

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DOCKET
No. 88DA0269
Entered by _____
Date _____

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
 PLAINTIFF-RESPONDENT,)
)
 VS.) SUPERIOR COURT
) NO. A-090435
)
 JOE HUNT, AKA JOSEPH HUNT,)
)
 AKA JOSEPH HENRY GAMSKY,)
)
 DEFENDANT-APPELLANT.)

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

APPEARANCES:

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

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 75 OF 101
(PAGES 11867 TO 12063, 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
WEDNESDAY, APRIL 1, 1987

VOLUME 75

PAGES 11862 TO 12063, INCL.

APPEARANCES:

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

FOR THE DEFENDANT: ARTHUR H. BARENS, ESQ.
10209 SANTA MONICA BOULEVARD
LOS ANGELES, CALIFORNIA 90067

AND

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

ROSEMARIE GOODBODY, CSR NO. 932
SALLY YERGER, CSR NO. 2008
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1 SANTA MONICA, CALIFORNIA; WEDNESDAY; APRIL 1, 1987; 10:30 A.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 CHAMBERS:)

7 MR. BARENS: GOOD MORNING, YOUR HONOR.

8 THE COURT: GOOD MORNING.

9 MR. WAPNER: GOOD MORNING.

10 MR. BARENS: YOUR HONOR, WE HAD A FEW ADMINISTRATIVE
11 THINGS TO ADDRESS THE COURT ABOUT THIS MORNING.

12 YOUR HONOR, WE WILL SHORTLY BE PROCEEDING WITH
13 THE WITNESSES FROM ARIZONA AND TO THAT END, I WANTED TO COME
14 TO AN AGREEMENT WITH THE PEOPLE, WHOM I HAVE SPOKEN TO, AND
15 THE COURT IN THAT REGARD, CONCERNING THE MAGAZINE ARTICLE
16 WE NEED TO USE RELATIVE TO THE IDENTIFICATION.

17 THE SOLE RELEVANCY OF THE ARTICLE IS THE PICTURE
18 OF MR. LEVIN AND THEN THERE IS SOMETHING LESS THAN TWO
19 PARAGRAPHS OF DIALOGUE WHERE THE ARTICLE DESCRIBES HIM, MAKES
20 REFERENCE TO HIS PHYSICAL CHARACTERISTICS. WE WOULD SEEK
21 TO LIMIT THE AMOUNT OF THE ARTICLE THAT THE JURY WOULD EVER
22 SEE TO SIMPLY THE PHOTOGRAPH THAT WILL BE DISCUSSED FOR
23 IDENTIFICATION PURPOSES AT THE HEARING AND THE TWO PARAGRAPHS
24 WHICH ARE VERY EASY TO IDENTIFY, THAT THE WITNESSES MADE
25 REFERENCE TO IN THEIR STATEMENTS TO THE POLICE.

26 NOW, IN ORDER TO ACCOMPLISH THAT, MR. WAPNER
27 EXPLAINED TO ME HE HAD -- WHICH I HAVEN'T SEEN YET -- SOMEHOW
28 OR ANOTHER REMOVED -- I AM SORRY -- MADE A CARDBOARD PIECE

1 OF FILE FOLDER THAT COULD BE PLACED OVER THE PAGE THAT WOULD
2 EXCLUDE EVERYTHING ELSE ON THAT PAGE, WHICH IS FINE WITH
3 ME.

4 MR. CHIER: DOES THAT INCLUDE ESLAMINIA?

5 MR. WAPNER: NO.

6 MR. BARENS: NO.

7 THE PICTURE MR. WAPNER HAS EXCLUSIVELY --
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1 MR. CHIER: THAT INCLUDES ESLAMINIA.

2 THE COURT: WELL, AT ANY RATE, THE JURY WOULD KNOW
3 THAT WAS CONTAINED IN AN ARTICLE IN ESQUIRE MAGAZINE. I
4 DON'T WANT THEM TO KNOW --

5 MR. BARENS: NO. WE WOULD HAVE TO SAY THAT IN ORDER
6 TO IDENTIFY THE TIME FRAME, AS WELL.

7 NOW YOUR HONOR, IN ADDITION TO THAT, LET ME MAKE
8 SURE WITH MR. WAPNER THAT WE ARE ALL MAKING REFERENCE TO
9 THE SAME THING.

10 THE COURT: WELL, THERE IS ONLY ONE PICTURE OF HIM --

11 MR. BARENS: YES, YOUR HONOR. YOUR HONOR, THERE IS
12 ALSO SOME LANGUAGE IN THE ARTICLE THAT COMMENCES AT A
13 PARAGRAPH AT THE BOTTOM OF PAGE 90. I HAVE READ IT AND I
14 AM GOING TO STEP OVER HERE TO SHOW MR. WAPNER EXACTLY WHAT
15 I AM REFERRING TO AT THE BOTTOM OF THE PAGE.

16 MR. WAPNER: WELL, THERE IS ALSO ON PAGE 90 AT THE
17 BEGINNING OF THE PARAGRAPH -- THERE ARE TWO PARAGRAPHS ABOVE
18 WHERE MR. BARENS IS TALKING ABOUT, A REFERENCE TO MR. LEVIN'S
19 AGE. IT SAYS THAT LEVIN, 42 -- AND THEN IT GOES ON TO TALK
20 ABOUT THINGS THAT DON'T HAVE TO DO WITH HIS DESCRIPTION.

21 IN THAT PARAGRAPH AND IN ANOTHER PARAGRAPH --
22 THEN IN THE THIRD PARAGRAPH AFTER THAT, IT SAYS THAT HE WAS
23 TALL AND SLENDER, ALWAYS EXPENSIVELY DRESSED, LEVIN HAD FINE,
24 SILVER HAIR, AND IMMACULATE WHITE BEARD, A SMILE THAT WAS
25 AN AFFRONT TO SOME AND IRRESISTIBLE TO OTHERS.

26 HIS EYES WERE "PIERCING" ONE ACQUAINTANCE THOUGHT --

27 THE COURT: WELL, THAT IS THE AUTHOR'S DESCRIPTION
28 OF HIM. WHY DOES THAT HAVE TO GO IN?

1 MR. WAPNER: WELL, IT IS RELEVANT BECAUSE I BELIEVE
2 THAT IF SHE IS CONSISTENT WITH HER PRIOR STATEMENTS, SHE
3 IS GOING TO SAY THAT SHE SAW THIS PICTURE AND THEN SHE IS
4 GOING TO SAY WELL, IT WAS NOT JUST THE PICTURE, IT WAS ALSO
5 THE DESCRIPTION THAT I READ IN THE ARTICLE.

6 SO WHAT IT SAYS IN THE ARTICLE ABOUT THE
7 DESCRIPTION, IS GOING TO THEN BECOME RELEVANT.

8 THE COURT: IF YOU ARE ABLE TO USE IT, IT IS ALL RIGHT
9 WITH ME.

10 MR. WAPNER: SURE.

11 MR. BARENS: PERHAPS MR. WAPNER, WHAT I OUGHT TO DO,
12 WITH THE COURT'S PERMISSION, I HAVE A PROPOSAL TO MAKE AND --

13 THE COURT: PARDON ME. IS THERE ANY EVIDENCE AS TO
14 HOW THAT PICTURE WAS TAKEN, IF IT IS A PICTURE?

15 MR. WAPNER: MY IMPRESSION IS THAT IT WAS AN ARTIST'S
16 DRAWING OF --

17 MR. BARENS: MY IMPRESSION IS THAT IT IS AN ART FORM
18 THAT THEY DO. IT IS A PHOTOGRAPH THAT THEY TAKE AND THEN
19 THEY TRY TO MAKE IT LOOK ARTISTIC, WHERE IT LOOKS LIKE AN
20 ARTIST'S RENDERING. BUT IT IS REALLY A PHOTOGRAPH THAT THEY
21 DOCTOR UP AND --

22 THE COURT: NO. I THINK YOU BETTER HAVE THE AUTHOR
23 OF THAT ARTICLE TESTIFY AS TO HOW THE PICTURE WAS DONE.

24 MR. WAPNER: WELL, I CAN TELL YOU EXACTLY HOW IT WAS
25 DONE. THERE WAS A PHOTOGRAPH OBTAINED BY SOMEONE FROM THE
26 DAILY NEWS.

27 THE DAILY NEWS TOOK THAT PHOTOGRAPH AND PRINTED
28 IT IN THE NEWSPAPER. THE PERSON WHO WROTE THE MAGAZINE

1 ARTICLE, GOT A COPY OF THE NEWSPAPER ARTICLE. HE THEN XEROXED
2 THE NEWSPAPER ARTICLE. HE SENT A XEROX COPY OF THE NEWSPAPER
3 PHOTOGRAPH TO THE PEOPLE AT ESQUIRE, WHO SENT IT OR GAVE
4 IT TO THE PERSON WHO DID THE ART WORK FOR THE ARTICLE.

5 THAT PERSON ATTEMPTED TO ENHANCE THE XEROX BY
6 THE USE OF A DARK PENCIL AND DID THAT --

7 THE COURT: WELL, WILL THAT COME BEFORE THE JURY?

8 MR. WAPNER: WELL, IT IS GOING TO DEPEND UPON THE
9 TESTIMONY OF THIS WITNESS.

10 THE COURT: WELL, IRRESPECTIVE OF HER TESTIMONY, IN
11 THIS ARTICLE -- IF THE ARTICLE AND THE PHOTOGRAPH ARE THE
12 BASIS OF IDENTIFICATION, SHOULDN'T THERE BE TESTIMONY AS
13 TO HOW THIS PICTURE WAS DONE AND HOW IT WAS DOCTORED UP?

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1 MR. WAPNER: I THINK IT IS GOING TO DEPEND UPON WHAT
2 SHE SAYS AND WHAT SHE SAYS ABOUT THE PICTURE, HOW MUCH SHE
3 RELIED ON IT AND DID IT LOOK LIKE HIM.

4 THE COURT: HE COMES HERE ALL THE TIME, DOES HE?

5 MR. WAPNER: I DON'T KNOW THAT HE KNOWS ALL OF THAT.

6 THE COURT: HE KNOWS ALL OF THAT, I IMAGINE.

7 MR. BARENS: I DON'T THINK HE DOES, SIR.

8 THE COURT: LET'S FIND OUT FROM HIM IF HE DOES OR HE
9 DOESN'T.

10 MR. BARENS: COULD WE GET BACK TO A PROPOSAL I HAD
11 FOR THE COURT FOR A MOMENT?

12 THE COURT: YES.

13 MR. BARENS: IN ORDER TO EXCISE THE WORDS ON THE PAGE
14 THAT ARE RELEVANT FROM THE ARTICLE, I THOUGHT WE COULD HAVE
15 THE WITNESS READ -- THERE ARE A COUPLE OF WAYS AND I AM GOING
16 TO ASK YOUR HONOR'S RECOMMENDATION -- THE WITNESS COULD READ
17 THE WORDS THAT SHE SAYS SHE RELIED UPON IN MAKING HER
18 IDENTIFICATION OUT OF THE ARTICLE.

19 THE COURT: PARDON ME. LET ME SEE, DID SHE SEE THIS
20 PICTURE FIRST OR DID SHE SEE THE PICTURE LATER?

21 MR. BARENS: SHE SAW THE SUBJECT FIRST, SIR.

22 THE COURT: HOW LONG BEFORE THIS PICTURE?

23 MR. BARENS: A FEW WEEKS BEFORE THIS, SIR.

24 MR. WAPNER: A FEW WEEKS?

25 MR. BARENS: A FEW WEEKS, WASN'T IT, MR. WAPNER?
26 IT WAS SIX TO EIGHT WEEKS OR SOMETHING.

27 MR. WAPNER: SIX TO EIGHT WEEKS.

28 MR. BARENS: WELL, A FEW WEEKS TO ME. A WEEK IS A

1 WEEK AND A FEW WEEKS IS --

2 THE COURT: AT ANY RATE, THE DATE OF THE ARTICLE WILL
3 BE GIVEN, WILL IT NOT?

4 MR. BARENS: YES, YOUR HONOR, WE ARE GOING TO MAKE
5 A DETAILED FULL DISCLOSURE.

6 THE COURT: AND THE DATE SHE SAW IT?

7 MR. BARENS: YOUR HONOR, WE ARE GOING TO MAKE AS
8 COMPREHENSIVE A DISCLOSURE TO THE COURT AS POSSIBLE.

9 NOW I WANT TO BE CANDID IN HOW WE ARE GOING TO
10 APPROACH THIS SO YOU WON'T HAVE ANY DOUBT, YOUR HONOR, IN
11 WHAT WE ARE GOING TO DO.

12 THE COURT: YES.

13 MR. BARENS: THE DISTRICT ATTORNEY AND A NUMBER OF
14 POLICE PERSONNEL SPENT A NUMBER OF HOURS WITH THESE PEOPLE
15 AND MADE A TAPE RECORDING OF IT, FROM WHICH THEY GAVE US
16 THE TRANSCRIPT BASICALLY AND THAT IS ALL I AM GOING TO DO,
17 IS TAKE HER THROUGH THE TAPE RECORDING.

18 THE COURT: INDEPENDENTLY OF THE TAPE RECORDING, AREN'T
19 YOU GOING TO ASK HER QUESTIONS?

20 MR. BARENS: I AM GOING TO TAKE HER THROUGH A TRANSCRIPT
21 OF THE TAPE IN MY QUESTIONS.

22 THE COURT: AREN'T YOU GOING TO TAKE HER INDEPENDENTLY?

23 MR. BARENS: ALL I AM GOING TO DO IS ASK HER STUFF
24 WITHIN THE POLICE MATERIAL WHICH HAD BEEN GIVEN TO ME.

25 THE COURT: YOU ARE GOING TO ASK HER ABOUT THIS TAPE
26 AND ASK HER IF THAT IS WHAT SHE SAID, IS THAT WHAT YOU ARE
27 GOING TO DO?

28 MR. BARENS: ONLY ON REDIRECT IF IT BECOMES NECESSARY.

1 THE COURT: THERE WON'T BE ANY PROBLEM ABOUT THE FACT
2 THAT SHE IS GOING TO TESTIFY TO WHAT SHE ORIGINALLY TOLD
3 THE DISTRICT ATTORNEY?

4 MR. BARENS: I DON'T KNOW IF SHE IS OR NOT.

5 LET ME SAY THIS, JUDGE, SO THE JUDGE WILL KNOW --
6 THE COURT: THAT IS SECONDARY EVIDENCE.

7 THE PRIMARY EVIDENCE IS HER TESTIFYING TO EXACTLY
8 WHAT SHE SAW AND WHEN SHE SAW IT AND SO FORTH AND LET IT
9 GO THAT WAY.

10 MR. BARENS: YES, SIR, I HAD NO DESIRE NOT TO.

11 MR. WAPNER: SO THE COURT IS NOT CONFUSED, THERE WERE
12 TWO SEPARATE INTERVIEWS THAT WERE DONE WITH EACH OF THESE
13 PEOPLE. ONE WAS AN INTERVIEW THAT WAS DONE -- IT HAD NOTHING
14 TO DO WITH THE POLYGRAPH, AND THAT WAS TAPE RECORDED, AND
15 THEN THERE WAS THE SECOND INTERVIEW WITH EACH OF THEM THAT
16 WAS ALSO TAPED THAT DID HAVE TO DO WITH THE POLYGRAPH
17 EXAMINATION.

18 THE COURT: I SEE. AND YOU ARE OBJECTING TO IT, AS
19 I UNDERSTAND IT?

20 MR. WAPNER: WELL, AND THAT IS ONE OF THE THINGS THAT
21 I WANTED TO JUST DISCUSS.

22 MR. BARENS: COULD I INTERRUPT FOR A MOMENT?

23 THE COURT: GO AHEAD.

24 MR. BARENS: THEN I WOULD LIKE TO DISCUSS THAT POINT.

25 ALL I WOULD LIKE TO DO, SIR, IS SNIP OUT OF THE
26 ARTICLE, THE XEROX THAT I HAVE, THE LANGUAGE WE ARE TALKING
27 ABOUT, PUT IT ON A PIECE OF PAPER AND MARK IT AS AN EXHIBIT.

28 THE COURT: ALL RIGHT.

1 MR. BARENS: SO WE DON'T HAVE THE WHOLE THING IN THERE,
2 THAT IS ALL.

3 THE COURT: THAT IS ALL RIGHT WITH ME, IF IT IS ALL
4 RIGHT WITH THE D.A.

5 MR. BARENS: IS THAT ALL RIGHT WITH YOU?

6 MR. WAPNER: I HAVE NO PROBLEM WITH THAT.

7 I THINK SHE HAS TO BE EXAMINED FIRST ON HER
8 RECOLLECTION OF WHAT IT SAID BEFORE SHE IS SHOWN THE ARTICLE
9 ITSELF.

10 MR. WAPNER: YES, SIR.

11 THE COURT: ALL RIGHT.

12 MR. BARENS: I HATE TO USE THIS EXPRESSION, BUT WE
13 HAVE TO DO A LITTLE CUT AND PASTE JOB HERE. MR. CHIER, I
14 WILL ASK TO DO THAT, AND THEN WHAT WE WILL DO IS SUBMIT THE
15 CUT AND PASTE TO MR. WAPNER TO INQUIRE IF HE WOULD LIKE ANY-
16 THING ELSE ON THERE.

17 THE COURT: CUT AND PASTE ON WHAT?

18 MR. BARENS: WE ARE GOING TO SNIP OUT OF THIS ARTICLE,
19 SIR.

20 THE COURT: WHICH ARTICLE, THE ONE IN ESQUIRE?

21 MR. BARENS: THE ESQUIRE ARTICLE, THE ESQUIRE ARTICLE,
22 SIR.

23 THE COURT: OH, YES.

24 MR. BARENS: WE ARE GOING TO SNIP OUT OF THIS AND THEN
25 WE WILL MOUNT IT ON A PIECE OF PAPER AND THEN WE WILL GIVE
26 IT TO MR. WAPNER AND ASK HIM IF THERE IS ANYTHING ELSE HE
27 WOULD LIKE INCLUDED IN IT OR EXCLUDED FROM IT.

28 MR. WAPNER: YOU ARE GOING TO TAKE IT FROM THE ORIGINAL

1 ARTICLE?

2 MR. BARENS: WELL, I WAS GOING TO TAKE IT FROM A XEROX
3 AND TRY TO KEEP THE ORIGINAL TOGETHER. I MEAN, I HAVE GOT
4 THE ORIGINAL MAGAZINE HERE.

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1 THE COURT: YOU CAN SAY TO HER, "IS THIS WHAT YOU READ
2 IN THE ARTICLE?" AND YOU READ THAT PORTION OF IT WHICH YOU
3 AGREE SHOULD BE GOING BEFORE THE JURY THEN.

4 MR. BARENS: YES, YOUR HONOR.

5 THE COURT: THEN SHE WILL SAY YES OR NO. IF SHE SAYS
6 YES, THEN IT IS INCORPORATED.

7 MR. BARENS: WELL, THE THING WAS, WE WANTED TO HAVE
8 AN EXHIBIT AVAILABLE FOR THE JURY TO HAVE IN REFERENCE TO
9 HER TESTIMONY AS TO WHAT THE WORDS WERE THAT SHE HAD READ.

10 THE COURT: IT IS ALL RIGHT WITH ME IF IT IS ALL RIGHT
11 WITH YOU.

12 MR. BARENS: I AM JUST TRYING TO WRESTLE WITH HOW WE
13 DO THAT. WE CAN TAKE AND SNIP IT OUT OF THE ORIGINAL, YES,
14 I GUESS IT IS BETTER. LET'S TAKE IT OUT OF THE ORIGINAL
15 MAGAZINE, WE WILL CUT OUT ALL OF THE STUFF IN HERE.

16 YES, YOU KNOW WHAT I WILL DO, I WILL TAKE, IF
17 YOU DON'T MIND, MR. WAPNER, I WILL TAKE MR. WAPNER'S CARDBOARD
18 THING AND LAY IT OVER THAT PAGE AND PUT THAT TOGETHER AND
19 I WILL MAKE THEM TWO PAGES OF ONE EXHIBIT SO WE DON'T GET
20 EVERYBODY CONFUSED HERE.

21 THE COURT: GO AHEAD.

22 MR. BARENS: OTHERWISE, WE WILL HAVE A PROSECUTION
23 EXHIBIT AND A DEFENSE EXHIBIT ON THE SAME THING, TOO.

24 THE COURT: THAT IS ALL RIGHT.

25 MR. BARENS: LET'S TRY AND BE ADMINISTRATIVELY AS GOOD
26 AS WE CAN.

27 MR. WAPNER: THAT IS OKAY.

28 MR. BARENS HAD MENTIONED TO ME THE POSSIBILITY

1 OF ACTUALLY CUTTING OUT THE PICTURE FROM THE ARTICLE AND
2 PUTTING IT ON THE PAGE BECAUSE HE DIDN'T WANT PEOPLE TRYING
3 TO PEAK UNDER THE CARDBOARD.

4 THE COURT: THAT IS BECAUSE THEY TALK ABOUT THE MURDER
5 UP IN SAN MATEO COUNTY?

6 MR. BARENS: THAT IS PRIMARILY WHAT THE ARTICLE IS
7 ABOUT.

8 MR. WAPNER: THE REASON WHY I PRODUCED THIS PIECE OF
9 CARDBOARD WITH THE HOLE IN IT WAS SO THAT IF WE WERE GOING
10 TO SHOW HER THE ORIGINAL ARTICLE, IT COULD BE PLACED OVER
11 THE ARTICLE WHEN IT WAS SHOWN IN COURT TO THE JURY. BUT
12 I HAVE NO OBJECTION TO MR. BARENS' PROCEDURE WHEN IT GOES
13 TO THE JURY OF ACTUALLY CUTTING THE PICTURE OUT AND PUTTING
14 IT ON THE PAGE WITH THE PICTURE.

15 THE COURT: WHILE SHE IS TESTIFYING, WOULDN'T YOU WANT
16 TO SHOW THE PICTURE TO THE JURY?

17 MR. WAPNER: YES.

18 THE COURT: IS THAT ALL RIGHT?

19 MR. BARENS: YES, SIR.

20 MR. WAPNER: AND THE PICTURE THAT IS CUT OUT AND THE
21 PART FROM THE MAGAZINE, I THINK SHOULD BE FROM THE ORIGINAL
22 ONE FROM THE ARTICLE ITSELF.

23 THE COURT: YES.

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1 MR. BARENS: DO YOU KNOW WHAT I WOULD LIKE TO DO --

2 THE COURT: NOT FROM THE XEROX.

3 MR. BARENS: PARDON ME, SIR?

4 THE COURT: IS THAT RIGHT?

5 MR. WAPNER: NOT FROM THE XEROX, CORRECT.

6 MR. BARENS: RIGHT. WHEN I SAY TO HIM, "IS THE MAGAZINE
7 YOU READ, IT HAS GOT TIM CARVER ON THE COVER," WHICH SHE
8 MENTIONS -- I JUST WONDER THEN IF I OUGHT TO TAKE THE COVER
9 OFF, CUT THE COVER OFF AND MAKE THAT AN EXHIBIT AS WELL, SO
10 WE CAN IDENTIFY THE MAGAZINE.

11 MR. CHIER: THAT WOULD BE JUST THE FIRST PAGE?

12 THE COURT: YOU HAVE GOT SOMETHING ON THERE, HAVE YOU
13 NOT? WHAT DOES IT SAY? WE DON'T WANT THAT.

14 MR. BARENS: WOULD YOUR HONOR MIND IF I CUT IT OUT? IT
15 SAYS, "THE BILLIONAIRE BOYS CLUB, A TALE OF MURDER AND MONEY
16 IN L.A."

17 IF WE COULD JUST CUT OUT THE THING THAT SAYS, "A
18 TALE OF MURDER AND MONEY IN L.A.," SO IT JUST SAYS, "THE
19 BILLIONAIRE BOYS CLUB," BECAUSE THAT IS ALL SHE TESTIFIED THAT
20 SHE SAW AN ARTICLE ABOUT.

21 SHE DIDN'T SAY ABOUT THE TALE OF MURDER AND MONEY
22 IN L.A.

23 MR. WAPNER: WELL, I UNDERSTAND WHAT COUNSEL IS WORRIED
24 ABOUT. BUT I DON'T SEE WHAT THE BIG DEAL IS.

25 THE COURT: THEY WOULD KNOW WHAT ESQUIRE MAGAZINE IS.
26 ANYBODY KNOWS ABOUT THAT. WHY DO YOU NEED THE COVER?

27 MR. BARENS: HERE IS WHAT I WILL DO. I WILL SHOW IT
28 TO HER AND I WILL SAY, "IS THIS THE MAGAZINE?" I WON'T

4-
1 INTRODUCE IT AT ALL.

2 THE COURT: FINE.

3 MR. WAPNER: FOR CLARIFICATION OF THE RECORD, I DO HAVE
4 THE ORIGINAL MAGAZINE THAT SHE READ, NOT JUST AN ORIGINAL COPY
5 OF THE ARTICLE, BUT THE MAGAZINE THAT SHE READ.

6 THE COURT: DOES IT MAKE ANY DIFFERENCE?

7 MR. CHIER: SHOULD WE MAKE IT A COURT'S EXHIBIT?

8 MR. WAPNER: NO. THE ONLY THING ON THERE IS -- THAT
9 IS OF SIGNIFICANCE THAT I WILL WANT TO REFER TO AT SOME POINT,
10 IS THE FACT THAT THIS MAGAZINE WAS SUBSCRIBED TO BY HER BROTHER,
11 WHO DIDN'T LIVE AT THE HOUSE WHICH SHE WAS LIVING.

12 AND THE MAGAZINE, SOMEHOW, ENDS UP AT THAT HOUSE.
13 I WANT TO DO A LIMITED EXAMINATION OF HER AS TO HOW IT WAS
14 THAT THAT MAGAZINE HAPPENED TO END UP AT THAT HOUSE.

15 IT IS NOT THAT BIG A DEAL, BUT IN THE OVERALL
16 PICTURE OF THIS WITNESS, I THINK IT IS IMPORTANT.

17 THE COURT: IF YOU THINK THAT IT IS REALLY VITAL, I HAVE
18 NO OBJECTION.

19 MR. BARENS: YOUR HONOR, THIS IS STILL ON THE ARIZONA
20 PEOPLE SUBJECT, YOUR HONOR -- WELL, IT OCCURRED TO ME THAT
21 YOUR HONOR MIGHT WISH TO ASK THESE WITNESSES SOME QUESTIONS.

22 DURING THE POLYGRAPH EXAMINATION --

23 THE COURT: I ONLY ASK QUESTIONS BECAUSE THE DISTRICT
24 ATTORNEY FAILED TO ASK THEM, THAT'S ALL. IF I THINK THEY ARE
25 MATERIAL FROM MY STANDPOINT, I THINK IT IS NECESSARY FOR ME
26 TO GET A COMPLETE PICTURE, I ASK THESE QUESTIONS. OTHERWISE,
27 I DON'T ASK QUESTIONS.

28 MR. BARENS: YOUR HONOR, I UNDERSTAND. I MEAN THAT

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DURING THE POLYGRAPH EXAMINATION ON THESE PEOPLE, THEY WERE
ASKED IF THEY KNEW ME OR HAD EVER SPOKEN TO ME OR MR. CHIER
OR MR. HUNT OR LOU TITUS OR YOU KNOW, THE FOLKS THAT WE KNOW
OR THE FOLKS -- YOU KNOW, ALL THAT KIND OF STUFF.

THEY SAID NO. THEY PASSED THE POLYGRAPH BOTH TIMES
IN THAT REGARD.

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1 MR. CHIER: IN ALL REGARDS.

2 MR. BARENS: IN ALL REGARDS, AS FAR AS THAT KIND OF
3 DATA IS CONCERNED.

4 MR. WAPNER: WELL, CAN I INTERRUPT FOR JUST A SECOND?

5 MR. BARENS: YES, SIR?

6 MR. WAPNER: WELL, THE QUESTION THAT THEY WERE ASKED
7 SPECIFICALLY WAS -- ON THE POLYGRAPH, WAS, "DID ANYBODY PUT
8 YOU UP TO THIS?"

9 THEY WERE ASKED EARLIER DID THEY KNOW CERTAIN
10 PEOPLE, BUT THAT WAS NOT DURING THE POLYGRAPH EXAMINATION.

11 MR. BARENS: ALL RIGHT. TO THE SAME EFFECT, YOUR HONOR.

12 WHAT I BELIEVE MR. WAPNER IS SATISFIED ABOUT AND
13 I AM REPRESENTING TO THE COURT, THAT IN MY LIFETIME, I HAVE
14 NEVER MET OR SPOKEN TO THESE PEOPLE, EITHER BY TELEPHONE OR
15 IN PERSON UNTIL SUNDAY OF THIS WEEK.

16 I HAD NEVER SPOKEN TO THEM. AND I MADE IT A POINT
17 NOT TO SPEAK TO THEM BY TELEPHONE OR IN PERSON OR ANYTHING
18 ELSE UNTIL SUNDAY OF THIS WEEK WHEN THEY CAME TO LOS ANGELES.

19 I WOULD ASK THE COURT -- I DON'T BELIEVE
20 MR. WAPNER IS GOING TO PUT THEM THROUGH THAT ON THE STAND.
21 BUT, THE PART ABOUT ASKING IF THEY KNOW MR. CHIER OR HUNT OR
22 ANY OF THAT STUFF, I WOULD ASK THE COURT, SINCE --

23 THE COURT: I DON'T PROPOSE TO ASK IT, EVEN IF HE
24 DOESN'T ASK THEM, ANYWAY.

25 MR. BARENS: WELL, I WAS ASKING FOR RESTRAINT IN THAT
26 REGARD.

27 THE COURT: NO.

28 MR. BARENS: THESE PEOPLE ARE HOSTILE.

1 THE COURT: HOSTILE?

2 MR. BARENS: YES, YOUR HONOR, TO EVERYBODY AT THIS POINT.

3 THE COURT: WHY DID THEY VOLUNTEER IN THE FIRST PLACE
4 TO GO TO THE POLICE IF THEY ARE HOSTILE?

5 MR. BARENS: WELL, THE GIRL PROCEEDED OUT OF A SENSE
6 OF CONSCIENCE. BUT SINCE THEN, THEY HAVE HAD MORE ATTENTION
7 THAN I BELIEVE THEY WERE HAPPY TO RECEIVE.

8 MR. CHIER: CIVIC DUTY TRANSFORMED INTO A NIGHTMARE.

9 MR. BARENS: AT LEAST THE WAY THEY PERCEIVE IT AT THIS
10 POINT.

11 OF COURSE, THEY ARE HERE PURSUANT TO A RATHER
12 VIGOROUS SUBPOENA PROCESS WHICH WE HAD TO FOLLOW.

13 MR. WAPNER: WELL, EVERYBODY WANTS TO MAKE IT APPEAR
14 THAT IT ONLY GOT TRANSFORMED INTO A NIGHTMARE BECAUSE THEY
15 WERE BEATEN UP BY THE LAW ENFORCEMENT PEOPLE. AND IN FACT,
16 IF MR. BARENS HAD BEEN IN TUCSON ON NOVEMBER THE 22ND, IT WOULD
17 HAVE -- HE WOULD HAVE OBSERVED THE DEMEANOR OF THIS WITNESS
18 TO BE THE SAME HOSTILE PERSON ON THAT FIRST DAY, AS IT IS
19 TODAY.

20 SO, THAT WAS TWO DAYS AFTER THEY WENT TO THE
21 POLICE.

22 THE COURT: WELL, LET'S STAY AWAY FROM THIS EXTRANEOUS
23 STUFF. IT WILL BE THE SAME AS ANY OTHER WITNESS, THE QUESTION
24 OF IDENTITY. LET IT GO THAT WAY.

25 IF YOU BRING IN OTHER THINGS OF COURSE, THAT IS
26 ALWAYS BAD.

27 MR. BARENS: YOUR HONOR, THE ONLY THING I HAVE READ IN
28 PREPARATION FOR THIS IS WHAT THE POLICE PEOPLE AND MR. WAPNER

1 GAVE ME.

2 THE COURT: THERE WON'T BE ANY REFERENCE TO THE
3 POLYGRAPH?

4 MR. BARENS: NO, SIR. I HAVE CAUTIONED AND ADMONISHED
5 THESE PEOPLE THAT THAT IS VERBOTEN. THAT IS IN ALL
6 CIRCUMSTANCES. THEY ARE NOT TO MENTION IT.

7 I WILL MENTION THAT TO THEM AGAIN BEFORE THEY
8 TAKE THE STAND. I DON'T KNOW WHAT MORE I CAN DO.

9 MR. WAPNER: THE ONLY THING THAT I WOULD ASK IS THAT
10 THE COURT, BEFORE THE JURY COMES IN, THAT THE COURT ADMONISH
11 EACH OF THEM THAT THERE IS NOT TO BE ANY REFERENCE MADE TO
12 THE POLYGRAPH.

13 THE COURT: I DO IT?

14 MR. BARENS: I THINK THAT IS BEING OVERVIGOROUS. I WILL
15 BEFORE THEY SAY A WORD, I WILL AGAIN WALK UP TO THE WITNESS
16 BOX AND SAY IT AGAIN TO THEM.

17 THE COURT: IF THEY DO, I AM GOING TO STRIKE ALL OF THEIR
18 TESTIMONY. SO YOU WARN THEM NOT TO SAY ANYTHING ABOUT IT.

19 SINCE THEY HAVE BEEN WARNED, IT WOULD INDICATE
20 THAT THEY ARE DOING IT DELIBERATELY.

21 MR. BARENS: WAIT A MINUTE. I WILL TELL THEM. I HAVE
22 TOLD THEM TWICE.

23 I HAVE TOLD EACH OF THEM AND I HAVE TOLD THEM
24 TOGETHER. I TOLD THEM SEPARATELY. AND I AM GOING TO TELL
25 THEM AGAIN AND --

26 THE COURT: DO YOU WANT ME TO ADMONISH THEM OUTSIDE THE
27 PRESENCE OF THE JURY?

28 MR. WAPNER: IF COUNSEL SAYS HE HAS ADMONISHED THEM,

1 I GUESS WE'LL HAVE TO ACCEPT THAT REPRESENTATION.

2 MR. BARENS: WHAT I AM ASKING YOUR HONOR TO UNDERSTAND
3 IS THAT -- ALL RIGHT. I HAVE DONE EVERYTHING PROFESSIONALLY
4 I CAN DO WITH THESE PEOPLE.

5 THE COURT: I AM NOT CRITICIZING YOU.

6 MR. WAPNER: WELL, TO THE EXTENT THAT COUNSEL SAYS THEY
7 ARE HOSTILE TO HIM AND TO ME, MAYBE AN ADMONITION BY THE COURT
8 WOULD BE APPROPRIATE.

9 MR. CHIER: IT HAS NOT BEEN DONE TO ANY OTHER WITNESS
10 IN THE CASE.

11 THE COURT: WHAT ABOUT --

12 MR. WAPNER: THEY ARE NOT TO MENTION POLYGRAPH.

13 THE COURT: HE IS TELLING THEM NOT TO DO IT.

14 MR. BARENS: YES, YOUR HONOR. ONE OTHER THING --

15 THE COURT: INCIDENTALLY, I MADE AN APPOINTMENT FOR
16 MRS. BECKING TO SEE A CARDIOLOGIST AND AN INTERNIST IN
17 BEVERLY HILLS ON FRIDAY. AND ONE OF THE JURORS AS I UNDERSTAND
18 IT, OFFERED TO PICK HER UP AND TO BRING HER TO THE DOCTOR.

19 MR. BARENS: WHO IS SHE SEEING BY ANY CHANCE, SIR?

20 THE COURT: DR. YURI BUSI, B-U-S-I, 2080 CENTURY PARK
21 EAST, ROOM 1005, AT 1 P.M. FRIDAY.

22 MR. BARENS: THANK YOU, YOUR HONOR.

23 YOUR HONOR, JUST TO MAKE SURE I UNDERSTAND WHAT
24 WE ARE DOING HERE, THE PHOTOGRAPH THAT WE ARE GOING TO REMOVE
25 FROM THE ARTICLE AND THE WORDS FROM THE ARTICLE, DO YOU WANT
26 TO HAVE THEM CUT FROM THE ORIGINAL MAGAZINE THAT YOU SAY IS
27 THE ONE THEY ACTUALLY READ?

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1 MR. WAPNER: ACTUALLY, I DON'T THINK THEY SHOULD BE CUT
2 FROM THAT ONE, ONLY BECAUSE SINCE THAT IS THE ORIGINAL, IT
3 PROBABLY SHOULD BE PRESERVED BUT --

4 MR. BARENS: OKAY, THEN WHAT I AM GOING TO DO IS I HAVE
5 THIS ORIGINAL MAGAZINE, SO WE WILL CUT IT OUT.

6 THE COURT: CUT IT OUT OF THAT THEN?

7 MR. BARENS: YES, YOUR HONOR.

8 THE COURT: ALL RIGHT. ALL YOU HAVE TO DO IS INDICATE
9 TO HER, "IS THIS THE MAGAZINE" AND SHOW IT TO HER AND TURN
10 IT AROUND, SHOW IT TO THE JURY, WITHOUT THEIR SEEING ANYTHING
11 ABOUT IT.

12 MR. BARENS: I WILL HAVE MY THUMB ON IT.

13 THE COURT: THAT IS A GOOD IDEA.

14 MR. BARENS: YOUR HONOR, ONE OTHER PIECE OF BUSINESS
15 FOR YOUR HONOR THIS MORNING.

16 THE COURT: YES.

17 MR. BARENS: WE LEFT OFF YESTERDAY AFTERNOON WITH SOME
18 AWKWARDNESS ABOUT SEEKING FROM YOUR HONOR AN INSTRUCTION
19 CONCERNING A MISUNDERSTANDING THE JURY COULD HAVE BASED ON
20 AN INQUIRY THE COURT MADE OF A WITNESS YESTERDAY.

21 THE DEFENSE WOULD PROPOSE THAT THE JUDGE MAKE A
22 COMMENT TO THE JURY THAT THE JUDGE WAS NOT MEANING TO STATE
23 THAT HE HAD READ AN ARTICLE THAT SAID IN THE ARTICLE THAT
24 BOBBY ROBERTS OR LYNNE ROBERTS RECEIVED CONSIDERATION FOR THE
25 MAKING OF A MOVIE INVOLVING MR. HUNT.

26 THE COURT: IS THERE ANYTHING TO INDICATE THERE THAT
27 I SAID HE WAS GETTING CONSIDERATION, THAT I SAID THEY WERE
28 GETTING CONSIDERATION?

5-2
1 MR. WAPNER: NOT THAT I CAN SEE, AT LEAST NOT BY THE
2 ANSWERS.

3 FIRST OF ALL, THERE IS NOTHING IN HERE THAT
4 SUGGESTS -- WELL, THE COURT NEVER MAKES A REFERENCE TO READING
5 AN ARTICLE.

6 AND IT IS ONLY AFTER THE COURT FINISHES ASKING
7 THE QUESTIONS AND THE WITNESS FINISHES ANSWERING THEM THAT
8 COUNSEL SAID PAGE 11845, AFTER ASKING TO APPROACH THE BENCH,
9 HE SAYS:

10 "COULD I SEE THE ARTICLE YOUR HONOR IS
11 REFERRING TO?"

12 BUT THERE IS NO MENTION IN THE QUESTIONS OF THE
13 FACT THAT THE COURT WAS READING FROM AN ARTICLE, AT LEAST I
14 DON'T SEE ANY.

15 MR. CHIER: THE JUDGE HAD THE ARTICLE IN HIS HAND.

16 THE COURT: I DID NOT HAVE THE ARTICLE IN MY HAND.

17 MR. WAPNER: WHETHER HE DID OR DID NOT.

18 THE COURT: I HAD IT ON THE BENCH.

19 I DON'T WANT YOU TO OFFER ANY SUGGESTIONS. YOU
20 KNOW MY FEELING ABOUT YOU. YOU JUST KEEP OUT OF THIS. YOU
21 HAVE AN EXTREMELY COMPETENT MAN, AND IT IS A GOOD IDEA THAT
22 YOU ARE HERE WITH HIM BECAUSE YOU WILL LEARN HOW TO CONDUCT
23 YOURSELF AS A TRIAL LAWYER.

24 MR. CHIER: I HAVE NEVER TRIED A CASE IN THIS COURT
25 BEFORE AND I DON'T KNOW WHY --

26 THE COURT: I AM TELLING YOU TO BE QUIET.

27 MR. CHIER: I DON'T KNOW WHY THIS COURT --

28 THE COURT: YOU CAN USE HIM AS AN EXAMPLE.

1 MR. BARENS: I AM TRYING TO STAY ON KEEL, GENTLEMEN.

2 YOUR HONOR, AT THE BOTTOM OF THAT PAGE THERE
3 YOU START ASKING THOSE SERIES OF QUESTIONS, SIR, IF I MIGHT,
4 IT STARTS WITH ABOUT AGENTS (COUNSEL INDICATING).

5 THE COURT: ALL RIGHT, YES.

6 (PAUSE IN PROCEEDINGS.)

7 THE COURT: WELL, THERE IS NOTHING HERE TO INDICATE
8 THAT. ALL I ASKED,

9 "AND DO YOU KNOW IF YOUR HUSBAND IS
10 GOING TO RECEIVE ANYTHING FROM ANYTHING THAT MIGHT
11 BE REALIZED FROM THIS PLAN?

12 "THE WITNESS: NO, YOUR HONOR. IN FACT, ALL
13 THIS HAS DONE IS COST US A LOT OF MONEY."

14 MR. BARENS: YES, YOUR HONOR, BUT WHAT HAPPENED THEN
15 IS --

16 THE COURT: YES, BUT THEY DON'T KNOW ANYTHING ABOUT
17 THE ARTICLE.

18 MR. BARENS: IF I MIGHT, YOUR HONOR, WHEN WE APPROACHED
19 THE BENCH, THERE WAS SOME DIALOGUE WITH YOUR HONOR WHERE
20 I BELIEVE YOUR HONOR SAID THERE WAS SOME IMPLICATION IN THE
21 ARTICLE TO THE EFFECT THAT THE ROBERTS WERE RECEIVING MONEYS
22 OR COULD RECEIVE MONEYS.

23 THE COURT: I DIDN'T SAY THAT, OH, NO, NO.

24 "DID YOUR HUSBAND EVER TELL YOU ABOUT
25 THE FACT THAT HE HAD HIRED THEATRICAL AGENTS ON A
26 CONTRACT WRITING THE LIFE STORY OF MR. HUNT?"

27 "THE WITNESS: I MYSELF, DID NOT HIRE THEM.
28 I THINK THAT THE MR. MARSH GENTLEMAN CONTACTED MY

1 HUSBAND AND THEY HAVE KNOWN EACH OTHER FOR MANY
2 YEARS AND HE ASKED HIM FOR AN INTRODUCTION WITH
3 JOE. THAT IS ALL THAT I KNOW.

4 "DO YOU KNOW IF YOUR HUSBAND IS
5 GOING TO RECEIVE ANYTHING FROM ANYTHING THAT
6 MIGHT BE REALIZED FROM THIS PLAN?

7 "THE WITNESS: NO, YOUR HONOR."

8 THEN SHE SAYS,

9 "IT COST US MONEY."

10 WHAT ELSE IS THERE?

11 MR. BARENS: YOUR HONOR USED AN EXPRESSION "YOUR HUSBAND
12 HAD HIRED THESE PEOPLE" AND IT WAS THAT --

13 THE COURT: (READING:)

14 "DID YOUR HUSBAND EVER TELL YOU ABOUT
15 THE FACT THAT HE HAD HIRED THEATRICAL AGENTS ON A
16 CONTRACT WRITING THE LIFE STORY OF MR. HUNT?"

17 AND THEN SHE SAYS:

18 "I MYSELF, DID NOT HIRE THEM."

19 AND THE IMPLICATION IS THAT HER HUSBAND DID.

20 MR. BARENS: WELL, BUT YOU SEE HE DIDN'T, SIR.

21 THE COURT: ALL RIGHT.

22 MR. BARENS: BUT WHILE I AM THINKING HERE, SIR --

23 THE COURT: WHY DON'T YOU PROPOSE SOMETHING AND WRITE
24 IT OUT AND I WILL CONSIDER THAT AND GIVE IT IF I THINK IT
25 IS IMPORTANT, ALL RIGHT?

26 MR. BARENS: IF I MIGHT MENTION SOMETHING, SIR, WHILE
27 WE ARE HERE ON A TOPIC, AFTER THE SESSION, WHILE STANDING
28 WITH MR. WAPNER IN THE PRESENCE OF LIEUTENANT ZOELLER AS

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1 WELL, THIS REPORTER, RON --

2 THE COURT: YES.

3 MR. BARENS: RON --

4 MR. WAPNER: OSTROFF.

5 MR. BARENS: -- OSTROFF CAME UP TO US FROM THE DAILY
6 NEWS AND COMMENTED THAT HE HAD NOT MEANT TO IMPLY IN HIS
7 ARTICLE THAT THE ROBERTS WERE RECEIVING MONEY.

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1 THE COURT: YES, HE MADE IT A POINT TO COME IN AND TELL
2 ME THE SAME THING.

3 MR. BARENS: HE SAW US AFTER HE HAD SEEN YOUR HONOR,
4 I THINK.

5 THE COURT: YES, HE TOLD ME THE SAME THING.

6 MR. BARENS: AND THAT IS WHAT, YOU KNOW, MAKES IT MORE
7 IMPORTANT.

8 THE COURT: IF YOU HAVE SOMETHING YOU WANT ME TO SAY
9 TO THE JURY, THEN IF IT IS SATISFACTORY, I WILL DO IT, IF
10 IT IS SATISFACTORY TO THE PEOPLE, TOO.

11 LET'S GO ON, WILL YOU?

12 MR. WAPNER: YOUR HONOR, --

13 MR. BARENS: WAS THERE ANYTHING ELSE?

14 MR. WAPNER: WELL, THERE IS JUST ONE OTHER THING,
15 COUNSEL WANTED TO DISCUSS A LIMITING INSTRUCTION, THE LIMITED
16 PURPOSE FOR WHICH THE REFERENCE TO MR. HUNT BEING CHARGED
17 AS A DEFENDANT IN THE ESLAMINIA CASE WAS INTRODUCED AND THEY
18 REFERRED ME TO 2.50 OF CALJIC, WHICH I HAVE READ, AND THAT
19 IS INAPPROPRIATE TO COVER THIS CIRCUMSTANCE.

20 AND WHAT I DECIDED ON MY OWN THIS MORNING IS
21 BASICALLY THE SAME AS THE COURT HAS JUST TOLD COUNSEL WITH
22 RESPECT TO THIS OTHER MATTER, AND THAT IS, THAT IF THEY
23 DRAFT WHAT THEY FEEL IS AN APPROPRIATE LIMITING INSTRUCTION,
24 I WILL TAKE A LOOK AT IT AND SEE IF I THINK IT IS APPROPRIATE.

25 BUT 2.50, AS IT CURRENTLY READS IN CALJIC SAYS
26 AT THE BEGINNING "EVIDENCE HAS BEEN INTRODUCED FOR THE PURPOSE
27 OF SHOWING THAT THE DEFENDANT COMMITTED A CRIME OR CRIMES
28 OTHER THAN THAT FOR WHICH HE IS ON TRIAL" AND THAT IS NOT

1 TRUE. IT WAS NOT INTRODUCED FOR THAT PURPOSE.

2 AND SO IF COUNSEL WANTS TO DRAFT WHAT THEY FEEL
3 IS APPROPRIATE --

4 THE COURT: THAT IS THE USUAL INSTRUCTION WHERE THERE
5 ARE OTHER OFFENSES WITH WHICH HE HAS NOT BEEN CHARGED, BUT
6 TO SHOW A COMMON SCHEME, PLAN OR DESIGN; IS THAT RIGHT?

7 MR. WAPNER: CORRECT. BUT IT DOESN'T APPLY TO THIS
8 SITUATION.

9 MR. BARENS: COULD MR. CHIER RESPOND, SIR?

10 THE COURT: GO AHEAD.

11 MR. CHIER: THE PROBLEM IS THAT WE, AS DEFENSE COUNSEL,
12 DO NOT KNOW THE PURPOSE FOR WHICH THIS EVIDENCE WAS RECEIVED.

13 THE ONLY AUTHORITY THAT I KNOW THAT ARTICULATES
14 THE GROUNDS FOR RECEIVING THIS EVIDENCE IS NUMBER 2.50 IN
15 CALJIC AND, THEREFORE, WE ARE NOT ABLE TO FASHION AN
16 INSTRUCTION BECAUSE WE DON'T KNOW WHAT THE COURT AND COUNSEL
17 HAD IN MIND WHEN THEY MOVED THIS STUFF INTO EVIDENCE.

18 THE COURT: YOU MOVED THE STUFF INTO EVIDENCE.

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1 THE COURT: YOU MOVED THE STUFF INTO EVIDENCE AND --

2 MR. CHIER: NO WE DIDN'T.

3 THE COURT: YOU STARTED EXAMINING ABOUT ANOTHER MURDER.
4 YOU ASKED HIM ABOUT GETTING ANOTHER IMMUNITY.

5 MR. CHIER: ONLY BECAUSE --

6 THE COURT: YOU WERE WARNED. I WARNED YOU BEFORE YOU
7 WENT INTO THAT. YOU DID IT WITH YOUR EYES OPEN.

8 MR. CHIER: WELL YOUR HONOR, WE DID IT UNDER THE THREAT
9 OR THE TENTATIVE RULING BY THE COURT THAT --

10 THE COURT: I DID NOT. ALL I TOLD YOU IS TO STAY AWAY
11 FROM ANYTHING THAT HAS ANYTHING TO DO WITH THE ESLAMINIA
12 MURDER. IF YOU DID, YOU ASKED HIM ABOUT IT, THE DISTRICT
13 ATTORNEY WOULD HAVE THE RIGHT TO, IN REBUTTAL OR REDIRECT,
14 TO SHOW EXACTLY WHAT THAT THING WAS ALL ABOUT.

15 MR. CHIER: BUT WE DID ASK ABOUT THE IMMUNITY, AS WE
16 THOUGHT WAS OUR RIGHT. THEN THE COURT ALLOWED THE PEOPLE TO
17 INTRODUCE -- AND IN FACT, THE COURT ON ITS OWN INITIATIVE,
18 INTRODUCED OTHER -- ELICITED EVIDENCE OF PATRICIDE.

19 I DON'T KNOW WHAT THE COURT'S THEORY WAS OF DOING
20 THAT. SO, NOW HOW DO WE FASHION AN INSTRUCTION LIMITING THE
21 PURPOSE FOR WHICH IT WAS INTRODUCED?

22 THE COURT: ALL RIGHT. LET'S GO BACK INTO COURT. ALL
23 RIGHT?

24 MR. CHIER: WHAT DO WE DO, JUDGE?

25 THE COURT: I WILL DRAFT MY OWN INSTRUCTION ON THAT.

26 (THE FOLLOWING PROCEEDINGS WERE HELD
27 IN OPEN COURT IN THE PRESENCE AND HEARING
28 OF THE JURY:)

5-2
1 MR. BARENS: WE WILL RECALL LYNNE ROBERTS.

2 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.

3
4 LYNNE ROBERTS,

5 RECALLED AS A WITNESS BY THE DEFENDANT, HAVING BEEN PREVIOUSLY
6 SWORN, RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

7 THE CLERK: YOU HAVE PREVIOUSLY BEEN SWORN. YOU ARE
8 STILL UNDER OATH. STATE YOUR NAME ONCE AGAIN FOR THE RECORD.

9 THE WITNESS: LYNNE ROBERTS.

10
11 FURTHER DIRECT EXAMINATION

12 BY MR. BARENS:

13 Q MRS. ROBERTS, I FORGOT TO ASK YOU SOMETHING.
14 MRS. ROBERTS, YOU FIRST SPOKE TO ME IN NOVEMBER OF 1984?

15 A YES.

16 Q ALL RIGHT. MRS. ROBERTS, AFTER OUR FIRST
17 CONVERSATION THAT WAS ON THE TELEPHONE -- WAS IT NOT?

18 A YES.

19 Q ALL RIGHT. DID YOU SUBSEQUENTLY HAVE A TELEPHONE
20 CONVERSATION WITH ME ABOUT THE DAYTIMER YOU BROUGHT YESTERDAY?

21 A YES.

22 THE COURT: ABOUT THE WHAT?

23 MR. BARENS: ABOUT THE DAY-BY-DAY BOOK INTRODUCED INTO
24 EVIDENCE.

25 Q WAS THAT AFTER NOVEMBER, 1984?

26 A YES.

27 Q DID I ASK YOU TO BE AT THE PRELIMINARY HEARING
28 IN BEVERLY HILLS FOR JOE HUNT'S CASE?

6-
1 A YES.

2 Q DID YOU COME TO THE FIRST DAY OF THE PRELIMINARY
3 HEARING?

4 A YES.

5 Q ALL RIGHT. WHO CAME WITH YOU?

6 A MY HUSBAND AND MY DAUGHTER.

7 Q ALL RIGHT. YOUR DAUGHTER, BROOKE ROBERTS?

8 A YES.

9 Q YOUR HUSBAND, BOBBY ROBERTS?

10 A YES.

11 Q DID I TELL YOU THAT YOU WERE GOING TO TESTIFY ON
12 THE FIRST DAY OF THE PRELIMINARY HEARING?

13 A NO. YOU SAID THE PROSECUTION'S WITNESSES GO FIRST.

14 Q ALL RIGHT. AND DID I TELL YOU TO BRING THE DAY-BY-
15 DAY BOOK, THE DAY YOU CAME TO COURT?

16 A YOU TOLD ME TO BRING IT THE DAY I WAS SUPPOSED
17 TO TESTIFY.

18 Q I UNDERSTAND THAT. BUT DID I TELL YOU THAT YOU
19 WERE GOING TO TESTIFY THE FIRST DAY?

20 A NO. YOU DID NOT.

21 Q ALL RIGHT. YOU DID NOT BRING THE BOOK TO COURT
22 ON THE FIRST DAY, DID YOU?

23 A NO.

24 Q WHAT DID I TELL YOU AT THE END OF THE FIRST DAY?

25 A THAT I WAS NOT GOING TO TESTIFY.

26 Q THEREFORE, YOU DID NOT BRING THE BOOK TO COURT,
27 DID YOU?

28 A NO.

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MR. BARENS: THANK YOU.

THE COURT: ALL RIGHT.

MR. WAPNER: I WOULD LIKE TO REOPEN CROSS-EXAMINATION
BRIEFLY, YOUR HONOR.

THE COURT: YES.

1 CROSS-EXAMINATION (REOPENED)

2 BY MR. WAPNER:

3 Q MRS. ROBERTS, YOU CAME BACK FROM ALASKA ON THE
4 28TH OF MAY?

5 A YES.

6 Q AND WHEN WAS IT THAT YOU FIRST BECAME AWARE THAT
7 THE 6TH OF JUNE WAS AN IMPORTANT DATE?8 A WELL, WHEN -- AFTER -- WHEN BROOKE GOT THE
9 INFORMATION.

10 Q WHAT INFORMATION?

11 A YOU KNOW, AFTER THE FIRST TIME, YOU KNOW -- BEFORE
12 THE PRELIMINARY WHEN THEY TOOK JOE YOU KNOW, TO COURT.13 AND THEY HAD ALL OF THE INFORMATION WHEN HE WAS
14 SUPPOSED TO HAVE COMMITTED THIS CRIME AND BROOKE SAID,
15 "REMEMBER, MOM, THAT WAS THE DAY OF THE CHECK. REMEMBER, WE
16 CALLED YOU ABOUT THE CHECK? AND THEY ARE SAYING THAT JOE DID
17 THIS CRIME THAT NIGHT."

18 SO THAT WAS THE FIRST TIME THAT I KNEW.

19 Q OKAY. SO IT WAS YOUR DAUGHTER WHO TOLD YOU WHAT
20 DAY IT WAS THAT WAS SUPPOSED TO BE IMPORTANT, RIGHT?

21 A WELL, SHE HAD GOTTEN THE REPORTS.

22 Q OKAY. AND WAS IT YOUR UNDERSTANDING, THAT BASED
23 ON HER READING OF THE REPORT, THAT SHE WAS THEN REALIZING WHAT
24 DAY IT WAS THAT WAS IMPORTANT?25 A WELL, ALL I KNOW IS THAT SHE SAID, "THEY SAID THAT
26 JOE DID THIS CRIME ON THAT DAY. AND REMEMBER, IT WAS THE DAY
27 OF THE CHECK."

28 AND I SAID YOU KNOW, THAT I REMEMBERED THE PHONE

1 CALL. BUT I DIDN'T KNOW UNTIL I LOOKED IN MY BOOK AND
2 EVERYTHING BECAUSE SHE SAID, "REMEMBER, YOU RETURNED FROM
3 ALASKA."

4 Q AND SO, IT WAS HER TELLING YOU ABOUT WHAT DATE
5 IT WAS?

6 A YES. SHE IS THE ONE THAT GOT THE INFORMATION,
7 YOU KNOW, AT THE COURT THAT DAY WHEN SHE WENT. THEY TOLD HER.

8 Q AND OTHER THAN HER TELLING YOU THAT, DID YOU HAVE
9 ANY INDEPENDENT RECOLLECTION OF THE DAY OF THE PHONE CALL?

10 A I REMEMBERED THE PHONE CALL AND ABOUT THE CHECK --

11 THE COURT: NO. HE IS ASKING YOU WHETHER YOU HAVE ANY
12 INDEPENDENT RECOLLECTION OF THE DAY OF THE TELEPHONE CALL.

13 Q BY MR. WAPNER: THE DATE?

14 A NO. I DIDN'T, UNTIL YOU KNOW, WE TALKED ABOUT
15 IT THEN I LOOKED BACK IN THE BOOK.

16 Q OKAY, NOW --

17 THE COURT: WHAT IN THE BOOK WOULD TELL YOU ABOUT THE
18 CONVERSATION?

19 THE WITNESS: WELL, OUR CONVERSATION --

20 THE COURT: WAIT A MINUTE. THERE IS NO REFERENCE IN
21 THE BOOK ABOUT THE TELEPHONE CONVERSATION?

22 THE WITNESS: NO. THERE ISN'T. I JUST LOOKED IN THERE
23 TO SEE FROM THE THREE WEEKS YOU KNOW, THAT WE HAD PLANNED FOR
24 OUR VACATION.

25 THE COURT: COULDN'T IT HAVE BEEN THE FOLLOWING DAY THAT
26 YOU MIGHT HAVE HEARD IT? SHE MIGHT HAVE CALLED YOU ON THE
27 FOLLOWING DAY, JUNE 7?

28 THE WITNESS: NO. I HAD TOLD BROOKE AND EVERYBODY ELSE

1 THAT WE WERE GOING TO BE GONE THREE WEEKS. SO SHE HAD PUT
2 THAT YOU KNOW, THAT DATE DOWN.

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1 Q BY MR. WAPNER: THAT IS ASSUMING, OF COURSE,
2 THAT SHE WROTE THE CORRECT DATE DOWN FIRST OF ALL, RIGHT?

3 A WELL, I WOULD ASSUME SO.

4 WHY WOULD SHE WRITE DOWN A DIFFERENT DATE IF
5 I TOLD HER I WAS RETURNING IN ABOUT THREE WEEKS ON JUNE 6TH?

6 Q OKAY. ALSO, THAT IS ASSUMING THAT SHE CALLED
7 YOU THE VERY SAME DAY THAT SHE BELIEVED YOU WERE COMING BACK
8 AS OPPOSED TO THE NEXT DAY, CORRECT?

9 A SHE CALLED ME THAT DAY BECAUSE OF THE CHECK.
10 IN OUR CONVERSATION, SHE ASKED ME ABOUT I JUST RETURNED,
11 "YOU AND DAD JUST GOT BACK FROM ALASKA, DIDN'T YOU?"

12 I SAID, "NO, I HAVE BEEN BACK FOR A WEEK. I
13 HAD TO COME BACK BECAUSE OF JURY DUTY."

14 Q OKAY. BUT SHE DIDN'T SAY TO YOU THAT -- WELL,
15 STRIKE THAT.

16 WHEN SHE CALLED YOU TO TALK TO YOU, DO YOU REMEMBER
17 WHAT TIME IT WAS?

18 A I STATED YESTERDAY THAT IT WAS -- I THINK IT WAS
19 AROUND 10:30, QUARTER TO 11:00. IT COULD HAVE BEEN 10:25.
20 IT COULD HAVE BEEN 10:20. IT COULD HAVE BEEN TWENTY-FIVE
21 MINUTES UNTIL. I DON'T KNOW THE EXACT MOMENT.

22 Q OKAY. I AM NOT ASKING YOU FOR THE EXACT MOMENT.

23 BUT YOU SAID 10:30 OR QUARTER TO 11:00; COULD
24 IT HAVE BEEN EVEN CLOSER TO 11:00 O'CLOCK?

25 A NO, BECAUSE I REMEMBER THAT, YOU KNOW, IT WAS
26 LIKE IN THE MIDDLE OF -- I WAS IN BED AND IT WAS LIKE IN
27 THE MIDDLE OF THE NEWS WHICH I WATCH.

28 Q DO YOU REMEMBER WHAT NEWS PROGRAM THAT WAS YOU

7-2
1 WERE WATCHING?

2 A YES, I THINK THAT IT WAS CHANNEL 11, I USED TO
3 WATCH THAT ALL OF THE TIME. IT WAS ON AT 10:00 O'CLOCK.
4 IT HAS BEEN CHANGED NOW. IT GOES ON AT 8:30 AND 12:00 O'CLOCK
5 AND NOW I WATCH CHANNEL 5.

6 - Q YOU HAD BEEN ON JURY DUTY STARTING ON THE 29TH
7 OF MAY, WHICH WAS A TUESDAY?

8 A UH-HUH.

9 Q IS THAT YES?

10 A YES.

11 MR. WAPNER: I HAVE NOTHING FURTHER.

12 THE COURT: ALL RIGHT, YOU MAY STEP DOWN. THANK YOU.

13 THE WITNESS: THANK YOU.

14 MR. BARENS: WE WILL CALL CARMEN CANCHOLA TO THE STAND.
15 IT WILL TAKE A MOMENT TO GET HER.

16 THE COURT: IS SHE OUTSIDE?

17 MR. BARENS: SHE IS UPSTAIRS. WE DISCUSSED THAT WITH
18 YOU, THE PROCEDURE.

19 (PAUSE IN PROCEEDINGS.)

20 MR. BARENS: I HAVE TO GET AN EXHIBIT BACK HERE, SIR.

21 THE COURT: WOULD YOU BOTH APPROACH HERE JUST A SECOND?
22 WE DON'T NEED THE REPORTER.

23 MR. WAPNER: ON THE RECORD?

24 THE COURT: NO.

25 (UNREPORTED COLLOQUY AT THE BENCH BETWEEN
26 THE COURT AND COUNSEL.)

27 MR. BARENS: THE WITNESS HAS NOT BEEN SWORN YET.

28 THE CLERK: IF YOU WOULD PLEASE STAND TO BE SWORN.

1 PLEASE RAISE YOUR RIGHT HAND.
2 YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY YOU
3 MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL
4 BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH,
5 SO HELP YOU GOD.

6 THE WITNESS: I DO.

7

8 CARMEN CANCHOLA,
9 CALLED AS A WITNESS BY THE DEFENDANT, WAS SWORN AND TESTIFIED
10 AS FOLLOWS:

11 THE CLERK: IF YOU WOULD SPELL YOUR FIRST AND LAST
12 NAMES, PLEASE.

13 THE WITNESS: C-A-R-M-E-N.

14 THE CLERK: AND THE LAST NAME?

15 THE WITNESS: C-A-N-C-H-O-L-A.

16 THE COURT: C-A-N?

17 THE WITNESS: C-A-N-C-H-O-L-A.

18

19 DIRECT EXAMINATION

20 BY MR. BARENS:

21 Q GOOD MORNING, MRS. CANCHOLA. WHERE DO YOU LIVE?

22 A IN TUCSON, ARIZONA.

23 Q AND ARE YOU HERE IN THIS COURTROOM TODAY PURSUANT
24 TO A SUBPOENA?

25 A YES, I AM.

26 Q ALL RIGHT. MS. CANCHOLA, HOW OLD ARE YOU?

27 A TWENTY-THREE.

28 Q WHERE WERE YOU BORN?

7-4
1 A CHICAGO, ILLINOIS.

2 Q AND DID YOU GROW UP IN THE CHICAGO AREA?

3 A YES, I DID.

4 Q AND DID YOU GO TO SCHOOL THERE?

5 A GRAMMAR SCHOOL, I ATTENDED THE REST OF GRAMMAR
6 SCHOOL AND PART OF HIGH SCHOOL IN ARIZONA.

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8A- 1 Q AND DID YOU EVENTUALLY LEAVE CHICAGO?

2 A I LEFT WHEN I WAS 12 YEARS OLD.

3 Q AND WHERE DID YOU MOVE?

4 A WE MOVED TO RIO PICO, ARIZONA.

5 Q DID YOU EVENTUALLY MOVE TO TUCSON?

6 A I MOVED BACK TO CHICAGO FROM RIO PICO. I FINISHED
7 MY HIGH SCHOOL THERE. I STARTED COLLEGE IN CHICAGO. THEN
8 I CAME BACK TO ARIZONA AGAIN.

9 Q DO YOU RECALL THE YEAR WHICH YOU CAME BACK TO
10 ARIZONA?

11 A IT WAS JANUARY OF 1982.

12 Q ALL RIGHT. DID YOU GO TO COLLEGE AT ALL IN ILLINOIS?

13 A BARRETT COLLEGE OF THE SACRED HEART IN LAKE FOREST.

14 Q THAT IS IN ILLINOIS?

15 A YES.

16 Q THAT WAS A WOMAN'S COLLEGE?

17 A IT WAS A WOMAN'S COLLEGE.

18 Q DO YOU RECALL WHAT YEAR IT WAS THAT YOU WERE AT
19 THE COLLEGE?

20 A JUST THE FIRST SEMESTER, SEPTEMBER OF 1981.

21 Q AND WHERE DID YOU LIVE WHILE YOU WERE THERE?

22 A IN THE DORMATORY.

23 Q AND AFTER YOU FINISHED YOUR ACTIVITY AT BARRETT
24 COLLEGE, WHERE DID YOU GO?

25 A I RETURNED BACK TO ARIZONA BECAUSE MY FATHER HAD
26 SUFFERED A SERIOUS ILLNESS. AND MY FAMILY KEPT IT FROM ME.
27 I WAS AFRAID THAT IF SOMETHING WERE TO HAPPEN --

28 THE COURT: I DON'T KNOW WHAT THE MATERIALITY OF THIS

1 IS.

2 LET'S GET DOWN TO THE NITTY-GRITTY, WILL YOU?

3 MR. BARENS: AGAIN, YOUR HONOR, I WAS TRYING TO FOLLOW
4 THE FORMAT --

5 THE COURT: LET'S GET TO THE RELEVANCY OF HER TESTIMONY.

6 MR. BARENS: ALL RIGHT. A MOMENT, YOUR HONOR. I NOW
7 HAVE TO FIND ANOTHER PLACE TO START.

8 (PAUSE.)

9 Q BY MR. BARENS: CALLING YOUR ATTENTION TO
10 SEPTEMBER OF 1986 --

11 A OKAY.

12 Q WAS THERE AN OCCASION WHEN YOU WENT -- STRIKE THAT.
13 WHAT WAS YOUR ACTIVITY OR OCCUPATION DURING
14 SEPTEMBER OF 1986?

15 A I WAS A STUDENT IN SCHOOL.

16 Q WHERE DID YOU GO TO SCHOOL?

17 A PART-TIME AT PIMA COLLEGE AND ALSO THE UNIVERSITY
18 OF ARIZONA. I TAKE CLASSES AT BOTH PLACES.

19 Q AT THAT TIME, WERE YOU TAKING AN ECONOMICS CLASS?

20 A MICRO-ECONOMICS CLASS.

21 Q SORRY? COULD YOU KEEP YOUR VOICE UP JUST A LITTLE
22 BIT? OR MAYBE YOU COULD MOVE YOUR CHAIR CLOSER TO THE
23 MICROPHONE.

24 A A MICRO-ECONOMICS CLASS.

25 Q ALL RIGHT. WAS THERE A NIGHT DURING SEPTEMBER
26 OF 1986, WHEN YOU DID NOT GO TO YOUR ECONOMICS CLASS?

27 A IT WAS TOWARD THE END OF SEPTEMBER THAT I HAD CUT
28 CLASS. I HAD GONE TO DINNER.

1 DINNER SORT OF DRAGGED ON. AND AS WE WERE LEAVING
2 THE RESTAURANT, WE BUMPED INTO MY PARENTS.

3 SO, MY PARENTS ASKED US TO STAY A LITTLE BIT
4 LONGER AND JOIN THEM FOR A DRINK --

5 Q LET'S BACK UP JUST A MINUTE IF WE COULD,
6 MS. CANCHOLA.

7 DO YOU RECALL WHAT NIGHT OF THE WEEK IT WAS THAT
8 YOU CUT THE CLASS?

9 A IT WAS THURSDAY NIGHT BECAUSE I ONLY HAD THE CLASS
10 ONCE A WEEK, EVERY THURSDAY.

11 Q ALL RIGHT. DID YOU GO TO DINNER WITH SOMEONE?

12 A WITH JESUS LOPEZ.

13 Q HE IS ALSO KNOWN AS CHINO LOPEZ?

14 A YES, UH-HUH.

15 Q YOU WENT TO DINNER AT WHAT RESTAURANT?

16 A AT THE CAFE NAPOLI.

17 Q WHERE IS THAT LOCATED, IN THE CITY OF TUCSON?

18 A CITY OF TUCSON ON SPEEDWAY.

19 Q AND NOW, YOU HAD DINNER WITH MR. LOPEZ. AND PRIOR
20 TO EXITING THE RESTAURANT, YOU SAY YOU RAN INTO YOUR PARENTS?

21 A UH-HUH. AS WE WERE LEAVING THE RESTAURANT, WE
22 BUMPED INTO MY PARENTS.

23 AND THEY ASKED ME TO JOIN THEM. THEY HAD FORGOTTEN
24 THAT I HAD THE CLASS, OTHERWISE THEY WOULD HAVE MADE ME GO
25 TO CLASS THAT NIGHT.

26 Q NOW, YOU STAYED WITH YOUR FOLKS AT DINNER AND SO
27 YOU WERE WAITING FOR A WHILE?

28 A UH-HUH. WE STAYED THROUGHOUT THE WHOLE TIME WHILE

1 THEY WERE EATING. CHINO ORDERED COFFEE AND I ORDERED ANOTHER
2 DRINK. BUT I WAS JUST SORT OF NURSING IT. I ALSO ORDERED
3 DESSERT.

4 I ATE MY DESSERT WHILE THEY ATE THEIR DINNER.

5 Q NOW, I AM CURIOUS AS TO WHAT YOU HAD TO DRINK
6 DURING DINNER OR AFTER DINNER WITH YOUR FOLKS.

7 DURING YOUR DINNER WITH MR. LOPEZ, YOU HAD HAD
8 SOMETHING OF AN ALCOHOLIC NATURE TO DRINK?

9 A CHINO ORDERED A BOTTLE OF MATEUS AND I THINK I
10 ONLY HAD ONE OR ONE AND A HALF GLASSES. CHINO HAD THE REST.

11 WITH MY PARENTS, I ORDERED A WHITE WINE SPRITZER
12 BUT I DIDN'T FINISH IT. I THINK I STILL HAD MOST OF IT IN
13 THE GLASS.

14 Q ALL RIGHT. IT WAS NOTHING UNUSUAL FOR YOU TO HAVE
15 THAT MUCH TO DRINK? I THINK YOU HAVE BEEN DESCRIBING ABOUT
16 A GLASS AND A HALF OF WINE PRODUCT?

17 A I TALK A LOT, SO I USUALLY HAVE A TENDENCY NOT
18 TO FINISH MY DRINKS.

19 Q ALL RIGHT. WHEN YOU LEFT THE RESTAURANT, WHERE
20 DID YOU GO?

21 A WE WENT BACK TO MY HOUSE. AND I GOT SOME OF MY
22 THINGS TOGETHER AND I WAS WAITING FOR MY PARENTS TO GET BACK.
23 THEY CAME BACK TO --

24 Q LET'S SLOW DOWN, BOTH FOR THE COURT REPORTER
25 BECAUSE SHE HAS TO TAKE DOWN WHAT YOU SAY AND ALSO I WOULD
26 LIKE TO BE VERY CAREFUL IN YOUR ANSWERS TO MY QUESTIONS AS
27 WE CAN BE DURING THIS OCCASION.

28 WHEN YOU SAY, "WE LEFT THE RESTAURANT," AND WENT

1 TO MY HOUSE, WHO IS "WE"?

2 A CHINO AND MYSELF. WE WENT IN MY CAR.

3 MY PARENTS SAID THAT THEY WOULD MEET US AT THE
4 HOUSE.

5 AND I THINK THAT THEY MIGHT HAVE STOPPED OFF
6 SOMEWHERE ALONG THE WAY BECAUSE IT TOOK THEM MAYBE 10 OR 15
7 MINUTES BEFORE THEY GOT TO THE HOUSE.

8 Q ALL RIGHT. YOU WENT TO THE HOUSE. WHAT DID YOU
9 DO WHILE YOU WERE AT THE HOUSE?

10 A I THINK I PACKED SOME OF MY THINGS TOGETHER. WE
11 HAD BOUGHT SOME OLD FURNITURE AND WE WERE GOING TO REFINISH
12 SOME FURNITURE. AND IT WAS UP AT THE RANCH.

13 IT WAS IN THE BARN UP AT THE RANCH.

14 Q ALL RIGHT. THERE IS A RANCH THAT --

15 A THAT CHINO LIVED ON --

16 Q HE WORKED AT --

17 A YES.

18 Q SO YOUR PLAN WAS TO GO BY YOUR HOUSE WHICH YOU
19 DID, TO GET SOME THINGS AND THEN TO GO TO THE RANCH?

20 A SOME OLD CLOTHES AND STAY AT THE RANCH.

21 Q ALL RIGHT. AFTER YOU LEFT YOUR HOUSE, WERE YOU
22 IN YOUR CAR?

23 A YES WE WERE.

24 Q AND WHAT SORT OF CAR IS THAT?

25 A I DRIVE A 1984 HONDA PRELUDE.

26 Q ALL RIGHT. WHEN YOU LEFT YOUR HOUSE, WHO WAS
27 DRIVING YOUR CAR?

28 A CHINO WAS DRIVING MY CAR.

1 Q ALL RIGHT. YOU LEFT YOUR HOUSE AND WHERE DID YOU
2 GO FROM YOUR HOUSE?

3 A WE TOOK SIXTH STREET TOWARD CAMPBELL. THAT IS
4 THE WAY WE ALWAYS GO UP TO THE RANCH. WE ALWAYS TAKE
5 CAMPBELL UP.

6 WE STOPPED AT THE CORNER OF SIXTH AND CAMPBELL
7 AT VICKERS GAS STATION.

8 THE COURT REPORTER: SPELL THAT.

9 THE WITNESS: V-I-C-K-E-R-S.

10 Q BY MR. BARENS: WERE YOU DRIVING INTO THE GAS
11 STATION -- STRIKE THAT.

12 HAD YOU EVER BEEN TO THAT GAS STATION BEFORE?

13 A A FEW TIMES. IT IS RIGHT ACROSS THE STREET FROM
14 THE CAMPUS, FROM THE UNIVERSITY OF ARIZONA CAMPUS.

15 Q IS VICKERS A CHAIN OF GAS STATIONS THAT ARE FOUND
16 IN YOUR AREA?

17 A IT IS A CHAIN OF SELF-SERVICE GAS STATIONS THAT
18 SELL COKES AND THINGS LIKE THAT.

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1 Q ALL RIGHT. A VICKERS STATION IS A SELF-SERVICE
2 FACILITY?

3 A UH-HUH, SELF-SERVICE.

4 Q AS YOU WERE DRIVING INTO THE GAS STATION, DID
5 YOU NOTICE ANYTHING?

6 A AH, WE DROVE INTO THE GAS STATION, WE NOTICED
7 A MAN THAT WAS OVER -- HE WAS ON OUR RIGHT-HAND SIDE. HE
8 WAS PARKED ON OUR RIGHT-HAND SIDE, ONCE WE FINALLY STOPPED.

9 I DON'T REMEMBER IF I NOTICED HIM WHEN WE CAME
10 IN.

11 MR. WAPNER: COULD THE COURT ADMONISH THE WITNESS TO
12 TESTIFY TO WHAT SHE NOTICED AS OPPOSED TO WHAT "WE" NOTICED?

13 THE COURT: YES, TELL US WHAT YOU SAW.

14 THE WITNESS: I DON'T REMEMBER WHETHER I NOTICED HIM
15 WHEN WE WERE COMING IN OR ONCE WE WERE ALREADY THERE.

16 IT HAS BEEN A WHILE.

17 Q BY MR. BARENS: IN ANY EVENT, DID MR. LOPEZ STOP
18 THE VEHICLE NEXT TO A GAS PUMP?

19 A YES, HE DID.

20 Q NOW, WAS THE GAS PUMP ON YOUR LEFT?

21 A IT WAS TO MY LEFT.

22 Q YOU WERE SEATED IN THE FRONT PASSENGER SEAT?

23 A UH-HUH, YES.

24 Q WERE THE WINDOWS UP OR DOWN ON THE CAR, TO YOUR
25 KNOWLEDGE?

26 A BOTH WINDOWS WERE DOWN, BOTH CHINO'S AND MINE,
27 AND THE HATCH WAS ALSO OPEN.

28 Q ALL RIGHT, NOW WHEN YOU GOT TO THE GAS STATION,

1 DID YOU REMAIN SEATED IN YOUR VEHICLE?

2 A YES, I DID THE WHOLE TIME.

3 Q DID YOU NOTICE ANOTHER VEHICLE?

4 A YES, TO MY RIGHT AND A LITTLE BIT BEHIND ME.

5 Q THE VEHICLE THAT WAS TO YOUR RIGHT, WAS IT PARKED
6 NEXT TO A GAS PUMP?

7 A YES, IT WAS.

8 Q THE GAS PUMP NEXT TO YOUR CAR WAS ON THE DRIVER'S
9 SIDE OF THE CAR?

10 A RIGHT.

11 Q THE GAS PUMP NEXT TO THE CAR WE ARE GOING TO
12 BE DISCUSSING WAS ON THE PASSENGER SIDE OF THAT CAR?

13 A RIGHT.

14 Q ON HIS RIGHT-HAND SIDE AS WELL?

15 A UH-HUH.

16 Q WERE THERE ANY GAS PUMPS BETWEEN YOUR CAR AND
17 THE CAR WE ARE GOING TO TALK ABOUT?

18 A NO.

19 Q ALL RIGHT. WHEN YOU GOT STOPPED, DID CHINO LOPEZ
20 GET OUT OF YOUR CAR?

21 A UH-HUH, YES, HE DID.

22 AND HE WENT TO GO PUT GAS IN THE CAR AND THEN
23 HE HOLLERED TO ME, BECAUSE I HAD FORGOTTEN TO PUSH THE LEVER.
24 THERE IS A LEVER.

25 MR. WAPNER: OBJECTION. THAT IS NON-RESPONSIVE.

26 COULD SHE ANSWER THE QUESTION YES, HE GOT OUT?

27 THE COURT: WAIT UNTIL THE QUESTION IS ASKED, ALL RIGHT?

28 MR. BARENS: ALL RIGHT, I AM SURE WE WILL GET THAT

9-3

1 IN, EITHER MYSELF OR MR. WAPNER, TO EVERY INCH OF MOVEMENT.

2 Q BY MR. BARENS: RIGHT NOW, WHAT I WOULD LIKE
3 TO KNOW IS, AS YOU WERE SITTING IN YOUR CAR, DID YOU NOTICE
4 ANYTHING?

5 A I WAS JUST SITTING THERE. I WAS KIND OF BORED.
6 I LOOKED AROUND AND TO MY RIGHT, THERE WAS A REAL ATTRACTIVE
7 OLDER GENTLEMAN.

8 Q ALL RIGHT. AND WHEN YOU SAY YOU SAW AN ATTRACTIVE
9 OLDER GENTLEMAN, COULD YOU PLEASE DESCRIBE TO ME THE
10 GENTLEMAN YOU SAW?

11 A HE WAS ABOUT SIX FOOT ONE, REAL SLENDER. HE
12 HAD VERY NICE CLOTHES ON, VERY EXPENSIVE LOOKING CLOTHES.
13 AND HE HAD SILVER HAIR. HE HAD BLUE-GRAY EYES. HE HAD A
14 SCAR, EITHER A SCAR OR A DEEP WRINKLE ON ONE SIDE OF ONE
15 OF HIS EYES, I DON'T REMEMBER WHICH ONE IT WAS, ABOUT AN
16 INCH. AND HE LOOKED KIND OF OLD AND YOUNG AT THE SAME TIME
17 BECAUSE AT FIRST, HE LOOKED YOUNG BUT THEN, HIS HAIR WAS
18 SILVER AND THEN AS HE CAME UP CLOSER, I SAW HE HAD CROWS
19 FEET ON BOTH OF HIS EYES.

20 Q DID YOU LATER SEE THAT -- STRIKE THAT.
21 WHEN YOU FIRST SAW THIS PERSON, WHERE WAS HE?

22 A I THINK HE WAS PUTTING GAS IN HIS CAR.

23 Q WAS HE STANDING UP?

24 A I THINK HE WAS LEANING OVER, MAYBE A BIT, HOLDING
25 THE PUMP IN THE CAR.

26 Q DID YOU LATER SEE HIM STANDING UP?

27 A YES, I DID.

28 Q COULD YOU ESTIMATE FOR ME WHAT THAT PERSON'S

1 HEIGHT WAS?

2 A HE WAS ABOUT --

3 THE COURT: SHE TOLD US SIX-ONE.

4 THE WITNESS: ABOUT SIX-ONE.

5 I GUESS THAT HE WAS ABOUT SIX-ONE BECAUSE WHEN
6 I WAS QUESTIONED BY MR. WAPNER, I TOLD HIM I THOUGHT THE
7 GENTLEMAN WAS ABOUT TWO TO THREE INCHES TALLER THAN CHINO
8 AND CHINO IS FIVE-TEN, SO I GUESS SIX-ONE.

9 Q BY MR. BARENS: ALL RIGHT, NOW WHEN YOU SAW THIS
10 PERSON, YOU SAY IN THE FIRST INSTANCE, YOU BELIEVE HE WAS
11 PUMPING GAS IN HIS CAR?

12 A HE WAS PUTTING GAS IN THE CAR, UH-HUH.

13 Q NOW, DID YOU CONTINUE TO LOOK AT HIM?

14 A YES, I DID.

15 Q AND WHY DID YOU CONTINUE TO LOOK AT THIS PERSON?

16 A HE WAS VERY, VERY ATTRACTIVE. THERE WAS SOME-
17 THING DIFFERENT ABOUT HIM. HE HAD LIKE A REGAL MANNER.
18 HE WAS VERY STRIKING.

19 I HAVE A FRIEND NAMED GRICEL.

20 THE COURT REPORTER: HOW DO YOU SPELL THAT?

21 THE WITNESS: G-R-I-C-E-L.

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9A
1 THE COURT: WHAT IS THAT?

2 THE WITNESS: GRICEL, G-R-I-C-E-L.

3 THE COURT: A GAZELLE, YOU MEAN AN ANIMAL? A GAZELLE
4 IS AN ANIMAL, ISN'T IT?

5 THE WITNESS: I DON'T KNOW.

6 (LAUGHTER IN COURTROOM.)

7 MR. BARENS: YOUR HONOR REFERENCES WHAT WE WOULD SAY
8 IS A GAZELLE, SIR.

9 THE COURT: A GAZELLE OR GRICEL?

10 MR. BARENS: WE ARE NOT TALKING ABOUT A GAZELLE, SIR.

11 THE COURT: A GAZELLE?

12 THE WITNESS: HER NAME IS GRICEL.

13 THE COURT: HOW DO YOU SPELL IT?

14 THE WITNESS: G-R-I-C-E-L.

15 THE COURT: OH, G-R-I-C-E-L. I'M SORRY. I THOUGHT
16 YOU SAID GAZELLE.

17 MR. BARENS: WELL, IF THAT COMES UP AGAIN, I WILL MAKE
18 IT CLEAR, YOUR HONOR.

19 THE COURT: ALL RIGHT.

20 Q BY MR. BARENS: IN ANY EVENT, YOU STARTED TO
21 COMMENT WHEN I WAS ASKING YOU WHY YOU CONTINUED TO LOOK AT
22 THIS INDIVIDUAL, ABOUT A FRIEND OF YOURS, WHOSE NAME IS
23 GRICEL.

24 A AND HER LAST NAME IS COLON, C-O-L-O-N.

25 Q ALL RIGHT. AND WHY DO YOU MENTION HER AT THIS
26 POINT?

27 A SHE IS A FASHION PHOTOGRAPHER AND SHE HAS DONE
28 A LOT -- HER MAJOR IS PHOTOGRAPHY BUT SHE WAS TAKING A LOT

0A-2

1 OF PHOTOGRAPHS OF DIFFERENT PEOPLE AROUND CAMPUS AT ARIZONA
2 STATE. SHE HAD HER BEDROOM ALL COVERED WITH DIFFERENT PHOTOS
3 OF PEOPLE SHE HAD SEEN THAT WERE REAL STRIKING OR ATTRACTIVE
4 LOOKING AND I THOUGHT IT WOULD BE NEAT IF I HAD A CAMERA
5 OR SOMETHING BECAUSE I WOULD HAVE GOTTEN A PICTURE OF THIS
6 MAN BECAUSE SHE WOULD HAVE LOVED TO HAVE GOTTEN SHOTS OF
7 HIM.

8 Q DID YOU SEE THIS MAN WALKING AROUND?

9 A I SAW HIM WALK TO GO PAY THE CASHIER, BUT I DON'T
10 REMEMBER HIM STANDING IN LINE AT THE CASHIER.

11 I DON'T KNOW WHY I DON'T REMEMBER THAT.

12 Q AS HE WALKED FROM HIS VEHICLE, WAS THE CASHIER
13 THAT YOU PAID TO YOUR LEFT?

14 A WHEN MR. WAPNER FIRST QUESTIONED ME, I THOUGHT --
15 THE COURT: JUST ANSWER THE QUESTION. DON'T MAKE ANY
16 REFERENCE TO MR. WAPNER.

17 Q BY MR. BARENS: JUST TELL US, IF YOU WOULD, WHEN --
18 STRIKE THAT. LET'S START AGAIN.

19 WAS THE CASHIER TO YOUR LEFT AS YOUR CAR WAS
20 PARKED?

21 A YES, UH-HUH.

22 Q DID THE PERSON YOU HAVE DESCRIBED TO US WALK
23 PAST YOUR CAR TO GET FROM HIS CAR TO PAY THE CASHIER?

24 A YES, HE DID.

25 Q DID HE COME IMMEDIATELY ADJACENT TO WHERE YOU
26 WERE SEATED IN YOUR CAR?

27 A HE WALKED PAST MY AUTOMOBILE AND THEN PAST THE
28 FRONT OF IT.

1 Q IN ORDER TO DESCRIBE HOW CLOSE HE CAME TO YOUR
2 CAR AS YOU ARE SEATED, IMAGINING FOR THIS MOMENT THAT YOU
3 WERE STILL SEATED IN THE CAR FACING THE DIRECTION YOU WERE
4 AT THAT TIME, AND AS I UNDERSTAND IT, THE GENTLEMAN WOULD
5 HAVE HAD TO COME FROM HERE; AM I ABOUT AT THE ANGLE OR
6 DISTANCE AT ONE POINT WHERE HE WAS (COUNSEL DEMONSTRATING)?

7 A I THINK SO.

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1 Q ALL RIGHT. NOW, AS HE WALKED TOWARD THE CASHIER --

2 A PROBABLY STRAIGHT.

3 Q ALL RIGHT. WAS THE GENTLEMAN WE ARE DESCRIBING
4 EVER AT A POINT WHERE HE WAS THIS CLOSE TO YOU AS YOU ARE
5 SITTING IN YOUR CAR?

6 MR. CHIER: INDICATING --

7 THE COURT: FOUR FEET?

8 MR. BARENS: I PRESUME WE ARE FOUR FEET?

9 THE WITNESS: MAYBE.

10 THE COURT: WAS HE THAT CLOSE TO YOU AT THE NEAREST
11 POINT?

12 THE WITNESS: CAN YOU STAND BACK, BACK AWAY. I THINK
13 ABOUT THERE.

14 MR. BARENS: I WOULD SAY WE ARE AT THREE FEET SIX, YOUR
15 HONOR?

16 THE COURT: THREE FEET SIX INCHES? WOULD HE BE ABOUT
17 THAT FAR AWAY FROM YOU?

18 THE WITNESS: I WOULD HAVE THOUGHT ABOUT THAT FAR AWAY
19 FROM THE CAR.

20 Q BY MR. BARENS: ALL RIGHT. WHEN THE PERSON WAS
21 THAT FAR AWAY FROM YOU, AT THE SAME MOMENT, WERE YOU STILL
22 LOOKING AT HIM?

23 A I THINK I MIGHT HAVE GLANCED UP AT HIM. BUT HE
24 WAS NOT LOOKING AT US AT THE TIME.

25 Q ALL RIGHT. DID YOU WATCH THE PERSON AS HE WALKED
26 PAST YOU, AS I AM NOW AND I AM NO LONGER ATTEMPTING TO FOLLOW
27 THE PATH OF TRAVEL THAT INDIVIDUAL TOOK -- BUT DID YOU CONTINUE
28 TO LOOK AT THAT PERSON AS HE WALKED TO THE CASHIER?

10A-2
1 A I GUESS I DID LOOK AT HIM WHEN HE WAS WALKING.
2 BUT I DON'T REMEMBER HIM STANDING RIGHT AT THE CASHIER.

3 Q ALL RIGHT. THE POINT I AM TRYING TO MAKE --

4 A I MIGHT HAVE LOOKED AROUND TO SEE WHAT CHINO WAS
5 DOING AT THE TIME OR SOMETHING OR --

6 Q ALL RIGHT. WHEN YOU FIRST SAW THE PERSON BEFORE
7 HE WALKED BY YOUR CAR, YOU SAW HIM PUMPING GAS?

8 A UH-HUH.

9 Q AFTER HE WAS PUMPING GAS, IS HE STANDING NEAR HIS
10 CAR FOR A WHILE?

11 A FOR A MINUTE.

12 Q ALL RIGHT. WERE YOU LOOKING AT HIM AS HE STOOD
13 NEAR HIS CAR?

14 A I THINK I DID, YES.

15 Q WAS HE LOOKING AT YOU?

16 A HE WAS LOOKING OVER AT US.

17 Q WAS THERE EVER A TIME WHEN YOUR EYES LOCKED ONTO
18 HIS EYES?

19 A YES. BUT I THINK THAT WAS LATER.

20 Q AT WHAT TIME?

21 A WHEN HE WAS BACK IN THE CAR.

22 Q ALL RIGHT. IN THE FIRST INSTANCE THEN, YOU SEE
23 HIM PUMPING GAS. YOU SEE HIM STANDING NEXT TO HIS CAR. HOW
24 MANY SECONDS DO YOU FEEL YOU SAW HIM STANDING NEXT TO HIS CAR?

25 A ABOUT 30 SECONDS, JUST STANDING THERE.

26 Q NOW, AS HE WALKED BY HIS CAR TO THE CASH REGISTER
27 OR TO PAY THE CASH PERSON, COULD YOU DESCRIBE HIS MANNERISMS
28 OR THE NATURE IN WHICH HE SEEMED TO BE PROCEEDING?

10A-3

1 A HE JUST HAD A PERFECT POSTURE. HE HAD LIKE, A
2 REGAL BEARING. JUST REALLY, YOU COULD TELL THAT HE WAS SOMEONE
3 WHO WAS USED TO HAVING A LOT OF MONEY.

4 Q IT APPEARED THAT WAY TO YOU?

5 A REAL WELL DRESSED. REAL IMPECCABLE.

6 Q ANYTHING ELSE ABOUT HIS MANNERISMS THAT YOU NOTICED?

7 A JUST THAT HIS -- THE WAY HE WAS DRESSED, IT WAS
8 METICULOUS. THERE WAS NOT A HAIR OUT OF PLACE. HE WAS
9 COMPLETELY WELL GROOMED.

10 Q ALL RIGHT. NOW, AFTER YOU SAW HIM GO TO THE
11 CASHIER, DID YOU SEE HIM RETURN TO HIS VEHICLE?

12 A I REMEMBER HIM WALKING BACK TO THE CAR. I JUST
13 DON'T REMEMBER HIM STANDING THERE PAYING THE CASHIER.
14 I COULDN'T REMEMBER THAT.

15 Q ALL RIGHT. DID YOU SEE WHEN THE INDIVIDUAL WALKED
16 BACK TO HIS CAR, DID HE WALK PAST YOUR CAR A SECOND TIME?

17 A YES. HE DID GO BACK TO HIS CAR.

18 Q DID YOU SEE HIM DO THAT?

19 A WALK PAST MY CAR AGAIN? YES. I DID.

20 Q WHEN HE WALKED PAST YOUR CAR AND GOT BACK TO HIS
21 CAR, WHAT DID HE DO?

22 A I DON'T REMEMBER IF HE STOOD THERE FOR A MOMENT
23 OR IF HE STOPPED TO TALK TO HIS FRIEND, THE FRIEND THAT WAS
24 WITH HIM FIRST.

25 THEN HE WALKED TO THE CAR.

26 Q NOW, WERE YOU MORE INTERESTED IN LOOKING AT HIM
27 OR MORE INTERESTED IN WHAT HE WAS DOING?

28 A JUST LOOKING AT HIM.

1 Q ALL RIGHT. SO, YOU WERE PRIMARILY PAYING ATTENTION
2 TO THE PERSON AND HIS APPEARANCE RATHER THAN EXACTLY WHAT HE
3 WAS DOING?

4 A EXACTLY WHAT HIS MOVEMENTS WERE.

5 Q ALL RIGHT. NOW, WHEN HE GOT BACK TO HIS CAR, YOU
6 SAY THAT HE MIGHT HAVE STOOD NEXT TO HIS CAR FOR A WHILE. DID
7 HE THEN GET IN HIS CAR?

8 A YES. UH-HUH. HE WAS WAITING FOR HIS FRIEND.

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1 Q ALL RIGHT. NOW, SPEAKING OF HIS FRIEND, WHEN YOU
2 FIRST NOTICED THE INDIVIDUAL YOU HAVE DESCRIBED FOR THE COURT,
3 DID YOU SEE A SECOND INDIVIDUAL WITH HIM?

4 A YES I DID.

5 Q WHERE WAS THE SECOND INDIVIDUAL WHEN YOU FIRST
6 SAW HIM?

7 A I REMEMBER HIM OUTSIDE OF THE CAR. I THINK THAT
8 MIGHT HAVE BEEN WHEN I WAS LOOKING OR NOTICING WHO HE WAS WITH.

9 I SAW ANOTHER MAN THAT WAS WITH HIM. I THINK HE
10 WAS STANDING OUTSIDE THE CAR, DRINKING SODA.

11 Q ALL RIGHT. NOW, COULD YOU PLEASE DESCRIBE FOR
12 THE COURT, THE SECOND INDIVIDUAL?

13 A IT WAS ABOUT HIS HEIGHT, ONLY KIND OF CHUNKY,
14 KIND OF A PAUNCH. HE WAS NOT AS TRIM.

15 HIS CLOTHES DIDN'T FIT HIM AS NICELY. HE HAD DARK
16 HAIR BUT A VERY PALE COMPLEXION, A MUSTACHE, BROWN EYES.

17 Q HOW OLD DID THE OTHER PERSON APPEAR TO BE?

18 A HE WAS ABOUT 15 TO 20 YEARS YOUNGER THAN THE MAN
19 I SAW BECAUSE HE DIDN'T HAVE CROW'S FEET OR -- HE LOOKED
20 YOUNGER.

21 Q SO, YOU ESTIMATE THE SECOND PERSON'S AGE TO HAVE
22 BEEN BETWEEN 20 AND 25?

23 A ABOUT 25, SOMEWHERE AROUND THERE.

24 Q WAS THERE ANYTHING ABOUT HIS MANNERISMS THAT YOU
25 NOTICED?

26 A THAT IS WHEN IT DAWNED ON ME THAT I ASSUMED THE
27 OTHER MAN WAS GAY BECAUSE OF THE GUY THAT WAS WITH HIM.

28 HE WAS JUST SORT OF -- HE WAS NOT FOR A MAN OF

1 HIS BUILD -- HE WAS KIND OF FLABBY AND JUST HIS MOVEMENTS,
2 THE WAY HE HELD HIS SODA OR SOMETHING.

3 AND THEN, WHEN HE GOT BACK INTO THE CAR HE WAS
4 ANGRY OR HE SAID SOMETHING TO THE PERSON AND WAS IRRITATED
5 BECAUSE THE MAN WITH THE SILVER HAIR HAD BEEN LOOKING AT MY
6 BOYFRIEND.

7 Q WE'LL GET TO THAT IN A MOMENT. DID THE TWO
8 GENTLEMEN THAT YOU SAW, APPEAR TO BE EFFEMINATE, IN YOUR
9 OPINION?

10 A THEY WERE A COUPLE, YES.

11 MR. WAPNER: SORRY. I DIDN'T HEAR THAT ANSWER.

12 THE WITNESS: THEY WERE A COUPLE, TOGETHER.

13 Q BY MR. BARENS: DID THEY APPEAR TO BE -- HOW DO
14 I PUT IT? DID THEY APPEAR TO BE OF THE HOMOSEXUAL PERSUASION
15 TO YOU?

16 A YES.

17 Q ALL RIGHT. IN ANY EVENT, YOU SAW THE YOUNG MAN
18 OUT OF THE CAR. THE YOUNGER MAN WHO YOU SAY IS 15 TO 20 YEARS
19 YOUNGER, OUTSIDE OF THE CAR. AND DID YOU SEE HIM GET A SODA
20 OR DRINKING A SODA?

21 A I REMEMBER HIM HOLDING A SODA IN HIS HANDS AND
22 STANDING OUTSIDE THE CAR, DRINKING A SODA.

23 Q ALL RIGHT. DID YOU SEE HIM GET BACK IN THE VEHICLE?

24 A YES I DID. AND THAT IS WHEN HE HAD A FEW WORDS
25 WITH THE MAN WITH THE SILVER HAIR, BECAUSE THE MAN WITH THE
26 SILVER HAIR KEPT STARING OVER AT US.

27 I WAS NOT SURE IF HE WAS JUST LOOKING AT US --
28 MAYBE WE LOOKED FAMILIAR OR HE THOUGHT WE WERE FAMILIAR OR

1 SOMETHING.

2 THEN I NOTICED THAT HE WAS STARING AT MY BOYFRIEND,
3 CHINO.

4 Q ALL RIGHT. NOW, PRIOR TO THE YOUNG MAN GETTING
5 INTO THE CAR, HAD YOU BEEN CONTINUING TO LOOK AT THE --
6 EXCUSE THE EXPRESSION -- OLDER MAN, AROUND 40? HAD YOU
7 CONTINUED LOOKING AT HIM?

8 A YES, UH-HUH.

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1 Q AND WAS HE LOOKING AT YOU?

2 A HE JUST KEPT LOOKING AT US, AND I WASN'T SURE --

3 HE JUST KEPT STARING OVER AT US AND I THOUGHT

4 A LOT OF TIMES, PEOPLE STARE BECAUSE THEY KNOW ME. THEY

5 WILL COME UP TO ME, "OH, I MET YOUR FATHER OR I MET YOUR

6 DAD" OR SOMETHING.

7 Q ALL RIGHT. DID YOUR EYES LOCK WITH HIS EYES?

8 A AT ONE POINT, YES. YOU KNOW --

9 Q DID YOU --

10 THEN CHINO GOT BACK IN THE CAR?

11 A CHINO DECIDED -- AFTER HE PAID FOR THE GAS, WE

12 WERE GOING TO TAKE OFF AND THEN HE SAID, "I HAD BETTER CHECK

13 THE OIL AND CHECK THE TRANSMISSION FLUID," BECAUSE MY

14 BROTHER HAD BURNED OUT THE ENGINE ON HIS AUTOMOBILE ONE OR

15 TWO DAYS BEFORE THAT AND MY FATHER HAD LECTURED US AT DINNER

16 THAT EVENING TO MAKE SURE I TOOK CARE OF THE CAR AND TO

17 CHECK THE OIL REGULARLY.

18 Q DID CHINO GET BACK IN THE CAR AT SOME POINT?

19 A AH, YES, HE DID, AFTER HE SPENT SOME TIME UNDER

20 THE HOOD.

21 HE COULDN'T FIND THE TRANSMISSION STICK.

22 Q ALL RIGHT, NOW WHEN CHINO GOT BACK IN THE CAR,

23 DID YOU AND CHINO DISCUSS THE PEOPLE IN THE OTHER CAR?

24 A WHEN WE WERE LEAVING CHINO SAID, "WERE YOU

25 FLIRTING WITH HIM? OR WHY DID THAT GUY KEEP LOOKING AT US?

26 WHY DID HE KEEP LOOKING OVER AT US?"

27 I SAID, "HE WASN'T LOOKING AT ME. HE WAS LOOKING

28 AT YOU."

1 Q AND DID YOU HAVE SOME DISAGREEMENT ABOUT THAT
2 SUBJECT?

3 A AH, WE MADE SOME CRACKS ABOUT IT LATER.
4 AND ALSO, CHINO LIKED THE CAR THEY WERE DRIVING.
5 IT WAS SOME SORT OF A CLASSIC AUTOMOBILE.

6 Q COULD YOU DESCRIBE THE CAR, AS BEST YOU CAN,
7 THAT THESE INDIVIDUALS WERE IN?

8 A I THOUGHT IT MIGHT HAVE BEEN A LATE '50'S, EARLY
9 '60'S AUTOMOBILE IN PERFECT, MINT CONDITION, WITH A SILVERISH
10 OR PINKISH-BEIGE COLOR. IT WAS A HARD TOP AND A TWO DOOR.

11 Q DID THE CAR APPEAR TO BE IN MINT CONDITION TO
12 YOU?

13 A IT WAS IN PERFECT CONDITION.

14 Q NOW, WHEN CHINO FIRST GOT BACK IN THE CAR, WHERE
15 WAS THE OTHER CAR THAT YOU JUST DESCRIBED?

16 A THEY -- AT THAT POINT WHEN CHINO FINALLY GOT
17 BACK IN THE CAR, THEY HAD DRIVEN AROUND. THEY MADE AN
18 UNUSUAL TURN WHEN THEY WERE LEAVING, INSTEAD OF LEAVING TO
19 THE EXIT THAT WAS CLOSEST TO THEM, IT IS LIKE HE DROVE AROUND
20 THE STATION KIND OF AND CAME BACK AND STOPPED ACROSS FROM
21 US.

22 Q ALL RIGHT. NOW, IN EFFECT, THE HALF OF THE CAR
23 TOWARDS YOU, THAT WAS LEAVING MADE WHAT WE WOULD CALL A
24 U-TURN AROUND THE PUMPS THAT YOU WERE NEXT TO?

25 A UH-HUH.

26 MR. WAPNER: WAS THAT YES?

27 THE WITNESS: YES, UH-HUH.

28 Q BY MR. BARENS: AND WHEN THEY WENT AROUND THE

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1 PUMP THAT WAS NEXT TO YOU, NOW THE CAR CAME TO A POINT WHERE
2 IT WAS NOW FACING YOUR CAR BUT PARALLEL?

3 A YES.

4 Q ALL RIGHT, THUS THE CAR THAT IS NOW -- ASSUMING
5 YOU WERE FACING THE DIRECTION THAT YOU WERE IN, THE CAR HAD
6 COME AROUND THIS WAY, AND IF WE COME BACK TOWARDS WHERE THE
7 JUDGE IS, AFTER HAVING MADE A U-TURN (COUNSEL INDICATING)?

8 A YES.

9 Q DID THE CAR STOP?

10 A IT STOPPED FOR A MOMENT.

11 Q WHAT HAPPENED WHEN THE CAR STOPPED?

12 A AH, IT STOPPED AND THE GUY JUST KEPT LOOKING
13 AT CHINO AND CHINO LOOKED AT THE GUY. THEY LOCKED GAZE BUT
14 I AM NOT SURE IF CHINO WAS BACK IN THE CAR AT THAT TIME OR
15 IF HE WAS STILL OUTSIDE STANDING ABOUT TWO FEET FROM THE
16 CAR.

17 I DON'T REMEMBER. IT HAS BEEN SINCE SEPTEMBER.

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1 Q NOW, THEN THE CAR EXITED?

2 A AND THEN THEY LEFT.

3 Q WHEN THE CAR LEFT, WHAT DID YOU SAY TO CHINO?

4 A I -- AT THAT POINT, THAT IS WHEN CHINO COMMENTED
5 ABOUT WHY THEY WERE LOOKING AT US OR WHY DID THEY KEEP LOOKING
6 AT US.

7 Q WHAT ELSE WAS SAID AT THAT PART OF THE DISCUSSION?

8 A I REMEMBER SAYING THAT, YOU KNOW, HE WAS
9 REAL -- HE WAS VERY ATTRACTIVE FOR A MAN HIS AGE, THAT, YOU
10 KNOW, TOO BAD THAT HE IS GAY.

11 Q DID YOU SAY ANYTHING ELSE ABOUT YOUR IMPRESSION
12 OF THE MAN AT THAT TIME?

13 A WELL, AT FIRST, I THINK WHEN I HEARD CHINO SAYING
14 HE WAS LOOKING AT ME, AND MY TURNING AROUND AND TELLING CHINO,
15 "NO, HE WAS LOOKING AT YOU."

16 Q ANYTHING ELSE YOU CAN REMEMBER, THAT YOU CAN
17 RECALL THAT YOU SAID DURING THAT CONVERSATION?

18 A CHINO SAID SOMETHING ABOUT "I WONDER WHAT KIND
19 OF CAR IT WAS."

20 THE CAR WAS PRETTY SHARP.

21 AND I SAID, "I DON'T KNOW."

22 AND I THINK I SAID SOMETHING ABOUT THEM LOOKING
23 SUSPICIOUS OR SOMETHING.

24 THE COURT: WHAT ABOUT BEING SUSPICIOUS?

25 THE WITNESS: ABOUT THEM BEING SUSPICIOUS BECAUSE THEY
26 KEPT LOOKING OVER AT US.

27 Q BY MR. BARENS: DID YOU THEN DRIVE TO THE RANCH?

28 A FROM THERE, WE DROVE UP TO THE RANCH.

1 Q DURING THE NEXT FOLLOWING FEW DAYS, DID YOU AND
2 CHINO DISCUSS THIS INCIDENT AGAIN OR MAKE REFERENCE TO IT
3 AGAIN?

4 A AH, YES, WE DID.

5 A FEW TIMES ON AND OFF, JUST IN JOKING AROUND,
6 IF WE WERE GOING OUT TO DINNER OR SOMETHING, AND CHINO WAS
7 TAKING TOO LONG, I SAID, "YOU DON'T HAVE TO LOOK PRETTY."

8 AND HE SAID, "DON'T YOU LIKE ME LOOKING PRETTY?"

9 HE MADE A WISECRACK ABOUT THE GUY, BECAUSE THE
10 GUY HAD BEEN LOOKING AT HIM.

11 Q BY MR. BARENS: YOU KIND OF KIDDED OR TEASED
12 ABOUT THE INCIDENT FOR THE NEXT SUBSEQUENT FEW DAYS?

13 A UH-HUH.

14 Q DID YOU CONTINUE IN YOUR CLASSES AT THE UNIVERSITY?

15 A YES, I DID.

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

17 (PAUSE IN PROCEEDINGS.)

18 Q BY MR. BARENS: CALLING YOUR ATTENTION TO
19 NOVEMBER 20 OF 1986, DID YOU HAPPEN TO READ AN ESQUIRE
20 MAGAZINE?

21 A YES, I DID.

22 Q THIS IS THE ESQUIRE MAGAZINE THAT YOU READ?

23 A YES.

24 Q ON THE COVER OF THIS MAGAZINE, IS THERE A REFERENCE
25 TO AN ARTICLE?

26 A YES, THERE IS.

27 Q AND WAS IT THE REFERENCE TO THE ARTICLE --

28 LET ME APPROACH THE WITNESS FOR A MOMENT SO WE

1 CAN PROCEED WITH CAUTION.

2 THE COURT: ALL RIGHT.

3 (UNREPORTED COLLOQUY BETWEEN MR. BARENS
4 AND THE WITNESS.)

5 Q BY MR. BARENS: WAS THERE A REFERENCE ON THE
6 COVER OF THE MAGAZINE THAT CAUGHT YOUR ATTENTION?

7 A THERE WERE TWO. I GUESS ONE SAID, "SCANDAL ON
8 WALL STREET" AND THE OTHER ONE WAS ABOUT THE BILLIONAIRE
9 BOYS CLUB.

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1 Q ALL RIGHT. AND I SHOW YOU THE COVER OF THIS
2 MAGAZINE. DO YOU SEE THOSE TWO REFERENCES?

3 A YES.

4 Q AND THIS IS IN FACT, THE MAGAZINE THAT YOU READ?

5 A YES IT IS.

6 Q NOW, WHY DID THOSE TWO ARTICLES CATCH YOUR
7 ATTENTION?

8 A AT THE TIME, I WAS TAKING A BUSINESS CLASS, SPEECH
9 COMMUNICATIONS CLASS. AND THE TEACHER HAD INSTRUCTED US THAT
10 SHE WANTED US TO PREPARE FOR A FIVE-MINUTE SPEECH REGARDING
11 SOMETHING WITHIN OUR MAJOR.

12 MY MAJOR IS ECONOMICS AND FINANCE. AND SO, I WAS
13 LOOKING FOR MAYBE, SOMETHING BUSINESS-RELATED OR ALSO, I WAS
14 BORED.

15 IT WAS AFTER MIDNIGHT. I COULDN'T SLEEP. SO I
16 GRABBED FOR THE NEAREST MAGAZINE.

17 Q ALL RIGHT. HAVE YOU BEEN AN INSOMNIAC FROM TIME
18 TO TIME IN YOUR LIFE?

19 A YES I HAVE.

20 Q WAS THERE MORE THAN ONE ESQUIRE MAGAZINE LOCATED
21 WHERE THIS ESQUIRE MAGAZINE WAS?

22 A THERE WAS ANOTHER ONE WITH A GREEN COVER.

23 Q WHOSE MAGAZINES WERE THEY?

24 A MY BROTHER, ROGER'S.

25 Q ALL RIGHT. NOW, AS YOU HAD FOUND THIS MAGAZINE,
26 YOU WERE AT YOUR HOUSE?

27 A YES I WAS.

28 Q ALL RIGHT. DOES ROGER LIVE AT THAT HOUSE?

1 A HE DOESN'T LIVE THERE. BUT HE IS AT OUR HOUSE
2 MORE THAN HE IS AT HIS.

3 Q DO YOU KNOW HOW THESE MAGAZINES HAPPENED TO BE
4 AT YOUR HOUSE?

5 A ROGER BROUGHT THEM OVER AND LEFT THEM THERE,
6 FORGOT THEM.

7 Q ALL RIGHT. YOU COMMENCED TO READ THE ARTICLE ON
8 THE BILLIONAIRE BOYS CLUB?

9 A YES.

10 Q WAS IT A LONG ARTICLE?

11 A I THINK IT WAS ABOUT 12 PAGES. IT WAS A LONG,
12 DOCUMENTARY ARTICLE.

13 Q ALL RIGHT. NOW, AS YOU WERE READING THE ARTICLE,
14 DID SOMETHING COME TO YOUR ATTENTION?

15 A THERE WAS A SKETCH OF MR. LEVIN AND I REMEMBER
16 GLANCING AT THE SKETCH AND THINKING THAT THE FACE LOOKS
17 FAMILIAR.

18 AND I DIDN'T THINK ANYTHING MORE ABOUT IT. I
19 CONTINUED READING THE STORY.

20 Q ALL RIGHT. NOW, IF WE COULD STOP AT THIS POINT,
21 I WIL SHOW YOU AGAIN, AN ESQUIRE MAGAZINE AND I CALL YOUR
22 ATTENTION TO A LABEL ON IT. WHAT IS THE NAME OF THE LABEL
23 ON HERE?

24 A ROGER CANCHOLA.

25 Q IS THAT YOUR BROTHER?

26 A MY BROTHER.

27 Q THE LABEL I HAVE JUST MADE REFERENCE TO IS REALLY
28 AN ADDRESS LABEL, IS IT NOT?

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A YES.

Q ALL RIGHT. IN OPENING THE MAGAZINE TO PAGE 84,
WHAT IS THE TITLE OF THE ARTICLE THAT WE SEE IN BOLD FACE?

A "THE BILLIONAIRE BOYS CLUB."

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12' 1 Q NOW, TURNING TO PAGE 87 OF THE ARTICLE, DO YOU
2 SEE AT PAGE 87, THE SKETCH THAT WE HAVE -- THAT YOU WERE
3 REFERRING TO?

4 A YES.

5 Q NOW, I SHOW YOU WHAT I HAVE DONE, IS CUT OUT OF
6 THAT OTHER ESQUIRE MAGAZINE, THE SKETCH YOU HAVE JUST MADE
7 REFERENCE TO.

8 WOULD YOU AGREE THAT THE SKETCH IN THE MAGAZINE
9 HERE, IS IDENTICAL IN EVERY RESPECT TO THE SKETCH I HAVE
10 CUT OUT AND MOUNTED ON THE WHITE PIECE OF PAPER?

11 A YES.

12 MR. BARENS: AND I AM GOING TO MARK THAT YOUR HONOR,
13 AS DEFENDANT'S NN.

14 THE COURT: YES.

15 MR. BARENS: I WILL SHOW IT TO THE JURY.

16 THE COURT: CIRCULATE IT AMONG THE JURY.

17 MR. BARENS: THANK YOU. SHOULD I HAVE THEM PASS IT ABOUT?

18 THE COURT: YES.

19 MR. BARENS: IF YOU WOULD, PLEASE.

20 YOUR HONOR, I WILL WAIT FOR THEM TO FINISH, SO
21 WE WILL HAVE ATTENTION PAID.

22 THE COURT: YES.

23 (PAUSE.)

24 MR. BARENS: I WILL RETURN THE PHOTOGRAPH.

25 THE COURT: BY THE WAY, DID THIS MAN THAT YOU SAW THERE,
26 DID HE HAVE A BEARD ON?

27 THE WITNESS: NO.

28 THE COURT: NO BEARD?

1 THE WITNESS: NO. HE WAS CLEAN SHAVEN.

2 THE COURT: ALL RIGHT.

3 Q BY MR. BARENS: NOW, DID YOU CONTINUE READING THE
4 ARTICLE AFTER YOU SAW THIS DRAWING?

5 A YES I DID.

6 Q WHEN YOU SAW THE DRAWING, DID YOU HAVE AN INITIAL
7 REACTION TO THE DRAWING ITSELF OR THE PHOTOGRAPH?

8 A JUST THAT IT LOOKED FAMILIAR. I JUST SORT OF PUT
9 IT ASIDE. I KEPT READING THE ARTICLE.

10 Q ALL RIGHT. WAS THERE SOMETHING ELSE IN THE ARTICLE
11 THAT CAUGHT YOUR ATTENTION?

12 A WHEN THEY STARTED DESCRIBING HIM, THAT HE HAD
13 SILVER HAIR, THAT HIS EYES -- SOMETHING ABOUT HIS EYES.

14 I REMEMBER, I KEPT -- I SAID SOMETHING ABOUT HIS
15 EYES TO CHINO, WHEN WE HAD LEFT THE GAS STATION.

16 I STARTED THINKING AND WE PROBABLY HAD ABOUT A
17 FIVE-MINUTE CONVERSATION AS WE WERE LEAVING THE GAS STATION
18 ABOUT THE GUY WE SAW, ABOUT THE COUPLE, ABOUT THE CAR AND
19 DIFFERENT THINGS.

20 Q WAS THERE ANYTHING ELSE, ANY OTHER WORDS IN THE
21 ARTICLE THAT CAUGHT YOUR ATTENTION?

22 A THE PIERCING EYES AND SOMETHING ABOUT IF YOU SAW
23 HIM, YOU DON'T FORGET WHAT HE LOOKS LIKE.

24 AND AS IT CONTINUED, IT MENTIONED THAT TOWARDS
25 THE END OF THAT, THAT HE WAS GAY. AND ALL OF A SUDDEN, I
26 LOOKED AT THE PHOTO AND THE SKETCH AND I TRIED TO PICTURE IT
27 WITH SILVER HAIR AND THE EYES AND EVERYTHING AND THE FACT THAT
28 I THOUGHT, "GOD, THAT IS THE GUY THAT WE SAW."

1 BUT THEN, I LOOKED BACK TO THROUGH THE ARTICLE
2 AND THEY SAID HE HAD A BEARD. THE GUY WE SAW DID NOT HAVE
3 A BEARD.

4 Q DID YOU FORM A BELIEF AT THAT TIME, BASED ON THE
5 DESCRIPTION THAT YOU READ IN THE ARTICLE AND THE PICTURE THAT
6 YOU SAW, THAT THE ARTICLE WAS DESCRIBING AND DEPICTING THE
7 SAME PERSON YOU HAD SEEN IN THE GAS STATION IN SEPTEMBER OF
8 1986?

9 A IT BOTHERED ME SO MUCH THAT I THOUGHT MAYBE I AM
10 WRONG.

11 BUT I JUST KEPT LOOKING AND LOOKING AT THE PICTURE.
12 I JUST KEPT PICTURING IN MY MIND THE PERSON THAT WE HAD SEEN.

13 AND THE NEXT DAY -- WELL, THAT NIGHT, I COULDN'T
14 EVEN SLEEP BECAUSE I THOUGHT ABOUT WHETHER I SHOULD CALL THE
15 POLICE. I THOUGHT MAYBE NO, I AM OVERREACTING OR SOMETHING.

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1 Q ALL RIGHT, COULD I ASK YOU -- I HAVE CUT OUT
2 FROM THE MAGAZINE CERTAIN SENTENCES I WOULD LIKE TO READ
3 OUT LOUD AND ASK YOU IF THOSE ARE THE SENTENCES YOU HAVE
4 BEEN DESCRIBING TO THE COURT AND THE JURY.

5 A YES.

6 Q COULD YOU PLEASE READ THOSE SENTENCES, MS.
7 CANCHOLA?

8 A (READING:)

9 "LEVIN, 42, LIKED TO INTRODUCE HIS
10 BLACK MAID, BLANCHE STURKEY" --

11 THE COURT REPORTER: WHAT WAS THAT?

12 Q BY MR. BARENS: WELL, IS THAT IN THERE?

13 A YES.

14 Q LET ME DRAW A LINE THROUGH WHAT WE SHOULDN'T
15 BE READING. JUST A MOMENT.

16 MR. CHIER: MY FINGERS WERE TOO THICK TO HOLD THE
17 SMALLER PIECE.

18 THE COURT: DID YOU HEAR ANY NOISE?

19 (UNREPORTED COLLOQUY BETWEEN MR. BARENS
20 AND THE WITNESS.)

21 THE WITNESS: OKAY.

22 "LEVIN, 42.

23 "TALL AND SLENDER AND ALWAYS EXPENSIVELY
24 DRESSED, LEVIN HAD FINE SILVER HAIR, AN IMMACULATE
25 WHITE BEARD, A SMILE THAT WAS AN AFFRONT TO SOME,
26 IRRESISTIBLE TO OTHERS. HIS EYES WERE 'PIERCING,'
27 ONE ACQUAINTANCE THOUGHT, 'SHIFTY,' ACCORDING TO
28 ANOTHER, BUT NO ONE WHO MET LEVIN FORGOT THE HIGH

1 AND NASAL VOICE THAT Poured FORTH IDEAS, OBSERVATIONS,
2 PROMISES, AND PROPOSITIONS AT A RATE THAT LEFT HIS
3 LISTENERS EITHER DAZZLED OR DUMBFOUNDED.

4 "LEVIN LOVED TO ENTERTAIN AND HAD
5 DOZENS OF CLOSE COMPANIONS. A HOMOSEXUAL, HE
6 TRAVELED WITH A RETINUE OF YOUNG MEN."

7 MR. BARENS: WE WOULD MARK THAT AS DEFENSE NEXT, YOUR
8 HONOR.

9 THE COURT: GO.

10 MR. BARENS: THANK YOU, SIR. INDEED, OR OH, MY.

11 (LAUGHTER IN COURTROOM.)

12 Q BY MR. BARENS: NOW, IN ANY EVENT, YOU SAY YOU
13 COULDN'T SLEEP THAT NIGHT?

14 A BECAUSE I --

15 Q YES?

16 A I THOUGHT MAYBE I SHOULD DO SOMETHING ABOUT IT
17 IF IT WAS REALLY THE PERSON THAT WE SAW.

18 Q WHAT DID YOU DO ABOUT IT?

19 A THE NEXT MORNING, I WENT TO CLASS. I WAS DEBATING
20 WHETHER OR NOT TO GO TO CLASS OR JUST GO TO THE POLICE
21 DEPARTMENT. I WENT TO CLASS.

22 I SPOKE TO SOMEONE IN MY CLASS.

23 Q WHOM DID YOU SPEAK TO?

24 A HIS NAME IS MIGUEL CHIBOLLA.

25 THE COURT REPORTER: WOULD YOU SPELL THAT?

26 THE WITNESS: M-I-G-U-E-L, C-H-I-B-O-L-L-A.

27 Q BY MR. BARENS: NOW, WHAT DID YOU TELL MIGUEL?

28 A I TOLD HIM ABOUT THE ARTICLE AND THAT I WAS ALMOST

1 POSITIVE THAT THE GUY WE SAW AT THE GAS STATION WAS THE SAME
2 GUY THAT WAS IN THE MAGAZINE.

3 AND I TOLD HIM -- I ASKED HIM IF HE THOUGHT I
4 SHOULD GO TO THE POLICE OR IF I SHOULD GO TO A FRIEND OF
5 THE FAMILY'S, WHO WAS A REPORTER, BECAUSE SHE HAS BEEN HAVING
6 PROBLEMS AT HER JOB AND MY DAD SAID SHE WAS A REAL GOOD
7 REPORTER AND SHE HADN'T GOTTEN GOOD STORIES AND I THOUGHT
8 IF IT WAS ACTUALLY LEVIN AND THEY CAUGHT HIM, IT WOULD BE
9 A GOOD STORY FOR HER, I THOUGHT.

10 BUT MY FRIEND SAID "ARE YOU CRAZY? IF YOU THINK
11 IT IS HIM, YOU GO TO THE POLICE RIGHT AWAY."

12 I NEVER SPOKE TO HER. I WENT STRAIGHT TO THE
13 POLICE DEPARTMENT. I DROVE STRAIGHT FROM CLASS.

14 Q WHY WERE YOU CONCERNED?

15 A BECAUSE THE ARTICLE, THE WAY IT WAS WRITTEN,
16 IT IMPLIED --

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1 MR. WAPNER: OBJECTION, YOUR HONOR, IT CALLS FOR
2 SPECULATION ON THE PART OF THE WITNESS.

3 Q BY MR. BARENS: WHY WERE YOU CONCERNED?

4 THE COURT: IT GOES TO STATE OF MIND. I WILL PERMIT
5 IT.

6 Q BY MR. BARENS: WHY WERE YOU CONCERNED?

7 A BECAUSE THE ARTICLE MADE IT SOUND LIKE THIS GUY
8 WAS STILL ALIVE SOMEWHERE, THAT HE HAD ENGINEERED HIS OWN
9 DISAPPEARANCE AND THE ARTICLE HAD SAID THAT HE WAS SUPPOSED
10 TO BE --

11 MR. WAPNER: THERE IS A MOTION TO STRIKE. IF WE ARE
12 GOING TO GET INTO THIS, THEN WE ARE GOING TO HAVE TO GET
13 INTO WHAT IT SAYS IN THE ENTIRE ARTICLE.

14 Q BY MR. BARENS: WELL, I AM ASKING YOU WHAT YOU
15 WERE CONCERNED ABOUT.

16 DID YOU HAVE A CONCERN IN YOUR MIND OR A MOTIVATION,
17 OR WHY DID YOU GO TO THE POLICE?

18 A BECAUSE I THOUGHT THAT THIS PERSON COULD STILL
19 BE ALIVE AND THERE ARE PEOPLE BEING TRIED FOR MURDER THAT
20 THEY DIDN'T COMMIT.

21 MR. WAPNER: MAY THE PREVIOUS PORTION OF THE ANSWER
22 THEN BE STRICKEN, YOUR HONOR?

23 THE COURT: AS TO WHAT PORTION ARE YOU TALKING ABOUT?

24 MR. WAPNER: THE PREVIOUS PORTION WHERE IT WAS SAID
25 IN THE ARTICLE OR IMPLIED IN THE ARTICLE, BECAUSE OTHERWISE,
26 WE ARE GOING TO GET INTO, AS COUNSEL KNOWS, INTRODUCING THE
27 WHOLE THING.

28 THE COURT: THE PREVIOUS PORTION AT THE TIME OF YOUR

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1 OBJECTION TO THE PREVIOUS TWO SENTENCES, THEY WILL BE
2 STRICKEN.

3 I THINK IT IS TIME FOR US TO GO TO LUNCH.

4 LADIES AND GENTLEMEN OF THE JURY, WE WILL TAKE
5 OUR CUSTOMERY RECESS AT THIS TIME UNTIL 1:30 THIS AFTERNOON.

6 THE SAME ADMONITION I GAVE YOU WOULD STILL APPLY.

7 (AT 12:00 NOON AN ADJOURNMENT WAS TAKEN
8 TO RESUME AT 1:30 P.M. OF THE SAME DAY.)

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1 SANTA MONICA, CALIFORNIA; WEDNESDAY, APRIL 1, 1987; 1:33 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 CHAMBERS:)

7 THE COURT: ALL RIGHT. I UNDERSTAND THAT YOU HAVE BEEN
8 TOLD BY THE CLERK AS TO WHAT WAS SAID BY SOME OF THE JURORS
9 ABOUT MRS. BECKING?

10 MR. WAPNER: I WAS TOLD BRIEFLY BY THE CLERK ABOUT WHAT --

11 THE COURT: WILL YOU TELL US FOR THE RECORD AGAIN, PLEASE?

12 THE CLERK: JUST AFTER THE HEARING, THREE JURORS CALLED
13 ME OUT. IT WAS JURORS NUMBERS 8, 9 AND -- 10 AND 11. THEY
14 SAID THAT THEY HAVE SEEN MRS. BECKING READ THE NEWSPAPER.

15 THEY DO NOT FEEL THAT SHE HEARS. SHE DID NOT HEAR
16 THE ADMONISHMENT THAT THE JUDGE ARTICULATED YESTERDAY.

17 ALSO, MRS. MICKELL SAID THAT MRS. BECKING CAME
18 UP TO HER ONE DAY -- I HAVE NO REFERENCE AS TO TIME -- AND
19 TOLD HER SOMETHING ABOUT THE CASE. AND MRS. MICKELL HAD NOT
20 HEARD IT. SHE SAYS, "WHERE DID YOU HEAR THAT?" AND
21 MRS. BECKING SAID, "IT WAS ON THE TELEVISION."
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1 WHEN I WAS TELLING MR. BARENS THIS, ONE OF THE
2 JOURNALISTS FOR CNN SAID, "OH, YES, I HAVE SEEN HER READING
3 ARTICLES ON THE CASE."

4 THE COURT: ABOUT THE CASE?

5 THE CLERK: YES.

6 THE COURT: I THINK, EVERYTHING BEING CONSIDERED, AND
7 FROM MY OWN OBSERVATIONS OF THIS JUROR, UNFORTUNATELY, SHE
8 IS A SICK WOMAN. SHE STARES STRAIGHT AHEAD. SHE HAS NO
9 IDEA WHAT IS GOING ON IN THE COURTROOM. I THINK I HAVE NO
10 ALTERNATIVE BUT TO EXCUSE HER.

11 MR. BARENS: YOUR HONOR, COULD I MAKE AN INQUIRY OF THE
12 COURT?

13 MY CONCERN NOW IS WHAT SHE MIGHT HAVE TOLD
14 SOMEBODY THAT SHE SAW ON TV, AMONGST THE JURY, AND MY
15 CONCERN IS --

16 THE COURT: PARDON ME. MISS MICKELL SAID TO YOU, WHAT
17 WAS IT THAT SHE SAID?

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1 THE CLERK: NO. I AM SORRY. SHE DID NOT TELL ME THE
2 SPECIFIC INCIDENT THAT HAD BEEN RELATED TO HER.

3 THE COURT: DO YOU WANT TO HAVE MRS. MICKELL IN AND ASK
4 HER?

5 MR. BARENS: NO.

6 DOES YOUR HONOR IN PRIVATE WANT TO ASK HER WHAT
7 SHE WAS TOLD?

8 I AM WORRIED ABOUT JURY POLLUTION, TO BE FRANK.

9 THE COURT: SHE WILL BE POLLUTING THE JURY, IF WHAT SHE
10 HAS BEEN DOING, READING IT AND TELLING WHAT SHE READ. SHE
11 DOESN'T UNDERSTAND THAT THEY ARE NOT SUPPOSED TO TELL ANYBODY.

12 MR. CHIER: YOUR HONOR READ A NEWSPAPER ARTICLE YESTERDAY.

13 THE COURT: WILL YOU SHUT UP? I ASKED YOU, PLEASE
14 DON'T EVER ADDRESS ME. IF YOU WANT TO SAY ANYTHING, PLEASE
15 TELL IT TO COUNSEL, WHO IS MUCH MORE COMPETENT THAN YOU ARE,
16 WHO KNOWS HOW TO OBSERVE ALL OF THE PROPRIETIES TO A COURT.
17 YOU BE QUIET. I DON'T WANT TO HEAR FROM YOU.

18 MR. WAPNER: ALSO, FOR THE RECORD, THAT IS NOT AN
19 ACCURATE STATEMENT, BECAUSE THE COURT DID NOT READ TO THE JURY
20 ANYTHING FROM THE NEWSPAPER ARTICLE.

21 THE COURT: THAT IS PRECISELY WHY I AM TELLING HIM TO
22 KEEP QUIET, FOR THE RECORD, BECAUSE HE HAS BEEN EXAGGERATING
23 AND LYING ABOUT ANY NUMBER OF THINGS WHICH HE HAS BEEN SAYING
24 TO THE COURT.

25 MR. BARENS: YOUR HONOR, WHAT I AM CONCERNED WITH, TO
26 THE EXTENT I HAVE SEEN TELEVISION ON THIS MATTER OR READ
27 ARTICLES ON THIS MATTER, THROUGH EITHER DESIGN OR INADVERTENCE,
28 THEY APPEAR, AT LEAST TO THIS READER AND OBSERVER, AS BEING

1 SOMEWHAT MORE FAVORABLE TO THE OTHER SIDE THAN TO THE DEFENSE,
2 I MIGHT SAY.

3 THE COURT: WELL, THAT IS WHAT I WANT TO INSURE AGAINST.
4 DO YOU REMEMBER I TOLD THEM YESTERDAY --

5 MR. BARENS: I KNOW.

6 THE COURT: -- UNDER NO CIRCUMSTANCES SHOULD THEY BE
7 READING OR HEARING ANYTHING, BECAUSE SOME OF THE THINGS SAID
8 IN THEM ARE NOT FOR THEIR EARS. IT MAY BE COMPLETELY
9 MISLEADING.

10 MR. BARENS: ALL I AM ASKING IS IF YOUR HONOR MIGHT
11 TRY TO FERRET OUT WHAT THAT WAS.

12 THE COURT: I WILL.

13 MR. BARENS: COULD YOUR HONOR TELL COUNSEL WHAT YOU ARE
14 TOLD?

15 THE COURT: YES, I WILL TELL YOU WHAT I SPOKE TO HER
16 ABOUT.

17 MR. BARENS: WHAT SHE SAID TO THESE PEOPLE ABOUT THAT.

18 MR. CHIER: WILL THIS BE ON THE RECORD?

19 MR. BARENS: YES.

20 THE COURT: DO YOU WANT IT ON THE RECORD?

21 MR. BARENS: YES, I SUPPOSE IT HAD BETTER BE, YOUR HONOR,
22 OR SHOULD BE, YOUR HONOR.

23 THE COURT: ALL RIGHT.

24 NOW I HAVE A TRANSCRIPT OF THIS MORNING AT PAGE
25 11934 OF THIS WITNESS'S TESTIMONY THAT YOU HAVE PRESENTLY ON
26 THE STAND, WHICH I DIDN'T CATCH AND YOU ARE QUESTIONING. THIS
27 IS AT LINE 16 AT PAGE 11934, LINE 14, RATHER:

28 "Q BY MR. BARENS: WELL, I AM ASKING YOU

1 WHAT YOU WERE CONCERNED ABOUT, DID YOU HAVE A
2 CONCERN IN YOUR MIND OR A MOTIVATION, OR WHY DID
3 YOU GO TO THE POLICE?

4 "A BECAUSE I THOUGHT THAT THIS PERSON CAN
5 STILL BE ALIVE AND THAT THERE ARE PEOPLE BEING
6 TRIED FOR A MURDER THAT THEY DIDN'T COMMIT."

7 MR. BARENS: YES, YOUR HONOR.

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1 MR. BARENS: YES, YOUR HONOR.

2 THE COURT: SHE HAD NO BUSINESS MAKING A REMARK OF
3 THAT KIND.

4 MR. BARENS: I DIDN'T TELL HER TO MAKE THAT REMARK.
5 NOW, LET ME MAKE SOMETHING CLEAR ON THE RECORD RIGHT NOW,
6 JUDGE --

7 THE COURT: DID YOUR ASSOCIATE DO THAT?

8 MR. BARENS: YOUR HONOR, LET ME MAKE THAT REAL CLEAR,
9 WHAT TRANSPIRED, HERE. I MET THIS PERSON ON SUNDAY OF THIS
10 WEEK FOR THE FIRST TIME IN MY LIFE. SHE HAD MADE A STATEMENT,
11 THAT STATEMENT, VERBATIM, TO THE POLICE WHEN SHE WAS INTER-
12 VIEWED ON NOVEMBER THE 22ND, 1986.

13 THE COURT: SHE SAID THIS?

14 MR. WAPNER: SHE --

15 MR. BARENS: THAT IS EXACTLY WHAT SHE SAID.

16 THE COURT: DO YOU KNOW THAT?

17 MR. WAPNER: I DON'T KNOW IF THAT IS VERBATIM. BUT
18 HER MOTIVATION FOR GOING TO THE POLICE, WAS READING THE
19 ARTICLE AND --

20 THE COURT: WHY DIDN'T YOU MAKE AN OBJECTION TO HAVE
21 IT STRICKEN, AS EXPRESSING HER BELIEF AS TO GUILT OR
22 INNOCENCE?

23 MR. WAPNER: THERE WERE OBJECTIONS SHORTLY AFTER THAT.

24 THE COURT: YOU SAID:

25 "MR. WAPNER: MAY THE PREVIOUS PORTION OF
26 THE ANSWER THEN BE STRICKEN, YOUR HONOR?"

27 THEN THE COURT SAID:

28 "WHAT PORTION ARE YOU TALKING ABOUT?"

1 "MR. WAPNER: THE PREVIOUS PORTION WHERE
2 IT IS SAID IN THE ARTICLE OR IMPLIED IN THE
3 ARTICLE, BECAUSE OTHERWISE, WE ARE GOING TO GET
4 INTO, AS COUNSEL KNOWS, INTRODUCING THE WHOLE
5 THING."

6 DID YOU HEAR THAT PORTION OF HER ANSWER? I DIDN'T
7 HEAR IT.

8 MR. WAPNER: YES. IF THAT IS HER MOTIVATION, IF THAT
9 IS WHAT SHE THOUGHT AND WHAT SHE IS SAYING, THAT SHE THOUGHT
10 SHE SAW THE GUY WHO WAS SUPPOSED TO BE DEAD, THAT IS ALL
11 RIGHT.

12 THE COURT: THEN SHE WENT ON AND SHE SAID THAT THERE
13 ARE PEOPLE BEING TRIED FOR MURDER THAT THEY DIDN'T COMMIT.
14 SHE IS EXPRESSING HER BELIEF AS TO THE GUILT OR INNOCENCE
15 OF THE DEFENDANT AND --

16 MR. WAPNER: WELL YOUR HONOR --

17 THE COURT: ISN'T THAT TRUE? ISN'T THAT HOW YOU UNDER-
18 STAND IT?

19 MR. WAPNER: I HAVE TO READ THE WHOLE THING. BUT --

20 THE COURT: WELL, I JUST READ IT TO YOU TWICE.

21 MR. WAPNER: MY UNDERSTANDING WAS THAT SHE IS SAYING
22 THAT SHE WENT TO THE POLICE BECAUSE SHE THOUGHT THAT SHE
23 SAW IN THE GAS STATION, A PERSON THAT ACCORDING TO THIS
24 ARTICLE, HAD BEEN KILLED.

25 THE COURT: YES. DID YOU HEAR HER SAY THAT THAT SHE
26 WENT TO THE POLICE BECAUSE THERE ARE PEOPLE BEING TRIED FOR
27 MURDER THAT THEY DIDN'T COMMIT?

28 MR. WAPNER: WELL, IF THAT IS THE PRECISE ANSWER THAT

1 SHE GAVE -- AND I DO HAVE TO READ THE ENTIRE CONTEXT OF
2 IT -- THEN I WOULD MAKE A MOTION TO STRIKE IT. IT WAS RIGHT
3 BEFORE LUNCH, APPARENTLY.

4 MR. BARENS: YOUR HONOR, EXCUSE ME. YOUR HONOR MADE
5 A STATEMENT, "DID I PUT HER UP TO THAT, OR DID MR. CHIER?"

6 THE COURT: I DIDN'T ASK YOU THAT. I ASKED YOU WHETHER
7 OR NOT YOU KNEW ANYTHING ABOUT WHAT SHE WAS GOING TO SAY.

8 MR. BARENS: I WANT TO MAKE IT PERFECTLY CLEAR --

9 THE COURT: I WILL TAKE YOUR WORD FOR IT. YOU SAY NO
10 AND THAT IS ENOUGH.

11 MR. BARENS: MR. WAPNER CAN TELL THE COURT AS TO THE
12 TAPE RECORDING, WE DO HAVE A TRANSCRIPT OF THE TAPE RECORDING.

13 SHE SAID ALMOST THOSE EXACT WORDS ON HER TAPE
14 RECORDING ON NOVEMBER THE 22ND.

15 MR. WAPNER: I DON'T KNOW WHETHER SHE SAID THOSE EXACT
16 WORDS. I AM NOT GOING TO QUARREL WITH THE NATURE OF WHAT
17 SHE SAID.

18 SHE SAID THAT HER MOTIVATION WAS, HAVING READ
19 THIS ARTICLE AND THINKING THAT THE PERSON THEY CLAIMED WAS
20 DEAD, WAS IN FACT, ALIVE, IN HER MIND, THAT IS WHY SHE WENT
21 TO THE POLICE. I CAN'T TELL YOU WHETHER --

22 MR. BARENS: I WILL REPRESENT TO THIS COURT THAT I HAVE
23 A TRANSCRIPT OF THIS TAPE AND --

24 THE COURT: DON'T WORRY. WHEN A QUESTION COMES UP,
25 I ALWAYS TAKE YOUR WORD FOR IT. I DID TAKE YOUR WORD FOR
26 THAT WITH THE CHARGE WHICH WAS MADE ABOUT YOUR FINDING A
27 WITNESS IN RIO.

28 MR. BARENS: YES, WITH THAT TITUS BUSINESS.

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1 THE COURT: AND I BELIEVED YOU. I TOLD YOU THAT AT
2 THAT TIME. THAT IS THE REASON THAT I DIDN'T PURSUE IT.

3 MR. BARENS: I HAVE BEEN REAL SANITARY, NOT EVEN CALLING
4 HER OR SPEAKING TO HER UNTIL SUNDAY. NOW, WHEN I MET HER
5 SUNDAY, I TOLD HER THAT I WOULD NOT TALK TO HER EXCEPT TO
6 ASK HER IF SHE HAD --

7 THE COURT: WHY DID YOU ASK HER THE QUESTION, "DID
8 YOU HAVE A CONCERN IN YOUR MIND OR MOTIVATION FOR GOING TO
9 THE POLICE?"

10 MR. BARENS: I TOLD YOU, YOUR HONOR. I HAVE GONE RIGHT
11 DOWN THE TRANSCRIPT OF THE TAPE THAT I WAS PROVIDED WITH
12 AND ASKED HER THE SAME QUESTIONS THAT MR. WAPNER --

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1 THE COURT: WERE YOU CLAIMING THAT THIS IS ADMISSIBLE,
2 HER BELIEF AS TO THE GUILT OR THE INNOCENCE OF THE DEFENDANT?
3 IS THAT TRUE?

4 MR. BARENS: DO I BELIEVE THAT HER OPINION --

5 THE COURT: IT IS IMPROPER.

6 MR. BARENS: WELL, LET ME ANSWER IT THIS WAY, YOUR
7 HONOR. MY POINT WOULD BE THAT I BELIEVE THAT SHE IS ENTITLED
8 TO STATE WHAT HER STATE OF MIND WAS --

9 THE COURT: THAT'S NOT ALL. SHE IS EXPRESSING AN OPINION
10 AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT.

11 MR. BARENS: I DON'T BELIEVE SHE IS EXPRESSING ANY
12 OPINION AS TO --

13 THE COURT: THAT IS WHAT SHE SAID, "PEOPLE ARE BEING
14 TRIED FOR MURDER THEY DIDN'T COMMIT."

15 MR. BARENS: I BELIEVE IF YOU WILL TAKE THE WHOLE
16 CONTEXT, THE CONTEXT IS THAT I ASKED HER --

17 THE COURT: SHE SAID THAT HER MOTIVATION WAS THAT SHE
18 DIDN'T WANT TO SEE ANYBODY TRIED FOR A MURDER THAT THEY DIDN'T
19 COMMIT. THAT IS THE MOTIVATION.

20 MR. BARENS: BUT, SHE IS NOT SAYING THAT SHE KNOWS
21 WHETHER THIS DEFENDANT IS INNOCENT OR NOT. SHE DOESN'T KNOW
22 THIS DEFENDANT.

23 THE COURT: OF COURSE. OF COURSE HE MUST BE INNOCENT
24 IF THE MAN WHO WAS SUPPOSED TO HAVE BEEN MURDERED IS STILL
25 ALIVE.

26 MR. BARENS: THAT GOES TO HER STATE OF MIND.

27 THE COURT: WELL, HER STATE OF MIND -- SHE IS EXPRESSING
28 AN OPINION AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT AND --

1 MR. BARENS: WELL YOUR HONOR, LET ME SAY ONE THING
2 CLEARLY. I HAVE NEVER, EVER SPOKEN TO THIS WITNESS OTHER
3 THAN PRECISELY WHAT IS ON THOSE TAPE RECORDINGS.

4 I HAVE ADMONISHED HER FOUR DIFFERENT TIMES --
5 THE COURT: WHAT I WILL DO, WHEN I GET OUT THERE, I
6 WILL SAY SOMETHING, IN VIEW OF EVERYTHING ABOUT THIS WITNESS.

7 THEN I WILL GET MRS. MICKELL AND I WILL ASK MRS.
8 MICKELL WHAT SHE HAS SAID SHE HEARD ON TELEVISION.

9 MR. BARENS: I DON'T KNOW IF I'D DO THAT, SIR. I THINK
10 THAT YOU --

11 THE COURT: WELL, YOU JUST TOLD ME THAT --

12 MR. BARENS: I ASKED YOU TO ASK MRS. BECKING WHAT SHE
13 HAD SAID.

14 THE COURT: WHAT IS MRS. BECKING GOING TO SAY? SHE
15 WILL DENY THAT SHE SAID ANYTHING OR READ ANYTHING.

16 MR. BARENS: THEN I THINK WE OUGHT TO DROP IT.

17 THE COURT: ALL RIGHT. YOU WANT ME TO GET MRS. BECKING
18 IN HERE FIRST? I WILL DO THAT.

19 MR. BARENS: I THOUGHT YOU COULD JUST ASK HER --

20 MR. WAPNER: DOES THE COURT INTEND TO EXCUSE MRS.
21 BECKING AT THIS TIME?

22 THE COURT: I DO. I INTEND FULLY TO DO THAT BECAUSE
23 I DON'T THINK HER STATE OF HEALTH IS SUCH -- AND HER HEARING
24 IS BAD. I DON'T THINK THAT SHE OUGHT TO STAY ON THE JURY.
25 OKAY?

26 MR. WAPNER: THAT IS ACCEPTABLE TO THE PEOPLE. I MEAN,
27 I HAVE NO OBJECTION TO THAT, BASED ON WHAT WE HAVE SEEN EARLIER
28 THIS WEEK AND THE STATEMENTS OF THREE DIFFERENT JURORS ABOUT

1 HER APPARENTLY -- EITHER HER HEARING IS SO BAD THAT SHE DIDN'T
2 HEAR THE COURT'S ADMONITION, IN WHICH CASE SHE HAS MISSED
3 HALF OF THE TESTIMONY ANYWAY OR SHE HEARD THE COURT'S
4 ADMONITION AND VIOLATED IT.

5 YOU MIGHT WANT TO FIND OUT HOWEVER, WHEN ALL
6 OF THIS --

7 THE COURT: ALL RIGHT. I WILL GET HER IN AND FIND
8 OUT WHAT SHE DID SAY. IF SHE DID SAY IT, THEN I WILL TELL
9 HER THAT I WILL EXCUSE HER.

10 MR. BARENS: BEFORE WE GO BACK THOUGH INTO THE COURT,
11 COULD YOU CALL US BACK IN SO WE CAN HEAR WHAT HAPPENS, BECAUSE
12 WE WOULD LIKE TO KNOW?

13 THE COURT: CERTAINLY.

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1 MR. BARENS: MY POSITION IS THAT I DEFER TO HIS HONOR
2 ON THIS POINT, PERIOD.

3 THE COURT: VERY GOOD, ALL RIGHT.

4 I FEEL COMFORTABLE ABOUT EXCUSING HER, IF I AM
5 GOING TO EXCUSE HER, BECAUSE WE HAVE APPARENTLY THREE
6 EXTREMELY COMPETENT ALTERNATES FROM WHOM WE CAN CHOOSE.
7 CERTAINLY, IT IS BETTER FOR BOTH SIDES IF WE HAD SOMEBODY THAT
8 IS VERY COMPETENT RATHER THAN ONE THAT IS QUESTIONABLE.

9 MR. WAPNER: I ASSUME THAT WHEN COUNSEL SAYS HE IS
10 DEFERRING TO THE COURT, THAT MEANS WHATEVER THE COURT DECIDES,
11 THERE WOULD BE NO OBJECTION?

12 THE COURT: I ASSUME THAT.

13 MR. BARENS: THAT IS WHAT I MEANT TO SAY.

14 THE COURT: ALL RIGHT, LET'S TELL DIANE TO GET
15 MRS. BECKING IN.

16 MR. BARENS: DO YOU THINK MAYBE WE SHOULD STAY TO HEAR
17 IT FIRS^THAND?

18 THE COURT: DO ANYTHING YOU WANT.

19 MR. BARENS: WHAT DO YOU THINK WE SHOULD DO?

20 THE COURT: SINCE IF SHE SEES YOU IN HERE, SHE MAY
21 HESITATE ABOUT TELLING YOU WHAT SHE DID, LET ME TALK TO HER
22 FIRST AND THEN IF YOU WANT TO COME AND QUESTION HER, ALL RIGHT.

23 MR. BARENS: MAYBE YOU WILL HAVE HER WAIT IN THE HALL
24 AND TELL US WHAT SHE SAID AND THEN WE WILL MAKE A DECISION
25 THEN.

26 THE COURT: ALL RIGHT, FINE.

27 MR. BARENS: IF THAT IS AGREEABLE WITH MR. WAPNER. IS
28 THAT AGREEABLE, MR. WAPNER?

17- 1 MR. WAPNER: I THINK -- I GUESS THAT IS ALL RIGHT.

2 THE COURT: IF YOU HAVE ANY DOUBTS ABOUT IT, TELL US.

3 MR. WAPNER: IT SEEMS CONVOLUTED TO ME. I DON'T SEE
4 WHAT THE HARM IS IN OUR BEING HERE, INSTEAD OF SITTING OUTSIDE
5 AND HAVING TO REPEAT IT. IT DOESN'T MATTER EITHER WAY FOR
6 ME, IF THE COURT WANTS TO EXAMINE HER.

7 THE COURT: I THINK SHE WOULD BE MORE FRANK IN TALKING
8 TO ME THAN IF SHE FOUND YOU BOTH HERE.

9 MR. WAPNER: THAT IS FINE.

10 (COUNSEL EXIT CHAMBERS.)

11 (JUROR BECKING ENTERS CHAMBERS:)

12 JUROR BECKING: GOOD AFTERNOON.

13 THE COURT: HOW ARE YOU?

14 JUROR BECKING: PRETTY GOOD. THANK YOU.

15 THE COURT: HOW ARE YOU FEELING?

16 JUROR BECKING: FINE. NO MORE PROBLEMS.

17 THE COURT: NO MORE PROBLEMS?

18 JUROR BECKING: NO, NOT SINCE THAT MORNING.

19 THE COURT: WELL, WE HAVE A LITTLE PROBLEM, MRS. BECKING.
20 THAT PROBLEM IS THAT IT HAS BEEN REPORTED TO ME FROM SOME OF
21 THE JURORS, AND ALSO BY PEOPLE OUTSIDE, THAT YOU HAVE BEEN
22 READING IN THE NEWSPAPERS AN ACCOUNT OF THIS PARTICULAR
23 TRIAL.

24 JUROR BECKING: WELL, I HAVEN'T SAID ANYTHING ABOUT
25 ANYTHING TO ANYBODY.

26 THE COURT: WELL, YES, ONE OF THE JURORS SAID THAT YOU
27 SAW A TELEVISION PROGRAM AND YOU TOLD HER WHAT YOU HAD SEEN
28 ON TELEVISION.

17- 1 JUROR BECKING: I DON'T RECALL TELLING HER.

2 THE COURT: WELL, SHE SAID SO.

3 JUROR BECKING: I HAVE BEEN VERY QUIET ABOUT THE WHOLE
4 THING, TO BE REAL HONEST. I HAVEN'T TALKED TO MY SISTERS OR
5 MY FAMILY.

6 THE COURT: YOU HAVE NOTHING WRONG WITH YOUR HEARING,
7 HAVE YOU?

8 JUROR BECKING: WHAT'S THAT?

9 THE COURT: DID YOU GET THAT?

10 (THE RECORD WAS READ BY THE REPORTER.)

11 THE COURT: I ASKED YOU WHETHER YOU HAD ANYTHING WRONG
12 WITH YOUR HEARING.

13 JUROR BECKING: NOT REALLY. I CAN HEAR PRETTY GOOD,
14 I THINK.

15 THE COURT: HAVE YOU HAD ANY PROBLEM AT ALL WITH YOUR
16 HEARING?

17 JUROR BECKING: NO.

18 BUT I DON'T THINK THAT IS FAIR OF ANY OF THE OTHER
19 JURORS. I AM JUST BEING AS HONEST AS I CAN AND I AM LISTENING
20 TO THE EVIDENCE.

21 THE COURT: YOU DENY THAT YOU TOLD THEM ANYTHING; ISN'T
22 THAT RIGHT?

23 JUROR BECKING: I CAN'T REMEMBER SAYING ANYTHING TO ANY
24 OF THEM.

25 THE COURT: WELL, HAVE YOU READ ANYTHING ABOUT THE CASE
26 IN THE NEWSPAPERS?

27 JUROR BECKING: WELL, SURE, I HAVE READ SOMETHING.

28 THE COURT: YOU KNOW YOU WEREN'T SUPPOSED TO.

1 JUROR BECKING: I KNOW IT. WELL, I JUST READ HEADLINES,
2 YOU KNOW.

3 THE COURT: AND YOU SAW IT ON TELEVISION, TOO, DIDN'T
4 YOU?

5 JUROR BECKING: WELL, I DON'T WATCH IT.

6 THE COURT: DIDN'T YOU TELL ONE OF THE JURORS WHAT YOU
7 SAW ON TELEVISION?

8 JUROR BECKING: I CAN'T REMEMBER SAYING ANYTHING ABOUT
9 SEEING ANYTHING ON TELEVISION.

10 THE COURT: OH, ALL RIGHT. I AM REALLY VERY DEEPLY
11 CONCERNED ABOUT YOUR HEALTH AND THE INCIDENT THAT HAD HAPPENED
12 AND I AM AFRAID IF THE TENSION OF THE TRIAL AND THE FACT THAT
13 YOU MIGHT BE COOPED UP IN THE JURY ROOM FOR MAYBE DAYS AND
14 DAYS AFTER THE INSTRUCTIONS ARE GIVEN AND ALL OF THE ARGUMENT
15 AND SO FORTH, THAT MIGHT BE BAD FOR YOUR HEALTH IF YOU WERE
16 TO CONTINUE.

17 JUROR BECKING: WELL, IF YOU DON'T WANT ME TO, I WON'T.

18 THE COURT: WELL, NO, IT IS FOR YOUR SAKE. IT IS NOT
19 A QUESTION OF WHAT I WANT, ALTHOUGH IF I THOUGHT WE DIDN'T
20 WANT YOU, WE WOULD HAVE DONE SOMETHING.

21 JUROR BECKING: I HAVE BEEN HERE 40 DAYS AND I FEEL I
22 AM DOING AS GOOD A JOB AS THE OTHER JURORS, TO BE REAL HONEST.

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7A 1 THE COURT: YOU WANT TO BE ON THE JURY?

2 JUROR BECKING: YES.

3 THE COURT: WHY IS THAT?

4 JUROR BECKING: WELL, I ENJOY IT. IT IS SOMETHING
5 DIFFERENT FOR ME TO DO.

6 THE COURT: AS I SAID, I AM DEEPLY CONCERNED ABOUT THE
7 FACT YOU MIGHT BE COOPED UP FOR DAYS AND MAYBE WEEKS IN THE
8 JURY ROOM AND BE UNDER THE PRESSURES AND EVERYTHING ELSE OF
9 DECIDING THIS CASE. IT MIGHT BE BAD FOR YOUR HEALTH.

10 JUROR BECKING: WELL, IT IS UP TO YOU.

11 THE COURT: ALL RIGHT. WHY DON'T WE GET THE ATTORNEYS
12 IN NOW.

13 JUROR BECKING: I USED TO WORK FOR ATTORNEYS FOR ABOUT
14 TEN YEARS.

15 THE COURT: OH YOU DID?

16 JUROR BECKING: I DID EVERYTHING. I WAS A LEGAL SECRETARY.

17 THE COURT: YOU WERE A LEGAL SECRETARY?

18 JUROR BECKING: OH, YES, FOR TEN YEARS.

19 I WORKED AT HOME FOR A JUDGE FOR A WHILE, TOO.

20 (COUNSEL ENTERED CHAMBERS.)

21 THE COURT: I DIDN'T KNOW MRS. BECKING HAD BEEN A LEGAL
22 SECRETARY AND HAD BEEN WORKING FOR A JUDGE, TOO.

23 JUROR BECKING: I RECALL TELLING YOU WHEN YOU WERE
24 INTERVIEWING ME.

25 THE COURT: YES.

26 MR. BARENS: INDEED.

27 THE COURT: I ASKED MRS. BECKING ABOUT WHETHER SHE READ
28 ANY NEWSPAPERS ABOUT THE CASE AND SHE SAID THAT SHE HAD.

1 I ASKED HER WHETHER OR NOT SHE HAD SPOKEN TO ONE OF THE JURORS
2 ABOUT SOME TELEVISION PROGRAM, AND THE JUROR HAD INDICATED
3 TO HER THAT SHE IS NOT SUPPOSED TO AND SHE SAID SHE DOESN'T
4 REMEMBER HAVING SAID ANYTHING TO ANY OTHER JURORS ABOUT HAVING
5 LOOKED AT TELEVISION.

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1 BUT, HAD YOU LOOKED AT THE TELEVISION?

2 MS. BECKING: NOT LATELY, NO.

3 THE COURT: NOT LATELY?

4 MS. BECKING: AS A MATTER OF FACT, I HAVE BEEN GOING
5 TO BED AT 7:00 OR 8:00 AT NIGHT.

6 THE COURT: BUT, HERE IN THE COURSE OF THIS TRIAL?

7 MS. BECKING: VERY, VERY LITTLE

8 THE COURT: HAVE HAVE YOU SEEN ANYTHING ABOUT THIS
9 CASE?

10 MS. BECKING: NOT REALLY, NO.

11 THE COURT: WELL, I TOLD YOU THAT ONE OF THE JURORS
12 SAID THAT YOU DID AND YOU TALKED ABOUT IT.

13 MS. BECKING: WOULD YOU TELL ME WHICH ONE?

14 THE COURT: I CAN'T DO THAT. I DON'T WANT TO CREATE
15 A PROBLEM.

16 MS. BECKING: I REALLY DON'T LIKE THAT AT ALL.

17 THE COURT: ALL RIGHT. THANK YOU VERY, VERY MUCH,
18 MS. BECKING. YOU WILL BE EXCUSED.

19 MS. BECKING: DO YOU WANT ME TO STAY OR --

20 THE COURT: WE WILL LET YOU KNOW IN A MINUTE.

21 MS. BECKING: ALL RIGHT. AM I TO GO BACK INTO THE
22 JURY ROOM?

23 THE COURT: YES. YOU GO BACK INTO THE JURY ROOM.

24 MS. BECKING: ALL RIGHT.

25 (JUROR BECKING EXITS CHAMBERS.)

26 THE COURT: AT ONE STAGE OF MY QUESTIONING, I TALKED
27 WITH A VOICE THAT I AM USING NOW AND SHE COULDN'T HEAR ME.
28 SHE SAYS, "WHAT IS THAT YOU ARE SAYING?"

1 I ASKED HER WHETHER ANYTHING WAS WRONG WITH HER
2 HEARING AND SHE SAID NO, IN A LOUD TONE OF VOICE.

3 I DOUBT VERY MUCH THAT ANY JUROR WOULD SAY THAT
4 SHE HAD TOLD HER ABOUT A TELEVISION PROGRAM AND WHAT WAS
5 ON THAT PROGRAM, UNLESS IT WAS SO. I EXPECTED HER TO DENY
6 IT.

7 MR. BARENS: WELL, I THINK WE HAVE NO CHOICE THEN,
8 BUT TO ASK THE JUROR TO CONFIRM THE SAME TO YOUR HONOR FOR
9 THE RECORD. I AM FEELING --

10 THE COURT: I WILL ASK THAT JUROR TO COME IN. DO YOU
11 WANT ME TO?

12 MR. BARENS: I AM FEELING AWKWARD. YES.

13 THE COURT: ALL RIGHT.

14 MR. WAPNER: I THINK FOR THE RECORD, WE SHOULD DO IT
15 AND NOT JUST BECAUSE MR. BARENS IS FEELING AWKWARD.

16 BUT I UNDERSTAND WHAT HE IS SAYING. HER RESPONSE
17 ABOUT LOOKING AT THE TELEVISION -- I REALIZE THE COURT WAS
18 NOT INTENDING TO CROSS-EXAMINE HER. BUT SHE SAID, "NOT REALLY,
19 NO." WELL, WHAT DOES "NOT REALLY" MEAN? I MEAN SHE EITHER
20 LOOKED AT THE TV OR SHE DIDN'T.

21 MR. CHIER: SHE SAID LATER, FRED THAT --

22 MR. BARENS: COULD I APPROACH ANOTHER SUBJECT WHILE
23 I AM HERE, YOUR HONOR?

24 A MAJOR POINT HAS BEEN EXPRESSED TO ME THAT THE
25 WITNESS PRESENTLY ON THE STAND HAS A MAJOR OBJECTION TO HER
26 PICTURE BEING SHOWN OR BEING TAKEN ON TELEVISION.

27 THE COURT: I WILL CUT IT OFF.

28 MR. BARENS: I WANT YOU TO HAVE THOSE PRESS PEOPLE

1 IN HERE AND JUST LIKE WITH MR. KARNY, I DON'T WANT HER
2 PHOTOGRAPHIC IMAGE SHOWN ON TELEVISION.

3 HER FATHER WAS -- IS AN APPOINTEE OF PRESIDENT
4 NIXON TO A COMMISSION. AT LEAST, THAT IS WHAT SHE TOLD US.

5 MR. CHIER: WITH THE DEPARTMENT OF COMMERCE.

6 MR. BARENS: IN WASHINGTON, D.C. HE IS A FAIRLY
7 SIGNIFICANT BUSINESSMAN IN TUCSON, ARIZONA. THEY ARE
8 SIGNIFICANT SOCIAL FIGURES.

9 HER PARENTS AS I UNDERSTAND IT, ARE REAL UPSET
10 ABOUT THIS WHOLE THING, WHICH PROBABLY EXPLAINS SOME OF HER
11 ATTITUDE AS FAR AS HOW SHE HAS BEEN TOWARD US.

12 THE COURT: THE ATTITUDE I THOUGHT, WAS EXTREMELY FAVORABLE
13 TO YOU.

14 MR. BARENS: WELL YOUR HONOR, THIS LADY HAS BEEN LESS
15 THAN ACCOMMODATING, SINCE WE INITIALLY CONTACTED HER ABOUT
16 THREE WEEKS AGO AND WE SENT MR. CHIER TO TUCSON TO SPEAK
17 TO HER FOR THE FIRST OCCASION.

18 MR. CHIER: THERE WAS AN OSC --

19 THE COURT: WELL, HER VOLUNTARY STATEMENT THAT -- ABOUT
20 THE GUILT OR INNOCENCE OF THE DEFENDANT, WHO SHE SAID WAS
21 NOT GUILTY --

22 MR. BARENS: YOUR HONOR, MAY I REPRESENT TO THE COURT
23 THAT IT WAS NECESSARY TO BRING AN OSC IN TUCSON, TO SECURE
24 LOCAL COUNSEL, TO GET A JUDGE TO ORDER HER IN?

25 THE COURT: I AM NOT CRITICIZING YOU IN THE SLIGHTEST,
26 OR YOUR CONDUCT. I THINK THAT IT IS UNFORTUNATE FOR YOU THAT
27 YOU ASKED THE QUESTION THAT BROUGHT FORTH THE ANSWER. THAT
28 IS THE ONLY THING THAT I AM INQUIRING ABOUT.

1 MR. BARENS: YOUR HONOR, COULD YOUR HONOR --

2 THE COURT: DID YOU ANTICIPATE THAT SHE WOULD ANSWER
3 THAT WAY?

4 MR. BARENS: NO, YOUR HONOR, I DID NOT ANTICIPATE THAT.
5 BECAUSE SHE GAVE VAGUE ANSWERS TO THAT QUESTION,
6 AS IS SHOWN IN THE TAPE.

7 THE MOST RECENT ANSWER THAT SHE HAS GIVEN WAS
8 THE ONE THAT SHE FELT A DUTY AND SHE WAS CONCERNED. IT WAS
9 OUT OF A SENSE OF -- SHE COULDN'T SLEEP AT NIGHT BECAUSE
10 SHE THOUGHT SHE SAW THE SAME MAN.

11 THAT WAS THE RECENT ANSWER THAT SHE GAVE WHEN
12 SHE WAS EXAMINED SUBSEQUENTLY BY THE POLICE.

13 WHAT I HAVE DONE JUDGE, I HAVE NOT EVEN MADE
14 UP MY QUESTIONS. I HAVE USED MR. WAPNER'S QUESTIONS AND
15 THE OTHER POLICE'S QUESTIONS AND I AM MIMICKING AND READING
16 THOSE QUESTIONS FROM THE TAPE.

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1 THE COURT: YOU DIDN'T ANTICIPATE THE ANSWER?

2 MR. BARENS: NO. I DID NOT.

3 THE COURT: ALL RIGHT. I WILL TAKE YOUR WORD FOR IT.

4 MR. BARENS: I THOUGHT SHE WOULD GIVE THE RECENT ANSWER.
5 SOME OF HER ANSWERS, WHICH I AM SURE MR. WAPNER WILL POINT
6 TO THE JURY, VARY AT TIMES.

7 THE COURT: ALL RIGHT. WHY DON'T WE GET THE JUROR IN?
8 I WILL TALK TO HER.

9 MR. BARENS: BY YOURSELF, YOUR HONOR?

10 THE COURT: YES.

11 MR. BARENS: ALL RIGHT. THEN, WILL YOU INVITE US IN
12 AS WE DID IN THE LAST PROCEDURE?

13 THE COURT: OKAY.

14 MR. BARENS: THEN YOUR HONOR, BEFORE WE PROCEED, YOU
15 WILL TALK TO THE MEDIA PEOPLE? BECAUSE I HAVE BEEN CHARGED
16 TO ASK YOU TO DO THAT.

17 THE COURT: ALL RIGHT. I WILL -- WELL, THEY HAVE ALREADY
18 TAKEN THE PICTURE.

19 MR. BARENS: WELL THEN, THEY HAVE NOT SHOWN IT YET
20 BECAUSE IT IS NOT TIME FOR THE 5:00 O'CLOCK NEWS OR WHATEVER
21 HAPPENS WITH THESE THINGS. BUT AT A MINIMUM, THEY CAN'T
22 DO THAT.

23 THE COURT: CAN I DO THAT? CAN I TELL THEM ONCE THEY
24 HAVE GOT IT THAT THEY CAN'T USE IT? I CAN'T TELL THEM THAT.

25 MR. WAPNER: I HAVE NO PROBLEM WITH IT. THE PROBLEM
26 IS, THAT AS COUNSEL KNOWS FROM WHEN WE DID THIS WITH MR.
27 KARNY, WE HAVE TO NOTIFY THE MEDIA. THEY HAVE A RIGHT TO
28 GET THEIR LAWYER HERE.

1 ALSO, THE PROBLEM IS -- I UNDERSTAND HER CONCERN.
2 WITH MR. KARNY, THE IDEA WAS THAT IF HIS FACE WAS RECOGNIZED,
3 HIS SAFETY WOULD BE JEOPARDIZED.

4 WHAT SHE IS TRYING TO PROTECT IS ANYBODY IN
5 TUCSON KNOWING THAT SHE TESTIFIED. BUT THEY ARE GOING TO
6 KNOW WHEN IT COMES UP THAT IT IS CARMEN MARIE CANCHOLA FROM
7 TUCSON, ARIZONA.

8 MR. BARENS: I CAN ONLY SPECIFY WHAT WAS URGENTLY
9 REQUESTED, THAT I SPEAK TO YOUR HONOR.

10 THE COURT: LET ME TALK TO THE MEDIA AND SEE WHETHER
11 OR NOT AS A COURTESY, THEY WOULD DO IT. I CAN'T ORDER THEM
12 NOT TO.

13 MR. BARENS: THAT IS ALL I CAN DO IS ASK, YOUR HONOR.

14 THE COURT: WELL, I WILL DO IT AS A COURTESY.

15 MR. BARENS: I FEEL IN MAKING THE REQUEST, I HAVE
16 FULFILLED MY OBLIGATION TO THE WITNESS.

17 THE COURT: THEN I WILL DO THAT.

18 MR. BARENS: SHALL I ASK THE CLERK TO SUMMON THE JURORS?

19 THE COURT: YES. SHE KNOWS WHO THE JURORS ARE.

20 MR. BARENS: I BELIEVE SO, SIR.

21 (COUNSEL EXIT CHAMBERS.)
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1 THE CLERK: SHE JUST WANTS TO BE EXCUSED.

2 THE COURT: THE JUROR HAS TOLD THE CLERK SHE WANTS TO
3 BE EXCUSED FROM THIS CASE.

4 MR. BARENS: ALL RIGHT, YOUR HONOR.

5 THE COURT: ALL RIGHT, WE WILL EXCUSE HER.

6 MR. WAPNER: I HAVE NO OBJECTION.

7 MR. BARENS: JUST A MOMENT. HOW SHOULD WE LANGUAGE THIS,
8 YOUR HONOR?

9 THE COURT: AT HER REQUEST.

10 MR. BARENS: WELL, I THINK PERHAPS, ONE DOESN'T KNOW
11 WHAT IS SAID LATER ON ABOUT THE SUBJECT. AS A SUGGESTION,
12 YOUR HONOR --

13 THE COURT: TELL ME WHAT YOUR SUGGESTION IS.

14 MR. BARENS: WELL, I WAS THINKING THAT PERHAPS YOUR HONOR
15 COULD SAY, IN LIGHT OF HER HEALTH PROBLEMS THAT IN ORDER TO
16 SAFEGUARD HER WELL BEING, TO AVOID FURTHER STRESS IN THIS
17 MATTER.

18 THE COURT: NO. THEN IF YOU ARE NOT THE ATTORNEY ON
19 APPEAL, SOMEBODY MIGHT THINK THERE WAS NO REASON FOR EXCUSING
20 HER FOR HEALTH REASONS, THERE HADN'T BEEN ENOUGH SHOWN.

21 MR. WAPNER: WAIT A SECOND. WHY IS THERE CONCERN ABOUT
22 WHAT IS GOING TO BE SAID?

23 YOU ARE TALKING ABOUT BEING SAID TO THE OTHER
24 JURORS?

25 MR. BARENS: YES.

26 MR. WAPNER: NOTHING HAS TO BE SAID TO THE OTHER JURORS,
27 OTHER THAN SHE WAS EXCUSED.

28 THE COURT: THAT IS ALL.

19- 1 MR. WAPNER: THEY DON'T HAVE TO KNOW THE REASON.

2 MR. BARENS: OKAY.

3 MR. WAPNER: AND THE RECORD AS FAR AS WHY, I THINK IT
4 WILL SPEAK FOR ITSELF IN TERMS OF ALL OF THE THINGS THAT
5 HAVE HAPPENED.

6 MR. BARENS: OKAY.

7 THE COURT: WE HAVE IT ON THE RECORD NOW, IT IS AT HER
8 REQUEST AND I WILL TELL HER THANK YOU VERY MUCH AND UNDER
9 ALL OF THE CIRCUMSTANCES, I THINK YOU ARE GOING TO BE EXCUSED
10 THEN.

11 MR. BARENS: JUDGE, YOU DON'T HAVE TO SAY TO THE JURY
12 THAT SHE REQUESTED TO BE EXCUSED BECAUSE THEY MAY ALL SAY
13 "WE WOULD LIKE TO LEAVE." THAT IS WHAT I DON'T WANT TO HAVE
14 HAPPEN BECAUSE SOME OF THEM MAY --

15 THE COURT: I WILL TELL HER, "MRS. BECKING, IN VIEW OF
16 ALL OF THE CIRCUMSTANCES, I THINK IT MAY BE WELL TO EXCUSE
17 YOU."

18 MR. BARENS: WHEN YOU COME OUT, YOU MIGHT SAY THAT WE
19 ARE GOING TO PICK AN ALTERNATE JUROR, SHE HAS BEEN EXCUSED,
20 BECAUSE I DON'T WANT ANYBODY ELSE ASKING TO BE EXCUSED.

21 THE COURT: WAIT A MINUTE NOW. WHEN THE JURORS ALL COME
22 IN, SHE WILL BE AMONGST THE JURORS.

23 MR. BARENS: THEN JUST SAY, "WELL, THANK YOU FOR YOUR
24 SERVICES AND WE ARE GOING TO PICK A NEW JUROR."

25 THE COURT: ALL RIGHT, AS LONG AS YOU WANT TO DO THAT.

26 IS THAT AGREEABLE TO YOU?

27 MR. WAPNER: THAT IS FINE.

28 MR. BARENS: IN VIEW OF --

19-7
1 THE COURT: IN VIEW OF WHAT?

2 MR. BARENS: I WOULD JUST SAY THANK YOU FOR YOUR SERVICES,
3 WE ARE NOW GOING TO PICK A NEW JUROR.

4 THE COURT: ALL RIGHT, "THANK YOU VERY MUCH FOR YOUR
5 SERVICES. WE WILL PICK A NEW JUROR."

6 LET'S GO.

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1 MR. WAPNER: THE PEOPLE AND THE DEFENDANT STIPULATE?

2 MR. BARENS: YES.

3 COULD YOUR HONOR PLEASE JUST TAKE A MOMENT, BECAUSE
4 THE WITNESS IS ON ME TO SPEAK TO THAT PRESS POOL GUY NOW.

5 THE COURT: WHO IN THE PRESS POOL?

6 MR. CHIER: RICK LAMONT IS HERE.

7 THE CLERK: LAMONT.

8 MR. BARENS: YES, THAT GUY FROM CHANNEL 2, THAT YOUNG
9 MAN WITH THE DARK HAIR THAT WAS HANGING OUT WITH HIM.

10 MR. WAPNER: NO.

11 MR. BARENS: THE GUY WITH THE TIE ON. HE IS OUT THERE
12 SITTING NEXT TO --

13 MR. CHIER: HE IS WITH 20/20.

14 MR. BARENS: I DON'T KNOW.

15 ASK HIM WHO IS THE GUY FROM CHANNEL 2 THAT IS WITH
16 HIM.

17 THE CLERK: OKAY.

18 MR. BARENS: I AM SORRY, YOUR HONOR. I APPRECIATE THE
19 ACCOMMODATION.

20 THE COURT: I WILL DO THE BEST I CAN BUT I CAN'T ORDER
21 THEM NOT TO.

22 MR. BARENS: I UNDERSTAND.

23 THE COURT: I MIGHT SUGGEST THEY HAVE GOT ENOUGH ON IT,
24 THEY DON'T NEED ANYTHING FURTHER AS FAR AS THIS WITNESS IS
25 CONCERNED, THEY HAVE ALREADY GOT IT.

26 MR. BARENS: YOU CAN ASK HIM NOT TO USE IT AS A COURTESY
27 TO YOU.

28 THE COURT: ALL RIGHT, I CAN DO THAT.

19A 0
1 THAT IS LAMONT?

2 MR. BARENS: I DON'T KNOW.

3 DO YOU KNOW THE OTHER GENTLEMAN, WHO THE OTHER
4 GENTLEMAN IS?

5 MR. WAPNER: I BELIEVE IT IS JIM MORET, M-O-R-E-T.

6 THE COURT: ALL RIGHT, I WILL ASK THEM BOTH.

7 THIS IS AT THE REQUEST OF THE WITNESS?

8 MR. BARENS: YES.

9 THE COURT: SHE TALKED TO YOU AND YOU ARE CONVEYING THAT
10 REQUEST TO ME?

11 MR. BARENS: YES, YOUR HONOR.

12 THE COURT: DO YOU WANT TO BE PRESENT DURING THE TIME
13 I TELL THEM THAT?

14 MR. BARENS: I WOULD JUST LIKE TO TELL HER WHAT THEIR
15 RESPONSE IS SO I CAN TELL THE WITNESS.

16 (PAUSE IN PROCEEDINGS.)

17 (MESSRS. LAMONT AND MORET ENTER CHAMBERS.)

18 THE COURT: MR. MORET AND MR. LAMONT, I HAVE HAD A
19 REQUEST FROM DEFENSE COUNSEL, THEY SAY THAT THE WITNESS
20 PRESENTLY ON THE STAND DOESN'T WANT TO HAVE HER PICTURE TAKEN
21 OR ANYTHING DONE WHILE SHE IS ON THE STAND BECAUSE OF HER
22 FAMILY RELATIONS BACK IN ARIZONA, THAT HER FAMILY IS
23 PROMINENT AND SO FORTH AND THEY DON'T WANT TO HAVE ANY
24 PUBLICITY IN CONNECTION WITH THIS MATTER. I AM CONVEYING THAT
25 REQUEST TO YOU.

26 MR. MORET: OKAY.

27 THE COURT: YOU DO WHAT YOU LIKE ABOUT IT.

28 MR. BARENS: WHAT I MIGHT REQUEST, GENTLEMEN, IS IF THERE

9A - 1 IS ANY WAY -- IT MAY BE TOO LATE -- IF YOU ARE GOING TO RUN
2 HER, TO AT LEAST PHOTOGRAPHICALLY -- I DON'T CARE ABOUT THE
3 VOICE -- BUT PHOTOGRAPHICALLY TO INTERRUPT HER FACIAL
4 FEATURES, AS WAS DONE WITH MR. KARNY TO THE EXTENT IT IS
5 POSSIBLE.

6 MR. MORET: OKAY. LET ME ASK YOU. IS THIS FOR THIS
7 WITNESS ALONE OR IS IT FOR OTHER WITNESSES?

8 MR. BARENS: THAT IS THE ONLY WITNESS I HAVE HEARD THAT
9 REQUEST FROM.

10 THE COURT: THIS WITNESS ALONE?

11 MR. BARENS: THAT I HAD THE REQUEST FROM.

12 MR. MORET: OKAY. WHAT I WILL DO IS, I WILL CALL THE
13 STATION. I DON'T KNOW IF IT IS POSSIBLE AS TO WHAT I HAVE
14 SENT IN. THAT IS SOMETHING I WILL HAVE TO CHECK ABOUT.

15 THE COURT: ALL RIGHT.

16 MR. MORET: I WILL CERTAINLY BE HAPPY TO CHECK.

17 THE COURT: IF YOU CAN DO IT, FINE. IF YOU CAN'T, ALL
18 RIGHT.

19 MR. MORET: HOW ABOUT HER NAME?

20 MR. BARENS: I DON'T THINK YOU CAN DO THAT LEGALLY.

21 I THINK IT IS JUST THE PICTURE, THE PHOTOGRAPHIC REPRESENTATION
22 IS THE ONLY SUBJECT I AM ADDRESSING.

23 MR. CHIER: THE LIKENESS ONLY.

24 THE COURT: ALL RIGHT.

25 MR. MORET: ALL RIGHT.

26 THE COURT: ALL RIGHT, THANK YOU.

27 (RECESS.)

28

1 (THE FOLLOWING PROCEEDINGS WERE HELD
2 IN OPEN COURT IN THE PRESENCE OF THE
3 JURY:)

4 THE COURT: GOOD AFTERNOON, LADIES AND GENTLEMEN.
5 MS. BECKING HAS BEEN EXCUSED FROM THE JURY, WITH THE DEEP THANKS
6 OF THE COURT.

7 WE'LL NOW PROCEED TO SELECT ONE OF THE ALTERNATE
8 JURORS TO TAKE HER PLACE.

9 THE CLERK: JUEL JANIS.

10 THE COURT: ALL RIGHT.

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12 CARMEN CANCHOLA,
13 CALLED AS A WITNESS BY THE PEOPLE, HAVING BEEN PREVIOUSLY SWORN,
14 RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

15 THE COURT: I HAVE TO TELL YOU TO JUST ANSWER THE
16 QUESTIONS OF FACT. DON'T EXPRESS ANY PERSONAL OPINIONS OF
17 YOUR OWN.

18 THE WITNESS: I WILL TRY.

19 THE COURT: THANK YOU.

20
21 DIRECT EXAMINATION (CONTINUED)

22 BY MR. BARENS:

23 Q MS. CANCHOLA, YOU MADE THE DECISION TO GO TO THE
24 POLICE. NOW AS I UNDERSTAND IT, YOU HAD READ THE ARTICLE ON
25 NOVEMBER 21, 1986, IS THAT CORRECT?

26 A IT WAS A THURSDAY NIGHT. SO I THINK IT WAS THE
27 20TH.

28 Q THE 20TH? AND WHAT DAY DID YOU GO TO THE POLICE

1 DEPARTMENT?

2 A THE FOLLOWING MORNING, AFTER I COULDN'T SLEEP.

3 Q IT WOULD BE --

4 A I MEAN, AFTER CLASS.

5 Q THE 21ST OF NOVEMBER, 1986?

6 A THE 21ST, FRIDAY.

7 Q ALL RIGHT. NOW, WHEN YOU WENT TO THE POLICE
8 STATION, DO YOU KNOW WHO YOU SAW THERE? WHO WAS THE FIRST
9 PERSON YOU SPOKE TO?

10 A I SAW DETECTIVE JEFF MEYERS.

11 Q AND DID DETECTIVE MEYERS INTERVIEW YOU AT THAT POINT
12 IN TIME?

13 A YES. HE DID FOR ABOUT AN HOUR.

14 Q DID YOU TELL DETECTIVE MEYERS ESSENTIALLY WHAT
15 YOU TOLD US HERE TODAY?

16 A I TOLD HIM YOU KNOW THAT I COULD BE WAY OFF OR
17 WHATEVER BUT THAT I FELT I SHOULD YOU KNOW, LET THEM KNOW THAT
18 I THOUGHT I SAW SOMEONE WHO LOOKED A LOT LIKE --

19 THE COURT: THE QUESTION WAS, "DID YOU TELL THEM
20 SUBSTANTIALLY WHAT YOU TOLD US TODAY?"

21 THE WITNESS: YES.

22 THE COURT: ALL RIGHT.

23 THE WITNESS: YES.

24 Q BY MR. BARENS: NOW, AFTER YOU TOLD HIM, THEN YOU
25 GAVE YOUR IDENTITY AND ET CETERA TO DETECTIVE MEYERS?

26 A YES I DID.

27 Q NOW, AFTER HAVING READ THE ARTICLE AND SEEING THE
28 PICTURE AND THE ARTICLE, COULD YOU ASCRIBE A PERCENTAGE OF

20A -
1 CERTAINTY THAT YOU HAD, THAT THE PERSON YOU SAW AT THE GAS
2 STATION, WAS THE PERSON WHOSE PICTURE YOU HAD SEEN IN THE
3 ARTICLE YOU HAVE DISCUSSED WITH THE COURT?

4 A YES I DID.

5 Q AND WHAT PERCENTAGE OF CERTAINTY WOULD YOU ASCRIBE
6 TO YOUR BELIEF THAT IT WAS THE SAME PERSON?

7 A I TOLD HIM 90 PERCENT. BUT I DIDN'T TELL HIM
8 ABSOLUTELY FOR SURE UNTIL I SAW A PHOTO, A REAL PHOTO OF THE
9 PERSON.

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1 Q NOW, YOU TOLD DETECTIVE MEYERS THAT YOU WERE
2 90 PERCENT CERTAIN --

3 A NO, NOT THAT DAY. IT WAS LATER WITH MR. WAPNER
4 AND THE POLICE OFFICERS.

5 THE COURT: HE WANTS TO KNOW WHAT YOU TOLD MR. MEYERS.

6 Q BY MR. BARENS: ALL RIGHT. AS I UNDERSTAND IT
7 THEN, YOU DID NOT EXPRESS A PERCENTAGE OF CERTAINTY TO
8 DETECTIVE MEYERS WHEN YOU FIRST SPOKE TO HIM?

9 A I CAN'T BE SURE. IT HAS BEEN ABOUT SEVEN MONTHS,
10 NOW.

11 Q WHAT IF ANYTHING, HAPPENED ON THE 22ND OF
12 NOVEMBER, THE FOLLOWING DAY?

13 A WELL, I RECEIVED A PHONE CALL. I WAS TOLD THAT
14 CHINO AND MYSELF SHOULD GO TO THE POLICE STATION AND SOME
15 PEOPLE FROM BEVERLY HILLS HAD FLOWN IN AND THEY WANTED TO
16 SPEAK TO US AND IT WOULD ONLY TAKE A COUPLE OF HOURS.

17 Q NOW, WHOM DID YOU MEET THE NEXT DAY? NOW WE ARE
18 AT NOVEMBER 21, 1986. WHOM DID YOU MEET?

19 A MR. WAPNER AND DETECTIVE MACMAC.

20 Q M-A-C-M-A-C?

21 A YES.

22 Q MACMAC AND WHO ELSE DID YOU MEET, IF ANYONE, THAT
23 DAY?

24 A DETECTIVE PHILLPELI AND MR. MEYERS, DETECTIVE
25 MEYERS WAS THERE ALSO.

26 Q NOW, WHAT DAY OF THE WEEK?

27 A THAT WAS A SATURDAY.

28 Q NOW, WITH WHOM DID YOU PRIMARILY SPEAK AT THAT

1 TIME?

2 A EVERYBODY, IT SEEMED.

3 Q OKAY. WERE YOU QUESTIONED BY MR. WAPNER?

4 A YES I WAS.

5 Q WERE YOU QUESTIONED BY THE OTHER POLICE OFFICERS
6 THAT WERE PRESENT?

7 A YES I WAS.

8 Q WERE YOU IN FACT, QUESTIONED ON EVERY SUBJECT THAT
9 I HAVE ASKED YOU ABOUT TODAY?

10 A YES I WAS.

11 Q ALL RIGHT. I WOULD ASSUME THAT YOU WERE ASKED
12 A LOT MORE QUESTIONS THAN I HAVE ASKED YOU?

13 A YES, I WAS.

14 Q HOW MANY HOURS DID YOU SPEND WITH MR. WAPNER
15 ET AL. ON THAT DAY?

16 A I WAS WITH THEM FROM 12:00 TO 5:00. THEN THERE
17 WAS A BREAK IN BETWEEN BECAUSE THAT INCLUDES THE TIME THAT
18 CHINO WAS SPEAKING TO THEM ALSO. I WAS WAITING IN THE
19 HALLWAY FOR CHINO FOR ABOUT TWO HOURS OR TWO AND A HALF HOURS.

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1 Q AND THEN HOW LONG AFTER THE BREAK AT 5:00 DID
2 THIS CONTINUE?

3 A THEY GAVE US AN HOUR BREAK AND THEN I -- I CAME
4 BACK TO THE POLICE STATION AT 6:00 AND WE DIDN'T LEAVE, BOTH
5 CHINO AND I DIDN'T LEAVE THE POLICE STATION AGAIN UNTIL
6 10:00 O'CLOCK AT NIGHT.

7 Q SO THIS HAD STARTED AROUND NOON, AND EXCEPT FOR
8 THE BREAK, CONTINUED UNTIL 10:00 P.M. THAT NIGHT?

9 A YES, UH-HUH.

10 AND I NEVER CONSIDERED CALLING IN A LAWYER AT
11 THAT POINT. I DIDN'T THINK IT WAS NECESSARY UNTIL AFTER
12 ALL THAT WE WENT THROUGH THAT DAY.

13 Q NOW, AS A PART OF THE QUESTIONING YOU WENT THROUGH
14 THAT DAY, WERE YOU SHOWN A LINEUP?

15 A YES, I WAS.

16 Q AND WAS THAT IN THE FORM OF A LINEUP, A PHOTOGRAPHIC
17 LINEUP CONSISTING OF SIX PHOTOGRAPHS?

18 A YES, IT WAS.

19 Q WHO SHOWED THAT TO YOU?

20 A I DON'T REMEMBER WHICH PERSON IT WAS. THERE
21 WERE THREE PEOPLE IN THE ROOM AT THE TIME. IT WAS MR. WAPNER,
22 MACMAC AND DETECTIVE MEYERS.

23 Q ALL RIGHT. IS THIS THE LINEUP THAT YOU WERE SHOWN,
24 EXCEPT THAT IT IS NOW BLOWN UP?

25 A YES, IT IS.

26 Q DID YOU MAKE AN IDENTIFICATION IN THAT LINEUP?

27 A YES, I DID.

28 Q POINT FOR THE JURY TO THE PERSON YOU IDENTIFIED.

1 A THE RIGHT LOWER CORNER (WITNESS INDICATING).

2 MR. BARENS: THE RECORD WILL REFLECT, AND I WOULD LIKE
3 TO MARK THIS AT THIS POINT AS DEFENDANT'S NEXT, WHICH I BELIEVE
4 IS PP, YOUR HONOR?

5 THE COURT: YES, THAT WOULD BE PP.

6 MR. BARENS: THE RECORD WILL REFLECT THAT THE WITNESS
7 HAS INDICATED A PHOTOGRAPHIC IN THE LOWER RIGHT-HAND CORNER
8 AND IT WOULD BE THE BOTTOM PHOTOGRAPH ON THE RIGHT-HAND SIDE.

9 JUST A MOMENT, YOUR HONOR.

10 (UNREPORTED COLLOQUY BETWEEN MR. WAPNER
11 AND MR. BARENS.)

12 MR. BARENS: I BELIEVE WE COULD OFFER A STIPULATION
13 THAT THE PICTURE THAT THE WITNESS HAS IDENTIFIED IS A PICTURE
14 OF RONALD GEORGE LEVIN.

15 THE COURT: RIGHT, IT HAS BEEN SO STIPULATED SO THE
16 JURORS ARE SO INSTRUCTED AND WILL ACCEPT THAT AS BEING THE
17 FACT.

18 Q BY MR. BARENS: FROM THE TIME YOU WERE FIRST
19 SHOWN THAT LINEUP CARD, DID YOU IMMEDIATELY PICK THE PHOTOGRAPH
20 YOU PICKED TODAY?

21 A I MADE A POINT OF LOOKING AT ALL OF THE OTHER
22 ONES AND I CHOSE THAT ONE LIKE IN ABOUT FIVE SECONDS, BECAUSE
23 THE OTHER ONES WEREN'T EVEN CLOSE.

24 THE COURT: WHAT ABOUT THE OTHER ONES?

25 THE WITNESS: THEY WEREN'T EVEN CLOSE TO THE PERSON
26 WE SAW.

27 THE COURT: THEY WEREN'T EVEN CLOSE TO THE PERSON YOU
28 SAW, ALL RIGHT.

1 Q BY MR. BARENS: AFTER LOOKING AT THE PHOTOGRAPH,
2 CAN YOU ASCRIBE A PERCENTAGE OF CERTAINTY TO HOW CERTAIN
3 YOU ARE THAT THE PERSON YOU SAW IN THE GAS STATION IS THE
4 PERSON YOU SEE IN THAT PHOTOGRAPH?

5 A WHEN I SAW JUST THE SMALL PHOTO, I TOLD THEM
6 ABOUT 90 PERCENT, I SAID "BUT COULDN'T WE HAVE A COLOR PHOTO,
7 MAYBE ONE SHOWING HIM WITHOUT A BEARD OR SOMETHING?"

8 AND HE SAID THAT NONE WERE AVAILABLE. "NO,"
9 HE SAID. MR. WAPNER HAD SAID THAT THEY CAN'T -- OR THEY
10 WEREN'T GOING TO SAY TO US WHETHER OR NOT IT WAS THE RIGHT
11 PERSON WE HAD SELECTED, THEY WOULDN'T SAY. THEY JUST SAID
12 OKAY.

13 Q I NOW SHOW YOU A PHOTOGRAPH --

14 MR. WAPNER: REFER TO WHAT IT IS YOU ARE REFERRING
15 TO.

16 MR. BARENS: A PHOTOGRAPH OF RONALD GEORGE LEVIN, WHICH
17 I REPRESENT TO THE COURT IS A DUPLICATE I HAD MADE OF THE
18 PHOTOGRAPH THE PEOPLE HAVE USED THROUGHOUT THIS TRIAL.

19 THE COURT: ALL RIGHT.

20 MR. BARENS: I FORGET. DO YOU REMEMBER THE EXHIBIT
21 NUMBER?

22 MR. WAPNER: WHY DON'T WE USE THE ONE THAT IS IN EVIDENCE?

23 MR. BARENS: OH, WE CAN USE THE ONE IN EVIDENCE THEN.

24 Q I AM NOW SHOWING YOU PEOPLE'S EXHIBIT NUMBER
25 6) IN EVIDENCE. I BELIEVE THIS TO BE A LARGER PHOTOGRAPH
26 OF THE PHOTOGRAPH THAT YOU WERE LOOKING AT IN PEOPLE'S PP,
27 WOULD YOU AGREE ON THAT?

28 MR. WAPNER: IT IS DEFENDANT'S PP AND IT LOOKS SMALLER

1 TO ME.

2 MR. CHIER: IT LOOKS SMALLER.

3 THE COURT: MUCH SMALLER.

4 MR. BARENS: WELL, IT IS SMALLER.

5 (LAUGHTER IN COURTROOM.)

6 MR. BARENS: NOW, WE HAVE GOT THE NECK IN THERE, TOO.

7 WELL, THIS IS A BETTER PICTURE, ISN'T IT?

8 MR. WAPNER: YOUR HONOR, I THINK THAT BOTH OF THE
9 PHOTOGRAPHS WILL SPEAK FOR THEMSELVES AS TO WHICH IS BETTER
10 AND WHICH ISN'T.

11 MR. BARENS: I DON'T THINK WE HAVE A REAL WORLD DISPUTE
12 THAT THIS IS THE SAME PHOTOGRAPH AS THAT PHOTOGRAPH. WE
13 COULD PUT IT UP HERE. DO YOU WANT TO STIPULATE ON THAT?

14 THE COURT: WELL, HE IS GOING TO STIPULATE THE ONE
15 YOU HAVE IN YOUR HAND NOW IS A PHOTOGRAPH OF MR. RON LEVIN.

16 Q BY MR. BARENS: OKAY. AFTER LOOKING AT THE
17 PHOTOGRAPH THAT I HAVE NOW PLACED OVER THE LARGE CARD, CAN
18 YOU ASCRIBE A PERCENTAGE OF CERTAINTY AS TO HOW CERTAIN YOU
19 ARE THAT THE PERSON YOU SEE IN THAT PHOTOGRAPH IS THE SAME
20 PERSON THAT YOU SAW IN THE GAS STATION IN SEPTEMBER OF 1986?

21 A AT THE TIME I TOLD HIM 90 PERCENT, BUT THAT THE
22 MAN WE SAW HAD SHORTER HAIR AND DIDN'T HAVE A BEARD.

23 Q WHAT PERCENTAGE OF CERTAINTY DO YOU HAVE, AS
24 YOU SIT IN THE WITNESS CHAIR TODAY, THAT THE PERSON YOU SEE
25 IN THAT PHOTOGRAPH IS THE SAME PERSON YOU SAW ON THAT DATE?

26 A WHEN YOU SHOWED ME THE OTHER ONE WITHOUT THE
27 BEARD, YOU SHOWED ME ANOTHER PHOTO --

28 Q WE WILL COME TO THAT.

1 A I SAID ABOUT 99 PERCENT SURE THAT IT WAS THE
2 MAN THAT WE HAD SEEN.

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22. 1 Q I WANT TO SHOW YOU PEOPLE'S EXHIBIT NO. 153.

2 MR. CHIER: HE NEEDS AN ASSOCIATE.

3 THE COURT: WHAT WAS THAT CRACK YOU MADE?

4 MR. CHIER: I SAID HE NEEDED AN ASSOCIATE.

5 THE COURT: YES. THAT IS THE GREATEST HELP THAT HE HAS
6 HAD FROM YOU.

7 MR. BARENS: THANK YOU, GENTLEMEN.

8 Q ALL RIGHT. CAN YOU SEE THAT?

9 A MOVE IT BACK THIS WAY.

10 Q OKAY. ALL RIGHT. I WILL FIRST PUT THIS EXHIBIT
11 NO. 153 ON THE TABLE. WHEN YOU LOOK AT THAT PHOTOGRAPH, DO
12 YOU SEE THE PERSON THAT YOU SAW IN THE GAS STATION IN SEPTEMBER
13 OF 1986?

14 A YES.

15 Q WHAT PERCENTAGE OF CERTAINTY DO YOU HAVE, AS YOU
16 LOOK AT THAT PHOTOGRAPH, THAT THAT IS THE SAME PERSON THAT
17 YOU SAW ON THAT OCCASION?

18 A 99 PERCENT.

19 Q 99 PERCENT?

20 A YES.

21 Q NOW, AFTER YOU WERE INTERVIEWED ON NOVEMBER 22ND,
22 WERE YOU INTERVIEWED AGAIN?

23 A I WAS CONTACTED A FEW TIMES BY DETECTIVE MEYERS
24 AND I WAS COOPERATIVE WITH THE POLICE. I TOLD THEM THAT I
25 WOULD GO TO GAY BARS TO SEE IF I COULD FIND THE PERSON THAT
26 WE HAD SEEN ON THAT NIGHT AND --

27 MR. WAPNER: OBJECTION, YOUR HONOR. IT IS A NARRATIVE.
28 IT IS NOT RESPONSIVE TO THE QUESTION.

22-7
1 THE QUESTION WAS, "WAS SHE CONTACTED," AND IT IS
2 EITHER A YES OR NO ANSWER.

3 THE COURT: WERE YOU CONTACTED?

4 THE WITNESS: YES.

5 THE COURT: ANSWER THE QUESTIONS, PLEASE.

6 THE WITNESS: YES. I WAS.

7 Q BY MR. BARENS: ON HOW MANY OCCASIONS HAVE YOU
8 BEEN CONTACTED BY EITHER DISTRICT ATTORNEYS OR POLICE
9 PERSONNEL SUBSEQUENT TO NOVEMBER 21, 1986?

10 MR. WAPNER: OBJECTION, RELEVANCE.

11 MR. BARENS: I THINK THAT --

12 THE COURT: I WILL SUSTAIN THE OBJECTION.

13 Q BY MR. BARENS: WERE YOU CONTACTED FOR
14 INVESTIGATION PURPOSES AFTER NOVEMBER 21ST, 1986?

15 A SEVERAL TIMES.

16 Q ALL RIGHT. WERE YOU SHOWN OTHER PHOTOGRAPHIC
17 LINEUPS OTHER THAN THE ONE I SHOWED YOU THAT YOU IDENTIFIED
18 A FEW MINUTES AGO?

19 A NO.

20 Q WERE YOU EVER SHOWN ADDITIONAL PHOTOGRAPHS OF
21 PEOPLE BY POLICE DEPARTMENT PERSONNEL?

22 A YES, AT THE FIRST QUESTIONING.

23 THE COURT: WHAT DID YOU SAY?

24 THE WITNESS: YES, AT THE FIRST QUESTIONING. THERE WAS
25 ANOTHER LINEUP.

26 Q BY MR. BARENS: SORRY. THIS OCCURRED AT THE FIRST
27 LINEUP?

28 A THEY SHOWED US ANOTHER ONE. I SAID IT WAS NONE

1 OF THEM AT THE FIRST ONE.

2 Q WERE YOU SHOWN ANOTHER PHOTOGRAPHIC LINEUP CARD
3 THAT WAS SIMILAR IN NATURE TO THE ONE THAT I SHOWED YOU
4 EARLIER?

5 A YES.

6 Q AND WERE THERE ALSO SIX PICTURES ON THAT?

7 A YES.

8 Q AND WHAT DID YOU SAY TO THE OFFICERS WHEN YOU WERE
9 SHOWN THAT LINEUP CARD?

10 A NONE OF THEM WERE CLOSE. THEY ALL LOOKED LIKE
11 TRANSIENTS.

12 MR. BARENS: ALL RIGHT. JUST A MOMENT, YOUR HONOR.

13 (PAUSE.)

14 Q BY MR. BARENS: ALL RIGHT. I SHOW YOU ANOTHER
15 PHOTOGRAPHIC LINEUP CARD. WAS THAT THE OTHER PHOTOGRAPHIC
16 LINEUP CARD THAT YOU WERE SHOWN?

17 A YES.

18 MR. WAPNER: MAY THAT BE MARKED FOR IDENTIFICATION?

19 MR. BARENS: ALL RIGHT. THIS WILL BE --

20 THE COURT: QQ.

21 MR. BARENS: THANK YOU, SIR.

22 Q AND I SHOW YOU ANOTHER PICTURE WHICH HAS A PERSON'S
23 NAME PRINTED UNDER IT. WERE YOU ALSO SHOWN THAT PHOTOGRAPH?

24 A I DON'T REMEMBER.

25 Q WERE YOU EVER SHOWN THIS PHOTOGRAPH AT ANY TIME
26 BY POLICE PERSONNEL IN TUCSON, ARIZONA?

27 A I HONESTLY DON'T REMEMBER.

28 MR. WAPNER: MAY THAT BE MARKED ALSO?

1 THE COURT: HOW DO YOU WANT IT MARKED? ALL RIGHT, RR.

2 MR. BARENS: RR.

3 Q WHEN YOU WERE SHOWN THIS PHOTOGRAPHIC LINEUP, DID
4 YOU PICK ANYONE OUT OF THAT AT ALL?

5 A NO, NONE OF THEM WERE CLOSE.

6 Q DID YOU MAKE THAT DECISION IMMEDIATELY WHEN YOU
7 LOOKED AT THE PHOTOGRAPHS?

8 A ALMOST IMMEDIATELY.

9 Q I AM SHOWING YOU A SMALLER VERSION OF DEFENDANT'S
10 PP. IS THAT THE SIZE OF THE PHOTOGRAPHS THAT YOU SAW IN
11 TUCSON ON THIS DATE?

12 A YES IT IS.

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1 MR. BARENS: I WOULD LIKE TO CIRCULATE THOSE SIMULTANEOUSLY
2 TO THE JURY, YOUR HONOR.

3 THE COURT: ALL RIGHT.

4 MR. BARENS: THANK YOU.

5 THE COURT: WHY DON'T YOU WALK THEM UP AND DOWN LIKE
6 YOU HAVE BEEN DOING, TO SAVE MORE TIME?

7 MR. BARENS: I WOULD LIKE TO CIRCULATE THEM, JUDGE.

8 THE COURT: GO AHEAD.

9 MR. BARENS: THANK YOU, YOUR HONOR.

10 I AM MARKING THE SMALL ONE NOW, WHICH IS THE
11 SIZE THAT THE WITNESS SAYS SHE WAS SHOWN AS DEFENDANT'S RR.

12 MR. CHIER: QQ.

13 THE COURT: QQ?

14 MR. BARENS: NO. QQ IS --

15 THE COURT: THAT IS THE LINEUP CARD?

16 MR. BARENS: NOW I AM SHOWING RR AS WELL.

17 MR. WAPNER: THAT WAS RR THAT WAS A SINGLE PHOTOGRAPH.

18 MR. BARENS: OKAY. SORRY.

19 THIS IS SS.

20 MR. WAPNER: YOUR HONOR, MAY I JUST MAKE A DESCRIPTION
21 FOR THE RECORD SO THAT WE ARE CLEAR WHAT WE ARE TALKING ABOUT?

22 THE PHOTOGRAPH THAT HAS BEEN MARKED AS RR IS
23 A PHOTOGRAPH OF A SINGLE MALE INDIVIDUAL AND IT SAYS "TRAVIS
24 BRIGHAM" ON THE BOTTOM.

25 AND MAYBE COUNSEL CAN DESCRIBE SO THE RECORD
26 WILL BE CLEAR WHAT THE OTHER ONE IS.

27 MR. BARENS: OKAY. JUST SO WE ARE STRAIGHT ON WHAT
28 WE ARE TALKING ABOUT. QQ IS A SIX-PICTURE LINEUP CARD

1 SHOWING A VARIETY OF MALE WHITE INDIVIDUALS THAT WAS PRESENTED
2 TO THE WITNESS, FROM WHICH SHE SAYS SHE IMMEDIATELY SAID
3 NONE OF THESE PEOPLE WERE THE SUBJECT.

4 DEFENDANT'S RR IS A SMALLER VERSION OF DEFENDANT'S
5 PP, WHICH THE WITNESS IDENTIFIES AS BEING THE SIZE AND FORMAT
6 THAT SHE WAS GIVEN ON NOVEMBER 22ND IN TUCSON AT THE
7 DISCUSSION SHE HAD WITH MR. WAPNER AND THE POLICE OFFICER.

8 Q BY MR. BARENS: IS THAT CORRECT?

9 A YES.

10 MR. WAPNER: I DON'T KNOW THAT THERE HAS BEEN TESTIMONY
11 TO THAT EFFECT YET.

12 THE COURT: LET'S GET THE PHOTOS. WHAT ABOUT THE OTHER
13 ONE, THAT SINGLE ONE?

14 MR. BARENS: YOU WANT TO HAVE THAT STIPULATED TO?

15 THE COURT: WHAT IS THAT NOW, WILL THAT BE SS?

16 MR. BARENS: WE MARKED THAT ONE RR.

17 WE HAVE GOT RR, AND SS IS A SMALLER VERSION OF
18 PP.

19 THE COURT: ALL RIGHT.

20 MR. BARENS: IT WILL TAKE A MOMENT WHILE THOSE ARE
21 CIRCULATING, YOUR HONOR.

22 THE COURT: ALL RIGHT.

23 (THE PHOTOGRAPHS WERE CIRCULATED AMONG

24 THE JURY.)

25 MR. BARENS: HAVE WE FINISHED?

26 THE COURT: SINCE THEY HAVE BEEN EXHIBITED, WHY DON'T
27 WE MARK THEM IN EVIDENCE INSTEAD OF JUST FOR IDENTIFICATION,
28 SHALL WE?

1 YOU WANT PP OFFERED ALSO?

2 MR. BARENS: YES, YOUR HONOR, WE WOULD MOVE TO ADMIT
3 ON BEHALF OF THE DEFENDANT EXHIBITS PP, QQ, RR AND SS AT
4 THIS TIME.

5 THE COURT: ALL RIGHT.

6 MR. WAPNER: I HAVE NO OBJECTION.

7 THE COURT: THEY WILL BE RECEIVED.

8 MR. BARENS: THANK YOU, YOUR HONOR.

9 Q WERE YOU EVER THEREAFTER FORMALLY INTERVIEWED
10 BY THE REPRESENTATIVES OF THE DISTRICT ATTORNEY'S OFFICE
11 IN BEVERLY HILLS?

12 A IF I WAS INTERVIEWED BY BEVERLY HILLS?

13 Q NO.

14 DID A DISTRICT ATTORNEY EVER AGAIN COME TO TUCSON
15 TO INTERVIEW YOU?

16 A YES.

17 Q WHEN WAS THAT?

18 A I WAS GOING HOME BECAUSE IT WAS MY BROTHER'S
19 BIRTHDAY AND I HAD GOTTEN THERE AND APPARENTLY THOSE PEOPLE
20 HAD BEEN THERE FOR ABOUT TWO HOURS.

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1 MR. WAPNER: OBJECTION. THE QUESTION CALLS FOR, WHEN
2 WAS IT?

3 THE COURT: WHEN WAS IT?

4 THE WITNESS: IT WAS NOVEMBER 26TH.

5 Q BY MR. BARENS: WITH WHOM DID YOU MEET ON THAT
6 OCCASION?

7 A LISA HART AND I DON'T REMEMBER THE OTHER GENTLEMAN'S
8 NAME, THE GENTLEMAN IN CHARGE OF THE IDENTI KIT.

9 Q WHO IS LISA HART?

10 A SHE SAID TWO DIFFERENT THINGS. I THINK, TO ME,
11 SHE HAD IMPLIED SHE WAS A LAWYER AND TO CHINO, SHE IMPLIED
12 SHE WAS AN INVESTIGATOR, SHE WAS SOMETHING WITH THE DISTRICT
13 ATTORNEY'S OFFICE.

14 Q DID SHE TELL YOU SHE WAS A PERSON ASSOCIATED
15 WITH THE DISTRICT ATTORNEY'S OFFICE HERE IN SANTA MONICA?

16 A SOMETHING LIKE THAT.

17 Q ALL RIGHT. AND WHAT DID YOU DISCUSS WITH LISA
18 HART?

19 A NOTHING, BECAUSE AT THAT POINT AFTER --

20 I WAS REAL COOPERATIVE WITH THE POLICE AND EVERY-
21 BODY UP TO THAT POINT.

22 MR. WAPNER: OBJECTION, AS NOT RESPONSIVE.

23 THE ANSWER WAS "NOTHING." EVERYTHING ELSE WAS
24 NOT RESPONSIVE.

25 THE COURT: I WILL STRIKE EVERYTHING AFTER THAT.

26 JUST ANSWER THE QUESTIONS, AS I TOLD YOU A NUMBER
27 OF TIMES, WILL YOU, PLEASE?

28 Q BY MR. BARENS: DID LISA HART ASK YOU ANY QUESTIONS?

1 A YES.

2 Q WHAT DID SHE ASK YOU?

3 MR. WAPNER: OBJECTION. RELEVANCY. IF THERE WAS NO
4 DISCUSSION, THEN THE QUESTIONS THEMSELVES ARE HEARSAY AND
5 HAVE NO MEANING.

6 MR. BARENS: YOUR HONOR, WE HAVE --

7 THE COURT: DID YOU ANSWER ANY OF THE QUESTIONS THEY
8 ASKED YOU?

9 THE WITNESS: I STARTED TO.

10 THE COURT: ALL RIGHT, TELL US WHAT YOU ANSWERED.

11 THE WITNESS: SHE STARTED ASKING ME WHETHER OR NOT
12 I WAS SURE ABOUT THE PERSON I HAD SEEN AND HOW I WAS
13 MESSING UP ALL OF THE INVESTIGATIVE WORK THAT HAD BEEN DONE
14 AND I HAD BETTER BE SURE BECAUSE OF THE WORK THAT HAD BEEN
15 DONE AND SHE WAS KIND OF TRYING TO INTIMIDATE ME AND SO I
16 GOT UP AND I WALKED OUT OF THE ROOM.

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1 MR. WAPNER: OBJECTION, MOTION TO STRIKE THAT THEY TRIED
2 TO INTIMIDATE ME.

3 THE COURT: I WILL LET IT STAND TO SHOW THE BIAS OF THE
4 WITNESS.

5 MR. BARENS: WHOSE BIAS?

6 THE COURT: THE WITNESS'S.

7 MR. BARENS: HOW ABOUT WHO WAS SPEAKING TO HER.

8 THE COURT: WILL YOU PLEASE GO ON?

9 Q BY MR. BARENS: DID YOU GET THE IMPRESSION THAT
10 YOU WERE BEING DISSUADED FROM COMING TO TESTIFY?

11 A YES.

12 Q ALL RIGHT. MS. CANCHOLA, WHEN WAS THE FIRST TIME
13 IN YOUR LIFE YOU EVER SPOKE TO ME, EITHER IN PERSON OR ON THE
14 TELEPHONE?

15 A NOT UNTIL THIS SUNDAY.

16 Q SUNDAY, THREE DAYS AGO?

17 A YES.

18 Q PRIOR TO THAT, HAD YOU EVER SPOKEN TO ME ON THE
19 TELEPHONE?

20 A NO, NOT AT ALL.

21 THE COURT: HAVE YOU SPOKEN TO ANYBODY ASSOCIATED WITH
22 THE DEFENSE?

23 MR. BARENS: YOUR HONOR, WE ARE GETTING TO THAT AND --

24 THE COURT: GET TO IT. YOU ARE TALKING ABOUT YOURSELF.
25 LET'S TALK ABOUT SOMEBODY ELSE THAT SHE MIGHT HAVE --

26 MR. BARENS: YOUR HONOR, I WOULD LIKE TO CONDUCT THE
27 DEFENSE.

28 THE COURT: I KNOW YOU WOULD LIKE TO CONDUCT IT. BUT,

24-2
1 LET'S CONDUCT IT --

2 MR. BARENS: PROPERLY, SIR?

3 THE COURT: YES, PROPERLY.

4 MR. BARENS: WELL, THAT WOULD ENTAIL ME ASKING QUESTIONS
5 SEQUENTIALLY.

6 THE COURT: ASK THE QUESTIONS, WILL YOU PLEASE?

7 MR. BARENS: I AM TRYING TO, SIR.

8 Q MS. CANCHOLA, SINCE SUNDAY TO THE TIME YOU CAME
9 TO COURT HERE, HAVE YOU EVER SPOKEN TO ME ON THE TELEPHONE?

10 A NO.

11 Q MS. CANCHOLA, PRIOR TO SUNDAY OF THIS WEEK, WERE
12 YOU CONTACTED BY SOMEONE ASSOCIATED WITH MY OFFICE?

13 A YES, MR. CHIERS.

14 THE COURT: MR. CHIER? THAT MAN, THERE?

15 THE WITNESS: YES.

16 THE COURT: ALL RIGHT.

17 MR. CHIER: THE ASSOCIATE.

18 MR. BARENS: STIPULATED.

19 Q WHEN DID MR. CHIER CONTACT YOU FOR THE FIRST TIME?

20 A I DON'T REMEMBER BECAUSE I WAS NOT TAKING PHONE
21 CALLS ANY MORE BECAUSE PEOPLE WERE PESTERING US.

22 Q ALL RIGHT. WAS IT WITHIN THE LAST 30 DAYS?

23 A I THINK SO.

24 Q ALL RIGHT. IT WAS DURING LET'S SAY THE TIME
25 BETWEEN -- TODAY BEING THE FIRST OF APRIL AND THE FIRST OF
26 MARCH -- WAS IT WITHIN THE LAST 30-DAY PERIOD?

27 A I THINK SO, SOMEWHERE AROUND THERE.

28 Q AND DID MR. CHIER DURING THAT PERIOD OF TIME, GO

24
1 TO TUCSON, ARIZONA TO SEE YOU?

2 A YES. HE DID.

3 Q ALL RIGHT. UP TO THAT POINT IN TIME, HAD YOU
4 EVER SPOKEN TO ANY PERSON ASSOCIATED WITH EITHER MY OFFICE
5 OR MR. CHIER OR ANYONE REPRESENTING THE DEFENDANT, JOE HUNT
6 IN THIS MATTER?

7 A NO.

8 MR. BARENS: THANK YOU.

9 THE COURT: ALL RIGHT.

10 MR. BARENS: A MOMENT?

11 THE COURT: YES, SURELY.

12 (PAUSE.)

13 Q BY MR. BARENS: MS. CANCHOLA, IS IT NOT A FACT
14 THAT YOU --

15 MR. WAPNER: OBJECTION, LEADING.

16 THE COURT: SUSTAINED.

17 Q BY MR. BARENS: MS. CANCHOLA, PRIOR TO THE TIME
18 THAT YOU SAW MR. CHIER, HAD AN O.S.C. FOR YOUR ATTENDANCE AT
19 THIS TRIAL BEEN ISSUED BY A JUDGE IN TUCSON, ARIZONA?

20 A YES.

21 Q WAS THERE A PROCEEDING INITIATED WHEREBY YOU WERE
22 ORDERED TO COME TO THIS COURT?

23 A YES. I WAS NOT GOING TO COME. I WAS GOING TO
24 DISAPPEAR FOR A WHILE.

25 THE COURT: I DIDN'T HEAR THAT.

26 THE WITNESS: I WAS NOT GOING TO COME. I WAS GOING TO
27 DISAPPEAR.

28 THE COURT: YOU WERE GOING TO DISAPPEAR?

1 Q BY MR. BARENS: AND WERE LEGAL PROCEEDINGS BROUGHT
2 TO COMPEL YOUR ATTENDANCE IN COURT?

3 A YES.

4 Q AND IT WAS ONLY AFTER --

5 THE COURT: DO YOU WANT SOME WATER?

6 THE WITNESS: YES, PLEASE.

7 THE COURT: GET A LITTLE WATER FOR THE LADY, PLEASE.

8 (PAUSE.)

9 Q BY MR. BARENS: MS. CANCHOLA, IT WAS ONLY AFTER
10 THE COURT PROCEEDINGS THAT YOU SPOKE TO MR. CHIER?

11 A YES.

12 Q MS. CANCHOLA, WHAT SORT OF THINGS HAVE HAPPENED
13 TO YOU SINCE YOU CAME FORWARD WITH YOUR STORY?

14 A ANONYMOUS PHONE CALLS, PEOPLE TRYING TO BREAK INTO
15 MY HOUSE --

16 MR. WAPNER: OBJECTION, RELEVANCE.

17 THE COURT: I WILL SUSTAIN THE OBJECTION. I THINK YOU
18 OUGHT TO TERMINATE YOUR EXAMINATION AT THIS TIME, IF YOU WILL,
19 PLEASE.

20 MR. BARENS: ALL RIGHT. WE WILL RESERVE --

21 THE COURT: YES.

22 MR. WAPNER: MOTION TO STRIKE THE LAST ANSWER.

23 THE COURT: I WILL STRIKE IT.

24 MR. WAPNER: YOUR HONOR, SINCE YOU ARE GOING TO TAKE
25 A BREAK AT 3 O'CLOCK, MAYBE WE SHOULD BREAK AT THIS TIME.

26 THE COURT: ALL RIGHT. WE WILL TAKE A 15-MINUTE RECESS
27 AT THIS TIME, LADIES AND GENTLEMEN.

28 (RECESS.)

1 THE CLERK: MA'AM, YOU HAVE BEEN PREVIOUSLY SWORN,
2 SO YOU ARE STILL UNDER OATH.

3 IF YOU WOULD JUST STATE YOUR NAME AGAIN FOR THE
4 RECORD.

5 THE WITNESS: CARMEN CANCHOLA.

6
7 CROSS-EXAMINATION

8 BY MR. WAPNER:

9 Q MISS CANCHOLA, YOU WENT TO THE POLICE AFTER YOU
10 READ A MAGAZINE ARTICLE, RIGHT?

11 A YES.

12 Q WHEN DID YOU READ THE ARTICLE?

13 A I HAD READ IT ON A THURSDAY NIGHT.

14 Q WHAT WAS THE DATE?

15 A I GUESS NOVEMBER 20.

16 Q AND THE PERSON YOU SAW IN THE GAS STATION, HOW
17 LONG BEFORE THAT HAD YOU SEEN THAT PERSON IN THE GAS STATION?

18 A I SAID IT WAS SIX TO EIGHT WEEKS.

19 Q AND DURING THE TIME THAT YOU WERE FIRST INTERVIEWED,
20 WERE YOU ASKED TO ATTEMPT TO PIN DOWN THE PRECISE DATE?

21 A YES, I WAS.

22 Q AND YOU WEREN'T ABLE TO DO IT THAT NIGHT, WERE
23 YOU?

24 A NO.

25 Q IN FACT, WERE YOU EVEN SURE AT THAT TIME OF THE
26 PRECISE DAY OF THE WEEK THAT IT WAS THAT YOU HAD SEEN THIS
27 PERSON?

28 A I DIDN'T REMEMBER AT FIRST, BUT THEN I REMEMBERED

1 IT WAS THE NIGHT I SKIPPED CLASS, I JUST DON'T KNOW WHAT
2 NIGHT THAT WAS.

3 MY TEACHER KEPT POOR RECORDS.

4 Q WAS IT YOU WHO REMEMBERED YOU HAD SKIPPED CLASS
5 OR WERE YOU REMINDED BY SOMEBODY ELSE?

6 A I JUST REMEMBERED THAT I HAD SKIPPED CLASS.

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1 Q DID YOU SAY ORIGINALLY IN THE INTERVIEW YOU
2 THOUGHT IT WAS A FRIDAY AND CHINO HAD REMINDED YOU THAT YOU
3 HAD SKIPPED CLASS AND THEREFORE, IT MIGHT HAVE BEEN A
4 THURSDAY?

5 A I MIGHT HAVE. IT WAS ABOUT -- WHEN I LAST SPOKE
6 TO YOU, IT WAS ABOUT SEVEN MONTHS AGO. I MIGHT HAVE.

7 Q OKAY. AND NOW YOU ARE SURE THAT IT WAS YOU WHO
8 REMEMBERED THAT IT WAS A FRIDAY INSTEAD OF THURSDAY?

9 A NO, THURSDAY INSTEAD OF FRIDAY.

10 Q OKAY. AND AFTER YOU WERE ASKED ON THAT FIRST
11 OCCASION TO FIND THE DATE THAT IT HAPPENED, DID YOU SAY THAT
12 THERE WAS GOING TO BE A FAIRLY EASY WAY OF DOING THAT?

13 A YES.

14 Q WHAT WAS THAT? OR HOW WERE YOU GOING TO HAVE IT
15 DONE?

16 A BY CHECKING WITH MY TEACHER FROM MY ECONOMICS
17 CLASS TO CHECK IN HIS RECORD BOOK AS TO WHICH CLASSES I MISSED.
18 BECAUSE I REMEMBERED ONLY MISSING TWO.

19 Q DID YOU CHECK WITH YOUR TEACHER IN THE ECONOMICS
20 CLASS?

21 A I THINK I SPOKE TO HIM. AND JEFF MEYERS SAID HE
22 WAS GOING TO CALL HIM. JEFF MEYERS I GUESS, SPOKE TO HIM ALSO.

23 Q DID YOU SPEAK TO HIM?

24 A MY TEACHER?

25 Q YES.

26 A I THINK I TOLD HIM HE WAS GOING TO GET A CALL FROM
27 THE POLICE.

28 Q DID YOU ASK HIM FOR THE DATE?

26- 1 A I TAKE THAT BACK. I SPOKE TO MY TEACHER. MY
2 TEACHER CALLED ME AND TOLD ME THAT HE HAD GOTTEN -- HE HAD
3 SPOKEN TO THE POLICE AND THAT HE HAD GIVEN THEM TWO DATES.
4 AND ONE OF THEM TURNED OUT TO BE A SUNDAY.

5 THERE WAS NO CLASS ON SUNDAY, SO HE KEPT VERY POOR
6 RECORDS.

7 Q AND IT TOOK QUITE SOME TIME TO PIN DOWN -- WELL,
8 DID YOU EVER IN FACT, PIN DOWN THE DATE?

9 A NO I DIDN'T.

10 Q YOU ALSO TRIED TO MESH IT WITH THE DATE THAT YOUR
11 FATHER USED HIS CREDIT CARD AT THE --

12 A WE WEREN'T SURE WHETHER OR NOT HE USED THE CREDIT
13 CARD AT THE --

14 Q EXCUSE ME. PLEASE LET ME FINISH THE QUESTION.

15 DIDN'T YOU ALSO TRY TO MESH IT WITH THE RECORDS
16 THAT YOUR FATHER HAD ABOUT WHEN HE MIGHT HAVE BEEN AT THE CAFE
17 NAPOLI?

18 A YES.

19 Q HE GOES TO THE CAFE NAPOLI FAIRLY OFTEN?

20 A YES.

21 Q DID YOU EVER SATISFY YOURSELF THAT THERE WAS A
22 DAY THAT YOU HAD MISSED CLASS AND THAT THE RECORDS OF THE
23 CAFE NAPOLI MESHED WITH?

24 A THE DATE DIDN'T MESH.

25 Q ALL RIGHT. SO YOU NEVER COULD IN FACT, MATCH IT
26 UP?

27 A PIN DOWN THE DATE? WE NEVER DID PIN DOWN THE DATE.

28 Q YOU HAVE TO WAIT A SECOND. THIS LADY CAN'T WRITE

6-
1 IT DOWN WHEN WE BOTH TALK AT THE SAME TIME. I WILL WAIT UNTIL
2 YOU FINISH, IF YOU WILL WAIT UNTIL I FINISH. ALL RIGHT?

3 SO, YOU NEVER DID PIN DOWN A GIVEN DAY WHEN YOU
4 AND YOUR FATHER WERE BOTH AT THE CAFE NAPOLI AND YOU MISSED
5 CLASS, RIGHT?

6 A RIGHT.

7 Q IS THERE SOME -- DO YOU HAVE ANY MEMORY NOW OF
8 WHICH OF THOSE IS ACCURATE, WHETHER YOU WERE AT THE CAFE
9 NAPOLI OR WHETHER YOU MISSED CLASS?

10 A CAN YOU REPEAT THAT, PLEASE?

11 Q SINCE THERE WAS NO DATE IN THE RECORDS THAT WOULD
12 MESH WITH YOU MISSING CLASS AND BEING AT THE CAFE NAPOLI, ARE
13 YOU SURE THAT BOTH OF THOSE HAPPENED ON THE NIGHT?

14 A PRETTY SURE.

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1 Q WHY DO YOU SAY THAT?

2 A JUST FROM TRYING TO REMEMBER THE EVENTS OF THAT
3 EVENING, THAT WE HAD GONE OUT TO EAT.

4 ONCE, CHINO HAD REMINDED ME ABOUT THAT. WE JUST
5 TALKED ABOUT IT AND I AM PRETTY SURE IT WAS THAT NIGHT.

6 Q BUT IN GOING BACK, YOU COULDN'T FIND ANYTHING
7 TO VERIFY IT?

8 A NO, I COULDN'T.

9 Q AND OTHER THAN SEEING THIS PERSON ON THAT ONE
10 TIME AT THE GAS STATION, HAD YOU EVER SEEN THAT PERSON BEFORE
11 THAT NIGHT?

12 A NO, HUH-UH.

13 Q HAVE YOU EVER SEEN HIM IN PERSON SINCE THAT NIGHT?

14 A NO.

15 Q AND THE ARTICLE THAT YOU READ DIDN'T CONTAIN
16 A PHOTOGRAPH OF MR. LEVIN, DID IT?

17 A IT HAD A SKETCH.

18 MR. BARENS: OBJECTION. I DON'T THINK THAT PROPERLY
19 STATES THE EVIDENCE THAT HAS BEEN DISCUSSED AS TO HOW THE
20 ILLUSTRATION WE HAVE WAS ARRIVED AT, WAS PRODUCED.

21 THE COURT: SHE HAS TESTIFIED BEFORE, I THINK ON DIRECT
22 EXAMINATION, THAT IT WAS A SKETCH.

23 ISN'T THAT WHAT YOU SAID?

24 THE WITNESS: YES, I SAID IT LOOKS LIKE A SKETCH.

25 THE COURT: WHAT IS YOUR OBJECTION?

26 MR. BARENS: I BELIEVE WE KNOW BETTER THAN THAT, YOU
27 DO AND MR. WAPNER DOES AND I DO.

28 THE COURT: THAT IS A VERY IMPROPER REMARK FOR YOU

1 TO MAKE AT THIS PARTICULAR TIME.

2 MR. BARENS: YOUR HONOR, WE HAD A DISCUSSION ABOUT
3 THIS.

4 THE COURT: I KNOW WE HAD A DISCUSSION. WE HAD A
5 DISCUSSION THAT IT WAS NOT AN ACTUAL PHOTOGRAPH.

6 MR. WAPNER: YOUR HONOR, THERE IS NO TESTIMONY IN THE
7 RECORD, AND THAT IS AN IMPROPER REMARK AND I WOULD ASK THAT
8 EVEN THOUGH THE REMARKS OF COUNSEL ARE NOT EVIDENCE, I WOULD
9 ASK THAT IT BE STRICKEN.

10 THE COURT: GIVE THE DISTRICT ATTORNEY AN OPPORTUNITY
11 TO EXAMINE AND NOT OFFER ANYTHING.

12 MR. BARENS: WELL, I WILL OBJECT WHEN IT IS APPROPRIATE.

13 THE COURT: YOU MAY PROCEED.

14 Q BY MR. WAPNER: YOU TOLD US THAT THE ARTICLE
15 YOU SAW CONTAINED WHAT YOU BELIEVED TO BE A SKETCH OF MR.
16 LEVIN; IS THAT RIGHT?

17 A EXCUSE ME. WOULD YOU REPEAT THAT, PLEASE?

18 Q DID THE ARTICLE THAT YOU READ CONTAIN A SKETCH
19 OF MR. LEVIN?

20 A YES, IT DID.

21 Q OKAY. AND WHEN YOU READ THE ARTICLE AND YOU
22 SAW THAT SKETCH, WERE YOU CONVINCED THAT THE PERSON THAT
23 YOU SAW IN THE GAS STATION WAS THE PERSON THAT YOU SAW IN
24 THE SKETCH?

25 A AFTER I READ THE ARTICLE.

26 Q FIRST THINGS FIRST.

27 A BEFORE I READ THE ARTICLE, I GLANCED AT IT AND
28 I THOUGHT IT LOOKED FAMILIAR.

1 Q I AM ASKING YOU, FIRST OF ALL, ABOUT WHEN YOU
2 SAW THE PICTURE.

3 A UH-HUH.

4 Q LET ME ASK YOU FIRST ABOUT THE PICTURE.

5 THE ARTICLE IN THE MAGAZINE, WOULD IT BE FAIR
6 TO SAY, STARTS ON PAGE 84?

7 A YES.

8 Q OKAY. AND THE SKETCH OF MR. LEVIN APPEARS ON
9 PAGE 87, DOESN'T IT?

10 A YES, IT DOES.

11 Q BUT THE DESCRIPTION AND THE WORDS OF MR. LEVIN
12 DON'T APPEAR UNTIL PAGE 90, DOES IT?

13 A RIGHT.

14 Q OKAY, SO WERE YOU READING THE ARTICLE IN SEQUENCE,
15 PAGE BY PAGE?

16 A I BEG YOUR PARDON?

17 Q DID YOU JUST GO STRAIGHT THROUGH AND READ THE
18 ENTIRE ARTICLE?

19 A YES, UH-HUH.

20 Q SO YOU WOULD HAVE SEEN THE SKETCH AT PAGE 87
21 BEFORE YOU SAW THE DESCRIPTION AT PAGE 90, RIGHT?

22 A UH-HUH.

23 Q YOU HAVE TO SAY YES OR NO SO SHE CAN WRITE IT
24 DOWN.

25 A YES.

26 Q WHEN YOU SAW THE SKETCH AT PAGE 87, WHAT DID
27 YOU THINK?

28 A I JUST GLANCED AT IT AND I THOUGHT THAT THE FACE

1 LOOKED FAMILIAR.

2 Q BUT YOU DIDN'T AT THAT TIME SAY "THAT IS THE
3 PERSON THAT I SAW AT THE GAS STATION"?

4 A NO. I JUST THOUGHT IT LOOKED FAMILIAR BECAUSE
5 I DIDN'T RELATE THE TWO THINGS.

6 Q ALL RIGHT. AND WHAT WAS IT THAT CAUSED YOU LATER
7 IN READING THE ARTICLE TO THINK THAT IT WAS THE PERSON IN
8 THE GAS STATION?

9 A THE DESCRIPTION OF WHAT HE LOOKED LIKE, BECAUSE
10 I REMEMBER THAT NIGHT SAYING SOMETHING TO CHINO ABOUT THE
11 GUY'S EYES.

12 I USED SOME WORD, I DON'T REMEMBER WHAT WORD
13 IT WAS, WHETHER IT WAS HAUNTING OR HYPNOTIC, SOMETHING ABOUT
14 HIS EYES.

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1 Q AND WHAT ELSE THAT YOU READ IN THE ARTICLE WAS
2 IT THAT MADE YOU THINK THAT THAT WAS THE PERSON YOU HAD SEEN
3 IN THE GAS STATION, BESIDES THE DESCRIPTION OF HIS EYES?

4 A HIS HAIR. BUT, I TOLD YOU TOO THAT AT THE PLACE
5 WHEN I FIRST SAW THAT --

6 Q JUST TELL ME NOW WHAT IT WAS THAT YOU REMEMBER
7 IN THE ARTICLE THAT MADE YOU THINK THAT THE SKETCH THAT YOU
8 SAW IN THE ARTICLE, WAS THE PERSON THAT YOU SAW AT THE GAS
9 STATION.

10 A BECAUSE I STARTED -- I LOOKED BACK. AND I WAS
11 PICTURING IT WITH SILVER HAIR, WITH THE COLORED EYES, WITH
12 THE SAME BLUE/GRAY EYES, JUST SORT OF LOOKING AT IT.

13 BUT THEN I THOUGHT MAYBE I WAS WRONG BECAUSE THE
14 ARTICLE SAYS HE HAD A BEARD. THE MAN WE SAW DIDN'T HAVE A
15 BEARD.

16 Q WHERE --

17 A IT SAYS SOMEWHERE THAT HE HAD A BEARD.

18 Q WHERE IN THE ARTICLE -- AND I THINK THE DESCRIPTION
19 IS IN THAT EXHIBIT THAT WE HAVE MARKED AS 00, DOES IT SAY THAT
20 HE HAD BLUE/GRAY EYES?

21 A I GUESS IT DOESN'T. BUT I WAS PICTURING THE
22 PHOTO BECAUSE IT MADE ME START THINKING OF THE PERSON THAT
23 WE HAD SEEN.

24 I STARTED LOOKING AT THE SKETCH AND PICTURING THE
25 PERSON THAT I SAW AT THE GAS STATION.

26 Q OKAY. BUT WHAT I WANT TO KNOW IS, WHAT IN ADDITION --
27 THE SKETCH WAS NOT ENOUGH, WAS IT? IF YOU JUST HAD THE SKETCH,
28 FROM THE ARTICLE, YOU WOULDN'T HAVE COME TO THE CONCLUSION

1 THAT IT WAS THE SAME PERSON AT THE GAS STATION, RIGHT?

2 A I GUESS SO, YES.

3 Q BECAUSE WHEN YOU FIRST LOOKED AT IT, YOU JUST
4 THOUGHT IT LOOKED --

5 A WELL, IT JUST WAS A BLACK AND WHITE SKETCH.
6 I MEAN --

7 Q OKAY. SO THEN, YOU HAVE TO ADD TO IT SOME OF THE
8 WORDS YOU READ IN THE ARTICLE, RIGHT?

9 A UH-HUH.

10 Q YOU HAVE TO SAY YES OR NO.

11 A SORRY. YES.

12 Q AND WHAT I WANT TO KNOW IS, WHAT WORDS, THE WORDS
13 THAT YOU READ -- EXCUSE ME JUST A MOMENT.

14 WHAT CAN YOU REMEMBER ABOUT THE WORDS THAT YOU
15 READ IN THE ARTICLE THAT MADE YOU GO BACK AND THINK THIS MIGHT
16 BE THE PERSON?

17 A I DON'T REMEMBER THE EXACT WORDS. I HAVE NOT
18 READ THE ARTICLE SINCE THEN.

19 MY MOTHER WON'T ALLOW THAT MAGAZINE IN THE HOUSE.
20 IT WAS ABOUT SEVEN MONTHS AGO THAT I READ THAT.

21 Q WHY DON'T YOU READ IT NOW, THEN? READ THAT
22 PORTION OF THE ARTICLE AND TELL ME IF YOU CAN, IF THAT REFRESHES
23 YOUR RECOLLECTION AS TO WHAT SPECIFICALLY IN THAT CLIPPING
24 THAT YOU READ, MADE YOU THINK THAT THE SKETCH THAT
25 PREVIOUSLY LOOKED FAMILIAR TO YOU, NOW IS THE PERSON THAT IS
26 AT THE GAS STATION?

27 A WELL, IT SAID HIS AGE. IT SAID HE WAS TALL AND
28 SLENDER. IT SAYS EXPENSIVELY DRESSED. SILVER HAIR. THE

8-7
1 EYES WERE PIERCING.

2 Q NOW, THE --

3 A AND THAT HE WAS A HOMOSEXUAL AND TRAVELED WITH
4 A RETINUE OF YOUNG MEN.

5 Q NOW, PIERCING EYES, DID YOU EVER DISCUSS THAT WITH
6 ANYBODY IN TERMS OF WHETHER IT MEANT THE SAME THING TO YOU
7 AS TO ANYBODY ELSE?

8 A NO.

9 Q OKAY. WHEN YOU READ THIS IN HERE THAT IT
10 DESCRIBES HIS EYES TWO DIFFERENT WAYS IN THE ARTICLE, DOESN'T
11 IT? IT SAID PIERCING AND SHIFTY? SOME PEOPLE THOUGHT THEY
12 WERE PIERCING AND SOME PEOPLE THOUGHT THEY WERE SHIFTY, RIGHT?

13 A YES.
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1 Q DID YOU THINK THEY WERE SHIFTY?

2 A SUSPICIOUS. HE JUST SEEMED SORT OF SUSPICIOUS.

3 Q WHO WAS SUSPICIOUS?

4 A THE PERSON SEEMED SORT OF SUSPICIOUS.

5 Q WHY DID HE SEEM SUSPICIOUS?

6 A WELL, HE WAS AT THE GAS STATION FOR A LONG TIME.

7 WE WERE THERE BECAUSE WE HAD TO BE.

8 Q WAIT A SECOND. HE WAS AT THE GAS STATION A LONG
9 TIME AND WHAT --

10 A IT SEEMED LIKE A WHILE. PLUS THE FACT OF THE
11 EXAGGERATED EXIT THAT THEY MADE FROM THE GAS STATION.

12 Q WELL, WE WILL GET TO THE EXAGGERATED EXIT IN A
13 MINUTE.

14 BUT WHAT IS IT THAT YOU NOTICED ABOUT THE FACT
15 THAT HE WAS AT THE GAS STATION FOR A LONG TIME?

16 A WELL, HE KEPT LOOKING OVER AT US.

17 Q WELL, LET'S TALK ABOUT FIRST, BEING THERE FOR A
18 LONG TIME. WAS THERE ANYTHING SUSPICIOUS ABOUT THE FACT THAT
19 HE WAS AT THE GAS STATION FOR A LONG TIME?

20 A WELL, IT WAS SORT OF UPSETTING. I MEAN, THE GUY
21 KEPT STARING AT MY BOYFRIEND THE WHOLE TIME. IT WAS KIND OF
22 UNCOMFORTABLE.

23 Q WAIT A MINUTE. I THOUGHT THAT WE WERE STILL ON
24 BEING AT THE GAS STATION FOR A LONG TIME. WHAT WAS UPSETTING
25 ABOUT --

26 A WELL, HE JUST SAT IN THE CAR AND KEPT STARING AT
27 US.

28 Q THE FACT THAT IT WAS A LONG TIME, WAS THERE ANYTHING

8-
1 SUSPICIOUS OR UPSETTING ABOUT THE FACT THAT THEY WERE THERE
2 FOR A LONG TIME?

3 A IT WAS MORE THE EXIT WHEN THEY LEFT. HE STOPPED
4 AND THEY JUST LOOKED OVER AT US. THEY NEVER SMILED. THEY
5 NEVER SAID HELLO, NOTHING LIKE THAT.

6 Q SO WHAT WAS IT ABOUT THE WAY HE WAS LOOKING, THAT
7 YOU THOUGHT WAS SUSPICIOUS?

8 A JUST UNCOMFORTABLE.

9 Q WAIT A SECOND. WAS IT SUSPICIOUS OR UNCOMFORTABLE?

10 A UNCOMFORTABLE.

11 Q WHAT WAS IT?

12 A IT WAS BOTH.

13 Q WHAT WAS IT ABOUT IT THAT WAS UNCOMFORTABLE?

14 A WHAT I JUST SAID, THAT --

15 Q THAT HE LOOKED AT YOU?

16 A NO. THEY WERE THERE FOR A WHILE AND THEY WERE
17 STARING AT MR. BO-FRIEND. AND THE EXIT THAT THEY MADE AT THE
18 GAS STATION.

19 Q OKAY. THE EXIT, WHAT WAS IT ABOUT THE EXIT THAT
20 THEY MADE AT THE GAS STATION?

21 A HE COULD HAVE EASILY JUST BACKED OUT AND LEFT IN
22 THE EXIT CLOSE TO HIM.

23 BUT INSTEAD, HE MADE A U-TURN, GOING ALL OF THE
24 WAY AROUND THE STATION AND THEN COMING BACK AND THEN STOPPING
25 FOR A MOMENT AND THEN STARING RIGHT AT CHINO AND THEN HE LEFT.

26 Q WHICH DIRECTION DID THEY TRAVEL, ONCE THEY GOT
27 OUT TO THE STREET?

28 A I DON'T REMEMBER. RIGHT NOW, I DON'T REMEMBER.

1 IT HAS BEEN SEVEN MONTHS.

2 Q OKAY. DO YOU SEE THE DIAGRAM THAT IS ON THE
3 BOARD TO YOUR RIGHT?

4 A UH-HUH.

5 Q DO YOU RECOGNIZE THE NAMES OF THE STREETS THAT
6 ARE ON THERE?

7 A YES.

8 Q DOES THAT APPEAR TO BE IN A ROUGH, CRUDE FASHION,
9 THE DEPICTION OF THE GAS STATION THAT YOU WERE AT THAT NIGHT?

10 A YES IT IS.

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1 Q YOU SEE WHERE IT SAYS "U OF A" ON THE LEFT?

2 A UH-HUH.

3 Q YOU SEE WHERE IT SAYS "N" AT THE TOP WITH AN
4 ARROW?

5 A UH-HUH.

6 Q WOULD NORTH BE AT THE TOP OF THIS DIAGRAM?

7 A YES.

8 Q AND SO THE UNIVERSITY, WHERE IT SAYS "U OF A",
9 DOES THAT DEPICT THE --

10 A THE UNIVERSITY IS OVER IN THAT AREA (WITNESS
11 INDICATING).

12 Q UNIVERSITY OF ARIZONA IS IN FACT --

13 DOESN'T THE UNIVERSITY COME ALL THE WAY TO THE
14 NORTHWEST CORNER OF SIXTH AND CAMPBELL?

15 A NO, IT DOESN'T.

16 ON THAT CORNER, THERE IS SOME SHOPS. THERE IS
17 ALSO A HAIR SHOP. ACROSS THE STREET FROM THAT IS A PHOTO-
18 GRAPHER'S STUDIO AND ON THE OTHER SIDE OF IT IS A BUILDING
19 OR SOME KIND OF BUSINESS AND RIGHT OVER THERE, THAT IS THE
20 WYKO OFFICE BUILDING THAT HAS JUST BEEN CONSTRUCTED.

21 Q THAT IS ALONG THE WEST EDGE OF CAMPBELL THAT
22 COMES DOWN TO SIXTH?

23 A EXCUSE ME?

24 Q I AM TALKING ABOUT THE --

25 A I DON'T KNOW HOW LONG THE EXACT PROPERTY LINE
26 EXTENDS, BUT I KNOW ON THE CORNER OF SIXTH AND CAMPBELL THERE
27 IS A HAIR SHOP, AND NOT EXACTLY ON THE CORNER THERE IS SOME
28 SHOPS, THERE IS LIKE THREE OR FOUR OF THEM AND OVER ON THE

1 OTHER SIDE IS A PHOTOGRAPHER'S STUDIO.

2 Q WHERE DOES THE UNIVERSITY START?

3 A SOME OF THE PROPERTY MIGHT START ABOUT THERE,
4 BUT IT IS KIND OF --

5 Q ABOUT WHERE?

6 A AH, DO YOU WANT ME TO --

7 Q I WILL GIVE YOU A POINTER AND YOU CAN POINT TO
8 IT.

9 A I DON'T KNOW -- RIGHT IN HERE WOULD BE SOME
10 BUSINESSES OF SOME SORT AND THE UNIVERSITY WOULD START, I
11 GUESS, RIGHT AROUND HERE (WITNESS INDICATING).

12 Q AREN'T THERE A BUNCH OF ATHLETIC FIELDS FOR THE
13 UNIVERSITY --

14 A YES.

15 Q -- RIGHT THERE?

16 A YES.

17 Q AND ISN'T THE BASKETBALL ARENA ABOUT A BLOCK
18 OR SO UP THE STREET, WHICH WOULD BE AT THE TOP HERE?

19 MR. BARENS: YOUR HONOR, I CAN'T SEE THE RELEVANCY
20 AS TO THE BASKETBALL ARENA.

21 MR. WAPNER: I AM TRYING TO TEST HER RECOLLECTION AS
22 TO WHETHER SHE KNOWS THE AREA OR NOT.

23 MR. BARENS: I DON'T KNOW WHAT THE AREA HAS TO DO WITH
24 THE IDENTIFICATION OF THE SUBJECT, SIR.

25 THE COURT: WELL, THAT IS SOMETHING THAT THE JURY WOULD
26 HAVE TO DETERMINE, NOT YOU.

27 MR. BARENS: THE AREA?

28 THE COURT: THE OBJECTION IS OVERRULED.

1 Q BY MR. WAPNER: THAT WHOLE CORNER ISN'T TAKEN
2 UP WITH THE UNIVERSITY?

3 A RIGHT AT THE CORNER, NO.

4 I AM FROM TUCSON. ARE YOU FROM TUCSON, MR. WAPNER?

5 Q NO, I AM NOT. BUT UNFORTUNATELY, THE WAY THIS
6 WORKS, I HAVE TO ASK THE QUESTIONS AND YOU HAVE TO ANSWER
7 THEM.

8 IN ANY EVENT, THE STREET THAT IS CAMPBELL AVENUE,
9 ARE YOU FAMILIAR WITH HOW THAT IS DIVIDED AT THAT LOCATION?

10 A I THINK THERE MIGHT BE AN ISLAND OR SOMETHING
11 IN THE MIDDLE, AN ISLAND IN THE MIDDLE OF CAMPBELL.

12 Q YOU ARE NOT SURE? YOU ARE NOT SURE?

13 A MAY I SAY SOMETHING?

14 Q NO, YOU JUST HAVE TO ANSWER THE QUESTIONS.

15 DO YOU KNOW WHETHER THERE IS AN ISLAND IN THE
16 MIDDLE?

17 A YOU SAID AT THE POLICE STATION, YOU WERE SPEAKING
18 TO OTHER POLICE OFFICERS --

19 Q EXCUSE ME. YOU HAVE TO ANSWER.

20 A YOU BELIEVED THAT I SAW SOMEBODY, YOU JUST DON'T KNOW
21 WHO IT WAS I SAW. THAT IS WHAT YOU SAID.

22 THE COURT: DON'T GET EXCITED, JUST LISTEN TO THE
23 QUESTIONS. YOU ANSWER THE QUESTIONS, ALL RIGHT?

24 Q BY MR. WAPNER: ARE YOU FAMILIAR WITH HOW CAMPBELL
25 AVENUE IS DIVIDED?

26 A I BELIEVE THERE IS AN ISLAND DOWN THE CENTER
27 OF IT.

28 Q OKAY. AND THE GAS STATION, IF YOU WANT TO GO --

1 IS THERE A DRIVEWAY OUT OF THE GAS STATION ON
2 THE WEST SIDE HERE (INDICATING)?

3 A YES, THERE IS.

4 Q OKAY. IN FACT, ISN'T CAMPBELL AVENUE DIVIDED
5 BY SOME SORT OF A CONCRETE DIVIDER IN THE MIDDLE THERE?

6 A YES.

7 Q OKAY. SO IF YOU COME OUT OF THE GAS STATION
8 AT THIS NORTHWEST EXIT, HOW MANY DIFFERENT DIRECTIONS CAN
9 YOU GO?

10 A JUST ONE.

11 Q OKAY. YOU CAN ONLY GO NORTH ON CAMPBELL AVENUE,
12 RIGHT?

13 A YES.

14 Q AND IF YOU WANT TO GO SOUTH ON CAMPBELL AVENUE
15 OR EAST OR WEST ON SIXTH STREET, YOU HAVE TO COME OUT OF
16 ONE OF THE EXITS DOWN HERE, RIGHT, ON THE SOUTH SIDE OF THE
17 GAS STATION; IS THAT RIGHT?

18 A THERE IS A LITTLE PLACE -- THERE IS PLACES ON
19 THE ISLAND WHERE YOU COULD JUST EASILY MAKE A U-TURN. IF
20 YOU WERE GOING TO GO OUT THAT WAY, THERE IS LIKE A BREAK
21 IN WHERE YOU GO OFF TO THE LEFT AND YOU CAN JUST MAKE A
22 TURN (WITNESS INDICATING).

23 Q IF YOU WANTED TO GO SOUTH -- I MEAN, YOU WOULD
24 HAVE TO GO NORTH AND FIND A PLACE TO MAKE A U-TURN AND COME
25 BACK SOUTH?

26 A RIGHT, I THINK THERE IS ONE CLOSE TO THE EXIT
27 OF THE GAS STATION BUT I AM NOT SURE.

28 Q AND THE CAR THAT YOU SAW IN THE GAS STATION,

9-5

1 WAS IT THERE WHEN YOU FIRST DROVE IN OR DO YOU KNOW?

2 A YES, IT WAS THERE.

3 Q IT WAS ALREADY THERE WHEN YOU CAME IN?

4 A IT WAS ALREADY THERE WHEN WE DROVE IN.

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1 Q WHERE WAS IT? CAN YOU TAKE THIS RED MARKER AND
2 SHOW US WHERE IT WAS?

3 A I COULDN'T REMEMBER WHETHER WE WERE HERE AND
4 THEY WERE THERE OR WHETHER WE WERE HERE AND THEY WERE THERE
5 (WITNESS INDICATING).

6 Q WHAT IS YOUR BEST RECOLLECTION NOW?

7 A JUST THAT THEY WERE ACROSS FROM US AND MORE BEHIND
8 US, EITHER HERE OR RIGHT HERE LIKE THIS. MAYBE A LITTLE
9 BIT UP HIGHER AND OUR CARS WERE BOTH FACING THIS WAY. THEY
10 WERE BOTH FACING NORTH (WITNESS INDICATING).

11 Q CLEARLY, THEY WERE BEHIND YOU, IN ANY EVENT?

12 A UH-HUH, A BIT BEHIND US.

13 Q ARE YOU FAMILIAR WITH WHERE THE CASHIER IS AT
14 THAT STATION?

15 A WE THOUGHT IT WAS IN THE CENTER BECAUSE ALL OF
16 THE VICKERS GAS STATIONS IN TUCSON HAVE A CASHIER IN THE
17 CENTER.

18 IT TURNED OUT IT WAS OVER HERE AND I THINK OVER
19 HERE THEY HAVE REFRESHMENTS, BECAUSE CHINO AND I WENT BACK
20 TO THE GAS STATION.

21 Q WELL, WHEN DID YOU GO BACK THERE?

22 A I DON'T REMEMBER.

23 Q WHY DID YOU GO BACK THERE?

24 A TO TAKE A LOOK, BECAUSE JEFF MEYERS -- I WAS
25 INSISTING AT FIRST THAT THEY WERE IN THE CENTER AISLE BECAUSE,
26 MOST OF THEM ARE IN THE CENTER AISLE AND JEFF MEYERS PULLED
27 OUT A PICTURE AND SAID, "WE TOOK SOME PICTURES. IT IS
28 ACTUALLY TO THE LEFT."

1 Q HOW OFTEN HAD YOU GONE TO THAT VICKERS GAS STATION
2 BEFORE?

3 A MAYBE ONLY ONCE OR TWICE BEFORE.

4 Q WASN'T IT THE VICKERS GAS STATION THAT WAS ON
5 THE WAY FROM YOUR HOUSE TO THE RANCH?

6 A YES, BUT I DIDN'T LIKE GOING OUT TO THE RANCH.
7 IT IS KIND OF FAR.

8 Q YOU HAD ONLY BEEN THERE ONCE OR TWICE BEFORE?

9 A AT THAT PARTICULAR STATION?

10 Q RIGHT.

11 HAD YOU BEEN TO THAT PARTICULAR STATION ONCE
12 OR TWICE BEFORE?

13 A I THINK.

14 Q YOU ARE NOT SURE ABOUT THAT?

15 A WE JUST -- WHEN MY CAR IS ON EMPTY, WE JUST STOP
16 AT THE NEAREST GAS STATION AND PUT GAS IN IT.

17 Q AND YOU BELIEVE NOW THAT THE CASHIER IS ON THE
18 FAR WESTERN-MOST ISLAND, RIGHT?

19 A YES.

20 Q WHERE AT THAT ISLAND?

21 A I DON'T REMEMBER. I THINK IT IS IN THE CENTER.

22 Q OKAY. DO YOU WANT TO PUT A C THERE IN THE CENTER?

23 A OKAY.

24 (WITNESS COMPLIES.)

25 Q BY MR. WAPNER: NOW, WHEN YOU GO UP THERE TO
26 PAY THE CASHIER, WHERE DO YOU STAND TO PAY?

27 A I THINK THERE IS TWO OPENINGS AND THE CASHIER'S
28 ISLAND IS ON BOTH SIDES.

1 Q CAN YOU PARK THERE TO GET GAS, BLOCKING THE OPENING
2 THAT WOULD BE ON THE EAST SIDE?

3 A EXCUSE ME?
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1 Q WHERE YOU HAVE GOT THE LINE THAT YOU SAY MIGHT
2 HAVE BEEN THE CAR --

3 A I --

4 Q LET ME JUST ASK THE QUESTION. THEN YOU CAN ANSWER
5 IT. WHERE YOU HAVE GOT THE LINE WHICH WOULD BE YOUR CAR, THAT
6 WOULD BE BLOCKING THE ENTRANCE TO THE CASHIER, RIGHT?

7 A LIKE -- NO. SEE, BECAUSE THE CASHIER WAS IN THE
8 CENTER, I HAD THOUGHT. AND I ASSUMED THAT THAT IS WHERE THE
9 CASHIER IS, THERE. AND THEN WE WERE IN FRONT OF THE CASHIER
10 AND I KNOW THAT THE OTHER CAR WAS RIGHT ABOUT HERE, THEN
11 (INDICATING). BUT THEN YOU SAID --

12 Q LET ME JUST ASK YOU A QUESTION. YOU HAVE MADE
13 A LINE HERE TO INDICATE WHERE YOUR CAR WAS. IF IT WAS PARKED
14 THEN --

15 A THE CASHIER WAS --

16 Q LET ME JUST FINISH ASKING MY QUESTION. THEN YOU
17 CAN ANSWER. THIS LADY CAN'T WRITE DOWN BOTH OF US AT THE SAME
18 TIME.

19 IF YOUR CAR IS PARKED HERE, WOULDN'T IT BE BLOCKING
20 THE CASHIER?

21 A YES.

22 Q OKAY. WAS IT PARKED THERE?

23 A NO.

24 Q WHERE WAS IT?

25 A IF WE WERE PARKED ON THIS SIDE, THEN IT HAD TO
26 BE RIGHT ABOUT HERE (INDICATING).

27 IF WE WERE OVER HERE, THEN IT WAS IN FRONT OF THE
28 SODAS. THERE WAS SOMETHING ALONGSIDE OF OUR CAR.

1 Q YOU HAVE TO KEEP YOUR VOICE UP. SO THE SODAS WOULD
2 BE IN THE MIDDLE. IS THAT RIGHT?

3 A THE SODA WOULD BE THERE -- IT WAS EITHER THE
4 SODAS OR THE CASHIER.

5 Q BEFORE YOU MAKE RED MARKINGS ALL OVER HERE, CAN
6 YOU PUT AN "S" WHICH WOULD BE WHERE THE SODAS ARE IN THE
7 MIDDLE?

8 A YES.

9 Q OKAY. DO YOU KNOW WHAT IS ON THE OTHER SIDE, THE
10 FAR SIDE? IN THE MIDDLE?

11 A I DON'T KNOW. MORE GAS PUMPS? I DON'T KNOW.

12 Q ALL RIGHT. YOU CAN RESUME YOUR SEAT.

13 YOUR HONOR, I HAVE A PHOTOGRAPH THAT I WOULD LIKE
14 TO HAVE MARKED AS PEOPLE'S -- I THINK IT IS 231 FOR
15 IDENTIFICATION.

16 THE COURT: YES.

17 MR. WAPNER: THIS IS A PHOTOGRAPH THAT APPEARS TO
18 DEPICT A VICKERS GAS STATION.

19 MR. BARENS: CAN WE SEE IT? BECAUSE WE HAVE GOT SIX.

20 THE COURT: WILL YOU SHOW HIM, PLEASE?

21 Q BY MR. WAPNER: NOW, DO YOU RECOGNIZE THAT
22 PHOTOGRAPH?

23 A IT IS THE VICKERS AT SIXTH AND CAMPBELL?

24 Q I AM ASKING YOU IF YOU RECOGNIZE IT. I DON'T
25 WANT YOU TO ASK ME.

26 A YES.

27 Q DO YOU RECOGNIZE THAT PHOTOGRAPH?

28 A YES.

30-
1 Q WHAT IS IT?

2 A IT IS A VICKERS GAS STATION.

3 Q DO YOU KNOW IF THAT IS THE STATION THAT YOU WERE
4 AT THAT DAY?

5 A YES IT IS.

6 Q WHAT ENABLES YOU TO RECOGNIZE IT?

7 A THE MAJORITY OF THE VICKERS LOOK ALIKE, QUITE A
8 BIT ALIKE.

9 Q ANYTHING THAT ALLOWS YOU TO KNOW THAT THAT IS THE
10 STATION --

11 A IF THE PICTURE WOULD HAVE BEEN A LITTLE BIGGER,
12 YOU WOULD HAVE SEEN THE WYKO BUILDING TO THE RIGHT OF IT.

13 THE COURT REPORTER: HOW DO YOU SPELL THAT?

14 THE WITNESS: W-Y-K-O.

15 Q BY MR. WAPNER: YOU MEAN TO THE RIGHT OF IT ON
16 SIXTH STREET?

17 A LIKE THIS (INDICATING). IT WOULD BE RIGHT HERE.

18 Q SO THE WYKO BUILDING WOULD -- WHAT YOU ARE SAYING
19 IS THAT IT IS OVER IN THIS AREA OF THE DIAGRAM?

20 A IT IS A LITTLE FURTHER BACK FROM THE STREET, A
21 LITTLE FURTHER BACK. SOMEWHERE IN THERE, THERE IS A WYKO.

22 MR. WAPNER: INDICATING ON THE RIGHT-HAND, CENTER PORTION
23 OF THE DIAGRAM, YOUR HONOR?

24 THE COURT: YES.

25 MR. WAPNER: INCIDENTALLY, MAY THAT BE MARKED AS 232?

26 THE COURT: IT WAS 221 BEFORE, DID YOU SAY?

27 THE CLERK: NO. 231.

28 THE COURT: ALL RIGHT. THAT WILL BE 232.

30- "
1 MR. WAPNER: YOUR HONOR, MAY THAT PHOTOGRAPH BE
2 RECEIVED INTO EVIDENCE?

3 THE COURT: YES.

4 MR. WAPNER: MAY I JUST PASS IT BY THE JURY BRIEFLY?

5 THE COURT: YES.

6 (PAUSE.)

7 MR. WAPNER: WHILE WE ARE DOING THAT, I JUST HAVE ONE
8 OTHER PHOTOGRAPH THAT ALSO APPEARS TO DEPICT THE SAME STATION.
9 MAY IT BE 233 FOR IDENTIFICATION?

10 MR. BARENS: COULD I JUST SEE IT?

11 THE COURT: 233.

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1 Q BY MR. WAPNER: MISS CANCHOLA, SHOWING YOU
2 ANOTHER PHOTOGRAPH THAT IS MARKED AS 233 FOR IDENTIFICATION,
3 DO YOU RECOGNIZE THAT? DOES THAT APPEAR TO BE A DIFFERENT
4 VIEW OF THE SAME STATION?

5 A YES, IT DOES.

6 MR. BARENS: COULD WE MAKE SURE THAT SHE SAID SHE
7 RECOGNIZED IT, SIR?

8 THE COURT: I DON'T KNOW.

9 DID YOU SAY ANYTHING ABOUT RECOGNIZING IT? DO
10 YOU RECOGNIZE THAT PHOTOGRAPH?

11 THE WITNESS: YES, YES, I DO.

12 THE COURT: IS THAT A PHOTOGRAPH OF THE STATION IN
13 QUESTION?

14 THE WITNESS: YES, IT IS.

15 THE COURT: ALL RIGHT.

16 THE WITNESS: AND IT APPEARS TO HAVE A STADIUM IN THE
17 BACKGROUND.

18 Q BY MR. WAPNER: THAT PHOTOGRAPH APPEARS TO BE
19 TAKEN FROM APPROXIMATELY THIS DIRECTION, LOOKING THROUGH
20 THE GAS STATION AND ACROSS --

21 A AT THE UNIVERSITY.

22 Q -- ACROSS CAMPBELL AVENUE, RIGHT?

23 A UH-HUH.

24 Q DO YOU SEE IN THAT PHOTOGRAPH WHAT APPEARS TO
25 BE PLAYING FIELDS FROM THE UNIVERSITY ALONG CAMPBELL AVENUE?

26 A I JUST SEE THE TOP OF THE STADIUM.

27 Q WHEN YOU SAY "THE TOP OF THE STADIUM," THAT IS
28 THE BASKETBALL STADIUM --

1 A MC HALE.

2 Q MC HALE CENTER, WHERE THE UNIVERSITY OF ARIZONA
3 PLAYS ITS BASKETBALL GAMES, RIGHT?

4 A YES.

5 Q ARE YOU IN FACT A UNIVERSITY OF ARIZONA PARTISAN?

6 A I BEG YOUR PARDON?

7 Q WERE YOU A UNIVERSITY OF ARIZONA FAN?

8 A I WASN'T UPSET ABOUT MISSING A GAME AS MUCH AS
9 YOU WERE THAT DAY.

10 Q WE HAD SOME DISCUSSION THAT DAY, DIDN'T WE, ABOUT
11 THE FACT THERE WERE TWO BIG FOOTBALL GAMES THAT DAY?

12 A FOOTBALL GAMES.

13 Q THEY WEREN'T BASKETBALL GAMES IN NOVEMBER, RIGHT?

14 A NO, IT WAS FOOTBALL AND YOU HAD TICKETS AND YOU
15 COULDN'T GO.

16 Q OKAY, I CERTAINLY DID.

17 BUT IN FACT, MC HALE CENTER, WHICH IS WHERE THE
18 UNVIERSITY PLAYS ITS BASKETBALL GAMES, IS DEPICTED IN THAT
19 PHOTOGRAPH, WHICH WOULD BE APPROXIMATELY HERE ON THE DIAGRAM,
20 RIGHT?

21 A ACROSS, YES.

22 MR. WARNER: INDICATING, YOUR HONOR, ON THE LEFT-HAND
23 SIDE NEAR WHAT IT SAYS "U OF A."

24 THE COURT: YES.

25 Q BY MR. WAPNER: ALL RIGHT, NOW THE WHOLE POINT
26 OF THIS IS, IS THE CAR THAT CONTAINED THESE OTHER PEOPLE
27 THAT YOU SAW IN THE GAS STATION, WAS ALREADY THERE WHEN YOU
28 PULLED IN, RIGHT?

1 A YES, IT WAS.

2 Q ALL RIGHT. DID YOU NOTICE THE PEOPLE AT THAT
3 TIME?

4 A WHEN WE FIRST PULLED IN?

5 Q YES.

6 A I DON'T REMEMBER IF I NOTICED THEM WHEN WE FIRST
7 PULLED IN OR UNTIL CHINO GOT OUT OF THE CAR.

8 Q NOW, YOU WERE IN A HONDA PRELUDE?

9 A A HONDA PRELUDE --

10 Q AND --

11 A '84.

12 I AM SORRY.

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1 Q IS THAT SOMEWHAT OF A SPORTS CAR?

2 A NOT THE WAY I HAVE TAKEN CARE OF IT.

3 Q DOES IT SIT FAIRLY -- DO YOU RIDE FAIRLY LOW
4 TO THE GROUND IN THAT CAR?

5 A YES.

6 Q AND THE OTHER CAR THAT YOU SAW WAS AN OLDER
7 AMERICAN CAR, RIGHT?

8 A YES.

9 Q LATE '50'S OR EARLY '60'S, I THINK YOU SAID?

10 A YES.

11 Q DID THAT RIDE SUBSTANTIALLY HIGHER THAN THE CAR
12 THAT YOU WERE IN?

13 MR. BARENS: OBJECTION. "SUBSTANTIALLY" IS VAGUE AND
14 AMBIGUOUS.

15 THE COURT: OVERRULED.

16 THE WITNESS: I DON'T REMEMBER THE CAR THAT WELL.
17 THAT IS WHY WE COULDN'T FIND THE CAR.

18 Q BY MR. WAPNER: WHAT DO YOU REMEMBER ABOUT IT?

19 A I TRIED TO REMEMBER THE COLOR OF IT, WHICH I
20 TOLD YOU, WHICH I THOUGHT WAS A BEIGE-ISH OR A SILVER, BUT
21 I WAS LOOKING MORE AT THE PERSON.

22 I THINK CHINO WAS LOOKING MORE AT THE CAR BUT
23 EVEN HE DIDN'T REMEMBER WHAT KIND OF CAR IT WAS.

24 Q YOU SAY IT WAS A BEIGE-ISH COLOR?

25 A THERE IS A COLOR CALLED METALLIC BEIGE IN THE
26 VOLVOS AND IT LOOKS LIKE THIS SILVER OR GRAY, BECAUSE THAT
27 WAS THE COLOR OF ONE OF MY DAD'S OLD CARS.

28 Q METALLIC BEIGE LOOKS SILVER OR GRAY?

1 A LOOKS LIKE SILVER OR DARKISH GRAY.

2 Q WAS THAT THE APPROXIMATE COLOR OF THIS CAR THAT
3 YOU SAW?

4 A THAT IS WHAT I THOUGHT IT MIGHT HAVE BEEN BUT
5 I WASN'T SURE.

6 I DON'T REMEMBER THE CAR THAT WELL.

7 Q IT APPEARED TO BE ORIGINAL PAINT ON THE CAR?

8 A I DON'T KNOW THAT MUCH ABOUT CARS.

9 Q YOU DON'T KNOW WHETHER IT WAS METALLIC PAINT
10 ON THAT CAR OR NOT?

11 A I SAID METALLIC BEIGE BECAUSE THAT WAS THE COLOR
12 OF ONE OF MY DAD'S CARS, MY DAD'S OTHER CAR, AND I THOUGHT
13 THAT THAT WAS CLOSE TO THE SAME COLOR, BUT I DON'T REMEMBER
14 WHETHER IT WAS A METALLIC OR IT WASN'T.

15 Q WHAT ELSE DO YOU REMEMBER ABOUT THE CAR?

16 A YOU SHOWED ME A --

17 Q JUST TELL ME NOW WHAT ELSE YOU REMEMBER ABOUT
18 THE CAR?

19 A I DON'T REMEMBER IT BEING ROUNDISH, AND I THINK
20 IT MIGHT HAVE BEEN ONLY A TWO DOOR.

21 OH, AND THE PLATES. I THOUGHT IT WAS UNUSUAL,
22 THE CAR WAS AN OLD CAR BUT IT HAD RED AND WHITE PLATES INSTEAD
23 OF YELLOW AND GREEN LIKE THE NEW ONES.

24 THE COURT: THEY HAD WHAT?

25 THE WITNESS: THE OLDER ONES HAVE THE YELLOW AND GREEN
26 AND THE NEWER ONES ARE RED AND WHITE.

27 THE COURT: PLATES?

28 MR. WAPNER: LICENSE PLATES.

1 THE WITNESS: LICENSE PLATES.

2 THE COURT: WHAT STATE?

3 THE WITNESS: ARIZONA.

4 THE COURT: ARIZONA PLATES, WERE THEY?

5 THE WITNESS: YES.

6 THE COURT: YOU DIDN'T GET THE NUMBER, BY ANY CHANCE?

7 THE WITNESS: NO.

8 I WOULDN'T BE HERE RIGHT NOW.

9 (LAUGHTER IN COURTROOM.)

10 THE COURT: I THOUGHT BECAUSE IT INTERESTED YOU THAT
11 MUCH, YOU MIGHT HAVE MEMORIZED THE NUMBER.

12 THE WITNESS: NO, NO.

13 Q BY MR. WAPNER: NOW, WHEN YOU PULLED INTO THE
14 GAS STATION, YOU PULLED IN AHEAD OF THIS OTHER CAR, RIGHT,
15 SO THAT THAT CAR WAS BEHIND WHERE YOU WERE?

16 A YES.

17 Q AND DID YOU NOTICE AT THAT TIME WHERE THE PEOPLE
18 WERE WHO WERE IN THAT OTHER CAR, WERE THEY IN THE CAR, OUT
19 OF THE CAR?

20 A I THINK YOU WOULD HAVE TO REFER BACK TO THE
21 TRANSCRIPT EXACTLY AS TO WHAT I HAD TOLD YOU.

22 Q WELL, I WANT TO KNOW WHAT YOU REMEMBER NOW.

23 I DON'T WANT TO --

24 A BECAUSE IT HAS BEEN SEVEN MONTHS SINCE I FIRST
25 TALKED TO YOU.

26 Q WHAT DO YOU REMEMBER NOW ABOUT WHERE THE PEOPLE
27 WERE WHO WERE IN THAT CAR?

28 A I REMEMBER THAT THE GUY WITH THE SILVER HAIR

1 WAS PUTTING GAS IN THE CAR, I THINK.

2 Q AND THIS GAS STATION IS A SELF-SERVICE STATION?

3 A IT IS.

4 Q WHEN DO YOU PAY?

5 A YOU PAY AFTERWARDS.

6 Q SO THE SILVER-HAIRED PERSON WAS PUTTING GAS IN
7 THE CAR?

8 A IN THE CAR.

9 Q NOW, DO YOU REMEMBER WHERE HE WAS STANDING?

10 A I DON'T REMEMBER IF HE WAS STANDING -- SOME CARS
11 HAVE THE GAS THING IN BACK OF THE CAR AND SOME OF THEM HAVE
12 IT ON THE OTHER SIDE OF THE CAR.

13 Q WHAT IS YOUR RECOLLECTION NOW AS TO WHERE HE
14 WAS STANDING?

15

16 A I THOUGHT I REMEMBERED TELLING YOU I WASN'T SURE
17 WHETHER HE WAS IN BACK OR TO THE SIDE.

18 Q I WANT TO KNOW WHAT YOU REMEMBER NOW.

19 A I DON'T REMEMBER WHERE HE WAS STANDING EXACTLY.

20 Q AND YOU PULLED IN AND DID YOU AT ALL TIMES, WHEN
21 YOU WERE IN THIS GAS STATION, REMAIN SEATED IN THE PASSENGER
22 SEAT OF THE CAR?

23 A YES, I WAS SEATED THE WHOLE TIME.

24 Q DO YOU REMEMBER NOTICING THIS PERSON WHEN YOU
25 FIRST DROVE IN?

26 A I DON'T KNOW WHETHER OR NOT I DID.

27 Q THEN AT SOME POINT --

28 WELL, AFTER YOU PULLED INTO THE GAS STATION,

1 YOU STAYED SEATED IN THE CAR; WHAT IS THE FIRST INSTANT THAT
2 YOU REMEMBER SEEING THIS PERSON OR NOTICING HIM?

3 A IT MUST HAVE BEEN WHEN I SAW HIM PUMPING THE
4 GAS.

5 Q WELL, THAT IS WHEN YOU DROVE IN?

6 A I DON'T KNOW IF IT WAS WHEN WE DROVE IN OR AFTER
7 WE HAD ALREADY STOPPED THE CAR.

8 I WAS JUST LOOKING AROUND.

9 Q NOW, IN ORDER TO SEE HIM PUMPING THE GAS, DID
10 YOU TURN YOUR HEAD?

11 A YES.

12 Q HOW FAR DID YOU HAVE TO TURN YOUR HEAD?

13 A I GUESS LIKE THIS (WITNESS DEMONSTRATING).

14 MR. WAPNER: INDICATING APPROXIMATELY PARALLEL TO
15 THE SHOULDER, YOUR HONOR?

16 THE COURT: YES.

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2A
1 MR. BARENS: RIGHT SHOULDER? RIGHT SHOULDER ACTUALLY?

2 THE COURT: RIGHT SHOULDER.

3 Q BY MR. WAPNER: AND SO, IF YOU TURNED YOUR HEAD --
4 HOW FAR DID YOU TURN IT EXACTLY? WAS IT PARALLEL TO YOUR
5 SHOULDER OR NOT QUITE AS FAR?

6 A I DON'T REMEMBER. SORRY. I DON'T REMEMBER.

7 Q WELL, WHEN YOU TURNED YOUR HEAD IN THAT DIRECTION,
8 HOW IS THAT YOU WERE ABLE TO SEE SOMEONE WHO WAS STANDING
9 BEHIND YOU?

10 A HE WASN'T --

11 MR. BARENS: OBJECTION.

12 THE WITNESS: EXACTLY BEHIND ME BECAUSE HE WAS OFF TO
13 THE SIDE.

14 MR. BARENS: VAGUE AND AMBIGUOUS.

15 THE COURT: PARDON ME?

16 DO YOU UNDERSTAND THE QUESTION?

17 THE WITNESS: YES. HE SAID BEHIND ME AND HE WAS --

18 THE COURT: IT IS AMBIGUOUS TO YOU?

19 THE WITNESS: IT IS AMBIGUOUS. HE WAS NOT BEHIND ME.
20 HE WAS DIAGONAL TO ME.

21 THE COURT: DO YOU KNOW WHAT AMBIGUOUS MEANS?

22 THE WITNESS: VAGUE.

23 MR. BARENS: VAGUE AND AMBIGUOUS, ACTUALLY.

24 THE COURT: DID YOU UNDERSTAND THE QUESTION, THOUGH?

25 THE WITNESS: HE WANTED TO KNOW HOW FAR MY HEAD WAS
26 TURNED.

27 THE COURT: IS THAT VAGUE TO YOU?

28 THE WITNESS: IT WAS, IF HE JUST ASKED THE QUESTION THAT

32
1 HE WAS BEHIND ME. HE WAS NOT BEHIND ME.

2 THE COURT: WELL, TELL US WHERE HE WAS.

3 Q BY MR. WAPNER: FIRST OF ALL, WHY DON'T YOU MAKE
4 A -- I HATE TO GIVE YOU THIS RED MARKER AGAIN. I WILL GIVE
5 YOU THE RED MARKER BUT INSTEAD OF JUST MAKING A LINE, WOULD
6 YOU DO ME A FAVOR AND PUT A RECTANGLE, JUST ONE RECTANGLE FOR
7 WHERE YOUR CAR WAS, YOUR BEST RECOLLECTION OF WHERE YOUR CAR
8 WAS.

9 A I CAN'T BECAUSE I WAS NOT SURE IF BOTH OF OUR
10 AUTOMOBILES WERE TO THE LEFT OR IN THE CENTER ONE.

11 Q YOU DON'T RECALL NOW?

12 A I DON'T REMEMBER WHICH SIDE WE WERE EXACTLY.
13 I JUST REMEMBER THE CAR. THERE WERE NO ISLANDS BETWEEN US.

14 HE WAS ACROSS FROM US DIAGONALLY.

15 Q DIAGONALLY BEHIND YOU, CORRECT?

16 A YES.

17 Q AND HIS CAR WAS FACING TOWARD THE TOP OF THIS
18 DIAGRAM, AS WAS YOURS, RIGHT?

19 A YES. NORTH.

20 Q SO WOULD IT BE FAIR IF I TOOK AND PUT ON EACH OF
21 THOSE THINGS THAT YOU HAVE DRAWN, A LITTLE TRIANGLE AT THE
22 FRONT INDICATING WHICH DIRECTION THEY WERE FACING?

23 A YES.

24 Q NOW, SINCE THIS WAS AN OLDER AMERICAN CAR, IT IS
25 FAIR TO SAY THAT THE GAS TANK WAS NOT IN THE FRONT OF THE CAR,
26 WAS IT?

27 A I DON'T THINK SO.

28 Q ALL RIGHT. SO IT WAS SOMEPLACE TO THE REAR OF

32A -
1 THE CAR, RIGHT?

2 A REAR OR SIDE.

3 Q TO THE REAR PORTION OF THE CAR, WHETHER IT WAS
4 ACTUALLY IN THE BACK OR WHETHER IT WAS ON THE SIDE? IT WAS
5 TO THE BACK PORTION OF THE CAR, CORRECT?

6 A YES.

7 Q ALL RIGHT. SO IF EITHER OF THESE IS THE CAR THAT
8 BELONGED TO -- LET ME ASK YOU THE QUESTION. I WILL ASK YOU
9 ANOTHER QUESTION.

10 DO YOU KNOW WHETHER HE WAS STANDING CLOSEST TO
11 THE PUMPS, PUMPING GAS OR DID HE HAVE THE HOSE FOR PUMPING
12 THE GAS ALL OF THE WAY ACROSS THE CAR?

13 A I DON'T REMEMBER. I DON'T REMEMBER.

14 Q WOULD IT BE A FAIR STATEMENT THAT THE PERSON WAS PUT-
15 TING GAS IN THEN WAS EITHER BEHIND THE CAR, OR TO THE REAR
16 OF THE CAR ON THE SIDE CLOSEST TO THE PUMPS? WOULD THAT BE
17 FAIR?

18 A HE COULD HAVE BEEN ON THE OTHER SIDE. HE COULD
19 HAVE HAD THE HOSE STRETCHED.

20 Q WELL HE COULD HAVE. DOES THAT MEAN THAT YOU JUST
21 DON'T RECALL WHERE HE WAS STANDING?

22 A EXACTLY HIS PLACEMENT WHERE HE WAS STANDING, NO.
23 I DON'T.

24 Q NOW, THEN IF HE WAS ON THE SIDE, EVEN IF HE HAD
25 THE HOSE STRETCHED, HE WOULD STILL BE BEHIND YOU, IS THAT RIGHT?

26 A YES.

27 Q ALL RIGHT. NOW, TO SEE HIM, WHAT DID YOU DO?

28 A I TURNED. I WAS LOOKING AROUND.

1 Q WHY WERE YOU LOOKING AROUND?

2 A CHINO GOT OUT OF THE CAR. I WAS JUST SITTING THERE.
3 I WAS KIND OF BORED.

4 I JUST STARTED LOOKING AROUND. THERE ARE STUDENTS
5 AROUND BECAUSE IT IS CLOSE TO THE UNIVERSITY OF ARIZONA.
6 THERE ARE USUALLY STUDENTS JUST BEING AROUND, JUST DRESSED
7 CASUALLY IN SWEATS OR JUST CASUALLY DRESSED --

8 Q LET ME ASK ANOTHER QUESTION.

9 MR. CHIER: SHE DIDN'T FINISH.

10 THE COURT: DID YOU HEAR ANYTHING?

11 MR. WAPNER: NO.

12 MR. CHIER: I SAID THAT SHE HAD NOT FINISHED.

13 THE COURT: THERE IS A LAWYER DOING THE OBJECTING.

14 MR. CHIER: I AM A LAWYER. I AM A MEMBER OF THE BAR.
15 YOU ARE A JUDGE. YOU STOP TALKING TO ME THIS WAY.

16 THE COURT: WOULD YOU REMOVE HIM FROM THE COURTROOM,
17 PLEASE?

18 MR. BARENS: JUDGE, I NEED --

19 THE COURT: I WANT HIM REMOVED FROM THE COURTROOM.

20 (MR. CHIER IS REMOVED FROM THE COURTROOM.)

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1 MR. BARENS: I NEED TO APPROACH.

2 THE COURT: NO YOU DON'T.

3 MR. BARENS: YES I DO, SIR.

4 THE COURT: GO AHEAD.

5 MR. BARENS: I NEED TO APPROACH.

6 THE COURT: YOU DON'T HAVE TO APPROACH.

7 MR. BARENS: I MUST, SIR.

8 THE COURT: I DON'T WANT YOU TO APPROACH, EITHER. WILL
9 YOU SIT DOWN, PLEASE?

10 MR. BARENS: SIR, I HAVE --

11 THE COURT: WILL YOU SIT DOWN? SIT DOWN.

12 MR. BARENS: SIR --

13 THE COURT: GO AHEAD. YOU MAY PROCEED. I DON'T WANT
14 ANY OUTBURSTS FROM ANYBODY IN THIS COURT.

15 MR. BARENS: I HAVE TO APPROACH TO MAKE A RECORD.

16 THE COURT: YOU MAKE A RECORD. WE WILL MAKE A RECORD
17 LATER. I WILL GIVE YOU AN OPPORTUNITY.

18 MR. BARENS: SIR, FOR THE RECORD NOW, I AM RESERVING
19 ON THIS SPECIFIC --

20 THE COURT: I WILL GIVE YOU THE OPPORTUNITY LATER TO
21 MAKE A RECORD. LET'S GO ON.

22 MR. BARENS: THANK YOU, SIR.

23 THE COURT: GO AHEAD.

24 MR. BARENS: SIR, I THINK I HAVE TO SAY THAT I AM
25 PROCEEDING --

26 THE COURT: WILL YOU PLEASE SIT DOWN? YOU CAN MAKE A
27 RECORD LATER.

28 MR. BARENS: BUT I HAVE TO AT THIS POINT SAY THAT I AM

3'
1 PROCEEDING UNDER PROTEST AT THIS POINT.

2 THE COURT: I UNDERSTAND PERFECTLY. YOU MAY PROCEED.

3 MR. BARENS: THANK YOU.

4 THE COURT: YOUR CLIENT CAN SIT NEXT TO YOU, IF HE WANTS
5 TO.

6 Q BY MR. WAPNER: WHEN YOU LOOKED AROUND, DID YOU
7 JUST KIND OF SURVEY THE GAS STATION AND TURN BACK AROUND AND
8 SIT FACING FORWARD?

9 A NO. I THINK I KEPT LOOKING AT HIM BECAUSE HE WAS
10 SO DISTINCTIVE LOOKING. HE WAS VERY EXPENSIVELY DRESSED.

11 Q WHEN YOU KEPT LOOKING AT HIM, WAS THAT WITH --
12 YOU WERE SITTING FACING FORWARD WITH YOUR HEAD TURNED?

13 A I GUESS I WAS LIKE THIS (INDICATING).

14 MY CAR IS REAL SHORT. IT IS NOT A BIG CAR. IT
15 IS A PRELUDE.

16 SO, HE WOULD BE JUST SORT OF -- HIS CAR WOULD
17 PROBABLY BE WHERE THE WALL STARTS, WHERE HIS CAR WOULD
18 PROBABLY START. ONLY HE WAS ACROSS FROM ME. SO I WOULD --

19 Q THE FRONT OF HIS CAR --

20 A THE FRONT OF HIS CAR IS WHERE THE WALL IS. MY
21 CAR IS SHORT.

22 Q OKAY. HIS CAR BEING LATE FIFTIES OR EARLY
23 SIXTIES CAR, HOW LONG WAS -- HOW BIG WAS THAT CAR?

24 A I DON'T REMEMBER IT BEING REAL LONG. IT LOOKED
25 OLDER. BUT I DON'T REMEMBER IT HAVING A REAL LONG FRONT OR
26 REAL LONG -- I DON'T REMEMBER EXACTLY THE AUTOMOBILE.

27 Q DID YOU SAY THAT IT WAS LONGER THAN A MID-SIZED
28 CAR? DO YOU REMEMBER SAYING THAT IN YOUR STATEMENT ON

32P
1 NOVEMBER THE 22ND?

2 A NO I DON'T.

3 Q LATE FIFTIES OR EARLY SIXTIES, HOW BIG DO YOU THINK
4 HIS CAR WAS?

5 A I DON'T KNOW.

6 Q AND HE WAS TOWARD THE BACK OF HIS CAR, RIGHT?

7 A NO. I DON'T KNOW. BECAUSE I DON'T REMEMBER IF
8 HE WAS IN THE BACK OR IF HE HAD MAYBE THE HOSE PULLED AROUND.

9 Q OKAY. THE WHOLE POINT IS, HOW FAR AROUND IN YOUR
10 SEAT DID YOU HAVE TO TURN TO BE ABLE TO SEE THIS PERSON?

11 A I JUST REMEMBER LOOKING LIKE THAT (INDICATING).

12 Q JUST OVER YOUR SHOULDER?

13 A OVER MY SHOULDER, UH-HUH.

14 Q AND AS HE WAS PUMPING, IT WAS THE SILVER-HAIRED
15 MAN THAT WAS PUMPING THE GAS?

16 A YES.

17 Q AT THAT TIME, HOW LONG DID YOU LOOK AT HIM?

18 A I DON'T REMEMBER. I DON'T THINK I KEPT STARING
19 AT HIM BECAUSE AT THAT PARTICULAR POINT, CHINO REMINDED ME
20 SOMEWHERE ALONG THE TIME TO PUSH THE LEVER.

21 THERE IS A LEVER FOR GAS. YOU CAN'T PUT GAS IN
22 THE CAR WITHOUT PULLING THE LEVER INSIDE THE CAR.

23 SO, I HAD TO REACH OVER THE DRIVER'S SEAT AND
24 REACH TOWARD THE LEVER AND PULL THE LEVER.

25 Q DO YOU REMEMBER SAYING DURING THE INTERVIEW ON
26 NOVEMBER 22, THAT YOU DIDN'T SEE HIM AT THE BACK OF THE --
27 YOU WEREN'T LOOKING AT HIM WHEN HE WAS AT THE BACK OF THE CAR?

28 A I DON'T REMEMBER.

32P
1 Q DID YOU EVER SEE A TRANSCRIPT OF THAT TAPE
2 RECORDING?

3 A I JUST GLANCED AT IT. I DIDN'T BOTHER LOOKING
4 AT IT BECAUSE I JUST -- I MEAN, I SAW SOMEONE. AND YOU SAID
5 THAT I SAW -- YOU THOUGHT I SAW SOMEONE AND YOU JUST WEREN'T
6 SURE IF IT WAS HIM --

7 Q YOU GLANCED AT WHAT --

8 A EXCUSE ME.

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1 Q DID YOU SEE A TRANSCRIPT OF THE TAPE RECORDING?

2 A YES.

3 Q WHO SHOWED IT TO YOU?

4 A I RECEIVED ONE ON SUNDAY.

5 Q FROM WHO?

6 A FROM MR. CHIERS.

7 Q AND DID YOU HAVE A CHANCE TO REVIEW IT?

8 A THAT TRANSCRIPT OF THE OTHER INTERVIEW?

9 Q DID YOU HAVE A CHANCE TO REVIEW IT?

10 A I DIDN'T. I GLANCED THROUGH IT.

11 IT WAS REAL THICK. IT WAS ABOUT -- IT WAS ABOUT
12 10 HOURS WORTH.

13 Q WELL, YOU ARE SPEAKING OF 10 HOURS WORTH OF
14 CONVERSATIONS WITH YOU?

15 A NO, IT WAS WE SPENT -- WE GOT TO THE POLICE
16 STATION AT AROUND 12:00 AND WE WERE MADE TO WAIT UNTIL ABOUT --
17 A WHILE DOWNSTAIRS AND THEN I SPOKE TO YOU, I WAS IN WITH YOU,
18 AND I DON'T REMEMBER HOW LONG IT WAS, ABOUT TWO, TWO AND A
19 HALF HOURS.

20 Q WEREN'T YOU THERE ABOUT TWO TO TWO AND A HALF HOURS?

21 A YES, AND THEN THE REST OF THE TIME, I STAYED WAITING
22 FOR CHINO.

23 Q LET ME ASK THE QUESTIONS AND YOU ANSWER THEM, OKAY?

24 AFTER THAT FIRST INTERVIEW --

25 FIRST OF ALL, YOU DIDN'T SIT IN A ROOM FOR 10
26 STRAIGHT HOURS, DID YOU?

27 A WHEN WE HAD A ONE-HOUR BREAK BECAUSE I HAD
28 REQUESTED IT. WE HADN'T EATEN ALL DAY.

1 Q YOU REQUESTED IT AND THE BAD PEOPLE MADE YOU WANT
2 TO SIT THROUGH THE WHOLE TIME?

3 A WE DIDN'T THINK YOU WERE BAD PEOPLE AT FIRST. WE
4 JUST THOUGHT WE WERE TELLING THE TRUTH AND WE HAD NOTHING TO
5 WORRY ABOUT.

6 Q WHEN YOU WERE FIRST INTERVIEWED, YOU WERE
7 INTERVIEWED FOR ABOUT TWO HOURS, TWO TO TWO AND A HALF HOURS,
8 RIGHT?

9 A YES.

10 Q AND THAT WAS SHORTLY AFTER NOON WHEN YOU GOT TO
11 THE STATION, RIGHT?

12 A WE GOT THERE RIGHT ABOUT NOON BUT THEY SAID YOU
13 WERE BUSY, THAT THE OFFICERS WERE BUSY UPSTAIRS.

14 Q IT WAS SHORTLY AFTER NOON THAT YOU STARTED TO BE
15 INTERVIEWED?

16 A ABOUT 12 O'CLOCK, WE GOT TO THE POLICE STATION.

17 Q AND SHORTLY AFTER THAT, YOU WERE INTERVIEWED,
18 RIGHT?

19 A NO.

20 WE WERE FORCED TO WAIT DOWNSTAIRS. THAT IS WHY
21 CHINO WAS MAD AT ME.

22 Q WHEN DID THE INTERVIEW START?

23 A I DON'T REMEMBER.

24 I JUST REMEMBERED WE DID A LOT OF WAITING THAT
25 DAY.

26 Q AND YOU WERE FORCED TO WAIT DOWNSTAIRS?

27 A WE WERE ASKED TO WAIT DOWNSTAIRS.

28 Q OKAY. AND YOU WERE INTERVIEWED FOR ABOUT TWO AND

1 HALF HOURS, RIGHT?

2 A YES.

3 Q AND WERE YOU THROUGH SOMETIME IN THE MIDDLE OF
4 THE AFTERNOON, RIGHT --

5 A YES.

6 Q -- WITH THAT INTERVIEW?

7 A UH-HUH.

8 Q AND CHINO WAS THERE THEN, RIGHT?

9 A YES. AND THEN I WAITED OUTSIDE.

10 Q RIGHT. AND YOU WAITED OUTSIDE BY YOURSELF --

11 A I DON'T KNOW.

12 Q -- WHILE HE WAS INTERVIEWED, RIGHT?

13 A I THINK DETECTIVE MEYERS SPOKE TO ME A FEW TIMES
14 DURING THAT IN THE OUTSIDE ROOM.

15 Q BASICALLY, YOU WERE JUST SITTING THERE WAITING
16 FOR CHINO TO FINISH HIS INTERVIEW, RIGHT?

17 A YES.

18 Q AND THEN CHINO FINISHED HIS INTERVIEW AND THEN
19 YOU LEFT AND WENT TO HAVE SOMETHING TO EAT, RIGHT?

20 A UH-HUH, YES.

21 Q AND THEN YOU CAME BACK, RIGHT?

22 A YES, WE DID, WITHIN AN HOUR.

23 Q AND YOU WERE INTERVIEWED AGAIN?

24 A YOU DIDN'T WANT US TO TAKE A BREAK, THOUGH.

25 MR. WAPNER: YOUR HONOR, MAY THAT BE STRICKEN AS
26 NONRESPONSIVE?

27 THE WITNESS: IT IS THE TRUTH.

28 THE COURT: I WAS TALKING TO THE CLERK.

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WOULD YOU READ THE QUESTION AND ANSWER, PLEASE?

(THE RECORD WAS READ BY THE REPORTER.)

THE WITNESS: YOU WANTED TO --

THE COURT: I WILL STRIKE THE ANSWER.

WERE YOU INTERVIEWED AGAIN?

THE WITNESS: YES, WE WERE.

THE COURT: ALL RIGHT, THANK YOU.

3A-1
1 Q BY MR. WAPNER: AND THAT WAS STARTING AROUND
2 7 O'CLOCK, PERHAPS?

3 A 6:00, AROUND 6:00.

4 Q AND THAT LASTED FOR ABOUT ANOTHER TWO HOURS?

5 A ABOUT THERE.

6 Q AND THEN YOU WENT OUT AND WAITED AGAIN FOR CHINO,
7 RIGHT?

8 A AND HE HAD WAITED OUTSIDE DURING -- NOT EVEN INSIDE
9 THE BUILDING.

10 Q CAN YOU JUST ANSWER THE QUESTION ABOUT WHAT YOU
11 WERE DOING.

12 A UH-HUH.

13 Q YOU WERE ASKED THEN AFTER YOUR SECOND INTERVIEW
14 TO WAIT OUTSIDE, RIGHT?

15 A YES.

16 Q AND YOU DID WAIT UNTIL HE WAS FINISHED BEING
17 INTERVIEWED, RIGHT?

18 A RIGHT.

19 Q AND THEN YOU LEFT AND IT WAS ABOUT 10 O'CLOCK?

20 A WE DIDN'T LEAVE RIGHT AWAY.

21 THERE WAS PARTS OF THE TRANSCRIPT THAT WEREN'T
22 THERE AT THE END WHEN WE WERE TALKING AGAIN OUTSIDE OF THE
23 INTERVIEW ROOM.

24 Q OKAY. THAT WAS MORE OR LESS CONVERSATION ABOUT
25 WHAT YOU MIGHT EXPECT TO HAPPEN IN THE FUTURE, CORRECT?

26 A WITH REGARDS TO THE -- YOU TOLD US THAT THE DEFENSE
27 WAS GOING TO BE WORSE WITH US, AND THAT IS WHY WE AVOIDED THEM,
28 I MEAN.

1 THAT IS WHAT YOU SAID.

2 Q DID THAT HAVE TO DO WITH WHAT MIGHT HAPPEN IN THE
3 FUTURE?

4 A YES, FOR ABOUT HALF AN HOUR.

5 Q AND SO THE TOTAL TIME THAT YOU WERE BEING ASKED
6 QUESTIONS WAS MAYBE FOUR AND A HALF HOURS, RIGHT, TWO TO TWO
7 AND A HALF HOURS THE FIRST TIME AND THEN APPROXIMATELY ANOTHER
8 TWO HOURS AT THE SECOND INTERVIEW, RIGHT?

9 A HOUR AND A HALF, TWO HOURS, SOMETHING LIKE THAT,
10 YES.

11 THE REST OF THE TIME, I WAITED.

12 Q OKAY. SO YOU WEREN'T SITTING IN A LITTLE INTERVIEW
13 ROOM BEING BROWBEATEN FOR TEN HOURS, WERE YOU?

14 MR. BARENS: OBJECTION. THAT IS ARGUMENTATIVE, THAT
15 "BROWBEATEN" THING.

16 THE COURT: SUSTAINED.

17 MR. BARENS: I WOULD LIKE IT STRICKEN, SIR.

18 THE COURT: I SUSTAINED THE OBJECTION.

19 MR. BARENS: THANK YOU, SIR.

20 Q BY MR. WAPNER: NOW, DID YOU SAY AT THE FIRST TIME
21 THAT YOU WERE INTERVIEWED THAT -- DO YOU REMEMBER BEING ASKED
22 THESE QUESTIONS:

23 "DID YOU SEE HIM GO TO THE GAS PUMP AT
24 ALL?

25 "A I DON'T KNOW IF I MIGHT -- MIGHT HAVE
26 LOOKED AWAY AGAIN BECAUSE I DON'T REMEMBER HIM
27 GOING TO THE GAS PUMP.

28 "I JUST REMEMBER HIM STANDING AT THE

1 BACK OF THE CAR.

2 "I THINK I REMEMBER HIM PULLING IT OUT
3 AND THEN PLACING THE PUMP BACK ON, YOU KNOW, THE
4 NOZZLE BACK ON THE PUMP, BUT I DON'T REMEMBER HIM
5 GETTING IT AND PUTTING IT IN.

6 "BUT I DO REMEMBER HIM BEING BACK OF THE
7 CAR.

8 "Q HOW LONG DID YOU SEE HIM WHILE HE WAS
9 AT THE BACK OF THE CAR?

10 "A I -- I WASN'T LOOKING AT HIM WHEN HE
11 WAS AT THE BACK OF THE CAR.

12 "HOWEVER LONG IT TOOK HIM TO PUT THE
13 GAS IN THE CAR.

14 "PROBABLY WHAT, ABOUT A MINUTE, PROBABLY.
15 IT WOULD PROBABLY TAKE ABOUT A MINUTE."

16 DO YOU REMEMBER BEING ASKED THOSE QUESTIONS AND
17 GIVING THOSE ANSWERS?

18 A THOSE QUESTIONS SOUND FAMILIAR.

19 Q HOW ABOUT THE ANSWERS?

20 A IT HAS BEEN SEVEN MONTHS.

21 THE COURT: PARDON ME?

22 THE WITNESS: IT HAS BEEN SEVEN MONTHS.

23 THE COURT: DO THE ANSWERS SOUND RIGHT TO YOU?

24 THE WITNESS: THEY SOUND CLOSE. THEY SOUND RIGHT.

25 IT HAS BEEN SEVEN MONTHS.

26 Q BY MR. WAPNER: NOW, DID YOU OR DID YOU NOT SEE
27 HIM WHEN HE WAS STANDING AT THE BACK OF THE CAR?

28 A I DON'T KNOW. I DON'T REMEMBER.

1 Q NOW, WHAT IS THE NEXT PLACE THAT HE MIGHT HAVE
2 BEEN AT THE STATION THAT YOU RECALL PERHAPS SEEING HIM?

3 A I GUESS AFTER HE PUMPED THE GAS, HE WENT TO GO
4 PAY FOR IT AND HE HAD TO WALK PAST MY CAR.

5 Q OKAY. DID HE DO THAT OR ARE YOU JUST GUESSING
6 ABOUT IT?

7 MR. BARENS: WHICH PART, SIR?

8 THE WITNESS: IT HAD TO BE --

9 MR. BARENS: WE HAVE AN ANSWER THAT CONTAINS MORE THAN
10 ONE ELEMENT, SIR, AND THE QUESTION IS VAGUE AND AMBIGUOUS.
11 I DON'T KNOW WHICH PART HE IS REFERRING TO IN HIS QUESTION.

12 THE COURT: ALL RIGHT. WOULD YOU SPECIFY WHICH PART
13 OF IT?

14 Q BY MR. WAPNER: DID HE DO SOMETHING AFTER BEING
15 AT THE BACK OF THE CAR?

16 A HE WENT TO PAY FOR THE GAS.

17 Q DID YOU SEE THAT?

18 A I REMEMBER HIM WALKING PAST MY CAR AND WALKING --
19 HE HAD TO CROSS THE FRONT OF IT. BUT I DON'T REMEMBER SEEING
20 HIM STANDING IN LINE.

21 Q HOW FAST OR SLOW WAS HE WALKING?

22 A I DON'T REMEMBER.

23 Q IS THERE ANYTHING THAT STOOD OUT IN YOUR MIND ABOUT
24 HOW HE WALKED?

25 A THAT I JUST REMEMBER BEING ABLE -- YES, THAT HE
26 WAS -- I REMEMBERED THAT HE WAS VERY WELL DRESSED. HE HAD
27 ON A BETTER--I GUESS THE KIND OF CLOTHES HE HAD ON, THAT IS
28 WHAT I NOTICED.

4-1

1 Q CARMEN, EXCUSE ME. I AM ASKING YOU IF ANYTHING
2 STOOD OUT ABOUT THE WAY HE WALKED, THE MANNER IN WHICH HE
3 WALKED?

4 A HE HAD GOOD POSTURE. I DON'T REMEMBER HIM HAVING
5 A LIMP OR ANYTHING LIKE THAT, IF THAT IS WHAT YOU ARE
6 ASKING.

7 Q ANYTHING ABOUT THE SPEED WITH WHICH HE WALKED
8 THAT STOOD OUT?

9 A I DON'T REMEMBER HIM BEING IN ANY HURRY.

10 Q AND WHEN HE WENT TO PAY AT THE CASHIER, DID YOU
11 SEE HIM AT THAT TIME?

12 A I DON'T REMEMBER HIM STANDING AT THE CASHIER.

13 Q AND AS HE WALKED BACK TO YOUR CAR, HOW LONG WAS
14 HE IN YOUR VIEW? HOW MANY SECONDS CAN YOU RECALL SEEING
15 HIM AT THAT TIME?

16 A I DON'T KNOW. I DON'T REMEMBER.

17 Q DO YOU REMEMBER HOW MANY SECONDS YOU MIGHT HAVE
18 SEEN HIM IF YOU DID AT ALL, WHEN HE WAS AT THE BACK OF THE
19 CAR?

20 A I DON'T REMEMBER.

21 Q AND YOU DIDN'T SEE HIM WHEN HE WAS PAYING AT
22 THE CASHIER, RIGHT?

23 A I DON'T REMEMBER SEEING HIM AT THE CASHIER. BUT
24 I THOUGHT THAT HE HAD BEEN THERE FOR A WHILE. THAT IS WHY
25 I HAD TOLD YOU --

26 Q WHAT MADE YOU THINK HE HAD BEEN THERE FOR A WHILE?

27 A BECAUSE I DON'T REMEMBER HIM COMING BACK RIGHT
28 AWAY, REAL FAST.

4B

1 Q OKAY. BUT, SO WHAT YOU ARE SAYING IS, THERE
2 WAS A TIMKE LAPSE WHERE HE WAS KIND OF OUT OF YOUR VIEW.
3 BUT YOU DIDN'T SEE HIM AT THAT POINT? IS THAT WHAT YOU ARE
4 SAYING?

5 A YES.

6 Q OKAY.

7 A CHINO MIGHT HAVE SAID SOMETHING TO ME. I MIGHT
8 HAVE --

9 Q EXCUSE ME. YOU HAVE TO WAIT FOR THE NEXT
10 QUESTION.

11 A BUT THAT WAS WITH REGARD TO THE LAST QUESTION.

12 Q WAIT FOR THE NEXT QUESTION, WOULD YOU PLEASE?
13 AFTER HE WAS OUT OF YOUR VIEW FOR A WHILE, WHAT
14 DID HE DO AT THAT POINT?

15 A WHAT DID HE DO?

16 Q RIGHT.

17 A I DON'T KNOW IF HE WAS --

18 Q WHAT IS THE NEXT TIME YOU RECALL SEEING HIM?

19 A COMING BACK TOWARD HIS CAR.

20 Q AND WHERE WAS HE AT THAT POINT?

21 A I DON'T REMEMBER.

22 Q DID HE WALK PAST YOU?

23 A YES. HE HAD TO.

24 Q YOU SAY HE HAD TO BECAUSE AT SOME POINT HE WAS
25 AT THE CASHIER, AND THEN LATER, HE WAS AT HIS CAR, RIGHT?

26 A WHAT DID I SAY IN THE TRANSCRIPT SEVEN MONTHS
27 AGO?

28 Q I AM ASKING YOU.

1 A YOU ARE ASKING ME FROM SEVEN MONTHS AGO.

2 Q NO. I AM ASKING YOU WHAT YOU RECALL NOW OF WHAT
3 HAPPENED.

4 A I DON'T REMEMBER.

5 Q OKAY. SO YOU DON'T HAVE ANY PARTICULAR RECOLLECTION
6 OF SEEING HIM WALK BACK FROM YOUR CAR -- FROM THE CASHIER
7 TO HIS CAR, RIGHT?

8 A I DON'T REMEMBER.

9 Q NOW, WHEN HE GOT BACK TO THE -- DO YOU REMEMBER
10 SEEING HIM WHEN HE WAS BACK AT THE CAR?

11 A YES. I REMEMBER SEEING HIM. I REMEMBER SITTING
12 AND I REMEMBER HIM SITTING IN THE CAR AND STARING OVER AT
13 US.

14 HIS FRIEND WASN'T IN THE CAR WITH HIM. HIS FRIEND
15 WAS DRINKING A SODA.

16 Q LET ME ASK YOU THIS. DO YOU REMEMBER HIM GETTING
17 INTO THE CAR?

18 A YES.

19 Q NOW, HE IS SITTING IN HIS -- DO YOU REMEMBER
20 HIM OPENING THE DOOR, ACTUALLY?

21 A NO. I DON'T.

22 Q AND SO, THE NEXT THING YOU REMEMBER IS, HE IS
23 IN HIS CAR, IS THAT RIGHT?

24 A HE WAS IN THE CAR.

25 Q AND ONCE AGAIN, HIS CAR IS BEHIND YOUR CAR, IS
26 THAT RIGHT?

27 A IT IS DIAGONAL. IT IS DIAGONAL FROM US.

28 Q IT WOULD BE AS YOU WERE SITTING FACING -- AS

1 YOU WERE SITTING FACING IN YOUR CAR, IT WOULD BE DIAGONALLY
2 BEHIND YOUR RIGHT SHOULDER, CORRECT?

3 A YES.

4 Q OKAY. AND DID YOU TURN AROUND AGAIN AT THAT
5 POINT?

6 A YES, I DID.

7 Q WHAT PART OF YOUR BODY DID YOU TURN AROUND?

8 A I JUST -- I JUST TURNED. I WAS LOOKING AT HIM.
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4-5
1 Q TURNED YOUR HEAD?

2 A PARDON ME?

3 Q TURNED YOUR HEAD?

4 A YES.

5 Q AND HOW LONG DID YOU OBSERVE HIM AT THAT TIME?

6 A FOR A WHILE. I DON'T KNOW HOW LONG BECAUSE HE
7 KEPT LOOKING OVER AT US.

8 Q AND DID YOU CONTINUE TO LOOK AT HIM?

9 A YES.

10 Q AS YOU WERE LOOKING AT HIM, WAS THE WINDOW IN
11 HIS CAR UP OR DOWN?

12 A THE DRIVER'S SIDE WINDOW? IT WAS DOWN.

13 Q AND WERE YOU LOOKING AT HIM THROUGH THE WINDSHIELD
14 OR THROUGH THE OPEN WINDOW?

15 A HIS WINDOW.

16 MR. BARENS: WHICH WINDOW?

17 Q BY MR. WAPNER: WERE YOU LOOKING AT HIM THROUGH
18 HIS WINDSHIELD OR THROUGH HIS OPEN WINDOW?

19 A THROUGH HIS OPEN WINDOW.

20 Q AND HOW LONG DID YOU LOOK AT HIM AT THAT TIME?

21 A I JUST KEPT LOOKING OVER THAT WAY. BUT SOMEWHERE
22 IN THE MIDDLE, THERE IS AN INTERRUPTION POINT BECAUSE THAT
23 WAS WHAT THE POLICE WERE TRYING TO TRACK DOWN, TO TRY TO
24 TIE IN THE DATE THAT WE SAW HIM.

25 THAT WAS WITH REGARD TO -- I SPOKE TO DETECTIVE
26 MEYERS ABOUT THIS AFTERWARDS AND --

27 MR. WAPNER: YOUR HONOR, THERE IS NO QUESTION PENDING.

28 THE WITNESS: I AM TRYING TO CLARIFY BUT --

1 THE COURT: YOU WILL HAVE AN OPPORTUNITY WHEN MR. BARENS
2 GETS TO YOU.

3 Q BY MR. WAPNER: WHEN YOU WERE LOOKING AT HIM
4 AND HE IS SITTING IN HIS CAR, DO YOU REMEMBER HOW MANY SECONDS,
5 MINUTES OR HOURS IT WAS THAT YOU LOOKED AT HIM?

6 A NO, I DON'T.

7 Q COULD YOU GIVE US AN ESTIMATE OF APPROXIMATELY
8 HOW LONG IT WAS?

9 A I DON'T KNOW.

10 Q DURING THE ACTUAL TIME THIS WAS GOING ON, CHINO
11 WAS PUTTING GAS IN YOUR CAR?

12 A NO. HE WENT TO PAY THE CASHIER.

13 Q HE HAD ALREADY PUT GAS IN YOUR CAR?

14 A HE HAD ALREADY PUT THE GAS IN THE CAR.

15 Q DID YOU PAY ANY ATTENTION TO CHINO PAYING THE
16 CASHIER?

17 A I THINK HE LEFT HIS WALLET IN THE CAR. HE MIGHT
18 HAVE. I DON'T REMEMBER EXACTLY.

19 BUT HE USUALLY TAKES HIS WALLET OUT OF HIS POCKET
20 AND TOSSES IT ON THE DASHBOARD. I MIGHT HAVE HANDED HIM
21 HIS WALLET.

22 Q YOU ARE NOT SURE?

23 A I DON'T REMEMBER.

24 Q NOW, YOU SAID THAT THIS PERSON IN THE OTHER CAR,
25 KEPT LOOKING OVER AT YOU. DID HE LOOK OVER THEN AND DID
26 HE LOOK BACK?

27 A NO. HE JUST KEPT LOOKING OVER IN OUR DIRECTION.

28 Q ALL RIGHT. THEN CHINO WAS AT THE CASHIER AT

34-7

1 THAT TIME?

2 A NO. I THINK AT THAT POINT IN TIME, CHINO HAD
3 COME BACK TO THE CAR AND HAD WANTED TO CHECK THE CAR FOR
4 OIL AND THE TRANSMISSION FLUID.

5 Q IS THE HOOD RELEASE INSIDE THE FRONT OF THE CAR?

6 A IT IS INSIDE THE CAR. AND I HAD TO PULL IT.

7 Q OKAY. AND DID YOU REMIND CHINO TO CHECK THE
8 OIL OR DID HE DO THAT ON HIS OWN?

9 A HE DID IT BECAUSE MY DAD WAS UPSET. MY BROTHER
10 BURNED OUT THE ENGINE ON HIS CAR.

11 Q NOW, AFTER HE CHECKED THE OIL, DID -- WELL, WAS
12 IT WHILE HE WAS CHECKING THE OIL, THAT YOU WERE LOOKING BACK
13 AT THIS PERSON IN THE OTHER CAR?

14 A I MIGHT HAVE LOOKED BACK, BUT I THINK CHINO HAD
15 TO ASK ME WHERE THE TRANSMISSION DIP STICK IS BECAUSE IN
16 A HONDA PRELUDE, IT IS ALONGSIDE OR ON THE OTHER SIDE OF
17 THE ENGINE.

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1 Q DID YOU VERBALLY TELL --

2 MR. BARENS: EXCUSE ME, YOUR HONOR. COULD I APPROACH
3 FOR A MOMENT, SIR?

4 THE COURT: YES.

5 MR. BARENS: THANK YOU, SIR.

6 (THE FOLLOWING PROCEEDINGS WERE HELD
7 AT THE BENCH OUTSIDE THE HEARING OF THE
8 JURY:)

9 THE COURT: I ASSUME YOU ARE GOING TO TELL ME THAT
10 YOU MISS YOUR ASSOCIATE; ISN'T THAT WHAT YOU ARE APPROACHING
11 ME FOR?

12 MR. BARENS: SIR, I WAS GOING TO COMMENT TO THE COURT
13 THAT IT HAS BEEN ABOUT 30 MINUTES, SIR, AND I WOULD MOST
14 RESPECTFULLY, SIR, ASK LEAVE OF THE COURT FOR MR. CHIER TO
15 RETURN.

16 THE COURT: YOU THINK HE WILL KEEP QUIET?

17 MR. BARENS: YES, YOUR HONOR.

18 THE COURT: IF HE WILL KEEP QUIET, I WILL PERMIT HIM
19 TO RETURN.

20 MR. BARENS: I WOULD APPRECIATE IT, SIR. I WOULD MOST
21 APPRECIATE IT.

22 THE COURT: ALL RIGHT. YOU ADMONISH HIM ABOUT THAT.
23 NO MORE OF THESE OUTBURSTS FROM HIM.

24 MR. BARENS: COULD I HAVE A MOMENT TO GET HIM?

25 THE COURT: SURE, YOU CAN GO OUT AND GET HIM.

26 MR. BARENS: ALL RIGHT.

27 THE COURT: WAIT A MINUTE NOW. ISN'T THERE ANYBODY
28 AROUND HERE WE CAN SEND TO GET HIM? THE CLERK CAN GET HIM

35-2

1 OR THE BAILIFF CAN GET HIM.

2 MR. BARENS: I AM CONCERNED TO MAKE SURE HE COMES BACK.

3 THE COURT: WHY SHOULDN'T HE COME BACK? TELL HIM
4 IT IS THE ORDER OF THE COURT THAT HE COMES BACK, YOU WANT
5 HIM BACK.

6 MR. BARENS: YES, I WOULD LIKE TO DO THAT PERSONALLY.

7 THE COURT: MADAM CLERK, TELL MR. CHIER THE COURT SAYS
8 HE MAY COME BACK AND COUNSEL NEEDS HIM HERE, ALL RIGHT?

9 MR. WAPNER: MAY I HAVE A SECOND TO GET A DRINK OF
10 WATER IN THE BACK OF THE COURTROOM?

11 THE COURT: SURE.

12 MR. BARENS: I WILL JUST STEP OUT FOR A MOMENT, YOUR
13 HONOR.

14 (PAUSE IN PROCEEDINGS.)

15 (MR. CHIER ENTERS THE COURTROOM.)

16 MR. BARENS: THANK YOU, YOUR HONOR. WE ARE READY TO
17 PROCEED.

18 THE COURT: ALL RIGHT, YOU MAY PROCEED.

19 MR. WAPNER: THANK YOU.

20 Q DID YOU GET OUT OF THE CAR TO SHOW MR. LOPEZ
21 WHERE THE DIP STICK WAS FOR HIM?

22 A IF HE DIDN'T KNOW WHERE IT WAS, I CERTAINLY DIDN'T
23 KNOW WHERE IT WAS.

24 WE COULDN'T FIND IT.

25 I NEVER GOT OUT OF THE CAR.

26 Q WERE YOU TRYING TO HELP HIM FIND IT?

27 A THERE IS NO WAY I COULD HAVE HELPED HIM. I DON'T
28 KNOW ANYTHING ABOUT CARS.

1 Q I THOUGHT WHEN YOU SAID BEFORE ABOUT TELLING
2 US WHERE THE DIP STICK WAS FOR THE PRELUDE, THAT MEANT THAT
3 YOU KNEW.

4 A NO.

5 WE FOUND OUT TOGETHER LATER ON. WE STOPPED --
6 THIS IS, YOU KNOW, MONTHS AFTERWARDS. WE JUST NEVER CHECKED
7 THE TRANSMISSION FLUID.

8 WE SPENT A WHILE UNDER THE HOOD, TRYING TO LOOK
9 FOR IT.

10 Q YOU STILL HAVE A TRANSMISSION IN YOUR CAR, DON'T
11 YOU?

12 A YEAH, \$190 EXPENSE ON IT BUT, YES, IT IS STILL
13 THERE.

14 Q DID YOU SPEND ANY TIME TALKING TO HIM OR HIM
15 ASKING YOU QUESTIONS ABOUT THE CAR, WHERE IS THE TRANSMISSION
16 DIP STICK, SOMETHING LIKE THAT?

17 A HE MIGHT HAVE ASKED ME AND I THINK I SAID, "I
18 DON'T KNOW" AND THAT WAS IT AND HE WAS MAD AT ME.

19 Q HOW LONG DID IT TAKE HIM TO CHECK THE OIL AND
20 THE TRANSMISSION OR TRY TO CHECK THE TRANSMISSION FLUID?

21 A IT WAS -- IT PROBABLY TOOK HIM A WHILE.

22 Q DO YOU KNOW HOW LONG APPROXIMATELY?

23 A I DON'T KNOW.

24 Q AFTER HE DID THAT, DID HE GET IN THE CAR?

25 A AFTER HE FINALLY FINISHED, HE SHUT THE HOOD DOWN
26 AND THEN HE GOT IN THE CAR AND --

27 Q DID HE GET IN THE CAR AFTERWARDS?

28 A YES, HE DID.

1 Q AFTER HE GOT IN THE CAR, DID THE TWO OF YOU LEAVE?

2 A YES, WE DID.

3 Q BY THAT TIME, THE OTHER CAR HAD ALREADY LEFT, RIGHT?

4 A YES.

5 Q NOW, THE OTHER CAR, YOU SAY, TOOK THE CIRCUITOUS
6 ROUTE OUT OF THE STATION, RIGHT?

7 A UH-HUH.

8 Q IS THAT RIGHT?

9 A YES.

10 Q BUT YOU DON'T REMEMBER WHICH DIRECTION THE CAR
11 WENT AFTER IT GOT OUT OF THE STATION?

12 A IN TERMS OF WHETHER OR NOT IT MADE A LEFT OR
13 RIGHT ON SIXTH? RIGHT NOW I DON'T REMEMBER BECAUSE HE LEFT ON
14 ONE OF THE EXITS ON SIXTH.

15 Q CAN YOU DESCRIBE FOR US THE ROUTE THAT THE CAR
16 TOOK OUT OF THE GAS STATION?

17 AND LET ME GIVE YOU A MARKER. IF YOU CAN, JUST
18 MAKE ONE DOTTED LINE AND SHOW US THE ROUTE THAT THE CAR TOOK
19 OUT OF THE STATION.

20 A IF WE WERE PARKED HERE AND THIS IS HIS CAR, THEY
21 LEFT LIKE THIS (WITNESS INDICATING).

22 AND I DON'T KNOW WHETHER THEY WENT OUT THIS ONE
23 OR THAT ONE. IT DEPENDS ON WHERE IT WAS AT. AND THEY
24 STOPPED (WITNESS INDICATING).

25 Q AND THEN IF THEY WERE PARKED AT THE OTHER ONE --

26 A THEY STOPPED RIGHT ABOUT THERE (WITNESS INDICATING).

27 Q FOR HOW LONG DID THE CAR STOP THERE?

28 A LONG ENOUGH FOR HIM TO LOCK GAZE WITH CHINO.

1 Q NOW, HE LOCKED GAZE WITH YOU OR WITH CHINO?

2 A I THINK HE WAS LOOKING AT CHINO.

3 I SAW HIM AND I SAW HIS EYES.

4 Q YOU CAN RESUME YOUR SEAT.

5 (WITNESS COMPLIES.)

6 Q YOU WERE ASKED BY MR. BARENS WHETHER YOU LOCKED
7 GAZE WITH THIS PERSON; WAS IT YOU OR WAS IT MR. LOPEZ?

8 A I THINK BOTH OF US DID AT DIFFERENT TIMES.

9 Q HOW LONG IN TERMS OF SECONDS, MINUTES OR HOURS
10 WAS THAT CAR STOPPED WHERE YOU PUT THE BLUE X?

11 (PAUSE IN PROCEEDINGS.)

12 Q ARE YOU LOOKING AT THE CLOCK NOW?

13 A I AM LOOKING AT THE CLOCK TO SEE WHAT.

14 I DON'T KNOW, MAYBE ABOUT FIVE OR TEN SECONDS.

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1 Q AND AFTER THE CAR STOPPED THERE, IT WENT OUT ON
2 SIXTH STREET?

3 A YES.

4 Q NOW, WHEN THE CAR STOPPED AT THAT POINT, THERE
5 WAS IN FACT, A -- THERE WERE GASOLINE PUMPS IN BETWEEN YOUR
6 CAR AND THE OTHER CAR, IS THAT RIGHT?

7 A WHEN IT STOPPED?

8 Q YES.

9 A YES.

10 Q OKAY. SO, AS YOU WERE LOOKING AT THE PERSON
11 DRIVING THE OTHER CAR, YOU HAVE TO LOOK ACROSS THIS ISLAND?

12 A THERE IS A GAP. ON THE PHOTOGRAPH, THERE ARE GAPS --

13 Q LET ME ASK YOU THE QUESTION. SEE IF YOU CAN
14 ANSWER IT.

15 DID YOU HAVE TO LOOK ACROSS THIS ISLAND?

16 A THERE WAS A WIDER GAP THAN BETWEEN --

17 Q THE QUESTION IS, DID YOU HAVE TO LOOK ACROSS THE
18 ISLAND?

19 A YES.

20 Q OKAY. AND IN ADDITION TO THAT, YOU HAD TO LOOK
21 ACROSS YOUR CAR, IS THAT RIGHT?

22 A YES.

23 Q SO, YOU HAD TO LOOK PAST CHINO, ACROSS THE ISLAND
24 TO THE OTHER CAR, RIGHT?

25 A I DON'T REMEMBER IF CHINO WAS ABOUT TO GET BACK
26 INTO THE CAR AT THAT POINT OR IF HE WAS STILL STANDING OUTSIDE
27 THE CAR, ABOUT TO GET IN OR IF HE WAS ALREADY SITTING NEXT
28 TO ME. I DON'T REMEMBER THAT.

36A 0
1 Q IF YOU SAY THAT HE WAS STANDING OUTSIDE THE CAR,
2 YOU ARE TALKING ABOUT THE DRIVER'S DOOR?

3 A IT MIGHT HAVE BEEN AT THE DRIVER'S DOOR OR ABOUT
4 READY TO GET IN OR IF HE WAS NOT IN THE CAR YET. I DON'T
5 REMEMBER.

6 Q WHEN YOU SAY THAT HE WAS ABOUT READY TO GET IN,
7 WAS HE IN THE PROCESS OF GETTING IN? WHAT WAS HE DOING?

8 A I DON'T REMEMBER.

9 MR. BARENS: I THINK THE WITNESS ANSWERED THAT SHE
10 DIDN'T REMEMBER. SHE WAS ASKED FOR THE THIRD TIME --

11 THE COURT: YOU DON'T REMEMBER?

12 THE WITNESS: I DON'T REMEMBER EXACTLY.

13 THE COURT: YOUR NEXT QUESTION?

14 Q BY MR. WAPNER: YOU DON'T KNOW IF MR. LOPEZ WAS
15 EITHER IN OR OUT OF THE CAR, RIGHT?

16 A RIGHT.

17 Q AND AFTER THE CAR STOPPED WHERE YOU HAVE THE BLUE
18 X, IT LEFT THE GAS STATION AND YOU NEVER, EVER SAW THAT PERSON
19 AGAIN, CORRECT?

20 A NO.

21 Q NOW --

22 MR. BARENS: WELL, YOUR HONOR --

23 THE COURT: WAIT A MINUTE.

24 MR. WAPNER: WELL, I WILL ASK YOU. MAYBE I HAD A DOUBLE
25 NEGATIVE.

26 Q DID YOU EVER SEE THIS PERSON AGAIN?

27 MR. BARENS: I PRESUME COUNSEL MEANS IN PERSON.

28 THE COURT: YES. OF COURSE.

36A - 2
1 Q BY MR. WAPNER: DID YOU EVER SEE THAT PERSON AGAIN?

2 A NO I DIDN'T.

3 Q DO YOU HAVE AN ESTIMATE OF THE TOTAL AMOUNT OF
4 TIME THAT YOU HAD TO OBSERVE THE FACE OF THE PERSON AT THE
5 GAS STATION?

6 A NO I DON'T.

7 Q HOW LONG WAS THAT CAR AT THE GAS STATION ALTOGETHER
8 DURING THE TIME THAT YOU WERE THERE?

9 A I DON'T KNOW.

10 Q HOW LONG WAS YOUR CAR AT THE GAS STATION ALTOGETHER?

11 A SORRY. I COULDN'T TELL YOU.

12 THE COURT: PARDON ME?

13 THE WITNESS: I COULDN'T TELL HIM. SORRY. I DON'T KNOW.

14 Q BY MR. WAPNER: DID YOU FILL YOUR TANK WITH GAS?

15 A YES WE DID. IT WAS ON EMPTY.
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36A-4

1 Q HOW MUCH TIME --

2 A SORRY.

3 Q HOW MUCH TIME DID YOU SPEND AT THE GAS STATION
4 AFTER THE OTHER CAR LEFT?

5 A MAYBE -- I DON'T KNOW. MAYBE ABOUT A MINUTE OR
6 MORE.

7 Q DO YOU HAVE ANY IDEA HOW LONG YOU WERE THERE
8 ALTOGETHER?

9 A NO. I COULDN'T TELL YOU HOW LONG I WAS THERE THE
10 WHOLE TIME.

11 Q SO, YOU DON'T KNOW HOW LONG IT WAS THAT YOU HAD
12 TO OBSERVE THE FACE OF THIS PERSON, DO YOU?

13 A NO.

14 Q NOW, WHAT WAS IT THAT MADE YOU THINK THAT THIS
15 PERSON WAS GAY?

16 A I DIDN'T THINK SO AT FIRST.

17 Q WHY?

18 A I DON'T KNOW. JUST -- I JUST DIDN'T THINK SO.
19 HE WAS EXTREMELY ATTRACTIVE.

20 THE COURT: PARDON ME?

21 THE WITNESS: HE WAS VERY ATTRACTIVE.

22 THE COURT: BUT THAT DOESN'T MAKE HIM GAY, DOES IT?

23 THE WITNESS: NO IT DOESN'T.

24 Q BY MR. WAPNER: SO WHEN YOU FIRST SAW THIS PERSON,
25 YOU NOTICED THAT THIS WAS AN ATTRACTIVE MAN?

26 A UH-HUH.

27 Q IS THAT YES?

28 A YES.

36P
1 Q ALL RIGHT. JUST LOOKING AT HIM ALONE, DIDN'T MAKE
2 YOU THINK THAT HE WAS GAY, DID IT?

3 A NO.

4 Q OKAY. AND THERE WASN'T ANYTHING ABOUT THE WAY
5 THAT HE WALKED OR THE WAY THAT HE CARRIED HIMSELF THAT MADE
6 YOU THINK THAT HE WAS GAY WHEN YOU LOOKED AT HIM?

7 A NO, NOT AT FIRST.

8 Q WAS THERE AT SOME POINT LATER, SOMETHING ABOUT
9 THE WAY HE WALKED OR CARRIED HIMSELF THAT MADE YOU THINK HE
10 WAS GAY?

11 A WELL, MOST MEN HIS AGE, DON'T USUALLY TAKE THAT
12 MUCH CARE ABOUT THEMSELVES OR CARE OF THEMSELVES. HE WAS
13 VERY METICULOUSLY DRESSED, REALLY.

14 THE COURT: YOU MEAN A MAN DRESSED METICULOUSLY WHO TAKES
15 CARE OF HIMSELF IS NECESSARILY GAY?

16 THE WITNESS: NO.

17 THE COURT: THAT IS WHAT YOU JUST SAID.

18 MR. BARENS: WELL, LET'S NOT BE ARGUMENTATIVE, FOLKS.

19 THE COURT: ISN'T THAT WHAT YOU JUST SAID? YOU THOUGHT
20 HE WAS GAY BECAUSE OF THE WAY HE DRESSED METICULOUSLY?

21 THE WITNESS: NO, NO.

22 MR. BARENS: I DON'T THINK THAT YOU SHOULD ARGUE WITH
23 THE WITNESS ABOUT HER OPINION. SHE IS ENTITLED TO --

24 THE COURT: SURE.

25 THE WITNESS: THE PERSON I SAW -- THE PERSON THAT WAS
26 WITH HIM --

27 Q BY MR. WAPNER: I WANT TO GET TO THAT IN A MINUTE.
28 WHAT I AM TALKING ABOUT, FORGETTING ABOUT THE

1 PERSON THAT WAS WITH HIM, JUST TALK ABOUT THIS PERSON ALONE
2 FOR A SECOND, OKAY? CAN WE DO THAT?

3 MR. CHIER: STRONG VIBES OR WEAK VIBES.

4 THE COURT: I WOULD SUGGEST THAT YOU TALK TO YOUR
5 ASSISTANT AND TELL HIM TO --

6 MR. CHIER: I AM CO-COUNSEL.

7 THE COURT: TELL HIM NOT TO TALK AUDIBLY.

8 GO AHEAD.

9 Q BY MR. WAPNER: LET'S JUST USE THE MAN WITH THE
10 SILVER HAIR, ALL RIGHT, FOR THE TIME BEING?

11 THERE WASN'T ANYTHING ABOUT THE WAY HE WALKED OR
12 THE WAY HE CARRIED HIMSELF THAT MADE YOU THINK HE WAS GAY,
13 CORRECT?

14 A NO.

15 Q THAT IS NOT CORRECT?

16 A OR, THAT IS CORRECT. THAT'S CORRECT.

17 Q NOW, WAS THERE SOMETHING ABOUT THE WAY THAT HE
18 DRESSED THAT MADE YOU THINK THAT HE WAS GAY?

19 A NO.

20 Q FOCUSING ON HIM INDIVIDUALLY, WITHOUT TALKING ABOUT
21 THE OTHER PERSON, WAS THERE ANYTHING THAT MADE YOU THINK THAT
22 PERSON WAS GAY?

23 A I REALLY DON'T KNOW IF I THOUGHT HE WAS GAY AFTER
24 SEEING THE OTHER PERSON OR JUST BY LOOKING AT HIM. IT IS HARD
25 TO SAY.

26 Q WELL, WASN'T IT IN FACT, WHEN YOU SAW THE OTHER
27 PERSON THAT YOU MADE UP YOUR MIND THAT THIS PERSON WAS
28 PROBABLY GAY BECAUSE --

1 MR. BARENS: OBJECTION. THAT IS ARGUMENTATIVE. THE
2 WITNESS HAS JUST TESTIFIED THAT SHE IS NOT SURE AND --

3 THE COURT: I WILL SUSTAIN THE OBJECTION. GO AHEAD.
4 I WILL SUSTAIN THE OBJECTION.

5 Q BY MR. WAPNER: IN LOOKING AT THE PERSON, WAS THERE
6 SOMETHING -- WELL, WHAT WAS IT THAT HAPPENED THAT NIGHT AT
7 THE STATION, THAT MADE YOU THINK THAT THIS PERSON MAY BE GAY?

8 A THE PERSON THAT WAS WITH HIM.

9 Q OKAY. NOW, WHAT WAS IT ABOUT THAT PERSON THAT
10 WAS WITH HIM?

11 A HIS GESTURES.

12 THE COURT: PARDON ME?

13 THE WITNESS: HIS MOVEMENTS, HIS MOVEMENTS.
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1 THE COURT: THEY FLUTTER AROUND LIKE THIS, IS THAT
2 WHAT YOU MEAN?

3 THE WITNESS: I SAID HIS MOVEMENTS --

4 MR. BARENS: SIR, SIR.

5 THE COURT: GO AHEAD.

6 MR. BARENS: I ONLY, BECAUSE IT IS NOT, A LOT OF
7 HOMOSEXUALS DON'T DO THAT.

8 THE COURT: WELL, HE WANTS TO KNOW WHAT ABOUT THE
9 MOVEMENTS WHICH WOULD INDICATE THAT THIS OTHER PERSON WAS
10 GAY.

11 MR. BARENS: I DON'T THINK ANYBODY EVER SAID THAT,
12 YOU KNOW, THERE WAS ANY FLUTTERING GOING ON, SIR.

13 THE COURT: I JUST ASKED WHETHER OR NOT THAT WAS THE
14 CONDUCT SHE OBSERVED. THAT IS ALL.

15 GO AHEAD.

16 Q BY MR. WAPNER: WHAT WAS IT ABOUT THE MOVEMENTS
17 OF THIS OTHER PERSON THAT MADE YOU THINK THAT HE WAS GAY?

18 A I HAD GAY FRIENDS AND ALL, BEFORE, SO HE JUST --
19 HIS MOVEMENTS WERE SORT OF FEMININE.

20 AND THEN WHEN HE GOT BACK INTO THE CAR AND HE
21 WAS SITTING IN THE CAR OPPOSITE THE MAN WITH THE SILVER HAIR,
22 HE NOTICED THE MAN WITH THE SILVER HAIR WAS STARING AT MY
23 BOYFRIEND.

24 I HAD NOTICED AT THAT POINT --

25 MR. WAPNER: MOTION TO STRIKE AS CALLING FOR
26 SPECULATION AS TO WHAT THE OTHER PERSON NOTICED, YOUR HONOR.

27 MR. BARENS: WELL, I THINK SHE IS ENTITLED TO GIVE
28 HER CONCLUSION, SIR.

1 THE COURT: I WILL LET IT STAND. GO AHEAD.

2 THE WITNESS: THE OTHER PERSON -- YOU WANT ME TO FINISH
3 ANSWER?

4 Q BY MR. WAPNER: NO. I WANT YOU TO RESPOND TO
5 THE QUESTION WHICH WAS, WHAT WAS IT ABOUT THE OTHER PERSON'S
6 MOVEMENTS THAT MADE YOU THINK THAT HE WAS GAY, NOT WHAT HE
7 SAID BUT WHAT ABOUT HIS MOVEMENTS?

8 A FEMININE GESTURES AND THAT HE WAS JEALOUS.

9 Q WELL, JEALOUSY WASN'T PART OF HIS MOVEMENTS,
10 WAS IT?

11 A WHAT HE WAS SAYING --

12 MR. BARENS: THAT IS ARGUMENTATIVE, TOO, BECAUSE ONE
13 CAN ACT JEALOUS WITHOUT SAYING ANYTHING, TOO, BECAUSE WE
14 ARE INTO A WHOLE GESTALT OF THE SITUATION.

15 THE COURT: ARE YOU MAKING AN OBJECTION OR AN ARGUMENT?

16 MR. BARENS: MAKING AN OBJECTION.

17 THE COURT: WHAT IS THE GROUNDS OF THE OBJECTION?

18 MR. BARENS: THE QUESTION IS VAGUE AND AMBIGUOUS AND
19 MISREPRESENTS TO THE WITNESS.

20 THE COURT: DO YOU UNDERSTAND THE QUESTION?

21 THE WITNESS: WHY DON'T YOU REPEAT IT?

22 THE COURT: REPEAT THE QUESTION, PLEASE.

23 Q BY MR. WAPNER: THE FACT THAT HE WAS JEALOUS
24 DIDN'T HAVE ANYTHING TO DO WITH HIS MOVEMENTS, DID IT?

25 A YES, IT DOES.

26 I COULDN'T HEAR WHAT THEY WERE SAYING BUT I SAW
27 HIS FACE AND THE WAY HE WAS LOOKING AND, YOU KNOW, WHAT HE
28 SAID TO THE OTHER PERSON AND THAT IS WHY -- THAT IS WHEN

1 THEY LEFT.

2 Q YOU COULDN'T HEAR ANYTHING ABOUT THE CONVERSATION,
3 COULD YOU?

4 A NO.

5 BUT I SAW HIS SOUR FACE AND I NOTICED THE MAN
6 AT THAT POINT -- I HAD ALREADY NOTICED THAT THE SILVER-
7 HAired MAN WASN'T LOOKING AT ME BUT HE WAS LOOKING AT CHINO.

8 Q BUT YOU DON'T KNOW WHAT WAS GOING ON BETWEEN
9 THOSE TWO PEOPLE BEFORE THEY GOT TO THE STATION, DO YOU?

10 A NO.

11 Q DO YOU KNOW WHAT THE RELATIONSHIP BETWEEN THOSE
12 TWO PEOPLE WAS?

13 A I AM ASSUMING THAT THEY WERE BOYFRIENDS.

14 Q ALL RIGHT. AND WHY DO YOU MAKE THAT ASSUMPTION?

15 A BECAUSE THE MAN WAS UPSET BECAUSE THE OTHER GUY
16 HAD SAT THERE AND HAD BEEN STARING AT CHINO.

17 Q WELL, HE GOT IN THE CAR, THE SECOND PERSON GOT
18 IN THE CAR AND THERE WAS SOME DISCUSSION APPARENTLY; IS THAT
19 RIGHT?

20 A AND THEY LEFT ALMOST RIGHT AWAY AFTER --

21 I MEAN RIGHT AFTER THE DISCUSSION, BUT THEN THE
22 SILVER-HAired GUY STOPPED.

23 Q THE GAS WAS ALREADY IN THE CAR?

24 A YES -- IN WHOSE CAR? THE GAS WAS IN WHICH CAR?

25 Q WAS ALREADY IN THE SILVER-HAired PERSON'S CAR?

26 A YES.

27

28

37A ' 1 Q THERE WOULDN'T BE ANYTHING UNUSUAL ABOUT HIM
2 LEAVING THE GAS STATION AFTER HE PUT THE GAS IN THE CAR?

3 A BUT THEY WERE SITTING THERE SAYING SOMETHING AND
4 THAT IS WHEN THE CAR SORT OF VROOMED FORWARD.

5 Q COULD YOU HEAR ANYTHING OF THE CONVERSATION?

6 A NO.

7 Q AND DID THEY HAVE ANY DISCUSSION AT ALL AT ANY
8 TIME WHILE THEY WERE IN THE GAS STATION THAT YOU COULD HEAR?

9 A THAT I COULD HEAR, NO.

10 Q WHAT WAS GOING ON IN THE CAR BETWEEN THE TWO OF
11 THEM IS A COMPLETE ASSUMPTION ON YOUR PART, RIGHT?

12 A WELL, IT IS BASED ON THE FACT THAT I HAVE SEEN
13 CHINO LOOK AT OTHER GIRLS AND I HAVE SAID SOMETHING TO HIM AND WE
14 HAVE BEEN SOMEPLACE BEFORE OR SOMETHING AND HE SAID, "NO, I WASN'T
15 LOOKING AT HER."

16 Q BUT WHETHER THAT DISCUSSION HAD ANYTHING TO DO
17 WITH LOOKING OR NOT LOOKING, YOU DON'T KNOW, DO YOU?

18 A HE WAS STARING RIGHT AT CHINO.

19 MR. BARENS: OBJECTION AS ARGUMENTATIVE. THE WITNESS
20 HAS SAID SHE IS MAKING AN ASSUMPTION AND HE DOESN'T WANT TO
21 ACCEPT THE ASSUMPTION.

22 MR. WAPNER: I DON'T THINK SHE DID SAY SHE MADE AN
23 ASSUMPTION.

24 MR. BARENS: I THINK SHE MADE THREE OR FOUR STATEMENTS.

25 THE COURT: OVERRULED. LET HER ANSWER.

26 THE WITNESS: CAN YOU REPEAT THAT AGAIN, PLEASE?

27 Q BY MR. WAPNER: YOU DIDN'T HEAR ANY OF THE
28 CONVERSATION, DID YOU?

37^ 2
1 A NO, I DIDN'T.

2 Q OKAY, SO WHEN YOU SAY THAT THEY WERE TALKING ABOUT
3 A CERTAIN THING, IS THAT BASED ON AN ASSUMPTION THAT YOU MADE?

4 A I AM BASING -- I AM ASSUMING THAT SINCE HE WAS
5 LOOKING AT CHINO, AND THEN HE -- THE OTHER GUY GOT IN THE CAR
6 AND SAID SOMETHING TO HIM, IT WASN'T A LONG CONVERSATION, IT
7 WAS JUST SOMETHING AND HE HAD A SOUR LOOK ON HIS FACE. THE
8 GUY LOOKED AWAY, DIDN'T LOOK AT CHINO ANY MORE, AND THEN HE
9 KIND OF JUST MOVED THE CAR FORWARD AND DIDN'T EVEN LOOK OVER
10 AT US BUT, YET, WHEN THEY WERE LEAVING, HE STOPPED AND LOOKED
11 AT CHINO AGAIN.

12 Q BASED ON THAT, YOU THINK THEY WERE HAVING A
13 DISCUSSION ABOUT BEING JEALOUS?

14 A NO.

15 I AM SAYING THAT THE OTHER GUY WAS UPSET WITH THE
16 MAN WITH THE SILVER HAIR BECAUSE HE HAD BEEN STARING AT
17 CHINO.

18 Q AND THAT IS AN ASSUMPTION THAT YOU MAKE, RIGHT,
19 THAT THAT IS WHY HE WAS UPSET?

20 A YES.

21 THE COURT: PARDON ME. YOU WILL BE A LITTLE LONGER,
22 WILL YOU?

23 MR. WAPNER: I THINK SO.

24 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN OF THE JURY,
25 WE WILL TAKE OUR CUSTOMARY ADJOURNMENT AT THIS TIME UNTIL
26 TOMORROW AT THE SAME TIME TOMORROW MORNING AT 10:30.

27 THE SAME ADMONITION I GAVE YOU WOULD STILL APPLY
28 AND GOOD NIGHT.

(AT 4:30 P.M. AN ADJOURNMENT WAS TAKEN UNTIL
THURSDAY, APRIL 2, 1987, AT 10:30 A.M.)