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COURT OF APPEAL OF THE STATE OF CALIFORNIA
 SECOND APPELLATE DISTRICT

FEB 11 1988

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
 PLAINTIFF-RESPONDENT,)
)
 VS.)
)
 JOE HUNT, AKA JOSEPH HUNT,)
 AKA JOSEPH HENRY GAMSKY,)
)
 DEFENDANT-APPELLANT.)

SUPERIOR COURT
 NO. A-090435

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
 HONORABLE LAURENCE J. RITTENBAND, JUDGE PRESIDING
 REPORTERS' TRANSCRIPT ON APPEAL

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: JOHN K. VAN DE KAMP
 STATE ATTORNEY GENERAL
 3580 WILSHIRE BOULEVARD
 ROOM 800
 LOS ANGELES, CALIFORNIA 90010

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 5 OF 101
 (PAGES 431 TO 532, INCLUSIVE)

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ROSEMARIE GOODBODY, CSR NO. 932
 SALLY YERGER, CSR NO. 2008
 OFFICIAL REPORTERS

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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.)

NO. A-090435)

JOE HUNT, AKA JOSEPH HENRY GAMSKY,)

DEFENDANT.)

REPORTERS' DAILY TRANSCRIPT

WEDNESDAY, NOVEMBER 12, 1986

VOLUME 5

(PAGES 431 TO 552, INCLUSIVE)

APPEARANCES:

FOR THE PEOPLE:

IRA REINER, DISTRICT ATTORNEY
BY: FREDERICK N. WAPNER, DEPUTY
1725 MAIN STREET
SANTA MONICA, CALIFORNIA 90401

FOR THE DEFENDANT:

ARTHUR H. BARENS, ESQ.
10209 SANTA MONICA BOULEVARD
LOS ANGELES, CALIFORNIA 90067

AND

RICHARD C. CHIER, ESQ.
10920 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90024

ROSEMARIE GOODBODY, CSR NO. 932
SALLY YERGER, CSR NO. 2008
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1 SANTA MONICA, CALIFORNIA; WEDNESDAY, NOVEMBER 12, 1986; 10:35 A.M.

2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE

3 (APPEARANCES AS NOTED ON TITLE PAGE

4 EXCEPT MR. CHIER WAS NOT PRESENT.)

5
6 MR. BARENS: GOOD MORNING.

7 MR. WAPNER: GOOD MORNING.

8 THE COURT: GOOD MORNING.

9 MR. WAPNER: MR. LIVESAY IS PRESENT. HE IS NOT IN THE
10 COURTROOM RIGHT NOW BUT COUNSEL DID NOT INFORM ME UNTIL THIS
11 MORNING APPROXIMATELY A LITTLE AFTER 10:00, I GUESS, OF THE
12 OTHER CASES UPON WHICH HE IS RELYING AND UPON WHICH HE WISHES
13 TO QUESTION MR. LIVESAY. I HAVE HAD MR. LIVESAY CALL HIS
14 OFFICE AND THEY ARE SENDING COPIES OF THOSE CASES TO US, BUT
15 I THINK THAT AT THE EARLIEST THEY WOULD PROBABLY BE HERE BY
16 QUARTER TO 11:00 AND MAYBE WE ARE LOOKING AT 11 O'CLOCK.

17 I HAVE SPOKEN WITH MR. BARENS AND HE TELLS ME
18 THAT HE THINKS THIS HEARING SHOULD TAKE SOMEWHERE BETWEEN
19 HALF AN HOUR AND 45 MINUTES, SO SINCE MR. LIVESAY IS HERE
20 AND HAS COME FROM DOWNTOWN, IF WE COULD PUT THIS MATTER OVER
21 UNTIL 11:00.

22 THE COURT: LET'S GO AS FAR AS WE CAN AND THEN BY THAT
23 TIME THESE OTHER CASES WILL BE HERE AND HE CAN INQUIRE ABOUT
24 THEM.

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1 MR. WAPNER: WELL, THAT WOULD BE FINE EXCEPT THAT THESE
2 CASES ARE THE STARTING, THE MIDDLE AND THE END. I MEAN, THE
3 IDEA OF THE MOTION IS TO INQUIRE AS TO WHY WE ARE SEEKING THE
4 DEATH PENALTY IN THIS CASE AS OPPOSED TO CASE A AND CASE B.
5 IT IS CASE A AND CASE B THAT ARE ON THEIR WAY FROM DOWNTOWN.

6 THE COURT: WELL, THIS MOTION WAS MADE A CONSIDERABLE
7 TIME AGO. DIDN'T THEY KNOW WHICH CASES THEY WERE GOING TO
8 RELY ON?

9 MR. WAPNER: THAT IS NOT A QUESTION YOU SHOULD PUT TO
10 ME.

11 THE COURT: WELL, DID HE TELL YOU? DID YOU ASK HIM?

12 MR. WAPNER: I ASKED MR. LIVESAY.

13 THE COURT: NO. DID YOU ASK COUNSEL?

14 MR. WAPNER: I ASKED COUNSEL.

15 THE COURT: WHAT CASES HE WAS RELYING ON?

16 MR. WAPNER: YES.

17 MR. BARENS: HE ASKED ME THIS MORNING.

18 MR. WAPNER: I ASKED HIM THIS MORNING. AND I WOULD ASK
19 MR. LIVESAY.

20 THIS IS WHAT I DID, YOUR HONOR. I TALKED TO MR.
21 LIVESAY. I SAID, "HAS THE REPRESENTATIVE FROM THE DEFENSE
22 BEEN THERE?"

23 HE SAID, "YES. SOMEONE WAS HERE. THEY LOOKED
24 THROUGH THE FILES."

25 I SAID, "DID THEY COPY ANYTHING?" HE SAID, "AS
26 FAR AS I KNOW, NO, BECAUSE I WAS GOING TO OBTAIN FROM OUR
27 OFFICE, COPIES OF ANY INFORMATION WAS OBTAINED BY THE DEFENSE."

28 HE SAID, "AS FAR AS I KNOW, THEY HAVE NOT OBTAINED

1 ANYTHING."

2 SO I WAS THEN LEFT IN THE DRAG. I WAS NOT
3 INFORMED BY COUNSEL UNTIL TODAY.

4 THE COURT: ARE THERE ANY PRELIMINARY MATTERS THAT YOU
5 WANT TO ELICIT FROM MR. LIVESAY AND THEN YOU CAN GO ON
6 TO THE CASES?

7 MR. BARENS: WELL, YOUR HONOR, CERTAINLY YOUR HONOR,
8 THERE ARE MATTERS IN ADDITION TO COMING FROM MR. WAPNER'S
9 MEMORANDA TO MR. LIVESAY, THAT I WILL BE INQUIRING INTO
10 EXTENSIVELY.

11 THERE ARE 12 TO 14 POINTS IN A MEMORANDA THAT MR.
12 WAPNER --

13 THE COURT: WELL, WHY DON'T YOU JUST ASK HIM ABOUT THOSE
14 AND WAIT UNTIL THE CASES COME?

15 MR. BARENS: THE AWKWARDNESS IN THAT, YOUR HONOR, COULD
16 BE THAT I BELIEVE MR. WAPNER AND MR. LIVESAY WANT A FEW
17 MINUTES RECESS TO REVIEW THE FILES THAT ARE BEING BROUGHT
18 DOWN.

19 I HAVE ALSO ASKED FOR AN OPPORTUNITY TO REVIEW
20 SPECIFICALLY WHAT MR. LIVESAY IS GOING TO USE TO REFRESH HIS
21 RECOLLECTION. AND I SUBMIT THAT IT COULD CREATE SOME AWKWARD-
22 NESS IN THE PROCEEDINGS.

23 THE COURT: WELL, WHAT DO YOU WANT ME TO DO? DEFER IT
24 UNTIL 11:00 O'CLOCK?

25 MR. BARENS: 11:15 AT THE LATEST, YOUR HONOR. MR.
26 WAPNER HAS INDICATED THAT THE MATERIALS WOULD BE HERE BY
27 11:00.

28 AND I PRESUME THAT WE MIGHT NEED 15 MINUTES TO

1 REVIEW IT.

2 MR. WAPNER: WELL, LET'S JUST DO IT -- LET'S JUST CHECK
3 IN AT 11:00 AND IF WE CAN START THEN, WE WILL DO IT. IF
4 NOT --

5 THE COURT: ALL RIGHT. THANK YOU.

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1 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE
2 HELD AT THE BENCH:)

3 THE COURT: SO WE DON'T WASTE ANY TIME WE CAN GO OVER
4 THOSE QUESTIONS YOU PROPOSED TO ASK THE JURORS AND I WILL
5 TELL YOU WHICH ONES I WILL PERMIT AND THOSE THAT I AM NOT
6 GOING TO PERMIT.

7 MR. BARENS: ALL RIGHT.

8 MR. WAPNER: I WAS APPROACHED BY A REPORTER THIS MORNING,
9 MR. DUNLEVY. I BELIEVE IT IS SPELLED D-U-N-L-E-V-Y, WHO SAYS
10 HE TALKED TO YOU IN CHAMBERS.

11 THE COURT: HE DIDN'T TALK TO ME.

12 MR. WAPNER: OKAY.

13 THE COURT: WHERE IS MR. DUNLEVY?

14 MR. WAPNER: DUNLEVY.

15 THE COURT: DUNLEVY.

16 MR. WAPNER: IT IS THIS GENTLEMAN OUT THERE.

17 THE COURT: DID YOU TELL COUNSEL THAT YOU TALKED TO
18 ME ABOUT THIS CASE IN CHAMBERS?

19 MR. DUNLEVY: NO, SIR. I SAID I TALKED TO YOU ABOUT --

20 THE COURT: WHERE DID YOU GET THAT IDEA FROM?

21 MR. WAPNER: FROM HIM. HE SAID -- WELL, IN ANY EVENT --

22 THE COURT: HE DIDN'T TALK TO ME IN CHAMBERS.

23 ALL HE DID WAS TO TAKE SOME PICTURES AND THAT
24 IS ALL.

25 MR. WAPNER: OKAY.

26 THE COURT: I REFUSED TO TALK TO HIM.

27 MR. WAPNER: IS THAT STILL THE POSTURE YOU HAVE ORDERED
28 THE LAWYERS TO TAKE?

3-2
1 THE COURT: HE JUST WANTED TO TAKE PICTURES OF ME IN
2 CHAMBERS AND THAT IS ALL AND THAT IS ALL I PERMITTED HIM TO
3 DO.

4 MR. WAPNER: I UNDERSTAND THAT.

5 WHAT I WANT TO KNOW, IS THAT THE SAME --

6 THE COURT: I DON'T WANT -- WHEN THIS TRIAL STARTS,
7 I DON'T WANT TO HAVE COUNSEL TALKING TO ANY REPORTERS ABOUT
8 THE FACTS IN THE CASE.

9 MR. WAPNER: OKAY. THANK YOU.

10 THE COURT: ALL RIGHT?

11 MR. BARENS: I UNDERSTAND.

12 THE COURT: IS THAT AGREEABLE TO YOU?

13 MR. BARENS: I UNDERSTAND, YOUR HONOR.

14 MR. CHIER IS NOT HERE TODAY. HE IS ILL TODAY.

15 THE COURT: HE IS ILL?

16 MR. BARENS: HE IS ILL.

17 THE COURT: I AM SORRY TO HEAR THAT. YOU WILL DO VERY
18 WELL, I EXPECT YOU WILL.

19 MR. BARENS: ONE LIVES IN HOPE.

20 THE COURT: NOTHING WILL BE LEFT UNCOVERED.

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1 (THE FOLLOWING PROCEEDINGS WERE HELD
2 IN OPEN COURT:)

3 THE COURT: WELL, LET'S HAVE MR. LIVESAY SWORN.
4

5 CURT LIVESAY,
6 CALLED AS A WITNESS BY THE DEFENDANT, HAVING BEEN SWORN,
7 TESTIFIED AS FOLLOWS:

8 THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY
9 YOU MAY GIVE IN THE CUASE NOW PENDING BEFORE THIS COURT SHALL
10 BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO
11 HELP YOU GOD?

12 THE WITNESS: I DO.

13 THE CLERK: PLEASE BE SEATED THERE IN THE WITNESS STAND.
14 STATE AND SPELL YOUR NAME FOR THE RECORD.

15 THE WITNESS: MY NAME IS CURT, C-U-R-T, LIVESAY,
16 L-I-V-E-S-A-Y.

17 THE CLERK: THANK YOU.

18 THE COURT: IT IS YOUR MOTION, YOU MAY PROCEED.

19 MR. BARENS: THANK YOU, YOUR HONOR.
20

21 EXAMINATION

22 BY MR. BARENS:

23 Q GOOD MORNING, MR. LIVESAY.

24 A GOOD MORNING.

25 Q HOW ARE YOU EMPLOYED?

26 A YES.

27 Q HOW ARE YOU EMPLOYED, SIR?

28 A I AM AN ATTORNEY LICENSED TO PRACTICE IN

1 CALIFORNIA. I AM PRESENTLY EMPLOYED AS THE ASSISTANT
2 DISTRICT ATTORNEY OF LOS ANGELES COUNTY.

3 Q AND DO YOU HAVE ANY SPECIALIZED FUNCTION IN YOUR
4 DUTY, SIR?

5 A I HAVE GENERAL OVERSIGHT RESPONSIBILITY FOR THE
6 OFFICE, HAVING ONLY TWO SUPERIORS WITHIN THE OFFICE, THE
7 CHIEF DEPUTY AND THE DISTRICT ATTORNEY.

8 AMONG MY DUTIES, I AM RESPONSIBLE FOR THE SPECIAL
9 CIRCUMSTANCE CASES, SPECIFICALLY MAKING THE DECISION AS TO
10 THE APPROPRIATE PENALTY TO BE SOUGHT BY THE PROSECUTION IN
11 EACH ONE.

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1 Q IN OTHER WORDS, WOULD IT BE A FAIR STATEMENT THAT
2 YOU HAVE VETO AUTHORITY IN TERMS OF RECOMMENDATIONS FROM
3 DEPUTIES CONCERNING WHETHER OR NOT THE DEATH PENALTY SHOULD
4 BE SOUGHT IN A SPECIFIC CASE?

5 A YES, IT IS A VETO AUTHORITY. HOWEVER, I THINK
6 IT IS AN AFFIRMATIVE DUTY TO MAKE THE DECISION, NOT JUST TO
7 VETO RECOMMENDATIONS OF OTHERS.

8 Q THEREFORE, SIR, IS IT A FAIR STATEMENT THAT YOU
9 CAN EITHER CONFIRM OR DENY A REQUEST THAT THE DEATH PENALTY
10 BE SOUGHT AND, ALTERNATIVELY, THAT A DEATH PENALTY SHOULD BE
11 SOUGHT IF A DEPUTY DECLINED TO DO SO?

12 A YES.

13 Q ON BOTH ELEMENTS OF THE QUESTION, MR. LIVESAY?

14 A YES.

15 Q MR. LIVESAY, DID YOU RECEIVE ANY DOCUMENTATION
16 FROM A DEPUTY DISTRICT ATTORNEY CONCERNING WHETHER OR NOT THE
17 DEATH PENALTY SHOULD BE SOUGHT IN THE MATTER OF PEOPLE V.
18 JOE HUNT?

19 A YES.

20 Q DO YOU HAVE THAT DOCUMENT WITH YOU?

21 A YES.

22 Q COULD YOU IDENTIFY THAT DOCUMENT, MR. LIVESAY?

23 A THE DOCUMENTS CONSIST OF NUMEROUS PAGES WITH
24 REFERENCE TO DEFENDANT HUNT.

25 THE DOCUMENTS ARE A MEMO DATED JULY 22, 1985.
26 ANOTHER MEMO OF JULY 8, 1985. ANOTHER MEMO OF JULY 8, 1985.
27 ANOTHER FORM CONTAINING HANDWRITTEN NOTATIONS, ALONG WITH A
28 TYPED FORM, A MEMO OF FIVE PAGES DATED JULY 1, 1985.

1 THOSE DOCUMENTS ARE MAINTAINED WITHIN A FILE WHICH
2 ALSO INCLUDES SIMILAR DOCUMENTS FOR A CO-DEFENDANT.

3 Q THANK YOU, MR. LIVESAY.

4 MR. LIVESAY, AMONG THE DOCUMENTS YOU HAVE REFERRED
5 TO, I BELIEVE YOU WILL COME TO A DOCUMENT CALLED OR CAPTIONED
6 "RESUME AND APPRAISAL OF OFFENSE IN SPECIAL CIRCUMSTANCES"?

7 A YES, SIR.

8 Q WOULD THAT BE A PRIMARY DOCUMENT THAT YOU WOULD
9 REFER TO IN MAKING YOUR DECISION?

10 A YES.

11 Q AND OSTENSIBLY, THAT DOCUMENT PROVIDES YOU A
12 SUMMARY OF THE CIRCUMSTANCES OF THE ALLEGED CRIME AND RATIONALE
13 SUPPORTING THE ALLEGED APPROPRIATENESS OF THE DEATH PENALTY?

14 A YES.

15 Q MR. LIVESAY, IS IT A FAIR STATEMENT THAT IN
16 CONTEMPLATING THE APPROPRIATENESS OF THE DEATH PENALTY, YOU
17 HAVE PREVIOUSLY TESTIFIED THAT THERE ARE THREE PRIMARY FACTORS
18 YOU REGARD?

19 A THERE ARE MANY FACTORS.

20 THERE ARE APPROXIMATELY THREE THAT TEND TO BE
21 PRINCIPAL FACTORS.

22 Q COULD YOU IDENTIFY THOSE FOR THE COURT, PLEASE?

23 A FIRST, THE CIRCUMSTANCES OF THE OFFENSE, THE
24 DEFENDANT'S AGE AND HIS BACKGROUND.

25 Q NOW I BELIEVE MATERIALS WERE PROVIDED YOU IN THE
26 AFOREMENTIONED RESUME INVOLVING THOSE THREE AREAS IN TERMS
27 OF THIS CASE?

28 A AMONG OTHER AREAS, YES.

1 Q NOW I PRESUME THEN YOU EVALUATED THOSE FACTORS
2 IN THIS CASE IN COMPARISON WITH FINDINGS YOU HAD MADE ON
3 PREVIOUS ANALOGOUS CASES?

4 A YES.

5 Q I CITE TO YOUR ATTENTION A FILE WHICH I BELIEVE
6 YOU REVIEWED THIS MORNING IN PEOPLE V. ACOSTA, WAS IT?

7 A YES.
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1 Q NOW IN THIS MATTER, I BELIEVE THE DEFENDANT WAS
2 AGE 25?

3 A YES. MR. ACOSTA WAS 25.

4 Q AND WHAT WAS HE CHARGED WITH IN THAT CASE?

5 A ROBBERY AND ROBBERY/MURDER.

6 Q ESSENTIALLY A 187 COMBINED WITH A 211?

7 A YES.

8 Q AND SO FAR, WE HAVE HIM BEING THE SAME AGE AS MR.
9 HUNT WAS AT THE TIME OF THE CRIME ALLEGED IN THIS MATTER AND
10 BEING CHARGED WITH THE SAME TWO OFFENSES, IS THAT A FAIR
11 STATEMENT?

12 A YES.

13 Q NOW, IN THAT CASE, YOU DID NOT SEEK THE DEATH
14 PENALTY?

15 A NOT AGAINST MR. ACOSTA.

16 Q AND I AM LIMITING MY INQUIRY THIS MORNING, TO MR.
17 ACOSTA IN THIS CONTEXT, MR. LIVESAY.

18 AND WHY DID YOU NOT SEEK THE DEATH PENALTY IN THAT
19 MATTER?

20 A THE VICTIM WAS ARMED WITH AN 18 TO 20-INCH STEEL
21 BAR. MR. ACOSTA WAS APPREHENDED NOT LONG AFTER THE OFFENSE.

22 HE WAS CRYING. HE APPEARED REMORSEFUL.

23 Q ISN'T IT TRUE, THAT AMONG THE REASONS YOU DIDN'T
24 FILE FOR THE DEATH PENALTY IN THAT CASE, IS THAT YOU HAD NO
25 PROOF OF PRIOR VIOLENT ACTS ON THE PART OF MR. ACOSTA?

26 A YES.

27 Q I THINK IF YOU REFERENCE YOURSELF TO THE LAST
28 PAGE OF THE DEPUTY D.A. RECOMMENDATIONS, THERE IS I BELIEVE

1 ON THE LAST PAGE, SOME LANGUAGE ABOUT TWO AREAS OF PROBLEMS
2 THE DEPUTIES SEEM TO BE BRINGING TO YOUR ATTENTION OR THAT
3 CONCERN THEM.

4 ONE WAS NO PRIOR VIOLENT ACT AND SECONDARY, NO
5 PRIOR HOMICIDE CONVICTIONS.

6 A I APPRECIATE THAT. BUT I SEE THAT IN HIS RECORD,
7 HE HAD AN ATTEMPTED ROBBERY, WHICH MAY INDICATE A CRIME OF
8 VIOLENCE.

9 Q I AM ONLY SAYING, MR. LIVESAY, ISN'T IT A FACT
10 THAT THE DEPUTY THERE MAKES AFFIRMATIVE REPRESENTATIONS THAT
11 AMONG HIS EVALUATING FACTORS, ARE THAT HE FOUND NO PRIOR
12 VIOLENT ACTS AND NO PRIOR HOMICIDE CONVICTIONS ON THIS
13 DEFENDANT IN COMING TO THE CONCLUSION?

14 A WELL, IT IS STATED IN TERMS OF THE HEAD DEPUTY,
15 THAT HIS DECISION WILL BE ALTERED IF THERE WERE A PRIOR
16 HOMICIDE. AND HE SAID IT APPEARS UNLIKELY THAT HE HAS ONE.

17 Q I BELIEVE ON THE SAME PAGE, IF I AM NOT MISTAKEN,
18 MR. LIVESAY, THERE IS THE STATEMENT THAT THEY FOUND NO PRIOR
19 VIOLENT ACTS.

20 A WELL, AT THIS TIME, WE HAVE INSUFFICIENT EVIDENCE
21 OF PRIOR ACTS OF SERIOUS VIOLENCE.

22 Q I AM SATISFIED WITH THAT, MR. LIVESAY. NOW MR.
23 LIVESAY, WERE YOU SUBMITTED ALLEGED VIOLENT ACTS ON MR. HUNT'S
24 PAST, THAT HELPED MAKE YOUR DECISION TO SEEK THE DEATH PENALTY
25 IN THIS CASE?

26 A YES, IN THE SENSE OF PAST ACTS SO FAR AS A RAP
27 SHEET GOES. AND THAT DID HELP.

28 Q SO YOU FOUND NO PRIOR RECORD ON MR. HUNT OF ANY

1 KIND, DID YOU?

2 A EXCEPT ONES ALLEGED IN CONTEMPORANEOUS CASES.
3 NO CRIMINAL HISTORY INFORMATION POINTING TO ACTS OF VIOLENCE.

4 Q NOW, DID YOU FIND ANY ALLEGATION OF ANY PRIOR
5 ACTS OF VIOLENCE PRIOR TO THE MATTER BEFORE THIS COURT
6 INVOLVING MR. HUNT?

7 A AS I RECALL, I DIDN'T KNOW WHETHER THE MATTER
8 INVOLVING AN OUTSTANDING WARRANT WAS HEARD BEFORE OR AFTER
9 THE EVENTS IN THIS CASE.

10 MR. BARENS: LET ME STATE THAT I WOULD STIPULATE THAT
11 THAT WARRANT BEING REFERENCED WAS FOR AN ACT SUBSEQUENT TO
12 THE ALLEGED DISAPPEARANCE OF MR. LEVIN.

13 MR. WAPNER: WELL, I HAVE NO OBJECTION TO STIPULATING
14 THAT THAT'S A FACT. I DON'T KNOW HOW IT IS RELEVANT TO THE
15 DECISION-MAKING PROCESS THAT WENT ON THIS CASE.

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7- 1 MR. BARENS: YES, I AM ASKING -- WHAT I AM TRYING TO
2 GET TO, YOUR HONOR --

3 THE COURT: WELL, YOU HAVE THE STIPULATION, LET'S GO
4 ON.

5 Q BY MR. BARENS: ALL RIGHT, THANK YOU.

6 NOW MR. LIVESAY, NOW THAT THAT MATTER HAS BEEN
7 DEEMED SUBSEQUENT TO THE MATTER WE ARE TALKING ABOUT, I DON'T
8 BELIEVE THERE IS ANYTHING IN YOUR D.A. POLICY MEMORANDA IN
9 THE FILING OR THE SEEKING OF THE DEATH PENALTY THAT IN ANY
10 RESPECT REFERS TO SUBSEQUENT ACTS. I BELIEVE IT ONLY
11 REFERENCES PRIOR ACTS, IS THAT NOT A FAIR STATEMENT?

12 A I WOULD DISAGREE.

13 Q COULD YOU SHOW ME WHERE IN YOUR POLICY MEMORANDA
14 SEEKING THE DEATH PENALTY THERE IS REFERENCE TO SUBSEQUENT
15 ACTS?

16 A IT SHOULD BE THE VERY LAST CATEGORY. I WOULD
17 SAY PAGE 14, PARAGRAPH SMALL L, PAREN.

18 THE COURT: WOULD YOU READ IT INTO THE RECORD, PLEASE?

19 THE WITNESS: "THE ACCUSED'S CHARACTER, BACKGROUND,
20 HISTORY, MENTAL CONDITION AND PHYSICAL CONDITION, EXCEPT NO
21 CRIMINAL ACTIVITY, NOT USING EXPRESS OR IMPLIED THREAT."

22 I WOULD SUGGEST THAT THAT COVERS THE SITUATION
23 FOR THE DEFENDANT'S CONDUCT UP TO THE POINT OF THE PENALTY
24 PHASE, REGARDLESS OF WHEN IT OCCURRED.

25 Q BY MR. BARENS: RESPECTFULLY, IF YOU WOULD GIVE
26 US THE REST OF THAT SENTENCE, MR. LIVESAY.

27 A "DOES NOT INVOLVE THE EXPRESS OR IMPLIED THREAT
28 TO USE FORCE OR VIOLENCE SHALL BE CONSIDERED UNLESS IT HAS

7-2
1 RESULTED IN A PRIOR FELONY CONVICTION."

2 Q YES. AGAIN, I DO SEE THE WORD "PRIOR" IN THAT
3 PARAGRAPH, MR. LIVESAY.

4 THROUGHOUT THIS MEMORANDA, ALL I SEE IS THE WORD
5 "PRIOR." I SUBMIT TO YOU, MR. LIVESAY, THE WORD "SUBSEQUENT"
6 IS NOT ONE TIME USED IN THIS MEMORANDA.

7 MR. WAPNER: OBJECTION. THAT IS ARGUMENTATIVE AND ALSO
8 IT IS NOT A QUESTION.

9 MR. BARENS: WELL, I AM SIMPLY SEEKING DIRECTION.

10 THE COURT: HE WANTS AN EXPLANATION FROM YOU AS TO WHY
11 NOWHERE IN THIS MEMORANDUM IS THERE ANY CATEGORY OF ANY
12 SUBSEQUENT ACTS WHICH WERE ALLEGEDLY COMMITTED BY THE
13 DEFENDANT.

14 THE WITNESS: I BELIEVE THAT IN PARAGRAPH L, THE
15 ACCUSED'S BACKGROUND AND HIS HISTORY GOES UP TO THE POINT
16 THE MATTER IS SUBMITTED TO THE TRIER OF FACT AT THE PENALTY
17 PHASE AND THAT ANYTHING THAT OCCURS UP TO THAT TIME GOING
18 TO AGGRAVATION OR MITIGATION, OTHERWISE ADMISSIBLE, WOULD
19 BE SUBJECT FOR A CONSIDERATION IN THE DETERMINATION OF THE
20 APPROPRIATE PENALTY WHETHER IT IS A PRIOR CONVICTION OR NOT.

21 Q BY MR. BARENS: WELL, THE PROBLEM I HAVE WITH
22 THAT, MR. LIVESAY, IS THIS COMES UNDER SECTION "I" OF YOUR
23 MEMORANDA TALKING ABOUT APPROPRIATENESS OF THE DEATH PENALTY
24 IN A SPECIAL CIRCUMSTANCES CASE, TALKING TO THE D.A. ABOUT
25 THE APPROPRIATENESS OF BRINGING IN THE CASE FOR THE PENALTY.
26 IN THE WARRANT, I BELIEVE, WE ARE TALKING ABOUT A CASE THAT
27 HAD BEEN FILED THAT NEVER HAD BEEN BROUGHT BEFORE THE BENCH,
28 STILL HASN'T TO MY KNOWLEDGE, A CASE INVOLVING AN ALLEGATION

1 THAT IS TOTALLY UNSUPPORTED AT THIS POINT. WHAT I AM TRYING
2 TO UNDERSTAND --

3 WHAT I AM ASKING YOU IS: DID THE REFERENCE TO
4 AN OUTSTANDING WARRANT INFLUENCE YOU IN DECIDING TO SEEK THE
5 DEATH PENALTY IN THIS CASE?

6 A YES.

7 Q AND WHY DID -- HOW DID THAT INFLUENCE YOU,
8 MR. LIVESAY?

9 A I BELIEVE IT WENT TO DEFENDANT'S CHARACTER.

10 Q MR. LIVESAY, YOU HAVE SOME CONCERN, DON'T YOU,
11 ABOUT EVIDENTIARY PROBLEMS IN ENTERTAINING WHETHER YOU WOULD
12 SEEK THE DEATH PENALTY, EVIDENTIARY PROBLEMS IN TERMS OF YOUR
13 ABILITY OR THE PEOPLE'S ABILITY TO PUT ON THE INFORMATION
14 BEFORE A JURY IN A DEATH PENALTY CASE?

15 A YES.

16 Q NOW, ON THAT WARRANT WE ARE SPEAKING SPECIFICALLY,
17 I BELIEVE ABOUT THE ESLAMINIA MATTER WHICH WAS REFERRED TO
18 IN THE D.A. MEMORANDUM: ISN'T THAT CORRECT?

19 A YES.

20 Q NOW, MR. LIVESAY, YOU WOULD CONCEDE THAT AT LEAST
21 IN THE WAY IT IS ALLEGED THAT EVENT TOOK PLACE SUBSEQUENT IN
22 TIME TO THE LEVIN MATTER.

23 A I UNDERSTAND THAT NOW.

24 Q ARE YOU ALSO AWARE THAT THE GOVERNMENT, THE PEOPLE
25 ARE NOT SEEKING THE DEATH PENALTY IN THIS MATTER?

26 A NO.

27 Q WELL, WOULD IT MAKE A DIFFERENCE TO YOU IN YOUR
28 FINDING IN MAKING THE DECISION TO SEEK THE DEATH PENALTY IN

1 THIS MATTER IF I TOLD YOU THEY WEREN'T SEEKING THE DEATH
2 PENALTY IN THAT CASE?

3 A NO.

4 Q WHY IS THAT?

5 A I AM NOT AWARE OF WHAT DECISION THEY HAVE MADE
6 THERE BUT THE FACT THAT PROBABLE CAUSE HAD BEEN ESTABLISHED
7 FOR THE ISSUANCE OF THE CASE CAUSED ME TO CONSIDER THAT AS
8 AN AGGRAVATING FACTOR, WHETHER CONVICTION IS HAD, OR ALL OR
9 A PART OF THE CASE IS PROVEN HERE IN THE DEATH PENALTY PHASE,
10 I FOUND INTERESTING BUT NOT DETERMINATIVE IN THIS CASE.

11 Q IF I UNDERSTAND YOU CORRECTLY, MR. LIVESAY, YOU
12 ARE SAYING THAT THE MERE FACT THAT AN ALLEGATION IS MADE
13 AGAINST THE DEFENDANT, ALTHOUGH THERE HAS BEEN NO FINDING
14 OF FACT WHATSOEVER ON INNOCENCE OR GUILT, WOULD INFLUENCE
15 YOU TO SEEK THE DEATH PENALTY AGAINST THAT DEFENDANT IN THE
16 CASE YOU WERE MAKING A DECISION ON?

17 A YES.

18 Q WHY IS THAT?

19 A PROBABLE CAUSE HAS BEEN ESTABLISHED WITH THE
20 ISSUANCE OF THE WARRANT.

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1 Q DOES PROBABLE CAUSE EQUAL A CONVICTION IN YOUR
2 MIND?

3 A NO.

4 Q HOW WOULD YOU FEEL IF YOU HAD MADE THAT DECISION
5 TO RECOMMEND THE DEATH PENALTY AND LATER ON, DISCOVERED THAT
6 THE MAN WAS ACQUITTED IN THAT CASE?

7 A WELL, IF HE HAD BEEN ACQUITTED, I WOULD CERTAINLY
8 TAKE THAT ELEMENT FROM CONSIDERATION. THAT MAY NOT BE CON-
9 sidered.

10 Q THAT WOULD BE A BIT AFTER THE HORSE WAS OUT OF
11 THE BARN, WOULDN'T IT, IN THE MATTER THAT YOU WERE MAKING YOUR
12 DECISION ON?

13 MR. WAPNER: OBJECTION, ARGUMENTATIVE.

14 THE COURT: OVERRULED.

15 THE WITNESS: IT DEPENDS ON WHAT OTHER ACTS OF VIOLENCE
16 COULD BE PROVED INDEPENDENTLY OF WHATEVER THEY DID IN THAT
17 CASE.

18 THE COURT: I THINK THESE ARE QUESTIONS WHICH MIGHT BE
19 APPROPRIATE AFTER YOU HAVE GIVEN US THE OTHER CASES THAT HE
20 HAS, THAT YOU INTEND TO SHOW, WHERE NO DEATH PENALTY HAS BEEN
21 SOUGHT.

22 MR. BARENS: ALL RIGHT. I WILL CHANGE MY ORDER OF
23 PRESENTATION TO ACCOMMODATE THE COURT.

24 Q MR. LIVESAY, I REFERENCE YOU TO ANOTHER MATTER
25 OF LAWRENCE ANTHONY, THAT I BELIEVE YOU REVIEWED THIS MORNING?

26 A YES.

27 Q NOW, WHAT WAS MR. ANTHONY CHARGED WITH?

28 A ATTEMPTED ROBBERY, BURGLARY AND MURDER.

1 Q AND TWO OF THOSE COUNTS AT LEAST, ARE IDENTICAL
2 TO THE CHARGE AGAINST MR. HUNT IN THIS MATTER?

3 THE COURT: IS THERE A ROBBERY COUNT IN THIS PARTICULAR
4 MATTER?

5 MR. WAPNER: YES, YOUR HONOR.

6 MR. BARENS: ALTHOUGH IT WAS NOT SUSTAINED AT THE
7 PRELIMINARY HEARING, IT WAS REFILED BY THE PEOPLE IN THE
8 SUPERIOR COURT.

9 THE COURT: AND IT IS A CHARGE?

10 MR. BARENS: YES.

11 THE WITNESS: IN THE ANTHONY CASE, THERE WAS AN ATTEMPTED
12 ROBBERY.

13 Q BY MR. BARENS: YOU HAVE A 664/211 COMBINED WITH
14 A 187?

15 A YES.

16 Q NOW, MR. ANTHONY WAS 22 YEARS OLD?

17 A YES.

18 Q IN THE ANTHONY MATTER, I BELIEVE -- LET'S SEE,
19 HERE. SOME OF THE ELEMENTS WERE THAT THAT WAS A PREMEDITATED
20 MATTER, MR. LIVESAY?

21 A WELL, I WAS NOT CONVINCED OF THAT, FROM THE
22 MEMORANDUM.

23 Q WHY WAS THAT?

24 A WELL, THE DYING DECLARATION OF THE VICTIM WAS THAT
25 IT WAS AFTER HIS REFUSAL TO HAND OVER ANY MONEY, THAT HE WAS
26 SHOT.

27 HE WAS SHOT IN TWO PLACES, THE NECK AND THE STOMACH.
28 IT WOULD BE DIFFICULT I THINK, TO SHOW IT WAS PREMEDITATED.

1 Q WELL, YOU HAD NO PROBLEM IN THE PREMEDITATION
2 CONCERNING THE 211, DID YOU?

3 A NO.

4 Q NOW MR. LIVESAY, IT IS A FAIR STATEMENT, THAT YOUR
5 DEPUTY THERE TOLD YOU THAT THIS DEFENDANT APPARENTLY SHOWED
6 NO REMORSE?

7 A NO.

8 Q AND IT IS A FAIR STATEMENT THAT THIS DEFENDANT
9 HAD NO PRIOR RECORD?

10 A YES.

11 Q NOW, IN THE HUNT CASE, YOU WERE TOLD BY YOUR
12 DEPUTY THAT HE HAD NO PRIOR RECORD?

13 A YES.

14 Q AND THAT HE HAD NO REMORSE?

15 A YES.

16 Q NOW, WEREN'T YOU ALSO TOLD IN THE ANTHONY CASE,
17 THAT THERE WAS NO NEED FOR VIOLENCE, THAT THE DEFENDANT COULD
18 HAVE SOMEWHAT EASILY OVERPOWERED THE VICTIM WITHOUT RESORTING
19 TO SHOOTING HIM?

20 A YES.

21 Q NOW, THERE WAS HOWEVER, ON MR. ANTHONY, A RECORD
22 OF A PRIOR ARREST, WASN'T THERE, THAT WAS REJECTED?

23 A YES.

24 Q NOW, WHAT I AM TRYING TO DO MR. LIVESAY, IS CONTRAST
25 OBVIOUSLY WHAT WE HAVE IN THE HUNT CASE, WITH WHAT WE HAVE
26 IN ANTHONY.

27 IN ANTHONY, WE HAVE NO REMORSE, NO PRIORS BUT A
28 PRIOR ARREST WHICH WE DON'T HAVE IN OUR CASE, APPROXIMATELY

1 THE SAME AGE, 22 VERSUS 25 AND NO NEED FOR VIOLENCE?

2 A YES.

3 Q HOW ARE YOU ABLE TO DISCRIMINATE YOUR DECISION
4 IN NOT FILING THE DEATH PENALTY ON MR. ANTHONY, VERSUS MR.
5 HUNT?

6 A IN MR. HUNT'S CASE, THERE WAS A GREAT DEAL MORE
7 SOPHISTICATION IN IT, THE PLANNING, THE USE OF AN ACCOMPLICE
8 TO SEPARATE HIMSELF FROM THE ACTUAL KILLING.

9 Q WHAT EVIDENCE DO YOU HAVE OF THAT, MR. LIVESAY?
10 PERHAPS I CAN HELP YOU ON THAT, MR. LIVESAY.

11 ISN'T IT A TRUE STATEMENT, THAT THE ONLY EVIDENCE
12 THAT YOU HAVE OF THAT, IS THE UNCORROBORATED TESTIMONY OF
13 MR. KARNY?

14 A NO.

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1 Q WHAT ELSE DO YOU HAVE?

2 A STATEMENTS BY MR. HUNT.

3 Q DO YOU HAVE ANY EVIDENTIARY CONCERNS CONCERNING
4 THOSE STATEMENTS IN TERMS OF HAVING TO FIRST ESTABLISH THE
5 CORPUS DELICTI?

6 THE COURT: ARE YOU TALKING ABOUT THE SEVEN SHEETS WHERE
7 HE SAYS THINGS TO DO AT RON'S OR LEVIN'S? IS THAT IT,
8 SHOWING PREMEDITATION?

9 THE WITNESS: I WAS NOT AWARE OF THAT, YOUR HONOR, AT
10 THE TIME I MADE THE DECISION.

11 THE COURT: YOU DIDN'T KNOW ABOUT IT?

12 MR. LIVESAY: THE SEVEN PAGES, I WAS NOT AWARE OF.

13 THE COURT: ALL RIGHT.

14 Q BY MR. BARENS: NOW, WHAT I AM ASKING YOU MORE
15 SPECIFICALLY, MR. LIVESAY, IS YOUR CONCERNS ABOUT THE
16 ADMISSIBILITY OF STATEMENTS OF THE DEFENDANT, IN A NO-BODY
17 CASE IN TERMS OF CORPUS DELICTI PROBLEMS.

18 DID YOU CONSIDER THAT IN MAKING YOUR DECISION?

19 A I CONSIDERED THE FACT THAT NO BODY HAD BEEN
20 RECOVERED, YES.

21 Q BY THE WAY, WHILE WE ARE ON THE TOPIC MR. LIVESAY,
22 CAN YOU REFER ME TO ANY OTHER CASE WHEREIN YOU MADE A
23 RECOMMENDATION FOR SEEKING THE DEATH PENALTY, WHERE THERE WAS
24 NO BODY LOCATED?

25 A WE HAVE HAD A FEW CASES, SPECIAL CIRCUMSTANCE
26 CASES WHERE NO BODY HAS BEEN RECOVERED.

27 I CAN'T RECALL ONE JUST NOW. BUT WITHIN THIS
28 COUNTY, WITHIN THIS LAST SEVEN OR EIGHT YEARS, WE HAVE HAD

1 A FEW.

2 Q DID YOU SEEK THE DEATH PENALTY IN ALL THOSE
3 CASES?

4 A I DON'T KNOW.

5 Q NOW, ISN'T IT A FAIR STATEMENT MR. LIVESAY, I
6 SUBMIT THAT YOU COULD NOT FIND ONE NO-BODY CASE WHERE YOUR
7 OFFICE EVER SOUGHT THE DEATH PENALTY, EXCEPT INVOLVING JOE
8 HUNT?

9 NOW, CAN YOU SIR, TELL ME ONE INSTANCE, SPECIFIC
10 INSTANCE WHERE YOUR OFFICE EVER SOUGHT THE DEATH PENALTY IN
11 A NO-BODY CASE, EXCEPT FOR MR. HUNT?

12 A YOU MEAN WITHIN THE LAST SERIES OF DEATH PENALTY
13 STATUTES, AUGUST '77 UNTIL TODAY?

14 Q YES, MR. LIVESAY.

15 A I CAN'T RECALL ONE SPECIFICALLY.

16 Q I SUBMIT THAT THAT IS BECAUSE THERE ARE NONE.

17 MR. WAPNER: OBJECTION, ARGUMENTATIVE. AGAIN, IT IS
18 A STATEMENT OF COUNSEL. IT IS NOT A QUESTION TO THE WITNESS.

19 THE COURT: I WILL SUSTAIN THE OBJECTION.

20 Q BY MR. BARENS: NOW, GOING BACK TO THE MEMORANDA
21 SUBMITTED TO YOU BY MR. WAPNER, THE ESLAMINIA INFORMATION THAT
22 YOU RECEIVED, WOULD IT MAKE A DIFFERENCE IF I TOLD YOU THAT
23 THAT IS SOLELY BASED UPON THE UNCORROBORATED TESTIMONY OF AN
24 ALLEGED CO-CONSPIRATOR OR ACCOMPLICE TESTIMONY.

25 A IF THAT WERE THE FACT, IT WOULD MAKE A DIFFERENCE.

26 Q WOULD THAT MAKE YOU LESS LIKELY TO SEEK THE DEATH
27 PENALTY?

28 A NO.

1 Q NO?

2 A NO.

3 Q EVEN THOUGH IT IS A WELL ESTABLISHED PRINCIPLE
4 OF LAW THAT THE CO-CONSPIRATOR OR ACCOMPLICE TESTIMONY HAS
5 TO BE REGARDED WITH THE UTMOST OF SCRUTINY AND SKEPTICISM?

6 A YES.

7 Q WHY WOULD THAT NOT INFLUENCE YOUR DECISION?

8 A THAT CASE WAS NOT DETERMINATIVE HERE.

9 Q ALL RIGHT. WHAT WAS DETERMINATIVE?

10 THE COURT: PARDON ME. HAVE YOU FINISHED THE THREE
11 CASES?

12 MR. BARENS: ACTUALLY, I AM ONLY REFERENCING TWO, YOUR
13 HONOR. I AM FINISHED WITH THOSE.

14 NOW I AM GOING TO GET INTO THE SPECIFICS OF THE
15 MEORANDA.

16 THE COURT: VERY GOOD. ALL RIGHT.

17 Q BY MR. BARENS: IN FACT, I WILL WITHDRAW THE LAST
18 QUESTION AND TAKE YOU THORUGH IT MORE SPECIFICALLY, IF YOU
19 WOULD.

20 MR. LIVESAY, DID YOU REGARD AN ALLEGED INCIDENT
21 INVOLVING A MAN NAMED BRUCE SWARTOUT?

22 A YES.

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1 Q AND DID THAT INFLUENCE YOU IN MAKING YOUR DECISION
2 TO SEEK THE DEATH PENALTY?

3 A YES.

4 Q AND WHAT WAS THAT?

5 A IT APPEARED TO ME THAT IT WAS A MATTER THAT WAS
6 A FACTOR IN AGGRAVATION.

7 Q AND WHAT WAS THAT MATTER?

8 A THAT PITTMAN AT THE REQUEST OF THE DEFENDANT SET
9 OUT TO KILL SWARTOUT; THAT PITTMAN THREW CHEMICALS ON HIM
10 IN AN EFFORT TO DO THAT BUT SWARTOUT SURVIVED.

11 Q NOW, WHAT CRIMINAL CHARGES WERE FILED IN THE
12 SWARTOUT MATTER, MR. LIVESAY?

13 A I DON'T KNOW.

14 Q WOULD IT INFLUENCE YOUR DECISION IF I TOLD YOU
15 THAT NO CRIMINAL CHARGES WERE FILED AT ANY TIME AS AGAINST
16 EITHER MR. PITTMAN OR MR. HUNT IN THAT MATTER?

17 A NO. I DID NOT CONSIDER THIS A CASE THAT WAS
18 CHARGED.

19 Q YOU DIDN'T CONSIDER IT AS A CHARGED CASE?

20 A NO.

21 Q DID YOU CONSIDER IT WAS TRUE?

22 A YES.

23 Q WHY?

24 A THAT IS A MEMORANDUM GIVEN TO ME BY THE TRIAL
25 DEPUTY; THAT WAS A MATTER THAT IF NO CRIMINAL CHARGES WERE
26 FILED OR PROVEN, THAT AT LEAST SOMETHING COULD BE SHOWN AT
27 THE PENALTY PHASE.

28 Q BASED ON WHAT WOULD SOMETHING BE SHOWN IF THERE

1 IS NO FILING.

2 A THE FACTS OF THE CASE, I WOULD SUGGEST THE CALLING
3 OF THE WITNESSES WHO HEARD THE DEFENDANT AND PITTMAN TALKING
4 ABOUT IT.

5 Q HOW ABOUT THE ALLEGED VICTIM?

6 A IF HE IS AVAILABLE.

7 Q IF THE ALLEGED VICTIM OSTENSIBLY NEVER FILED A
8 COMPLAINT WITH ANY POLICE AGENCY, WOULD THAT INFLUENCE YOU?

9 A THAT WOULD INFLUENCE ME BUT I AM SURE THAT THE
10 VICTIM COULD BE SUBPOENAED IF HE IS AVAILABLE.

11 Q WHAT IF I TOLD YOU THAT THE ALLEGED CHEMICALS
12 THAT WERE ALLEGEDLY THROWN AT MR. SWARTOUT, THAT FORENSIC
13 TESTS WERE PERFORMED ON THOSE ALLEGED CHEMICALS ON TWO
14 DIFFERENT OCCASIONS AND THAT THE CONCLUSION WAS THAT THOSE
15 CHEMICALS WERE COMMON TEA, T-E-A, TEA.

16 THE COURT: T-E-A-T?

17 MR. BARENS: NO. T-E-A WITH THE WORD SAID AFTER IT.

18 THE COURT: YOU MEAN T-E-A, TEA?

19 MR. BARENS: YES.

20 THE COURT: ORDINARY TEA LEAVES?

21 MR. BARENS: QUITE SO, YOUR HONOR.

22 THE WITNESS: IT WOULD DEPEND UPON THE TRIAL DEPUTY,
23 WHETHER HE WANTED TO PROVE THAT. BUT IF IT WAS AN EFFORT
24 TO SCARE THE VICTIM, IT COULD BE REGARDED AS AN AGGRAVATING
25 FACTOR.

26 Q BY MR. BARENS: WOULD IT MAKE ANY DIFFERENCE IN
27 YOUR WEIGHTING THAT MATTER IF I TOLD YOU THAT WAS TEA INSTEAD
28 OF SOME JAMES BOND CHEMICAL?

1 A YES.

2 Q NOW, WOULD IT MAKE A DIFFERENCE, ONCE AGAIN, IF
3 I TOLD YOU THAT THE VICTIM SOUGHT NO COMPLAINT ON THAT?

4 A YES.

5 Q DID YOU AT ALL CONSIDER ANY INVESTIGATION INTO
6 THE ALLEGED WITNESS WHO CLAIMED THAT HE HEARD EITHER PITTMAN
7 OR HUNT SAY THAT THIS SWARTOUT MATTER EVER OCCURRED, TO TEST
8 THE RELIABILITY OF ANY WITNESS?

9 A NO.

10 Q SO THERE IS NO INVESTIGATION AT ALL, WE JUST --
11 I MEAN IF A MAN OFF THE STREET COMES ALONG AND SAYS "THIS
12 GUY THREW SOME CHEMICAL AND TRIED TO KILL SOME GUY," WE JUST
13 ACCEPT THAT. WE DON'T LOOK AT THAT GUY'S CHARACTER AT ALL.
14 WE DON'T LOOK AT HIS RELIABILITY AT ALL. WE DON'T LOOK FOR
15 ANY BIAS IN HIM AT ALL. WE JUST ACCEPT HIS STATEMENT AND
16 SAY "WE WILL SEEK THE DEATH PENALTY AGAINST THAT DEFENDANT;"
17 IS THAT CORRECT?

18 A NO.

19 Q WHAT IS NOT CORRECT?

20 A MY FUNCTION IN THIS IS TO REVIEW THE INFORMATION.
21 IT IS THE TRIAL DEPUTY'S FUNCTION TO DETERMINE
22 WHAT MAY BE PROVED OR HOW IT MAY BE PROVED AT TRIAL.

23 Q WELL, DID THE TRIAL DEPUTY ADVISE YOU HE HAD DONE
24 ANY INVESTIGATION INTO THE WITNESS ASSERTING THAT SOMETHING
25 ACTUALLY HAPPENED CONCERNING MR. SWARTOUT?

26 A NO.

27 Q HE DIDN'T REPRESENT TO YOU THAT HE INVESTIGATED
28 IT AT ALL, DID HE?

1 A NO.

2 Q YET, NONETHELESS, WITH A MAN'S LIFE ON THE LINE,
3 THAT INFLUENCES YOUR DECISION?

4 A YES.

5 Q NOW, WERE YOU TOLD THAT MR. HUNT HAD BEEN
6 CONVICTED OF A BATTERY IN CHICAGO?

7 A I DON'T BELIEVE SO.

8 Q I RESPECTFULLY SUBMIT THAT IS IN YOUR MEMORANDA.

9 A COULD I ASK WHERE?

10 Q ALL RIGHT, YES, SIR.

11 A PAGE 4?

12 Q I AM LOOKING, YES, IT IS ACTUALLY IN THE --

13 A YES.

14 Q -- ALMOST THE TOP 25 PERCENT; DO YOU SEE THAT?

15 A YES.

16 Q DID THAT INFLUENCE YOU IN MAKING YOUR DECISION
17 TO SEEK THE DEATH PENALTY?

18 A NO.

19 Q IT DID NOT?

20 A NO.

21 Q SO I SUPPOSE IT WOULDN'T INFLUENCE YOU IF I TOLD
22 YOU THAT IT WAS JUST AN ABSOLUTE FALSEHOOD, THAT HE WAS NEVER
23 CONVICTED OF ANYTHING IN CHICAGO.

24 A WELL, NOT TRUE.

25 THE COURT: HE SAID HE DIDN'T TAKE IT INTO CONSIDERATION
26 SO LET'S GET ON TO SOMETHING ELSE.

27 Q BY MR. BARENS: WELL, WHY DIDN'T YOU TAKE IT INTO
28 CONSIDERATION?

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1 A AS A FACTOR IN AGGRAVATION, FIRST OF ALL, THE
2 MISDEMEANOR CONVICTION AS A CONVICTION IS NOT ADMISSIBLE.

3 IT WOULD TAKE A MATTER OF CALLING WITNESSES TO
4 PROVE IT AND CALLING WITNESSES TO PROVE A 1982 MISDEMEANOR
5 FROM A FOREIGN JURISDICTION WOULDN'T BE WORTHWHILE.

6 Q AND YOU ARE REPRESENTING TO ME TRUTHFULLY THAT
7 HAD NO BEARING ON YOUR EVALUATION OF MR. HUNT AS A CANDIDATE
8 FOR THE DEATH PENALTY?

9 A IT SURE DIDN'T.

10 Q I AM SORRY.

11 A IT DID NOT.

12 Q I APPRECIATE THAT, MR. LIVESAY.

13 NOW, MR. LIVESAY, DO YOU HAVE ANY REGARD FOR THE
14 CHARACTER OF THE ALLEGED VICTIM IN MAKING THE DETERMINATION
15 TO SEEK THE DEATH PENALTY?

16 A YES, IF IT GOES TO THE PROOF OF THE CASE.
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1 Q DID YOU HAVE ANY REGARD FOR THE CHARACTER OF
2 MR. LEVIN IN REACHING YOUR DECISION?

3 A IT DIDN'T APPEAR THAT THERE WAS ANYTHING THAT
4 I KNEW ABOUT THE VICTIM THAT MADE IT RELEVANT.

5 Q WHAT DID YOU KNOW ABOUT THE CHARACTER OF THE VICTIM?

6 A THAT HE WAS A PERSON WHO HAD MET THE DEFENDANT
7 HERE, HAD SET UP A FRAUD, IN EFFECT, OF THIS DEFENDANT.

8 Q WERE YOU TOLD THAT THE VICTIM WAS A CON MAN AND
9 A THIEF?

10 A YES.

11 Q WERE YOU TOLD THAT THE DEFENDANT (SIC) WAS
12 FACING SERIOUS CRIMINAL CHARGES IN THIS JURISDICTION?

13 A YES.

14 Q WERE YOU TOLD THAT THE DEFENDANT (SIC) WAS ON
15 BAIL AT THE TIME OF HIS DISAPPEARANCE?

16 A YES, THAT HIS CASE WAS PENDING.

17 Q WERE YOU TOLD THAT THE DEFENDANT HAD A PRIOR
18 CONVICTION -- I AM SORRY -- THAT THE VICTIM HAD A PRIOR
19 CONVICTION?

20 A YES.

21 Q DID ANY OF THAT INFLUENCE YOU IN TERMS OF HOW A
22 JURY MIGHT RESPOND WHEN CONFRONTED WITH MAKING A DEATH PENALTY
23 ELECTION?

24 A YES, BUT THAT IS NOT A FACTOR.

25 THE TEST IS NOT HOW THE JURY WOULD RESPOND.

26 Q WHY IS THAT?

27 A UNDER THE PREVIOUS LAW, THE TEST WAS A PREDICTION
28 OF WHETHER A JURY WOULD IMPOSE THE DEATH PENALTY.

1 UNDER THE CURRENT LAW, THAT IS NOT THE STATUTORY
2 TEST.

3 Q DOESN'T THAT GIVE YOU SOME CONCERN, NONETHELESS,
4 IN MAKEING YOUR OWN DECISION?

5 A YES, IT DOES.

6 Q I MEAN AS --

7 A YES, IT DOES.

8 Q WHAT WAS YOUR RESPONSE TO THIS INFORMATION CONCERN-
9 ING MR. LEVIN?

10 A WELL, MY RESPONSE WAS THAT IF HE WERE CALLED AS
11 A WITNESS, IT WAS CERTAINLY SOMETHING THAT WE COULD WORRY
12 ABOUT PROVING BUT, HERE, HE WASN'T A WITNESS.

13 Q I DON'T KNOW WHERE TO SERVE THE SUBPOENA, MR.
14 LIVESAY.

15 WELL, MR. LIVESAY, THERE ARE SEVERAL OTHER FACTORS
16 THAT I WOULD LIKE TO REFERENCE YOU IN THE RECOMMENDATION FOR
17 THE DEATH PENALTY.

18 IN MR. WAPNER'S MEMORANDA, I AM REFERRING TO PAGE
19 4, ITEM 3, QUOTING:

20 "THE DEFENDANT WAS NOT UNDER ANY UNDUE
21 EXTREME MENTAL OR EMOTIONAL DISTURBANCE AT THE
22 TIME THE OFFENSE WAS COMMITTED."

23 WHAT INFORMATION DID YOU HAVE IN SUPPORT OF THAT
24 CONTENTION?

25 A HIS APPEARANCE AT A DINNER IN THE VICTIM'S HOUSE,
26 HIS EXECUTION OF THE PLAN TO HAVE THE DEFENDANT (SIC) --
27 I AM SORRY -- TO HAVE THE VICTIM KILLED.

28 Q THEREFORE, YOU CONCLUDE THAT THERE IS NO EMOTIONAL

1 DISTURBANCE PRESENT IN AN INDIVIDUAL'S LIFE BECAUSE THEY CAN
2 GO FROM ONE PLACE TO ANOTHER AND DO SOMETHING THEY PLANNED
3 TO DO ALLEGEDLY WHEN THEY GET THERE?

4 A BASICALLY, YES.

5 Q WELL, ISN'T IT TRUE YOU HAD NO SPECIFIC INFORMATION
6 CONCERNING MR. HUNT'S EMOTIONAL BACKGROUND OR EMOTIONAL
7 DEVELOPMENT WHEN YOU MADE YOUR DECISION?

8 A YES, NO MEDICAL RECORD OR ANYTHING OF THAT KIND.

9 Q DID YOU SEEK ANY?

10 A NO.

11 Q DO YOU EVER?

12 A YES.

13 Q WHY DO YOU SOMETIMES AND NOT OTHERS?

14 A WHEN IT IS A BIZARRE CRIME, A PERSON HAS KILLED
15 A NUMBER OF PEOPLE IN HIS FAMILY. WHEN IT IS A SITUATION THAT
16 THE CIRCUMSTANCES SURROUNDING THE OFFENSE HAS SEEMED BIZARRE.

17 Q NOTHING BIZARRE IN THIS MATTER, WAS THERE?

18 A IN THIS CASE?

19 Q YES.

20 A WELL, NOT AS KILLINGS FOR HIRE GO, NO.

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1 Q NOW, ITEM 5 SPEAKS ABOUT -- THERE WERE NO
2 CIRCUMSTANCES SURROUNDING THIS KILLING WHICH WOULD LEAVE THE
3 DEFENDANT TO BELIEVE IT WAS MORALLY JUSTIFIABLE.

4 WHEN YOU REGARD FACTOR 5, DO YOU EVER THINK ABOUT
5 A KILLING THAT IS THE RESULT OF A HEAT OF PASSION?

6 A YES.

7 Q WOULD THAT INFLUENCE YOU IN MAKING YOUR DECISION?

8 A YES.

9 Q IF I TOLD YOU, ASSUMING ARGUENDO FOR THIS
10 DISCUSSION MR. LIVESAY, THAT MR. HUNT HAD BEEN DEFRAUDED OF
11 \$4 MILLION BY MR. LEVIN AND ASSUMING ARGUENDO THEREAFTER,
12 KILLED HIM AS A RESULT OF A PASSION HE DEVELOPED AS THE RESULT
13 OF BEING ROOKED OUT OF \$4 MILLION, WOULD THAT INFLUENCE YOUR
14 DECISION AS TO THIS CRITERIA?

15 A NO.

16 Q WHY NOT?

17 A I BELIEVE I WAS AWARE OF THAT AT THE TIME.

18 BUT, BUSINESS DEALS, ESPECIALLY AN ONGOING
19 CONSPIRACY THAT GOES SOUR, I DON'T CONSIDER AS MEETING A
20 MORAL JUSTIFICATION.

21 Q MORAL JUSTIFICATION? I THOUGH, HAD INTRODUCED
22 FOR YOUR REVIEW, THE CONCEPT OF PASSION.

23 A YES.

24 Q WHAT ABOUT PASSION? WHAT ABOUT PASSION THAT
25 HUMANS HAVE?

26 A I SUPPOSE IT DEPENDS UPON THE GENESIS OF IT.

27 Q ARE YOU SAYING THAT SOME PASSION IS MORE
28 ACCEPTABLE THAN OTHERS?

10- 1 A FROM THE STANDPOINT OF JUSTIFYING A KILLING, YES.

2 Q WHAT SORT OF PASSION JUSTIFIES KILLING, TO YOUR
3 OFFICE, MR. LIVESAY?

4 A LOVE AFFAIRS, ATTEMPTING TO TAKE BACK PROPERTY
5 OR MONEY WHICH HAS BEEN RECENTLY TAKEN THROUGH VIOLENCE OR
6 EXTORTION, PERHAPS A PASSION THAT WOULD BE ALMOST A
7 JUSTIFICATION FOR SELF-DEFENSE. THAT IS A DEFENSE OF ONE'S
8 SELF OR ANOTHER.

9 Q ARE YOU FAMILIAR WITH ANY CASE WHERE A DEFENDANT
10 WAS RIPPED OFF AND KILLED THE PERPETRATOR, WHERE YOUR OFFICE
11 DID NOT SEEK THE DEATH PENALTY?

12 A I CAN'T RECALL ONE SPECIFICALLY BY NAME. BUT
13 I AM SURE THERE IS SUCH A CASE IN THE 1,000 THAT WE HAVE.

14 Q A CASE WHERE A MAN WAS -- OR A PERSON WAS
15 THE VICTIM OF A RIP-OFF AND KILLED SOMEONE, THAT YOU SOUGHT
16 LIFE WITHOUT, INSTEAD OF THE DEATH PENALTY?

17 A YES.

18 Q BUT NOT IN THIS CASE?

19 A NOT IN THIS CASE.

20 Q WHY?

21 A I BELIEVE THE SOPHISTICATION WITH WHICH THE
22 DEFENDANT SET UP THE PLAN.

23 Q WELL, LET ME ASK YOU SOMETHING. IF YOU ARE
24 BUYING -- WELL, YOU WEREN'T AWARE OF ANY WRITTEN MEMORANDA
25 TALKING ABOUT HOW TO EXECUTE THE CRIME, WERE YOU?

26 A NO.

27 Q SO, SOPHISTICATION EQUALS PLANNING?

28 A YES.

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1 A YES.

2 Q HOW DO YOU DIFFERENTIATE PLANNING FROM PLANNING?
3 WHEN DOES PLANNING IN YOUR MIND BECOME SOPHISTICATED, AS
4 OPPOSED TO JUST PLANNING?

5 A PLANNING THAT ALMOST SUCCEEDS IS USUALLY FAIRLY
6 SOPHISTICATED. I HAD --

7 Q BUT MR. LIVESAY --

8 MR. WAPNER: EXCUSE ME. I DON'T THINK THE WITNESS WAS
9 FINISHED ANSWERING THE QUESTION.

10 MR. BARENS: SORRY.

11 THE COURT: YOU MAY FINISH, MR. LIVESAY.

12 THE WITNESS: I HAD SEVERAL PAGES IN THE MEMORANDUM
13 GOING TO THE SOPHISTICATION OF THIS PLAN.

14 Q BY MR. BARENS: WELL, JUST A MOMENT AGO THOUGH,
15 YOU SAID PLANNING THAT SUCCEEDS.

16 BY THE TIME A MATTER REACHES YOUR DESK, EVIDENTLY
17 SOMEBODY SUCCEEDED, MR. LIVESAY IN EACH INSTANCE?

18 A NO. I MEAN SUCCEEDED IN THE EFFORT TO COVER THE
19 OFFENSE. THAT IS, SUCCESS MEANING PERPETRATING A CRIME, NOT
20 BEING APPREHENDED, THE LENGTHS TO WHICH THE PERPETRATOR GOES
21 TO AVOID APPREHENSION.

22 THE COURT: PARDON ME. YOU WILL BE SOME TIME, WON'T
23 YOU?

24 MR. BARENS: I COULD FINISH IN TEN MINUTES, YOUR HONOR.

25 THE COURT: ALL RIGHT.

26 MR. BARENS: THANK YOU.

27 THE COURT: ALL RIGHT. GO AHEAD.

28 MR. WAPNER: WELL, WITH ALL DUE RESPECT, I THINK THERE

1 IS GOING TO BE SOME CROSS-EXAMINATION AND THERE IS GOING TO
2 BE SOME ARGUMENT.

3 I DON'T SEE US FINISHING BEFORE 12:30. IN ANY
4 EVENT, I WOULD APPRECIATE IT.

5 THE COURT: DO YOU WANT TO HAVE A RECESS? IS THAT IT?

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

7 (BRIEF PAUSE.)

8 MR. WAPNER: WELL, MY PREFERENCE IS TO BREAK BECAUSE
9 I DON'T THINK WE'LL FINISH THE MATTER BEFORE 12:30, IN ANY
10 EVENT.

11 MR. BARENS: COULD I HAVE A MOMENT WITH COUNSEL?

12 THE COURT: YES.

13 (BRIEF PAUSE.)

14 MR. BARENS: COULD WE RECESS TODAY UNTIL 1:30?

15 THE COURT: SURELY.

16 MR. BARENS: ALL RIGHT.

17 THE COURT: WE WILL TAKE A RECESS UNTIL 1:30 THIS
18 AFTERNOON. COME BACK HERE THEN, MR. LIVESAY.

19 MR. LIVESAY: THANK YOU, YOUR HONOR.

20 (12:05 P.M. A RECESS WAS TAKEN UNTIL
21 1:30 P.M. OF THE SAME DAY.)
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1 SANTA MONICA, CALIFORNIA; WEDNESDAY, NOVEMBER 12, 1968; 1:40 P.M.

2 DEPARTMENT WEST G HON. LAURENCE J. RITTENBAND, JUDGE

3 (APPEARANCES AS NOTED ON TITLE PAGE

4 EXCEPT MR. CHIER IS NOT PRESENT.)

5
6 THE COURT: THE RECORD WILL INDICATE THE PRESENCE OF
7 THE DEFENDANT AND COUNSEL AND MR. LIVESAY.

8 YOU MAY CONTINUE.

9 MR. BARENS: GOOD AFTERNOON, YOUR HONOR.

10
11 CURT LIVESAY,

12 CALLED AS A WITNESS BY THE DEFENDANT, HAVING BEEN PREVIOUSLY
13 DULY SWORN, RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

14
15 EXAMINATION (CONTINUED)

16 BY MR. BARENS:

17 Q MR. LIVESAY, I AM STILL REFERENCING THE FOURTH
18 PAGE OF MR. WAPNER'S MEMORANDA THAT WE WERE DISCUSSING THIS
19 MORNING.

20 THE TENTH POINT LISTED ON PAGE 4 MAKES REFERENCE
21 TO THE FACT THAT THERE ARE NO OTHER CIRCUMSTANCES WHICH
22 EXTENUATE THE GRAVITY OF THE CRIME; DID YOU BELIEVE THAT WHEN
23 YOU READ THAT?

24 A WELL, I BELIEVE THAT THE HEAD DEPUTY WAS OF THAT
25 VIEW.

26 I BELIEVE THAT THERE IS ALWAYS SOME EXTENUATING
27 CIRCUMSTANCE, THE DEFENDANT'S BACKGROUND, THERE IS ALWAYS
28 SOMETHING ON BEHALF OF THE DEFENDANT THAT WOULD BE ADMISSIBLE

1 ON A PENALTY PHASE.

2 Q DID YOU MAKE ANY ATTEMPT TO INVESTIGATE ANY MATERIAL
3 THAT MIGHT HAVE INFLUENCED YOUR DECISION IN SEEKING THE DEATH
4 PENALTY?

5 A NO.

6 Q HAVE YOU EVER DONE THAT TYPE OF AN ACTIVITY WHEN
7 YOU HAVE SEEN THAT TYPE OF STATEMENT ON ONE OF THESE REPORTS?

8 A YES.

9 Q WHY DID YOU NOT IN THIS INSTANCE?

10 A I BELIEVE THAT THE CIRCUMSTANCES OF THE OFFENSE
11 WERE A PRIMARY FACTOR.

12 IT WOULD BE DIFFICULT FOR ME TO SPECULATE OF
13 FACTORS UNKNOWN TO THE TRIAL DEPUTY AND THE HEAD DEPUTY THAT
14 WOULD OVERCOME THE CIRCUMSTANCES OF THE OFFENSE.

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1 Q IN REFERENCE TO ITEM 10, WOULD YOU HAVE CONCERNED
2 YOURSELF OR DID YOU CONCERN YOURSELF WITH THE VICTIM, THE
3 CHARACTER OF THE ALLEGED VICTIM IN THIS INSTANCE, THE FACT
4 THAT HE WAS A SELF-PROFESSED CON MAN AND FACING FELONY CHARGES
5 AND HOMOSEXUAL AND A GENERAL NE'ER DO WELL DID THAT INFLUENCE
6 YOU AT ALL?

7 A I DON'T RECALL AN ALLEGATION ABOUT HIS HOMOSEXUAL
8 LIFESTYLE. BUT I DIDN'T CONSIDER THE INFORMATION ABOUT THE
9 VICTIM AS BEING A CON MAN AS OTHER CIRCUMSTANCES BUT AS A PART
10 OF THE CIRCUMSTANCES OF THE OFFENSE.

11 Q IN THE EXPRESSION "ATTENUATE THE GRAVITY OF THE
12 CRIME," THE FACT THAT HE WAS FACING CRIMINAL CHARGES OR THE
13 FACT THAT HE HAD A PRIOR CRIMINAL RECORD, WOULD NOT INFLUENCE
14 YOUR THINKING?

15 A WELL, NOT IN THAT CATEGORY. I CONSIDERED THAT
16 PART OF THE CIRCUMSTANCES HERE, THAT HE WAS KILLED BECAUSE
17 OF HIS CONDUCT. HIS CONDUCT BEING A CON MAN AND IN EFFECT,
18 PERPETRATING FRAUD UPON THE DEFENDANT. I DID CONSIDER THAT.

19 Q NOW MR. LIVESAY, YOU INDICATED EARLIER THAT ONE
20 OF THE THINGS THAT IMPRESSED YOU IN MAKING YOUR DECISION, WAS
21 THAT THERE WAS AN ELEMENT OF SOPHISTICATION IN THE PLANNING,
22 ALLEGEDLY OF THE HOMICIDE HERE?

23 A YES.

24 Q MR. LIVESAY, WOULD IT BE A FAIR STATEMENT THAT
25 MORE INTELLIGENT PEOPLE MIGHT ENGAGE THEMSELVES IN MORE
26 SOPHISTICATED PREPARATION FOR A CRIME?

27 A YES.

28 Q WOULD THAT BE YOUR EXPERIENCE OF THE MURDERS THAT

1 YOU HAVE HAD TO MAKE DECISIONS ABOUT?

2 A I WOULD SAY MOST OF THEM WERE LESS SOPHISTICATED
3 THAN THIS. THERE COULD BE A FEW MORE SOPHISTICATED.

4 Q AND THE ONES YOU ARE THINKING ABOUT WHEN YOU MAKE
5 THAT COMMENT, WHERE THERE WAS MORE SOPHISTICATION, COULD YOU
6 TELL ME WHETHER OR NOT IN THE MAJORITY OF THOSE CASES, THE
7 MAJORITY OF THOSE CASES, DID YOUR OFFICE SEEK THE DEATH PENALTY?

8 A THE ONE THAT COMES TO MIND, NO. AND AS I RECALL
9 THE SECOND ONE, YES.

10 Q SO YOU HAD A SPLIT THERE. COULD YOU TELL THE COURT
11 HOW YOU DISCRIMINATED IN MAKING YOUR DECISIONS IN THOSE TWO?

12 A THE FIRST THAT COMES TO MIND IS THE CASE INVOLVING
13 THE ISRAELI MAFIA.

14 Q I RECALL THAT. THE ZACHARIAH MATTER?

15 A YES.

16 Q SO YOU FOLKS IN THAT CASE, DID NOT SEEK THE DEATH
17 PENALTY, DID YOU?

18 A NOT ULTIMATELY. WE DID ORIGINALLY.

19 Q LATER ON, YOU AMENDED OR YOU RECANTED YOUR POSITION
20 AND SOUGHT LIFE WITHOUT?

21 A YES.

22 Q ZACHARIAH AS I RECALL, INVOLVED A DOUBLE HOMICIDE?

23 A YES.

24 Q IT INVOLVED DISMEMBERMENT OF THE VICTIMS?

25 A YES.

26 Q INVOLVED NARCOTICS TRANSACTIONS?

27 A YES.

28 Q WHY DIDN'T YOU SEEK THE DEATH PENALTY?

1 A WE DID UP UNTIL AS I RECALL, ONE OF THE TRIALS
2 STARTED.

3 AND WE AT THAT TIME, DISCOVERED IT WAS IMPOSSIBLE
4 TO PROVE OUR THEORY OF THE CASE WITH THE EVIDENCE WE HAD.

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1 Q BY MR. BARENS: WASN'T YOUR PROBLEM, MR. LIVESAY,
2 SOME BELIEF THAT YOU COULDN'T SHOW PREMEDITATION?

3 A I AM NOT SURE OF THAT ELEMENT IN THAT CASE.

4 Q WELL, IT IS MY UNDERSTANDING, YOU CAN CORRECT
5 ME, MR. LIVESAY, BUT IN THAT CASE, I BELIEVE THAT AT LEAST
6 THE PEOPLE IN THAT CASE INDICATED YOUR PRIMARY CONCERN WAS
7 YOU COULDN'T SHOW INTENT TO COMMIT A MURDER?

8 A I CAN'T RECALL THAT ELEMENT IN THAT CASE.

9 Q WHEN I TELL YOU THAT THE VICTIMS WERE SUMMARILY
10 AND SYSTEMATICALLY DISMEMBERED AND THEIR BODY PARTS
11 DISSEMINATED AROUND DOWNTOWN LOS ANGELES, THAT SOUNDS LIKE
12 PREMEDITATION, DOESN'T IT?

13 A YES, ON SOMEBODY'S PART.

14 Q YOU DID NOT SEEK THE DEATH PENALTY IN THAT CASE?

15 A ULTIMATELY, THAT'S CORRECT.

16 Q THERE WAS SIGNIFICANT PREMEDITATION IN THAT CASE,
17 WASN'T THERE, IN TERMS OF PLANNING?

18 A ABSOLUTELY, I THOUGHT SO.

19 Q IT WAS A SOPHISTICATED AMOUNT OF PLANNING, WOULDN'T
20 YOU SAY?

21 A WELL, THE PLANNING OF IT WAS RATHER SOPHISTICATED.
22 THE PERPETRATION DIDN'T MEET THE PLANNING STANDARDS, THOUGH.

23 Q I DOUBT VERY MUCH WE WOULD BE DISCUSSING THE
24 ZACHARIAH'S CASE HAD THE PREPARATION MATCHED THE PLANNING.

25 IN THAT CASE THEY LURED THE RUBINS OUT TO THE
26 BONAVENTURE HOTEL AND DID ALL OF THAT, IT WAS KIND OF A
27 COMPLICATED SERIES OF ACTIVITIES THEY WENT THROUGH IN
28 ESTABLISHING THAT CRIME.

1 A YES.

2 Q AND IT WAS CONSTRUCTED OVER A CONSIDERABLE PERIOD
3 OF TIME?

4 A I CAN'T RECALL THE DURATION BUT IT WAS AT LEAST
5 OVER A PERIOD OF A FEW DAYS.

6 Q IF NOT A WEEK, MR. LIVESAY?

7 A THAT IS POSSIBLE.

8 Q IN COMPARING THE AMOUNT OF PLANNING THAT WENT
9 INTO THE ZACHARIAH'S CASE CONTRASTED WITH WHAT YOU BELIEVE
10 THE AMOUNT OF PLANNING WHICH WAS ASSOCIATED WITH THE CRIME
11 ALLEGED IN THE MATTER BEFORE THE BENCH, HOW WOULD YOU COMPARE
12 THE ELEMENTS OF SOPHISTICATION?

13 A WELL, ON BALANCE, FAIRLY CLOSE.

14 THERE, THEY REALLY DIDN'T GO PAST THE SCENE EXCEPT
15 IN AN ATTEMPT TO DISMEMBER THE BODIES AND CAUSE A DISPOSITION
16 OF THE BODIES SO THEY WOULD NEVER BE IDENTIFIED.

17 HERE, ONE OF THE PERPETRATORS ASSUMED THE
18 IDENTITY OF THE VICTIM AND ACTUALLY MADE A NEW YORK TRIP AND,
19 HERE THE BODY OF THE VICTIM HASN'T BEEN RECOVERED.

20 WITH RESPECT TO THE OTHER PART OF IT, IT SEEMS
21 TO BE FAIRLY CLOSE.

22 Q WHEN YOU SAY THAT THE BODY OF THE VICTIM HASN'T
23 BEEN DISCOVERED, I PRESUME THEN YOUR MENTAL PROCESS INVOLVES
24 THAT YOU CONCLUDED PRIOR TO TRIAL THAT MR. LEVIN IS DEAD?

25 A YES.

26 Q YOU FEEL THAT IT IS APPROPRIATE TO DRAW THAT
27 CONCLUSION IN RECOMMENDING THE DEATH PENALTY PRIOR TO EITHER
28 FINDING A BODY OR GETTING A JURY TO MAKE A FINDING?

1 A YES.

2 Q WHY IS THAT?

3 A ON THE EVIDENCE HERE, I BELIEVE THAT WE CAN PROVE
4 THAT MR. LEVIN WAS KILLED.

5 Q AGAIN, BASED ON STATEMENTS YOU ARE ATTRIBUTING
6 TO THE DEFENDANT?

7 A YES.

8 Q MR. LIVESAY, CONTINUING ON WITH THE ELEVENTH ITEM,
9 I NOTICE IT SAYS "THE DEFENDANT IS AN INTELLIGENT YOUNG MAN",
10 DOES IT SAY THAT?

11 A YES.

12 Q DO YOU FEEL THAT INTELLIGENCE FACILITATES
13 REHABILITATION?

14 A YES.

15 Q WELL, LET ME STOP FOR A MOMENT AND GO TO THE FIFTH
16 PAGE OF THIS DOCUMENT. I NOTICE THAT YOUR DEPUTY SUGGESTS DEFENDANT IS
17 BEYOND REHABILITATION WITH THE ABILITY TO REHABILITATE MR. HUNT?

18 A YES.

19 Q WHY WOULD MR. HUNT NOT BE A CANDIDATE, ASSUMING
20 HE HAD DONE THIS, FOR REHABILITATION?

21 A WELL, IF HE HAD DONE THIS WITH THE PLANNING AND
22 THE CUNNING THAT APPARENTLY IT WAS CARRIED OFF, IT IS MY VIEW
23 THAT THE WRITER BELIEVED THAT IT WOULD BE VERY DIFFICULT TO
24 REHABILITATE HIM.

25 Q AND YOU JUST ADOPTED THAT VIEW?

26 A WELL, NOT ALTOGETHER THAT VIEW, BUT I DID ADOPT
27 THAT PART OF THE MEMORANDUM THAT WE COULD PROVE THE CASE.

28 Q WELL, DID YOU MAKE ANY ATTEMPT TO MAKE SOME

1 INDEPENDENT DECISION ABOUT REHABILITATION POSSIBILITY?

2 A YES.

3 Q DO YOU CONSIDER THE YOUTHFULNESS OF THE OFFENDER?

4 A WELL, YES IN CONJUNCTION WITH OTHER FACTORS.

5 Q DO YOU CONSIDER THE FACT THAT HE HAD NO PRIOR
6 CRIMINAL RECORD?

7 A YES.

8 Q DID YOU CONSIDER THE FACT THERE WERE NO PRIOR
9 ACTS OF VIOLENT CONDUCT?

10 A YES.

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1 Q WOULD YOU CONSIDER THE EDUCATIONAL ATTAINMENT OF
2 THE INDIVIDUAL?

3 A YES.

4 Q NOW MR. HUNT WOULD SHOW FAVORABLY ON EVERY ONE
5 OF THOSE CRITERIA, WOULDN'T HE?

6 A YES.

7 Q BUT YOU RECOMMENDED TO SEEK THE DEATH PENALTY?

8 A YES.

9 Q COULD YOU TELL ME ANY OTHER INSTANCE WHERE AN
10 INDIVIDUAL SHOWING A FAVORABLE ON AGE, EDUCATION, NO PRIOR
11 RECORD, NO PRIOR VIOLENCE CRIMES AND NO BODY IN THE CASE,
12 WHERE YOUR OFFICE SOUGHT THE DEATH PENALTY?

13 A ON ALL FACTORS EXCEPT THE LAST ONE. AND IF THAT
14 IS IN THE CONJUNCTION, I CAN'T RECALL A SPECIFIC CASE. SO
15 THEREFORE, I WOULD HAVE TO SAY NO TO THE QUESTION.

16 Q NOW, WOULD YOU CONSIDER IN WEIGHING AND CONTRASTING
17 FIGURES, THAT THOSE FIGURES I ENUMERATED WOULD BE SIGNIFICANT
18 OR HEAVILY WEIGHED FACTORS IN DETERMINING YOUR ABILITY TO
19 REHABILITATE THE DEFENDANT?

20 A IT WOULD BE IMPORTANT. I THIN --

21 Q ARE ALL OF THOSE FACTORS SUMMARILY OUTWEIGHED BY
22 THE CIRCUMSTANCES OF THE CRIME?

23 A YES.

24 Q ARE YOU TELLING THIS COURT THAT THE DETERMINATION
25 ENTIRELY RESTS ON THE CIRCUMSTANCES OF THE CRIME?

26 A YES.

27 Q IN OTHER WORDS, IN MAKING A DETERMINATION AS TO
28 WHETHER OR NOT YOU WERE GOING TO EXECUTE SOMEBODY, ALL THAT

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1 MATTERS IS JUST WHAT HE DID IN THE CRIME CONTEXT?

2 A NO. BUT IT IS POSSIBLE TO DO SOMETHING THAT WOULD
3 OUTWEIGH THE OTHER FACTORS IN MITIGATION.

4 Q EVEN IF WE HAD THE UNIQUE SITUATION WHERE ALL OF
5 THE OTHER FACTORS IN MITIGATION POINTED TOWARD LWOP?

6 A IT IS POSSIBLE.

7 THE COURT REPORTER: WHAT IS THAT?

8 MR. BARENS: LIFE WITHOUT POSSIBILITY OF PAROLE.

9 Q IS THAT TRUE?

10 A IT IS POSSIBLE.

11 Q HAD YOU EVER HAD THAT HAPPEN BEFORE, MR. LIVESAY?

12 A I BELIEVE SO.

13 Q YOU HAVE HANDLED HOW MANY? FIFTEEN HUNDRED CASES
14 SINCE YOU HAVE BEEN IN YOUR OFFICE, SIR?

15 A SPECIAL CIRCUMSTANCES CASES?

16 Q YES, SIR.

17 A NO, PROBABLY IN THE AREA OF 1,000.

18 Q ONE THOUSAND. TO MY PREVIOUS QUESTION, YOU
19 ANSWERED THAT YOU BELIEVED THAT YOU HAD HAD A SITUATION WHERE
20 THIS HAPPENED BEFORE?

21 A YES.

22 Q HOW MANY SITUATIONS DID YOU HAVE THAT BEFORE?

23 A JUST BY NAME, I CAN RECALL ONE.

24 Q ONE?

25 A YES.

26 Q ONE OUT OF ONE THOUSAND?

27 A WELL, BY NAME THAT I RECALL. I AM NOT SURE HOW
28 MANY THERE ARE IN THE POPULATION OF 1,000.

1 Q ONE? NOW, CONTINUING ON PAGE 5, YOUR DEPUTY
2 INDICATES THAT THE DEFENDANT WOULD POSE A GREAT DANGER TO
3 SOCIETY IF HE IS EVER RELEASED FROM PRISON. DID THAT INFLUENCE
4 YOU?

5 A YES.

6 Q WELL, WHAT IS LIFE WITHOUT POSSIBILITY OF PAROLE
7 ABOUT? ARE THOSE PEOPLE RELEASED?

8 A NOT PRESENTLY.

9 Q WELL, WE ARE DEALING IN THE PRESENT IN THIS CASE,
10 AREN'T WE?

11 A YES.

12 Q WELL, IF A SENTENCE OF LIFE WITHOUT WERE IMPOSED
13 IN THE MATTER UNDER PRESENT LAW, COULD THE DEFENDANT BE
14 RELEASED TO SOCIETY?

15 A NO.

16 Q WELL, WHAT WEIGHT DID YOU GIVE A FACTOR HERE THAT
17 HE WOULD FACE A DANGER TO SOCIETY IF HE WAS EVER RELEASED,
18 WHEN YOU KNOW THAT UNDER CURRENT LAW, HE COULDN'T BE RELEASED
19 IF YOU GAVE HIM LIFE WITHOUT?

20 A WELL, I THINK IT GOES TO THE ASSESSMENT OF THE
21 DANGER OF THE DEFENDANT.

22 Q BUT IF THE SYSTEM AND THE LEGAL BODY PRECLUDES
23 HIM FROM BEING RELEASED TO SOCIETY, WHAT IS THE NECESSITY FOR
24 THE DEATH PENALTY, WHEN ONCE AGAIN, WE HAVE A DEFENDANT WHERE
25 ALL OF THE CRITERIA BUT FOR CIRCUMSTANCES OF CRIME, CAN FORM
26 WITH THE CRITERIA YOU NEED FOR LIFE WITHOUT?

27 A I UNDERSTAND THAT. IF HE IS HELD FOR LIFE
28 IN PRISON, THEN HE WOULDN'T BE A DANGER TO SOCIETY, EXCEPT

1 TO SOCIETY'S PRISON STAFF.

2 Q IT DOESN'T SAY THAT.

3 A WELL, IN THOSE CASES, IT IS A COMMON ELEMENT FOR
4 ANYONE TO PROVE THAT INSIDE THE PRISON, HE WOULD NOT BE A
5 DANGER.

6 Q WELL, WE DON'T HAVE THE NECESSARY PRECEDENT
7 FOR THAT, SINCE MR. HUNT DOESN'T HAVE ANY PRISON RECORD?

8 A THERE ARE MANY FACTORS, MANY WAYS TO PROVE THAT
9 POINT TO THE TRIER OF FACT, WITHOUT SHOWING THE DEFENDANT'S
10 PAST CONDUCT IN PRISON.

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1 Q IT SAYS HERE THAT THE DEFENDANT HAS NO SENSE OF
2 MORALITY AND BELIEVES HE HAS DONE NOTHING WRONG. WHAT DID
3 YOU BASE YOUR CONCLUSION TO THAT EFFECT ON?

4 A WHAT I CAN SAY IS THAT IT WAS A BASIS THROUGHOUT
5 THE MEMORANDUM ABOUT HIS LEADING A GROUP AND IN EFFECT, CAUSING
6 PERSONS TO BELIEVE IN HIM AND HIS PHILOSOPHY.

7 Q WHAT PHILOSOPHY WAS THAT, MR. LIVESAY?

8 A IT WAS ONE DESCRIBED HERE AS I RECALL, AS PARADOX
9 PHILOSOPHY.

10 Q IS THAT A PHILOSOPHY THAT YOU THINK YOU UNDERSTAND?

11 A I NEVER HEARD OF IT BEFORE.

12 Q IS THERE SOMETHING PEJORATIVE OR NEGATIVE ABOUT
13 PARADOX PHILOSOPHY TO YOU?

14 A YES.

15 Q WHAT IS THAT?

16 A THE FIRST DISCUSSION I BELIEVE, OCCURRED ON PAGE
17 2 WHERE THE DEFENDANT WAS DESCRIBED AS A LEADER OF A FRATERNAL
18 AND BUSINESS ORGANIZATION COMPRISED OF FRIENDS THAT HE BELIEVED
19 HE WAS A WHIZ AT TRADING COMMODITIES AND THAT HE FORMED THIS
20 GROUP TO RAISE MONEY. HE HAD A PHILOSOPHY CALLED PARADOX,
21 THAT MEANT THAT THE ENDS JUSTIFY THE MEANS.

22 IT GOES ON TO DESCRIBE HOW HE WOULD CAUSE PEOPLE
23 TO INVEST LARGE SUMS OF MONEY WITH HIM, THAT HE WAS LOOKING
24 FORWARD TO RAISING MORE MONEY AT ALL TIMES. AND HE HAD USED
25 THE LATTER MONEY TO PAY OFF THE INVESTORS IN THE BEGINNING.

26 Q PAID OFF INVESTORS WITH THAT MONEY, INDEED. MR.
27 LIVESAY, ARE WE GOING TO GIVE MR. HUNT THE DEATH PENALTY
28 BECAUSE HE HAS A PHILOSOPHY TO WHICH YOU DO NOT SUBSCRIBE?

1 A NOT SOLELY.

2 Q NOT SOLELY, BUT DID THAT PLAY INTO IT?

3 A YES.

4 Q WHERE IN YOUR POLICY MEMORANDA, DO WE TALK ABOUT
5 GIVING PEOPLE THE DEATH PENALTY BECAUSE OF THEIR PHILOSOPHY?

6 A OBVIOUSLY, I BELIEVE THAT IT SAYS IN THE FIRST
7 CATEGORY ABOUT THE CIRCUMSTANCES OF THE OFFENSE, IF THERE IS
8 MOTIVATION.

9 Q MR. LIVESAY, YOU ARE NOT GOING TO TELL ME THAT
10 THE PEOPLE IN THE STATE OF CALIFORNIA, WISH TO EXECUTE PEOPLE
11 FOR THEIR PHILOSOPHY?

12 A ONLY FOR SPECIAL CIRCUMSTANCE MURDERS PERPETRATED
13 IN CERTAIN WAYS.

14 Q WELL, ARE THEY GOING TO WEIGHT THEIR PHILOSOPHY
15 AS AN ELEMENT IN WHETHER WE DETERMINE TO KILL THEM?

16 A IF IT IS INTERWOVEN WITH THE OFFENSE, YES.

17 Q WELL, I DON'T SEE IN YOUR MEMORANDUM ANYTHING THAT
18 SAYS PARADOX PHILOSOPHY SAYS THAT WE KILL PEOPLE.

19 ISN'T PARADOX PHILOSOPHY IN HERE REFERENCED AS
20 A TYPE OF BUSINESS STRATEGEM?

21 A I READ IT AS NOT ONLY A BUSINESS STRATEGEM PERHAPS,
22 BUT AS A JUSTIFICATION FOR THE KILLINGS HERE.

23 Q WELL, YOU READ THAT INTO IT?

24 A YES.

25 Q NOW, YOU DIDN'T READ ANYTHING HERE THAT SAID THE
26 PARADOX PHILOSOPHY HAS IMPLICIT IN IT THAT YOU GO OUT TO KILL
27 PEOPLE?

28 A NO.

1 Q BUT YET, YOU IMPLIED THAT?

2 A YES.

3 Q DID YOU HAVE A BASIS IN FACT UPON WHICH TO
4 IMPLY THAT?

5 A I BELIEVE SO.

6 Q WAS IT BASED ON THE GESTALT YOU FELT, OF THE WHOLE
7 CIRCUMSTANCES HERE OR SOMETHING?

8 A NEXT TWO OR THREE PAGES OF THE MEMORANDUM.

9 Q IN OTHER WORDS, THE REITERATION OF THE FACT THAT
10 THE HOMICIDE ALLEGEDLY OCCURRED? YOU SAW THAT AS A FULFILL-
11 MENT OF A MANIFESTO OF PARADOX PHILOSOPHY?

12 A WELL, YES. HIS LEADERSHIP OF THE GROUP. HIS BEING
13 ABLE TO OBTAIN ASSISTANCE FROM OTHERS AND KILLING THOSE WITH
14 WHICH HE DISAGREED.

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1 Q WELL, IT DOESN'T SAY ANYWHERE HERE, DOES IT, THAT
2 ANY OF THESE PEOPLE DISAGREED WITH MR. HUNT?

3 A WELL, I BELEIVE MR. LEVIN DID.

4 Q WHERE DOES IT SAY THAT?

5 A WELL, WHEN MR. LEVIN SET UP A FRAUD, I BELIEVE
6 THIS IS INCONSISTENT IN WHAT EACH OF THEM BELIEVED.

7 Q COULD IT HAVE BEEN THE OTHER SIDE OF THAT, THAT
8 MR. LEVIN FOR JUST REASONS OF HIS OWN, WAS PERPETRATING ANOTHER
9 FRAUD THAT WAS CONSISTENT WITH THE WAY MR. LEVIN ACTED
10 THROUGHOUT HIS LIFE?

11 A EXCEPT IN THIS CASE, I DIDN'T SEE ANY ACTUAL MONEY
12 FLOWING TO LEVIN.

13 Q YOU DIDN'T SEE ANY MONEY FLOWING TO ANYBODY, DID
14 YOU?

15 A I AM NOT SURE OF THAT ONE. ON THE OVERALL PICTURE,
16 YES. IT IS MY BELIEF THAT A GREAT DEAL OF MONEY HAD FLOWED
17 TO MR. HUNT IN HIS OPERATION AND THAT HE WAS UPSET AT LEVIN.

18 Q NOT INVOLVING MR. LEVIN?

19 A NO, NOT THAT I WAS AWARE OF.

20 Q BY THE WAY, THIS MONEY THAT MR. HUNT WOULD HAVE
21 OBTAINED FROM MR. LEVIN, IF YOU WANT TO SUBSCRIBE TO A BELIEF
22 THAT HOMICIDE OCCURRED TO GET MONEY HERE PURSUANT TO 211, WHERE
23 WAS THE MONEY SUPPOSED TO GO? WAS MR. HUNT SUPPOSED TO GET
24 IT OR ISN'T IT TRUE THAT THE INVESTORS WERE SUPPOSED TO GET
25 IT?

26 A COULD I HAVE JUST A MOMENT?

27 Q YES. ISN'T IT TRUE, TO SAVE YOU SOME TIME MR.
28 LIVESAY, THAT YOUR DEPUTY FAILED TO MENTION THAT RATHER

1 SALIENT FACT AS TO WHERE THE MONEY WAS SUPPOSED TO GO?

2 A I WOULD HAVE TO READ FROM THE BEGINNING. BUT IT
3 WAS MY UNDERSTANDING THAT THERE WAS IN A FICTITIOUS ACCOUNT
4 SET UP BY THE VICTIM --

5 Q NO. EXCUSE ME, MR. LIVESAY. I AM NOW REFERRING
6 TO WHERE THE MILLION FIVE THAT THE DEFENDANT WAS ALLEGEDLY
7 OBTAINING FROM LEVIN WAS SUPPOSED TO GO?

8 A NO. I BELIEVE THE DEPUTY DID INFORM ME OF THAT.

9 COULD I HAVE A MOMENT TO FIND THAT AREA?

10 (BRIEF PAUSE.)

11 THE WITNESS: IT IS MY BELIEVE THE DEPUTY TOLD ME THE
12 MONEY WAS TO GO TO -- WAS TO BE SOUGHT BECAUSE INVESTORS WERE
13 DEMANDING MONEY.

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BY MR. BARENS:

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1 Q WOULD IT SUGGEST TO YOU THAT THE PROCEEDS THEN,
2 IF YOU BELIEVE THIS, OF THE LEVIN MATTER WERE TO BE LEACHED
3 BACK TO THE INVESTORS?

4 A IT IS POSSIBLE.

5 Q AND NOT TO MR. HUNT, THAT IS POSSIBLE, IS IT?

6 A IT IS POSSIBLE.

7 Q IF I WERE TO PROVE TO YOU THAT THE MONEY FROM
8 LEVIN WAS NOT TO AGGRANDIZE TO HUNT'S BENEFIT AT ALL BUT,
9 RATHER, GO BACK TO THESE INVESTORS, WOULD THAT INFLUENCE YOU
10 IN DETERMINING WHETHER OR NOT WE SHOULD KILL MR. HUNT?

11 A WELL, NOT IN THAT MR. HUNT WAS NOT ATTEMPTING
12 TO OBTAIN THE MONEY FOR HIS OWN BENEFIT.

13 Q THE FACT THAT HUNT WAS ACTING THROUGH SOME
14 MISGUIDED ROBIN HOOD CONCEPT TO OBTAIN THESE FUNDS FOR THE
15 INVESTORS WOULD NOT INFLUENCE YOU IN DETERMINING WHETHER TO
16 KILL HIM?

17 A WELL, IF IT WERE A ROBIN HOOD CONCEPT, IT WOULD.

18 Q WELL, WE TAKE FROM A CON MAN --

19 THE COURT: WELL, WHO WAS THAT CHECK FOR A MILLION AND
20 A HALF TO GO TO, IT WAS MADE OUT TO A CORPORATION, WASN'T IT?

21 MR. BARENS: YES, YOUR HONOR.

22 THE COURT: AND THEY HAD AN AGREEMENT TO CONTEMPORANEOUSLY,
23 WITH THE EXECUTION OF THE CHECK --

24 MR. BARENS: YES, YOUR HONOR.

25 THE COURT: -- SO THE FUNDS WOULD GO TO THE CORPORATION?

26 MR. BARENS: YES. THE CHECK WAS NEVER MADE OUT TO
27 MR. HUNT. IT WAS MADE OUT TO A CORPORATE ENTITY WITH THE
28 INVESTORS.

15-2
1 THE COURT: OBVIOUSLY, MR. HUNT HAD A TREMENDOUS
2 INTEREST IN THAT PARTICULAR CORPORATION, DIDN'T HE?

3 MR. BARENS: NO.

4 MR. HUNT WAS IN FACT WAS NOT A SHAREHOLDER, YOUR
5 HONOR.

6 THE COURT: WHO WERE THE SHAREHOLDERS?

7 MR. BARENS: A VARIETY OF INVESTORS THAT YOUR HONOR
8 WILL LIKELY MEET AS WE PROCEED OR THEIR ACCOUNTANTS, YOUR
9 HONOR.

10 THE COURT: ALL RIGHT.

11 Q BY MR. BARENS: IN ANY EVENT, MR. LIVESAY, WOULD
12 IT INFLUENCE YOU, KNOWING THAT MR. HUNT WAS NOT GOING TO GET
13 A SOU, OF THAT MONEY?

14 A WELL, YES, IT WOULD.

15 Q WOULD WE STILL WANT TO KILL HIM?

16 A I BELIEVE SO.

17 Q EVEN THOUGH THE SENSIBLE GAIN FROM THIS
18 TRANSACTION WAS TO STEAL FROM A CON MAN TO REPAY INVESTORS
19 WHO WOULD OTHERWISE LOSE MONEY?

20 A THE WAY I READ THE MEMO, IT WAS TO MR. HUNT'S
21 BENEFIT.

22 Q IF YOU WOULD ANSWER MY QUESTION.

23 A I AM SORRY, COUNSEL.

24 Q GIVEN THOSE FACTS, DO WE KILL HIM?

25 A COULD I HEAR THOSE FACTS AGAIN?

26 Q THE FACTS ARE, ASSUMING ARGUENDO JUST FOR THIS
27 HYPOTHETICAL, THE DEFENDANT TAKES MONEY FROM A KNOWN CON MAN,
28 A GUY FACING FELONY CHARGES, ET CETERA, FOR THE SOLE PURPOSE

15- 1 OF PAYING BACK INVESTORS WHO WOULD OTHERWISE LOSE THEIR
2 INVESTMENT AND THE DEFENDANT HAS NO FINANCIAL GAIN OF A
3 PERSONAL NATURE WHATSOEVER, ASSUMING THOSE FACTS, DO WE KILL
4 THE DEFENDANT?

5 A I WOULD ASK WHY DID HE DO IT?

6 Q IF IT WERE ESTABLISHED IT WAS DONE OUT OF A
7 SPIRIT OF MORAL RESPONSIBILITY TO THE INVESTORS.

8 A PROBABLY NOT.

9 Q DON'T KILL HIM?

10 A YES.

11 Q THE FACTS AS YOU SEE THEM IN THIS MEMORANDA DO
12 NOT DISPUTE THE FACT, DO THEY, THAT THE INVESTORS WERE TO
13 RECEIVE THE MONEY, AND HIS HONOR HAS REFERENCED THE CHECK
14 WAS NOT MADE OUT TO THE DEFENDANT, AND THERE WAS A
15 CONTEMPORANEOUS SPLIT ON AN OPTION AGREEMENT FOR AN INVESTMENT,
16 WOULD THAT INFLUENCE YOU?

17 A YES.

18 Q NOW, MR. LIVESAY, YOU TESTIFIED THAT YOU HAVE
19 SEEN ABOUT A THOUSAND OF THESE SPECIAL CIRCUMSTANCES CASES
20 SINCE YOU HAVE BEEN PURSUING THE ACTIVITY YOU ARE PRESENTLY
21 ENGAGED IN; IS THAT CORRECT?

22 A YES.

23 Q AND IN HOW MANY OF THOSE INSTANCES HAVE YOU
24 VETOED OR OVERRULED A DEPUTY'S RECOMMENDATION TO SEEK THE
25 DEATH PENALTY?

26 A IT IS AN ESTIMATE. I WOULD GUESS PROBABLY
27 5 PERCENT OF THEM.

28 Q FIFTY OUT OF THE THOUSAND?

5-4
1 A YES.

2 Q WAS THERE ANY PECULIARITY OR COMMON DENOMINATOR
3 TO THOSE 50 THAT YOU COULD EXPRESS TO ME, SIR?

4 A PROBABLY THE MOST COMMON IS THAT SOMEBODY ALONG
5 THE LINE DISAGREED BUT --

6 Q SOMEONE OTHER THAN YOURSELF?

7 A YES.

8 Q WHAT ABOUT IF YOU WERE THE ONLY ONE WHO DISAGREED?

9 A I THINK I PROBABLY WOULD HAVE DONE THE SAME THING.

10 Q MR. LIVESAY, HAVE YOU EVER BEEN THE ONLY ONE WHO
11 DISAGREED?

12 A YES, I HAVE.

13 Q HOW MANY OF THE 50 WERE YOU THE ONLY ONE?

14 A FOR OVERRULING THE DEATH PENALTY?

15 Q YES.

16 A I DON'T KNOW PRECISELY. I WOULD SUPPOSE IT WOULD
17 BE IN THE LOWER RANGE, MAYBE 10 PERCENT OF THAT POPULATION.

18 Q SO NOW WE ARE DOWN TO TALKING ABOUT FIVE OUT OF
19 A THOUSAND?

20 A WHERE NOBODY ELSE DISAGREED, YES.

21 Q FIVE OUT OF A THOUSAND?

22 A YES.

23 Q NOW, THERE ARE WHAT, A HUNDRED AND FIFTY DEPUTIES
24 OUT THERE SUPPLING THESE SPECIAL CIRCUMSTANCES CASES TO YOU?

25 A NO.

26 Q HOW MANY?

27 A THE HEAD DEPUTIES SUPPLY THE INITIAL MEMO. THERE
28 ARE ONLY APPROXIMATELY 25 TO 28 OF THOSE PEOPLE.

5-7
1 Q THAT WHAT, SIR?

2 A SUPPLY THIS INITIAL MEMORANDUM.

3 Q YOU MEAN SIMILAR TO THE MEMORANDUM YOU GOT HERE?

4 A YES.

5 Q ALL OF THOSE PEOPLE HAVE MADE DECISIONS BY THE
6 TIME IT GETS TO YOU?

7 A YES.

8 Q AND THOSE 28 OR 25 PEOPLE, AS IT MAY BE, WOULD
9 HAVE PROVIDED YOU WITH A THOUSAND CASES YOU MADE DECISIONS
10 ON?

11 A YES.

12 Q AND OUT OF THOSE FIVE TIMES, YOU UNILATERALLY
13 OVERRULED THE REQUEST FOR THE DEATH PENALTY?

14 A CASES WHERE I WAS THE ONE WHO DISAGREED WITH THE
15 OTHERS, YES.

16 I DON'T KNOW IF THAT IS UNILATERALLY.

17 IT WAS BASED ON THE INFORMATION I HAD.

18 Q AND ALL OF THE OTHER TIMES YOU DO WHAT THE DEPUTY
19 REQUESTS?

20 A NO.

21 THAT IS JUST WITH RESPECT TO THE CASES WHERE A
22 DEPUTY RECOMMENDED SOMETHING OTHER THAN DEATH AND I DECIDED
23 DEATH.

24 Q HOW ABOUT THE OTHER WAY AROUND, HOW MANY TIMES
25 OUT OF A THOUSAND HAVE YOU DETERMINED THAT THERE SHOULD NOT
26 BE A DEATH PENALTY?

27 A WHERE EVERYBODY ELSE HAS RECOMMENDED --

28 Q THE DEATH PENALTY.

5-c
1 A -- THE DEATH PENALTY?

2 I WOULD VENTURE TO SAY THAT THE NUMBER IS A LITTLE
3 BIT HIGHER. I WOULD SAY NO DEATH PENALTY WHERE SOMEBODY ELSE
4 IS RECOMMENDING THE DEATH PENALTY IN, LET'S SAY, THE FIVE
5 CASES.

6 Q FIVE OUT OF A THOUSAND?

7 A THE OTHER WAY AROUND, WHERE I AM RECOMMENDING
8 THE DEATH PENALTY AND EVERYBODY ELSE IS SAYING LIFE WITHOUT
9 WOULD BE A FEWER NUMBER OF CASES.

10 Q ON THOSE OCCASIONS WHEN YOU DETERMINED NOT TO
11 SEEK THE DEATH PENALTY, ISN'T IT TRUE THAT THE COMMON THREAD
12 AMONG ALL OF THOSE CASES WAS THE FACT THAT YOU HAD AN
13 EVIDENTIARY PROBLEM?

14 A NOW THAT WAS WITH RESPECT TO THE ENTIRE POPULATION,
15 YES.

16 Q AND IT DIDN'T HAVE TO DO AT ALL WITH YOUR OTHER
17 CRITERIA WHICH YOU TALKED ABOUT IN THE LEO CASE ABOUT
18 AGE AND PRIOR CONVICTIONS?

19 A WITH RESPECT TO SPECIAL CIRCUMSTANCE CASES, NOT
20 JUST THE TWO GROUPS WHERE I DISAGREED WITH PEOPLE, THE VAST
21 MAJORITY HAVE BEEN EVIDENTIARY PROBLEMS.

22 Q WHERE I AM LOST, MR. LIVESAY, IS WE ARE DEALING
23 WITH PEOPLE'S LIVES AND DEATHS, YOU DON'T SEEM TO, IN THE
24 LONG RUN, REALLY GIVE MUCH WEIGHT AT ALL TO AGE, EDUCATION,
25 PRIOR CONVICTIONS, PRIOR CRIMINAL RECORD WHEN IT REALLY GETS
26 DOWN TO IT, DO YOU?

27 A IN CLOSE CASES, THEY MAKE THE DIFFERENCE.

28 Q BUT CIRCUMSTANCES OF THE CRIME OVERWHELM MOST

5- 1 DECISIONS, DON'T THEY?

2 A IN MOST CASES, YES.

3 MR. BARENS: THANK YOU, MR. LIVESAY.

4 THE COURT: ALL RIGHT.
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EXAMINATION

1
2 BY MR. WAPNER:

3 Q DOES THE DISTRICT ATTORNEY'S OFFICE HAVE POLICY
4 GUIDELINES THAT YOU USE IN MAKING THE DETERMINATION TO SEEK
5 OR NOT SEEK THE DEATH PENALTY?

6 A YES.

7 Q AND ARE THEY CONTAINED IN THE DISTRICT ATTORNEY'S
8 LEGAL POLICY MANUAL, SECTION 2-C?

9 A YES.

10 MR. WAPNER: YOUR HONOR, I HAVE A COPY OF THAT THAT
11 I WOULD LIKE TO MARK, PERHAPS AS A COURT EXHIBIT WHICH WOULD
12 BE COURT'S 2, I THINK.

13 THE COURT: ALL RIGHT, 2.

14 MR. WAPNER: I PREVIOUSLY PROVIDED THIS TO COUNSEL.

15 MAY IT BE RECEIVED IN EVIDENCE, YOUR HONOR?

16 THE COURT: YES.

17 INCIDENTALLY, A REFERENCE HAS BEEN MADE TO THE
18 REPORT THAT YOU HAD MADE TO MR. LIVESAY. THAT IS NOT IN
19 EVIDENCE, IS IT, OR DO YOU INTEND TO SUBMIT IT IN EVIDENCE?

20 WHAT I AM THINKING IS WE HAVE EXAMINATION,
21 DEFENSE COUNSEL HAD POINTED OUT CERTAIN AREAS IN THAT
22 MEMORANDUM BUT ALL OF THE REASONS WHY MR. LIVESAY HAS
23 RECOMMENDED THE DEATH PENALTY HAVE NOT BEEN STATED ON THE
24 RECORD. HAVE WE GOT IT ON THE RECORD ANYWHERE?

25 MR. WAPNER: WELL, I WAS INTENDING TO ELICIT THAT.

26 IF THE COURT IS SUGGESTING WE MAKE A COPY OF THE
27 MEMORANDA PART OF THE RECORD, I WOULD BE HAPPY TO DO THAT.

28 THE COURT: ALL RIGHT. THAT WOULD SET FORTH HIS REASONS

5A- 1 FOR RECOMMENDING THE DEATH PENALTY; IS THAT IT?

2 MR. WAPNER: WELL, PERHAPS WE CAN GO INTO THAT IN A
3 MINUTE.

4 THE COURT: GO AHEAD.

5 Q BY MR. WAPNER: MR. LIVESAY, SHOWING YOU WHAT
6 APPEARS TO A COPY OF A MEMORANDUM; WOULD YOU TAKE A LOOK AT
7 THAT.

8 A YES, I HAVE.

9 Q AND DOES THAT APPEAR TO BE WITH CERTAIN PAGES --
10 PRELIMINARY PAGES MISSING -- A COPY OF THE MEMORANDUM,
11 INCLUDING THE PORTION THAT SETS OUT THE FACTUAL CIRCUMSTANCES
12 OF THE OFFENSE?

13 A YES.

14 Q WHAT ARE THE PAGES THAT ARE MISSING FROM THAT
15 MEMORANDUM THAT ARE CONTAINED IN THE MATERIALS THAT YOU HAVE
16 IN FRONT OF YOU?

17 THE COURT: THAT ARE CONTAINED WHERE? CONTAINED IN
18 WHAT?

19 MR. WAPNER: CONTAINED IN THE INFORMATION THAT HE HAS
20 BROUGHT, THERE ARE CERTAIN THINGS THAT MR. LIVESAY HAS IN
21 FRONT OF HIM APPARENTLY THAT ARE MISSING FROM THE COPY.

22 THE WITNESS: THE ONLY PAGE I RECOGNIZE AS MISSING IS
23 THAT ONE CALLED "CAPITAL CASE SPECIAL MEMORANDUM" WHICH HAS
24 THE DATES, SIGNATURE AND INDICATIONS OF PROCEDURALLY WHEN
25 THE COMPLAINT WAS FILED, THROUGH THE STEPS OF OBTAINING A
26 DECISION FROM ME.

27

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6-1

1 Q THAT PIECE OF PAPER THAT YOU ARE REFERRING TO IS
2 PRETTY MUCH A HOUSEKEEPING INFORMATION SHEET SO THAT THE
3 DISTRICT ATTORNEY'S OFFICE CAN KEEP TRACK OF WHAT DECISIONS
4 WERE MADE BY WHAT PEOPLE ON WHAT DAYS?

5 A YES.

6 MR. WAPNER: YOUR HONOR, MAY A COPY OF THE MEMORANDUM
7 BE MARKED AS COURT'S 3?

8 THE COURT: 3, YES. SO MARKED.

9 MR. WAPNER: MAY IT BE RECEIVED?

10 THE COURT: YES.

11 Q BY MR. WAPNER: ARE THE FACTORS THAT ARE CONSIDERED
12 IN MAKING A DECISION AS TO THE DEATH PENALTY AND THAT ARE SET
13 OUT IN SECTION 2-C OF LEGAL POLICIES MANUAL, ALSO CONTAINED
14 IN THE SECTION 190 OF THE PENAL CODE?

15 A YES.

16 Q ALL RIGHT. AND THOSE ARE THE FACTORS IN SECTION
17 190.3 OF THE PENAL CODE OR THE FACTORS IN AGGRAVATION AND
18 FACTORS IN MITIGATION THAT THE JURY IS PERMITTED TO CONSIDER
19 IN MAKING THIS DETERMINATION ON THE DEATH PENALTY?

20 A YES.

21 Q CAN YOU RELATE TO THE COURT BRIEFLY, THE REASON
22 THAT YOU MADE A DETERMINATION TO SEEK THE DEATH PENALTY IN
23 THIS CASE?

24 A AT THE TIME THE DECISION WAS MADE, THE ONLY
25 INFORMATION I HAD ABOUT THE EVIDENCE, WHAT COULD BE PROVED
26 IN THE CASE, WAS THAT REFLECTED IN THE MEMORANDUM.

27 THE PRIMARY REASON WAS THE CIRCUMSTANCES OF THE
28 OFFENSE, THE SOPHISTICATION OF THE PLAN AND THE PERPETRATION

1 OF IT.

2 SECONDARY TO THAT WERE THE OTHER OFFENSES THAT
3 IF NOT CHARGED, SOME WITNESSES COULD BE CALLED TO PROVE. THE
4 PLANNING APPEARS TO BE ONE WHERE MR. HUNT IN AN EFFORT TO
5 PERPETUATE HIS INVESTMENT COMPANY, WAS WILLING TO KILL ANYONE
6 WHO THWARTED THAT EFFORT.

7 IT WAS MY UNDERSTANDING THAT HE PERHAPS LEGITIMATELY,
8 THOUGHT THAT -- HAD AN HONEST BELIEF IF YOU WILL, THAT HE HAD
9 MADE A SUBSTANTIAL NUMBER OF MILLIONS OF DOLLARS IN A
10 COMMODITIES TRADING ACCOUNT, TO DISCOVER THAT THE VICTIM HAD
11 PERPETRATED NOT A FRAUD, BUT AT LEAST A VERY LARGE PRACTICAL
12 JOKE.

13 I DID NOT BELIEVE THAT THE MONEY WAS TO GO TO THE
14 VICTIM FOR HIS FALSE ACCOUNT AND AS I UNDERSTOOD IT, THE VICTIM
15 AT NO TIME, INTENDED TO GIVE THE DEFENDANT MONEY.

16 BUT ONCE THE DEFENDANT DISCOVERED THAT THERE WAS
17 NO SUCH ACCOUNT, THAT HE ATTEMPTED TO OBTAIN MONEY FROM THE
18 VICTIM.

19 A SCHEME WAS SET UP WITH A CO-DEFENDANT TO MEET
20 THE VICTIM AT HIS HOME, HAVE THE CO-DEFENDANT APPEAR LATER,
21 REPRESENT HIMSELF AS A HITMAN FOR THE MAFIA AND THEREAFTER,
22 OBTAIN A MILLION AND A HALF DOLLARS; THAT THE DEFENDANT DURING
23 THE CONVERSATION WITH THE VICTIM, ASKED IF THAT WAS ENOUGH.

24 ULTIMATELY, THEY OBTAINED FROM THE VICTIM, A CHECK.
25 THE VICTIM WAS KILLED. THE CO-DEFENDANT FOR PURPOSES OF A
26 TRIP TO COVER THE OFFENSE, SOUGHT TO TRAVEL IN THE NAME OF
27 THE VICTIM, TO COVER THEIR HAVING KILLED THE VICTIM.

28 THE VICTIM'S BODY WAS DISPOSED OF AND HAS NOT BEEN

1 RECOVERED.

2 AND THE DEFENDANT SPOKE IN FRONT OF OTHERS ABOUT
3 HIS PERPETRATION OF THIS OFFENSE AND SOME OTHER OFFENSES THAT
4 MIGHT BE USED AT THE PENALTY PHASE.

5 THE COURT: PARDON ME. IN CONNECTION WITH THAT, DIS-
6 CLOSURE BY THE DEFENDANT ALLEGEDLY IN FRONT OF MEMBERS OF HIS
7 GROUP, WASN'T THERE SOME STATEMENT MADE, IF I RECALL, THAT IF
8 THEY DISCLOSED TO ANYBODY ELSE, THAT HE WOULD DO AWAY WITH
9 THEM?

10 THE WITNESS: I KNEW THAT. WHETHER I KNEW IT AT THE
11 TIME I MADE THE DECISION, I WOULD HAVE TO LOOK AT THE MEMO.

12 I HAVE SINCE DISCUSSED THE CASE WITH COUNSEL.

13 MR. BARENS: FOR THE RECORD, THE DEFENSE WOULD MOST
14 VIGOROUSLY DISAGREE THERE WAS ANY SORT OF ANNOUNCEMENT THAT
15 WOULD BE INTRODUCED.

16 THE COURT: WELL, I AM TELLING YOU NOW WHAT THE TESTIMONY
17 WAS. IT WASN'T -- WASN'T THERE TESTIMONY AS I RECALL IN THE
18 PITTMAN CASE, THAT WHEN THIS CONFERENCE TOOK PLACE, THE
19 DISCLOSURE WHICH ALLEGEDLY WAS MADE BY THE DEFENDANT TO HIS
20 INNER-CIRCLE, THAT THEY WOULD KEEP QUIET ABOUT IT OR THE SAME
21 THING MIGHT HAPPEN TO THEM? WASN'T THERE SOMETHING ABOUT
22 THAT?

23 MR. BARENS: YOUR HONOR, I COULD PRESUME YOUR HONOR
24 WOULD NOT BE IMPRESSED BY THAT STATEMENT IN TERMS OF MR.
25 HUNT RECEIVING A FAVORABLE TRIAL HERE, AS THERE HAS BEEN NO
26 EVIDENCE TO THAT EFFECT IN THIS CASE.

27 THERE HAS BEEN NO EVIDENCE AT ALL.

28 THE COURT: WELL, I CAN'T BE DEAF TO WHAT I HEARD IN

1 THE PITTMAN CASE.

2 MR. BARENS: QUITE SO.

3 THE COURT: I CAN'T BE DEAF TO THE FACT THAT IN THIS
4 PARTICULAR CASE, THEY WILL TESTIFY TO THE SAME CONTENT OF THAT
5 CONVERSATION.

6 I CAN'T BE DEAF TO THE FACT THAT THIS IS WHAT WAS
7 SAID AT THIS PARTICULAR MEETING.

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16-B

1 MR. BARENS: I HAVE NO DOUBT THAT YOUR HONOR --

2 THE COURT: THAT WOULD BE A FACTOR IF IT WERE TRUE.

3 THAT WOULD BE A FACTOR TO INDICATE A WEIGHING IN FAVOR OF
4 SEEKING THE DEATH PENALTY IN THIS CASE, BECAUSE IT GOES TO
5 THE THREATS WHICH WERE MADE TO THE OTHER PEOPLE.

6 MR. BARENS: WELL, CERTAINLY YOUR HONOR, THE FACT THAT
7 YOU JUST INTRODUCED TO MR. LIVESAY, ISN'T IN THIS MEMORANDUM
8 AT ALL.

9 THE COURT: I DON'T KNOW. I HAVE NOT READ THE
10 MEMORANDUM. I ASSUME THAT THERE WAS IN THIS MEMORANDUM --
11 IF IT ISN'T, THAT IT IS A FACT WHICH I CAN TAKE JUDICIAL NOTICE
12 ALMOST.

13 MR. BARENS: NO. BUT SEE --

14 THE COURT: THERE WAS SUCH TESTIMONY.

15 MR. BARENS: I UNDERSTAND THAT. I AM SURE YOUR HONOR
16 IS AWARE OF THE FACT THAT UPON CROSS-EXAMINATION, A WITNESS
17 MAKING THAT STATEMENT IN THE PRIOR TRIAL THAT YOUR HONOR MIGHT
18 HAVE HEARD, COULD BE IMPEACHED --

19 THE COURT: NO QUESTION ABOUT IT. SO COULD ALL OF THE
20 ALLEGATIONS MADE HERE, EVERYTHING ON WHICH MR. LIVESAY HAS
21 RELIED TO RECOMMEND THE DEATH PENALTY IN THIS CASE MAY ALL
22 BE IMPEACHED.

23 BUT THAT IS NOT THE CRITERIA THAT HE CAN BE
24 IMPEACHED.

25 MR. BARENS: I AM PUZZLED AS TO WHY YOU WOULD INTRODUCE
26 THAT FACT AT THIS JUNCTURE, APPARENTLY ASSISTING MR. LIVESAY --

27 THE COURT: WELL, IF IT IS TRUE THAT DURING ALL OF THIS,
28 THERE WAS A MEETING AT WHICH IT WAS DISCLOSED ALLEGEDLY BY

6P
1 THE DEFENDANT, THAT JIM AND I, THE TWO OF THEM, HAD DONE AWAY
2 WITH MR. LEVIN AND A WARNING TO THOSE PRESENT HEREIN, THAT
3 THE SAME THING MIGHT HAPPEN TO THEM IF THIS IS DISCLOSED TO
4 ANYBODY, THAT IS A FACT WHICH WOULD BE TAKEN INTO CONSIDERATION
5 IN ANY CIRCUMSTANCES.

6 MR. BARENS: I REALIZE THAT. BUT YOUR HONOR, MR. LIVESAY
7 HAD MADE HIS DETERMINATION TO SEEK THE DEATH PENALTY AND I
8 FEEL WE HAVE TO MAKE A DECISION ON THE APPROPRIATENESS OF
9 HIS DECISION-MAKING PROCESS WITHOUT THAT FACT.

10 THE COURT: THEY AREN'T FORECLOSED BY THE MEMORANDUM
11 AND THE DETERMINATION WHICH THEY MADE.

12 HAVE YOU NOT RECEIVED AMENDMENTS FROM TIME TO
13 TIME AND AMENDED YOUR STATEMENTS FROM TIME TO TIME AS FACTS
14 BECAME CLEAR TO YOU?

15 THE WITNESS: I HAVE DISCUSSED THAT MATTER WITH THE
16 TRIAL COUNSEL. THERE ARE TWO THINGS IN THE MEMO THAT INDICATE
17 THAT THE DEFENDANT THE CODEFENDANT ADVISED OTHERS IN THE GROUP
18 OF TWO CRIMES --

19 THE COURT: MR. LIVESAY, I AM TALKING ABOUT IN THAT
20 PARTICULAR CONFERENCE AS I RECALL, THERE WAS ALSO A THREAT
21 MADE ALLEGEDLY BY THE DEFENDANT THAT THE SAME THING WOULD
22 HAPPEN TO THESE OTHER PEOPLE IF THEY DISCLOSED ANYTHING THAT --

23 THE WITNESS: THAT WAS REFLECTED TWICE IN THE MEMO,
24 NOT THAT THREATS WERE MADE BUT THAT MEETINGS WERE CALLED AND
25 THEY WERE ADVISED THIS THIS DEFENDANT AND THE CODEFENDANT
26 HAD KILLED MR. LEVIN AND THAT THEY ATTEMPTED TO KILL
27 MR. SWARTOUT.

28 THE COURT: BUT THERE IS NOTHING IN YOUR MEMO AS TO

6B-3
1 WHAT ELSE THEY SAID AT THAT PARTICULAR MEETING?

2 THE WITNESS: NO.

3 THE COURT: ARE YOU FINISHED? YOU WILL HAVE A CHANCE.

4 MR. BARENS: THANK YOU.

5 MR. WAPNER: THANK YOU.

6 Q MR. LIVESAY, CALLING YOUR ATTENTION TO PAGE 3
7 OF THE MEMORANDUM, ON THE FOURTH FULL PARAGRAPH, WHERE IT
8 SAYS THE STATEMENT ABOUT --

9 THE COURT: WHICH MEMORANDUM ARE YOU TALKING ABOUT?

10 MR. WAPNER: THE COURT'S C, YOUR HONOR.

11 THE COURT: C OR 3?

12 MR. WAPNER: YES, PAGE 3.

13 THE COURT: I CAN'T READ IT, CAN YOU?

14 MR. BARENS: PAGE 3.

15 MR. WAPNER: IT IS THE PAGE NUMBERED 3 ON THE BOTTOM.

16 MR. BARENS: YES. IT IS NOT ACTUALLY THE THIRD PAGE.

17 YOU WILL COME TO IT. IT IS THE ONE WHICH IS NUMBER 3.

18 IT IS ABOUT THE SIXTH PAGE OR SO OF THE PACKET.

19 THE COURT: THE TYPING IS VERY, VERY BAD. I CAN'T MAKE
20 IT OUT.

21 MR. WAPNER: THE XEROXING IS BAD.

22 MR. BARENS: IT IS ACTUALLY THE EIGHTH PAGE OF THE
23 PACKET, YOUR HONOR.

24 THE COURT: ALL RIGHT. LET'S GO AHEAD.

25 Q BY MR. WAPNER: MR. LIVESAY, ON THE PAGE NUMBERED
26 3 AT THE BOTTOM IN THE FOURTH FULL PARAGRAPH- WHERE IT SAYS
27 THE STATEMENT ABOUT THE MEETING THAT OCCURRED AND MR. HUNT
28 SAID, DOES IT SAY ANYTHING IN THERE ABOUT THE THREATS THAT

1 WERE MADE OR ALLEGEDLY MADE TO THE WITNESSES?

2 A IS THAT THE PARAGRAPH THAT STARTS, "A FEW
3 WEEKS ..."

4 MR. WAPNER: YES.

5 THE COURT: I AM SORRY. I DON'T SEE WHERE THAT IS.

6 MR. WAPNER: MAY I APPROACH THE BENCH, PLEASE?

7 THE COURT: YES.

8 MR. BARENS: I DON'T SEE IT EITHER.

9 (BENCH CONFERENCE NOT REPORTED.)

10 Q BY MR. WAPNER: IS THERE ANYTHING IN THAT
11 PARAGRAPH ABOUT A THREAT TO KILL THE PEOPLE WHO HEARD THAT
12 ALLEGED STATEMENT?

13 A NO. I DON'T SEE IT. I DON'T SEE THAT EXPRESS
14 STATEMENT.

15 THE COURT: WELL, WHERE IS THAT? THERE ISN'T ANY SUCH
16 LANGUAGE.

17 MR. WAPNER: THAT'S RIGHT.

18 THE COURT: HUNT CALLED A MEETING OF THE BBC WHERE HE
19 SAID THAT THEY MIGHT MURDER LEVIN. PITTMAN WAS PRESENT AND
20 DENIED COMMITTING THE MURDER.

21 THIS ADOPTED ADMISSION AND HIS PRESENCE IN
22 NEW YORK USING LEVIN'S IDENTIFICATION AND FALSE NAME AND HIS
23 WHEREABOUTS AT THE TIME OF THE MURDER ARE PRIME EVIDENCE
24 AGAINST PITTMAN. BUT THERE IS NOTHING THERE ABOUT THREATS
25 BEING MADE.

26 MR. WAPNER: THAT IS EXACTLY RIGHT. THAT WAS THE POINT
27 OF ELICITING THAT TESTIMONY.

28 THE COURT: WHAT WAS THE POINT OF IT?

1 MR. WAPNER: TO CLARIFY WHETHER OR NOT THERE IS ANYTHING
2 IN THE MEMORANDUM --

3 THE COURT: THERE IS NOTHING IN THE MEMO WITH RESPECT
4 TO THOSE THREATS?

5 THE WITNESS: THAT'S CORRECT.

6 Q BY MR. WAPNER: THANK YOU. I DON'T KNOW IF YOU
7 HAD FINISHED ENUMERATING YOUR REASONS BASED ON THE
8 CIRCUMSTANCES OF THE EVENTS FOR SELECTING THE DEATH PENALTY.
9 IF YOU HAVE, I WILL ASK YOU ANOTHER QUESTION. IF YOU HAVE
10 NOT --

11 A THOSE WERE BASICALLY THE FACTORS REFLECTED IN
12 THE MEMORANDUM THAT HAS BEEN MARKED.

13 Q WOULD YOU BRIEFLY RELATE TO THE COURT, THE FACTS
14 OF THE CASE OF PEOPLE V. ACOSTA, THAT COUNSEL ASKED YOU ABOUT
15 THIS MORNING?

16 A THAT IS A CASE WHERE THE VICTIM, A BAR OWNER,
17 HAD GONE TO HIS ESTABLISHMENT TO OBTAIN THE NIGHT RECEIPTS.
18 HE RECEIVED A TELEPHONE CALL FROM HIS WIFE THAT
19 SHE, WHO LIVED NEARBY, HAD OBSERVED SOMEONE IN THE ALLEYWAY
20 HIDING.

21 ULTIMATELY, HE CHECKED AND DIDN'T SEE ANYBODY.
22 HE PICKED UP THE NIGHT RECEIPTS. HE ARMED HIMSELF WITH AN
23 18 TO 20-INCH STEEL BAR, ENTERED THE ALLEY, TO BE ACCOSTED
24 BY THE DEFENDANT.

25 AND ANOTHER WITNESS OBSERVED THE VICTIM APPROACH
26 THEREAFTER AND OBSERVED THE VICTIM FALLING. THE VICTIM HAD
27 BEEN STABBED ABOUT 15 TIMES. THE MONEY WAS GONE.
28

1 Q BY MR. WAPNER: AND IN THAT CASE, WHAT WAS THE
2 CASE WHERE THE DEFENDANT WAS ARRESTED THE NEXT DAY?

3 A I BELIEVE THAT STATEMENT WAS IN THE FOLLOWING CASE.

4 Q HOW WOULD YOU COMPARE YOUR DECISION NOT TO SEEK
5 THE DEATH PENALTY IN THAT CASE WITH YOUR DECISION TO SEEK THE
6 DEATH PENALTY IN THIS CASE?

7 A WELL, THAT CASE ON ITS FACTS IS ONE WHERE THE
8 VICTIM HIMSELF WAS ARMED AND ATTEMPTED TO THWART THE ROBBERY
9 AND IT WAS, AS ROBBERIES GO, SORT OF A STREET ROBBERY. IT
10 WAS ONE WHERE THE VICTIM WAS ARMED.

11 Q AND BY USING THE TERM "STREET ROBBERY," I ASSUME
12 THAT THAT CONNOTES ONE WITH A LOW DEGREE OF SOPHISTICATED?

13 A WELL, LESS PLANNING AND SOPHISTICATED THAN
14 OTHERS.

15 Q AND CAN YOU BRIEFLY RELATE THE FACTS OF PEOPLE
16 V. LAWRENCE ANTHONY, THE OTHER CASE YOU WERE ASKED ABOUT
17 THIS MORNING?

18 A THAT WAS THE CASE WHERE THE DEFENDANT ANTHONY AND
19 THE ACCOMPLICE ENTERED A CHECK-CASHING ESTABLISHMENT TO ROB
20 THE VICTIM. UPON THE DEMAND FOR MONEY, ANTHONY BEING THE ONLY
21 ONE ARMED, THE VICTIM REFUSED AND ANTHONY SHOT HIM TWICE, ONCE
22 IN THE NECK AND ONCE IN THE STOMACH. THE VICTIM LIVED A FEW
23 DAYS AND MADE A STATEMENT WHICH WAS LATER DECLARED A DYING
24 DECLARATION, STATING THE FACTS OF THE CONFRONTATION.

25 Q AND WOULD YOU RELATE YOUR DECISION NOT TO SEEK
26 THE DEATH PENALTY IN THAT CASE TO YOUR DECISION TO SEEK THE
27 DEATH PENALTY IN THIS CASE?

28 A WELL, IT WAS ONE WHERE, ALTHOUGH THERE WAS

7-2

1 PLANNING GOING INTO THE ROBBERY ITSELF, THE KILLING DIDN'T
2 APPEAR TO HAVE MUCH PLANNING IN IT DUE TO THE LOCATION OF THE
3 SHOT AND THE WAY IT WAS PERPETRATED. ONE PERSON WAS ARMED,
4 WENT INTO THE STORE WITH THE SECOND ONE; UPON REFUSAL, THEN
5 SHOOTING OCCURRED. THE TWO THEN LEFT THE VICTIM ON THE
6 PREMISES. THEY ENTERED A CAR THAT WAS OBSERVED, A TAG ON IT
7 WAS TAKEN AND THEY WERE TRACED.

8 THE EARLIER STATEMENT ABOUT BEING ARRESTED THE
9 NEXT DAY WAS IN FACT A MATTER RELATING TO THE ACOSTA CASE.

10 Q WHAT WAS THAT STATEMENT?

11 A THE DEFENDANT WAS OBSERVED STAGGERING IN A DRUNKEN
12 CONDITION BY AN OFFICER. THE DEFENDANT WAS CRYING AND
13 REPEATEDLY SAYING "I KNOW HE IS DEAD FOR A LOUSY HUNDRED BUCKS.
14 I DIDN'T MEAN TO KILL HIM".

15 Q WHAT AFFECT DID THAT HAVE IN THE ACOSTA CASE ON
16 YOUR DECISION NOT TO SEEK THE DEATH PENALTY?

17 A WELL, I BELIEVE IT DEMONSTRATED REMORSE ON THE
18 PART OF THE DEFENDANT THERE.

19 Q WAS THERE ANYTHING THAT YOU HAD IN FRONT OF YOU
20 IN MEMORANDUM THAT IS COURT'S C THAT INDICATED THAT THE
21 DEFENDANT IN THIS CASE IN ANY WAY WAS REMORSEFUL?

22 A NO.

23 Q DID EITHER MR. ACOSTA OR MR. ANTHONY HAVE A
24 PENDING CASE AGAINST THEM AT THE TIME OF THEIR CASES, ANOTHER
25 CASE FOR MURDER OR A WARRANT FOR MURDER?

26 A NO.

27 Q WITH REGARD TO YOUR CONSIDERATION ABOUT THE OUT-
28 STANDING WARRANT FOR MR. HUNT ON A MURDER CHARGE IN SAN MATEO

7-3

1 COUNTY, WHAT PART DOES THAT PLAY IN YOUR DETERMINATION TO SEEK
2 THE DEATH PENALTY; WHERE DOES THAT ENTER INTO THE DECISION?

3 A IT IS NOT DETERMINATIVE IN THE DECISION FROM THAT,
4 I WOULD EXPECT EITHER IF THAT CASE IS NOT LITIGATED, PARTS
5 OF THAT CASE CAN BE PROVED BOTH HERE IN THE PENALTY PHASE OR
6 IF THE CASE HAS BEEN LITIGATED, PERHAPS A CONVICTION ITSELF
7 OR THE WITNESSES CALLED THERE TO BE CALLED HERE IN A PENALTY
8 PHRASE.

9 WHAT I ASSUME FROM THE FACT THE CASE WAS CALLED
10 WAS THAT THERE WAS AT LEAST PROBABLE CAUSE TO PROVE THE OFFENSE
11 AND THE DEFENDANT'S CONNECTION TO IT.

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1 Q WITH REGARD TO THE QUESTION THAT YOU WERE ASKED
2 EARLIER ABOUT WHETHER OR NOT THE DEATH PENALTY WAS BEING
3 SOUGHT IN THE SAN MATEO COUNTY CASE, WERE YOU AWARE THAT THAT
4 WAS NOT A SPECIAL CIRCUMSTANCES CASE?

5 A I WAS NOT AWARE IT WAS OR WAS NOT.

6 Q THE MEMORANDUM THAT YOU HAVE IN FRONT OF YOU AND
7 THAT HAS BEEN MARKED AS COURT'S C, CAN YOU EXPLAIN TO THE
8 COURT THE PROCEDURE THAT IS FOLLOWED PURSUANT TO THE LEGAL
9 POLICIES MANUAL TO HAVE THAT MEMORANDUM WRITTEN AND THEN
10 TRANSMITTED TO YOU?

11 A IT IS ONE THAT IS DELINEATED.

12 Q DELINEATED IN 2-C, WHICH HAS BEEN MARKED, I BELIEVE
13 AS "EXHIBIT."

14 IT STARTS WITH A MEMORADUM FROM A HEAD DEPUTY
15 WHICH SHOULD REFLECT THE OPINION OF THE TRIAL DEPUTY AS WELL.
16 THE MEMORANDUM IS TRANSMITTED THROUGH CHANNELS TO THE CHIEF
17 DEPUTY, WHO SENDS ALL OF THE MEMORANDUM TO THE SPECIAL
18 CIRCUMSTANCES DESIGNEE FOR DECISION.

19 EACH PERSON IN THE PROCESS UP TO THE CHIEF
20 DEPUTIES EXPECT TO GIVE AN OPINION ABOUT THE PROPRIETY OF THE
21 DEATH PENALTY OR LIFE WITHOUT SPECIAL CIRCUMSTANCES OR SOME
22 OTHER DISPOSITION OF THE CASE.

23 THE LANGUAGE REQUIRES CERTAIN TURNAROUND TIMES
24 AND CERTAIN FORMS TO BE USED IN AN EFFORT TO TRACK THESE CASES
25 IN AN ATTEMPT TO CAUSE THEM TO BE ESPECIALLY MONITORED IN THE
26 JUSTICE SYSTEM.

27 Q IN 2-C OF THE LEGAL POLICY MANUAL, IT TALKS ABOUT
28 THE SPECIAL CIRCUMSTANCES DESIGNEE. AT THE TIME THE

1 DESIGNATION TO SEEK THE DEATH PENALTY WAS MADE IN THIS CASE,
2 WHO WAS THE SPECIAL DESIGNEE?

3 A I WAS.

4 Q AND ARE YOU STILL?

5 A YES.

6 Q AND WITH REGARD TO QUESTIONS THAT YOU WERE ASKED
7 ABOUT LIFE WITHOUT THE POSSIBILITY OF PAROLE, DOES THAT MEAN
8 THAT SOMEONE ACTUALLY WILL SERVE THE TIME IN PRISON? YOU
9 MADE A STATEMENT THAT THEY ARE NOT PRESENTLY RELEASED, CAN
10 YOU EXPLAIN THAT?

11 A THE TWO PENALTIES LEGALLY POSSIBLE NOW FOR SPECIAL
12 CIRCUMSTANCES ARE DEATH AND LIFE WITHOUT POSSIBILITY OF PAROLE.

13 WITH RESPECT TO SUSTAINING SPECIAL CIRCUMSTANCES,
14 EITHER THROUGH THE TRIAL PROCESS OR ON APPEAL, THE STATISTICAL
15 AVERAGE ISN'T TOO PROMISING.

16 AT THE TIME I MAKE THE DECISION ON WHETHER A
17 PERSON SHOULD SUFFERN THE DEATH PENALTY OR LIFE WITHOUT
18 POSSIBILITY OF PAROLE, I ASSUME THAT WE CAN PROVE THE SPECIAL
19 CIRCUMSTANCES AND THAT THE THEORETICAL PUNISHMENT OF THOSE
20 TWO PENALTIES IS THE ONE THAT WILL OCCUR IF THE FACT-FINDER
21 DETERMINES IT.

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8A 1
1 MR. WAPNER: NOTHING FURTHER.

2 THE COURT: ANY REDIRECT?

3 MR. BARENS: NO REDIRECT.

4 THE COURT: ALL RIGHT. MR. LIVESAY MAY BE EXCUSED?

5 MR. BARENS: SO STIPULATED.

6 MR. WAPNER: NO OBJECTION.

7 THE WITNESS: THANK YOU.

8 THE COURT: ALL RIGHT. I WILL HEAR ARGUMENT.

9 MR. BARENS: THANK YOU, YOUR HONOR.

10 YOUR HONOR, PRIOR TO PROCEEDING WITH MY ARGUMENT,
11 THE DEFENDANT FEELS THAT IT IS INCUMBENT TO EXPRESS OUR
12 VIGOROUS DISAGREEMENT AND EXCEPTION TO YOUR HONOR'S EARLIER
13 COMMENT THAT YOU EXPRESSED ON THE RECORD CONCERNING THOSE
14 ALLEGED THREATS.

15 THE COURT: ALL RIGHT. I REALLY ASKED HIM WHETHER OR
16 NOT, HAVING READ THE MEMORANDA, WHETHER THERE IS ANYTHING
17 IN THERE WITH REFERENCE TO THIS MEETING AND ANY ALLEGED
18 THREATS WHICH WERE MADE AT THE MEETING. I REMEMBER HAVING
19 HEARD IT. I WANTED TO KNOW WHETHER HE HAD TAKEN IT INTO
20 CONSIDERATION. THAT IS VERY SIMPLE.

21 THERE WAS NO MISSTATING ABOUT IT.

22 MR. BARENS: WELL AGAIN, YOUR HONOR, THE DEFENSE FEELS
23 DISADVANTAGED IN THE EXTREME BY THAT INSTANCE AND IN THAT
24 CONTEXT AND WE DO WISH TO STATE FOR THE RECORD, THAT THE
25 DEFENSE FEELS IT WAS INAPPROPRIATE FOR THE COURT TO OSTENSIBLY,
26 PROVIDE ADDITIONAL JUSTIFICATIONS FOR MR. LIVESAY'S OPINION
27 THAT WAS NOT CONTAINED IN THE MEMORANDA UPON WHICH HE
28 SUBSEQUENTLY COMMENTED DURING HIS TESTIMONY.

1 THE DEFENSE HAS NO DOUBT --

2 THE COURT: I WILL MAKE A STATEMENT FOR THE RECORD THAT
3 I WILL NOT CONSIDER WHAT I HAD SAID WITH RESPECT TO THE
4 THREATS IN MAKING A DETERMINATION IN THIS CASE. ALL RIGHT?

5 MR. BARENS: THE DEFENSE APPRECIATES THAT, YOUR HONOR.

6 YOUR HONOR, AGAIN FOR PURPOSES OF THE RECORD,
7 WE HAVE BEEN ASSURED BY THE COURT ON REPEATED OCCASIONS, THAT
8 NOTHING IN THE PREVIOUS PITTMAN TRIAL WOULD INFLUENCE YOUR
9 HONOR'S DETERMINATION AS TO MR. HUNT'S GUILT OR INNOCENCE.

10 THE COURT: NO. THERE IS NOTHING IN THERE. I CAN'T
11 ERADICATE FROM MY MIND THE TESTIMONY WHICH I HAD HEARD IN
12 THAT CASE, WHICH WOULD BE TESTIMONY IN THIS CASE.

13 MR. BARENS: THE ONLY REQUEST THAT THE DEFENSE HAS ON
14 A CONTINUING BASIS --

15 THE COURT: I WILL NOT PERMIT ANYTHING THAT I HAVE HEARD
16 IN THAT CASE IN ANY WAY, TO INFLUENCE ME ON ANY RULINGS I
17 MAY MAKE IN THIS PARTICULAR CASE. YOU HAVE THAT ASSURANCE.

18 MR. BARENS: THE DEFENSE APPRECIATES THAT, YOUR HONOR.
19 THE DEFENSE ONLY REQUESTS IN FURTHERANCE, THAT THE COURT NOT
20 MAKE A STATEMENT CONCERNING TESTIMONY IN THAT CASE AND THAT
21 THE PEOPLE DON'T BRING UP THAT CASE.

22 THE COURT: I TOLD YOU THAT I WOULD NOT DO ANYTHING
23 WITH RESPECT TO THIS CASE WHICH IN ANY WAY, REFERS TO THE
24 TESTIMONY OF THE OTHER CASE. THAT COVERS IT.

25 MR. BARENS: I APPRECIATE THAT, YOUR HONOR. THE ONLY
26 FURTHER POINT THAT I AM MAKING AND WHAT CONCERNS ME, YOUR
27 HONOR, WAS THAT YOUR HONOR MADE REFERENCE TO EVIDENCE OR
28 TESTIMONY THAT THE PEOPLE HAD NOT PUT FORTH.

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IT IS THE PEOPLE'S OBLIGATION TO PUT FORTH
TESTIMONY --

THE COURT: WELL, THEY PUT FORTH THAT TESTIMONY IN THE
OTHER CASE, IS WHAT I AM TRYING TO TELL YOU.

MR. BARENS: I SUBMIT THAT THEY HAVE THAT OBLIGATION
IN THIS CASE, WITHOUT ANY ASSISTANCE --

THE COURT: WELL, THEY DON'T HAVE ANY ASSISTANCE FROM
ME. I KNOW WHAT THE WITNESSES HAVE SAID. HE HAS A TRANSCRIPT
OF THE TESTIMONY.

I AM NOT TELLING HIM ANYTHING THAT HE DOESN'T
ALREADY KNOW, THAT HE WON'T PROVE IN THIS CASE.

MR. BARENS: JUST THAT I THINK IT WOULD SERVE THE ENDS
OF JUSTICE BETTER, YOUR HONOR, IF WE COULD FIRST HEAR IT FROM
THE PEOPLE RATHER THAN THE COURT.

THE COURT: WELL, GO AHEAD.

MR. BARENS: THANK YOU, YOUR HONOR.

YOUR HONOR, THE DEFENSE SUBMITS THAT IT IS APPARENT
FROM MR. LIVESAY'S TESTIMONY, THAT THERE HAS BEEN SIMPLY A
TOTAL FAILURE AND INSUFFICIENT SHOWING THAT THERE HAS BEEN
ANY EVIDENCE WHATSOEVER THAT THERE HAS BEEN A UNIFORM CHARGING
POLICY IN THIS MATTER.

8A-3

8B FC

18B 1 THE CRITERIA THAT MR. LIVESAY REFERRED TO APPEAR
2 TO HAVE BEEN APPLIED ON AN ARBITRARY AND INCONSISTENT BASIS
3 AND TOTALLY AD HOC. THERE WAS NO RHYME OR REASON WHATSOEVER
4 FROM WHICH HE COULD DERIVE A COHERENT CHARGING POLICY IN
5 SELECTING OR ELECTING TO GIVE THE DEFENDANT IN THIS CASE,
6 THE DEATH PENALTY.

7 WE SUBMIT THAT THE ARBITRARY DECISION IN THIS
8 INSTANCE CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT WITHIN THE
9 MEANING OF THE EIGHTH AMENDMENT OF THE UNITED STATES
10 CONSTITUTION AND ARTICLE 1, SECTION 6 OF THE CALIFORNIA
11 CONSTITUTION.

12 YOUR HONOR, WHAT DID WE HEAR TODAY? WE HEARD
13 THAT MR. LIVESAY BASED HIS OPINION ON ALLEGATIONS THAT ARE
14 TOTALLY, FACTUALLY UNSUPPORTED IN THE MEMORANDUM. THERE IS
15 NO DISPUTE THAT THE MEMORANDA MAKES REFERENCE TO AN ALLEGED
16 BATTERY CONVICTION IN CHICAGO. I SUBMIT THE BATTERY
17 CONVICTION JUST NEVER OCCURRED.

18 THERE IS REFERENCE TO THIS SWARTOUT MATTER WHICH
19 ALLEGEDLY OCCURRED WHERE SOME CHEMICAL WAS THROWN --

20 THE COURT: I WILL DISREGARD THOSE TWO MATTERS.

21 MR. BARENS: YOU ARE DISREGARDING THEM?

22 THE COURT: YES.

23 MR. BARENS: THANK YOU, YOUR HONOR. YOUR HONOR, WE
24 HAD TESTIMONY THAT HE COULD NOT RECALL A SINGLE INSTANCE OF
25 A NO BODY CASE WHEREIN THERE WAS A FILING REQUESTING THE DEATH
26 PENALTY, EXCEPT MR. HUNT, IN OVER 1,000 CASES, TO HIS KNOWLEDGE
27 AND EVEN PRIOR TO HIS TAKING OFFICE, BACK TO THE INITIATION
28 OF THE NEW DEATH PENALTY.

1 THEN WHY ARE WE GOING TO DO IT TO MR. HUNT? WHAT
2 DID WE HEAR, YOUR HONOR? WELL, WE HEARD THAT HE HAS A
3 PHILOSOPHY UNACCEPTABLE TO MR. LIVESAY.

4 I SUBMIT THAT AT THE TIME, I DON'T BELIEVE THE
5 PEOPLE OF THE STATE OF CALIFORNIA ARE GOING TO KILL PEOPLE
6 OVER PHILOSOPHY. WE HEARD TALK ABOUT SOPHISTICATION IN THE
7 PLANNING OF THE ALLEGED CRIME. YET, MR. LIVESAY AGREED THAT
8 IN CASES WITH GREATER OR EQUAL SOPHISTICATION, THEY DON'T
9 SEEK THE DEATH PENALTY.

10 WE HEARD HIM TOTALLY THROW OUT 66 PERCENT, TWO-
11 THIRDS OF THE CRITERIA THAT HE SAID GO INTO MAKING A
12 DETERMINATION AS TO WHETHER THEY WILL GIVE THE DEATH PENALTY
13 IN TERMS OF AGE AND PRIOR CRIMINAL RECORD, WHICH I DISREGARDED
14 WHEN WE COME TO MR. HUNT.

15 MR. HUNT, HE TESTIFIED, SHOWED IN A POSITIVE
16 SENSE FOR SEEKING LIFE WITHOUT POSSIBILITY OF PAROLE. HIS
17 EDUCATIONAL STANDARDS, HIS YOUTH, HIS LACK OF PRIOR CRIMINAL
18 RECORD, HIS LACK OF PRIOR ACTS OF VIOLENCE, THEY DO GREAT
19 FOR HIM. THEY KEEP THE STATE FROM KILLING HIM UNTIL WE GET
20 TO THE PARADOX PHILOSOPHY, UNTIL WE GET TO THE FACT THAT HE
21 IS ASSOCIATED WITH THESE OTHER YOUNG MEN IN A FRATERNAL
22 ORGANIZATION, UNTIL WE GET TO THE FACT THAT HE ALLEGEDLY
23 PARTICIPATES IN A SOPHISTICATED ACTIVITY.

24 THEN WE ARE GOING TO KILL HIM, EVEN THOUGH HE
25 DOESN'T DISMEMBER THE RUBINS AND PLACE THEIR BODIES ALL OVER
26 DOWNTOWN LOS ANGELES. WE DON'T KILL THEM, BUT WE ARE GOING
27 TO KILL MR. HUNT, EVEN THOUGH HE DOESN'T STAB HIS VICTIM
28 15 TIMES, AS WE HAVE IN THE ACOSTA CASE. WE ARE GOING TO

1 KILL HIM.

2 I SUBMIT, YOUR HONOR, THAT THERE WAS NO COHERENT
3 POLICY ADDRESSED WHATSOEVER IN CONFORMITY WITH THE REQUIREMENTS
4 OF LAW IN THIS COUNTRY OR ANY SENSE OF JUSTICE.

5 REHABILITATION, WE ARE NOT EVEN GOING TO CONSIDER
6 IF MR. HUNT CAN BE REHABILITATED BECAUSE IF WE CONSIDER THAT,
7 HE PASSES THE TEST. HE IS INTELLIGENT. HE IS TEACHABLE.
8 WE CAN KEEP HIM IN THE PRISON POPULATION.

9 NO, IT IS NOT GOOD ENOUGH TO DO LIFE WITHOUT,
10 THIS TIME, YOUR HONOR. WE ARE GOING TO KILL HIM BASED ON
11 FACTORS THAT ARE UNPROVEN, BASED ON FACTORS THAT ARE NOT OF
12 SIGNIFICANCE.

13 WE ARE GOING TO CONSIDER PHILOSOPHY. WE ARE GOING
14 TO CONSIDER SOPHISTICATION. BUT, WE ARE NOT GOING TO CONSIDER
15 EVERYTHING EVERYBODY ELSE CONSIDERED FROM TIME IMMEMORIAL
16 IN TERMS OF YOUTH AND PRIORS.

17 THE VERY FACTORS THAT SAVE DEFENDANTS IN THE OTHER
18 CASES WE ARE NOT GOING TO CONSIDER AS TO MR. HUNT. WE ARE
19 GOING TO KILL HIM. I SAY THAT IT IS UNJUSTIFIABLE. IT IS
20 BASED ON NO SHOWING OF FACTS WHATSOEVER.

21 YOUR HONOR HIMSELF HAS TO THROW OUT FACTORS THAT
22 THE PEOPLE PUT INTO THEIR MEMORANDUM BECAUSE THEY ARE
23 INCREDIBLE. BUT LIVESAY BASES HIS DETERMINATION ON THOSE.

24 I SUBMIT THAT THE COURT CAN FIND NO ALTERNATIVE
25 BUT TO DISMISS THE DEATH PENALTY IN THIS MATTER.

26 THE COURT: ALL RIGHT.

27 MR. WAPNER: THANK YOU, YOUR HONOR.

28 THE ISSUE IN THIS CASE ON THIS MOTION, AS I SEE

1 IT, IS WHETHER OR NOT THE DECISION BY THE DISTRICT ATTORNEY'S
2 OFFICE TO SEEK THE DEATH PENALTY IN THIS CASE, WAS RANDOM,
3 ARBITRARY OR CAPRICIOUS.

4 THAT IS, ARE THEY SINGLING OUT MR. HUNT FOR
5 DIFFERENT TREATMENT ON A RANDOM OR ARBITRARY BASIS WITHOUT
6 PROPER REGARD FOR HOW HIS CASE RELATES TO OTHER CASES.

7 SINCE THIS IS A MOTION MADE BY THE DEFENSE AND
8 IT IS THEIR BURDEN TO SHOW THAT THIS DECISION WAS IN FACT,
9 RANDOM, ARBITRARY AND CAPRICIOUS, IN ATTEMPTING TO DO THAT,
10 THEY HAVE ASKED MR. LIVESAY ABOUT ONLY TWO OTHER CASES.

11 AND ONE CAN ONLY ASSUME THAT THEY -- I KNOW THAT
12 THESE FILES OF THE DISTRICT ATTORNEY'S OFFICE HAVE BEEN OPEN
13 AND AVAILABLE TO THE DEFENSE TO LOOK THROUGH ALL OF THE CASES
14 AND ALL OF THE CASES THAT THEY HAD THE OPPORTUNITY TO REVIEW,
15 THESE ARE THE TWO --

16 THE COURT: WELL, THEY WERE DENOMINATED AS TO
17 PROPORTIONALITY AND AS TO COMPARISON OF FACTS IN THE CASE,
18 WITH OUR CASE, WHICH DETERMINES WHETHER OR NOT THE DEATH
19 PENALTY SHOULD BE PERMITTED IN THIS CASE.

20 MR. WAPNER: THAT IS THE THRUST OF THE MOTION, AS I
21 UNDERSTAND IT, THAT IT IS AN ARBITRARY DECISION. IT IS OUT
22 OF PROPORTION TO THE DECISIONS MADE IN OTHER CASES. AND THE
23 POINT --

24 THE COURT: BUT THOSE TWO CASES WHICH I THINK ARE HARDLY
25 COMPARABLE --

26 MR. WAPNER: MY ARGUMENT IS THAT SINCE ALL OF THE FILES
27 WERE OPEN, FOR THEM TO LOOK AT AND THEY PICKED OUT THESE TWO
28 CASES, ONE CAN ONLY ASSUME THAT THESE ARE THE TWO CASES THAT

1 THEY FOUND OUT OF ALL OF THEM, TO BE THE MOST COMPARABLE.

2 AND I AGREE WITH THE COURT, THAT THOSE TWO CASES
3 ARE HARDLY COMPARABLE. I GUESS THEY PICKED THOSE TWO CASES
4 BECAUSE THE DEFENDANTS IN THOSE CASES WERE BOTH RELATIVELY
5 YOUNG AND BECAUSE THEY DIDN'T HAVE MUCH IF ANY, PRIOR RECORD.

6 BUT THAT IS WHERE THE SIMILARITY STOPS COMPLETELY.
7 BECAUSE AS MR. LIVESAY CORRECTLY POINTED OUT, MR. ACOSTA
8 COMMITTED A STREET ROBBERY AND STABBED SOMEBODY AND STOLE
9 \$100.

10 AND THEY FIND MR. ACOSTA THE NEXT DAY, STUMBLING
11 DRUNK AND WHEN THEY ARREST HIM, HE STARTS CRYING AND HE
12 APOLOGIZES AND ISN'T IT A SHAME THAT THIS GUY HAD TO DIE OVER
13 THE THEFT OF \$100.

14 WELL, THAT HARDLY COMPARES TO MR. HUNT'S COLD-
15 BLOODED, CALCULATED KILLING OF MR. LEVIN AND DISPOSING OF
16 HIS BODY.

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1 AND THEN THE SECOND CASE THAT THEY CITE OUT OF
2 ALL OF THESE CASES IS, AGAIN, A STREET ROBBERY EXCEPT THAT
3 THE ROBBERY WAS NEVER COMPLETED. IT WAS AN ATTEMPTED STREET
4 ROBBERY WHERE TWO MEN GO INTO A CHECK-CASHING STORE WITH A
5 GUN AND THEY SAY "GIVE ME THE MONEY" AND THE GUY SAYS "I AM
6 NOT GOING TO GIVE YOU THE MONEY" SO THEY SHOOT HIM TWICE, AND
7 WE ARE SUPPOSED TO COMPARE THAT CASE TO THIS CASE?

8 I THINK WHAT MR. LIVESAY'S TESTIMONY MAKES IT
9 COMPLETELY CLEAR IS THAT HE DOESN'T MAKE RANDOM, ARBITRARY
10 OR CAPRICIOUS DECISIONS BUT, IN FACT, CONSISTENTLY WEIGHS THE
11 FACTS OF ONE CASE AGAINST THE FACTS OF ALL OTHER CASES SO HE
12 MAKES SURE THAT THERE IS SOME RYHME OR REASON TO ALL OF THIS.

13 MR. LIVESAY GOES AROUND THE COUNTY TESTIFYING IN
14 VARIOUS COURTROOMS ANDHE HAS BEEN WELL AWARE FOR YEARS THAT
15 HE HAS TO BE RESPONSIBLE FOR JUSTIFYING HIS DECISION TO SEEK
16 THE DEATH PENALTY IN ONE CASE AS OPPOSED TO ALL OF THE OTHER
17 CASES AND THAT HE MAKES A REASONED, CALCULATED AND REASONABLE
18 DECISION BASED ON THE FACTORS THAT HE HAS BEFORE HIM.

19 ALSO, JUST MAYBE AS AN ASIDE. EVEN THOUGH I KNOW
20 THE COURT IS NOT CONSIDERING THESE TWO THINGS, COUNSEL ALWAYS
21 LIKES TO POINT OUT THAT SUCH AND SUCH THINGS AREN'T TRUE; THAT
22 MR. HUNT, FOR EXAMPLE, DIDN'T HAVE A BATTERY CONVICTION BUT
23 THAT IS SOMETHING HE MAKES A STATEMENT IN ARGUMENT WITHOUT
24 ANY EVIDENCE AT THE MOTION TO BACK IT UP, WHICH IS A CONSTANT
25 PROBLEM THAT WE ARE HAVING.

26 IN ANY EVENT, WHAT I AM SAYING IS THAT THE REASON IS
27 THAT DECISION OF MR. LIVESAY WAS NEITHER ARBITRARY, RANDOM
28 OR CAPRICIOUS AND THAT THIS MOTION SHOULD BE DENIED.

1 THE COURT: ALL RIGHT. MR. BARENS, IN LEO V. SUPERIOR
2 COURT AT 179 CAL.APP.3D, 274 AT PAGE 288, THE COURT REFERS
3 TO PEOPLE V. GEPHART, AT 93 CAL.APP.3D, AND QUOTES THE
4 FOLLOWING:

5 "THE PROSECUTOR IS VESTED WITH
6 DISCRETION IN DECIDING WHETHER TO PROSECUTE" --
7 CITING GOVERNMENT CODE 26501 -- "THIS DISCRETION
8 IS BROAD AND QUASI-JUDICIAL IN NATURE.

9 "THE DISCRETION EXERCISED IS BROADER
10 THAN 'PROBABLE CAUSE' AND INCLUDES THE OPINION OF GUILT
11 OF LIKELIHOOD OF CONVICTION, EVALUATION OF LEGAL
12 ISSUES, WITNESS PROBLEMS, WHETHER THE ACCUSED
13 IS REGARDED AS DANGEROUS AND THE ALTERNATIVES TO
14 PROSECUTION."

15 NOW, IN THAT CASE THE COURT UPHELD THE DECISION
16 OF THE DISTRICT ATTORNEY AS TO WHETHER THE DEATH PENALTY SHOULD
17 BE PURSUED AND, AGAIN POINTS OUT ITS PROSECUTORIAL
18 DISCRETION AND IN THE EXERCISE OF THAT DISCRETION, IT DOES
19 NOT DEPRIVE THE DEFENDANT IN A CAPITAL CASE OF HIS CONSTITUTIONAL
20 RIGHTS.

21 IN THAT CASE THE COURT HELD THAT THE CRITERIA
22 WHICH COUNSEL FOR THE PEOPLE HAS INDICATED: "IN LIGHT OF THE
23 FOREGOING DISCUSSION, WE HOLD THAT THE DECISION OF THE
24 DISTRICT ATTORNEY TO SEEK THE DEATH PENALTY WAS NOT RANDOM,
25 ARBITRARY OR CAPRICIOUS."

26 AND IT IS YOUR OPINION THAT IT WAS ARBITRARY; IS
27 THAT IT?

28 MR. BARENS: YES, YOUR HONOR, AND SINGULAR, YOUR HONOR,

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1 AND TOTALLY INCONSISTENT WITH ALL OF THEIR OWN CRITERIA.

2 THE COURT: LET ME READ THIS. I HAVEN'T HAD AN
3 OPPORTUNITY TO STUDY THE PEOPLE'S EXHIBIT C OR 3, AS THE
4 CLERK HAS NUMBERED IT, AND ALSO PEOPLE'S 2 ON THE CRITERIA
5 WHICH IS USED BY THE DISTRICT ATTORNEY'S OFFICE. I WILL TAKE
6 THIS UNDER SUBMISSION AND I WILL READ IT OVERNIGHT AND LET
7 YOU KNOW TOMORROW.

8 MR. BARENS: YOUR HONOR, TO FINISH MY COMMENT TO YOUR
9 LAST QUESTION, YOUR HONOR, IN TERMS OF PROPORTIONALITY. THERE
10 IS NO PROPORTIONALITY AT ALL. THEY HAVE NEVER SOUGHT THE
11 DEATH PENALTY IN A NO BODY CASE EXCEPT IN THIS CASE, EVEN
12 THOUGH ALL THE CIRCUMSTANCES POINT TOWARD NO FILING, NO
13 SEEKING OF THE DEATH PENALTY.

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1 THE COURT: I DON'T KNOW THAT NO FINDING OF THE BODY
2 IS AN EXTREMELY IMPORTANT CRITERIA.

3 YOU MEAN IN ANY CASE WHERE A BODY HAS DISAPPEARED
4 OR BEEN CHOPPED UP AND DESTROYED, THAT MEANS THERE WOULD BE
5 NO DEATH PENALTY AND THAT WOULD BE A GREAT FACTOR IN MILITATING
6 AGAINST ASKING FOR THE DEATH PENALTY?

7 MR. BARENS: I CANNOT SAY THE FACT IS THEY HAVE NEVER
8 DONE IT.

9 THE COURT: THERE ARE VERY FEW CASES WHERE THE BODY ISN'T
10 FOUND.

11 MR. BARENS: THEY DID NOT IN THE SCOTT CASE, AS FAR BACK
12 AS 1952.

13 THE COURT: I REMEMBER.

14 MR. BARENS: REMEMBER L. EWING SCOTT AND HIS WIFE?

15 THE COURT: HIS WIFE WHO DISAPPEARED.

16 MR. BARENS: QUITE SO.

17 THE COURT: I DON'T KNOW WHETHER THE DEATH PENALTY WAS
18 ASKED FOR IN THAT CASE OR WHAT WAS THE STATE OF THE LAW IN
19 THAT PARTICULAR CASE.

20 MR. BARENS: I RESPECTFULLY SUBMIT THEY HAD AN
21 OPPORTUNITY AND DID NOT.

22 MR. WAPNER: I DON'T KNOW WHAT THE STATE OF THE LAW WAS
23 IN THAT CASE EITHER, YOUR HONOR.

24 THE COURT: I DON'T KNOW EITHER.

25 AT ANY RATE, LET ME READ THESE PAPERS AND I WILL
26 TAKE IT UNDER SUBMISSION.

27 MR. BARENS: YOUR HONOR, ALL RIGHT.

28 THE COURT: THE NEXT THING IS WE WILL GO INTO CHAMBERS

1 AND GO OVER THOSE QUESTIONS, ALL RIGHT, THAT YOU WANT TO ASK
2 THE PROSPECTIVE JURORS.

3 MR. BARENS: YOUR HONOR, I WOULD LIKE TO --

4 THE COURT: THAT IS ON THE ASSUMPTION, PREDICATED ON
5 THE ASSUMPTION THAT THEY HAVE NOTHING TO DO WITH THE DEATH
6 PENALTY.

7 MR. BARENS: YOUR HONOR, I WOULD LIKE TO DELAY THAT IN
8 WAITING FOR MR. CHIER TO BE IN ATTENDANCE ON THE ISSUE OF THE
9 JURY VOIR DIRE QUESTIONS.

10 THE COURT: WE HAVE TIME NOW AND COULD DO IT TODAY.

11 MR. BARENS: I WOULD SIMPLY BELIEVE THAT AS MR. CHIER
12 ASSISTED OR ACTUALLY DRAFTED THAT --

13 THE COURT: SINCE YOU ARE GOING TO TAKE THE LABORING
14 OAR IN THE TRIAL OF THIS CASE AND YOU ARE EXTREMELY COMPETENT
15 IN DETERMINING WHETHER OR NOT -- I HAVE TO MAKE A DETERMINATION
16 FOR THE ADMISSION OF THOSE PARTICULAR QUESTIONS ANYWAY.

17 MR. BARENS: RIGHT.

18 THE COURT: I WANT TO TELL YOU WHAT MY FEELING IS ON
19 EACH OF THEM.

20 MR. BARENS: IF YOUR HONOR WOULD BE CONTENT IN
21 EXPRESSING YOUR FINDING AND LET ME RESERVE THE RIGHT TO
22 DISAGREE SUBSEQUENTLY, THAT WOULD BE FINE.

23 THE COURT: SURE, FINE. LET'S GO INTO CHAMBERS.

24 MR. BARENS: MAY WE HAVE FIVE MINUTES, YOUR HONOR?

25 THE COURT: YES.

26 (RECESS.)

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1 (THE FOLLOWING PROCEEDINGS WERE HELD IN
2 CHAMBERS:)

3 MR. WAPNER: DO YOU WANT ME TO READ YOU THIS PARAGRAPH?

4 THE COURT: YES.

5 MR. WAPNER: I WILL READ IT FROM THE COPY THAT I HAVE.

6 AND FOR THE RECORD, THIS IS COURT'S EXHIBIT 3, THE MEMORANDUM
7 THAT MR. LIVESAY REFERRED TO IN HIS TESTIMONY.

8 AND A COPY WAS PROVIDED TO THE COURT. THIS IS
9 THE PARAGRAPH THAT IS UNINTELLIGIBLE.

10 IT SAYS:

11 "FOR RECORD-KEEPING PURPOSES IT SHALL
12 BE THE RESPONSIBILITY OF THE HEAD DEPUTY TO REPORT
13 TO THE CHIEF DEPUTY THROUGH THE APPROPRIATE BUREAU
14 DIRECTLY, BY WRITTEN MEMO, THE PRECISE OUTCOME OF
15 THE CASE DESCRIBING IN DETAIL THE MATTERS ITEMIZED
16 IN SECTION 2-C, APPENDIX F OF OUR LEGAL POLICIES
17 MANUAL."

18 THE COURT: ALL RIGHT.

19 MR. WAPNER: I DON'T THINK IT REALLY HAS ANY BEARING.

20 THE COURT: NO. I WANTED IT ON THE RECORD.

21 MR. WAPNER: ALL RIGHT. THE RECORD SHOULD PROBABLY
22 REFLECT THAT WE ARE IN CHAMBERS, DISCUSSING THE JURY
23 QUESTIONNAIRE AND WHAT QUESTIONS THE COURT IS GOING TO PERMIT.

24 MR. BARENS: AND FURTHER, THAT THE DEFENSE HAS RESERVED
25 THE RIGHT TO RESPOND TO YOUR HONOR'S COMMENTS UNTIL A
26 SUBSEQUENT TIME.

27 THE COURT: VERY WELL. YOU CAN RESPOND NOW. YOU MAY
28 DO SO.

1 MR. BARENS: IF I MAY, I WOULD RESERVE THAT RIGHT, YOUR
2 HONOR.

3 THE COURT: YES. ALL RIGHT. WE'LL START NOW, WITH THE
4 ONE ON PAGE 3, A, B, C, D, D-1 AND D-2 AND D-3.

5 NOW, THE COURT ON ITS VOIR DIRE OF THE PROSPECTIVE
6 JURORS, WILL ASK THOSE QUESTIONS NUMBER 1, A, B, C, D AND
7 AS TO D -- ALL RIGHT. I WILL ASK THOSE QUESTIONS AND ALSO
8 E.

9 MR. WAPNER: ARE YOU GOING TO ASK D-1, 2 AND 3?

10 THE COURT: YES. D-1, 2 AND 3, I GENERALLY ALLOW THAT
11 IN THIS CASE.

12 WHAT IS THE NAME OF YOUR SPOUSE? I ASK THAT
13 QUESTION IN ANY EVENT. ALL RIGHT. SO THAT WILL BE COVERED
14 BY MY VOIR DIRE.

15 NOW, HE HAS THE MARITAL STATUS. IT IS HAS THE
16 MARITAL STATUS CHANGED IN THE LAST TEN YEARS. WHAT IS THE
17 RELEVANCY OF THAT?

18 MR. BARENS: YOUR HONOR, IT GOES TO SOME PREJUDICES THAT
19 OBVIOUSLY, PEOPLE MAY HAVE AS A RESULT OF DIVORCE AND THEIR
20 PRIOR CONTACT WITH ATTORNEYS IN COURTS.

21 I BELIEVE THAT THERE ARE SIGNIFICANT IMPLICATIONS
22 AS TO A PERSON'S ORIENTATION TOWARD THE JUDICIAL PROCESS
23 AS A RESULT OF HAVING PARTICIPATED IN IT.

24 THE COURT: I DON'T REMEMBER THAT QUESTION EVER -- WELL,
25 ONCE MAYBE, IN ALL THE CRIMINAL CASES THAT I HAVE PROBABLY
26 HAD, THAT HAS BEEN ASKED.

27 "HAS YOUR MARITAL STATUS CHANGED?" AND THEN YOU
28 WANT TO KNOW BY REASON OF DEATH OR DIVORCE OR REMARRIAGE?

1 MR. WAPNER: YOUR HONOR, I THINK THAT IN FAIRNESS, I
2 THINK THAT IF MY RECOLLECTION SERVES ME CORRECTLY, THAT IN
3 FAIRNESS TO COUNSEL, THAT IS PROBABLY SOMETHING I PUT IN THERE
4 BECAUSE --

5 THE COURT: YOU PUT IT IN THERE?

6 MR. WAPNER: BECAUSE MR. CHIER AND I SAT DOWN TOGETHER
7 AND TRIED TO MESH --

8 THE COURT: WHAT IS THE MATERIALITY OF THAT?

9 MR. WAPNER: JUST TO FIND OUT THE DIFFERENCE BETWEEN
10 THE POSSIBLE MENTAL FRAME OF MIND OF SOMEONE WHO HAS BEEN
11 MARRIED TO THE SAME PERSON 35 YEARS --

12 THE COURT: THEN HE CAN ASK EVERY SINGLE, ONE OF THE
13 PROSPECTIVE JURORS WHO HAVE BEEN MARRIED AND ASK THEM THAT
14 QUESTION AND YOU GO THROUGH ALL OF THAT --

15 MR. WAPNER: I DON'T KNOW I NECESSARILY WOULD. I THINK
16 PRIMARILY THE REASON WE ARE HERE IS TO FIND OUT WHETHER THEY
17 WOULD BE PRECLUDED AND YOU PROBABLY GET A SENSE FROM THESE
18 PEOPLE WHEN YOU TALK TO THEM WHETHER OR NOT YOU NEED TO ASK
19 THESE QUESTIONS. A LOT OF THEM ARE GOING TO BE PRETTY
20 OBVIOUS.

21 THE PERSON GETS UP THERE AND SAYS THEY ARE
22 DIVORCED, THEN YOU KIND OF KNOW THE --

23 THE COURT: YOU ASK THEM WHAT AFTER THAT? WHOSE FAULT
24 IT WAS?

25 MR. WAPNER: NO.

26 THE COURT: WAS THERE LITIGATION IN CONNECTION WITH IT?
27 IS THAT WHAT YOU WANT TO FIND OUT?

28 MR. WAPNER: I PERSONALLY --

1 THE COURT: I DON'T THINK THAT -- IT IS JUST TOO
2 INTRUSIVE. IT IS TOO INTRUSIVE IN THEIR PERSONAL BUSINESS.
3 I WON'T ALLOW IT.

4 MR. BARENS: WOULD YOUR HONOR PERMIT A QUESTION ABOUT
5 SIMPLY, HAVE YOU EVER BEEN DIVORCED?

6 THE COURT: ALL RIGHT. I WILL PERMIT THAT.

7 MR. BARENS: THANK YOU.

8 THE COURT: I WILL CHECK DIVORCE.

9 NOW, THE POLITICAL AFFILIATION? WHAT IS THE
10 RELEVANCE OF THAT?

11 MR. BARENS: WELL, YOUR HONOR, FROM THE DEFENSE STAND-
12 POINT, OBVIOUSLY, CONSERVATIVES TEND TO BE MORE VIGOROUSLY
13 IN FAVOR OF THE DEATH PENALTY THAN LIBERALS.

14 AND CERTAINLY, IT WOULD SAVE A LOT OF OTHER
15 QUESTIONS TO GO RIGHT TO IT. POLITICAL AFFILIATIONS CERTAINLY
16 BESPEAKS A SOCIAL PHILOSOPHY.

17 THE COURT: AND ALSO RELIGION, TOO?

18 MR. BARENS: WELL, I WILL WITHDRAW THE QUESTION ON
19 RELIGION, YOUR HONOR, FOR THE DEFENDANT.

20 MR. WAPNER: NO. I AGREE. I DON'T THINK WE SHOULD BE
21 ASKING THEM WHAT THEIR RELIGIOUS PREFERENCE IS.

22 MR. BARENS: I AGREE. IT IS STRICKEN.

23 THE COURT: ALL RIGHT. DO YOU WANT TO HAVE YOUR -- DO
24 YOU THINK THAT THEY ARE BEING ASKED ABOUT WHETHER THEY ARE
25 A DEMOCRAT OR REPUBLICAN OR AN INDEPENDENT -- DO YOU THINK
26 THAT WOULD HAVE ANY MATERIALITY IN THIS CASE?

27 MR. WAPNER: I DON'T THINK --

28 THE COURT: WELL, THERE ARE LIBERAL REPUBLICANS AND THERE

1 ARE CONSERVATIVE DEMOCRATS. THERE ARE CONSERVATIVE DEMOCRATS
2 AND LIBERAL REPUBLICANS AND LIBERAL DEMOCRATS. I DON'T
3 UNDERSTAND THAT. I DON'T UNDERSTAND WHY YOU --

4 MR. BARENS: WELL, YOUR HONOR, THE MERE FACT OF A
5 PERSON IDENTIFYING THEMSELVES ALONG THOSE LINES ALSO TELLS
6 THE DEFENSE A GREAT DEAL ABOUT THEIR PERSONALITY.

7 THE FACT IS, WHEN ASKED, IF YOU WOULD ASK ME FOR
8 INSTANCE, I MIGHT TELL YOU THAT IT DEPENDS UPON THE CANDIDATE.
9 WHAT PARTY I SUBSCRIBE TO OR THE ISSUE, RATHER THAN THE
10 CATEGORY.

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1 THE COURT: IT GOES NO FURTHER THAN YOUR TELLING THEM
2 YOU ARE A REPUBLICAN OR A DEMOCRAT; TO THAT EXTENT, THAT IS
3 YES.

4 MR. BARENS: THANK YOU, YOUR HONOR.

5 THE COURT: G, H AND I ARE OUT.

6 MR. BARENS: THAT IS FINE, YOUR HONOR.

7 THE COURT: ALL RIGHT, AND 2, I WILL ASK THAT ON MY
8 VOIR DIRE, HEALTH PROBLEMS AND SO FORTH.

9 AND 3, I CAN ASK THAT OR I WILL LEAVE IT FOR
10 YOU. YOU CAN ASK THAT IF YOU WANT. YOU CAN ASK 3.

11 4, YOU CAN ASK.

12 5, YOU CAN ASK.

13 6, YOU CAN ASK.

14 "LIST ALL POSITIONS HELD WITHIN THE ORGANIZATIONS
15 OR GROUPS." THAT CAN BE ASKED. 7, THAT IS OKAY.

16 CROSS OUT THAT "PLACE AN X", CROSS THAT OUT.

17 "DO YOU THINK YOUR CONCERN ABOUT
18 YOUR CHILDREN OR DEPENDENTS MIGHT DISTRACT YOUR
19 CONCENTRATION IF YOU SERVED AS A JUROR?"

20 I DON'T KNOW WHY CONCERN ABOUT CHILDREN WOULD
21 CAUSE ANY DISTRACTION.

22 MR. BARENS: PARENTS MIGHT BE CONCERNED, PERHAPS A
23 HOUSEWIFE, SHE IS GONE AND NOT HOME AFTER SCHOOL WHEN THEY
24 COME HOME. IF IT IS AN ECONOMIC HARDSHIP, SHE MIGHT FEEL
25 SHE IS ABANDONING THE CHILDREN.

26 THE COURT: THAT IS ONLY ASSUMING THEY HAD CHILDREN.

27 MR. BARENS: I WOULD ONLY ASK THAT IF THEY DID HAVE
28 CHILDREN, YOUR HONOR.

1 THE COURT: OR DEPENDENTS?

2 MR. BARENS: YES, YOUR HONOR.

3 THE COURT: WHY DON'T YOU ASK THEM THAT CATEGORICAL
4 QUESTION: IS THERE ANYTHING IN YOUR CIRCUMSTANCES WHICH WOULD
5 IN ANY WAY CAUSE YOU TO LOSE YOUR CONCENTRATION SO YOU CAN'T
6 CONCENTRATE ON THIS CASE?

7 MR. BARENS: SOMETIMES WHEN ASKED THAT BROAD A QUESTION,
8 YOUR HONOR, ONE OVERLOOKS THINGS THAT WILL OCCUR SUBSEQUENTLY
9 AND BY THIS QUESTION, I SEEK TO ELICIT MORE SPECIFIC RESPONSE.

10 THE COURT: WELL, IF THERE ARE ANY CHILDREN, ALL RIGHT.

11 MR. BARENS: THANK YOU, YOUR HONOR.

12 THE COURT: WHAT IS YOUR FEELING ON IT?

13 MR. WAPNER: IT IS OKAY WITH ME.

14 THE COURT: ALL RIGHT. I DON'T WANT THIS GOING ON AD
15 INFINITUM, YOU KNOW. WE WANT TO GET OVER WITH THIS TRIAL
16 SOMETIME.

17 MR. BARENS: I KNOW, YOUR HONOR.

18 THE COURT: YOU WANT THAT, AS I DO.

19 MR. BARENS: QUITE SO, YOUR HONOR.

20 THE COURT: 9: "STATE YOUR OCCUPATION."

21 NOW, "IF UNEMPLOYED, REASON FOR UNEMPLOYMENT."

22 THAT IS OKAY.

23 11 IS OKAY.

24 12 IS OKAY.

25 13 IS OKAY. I WILL PROBABLY ASK IT MYSELF.

26 I THINK WE ARE GOING TOO FAR AFIELD ON 14: "IF
27 YOU WERE PREVIOUSLY MARRIED, STATE THE OCCUPATION OF YOUR
28 PREVIOUS SPOUSE FOR A FIVE-YEAR PERIOD PRECEDING THE TERMINATION

1 OF THE MARRIAGE," AND SO FORTH.

2 MR. BARENS: HOW ELSE AM I GOING TO FIND OUT PEOPLE
3 THAT WERE DIVORCED, IF THEY WERE MARRIED TO POLICE OFFICERS
4 OR PROBATION OFFICERS?

5 THE COURT: I WILL ASK THAT QUESTION, WHETHER OR NOT
6 THEY KNOW ANYBODY OR HAVE BEEN MARRIED TO SOMEONE OR RELATED
7 TO ANYBODY IN LAW ENFORCEMENT, I WILL ASK THAT QUESTION.

8 MR. BARENS: BUT HERE WE ARE ASKING IF THEY WERE
9 PREVIOUSLY MARRIED TO ONE OF THOSE PEOPLE. THEY CAN ANSWER
10 YOUR QUESTION NO AND STILL ANSWER YES TO THIS QUESTION.

11 THE COURT: NO, THEY WOULD HAVE TO ANSWER YES TO MY
12 QUESTION.

13 I ASK THEM WHETHER OR NOT THEY OR MEMBERS OF THEIR
14 FAMILY HAVE EVER BEEN AFFILIATED WITH ANY LAW ENFORCEMENT
15 AGENCY OF ANY KIND.

16 MR. BARENS: YOUR HONOR, YOU ARE ASKING THE OCCUPATION
17 OF SPOUSES.

18 THE COURT: PREVIOUS SPOUSES, YOU ARE ASKING HERE, NOT
19 OF THE SPOUSE AND I AM GOING TO ASK THAT QUESTION.

20 MR. BARENS: YOUR HONOR, I AM REFERRING TO OCCUPATION
21 OF PREVIOUS SPOUSES AND I THINK --

22 THE COURT: I AM NOT INTERESTED IN THAT. THE ANSWER
23 IS NO TO THAT.

24 MR. BARENS: I DO TAKE EXCEPTION, YOUR HONOR, AND WOULD
25 LIKE TO BE HEARD ON IT LATER.

26 THE COURT: GO AHEAD.

27 MR. BARENS: THANK YOU.

28 THE COURT: "PLEASE INDICATE YOUR ANNUAL INCOME."

1 I THINK YOU ARE TOO INTRUSIVE TO FIND OUT ABOUT
2 THAT.

3 MR. BARENS: WELL, YOUR HONOR, WE TRIED TO BE GENERAL
4 IN THE WAY WE ASKED IT TO BE RESPONDED TO.

5 THE COURT: YOU ARE INDICATING UP TO TWENTY,
6 FORTY, FIFTY THOUSAND. YOU ARE ASKING THEM EXACTLY HOW MUCH
7 THEY ARE MAKING AND I DON'T THINK THAT IS FAIR. I DON'T
8 THINK IT HAS ANYTHING TO DO AT ALL WITH THIS.

9 IF YOU KNOW ABOUT THEIR EMPLOYMENT AND YOU KNOW
10 WHAT THEY DO, THAT WILL GIVE YOU A GENERAL IDEA ABOUT THEIR
11 STATION IN LIFE. YOU DON'T HAVE TO ASK SPECIFIC QUESTIONS
12 ABOUT HOW MUCH MONEY THEY MAKE.

13 THE ANSWER IS NO TO 15.

14 16, NO ALSO.

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1 MR. BARENS: WELL, WE HAVE A CONTINUING EXCEPTION TO
2 THE NO ANSWERS.

3 THE COURT: YES, YES, THAT IS CORRECT.

4 MR. BARENS: THANK YOU, YOUR HONOR.

5 THE COURT: 17: "HAVE YOU RECEIVED ANY TRAINING IN
6 THE PRINCIPLES OF ACCOUNTING?"

7 OKAY. BUT TELL ME WHAT THE REASON FOR THAT IS.

8 MR. BARENS: THERE WILL BE CONSIDERABLE TESTIMONY ABOUT
9 MR. HUNT'S BUSINESS ACTIVITIES IN A RATHER SOPHISTICATED NATURE
10 HERE AND AS TO WHETHER OR NOT THERE WERE LEGITIMATE ACCOUNTING
11 PROCEDURES THAT WERE FOLLOWED OR NOT FOLLOWED, REPORTING
12 PROCEDURES.

13 THE COURT: ALL RIGHT, THAT IS OKAY. 17 IS OKAY.

14 NOW, WHAT DOES ECONOMICS HAVE TO DO WITH IT?

15 MR. BARENS: YOUR HONOR, THERE WILL BE AN ARGUMENT HERE
16 THAT THIS PARADOX PHILOSOPHY --

17 THE COURT: WHAT DOES IT MEAN ABOUT TRAINING IN
18 ECONOMICS? I DON'T KNOW WHAT THAT MEANS.

19 MR. BARENS: BASICALLY, YOUR HONOR, THERE WOULD BE TWO
20 WAYS I WOULD SEE THAT: IN COLLEGE, TAKING CLASSES IN
21 ECONOMICS OR POSSIBLY EVEN MASTER'S IN ECONOMICS ON THE ONE
22 LEVEL AND, SECONDARILY, TAKING CONTINUING EDUCATION CLASSES
23 IN ECONOMICS PURSUANT TO EMPLOYMENT.

24 THE COURT: DO YOU SEE ANY RELEVANCE IN THAT?

25 MR. WAPNER: WELL, I MEAN SOMESLIGHT RELEVANCE, I THINK
26 I UNDERSTAND WHAT THEY ARE TRYING TO GET AT. I THINK IT IS
27 FAIR.

28 MR. BARENS: I WOULD ALSO POINT OUT, YOUR HONOR, THAT

1A
1 THE UNIVERSITY OF CALIFORNIA SYSTEM IS NOW MAKING CLASSES
2 IN ECONOMICS A MANDATORY ENTRANCE REQUIREMENT TO GET INTO
3 THE UNIVERSITY.

4 THE COURT: SO FAR, YOU HAVE BEEN HANDLING YOURSELF
5 VERY WELL. YOU DON'T NEED MR. CHIER HERE FOR ANY BACKUP.

6 MR. BARENS: THANK YOU, YOUR HONOR.

7 THE COURT: NOW THE NEXT ONE IS BANKING. WE HAVE GOT
8 TO GO INTO BANKING, TOO?

9 MR. BARENS: WELL, YOUR HONOR, THIS WHOLE BUSINESS ABOUT
10 THE CHECK, ITS ABILITY TO BE NEGOTIATED, ITS REJECTION, THE
11 PRESENTATION CIRCUMSTANCES, THEY ARE GOING TO HAVE BANKERS
12 TESTIFYING IN COURT. THEY DID AT THE PRELIMINARY HEARING.

13 THE COURT: YOU WILL HAVE BANKERS TESTIFYING?

14 MR. WAPNER: YES, THERE IS A PERSON FROM -- WELL, THERE
15 WILL BE A FEW PEOPLE FROM BANKS TESTIFYING ACTUALLY.

16 THE COURT: ALL RIGHT, 18 WILL BE ALL RIGHT.

17 19 WILL BE ALL RIGHT.

18 20, I AM GOING TO ASK THAT.

19 MR. BARENS: THANK YOU, YOUR HONOR.

20 THE COURT: "DO YOU UTILIZE YOUR TRAINING IN YOUR
21 OCCUPATION?" I WILL INQUIRE ABOUT THAT.

22 AND 21, THE ARMED SERVICES. WHAT HAS THAT GOT
23 TO DO WITH THIS CASE?

24 MR. BARENS: YOUR HONOR, IN THE ARMED SERVICES,
25 SPECIALIZED TRAINING IS PROVIDED TO PEOPLE IN THE MODERN
26 MILITARY.

27 THE COURT: WHAT HAS THAT GOT TO DO WITH THE ISSUES
28 IN THIS CASE? HOW ARE THEY RELATED? HOW IS THAT RELATED?

1 MR. BARENS: BY INQUIRING INTO WHAT SPECIALIZED
2 TRAINING -- FOR INSTANCE, SOMETIMES NOW R.O.T.C. ACTIVITIES
3 OR IN THE MILITARY SERVICE, THERE ARE SPECIALIZED ACCOUNTING
4 COURSES AND BANKING WHICH ARE THE SAME THING YOU GET IN THE
5 UNIVERSITY.

6 THE COURT: YOU HAVE GOT THOSE QUESTIONS BEFORE ABOUT
7 BANKING AND ECONOMICS AND ACCOUNTING, YOU HAVE ALREADY ASKED
8 THOSE QUESTIONS.

9 MR. BARENS: I BELIEVE ALSO THAT PEOPLE IN THE ARMED
10 SERVICES ARE ALSO INDOCTRINATED IN CERTAIN PHILOSOPHIES THAT
11 WOULD AFFECT THEIR DISPOSITION TOWARD THE DEATH PENALTY.

12 THE COURT: I WILL NOT PERMIT YOU TO ASK THAT QUESTION,
13 21.

14 MR. BARENS: EXCEPTION IS NOTED.

15 THE COURT: THAT IS ALL RIGHT. NO ON A AND B.

16 MR. BARENS: YOU ARE INDICATING NO TO A AND B, YOUR
17 HONOR?

18 THE COURT: THAT'S RIGHT.

19 MR. BARENS: THANK YOU, YOUR HONOR.

20 THE COURT: WELL, SPECIFICALLY YOU WANT EVERY SINGLE
21 ONE OF THOSE QUESTIONS ANSWERED?

22 MR. BARENS: WELL, IN SOME OF THEM, YOUR HONOR,
23 OBVIOUSLY WE WON'T PURSUE IT WITH EVERY JUROR THAT WILL BE
24 SUMMONED.

25 THE COURT: THAT IS WHAT YOU WANT, YOU WANT TO ASK THAT
26 OF EVERY SINGLE JUROR?

27 MR. BARENS: I AM NOT REPRESENTING I WOULD ASK EVERY
28 SINGLE JUROR. I AM ASKING FOR THE ABILITY TO ASK THE QUESTION

1 IF I DETERMINE IT ADVISABLE ON A SPECIFIC JUROR AND I WOULD
2 LIKE THAT LATITUDE.

3 THE COURT: WHAT CHANCE IS THERE THAT ANY ONE OF THESE
4 JURORS OR ANY MEMBER OF THEIR FAMILY HAVE EVER WORKED FOR
5 THE PLAZA HOTEL?

6 MR. BARENS: WELL, YOUR HONOR, EVERYBODY TRIES TO RETIRE
7 IN SANTA MONICA. AND REMEMBER YOU ARE IN A PLACE HERE, YOUR
8 HONOR, THAT IF I WAS IN NEW YORK MY WHOLE LIFE, I WOULD LOVE
9 TO COME TO SANTA MONICA.

10 THE COURT: YOU MEAN ANYTHING THAT IS POSSIBLY MENTIONED
11 IN THIS PARTICULAR CASE, YOU ARE GOING TO ASK THEM WHETHER
12 OR NOT THEY HAVE BEEN EMPLOYED THERE?

13 MR. BARENS: ONLY TO THE EXTENT WE FEEL THERE COULD
14 BE TESTIMONY THAT WOULD GIVE THEM INSIDE INFORMATION AS TO
15 THE METHODS OF OPERATING THOSE ESTABLISHMENTS.

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1 THE COURT: FEDERAL BUREAU OF INVESTIGATION? CENTRAL
2 INTELLIGENCE? DRUG ENFORCEMENT? DEPARTMENT OF JUSTICE?
3 DEPARTMENT OF THE TREASURY? YOU WANT TO ASK ALL THOSE
4 QUESTIONS?

5 MR. BARENS: THEY ARE TYPES OF LAW ENFORCEMENT AGENCIES,
6 YOUR HONOR.

7 THE COURT: WELL, I AM GOING TO ASK SPECIFICALLY
8 WHETHER THEY OR MEMBERS OF THEIR FAMILY OR CLOSE PERSONAL
9 FRIENDS HAVE EVER BEEN IDENTIFIED WITH ANY KIND OF LAW
10 ENFORCEMENT AGENCY.

11 MR. BARENS: THE PROBLEM THAT YOU GET INTO, YOUR HONOR,
12 IS THAT MEMBERS OF THE AGENCIES THAT WE HAVE ENUMERATED, MIGHT
13 NOT ANSWER POSITIVELY ON THAT BECAUSE THEY MAY NOT CONSIDER
14 THAT THEY ARE A LAW ENFORCEMENT AGENCY. I HAVE HAD THAT
15 PROBLEM, YOUR HONOR.

16 THE COURT: WELL, WHAT RELEVANCE IF THEY ARE WORKING
17 FOR THE DEPARTMENT OF THE TREASURY?

18 MR. BARENS: WELL, THE DEPARTMENT OF THE TREASURY --

19 THE COURT: YOU MEAN YOU ASKED ABOUT A LAW ENFORCEMENT
20 AGENCY BECAUSE THEN THEY MIGHT IDENTIFY THEMSELVES AS
21 SYMPATHETIC TO THE PEOPLE IN THOSE PARTICULAR AGENCIES?

22 MR. BARENS: THE DEPARTMENT OF THE TREASURY --

23 THE COURT: WHAT HAS THAT GOT TO DO WITH IT?

24 MR. BARENS: WELL, THEY ARE PRIMARILY AN ENFORCEMENT
25 BUREAU. THE DEPARTMENT OF TREASURY --

26 THE COURT: WELL, IF THEY HAVE BEEN AT THE TREASURY,
27 THEY WILL TELL YOU WHETHER THEY HAVE BEEN IDENTIFIED WITH ANY
28 LAW ENFORCEMENT. I WOULDN'T ASK EVERY SINGLE ONE OF THOSE.

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1 WE WILL NEVER GET THROUGH WITH THE CASE.

2 MR. BARENS: AGAIN YOUR HONOR, I WAS TRYING TO BE
3 SPECIFIC. LEST WE HAVE A DIFFERENCE OF OPINION AS TO WHAT
4 CONSTITUTES A LAW ENFORCEMENT ACTIVITY --

5 THE COURT: ALL RIGHT. THAT IS ONE I WILL ASK. I HAVE
6 BEEN DOING IT UNIFORMLY FOR YEARS AND NOBODY EVER COMPLAINED
7 ABOUT IT.

8 THE PLAZA HOTEL, WHY ASK THAT ONE? WHAT DOES
9 LA SCALA HAVE TO DO WITH IT?

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1 MR. BARENS: THAT IS A RESTAURANT IN BEVERLY HILLS
2 WHEREIN, THE DEFENSE WILL -- I AM SURE THERE WILL BE EVIDENCE
3 INTRODUCED INTO THE ACTIVITIES AND OPERATION OF THE LA SCALA
4 RESTAURANT.

5 THE COURT: HOW IS THAT RELEVANT?

6 MR. BARENS: WELL, I BELIEVE THERE WILL BE INTRODUCED,
7 EVIDENCE CONCERNING MR. HUNT'S PRESENCE IN THAT RESTAURANT
8 THE NIGHT OF MR. LEVIN'S ALLEGED DISAPPEARANCE.

9 THE COURT: OH. WELL, YOU WANT TO KNOW WHETHER THEY
10 EVER WORKED THERE?

11 MR. BARENS: YES.

12 THE COURT: WHETHER THEY HAVE EVER WORKED THERE?

13 MR. BARENS: YES, YOUR HONOR.

14 THE COURT: ALL RIGHT. YOU ASK THEM WHETHER THEY HAVE
15 EVER WORKED AT LA SCALA AND THE ANIMAL OBEDIENCE TRAINING
16 SCHOOL OR WHETHER THEY WERE A VETERINARIAN. ALL RIGHT.

17 MR. BARENS: THANK YOU.

18 THE COURT: WHAT DOES A VETERINARIAN HAVE TO DO WITH THIS?

19 MR. BARENS: YOUR HONOR, ONE OF THE IMPORTANT
20 PARTICIPANTS IN THIS CASE ULTIMATELY, WILL BE MR. LEVIN'S DOG.
21 TRUST ME, YOUR HONOR.

22 THE COURT: OKAY.

23 MR. BARENS: EXCUSE THE EXPRESSION, OF COURSE.

24 THE COURT: MEANING HIS HAVING MESSED UP THE APARTMENT
25 WHEN THEY GOT THERE?

26 MR. BARENS: YES.

27 THE COURT: WHAT HAS THAT GOT TO DO WITH IT?

28 MR. BARENS: WELL YOUR HONOR, THE FACT OF WHETHER HE

1 DID OR DIDN'T, EVIDENTLY HAS ACHIEVED SOME SIGNIFICANCE IN
2 THIS CASE.

3 THE COURT: OKAY. IF THAT IS A PART OF THE DEFENSE,
4 IT IS OKAY WITH ME. WHAT HAS THE VETERINARIAN GOT TO DO WITH
5 IT?

6 MR. BARENS: SENSIBILITY, YOUR HONOR.

7 THE COURT: ALL RIGHT. AND WHAT IS THIS ABOUT BEING
8 ON CALL OR ON JURY DUTY IN THIS COURT? WHAT IS THAT?

9 MR. BARENS: WE HAVE HAD SOME PROBLEMS WITH JURORS BEING
10 TAINTED IN OTHER COURTS BY DISCUSSION OF THIS CASE IN THE
11 HALLWAYS AND READING ARTICLES AND ET CETERA, ET CETERA.

12 AND IF THE JUROR HAS DISCUSSED THIS CASE WITH
13 THOSE PROSPECTIVE JURORS, WE SHOULD KNOW ABOUT IT.

14 THE COURT: WELL, OF COURSE, IF THEY HAVE BEEN ON THE
15 JURY PANEL, DO YOU WANT THEM TO GIVE THEIR NAMES AND EVERYTHING?
16 I THINK THAT THAT IS -- I WOUDLN'T. NO ON 23.

17 24, I WILL ASK THEM. THE CIVIL CASES, YOU WANT
18 THAT, TOO?

19 MR. BARENS: YES, YOUR HONOR.

20 THE COURT: WELL, SOMETIMES I DO THAT TO POINT OUT THE
21 DIFFERENCE IN THE BURDEN OF PROOF IN A CIVIL CASE AND A
22 CRIMINAL CASE.

23 I WILL NOT PERMIT YOU TO ASK 25, THE NATURE OF
24 THE VERDICT. YOU WOULD LIKE TO KNOW WHETHER OR NOT IT WAS
25 GUILTY OR NOT GUILTY. IS THAT THE IDEA? I NEVER PERMIT THAT
26 TO BE DONE.

27 MR. BARENS: EXCEPTION, YOUR HONOR. AS TO A-5, THE COURT
28 IS SAYING NO AND WE ARE NOTING AN EXCEPTION.

1 THE COURT: I WILL GENERALLY ASK WHAT THEIR EXPERIENCE
2 HAS BEEN IN CRIMINAL CASES.

3 MR. BARENS: THANK YOU.

4 THE COURT: AND ALSO NUMBER 25, HAVE YOU OR ANY MEMBER
5 OF YOUR FAMILY OR AN ACQUAINTANCE BEEN A PARTY TO ANY CIVIL
6 ACTION?

7 MR. WAPNER: THAT IS RELEVANT TO THE EXTENT THAT THERE
8 IS GOING TO BE TESTIMONY OF DIFFERENT PEOPLE SUING DIFFERENT
9 PEOPLE IN THIS CASE.

10 THE COURT: WELL, HOW IS THERE BEING A PARTY TO A CIVIL
11 ACTION HAVING ANYTHING TO DO WITH THAT?

12 MR. WAPNER: I WANT TO KNOW WHETHER YOU HAVE A
13 PARTICULARLY LITIGIOUS JUROR.

14 THE COURT: YOU WANT TO ASK THIS, YOU MEAN?

15 MR. WAPNER: I WOULD LIKE TO BE ABLE TO ASK THAT
16 QUESTION.

17 THE COURT: DO YOU WANT TO ASK THE QUESTION?

18 MR. BARENS: YES, YOUR HONOR.

19 THE COURT: OKAY.

20 MR. BARENS: IT IS RIGHT AFTER THAT, THAT THEY TELL US
21 THEY HATE ALL LAWYERS.

22 THE COURT: WHAT DOES BANKRUPTCY HAVE TO DO WITH THIS?

23 MR. WAPNER: WELL, THERE MAY BE SOME TESTIMONY ABOUT
24 A BANKRUPTCY OR ALLEGED BANKRUPTCY THAT MR. LEVIN WENT THROUGH.

25 THE COURT: THE ANSWER TO THAT IS NO. I WILL NOT. NOW,
26 ON 26 --

27 MR. WAPNER: YOUR HONOR, MAY I BE HEARD BRIEFLY?

28 THE COURT: GO AHEAD.

1 MR. WAPNER: I THINK THAT FOR EXAMPLE, IF I WERE ARGUING
2 TO A JURY ABOUT BANKRUPTCY, I WOULD LIKE TO KNOW WHOSE EYES
3 I AM LOOKING INTO IN TERMS OF WHETHER THEY HAVE BEEN ON ONE
4 END OR THE OTHER OF BANKRUPTCY. DID THEY DECLARE BANKRUPTCY?
5 DID THEY HAVE A PARTICULAR VIEW ON IT? DID THEY GET SCREWED
6 OUT OF A LOT OF MONEY BY BEING A CREDITOR BY A PERSON WHO
7 DECLARED BANKRUPTCY?

8 THE COURT: WHAT HAS THAT GOT TO DO WITH THIS CASE?

9 MR. WAPNER: WELL, THE DEFENSE IS GOING TO CLAIM IN THIS
10 CASE, THAT MR. LEVIN JUST SKIPPED TOWN BECAUSE --

11 THE COURT: WHAT HAS THAT GOT TO DO WITH BANKRUPTCY?

12 MR. WAPNER: WELL, THEY ARE GOING TO CLAIM THAT HE HAD
13 TRIED TO DECLARE BANKRUPTCY. HE WASN'T ABLE TO DO IT. AGAIN,
14 I WOULD LIKE TO KNOW WHAT PEOPLE ARE THINKING ABOUT --

15 THE COURT: LET'S SEE HOW THAT DEVELOPS, FIRST. I WILL
16 NOT PERMIT YOU TO ASK THAT.

17 FIND OUT WHETHER THEY HAVE BEEN BANKRUPT? WHY?
18 YOU WANT TO KNOW IF THEY PAY THEIR CREDITORS? I WON'T PERMIT
19 YOU TO DO THAT. IT IS TOO INTRUSIVE INTO THEIR PERSONAL
20 LIVES.

21 27 IS OKAY. I WILL BE ASKING THAT ANYWAY, MYSELF.
22 HAVE YOU OR YOUR FAMILY OR ANY ACQUAINTANCE -- WELL, EVER BEEN
23 CONVICTED OF A FELONY? OR CLOSE PERSONAL FRIEND? RIGHT?

24 MR. BARENS: WELL, THE PROBLEM I GET INTO IN ELIMINATING
25 ACQUAINTANCE -- YOU ARE SAYING CLOSE PERSONAL FRIEND INSTEAD
26 OF ACQUAINTANCE? I ACCEPT THAT, YOUR HONOR.

27 THE COURT: OKAY. THAT GOES TO A FELONY, NOT A
28 MISDEMEANOR.

1 MR. WAPNER: YOUR HONOR, EXCUSE ME. NUMBER 27, IS THE
2 COURT SAYING THE COURT WILL ASK THAT QUESTION?

3 THE COURT: YES.

4 MR. WAPNER: OKAY.

5 THE COURT IS LIKEWISE, GOING TO ASK 28?

6 THE COURT: YES. AND 29 WILL BE ALL RIGHT. I WILL ASK
7 THAT.

8 30, ASKING THEM WHETHER THEY HAVE BEEN AN INMATE
9 IN FEDERAL, STATE OR COUNTY INSTITUTIONS? WHAT FOR? WHAT
10 HAS THAT GOT TO DO WITH IT? OR A FAMILY MEMBER?

11 I AM ASKING THE QUESTION WHETHER OR NOT THEY HAVE
12 BEEN EVER ARRESTED OR CHARGED WITH A FELONY, NOT A MISDEMEANOR.
13 THAT WOULD COVER IT.

14 THEY WILL GIVE US ALL OF THAT. HAVE THEY EVER
15 BEEN CHARGED AND IT IS POSSIBLE THAT THEY MIGHT HAVE BEEN
16 CONVICTED. I WON'T ASK THAT NUMBER 30.

17 MR. WAPNER: WELL, LET ME SUBMIT IT TO YOU. IT MIGHT
18 HAVE TO DO WITH THE FACT THAT ANOTHER CONTENTION BY THE
19 DEFENSE IS GOING TO BE THAT MR. LEVIN LEFT BECAUSE HE WAS
20 AFRAID OF GOING TO JAIL.

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1 THE COURT: WHAT HAS THAT GOT TO DO WITH A MEMBER OF
2 YOUR FAMILY OR AN ACQUAINTANCE EVER HAVING BEEN AN INMATE?

3 MR. BARENS: IT MIGHT AFFECT THEIR STATE OF MIND ABOUT
4 PEOPLE WHO HAVE BEEN TO JAIL OR NOT BEEN TO JAIL AND WHAT
5 IT IS LIKE TO BE IN JAIL.

6 THE COURT: NO, I AM NOT GOING TO ALLOW THAT.

7 OKAY ON 31.

8 32 IS OKAY. I AM GOING TO ASK THAT MYSELF ANYWAY.

9 33 IS OKAY.

10 34. THAT IS PART OF MY VOIR DIRE. AS PART OF
11 MY VOIR DIRE, I AM GOING TO READ AND DISCUSS THE PRESUMPTION
12 OF INNOCENCE AND THE BURDEN OF PROOF IN A CRIMINAL CASE AND
13 THAT THE PRESUMPTION STAYS WITH THE DEFENDANT ALL THROUGHOUT
14 THE TRIAL AND ALL THROUGH THE DELIBERATIONS IN THE JURY ROOM
15 AND I WILL ASK THEM WHETHER OR NOT ANYBODY HAS ANY DISAGREEMENT
16 WITH ANY PART OF THAT, OKAY?

17 "THE PROSECUTION'S BURDEN IS TO PROVE
18 GUILT BEYOND A REASONABLE DOUBT."

19 THAT IS COVERED IN THE INSTRUCTION AND YOU CAN
20 ASK THEM IF THEY FAIL TO DO SO, WOULD YOU FIND THE DEFENDANT
21 NOT GUILTY?

22 DON'T ASK THEM WHETHER THEY AGREE. YOU MAY ASK
23 THEM IF THEY AGREE THAT THE LAW IS THE LAW AND THAT THEY WILL
24 FOLLOW THAT LAW.

25 MR. BARENS: YOUR HONOR, IN ASKING THEM --

26 THE COURT: "AGREE STRONGLY OR DISAGREE STRONGLY OR
27 NO OPINION." IF IT IS THE LAW, THEY MUST FOLLOW IT.

28 MR. BARENS: WELL, YOUR HONOR, WE ARE GOING TO HEAR

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1 JURORS SAY THAT EVEN THOUGH THE DEATH PENALTY IS THE LAW,
2 THEY WON'T DO IT.

3 THE COURT: THAT IS NOT THE DEATH PENALTY.

4 THIS HAS TO DO WITH THE PRESUMPTION OF INNOCENCE
5 AND THE BURDEN OF PROOF BEYOND A REASONABLE DOUBT.

6 MR. BARENS: I FEEL THERE MIGHT BE PEOPLE THAT WOULD
7 SAY HONESTLY THAT ALTHOUGH THERE IS A BURDEN OF PROOF, THEY
8 REALLY DON'T THINK TOO MUCH OF THAT WHOLE PRESUMPTION -- I
9 AM SORRY -- OF THE PRESUMPTION OF INNOCENCE AND THEY WOULD
10 SAY "I DON'T REALLY BELIEVE THAT AT ALL, EVEN THOUGH I WILL
11 FOLLOW IT IF THE JUDGE TELLS ME TO, BUT I DON'T GIVE THAT
12 ANY CREDIBILITY AT ALL."

13 YOU MIGHT HAVE SOMEONE, FOR INSTANCE, YOUR HONOR,
14 THAT HAS LIVED A LONG TIME IN EUROPE, EVEN THOUGH AN
15 AMERICAN, THAT WOULD COME OVER AND SAY THEY DON'T DO THAT
16 IN ENGLAND -- STRIKE THAT -- THEY DON'T DO THAT IN FRANCE.

17 THE COURT: I WILL ASK THEM WHETHER OR NOT THEY HAVE
18 ANY DOUBT ABOUT WHETHER THEY WILL FOLLOW THE LAW AS I STATE
19 IT OR DO THEY HAVE ANY MENTAL RESERVATIONS.

20 MR. BARENS: MENTAL -- WELL, I WOULD ASK THAT
21 INDIVIDUALLY TO THE JURORS, YOUR HONOR.

22 THE COURT: GO AHEAD.

23 MR. BARENS: THANK YOU, YOUR HONOR.

24 THE COURT: OKAY ON C.

25 I DON'T UNDERSTAND 35. "DO YOU BELIEVE THAT OUR
26 CRIMINAL JUSTICE SYSTEM FAVORS THE WEALTHY?"

27 MR. BARENS: WELL, THE PROSECUTION IS GOING TO TALK
28 A LOT ABOUT THESE BEING A BUNCH OF PRIVILEGED CHILDREN THAT

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1 WERE OUT THERE LEADING THE HIGH LIFE AND CAROUSING ABOUT AND
2 I BELIEVE THAT PEOPLE THAT HAVE PREJUDICES -- CERTAINLY, THERE
3 ARE A LOT OF PEOPLE THAT FEEL OUR JUSTICE SYSTEM FAVORS THE
4 WEALTHY AND THEY MIGHT CONSIDER THIS AN OPPORTUNITY TO EVEN
5 THINGS UP A BIT. IF THEY DO HAVE AN OPINION, I WOULD LIKE
6 TO KNOW.

7 THE COURT: HOW ABOUT PERSONS IN THE PUBLIC EYE, WHAT
8 HAS THAT GOT TO DO WITH IT?

9 MR. BARENS: ABSOLUTELY, YOUR HONOR, I BELIEVE THERE
10 IS A SIMILAR PREJUDICE. FOR INSTANCE, EVERYONE THOUGHT PATTY
11 HEARST WOULD BE ACQUITTED SIMPLY BECAUSE OF WHO SHE WAS.

12 THE COURT: I KNOW, BUT PATTY HEARST ISN'T INVOLVED
13 HERE.

14 IS THAT ONE OF THOSE YOU APPROVED OF?

15 MR. WAPNER: I THINK BOTH OF THOSE SHOULD BE ASKED.
16 35, CERTAINLY, BECAUSE I THINK IT IS IMPORTANT, AT LEAST TO
17 BE ABLE TO FIND OUT HOW THEY FEEL ABOUT DEFENDANTS WHO HAVE
18 A LOT OF MONEY. I MEAN THEY ARE GOING TO SEE MR. HUNT SITTING
19 THERE WITH ALL OF THIS FINERY ALL OF THE TIME AND HE IS NOT
20 GOING TO BE LIKE --

21 MR. BARENS: THE DEFENSE TAKES EXCEPTION TO THAT
22 CHARACTERIZATION.

23 THE COURT: WELL, THAT IS JUST THE DIFFICULTY RIGHT
24 AWAY.

25 MR. WAPNER: BUT THAT IS PRECISELY THE POINT.

26 THE COURT: IF HE IS WEALTHY, THEN HE CAN AFFORD TO
27 HIRE TWO LAWYERS, CAN'T HE?

28 MR. BARENS: ACTUALLY, THE STATE HAS PROVIDED ONE,

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1 YOUR HONOR.

2 THE COURT: WELL, IF HE IS WEALTHY THEN HE SHOULD TAKE
3 CARE OF BOTH.

4 I DON'T SEE ANY POINT IN ASKING ANY QUESTION ABOUT
5 WHETHER THEY ARE RICH OR POOR. JUSTICE HAS BLINDERS AND IT
6 DOESN'T RECOGNIZE THE POOR OR THE RICH.

7 MR. BARENS: THE JURORS DO.

8 MR. WAPNER: IT ISN'T LIKE ANY OTHER CASE -- THIS IS
9 THE OTHER SIDE OF THE COIN OF A DEFENDANT IN CUSTODY -- WOULD
10 YOU HOLD IT AGAINST HIM, FOR EXAMPLE, BECAUSE HE IS IN CUSTODY?
11 AND THIS IS: WOULD YOU FAVOR HIM BASICALLY BECAUSE HE IS
12 RICH AND HE IS OUT?

13 THE COURT: ALL RIGHT, I WILL LET YOU ASK THAT. YOU
14 WANT TO ASK IT, DON'T YOU?

15 MR. BARENS: YES, I DO, YOUR HONOR.

16 THE COURT: ALL RIGHT. 36 IS OUT.

17 MR. BARENS: EXCEPTION, YOUR HONOR.

18 THE COURT: 37 IS OKAY.

19 38 IS OKAY.

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1 MR. WAPNER: 36 IS OUT, DID YOU SAY?

2 THE COURT: YES, ABOUT PEOPLE IN THE PUBLIC EYE; THAT
3 DOESN'T HAVE ANYTHING TO DO WITH THE CRIMINAL JUSTICE SYSTEM.

4 37 IS OKAY.

5 38, OKAY.

6 39 IS OKAY. WOULDN'T 39 COME INTO PLAY WHEN THEY
7 ASK THEM ON THE WITHERSPOON QUESTIONS?

8 MR. WAPNER: NOT EXACTLY.

9 MR. BARENS: IT IS A DIFFERENT QUESTION HERE.

10 THE COURT: ALL RIGHT.

11 MR. BARENS: YOUR HONOR, WOULD YOUR HONOR OBJECT TO
12 US CONCLUDING THIS SESSION FOR TODAY, AS MR. CHIER'S ILLNESS
13 COMPELS ME TO BE OF ASSISTANCE IN OUR PRACTICE ON A MATTER
14 AT 4 O'CLOCK?

15 THE COURT: ALL RIGHT.

16 MR. BARENS: THANK YOU, YOUR HONOR.

17 THE COURT: THEN WE WILL START WITH PAGE 16.

18 MR. WAPNER: I HAVE ANOTHER QUESTION.

19 THE COURT: PARDON ME. ARE YOU GOING TO GO AHEAD WITH
20 THIS ARCE THING TOMORROW?

21 MR. BARENS: NOT MYSELF, YOUR HONOR, BUT MR. CHIER IS.

22 MR. WAPNER: HE IS GOING TO BE HERE TOMORROW?

23 MR. BARENS: I HAVE GREAT CONCERN THAT MR. CHIER WILL
24 NOT BE AVAILABLE TOMORROW, AS HE SOUNDED QUITE LIKE DEATH
25 WARMED OVER TODAY.

26 THE COURT: THEN YOU WILL HAVE TO DO IT.

27 MR. BARENS: I AM NOT COMPETENT TO DO THAT. I HAVE
28 NEVER DONE THAT. I DIDN'T READ ANY OF THE MATERIAL. I DON'T

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1 KNOW ANYTHING ABOUT THE ARCE MOTION. I HAVE NEVER SEEN AN
2 ARCE MOTION, TO BE CANDID WITH YOUR HONOR.

3 THE COURT: THAT IS WHAT WE HAVE BEEN DOING WHEN WE
4 HAVE HAD THE HARDSHIP CASES. EVERY SINGLE TIME, I HAVE ASKED
5 THE JUROR WHERE THEY LIVED AND, CLEARLY, IT APPEARS ON THE
6 RECORD THAT THESE PROSPECTIVE JURORS COME FROM A CROSS
7 SECTION OF THE COMMUNITY, AT LEAST CERTAINLY WITHIN A 20-MILE
8 AREA. I DON'T KNOW WHY WE ARE PURSUING THIS THING.

9 MR. BARENS: CAN I COMMENT OFF THE RECORD?

10 MR. WAPNER: EXCUSE ME, COUNSEL. I DON'T MEAN TO BE
11 IMPERTINENT BUT SINCE THE LAW REQUIRES THAT WE BE ON THE
12 RECORD THE WHOLE TIME --

13 THE COURT: NOT EVERY SINGLE REMARK HAS TO BE MADE ON
14 THE RECORD IF IT HAS NOTHING TO DO WITH THE CASE.

15 GO AHEAD AND PUT IT ON THE RECORD.

16 MR. BARENS: THE PROBLEM I HAVE, YOUR HONOR, IS THAT
17 MR. CHIER AUTHORED THIS ARCE DISCUSSION. I HAVE NO
18 PROFESSIONAL FAMILIARITY WITH THAT WHOLE SUBJECT MATTER.
19 HE READ THAT TRANSCRIPT FROM THE VALLEY CASE THAT WAS LODGED
20 WITH THE COURT AND HAS VIGOROUSLY ADVISED ME PRIOR TO MY COMING
21 HERE TODAY THAT I SHOULD NOT RECEDE FROM HIS REQUEST FOR THE
22 ARCE HEARING.

23 THE COURT: I WOULD SUGGEST THAT OVERNIGHT YOU READ
24 THAT TRANSCRIPT AND EVERYTHING ELSE AND THAT WILL FAMILIARIZE
25 YOU WITH IT; IS THAT ALL RIGHT?

26 MR. BARENS: YES, YOUR HONOR.

27 THE COURT: THEN WE WILL PROCEED WITH THE ARCE MOTION
28 TOMORROW.

1 MR. BARENS: YES, YOUR HONOR.

2 THE COURT: IF MR. CHIER IS HERE AND HE WANTS TO DO
3 IT, HE IS PERFECTLY AT LIBERTY TO DO IT BUT YOU ARE AN
4 EXTREMELY INTELLIGENT BOY AND I AM SURE THAT YOU CAN DO
5 JUST AS WELL AS MR. CHIER COULD DO WITH IT IF YOU READ WHAT
6 HE HAS OR ALREADY HAS READ.

7 MR. BARENS: YES, YOUR HONOR.

8 THE COURT: INCIDENTALY, ON THE RECORD, THOSE RECORDS
9 THAT YOU HAD SUBPOENAED FROM THE STATE BAR --

10 MR. BARENS: YES, YOUR HONOR.

11 THE COURT: THERE WERE FILES 1 AND 2 WHICH WILL BE MADE
12 AVAILABLE TO YOU.

13 MR. WAPNER: THAT IS THE ONE THAT HAVE BASICALLY
14 NEWSPAPER CLIPPINGS AND --

15 THE COURT: NO. BASICALLY, IT IS THAT TRANSCRIPT OF
16 THAT PROCEEDING IN THE MUNICIPAL COURT.

17 MR. WAPNER: OF OUR PROCEEDINGS IN THE MUNICIPAL COURT?

18 THE COURT: YES, AND THAT HAD TO DO WITH -- THAT
19 MUNICIPAL COURT PROCEEDING HAD TO DO WITH THE CASE UPSTATE,
20 ISN'T THAT IT?

21 MR. WAPNER: WELL, I DON'T KNOW BUT AS FAR AS ANY
22 TRANSCRIPTS OF PROCEEDINGS, COUNSEL HAS THE TRANSCRIPTS OF
23 THE MUNICIPAL COURT PROCEEDINGS IN THIS CASE, OBVIOUSLY.

24 THE COURT: NO, NO. I AM TALKING ABOUT THE TRANSCRIPT
25 THAT THEY HAD -- DIDN'T THEY INDICATE --

26 MR. BARENS: I DON'T HAVE THAT LIST WITH ME, YOUR HONOR.

27 MR. WAPNER: I DON'T EITHER.

28 THE OTHER THING I ASKED THE COURT IS, BEFORE YOU

1 MAKE ANY RULING, THE COURT SAID IT WOULD ALLOW COUNSEL FOR
2 MR. KARNY TO BE PRESENT AND MAKE ANY OBJECTIONS, SO INSTEAD
3 OF JUST DISCLOSING NOW, TELLING COUNSEL NOW WHAT IT IS --

4 THE COURT: WHAT DO YOU MEAN, ON WHAT?

5 MR. WAPNER: ON WHETHER OR NOT THE STATE BAR MATERIALS
6 SHOULD BE TURNED OVER, MR. KARNY HIMSELF, I THINK, HAS A RIGHT
7 OF PRIVACY THAT HE SHOULD BE ALLOWED TO ASSERT THROUGH HIS
8 COUNSEL.

9 THE COURT: WHERE IS THAT FILE, EXHIBIT 1?

10 MR. BARENS: THERE IS THE INVENTORY LIST.

11 THE COURT: THE MOTION PAPERS, THE FILE.

12 MR. BARENS: FROM MR. SWEET?

13 THE COURT: 1, 2, 3, 4, 5 AND 6.

14 MR. WAPNER: THE STATE BAR MATERIAL.

15 THE COURT: THE STATE BAR MATERIAL.

16 THE CLERK: THAT IS EXHIBIT 1, COURT EXHIBIT 1; IS THAT
17 RIGHT?

18 MR. WAPNER: YES.

19 THE COURT: WHATEVER IT IS, GET IT, WILL YOU?

20 THE CLERK: YES.

21 THE COURT: THEY ARE GOING TO PRODUCE 3, 4, 5, 6 AND
22 7 AND WE WILL HAVE IT SEALED AND I WILL READ IT OVER AGAIN
23 AND IF THERE IS ANYTHING THERE WHICH I THINK IS PERTINENT
24 AND IS NECESSARY FOR THE DEFENDANT TO HAVE VIS-A-VIS KARNY,
25 I WILL MAKE THAT KNOWN TO YOU.

26 MY IMPRESSION IS, HAVING LOOKED THROUGH THOSE
27 FILES, THERE ISN'T ANYTHING THERE.

28 MR. BARENS: YOUR HONOR, TO THE EXTENT MR. KARNY MAKES

1 STATEMENTS CONCERNING HIS INVOLVEMENT OR THE LACK THEREOF
2 IN THIS MATTER, WE CONSIDER IT EXTREMELY IMPORTANT TO THE
3 DEFENSE FOR IMPEACHMENT PURPOSES.

4 THE COURT: HE IS GOING TO GIVE YOU THE AFFADVIT OF
5 KARNY FOR THE ARREST OF HUNT AND DOSTI AND SO FORTH, AND THE
6 DMV REPORT, THEY ARE GOING TO GIVE YOU THAT. THEN THE
7 DEPOSITION OF KARNY AND THE CIVIL LITIGATION, THE LETTER --

8 MR. WAPNER: WHAT I AM SAYING IS, BEFORE YOU DECIDE
9 TO DISCLOSE, TURN OVER ANY OF THESE TO THE DEFENSE, YOUR HONOR,
10 THAT THE ATTORNEY FOR MR. KARNY SHOULD HAVE AN OPPORTUNITY
11 TO BE HEARD AND VOICE ANY OBJECTIONS.

12 THE COURT: YES, YES, YES.

13 WE DON'T HAVE TO DECIDE THAT AT THIS VERY MOMENT,
14 DO WE? WE WILL WAIT UNTIL WE GET A JURY AND WE START THE
15 TRIAL, ALL RIGHT?

16 MR. BARENS: YOUR HONOR, IN TERMS OF TOMORROW THEN,
17 WE HAVE THIS ARCE BUSINESS AND, YOUR HONOR, ASIDE FROM THAT,
18 WE WOULD PROCEED WITH FINISHING THESE QUESTIONS AND --

19 THE COURT: FINISHING WHICH QUESTIONS, THESE QUESTIONS?

20 MR. BARENS: THESE QUESTIONS, YOUR HONOR.

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1 MR. BARENS: AND I PRESUME A RULING ON THE LIVESAY
2 MOTION?

3 THE COURT: YES. ALL RIGHT.

4 MR. BARENS: THEN WHAT WOULD YOUR HONOR PROPOSE FOR
5 TOMORROW?

6 THE COURT: THEN WE HAVE GOT ALL THE JURORS THAT WILL
7 BE COMING IN.

8 MR. WAPNER: I THINK THEN WHAT WE HAVE TO DO IS MAKE
9 A DETERMINATION OF HOW MANY --

10 THE COURT: HOW MANY MORE WE NEED?

11 MR. WAPNER: WELL, I THINK THE COURT HAS ALREADY INDICATED
12 THAT IT IS GOING TO START WITH THE 93 THAT I BELIEVE WE HAVE.

13 THE COURT: WELL, WE WILL SEE HOW MANY WILL BE EXCUSED
14 UNDER WITHERSPOON. THEN WE WILL SEE HOW MANY WE HAVE LEFT.

15 MR. BARENS: IS IT YOUR INTENTION TO COMMENCE THE HOVEY
16 VOIR DIRE TOMORROW?

17 THE COURT: YES, WHEN WE GET TO IT.

18 MR. WAPNER: MAY I MAKE A SUGGESTION? SINCE WE DON'T
19 HAVE ANY IDEA YET EXACTLY HOW LONG THIS HOVEY PROCEDURE IS
20 GOING TO TAKE FOR EACH JUROR AND THEREFORE IT IS HARD TO KNOW
21 ABOUT SCHEDULING, MAYBE WHAT WE SHOULD DO IS, ONCE WE GET
22 STARTED WITH THE HOVEY/WITHERSPOON PROCEDURE AND FIND OUT
23 APPROXIMATELY HOW LONG IT IS TAKING FOR EACH JUROR, THAT WE
24 CAN THEN BREAK DOWN THE LIST OF PROSPECTIVE JURORS AND GIVE
25 THEM APPOINTMENTS FOR WHEN THEY CAN RETURN?

26 THE COURT: THAT IS ALL RIGHT WITH ME.

27 MR. BARENS: THAT IS AGREEABLE.

28 THE COURT: YOU SUGGESTED THAT BEFORE. ALL RIGHT.

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1 MR. BARENS: THANK YOU.

2 THE COURT: YOU CAN GO ABOUT YOUR BUSINESS.

3 MR. BARENS: THANK YOU.

4 MR. WAPNER: I BELIEVE THE COURT SAID 10:00 O'CLOCK
5 TOMORROW.

6 THE COURT: YES.

7 (AT 3:45 P.M. AN ADJOURNMENT WAS TAKEN
8 THURSDAY, NOVEMBER 13, 1986 AT 10:00
9 A.M.)

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