

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

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Entered by _____
Date _____

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

10/25/87

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
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FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 72 OF 101
(PAGES 11397 TO 11435, 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 26, 1987

VOLUME 72

PAGES 11394 TO 11435, INCL.

APPEARANCES:

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FOR THE DEFENDANT: ARTHUR H. BARENS, ESQ.
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AND

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

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

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3 -----
4 E X H I B I T S5
6

<u>PEOPLE'S EXHIBITS:</u>		<u>IN EVIDENCE</u>
7 1 THROUGH 16	(PREVIOUSLY IDENTIFIED)	11397
8 19, 20, 24, 25, 26, 27 28, 34	(PREVIOUSLY IDENTIFIED)	11397
9 38-A, 38-B, 38-C	(PREVIOUSLY IDENTIFIED)	11407
10 39 THROUGH 46	(PREVIOUSLY IDENTIFIED)	11397
11 48, 50 THROUGH 55	(PREVIOUSLY IDENTIFIED)	11397
12 56 THROUGH 62	(PREVIOUSLY IDENTIFIED)	11420
13 68-A THROUGH 68-G	(PREVIOUSLY IDENTIFIED)	11407
14 69 THROUGH 82	(PREVIOUSLY IDENTIFIED)	11420
15 83	(PREVIOUSLY IDENTIFIED)	11411
16 85 THROUGH 102	(PREVIOUSLY IDENTIFIED)	11420
17 103-A AND 103-B	(PREVIOUSLY IDENTIFIED)	11413
18 106	(PREVIOUSLY IDENTIFIED)	11420
19 107	(PREVIOUSLY IDENTIFIED)	11398
20 108 THROUGH 184	(PREVIOUSLY IDENTIFIED)	11420
21 185-A, 185-B, 185-C THROUGH 201-A	(PREVIOUSLY IDENTIFIED)	11420
22 202	(PREVIOUSLY IDENTIFIED)	11414
23 203 THROUGH 209	(PREVIOUSLY IDENTIFIED)	11420
24 210	(PREVIOUSLY IDENTIFIED)	11402
25 211	(PREVIOUSLY IDENTIFIED)	11420
26 212	(PREVIOUSLY IDENTIFIED)	11399
27 213 THROUGH 217	(PREVIOUSLY IDENTIFIED)	11420
28 218	(PREVIOUSLY IDENTIFIED)	11399
219	(PREVIOUSLY IDENTIFIED)	11420
220, 221	(PREVIOUSLY IDENTIFIED)	11399
222 THROUGH 225	(PREVIOUSLY IDENTIFIED)	11420
228, 229	(PREVIOUSLY IDENTIFIED)	11420

1 INDEX FOR VOLUME 72 (CONTINUED)

2
3 E X H I B I T S

4
5 DEFENDANT'S EXHIBITS: IN
EVIDENCE

6 A AND B	(PREVIOUSLY IDENTIFIED)	11432
7 D THROUGH G	(PREVIOUSLY IDENTIFIED)	11432
8 I THROUGH Z	(PREVIOUSLY IDENTIFIED)	11432
9 CC THROUGH KK	(PREVIOUSLY IDENTIFIED)	11432

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1 SANTA MONICA, CALIFORNIA; THURSDAY, MARCH 26, 1987; 9:55 A.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENRAND, JUDGE

3 (APPEARANCES AS NOTED ON TITLE PAGE
4 EXCEPT MR. BARENS IS NOT PRESENT.)

5
6 (THE FOLLOWING PROCEEDINGS WERE HELD
7 OUT OF THE PRESENCE OF THE JURY, THE
8 DEFENDANT WAS NOT PRESENT:)

9 MR. CHIER: WHAT HAPPENED IS THAT THE WORD PROCESSOR
10 BROKE DOWN. WOULD YOU MIND IF I JUST TURN IN THIS DRAFT?
11 I WILL REPLACE IT MONDAY WITH -- I HAVE MADE COPIES OF MY DRAFT.
12 I GAVE ONE TO FRED.

13 MR. WAPNER: DID YOU KNOW THAT YOU MARKED THE SAME
14 EXHIBIT TWICE? I HAVE NO OBJECTION TO IT. THAT IS THE
15 MICHAEL DOW CONTRACT. IT IS N AND IT IS KK.

16 THE COURT: DO YOU HAVE THE LIST OF THE EXHIBITS?

17 THE CLERK: YES.

18 THE COURT: LET ME SEE IT, PLEASE.

19 ALL RIGHT. I THINK WE WILL START WITH WHAT,
20 NO. 1? IT IS THE CONSERVATOR'S ACCOUNTING, IS THAT IT?

21 MR. WAPNER: YES.

22 I AM JUST MAKING A LIST HERE FOR MR. CHIER OF THE
23 ONES THAT I WAS OBJECTING TO. MAY I JUST HAVE A MOMENT?

24 (UNREPORTED COLLOQUY BETWEEN COUNSEL.)

25 MR. WAPNER: YOUR HONOR, EXHIBIT NO. 1 IS A SCHEDULE
26 THAT WAS PREPARED BY DAVID OSTROVE OF ALL OF THE MONEY THAT
27 HE RECEIVED FROM LIQUIDATING MR. LEVIN'S ASSETS.

28 MAYBE MORE PROPERLY, IT IS A SCHEDULE OF THE

1 LIQUID ASSETS THAT HE GOT AND CHECKS THAT HE CASHED.

2 THE COURT: ALL RIGHT. WHAT IS THE OBJECTION: TO
3 NO. 1?

4 MR. CHIER: THE OBJECTION --

5 THE COURT: THE METHOD OF RECAPITULATION WAS FLAWED,
6 YOU SAY, IN WHAT RESPECT?

7 MR. CHIER: IN THAT IT OMITTED A NUMBER OF ASSETS THAT
8 SHOULD HAVE BEEN INCLUDED THAT WASN'T INCLUDED. THAT IT
9 WASN'T A TRUE REFLECTION OF THE CONDITION OF THE LEVIN ESTATE.

10 ...
11 THAT THE RECORDS, THE UNDERLYING RECORDS, OF
12 COURSE, ARE ADMISSIBLE BUT THE RECAPITULATION BY THE WITNESS
13 IS AN INDIRECT WAY OF ALLOWING THE WITNESS TO ARGUE THE
14 PEOPLE'S CASE AND THE RECAPITULATION IS NOT SUPPORTED BY THE
15 EVIDENCE, YOUR HONOR, SO THAT THE OBJECTION --

16 BASICALLY, WE HAVE NO OBJECTION TO THE UNDERLYING
17 RECORDS, FROM WHICH THE PEOPLE CAN MAKE WHATEVER ARGUMENTS
18 THEY WANT BUT TO ALLOW THE CONSERVATOR TO PUT IN A
19 RECAPITULATION AND SUMMARY, WHICH HAS BEEN DEMONSTRATED TO
20 BE INACCURATE IN SOME RESPECTS, IS NOT FAIR.

21 THE COURT: YOU CAN ARGUE TO THE JURY THAT IF THERE ARE
22 ANY INACCURACIES IN THIS PARTICULAR EXHIBIT, THEN THE TESTIMONY
23 WILL SHOW THAT HAS BEEN IMPEACHED, IF IT HAS BEEN IMPEACHED
24 AND AS IT IS.

25 WHAT HAVE YOU TO SAY TO THAT?
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1 MR. WAPNER: WELL FIRST OF ALL, IT IS ALLEGED THAT THERE
2 IS SOME INACCURACY IN THERE. I DON'T KNOW BY THAT GENERAL
3 STATEMENT, WHAT IS MEANT. IF IT IS ALLEGED THERE IS SOME
4 OMISSION, I AM NOT AWARE OF ANY. BUT IF THEY CAME OUT IN THE
5 TESTIMONY, CERTAINLY THE JURY WILL HAVE THEM. IT IS AT LEAST,
6 A SCHEDULE OF THE CASH RECEIPTS THAT HE WAS ABLE TO ACCUMMULATE
7 FROM THIS ESTATE.

8 THE COURT: WELL, IN WHAT RESPECT DID THE DESCRIPTION
9 OF THE ASSETS AND AMOUNT OF MONEY -- IN WHAT RESPECT HASN'T
10 THAT BEEN ESTABLISHED? WHERE IS IT FLAWED?

11 MR. CHIER: JUST OFF THE TOP OF MY HEAD, HE FAILED TO
12 MENTION THAT HE HAD SETTLED SOME CLAIM OF LEVIN'S FOR ABOUT
13 \$50,000. I AM NOT SAYING THAT THAT -- WHAT I AM SAYING IS
14 THAT THE FACT THERE WERE OMISSIONS, YOUR HONOR, IS INDICATIVE
15 OF THE FLAWED MANNER --

16 THE COURT: THIS IS JUST CASH RECEIPTS. THERE ISN'T
17 ANYTHING ELSE ABOUT OTHER CLAIMS ON WHICH ANY MONEYS WERE
18 REALIZED, IF THEY WERE.

19 THESE ARE JUST -- IT IS A SCHEDULE OF CASH
20 RECEIPTS. IS THERE ANYTHING ON THAT LIST WHICH IS NOT
21 RECORRECT?

22 MR. CHIER: MY UNDERSTANDING WAS THAT IT WAS A SCHEDULE
23 OF ASSETS.

24 THE COURT: NO. IT SAYS "CASH RECEIPTS."

25 MR. CHIER: WELL, THAT IS MY OBJECTION, YOUR HONOR.

26 THE COURT: WELL, THERE IS NO OBJECTION, THEN. IT IS
27 JUST CASH RECEIPTS. THERE IS NOTHING TO INDICATE THAT THAT
28 IN ANY WAY, HAS BEEN IMPEACHED. I WILL OVERRULE THE OBJECTION

1 ON 1.

2 ALL RIGHT. THE NEXT ONE IS 55. 55, MADAM CLERK?

3 MR. WAPNER: 55 ARE THE SEVEN PAGES OF YELLOW PAPER,
4 "AT LEVIN'S TO DO" THAT WE HAVE BEEN OVER AND OVER.

5 THE COURT: WHAT IS THE OBJECTION TO THAT?

6 MR. CHIER: THE OBJECTION IS BASICALLY THAT THESE
7 SEVEN PAGES CONSTITUTE STATEMENTS OF THE DEFENDANT THAT THERE
8 IS NO CORPUS ESTABLISHED FOR THE ADMISSION OF THESE
9 STATEMENTS INDEPENDENTLY OF THE DEFENDANT'S EXTRAJUDICIAL
10 STATEMENTS.

11 THE COURT: WELL, THAT OBJECTION WILL BE OVERRULED. THAT
12 WILL BE RECEIVED. ANYTHING BETWEEN 1 AND 55?

13 MR. WAPNER: ANY OBJECTION ON ANY OF THOSE EXHIBITS?

14 MR. CHIER: THERE WERE THREE OTHERS. I DON'T HAVE THEM
15 WITH ME BECAUSE THERE WAS A MECHANICAL BREAKDOWN. WHAT I COULD
16 DO IS, JUST FINISH THIS UP AND TAKE CARE OF THEM ON MONDAY
17 MORNING. THERE ARE ONLY TWO OR THREE OF THEM.

18 THE COURT: MONDAY MORNING? I WANT TO HAVE ALL OF THEM
19 IN BEFORE MONDAY MORNING.

20 MR. CHIER: WELL, I WILL JUST MESSENGER IT DOWN
21 TOMORROW AND SUBMIT IT ON THE WRITTEN OBJECTIONS, YOUR HONOR.

22 THE COURT: ALL RIGHT. NOW, THE NEXT ONE YOU HAVE TO
23 ARGUE IS 107, A PHOTOGRAPH OF HUNT AND KARNY.

24 MR. CHIER: YES.

25 THE COURT: MAY I SEE THAT, PLEASE? WHAT HAVE YOU TO
26 SAY ON THAT?

27 MR. WAPNER: YOUR HONOR, ONLY THAT IT SHOWS BY PHOTOGRAPH,
28 THE RELATIONSHIP BETWEEN MR. HUNT AND MR. KARNY DURING THE

1 TIME THAT THE BBC WAS IN OPERATION. I WILL LET THE COURT TAKE
2 A LOOK AT THE PICTURE AND MAKE ITS OWN DECISION ON THAT.

3 MR. CHIER: THERE IS NO TESTIMONY WHATSOEVER AS TO WHEN
4 THE PHOTOGRAPH WAS TAKEN OR WHERE IT WAS TAKEN OR HOW IT WAS
5 TAKEN.

6 MR. WAPNER: THAT'S CORRECT. ONLY THAT IT WAS ON AN
7 UNEXPOSED ROLE OF FILM -- OR UNDEVELOPED ROLE OF FILM THAT
8 WAS FOUND BY DETECTIVE ZOELLER IN MR. HUNT'S APARTMENT DURING
9 THE SEARCH ON OCTOBER THE 2ND. THEREFORE, IT HAD TO BE TAKEN
10 BEFORE OCTOBER 2ND.

11 THE COURT: WELL, IT SHOWS THE DEGREE OF INFORMALITY
12 AND INTIMACY BETWEEN THE TWO PEOPLE. THE OBJECTION IS
13 OVERRULED ON THAT PHOTOGRAPH. 107 WILL BE RECEIVED.

14 NEXT IS 212, 218, 220 AND 221. WERE THERE ANY
15 OBJECTIONS MADE AT THE TIME THAT THESE EXHIBITS WERE OFFERED
16 IN IDENTIFICATION?

17 MR. CHIER: THERE IS NO OBJECTION THAT LIES AS TO HAVING
18 AN EXHIBIT MARKED.

19 THE COURT: PARDON ME?

20 MR. CHIER: THERE IS NO OBJECTION THAT I KNOW OF TO
21 HAVING AN ITEM MARKED FOR IDENTIFICATION. YOU CAN HAVE A
22 KITCHEN SINK MARKED FOR IDENTIFICATION AND --

23 THE COURT: WELL, I AM ASKING YOU WHETHER OR NOT THERE
24 WAS ANY REMARK MADE ABOUT THOSE EXHIBITS AT THE TIME OR ANY
25 OBJECTION MADE AS TO THEIR BEING OFFERED INTO EVIDENCE.

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1 MR. CHIER: THERE IS AN OBJECTION BEING MADE RIGHT NOW
2 AGAINST THEIR BEING OFFERED IN EVIDENCE, YOUR HONOR.

3 THE COURT: ALL RIGHT, LET ME SEE THAT, WILL YOU, PLEASE?

4 THE CLERK: THAT IS 220?

5 THE COURT: 218, 220 AND 221, PHOTOGRAPHS OF FINGERPRINTS.

6 I THOUGHT THERE WAS TESTIMONY AS TO THE CHAIN OF
7 CUSTODY, WASN'T THERE?

8 MR. WAPNER: WELL, I AM FAIRLY CERTAIN THERE WAS
9 TESTIMONY THAT THOSE WERE THE PHOTOGRAPHS THAT WERE TAKEN
10 OF THE LIFTS THAT WERE DEVELOPED FROM THE LIST.

11 THE TESTIMONY WAS OF KURT KUHN, WHO SAID THAT HE
12 SAW THE LIFTS BEING DEVELOPED AND THE PICTURES TAKEN.

13 THE COURT: OH, YES, I REMEMBER.

14 THE CLERK: DID YOU SAY 222?

15 THE COURT: NO. JUST 212, 218 TO 221.

16 THE OBJECTION WILL BE OVERRULED. THEY WILL BE
17 RECEIVED IN EVIDENCE AND THEY WILL BE MARKED AS 212, 218, 220
18 AND 221 IN EVIDENCE.

19 "EXHIBIT UNKNOWN, PERSONAL HANDWRITING." WHAT
20 IS THAT?

21 MR. CHIER: WE COULDN'T FIGURE OUT WHAT THE NUMBER WAS,
22 YOUR HONOR.

23 THE COURT: PERSONAL HANDWRITING SAMPLES, I THINK I
24 REMEMBER THEM. THERE WERE SOME YELLOW SHEETS, WEREN'T THERE?

25 MR. WAPNER: IT IS 210, I BELIEVE.

26 THE COURT: 210?

27 MR. WAPNER: I BELIEVE IT IS 210.

28 THE COURT: WHERE IS THE ORIGINAL OF THIS LIST?

1 THE CLERK: I CONFESS THAT I KEPT IT FOR MYSELF.

2 (DOCUMENT HANDED TO THE COURT BY

3 THE CLERK.)

4 THE COURT: ALL RIGHT, 210 IS HANDWRITING PAGES BY HUNT.

5 MR. WAPNER: I WOULD ASK THE COURT TO PLEASE LOOK AT
6 THAT EXHIBIT, BECAUSE I THINK THAT WHEN YOU LOOK AT IT, THE
7 EVIDENTIARY VALUE WILL BECOME EVIDENT AND THE FACT THAT THE
8 WRITING HAS BEEN IN FACT IDENTIFIED TO THE DEFENDANT THEREFORE
9 GOES TO SHOW THE RELATIONSHIP THAT THE DEFENDANT HAD WITH THESE
10 DIFFERENT PEOPLE TO WHOM HE IS WRITING THE NOTES.

11 MR. CHIER: IT IS A PERSONAL COMMUNICATION BETWEEN
12 MR. HUNT AND HIS FORMER GIRLFRIEND, BROOKE ROBERTS.

13 IT IS NOT PROBATIVE OF ANY ISSUE IN THE CASE,
14 YOUR HONOR.

15 THE ONLY ISSUE, THE PURPOSE FOR WHICH THE DOCUMENT
16 WAS SEIZED, WAS AS AN EXAMPLAR OF THE DEFENDANT'S HANDWRITING.
17 THE DEFENDANT'S HANDWRITING HAVING BEEN ESTABLISHED IN A
18 NUMBER OF WAYS, THE ONLY PURPOSE FOR PROMOTING ITS RECEIPT
19 INTO EVIDENCE WOULD BE TO GET IN TO THE PERSONAL CONTENTS OF
20 THE NOTE.

21 MR. WAPNER: WELL, IF THE COURT READS THE ENTIRE
22 EXHIBIT, IT BECOMES APPARENT THAT THERE IS A NOTE FROM
23 MR. HUNT TO MR. PITTMAN, FROM MR. HUNT TO MR. KARNY AND FROM
24 MR. HUNT TO MR. DICKER, IN ADDITION TO NOTES THAT HE WROTE
25 TO BROOKE ROBERTS.

26 MR. CHIER: THE PEOPLE SHOULD NOT BE ENTITLED TO
27 CROSS-EXAMINE MR. HUNT ON HEARSAY, PERSONAL STATEMENTS HE HAS
28 MADE FOR WHICH THERE IS NO EVIDENCE THEY WERE COMMUNICATED

1 TO THE WITNESSES.

2 IT IS IN EFFECT ALLOWING THE PEOPLE TO CROSS-
3 EXAMINE THE DEFENDANT ON HIS OWN UNCOMMUNICATED THOUGHTS THAT
4 ARE NOT PROBATIVE OF ANY ISSUE IN THE CASE.

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1 THE COURT: WHAT DO YOU SAY ABOUT THOSE AGAIN?

2 MR. WAPNER: THERE ARE A FEW DIFFERENT PAGES. I THINK
3 THERE ARE TWO PAGES. ONE OF THE PAGES HAS ON ONE SIDE OF IT,
4 A NOTE THAT SAYS, "JIM" ON THE TOP AND IT SAYS, "I AM PLEASED
5 I MET YOU." AND THEN IT IS SIGNED, "YOUR HOME BOY, JOSEPH,
6 LIKE ONLY YOU AND I KNOW."

7 AND THEN IT GOES ON AND TALKS ABOUT, "DEAN, MY
8 FIRST FRIEND, DON'T RECOIL ..." AND THEN THERE IS A NOTE TO
9 EVAN DICKER AND APPARENTLY, ONE TO JON ALLEN.

10 AND I THINK THAT IT SHOWS THE DEFENDANT'S
11 RELATIONSHIP TO THESE DIFFERENT PEOPLE. AND IN ESSENCE, IT
12 APPEARS TO BE INSTRUCTIONS TO THEM ON WHAT TO DO WHILE HE IS
13 NOT AROUND OR UNTIL HE GETS BACK.

14 THE COURT: WHEN WAS THIS ALLEGEDLY WRITTEN?

15 MR. WAPNER: WE ONLY KNOW IT WAS WRITTEN BEFORE
16 OCTOBER 3RD.

17 THE COURT: AFTER JUNE 6?

18 MR. WAPNER: AFTER JUNE 6.

19 MR. CHIER: THERE IS NO EVIDENCE OF THAT.

20 MR. WAPNER: WELL, WE ONLY KNOW IT WAS WRITTEN BEFORE
21 OCTOBER THE 3RD, WHEN THE HOUSE WAS SEARCHED. FROM THE NATURE
22 OF THE COMMUNICATIONS, AND LOOKING AT THE PAGE IN TOTAL, IT
23 APPEARS TO HAVE BEEN WRITTEN AFTER MR. HUNT -- AFTER EITHER
24 HE WAS IN CUSTODY AND THEN BROUGHT BACK AND LEFT FOR THEM OR
25 IN PREPARATION FOR GOING INTO CUSTODY OR BEING AWAY.

26 THE COURT: WELL, I WILL ADMIT IT AS SHOWING THE
27 RELATIONSHIP OF THE DEFENDANT TO THE VARIOUS PEOPLE.

28 MR. CHIER: WELL YOUR HONOR, THE COMMUNICATIONS WERE NEVER

1 COMMUNICATED. THOSE ARE LIKE, LISTS OF PRIVATE THOUGHTS.
2 THEY ARE NOT STATEMENTS IN FURTHERANCE OF A CONSPIRACY.

3 THESE ARE NOT CONVERSATIONS BY THE DEFENDANT. THEY
4 ARE HIS PERSONAL THOUGHTS. THEY ARE REALLY NOT ADMISSIBLE
5 UNDER ANY THEORY. THE RELATIONSHIP BETWEEN THE PEOPLE IS NOT
6 IN ISSUE.

7 THAT IS LIKE YOU ARE SAYING IT IS BEING RECEIVED
8 TO PROVE A FACT WHICH IS NOT IN ISSUE IN THE CASE. IT DOESN'T
9 SEEM CORRECT, YOUR HONOR.

10 MR. WAPNER: WELL, TO THE EXTENT THAT MR. HUNT -- AND
11 THE ENTIRE DEFENSE IS CLAIMING ALL OF THESE PEOPLE ARE LYING
12 AND THAT MR. HUNT IS GOING TO BE THE ONLY ONE TELLING THE
13 TRUTH ABOUT THESE INCIDENTS AND THAT THESE PEOPLE SOMEHOW,
14 TURNED ON HIM, THE FACT THAT HE MADE STATEMENTS TO DEAN KARNY
15 TO THE EFFECT, "DON'T RECOIL. YOU ARE VERY ABLE. INTERVIEW,
16 INVESTIGATE, RESEARCH, LOOK AFTER YOURSELF. I AM COMING BACK."

17 MR. CHIER: THOSE WERE NEVER MADE. IT IS NOT CORRECT
18 TO CALL THEM STATEMENTS. THEY ARE LIKE, PRIVATE, LIKE A
19 DIARY, YOUR HONOR.

20 MR. WAPNER: WELL, THE COURT CAN LOOK AT THE PIECE OF
21 PAPER, THE TWO PIECES OF PAPER. IT DOESN'T APPEAR TO BE ANY
22 KIND OF A DIARY. IT APPEARS TO BE NOTES THAT WERE LEFT.

23 THEY ARE NOT THOUGHTS THAT APPEAR FROM THEIR FACE,
24 TO BE NOTES THAT SOMEBODY IS WRITING TO THEMSELVES. HE SAYS,
25 "JIM," AND THAT IS NOT ME WRITING ABOUT JIM. HE SAYS TO JIM,
26 "TAKE INITIATIVE ON SELLING THE ASSETS. IN PARTICULAR GET
27 THE MOTORCYCLES IN SHAPE. ALSO, SELL THE LINCOLN CONTINENTAL
28 AND THE OLSDMOBILE. SEE ABOUT \$6,000 ..." --

1 THE COURT: WHAT IS THAT? A WATCH?

2 MR. WAPNER: "ON WATCH OR SOME REASONABLE PRICE. SELL
3 EXCESS FURNITURE. STAY ON TOP OF YOUR CASE." THERE ARE THREE
4 EXCLAMATION POINTS. AND THEN IT IS SIGNED, "YOUR HOME BOY,
5 JOSEPH, LIKE ONLY YOU AND I KNOW. HA HA HA."

6 YOU MEAN TO TELL ME THAT THAT IS A NOTE FROM
7 MR. HUNT TO HIMSELF COMMUNICATING HIS PRIVATE THOUGHTS?
8 THAT IS THE MOST LUDICROUS THING I EVER HEARD OF.

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1 MR. CHIER: IT IS AN UNMAILED STATEMENT, YOUR HONOR,
2 UNCOMMUNICATED STATEMENT.

3 THE COURT: I WILL ADMIT THAT.

4 NOW WHEN AM I GOING TO GET THE OTHER ONES YOU ARE
5 SUBMITTING?

6 MR. CHIER: I WILL HAVE THE MESSENGER BRING THEM DOWN
7 TOMORROW MORNING.

8 THE COURT: VERY GOOD.

9 MR. WAPNER: THERE ARE CERTAIN THINGS I HAVE NOT PUT
10 IN WRITING.

11 THE COURT: ARE THERE ANY THAT YOU WANT TO WITHDRAW AT
12 THIS POINT OR DO YOU WANT THE REST OF THEM ADMITTED?

13 MR. WAPNER: THERE ARE CERTAIN EXHIBITS, IF I MIGHT JUST
14 HAVE A MOMENT.

15 THE COURT: WOULD YOU FILE THE OBJECTIONS?

16 MR. CHIER: IF YOU WOULD HOLD IT UNTIL TOMORROW, I WOULD
17 REPLACE THAT WITH A LINED AND NUMBERED COPY, WHICH WOULD
18 PROBABLY BE A LITTLE BETTER.

19 THE COURT: ALL RIGHT, FINE.

20 MR. WAPNER: THERE IS EXHIBIT 38 WHICH ARE THE RECORDS --

21 THE COURT: 38?

22 MR. WAPNER: FROM TOPAZ AUTO LEASING AND WITHIN THAT
23 EXHIBIT THERE ARE EXHIBITS MARKED 38-A, -B AND -C.

24 THE COURT: YES.

25 MR. WAPNER: WHICH ARE THE LEASING DOCUMENTS FOR THE
26 THREE CARS.

27 THE COURT: YES.

28 MR. WAPNER: I WISH TO HAVE THOSE RECEIVED.

1 THE BALANCE OF THE EXHIBITS ARE APPARENTLY --
2 THE COURT: WHAT DO YOU MEAN, YOU WISH TO HAVE THOSE
3 PARTICULARLY RECEIVED? I DON'T UNDERSTAND YOU.

4 YOU WANT ALL OF YOUR EXHIBITS RECEIVED, DON'T YOU?

5 MR. WAPNER: I AM SORRY. WHAT I AM -- I WANT ALL OF
6 THE EXHIBITS RECEIVED THAT HAVE BEEN MARKED, WITH CERTAIN
7 EXCEPTIONS WHICH I AM GIVING YOU THE EXCEPTIONS NOW.

8 THE COURT: AND THAT IS 38?

9 MR. WAPNER: I WANT 38-A, -B AND -C RECEIVED BUT THE
10 BALANCE OF 38 ARE STATEMENTS FROM THE LEASING COMPANY ABOUT
11 MONTHLY BILLINGS THAT ARE APPARENTLY COMPUTER GENERATED AND
12 WE HAD TESTIMONY ABOUT THEM. FRANKLY, THEY DON'T MEAN ANYTHING
13 TO ME WHEN I LOOKED AT THEM AND I DON'T THINK THEY ARE OF ANY
14 PROBATIVE VALUE TO THE JURY.

15 THE COURT: THE ONLY THING WE HAVE IS -A, -B AND -C
16 WHICH HAS BEEN OFFERED INTO EVIDENCE.

17 MR. CHIER: WE OURSELVES, MOVED THOSE INTO EVIDENCE,
18 I BELIEVE.

19 THE COURT: ARE THOSE DEFENSE EXHIBITS?

20 MR. WAPNER: NO. THOSE ARE THE PEOPLE'S EXHIBITS.

21 THE ONLY THING I AM TALKING TO YOU ABOUT IS THE
22 BALANCE OF 38, THAT I DON'T THINK SHOULD GO IN.

23 THE COURT: WELL, TELL ME WHICH IS THE BALANCE OF 38?

24 MR. WAPNER: IT IS THE INSIDE OF THE ENVELOPE. IT IS
25 LIKE MONTHLY STATEMENTS.

26 THE CLERK: I TOOK THEM OUT. THEY ARE MARKED ON THE
27 BACK.

28 MR. CHIER: WE WOULD LIKE ALL OF 38 RECEIVED.

1 THE CLERK: THIS IS 38-A, -B AND -C, THIS IS THE BALANCE,
2 YOUR HONOR.

3 MR. WAPNER: IF THE DEFENSE WANTS THE BALANCE IN, IT
4 IS VERY HARD TO READ THEM OR CORRELATE THEM TO ANY VEHICLE
5 BUT I DON'T THINK IT MAKES THAT MUCH DIFFERENCE.

6 THE COURT: DO YOU WANT THEM ALL IN?

7 MR. CHIER: YES, YOUR HONOR.

8 THE COURT: ALL RIGHT, I WILL TAKE THE WHOLE BUSINESS
9 IN, ALL OF 38 WILL BE RECEIVED.

10 NOW ARE THERE ANY OTHERS?

11 MR. WAPNER: YES. I HAVE A NOTE FROM THE CLERK THAT
12 SOME OF 68 WAS ALREADY RECEIVED. 68 IN ITS ENTIRETY WERE THE
13 RECORDS FROM THE PLAZA HOTEL.

14 THE COURT: 68?

15 MR. WAPNER: RIGHT.

16 THE COURT: 68-A, -B, -C, -D, -E AND SO ON AND SO FORTH.

17 MR. WAPNER: RIGHT.

18 THE COURT: WHAT IS THIS, MADAM CLERK?

19 THE CLERK: PHOTOCOPIES OF THE CHARGE.

20 THE COURT: YOU WANT 68 IN?

21 MR. WAPNER: I THINK 68-A THROUGH -G HAS ALREADY BEEN
22 RECEIVED.

23 THE COURT: ALL RIGHT.

24 MR. WAPNER: THE ONLY THING I AM --

25 THE COURT: IF THEY HAVEN'T BEEN RECEIVED, THEN THEY
26 WILL BE RECEIVED NOW, ALL RIGHT.

27 MR. WAPNER: THE BALANCE OF 68 CONSISTS OF PHONE CALLS
28 MADE FROM THE PLAZA HOTEL, FROM THE ENTIRE HOTEL.

1 THE COURT: OH, YES.

2 MR. WAPNER: AND THERE HASN'T BEEN ANY FOUNDATION FOR
3 THAT.

4 THE COURT: WHAT DO YOU NEED IT IN THERE FOR?

5 MR. CHIER: WE NEED IT THERE TO BE ABLE TO POINT OUT
6 CERTAIN PHONE CALLS MADE FROM THE HOTEL ON CERTAIN DATES,
7 YOUR HONOR. IT WOULD SHOW THAT MR. PITTMAN TELEPHONED HIS
8 WIFE FROM HIS HOTEL ROOM SPECIFICALLY AND OTHER PEOPLE, WHICH
9 ERODES THE THEORY OF THE PEOPLE THAT HE WAS THERE FOR SOME
10 PURPOSE OF IMPERSONATING MR. LEVIN.

11 THE COURT: HOW DOES THAT ERODE THAT?

12 MR. CHIER: IT ERODES IT BECAUSE HE IS NOT --

13 THE COURT: YOU MEAN THE CALLS THAT ARE RECORDED SO IT
14 SHOWS HE CALLED HIS WIFE, YOU MEAN?

15 MR. CHIER: HE WAS ACTING -- HE WAS CALLING PEOPLE THAT
16 ARE CONNECTED WITH HIS OWN PERSONAL LIFE SITUATION AND NOT --

17 THE COURT: WHAT HAS THAT GOT TO DO WITH BEING THE
18 IMPOSTOR?

19 MR. CHIER: WELL, IT IS THE THEORY OF THE PEOPLE THAT
20 HE WAS IMPERSONATING MR. LEVIN.

21 THE COURT: YES, THERE IS NO QUESTION ABOUT THE FACT
22 THAT HE WAS.

23 MR. CHIER: WELL, YOUR HONOR, IT IS IMPORTANT TO US
24 TO HAVE THOSE TELEPHONE CALLS IN EVIDENCE SO WE CAN ARGUE THAT.

25 THE COURT: WHERE ARE THE PHONE CALLS?

26 MR. CHIER: THE PHONE CALLS THAT WOULD BE ON THE LIST
27 WOULD BE THE NUMBER OF MR. PITTMAN'S WIFE AND WE WILL ISOLATE
28 THOSE NUMBERS FOR THE JURY AND GIVE FOUNDATION TESTIMONY

1 CONCERNING THEM.

2 MR. WAPNER: I HAVE NO OBJECTION.

3 THE COURT: ALL RIGHT, WE WILL LEAVE IT IN, OKAY.

4 ANYTHING ELSE?

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1 MR. WAPNER: 83 ARE THE RECORDS THAT WERE TAKEN FROM
2 MR. LEVIN'S HOUSE OF THE TRADING AT THE CLAYTON BROKERAGE
3 COMPANY, INCLUDING IN 83, RECORDS THAT HE HAD ATTACHED FROM
4 OTHER PLACES, SPECIFICALLY, A BROKERAGE HOUSE CALLED RAUCHNER,
5 R-A-U-C-H-N-E-R --

6 THE COURT: THIS?

7 MR. WAPNER: YES, PIERCE, P-I-E-R-C-E, AND REFSNAS,
8 R-E-F-S-N-A-S.

9 AND WE HAVE HAD TESTIMONY FROM MR. FRIEDMAN THAT
10 THAT LIKewise, WAS -- HE DIDN'T USE THE WORD "PHONY." BUT
11 FOR THE PURPOSES OF THIS ARGUMENT, I WILL USE THE WORD "PHONY"
12 ACCOUNT.

13 UNLESS THERE IS SOME AGREEMENT BETWEEN COUNSEL
14 THAT THOSE RECORDS LIKewise, ARE RECORDS OF A PHONY ACCOUNT,
15 I WOULD ASK THAT ONLY THAT PART OF 83 THAT CONSISTS OF THE
16 RECORDS OF THE CLAYTON BROKERAGE BE RECEIVED.

17 MR. CHIER: THOSE RECORDS ARE EXTREMELY IMPORTANT TO
18 THE DEFENSE, YOUR HONOR. THE ONLY EVIDENCE CONCERNING WHAT
19 THEY ARE IS THE OBJECTIONABLE, HEARSAY TESTIMONY BY
20 MR. FRIEDMAN. ON THEIR FACE, THEY APPEAR TO BE VALID
21 RECORDS OF ACCOUNT WHICH ENABLED MR. LEVIN TO ESTABLISH OTHER
22 ACCOUNTS.

23 AND THESE RECORDS KEY IN, IN A NUMBER OF PLACES,
24 WITH THE DEFENSE THEORY OF MR. LEVIN'S DEPARTURE.

25 SO, TO SEPARATE THOSE FROM THE CLAYTON, WOULD BE
26 TO PRESENT ONLY A HALF TRUTH TO THE JURY.

27 MR. WAPNER: WELL, COUNSEL I AM SURE, KNOWS THAT THAT
28 ACCOUNT LIKewise, WAS NOT A REAL ACCOUNT. UNLESS WE CAN REACH

1 SOME STIPULATION, THERE HAS NOT BEEN ANY FOUNDATION AT ALL
2 FOR THE BALANCE OF THOSE RECORDS. THERE HAS NOT BEEN ANY
3 TESTIMONY ABOUT THEM. THERE HAS NOT BEEN ANY FOUNDATION FOR
4 THEM. THEY ARE NOT BUSINESS RECORDS.

5 THE COURT: WELL, WHY IS ALL OF IT THEN BEING OFFERED
6 INTO EVIDENCE?

7 MR. WAPNER: IT WAS ALL MARKED TOGETHER. IT WAS FOUND
8 TOGETHER IN MR. LEVIN'S HOUSE.

9 BUT ONLY THAT PART OF IT THAT IS REALLY RELEVANT
10 TO THIS CASE -- THAT IS ONLY THE ONES FROM THE CLAYTON
11 BROKERAGE COMPANY.

12 THE COURT: WELL, YOU CAN ARGUE THAT TO THE JURY. I
13 WILL LET IT GO IN.

14 MR. CHIER: THANK YOU.

15 THE COURT: ALL RIGHT.

16 MR. WAPNER: MAY I HAVE A MOMENT?

17 (PAUSE.)
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1 MR. WAPNER: ANOTHER PEOPLE'S EXHIBIT IS 103. THERE
2 IS AN EXHIBIT MARKED 103-A AND -B. AND THOSE ARE THE ONLY
3 ONES THAT WOULD BE OFFERED AND NOT THE BALANCE OF 103.

4 MR. CHIER: SORRY?

5 THE COURT: YOU OFFERED -A AND -B, DIDN'T YOU?

6 MR. WAPNER: YES.

7 MR. CHIER: YOU HAVE ME AT A DISADVANTAGE, SIR.

8 THE COURT: GO AHEAD.

9 MR. WAPNER: 103-A, I BELIEVE IS A LETTER FROM -- ONE
10 IS A LETTER FROM MR. HUNT, I THINK, TO MR. LEVIN. ONE IS A
11 COPY OF A LETTER FROM SECURITY BANK TO MR. LEVIN.

12 THE COURT: ONE IS A LETTER FROM HUNT TO LEVIN?

13 MR. WAPNER: AND ONE IS A LETTER FROM SECURITY BANK TO
14 LEVIN.

15 MR. CHIER: ARE YOU WITHDRAWING THOSE?

16 MR. WAPNER: NO. I AM ONLY OFFERING 103-A AND -B, NOT
17 THE BALANCE.

18 THE COURT: ALL I HAVE IS 103-A AND -B.

19 THE CLERK: THIS IS THE REMAINDER.

20 MR. CHIER: WHAT IS THE REMAINDER?

21 MR. WAPNER: THERE ARE SOME CHECKS FROM MR. HUNT TO
22 MR. LEVIN AND VICE VERSA, REGARDING LOANS.

23 MR. CHIER: WELL, IF EVER THERE WAS A RELATIONSHIP THAT
24 NEEDED TO BE FLUSHED OUT, THIS IS THE RELATIONSHIP. YOUR HONOR,
25 NOT TO ACCEPT THAT WHEN THEY REFLECT ON THE RELATIONSHIP
26 BETWEEN THE PEOPLE -- THEY SHOULDN'T BE SEPARATED FROM THE
27 OTHER EXHIBITS.

28 MR. WAPNER: WELL, THERE HAS NEVER BEEN ANY TESTIMONY

1 ABOUT THEM WHATSOEVER. IF THE DEFENDANT WANTS TO TESTIFY
2 ABOUT THOSE THINGS AND MARK THOSE AS HIS EXHIBITS, THAT IS
3 THEIR BUSINESS. BUT THEY WERE NEVER IDENTIFIED IN THIS
4 HEARING.

5 THE COURT: YOU NEVER OFFERED THEM?

6 MR. WAPNER: I NEVER OFFERED THEM. THERE HAS NEVER BEEN
7 ANY TESTIMONY ABOUT THEM.

8 WELL TO SAY NOW -- WELL, IT SOUNDS GOOD, LET'S
9 PUT THEM IN. THAT BEGS THE QUESTION. THERE IS NO FOUNDATION.

10 THE COURT: THERE IS NO PREJUDICE TO YOUR OFFERING THOSE.

11 MR. CHIER: WELL, THE REMAINDER IS -C THROUGH -F?

12 THE COURT: NO. THEY HAVE NEVER BEEN MARKED, EVEN.
13 THEY HAVE NEVER BEEN IDENTIFIED OR MARKED FOR IDENTIFICATION.

14 MR. CHIER: COULD WE JUST MARK THEM AND MOVE THEM INTO
15 EVIDENCE RIGHT NOW?

16 THE COURT: YOU HAVE A RIGHT TO DO THAT WHEN YOU PUT
17 YOUR OWN CASE ON.

18 MR. CHIER: OKAY. THIS IS UNMARKED 103?

19 THE COURT: ALL RIGHT. 103-A AND -B WILL BE RECEIVED.

20 THE CLERK: SORRY, YOUR HONOR?

21 THE COURT: JUST 103-A AND -B WILL BE RECEIVED.

22 MR. WAPNER: AND 202 OR THE HAND PREPARED LISTS BY
23 CINDY HEBERER FROM THE BANK OF AMERICA. THERE ARE ORIGINALS
24 AND THEN THERE ARE COPIES. AND I MOVE TO HAVE THE COPIES
25 WITHDRAWN AND ONLY HAVE THE ORIGINALS RECEIVED INTO EVIDENCE.

26 THE COURT: ON WHAT?

27 MR. WAPNER: 202.

28 THE COURT: FOUR PAGES?

1 MR. WAPNER: RIGHT.

2 THE COURT: THESE ARE CHECKS?

3 MR. WAPNER: RIGHT. BUT I -- REALLY I WILL ONLY OFFER
4 TWO PAGES BECAUSE THE OTHER TWO ARE XEROXES OF THE ORIGINALS.

5 THE COURT: ALL RIGHT. THEN, THE ORIGINALS WILL BE
6 RECEIVED. THE XEROXES WILL NOT BE.

7 MR. WAPNER: THANK YOU.

8 THE COURT: ALL RIGHT.

9 MR. WAPNER: THE NEXT EXHIBIT IS 226. THERE WERE SOME
10 DOCUMENTS TAKEN FROM THE WILSHIRE MANNING. THE ONLY THING
11 THAT I HAVE TO SAY ABOUT THAT, IS THAT THERE IS SOMETHING IN
12 THERE CALLED THE BBC PHONE BOOK THAT CONTAINS SEVERAL NAMES
13 THAT I DON'T THINK IS PARTICULARLY RELEVANT.

14 THE COURT: 226 IS THE HANDWRITING EXEMPLARS. IS THAT
15 WHAT YOU HAVE?

16 MR. WAPNER: I JUST ASKED THE COURT TO TAKE A LOOK AT
17 THAT. IF IT FEELS THEY ARE ALL RELEVANT, IT CAN BE RECEIVED.
18 IF NOT, THEN THEY SHOULDN'T ALL BE RECEIVED.

19 THE COURT: THESE ARE HANDWRITING SAMPLES. WEREN'T THEY
20 RECEIVED FOR THAT PURPOSE?

21 MR. WAPNER: THEY WERE RECEIVED PARTLY FOR THAT PURPOSE.
22 ONE OF THEM IS A LETTER, A HANDWRITTEN LETTER BY MR. HUNT TO
23 THE CHICAGO MERCANTILE EXCHANGE, GIVING HIS OBJECTIONS TO THEIR
24 DISCIPLINARY ACTION. AND OTHER ONES ARE SOMETHING CALLED THE
25 BBC PHONE BOOK.

26 THE COURT: WHICH ONE DID YOU WANT TO OFFER NOW?

27 MR. WAPNER: WELL, AS I LOOKED AT IT --

28 THE COURT: IF THEY ARE OFFERED FOR PURPOSES OF

1 HANDWRITING EXEMPLARS, IT HAS BEEN CONCEDED THAT IF YOU ARE
2 REFERRING TO -- 58, WASN'T IT? THE SEVEN PAGES, HE HAS
3 CONCEDED THAT THEY ARE ALL IN HIS HANDWRITING.
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1 MR. WAPNER: I HAVE NO OBJECTION IF THAT EXHIBIT IS
2 NOT RECEIVED AT ALL. IT DOESN'T BOTHER ME.

3 MR. CHIER: I WOULD LIKE TO DISCUSS THAT WITH MR. HUNT.

4 YOUR HONOR HAS LET IN A LOT OF TESTIMONY
5 CONCERNING HIS EXCLUSION FROM THE MERCHANTILE EXCHANGE AND
6 THIS --

7 THE COURT: YOU WANT THIS SELF-SERVING DECLARATION
8 PUT IN, IS THAT IT?

9 MR. CHIER: YES.

10 THE COURT: IT WAS ONLY OFFERED FOR THE PURPOSE OF
11 THE HANDWRITING. IF YOU WANT TO OFFER IT, YOU OFFER IT YOUR-
12 SELF.

13 MR. CHIER: THAT IS WHAT I WOULD LIKE TO DO.

14 THE COURT: I WILL PASS UPON ITS ADMISSIBILITY
15 AT THAT TIME.

16 THAT WILL NOT BE RECEIVED. YOU WITHDRAW THAT,
17 DO YOU?

18 MR. WAPNER: YES.

19 THE COURT: ALL RIGHT, THAT IS NUMBER 206.

20 MR. WAPNER: 226, I THINK.

21 THE COURT: ALL RIGHT, 226 IS WITHDRAWN. I WILL MARK
22 THAT WITH A "W" AS WITHDRAWN.

23 THE CLERK: YOU DON'T EVEN WANT IT MARKED?

24 THE COURT: NO. IT HAS BEEN MARKED. JUST LEAVE IT
25 THAT WAY. BUT IT HAS BEEN WITHDRAWN FROM EVIDENCE.

26 MR. WAPNER: AND 227 WERE THREE CARDS TAKEN FROM THE
27 DEFENDANT.

28 THE COURT: TWO WHAT?

1 MR. WAPNER: 227.

2 THE COURT: YES, THE DRIVER'S LICENSE, YOU MEAN?

3 MR. WAPNER: IT WAS TOM MAY'S DRIVER'S LICENSE, A
4 MALIBU GRAND PRIX CARD WITH THE DEFENDANT'S NAME ON IT AND
5 AN ILLINOIS IDENTIFICATION CARD WITH THE DEFENDANT'S NAME
6 ON IT.

7 WE ALREADY HAD SOME DISCUSSION ABOUT THE FACT
8 THAT WHETHER HE HAD TOM MAY'S DRIVER'S LICENSE WAS RELEVANT,
9 SO THE COURT MAY NOT WANT TO RECEIVE THAT PORTION OF THE
10 EXHIBIT.

11 LIKewise, I DON'T REALLY CARE ABOUT THE MALIBU
12 IDENTIFICATION CARD.

13 I DO WANT, HOWEVER, THE ILLINOIS IDENTIFICATION
14 CARD WITH THE DEFENDANT'S PICTURE ON IT, RECEIVED IN EVIDENCE.

15 THE COURT: WHAT DO YOU WANT TO DO, WITHDRAW THIS OTHER,
16 IS THAT IT? DO YOU WANT THIS SEPARATED?

17 MR. WAPNER: THE COURT IS REFERRING TO THE FACT THEY
18 ARE ALL IN ONE PLASTIC SLEEVE?

19 THE COURT: YES.

20 MR. WAPNER: IF THEY CAN BE SEPARATED, THAT IS FINE.

21 I UNDERSTAND THERE WAS AN OBJECTION TO MR. MAY'S
22 DRIVER'S LICENSE GOING IN. I HAVE NO PROBLEM IF THAT IS
23 NOT RECEIVED.

24 LIKewise, THE MALIBU GRAND PRIX CARD, I HAVE
25 NO PROBLEM IF THAT IS NOT RECEIVED.

26 THE COURT: ALL YOU WANT IS THE LICENSE OF THE DEFENDANT?

27 MR. WAPNER: THE ILLINOIS IDENTIFICATION CARD OF THE
28 DEFENDANT.

1 THE COURT: HOW DO WE GET THIS OUT?

2 MR. WAPNER: I THINK THE CLERK CAN DO THAT.

3 THE COURT: ALL RIGHT. JUST THIS PART WILL BE MARKED.

4 MR. WAPNER: CAN WE MARK THE ILLINOIS IDENTIFICATION

5 CARD IN THE NAME OF, I THINK IT IS JOSEPH --

6 THE COURT: HUNT.

7 MR. WAPNER: -- HUNT AS 227-A AND HAVE THAT RECEIVED?

8 THE COURT: YES.

9 MR. WAPNER: THANK YOU, YOUR HONOR.

10 THE COURT: YOU MAKE IT A POINT TO TAKE THAT OUT, WILL
11 YOU?

12 THE CLERK: YES, YOUR HONOR.

13 IT IS JUST THIS CARD AND NOT THE DRIVER'S LICENSE?

14 THE COURT: NOT THE REST.

15 THE CLERK: ALL RIGHT.

16 MR. WAPNER: THE OTHER ONE IS 185, WHICH WAS THE MINUTE
17 BOOK OF MICROGENESIS AND THERE WERE SOME DOCUMENTS MARKED
18 185-A AND B.

19 THE COURT: JUST A MINUTE NOW.

20 MR. WAPNER: AND THOSE, I AM MOVING TO HAVE A AND B
21 RECEIVED.

22 I DON'T KNOW WHETHER IT IS RELEVANT TO HAVE THE
23 ENTIRE BOOK OF MINUTES OF THE COMPANY RECEIVED.

24 THE COURT: NOTEBOOK OF MICROGENESIS, THAT IS 185.

25 MR. WAPNER: RIGHT.

26 THE COURT: AND YOU JUST WANT A AND B?

27 MR. WAPNER: RIGHT.

28 THE COURT: LET ME TAKE A LOOK AT THAT.

1 185-A IS THE MINUTES OF THE BOARD OF DIRECTORS
2 MEETING OF MAY 29, '84 AND THAT WILL BE RECEIVED.

3 AND 185-B IS ALSO THE AGENDA FOR THE SPECIAL
4 MEETING OF THE BOARD OF DIRECTIONS OF MICROGENESIS, YOU WANT
5 THAT RECEIVED?

6 MR. WAPNER: YES.

7 THE COURT: THAT WILL BE RECEIVED.

8 THEN THERE IS ANOTHER ONE, 185-C, MINUTES OF
9 THE MEETING OF THE BOARD OF DIRECTORS OF MICROGENESIS, DO
10 YOU WANT THAT RECEIVED?

11 MR. WAPNER: WHAT IS THE DATE ON THAT, YOUR HONOR?

12 THE COURT: THAT WAS A MEETING HELD ON MAY 2ND, 1984.

13 MR. WAPNER: THAT IS FINE.

14 THE COURT: SIGNED BY EVAN DICKER.

15 MR. WAPNER: IT IS JUST THE BALANCE OF THE BOOK, TO
16 PUT IN THAT WHOLE BOOK, THE ENTIRE BOOK THAT WAS MARKED AS
17 185 --

18 THE COURT: WE ARE GETTING THAT IN A MINUTE.

19 MR. WAPNER: I AM SORRY.

20 THE COURT: THE CLERK IS GETTING THAT.

21 WHAT IS THE RELEVANCY OF THIS?

22 MR. WAPNER: THAT IS THE WHOLE POINT, THAT THE DOCUMENTS
23 THAT ARE RELEVANT ARE MARKED AND THE WHOLE BOOK WAS MARKED
24 AS 185, BUT IT CONTAINS ALL OF THE MINUTES OF ALL OF THE
25 MEETINGS.

26 THE COURT: DO YOU WANT TO WITHDRAW THAT AND NOT HAVE
27 IT MARKED?

28 MR. WAPNER: I AM JUST NOT OFFERING IT IN EVIDENCE,

1 THAT PORTION OF IT.

2 THE COURT: IF YOU DESIRE TO DO SO, YOU CAN DO THAT.
3 THAT WILL BE WITHDRAWN, 185.

4 MR. WAPNER: AND ALL OF THE OTHER EXHIBITS THAT HAVE
5 BEEN PREVIOUSLY MARKED, I AM MOVING INTO EVIDENCE AT THIS
6 TIME.

7 THE COURT: THEY WILL BE RECEIVED SUBJECT TO THE
8 OBJECTIONS THAT ARE GOING TO BE FILED TOMORROW MORNING.

9 MR. WAPNER: ALL RIGHT.

10 THE COURT: YOU WILL SUBMIT ON THAT.

11 YOU WANT TO BE HERE TOMORROW SO AS TO GO OVER
12 THOSE -- GO OVER THOSE OBJECTIONS TO SEE WHAT YOU HAVE
13 TO SAY?

14 MR. WAPNER: NO. I WILL JUST --

15 I HAVE CERTAIN OBJECTIONS TO CERTAIN OF THE DEFENSE
16 EXHIBITS.

17 THE COURT: I AM TALKING ABOUT YOUR EXHIBITS, THE
18 PEOPLE'S EXHIBITS, YOU WILL BE HERE TOMORROW?

19 MR. WAPNER: YES, I CAN BE HERE.

20 THE COURT: YOU WANT TO ARGUE?

21 MR. WAPNER: COUNSEL APPARENTLY DOESN'T WANT TO MAKE
22 AN APPEARANCE TOMORROW.

23 MR. CHIER: I CAN'T.

24 THE COURT: THEN YOU MAKE THE APPEARANCE. I WILL TAKE
25 HIS UNDER SUBMISSION. IF YOU HAVE ANY OBJECTIONS TO HIS
26 OBJECTIONS, WE WILL DISCUSS IT TOMORROW.

27 MR. WAPNER: WELL, I WILL HAVE TO FILE THAT IN WRITING.
28 I WON'T DISCUSS IT WITH THE COURT WITHOUT COUNSEL BEING HERE.

1 THE COURT: WELL, HE IS WAIVING HIS APPEARANCE.

2 MR. CHIER: I AM JUST AGREEING TO SUBMIT THEM ON THE WRITTEN
3 OBJECTIONS, YOUR HONOR.

4 THE COURT: IF COUNSEL WANTS AN OPPORTUNITY, DO YOU
5 WANT TO REPLY TO THEM FORMALLY? HOW DO YOU WANT TO HANDLE
6 IT? HE IS WAIVING HIS APPEARANCE ON THIS.

7 MR. WAPNER: I GUESS I WILL HAVE TO FILE SOME KIND OF
8 A WRITTEN RESPONSE.

9 THE COURT: IF YOU WANT TO DO IT THAT WAY, FINE.

10 VERY WELL, NOW WE WILL GO TO THE DEFENDANT'S
11 EXHIBITS.

12 WHAT IS THIS?

13 THE CLERK: THAT IS A LIST OF THE DEFENDANTS EXHIBITS,
14 YOUR HONOR.

15 THE COURT: TO WHICH OF THESE DO YOU HAVE ANY OBJECTIONS?

16 MR. WAPNER: THE FIRST ONE THAT I HAVE AN OBJECTION
17 TO IS F, YOUR HONOR, WHICH IS -- ARE THEY MARKED HERE?

18 THE CLERK: YES.

19 THE COURT: ALL RIGHT, FIVE PAGES OF COMPUTER PRINTOUT.
20 LET ME SEE THAT, PLEASE?

21 MR. WAPNER: IT IS A SUMMARY THAT JOE HUNT PREPARED
22 OF THE AMERICAN EXPRESS BILLS THAT HAVE BEEN MARKED IN
23 EVIDENCE IN THEIR ENTIRETY.

24 THERE HAS BEEN ABSOLUTELY NO FOUNDATION FOR THAT
25 SUMMARY, NOBODY TO TESTIFY THAT IT IS ACCURATE OR ANYTHING
26 LIKE THAT, AND I HAVE A STRENUOUS OBJECTION TO IT.

27 MR. CHIER: THE GENTLEMAN FROM AMERICAN EXPRESS
28 CORRELATED THAT DOCUMENT TO THE ACTUAL AMERICAN EXPRESS BILLS

1 AND TESTIFIED, THEREBY GIVING THE DOCUMENT THE FOUNDATION
2 AUTHENTICITY THAT IT OTHERWISE LACKED, YOUR HONOR.

3 MR. WAPNER: WELL, I AM NOT SURE THAT HE DID CORRELATE
4 IN ITS ENTIRETY THOSE THINGS TO THE AMERICAN EXPRESS BILLS.

5 THERE WERE CERTAIN THINGS THAT HE WAS ASKED TO
6 LOOK AT AND SEE IF THEY WERE ON THERE BUT NEVER DID REPRESENT
7 THAT THAT WAS IN ITS ENTIRETY AN ACCURATE SUMMARY OF THE
8 BILLS.

9 THE JURY HAS EACH AND EVERY BILL AND THEY WILL
10 BE ABLE TO LOOK AT THAT AND IF THE DEFENDANT LATER WANTS
11 TO TAKE THE STAND AND TESTIFY ABOUT HOW THAT DOCUMENT WAS
12 PREPARED AND LAY SOME FOUNDATION FOR IT, THEN MAYBE IT CAN
13 BE RECEIVED AT THAT TIME. BUT THERE IS NOTHING TO VOUCH
14 FOR THE AUTHENTICITY OF THAT DOCUMENT OR THE MODE OF
15 PREPARATION OR THE RELIABILITY OF IT. AND I THINK THAT THE
16 BILLS SPEAK FOR THEMSELVES.

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1 MR. CHIER: YOUR HONOR, THIS IS NOT LIKE AN ORIGINAL
2 DOCUMENT. THIS IS A QUESTION OF SORTING. AND THE BILLS
3 WERE JUST SORTED AND SEGREGATED INTO THEIR PROPER CATEGORIES.
4 THERE IS NO ATTEMPT TO BURY OTHERWISE INADMISSIBLE EVIDENCE
5 IN THIS OR TO JUST -- JUST AS A MINISTERIAL ACT OF SORTING
6 OUT THE BILLS. IT IS LISTING THEM IN GENERAL CATEGORIES.
7 AND IT WAS USED BY THE WITNESS FROM AMERICAN EXPRESS TO
8 DESCRIBE THE FLURRY OF ACTIVITY ON MR. LEVIN'S ACCOUNT IN
9 THE LAST THREE MONTHS TO --

10 THE COURT: WELL, WHAT IS THE SIGNIFICANCE OF THE
11 NOTATION AT THE BOTTOM ON A NUMBER OF THESE WHICH SAYS,
12 "CLIENT/ATTORNEY PRIVILEGE, BARENS, CHIER"? WHAT DOES THAT
13 MEAN?

14 MR. WAPNER: ALL I CAN TELL YOU IS THAT THOSE DOCUMENTS
15 WERE PREPARED BY JOE HUNT.

16 THE COURT: THOSE DOCUMENTS?

17 MR. WAPNER: THOSE THREE PAGES OF COMPUTER GENERATED
18 DOCUMENTS WERE PREPARED BY JOE HUNT. THAT IS WHY I AM SAYING
19 I DON'T KNOW WHAT THE FOUNDATION IS. I DON'T KNOW WHAT THE
20 RELIABILITY IS.

21 THE COURT: ALL RIGHT. THEY WON'T BE RECEIVED.

22 MR. WAPNER: I THINK THAT THEY CAN BE --

23 THE COURT: HE CAN TESTIFY WITH RESPECT TO THEM. THIS
24 IS WITHOUT PREJUDICE TO HIS TESTIFYING ON THAT.

25 SO THIS DEFENDANT'S EXHIBIT WILL NOT BE RECEIVED
26 FOR THE TIME BEING.

27 MR. WAPNER: THERE ARE TWO DEFENSE EXHIBITS THAT ARE
28 MARKED WITH THE SAME NUMBER, DEFENDANT'S N AND DEFENDANT'S KK.

1 THEY ARE THE SAME EXHIBIT.

2 THE COURT: N?

3 MR. WAPNER: N AS IN NANCY AND KK ARE THE SAME EXHIBIT.
4 THEY ARE JUST DIFFERENT COLORED PIECES OF PAPER. THEY MAY
5 HAVE BEEN SIGNED AT DIFFERENT TIMES. BUT IT IS THE SAME.

6 THE COURT: WHAT IS IT?

7 MR. WAPNER: THIS IS THE LETTER FROM JOE HUNT MARKED
8 FOR IDENTIFICATION. IT IS KK.

9 MR. CHIER: WHY DON'T WE JUST PUT THEM BOTH IN AS
10 EXHIBIT N?

11 MR. WAPNER: MAY I SEE THEM FOR JUST ONE MOMENT?

12 THE COURT: ALL RIGHT.

13 MR. WAPNER: I GUESS WE CAN COMBINE THEM. I DON'T
14 KNOW WHY WE HAVE TO HAVE DUPLICATES.

15 THE COURT: IS THERE SOME SIGNIFICANCE OF HAVING A
16 COPY OF IT? WHICH IS THE ORIGINAL? N?

17 MR. WAPNER: IT IS HARD TO TELL. BUT IT LOOKS LIKE
18 IT IS THE ORIGINAL.

19 THE COURT: THAT'S CORRECT. ANY OBJECTION? DO YOU
20 WANT TO HAVE BOTH OF THEM? THERE IS NO REASON FOR IT.

21 MR. CHIER: THEY CAME IN AT DIFFERENT TIMES.

22 THE COURT: WHAT?

23 MR. CHIER: THEY CAME IN --

24 THE COURT: LOOK AT THEM.

25 MR. CHIER: IT SEEMS THAT THERE WOULD BE NO HARM.

26 MR. WAPNER: YOUR HONOR, AS I THINK ABOUT IT, MAYBE
27 SINCE THERE WAS TESTIMONY FROM WITNESSES AS TO DIFFERENT
28 ONES --

1 THE COURT: ALL RIGHT. WE WILL HAVE BOTH OF THEM.
2 THEY WILL BE RECEIVED.

3 MR. WAPNER: THERE IS AN OBJECTION TO DEFENDANT'S Y,
4 WHICH IS A LETTER FROM MR. HUNT. IT IS A COPY OF A LETTER
5 APPARENTLY FROM MR. HUNT TO MR. LEVIN, DATED MAY 1ST, WHICH
6 IS ALSO WITHOUT FOUNDATION.

7 THE SECRETARY WAS ASKED ABOUT THAT LETTER AND
8 DID SHE RECALL IT. I THINK THAT SHE SAID SHE DID NOT
9 SPECIFICALLY RECALL THAT LETTER. AGAIN, IF I COULD SEE THAT
10 JUST BRIEFLY --

11 MR. CHIER: IS IT THE MAY 1ST LETTER?

12 THE COURT: YES.

13 MR. CHIER: THERE HAS BEEN PLENTY OF TESTIMONY CONCERNING
14 THAT LETTER.

15 MR. WAPNER: FIRST OF ALL, THIS IS A COPY.

16 THE COURT: I THINK THAT IT WAS HANDED BY MR. BARENS
17 TO ONE OF THE WITNESSES.

18 MR. WAPNER: IT WAS. IT WAS HANDED BY MR. BARENS TO
19 LORIE LEIS AND SHE SAID THAT SHE DIDN'T SPECIFICALLY RECALL
20 THIS LETTER.

21 SECOND OF ALL, IT IS A COPY. AND THERE IS AN
22 OBJECTION, BASED ON THE BEST EVIDENCE RULE.

23 THIRD OF ALL, THERE IS NO FOUNDATION THAT THAT
24 LETTER WAS EVER SENT OR DELIVERED OR WHATEVER HAPPENED TO
25 THE ORIGINAL OF THAT LETTER. UNLESS THE ORIGINAL --

26 THE COURT: ALL RIGHT. I WILL PERMIT THE DEFENDANT
27 TO TESTIFY AS TO THAT. IF IT IS ADMISSIBLE, I WILL RECEIVE
28 IT AT THAT TIME. IN THE MEANTIME, I WILL EXCLUDE IT AT THIS
29 TIME.

1 MR. WAPNER: LIKewise WITH DEFENDANT'S AA AND BB.
2 THERE HAS NOT BEEN ANY FOUNDATION YET AS TO WHAT THOSE ARE.
3 THOSE WERE RECEIPTS FROM THE MOTORCYCLE PLACE IN CULVER CITY
4 ABOUT THE PURCHASE OF THE MOTORCYCLES.

5 THEY WERE USED TO SHOW TO STEVE TAGLIANETTI AND
6 SAY, WELL, IF THESE HAVE A CERTAIN DATE ON THEM, ISN'T THAT
7 THE DATE THAT THE MOTORCYCLES WERE PURCHASED?

8 AND THOSE DOCUMENTS ARE PURPORTEDLY BUSINESS
9 RECORDS THAT HAVE NOT BEEN AUTHENTICATED. THERE HAS NOT
10 BEEN ANY TESTIMONY ABOUT THEM AND UNTIL AND UNLESS THEY ARE
11 AUTHENTICATED, THERE IS AN OBJECTION.

12 LIKewise, THEY ARE COPIES. THOSE ARE NOT THE
13 ORIGINAL DOCUMENTS.

14 MR. CHIER: YOUR HONOR, THROUGHOUT THE TRIAL --

15 THE COURT: WHO DID HE SHOW THEM TO?

16 MR. WAPNER: THEY WERE SHOWN TO STEVE TAGLIANETTI
17 BECAUSE HE TESTIFIED ABOUT THE DEFENDANT PURCHASING THESE
18 TEN MOTORCYCLES AND WHAT DATE HE THOUGHT IT WAS.

19 THOSE DOCUMENTS WERE SHOWN TO HIM FOR THE PURPOSE
20 OF SUGGESTING THAT THE DATE WAS AT SOME POINT LATER THAN
21 WHAT HE SAID IT WAS, WHICH MIGHT HAVE BEEN.

22 BUT THE FACT IS, THAT THOSE DOCUMENTS HAVE NOT
23 BEEN AUTHENTICATED. HE CAN'T SAY YES, NOW I SAW THOSE AND
24 NOW I KNOW FOR SURE THAT IT WAS ON THAT DATE.

25 AND THERE IS NO FOUNDATION FOR THOSE DOCUMENTS
26 AS BUSINESS RECORDS OR OTHERWISE. AND ALSO, THEY ARE COPIES
27 OF THE ORIGINAL DOCUMENTS.

28 AND SO, UNTIL WE HAVE SOME TESTIMONY BY SOMEBODY

1 FROM THE HONDA MOTORCYCLE PLACE OR MR. HUNT, I DON'T THINK
2 THERE IS ANY FOUNDATION FOR THE ADMISSION OF THOSE RECORDS.

3 THE COURT: ALL RIGHT. THIS WILL BE WITHOUT PREJUDICE
4 TO HAVING IT AUTHENTICATED. MR. HUNT CAN TESTIFY WITH RESPECT
5 TO IT WHEN IT IS OFFERED BY THE DEFENDANT.

6 MR. WAPNER: LASTLY, YOUR HONOR, THERE IS A DOCUMENT
7 THAT IS DEFENDANT'S C. IT IS THE COMPLAINT FILED IN THE
8 PROGRESSIVE SAVINGS AND LOAN CASE AGAINST MR. HUNT AND MR.
9 LEVIN AND SEVERAL OTHER PEOPLE. THAT IS A COPY THAT THE
10 DEFENSE, OBVIOUSLY, USED FOR SOME PURPOSE BEFORE THEY CAME
11 TO TRIAL.

12 I HAVE NO OBJECTION TO THE RECEIPT OF THE DOCUMENT.
13 HOWEVER, AS THE COURT GOES THROUGH THAT DOCUMENT, YOU WILL
14 SEE THAT THERE ARE VARIOUS CHECK MARKS AND THE NAME OF LEVIN
15 IS CIRCLED AND EMPHASIZED AND I THINK THAT THOSE SHOULD ALL --
16 EITHER A DIFFERENT COPY SHOULD BE SUBSTITUTED -- WELL,
17 ACTUALLY, I THINK A DIFFERENT COPY, A CLEAN COPY SHOULD BE
18 SUBSTITUTED FOR THE ONE THAT HAS BEEN PRODUCED BECAUSE THERE
19 ARE CIRCLES AND CHECK MARKS BY MR. LEVIN. AND NO MATTER
20 HOW HARD THE COURT TRIES TO ERASE THOSE THINGS, IT WILL STILL
21 BE CLEAR. THEREFORE, IT APPEARS THAT THE THINGS ARE
22 EMPHASIZED IN THAT COPY OF THE DOCUMENT THAT ARE NOT EMPHASIZED
23 IN THE ORIGINAL. THERE IS AN OBJECTION TO THAT.

24 MR. CHIER: TO THE EXTENT THAT THESE ARE MARKINGS BY
25 MR. LEVIN, IT IS IMPORTANT TO HAVE THE COPY WITH HIS
26 RUMINATIONS IN EVIDENCE SO THAT WE CAN ARGUE PROPERLY THAT
27 THIS IS ONE OF THE --

28 THE COURT: WHAT IS THIS DOCUMENT? WHAT IS THE RELEVANCY

1 OF THIS ENTIRE DOCUMENT, EXCEPT THAT THERE WAS A LAWSUIT AGAINST
2 LEVIN AND THE MAYS AND JOE HUNT?

3 MR. WAPNER: WELL, THAT IS THE ONLY RELEVANCY OF IT
4 BUT --

5 THE COURT: WHY DON'T WE JUST HAVE THE FACE SHEET WITH
6 THE NAME OF THE LAWSUIT AND THE NAME OF THE PARTIES AND THE
7 NATURE OF THE LAWSUIT, FIRST AMENDED COMPLAINT FOR DAMAGES
8 AND FAILURE TO PAY CHECK, BREACH OF CONTRACT, NEGLIGENCE.

9 THIS DESCRIBES EVERYTHING IN CONNECTION WITH
10 THE LAWSUIT. WHAT DO WE NEED THE BALANCE OF IT FOR?

11 MR. CHIER: WE NEED IT BECAUSE THE MARKINGS BY MR.
12 LEVIN REFLECT TO STATE OF MIND --

13 MR. WAPNER: WAIT A MINUTE. THOSE AREN'T MARKINGS
14 BY MR. LEVIN.

15 THE COURT: HE SAYS THEY WERE MARKED BY MR. LEVIN.

16 MR. WAPNER: THIS IS A DEFENSE EXHIBIT. THEY CAN
17 PROBABLY PUT MR. HUNT ON.

18 MR. CHIER: I HAVE NO OBJECTION TO A CLEAN COPY.

19 THE COURT: WHY DO WE NEED A CLEAN COPY? ALL WE NEED
20 IS JUST THE FIRST PAGE, TO SHOW THE LAWSUIT.

21 MR. CHIER: THE FIRST PAGE IS TOO PROVOCATIVE. THEY
22 SEE THE FIRST PAGE AND THEY DON'T UNDERSTAND WHAT IT IS ALL
23 ABOUT. EITHER IT COMES IN ENTIRELY OR NOT AT ALL.

24 MR. WAPNER: WELL, THE PROBLEM WITH IT OF COURSE, IS
25 THAT IS A DOUBLE-EDGED SWORD. BASICALLY, THE PROBLEM IS
26 THAT IT IS ALLEGATIONS BY THE PEOPLE FILING THE LAWSUIT.
27 AND OBVIOUSLY, IT IS UNSUBSTANTIATED ALLEGATIONS AT THAT
28 POINT.

1 IT IS PUT IN BY THE DEFENSE TO SAY THAT OBVIOUSLY,
2 LEVIN DID THOSE THINGS AND LOOK AT WHAT THEY ARE SUING HIM
3 FOR.

4 ON THE OTHER HAND, IT CLAIMS THERE WAS A
5 CONSPIRACY BETWEEN MR. HUNT AND MR. LEVIN AND PEOPLE ACTING
6 ON THE DIRECTION OF MR. HUNT, TO OBTAIN THOSE MONEYS. SO --

7 THE COURT: HOW DOES THIS HELP THE DEFENSE IN THIS
8 MATTER?

9 MR. CHIER: WELL, IN A NUMBER OF WAYS. IT EXPLAINS
10 THE RELATIONSHIP, THE OSTENSIBLE RELATIONSHIP BETWEEN THE
11 PARTIES, YOUR HONOR. THERE HAS BEEN AN ENORMOUS AMOUNT OF
12 TESTIMONY BY MR. MARMOR AND OTHER PEOPLE CONCERNING THIS
13 ACTION.

14 IT GOES TO SHOW THE DEFENDANT'S STATE OF MIND.
15 IT GOES TO SHOW THAT INSOFAR AS THE ALLEGATIONS BEING IN
16 PROGRESS, TO WHICH AN INFERENCE COULD BE DRAWN -- THERE ARE
17 ALLEGATIONS IN THERE CONCERNING THE VICTIM'S ACTIVITIES OR
18 MR. LEVIN'S ACTIVITIES.

19 AND THERE HAD BEEN A LOT OF TESTIMONY CONCERNING
20 THIS WHOLE THING. THIS IS JUST A COALESCING OF ALL OF THE --

21 THE COURT: WELL, FRANKLY, I DON'T SEE WHAT THIS LAWSUIT
22 HAS TO DO WITH ANY OF THE ISSUES IN THIS CASE.

23 MR. WAPNER: THE THING THAT THE DEFENSE WILL WANT TO
24 ARGUE, IN ARGUMENT, IS THAT LEVIN GOT \$150,000 FROM PROGRESSIVE
25 SAVINGS AND LOAN IN SEPTEMBER OF 1983. AND SINCE THE
26 CONSERVATOR IN JUNE OF 1984, COULD ONLY COME UP WITH \$36,000,
27 LEVIN ABSCONDED AND WHAT HAPPENED TO THE OTHER \$100,000?

28 WELL, THERE ARE CERTAIN BASIC FLAWS IN THAT

1 ARGUMENT, BUT THE BIGGEST PROBLEM IS THAT THIS DOCUMENT ONLY
2 CONSISTS OF ALLEGATIONS.

3 TO BE ABLE TO PUT THAT INTO EVIDENCE AND THEN
4 ARGUE IT TO THE LADIES AND GENTLEMEN OF THE JURY, THAT HE
5 GOT A HUNDRED AND FIFTY THOUSAND DOLLARS, IS OBVIOUSLY
6 INACCURATE.

7 IF THEY ARE PREPARED TO PROVE UP SOMETHING FROM
8 PROGRESSIVE SAVINGS AND LOAN, THAT IS ANOTHER STORY.

9 THE COURT: DO YOU WANT THIS REJECTED ALTOGETHER?

10 MR. WAPNER: WELL, THE --

11 THE COURT: THERE HAS BEEN TESTIMONY WITH RESPECT TO
12 THE LAWSUIT, WASN'T THERE? I THINK THAT THE FIRST STAGE
13 OF THIS IS THE ONLY THING THAT IS MATERIAL TO SHOW THAT THERE
14 WAS A LAWSUIT. IT IS WHAT THE LAWSUIT WAS ALL ABOUT AND WHO
15 THE PARTIES WERE. AND NONE OF THE ALLEGATIONS CONTAINED
16 IN THAT WOULD BE PROVABLE IN THIS CASE -- THEY HAVE NOT BEEN
17 PROVED, RATHER. THEREFORE, THEY ARE SELF-SERVING AND --

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1 MR. CHIER: WE DON'T HAVE TO PROVE THEM, YOUR HONOR.
2 THE FACT THAT THEY MADE THIS ACCUSATION AGAINST MR. LEVIN
3 HAS EVIDENTIARY VALUE OF ITS OWN.

4 THE COURT: WELL, I WILL RECEIVE THE FIRST PAGE AND
5 THAT IS ALL.

6 MR. CHIER: WE ARE PREPARED TO OFFER A CLEAN COPY,
7 IF MR. WAPNER WOULD AGREE TO THAT, WE WILL REPLACE IT WITH
8 A CLEAN COPY.

9 MR. WAPNER: TO THE EXTENT THAT THE DOCUMENT CLAIMS
10 A CONSPIRACY BETWEEN MR. HUNT AND MR. LEVIN, I HAVE NO PROBLEM
11 WITH THAT.

12 IT IS ONLY THAT THE WHOLE THING IS ALLEGATIONS
13 IN THE FIRST INSTANCE.

14 THE COURT: EVERYTHING CONTAINED, AS I SAID BEFORE,
15 ON THE FIRST PAGE SHOWS THE NATURE OF THIS PARTICULAR ACTION
16 AND EVERYTHING THAT FOLLOWS IS JUST THE DETAILS OF IT.

17 IT WAS SHOWN THAT THE PROGRESSIVE SAVINGS AND LOAN
18 BROUGHT AN ACTION AGAINST LEVIN AND ALL OF THESE PEOPLE FOR
19 FAILURE TO PAY A CHECK, BREACH OF CONTRACT, FRAUD, CONSPIRACY,
20 CONSPIRACY TO DEFRAUD, CONVERSION, CONSPIRACY TO CONVERT,
21 FRAUD, MONEY HE HAD RECEIVED. THEY SUMMARIZE EACH ONE OF
22 THESE CAUSES OF ACTION. WHAT ELSE DO WE NEED?

23 MR. CHIER: MR. HUNT IS GOING TO BE TESTIFYING ABOUT
24 THIS LAWSUIT AND ABOUT HIS RELATIONSHIP TO THIS LAWSUIT.

25 THE COURT: THEN I WILL KEEP IT OUT FOR THE TIME BEING
26 UNTIL HE CAN TESTIFY TO THAT.

27 MR. WAPNER: THOSE ARE THE ONLY OBJECTIONS I HAVE TO
28 THE DEFENSE EXHIBITS.

1 THE COURT: DO YOU WANT THE REST OF THE EXHIBITS
2 RECEIVED?

3 MR. CHIER: YES, YOUR HONOR.

4 THE COURT: THEY WILL BE RECEIVED.

5 MR. WAPNER: YOUR HONOR, THERE ARE TWO OTHER THINGS
6 THAT I WOULD LIKE TO BRING UP, AS LONG AS COUNSEL IS HERE.

7 ONE, THEY HAVE SUBPOENAED A DEPUTY DISTRICT
8 ATTORNEY TO TESTIFY FOR THE DEFENDANT. HER NAME IS LISA
9 HART AND SHE IS CURRENTLY IN JURY TRIAL IN JUDGE SHIMER'S
10 COURT, SO, NUMBER ONE, THAT PRESENTS A LOGISTICAL PROBLEM.

11 BUT, TWO, I WOULD ASK THE COURT TO ASK COUNSEL
12 TO MAKE AN OFFER OF PROOF AS TO THE NATURE OF HER TESTIMONY
13 FOR THE PURPOSE OF MAKING A MOTION IN LIMINE TO EXCLUDE IT
14 ALTOGETHER.

15 I CAN TELL YOU BASICALLY SHE WAS ONE OF THE PEOPLE
16 FROM THE PROSECUTION WHO AT ONE TIME WENT TO TUCSON TO FURTHER
17 THE INVESTIGATION OF SOME OF THE EVENTS THAT HAPPENED THERE.
18 SHE DID NOT PERSONALLY INTERVIEW ANY WITNESSES AND I DON'T
19 KNOW WHAT POSSIBLY COULD BE THE MATERIALITY OF HER TESTIMONY.

20 AND BECAUSE SHE IS IN JURY TRIAL NOW AND JUST
21 BECAUSE I DON'T THINK THERE IS ANY MATERIALITY TO IT AT ALL,
22 I WOULD ASK THE COURT TO ASK COUNSEL TO MAKE AN OFFER OF
23 PROOF ABOUT WHAT THEY EXPECT TO PRODUCE FROM HER TESTIMONY.

24 MR. CHIER: WE DO NOT HAVE TO MAKE AN OFFER OF PROOF,
25 YOUR HONOR.

26 THE COURT: WELL, I WANT YOU TO MAKE AN OFFER OF PROOF.

27 MR. CHIER: WE DO NOT HAVE TO DO THAT, YOUR HONOR.

28 THE COURT: THEN SHE WON'T APPEAR. YOU CAN'T TAKE

1 SOMEBODY WHO IS IN THE PROCESS OF TRYING A CASE AND SAY,
2 "I WANT YOU IN HERE".

3 MR. CHIER: SHE IS A MATERIAL WITNESS.

4 THE COURT: IN WHAT RESPECT?

5 MR. CHIER: WELL, WE WILL SEE WHEN SHE GETS ON THE
6 STAND.

7 WE DON'T HAVE TO PREVIEW OUR DEFENSE FOR THE
8 DISTRICT ATTORNEY, ANY MORE THAN HE DOES FOR US.

9 THE COURT: YOU KNOW EVERYTHING THE DISTRICT ATTORNEY
10 HAS PRODUCED, YOU HAVE KNOWN THAT AND YOU ARE ENTITLED TO
11 KNOW EVERYTHING THAT HE HAS PRODUCED.

12 MR. CHIER: UNLESS THERE IS SOME RECIPROCAL DISCOVERY
13 LEGISLATION, THAT IS THE WAY IT IS GOING TO BE.

14 THE COURT: WHAT ARE YOU GOING TO DO?

15 MR. WAPNER: I WILL PROBABLY FILE A MOTION IN LIMINE
16 TO PRECLUDE THAT.

17 THE COURT: ALL RIGHT, YOU MAKE THAT MOTION AND I WILL
18 MAKE A RULING AT THAT TIME.

19 AND YOU CAN FILE OPPOSITION TO IT.

20 MR. WAPNER: THE OTHER THING THAT I WANT TO BRING UP
21 AT THIS TIME IS THAT I ANTICIPATE THAT THE PEOPLE FROM
22 ARIZONA WILL TESTIFY EARLY IN THE DEFENSE CASE AND THERE
23 WAS AN ALLUSION IN MR. BARENS' OPENING STATEMENT TO THE FACT
24 THERE WERE SOME SCIENTIFIC, QUOTE, UNQUOTE, VERIFICATION
25 FOR THEIR TESTIMONY.

26 MR. BARENS, AND ESPECIALLY MR. CHIER KNOW THAT
27 POLYGRAPH EVIDENCE IS NOT ADMISSIBLE.

28 AND I WOULD LIKE THE COURT TO, FIRST OF ALL,

1 ADMONISH MR. BARENS AND MR. CHIER NOT TO ASK ANY QUESTIONS
2 ABOUT THAT.

3 AND SECOND OF ALL, I WOULD ASK THE COURT, BEFORE
4 THE JURY COMES IN, TO ADMONISH BOTH OF THESE WITNESSES
5 DIRECTLY NOT TO VOLUNTEER OR MENTION THE FACT THAT THEY WERE
6 GIVEN A POLYGRAPH EXAMINATION AND THAT THAT IN NO WAY SHOULD
7 BE ADMISSIBLE EVIDENCE IN THIS COURT.

8 MR. CHIER: THAT IS NOT THE STATE OF THE LAW.

9 THE STATE OF THE LAW IS THAT THE PROPONENT OF
10 A POLYGRAPH EXAMINATION MAY NOT OFFER IT BUT THERE IS A
11 CASE CALLED WITHERSPOON, A CALIFORNIA CASE, WHICH SAYS THAT
12 THE FACT THAT A POLYGRAPH EXAMINATION WAS CONDUCTED BY THE
13 PERSON SEEKING TO --

14 THE COURT: COLLIGRAPHY?

15 MR. CHIER: POLYGRAPHY, LIE DETECTOR.

16 THE COURT: OH, POLYGRAPHY. I THOUGHT YOU SAID
17 COLLIGRAPHY.

18 MR. CHIER: POLYGRAPHY, YES.

19 IT IS ADMISSIBLE ON THE THEORY THAT IT SHOWS
20 THE EXTENT TO WHICH THEY VERIFY THE VERACITY OF THE PEOPLE,
21 WHOSE VERACITY WAS DOUBTED IN THE FIRST INSTANT.

22 MR. WAPNER: DO YOU HAVE A CITATION ON THAT?

23 MR. CHIER: I DON'T HAVE THAT. I WASN'T EXPECTING TO
24 BE ARGUING THAT TODAY.

25 THE COURT: WILL YOU PRODUCE IT TOMORROW? WITHERSPOON,
26 WILL YOU GET THE CITATION ON THAT?

27 THAT IS NOT THE WITHERSPOON?

28 MR. CHIER: IT IS NOT THE WITHERSPOON.

1 IT IS A WITHERSPOON CASE.

2 THE COURT: ALL RIGHT. ANYTHING FURTHER?

3 MR. WAPNER: NO -- ONLY THAT, BEFORE THERE IS ANY
4 EXAMINATION OF THOSE WITNESSES ON THAT POINT, THAT THIS BE
5 FULLY ARGUED AND THEN THE WITNESSES ADMONISHED.

6 THE COURT: OH, YES, THAT WILL BE DONE.

7 MR. WAPNER: THANK YOU, YOUR HONOR.

8 THE COURT: WHAT I WANT IS A CITATION.

9 ALL RIGHT, THANK YOU.

10 (AT 11:00 A.M. PROCEEDINGS WERE ADJOURNED
11 TO RESUME MONDAY, MARCH 30, 1987 AT 10:30 A.M.)
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