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COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

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

OCT 03 1987

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
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LOS ANGELES, CALIFORNIA 90010

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 36 OF 101
(PAGES 5477 TO 5594 , INCLUSIVE)

COPY

ROSEMARIE GOODBODY, CSR NO. 932
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OFFICIAL REPORTERS

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

JOSEPH HUNT,)

DEFENDANT.)

REPORTERS' DAILY TRANSCRIPT

TUESDAY, JANUARY 20, 1987

VOLUME 36

PAGES 5477 TO 5594, INCL.

APPEARANCES:

FOR THE PLAINTIFF: 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
OFFICIAL REPORTERS

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TUESDAY, JANUARY 20, 1987 VOLUME 36 PAGES 5477 TO 5594

A.M. 5477

P.M. 5546

PROCEEDINGS

VOIR DIRE OF ALTERNATE JURORS (CONTINUED) 5477

MOTIONS 5546

1 SANTA MONICA, CALIFORNIA; TUESDAY, JANUARY 20, 1987; 10:50 A.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS NOTED ON TITLE PAGE.)
4

5 THE COURT: STIPULATED THE DEFENDANT IS PRESENT, COUNSEL
6 ARE PRESENT AND THE PROSPECTIVE JURORS ARE PRESENT.

7 GOOD MORNING, LADIES AND GENTLEMEN.

8 YOUR PEREMPTORY, IS IT?

9 MR. WAPNER: I WAS ABOUT TO EXAMINE MRS. BONE, YOUR
10 HONOR.

11 THE COURT: OH, GO AHEAD, YOU DO THAT.

12 MR. WAPNER: THANK YOU.

13 GOOD MORNING, MRS. BONE. HOW ARE YOU?

14 MS. BONE: FINE. THANK YOU.

15 MR. WAPNER: YOU SAID THAT YOU KNOW WHY ROSEMARIE WOULD
16 REMEMBER YOU.

17 MS. BONE: YES.

18 MR. WAPNER: WHY?

19 MS. BONE: I WAS AFRAID YOU WOULD ASK AND I REALIZED,
20 TOO, THINKING ABOUT IT OVER THE WEEKEND, I DO BELIEVE
21 JUDGE RITTENBAND WAS THE JUDGE.

22 I WAS FOREMAN OF THE JURY AT THE TIME AND WHEN
23 WE DID REACH A VERDICT AND WE CAME BACK INTO THE COURTROOM,
24 THE JUDGE ASKED WHAT THE VERDICT OF THE JURY WAS AND I
25 REMEMBER LEAPING TO MY FEET AND SAYING, "THE JURY FINDS THE
26 DEFENDANT" AND JUDGE RITTENBAND SAYING, "WAIT A MINUTE. YOU
27 WATCH TOO MUCH TV."

28 I SAID, "I NEVER WATCH TV."

1 AND I REMEMBER I WAS PURPLE WITH EMBARRASSMENT
2 AND THE COURTROOM WENT INTO LAUGHTER AND I THINK THAT IS WHY
3 ROSEMARIE WOULD REMEMBER ME.

4 MR. WAPNER: OKAY, SO OBVIOUSLY THE JURY DID REACH A
5 VERDICT IN THAT CASE?

6 MS. BONE: YES, THEY DID.

7 MR. WAPNER: WAS THAT YOUR ONLY EXPERIENCE ACTUALLY
8 SITTING ON A JURY?

9 MS. BONE: NO.

10 AT THE SAME TIME, I WAS ON A CIVIL CASE.

11 MR. WAPNER: AND DID THAT JURY DELIBERATE?

12 MS. BONE: NO. THIS CASE WAS DISMISSED.

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1 MR. WAPNER: WAS IT DISMISSED OR WAS IT SETTLED OR DO
2 YOU KNOW?

3 MS. BONE: IT WAS SETTLED OUT OF COURT.

4 MR. WAPNER: OKAY. AND WHAT DID YOU THINK OF YOUR
5 EXPERIENCE SITTING ON THAT CASE, THAT CRIMINAL CASE?

6 MS. BONE: VERY INTERESTING AND VERY ENLIGHTENING.

7 MR. WAPNER: THAT IS THE CASE WITH THE TWO FEMALE
8 LAWYERS, ONE OF WHOM YOU FELT SORRY FOR?

9 MS. BONE: YES.

10 MR. WAPNER: DO YOU REMEMBER WHETHER THE ONE YOU FELT
11 SORRY FOR WAS THE PROSECUTOR OR DEFENSE ATTORNEY?

12 MS. BONE: NO. SORRY, I DON'T.

13 MR. WAPNER: AND DID THAT INVOLVE SOME KIND OF SEXUAL
14 ASSAULT?

15 MS. BONE: NO.

16 MR. WAPNER: IT WAS AN ASSAULT OF SOME SORT?

17 MS. BONE: YES.

18 MR. WAPNER: AND IT WAS WITH A WEAPON OF SOME KIND?

19 MS. BONE: NO.

20 MR. WAPNER: WAS THERE A LOT OF DISCUSSION IN THE JURY
21 ROOM ABOUT THE PERFORMANCE OF THE LAWYERS OR ONE OF THE LAWYERS
22 IN PARTICULAR?

23 MS. BONE: IT WAS BROUGHT UP, YES.

24 MR. WAPNER: WHAT EFFECT DID THAT HAVE ON THE
25 DELIBERATIONS?

26 MS. BONE: I DON'T REMEMBER THAT IT HAD ANY EFFECT AT
27 ALL. THEY JUST FELT THE CASE WAS NOT WELL PRESENTED.

28 MR. WAPNER: AND YOU DON'T REMEMBER AT THIS TIME WHICH

1 SIDE YOU FELT WASN'T WELL PRESENTED?

2 MS. BONE: I REALLY DON'T, SORRY. IN FACT, I DON'T
3 REMEMBER WHETHER THOSE LAWYERS WERE WITH THE CIVIL CASE OR
4 WITH THE CRIMINAL CASE.

5 I JUST REMEMBER THINKING ABOUT THE PERFORMANCE
6 OF THAT LAWYER. BUT I DON'T REALLY RECALL WHETHER IT WAS
7 THE CIVIL OR CRIMINAL CASE.

8 MR. WAPNER: IN THE CIVIL CASE, YOU NEVER ACTUALLY GOT
9 TO THE POINT OF DELIBERATING?

10 MS. BONE: NO.

11 MR. WAPNER: SO DO YOU RECALL WHETHER OR NOT IT WAS
12 DISCUSSED IN THE JURY ROOM ABOUT THE PERFORMANCE OF THE
13 LAWYERS?

14 MS. BONE: THEN IT HAD TO BE THE CRIMINAL CASE.

15 MR. WAPNER: EITHER THAT OR IT WAS DISCUSSED AMONG THE
16 JURORS IN THE HALLWAY, PERHAPS?

17 MS. BONE: NO. I THINK IT HAD TO BE THE CRIMINAL --
18 WELL, I DON'T WANT TO MAKE A DEFINITE STATEMENT BECAUSE I
19 AM NOT CERTAIN. I WOULD HAVE TO REALLY THINK BACK. IT HAS
20 BEEN ABOUT FOUR OR FIVE YEARS AGO.

21 MR. WAPNER: THE CASE THAT YOU WERE THE FOREMAN ON,
22 DID YOU TELL US IT TOOK ABOUT A WEEK TO GET A VERDICT IN THAT
23 CASE?

24 MS. BONE: NO. IT TOOK ABOUT SIX HOURS.

25 MR. WAPNER: DID EVERYBODY MAKE A PRETTY
26 CONSCIENTIOUS EFFORT TO REACH A VERDICT IN THAT CASE?

27 MS. BONE: VERY MUCH SO. IT WAS NOT A UNANIMOUS VERDICT
28 AT FIRST.

1 MR. WAPNER: WHAT ARE YOUR QUESTIONS ABOUT THE PIE
2 EXAMPLE? YOU SAID YOU WOULD HAVE SOME QUESTIONS.

3 MS. BONE: I WAS WONDERING IN LISTENING -- I WAS
4 WONDERING IF THERE WAS AN ANIMAL IN THE HOUSE.

5 MR. WAPNER: WHY WOULD YOU WANT TO KNOW IF THERE WAS
6 AN ANIMAL IN THE HOUSE?

7 MS. BONE: WELL, BEFORE IF I KNEW THERE WAS AN ANIMAL
8 IN THE HOUSE, THE QUESTION I WAS WONDERING -- IS ALSO THAT
9 HE HAD A PIECE OF PIE. IT NEVER SAID THE SHAPE OF THE PIECE
10 OF PIE.

11 MR. WAPNER: WHAT DIFFERENCE WOULD IT MAKE?

12 MS. BONE: QUITE A DIFFERENCE.

13 MR. WAPNER: WHY?

14 MS. BONE: BECAUSE IF IT WAS AN ANIMAL IT CERTAINLY
15 WOULD NOT HAVE BEEN CUT IN A TRIANGLE.

16 MR. WAPNER: IF THE ANIMAL GOT INTO THE HOUSE AND TOOK
17 THE PIE, WHAT IS YOUR THEORY ON HOW JOHNNY GOT THE PIE ON
18 HIM?

19 MS. BONE: IT DEPENDS IF HE WAS A DOG KISSER OR NOT.
20 LIKE, SO MANY PEOPLE KISS THEIR DOGS OR ANIMALS AND LEAN DOWN.
21 THERE ARE MANY UNCERTAINTIES.

22 THE DOG OR WHATEVER ANIMAL COULD HAVE TAKEN A
23 CHUNK OUT OF THE PIE. JOHNNY COULD HAVE PETTED THE DOG. THE
24 DOG COULD HAVE LICKED HIS FACE. I WOULD HAVE TO HEAR MORE.

25 MR. WAPNER: WITHOUT HEARING MORE, DO YOU HAVE A
26 REASONABLE DOUBT AS TO WHAT HAPPENED TO THE PIE?

27 MS. BONE: YES.

28

1 THE COURT: ANYTHING FURTHER?

2 MR. WAPNER: YOU SAID THAT ON THE CASE YOU SAT ON BEFORE
3 YOU WERE SURPRISED BY WHAT THE DEFENDANT SAID. WHAT WAS IT
4 ABOUT WHAT HE SAID THAT SURPRISED YOU?

5 MS. BONE: I DON'T THINK IT IS WHAT HE SAID.

6 I THINK IT WAS THE BODY LANGUAGE, HIS VOICE, THE
7 TIMBER OF HIS VOICE, I WAS JUST SURPRISED.

8 HE SEEMED -- THE PERSON SEEMED VERY SHY TO ME.
9 HE CAME ACROSS AS VERY SHY AND I WAS A LITTLE BIT SURPRISED
10 BECAUSE OF THAT.

11 MR. WAPNER: THANK YOU. I WILL PASS FOR CAUSE.

12 THE COURT: ALL RIGHT. PEOPLE'S PEREMPTORY.

13 MR. WAPNER: YES, WE DO THANK AND ASK THE COURT TO
14 EXCUSE MRS. BONE. THANK YOU, MA'AM.

15 THE COURT: THANK YOU, MRS. BONE. YOU WILL BE EXCUSED.

16 MR. BARENS: COULD WE APPROACH JUST FOR A QUICK MOMENT,
17 YOUR HONOR?

18 THE COURT: ALL RIGHT.

19 (THE FOLLOWING PROCEEDINGS WERE HELD
20 AT THE BENCH:)

21 THE COURT: I THINK YOU HAD TWO THAT YOU HAD EXERCISED.

22 MR. WAPNER: THAT IS THE SECOND ONE.

23 THE CLERK: NO. THREE.

24 MR. BARENS: I JUST WANTED TO TAKE A MOMENT --

25 THE COURT: NO. LET'S SEE HOW MANY HE HAS. HOW MANY
26 HAVE YOU EXERCISED, TWO, DIDN'T YOU?

27 THE CLERK: TWO.

28 MR. WAPNER: THAT IS THE SECOND ONE.

1 THE CLERK: AND MR. BARENS HAD THREE.

2 THE COURT: THAT IS RIGHT.

3 MR. BARENS: I JUST WANTED TO TAKE A QUICK MINUTE TO
4 RECONFIRM WHERE WE ARE PROCEDURALLY NOW, JUDGE. WE HAVE NOW
5 FINISHED THREE OF THE FIRST -- WELL, MR. RUTHERFORD WOULD
6 MAKE IT FOUR ALTERNATES, ALTHOUGH HE IS NOW IN THE BOX, SO
7 WE FINISHED THE NEXT THREE AND I AM WONDERING WHEN I CAN
8 BECOME ELIGIBLE FOR THE EXERCISE OF A PEREMPTORY.

9 THE COURT: IF WE HAVE A FOURTH.

10 MR. BARENS: OKAY. SO THEN FRED WOULD BE THE ONLY ONE,
11 MR. WAPNER WOULD BE THE ONLY ONE ELIGIBLE AT THIS POINT IN
12 TIME?

13 THE COURT: THAT'S CORRECT.

14 MR. BARENS: AND THEN YOUR HONOR WILL MAKE A DECISION
15 ABOUT WHAT HAPPENS AT THAT POINT?

16 THE COURT: I WILL SEE HOW MANY WE HAVE GOT.

17 AND I HAVE GOT TO GET A STIPULATION THAT WE DON'T
18 HAVE TO HAVE TWO LEFT OVER.

19 MR. BARENS: I SEE, YOUR HONOR.

20 THE COURT: YOU GET THE IDEA? SO WE CAN EXHAUST ALL
21 OF THEM.

22 MR. BARENS: I SEE, YOUR HONOR.

23 THE COURT: FOR EXAMPLE, SUPPOSE WE TAKE ONE OF THE
24 FIVE LEFT, SO THAT WILL BE FOUR. HE HAS ONE PEREMPTORY,
25 ALL RIGHT? SO ASSUME HE DOES NOT EXERCISE THE PEREMPTORY
26 AND PASSES, THAT MEANS WE HAVE THREE IN THE JURY BOX AND WE
27 HAVE FOUR OUT THERE. NOW WE CAN TAKE ONE MORE, WHICH IS
28 PERFECTLY FINE, BECAUSE IF WE TAKE ONE MORE THERE WILL BE

1 TWO PEREMPTORIES AND THAT LEAVES ONE LEFT ONCE WE GET FINISHED
2 WITH EVERYBODY.

3 MR. BARENS: ALL RIGHT.

4 THE COURT: LET'S SEE WHAT HAPPENS FIRST WITH THE NEXT
5 ONE. IT MAY VERY WELL BE WE GET SPELLMAN --

6 MR. BARENS: SPEARMAN. THEN WE CAN ALL TALK IT OVER.

7 THE COURT: SPEARMAN AND THEN I AM SURE HE IS GOING
8 TO BE PEREMPTORILY CHALLENGED BY ONE OF THE TWO OF YOU --
9 NOT YOU, YOU CAN'T -- BUT MAYBE BY HIM. LET'S SEE IF WE GET
10 RID OF HIM THAT WAY.

11 MR. BARENS: ALL RIGHT.

12 THE COURT: I CAN'T TELL HER TO PICK HIM OUT, YOU KNOW.

13 MR. BARENS: BURN THE CARD -- THANK YOU, JUDGE.

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

16 THE CLERK: LINDA D. CAMPBELL-CABLE.

17 IS THAT MRS. CABLE?

18 MS. CABLE: MISS OR MS.

19 I USUALLY GO BY CAMPBELL RATHER THAN CABLE.

20 THE CLERK: MISS CAMPBELL.

21 THE COURT: WHAT DO YOU DO, MISS CAMPBELL?

22 MS. CAMPBELL: I WORK FOR GENERAL TELEPHONE.

23 THE COURT: IN WHAT CAPACITY?

24 MS. CAMPBELL: RIGHT NOW I AM A BUSINESS REPRESENTATIVE
25 IN SPECIAL SERVICES. IT IS A JOB I JUST STARTED SO I AM NOT
26 REAL FAMILIAR WITH IT YET.

27 THE COURT: WHAT EDUCATIONAL BACKGROUND DO YOU HAVE?

28 MS. CAMPBELL: HIGH SCHOOL AND ABOUT TWO AND A HALF

1 YEARS OF JUNIOR COLLEGE.

2 THE COURT: ALL RIGHT. WHERE DO YOU LIVE?

3 MS. CAMPBELL: PARDON ME?

4 THE COURT: WHERE DO YOU LIVE?

5 MS. CAMPBELL: RIGHT NOW AGOURA. I JUST MOVED TO
6 AGOURA.

7 THE COURT: AGOURA? HE HAS JUST BOUGHT A HOUSE OUT
8 THERE, OUR BAILIFF, YOU KNOW.

9 MS. CAMPBELL: SO I HEAR.

10 THE COURT: YOU WILL HAVE HIM AS A NEIGHBOR.

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1 THE COURT: HAVE YOU EVER SERVED AS A JUROR IN A
2 CRIMINAL CASE BEFORE?

3 MS. CAMPBELL: NEVER.

4 THE COURT: AND HAVE YOU EVER BEEN THE VICTIM OF ANY
5 KIND OF THEFT OR CRIME OF ANY KIND?

6 MS. CAMPBELL: NEVER.

7 THE COURT: YOU ARE VERY FORTUNATE. ALL RIGHT. YOU
8 MAY INQUIRE.

9 MR. BARENS: THANK YOU, YOUR HONOR. GOOD MORNING,
10 MS. CAMPBELL.

11 MS. CAMPBELL: CAMPBELL OR CABLE. I DON'T CARE.

12 MR. BARENS: OKAY. I WON'T CALL YOU JOHNSON, THOUGH.

13 YOU HAVE NEVER SERVED ON A JURY BEFORE. HAVE
14 YOU EVER BEEN CALLED FOR JURY SERVICE BEFORE, WHERE YOU WERE
15 A PART OF THE PROCESS BEFORE?

16 MS. CAMPBELL: THIS IS THE VERY FIRST TIME.

17 MR. BARENS: AND IS THIS EQUALLY, YOUR FIRST EXPERIENCE
18 IN THE COURTROOM AT ANY TIME THAT YOU HAVE EVER BEEN -- YOU
19 HAVE NEVER BEEN A WITNESS IN A TRIAL?

20 MS. CAMPBELL: I WAS SUBPOENAED AS A CHARACTER WITNESS
21 AT ONE TIME FOR SOMEONE. I DON'T REMEMBER TOO MANY OF THE
22 DETAILS. I JUST WENT IN.

23 THEY ASKED ME ABOUT A COUPLE OF DAYS THAT I WAS
24 AT WORK THAT THIS OTHER PERSON WAS SUPPOSED TO BE THERE. I
25 TESTIFIED THAT YES, THIS PERSON WAS AT WORK AND SO WAS I.
26 THAT WAS THE END OF THAT.

27 MR. BARENS: YOU DIDN'T LISTEN TO ANY OF THE PROCEEDINGS
28 IN THAT MATTER?

1 MS. CAMPBELL: NO. THEY CALLED US IN INDIVIDUALLY.

2 MR. BARENS: I SEE. WAS THAT A CRIMINAL TRIAL?

3 MS. CAMPBELL: I DON'T RECALL BECAUSE I DON'T KNOW WHAT
4 IT WAS ABOUT. I WAS JUST CALLED IN TO VERIFY SOMEONE WAS
5 WHERE THEY SAID THEY WERE.

6 MR. BARENS: WAS THAT YOUR ONLY EXPERIENCE IN THE
7 COURTROOM?

8 MS. CAMPBELL: YES.

9 MR. BARENS: YOU NEVER HAD OCCASION TO WATCH A CRIMINAL
10 TRIAL IN ANY KIND OF SETTING?

11 MS. CAMPBELL: NO.

12 MR. BARENS: OKAY. YOU SAY THAT YOU ARE STARTING ON
13 A NEW JOB AT THE TELEPHONE COMPANY IN SPECIAL SERVICES.

14 MS. CAMPBELL: RIGHT. THAT'S CORRECT.

15 MR. BARENS: HAVE YOU BEEN WORKING FOR THE PHONE COMPANY
16 A WHILE?

17 MS. CAMPBELL: SIX YEARS.

18 MR. BARENS: WHAT HAVE YOU GENERALLY DONE?

19 MS. CAMPBELL: I WAS A RESIDENTIAL REPRESENTATIVE.
20 I TOOK ORDERS TO HAVE RESIDENTIAL SERVICES INSTALLED.

21 MR. BARENS: PRIOR TO THAT SIX-YEAR STINT, WHAT DID
22 YOU DO?

23 MS. CAMPBELL: WELL, LET'S SEE. I WORKED AS A SIGN
24 MAKER FOR THE HARRIS COMPANY FOR ABOUT THREE YEARS. THAT
25 IS A DEPARTMENT STORE IN THE SAN BERNARDINO AREA.

26 AND I WORKED UP AT SNOW SUMMIT DURING THE WINTER
27 SEASON FOR A WHILE. THAT IS A SKI RESORT THERE.

28 I HAVE DONE SOME COCKTAIL WAITRESSING. I HAVE

1 DONE SOME FOOD WAITRESSING. THAT IS ABOUT IT.

2 MR. BARENS: YOU HAVE TWO YEARS OF JUNIOR COLLEGE
3 EXPERIENCE. WAS THAT HERE IN SOUTHERN CALIFORNIA?

4 MS. CAMPBELL: YES, IT WAS.

5 MR. BARENS: WHERE DID YOU GO TO SCHOOL?

6 MS. CAMPBELL: SAN BERNARDINO VALLEY COLLEGE AND BIG
7 BEAR HIGH SCHOOL AND ELEMENTARY SCHOOL.

8 MR. BARENS: DID YOU HAVE A MAJOR AT THE J.C.?

9 MS. CAMPBELL: I TENDED TO TAKE A LOT OF ART COURSES
10 AND CULTURAL ANTHROPOLOGY FOR MY MAIN INTERESTS.

11 MR. BARENS: WAS THAT PREPATORY TO A CERTAIN
12 PROFESSIONAL PURSUIT?

13 MS. CAMPBELL: I HAD THOUGHT IT WOULD BE AT THE TIME.
14 BUT IT DID NOT END UP SO. THE ART WAS FOR COMMERCIAL
15 PURPOSES.

16 MR. BARENS: WHAT DID YOU INTEND TO DO, HAD YOU
17 ACTUALLY PURSUED WHATEVER PROFESSIONAL INTEREST YOU HAD AT
18 THAT TIME?

19 MS. CAMPBELL: WELL, I HAD HOPED TO GO INTO BUSINESS
20 ADVERTISING. BUT I JUST DIDN'T HAVE THE STAMINA AND
21 IMAGINATION FOR IT.

22 MR. BARENS: WAS THERE ANYTHING IN PARTICULAR WHERE
23 YOU HAD A FIELD OF EMPHASIS IN CULTURAL ANTHROPOLOGY?

24 MS. CAMPBELL: NOT PARTICULARLY. IT WAS JUST A SUBJECT
25 THAT I WAS INTERESTED IN.

26 MR. BARENS: COULD YOU TELL US WHAT INTERESTED YOU
27 ABOUT THAT?

28 MS. CAMPBELL: JUST HOW PEOPLE HAVE DEVELOPED THEIR

1 DIFFERENT CULTURES OVER THE AGES.

2 MR. BARENS: EVOLUTIONARY DEVELOPMENT OF CULTURAL
3 REPRESENTATION?

4 MS. CAMPBELL: YES.

5 MR. BARENS: WITHIN THAT, WAS THERE A PARTICULAR
6 CULTURE YOU WERE INTERESTED IN?

7 MS. CAMPBELL: NOT ESPECIALLY. I WOULD SAY MAYBE THE
8 AMERICAN INDIAN CULTURES.

9 MR. BARENS: FROM THAT EXPERIENCE, YOU BECAME AWARE
10 OF THAT FACT THAT BASED ON CULTURAL EXPERIENCE, ONE'S
11 PERCEPTIONS ARE GREATLY DEFINED. WOULD YOU AGREE WITH THAT
12 STATEMENT?

13 MS. CAMPBELL: THAT'S CORRECT.

14 MR. BARENS: AND THE FACT OF THE MATTER IS, IN A SEARCH
15 FOR TRUTH, SOMEWHAT LIKE THE SEARCH FOR BEAUTY, IT LIES IN
16 THE EYES OF THE BEHOLDER, ISN'T THAT SO?

17 MS. CAMPBELL: YES.

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1 MR. BARENS: CONDUCT THAT IS ACCEPTABLE IN VARIOUS
2 SOCIETIES AND CULTURES, IS UNACCEPTABLE IN OTHER CULTURES?

3 MS. CAMPBELL: THAT IS TRUE.

4 MR. BARENS: AND WHAT WE BELIEVE TWO DIFFERENT CULTURES
5 WOULD LOOK AT -- THEY WOULD LOOK AT AN EVENT THAT WE WOULD
6 CALL A FACTUAL EVENT AND COME TO MARKEDLY DIFFERENT CONCLUSIONS
7 ABOUT THE GENESIS ABOUT THAT EVENT?

8 MS. CAMPBELL: DEFINITELY.

9 MR. BARENS: BASED ON THEIR BELIEF SYSTEMS?

10 MS. CAMPBELL: YES.

11 MR. BARENS: AND WHAT THEY PERCEIVE THINGS TO BE?

12 MS. CAMPBELL: THAT'S CORRECT.

13 MR. BARENS: COULD YOU UNDERSTAND FROM THAT, THAT TRUTH
14 PER SE OR THE EXISTENCE OR NON-EXISTENCE OF A FACT PER SE,
15 IS GREATLY SUBJECT TO A LOT OF SUBJECTIVE FACTORS?

16 MS. CAMPBELL: DEFINITELY.

17 MR. BARENS: WOULD YOU, BASED ON THAT EXPERIENCE, TAKE
18 A LOOK AT THE PERCEPTIONS OF THE VARIOUS WITNESSES WHEN THEY
19 TESTIFY, TO SEE WHAT VANTAGE POINT THEY ARE EXAMINING EVIDENCE
20 FROM?

21 MS. CAMPBELL: ABSOLUTELY.

22 MR. BARENS: DO YOU UNDERSTAND THAT BASED ON OUR
23 EXPERIENCES AS PARTICIPANTS IN AMERICAN SOCIETY, WE ARE ALL
24 REPRESENTATIVE OF SUBCULTURES SIMILAR TO WHAT YOU STUDIED,
25 THAT GREATLY BEAR ON OUR PRESUMPTIONS ABOUT REALITY?

26 MS. CAMPBELL: YES.

27 MR. BARENS: SO IF WE HAVE A QUESTION THAT CALLS FOR
28 INTERPRETATION ABOUT WHETHER FACTS SUGGEST THAT SOMEONE IS

1 DEAD VERSUS WHETHER OR NOT THEY ARE MISSING VERSUS WHETHER
2 OR NOT THEY ARE VOLUNTARILY OR INVOLUNTARILY MISSING, A LOT
3 OF THE CONCLUSIONS THAT A JUROR MIGHT -- SORRY, THAT A WITNESS
4 MIGHT DRAW, WOULD BE BASED ON THEIR EXPERIENCE LEVEL AND THEIR
5 PERCEPTION OF THINGS?

6 MS. CAMPBELL: YES.

7 MR. BARENS: DO YOU UNDERSTAND THAT?

8 MS. CAMPBELL: YES. I UNDERSTAND THAT.

9 MR. BARENS: TRUTH IS RELATIVE, ISN'T IT?

10 MS. CAMPBELL: YES.

11 MR. BARENS: WHEN WE START TALKING ABOUT -- AND IF
12 YOU HEAR SOMEONE TELLING YOU IN THIS COURTROOM THAT SOMETHING
13 IS ABSOLUTELY TRUE, I DARE SAY FROM YOUR EDUCATION, I WILL
14 BET THAT THERE AREN'T MORE THAN ONE OR TWO THINGS ABOUT THE
15 UNIVERSE YOU COULD TELL ME THAT EXIST AS ABSOLUTE TRUTH.

16 MS. CAMPBELL: THAT'S CORRECT.

17 MR. BARENS: IT BEHOOVES US THEN, TO CAREFULLY LISTEN
18 TO ALL OF THE WITNESSES BEFORE WE DRAW ANY CONCLUSIONS ABOUT
19 WHAT CONSTITUTES TRUTH?

20 MS. CAMPBELL: DEFINITELY.

21 MR. BARENS: PARTICULARLY IF WE CANNOT IN A DIRECT
22 SENSE, EXAMINE EVIDENCE, LIKE A BODY?

23 MS. CAMPBELL: YES.

24 MR. BARENS: WOULD YOU AGREE WITH THAT?

25 MS. CAMPBELL: I AGREE.

26 MR. BARENS: YOU KNOW ALL OF THIS BUSINESS ABOUT PIES
27 AND WHATNOT AND CIRCUMSTANTIAL EVIDENCE, THERE IS A TIME WHEN
28 YOU ARE GIVEN CERTAIN FACTS AND THEN ASKED TO DRAW A CONCLUSION

1 BASED ON INFERENCES APPEARING IN THOSE FACTS?

2 MS. CAMPBELL: YES.

3 MR. BARENS: DO YOU UNDERSTAND THAT THE ONLY ONE THAT
4 CAN MAKE AN INFERENCE IS NOT COUNSEL, NOT THE PROSECUTION
5 OR THE DEFENSE OR THE JUDGE, BUT INFERENCES AND THE DEFINITION
6 AND IMPLICATION OF INFERENCES IS SOLELY THE PROVINCE OF THE
7 JUROR?

8 MS. CAMPBELL: REPEAT THAT. I DIDN'T -- PUT IT IN
9 DIFFERENT PHRASES.

10 MR. BARENS: WELL, YOU ARE ASKED TO MAKE AN INFERENCE
11 BASED ON EVIDENCE PRESENTED.

12 MS. CAMPBELL: YES.

13 MR. BARENS: THE ONLY ONE WHO IS CAPABLE OF MAKING
14 A DEDUCTION OR COMING TO A CONCLUSION BASED ON THE REFERENCES
15 IS YOU AS A JUROR?

16 MS. CAMPBELL: YES.

17 MR. BARENS: IT IS NOT AN INFERENCE WE AS COUNSEL HAVE.
18 IT IS NOT WHAT THE JUDGE HAS THAT IS REALITY HERE.

19 WHEN WE GET INTO WHAT IS A REASONABLE INFERENCE
20 AND A REASONABLE CONCLUSION, DO YOU UNDERSTAND THAT THOSE
21 ARE ALL MATTERS THAT ARE REASONABLE TO THE JURORS, THAT IS,
22 WHAT YOU THINK?

23 MS. CAMPBELL: YES. I UNDERSTAND.

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1 MR. BARENS: WHAT ANYBODY ELSE THINKS IS REASONABLE
2 IS THEIR OPINION. IT IS NO BETTER NOR WORSE THAN YOURS.

3 MS. CAMPBELL: I UNDERSTAND.

4 MR. BARENS: IT IS JUST INTERESTING -- NOW
5 MRS. BONES WHO SPECULATED IN RESPONSE TO ONE OF COUNSEL'S
6 QUESTIONS AND WANTED TO KNOW ABOUT THE SHAPE OF THE PIE.

7 MS. CAMPBELL: THAT HAD CROSSED MY MIND.

8 MR. BARENS: HAD IT INDEED?

9 MS. CAMPBELL: YES.

10 MR. BARENS: IT DIDN'T SEEM UNREASONABLE TO YOU, DID
11 IT?

12 MS. CAMPBELL: NO, BECAUSE I HAVE A CAT WHO WILL EAT
13 ANYTHING SO IT DIDN'T SEEM UNREASONABLE AT ALL.

14 MR. BARENS: I NOTICED MRS. BONES RESPONSE EVOKED A
15 BIT OF LAUGHTER ABOUT THE COURTROOM, WHICH I CAN UNDERSTAND.

16 BUT NONETHELESS, ALTHOUGH WE MIGHT HAVE LAUGHED
17 AT WHAT SEEMED TO BE A FARFETCHED OR SOMEWHAT REMOTE CONCERN,
18 NONETHELESS, IT TURNS OUT REASONABLE BASED UPON YOUR
19 CULTURAL EXPERIENCE, DOESN'T IT?

20 MS. CAMPBELL: YES.

21 MR. BARENS: SO WE COULDN'T EXACTLY DISMISS THAT OUT
22 OF HAND AS BEING UNREASONABLE, COULD WE?

23 MS. CAMPBELL: NO.

24 MR. BARENS: IT TURNS OUT THE FACT IS, OF COURSE, IT
25 COULD BE THE TRUTH, IT COULD BE THE ANSWER?

26 MS. CAMPBELL: VERY WELL COULD BE.

27 MR. BARENS: LITTLE JOHNNY MAY HAVE HAD SOME CONTACT
28 WITH A DOG THAT PUTS PIE ALL OVER HIM.

5-2
1 BUT WHAT DO WE SEE THERE? WE SEE, DO WE NOT,
2 THAT LITTLE JOHNNY HAS A TERRIBLY GUILTY APPEARANCE, HE LOOKED
3 GUILTY, DIDN'T HE?

4 MS. CAMPBELL: YES.

5 MR. BARENS: HE LOOKED READILY CONVICTABLE, DIDN'T HE?

6 MS. CAMPBELL: YES.

7 MR. BARENS: AND THEN HE LOOKED REASONABLY CONVICTABLE
8 BASED ON ALL OF THE EVIDENCE, DIDN'T HE?

9 MS. CAMPBELL: YES, HE DID.

10 MR. BARENS: BUT IF THE TRUTH BE THAT THE DOG IS THE
11 EXPLANATION, WE BEST NOT HAVE CONVICTED HIM TOO QUICKLY INDEED.

12 MS. CAMPBELL: THAT'S TRUE.

13 MR. BARENS: THAT IS WHY WE HAVE TO LISTEN CAREFULLY
14 TO ALL OF THE EVIDENCE, PARTICULARLY THAT EVIDENCE THAT
15 DOESN'T SEEM SO PROBABLE TO BEGIN WITH BECAUSE, I ASSURE YOU,
16 WE ARE IN AN UNUSUAL SETTING WITH UNUSUAL ANSWERS.

17 YOU WON'T JUST BE LOOKING FOR THE TYPICAL OR
18 USUAL ANSWERS TO RESOLVE ALL OF THE QUESTIONS WE MAY DEAL
19 WITH IN THIS COURTROOM?

20 MS. CAMPBELL: NO. I WOULD HAVE TO HEAR ALL OF THE
21 TESTIMONY.

22 MR. BARENS: HOW DO YOU FEEL ABOUT THE PRESUMPTION OF
23 INNOCENCE THAT ACCOMPANIES THE DEFENDANT?

24 MS. CAMPBELL: WELL, LIKE ONE OTHER LADY SAID BEFORE,
25 I FEEL FORTUNATE TO LIVE IN A COUNTRY THAT THAT IS THE WAY
26 THINGS ARE. I THINK IT IS GREAT. IT IS THE WAY IT SHOULD
27 BE.

28 MR. BARENS: COULD YOU UNDERSTAND THAT ALTHOUGH

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1 MR. WAPNER MIGHT SAY THAT HERE, ALL DEFENDANTS GET THAT AND
2 A LOT OF THOSE DEFENDANTS ULTIMATELY ARE CONVICTED; DOES THAT
3 DETRACT IN YOUR MIND IN ANY WAY FROM THE FACT THAT HE HAS
4 THE PRESUMPTION OF INNOCENCE AS HE SITS THERE?

5 MS. CAMPBELL: NO.

6 MR. BARENS: DOES IT MAKE IT ANY LESS IMPORTANT?

7 MS. CAMPBELL: NO.

8 MR. BARENS: DOES IT MAKE IT LESS IMPORTANT IF YOU
9 WERE A DEFENDANT IN A CASE THAT OTHER DEFENDANTS OVER THE
10 YEARS HAD BEEN CONVICTED?

11 MS. CAMPBELL: NO.

12 MR. BARENS: YOU DIDN'T REALLY THINK AS YOU SAT THERE
13 THAT NO DEFENDANT WHO HAD THE PRESUMPTION OF INNOCENCE HAD
14 NEVER BEEN CONVICTED IN THIS COUNTRY, DID YOU?

15 MS. CAMPBELL: NO.

16 MR. BARENS: BY THAT, IT IS NOT SOME PROCEDURAL
17 NICETY THAT IS GIVEN THAT REALLY DOESN'T MEAN MUCH.

18 MS. CAMPBELL: NO.

19 MR. BARENS: COULD YOU BE WILLING TO LISTEN TO THE
20 DEFENDANT TESTIFY OPEN-MINDEDLY?

21 MS. CAMPBELL: YES.

22 MR. BARENS: DO YOU THINK HE WOULD NECESSARILY BE LESS
23 THAN TRUTHFUL?

24 MS. CAMPBELL: NO.

25 MR. BARENS: WHAT SORT OF HOBBIES DO YOU HAVE?

26 MS. CAMPBELL: I READ A LOT. I COOK. I SING.

27 I USED TO SKI. I DON'T DO THAT VERY OFTEN ANY
28 MORE.

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1 THAT IS ABOUT IT.

2 MR. BARENS: IS THERE ANY PARTICULAR SUBJECT MATTER
3 YOU PREFER TO READ?

4 MS. CAMPBELL: I LIKE HISTORICAL NOVELS.

5 MR. BARENS: HISTORICAL?

6 MS. CAMPBELL: NOVELS BASED ON QUITE A BIT OF FACT WITH
7 ENOUGH FROU-FROU IN IT TO MAKE IT INTERESTING.

8 MR. BARENS: ROMANCE?

9 MS. CAMPBELL: NOT ROMANCE BUT --

10 MR. BARENS: EDITORIAL? THAT MAKES IT INTERESTING.

11 WHAT WAS THE LAST BOOK YOU READ?

12 MS. CAMPBELL: "LONG KNIVES."

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1 MR. BARENS: WAS THAT ABOUT CUSTER?

2 MS. CAMPBELL: IT WAS ABOUT GEORGE ROGERS CLARK.

3 MR. BARENS: THE EXPEDITION COMING TO THE WEST AND ALL
4 OF THAT?

5 MS. CAMPBELL: THAT WAS WILLIAM CLARK.

6 MR. BARENS: WHO IS GEORGE WILLIAM CLARK?

7 MS. CAMPBELL: GEORGE ROGERS CLARK WAS WILLIAM CLARK'S
8 OLDER BROTHER. HE HELPED SETTLE THE KENTUCKY FRONTIER.

9 MR. BARENS: WELL, I LEARN SOMETHING EVERY DAY.
10 I DIDN'T KNOW HE HAD A BROTHER. I JUST THOUGHT HE WAS HANGING
11 OUT WITH SOME OTHERS -- HANGING OUT WITH ANOTHER FELLOW.

12 WHAT ABOUT THE LAST MOVIE YOU SAW?

13 MS. CAMPBELL: "STAR TREK IV."

14 MR. BARENS: DO YOU HAVE A STEADY BOYFRIEND?

15 MS. CAMPBELL: YES, I DO.

16 MR. BARENS: WHAT DOES HE DO?

17 MS. CAMPBELL: HE AND HIS FATHER OWN A GARAGE DOOR AND
18 GATE INSTALLATION BUSINESS.

19 MR. BARENS: HAVE YOU EVER BEEN MARRIED?

20 MS. CAMPBELL: NO, NO, I HAVEN'T.

21 MR. BARENS: THAT IS FINE WITH ME.

22 HOW WOULD YOU FEEL -- AND I HAVE ASKED THIS OF
23 SEVERAL RECENT JURORS, PROSPECTIVE JURORS -- HOW WOULD YOU
24 FEEL, BASED ON YOUR EXPERIENCE AND YOUR POINT OF VIEW AND
25 YOUR ATTITUDES, IF YOU WERE MY CLIENT HERE AND WERE CHARGED
26 WITH A SERIOUS CRIME, HOW WOULD YOU FEEL IF THE 12 JURORS
27 ALL HELD YOUR POINT OF VIEW?

28 MS. CAMPBELL: I WOULD BE FAIRLY CONFIDENT THAT I WOULD

1 HAVE A FAIR JURY, A FAIR HEARING.

2 MR. BARENS: AN OPEN-MINDED JURY?

3 MS. CAMPBELL: YES, SIR.

4 MR. BARENS: AND THAT IS ALL WE ARE LOOKING FOR.

5 THANK YOU FOR YOUR TIME.

6 MS. CAMPBELL: YOU ARE WELCOME.

7 MR. BARENS: PASS FOR CAUSE, YOUR HONOR.

8 THE COURT: ALL RIGHT, MR. WAPNER.

9 MR. WAPNER: THANK YOU, YOUR HONOR.

10 GOOD MORNING, MISS CAMPBELL.

11 MS. CAMPBELL: GOOD MORNING.

12 MR. WAPNER: WHEN DID YOU THINK ABOUT THE SHAPE OF THE
13 PIECE OF PIE, BEFORE OR AFTER MRS. BONE --

14 MS. CAMPBELL: OH, BEFORE. I HAD BEEN THINKING ABOUT
15 THAT ALL ALONG.

16 MR. WAPNER: WHAT DIFFERENCE DID IT MAKE TO YOU?

17 MS. CAMPBELL: WELL, AS I SAID, I HAVE A CAT WHO WILL
18 EAT ANYTHING AT ALL AND IT IS VERY POSSIBLE THAT AN ANIMAL
19 COULD GET INTO THE HOUSE AND, YOU KNOW, GET INTO THE PIE.
20 MAYBE HE GRABBED THE ANIMAL AND HAD PIE ALL OVER HIM. I MEAN
21 IT IS A POSSIBILITY.

22 MR. WAPNER: DO YOU MAKE ANY DISTINCTION BETWEEN THINGS
23 THAT ARE POSSIBLE AND THINGS THAT YOU THINK ARE REASONABLE?

24 (PAUSE.)

25 MS. CAMPBELL: I THINK ANYTHING IS POSSIBLE. IT MAY
26 NOT ALWAYS BE REASONABLE BUT THINGS ARE ALWAYS POSSIBLE.

27 MR. WAPNER: OKAY. AND IN ANY GIVEN SITUATION,
28 REGARDLESS OF THE FACTS, DO YOU THINK YOU COULD ALWAYS COME

1 UP WITH ANOTHER QUESTION OR ANOTHER STATEMENT THAT THIS IS
2 POSSIBLE OR THAT IS POSSIBLE REGARDLESS OF THE FACTS?

3 (PAUSE.)

4 MS. CAMPBELL: IF --

5 MR. WAPNER: LET ME SUGGEST SOMETHING TO YOU.

6 MS. CAMPBELL: THANK YOU.

7 MR. WAPNER: LET'S TAKE IT FIRST OF ALL OUT OF THE REALM
8 OF THE CAT AND SAY, WELL, IT IS POSSIBLE THAT A HORDE OF
9 RUNAWAY STUDENTS CAME INTO THE HOUSE AND THEY GRABBED THE
10 KID AND THEY HELD HIM DOWN AND THEY TOOK SOME PIE AND THEY
11 SMEARED IT ALL OVER HIS FACE, RIGHT?

12 MS. CAMPBELL: YES.

13 MR. WAPNER: IT IS POSSIBLE, RIGHT?

14 MS. CAMPBELL: IT IS POSSIBLE.

15 MR. WAPNER: IS IT LIKELY?

16 MS. CAMPBELL: NOT LIKELY.

17 MR. WAPNER: NOT REASONABLE?

18 MS. CAMPBELL: NOT TOO REASONABLE, NO.

19 MR. WAPNER: OKAY. NOW WHAT DO YOU KNOW ABOUT THE
20 HYGIENE HABITS OF YOUR CAT AFTER IT EATS SOMETHING?

21 MS. CAMPBELL: SHE USUALLY WASHES.

22 MR. WAPNER: CATS WASH THEMSELVES?

23 MS. CAMPBELL: YES.

24 MR. WAPNER: OKAY. WHY DID IT OCCUR TO YOU TO PUT THE
25 CAT IN THE HYPOTHETICAL WHEN IT WASN'T THERE BEFORE?

26 MS. CAMPBELL: JUST BECAUSE OF BEING A CAT OWNER, I
27 KNOW WHAT THEY ARE CAPABLE OF.

28 MR. WAPNER: OKAY. HOW SOON AFTER THE CAT EATS SOMETHING

1 DOES THE CAT WASH ITSELF?

2 MS. CAMPBELL: USUALLY WITHIN ABOUT FIVE, TEN MINUTES.

3 MR. WAPNER: AND IS THE CAT PRETTY GOOD ABOUT WASHING
4 ITSELF?

5 MS. CAMPBELL: YEAH. YES, I MEAN.

6 MR. WAPNER: SO IN YOUR SITUATION, THE CAT WOULD HAVE
7 TO EAT THE PIE AND THEN IMMEDIATELY THE CHILD WOULD HAVE TO
8 COME UPON THE CAT?

9 MS. CAMPBELL: THE CAT WOULD HAVE TO BE CAUGHT IN THE
10 ACT.

11 MR. WAPNER: AND WOULD YOU EXPECT THAT YOU MIGHT SEE
12 SOMETHING DIFFERENT ON THE CHILD?

13 MS. CAMPBELL: PROBABLY SEE CAT FUR.

14 MR. WAPNER: DID YOU HEAR ANYTHING IN THE EXAMPLE ABOUT
15 CAT FUR?

16 MS. CAMPBELL: NO.

17 MR. WAPNER: IF YOU LOOKED AT THE CHILD AND YOU SAW
18 CAT FUR MIXED IN WITH THE PIE, THAT MIGHT MEAN ONE THING TO
19 YOU, RIGHT?

20 MS. CAMPBELL: THAT'S CORRECT.

21 MR. WAPNER: AND IF YOU DIDN'T SEE ANY CAT FUR, THAT
22 MEAN SOMETHING ELSE TO YOU, RIGHT?

23 MS. CAMPBELL: TRUE.

24 MR. WAPNER: WOULD YOU ASK THOSE QUESTIONS AS WELL?

25 MS. CAMPBELL: PROBABLY.

26 MR. WAPNER: OKAY. YOU KNOW IT IS POSSIBLE THAT THE
27 NEIGHBORS HAD A LION WHO CAME IN AND ATE THE PIE, TOO, RIGHT?

28 MS. CAMPBELL: YES, THAT IS POSSIBLE.

1 MR. WAPNER: THE THING THAT I AM TRYING TO GET AT IS
2 THAT REGARDLESS OF THE CASE, REGARDLESS OF THE FACT SITUATION,
3 IF YOU GO INTO A JURY ROOM TO DELIBERATE A CASE WITH 11 OTHER
4 PEOPLE, YOU CAN ALWAYS AD NAUSEAM COME UP WITH ANOTHER
5 POSSIBLE QUESTION; DO YOU THINK THAT IS TRUE?

6 MS. CAMPBELL: OH, DEFINITELY.

7 MR. WAPNER: ALL RIGHT. AND DO YOU THINK THAT JUST
8 BECAUSE IT IS ALWAYS POSSIBLE TO ASK THE NEXT, IT IS POSSIBLE
9 THIS OR IT IS POSSIBLE THAT QUESTION, DO YOU THINK THAT JUST
10 BECAUSE OF THAT, THAT CASES CANNOT BE PROVED BEYOND A
11 REASONABLE DOUBT?

12 MS. CAMPBELL: NO, BECAUSE IT IS MY UNDERSTANDING WHEN
13 YOU GO IN TO DELIBERATE, YOU HAVE ALL OF THE EVIDENCE THERE
14 THAT YOU CAN WORK WITH.

15 MR. WAPNER: RIGHT. BUT --

16 MS. CAMPBELL: THERE IS NO WHAT-IFFING ONCE YOU ARE
17 IN THERE, YOU HAVE TO GO WITH WHAT EVIDENCE YOU HAVE.

18 MR. WAPNER: WELL, BUT REGARDLESS OF WHAT EVIDENCE YOU
19 HAVE, THE WHAT-IFFING DOESN'T COME FROM THE EVIDENCE. THE
20 WHAT-IFFING COMES FROM PEOPLE ASKING THE QUESTIONS.

21 MS. CAMPBELL: YES.

22 MR. WAPNER: RIGHT.

23 MS. CAMPBELL: YES.

24 MR. WAPNER: OKAY. AND ARE YOU THE KIND OF A PERSON
25 WHO IS NOT GOING TO BE SATISFIED, NO MATTER WHAT KIND OF
26 EVIDENCE YOU HAVE, IT IS ALWAYS GOING TO BE WHAT IF THIS OR
27 WHAT IF THAT?

28 MS. CAMPBELL: NO.

1 MR. WAPNER: HAVE YOU EVER BEEN ON A JURY BEFORE?

2 MS. CAMPBELL: NO, I HAVE NOT.

3 MR. WAPNER: ARE YOUR PARENTS STILL LIVING?

4 MS. CAMPBELL: MY MOTHER IS.

5 MR. WAPNER: DOES SHE LIVE IN THE LOS ANGELES AREA?

6 MS. CAMPBELL: NO. SHE LIVES IN BIG BEAR.

7 MR. WAPNER: HOW OFTEN DO YOU SEE OR TALK TO HER?

8 MS. CAMPBELL: I TALK TO HER ABOUT ONCE A WEEK. AND

9 I USUALLY SEE HER IN THE SUMMER ABOUT EVERY OTHER WEEK. I
10 VERY SELDOM GO UP IN THE WINTER.

11 MR. WAPNER: TOO COLD?

12 MS. CAMPBELL: I DON'T LIKE DRIVING IN THE SNOW AND
13 ICE.

14 MR. WAPNER: AND WERE YOU RAISED IN THE BIG BEAR AREA?

15 MS. CAMPBELL: YES, I WAS.

16 MR. WAPNER: DO YOU HAVE ANY BROTHERS OR SISTERS?

17 MS. CAMPBELL: NO, I DO NOT.

18 MR. WAPNER: WOULD YOU SAY YOU ARE FAIRLY CLOSE TO
19 YOUR MOTHER?

20 MS. CAMPBELL: YES. WE ARE GOOD FRIENDS.

21 MR. WAPNER: HAD YOU EVER BEEN THE VICTIM OF A THEFT
22 OR ANY KIND OF A CRIME SCHEME?

23 MS. CAMPBELL: NEVER.

24 MR. WAPNER: DO YOU HAVE ANY IDEA WHATSOEVER, WHAT
25 THE CASE WAS ABOUT BEFORE YOU WERE CALLED AS A CHARACTER
26 WITNESS?

27 MS. CAMPBELL: NOT REALLY, NO.

28 MR. WAPNER: DO YOU KNOW?

1 MS. CAMPBELL: I WAS JUST THERE TO VERIFY SOMEONE --
2 LIKE I SAID, WAS WHERE THEY SAID THEY WERE ON A GIVEN DAY.

3 MR. WAPNER: YOU DON'T KNOW WHETHER IT WAS A CIVIL
4 OR CRIMINAL CASE?

5 MS. CAMPBELL: I DON'T.

6 MR. WAPNER: DO YOU KNOW WHICH SIDE IT WAS THAT ASKED
7 YOU TO COME INTO THE COURTROOM? WAS IT THE PERSON WHO WAS
8 SUPPOSED TO BE AT WORK OR NOT OR WAS IT THE EMPLOYEE OR SOMEONE
9 ELSE?

10 MS. CAMPBELL: IT WAS THE PERSON WHO WAS SUPPOSED TO
11 BE THERE.

12 MR. WAPNER: HAVE YOU EVER BEEN IN A SITUATION WHERE
13 YOU WERE IN A SERIOUS DISCUSSION WITH A FRIEND OR RELATIVE
14 AND YOU TOOK A POSITION AND THEN CHANGED YOUR MIND?

15 MS. CAMPBELL: DEFINITELY.

16 MR. WAPNER: DO YOU THINK THAT IF YOU ARE IN THE JURY
17 ROOM AND YOU LISTEN TO ALL OF THE EVIDENCE AND YOU DISCUSS
18 IT WITH THE OTHER JURORS AND YOU HAVE ORIGINALLY TAKEN ONE
19 POSITION THAT YOU COULD CHANGE THAT POSITION IF THEY CONVINCED
20 YOU THAT YOU ARE WRONG?

21 MS. CAMPBELL: YES.

22 MR. WAPNER: AND THE OTHER SIDE OF THAT COIN, OF COURSE,
23 IS COULD YOU HOLD FAST TO THAT POSITION IF YOU WERE CONVINCED
24 THAT YOU WERE CORRECT?

25 MS. CAMPBELL: DEFINITELY.

26 MR. WAPNER: HOW DO YOU FEEL ABOUT THE IDEA OF
27 CIRCUMSTANTIAL EVIDENCE?

28 MS. CAMPBELL: IT IS FINE. I CAN'T SEE ANY REASON

1 WHY NOT TO USE IT, IF YOU HAVE IT.

2 MR. WAPNER: DID YOU HAVE AN IDEA IN YOUR HEAD BEFORE
3 YOU CAME INTO THIS COURTROOM THAT IT WAS DIFFERENT THAN OTHER
4 KINDS OF EVIDENCE OR NOT AS GOOD AS OTHER KINDS OF EVIDENCE?

5 MS. CAMPBELL: I HAD NOT REALLY THOUGHT ABOUT IT.

6 MR. WAPNER: IF THE JUDGE TELLS YOU THAT IT IS JUST
7 AS GOOD AS ANY OTHER KIND OF EVIDENCE, CAN YOU FOLLOW THAT
8 INSTRUCTION?

9 MS. CAMPBELL: YES.

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1 MR. WAPNER: IF THE JUDGE TELLS YOU THAT IT IS JUST
2 AS GOOD AS ANY OTHER KIND OF EVIDENCE, CAN YOU FOLLOW THAT
3 INSTRUCTION?

4 MS. CAMPBELL: YES.

5 MR. WAPNER: IF YOU ARE CHOSEN AS A JUROR IN THIS CASE
6 AND YOU ACTUALLY GET INTO THE JURY ROOM TO DELIBERATE, CAN
7 YOU DECIDE THE CASE ON THE FACTS THAT ARE PRESENTED TO YOU
8 AND THE LAW THAT THE JUDGE GIVES YOU, WITHOUT SPECULATING
9 ON WHAT MIGHT BE POSSIBILITIES AND THINGS LIKE THAT?

10 MS. CAMPBELL: YES, I CAN.

11 MR. WAPNER: AND FIGURATIVELY SPEAKING, WILL YOU ONLY
12 SEE THE CAT IF WE HAVE GOT CAT HAIR AND NOT IF WE DON'T?

13 MS. CAMPBELL: YES.

14 MR. WAPNER: ASSUMING THAT THERE WAS NO CAT IN THAT
15 HOUSE, DO YOU HAVE AN OPINION AS TO WHAT HAPPENED TO THE
16 PIECE OF PIE?

17 MS. CAMPBELL: I WOULD HAVE TO SAY MORE THAN LIKELY,
18 THE CHILD ATE THE PIE, IF THERE WAS NO CAT IN THE HOUSE AND
19 JUST ME AND THE CHILD AND I KNOW I DIDN'T EAT IT.

20 MR. WAPNER: OKAY. THE OTHER THING IS, THAT IS
21 IMPORTANT, AS YOU POINTED OUT, WHEN YOU GO INTO THE JURY ROOM,
22 YOU WILL HAVE ALL OF THE FACTS. CAN YOU REFRAIN FROM
23 INJECTING OTHER FACTS INTO IT THAT WEREN'T THERE, FOR EXAMPLE?

24 MS. CAMPBELL: YES, I CAN.

25 MR. WAPNER: OKAY. THAT IS, REFRAIN FROM PUTTING A
26 CAT IN IF YOU DID NOT HEAR ANYTHING ABOUT IT?

27 MS. CAMPBELL: YES.

28 MR. WAPNER: OKAY. THE OTHER THING THAT IS IMPORTANT

1 AND WE HAVE TALKED ON THIS. I DON'T KNOW IF WE DID IT WHEN
2 ALL OF THE NEW GROUP WAS IN THE COURTROOM OR NOT. COULD YOU
3 REFRAIN FROM DOING ANY INDEPENDENT INVESTIGATION IN THIS
4 CASE?

5 MS. CAMPBELL: YES.

6 MR. WAPNER: CAN YOU?

7 MS. CAMPBELL: I HAVE SO FAR.

8 MR. WAPNER: OKAY. WELL, IT IS IMPORTANT. THE REASON
9 FOR THAT IS, FIRST OF ALL, BECAUSE THE JUDGE WILL TELL YOU
10 THAT YOU CAN'T DO IT. THAT IS THE MOST IMPORTANT THING. IF
11 HE TELLS YOU SOMETHING, WILL YOU FOLLOW THAT?

12 MS. CAMPBELL: YES. LIKE I SAID, I HAVE SO FAR.

13 MR. WAPNER: ALL RIGHT. AND THE SECOND REASON IS BECAUSE
14 ALL OF THE JURORS HAVE TO BE ON THE SAME FOOTING, DO YOU
15 UNDERSTAND THAT?

16 MS. CAMPBELL: YES.

17 MR. WAPNER: SO IT WOULDN'T BE FAIR FOR ONE PERSON
18 TO GO OUT AND SEE SOMETHING AND EVERYBODY ELSE DIDN'T SEE
19 IT?

20 MS. CAMPBELL: YES.

21 MR. WAPNER: AND THE THIRD AND MAIN REASON FOR THAT
22 AND ALL OF THE ABOVE, IS THAT THINGS MAY CHANGE BETWEEN THE
23 TIME THAT YOU SEE THEM AND THE WAY THEY WERE AT THE TIME THE
24 CRIME HAPPENED OR THE KILLING HAPPENED. DO YOU UNDERSTAND
25 THAT?

26 MS. CAMPBELL: I UNDERSTAND THAT.

27 MR. WAPNER: IF YOU LISTEN TO ALL OF THE FACTS IN THE
28 CASE, YOU DECIDE THAT THE EVIDENCE PROVES BEYOND A REASONABLE

1 DOUBT THAT THE VICTIM WAS MURDERED AND THAT THE DEFENDANT
2 IN THIS CASE DID IT AND YOU FURTHER DECIDE THAT YOU JUST DON'T
3 LIKE THE GUY WHO WAS MURDERED, COULD YOU NONETHELESS, RETURN
4 A VERDICT OF GUILTY?

5 MS. CAMPBELL: YES.

6 MR. WAPNER: BECAUSE THE EVIDENCE WOULD PROVE BEYOND
7 A REASONABLE DOUBT THAT THE DEFENDANT IN FACT, COMMITTED THE
8 CRIME?

9 MS. CAMPBELL: IF THE EVIDENCE PROVES IT BEYOND A
10 REASONABLE DOUBT, YES.

11 MR. WAPNER: THAT WOULD OF COURSE BE THE ONLY WAY THAT
12 YOU WOULD RETURN A VERDICT OF GUILTY?

13 MS. CAMPBELL: YES.

14 MR. WAPNER: BUT THE POINT OF THAT QUESTION IS, THAT
15 WHETHER OR NOT YOU LIKE THE PERSON WHO WAS KILLED, IF YOU
16 BELIEVE THAT HE WAS KILLED AND THE DEFENDANT DID IT --

17 MS. CAMPBELL: THAT WOULD HAVE NO BASIS IN THE DECISION.

18 MR. WAPNER: OKAY. THANK YOU VERY MUCH. I WILL PASS
19 FOR CAUSE, YOUR HONOR.

20 THE COURT: PEREMPTORY?

21 MR. WAPNER: WE'LL ACCEPT THE ALTERNATES, YOUR HONOR.

22 THE COURT: ALL RIGHT. WILL YOU APPROACH THE BENCH,
23 PLEASE?

24 (THE FOLLOWING PROCEEDINGS WERE HELD AT
25 THE BENCH:)

26 THE COURT: IF YOU BOTH DESIRE A FOURTH JUROR, I AM
27 WILLING TO GO ALONG WITH IT.

28 MR. WAPNER: I THINK THAT WE SHOULD ABSOLUTELY HAVE

1 ONE, YOUR HONOR.

2 THE COURT: ALL RIGHT. DO YOU FEEL THAT WAY?

3 MR. BARENS: I THINK OUT OF AN ABUNDANCE OF CAUTION,
4 YES.

5 THE COURT: AND WHAT WOULD HAPPEN IF WE HAVE TWO LEFT
6 OVER?

7 MR. BARENS: WE GO WITH THEM. WE EXHAUST THEM.

8 THE COURT: WE EXHAUST THEM? THAT IS AGREEABLE TO
9 YOU, ALSO?

10 MR. WAPNER: SO STIPULATED.

11 MR. BARENS: LET ME ASK YOU SOMETHING. IT IS NOT THAT
12 I AM SUGGESTING WE FIX THE POT ENTIRELY BUT DO YOU WANT TO
13 AGREE THAT WE COULD WAIT FOR SPEARMAN LAST AND SEE HOW WE
14 DO WITH THE OTHER THREE?

15 MR. WAPNER: NO.

16 MR. BARENS: LET'S JUST GO WITH IT, THEN.

17 THE COURT: WHAT DID HE SAY?

18 MR. BARENS: NOTHING. I WITHDRAW THE COMMENT. IT
19 WAS NOT APPROPRIATE.

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1 THE COURT: ALL RIGHT. THANK YOU.

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

4 THE COURT: I THINK IT WOULD BE A PITY WITH FOUR
5 REMAINING JURORS THAT HAVE BEEN HERE ALL OF THIS TIME, IF
6 THEY DIDN'T HAVE AN OPPORTUNITY TO COME IN AS A PROSPECTIVE
7 JUROR IN THE CASE.

8 WHAT WE HAVE AGREED TO DO IS, WE WILL SIT THE
9 FOURTH ALTERNATE JUROR. PLEASE DRAW ONE.

10 THE CLERK: CATHERINE J. KEENAN, K-E-E-N-A-N.

11 THE COURT: MISS KEENAN, YOU ARE FAMILIAR WITH THE
12 WHOLE PROCEDURE NOW, AREN'T YOU?

13 MS. KEENAN: YES.

14 THE COURT: WHAT DO YOU DO?

15 MS. KEENAN: I AM AN APPEALS OFFICER AT THE IRS.

16 THE COURT: TELL US WHAT YOU DO EXACTLY.

17 MS. KEENAN: IF CASES COME TO ME FOR EXAMINATION, IF
18 THERE IS A DISAGREEMENT AFTER THE AUDIT IS FINISHED, I
19 SETTLE THEM SO THERE DOESN'T HAVE TO BE ANY LITIGATION. OR,
20 THEY CAN APPEAL THE PENALTIES, THE CIVIL PENALTIES FOR
21 COLLECTION.

22 THE COURT: THAT IS EXTREMELY INTERESTING. TELL ME,
23 WHAT WAS YOUR BACKGROUND AND TRAINING FOR THIS KIND OF A JOB
24 WHICH SEEMS TO BE VERY, VERY INTERESTING?

25 MS. KEENAN: I HAVE A DEGREE IN HISTORY FROM UCLA.
26 I HAVE TAKEN A LOT OF ACCOUNTING AT NIGHT.

27 THE COURT: WHERE DO YOU LIVE?

28 MS. KEENAN: EL SEGUNDO.

1 THE COURT: HAVE YOU EVER SAT AS A JUROR IN A CRIMINAL
2 CASE BEFORE?

3 MS. KEENAN: NO.

4 THE COURT: HAVE YOU EVER BEEN THE VICTIM OF ANY KIND
5 OF A SERIOUS CRIME?

6 MS. KEENAN: PETTY ASSAULT.

7 THE COURT: PETTY ASSAULT?

8 MS. KEENAN: I THINK THAT IS WHAT IT WAS. I WAS LIVING
9 IN TOKYO.

10 THERE WAS A STREET BRAWL AND FLYING BOTTLES.
11 MY LEGS WERE ALL CUT UP. I NEVER WENT TO THE TRIAL. BUT
12 I HAD TO MAKE A DEPOSITION.

13 THE COURT: I SEE. YOU HAVE FULLY RECOVERED FROM THAT,
14 DID YOU?

15 MS. KEENAN: YES.

16 THE COURT: THAT'S GOOD. ALL RIGHT. QUESTIONS?

17 MR. BARENS: THANK YOU, YOUR HONOR. GOOD MORNING,
18 MISS KEENAN.

19 MS. KEENAN: GOOD MORNING.

20 MR. BARENS: MISS KEENAN, OBVIOUSLY, YOUR EMPLOYMENT
21 IS OF SOME CONCERN TO THE DEFENSE. IN THE IRS SETTING, I
22 BELIEVE THE PRESUMPTION OF INNOCENCE IS IN TERMS OF THE
23 TAXPAYER WHO HAS THE OBLIGATION OR THE DUTY OF PROOF. IS
24 THAT CORRECT?

25 MS. KEENAN: THE BURDEN OF PROOF ON DEDUCTIONS AND
26 MOST CIVIL PENALTIES IS ON THE TAXPAYER. ADDITIONAL INCOME,
27 IT IS ON THE GOVERNMENT AND ON FRAUD, IT IS ON THE GOVERNMENT.
28 BUT, THERE IS NO INNOCENCE. THEY ARE ALL CIVIL CASES. I
29 HAVE NEVER DEALT WITH A CRIMINAL CASE.

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1 MR. BARENS: LET'S SAY IF YOU ALWAYS CONSIDER -- YOU
2 CONSIDER THEM GUILTY AND IF YOU DON'T, HE IS CONSIDERED
3 INNOCENT; WOULD YOU ACCEPT THAT FOR PURPOSES OF OUR
4 DISCUSSION?

5 MS. KEENAN: I GUESS SO. I DON'T ACTUALLY APPROACH
6 IT THAT WAY.

7 MR. BARENS: LET'S APPROACH IT FROM A DIFFERENT WAY.

8 IN WHAT PERCENTAGE, IF ANY, OF THE MATTERS THAT
9 COME BEFORE YOU, DOES IT TURN OUT THAT THE TAXPAYER DOESN'T
10 OWE ANY MONEY?

11 MS. KEENAN: NOT VERY MANY. 5 PERCENT MAYBE.

12 MR. BARENS: 5 PERCENT OR LESS?

13 MS. KEENAN: YES.

14 MR. BARENS: SO IN THE SITUATION WHERE YOU ARE SEEING
15 A CASE, DOES IT ACTUALLY COME TO YOU FOR A DETERMINATION AS
16 TO WHETHER OR NOT MONEY IS OWING OR TO REACH SOME KIND OF
17 AN ACCOMMODATION FOR A PAYMENT SCHEDULE?

18 MS. KEENAN: NO, I HAVE NOTHING TO DO WITH PAYMENTS.
19 ONLY TO DETERMINE THE AMOUNT OF TAX DUE.

20 MR. BARENS: DO YOU HAVE A PRESUMPTION THAT TAX IS DUE
21 FROM THE OUTSET WHEN THEY FIRST COME TO SEE YOU?

22 MS. KEENAN: NO.

23 ACTUALLY, OKAY, WHAT I DO, I AM TRYING TO PREVENT
24 LITIGATION.

25 MR. BARENS: RIGHT.

26 MS. KEENAN: SO I LOOK AT THE FACTS IN THE CASE AND
27 APPLY THE LAW AND DECIDE ACTUALLY WHAT THE HAZARDS OF TAKING
28 IT TO COURT ARE.

7-2
1 SOMETIMES I FIND THAT THE GOVERNMENT IS COMPLETELY
2 WRONG, THERE IS NO CASE AND THAT THEIR HAZARDS ARE 100 PERCENT.
3 OKAY?

4 THAT DOESN'T HAPPEN VERY OFTEN BECAUSE,
5 FORTUNATELY, OUR EMPLOYEES AREN'T THAT INCOMPETENT TO BE
6 100 PERCENT WRONG FREQUENTLY.

7 SOMETIMES I FIND THAT THE TAXPAYER IS 100 PERCENT
8 WRONG.

9 THEY DON'T LIKE THE LAW. A LOT OF TIMES I GET
10 "IT IS NOT FAIR," WHICH IS TOTALLY IRRELEVANT TO MY
11 CONSIDERATIONS.

12 MOST OF IT IS UNFAIR.

13 (LAUGHTER IN COURTROOM.)

14 MR. BARENS: YOU WILL GET NO ARGUMENT FROM ME. I WILL
15 ENDORSE THAT ALL THE WAY.

16 MS. KEENAN: I ALWAYS TELL THE TAXPAYERS "CONGRESS IN
17 ITS WISDOM THOUGHT THIS WAS FAIR WHEN THEY PASSED IT," OKAY?

18 ALL I LOOK AT IS WHETHER IT IS LEGAL OR NOT AND
19 IT IS NOT THAT BLACK AND WHITE A LOT OF TIMES.

20 ONE OF OUR MOST FREQUENT QUESTIONS IS: "WHAT IS
21 THE DIFFERENCE?" AND IT IS NOT THAT EASY AS SOMETIMES THERE
22 IS NO RIGHT ANSWER SO I SAY "WELL, IF A GUY HAS A 60/40
23 PERCENT CHANCE OF PROVING IT, SINCE THE BURDEN IS ON HIM,
24 SO WE WILL SETTLE IT FOR 40 PERCENT."

25 MR. BARENS: SO YOU KIND OF PRORATE THE STATISTICAL
26 PROBABILITIES OF SUCCESS FOR THE GOVERNMENT AND MAKE A
27 SETTLEMENT RECOMMENDATION BASED ON THAT?

28 MS. KEENAN: RIGHT.

7A
1 MR. BARENS: YOU REALLY DON'T GET INTO BEYOND A REASONABLE
2 DOUBT AS A CONCEPT, DO YOU, AT ALL?

3 MS. KEENAN: NEVER, NEVER.

4 MR. BARENS: REALLY, IT IS MORE BASED ON IT IS A MORE
5 LIKELY TEST?

6 MS. KEENAN: IT IS MORE PROBABLE THAN NOT AND IN A TIE,
7 IN DEDUCTION CASES, CREDIT CASES, THE TIES GO TO THE
8 GOVERNMENT.

9 MR. BARENS: ISN'T ALSO WHEN THAT HAPPENS, THEY
10 TAKE EVERYTHING BESIDE THE TIES?

11 MS. KEENAN: THE TAXPAYER IS IN CONTROL OF ALL OF THE
12 RECORDS SO I THINK THAT IS WHY CONGRESS PASSED THAT.

13 MR. BARENS: DO YOU UNDERSTAND IN THIS FORUM, ALL OF
14 THAT IS TOTALLY DIFFERENT, IF NOT TOTALLY CONTRARY?

15 MS. KEENAN: I WOULD SAY IT IS TOTALLY CONTRARY.

16 MR. BARENS: WHAT HAPPENS IF YOU ARE A JUROR, AS A JUROR,
17 WHAT DO YOU DO IF IT IS A CLOSE CALL ON WHETHER IT IS BEYOND
18 A REASONABLE DOUBT OR NOT?

19 MS. KEENAN: IT GOES TO THE DEFENDANT.

20 MR. BARENS: MS. CAMPBELL-CABLE, THE JUROR SEATED TO
21 YOUR LEFT, JUST NOW IN DISCUSSION WITH MR. WAPNER, SAID IN
22 RESPONSE TO "WHAT HAPPENED TO THE PIECE OF PIE IF THE CAT
23 WASN'T PRESENT IN THE HYPOTHETICAL," AND SHE RESPONDED "I
24 BELIEVE MORE THAN LIKELY THE CHILD ATE THE PIE."

25 NOW, WHAT DO WE DO IF YOU RETIRE AND DELIBERATE
26 AND THE BEST YOU CAN SAY ABOUT THE GOVERNMENT'S CASE HERE
27 IS THAT MORE THAN LIKELY JOE HUNT KILLED SOMEBODY?

28 MS. KEENAN: IT IS NOT ENOUGH TO CONVICT.

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MR. BARENS: NOT AT ALL.

WE HAVE HAD EXTENSIVE DISCUSSION, HAVE WE NOT,
ABOUT THE APPEARANCE OF GUILT OR SUSPICIOUS CONDUCT OR
SUSPICIOUS CIRCUMSTANCES, IS THAT BEYOND A REASONABLE DOUBT?

MS. KEENAN: NO.

MR. BARENS: APPEARANCES, EVEN IN YOUR BUSINESS, I WOULD
PRESUME, CAN BE DECEIVING AT TIMES.

MS. KEENAN: YES.

MR. BARENS: QUITE SO.

AND OFTEN, DON'T YOU GET TAXPAYERS' RECORDS THAT
HAVE THE APPEARANCE OF CONSTITUTING A DEDUCTION BUT ON FURTHER
EXAMINATION, ARE UNSUPPORTED?

MS. KEENAN: I DON'T WANT TO SAY THAT I GET THEM OFTEN
BUT, YES, I DO GET DOCUMENTS THAT CAN'T BE RELIED UPON.

1 MR. BARENS: I'LL BET YOU IN FACT GET A LOT OF DOCUMENTS
2 THAT ARE JUST DOWNRIGHT FABRICATION.

3 MS. KEENAN: NOT A LOT BUT I HAVE SEEN QUITE A FEW.

4 MR. BARENS: SO IF WE WENT ON THE APPEARANCE OF THINGS,
5 WITHOUT LOOKING AT THE UNDERLYING MOTIVES OF THE WRITERS,
6 THE PREPARERS OF THOSE DOCUMENTS, WE REALLY WOULDN'T GET TO
7 THE RIGHT ANSWER, WOULD WE?

8 MS. KEENAN: RIGHT.

9 MR. BARENS: COULD YOU ACCEPT THAT IN THIS SETTING,
10 IN THIS FORUM, THE DEFENDANT HAS NO BURDEN OF PROOF WHATSOEVER?

11 MS. KEENAN: ABSOLUTELY.

12 MR. BARENS: IF THE DEFENDANT TESTIFIES AND SAYS "WELL,
13 I DON'T KNOW WHAT HAPPENED TO RON LEVIN, I DIDN'T KILL HIM
14 BUT I DON'T KNOW WHAT HAPPENED TO HIM," DO YOU THINK THAT
15 HE HAS SOME AFFIRMATIVE DUTY BEYOND THAT TO EXPLAIN TO YOU
16 WHERE THIS PERSON IS?

17 MS. KEENAN: ABSOLUTELY NOT.

18 MR. BARENS: COULD YOU ACCEPT THAT?

19 MS. KEENAN: YES.

20 MR. BARENS: DO YOU THINK THERE IS ANYTHING UNFAIR THAT
21 THE GOVERNMENT HAS THE SOLE BURDEN TO PROVE WHAT DID OR DID
22 NOT HAPPEN TO MR. LEVIN?

23 MS. KEENAN: NOT AT ALL.

24 MR. BARENS: HOW DID YOU FEEL ABOUT THE PIE BUSINESS
25 AND THE REASONS GIVEN IN THE COURTROOM?

26 MS. KEENAN: GIVEN THE LIMITS OF THE EXAMPLES, IF THOSE
27 WERE ALL OF THE FACTS, I WOULD SAY THAT THE CHILD ATE THE
28 PIE.

7A
1 MR. BARENS: AS A RATIONAL PERSON, IF I CREATE A
2 HYPOTHETICAL WHERE I HAVE TOTALLY ISOLATED THE FACTS AND I
3 HAVE TOLD YOU THERE IS NO ONE ELSE PRESENT IN THE HOUSE, A
4 TOTALLY SANITARY SITUATION, MUCH MORE SANITARY THAN YOU HAVE
5 EVER HAD IN REAL LIFE, BUT I TELL YOU THAT NO ONE IS THERE
6 BUT THE MOTHER AND THE CHILD AND WE ARE OUT IN THE MIDDLE
7 OF NOWHERE, EVEN WITHOUT ACCESS TO HUMANITY, PETS OR OTHER
8 KNOWN FACTORS, AM I REALLY ASKING YOU A QUESTION WHEN I ASK
9 YOU WHO ATE THE PIE?

10 MS. KEENAN: NO.

11 MR. BARENS: NOT A QUESTION AT ALL, IS IT?

12 I AM SIMPLY ASKING YOU TO TELL ME I AM RIGHT;
13 IS THAT CORRECT?

14 MS. KEENAN: I WOULD SAY THE LIMITATIONS ARE SUCH THAT
15 IT IS THE ONLY CONCLUSION THAT YOU CAN GIVE.

16 MR. BARENS: DO YOU UNDERSTAND IF THAT IS WHAT WE HAD
17 IN THIS COURTROOM, WE WOULDN'T HAVE ALL OF THIS GOING ON?

18 MS. KEENAN: I WOULDN'T HAVE A JOB IF THAT IS WHAT WE
19 HAD.

20 MR. BARENS: QUITE SO.

21 YOU ARE NOT GOING TO GET THAT SANITARY PACKAGE
22 IN ANY KIND OF A CASE WHERE A DEFENDANT PLEADS NOT GUILTY
23 BECAUSE, OTHERWISE, WE WOULD BE HERE TALKING ABOUT SENTENCE
24 INSTEAD OF ABOUT WHETHER OR NOT ANYBODY IS GUILTY OF ANYTHING;
25 DO YOU UNDERSTAND THAT?

26 MS. KEENAN: YES.

27 MR. BARENS: ALL RIGHT. YOU ARE COMFORTABLE WITH THE
28 PRESUMPTION OF INNOCENCE?

1 MS. KEENAN: YES.

2 MR. BARENS: WHEN YOU LOOK AT -- YOU TOLD ME EARLIER
3 THAT YOU LOOK AT A FILE OR WHATEVER, HOW DO YOU LOOK AT THAT?
4 DO YOU JUST GET WRITTEN REPORTS OR DO LAWYERS MAKE A
5 PRESENTATION TO YOU?

6 MS. KEENAN: NO.

7 THEY ARE FROM AGENTS, ACCOUNTANTS AND THEY ARE
8 ACCOUNTING WORKING PAPERS.

9 MR. BARENS: WHAT DO YOU SEE FROM THE TAXPAYER'S POINT
10 OF VIEW?

11 MS. KEENAN: THE WORKING PAPERS, OKAY? THEY ARE
12 THEORETICALLY INCLUDING THE LOG WHICH APPLIES, THE FACTS IN
13 THE CASE, THE TAXPAYER'S POSITION AND THE ACCOUNTANT'S
14 POSITION.

15 MR. BARENS: DOES THE AGENT EXPRESS HIS PERCEPTION OF
16 THE TAXPAYER'S POSITION?

17 MS. KEENAN: YES.

18 MR. BARENS: SO ACTUALLY, THERE IS NOTHING THERE ON
19 A FIRSTHAND ARGUMENT-TYPE BASIS?

20 MS. KEENAN: YES.

21 THEY MAKE A WRITTEN FORMAL PROCESS. SOME OF THEM
22 ARE FROM ATTORNEYS, SOME FROM CPA'S AND SOME FROM THE
23 TAXPAYERS THEMSELVES.

24 THEY VARY WIDELY FROM "THIS IS NOT FAIR" TO VERY
25 LENGTHY LEGAL DISSERTATIONS.

26 MR. BARENS: PRIOR TO YOUR DETERMINATION, HAVE YOU
27 RECEIVED COMMENTS FROM THE CASE AGENT CONCERNING THE
28 DEFENDANT'S PROTEST OR THE TAXPAYER'S PROTEST POSITION, HAVE

1 THEY PUT AN EVALUATION ABOUT THAT PROTEST POSITION THAT GOES
2 INTO THEIR MEMORANDA?

3 MS. KEENAN: NO.

4 BUT YOU ASSUME THAT THEY DID NOT BUY IT BECAUSE
5 IF THEY DID, THE CASE WOULDN'T COME TO ME.

6 THEY WOULD MAKE AN AGREEMENT WITH THE TAXPAYERS,
7 SETTLE IT.

8 MR. BARENS: HOW DO YOU COMMUNICATE YOUR FINDING?

9 MS. KEENAN: I WRITE UP A WRITTEN RECOMMENDATION AS
10 TO HOW THE CASE SHOULD BE SETTLED AND MY SUPERVISOR ACTUALLY
11 HAS THE AUTHORITY TO SETTLE THE CASE SO SHE HAS TO SIGN IT.

12 MR. BARENS: DID YOU RECEIVE ANY PARTICULAR TRAINING
13 OR HAVE ANY PARTICULAR BACKGROUND THAT EQUIPPED YOU FOR THAT
14 EMPLOYMENT?

15 MS. KEENAN: WELL, I WAS IN EXAMINATIONS FOR, I DON'T
16 KNOW, SEVEN OR EIGHT YEARS.

17 MR. BARENS: YOU WERE A FIELD CASE WORKER?

18 MS. KEENAN: I STARTED IN THE OFFICE, I WAS A FIELD
19 AGENT AND THEN WENT TO APPEALS. I HAVE HAD TRAINING FOR
20 APPEALS.

21 MR. BARENS: AS A FIELD AGENT, MANY PEOPLE IN OUR SOCIETY
22 LOOK AT FIELD AGENTS SOMEWHAT AS PROSECUTORS, IN A CANDID
23 SENSE; DO YOU IN ANY WAY PERCEIVE YOURSELF AS A PROSECUTOR
24 FOR THE UNITED STATES GOVERNMENT IN YOUR JOB?

25 MS. KEENAN: NO, BECAUSE I WAS SITTING OUT THERE WHEN
26 THEY ASKED ABOUT WHETHER OR NOT I WAS IN LAW ENFORCEMENT AND
27 IT ACTUALLY DIDN'T OCCUR TO ME WHEN I WAS SITTING THERE. BUT
28 AS THE WEEKS PASSED, I THINK I THOUGHT MAYBE I SHOULD HAVE

1 SAID BUT I DON'T THINK OF MYSELF AS LAW ENFORCEMENT.

2 MR. BARENS: WHAT CONCERNS ME IS YOUR PERCEPTION OF
3 YOURSELF, NOT THE PUBLIC'S PERCEPTION OF YOU.

4 MS. KEENAN: THAT IS RIGHT, I DON'T THINK OF MYSELF
5 OR NEVER DID.

6 MR. BARENS: YOU DID NOT?

7 MS. KEENAN: NO.

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1 MR. BARENS: YOU FELT THAT -- DID YOU BELIEVE YOU HEARD
2 THE STORY THAT THIS TAXPAYER IS GOING TO COME IN HERE AND
3 GIVE ME A SONG AND DANCE AND THEY ALL DON'T TELL THE TRUTH
4 AND YOU KNOW, HAVE A BIAS LIKE THAT?

5 MS. KEENAN: NO, BECAUSE MOST OF THE AUDITS, MOST OF
6 THE EVIDENCE THAT YOU GET IS THE TAXPAYER SAYING THAT IT IS
7 SO.

8 MOST PEOPLE DON'T HAVE RECORDS AT ALL, NO DOCU-
9 MENTS AT ALL.

10 SO MOST OF WHAT YOU LOOK AT IS THINGS THAT THE
11 TAXPAYER SAYS.

12 MR. BARENS: DO YOU THINK THERE IS ANYTHING, BASED
13 ON YOUR PROFESSIONAL EXPERIENCE OR TRAINING AT ALL, THAT WOULD
14 BIAS YOU AS A WITNESS IN FAVOR OF THE PROSECUTION?

15 MS. KEENAN: NO.

16 MR. BARENS: YOU DO NOT?

17 MS. KEENAN: NO.

18 MR. BARENS: THE FACT THAT YOU WORK FOR THE UNITED
19 STATES GOVERNMENT AND THE PROSECUTION REPRESENTS A BRANCH
20 OF THE STATE OR COUNTY GOVERNMENT, AS THE CASE MAY BE
21 PERCEIVED, THAT WOULD NOT IN ANY WAY INFLUENCE YOU IN FAVOR
22 OF THE PROSECUTION?

23 MS. KEENAN: NO.

24 MR. BARENS: YOU MENTIONED THAT YOU HAVE A DEGREE IN
25 HISTORY?

26 MS. KEENAN: YES.

27 MR. BARENS: AND DID YOU HAVE AN EMPHASIS OF STUDY
28 WITHIN THAT DEGREE?

1 MS. KEENAN: YES, THE 16TH CENTURY, MOSTLY THE
2 REFORMATION.

3 MR. BARENS: ALL RIGHT. WHERE DID YOU OBTAIN THAT
4 DEGREE?

5 MS. KEENAN: AT UCLA.

6 MR. BARENS: AND YOU HAVE A GRADUATE DEGREE OR POST-
7 GRADUATE DEGREE?

8 MS. KEENAN: JUST A BACHELOR OF ARTS.

9 MR. BARENS: AND DID YOU HAVE A MINOR ACCOMPANYING
10 THAT?

11 MS. KEENAN: ENGLISH.

12 MR. BARENS: ANY PARTICULAR EMPHASIS IN ENGLISH?

13 MS. KEENAN: NO. I READ A LOT. I LIKE THE CLASSES.

14 MR. BARENS: IS THERE A PARTICULAR TYPE OF READING
15 THAT YOU PREFER?

16 MS. KEENAN: HISTORY.

17 MR. BARENS: IT SEEMS CONSISTENT TO ME. DID YOU HAVE
18 A PROFESSOR NAMED LEEHAN AT UCLA IN ENGLISH?

19 MS. KEENAN: NO. I DON'T THINK SO.

20 MR. BARENS: DID YOU READ ANY PHILOSOPHY?

21 MS. KEENAN: YES, HOBBS, MARX -- I WAS JUST TRYING
22 TO THINK OF THEM, LOCKE, ROUSSEAU, LES PHILSOPHES IN FRANCE
23 AND A LOT OF RELIGION.

24 MR. BARENS: DID YOU GET INTO ANY EXISTENTIAL PHILOSOPHY?

25 MS. KENNAN: NO. I THINK I MAY HAVE READ NO EXIT.
26 I HAVE A COPY WHICH I HAVE RESISTED LOOKING AT. I DON'T KNOW
27 THAT I EVER GOT THROUGH IT. BUT I HAVE IT.

28 MR. BARENS: DID YOU GET INTO READING CAMUS OR SARTRE

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1 OR ANY OF THOSE PEOPLE?

2 MS. KEENAN: NO.

3 MR. BARENS: ALL RIGHT. ARE YOU FAMILIAR WITH WHAT
4 I MEAN BY EXISTENTIAL PHILOSOPHY?

5 MS. KEENAN: ACTUALLY, I HAVE HEARD THE TERM, OKAY?
6 BUT I DON'T REALLY KNOW WHAT IT -- I HAVE READ STUFF BY
7 SIMONE DE BEAUVOIR, THE FEMINIST STUFF.

8 MR. BARENS: DID YOU EVER HEAR THE EXPRESSION "PARADOX
9 PHILOSOPHY" IN ANY OF THE MATERIALS YOU EITHER READ OR WERE
10 LECTURED UPON AT UCLA?

11 MS. KEENAN: NOT THAT I RECALL.

12 MR. BARENS: THIS DOESN'T RING ANY BELLS FOR YOU?

13 MS. KEENAN: NO.

14 MR. BARENS: WOULD A YOUNG MAN WHO WAS A MEMBER OF
15 SOMETHING CALLED THE BILLIONAIRE BOYS CLUB CAUSE YOU ANY
16 CONCERN?

17 MS. KEENAN: NO.

18 MR. BARENS: IT DOESN'T MAKE YOU THINK THAT HE IS SOME
19 SORT OF A BAD GUY AS A RESULT OF THAT?

20 MS. KEENAN: NO.

21 MR. BARENS: YOU WOULDN'T THINK THAT HE OWED TAXES,
22 WOULD YOU?

23 MS. KEENAN: NO.

24 MR. BARENS: ALL RIGHT. YOU HAVE NEVER WATCHED A
25 CRIMINAL TRIAL BEFORE?

26 MS. KEENAN: NO.

27 MR. BARENS: HAVE YOU EVER WATCHED ANY TAX TRIALS?

28 MS. KEENAN: YES.

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1 MR. BARENS: AND HAVE YOU WATCHED TAX EVASION TRIALS?

2 MS. KEENAN: NO, ONLY TAX COURT TRIALS. THOSE ARE
3 CIVIL CASES.

4 MR. BARENS: CIVIL? OVER IN THE FEDERAL BUILDING,
5 HERE?

6 MS. KEENAN: YES, JUST A JUDGE.

7 MR. BARENS: WHY DO YOU DO THAT?

8 MS. KEENAN: ON CALENDAR, WE MAKE A LAST DITCH EFFORT
9 TO SETTLE THE CASES.

10 MR. BARENS: SO YOU ARE PRESENT IN THE COURTROOM TO
11 PARTICIPATE IN A HOPEFUL NEGOTIATION PROCESS?

12 MS. KEENAN: YES.

13 MR. BARENS: WHAT USUALLY HAPPENS AT THE LAST MINUTE,
14 THERE? I MEAN, IN THE GREATER PERCENTAGE OF CASES, IS THERE
15 A DISPOSITION?

16 MS. KEENAN: ALMOST ALL OF THE CASES ARE SETTLED.

17 MR. BARENS: IT IS BASED ON WHAT I WOULD GENERALLY
18 REFER TO AS A COST-EFFECTIVE BASIS, BOTH FOR THE GOVERNMENT
19 AND THE TAXPAYER?

20 MS. KEENAN: THAT IS WHY IT IS DONE. WE CAN'T CONSIDER
21 THAT WHEN YOU WRITE UP THE REPORT.

22 YOU HAVE TO COME UP WITH SOME LEGAL AND FACTUAL
23 WAY TO SETTLE THE CASE.

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1 MR. BARENS: I TEND OVER THE YEARS TO PERCEIVE THE
2 WHOLE CIVIL JUSTICE SYSTEM AS SOMETHING THAT COULD BE CALLED
3 A SYMPHONY OF ACCOMMODATION, WHICH HAS BEEN SET UP OVER SIX
4 OR 800 YEARS. DO YOU UNDERSTAND THAT THERE IS NO
5 ACCOMMODATION BETWEEN MR. WAPNER AND MYSELF POSSIBLE IN THIS
6 SETTING?

7 MS. KEENAN: YES.

8 MR. BARENS: WE JUST CAN'T WORK IT OUT. WE HAVE TOTALLY
9 DIFFERENT POINTS OF VIEW, HERE. THIS IS NOT SOMETHING WHERE
10 WE, YOU UNDERSTAND, TRY TO MARK EACH OTHER UP, SO TO SPEAK
11 AND THEN SEE IF WE CAN WORK SOMETHING OUT, JUST BEFORE YOU
12 RETIRE?

13 MS. KEENAN: YES.

14 MR. BARENS: DO YOU UNDERSTAND THAT?

15 MS. KEENAN: YES.

16 MR. BARENS: AND THIS IS NOT A BARGAINING CONTEST THAT
17 WE ENGAGE IN, HERE?

18 MS. KEENAN: YES.

19 MR. BARENS: BUT RATHER, WE HAVE A TOTALLY BLACK AND
20 WHITE VARIANCE ON WHAT THE TRUTH IS.

21 MS. KEENAN: YES.

22 MR. BARENS: AND DO YOU THINK YOU COULD LISTEN TO ALL
23 THE EVIDENCE BEFORE YOU CAME TO A CONCLUSION?

24 MS. KEENAN: YES.

25 MR. BARENS: YOU WOULD NOT BE OVERWHELMED BY WEEKS
26 OF THE GOVERNMENT PUTTING ON THEIR CASE, SAYING THIS IS TRUE
27 AND THIS IS TRUE AND THIS IS TRUE AND THEN, EVEN BEFORE I
28 PUT ON A DEFENSE, HAVE REACHED SOME DECISION ABOUT THE DEFENDANT

1 GUILT OR INNOCENCE? YOU COULD RESIST THAT, COULDN'T YOU?

2 MS. KEENAN: YES.

3 MR. BARENS: YOU WOULD WANT TO HEAR BOTH SIDES?

4 MS. KEENAN: YES.

5 MR. BARENS: DO YOU HAVE ANY HOBBIES?

6 MS. KEENAN: YES. I PLAY THE PIANO AND THE VIOLIN.

7 THE COURT: I CAN'T HEAR YOU.

8 MS. KEENAN: I PLAY THE PIANO AND THE VIOLIN AND I
9 PLAY TENNIS.

10 MR. BARENS: DO YOU HAVE A STEADY BOYFRIEND?

11 MS. KEENAN: YES.

12 MR. BARENS: WHAT DOES HE DO?

13 MS. KEENAN: HE SELLS INSURANCE.

14 MR. BARENS: NEVER BEEN MARRIED?

15 MS. KEENAN: NO.

16 MR. BARENS: AS I HAVE ASKED RECENT PROSPECTIVE JURORS,
17 HOW WOULD YOU FEEL IF YOU WERE MY CLIENT HERE ON THE DEFENSE
18 AND THE JURY WAS COMPOSED OF PEOPLE WITH YOUR BACKGROUND?
19 HOW WOULD YOU FEEL ABOUT GOING TO TRIAL? WHAT WOULD YOU SAY
20 TO ME AS YOUR LAWYER AND I WOULD SAY TO YOU HOW WAS THE JURY
21 LOOKING TO YOU, MISS KEENAN?

22 MS. KEENAN: I THINK THAT I WOULD BE QUITE SATISFIED
23 THAT I COULD GET A FAIR HEARING AND A FAIR TRIAL.

24 MR. BARENS: YOU CAN ASSURE ME, BECAUSE OBVIOUSLY AS
25 A DEFENSE LAWYER DEALING WITH SOMEONE WHO IS A PART OF THE
26 GOVERNMENT AND RIGHTLY OR WRONGLY, I THINK MOST TAXPAYERS
27 LOOK AT THAT WHOLE IRS SITUATION AS PROSECUTION ORIENTED.

28 YOU DON'T FEEL ANY WAY, THAT THAT WOULD CAUSE

1 YOU -- SHOULD CAUSE ME PROPERLY ANY CONCERN ABOUT YOU AS AN
2 INDIVIDUAL?

3 MS. KEENAN: ABSOLUTELY NOT.

4 MR. BARENS: OBVIOUSLY, I APPRECIATE THAT EVERY ONE
5 OF YOU WHO WORKS IN THE IRS, IS DIFFERENT IN YOUR
6 PHILOSOPHY AND VALUE SYSTEMS. THANK YOU VERY MUCH. WE PASS
7 FOR CAUSE, YOUR HONOR.

8 THE COURT: ALL RIGHT.

9 MR. WAPNER: GOOD MORNING, MS. KEENAN. HOW COMFORTABLE
10 DO YOU FEEL NOW THAT MR. BARENS HAS TOLD YOU TWO OR THREE
11 TIMES THAT HE THINKS YOU ARE PROSECUTION ORIENTED? IS THAT
12 SEAT GETTING A LITTLE BIT WARMER TO YOU?

13 MS. KEENAN: I HEAR IT ALL OF THE TIME.

14 MR. WAPNER: AND THE TAX COURT CASES, IF THEY GET TO
15 COURT, WHO ARE THEY PROSECUTED BY?

16 MS. KEENAN: THE DISTRICT COUNSEL.

17 MR. WAPNER: FOR THE IRS?

18 MS. KEENAN: (NODS HEAD UP AND DOWN.)

19 MR. WAPNER: IS THAT YES?

20 MS. KEENAN: YES.

21 MR. WAPNER: HOW MUCH CONTACT DO YOU HAVE WITH THEM
22 ON A DAILY BASIS?

23 MS. KEENAN: WELL, I SEE THEM. WE SHARE THE LIBRARY.
24 WE DON'T WORK TOGETHER.

25 THEY ARE PROSECUTORS. I MEAN, THAT IS THE WAY
26 IT IS SET UP. THE GOVERNMENT IS THE DEFENDANT.

27 MR. WAPNER: OKAY. YOU DON'T SEE YOURSELF AS JUST
28 A BRANCH OF THE DISTRICT COUNSEL?

1 MS. KEENAN: NOT AT ALL.

2 MR. WAPNER: YOU DON'T WORK WITH ANY ASSISTANT U.S.
3 ATTORNEYS?

4 MS. KEENAN: NO, NEVER. THEY DO CRIMINAL CASES.

5 MR. WAPNER: AND NONE OF YOUR CASES EVER BECOME CRIMINAL
6 CASES?

7 MS. KEENAN: NO.

8 MR. WAPNER: HAVE YOU HAD ANY EXPERIENCES WITH LAW
9 ENFORCEMENT, LIKE TRAFFIC TICKETS OR THINGS LIKE THAT, THAT
10 LEFT SUCH A BAD TASTE IN YOUR MOUTH THAT YOU WOULD HOLD IT
11 AGAINST A POLICE OFFICER IF HE TESTIFIED?

12 MS. KEENAN: NO.

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1 MR. WAPNER: DO YOUR PARENTS LIVE IN THE LOS ANGELES
2 AREA?

3 MS. KEENAN: YES, THEY LIVE IN EL SEGUNDO.

4 MR. WAPNER: HOW OFTEN DO YOU SEE OR TALK TO THEM?

5 MS. KEENAN: ABOUT ONCE A WEEK.

6 MR. WAPNER: DO YOU HAVE ANY BROTHERS OR SISTERS?

7 MS. KEENAN: ONE OF EACH.

8 MR. WAPNER: DO THEY LIVE LOCALLY?

9 MS. KEENAN: MY BROTHER LIVES IN MANHATTAN AND MY SISTER
10 LIVES IN MAR VISTA.

11 MR. WAPNER: MANHATTAN IN NEW YORK?

12 MS. KEENAN: MANHATTAN BEACH.

13 MR. WAPNER: HOW OFTEN DO YOU SEE OR TALK TO THEM?

14 MS. KEENAN: ABOUT ONCE A WEEK.

15 MR. WAPNER: DO YOU HAVE ANY IDEA ABOUT CIRCUMSTANTIAL
16 EVIDENCE OR DID YOU BEFORE YOU CAME INTO THE COURTROOM HERE?

17 MS. KEENAN: YES.

18 MR. WAPNER: AND WHAT WAS YOUR FEELING BEFORE YOU CAME
19 INTO COURT?

20 MS. KEENAN: THAT ALL EVIDENCE IS EVIDENCE. I HAD
21 A FOUR-HOUR CLASS ON EVIDENCE WHEN I BECAME AN APPEALS OFFICER.

22 MR. WAPNER: OKAY. THAT DOESN'T QUALIFY YOU TO KNOW
23 MORE ABOUT IT THAN THE JUDGE?

24 MS. KEENAN: I KNOW THAT.

25 MR. WAPNER: OKAY. SO YOU HEARD THE EXAMPLE THAT I
26 USED WITH THE OTHER JURORS ABOUT OCCASIONALLY GETTING JURORS
27 IN THE JURY BOX WHO SAY THAT THEY HAVE BEEN TO LAW SCHOOL
28 OR THEY KNOW THIS OR THEY KNOW THAT AND THEY DON'T FOLLOW

1 THE JUDGE'S INSTRUCTIONS.

2 THAT IS NOT GOING TO BE A PROBLEM FOR YOU?

3 MS. KEENAN: NO.

4 MR. WAPNER: HAVE YOU EVER BEEN THE VICTIM OF A FRAUD
5 OR ANY KIND OF A CON SCHEME?

6 MS. KENNAN: NOT THAT I EVER DETECTED.

7 MR. WAPNER: OKAY. HOW LONG HAVE YOU BEEN WORKING
8 FOR THE IRS TOTALLY?

9 MS. KEENAN: FIFTEEN YEARS.

10 MR. WAPNER: DID YOU HEAR THE NAMES OF ALL THE WITNESSES
11 THAT THE JUDGE READ?

12 MS. KEENAN: YES.

13 MR. WAPNER: AND DID YOU HEAR THE NAME OF THE VICTIM
14 IN THIS CASE, MR. LEVIN, RONALD LEVIN?

15 MS. KEENAN: I HEARD ALL OF THE NAMES.

16 MR. WAPNER: DIDN'T MEAN ANYTHING TO YOU?

17 MS. KEENAN: (NODS HEAD FROM SIDE TO SIDE.)

18 MR. WAPNER: IS THAT NO?

19 MS. KEENAN: NO, SORRY.

20 MR. WAPNER: THANK YOU. I PASS FOR CAUSE, YOUR HONOR.

21 THE COURT: ALL RIGHT.

22 MR. BARENS: COULD WE APPROACH THE BENCH?

23 THE COURT: YES.

24 (THE FOLLOWING PROCEEDINGS WERE HELD AT
25 THE BENCH:)

26 MR. BARENS: I AM NOT SURE WHAT TO DO NOW.

27 THE COURT: WELL --

28 MR. BARENS: I AM NOT PREPARED -- WELL, I HEAR THAT

1 I HAVE ONLY ONE, AS I UNDERSTAND IT? HE HAS ONE, TOO?

2 THE COURT: YES.

3 MR. BARENS: ALL RIGHT. COULDN'T WE HEAR BOTH OF THEM
4 BEFORE I HAVE TO EXERCISE MY CHOICE?

5 THE COURT: NO.

6 MR. BARENS: BECAUSE I DON'T HAVE A CHOICE.

7 THE COURT: NO. YOU HAVE GOT A CHOICE NOW TO TAKE
8 HER OR NOT TAKE HER.

9 MR. BARENS: BUT THEN YOU SEE, IF I DON'T TAKE HER,
10 IF I DON'T --

11 THE COURT: IF YOU DON'T TAKE HER, YOU MIGHT GET
12 SPEARMAN.

13 MR. CHIER: HE LIKES ARTHUR'S SUIT, ANYWAY.

14 MR. BARENS: I STILL HAVE A PEREMPTORY, IF I DON'T --

15 THE COURT: IF HE TAKES HER, THEN YOU HAVE NOT GOT
16 A PEREMPTORY.

17 MR. BARENS: CAN WE TALK?

18 MR. WAPNER: ABOUT WHAT?

19 MR. BARENS: I WOULD LIKE TO KNOW WHAT YOUR THOUGHTS
20 ARE.

21 MR. WAPNER: NO. THE GAME DOESN'T WORK THAT WAY.

22 THE COURT: THAT'S RIGHT.

23 MR. BARENS: ALL RIGHT. COULD WE CONFER FOR A MOMENT,
24 THEN? SO I AM CLEAR IF I PASS HER, THEN I AM AT FRED'S
25 MERCY?

26 THE COURT: NO. I DON'T THINK THAT YOU ARE AT ANYBODY'S
27 MERCY. IF YOU ARE OF THE OPINION SHE WOULD MAKE A GOOD
28 ALTERNATE OR POSSIBLE REGULAR JUROR, YOU ACCEPT HER. IF YOU

1 DON'T THINK SO, YOU CAN LOOK AT WHAT YOU HAVE LEFT.

2 MR. BARENS: I KNOW. ALL RIGHT. HE IS OUT THERE LIKE
3 THAT SHARK IN THE MOVIE JAWS. HE IS OUT THERE. OKAY. JUDGE,
4 LET US HAVE A MOMENT IF YOU WOULD, PLEASE.

5 THE COURT: GO AHEAD.

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9-1
1 (THE FOLLOWING PROCEEDINGS WERE HELD
2 IN OPEN COURT:)

3 (UNREPORTED COLLOQUY BETWEEN MR. BARENS,
4 MR. CHIER AND THE DEFENDANT.)

5 MR. BARENS: WE WILL PASS FOR CAUSE, YOUR HONOR.

6 THE COURT: ALL RIGHT, YES, I KNOW YOU PASSED FOR CAUSE
7 BEFORE. IT IS YOUR PEREMPTORY.

8 (PAUSE.)

9 MR. BARENS: I WILL ACCEPT THE ALTERNATE.

10 THE COURT: VERY GOOD.

11 MR. WAPNER: THE PEOPLE WILL ACCEPT THIS ALTERNATE ALSO.

12 THE COURT: ALL RIGHT, THANK YOU VERY MUCH.

13 WHAT I AM GOING TO DO IS NOW -- WE DON'T WANT
14 TO SWEAR THEM YET, IS THAT IT?

15 MR. WAPNER: CORRECT.

16 THE COURT: WHAT I AM GOING TO DO NOW IS TO ASK YOU
17 ALL TO COME BACK TOMORROW MORNING.

18 THE REASON FOR THAT IS WE HAVE GOT SOME MOTIONS
19 THAT WE HAVE TO DISPOSE OF THIS AFTERNOON AND THERE IS NO
20 SENSE YOUR WAITING AROUND JUST TWIDDLING YOUR THUMBS UNTIL
21 YOU ARE READY TO BE CALLED BACK IN, SO WHAT I WILL ASK YOU
22 TO DO IS TO COME BACK.

23 MR. WAPNER: MAY WE APPROACH THE BENCH?

24 THE COURT: ALL RIGHT, APPROACH THE BENCH.

25 IT MIGHT BE TOMORROW MORNING, LADIES AND
26 GENTLEMEN.

27 (THE FOLLOWING PROCEEDINGS WERE HELD
28 AT THE BENCH:)

9-2
1 THE COURT: I AM SORRY. I THOUGHT WE WERE GOING TO
2 ARGUE THOSE MOTIONS THAT YOU HAVE, THE ORAL MOTIONS THAT YOU
3 HAVE PENDING AND DEPENDING UPON WHAT THE DISPOSITION IS GOING
4 TO BE OF THOSE MOTIONS -- IN OTHER WORDS, SUPPOSE WE ARGUE
5 THE MOTION TO DISMISS AND I DENY IT, JUST ASSUMING THAT I
6 DO, WHAT IS THERE LEFT FOR US TO DO BUT TO TRY THE CASE?

7 MR. BARENS: I BEG YOUR PARDON, YOUR HONOR, BUT I BELIEVE
8 THAT WE HAD DETERMINED LAST THURSDAY --

9 THE COURT: THAT WE WILL TAKE A WEEK, YOU MEAN?

10 MR. BARENS: YES.

11 THE COURT: WE WILL TAKE THE REST OF THE WEEK.

12 MR. BARENS: WELL, I HAD MADE A MOTION TO CONTINUE,
13 WHICH YOUR HONOR WAS CONSIDERING AND YOUR HONOR HAD SOMEWHAT
14 INDICATED THAT WE WOULD HAVE TEN DAYS IN WHICH TO GO TO
15 SAN FRANCISCO. I HAVE PREPARED THE MOTION.

16 THE COURT: YOU HAVE HAD MORE THAN TWO WEEKS TO GO TO
17 SAN FRANCISCO AND TO DO SOMETHING ABOUT IT.

18 MR. BARENS: IF YOU WILL RECALL, WE DIDN'T PRESENT THE
19 MOTION FOR CONTINUANCE UNTIL LAST WEDNESDAY, WHICH WAS HEARD
20 LAST THURSDAY, YOUR HONOR, AT WHICH TIME YOUR HONOR INDICATED
21 THAT WE WOULD HAVE AN OPPORTUNITY TO GO UP THERE AND GET ON
22 THE CALENDAR AND BE HEARD ON OUR MOTION TO RETURN OUR
23 EXHIBITS.

24 THE COURT: I TOLD YOU TWO WEEKS AGO TO SEND YOUR
25 ASSOCIATE UP THERE TO MAKE ANY MOTIONS THAT NEED TO BE MADE.
26 YOU WEREN'T NEEDED, SINCE YOU ARE TRYING THIS CASE HERE.

27 MR. BARENS: THE DEFENDANT IS ENTITLED TO BE THERE TO
28 LOOK AT THE DOCUMENTS AND TO TESTIFY AT THE EVIDENTIARY

9-7
1 HEARING, WHICH I NEED HIM PRESENT FOR.

2 THE COURT: HASN'T THAT MOTION BEEN MADE?

3 MR. BARENS: I HAVE A MOTION I DID NOT FILE.

4 THE COURT: WHY NOT?

5 MR. BARENS: I HAVE BEEN HERE ENGAGED.

6 THE COURT: YOU HAVE AN ASSOCIATE WHO HAS BEEN MAKING
7 ANY NUMBER OF MOTIONS WHILE YOU ARE HERE.

8 MR. BARENS: QUITE SO.

9 YOUR HONOR, I REPRESENT TO THE COURT, I HAVE
10 DILIGENTLY AND EXPEDITIOUSLY PROCEEDED IN RESPONSE TO THIS
11 HORRENDOUS THING THAT HAS HAPPENED HERE. IT HAS NOT BEEN
12 TWO WEEKS NOW BUT, RATHER, IT HAS BEEN TEN DAYS NOW AND NOT
13 COURT DAYS AT THAT.

14 YOUR HONOR, WE WERE UNABLE TO FILE THE MOTION
15 YESTERDAY BECAUSE THERE WAS NO ONE IN SESSION YESTERDAY.

16 WE ARE PREPARED TO FILE THE MOTION.

17 I WOULD LIKE TO EXPRESS ANOTHER PROBLEM THAT I
18 WOULD LIKE TO STATE, YOUR HONOR, WHICH I AM SURE YOUR HONOR
19 WOULD BE AWARE OF IF YOU THINK ABOUT IT. I AM NEITHER FISH
20 NOR FOWL IN THAT COURT RIGHT NOW. THIS CASE NUMBER OF THIS
21 COURT DOWN HERE DOESN'T HELP ME UP THERE. I HAVE TO SOMEHOW
22 PIGGYBACK MY WAY, SO TO SPEAK, INTO THAT COURT.

23 THE COURT: WHY DIDN'T YOU GIVE INSTRUCTIONS TO THE
24 LAWYER UP THERE WHO IS REPRESENTING THE DEFENDANT THERE?

25 MR. BARENS: I TALKED TO HIM YESTERDAY.

26 THE COURT: WHY DIDN'T YOU HAVE HIM GO THERE AND TALK
27 TO HIM AND GIVE HIM ALL OF THE PAPERS?

28 MR. BARENS: I TALKED TO HIM YESTERDAY.

1 THE COURT: TEN DAYS HAVE GONE BY AND NOT A THING HAS
2 BEEN DONE.

3 MR. BARENS: THAT IS JUST NOT TRUE, YOUR HONOR. I HAVE
4 RESPONDED AS VIGOROUSLY AS COUNSEL CAN.

5 YOUR HONOR, I DID NOT CREATE THIS PROBLEM. I
6 NOTICE YOU ARE NOT ASKING MR. WAPNER WHAT HE HAS DONE.

7 THE COURT: I WANT YOU TO GET FINISHED TELLING ME NOW
8 WHAT YOUR POSITION IS AND THEN I WILL ASK MR. WAPNER.

9 MR. BARENS: I WOULD LIKE TO KNOW WHAT THE PROSECUTION
10 HAS DONE TO ASSIST IN THE RECOVERY OF THOSE DOCUMENTS FOR
11 US.

12 THE COURT: WHAT DOCUMENTS?

13 MR. BARENS: THE MATERIALS THAT WERE REMOVED.

14 THE COURT: WHAT HAS BEEN REMOVED?

15 MR. BARENS: WE DON'T KNOW.

16 THE COURT: I HAVEN'T THE REMOTEST IDEA WHAT YOU ARE
17 TALKING ABOUT EVEN. WHAT DOCUMENTS DO YOU HAVE REFERENCE
18 TO?

19 MR. BARENS: THEY HAVE NOT PROVIDED US WITH AN
20 INVENTORY, YOUR HONOR.

21 THE COURT: WHAT DO YOU KNOW ABOUT IT, MR. WAPNER?

22 MR. WAPNER: YOUR HONOR, AS THE COURT KNOWS, I HAVE
23 INTENTIONALLY ATTEMPTED TO DISTANCE MYSELF FROM WHAT WAS TAKEN
24 BECAUSE I DON'T WANT THE PROSECUTION IN THIS CASE TO BE
25 TAINTED BY ANY MATERIALS THAT WERE SEIZED AND THEN HAVE
26 MR. BARENS SAY WELL, THANK YOU, MR. WAPNER, FOR LOOKING AT
27 IT AND NOW YOU ARE TAINTED BY THIS AND YOU CAN'T PROSECUTE
28 THIS CASE. SO I DON'T INTEND TO LOOK AT THE DOCUMENTS.

9-5
1 THE COURT: I DIDN'T ASK YOU TO LOOK AT THEM.

2 I WANT TO KNOW WHAT THE DOCUMENTS ARE
3 SPECIFICALLY TO SEE WHAT RELATIONSHIP THOSE DOCUMENTS HAVE
4 TO THIS CASE.

5 SO FAR AS I KNOW, ALL OF THE NOTES THE DEFENDANT
6 HAS BEEN TAKING -- AND HE HAS BEEN DOING A LOT OF THAT, A
7 MASS OF THAT, THOSE ARE A LOT OF THINGS THAT HAVE BEEN TAKEN.
8 I AM NOT INTERESTED IN WHAT THEY TOOK OF HIS.

9 I AM ONLY INTERESTED IN WHAT THEY TOOK OF
10 COUNSEL.

11 MR. WAPNER: WELL, I CAN GET A LIST FROM THE ATTORNEY
12 GENERAL'S OFFICE. I CAN GET A COPY OF THE RETURN ON THE
13 WARRANT.

14 I HAVE NO IDEA HOW SPECIFIC IT IS. IN OTHER
15 WORDS --
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9-6
1 THE COURT: WELL, AT LEAST SEE WHAT IT IS THAT THEY
2 TOOK. IS THERE A DESCRIPTION OF THE DOCUMENTS WHICH WERE
3 TAKEN?

4 MR. WAPNER: I WILL OBTAIN A RETURN OF THE WARRANT.

5 I ASKED THE ATTORNEY GENERAL ABOUT THAT LAST WEEK
6 AND IT WAS MY UNDERSTANDING THAT THEY WERE GOING TO HAVE THE
7 RETURN PREPARED AS OF LAST WEDNESDAY. I DON'T HAVE A COPY
8 OF IT. I AM SURE I CAN GET ONE.

9 THE COURT: WHY DIDN'T YOU GET IT BEFORE NOW?

10 MR. WAPNER: IT WAS MY UNDERSTANDING HE WAS GOING TO
11 SEND IT TO ME.

12 THE COURT: THIS IS TUESDAY. THAT WAS LAST WEDNESDAY.

13 MR. WAPNER: WELL, I WILL CALL HIM AND SEE.

14 THE COURT: DID YOU SEE A COPY OF THE RETURN?

15 MR. BARENS: NO.

16 I TRIED TO CONTACT MR. VANCE AND PARKER KELLY.
17 MR. JOHN VANCE IS THE ATTORNEY GENERAL AND I TRIED TO REACH
18 HIM WITHOUT SUCCESS.

19 SINCE FRIDAY, I HAVE TRIED TO REACH PARKER KELLY,
20 MR. HUNT'S LAWYER UP THERE, WITHOUT SUCCESS.

21 I AM ASKING THOSE GENTLEMEN -- MY PURPOSE WAS
22 TO ASK THEM IF THERE WAS SOMEHOW A WAY TO WORK OUT A
23 STIPULATION THAT I COULD APPEAR AND BE ON CALENDAR FOR MY
24 MOTION UP THERE.

25 IF MR. VANCE, WHO HAS ALWAYS BEEN A GENTLEMAN
26 IN THE PAST, WOULD PERMIT ME STANDING TO GO THERE AND MOTION
27 THE RETURN OF MY DOCUMENTS --

28 THE COURT: YOU ARE TALKING ABOUT "MY DOCUMENTS."

9-7
1 I DON'T KNOW WHAT DOCUMENTS YOU ARE REFERRING TO.

2 MR. BARENS: MY CLIENT'S DOCUMENTS, YOUR HONOR.

3 THE COURT: THAT IS BETTER.

4 MR. BARENS: THE DEFENSE'S DOCUMENTS.

5 I AM SORRY, YOUR HONOR.

6 THE COURT: YES.

7 MR. BARENS: BUT HOWEVER, I SUBMIT, SOME OF MY
8 DOCUMENTS, I BELIEVE, THE DOCUMENTS BEING ONES I GENERATED.

9 THE COURT: YOU KNOW WHAT THEY ARE, DON'T YOU?

10 MR. BARENS: I HAVE NO IDEA, YOUR HONOR.

11 THE COURT: YOU DON'T KNOW WHAT YOUR DOCUMENTS ARE
12 EITHER?

13 MR. BARENS: YES, I KNOW WHAT DOCUMENTS ORIGINATED IN
14 MY OFFICE THAT WOULD BE A PART OF WHAT WAS THERE.

15 THERE WERE CERTAIN MEMORANDA I ADDRESSED TO THE
16 DEFENDANT WHEREIN I DISCUSSED ANTICIPATED TESTIMONY.

17 MR. WAPNER: MAY I SUGGEST SOMETHING?

18 THE COURT: YES.

19 MR. WAPNER: THAT WE TELL THE JURY TO COME BACK AT
20 1:45 AND THAT I WILL CALL MR. VANCE IN THE MEANTIME BUT --

21 THE COURT: WHY DON'T I TELL THEM TO COME BACK TOMORROW?

22 MR. BARENS: WHAT ARE WE GOING TO DO WITH THEM
23 TOMORROW?

24 THE COURT: WELL, WE MIGHT RESOLVE SOME THINGS TODAY,
25 THIS AFTERNOON.

26 MR. BARENS: I CAN ASSURE YOUR HONOR THAT I FACTUALLY
27 BELIEVE THAT THE DEFENDANT HAS A LEGAL BASIS TO PROCEED TO
28 AN EVIDENTIARY HEARING UP THERE TO OBTAIN DOCUMENTS.

1 I BELIEVE YOUR HONOR INDICATED YOU WOULD NOT RULE
2 ON THE MOTION TO DISMISS UNTIL AFTER YOU HEARD ABOUT THE
3 DISCOVERY MOTION.

4 THE COURT: THAT IS WHY I TOLD YOU LAST WEEK THAT I
5 WANTED TO KNOW PRECISELY WHAT IT IS THAT WAS SEIZED. IT MIGHT
6 HAVE ABSOLUTELY NOTHING TO DO WITH THIS CASE AT ALL.

7 MR. BARENS: YOUR HONOR, THEY HAVE TEN DAYS IN WHICH
8 TO RETURN -- IN WHICH TO FILE A RETURN ON THE WRIT.

9 THE COURT: I UNDERSTAND IT HAS BEEN RETURNED.

10 MR. BARENS: AGAIN, YOUR HONOR, THEY HAVEN'T MADE IT
11 AVAILABLE TO THE DEFENSE.

12 MR. WAPNER: I WILL FIND OUT WHETHER THEY FILED THE
13 RETURN OR NOT. I DON'T KNOW WHETHER THEY HAVE.

14 I THOUGHT THEY WERE GOING TO DO IT AS OF LAST
15 WEEK.

16 MR. BARENS: ACTUALLY, YOUR HONOR, TO BE CANDID, I DON'T
17 BELIEVE THEIR TEN DAYS EXPIRED BY LAST WEDNESDAY. I THINK
18 THEY HAD UNTIL FRIDAY ON THE TEN DAYS.

19 THE COURT: WHEN ARE YOU GOING TO FIND ALL OF THAT OUT?

20 MR. WAPNER: I WILL CALL RIGHT NOW.

21 BUT IN ANY EVENT, YOUR HONOR, THERE HAS TO BE
22 SOME LITIGATION ON THIS IN THE COURT IN SAN MATEO COUNTY AND
23 THEN WE HAVE TO HAVE A HEARING IN THIS COURT IN ADDITION TO
24 THAT TO DETERMINE NOT ONLY WHAT MIGHT HAVE BEEN TAKEN BUT
25 THE EFFECT OF WHAT WAS TAKEN ON THIS CASE AND THE EFFECT OF
26 WHAT WAS SEIZED BY THE OFFICERS.

27 THE COURT: SO FAR, ALL I KNOW IS WHAT HAS BEEN TAKEN
28 IS THE AFFIDAVIT OF WHAT'S HIS NAME, THAT ALL OF THE DOCUMENTS

1 HE HAD PREPARED BUT NOTHING -- NO RELATIONSHIP SHOWN AT ALL TO THE
2 ALLEGED QUOTE 80 EXHIBITS. I DON'T KNOW WHAT THE 80 EXHIBITS
3 ARE AND WHAT HE HAS TO DO WITH THE EXHIBITS.

4 THEY SHOULD BE IN YOUR POSSESSION AND NOT IN HIS.

5 MR. BARENS: YOUR HONOR, THE FACT THAT THE DEFENDANT
6 PREPARED CERTAIN DOCUMENTS FOR ME, YOUR HONOR, IF WE ARE
7 TALKING ABOUT DOCUMENTS WHERE THE DEFENDANT IS TALKING ABOUT
8 HIS TESTIMONY AND HIS WORK PRODUCT AND FOR THEM TO HAVE
9 POSSESSION OF THAT ANTICIPATED TESTIMONY TO ENABLE THEM TO
10 ANTICIPATE HIS TESTIMONY AND MY CROSS-EXAMINATION OF
11 WITNESSES --

12 YOUR HONOR, I WILL ADMIT TO THE COURT HE HAS
13 WRITTEN ME EXTENSIVE MEMORANDA TELLING ME HOW I -- SUGGESTED
14 CROSS-EXAMINATION FOR WITNESSES AND THEY SHOULDN'T HAVE THAT.

15 THE COURT: A LOT OF STUFF WAS LEFT. HOW DO WE KNOW IT
16 WASN'T STUFF THAT WAS LEFT BY THE PEOPLE WHO HAD THE SEARCH
17 WARRANT?

18 YOUR STUFF IS NOT INCLUDED IN THAT.

19 MR. BARENS: I WILL SUBMIT TO YOUR HONOR THAT THE 80
20 DEFENSE EXHIBITS THAT WOULD SUPPORT CROSS-EXAMINATION AND
21 IMPEACHMENT OF THESE WITNESSES WAS SEIZED.

22 THE COURT: AS EXHIBITS 1 THROUGH 80?

23 MR. BARENS: I WOULD NOT -- WHY WOULD WE DO THAT AT
24 THIS TIME?

25 THE COURT: I DON'T KNOW. YOU MENTIONED SPECIFICALLY
26 80 EXHIBITS.

27 MR. BARENS: THAT IS CORRECT.

28 THE COURT: ARE THERE 80 EXHIBITS?

1 MR. BARENS: THERE WERE EITHER 78 OR 80.

2 THE COURT: WHAT ARE THEY?

3 MR. BARENS: I DO NOT WANT TO REVEAL SPECIFICALLY OTHER
4 THAN TO SAY --

5 THE COURT: I DON'T WANT TO KNOW THE CONTENTS. I JUST
6 WANT TO KNOW WHAT THEY ARE.

7 MR. BARENS: IN THE NATURE OF CORRESPONDENCE INVOLVING
8 WITNESSES, RECEIPTS.

9 THE COURT: THESE WOULD BE EXHIBITS IN THIS CASE?

10 MR. BARENS: YES, YOUR HONOR.

11 THE COURT: CORRESPONDENCE WITH OTHER WITNESSES?

12 MR. BARENS: YES, YOUR HONOR, THAT I CAN ASSURE THE
13 COURT THE GOVERNMENT IS GOING TO CALL.

14 THE COURT: YOU MEAN THAT IS INTENDED FOR CROSS-
15 EXAMINATION, IS THAT IT?

16 MR. BARENS: ABSOLUTELY, AND IMPEACHMENT, YOUR HONOR.

17 AGAIN, I WILL CALL YOUR HONOR'S ATTENTION THAT
18 IF THIS WAS ALL FAIR PLAY AND CRICKET GOING ON HERE, HOW COME
19 MR. WAPNER'S INVESTIGATOR, LES ZOELLER FROM THE BEVERLY HILLS
20 POLICE DEPARTMENT, DIDN'T EVEN TELL MR. WAPNER HE WAS GOING
21 OVER THERE?

22 MR. WAPNER: EXCUSE ME, MR. BARENS. LET'S NOT LITIGATE
23 RIGHT NOW WHETHER IT IS FAIR PLAY.

24 WE ARE HERE TO DECIDE HOW LONG WE ARE GOING TO
25 POSTPONE THIS CASE, IF AT ALL. LET'S STICK TO THE ISSUE.

26 THE COURT: THERE IS A POSSIBILITY THAT I MIGHT CALL
27 AND TELL THE JUDGE THAT WHATEVER WAS ON THERE MIGHT POSSIBLY
28 HAVE A BEARING ON THIS PARTICULAR CASE AND ASK TO HAVE ALL

1 OF THESE RECORDS SENT DOWN HERE AND EXAMINED BY ME. WOULD
2 THAT BE A SUGGESTION?

3 MR. WAPNER: AS I TOLD THE COURT LAST WEEK, I THINK
4 WHAT HAS TO BE DONE, THERE HAS TO BE AN INDEPENDENT PARTY
5 IN THE NATURE OF A SPECIAL MASTER APPOINTED TO EXAMINE THE
6 EXHIBITS.

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1 THE COURT: WELL, I DON'T PROPOSE TO CONTINUE THIS
2 TRIAL INDEFINITELY. I WANT TO GO TO TRIAL ON THIS CASE.

3 MR. WAPNER: I AGREE, YOUR HONOR. I WANT TO GO TO
4 TRIAL ALSO. BUT THIS IS A VERY IMPORTANT ISSUE THAT I THINK
5 ABSOLUTELY HAS TO BE RESOLVED BEFORE WE PROCEED BECAUSE IF
6 IT IS NOT PRESOLVED AND RESOLVED PROPERLY AND WE PROCEED TO
7 TRIAL IN THIS CASE FOR TWO OR THREE MONTHS, IT IS FOR NAUGHT.
8 I DON'T WANT TO DO THAT.

9 THE COURT: BUT, YOU SUGGEST THAT WE CONTINUE IT FOR
10 THREE OR FOUR MONTHS? IS THAT WHAT YOU WANT TO DO, UNTIL
11 WE RESOLVE THE MATTER UP THERE?

12 MR. WAPNER: NO, YOUR HONOR.

13 THE COURT: FIRST I WANT TO FIND OUT WHAT HAS BEEN
14 SEIZED. THEN I CAN MAKE MY OWN MIND UP AS TO WHETHER OR NOT
15 WE CAN PROCEED IN THIS CASE AND WHETHER OR NOT WE CAN GET
16 THE STUFF BACK.

17 MR. BARENS: EXCUSE ME. I NEED A MOMENT.

18 (BRIEF PAUSE.)

19 MR. BARENS: YOUR HONOR, AGAIN, FIRST OF ALL, WE GET
20 BACK TO THE ISSUE OF, DOES THE DEFENSE HAVE TO REVEAL TO THE
21 COURT AND TO THE PROSECUTOR, THE NATURE OF OUR EVIDENCE IN
22 ORDER TO PROTECT THIS EVIDENCE?

23 THE COURT: I HAVE TO KNOW WHAT IT IS. I HAVE TO KNOW
24 WHAT IT IS IN ORDER TO PASS UPON THIS MOTION. IS IT MATERIAL
25 OR ISN'T IT MATERIAL? IS IT ALL MAKE-BELIEVE? IS IT A LOT
26 OF STUFF THAT HE WROTE UP, WHICH DOESN'T MEAN ANYTHING IN
27 THIS CASE?

28 MR. BARENS: I CAN ASSURE YOUR HONOR, THAT I BELIEVE

1 THE QUESTIONS HE PROPOSED TO ME FOR CROSS-EXAMINATION OF
2 WITNESSES --

3 THE COURT: WELL, HE CAN STILL DO THAT DURING THE COURSE
4 OF THE TRIAL.

5 MR. BARENS: BUT YOUR HONOR, IF THEY HAVE GOT IT, IF
6 THE PROSECUTION HAS GOT IT, THEN --

7 THE COURT: WELL, WHAT WE CAN DO IS GET IT BACK.

8 MR. BARENS: RIGHT, YOU ARE STILL GOING TO HEAR THE
9 MOTION FOR DISMISSAL THAT YOU ARE GOING TO LISTEN TO OPENLY,
10 YOUR HONOR?

11 MR. WAPNER: WELL, THE QUESTION BEFORE THE COURT IS
12 WHAT DO WE DO WITH THIS JURY? WE HAVE BEEN AT THE BENCH NOW
13 FOR ABOUT TEN MINUTES. I THINK THAT AT THE VERY LEAST, WE
14 SHOULD MAYBE TELL THEM TO COME BACK AT 2:00 O'CLOCK AND
15 BETWEEN 1:45 AND 2:00 O'CLOCK, WE CAN RESOLVE THIS.

16 BUT IT DOESN'T APPEAR THAT WE ARE GOING TO RESOLVE
17 THIS.

18 THE COURT: WELL, THEN, I WILL HAVE THEM COME BACK
19 TOMORROW MORNING. IT GIVES US ALL AFTERNOON TO EXPLORE IT
20 AND FIND OUT. THANK YOU.

21 (THE FOLLOWING PROCEEDINGS WERE HELD IN
22 OPEN COURT:)

23 THE COURT: SORRY TO KEEP YOU WAITING, LADIES AND
24 GENTLEMEN. MATTERS HAVE COME UP WHICH MAY ENTAIL A LITTLE
25 DELAY. SO, WHAT I WILL ASK YOU TO DO IS, COME BACK TOMORROW
26 MORNING AT 10:30 IF YOU WILL, PLEASE. GO TO THE JURY ASSEMBLY
27 ROOM.

28 WHEN WE ARE READY FOR YOU HERE, WE WILL ASK YOU

1 TO COME IN. THANK YOU VERY MUCH.

2 AS TO THE REMAINING JURORS IN THE PANEL, THE
3 COURT WISHES TO THANK YOU VERY MUCH FOR YOUR ATTENDANCE HERE
4 ALL THROUGHOUT. YOU SEE, WE HAVE A FULL COMPLIMENT OF JURORS
5 PLUS OUR ALTERNATES.

6 YOU ALL GO BACK TO THE JURY ASSEMBLY ROOM IF
7 YOU WILL, PLEASE. TELL THEM THAT SO FAR AS THIS CASE IS
8 CONCERNED, YOU ARE NOT REQUIRED ANYMORE. THANK YOU.

9 I WILL SEE YOU ALL BACK TOMORROW MORNING.

10 (AT 12:07 P.M. AN ADJOURNEMENT WAS TAKEN
11 UNTIL 1:35 P.M. OF THE SAME DAY.)

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1 SANTA MONICA, CALIFORNIA; TUESDAY, JANUARY 20, 1987; 2:00 P.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS NOTED ON TITLE PAGE.)
4

5 (THE FOLLOWING PROCEEDINGS WERE HELD
6 OUTSIDE THE PRESENCE AND HEARING OF THE
7 JURY:)

8 THE COURT: I THINK WE HAVE SOME UNFINISHED BUSINESS
9 FIRST, HAVEN'T WE, A MOTION WHICH HAS BEEN FILED?

10 MR. BARENS: THE ONLY MOTION I BELIEVE THAT WAS
11 RELEVANT AT THIS TIME FRAME, YOUR HONOR, THERE HAD BEEN A MOTION,
12 THAT I WILL CALL IT A TENTATIVE RULING YOUR HONOR HAD MADE
13 LAST THURSDAY CONCERNING COUNSEL'S DEFENSE MOTION TO CONTINUE
14 IN LIGHT OF ALL OF THIS BUSINESS ABOUT THE DOCUMENTS IN SAN
15 MATEO. THAT WAS THE ONLY MOTION WE HAD REQUESTED BEFORE THE
16 COURT.

17 THE COURT: DIDN'T WE HAVE A PROPORTIONALITY THING?

18 MR. BARENS: YOU MEAN THE ARCE MOTION, YOUR HONOR?

19 THE COURT: YES, THE ARCE MOTION, DIDN'T WE HAVE THAT?

20 MR. BARENS: YOUR HONOR MIGHT RECALL WE HAD RESERVED
21 ARGUMENT ON THAT.

22 THE COURT: THAT IS WHAT I SAID. WHY DON'T WE DISPOSE
23 OF THOSE PRELIMINARY MOTIONS FIRST?

24 MR. BARENS: YOUR HONOR, I AM NOT PREPARED.

25 AT AN EARLIER TIME, YOUR HONOR MIGHT RECALL MR.
26 CHIER HAD EXCLUSIVELY HANDLED THE WHOLE ARCE BUSINESS AND
27 I HAD ADVISED THE COURT THROUGHOUT THAT I HAD NO FAMILIARITY
28 AT ALL ON THAT WHOLE ARCE MATTER.

THE COURT: WELL, FAMILIARIZE YOURSELF ON IT MORE AT
SOME LATER DATE AND WE WILL HEAR THAT.

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1 MR. BARENS: YOUR HONOR, THE OTHER MOTION -- YOUR HONOR,
2 JUST TO KIND OF SUMMARIZE ALL OF THE MOTIONS PENDING IN THE
3 ETHER THAT I CAN THINK OF NOW, WE HAD WITHDRAWN THE KARNY
4 DISCOVERY MOTION, AS YOU WILL RECALL, LAST WEEK.

5 ANOTHER MOTION THAT I STILL AM A LITTLE UNDEFINED
6 ON, WAS THE FINAL RESOLUTION ON THE STATE BAR PROCEEDINGS
7 ON THE SUBPOENAED MATERIAL FROM THE STATE BAR THAT YOUR HONOR
8 HAD CONSIDERED. I AM NOT SURE THAT WE ACTUALLY HAD SOME
9 DEFINITIVE RESOLUTION ON THAT.

10 THE COURT: I THOUGHT YOU SAW THE VARIOUS EXHIBITS WHICH
11 WERE IN THE -- THAT I MADE AVAILABLE TO YOU. THOSE ARE THE
12 ONLY RECORDS I MADE AVAILABLE TO YOU. YOU GET WHATEVER YOU
13 CAN FROM THAT. THAT IS THE END OF THAT.

14 MR. BARENS: AND THEN YOUR HONOR HAS RULED THAT THE
15 REST OF THE MATERIAL WAS SUBJECT TO VARIOUS PRIVILEGES?

16 THE COURT: THAT'S CORRECT.

17 MR. BARENS: YOUR HONOR, LET ME JUST THINK IF THERE
18 WAS ANYTHING ELSE BEFORE THE COURT. THE WAY I UNDERSTOOD
19 YOUR HONOR LAST THURSDAY, YOUR HONOR INDICATED THAT HE COULD
20 NOT RULE IN A VACUUM ON THE MOTION TO DISMISS THAT HAD BEEN
21 CALENDARED.

22 THEREFORE, WE WERE GOING TO HAVE -- WHICH BRINGS
23 US PERHAPS TO THE BUSINESS AT HAND, WE WERE GOING TO HAVE
24 A BRIEF OPPORTUNITY TO PROCEED AS REQUIRED IN NORTHERN
25 CALIFORNIA, COME BACK HERE WITH THE RESULTS OF THAT AND
26 INCORPORATE IT INTO --

27 THE COURT: I WON'T WAIT FOR A DISPOSITION OF THAT MATTER.
28 IT TAKES TOO LONG. I DON'T WANT TO HAVE THIS JURY ON HOLD

1 UNTIL THEN.

2 I WANT TO FIND OUT FIRST WHAT THE PAPERS ARE THAT
3 YOU SAY WERE SEIZED WHICH YOU NEED TO PROCEED HERE. ARE THOSE
4 VITAL DOCUMENTS? THE MOST VITAL DOCUMENT WHICH WAS NOT
5 SEIZED, IS YOUR HEAD. YOU HAVE GOT IT ALL IN YOUR HEAD. YOU
6 CAN PROCEED WITH THAT.

7 MR. BARENS: YES, ALTHOUGH I MIGHT HAVE IT IN MY HEAD,
8 MY HEAD WILL NOT PRODUCE AN EXHIBIT. AND AGAIN YOUR HONOR,
9 PLEASE OBLIGE ME IN MAKING A RECORD HERE YOUR HONOR, IN
10 PERSPECTIVE, THE DEFENSE DID NOT BRING THIS TRAVESTY UPON
11 ITSELF.

12 THE FACT IS, THAT THESE PEOPLE HAVE COME IN AND
13 TAKEN DEFENSE EXHIBITS AND A VARIETY OF OTHER MATERIALS. THEY
14 HAVE NOT RETURNED -- HAVE NOT FILED THEIR RETURN ON THE
15 WARRANT YET, WITH THE COURT. WE HAVE NOT ACCESSED THAT
16 MATERIAL.

17 THE COURT: I UNDERSTAND IT WAS.

18 MR. WAPNER: THE RETURN HAS BEEN FILED. I WILL HAVE
19 A COPY OF IT. IT IS BEING EXPRESS MAILED TO ME. I SHOULD
20 HAVE IT BY TOMORROW.

21 MR. BARENS: WELL, OBVIOUSLY, I HAVE NOT SEEN IT,
22 YOUR HONOR.

23 YOUR HONOR, TO THE EXTENT THAT THAT DOCUMENT --
24 AND I WOULD PRESUME YOUR HONOR, THAT THAT DOCUMENT WILL MAKE
25 SOME GENERALIZED REFERENCE TO FOR INSTANCE, "BOX OF
26 MISCELLANEOUS DOCUMENTS," WE --

27 MR. WAPNER: I THINK MR. BARENS IS CORRECT BECAUSE I
28 REQUESTED MR. VANCE AND MR. BREILING, WHO WERE RESPONSIBLE

1 FOR THE SEARCH, TO SEAL THE ITEMS THAT THEY GOT, SO THAT AN
2 INDEPENDENT DETERMINATION COULD BE MADE AS TO WHETHER THE
3 ITEMS WERE PRIVILEGED OR WERE THEY NOT PRIVILEGED AND WHETHER
4 THEY SHOULD BE KEPT OR WHETHER THEY SHOULD BE TURNED OVER
5 TO MR. BARENS.

6 AND WHEN I SPOKE TO MR. VANCE THIS AFTERNOON,
7 HE TOLD ME THAT THE RETURN IS GOING TO SAY IN VERY GENERAL
8 TERMS WHAT THEY GOT. SO I DON'T THINK WE ARE GOING TO BE
9 ABLE TO TELL BY LOOKING AT THAT.

10 THE COURT: WELL, WE HAVE GOT TO LOOK AT THE DOCUMENTS,
11 DON'T WE? NOT WE, ME.

12 MR. WAPNER: WELL, WITH ALL DUE RESPECT, YOU ARE GOING
13 TO HAVE TO SEE THEM AT SOME POINT. BUT THE WARRANT WAS ISSUED
14 AND RETURNABLE IN SAN MATEO COUNTY AND ONE OF THE THINGS THAT
15 I THINK THAT WE ARE OVERLOOKING IN ALL OF THIS IS, THAT
16 SEPARATE FROM ANY DETERMINATION THAT IS MADE BY THIS COURT,
17 IS A DETERMINATION TO BE MADE IN THE SAN MATEO COUNTY COURT
18 AS TO WHETHER OR NOT THE WARRANT WAS VALID, AND IF IT WAS
19 VALID, WERE THE ITEMS SEIZED, PROPERLY SEIZED UNDER THE
20 WARRANT AND IF THEY WERE PROPERLY SEIZED UNDER THE WARRANT,
21 WAS ANY PRIVILEGE VIOLATED AND IF THERE WAS, WHAT IS THE
22 REMEDY.

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1 THERE ARE PARTIES IN THAT PROCEEDING THAT HAVE
2 AN INTEREST IN THOSE DOCUMENTS INDEPENDENT OF ANYTHING THAT
3 GOES ON IN THIS COURT, SO THERE IS GOING TO HAVE TO BE
4 LITIGATION THERE BEFORE THERE IS ANY LITIGATION HERE.

5 THE COURT: I AM ONLY INTERESTED IN FINDING OUT
6 SPECIFICALLY WHAT IT WAS THAT WAS SEIZED THERE TO SEE WHETHER
7 OR NOT THAT HAS ANY RELEVANCY TO ANYTHING IN THIS PARTICULAR
8 CASE.

9 THEY MIGHT HAVE SEIZED EVERYTHING THAT MIGHT
10 BE RELEVANT TO THE CASE UP NORTH AND LEFT ANYTHING THAT WAS
11 NOT RELEVANT TO THAT CASE UP THERE, WITH THE DEFENDANT AT
12 HIS HOME.

13 MR. WAPNER: HOW DOES THE COURT PROPOSE TO DO THAT?

14 THE COURT: I DON'T KNOW HOW I AM SUPPOSED TO DO THAT.

15 WHAT I INTEND TO DO IS SO WE CAN PROCEED
16 AS EXPEDITIOUSLY AS POSSIBLE IN THIS CASE, I AM GOING TO CALL
17 THE JUDGE UP THERE AND ASK TO HAVE ALL OF THOSE RECORDS AND
18 DOCUMENTS BROUGHT DOWN HERE AND I WILL HAVE AN IN CAMERA
19 INSPECTION TO SEE WHETHER OR NOT ANYTHING POSSIBLY UP THERE
20 IS PRESENT HERE THAT COULD BE USED BY DEFENSE COUNSEL IN THE
21 TRIAL OF THIS CASE.

22 IF THERE IS NOTHING IN THERE THEN, OF COURSE,
23 THERE IS NOTHING I AM INTERESTED IN.

24 AND IF THERE IS, THEN I WILL HAVE COPIES MADE
25 OF THAT AND TURN IT BACK TO THE DEFENDANT.

26 MR. BARENS: YOUR HONOR, THE DEFENSE WOULD CONTEND
27 THAT IT WOULD BE HIGHLY INAPPROPRIATE, AND I SAY THIS
28 RESPECTFULLY, FOR YOUR HONOR, WHO IS ABOUT TO TRY THIS CASE,

1 IF HE VIEWS DEFENSE MATERIAL.

2 I BELIEVE THE PROCEDURE, YOUR HONOR, IS FOR AN
3 INDEPENDENT MASTER.

4 THE COURT: WHAT IS THE INDEPENDENT MASTER GOING TO
5 DO? DOES HE KNOW WHAT THE ISSUES ARE IN THIS CASE?

6 YOU CAN'T HAVE AN INDEPENDENT MASTER EVALUATE
7 WHETHER OR NOT THEY ARE RELEVANT HERE.

8 MR. BARENS: I BELIEVE WE COULD IDENTIFY TO AN
9 INDEPENDENT MASTER THE NATURE OF THE MATERIALS THAT THE DEFENSE
10 PLANS TO PRESENT TO THE COURT DURING THE TRIAL.

11 I BELIEVE THAT YOUR HONOR SHOULD NOT EXAMINE
12 THE DEFENSE MATERIALS.

13 THE COURT: I CAN HAVE THESE RECORDS HERE, NOT IN THE
14 PRESENCE OF THE DISTRICT ATTORNEY, BUT IN YOUR PRESENCE AND
15 WE CAN GO OVER EVERYTHING AND SEE WHAT THEY ARE AND IF THERE
16 IS ANYTHING IN THERE THAT BELONGS TO YOU, WE CAN HAVE THEM
17 COPIED AND LEAVE A COPY FOR WHOEVER WANTS IT UP THERE. THAT
18 IS THE WAY I THINK IT SHOULD BE DONE.

19 MR. BARENS: YOUR HONOR, THE IMPACT OF WHAT OCCURRED
20 THAT DAY AT THE ROBERTS' IS, AS WE CONTENDED IN THE MOTION
21 TO DISMISS BEFORE YOUR HONOR --

22 THE COURT: YOU ARE MAKING A MOTION TO DISMISS JUST
23 BECAUSE THEY SEIZED CERTAIN MATERIALS THAT MIGHT BE APPLICABLE
24 TO THIS CASE HERE? I WILL DENY THAT RIGHT OUT OF HAND.
25 THAT IS NOT GROUNDS FOR A MOTION TO DISMISS IN THIS CASE.

26 MR. BARENS: YOUR HONOR, A MAJOR PORTION OF THE MOTION
27 THAT IS BEFORE THE COURT GOES TO WHAT IS THE REMEDY FOR THE
28 FACT THAT THE BEVERLY HILLS POLICE DEPARTMENT, THE INVESTIGATORS

1 IN THIS CASE, HAVE READ DEFENSE MATERIAL.

2 THE COURT: I HAVE TOLD YOU WHAT THE REMEDY IS. I
3 WILL ENJOIN AND DIRECT THE DISTRICT ATTORNEY NOT TO TALK TO
4 ANY OFFICERS ABOUT WHAT THEY FOUND OUT UP THERE. I WILL ENJOIN
5 THEM TO A COMPLETE SILENCE AND TO A COMPLETE DIVORCE FROM
6 ANYTHING THEY MIGHT HAVE HEARD AND NEVER TO MENTION IT TO
7 THE DISTRICT ATTORNEY.

8 MR. BARENS: YOUR HONOR --

9 THE COURT: AND I WILL ENJOIN HIM NOT EVEN TO LOOK AT
10 IT OR TALK ABOUT IT. THAT IS THE ONLY WAY OF SANITIZING IT.

11 MR. BARENS: YOUR HONOR, I BELIEVE THE LAW ENTITLES
12 THE DEFENDANT TO --

13 THE COURT: I CAN HEAR YOUR MOTION NOW. I DON'T HAVE
14 TO WAIT UNTIL THAT IS DONE, BECAUSE YOU CLAIM AT THIS
15 PARTICULAR POINT YOU HAVE THE RIGHT TO SEEK A DISMISSAL OF
16 THIS CASE, ISN'T THAT RIGHT, WITHOUT KNOWING WHAT THE DOCUMENTS
17 ARE THAT HAVE BEEN SEIZED; IS THAT CORRECT?

18 MR. BARENS: IF I MIGHT BE HEARD.

19 THE COURT: I AM ASKING YOU WHETHER THAT IS CORRECT.

20 MR. BARENS: YES, IT IS, YOUR HONOR.

21 THE COURT: THEN I AM GOING TO DENY YOUR MOTION.

22 MERELY BECAUSE SOMEBODY ELSE WENT UP THERE,
23 WITHOUT THE DISTRICT ATTORNEY HERE HAVING ANYTHING TO DO WITH
24 IT, AND THEY MIGHT HAVE FOUND OUT SOMETHING WHICH THEY CANNOT
25 USE AND WILL NOT USE AND I AM ENJOINING ITS USE, DOESN'T MEAN
26 YOU ARE ENTITLED TO A DISMISSAL OF THIS ACTION. IT HAS NOTHING
27 TO DO WITH WHAT THE D.A. DID.

28 MR. BARENS: YOUR HONOR, I BELIEVE WE ARE ENTITLED

1 TO AN EVIDENTIARY HEARING ON THAT, YOUR HONOR. IT IS
2 INCUMBENT TO LISTEN TO TESTIMONY, HAVE THE SEARCHING OFFICERS
3 AND THE TESTIMONY OF THE DEFENDANT HIMSELF AS TO WHAT WAS
4 GOING ON THERE.

5 THE COURT: DO YOU WANT THE SEARCHING OFFICERS TO
6 TESTIFY HERE AS TO WHAT THEY READ, WHAT THEY DIDN'T READ?
7 THEN THAT WILL BE DISCLOSING EVERYTHING THAT THEY KNOW.

8 MR. BARENS: WE WANT IT IN FRONT OF A SPECIAL MASTER.

9 THE COURT: I AM NOT GOING TO CONTENANCE THAT.

10 MR. BARENS: ALL I CAN DO, YOUR HONOR -- YOUR HONOR
11 MAKES RULING AND I MAKE MOTIONS.

12 THE COURT: YES. I AM MAKING A RULING HERE ON THE
13 BASIS OF THE MOTION THAT YOU MADE, NAMELY, THAT YOU ARE
14 ENTITLED TO A DISMISSAL OF THIS CASE MERELY BECAUSE A JUDGE
15 UP IN SAN MATEO COUNTY ISSUED A SEARCH WARRANT TO SEARCH FOR
16 PAPERS THAT MAY BE MATERIAL TO THE CASE UP THERE AND THAT
17 THAT WAS DONE, AND WHATEVER PAPERS WERE UNEARTHED FROM THE
18 PREMISES OF THE DEFENDANT WERE THEN MADE KNOWN TO SOME OF
19 THE POLICE OFFICERS IN THIS CASE. ON THE BASIS OF THAT, I
20 WILL NOT GRANT YOUR MOTION. I WILL DENY IT.

21 MR. BARENS: IF I MIGHT JUST GO ON JUST A BIT, YOUR
22 HONOR.

23 YOUR HONOR, THE CONDUCT OF THE GOVERNMENT
24 OFFICIALS RESULTED IN, WE CONTEND, A VIOLATION OF MR. HUNT'S
25 FIFTH AND SIXTH AMENDMENT RIGHTS.

26 WE HAVE A ONE-GOVERNMENT CONCEPT, AS YOU KNOW,
27 WHICH IS A WELL ESTABLISHED LEGAL PRINCIPLE IN THIS STATE
28 AND THROUGHOUT THE UNITED STATES.

1 THE FACT THAT MR. WAPNER WAS NOT PERSONALLY
2 INVOLVED IN THE CONDUCT, IN TERMS OF PROSECUTORIAL MISCONDUCT,
3 DOES NOT EXCUSE IT.

4 THE FACT OF THE MATTER IS THIS IS AN AGENCY THAT
5 IS ATTRIBUTED TO MR. WAPNER'S OFFICE, THEIR CONDUCT IS
6 ATTRIBUTED TO MR. WAPNER'S OFFICE AND WE SUBMIT THAT THE
7 CONDUCT WAS SO OUTRAGEOUS IN THIS INSTANCE, WHAT OCCURRED
8 WAS SUCH A SUBSTANTIVE VIOLATION OF THE DEFENDANT'S RIGHT
9 TO COUNSEL, RIGHT TO PRIVILEGED COMMUNICATIONS WITH HIS
10 COUNSEL, AS TO AMOUNT TO ABSOLUTELY UNACCEPTABLE PROCEDURES.

11 THE COURT: AT THIS POINT, I DON'T KNOW WHAT THE SEARCH
12 WARRANT SOUGHT.

13 MR. BARENS: I WOULD REQUEST ONCE AGAIN, YOUR HONOR --

14 THE COURT: IN ORDER FOR YOU TO MAKE ANY KIND OF
15 A VALID POINT, IS TO TELL ME THAT THE SEARCH WARRANT SOUGHT
16 DOCUMENTS WHICH ARE REQUIRED IN THIS CASE AND USABLE BY YOU
17 IN THIS CASE.

18 MR. BARENS: WE SAID, YOUR HONOR --

19 THE COURT: I DON'T KNOW.

20 HAVE YOU SEEN THE SEARCH WARRANT?

21 MR. BARENS: THEY HAVE NOT GIVEN US THAT.

22 THE COURT: DID YOU SEE THE SEARCH WARRANT?

23 MR. BARENS: NO, I HAVE NOT.

24 THE COURT: THEN YOU DON'T KNOW WHAT YOU ARE TALKING
25 ABOUT AT THIS POINT, DO YOU?

26 MR. BARENS: I DO KNOW WHAT I AM TALKING ABOUT IN THE
27 SENSE, YOUR HONOR, THAT I AM NOW MORE SPECIFICALLY ADVISED
28 THAT 76 DEFENSE EXHIBITS WERE SEIZED.

1 AND LET ME EXPLAIN TO YOUR HONOR MORE SPECIFICALLY
2 WHAT I MEAN: THE 76 DEFENSE EXHIBITS HAD WITH THEM AN INDEX
3 CATALOG THAT IDENTIFIED BOTH THE EXHIBIT AND THE RELEVANCE,
4 SIGNIFICANCE TO THE DEFENDANT, WHICH DOCUMENTS WERE PREPARED
5 BY MR. HUNT.

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1 I HAD DISCUSSIONS WITH MR. HUNT OVER TIME ABOUT
2 THOSE SPECIFIC DOCUMENTS. I HAD FROM TIME TO TIME, SEEN SOME
3 OF THE DOCUMENTS THAT WERE SEIZED. I CANNOT PRESENT THE
4 CASE WITHOUT MY DOCUMENTS. THAT IS THE FIRST THING.

5 THE SECOND THING I MUST GET BACK TO YOUR HONOR,
6 IN ENJOINING -- AND I SUBMIT THAT THE SANCTION, THE REMEDY,
7 IS INSUFFICIENT IN THIS INSTANCE -- IN ENJOINING THOSE
8 OFFICERS FROM TELLING MR. WAPNER WHAT THEY SAW, IT DOES NOT
9 GO FAR ENOUGH, YOUR HONOR. THOSE OFFICERS HAVE EXTENSIVE,
10 ONGOING CONTACT WITH ALL OF THE WITNESSES. THE PEOPLE ARE
11 GOING TO CALL THOSE WITNESSES TO TESTIFY IN THIS CASE AND
12 THEY WILL BE INSTRUMENTAL IN PARTICIPATING WITH THEM.

13 I CAN'T UNRING THE BELL. THE KNOWLEDGE THAT THEY
14 HAVE -- HOW COULD YOUR HONOR EVER FEEL PROPERLY ASSURED THAT
15 THEY HAD NOT MADE USE DIRECTLY OR INDIRECTLY OF KNOWLEDGE
16 THEY HAD IN PREPARING WITNESSES TO TESTIFY?

17 THE COURT: HOW AM I TO KNOW AND RULE ON IT UNTIL I
18 SEE THE SO-CALLED EXHIBITS OF YOURS, TO SEE WHETHER OR NOT
19 THERE IS ANY RELEVANCY IN THIS CASE? IF THE WORLD KNEW ABOUT
20 IT, IT WOULDN'T MAKE ANY DIFFERENCE OR THE JURORS, IF THEY
21 KNEW ABOUT IT, IT WOULDN'T MAKE ANY DIFFERENCE OR THE
22 DISTRICT ATTORNEY KNEW ABOUT IT, IT WOULDN'T MAKE ANY
23 DIFFERENCE.

24 HOW DO I KNOW WHAT THEY ARE? TO GRANT A MOTION
25 ON THE BASIS -- YOU TELL ME THERE ARE 76 EXHIBITS AND TO
26 GRANT A MOTION TO DISMISS WITHOUT ANYTHING FURTHER. WELL,
27 THAT IS RIDICULOUS.

28 MR. BARENS: THE CASE THAT WE CITE IN OUR MOTION TO

14A-2
1 DISMISS, BARBER, TALKS ABOUT THIS VERY ISSUE AND ADDRESSES
2 WHAT YOUR HONOR JUST SAID.

3 IT SAID THAT YOUR HONOR CAN NEVER KNOW AND THAT
4 IS WHY DISMISSAL IS THE ONLY REMEDY IS BECAUSE NEITHER THE
5 COURT NOR COUNSEL COULD EVER BE TOTALLY ASSURED THAT THE
6 MATERIALS WEREN'T TAINTING THE DEFENSE'S INHERENT POSITION.

7 THE COURT: LET ME KNOW WHAT THEY ARE. I HAVE GOT TO
8 KNOW WHAT THEY ARE BEFORE I CAN SAY ANYTHING.

9 MR. BARENS: WELL YOUR HONOR, I AM HAPPY IN CAMERA,
10 TO DISCUSS -- THE PROBLEM I GET INTO YOUR HONOR, THERE IS
11 NO PRECEDENT FOR MAKING COUNSEL TELL THE SECRET TO PROTECT
12 THE SECRET.

13 I AM TELLING YOUR HONOR IN GOOD FAITH AND AS AN
14 OFFICER OF THIS COURT, THAT THERE WERE DEFENSE MATERIALS
15 EXPOSED TO THE PROSECUTION'S AGENTS THAT WENT INTO A
16 PRECISE CROSS-EXAMINATION, QUESTION-BY-QUESTION AND THAT IS
17 WHAT WE PLANNED TO USE, PRECISE TACTICS THAT WE PLANNED TO
18 UTILIZE, DOCUMENTS AND CORRESPONDENCE BETWEEN PROSECUTION
19 WITNESSES AND MR. WAPNER IS WRITING ALL THIS DOWN AND I AM
20 TRYING TO BE AS CIRCUMSPECT AS I CAN TO PROTECT MR. HUNT'S
21 INTEREST IN THIS CASE.

22 THERE WAS CORRESPONDENCE THAT WAS AUTHORED BY
23 PROSECUTION WITNESSES THAT WILL FLY IN THE FACE OF TESTIMONY
24 IN THIS COURTROOM AND PREVIOUS TESTIMONY THEY HAVE EXPRESSED.

25 BEYOND THAT, I CAN'T GO, YOUR HONOR, AND STILL
26 FULFILL MY DUTY HERE.

27 THE COURT: I UNDERSTAND THAT. I CAN UNDERSTAND YOUR
28 CAUTION IN DISCLOSING ANYTHING THAT IS CONFIDENTIAL BETWEEN

14A-3
1 YOU AND YOUR CLIENT AND ANYTHING THAT YOU PREPARED FOR HIM
2 IN THE NATURE OF A COMMUNICATION BETWEEN THE ATTORNEY AND
3 A CLIENT.

4 I DON'T WANT YOU TO TELL ME SPECIFICALLY WHAT
5 IT IS. BUT I WOULD LIKE TO KNOW WHAT IT IS, SO WE CAN SEE
6 WHETHER OR NOT THERE IS ANY BASIS FOR WHAT YOU ARE TELLING
7 ME.

8 MR. BARENS: LET ME GIVE YOUR HONOR A FURTHER EXAMPLE.
9 WE HAD ALL THE PITTMAN TRANSCRIPTS AVAILABLE. MR. HUNT READ
10 THE PITTMAN TRANSCRIPTS. WE READ THE PITTMAN TRANSCRIPTS.

11 WE SAT DOWN AND WORKED ON QUESTIONS. I THEN GAVE
12 THE STUFF TO MR. HUNT AND ASKED HIM TO WORK ON QUESTIONS.
13 THOSE DOCUMENTS --

14 THE COURT: DID YOU MAKE A NOTE OF THE DOCUMENTS THAT
15 YOU HAD?

16 MR. BARENS: YES.

17 THE COURT: YOU HAVE STILL GOT THEM. YOU CAN USE THEM
18 AGAIN WITH ANY WITNESS THAT MAY TAKE THE STAND.

19 MR. BARENS: YOUR HONOR, THE AGENTS OF THE PROSECUTION
20 ACCESSED THAT MATERIAL.

21 THE COURT: I AM TRYING TO SANITIZE ALL THAT. I AM
22 TRYING TO SAY THAT HE WILL NOT USE THAT.

23 MR. BARENS: YOU CAN'T ASSURE US OF THAT OR YOURSELF
24 OF THAT, JUDGE.

25 THE COURT: THE MOTION HAS TO BE GRANTED THEN? ISN'T
26 THAT WHAT YOU ARE TELLING ME?

27 MR. BARENS: THAT IS WHAT BARBER SAYS THAT WHEN THIS
28 HAPPENS, THE JUDGE -- YOU READ WHAT BARBER SAYS.

1 THE COURT: WE HAVE NOTHING TO DO WITH IT. THE
2 PROSECUTION DOWN HERE HAD NOTHING TO DO WITH IT. IT WAS --

3 MR. BARENS: THE LAW SAYS THAT THE FACT THAT THE D.A.
4 ON THE CASE IN THE COURTROOM HAD NOTHING TO DO WITH IT, MEANS
5 NOTHING IN ITSELF.

6 THE COURT: THERE WAS A WARRANT ISSUED ON AN AFFIDAVIT
7 BY A JUDGE IN ANOTHER COUNTY.

8 MR. BARENS: YOUR HONOR, BARBER ADDRESSES THIS POINT.
9 BARBER SAYS THERE IS NO NECESSITY --

10 THE COURT: GIVE ME THAT CITATION AGAIN, WILL YOU?
11 TAKE IT DOWN, WILL YOU?

12 MR. WAPNER: YOUR HONOR, WITH ALL DUE RESPECT, WE ARE
13 ARGUING THIS CASE IN A VACUUM BECAUSE I DON'T ACCEPT
14 MR. BARENS' CHARACTERIZATION OF WHAT THEY SAW OR WHAT THEY
15 READ.

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1 THE COURT: THAT IS WHAT I AM TRYING TO TELL HIM.
2 I WON'T ACCEPT IT UNTIL I SEE IT MYSELF.

3 MR. WAPNER: THANK YOU.

4 MR. BARENS: IN ANY EVENT, WE HAVE BARBER VERSUS
5 MUNICIPAL COURT, A 1979 --

6 THE COURT: WHAT IS THE NAME?

7 MR. BARENS: BARBER, B-A-R-B-E-R.

8 THE COURT: VERSUS MUNI COURT?

9 MR. BARENS: YES, AT 24 CAL.3D, 742 AND 750. YOUR HONOR,
10 MIGHT WE APPROACH BRIEFLY?

11 THE COURT: SURE.

12 (THE FOLLOWING PROCEEDINGS WERE HELD
13 AT THE BENCH:)

14 MR. BARENS: YOUR HONOR, I AM NOT IN THE LEAST, TRYING
15 TO BE CONFRONTATIONAL IN ANY WAY. I HAVE AVOIDED THAT.
16 MR. CHIER PREPARED THIS MOTION AND IS MUCH MORE VERSED ON
17 THIS MOTION THAN I AM.

18 I WOULD MOST RESPECTFULLY SEEK LEAVE OF THE COURT
19 TO HAVE MR. CHIER RESPOND TO THIS MOTION. HE PREPARED THE
20 MOTION. HE RESEARCHED IT.

21 THE COURT: WELL, YOU HAVE READ IT, HAVEN'T YOU?

22 MR. BARENS: I DID NOT READ ALL THE SUPPORTING CASES.
23 I DID NOT FIND BARBER, NOR DID I READ ALL THE -- MR. CHIER
24 DID. I ASK YOUR HONOR AS HUMBLLY AS I CAN, TO ALLOW HIM TO
25 ARGUE THIS MOTION.

26 MR. WAPNER: BEFORE WE EVEN GET INTO THAT, I DON'T THINK
27 THAT WE ARE HERE TO ARGUE THE SUBSTANCE OF THIS MOTION BECAUSE
28 WE WILL BE GOING AROUND IN CIRCLES.

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1 IT IS ALL GOING TO COME BACK TO THE FACT THAT
2 THE COURT HAS TO HAVE FACTS BEFORE IT CAN MAKE A DETERMINATION.

3 THE COURT: HE SAYS I DON'T NEED THOSE FACTS. HE SAYS
4 ALL I NEED IS HIS STATEMENT. HE SAYS ALL I NEED IS HIS
5 STATEMENT THAT THESE ARE CONFIDENTIAL COMMUNICATIONS BETWEEN
6 ATTORNEY AND CLIENT, WHICH YOUR OFFICE -- BY "YOUR OFFICE"
7 I MEAN THE POLICE DEPARTMENT HERE IN BEVERLY HILLS OR
8 LOS ANGELES, HAS HAD ACCESS TO AND THEY HAVE READ.

B
9 SO THAT IMMEDIATELY, HE SAYS IT GIVES THEM A RIGHT
10 TO MAKE THIS MOTION TO HAVE IT DISMISSED.

11 MR. WAPNER: BUT THE POINT IS, THAT JUST BECAUSE
12 MR. BARENS SAYS THAT IS FACT, DOESN'T MAKE IT A FACT.

13 THE COURT: OF COURSE. OF COURSE NOT.

14 MR. BARENS: BUT YOUR HONOR, THE ONLY REASON THIS COMES
15 UP IS THAT YOUR HONOR IS NOW RULING AGAINST MY MOTION.

16 THE COURT: I -- YOU SAY THAT I MUST GRANT YOUR MOTION
17 BECAUSE OF THE FACT THAT THE DISTRICT ATTORNEY'S POLICE OR
18 THE POLICE DEPARTMENT -- WHAT IS HIS NAME AGAIN?

19 MR. BARENS: ZOELLER. BUT THERE WERE TWO OTHER OFFICERS
20 THAT ACCOMPANIED HIM.

21 THE COURT: AND TWO OTHERS MIGHT HAVE BEEN UP THERE.
22 FIRST, YOU SUPPOSE THAT HE READ IT. THEN YOU SUPPOSE THAT
23 HE COMMUNICATED IT. THERE IS NO EVIDENCE AT ALL.

24 MR. BARENS: I NEVER SAID THAT HE COMMUNICATED TO
25 MR. WAPNER. I AM SAYING THAT THE LAW IS SUCH IN THIS STATE
26 THAT THEY DON'T HAVE TO COMMUNICATE TO MR. WAPNER.

27 THE COURT: ALL RIGHT. THAT IS SUFFICIENT. RIGHT AT
28 THAT POINT THEN, YOU SAY THAT THE MOTION SHOULD BE GRANTED?

1 MR. BARENS: YOUR HONOR, I BELIEVE STILL THAT WE ARE
2 ENTITLED TO A HEARING ON ALL THIS BUSINESS, AN EVIDENTIARY
3 HEARING WHERE I HAVE AN OPPORTUNITY TO CROSS-EXAMINE THOSE
4 FELLOWS.

5 THE COURT: HOW CAN WE HAVE AN EVIDENTIARY HEARING IF
6 I DON'T SEE WHAT THE RECORDS ARE AND THE RECORDS AREN'T
7 PRODUCED FOR ME?

8 MR. BARENS: BECAUSE I ASSUME YOUR HONOR, THAT MY MOTION
9 FOR THE RETURN OF RECORDS IS GOING TO BE GRANTED AND I PLAN
10 TO TURN TO -- TO USE THOSE DOCUMENTS IN AN EVIDENTIARY HEARING
11 AND SAY TO THEM, LISTEN, YOU SAW THIS, DIDN'T YOU? OR DID
12 YOU SEE IT? HOW COULD YOU TELL YOU DIDN'T SEE THIS WHEN IT
13 WAS A PART OF SOME OTHER EXHIBITS THAT YOU DID IN FACT, SEE?

14 I MEAN, WE HAVE TO GET INTO THAT.

15 MR. WAPNER: TWO THINGS ARE HAPPENING. ONE -- THERE
16 ARE TWO DIFFERENT CLAIMS THAT I SEE THAT ARE BEING MADE BY
17 THIS MOTION. ONE IS THAT PEOPLE WHO WERE THERE DURING THE
18 SEARCH SAW CERTAIN THINGS AND THEY TOOK THEM. AND IF WE
19 GET THOSE THINGS BACK, THEN WE CAN MAKE A DETERMINATION AS
20 TO WHAT THEY SAW.

21 I THINK THEY ARE MAKING A SECOND CLAIM, WHICH
22 IS THAT THEY SAW OTHER THINGS THAT THEY DIDN'T TAKE. AS TO
23 THAT SECOND PART --

24 THE COURT: HOW ARE WE GOING TO KNOW THAT?

25 MR. WAPNER: WELL, THE SECOND PART, YOU HAVE TO HAVE
26 A HEARING, ACCORDING TO THE DECLARATIONS THAT WERE FILED WITH
27 THE MOTION AND THEY WILL CALL WITNESS A, B AND C, WHO ARE
28 GOING TO SAY --

1 THE COURT: WELL, LET'S HAVE A HEARING. WE WILL CALL
2 THE POLICE OFFICERS FROM DOWN HERE, WHO SUPPOSEDLY WERE UP
3 THERE AND ASK THEM WHAT THEY FOUND OUT AND WHAT THEY SAW.

4 MR. WAPNER: I THINK HOWEVER, THAT THE HEARING IS
5 AFTER THE FIRST RESOLUTION. THE FIRST RESOLUTION IS, WHAT
6 WAS TAKEN AND ARE THEY ENTITLED TO IT BACK.

7 THE COURT: WELL, WHAT WAS TAKEN WILL BE COMING IN THE
8 MAIL, WON'T IT, TO YOU, EXPRESS MAIL?

9 MR. WAPNER: ONLY A GENERAL LIST. WHAT IS GOING TO
10 COME IS NOT GOING TO BE SATISFACTORY TO YOU.

11 WHAT IS GOING TO COME IS A GENERAL LIST THAT IS
12 GOING TO SAY, "WE TOOK BOXES OF EXHIBITS OR PAPERS OR
13 MISCELLANEOUS PAPERS."

14 THE COURT: WITHOUT DESCRIBING IT?

15 MR. WAPNER: IT WON'T DESCRIBE IT IN NEARLY THE DETAIL
16 SUFFICIENT TO MAKE A RULING.

17 THE COURT: WELL, WHAT IS GOING TO BE THE RESOLUTION?
18 SUPPOSE YOU HAVE -- WHAT IS GOING TO HAPPEN? YOU ARE GOING
19 TO START MAKING THE MOTIONS AND MOTIONS UP THERE.

20 THEN YOU ARE GOING TO HAVE A SPECIAL MASTER
21 APPOINTED AND THEN IT WILL BE WEEKS OR MONTHS BEFORE WE EVER
22 GET TO TRIAL IN THIS CASE.

23 MR. WAPNER: I DON'T THINK SO.

24 THE COURT: OF COURSE IT WILL. I KNOW HOW THEY WORK.
25 THERE WILL BE DOZENS OF WITNESSES CALLED, HUNDREDS OF
26 DOCUMENTS TO LOOK OVER.

27 THAT DOESN'T MAKE IT OVERNIGHT.

28 MR. WAPNER: I DON'T THINK IT TAKES OVERNIGHT. BUT

1 I DON'T SHARE THE COURT'S CONCERN THAT IT IS GOING TO TAKE
2 MONTHS. IT MAY TAKE A FEW WEEKS. MAYBE I AM BEING SOMEWHAT
3 NAIVE BUT BETWEEN NAIVETE AND YOUR EXPERIENCE, I THINK THAT
4 THERE IS SOMEWHAT OF A COMMON GROUND WHERE, IF WE PUT THIS
5 CASE OVER FOR EXAMPLE, FOR -- AND I DID DISCUSS THIS WITH
6 COUNSEL, LET'S SAY, TEN DAYS UNTIL A WEEK FROM MONDAY FOR
7 A STATUS CHECK, IF THERE IS SOMETHING WE CAN DO IN THE
8 MEANTIME BY WAY OF MOTIONS, WE'LL DO IT.

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1 BUT I DON'T WANT TO CONTINUE THE CASE FOR MONTHS,
2 EITHER. I AGREE WITH THE COURT.

3 MR. BARENS: I DON'T WANT TO EITHER.

4 MR. WAPNER: BUT I THINK IT CAN BE DONE MORE
5 EXPEDITIOUSLY.

6 THE COURT: THE MAIN POINT HE IS MAKING IS THAT AT THIS
7 PARTICULAR STAGE, THE HARM HAS ALL BEEN DONE. NO MATTER WHAT
8 HAPPENS, NO MATTER WHAT THE DOCUMENTS ARE, THE HARM IS
9 ALREADY DONE.

10 SO, HE WANTS THIS MOTION IN EFFECT, DECIDED NOW.

11 MR. WAPNER: I THINK THE COURT IS MISREADING COUNSEL.
12 I DON'T THINK HE WANTS THE MOTION NOW. I THINK HE IS
13 ASKING FOR AN EVIDENTIARY HEARING.

14 THE COURT: DO YOU WANT AN EVIDENTIARY HEARING?

15 MR. BARENS: YOUR HONOR, I WANT TO --

16 THE COURT: OR, DO YOU WANT THE EVIDENTIARY HEARING
17 HERE OR THERE?

18 MR. WAPNER: HERE AND IN NORTHERN CALIFORNIA.

19 MR. BARENS: THE LAW SAYS THAT I AM ENTITLED TO IT.
20 JUDGE, I WANT TO PROCEED IN SOME ORDERLY FASHION, HERE.

21 JUDGE, I BELIEVE THAT ANY JUDGE HEARING THIS IN
22 NORTHERN CALIFORNIA, IS GOING TO ORDER THE RETURN OF MY
23 DOCUMENTS IN SOME SUMMARY FASHION.

24 ANY JUDGE WHO HEARS MY SITUATION DOWN HERE, WILL --

25 THE COURT: WELL, I ASKED YOU TO MAKE THAT MOTION TWO
26 WEEKS AGO. WHY DIDN'T YOU MAKE IT?

27 MR. BARENS: YOUR HONOR, I HAVE BEEN IN YOUR COURT FOR
28 THE LAST TWO WEEKS.

1 THE COURT: WELL, MAKE THE MOTION AND HAVE IT
2 RETURNABLE SOMETIME, AND THEN YOU GO UP THERE AND --

3 MR. BARENS: I HAVE THE MOTION HERE TODAY, YOUR HONOR.
4 WE ARE GOING TO FILE IT. BUT I WOULD LIKE TO SEE THE RETURN
5 ON THE SEARCH WARRANT BEFORE I FILE MY MOTION.

6 THE COURT: HE TELLS ME THE RETURN ON THE WARRANT IS
7 SOMETHING -- IT DOESN'T GIVE YOU ANYTHING.

8 MR. BARENS: YOUR HONOR, I DIDN'T GET THE AFFIDAVIT
9 UNTIL LAST FRIDAY. FOR YOUR HONOR TO EVEN OBLIQUELY
10 SUGGEST THAT I HAVE BEEN DERELICT IN PURSUING THIS MATTER,
11 IS INACCURATE.

12 THE COURT: DO YOU REMEMBER THAT I TOLD YOU LAST WEEK
13 THAT I WANTED IT DONE RIGHT AWAY?

14 MR. BARENS: I WANTED IT DONE, TOO. I AM OFFENDED
15 THAT --

16 THE COURT: THEN YOU SHOULD HAVE DONE IT.

17 MR. BARENS: DONE WHAT? HOW COULD I PROCEED?

18 THE COURT: GET THE MOTION UP THERE.

19 MR. BARENS: WELL, HOW COULD I MAKE AN INTELLIGENT
20 MOTION WITHOUT HAVING THE DOCUMENTS?

21 THE COURT: YOU DON'T NEED THE RETURN. IF YOUR
22 POSITION IS THAT THEY CAME DOWN AND --

23 MR. BARENS: YOUR HONOR, I DON'T KNOW --

24 THE COURT: THAT THEY CAME DOWN AND UNLAWFULLY MADE
25 A SEARCH AND SEIZURE AND YOU DON'T NEED ANYTHING FURTHER THAN
26 THAT.

27 MR. BARENS: YOUR HONOR, THE JUDGE IS GOING TO ASK ME
28 TO TALK TO THEM ABOUT WHAT THEY TOOK.

1 THE COURT: YOU SAY THEY KNEW WHAT THEY TOOK.

2 MR. BARENS: YOUR HONOR, THE DEFENDANT HAS AN INHERENT
3 RIGHT TO BE THERE WITH ME WHEN THIS GOES DOWN. HOW CAN HE
4 BE THERE WITH ME WHEN HE HAS AN OBLIGATION TO BE HERE WITH
5 US? I CAN'T BE TWO PLACES AT ONE TIME AND HE CAN'T BE TWO
6 PLACES AT ONE TIME, YOUR HONOR.

7 WHY AM I SUDDENLY THE VICTIM OF ALL OF THIS?

8 THE COURT: I WANT IT DONE AS SOON AS POSSIBLE.

9 MR. BARENS: I KNOW, BUT YOUR HONOR IS SUGGESTING THE
10 DEFENSE DOESN'T WANT THIS DONE.

11 THOSE ARE DEFENSE EXHIBITS UP THERE.

12 MR. WAPNER: MAY I SAY SOMETHING?

13 I UNDERSTAND, I THINK, THE COURT'S DESIRE TO
14 PROCEED AS EXPEDITIOUSLY AS POSSIBLE.

15 AS I SAID BEFORE LUNCH, I BELIEVE TO PROCEED
16 TOO EXPEDITIOUSLY HERE IN THIS CASE IS FALSE ECONOMY BECAUSE
17 IF WE DO NOT GET A PROPER RESOLUTION OF THIS MATTER NOW, THEN
18 THAT MEANS NOTHING BECAUSE WE WILL HAVE TO TRY THE CASE AGAIN
19 TWO YEARS FROM NOW.

20 THE COURT: I DON'T THINK SO.

21 MR. WAPNER: AND SO I THINK THAT IT IS IMPORTANT TO
22 TRY AND GET IT RESOLVED.

23 I AM NOT SAYING THAT WE DRAG OUR FEET.

24 THE COURT: I WANT SOME OUTSIDE LIMIT AS TO HOW LONG
25 THIS THING IS GOING TO TAKE. I WANT AN OUTSIDE LIMIT SO THAT
26 I CAN TELL THE JURORS THAT THEY CAN COME BACK AND WE WILL
27 START THE TRIAL.

28 MR. BARENS: COULD WE DO THIS? I HAVE A SUGGESTION.

1 THE COURT: GO AHEAD.

2 MR. BARENS: YOUR HONOR, IF WE COULD HAVE -- WHAT WE
3 HAD TALKED ABOUT JUST BEFORE WE CONVENED, WAS TO GO OVER TO
4 A WEEK FROM MONDAY, THAT IS A WEEK FROM MONDAY TO GIVE YOUR
5 HONOR A STATUS REPORT ON WHAT HAPPENED IN SAN FRANCISCO AND
6 WHAT KIND OF RESPONSE WE GOT UP THERE AND AT THAT TIME, I
7 BELIEVE WE COULD MAKE A DEFINITIVE STATEMENT TO YOUR HONOR
8 BASED ON SOMETHING, RATHER THAN A GUESS.

9 THE COURT: SUPPOSE I GET AN ORDER FROM THE JUDGE UP
10 THERE TO HAVE THIS STUFF BROUGHT DOWN HERE FOR ME TO LOOK
11 AT IT?

12 MR. BARENS: AGAIN, YOUR HONOR, I BELIEVE, AND I WOULD
13 BE GLAD TO GIVE YOUR HONOR SOME LAW ON THIS, I BELIEVE WE
14 WOULD BE IN SEVERE JEOPARDY BY EVER CONSENTING TO YOUR
15 HONOR SEEING THIS MATERIAL.

16 THE COURT: WHY?

17 MR. BARENS: BECAUSE YOUR HONOR IS TRYING THE CASE.

18 THE COURT: DO YOU THINK I WOULD BE POISONED BY IT?
19 DO YOU THINK I AM TWO YEARS OLD SO I WOULD BE INFLUENCED BY
20 SOMETHING I MIGHT READ?

21 MR. BARENS: YOUR HONOR, NO. I AM ONLY SAYING THAT
22 PRECEDENCE WOULD SUGGEST THAT IT WOULD BE UNAPPROPRIATE FOR
23 THE COURT TO DO SO.

24 THE COURT: WELL, THEY WOULD BE SEEING IT UP THERE,
25 WON'T THEY? EVERYTHING YOU ARE TELLING ME NOW, THEY WOULD
26 BE SEEING EVERYTHING, ALL OF THE DOCUMENTS AND EVERYTHING.

27 MR. BARENS: A SPECIAL MASTER.

28 THE COURT: A SPECIAL MASTER WILL BE SEEING IT HIMSELF,

1 WON'T HE?

2 MR. BARENS: YES.

3 THE COURT: WON'T ALL OF YOU BE SEEING IT, TOO?

4 MR. BARENS: NO, YOUR HONOR.

5 THE COURT: WHY NOT?

6 MR. BARENS: WELL, YOUR HONOR, THE SPECIAL MASTER --

7 THE COURT: YOU MEAN YOU WILL HAVE A HEARING BEFORE
8 A SPECIAL MASTER WITHOUT ANYBODY BEING PRESENT?

9 MR. BARENS: NO, YOUR HONOR.

10 THE SPECIAL MASTER -- IT WOULD BE DESCRIBED TO
11 THE SPECIAL MASTER, THE DEFENSE'S POSITION ON WHAT WAS
12 ATTORNEY-CLIENT COMMUNICATION AND DEFENSE MATERIALS AND HE
13 WOULD HAVE TO MAKE A DECISION IN ISOLATION WITHOUT ANY IMPACT
14 ON THIS CASE OR HAVING ANY FURTHER RESPONSIBILITIES IN THIS
15 CASE.

16 YOUR HONOR, LISTEN, BEFORE YOU GET UPSET WITH
17 THE DEFENSE HERE, THE DEFENSE DIDN'T DO THIS. I DIDN'T BRING
18 THIS PROBLEM INTO YOUR LIFE OR MY LIFE.

19 MR. WAPNER: MR. BARENS, I THINK THE COURT, WITH ALL
20 DUE RESPECT, THE COURT IS NOT SO UPSET WITH ANYBODY AS WITH
21 THE FACT THE TRIAL IS GOING TO BE DELAYED FOR A PERIOD OF
22 TIME.

23 MR. BARENS: I WANT TO GET THINGS DONE AS SOON AS
24 POSSIBLE. I HAVE A CAREER TO PURSUE AND I DON'T WANT TO BE
25 HERE FOR THE REST OF MY LIFE BUT I DON'T WANT TO SEE A
26 MISTRIAL OR HAVE SOMETHING ON APPEAL THAT IS GOING TO BE
27 PUT BACK IN MY LAP TWO YEARS FROM NOW.

28 I AM TRYING TO SEE THAT HIS RIGHTS ARE PROTECTED.

1 THE COURT: FIRST OF ALL, YOU WANT THE JUDGE UP THERE
2 TO ISSUE AN ORDER.

3 MR. BARENS: WITH THE MATERIALS RETURNED TO US WITH
4 A SPECIAL MASTER.

5 THE COURT: SUPPOSE THE JUDGE UP THERE RULES THAT
6 WITHOUT ANYTHING ELSE, THIS IS PROPERLY SEIZABLE, NOW WHAT?

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1 MR. BARENS: THEN I WILL COME BACK HERE AND I WILL
2 SPECIFICALLY IDENTIFY, AFTER MY DISCOVERY MOTION THERE, AND
3 SAY, "LISTEN, JUDGE, THEY ARE NOT GIVING ME THE PROPER
4 DOCUMENTS."

5 THE COURT: SUPPOSE THE JUDGE UP THERE SAYS THAT NOTHING
6 THERE IS RELEVANT HERE AND THAT NOTHING SHOULD BE RETURNED.

7 MR. BARENS: THEN YOUR HONOR IS GOING TO HAVE TO HEAR
8 THE MOTION FOR DISMISSAL OF THE JUDGMENT AT THAT POINT IN
9 TIME AND I WILL HAVE TO COME BACK AND SAY THEY HAVE MY
10 IMPEACHMENT MATERIALS AND THEY SAY I CAN'T USE THEM.

11 THE COURT: THAT IS WHY I WANT TO CUT THROUGH ALL OF
12 THIS. IF IT COMES BACK TO ME, I WILL GIVE THE STUFF BACK
13 IF IT BELONGS TO YOU.

14 MR. BARENS: YOUR HONOR, NO.

15 THE COURT: THEN I WILL GIVE IT TO YOU.

16 BUT YOU ARE NOT SATISFIED WITH THAT, YOU WANT
17 A DISMISSAL BECAUSE MAYBE THE POLICE OFFICERS LOOKED AT IT.
18 THEN WE ARE BACK TO SQUARE ONE.

19 WHAT IS THE USE OF GOING THROUGH ALL OF THAT
20 IF ALL OF YOUR POINT WILL BE THAT THE POLICE OFFICERS LOOKED
21 AT IT?

22 MR. BARENS: I HAVE TO DO WHAT THE LAW SAYS MAKES
23 INCUMBENT UPON ME IN THIS SETTING.

24 THE COURT: THEN THE MATTER CAN BE DECIDED NOW. YOU
25 ARE ARGUING -- I HAVE TO REPEAT IT AGAIN -- YOU ARE ARGUING
26 THAT THE CASE IS ALREADY OUT OF THE BAG AND YOUR CONSTITUTIONAL
27 RIGHTS HAVE BEEN VIOLATED AND AT THIS POINT YOU ARE ENTITLED
28 TO A DISMISSAL; AM I SAYING THAT CORRECTLY?

1 MR. BARENS: YES. I UNDERSTAND YOUR HONOR.

2 THE COURT: ALL RIGHT.

3 MR. BARENS: BUT I DON'T THINK I CAN CONVINCING YOU OF
4 THAT WITHOUT HAVING AN EVIDENTIARY HEARING UP THERE AND AN
5 EVIDENTIARY HEARING IN THIS COURTROOM WHERE I CAUSE THESE
6 PEOPLE TO TESTIFY ABOUT WHAT THEY SAW AND WHAT THEY DID.

7 I DON'T THINK I WILL EVER CONVINCING YOUR HONOR
8 WITHOUT PUTTING THESE LIVE BODIES ON IN HERE.

9 THE COURT: WHY DON'T WE HAVE A HEARING DOWN HERE?

10 WHY DO I HAVE TO WAIT FOR YOU TO DO IT UP THERE?

11 MR. BARENS: BECAUSE I WOULD LIKE TO GO UP THERE, AS
12 THE LAW REQUIRES ME TO DO, AND MAKE A MOTION TO FIRST RETURN
13 THE MATERIALS.

14 YOUR HONOR, ON THE CHANCE THAT I WILL HAVE TO
15 GO FORWARD IN TRIAL DOWN HERE EVENTUALLY, I HAVE GOT TO MAKE
16 A MOTION FOR THE RETURN OF MY DOCUMENTS. IF YOUR HONOR
17 DENIES MY MOTION IT IS STILL --

18 THE COURT: I HAVEN'T GOT YOUR DOCUMENTS.

19 MR. BARENS: NO, NO.

20 BUT IF YOUR HONOR DENIES MY MOTION TO DISMISS,
21 I STILL NEED THE MATERIALS TO PROCEED WITH THE TRIAL AND I
22 CAN'T TELL YOUR HONOR WHETHER I HAVE GOT THOSE MATERIALS OR
23 NOT --

24 LISTEN. DOES YOUR HONOR HAVE SOME FEELING I
25 AM HERE TRYING TO BE DILATORY?

26 THE COURT: NO.

27 MR. BARENS: OR TO DELAY THIS TRIAL?

28 THE COURT: NO, NO.

1 BUT I THINK -- I DON'T THINK WE NEED ALL OF THESE
2 STEPS THAT YOU WANT TO TAKE.

3 MR. BARENS: YOUR HONOR, IF I DON'T HAVE THE MATERIALS,
4 I CAN'T PUT ON THE DEFENSE. IF I DON'T HAVE THE EXHIBITS,
5 I CAN'T PUT THEM ON AS DEFENSE EXHIBITS.

6 I HAVE GOT TO MAKE A MOTION FOR THE RETURN OF
7 THE DOCUMENTS.

8 THE COURT: CAN YOU TELL ME NOW WHAT THE EXHIBITS ARE
9 THAT YOU WANT?

10 MR. BARENS: I TOLD YOUR HONOR.

11 THE COURT: 76 EXHIBITS, IS THAT WHAT YOU WANT?

12 MR. BARENS: I WANT THOSE AND I WANT ANY AND ALL --

13 MR. CHIER: EVERYTHING THEY TOOK.

14 MR. BARENS: ANY AND ALL DOCUMENTS.

15 THE COURT: EVERYTHING THAT WAS TAKEN?

16 MR. BARENS: YES.

17 THE COURT: ON A VALID WARRANT?

18 MR. BARENS: YES, YOUR HONOR.

19 WHY ARE THEY MORE -- WHY IS IT VALID UP THERE?
20 IT ISN'T UNTIL I HAVE LITIGATED WHETHER IT IS VALID OR NOT.

21 I WANT TO BE ABLE TO TALK TO THE JUDGE AND SAY,
22 "LISTEN, JUDGE, YOU HAD NO RIGHT TO DO THIS".

23 THE COURT: HAVE YOU GOT YOUR PAPERS ALL READY TO MAKE
24 YOUR MOTION UP THERE?

25 MR. BARENS: I HAVE THAT WITH ME.

26 THE COURT: ALL RIGHT. ARE YOU GOING TO FILE IT
27 TOMORROW?

28 MR. BARENS: I CAN'T FILE IT TOMORROW. IT WILL BE

1 FILED AT THE LATEST DAY AFTER TOMORROW. I HAVE IT IN DRAFT
2 FORM HERE.

3 THE COURT: WHAT DO YOU WANT ME TO DO?

4 MR. WAPNER: WHAT I WOULD LIKE IS FOR THE COURT TO
5 GIVE US ENOUGH TIME SO THAT ONCE THAT MOTION IS FILED, THE
6 PROSECUTING AGENCY HAS TIME TO RESPOND TO THAT UP THERE AND
7 THEY HAVE A HEARING.

8 THEN ONCE THEY HAVE A HEARING, HE EITHER GETS
9 BACK CERTAIN DOCUMENTS OR HE DOESN'T.

10 AFTER THEY HAVE THAT, THEN WE COME BACK HERE.

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1 THE COURT: SUPPOSE I GET THE JUDGE UP THERE TO SEND
2 ALL OF THE DOCUMENTS DOWN HERE?

3 MR. BARENS: THEN I STILL WOULD LIKE AN EVIDENTIARY
4 HEARING DOWN HERE BEFORE YOUR HONOR RULES ON THE MOTION.

5 THE COURT: I WILL GIVE YOU A HEARING HERE; YOU WANT
6 TO DETERMINE WHETHER OR NOT THE POLICE OFFICERS HAVE USED
7 THAT INFORMATION?

8 MR. BARENS: NOT JUST THAT.

9 I WANT YOUR HONOR, AFTER HEARING THE TESTIMONY
10 AND READING THE BARBER CASE, AND THE ASSOCIATED CASES, TO
11 DETERMINE IF WE HAVE SUCH A DEGREE OF PROSECUTORIAL MISCONDUCT
12 AS TO OFFEND YOUR HONOR'S SENSE OF JUSTICE AND FAIR PLAY IN
13 THIS SYSTEM.

14 THE COURT: DO YOU OBJECT TO MY CALLING THE JUDGE AND
15 FINDING OUT IF I CAN GET THEM SENT DOWN HERE?

16 MR. WAPNER: YOU ARE TALKING ABOUT COPIES OF THE
17 MATERIAL?

18 THE COURT: YES.

19 MR. WAPNER: ALL RIGHT, YOU CAN CALL THE JUDGE.

20 THE COURT: ALL RIGHT. WAIT A MINUTE. I WILL PROMISE
21 HIM THAT THE INTEGRITY OF ALL OF THE DOCUMENTS UP THERE WILL
22 BE PRESERVED, THEY WILL BE WITH ME, AND I WILL MAKE COPIES
23 OF ANYTHING THAT IS REQUIRED BY COUNSEL.

24 YOU ARE NOT TO LOOK AT THEM.

25 MR. BARENS: BUT THAT GETS INTO READING DOCUMENTS.

26 MR. WAPNER: YOUR HONOR --

27 THE COURT: I AM SURPRISED AT YOU, I REALLY AM.

28 MR. BARENS: YOUR HONOR, I AM NOT ADDRESSING THIS

1 PERSONALLY.

2 I HAVE A LEGAL OBLIGATION TO SAY THIS.

3 THE COURT: DON'T I KNOW ENOUGH ABOUT THIS CASE FROM
4 THE PITTMAN CASE, I KNOW EVERYTHING ABOUT THAT CASE, EVERY-
5 THING TO BE KNOWN; DOES THAT TAINT ME?

6 MR. BARENS: I AM NOT SAYING AS A PERSONAL MATTER THAT
7 YOUR HONOR WOULD BE TAINTED OR INFLUENCED IN ANY WAY.

8 I AM SAYING THE LAW REQUIRES ME TO SAY THAT THE
9 DEFENDANT'S RIGHTS COULD BE ABRIDGED BY YOUR HONOR READING
10 IT.

11 THE COURT: I HAVE TO MAKE A DETERMINATION TO SEE
12 WHETHER OR NOT THE DEFENDANT'S RIGHTS ARE ABRIDGED AND I HAVE
13 TO SEE THOSE DOCUMENTS TO MAKE THE RULING.

14 MR. BARENS: YOUR HONOR HAS --

15 THE COURT: I HAVE TO MAKE A DECISION AS TO WHETHER
16 OR NOT THEY SHOULD BE RETURNED. TO DETERMINE IF THEY ARE
17 RELEVANT IN THIS CASE, I HAVE TO SEE THEM, DON'T I?

18 MR. WAPNER: SOMEBODY HAS TO SEE THEM.

19 THE COURT: YES.

20 MR. WAPNER: THE QUESTION IS WHETHER OR NOT IT SHOULD
21 BE THIS COURT OR WHETHER IT SHOULD BE A SPECIAL MASTER.

22 LET'S SAY THAT THE SPECIAL MASTER LOOKS AT THEM.

23 THE COURT: A SPECIAL MASTER KNOWS NOTHING ABOUT
24 THE ISSUES IN THIS CASE WHATSOEVER TO KNOW WHETHER OR NOT
25 THEY ARE RELEVANT OR NOT.

26 MR. BARENS: A SPECIAL MASTER CAN CERTAINLY DETERMINE
27 WHAT IS AN ATTORNEY-CLIENT COMMUNICATION.

28 THE COURT: WHAT?

1 MR. BARENS: A SPECIAL MASTER CAN CERTAINLY DETERMINE
2 WHAT IS AN ATTORNEY-CLIENT COMMUNICATION.

3 MR. WAPNER: YOUR HONOR, I AM CONFIDENT THEY DIDN'T
4 SEIZE ANY ATTORNEY-CLIENT COMMUNICATIONS.

5 MR. BARENS: I DON'T THINK YOUR HONOR CAN ACCEPT THAT.

6 THE COURT: NO, I CAN'T ACCEPT THAT.

7 MR. WAPNER: I AM NOT ASKING THE COURT TO MAKE A RULING
8 BASED ON THIS.

9 THE COURT: NO, I AM NOT MAKING ANY RULING BASED ON
10 THAT OR ANY RULING BASED ON WHAT HE SAYS HAS BEEN SEIZED,
11 THE 76 SO-CALLED EXHIBITS. I CANNOT MAKE ANY DETERMINATION
12 AS TO WHETHER OR NOT THEY ARE EXHIBITS OR JUST A LOT OF
13 HOGWASH.

14 MR. BARENS: I HOPE YOUR HONOR IS NOT DETERMINING IN
15 YOUR HONOR'S MIND THAT WHEN I SAY THERE ARE 76 EXHIBITS, I
16 AM BEING ANYTHING LESS THAN CANDID ABOUT THAT OR FEEL THAT
17 THEY ARE NOT OF SIGNIFICANCE.

18 THE COURT: NO, NEVER HAVE I EVER IMPUGNED YOUR
19 INTEGRITY IN THIS CASE, HAVE I?

20 MR. BARENS: NO, YOU HAVE NOT, AND I APPRECIATE THAT.

21 I AM SUBMITTING TO YOU THAT THE TWO YEARS THAT
22 JOE HUNT HAS BEEN WORKING ON THIS WITH ME, WE DIDN'T INTEND
23 TO COME DOWN HERE AND GO DOWN THE TUBES, SO TO SPEAK. WE
24 HAVEN'T GOT MR. YOUNG PUTTING THIS CASE ON. WE PLAN TO GO
25 FORWARD AGGRESSIVELY HERE AND PLAN TO PUT ON EVERY EXHIBIT
26 WE HAVE BEEN ABLE TO LOCATE IN THE LAST TWO YEARS.

27 THE COURT: IS 30 DAYS ENOUGH TO DO ALL OF THAT?

28 MR. BARENS: I DON'T EVEN ASK FOR 30 DAYS.

1 THE COURT: HOW LONG DO YOU WANT?

2 MR. BARENS: HERE IS WHAT I ASKED YOUR HONOR TO DO,
3 IF HIS HONOR WOULD LET US COME BACK A WEEK FROM MONDAY WITH
4 A STATUS REPORT, I THINK WHAT IS GOING TO HAPPEN, TO BE
5 HONEST WITH YOU -- OUR MOTION WILL BE GRANTED.

6 THEY ARE GOING TO GRANT MY MOTION AND
7 WE WILL COME BACK AND PUT ON AN EVIDENTIARY HEARING ON A
8 MOTION FOR DISMISSAL, WHICH I WILL DO FORTHWITH.

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1 THE COURT: PARDON ME. DID YOU TALK TO THE ATTORNEY
2 GENERAL WHO IS GOING TO PROSECUTE THIS CASE?

3 MR. WAPNER: YES.

4 THE COURT: HE KNOWS WHAT THE PAPERS ARE WHICH WERE
5 SEIZED, DOESN'T HE?

6 MR. WAPNER: THE INVESTIGATOR KIND OF KNOWS WHAT THEY
7 ARE.

8 THE ATTORNEY GENERAL DOESN'T REALLY KNOW BECAUSE
9 HE WASN'T PRESENT DURING THE SEARCH.

10 THE COURT: CAN'T HE JUST TAKE THINGS WHICH ARE RELEVANT
11 TO THAT CASE UP THERE --

12 MR. BARENS: OH, YOUR HONOR.

13 THE COURT: -- AND SEND EVERYTHING BACK HERE?

14 MR. BARENS: YOU COULD NOT RELY ON MR. VANCE, WHO I
15 LIKE PERSONALLY, TO BE ANYTHING ELSE THAN A PROSECUTOR.

16 THE COURT: HOW ABOUT THE ATTORNEY GENERAL? HE IS
17 THE ATTORNEY GENERAL, YOU DON'T TRUST HIM?

18 MR. BARENS: YOUR HONOR, HE IS THE MOST PROSECUTION
19 ORIENTED MAN YOU WOULD LIKE TO SEE.

20 MR. WAPNER: YOUR HONOR, WHAT I AM TRYING TO DO IS
21 TO DOT ALL OF THE I'S, CROSS ALL OF THE T'S, AND MAKE SURE
22 THAT EVERYTHING IS DONE PROPERLY SO THAT SOMEBODY CAN'T COME
23 BACK AND SAY, "WELL, THE PROSECUTOR JUST CALLED UP AND THEY
24 KIND OF SHMOOZED EVERYBODY AND THEY GOT WHAT THEY WANTED."
25 I DON'T WANT IT TO LOOK LIKE THAT.

26 MR. BARENS: I DON'T WANT IT TO LOOK LIKE THAT EITHER.

27 THE COURT: WHAT DO YOU WANT TO DO? DO YOU WANT TO
28 CONTINUE IT TO A WEEK FROM MONDAY, TEN DAYS?

1 MR. BARENS: TO A WEEK FROM MONDAY, WE WILL COME BACK
2 AND GIVE YOUR HONOR AN HONEST STATUS REPORT.

3 THE COURT: TEN DAYS?

4 MR. BARENS: THAT ROUGHLY, YES, YOUR HONOR, AND I WILL
5 VIGOROUSLY PURSUE THIS MATTER.

6 THE COURT: A STATUS REPORT ISN'T ENOUGH. THAT MEANS
7 ANOTHER FOUR WEEKS AFTER THAT.

8 MR. BARENS: I DIDN'T SAY THAT, YOUR HONOR.

9 I SAID, YOUR HONOR, I HOPE TO BE UP IN THAT COURT
10 NEXT WEEK IN SAN MATEO, IF AT ALL POSSIBLE, AND GET SOMEBODY
11 TO LISTEN TO ME.

12 MR. WAPNER: I THINK THAT IT IS REALISTIC TO THINK
13 THAT PROBABLY BY TWO AND A HALF WEEKS, WHICH WILL BE THE REST
14 OF THIS WEEK, NEXT WEEK AND THE FOLLOWING WEEK, I THINK IT
15 IS REALISTIC TO THINK WE COULD HAVE ALL OF THIS RESOLVED AND
16 BE PREPARED TO GO FORWARD.

17 MR. BARENS: THAT IS RIGHT, I THINK THAT IS REALISTIC.

18 THE COURT: I WILL HAVE YOUR PROMISE AND YOUR PROMISE,
19 TOO, SO WE WILL CONTINUE IT TO A WEEK FROM NEXT MONDAY.

20 MR. BARENS: WELL, MR. WAPNER SAID IT MIGHT BE A
21 BETTER IDEA SO I DON'T HAVE TO WASTE ANYBODY'S TIME, MR. WAPNER
22 SAYS IN TWO AND A HALF WEEKS I CAN GET IT ON CALENDAR AND
23 BE DONE WITH IT INSTEAD OF HAVING ANOTHER CONTINUANCE.

24 THE COURT: THEN THAT WILL SHORTEN THE TIME.

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1 MR. BARENS: COULD I HEAR MR. WAPNER AGAIN? SORRY.

2 MR. WAPNER: WHEN I SAID THAT THE TWO AND A HALF WEEKS,
3 I WAS HOPING THAT THAT MEANS EVERYTHING. THAT MEANS GOING
4 UP TO NORTHERN CALIFORNIA, DOING WHATEVER THEY HAVE TO DO,
5 COMING BACK DOWN HERE, HAVING OUR HEARING, HAVING OUR MOTIONS
6 AND THEN BASICALLY TWO WEEKS FROM THIS COMING MONDAY, WE MAKE
7 OPENING STATEMENTS AND WE GO TO TRIAL.

8 MR. BARENS: WELL, ASSUMING THE JUDGE STILL HAS --

9 THE COURT: CAN'T YOU GET AN AGREEMENT FROM THE
10 ATTORNEY GENERAL THAT ALL OF THE STUFF THEY SEIZED SHOULD
11 BE BROUGHT DOWN HERE? LET THEM MAKE COPIES OF ANYTHING THERE
12 THAT THEY THINK THEY NEED FOR THEIR TRIAL. PRESERVE THE REST
13 OF THE RECORDS FOR THEIR USE UP THERE. THEY DON'T NEED IT
14 NOW.

15 THEY HAVE GOT TO WAIT UNTIL WE FINISH OUR TRIAL,
16 ANYWAY. CAN'T YOU GET THE ATTORNEY GENERAL TO DO THAT?

17 MR. WAPNER: MAYBE.

18 THE COURT: AND NOT JEOPARDIZE THIS CASE?

19 MR. BARENS: COULD WE AT LEAST DO IT A WEEK FROM MONDAY,
20 TO GET STRAIGHT ON ALL OF THIS? I WANT AN OPPORTUNITY TO
21 GET --

22 THE COURT: NO. IF WE GET ALL OF THIS STUFF DOWN HERE,
23 EVERYTHING IS BEING TRANSFERRED DOWN HERE --

24 MR. BARENS: I AM IN NO WAY -- LET ME MAKE THIS CLEAR.
25 I AM IN NO WAY, WAIVING MY RIGHT TO AN EVIDENTIARY HEARING
26 ON MY DISMISSAL MOTION, EVEN IF THOSE DOCUMENTS ARE --

27 THE COURT: WELL, WHAT IS THE BASIS OF YOUR MOTION?

28 MR. BARENS: WELL, ONCE THE DOCUMENTS ARE DOWN HERE,

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1 JUDGE --

2 THE COURT: YOU WANT TO PUT THE COPS ON THE STAND?

3 MR. BARENS: YES, SIR. I WANT TO PUT THE DEFENDANT
4 ON THE STAND.

5 THE COURT: THAT'S ALL RIGHT. YOU CAN DO THAT. I WILL
6 PERMIT YOU TO DO THAT.

7 MR. BARENS: I WANT EVERY OPPORTUNITY I CAN, TO CONVINC
8 YOUR HONOR TO GRANT THE DISMISSAL MOTION.

9 THE COURT: WELL, LOOK, THIS IS A VERY, VERY SERIOUS
10 THING BEFORE I WILL EVER DISMISS.

11 YOU MEAN SO THAT THEY CAN REFILE IT? IS THAT
12 WHAT YOU MEAN?

13 MR. BARENS: I DON'T WANT THEM TO REFILE IT. I AM SAYING
14 THAT IT IS OBLIGATORY ON THIS COUNSEL TO SERIOUSLY PURSUE
15 THE DEFENSE MOTION TO DISMISS.

16 THE COURT: WHAT HAPPENS AFTER THE CASE -- SUPPOSE HE
17 DISMISSES IT? THERE IS NO JEOPARDY ATTACHED BECAUSE --

18 MR. BARENS: I HAVE A GENTLEMAN'S AGREEMENT WITH
19 MR. WAPNER THAT I WOULD NOT REQUEST THE JURY TO BE SWORN.
20 THEIR OPTIONS ARE OPEN. I AM TRYING TO HAVE SOME SENSE OF
21 FAIR PLAY ABOUT THE WAY THE DEFENSE IS CONDUCTING THEMSELVES.

22 THE COURT: WELL, IF IT IS DISMISSED, WHAT HAPPENS?

23 MR. BARENS: WELL, THEY HAVE THEIR OPTIONS.

24 THE COURT: WHAT OPTIONS?

25 MR. BARENS: TO REFILE.

26 MR. WAPNER: YOUR HONOR, THIS PRESENTS A VERY
27 INTERESTING POINT.

28 MR. BARENS: THEY WILL NEVER SUCCESSFULLY GET IT

16A-3
1 REFILED.

2 MR. WAPNER: FORGET ABOUT THE REFILING.

3 MR. BARENS: I AM BEING UP FRONT.

4 MR. WAPNER: EXCUSE ME.

5 THE COURT: IF IT IS -- WHAT I HAVE BEEN TELLING YOU
6 IS THAT IT IS A VERY SERIOUS MURDER CASE. IF IT IS GOING
7 TO BE DISMISSED BECAUSE OF SOME CONDUCT ON THE PART OF
8 SOMEBODY, SOME ATTORNEY GENERAL UP IN ANOTHER CASE THAT
9 AFFECTS THIS CASE --

10 MR. BARENS: IT INVOLVES THE INVESTIGATORS IN THIS CASE.
11 WAIT A MINUTE, YOUR HONOR --

12 THE COURT: WELL, THEY ARE NOT THE ONES -- THAT I DON'T
13 KNOW. WE'LL FIND OUT IN AN EVIDENTIARY HEARING HOW
14 INSTRUMENTAL THEY WERE IN GETTING THIS THING, THE WARRANT
15 AND THE ATTACHMENT.

16 MR. BARENS: YOUR HONOR, I --

17 MR. WAPNER: LET'S DO THIS. LET ME TALK TO THE
18 ATTORNEY GENERAL. IF HE SAYS TO ME THAT HE WILL MAKE COPIES
19 OF EVERYTHING AND GIVE IT TO THE DEFENSE, NOT TO ME BECAUSE
20 I DON'T WANT THE COPIES -- AND I DON'T WANT TO BE TAINTED
21 BY THIS. BUT IF HE SAYS THAT HE WILL MAKE COPIES OF ALL OF
22 THIS AND GIVE THEM BACK TO THE DEFENSE, COPIES OF EVERYTHING
23 THAT WAS TAKEN, THEN IT SEEMS TO ME THAT WE SHOULD BE IN SOME
24 POSITION IN THIS COURT --

25 THE COURT: THEN WE CAN PROCEED, EXCEPT FOR THE
26 EVIDENTIARY HEARING AND --

27 MR. WAPNER: WE HAVE TO HAVE AN EVIDENTIARY HEARING.

28 THE COURT: WE'LL HAVE AN EVIDENTIARY HEARING.

16A-11
1 MR. BARENS: MIGHT I STATE THAT I AM SURE YOUR HONOR
2 IS AWARE OF THE FACT THAT IN THIS STATE AND FEDERAL COURTS
3 AND THROUGHOUT THE UNITED STATES, THERE IS AMPLE PRECEDENT
4 TO SHOW THAT THE MOST SERIOUS OF CRIMES HAVE BEEN THE
5 SUBJECTS OF DISMISSAL MOTIONS THAT WERE GRANTED, IN LIGHT
6 OF PROSECUTORIAL MISCONDUCT.

7 MR. WAPNER: LET'S NOT ARGUE THE DISMISSAL MOTION NOW.

8 THE COURT: THERE IS NO PROSECUTOR MISCONDUCT HERE.

9 MR. BARENS: YOUR HONOR, THE PROSECUTOR, AS THE BARBER
10 CASE SHOWS, IS CONSIDERED THE VICTIM OF HIS OWN INVESTIGATORS.

11 MR. WAPNER: WE ARE NOT ARGUING THAT MOTION NOW. WHAT
12 IS THE POINT OF GOING THROUGH IT?

13 THE COURT: WILL YOU SEE IF YOU CAN GET THE ATTORNEY
14 GENERAL TO DO IT? WE WILL GET A COURT ORDER TO SEND IT DOWN
15 HERE, SINCE WE ARE TRYING THE CASE FIRST AND ORDER HIM TO
16 MAKE COPIES OF EVERYTHING AND TURN IT OVER TO DEFENSE COUNSEL.

17 THAT WILL BE SO YOU DON'T LOOK AT IT OR ANYTHING
18 ELSE. THEN TELL HIM ALSO THAT IT IS AN ORDER OF THIS COURT
19 THAT NOTHING BE DIVULGED AS TO WHAT HE IS GOING TO MAKE
20 COPIES OF.

21 MR. WAPNER: I WILL PURSUE IT. AS FAR AS THE JURORS
22 ARE CONCERNED, WHEN THEY ARE COMING BACK TOMORROW, I THINK
23 THAT CERTAINLY -- WE CAN'T DO ANYTHING WITH THEM THIS WEEK.
24 AND I DON'T THINK IT IS REASONABLE TO ASSUME WE ARE GOING
25 TO GET THIS RESOLVED BEFORE NEXT WEEK.

26 SO, I THINK MAYBE --

27 THE COURT: DO YOU WANT TO CALL UP THE ATTORNEY GENERAL
28 NOW? FIND OUT IF THEY WILL SEND THE STUFF DOWN.

6A-5

1 MR. WAPNER: I WILL CALL. BUT, LET ME JUST TELL THE
2 COURT ALL OF THE THINGS THAT OCCUR TO ME, WHICH IS THAT THE
3 ATTORNEY GENERAL THERE, ALTHOUGH HE HAS A BIGGER PROBLEM IN
4 HIS CASE BECAUSE IT IS HIS INVESTIGATORS WHO ACTUALLY SEIZED
5 ALL THIS MATERIAL, MAY SAY WE HAVE BOXED IT UP AND IT IS SEALED
6 AND WE DON'T WANT TO MAKE COPIES BECAUSE WE ARE GOING TO HAVE
7 SOME INDEPENDENT AGENCY MAKE THAT DETERMINATION.

8 THE COURT: HAVE THEM SEND IT DOWN HERE AND WE'LL MAKE
9 COPIES.

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16B-1
1 MR. BARENS: WHO WILL?

2 THE COURT: WE WILL HERE.

3 MR. WAPNER: HE IS TALKING ABOUT THE COURT.

4 THE COURT: THE COURT WILL.

5 MR. BARENS: WITHOUT READING THEM? COULD YOU ORDER
6 A CLERK TO MAKE COPIES?

7 THE COURT: WHAT AM I GOING TO TELL THEM TO MAKE COPIES
8 OF?

9 MR. BARENS: EVERYTHING IN THE BOX.

10 THE COURT: WHAT IS IT, ONE BOX?

11 MR. BARENS: NO.

12 THE COURT: HOW MUCH?

13 MR. BARENS: A LOT OF STUFF.

14 MR. WAPNER: THE MORE I THINK ABOUT IT, THE MORE I AM
15 CONVINCED THAT --

16 THE COURT: I THINK ALL HIS NOTES AND THE VOLUMES AND
17 VOLUMES OF IT, LIKE ON THIS PADS THAT HE HAS GOTTEN. HE HAS
18 HAD DOZENS AND DOZENS OF THOSE, THAT I THINK WERE SEIZED.
19 HE SAID SO, HIMSELF. HE SAID SO IN HIS AFFIDAVIT.

20 I DON'T THINK ANY -- I DON'T BELIEVE THAT FROM
21 WHAT I READ IN THE PAPERS THAT THERE WAS ANYTHING EXCEPT FOR
22 REFERENCE TO 80 EXHIBITS, NOTHING THAT WAS SEIZED THAT LOOKS
23 LIKE IT IS ANYTHING AT ALL SIMILAR TO THIS CASE.

24 MR. BARENS: WHAT ABOUT MY STUFF?

25 MR. WAPNER: WELL, WE DON'T KNOW.

26 THE COURT: HOW DO I KNOW UNTIL I READ IT?

27 MR. BARENS: I CAN ONLY GO ON WHAT THE ROBERTS,
28 MR. AND MRS. ROBERTS WERE WILLING TO TELL ME.

16B-2
1 THE COURT: WELL, I WON'T PAY ANY ATTENTION TO WHAT
2 THEY SAY.

3 MR. BARENS: WELL, YOU MIGHT WANT TO LISTEN TO THEIR
4 TESTIMONY.

5 THE COURT: ON WHAT THEY SAW SOMEBODY READING?

6 MR. BARENS: YES, YOUR HONOR. I --

7 THE COURT: I AM TELLING YOU THAT I WILL TAKE IT WITH
8 A GRAIN OF SALT.

9 MR. BARENS: BUT IF A POLICE OFFICER TELLS YOU THAT
10 HE DIDN'T READ IT, YOU WOULD TAKE THAT WITH MORE THAN A GRAIN
11 OF SALT?

12 THE COURT: SURE I WOULD.

13 MR. BARENS: WHAT IS THAT?

14 THE COURT: YES. I WILL TAKE IT -- HOW DO THEY KNOW
15 WHAT THE POLICE OFFICER READ?

16 MR. BARENS: BECAUSE THEY HAD A REAL INTEREST IN WATCHING
17 THEM AND WHAT THEY WERE DOING AND WE ASKED THEM TO.

18 THE COURT: THEY SAW DOCUMENTS THEMSELVES, DID THEY?

19 MR. BARENS: YES. I ASKED THEM IN CHAMBERS, TO BE SURE
20 TO CATALOG -- WHEN YOUR HONOR PERMITTED ME TO USE YOUR PHONE,
21 I WENT IN THERE AND I TOLD MRS. ROBERTS TO BE SURE AND
22 CATALOG WHAT THEY WERE DOING.

23 THE COURT: I DON'T WANT TO PREJUDGE ANYTHING.

24 MR. BARENS: WHAT I AM ASKING IS --

25 THE COURT: I WILL TAKE A LOOK. TRY TO GET IT. THEY
26 DON'T NEED IT NOW. THEY CAN WAIT UNTIL AFTER THEY START THEIR
27 TRIAL.

28 WE CAN FINISH OURS IN THE MEANTIME. LET THEM

16B-3
1 SEND ALL OF THE BOXES DOWN HERE.

2 MR. BARENS: YOUR HONOR, PLEASE --

3 THE COURT: I DON'T NEED TO KNOW WHAT THEY ARE. I WON'T
4 READ THEM. I PROMISE YOU THAT.

5 I JUST WANT TO SEE WHETHER OR NOT IT IS RELEVANT.

6 MR. BARENS: ALL I WILL SAY IS IF THEY WILL SEND ALL
7 OF THE STUFF DOWN HERE AND RETURN IT TO US --

8 THE COURT: RETURN IT TO YOU?

9 MR. BARENS: RETURN IT TO THE DEFENSE --

10 THE COURT: WELL, WHAT ABOUT THE STUFF THEY SEIZED WHICH
11 MIGHT BE PROPERLY SEIZABLE? WHAT ABOUT THE --

12 MR. BARENS: LET THEM COPY IT FOR THEMSELVES AND SEND
13 ALL THE STUFF DOWN TO ME.

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16B-4
1 THE COURT: ALL RIGHT. WE WILL SEE IF THEY CAN DO THAT.

2 MR. WAPNER: IF IT IS PROPERLY SEIZABLE UNDER A VALID
3 WARRANT, THEY ARE UNDER NO OBLIGATION TO RELEASE THE
4 ORIGINALS.

5 THE COURT: OF COURSE NOT. HAVE THEM CHECK AND MAKE
6 COPIES OF WHAT THEY HAVE GOT AND SEND IT DOWN HERE.

7 MR. WAPNER: I AM SUGGESTING THAT THERE IS LITIGATION
8 ON WHETHER IT WAS A VALID WARRANT. BECAUSE IF IT IS NOT A
9 VALID WARRANT, THEN THEY ARE NOT ENTITLED TO THE STUFF IN
10 THE FIRST PLACE. RIGHT?

11 THE COURT: IF IT IS NOT A VALID WARRANT, THEY ARE NOT
12 ENTITLED TO IT.

13 MR. WAPNER: TO TAKE IT, RIGHT.

14 THE COURT: IN OTHER WORDS, THEY HAVE TO RETURN IT?

15 MR. WAPNER: IF IT IS A VALID WARRANT, THEN THEY MAY
16 BE ENTITLED TO SEIZE IT BUT IT STILL MAY BE PRIVILEGED AND
17 A SPECIAL MASTER WOULD HAVE TO MAKE THAT DETERMINATION.

18 AND IF IT IS A VALID WARRANT AND IT IS NOT
19 PRIVILEGED BUT THEY WERE GOING TO BE USED AS EXHIBITS DOWN
20 HERE, THEN THEY ARE ENTITLED TO COPIES.

21 THE COURT: WELL, THAT WILL AVOID ALL THE SPECIAL
22 MASTER STUFF, WHICH WILL TAKE AN INORDINATE AMOUNT OF TIME.

23 LET THEM COPY EVERYTHING THEY HAVE GOT UP THERE
24 AND MAIL IT ALL DOWN HERE AND RETURN IT TO HIM. YOU ARE
25 ENTITLED TO COPIES.

26 AREN'T THEY ENTITLED TO COPIES OF EVERYTHING THAT
27 WAS SEIZED?

28 MR. WAPNER: YES.

1 THE COURT: ALL RIGHT. MAKE THE COPIES AND RETURN IT
2 ALL.

3 MR. BARENS: YOUR HONOR, CAN I GET A RULING THAT IN
4 THE EVENT THE EXHIBITS AREN'T THE ORIGINALS, THAT YOUR HONOR
5 WILL LET ME ADMIT THEM INTO EVIDENCE?

6 THE COURT: THE COPIES THEY MAKE? YES.

7 MR. BARENS: THERE IS NOTHING ELSE I CAN DO.

8 THE COURT: THAT IS GOOD. SURE. I WILL PERMIT THAT.

9 MR. BARENS: YES.

10 THE COURT: ALSO A FIRM INJUNCTION AND AN ORDER TO THE
11 POLICE OFFICERS -- I WILL MAKE IT PERSONAL TO THEM AND I WILL
12 HAVE THEM BROUGHT IN HERE, THAT THEY ARE NOT TO DISCLOSE
13 ANYTHING THAT THEY HAVE READ TO ANYBODY OR INDICATE IT TO
14 ANY WITNESSES AND CERTAINLY NOT THE DISTRICT ATTORNEY.

15 MR. BARENS: YOUR HONOR, THE DEFENSE ABSOLUTELY INSISTS
16 ON A FULL EVIDENTIARY HEARING ON THIS MATTER, RATHER THAN
17 JUST A SUMMARY ORDER.

18 THE COURT: WE'LL HAVE AN EVIDENTIARY HEARING. WE WILL
19 HAVE THE POLICE OFFICERS COME IN AND WE WILL FIND OUT.

20 YOU CAN'T ASK THEM WHAT THEY READ BECAUSE THEY
21 WILL BE DISCLOSING THINGS FOR YOU.

22 MR. BARENS: I WOULD ASK YOUR HONOR TO --

23 THE COURT: UNLESS YOU WANT TO HAVE THEM IN CAMERA,
24 HERE.

25 MR. BARENS: WELL, I WOULD --

26 THE COURT: WE WILL FIND IT OUT FIRST. THEY CAN MAKE
27 COPIES AND SEND EVERYTHING DOWN TO HIM.

28 MR. WAPNER: WELL, I WILL FIND OUT ABOUT THAT, YOUR

1 HONOR.

2 THE COURT: ALL RIGHT.

3 MR. WAPNER: MEANTIME, WHAT DO WE TELL THE JURY TOMORROW
4 MORNING? TO COME BACK A WEEK FROM MONDAY?

5 THE COURT: WE WILL TELL THEM TO COME BACK A WEEK FROM
6 MONDAY, YES.

7 MR. WAPNER: UNLESS A WEEK FROM MONDAY AT THE MOMENT,
8 IS GOING TO BE THE DAY FOR THE STATUS CHECK TO SEE WHERE WE
9 ARE.

10 THE COURT: YES. BEFORE WE GO, WHAT AM I GOING TO TELL
11 THE JURORS TOMORROW AS TO WHY THERE IS SUCH A LONG DELAY?

12 MR. WAPNER: WHAT YOU ARE GOING TO TELL THE JURORS
13 TOMORROW IS THAT DURING THE COURSE OF SELECTING THE JURY,
14 SOMETHING UNEXPECTED TRANSPIRED THAT NO ONE HAD ANTICIPATED.
15 BECAUSE OF THAT, IT IS GOING TO TAKE AT LEAST THE BALANCE
16 OF NEXT WEEK TO RESOLVE IT.

17 MR. BARENS: AND IF I MIGHT INTERRUPT AND I DO SO
18 RESPECTFULLY YOUR HONOR, SIMPLY SAY THAT THERE ARE
19 PRETRIAL MOTIONS THAT HIS HONOR HAS TO CONSIDER.

20 THE COURT: THAT DOESN'T TAKE THAT LONG.

21 MR. BARENS: WELL, YOU COULD SAY THAT WE HAVE AN
22 OPPORTUNITY TO BE FILING SOME MOTIONS AND YOUR HONOR HAS TO
23 CONSIDER THEM AFTER THEY ARE FILED.

24 THE COURT: WELL, THERE ARE A NUMBER OF MOTIONS AND
25 HEARINGS OUTSIDE THE PRESENCE OF THE JURY. ALL RIGHT. WILL
26 THAT BE ALL RIGHT WITH YOU?

27 MR. WAPNER: ALL RIGHT. TELL THEM WE ARE GOING TO ASK
28 THEM TO COME BACK A WEEK FROM MONDAY, WHICH WOULD BE

1 FEBRUARY THE 2ND.

2 THE COURT: WHAT WAS THAT CITATION?

3 MR. BARENS: PEOPLE VERSUS BARBER -- SORRY. THAT IS
4 BARBER V. MUNICIPAL COURT, 24 CAL.3D 742.

5 THE COURT: I WILL READ THAT.

6 MR. BARENS: IT IS REALLY IMPORTANT, YOUR HONOR, OR
7 I WOULDN'T BRING IT UP.

8 THE COURT: WELL, OF COURSE IT IS. ALL RIGHT.

9 742? IS THAT RIGHT?

10 MR. BARENS: YES, YOUR HONOR.

11 THE COURT: ALL RIGHT.

12 MR. WAPNER: IF THERE IS ANYTHING THAT CAN BE DONE IN
13 THIS COURT BY WAY OF HEARINGS IN THE MEANTIME, APPROPRIATE
14 MOTIONS WILL BE MADE.

15 THE COURT: ALL RIGHT.

16 MR. WAPNER: I THINK YOU SHOULD ALSO TELL THE JURORS
17 THAT ON FEBRUARY THE 2ND WHEN THEY COME BACK, WE MAY BE
18 PROCEEDING WITH THIS CASE OR IT MAY TAKE ANOTHER WEEK TO
19 RESOLVE IT.

20 THE COURT: ARE YOU GOING TO CALL THE ATTORNEY GENERAL
21 AND FIND OUT WHETHER THEY CAN RETURN EVERYTHING THAT THEY
22 SEIZED AND THEY WILL MAKE COPIES OF IT?

23 MR. WAPNER: I WILL TALK TO THEM ABOUT IT.

24 THE COURT: ALL RIGHT. THEN HE CAN PROCEED UP THERE
25 WITH THE MOTIONS. YOU CAN HAVE THEM RETURN YOUR COPIES.

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7-1

1 MR. WAPNER: EXCUSE ME, YOUR HONOR. DO WE STILL NEED
2 TO BE AT THE BENCH?

3 MR. BARENS: NO. I JUST FEEL LIKE I DON'T KNOW WHAT
4 I AM DOING MORE PRIVATELY UP HERE.

5 ALL RIGHT, I AM CONCLUDED FOR THE DAY, YOUR
6 HONOR.

7 THE COURT: ALL RIGHT.

8 MR. BARENS: THANK YOU, YOUR HONOR.

9 THE COURT: ALL RIGHT, TOMORROW.

10 MR. BARENS: AT 10:30, YOUR HONOR.

11 (AT 2:50 P.M. AN ADJOURNMENT WAS TAKEN
12 UNTIL WEDNESDAY, JANUARY 21, 1987 AT
13 10:30 A.M.)
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