

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT

88DA0269

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 0 9 11

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

APPEARANCES:

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

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 42 OF 101  
(PAGES 6189 TO 6312, INCLUSIVE)

COPY

ROSEMARIE GOODBODY, CSR NO. 932  
SALLY YERGER, CSR NO. 2008  
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. )

JOSEPH HUNT, )

DEFENDANT. )

NO. A-090435

REPORTERS' DAILY TRANSCRIPT

FRIDAY, JANUARY 30, 1987

VOLUME 42

PAGES 6189 TO 6312, 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

1 FRIDAY, JANUARY 30, 1987 VOLUME 42 PAGES 6189 TO 6312  
2 A.M. 6189  
3 P.M. 6264

4 -----  
5 PROCEEDINGS

6 MOTIONS 6189  
7 -----

8 CHRONOLOGICAL INDEX OF WITNESSES

9 DEFENDANT'S WITNESSES: EXAMINATION

10 ROBERTS, LYNNE  
11 (BY MR. BARENS) 6189  
12 (BY MR. WAPNER) 6192  
13 (BY MR. BARENS) 6212

14 PEOPLE'S WITNESSES:

15 FOGG, CLARK W.  
16 (BY MR. WAPNER) 6214  
17 (BY MR. BARENS) 6217  
18 (BY MR. WAPNER) 6227

19 ROBERTS, BROOKE  
20 (BY MR. WAPNER) 6232

21 DEFENDANT'S WITNESSES:

22 HUNT, JOSEPH  
23 (BY MR. BARENS) 6244  
24 (BY MR. WAPNER) 6247  
25 6251  
26 6257

27  
28

1 SANTA MONICA, CALIFORNIA; FRIDAY, JANUARY 30, 1987; 10:15 A.M.  
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE  
3 (APPEARANCES AS NOTED ON TITLE PAGE.)  
4

5 THE COURT: ALL RIGHT. I WILL GET THE WITNESS,  
6 YOUR HONOR.

7 (PAUSE IN PROCEEDINGS.)  
8

9 LYNNE ROBERTS,  
10 CALLED AS A WITNESS BY THE DEFENDANT, HAVING BEEN PREVIOUSLY  
11 SWORN, RESUMED THE WITNESS STAND AND TESTIFIED FURTHER AS  
12 FOLLOWS:

13 THE CLERK: YOU HAVE PREVIOUSLY BEEN SWORN. YOU ARE  
14 STILL UNDER OATH SO JUST HAVE A SEAT.

15 THE WITNESS: OKAY.

16 THE CLERK: AND STATE YOUR NAME AGAIN FOR THE RECORD,  
17 PLEASE.

18 THE WITNESS: LYNNE ROBERTS.

19 MR. BARENS: JUST ONE MOMENT, IF YOU WOULD, YOUR HONOR.

20 THE COURT: ALL RIGHT.  
21

22 EXAMINATION (RESUMED)

23 BY MR. BARENS:

24 Q MRS. ROBERTS, I BELIEVE WE LEFT OFF YESTERDAY  
25 WHERE YOU HAD DESCRIBED A THIRD OCCASION WHEN YOU WERE UPSTAIRS  
26 IN YOUR BEDROOM AND YOU OVERHEARD A CONVERSATION, DO YOU RECALL?

27 A YES.

28 Q AND THAT CONVERSATION HAVING TAKEN PLACE BETWEEN

1 OFFICERSZOELLER AND BREILING.

2 AFTER THAT, DID YOU COME OUT OF YOUR BEDROOM?

3 A NO.

4 I STAYED IN THE BEDROOM FOR A FEW MINUTES, BECAUSE  
5 MR. ZOELLER ASKED THE PHOTOGRAPHER, THE TALL MAN, TO COME  
6 AND HE BROUGHT HIM THERE AND THEY STOOD, LIKE, IN THE SAME  
7 LOCATION AND HE SAID TO HIM THAT IF -- THAT HE JUST SAID TO  
8 THIS MAN -- I DON'T KNOW HIS NAME -- HE JUST TO HIM "LISTEN,  
9 IF YOU ARE ASKED, WE WEREN'T SUPPOSED TO TAKE PHOTOGRAPHS  
10 AND WE WEREN'T SUPPOSED TO READ THOSE PAPERS IN THE COMPUTER  
11 ROOM," AND HE SAID, "IF YOU ARE ASKED, YOU TELL THEM THAT  
12 YOU STOPPED TAKING PICTURES AS SOON AS I TOLD YOU THAT YOU  
13 WEREN'T SUPPOSED TO TAKE ANY PICTURES."

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Q NOW, WHO WAS THE SPEAKING PARTY IN THAT  
2 CONVERSATION?

3 A MR. ZOELLER SAID THIS TO THE TALL MAN WHO HAD  
4 THE CAMERA, THE PHOTOGRAPHER.

5 Q ALL RIGHT. NOW, AFTER THAT, WHAT DID YOU DO?

6 A WELL, I WAITED UNTIL THEY WALKED DOWN THE HALL.  
7 THEN I WENT INTO THE ROOM AND I ASKED MR. CHIER TO PLEASE  
8 COME OUT OF THE ROOM. HE WAS IN THE COMPUTER ROOM.

9 AND HE DID AND WE WALKED DOWNSTAIRS TO THE TAP  
10 ROOM. I TOLD HIM THE CONVERSATIONS THAT I HEARD.

11 Q ALL RIGHT. NOW AFTER THAT, WHAT DID YOU DO DURING  
12 THE REST OF THE TIME THAT THE SEARCH ACTIVITY WAS GOING ON?

13 A WELL, I WENT DOWNSTAIRS IN THE LAUNDRY ROOM AND  
14 CHECKED WITH THE LADY THAT WAS WORKING THAT DAY. BECAUSE  
15 SHE HAS HIGH BLOOD PRESSURE AND SHE WAS VERY UPSET.

16 I SPENT TIME WITH HER, CONSOLING HER. THEN I  
17 TOOK HER UPSTAIRS IN MY BEDROOM AND TOLD HER TO YOU KNOW,  
18 SIT UP THERE AND WATCH TV OR SOMETHING.

19 BUT SHE WAS TOO NERVOUS TO WATCH TV. SO SHE JUST  
20 SAT IN THE CHAIR. I SAID, "JUST STAY HERE UNTIL ALL OF THE  
21 MEN LEAVE," BECAUSE SHE GETS VERY NERVOUS.

22 Q ARE YOU TELLING ME THAT YOU SPENT THE REST OF  
23 THE TIME THE SEARCH WAS PROCEEDING DOWNSTAIRS?

24 A WELL, I WENT DOWN, YOU KNOW, TO SEE ABOUT HATTIE.  
25 THEN I WALKED BACK UPSTAIRS AND -- NO.

26 THEN, WELL, I DIDN'T STAY THE WHOLE TIME DOWNSTAIRS.  
27 I WAS UPSTAIRS AND DOWNSTAIRS.

28 Q ALL RIGHT.



1 MR. WAPNER: THANK YOU, YOUR HONOR.

2 THE WITNESS: WELL, I WOULD SAY PROBABLY BETWEEN, YOU  
3 KNOW, 15 TO 20 MINUTES.

4 BECAUSE EACH TIME I WOULD GO IN IT WOULD BE LIKE  
5 THREE OR FOUR MINUTES. I WOULD GO IN THERE YOU KNOW. I WENT  
6 IN THERE QUITE A FEW TIMES.

7 Q BY MR. WAPNER: FIFTEEN OR TWENTY MINUTES TOTAL?

8 A OUT OF THE THREE HOURS, I WOULD SAY PROBABLY SO.

9 Q ALL RIGHT. AND THAT WAS BROKEN UP INTO SEVERAL  
10 TIMES OF GOING IN FOR A FEW MINUTES AND THEN GOING OUT, RIGHT?

11 A YES.

12 Q NOW, ONE TIME DETECTIVE BREILING ASKED YOU TO  
13 LEAVE BECAUSE HE SAID THE ROOM IS TOO SMALL IF YOU WERE JUST  
14 GOING TO BE TALKING, TO GO SOMEPLACE ELSE, RIGHT?

15 A HE SAID, "I AM GOING TO HAVE TO ASK YOU AND  
16 MR. ROBERTS TO LEAVE THE ROOM --" SOMETHING ABOUT HAVING THE  
17 CONVERSATION OUTSIDE OF THE ROOM.

18 AND AS I WAS LEAVING, I SAID, "I WAS NOT TALKING."

19 AND THEN HE SAID SOMETHING ABOUT THE ROOM BEING  
20 TOO SMALL AND I AM GOING TO HAVE TO ASK YOU TO WAIT OUTSIDE.

21

22

23

24

25

26

27

28

1 Q AT THAT PARTICULAR TIME WHEN YOU WERE IN THE ROOM,  
2 WHAT WERE YOU DOING?

3 A STANDING THERE WATCHING THEM.

4 Q WHO WERE YOU WATCHING?

5 A THAT DETECTIVE ROZZI AND THE DETECTIVE THAT HAD  
6 A MUSTACHE THAT IS STANDING OUTSIDE IN THE HALL.

7 A THAT IS CLARK FOGG FROM THE BEVERLY HILLS POLICE  
8 DEPARTMENT?

9 A I DON'T KNOW HIS NAME.

10 Q IF I TOLD YOU THAT THE PERSON OUT IN THE HALL  
11 WAS CLARK FOGG FROM THE BEVERLY HILLS POLICE DEPARTMENT, WOULD  
12 YOU ACCEPT THAT?

13 A YES.

14 Q OKAY. AND WAS MR. FOGG SEARCHING THROUGH THINGS?

15 A UH-HUH.

16 Q IS THAT YES?

17 A YES.

18 Q WHAT DID YOU SEE HIM DOING?

19 A WELL, HE WAS LIKE ON THE FLOOR, GOING THROUGH  
20 SOME PAPERS AND THEN I SAW HIM -- THERE IS SHELVES THERE IN  
21 THAT COMPUTER ROOM AND HE WAS, YOU KNOW, LOOKING THROUGH THINGS  
22 ON THOSE SHELVES.

23 Q DID YOU SEE A MAN THERE WHO, FOR LACK OF A BETTER  
24 TERM, APPEARED TO BE DOING SECRETARIAL TYPE TASKS OF WRITING  
25 DOWN, FOR EXAMPLE, THE PICTURES THAT WERE TAKEN, MAKING NOTES?

26 A NO.

27 Q DURING THE TIME THAT YOU SAW MR. FOGG IN THE  
28 ROOM, WAS THERE SOMEONE ELSE IN THERE TAKING PICTURES, THE

1 TALL MAN, PERHAPS.

2 A THE TALL MAN, I SAW TAKE PICTURES, ALL OF --  
3 YES, HE IS THE ONE I SAW TAKING PICTURES.

4 Q DID YOU EVER SEE MR. FOGG ASSISTING THE TALL  
5 MAN WHO WAS TAKING PICTURES?

6 A NO.

7 Q AND THE PERSON THAT YOU --  
8 WHEN MR. FOGG WAS GOING THROUGH THE BOOKCASE,  
9 WHERE WAS MR. ROZZI?

10 A HE WAS OVER BY THE -- THAT ARMOIRE I TOLD YOU  
11 ABOUT YESTERDAY AND THERE WERE BOXES AND PAPERS AND THINGS  
12 IN BACK OF IT AND ON THE SIDE OF IT, AND WORKING ALONG THE  
13 DESK -- YOU SEE THE ARMOIRE AND THE DESK ARE LIKE SIDE BY  
14 SIDE.

15 Q WHAT WAS MR. FOGG DOING AT THE BOOKCASE?

16 A HE WAS JUST LOOKING THROUGH SOME THINGS THAT  
17 WERE ON THE SHELVES.

18 Q WHAT THINGS?

19 A WELL, THERE IS BOOKS AND LOTS OF PAPERS AND THINGS  
20 LIKE THAT, BOOKS.

21 Q WHAT WAS HE DOING?

22 A HE WAS JUST GOING THROUGH THEM.

23 Q WELL, CAN YOU EXPLAIN TO ME EXACTLY HOW HE WAS  
24 DOING THAT?

25 A WELL, HE WAS, YOU KNOW, LIKE IF HE WAS LOOKING  
26 AT THE PAPERS, HE WAS GOING THROUGH LIKE THIS AND LOOKING  
27 THROUGH THEM, HOLDING SOME IN HIS HAND AND GOING LIKE THIS  
28 (INDICATING).

1 Q DO YOU KNOW WHAT KIND OF PAPERS WERE ON THAT  
2 BOOK SHELF?

3 A NO.

4 Q AND THIS IS THE TIME WHEN YOU WERE IN THERE WITH  
5 YOUR HUSBAND, RIGHT?

6 A YES.

7 Q DID YOUR HUSBAND SAY TO MR. FOGG, "THOSE ARE  
8 MY PAPERS"?

9 A I THINK HE SAID THAT TO MR. ROZZI. AT ONE POINT  
10 HE SAID, "THOSE PAPERS ARE MINE."

11 AND I SAID, "WELL, I DON'T KNOW IF THOSE ARE  
12 YOURS, BOBBY, BECAUSE THE KIDS, YOU KNOW, HAVE A LOT OF STUFF  
13 IN HERE."

14 Q THAT IS WHEN DETECTIVE ROZZI WAS THERE?

15 A UH-HUH.

16 THE COURT REPORTER: IS THAT ANSWER YES?

17 THE WITNESS: YES.

18 Q BY MR. WAPNER: THERE WAS A DISPUTE -- MAYBE  
19 THAT IS NOT A GOOD WORD -- YOU AND YOUR HUSBAND HAD A DIFFERENCE  
20 OF OPINION AS TO WHETHER THOSE PAPERS WERE YOUR HUSBAND'S  
21 OR COULD HAVE BEEN SOMEONE ELSE'S, RIGHT?

22

23

24

25

26

27

28

1           A       WELL, THERE WASN'T A DISPUTE.

2                   IT WAS JUST THAT WHEN MY HUSBAND SAID THAT TO  
3 MR. ROZZI, IT WAS ABOUT THOSE PAPERS THAT WERE IN THAT BOX  
4 BEHIND THE ARMOIRE, THE PAPERS ON THE SHELF, I DIDN'T HEAR  
5 MY -- YOU KNOW, I DIDN'T HEAR OR SEE MY HUSBAND SAY THAT ABOUT  
6 THE ONES ON THE SHELF THAT HE WAS GOING THROUGH, BUT WHAT  
7 HE SAID WAS ABOUT THAT BIG BOX THAT HAD ALL OF THE PAPERS  
8 BY THE ARMOIRE.

9           Q       NOW, WERE YOU IN THE ROOM WHEN DETECTIVE ROZZI  
10 WAS GOING THROUGH SOME PAPERS THAT WERE ON THE SHELF?

11          A       NO.

12                   IT WAS THAT OTHER GENTLEMAN THAT I SAW GOING  
13 THROUGH, MR. FOGG, ON THE SHELF.

14          Q       WAS YOUR HUSBAND THERE AT THAT TIME?

15          A       IN THE ROOM?

16          Q       YES.

17          A       WHEN I SAW THIS?

18          Q       WHEN YOU SAW MR. FOGG GOING THROUGH THE PAPERS  
19 ON THE SHELF, WAS YOUR HUSBAND THERE?

20          A       YES, I THINK HE WAS, YES.

21          Q       AND YOUR HUSBAND DIDN'T SAY ANYTHING TO MR. FOGG  
22 ABOUT "THOSE ARE MY PAPERS"?

23          A       I DON'T REMEMBER THAT.

24          Q       THE OTHER TIMES THAT YOU SPENT IN THE COMPUTER  
25 ROOM, WHAT DID YOU SEE?

26          A       WELL, I JUST SAW THE MEN OUT THERE, THE ONE,  
27 YOU KNOW, AS I SAID YESTERDAY, I THINK IT WAS THE SECOND TIME  
28 THAT I WENT IN THERE THAT I SAW MR. BREILING, MR. ZOELLER

1 AND THE PHOTOGRAPHER GOING THROUGH ALL OF THE COMPUTER PAPERS  
2 AND ALL OF THE STUFF ON THE END OF THE BED, WHICH WAS THE  
3 COMPUTER FILES AND THINGS, AND THE PHOTOGRAPHER, HE WAS TAKING  
4 PHOTOGRAPHS OF IT.

5 Q NOW, THE SECOND TIME YOU WERE IN THERE, WAS HOW  
6 LONG AFTER THE POLICE FIRST GOT TO THE HOUSE?

7 A WELL, I THINK IT WAS AT LEAST A HALF HOUR OR  
8 SO. I CAN'T REMEMBER JUST EXACTLY. I JUST --

9 Q COULD IT HAVE BEEN OVER AN HOUR AFTER THEY HAD  
10 GOTTEN THERE?

11 A COULD IT HAVE BEEN OVER AN HOUR?

12 Q YES.

13 A I DON'T -- I DON'T KNOW. IT COULD HAVE BEEN.  
14 IT COULD HAVE BEEN.

15 I DON'T REMEMBER THE TIME BECAUSE I WAS -- I  
16 WAS VERY UPSET AND I DIDN'T EVEN, YOU KNOW, THINK ABOUT, YOU  
17 KNOW, LOOKING AT THE TIME TO SEE WHAT TIME IT WAS AND ALL  
18 OF THAT.

19 Q THE FIRST TIME THAT YOU WERE UP THERE, HOW LONG  
20 WAS IT AFTER THE POLICE HAD GOTTEN THERE, THE FIRST TIME THAT  
21 YOU STOPPED IN THE COMPUTER ROOM?

22 A WELL, THAT WAS, YOU KNOW, AFTER I HAD GONE DOWN-  
23 STAIRS AND SEEN -- I DON'T KNOW -- I DON'T KNOW EXACTLY.

24 I JUST KNOW WHAT I DID AND WHAT, YOU KNOW, WHAT  
25 I WENT --

26 YOU KNOW, DIFFERENT THINGS THAT I DID AND WHEN  
27 I WENT UP THERE THE FIRST TIME AFTER --

28 ACTUALLY, THE FIRST TIME THAT I SAW THEM WAS

1 ON MY WAY DOWNSTAIRS BECAUSE MY BEDROOM IS HERE AND THE HALL  
2 COMES HERE AND THEN RIGHT THERE IS THE COMPUTER ROOM, SO AS  
3 I -- THEY, YOU KNOW, WHEN I WENT DOWNSTAIRS THE VERY FIRST  
4 TIME, I LOOKED IN THE COMPUTER ROOM AND THAT IS WHEN I SAW  
5 THEM.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Q WHO WAS THERE, THEN?

2 A THAT WAS MR. ZOELLER, THE PHOTOGRAPHER AND THE  
3 OTHER TWO MEN. AT THE TIME, I DIDN'T KNOW THEIR NAMES.

4 Q WHAT DOES MR. ZOELLER LOOK LIKE?

5 A I KNOW WHAT MR. ZOELLER LOOKS LIKE. I HAVE SEEN  
6 HIM MANY TIMES.

7 Q JUST DESCRIBE HIM FOR ME, WOULD YOU PLEASE?

8 A YES. HE IS ABOUT I WOULD SAY, SIX FEET OR SIX-FEET-  
9 ONE, MEDIUM BROWN HAIR, MUSTACHE.

10 Q AND --

11 A I HAVE SEEN HIM MANY TIMES.

12 Q WOULD YOU SAY HE IS SLENDER, HEAVY?

13 A MEDIUM BUILD.

14 Q AND HE WAS THERE THE FIRST TIME THAT YOU WALKED  
15 BY?

16 A YEAH. WELL, YES. I THINK HE WAS, YEAH.

17 Q DOES THAT MEAN THAT YOU ARE NOT SURE?

18 A WELL, THAT WAS JUST ABOUT -- IT WAS PROBABLY 15  
19 OR 20 MINUTES AFTER THEY GOT THERE. I WENT DOWNSTAIRS. I  
20 AM NOT SURE ON THAT TIME.

21 Q BUT YOU ARE MORE SURE THAT WHEN YOU WENT THROUGH  
22 THE SECOND TIME, THAT DETECTIVE ZOELLER WAS THERE?

23 A YES.

24 Q AND THAT COULD HAVE BEEN AS MUCH AS AN HOUR AFTER  
25 THE POLICE GOT THERE?

26 A YES.

27 Q AND THE SECOND TIME WHEN YOU WENT UPSTAIRS AND  
28 MR. ZOELLER WAS THERE, WAS MR. CHIER THERE ALSO?

1 A NO. MR. CHIER CAME LATER. HE WAS THERE AFTER  
2 ABOUT THE THIRD TIME THAT I WENT UP THERE. HE WAS A LITTLE  
3 LATER.

4 Q HOW MUCH LATER DID MR. CHIER ARRIVE?

5 MR. BARENS: LATER COMPARED TO WHAT? OBJECTION. THE  
6 QUESTION IS VAGUE AND AMBIGUOUS.

7 THE COURT: LATER THAN WHAT?

8 MR. WAPNER: THANK YOU.

9 Q HOW MUCH AFTER THE SECOND TIME THAT YOU WALKED  
10 BY THE ROOM, DID MR. CHIER ARRIVE?

11 A WELL, I DON'T KNOW. I KNOW THAT MR. CHIER DIDN'T  
12 GET THERE YOU KNOW -- IT JUST SEEMED LIKE A LONG TIME.

13 I DON'T KNOW. BUT I KNOW ON THE THIRD TIME I  
14 WAS UP THERE AND I WALKED OUT ONTO THE LANDING OF YOU KNOW,  
15 BY THE STAIRS, THAT IS WHEN MR. CHIER WALKED UP, CAME UP.

16 Q AND DURING THE TIMES THAT YOU WERE IN THE  
17 COMPUTER ROOM, DO YOU HAVE ANY IDEA WHAT THE CONTENT WAS OF  
18 THE PAPERS THAT THESE OFFICERS WERE READING?

19 A YES. IT WAS JOSEPH'S -- WHAT HE HAS BEEN WORKING  
20 ON FOR A YEAR.

21 Q HOW DO YOU KNOW THAT?

22 A BECAUSE HE LIVES IN MY HOME. I GO IN THERE.  
23 HE TELLS ME. HE TELLS MY HUSBAND. WE KNOW WHAT  
24 HE IS WORKING ON IN THERE.

25 Q DID YOU SEE WHAT THEY WERE READING?

26 A THEY WERE READING THE COMPUTER PRINTOUTS THAT  
27 WERE THERE. AND THERE WAS LIKE, A CARDBOARD BOX OF MATERIALS  
28 THAT JOE HAD TOLD ME THE NIGHT BEFORE, YOU KNOW, BECAUSE I

1 ALWAYS GO IN AND CHECK ON HIM AND TALK TO HIM BECAUSE HE STAYS  
2 IN THERE FOR HOURS.

3 HE PUTS THE LITTLE YELLOW, YOU KNOW, THOSE LITTLE  
4 TINY -- YOU KNOW, THE THINGS LIKE THAT (INDICATING). ONLY  
5 THE NEXT SIZE.

6 HE PUTS THAT ON A THING, LIKE THOSE WERE HIS --  
7 WHAT DO YOU CALL THEM?

8 THEY WERE FOR THE DEFENSE AND THEY WERE NUMBERED.  
9 I CAN'T THINK OF THE PROPER NAME.

10 Q EXHIBITS?

11 A YES. THAT'S IT.

12 Q MRS. ROBERTS, HAVE YOU EVER READ THE COMPUTER  
13 PAPERS?

14 A I GLANCED THROUGH IT. YOU KNOW, I HAD NOT --  
15 I DIDN'T READ IT WORD FOR WORD ON EVERYTHING BUT I HAVE, YEAH.

16 Q BY GLANCING AT IT, COULD YOU GET AN IDEA WHAT  
17 THE CONTENTS WERE?

18 A YES.

19 Q SO, IF I TOOK A QUICK GLANCE AT IT, YOU WOULD  
20 KNOW WHETHER IT WAS DEFENSE MATERIALS OR NOT, WOULDN'T YOU?

21 A WELL, I WOULD THINK SO.

22 Q OKAY. YOU WOULDN'T HAVE TO SIT AND READ IT VERY  
23 EXTENSIVELY TO FIGURE OUT WHAT IT WAS, WOULD YOU?

24 A NO. THAT IS WHY I WAS SURPRISED THAT THEY SPENT  
25 SO MUCH TIME READING IT.

26 Q AND THE PEOPLE THAT YOU SAW READING THE COMPUTER  
27 PAPER WERE WHO?

28 A MR. BREILING, MR. ZOELLER AND THE PHOTOGRAPHER

1 AND THE OTHER ONE, MR. FOGG.

2 Q WHAT WAS THE PHOTOGRAPHER DOING WITH HIS CAMERA  
3 WHILE HE WAS READING THE COMPUTER PAPERS?

4 A HE WAS TAKING PICTURES OF IT.

5 Q CLOSEUP PICTURES OF THE COMPUTER PAPER?

6 A YES.

7 Q AND HOW CLOSE WAS HIS CAMERA TO THE COMPUTER PAPER?

8 A WELL, THE COMPUTER PAPER WAS HERE (INDICATING)  
9 AND HE WAS A TALL MAN. HE WAS GOING LIKE THIS WITH THE  
10 CAMERA (INDICATING).

11 SO, IT WAS THAT FAR. I MEAN, HE WAS CLOSE.

12 Q DID HE TAKE A PICTURE OF ONLY ONE PAGE AND THEN  
13 TURN THE PAGE AND THEN TAKE ANOTHER PICTURE?

14 A YES. THEY WERE TURNING THE PAPERS OVER LIKE THAT  
15 (INDICATING), GOING THROUGH IT. AND HE WAS SNAPPING PICTURES.

16 Q SO, IT WAS LIKE THEY HAVE IN THE SPY MOVIES WHERE  
17 THEY TAKE PICTURES OF PAPER?

18 MR. BARENS: OBJECTION, VAGUE AND AMBIGUOUS.

19 THE WITNESS: I DON'T KNOW ABOUT THE SPY MOVIES. I  
20 HAVE NOT BEEN IN A SPY MOVIE.

21 THE COURT: YOU WOULD HAVE TO QUALIFY HER ABOUT SPY  
22 PICTURES.

23 MR. BARENS: AND WHICH ONE. THEY ALL HAVE THOSE LITTLE  
24 CAMERAS.

25 Q BY MR. WAPNER: HOW MANY PICTURES DID HE TAKE  
26 OF THOSE PIECES OF PAPER?

27 A I DON'T KNOW. I WAS ONLY THERE FOR THREE OR FOUR  
28 MINUTES AND THEN I WOULD WALK AWAY.

1 Q WHEN YOU CAME BACK, WAS HE STILL TAKING PICTURES  
2 OF THE PAPER?

3 A NO, NO, I DON'T RECALL THAT.

4 Q AND IN THE MIDDLE OF ALL THIS, WHILE ALL OF THIS  
5 WAS GOING ON, YOU DECIDED TO START DUSTING?

6 A NO, NOT IN THE MIDDLE OF IT.

7 AFTER THE DETECTIVE WAS FINISHED WITH MY ROOM,  
8 AS I SAID YESTERDAY, I DECIDED TO JUST STAY UP IN MY ROOM.  
9 I MEAN I WAS REALLY IN OVERWHELM. THAT WAS VERY DISTURBING.

10 Q WHERE IN THE ROOM WERE YOU?

11 A BY MY DESK ON THE RIGHT-HAND SIDE OVER HERE.

12 Q WHAT WERE YOU DUSTING?

13 A LITTLE BELSAM BATTERSEA BOXES THAT I HAVE IN --  
14 ON MY DESK.

15 Q WHEN YOU MENTIONED THAT YESTERDAY, PLEASE FORGIVE  
16 ME, BUT I DIDN'T EVEN UNDERSTAND THE WORD BECAUSE I HAD NEVER  
17 HEARD THAT. CAN YOU EXPLAIN IT TO ME?

18 A YES. THEY ARE LITTLE ENAMEL BOXES THAT HAVE LITTLE  
19 THINGS ON THEM, YOU KNOW.

20 MY HUSBAND BUYS THEM FOR ME FOR VALENTINE'S DAY  
21 AND CHRISTMAS AND THINGS LIKE THAT.

22 Q HOW MANY OF THEM?

23 A I HAVE ABOUT 11 OR 12.

24 Q AND THEY HAVE LITTLE LIDS ON THEM?

25 A YES, YOU OPEN THEM.

26 Q YOU OPEN THEM UP, DUST THE LIDS, DUST THE BOTTOMS?

27 A NO, I DIDN'T OPEN ALL OF THEM UP.

28 I ALSO HAVE A LOT OF CRYSTALS AND I HAVE PICTURES

1 OF MY FAMILY.

2 Q WHAT WERE ALL OF THESE THINGS SITTING ON?

3 A ON AN ANTIQUE DESK.

4 Q WHAT IS THE TOP OF THE DESK MADE OUT OF?

5 A I THINK THE WHOLE DESK IS LIKE MAHOGANY.

6 Q DO THEY MAKE NOISE WHEN YOU PICK THEM UP AND  
7 PUT THEM DOWN?

8 A THEY WOULDN'T HAVE TO.

9 Q DID THEY THAT DAY?

10 A I DON'T THINK SO.

11 Q YOU ARE NOT SURE?

12 A I DON'T REMEMBER SLAMMING THEM DOWN.

13 I LIKE THEM A LOT. I WOULDN'T, YOU KNOW, I  
14 WOULDN'T SLAM THEM DOWN.

15 Q WHEN IN RELATION TO WHEN YOU SAW -- EXCUSE ME.

16 WHEN, IN RELATION TO WHEN YOU WERE IN THE UPSTAIRS  
17 COMPUTER ROOM THE SECOND TIME, DID YOUR DAUGHTER COME IN  
18 THE HOUSE?

19 A I THINK THAT WAS WHEN THEY CAME IN THE HOUSE  
20 AND WENT INTO THE OTHER ROOM, THE BEDROOM, AND SHE SAT ON  
21 THE BED.

22 MY SON, CURTIS, WAS STANDING IN THERE ALSO BUT  
23 HE WAS WALKING BACK AND FORTH, YOU KNOW, FROM ONE BEDROOM  
24 TO ANOTHER AND BROOKE WENT AND JUST SAT ON THE BED.

25 Q WHAT WAS SHE WEARING?

26 A I THINK SHE WAS WEARING LIKE THEY LOOK LIKE SUMMER  
27 PAJAMAS KIND OF BUT THEY ARE NOT TRULY PAJAMAS. SHE JUST  
28 SLEEPS IN THEM.

1 Q DID SHE SIT ON THE BED, LIKE ON THE EDGE OF THE  
2 BED?

3 A NO. SHE JUMPED, LIKE, IN THE MIDDLE OF THE BED.  
4 I WENT IN THERE, YOU KNOW. I SAW HER GO IN THERE  
5 AND I WENT IN AND SHE WAS JUST LIKE IN THE MIDDLE OF THE BED.  
6 IT WAS UNMADE AND SHE JUST JUMPED IN THE MIDDLE OF IT.

7 Q WERE YOU THERE WHEN THE PHONE CALL CAME INTO  
8 THE HOUSE AND DETECTIVE ZOELLER AT SOME POINT GOT ON THE PHONE?

9 A YES.

10 ACTUALLY, I WAS ON THE PHONE AND I THINK IT WAS  
11 MR. BARENS SAID THAT -- OH, THAT YOU WANTED TO SPEAK TO HIM  
12 OR SOMETHING AND I GOT OFF THE PHONE.

13 Q DID YOU SEE OR HEAR MR. ZOELLER TALK ON THE PHONE?

14 A NO -- YES. I THINK HE WENT -- HE TOOK THE PHONE  
15 CALL, YOU KNOW, DOWN, I THINK IN MY HUSBAND'S OFFICE OR THE  
16 LIBRARY, WHICH IS RIGHT NEXT TO EACH OTHER.

17 Q MR. BARENS CALLED THE HOUSE AND THERE WAS AN  
18 EMERGENCY INTERRUPT ON THE PHONE?

19 A YES.

20 Q AND YOU GOT OFF THE PHONE?

21 A YES.

22 Q WHEN, IN RELATION TO THAT, WAS IT THAT YOU HEARD  
23 THIS CONVERSATION IN THE HALLWAY YOU TOLD US ABOUT?

24 A WELL, IT WASN'T LONG AFTER. I DON'T KNOW HOW  
25 MANY MINUTES IT WAS BUT IT WAS JUST A FEW MINUTES.

26 Q AFTER THE PHONE CALL; IS THAT RIGHT?

27 A YES, AFTER THE PHONE CALL.

28 Q AND WHEN, IN RELATION TO THAT CONVERSATION, WAS

1 IT, THAT YOU SAW THE TALL MAN TAKING PICTURES OF THE COMPUTER  
2 PAPERS?

3 A OH, THAT -- HE DID THAT EARLY ON.

4 Q WERE THOSE PICTURES, DID THEY APPEAR TO BE IN  
5 THE MIDDLE OF A ROLL THAT HE WAS TAKING PICTURES OF OTHER  
6 THINGS BEFORE AND OTHER THINGS AFTERWARDS?

7 A WELL, HE HAD BEEN TAKING -- HE -- HE HAD BEEN  
8 TAKING PICTURES, YOU SEE, BUT THAT WAS THE FIRST TIME I SAW  
9 HIM TAKE PICTURES, BUT I KNEW THAT WHEN MR. BREILING SAID  
10 TO MY HUSBAND, "DO YOU HAVE A SAFE?" AND HE SAID, "YES," AND  
11 HE SAID, "MAY I SEE IT?" AND MY HUSBAND TOOK HIM DOWNSTAIRS  
12 TO SEE IT AND THEN AFTER THAT, THEN -- HE -- MR. BREILING  
13 WENT THROUGH ALL OF THE LUGGAGE THAT WE HAVE AND THEN THEY  
14 WENT OVER AND I HAVE SHELVES, YOU KNOW, DOWN IN THE LAUNDRY  
15 ROOM AND --

16 Q MRS. ROBERTS, WAIT. I THINK WE HAVE GOTTEN A  
17 LITTLE FAR AFIELD.

18 A WELL, I WAS GOING TO TELL YOU THAT IS WHERE HE  
19 TOOK SOME MORE PHOTOGRAPHS, I SAW HIM, BECAUSE I OPENED THE  
20 DOOR AND HE WAS TAKING PICTURES, BECAUSE THEY TOOK -- I HAVE  
21 AN OLD TYPEWRITER THAT IS ON THE SHELF DOWN IN THE LAUNDRY  
22 ROOM AND HE TOOK PICTURES OF THAT.

23 Q DID YOU SEE HIM AFTER THAT TAKE THE SUPPOSED  
24 PICTURES OF THE COMPUTER PAPER?

25 A WELL, I -- YES, YES. THEN WHEN HE WAS UPSTAIRS,  
26 HE WAS TAKING PICTURES BUT I HAD SAID TO HIM --

27 YOU SEE, I KNEW HE WAS TAKING PICTURES BECAUSE  
28 WHEN I CAME DOWNSTAIRS IN MY ROBE, I SAID, "OH, GOD, YOU ARE

1 NOT GOING TO TAKE MY PICTURE, ARE YOU?"

2 HE SAID, "NO, NO, MRS. ROBERTS. I AM JUST TAKING  
3 PICTURES OF THE HOUSE AND THINGS IN THE HOUSE."

4 AND I SAID, "OH, THANK GOODNESS."

5 SO I KNEW HE HAD TO TAKE PICTURES. HE TOLD ME  
6 HE HAS TO TAKE PICTURES.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 MR. WAPNER: THANK YOU. NOTHING FURTHER.

2 MR. BARENS: NO REDIRECT, YOUR HONOR.

3 THE COURT: DO I UNDERSTAND YOU TO TESTIFY THAT  
4 MR. ZOELLER AND SOME DETECTIVES FROM THE LOS ANGELES POLICE  
5 DEPARTMENT, WERE GOING OVER EVERY, SINGLE PAPER THAT WAS IN  
6 THAT ROOM WHERE THE COMPUTER WAS, TOGETHER WITH THE TRASH  
7 BASKET?

8 THE WITNESS: YES THEY WERE.

9 THE COURT: HOW DO YOU KNOW IT WAS EVERY, SINGLE PAPER?

10 THE WITNESS: WELL, I DON'T KNOW EVERY, SINGLE PAPER.

11 I JUST KNOW ALL OF THE PAPERS THAT WERE ON THE  
12 END OF THE BED AND THE COMPUTER THING AROUND THE DESK AND  
13 IN THE TRASH CAN.

14 THE COURT: IN YOUR AFFIDAVIT, YOU SAID:

15 "I SPECIFICALLY RECALL SEEING DETECTIVE  
16 ZOELLER AND TWO DETECTIVES FROM HOLLYWOOD DIVISION  
17 OF THE LOS ANGELES POLICE DEPARTMENT IN JOE'S  
18 OFFICE GOING THROUGH EVERY, SINGLE PAPER IN THE  
19 ROOM, INCLUDING THOSE IN THE TRASH CAN."

20 YOU SAW THAT?

21 THE WITNESS: I SAW THAT, YOUR HONOR. BUT I WAS NOT  
22 THERE EVERY MINUTE.

23 THE COURT: I JUST WANT TO KNOW WHETHER OR NOT YOU SAW  
24 THEM GOING THROUGH EVERY, SINGLE PAPER. IS THAT WHAT YOU  
25 SAID?

26 THE WITNESS: I DID SAY THAT.

27 THE COURT: YOU SAID ALSO YOU OVERHEARD THE CONVERSATION  
28 BETWEEN BREILING AND DETECTIVE ZOELLER?

1 THE WITNESS: YES.

2 THE COURT: WHO YOU SAY WERE NOT AWARE OF YOUR PRESENCE?  
3 AND YOU SAY:

4 "THE CONTENTS OF THIS CONVERSATION  
5 WILL BE REVEALED BY MYSELF ON EXAMINATION AT THE  
6 TIME OF THE HEARING INVOLVED. HOWEVER, SUFFICE IT  
7 TO SAY THAT THE CONVERSATION OVERHEARD BY MYSELF  
8 WAS MOST DISTURBING TO ME BECAUSE OF ITS CYNICAL  
9 NATURE."

10 WHAT WAS THE CYNICAL NATURE OF THE CONVERSATION?

11 THE WITNESS: WELL, THE FACT THAT HE SAID, "WHAT WE  
12 MIGHT HAVE DONE IS ILLEGAL AND I HAVE GOT TO GET OUT OF HERE."

13 THE COURT: I JUST WANT TO BE SURE THAT YOU CHARACTERIZED  
14 THAT AS BEING CYNICAL. IS THAT WHAT YOU SAY?

15 THE WITNESS: YES.

16 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. NO FURTHER  
17 QUESTIONS.

18 CALL YOUR NEXT WITNESS.

19 MR. BARENS: MAY I HAVE A MOMENT SO I CAN MAKE SURE --

20 (WITNESS LYNNE ROBERTS EXITS THE  
21 COURTROOM.)

22 (PAUSE.)

23 THE COURT: INCIDENTALLY, MR. WAPNER, AMONG THE PICTURES  
24 TAKEN IN THIS ROLE NUMBER MH 4, IT SAYS "NINE ITEMS COLLECTED  
25 BY S. A. BREILING FROM UPSTAIRS NORTHEAST AND SOUTHEAST  
26 BEDROOM AND BASEMENT." DO YOU HAVE THOSE PHOTOGRAPHS?

27 MR. WAPNER: DON'T HAVE THE PHOTOGRAPHS.

28 THE COURT: WELL, WOULD YOU MAKE IT A POINT TO OBTAIN

1 THOSE SO WE CAN EXAMINE THEM?

2 MR. WAPNER: I WILL.

3 THE COURT: BECAUSE THERE HAS BEEN TESTIMONY HERE THAT  
4 THE PHOTOGRAPHER ACTUALLY TOOK PHOTOGRAPHS OF THE COMPUTER  
5 SPAWNED PAPERS WHICH HAVE BEEN REFERRED TO. I WANT TO SEE  
6 WHETHER OR NOT ANY OF THOSE PHOTOGRAPHS ACTUALLY SHOW THAT.

7 MR. WAPNER: I WILL PROVIDE THOSE TO THE COURT,  
8 YOUR HONOR. I CAN REPRESENT THAT I AT ONE TIME, SAW THE  
9 BOOKS CONTAINING THE PHOTOGRAPHS THAT WERE TAKEN.

10 AND I ASKED OFFICER BREILING IF WE COULD KEEP  
11 THOSE AND USE THOSE AS EXHIBITS IN THIS HEARING.

12 AND HE SAID THAT THEY NEEDED THEM FOR THE  
13 ANTICIPATED HEARING IN NORTHERN CALIFORNIA AND THAT IS WHEN  
14 HE TOLD ME THAT THE OTHER PHOTOGRAPHS WOULD NOT BE READY FOR  
15 TWO WEEKS.

16 THE COURT: WELL, SEE WHAT YOU CAN DO ABOUT GETTING  
17 THAT EXPEDITED.

18 MR. WAPNER: I CAN TELL YOU THAT THERE WERE NOT  
19 PHOTOGRAPHS THAT WERE BLOWUPS OR CLOSEUPS OF DOCUMENTS, WHERE  
20 YOU COULD SEE ANY WRITING OR READ ANY WRITING ON ANY  
21 DOCUMENTS.

22 THE COURT: WELL, LET US BE THE JUDGE OF THAT.

23 MR. BARENS: HOW CAN THE PEOPLE SAY THAT WITHOUT THE  
24 PHOTOGRAPHS?

25 THE COURT: DID YOU HEAR WHAT I SAID? I SAID THAT --

26 MR. WAPNER: I AM NOT PURPORTING TO TESTIFY.

27 THE COURT: YOU GET THEM FOR ME. WOULD YOU?

28 MR. WAPNER: I WILL.

1 MR. BARENS: I WANT TO RECALL LYNNE ROBERTS FOR ONE  
2 MINUTE, JUST ONE QUESTION.

3 THE CLERK: MRS. ROBERTS, YOU ARE STILL UNDER OATH.

4 THE COURT: DO YOU UNDERSTAND THAT?

5 THE WITNESS: YES.

6  
7 EXAMINATION

8 BY MR. BARENS:

9 Q MRS. ROBERTS, UPON MR. HUNT'S RETURN TO THE  
10 RESIDENCE THAT LATE AFTERNOON OR EVENING, DID MR. HUNT START  
11 SEALING UP THE DOCUMENTS THAT WERE REMAINING IN THE COMPUTER  
12 ROOM?

13 A YES. HE ASKED ME AND MY HUSBAND TO GO IN WITH  
14 HIM. AND WE WENT INTO THE ROOM AND HE STARTED SEALING  
15 EVERYTHING AND YOU KNOW, I SIGNED THE ENVELOPES AND  
16 EVERYTHING. THEY WERE SEALED.

17 Q IN OTHER WORDS, YOU SIGNED THE SEALED ENVELOPES  
18 TO VERIFY THAT YOU HAD WITNESSED THE SEALING?

19 A YES.

20 Q AND DID YOU SEE WHAT MR. HUNT DID? WERE THERE  
21 A LOT OF THOSE ENVELOPES?

22 A YES. I THINK SO.

23 Q AND DID HE PUT THOSE ENVELOPES INTO A LARGE BOX?

24 A YES.

25 Q AND WAS THE BOX SEALED?

26 A YES.

27 MR. BARENS: NOTHING FURTHER.

28 MR. WAPNER: I HAVE NO QUESTIONS.

3-2

1 THE COURT: ALL RIGHT. THANK YOU. YOU MAY STEP DOWN.

2 MR. BARENS: THANK YOU.

3 YOUR HONOR, WE WOULD STIPULATE THAT THE PEOPLE  
4 CAN CALL DETECTIVE FOGG, WHO WAS PRESENT AT THIS POINT, IN  
5 THE SAME FORMAT THAT WE DID PRIOR TO CALLING THE DEFENSE  
6 WITNESSES.

7 THE COURT: ALL RIGHT.

8 MR. BARENS: THANK YOU.

F

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 THE COURT: DO YOU HAVE ANY OTHER WITNESSES?

2 MR. BARENS: MR. WAPNER ASKED THAT I MAKE BROOKE ROBERTS  
3 AVAILABLE AS HIS WITNESS. SHE HASN'T GOTTEN HERE YET.  
4 FRANKLY I ASKED HER TO COME AT 11:00, YOUR HONOR.

5 THE COURT: WHAT?

6 MR. BARENS: WE ASKED HER TO COME AT 11:00, YOUR HONOR.

7 THE COURT: ALL RIGHT, VERY GOOD.

8

9

10 CLARK W. FOGG,  
11 CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND TESTIFIED  
12 AS FOLLOWS:

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

17 THE WITNESS: YES, I DO.

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

19 THE WITNESS: CLARK W. FOGG, C-L-A-R-K F-O-G-G.

20

21 EXAMINATION

22 BY MR. WAPNER:

23 Q MR. FOGG, BY WHOM ARE YOU EMPLOYED?

24 A BEVERLY HILLS POLICE DEPARTMENT.

25 Q WHAT DO YOU DO FOR THEM?

26 A I AM AN IDENTIFICATION TECHNICIAN.

27 Q AND DID YOU GO TO A LOCATION AT 10984 BELLAGIO  
28 ROAD IN THE CITY AND COUNTY OF LOS ANGELES ON JANUARY 8, 1987?

A YES, I DID.

1 Q WHY DID YOU GO THERE?

2 A FOR A SEARCH WARRANT.

3 Q AND WHAT WAS YOUR FUNCTION DURING THE SERVICE  
4 OF THAT SEARCH WARRANT?

5 A MY FUNCTION WAS TO PHOTOGRAPH THE SEARCH WARRANT  
6 BEFORE AND AFTER ANY KIND OF A COLLECTION OF EVIDENCE THAT  
7 WAS ORDERED BY OSCAR BREILING, AGENT OSCAR BREILING.

8 Q WHEN YOU WENT TO THE RESIDENCE, WHAT PORTION DID  
9 YOU FIRST GO TO?

10 A MY ROLE WAS TO GO TO THE GUEST HOUSE.

11 Q AND WAS DETECTIVE ZOELLER WITH YOU, AMONG OTHER  
12 PEOPLE?

13 A YES, HE WAS.

14 Q WHAT DID YOU DO IN THE GUEST HOUSE?

15 A I GOT THERE AT 10:40. I PHOTOGRAPHED THE GUEST  
16 HOUSE BEFORE THE SEARCH AND PHOTOGRAPHED IT AFTER THE SEARCH.

17 Q DID YOU PARTICIPATE IN THE SEARCH AT ALL OF THE  
18 GUEST HOUSE?

19 A NO, I DID NOT.

20 Q AFTER YOU TOOK THE QUOTE "AFTER PHOTOGRAPHS"  
21 UNQUOTE, OF THE GUEST HOUSE, WHAT DID YOU DO?

22 A I PROCEEDED TO GO TO THE MAIN HOUSE, UNDER  
23 DIRECTION OF AGENT BREILING, TO HELP KURT KUHN KEEP A  
24 PHOTOGRAPHIC LOG OF THE PICTURES THAT HE WAS TAKING.

25 Q AND WHERE IN THE MAIN HOUSE DID YOU GO?

26 A I WAS WITH KURT ON THE FIRST FLOOR AND SECOND  
27 FLOOR THROUGHOUT THE HOUSE.

28 Q WHAT WERE YOU DOING?

1           A           MY FUNCTION AND MY ONLY FUNCTION WAS TO KEEP A  
2 PHOTOGRAPHIC LOG OF THE PICTURES THAT HE WAS TAKING. IT WAS  
3 A WRITTEN DOWN DOCUMENTATION.

4           Q           AND IS THAT A RECORD, WRITTEN RECORD OF THE  
5 LOCATION THAT IS BEING PHOTOGRAPHED AND WAS BEING PHOTOGRAPHED?

6           A           THAT'S RIGHT.

7           Q           DID YOU AT ANY TIME WHILE YOU WERE IN THE MAIN  
8 HOUSE PARTICIPATE IN THE SEARCH?

9           A           NO, I DID NOT.

10          Q           DID YOU GO UP INTO THE COMPUTER ROOM?

11          A           YES, I DID.

12          Q           DID YOU AT ANY TIME SEARCH ANY ITEMS IN THAT ROOM?

13          A           NO, I DID NOT.

14          Q           DID YOU LOOK AT ANY ITEMS, SEARCH ANY ITEMS THAT  
15 WERE ON THE BOOK SHELF IN THAT ROOM?

16          A           NO, I DID NOT.

17          Q           DID YOU OPEN ANY NOTEBOOKS ON THE BOOK SHELF IN  
18 THAT ROOM?

19          A           NO.

20          Q           DID YOU LOOK AT ANY PAPERS THAT WERE ON THE BOOK  
21 SHELF IN THAT ROOM?

22          A           NO.

23          Q           WHEN YOU WERE IN THE COMPUTER ROOM, WAS YOUR JOB  
24 STILL TO ASSIST MR. KURT KUHN IN KEEPING THE PHOTOGRAPHIC  
25 LOG?

26          A           THAT IS CORRECT.

27          MR. WAPNER: THANK YOU. I HAVE NOTHING FURTHER.

28

## EXAMINATION

1  
2 BY MR. BARENS:

3 Q DETECTIVE FOGG, WERE YOU PREVIOUSLY FAMILIAR WITH  
4 THE INVESTIGATION SURROUNDING JOE HUNT AND THE DISAPPEARANCE  
5 OF RON LEVIN?

6 A YES, I AM.

7 Q AND IS IT NOT A FACT THAT PREVIOUSLY YOU HAD TAKEN  
8 PHOTOGRAPHS CONCERNING THE INVESTIGATION AND THE DISAPPEARANCE  
9 OF RON LEVIN?

10 A THAT IS CORRECT.

11 Q WHEN WAS THAT, SIR?

12 A I BELIEVE IT WAS IN '84.  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Q AND WHAT PHOTOGRAPHS -- STRIKE THAT.

2 WHAT PLACES DID YOU TAKE PHOTOGRAPHS IN IN 1984?

3 A IT WAS THE RESIDENCE OF RON LEVIN AND IT WAS  
4 CONCERNING A MISSING REPORT.

5 Q MISSING PERSON'S REPORT?

6 A YES, THAT IS CORRECT.

7 Q AND BETWEEN 1984 AND 1987, DID YOU BECOME FAMILIAR  
8 WITH THE FACTS CONCERNING THE INVESTIGATION OF THE  
9 DISAPPEARANCE OF RON LEVIN AND THE ALLEGED HOMICIDE OF RON  
10 LEVIN THEREAFTER?

11 A YES, I DID.

12 Q AND SO YOU HAD A PRETTY WELL UNDERSTANDING OF  
13 WHAT THAT CASE WAS ABOUT?

14 A ONLY A BRIEF KNOWLEDGE.

15 Q SURE. DID YOU UNDERSTAND THAT JOSEPH HUNT WAS  
16 THE DEFENDANT IN THIS CASE?

17 A YES, I DID.

18 Q DID YOU UNDERSTAND, AS YOU WENT TO THE ROBERTS  
19 RESIDENCE ON JANUARY 8, 1987, THAT JOE HUNT WAS PRESENTLY  
20 THEN IN TRIAL FOR THAT HOMICIDE?

21 A YES.

22 Q WHO TOLD YOU THAT?

23 A THAT WAS UNDER DIRECTION OF OSCAR BREILING, LES  
24 ZOELLER.

25 Q THEY TOLD YOU THAT?

26 A YES.

27 Q WHAT DID THEY TELL YOU IN THAT REGARD?

28 A THAT HE WAS UNDER THE SUSPICION OF MURDER AND

1 THAT WE ARE THERE TO SEARCH HIS HOUSE AND MY ROLE WAS TO TAKE  
2 PHOTOGRAPHS OF THE SEARCH.

3 Q DID THEY TELL YOU THAT MR. HUNT WAS PRESENTLY  
4 IN TRIAL IN THE COURTROOM IN TRIAL?

5 A I BELIEVE SOMETHING WAS MENTIONED TO THAT EFFECT.

6 Q WHO MENTIONED THAT, SIR?

7 A I BELIEVE IT WAS AGENT BREILING.

8 Q WHEN DID HE MENTION THAT TO YOU, SIR?

9 A DURING A BRIEFING BEFORE THE SEARCH.

10 Q WHAT DID HE SAY IN THAT REGARD DURING THAT BRIEFING?

11 A THAT A TRIAL WAS NOW IN PROGRESS AND THAT WE WERE  
12 TO SEARCH THE RESIDENCE AND, BASICALLY, MY ROLE IN THE SEARCH.

13 Q DID HE TELL YOU WHAT TO PHOTOGRAPH?

14 A YES, HE DID.

15 Q WHAT DID HE TELL YOU TO PHOTOGRAPH, SIR?

16 A BASICALLY, HE WANTED ME TO PHOTOGRAPH THE GUEST  
17 HOUSE BEFORE THE SEARCH, OVERALL PHOTOGRAPHS AFTER THE SEARCH  
18 AND ANY KIND OF EVIDENCE HE WANTED POLAROID OF, JUST AN  
19 OVERALL OF THE EVIDENCE BEING COLLECTED.

20 Q HOW MANY POLAROID PICTURES DID YOU TAKE?

21 A EIGHT.

22 Q CAN YOU EXPLAIN TO ME WHY THERE IS NO REFERENCE  
23 TO POLAROID PHOTOGRAPHS AT ALL IN THE SUMMARY WE RECEIVED  
24 ON THE RETURN ON THE WARRANT, THERE IS NO REFERENCE TO  
25 POLAROID PHOTOGRAPHS ON THERE.

26 A THERE SHOULD BE.

27 THE REPORT THAT I GAVE OSCAR BREILING, THERE WERE  
28 MENTIONS OF POLAROID BEING TAKEN.

1 MR. BARENS: YOUR HONOR MIGHT TAKE NOTE OF THE FACT THAT  
2 ALTHOUGH THIS WITNESS TALKS ABOUT EIGHT PHOTOGRAPHS OF A  
3 POLAROID NATURE, AS BEST AS I CAN IN THIS LISTING CALLED  
4 "PHOTOGRAPH LOG," WHICH, AS YOUR HONOR IS AWARE CONTAINS  
5 SEVERAL PAGES, THERE IS NO MENTION OF POLAROID PHOTOGRAPHS.

6 THE COURT: THERE IS NO MENTION OF ANY OTHER KIND OF  
7 PHOTOGRAPHS, IS THERE?

8 MR. BARENS: WELL, YOUR HONOR --

9 THE COURT: IT JUST SAYS -- ALL IT SAYS IS "PHOTOGRAPHIC  
10 LOG," THE PHOTOGRAPHER --

11 MR. BARENS: EXCUSE ME, YOUR HONOR. THEY SPEAK ABOUT  
12 FRAME NUMBERS OF WHAT APPEAR TO BE 35 MILLIMETER, PHOTOGRAPHIC  
13 MATERIALS.

14 THE COURT: WHERE DOES THAT APPEAR?

15 MR. BARENS: WELL, YOUR HONOR, THE WAY THEY HAVE IT,  
16 CIRCUMSTANTIALLY IT APPEARS THAT --

F  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE COURT: WHERE DOES IT SAY 35 MILLIMETERS?

2 MR. BARENS: IT DOES NOT SPECIFICALLY SAY THAT.

3 THE COURT: WELL, YOU SAID THAT IT SAYS 35 MILLIMETERS.

4 MR. BARENS: IT APPEARS TO BE.

5 THE COURT: WHAT MAKES YOU THINK IT APPEARS TO BE?

6 MR. BARENS: WELL, THERE IS A REFERENCE FRAME NUMBER  
7 AND FOR INSTANCE, THERE IS LIKE, A 35 BELOW THAT.

8 THE COURT: 35?

9 MR. BARENS: NO, 35 NUMBERS. THAT SUGGESTS THAT IT  
10 WAS A ROLL OF 36.

11 THE COURT: 35?

12 MR. BARENS: WELL, LOOK AT THE VERY FIRST ONE YOU COME  
13 TO SEQUENTIALLY, YOUR HONOR.

14 THE COURT: WELL, THAT MEANS THE NUMBER OF FRAMES WHICH  
15 ARE ON THE ROLL? DOES THAT MEAN 35 MILLIMETER?

16 MR. BARENS: NO. I AM ASSUMING THAT YOU MIGHT TAKE  
17 NOTICE THAT IF I AM TAKING A 35 MILLIMETER, IT WOULD TYPICALLY  
18 BE A ROLL OF 36 FRAMES.

19 THE COURT: I CAN'T TAKE NOTICE OF THAT.

20 MR. BARENS: I WOULD SAY BASED ON MY EXPERIENCE, IT  
21 WAS SUGGESTED TO ME THAT THAT IS WHAT WE HAD HERE.

22 WHEREAS WITH POLAROID'S --

23 THE COURT: ASK HIM IF HE KNOWS MORE ABOUT IT.

24 MR. BARENS: OKAY.

25 Q IF YOU WERE DESCRIBING A PHOTOGRAPHIC LOG --

26 THE COURT: TAKE A LOOK AT THE PHOTOGRAPHIC LOG, WILL  
27 YOU? WILL YOU TELL US WHAT KIND OF A CAMERA WAS USED FOR  
28 THAT?

1 THE WITNESS: IT IS RIGHT THERE INDICATING THE ROLL  
2 NUMBER. THAT IS FROM A 35 MILLIMETER CAMERA.

3 THE COURT: ALL RIGHT.

4 MR. BARENS: I DID NOT MEAN TO MISLEAD.

5 THE COURT: WELL, THAT'S ALL RIGHT.

6 MR. BARENS: WELL, IT JUST OCCURRED TO ME THAT THAT  
7 IS WHAT IT WAS.

8 Q CAN YOU SEE IN THESE PHOTOGRAPHS WHERE THE  
9 REFERENCE IS TO THE EIGHT POLAROIDS? THEY WOULD PROBABLY  
10 BE IDENTIFIED INDIVIDUALLY? OR DIFFERENTLY?

11 A NO, SIR. I CANNOT. THEY WERE LOCATED IN THE  
12 BLACK NOTEBOOK THAT OSCAR BREILING HAD HERE IN COURT.

13 MR. BARENS: WHILE YOU HAVE THAT IN YOUR HAND, IF YOU  
14 WOULD, YOUR HONOR --

15 THE COURT: YES.

16 Q BY MR. BARENS: IF YOU LOOK AT THE PHOTOGRAPHIC  
17 LOG, I NOTICE THAT ON THE ROLL NUMBER, IT SAYS "M.H.3." WHAT  
18 DOES THAT STAND FOR?

19 A "M.H." SIGNIFIES THE MAN HOUSE TO DISTINGUISH  
20 THE MAIN HOUSE FROM THE GUEST HOUSE.

21 Q ALL RIGHT. ON THAT ONE, SIR, ROLL NUMBER 3,  
22 IT APPEARS THAT THE NUMBER SEQUENCE DOWN TO -- IT GOES DOWN  
23 TO NUMBER 25 AND 26. THEN THERE ARE NO MORE NUMBERS.

24 WHAT DO YOU THINK HAPPENED TO THE OTHER TEN  
25 PHOTOGRAPHS, IF YOU CAN GIVE ME AN OPINION, IF YOU ARE ABLE  
26 TO GIVE ME AN OPINION.

27 A THE PHOTOGRAPHER WAS KURT KUHN. I AM JUST  
28 ASSUMING THAT HE BASICALLY WANTED TO START A NEW ROLL OF FILM

5  
1 AT THAT TIME.

2 Q ANY PARTICULAR REASON WHY YOU WOULD IF YOU HAD  
3 TEN LEFT IN THE CAMERA?

4 A NO.

5 Q ALL RIGHT. DO YOU NORMALLY USE ALL 36 FRAMES,  
6 DO YOU NOT, SIR?

7 A YES.

8 Q I NOTICE FOR INSTANCE THAT IF YOU GO TO THE ROLL  
9 "G.H.I" WHICH I GUESS IS THE LAST ONE OF THESE, IT JUST HAS  
10 NUMBERS THROUGH 16. SO, WE HAVE OVER HALF THE ROLL LEFT,  
11 I PRESUME, ON THAT ROLL OF FILM?

12 A THAT'S CORRECT.  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Q WELL, ALL RIGHT. IN THE EVENT --

2 THE COURT: WHY DIDN'T YOU ASK THE OTHER PHOTOGRAPHER  
3 ALL OF THAT WHEN HE WAS HERE?

4 MR. BARENS: IT QUITE WELL DIDN'T OCCUR TO ME.

5 THE WITNESS: BECAUSE THE GUEST HOUSE WAS SUCH A SMALL  
6 PLACE, ONLY 16 FRAMES WERE NEEDED TO PHOTOGRAPH THE WHOLE,  
7 ENTIRE SCENE.

8 Q BY MR. BARENS: AND THEN, I AM NOT ASKING YOU  
9 WHAT HE DID, BUT WHAT YOU MIGHT DO UNDER THE SAME OR SIMILAR  
10 CIRCUMSTANCES. BECAUSE YOU WENT TO A DIFFERENT PLACE, YOU  
11 WOULD THEN START A NEW ROLL JUST AS A RESULT OF THAT?

12 A THAT'S CORRECT. WHAT HE DOES IS, WE FILE ALL  
13 THE NEGATIVES TOGETHER.

14 MR. BARENS: THAT MAKES SENSE TO ME.

15 THE COURT: ALL RIGHT. IT MAKES SENSE TO ME, TOO.  
16 PARDON ME, YOU SAY THOSE EIGHT POLAROIDS ARE IN THE POSSESSION  
17 OF ARTHUR BREILING?

18 THE WITNESS: YES.

19 THE COURT: ALL RIGHT.

20 Q BY MR. BARENS: DID YOU SHOW THOSE EIGHT TO  
21 ANYBODY ELSE?

22 A NO. THEY WERE SHOWN TO KURT KUHN.

23 Q DID YOU SEE ANYONE SHOWING THE PHOTOGRAPHS TO  
24 ANYONE ELSE?

25 A NO, SIR. I DID NOT.

26 THE COURT: AND DID HE SHOW IT TO THE DISTRICT ATTORNEY,  
27 TO YOUR KNOWLEDGE?

28 THE WITNESS: I AM NOT AWARE ABOUT THAT, NO.

1 Q BY MR. BARENS: NOW, WHERE ARE THOSE EIGHT  
2 POLAROIDS NOW?

3 A IN THE POSSESSION OF ARTHUR BREILING.

4 Q HOW DO YOU KNOW THAT, SIR?

5 A BECAUSE WHEN I CAME TO TESTIFY THE FIRST TIME,  
6 HE HAD THEM IN A NOTEBOOK, A BLACK NOTEBOOK.

7 Q HOW DO YOU KNOW THAT, SIR?

8 A I DID SEE THOSE.

9 Q AND HOW DID YOU HAPPEN TO LOOK AT MR. BREILING'S  
10 NOTEBOOK WHEN HE CAME TO COURT, HERE?

11 A THOSE WERE THE PHOTOGRAPHS THAT I TOOK, I WAS  
12 TAKING AT THE TIME OF THE SEARCH.

13 Q RIGHT. WHY DID YOU HAPPEN TO BE LOOKING AT MR.  
14 BREILING'S NOTEBOOK WHEN YOU CAME TO COURT, HERE?

15 A HE GAVE ME THE NOTEBOOK WITH ONLY THE PICTURES  
16 THAT I TOOK.

17 Q WHY DID HE DO THAT?

18 A TO ASK ME QUESTIONS ABOUT THOSE PHOTOGRAPHS,  
19 HOW HE SET THEM UP.

20 Q DID YOU FELLOWS KIND OF CONFER GENERALLY ABOUT  
21 WHAT HAPPENED THAT DAY DURING THE SEARCH?

22 A NO, SIR.

23 Q YOU DIDN'T DISCUSS THAT AT ALL?

24 A NO. HE THOUGHT I MIGHT NEED THE PHOTOGRAPHS  
25 WHEN I TESTIFIED HERE.

26 Q DID YOU PHOTOGRAPH DOCUMENTS?

27 A NO, SIR, NO PARTICULAR DOCUMENTS. THERE WERE  
28 A NUMBER OF DOCUMENTS TOGETHER WHICH I TOOK AN OVERALL

1 PHOTOGRAPH OF, POLAROID ONLY.

2 Q ASIDE FROM THE EIGHT POLAROID PHOTOGRAPHS THAT  
3 YOU SAY YOU TOOK, DID YOU TAKE ANY MORE PICTURES?

4 A NOT IN THE MAIN HOUSE.

5 Q ALL RIGHT. THEREFORE, YOU ARE SAYING THAT THEY  
6 WOULD HAVE BEEN TAKEN IN THE GUEST HOUSE?

7 A THAT'S CORRECT.

8 Q YOU TOOK POLAROID PHOTOGRAPHS IN THE GUEST HOUSE?

9 A NO, SIR. I DID NOT.

10 Q YOU TOOK 35 MILLIMETER IN THE GUEST HOUSE?

11 A THAT'S CORRECT.

12 Q YOU WERE IN A ROOM UPSTAIRS WITH A COMPUTER IN  
13 IT?

14 A YES, SIR. I WAS.

15 Q DID YOU HAPPEN TO SEE MRS. ROBERTS IN THAT ROOM?

16 A YES.

17 Q AND WAS SHE THERE ON ONE OR MORE THAN ONE OCCASION  
18 WHILE YOU WERE IN THAT ROOM?

19 A MORE THAN ONE OCCASION.

20 Q AND HOW LONG IN POINT OF TIME, CAN YOU ESTIMATE  
21 YOU WERE IN THAT ROOM?

22 A I WAS IN THERE, IN AND OUT I GUESS, A TOTAL  
23 OF -- IF YOU WOULD TOTAL ALL OF THE MINUTES TOGETHER, PROBABLY  
24 AN HOUR.

25 Q THAT YOU SPENT IN THERE? DID YOU HAVE YOUR  
26 CAMERA WITH YOU DURING THAT HOUR?

27 A A POLAROID CAMERA, YES, SIR.

28 Q YES, SIR?

-4

1 A YES.

2 Q ON POLAROID FILM, HOW MANY FRAMES ARE IN THERE  
3 NORMALLY?

4 A ON THAT PARTICULAR CAMERA, TEN.

5 Q AND YOU WENT UP THERE AND I BELIEVE YOU DESCRIBED  
6 TO ME THAT YOU HAVE LIKE, A SPECIAL CASE FOR YOUR POLAROID  
7 APPARATUS THAT HAS A WAY TO CARRY BOTH THE CAMERA AND A  
8 VARIETY OF SUPPORT ITEMS FOR THE CAMERA?

9 A FILM, YES.

10 Q AND HOW MANY ROLLS OF FILM DO YOU CARRY IN THERE  
11 WITH THAT CASE?

12 A THE CASE USUALLY CARRIES APPROXIMATELY FIVE DOUBLE  
13 PACKS OF FILM. SO IT IS A TOTAL OF TEN.

14 Q DO YOU ACTUALLY REFER TO THOSE AS BOXES OF FILM  
15 WHEN YOU COME TO A POLAROID, AS OPPOSED TO A ROLL OF FILM?

16 A WHEN YOU REFER TO A POLAROID, YOU REFER JUST  
17 TO SHOTS INDIVIDUALLY. HOW MANY SHOTS YOU TAKE.

18 Q YOU WOULDN'T CALL IT ROLLS OF FILM?

19 A NO, SIR.

20 MR. BARENS: OKAY. NOTHING FURTHER.

21 THE COURT: ALL RIGHT.

22 MR. WAPNER: I HAVE A FEW QUESTIONS.

23

24

EXAMINATION

25 BY MR. WAPNER:

26 Q FIRST OF ALL, WHY DID YOU TAKE POLAROID PICTURES?

27 A THEY WERE UNDER THE DIRECTION OF AGENT BREILING,  
28 TO HAVE THEM AT THAT TIME, JUST TO SEE IF THEY DID COME OUT.

1 Q ALL RIGHT. IS IT ALSO A PRECAUTION IN THE EVENT --  
2 UNLIKELY AS IT MAY BE -- THAT THE OTHER PICTURES THAT YOU  
3 TOOK WOULD NOT COME OUT?

4 A THAT'S CORRECT. IT IS A BACK-UP.

5 Q AND HAVE YOU HAD ANY CHANCE TO REVIEW THE PHOTO-  
6 GRAPHS -- THE PHOTOGRAPHIC LOGS TODAY?

7 A YES, I HAVE.

8 Q DO THEY REFER TO THE POLAROID PICTURES ON THEM?

9 A NO, THEY DO NOT.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Q DID YOU WRITE YOUR OWN RECORD OF WHAT HAPPENED  
2 AT THE HOUSE?

3 A YES, I DID, AS PER THE SHOTS TAKEN.

4 Q OKAY. THAT IS THE PHOTOGRAPHIC LOG?

5 A YES, IT IS.

6 THAT SHOULD BE THE LAST SHEET.

7 Q BUT AS FAR AS THE POLICE REPORT, ACTUALLY OTHER  
8 THAN THE PHOTOGRAPHIC LOG, DID YOU MAKE ANY POLICE REPORT  
9 OF YOUR ACTIVITIES THERE?

10 A NO, SIR.

11 Q DID MR. KUHN?

12 A YES, HE DID.

13 Q DID YOU HAVE A CHANCE TO REVIEW MR. KUHN'S REPORT?

14 A YES, I DID.

15 Q DID MR. KUHN CONFER WITH YOU BEFORE WRITING HIS  
16 REPORT?

17 A WE BASICALLY TALKED ABOUT WHAT HE WAS GOING TO  
18 WRITE AND AFTER HE WROTE IT, I CONFERRED AND OKAYED THE REPORT.

19 Q AND INDICATED TO HIM YOU THOUGHT IT WAS ACCURATE?

20 A YES, I THOUGHT IT WAS ACCURATE.

21 Q DID YOU PUT IN THE REPORT THAT THERE WERE IN FACT  
22 SOME POLAROID PHOTOGRAPHS TAKEN BY YOU?

23 A I DON'T BELIEVE THERE WAS A MENTION OF THAT.

24 THE COURT: YES, IT SAYS "POLAROID PHOTOGRAPHS OF THOSE  
25 SPECIFIC ITEMS COLLECTED TO BE TAKEN BY I.D. TECHNICIAN FOGG."

26 THE WITNESS: YES.

27 Q BY MR. WAPNER: IF YOU PUT THAT IN THE REPORT  
28 AND YOU READ IT, WAS IT ACCURATE AT THE TIME?

1 A YES, YES, IT WAS ACCURATE.

2 Q AND WHEN YOU SAW THOSE PHOTOGRAPHS THAT AGENT  
3 BREILING HAD WHEN HE WAS HERE, DID THOSE APPEAR TO BE THE  
4 PHOTOGRAPHS YOU HAD TAKEN THAT DAY?

5 A YES, THEY DID.

6 MR. WAPNER: THANK YOU. I HAVE NOTHING FURTHER.

7 THE COURT: ALL RIGHT.

8

9

EXAMINATION

10 BY MR. BARENS:

11 Q WHEN YOU WERE TAKING POLAROID PHOTOGRAPHS, WAS  
12 DETECTIVE ZOELLER PRESENT IN THE ROOM?

13 A NOT AT ALL TIMES.

14 Q WAS HE PRESENT AT SOME TIMES?

15 A YES, HE WAS.

16 Q DID OFFICER ZOELLER EVER SEE ANY OF THOSE  
17 POLAROID PHOTOGRAPHS?

18 A I PRESUME HE DID.

19 MR. BARENS: NOTHING FURTHER.

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

21 THE WITNESS: THANK YOU.

22 THE COURT: YOU ARE EXCUSED.

23 MR. BARENS: CAN I JUST SEE IF THE WITNESS HAS ARRIVED?

24 MR. WAPNER: THIS WITNESS IS EXCUSED?

25 THE COURT: YES, SURELY.

26 MR. BARENS: NO OBJECTION.

27 MR. WAPNER: THANK YOU VERY MUCH.

28 MR. BARENS: YOUR HONOR, I DON'T SEE THE WITNESS AT

3  
1 THIS MOMENT.

2 THE COURT: YES.

3 MR. BARENS: COULD WE PERHAPS HAVE A TEN-MINUTE RECESS,  
4 PLEASE?

5 THE COURT: SURE.

6 MR. BARENS: THANK YOU, YOUR HONOR.

7 THE COURT: VERY WELL.

8 (RECESS.)

F  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE COURT: ALL RIGHT. CALL YOUR NEXT WITNESS.

2 MR. WAPNER: BROOKE ROBERTS.

3

4 BROOKE ROBERTS,

5 CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND TESTIFIED  
6 AS FOLLOWS:

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

11 THE WITNESS: I DO.

12 THE CLERK: PLEASE TAKE THE WITNESS STAND. STATE YOUR  
13 NAME.

14 THE WITNESS: BROOKE ROBERTS.

15 THE CLERK: DOES YOUR FIRST NAME END WITH AN "E"?

16 THE WITNESS: YES.

17

18 EXAMINATION

19 BY MR. WAPNER:

20 Q MISS ROBERTS, ARE YOU THE DAUGHTER OF BOBBY AND  
21 LYNNE ROBERTS?

22 A YES, I AM.

23 Q DO YOU LIVE AT 10984 BELLAGIO ROAD, CITY AND  
24 COUNTY OF LOS ANGELES?

25 A YES, I DO.

26 Q WHERE AT THAT LOCATION, DO YOU LIVE?

27 A I LIVE IN THE GUEST HOUSE.

28 Q WERE YOU HOME ON JANUARY THE 8TH, 1987?

1 A YES, I WAS.

2 Q DID SOMEONE COME AND KNOCK ON YOUR DOOR?

3 A THEY BANGED ON MY DOOR.

4 Q AND DID YOU OPEN THE DOOR RIGHT AWAY?

5 A NO, I DIDN'T.

6 Q WHAT DID YOU DO?

7 A WELL, I WAS SLEEPING AT THE TIME. AND ALL THEY  
8 SAID WAS THAT THEY WERE GOING TO BREAK DOWN MY DOOR.

9 I WAS NOT SURE EXACTLY WHO THESE PEOPLE WERE.

10 Q HOW LONG WERE THE PEOPLE THERE BEFORE THEY SAID  
11 THEY WERE GOING TO BREAK DOWN YOUR DOOR?

12 A ONE MINUTE. THEY CAME TO MY BEDROOM IMMEDIATELY.

13 Q AND WHEN THEY FIRST KNOCKED ON THE DOOR, WHAT  
14 DID THEY SAY?

15 A THEY SAID, "OPEN THE DOOR OR WE ARE GOING TO  
16 BREAK DOWN THE DOOR."

17 Q DID THEY SAY, "WE ARE POLICE OFFICERS. WE ARE  
18 HERE TO SERVE A SEARCH WARRANT"?

19 A NO, THEY DIDN'T.

20 Q YOU MEAN YOU JUST HEARD BANGING ON YOUR DOOR  
21 AND SOMEBODY SAID, "OPEN THE DOOR OR WE ARE GOING TO BREAK  
22 IT DOWN"?

23 A THAT'S RIGHT.

24 Q YOU HAD NO IDEA WHO IT WAS?

25 A NO. I CALLED MY FATHER IMMEDIATELY.

26 Q AND IT WAS ONLY BECAUSE YOUR FATHER TOLD YOU  
27 THAT THEY WERE POLICE OFFICERS THAT YOU UNDERSTAND THEY WERE?

28 A NO. HE NEVER COULD TAKE THE PHONE CALL BECAUSE

1       THEY WERE IN THE HOUSE ALSO.

2               Q       SO WHAT HAPPENED AFTER THAT?

3               A       WELL, I HEARD LESS ZOELLER'S VOICE AND THEY WERE  
4       GETTING READY TO BREAK DOWN MY DOOR.

5                       THEY SENT A POLICE OFFICER AROUND IN MY BEDROOM,  
6       TO THE BATHROOM WINDOW. AND THEY WERE OPENING UP THE WINDOW  
7       AND THEY WERE BANGING ON THE DOOR.

8                       I SAID YOU KNOW, "WAIT A MINUTE. I JUST GOT  
9       UP, HERE."

10                      AND I IMMEDIATELY OPENED THE DOOR. AND THEY  
11       SAID THAT I HAD TO GET OUT AND THEY ALL CAME IN.

12               Q       HOW LONG WERE THEY THERE BEFORE THEY ACTUALLY  
13       OPENED THE DOOR?

14               A       A MINUTE.

15               Q       AND AFTER THEY CAME IN, WHAT DID THEY DO?

16               A       THEY TOLD ME THAT I HAD TO LEAVE THE ROOM AND  
17       THEY TOOK PHOTOGRAPHS.

18               Q       AND AFTER THEY TOOK THE PHOTOGRAPHS, WHAT DID  
19       THEY DO?

20               A       THEY TOLD ME THEY WERE GOING TO SEARCH THE ROOM.

21               Q       DID THEY?

22               A       YES.

23               Q       HOW LONG WERE THEY THERE?

24               A       APPROXIMATELY AN HOUR AND A HALF.

25               Q       DETECTIVE ZOELLER WAS THERE THE WHOLE TIME?

26               A       NO, HE WAS NOT.

27               Q       HOW LONG DID HE STAY THERE?

28               A       I DON'T KNOW.

1 Q WELL, HOW DO YOU KNOW THAT THEY WERE IN THAT  
2 ROOM AN HOUR AND A HALF?

3 A BECAUSE I LOOKED AT THE CLOCK AND IT WAS A QUARTER  
4 TO 12:00.

5 Q WHEN THEY LEFT YOUR ROOM?

6 A THERE WERE A COUPLE OF POLICE OFFICERS IN MY  
7 ROOM. ZOELLER WAS NOT IN MY ROOM ANYMORE.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Q WHEN THEY FIRST CAME IN, DETECTIVE ZOELLER WAS  
2 THERE DOING THE SEARCH, CORRECT?

3 A PARDON ME?

4 Q WHEN THEY FIRST CAME IN YOUR ROOM, DETECTIVE  
5 ZOELLER WAS THERE DOING THE SEARCH, WASN'T HE?

6 A YES.

7 Q WHERE WERE YOU?

8 A I WAS ON MY BED.

9 Q AND DID YOU STAY ON THE BED THE WHOLE TIME?

10 A YES.

11 Q AND HOW MUCH OF THAT TIME DID YOU SEE DETECTIVE  
12 ZOELLER THERE?

13 A AN HOUR.

14 Q HE WAS IN YOUR ROOM FOR, UNINTERRUPTED FOR AN  
15 HOUR?

16 A NO, HE -- DETECTIVE BREILING CAME IN AND WANTED  
17 TO TALK TO HIM A COUPLE OF TIMES AND WANTED HIM TO GO OUTSIDE  
18 WITH HIM.

19 Q DID HE LEAVE FOR A SHORT PERIOD OF TIME?

20 A YES.

21 Q A FEW MINUTES?

22 A FIVE, TEN MINUTES.

23 Q TALKING TO OFFICER BREILING?

24 A UH-HUH.

25 Q WAS HE STANDING OUTSIDE TALKING TO OSCAR BREILING?

26 A I DON'T KNOW.

27 Q AND BUT FOR THE BETTER PART OF AN HOUR, HE WAS  
28 IN YOUR ROOM?

1 A YES.

2 Q AND AFTER -- HOW LONG WERE YOU IN THAT ROOM BEFORE  
3 YOU LEFT TO GO SOMEWHERE ELSE?

4 A APPROXIMATELY AN HOUR.

5 Q AND AFTER THAT HOUR, WHERE DID YOU GO?

6 A I WENT UPSTAIRS.

7 Q NOW, HOW DO YOU KNOW IT WAS AN HOUR AND A HALF  
8 THAT THEY WERE IN YOUR ROOM IF YOU LEFT AFTER AN HOUR?

9 A I DON'T KNOW SPECIFICALLY HOW LONG I WAS IN THAT  
10 ROOM BUT IT WAS APPROXIMATELY AN HOUR.

11 Q DID ALL OF THE POLICE OFFICERS LEAVE WHEN YOU  
12 LEFT THE ROOM?

13 A NO.

14 Q SO YOU LEFT AND LEFT THE POLICE OFFICERS THERE  
15 SEARCHING?

16 A YES, THERE WAS ONE LEFT WHEN I LEFT.

17 Q DO YOU KNOW WHO THAT WAS?

18 A NO, I DON'T KNOW.

19 Q WHERE IN THE MAIN HOUSE DID YOU GO?

20 A I WENT UP TO JOE'S OFFICE AND I WENT INTO HIS  
21 BEDROOM.

22 Q HOW LONG WERE YOU IN THE OFFICE?

23 A FIFTEEN OR TWENTY MINUTES.

24 Q WHAT WERE YOU DOING WHILE YOU WERE THERE?

25 A I WAS WATCHING.

26 Q WHAT DID YOU SEE?

27 A I FOLLOWED DETECTIVE ZOELLER UPSTAIRS.

28 THE COURT: YOU SAW DETECTIVE ZOELLER WHAT?

1 THE WITNESS: I FOLLOWED DETECTIVE ZOELLER UPSTAIRS.

2 Q BY MR. WAPNER: WAS MR. CHIER THERE AT THAT POINT?

3 A YES, HE WAS.

4 Q SO WHEN YOU WENT UPSTAIRS WITH MR. ZOELLER,  
5 MR. CHIER WAS ALREADY THERE?

6 A HE WAS IN THE HALLWAY.

7 Q AND DID YOU FOLLOW MR. ZOELLER FROM YOUR ROOM  
8 TO THE MAIN HOUSE?

9 A YES.

10 Q AND SO WHEN MR. ZOELLER GOT THERE, MR. CHIER WAS  
11 ALREADY THERE?

12 A YES.

13 Q AND WHEN YOU WENT INTO JOE'S, MR. HUNT'S OFFICE,  
14 DID DETECTIVE ZOELLER GO IN THERE ALSO?

15 A YES, HE DID.

16 Q WHAT DID YOU SEE HIM DO?

17 A I SAW HIM GET DOWN ON HIS KNEES, AND BREILING  
18 WAS RIGHT ACROSS FROM HIM ON HIS KNEES ALSO, AND THEY STARTED  
19 GOING THROUGH FILES AND PAPER.

20 Q WHERE IN THE ROOM?

21 A RIGHT IN FRONT OF ME.

22 Q I KNOW BUT THAT DOESN'T HELP THE JUDGE, BECAUSE  
23 HE DOESN'T KNOW WHERE YOU WERE.

24 A IN THE CENTER OF THE ROOM. THERE IS BOXES AND  
25 THEN THERE IS JOE'S DESK AND THEN THERE IS A BED RIGHT NEXT  
26 TO THAT.

27 Q AND IT WOULD BE NEAR THE BED AND THE DESK?

28 A YES.

4  
1 Q WERE THE ITEMS IN THAT BOX CONTAINED IN MANILA  
2 FOLDERS?

3 A YES, THEY WERE.

4 Q WAS DETECTIVE ZOELLER LOOKING THROUGH THEM,  
5 PULLING THEM BACK TOWARD HIM AS HE WOULD GO?

6 A HE WAS READING THEM AND THEY WERE DISCARDING  
7 THINGS AND THEN BREILING WAS ALSO READING AND GOING THROUGH  
8 THE FILES.

9 Q WOULD OSCAR BREILING READ THE THINGS THAT  
10 DETECTIVE ZOELLER HAD SET ASIDE FOR HIM?

11 A NO.

12 OSCAR BREILING HAD -- WHAT I NOTICED WAS BREILING  
13 WOULD SAY, "READ THIS" AND ZOELLER WOULD READ IT AND THEN  
14 ZOELLER -- ZOELLER STARTED GOING THROUGH THE WHOLE ENTIRE  
15 ROOM WITH OTHER POLICE OFFICERS.

16 Q WHAT ELSE DID YOU SEE HIM DO, BESIDES READING  
17 THOSE FILES?

18 A I SAW HIM LOOK ALL THROUGH JOE'S DESK. I SAW  
19 HIM GO THROUGH THE TRASH CAN. I SAW HIM GO THROUGH THE BOOK  
20 SHELVES.

21 Q THE BOOK SHELVES THAT HAD THE BLACK BINDERS ON  
22 THEM?

23 A YES.

24 Q AND WHAT DID YOU SEE HIM DO IN THOSE BOOK SHELVES?

25 A I SAW HIM GO THROUGH EVERY LEAFLET OF PAPER.

26 Q EACH BINDER?

27 A YES.

28 Q AND EACH PIECE OF PAPER IN EACH BINDER?

-5

1

A YES.

2

Q ONE BY ONE BY ONE?

3

A THAT IS WHAT THEY DO.

4

Q HOW MANY BINDERS WERE ON THAT BOOK SHELF?

5

A I DON'T KNOW.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

2F

1 Q TAKE A GUESS.

2 MR. BARENS: OBJECTION.

3 THE COURT: GIVE US YOUR BEST ESTIMATE.

4 MR. WAPNER: THANK YOU, YOUR HONOR.

5 THE WITNESS: APPROXIMATELY 15.

6 Q BY MR. WAPNER: AND DO YOU HAVE AN ESTIMATE OF  
7 APPROXIMATELY -- THE APPROXIMATE THICKNESS OF THE PAPERS IN  
8 EACH OF THOSE BINDERS?

9 A ABOUT THREE INCHES, TWO AND A HALF INCHES  
10 (INDICATING).

11 Q AND HOW LONG WERE YOU IN THAT ROOM ALTOGETHER?

12 A I WAS IN JOE'S ROOM FOR -- I WAS WALKING IN AND  
13 OUT OF JOE'S ROOM AND THE GUEST BEDROOM -- BECAUSE THEY WERE  
14 ALSO GOING THROUGH EVERYTHING IN THE BEDROOM AND TAKING  
15 PICTURES. AND I WANTED TO SEE WHAT WAS GOING ON, YOU KNOW,  
16 EXACTLY WHAT THEY WERE DOING IN BOTH ROOMS.

17 Q DID YOU CONTINUE TO WALK BACK AND FORTH?

18 A AFTER I LEFT THE OFFICE, THERE WERE A LOT OF  
19 POLICE OFFICERS IN HIS BEDROOM. AND SO I WENT AND SAT ON  
20 HIS BED AND JUST WATCHED WHAT THEY WERE DOING.

21 Q DID YOU GO BACK INTO THE COMPUTER ROOM AFTER  
22 THAT?

23 A YES, I DID. I WALKED IN. AND THEN I WALKED  
24 BACK OUT.

25 Q HOW MANY TIMES DID YOU DO THIS PROCEDURE, GOING  
26 BACK AND FORTH?

27 A APPROXIMATELY THREE TIMES.

28 Q AND THE TOTALITY OF THE TIME THAT YOU SPENT IN

1 THE COMPUTER ROOM WAS WHAT?

2 A ALTOGETHER BACK AND FORTH?

3 Q ALTOGETHER.

4 A TWENTY-FIVE OR TWENTY MINUTES.

5 Q AND IN THAT 20 MINUTES, DETECTIVE ZOELLER WAS  
6 GOING THROUGH THE FILES ON THE FLOOR, RIGHT?

7 A YES.

8 Q GOING THROUGH EVERY PAGE OF THE THREE INCHES  
9 OF THE 15 BINDERS, RIGHT?

10 A YES.

11 Q AND WHAT ELSE WAS HE DOING?

12 A HE WAS ALSO LOOKING THROUGH THE DESK, JOE'S DESK.

13 Q EVERY DRAWER?

14 A YES.

15 Q EVERY PIECE OF PAPER?

16 A YES.

17 Q EVERY PENCIL?

18 A YES.

19 Q EVERY PIECE OF COMPUTER PAPER?

20 A YES.

21 Q WHAT ELSE WAS HE LOOKING AT?

22 A UNDER THE BED.

23 Q ALL RIGHT. HOW LONG DID HE SPEND UNDER THERE?

24 A I DON'T KNOW.

25 Q WHAT ELSE DID HE LOOK AT?

26 A HE LOOKED EVERYWHERE IN THE ROOM.

27 Q WHERE ELSE?

28 A HE LOOKED IN THE TRASH CAN.

1 Q AT EVERY PIECE OF PAPER?

2 A I PRESUME SO.

3 Q WELL, WAIT A MINUTE. DID YOU SEE HIM DO IT OR  
4 NOT?

5 A YES, I DID.

6 Q SO YOU KNOW THEN THAT IT WAS EVERY PIECE OF PAPER,  
7 RIGHT?

8 A YES.

9 Q AND WHAT ELSE DID HE TOOK AT?

10 A THAT IS ALL I CAN REMEMBER.

11 Q ALL RIGHT. DID YOU SEE HIM APPARENTLY READING  
12 IT? IS THAT WHAT YOU SAW HIM DO?

13 A YES.

14 Q THIS ALL HAPPENED IN THE 15 OR 20 MINUTES THAT  
15 YOU WERE IN THERE?

16 A YES. IT WAS STILL HAPPENING WHEN I LEFT.

17 MR. BARENS: I BELIEVE THE WITNESS STATED --

18 THE COURT: TWENTY OR TWENTY-FIVE MINUTES.

19 MR. WAPNER: THANK YOU. NOTHING FURTHER.

20 MR. BARENS: I HAVE NOTHING FURTHER.

21 THE COURT: ALL RIGHT. THANK YOU. YOU MAY STEP DOWN.

22 DO YOU HAVE ANY FURTHER WITNESSES?

23 MR. BARENS: FROM THE DEFENSE, WAIT JUST A MOMENT.

24 (PAUSE.)

25 MR. BARENS: WE'LL RECALL MR. HUNT, BRIEFLY.

26

27

28

1 JOSEPH HUNT,  
2 CALLED AS A WITNESS ON HIS OWN BEHALF, HAVING BEEN PREVIOUSLY  
3 SWORN, EXAMINED FURTHER AS FOLLOWS:

4 THE CLERK: YOU HAVE BEEN SWORN AND YOU ARE STILL UNDER  
5 OATH. HAVE A SEAT THERE AND STATE YOUR NAME FOR THE RECORD.

6 THE WITNESS: JOE HUNT.  
7

8 EXAMINATION

9 BY MR. BARENS:

10 Q MR. HUNT, YOU TESTIFIED THAT SUBSEQUENT TO YOUR  
11 RETURN TO THE HOME ON JANUARY 8, 1987, THAT YOU CAUSED  
12 THE REMAINING MATERIALS IN THE OFFICE TO BE SEALED. IS THAT  
13 CORRECT?

14 A YES.

15 Q WHAT DID YOU DO WITH THE THEN SEALED MATERIALS?

16 A WELL, THEY STAYED AT MY HOUSE FOR A COUPLE OF  
17 DAYS. THEN I THOUGHT IT WOULD BE SAFER IF I TURNED THEM OVER  
18 TO YOU, MR. BARENS.

19 Q AND DID YOU IN FACT, TURN THE ENTIRE ASSEMBLAGE  
20 OF SEALED MATERIALS OVER TO ME?

21 A YES.

22 Q AND WERE THEY CONTAINED --

23 THE COURT: WERE THEY WHAT?

24 MR. BARENS: YOUR HONOR, I PREFER NOT TO HAVE THAT.

25 THE COURT: WELL, HE IS ALREADY DONE.

26 MR. BARENS: I MEAN PROSPECTIVELY, YOUR HONOR.

27 THE COURT: ALL RIGHT. GO AHEAD.

28 MR. BARENS: YOU ARE SAYING TO ME TO GO AHEAD?

1 THE COURT: YES.

2 Q BY MR. BARENS: MR. HUNT, YOU TURNED THOSE OVER  
3 TO ME IN A SINGLE BOX?

4 A YES, WITH A COVER ON IT.

5 Q ALL RIGHT. AND YOU GAVE THAT TO ME APPROXIMATELY  
6 A WEEK AGO AT MY OFFICE?

7 A APPROXIMATELY FIVE OR SEVEN DAYS, SOMETHING LIKE  
8 THAT.

9 Q LAST WEEK?

10 A YEAH.

11 Q THANK YOU, MR. HUNT.

12 MR. HUNT, DID YOU HAVE AN OPPORTUNITY TO LOOK  
13 AT THE CONTENTS OF A CERTAIN BOX THAT THE COURT PROVIDED ME  
14 WITH YESTERDAY IN THIS COURTROOM?

15 A YES.

16 Q AND OSTENSIBLY, IT WAS SUPPOSED TO BE COPIES  
17 OF THE MATERIALS THE POLICE PEOPLE TOOK FROM THE ROBERTS'  
18 RESIDENCE ON JANUARY 8, 1987?

19 A THAT IS WHAT I WAS TOLD.

20 Q DID YOU SEE ANYTHING MISSING FROM THAT, COPIES  
21 THAT YOU UNDERSTOOD THAT THEY HAD TAKEN?

22 THE COURT: WHAT DO YOU MEAN, DID HE SEE ANYTHING  
23 MISSING? MISSING FROM WHAT?

24 MR. BARENS: MATERIALS THAT WE RECEIVED SUPPOSEDLY  
25 ARE REPRESENTED BY A SUMMARY IN THE INVESTIGATION REPORT.  
26 WE HAVE HEARD TESTIMONY ABOUT WHAT WAS ALLEGEDLY TAKEN.

27 THE COURT: YES.

28 MR. BARENS: AND THERE WAS SOME IDENTIFICATION --

1 THE COURT: WELL, DOES HE KNOW FIRST WHAT WAS TAKEN?  
2 HOW DOES HE KNOW WHAT WAS MISSING FROM THE BOX?

3 MR. BARENS: LET ME BE MORE SPECIFIC WITH HIM, YOUR  
4 HONOR.

5 THE COURT: ALL RIGHT. GO AHEAD.

6 Q BY MR. BARENS: MR. HUNT, AMONG THE MATERIAL  
7 THAT YOU SAW YESTERDAY, WAS THERE AN EXHIBIT NUMBER XEROXED  
8 THAT YOU SAW?

9 A COULD YOU ASK THAT QUESTION AGAIN? I DIDN'T  
10 UNDERSTAND IT.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

3A-1

1 Q YES, AMONG THE MATERIALS THAT YOU LOOKED AT IN  
2 THE BOX YESTERDAY, WAS THERE AN EXHIBIT NO. 37?

3 A WELL, THERE WAS WHAT APPEARED TO ME TO BE A  
4 XEROX OF THE POST-IT STICKER WHICH HAD MY WRITING ON IT,  
5 37, AND IT WAS NEXT TO A PIECE OF PAPER.

6 Q ALL RIGHT. DID YOU IN FACT -- ARE YOU FAMILIAR  
7 WITH WHAT WAS THE CONTENTS OF THE EXHIBIT YOU HAD NUMBERED  
8 37?

9 A YES, I AM.

10 Q ALL RIGHT. IS EXHIBIT NO. 37 SOMETHING YOU HAD  
11 DISCUSSED WITH ME?

12 A YES, I HAD DISCUSSED IT WITH YOU.

13 Q AND YOU HAD DISCUSSED IT WITH MR. CHIER?

14 A YES.

15 Q DID YOU SEE EXHIBIT NO. 37, THE SUBSTANCE OF  
16 EXHIBIT NO. 37 AMONGST THE MATERIALS THAT WERE IN THE BOX?

17 A NO, I DIDN'T.

18 THE POST-IT STICKER WAS NEXT TO SOMETHING ENTIRELY  
19 DIFFERENT.

20 Q NEXT TO ANOTHER MATERIAL?

21 A YES.

22 MR. BARENS: NOTHING FURTHER.

23 THE COURT: WAIT A MINUTE.

24  
25 EXAMINATION

26 BY MR. WAPNER:

27 Q DID YOU SEE THIS POTENTIAL EXHIBIT NO. 37 IN ANY  
28 OF THE MATERIALS THAT YOU SEALED UP AND GAVE TO MR. BARENS?

1 A NO.

2 AT THAT POINT, MR. WAPNER, I LOOKED VERY CAREFULLY  
3 AND VERY THOROUGHLY THROUGH ALL OF THE XEROX MATERIALS IN  
4 AN EFFORT TO TRY AND FIND WHAT I RECOLLECT, RECALL TO BE  
5 NO. 37 AND THEN I LOOKED AT MY COMPUTER TO VERIFY WHAT ITS  
6 RECORD OF NO. 37 WAS.

7 Q AND DID YOU LOOK IN THE HOUSE, IN THE ROOMS TO  
8 FIND OUT IF YOU HAD THAT PIECE OF PAPER?

9 A YEAH. I LITERALLY TORE THE PLACE APART LOOKING  
10 FOR IT.

11 Q AND WHAT ABOUT IN THE REST OF THE BOX?

12 A THE REST?

13 Q OF THE BOX THAT YOU WERE PROVIDED.

14 A I LOOKED VERY CAREFULLY THROUGH THE BOX THAT I  
15 WAS PROVIDED, THREE OR FOUR TIMES.

16 Q AND YOU DIDN'T FIND WHAT YOU BELIEVED TO BE THE  
17 SUBSTANCE OF THAT DOCUMENT?

18 A NO, I COULDN'T FIND IT ANYWHERE, MR. WAPNER.

19 MR. WAPNER: I HAVE NOTHING FURTHER.

20 THE COURT: WHAT WAS 37?

21 MR. BARENS: I WOULD OBJECT AND INSTRUCT HIM NOT TO  
22 ANSWER.

23 THE COURT: OVERRULED. I WANT TO KNOW WHAT IT SUPPOSEDLY  
24 REPRESENTS. I DON'T WANT TO HAVE THE EXACT CONTENTS.

25 MR. BARENS: DID YOU UNDERSTAND, MR. HUNT?

26 IF I MIGHT CAUTION MR. HUNT, PLEASE DO COOPERATE  
27 WITH THE JUDGE AND TELL HIM WHAT 37 CONSISTED OF.

28 THE WITNESS: YES.

A-3

1 MR. BARENS: HOWEVER, I AM ASKING YOU NOT TO IDENTIFY  
2 THE PERSONS WHO ARE INVOLVED IN NO. 37.

3 THE WITNESS: YOU WANT -- CAN I ASK HIM A QUESTION?

4 THE COURT: WHAT IS 37?

5 THE WITNESS: COULD I ASK HIM TO CLARIFY?

6 THE COURT: YES.

7 THE WITNESS: YOU WANT ME TO TELL HIS HONOR WHAT 37  
8 WAS, WITHOUT SAYING WHO IT REFERRED TO, IS THAT CORRECT?

9 LET ME GIVE HIS HONOR AN ANSWER AND SEE IF IT  
10 SATISFIES HIM.

11 MR. BARENS: GO AHEAD AND SEE IF HE IS SATISFIED WITH  
12 THE ANSWER.

13 THE WITNESS: NO. 37 WAS AN EXTREMELY IMPORTANT PIECE  
14 OF INFORMATION THAT WAS MEANT FOR THE IMPEACHMENT OF A WITNESS  
15 IN BOTH THIS CASE AND IN MY SAN FRANCISCO CASE.

16 THE COURT: IS THAT A COMMUNICATION YOU RECEIVED FROM  
17 YOUR LAWYER?

18 THE WITNESS: NO.

19 IT WAS IN HIS OWN HANDWRITING.

20 THE COURT: WHOSE HANDWRITING?

21 THE WITNESS: THE WITNESS IN QUESTION.

22 THE COURT: IT WAS A DOCUMENT OR AN EXHIBIT THAT IS  
23 GOING TO BE USED FOR THE PURPOSE OF CROSS-EXAMINING A WITNESS  
24 IN THIS CASE AND THE CASE IN SAN MATEO COUNTY, IS THAT IT?

25 THE WITNESS: YES.

26 IT WAS ONE OF THE MOST IMPORTANT ONES I HAVE,  
27 IF NOT THE MOST IMPORTANT.

28 THE COURT: YOU MEAN, WAS IT IN THE FORM OF A LETTER

A04

1 OR MEMORANDA, WAS IT?

2 THE WITNESS: IT WAS FOLIOGRAPHIC, IT WAS A NOTE, AND  
3 IT WAS A DATED NOTE AND BOTH THE DATE AND THE CONTENTS OF  
4 THE NOTE WERE OF PARAMOUNT IMPORTANCE TO THE DEFENSE.

5 THE COURT: ALL RIGHT. YOU HAVEN'T GOT A COPY OF IT,  
6 HAVE YOU?

7 THE WITNESS: NO.

8 ALL OF THE EXHIBITS, WITH A FEW EXCEPTIONS, WERE  
9 THE SOLE COPIES OF THE MATERIALS.

10 THE COURT: ALL RIGHT.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

A-1  
1 THE WITNESS: IF I MIGHT ADD --

2 THE COURT: DID YOU FIND ANY COMPUTER PAPERS LIKE THAT  
3 IN THE BOX THAT YOU GOT?

4 THE WITNESS: NO, I DIDN'T, YOUR HONOR.

5 YOUR HONOR, I DIDN'T FIND ANY OF THE RECENTLY  
6 GENERATED COMPUTER PAPER FROM MY APPLE COMPUTER, WHICH I GOT  
7 IN 1986.

8 THE COURT: THERE WERE NO COMPUTER PAPERS IN THERE AT  
9 ALL, WERE THERE?

10 THE WITNESS: I THINK THERE WERE SOME THINGS THAT WERE  
11 GENERATED BY COMPUTERS BUT CERTAINLY NOT BY MY COMPUTER AND  
12 WHAT WE HAVE BEEN TALKING ABOUT.

13 THE COURT: THEY DIDN'T LOOK LIKE COMPUTER PAPERS, DID  
14 THEY?

15 THE WITNESS: NOT FROM THAT COMPUTER, NO, SIR.

16 THE COURT: BECAUSE I LOOKED INTO IT, TOO, AND I DIDN'T  
17 FIND ANY COMPUTER PAPERS IN THERE AT ALL.

18 ALL RIGHT, THANK YOU.

19 ANYTHING FURTHER?

20 MR. WAPNER: JUST BRIEFLY, YOUR HONOR.

21

22

EXAMINATION

23 BY MR. WAPNER:

24 Q WAS THAT DOCUMENT THAT WAS ANTICIPATED TO BE  
25 DEFENSE EXHIBIT 37 WRITTEN IN THE PERIOD OF 1983-1984?

26 A YES, IT WAS, MR. WAPNER.

27 Q WAS IT WRITTEN PURPORTEDLY BY SOMEBODY WHO WAS  
28 A MEMBER OF THE BBC OR SOMEONE RELATED TO THE BBC?

1 A SOMEONE RELATED TO THE BBC.

2 Q THANK YOU.

3 LET ME ASK YOU, THESE EXHIBIT STICKERS, THEY WERE  
4 AFFIXED TO THE PIECES OF PAPER WITH LITTLE PIECES OF ADHESIVE  
5 THAT COME ON THE PAPER, RIGHT?

6 A YES.

7 Q AND THIS STICKER IN THE XEROX OR ON THE XEROX  
8 OF THE STICKER THAT HAD THE WRITING "37" ON IT, WAS THAT  
9 ATTACHED TO AN EXHIBIT THAT WAS ASSIGNED AN ENTIRELY DIFFERENT  
10 NUMBER BY YOU, OR WAS IT ATTACHED TO SOMETHING THAT WASN'T  
11 SUPPOSED TO BE AN EXHIBIT?

12 A IT WAS ATTACHED TO SOMETHING WHICH WAS NOT AN  
13 EXHIBIT.

14 WHAT IT WAS ATTACHED TO WAS SOMETHING THAT I  
15 RECOLLECT BEING IN MY BEDROOM AND IT WAS ALSO SOMETHING THAT  
16 BROOKE ROBERTS HAD WRITTEN DOWN ON THE LIST WHICH, YOU KNOW,  
17 I HAVE HEARD TESTIMONY TO THE EFFECT SHE MADE WITH RICHARD  
18 CHIER, YOU KNOW, IN RICHARD CHIER'S PRESENCE.

19 Q SO YOU DON'T KNOW HOW THAT 37 POST-IT STICKER  
20 CAME TO BE IN THE BOX OR WHETHER IN FACT THAT DOCUMENT WAS  
21 IN FACT TAKEN?

22 A I KNOW HOW THE POST-IT STICKER CAME TO BE IN THE  
23 BOX.

24 Q HOW DO YOU KNOW THAT?

25 A REFERRING TO THE CARDBOARD BOX THAT WAS ON THE  
26 BED, BECAUSE I PLACED ALL OF THE EXHIBITS WITH THE POST-IT  
27 STICKERS IN THE BOX THAT WAS ON THE BED THE NIGHT BEFORE OR  
28 THE MORNING OF JANUARY 8 WHEN I LEFT FOR COURT.

1 Q RIGHT, BUT YOU DON'T KNOW HOW IT CAME TO BE IN  
2 THE BOX THAT THE DETECTIVES TOOK, DO YOU?

3 A I DON'T KNOW HOW -- WHAT THE CHAIN OF CUSTODY  
4 WAS FROM THE TIME THAT THE DETECTIVES TOOK THOSE THINGS OR  
5 TOOK THAT STICKER NO. 37 AND THE TIME THAT I RECEIVED IT IN  
6 COURT, NO, I DON'T.

7 Q AND YOU DON'T EVEN KNOW IF THE DETECTIVES EVEN  
8 TOOK THAT ITEM THAT IS 37, DO YOU?

9 A NO. I DON'T.

10 ALL I KNOW IS THEY TOOK NUMBER 37 LABEL.

11 Q IF SOMEHOW THAT FELL OFF OF SOMETHING WHILE THEY  
12 WERE SEARCHING AND GOT INCLUDED IN THE BOX, YOU WOULDN'T KNOW  
13 THAT.

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

-1

1 MR. BARENS: OBJECTION, CALLS FOR SPECULATION ON THE  
2 WITNESS' PART.

3 THE COURT: OVERRULED.

4 THE WITNESS: ALL OF THE EXHIBITS 1 THROUGH SIXTY-SOME  
5 ODD WERE IN A CARDBOARD TRAY. NUMBER 37 -- AND THEY WERE  
6 IN SEQUENTIAL ORDER.

7 NUMBER 37 WOULD HAVE BEEN IN THE MIDDLE OF THOSE  
8 EXHIBITS. I HAD GONE THROUGH THE EXHIBITS A FEW DAYS EARLIER  
9 BECAUSE I WAS COMPARING THEM AGAINST THE -- A FEW DAYS EARLIER  
10 BEFORE JANUARY 8, BECAUSE I WAS COMPARING THEM AGAINST THE  
11 COMPUTER LIST. AND ALL OF THEM -- YOU KNOW, IT WAS A  
12 SEQUENTIAL PROGRESSION FROM 1 THROUGH 66.

13 Q BY MR. WAPNER: I DON'T THINK THAT ANSWERED THE  
14 QUESTION. BUT IT IS ALL RIGHT. THANK YOU. NOTHING FURTHER.

15 THE COURT: WELL, IF THEY WERE WANTING TO TAKE YOUR  
16 EXHIBIT, YOU MEAN THEY JUST TORE OFF THAT IDENTIFICATION NUMBER  
17 37 AND THEY KEPT THE OTHER EXHIBIT? IS THAT WHAT YOU ARE  
18 TELLING US?

19 THE WITNESS: I DON'T KNOW. BUT THESE POST-IT  
20 STICKERS, YOU CAN TAKE THEM OFF. IT IS NOT LIKE SCOTCH TAPE.  
21 YOU CAN TAKE THEM OFF WITHOUT RIPPING. THE MUCILAGE OR  
22 WHATEVER, DOESN'T ADHERE THAT STRONGLY.

23 THE COURT: WELL, SINCE THIS WAS THE ONLY THING THAT  
24 WAS FOUND OF EXHIBIT 37 --

25 MR. BARENS: I DIDN'T UNDERSTAND THAT.

26 THE COURT: THE STICKER 37 WAS THE ONLY ONE OF THE 60  
27 EXHIBITS THAT YOU HAD MARKED WITH NUMBERS, IS THAT RIGHT?

28 THE WITNESS: ALL OF THE 60 EXHIBITS, IF I UNDERSTAND

1 YOUR HONOR'S QUESTION PROPERLY, WERE NUMBERED AND HAD POST-IT  
2 STICKERS ON THEM, 1 THROUGH SIXTY-SOME ODD.

3 THE COURT: THEN YOU CLAIM THAT WHEN YOU GOT BACK ALL  
4 60 EXHIBITS WERE MISSING. IS THAT IT?

5 THE WITNESS: WHEN I GOT BACK HOME JANUARY THE 8TH,  
6 I WENT UPSTAIRS. ALL EXCEPT TWO -- AND I PREVIOUSLY TESTIFIED  
7 ABOUT THOSE TWO WITH THE POST-IT STICKERS AFFIXED ARE IN THE  
8 BOX WHICH IS IN MR. BARENS' POSSESSION.

9 THE COURT: ALL RIGHT. ALL OF THE 58 HAVE BEEN TAKEN,  
10 AT LEAST THEY WERE MISSING, IS THAT CORRECT?

11 THE WITNESS: YEAH, SIXTY-SOME ODD.

12 THE COURT: YOU DIDN'T FIND THEM IN THE BOX, DID YOU?

13 THE WITNESS: NOT THE BOX MR. WAPNER TURNED OVER TO  
14 US YESTERDAY. I FOUND ALL OF THEM TO BE IN GOOD ORDER,  
15 SAVE FOR THIS NUMBER 37, THE POST-IT STICKER OF WHICH WAS  
16 XEROXED ON A LEGAL SIZED -- XEROXED ON A LETTER SIZED PIECE  
17 OF PAPER.

18 THAT PIECE OF PAPER DID NOT RELATE TO THAT  
19 EXHIBIT NUMBER.

20 THE COURT: MY QUESTION IS, THE 60 THINGS THAT YOU  
21 HAD MARKED WHEN YOU DESIGNATED THEM EXHIBITS, WERE THEY FOUND  
22 IN THE BOX, ALL EXCEPT 37?

23 THE WITNESS: YES, YOUR HONOR. IN THE BOX THAT THE DISTRICT  
24 ATTORNEY TURNED OVER TO US, I FOUND ALL OF THE OTHER EXHIBITS  
25 IN ORDER.

26 THE COURT: ALL OF THE EXHIBITS, CORRECT?

27 THE WITNESS: YES.

28 THE COURT: AND WHICH OF THOSE 60 DO YOU CLAIM ARE

1 COMMUNICATIONS RECEIVED FROM THE LAWYER, CONFIDENTIAL  
2 COMMUNICATIONS?

3 THE WITNESS: IF MY MEMORY SERVES ME CORRECTLY --

4 THE COURT: YES?

5 THE WITNESS: NONE OF THOSE EXHIBITS ARE CONFIDENTIAL  
6 COMMUNICATIONS BETWEEN MY LAWYER, EXCEPT SINCE I HAVE SHOWN  
7 HIM THOSE DOCUMENTS, THEY WERE DOCUMENTS THAT HE UNDERSTOOD  
8 TO BE A PART OF --

9 THE COURT: NO COMMUNICATIONS BETWEEN YOU AND YOUR  
10 LAWYER? IS THAT RIGHT?

11 THE WITNESS: NO. THE EXHIBITS WERE FOR SUBMISSION  
12 TO THE COURT.

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

B-1

1 THE COURT: ALL RIGHT. BUT THEY WEREN'T CONFIDENTIAL,  
2 WERE THEY?

3 MR. BARENS: OBJECTION, WORK PRODUCT.

4 THE COURT: OVERRULED. WERE THEY CONFIDENTIAL  
5 COMMUNICATIONS BETWEEN YOU AND YOUR LAWYER?

6 THE WITNESS: I FELT THAT THE EXHIBITS WE WERE GOING  
7 TO USE IN THE TRIAL, THAT WE AGREED UPON BE SUBMITTED AS  
8 EVIDENCE, WERE CONFIDENTIAL. THAT IS MY OWN STATE OF MIND.  
9 IT IS NOT REALLY --

10 THE COURT: ALL RIGHT. THANK YOU. ANYTHING FURTHER?

11 MR. BARENS: NOTHING FURTHER.

12 MR. WAPNER: YES, JUST BRIEFLY.

13

14

EXAMINATION

15 BY MR. WAPNER:

16 Q OTHER THAN THOSE 60 OR SO EXHIBITS OR WHAT YOU  
17 HAVE LABELED AS EXHIBITS, WERE THERE OTHER THINGS IN THE BOX  
18 THAT THE DETECTIVES TOOK?

19 A THERE WERE SOME OTHER THINGS MISSING WHEN I CAME  
20 HOME. AS TO WHAT WAS IN THE BOX THAT THE DETECTIVES TOOK,  
21 I WAS IN COURT AT THE TIME THEY TOOK THE BOX.

22 Q WELL, YOU REVIEWED THE BOX, YESTERDAY, DIDN'T  
23 YOU?

24 A YES.

25 Q ALL RIGHT.

26 A THAT BOX --

27 Q AND THAT PURPORTED TO CONTAIN A COPY OF EVERYTHING  
28 THAT WAS TAKEN, RIGHT?

1           A       WELL, I AM NOT TRYING TO BE TECHNICAL WITH YOU,  
2 MR. WAPNER. BUT I DIDN'T SEE A PIECE OF PAPER IN THERE THAT  
3 SAID THAT I PURPORTED THIS TO BE EVERYTHING THAT WAS TAKEN.  
4 SO I DON'T KNOW. PERHAPS MR. BREILING HAS EXHIBITS, YOU KNOW.

5           Q       OKAY. I WON'T ARGUE WITH YOU ON THAT POINT.

6                    OF THE THINGS THAT YOU SAW IN THE BOX, WERE THEY  
7 ALL MATERIALS THAT WERE GENERATED DURING THE PERIOD OF 1983  
8 AND '84?

9           A       NO. I DON'T BELIEVE THAT TO BE TRUE.

10          Q       OKAY.

11          A       NO. I AM NOT RECOLLECTING ANYTHING OTHER THAN  
12 SOME LETTERS FROM JEFFREY MELCZER, WHICH MAY HAVE BEEN 1985  
13 OR '86.

14                   THE COURT: FROM WHOM?

15                   THE WITNESS: JEFFREY MELCZER. HE IS MY ATTORNEY IN  
16 THE CIVIL MATTER.

17          Q       BY MR. WAPNER: I WON'T GET INTO WHETHER ANYBODY  
18 ELSE VIOLATED YOUR PRIVILEGES IN ANY OTHER CASE.

19                   BUT, THE LETTERS BETWEEN YOU AND MR. MELCZER,  
20 WERE NOT -- ARE YOU CLAIMING THAT THOSE WERE SOMEHOW  
21 PRIVILEGED COMMUNICATIONS BETWEEN YOU AND MR. BARENS AND MR.  
22 CHIER?

23          A       NO, I AM NOT, MR. WAPNER.

24          Q       OTHER THAN THE LETTERS FROM MR. MELCZER, CAN  
25 YOU RECALL ANYTHING ELSE THAT WAS TAKEN, THAT WAS NOT GENERATED  
26 DURING THE PERIOD OF 1983 AND '84?

27          A       WELL, THE LABELS THEMSELVES. ONCE AGAIN, I AM  
28 NOT TRYING TO BE TECHNICAL.

1 Q THAT'S ALL RIGHT. I AM LISTENING.

2 A I WANT TO GIVE YOU A PRECISE ANSWER. I DIDN'T  
3 STUDY THE DOCUMENTS. A LOT OF THE DOCUMENTS, I DIDN'T STUDY  
4 REALLY CAREFULLY.

5 I WENT THROUGH THE EXHIBITS LAST NIGHT, SO I  
6 AM NOT PREPARED TO GIVE YOU A FULL ANSWER ON THAT AT THIS  
7 TIME, MR. WAPNER.

8 Q WAIT A SECOND. YOU DIDN'T GO THROUGH THOSE  
9 CAREFULLY, BUT YOU WENT THROUGH THEM CAREFULLY ENOUGH TO KNOW  
10 THAT THIS ONE THING THAT YOU ARE CLAIMING IS THE MOST IMPORTANT  
11 THING, WAS MISSING?

12 A IT WAS HIGHLY DISTINCTIVE. I COULD TELL YOU  
13 THAT IT WAS NOT FOR INSTANCE, A CHECK. I DON'T HAVE TO LOOK  
14 AT THE CHECKS AND THERE IS QUITE A LARGE QUANTITY OF THAT  
15 MATERIAL, THAT WAS XEROXED CHECKS. I DON'T HAVE TO LOOK AT  
16 THOSE VERY CAREFULLY TO KNOW THAT THEY WEREN'T AN EIGHT AND  
17 A HALF BY ELEVEN PIECE OF PAPER, MR. WAPNER.

18 Q ALL RIGHT. AND THAT IS THE ONLY -- THAT ONE  
19 PIECE OF PAPER IS THE ONLY THING THAT WAS MISSING, THAT YOU  
20 THINK WAS MISSING?

21 A WELL, FROM THE EXHIBITS, YES. THERE WAS IN MY  
22 BEDROOM I RECOLLECT, A QUANTITY OF STATIONERY THAT RELATES  
23 TO A PARTICULAR INDIVIDUAL IN THIS CASE. I DIDN'T SEE COPIES  
24 OF EACH SHEET OF THAT.

25 AND IT SEEMS LIKE THEY WERE COPYING EVERY SHEET  
26 OF EVERYTHING ELSE. I DON'T KNOW WHETHER THEY JUST COPIED  
27 ONE SHEET OF THAT AND SAID IT WAS ENOUGH.

28 Q OKAY. OTHER THAN THE LETTER FROM MR. MELCZER,

1 THE POST-IT STICKERS, WAS THERE ANYTHING ELSE THAT WAS  
2 GENERATED IN A PERIOD OTHER THAN 1983 OR '84?

3 A THERE WAS A PLEADING PAPER BY PARKER KELLY AND  
4 JOHN COST, WHO ARE MY LAWYERS IN SAN FRANCISCO REPRESENTING  
5 ME IN THAT CRIMINAL CASE.

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

-1  
1 Q WHAT ELSE?

2 A THERE WERE QUITE A FEW OTHER THINGS, I BELIEVE,  
3 THAT RELATED TO 1985-'86 THAT I CAN'T RECOLLECT THEM IN  
4 DETAIL.

5 Q WERE THEY COMMUNICATIONS BETWEEN YOU AND YOUR  
6 LAWYER?

7 A I CAN'T -- I CANNOT RECOLLECT AT THIS TIME WHAT  
8 EXACTLY SOME OF THOSE OTHER THINGS WERE THAT WERE IN THE BOX.

9 THE COURT: YOU SAY THERE MIGHT HAVE BEEN LETTERS,  
10 COMMUNICATIONS IN THAT BOX THAT YOU SAW, BETWEEN YOUR LAWYER  
11 AND YOU?

12 BECAUSE I DIDN'T SEE ANY OF THOSE THINGS IN THERE,  
13 MAYBE THEY WERE HIDDEN SOMEWHERE.

14 THE WITNESS: NO, YOUR HONOR, I DON'T RECOLLECT AT THIS  
15 TIME BUT, AS I SAID LAST NIGHT, I WASN'T -- I WAS LOOKING  
16 AT THE EXHIBITS AND THEN I STARTED --

17 AFTER I SAW THIS THING WITH NUMBER 37, I BECAME  
18 INVOLVED WITH THIS WHOLE ISSUE OF 37.

19 THE COURT: ALL RIGHT. AT ANY RATE, YOUR BEST  
20 RECOLLECTION IS YOU DIDN'T SEE ANY COMMUNICATION BETWEEN YOU  
21 AND YOUR LAWYER, IS THAT RIGHT, BY THAT, I MEAN THE LAWYERS  
22 THAT REPRESENT YOU HERE?

23 THE WITNESS: NO, NOTHING ADDRESSED TO ARTHUR.

24 THE COURT: PARDON ME?

25 THE WITNESS: NO, NOTHING ADDRESSED TO ARTHUR OR ON  
26 HIS STATIONERY.

27 THE COURT: WELL, FROM YOU TO HIM OR FROM HIM TO YOU.

28 THE WITNESS: NO, MY BEST RECOLLECTION IS THERE WAS

5-2  
1 NOTHING THERE TO THAT EFFECT.

2 THE COURT: MR. WAPNER.

3 MR. WAPNER: I HAVE NOTHING FURTHER.

4 THE COURT: ALL RIGHT. THANK YOU. YOU MAY STEP DOWN.

5 THE WITNESS: THANK YOU, YOUR HONOR.

6 MR. BARENS: WE REST, IF THAT IS APPROPRIATE, YOUR HONOR.

7 THE COURT: WELL, YOU MEAN ON THE MOTION?

8 MR. BARENS: WELL, WE WILL ARGUE.

9 THE COURT: OF COURSE. I MEAN YOU REST ON THE MOTION.

10 HOW ABOUT YOU?

11 MR. WAPNER: I HAVE NO FURTHER WITNESSES, YOUR HONOR.

12 THE COURT: AND NO REBUTTAL?

13 MR. WAPNER: I HAVE NO REBUTTAL.

14 IT OCCURS TO ME, NOT THAT I IN ANY SENSE AM TAKING  
15 WHAT MR. HUNT SAID TO BE THE GOSPEL, BUT I --

16 MR. BARENS: WHY NOT?

17 MR. WAPNER: I JUST WONDER IF A PHONE CALL TO  
18 MR. BREILING, IN THE EVENT -- I DON'T KNOW WHETHER WHAT HE  
19 SAYS IS TRUE OR NOT.

20 THE COURT: WHY DON'T YOU GIVE HIM A PHONE CALL AND  
21 SEE WHETHER OR NOT --

22 DO YOU WANT TO RESERVE YOUR RIGHT TO CALL  
23 MR. BREILING?

24 MR. WAPNER: THANK YOU.

25 THE COURT: YOU CALL HIM NOW AND WE WILL ADJOURN UNTIL  
26 1:30.

27 MR. BARENS: YOU WOULDN'T LIKE TO ARGUE NOW AND BE DONE  
28 WITH IT?

1 THE COURT: NOW, IN 12 MINUTES OR 15 MINUTES?

2 MR. CHIER: FIVE MINUTES.

3 MR. BARENS: HOW LONG DO YOU WANT TO TAKE?

4 MR. CHIER: FIVE, SIX MINUTES.

5 MR. BARENS: LET ME CONFER WITH THE PEOPLE, BECAUSE  
6 IF WE CAN FINISH THIS THIS MORNING WE WON'T HAVE TO COME BACK.

7 THE COURT: IF THE MOTION IS DENIED, WE HAVE SOME OTHER  
8 UNFINISHED BUSINESS WE CAN FINISH THIS AFTERNOON AND WE WILL  
9 BE READY FOR THE JURY TRIAL ON MONDAY IF IT IS DENIED.

10 MR. BARENS: YES, INDEED. WHY DON'T WE DO IT AT 1:30,  
11 SINCE WE HAVE TO COME BACK AT 1:30 ANYHOW?

12 THE COURT: YOU DO THAT.

13 WHY DON'T YOU FIND OUT FROM BREILING, SINCE THERE  
14 HAS BEEN SOME TESTIMONY ABOUT THE MISSING PAPERS, YOU HAD  
15 BETTER ASK HIM ABOUT THAT.

16 (AT 11:45 A.M. A RECESS WAS TAKEN UNTIL  
17 1:30 P.M. OF THE SAME DAY.)

18

19

20

21

22

23

24

25

26

27

28

1 SANTA MONICA, CALIFORNIA; FRIDAY, JANUARY 30, 1987; 1:35 P.M.  
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE  
3 (APPEARANCES AS NOTED ON TITLE PAGE.)  
4

5 THE COURT: ALL RIGHT. I WILL HEAR ARGUMENTS, NOW.

6 MR. BARENS: WELL, AS I ADVISED THE COURT, I WAS GOING  
7 TO HAVE MR. CHIER ARGUE THIS MOTION.

8 MR. CHIER: THANK YOU, YOUR HONOR. IF IT PLEASE THE  
9 COURT, COUNSEL, I ASSUME YOUR HONOR, THAT FROM THE PROGRESS  
10 OF THINGS IN THIS COURT, THAT YOUR HONOR IS DENYING THE  
11 DEFENSE LEAVE TO LITIGATE THE BONA FIDES OF THE SEARCH WARRANT  
12 IN SAN MATEO COUNTY?

13 THE COURT: I AM NOT DOING ANYTHING. YOU CAN DO WHAT-  
14 EVER YOU WANT IN SAN MATEO COUNTY.

15 MR. CHIER: I AM ASSUMING THAT THERE IS NO CONTINUANCE  
16 BEING GRANTED HERE?

17 THE COURT: THERE WON'T BE ANY CONTINUANCE GRANTED  
18 FOR THAT PURPOSE HERE.

19 MR. CHIER: SO IT IS SOMEWHAT AWKWARD AT THIS MOMENT  
20 IN TIME, TO BE ARGUING IN THIS CASE, THAT A DISMISSAL SHOULD  
21 BE GRANTED BY REASON OF THE DELIBERATE AND CALCULATED  
22 ENCROACHMENT BY THE PROSECUTION IN THE PRIVILEGED MATTERS  
23 BECAUSE --

24 THE COURT: WHICH PRIVILEGED MATTERS ARE YOU TALKING  
25 ABOUT?

26 MR. CHIER: I AM TALKING ABOUT WORK PRODUCT AND --

27 THE COURT: WHOSE WORK PRODUCT ARE YOU TALKING ABOUT?

28 MR. CHIER: I AM TALKING ABOUT THE COMPUTER PRINTOUT

1 THAT --

2 THE COURT: THERE WAS NOT ANYTHING AMONG THE PAPERS  
3 THAT I SAW WHICH SHOWED ME A COMPUTER PRINTOUT.

4 MR. CHIER: WELL, I AM DISTINGUISHING -- COULD I JUST  
5 ARGUE?

6 THE COURT: JUST GO AHEAD. GO AHEAD.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 MR. CHIER: IN ORDER TO PROPERLY ADDRESS THIS ISSUE,  
2 WE HAVE TO GO TO THE GENESIS, WHICH IS THE PROCUREMENT BY  
3 OSCAR BREILING OF A SEARCH WARRANT FOR THE RESIDENCE OF, AS  
4 WE HAVE SEEN AND AS THEY ANTICIPATED, THE OFFICE OF THE  
5 DEFENDANT, JOE HUNT.

6 THE PROCUREMENT OF THE WARRANT IS NOTABLE IN  
7 SEVERAL RESPECTS: FIRST, THAT IT WAS PROCURED ON THE BASIS  
8 OF STALE INFORMATION.

9 THE COURT: STALE WHAT?

10 MR. CHIER: STALE INFORMATION, YOUR HONOR.

11 SECOND, THAT THE WARRANT OMITTED TO ADVISE THE  
12 ISSUING MAGISTRATE OF THAT CRITICAL INFORMATION, WHICH AGENT  
13 BREILING MADE SUCH AN ISSUE OF IN BRIEFING THE OFFICERS WHO  
14 WERE GOING TO SERVE THE WARRANT ON THE BELLAGIO LOCATION.

15 THE OMISSION FROM THE AFFIDAVIT OF THE FACT THAT  
16 THERE WERE LIKELY TO BE SENSITIVE MATERIALS OF A PRIVILEGED  
17 NATURE ON THE PREMISES, I THINK, WAS NOT AN ACCIDENT. IT WAS  
18 A DELIBERATE OMISSION, AS WAS THE FAILURE TO NOTIFY MR. WAPNER  
19 OR THIS TRIAL COURT CONCERNING THE INTENTIONS DURING A TIME  
20 WHEN MR. HUNT WAS IN TRIAL AND, OBVIOUSLY DISABLED FROM BEING  
21 PRESENT AT HIS HOME IN A TOTALLY DEFENSELESS POSITION VIS-A-VIS  
22 THE SERVICE OF THIS WARRANT.

23 THE WARRANT, ON ITS FACE, IS OVERLY BROAD.  
24 IT AUTHORIZES BY ITS TERMS THE SEIZURE OF NEARLY EVERYTHING,  
25 LEAVING TO THE SEIZING OFFICERS THE DISCRETION AS TO WHETHER  
26 OR NOT ANY PARTICULAR PIECE OF EVIDENCE IS WITHIN THE BROAD  
27 PARAMETERS OF THE WARRANT.

28 IN ORDER TO DETERMINE THE SEIZABILITY, EVERYTHING

1 THAT IS POTENTIALLY SEIZABLE MUST BE LOOKED AT BY THE OFFICERS  
2 AND EVALUATED.

3 NOW WE HAVE HEARD TESTIMONY DURING THESE PROCEED-  
4 INGS CONCERNING A KIND OF POLICE NEW SPEAK, THAT IS, "GLANCING"  
5 IS NOT READING. BUT WE HAVE HEARD TESTIMONY FROM THE  
6 DEFENDANT, WHICH IS UNCONTRADICTED AND PERHAPS CORROBORATED  
7 BY THE TESTIMONY OF AGENT TULLENERS, THAT CERTAIN OF THESE  
8 COMPUTER PRINTOUTS WHICH WERE THERE IN PLAIN VIEW BY THE  
9 COMPUTER AND ON THE FLOOR, ON THE BED, HAD CONSPICUOUS  
10 HEADNOTES ON. AGENT TULLENERS WAS ABLE TO GLEAN FROM HIS  
11 GLANCING THAT ONE OF THE COMPUTER PRINTOUT STACKS HAD MATTERS  
12 ON IT RELATIVE TO THE JURY SELECTION, SO HE THOUGHT AND SO  
13 HE INFERRED.

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

1           NOW, I WOULD SUBMIT TO THE COURT, THAT IN AND  
2 OF ITSELF, THE DEFENSE NOTES AND NOTATIONS CONCERNING  
3 PARTICULAR PROSPECTIVE JURORS ARE IN ITSELF, A TYPE OF  
4 PRIVILEGED MATERIAL THAT IS DEFENSE MATTER AND THAT THE VOIR  
5 DIRE IN A CRIMINAL CASE IS NO LESS A PART OF THE TRIAL PROCESS  
6 THAN IS OPENING STATEMENT OR CLOSING ARGUMENT.

7           SO, THE THINGS THAT WE KNOW AND HAVE BEEN  
8 DISCLOSED IN THIS COURTROOM, THAT WERE THERE ON THE PREMISES  
9 TO BE VIEWED, WERE INEVITABLY VIEWED BY THE OFFICERS, WERE  
10 MATTERS OF WORK PRODUCT AND DEFENSE-ORIENTED MATERIALS.

11           THE FACT THAT SOME OF THESE MATERIALS WERE LEFT  
12 BEHIND AND NOT SEIZED DOES NOT GAIN SAY THAT THEY -- THERE  
13 HAVE BEEN MULTIPLE VIOLATIONS OF THE DEFENDANT'S RIGHTS IN  
14 THIS CASE.

15           IT IS SIGNIFICANT THAT THE OFFICERS ASSEMBLED  
16 AT THE BEVERLY HILLS POLICE DEPARTMENT AND THAT EVERYBODY  
17 EXCEPT OFFICER KUHN OR WHATEVER HIS TITLE IS, MR. KUHN --  
18 EVERYBODY EXCEPT MR. KUHN RECALLS IN VARYING DETAIL, THE  
19 BRIEFING GIVEN BY MR. BREILING.

20           THE SUBSTANCE OF THE TESTIMONY OF PERSONS WHO  
21 APPEARED HERE CONCERNING THE BRIEFING, WAS THAT THERE WERE  
22 LIKELY TO BE DEFENSE TYPES OF MATERIALS THERE, PRIVILEGED  
23 MATERIALS, WORK PRODUCT MATERIALS AND THAT THEY SHOULD BE  
24 CAREFUL IN THEIR SIFTING AND RUMMAGING THROUGH THESE PAPERS.

25           AND IT WAS AFTER ALL, ACCORDING TO THE SEARCH  
26 WARRANT, PAPERS THAT THEY WERE LOOKING FOR, NEVER MIND THAT  
27 THEY TOOK PAPERS FROM 1984, BY THE WAY. NEVER MIND THAT THEY  
28 TOOK TYPEWRITER RIBBONS, TYPEWRITER BALLS AND OTHER THINGS

1 WHICH ARE CLEARLY NOT WITHIN THE PARAMETERS OR DESCRIPTION  
2 CONTAINED IN THE WARRANT.

3 IN ANY EVENT, AT THIS BRIEFING, WE NOW HAVE  
4 KNOWLEDGE, SCIENTER ON THE PART OF THE OFFICERS, SEARCHING  
5 OFFICERS AND PARTICULARLY, OFFICER ZOELLER, WHO WAS THE --  
6 HE HAD THE BIGGEST AX TO GRIND VIS-A-VIS MR. HUNT, YOUR HONOR.

7 I THINK IT WAS NOT AN ACCIDENT THAT MR. BREILING  
8 ASSEMBLED PERSONS WITH INTIMATE KNOWLEDGE OF THE PROSECUTIONS  
9 OF MR. HUNT. IT WAS NOT AN ACCIDENT THAT MR. ZOELLER WAS  
10 INVITED. MR. BREILING CONCEDED ON THE STAND THAT HE WAS WELL  
11 AWARE THAT MR. ZOELLER MIGHT IN THE COURSE OF SEARCHING ON  
12 THE SAN MATEO WARRANT, HIT PAY DIRT OR HAVE A COLLATERAL  
13 BENEFIT BY THE SEIZURE OR VIEWING OF SOMETHING THAT WOULD  
14 AID THE PROSECUTION.

15 THE CASE OF UNITED STATES V. GIGLIO ESTABLISHES  
16 THE RATHER IRREFUTABLE PRINCIPLE OF LAW THAT THERE IS ONE  
17 GOVERNMENT, ONE PROSECUTION.

18 THE FACT THAT IT IS CLAIMED THAT MR. WAPNER HAS  
19 NO KNOWLEDGE OF ANY OF THE MATTERS THAT WERE IN MR. HUNT'S  
20 HOUSE, DOES NOT AID THE PROSECUTION IN THIS SITUATION ONE  
21 IOTA. THE EVIDENCE AND INFORMATION DEEMED OR KNOWN TO  
22 MR. ZOELLER AND SEEN BY MR. ZOELLER IS DEEMED TO BE KNOWLEDGE  
23 OF THE ENTIRE PROSECUTION, JUST NOT THE BEVERLY HILLS POLICE  
24 DEPARTMENT.

25 THERE IS VICARIOUS LIABILITY. THERE IS VICARIOUS  
26 RESPONSIBILITY. THERE IS THE KNOWLEDGE OF ALL OF THEM.  
27 MR. ZOELLER IS A PERSON WHO INTERFACES WITH THE WITNESSES.

28 MR. ZOELLER IS A PERSON WHO INTERFACES WITH THE

1 DISTRICT ATTORNEY. MR. ZOELLER IS YOUR HONOR, A KEY PERSON  
2 IN THIS DRAMA AND THE INFORMATION SEEN BY HIM, ALTHOUGH IT  
3 WAS NOT TAKEN AND WE CONCEDE THAT THE COMPUTER THINGS DO NOT  
4 APPEAR TO HAVE BEEN ACTUALLY TAKEN AND PARENTHETICALLY,  
5 WHETHER THEY WERE PHOTOGRAPHED OR NOT REMAINS TO BE SEEN --  
6 AND THERE ARE CERTAIN IRREGULARITIES WITH RESPECT TO THE  
7 PHOTOGRAPHIC LOG IN THAT THEY GO UP THERE WITH ROLLS OF  
8 36 EXPOSURE FILM, SOME OF WHICH ARE COMPLETELY EXPOSED AND  
9 OTHERS, ODDLY ENOUGH, ARE LOPPED OFF AT EXPOSURE 10 OR 12.

10 BUT, BE THAT AS IT MAY, MR. ZOELLER'S VIEWING --  
11 AND IT IS VIRTUALLY INCONTESTABLE THAT HE DID VIEW THESE  
12 THINGS, PUTS THE DEFENDANT IN THIS DILEMMA.

13 MR. ZOELLER, WHO IS THE LAST PERSON IN THE WORLD  
14 WHO SHOULD HAVE BEEN BROUGHT ALONG ON A SEARCH OF A  
15 DEFENDANT'S PREMISES IN THE MIDST OF A TRIAL, HAS BEEN  
16 EXPOSED TO MATERIALS WHICH THE DEFENSE WAS INTENDING TO USE  
17 IN THEIR DEFENSE OF THIS PERSON, MR. HUNT.

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 HE HAS BEEN AND THEY HAVE BEEN EXPOSED TO  
2 MATERIALS ANALYZING AND CROSS-REFERENCING CERTAIN ASPECTS  
3 OF THIS PROSECUTION AND THIS IS STATE ACTION, UNDER THE GUISE  
4 OF THE FOURTH AMENDMENT, AND IT IS NOT JUSTIFICATION IN  
5 CONTEMPLATION OF LAW FOR AN ENCROACHMENT OF A DEFENDANT'S  
6 FIFTH AND SIXTH AMENDMENT PRIVILEGES TO SAY IT WAS DONE IN  
7 THE NAME OF THE FOURTH AMENDMENT.

8 THE CASE OF TOWLER ESTABLISHES THAT THE GOOD  
9 INTENTIONS OF THE POLICE OR THE PROSECUTION IN MAKING THE  
10 ENCROACHMENT DO NOT MATTER.

11 IN TOWLER, YOUR HONOR, YOU WILL RECALL THAT THE  
12 DISTRICT ATTORNEY WENT INTO THE JAIL CELL WITH A COURT ORDER  
13 TO GET A HANDWRITING EXEMPLAR AND IN THE PROCESS, HE  
14 VIOLATED THE DEFENDANT'S ATTORNEY-CLIENT MATERIALS.

15 THE COURT FOUND IN TOWLER, YOUR HONOR, THAT  
16 ALTHOUGH THERE WAS A LOFTY MOTIVE, THE DETERRENCE OF FUTURE  
17 CRIME INVOLVED IN TOWLER, THAT THE INFRINGEMENT WAS DEPLORABLE  
18 BUT SINCE THIS WAS BEING RAISED POST-TRIAL, IT WAS NOT  
19 REVERSIBLE ERROR BECAUSE THE DEFENDANT FAILED TO DEMONSTRATE  
20 PREJUDICE.

21 NOW IN THIS CASE, THE CONUNDRUM THE DEFENDANT  
22 IS IN IS THIS: HE CLAIMS, AND THERE IS CIRCUMSTANTIAL EVIDENCE  
23 TO COORBORATE HIS CLAIM, THAT THERE WERE DEFENSE MATERIALS  
24 IN THE ROOM THAT WAS SEARCHED FOR APPROXIMATELY THREE HOURS  
25 BY NOT LESS THAN FOUR OFFICERS AT ANY GIVEN TIME.

26 NOW, IT IS INESCAPABLE -- IT IS INESCAPABLE THAT  
27 IN SEARCHING A SMALL AREA SUCH AS THE ROOM THAT WE ARE TALKING  
28 ABOUT FOR THREE HOURS BY MEN THAT HAVE BEEN TRAINED, A, OR

1 FIRST, TO SEARCH AND SECOND, WHO HAVE SPECIFIC KNOWLEDGE ABOUT  
2 SPECIFIC MATTERS IN THIS CASE, IT IS INESCAPABLE THAT THEY  
3 MAY HAVE SEEN IN THE COURSE OF DIFFERENTIATING FROM SEIZABLE  
4 AND UNSEIZABLE ITEMS, MATTERS WHICH ARE PRIVILEGED.

5 NOW, THE DILEMMA OF THE DEFENDANT IS THAT SINCE  
6 IT IS CLAIMED THAT MR. WAPNER DOES NOT KNOW ABOUT THIS NOW  
7 AND, THEREFORE, HE IS NOT TAINTED, THAT IN ORDER FOR THE COURT  
8 TO PROPERLY RULE ON SUCH A CLAIM BY THE DEFENDANT, IT SHOULD  
9 PROPERLY HAVE A PREVIEW OR HAVE A DISCLOSURE BY THE DEFENDANT  
10 OF WHAT IT WAS THAT WAS THERE AND THEN AND ONLY THEN CAN THE  
11 COURT SAY WITH DEFINITION THAT WHAT WAS SEEN WAS INDEED  
12 PRIVILEGED OR WORK PRODUCT AND, THEREFORE, SANCTIONS ARE IN  
13 ORDER.

14 BUT THE DILEMMA THAT WE ARE IN, YOUR HONOR, AS  
15 SO INCISIVELY RECOGNIZED IN BARBER IS THAT WE ARE IN THE  
16 POSITION AS A RESULT OF STATE ACTION, OF HAVING TO REVEAL  
17 THE VERY THING WE ARE HERE TO PROTECT AND BECAUSE, YOUR HONOR,  
18 OF THE FACT THAT THIS WAS A CALCULATED RISK, THIS WAS A RISK  
19 ASSUMED BY MR. ZOELLER, AN AGENT OF THE PROSECUTION WHEN HE  
20 CHOSE NOT TO ADVISE MR. WAPNER, WHEN HE CHOSE NOT TO ADVISE  
21 YOUR HONOR, WHEN HE CHOSE NOT TO ADVISE ANYBODY CONCERNING  
22 HIS INTENTIONS, AND I THINK THAT WE CAN SHOW, WE CAN POINT  
23 TO A CONSCIOUSNESS OF IMPROPRIETY, TO SAY THE LEAST, ON THE  
24 PART OF MR. ZOELLER IN MAINTAINING HIS SILENCE.

25 HIS ALLEGED REASON FOR NOT CONTACTING MR. WAPNER  
26 IS THAT MR. WAPNER IS AN ETHICAL AND HONEST PERSON AND HE  
27 WAS AFRAID THAT MR. WAPNER MIGHT FEEL ETHICALLY OR LEGALLY  
28 BOUND TO TAKE STEPS TO PREVENT THIS, WHICH HAS PUT US IN THE

1. VERY POSITION WE ARE HERE TODAY ARGUING THAT THIS CASE SHOULD  
2 BE DISMISSED.

3A 3 AND IT IS BECAUSE, YOUR HONOR, OF THE DIFFICULTY  
4 FOR THE DEFENDANT TO PROVE HIS PREJUDICE, IT IS THE UNSURENESS  
5 OF WHAT MR. ZOELLER WILL DO WHEN HE INTERFACES WITH WITNESSES,  
6 WHEN HE TALKS TO MR. WAPNER, WHEN HE ANSWERS QUESTIONS FROM  
7 THE STAND. IT IS BECAUSE OF THE VERY DIFFICULTY IN PROVING  
8 THE EXACT NATURE OF THE USE OR EXPLOITATION OF THE MATTERS  
9 THAT WERE UNCONTESTABLY THERE AND SEEN BY THESE OFFICERS,  
10 AND PARTICULARLY MR. ZOELLER, THAT THE ONLY APPROPRIATE  
11 REMEDY IS DISMISSAL.

12 IT IS VIRTUALLY IMPOSSIBLE TO PROVIDE ANY LESSER  
13 SANCTION.

14 AND THAT THE COURT'S ORDERING OF MR. ZOELLER  
15 AND MR. BREILING AND THESE PEOPLE, THE COURT'S ORDERING THESE  
16 PEOPLE NOT TO DISCUSS THIS IN ANY WAY, IS A MERE GENUFLECTION  
17 IN THE DIRECTION OF SOME SORT OF REMEDY AND IS REALLY NO  
18 REMEDY AT ALL, YOUR HONOR, BECAUSE THEY CAN'T -- THEY HAVE  
19 TO TALK TO ONE ANOTHER. THEY HAVE TO INTERFACE BECAUSE OF  
20 OTHER INTERRELATED MATTERS AND IT IS IMPOSSIBLE TO ERASE FROM  
21 THEIR MINDS THINGS THEY HAVE SEEN AND THAT WILL EITHER  
22 CONSCIOUSLY OR UNCONSCIOUSLY AFFECT THEIR PERCEPTION OF THE  
23 EVIDENCE, OF PEOPLE, OF WITNESSES AND OF THINGS.

24 EVEN IF THE COURT MAKES SOME RULING ON THIS  
25 ISSUE OF TAINT, REQUIRING THE DISTRICT ATTORNEY TO PROVE  
26 BEYOND A REASONABLE DOUBT THAT EVIDENCE OR TESTIMONY DERIVES  
27 FROM AN INDEPENDENT SOURCE, THIS IS INADEQUATE BECAUSE IN  
28 ORDER FOR THE COURT TO MAKE AND ENFORCE SUCH A SANCTION, THE

1 DEFENDANT HAS TO REVEAL HIS SECRETS TO THE COURT AND COUNSEL  
2 TO DETERMINE WHETHER OR NOT THE PERSON OR THE THING BEING  
3 USED AGAINST HIM DERIVES FROM SOME INDEPENDENT SOURCE OR  
4 DERIVES FROM THE DEFENDANT'S PAPERS.

5 AND IT IS FOR THIS REASON THAT THE PEOPLE ACTING  
6 THROUGH MR. ZOELLER HAVE ASSUMED THE RISK OF CONTINUANCE AND  
7 I SUBMIT, YOUR HONOR, THAT THERE IS NO LESSER REMEDY.

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

A-1  
1 MR. CHIER: MAY I HAVE JUST A MOMENT?

2 THE COURT: YOU MEAN THE SAFEGUARDS WHICH I HAVE  
3 INDICATED TO THE PROSECUTION TEAM THAT HAS TESTIFIED HERE --  
4 FIRST, I HAVE GOT TO ASSUME THAT THEY READ SOMETHING THAT  
5 THEY WOULD REMEMBER, WHICH THEY TESTIFIED THAT THEY DIDN'T.

6 YOU HAVE GOT TO ASSUME THAT THESE PEOPLE WILL  
7 DISOBEY MY INJUNCTION NOT TO DISCUSS IT WITH THE DISTRICT  
8 ATTORNEY OR WITH ANY WITNESSES, ANYTHING THAT THEY MIGHT HAVE  
9 HEARD AND THAT THAT INFORMATION IF THEY HEARD IT, WILL LIE  
10 BURIED WITH THEM, IF IT TOUCHES UPON THE CONFIDENTIAL  
11 COMMUNICATIONS BETWEEN THE ATTORNEY AND CLIENT OR ANY SO-  
12 CALLED WORK PRODUCT.

13 YOU HAVE TO ASSUME THAT THEY WON'T LISTEN TO ME,  
14 WON'T FOLLOW MY INJUNCTIONS AND COMMUNICATE IT NONETHELESS,  
15 TO THE PEOPLE OR TO THE WITNESSES WHO WILL TESTIFY IN THIS  
16 CASE. IS THAT RIGHT? YOU DON'T BELIEVE THAT IT IS POSSIBLE  
17 TO BE SANITIZED?

18 MR. CHIER: WELL, I HAVE TO ASSUME A CERTAIN AMOUNT  
19 OF THAT, YES, YOUR HONOR, WHETHER INTENTIONAL OR NOT --

20 THE COURT: YOU SAY THAT IT CANNOT BE IN ANY WAY  
21 SANITIZED, AS SOME OF THE CASES STATE?

22 WE SHOULD KEEP IT FROM GOING INTO EVIDENCE BEFORE  
23 THIS JURY AND THERE IS NO HARM DONE?

24 MR. CHIER: WELL, COULD MR. ZOELLER BE PROHIBITED FROM  
25 SPEAKING TO THE WITNESSES?

26 THE COURT: HE HAS BEEN TOLD NOT TO, ABOUT ANY MATTER  
27 WHICH HE READ WHICH IS WITHIN THE SO-CALLED PRIVILEGED  
28 COMMUNICATION WHICH HE SAID HE DIDN'T READ ANY.

1A-2  
1 BUT ASSUMING THAT HE DID, HE HAS BEEN FIRMLY  
2 ENJOINED NOT TO COMMUNICATE IT, ANY OF THAT INFORMATION TO  
3 ANYBODY.

4 MR. CHIER: BUT HE HAS NOT BEEN PROHIBITED FROM FLAT  
5 OUT, SPEAKING TO THESE PEOPLE. HE HAS MERELY BEEN PROHIBITED  
6 FROM SPEAKING --

7 THE COURT: DO YOU WANT ME TO MAKE IT MORE POSITIVE?  
8 I WILL SEE THAT COUNSEL COMMUNICATES TO HIM.

9 I WILL MAKE IT MORE POSITIVE THAT HE IS NOT EVEN  
10 TO SPEAK TO ANY PEOPLE ABOUT ANY MATTER WHICH TOUCHES UPON  
11 THE FORBIDDEN FRUIT THAT SUPPOSEDLY, HE HAS TAKEN.

12 MR. CHIER: WELL, COULD I READ FROM BARBER? IT IS  
13 EXPRESSED BETTER THAN I CAN. ON THE FACTS OF BARBER --

14 THE COURT: WAS THAT A FOUR TO THREE DECISION?

15 MR. CHIER: THIS IS THE GLOVER COURT.

16 THE COURT: ARE YOU TALKING ABOUT BARBER OR GLOVER?

17 MR. CHIER: I AM TALKING ABOUT THE GLOVER COURT QUOTING  
18 TOWLER, SORRY, YOUR HONOR.

19 "ON THE FACTS OF BARBER, WE CONCLUDE  
20 THAT AN EXCLUSIONARY SANCTION WOULD NOT ADEQUATELY  
21 PROTECT THE DEFENDANT'S RIGHTS IN PART, BECAUSE IN  
22 ORDER TO ENFORCE THAT SANCTION, NAMELY, THE SANCTION  
23 OF FORCING THE PROSECUTION TO PROVE THE SOURCE OF  
24 THEIR EVIDENCE, THE DEFENDANT WOULD HAVE BEEN  
25 FORCED TO DIVULGE THE FULL CONTENTS OF CONVERSATIONS  
26 TO WHICH THE POLICE INFORMANT ..."

27 THIS IS ANALOGOUS IN THIS CASE, TO MR. ZOELLER --  
28 THE COURT: WELL, THAT IS NOT TRUE. NOBODY IS FORCING

A-3  
1 HIM TO DIVULGE ANYTHING TO ANYBODY.

2 MR. CHIER: BUT HERE IS THE THING, YOUR HONOR. IF  
3 SOMETHING SHOULD COME UP IN THE COURSE OF TRIAL WHICH IS  
4 SOMETHING THAT WAS NEVER PROVIDED TO THE DEFENDANT BY WAY  
5 OF DISCOVERY, BUT YET, WAS SOMETHING THAT COULD HAVE BEEN  
6 KNOWN TO THE PERSON TESTIFYING UNKNOWN TO THE PROSECUTION  
7 THROUGH ANY OF ITS AGENTS --

8 THE COURT: WELL, YOU WILL RECOGNIZE THAT WHEN IT COMES  
9 UP. YOU CAN COME UP TO THE BENCH AND ASK ME TO EXCLUDE THAT  
10 TESTIMONY AND I WILL SEE THAT IT IS DONE.

11 MR. CHIER: BUT YOU SEE, THERE IS NO WAY TO DO THIS  
12 IN CASES WHERE LET'S SAY, THERE IS A SECONDARY USE OF IT.  
13 IT IS EXPLOITED AND NOT USED DIRECTLY, JUDGE. THAT IS THE  
14 DIFFICULTY WE ARE IN AND --

15 THE COURT: I DON'T KNOW WHAT YOU MEAN BY "SECONDARY  
16 USE". HOW --

17 MR. CHIER: IF THEY GET A LEAD FROM SOMETHING. LET'S  
18 SAY THAT SOMETHING THEY SAW, THEY DON'T GO OUT AND USE IT  
19 DIRECTLY, BUT IT GIVES THEM A LEAD. SO, THERE IS AN  
20 ATTENUATED NEXUS.

21 THE COURT: THAT IS ASSUMING THAT THEY SAW SOMETHING  
22 WHICH THEY CAN USE. UNTIL IT IS PROVEN TO ME AS TO WHAT HE  
23 ACTUALLY SAW, THAT THEY WERE GOING TO USE, I CAN'T SPECULATE  
24 THAT MAYBE THERE IS SOMETHING THAT MAYBE THEY WILL USE.  
25 I CAN'T MAKE A DECISION IN DISMISSING A MURDER TRIAL, A  
26 MURDER CASE IN THE FIRST DEGREE WITH A DEATH PENALTY, BASED  
27 UPON SOMETHING THAT YOU ARE SPECULATING ABOUT.

28 WHAT PARTICULARLY DO YOU WANT ME TO EXERCISE?

1 MR. CHIER: HERE IS WHAT BARBER SAYS ABOUT THIS VERY  
2 ISSUE:

3 "EVEN THE BLATANT USE OF ILLEGALLY  
4 OBTAINED INFORMATION WILL BE DIFFICULT TO PROVE.  
5 AS JUSTICE MARSHALL POINTS OUT, PROVING THAT AN  
6 INFORMER REPORTED TO THE PROSECUTION ON DEFENSE  
7 STRATEGY ..."

B F

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

0B-1

1 I AM NOT CALLING MR. ZOELLER AN INFORMER. BUT  
2 FOR PURPOSES OF THIS ARGUMENT, HE IS IN THE ROLE OF AN  
3 INFORMER.

4 IT SAYS:

5 "PROVING THAT AN INFORMER REPORTED TO  
6 THE PROSECUTION ON DEFENSE STRATEGY WILL SELDOM  
7 BE POSSIBLE NOT ONLY BECAUSE SUCH PROOF REQUIRES  
8 AN INFORMER OR PROSECUTOR TO ADMIT HIS OWN  
9 WRONGDOING AND OPEN THE DOOR TO DAMAGE SUITS  
10 AND AN ATTACK ON CONVICTIONS BUT ALSO BECAUSE  
11 AN INFORMANT'S FAILURE TO MAKE A REPORT AFTER  
12 OVERHEARING A LAWYER/CLIENT SESSION OFTEN TIMES  
13 CAN BE AN EFFECTIVE MEANS OF COMMUNICATING TO  
14 THE PROSECUTOR THAT NOTHING SURPRISING WAS  
15 UNCOVERED."

16 THE COURT: REFRESH MY RECOLLECTION. WHAT WAS THE  
17 NATURE OF THE CHARGE IN THE BARBER CASE?

18 MR. CHIER: I DON'T THINK THAT THE NATURE OF THE CHARGE  
19 HAS ANY --

20 THE COURT: LET ME DECIDE THAT. WHAT WAS THE NATURE  
21 OF THE CHARGE THERE?

22 MR. CHIER: I BELIEVE THAT IT WAS A TRESPASSING. THERE  
23 WAS A --

24 THE COURT: DO YOU THINK THE SUPREME COURT, THAT  
25 SUPREME COURT EVEN, NOT ANY LONGER OUR SUPREME COURT -- BUT  
26 YOU SAY THAT THE SUPREME COURT IN THE MURDER CASE WHERE THE  
27 DEATH PENALTY IS SOUGHT EQUATES BOTH CASES AND THE REASONING  
28 IN THAT CASE WOULD ALSO APPLY TO THIS? IS THAT WHAT YOU ARE

1 TELLING ME?

2 MR. CHIER: I THINK THAT JUSTICE IS BLIND TO THE NATURE  
3 OF THE CHARGES WHEN --

4 THE COURT: NO. IT IS EXTREMELY IMPORTANT. IT IS THE  
5 TYPE OF CHARGE, CRIME THAT YOU ARE GOING TO DISMISS.

6 MR. CHIER: YOU MEAN THERE IS A BALANCING PROCESS THAT  
7 TAKES PLACE HERE?

8 THE COURT: YOU KNOW DAMN WELL. IT IS A MUCH MORE  
9 SERIOUS CHARGE. THIS REQUIRES MUCH MORE SERIOUS CONSIDERATION.

10 MR. CHIER: RESPECTFULLY, I DISAGREE WITH THE COURT'S --

11 THE COURT: YOU MEAN THAT A SPITTING ON THE SIDEWALK  
12 CASE, INSOFAR AS CONSTITUTIONAL RIGHTS ARE CONCERNED, IS THE  
13 SAME AS A MURDER CASE WHERE THE DEATH PENALTY IS SOUGHT?

14 MR. CHIER: WELL, INSOFAR AS THE PANOPLY OF RIGHTS  
15 AVAILABLE TO THE DEFENDANT IN A CRIMINAL CASE, IT IS THE SAME.  
16 YES. HE HAS A RIGHT TO COUNSEL EVEN IF IT IS A MISDEMEANOR.  
17 HE HAS A RIGHT OF CROSS-EXAMINATION.

18 HE HAS THE PRIVILEGE AGAINST SELF-INCRIMINATION.  
19 HE HAS THE PRESUMPTION OF INNOCENCE. HE HAS THE SAME --

20 THE COURT: I JUST WANTED TO GET THAT EXPRESSION FROM  
21 YOU AS TO WHETHER YOU THINK THAT THE SUPREME COURT, AS THEY  
22 DID IN THAT CASE ON THE NATURE OF THE CHARGE IN THAT CASE --  
23 IT WOULD BE THE SAME AS IT WOULD IN THIS PARTICULAR CASE WHICH  
24 IS A CAPITAL CASE, IF IT COMES UP BEFORE THEM.

25 MR. CHIER: I THINK THAT CONSTITUTIONAL RIGHTS ARE  
26 CONSTITUTIONAL RIGHTS, NO MATTER WHAT LEVEL --

27 THE COURT: TO THE EXTENT OF DISMISSING A MURDER TRIAL?

28 MR. CHIER: YES, YOUR HONOR.

1 THE COURT: WELL, I JUST WANTED TO GET YOUR VIEW ON  
2 IT.

3 MR. CHIER: MAY I JUST SAY IN CONCLUSION YOUR HONOR,  
4 THAT IN THIS CASE YOUR HONOR, WE HAVE SEEN THE PIECE OF PAPER  
5 DATED 1987 WHICH MR. TULLENERS CHARACTERIZED AS EVIDENCE OF  
6 I GUESS, AN INTENDED INFORMANT ASSASSINATION, PLANTING IN  
7 THE GROUND LIKE A TREE OR SOMETHING LIKE THAT.

8 THE MORE LOGICAL, REASONABLE INTERPRETATION OF  
9 THIS PIECE OF PAPER AND THE SCRIPTIC NOTATIONS IS THAT FIRST,  
10 MR. HUNT IS APPARENTLY, IN COMMUNICATION WITH MR. PITTMAN.

F

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE COURT: THAT IS WHAT I SUSPECTED MYSELF.

2 MR. CHIER: ALL RIGHT.

3 THE COURT: I SUSPECTED IT WAS A CALL FROM PITTMAN  
4 TO THE DEFENDANT AND HE MADE NOTES OF THE CALL HE HAD GOTTEN.

5 MR. CHIER: LOOK WHERE WE ARE AS A RESULT OF THIS,  
6 JUDGE. THE VERY THING THAT YOU SUSPECTED AND WE SUSPECTED  
7 IS PROBABLY SUSPECTED BY THE DISTRICT ATTORNEY SO WHAT DOES  
8 HE KNOW FROM THIS? HE COULD KNOW FROM THIS THAT MR. HUNT'S  
9 DEFENSE IS PROBABLY NOT CONFLICTING WITH MR. PITTMAN'S. THAT  
10 IS VALUABLE INFORMATION TO A PROSECUTOR.

11 THE COURT: WHAT IS THERE TO INDICATE ANY NATURE OF  
12 THE DEFENSE?

13 MR. CHIER: THE FACT THAT --

14 THE COURT: TELL ME WHAT IS IN THAT DOCUMENT FROM WHICH  
15 YOU CAN DRAW A CONCLUSION THAT PITTMAN WAS TELLING HIM ABOUT  
16 A DEFENSE WHICH WAS GOING TO BE EXERCISED?

17 MR. CHIER: ITS EXISTENCE SUGGESTS THAT THESE PEOPLE  
18 ARE IN CONTACT AND IT WOULD, THEREFORE, BELIE THE FACT THAT  
19 THERE IS GOING TO BE CONFLICTING DEFENSES OFFERED BETWEEN  
20 MR. HUNT AND MR. PITTMAN.

21 IT IS NOT OBVIOUSLY INEXORABLE BUT THAT IS  
22 CERTAINLY A LEGITIMATE INFERENCE ONE COULD DRAW FROM THE  
23 CONTENTS OF THIS PIECE OF PAPER.

24 SOME THINGS EVEN BY OMISSION, THINGS DON'T HAVE  
25 TO ACTUALLY COME RIGHT OUT AND HIT YOU RIGHT IN THE HEAD AND  
26 SAY "THIS IS OUR DEFENSE," AND D-E-F-E-N-S-E, YOUR HONOR,  
27 BUT THERE ARE MORE SUBTLE FORMS OF PREJUDICE JUST BY EXISTENCE  
28 OR NONEXISTENCE OF THINGS.

1 THE COURT: YOU ARE GOING TO ASSUME THAT THIS DOCUMENT  
2 IS GOING TO BE ADMISSIBLE IN SUM IN THE ACTION UP NORTH OR  
3 WHETHER IT WOULD BE ADMISSIBLE IN THE ACTION HERE?

4 MR. CHIER: WE ARE NOT TALKING ABOUT ADMISSIBILITY.

5 THE COURT: THERE ISN'T ANYTHING IN THERE THAT CAN  
6 BE USED BY ANYBODY.

7 MR. CHIER: IT CAN BE USED BY WHAT IT SUGGESTS OR WHAT  
8 IT INFERS.

9 THE COURT: TELL ME WHAT IT CAN BE USED FOR.

10 MR. CHIER: WELL, YOUR HONOR, THAT IS THE PROBLEM I  
11 AM IN. IF I WERE TO TELL YOU ALL OF THE EXHIBITS IN THAT  
12 BOX, THERE WERE SOME SIXTY SOME, YOU KNOW, EXHIBITS, YOUR  
13 HONOR, IF I WERE TO STAND HERE NOW AND HAVE TO TELL YOU EXACTLY  
14 HOW EACH ONE OF THOSE DOCUMENTS IS GOING TO BE USED, I MEAN,  
15 YOU KNOW, WE HAVE GIVEN AWAY THE STORE.

16 THE PROBLEM IS THAT TO CUNNING AND WILY LAW  
17 ENFORCEMENT OFFICERS THAT ARE FAMILIAR WITH THE CASE, THEY  
18 CAN FIGURE OUT FROM A MERE LOOKING AT THESE THINGS WHAT THEIR  
19 FUNCTION IS OR WHAT THEIR PURPOSE IS AND THAT IS WHERE YOU  
20 ARE PREJUDICED IN A SITUATION LIKE THIS.

21 IT IS NOT ANYTHING THAT NECESSARILY HAS TO BE  
22 THERE IN NEON LIGHTS. IT IS THE VERY EXISTENCE OF CERTAIN  
23 THINGS OR THE VERY SEGREGATION OF CERTAIN THINGS FROM OTHER  
24 THINGS, THE VERY ORDER OF THINGS, IN WHICH THE ITEMS ARE  
25 ORDERED, GIVES YOU INFORMATION THAT YOU SHOULDN'T OTHERWISE  
26 HAVE.

27 AND HOW ELSE ARE YOU GOING TO DETER THIS TYPE  
28 OF CONDUCT BY THE POLICE, WHEN THERE IS AN ONGOING TRIAL,

1 WHEN THERE IS EVIDENCE THAT THESE PEOPLE HAVE NOW, THEY KNOW  
 2 FULL WELL THAT THIS IS A FAIRLY UNUSUAL SITUATION WHERE MR.  
 3 HUNT IS MORE ACTIVELY PARTICIPATING IN HIS OWN DEFENSE.

4 THERE IS NO QUESTION THEY KNEW THERE WOULD BE  
 5 THE POSSIBILITY OF THIS STUFF BEING THERE AND IT WAS THERE.  
 6 IT WAS THERE. AND FOR MR. ZOELLER TO BE THERE IS JUST  
 7 INEXCUSABLE, INCOMPREHENSIBLE AND I THINK UNCONSCIONABLE.  
 8 IT IS SO EGREGIOUS IN MY MIND, SO I DON'T KNOW ANY LESSER  
 9 SANCTION IS ADEQUATE AND I THANK YOUR HONOR.

10 THE COURT: ALL RIGHT.

11 MR. WAPNER: FIRST OF ALL, LET ME TRY AND STRUCTURE  
 12 THIS SOMEWHAT. I THINK THAT THERE ARE SEVERAL SEPARATE ISSUES  
 13 HERE.

14 FIRST OF ALL, THERE IS A QUESTION OF WHAT WAS  
 15 ACTUALLY TAKEN AND THE COURT HAS HAD AN OPPORTUNITY TO REVIEW  
 16 ALL OF THE ITEMS THAT WERE TAKEN, AND I WOULD ASK THE COURT  
 17 AT THE CONCLUSION OF THE ARGUMENTS TO MAKE SOME FACTUAL FINDING  
 18 AS TO WHETHER OR NOT THE ITEMS THAT WERE TAKEN IN ANY WAY  
 19 ENCOMPASSED THE ATTORNEY-CLIENT PRIVILEGE AND IF THEY DID,  
 20 THEN WHAT THE APPROPRIATE REMEDY IS IN TERMS OF THAT.

21 AND FROM THE TESTIMONY THAT WE HAVE HAD FROM,  
 22 AMONG OTHER PEOPLE, MR. HUNT THIS MORNING ON THE WITNESS STAND  
 23 BY HIS OWN ADMISSION, MOST OF THOSE ITEMS WERE DOCUMENTS THAT  
 24 WERE PREPARED IN 1983 AND 1984, BEFORE ANY ATTORNEY-CLIENT  
 25 PRIVILEGE EXISTED OR RELATIONSHIP EXISTED THAT WOULD GIVE  
 26 RISE TO A PRIVILEGE, SO THE COURT HAS TO MAKE OBVIOUSLY A  
 27 FACTUAL DETERMINATION ON THE ITEMS THAT IT HAS BEFORE IT.

28 THEN THE NEXT QUESTION IS OF THE ITEMS THAT WERE

1 NOT TAKEN BUT WERE OBSERVED BY THE LAW ENFORCEMENT PEOPLE,  
2 HAS THERE BEEN A SHOWING BY THE DEFENSE, WHO HAS THE BURDEN  
3 IN THIS HEARING, THAT THEY SAW THINGS THAT ENCOMPASSED  
4 ATTORNEY-CLIENT PRIVILEGED MATERIAL?  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 MR. CHIER ASSUMED IN HIS ARGUMENT THAT IT WAS  
2 UNCONTROVERTED THAT THEY SAW THESE THINGS. I DON'T ASSUME  
3 THAT AT ALL. IN FACT, WITH THE EXCEPTION OF AGENT TULLENERS,  
4 EVERY PERSON WHO TESTIFIED SAID THAT THEY DID NOT SEE THINGS  
5 THAT ENCOMPASSED LAWYER-CLIENT PRIVILEGE OR WORK PRODUCT  
6 MATERIALS.

7 AS THE COURT IS AWARE, DURING THE HEARING ON  
8 THIS MOTION, I CONTINUED TO ATTEMPT TO OBJECT TO THE PHRASE  
9 "DEFENSE MATERIALS" BECAUSE THAT IS TOO BROAD. WE ARE NOT  
10 TALKING ABOUT DEFENSE MATERIALS BECAUSE DOCUMENTS THAT WERE  
11 PREPARED IN 1983 AND 1984, DURING THE TIME THAT THE BBC WAS  
12 IN OPERATION AND THE CRIMES IN THIS CASE OCCURRED, ARE NOT  
13 WORK PRODUCT AND THEY ARE NOT PRIVILEGED COMMUNICATIONS.  
14 THE FACT THAT THEY MAY LATER GO ON TO BE USED BY THE DEFENSE  
15 IN THE PREPARATION OF THE CASE DOESN'T SOMEHOW THEN ELEVATE  
16 THESE DOCUMENTS TO THE STATUS OF EITHER PRIVILEGED COMMUNICATIONS  
17 OR WORK PRODUCT.

18 AND I DON'T THINK THERE HAS BEEN ANY PROOF BY  
19 THE DEFENSE IN THIS CASE THAT THE PEOPLE SAW THINGS THAT WERE  
20 WORK PRODUCT, WITH THE EXCEPTION OF THE ITEM THAT AGENT  
21 TULLENERS SAID THAT HE SAW THAT HAD TO DO WITH SOMEBODY'S  
22 IMPRESSION OF ONE OF THE PROSPECTIVE JURORS IN THE CASE.  
23 WELL, IN THAT INSTANCE, LET'S ASSUME THAT THAT IS EITHER WORK  
24 PRODUCT OR ATTORNEY-CLIENT PRIVILEGED MATERIAL. AGENT  
25 TULLENERS TESTIFIED THAT HE HAD NEVER TALKED TO OR MET ME  
26 UNTIL THE MORNING OF THAT HEARING AFTER THE JURY IN THIS CASE  
27 ALREADY HAD BEEN SELECTED AND THAT THAT INFORMATION WAS NOT  
28 COMMUNICATED TO ME OR TO ANYONE ELSE.

1                   AND LET'S ASSUME THAT HE TOLD OTHER PEOPLE, WHICH  
2 HE SAID HE DIDN'T DO. SO WHAT? THERE IS NO PREJUDICE IN  
3 ANY WAY DEMONSTRATED BY THE USE OF THAT MATERIAL, EVEN THOUGH  
4 HE COULDN'T EVEN REMEMBER THE NAME OF THE PERSON WHO WAS ON  
5 THERE OR THE SPECIFIC INFORMATION THAT THE DOCUMENT CONTAINED.

6                   AS FAR AS THE NOTE THAT WAS SEIZED THAT HAD TO  
7 DO SOMEHOW WITH PLANTING SNITCHES, AS FAR AS THAT PARTICULAR  
8 PIECE OF PAPER IS CONCERNED, I THINK THAT WITHOUT CONCEDING  
9 THAT IT IS PRIVILEGED OR WORK PRODUCT OR ANYTHING ELSE, THAT  
10 IF THE COURT TAKES THE STEP OF SAYING, "OKAY, THE SANCTION  
11 AS FAR AS THAT PIECE OF PAPER IS CONCERNED IS THAT THE  
12 PROSECUTION DOESN'T USE THAT PIECE OF PAPER OR ANY INFORMATION  
13 DERIVED FROM IT," SEEMS TO ME THAT IT IS SUFFICIENT.

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

A-1

1 MR. CHIER SAYS THAT IT IS INCONCEIVABLE THAT THE  
2 OFFICERS SAW THESE THINGS. I ASSUME THAT THAT IS BASED ON  
3 THE TESTIMONY OF THE OTHER PEOPLE THAT WERE IN THAT HOUSE.  
4 BUT I SUBMIT TO YOU, THAT THOSE PEOPLE DON'T KNOW WHAT THEY  
5 SAW.

6 THEY DON'T KNOW WHO THEY SAW DOING WHAT. THEY  
7 WERE IN AND OUT OF THOSE ROOMS. AND THEY DON'T KNOW WHAT  
8 WAS ON THE PIECES OF PAPER THAT THE PEOPLE WERE LOOKING AT.

9 ONE EXAMPLE OF COURSE, IS MR. HUNT, WHO SAYS THAT  
10 I WENT THROUGH ALL OF THE ITEMS WHEN I GOT BACK AND OF ALL  
11 OF THE PIECES OF COMPUTER PAPER THAT WERE THERE AND THAT WERE  
12 IN THE TRASH CAN, I REMEMBER WHAT WAS IN MY TRASH THAT I PUT  
13 THERE APPROXIMATELY A WEEK OR SO BEFORE.

14 THERE WERE THREE OR FOUR PIECES MISSING THAT I  
15 CAN'T FIND LATER. AND THEREFORE, THE OFFICERS MUST HAVE TAKEN  
16 THEM.

17 WELL, THE COURT HAS GONE THROUGH THE BOX AND  
18 BASICALLY HAS GOTTEN MR. HUNT TO AGREE WITH THE COURT ON THE  
19 STAND, THERE WEREN'T ANY PAPERS IN THAT BOX THAT WERE  
20 GENERATED BY THAT COMPUTER.

21 SO, I THINK IT CALLS MR. HUNT'S CREDIBILITY AS  
22 TO THAT PARTICULAR POINT INTO SERIOUS QUESTION.

23 THE COURT: BEFORE THE BOXES WERE TAKEN AWAY, DID  
24 MR. TULLENERS TESTIFY THAT MR. CHIER WAS GIVEN EVERY  
25 OPPORTUNITY TO EXAMINE EVERY PIECE OF PAPER, EVERY DOCUMENT  
26 THAT WAS PLACED IN THE BOXES BEFORE THEY WERE TAKEN AWAY?

27 MR. WAPNER: YES AND COULD HAVE AS MUCH TIME AS HE  
28 WANTED TO, TO DO IT. HE WAS IN NO RUSH. AND AGENT TULLENERS

A-2  
1 HAD GONE THERE EXPECTING TO SPEND THE WHOLE DAY THERE.

2 ALSO, THE POINT THAT THE COURT MAKES ABOUT THE  
3 DISTINCTION BETWEEN THIS CASE AND BARBER I THINK, IS APT WHEN  
4 YOU TAKE A LOOK AT THE OTHER CASES THAT --

5 THE COURT: WILL FOLLOW BARBER?

6 MR. WAPNER: AND SOME WHICH PRECEDE IT. BUT THERE ARE  
7 MURDER CASES, THE GLOVER CASE IN PARTICULAR THAT I CITED,  
8 THAT WERE MUCH MORE EGREGIOUS VIOLATIONS THAN WE HAVE HERE.

9 IN THE GLOVER CASE, ALTHOUGH IT WAS A SEARCH OF  
10 THE DEFENDANT'S JAIL CELL WITH A SEARCH WARRANT, FIRST, THEY  
11 WENT IN WITH THE USE OF TELLING HIM THAT HIS LAWYER WAS THERE,  
12 SO THAT HE WOULD GATHER UP ALL OF HIS LEGAL PAPERS AND THEN  
13 THEY STOPPED HIM.

14 THEY TOOK THE PAPERS AWAY FROM HIM. THEY LOOKED  
15 AT HIS LEGAL PAPERS AND ALTHOUGH THEY WERE SEALED, THE  
16 DISTRICT ATTORNEY THEN GOT AN ORDER THAT THEY BE TURNED OVER  
17 TO HIM BY WAY OF DISCOVERY AND THEY WERE.

18 IT WAS UNDISPUTED IN THAT CASE THAT THE DISTRICT  
19 ATTORNEY'S OFFICE AND THE POLICE DEPARTMENT HAD READ CERTAIN  
20 ITEMS THAT WERE CONTAINED IN THERE.

21 THE GLOVER COURT DIDN'T HAVE ANY TROUBLE IN  
22 FASHIONING A REMEDY SHORT OF DISMISSAL IN THAT CASE.

23 THE COURT: AND THAT CASE, TO BE SURE, NONE OF THAT  
24 EVIDENCE GOT INTO THE TRIAL. IS THAT RIGHT?

25 MR. WAPNER: THAT'S RIGHT. AND TOWLER, IN A SIMILAR  
26 FASHION, WAS A SEARCH OF THE JAIL CELL WHERE THE PROSECUTOR  
27 HIMSELF, THE PERSON ACTUALLY PROSECUTING THE CASE, READ  
28 A SYNOPSIS OF THE DEFENSE IN THAT CASE.

1                   AND ALTHOUGH THE CASE WAS DECIDED BASED ON THE  
2 FACT THAT THE DEFENDANT HAD FAILED TO ASK FOR A DISMISSAL  
3 IN THE LOWER COURT AND THEREFORE, WAS BARRED FROM URGING THAT  
4 ON APPEAL, THEY DID SAY IN DICTA, THAT REMEDIES SHORT OF  
5 DISMISSAL COULD BE FASHIONED IN THAT CASE.

6                   AND ALSO, THERE IS A CASE THAT PRECEDED BARBER,  
7 AN APPELLATE CASE, THE WILSON CASE, WHERE A LAWYER CAME WITH  
8 A CLIENT TO SURRENDER HIM TO THE POLICE STATION. THEY FIRST  
9 OF ALL, SEPARATED THE LAWYER AND THE CLIENT AND WOULDN'T LET  
10 HER BE PRESENT WHEN SHE WAS OBJECTING TO THE CLIENT BEING  
11 QUESTIONED.

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1            THEN WHEN THEY PUT THE LAWYER AND THE CLIENT IN  
2 A ROOM TO SPEAK WITH EACH OTHER, THE POLICE TAPED THE  
3 CONVERSATION BETWEEN THE LAWYER AND THE CLIENT AND THEN LATER  
4 PLAYED THAT TAPE FOR SEVERAL PEOPLE.

5            IT WAS UNCLEAR FROM THE RECORD, EXACTLY HOW MANY  
6 PEOPLE OR WHO THEY WERE. BUT IT WAS TAPED. THERE WERE  
7 PERSONNEL FROM THE DISTRICT ATTORNEY'S OFFICE WHO HEARD THAT.

8            THERE WERE AS MANY AS EIGHT TO TWENTY PEOPLE WHO  
9 HAD HEARD THE RECORDING. THE COURT IN THAT CASE HAD NO  
10 TROUBLE COMING TO A REMEDY SHORT OF DISMISSING THE CASE.

11           THE PROBLEM IN BARBER WAS THAT EVERYTHING WAS  
12 ORAL AND IT WAS AN INFORMANT WHO HAD INTENTIONALLY BEEN  
13 PLANTED BY THE POLICE DEPARTMENT TO LISTEN IN ON THESE  
14 ATTORNEY/CLIENT CONVERSATIONS.

15           THERE IS NO PROOF IN THIS CASE THAT THERE WERE  
16 ANY ATTORNEY/CLIENT COMMUNICATIONS THAT WERE OVERHEARD.  
17 I THINK THE RECORD IN THIS HEARING, FALLS FAR SHORT OF  
18 PROOF THAT ANYTHING THAT WAS READ BY THE PEOPLE WHO WERE  
19 THERE ENCOMPASSED AN ATTORNEY/CLIENT CONVERSATION OR ANY KIND  
20 OF PRIVILEGED MATERIAL.

21           AND I THINK FURTHER, THAT THE OFFICERS WERE  
22 EXCEEDINGLY CAREFUL IN NOT READING THAT MATERIAL AND IN FACT,  
23 AGENT BREILING BRIEFED ALL OF THOSE PEOPLE WHO WERE DOING  
24 THE SEARCH ON THAT MATTER.

25           I AM PERFECTLY COMFORTABLE WITH THE SANCTION FROM  
26 THE COURT, THAT NONE OF THE MATERIAL THAT WAS TAKEN -- LET'S  
27 EVEN ASSUME THAT IT WAS LAWFULLY SEIZED BY THE POLICE  
28 DEPARTMENT. I WAS PREPARED TO GO TO TRIAL WITHOUT THAT

1 MATERIAL. WE WERE IN THE PROCESS OF SELECTING THE JURY.

2 I AM STILL PREPARED TO GO TO TRIAL WITHOUT THAT  
3 MATERIAL, EVEN THOUGH MUCH OF IT I SUBMIT TO THE COURT, WAS  
4 LAWFULLY SEIZED UNDER THAT WARRANT AND PROBABLY COULD BE  
5 TURNED OVER TO THE PROSECUTION AFTER PROPER LITIGATION IN  
6 SAN MATEO COUNTY.

7 BUT IF THE COURT MAKES AN ORDER IN THIS CASE THAT  
8 NONE OF THE CONTENTS OF THE ITEMS THAT WERE SEIZED SHOULD  
9 BE DIVULGED TO THE PROSECUTION IN THIS CASE, THEN I THINK  
10 THAT IS A SUFFICIENT --

11 THE COURT: WELL, SUPPOSE THERE IS NO CONFIDENTIAL  
12 COMMUNICATIONS OR ATTORNEY/CLIENT CORRESPONDENCE OF ANY KIND  
13 OR WORK-RELATED OR PRODUCT-RELATED, IS THERE ANYTHING TO  
14 PREVENT THE DISCLOSURE OF ANYTHING AMONG THE PAPERS WHICH  
15 WERE SEIZED, TO THE PROSECUTION IN THIS CASE?

16 MR. WAPNER: LEGALLY, PROBABLY NOT.

17 THE COURT: WHY NOT? YOU MEAN, DOCUMENTS THAT HAVE  
18 BEEN PROPERLY SEIZED AND THEY DON'T FALL WITHIN THE PRIVILEGE,  
19 IT CAN'T BE USED BY YOU?

20 MR. WAPNER: YOU SAID, "IS THERE ANYTHING TO PREVENT  
21 IT?"

22 THE COURT: THAT IS WHAT I SAID, YES.

23 MR. WAPNER: I SAID THAT THERE PROBABLY IS NOTHING TO  
24 PREVENT IT.

25 THE COURT: SO, ANYTHING SEIZED ISN'T TAINTED BY ANY  
26 CONFIDENTIAL COMMUNICATION OR ATTORNEY/CLIENT PRIVILEGE AND  
27 MAY BE USED BY YOU. IS THAT TRUE?

28 NOW, IS IT YOUR POSITION THAT YOU WOULD HAVE A

1 RIGHT TO LOOK AT THAT MATERIAL, SINCE THERE ISN'T ANY  
2 VIOLATION OF ANY CONFIDENTIAL RELATIONSHIP?

F

- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1 MR. WAPNER: I THINK THAT PROBABLY THAT IS TRUE.

2 OUT OF AN ABUNDANCE OF CAUTION --

3 THE COURT: THAT IS WHAT YOU HAVE BEEN DOING ALL  
4 THROUGHOUT HAS BEEN OUT OF AN ABUNDANCE OF CAUTION ON EVERYTHING  
5 YOU HAVE DONE ON THIS CASE TO MAKE SURE THERE IS NO ERROR  
6 WHICH OCCURS.

7 MR. WAPNER: LET ME JUST SAY ONE THING TO THE COURT  
8 IN THAT VEIN.

9 I AM NOT SURE WHAT THE COURT IS SAYING, BUT IN  
10 ANY EVENT, THIS WAS NOT SUGGESTED BY COUNSEL, BUT I THINK  
11 THAT THE ARGUMENT COULD BE MADE THAT A PORTION OF THOSE  
12 DOCUMENTS THAT NOW HAS BECOME AN ATTORNEY-CLIENT COMMUNICATION  
13 WOULD BE THAT NOTATION -- NOT THE DOCUMENT ITSELF -- I AM  
14 NOT TALKING ABOUT THE DOCUMENT ITSELF, BUT THE NOTATION ON  
15 THE DOCUMENT OF A STICKER WITH A NUMBER ON IT, WHICH IS  
16 TANTAMOUNT TO A STATEMENT BY SOMEONE, PRESUMABLY A WITNESS,  
17 BASED ON THE TESTIMONY AT THIS HEARING, WHICH "WE INTEND TO  
18 USE TO IMPEACH A WITNESS WITH" AND SO ON AND SO FORTH, ALL  
19 I AM SUGGESTING IS IF THE COURT DECIDES THAT IT IS GOING TO  
20 TURN THE MATTERS OVER TO THE PROSECUTION OR IF THE COURT IS  
21 MAKING A RULING THAT THERE WAS NO PRIVILEGE OR ANYTHING, THAT  
22 ANY NOTATION ON THE DOCUMENTS THAT THEY ARE --

23 THE COURT: YOU MEAN MERELY A STICKER WITH A "37" ON  
24 THAT, IT IS COMPLETELY MEANINGLESS. NOBODY WOULD WANT TO  
25 INTRODUCE THAT INTO EVIDENCE. FOR WHAT PURPOSE?

26 MR. WAPNER: I AM NOT SUGGESTING I WOULD INTRODUCE  
27 THE STICKER. THAT IS NOT WHAT I AM SAYING, THAT THE STICKER  
28 IS TANTAMOUNT TO A STATEMENT, WHICH IS SOMETHING THAT WAS

-2

1 SUGGESTED, "WE INTENDED TO USE THAT TO IMPEACH A WITNESS."

2 THE COURT: WHAT ABOUT THE IMPLICATION IN MR. BARENS'  
3 CROSS-EXAMINATION OF SOME OF YOUR WITNESSES THAT THIS WASN'T  
4 A BONA FIDE SEARCH WARRANT WHICH WAS SOUGHT?

5 THAT WHAT THE REASON FOR SEEKING IT WAS, AND  
6 THE REASON FOR HAVING ZOELLER AND THE L.A. POLICE OFFICERS  
7 PRESENT AT THAT TIME WAS TO TRY TO GET EVIDENCE, NOT IN THIS  
8 CASE OR IN THE CASE UP THERE, BUT SOME OTHER MATTER, AND THAT  
9 IT WAS JUST A SUBTERFUGE AND TO BE USED FOR THAT PARTICULAR  
10 PURPOSE AND, THEREFORE, THAT TAINTS THE ENTIRE SEARCH?

11 MR. WAPNER: WELL, I DON'T THINK THAT THERE IS ANY  
12 EVIDENCE TO SUPPORT THAT.

13 THE COURT: LOOK, HE SAYS THERE IS AN INFERENCE: WHY  
14 DO THEY SELECT ZOELLER, WHO IS THE PRIMARY INVESTIGATOR IN  
15 THIS PARTICULAR CASE? AND WHY DID THEY SEEK THESE OTHER  
16 OFFICERS, ITO AND ROZZI AND SOME OF THE OTHERS, WHO WERE  
17 INTERESTED IN THIS MURDER IN HOLLYWOOD, BUT FOR THE PURPOSE  
18 OF TRYING TO GET EVIDENCE THAT THERE MIGHT POSSIBLY BE THERE,  
19 IMPLICATING HIM EITHER IN THIS CASE OR ON THOSE CASES IN  
20 HOLLYWOOD?

21 MR. WAPNER: WELL, FIRST OF ALL, LET ME ADDRESS THAT  
22 IN TWO WAYS: FIRST OF ALL, I THINK THE FACT THAT DETECTIVE  
23 BREILING, AGENT BREILING WENT TO TWO OR THREE DIFFERENT  
24 PEOPLE IN THE ATTORNEY GENERAL'S OFFICE AND THEN TO A JUDGE  
25 IN SAN MATEO COUNTY AND HAD A JUDICIALLY AUTHORIZED SEARCH,  
26 IS EVIDENCE OF THEIR GOOD FAITH AND THAT THEY GOT THE WARRANT  
27 FOR PRECISELY THE REASONS THAT WERE STATED IN THE WARRANT.

28 AND I DON'T THINK THERE IS ANY EVIDENCE --

1 THE COURT: PARENTHETICALLY, YOU BELIEVE THE SEARCH  
2 WARRANT WAS VALIDLY ISSUED AND BASED UPON AN AFFIDAVIT OF  
3 GOOD CAUSE?

4 MR. WAPNER: YES, I DO.

5 BUT I ALSO THINK -- AND THAT WAS MY SECOND POINT --  
6 THAT WHETHER THE SEARCH WARRANT WAS VALID AND/OR WHETHER IT  
7 WAS A SUBTERFUGE IS BASICALLY NOT GERMANE TO THE ISSUE BEFORE  
8 THIS COURT BECAUSE THE QUESTION IS: WHAT DID THE PEOPLE WHO  
9 WERE THERE SEE? DID THEY SEE ATTORNEY-CLIENT PRIVILEGED  
10 COMMUNICATIONS? AND DID THEY SEE WORK PRODUCT?

11 IT IS GERMANE TO THE ISSUE BEFORE THIS COURT  
12 ONLY TO ONE EXTENT, WHICH IS IF THE SEARCH WARRANT WAS NOT  
13 VALID AND THE ITEMS THAT THEY TOOK, THEREFORE, ARE NOT PROPERLY  
14 SEIZABLE, THEN THEY CAN'T BE TURNED OVER -- THEY CAN'T BE  
15 USED BY THE PROSECUTION IN THAT CASE OR IN THIS CASE.

16 THE COURT: ALL RIGHT.  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 MR. WAPNER: BUT IF --

2 THE COURT: AND IF THERE WAS ANYTHING SEEN, IT CANNOT  
3 BE USED IN THIS CASE AND NO COMMUNICATION OF THAT MATERIAL  
4 SHOULD BE MADE TO EITHER YOU OR ANY PROSPECTIVE WITNESS IN  
5 THE CASE, INCLUDING THE POLICE OFFICERS.

6 MR. WAPNER: RIGHT.

7 THE COURT: IS THAT WHAT YOU ARE SAYING?

8 MR. WAPNER: WELL, THE QUESTION REALLY IS: DID THEY  
9 VIOLATE ANY PRIVILEGE.

10 WHAT YOU ARE SAYING IS, IF IT IS NOT A LAWFUL  
11 WARRANT, THEY CAN'T USE THE INFORMATION IN ANY EVENT?

12 THE COURT: THAT IS CORRECT.

13 WELL, MY PRESENT THINKING IS THAT IT WAS ON ITS  
14 FACE, IT LOOKS LIKE A PERFECTLY VALID SEARCH WARRANT AND ON  
15 ITS FACE WITH THE SUPPORTING AFFIDAVIT OF GOOD CAUSE THAT  
16 SUPPORTS THE ISSUANCE OF A SEARCH WARRANT, SO IF I WERE TO  
17 DETERMINE IT AB INITIO, I WOULD SAY IT IS A VALID WARRANT  
18 AND A VALID AFFIDAVIT IN SUPPORT OF THE WARRANT. I HAVE READ  
19 IT AND I HAVE STUDIED IT CAREFULLY AND I HAVE REACHED THE  
20 CONCLUSION THAT THE WARRANT WAS A VALID WARRANT VALIDLY ISSUED  
21 AND VALIDLY SERVED AND VALIDLY SUPPORTED BY THE AFFIDAVIT  
22 OF GOOD CAUSE.

23 NOW WE REACH ANOTHER POINT. THE THRESHOLD POINT  
24 IS, ASSUMING THAT TO BE DONE AT THE TIME OF THE SEARCH, WHAT  
25 THEY SEIZED WAS THAT IN ANY WAY IN VIOLATION OF THE RIGHTS  
26 OF THE DEFENDANT?

27 NOW, THERE IS EVIDENCE ON BOTH SIDES, ISN'T THERE?  
28 YOU HAVE HEARD FROM THE WITNESSES, THE FAMILY WHO WERE THERE,

1 WHO SAY THEY SAW THEM EXAMINE EVERY SINGLE DOCUMENT AND READ  
2 IT CAREFULLY, APPARENTLY EVERY SINGLE PIECE OF PAPER THAT  
3 WAS THERE, THEY READ -- AND I DON'T KNOW THAT THEY ACTUALLY  
4 SAID THEY SEIZED ALL OF IT, THOUGH, I DON'T REMEMBER THEIR  
5 HAVING SAID THAT. BUT WE KNOW ONE THING, HOWEVER, AND I THINK  
6 I CAN MAKE A FINDING TO THAT EFFECT: THAT THERE WAS NOTHING  
7 IN ANY WAY CONFIDENTIAL, IN ANY WAY WAS THERE ATTORNEY-CLIENT  
8 PRIVILEGED OR WORK PRODUCT WHICH WAS ACTUALLY SEIZED. IF  
9 WE BELIEVE MR. TULLENERS THAT EVERYTHING IN THAT BOX THAT  
10 WAS ACTUALLY TAKEN AWAY HAD BEEN EXAMINED BY MR. CHIER AND  
11 NO OBJECTION MADE TO ANY ONE OF THEM, HE HAD SUFFICIENT TIME  
12 IN WHICH TO DO IT.

13 IF I HAD TO DECIDE THAT ISSUE, I WOULD DECIDE  
14 THAT HE HAD EVERY OPPORTUNITY TO EXAMINE THOSE DOCUMENTS  
15 AND I HAVE TO REACH THE CONCLUSION THERE WAS NOTHING AMONGST  
16 THOSE DOCUMENTS WHICH WAS IN ANY WAY CONFIDENTIAL WHICH WAS  
17 SACROSANCT AND I AM MAKING THAT FINDING NOW.

18 MR. WAPNER: OKAY, WHICH LEAVES THE SECOND ISSUE, WHICH  
19 IS THE ISSUE OF WHAT WAS SEEN BUT NOT TAKEN.

20 THE COURT: THAT IS CORRECT. AS TO THAT, WE HAVE GOT  
21 A CONFLICT OF TESTIMONY, HAVEN'T WE? WE HAVE THE TESTIMONY  
22 OF ALL OF THE POLICE OFFICERS THAT, FIRST, THEY WERE ENJOINED  
23 CLEARLY AND DIRECTED NOT IN ANY WAY TO READ OR TO SEIZE  
24 ANYTHING WHICH MIGHT LOOK LIKE AN ATTORNEY-CLIENT COMMUNICATION  
25 AND EACH ONE OF THEM TESTIFIED CATEGORICALLY THAT THEY DIDN'T  
26 DO THAT, EXCEPT FOR THE POSSIBLE EXCEPTION OF MR. TULLENERS,  
27 WHO TESTIFIED ONLY WITH RESPECT TO WHAT APPEARED TO BE NOTES  
28 AND COMMENTS ON A VOIR DIRE OF A PROSPECTIVE JUROR. AND I

1 CAN'T CHARACTERIZE THAT, AS APPARENTLY IT WAS DONE BY THE  
2 DEFENDANT, WHO IS VERY CONSCIENTIOUS ABOUT EVERYTHING THAT  
3 HAPPENED IN THIS CASE AND TOOK NOTES VOLUNIMOUSLY, BUT I CAN'T  
4 CHARACTERIZE THAT AS BEING A VIOLATION OF ANY PRIVILEGE.  
5 IT IS SOMETHING THAT HE HIMSELF TOOK AND DID WITHOUT ANY  
6 COMMUNICATIONS TO ANYBODY. SO EVEN THAT, I DISCOUNT. I DON'T  
7 THINK THAT IS A CAUSE FOR DISMISSING A MURDER CHARGE MERELY  
8 BECAUSE SOMEBODY LOOKED AT A COMMENT ON VOIR DIRE OF A  
9 PARTICULAR JUROR.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

A-1

1            THAT IS WHY I ASKED THE QUESTION BEFORE, DOES  
2            IT MAKE ANY DIFFERENCE WHAT TYPE OF CASE IT IS, BEFORE WE  
3            REACH THE CONCLUSION TO DISMISS IT. AND WITHOUT MORE SERIOUSLY  
4            CONSIDERING DISMISSING A MURDER CHARGE, RATHER THAN ONE  
5            INVOLVED IN THE BARBER CASE AND IT IS MY OPINION AND I WILL  
6            STATE IT ON THE RECORD, THAT I THINK IF THE SUPREME COURT  
7            HAD TO CONSIDER DISMISSING A MURDER CHARGE WHERE THE DEATH  
8            PENALTY IS SOUGHT FOR THE KIND OF CONDUCT THAT TOOK PLACE,  
9            THAT THEIR CONCLUSION MIGHT BE DIFFERENT.

10            EVEN IF THAT CASE WAS A FOUR TO THREE DECISION  
11            IF I REMEMBER CORRECTLY, AND THREE OF THE MEMBERS OF THAT --  
12            OR MOST OF THE MEMBERS OF THE MAJORITY OPINION ARE FROM  
13            JUSTICES WHO ARE NO LONGER ON THE COURT AND CONCEIVABLY,  
14            ANOTHER SUPREME COURT MIGHT ACT DIFFERENTLY.

15            MR. WAPNER: WELL, I ALSO THINK THE CASES THAT HAVE  
16            BEEN DECIDED SINCE THEN, SUPPORT THE COURT'S POSITION.

17            THE COURT: WHEN THAT CASE HAS BEEN DISTINGUISHED, ANY  
18            NUMBER OF TIMES, I DON'T KNOW OF ANY, SINGLE CASE IN WHICH  
19            IT HAS FOLLOWED ON THE FACTS OF THAT CASE.

20            IN ANY EVENT, YOU HAVE GOT AN INDICATION FROM  
21            ME. I FIND FIRST THAT ON ITS FACE, THAT THE SEARCH WARRANT  
22            WAS VALID.

23            TWO, IT WAS ADEQUATELY SUPPORTED BY THE AFFIDAVIT.  
24            I BELIEVE THAT ALL OF THE PEOPLE WHO ENGAGED IN THE PARTICULAR  
25            SEARCH AND SEIZURE WERE ADEQUATELY AND FIRMLY AND  
26            CATEGORICALLY ADVISED UNDER NO CIRCUMSTANCES, TO SEIZE OR  
27            TAKE OR READ OR DO ANYTHING WITH RESPECT TO ANY MATTER WHICH  
28            INVOLVED THE ATTORNEY/CLIENT RELATIONSHIP OR OTHERWISE

1 PRIVILEGED.

2 AND WHATEVER THEIR PURPOSE MAY HAVE BEEN, I DON'T  
3 THINK IT IS EVEN MATERIAL THAT THEY WENT IN THERE ASSUMING  
4 THAT THEY MIGHT BE ABLE TO FIND SOMETHING. THAT HAPPENS IN  
5 EVERY CASE, ANY KIND OF A SEARCH WARRANT, THAT THEY MIGHT  
6 BE LOOKING FOR THINGS, HOPING THERE MIGHT BE SOMETHING ELSE  
7 UNCOVERED.

8 BUT I DON'T THINK THAT THIS IS INVALIDATING THE  
9 SEARCH.

10 SO, I WILL DENY THE MOTION. ALL RIGHT.

11 NOW, WE HAVE ANOTHER MOTION PENDING, HAVE WE NOT?

12 HAVE YOU READ THE O'HARE CASE?

13 MR. BARENS: I BELIEVE MR. CHIER DID.

14 HOWEVER, I THINK RELATIVE TO THE ARCE MATTER,  
15 WE CAN MAKE THIS RATHER SIMPLE, YOUR HONOR.

16 THE COURT: ARCE?

17 MR. BARENS: YOU ARE REFERENCING THE ARCE MOTION?

18 THE COURT: YES.

19 MR. BARENS: DOESN'T O'HARE HAVE TO DO WITH THE ARCE  
20 MATTER?

21 THE COURT: YES.

22 MR. BARENS: THE MATTER IS SUBMITTED.

23 THE COURT: LET ME HEAR FROM YOU. I DON'T WANT TO MAKE  
24 A JUDGMENT UNLESS I FEEL I AM DOING THE RIGHT THING.

25 DO YOU FEEL THAT O'HARE IS NOT CONCLUSIVE, BUT  
26 VERY PERSUASIVE ON THE MOTION?

27 MR. BARENS: MR. CHIER READ O'HARE. I DID NOT.

28 THE COURT: ALL RIGHT. THEN I WILL GET MR. CHIER'S

A-3

1       VERSION OF IT. I WILL HEAR FROM YOU.

2               MR. CHIER: FROM A CURSORY EXAMINATION, IT WOULD APPEAR  
3       THAT AT LEAST AS TO A PORTION OF THE POINTS BEING URGED IN  
4       OUR MOTION THAT THE O'HARE CASE COULD BE SEEN AS DISPOSITIVE.

5               I HATE TO ENGAGE IN THIS AMBIGUOUS LAWYER TALK.  
6       BUT THERE WERE OTHER ASPECTS OF THE MOTION WHICH I DO NOT  
7       THINK ARE ADDRESSED BY O'HARE, SUCH AS THE QUESTION OF WHETHER  
8       OR NOT PERSONS ARE TOO EASILY EXCUSED FOR HARDSHIP, THE  
9       COMPOSITION OF THE NUMBER OF YOUNG PEOPLE AND THE NUMBER OF  
10      POOR PEOPLE AND THAT TYPE OF STUFF.

11              I WOULD BE WILLING TO JUST SUBMIT IT ON THE BASIS  
12      OF THE MOTIONS --

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE COURT: YOU MEAN THAT YOU CANNOT INQUIRE OF PEOPLE  
2 WHETHER OR NOT IT WOULD BE AN ECONOMIC HARDSHIP FOR THEM?  
3 YOU MUST TAKE THEM AND INSIST UPON THEIR STAYING, EVEN THOUGH  
4 THEY ARE POOR AND COULDN'T AFFORD TO DO IT?

5 MR. CHIER: WELL, AS I SEE IT, JUDGE, THE FACT THAT  
6 THE JURORS GET TEN OR TWELVE DOLLARS A DAY, WHICH IS NOT EVEN  
7 A LIVING WAGE --

8 THE COURT: OF COURSE NOT.

9 MR. CHIER: YOU WOULD TEND TO GET EITHER A PROFESSIONAL  
10 JUROR, A RETIRED PERSON. YOU DON'T GET A TRUE CROSS-SECTION.

11 THE COURT: YES. YOU DO GET A LOT OF EMPLOYED PEOPLE  
12 WHOSE EMPLOYERS ARE WILLING TO PAY THEM.

13 MR. CHIER: WELL, YOU DON'T -- YOU TEND TO GET PEOPLE  
14 FROM THE LARGE CORPORATIONS WHO ARE MORE MIDDLE CLASS. THEY  
15 HAVE MORE MIDDLE CLASS VALUES. IT IS A SEGMENT OF THE  
16 POPULATION, JUDGE, THAT IS DIFFERENT FROM PEOPLE THAT WORK  
17 FOR SMALLER COMPANIES, THAT DON'T HAVE THE SAME TYPE OF  
18 CORPORATE MENTALITY.

19 THE COURT: YOU MEAN WE SHOULD GO DOWN TO SKID ROW AND  
20 PICK OUT PEOPLE THERE?

21 MR. CHIER: WELL, I THINK THAT THERE IS SOMETHING SHORT  
22 OF THAT, THAT IS MISSING FROM THE JURY PANEL, YOUR HONOR.  
23 OBVIOUSLY, THE SKID ROW PEOPLE WOULD NOT QUALIFY.

24 THE COURT: WHAT HAVE YOU TO SAY ABOUT THAT, MR. WAPNER?  
25 COUNSEL CONCEDES THAT THE LARGE PART OF THE OPINION IN O'HARE,  
26 SEEMS TO BE ALMOST DETERMINATIVE EXCEPT FOR THE OTHER POINTS  
27 THAT HE MADE ABOUT POOR PEOPLE NOT BEING ON A JURY BECAUSE  
28 THEY CAN'T AFFORD IT, SO THEY ARE NOT CHOSEN.

1 MR. WAPNER: WELL, IT IS A NOVEL THEORY. IT IS  
2 INTERESTING.

3 THE COURT: OF COURSE, I HAVE NOT EVER SEEN ANY CASE  
4 WHICH SO DECIDED.

5 MR. WAPNER: WELL, THAT IS WHAT I WAS GETTING TO.

6 THE COURT: HE WANTS ME TO --

7 MR. WAPNER: CREATE LAW?

8 THE COURT: YEAH, GO INTO NEW PASTURES, SO TO SPEAK,  
9 TASTE THE ALFALFA THERE.

10 MR. WAPNER: WE KNOW MR. CHIER HAS A VERY CREATIVE LEGAL  
11 MIND BECAUSE FROM HIS CAR, HE COULD TRY TO FIGURE OUT THAT  
12 HE SHOULD CONVERT MR. HUNT'S HOUSE INTO A LAW OFFICE AND THAT  
13 HE COULD DO SOMETHING ABOUT THE SEARCH.

14 I WILL GRANT THE FACT THAT HE HAS A VERY CREATIVE  
15 LEGAL MIND. BUT I DON'T THINK THAT THAT IS THE LAW IN THIS  
16 STATE.

17 I ALSO DON'T NECESSARILY AGREE WITH THE CONCLUSION  
18 THAT IT KEEPS POOR PEOPLE OFF THE JURY UNLESS HE IS TALKING  
19 ABOUT -- WELL, I DON'T KNOW WHO HE IS TALKING ABOUT BECAUSE  
20 IF HE IS TALKING ABOUT PEOPLE WHO HAVE JOBS THAT PAY THEM  
21 A LOW WAGE, WE DON'T HAVE ANY TESTIMONY THAT THESE PEOPLE  
22 WON'T BE COMPENSATED, EVEN AT THE LOW WAGE, FROM THIS JOB,  
23 WHILE THEY ARE ON JURY DUTY BECAUSE WE KNOW THAT MOST OF THE  
24 PEOPLE WHO ARE ON JURY DUTY, WHETHER THEY ARE RICH OR POOR,  
25 IF THEY ARE NOT COMPENSATED BY THEIR EMPLOYER, THEY ARE  
26 EXCUSED.

27 THAT INCLUDES RICH PEOPLE AND POOR PEOPLE AND  
28 MIDDLE INCOME PEOPLE. SO, LIKEWISE, WHAT IF HE IS TALKING

1 ABOUT WELFARE RECIPIENTS? WELL, IF THEY GET THEIR FIVE OR  
2 TEN DOLLARS A DAY, THAT IS ON TOP OF THEIR WELFARE BENEFITS.  
3 THERE IS NO INDICATION THAT THEIR WELFARE BENEFITS WOULD  
4 CEASE BECAUSE THEY ARE ON JURY DUTY.

5 I DON'T KNOW WHAT EXACTLY -- WHO HE IS SUGGESTING  
6 WOULD BE EXCLUDED, BUT I DON'T THINK WE HAD ANY TESTIMONY  
7 AT THAT HEARING THAT WOULD SUPPORT THAT KIND OF A THEORY.  
8 I THINK THAT IT IS --

9 MR. CHIER: MAY I JUST RESPOND?

10 THE COURT: YES.

11 MR. CHIER: PART OF THE PROBLEM AS I SAW IT THEN AND  
12 I STILL SEE IT, IS THAT BY LIMITING THE JUROR SELECTION  
13 SOURCES TO D.M.V. LISTS AND VOTER REGISTRATION LISTS, YOU  
14 ARE MISSING A FAIRLY LARGE SEGMENT OF OTHERWISE ELIGIBLE  
15 JURORS, PERSONS THAT ARE NONCONFORMING, PERHAPS PEOPLE THAT  
16 DON'T DRIVE CARS AND PEOPLE WHO ALTHOUGH THEY DON'T VOTE OR  
17 REGISTER TO VOTE, MIGHT PARTICIPATE IN GOVERNMENT BY --

18 THE COURT: WELL, OF THOSE PEOPLE, HOW ARE WE GOING  
19 TO DETERMINE WHETHER OR NOT THEY ARE CITIZENS?

20 MR. CHIER: WHETHER OR NOT THEY ARE CITIZENS?

21 THE COURT: PARDON ME. DO WE PERMIT ALIENS TO SIT ON  
22 JURIES?

23 MR. WAPNER: NO. THEY HAVE TO BE --

24 THE COURT: CITIZENS?

25 MR. WAPNER: CITIZENS, I BELIEVE. YES.

26 THE COURT: AM I RIGHT ABOUT THAT?

27 MR. BARENS: YES.

28 THE COURT: HOW ARE WE GOING TO DETERMINE IF WE PICK

1 THEM OFF THE STREET, WHETHER THEY ARE CITIZENS?

2 MR. CHIER: WELL, THERE ARE PUBLIC UTILITY LISTS.

3 THE COURT: THAT WOULDN'T SHOW US WHETHER THEY ARE  
4 CITIZENS.

5 MR. CHIER: BUT, NEITHER DOES A DRIVER'S LICENSE.  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

F

1 THE COURT: WELL, THEY HAVE TO SAY IN THERE, DON'T  
2 THEY HAVE TO, IF I REMEMBER, WHETHER THEY ARE A CITIZEN OF  
3 THE UNITED STATES?

4 MR. CHIER: NO, I DON'T THINK THAT IS A REQUIREMENT.

5 MR. BARENS: NOT ON THE DMV.

6 THE COURT: AT ANY RATE, ON THE VOTER LISTS, YOU HAVE  
7 TO BE ONE.

8 I THINK WE HAVE TO GO THROUGH THE WHOLE PROCESS  
9 OF FINDING OUTT WHETHER THEY ARE CITIZENS --

10 MR. CHIER: MAYBE WE WILL SOMEDAY HAVE --

11 THE COURT: WELL, SOMEDAY.

12 AT ANY RATE, THE SYSTEM WE HAVE GOT HAS BEEN  
13 WORKING PRETTY WELL. I DON'T THINK THAT THIS IS THE TIME  
14 TO CHANGE IT.

15 MR. BARENS: WE ARE OBLIGATED --

16 THE COURT: WELL, YOU HAVE BEEN DOING VERY WELL, BOTH  
17 OF YOU AS LAWYERS HAVE BEEN DOING VERY WELL UNDER IT AND I  
18 HOPE YOU CONTINUE TO DO SO. YOUR COLLEAGUE HAS BEEN DOING  
19 VERY WELL AND HE HAS PRESENTED THE CASE IN ITS BEST POSSIBLE  
20 LIGHT.

21 MR. BARENS: QUITE SO. I COULD NOT ADD ANYTHING TO  
22 MR. CHIER'S PREPARATION, YOUR HONOR.

23 THE COURT: FINE. THEN WE HAVE CLEARED OUR DECKS,  
24 HAVE WE?

25 MR. WAPNER: I THINK, ALTHOUGH I THINK IT IS PRETTY  
26 OBVIOUS WHAT HAS BEEN GOING ON, HAS THE COURT MADE A RULING  
27 ON THE ARCE MOTION?

28 THE COURT: YES, I AM DENYING IT.

1 MR. BARENS: I AM SHOCKED.

2 THE COURT: I DON'T THINK THERE IS ANYTHING IN THE  
3 SELECTION OF OUR JURORS WHICH IS IN ANY WAY UNCONSTITUTIONAL  
4 OR A VIOLATION OF THE DEFENDANT'S RIGHTS.

5 MR. WAPNER: YOUR HONOR, WITH ALL DUE RESPECT TO  
6 EVERYBODY, I JUST WANTED TO TAKE UP SOME HOUSEKEEPING THINGS  
7 SO WE DON'T HAVE TO DO IT NEXT WEEK.

8 THE COURT: ALL RIGHT.

9 MR. WAPNER: MAYBE THIS IS ONE OF MY PERSONAL QUIRKS,  
10 BUT CAN WE HAVE SOME UNDERSTANDING THAT WHEN OBJECTIONS ARE  
11 MADE DURING THE COURSE OF TRIAL THAT THEY ARE MADE BY STATING  
12 THAT THERE IS AN OBJECTION AND STATING THE LEGAL GROUNDS,  
13 RATHER THAN HAVING SPEAKING OBJECTIONS? AND IF THERE IS GOING  
14 TO BE A SPEAKING OBJECTION, THAT IT BE DONE AT THE BENCH.

15 THE COURT: WELL, YOU DON'T HAVE TO DO THAT. MR.  
16 BARENS KNOWS THAT AND HE WILL OBSERVE THAT, I AM SURE HE WILL  
17 OBSERVE THAT.

18 MR. BARENS: QUITE SO, YOUR HONOR.

19 THE COURT: INCIDENTALLY, I WANT NO REFERENCE AT ALL  
20 ABOUT WHAT HAPPENED IN HOLLYWOOD IN ANY WAY THROUGHOUT THIS  
21 TRIAL.

22 MR. WAPNER: THAT WAS THE NEXT THING.

23 THE COURT: I DON'T WANT ANY SUGGESTION THAT THERE  
24 WAS A HOLLYWOOD MURDER OR ANYBODY CONNECTED IN THIS CASE WAS  
25 INVOLVED IN IT.

26 MR. WAPNER: CAN THAT RULING BE --

27 THE COURT: THERE WERE REFERENCES, YOU HAD ASKED ABOUT  
28 THAT HOLLYWOOD MURDER, MR. BARENS.

1 MR. BARENS: YOUR HONOR, I HAD UNDERSTOOD AND IN GOOD  
2 FAITH WITH YOUR HONOR FROM THE START, THAT IN FRONT OF THE  
3 JURY, I WOULD NEVER DO THAT.

4 THE COURT: WELL, FINE. I AM SURE YOU WILL OBSERVE  
5 THAT.

6 MR. BARENS: I WILL DO SO.  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

-4

1 MR. WAPNER: THAT INCLUDES ANY INFERENCE THAT MIGHT  
2 BE SUGGESTED BY A QUESTION THAT IS ASKED OF A WITNESS?

3 THE COURT: HE KNOWS THAT. HE KNOWS WHAT TO DO AND  
4 HE KNOWS WHAT TO ASK AND WHAT NOT TO ASK. HE HAS NODDED HIS  
5 HEAD, HE KNOWS I TOOK HIM TO TASK. HE KNOWS WHAT TO DO.  
6 HE IS AN EXPERIENCED, COMPETENT LAWYER AND AN ETHICAL ONE,  
7 TOO.

8 IS THERE ANY OTHER THING YOU CAN THINK OF?

9 MR. WAPNER: NONE THAT I CAN THINK OF RIGHT NOW. I  
10 AM SURE I CAN THINK OF SOME AND I WILL --

11 THE COURT: ALL RIGHT, YOU TAKE IT UP AT THE BENCH  
12 THEN.

13 MR. BARENS: I AM SORRY. WHAT WAS THAT?

14 THE COURT: ANY OTHER CHORES YOU CAN THINK OF, IS THERE  
15 ANYTHING ELSE YOU WANT TO HAVE, ANY WARNINGS? IF YOU HAVE  
16 ANY, I WOULD LIKE TO LISTEN TO YOURS, TOO.

17 MR. BARENS: NO, YOUR HONOR.

18 I PRESUME WE ALL UNDERSTAND THE HOURS AND THE  
19 DAYS TYPE OF THING SO THAT WE --

20 THE COURT: FOUR DAYS A WEEK.

21 MR. BARENS: FOUR DAYS FROM 10:30 TO 4:30, TYPE OF  
22 THING SO WE CAN ALL RELY ON OUR SCHEDULES, YOUR HONOR?

23 THE COURT: THAT'S RIGHT. AND EVERYBODY WILL BE  
24 PROMPT AND ON TIME.

25 MR. BARENS: RIGHT.

26 YOUR HONOR, PERHAPS NOW ISN'T THE TIME TO INQUIRE  
27 ABOUT IT, THERE HAD BEEN SOME DISCUSSION ABOUT EASTER.

28 THE COURT: I DON'T KNOW THAT. THERE HAS BEEN NO

1 DISCUSSION ABOUT EASTER.

2 MR. BARENS: I HAD A CONVERSATION WITH YOUR CLERK.

3 THE COURT: DO YOU WANT TO GO SKIING, THAT IS JUST  
4 WHAT YOU WANT TO GET OFF FOR.

5 MR. BARENS: YES, YOUR HONOR.

6 THE COURT: THAT INVOLVES EXPENDITURE OF TOO MUCH  
7 MONEY WITH THE SALARIES FOR THE HELP AND EVERYBODY ELSE AND  
8 IT COST \$4,000 A DAY TO RUN A COURT, DID YOU KNOW THAT?

9 MR. BARENS: NO, I DID NOT, YOUR HONOR.

10 THE COURT: THE STATISTICS SHOW THAT.

11 MR. BARENS: ALL RIGHT, YOUR HONOR.

12 THE COURT: ALL THE DECKS HAVE BEEN CLEARED, HAVE THEY?

13 MR. WAPNER: YOUR HONOR, I DO ANTICIPATE THE OPENING  
14 STATEMENT ON BOTH SIDES ON MONDAY.

15 THE COURT: WELL, THEY MIGHT NOT WANT TO DO THAT. THEY  
16 MIGHT RESERVE THEIR RIGHT TO MAKE AN OPENING STATEMENT.

17 MR. WAPNER: I ONLY SAY THAT BECAUSE I TALKED TO MR.  
18 BARENS EARLIER, AND THE TESTIMONY WILL COMMENCE MONDAY  
19 AFTERNOON.

20 THE COURT: WELL, WE WILL GO RIGHT THROUGH.

21 DID YOU HEAR WHAT HE SAID?

22 MR. BARENS: I DIDN'T ACTUALLY.

23 THE COURT: HE SAID YOU WILL HAVE OPENING STATEMENT  
24 FIRST THING MONDAY MORNING AND I SAID YOU MAY RESERVE YOUR  
25 RIGHT TO MAKE AN OPENING STATEMENT.

26 MR. BARENS: ALL RIGHT.

27 THE COURT: YOU DON'T HAVE TO MAKE IT ON MONDAY.

28 MR. BARENS: I UNDERSTAND THAT, YOUR HONOR. HOWEVER,

1 I HOPE THEY ARE STILL AWAKE AFTERWARDS.

2 THE COURT: THEY ARE STILL WHAT?

3 MR. BARENS: AWAKE AFTERWARD.

4 MR. WAPNER: I JUST WILL TELL THE COURT I TALKED TO  
5 MR. BARENS ABOUT THAT IN SCHEDULING WITNESSES, I AM DOING  
6 THAT IN ANTICIPATION.

7 THE COURT: ALL RIGHT. DO YOU WANT TO FIND OUT FROM  
8 HIM WHETHER HE INTENDS TO MAKE AN OPENING STATEMENT?

9 MR. WAPNER: I KNOW HE IS NOT BOUND BY IT BUT I AM  
10 JUST TELLING THE COURT IF I GET SURPRISED AND RUN OUT OF  
11 WITNESSES.

12 THE COURT: ALL RIGHT, SEE YOU ON MONDAY.

13 (AT 2:40 P.M. AN ADJOURNMENT WAS TAKEN  
14 UNTIL MONDAY, FEBRUARY 2, 1987 AT  
15 10:30 A.M.)

16

17

18

19

20

21

22

23

24

25

26

27

28