

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

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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 9 1987

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

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: JOHN K. VAN DE KAMP
STATE ATTORNEY GENERAL
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FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME ⁶⁵ OF 101
(PAGES 10259 TO 10423, 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

THURSDAY, MARCH 12, 1987

VOLUME 65

PAGES 10259 TO 10423, INCL.

APPEARANCES:

FOR THE PLAINTIFF: IRA REINER, DISTRICT ATTORNEY
BY: FREDERICK N. WAPNER, DEPUTY
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FOR THE DEFENDANT: ARTHUR H. BARENS, ESQ.
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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 THURSDAY, MARCH 12, 1987

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1 SANTA MONICA, CALIFORNIA; THURSDAY, MARCH 12, 1987; 10:40 A.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS NOTED ON TITLE PAGE
4 EXCEPT MR. CHIER IS NOT PRESENT.)
5

6 THE COURT: ALL RIGHT, GOOD MORNING, LADIES AND
7 GENTLEMEN.

8 YOU MAY HAVE A SEAT.
9

10 RICHARD L. CLASON,
11 CALLED AS A WITNESS BY THE PEOPLE, HAVING BEEN PREVIOUSLY
12 SWORN, TESTIFIED AS FOLLOWS:

13 THE CLERK: YOU HAVE PREVIOUSLY BEEN SWORN SO YOU ARE
14 STILL UNDER OATH, MR. CLASON.

15 IF YOU WOULD JUST STATE YOUR NAME AGAIN FOR THE
16 RECORD.

17 THE WITNESS: THANK YOU. RICHARD L. CLASON,
18 C-L-A-S-O-N.

19
20 DIRECT EXAMINATION (RESUMED)

21 BY MR. WAPNER:

22 Q MR. CLASON, IN ADDITION TO THE REGULAR
23 EXEMPLARS THAT YOU USED TO COMPARE THE HANDWRITING THAT WAS
24 ON THE SEVEN PAGES THAT WE HAVE MARKED AS PEOPLE'S 55 FOR
25 IDENTIFICATION, WAS THERE ANYTHING ELSE THAT YOU USED AS
26 AN EXEMPLAR OF THE HANDWRITING OF MR. HUNT FOR THE PURPOSE
27 OF COMPARING IT TO THE HANDWRITING THAT WAS ON THE LIST,
28 PEOPLE'S 55?

1 A YES. THERE WERE FOUR OR FIVE SHEETS, YELLOW
2 TABLET SHEETS OF PAPER THAT HAD WRITING ON THEM THAT WAS
3 PURPORTEDLY DONE BY THE DEFENDANT.

4 IT WAS COMPRISED OF NOTES WRITTEN TO OTHER
5 PERSONS BY THE DEFENDANT.

6 Q AND WHERE DID YOU GET THOSE PIECES OF PAPER
7 FROM?

8 A THOSE WERE BROUGHT TO MY ATTENTION BY DETECTIVE
9 ZOELLER.

10 Q AND AS FAR AS YOU KNEW, THEY WERE TAKEN OUT OF
11 THE DEFENDANT'S RESIDENCE BY DETECTIVE ZOELLER WHEN HE
12 SERVED THE SEARCH WARRANT ON THE RESIDENT?

13 A I -- I DON'T KNOW WHERE HE GOT THEM.
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1 Q YOU WEREN'T THERE WHEN ANY WARRANT WAS SERVED?

2 A NO, SIR.

3 Q ALL RIGHT. LET'S JUST CONTINUE ON WITH THE PAGES
4 THAT YOU EXAMINED.

5 THIS LIST IS PEOPLE'S 55. AND I BELIEVE YOU HAD
6 TOLD US ABOUT THE FIRST PAGE, WHICH IS "AT LEVINS TO DO" AND
7 THE SECOND PAGE, WHICH IS "JIM DIGS PIT."

8 WHAT WAS THE NEXT PAGE THAT YOU EXAMINED?

9 A THERE WOULD HAVE BEEN ONE PAGE THAT I EXAMINED
10 IN BETWEEN THOSE TWO AND THAT WAS ONE THAT STARTS OUT WITH
11 A NUMBER 1 AND SAYS "RESERVATION."

12 Q AND IS THAT THE ONE THAT IS INDICATED BY THE
13 BLOW-UP THAT I JUST PLACED IN FRONT OF YOU?

14 A YES IT IS.

15 Q AND ON THAT LIST, WHAT WRITING DID YOU USE TO
16 COMPARE THAT TO?

17 A I USED DOCUMENTS THAT WERE BROUGHT TO MY ATTENTION
18 BY DETECTIVE ZOELLER, WHICH I REFERRED TO A MOMENT AGO.

19 Q AND SPECIFICALLY, WHICH OF THOSE DOCUMENTS DID
20 YOU USE?

21 A EXCUSE ME JUST A MOMENT, WHILE I REFER TO MY NOTES.

22 MR. WAPNER: YOUR HONOR, I HAVE SOME DOCUMENTS. I WOULD
23 ASK TO HAVE THE COURT MARK THEM AS PEOPLE'S 210 FOR
24 IDENTIFICATION. THEY ARE TWO HANDWRITTEN PAGES, ONE ON YELLOW
25 PAPER IN BLUE INK AND ONE ON WHITE PAPER THAT APPEARS TO BE
26 TORN OUT OF A NOTEBOOK.

27 THE FIRST TWO WORDS OF WHICH ARE "DEAR BROOKE."

28 MAY THOSE TWO PAPERS AND THE ENVELOPE COLLECTIVELY

1 BE MARKED AS 210 FOR IDENTIFICATION?

2 THE COURT: SO MARKED.

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1 (THE FOLLOWING PROCEEDINGS WERE HELD
2 AT THE BENCH OUTSIDE THE HEARING OF
3 THE JURY:)

4 MR. BARENS: THE DEFENSE WOULD OBJECT TO THE
5 INTRODUCTION OF THESE LETTERS OR THEIR BEING SHOWN TO THE
6 JURY. THEY ARE NOT PROBATIVE. THERE IS NO ISSUE ABOUT
7 THE HANDWRITING BEING MR. HUNT'S THAT THE DETECTIVE IS
8 TESTIFYING TO.

9 WE BELIEVE THESE LETTERS ARE PREJUDICIAL IN
10 A PERSONAL SENSE TO MR. HUNT AND SHOULD NOT BE SHOWN TO
11 THE JURY.

12 THE COURT: LET ME SEE THEM.

13 MR. BARENS: YOUR HONOR, THEY DON'T GO TO ESTABLISH
14 ANYTHING OTHER THAN THE CONTENTS OF THE LETTERS AND TO
15 MAKE MR. HUNT LOOK LIKE A BAD PERSON.

16 THEY DON'T GO TO PROVE HIS HANDWRITING, WHICH
17 WE OFFERED TO STIPULATE ON YESTERDAY.

18 MR. WAPNER HAS NO OTHER PURPOSE IN USING THIS
19 HANDWRITING OTHER THAN TO SHOW THE JURY THE CONTENTS OF
20 THESE LETTERS.

21 THE COURT: WHAT IS IN THE LETTERS?

22 MR. BARENS: THE LETTERS, I THINK, ARE EMBARRASSING,
23 NOT IN TERMS OF WHETHER DID HE COMMIT A MURDER OR NOT, THEY
24 ARE EMBARRASSING, THE PERSONAL REMARKS IN HERE ABOUT HIS
25 RELATIONSHIP WITH BROOKE.

26 THE COURT: RELATIONSHIP WITH WHO?

27 MR. BARENS: THE RELATIONSHIP WITH BROOKE IN TERMS
28 OF THEIR LOVE RELATIONSHIP, IN TERMS OF CHRISTMAS --

1 THE COURT: DO YOU THINK IF YOU GET A CONCESSION FROM
2 THEM THAT IT IS IN HIS HANDWRITING, THAT WE HAVE ACCOMPLISHED
3 OUR PURPOSE?

4 MR. WAPNER: FIRST OF ALL, THEY HELP ON THE EXEMPLAR.
5 AND SECOND OF ALL, IF MR. CLASON CAN SAY THAT
6 THESE NOTES, HE USED THESE FIRST AS AN EXEMPLAR AND THEN
7 COMPARED THESE TO THE ACTUAL WITNESSED EXEMPLAR OF MR. HUNT,
8 THEN HE CAN SAY THESE WERE IN HUNT'S HANDWRITING ALSO.

9 ALL RIGHT, ONE OF THESE NOTES SAYS, FOR EXAMPLE
10 "DEAN, MY BEST FRIEND. DON'T RECOIL. YOU ARE VERY ABLE.
11 INTERVIEW. INSTIGATE. RESEARCH. LOOK AFTER YOURSELF. I
12 AM COMING BACK.

13 "LOVE, JOSEPH HUNT."

14 MR. BARENS: YOUR HONOR, AGAIN, WE DON'T HAVE TESTIMONY,
15 EXCEPT IN A VACUUM, AS TO WHAT THAT NOTE IS ALL ABOUT. WE
16 DON'T KNOW WHETHER MR. KARNY EVER RECEIVED IT, WHEN IN FACT
17 IT IS SHOWN IN JOE'S APARTMENT AND IT HAS NEVER BEEN RECEIVED
18 BY KARNY.

19 THE COURT: WELL, IF THIS MIGHT BE ADMISSIBLE FOR
20 ANY OTHER PURPOSE, I CAN UNDERSTAND LATER ON IF YOU WANT
21 TO IN SOME WAY INTRODUCE IT IN EVIDENCE, BUT AT THIS
22 PARTICULAR STAGE, WHY DO WE HAVE TO HAVE HIS TESTIMONY?
23 HE IS THE HANDWRITING EXPERT. COUNSEL ARE PREPARED TO NOW
24 STIPULATE THAT EVERYTHING IS IN HIS HANDWRITING. WHAT MORE
25 DO YOU WANT?

26 MR. WAPNER: THE MAIN THING I WANT TO DO IS TO GO
27 THROUGH THIS LIST PAGE BY PAGE, THAT IS WHAT I WANT TO DO.

28 THE COURT: WELL, YOU WANT TO DO IT PAGE BY PAGE?

1 IT IS IN EVIDENCE. YOU DON'T HAVE TO DO THAT NOW, DO YOU?

2 IF HE ADMITS THAT EVERY SINGLE ONE -- EVERY
3 SINGLE ONE OF THE WORDS IS ALL IN THE HANDWRITING OF THE
4 DEFENDANT, WHAT MORE DO YOU WANT?

5 MR. BARENS: JUDGE, WE ARE GOING TO GO THROUGH THIS
6 PAGE BY PAGE WITH MR. KARNY AND WE ARE GOING TO GO THROUGH
7 IT PAGE BY PAGE WITH MR. HUNT. I DON'T KNOW WHY WE WANT
8 TO GO THROUGH PAGE BY PAGE WITH THIS WITNESS, TOO.

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1 THE COURT: I DON'T KNOW EITHER. WE ARE WASTING AN
2 AWFUL LOT OF TIME, IT SEEMS TO ME. IF THEY ARE WILLING TO
3 PUT ON THE RECORD, THAT ALL SEVEN PAGES ARE THE HANDWRITING
4 OF THE DEFENDANT, THAT IS ALL YOU NEED FOR ANY PURPOSE.

5 MR. BARENS: WHY WASTE MORE TIME? I WILL ADMIT THAT
6 THE EXEMPLAR IS IN HIS HANDWRITING. I ADMIT THE STUFF IS
7 IN HIS HANDWRITING. I AM WILLING TO ADMIT THAT. I NEVER
8 MADE A POINT OUT OF IT.

9 MR. WAPNER: LET ME ASK THIS WITNESS IF HE ALSO --

10 THE COURT: WHAT DIFFERENCE DOES IT MAKE? ALL OF THIS
11 IS IN HIS HANDWRITING.

12 MR. WAPNER: THE ONLY THING I WANTED TO DO, YOUR HONOR,
13 IS TO BE ABLE TO GO THROUGH THIS LIST WITH THE WITNESS AND
14 HAVE HIM --

15 THE COURT: WHY DO YOU HAVE TO GO THROUGH IT? IF WE
16 HAVE A CONFESSION FROM THE DEFENDANT THAT EVERY, SINGLE WORD
17 ON THOSE SEVEN PAGES ARE HIS HANDWRITING --

18 MR. WAPNER: WELL, FIRST OF ALL, I DON'T THINK THAT
19 HE CAN MAKE THAT CONFESSION BECAUSE THIS WITNESS SAYS THERE
20 ARE CERTAIN WORDS THAT HE ALREADY TESTIFIED TO SOME YESTERDAY
21 THAT HE CAN'T MAKE OUT AND --

22 THE COURT: WELL, IF THEY ARE WILLING TO CONCEDE THAT
23 IT IS IN HIS HANDWRITING, THE HANDWRITING OF THE DEFENDANT,
24 WHAT DO YOU WANT?

25 MR. WAPNER: AS FAR AS THE REASON WE ARE HERE, AS FAR
26 AS THIS PARTICULAR EXEMPLAR, IF HE REFERS TO IT, HE ISN'T
27 REFERRING TO THE CONTENTS. AND, THERE IS NO --

28 THE COURT: BUT, WHAT DIFFERENCE DOES IT MAKE? IF YOU

1 WANT TO INTRODUCE IT LATER ON, IF IT HAS SOME OTHER PROBATIVE
2 VALUE WITH SOME OTHER WITNESS, FINE. YOU CAN CROSS-EXAMINE
3 THE DEFENDANT ABOUT THAT.

4 MR. WAPNER: YOUR HONOR, BUT THERE IS NO PROBATIVE VALUE
5 TO THIS TO BE INTRODUCED LATER UNLESS SOMEBODY SAYS IT IS
6 IN THE DEFENDANT'S HANDWRITING AND --

7 MR. BARENS: I WILL STIPULATE THAT IT IS IN HIS
8 HANDWRITING LATER ON.

9 THE COURT: YOU CAN STIPULATE NOW, IF YOU WANT, IN
10 ADVANCE.

11 MR. BARENS: I DON'T WANT TO STIPULATE IN FRONT OF THE
12 JURY.

13 THE COURT: YOU CAN'T STIPULATE?

14 MR. BARENS: I AM TELLING YOUR HONOR THAT I WILL
15 STIPULATE THAT THIS IS IN HIS HANDWRITING.

16 MR. WAPNER: WELL THEN, THERE IS NO PROBLEM IF I SHOW
17 THIS TO THE WITNESS WITHOUT HIM MAKING REFERENCE TO THE
18 LANGUAGE AND --

19 THE COURT: WHY DO YOU NEED HIM TO DO THAT? HE IS ONLY
20 HERE FOR ONE PURPOSE, TO IDENTIFY CERTAIN HANDWRITING.

21 MR. BARENS: THEN THE JURY IS GOING TO WONDER WHY THEY
22 WEREN'T SHOWN IT LATER ON, IF WE STIPULATE TO IT. THEY MAY
23 THINK THAT WE ARE SUPPRESSING UNDER MIRANDA --

24 MR. WAPNER: IF YOU HAD NOT MADE A BIG DEAL OUT OF IT,
25 I --

26 MR. BARENS: IF YOU HAD NOT BROUGHT IT UP, I WOULDN'T
27 HAVE HAD A PROBLEM.

28 MR. WAPNER: WELL, HE IS THE ONE WHO --

3

1 THE COURT: WELL, LET'S MARK IT IN SOME WAY.

2 MR. WAPNER: IT HAS BEEN MARKED AS 210, YOUR HONOR.
3 THERE DOESN'T NEED TO BE ANY REFERENCE TO THE CONTENTS OF
4 IT.

5 THE COURT: ALL RIGHT. 210 FOR THE RECORD, YOU CONCEDE
6 THAT THE HANDWRITING ON 210 IS IN THE HANDWRITING OF THE
7 DEFENDANT?

8 MR. BARENS: YES, THAT'S CORRECT. IT IS ACTUALLY A
9 STIPULATION.

10 I AM NOT STIPULATING TO ITS ADMISSIBILITY OR
11 PROBATIVE VALUE OR RELEVANCY. I AM ADMITTING TO YOUR HONOR
12 THAT IT IS IN THE DEFENDANT'S HANDWRITING AND RESERVING TO
13 A LATER DATE, FURTHER OBJECTION, IF THE PEOPLE TRY TO MAKE
14 REFERENCE TO IT OR USE IT.

15 THE COURT: ALL RIGHT.
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1 DO YOU WANT TO GET THAT ON THE RECORD NOW? DO
2 YOU WANT TO GET THE STIPULATION ON THE RECORD?

3 MR. BARENS: YES.

4 MR. WAPNER: YES. WELL, THE JURY HAS NO --

5 THE COURT: WELL, JUST ABOUT THE SEVEN SHEETS?

6 MR. BARENS: I SAID THAT I WAS WILLING TO.

7 THE COURT: LET'S DO IT NOW.

8 MR. BARENS: ALL RIGHT.

9 MR. WAPNER: EXCUSE ME, YOUR HONOR.

10 THE COURT: ANYTHING ELSE?

11 MR. WAPNER: I WANT TO KNOW IF THE COURT IS ORDERING
12 ME TO ENTER INTO THIS STIPULATION?

13 THE COURT: I AM NOT ORDERING ANYTHING. HE IS OFFERING
14 A STIPULATION. HIS STIPULATION IS THAT ALL OF THE SHEETS
15 WHICH HE HAS ANALYZED ARE ALL IN THE HANDWRITING OF THE
16 DEFENDANT. WE WILL MAKE IT NOW FOR THE JURY.

17 THEN IT IS ALL YOU COULD GET FROM HIS TESTIMONY,
18 THAT IT IS THE HANDWRITING OF THE DEFENDANT. WHAT ELSE DO
19 YOU WANT?

20 MR. WAPNER: I TOLD YOU. I HAVE TOLD YOU SEVERAL TIMES
21 THAT I WANTED TO DO, IS GO THROUGH THIS LIST IN THE PRESENCE
22 OF THE JURY AND YOU ARE SAYING THAT I CAN'T --

23 THE COURT: I DON'T UNDERSTAND. YOU MIGHT CREATE A
24 DOUBT IN THE MINDS OF THE JURORS. WE CAN GET THROUGH THE
25 CROSS-EXAMINATION. YOU MIGHT BE CREATING A DOUBT IN THE MINDS
26 OF THE JURORS.

27 MAYBE THEY WILL THINK IT ISN'T IN HIS HANDWRITING.
28 BUT, YOU CAN GET A CONFESSION THAT ESTABLISHES

1 THAT FACT. YOU DON'T HAVE TO PERSUADE THE JURY THAT IT IS
2 IN HIS HAND WHEN YOU GET A STIPULATION THAT IT IS.

3 MR. BARENS: I FIND IT INCREDIBLE AND I MADE THIS CLEAR.
4 I OFFERED TO STIPULATE TO THIS, COMING OUT OF THE GATE,
5 YESTERDAY.

6 THE COURT: WELL, I THOUGHT THERE WAS SOMETHING SPECIAL
7 THAT HE WANTED TO GET IN. BUT AS LONG AS YOU ARE CONCEDED
8 EVERY, SINGLE ONE OF THE PAGES IS IN HIS HANDWRITING, THAT
9 IS ALL WE NEED.

10 MR. BARENS: WHEN I PUT HUNT ON THE STAND, I WILL ASK
11 IF HE WROTE THIS AND IF HE WROTE THAT AND WHY DID HE WRITE
12 IT. HE HAS TO ADMIT THAT HE WROTE IT.

13 MR. WAPNER: ALL RIGHT, YOUR HONOR. I WILL ACCEDE TO
14 THE COURT'S WISHES.

15 THE COURT: ALL RIGHT. YOU CAN FRAME THE STIPULATION.

16 MR. BARENS: YES.

17 (THE FOLLOWING PROCEEDINGS WERE HELD

18 IN OPEN COURT:)

19 MR. BARENS: THE DEFENSE HAS ALWAYS BEEN WILLING --

20 THE COURT: NO. JUST MAKE THE STIPULATION.

21 MR. BARENS: THE DEFENSE IS WILLING TO STIPULATE THAT
22 THE SEVEN PAGES AND ALL OF THE SEVEN PAGES AND EACH WORD ON
23 THE SEVEN PAGES IS IN THE HANDWRITING OF JOSEPH HUNT.

24 THE COURT: ALL RIGHT. DO YOU ACCEPT THE STIPULATION?

25 MR. WAPNER: SO STIPULATED.

26 THE COURT: LADIES AND GENTLEMEN OF THE JURY, YOU WILL
27 ACCEPT AS PROVEN IN THIS CASE CONCLUSIVELY, THAT EACH ONE
28 OF THOSE SEVEN SHEETS OF PAPER -- WHAT IS THE EXHIBIT NUMBER

1 AGAIN?

2 MR. WAPNER: MAY I HAVE A MOMENT?

3 (PAUSE.)

4 THE COURT: EXHIBIT 55, ALL OF THE WRITING THAT APPEARS
5 ON THOSE SEVEN SHEETS OF PAPER IS IN THE HANDWRITING OF THE
6 DEFENDANT. YOU ACCEPT THAT AS BEING CONCLUSIVELY ESTABLISHED.
7 WE WILL SHORTCUT THIS TESTIMONY.

8 ANYTHING FURTHER OF THIS WITNESS?

9 MR. WAPNER: I DO HAVE A FEW QUESTIONS.

10 Q YOU TALKED YESTERDAY ABOUT THE FACT THAT THERE
11 ARE CERTAIN TYPES OF CHARACTERISTICS THAT PEOPLE WRITE, THAT
12 YOU DON'T FEEL YOU CAN IDENTIFY BECAUSE THEY FALL INTO THE
13 CATEGORY OF SQUIGGLES, RIGHT?

14 A YES, SIR.

15 Q WHEN YOU LOOKED AT THE DOCUMENTS FROM THE PLAZA
16 HOTEL IN NEW YORK, DID YOU SEE ANYTHING ON THOSE DOCUMENTS
17 THAT FELL INTO THAT CATEGORY?

18 A YES. I DID SEE A SIGNATURE THAT WOULD FALL INTO
19 THAT CATEGORY.

20 Q THANK YOU. DIRECTING YOUR ATTENTION TO DOCUMENT
21 68-A, WOULD YOU PLEASE JUST POINT ON THAT DOCUMENT, TO WHAT
22 IT IS THAT YOU TALKED ABOUT THAT FALLS INTO THAT CATEGORY?

23 A YES. THERE IS A LINE THAT IS THE BOTTOM LINE
24 OF FIVE LINES WHICH IS CONTAINED IN HANDWRITING AND PRINTING.

25 THE BOTTOM LINE IS MARKED "SIGNATURE" AND IT
26 CONTAINS SUCH A CHARACTER AS YOU DESCRIBE AS A SQUIGGLE.

27 Q AND DO YOU FEEL, BASED ON THAT, THAT YOU WOULD
28 BE ABLE TO, IF YOU HAD AN EXEMPLAR, IDENTIFY THIS TO ANY

7
1 GIVEN INDIVIDUAL?

2 A PROBABLY NOT.

3 MR. WAPNER: MAY I JUST PASS THIS IN FRONT OF THE JURY
4 BRIEFLY?

5 THE COURT: YES.

6 (PAUSE.)

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1 Q HAVE YOU HAD OCCASION TO EXAMINE THE PURPORTED
2 SIGNATURE OF RON LEVIN DURING THE COURSE OF YOUR DEALINGS
3 WITH THIS CASE?

4 A YES, I HAVE.

5 Q AND HOW WOULD YOU DESCRIBE THAT SIGNATURE IN
6 TERMS OF WHETHER IT FALLS INTO THE CATEGORY OF HANDWRITING
7 OR SQUIGGLING?

8 A WELL, IT IS A VERY BRIEF SIGNATURE AND RATHER
9 EMBELLISHED AND, IN MY OPINION, FALLS MORE IN THE CATEGORY
10 OF A SQUIGGLE THAN ANY TYPE OF ACTUAL WRITING.

11 Q ALL RIGHT. AND JUST TO BE CLEAR, THE WRITING
12 THAT YOU IDENTIFIED ON 68-A, WAS THE PRINTING, "RON LEVIN"
13 BASICALLY AT THE TOP AND SOME OF THE OTHER WORDS ON THE
14 PAGE BUT NOT THE SIGNATURE WHICH CONSISTS OF A SCRIBBLE?

15 A THAT'S RIGHT.

16 Q JUST AS AN EXAMPLE, I WANT TO SHOW YOU A
17 SIGNATURE CARD FROM OLYMPIC NATIONAL BANK THAT WE HAVE
18 MARKED AS PEOPLE'S 41; DO YOU SEE WHERE IT CONTAINS THERE
19 SOMETHING UNDER THE HEADING OF AUTHORIZED SIGNATURES?

20 A YES, SIR.

21 Q AND HOW WOULD YOU DEFINE THAT IN TERMS OF WHETHER
22 IT COMES INTO THE CATEGORY OF A SQUIGGLE OR NOT?

23 A YES, I WOULD DESCRIBE IT AS SUCH. IT COULD
24 BE CONSTRUED AS A CAPITAL "R" BUT IF IT IS, THEN THAT IS
25 ALL THERE IS, THEN JUST THE "R" AND A DOT AND IT IS NOT
26 ENOUGH, IN MY OPINION, FOR ANY CONCLUSIVE OPINION.

27 Q SO IF YOU HAD ANOTHER -- IF YOU KNEW THAT
28 SIGNATURE, FOR EXAMPLE, WAS MADE BY MR. LEVIN AND YOU HAD

2
1 ANOTHER ONE THAT YOU WERE TO COMPARE IT TO, WOULD YOU BE
2 ABLE TO GIVE AN OPINION ONE WAY OR THE OTHER?

3 A ONLY THAT THE TWO ARE SIMILAR.
4 I PROBABLY WOULDN'T BE ABLE TO STATE ANYTHING
5 DEFINITE.

6 Q CAN YOU EXAMINE THE WRITING OF NUMERALS TO
7 DETERMINE WHETHER THEY ARE MADE BY THE SAME PERSON?

8 A YES.

9 Q AND WERE YOU RECENTLY ASKED TO LOOK AT TWO
10 APPARENTLY IDENTICAL CONTRACTS BEARING WRITING THAT HAD
11 DIFFERENT DATES ON THEM TO TRY AND DETERMINE WHETHER THESE
12 DATES WERE WRITTEN BY THE SAME PERSON?

13 A RIGHT OFFHAND I DON'T RECALL.

14 DO YOU HAVE THOSE DOCUMENTS HERE?

15 Q WE ARE GETTING THEM.

16 A OKAY.

17 Q AND WAS THAT SOMETHING THAT WAS DONE FAIRLY
18 RECENTLY?

19 AND I WANT TO SHOW YOU TWO CONTRACTS, ONE THAT
20 IS MARKED PEOPLE'S 58.

21 FIRST, LET ME ASK YOU, ON PEOPLE'S 58, THERE
22 IS A SIGNATURE ABOVE A TYPEWRITTEN LINE WHERE IT SAYS
23 "RON LEVIN" IN TYPING, HOW WOULD YOU CHARACTERIZE THAT
24 SIGNATURE IN TERMS OF WHETHER IT IS SUFFICIENT FOR YOU TO
25 MAKE A HANDWRITING COMPARISON?

26 A I WOULD SAY THAT IT IS NOT SUFFICIENT WRITING.

27 Q AND HOW WOULD YOU CHARACTERIZE THE SIGNATURE
28 ON PEOPLE'S 95 ABOVE WHERE IT SAYS "RON LEVIN," AS TO WHETHER

1 OR NOT IT IS SUFFICIENT FOR YOU TO BE ABLE TO MAKE A HAND-
2 WRITING COMPARISON?

3 A YES, I DO RECALL LOOKING AT THESE NOT TOO LONG
4 AGO AND I FEEL THAT THE WRITING HERE IS INSUFFICIENT TO
5 FORM AN OPINION, AT LEAST A DEFINITE OPINION.

6 THE TWO SIGNATURES ARE SIMILAR. ONE HAS A
7 LITTLE TREMOR IN IT, WHICH MIGHT BE CAUSED BY THE SURFACE
8 OF THE PAPER BEING ROUGH. OTHERWISE, THEY ARE SIMILAR.

9 Q AND ONE OF THESE CONTRACTS, THAT BEING PEOPLE'S
10 58, BEARS THE DATE UNDER THE SIGNATURE OF "6-5 OF '84,"
11 CORRECT?

12 A YES.

13 Q AND ONE OF THEM BEARS THE DATE UNDER THE
14 SIGNATURE "6-6 OF '84," CORRECT?

15 A YES.

16 Q AND WERE YOU ASKED TO LOOK AT THE WRITING OF
17 THOSE NUMBERS TO TRY AND DETERMINE WHETHER THEY WERE WRITTEN
18 BY THE SAME PERSON OR DIFFERENT PEOPLE?

19 A NO, I WASN'T ABLE TO MAKE A DEFINITE
20 DETERMINATION ABOUT THAT.

21 AGAIN, THE WRITING IS QUITE BRIEF. IT IS
22 SIMILAR. IT COULD HAVE BEEN WRITTEN BY THE SAME PERSON.

23 Q BUT YOU ARE JUST NOT CAPABLE OF GIVING A
24 DEFINITE OPINION ONE WAY OR THE OTHER?

25 A THAT'S CORRECT.

26 MR. WAPNER: THANK YOU. I HAVE NO FURTHER QUESTIONS.

27 THE COURT: ANY QUESTIONS?

28

CROSS-EXAMINATION

1
2 BY MR. BARENS:

3 Q MR. CLASON -- I OVERDOSED WITH DOCUMENTS --
4 MR. CLASON, IN COMPARING ON PEOPLE'S 68-A, THE STUFF IN
5 NEW YORK THAT IS PRINTED OUT ON THIS WESTIN HOTEL SLIP HERE
6 WHERE "RONALD LEVIN" IS PRINTED THERE ON THE FIRST THREE
7 LINES, YOU WERE EASILY ABLE TO COMPARE THAT WITH THE PITTMAN
8 EXEMPLAR, WERE YOU NOT, SIR?

9 A YES, I WAS.

10 Q THERE DOESN'T APPEAR TO BE ANY ATTEMPT TO
11 DISGUISE THE HANDWRITING THERE, DOES IT, SIR?

12 A NO, NONE WHATEVER.

13 Q NOW WHEN WE COMPARE THE HANDWRITING ON THAT
14 DOCUMENT WITH SOMETHING CALLED A PROPERTY CLERK'S INVOICE,
15 WHICH I THINK IS PEOPLE'S 74, THE DOCUMENT WHEN MR. PITTMAN
16 IS RELEASED FROM JAIL IN NEW YORK AND YOU SEE THE SIGNATURE
17 LINE HERE?

18 A YES, SIR.

19 Q DOES THAT APPEAR LIKE IT IS JUST ONE OF THOSE
20 SQUIGGLE SIGNATURES OR IS THAT A DECIPHERABLE SIGNATURE
21 FOR YOU?

22 A I COULDN'T REALLY DECIPHER THAT. I REALLY
23 COULDN'T TELL WHAT THOSE LETTERS ARE.

24 Q OKAY. SO WHEN YOU COMPARE THAT TO THE FIRST
25 THREE LINES OF THE WESTON HOTEL SLIP, OBVIOUSLY, THE WESTIN
26 HOTEL SLIP IS MUCH MORE DISCERNIBLE, IS IT NOT?

27 A YES.
28

1 Q OKAY. NOW, AS FAR AS -- I BELIEVED YOU USED
2 THE EXPRESSION JUST NOW, THAT THE SIGNATURES ON PEOPLE'S
3 58, ABOVE WHERE THE NAME "RON LEVIN" WAS TYPED AND ON
4 PEOPLE'S 95, ABOVE WHERE THE NAME "RON LEVIN" IS TYPED,
5 APPEAR TO BE SIMILAR?

6 A THEY SEEM TO BE SIMILAR TO ONE ANOTHER IN LETTER
7 FORM, YES.

8 Q AND AS FAR AS THE WRITING, WHERE THE DATES ARE,
9 THEY APPEAR TO BE SIMILAR, AS WELL?

10 A YES. THEY DO.

11 Q DID YOU TESTIFY THAT IT APPEARED THEY COULD BE
12 WRITTEN BY THE SAME PERSON?

13 A THEY COULD BE.

14 Q OKAY. NOW, THE SIGNATURE CARDS THAT WE HAVE
15 FROM THIS OLYMPIC NATIONAL BANK THAT YOU HAD REFERENCED,
16 THEY ARE ALL SIMILAR, AS WELL?

17 A YES. THEY ARE.

18 MR. BARENS: I WANT TO APPROACH AND ASK THE WITNESS
19 A QUESTION OFF THE RECORD, TO SAVE TIME, JUDGE.

20 (UNREPORTED COLLOQUY BETWEEN DEFENSE
21 COUNSEL AND THE WITNESS.)

22 MR. BARENS: JUST ONE MORE MOMENT.

23 THE COURT: IS THIS ON SOMETHING COLLATERAL? DOES
24 THIS HAVE TO DO WITH THE DIRECT THAT HE JUST TESTIFIED TO?

25 MR. BARENS: COULD I APPROACH THE BENCH? I CAN RESOLVE
26 THIS, YOUR HONOR.

27 THE COURT: ALL RIGHT.

28 (THE FOLLOWING PROCEEDINGS WERE HELD

1 AT THE BENCH OUTSIDE THE HEARING OF
2 THE JURY:)

3 THE COURT: DO YOU WANT TO GET HIM TO TESTIFY TO SOME
4 OTHER COLLATERAL MATTER THAT HAS NOTHING TO DO WITH THE
5 DIRECT EXAMINATION? IS IT ON OTHER SIGNATURES OF SOMEBODY
6 ELSE?

7 MR. BARENS: I WAS GOING TO TRY TO -- PLEASE, JUST
8 HEAR ME. I WILL TAKE HIM BACK AS A DEFENSE WITNESS. BUT
9 I THOUGHT SINCE WE WERE HERE ANYHOW, I COULD DO IT.

10 I HAD STEVE TAGLIANETTI -- DO YOU REMEMBER
11 DEFENDANT'S CC? THAT HAD TAGLIANETTI'S SIGNATURE ON IT AND
12 TAGLIANETTI SAID YEAH, IT WAS HIS SIGNATURE BUT HE COULDN'T
13 BE SURE. THERE WAS SOME DOUBT.

14 I HAVE FOUR OR FIVE TAGLIANETTI SIGNATURES --
15 THE COURT: WHAT HAS THIS GOT TO DO WITH THE DIRECT?

16 MR. BARENS: I WAS GOING TO TRY TO AVOID CALLING HIM
17 AS A DEFENSE WITNESS.

18 THE COURT: CALL HIM AS A DEFENSE WITNESS.

19 MR. BARENS: OKAY. I WILL DO IT THEN.

20 (THE FOLLOWING PROCEEDINGS WERE HELD IN
21 OPEN COURT IN THE PRESENCE AND HEARING OF
22 THE JURY:)

23 MR. BARENS: MR. CLASON, WE ARE GOING TO ASK YOU TO
24 BE AVAILABLE AS A DEFENSE WITNESS. I WON'T ASK YOU ANY
25 QUESTIONS ABOUT THIS TODAY. I WILL ASK THE COURT TO RETAIN
26 HIM ON CALL FOR THE DEFENSE.

27 THE COURT: YES. HE WILL BE ON CALL, MR. CLASON. ANY
28 REDIRECT?

1 MR. WAPNER: NO. ACTUALLY, YES.

2

3

REDIRECT EXAMINATION

4

BY MR. WAPNER:

5

Q WHEN YOU SAY THAT SIGNATURES THAT ARE SIMILAR
6 COULD BE MADE BY THE SAME PERSON, IS THERE A REVERSE SIDE
7 OF THE COIN MEANING THAT THEY COULD OR COULD NOT BE MADE
8 BY THE SAME PERSON?

9

A YES. IT IS TRUE. IT IS THAT I DON'T SEE ANYTHING
10 THAT COULD RULE OUT THEM BEING MADE BY THE SAME PERSON.

11

THE COURT: ALL RIGHT. THANK YOU VERY MUCH. YOU WILL
12 BE ON CALL TO COUNSEL.

13

CALL YOUR NEXT WITNESS.

14

MR. WAPNER: KURT KUHN.

15

MR. BARENS: COULD I JUST HAVE ONE MOMENT TO SPEAK
16 TO THE WITNESS?

17

(PAUSE.)

18

19

KURT KUHN,

20

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

22

THE CLERK: RAISE YOUR RIGHT HAND TO BE SWORN.

23

YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY YOU
24 MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL
25 BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH,
26 SO HELP YOU GOD.

27

THE WITNESS: I DO.

28

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

1 THE WITNESS: KURT E. KUHN. THAT IS K-U-R-T, E.,
2 K-U-H-N.

3
4 DIRECT EXAMINATION

5 BY MR. WAPNER:

6 Q MR. KUHN, BY WHOM ARE YOU EMPLOYED?

7 A BEVERLY HILLS POLICE DEPARTMENT.

8 Q IN WHAT CAPACITY?

9 A SENIOR IDENTIFICATION TECHNICIAN, SUPERVISOR
10 OF THE CRIME LAB.

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1 Q BY MR. WAPNER: AND WERE YOU WORKING WITH THE
2 BEVERLY HILLS POLICE DEPARTMENT IN THAT CAPACITY IN 1984?

3 A YES, SIR, I WAS.

4 Q AND ARE YOU FAMILIAR -- WELL, AS AN IDENTIFICATION
5 TECHNICIAN, DO YOU DO WORK WITH FINGERPRINTS?

6 A YES, SIR, I DO.

7 Q AND WHAT IS YOUR TRAINING WITH RESPECT TO --
8 MR. BARENS: WE WILL STIPULATE THAT OFFICER KUHN IS
9 AN EXPERT FINGERPRINT PARTY.

10 THE COURT: FULLY QUALIFIED?

11 MR. BARENS: FULLY QUALIFIED ABOUT FINGERPRINTS,
12 EVERYTHING.

13 THE COURT: DO YOU ACCEPT THE STIPULATION?

14 MR. WAPNER: YES, THE PEOPLE ACCEPT THE STIPULATION.

15 THE COURT: ALL RIGHT, THE JURY WILL ACCEPT THE
16 STIPULATION, TOO AND IT IS DEEMED TO BE CONCLUSIVELY
17 ESTABLISHED THAT HE IS COMPETENT AND QUALIFIED.

18 MR. WAPNER: THANK YOU, YOUR HONOR.

19 Q WHAT IS IT, WHEN A PERSON TOUCHES SOMETHING THAT
20 MAKES THEM LEAVE FINGERPRINTS ON A SURFACE?

21 A THE FINGERPRINT YOU ARE DESCRIBING IS A LATENT
22 FINGERPRINT. IT CAN BE LEFT BY VARIOUS MEANS. A LATENT
23 FINGERPRINT IS MOSTLY DESCRIBED AS AN IMPRESSION THAT IS LEFT
24 BY THE FRICTION RIDGE AREAS OF EITHER THE FINGERS, THE PALMS
25 AND ALSO THE SOLES OF THE FEET.

26 AND BY FRICTION RIDGE AREA, IT IS JUST THE VARIOUS
27 RIDGES THAT YOU SEE THAT ARE ON THE FINGERTIPS AND THE OTHER
28 AREAS I DESCRIBED.

1 THIS IMPRESSION IS USUALLY NOT VISIBLE TO THE
2 NAKED EYE. IT SOMETIMES CAN BE SEEN BY SIDE LIGHTING BUT
3 MOST OF THE TIME, IT REQUIRES SOME KIND OF PHYSICAL DEVELOPMENT.

4 AND BY PHYSICAL DEVELOPMENT, THE MOST CONVENTIONAL
5 METHODS THAT EVERYONE IS USED TO SEEING IS THE APPLICATION
6 OF SOME COLOR FINGERPRINT POWDER TO A SURFACE WITH A BRUSH
7 AND WHEN THE BRUSH IS WIPED OVER THE SURFACE, EXCESS POWDER
8 IS REMOVED AND IT MAKES THE IMAGE OR THE IMPRESSION VISIBLE
9 AND THIS IMPRESSION CAN THEN BE LIFTED WITH FROM WHAT IS NOT
10 MUCH DIFFERENT FROM SCOTCH TAPE, THE ONLY DIFFERENCE BEING
11 IT IS A LITTLE THICKER AND IT IS PRESSURE WOUND TO RELIEVE
12 BUBBLES.

13 THE COURT REPORTER: TO RELIEVE?

14 THE WITNESS: TO RELIEVE BUBBLES.

15 I AM SORRY. I WILL SLOW DOWN.

16 THE IMPRESSION IS THEN LIFTED AND IT IS PLACED
17 ON A BACKING CARD.

18 NOW, IF YOU ARE USING A BLACK FINGERPRINT POWDER,
19 WHICH IS VERY COMMON, YOU WOULD PUT IT ON A WHITE LIFT CARD.

20 IF YOU ARE USING SILVER FINGERPRINT POWDER, YOU
21 WOULD PUT IT ON A BLACK LIFT CARD BECAUSE IT IS JUST A
22 CONTRASTING COLOR.

23 OTHER TESTS YOU USE ARE CHEMICAL REACTION TESTS --

24 Q BY MR. WAPNER: LET ME ASK YOU SOMETHING: WHEN
25 YOU ARE TRYING TO GET FINGERPRINTS OFF OF PAPER, DO YOU DO
26 IT WITH POWDER?

27 A NO, SIR, YOU DO NOT.

28 Q WHY?

1 A PAPER IS A POROUS SURFACE AND THE CHEMICAL --
2 THE PERSPIRATION WOULD SOAK INTO THE PAPER AND THE POWDER
3 METHOD IS THE WORST POSSIBLE ONE YOU CAN USE.

4 WHAT WE USE IS A PROCEDURE CALLED NINHYDRIN.

5 IT IS A CHEMICAL THAT REACTS TO THE AMINO ACIDS
6 THAT ARE IN THE PERSPIRATION OR OTHER PHYSIOLOGICAL FLUIDS
7 OF THE BODY. THE CHEMICAL REACTION OCCURS BETWEEN THE CHEMICAL
8 AND THE AMINO ACIDS, LEAVING A PURPLE COLORATION AND THAT
9 PARTICULAR LATENT FINGERPRINT WOULD THEN HAVE TO BE
10 PHOTOGRAPHED.

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1 Q WHY DO YOU PHOTOGRAPH THE PRINT?

2 A WELL, NUMBER ONE, IT IS IMPOSSIBLE TO LIFT WITHOUT
3 DESTROYING THE ORIGINAL PAPER.

4 AND SECONDLY, NINHYDRIN WILL, OVER A PERIOD OF
5 TIME, AND IN FACT MOST OF THE TIME, IT WILL DISSIPATE TO THE
6 POINT WHERE THEN MAYBE NO VISIBLE PRINT IS THERE SOME TIME
7 AFTER THE ACTUAL PROCEDURE HAS BEEN DONE.

8 Q HOW LONG DOES IT USUALLY TAKE FOR THE PRINTS THAT
9 ARE DEVELOPED BY NINHYDRIN TO DISSIPATE?

10 A I HAVE SEEN THEM DISSIPATE WITHIN THREE TO FOUR
11 DAYS.

12 I HAVE ALSO SEEN THEM LAST ON DOCUMENTS FOR YEARS.

13 Q WELL, FIRST OF ALL, DID YOU HAVE ANY RESPONSIBILITY
14 DURING 1984 FOR THE MIXING OF A NINHYDRIN CHEMICAL THAT WAS
15 USED TO LIFT FINGERPRINTS?

16 A YES, SIR, I DID.

17 Q WHAT WAS THAT RESPONSIBILITY?

18 A I WAS THE ONE THAT PRIMARILY DID MOST OF THE
19 MIXING.

20 Q AND WHAT DID YOU HAVE TO DO IN THAT REGARD?

21 A IT IS FOLLOWING A CHEMICAL RECIPE. AN EXACT AMOUNT
22 OF THE NINHYDRIN CRYSTALS IS MIXED IN WITH ONE OR TWO DIFFERENT
23 SOLVENTS AND THEY ARE ALLOWED TO MIX, WHILE ONE OF THE
24 PROCEDURES REQUIRED A SEPARATION OF ONE LIQUID IN ANOTHER,
25 IT IS PLACED IN A STORAGE BOTTLE READY FOR USE.

26 Q WHEN YOU ARE LIFTING FINGERPRINTS OR TRYING TO
27 LIFT FINGERPRINTS BY THE USE OF NINHYDRIN FROM PAPER AND PAPER
28 THAT HAS BALL-POINT INK ON IT, IS THERE SOME SPECIFIC THING

1 THAT YOU PUT IN THE NINHYDRIN TO USE WITH NINHYDRIN SO YOU
2 DON'T DAMAGE THE INK?

3 A YOU USE A PARTICULAR CHEMICAL BASE, YES. TWO
4 BASES COULD BE USED AND THEY ARE ACETONE AND PETROLEUM ETHER.

5 ACETONE HAS A TENDENCY TO RUN INK SO ANY DOCUMENTS
6 THAT MAY HAVE WRITING, TYPEWRITING, BALL-POINT INK, WE WILL
7 USE THE PETROLEUM ETHER BASE BECAUSE IT DOES NOT CAUSE THE
8 INKS ON THE PAPER TO RUN.

9 Q AND YOU SOMETIMES ABBREVIATE THAT AS "PET ETHER"?

10 A YES, SIR.

11 Q IF THE CHEMICALS ARE MIXED PROPERLY, THEN HOW
12 IS IT THAT YOU OBTAIN A FINGERPRINT BY THE USE OF THESE
13 CHEMICALS ON THE PAPER?

14 A IT IS A RATHER SIMPLE MECHANICAL PROCEDURE.

15 THE ITEM IN QUESTION IS PLACED IN A TRAY OF THE
16 SOLUTION. THE SOLUTION IS ALLOWED TO SOAK INTO THE ITEM IN
17 QUESTION. IT IS REMOVED, ALLOWED TO DRY AND WE SUBJECT IT
18 TO A LITTLE BIT OF HEAT, WHICH THROUGH EXPERIENCE, HAS SHOWN
19 THAT IT TENDS TO INCREASE THE REACTION TIME.

20 Q IT DEVELOPS THE PRINTS FASTER?

21 A IT SEEMS TO.

22 Q AND IF THERE WERE SOME PRINTS LIFTED FROM PIECES
23 OF PAPER INVOLVED IN THIS CASE, IN 1984, AND THERE ARE NO
24 VISIBLE MARKES LEFT ON THE PAPER FROM THE NINHYDRIN, WOULD
25 THAT BE UNUSUAL?

26 A NO, SIR, I DON'T THINK IT WOULD BE.

27 Q DID YOU ALSO COMPARE CERTAIN FINGERPRINTS IN THIS
28 CASE THAT WERE TAKEN APPARENTLY FROM MR. PITTMAN IN NEW YORK

1 WITH THE EXEMPLAR THAT WAS TAKEN FROM MR. PITTMAN THEN IN
2 BEVERLY HILLS?

3 A YES, SIR, I DID.

4 (UNREPORTED COLLOQUY BETWEEN COUNSEL.)

5 MR. WAPNER: YOUR HONOR, I HAVE A DOCUMENT THAT I WOULD
6 LIKE TO HAVE MARKED AS PEOPLE'S 93 FOR IDENTIFICATION. IT
7 APPEARS TO BE A XEROX OF A PRINT CARD FROM THE BEVERLY HILLS
8 POLICE DEPARTMENT.

9 THE COURT: SO MARKED.

10 Q BY MR. WAPNER: SHOWING YOU PEOPLE'S 93, DO YOU
11 RECOGNIZE THAT?

12 A YES, SIR, I DO.

13 Q WHAT IS THAT?

14 A IT IS A XEROX COPY OF THE ORIGINAL CARD ON AN
15 ARREST OF MR. JAMES PITTMAN FROM SEPTEMBER 19, 1984.

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1 Q SO THAT 93 IS A COPY OF THE ORIGINAL CARD THAT
2 YOU HAD?

3 A YES, SIR. IT IS.

4 Q WHAT IS THE DATE THAT IS INDICATED ON THERE WHEN
5 THOSE PRINTS WERE TAKEN?

6 A 9-19-84.

7 MR. WAPNER: COUNSEL, MAY IT BE STIPULATED THAT THOSE
8 WERE IN FACT, THE PRINTS OF MR. PITTMAN?

9 MR. BARENS: WELL, I WILL STIPULATE THAT THAT IS WHAT
10 IT SAYS ON THERE. I WILL STIPULATE THAT WHAT THEY GOT
11 IN NEW YORK AND WHAT THEY HAVE GOT HERE LOOKS TO BE THE
12 SAME OR WHATEVER HE WANTS TO SAY ON THAT. I CAN'T STIPULATE
13 TO ANY PERSONAL KNOWLEDGE. BUT I WILL STIPULATE THAT ONE
14 LOOKS LIKE THE OTHER.

15 WHAT DO YOU WANT ME TO SAY?

16 Q BY MR. WAPNER: MR. KUHN, THE CARD IS IN FRONT
17 OF YOU, THAT IS A COPY THAT IS 93 -- DOES THAT PURPORT TO
18 BE A COPY OF AN ORIGINAL FINGERPRINT CARD TAKEN AT THE
19 BEVERLY HILLS POLICE DEPARTMENT?

20 A YES, SIR.

21 Q IS THERE A SIGNATURE ON THERE OF THE PERSON WHO
22 TOOK THOSE FINGERPRINTS?

23 A YES, SIR.

24 Q WHO IS THAT? WHAT IS THE SIGNATURE?

25 A G. SULIER.

26 THE COURT REPORTER: SPELL THAT.

27 THE WITNESS: S-U-L-I-E-R.

28 Q BY MR. WAPNER: AND WAS THAT PERSON WORKING AT

1 THE BEVERLY HILLS POLICE DEPARTMENT IN 1984?

2 A YES, SIR.

3 Q AND WHAT IS THE DATE THAT THESE PRINTS WERE
4 PURPORTEDLY TAKEN?

5 A SEPTEMBER 19, 1984.

6 Q AND IS IT MR. OR MRS. OR MS. SULIER?

7 A MS.

8 Q AND WAS MS. SULIER QUALIFIED TO ROLL FINGER-
9 PRINTS AT THAT TIME?

10 A YES, SIR.

11 Q WHEN FINGERPRINTS ARE TAKEN FROM A SUSPECT OR
12 FROM A PERSON IN CUSTODY IN THE NORMAL COURSE OF BUSINESS,
13 ARE THEY PLACED ON A CARD SIMILAR TO THE ONE THAT YOU HAVE
14 A COPY OF, PEOPLE'S 93?

15 A YES, SIR. THEY ARE.

16 Q ALL RIGHT. AND THAT IS DONE BY THE PERSON
17 TAKING THE SUSPECT'S FINGERS, PUTTING THEM IN INK AND THEN
18 HAVING THEM PLACED ONTO THE CARD?

19 A YES, SIR.

20 MR. WAPNER: COUNSEL, MAY IT BE STIPULATED THAT MS.
21 G. SULIER BE DEEMED CALLED, SWORN AND TESTIFIED THAT THE
22 PRINTS THAT SHE PLACED ON THE CARD WERE PLACED ON THERE BY
23 THE PERSON WHO WE HAVE PREVIOUSLY IDENTIFIED IN THIS TRIAL
24 AS JAMES PITTMAN?

25 MR. BARENS: SO STIPULATED.

26 THE COURT: ALL RIGHT. AGAIN, THE JURY WILL ACCEPT
27 THAT STIPULATION AND THE FACTS OF THE STIPULATION AS BEING
28 PROVED.

1 Q BY MR. WAPNER: DID YOU COMPARE THE FINGERPRINTS
2 ON PEOPLE'S 93 TO THOSE ON PEOPLE'S 76?

3 A YES, SIR. I DID.

4 Q DID YOU FORM AN OPINION AS TO WHETHER THEY WERE
5 MADE BY ONE AND THE SAME PERSON?

6 A YES, SIR. I DID.

7 Q WHO WAS THAT PERSON?

8 A WELL, THERE ARE CERTAIN RIDGE CHARACTERISTICS
9 ON ALL THE FINGERS TO INDICATE THAT THEY WERE MADE BY
10 ONE AND THE SAME PERSON.

11 Q AND DO YOU DO OTHER THINGS FOR THE POLICE
12 DEPARTMENT BESIDES TAKING FINGERPRINTS?

13 A YES, SIR. I DO.

14 Q HOW ABOUT PICTURES? DO YOU TAKE PICTURES FOR
15 THE POLICE DEPARTMENT?

16 A YES, SIR. I AM A PHOTOGRAPHER ALSO.

17 Q WERE YOU ASKED BY THE INVESTIGATING OFFICER IN
18 THIS CASE, DETECTIVE LES ZOELLER, TO TAKE AN AERIAL PHOTO-
19 GRAPH OF A PORTION OF THE ANGELES NATIONAL FOREST CALLED
20 SOLEDAD CANYON?

21 A YES, SIR. I WAS.

22 Q DID YOU DO THAT?

23 A YES, SIR. I DID.

24 Q WHEN YOU TAKE AERIAL PHOTOGRAPHS, DO YOU MAKE
25 SOME KIND OF A NOTATION ON A FIELD INVESTIGATION REPORT AS
26 TO THE FACT THAT YOU TOOK PHOTOGRAPHS?

27 A I NORMALLY DO, YES, SIR.

28 Q SHOWING YOU NOW WHAT APPEARS TO BE A DOCUMENT

1 CALLED "FIELD INVESTIGATION REPORT" DO YOU RECOGNIZE THAT?

2 A YES, SIR. I DO.

3 Q AND WHAT IS IT?

4 A IT IS A COPY OF THE REPORT I WROTE FOR
5 DETECTIVE ZOELLER'S BENEFIT ON WHAT I HAD DONE THAT
6 PARTICULAR DAY.

7 Q AND WHAT DID YOU DO ON THAT PARTICULAR DAY?

8 A I ACCOMPANIED SERGEANT BILL KEMP FROM THE SANTA
9 MONICA POLICE DEPARTMENT IN THEIR DEPARTMENT PLANE AND WE
10 TOOK SEVERAL PHOTOGRAPHS OF THE AREA IN QUESTION.

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1 Q AND WHAT DAY WAS THAT?

2 A IT WAS JANUARY 8, 1986.

3 MR. WAPNER: YOUR HONOR, I HAVE A PHOTOGRAPH THAT
4 I WOULD LIKE TO HAVE MARKED AS 211 FOR IDENTIFICATION.

5 THE COURT: BE SO MARKED.

6 Q BY MR. WAPNER: WOULD YOU FIRST OF ALL, TELL
7 US HOW YOU WENT ABOUT TAKING THIS PICTURE, THIS 211?

8 A INITIALLY, DETECTIVE ZOELLER GAVE ME A
9 PARTICULAR AREA IN QUESTION. I HAD BEEN TO THE AREA ON
10 SEVERAL OCCASIONS BEFORE. SO I KNEW THE AREA A LITTLE
11 BIT.

12 Q HAD YOU BEEN ON YOUR OWN FOR RECREATIONAL
13 PURPOSES OR HAD YOU BEEN WITH DETECTIVE ZOELLER AS A PART
14 OF YOUR DUTIES WITH THE BEVERLY HILLS POLICE DEPARTMENT?

15 A I HAD BEEN WITH DETECTIVE ZOELLER, AS A PART
16 OF MY DUTIES.

17 Q YOU KNEW THE AREA A LITTLE BIT BECAUSE YOU HAD
18 BEEN THERE AND WHAT ELSE?

19 A SERGEANT KEMP GOT ME IN THE AREA AND I POINTED
20 OUT THE PARTICULAR AREA WE NEEDED TO TAKE PICTURES OF.

21 THE INITIAL PICTURES WE TOOK WERE AT 5,000
22 FEET. I DETERMINED THAT I DID NOT HAVE A WIDE ENOUGH
23 FIELD VIEW WITH THE TWO CAMERAS THAT WE HAD, SO I WENT TO
24 10,000 FEET AND TOOK THEM AGAIN.

25 Q SHOWING YOU A PHOTOGRAPH WE HAVE MARKED AS
26 211 FOR IDENTIFICATION, DO YOU RECOGNIZE THAT?

27 A YES, SIR. I DO.

28 Q WHAT IS IT?

1 A IT IS A VIEW, A SOUTHERN VIEW OF THE AREA OF
2 THE ANGELES NATIONAL FOREST. AND I BELIEVE THIS IS THE
3 ROAD THAT YOU SEE RUNNING ABOUT A THIRD OF THE WAY DOWN,
4 THAT IS SOLEDAD CANYON.

5 Q ALL RIGHT. NOW, IS THIS THE ONE THAT WAS TAKEN
6 FROM 5,000 FEET OR 10,000 FEET?

7 A I BELIEVE THIS IS ONE OF THE ONES TAKEN FROM
8 10,000.

9 Q NOW, LET ME SEE IF I CAN HOLD IT UP SO MAYBE
10 YOU CAN SEE IT. CAN YOU SEE IT IF I HOLD IT THERE AND
11 PERHAPS THE JURORS CAN SEE IT?

12 A YES.

13 Q ALL RIGHT. THE ROAD THAT YOU REFERRED TO THAT
14 IS TWO-THIRDS OF THE WAY DOWN BEING SOLEDAD CANYON, WHERE
15 IS THAT?

16 A THAT WOULD THIS AREA RIGHT THROUGH HERE
17 (INDICATING).

18 Q AND WAS THERE A PARTICULAR PORTION OF SOLEDAD
19 CANYON THAT YOU WERE TRYING TO TAKE PHOTOGRAPHS OF OR THAT
20 YO HAD BEEN TO BEFORE?

21 A I WAS INTERESTED IN IT, I GUESS YOU WOULD CALL
22 IT A FIRE ROAD THAT YOU CAN SEE RUNNING UP THOSE TWO
23 RIDGES.

24 Q IS THAT THE ONE THAT IS STARTING HERE AND GOING
25 UP THIS WAY?

26 A YES, SIR. IT IS.

27 Q AND THIS IS A VIEW LOOKING SOUTH?

28 A FROM THE NORTH, LOOKING SOUTHWARD, YES.

1 Q AND AT THE VERY TOP OF THIS PICTURE, CAN YOU
2 SEE SOMETHING THAT IS A VERY SMALL PORTION THAT LOOKS A
3 LITTLE BIT LIKE CIVILIZATION? WHAT IS THAT?

4 A I DON'T KNOW.

5 Q IS THAT PERHAPS, A PORTION OF THE SAN FERNANDO
6 VALLEY?

7 A I BELIEVE IT IS.

8 Q OKAY. AND DO YOU HAVE ANY IDEA HOW MANY
9 SQUARE MILES OF TERRITORY ARE ENCOMPASSED BY LET'S JUST
10 SAY THE FOREGROUND OF THIS PHOTOGRAPH?

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1 MR. BARENS: YOUR HONOR, I REALIZE HE IS QUALIFIED TO
2 MEASURE LITTLE FINGERPRINTS BUT I DON'T KNOW IF HE IS QUALIFIED
3 TO GIVE AN OPINION ON THIS.

4 MR. WAPNER: IT IS OKAY, JUDGE. IT IS ANOTHER ONE OF
5 THOSE QUESTIONS, THE ANSWER TO WHICH IS PROBABLY GOING TO
6 BE NO.

7 THE COURT: ALL RIGHT.

8 Q BY MR. WAPNER: HOW MANY PHOTOGRAPHS DID YOU TAKE?

9 A I DON'T RECALL THE EXACT NUMBER OF PHOTOGRAPHS
10 I TOOK.

11 I TOOK FOUR BLACK AND WHITE SHEET FILM NEGATIVES,
12 WHICH WERE FOUR-BY-FIVE IN SIZE, AND I BELIEVE PROBABLY TEN
13 TO FIFTEEN COLOR PHOTOGRAPHS.

14 MR. WAPNER: MAY I WALK THIS BRIEFLY IN FRONT OF THE
15 JURY?

16 THE COURT: SURE.

17 (MR. WAPNER SHOWING EXHIBIT TO JURY.)

18 Q BY MR. WAPNER: AND THIS IS ONE OF THE SEVERAL
19 PHOTOGRAPHS THAT YOU TOOK ON THAT DATE?

20 A YES, SIR.

21 Q AND DID YOU ALSO ACCOMPANY DETECTIVE ZOELLER AND
22 TAKE PHOTOGRAPHS IN RON LEVIN'S APARTMENT?

23 A YES, SIR, I DID.

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

25 THE COURT: ANY QUESTIONS?

26 MR. BARENS: THANK YOU, YOUR HONOR.

27

28

CROSS-EXAMINATION

1
2 BY MR. BARENS:

3 Q WELL, WE MIGHT AS WELL START WITH WHERE WE WERE.
4 HOW MANY TIMES DID YOU GO TO SOLEDAD CANYON WITH
5 DETECTIVE ZOELLER?

6 A I PROBABLY HAVE BEEN UP THERE AT LEAST THREE OR
7 FOUR TIMES.

8 Q THREE OR FOUR TIMES?

9 AND DID YOU ALWAYS GO TO THE SAME AREA?

10 A SAME GENERAL VICINITY, YES, SIR.

11 Q I GUESS YOU WALKED THAT WHOLE AREA WHEN YOU WERE
12 UP THERE?

13 A WE WALKED QUITE A BIT OF THE AREA, YES, SIR.

14 Q DID YOU SEE AN AREA WITH A WATERFALL?

15 A I DON'T THINK I PERSONALLY SAW THE WATERFALL.

16 I HEARD THERE WAS A WATERFALL IN THE AREA.

17 Q YOU HEARD BY YOUR EARS OR YOU HEARD BY YOUR EYES --
18 THAT WAS A LITTLE JOKE.

19 IN ANY EVENT, SO YOU WERE UP THERE THREE OR FOUR
20 TIMES AND ON THE THREE OR FOUR TIMES, DID YOU TAKE PHOTOGRAPHS
21 ALL OF THOSE TIMES YOU WERE UP THERE?

22 A A COUPLE OF TIMES I TOOK PHOTOGRAPHS, YES, SIR.

23 Q OKAY. HOW MANY HOURS DID YOU GO EACH TIME YOU
24 WERE UP THERE, HOW LONG WOULD YOU STAY UP THERE?

25 A PROBABLY FOUR TO SIX HOURS.

26 Q EACH TIME?

27 A YES, SIR.

28 Q AND YOU TOOK PHOTOGRAPHS, WHAT DID YOU TAKE

3
1 PHOTOGRAPHS OF?

2 MR. WAPNER: YOUR HONOR, MAY WE APPROACH THE BENCH?

3 MR. BARENS: I THINK I AM ENTITLED TO KNOW ABOUT THESE.

4 THE COURT: ALL RIGHT.

5 (THE FOLLOWING PROCEEDINGS WERE HELD

6 AT THE BENCH:)

7 THE COURT: YES, GO AHEAD.

8 MR. BARENS: I THINK I KNOW WHAT MR. WAPNER IS GOING
9 TO TELL ME. IT SUDDENLY OCCURRED TO ME, HE WAS UP THERE ON
10 ANOTHER CASE YOUR HONOR MIGHT BE FAMILIAR WITH, SO WE WILL
11 STAY AWAY.

12 I APPRECIATE YOUR CAUTION.

13 MR. WAPNER: I DON'T KNOW WHY, JUDGE, IT IS ALWAYS UP
14 TO ME TO PROTECT THE RECORD.

15 THAT IS THE WHOLE POINT, HE TOOK PICTURES OF THE
16 RECOVERY OF THE BONES OF MR. ESLAMINIA.

17 MR. BARENS: I FORGOT. I FORGOT.

18 THE COURT: WELL, YOU DON'T WANT TO ASK ANY FURTHER
19 QUESTIONS, DO YOU?

20 MR. BARENS: ON SOME OTHER SUBJECT, I DO.

21 THE COURT: GO AHEAD.

22 MR. BARENS: OKAY.

23 (THE FOLLOWING PROCEEDINGS WERE HELD

24 IN OPEN COURT:)

25 THE COURT: DO YOU WITHDRAW YOUR LAST QUESTION?

26 MR. BARENS: YES, I WILL GO ON TO NEW QUESTIONS.

27 THE COURT: ALL RIGHT.

28 Q BY MR. BARENS: SO YOU WERE UP THERE ON THESE

4
1 OCCASIONS TAKING PHOTOGRAPHS; DID YOU TAKE THE AERIAL
2 PHOTOGRAPHS AFTER THOSE OCCASIONS OR BEFORE THOSE OCCASIONS?

3 A AFTER.

4 Q AND DOES THE PHOTOGRAPH DEPICT THE AREA WHERE
5 YOU HAD BEEN ON THE GROUND?

6 A YES, SIR, IT DOES.

7 Q AND ON THE GROUND HERE, WHAT ELSE DO YOU SEE GOING
8 ON HERE, BECAUSE I CAN'T TELL FROM THE PHOTOGRAPH; WHAT IS
9 IN THE AREA ALONG THE ROAD HERE WHERE IT IS KIND OF A NICER
10 LOOKING AREA, YOU KNOW, ALONG THE ROAD, WHAT IS, LIKE, IN
11 THIS AREA HERE?

12 A I BELIEVE THE AREA YOU ARE QUESTIONING, I BELIEVE
13 IS A TRAILER PARK AND I HAVEN'T BEEN BEYOND THAT.

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1 MR. WAPNER: INDICATING IN THE LOWER LEFT-HAND PROTION
2 OF THE PHOTOGRAPH?

3 AND PERHAPS WE COULD POINT THAT OUT FOR THE JURY
4 ALSO?

5 MR. BARENS: THIS AREA WHERE IT APPEARS TO BE -- I DON'T
6 KNOW -- DARKER AREAS HERE. IT LOOKS LIKE BOXES OR SOMETHING
7 LIKE THAT. (COUNSEL INDICATING.)

8 Q NOW, I ASK YOU, WHAT IS THIS OVER HERE, THIS BIG
9 GRASSY AREA LOOKING THING (COUNSEL INDICATING).

10 A I HONESTLY DON'T RECALL WHAT IT WAS.

11 Q BUT THAT APPEARS TO BE A PLANTED AREA OR
12 SOMETHING?

13 A IT APPEARS TO BE.

14 Q YOU DIDN'T NOTICE IT WHEN YOU WERE LOOKING UP
15 THERE?

16 A NO, SIR.

17 Q ALL OF THIS IS A PAVED ROAD, IS IT, SIR?

18 A THE PAVED ROAD IS THE SMALLER WHITE LINE THAT
19 YOU CAN SEE.

20 Q THROUGHOUT THE PHOTOGRAPH?

21 A RIGHT THROUGH HERE. (WITNESS INDICATING.)

22 Q AND THAT IS ACTUALLY A COMPLETED HIGHWAY OR ROADWAY?

23 A TWO-LANE HIGHWAY, YES, SIR.

24 Q A TWO-LANE HIGHWAY THAT GOES THROUGH THERE?

25 WHEN YOU WERE UP THERE, DID YOU SEE EVIDENCE OF
26 REFUSE, YOU KNOW, IN TERMS OF MAYBE BEER CANS OR POP BOTTLES
27 OR TRASH OR WHATEVER THAT YOU MIGHT SEE AROUND CAMP SITES
28 OR PICNIC AREAS AND THINGS OF THAT NATURE?

1 A YES, SIR.

2 Q AND IT LOOKED LIKE THAT WAS IN THE AREA THAT THE
3 PUBLIC WOULD GO UP THERE AND HAVE SOME SORT OF ACTIVITY IN?

4 A YES, SIR, THEY COULD.

5 Q NOW, WHEN YOU TESTIFIED THAT YOU TOOK A PICTURE
6 FROM 10,000 FEET UP AND 5,000 FEET UP, WHAT DIFFERENCE DID
7 IT MAKE, JUST THE WIDENESS OF THE ANGLE YOU WERE TRYING TO
8 CAPTURE?

9 A IT MATTERED AS TO THE FIELD OF VIEW, YES, SIR.
10 THE ONES FROM 5,000 FEET WERE SPECIFIC SMALLER
11 AREAS THAT PROBABLY ONLY ENCOMPASSED ABOUT MAYBE A HALF A
12 SQUARE MILE.

13 THE LARGER ONES ENCOMPASSED A FULL FIELD OF VIEW.

14 Q AND WHAT WAS YOUR PURPOSE, WHAT WERE YOU TRYING
15 TO ACCOMPLISH BY DOING ONE AT 5,000 AND ONE AT 10,000, JUST
16 TO GET MORE IN THE PICTURE?

17 A YES, SIR.

18 Q OKAY. WAS THERE A PARTICULAR REASON WHY YOU
19 SELECTED, IF YOU DID, THIS PARTICULAR PHOTO?

20 A I DIDN'T MAKE THE SELECTION.

21 THE SELECTION WAS MADE BY DETECTIVE ZOELLER.

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1 Q OKAY. NOW, YOU MENTIONED IN YOUR TESTIMONY,
2 THAT FINGERPRINTS ON PAPER SURFACE DOCUMENTS SUBJECT TO
3 NINHYDRIN TESTING, COULD LAST FOR YEARS?

4 A YES, SIR. THEY COULD.

5 Q AND YOU ALSO MENTIONED THAT YOU WENT TO MR.
6 LEVIN'S HOUSE?

7 A YES, SIR. I DID.

8 Q DID YOU DO ANY FINGERPRINTING THERE?

9 A I KNOW I SUPERVISED SOME PHOTOGRAPHY. I KNOW
10 I HAVE TAKEN SOME PHOTOGRAPHY THERE. I AM NOT SURE WHETHER
11 OR NOT I HAVE DONE ANY FINGERPRINT WORK THERE.

12 Q WELL, LET ME ASK YOU THIS. DID YOU FINGERPRINT
13 THERE, THE FOLDER OF THE MICROGENESIS AGREEMENT?

14 A ANY KIND OF FINGERPRINTING CHEMICAL PROCESSING
15 OF PAPER ITEMS WOULD NOT BE DONE AT THE LOCATION.

16 THOSE ITEMS WOULD BE COLLECTED, TRANSPORTED
17 BACK AND DONE IN THE CRIME LAB.

18 Q DID YOU DO THAT AT ANY LOCATION?

19 A I PROCESSED QUITE A FEW DOCUMENTS FROM THIS
20 CASE IN THE LAB, YES, SIR.

21 Q COULD YOU TELL US WHICH DOCUMENTS THEY WERE,
22 SIR?

23 A NO, I COULDN'T.

24 Q WHY IS THAT?

25 A THERE HAVE BEEN QUITE A FEW THAT I HAVE DONE.
26 I DON'T REMEMBER EXACTLY WHICH ONES I HAVE PROCESSED. AND
27 SOME OF THEM, I HAVE JUST SUPERVISED THE PROCESSING OF.

28 Q SHOWING YOU EXHIBIT 100, WHICH IS THE COVER OF

1 THE FOLDER FOUND IN MR. LEVIN'S APARTMENT, THIS GREEN
2 FILE FOLDER, DID YOU FINGERPRINT THAT?

3 A IT LOOKS LIKE THE ONE THAT I SUPERVISED THE
4 PROCESSING OF, AT LEAST.

5 Q COULD YOU TELL US WHAT PRINTS WERE FOUND ON
6 THAT?

7 A THERE MAY HAVE BEEN SOME IDENTIFIABLE PRINTS.
8 I DON'T RECALL IF THERE WERE ANY IDENTIFICATIONS MADE.

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

10 THE COURT: YES.

11 (PAUSE.)

12 THE WITNESS: THERE WERE SEVERAL LATENT FINGERPRINTS
13 DEVELOPED THAT WERE OF VALUE FOR COMPAIRSON THAT WERE
14 IDENTIFIABLE.

15 Q BY MR. BARENS: DID YOU FIND MORE THAN ONE
16 PERSON'S PRINTS ON THAT?

17 A I DIDN'T DO THE COMPARISON WORK IN THIS CASE.

18 Q COULD YOU TELL ME WHO DID?

19 A JAMES WAGENBRENNER.

20 Q SO WHEN YOU SAY YOU WERE SUPERVISING, YOU WERE
21 JUST KIND OF WATCHING WHILE SOMEBODY ELSE WAS DOING IT?

22 A THE ACTUAL PROCESSING, YES, SIR. THE ACTUAL
23 IDENTIFICATIONS, I BELIEVE I LOOKED AT AT A LATER DATE.
24 I DID NOT DO THE ACTUAL EXAMINATION.

25 Q OKAY, SIR. IN YOUR AREA OF SPECIALIZATION, I
26 SUPPOSE THAT ON A SURFACE LIKE A TYPEWRITER KEY, IT COULD
27 BE FINGERPRINTED?

28 A IT COULD BE FINGERPRINTED. MY OPINION WOULD

1 BE THAT YOU PROBABLY WOULD NOT OBTAIN IDENTIFIABLE
2 LATENT PRINTS FROM IT, HOWEVER.

3 Q WHY IS THAT?

4 A THE PARTICULAR AREA IS EXTREMELY SMALL AND IF
5 THE TYPEWRITER IS IN ACTIVE USE, YOU WOULD HAVE AN OVERLAY
6 OF ONE LATENT PRINT UPON ANOTHER LATENT PRINT. YOU WOULD
7 END UP WITH A SMUDGE ON THE MIDDLE OF THE KEY ITSELF.

8 Q OKAY. HOW ABOUT A DATE STAMP? THAT IS, A
9 DATE STAMP THAT WE WOULD TAKE AND STAMP? DO YOU THINK
10 SOMETHING LIKE THAT WOULD SHOW FINGERPRINTS?

11 A IT COULD BUT I WOULD PROBABLY HAVE TO ENTER
12 THE SAME OPINION AGAIN. THE AREA THAT WOULD BE NORMALLY
13 HANDLED WOULD BE CONSTANTLY HANDLED, AGAIN, LEAVING AN
14 OVERLAY OF LATENT PRINT UPON LATENT PRINT.

15 Q ARE YOU TELLING ME THAT ANYTHING THAT SUGGESTS
16 THAT IT IS USED BY MORE THAN ONE PERSON, CANNOT BE FINGER-
17 PRINTED?

18 A I AM SAYING THAT IT CAN BE FINGERPRINTED. I
19 HAVE DONE ENOUGH OF THOSE OVER THE YEARS AND THE MAJORITY
20 OF THE TIME, YOU DO NOT GET AN IDENTIFIABLE LATENT PRINT.

21 Q WHEN YOU SAY "MAJORITY OF THE TIME" CAN YOU
22 ASCRIBE A PERCENTAGE TO THAT?

23 A 50/50.

24 Q 50/50 WHETHER YOU WOULD GET A PRINT OR NOT,
25 SIR?

26 A YES, SIR.

27 Q WHAT ABOUT DOORS? IF I WERE TO TOUCH THE EDGE
28 OF A DOOR TO OPEN OR CLOSE THAT SURFACE MADE OF WOOD WITH

1 PAINT ON IT, COULD YOU FINGERPRINT THAT?

2 A YES, SIR. YOU COULD.

3 Q AND A TELEPHONE RECEIVER?

4 A YES, SIR.

5 Q CAN YOU FINGERPRINT THAT?

6 A YOU SURE COULD.

7 Q AND HANDLES IN GENERAL, LIKE THE HANDLE LET'S
8 SAY EVEN A CLIP, THIS ACCO PAPER CLIP HERE? IT WOULD BE
9 ONE OF THOSE TYPES OF THINGS THAT WOULD LEAVE A PRINT,
10 WOULDN'T IT?

11 A IT COULD.

1 Q AND THAT WOULD BE AN IDENTIFIABLE SURFACE FOR
2 A PRINT?

3 A AGAIN, HAVING WORKED WITH ENOUGH OF THOSE OVER
4 THE YEARS, I WOULD SAY IT PROBABLY FALLS INTO THE SAME CATEGORY,
5 THAT THE AMOUNT OF THE HANDLING IT WOULD RECEIVE, WITH THE
6 ADDITION OF REMOVAL OF PAPERS, IT COULD YIELD AN IDENTIFIABLE
7 PRINT BUT I WOULD HAZARD A GUESS IT WOULD PROBABLY BE A GROUP
8 OF SMUDGES.

9 Q OKAY. WHAT IF IT WAS ONLY HANDLED ON ONE OCCASION,
10 WOULD WE GET A PRINT THEN THAT WOULD BE IDENTIFIABLE?

11 A IN THEORY, BUT THEN IT WOULD GO BACK TO DEPENDING
12 UPON THE PERSON WHO HAD LEFT THE LATENT IMPRESSION.

13 Q WHAT THEORY IS THAT, SIR?

14 A WELL, SOME PEOPLE -- PEOPLE AS A WHOLE ARE GENERALLY
15 DIVIDED UP INTO TWO GROUPS, SECRETERS AND NONSECRETERS.
16 SECRETERS BEING THOSE WHO SECRETE THROUGH THEIR PORES,
17 PERSPIRATION, VARIOUS OTHER PHYSIOLOGICAL FLUIDS.

18 SOME PEOPLE SECRETE HEAVILY.

19 SOME PEOPLE SECRETE VERY LITTLE, IF ABSOLUTELY
20 NOTHING.

21 IT COULD ALSO DEPEND ON THE CONDITIONS IN THE
22 LOCATION AT THE TIME ATMOSPHERIC-WISE. IT COULD DEPEND UPON
23 THE AMOUNT OF ITEMS THAT HAD BEEN HANDLED PRIOR TO HANDLING
24 THE INDIVIDUAL ITEM ITSELF.

25 Q ISN'T IT TRUE THAT NONSECRETERS COMPRISE LESS
26 THAN 5 PERCENT OF THE POPULATION?

27 A THAT, I DON'T KNOW.

28 Q WOULDN'T THIS SURFACE HERE, THIS METAL SURFACE

1 BE A BETTER SURFACE FOR OBSERVING A PRINT THAN A PIECE OF
2 PAPER?

3 A PROBABLY NOT.

4 AND I BASE THAT ON THE FACT THAT THE PAPERS ARE
5 GOING TO BE HANDLED INITIALLY, THE PAPERS AT TIMES ACT ALMOST
6 AS AN ACCEPTOR FOR THE FINGERPRINT, THE PERSPIRATION OILS
7 BEING ABSORBED ON THE PAPER AND THE MORE PAPER YOU HANDLE,
8 IT IS ALMOST AS THOUGH YOU WIPED ALL OF THE LATENT IMPRESSION,
9 LEAVING MATERIALS FROM THE FINGERTIPS.

10 Q SO YOU ARE SAYING THE MORE PAGES I HANDLE, THE
11 LESS RELIABLE THE PRINT?

12 A I DON'T KNOW IF I WOULD CALL IT LESS RELIABLE.
13 LET'S SAY LESS POSSIBILITY TO OBTAIN AN
14 IDENTIFIABLE PRINT.

15 Q THAT HAS BEEN YOUR EXPERIENCE?

16 A YES AND NO.
17 IT DEPENDS ON INDIVIDUAL CIRCUMSTANCES, INDIVIDUAL
18 PEOPLE.

19 Q OKAY. IN THIS INSTANCE, DID YOU PRINT THIS PAPER
20 HERE THAT IS PART OF 94?

21 A NO, SIR, I DON'T BELIEVE WE DID.

22 Q HOW ABOUT THE OTHER TYPE OF AREAS THAT I DESCRIBED
23 AT THE LEVIN HOUSE, DID YOU PRINT ANY OF THOSE AREAS?

24 A NO, SIR, WE DID NOT.

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1 Q DID YOU REMOVE ANY PHYSICAL PROPERTY FROM THE
2 LEVIN HOUSE OTHER THAN THESE DOCUMENTS THAT YOU TRIED TO
3 DEVELOP FINGERPRINTS ON?

4 A I DON'T RECALL WITHOUT SEEING THE REPORT.

5 Q CAN YOU FIND FOR ME ON YOUR REPORT AND TELL ME
6 WHAT WERE THE PHYSICAL ITEMS THAT YOU REMOVED FROM THE HOUSE
7 FROM WHICH YOU TRIED TO DEVELOP PRINTS?

8 A WE REMOVED QUITE A FEW ITEMS FROM THE HOUSE THAT
9 DAY. IT LOOKS TO ME LIKE, AT THE DIRECTION OF DETECTIVE
10 ZOELLER, WE PROCESSED SEVERAL LEGAL PAPERS AND A GREEN
11 EXTERIOR FOLDER.

12 Q OTHER THAN THAT, DID YOU REMOVE ANY PROPERTY FROM
13 THE HOUSE FOR PURPOSES OF TRYING TO LIFT LATENT FINGERPRINTS
14 FROM?

15 A NOT TO MY KNOWLEDGE.

16 Q DID YOU DO ANYTHING AT THE SCENE IN TERMS OF
17 LIFTING LATENT FINGERPRINTS?

18 A NOT TO MY KNOWLEDGE.

19 Q NOW I SHOW YOU PEOPLE'S 97, WHICH APPEARS TO BE
20 A DATE STAMP; DID YOU FINGERPRINT THIS?

21 A I DON'T BELIEVE SO.

22 MR. WAPNER: MAY I SEE THE ENVELOPE, PLEASE, YOUR HONOR?

23 I DON'T BELIEVE THAT HAS BEEN MARKED FOR THE
24 PURPOSES OF THIS TRIAL; MAY IT BE SO MARKED AS 97?

25 THE COURT: YES.

26 MR. BARENS: 97 BEING A DATE STAMP LOCATED IN THE LEVIN
27 RESIDENCE.

28 MR. WAPNER: AND ALSO THE ENVELOPE BEARING A BEVERLY

1 HILLS POLICE DEPARTMENT PROPERTY TAG, MAY THE ENVELOPE AND
2 ITS CONTENTS BE MARKED 97, PLEASE?

3 THE COURT: SO MARKED.

4 Q BY MR. BARENS: NOW I SUPPOSE IF I WERE GOING
5 TO USE THIS I WOULD HAVE TO ADJUST A DATE STAMP TO THE CORRECT
6 DATE; IS THAT NOT CORRECT, SIR?

7 A YES, SIR.

8 Q PROBABLY, AT LEAST LOOKING AT THIS, I WOULD HAVE
9 TO USE MORE THAN ONE HAND TO DO THAT BECAUSE OF THE WAY THE
10 DEVICE IS CONSTRUCTED?

11 A YES, SIR.

12 Q AND SO I SUPPOSE I WOULD BE LEAVING FINGERPRINTS
13 ON THESE METAL SURFACES ON THE SIDE?

14 A YES, SIR.

15 Q AND I WOULD BE, I SUPPOSE, LEAVING A PALM PRINT
16 ON TOP IF I DEPRESS IT?

17 A MOST PROBABLY.

18 Q AND I SUPPOSE I WOULD BE LEAVING FINGERPRINTS
19 ON AT LEAST TWO OR MORE OF THESE METAL SURFACES WHILE I AM
20 ADJUSTING THIS DATE?

21 A YES, SIR.

22 Q AND I'D PROBABLY HAVE FINGERPRINTS FROM BOTH MY
23 HANDS ON THERE, WOULD I NOT?

24 A YES, SIR, YOU PROBABLY WOULD.

25 Q AND YOU DIDN'T FINGERPRINT THIS?

26 A NO, SIR, I DIDN'T.

27 MR. BARENS: JUST A MOMENT, YOUR HONOR.

28 (UNREPORTED COLLOQUY BETWEEN MR. BARENS
AND THE DEFENDANT.)

1 Q BY MR. BARENS: WHEN YOU OBSERVE A FINGERPRINT
2 ON SOMETHING, FROM YOUR OBSERVATION, COULD YOU TELL US
3 WHEN THE PRINT WAS PLACED ON THE DOCUMENT, A PIECE OF
4 PAPER?

5 A NO, SIR.

6 Q SO ALL YOU CAN TELL IS WHETHER IT IS THERE OR
7 NOT BUT WE CAN'T TELL WHEN IT IS THERE?

8 A THAT'S TRUE.

9 Q NOW, WHEN YOU LOOKED AT THE SEVEN PAGES IN
10 THIS CASE, WERE YOU ONLY LOOKING FOR ONE PERSON'S FINGER-
11 PRINTS?

12 MR. WAPNER: I DON'T THINK THAT HE EVER TESTIFIED
13 THAT HE LOOKED AT THE SEVEN PAGES, YOUR HONOR.

14 MR. BARENS: WRONG.

15 THE COURT: I DON'T THINK HE TESTIFIED ABOUT FINGER-
16 PRINTS ON THE SEVEN PAGES.

17 MR. BARENS: PROBABLY ANOTHER GUY. OKAY. WE WOULD
18 LIKE TO RETAIN THE WITNESS FOR THE DEFENSE.

19 THE COURT: ALL RIGHT.

20 MR. BARENS: THANK YOU.

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REDIRECT EXAMINATION

23 BY MR. WAPNER:

24 Q FIRST OF ALL, THE FACTORS THAT YOU WERE TALKING
25 TO COUNSEL ABOUT, WHEN YOU LEAVE FINGERPRINTS AND WHEN
26 YOU DON'T, DOES THAT MEAN THAT JUST BECAUSE I MIGHT TOUCH
27 A SURFACE, THAT IT IS ALWAYS GOING TO LEAVE A FINGERPRINT?

28 A NO, SIR. IT DOESN'T.

1 Q WHY?

2 A AS I DESCRIBED EARLIER, IT CAN BE DEPENDENT
3 UPON THE SURFACE INVOLVED. IF THE SURFACE IS VERY
4 TEXTURED, A LEATHERETTE TYPE OF SURFACE, A SUEDE TYPE
5 OF SURFACE, CONCRETE, THOSE TEXTURED SURFACES ARE NOT
6 CONDUCIVE FOR LATENT FINGERPRINTS TO BE LEFT.

7 OTHER PAPER ITEMS THAT I DESCRIBED --

8 Q WELL, HOW DO YOU KNOW?

9 A THE HANDLING OF OTHER ITEMS WILL TEND TO
10 WIPE AWAY THE NECESSARY PERSPIRATION, FOR LACK OF A BETTER
11 WORD, THAT IS ON THE FINGERS THAT ENDS UP LEAVING THE
12 LATENT PRINTS. ATMOSPHERIC CONDITIONS CAN PLAY A PART.
13 ON A COLD DAY, THE PORES CLOSE UP AND YOU DON'T SECRETE,
14 EVEN IF YOU HAPPEN TO BE ONE OF THE THOSE INTO THE HEAVY
15 SECRETER CLASS.

16 Q WHAT HAPPENS IF YOU JUST WASHED YOUR HANDS AND
17 DRIED THEM OFF WITH A TOWEL AND THEN TOUCHED SOMETHING?
18 MIGHT THAT AFFECT WHETHER YOU ARE GOING TO LEAVE SOMETHING
19 OR NOT?

20 A IT COULD AFFECT IT. YOU COULD WASH AWAY MOST
21 OF THE OILS THAT MAY HAVE BEEN THERE THAT WOULD HAVE BEEN
22 DEPOSITED.

23 Q YOU TALKED ABOUT TOUCHING SEVERAL DIFFERENT PIECES
24 OF PAPER. I TAKE IT THAT EACH TIME YOU TOUCH A PIECE OF
25 PAPER OR OTHER SURFACE, SOME OF THE PERSPIRATION OR
26 PHYSIOLOGICAL FLUIDS ON YOUR HANDS ARE ABSORBED INTO THE
27 DIFFERENT SURFACES THAT YOU MIGHT TOUCH?

28 A JUST ABOUT ANY SURFACE THAT YOU WOULD TOUCH,

1 YOU WOULD, EACH INDIVIDUAL TIME YOU TOUCH IT, YOU LEAVE A
2 DEPOSIT THERE.

3 Q AND SO, THE MERE FACT THAT SOMEONE TOUCHES A
4 SURFACE, DOESN'T NECESSARILY MEAN THAT THERE IS GOING TO
5 BE A FINGERPRINT THERE, CORRECT?

6 A THAT'S TRUE.

7 Q DID YOU SUPERVISE AN OFFICER FROM THE BEVERLY
8 HILLS POLICE DEPARTMENT NAMED CLARK FOGG, WHEN HE DIPPED
9 CERTAIN ITEMS IN THIS CASE IN NINHYDRIN?

10 A YES, SIR. I DID.
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1 Q SHOWING YOU PEOPLE'S 55 FOR IDENTIFICATION, DO
2 YOU RECOGNIZE THOSE?

3 A YES, SIR.

4 Q AND WHAT DID YOU SEE MR. FOGG DO WITH RESPECT
5 TO THOSE SEVEN PIECES OF PAPER?

6 A EACH OF THOSE ITEMS WERE PLACED IN A STAINLESS
7 STEEL TRAY THAT HAD BEEN FILLED WITH PETROLEUM ETHER BASED
8 NINHYDRIN SOLUTION AND --

9 Q LET ME STOP YOU FOR ONE SECOND. THAT IS THE
10 SOLUTION THAT YOU TOLD US ABOUT BEFORE THAT YOU MIXED UP,
11 RIGHT?

12 A YES, SIR.

13 Q AND THEN WHEN YOU SAY EACH OF THE ITEMS WAS
14 PLACED IN, WAS EACH ONE PLACED IN INDIVIDUALLY?

15 A YES, SIR.

16 Q DID YOU SEE MR. FOGG DO THAT?

17 A YES, SIR. I DID.

18 Q HOW LONG WERE EACH OF THOSE PIECES LEFT IN THE
19 TRAY?

20 A I WOULD GUESS IT PROBABLY TAKES ABOUT TEN TO
21 FIFTEEN SECONDS FOR THE SOLUTION TO SATURATE EACH
22 INDIVIDUAL PAGE.

23 Q WHAT DID YOU SEE MR. FOGG DO AFTER THE PAPERS
24 WERE PUT INTO THE TRAY?

25 A AFTER THE SATURATION HAD OCCURRED, HE REMOVED
26 EACH ONE AND REPLACED THEM IN A VERY LARGE, PLASTIC
27 PHOTOGRAPHY TRAY TO ALLOW THEM TO DRY. AND AGAIN, THEY ARE
28 SEPARATED AND NOT ALLOWED TO TOUCH.

1 Q AND AFTER THEY WERE PLACED IN PHOTOGRAPHIC
2 TRAYS, HOW LONG DID IT TAKE FOR THEM TO DRY?

3 A WELL, THEY USUALLY DRY WITHIN A MATTER OF A
4 MINUTE OR SO. HOWEVER, THE DEVELOPMENT TIME FOR NINHYDRIN
5 IS ANYWHERE FROM FOUR TO SIX HOURS.

6 AND THEN, AS A MATTER OF COURSE, WE NORMALLY
7 WILL REPROCESS THE NEXT DAY, TO MAKE SURE THAT THERE HAS
8 BEEN A FULL DEVELOPMENT.

9 Q AND DO YOU KNOW WHEN THAT WAS DONE IN THIS
10 CASE?

11 A I DON'T BELIEVE THAT WE USUALLY DOCUMENT THE
12 FACT THAT WE REPROCESSED. IT IS JUST A POLICY TO INSURE
13 THAT THERE HAS BEEN ADEQUATE SATURATION AND ADEQUATE
14 DEVELOPMENT. WE DO IT AS A MATTER OF COURSE.

15 Q WHEN WERE THESE FIRST DIPPED IN NINHYDRIN, DO
16 YOU REMEMBER?

17 A NOT WITHOUT THE REPORT YOU HAVE.

18 Q ALL RIGHT. LET ME JUST GET IT FOR YOU.
19 SHOWING YOU A DOCUMENT THAT SAYS "LATENT PRINT
20 PROCESSING REPORT" DO YOU RECOGNIZE THAT?

21 A YES, SIR. I DO.

22 Q WHAT IS IT?

23 A IT IS THE PROCESSING REPORT THAT WE FILLED OUT
24 IN REGARD TO THE PROCESSING OF THESE PARTICULAR SHEETS OF
25 YELLOW PAPER AND THE GREEN FILE FOLDERS THAT I WAS SHOWN
26 EARLIER BY THE DEFENSE.

27 Q WHEN WERE THOSE PIECES OF YELLOW PAPER PROCESSED?

28 A ON AUGUST 17, 1984.

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Q AND WERE THERE ANY IDENTIFIABLE FINGERPRINTS
DEVELOPED FROM THOSE PAGES?

A YES, SIR. THERE WERE.

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1 Q AND THAT WAS DETERMINED AFTER THEY WERE LEFT
2 FOR THE TWO DAYS, THE PAGES WERE LEFT FOR THE TWO DAYS TO
3 LET THE PRINTS DEVELOP?

4 A YES, SIR.

5 NORMALLY, WITHIN SIX TO EIGHT HOURS, YOU WOULD
6 BE ABLE TO SEE WHETHER OR NOT THERE WAS DEVELOPMENT AND,
7 LIKE I SAID, AS A MATTER OF COURSE WE WOULD REPROCESS AND
8 ALLOW IT TO SIT AGAIN AND IT IS USUALLY LEFT OVERNIGHT.

9 Q AND OF THE PRINTS THAT WERE DEVELOPED, WAS SOME-
10 THING DONE TO PRESERVE THE FINGERPRINTS FOR FURTHER USE?

11 A YES, SIR. THEY ARE PHOTOGRAPHED.

12 Q AND DID SOMEBODY DO THAT IN THIS CASE?

13 A YES, SIR.

14 Q WHO WAS THAT?

15 A IT WAS, AGAIN, CLARK FOGG.

16 Q DID YOU WATCH HIM DO THAT?

17 A YES, SIR. I DID.

18 MR. WAPNER: YOUR HONOR, I HAVE TWO ITEMS THAT APPEAR
19 TO BE PHOTOGRAPHS OF FINGERPRINTS; MAY THEY BE MARKED AS
20 212 AND 213?

21 THE COURT: YES.

22 MR. BARENS: CAN I SEE THOSE?

23 MR. WAPNER: LOOK AT THESE FIRST.

24 Q SHOWING YOU 212 FOR IDENTIFICATION, DO YOU
25 RECOGNIZE THIS?

26 A IT IS A PHOTOGRAPH OF WHAT APPEARS TO BE A
27 NINHYDRIN DEVELOPED LATENT FINGERPRINT.

28 Q AND DO YOU KNOW SPECIFICALLY WHAT THAT -- WHETHER

1 THAT NINHYDRIN DEVELOPED FINGERPRINT IS ON THAT PHOTO-
2 GRAPH?

3 A I WOULD HAVE TO GO THROUGH THE STAGES.

4 AGAIN, I DID NOT MAKE THE INITIAL COMPARISON.

5 Q AGAIN, I AM NOT ASKING YOU IF YOU DID THE
6 COMPARISON, JUST, DO YOU KNOW IF A PHOTOGRAPH IS TAKEN
7 FROM THE LIST -- STRIKE THAT.

8 WHEN THE PHOTOGRAPH IS TAKEN OF THE FINGERPRINT,
9 IS THERE SOME IDENTIFICATION PUT ON THE BACK OF THE
10 PHOTOGRAPH TO IDENTIFY WHAT IT IS A PHOTOGRAPH OF?

11 A NORMALLY, WE TRY AND MARK THE ORIGINAL PIECE
12 OF EVIDENCE WHERE THE LATENT FINGERPRINT WAS TAKEN FROM,
13 CIRCLE IT, INITIAL IT, SOMETHING OF THAT NATURE, SO WE
14 ARE ABLE TO IDENTIFY ITS LOCATION OF DEVELOPMENT AT A
15 LATER TIME.

16 Q DO YOU KNOW IF THAT WAS DONE IN THIS CASE?

17 A I DON'T KNOW FOR SURE.

18 Q WOULD YOU TAKE A LOOK AND SEE?

19 A I SEE TWO LARGE AREAS THAT ARE CIRCLED ON THE
20 BACK OF ONE OF THE SHEETS OF PAPER AND THAT IS ONE OF THE
21 METHODS THAT WE MAY USE TO IDENTIFY WHERE THE LATENTS CAME
22 FROM.

23 Q OKAY, WE WILL GET BACK TO THOSE CIRCLES WITH
24 MR. WAGENBRENNER.

25 LET ME ASK --

26 THE COURT: ARE YOU GOING TO GO TO ANOTHER SUBJECT?

27 MR. WAPNER: YES, BRIEFLY.

28 THE COURT: CAN YOU FINISH WITH HIM BRIEFLY?

1 MR. WAPNER: WELL, IT LOOKS LIKE IT IS GOING TO TAKE
2 AT LEAST -- MR. BARENS SAYS HE HAS A FEW QUESTIONS SO IT
3 IS GOING TO TAKE AT LEAST FIVE MINUTES SO I GUESS WE SHOULD
4 BREAK.

5 THE COURT: I THINK THEN WE WILL TAKE A RECESS AT
6 THIS TIME.

7 LADIES AND GENTLEMEN, WE WILL TAKE A RECESS
8 AT THIS TIME UNTIL 1:30 THIS AFTERNOON.

9 THE SAME ADMONITION I GAVE YOU WILL STILL APPLY.

10 (PROCEEDINGS WERE ADJOURNED AT 12:00 NOON
11 TO RESUME AT 1:30 P.M. OF THE SAME DAY.)
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1 SANTA MONICA, CALIFORNIA; THURSDAY, MARCH 12, 1987; 1:30 P.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS NOTED ON TITLE PAGE.)
4

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

8 (THE FOLLOWING PROCEEDINGS WERE HELD
9 IN THE PRESENCE OF MR. BARENS, MR.
10 PHILLIPS AND MR. SCHOENBERG, MR. WAPNER
11 AND MR. CHIER NOT BEING PRESENT.)

12 MR. SCHOENBERG: HERBERT SCHOENBERG ON BEHALF OF
13 CBS -- KCBS, I SHOULD SAY.

14 MR. PHILLIPS: BRADLEY PHILLIPS ON BEHALF OF CAPITAL
15 CITIES, ABC, CABLE NEWS NETWORK.

16 THE COURT: DID YOU HAVE FURTHER DISCUSSIONS WITH
17 THE DISTRICT ATTORNEY?

18 MR. SCHOENBERG: WE HAVE NOT SEEN A PROPOSED ALTERNATIVE
19 ORDER. I DON'T KNOW WHETHER THE COURT HAS ONE, EITHER.

20 THE COURT: HAVE YOU SEEN ANY OTHER ORDER?

21 THE CLERK: FRED HAS NOT SUBMITTED IT. WHEN I CALLED
22 HIS OFFICE NOW, THEY RELAYED THE MESSAGE TO HIM TO COME
23 DOWN RIGHT AWAY, THAT YOU WERE ON THE BENCH.

24 (MR. WAPNER ENTERS THE COURTROOM.)

25 THE COURT: ALL RIGHT. HAVE YOU READ THE
26 ALTERNATIVE ORDER?

27 MR. WAPNER: SORRY, YOUR HONOR?

28 THE COURT: HAVE YOU GOT ANY OTHER ORDERS?

1 MR. WAPNER: YES. I DO APOLOGIZE FOR BEING LATE.

2 (MR. CHIER ENTERS THE COURTROOM.)

3 THE COURT: DO YOU HAVE ANY OBJECTION?

4 MR. PHILLIPS: YOUR HONOR, AS FAR AS WITH RESPECT
5 TO -- WELL, LET ME ADDRESS EACH OF THE ITEMS IN HIS
6 PROPOSED ORDER SEPARATELY.

7 WITH THE RESPECT OF THE IMAGES OF HIS FACE
8 AND VOICE BEING ALTERED ELECTRONICALLY OR OTHERWISE BEFORE
9 IT IS RECORDED ON TAPE OR FILM, MY UNDERSTANDING FROM MY
10 CLIENTS IS THAT THAT IS NOT TECHNOLOGICALLY POSSIBLE.

11 I ALSO HAVE OBJECTED TO IT ON A NUMBER OF OTHER
12 GROUNDS, ASIDE FROM THAT. BUT, IT NOT BEING POSSIBLE, I
13 AM NOT SURE THAT THEY ARE RELEVANT.

14 ONE PROBLEM WITH IT, YOUR HONOR, IS EVEN IF ONE
15 WERE GOING TO ALTER THE TAPE, MY UNDERSTANDING IS THAT
16 TECHNICALLY, IF YOU MADE ONE TAPE AND YOU THEN HAD THE
17 ENTIRE TAPE ALTERED, THAT WOULD TAKE AT LEAST A DAY TO
18 ALTER ONE DAY'S TESTIMONY ENTIRELY.

19 NONE OF THE BROADCAST ENTITIES, AS FAR AS I
20 UNDERSTAND IT -- CERTAINLY NOT MY CLIENTS, INTEND TO USE
21 ANYWHERE CLOSE TO ALL OF MR. KARNY'S TESTIMONY. THEY PLAN
22 TO USE A FEW MINUTES HERE AND THERE FROM HIS TESTIMONY,
23 PERHAPS.

24 IT WOULD TAKE A VERY SHORT WHILE FOR THEM TO
25 EDIT THOSE PORTIONS AND FOR HIS FACE AND VOICE TO BE
26 RENDERED UNRECOGNIZABLE AT VERY LITTLE EXPENSE, BY COMPARISON
27 WITH EDITING THE WHOLE THING.

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1 BUT THIS PROPOSAL, I DON'T BELIEVE, IS POSSIBLE
2 ACCORDING TO MY FINDINGS.

3 THE COURT: ALL RIGHT, JUST A MOMENT, PLEASE.

4 MR. PHILLIPS: WITH RESPECT TO --

5 THE COURT: COUNSEL. JUST ONE MINUTE.

6 MR. PHILLIPS: YES.

7 (PAUSE IN PROCEEDINGS.)

8 MR. PHILLIPS: I AM SORRY.

9 THE COURT: ALL RIGHT.

10 MR. PHILLIPS: WITH RESPECT TO ONE REPRESENTATIVE OF
11 THE ELECTRONIC MEDIA BEING SELECTED, YOUR HONOR, IT JUST
12 SIMPLY PRACTICALLY MAKES LIFE SIGNIFICANTLY MORE DIFFICULT
13 FOR THE MEMBERS OF THE POOL TO DO THAT AND ASSUMING, PROVIDED
14 THAT ALL OF THEM UNDERSTAND WHAT THE PROVISIONS OF YOUR HONOR'S
15 ORDER ARE, I SEE NO REASON FOR IT WHATSOEVER.

16 EACH INDIVIDUAL WHO WILL BE INVOLVED IN TAPING
17 PROCEEDINGS WILL BE AWARE OF EXACTLY WHAT THE PROCEDURE IS
18 TO BE FOLLOWED AND BE SUBJECT TO YOUR HONOR'S ORDER.

19 THE COURT: UH-HUH.

20 MR. PHILLIPS: WITH RESPECT TO THE FIRST ITEM ON THE
21 SECOND PAGE, YOUR HONOR, WE WOULD HAVE NO OBJECTION TO THAT
22 PROVISION IF IT MEANS THAT NO ARTISTS' RENDITIONS ARE TO BE
23 MADE IN THE COURTROOM.

24 I BELIEVE THE UNITED STATES V. CBS CASE THAT WE
25 CITED IN OUR PAPERS, YOUR HONOR, INDICATED THAT A BROADER
26 PROHIBITION INCLUDING ARTISTS' RENDITIONS MADE OUTSIDE THE
27 COURTROOM VIOLATES THE FIRST AMENDMENT AND WE WOULD OBJECT
28 TO THAT.

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1 AND OTHERWISE, SUBSTANTIVELY, I DON'T BELIEVE
2 WE HAVE ANY OBJECTION TO THE OTHER PROVISIONS OF THIS ORDER.
3 BUT WE VIGOROUSLY OBJECT TO THE ONES I HAVE
4 MENTIONED.

5 THE COURT: HOW DO YOU WANT TO MODIFY THAT FIRST ONE,
6 FOR EXAMPLE?

7 MR. PHILLIPS: OUR SUGGESTION OR A SUGGESTION WOULD
8 BE, FRANKLY, RATHER, TO MODIFY OUR ORDER, IF YOUR HONOR THINKS
9 SOME MODIFICATION IS IN ORDER, SIMPLY TO PROVIDE THAT EACH --

10 THE COURT: WHERE IS IT?

11 YES, I HAVE GOT IT HERE, YES.

12 MR. PHILLIPS: EACH BROADCAST ENTITY THAT PLUGS INTO
13 THE POOL CAMERA, IF YOU WILL, SIGN AN ACKNOWLEDGEMENT THAT
14 THEY HAVE RECEIVED A COPY OF THE ORDER AND WILL ABIDE BY THE
15 ORDER AND THAT SHOULD SOLVE ANY PROBLEM WITH RESPECT TO ANYONE
16 OBTAINING A COPY THAT ISN'T AWARE OF OR CONSIDERS THEMSELVES
17 BOUND BY THE ORDER.

18 MR. WAPNER: YOUR HONOR, THE CONCERN THAT I AM TRYING
19 TO ADDRESS HERE IS TO MAKE SURE THAT THERE IS NO ORIGINAL
20 TAPE MADE OR AVAILABLE TO ANYONE NOW OR AT ANY TIME IN THE
21 FUTURE THAT CAN BE USED TO RECOGNIZE MR. KARNY'S IMAGE.

22 THE POINT IS THAT THERE ARE A FEW DIFFERENT WAYS
23 OF TECHNICALLY HANDLING THIS BUT THE ONLY WAY THAT IS
24 ACCEPTABLE TO THE PEOPLE -- AND I COMPLETELY DISAGREE WITH
25 MR. PHILLIPS ABOUT THE POSSIBILITY OF DOING IT IN THE
26 COURTROOM BECAUSE THERE ARE SEVERAL DIFFERENT WAYS OF DOING
27 IT IN THE COURTROOM, INCLUDING SPECIFICALLY, THE USE OF FILTERS
28 ON A CAMERA SO WHEN THEY TAKE THE PICTURE, THEY TAKE HIS FACE

1 THROUGH A FILTER SO YOU CAN'T RECOGNIZE IT.

2 SHORT OF THAT, THE COURT'S SUGGESTION WAS THEY
3 ONLY BE ALLOWED TO PHOTOGRAPH HIM FROM THE NECK DOWN.

4 BUT THERE ARE DIFFERENT WAYS THAT IT CAN BE DONE
5 SO THAT THERE NEVER IS AN ORIGINAL TAPE PRODUCED WHERE HIS
6 IMAGE IS RECOGNIZABLE.

7 AND IF YOU TALK TO THE TECHNOLOGY PEOPLE INVOLVED
8 IN THIS, THEY WILL TELL YOU THAT THERE ARE SEVERAL DIFFERENT
9 WAYS THAT THIS CAN BE DONE: PUTTING A FILTER ON THE CAMERA,
10 OR IN THE CRUDEST WAY, IN THIS ELECTRONIC AGE OF TECHNIQUES,
11 I HAVE BEEN TOLD THAT IF YOU SMEAR VASELINE ON THE TOP OF
12 THE LENS AND YOU TAKE THE PICTURE, THAT THAT PART OF THE IMAGE
13 THAT IS TAKEN BY THE TOP OF THE LENS ISN'T RECOGNIZABLE. SO
14 THERE ARE SEVERAL WAYS THAT IT CAN BE DONE.

15 BUT THIS IS THE REASON FOR IT: WHAT I AM TRYING
16 TO GET AT BY THIS ORDER IS SAFEGUARDS FOR THIS WITNESS SO
17 THAT THERE IS NO ORIGINAL TAPE.

18 HERE IS THE REASON FOR THAT: IT IS OBVIOUS FROM
19 THE PUBLICITY THAT THIS CASE HAS RECEIVED THAT THERE ARE PEOPLE
20 WHO WILL SEIZE AND TAKE ADVANTAGE OF THIS SITUATION TO TRY
21 AND MAKE MONEY, IF NOTHING ELSE.

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1 IF THE COURT DOESN'T HAVE SOME SAFEGUARDS, THERE
2 ARE GOING TO BE ORIGINAL TAPES FLOATING AROUND OUT THERE
3 THAT ARE GOING TO BE AVAILABLE TO PEOPLE.

4 THE COURT: CAN YOU PREVENT ANY ORIGINAL TAPES FROM
5 BEING DISTRIBUTED AND USED?

6 MR. WAPNER: YOUR HONOR, WHAT I AM TRYING TO DO --

7 THE COURT: WITH THE FULL FACE AND VOICE?

8 MR. PHILLIPS: MY CLIENTS, ABC AND CNN CAN CERTAINLY
9 AGREE THAT WE WILL NOT TRANSFER ANY COPY OR ORIGINAL
10 TAPE SHOWING MR. KARNY'S FACE OR VOICE IN A RECOGNIZABLE
11 MANNER TO ANY OTHER PERSON.

12 WE'LL USE IT EXCLUSIVELY FOR PURPOSES OF
13 BROADCASTING WITH THE FACE DISTORTED.

14 THE COURT: WHAT IS THE PROBLEM WITH THAT?

15 MR. PHILLIPS: AND I BELIEVE THAT YOU COULD PROVIDE
16 THAT ANYONE PLUGGING INTO THE POOL CAMERA WILL HAVE TO
17 ABIDE BY THAT SAME RESTRICTION.

18 THE COURT: WHO DOES THE PLUGGING IN HERE? ACTUALLY,
19 WHO WILL BE PLUGGING IN?

20 MR. PHILLIPS: WELL, IT IS MY UNDERSTANDING -- MR.
21 LAMONT IS HERE AND HE CAN CORRECT ME IF I AM WRONG. IT
22 IS MY UNDERSTANDING THAT THE ONLY COMPANIES PLUGGED INTO
23 THAT RIGHT NOW ARE ABC, CNN AND KCBS. OTHERS MIGHT AT ONE
24 TIME -- PLUG IN AT SOME TIME LATER. IF THEY DO SO, OUR
25 PROPOSAL WOULD BE THAT THEY SIGN AN ACKNOWLEDGEMENT THAT
26 THEY HAVE RECEIVED A COPY OF YOUR HONOR'S ORDER AND WILL
27 ABIDE BY THE PROVISIONS OF YOUR HONOR'S ORDER.

28 THE COURT: SUPPOSE THEY DON'T?

1 MR. PHILLIPS: WELL, SUPPOSE THEY DON'T SIGN THE
2 ACKNOWLEDGEMENT?

3 THE COURT: SUPPOSE THEY DON'T -- SUPPOSE THEY SIGN
4 IT AND THEY DO IT ANYWAY. THERE IS NO WAY I HAVE OF
5 PUNISHING THEM. THEY ARE NOT IN CONTEMPT OF THE COURT'S
6 ORDER BECAUSE IT WAS NOT MADE TO THEM.

7 MR. PHILLIPS: WELL, YOUR HONOR, I DON'T THINK THAT
8 THAT IS ACCURATE. I THINK THAT IF YOUR HONOR RENDERS AN
9 ORDER, UNDER RULE 980, IT APPLIES TO ANYONE AND ONCE WE
10 HAVE --

11 THE COURT REPORTER: SLOW DOWN, MR. PHILLIPS.

12 MR. PHILLIPS: ALL OF THOSE WHO PARTICIPATE IN THE
13 POOL --

14 THE COURT: ALL OF THOSE?

15 MR. PHILLIPS: THAT WOULD BE MY UNDERSTANDING.
16 OBVIOUSLY, THEY WOULD BE ABSENT PARTIES --

17 THE COURT: THE ORDER WHICH YOU PRESENTED TO ME FOR
18 SIGNATURE DOESN'T CONTAIN ANY SUCH PROVISION, DOES IT?

19 MR. PHILLIPS: NO. IT IS MY SUGGESTION.

20 IF YOU HAVE A CONCERN ABOUT WHAT MR. WAPNER IS
21 TALKING ABOUT, THAT THE ORDER COULD BE MODIFIED TO INCLUDE
22 SUCH A PROVISION THAT ANYONE WHO PARTICIPATES IN THE POOL
23 COULD SIGN AN ACKNOWLEDGEMENT THAT THEY HAVE RECEIVED A
24 COPY OF THIS ORDER AND WILL ABIDE BY ITS PROVISIONS, IF YOU
25 WANT TO INCLUDE A PROVISION IN THE ORDER THAT REQUIRES THAT
26 WE NOT PROVIDE A COPY OF THE ORIGINAL TAPE TO ANYONE, ANY
27 OUTSIDE, THIRD PERSON AND THE TAPE WILL BE USED ONLY FOR
28 PURPOSES OF BROADCASTS BY THAT ENTITY AND ONLY AFTER THE

1 FACE AND VOICE HAVE BEEN ALTERED. THAT IS FINE WITH US.
2 WE THINK THAT --

3 THE COURT: WELL, DOESN'T THAT AFFORD EVERY
4 PROTECTION?

5 MR. WAPNER: NO.

6 THE COURT: WHY NOT?

7 MR. WAPNER: COUNSEL HAS NOT EXPLAINED TO YOU THE
8 PROCEDURE THAT IS INVOLVED IN DOING THOSE TAPES.

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1 HERE IS THE PROCEDURE HE IS SUGGESTING. WHAT
2 HE IS SUGGESTING IS THAT THEY MAKE THE TAPE IN COURT AND
3 THEY RECORD THE TAPE THAT TAPES MR. KARNY'S COMPLETE IMAGE.
4 THE FACE IS NOT DISTORTED AND THE VOICE IS NOT DISTORTED.

5 BY THE WAY, HE LUMPED ALL OF THOSE THINGS
6 TOGETHER AND NEGLECTED TO TELL YOU THAT HIS OWN PEOPLE WILL
7 SAY THAT IT IS POSSIBLE WHILE IT IS BEING RECORDED, TO
8 DISTORT THE VOICE BY MEANS OF HAVING A SYNTHESIZER BOX
9 IN BETWEEN THE MICROPHONE AND THE RECORDING OF THE VOICE.

10 SO, THAT VOICE WILL THEN BE DISTORTED YOUR
11 HONOR. AND --

12 MR. PHILLIPS: THAT WOULD ALSO DESTROY YOUR HONOR'S
13 VOICE, WERE IT TURNED ON. AND EVERY TIME ANY OTHER PERSON
14 STARTED SPEAKING, THE COURT OR LAWYER STARTED SPEAKING --

15 MR. WAPNER: WELL, IT IS MY UNDERSTANDING THAT THEY
16 CAN RECORD IT ON TWO CHANNELS AND THEY CAN HAVE ONE
17 CHANNEL RECORDING THE WITNESS'S VOICE AND A SECOND CHANNEL
18 RECORDING THE VOICE OF EVERYONE ELSE IN THE COURTROOM.

19 SECOND OF ALL, THEY STILL HAVE THE ORIGINAL,
20 A FULL-FACE IMAGE OF MR. KARNY. THEN THE PROCEDURE IS, IF
21 YOU HAVE AN ORIGINAL, THEY TAKE THAT TO THE STATION AND
22 THEY PRODUCE FROM THAT ORIGINAL, A COPY.

23 AND THEN THEY ELECTRONICALLY ALTER THE FACE ON
24 THE COPY. SO NOW YOU HAVE AN ORIGINAL THAT IS --

25 THE COURT: WHAT ABOUT THE ORIGINAL? DOES IT GET
26 DISTRIBUTED TO --

27 MR. WAPNER: NO. THE ORIGINAL REMAINS. NOW THE
28 QUESTION IS --

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1 THE COURT: IS THAT WHAT YOU DO?

2 MR. PHILLIPS: COULD I HAVE MY CLIENTS COME UP SO YOU
3 CAN UNDERSTAND HOW IT REALLY WORKS? THEY CAN COME UP AND
4 EXPLAIN IT TO YOU.

5 THE COURT: YES.

6 MR. PHILLIPS: WELL, THIS IS MR. LA MONT FROM CNN.

7 MR. LA MONT: THE VIDEO THAT WE SHOOT, LET'S SAY, OFF
8 THE POOL WITH OUR --

9 THE COURT REPORTER: PLEASE SLOW DOWN. THAT IS
10 UNREPORTABLE.

11 MR. LA MONT: WE TAKE BACK TO THE BUREAU AND THEN
12 WE HAVE THAT VIDEO. WE DON'T MAKE COPIES. WE ALTER THE
13 ORIGINAL. WE TAKE OUT WHAT WE WANT FROM HIM. WE ALTER
14 IT.

15 THAT IS WHAT IS AIRED WITH THE FACE AND THE
16 VOICE ALTERED.

17 AND THE REST IS ERASED IF THAT IS WHAT THE COURT
18 WANTS. WE WILL ERASE THE ORIGINAL.

19 THE COURT: ANY COPIES THAT ARE MADE MUST BE MADE
20 FROM THAT ORIGINAL?

21 MR. LA MONT: THEY WOULD BE MADE FROM THE ONE THAT
22 WAS ALTERED, YES. WE DON'T MAKE A COPY OF THE ORIGINAL.

23 MR. WAPNER: WELL, THAT IS NOT HOW THE PROCEDURE WAS
24 EXPLAINED TO ME IN THE FIRST PLACE.

25 THE COURT: WELL, HE IS EXPLAINING IT TO YOU NOW, THAT
26 HE WILL DO IT THAT WAY.

27 MR. WAPNER: THERE ARE STILL A COUPLE OF PROBLEMS
28 THAT REMAIN WITH THAT PROCEDURE. THAT IS, THAT WE HAVE

1 NOT JUST CNN, BUT SEVERAL DIFFERENT PEOPLE INVOLVED IN
2 THIS. CNN SAYS THAT THEY WILL DISTORT THOSE PORTIONS
3 THAT THEY WANT AND THAT IS WHAT THEY WILL USE.

4 BUT THEN, CBS SAYS THAT THEY WANT TO USE OTHER
5 PORTIONS. SOMEBODY ELSE SAYS THAT THEY WANT TO USE OTHER
6 PORTIONS. THE POINT IS, WHATEVER THE PROCEDURE IS --

7 THE COURT: DOES IT HAPPEN THAT WAY? HOW DO YOU --

8 MR. SCHOENBERG: WE CAN PLUG IT IN THE POOL. BUT
9 WE DO IT WITH THE SAME DISTORTION. WE GET --

10 MR. LA MONT: YES, WE CAN --

11 THE COURT REPORTER: GENTLEMEN, PLEASE. ONE AT A
12 TIME.

13 MR. WAPNER: ONE OF THE THINGS THAT I THINK IS
14 VERY IMPORTANT IS THAT IT HAS TO BE EXPLAINED THAT WHEN
15 THERE IS A POOL, YOU DON'T HAVE ONE ORIGINAL. YOU HAVE
16 MANY ORIGINALS, AS MANY AS THERE ARE PEOPLE PLUGGING IN
17 THE POOL.

18 THE COURT: WELL, IT WOULD ONLY BE THESE THREE
19 PLUGGING INTO THE POOL. EACH ONE IS GOING TO BE BOUND.

20 MR. WAPNER: WHAT I AM SUGGESTING IS FOR THE COURT
21 TO ADOPT THE PROCEDURE -- IF YOU ARE GOING TO ADOPT THIS
22 PROCEDURE, I STRENUOUSLY OBJECT TO THE ONE WHERE THEY ARE
23 PRODUCING IT ORIGINALLY AND THEN IT IS NOT ALTERED.

24 THERE SHOULD BE ONLY ONE AND NOT SIX OR SEVEN
25 OR EIGHT --

26 THE COURT: WILL YOU ALTER THE ORIGINAL, MR. LA MONT?

27 MR. LA MONT: YES, SIR. AND I --

28 MR. PHILLIPS: THERE WOULD BE --

1 MR. LA MONT: AND WE --

2 MR. PHILLIPS: THERE WOULD BE THREE ORIGINALS, ONE
3 FOR EACH ONE PLUGGING INTO THE POOL AND EACH OF THEM
4 WOULD THEN GET THAT ORIGINAL TAPE AND USE THAT AND EDIT
5 THEIR PORTION AND DISCARD THE REMAINDER.

6 MR. LA MONT: RIGHT.
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1 THE COURT: THAT ORIGINAL CAN NEVER BE USED ANY MORE
2 THEREAFTER; IS THAT CORRECT?

3 MR. WAPNER: FIRST OF ALL, HE SAYS THERE ARE THREE --
4 BECAUSE THERE ARE THREE PEOPLE WHO ARE REPRESENTED BUT ON
5 ANY GIVEN DATE, IF CHANNEL 9 WANTS TO, THEY WILL COME IN AND
6 PLUG IN AND IF CHANNEL 5 WANTS TO COME IN, THEY WILL COME
7 IN AND PLUG IN IF THEY WANT TO.

8 THE COURT: NO, NO.

9 MR. SCHOENBERG: THEY HAVE TO MAKE A MEDIA REQUEST OF
10 THE COURT BEFORE THEY CAN PLUG IN AND THEN THE COURT CAN
11 ADVISE THEM OF THE ORDER AND THEY CAN SIGN ANYTHING THE COURT
12 WANTS BEFORE THEY PLUG IT IN.

13 MR. WAPNER: THE THING IS I WAS GOING TO ASK IF THE
14 COURT IS GOING TO ADOPT THIS PROCEDURE, THAT THERE BE SOME
15 SAFEGUARD THAT NOT ONLY THE ORDER IS BEING FOLLOWED BUT THAT
16 THERE IS NO ONE ALONG THE CHAIN OF CUSTODY OF THESE TAPES
17 THAT CAN MAKE COPIES.

18 THE COURT: COPIES WILL BE MADE ONLY OF THE ALTERED
19 ORIGINAL.

20 MR. WAPNER: WELL, THAT IS ASSUMING, FOR EXAMPLE, THAT
21 SOME COURIER DOESN'T GET THE IDEA THAT BETWEEN HERE AND THE
22 STATION, THEY MAKE A COPY OR ANYTHING LIKE THAT.

23 WHAT I AM SAYING IS I THINK THERE SHOULD BE SOME
24 SAFEGUARDS.

25 THE COURT: I THINK YOU ARE BEING STARTLED BY SHADOWS
26 MORE THAN ANYTHING OF SUBSTANCE.

27 MR. WAPNER: THE OTHER THING I WOULD ASK IS IF THIS
28 IS THE PROCEDURE THAT IS GOING TO BE FOLLOWED, THAT EVERY

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1 DAY THAT IT IS DONE THAT THE COURT REQUIRE THAT SOMEBODY FROM
2 THE STATION FILE THE NEXT DAY AN AFFIDAVIT UNDER THE PENALTY
3 OF PERJURY THAT THE ORIGINAL WAS DESTROYED AND THIS IS THE
4 ONLY TAPE THAT REMAINS.

5 THE COURT: YOU DON'T HAVE TO DO THAT. THERE WILL BE
6 ONE ORDER WHICH WILL BE APPLICABLE RIGHT FROM THE VERY
7 BEGINNING TO ALL OF THEM AND IF THERE IS ANY OTHER CHANNEL,
8 AS HAS BEEN INDICATED, CHANNEL 5 OR 9, OR SOME OTHER CHANNEL
9 WANTS TO PARTICIPATE, THEY THEN WILL ALSO BE SUBJECT TO THE
10 ORDER AND IT WILL BE STIPULATED THAT THEY WILL BE.

11 MR. WAPNER: THERE IS ONE OTHER THING, MR. KARNY'S
12 COUNSEL IS PRESENT AND I WONDER IF HE MIGHT WISH TO ADDRESS
13 THE COURT.

14 THE COURT: ALL RIGHT.

15 MR. MORROW: GOOD MORNING. I AM RONALD MORROW,
16 REPRESENTING MR. KARNY.

17 YOUR HONOR, I DID SOME RESEARCH YESTERDAY AND
18 DISCOVERED THAT FOR NOT A LOT OF MONEY, THERE CAN BE PRODUCED
19 IN THE COURTROOM AN ORIGINAL DISTORTED VISUAL, AS WELL AS
20 AUDITORY, TAPE THAT CAN THEN BE COPIED AND BE HANDED OVER
21 TO THE VARIOUS NETWORKS SO THERE NEVER IS AN ORIGINAL THAT
22 CAN BE STOLEN BY AN EMPLOYEE AND REPRODUCED IN TEN YEARS.

23 YOUR HONOR, THIS CASE FROM THE CONTACTS THAT I
24 HAVE HAD FROM MEDIA ACROSS THE COUNTRY, PEOPLE WRITING BOOKS,
25 WRITING MOVIES, MAKING MOVIES, THERE WILL BE, YOUR HONOR,
26 INTEREST IN THIS CASE, I SUBMIT, 20 YEARS FROM NOW.

27 IF THERE EVER IS AN ORIGINAL OF MR. KARNY'S VOICE
28 ON TAPE, IT COULD EXPOSE HIM TO ANNIHILATION 20 YEARS DOWN

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1 THE LINE.

2 I SUBMIT THE MONETARY INCENTIVE IS THERE AND THESE
3 PEOPLE, THEY CAN HAVE, WHATEVER THE NETWORKS WANT, WHICH THEY
4 SEEM TO BE MORALLY CRUMBLING, BUT THE FACT IS THEIR EMPLOYEES
5 CAN STEAL A PORTION OF THE ORIGINAL AND HAVE THE ORIGINAL
6 OF HIS VOICE AND RUIN HIS LIFE OR TERMINATE HIS LIFE.

7 YOUR HONOR, WE CAN HIRE OUR -- I SPOKE TO A MAN
8 WHO IS EQUIPPED, WHO HAS DONE THIS DISTORTION PROCESS MATTER
9 ON HUNDREDS OF OCCASIONS. HE CAN PRODUCE FROM THE COURTROOM
10 EACH DAY FOR THE COST OF \$1,500 FOR HIM, THE EQUIPMENT
11 NECESSARY AND I SEE SOME OF THE EQUIPMENT IS HERE IN THE
12 POSSESSION OF CNN, IT IS THIS HARMONIZER THAT DISTORTS THE
13 VOICE.

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1 ONCE IT IS RECORDED, DISTORTED, BUT IT IS CAPABLE
2 OF BEING REPRODUCED TO BROADCAST STANDARDS, THEN THERE IS
3 NO CHANCE OF MR. KARNY FACING THIS PARTICULAR DANGER IN THE
4 FUTURE IN HIS LIFE.

5 THE COURT: HOW ABOUT THE SUGGESTION THAT HAS JUST BEEN
6 MADE, NAMELY, THAT EACH ONE OF THEM WOULD BE BOUND UNDER PENALTY
7 OF BEING IN CONTEMPT OF COURT?

8 MR. MORROW: YOUR HONOR --

9 THE COURT: EACH ONE OF THEM WILL BE BOUND. IT IS THEIR
10 JOB TO SEE THAT THERE ISN'T ANY KIND OF SHENANIGANS REPORTED
11 WHICH WILL ENABLE SOMEBODY TO GET UNEDITED OR --

12 MR. MORROW: I SUBMIT, YOUR HONOR, THAT IS UNENFORCEABLE
13 20 YEARS FROM NOW. I PROBABLY WON'T BE HERE AND THERE IS
14 A CHANCE --

15 THE COURT: WHY ARE YOU CONCERNED ABOUT 20 YEARS FROM
16 NOW?

17 MR. MORROW: I AM CONCERNED ABOUT STEALING SOMETHING
18 NOW AND NOT BEING REVEALED FOR 15 OR 20 YEARS AND THEN IT
19 IS REVEALED.

20 THE COURT: THE PURPOSE OF HAVING THIS DONE IS THAT
21 THERE MIGHT BE IMMEDIATE DANGER TO HIM, NOT 20 YEARS DOWN
22 THE LINE.

23 MR. MORROW: AS HIS ATTORNEY, I AM CONCERNED FOR THE
24 REST OF HIS LIFE, NOT JUST THIS WEEK.

25 BESIDES THIS MATTER, HE HAS MORE TRIALS, HE IS
26 TESTIFYING IN NORTHERN CALIFORNIA WHERE HIS SAFETY IS OF
27 CONCERN. IT DOESN'T END THIS WEEK, YOUR HONOR, OR IF HE
28 TESTIFIES FOR TWO WEEKS. IT IS ANTICIPATED THAT HE WILL BE

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1 ACCEPTED IN THE FEDERAL WITNESS PROTECTION PROGRAM AND HE
2 COULD BE IN MASSILLON, OHIO SOME DAY, YOUR HONOR, AND SOMEONE
3 PUTS OUT A DOCUMENTARY AND HE IS RECOGNIZED AND HE IS KILLED
4 AT THAT TIME. THAT IS MY CONCERN. NOT JUST THIS WEEK BUT
5 FOREVER. I DON'T CONSIDER HIM AN EXPENDABLE COMMODITY,
6 YOUR HONOR.

7 MR. WAPNER: YOUR HONOR, THERE IS ALSO ANOTHER CONCERN
8 TO BE ADDRESSED AND THAT IS ALTHOUGH MR. LA MONT HAS SUGGESTED
9 THEY ALTER THE ORIGINAL, THAT IS NOT THE PROCEDURE THAT WAS
10 AT ALL EXPLAINED TO ME BY A REPRESENTATIVE FROM KCBS.

11 THE COURT: HE EXPLAINED IT TO YOU. HE SAID THAT WAS
12 THE WAY IT IS GOING TO BE DONE. THE ORIGINAL IS GOING TO
13 BE ALTERED SO THAT THEREAFTER, THEY CANNOT MAKE COPIES OF
14 THE ORIGINAL WHICH IS TO BE ALTERED.

15 MR. LA MONT: NO --

16 THE COURT: MR. LA MONT?

17 MR. PHILLIPS: YOUR HONOR, A COUPLE OF THINGS.

18 FIRST OF ALL, IF YOUR HONOR IS INTERESTED, I WOULD
19 BE HAPPY TO CALL THE ENGINEER FROM ABC AND QUALIFY HIM AS
20 AN EXPERT WITNESS IF YOU WISH TO PROCEED THAT WAY.

21 THE COURT: HAVE HIM CALLED.

22 THE COURT REPORTER: WHAT IS SO FUNNY MR. CHIER?
23 I CAN'T HEAR.

24 MR. CHIER: I AM SORRY.

25 THE COURT: I WANT YOU OUT OF THE COURTROOM. WOULD
26 YOU EVICT HIM?

27 THE BAILIFF: LET'S GO OUT OF THE COURTROOM.

28 THE COURT: HE IS INTERRUPTING THE PROCEEDINGS.

1 THE BAILIFF: OUT OF THE COURTROOM.

2 THE COURT: TAKE HIM BY THE BACK OF THE NECK IF YOU
3 HAVE TO.

4 THE BAILIFF: LET'S GO OUT OF THE COURTROOM.

5 (MR. CHIER EXITS THE COURTROOM ESCORTED
6 BY THE BAILIFF.)

7 MR. PHILLIPS: I BELIEVE IT IS SPELLED L-A-U-B-E-N-D-E-R.

8 THE COURT REPORTER: WHAT IS YOUR FIRST NAME?

9 MR. LAUBENDER: GEORGE.

10 MR. PHILLIPS: CAN YOU EXPLAIN TO THE JUDGE HOW IT IS
11 THAT YOU WOULD -- FIRST, WHETHER OR NOT IT IS POSSIBLE TO
12 DO AN IN COURTROOM DISTORTION OF THE FACE AND THE VOICE IN
13 A BROADCAST QUALITY MANNER?

14 THE COURT: AND THEREAFTER NOT BE ABLE TO -- THAT THAT
15 ORIGINAL NEVER BE ABLE TO BE USED THEREAFTER?

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1 MR. LAUBENDER: YOUR HONOR, WE CAN DISTORT THE VOICE
2 OF ONLY THE PERSON SITTING OVER HERE (INDICATING).

3 THE COURT: YES.

4 MR. LAUBENDER: THEN BY ADDING A LITTLE MORE EXPENSE,
5 A LITTLE MORE EQUIPMENT, WE COULD MAKE THE OTHER VOICES
6 UNDISTORTED.

7 WITH RESPECT TO THE PICTURE, I DON'T KNOW OF ANY
8 GOOD WAY OF DISTORTING THE PICTURE THAT WOULD BE ACCEPTABLE
9 ON NATIONAL TELEVISION.

10 THE WAY THAT WE MIGHT BE ABLE TO DO IT WOULD BE
11 RATHER GROSS, AKIN TO PUTTING YOUR HAND OVER THE UPPER PART
12 OF THE CAMERA, VASELINE, A DOT ON THE LENS.

13 THE COURT: CAN YOU DO THAT?

14 MR. LAUBENDER: YOU COULD DO THAT BUT IT WOULD LOOK
15 VERY POOR. IT WOULD LOOK VERY AMATEURISH. I DON'T BELIEVE
16 IT WOULD BE ACCEPTABLE.

17 THE COURT: WOULD IT BE EFFECTIVE?

18 MR. LAUBENDER: IT WOULD PROBABLY BE EFFECTIVE.

19 THE COURT: I DON'T WANT "PROBABLY."

20 MR. LAUBENDER: IT WOULD BE SO EFFECTIVE THAT NO NETWORK
21 WOULD WANT TO PUT THE PICTURE ON TV AT ALL. IT MAY BE THAT
22 GROSS.

23 MR. WAPNER: WHAT DOES GROSS MEAN?

24 MR. LAUBENDER: COARSE. UNSOPHISTICATED. UNCOMMERCIAL.
25 UNBROADCASTWORTHY.

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1 MR. WAPNER: HOW IS IT UNBROADCASTWORTHY AND
2 UNSOPHISTICATED IF THEY DON'T SEE HIS FACE? THEY SEE THE
3 BOTTOM PORTION OF HIS BODY. HOW IS THAT COARSE OR
4 UNSOPHISTICATED?

5 THE COURT: IT HAS NOT BEEN SUGGESTED TO YOU TO TAKE
6 THE PICTURE IN A WAY THAT DOESN'T SHOW HIS FACE AT ALL,
7 JUST BELOW THE NECK?

8 MR. PHILLIPS: YOUR HONOR --

9 MR. LAUBENDER: YOU HAVE THE UPPER HALF OF THE LENS
10 AND YOU --

11 THE COURT: I DON'T KNOW. I AM NOT TECHNICALLY --

12 MR. LAUBENDER: THEN YOU DO SOMETHING LIKE THAT.
13 I DON'T THINK THAT IT IS A PICTURE THAT WILL EVER AIR.

14 MR. PHILLIPS: I THINK THAT IS THE POINT, YOUR HONOR.
15 IF WE ARE TRYING TO MAKE IT SO DIFFICULT FOR THE MEDIA TO
16 BROADCAST -- WE ARE HAPPY TO DO IT IN A WAY -- WE ARE
17 HAPPY TO DO IT IN A WAY SO THAT THE VOICE IS NOT RECOGNIZABLE.
18 BUT I THINK THAT IT IS BEING ATTEMPTED TO MAKE IT SO DIFFICULT
19 AND SO BURDENSOME --

20 THE COURT REPORTER: SLOW DOWN, MR. PHILLIPS.

21 THE COURT: SO WHAT?

22 MR. PHILLIPS: IT SEEMS TO BE AN ATTEMPT TO MAKE IT
23 SO BURDENSOME AND SO DIFFICULT FOR THE MEDIA TO RECORD MR.
24 KARNY'S TESTIMONY, THAT WE HAVE AGREED WE WILL ENGAGE IN
25 THIS PROCEDURE THAT WILL INSURE THAT HIS FACE AND VOICE ARE
26 NOT BROADCAST IN ANY RECOGNIZABLE MANNER AND THAT THIS
27 PROCEDURE WILL BE SO DIFFICULT THAT WE SIMPLY WILL NOT
28 BOTHER BECAUSE WE WILL NOT HAVE SOMETHING THAT IS BROADCAST

1 QUALITY.

2 THE COURT: ALL RIGHT. THANK YOU BOTH. I WILL TELL
3 YOU WHAT YOU DO.

4 YOU PREPARE AN ORDER ALONG THE LINES THAT YOU
5 HAVE SUGGESTED. PREPARE AN ORDER AND YOU WILL NOW BE
6 RESPONSIBLE THAT WHEN THE ORIGINAL HAS BEEN TAKEN, THAT THE
7 FACE AND VOICE WILL BE SO ALTERED THAT THEREAFTER, ANY
8 COPIES -- IF THERE ARE ANY COPIES MADE, IT WILL BE IN THE
9 SAME FORM WITH THE FACE AND VOICE DISGUISED AND THAT THERE
10 WON'T BE ANY ORIGINAL FROM WHICH THEY CAN EVER, EVER GET
11 THE ACTUAL FACE AND ACTUAL VOICE.

12 MR. PHILLIPS: LET ME MAKE SURE THAT I UNDERSTAND
13 WHAT YOUR HONOR IS SAYING --

14 THE COURT: EXACTLY WHAT YOU TOLD ME BEFORE.

15 MR. PHILLIPS: CAN I JUST REPEAT IT, TO MAKE SURE
16 THAT I AM DOING WHAT YOU HAVE INSTRUCTED ME TO DO?

17 THE COURT: YES.

18 MR. PHILLIPS: MY UNDERSTANDING IS THAT THERE WILL
19 BE A POOL CAMERA, THAT THE MEMBERS OF THE POOL WILL BE ABLE
20 TO TAPE OFF OF A POOL CAMERA, THAT ANY MEMBER OF THE POOL,
21 ANY ADDITIONAL MEMBER OF THE POOL WHO WANTS TO PARTICIPATE
22 WILL HAVE TO MAKE APPLICATION TO YOUR HONOR AND BE ADVISED
23 OF THE TERMS OF THE ORDER. THAT ORDER WILL PROVIDE THAT
24 THE ORIGINAL TAPE MADE BY ANY MEMBER OF THE POOL, ANY
25 PORTION THEREOF WHICH IS TO BE BROADCAST, WILL HAVE MR.
26 KARNY'S FACE ALTERED OR DISGUISED SO AS TO BE UNRECOGNIZABLE
27 AND ALL OTHER PORTIONS OF THE ORIGINAL TAPE WILL BE DESTROYED
28 SO THE ONLY COPIES THAT COULD THEREAFTER BE MADE WOULD BE

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1 COPIES OF THE PORTIONS WITH HIS FACE AND VOICE ALTERED.
2 IS THAT WHAT YOUR HONOR INTENDS?

3 THE COURT: THAT IS WHAT I THINK WOULD BE EFFECTIVE
4 UNDER THE CIRCUMSTANCES. I DON'T THINK WE NEED TO BE
5 CONCERNED THEREAFTER THAT ANY EXISTING TAPES OR ANYTHING
6 ELSE WILL HAVE THE FACE AND THE VOICE -- WELL, IT WILL BE
7 DISTORTED SO THERE ISN'T ANY POSSIBILITY THAT 20 YEARS
8 DOWN THE ROAD, IT IS --

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1 MR. MORROW: SO THE ORDER THEN IS AS TO THE
2 DESTRUCTION OF THE ORIGINAL AND SO THAT THERE WILL NOT
3 BE IN EXISTENCE ANY UNADULTERATED ORIGINAL?

4 THE COURT: IS THAT RIGHT?

5 MR. PHILLIPS: I THOUGHT THAT IT WAS JUST INCLUDED
6 IN WHAT I SAID.

7 THE COURT: THAT WILL BE INCLUDED IN THE ORDER.

8 MR. WAPNER: WHAT I AM HAVING SOMEWHAT OF A PROBLEM
9 WITH, MR. LA MONT AND THE OTHERS HAVE EXPLAINED THE
10 PROCEDURE THAT THEY USE. BUT THE PROCEDURE AS I UNDERSTAND
11 IT -- I DON'T KNOW IF IT IS EVER COVERED BY THE ORDER OR
12 NOT, THAT CBS USES SOMETHING INVOLVING NOT BLOCKING THE
13 ORIGINAL BUT MAKING A COPY FROM WHICH THEY THEN DO WHAT
14 IT IS THAT THEY PLAN TO. AND SO IF THAT IS NOT --

15 MR. SCHOENBERG: WE WILL -- I WILL REPRESENT TO THE
16 COURT THAT THE LAST TIME I THINK ONE OF THE PAPERS PICKED
17 UP A QUOTE ABOUT A BLACK RECTANGLE AND WE WOULD BE ABLE TO
18 DISTORT THE FACE AND DISGUISE WITH RESPECT TO THE VOICE AND --

19 THE COURT: AND THE ORIGINAL THEREAFTER WILL BE
20 DESTROYED SO THAT IT CAN'T BE DUPLICATED?

21 MR. SCHOENBERG: YES.

22 MR. WAPNER: YOUR HONOR, I BELIEVE MR. SCHOENBERG
23 BROUGHT SOMETHING WITH HIM, A TAPE OF A DEMONSTRATION
24 THAT HE MAY HAVE PROVIDED OF HOW IT COULD BE DONE. LIKE
25 I SAY, I WANT TO KNOW WHAT WE END UP WITH.

26 MR. SCHOENBERG: I DON'T -- SOMEBODY GAVE THIS TO ME.
27 IT IS SUPPOSED TO BE A DEMONSTRATION TAPE. I HAVE NEVER
28 SEEN IT. I DON'T KNOW WHAT IT INCLUDES.

1 IT MAY BE A DEMONSTRATION TAPE OF SOMEBODY
2 WITH FILERED LENS. I HAVE NEVER SEEN IT BEFORE AND I --

3 THE COURT: MAKE IT AVAILABLE TO THE DISTRICT
4 ATTORNEY AND PREPARE THE ORDER.

5 (MR. MORROW, MR. SCHOENBERG AND MR.
6 PHILLIPS EXIT THE COURTROOM.)

7 (PAUSE.)

8 (THE FOLLOWING PROCEEDINGS WERE HELD IN
9 OPEN COURT IN THE PRESENCE OF THE JURY,
10 WITH MR. CHIER BEING PRESENT:)

11 THE COURT: LET'S PROCEED. ALL RIGHT. GO AHEAD.

12 MR. WAPNER: YES, YOUR HONOR.

13 THE COURT: SORRY FOR THE DELAY, LADIES AND GENTLEMEN.
14 WE HAD SOME MATTERS TO TAKE CARE OUTSIDE OF THE PRESENCE
15 OF THE JURY.

16
17 KURT KUHN,

18 THE WITNESS ON THE STAND AT THE TIME OF ADJOURNMENT, RESUMED
19 THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

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21 REDIRECT EXAMINATION (CONTINUED)

22 BY MR. WAPNER:

23 Q WHAT EFFECT DOES THE OVERLAY OF ONE PRINT
24 ON ANOTHER HAVE ON YOUR ABILITY TO RECOGNIZE WHETHER THERE
25 IS A FINGERPRINT THERE OR NOT?

26 A ONE LATENT PRINT OVERLAID ON ANOTHER WILL
27 DESTROY THE CONTENTS OR THE IDENTIFICATION. THE INTER-
28 RELATIONSHIPS BETWEEN THE VARIOUS CHARACTERISTICS THAT WE

1 WILL SEE A NUMBER OF INTERVENING CHARACTERISTICS AND
2 BETWEEN EACH CHARACTERISTIC AND A LOT OF THE TIMES IT
3 CAN TOTALLY OBLITERATE THE CHARACTERISTICS WE MAY BE ABLE
4 TO SEE.

5 Q DID YOU TAKE SOME PHOTOGRAPHS FROM THE GROUND
6 OF SOLEDAD CANYON DURING SOME OF THE TIMES YOU WERE UP
7 THERE?

8 A YES, I DID.

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1 Q AND SHOWING YOU A PHOTOGRAPH THAT IS MARKED --
2 MR. WAPNER: WELL, I DON'T THINK IT HAS BEEN MARKED
3 FOR THIS TRIAL; MAY IT BE MARKED AS 108 FOR IDENTIFICATION,
4 YOUR HONOR?

5 THE COURT: YES.

6 Q BY MR. WAPNER: MR. KUHN, DO YOU RECOGNIZE THAT?

7 A YES, SIR, I DO.

8 Q WHAT IS IT?

9 A IT'S A -- ACTUALLY THREE PHOTOGRAPHS THAT HAVE
10 BEEN OVERLAYED TO DEPICT A FIRE ROAD AREA UP ON TOP OF THE
11 HILLS WHERE WE WERE AT.

12 Q WHO TOOK THE THREE PHOTOGRAPHS?

13 A I DID AND I TOOK THEM IN SEQUENCE TO TRY AND BE
14 ABLE TO MAKE AN OVERLAY SUCH AS THIS (INDICATING).

15 Q DID YOU PUT THEM TOGETHER AND MAKE THE OVERLAY?

16 A YES, I BELIEVE I DID.

17 Q AND WHERE WERE THOSE PHOTOGRAPHS TAKEN?

18 A ON A FIRE ROAD AT THE TOP OF THE -- AT THE TOP
19 OF THE HILL AND WHICH FIRE ROAD WE TOOK UP THERE, I DON'T
20 REMEMBER.

21 I WOULD HAVE TO REFER TO THE MAP.

22 Q OKAY. WAS THAT IN SOLEDAD CANYON?

23 A OH, YES, IT WAS.

24 Q IS THAT A PORTION OF THE AREA THAT IS DEPICTED
25 IN 211 FOR IDENTIFICATION?

26 A YES, SIR, IT IS.

27 Q AND IS THERE ANY WAY FOR YOU TO KNOW BY LOOKING
28 AT THIS PICTURE THAT IS 211, WHAT PORTION OF THIS PICTURE

1 IS INDICATED BY THE PHOTOGRAPH THAT IS 108?

2 A I THINK I MAY BE ABLE -- I MAY BE ABLE TO -- I
3 BELIEVE IT DEPICTS THIS PARTICULAR REGION RIGHT HERE
4 (INDICATING).

5 Q CAN YOU TURN THAT JUST SO THE JURY CAN SEE IT?
6 (WITNESS COMPLIES.)

7 Q BY MR. WAPNER: ALL RIGHT, MAY I PASS 108 BRIEFLY
8 BEFORE THE JURY?

9 THE COURT: GO AHEAD.

10 (MR. WAPNER SHOWS EXHIBIT TO JURY.)

11 Q BY MR. WAPNER: WHEN APPROXIMATELY WAS THIS
12 PHOTOGRAPH THAT IS 108 TAKEN?

13 A THE FALL OF 1984, I BELIEVE.

14 Q SOMETIME IN THE FALL OF 1984?

15 A THAT IS THE BEST I CAN DO. I AM SORRY.

16 Q OKAY. WHEN YOU TOOK THE PHOTOGRAPH THAT IS 108,
17 WERE YOU WITH DETECTIVE ZOELLER?

18 A YES, I WAS.

19 I CAN SPECIFY PROBABLY, FALL BEING ABOUT LATE
20 OCTOBER, EARLY TO MID-NOVEMBER.

21 Q OKAY. AND DOES THIS PHOTOGRAPH THAT IS 108
22 ACCURATELY DEPICT THE WAY THE TERRAIN LOOKED IN SOLEDAD
23 CANYON AT THE TIME YOU TOOK THE PHOTOGRAPHS?

24 A YES, SIR, IT DOES.

25 Q LIKewise, WITH 211, DOES THAT ACCURATELY DEPICT
26 THE WAY THE TERRAIN LOOKED AT THE TIME?

27 A YES, IT DOES.

28 Q NOW, WHAT EFFECT DOES A PERSON WEARING GLOVES

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1 HAVE ON WHETHER THEY ARE GOING TO LEAVE FINGERPRINTS ON THINGS
2 THEY TOUCH?

3 A JUST ABOUT NEGATES THE POSSIBILITY OF LATENT
4 FINGERPRINTS BEING LEFT.

5 Q SO IF A PERSON MADE THEMSELVES A LIST OF THINGS
6 THEY WERE GOING TO DO IF THEY WOULD GO TO A PARTICULAR LOCATION
7 AND ONE OF THEM SAID "PUT GLOVES ON" AND THEY ACTUALLY
8 FOLLOWED THAT NOTATION TO THEMSELVES AND PUT GLOVES ON, WOULD
9 YOU EXPECT THERE TO BE ANY FINGERPRINTS THERE OF THAT PERSON?

10 A NO, SIR.

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1 MR. BARENS: OBJECTION. CALLS FOR SPECULATION AT THIS
2 POINT AND IT IS CONFLICTING WITH OTHER TESTIMONY WE ARE GOING
3 TO HAVE FROM THEM.

4 THE COURT: OVERRULED.

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

6 THE COURT: NOW YOU MAY INQUIRE ABOUT THAT.
7

8 RE-CROSS-EXAMINATION

9 BY MR. BARENS:

10 Q OKAY. DID YOU EVER HEAR THAT FINGERPRINTS WERE
11 FOUND ON THE SEVEN PAGES?

12 A YES, SIR.

13 Q MORE THAN ONE FINGERPRINT?

14 A I BELIEVE THERE WAS MORE THAN ONE FINGERPRINT
15 FOUND.

16 Q SO I GUESS IF YOU FOUND SOMEBODY'S FINGERPRINTS
17 ON THE SEVEN PAGES, THEY DIDN'T HAVE GLOVES ON WHEN THE
18 FINGERPRINTS WERE PUT ON THE PAGES?

19 A I WOULD SAY THAT IS TRUE.

20 Q WHAT WOULD THE EFFECT BE IF I HAD GLOVES ON AND
21 I TOUCHED, LET'S SAY, THAT DATE STAMP DEVICE THAT I HAD
22 EARLIER TODAY, IF I HELD THAT AND MANIPULATED IT AND SET THE
23 DATE AND PRESSED IT AND DID ALL OF THAT STUFF TO IT AND I
24 HAD GLOVES ON IT, WOULD IT WIPE OFF PRINTS THAT WERE ON THERE?

25 A IT COULD.

26 Q DID YOU EVER PRINT THAT TO FIND OUT IF THERE WERE
27 ANY PRINTS ON THERE?

28 A I BELIEVE I TESTIFIED EARLIER, NO, I DID NOT.

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1 Q SO WE CAN'T TELL WHETHER THERE WERE PRINTS OR
2 NOT PRINTS OR ANYTHING AT THE TIME, BECAUSE IT WASN'T PRINTED?

3 THE COURT: ON WHAT, ON THAT?

4 MR. BARENS: YES.

5 THE COURT: GO AHEAD.

6 THE WITNESS: NO, SIR.

7 Q BY MR. BARENS: WELL, WHO MADE THE DECISIONS ON
8 WHAT YOU WERE GOING TO PRINT IN THE LEVIN HOUSE AND WHAT YOU
9 WEREN'T GOING TO PRINT?

10 A DETECTIVE ZOELLER HAD CONTROL OF THE SCENE.

11 Q DID YOU MAKE SUGGESTIONS?

12 ARE YOU THE SENIOR FINGERPRINT GUY?

13 A YES, SIR, I AM.

14 Q DID YOU MAKE SUGGESTIONS TO -- I DON'T BELIEVE
15 DETECTIVE ZOELLER IS A FINGERPRINT EXPERT FOR YOUR DEPARTMENT,
16 IS HE?

17 A NO, SIR.

18 Q DID YOU MAKE SUGGESTIONS AND GUIDANCE FOR HIM
19 ON WHAT YOU SHOULD PRINT AND NOT PRINT WHILE YOU WERE THERE?

20 A I MAY HAVE MADE SUGGESTIONS.

21 HOWEVER, WHEN I WAS ADVISED OF THE CONDITIONS,
22 I AGREED WITH DETECTIVE ZOELLER AT THE TIME.

23 Q WHEN YOU ACCEPTED WHAT DETECTIVE ZOELLER TOLD
24 YOU, HAD HE EXPLAINED TO YOU SOME SORT OF A THEORY OF HOMICIDE?

25 A I DON'T RECALL IF WE WERE TALKING ABOUT A HOMICIDE
26 AT THE TIME. WE MAY HAVE BEEN.

27 I REMEMBER HE EXPLAINED THE CIRCUMSTANCES, AS
28 THE INDIVIDUAL WHO HAD BEEN IN THE HOUSE WOULD HAVE PROBABLY

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1 HAD LAWFUL ACCESS TO THE HOUSE AT THE TIME, SO WE WERE IN
2 AGREEMENT THAT DEVELOPMENT AND IDENTIFICATION OF LATENT
3 FINGERPRINTS TO AN INDIVIDUAL WHO HAD LAWFUL ACCESS TO THE
4 HOUSE WOULDN'T BE THAT IMPORTANT.

5 Q SO WHAT YOU ARE TELLING ME, I BELIEVE, IS THAT
6 SINCE YOU HAD SOME THEORY GIVEN TO YOU AS TO HOW A MURDER
7 DID OR DID NOT TAKE PLACE THERE, THAT THAT GOVERNED WHAT YOU
8 DECIDED TO FINGERPRINT AND NOT FINGERPRINT?

9 A YES, SIR.

10 Q SO GOING IN, BASED ON CERTAIN SUPPOSITIONS YOU
11 HAD, SUPPOSITIONS THAT YOU HAD ABOUT WHAT HAD HAPPENED OR
12 NOT HAPPENED, THAT DICTATED THE TYPE OF INVESTIGATION YOU
13 DID?

14 A YES, SIR.

15 Q DOES A SURFACE WHERE PRINTS ARE WIPED OFF OF LOOK
16 THE SAME AS A SURFACE ON WHICH PRINTS ARE OVERLAYED?

17 A THEY COULD.

18 Q IS THE OTHER SIDE OF THAT, THEY COULD NOT?

19 A YOU CAN'T REALLY TELL.

20 Q OKAY, RIGHT. DID YOU FINGERPRINT THE XEROX MACHINE
21 AT LEVIN'S?

22 A NO, SIR.

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1 Q DID YOU FINGERPRINT THE WHOLE -- YOU DIDN'T,
2 FINGERPRINT THE HOLE PUNCH? DID YOU FINGERPRINT THE
3 REFRIGERATOR?

4 A NO, SIR.

5 THE COURT: WELL, TELL US WHAT YOU FINGERPRINTED.
6 LET'S NOT GO THROUGH IT, ITEM BY ITEM FOR ONE THOUSAND
7 ITEMS. TELL US WHAT YOU DID DO.

8 THE WITNESS: I BELIEVE THE TWO ITEMS WE PRINTED WERE
9 THE GREEN FILE FOLDER AND THE MICROGENESIS FILE FOLDER
10 AND THE SEVEN SHEETS OF YELLOW LEGAL PAD.

11 THE COURT: LET'S GO ON.

12 MR. BARENS: WELL YOUR HONOR, THE DEFENSE IS INTERESTED
13 SPECIFICALLY IN --

14 THE COURT: HE TOLD YOU SPECIFICALLY WHAT THEY
15 FINGERPRINTED. THAT LEAVES OUT EVERYTHING ELSE THAT IS
16 ON THE PREMISES.

17 MR. BARENS: I AM GOING TO ASK HIM WHY THEY DIDN'T
18 FINGERPRINT CERTAIN ITEMS.

19 THE COURT: I THOUGHT YOU ASKED THAT BEFORE. HE SAID
20 THAT DETECTIVE ZOELLER GAVE THE PARAMETERS OF WHAT SHOULD
21 BE FINGERPRINTED.

22 MR. BARENS: NO. I DON'T THINK HE TOLD HIM WHAT TO
23 PRINT OR NOT TO PRINT. I BELIEVE THAT THE PROSECUTION
24 THEORY AND THE DEFENSE THEORY --

25 THE COURT: WHY DIDN'T YOU FINGERPRINT THE REFRIGERATOR?
26 IS THAT WHAT YOU WANT TO DO?

27 MR. BARENS: WELL, I HAD SOME OTHER SPECIFICS THAT
28 I WANTED TO ASK HIM.

1 THE COURT: WHY DIDN'T YOU FINGERPRINT THE REFRIGERATOR?

2 THE WITNESS: WE DIDN'T. I DON'T KNOW WHY WE DIDN'T.
3 I WAS GOING UNDER THE PREMISE OF DETECTIVE ZOELLER'S
4 DIRECTION.

5 THE COURT: ALL RIGHT.

6 Q BY MR. BARENS: WHY DIDN'T YOU FINGERPRINT THE
7 XEROX MACHINE?

8 A I WAS GOING UNDER THE DIRECTION OF DETECTIVE
9 ZOELLER, WHO HAS FULL COMMAND OF THE CRIME SCENE.

10 Q . NOW, THE TYPEWRITER, TELL ME WHY YOU DIDN'T
11 FINGERPRINT THE TYPEWRITER.

12 A WE WERE FINGERPRINTING ONLY THOSE ITEMS THAT
13 I SAID ALREADY.

14 Q SO I CAN UNDERSTAND THIS BETTER, WHEN YOU GOT
15 THERE, YOU WERE TOLD TO FINGERPRINT THIS AND THIS BY
16 DETECTIVE ZOELLER BUT DON'T FINGERPRINT ANYTHING ELSE?

17 A ACTUALLY, I DON'T BELIEVE WE WERE TOLD TO FINGER-
18 PRINT ANYTHING. WE WERE COLLECTING CERTAIN PIECES OF
19 EVIDENCE.

20 YES, WE TOOK CERTAIN PIECES OF EVIDENCE, THE
21 GREEN FILE FOLDER AND THE SEVEN LEGAL SHEETS THAT WERE
22 FOUND LATER. WE DECIDED TO PRINT THOSE.

23 Q SO, ON THAT LIST NEXT TO YOU THERE, DO YOU SEE
24 THE WORD "XEROX", DON'T YOU?

25 A YES, SIR.

26 Q IT DIDN'T OCCUR TO YOU TO MAKE A FINGERPRINT --
27 TAKE FINGERPRINTS ON THE XEROX MACHINE?

28 A I SAW THE SEVEN LEGAL PAGES. I NEVER READ THE

1 SEVEN LEGAL PAGES UNTIL THEY HAD ALREADY BEEN BROUGHT TO
2 THE LAB.

3 Q DO YOU THINK ANYBODY THERE HAD READ THEM?

4 A I KNOW THEY WERE GLANCED AT BY DETECTIVE
5 ZOELLER. I BELIEVE THAT HE SAW CERTAIN THINGS THAT AT
6 THAT POINT -- WELL, THEY WERE HANDLED NO MORE. THEY WERE
7 PUT ASIDE FOR LATENT FINGERPRINT TESTING.

8 Q WHAT DATE IS THIS?

9 A WHAT?

10 Q WHAT DAY ARE YOU DOING THIS?

11 A CAN I SEE MY REPORT?

12 THE COURT: SOMETIME IN AUGUST. IS THAT WHAT YOU
13 SAID?

14 THE WITNESS: AUGUST 17, 1984.

15 Q BY MR. BARENS: THE 17TH OF AUGUST? DID YOU
16 GO BACK THERE A SECOND TIME, SIR?

17 A YES, I DID.

18 Q AND WHEN DID YOU GO BACK THERE THE SECOND TIME?

19 A THE 27TH OF NOVEMBER, THE SAME YEAR. 1984.

20 Q OKAY. I PRESUME THAT YOU HAD POSSESSION OF THE
21 SEVEN PAGES BETWEEN THE 17TH -- I MEAN, FROM AUGUST 17TH
22 FORWARD, DID YOU NOT, SIR?

23 A YES.

24 Q DID YOU EVER GO BACK AFTER THE 17TH OF AUGUST
25 AND FINGERPRINT ANY OF THE THINGS I HAVE ASKED YOU ABOUT
26 AFTER THE 17TH OF AUGUST?

27 A NO, SIR.

28 Q YOU SAY THAT YOUR REPORT INDICATED THAT ON THE

1 GREEN FILE FOLDER FOUND IN LEVIN'S RESIDENCE, YOU FOUND
2 SOME IDENTIFIABLE PRINTS?

3 A YES, SIR.

4 Q AND WHOSE PRINTS WERE THEY?

5 A I DON'T KNOW.

6 Q WELL --

7 A AGAIN, I DIDN'T DO THE COMPARISON WORK ON THE
8 CASE.

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1 Q YOU SUPERVISED THE COMPARISON WORK?

2 A YES, SIR.

3 Q DID YOU IN SUPERVISING THE COMPARISON WORK,
4 TRY TO COMPARE THE PRINTS YOU FOUND IN THE GREEN FILE
5 FOLDER WITH ANYBODY'S PRINTS?

6 A I MAY HAVE VERIFIED AN IDENTIFICATION. IT IS
7 NOT NECESSARILY THAT I WILL MAKE EACH AND EVERY COMPARISON
8 THAT ONE OF THE OTHER EXPERTS HAS ALREADY MADE.

9 Q HOW ABOUT IN THIS SPECIFIC INCIDENT, SIR?
10 DO YOU KNOW IF ANYONE TRIED TO COMPARE THE PRINTS FOUND
11 ON THE GREEN FILE FOLDER WITH ANY PERSON'S PRINTS?

12 A YES.

13 Q WAS THAT DONE?

14 A MR. WAGENBRENNER HANDLED THE COMPARISONS ON
15 THE CASE.

16 Q DO YOU KNOW AGAINST WHOSE PRINTS THE COMPARISON
17 WAS MADE?

18 A I BELIEVE WE CHECKED THE VICTIM, RON LEVIN.
19 I BELIEVE WE CHECKED MR. PITTMAN AND MR. HUNT AND I BELIEVE
20 ALL OF US WHO WERE AT THE SCENE WHO MAY HAVE HAD ACCESS TO
21 HANDLING THAT GREEN FOLDER.

22 Q YOU DIDN'T MATCH ON ANY OF THOSE PEOPLE?

23 A MR. WAGENBRENNER HANDLED THE COMPARISON WORK.

24 Q I AM ASKING FROM YOUR KNOWLEDGE, SIR.

25 A NO.

26 MR. WAPNER: OBJECTION, CALLING FOR HEARSAY. MR.
27 WAGENBRENNER IS GOING TO BE HERE. HE IS IN THE HALL.
28 YOU CAN ASK HIM.

1 MR. BARENS: I THINK HE ANSWERED THE QUESTION.

2 Q NOW, IN THIS PHOTOGRAPH 208, AM I SEEING
3 ANYTHING? IS THERE ANYTHING PARTICULAR THAT YOU ARE
4 SHOWING --

5 MR. WAPNER: IT IS 108.

6 MR. BARENS: SORRY. IT IS 108.

7 Q AM I SEEING ANYTHING IN PARTICULAR?

8 THE COURT: HOW DOES HE KNOW WHAT YOU ARE SEEING ON
9 THAT? HE CAN TELL YOU WHAT HE SEES ON IT.

10 Q BY MR. BARENS: WHAT CAN YOU SEE?

11 DO YOU SEE ANYTHING ON HERE?

12 A IT DEPICTS THE FIRE ROAD.

13 Q THE FIRE ROAD IS ON THE RIGHT-HAND SIDE OF THE
14 PICTURE?

15 A THAT IS A PART OF THE FIRE ROAD. IT ALSO COMES
16 ALL OF THE WAY ACROSS, AS A LITTLE WHITE LINE.

17 Q THAT IS THE PURPOSE OF THIS PICTURE, TO SHOW
18 THE FIRE ROAD?

19 A YES, SIR.

20 Q AND THERE ARE A LOT OF OTHER FIRE ROADS IN
21 THAT BIG PICTURE, AREN'T THERE?

22 A YES.

23 Q IS THERE ANY PARTICULAR REASON WHY YOU BLEW UP
24 THIS PART OF THE FIRE ROAD?

25 A THAT SERIES OF PHOTOGRAPHS THAT WERE TAKEN,
26 WAS TAKEN ON ONE OF OUR OUTINGS UP TO THE TOP OF THAT HILL.

27 Q OKAY. BY THE WAY, THAT WAS TAKEN IN THE FALL,
28 WAS IT NOT, SIR?

1 A YES, SIR.

2 Q TO YOUR KNOWLEDGE, WOULDN'T THE FOLIAGE THERE
3 BE MORE PREVALENT IN THE FALL THAN IT WOULD BE IN THE
4 SUMMER?

5 A I SUPPOSE.

6 Q SO, IF I WAS TO TAKE A PICTURE OF THIS AREA IN
7 JUNE OR JULY, I SUPPOSE IT WOULD LOOK DIFFERENT THAN IT
8 DOES IN THE PICTURE IN OCTOBER OR NOVEMBER?

9 A I WOULD EXPECT THAT IS TRUE.

10 MR. BARENS: THANK YOU.

11 THE COURT: ALL RIGHT. ANYTHING FURTHER?

12

13

FURTHER REDIRECT EXAMINATION

14

BY MR. WAPNER:

15

Q YOU ARE NOT A BOTANIST?

16

A NO, SIR.

17

18 Q YOU DON'T KNOW ABOUT THOSE PARTICULAR PLANTS
19 THAT ARE UP THERE, WHETHER THEY ARE GREEN ALL YEAR OR NOT?

19

A NO, SIR. I DON'T.

20

21 Q OKAY. WHEN PERSONS TOUCH SOMETHING AND IF
22 IT HAPPENS THAT IN THAT TOUCHING, THEY LEAVE A FINGERPRINT,
23 IS THERE ANY WAY FOR YOU TO KNOW HOW LONG THAT PRINT MIGHT
24 STAY THERE?

24

A NO, SIR.

25

Q NO, THERE ISN'T?

26

A NO, SIR. THERE IS NOT.

27

28

-1
1 Q OKAY, AND ASSUMING -- WHAT FACTORS MIGHT DETERMINE
2 HOW LONG A PRINT MIGHT STAY AT A PARTICULAR PLACE?

3 A VERY SIMILAR TO THE SAME CIRCUMSTANCES I DISCUSSED
4 EARLIER, ON WHAT -- WHAT PARTICULAR SURFACES MIGHT BE
5 CONDUCTIVE. IT DEPENDS ON WHETHER THE PERSON IS A SECRETER
6 OR NOT.

7 IT COULD DEPEND UPON THE SURFACE INVOLVED. IT
8 COULD DEPEND UPON THE ATMOSPHERIC CONDITIONS AND THE TIME.

9 AT PRESENT, THERE IS NO WAY TO CHEMICALLY OR
10 PHYSICALLY DATE THE AGE OF A FINGERPRINT.

11 Q AND IT MIGHT DEPEND ON, FOR EXAMPLE, THE HOUSE-
12 KEEPING HABITS OF THE PERSON WHO IS ASSIGNED TO CLEAN THE
13 REFRIGERATOR, RIGHT?

14 A YES, SIR.

15 Q SO IF YOU GET SOMEBODY WHO CLEANS THE REFRIGERATOR
16 DOOR EVERY DAY OR ONCE A WEEK, PRESUMABLY THEY WIPE AWAY ANY
17 FINGERPRINTS THAT WERE LEFT THERE DURING THE WEEK, RIGHT?

18 A YES, SIR.

19 Q ALSO, IF THE PERSON WHOSE FINGERPRINTS YOU HAPPEN
20 TO BE SEEKING WAS, LET'S SAY, A FRIEND OR RELATIVE OF THE
21 PERSON IN WHOSE HOUSE YOU ARE LOOKING FOR THE FINGERPRINTS,
22 WOULD YOU EXPECT TO FIND THEIR FINGERPRINTS THERE POSSIBLY?

23 A YES, SIR, IT WOULD BE.

24 Q IF A PERSON HAD BEEN VISITING IN THE HOUSE, THEY
25 MIGHT HAVE LEFT THEM THERE AT ANY TIME, RIGHT?

26 A YES, SIR, IT IS VERY POSSIBLE.

27 Q AND WHEN A PERSON TOUCHES AN OBJECT, HE MAY OR
28 MAY NOT LEAVE FINGERPRINTS ON IT AT ANY POINT, RIGHT?

1 A THAT IS ALSO TRUE.

2 Q SO, FOR EXAMPLE, IF THE PERSON WHO LEFT THE
3 FINGERPRINTS ON THIS LIST THAT IS COMPRISED OF SEVEN PIECES
4 OF YELLOW PAPER, IF HE LEFT HIS FINGERPRINTS ON THERE AT THE
5 TIME HE WAS WRITING THE LIST AND THEY WEREN'T WIPED AWAY OR
6 ADULTERATED, YOU WOULD EXPECT TO FIND THEM THERE AT SOME POINT
7 LATER, CORRECT?

8 A YES, SIR.

9 Q THE REPORT THAT YOU HAVE THAT IS DATED AUGUST 17,
10 IS THAT THE DATE THAT THE ANALYSIS WORK WAS DONE?

11 A THAT IS THE DATE THE CHEMICAL PROCESSING WAS DONE,
12 YES, SIR.

13 Q WAS THE ACTUAL TAKING OF THE DOCUMENTS AND
14 EVERYTHING DONE THE DAY BEFORE, ON THE 16TH?

15 A WELL, ACTUALLY, I BELIEVE THAT EVERYTHING WAS
16 TAKEN ON THE 17TH AND WE PROCESSED IT IMMEDIATELY UPON
17 RETURNING TO THE LAB.

18 Q IF I SHOW YOU A REPORT PREPARED BY DETECTIVE
19 ZOELLER REGARDING THE SEIZURE OF THE ITEMS, WOULD YOU JUST
20 LOOK AT THE PARAGRAPH BEGINNING -- THE SECOND PARAGRAPH --
21 AND TELL ME WHETHER THAT HAS ANY BEARING ON YOUR RECOLLECTION
22 AS TO WHAT DATE IT WAS YOU WERE THERE?

23 A I BELIEVE THERE IS AN ERROR IN OUR REPORT.

24 IT WAS ON THE 16TH.

25 THE COURT: THE 16TH OF WHAT?

26 THE WITNESS: OF AUGUST OF '84.

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

28 THE COURT: ANYTHING FURTHER?

1 MR. BARENS: YES, YOUR HONOR, TWO AREAS, SIR.

2 THE COURT: ALL RIGHT, GO AHEAD.

3

4 FURTHER RECROSS-EXAMINATION

5 BY MR. BARENS:

6 Q ONE, YOU SAID THAT THE APPEARANCE ON THE SURFACE
7 UPON WHICH PRINTS HAVE BEEN WIPED OFF WOULD APPEAR THE SAME
8 WAY AS A SURFACE WHERE PRINTS WERE OVERLAYED; IS THAT TRUE?

9 A ARE YOU -- WELL, LET'S CLARIFY THE MATTER A LITTLE
10 MORE. ARE WE TALKING ABOUT AN AREA THAT WE HAVE PROCESSED
11 WITH FINGERPRINT POWDER OR WITH ONE OF OUR OTHER METHODS?
12 OR ARE WE TALKING ABOUT JUST AN AREA UNDER GENERAL
13 OBSERVATION?

14 Q LET'S TAKE IT ONE AT A TIME, SIR.

15 A OKAY. AN AREA WHERE YOU ARE JUST LOOKING AT IT
16 IN GENERAL, IT IS VERY OFTEN DIFFICULT TO TELL IF THERE ARE
17 ANY FINGERPRINTS THERE OR NOT.

18 AND WHEN WE ARE PROCESSING IT WITH POWDER, I HAVE
19 COME ACROSS TIMES WHEN I HAVE DEVELOPED THINGS AND LEFT A
20 BUNCH OF SMUDGES, INDICATING IT HAS BEEN HANDLED A LOT.

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1 THE COURT: THAT IS NOT WHAT YOU ASKED, WAS IT?

2 MR. BARENS: NOPE.

3 THE COURT: JUST LISTEN TO THE QUESTION, PLEASE.

4 Q BY MR. BARENS: NOW WHAT I AM ASKING YOU, SIR,
5 IF I HAVE AN AREA WHERE THERE ARE FINGERPRINTS OVERLAYED,
6 IS IT NOT TRUE THAT AN AREA WHERE THERE ARE FINGERPRINTS
7 OVERLAYED, I AM GOING TO SEE PRINT RIDGE MARKS, EVIDENCE OF
8 PRINT RIDGE MARKS?

9 A WITH OR WITHOUT PROCESSING?

10 Q ANY WAY YOU DO IT.

11 A WITH PROCESSING, PROBABLY.

12 Q OKAY.

13 A WITHOUT, NO.

14 Q NOW, OBVIOUSLY YOU PROCESS THESE THINGS, DON'T
15 YOU, IN ORDER TO SHOW WHETHER THERE ARE PRINTS OR NOT?

16 A YOU ASKED A GENERAL QUESTION AND I GAVE YOU A
17 GENERAL ANSWER.

18 Q NOW, IF THERE IS A SURFACE THAT HAS BEEN WIPED,
19 DO I SEE RIDGE MARKS?

20 A NO, SIR.

21 Q NOW YOU ARE A FINGERPRINT EXPERT, WE HAVE ALL
22 AGREED, AND I ASSUME THAT YOU HAVE SOME GENERALIZED KNOWLEDGE
23 ABOUT THIS SCIENCE OF FINGERPRINT OBTAINING AND PROCESSING,
24 CORRECT, SIR?

25 A YES, SIR.

26 Q ARE YOU AWARE OF THE FACT THAT FINGERPRINTS WERE
27 FOUND IN KING TUT'S TOMB WHEN IT WAS OPENED?

28 A I BELIEVE I READ THAT, YES, SIR.

-A-2

1 MR. BARENS: THANK YOU, SIR. GOOD POINT. INTERESTING.

2 (LAUGHTER IN COURTROOM.)

3 THE COURT: ANYTHING FURTHER?

4 MR. WAPNER: NO.

5 MY ONLY QUESTION IS: WHO IS IT INTERESTING TO?

6 THE COURT: ALL RIGHT, THANK YOU VERY MUCH. YOU MAY
7 STEP DOWN.

8 CALL YOUR NEXT WITNESS.

9 MR. WAPNER: YES, JAMES WAGENBRENNER.

10

11 JAMES WAGENBRENNER,
12 CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND TESTIFIED
13 AS FOLLOWS:

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

18 THE WITNESS: I DO.

19 THE CLERK: IF YOU WOULD BE SEATED THERE AT THE WITNESS
20 STAND.

21 NOW WOULD YOU STATE AND SPELL YOUR NAME FOR THE
22 RECORD, PLEASE.

23 THE WITNESS: JAMES F. WAGENBRENNER,
24 W-A-G-E-N-B-R-E-N-N-E-R.

25

26 DIRECT EXAMINATION

27 BY MR. WAPNER:

28 Q MR. WAGENBRENNER, BY WHOM ARE YOU EMPLOYED?

1 A BEVERLY HILLS POLICE DEPARTMENT.

2 Q AND WHAT DO YOU DO FOR THEM?

3 A I AM AN IDENTIFICATION TECHNICIAN.

4 Q AND AS AN IDENTIFICATION TECHNICIAN, ARE YOU
5 QUALIFIED TO IDENTIFY AND CLASSIFY FINGERPRINTS?

6 A YES.

7 Q AND HAVE YOU QUALIFIED AS AN EXPERT IN THE
8 IDENTIFICATION AND CLASSIFICATION OF FINGERPRINTS IN THE
9 MUNICIPAL AND SUPERIOR COURTS OF THIS COUNTY?

10 A YES.

11 Q ON APPROXIMATELY HOW MANY OCCASIONS?

12 A APPROXIMATELY 325 TIMES.

13 Q AND DID YOU DO SOME FINGERPRINT COMPARISON OF
14 CERTAIN ITEMS INVOLVED IN THIS CASE?

15 A YES, SIR.

16 Q FIRST OF ALL, DID YOU DO A FINGERPRINT COMPARISON
17 OF A FILE FOLDER WHICH IS MARKED AS PEOPLE'S 100 FOR
18 IDENTIFICATION?

19 A YES, SIR.

20 Q AND WERE THERE SOME PRINTS DEVELOPED FROM THAT
21 FILE FOLDER USING A PROCESS CALLED NINHYDRIN?

22 A YES, SIR.

23

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1 Q AND WERE YOU ASKED TO -- WELL, FIRST OF ALL,
2 YOU DIDN'T FIND ANY IDENTIFIABLE FINGERPRINTS ON THAT
3 DOCUMENT?

4 A TO ALLEVIATE CONFUSION, I DIDN'T DO THE
5 PROCESSING. I EXAMINED THE PHOTOGRAPHS OF LATENT PRINTS
6 THAT WERE DEVELOPED FROM THIS AND OTHER ITEMS. AND YES,
7 THERE WERE IDENTIFIABLE PRINTS FROM THIS SURFACE.

8 Q AND WERE YOU ABLE TO MATCH THOSE PRINTS TO THE
9 PRINTS OF ANYONE WHO YOU WERE GIVEN IN THIS CASE TO
10 COMPARE THEM TO?

11 A YES, SIR. ONE OF THE PRINTS THAT CAME OFF OF
12 THIS FOLDER WAS IDENTIFIED.

13 Q WHOSE PRINT WAS THAT?

14 A DETECTIVE ZOELLER'S.

15 Q AND IS THAT A FAIRLY ROUTINE PROCEDURE TO MATCH
16 OR ATTEMPT TO MATCH PRINTS ON THE FOLDER AGAINST DIFFERENT
17 MEMBERS OF THE POLICE DEPARTMENT WHO HAPPEN TO BE PRESENT
18 WHEN ITEMS ARE SEARCHED AND SEIZED?

19 A YES, SIR. IT IS.

20 Q YOU DON'T HAVE A WARRANT OUT FOR DETECTIVE
21 ZOELLER'S ARREST, DO YOU?

22 A NO, SIR.

23 MR. BARENS: HE IS HERE, ISN'T HE?

24 Q BY MR. WAPNER: AND WERE YOU ALSO ASKED TO
25 EXAMINE FINGERPRINTS OF THE DEFENDANT IN THIS CASE AND
26 COMPARE THEM TO THE PHOTOGRAPHS OF CERTAIN LATENTS THAT
27 WERE DEVELOPED?

28 A YES, SIR.

1 Q SHOWING YOU FIRST OF ALL, AN ITEM THAT WE
2 HAVE MARKED AS PEOPLE'S 55 FOR IDENTIFICATION, DO YOU
3 RECOGNIZE THAT?

4 A THESE APPER TO BE THE PIECES OF PAPER THAT
5 WERE PROCESSED, THAT THE PHOTOGRAPHS OF THE DEVELOPED
6 LATENT PRINTS WERE OBTAINED FROM.

7 MR. WAPNER: YOUR HONOR, I HAVE ANOTHER DOCUMENT THAT
8 I DON'T BELIEVE HAS BEEN MARKED FOR PURPOSES OF THIS CASE,
9 THAT I WOULD ASK TO HAVE MARKED AS PEOPLE'S 212 FOR
10 IDENTIFICATION.

11 THE COURT: SO MARKED.

12 THE CLERK: THAT WOULD BE 214.

13 MR. WAPNER: SORRY. 214. I AM A LITTLE BIT BEHIND.

14 THAT IS A XEROX OF A FINGERPRINT CARD OF
15 JOSEPH HUNT.

16 THE COURT: SO MARKED.

17 Q BY MR. WAPNER: MR. WAGENBRENNER, SHOWING YOU
18 TWO OTHER ITEMS MARKED 212 AND 213, DO YOU RECOGNIZE THOSE?

19 A THOSE ARE PHOTOGRAPHS OF LATENT PRINTS WHICH
20 WERE DEVELOPED AND PHOTOGRAPHS OF ONE OF THE SHEETS OF
21 PAPER.

22 Q AND HAVE YOU BEEN SHOWN THESE TWO PHOTOGRAPHS
23 ON ANOTHER OCCASION WHERE YOU APPEARED AT A HEARING
24 CONNECTED WITH THIS CASE IN BEVERLY HILLS MUNICIPAL COURT?

25 A YES, SIR. THAT'S CORRECT.

26 Q WHEN YOU WERE SHOWN THOSE AT THE BEVERLY HILLS
27 MUNICIPAL COURT, DID YOU COMPARE THOSE TO SOME PRINTS THAT
28 EXISTED ON A PORTION OF A LIST THAT IS PEOPLE'S 55?

1 A YES, SIR. I DID.

2 Q AND WHAT PORTION OF THAT LIST DID YOU COMPARE
3 THEM TO?

4 A THE ONE SHEET OF YELLOW PAPER THAT IS INCLUDED
5 IN PEOPLE'S 55, HAS TWO CIRCLES WITH THE LETTER "A" AND THE
6 LETTER "B".

7 I PLACED THE CIRCLES AND THE LETTERS ON THE
8 PLASTIC SHEET THAT THE PAPER IS CONTAINED IN, AT THE TIME
9 OF THAT OTHER CASE.

10 Q NOW, AS YOU LOOK AT THIS PIECE OF PAPER NOW,
11 THERE APPEARS TO BE TWO CIRCLES WITH AN "A" AND A "B" AND
12 NOTHING EXCEPT YELLOW PAPER IN THE MIDDLE. IS THAT FAIRLY
13 ACCURATE?

14 A YES, SIR.

15 Q ALL RIGHT. AT THE TIME YOU PLACED THE CIRCLES
16 THERE, WHAT WERE YOU CIRCLING?

17 A THERE WERE VISIBLE FINGERPRINTS AT THAT TIME.

18 Q WHAT DID THEY LOOK LIKE?

19 A THEY WERE PURPLE IN COLOR.

20 Q IS THAT WHAT YOU NORMALLY EXPECT TO FIND WHEN
21 YOU PLACE PAPER IN NINHYDRIN AND IT TURNS OUT TO DEVELOP
22 FINGERPRINTS?

23 A YES, SIR.

24 Q WHEN YOU SAW THE FINGERPRINTS THERE ON THE PAPER,
25 WAS THAT SOMETIME IN LATE 1984 OR EARLY 1985 WHEN YOU
26 TESTIFIED AT A PRELIMINARY HEARING?

27 A YES, SIR.

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

1 (PAUSE.)

2 Q BY MR. WAPNER: WOULD THAT BE APPROXIMATELY
3 DECEMBER 26, 1984? IF THAT IS THE DATE INDICATED ON THAT
4 PORTION OF THE TRANSCRIPT OF THE PRELIMINARY HEARING AT
5 WHICH YOU TESTIFIED?

6 A YES, SIR.

7 Q AND WHEN YOU LOOKED AT THE PRINTS ON THE PAPER
8 AT THAT TIME, DID YOU COMPARE THEM TO THE TWO PRINTS THAT
9 ARE IN FRONT OF YOU AND THE PHOTOGRAPHS THAT ARE 212 AND
10 213?

11 A YES, SIR. I DID.

12 Q ALL RIGHT. AND WHAT DID YOU DETERMINE?

13 A THE PRINTS THAT APPEAR ON 212 --

14 THE COURT: WHAT IS THAT?

15 THE WITNESS: IT IS --

16 THE COURT: HOLD THE PICTURE UP FOR US SO WE CAN
17 SEE IT. SHOW IT TO THE JURY.

18 THE WITNESS: THE FINGERPRINT THAT APPEARS IN THE
19 PHOTOGRAPH WHICH IS PEOPLE'S 212 CORRESPONDS WITH THE CIRCLE
20 THAT IS LETTERED A.

21 THE FINGERPRINT THAT APPEARS ON THE FRONT OF
22 213, CORRESPONDS WITH THE FINGERPRINT THAT WAS CIRCLED WITH
23 THE NUMBER B OR THE LETTER B.

24 Q BY MR. WAPNER: WHAT IS ON THE FRONT SIDE OF
25 THAT PIECE OF PAPER?

26 A THIS IS SOME WRITING ON THE FRONT OF THE PIECE
27 OF PAPER.

28 Q WHAT DOES IT SAY ON THE FRONT?

1 A "NUMBER 1, RESERVATION. NUMBER 2, SCHEDULE
2 WITH LEVIN. NUMBER 3, SCENARIO PAPER. NUMBER 4, SCENARIO
3 LIST."

4 Q DOES THAT PIECE OF PAPER APPEAR TO BE
5 REPRODUCED ON THE LARGE BOARD THAT I HAVE PLACED ON THE
6 EASEL TO YOUR LEFT OR TO YOUR RIGHT?

7 A YES, SIR. THAT APPEARS TO BE THE SAME LIST.

8 Q AND THE BACKSIDE OF THAT PIECE OF PAPER, THERE
9 WERE TWO FINGERPRINTS, IS THAT RIGHT?

10 A YES, SIR.

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1 Q DID YOU COMPARE THOSE FINGERPRINTS TO THE
2 FINGERPRINT CARD, A COPY OF WHICH IS 214 FOR IDENTIFICATION?

3 A YES, SIR, I DID.

4 THE COURT: THE RECORD WILL SHOW THOSE ARE FINGERPRINTS
5 OF THE DEFENDANT?

6 MR. WAPNER: MAY IT BE SO STIPULATED?

7 MR. BARENS: WE WILL STIPULATE TO THE WHOLE BUSINESS.

8 THE COURT: ALL RIGHT.

9 MR. WAPNER: MAY IT BE STIPULATED THAT THE FINGERPRINTS
10 THAT ARE CONTAINED ON 214 ARE THE FINGERPRINTS OF THE
11 DEFENDANT?

12 MR. BARENS: YES.

13 THE COURT: ALL RIGHT.

14 MR. WAPNER: THANK YOU.

15 Q WHEN YOU COMPARED THE FINGERPRINTS ON 214 TO THE
16 FINGERPRINTS THAT WERE IN THE PHOTOGRAPHS 212 AND 213 AND
17 ALSO TO THE PRINTS THAT WERE ON THE LIST, WHAT DID YOU
18 DETERMINE?

19 A I DETERMINED THAT THE FINGERPRINTS THAT APPEAR
20 ON BOTH 212 AND 213, WHICH ARE A AND B, ON THE BACK OF THE
21 PIECE OF PAPER, AND THE RIGHT THUMB PRINT, WHICH APPEARS ON
22 NO. 214, ARE THE SAME AND WERE MADE BY ONE AND THE SAME PERSON.

23 Q SO BOTH OF THE FINGERPRINTS THAT ARE ON THE BACK
24 OF THE PIECE OF PAPER THAT IS PART OF 55 WERE MADE BY THE
25 RIGHT THUMB OF THE DEFENDANT IN THIS CASE?

26 A YES, SIR.

27 Q AND IS IT POSSIBLE FOR YOU TO DEMONSTRATE FOR
28 US EXACTLY WHERE THE PRINTS WERE AND HOW THE PAPER MIGHT HAVE

1 BEEN TOUCHED TO PRODUCE THE PRINT THERE?

2 A IT IS MY ESTIMATION, BASED ON THE CREASE THAT
3 APPEARS ON THE PIECE OF PAPER ITSELF, AND WHEN YOU EXAMINE
4 THE PHOTOGRAPHS YOU CAN SEE THE CREASE ON THE PHOTOGRAPHS,
5 THAT IT APPEARS TO BE THAT THE PAPER WAS FOLDED IN HALF SO
6 THAT THE BLANK SIDE WAS OUT AND SIMILAR TO THIS FASHION AND
7 THE RIGHT THUMB WAS PLACED FIRST HERE AND THERE -- OR WHICHEVER
8 ORDER THEY WERE PLACED IN, I CAN'T TELL, BUT THE THUMB APPEARS
9 IN THOSE TWO LOCATIONS.

10 MR. WAPNER: I HAVE NOTHING FURTHER.

11 THE COURT: ANY CROSS-EXAMINATION?

12 MR. BARENS: YES.

13
14 CROSS-EXAMINATION

15 BY MR. BARENS:

16 Q DETECTIVE WAGENBRENNER, EXACTLY WHAT IS YOUR
17 SPECIALIZATION?

18 A MY PRIMARY AREA OF SPECIALIZATION IS THE
19 COMPARISON OF FINGERPRINTS.

20 Q DO YOU GO TO CRIME, ALLEGED CRIME SCENES TO DO
21 INVESTIGATIONS?

22 A YES, I DO.

23 Q DID YOU GO TO THE RESIDENCE LOCATED AT 144 SOUTH
24 PECK IN BEVERLY HILLS?

25 A TO INVESTIGATE A CRIME?

26 Q FOR ANY REASON?

27 A I WAS AT THAT RESIDENCE ON ONE OCCASION TO HELP
28 COLLECT EVIDENCE THAT WAS BEING OBTAINED IN A SEARCH WARRANT.

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Q WHEN WAS THAT?

MR. WAPNER: OBJECTION. RELEVANCE.

THE COURT: OVERRULED.

MR. WAPNER: YOUR HONOR, MAY WE APPROACH THE BENCH,
PLEASE?

THE COURT: ALL RIGHT.

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

3 MR. WAPNER: YOUR HONOR, IT WAS A SEARCH WARRANT THAT
4 WAS SERVED ON MR. LEVIN'S RESIDENCE FOR SOME CRIMES THAT
5 MR. LEVIN ALLEGEDLY COMMITTED AND NOW WE ARE GOING TO GET
6 INTO, "WHAT DID YOU SEIZE THERE? WHAT WAS ALL OF HIS PROPERTY?"

7 IT IS TOTALLY IRRELEVANT TO THIS PROCEEDING.

8 THE COURT: IS THAT WHAT YOUR PURPOSE IS?

9 MR. BARENS: I HAD NO IDEA.

10 I THOUGHT THIS GUY WAS THERE WHEN THEY --

11 THE COURT: WELL, COUNSEL TELLS ME NOW HE WASN'T THERE
12 FOR THE PURPOSE OF THIS CASE BUT HE WAS THERE FOR THE PURPOSE
13 OF INVESTIGATING SOME OTHER CRIME WHICH HAS BEEN COMMITTED
14 OR WHICH WAS THEN INVESTIGATED BY THE DISTRICT ATTORNEY, IS
15 THAT IT?

16 MR. WAPNER: RIGHT. AS COUNSEL KNOWS AND HAS ALREADY
17 BEEN BROUGHT UP IN THIS CASE, MR. LEVIN WAS BEING CHARGED
18 WITH A CRIME AT THE TIME OF HIS DISAPPEARANCE ON JUNE THE 6TH
19 AND IT IS PART OF THAT INVESTIGATION THAT IT WAS A SEARCH
20 WARRANT THAT THIS OFFICER PARTICIPATED IN, THERE WAS ALLEGEDLY
21 SOME STOLEN PROPERTY AND STUFF LIKE THAT, AND NOW WE ARE
22 GETTING INTO LITIGATING WHAT WAS STOLEN AND THAT IS TOTALLY
23 IRRELEVANT TO THE ISSUES IN THIS CASE.

24 THE COURT: IF WHAT YOU SAY IS CORRECT, I WILL SUSTAIN
25 THE OBJECTION.

26 MR. BARENS: YOUR HONOR, WOULD YOU MIND IF I JUST
27 APPROACHED THE WITNESS OFF THE RECORD AND ASKED HIM A COUPLE
28 OF QUESTIONS?

A-2

1 THE COURT: SURE.

2 MR. BARENS: YOUR HONOR, TO MAKE THE RECORD CLEAR, THE
3 LAST WITNESS THAT TESTIFIED SAID THAT HE WAS AT THE SCENE
4 DIRECTING ANOTHER FINGERPRINT GUY, YOU REMEMBER, AT LEVIN'S
5 HOUSE, AND I THOUGHT THIS WAS THE GUY THEY WERE TALKING ABOUT.

6 THE COURT: NO, EVIDENTLY NOT.

7 MR. BARENS: WHO WAS THE GUY, MR. WAPNER, THAT THE
8 PREVIOUS WITNESS WAS TALKING ABOUT HE WAS SUPERVISING?

9 MR. WAPNER: I DON'T KNOW. IT WAS PROBABLY CLARK FOGG.
10 I DON'T KNOW. YOU CAN ASK THIS WITNESS.

11 MR. BARENS: LET ME GO UP THERE AND JUST TALK TO HIM.

12 THE COURT: ALL RIGHT, GO AHEAD.

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1 (UNREPORTED COLLOQUY BETWEEN MR.
2 BARENS AND THE WITNESS.)

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

5 MR. BARENS: I AM NO LONGER REFERRING AT ALL TO THE
6 OTHER TIME YOU WERE -- TO THE OCCASION YOU WERE AT LEVIN'S
7 HOUSE FOR ANY OF MY QUESTIONS. OKAY?

8 Q YOU MENTIONED THAT YOU DID SOME WORK REFERABLE
9 TO THE GREEN FILE FOLDER?

10 A I COMPARED SOME PRINTS THAT WERE TAKEN FROM
11 IT, YES.

12 Q OKAY. HOW MANY IDENTIFIABLE PRINTS WERE ON
13 THE GREEN FOLDER?

14 A SIR, I CAN'T GIVE YOU AN ACCURATE COUNT ON
15 HOW MANY IDENTIFIABLE PRINTS WERE OBTAINED FROM ANYTHING
16 BECAUSE I REALLY DON'T KNOW. THERE WERE ABOUT 25 PHOTOGRAPHS
17 TAKEN OF IDENTIFIABLE PRINTS THAT WERE TAKEN FROM THE
18 FOLDER AND THE PIECES OF PAPER.

19 Q ALL RIGHT. FROM THE PIECE OF PAPER, THERE WERE
20 MORE PRINTS THAN MR. HUNT'S OR WHAT YOU BELIEVED TO BE MR.
21 HUNT'S, WHICH I WILL NOT DISPUTE WITH YOU?

22 A THERE WERE OTHER PRINTS ON THE SEVEN PAGES.
23 YES, SIR.

24 Q DID YOU PRINT EVERY ONE OF THE SEVEN PAGES?

25 A I DIDN'T PRINT IT AT ALL. BUT, YES. ALL
26 SEVEN PAGES WERE PROCESSED FOR PRINTING.

27 Q AND FROM ALL THE PAGES, DID YOU COMPARE THOSE
28 PRINTS TO THE PERSONS -- I AM JUST TALKING NOW ABOUT THE

1 SEVEN PAGES -- DID YOU COMPARE THOSE PRINTS WITH OTHER
2 KNOWN PRINTS THAT YOU WERE AWARE OF?

3 A YES, SIR. I DID.

4 Q OKAY. ON THE SEVEN PAGES, HOW MANY OTHER
5 PERSON'S PRINTS DID YOU COMPARE WITH THE PRINTS ON THE
6 SEVEN PAGES?

7 A THE TOTAL NUMBER OF PEOPLE'S PRINTS? KNOWN
8 PEOPLE'S PRINTS?

9 Q YES, SIR.

10 A I DON'T REMEMBER. THERE WEREN'T VERY MANY.
11 I THINK IT WAS THREE OR FOUR PEOPLE.

12 Q OKAY. WHO WERE THE THREE OR FOUR PEOPLE'S
13 PRINTS YOU COMPARED WITH THE PRINTS YOU FOUND ON THE SEVEN
14 PAGES?

15 A I RECALL CHECKING DETECTIVE ZOELLER'S PRINTS,
16 RON LEVIN'S PRINTS, JAMES PITTMAN'S PRINTS AND JOSEPH HUNT'S
17 PRINTS.

18 Q OKAY. YOU DIDN'T CHECK FOR DEAN KARNY'S PRINTS?

19 A NO, SIR.

20 Q YOU DIDN'T CHECK FOR ANYBODY NAMED MAY, THEIR
21 PRINTS?

22 A NO, SIR.

23 Q YOU DIDN'T CHECK FOR MARTIN LEVIN'S PRINTS?

24 A I DON'T RECALL CHECKING FOR MARTIN LEVIN'S PRINTS.
25 NO, SIR.

26 Q OR YOU DIDN'T CHECK FOR CAROL LEVIN'S PRINTS?

27 A NO, SIR.

28 Q WHAT DID YOU HAVE THAT YOU USED TO CHECK FOR

1 RON LEVIN'S PRINTS BY WAY OF COMPARISON?

2 A A PRINT CARD THAT WE HAD ON FILE WITH THE
3 DEPARTMENT.

4 Q NOW, YOU SAID THAT YOU CHECKED BACK AND FORTH,
5 BOTH SIDES OF ALL SEVEN PAGES?

6 A I CHECKED THE PHOTOGRAPHS AND I CHECKED EVERY
7 PHOTOGRAPH THAT WAS TAKEN.

8 Q OKAY. NOW, THE PHOTOGRAPHS SHOWED WHICH SIDES
9 OF THE PAGES, SIR?

10 A THE PHOTOGRAPHS SHOWED NOTHING MORE THAN WHAT
11 THESE PHOTOGRAPHS SHOW, JUST LATENT PRINTS APPEARING ON THE
12 FRONT OF THE PHOTOGRAPHS.

13 Q OKAY. THERE WERE A LOT OF PARTIAL PRINTS ON
14 THE SEVEN PAGES, WERE THERE NOT, SIR?

15 A YES, SIR.

16 Q AND WHAT ATTEMPTS DID YOU MAKE TO IDENTIFY
17 PARTIALS?

18 A I ONLY ATTEMPTED TO MAKE THE COMPARISONS OF THE
19 PEOPLE THAT I WAS REQUESTED TO CHECK THEM AGAINST.

20 Q WHO MADE THAT REQUEST OF YOU?

21 A DETECTIVE ZOELLER.

22 Q OKAY. NOW, AS TO THE GREEN FILE FOLDER, WOULD
23 IT BE YOUR TESTIMONY THAT YOU WENT THROUGH THE SAME PROCEDURE
24 WITH THEM?

25 A YES, SIR.

26 Q NOW, YOU SAY THAT YOU FOUND ONE PRINT YOU
27 MATCHED UP TO DETECTIVE ZOELLER?

28 A YES, SIR.

1 Q AND WHAT ABOUT THE OTHER PRINT?

2 A I HAVE NOT IDENTIFIED THEM AS -- THEY ARE
3 IDENTIFIABLE BUT NOT IDENTIFIED.

4 Q NOW, WAS THERE ANY OTHER MATERIAL THAT YOU
5 SOUGHT TO PRINT, IF YOU COULD IDENTIFY PRINTS ON THOSE
6 SURFACES?

7 A NOT TO MY KNOWLEDGE. AS I SAY, I DIDN'T PROCESS
8 THEM.

9 Q IN OTHER WORDS, AS I AM UNDERSTANDING YOU
10 CORRECTLY, THE ONLY MATERIALS WHICH YOU DID A COMPARISON
11 STUDY ON, WERE JUST THE SEVEN PAGES AND THE GREEN FILE
12 FOLDER?

13 A YES, SIR.

14 Q NOW, HOW MANY UNIDENTIFIABLE PRINTS ARE THERE
15 ON THE SEVEN PAGES?

16 A I REALLY CAN'T ANSWER THAT QUESTION. THERE WERE
17 25 -- I THINK THERE WERE 25 PHOTOGRAPHS TAKEN. IN EACH
18 OF THE PHOTOGRAPHS, THERE WAS PROBABLY MORE THAN -- OR
19 THERE IS A POSSIBILITY OF THERE BEING MORE THAN ONE
20 IDENTIFIABLE FINGERPRINT APPEARING IN THE PHOTOGRAPHS.

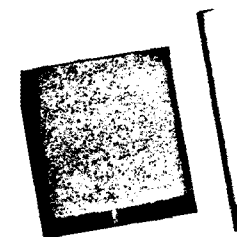
21 WE HAVE IDENTIFIED TWO OF THE PHOTOGRAPHS,
22 WHICH LEAVES 23 PHOTOGRAPHS PLUS DETECTIVE ZOELLER'S.

23 SO, THERE PROBABLY IS A MINIMUM OF 22
24 IDENTIFIABLE FINGERPRINTS REMAINING.

25 Q THAT HAVE NOT BEEN --

26 A NOT BEEN IDENTIFIED, THAT'S CORRECT.

27 Q YES, SIR. THAT IS FOUND ALL OVER THE SEVEN
28 ES?



1 A I AM SURE IT IS, YES, SIR.

2 Q WHO CHOSE OR DETERMINED THE 25 PHOTOGRAPHS,
3 THE SUBJECTS OF THE 25 PHOTOGRAPHS?

4 A I AM NOT SURE. I THINK THAT IT WAS MR.
5 FOGG AND I BELIEVE THAT HE CONSULTED SENIOR I.D. TECHNICIAN
6 KUHN PRIOR TO PHOTOGRAPHING THEM. BUT I WAS NOT THERE.
7 I DON'T KNOW FOR SURE.

8 Q OKAY. INCIDENTALLY, WHEN YOU DO A NINHYDRIN
9 TEST ON PAPER SUCH AS THE PAPER IN FRONT OF YOU, WHAT WOULD
10 THAT DO IN TERMS OF MY ABILITY, LET'S SAY, TO PRINT THAT
11 TODAY?

12 A YOU MEAN TO STILL OBTAIN IDENTIFIABLE FINGER-
13 PRINTS ON IT?

14 Q TO LIFT A LATENT THAT WAS EXISTENT AS OF SAY,
15 AUGUST 16, 1984?

16 A I WOULD SAY THE CHANCES ARE THAT IDENTIFIABLE
17 LATENTS THAT EXISTED AT THAT TIME, COULD BE REDEVELOPED AT
18 THIS TIME.

19 Q WHAT ABOUT THE TYPE OF PACKAGING, SIR THAT YOU
20 HAVE THOSE DOCUMENTS IN RIGHT NOW?

21 A PLASTIC IS NOT THE BEST PACKAGING TO PUT
22 MATERIALS IN WHICH YOU WANT TO OBTAIN FINGERPRINTS FROM.
23 BUT THE POSSIBILITY EXISTS IN MY MIND, THAT THE PRINTS COULD
24 BE REDEVELOPED THAT EXISTED AT THAT TIME.

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1 Q ISN'T IT ALMOST A STANDARD PRACTICE IN TERMS OF
2 PAPER PRODUCTS THAT YOU WOULD NEVER EVER -- NOT NEVER EVER,
3 THAT DOESN'T EXIST IN THIS WORLD -- BUT YOU WOULD VERY SELDOM
4 WANT TO STORE PAPER PRODUCTS IN A PLASTIC WRAPPER LIKE YOU
5 HAVE THERE IN TERMS OF MAINTAINING THE VIABILITY OF PRINT
6 SURFACES BECAUSE OF WHAT IS KNOWN AS THE GREENHOUSE EFFECT
7 IN THAT SETTING?

8 A WE TRY TO DISCOURAGE OUR OFFICERS FROM PLACING
9 ITEMS THAT THEY WANT PROCESSED FOR PRINTS IN PLASTIC BECAUSE
10 OF THE GREENHOUSE EFFECT, YES, SIR.

11 WE TRY TO ENCOURAGE THEM TO PUT IT INTO PAPER
12 BUT SOMETIMES, THEY GET INTO PLASTIC. MOST OFTEN, THEY END
13 UP IN PLASTIC. IT IS USUALLY WHAT IS AVAILABLE.

14 Q COULD YOU EXPLAIN BRIEFLY WHAT THE GREENHOUSE
15 EFFECT IS IN THAT SETTING.

16 THE COURT: WOULD YOU APPROACH THE BENCH, PLEASE?

17 (THE FOLLOWING PROCEEDINGS WERE HELD

18 AT THE BENCH:)

19 THE COURT: IT IS LIKE FLOWERS THAT BLOOM IN THE SPRING,
20 TRA-LA-TRA-LA, IT HAS NOTHING TO DO WITH THE CASE. WHAT IS
21 ALL OF THIS BUSINESS ABOUT ANYHOW?

22 THERE IS AN ADMISSION THAT THE FINGERPRINTS ON
23 THAT SHEET, HE WROTE THEM AND THEY ARE HIS FINGERPRINTS.

24 MR. BARENS: NEVER DENIED.

25 THE COURT: WHAT IS ALL THIS CRAP ABOUT?

26 MR. BARENS: CRAP, SIR?

27 THE COURT: IT IS A LOT OF JUNK, CERTAINLY. WHAT ARE
28 YOU GETTING INTO IT FOR? IT IS VERY INTERESTING BUT WHAT

25-2
1 DOES IT HAVE TO DO WITH THIS CASE?

2 MR. BARENS: WE WILL GET INTO THAT INTO THE DEFENSE,
3 JUDGE.

4 THE COURT: WELL, TELL ME, MAKE AN OFFER OF PROOF.

5 MR. BARENS: I THINK I AM PROFESSIONALLY RESTRAINED
6 FROM DOING THAT RIGHT NOW.

7 THE COURT: NO, YOU ARE NOT. YOU TELL ME WHAT YOUR
8 OFFER OF PROOF IS AS LONG AS YOU ARE GOING TO DO IT.

9 MR. BARENS: I HAVE CONCLUDED WHAT I INTENDED TO DO,
10 YOUR HONOR.

11 THE COURT: PARDON ME?

12 MR. BARENS: I HAVE CONCLUDED.

13 THE COURT: IS THERE ANY FURTHER EXAMINATION OF THIS
14 WITNESS?

15 MR. BARENS: ON OTHER AREAS.

16 THE COURT: WHAT OTHER AREAS DO YOU HAVE IN MIND?

17 MR. BARENS: I DON'T HAVE MY NOTES RIGHT HERE. IF YOU
18 WOULD LIKE ME TO GET THEM.

19 THE COURT: YES, GET THEM.

20 (UNREPORTED COLLOQUY BETWEEN MR. BARENS
21 AND MR. CHIER.)

22 MR. BARENS: LET ME, BECAUSE I AM SENSITIVE ON THE RECORD
23 HERE, JUDGE, MOST RESPECTFULLY, MAKE A POINT TO YOUR HONOR.
24 I BELIEVE THAT IT IS IMPERMISSIBLE FOR DEFENSE COUNSEL IN
25 A CRIMINAL CASE TO PREVIEW QUESTIONS TO EITHER THE COURT OR
26 THE PROSECUTOR.

27 THE COURT: YOU ARE GOING TO GO OVER THESE VERY SAME
28 QUESTIONS -- MAKE YOUR OFFER OF PROOF. WHAT IS THE OFFER

25-7
1 OF PROOF? I DON'T UNDERSTAND. THESE FINGERPRINTS SUPPOSEDLY
2 BELONGED TO YOUR CLIENT. I SUPPOSE THERE ARE A NUMBER OF
3 OTHER PEOPLE THAT HAPPENED TO BE THERE. WHAT IS THE
4 SIGNIFICANCE OF ALL OF THAT? WHAT ARE WE WASTING SO MUCH
5 TIME FOR?

6 MR. BARENS: YOUR HONOR, I WAS ENGAGING IN CROSS-
7 EXAMINATION.

8 THE COURT: OF WHAT? TELL ME WHAT IT IS.

9 YOU ARE JUST WASTING A LOT OF TIME.

10 MR. BARENS: I WAS --

11 THE COURT: TELL THAT GUY TO SHUT UP WHILE I AM TALKING
12 TO YOU.

13 MR. BARENS: EXCUSE ME, YOUR HONOR. I WAS EXAMINING
14 THE WITNESS, AND AS I HAVE BEEN DOING THROUGHOUT THIS WHOLE
15 TRIAL, I FOLLOWED THE SCOPE AND DIRECTION OF THE DIRECT
16 EXAMINATION ON THE FACTS.

17 THE COURT: TELL ME WHAT THE PURPOSE OF ALL OF THESE
18 QUESTIONS ARE. THIS MAN IS A HANDWRITING EXPERT. HE HAS
19 COMPARED THE SIGNATURES AND COMPARED THE FINGERPRINTS OF THE
20 EXEMPLAR AND NOW OF THE ACTUAL THING AND HE SAID, AND YOU
21 ADMIT THAT IT IS YOUR CLIENT'S, NOT ONLY HANDWRITING, BUT
22 THAT IT IS YOUR CLIENT'S FINGERPRINTS. NOW WHERE ARE WE GOING?

23 MR. BARENS: WELL, I --

24 THE COURT: THAT SOMEBODY ELSE ALLEGEDLY OR THERE MIGHT
25 BE SOME OTHER FINGERPRINTS ON IT, IDENTIFIABLE, WHAT DIFFERENCE
26 DOES THAT MAKE?

27 MR. BARENS: YOUR HONOR, THAT WILL BE THE SUBJECT OF
28 THE DEFENSE CASE.

25-4

1 THE COURT: WHAT?

2 MR. BARENS: THAT WILL BE A SUBJECT OF THE DEFENSE CASE.

3 THE COURT: WHAT SUBJECT, WHAT CASE? HOW IS THAT A
4 SUBJECT OF THE DEFENSE CASE?

5 MR. BARENS: YOUR HONOR --

6 THE COURT: WE ARE ON THE SUBJECT NOW OF THE FINGERPRINTS,
7 YOUR CLIENT'S FINGERPRINTS ON THESE YELLOW SHEETS.

8 MR. BARENS: I HAVE NEVER DISPUTED THAT.

9 THE COURT: HOW IS THAT A SUBJECT OF THE DEFENSE?

10 MR. BARENS: I NEVER DISPUTED THAT.

11 THE COURT: WHY ARE YOU GOING INTO IT THEN?

12 MR. BARENS: YOUR HONOR, I DO NOT FEEL --

13 THE COURT: YOU SAID YOU WANTED TO GET YOUR NOTES TO
14 GIVE ME AN OFFER OF PROOF. WHAT IS YOUR OFFER OF PROOF?
15 DID YOU CHANGE YOUR MIND BECAUSE YOUR COLLEAGUE HAS WHISPERED
16 SOMETHING IN YOUR EAR, AS USUAL?

17 MR. BARENS: NO, YOUR HONOR. I MAKE MY OWN DECISIONS
18 AS TO HOW I PROCEED WITH A WITNESS. I AM NOT ASSISTED BY
19 MR. CHIER.

20 THE COURT: YOU SAID YOU WOULD GET YOUR NOTES AND YOU
21 WENT TO GET THEM AND HE WHISPERED IN YOUR EAR AND NOW YOU
22 SAID YOU DON'T WANT TO DISCLOSE IT.

23 MR. BARENS: I BELIEVE AS A MEMBER OF THE BAR AND MY
24 UNDERSTANDING OF THE CASE LAW, I AM SPECIFICALLY FORBIDDEN
25 FROM PREVIEWING THE DEFENSE CASE TO THE JUDGE.

26 THE COURT: YOU WERE ASKING HIM CERTAIN QUESTIONS AND
27 THE LINE OF INQUIRY THAT YOU ARE AT IS COMPLETELY IMMATERIAL
28 AND IRRELEVANT. YOU SAID IT HAS SOME RELEVANCE AND THAT YOU

25-5
1 WANTED TO EXAMINE YOUR NOTES. WHAT IS THE RELEVANCE OF THESE
2 QUESTIONS YOU ARE ASKING?

3 MR. BARENS: YOUR HONOR, I DID NOT ASK HIM A QUESTION
4 ON A SINGLE AREA THAT HAD NOT BEEN EXAMINED BY THE PEOPLE,
5 NOT A SINGLE AREA.

6 THE COURT: GO AHEAD.

7 MR. BARENS: THANK YOU, YOUR HONOR.

8 (THE FOLLOWING PROCEEDINGS WERE HELD
9 IN OPEN COURT:)

10 MR. BARENS: A MOMENT, YOUR HONOR, IF I MIGHT.

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

13 Q BY MR. BARENS: I WANT TO BE SURE THAT WE UNDER-
14 STAND WHERE WE ARE RIGHT NOW IN THIS TESTIMONY.

15 OUT OF THE 25 PHOTOGRAPHS THAT YOU TOLD MR. WAPNER
16 AND THE COURT ABOUT AND MYSELF, YOU ARE SAYING THAT EACH OF
17 THOSE 25 PHOTOGRAPHS CONTAINED PHOTOGRAPHS OF IDENTIFIABLE
18 PRINTS?

19 A YES, SIR.

20 Q OF THOSE IDENTIFIABLE PRINTS, YOU HAVE BEEN ABLE
21 TO VERIFY TWO OF THEM, MATCH THEM -- I AM SORRY -- WHAT I
22 MEAN BY VERIFY, I MEAN MATCH AMONG THE PRINTS VERSUS AN
23 EXAMPLAR FOR COMPARISON?

24 A YES, SIR, WE IDENTIFIED TWO.

25 Q THEN IF I UNDERSTAND YOU CLEARLY, THERE ARE 23
26 PICTURES CONTAINING A NUMBER OF PRINTS PROBABLY IN EXCESS
27 OF THE NUMBER OF THE 23 THAT CONTAIN IDENTIFIABLE PRINTS THAT
28 DO NOT MATCH THE PRINTS EITHER OF RON LEVIN, JIM PITTMAN,

25-6

1 DETECTIVE ZOELLER OR JOE HUNT?

2 A YES, SIR, THAT'S CORRECT.

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1 Q DID YOU DO ANY FINGERPRINT COMPARISONS ON ALL
2 25 OF THE PRINTS IN ALL 25 PHOTOGRAPHS?

3 A I TRIED TO, YES, SIR, TO THE BEST OF MY ABILITY.

4 Q AND WHAT DO YOU MEAN? WHAT ARE YOU TELLING ME
5 WHEN YOU ARE TELLING ME THAT? THAT THERE WAS SOME LACK
6 OF SUCCESS OR YOU WERE NOT ABLE TO DO IT COMPREHENSIBLY?

7 A NO. I AM TELLING YOU THAT THESE TWO PRINTS
8 WERE THE ONLY ONES IDENTIFIED. THE OTHER ONES DID NOT
9 BELONG TO ANY OF THE PEOPLE THAT I COMPARED AGAINST THEM.

10 Q YOU ARE SURE OF THAT?

11 A YES, SIR.

12 MR. BARENS: THANK YOU, SIR.

13 THE COURT: ANYTHING FURTHER ON REDIRECT?

14 MR. WAPNER: YES, SIR.

15

16 REDIRECT EXAMINATION

17 BY MR. WAPNER:

18 Q WHAT IS THE REASON THAT YOU TAKE PICTURES OF
19 LATENT PRINTS THAT ARE DEVELOPED IN THE FIRST PLACE?

20 A WELL, THERE ARE A NUMBER OF REASONS. THE MAIN
21 REASON THAT WE TAKE PICTURES OF THEM IS THAT IT IS EASIER
22 TO MAKE COMPARISONS FROM THE PHOTOGRAPHS. AND ALSO, AS
23 IS SELF-EVIDENT, THE CHEMICAL FADES AFTER A PERIOD OF TIME
24 AND THEY DISAPPEAR.

25 Q AND THE PHOTOGRAPHS AFTER THEY ARE TAKEN ARE
26 KEPT WHERE?

27 A WE MAINTAIN THEM IN A FILE IN OUR OFFICE.

28 Q AND ARE THEY AVAILABLE FOR INSPECTION BY ANY

1 INDEPENDENT EXPERT WHO WANTS TO EXAMINE THEM?

2 A YES.

3 Q ALL RIGHT. AND SO, HAVE YOU IN YOUR EXPERIENCE
4 WITH THE BEVERLY HILLS POLICE DEPARTMENT, HAD OCCASION TO
5 SEE EXPERTS RETAINED OR APPOINTED BY DEFENSE COUNSEL,
6 COME IN TO EXAMINE PRINTS THAT YOU HAVE LIFTED?

7 A YES, SIR.

8 Q IS THAT A PRACTICE THAT YOU ENCOURAGE OR
9 DISCOURAGE?

10 A WE ENCOURAGE IT.

11 MR. BARENS: WE MAKE A MOTION IN ANTICIPATION OF
12 COUNSEL'S NEXT QUESTION. WE WOULD LIKE TO APPROACH.

13 THE COURT: IF YOU DROP THE SUBJECT, THERE WON'T BE
14 ANY OCCASION TO APPROACH.

15 MR. BARENS: I THINK THERE WOULD NOT, YOUR HONOR. YOU
16 KNOW WHAT IS PERMISSIBLE IN THIS LINE OF QUESTIONING
17 AND --

18 MR. WAPNER: HE ANTICIPATES? I DON'T EVEN KNOW WHAT
19 MY NEXT QUESTION IS GOING TO BE.

20 THE COURT: I EXPECT THAT YOU DO AND SO DOES HE.

21 MR. WAPNER: LET'S APPROACH THE BENCH.

22 (THE FOLLOWING PROCEEDINGS WERE HELD
23 AT THE BENCH, OUTSIDE THE HEARING OF
24 THE JURY:)

25 THE COURT: THE DEFENSE COUNSEL IS ASKING FOR --

26 MR. WAPNER: WELL, I --

27 THE COURT: WHAT IS THE QUESTION THAT --

28 MR. WAPNER: WELL, THE NEXT QUESTION WOULD BE, HAS

1 ANYBODY ELSE COME TO EXAMINE THESE.

2 MR. BARENS: YOUR HONOR, AS YOUR HONOR KNOWS, THE
3 PEOPLE ARE NEVER, EVER PERMITTED TO ATTRIBUTE THE BURDEN
4 OF CONDUCT TO DEFENSE COUNSEL AND THEN BEAT THEM UP AND SAY
5 LOOK, YOU DIDN'T DO THAT. THEY CAN'T DO THAT, JUDGE. THAT
6 IS TOTALLY IMPERMISSIBLE CONDUCT.

7 AND THIS IS HISTORICALLY FROWNED UPON AND --

8 THE COURT: COUNSEL WANTS TO MAKE SURE THAT THE
9 JURY KNOWS THOSE PRINTS WERE AVAILABLE TO YOU IF YOU WANTED
10 THEM.

11 MR. WAPNER: THAT'S CORRECT. THE DEFENSE --

12 THE COURT: DIDN'T YOU ASK THE QUESTION WHETHER OR
13 NOT IT WAS AVAILABLE TO ANYBODY?

14 MR. WAPNER: BUT, THE NEXT QUESTION IS, DID THEY COME
15 AND/OR DID THEY SEND ANYBODY AND --

16 MR. BARENS: YOUR HONOR, I --

17 MR. CHIER: IF --

18 MR. WAPNER: MAY I ADDRESS THIS ISSUE? THE DEFENDANT
19 HIMSELF, HAS A PRIVILEGE AGAINST SELF-INCRIMINATION. BUT
20 THAT DOESN'T MEAN THAT IT CAN'T BE COMMENTED UPON THAT HE
21 DIDN'T OR COUNSEL DIDN'T AVAIL THEMSELVES OF OPPORTUNITIES
22 THAT THEY HAD TO EXAMINE THIS.

23 MR. BARENS: JUDGE, THEY CAN'T IMPLY A BURDEN TO THE
24 DEFENSE.

25 THE COURT: I THINK MAYBE WE BETTER DROP THE WHOLE
26 THING AT THIS STAGE.

27 (THE FOLLOWING PROCEEDINGS WERE HELD
28 IN OPEN COURT IN THE PRESENCE AND

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HEARING OF THE JURY:)

THE COURT: ARE YOU FINISHED WITH HIM?

MR. WAPNER: WELL, I HAVE TWO OR THREE MORE QUESTIONS.
BUT, I THINK THIS IS THE APPROPRIATE TIME FOR A BREAK.

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE WILL
TAKE A 15-MINUTE RECESS AT THIS TIME. THANK YOU.

(RECESS.)

27

27-1
1 THE COURT: ALL RIGHT, YOU MAY CONTINUE.

2 Q BY MR. WAPNER: I JUST HAVE ONE OTHER QUESTION.
3 WOULD YOU EXPLAIN TO US WHAT THE DIFFERENCE IS
4 BETWEEN AN IDENTIFIABLE PRINT AND ONE YOU HAVE IDENTIFIED
5 TO SOMEBODY?

6 A WELL, A PRINT THAT HAS BEEN IDENTIFIED TO SOMEBODY
7 IS NO LONGER UNIDENTIFIABLE. IT HAS BEEN IDENTIFIED AND YOU
8 CAN GIVE IT TO A NAME OR NUMBER OR WHATEVER.

9 AN IDENTIFIABLE PRINT IS ONE THAT CAN BE
10 IDENTIFIED, IT HAS ENOUGH RIDGE DETAIL, RIDGE CHARACTERISTICS
11 IN IT IN ORDER TO DETERMINE WHO IT BELONGS TO. IT IS JUST
12 THAT WE HAVE NOT LOOKED AT THE PROPER PRINT YET WHICH IT DOES
13 BELONG TO.

14 Q AND THE OTHER SIDE OF THAT IS THAT A PRINT THAT
15 IS NOT IDENTIFIABLE IS SOMETHING THAT GIVES YOU SOME INDICATION
16 THAT IT WAS OR MAY HAVE BEEN A FINGERPRINT OR A PORTION OF
17 A FINGERPRINT BUT DOES NOT HAVE SUFFICIENT CHARACTERISTICS
18 IN IT TO ALLOW YOU TO IDENTIFY IT TO ANY PARTICULAR PERSON?

19 A THAT'S CORRECT.

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

21 MR. BARENS: BRIEFLY.

22 THE COURT: ALL RIGHT.

23
24 RE-CROSS-EXAMINATION

25 BY MR. BARENS:

26 Q SIR, CAN YOU TELL ME WITH ASSURANCE THAT EACH
27 PRINT THAT IS IDENTIFIABLE IS CONTAINED IN ONE OF THE 25
28 PHOTOGRAPHS?

27-2

1 A NO, I CAN'T BECAUSE I DIDN'T PHOTOGRAPH THEM.

2 Q SIR, DID YOU OBSERVE ON THE PHOTOGRAPHS OR ON
3 THE ORIGINALS DURING YOUR EXAMINATION ANY SMUDGES?

4 A YES, SIR.

5 Q AND WERE THERE A GOOD NUMBER OF SMUDGES?

6 A YES, SIR.

7 Q AND A SMUDGE IS, AS I UNDERSTAND IT, COULD BE
8 A FINGERPRINT THAT HAS SOMEHOW BECOME DISTORTED RESULTING
9 IN A SMUDGE EFFECT?

10 A THAT WOULD BE A GOOD WAY TO DESCRIBE IT, YES,
11 SIR.

12 Q THE PHOTOGRAPHS, CAN YOU TELL ME IN TERMS OF A
13 QUANTIFICATION, THE PERCENTAGE OF THE ENTIRETY OF THE SEVEN
14 PAGES THAT IS DEPICTED IN THE 25 PHOTOGRAPHS YOU MADE REFERENCE
15 TO?

16 A I HAVE NO IDEA, SIR.

17 Q ONE WAY OR THE OTHER?

18 A NO, SIR.

19 Q IF I WERE TO PUT TO YOU THE SAME QUESTIONS
20 REFERABLE TO THE GREEN FOLDER THAT I HAVE PUT TO YOU REFERABLE
21 TO THE SEVEN PAGES, WOULD YOUR ANSWER IN EACH INSTANCE BE
22 THE SAME?

23 A YES, SIR.

24 MR. BARENS: THANK YOU, SIR.

25 MR. WAPNER: I HAVE NOTHING FURTHER.

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

27 THE WITNESS: THANK YOU, YOUR HONOR.

28 THE COURT: THIS WITNESS MAY BE EXCUSED?

27-3

1 MR. BARENS: COULD I ASK HIM JUST ONE OTHER QUESTION,
2 JUDGE?

3 THE COURT: GO AHEAD.

4 MR. BARENS: BEFORE HE IS EXCUSED.

5 Q SIR, WERE YOU ONE OF THE OFFICERS WHO MADE A TRIP
6 TO ARIZONA HAVING SOMETHING TO DO WITH SOME OTHER ASPECT OF
7 THIS CASE?

8 A NO, SIR.

9 MR. BARENS: THANK YOU, SIR.

10 THE COURT: ALL RIGHT, THANK YOU.

11 THE WITNESS: THANK YOU, YOUR HONOR.

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1 DANIEL JOSEPH HOLLAND, JR.,
2 CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND TESTIFIED
3 AS FOLLOWS:

4 THE CLERK: RAISE YOUR RIGHT HAND TO BE SWORN, PLEASE.

5 YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY YOU ARE
6 ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL
7 BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO
8 HELP YOU GOD?

9 THE WITNESS: I DO.

10 THE CLERK: PLEASE BE SEATED. STATE AND SPELL YOUR
11 NAME FOR THE RECORD.

12 THE WITNESS: DANIEL JOSEPH HOLLAND, JR.

13
14 DIRECT EXAMINATION

15 BY MR. WAPNER:

16 Q MR. HOLLAND, BY WHOM ARE YOU EMPLOYED?

17 A I AM EMPLOYED BY FIDELITY INVESTMENTS.

18 Q WHAT IS FIDELITY INVESTMENTS?

19 A FIDELITY INVESTMENTS IS A MUTUAL FUND AND A
20 BROKERAGE FIRM.

21 Q WHERE ARE THEY LOCATED?

22 A HEADQUARTERS ARE IN BOSTON, MASSACHUSETTS.

23 Q DO YOU WORK OUT OF THE BOSTON OFFICE?

24 A I DO.

25 Q WERE YOU WORKING FOR FIDELITY INVESTMENTS IN 1984?

26 A YES I WAS.

27 Q ALL OF 1984?

28 A YES.

1 Q AND SOMETIME IN THE SPRING OF 1984, APPROXIMATELY
2 AROUND MAY, DID YOU HAVE OCCASION TO TALK TO A PERSON NAMED
3 RON LEVIN?

4 A YES I DID.

5 Q AND DID YOU COME TO FIND OUT THAT MR. LEVIN HAD
6 TWO ACCOUNTS AT FIDELITY USA?

7 A THAT'S CORRECT.

8 Q AND WHAT WERE THE NAMES ON THOSE ACCOUNTS?

9 A THE ACCOUNTS WERE REGISTERED AS INTERNATIONAL
10 CLOTHING INCORPORATED AND GENERAL PRODUCERS CORPORATION.

11 Q AND WHAT WAS YOUR CAPACITY WITH FIDELITY INVESTMENTS
12 AT THE TIME OF MAY OF 1984?

13 A AT THAT TIME, MY POSITION WAS SUPERVISOR OF SALES
14 AND SERVICE OF FIDELITY USA, IN WHICH THE FUNDS FROM THOSE
15 TWO ACCOUNTS WERE HELD.

16 Q TELL US WHAT FIDELITY USA WAS?

17 A IT IS AN ASSETS MANAGEMENT OR CASH MANAGEMENT
18 ACCOUNT.

19 Q AND AN ASSETS OR CASH MANAGEMENT ACCOUNT, DOES
20 IT HAVE VARIOUS DIFFERENT ASPECTS TO IT?

21 A YES. ESSENTIALLY, THE ACCOUNT CONSISTS OF A MONEY
22 MARKET FUND IN CONJUNCTION WITH A BROKERAGE ACCOUNT, WITH
23 ADDITIONAL FEATURES SUCH AS CHECK WRITING, AVAILABLE.

24 Q DID MR. LEVIN HAVE CHECK WRITING PRIVILEGES ON
25 HIS GENERAL PRODUCERS ACCOUNT?

26 A YES HE DID.

27 Q DID HE HAVE A MASTERCARD ON THE GENERAL PRODUCERS
28 ACCOUNT?

1 A YES HE DID.

2 Q DO YOU HAVE RECORDS WITH YOU OF WHAT THE MASTERCARD
3 NUMBER WAS THAT HE HAD ON THAT ACCOUNT?

4 A I DO.

5 Q ALL RIGHT. WHAT WAS THAT MASTERCARD NUMBER?

6 A PARDON THE DELAY.

7 (PAUSE.)

8 THE WITNESS: THE MASTERCARD ACCOUNT NUMBER WAS
9 5414583000129118.

10 Q BY MR. WAPNER: AND THAT IS THE SAME ACCOUNT NUMBER
11 THAT APPARENTLY APPEARS ON THE BACK OF THE BILL THAT IS ONE
12 OF THE PAGES OF AN EXHIBIT MARKED 68 FOR IDENTIFICATION?

13 A THAT'S CORRECT.

14 MR. WAPNER: FOR THE RECORD, THE BILLS OF THE PLAZA
15 HOTEL ARE 68.

16 THE COURT: YES.

17 Q BY MR. WAPNER: AND AS SUPERVISOR OF SALES AND
18 SERVICE OF FIDELITY USA, WHAT DID YOUR DUTIES ENTAIL IN 1984?

19 A ESSENTIALLY, I HANDLED ITEMS THAT WERE OUT OF
20 THE USUAL. IF AN EXCEPTION TO THE NORMAL POLICY WAS REQUESTED
21 OR NEEDED TO BE MADE, I TOOK SUCH ACTION.

22 Q AND IN YOUR DEALINGS WITH -- OR IN THE COMPANY'S
23 DEALINGS WITH MR. LEVIN, HOW WAS IT THAT YOU CAME TO BE
24 INVOLVED WITH THOSE TWO ACCOUNTS?

25 A MY FIRST CONTACT WITH MR. LEVIN INVOLVED HIS
26 DEMAND THAT \$75,000 OF UNCOLLECTED MONEYS BE WIRED OUT OF
27 THE INTERNATIONAL CLOTHING ACCOUNT.

28 Q AND DID YOU HAVE A CONVERSATION WITH HIM ON THE

1 TELEPHONE ABOUT THAT?

2 A I DID.

3 Q ONE OR MORE THAN ONE?

4 A MORE THAN ONE. I WOULD ESTIMATE A HALF A DOZEN.

5 Q AND TO BE SURE THAT WE ARE TALKING ABOUT THE SAME
6 RON LEVIN, WHAT WAS THE TONE OR DEMEANOR OF THE PERSON THAT
7 YOU SPOKE WITH ON THE PHONE?

8 A HE WAS BELLIGERENT AND VERY OVERBEARING. IT WAS
9 CLEAR TO ME THAT HE WAS TRYING TO INTIMIDATE ME INTO DOING
10 SOMETHING THAT I DID NOT FEEL SHOULD BE DONE.

11 Q AND YOU NEVER ACTUALLY MET THIS PERSON IN PERSON,
12 DID YOU?

13 A NO, SIR.

14 Q AND DID YOU ACCEDE TO HIS DEMANDS AT THAT TIME,
15 YOU PERSONALLY?

16 A UPON THE INSTRUCTIONS OF MY SUPERIOR, I ACCEDED
17 TO HIS DEMANDS.

18 Q ALL RIGHT. AFTER THAT, WAS THERE SOME PROBLEM
19 WITH THE MONEY THAT HAD BEEN WIRED?

20 A YES. WE LOST IT ALL.

21 Q AND YOU HAD SOME CONTACT WITH THE BANK IN
22 SAN FRANCISCO OR PALO ALTO IN THAT REGARD?

23 A BANK OF AMERICA, YES.

24 Q ALL RIGHT. AND DID YOU CONTINUE TO HAVE CONTACT
25 WITH -- WELL, WHAT HAPPENED WITH THE ACCOUNTS AS A RESULT
26 OF THAT?

27 A IN FACT, THE DAY AFTER THE FUNDS WERE WIRED, IT
28 TURNED OUT THAT THE CHECK WHICH HAD BEEN DEPOSITED TO THE

1 ACCOUNT WAS RETURNED UNPAID. HENCE, WE SUSTAINED A \$75,000
2 LOSS. UPON CONTACTING BANK OF AMERICA WHERE THE FUNDS WERE
3 WIRED, I LEARNED THAT THEY HAD SUSTAINED A \$50,000 LOSS IN
4 THEIR SIMILARLY REGISTERED ACCOUNT.

5 Q WAS THIS IN CONNECTION WITH TRYING TO GET YOUR
6 MONEY BACK THE NEXT DAY?

7 A IN TRYING TO RECOUP THE MONEY THE NEXT DAY, I
8 CALLED AND REQUESTED THAT THE FUNDS BE RETURNED. I WAS
9 INFORMED THAT THEY HAD CAPTURED THE \$50,000 TO NET AGAINST THE
10 LOSS IN THE ACCOUNT AND THEN I WAS EVENTUALLY ABLE TO GET
11 AN INJUNCTION AGAINST THE REMAINING \$25,000.

12 Q AND DID YOU AT SOME POINT AFTER THAT -- DO YOU
13 REMEMBER WHEN THAT WAS, THAT THE MONEY WAS ORIGINALLY WIRED,
14 SO WE CAN FIX THIS IN POINT OF TIME?

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1 A YES. I HAVE DOCUMENTATION THAT FUNDS WERE
2 WIRED MAY 9, 1984.

3 Q ALL RIGHT. SO, YOUR ORIGINAL CONTACT WITH
4 MR. LEVIN WOULD HAVE BEEN BEFORE THAT, RIGHT?

5 A MY ORIGINAL CONTACT WITH MR. LEVIN WAS ON MAY
6 8.

7 Q AND DID YOU AT SOME POINT AFTER THE FUNDS WERE
8 WIRED, FIND OUT THAT MR. LEVIN HAD ANOTHER -- LET ME BACK
9 UP. MAYBE IT IS NOT CLEAR.

10 WAS THAT MONEY WIRED ON THE INTERNATIONAL
11 CLOTHING ACCOUNT?

12 A YES.

13 Q AT THE TIME IT WAS WIRED, DID YOU KNOW THAT HE
14 HAD ANOTHER ACCOUNT?

15 A NOT AT THE TIME IT WAS REQUESTED.

16 Q AFTER THAT, DID YOU FIND OUT THAT HE HAD
17 ANOTHER ACCOUNT?

18 A YES. IT WAS THEN THAT I LEARNED OF THE SECOND
19 ACCOUNT REGISTERED TO GENERAL PRODUCERS.

20 Q AND DID YOU DO SOMETHING WITH THE MONEY IN THE
21 GENERAL PRODUCERS ACCOUNT?

22 A YES.

23 Q WHAT DID YOU DO?

24 A I ATTEMPTED TO HOLD ONTO THOSE FUNDS.

25 Q HOW DID YOU DO THAT?

26 A I MOVED THE FUNDS OUT OF THE FIDELITY USA ACCOUNT
27 AND I MOVED THEM INTO AN ACCOUNT IN FIDELITY INCOME TRUST,
28 WHICH HAD BEEN THE MONEY MARKET IN WHICH THE CASH OF HIS --

1 OF THE GENERAL PRODUCERS ACCOUNT WAS INVESTED.

2 SO, THEY WERE IN ESSENTIALLY THE SAME
3 INSTRUMENTS.

4 Q OKAY. BOILING ALL THAT DOWN, WHAT YOU DID
5 WAS, HIDE THE MONEY FROM MR. LEVIN IN A PLACE WHERE HE
6 WAS STILL EARNING THE SAME AMOUNT OF INTEREST BUT HE WAS
7 NOT GOING TO BE ABLE TO GET HIS HANDS ON IT?

8 A RIGHT. I SUPPRESSED THE CONFIRMATION, SO THAT
9 HE WOULD NOT KNOW WHERE THE MONEY WAS.

10 Q AND AT SOME POINT, DID YOU BECOME AWARE OF
11 THE FACT THAT MR. LEVIN WAS TRYING TO GET AHOLD OF THE
12 MONEY IN THE GENERAL PRODUCERS ACCOUNT?

13 A YES.

14 Q WHEN WAS THAT?

15 A I CAN'T BE PRECISE AS TO THE FIRST DATE. BUT
16 I DO KNOW THAT AT LEAST BY MAY 23RD -- THAT'S NOT CORRECT.
17 IT WAS EARLIER THAN THAT. IN BETWEEN MAY 9 AND MAY 16, I
18 KNEW THAT THE MONEY -- THAT THERE WAS MONEY IN THE SECOND
19 ACCOUNT.

20 Q AND DID YOU HAVE SOME PHONE CALLS WITH MR.
21 LEVIN DURING THAT TIME?

22 A YES.

23 Q AND WHAT WAS THE NATURE OF THOSE PHONE CALLS?

24 A MR. LEVIN WANTED ME TO WIRE THE MONEY OUT OF
25 THE SECOND ACCOUNT, AS WELL.

26 Q AND HOW MANY PHONE CALLS DID YOU HAVE WITH HIM
27 IN THAT REGARD?

28 A IN REGARD TO THE SECOND ACCOUNT?

1 Q RIGHT.

2 A I WOULD ESTIMATE FOUR.

3 Q AND THE LAST OF THOSE PHONE CALLS, HOW DID YOU
4 LEAVE IT WITH MR. LEVIN?

5 A THAT THERE WOULD BE NO FURTHER POINT IN HE AND
6 I SPEAKING DIRECTLY AND THAT ANY FURTHER DEMANDS ON HIS
7 PART OUGHT TO BE REFERRED EITHER TO THE OUTSIDE COUNSEL THAT
8 FIDELITY HAD RETAINED IN THIS MATTER OR TO THE CORPORATE
9 SECURITY OFFICER WHO WAS PERFORMING SOME INVESTIGATIONS
10 INTERNALLY.

11 Q IN FACT, HAD YOU BEEN GIVING HIM STRAIGHT ANSWERS
12 AT THAT TIME AS TO WHERE THE MONEY WAS?

13 A NO.

14 Q AND AFTER THAT LAST -- FORGIVE ME, I DIDN'T
15 WRITE IT DOWN. WHAT WAS THE APPROXIMATE DATE OF THE LAST
16 TELEPHONE CALL THAT YOU HAD WITH MR. LEVIN?

17 A IT WOULD HAVE BEEN PRIOR TO MAY 16.

18 Q HOW DID YOU FIX THAT DATE?

19 A ON MAY 16, I DID IN FACT, EXECUTE A WIRE OUT
20 OF THE SECOND ACCOUNT TO OLYMPIC NATIONAL BANK.

21 Q FOR HOW MUCH?

22 A \$36,000 EVEN.

23 Q AND DID YOU CONTINUE TO HAVE CONTACT AT THAT
24 TIME WITH THE PEOPLE AT FIDELITY WITH REGARD TO THE MONEY
25 IN MR. LEVIN'S ACCOUNT?

26 A ON A DAILY BASIS.

27 Q WHO DID YOU TALK TO?

28 A THE PARTIES INVOLVED WERE MY SUPERIOR, SALLY

1 CASE AND THE PERSON IN CHARGE OF CORPORATE SECURITY, JOYCE
2 TUGGLE. AND, CHIEF COUNSEL TO FIDELITY MANAGEMENT RESEARCH,
3 WHICH IS THE PARENT HOLDING COMPANY, DICK RILEY.

4 Q WHAT WAS THE NATURE OF THE CONVERSATIONS YOU
5 HAD WITH THEM?

6 A IN ESSENCE, I WAS ARGUING THAT NO MORE FUNDS
7 SHOULD BE DISPERSED FROM THE GENERAL PRODUCERS ACCOUNT TO
8 LEVIN UNTIL SUCH TIME AS CORPORATE SECURITY COULD PRODUCE
9 EVIDENCE TO INDICATE THAT THOSE TWO CORPORATIONS WERE IN
10 FACT, ONE AND THE SAME. NAMELY, THAT THE OFFICERS AND THE
11 INTERESTED PARTIES AND THE CONTROLLING INDIVIDUALS FOR BOTH
12 CORPORATIONS WERE IDENTICAL.

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1 Q ALL RIGHT. AND WAS MR. RILEY INDICATING
2 THAT HE HAD CORRESPONDENCE FROM ONE OF MR. LEVIN'S LAWYERS?

3 A YES.

4 Q AND DID YOU CONTINUE TO HAVE THESE DISCUSSIONS
5 WITH MR. RILEY AND MISS TUGGLE ON AN ALMOST DAILY BASIS?

6 A YES.

7 Q AND WAS THERE -- DO YOU KNOW WHETHER THERE WAS
8 A LETTER RECEIVED BY MR. RILEY FROM A LAWYER IN LOS ANGELES
9 NAMED MR. PETROCELLI ON BEHALF OF MR. LEVIN?

10 A YES.

11 MR. WAPNER: YOUR HONOR, I HAVE A DOCUMENT I WOULD
12 LIKE TO MARK AS PEOPLE'S NEXT IN ORDER, WHICH WOULD BE
13 215 FOR IDENTIFICATION.

14 THE COURT: 215.

15 MR. WAPNER: THIS APPEARS TO BE A COPY OF A LETTER
16 DATED MAY THE 31ST.

17 Q SHOWING YOU 215 FOR IDENTIFICATION, DO YOU
18 RECOGNIZE THE NAME OF THE PERSON TO WHOM THAT LETTER IS
19 ADDRESSED?

20 A YES, I DO.

21 Q AND WHO IS THAT?

22 A MR. RICHARD RILEY.

23 MR. BARENS: YOUR HONOR, FOR THE RECORD, ALTHOUGH THE
24 DEFENSE IS AWARE THAT THERE ARE BASES FOR A MULTITUDE OF
25 OBJECTIONS CONCERNING THIS LETTER, THE DEFENSE IS GOING TO
26 WAIVE THOSE OBJECTIONS.

27 THE COURT: WHAT IS THE MATERIALITY OF ALL OF THIS?

28 MR. BARENS: WELL, WE CAN WAIVE THAT.

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1 MR. WAPNER: YOUR HONOR, IF THE COURT WILL RECALL,
2 I DON'T KNOW, WEEKS AGO, MAYBE IT SEEMED LIKE MONTHS AGO,
3 WE HAD A PERSON ON THE STAND FROM OLYMPIC BANK THAT HAD TO
4 DO WITH WIRE TRANSFER OF SOME MONEYS.

5 MR. BARENS: WE HAD BEST APPROACH ON THIS, YOUR
6 HONOR.

7 THE COURT: YES. I DON'T UNDERSTAND THAT.

8 (THE FOLLOWING PROCEEDINGS WERE HELD
9 AT THE BENCH OUTSIDE THE HEARING OF THE
10 JURY:)

11 THE COURT: WHAT IS THE MATERIALITY OF THIS TESTIMONY?

12 MR. WAPNER: YOUR HONOR, IF THE COURT WILL RECALL,
13 WE HAD SOMEBODY FROM OLYMPIC BANK TESTIFY ABOUT MR. LEVIN'S
14 BANK ACCOUNTS AND SHE TESTIFIED THAT THERE WAS A WIRE
15 TRANSFER OF MONEY RECEIVED BY OLYMPIC BANK ON JUNE THE
16 12TH AND SHE FURTHER SAID THAT THERE WAS A DOCUMENT THAT
17 SHE HAD IN HER POSSESSION THAT SAID -- ON THE OLYMPIC BANK
18 RECORDS SAYING THAT IT WAS "AT THE REQUEST OF SAME" AND SHE
19 DIDN'T KNOW WHAT THAT MEANT, WHETHER IT WAS REQUESTED BY
20 MR. LEVIN OR WHETHER IT WAS REQUESTED BY THE BANK IN BOSTON
21 OR WHAT.

22 THE COURT: YOU MEAN AFTER HIS ALLEGED DEATH ON THE
23 7TH, IS THAT THE IDEA?

24 MR. WAPNER: RIGHT.

25 THE COURT: TO CLEAR THAT UP, I CAN UNDERSTAND THAT.

26 MR. WAPNER: IF COUNSEL IS WILLING TO STIPULATE THAT
27 THAT WIRE WAS GENERATED AS A RESULT OF THE LETTER THAT WAS
28 SENT BY MR. PETROCELLI OF MITCHELL, SILBERBERG & KNUPP TO

1 MR. RILEY AND HAD NOTHING TO DO WITH ANY PHONE CALLS THAT
2 WERE MADE BY MR. LEVIN, THEN I WILL BE HAPPY TO ACCEPT THE
3 STIPULATION AND I HAVE NO FURTHER QUESTIONS OF THE WITNESS.

4 MR. BARENS: I DON'T CHOOSE TO STIPULATE AT THIS
5 POINT.

6 THE COURT: PARDON ME?

7 MR. BARENS: I DON'T CHOOSE TO STIPULATE.

8 THE COURT: DON'T STIPULATE, THEN GO AHEAD.

9 MR. BARENS: YOUR HONOR, COULD I BE HEARD?

10 THE COURT: GO AHEAD.

11 MR. BARENS: YOUR HONOR, I --

12 THE COURT: IF IT IS TO CLEAR UP SOMETHING ON THE
13 RECORD --

14 MR. BARENS: I WANT HIM TO CLEAR IT UP.

15 THE COURT: I WILL CLEAR IT UP MYSELF. IT IS SUPPOSED
16 TO BE ON JUNE 12, FIVE DAYS AFTER THE DATE HE IS ALLEGED
17 TO HAVE BEEN MURDERED.

18 MR. BARENS: I AM NOT SAYING THAT, YOUR HONOR.

19 I WANT HIM TO CLEAR IT UP.

20 I HAD ANOTHER THING TO SAY.

21 THE COURT: WHAT?

22 MR. BARENS: FOR THE DEFENSE, I WOULD LIKE TO SAY THAT
23 ALTHOUGH THE WIRE OF MAY 31ST, THE LETTER THAT IS GOING TO
24 BE DISCUSSED, NOT THE PARTY THAT RECEIVED THE LETTER ARE
25 IN COURT TO TESTIFY ABOUT THE SAME, ALTHOUGH I AM COGNIZANT
26 OF THE FACT THAT CERTAIN OBJECTIONS COULD BE MADE ON THAT,
27 I AM GOING TO WAIVE THOSE OBJECTIONS FOR THE RECORD. THAT
28 IS ALL I AM GOING TO SAY. THAT IS THE MAY 31ST LETTER.

1 THE COURT: ALL RIGHT, GO AHEAD.

2 MR. WAPNER: THANK YOU FOR THE WAIVER.

3 THE COURT: I CAN UNDERSTAND NOW WHY IT IS MATERIAL.

4 MR. WAPNER: WE CAN HAVE MR. PETROCELLI, THE WRITER
5 OF THE LETTER, HERE, COUNSEL, IF YOU WANT.

6 MR. BARENS: I AM WAIVING THOSE. I JUST WANTED TO
7 MAKE THE RECORD CLEAR THAT I UNDERSTOOD THAT WAS AVAILABLE.

8 THE COURT: YOU ARE BEING COOPERATIVE, IS THAT THE
9 IDEA?

10 MR. BARENS: ALSO, THAT I AM TRYING TO PRACTICE
11 PROPERLY.

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

3 Q BY MR. WAPNER: MR. HOLLAND, WERE YOU THE PERSON
4 AT FIDELITY INVESTMENTS WHO MR. LEVIN DEALT WITH ON THE
5 TELEPHONE?

6 A YES, SIR.

7 Q AND DID YOU EVER SPEAK TO HIM AT ALL AFTER
8 MAY 16 OF 1984 ON THE TELEPHONE?

9 A LET ME CHECK.

10 I DON'T BELIEVE SO, NO.

11 Q AND WERE YOU THE PERSON RESPONSIBLE --
12 WELL, LET ME JUST CONTINUE WITH THE CHAIN OF EVENTS.
13 THIS LETTER THAT IS DATED MAY THE 31ST OF 1984
14 IS ADDRESSED TO MR. RILEY; IS THAT RIGHT?

15 A THAT'S CORRECT.

16 Q WHAT WE HAVE MARKED AS 215 FOR IDENTIFICATION?

17 A THAT'S CORRECT.

18 Q AND IT SAYS IN THE RIGHT-HAND PORTION ABOUT A
19 THIRD OF THE WAY DOWN "VIA FEDERAL EXPRESS," DOES IT SAY THAT
20 ON YOUR COPY OF THE LETTER? DO YOU SEE IT?

21 A OH, YES, YES.

22 Q ON THE RIGHT-HAND PORTION OF THE LETTER "VIA FEDERAL
23 EXPRESS"?

24 A YES, IT DOES.

25 Q AND AFTER THIS LETTER WAS RECEIVED BY MR. RILEY,
26 WERE THERE FURTHER --

27 WELL, FIRST OF ALL, WHAT DOES THIS LETTER REQUEST?

28 A THIS LETTER REQUESTS THAT WE RELEASE ALL FUNDS

29^--2
1 HELD AT THE TIME IN THE GENERAL PRODUCERS ACCOUNT.

2 Q AND AFTER THIS LETTER WAS RECEIVED IN BOSTON,
3 DID IT SET INTO MOTION THE CHAIN OF EVENTS THAT LED TO SOMEBODY
4 AT FIDELITY MAKING A WIRE TRANSFER OF FUNDS FROM FIDELITY
5 TO THE OLYMPIC BANK IN LOS ANGELES?

6 A YES, THAT'S CORRECT.

7 Q ALL RIGHT.

8 A UPON RECEIPT OF A LETTER, MR. RILEY INSTRUCTED
9 MY SUPERIOR, SALLY CASE, THAT WE HAD NO RECOURSE BUT TO
10 COMPLY WITH THE REQUEST.

11 I WAS THEN INSTRUCTED TO WIRE ALL REMAINING FUNDS
12 OUT OF THE GENERAL PRODUCERS ACCOUNT TO OLYMPIC NATIONAL BANK.

13 Q AND DID YOU DO THAT?

14 A I DID.

15 Q WHEN DID YOU DO THAT?

16 A ON JUNE 11, 1984.

17 Q AND WHAT AMOUNT DID YOU WIRE ON JUNE 11TH, 1984?

18 A THE AMOUNT WIRED ON THAT DATE WAS \$5,623.31.

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1 Q AND THAT WAS THE REMAINING BALANCE IN THE
2 ACCOUNT?

3 A THAT REPRESENTED THE REDEMPTION OF ALL PRINCIPAL
4 AND INTEREST IN THE ACCOUNT. IT EFFECTIVELY CLOSED IT.

5 Q AND THAT MONEY WAS WIRED BY YOU ON JUNE 11
6 IN REPOSE TO A CHAIN OF EVENTS SET IN MOTION BY THE LETTER
7 SENT MAY 31ST BY THE LAWYER, MR. PETROCELLI, CORRECT?

8 A THAT'S CORRECT.

9 MR. WAPNER: THANK YOU. NOTHING FURTHER.

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CROSS-EXAMINATION

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BY MR. BARENS:

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14 Q DO YOU KNOW WHEN THE TWO ACCOUNTS WERE OPENED
15 AT YOUR BANK FOR INTERNATIONAL CLOTHING AND GENERAL
16 PRODUCERS?

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18 A MY INSTITUTION IS NOT A BANK.

19

20 Q ALL RIGHT. YOUR INSTITUTION?

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22 A I DON'T HAVE THAT READILY AVAILABLE. BUT I
23 COULD FIND IT.

24

25 Q DON'T BOTHER.

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27 A I BELIEVE --

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THE COURT: HE SAID NOT TO BOTHER.

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THE WITNESS: OKAY.

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31 Q BY MR. BARENS: WELL, IF YOU HAVE A BELIEF, I
32 WILL HEAR THAT.

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34 A I REALLY CAN'T BE CERTAIN. I CAN REMEMBER THE
35 ONE ACCOUNT WAS OPENED ON THE 11TH OF A GIVEN MONTH. AND
36 ONE ACCOUNT WAS OPENED ON THE 13TH, TWO DAYS SUBSEQUENT.

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1 AS TO THE SPECIFIC MONTH, I WOULD HAVE TO CHECK DOCUMENTS.

2 Q WOULD THAT BE DURING CALENDAR YEAR 1984?

3 A I WOULD HAVE TO CHECK.

4 Q OKAY. DON'T BOTHER AT THIS POINT.

5 NOW, YOU SAID THAT INITIALLY YOU HAD A SITUATION
6 ABOUT THE \$75,000. WAS THAT THE FIRST TIME THAT YOU HAD
7 OCCASION TO SPEAK TO MR. LEVIN?

8 A YES, IT WAS.

9 Q AND THAT WAS ON THE DATE ON OR ABOUT WHEN?
10 MAY 9TH?

11 A THE DATE OF THE CONVERSATION?

12 Q YES. THE FIRST TIME YOU TALKED TO HIM.

13 A IT WOULD HAVE BEEN MAY 8TH.

14 Q MAY 8TH?

15 A CORRECT.

16 Q BETWEEN MAY 8TH AND MAY 9, YOU ACTUALLY SENT
17 THE WIRE?

18 A RIGHT.

19 Q HOW MANY CONVERSATIONS DID YOU HAVE WITH MR.
20 LEVIN BETWEEN MAY 8 AND MAY 9?

21 A TWO.

22 Q AND WAS IT ONE ON THE 8TH AND ONE ON THE 9TH?

23 A THERE WERE TWO ON THE 8TH.

24 Q OKAY. MR. LEVIN WAS TELLING YOU WHAT? THAT
25 HE HAD DEPOSITED A CHECK TO YOUR ACCOUNT AND WANTED YOU TO
26 IMMEDIATELY WIRE THE MONEY?

27 A THAT'S CORRECT.

28 Q AND YOU WERE SAYING, WELL, THE FUNDS HAVE NOT

1 BEEN COLLECTED AND I CAN'T DO THAT UNTIL THE FUNDS COME
2 IN?

3 A THAT'S ALSO CORRECT.

4 Q DO YOU KNOW WHOSE CHECK HE HAD DEPOSITED THAT
5 WE WERE TALKING ABOUT?

6 A I DO HAVE THAT CHECK.

7 Q AND WHOSE CHECK IS THAT?

8 A IT WAS A CHECK WRITTEN OFF OF THE ACCOUNT OF
9 REGIS PACINO, GENERAL TRUST ACCOUNT, MADE PAYABLE TO
10 INTERNATIONAL CLOTHING CORPORATION. SO IN ESSENCE, IT WAS
11 A THIRD PARTY CHECK.

12 Q AND THAT CHECK WAS UNDER DATE OF?

13 A THE CHECK IS DATED APRIL 20, 1984.

14 Q AND DOES IT SAY THAT MR. PACINO IS AN ATTORNEY?

15 A YES. THE IMPRINT ON THE CHECK BEARS THE TITLE
16 "REGIS PACINO, ATTORNEY AT LAW, GENERAL TRUST ACCOUNT,"
17 AND AN ADDRESS.

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1 Q DO YOU HAVE ANY WAY OF KNOWING WHEN YOU
2 RECEIVED THAT CHECK?

3 A YES, I DO. JUST A MOMENT.

4 (PAUSE.)

5 THE WITNESS: THE CHECK BEARS A TIME STAMP SHOWING
6 A DATE OF APRIL 30, 1984.

7 Q BY MR. BARENS: NOW, YOU HAVE GOT IT ON APRIL
8 THE 30TH. AND NOW WE ARE TALKING ABOUT EIGHT OR NINE DAYS
9 LATER. WAS THERE ANYTHING REMARKABLE ABOUT THE CHECK TAKING
10 THAT LONG FOR YOU TO HAVE A PAYMENT ADVICE?

11 A NO, SIR.

12 Q OKAY. SO WHEN YOU GOT THE CALL, WHAT DID LEVIN
13 SAY TO YOU? DID HE SAY HE NEEDED THE MONEY?

14 A HE IMPLIED A DESPERATE URGENCY FOR THE MONEY.

15 Q DID HE GIVE YOU ANY REASON FOR THE DESPERATE
16 URGENCY?

17 A HE SAID THAT THERE WAS A BUSINESS TRANSACTION
18 THAT IF THESE FUNDS WERE NOT SPEEDILY RECEIVED, IT WOULD
19 BE IN JEOPARDY AND THEN HE THREATENED THAT HE WOULD SUE ME
20 INDIVIDUALLY AND FIDELITY AS A FIRM FOR THE LOSS OF PROFIT
21 OPPORTUNITIES IF WE JEOPARDIZED THIS BUSINESS TRANSACTION.

22 Q DID HE SAY WHAT AMOUNT OF PROFIT OPPORTUNITY
23 WAS BEING DISCUSSED?

24 A NO, SIR.

25 Q OKAY. DID HE MAKE THAT TYPE OF A REFERENCE IN
26 BOTH OF YOUR PHONE CALLS?

27 A THE FIRST PHONE CALL WAS A GOOD DEAL MORE
28 INFORMATIONAL THAN THE SECOND CALL.

1 Q IN THE SECOND PHONE CALL, THAT IS WHEN YOU
2 GOT THE "I AM GOING TO SUE YOU" CALL?

3 A NO. I BELIEVE THAT HE THREATENED TO SUE ME IN
4 THE FIRST CALL. THAT WAS ESTABLISHED RAPIDLY.

5 THE SECOND CALL WAS WHEN I HAD SPOKEN TO MY
6 SUPERIOR, WHO HAD THEN SPOKEN TO MR. LEVIN IN THE INTERIM.

7 AND SHE HAD DECIDED THAT I SHOULD GO AHEAD AND
8 WIRE THE FUNDS. MY SECOND PHONE CALL TO HIM OR THE SECOND
9 CONVERSATION, I BELIEVE SHE SUGGESTED THAT MR. LEVIN CALL
10 ME BACK OR TRANSFERRED THE CALL BACK TO ME. I DON'T
11 RECOLLECT. IT WAS MERELY TO CONFIRM THE FACT THAT YES, I
12 WOULD BE WIRING THE FUNDS OUT.

13 Q OKAY. WHEN YOU SAY YOU WIRED THE FUNDS OUT,
14 YOU SENT A WIRE TRANSFER TO A BANK AT THAT POINT?

15 A THAT'S CORRECT. WE USE A BANK FOR THESE
16 PURPOSES AND I SENT A FORM INSTRUCTING SHAWMUT BANK TO WIRE
17 IT.

18 Q NOW, THE TYPE OF INSTRUMENT RESULTING FROM YOUR
19 ACTIVITIES THERE, IS SOMETHING WHERE ONE CAN GET IMMEDIATE
20 USE OF THE FUNDS THAT RESULT AT THE OTHER END OF THE WIRING?

21 A THAT'S CORRECT. THEY ARE FEDERAL FUNDS COLLECTED
22 UPON RECEIPT AND IMMEDIATELY AVAILABLE FOR WITHDRAWAL.

23 Q NOW, YOU SENT THE WIRE FROM YOUR INSTITUTION
24 TO THE BANK OF AMERICA WHERE?

25 A I HAVE INFORMATION HERE THAT THE BANK BRANCH
26 WAS THE STANFORD BRANCH. ESSENTIALLY, THE WIRE TRANSMITTAL
27 WHEN IT GOES OUT, DOES NOT BEAR AN ADDRESS SO TO SPEAK. IT
28 BEARS A NINE DIGIT BANKING ASSOCIATION I.D. NUMBER AND A

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1 REFERENCE TO THE TITLE ON THE ACCOUNT AND A REFERENCE TO
2 THE ACCOUNT NUMBER.

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1 Q BUT YOU CAN'T TELL FROM THAT THE NAME OF THE CITY
2 THAT IT WENT TO?

3 A AGAIN, I DO HAVE A NOTE THAT THE WIRE WAS DIRECTED
4 TOWARD THE STANFORD BRANCH OF BANK OF AMERICA.

5 Q WHEREVER THAT IS.

6 A WHEREVER THAT MAY BE.

7 Q OKAY. NOW THAT ACTIVITY IS ON THE 9TH; WHEN DID
8 YOU FIRST GET NOTICE THAT YOU FOLKS MIGHT HAVE MADE A MISTAKE
9 IN JUDGMENT?

10 A THE FOLLOWING DAY, OR ACTUALLY AFTER THE CLOSE
11 OF BUSINESS ON THE 9TH, SO THE FOLLOWING BUSINESS DAY, IF
12 THAT DISTINCTION IS PERTINENT.

13 Q OKAY.

14 A IN MY BUSINESS, JUST TO MAKE THAT A LITTLE CLEARER,
15 EACH DAY ENDS AT 4 O'CLOCK, WHEN THE NEW YORK STOCK EXCHANGE
16 CEASES TRADING, EVERYTHING THAT TRANSPIRES AFTER THAT, WE
17 CONSIDER THE NEXT DAY'S BUSINESS.

18 Q HOW DID YOU RECEIVE NOTICE, WHAT HAPPENED?

19 A ANY TIME A CHECK IS DEPOSITED AS A PURCHASE TO
20 AN ACCOUNT, IT IS SUBJECT TO COLLECTION AND IF THE CHECK IS
21 RETURNED UNPAID TO US, OUR ACCOUNTING OR CONTROL DEPARTMENT
22 IS THEN RESPONSIBLE TO TRACK THE ACCOUNT WHERE THE CHECK IS
23 AND THEN, ESSENTIALLY, TO NEGATE OR VOID THE PURCHASE, TO
24 MAKE A DEBIT ENTRY TO NET OUT AGAINST THE CREDIT ENTRY IN
25 THE ACCOUNT.

26 Q DIDN'T IT SEEM ODD TO YOU, AS YOU LOOK AT IT,
27 THAT YOU HAD THIS CHECK FROM THE 30TH OF APRIL UNTIL THE 9TH
28 WHEN YOU WIRE THE MONEY AND WITHIN HOURS OF THAT, YOU ARE

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1 NOTIFIED OF THE DISHONORING OF THE CHECK?

2 A IT SEEMED MOST UNFORTUNATE.

3 (LAUGHTER IN COURTROOM.)

4 Q INDEED. WOULD THAT ALMOST BE BEYOND COINCIDENCE?

5 WHAT I AM SUGGESTING TO YOU THAT PERHAPS THE PERSON,
6 MR. LEVIN, WAS AWARE THAT YOU WERE --

7 MR. WAPNER: OBJECTION. ARGUMENTATIVE.

8 Q BY MR. BARENS: -- READILY GOING TO GET NOTICE
9 OF THE DISHONORING?

10 THE COURT: WELL, WE HAVE HEARD ENOUGH ABOUT PECK'S
11 BAD BOY. DO YOU WANT TO JUST LAY IT ON A LITTLE MORE? WHAT
12 IS THE PURPOSE OF THESE QUESTIONS?

13 THERE IS A SPECIFIC PURPOSE OF THE DISTRICT
14 ATTORNEY INTRODUCING THIS EVIDENCE, IT WAS MADE CLEAR TO YOU.
15 NOW STICK TO THAT EVIDENCE. NOW YOU WANT TO SHOW THERE WAS
16 SOMETHING DONE ON JUNE THE 12TH AND THAT IS WHY THE DISTRICT
17 ATTORNEY OFFERED THIS EVIDENCE TO SHOW IT WAS SET IN MOTION
18 LONG BEFORE THAT. I DON'T KNOW WHY YOU ARE BELABORING THIS
19 PARTICULAR THING. WE HAVE HEARD ENOUGH ABOUT PECK'S BAD BOY,
20 LET'S GET ON TO SOMETHING ELSE, WILL YOU?

21 Q BY MR. BARENS: IN ANY EVENT, AFTER MAY 9TH WHEN
22 THE MATTER IS DISHONORED, YOU THEN CALL, DO YOU, THE BANK
23 OF AMERICA.

24 A YES, I DID.

25 Q AND THE BANK OF AMERICA TOLD YOU THAT THEY HAD
26 SIMULTANEOUSLY OR AT A DIFFERENT STATE HAD A \$50,000 LOSS?

27 A ALL I KNOW IS THAT I WAS TOLD UPON CALLING TO
28 RETRIEVE THE WIRED FUNDS, THAT IT WAS, ESSENTIALLY, TOO LATE

31-3 1 BECAUSE UPON RECEIPT OF OUR FUNDS, THEY HAD APPLIED THEM
2 AGAINST THE EXISTING \$50,000 SHORTFALL THAT THEY HAD IN THEIR
3 ACCOUNT.

4 Q WAS THE BANK OF AMERICA THEN CLAIMING YOUR MONEY
5 SHOULD BE THEIR MONEY?

6 A THEY CLAIMED AND TOOK THAT POSTURE.

7 Q OKAY. SO SOMEWHERE \$25,000 IS LOST AT THIS POINT?

8 A I EVENTUALLY GOT AN INJUNCTION FREEZING THE
9 REMAINING MONEYS.

10 Q NOW, WE HAD ANOTHER ACCOUNT THERE THAT GETS
11 DISCUSSED BETWEEN YOU AND MR. LEVIN BETWEEN 5-9 AND 5-16;
12 IS THAT CORRECT?

13 A THAT'S CORRECT.

14 Q HOW MUCH MONEY IS IN THE OTHER ACCOUNT?

15 A WELL, THE -- I CAN'T ANSWER THAT, I SUPPOSE,
16 WITHOUT REFERENCE TO A SPECIFIC DATE AND I DON'T HAVE
17 BALANCES FOR EVERY DAY THE ACCOUNT WAS OPERATED.

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1 Q HOW ABOUT 5-9?

2 A I CANNOT SAY THE EXACT BALANCE. I BELIEVE --
3 I DON'T KNOW.

4 Q WAS IT FUNDS IN EXCESS OF \$36,000?

5 A ON 5-9?

6 Q ON A DATE BETWEEN -- ON ANY DATE YOU LIKE BETWEEN
7 5-9 AND 5-16.

8 A I AM NOT CERTAIN. I WOULD HAVE TO CHECK THE
9 STATEMENTS.

10 Q YOU DON'T HAVE THOSE WITH YOU?

11 A I HAVE MANY STATEMENTS WITH ME.

12 Q OKAY. WHAT I AM GETTING TO IS EVENTUALLY, YOU
13 ISSUED \$36,000 OUT OF THAT ACCOUNT?

14 A THAT'S CORRECT.

15 Q AND DID YOU DO THAT AS ANOTHER WIRE ACTIVITY ON
16 THE 16TH?

17 A THAT'S CORRECT.

18 Q HOW MANY PHONE CALLS DID YOU HAVE WITH LEVIN
19 BETWEEN THE 9TH AND THE 16TH?

20 A I THINK IN TOTAL, FROM THE FIRST DATE I SPOKE
21 WITH MR. LEVIN ON THE 9TH UNTIL THE 16TH, WHEN I NO LONGER
22 RECALL SPEAKING TO LEVIN AGAIN, THERE WERE A HALF A DOZEN
23 CONVERSATIONS.

24 Q WAS HE, ONCE AGAIN, IN HIS Demeanor AND TONE AND
25 WORDS, DESPERATE FOR THE MONEY?

26 MR. WAPNER: OBJECTION. CALLS FOR A CONCLUSION ON THE
27 PART OF THE WITNESS.

28 THE COURT: SUSTAINED.

31 ^ 2

1 Q BY MR. BARENS: A FEW MOMENTS AGO, YOU DESCRIBED
2 TO ME YOUR RECOLLECTION OF THE WAY MR. LEVIN ACTED DURING
3 THE PHONE CONVERSATIONS OF MAY 8TH AND MAY 9TH; DID HE ACT
4 IN A SIMILAR MANNER DURING THE PHONE CALLS BETWEEN MAY 9TH
5 AND MAY 16TH?

6 A HIS MANNER WAS DIFFERENT.

7 THE FIRST TIME, I SENSED THAT HE WAS IN TROUBLE
8 IF HE DIDN'T GET THAT MONEY.

9 THE SECOND TIME, I SENSED THAT HE WANTED IT BUT
10 I DIDN'T PERCEIVE SIMILAR URGENCY.

11 Q AT ANY TIME DURING THE PHONE CALLS BETWEEN THE
12 19TH AND THE 16TH --

13 A HE SEEMED MOST DESPERATE TO ME ON THE FIRST WIRE
14 AND LESS DESPERATE TO ME ON THE SECOND WIRE.

15 Q ALL RIGHT, NOW THE \$36,000 YOU SENT OUT, THAT
16 WAS NEVER INTERDICTED BY ANYONE SO FAR AS YOU KNOW, TO YOUR
17 KNOWLEDGE?

18 A CORRECT.

19 Q IN OTHER WORDS, LEVIN WOULD HAVE IN FACT RECEIVED
20 THAT MONEY?

21 A I COULDN'T SPECULATE AS TO WHETHER HE RECEIVED
22 IT.

23 I CAN ASSURE YOU THAT IT WAS WIRED.

24 Q OKAY. AND YOU WIRED THAT TO WHAT ACCOUNT?

25 A IT WAS AN ACCOUNT HELD AT OLYMPIC NATIONAL BANK.
26 THE ACCOUNT NUMBER, I BELIEVE, IS 0070270 WITH
27 A PREFIX 001.

28 Q AFTER BOTH OF THOSE TRANSACTIONS, DID YOU FOLKS

1 SUSTAIN A NET LOSS OR WHERE ARE YOU IN TERMS OF YOUR
2 INSTITUTION?

3 A AT THIS POINT IN TIME, WE ARE OUT \$75,000.

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1 MR. BARENS: JUST ONE MOMENT, YOUR HONOR.

2 (BRIEF PAUSE.)

3 Q BY MR. BARENS: DID YOU EVER TELL MR. LEVIN THAT
4 YOU WERE INTERESTED IN SEEKING A CRIMINAL COMPLAINT AGAINST
5 HIM FOR THE TRANSACTIONS AT YOUR BANK?

6 A I BELIEVE THAT IT WAS COMMUNICATED TO MR. LEVIN
7 BY OUR CORPORATE SECURITY OFFICER, AS WELL AS BY OUTSIDE LEGAL
8 COUNSEL. THAT INDIVIDUAL WAS BILL HURLEY.

9 Q DO YOU KNOW WHEN THAT OCCURRED?

10 A I BELIEVE THAT THE FIRST NOTICE THAT WE WOULD
11 SEEK YOU KNOW, LEGAL RECOURSE FOR THE RETURN OF THE MONEYS,
12 WOULD HAVE BEEN MADE ON THE 9TH OF MAY. I BELIEVE ALSO THAT
13 SALLY CASE WOULD HAVE INFORMED MR. LEVIN THAT SHE WAS GOING
14 TO IMPLEMENT LEGAL ACTION.

15 SHE CALLED HIM AFTER SHE LEARNED THAT THE \$75,000
16 WIRE RESULTED IN A LOSS.

17 THE COURT: YOU MEAN TO SUE HIM? IS THAT WHAT YOU ARE
18 TALKING ABOUT?

19 THE WITNESS: YES.

20 Q BY MR. BARENS: WAS THERE EVER ANY DISCUSSION
21 OF SEEKING A CRIMINAL SANCTION?

22 A I DON'T KNOW. I BELIEVE THAT AT A LATER POINT,
23 I BELIEVE THAT THE CORPORATE SECURITY OFFICE DID HAVE SOME
24 FORM OF A CRIMINAL COMPLAINT AGAINST RONALD LEVIN EVENTUALLY.

25 Q AT WHAT POINT IN TIME WAS THAT, SIR?

26 A I DON'T KNOW.

27 Q WERE YOU FOLKS AWARE THAT MR. LEVIN HAD A FRAUD
28 CASE PENDING AT THAT TIME?

1 MR. WAPNER: OBJECTION, RELEVANCE.

2 THE COURT: SUSTAINED.

3 Q BY MR. BARENS: DO YOU RECOGNIZE THE HANDWRITING
4 ON THIS MEMORANDA?

5 A YES I DO.

6 THE COURT: DID YOU SHOW IT TO COUNSEL?

7 MR. BARENS: I GOT IT FROM COUNSEL.

8 THE WITNESS: YES I DO.

9 Q BY MR. BARENS: WHOSE HANDWRITING IS THAT?

10 A THAT IS JOYCE TUGGLE'S, THE CORPORATE SECURITY
11 OFFICER THAT I WAS WORKING WITH.

12 Q THERE IS A DATE THERE OF 6/7/84, IS THERE, SIR?

13 A THAT'S CORRECT.

14 Q WERE YOU PRESENT AT A MEETING WHEN THESE NOTES
15 WERE GENERATED?

16 A AT THIS PARTICULAR MEETING? I DO NOT RECOLLECT
17 BEING PRESENT.

18 THE COURT: WHAT MEETING ARE YOU TALKING ABOUT? A
19 MEETING AMONG WHOM? IN BOSTON, YOU MEAN?

20 THE WITNESS: YES.

21 THE COURT: THAT WAS JUNE 7?

22 THE WITNESS: YES.

23 THE COURT: IN BOSTON THERE WAS A MEETING AT THAT TIME?

24 THE WITNESS: THAT'S CORRECT.

25 THE COURT: ALL RIGHT.

26 MR. BARENS: I WOULD LIKE TO GO THROUGH THAT, YOUR HONOR.

27 THE COURT: GO AHEAD.

28 MR. BARENS: THANK YOU.

32-3

1 Q IT SAYS THAT IT IS A STAFF MEETING, SIR?

2 A I BELIEVE THAT IS A SEPARATE ITEM.

3 Q HOW DO YOU MEAN THAT, SIR?

4 A THERE ARE THREE ENTRIES ON THIS PAGE, ONE OF WHICH
5 PERTAINS TO THE LEVIN CASE. THIS IS ESSENTIALLY, A DIARY
6 OF JOYCE'S DAILY ACTIVITIES.

7 Q THAT IS WHAT I AM TRYING TO UNDERSTAND BECAUSE
8 IT IS A BIT CONFUSING, JUST TO LOOK AT IT.

9 A I GRANT YOU THAT.

10 Q SIR, AM I ACCURATE IN SAYING THAT THE LAST ENTRY
11 STARTING WITH THE WORDS "SALLY CASE" WHICH APPEARS AS THE
12 THIRD ENTRY ON THE PAGE, IS THE ONE THAT RELATES TO MR. LEVIN?

13 A YES.

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1 Q I CAN'T MAKE HEADS OR TAILS OF THE FIRST TWO.
2 OKAY. COULD YOU PLEASE READ IT FOR US? IT
3 CONSISTS OF TWO ENTRIES. COULD YOU PLEASE READ US THOSE TWO
4 SENTENCES?

5 A SURELY. THE ENTRY STATES, "SALLY CASE WILL
6 RETURN \$5,500 PLUS INTEREST TO LEVIN/PACINO TO CLOSE OUT
7 ACCOUNT. I ADVISED HER TO MAKE SURE I HAVE A COMPLETE FILE
8 FOR DAN WILSON TO SEEK PROSECUTION."

9 MR. BARENS: NOW, WE WOULD LIKE THAT MARKED AS
10 DEFENDANT'S NEXT, YOUR HONOR.

11 THE COURT: THAT IS DATED WHEN?

12 MR. BARENS: JUNE 7.

13 THE WITNESS: JUNE 7, YOUR HONOR.

14 MR. BARENS: THAT WOULD BE DEFENDANT'S -- I AM NOT SURE.

15 THE CLERK: GG.

16 MR. BARENS: GG.

17 THE COURT: WE ARE UP TO GG.

18 MR. BARENS: THANK YOU, YOUR HONOR. THANK YOU, SIR.

19
20 REDIRECT EXAMINATION

21 BY MR. WAPNER:

22 Q MR. PACINO'S ADDRESS ON THAT CHECK, DO YOU HAVE
23 THAT IN FRONT OF YOU QUICKLY?

24 A THE ORIGINAL DEPOSIT CHECK?

25 Q RIGHT.

26 A YES I DO.

27 Q WHAT IS IT?

28 A IT IS 9720 WILSHIRE BOULEVARD, FOURTH FLOOR. THE

1 PHONE NUMBER IS REFERENCED AS AREA CODE 213, 274-6844,
2 BEVERLY HILLS, CALIFORNIA WITH A ZIP CODE OF 90212.

3 Q ALL RIGHT. SINCE YOUR INSTITUTION IS NOT A BANK,
4 DO YOU HAVE TO DEAL WITH BANKS HOLDING THE FUNDS, CORRECT?

5 A THAT'S CORRECT. WE EMPLOY A VARIETY OF BANKS
6 TO ACT AS CUSTODIANS FOR OUR FUNDS.

7 Q IN THIS CASE, THE WIRE TRANSFER WENT THROUGH THE
8 SHAWMUT BANK OF BOSTON?

9 A SHAWMUT BANK OF BOSTON, THAT'S CORRECT.

10 Q WHEN YOU TALKED TO MR. LEVIN FOR THE FIRST TIME,
11 IS IT FAIR TO SAY THAT HE WAS EITHER VERY DESPERATE FOR THE
12 MONEY OR WANTED YOU TO BELIEVE THAT HE WAS VERY DESPERATE
13 FOR THE MONEY?

14 A THAT WAS CONVINCING, YES.

15 Q THE \$25,000 THAT REMAINS FROM THE \$75,000, IS
16 THAT STILL FROZEN OR IS THERE STILL LITIGATION ABOUT THAT?

17 A MY INFORMATION FROM CORPORATE SECURITY WAS THAT
18 THERE WERE MANY CLAIMANTS TO ANY PIECE OF MONEY IN ANY OF
19 MR. LEVIN'S ACCOUNTS. I AM NOT REALLY SURE WHO ENDED UP WITH
20 THE \$25,000. IF FIDELITY DIDN'T GET IT BACK, THEN WE WOULD
21 HAVE RECOUPED OUR LOSS THROUGH INSURANCE.

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1 Q AND LASTLY, THE NOTATION ON DEFENDANT'S GG BY
2 JOYCE TUGGLE ON JUNE THE 7TH WAS MERELY ONE OF THE INCIDENTS
3 IN THE CHAIN OF EVENTS THAT BEGAN ON JUNE -- EXCUSE ME --
4 MAY THE 31ST BY THE SENDING OF THE LETTER AND CULMINATED
5 ON JUNE THE 11TH WITH YOUR WIRING THE MONEY?

6 A THAT IS CORRECT.

7 Q AND IT DOESN'T SAY IN THERE ANY PLACE, DOES IT,
8 THAT THERE WAS ANYTHING COMMUNICATED TO MR. LEVIN ABOUT
9 SEEKING PROSECUTION, DOES IT?

10 A NO, SIR.

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

12 MR. BARENS: MAY I INQUIRE?

13 THE COURT: GO AHEAD.

14

15 RECROSS-EXAMINATION

16 BY MR. BARENS:

17 Q SIR, YOU HAVE MADE REFERENCE TO A GENTLEMAN
18 IN YOUR CORPORATE SECURITIES DEPARTMENT A COUPLE OF TIMES
19 DURING THIS DISCUSSION. I AM WONDERING WHO THAT PERSON
20 WAS?

21 A WELL, THERE IS ONE GENTLEMAN AND HE IS DICK
22 RILEY, HE IS THE CHIEF COUNSEL.

23 THE CORPORATE SECURITY INDIVIDUAL IS A WOMAN
24 BY THE NAME OF JOYCE TUGGLE.

25 Q THE SAME PEOPLE?

26 AND WHERE ARE THEY TO BE FOUND?

27 THE COURT: IN BOSTON; IS THAT RIGHT?

28 THE WITNESS: EVERYONE WAS IN BOSTON.

1 Q BY MR. BARENS: DO YOU HAPPEN TO KNOW THEIR
2 PHONE NUMBER?

3 A SALLY CASE IS NO LONGER --

4 MR. WAPNER: YOUR HONOR, I WILL BE HAPPY TO PROVIDE
5 THIS TO COUNSEL.

6 MR. BARENS: WE WOULD THANK YOU ON THAT.

7 A MOMENT, YOUR HONOR.

8 Q DURING YOUR LAST CALL ON 5-16-84 WITH LEVIN AND
9 YOU TOLD HIM TO TALK TO YOUR LAWYERS, IS THE SENSE OF WHAT
10 I GOT FROM YOU.

11 A WE HAD REACHED AN IMPASSE AND IT WAS NO LONGER
12 FRUITFUL FOR ME TO TALK TO MR. LEVIN AND I WAS INSTRUCTED
13 THAT I SHOULD REFER ANY SUBSEQUENT DEMANDS ON HIS PART
14 EITHER TO OUTSIDE COUNSEL, BILL HERLIHY OR THE FIRM OF
15 KAYE, FIALKOW, RICHMOND --

16 THE COURT REPORTER: HOW DO YOU SPELL IT?

17 THE WITNESS: K-A-Y, FIALKOW, F-I-A-L-K-O-W.

18 AND I FORGOT THE LAST NAME.

19 OR CORPORATE SECURITY.

20 Q BY MR. BARENS: YOU TOLD THAT TO LEVIN AND LEVIN
21 SAID OKAY, OR HOW DID IT END?

22 A NOT AMICABLY.

23 HE HAD SPOKEN BOTH WITH MR. HERLIHY AND WITH
24 MS. TUGGLE BEFORE SO HE WASN'T ESPECIALLY PLEASED THAT I
25 WAS TELLING HIM THAT I WOULD NO LONGER TALK TO HIM.

26 AND HE HAD ALREADY DEALT WITH THE OTHER TWO
27 INDIVIDUALS I HAD REFERRED HIM TO AND HAD NOT RECEIVED
28 SATISFACTION FROM EITHER OF THEM.

1 MR. BARENS: THANK YOU, SIR.

2 MR. WAPNER: NOTHING FURTHER.

3 THE COURT: THANK YOU VERY MUCH.

4 THE WITNESS: YOU ARE VERY WELCOME.

5 THE COURT: YOU WILL BE EXCUSED.

6 MR. WAPNER: I UNDERSTOOD WE WERE GOING TO STOP A LITTLE
7 EARLY.

8 THE COURT: YES. NO SENSE STARTING WITH A NEW
9 WITNESS NOW, SO WE WILL TAKE AN ADJOURNMENT AT THIS TIME,
10 LADIES AND GENTLEMEN, UNTIL MONDAY MORNING AT THE CUSTOMARY
11 TIME AT 10:30.

12 AND THE SAME ADMONITION I GAVE YOU ABOUT TALKING
13 AMONG YOURSELVES OR LISTENING TO IT ON THE RADIO OR
14 TELEVISION WILL STILL APPLY.

15 HAVE A VERY PLEASANT WEEKEND AND GOOD NIGHT.

16 (AT 4:10 P.M. AN ADJOURNMENT WAS TAKEN
17 TO RESUME MONDAY, MARCH 16, 1987; AT
18 10:30 A.M.)

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