISTAKE THE FIRST TIME
YOU MADE AN OPENING STATEMENT. I SUPPOSE YOU DON'T WANT
TO MAKE IT AGAIN.

MR. BARENS: I DON'T PROPOSE TO MAKE ANY MORE THAN
I HAVE TO. BUT WILL MR. WAPNER? IS HE GOING TO TALK ABOUT
ESLAMINIA IN HIS OPENING STATEMENT?

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1 THE COURT: OF COURSE, HE WILL.

2 DO YOU WANT TO MAKE AN OPENING STATEMENT RIGHT
3 AFTER THAT, IS THAT WHAT YOU INTEND TO DO?

4 MR. BARENS: YES, YOUR HONOR, I PLAN TO RESPOND BRIEFLY.

5 THE COURT: YOU INTEND TO TALK ABOUT ESLAMINIA AND HIS
6 TESTIFYING IN THAT CASE?

7 MR. BARENS: IF HE DOES.

8 THE COURT: HE IS GOING TO TALK ABOUT ESLAMINIA,
9 OBVIOUSLY.

10 MR. BARENS: I HAVE TO THEN AS WELL.

11 THE COURT: YOU ARE GOING TO SAY THE DEFENDANT IS GOING
12 TO TAKE THE STAND AND DENY IT?

13 MR. BARENS: I DON'T KNOW WHAT I AM GOING TO SAY, YOUR
14 HONOR.

15 THE COURT: WELL, IT IS ENTIRELY UP TO YOU.

16 GIVE ME A CHANCE TO EXPLORE THIS BEFORE, HOWEVER.

17 MR. BARENS: I DON'T KNOW WHAT TO SAY BECAUSE I DON'T
18 KNOW.

19 THE COURT: WELL, I AM TELLING YOU NOT TO MAKE ANY
20 OPENING STATEMENT NOW. BUT IF YOU WANT TO MAKE AN OPENING
21 STATEMENT, IT IS ENTIRELY UP TO YOU.

22 MR. BARENS: WELL, I WILL MAKE SOME INNOCUOUS OPENING
23 STATEMENT.

24 MR. HUNT HAS A COUPLE OF MORE OBSERVATIONS.

25 THE COURT: YES?

26 THE DEFENDANT: ON THE REQUEST FOR THE IN LIMINE
27 EVIDENCE, TO DETERMINE WHETHER THE EVIDENCE IS SUFFICIENT TO
28 PERMIT ITS INTRODUCTION --

1 THE COURT REPORTER: WOULD YOU SLOW DOWN, PLEASE?

2 THE DEFENDANT: THE EVIDENCE ON THE REQUEST FOR THE
3 IN LIMINE HEARING, TO DETERMINE WHETHER THE EVIDENCE IS
4 SUFFICIENT TO PERMIT ITS INTRODUCTION BEFORE THE JURY, THAT
5 IS WHETHER THERE IS "SUBSTANTIAL EVIDENCE FOR WHICH THE JURY
6 COULD REASONABLY FIND THAT THE DEFENDANT COMMITTED THE
7 UNCHARGED OFFENSE," I WOULD CITE PEOPLE V. DURHAM, 70 CAL.2D,
8 171.

9 THE COURT: WAIT A MINUTE NOW. 70 CAL.2D?

10 THE DEFENDANT: YES.

11 THERE ARE ACTUALLY THREE CASES HERE.

12 MR. BARENS: PULL THAT FOR THE JUDGE, RICHARD.

13 THE COURT: 70 CAL.2D.

14 MR. CHIER: THAT IS CAL.APP. YOU HAVE, YOUR HONOR.

15 MR. BARENS: WELL, HELP HIS HONOR.

16 MR. WAPNER: RICHARD, IT IS THE TOP SHELF.

17 THE DEFENDANT: THE MAIN CASE ON THAT IS PEOPLE V.
18 PHILLIPS, AT 431 CAL.3D.

19 THE COURT: GIVE ME THE MAIN CASE.

20 THE DEFENDANT: I AM SORRY, YOUR HONOR?

21 MR. BARENS: WHAT WAS THE OTHER CITE NOW?

22 THE DEFENDANT: 70 CAL.2D 171 AND 41 CAL.3D IS AT PAGE
23 29.

24 THE COURT: WHAT PAGE IS 70 CAL.2D?

25 THE DEFENDANT: IT IS PAGE 190, FOOTNOTE 16.

26 THE COURT: 190?

27 THE DEFENDANT: YES. THE FOOTNOTE REFERS TO THIS ISSUE.

28 THE COURT: FOOTNOTE 16?

1 THE DEFENDANT: FOOTNOTE 16.

2 MR. CHIER: THE 41 CAL.3D VOLUME IS MISSING.

3 THE DEFENDANT: THAT IS THE MAIN ONE.

4 MR. CHIER: 41 CAL.3D WOULD BE VOLUME 8 OF THESE ADVANCE
5 SHEETS, YOUR HONOR.

6 THE COURT: YES, IT IS IN THERE.

7 IT SAYS "CUR FUNCTION ON APPEAL BEGINS AND ENDS
8 WITH THE DETERMINATION AS TO WHETHER SUBSTANTIAL EVIDENCE
9 WAS PRESENTED FROM WHICH THE JURY COULD REASONABLY HAVE FOUND
10 THE DEFENDANT COMMITTED THE UNCHARGED OFFENSES."

11 THE DEFENDANT: RIGHT, THAT IS WHAT I WAS CITING THAT
12 FOR. THE ISSUE OF THE IN LIMINE INQUIRY INTO THE SUFFICIENCY
13 OF THE EVIDENCE IN SUPPORT OF THE UNADJUDICATED VIOLENT
14 CRIMES WAS DISCUSSED IN PEOPLE V. PHILLIPS, WHICH IS WHAT
15 RICHARD IS TRYING TO GET.

16 I CITED PEOPLE V. DURHAM AS THE LOCATION WHERE
17 I GOT THE QUOTES, "SUBSTANTIAL EVIDENCE FROM WHICH THE JURY
18 COULD REASONABLY FIND THE DEFENDANT COMMITTED THE UNCHARGED
19 OFFENSES," AND I WAS JUST PARAPHRASING THE PURPOSE OF WHAT
20 THE GENERAL INQUIRY WAS BEFORE I GOT INTO THAT.

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1 THE COURT: WHAT IS IT YOU WANT TO KNOW FROM THE
2 PEOPLE AT THIS PARTICULAR TIME? IS IT WHAT EVIDENCE THEY
3 HAVE WITH RESPECT TO THESE OTHER CHARGED OFFENSES?

4 THE DEFENDANT: YES, I WOULD LIKE TO KNOW.

5 THE COURT: OTHER THAN ESLAMINIA?

6 DID YOU PREPARE TO GIVE THEM THE SUBSTANCE
7 OF IT?

8 MR. WAPNER: THEY HAVE THE SUBSTANCE OF IT. THEY
9 HAVE HAD ALL OF THOSE REPORTS FOR TWO YEARS NOW.

10 THE COURT: THE REPORTS, THEY ALREADY HAVE.

11 THOSE MOTIONS WILL BE DENIED. LET'S GET ON
12 WITH THE TRIAL OF THIS CASE, WILL YOU?

13 THE DEFENDANT: YOUR HONOR, THE ISSUES PERHAPS AREN'T
14 TOO CLEAR UNLESS YOU HAVE SOME IDEA OF WHAT THIS
15 SWARTOUT-F.C.A. INCIDENT INVOLVED.

16 THE COURT: YOU GAVE THEM THE POLICE REPORTS ON
17 THEM, DID YOU?

18 MR. WAPNER: ON BOTH OF THOSE INCIDENTS, THEY HAVE
19 HAD POLICE REPORTS FOR TWO YEARS NOW.

20 THE DEFENDANT: THERE IS AN ISSUE, AT LEAST WITH
21 THE F.C.A., THERE IS THE RIGHT OF CONFRONTATION WITH WITNESSES,
22 BECAUSE AS I UNDERSTAND IT, ONE OF THE KEY WITNESSES WAS
23 TO SOME STATEMENT MADE BY MY CO-DEFENDANT AND IT WAS DURING
24 OR IN FURTHERANCE OF A CONSPIRACY THAT WAS SUBSEQUENTLY
25 TO INVOLVE SOME OF THOSE ISSUES. INSTEAD OF HAVING IT
26 APPEAR IN A PREJUDICIAL MANNER IN FRONT OF THE JURY AND
27 THEN HAVE SOME SORT OF A RESOLUTION AT THE BENCH, WE THOUGHT
28 IT WOULD BE APPROPRIATE TO HAVE AN IN LIMINE HEARING WHERE

1 WE COULD DECIDE WHETHER THERE WERE SOME HEARSAY PROBLEMS
2 AND SOME CONFRONTATION PROBLEMS.

3 THE COURT: DO YOU INTEND TO HAVE ESLAMINIA FIRST,
4 IS THAT IT?

5 MR. WAPNER: NO.

6 THE FIRST THING IS THE SHOOTING IN SANTA ANA,
7 WHICH IS THE INCIDENT TO WHICH MR. HUNT REFERS.

8 THE NEXT THING IS DEALING WITH MR. SWARTOUT
9 IN IRVINE.

10 AND THEN WE WILL BEGIN WITH THE ESLAMINIA
11 THING, HOPEFULLY, WEDNESDAY OR LATE TOMORROW AFTERNOON,
12 DEPENDING ON HOW LONG ALL OF THIS OTHER STUFF TAKES.

13 MR. BARENS: I THINK WHAT THE DEFENDANT IS RAISING,
14 YOUR HONOR, IS WHAT I CALL THIS DRIVE-BY SHOOTING BUSINESS,
15 THAT HAS ITS GENESIS IN A HEARSAY STATEMENT WELL AFTER
16 THE COMMISSION OF IT, WHERE THE DEFENDANT IS BROUGHT INTO
17 THAT NEXUS THROUGH A STATEMENT MADE ALLEGEDLY BY MR. PITTMAN
18 TO ANOTHER PARTY, ATTRIBUTING CONDUCT TO MR. HUNT.

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1 THAT HEARSAY STATEMENT IS WELL AFTER THE INCIDENT
2 IN QUESTION AND IS NOT IN FURTHERANCE OF THAT INCIDENT
3 WHATSOEVER.

4 THE COURT: WHY DON'T WE WAIT UNTIL THAT PART OF
5 THE TRIAL? THEN YOU CAN COME UP AND MAKE YOUR MOTIONS
6 AT THE BENCH.

7 MR. BARNES: WELL, THIS IS COMING RIGHT AWAY, JUDGE.

8 THE COURT: WELL, THEN, IT WILL BE RIGHT AWAY.

9 MR. WAPNER: MR. TAGLIANETTI IS THE WITNESS THAT
10 TESTIFIES ABOUT THOSE STATEMENTS. HE WON'T BE HERE UNTIL
11 TOMORROW.

12 THE DEFENDANT: WELL, IF MR. TAGLIANETTI'S TESTIMONY -- WE
13 DON'T KNOW RIGHT NOW, IF IT IS FOUNDATIONAL TO THE WHOLE
14 ISSUE, THEN HAVING AN IN LIMINE HEARING WOULD SERVE.

15 IN PEOPLE V. PHILLIPS, IT SAYS THAT IN MANY
16 CASES IT MAY BE ADVISABLE FOR THE TRIAL COURT TO CONDUCT
17 A PRELIMINARY INQUIRY BEFORE THE PENALTY PHASE, TO DETERMINE
18 WHETHER THERE IS SUBSTANTIAL EVIDENCE TO PROVE EACH ELEMENT
19 OF THE OTHER CRIMINAL ACTIVITY. SO THERE IS SOME AUTHORITY
20 FOR THAT, YOUR HONOR.

21 THE COURT: WELL, WE CAN CROSS THAT BRIDGE WHEN
22 WE COME TO IT.

23 THE DEFENDANT: I HAVE ANOTHER ISSUE WHICH I THINK
24 IS VERY IMPORTANT. YOUR HONOR MIGHT LOOK MORE FAVORABLY
25 ON IT.

26 THE F.C.A. CASE SHOULD BE -- THAT IS THE DRIVE-BY
27 SHOOTING -- SHOULD BE EXCLUDED BECAUSE IT IS A NONVIOLENT
28 CRIME. THERE IS NO SHOWING THAT EVEN THOUGH A GUN IS

1 INVOLVED, OF ANYTHING OTHER THAN VANDALISM ATTEMPTED.

2 THE TIME OF THE ALLEGED CRIME IS AFTER BUSINESS
3 HOURS, IF I AM NOT MISTAKEN FROM MY READING OF THE POLICE
4 REPORT. THE PENAL CODE 190.3, PARAGRAPH 2, CONFIRMS THAT
5 "FORCE OR VIOLENCE IS A REQUIREMENT."

6 THE COURT: I KNOW THAT. DO YOU INTEND TO SHOW
7 FORCE OR VIOLENCE IN CONNECTION WITH THE UNCHARGED OFFENSES?

8 MR. WAPNER: I THINK IF YOU ARE SHOOTING OFF 11
9 ROUNDS FROM A .30 CALIBER CARBINE INTO A BUSINESS OCCUPIED
10 BY TWO PEOPLE, IF YOU CONSIDER THAT TO BE NONVIOLENT,
11 YOU MIGHT EXCLUDE IT.

12 THE COURT: IS THAT WHAT YOU ARE CLAIMING?

13 THE DEFENDANT: YES.

14 MR. WAPNER: BY MY DEFINITION, IT IS VIOLENCE.

15 THE DEFENDANT: THERE IS NO EVIDENCE THAT THE DEFENDANT
16 WAS EVER CONVICTED ON THE F.C.A. MATTER. PEOPLE V. BOYD
17 SPECIFICALLY SAYS THAT USE OF FORCE OR VIOLENCE AGAINST
18 PROPERTY IS EXCLUDED.

19 THE COURT: WELL, HOW ABOUT PEOPLE BEING INSIDE
20 THE PROPERTY?

21 THE DEFENDANT: THE ONLY DAMAGE WAS DONE TO THE
22 BUILDING. I AM NOT --

23 THE COURT: YOU MEAN SHOOTING AT AN OCCUPIED BUILDING
24 IS NOT A CRIME BUT A MISDEMEANOR?

25 MR. BARENS: I THINK WHAT MR. HUNT GOES TO, YOUR
26 HONOR, IF ONE ASSUMES, WHICH YOU MUST, THAT THE F.C.A.
27 MATTER WAS CALCULATED, ACCORDING TO MR. WAPNER, TO INTIMIDATE
28 A HUMAN BEING AND IF THE ACTIVITY OCCURRED AT A TIME WHEN

1 THAT HUMAN BEING COULD NOT BE ANTICIPATED TO BE IN THOSE
2 PREMISES, THEN THERE WOULD BE NO -- THE REQUIRED CRIMINAL
3 INTENT FOR AN ASSAULT OF THAT NATURE WOULD NOT BE PROVABLE.

4 THERE IS NO SCIANTER. THAT ELEMENT OF THE
5 CRIME IS NOT THERE UNLESS THE PEOPLE COULD DEMONSTRATE
6 THAT THERE WAS A LIKELIHOOD THAT THE ALLEGED OR INTENDED
7 VICTIM WOULD BE PRESENT.

8 MR. WAPNER: FIRST OF ALL, SECTION 246 OF THE PENAL
9 CODE DEFINES SHOOTING INTO AN INHABITED DWELLING.

10 SECOND OF ALL, BUSINESS HOURS ARE NOT THAT --
11 IT WAS ABOUT 7:00, IT IS MY UNDERSTANDING. THE LIGHTS
12 WERE ON. THERE WERE DOORS OF THIS BUSINESS THAT WERE
13 OPEN, IF ANYBODY HAD TAKEN THE TIME TO CHECK.

14 THEY WOULD KNOW THAT THE PEOPLE WERE LIKELY
15 TO BE INSIDE OF THERE. AND IN ANY EVENT, ANY TIME YOU
16 SHOOT INTO A BUILDING, YOU TAKE THE CHANCE THAT THERE
17 ARE PEOPLE THAT ARE INSIDE. AND BY ANYBODY'S DEFINITION,
18 SHOOTING OFF A .30 CALIBER CARBINE RIFLE INTO A BUILDING
19 IS A VIOLENT CRIME. I DON'T CARE HOW YOU CUT IT.

20 MR. BARENS: THERE WAS NEVER PROBABLE CAUSE TO CHARGE
21 OR ARREST MR. HUNT WITH THIS CRIME.

22 THE COURT: I HAVE GOT TO HEAR THE TESTIMONY BEFORE
23 I MAKE A RULING. LET'S GET STARTED. THAT IS ALL I WANT
24 TO HEAR.

25 THE DEFENDANT: YOUR HONOR, PLEASE. COULD I JUST --

26 THE COURT: I DON'T WANT TO BE HERE ALL DAY. IF
27 THERE IS ANYTHING FURTHER ON YOUR MOTIONS, YOU CAN TELL
28 YOUR LAWYER TO MAKE THEM.

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MR. BARENS: WE NEVER HAD ACCESS TO THE DEFENDANT --
THE DEFENDANT: PLEASE, YOUR HONOR. I WILL TRY
TO DO IT AS EXPEDITIOUSLY AS POSSIBLE.

THE COURT: GO AHEAD.

THE DEFENDANT: I ALSO ASK THAT THE ESLAMINIA CASE
BE EXCLUDED FROM THE PENALTY PHASE HEARING ON THE GROUNDS
THAT IT OCCURRED AFTER JUNE 6, 1984 AND THAT THE STATUTE
IS MEANT TO EXCLUDE CRIMES THAT ARE COMMITTED AFTER.

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1 AND FOR THAT, ALTHOUGH SECTION 190.3 SAID THAT
2 HE REFERS SIMPLY TO THE PRESENCE OR ABSENCE OF CRIMINAL
3 ACTIVITY, THE INTRODUCTORY PARAGRAPHS OF THAT SECTION REFER
4 TO THE PRESENCE OR ABSENCE OF OTHER CRIMINAL ACTIVITY.

5 PARAGRAPHS 1 AND 2 EMPHASIS ADDED AND "PRIOR
6 CRIMINAL ACTIVITY" IS IN PARAGRAPH 3. THIS RAISES A QUESTION
7 OF WHETHER THERE MUST BE A SPECIFIC TEMPORAL RELATIONSHIP
8 BETWEEN THE CAPITAL MURDER IN ISSUE AND THE OTHER CRIMINAL
9 ACTIVITY. AND IF SO, WHERE THE CRIMINAL ACTIVITY OCCURRING
10 AFTER THE CAPITAL HOMICIDE, IS ADMISSIBLE UNDER SECTION 190.3.

11 NOW, IF YOUR HONOR CONSIDERS TRADITIONAL
12 PRINCIPLES OF STATUTORY INTERPRETATION, A STRONG ARGUMENT
13 COULD BE MADE TO SUPPORT THE CONCLUSION THAT OTHER CRIMES
14 EVIDENCE ADMISSIBLE UNDER SUBSECTION B IS LIMITED TO VIOLENT
15 CRIMES OCCURRING BEFORE THE COMMISSION OF THE CAPITAL HOMICIDE.

16 THE WORD "PRIOR" IN PARAGRAPH 3 SHOULD NOT BE
17 IGNORED OR TREATED AS SURPLUSAGE. IF POSSIBLE, SIGNIFICANCE
18 SHOULD BE GIVEN TO EVERY WORD IN PURSUANCE OF LEGISLATIVE
19 PURPOSE. THAT IS FROM PEOPLE V. BLACK, 32 CAL.3D, PAGE 1
20 AT PAGE 5.

21 MOREOVER, IN THE ABSENCE OF ANYTHING IN THE
22 STATUTE TO THE CONTRARY, A REPEATED WORD OR PHRASE IN THE
23 STATUTE IS USED IN THE SAME SENSE THROUGHOUT. THAT IS
24 PEOPLE V. HERNANDEZ, PEOPLE V. BALDARES AND PEOPLE V. CROWSON.

25 THE COURT REPORTER: PLEASE SPELL THAT.

26 THE DEFENDANT: C-R-O-W-S-O-N. THAT IS BECAUSE "PRIOR"
27 AS USED IN SECTION 190.3 CAN BE CONSTRUED AS IN ACCORDANCE
28 WITH ITS TRADITIONAL MEANING.

1 PRIOR CRIMINAL ACTIVITY MUST BE GIVEN THE SAME
2 CONSTRUCTION, YOUR HONOR, LIMITING THE INTRODUCTION OF VIOLENT
3 CRIMES TO THOSE WHICH OCCURRED PRIOR TO THE CAPITAL HOMICIDE.

4 IT WOULD BE CONSISTENT WITH THE APPARENT INTENT
5 OF THE DRAFTERS, EXPRESSED IN SECTIONS A, C AND J. SO I WOULD
6 ASK FOR THE ESLAMINIA HOMICIDE TO BE EXCLUDED ON THAT BASIS.

7 MR. CHIER: WE WOULD JOIN, YOUR HONOR. VIS-A-VIS --

8 THE COURT: WELL, IT IS THE DEFENDANT'S MOTION. WHAT
9 DO YOU MEAN THAT YOU JOIN IN THE DEFENDANT'S MOTION?

10 MR. BARENS: WE CONCUR.

11 MR. CHIER: THESE ARE THE MATTERS WE WISHED TO BRIEF
12 FOR THE COURT.

13 THE COURT: WELL, YOU BRIEF IT FOR ME THEN, IN THE
14 MEANTIME. LET'S GET ON WITH THE TRIAL.

15 THE DEFENDANT: THERE ARE STILL A FEW MORE, SIR. THESE
16 ARE VERY IMPORTANT AND --

17 THE COURT: WELL, YOU CONFER WITH THE LAWYERS. I WILL
18 GIVE YOU PLENTY OF TIME TO DO THAT. LET THEM MAKE THE MOTIONS.
19 I AM NOT LISTENING TO YOU ANY MORE.

20 I AM THROUGH LISTENING TO YOU.

21 THE DEFENDANT: I AM QUITE SURE THAT I WOULD BE WAIVING --

22 THE COURT: YOU WON'T WAIVE ANYTHING. I WILL TELL YOUR
23 COUNSEL THAT.

24 MR. BARENS: LET ME ASK YOU THIS, YOUR HONOR, JUST TO
25 MAKE IT CLEAR FOR THE RECORD WHAT WE ARE DOING.

26 THE DEFENDANT HAS EXPRESSED THAT HE HAS ADDITIONAL
27 MOTIONS HE WISHES TO COMMUNICATE TO THE COURT THAT LIE IN
28 THE NATURE OF PREHEARING MOTIONS FOR THE DEFENDANT AND

1 IN LIMINE MOTIONS.

2 WE ARE ASKING FOR YOUR HONOR TO RESERVE. WE ARE
3 NOT WAIVING ANY MOTIONS THAT WE WOULD LIKE TO ADDRESS TO
4 YOUR HONOR. WE WOULD LIKE TO ADDRESS YOU AFTER THE NOON
5 BREAK.

6 AND THEN YOUR HONOR, PLEASE CONFIRM THAT THE
7 MATTERS WE BRING UP AFTER THE NOON BREAK ARE NOT DEEMED WAIVED
8 BECAUSE WE HAVE NOT BEEN ABLE TO ARTICULATE THEM AT THIS
9 JUNCTURE.

10 THE COURT: YOU ARE NOT WAIVING ANYTHING. ALL RIGHT?

11 THE DEFENDANT: FURTHERMORE, YOUR HONOR, IT MIGHT BE
12 IRREPARABLE HARM BECAUSE SOME OF THE THINGS MIGHT BE DEALING
13 WITH SOMETHING THAT COMES UP IN THE NEXT HOUR OR TWO OF
14 TESTIMONY. THEN, THEY ARE PREJUDICIAL AND --

15 MR. BARENS: I THINK THAT WE SHOULD BE CAUTIOUS IN ORDER
16 TO PROTECT THE RECORD AGAINST AN ERROR OF A FUNDAMENTAL
17 NATURE. WE ARE INTO SOME HEAVY CONSTITUTIONAL CONSIDERATIONS.
18 WE ARE AT THE DEATH PHASE OF THIS CASE.

19 THE COURT: LET HIM APPRISE YOU IN THE MEANTIME. THIS
20 IS THE FIRST TIME YOU HAVE HEARD ANY OF THIS?

21 MR. BARENS: YES, YOUR HONOR.

22 THE COURT: WELL, IT SEEMS THAT HE HAS BEEN WORKING
23 ON THIS A LONG TIME PRIOR TO THIS TIME.

24 MR. BARENS: YOUR HONOR, PLEASE UNDERSTAND THAT THEY
25 DON'T LET US TALK TO HIM OVER THE WEEKENDS. AND I DIDN'T
26 SEE HIM UNTIL HE WALKED IN HERE THIS MORNING, NOR DID I HAVE
27 AN OPPORTUNITY TO DO SO.

28 I AM TRYING TO MAKE SURE THAT WHAT WE DO, WHAT

1 WE ARE SUPPOSED TO DO AT THIS JUNCTURE IS --

2 THE COURT: YOU READ ALL OF HIS NOTES. YOU READ
3 EVERYTHING AND DISCUSS IT WITH HIM. THEN YOU MAKE THE MOTIONS.
4 ALL RIGHT?

5 MR. BARENS: WHAT HE IS SAYING I BELIEVE YOUR HONOR,
6 IS THAT IF WE DON'T DO THEM BEFORE THE STATEMENTS ARE MADE
7 TO THE JURY, AND THE FIRST WITNESS IS IMPANELED, WE RUN A
8 SUBSTANTIAL RISK OF IRREPARABLE HARM AND ERROR.

9 I DON'T THINK WE OUGHT TO TAKE THE RISK. I THINK
10 WE OUGHT TO TAKE THE TIME RIGHT NOW AND DO THIS.

11 THE COURT: HOW MUCH LONGER HAVE YOU GOT?

12 THE DEENDANT: PROBABLY ANOTHER HALF HOUR. BUT, I MEAN,
13 LIKE THERE ARE 15 SUBSTANTIVE ISSUES.

14 MR. BARENS: I THINK THAT WE BEST BE CAUTIOUS YOUR HONOR.

15 THE COURT: WHAT DO YOU MEAN BE CAUTIOUS? I HAVE
16 LISTENED TO THIS WHEN THIS IS SOMETHING THAT YOU SHOULD HAVE
17 PROPERLY PREPARED. YOU NEVER THOUGHT ABOUT ALL THESE POINTS?
18 IS THAT WHAT YOU ARE TRYING TO TELL ME? HE IS THE ONLY ONE
19 THAT KNEW ANYTHING ABOUT ALL OF THAT?

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1 MR. CHIER: YOUR HONOR, MAY I SAY SOMETHING?

2 THE COURT: YOU KNEW NOTHING ABOUT THIS?

3 MR. BARENS: YOUR HONOR --

4 THE COURT: YOU DIDN'T PREPARE FOR IT IN ADVANCE?

5 MR. BARENS: YOUR HONOR, THE WAY WE HAVE DONE THIS
6 THROUGHOUT THE TRIAL, SINCE WE STARTED TWO YEARS AGO --

7 (UNREPORTED COLLOQUY BETWEEN THE DEFENDANT
8 AND MR. BARENS.)

9 MR. BARENS: YOUR HONOR, I CAN ONLY SUBMIT THAT I BELIEVE
10 MR. HUNT SHOULD BE ABLE TO ADDRESS THE COURT ON THE MATTERS
11 THAT HE HAS THAT ARE OF A SUBSTANTIAL NATURE.

12 MR. WAPNER: CAN I JUST ADDRESS ONE THING? MAYBE WE
13 CAN, JUST AS A SUGGESTION, PUT IT INTO THE WORKS FOR NEXT
14 WEEKEND, THE COURT MIGHT WANT TO ASK MR. QUINN TO CALL TO
15 THE JAIL AND MAYBE SOME SPECIAL ARRANGEMENTS CAN BE MADE TO
16 HAVE COUNSEL SEE THE DEFENDANT ON THE WEEKEND AT THE JAIL.
17 I DON'T KNOW IF IT CAN BE DONE.

18 MR. BARENS: WE WOULD APPRECIATE THAT.

19 THE DEFENDANT: THE PROBLEM ALSO, YOUR HONOR --

20 THE COURT: I WILL DO THAT.

21 THE DEFENDANT: I GET TO THE PHONE MAYBE ONCE EVERY
22 THREE DAYS AND THEN VERY RARELY AT A TIME WHEN I CAN REACH
23 MY ATTORNEYS.

24 MR. BARENS: WHICH IS ANOTHER BIG PROBLEM I NEVER KNEW
25 WE HAD AT THIS POINT IN THE DEAL THAT HE CAN'T USE THE PHONE.

26 I CAN'T GET MY COMMUNICATIONS BACK AND FORTH WITH
27 THE DEFENDANT BECAUSE EVERY THIRD DAY, HE GETS A PHONE CALL
28 AT 6 O'CLOCK IN THE MORNING OR SOMETHING.

1 MR. WAPNER: WE CAN GET COURT ORDERED PHONE CALLS, TOO,
2 I AM SURE.

3 THE BAILIFF: PART OF A PROBLEM IS THE OVERCROWDING
4 OF THE JAIL. THEIR CAPACITY IS LIKE TEN OR ELEVEN THOUSAND
5 AND WE HAVE LIKE TWENTY-ONE OR TWENTY-TWO THOUSAND IN L.A.

6 THE COURT: THEY ALL WANT TO USE THE PHONES.

7 THE DEFENDANT: ABSOLUTELY, DOWN TO THE LAST MAN, THEY
8 WANT TO USE THE PHONE.

9 MR. BARENS: IT IS REAL AWKWARD.

10 MR. CHIER: JUDGE, HE ALSO DOESN'T GET BACK TO THE
11 COUNTY JAIL UNTIL --

12 THE COURT: I TELL YOU WHAT WE WILL DO TODAY, WHY DON'T
13 WE GO IN NOW? WHAT I INTEND TO DO IS TO PREINSTRUCT THE JURY
14 SO THEY KNOW SOMETHING ABOUT WHAT IS TO BE EXPECTED OF THEM
15 ON A DEATH PENALTY PHASE, THE SAME INSTRUCTIONS THAT I WILL
16 GIVE THEM AT THE CONCLUSION OF THE CASE AND THEY ARE
17 STANDARD INSTRUCTIONS, I WILL INSTRUCT THEM ABOUT THAT.

18 AND YOUR OPENING STATEMENT TO THE JURY -- THE
19 JURY WILL KNOW THAT OPENING STATEMENT IS NOT EVIDENCE IN THE
20 CASE AND THEN WHAT WE WILL DO THEN IS TO GO UNTIL ABOUT 3:30,
21 OR 3 O'CLOCK, SO YOU CAN HAVE THE BALANCE OF THE AFTERNOON
22 TO TALK TO HIM ABOUT ANY FURTHER MATTERS YOU WANT TO BRING
23 UP, WILL THAT BE ALL RIGHT?

24 MR. BARENS: OKAY.

25 THE COURT: HE WILL BE KEPT HERE FOR THAT PURPOSE UNTIL
26 4:30.

27 I SAW THE FORMER GIRLFRIEND OUT THERE AND THEY
28 DIDN'T BRING ANY CLOTHES ALONG SO, CONSEQUENTLY, THEY DIDN'T

1 LISTEN TO YOU.

2 MR. BARENS: THAT SEEMS TO BE THE CASE.

3 THE COURT: YES, THAT SEEMS TO BE THE CASE.

4 MR. BARENS: BY THE WAY, FOR THE RECORD, I WANT YOUR
5 HONOR TO KNOW THAT I WENT OUT THERE AFTER OUR LAST SESSION
6 AND I ASKED THEM IF THEY BROUGHT ANY CLOTHES AND THEY SAID
7 THEY DIDN'T. I SAID "DIDN'T I TELL YOU TO BRING CLOTHES FOR
8 THE DEFENDANT, HE WOULD BE PERMITTED TO PUT THEM ON?"

9 AND THEY TOLD ME, YES, THEY DID NOT DO IT THIS
10 MORNING. I ASKED THEM TO PLEASE DO SO.

11 I CAN'T ORDER THEM TO DO ANYTHING. I ASKED THEM.

12 THE COURT: DO YOU KNOW IF THEY WILL BRING THAT
13 TOMORROW?

14 MR. BARENS: I DON'T KNOW, YOUR HONOR.

15 I ASKED THEM THE SAME WAY I HAD.

16 THE COURT: YOU DON'T WANT THEM TO BRING THEM, DO YOU?

17 THE DEFENDANT: I WOULD JUST AS SOON BE TRIED IN THE
18 PENALTY PHASE IN THESE CLOTHES.

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1 THE COURT: ALL RIGHT, THEN I WILL STATE THAT TO
2 THE JURY.

3 MR. CHIER: YOUR HONOR, HE WAIVES HIS RIGHT TO DO
4 THAT.

5 MR. BARENS: HE HAS CHOOSEN, HE ELECTS TO BE IN
6 THE ATTIRE THAT HE HAS NOW.

7 MR. CHIER: HE HAS TO GET UP A LOT EARLIER. IT
8 IS A BURDEN FOR THE DEFENDANT TO GET DRESSED IN CIVILIAN
9 CLOTHES DOWN THERE.

10 THE COURT: THE CLOTHES ARE HERE. WE TAKE CARE
11 OF DRESSINGHIM HERE, DON'T WE?

12 THE BAILIFF: THE CLOTHES STAY HERE. IT TAKES FIVE
13 MINUTES.

14 THE COURT: THERE IS NO PROBLEM ABOUT IT. IT ONLY
15 TAKES FIVE MINUTES.

16 THE DEFENDANT: CAN I GET THE POINTS AND AUTHORITIES
17 AS TO WHY YOUR HONOR SHOULDN'T MAKE THAT STATEMENT TO
18 THE JURY?

19 THE COURT: I DON'T INTEND TO DO ANYTHING LIKE THAT.

20 MR. BARENS: HE IS SUGGESTING THAT IF THE DEFENSE
21 COULD HAVE AN OPPORTUNITY TO RESEARCH THAT, IF THERE ARE
22 SOME POSSIBLE POINTS AND AUTHORITIES TO SUPPORT THAT YOUR
23 HONOR SHOULD NOT MAKE SUCH A STATEMENT.

24 THE COURT: THE LAW IS THAT THE DEFENDANT SHOULD
25 NOT BE BROUGHT INTO COURT IN JAIL CLOTHES; IS THAT RIGHT?

26 MR. CHIER: AGAINST HIS WILL.

27 THE DEFENDANT: AGAINST HIS WILL.

28 THE COURT: SO THEREFORE, THERE IS AUTHORITY FOR

1 THE SUGGESTION THAT HE WEAR THEM. HOWEVER, IF HE EXPRESSES
2 HIMSELF THAT HE DOESN'T WANT IT, AS HE HAS ON THE RECORD,
3 HE CAN WEAR JAIL CLOTHES. I WILL TELL THE JURY THIS IS
4 AT HIS OWN ELECTION.

5 MR. BARENS: ALL WE ARE SAYING IS THAT THE DEFENSE
6 FEELS PERHAPS THAT IT MIGHT NOT BE THE APPROPRIATE THING
7 TO SAY THAT, BUT I DON'T KNOW IF IT CAN BE RESTRICTED
8 OR IF THERE IS A CASE THAT MIGHT SUGGEST TO YOUR HONOR
9 THAT YOUR HONOR MIGHT NOT SAY THAT TO THE JURY.

10 THE COURT: I TOLD YOU THERE IS A CASE WHICH HOLDS
11 THE DEFENDANT SHOULD NOT BE BROUGHT INTO COURT IN JAIL
12 CLOTHES, THAT HE MUST BE FURNISHED WITH CIVILIAN CLOTHES.

13 MR. BARENS: I THINK THAT CASE SAYS "AGAINST HIS
14 WILL."

15 THE COURT: NO, NO, NO, NOT AGAINST HIS WILL.

16 THE DEFENDANT: IT CERTAINLY DOESN'T SAY ANYTHING
17 ABOUT MAKING AN INSTRUCTION.

18 WHAT I WOULD LIKE NOW IS AN OPPORTUNITY TO
19 CHECK THE LAW ON IT, BECAUSE IF THAT IS THE CASE, THEN
20 I MAY CHANGE.

21 THE COURT: YOU DON'T NEED TO CHECK THE LAW ON IT.
22 THAT IS WHAT I AM GOING TO DO.

23 THE DEFENDANT: IF I AM IN A DILEMMA LIKE THAT,
24 I WOULD LIKE THE OPPORTUNITY OF CHECKING UP.

25 THE COURT: I WILL TELL YOU WHAT THE LAW IS, SO
26 FAR AS THAT IS CONCERNED. IF YOU WANT TO LOOK IT UP,
27 DO IT.

28 THE DEFENDANT: I WANT AN OPPORTUNITY. I DON'T

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1 WANT THE JURY TO HEAR THAT I AM BEING OBSTRUCTIVE. THEY
2 ARE GOING TO KNOW I HAVE COME IN HERE IN A DIFFERENT SUIT
3 EVERY DAY.

4 THE COURT: DO YOU WANT TO HAVE NON-JAIL CLOTHES ON
5 OR DON'T YOU?

6 THE DEFENDANT: EITHER HAVE MY SUIT OR THESE CLOTHES.

7 THE COURT: YOU HAVE HAD PLENTY OF TIME TO GET THEM
8 DOWN HERE. YOU REFUSED TO DO THAT.

9 THE DEFENDANT: PERHAPS YOUR HONOR COULD WITHHOLD
10 THE STATEMENT SO I COULD HAVE A CHANCE TO RESEARCH IT
11 AND BRING MY CLOTHES TOMORROW.

12 MR. BARENS: COULD WE HAVE UNTIL 1:30?

13 THE COURT: IN THE MEANTIME, LET HIM WEAR HIS JAIL
14 CLOTHES, IS THAT WHAT YOU WANT?

15 MR. BARENS: WHAT I UNDERSTAND, IN THE 30 MINUTES
16 BEFORE THAT WE HAVE, WHERE I ANTICIPATED YOUR HONOR MIGHT
17 TAKE A BREAK, YOU ARE GOING TO PRE-INSTRUCT AND COULD
18 WE HOLD DOING THE STATEMENT, OPENING STATEMENT EITHER
19 BY THE PROSECUTION OR DEFENSE UNTIL AFTER 1:30?

20 THE COURT: YES, I WILL DO THAT.

21 MR. BARENS: SO WE WILL BE CAUTIOUS IN WHAT WE ARE
22 DOING.

23 THE COURT: I WILL DO THAT. LET'S GET THE JURY
24 IN, PLEASE.

25 MR. CHIER: COULD WE MAYBE GET SOME CLOTHES FOR
26 HIM?

27 THE DEFENDANT: NO.

28 THE BAILIFF: THEY WON'T FIT.

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THE DEFENDANT: THEY WON'T FIT.

THE COURT: WILL YOU MAKE A COPY OF THE LIST?

THE COURT REPORTER: DO YOU WANT THAT AS A COURT
EXHIBIT, YOUR HONOR?

THE COURT: YES.

AND ALL OF THE DISCUSSION ABOUT THE JUROR
SHOULD BE MARKED SECRET AND CONFIDENTIAL.

(RECESS.)

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1 (WHEREUPON, MR. CHIER ENTERS
2 CHAMBERS:)

3 (FURTHER PAUSE IN PROCEEDINGS.)

4 (WHEREUPON, DEFENDANT ENTERS CHAMBERS.)

5 THE COURT: ALL RIGHT. THE RECORD WILL SHOW THE
6 PRESENCE OF THE DEFENDANT AND COUNSEL.

7 MR. CHIER: CAN I PROCEED?

8 I HAVE KIND OF A LONG LIST OF MOTIONS AND MATTERS TO
9 TAKE UP WITH THE COURT HERE, YOUR HONOR, AND IF WE COULD
10 GO THROUGH THESE.

11 THE FIRST THING I WOULD LIKE TO DO IS BRIEFLY
12 TOUCH UPON THAT IN YOUR PREINSTRUCTION TO THE JURY, YOU
13 OMITTED SUBSECTION C OF THE --

14 THE COURT: NO PRIOR FELONY.

15 MR. CHIER: -- THE ABSENCE OF ANY PRIOR FELONY CONVICTION
16 OF THE DEFENDANT.

17 THE COURT: I SAID THAT.

18 MR. CHIER: NO, YOU SKIPPED OVER IT OR I MISUNDERSTOOD
19 YOU THEN.

20 ALL RIGHT. BEFORE WE GET UNDER WAY WITH THE
21 OPENING STATEMENT OF MR. WAPNER, I THINK THAT WE SHOULD
22 HAVE A HEARING CONCERNING THE SUPPRESSION OF MR. KARNY'S
23 TESTIMONY, BASED UPON THE FAILURE OF THE PEOPLE TO RETURN
24 AN EXHIBIT, NO. 37 TO THE DEFENSE. THAT HAS A DIRECT
25 TENDENCY TO IMPEACH MR. KARNY.

26 THE COURT: DIDN'T I RULE ON THAT IN THE GUILT PHASE
27 OF THE TRIAL, 37?

28 MR. CHIER: WE DIDN'T HAVE A FULL HEARING.

1 THE COURT: I RULED ON IT AT THAT TIME. MY RULING
2 WILL BE THE SAME.

3 MR. CHIER: I AM MAKING ANOTHER MOTION AT THIS TIME.

4 THE COURT: THAT WILL BE DENIED.

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1 MR. CHIER: ALL RIGHT. WE DO HAVE PHYSICAL AND ORAL
2 TESTIMONY TOGETHER WITH CIRCUMSTANTIAL EVIDENCE TO SUPPORT
3 THE EXISTENCE OF THIS DOCUMENT AND THE NEED --

4 THE COURT: DESCRIBE THAT DOCUMENT.

5 MR. CHIER: IT IS A LETTER UNDER DATE OF JULY SOMETHING,
6 1980 --

7 THE DEFENDANT: EXCUSE ME. COULD I JUST COUNSEL WITH
8 HIM FOR JUST A SECOND?

9 (OFF THE RECORD DISCUSSION BETWEEN THE
10 DEFENDANT AND HIS COUNSEL.)

11 MR. CHIER: DO YOU REMEMBER THAT YOUR HONOR TOOK A
12 PROFFER FROM THE DEFENDANT AT THE SIDE BAR OUT OF THE HEARING
13 AND PRESENCE OF MR. WAPNER? THAT MATTER IS UNDER SEAL AT
14 THIS TIME. AND I HAD NEGLECTED TO RECALL THAT. BUT IT IS --
15 THE ENTIRE PROFFER WAS TAKEN BY YOUR HONOR UNDER SEAL, NOT
16 IN MR. WAPNER'S PRESENCE. AND I WOULD LIKE TO KEEP THE
17 STRUCTURE THAT WAY FOR THE TIME BEING.

18 MR. WAPNER: AS I RECALL, THE COURT'S RULING WAS THAT
19 HE COULD BE EXAMINED ABOUT THE CONTENTS OF THIS LETTER. THAT
20 IS MY RECOLLECTION.

21 MR. CHIER: YES. THAT IS WHAT I AM TALKING ABOUT, THE
22 PROFFER. THE JUDGE WAS ASKING ME TO GO INTO IT.

23 THE COURT: YOU MEAN YOU WANT TO OFFER THAT LETTER?

24 MR. CHIER: NO. I WANT TO HAVE A HEARING ON WHETHER
25 OR NOT THERE SHOULD BE A SANCTION EITHER OF A COURT MANDATORY
26 LAMP IN THIS CASE OR THE PROHIBITION OF MR. KARNY FROM
27 TESTIFYING AS A SANCTION FOR THE PEOPLE, THE GOVERNMENT NOT
28 RETURNING THIS DOCUMENT.

1 MR. WAPNER: WELL, MAY I JUST INTERJECT BRIEFLY BECAUSE
2 I THINK THAT THAT IS FACTUALLY INACCURATE. THE GOVERNMENT
3 IS NOT RETURNING THIS DOCUMENT BECAUSE THERE IS NO EVIDENCE
4 THAT WE EVER TOOK IT.

5 MR. CHIER: WELL, THAT IS WHAT THE HEARING WOULD BE
6 FOR.

7 THE COURT: YES. I REMEMBER THE TIME THAT WE HAD THE
8 MOTION TO SUPPRESS THE SEARCH WARRANT, ISN'T THAT RIGHT? WE
9 TALKED ABOUT IT AT THAT TIME, DIDN'T WE?

10 MR. WAPNER: THAT'S RIGHT.

11 THE COURT: LET'S GO ON TO THE NEXT ONE.

12 MR. CHIER: NOW YOUR HONOR, WHAT WE WOULD LIKE TO DO
13 IS RENEW OR REOPEN THE MOTION FOR DISCOVERY OF THE KARNY/
14 HOMICIDE, HOLLYWOOD MOTEL CASE AND THAT IS ON THE FOLLOWING
15 GROUNDS OR FOR THE FOLLOWING REASONS: FIRST, NOW BEAR IN
16 MIND THAT I AM NOT SEEKING ADMISSION OF THIS EVIDENCE AT THIS
17 JUNCTURE. WE ARE SEEKING ONLY TO LOOK AT IT. IT IS DISCOVERY,
18 IF YOU WILL.

19 IT IS FIRST, THE GROUNDS THAT IT WILL IMPEACH
20 THE CONTENTS OF THIS FILE. IT WILL HAVE A TENDENCY TO IMPEACH
21 MR. KARNY FOR BIAS, MOTIVE OR INTEREST. IT WILL IMPEACH HIS
22 TESTIMONY IN PARTICULAR RESPECT TO HIS CLAIM --

23 THE COURT: THIS IS A REPETITION OF THE SAME MOTION
24 THAT YOU MADE IN CONNECTION WITH HIS TESTIMONY.

25 MR. CHIER: ACTUALLY, WHAT HAPPENED --

26 THE COURT: YOU ARE REPEATING YOURSELF.

27 MR. CHIER: NOT REALLY BECAUSE WHAT HAPPENED IN THE
28 GUILT PHASE WITH RESPECT TO THE KARNY MOTION IS THAT SOMEHOW,

1 OUR MOTION GOT JOINED IN THE PITTMAN MOTION AND IT WAS NEVER
2 REALLY CLEARLY RESOLVED VIS-A-VIS MR. HUNT IN THIS CASE.

3 AND WE THINK THAT AT THIS PARTICULAR JUNCTURE,
4 HAVING NOW SEEN MR. KARNY TESTIFY AS A TYPE OF BORN AGAIN
5 PERSON IN THE GUILT PHASE --

6 THE COURT: DIDN'T WE HAVE A FULL HEARING? DIDN'T THE
7 PEOPLE IDENTIFIED WITH THAT PARTICULAR INVESTIGATION SAY THERE
8 WAS ABSOLUTELY NOTHING THAT THEY HAVE AGAINST MR. KARNY AND
9 THEREFORE, THERE WAS NOTHING TO GIVE YOU? DIDN'T THEY SAY
10 THAT?

11 MR. WAPNER: THEY FILED AN AFFIDAVIT TO THAT EFFECT.
12 AND THE STATUS OF THE MOTION BY THE DEFENSE IN THIS CASE,
13 WAS THAT IT WAS WITHDRAWN.

14 AND THEN LATER, MR. BRODEY AND MR. GREENHALGH
15 MADE A MOTION BEFORE WHEN MR. PITTMAN WAS KIND OF SUMMARILY
16 JOINED IN WITHOUT ARGUMENT BY COUNSEL AND THE MOTION WAS DENIED.

17 THE COURT: DENIED? RIGHT.
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THE COURT: I DENIED IT, DIDN'T I?

MR. WAPNER: THAT MOTION WAS DENIED.

MR. CHIER: COULD I JUST SAY WHY WE WANT TO HAVE A HEARING ON THAT, YOUR HONOR, FOR THE RECORD, PLEASE?

THE COURT: GO AHEAD.

MR. CHIER: THE CASE OF PEOPLE V. GREEN SUPPORTS THE THEORY AT A PENALTY PHASE OF GOING INTO THE IDEA OF THIRD PARTY CULPABILITY. WE ARE ENTITLED, AS A MATTER OF LAW, TO SHOW THAT IF LEVIN IS DEAD, THAT IF THERE IS A CULPABLE PERSON, VIS-A-VIS LEVIN AND ESLAMINIA, IT IS NOT MR. HUNT BUT MR. KARNY.

NOW ON THIS HOLLYWOOD FILE, WE SHOULD NOT BE BOUND BY THE DETERMINATION OF THE LOS ANGELES POLICE DEPARTMENT HOMICIDE PEOPLE FROM WORKING IN CONCERT WITH THE DISTRICT ATTORNEY'S OFFICE, THAT IN THEIR OPINION MR. KARNY IS NO LONGER A SUSPECT, ALTHOUGH HE WAS AT ONE TIME.

IT IS NOT REALLY FAIR TO SADDLE US AND TO BIND US BY THEIR DETERMINATION.

THE COURT: SPECIFICALLY, WHAT IS IT YOU WANT TO SHOW WITH RESPECT TO KARNY? THAT HE PERPETRATED THIS MURDER, IS THAT WHAT YOU ARE TRYING TO SHOW, SO AS TO ATTACK HIS CREDIBILITY; IS THAT WHAT YOU WANT TO DO?

MR. CHIER: YES, YOUR HONOR.

THE COURT: WHAT EVIDENCE DO YOU HAVE OF THAT?

MR. CHIER: WE DON'T HAVE ANY EVIDENCE.

THE COURT: IF YOU DON'T HAVE ANY EVIDENCE, HOW CAN YOU ATTACK HIM?

1 MR. CHIER: BECAUSE WE HAVEN'T BEEN PERMITTED TO
2 DISCOVER IT.

3 THE DEFENDANT: COULD I JUST --

4 THE COURT: LET HIM DO THE TALKING. YOU CAN TALK
5 TO HIM.

6 (UNREPORTED COLLOQUY BETWEEN THE
7 DEFENDANT AND MR. CHIER.)

8 MR. CHIER: MR. HUNT REMINDS ME THAT THERE HAS BEEN
9 A LOT OF INFORMATION OUT THERE. WE ARE NOT SURE OF THE
10 SOURCE OF THE INFORMATION BUT THERE ARE ALLEGED INFORMED
11 SOURCES, SUCH AS NEWSPAPER REPORTERS, AND I SAY THAT WITH
12 A GRAIN OF SALT, AND OTHER PERSONS HAVE TALKED ABOUT SOME
13 DETAILS OF THE HOMICIDE THING.

14 WE HAVE GLEANED, FOR EXAMPLE, THAT THERE WAS
15 CERTAIN PHYSICAL EVIDENCE THAT LINKED MR. KARNY THAT WAS
16 FOUND AT THE SCENE. FOR THOSE REASONS, WE WOULD SEEK,
17 NOT THE ADMISSION OF THIS STUFF AND NOT A RULING FROM
18 YOUR HONOR THAT WE ACTUALLY ASK MR. KARNY IN FRONT OF
19 THE JURY THESE QUESTIONS, BUT THAT WE BE GIVEN AN OPPORTUNITY
20 TO LOOK AT IT AND TO THEN SAY TO THE COURT THAT WE FEEL
21 THAT THIS OR THAT ASPECT OF IT IS SUBJECT TO BEING ASKED
22 MR. KARNY ON HIS CROSS-EXAMINATION.

23 THE COURT: ON CROSS-EXAMINATION, YOU CAN ASK HIM
24 WHETHER HE HAS EVER BEEN CONVICTED OF ANY FELONY.

25 ARE YOU TRYING TO CONVICT HIM OF THIS FELONY --

26 MR. CHIER: NO.

27 THE COURT: -- BY THIS QUESTION YOU ARE GOING TO
28 ASK HIM?

1 MR. CHIER: YOUR HONOR, IF YOU WILL RECALL, HE TESTIFIED
2 IN SUBSTANCE THAT HE IS NOW A BORN-AGAIN PERSON.

3 THE COURT: HE DIDN'T TALK ABOUT ANYTHING INVOLVING
4 THE HOLLYWOOD MATTER.

5 MR. CHIER: NO, BUT HE SAID THAT EVER SINCE HE LOOKED
6 AT THE PICTURE OF MR. ESLAMINIA, HE BECAME SICKENED AND
7 REALIZED THE FOLLY OF HIS WAYS AND IF IN FACT SUBSEQUENT
8 TO THAT, IT TURNS OUT THAT HE WAS OUT DOING SOMETHING --

9 THE COURT: DOING WHAT?

10 MR. CHIER: DOING HOMICIDES.

11 THE COURT: HOW DO YOU KNOW HE DID IT?

12 MR. CHIER: WE DON'T KNOW, OTHER THAN WHAT EVIDENCE
13 WE HAVE HEARD.

14 THE COURT: DO YOU MEAN YOU WANT TO ASK HIM, "DID
15 YOU DO THIS HOLLYWOOD MOTEL HOMICIDE?" IS THAT WHAT YOU
16 WANT TO ASK HIM?

17 MR. CHIER: IF THERE ARE ANY FILES CONCERNING THE
18 INVESTIGATION OF THIS CASE, THERE MAY BE EVIDENCE LINKING
19 MR. KARNY TO THAT HOMICIDE.

20 THE COURT: I WILL DENY THAT MOTION. I WON'T PERMIT
21 YOU TO ASK ANYTHING ABOUT THE HOLLYWOOD THING, ANY MORE
22 THAN I WOULD PERMIT THE DISTRICT ATTORNEY TO CROSS-EXAMINE
23 THE DEFENDANT AND ASK HIM ABOUT THE HOLLYWOOD THING.

24 ISN'T THERE SOME SUGGESTION THAT THE GUY IN
25 HOLLYWOOD WAS SOMEBODY WHO WAS A CELLMATE OF HIS?

26 MR. BARENS: THAT HAS NEVER BEEN A CONTENTION, TO
27 MY KNOWLEDGE.

28 THE COURT: THAT HE WAS IN THE JAIL AT THE SAME

1 TIME?

2 MR. BARENS: HAS THAT BEEN CONTENDED, MR. WAPNER?

3 MR. WAPNER: IF WE ARE GOING TO HAVE DISCOVERY ON
4 THE CASE, THEN I WILL BE HAPPY TO PROVIDE ANYTHING. BUT
5 IF WE ARE NOT, I AM NOT GOING TO MAKE ANY COMMENTS ON
6 THAT ONE WAY OR THE OTHER.

7 MR. BARENS: YOUR HONOR, I CAN ONLY SAY I NEVER
8 HEARD THAT ONE BEFORE, YOUR HONOR.

9 THE COURT: GO AHEAD.

10 MR. WAPNER: YOUR HONOR, I AM HAPPY TO SUBMIT THE
11 MATTER OF THE DISCOVERY ON THIS CASE TO THE CITY ATTORNEY
12 AND LET THEM DO WHATEVER IT IS THAT THEY WANT TO DO AS
13 FAR AS THAT IS CONCERNED.

14 THE COURT: YOU MEAN, THEM GIVE ANY EVIDENCE, YOU
15 MEAN?

16 MR. WAPNER: WELL, I DON'T KNOW, YOU KNOW, WHAT
17 THE POLICE OR THE CITY ATTORNEY'S OFFICE -- I DON'T KNOW
18 WHAT THEIR POSITION IS.

19 THE DEFENDANT: COULD I HAVE --

20 THE COURT: WHAT DOES THAT MEAN?

21 MR. WAPNER: IN TERMS OF TURNING ANYTHING OVER,
22 I WOULDN'T WANT TO JUST MAKE THIS FILE AVAILABLE JUST
23 FOR THE PURPOSE OF HAVING THEM LOOK AT IT. IF THEY ARE
24 SAYING, "WE JUST WANT TO SEE IT BUT WE ARE NOT GOING TO
25 USE IT." IF THEY ARE NOT GOING TO USE IT --

26 THE DEFENDANT: CAN I ADUMBRATE FROM WHAT I HAVE
27 SEEN IN THE NEWSPAPERS?

28 THE COURT: YES, YOU MAY.

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I AM GLAD YOU PRONOUNCED THE WORD CORRECTLY.
THE DEFENDANT: SO AM I.

I READ IN THE NEWSPAPERS -- THIS IS WITHOUT
MAKING ANY STATEMENT OUT OF MY OWN PERSONAL KNOWLEDGE
OR ANYTHING --

A FO.

1 I READ IN THE NEWSPAPER THAT -- WELL, FIRST
2 I WAS TOLD BY MR. WAPNER THAT HE WAS A SUSPECT. THEN
3 HE TOLD MY ATTORNEY THE PERSON INVOLVED WAS A HOMOSEXUAL,
4 WITHOUT MAKING ANY SORT OF STATEMENT ABOUT WHAT SIGNIFICANCE
5 IT MIGHT POSSIBLY BE, CONSIDERING THAT MR. LEVIN IS A
6 HOMOSEXUAL AND THAT THIS GUY IS A HOMOSEXUAL AND HADAYET
7 ESLAMINIA, I HAVE BEEN TOLD THROUGH OR SEEN IN REPORTS
8 IN THIRD-PARTY HANDS, WAS ALLEGEDLY BISEXUAL. FURTHERMORE,
9 THEY FOUND THIS MAN, MR. MEYER, ALLEGED FROM THE NEWSPAPER,
10 STUCK IN A TRUNK, WHICH SEEMS, TO ME PRELIMINARY TO KIDNAPPING.
11 WE HAVE A NO-BODY MURDER CASE HERE I HAVE BEEN CHARGED
12 WITH. THEN THE NEWSPAPER SAYS THAT SOME SORT OF RECEIPT
13 WAS FOUND, WHICH SOMEHOW TIES IN TO MR. KARNY, WAS FOUND
14 AT THE SCENE OF THIS LOCATION. AND THEN FINALLY, AND
15 I THINK THE MOST PERSUASIVE EVIDENCE, THEY HAVE SOME AFFIDAVIT
16 HERE IN RELATIONSHIP TO THE FACT THAT MR. KARNY'S FACE
17 AND VOICE SHOULD NOT BE REPRODUCED ON THE ELECTRONIC MEDIA,
18 FROM OSCAR BREILING, WHERE IT IS ALLEGED THAT EVIDENCE
19 WAS PLANTED. NOW IF THERE IS EVIDENCE PLANTED, THE LOGICAL
20 EXTENSION IS THAT IT IS INCRIMINATING. IF THERE IS INCRIMINATING
21 EVIDENCE, I THINK WE SHOULD HAVE A DISCOVERY MOTION, ESPECIALLY
22 SINCE MR. KARNY TELLS US ALL ON THE STAND THAT IN THIS
23 LARGE SECTION OF THIS WHOLE EXPLANATION FOR HIS CONDUCT
24 AND STATE OF MIND AND EVERYTHING ELSE, THAT HE WAS UNDER
25 SOME SORT OF PSYCHOLOGICAL DURESS, THAT HE RECOVERED FROM
26 IT THROUGH A JUDEO-CHRISTIAN OUTLOOK, HE IS NOW FREE FROM
27 THAT. THAT WAS THE UNDERCURRENT RUNNING THROUGH HIS ENTIRE
28 TESTIMONY AND WAS THE BULWARK OF HIS CREDIBILITY.

1 SO IN THAT SORT OF FRAMEWORK --

2 THE COURT: THERE IS NOTHING THAT IS NEW. IT IS NOTHING
3 OTHER THAN WHAT WAS PRESENTED TO ME AT THE GUILT PHASE OF
4 IT. AND WE DISCUSSED THE ENTIRE MATTER. THERE ISN'T ANY
5 NEW MATTER.

6 UNTIL SOMETHING SPECIFIC COMES UP AS TO HIS
7 CONNECTION WITH THIS HOLLYWOOD MOTEL MURDER, I AM NOT GOING
8 TO ADMIT ANY CROSS-EXAMINATION UNTIL YOU TELL ME WHAT IT IS
9 THAT YOU HAVE.

10 MR. BARENS: WELL, THE PROBLEM IS THAT THE DEFENSE
11 CONTENDS YOUR HONOR, THAT WITHOUT THEM GIVING US ACCESS TO
12 THE DISCOVERY, HOW DO WE KNOW WHAT THEY HAVE GOT?

13 THE COURT: WHAT MAKES YOU SUSPECT THAT HE HAD ANYTHING
14 TO DO WITH IT?

15 MR. BARENS: WELL, THE FIRST THING WE WERE TOLD WAS
16 THAT HE WAS A SUSPECT IN THE MURDER.

17 THE COURT: THAT IS BECAUSE SOMEBODY PLANTED SOME STUFF,
18 SUPPOSEDLY.

19 MR. BARENS: HOW DO WE KNOW IT?

20 THE COURT: I DON'T KNOW IT EITHER.

21 MR. BARENS: THEY CAME TO US WITH THIS DEAL SAYING THAT
22 HE WAS A SUSPECT IN A MURDER IN HOLLYWOOD.

23 THE COURT: YOU WERE TOLD CATEGORICALLY IN THIS ROOM
24 THAT THERE WAS NO BASIS OF ANY KIND OF COMPLAINT AGAINST
25 KARNY IN CONNECTION WITH THAT.

26 MR. BARENS: THAT IS WHAT THE POLICE NOW SAY. WHAT
27 THE DEFENSE IS SAYING, IS WHY SHOULD WE BE BOUND BY WHAT THEY
28 ARE SAYING ABOUT A GUY WHO HAS BEEN COOPERATING WITH THEM?

1 THE COURT: YES. BUT IT IS ONLY IN ASSUMING WHAT YOU
2 SAY IS CORRECT, ASSUMING THAT THEY HAVE A HOMICIDE AGAINST
3 HIM. ASSUMING EVERYTHING YOU SAY IS CORRECT, YOU CAN'T ATTACK
4 HIS CREDIBILITY BY SHOWING HIM SOMETHING LIKE THAT. YOU CANNOT
5 YOU CAN ONLY SHOW CRIMES THAT HE COMMITTED.

6 YOU CAN ONLY SHOW A CRIME THAT HE COMMITTED, WHERE
7 HE HAS BEEN CONVICTED OF A FELONY.

8 MR. BARENS: BUT WE ARE DOING THE SAME THING TO
9 MR. HUNT IN THE PENALTY PHASE TO SHOW A CRIME THAT HE HAS
10 NOT COMMITTED AND --

11 THE COURT: THAT IS BECAUSE THE STATUTE SAYS THEY CAN
12 DO IT. HE DOESN'T HAVE TO BE CONVICTED OF A CRIME IN ORDER
13 TO DO IT. DO YOU WANT ME TO READ YOU THE SECTION?

14 MR. BARENS: NO. I UNDERSTAND THE SECTION AND THE
15 INSTRUCTIONS WE HAVE BEEN AVAILED OF.

16 THE COURT: IT IS A CRIME OF VIOLENCE AND HE DOESN'T
17 HAVE TO BE CONVICTED. THE CONVICTION IS ONLY RELEVANT WHERE
18 IT IS A NONVIOLENT CRIME.

19 THE DEFENDANT: WE ALLEGE TWO OTHER BASES FOR ITS
20 ADMISSION. ONE IS THIRD PARTY CULPABILITY WHICH IS ADMISSIBLE
21 IN THE PENALTY PHASE AND TWO, THE FACT THAT IT GOES TO HIS
22 WHOLE PATTERN OF TESTIMONY CONCERNING HIMSELF.

23 THE COURT: WELL AT ANY RATE, I WILL DENY THAT MOTION
24 FOR THE TIME BEING. WHAT ELSE HAVE YOU GOT?

25 MR. CHIER: ALL RIGHT. I WOULD LIKE TO URGE THE COURT
26 AS A MATTER OF EQUITY, BASED UPON THE SEARCH AND SEIZURE OF
27 THE DEFENDANT'S PAPERS DURING -- JUST IMMEDIATELY PRIOR TO
28 THE COMMENCEMENT OF THE TRIAL, BECAUSE OF THE CHILLING EFFECT

1 THAT IT HAS HAD ON THE DEFENDANT'S ABILITY TO TESTIFY IN THIS
2 CASE, THAT YOUR HONOR AS A SANCTION FOR THIS RATHER
3 UNORTHODOX MOVE BY THE PEOPLE, THE COURT IMPOSE A JUDICIAL
4 OR DIRECTED VERDICT OF LWOP IN THIS CASE.

5 THE COURT: WHAT?

6 MR. CHIER: LIFE WITHOUT POSSIBILITY OF PAROLE. I AM
7 SORRY. I USED ATTORNEY SLANG.

8 I WOULD ASK -- I WOULD MOVE THAT THE COURT DO
9 THAT AS A SANCTION FOR THE UNORTHODOX --

10 THE COURT: THE COURT RULED THAT THE SEARCH AND SEIZURE
11 WAS PROPER AND LEGAL AND EVERYTHING THEY GOT THERE, THEY HAD
12 A RIGHT TO TAKE. WHY ARE YOU GOING INTO IT AGAIN?

13 MR. CHIER: BECAUSE THEY HAD ACCESS TO PAPERS AND
14 COMMUNICATIONS --

15 THE COURT: I UNDERSTAND. THAT WENT ALSO TO THE MOTION
16 TO DISMISS BECAUSE OF THE FACT THAT HE HAD BEEN PREJUDICED.
17 I ALREADY RULED ON IT. WHAT DO YOU WANT ME TO DO? RULE AGAIN?

18 MR. CHIER: I AM SAYING THAT IN THE LIMITED CONTEXT,
19 IT IS HAVING AN EFFECT UPON THE DEFENDANT'S ABILITY TO TESTIFY.

20 THE COURT: I WILL MAKE THE SAME RULING THAT I MADE
21 LAST TIME. THERE IS NOTHING NEW THAT YOU ARE ADDING.

22 MR. CHIER: NOW YOUR HONOR, WE GET INTO SOME OTHER
23 PRACTICAL, HOUSEKEEPING MATTERS. THESE ARE MATTERS IN LIMINE
24 WITH RESPECT TO SPECIFIC ITEMS OF EVIDENCE THAT WE EXPECT
25 WILL BE OFFERED.

26 WE MOVE FOR AN ORDER IN LIMINE PROHIBITING THE
27 INTRODUCTION BY THE PROSECUTION OF ANY EVIDENCE TENDING TO
28 SHOW THE EXTENT, NATURE OR DEGREE OF FAMILY BEREAVEMENT OF

1 THE FAMILY OF MR. LEVIN. THIS KIND OF EVIDENCE IS PROHIBITED
2 IN A PENALTY PHASE HEARING BY THE CASE OF ZANT V. STEPHEN.
3 THAT IS Z-A-N-T V. S-T-E-P-H-E-N, A U.S. SUPREME COURT CASE,
4 462, U.S., 862 AT 865.

5 THE COURT: WHAT? 462 WHAT?

6 MR. CHIER: 862 AT 865. THERE IS ALSO A CALIFORNIA
7 APPELLATE COURT CASE, PEOPLE V. LEVITT, L-E-V-I-T-T,
8 166 CAL.APP.3D, 500 AT 516.

9 MR. BARENS: 516, YOUR HONOR.

10 THE COURT: YES. SEPARATE ACTS OF VIOLENCE? WHAT IS
11 IT? 516, IS THAT IT?

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1 MR. BARENS: YES, YOUR HONOR.

2 THE COURT: WELL, THAT SAYS -- HAVE YOU SEEN THAT CASE?

3 MR. WAPNER: I HAD NOT SEEN IT. FRANKLY, I HAD NOT
4 PLANNED TO CALL ANYBODY FROM THE VICTIM'S FAMILY.

5 MR. CHIER: OUT OF AN ABUNDANCE OF CAUTION, YOUR HONOR --

6 THE COURT: ALL RIGHT. IT IS ACADEMIC, THEN.

7 MR. CHIER: WE WOULD ALSO MAKE A MOTION IN LIMINE
8 PROHIBITING THE PROSECUTION FROM ELICITING FROM WITNESS KARNY
9 AGAIN, THE DETAILS SUPPOSEDLY COMMUNICATED TO HIM BY MR. HUNT
10 IN THIS WALK AROUND THE BLOCK. THAT IS TO SAY --

11 MR. WAPNER: WAIT A SECOND --

12 THE COURT: WHAT WOULD BE THE NECESSITY?

13 MR. WAPNER: ARE YOU TALKING ABOUT HAVING HIM REITERATE
14 WHAT HE ALREADY TESTIFIED TO IN THE GUILT PHASE?

15 MR. CHIER: YES.

16 MR. WAPNER: NO. HE WON'T DO IT.

17 MR. CHIER: NOT ABOUT THE GUN OR SHOOTING THE CORPSE
18 OR ANYTHING LIKE THAT?

19 MR. WAPNER: IN ARGUMENT BUT NOT IN TESTIMONY.

20 MR. BARENS: MAKE THE MOTION AS TO ARGUMENT.

21 MR. CHIER: I MAKE IT AS TO ARGUMENT.

22 THE COURT: ONE OF THE FACTORS TO BE CONSIDERED BY THE
23 JURY, IS EVERYTHING THAT TOOK PLACE IN THE COMMISSION OF THE
24 CRIME ITSELF.

25 EVERY, SINGLE FACT MAY BE COMMENTED UPON AND MAY
26 BE CONSIDERED BY THEM. IF HE WANTS TO REPEAT SOME OF THOSE
27 FACTS, HE IS ENTITLED TO DO THAT. BY "HE" I MEAN THE D.A.

28 MR. BARENS: I UNDERSTAND.

1 MR. CHIER: THE CASE OF PEOPLE V. LOVE HOLDS WHEN THERE
2 IS NO SHOWING OF PURPOSEFUL TORTURE OR PROLONGATION OF THE
3 ALLEGED VICTIM'S PAIN OR SUFFERING, THAT THIS TYPE OF EVIDENCE
4 IS REALLY INADMISSIBLE.

5 THE COURT: THE EVIDENCE WAS ADMITTED. IT IS IN THE
6 RECORD. THE JURY MUST CONSIDER EVERYTHING IN CONNECTION WITH
7 THE CRIME ITSELF.

8 MR. CHIER: BUT THERE IS A PENALTY PHASE --

9 THE COURT: SURE. THEY HAVE THE RIGHT TO CONSIDER IT
10 IN THE PENALTY PHASE.

11 MR. CHIER: WELL, I THINK THE D.A. SHOULD NOT BE
12 PERMITTED TO ARGUE THIS. IF THEY CAN'T HEAR THE EVIDENCE,
13 THE D.A. SHOULDN'T BE ABLE TO --

14 THE COURT: THE D.A. HAS THE RIGHT TO COMMENT ON THAT
15 FACTOR OF THE CASE, ANY FACTOR IN CONNECTION WITH THE CRIME
16 ITSELF. IT IS THE LAW. THE LAW SAYS SO.

17 MR. WAPNER: THE FIRST THING THAT --

18 THE COURT: GO AHEAD. ANYTHING FURTHER?

19 MR. CHIER: SOMETIMES THERE IS LIKE A TRAFFIC JAM WITH
20 YOU KNOW, DIFFERENT ASPECTS OF THE LAW. AND I THINK THAT
21 HERE, WE HAVE A SLIGHT TRAFFIC JAM. IN ANY EVENT --

22 THE COURT: WELL, I DON'T THINK THERE IS ANY TRAFFIC
23 JAM BECAUSE THE LAW IS EXPLICIT ON THIS POINT. IT SAYS THAT
24 THE JURY MUST CONSIDER EVERYTHING IN CONNECTION WITH THE FACTS
25 OF THE CRIME ITSELF, EVERYTHING.

26 ALSO, THEY HAVE A RIGHT TO CONSIDER WHATEVER TALK
27 THEY MIGHT HAVE HAD.

28 MR. CHIER: I DON'T KNOW WHETHER THE D.A. IS INTENDING

1 TO OFFER LIFESTYLE EVIDENCE OF MR. HUNT AT THE PENALTY PHASE
2 HEARING, SUCH EVIDENCE CONCERNING WHERE HE GOT HIS FUNDS TO
3 LIVE OR THE MANNER IN WHICH HE LIVED. BUT THIS IS --

4 THE COURT: THERE IS EVIDENCE ALREADY IN THE RECORD.
5 HE HAS THE RIGHT TO COMMENT ON IT.

6 MR. CHIER: BUT THERE WOULD BE NO NEW EVIDENCE
7 INTRODUCED?

8 MR. WAPNER: THAT'S CORRECT, OTHER THAN WHAT BEARS ON
9 THE FACTS OF THE ESLAMINIA CASE. BUT THERE SHOULDN'T BE ANY
10 NEW EVIDENCE.

11 THE EVIDENCE OF MOTIVE THAT WENT TO THE GUILT
12 PHASE OF THE TRIAL IS GOING TO BE THE SAME. THERE IS NOT
13 GOING TO BE ANY EVIDENCE, ANY NEW EVIDENCE IN THE PENALTY
14 PHASE.

15 THE COURT: ALL RIGHT. ANYTHING FURTHER?
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1 MR. CHIER: BEFORE I MAKE THE MOTION, IS THERE GOING
2 TO BE NEW EVIDENCE ON THE STATEMENT OR ALLEGED STATEMENT
3 BY THE DEFENDANT THAT HE COMMITTED THE PERFECT CRIME,
4 THAT NO JURY WOULD EVER GIVE HIM THE DEATH PENALTY, THAT
5 TYPE OF THING?

6 THE COURT: THESE ARE THE SAME TYPE OF CATEGORIES
7 AS THESE OTHER THINGS.

8 MR. CHIER: YES. I DON'T KNOW IF THERE WAS TO BE
9 ANY NEW EVIDENCE TO THAT EFFECT.

10 MR. WAPNER: NO.

11 THE COURT: ON THE SUMMATION, IF HE WANTS TO, HE
12 HAS A RIGHT TO DO SO.

13 (COLLOQUY BETWEEN MR. CHIER AND THE
14 DEFENDANT.)

15 THE COURT: ALL RIGHT?

16 MR. CHIER: ALL RIGHT, THANK YOU, YOUR HONOR. THIS
17 MAY BE PREMATURE, I DON'T KNOW IF THERE ARE GOING TO BE
18 ANY ASSERTIONS EITHER THROUGH A WITNESS OR THE PROSECUTION
19 ABOUT FUTURE DANGEROUSNESS OF THE DEFENDANT. THIS TYPE
20 OF ASSERTION OR EVIDENCE OF SUCH ASSERTIONS IS PROHIBITED
21 BY PEOPLE V. RAMOS IN 30 CAL.3D, 553.

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1 THE COURT: YES, I KNOW THAT CASE.

2 YOU MEAN THE BRIGGS CASE:

3 "THE 'BRIGGS INSTRUCTION' SET
4 FORTH IN PENAL CODE SECTION 190.3 REQUIRED
5 THE TRIAL COURT TO INSTRUCT THE JURY THAT A
6 SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE
7 COULD BE MODIFIED OR COMMUTED BY THE GOVERNOR
8 TO A SENTENCE THAT INCLUDES THE POSSIBILITY
9 OF PAROLE. THE CALIFORNIA SUPREME COURT FOUND
10 THAT THIS INSTRUCTION VIOLATED FEDERAL CON-
11 STITUTIONAL STANDARDS IN PEOPLE V. RAMOS,
12 1983, 463 U.S. 992. HOWEVER, IN PEOPLE V. RAMOS,
13 1984, 37 CAL.3D 136, THE CALIFORNIA SUPREME
14 COURT HELD THAT THE INSTRUCTION VIOLATES THE
15 DUE PROCESS CLAUSE OF THE CALIFORNIA CONSTI-
16 TUTION, ET CETERA, BECAUSE IT IS MISLEADING,
17 IN THAT THE GOVERNOR CAN COMMUTE DEATH
18 SENTENCES AS WELL AS LIFE SENTENCES, AND
19 BECAUSE IT INVITES THE JURY TO CONSIDER
20 SPECULATIVE AND IMPERMISSIBLE FACTORS IN
21 REACHING ITS DECISION. THEREFORE, THE TRIAL
22 COURT SHOULD EXCISE THE SECOND PARAGRAPH OF
23 CALJIC 8.84.2 WHICH EMBODIES THE 'BRIGGS
24 INSTRUCTION,' WHEN INSTRUCTING THE JURY."

25 IS THAT WHAT YOU MEAN BY RAMOS?

26 MR. CHIER: YES, YOUR HONOR.

27 THE COURT: (READING)

28 "THE COURT ALSO STATED IN

1 RAMOS II THAT WHEN THE JURY RAISES THE
2 COMMUTATION ISSUE ITSELF, EITHER DURING VOIR
3 DIRE OR DELIBERATIONS, THE TRIAL COURT
4 SHOULD GIVE A CAUTIONARY INSTRUCTION INDICATING
5 THAT THE GOVERNOR'S COMMUTATION POWER APPLIES
6 TO BOTH DEATH AND LIFE SENTENCES, BUT
7 EMPHASIZING THAT IT WOULD BE A VIOLATION
8 OF THE JURORS' DUTY TO CONSIDER THE POSSIBILITY
9 OF COMMUTATION IN DETERMINING THE APPROPRIATE
10 SENTENCE. WHEN THE ISSUE IS NOT EXPRESSLY
11 RAISED BY THE JURY, THE COURT SHOULD NOT GIVE
12 SUCH A CAUTIONARY INSTRUCTION SUA SPONTE, BUT
13 SHOULD GIVE IT IF REQUESTED BY THE DEFENDANT."

14 THAT IS RAMOS, IS THAT WHAT YOU WANTED? I
15 WILL CONFORM TO THAT.

16 MR. CHIER: APROPOS OF THE THING WE HAVE BEEN DISCUSSING,
17 IS THERE GOING TO BE ANY NEW EVIDENCE OF ALLEGED THREATS
18 MADE BY THE DEFENDANT AGAINST THE MAY BROTHERS OR RENEE
19 MARTIN, ANY THREATS?

20 MR. WAPNER: I DON'T ANTICIPATE ANY NEW EVIDENCE.
21 ALL I CAN TELL YOU RIGHT NOW IS THAT I DON'T ANTICIPATE
22 ANY NEW EVIDENCE OF THREATS AGAINST PEOPLE, OTHER THAN
23 WHAT WE HAVE HAD IN THE GUILT PHASE. IF THAT CHANGES,
24 I WILL LET YOU KNOW.

25 BUT MY THINKING ABOUT THE WITNESSES WHO I
26 ANTICIPATE WILL TESTIFY, I DON'T THINK THAT I AM GOING
27 TO GO OVER THAT PART OF IT AGAIN AND I CAN'T THINK OF
28 ANY PART THAT APPLIES JUST TO THIS CASE AND NOT TO THE OTHER.

1 MR. CHIER: WE WOULD THEN MAKE A MOTION IN LIMINE
2 PROHIBITING THE PEOPLE FROM INTRODUCING ANY EVIDENCE OF
3 THREATS OR ANY STATEMENTS.

4 MR. WAPNER: COUNSEL, I APOLOGIZE FOR INTERRUPTING
5 YOU.

6 I DON'T KNOW AT THIS POINT WHETHER THIS WILL
7 COME OUT, BUT SOMETHING DID COME TO MY MIND AND IT HAS
8 TO DO WITH THE POSSIBILITY OF INTRODUCING A KIND OF VEILED
9 THREAT TO LAUREN RABB, WHO AT ONE TIME WAS COUNSEL FOR
10 THE DEFENDANT. WHEN SHE WENT TO THE COUNTY JAIL TO TELL
11 HIM THAT SHE WAS GOING TO WITHDRAW FROM THE CASE, THERE
12 WAS A STATEMENT IN GENERAL THAT PEOPLE IN THE JAIL HAVE
13 FRIENDS WHO HAVE CONTACTS OUTSIDE OF JAIL AND PEOPLE CAN
14 GET RAPED AND SODOMIZED, THINGS LIKE THAT. I DON'T KNOW
15 WHETHER I INTEND TO INTRODUCE THAT OR NOT.

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1 BUT I REMEMBER THAT COMING OUT IN AN INTERVIEW
2 I HAD WITH THE WITNESS, SO I WILL JUST PUT YOU ON NOTICE
3 OF THAT RIGHT NOW.

4 MR. CHIER: THE REASON IS THAT UNDER THE HOLDING
5 IN PEOPLE V. PHILLIPS AT 41 CAL.3D, 29, EVIDENCE OF MERE
6 INTENT TO COMMIT A CRIME IS INADMISSIBLE IN A PENALTY
7 PHASE HEARING.

8 THE COURT: HOW ABOUT THREATS?

9 MR. CHIER: PARDON ME, YOUR HONOR?

10 THE COURT: HOW ABOUT THREATS? THAT IS WHAT WE
11 HAVE BEEN TALKING ABOUT.

12 MR. CHIER: THREATS, YES, THAT WOULD BE THE SAME
13 THING.

14 WHAT THEY ARE TALKING ABOUT IS ACTS OF VIOLENCE,
15 NOT ABOUT TALK, YOUR HONOR.

16 THE PHILLIPS CASE WOULD SEEM TO SUBSUME ANY
17 TYPE OF FACTUAL PATTERN WHICH INVOLVES MERE TALK, AS OPPOSED
18 TO ACTION.

19 THE COURT: ALL RIGHT. AT ANY RATE, BEFORE YOU
20 DECIDE TO PUT ANYBODY ON, YOU APPROACH THE BENCH, ALL
21 RIGHT?

22 MR. WAPNER: ALL RIGHT.

23 THE COURT: ANYTHING ELSE?

24 MR. CHIER: THE PHILLIPS HOLDING WOULD ALSO BE SUPPORTED
25 BY 352 OF THE EVIDENCE CODE.

26 THE COURT: IF HE INTENDS TO DO THAT, YOU CAN REPEAT
27 THAT TO ME AGAIN.

28 MR. CHIER: NOW, IN PROCEEDING WITH THE EVIDENCE

1 ABOUT THE SWARTOUT CASE, THE SWARTOUT SITUATION, WHICH
2 IS THE INCIDENT WHERE THERE WAS LIQUID, SOME TEPID LIQUID
3 THROWN AT SWARTOUT.

4 THE COURT: TEPID? WHAT DOES THAT MEAN, WARM LIQUID?

5 MR. CHIER: SOME SORT OF INERT, LUKEWARM LIQUID.

6 MR. BARENS: IT WAS TEA.

7 MR. CHIER: TEA. THAT IS WHAT YOU ARE GOING TO
8 HEAR ABOUT, YOUR HONOR.

9 THE NOTICE THAT WE HAVE RECEIVED CONCERNING
10 THE SWARTOUT INCIDENT, AND THE SO-CALLED DRIVE-BY SHOOTING,
11 IS EITHER INFIRM OR THAT THIS EVIDENCE IS NOT ADMISSIBLE
12 FOR THE REASON, YOUR HONOR, THAT WITH RESPECT TO THE SWARTOUT
13 INCIDENT, THAT IS A GLASS OF TEA -- AND I THINK THE STATUTE
14 AND THE CASES REQUIRE THAT THERE BE SPECIFIC ACTS OF VIOLENCE
15 BY A DEFENDANT, OFFERED AGAINST HIM AT A PENALTY PHASE.

16 NOW, THIS INCIDENT WAS NEITHER THE SUBJECT
17 OF AN ARREST, NEITHER THE SUBJECT OF A COMPLAINT BEING
18 FILED AND NOT THE SUBJECT OF ANY KIND OF A SANCTION EVER
19 BEING IMPOSED.

20 FURTHERMORE, IT IS A MATTER IN WHICH THE STATUTE
21 OF LIMITATIONS HAS RUN. IT IS A MISDEMEANOR AT BEST,
22 IF IT IS ANYTHING.

23 THE COURT: LET ME ASK YOU. IN PEOPLE V. BOYD,
24 AT 28 CAL.3D, 762, THE BOYD CASE HELD THAT EVIDENCE CANNOT
25 BE ADMITTED BY THE PROSECUTION IN AGGRAVATION, EVIDENCE
26 OF THREATS OF VIOLENCE THAT WERE NOT SHOWN TO AMOUNT TO
27 CRIMES, SO I WILL DIRECT YOU THAT YOU ARE NOT TO SHOW
28 ANY EVIDENCE OF VIOLENCE OR THREATS OF VIOLENCE WHICH

1 DO NOT AMOUNT TO CRIMES. THAT IS SPECIFICALLY EXCLUDED
2 BY THE BOYD CASE.

3 MR. CHIER: ALSO BY PHILLIPS, YOUR HONOR.

4 THE COURT: I DON'T CARE ABOUT PHILLIPS.

5 I HAVE GOT BOYD AT 58 CAL.3D. IT IS A 1985
6 CASE.

7 (FURTHER UNREPORTED COLLOQUY BETWEEN
8 THE DEFENDANT AND MR. CHIER.)

9 THE COURT: IS THERE ANYTHING ELSE?

10 MR. CHIER: SO WITH RESPECT TO THE SWARTOUT MATTER,
11 WE HAVE NOT REALLY --

12 THE COURT: IF THERE IS ANY ACTUAL THROWING OF SOMETHING
13 AT SOMEBODY, THAT CONSTITUTES A CRIME OF VIOLENCE, EVEN
14 IF IT WAS A FEATHER.

15 MR. BARENS: A FEATHER?

16 THE COURT: YOU KNOW, IF THERE IS A PIN IN IT AND
17 HE THROWS IT AT SOMEBODY IT CAN TAKE HIS EYE OUT.

18 MR. CHIER: A DART, YOU MEAN?

19 MR. BARENS: YES, A DART, BUT THAT IS A DIFFERENT
20 DEAL.

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1 MR. BARENS: HERE WE HAVE GOT --

2 THE COURT: I DON'T UNDERSTAND.

3 MR. WAPNER: THE EVIDENCE REGARDING MR. SWARTOUT
4 IS NOT ONLY THAT THERE WAS THIS OBJECT THROWN ON HIM AND
5 THE REFERENCE TO TEA IS BECAUSE THAT IS WHAT MR. PITTMAN
6 TOLD THE IRVINE POLICE DEPARTMENT. THEY ANALYZED IT AND
7 WERE UNABLE TO DETERMINE WHAT IT WAS.

8 BUT I DON'T EXPECT THAT THERE WILL BE ANY
9 EVIDENCE THAT IT WAS TEA UNLESS THEY TRY TO GET OUT HEARSAY
10 STATEMENTS BY MR. PITTMAN TO THE INVESTIGATOR FROM THE
11 IRVINE POLICE DEPARTMENT.

12 THE POINT IS, THAT MR. PITTMAN WENT DOWN TO
13 IRVINE AND WAS LYING IN WAIT FOR THIS PERSON TO ARRIVE.
14 HE DID ARRIVE. AND THIS ITEM WAS THROWN ON HIM, WHICH
15 HAD A BURNING SENSATION.

16 NOW, NO TEA THAT I HAVE EVER SPILLED ON MYSELF
17 HAD ANY BURNING SENSATION ENOUGH SO THAT IT CAUSED THIS
18 MAN TO TAKE OFF HIS SHIRT AND HAVE HIS SKIN RINSED DOWN.

19 ALSO, AT THE TIME THAT IT WAS REPORTED, HE
20 REPORTED THAT A KNIFE WAS SWUNG AT HIM. NOW HE IS NOT
21 SURE WHETHER THAT IS TRUE OR NOT, BASED ON LOOKING BACK
22 INTO THE SUN.

23 BUT THE REPORT THAT COUNSEL WAS FURNISHED
24 SAYS THAT THERE WAS A DOWNWARD MOTION WITH THE HAND AND
25 THAT A KNIFE WAS BEING THRUST AT HIM. FURTHER, THE EVIDENCE
26 WILL SHOW --

27 THE COURT: WHAT IS THE RELATIONSHIP OF SWARTOUT
28 TO THE DEFENDANT?

1 MR. WAPNER: I WAS GETTING TO THAT. FURTHER, THE
2 EVIDENCE WILL SHOW THAT MR. SWARTOUT WAS ON A HIT LIST THAT
3 MR. HUNT HAD AND THE RELATIONSHIP BETWEEN MR. SWARTOUT AND
4 THE DEFENDANT WAS A BUSINESS RELATIONSHIP WHERE THE DEFENDANT
5 HAD IN ESSENCE, SWAPPED ONE OF HIS COMPANIES FOR MR. SWARTOUT'S
6 COMPANY AND THEY WERE SUPPOSEDLY GOING INTO A JOINT VENTURE
7 WITH THIS GUY, KILPATRICK IN COLORADO THAT HAD TO DO WITH
8 THE MICROGENESIS MACHINE AND TWO DEVICES MR. SWARTOUT HAD
9 BUILT AND PATENTED.

10 AND THEY WERE ALL SUPPOSED TO MAKE A LOT OF MONEY
11 OUT OF THAT. AND EACH IS NOW CLAIMING THAT THE OTHER ONE
12 SCREWED THEM AND IS TRYING TO MAKE THEIR OWN, INDEPENDENT
13 DEAL WITH KILPATRICK. AND SWARTOUT'S COMPANY ENDED UP GOING
14 INTO RUIN AS A RESULT OF THIS.

15 AND HE EVENTUALLY WENT TO MR. KILPATRICK AND SAID
16 THAT HUNT IS SELLING YOU, SUPPOSEDLY SELLING YOU THIS BROWNING
17 TECHNOLOGY BUT HE DOESN'T OWN IT. IT IS IN THE COMPANY THAT
18 I GOT FROM HUNT. SO THAT WAS THE NATURE OF IT.

19 MR. CHIER: THERE IS NO EVIDENCE THAT YOU WOULD WANT
20 TO SERVE UP TO A JURY TO ASK THEM TO TAKE A MAN'S LIFE ON
21 THE BASIS OF, YOUR HONOR. AND THE CASES DO NOT AUTHORIZE
22 MR. WAPNER TO PUT ON THIS KIND OF A CASE.

23 THE COURT: WELL, SUPPOSE THE DEFENDANT, HIMSELF, HAD
24 DONE IT? WOULD YOU SAY THAT THAT WOULD BE AN AGGRAVATING
25 CIRCUMSTANCE?

26 MR. CHIER: I WOULD SAY NOT EVEN IF THE DEFENDANT, HIMSELF
27 HAD DONE IT, WOULD THIS BE THE TYPE OF EVIDENCE THAT IS
28 CONTEMPLATED BY THAT SECTION, ACTS OF VIOLENCE.

1 THIS IS LIKE THE POLICE HYPOTHESIS ABOUT THIS.
2 IT IS IRRELEVANT.

3 THE COURT: I THOUGHT THAT SWARTOUT WAS GOING TO TESTIFY
4 THAT HE GOT A BURNING SENSATION AND HAD TO TAKE HIS CLOTHES
5 OFF?

6 MR. CHIER: HE NEVER SOUGHT MEDICAL ATTENTION. HE NEVER
7 HAD AN EXAMINATION --

8 THE COURT: WELL, YOU CAN ASK HIM THAT, TO MINIMIZE
9 THE AMOUNT OF HARM.

10 HAVE YOU GOT ANYTHING ELSE?

11 MR. CHIER: YES, YOUR HONOR. THE SAME WOULD BE TRUE --
12 WHAT IS THE SPECIFIC CODE SECTION THAT IS CLAIMED TO HAVE
13 BEEN VIOLATED BY THIS ACT OF MR. HUNT?

14 MR. WAPNER: ACTUALLY --

15 THE COURT: YOU ARE TALKING ABOUT THROWING SOMETHING
16 AT SOMEBODY?

17 MR. BARENS: MR. HUNT ISN'T ALLEGED TO HAVE DONE IT.

18 THE COURT: WELL, IT DOESN'T MAKE ANY DIFFERENCE IF
19 HE HAD AN ACCOMPLICE DO IT FOR HIM.

20 LIKE A NUMBER OF THINGS THAT CAME UP IN THE GUILT
21 PHASE, PITTMAN WAS SUPPOSED TO HAVE DONE THINGS --

22 MR. CHIER: WELL, WE HAVE NEVER BEEN PROVIDED WITH ANY
23 KIND OF EVIDENCE THAT THE PEOPLE RELY UPON THAT --

24 THE COURT: WELL, YOU WILL BE GIVEN THE EVIDENCE AT
25 THE TIME OF THE TRIAL? IS THAT WHAT YOU EXPECT TO DO?

26 MR. CHIER: MR. HUNT --

27 THE COURT: WE ARE ARGUING SOMETHING AS TO THE
28 ADMISSIBILITY OF EVIDENCE AND I DON'T KNOW WHAT THE EVIDENCE

3
1 IS.

2 MR. CHIER: IF IT IS INADMISSIBLE AND WE DETERMINE AT
3 THIS JUNCTURE THAT IT IS INADMISSIBLE, HE SHOULD NOT BE ABLE
4 TO GIVE IT IN HIS OPENING STATEMENT.

5 THE COURT: WHAT IS YOUR OFFER OF PROOF?

6 MR. WAPNER: THE OFFER OF PROOF FIRST OF ALL, ABOUT
7 THE CONNECTION BETWEEN MR. HUNT AND MR. SWARTOUT IS THAT AS
8 FAR AS THE DISCOVERY THAT COUNSEL HAS BEEN PROVIDED, I TOLD
9 THEM AND THE COURT LAST WEEK ON THE MOTION TO CONTINUE --
10 I PROVIDED THEM WITH A COPY OF THE REPORT THAT STEVE
11 TAGLIANETTI -- OR THE STATEMENTS THAT STEVE TAGLIANETTI MADE
12 TO DETECTIVE ZOELLER IN OCTOBER OF 1984.

13 THAT WAS INCLUDED IN THE ORIGINAL PACKAGE OF
14 DISCOVERY THAT WAS GIVEN TO THE DEFENSE IN THIS CASE PRIOR
15 TO THE PRELIMINARY HEARING AT THE END OF 1984.

16 IN THERE, IT INCLUDES A STATEMENT BASICALLY SAYING
17 THAT MR. HUNT AND MR. PITTMAN BOTH HAD TOLD MR. TAGLIANETTI
18 THAT MR. PITTMAN HAD GONE DOWN TO ORANGE COUNTY TO KILL
19 MR. SWARTOUT, BASED ON THE BUSINESS DEALINGS.

20 THIS IS EVIDENCE THAT TENDS TO CONNECT IT UP.
21 AS FAR AS THE SECTION OF THE PENAL CODE THAT WE ARE RELYING
22 ON, IT IS PRIMARILY SECTION 245 OF THE EVIDENCE CODE, ASSAULT
23 BY MEANS OF FORCE LIKELY TO PRODUCE GREAT BODILY INJURY OR
24 WITH A DEADLY WEAPON.

25 MR. CHIER: THE EVIDENCE THAT I QUESTION THE EXISTENCE
26 OF YOUR HONOR, IS THE EVIDENCE, THE ADMISSIBLE EVIDENCE LINKING
27 MR. HUNT TO MR. PITTMAN AND THEREBY, MAKING MR. HUNT LIABLE --

28 THE COURT: PARDON ME. YOU JUST HEARD THAT TAGLIANETTI

1 IS GOING TO TESTIFY THAT THE DEFENDANT --

2 MR. WAPNER: I EXPECT HIM TO TESTIFY THAT THE DEFENDANT
3 TALKED TO HIM ABOUT A HIT LIST THAT HE HAD THAT HAD
4 MR. SWARTOUT'S NAME ON IT.

5 THE COURT: WELL, LET'S GET ON TO THE NEXT ONE.

6 THE DEFENDANT: IF I COULD JUST MAKE ONE --

7 THE COURT: WE HAVE GOT TO GET THIS TRIAL IN THE WORKS
8 SOMETIME. I RULED FAVORABLY ON A COUPLE OF THESE ITEMS.

9 WHAT ELSE HAVE YOU GOT LEFT?

10 MR. CHIER: MAY I HAVE A MOMENT?

11 THE COURT: YES.

12 (PAUSE.)

13 MR. CHIER: YOUR HONOR, MR. HUNT MAKES A TELLING POINT
14 HERE, THAT IF THE COURT IS GOING TO GIVE THE BRIGGS/RAMOS
15 INSTRUCTION -- THE BOYD INSTRUCTION THAT --

16 THE COURT: WELL, I AM NOT GOING TO GIVE ANY INSTRUCTION
17 WITH RESPECT TO COMMUTATION OF SENTENCES.

18 MR. CHIER: I DIDN'T MEAN THAT. I MEANT BOYD. ISN'T
19 IT BOYD?

20 THE COURT: YES. I AM NOT GOING TO GIVE AN INSTRUCTION.
21 I JUST WON'T PERMIT ANY TESTIMONY OF MERE THREATS.

22 MR. CHIER: WHAT WE ARE TALKING ABOUT -- ON THE ONE
23 HAND, A HIT LIST IS AT BEST, AN IMPLIED THREAT.

24 THAT IS WHAT IT IS. SECOND OF ALL, WE ARE TALKING
25 ABOUT STATEMENTS WITHOUT A CORPUS, YOUR HONOR.

26 THE COURT: DIDN'T YOU LISTEN TO MR. WAPNER? HE SAID
27 THAT HE INTENDED TO SHOW BY THAT TESTIMONY -- TESTIMONY TYING
28 HIM IN WITH SOMETHING THAT WAS DONE BY PITTMAN AND THAT HE

1 KNEW ABOUT IT AND AUTHORIZED IT AND THAT HE HAD THIS HIT LIST.

2 SO, THAT ACT THEREAFTER BORE OUT WHAT HE SAID
3 HE WAS GOING TO DO TO HIM.

4 MR. CHIER: BUT THE INTENT TO COMMIT GREAT BODILY INJURY
5 IS NOT BORN OUT OF BY ANY OF THE EVIDENCE IN THE CASE OTHER
6 THAN STATEMENTS, ALLEGED STATEMENTS OF MR. HUNT AND
7 MR. PITTMAN.

8 THE COURT: WELL, DON'T BELABOR IT, WILL YOU? I THINK
9 WE HAVE GONE THOROUGH IT ENOUGH.

10 MR. CHIER: ALL RIGHT, YOUR HONOR.

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1 MR. CHIER: ALL RIGHT, YOUR HONOR. NOW WITH THE
2 COURT'S INDULGENCE, I WOULD LIKE TO RENEW MY MOTION FOR A
3 SEPARATE PENALTY PHASE JURY.

4 THE COURT: DON'T WASTE YOUR TIME MAKING THE MOTION,
5 IT IS GOING TO BE DENIED.

6 MR. CHIER: IT IS IN THE INTERESTS OF JUDICIAL
7 ECONOMY, YOUR HONOR.

8 THE COURT: DON'T WASTE YOUR TIME. I AM NOT GOING
9 TO GRANT IT.

10 MR. CHIER: I WILL JUST GIVE YOU THE TWO GROUNDS. I
11 WILL DO IT FOR THE RECORD.

12 THE COURT: GO AHEAD.

13 MR. CHIER: IF MR. HUNT IS CONVICTED IN SAN FRANCISCO,
14 THEY COULD THEN HAVE A PENALTY PHASE HEARING IN THIS CASE
15 WITHOUT FEAR OF PUTTING THE DEFENDENT IN THE DILEMMA OF
16 CHOOSING BETWEEN HIS FIFTH AMENDMENT RIGHT AND HIS RIGHT TO
17 TESTIFY IN A PENALTY PHASE HEARING.

18 SECOND OF ALL, IF HE IS ACQUITTED, IT IS POSSIBLE
19 THAT THE -- IF HE IS ACQUITTED IN SAN FRANCISCO, IN THE
20 SAN MATEO CASE, IT WOULD BE POSSIBLE THEN THAT THE JURY IN
21 THAT CASE WOULD HAVE BEEN GIVEN -- AND IF IT GIVES THE DEATH
22 PENALTY IN THIS CASE, IT IS POSSIBLE THAT MR. HUNT WOULD HAVE
23 RECEIVED THE DEATH PENALTY BASED UPON AN INCREMENT OF PROOF
24 WHICH DOESN'T STAND UP BASED UPON THE ACQUITTAL IN
25 SAN FRANCISCO. SO FOR THOSE REASONS, IN THE INTERESTS OF
26 JUSTICE AND ITS ADMINISTRATION, THERE IS MORE TO LOSE.

27 THE COURT: WHAT DOES HE WANT TO DO, WAIT UNTIL THERE
28 HAS BEEN THIS TRIAL UP THERE BEFORE WE GO INTO THE PENALTY

1 PHASE OF THIS CASE?

2 MR. CHIER: I THINK IT WOULD BE THE MOST JUDICIOUS
3 THING TO DO, YOUR HONOR, IN ORDER TO DEAL WITH THIS PROBLEM
4 THAT WE HAVE WITH THIS UNCHARGED OFFENSE THAT IS PENDING TRIAL
5 UP THERE.

6 THE COURT: UNCHARGED OFFENSE?

7 MR. WAPNER: THAT CASE HAS GOT TO BE AT LEAST SIX MONTHS,
8 AND MY GUESS IS A YEAR FROM GOING TO TRIAL. I CAN'T POSSIBLY
9 FATHOM HOW COUNSEL COULD EVEN SUGGEST THAT IT IS IN THE
10 INTERESTS OF JUDICIAL ECONOMY, SINCE WE WOULD HAVE TO, IN
11 THE PENALTY PHASE OF THE TRIAL WITH A SEPARATE JURY, RETRY
12 THE ENTIRE GUILT PHASE OF THIS CASE, WHICH CONSISTED OF SOME
13 TEN WEEKS OF TESTIMONY. IT IS ALMOST ABSURD TO SAY THAT IT
14 IS IN THE INTEREST OF JUDICIAL ECONOMY.

15 THE COURT: THAT MOTION TO DELAY IS GOING TO BE DENIED.

16 ARE YOU ALL FINISHED NOW?

17 MR. WAPNER: FURTHERMORE, YOUR HONOR, SINCE THE LAW
18 IS THAT IN ORDER FOR THE JURY TO CONSIDER THE EVIDENCE OF
19 THIS MURDER, IT HAS TO BE PROVED BEYOND A REASONABLE DOUBT
20 HERE, IF COUNSEL IS ARGUING THAT HE IS GOING TO GET ACQUITTED
21 UP THERE AND THE CASES ARE DECIDED ON THEIR FACTS, THEN IF
22 THE FACTS DON'T STAND UP, THEY WON'T STAND UP HERE EITHER.

23 THE COURT: I WILL INSTRUCT THE JURY, OF COURSE, BEFORE
24 THEY CAN EVEN CONSIDER EVIDENCE OF ANY OTHER CRIMES OR ACTS
25 OF VIOLENCE COMMITTED BY THE DEFENDANT THAT THEY HAVE TO PROVE
26 IT AND THEY HAVE TO BELIEVE IT BEYOND A REASONABLE DOUBT AND
27 I WILL SO INSTRUCT THE JURY, SO THE REASONABLE DOUBT THING
28 IS TAKEN CARE OF.

1 MR. CHIER: IS THAT A PREINSTRUCTION OR CONCLUDING
2 INSTRUCTION?

3 THE COURT: NO, I WILL DO IT AT THE CONCLUSION OF THE
4 CASE. I HAVE NO IDEA WHETHER THEY ARE GOING TO SHOW IT AT
5 THIS TIME.

6 I THINK YOU HAVE FORGOTTEN ONE OF THE MOST
7 IMPORTANT THINGS IN THIS CASE YOU HAVEN'T MENTIONED. YOU
8 TALKED ABOUT THE TESTIMONY OF DEAN KARNY. WHY DON'T YOU POINT
9 OUT THAT THE TESTIMONY OF AN ACCOMPLICE IN THE PENALTY PHASE
10 OF THE CASE CANNOT -- IT HAS TO BE CORROBORATED?

11 MR. BARENS: YES, WE WERE JUST ABOUT TO SAY THAT
12 ACTUALLY.

13 THE COURT: OH, INDEED, YES.

14 MR. BARENS: YES.

15 THE COURT: YOU ARE AWARE OF THAT, ARE YOU NOT? YOU
16 ARE AWARE OF THAT, AREN'T YOU?

17 MR. WAPNER: YES, YOUR HONOR, I AM.

18 THE COURT: DO YOU INTEND TO CORROBORATE HIS TESTIMONY?

19 MR. WAPNER: I DO.

20 THE COURT: ALL RIGHT, WATCH FOR IT. SEE THAT HE
21 CORROBORATES IT PROPERLY.

22 MR. CHIER: I SAW IT DONE ONCE, YOUR HONOR. I SAW THIS
23 DONE ONCE.

24 THE COURT: WELL, THE MOST IMPORTANT POINT YOU HAVEN'T
25 BROUGHT UP. THE TESTIMONY BY KARNY IS EXTREMELY IMPORTANT
26 AND HIS TESTIMONY IS NO GOOD BECAUSE IT IS THE TESTIMONY OF
27 AN ACCOMPLICE UNLESS IT HAS BEEN CORROBORATED AND IF IT HASN'T
28 BEEN CORROBORATED, THEN YOU ARE HOME FREE.

1 (UNREPORTED COLLOQUY BETWEEN THE DEFENDANT
2 AND MR. CHIER.)

3 THE COURT: DID YOU SAY SOMETHING?

4 MR. BARENS: NOTHING. BUT THANK YOU.

5 THE COURT: PART OF MY DUTIES IN THE CASE IS TO INDICATE
6 THINGS IN THE CASE WHICH SHOULD BE POINTED OUT.

7 MR. BARENS: THANK YOU, YOUR HONOR.

8 MR. CHIER: ONE THING I WANTED TO POINT OUT TO MR. WAPNER,
9 WHAT IS THE SPECIFIC CODE SECTION ALLEGED TO HAVE BEEN
10 VIOLATED BY THE DRIVE-BY ACT THAT HAS BEEN ALLEGED?

11 THE COURT: THE SHOOTING AT AN INHABITED DWELLING.

12 MR. WAPNER: I BELIEVE IT IS 246 OF THE PENAL CODE.

13 MR. BARENS: I HAD A GUY GET 90 DAYS FOR THAT ONCE.

14 THE COURT: ALL RIGHT, GET IN THE JURORS.

15 (PROCEEDINGS WERE ADJOURNED TO THE
16 COURTROOM.)

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1 SANTA MONICA, CALIFORNIA; THURSDAY, JUNE 25, 1987; 10:20 A.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 APPEARANCES:

4 THE DEFENDANT WITH COUNSEL, ARTHUR H. BARENS
5 AND RICHARD C. CHIER, MR. CHIER NOT BEING PRESENT;
6 FREDERICK N. WAPNER, DEPUTY DISTRICT ATTORNEY OF
7 LOS ANGELES COUNTY, REPRESENTING THE PEOPLE OF
8 THE STATE OF CALIFORNIA.
9 (ROSEMARIE GOODBODY, OFFICIAL REPORTER.)

10
11 (WHEREUPON, THE FOLLOWING PROCEEDINGS
12 WERE HELD IN CHAMBERS OUTSIDE THE
13 PRESENCE AND HEARING OF THE DEFENDANT:)

14 MR. BARENS: YOUR HONOR, I ADVISED THE DEFENDANT
15 ABOUT THE NINE-DAY MATTER AND THE DEFENDANT DOES NOT WISH
16 TO WAIVE.

17 THE COURT: THEN WE WILL PUT IT OVER.

18 MR. BARENS: YES, YOUR HONOR.

19 THE COURT: YOU KNOW THAT CASE, DON'T YOU?

20 MR. WAPNER: I DIDN'T HEAR ABOUT IT BUT I WAS JUST
21 CHECKING THE BENCH BOOK AND 1203 OF THE PENAL CODE SEEMS TO
22 INDICATE HE IS SUPPOSED TO GET THE PROBATION REPORT NINE DAYS
23 AHEAD OF TIME.

24 THE COURT: THERE IS A RECENT DECISION.

25 MR. BARENS: THAT WASN'T IN THE DAILY JOURNAL OR
26 ANYTHING. I NEVER SAW THAT.

27 THE COURT: YES, IT WAS.

28 THE COURT OF APPEALS HELD THAT THE FAILURE TO

1 OBTAIN SUCH A STIPULATION ENTITLED THE DEFENDANT TO
2 RE-SENTENCING EVEN IN THE ABSENCE OF AN OBJECTION AND REQUEST
3 FOR ADDITIONAL TIME. THAT IS REFERRING TO THE SLIP OPINION.

4 MR. BARENS: LET'S JUST PICK A DATE AND CONCLUDE IT
5 FOR TODAY THEN.

6 THE COURT: ALL RIGHT, NINE DAYS FROM TODAY.

7 TODAY IS THE DAY YOU GOT IT?

8 MR. BARENS: WHICH WOULD TAKE US TO --

9 THE COURT: NEXT MCNDAY.

10 MR. WAPNER: COULD WE DO IT ON FRIDAY, SINCE PITTMAN
11 IS GOING TO START IN DEPARTMENT D?

12 THE COURT: WELL, WILL YOU STIPULATE TO FRIDAY?

13 MR. BARENS: YES, YOUR HONOR.

14 THE COURT: A WEEK FROM NEXT FRIDAY -- MAKE IT ON
15 JULY 6TH THEN.

16 MR. BARENS: YES, I WILL.

17 MR. WAPNER: IT IS BETTER FOR ME IF WE DO IT THE
18 FOLLOWING FRIDAY BECAUSE I AM GOING TO BE IN TRIAL.

19 MR. BARENS: FINE, THE 12TH OR 11TH.

20 MR. WAPNER: WHY TAKE A CHANCE? LET'S PUT IT ON THE
21 10TH. IF THE 3RD IS FRIDAY, THEN THE 10TH HAS GOT TO BE THE
22 NEXT FRIDAY.

23 MR. BARENS: ALL RIGHT, THE 10TH -- WAIT A MINUTE --
24 ON THE 10TH, YOUR HONOR, I AM IN SAN FRANCISCO ON THE 10TH,
25 NOT ON THIS MATTER BUT ON ANOTHER MATTER ON THE 10TH AT 9:30.

26 WELL, HOW ABOUT THE 13TH, THE MONDAY AFTER THE
27 10TH?

28 IT IS NOT LIKE WE ARE KEEPING HIM IN CUSTODY

1 LONGER THAN HE HAS TO BE.

2 MR. WAPNER: NO, I AM ONLY TALKING ABOUT MYSELF BECAUSE
3 I AM GOING TO BE IN TRIAL ON THE PITTMAN MATTER.

4 MR. BARENS: WHY DON'T WE DO IT AT 9:00 O'CLOCK ON
5 THE 13TH AND THAT WAY YOU ARE THROUGH?

6 THE COURT: I DON'T KNOW IF WE CAN GET HIM UP IN
7 TIME.

8 MR. BARENS: WELL, 9:30. THEY HAD HIM HERE AT 9:30
9 TODAY.

10 THE COURT: ALL RIGHT, THE NINTH DAY WILL COME OUT ON
11 SATURDAY AND YOU GOT IT FOR THE FIRST TIME TODAY, DIDN'T YOU?

12 MR. BARENS: YES.

13 THE COURT: MAKE IT MONDAY THE 6TH OR THE 13TH. WHICH
14 DO YOU WANT?

15 MR. WAPNER: IF WE ARE GOING TO DO IT ON MONDAY, I
16 THINK THE 6TH IS PROBABLY BETTER THAN THE 13TH.

17 THE COURT: ALL RIGHT, THE 6TH. THE NINTH DAY COMES
18 OUT ON SATURDAY AND, THEREFORE, LET'S MAKE IT THE 6TH.

19 MR. BARENS: THAT IS JULY 6TH AT 9:30, YOUR HONOR.

20 MR. WAPNER: LET'S SET IT AT 9:00 O'CLOCK. HE PROBABLY
21 WON'T GET THE DEFENDANT AT 9:00 BUT --

22 MR. BARENS: I DON'T WANT TO HAVE TO BE HERE AT 9:00
23 IF WE ARE NOT GOING TO BE ABLE TO HANDLE IT.

24 THE COURT: MAKE IT 9:30. YOU WON'T GO UNTIL 10:30
25 ANYWAY WITH PITTMAN.

26 MR. WAPNER: PROBABLY NOT.

27 MR. BARENS: THIS IS A VERY SHORT MATTER, YOUR HONOR.
28 I AM PLANNING TO SUBMIT IT.

1 THE COURT: I'LL TELL YOU WHAT WE CAN DO ON THIS MOTION
2 FOR A NEW TRIAL, I CAN RULE ON IT. I AM NOT GOING TO HEAR
3 ARGUMENT.

4 MR. BARENS: I WAS JUST GOING TO SAY I WAS SUBMITTING
5 IT, YOUR HONOR.

6 THE COURT: ALL RIGHT, SUBMIT IT AND I WILL RULE ON IT
7 TODAY. I HAVE READ IT.

8 MR. BARENS: ALL RIGHT.

9 THE COURT: I WILL RULE ON IT NOW, OKAY?

10 MR. BARENS: OKAY, YOUR HONOR, FINE.

11 (WHEREUPON, THE FOLLOWING PROCEEDINGS

12 WERE HELD IN OPEN COURT WITHIN THE

13 PRESENCE AND HEARING OF THE DEFENDANT:)

14 THE COURT: I CALLED TO THE ATTENTION OF COUNSEL THE
15 OPINION OF THE COURT OF APPEALS IN THE CASE OF PEOPLE VS.
16 GIEVEINGER WHICH POINTED OUT THAT UNDER PENAL CODE SECTION 1203,
17 SUBDIVISION (B), THERE IS A PROVISION THAT IF THE DEFENDANT
18 RECEIVES A PROBATION REPORT LESS THAN NINE DAYS PRIOR TO THE
19 SENTENCING HEARING, THEN THE ONLY EFFECTIVE WAIVER IS EITHER
20 A WRITTEN WAIVER OR AN ORAL STIPULATION IN OPEN COURT WHICH
21 IS MADE AND ENTERED UPON THE MINUTES OF THE COURT.

22 I HAVE TAKEN UP WITH COUNSEL FOR THE DEFENDANT
23 WHETHER OR NOT THE DEFENDANT IS WILLING TO WAIVE A NINE-DAY
24 PROVISION, SINCE COUNSEL APPEARED TODAY FOR THE FIRST TIME
25 AND WAS GIVEN THE PROBATION REPORT.

26 WHAT DOES THE DEFENDANT DESIRE TO DO, DOES HE
27 DESIRE TO WAIVE THE NINE DAYS?

28 MR. BARENS: THE DEFENDANT DOES NOT WAIVE.

1 THE COURT: THAT MEANS I HAVE TO POSTPONE THE
2 SENTENCING.

3 MR. BARENS: THAT IS CORRECT, YOUR HONOR.

4 THE COURT: UNTIL JULY 6TH.

5 MR. BARENS: THAT IS CORRECT, YOUR HONOR.

6 MR. WAPNER: THAT IS ACCEPTABLE.

7 THE COURT: WE HAVE NO CHOICE IN THE MATTER. I AM
8 SORRY, BUT THAT WAS THE RECENT OPINION OF THE COURT OF APPEALS
9 AND THE CLERK CALLED IT TO MY ATTENTION TODAY. THEREFORE, I
10 HAVE NO ALTERNATIVE BUT TO CCNTINUE THIS CASE TO JULY 6TH
11 FOR SENTENCING.

12 HOWEVER, THERE WAS A MOTION FOR A NEW TRIAL.
13 LET THE RECORD SHOW THE COURT HAS READ THE MOTION AND
14 CONSIDERED IT.

15 SUBMITTED?

16 MR. BARENS: THE MATTER IS SUBMITTED, YOUR HONOR.

17 THE COURT: SUBMITTED?

18 MR. WAPNER: SUBMITTED.

19 THE COURT: THAT MOTION FOR A NEW TRIAL WILL BE DENIED.

20 MR. BARENS: YOUR HONOR, I BELIEVE THE JULY 6TH MATTER
21 IS AT 9:30?

22 THE COURT: YES. AND THE DESIRE OF THE DEFENDANT IS
23 TO CONTINUE IT UNTIL THAT DAY; IS THAT RIGHT?

24 THE DEFENDANT: YES, IT IS, YOUR HONOR.

25 THE COURT: ALL RIGHT, FINE.

26 MR. BARENS: THANK YOU, YOUR HONOR.

27 THE COURT: ALL RIGHT, JULY 6TH.

28 (AT 10:30 A.M., AN ADJOURNMENT WAS TAKEN
29 UNTIL 9:30 A.M., MONDAY, JULY 6, 1987.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT WEST C

HON. LAURENCE J. RITTENBAND, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

PLAINTIFF,)

CASE NO. A090435

VS.)

REPORTER'S
CERTIFICATE

JOE HUNT,)

DEFENDANT.)

STATE OF CALIFORNIA)

) SS

COUNTY OF LOS ANGELES)

I, ROSEMARIE GOODBODY, OFFICIAL REPORTER OF THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY
OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES
B0001 THROUGH B0296, INCLUSIVE, COMPRISE A TRUE AND CORRECT
AUGMENTED TRANSCRIPT OF THE PROCEEDINGS HELD IN THE
ABOVE-ENTITLED MATTER, AS DESIGNATED TO BE INCLUDED
THEREIN, REPORTED BY ME ON SEPTEMBER 27, 1985, NOVEMBER 4,
1986, DECEMBER 4, 1986, MARCH 4, 1987, APRIL 20, 21, AND
24, 1987, MAY 8 AND 11, 1987, AND JUNE 25, 1987.

DATED THIS 24TH DAY OF FEBRUARY, 1989.

Rosemarie Goodbody
ROSEMARIE GOODBODY, CSR #932
OFFICIAL REPORTER

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT WEST C

HON. LAURENCE J. RITTENBAND, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
PLAINTIFF,)
)
VS.)
)
JOE HUNT,)
)
DEFENDANT.)

CASE NO. A090435

REPORTER'S
CERTIFICATE

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

I, SALLY YERGER, OFFICIAL REPORTER OF THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY
OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES
B0001 THROUGH B0296, INCLUSIVE, COMPRISE A TRUE AND CORRECT
AUGMENTED TRANSCRIPT OF THE PROCEEDINGS HELD IN THE
ABOVE-ENTITLED MATTER, AS DESIGNATED TO BE INCLUDED
THEREIN, REPORTED BY ME ON OCTOBER ¹⁵ 1986, NOVEMBER 4, 1986,
DECEMBER 4, 1986, MARCH 4, 1987, APRIL 20, 21, AND 24,
1987, AND MAY 8 AND MAY 11, 1987.

DATED THIS 24TH DAY OF FEBRUARY, 1989.

Sally Yerger
SALLY YERGER, #2008
OFFICIAL REPORTER

