

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. )  
 )  
 JOE HUNT, AKA JOSEPH HUNT, )  
 AKA JOSEPH HENRY GAMSKY, )  
 )  
 DEFENDANT-APPELLANT. )

SUPERIOR COURT  
NO. A-090435

OCT 09 1987

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

APPEARANCES:

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

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 77 OF 101  
(PAGES 12253 TO 12336, 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

MONDAY, APRIL 6, 1987

VOLUME 77

PAGES 12253 TO 12336, INCL.

APPEARANCES:

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

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

AND

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

ROSEMARIE GOODBODY, CSR NO. 932  
SALLY YERGER, CSR NO. 2008  
OFFICIAL REPORTERS

1 MONDAY, APRIL 6, 1987 VOLUME 77 PAGES 12253. - 12336  
2 A.M. 12253  
3 P.M. 12314

---

4 CHRONOLOGICAL INDEX OF WITNESSES

5 DEFENDANT'S WITNESSES:      DIRECT      CROSS      REDIRECT      RECROSS  
6  
7  
8 LOPEZ, JESUS ADELBERTO  
9            (CONTINUED)            12253            12289            12306  
10            (FURTHER)            12314            12316  
11  
12  
13  
14  
15

---

14 EXHIBITS FOR VOLUME 77

15 PEOPLE'S EXHIBITS:                                  FOR                                  IN  
16    IDENTIFICATION EVIDENCE  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

240      COMPOSITE DRAWING                                  12270                                  12273

1 SANTA MONICA, CALIFORNIA; MONDAY, APRIL 6, 1987; 10:35 A.M.  
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE  
3 (APPEARANCES AS NOTED ON TITLE PAGE  
4 EXCEPT MR. CHIER IS NOT PRESENT.)  
5

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

8 JESUS ADELBERTO LOPEZ,  
9 THE WITNESS ON THE STAND AT THE TIME OF ADJOURNMENT, RESUMED  
10 THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

11 THE CLERK: YOU HAVE BEEN PREVIOUSLY SWORN SO YOU ARE  
12 STILL UNDER OATH.

13 IF YOU WOULD JUST STATE YOUR NAME AGAIN FOR THE  
14 RECORD.

15 THE WITNESS: IT IS JESUS ADELBERTO LOPEZ.  
16

17 CROSS-EXAMINATION (RESUMED)

18 BY MR. WAPNER:

19 Q MR. LOPEZ, DID YOU EVER SEE THIS MAN WITH THE  
20 SILVER HAIR PUMPING THE GAS IN THE CAR?

21 A NO, I DIDN'T.

22 Q AND WHEN YOU FIRST SAW HIM, HE WAS ALREADY AT  
23 THE CASHIER?

24 A YES, SIR.

25 Q WHEN YOU DROVE INTO THE STATION, YOU PULLED UP  
26 NEXT TO THE PUMP, CORRECT?

27 A RIGHT.

28 Q AND AFTER YOU PULLED UP NEXT TO THE PUMP, DID

1 YOU IMMEDIATELY GET OUT AND START PUMPING THE GAS?

2 A YES.

3 Q WHEN YOU GOT OUT AND PUMPED THE GAS, YOU DIDN'T  
4 HAVE TO WAIT FOR THE PUMP, RIGHT, BECAUSE THERE WASN'T ANY  
5 OTHER CARS IN THE STATION?

6 A RIGHT.

7 Q SO YOU JUST HAD TO GET OUT, WALK TO THE REAR  
8 OF THE CAR ON THE DRIVER'S SIDE, RIGHT?

9 A YES.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Q THAT IS WHERE THE GAS TANK IS LOCATED ON THE  
2 PRELUDE?

3 A YES IT IS.

4 Q THEN YOU OPEN THE DOOR FOR THE GAS TANK AND YOU  
5 UNSCREW THE TOP, RIGHT?

6 A RIGHT.

7 Q AND THEN YOU PUT THE PUMP IN?

8 A YES.

9 Q AND THEN AFTER YOU DID THAT, WHEN WAS IT THAT YOU  
10 NOTICED THIS MAN AT THE CASHIER PAYING?

11 A WHEN I TURNED AROUND.

12 Q DO YOU HAVE ANY ESTIMATE OF HOW LONG YOU HAD  
13 BEEN PUMPING GAS OR HOW MANY GALLONS YOU HAD PUT IN OR HOW  
14 MUCH TIME HAD PASSED BEFORE YOUR TURNED AROUND AND SAW THE  
15 PERSON --

16 A NO. I HAVE NO ESTIMATE ON THAT.

17 Q WHEN YOU FIRST PUT THE PUMP INTO THE TANK, YOU  
18 HAVE TO -- I ASSUME YOU LOOKED WHAT YOU WERE DOING?

19 A YES.

20 Q WOULD IT BE FAIR TO SAY THAT AT THAT POINT, YOU  
21 WERE AT LEAST LOOKING TOWARD THE EAST ON THIS DIAGRAM?

22 A YES.

23 Q AND DO YOU HAVE ANY IDEA HOW LONG YOU CONTINUED  
24 TO LOOK IN THAT DIRECTION?

25 A NOT REALLY.

26 Q REGARDING THIS ESTIMATE THAT YOU MADE THAT YOU  
27 WERE IN THE GAS STATION FOR 20 MINUTES, WOULD YOU SAY THAT  
28 YOU ARE NOT VERY GOOD AT ESTIMATING TIME?

1           A       YES, BASICALLY.

2           Q       YES, BUT YOU ARE NOT GOOD?

3           A       YES. I AM NOT VERY GOOD.

4           Q       OKAY. WHEN YOU WERE IN THE STATION -- WELL, DID  
5 YOU SEE THIS PERSON WITH THE SILVER HAIR GO FROM THE CASHIER  
6 TO HIS CAR?

7           MR. BARENS: ASKED AND ANSWERED.

8           THE COURT: SUSTAINED.

9           Q       BY MR. WAPNER: DID YOU SEE HIM WHEN YOU WERE  
10 INTERVIEWED ON THE 22ND OF NOVEMBER -- DID YOU MAKE ANY  
11 MENTION OF THE FACT THAT WHEN THE PERSON FINISHED PAYING, THAT  
12 HE STOPPED AT THE COKE MACHINE?

13          A       YES. I BELIEVE I DID.

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Q DID YOU HAVE A CHANCE TO REVIEW THE TRANSCRIPT?

2 A YES.

3 Q DID YOU FIND IT THERE WHERE IT WAS YOU SAID THAT  
4 HE STOPPED AT THE COKE MACHINE?

5 A NO, I DON'T THINK I DID. I AM NOT SURE.

6 Q WHY DO YOU THINK IT IS IN THERE IF YOU SAID IT?

7 A BECAUSE WE ALL -- WE ALSO WERE INTERVIEWED  
8 TOGETHER OUTSIDE OF THAT.

9 Q YOU THINK IT WAS WHEN YOU WERE TALKING OUTSIDE  
10 THE ROOM?

11 A I WAS TALKING -- IT WAS WHEN, I BELIEVE, I WAS  
12 TALKING TO MACMAC, I AM NOT SURE, AND YOU WERE THERE AND --  
13 BECAUSE I BELIEVE I MENTIONED THAT HE WAS DRINKING A COKE,  
14 HIS FRIEND WAS DRINKING A COKE, THAT IS WHEN I SAW THEM  
15 TOGETHER.

16 Q DO YOU REMEMBER SAYING THIS DURING THE INTERVIEW  
17 OF NOVEMBER THE 22ND, THE STATEMENT, PART OF WHICH IS  
18 UNINTELLIGIBLE, AND IT SAYS: "THIS WAY, SEE, BECAUSE I --  
19 PAYING ATTENTION TO HIM. HE WAS THERE AND THEN, YOU KNOW,  
20 I WAS PUMPING GAS AND I GUESS WHEN HE FINISHED PAYING, HE  
21 WENT TO HIS CAR AND THAT IS WHEN I PUT MY STUFF AWAY AND  
22 WENT TO PAY."

23 DO YOU REMEMBER SAYING THAT?

24 A NOT REALLY.

25 IT HAS BEEN A WHILE.

26 Q IF I SHOW THIS TO YOU --

27 A IS THAT WHAT I SAID?

28 Q WOULD IT REFRESH YOUR RECOLLECTION THAT YOU MADE



2

1 THAT STATEMENT?

2 A YEAH, I DID.

3 Q WOULD IT BE FAIR TO SAY THAT?

4 MR. BARENS: OBJECTION. WHAT IS FAIR TO SAY IS  
5 IRRELEVANT.

6 THE COURT: SUSTAINED.

7 Q BY MR. WAPNER: WERE YOU PAYING PARTICULAR  
8 ATTENTION TO THIS PERSON WITH THE SILVER HAIR?

9 A YES, I WAS.

10 Q WHY?

11 A BECAUSE HE STOOD OUT, ESPECIALLY IN THAT AREA,  
12 HE REALLY STOOD OUT.

13 Q DID YOU SPEND TIME CHECKING HIM OUT?

14 A YES.

15 Q DO YOU REMEMBER SAYING THIS ON NOVEMBER THE 22ND:

16 "NO, I -- I JUST -- NO, I JUST DIDN'T  
17 LOOK AT HIM THAT GOOD. I MEAN, YOU KNOW, IT IS  
18 KIND OF LIKE -- AFTER SHE TOLD ME, IT WAS KIND OF  
19 LIKE, YOU KNOW, I SAW A GUY BUT I WASN'T REALLY  
20 TRYING TO CHECK THE GUY OUT."

21 DO YOU REMEMBER SAYING THAT ON NOVEMBER 22ND?

22 A YES.

23

24

25

26

27

28

1 Q WASN'T IT ONLY AFTER YOU GOT BACK TO THE CAR AND  
2 YOU TALKED TO CARMEN ABOUT THIS PERSON, THAT YOU REALLY  
3 STARTED THINKING ABOUT HIM?

4 MR. BARENS: OBJECTION, ARGUMENTATIVE.

5 THE COURT: OVERRULED.

6 THE WITNESS: NO. BECAUSE HE REALLY STOOD OUT IN THAT  
7 PLACE. SO I HAD NOTICED HIM WAY BEFORE SHE TALKED TO ME.

8 Q BY MR. WAPNER: WAS THERE SOMETHING UNUSUAL ABOUT  
9 THE FACT THAT THERE WAS A GOOD-LOOKING MAN AT THAT GAS STATION?

10 A YES.

11 Q WHAT?

12 A THAT HE WAS AN OLDER, GOOD-LOOKING MAN. THAT FACT  
13 ITSELF, IS -- IT IS THE UNIVERSITY OF ARIZONA SO MOSTLY  
14 COLLEGE STUDENTS HANG OUT IN THAT AREA.

15 Q IS THAT THE ONLY OLDER PERSON YOU HAVE EVER SEEN  
16 IN THAT GAS STATION?

17 A IT IS THE ONLY ONE I REMEMBER.

18 Q HOW OFTEN HAVE YOU BEEN TO THAT PARTICULAR STATION?

19 A ABOUT THREE OR FOUR TIMES.

20 Q THAT IS THE ONLY "OLDER PERSON" THAT YOU EVER  
21 REMEMBER SEEING AT THAT GAS STATION?

22 A YES.

23 Q ARE THERE RESIDENCES IN THE AREA OF THE GAS  
24 STATION?

25 A YEAH. I BELIEVE SO.

26 Q IS THAT STUDENT HOUSING OR IS IT ALL KINDS OF PEOPLE  
27 THAT LIVE AROUND THERE?

28 A ALL KINDS OF PEOPLE.

1 Q OLDER PEOPLE, YOUNGER PEOPLE, MIDDLE-AGED PEOPLE?

2 A YEAH.

3 Q HAVE YOU EVER MADE A MISTAKE IN IDENTIFYING  
4 SOMEONE THAT -- THAT IS, THAT YOU SEE SOMEBODY ON THE STREET  
5 THAT YOU THOUGHT WAS SOMEBODY ELSE AND YOU COME UP TO THEM  
6 AND IT TURNS OUT TO BE A DIFFERENT PERSON?

7 A I GUESS.

8 MR. BARENS: WELL, OBJECTION AS TO SPECULATION.

9 THE COURT: DON'T GUESS. IF YOU RECALL IT EVER  
10 HAPPENING IN YOUR LIFE -- DO YOU RECALL THAT EVER HAPPENING?

11 THE WITNESS: NO. I DON'T RECALL IT.

12 Q BY MR. WAPNER: YOU DON'T RECALL THAT EVER  
13 HAPPENING TO YOU?

14 A YOU MEAN COME UP TO A PERSON AND SAY, "HI, I THOUGHT  
15 I REMEMBERED YOU"?

16 Q RIGHT, LOOK AT -- SEE SOMEBODY ON THE STREET OR  
17 IN A RESTAURANT OR ANY PLACE AND YOU THOUGHT IT WAS SOMEBODY  
18 THAT YOU KNEW AND IT TURNED OUT IT WAS NOT?

19 A YEAH. I GUESS IT PROBABLY HAPPENED TO ME.

20 MR. BARENS: OBJECTION AS TO GUESSING.

21 THE COURT: WHAT IS YOUR BEST RECOLLECTION?

22 THE WITNESS: I --

23 THE COURT: DID IT HAPPEN TO YOU OR DIDN'T IT?

24 THE WITNESS: NOT THAT I RECALL RIGHT NOW.

25 THE COURT: ALL RIGHT.

26 Q BY MR. WAPNER: HAVE YOU EVER MET RON LEVIN?

27 A NO.

28 Q BEFORE THE DATE THAT YOU WERE IN THIS GAS STATION

1 AND SAW SOMEONE WHO LOOKED LIKE HIM, HAD YOU EVER SPOKEN TO  
2 RON LEVIN?

3 A NO.

4 Q DID YOU KNOW WHO RON LEVIN WAS?

5 A NO.

6 Q AND THE PERSON THAT YOU SAW IN THIS GAS STATION,  
7 HAVE YOU EVER SEEN HIM IN PERSON SINCE THEN?

8 A NO.

9 Q YOU WERE ABLE TO SEE THE PERSON THAT WAS WITH THE  
10 MAN WITH THE SILVER HAIR, WEREN'T YOU?

11 A REAL SLIGHT. I DIDN'T REALLY PAY ATTENTION TO  
12 HIM.

13 Q CAN YOU DESCRIBE HIS BUILD FOR ME?

14 A HE WAS TALL, DARK HAIR. THAT'S ALL I REMEMBER.

15 Q HOW TALL WAS HE IN RELATION TO THE OTHER PERSON?

16 A HE WAS TALLER.

17 THE COURT: TALLER?

18 THE WITNESS: YEAH.

19 THE COURT: ALL RIGHT.

20 Q BY MR. WAPNER: AND HOW TALL WAS HE? WHAT IS YOUR  
21 RECOLLECTION OF HOW TALL HE WAS?

22 A I WOULD GUESS ABOUT SIX-FIVE OR SIX-SIX OR  
23 SOMETHING.

24 Q SIX-FIVE?

25 A IN THAT AREA, I GUESS.

26 Q DID YOU SAY ON NOVEMBER 22ND THAT HE WAS SIX FEET  
27 TALL?

28 A I MIGHT HAVE, YES.

1 Q THE TRANSCRIPT OF THE TAPE AT PAGE 17, LOOK AT  
2 THE BOTTOM --

3 A UH-HUH.

4 Q -- DO YOU SEE WHERE YOU WERE ASKED HOW TALL HE  
5 WAS?

6 A YES.

7 Q HOW TALL DID YOU SAY HE WAS?

8 A SIX FOOT TALL.

9 Q AND WHAT WAS HIS BUILD LIKE?

10 A THIN, I BELIEVE.

11 Q WHAT DO YOU MEAN WHEN YOU SAY "THIN"?

12 A THIN, LANKY, SKINNY.

13 Q DID HE HAVE ANY KIND OF A PAUNCH IN HIS STOMACH?

14 A I DIDN'T -- I DIDN'T REALLY PAY THAT MUCH  
15 ATTENTION.

16 Q DID YOU DESCRIBE HIM AS BEING APPROXIMATELY THE  
17 SAME BUILD AS DETECTIVE MEYERS?

18 A YES, BASICALLY.

19 MR. WAPNER: MAY I HAVE A MOMENT?

20 (UNREPORTED COLLOQUY BETWEEN COUNSEL.)

21 MR. WAPNER: DID YOU EVER SEE DETECTIVE MEYERS STANDING  
22 UP WHEN YOU WERE AT THE POLICE STATION?

23 A YES, I BELIEVE HE STOOD UP.

24 Q HE WAS PRETTY SLENDER, WASN'T HE?

25 A YES.

26 Q DID YOU COMPARE THE BUILD OF THIS PERSON THAT  
27 YOU SAW AS THE COMPANION OF THE ONE WITH THE SILVER HAIR,  
28 TO THE BUILD OF DETECTIVE MEYERS?

2

1 A YES, I BELIEVE SO.

2 Q DID DETECTIVE MEYERS HAVE ANY KIND OF A PAUNCH  
3 OR ANYTHING?

4 A NO, HE DIDN'T.

5 Q DID YOU ALSO SAY WHEN YOU WERE ASKED ON NOVEMBER  
6 22ND ABOUT THE OTHER PERSON WHO WAS WITH THE MAN WITH THE  
7 SILVER HAIR, THAT YOU DIDN'T GET THAT GOOD OF A LOOK AT HIM  
8 BECAUSE HE WAS SITTING IN THE CAR?

9 A YES, I DID.

10 Q YOU DIDN'T SAY ANYTHING AT THAT TIME ABOUT SEEING  
11 HIM BY THE COKE MACHINE, DID YOU?

12 A NO.

13 Q THE MAN WITH THE SILVER HAIR, WERE YOU ABLE TO  
14 WATCH HIM -- THE WAY HE WALKED? SPECIFICALLY, I AM INTERESTED  
15 IN THE SPEED WITH WHICH HE MIGHT HAVE BEEN WALKING.

16 A IT HAS BEEN A WHILE SO I WOULDN'T, I MEAN, STILL  
17 RECOLLECT HOW A PERSON WALKS.

18 Q WAS THERE ANYTHING UNUSUAL ABOUT THE PACE WITH  
19 WHICH HE WALKED?

20 A I DON'T REMEMBER. I DON'T REMEMBER AT THIS TIME.

21 Q DID YOU HEAR HIM SAY ANY WORDS?

22 A I SAW HIM TALKING TO HIM BUT I DIDN'T HEAR ANY-  
23 THING.

24 Q WAS THAT WHEN THE TWO OF THEM WERE IN THE CAR?

25 A NO.

26 WHEN THEY WERE AT THE COKE MACHINE.

27 Q COULD YOU HEAR THE WORDS BUT JUST NOT PAY ANY  
28 ATTENTION TO WHAT THE CONTENT WAS OR DID YOU JUST NOT HEAR

3

1 THEM AT ALL?

2 A I JUST WASN'T PAYING ATTENTION TO WHAT THEY WERE  
3 SAYING.

4 Q ANYTHING UNUSUAL ABOUT THE WAY THE PERSON TALKED,  
5 THE MAN WITH THE SILVER HAIR?

6 A I DON'T REMEMBER.

7 Q DID YOU SEE HIM MAKING ANY GESTURES WITH HIS  
8 HAND?

9 A I DON'T REMEMBER.

10 Q THE NIGHT THAT THIS HAPPENED, YOU HAD BEEN AT  
11 THE CAFE NAPOLI WITH CARMEN FOR DINNER, RIGHT?

12 A RIGHT.

13 Q AND YOU HAD A BOTTLE OF MATEUS BETWEEN THE TWO  
14 OF YOU AT DINNER, RIGHT?

15 A RIGHT.

16 Q HOW MUCH OF THE BOTTLE DID YOU DRINK?

17 A I HAD A LITTLE MORE THAN CARMEN DID.  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Q BETWEEN THE TWO OF YOU, DID YOU FINISH THE WHOLE  
2 BOTTLE?

3 A TWO GLASSES -- YES, WE DID.

4 Q HOW MUCH DID SHE HAVE?

5 A I DON'T RECALL RIGHT NOW.

6 Q AND HOW MANY GLASSES ALTOGETHER?

7 A ABOUT TWO OR THREE, I GUESS.

8 Q DID YOU HAVE A DRINK WITH HER PARENTS AFTER DINNER?

9 A NO. YEAH, I HAD COFFEE.

10 Q HOW LONG AFTER YOU HAD YOUR LAST GLASS OF WINE  
11 WAS IT THAT YOU SAW THIS PERSON IN THE GAS STATION?

12 A IT WAS A WHILE BECAUSE WE SAT THERE WITH HER PARENTS.  
13 AND WE SAT THERE FOR A WHILE AND HAD COFFEE WITH THEM. THEN  
14 WE DROVE OVER TO HER HOUSE AND WE WAITED FOR HER PARENTS FOR  
15 A WHILE.

16 AND THEN WE TOOK OFF FOR THE RANCH.

17 Q HOW FAR IS IT FROM THE RESTAURANT TO HER PARENTS'  
18 HOUSE?

19 A IT IS A GOOD RIDE.

20 THE COURT: KEEP YOUR VOICE UP, WILL YOU PLEASE?

21 THE WITNESS: ABOUT THREE OR FOUR MILES, I GUESS.

22 I DON'T KNOW.

23 Q BY MR. WAPNER: SO, WOULD IT TAKE ABOUT FIVE TO  
24 SEVEN MINUTES TO GET THERE FROM THE RESTAURANT?

25 A ABOUT TEN MINUTES. TRAFFIC WAS HEAVY.

26 Q AT THE TIME THAT YOU WERE AT THE GAS STATION, DID  
27 YOU FEEL ANY OF THE EFFECTS OF THE WINE THAT YOU HAD HAD?

28 A NO. BY THAT TIME IT WAS GONE.



1 Q CAN YOU DESCRIBE THE CAR THAT YOU SAW AT THE GAS  
2 STATION?

3 A ALL I COULD SAY IS THAT IT WAS KIND OF LIKE AN  
4 OLDER CAR. IT WAS REALLY A GOOD-LOOKING CAR. IT WAS A WELL-  
5 KEPT CAR.

6 IT WAS KIND OF LIKE BOXY, I GUESS, SQUARE.

7 Q WERE YOU SHOWN THIS LINEUP OF CARS THAT IS 234  
8 FOR IDENTIFICATION?

9 A YES.

10 Q DID YOU SELECT ONE OF THOSE CARS AS LOOKING MOST  
11 LIKE THE CAR THAT YOU SAW?

12 A YES. THIS ONE. BUT IT WAS SUCH A BAD -- I MEAN --

13 Q THE TOP ONE IN THE MIDDLE?

14 A YES.

15 Q WHAT IS WRONG WITH THAT PICTURE?

16 A IT IS NOT THE SAME CAR.

17 Q IS IT THE CLOSEST OF THOSE THAT ARE THERE?

18 A YES, OF THIS, IT WAS THE CLOSEST.

19 Q CAN YOU DESCRIBE WHAT THE CAR LOOKED LIKE THAT  
20 YOU SAW?

21 A I CAN'T RECALL THAT RIGHT NOW.

22 Q WAS IT DETECTIVE EDMONDS WHO SHOWED YOU THESE  
23 PICTURES THAT ARE 234 FOR IDENTIFICATION?

24 A WHICH DETECTIVE IS THAT?

25 Q IT WAS ONE OF THE DETECTIVES FROM BEVERLY HILLS  
26 POLICE DEPARTMENT WHO CAME?

27 A IT THAT THE COWBOYS? YEAH. IT WAS HIM.

28 Q AND DID YOU ALSO POINT OUT ANOTHER CAR TO HIM IN

1 IN THE PARKING LOT OF THE HIGH SCHOOL?

2 A YES. I THINK I DID.

3 Q WHAT KIND OF CAR WAS THAT, DO YOU REMEMBER?

4 A NO, NOT RIGHT OFF.

5 Q WAS IT A PLYMOUTH VALIANT?

6 A I GUESS.

7 MR. BARENS: WELL YOUR HONOR, I OBJECT TO HIS SAYING,  
8 "I GUESS," AS AN ANSWER, SIR.

9 THE COURT: LET'S -- WHAT DO YOU WANT ME TO DO WITH IT?

10 MR. BARENS: THE INSTRUCTION IS THAT IF HE KNOWS, HE  
11 KNOWS. HE CAN SAY THAT.

12 THE COURT: WELL, YOU ASK HIM ABOUT IT.

13 MR. BARENS: IF HE KNOWS, HE KNOWS. WE ARE NOT HERE  
14 TO GUESS.

15 THE COURT: WELL, IF ANYBODY SAYS THAT THEY GUESS --  
16 IS THAT YOUR BEST RECOLLECTION?

17 THE WITNESS: YES, TO MY RECOLLECTION. I DON'T REMEMBER  
18 RIGHT NOW.

19 Q BY MR. WAPNER: WOULD IT REFRESH YOUR RECOLLECTION  
20 IF YOU LOOKED AT THE BOTTOM OF PAGE 8 OF SERGEANT EDMONDS'  
21 REPORT REGARDING THE CAR THAT WAS IN THE PARKING LOT? DOES  
22 THAT HELP YOU AT ALL?

23 A NO.

24 Q DID YOU EVER TELL CARMEN THAT YOU DIDN'T WANT HER  
25 TO GET INVOLVED IN THIS CASE?

26 A YES I DID.

27 Q WHY DID YOU SAY THAT?

28 A BECAUSE I TOLD HER IT WAS GOING TO TAKE UP A LOT

1 OF OUR TIME.

2 Q HAD SHE BEEN INVOLVED IN -- HAD YOU EVER TOLD HER  
3 THAT BEFORE IN OTHER CASES, NOT TO GET INVOLVED?

4 A NO.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

-1

1 Q DID YOU KNOW THAT SHE HAD GONE TO THE POLICE  
2 REGARDING OTHER CASES BEFORE?

3 A NO, I HADN'T.

4 Q WHEN DETECTIVE EDHOLM AND SOME OTHER PEOPLE FROM  
5 BEVERLY HILLS CAME TO TUCSON ON ONE OF THOSE OCCASIONS, DID  
6 THEY ASK YOU TO TRY AND DO A DRAWING, A COMPOSITE DRAWING  
7 OF WHAT THIS PERSON LOOKED LIKE?

8 A YES, THEY DID.

9 Q AND DID DETECTIVE EDHOLM HAVE SOMETHING THAT  
10 HE CALLED AN IDENTI KIT WITH HIM?

11 A YES, HE DID.

12 MR. BARENS: YOUR HONOR, WE HAVE HAD A PREVIOUS  
13 OBJECTION AS TO THE IDENTI KIT MATERIALS, WHICH I BELIEVE  
14 THE COURT SUSTAINED.

15 THE COURT: WELL, I DON'T REMEMBER THAT.

16 MR. WAPNER: I DON'T EITHER.

17 THE COURT: LET'S GO ON, WILL YOU?

18 MR. BARENS: ALL RIGHT.

19 Q BY MR. WAPNER: DID HE SHOW YOU -- WELL, CAN  
20 YOU EXPLAIN TO US WHAT HAPPENED WHEN YOU TRIED TO DO THAT  
21 COMPOSITE PHOTOGRAPH?

22 A YES.

23 THE IDENTI KIT WAS SO LACKING IN STUFF THAT I  
24 JUST DID THE BEST I COULD.

25 Q WHAT DO YOU MEAN "LACKING IN STUFF"?

26 A I MEAN I WAS TRYING TO EXPLAIN TO HIM EXACTLY  
27 WHAT I THOUGHT THE GUY LOOKED LIKE BUT HE KIND OF WAS  
28 LEAFING THROUGH AND HE COULDN'T FIND THE CERTAIN FEATURES

2

1 OF THE MAN'S FACE.

2 Q WAS THIS A BOX THAT HAD DIFFERENT KINDS -- PICTURES  
3 OF DIFFERENT KINDS OF EYES AND CHINS?

4 A RIGHT.

5 Q AND CHEEKS AND HAIR AND THINGS LIKE THAT?

6 A UH-HUH.

7 Q YOU HAVE TO SAY "YES" OR "NO" SO SHE CAN WRITE  
8 IT.

9 A YES.

10 Q BASED ON ALL OF THOSE DIFFERENT THINGS, DID HE  
11 START WITH ONE BASIC FACE AND THEN YOU STARTED CHANGING IT  
12 AROUND, PUTTING DIFFERENT KINDS OF EYES AND DIFFERENT HAIR  
13 AND THINGS LIKE THAT?

14 A YES.

15 Q HOW LONG DID YOU SIT WITH HIM AND DO THAT?

16 A I WOULD SAY ABOUT AN HOUR.

17 Q AND WHAT HAPPENED AT THE END OF THAT HOUR?

18 A I TOLD HIM IT WAS LIKE THE BEST I COULD DO WITH  
19 WHAT HE HAD.

20 Q AND SHOWING YOU AN ITEM THAT I WOULD LIKE TO  
21 HAVE MARKED AS 240 FOR IDENTIFICATION, DO YOU RECOGNIZE THIS?

22 A YES.

23 Q WHAT IS IT?

24 A THAT IS THE "COMPOSITORY" I DID FOR HIM.

25 Q IS THAT A RESULT OF THE IDENTI KIT WORK THAT  
26 YOU DID AFTER SPENDING AN HOUR WITH --

27 A RIGHT.

28 Q -- DETECTIVE EDHOLM?

3

1 A YES.

2 Q AND DID YOU MAKE ANY STATEMENTS TO DETECTIVE  
3 EDHOLM AS TO HOW CLOSE THAT WAS TO THE PERSON THAT YOU SAW?

4 A I SAID "THIS IS ABOUT AS CLOSE AS I COULD GET  
5 WITH THE STUFF HE HAD TO WORK WITH."

6 Q DID YOU TELL HIM THAT IT BASICALLY RESEMBLED  
7 THE PERSON EXCEPT THAT HIS CHIN WAS MORE SCULPTURED AND THAT  
8 THE HAIR WAS ALL RIGHT, EXCEPT THAT IT WAS PUSHED BACK?

9 A YES, SOMETHING LIKE THAT AND THE EYES WEREN'T  
10 CORRECT. THEY EYES WEREN'T TOTALLY RIGHT.

11 HE COULDN'T FIND THE RIGHT EYES FOR HIM.

12 Q DID YOU TELL HIM THAT, TOO?

13 A YEAH, YEAH, I BELIEVE I DID.

14 Q I WANT TO SHOW YOU A REPORT PREPARED BY DETECTIVE  
15 EDHOLM, AND LOOK AT THE TOP PARAGRAPH ON THAT PAGE AND SEE  
16 IF THAT REFRESHES YOUR RECOLLECTION AT ALL AS TO WHAT YOU  
17 SAID TO THE DETECTIVE?

18 A UH-HUH.

19 Q DOES IT?

20 A SOMETHING LIKE IT.

21 Q WHAT WAS IT THAT YOU SAID TO DETECTIVE EDHOLM?

22 A HUH?

23 Q WHAT WAS IT THAT YOU SAID TO HIM?

24 A BASICALLY THE SAME THING, AND I TOLD HIM THAT  
25 THE EYES WEREN'T QUITE RIGHT.

26 Q WHAT DOES THAT SAY THAT YOU SAID TO HIM?

27 THE WITNESS: OH, THIS?

28 MR. BARENS: DO YOU WANT HIM TO READ THE POLICE REPORT

4

1 INTO EVIDENCE?

2 THE COURT: WELL, IF IT FAIRLY REPRESENTS WHAT YOU  
3 SAID TO HIM AND IT REFRESHES YOUR RECOLLECTION.

4 THE WITNESS: WELL, SOMEWHAT, IT REPRESENTS BUT THEN  
5 I SAID SOMETHING ELSE, I BELIEVE.

6 THE COURT: YES, GO AHEAD.

7 THE WITNESS: I SAID --

8 MR. BARENS: WELL, I DON'T BELIEVE THE COURT HAS  
9 INSTRUCTED HIM TO READ A POLICE REPORT.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

f

1 Q MR. LOPEZ, DID YOU SAY TO HIM THAT THE CHIN WAS  
2 MORE SCULPTURED AND THE HAIR WAS OKAY BUT COMBED STRAIGHT BACK?

3 A RIGHT.

4 Q AND HE DOESN'T MAKE ANY MENTION THERE OF THE EYES  
5 BEING DIFFERENT, DOES HE?

6 A HE MIGHT HAVE FORGOT.

7 MR. BARENS: OBJECTION AS TO RELEVANCY. WHAT THE OFFICER  
8 FAILED TO PUT IN OR DID PUT IN IS NOT RELEVANT. WHAT HE SAYS  
9 IS WHAT IS RELEVANT.

10 THE COURT: I WILL SUSTAIN THE OBJECTION.

11 MR. WAPNER: MAY 240 BE RECEIVED INTO EVIDENCE, YOUR  
12 HONOR?

13 MR. BARENS: WE OBJECT.

14 THE COURT: IT WILL BE RECEIVED.

15 MR. BARENS: DO YOU WANT TO HEAR THE OBJECTION IF YOU  
16 ARE RECEIVING IT INTO EVIDENCE, YOUR HONOR?

17 THE COURT: WELL, WE HAD RECEIVED HIS DESCRIPTION OF  
18 WHAT IT IS THAT HE TESTIFIED WITH RESPECT TO THAT PARTICULAR  
19 COMPOSITE.

20 MR. BARENS: YOUR HONOR, THE RELIABILITY OF THE COMPOSITE  
21 FOR THE JURY IS HIGHLY SUSPECT.

22 THE COURT: LET THE JURY DETERMINE THAT. I WILL ADMIT  
23 IT.

24 MR. WAPNER: MAY I JUST PASS IT AMONG THE JURORS, YOUR  
25 HONOR?

26 THE COURT: YES.

27 (PAUSE.)

28 Q BY MR. WAPNER: WHAT COLOR WERE THE EYES OF THE



1 MAN THAT HAD THE SILVER HAIR?

2 A I DON'T REMEMBER.

3 Q WERE YOU ABLE TO SEE THE COLOR?

4 A I MIGHT HAVE. I JUST DON'T REMEMBER.

5 Q WHAT WAS IT THAT MADE YOU THINK THE PERSON WAS  
6 GAY?

7 MR. BARENS: ASKED AND ANSWERED EXTENSIVELY, YOUR HONOR.

8 MR. WAPNER: I DON'T THINK I ASKED THE QUESTION ONCE.

9 COUNSEL MAY HAVE ASKED IT. THE COURT MAY HAVE ASKED IT.

10 THE COURT: HE MAY ANSWER IT AGAIN.

11 THE WITNESS: HE JUST GAVE OFF THIS CERTAIN THING THAT  
12 JUST -- YOU SAID THAT THIS GUY IS GAY.

13 Q BY MR. WAPNER: OKAY. WELL, THE FIRST THING I  
14 WANT TO DO IS PUT ASIDE THE FACT THAT HE WAS WITH ANYBODY ELSE.  
15 JUST CONCENTRATE ON HIM ALONE.

16 WHAT WAS IT ABOUT HIM IF YOU RECALL ANYTHING  
17 SPECIFIC, THAT MADE YOU THINK THAT HE WAS GAY?

18 MR. BARENS: YOUR HONOR, WE OBJECT TO THE QUESTION AS  
19 MISLEADING THE WITNESS. HE EARLIER TESTIFIED --

20 THE COURT: HE PREVIOUSLY TESTIFIED, DID HE? LET HIM  
21 TESTIFY AGAIN. THIS IS CROSS-EXAMINATION.

22 MR. BARENS: BUT YOUR HONOR, THE QUESTION IS MISLEADING.  
23 HE SAID IN THE EARLIER TESTIMONY THAT HE MADE HIS  
24 IDENTIFICATION --

25 THE COURT: DON'T REMIND HIM AS TO WHAT HE SAID  
26 PREVIOUSLY.

27 MR. BARENS: COULD WE APPROACH AND TELL YOU?

28 THE COURT: YES. YOU CAN TELL THAT TO ME BUT NOT TO

1 HIM.

2 MR. BARENS: THAT IS WHY IT IS MISLEADING. THANK YOU.

3 (THE FOLLOWING PROCEEDINGS WERE HELD

4 AT THE BENCH:)

5 THE COURT: WHAT IS YOUR OBJECTION?

6 MR. BARENS: YOUR HONOR, THE WITNESS PREVIOUSLY TESTIFIED  
7 THAT HIS SENSE OF THE SILVER-HAIRED MAN AS BEING GAY WAS BASED  
8 ON AN OVERALL SENSE HE HAD BECAUSE OF THE PERSON HE WAS WITH  
9 AND --

10 THE COURT: THIS IS CROSS-EXAMINATION. LET HIM HAVE  
11 A CHANCE TO ASK HIM AGAIN.

12 MR. BARENS: PARDON ME, YOUR HONOR. THE WITNESS CLEARLY  
13 INDICATED BOTH TO THE COURT AND TO ME ON EXAMINATION, THAT  
14 PART OF WHY HE FELT THAT HE WAS GAY IS BECAUSE OF THE OTHER  
15 MAN HE WAS WITH.

16 NOW, MR. WAPNER SAYS TO HIM, MAKE THE  
17 IDENTIFICATION WITHOUT IN YOUR OWN MIND -- WITHOUT REFERENCE  
18 TO THE MAN HE WAS WITH AND THAT IS MISLEADING BECAUSE HE  
19 ALREADY SAID THAT THAT IS PART OF HOW HE DID IT.

20 THE COURT: WELL, THE OTHER MAN BEING GAY BRUSHES OFF  
21 ON HIM, SO HE IS GAY?

22 MR. BARENS: WELL, HE SEEMS TO SAY THAT THE ASSOCIATION  
23 HAD A BEARING IN HIS MIND.

24 THE COURT: IT IS CROSS-EXAMINATION.

25 MR. BARENS: THANK YOU.  
26  
27  
28

1 (THE FOLLOWING PROCEEDINGS WERE HELD IN  
2 OPEN COURT IN THE HEARING AND PRESENCE  
3 OF THE JURY:)

4 Q BY MR. WAPNER: JUST CONCENTRATING ON THE PERSON,  
5 THE ONE WITH THE SILVER HAIR, WHAT WAS IT ABOUT HIM THAT  
6 MADE YOU THINK HE WAS GAY?

7 A IT'S REALLY HARD TO EXPLAIN, I DON'T KNOW.  
8 HOW DO YOU EXPLAIN A PERSON IS GAY?

9 Q I DON'T KNOW.  
10 HOW DO YOU EXPLAIN IT?

11 A I JUST GET THIS FEELING ABOUT IT, THAT HE IS  
12 GAY AND YOU SAY "HEY, WELL, HE IS GAY."

13 Q WELL, IF YOU CAN TRY AND RECALL WHAT IT WAS THAT  
14 YOU BASED YOUR FEELING ON.

15 A THE OVERALL GUY, I MEAN.

16 Q WHAT ABOUT HIM, THOUGH, WHAT ABOUT THE OVERALL  
17 GUY?

18 A AH, I DON'T KNOW. I JUST CAN'T EXPLAIN.  
19 I JUST GET THIS FEELING THAT THIS GUY IS GAY,  
20 SO HE IS GAY.

21 Q DID YOU SAY ON NOVEMBER 22ND THAT WHEN YOU WERE  
22 ASKED WHY HE WAS GAY, DID YOU SAY, "WELL, I DON'T KNOW. JUST  
23 THE WAY HE WAS DRESSED. HIS -- YEAH, HIS JEANS WERE JUST  
24 A LITTLE TOO TIGHT"?

25 A YEAH.

26 Q ANYTHING ELSE ABOUT -- WHAT WAS IT ABOUT THE  
27 FACT THAT HIS JEANS WERE TOO TIGHT THAT MADE YOU THINK HE  
28 WAS GAY?

1           A       HE WAS WEARING -- I GUESS HE WAS WEARING DESIGNER  
2 JEANS WHICH IS -- I DON'T KNOW ABOUT YOU BUT -- BUT AN OLDER  
3 MAN LIKE THAT WEARING DESIGNER JEANS IN THAT AREA AND STUFF,  
4 I DON'T KNOW.

5           Q       A GUY IN HIS 40'S?

6           A       RIGHT.

7           Q       WEARING DESIGNER JEANS NEAR THE UNIVERSITY OF  
8 ARIZONA?

9           A       YES, BASICALLY.

10          Q       SO THAT MAKES HIM GAY?

11          MR. BARENS: OBJECTION.

12          THE WITNESS: NO, IT DOESN'T MAKE HIM GAY.

13          MR. BARENS: OBJECTION. THE QUESTION IS MISLEADING.

14          THE COURT: I WILL STRIKE THE ANSWER. AND I SUSTAIN  
15 THE OBJECTION.

16          Q       BY MR. WAPNER: YOU SAID BEFORE THAT YOU HAD  
17 SEEN PEOPLE WHO APPEARED STRAIGHT BUT WERE GAY, DO YOU  
18 REMEMBER MAKING THAT STATEMENT?

19          A       YES.

20          Q       HOW DID YOU KNOW THAT THEY WERE GAY?

21          A       THEY -- I FOUND OUT LATER.

22          Q       THE PEOPLE TOLD YOU?

23          A       NO. I WAS TOLD BY SOMEBODY ELSE.

24          Q       OKAY. BUT THERE WAS NOTHING ABOUT THOSE PEOPLE  
25 IN THEIR APPEARANCE THAT MADE YOU THINK THEY WERE GAY?

26          A       RIGHT.

27          Q       ON THIS OCCASION, WAS IT THE FACT THAT YOU, FIRST  
28 OF ALL, HAD SEEN THE COMPANION AND, SECOND OF ALL, TALKED

3  
1 TO CARMEN ABOUT IT, THAT MADE YOU FEEL THAT PERHAPS THIS  
2 GUY WAS GAY?

3 A I GOT AN OVERALL GIST FIRST AND WHEN I TALKED TO  
4 CARMEN, I KIND OF CONFIRMED IT, BESIDES HIS PARTNER, YES.

5 Q ANYTHING ABOUT THE PARTNER INDEPENDENT OF THE  
6 OTHER PERSON THAT MADE YOU THINK HE WAS GAY?

7 A I REALLY DIDN'T GET A GREAT LOOK AT HIM.

8 THE COURT: PARDON ME?

9 THE WITNESS: I SAID I DIDN'T REALLY GET A GREAT LOOK  
10 AT THE GUY.

11 IT WAS JUST KIND OF LIKE I SAW HIM WHEN THEY  
12 WERE TOGETHER AND THAT WAS BASICALLY IT.

13 Q BY MR. WAPNER: SO IT WAS MOSTLY TALKING TO CARMEN  
14 AFTER THE FACT?

15 A YEAH, WE DISCUSSED IT AFTERWARDS, YES.

16 Q DID YOU SEE ANY MARKS OR SCARS ON THE PERSON?

17 MR. BARENS: BEFORE WE LEAVE THAT, I AM GOING TO OBJECT TO  
18 THAT AND ASK THAT THE ANSWER BE STRICKEN AS NON-RESPONSIVE.  
19 COUNSEL SAYS "IT WAS MOSTLY" AND THE WITNESS ANSWERED "WELL,  
20 WE DISCUSSED IT AFTERWARDS." THE "MOSTLY" WAS NOT RESPONDED  
21 TO BY THE WITNESS.

22 THE COURT: YOU CAN CLEAR IT UP ON REDIRECT.

23 MR. BARENS: WELL, I THINK, YOUR HONOR --

24 THE COURT: WELL, LET'S CLEAR IT UP ON REDIRECT, IF  
25 YOU WILL, PLEASE, HANDLE IT THAT WAY, WILL YOU?

26 MR. BARENS: ALL RIGHT.

27 Q BY MR. WAPNER: DID YOU SEE ANY SCARS OR MARKS  
28 ON THE FACE OF THE MAN WITH THE SILVER HAIR?

1           A       I DON'T RECOLLECT ANY.

2                   (MR. CHIER ENTERS THE COURTROOM.)

3           Q       DID YOU TELL DETECTIVE EDMONDS, THE PERSON WHO  
4 TALKED TO YOU IN THE PARKING LOT OF THE GYM AT TUCSON HIGH  
5 SCHOOL, THAT HE HAD NO VISIBLE SCARS?

6           A       I DIDN'T SAY THAT.

7                   I SAID I DIDN'T REMEMBER ANY.

8           Q       SO IF THAT IS WHAT HE WROTE DOWN, THEN HE MUST  
9 HAVE GOTTEN THAT WRONG?

10          A       YES.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

-1  
1 Q YOU DIDN'T REMEMBER ANY SCARS THEN AND YOU DON'T  
2 REMEMBER ANY SCARS NOW? IS THAT WHAT YOU ARE SAYING?

3 A NO. I DON'T.

4 Q HAVE YOU BEEN STAYING IN A MOTEL SINCE YOU HAVE  
5 BEEN IN TOWN WAITING TO TESTIFY?

6 A YES I HAVE.

7 Q WHEN YOU WERE FIRST SHOWN A GROUP OF PHOTOGRAPHS  
8 AT THE TUCSON POLICE STATION THE DAY THAT I WAS THERE WITH  
9 DETECTIVE MACMAC, YOU WERE READ AN ADMONITION ABOUT NOT  
10 DISCUSSING YOUR IDENTIFICATION WITH ANYBODY, RIGHT?

11 A YES.

12 Q AND THE DAY THAT YOU MADE THE IDENTIFICATION, DID  
13 YOU DISCUSS IT WITH CARMEN?

14 A NO, NOT ABOUT THE PERSON. NO.

15 THE COURT: YOU DIDN'T DISCUSS IT WITH HER AT ALL?

16 THE WITNESS: NO.

17 Q BY MR. WAPNER: DID YOU EVER DISCUSS IT WITH HER  
18 AFTER THAT DAY?

19 A NO. WE DISCUSSED BASICALLY WHAT WE TALKED ABOUT  
20 IN THE ROOM.

21 Q DID YOU DISCUSS WHETHER OR NOT YOU HAD PICKED OUT  
22 ANY PARTICULAR PHOTOGRAPH?

23 A WE MIGHT HAVE. I DON'T REMEMBER.

24 Q DID YOU TELL EHR WHICH ONE YOU HAD PICKED?

25 A I DON'T REMEMBER.

26 Q DID YOU DISCUSS WITH HER THE FACT THAT YOU BOTH  
27 THOUGHT THAT YOU HAD PICKED THE RIGHT PERSON?

28 A YEAH. WE DID DISCUSS THAT.

1 Q WHEN DID YOU DISCUSS THAT?

2 A RIGHT AFTER OUR MEETING WITH MR. FILIPPELLI.

3 Q SO THAT WAS THE SAME DAY, WHICH WAS NOVEMBER THE  
4 22ND OF 1986?

5 A RIGHT. YES.

6 Q DID YOU EVER DISCUSS IT ON ANOTHER DAY BETWEEN  
7 THEN AND THE TIME THAT YOU WERE CONTACTED BY SOMEBODY FROM  
8 THE DEFENSE IN THIS CASE AS TO THE FACT THAT YOU HAD PICKED  
9 THE CORRECT PERSON?

10 A YOU MEAN -- CAN YOU --

11 MR. BARENS: OBJECTION, MISLEADING. WE DON'T KNOW WHAT  
12 CORRECT PERSON MEANS, JUDGE.

13 THE COURT: SAME PERSON.

14 Q BY MR. WAPNER: DID YOU DISCUSS --

15 MR. BARENS: WELL, I THINK THAT WE SHOULD MAKE SURE THAT  
16 WE ARE TALKING ABOUT THE SAME OR CORRECT --

17 THE COURT: GO OVER THAT, PLEASE. ASK HIM WHICH ONE  
18 HE PICKED OUT. WE KNOW CARMEN PICKED OUT THE SAME ONE. WE  
19 DON'T HAVE TO GO AROUND.

20 Q BY MR. WAPNER: DID YOU DISCUSS WITH CARMEN THE  
21 FACT THAT THE TWO OF YOU HAD PICKED OUT THE SAME PICTURE?

22 A YES.

23 Q DID THAT REINFORCE YOUR BELIEF THAT YOU HAD PICKED  
24 OUT THE PERSON THAT YOU SAW AT THE GAS STATION?

25 A THAT WE PICKED SOMEBODY OUT, YES.

26 Q NOW, DID YOU DISCUSS IT WITH HER MORE THAN ONCE  
27 BETWEEN THE TIME OF NOVEMBER THE 22ND AND THE TIME YOU WERE  
28 CONTACTED BY SOMEBODY FROM THE DEFENSE IN THIS CASE?



1           A        IN JUST CONVERSATION, PROBABLY. NOT TO SIT DOWN  
2 TO REMEMBER IT.

3           Q        SORRY?

4           A        FIRST OF ALL, I WAS TOTALLY OPPOSED TO IT, TO  
5 TALKING ABOUT THIS BECAUSE I FELT THAT IT WAS REALLY PUTTING  
6 A LOT OF STRESS ON HER.

7                    I TOLD HER WHEN SHE STARTED TALKING ABOUT IT, I  
8 SAID, "WHY DON'T YOU JUST LEAVE IT BEHIND YOU BECAUSE IT IS  
9 JUST PUTTING SO MUCH STRESS ON YOU RIGHT NOW."

10                   WE TALKED ABOUT IT. WE TALKED ABOUT IT LIKE REAL  
11 SLIGHTLY IN CONVERSATION.

12           Q        WHEN YOU TALKED ABOUT IT IN CONVERSATION, DID YOU  
13 TRY TO REASSURE HER ABOUT ANY IDENTIFICATION THAT SHE HAD MADE?

14           A        NO.

15           Q        WHEN YOU CAME HERE -- WELL, WHEN MR. CHIER CAME  
16 TO TUCSON AND SHOWED YOU THE PHOTOGRAPHS THAT ARE 235, WERE  
17 YOU AND CARMEN TOGETHER AT THAT TIME?

18           A        YES.

19           Q        IN THE SAME ROOM?

20           A        YES.

21           Q        WHO WAS THERE BESIDES THE TWO OF YOU AND MR. CHIER?

22           A        CARMEN'S LAWYER.

23           Q        DID MR. CHIER SAY ANYTHING, READ ANY ADMONITION  
24 TO YOU AT THAT TIME?

25           MR. BARENS: OBJECTION AS TO RELEVANCY, SINCE COUNSEL  
26 ARE NOT POLICE OFFICERS AND --

27           THE COURT: OVERRULED.

28           MR. BARENS: THAT WAS A CLOSE ONE.

1 Q BY MR. WAPNER: ALL RIGHT. DID MR. CHIER READ  
2 YOU AN ADMONITION AT THAT TIME?

3 A I DON'T REMEMBER.

4 Q DID HE GIVE YOU ANY CAUTION AT ALL?

5 A I CAN'T REMEMBER.

6 Q WHAT DID HE SAY TO YOU WHEN HE SHOWED YOU THE  
7 PICTURES?

8 A "WAS THIS THE LINEUP," I BELIEVE IS WHAT HE SAID.  
9 "WAS THIS THE LINEUP THAT WAS SHOWN BY MR. WAPNER AND  
10 MR. MEYERS," I BELIEVE.

11 Q DID HE ASK YOU WHETHER YOU COULD PICK ANYBODY OUT  
12 AT THAT TIME?

13 A NO. HE ASKED US WHICH ONE DID WE PICK OUT, I  
14 BELIEVE.

15 Q DID YOU TELL HIM?

16 A I BELIEVE WE DID.

17 Q AND DID CARMEN ALSO TELL HIM?

18 A YES. I BELIEVE SO.

19 Q SO YOU WERE BOTH THERE IN THE SAME ROOM AT THE  
20 SAME TIME?

21 A YES.

22 Q SO, YOU KNEW FOR SURE, YOU BOTH KNEW THAT YOU  
23 PICKED THE SAME PERSON, RIGHT?

24 A YEAH.

25 Q WAS ANYTHING ELSE SAID BY MR. CHIER ABOUT THE  
26 PICTURES AT THAT TIME?

27 A NO, NOT REALLY. I DON'T RECALL. IT HAS BEEN A  
28 WHILE.

1 Q WHEN YOU KNEW THAT YOU WERE BOTH GOING TO HAVE  
2 TO COME TO LOS ANGELES TO TESTIFY, DID YOU AND CARMEN TALK  
3 TO EACH OTHER ABOUT THE FACT THAT YOU HAD BOTH PICKED THE SAME  
4 PICTURE?

5 A I GUESS WE DID, YEAH.  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Q WHEN YOU WERE IN THE ROOM WITH MR. CHIER IN TUCSON  
2 AND YOU BOTH PICKED THE SAME PICTURE, DID THAT MAKE YOU MORE  
3 SURE THAT YOU HAD IN FACT PICKED THE PERSON THAT YOU HAD  
4 SEEN AT THE GAS STATION?

5 A NO.

6 Q HOW DID IT MAKE YOU FEEL WHEN YOU KNEW THAT CARMEN  
7 HAD IN FACT PICKED THE SAME PERSON AS YOU?

8 A AS I SAID BEFORE, WE BASICALLY HAD A GIST THAT  
9 WE HAD PICKED OUT THE RIGHT PICTURE BECAUSE WE WERE GOING  
10 THROUGH THIS THING ALREADY.

11 Q WHAT DO YOU MEAN WHEN YOU SAY "THE RIGHT PICTURE"?

12 A WELL, THE FACT THAT WE WERE KEPT AT THAT STATION  
13 FOR TEN HOURS, BASICALLY, CLUED US IN THAT YOU GUYS WERE  
14 AFTER US BECAUSE WE HAD IDENTIFIED SOMEBODY.

15 Q WHEN YOU SAY "THE RIGHT PICTURE," WHAT DO YOU  
16 MEAN?

17 A THE ONE YOU GUYS DIDN'T WANT US TO CHOOSE, THAT  
18 IS THE ONE.

19 MR. WAPNER: MAY THAT BE STRICKEN AS CALLING FOR A  
20 CONCLUSION BY THE WITNESS?

21 THE COURT: YES.

22 YOU JUST ANSWER THE QUESTION.

23 THE WITNESS: I DID ANSWER THE QUESTION, SIR.

24 MR. BARENS: YOUR HONOR --

25 THE COURT: I WILL STRIKE IT.

26 GO AHEAD AND ASK THE NEXT QUESTION.

27 MR. BARENS: THAT IS WHAT HE MEANT.

28 THE COURT: ASK THE QUESTION YOURSELF.

1 MR. BARENS: COUNSEL ASKED HIM WHAT HE MEANT AND THAT  
2 IS WHAT HE ANSWERED. COUNSEL JUST DIDN'T LIKE THE ANSWER.

3 THE COURT: GO AHEAD.

4 MR. WAPNER: THE CONCLUSION AS TO WHAT WE WANTED IS  
5 WHAT I ASKED TO HAVE STRICKEN.

6 THE COURT: THAT PART, I AM STRIKING.

7 Q BY MR. WAPNER: WHEN YOU CAME TO LOS ANGELES  
8 AND YOU WENT AT SOME POINT TO MR. BARENS' OFFICE, RIGHT?

9 A YES.

10 Q AND YOU WERE WITH CARMEN AT THAT TIME?

11 A YES.

12 Q YOU WERE AGAIN SHOWN THE PHOTOGRAPHS THAT ARE  
13 MRKED 235 FOR IDENTIFICATION?

14 A YES.

15 Q AND THEN YOU WERE SHOWN SOME OTHER PICTURES,  
16 TOO, RIGHT? YOU WERE ALSO SHOWN SOME OTHER PICTURES?

17 A RIGHT.

18 Q WHICH OF THE OTHER PICTURES WERE YOU SHOWN?

19 MR. BARENS: I BELIEVE THIS WAS ALL ASKED DIRECTLY  
20 AND ANSWERED BY COUNSEL SPEAKING NOW.

21 MR. WAPNER: CERTAINLY NOT ALL OF IT.

22 THE COURT: GO AHEAD.

23 Q BY MR. WAPNER: YOU WERE SHOWN THREE PICTURES  
24 THAT ARE PEOPLE'S 6, PEOPLE'S 153 AND PEOPLE'S 154, CORRECT?

25 A RIGHT.

26 Q WHICH ONE WERE YOU SHOWN FIRST?

27 A THE BLOWUP, THE BIG ONE.

28 Q THAT WOULD BE PEOPLE'S 6?

-3

1           A        RIGHT.

2           Q        OKAY.  AND DID CARMEN SAY ANYTHING WHEN THAT  
3 PICTURE WAS SHOWN?

4           A        NO, I BELIEVE NOT.

5           Q        WHAT WAS SAID BY MR. BARENS OR MR. CHIER OR THEIR  
6 INVESTIGATOR AT THE TIME THESE PICTURES WERE SHOWN?

7           A        HE GAVE US THE WARNING THAT HE WAS --  
8 THE COURT:  HE WHAT?

9           THE WITNESS:  HE GAVE US A WARNING THAT THIS WAS IN  
10 NO WAY TO -- SOMETHING ABOUT OUR JUDGMENT TO ENHANCE THAT  
11 THIS WAS THE GUY OR ANYTHING.

12                   HE JUST SAID, "THIS IS JUST PICTURES THAT WE  
13 ARE GOING TO PUT UP."

14           Q        BY MR. WAPNER:  WHO GAVE YOU THIS WARNING?

15           A        MR. BARENS DID.

16           THE COURT:  DIDN'T HE TELL YOU THAT IT WAS AN EXHIBIT  
17 IN THIS CASE AND THAT THAT ACTUALLY WAS A PICTURE OF THE  
18 MISSING MAN?

19           THE WITNESS:  NO.

20           THE COURT:  HE DIDN'T TELL YOU THAT?

21           THE WITNESS:  NO.

22           THE COURT:  ALL RIGHT.

23           Q        BY MR. WAPNER:  AND WHAT WAS THE NEXT PICTURE  
24 THAT YOU WERE SHOWN?

25           A        I BLEIEVE THE ONE WITH THE DOG.

26           Q        AND WHAT DID CARMEN SAY WHEN THIS PICTURE WAS  
27 SHOWN?

28           A        SHE DIDN'T SAY ANYTHING.

1 Q WHAT DID YOU SAY?

2 A THEN IS WHEN I SAID "THAT IS THE PICTURE THAT  
3 REALLY CLEARED IT UP FOR ME," THAT THAT WAS BASICALLY THE  
4 GUY WE SAW.

5 Q IS THAT WHAT YOU SAID OUT LOUD AT THE TIME YOU  
6 WERE IN MR. BAREN'S OFFICE?

7 A I BELIEVE SO.

8 Q DID CARMEN SAY ANYTHING WHEN YOU SAID THAT?

9 A I BELIVE SHE WAS JUST LOOKING AT THE O'HER.

10 Q DID SHE SAY ANYTHING WHEN YOU MADE YOUR COMMENTS  
11 ABOUT PEOPLE'S 154?

12 A NO, I DON'T THINK SO.

13 Q THEN THE NEXT PICTURE YOU WERE SHOWN WAS 153?

14 A YES.

15 Q WHAT HAPPENED WHEN YOU WERE SHOWN 153?

16 A CARMEN SAID THAT IS THE PICTURE THAT SHE THOUGHT --

17 Q WHEN SHE SAID THAT IS THE PICTURE, IS THAT ALL  
18 SHE SAID?

19 A NO.

20 SHE SAID SOMETHING ELSE, I AM SURE. I JUST DON'T  
21 REMEMBER IT RIGHT NOW.

22 Q DID SHE DO ANYTHING BESIDES MAKING STATEMENTS?

23 A LIKE WHAT?

24 Q ANYTHING.

25 A LIKE YOU MEAN HAND GESTURES OR --

26 Q ANYTHING ELSE BESIDES JUST SAYING, "THIS IS THE  
27 ONE"?

28 A I AM SURE SHE SAID SOMETHING ELSE. I MEAN SHE

1 WAS TALKING.

2 Q DID SHE SEEM TO HAVE ANY REACTION IN PARTICULAR  
3 TO THIS PICTURE, 153, OTHER THAN THE FACT OF SAYING "THIS  
4 IS THE ONE"?

5 A SHE WAS LOOKING AT IT, YEAH.

6 Q INCIDENTALLY, YOU AND CARMEN WERE ASKED TO DO  
7 THIS IDENTI KIT ON THE SAME DAY; IS THAT RIGHT?

8 A YES.

9 Q AND THAT WAS AT HER PARENTS' HOUSE IN RIO RICO?

10 A YES.

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

12 THE COURT: ALL RIGHT, REDIRECT.

13 MR. BARENS: THANK YOU, YOUR HONOR.

14  
15 REDIRECT EXAMINATION

16 BY MR. BARENS:

17 Q GOOD MORNING, SIR.

18 A GOOD MORNING.

19 Q HAVE YOU AT ANY TIME EVER, SINCE SEPTEMBER OF  
20 1986, TO THE PRESENT, LOOKED AT THE ESQUIRE MAGAZINE, WHICH  
21 I WILL SHOW YOU HERE, THAT HAS TIM MC CARVER'S PICTURE ON  
22 THE COVER, HAVE YOU EVER LOOKED AT THAT?

23 THE COURT: ON DIRECT EXAMINATION, HE SAID HE HAD NEVER  
24 SEEN THAT, NEVER READ IT.

25 MR. BARENS: I AM ASKING FROM ANY TIME UNTIL THEN --

26 THE WITNESS: NO, NEVER.

27 MR. BARENS: -- UNTIL THIS MOMENT.

28 THE WITNESS: NO, NEVER HAVE.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

THE COURT: UNTIL THIS VERY MOMENT?

MR. BARENS: UNTIL THIS VERY MOMENT, ACTUALLY.

THE WITNESS: NO, NEVER HAVE, NEVER READ IT.

1 Q THE MAN YOU SAW WITH THE SILVER HAIR, YOU DESCRIBED  
2 AS A PERSON THAT LOOKED TO YOU AS SOMEONE WHO WORKED OUT, IS  
3 THAT CORRECT?

4 A YES.

5 Q WHEN YOU SAY "WORKING OUT," YOU NECESSARILY MEAN  
6 OR DO YOU IN THIS INSTANCE, MEAN SOMEONE WHO WORKS OUT WITH  
7 WEIGHTS?

8 A NO, JUST SOMEBODY THAT MAY RUN OR DOES A LITTLE  
9 ROWING OR SOMETHING. SOMETHING LIKE THAT.

10 Q SOMEONE THAT STAYS TRIM?

11 A STAYS TRIM, EXACTLY.

12 Q ALL RIGHT. WHEN YOU LOOKED AT THIS SILVER-HAIRED  
13 MAN, DID YOU SEE ANY DEFINED BICEPS?

14 A NOT REALLY DEFINED BICEPS, NO.

15 Q DID YOU SEE BICEPS THAT LOOKED TO YOU LIKE ANY  
16 GUY WHO PUMPED IRON?

17 A NO.

18 Q ALL RIGHT. YOU HAVE SEEN THOSE KINDS OF GUYS IN  
19 THE WRESTLING GYM, HAVE YOU NOT?

20 A YES.

21 Q THESE ARE PEOPLE THAT IF THEY ARE WEARING A POLO  
22 SHIRT, HAVE NOTICEABLE BICEPS?

23 A YES. I HAVE WRESTLED THEM BEFORE, YEAH.

24 Q NOTABLE FOREARMS?

25 A YES.

26 Q ALL RIGHT. ARE THOSE THE ARMS THAT YOU SAW ON  
27 THE MAN WITH THE SILVER HAIR?

28 A NO.

-2

1 Q DID YOU FEEL THAT HE WORKED OUT BECAUSE HE WAS  
2 TRIM FOR A PERSON OF HIS ADVANCED YEARS?

3 A YES, DEFINITELY.

4 Q IN LOOKING AT ME, DO I LOOK LIKE A PERSON WHO WORKS  
5 OUT TO YOU?

6 A YES, DEFINITELY.

7 Q ALL RIGHT. WAS YOUR ATTENTION PRIMARILY FOCUSED  
8 ON THE MAN WITH THE SILVER HAIR'S FACE?

9 A YES IT WAS.

10 Q WAS THAT WHAT HAD YOUR ATTENTION MOST OF THE TIME  
11 THAT YOU WERE OBSERVING HIM?

12 A YES.

13 Q THE OTHER MAN THAT YOU SAW WITH THE MAN WITH THE  
14 SILVER HAIR, DID YOU PAY ANY PARTICULAR ATTENTION TO HIM?

15 A NO, NOT REALLY.

16 Q DID YOU PAY ANY PARTICULAR ATTENTION TO HIS HEIGHT?

17 A NOT REALLY. BUT THEN, HE WAS STANDING ON -- I  
18 WOULD SAY HE WAS DRINKING A COKE. HE WAS PROBABLY STANDING  
19 RIGHT BY THE MACHINE, SO --

20 Q WAS HE STANDING ON AN ELEVATED AREA? IN OTHER  
21 WORDS, THE MACHINE IS ON LIKE A CURVED AREA, ELEVATED ABOVE  
22 THE SURFACE?

23 A RIGHT.

24 Q WAS THAT AREA ELEVATED ABOVE THE SURFACE THAT YOU  
25 WERE STANDING ON WHEN YOU OBSERVED HIM?

26 A YES.

27 Q DO YOU KNOW HOW MANY INCHES OF CURBING OR ELEVATION  
28 THERE WAS FOR THE AREA HE WAS STANDING ON? IN OTHER WORDS,

-3  
1 HOW MUCH HIGHER IT WAS OFF THE GROUND IN THAT AREA THAN THE  
2 AREA YOU WERE STANDING ON?

3 A I WOULD SAY FOUR OR FIVE INCHES.

4 THE COURT: PARDON ME. DID YOU INCLUDE THAT FOUR OR  
5 FIVE INCHES IN HIS HEIGHT WHEN YOU GAVE AN ESTIMATE OF SIX-  
6 FOOT-FIVE?

7 THE WITNESS: NO.

8 THE COURT: YOU GAVE AN ESTIMATE OF HOW TALL HE ACTUALLY  
9 WAS?

10 THE WITNESS: YES.

11 THE COURT: GO AHEAD.

12 Q BY MR. BARENS: THE FACT THAT AT ONE TIME YOU FELT  
13 THAT THIS MAN -- I THINK MR. WAPNER POINTED OUT FOR US THAT  
14 YOU MIGHT HAVE DESCRIBED ON A PRIOR OCCASION THAT THIS MAN  
15 WAS SIX FEET TALL, BUT NOW I BELIEVE TODAY YOU SAID THAT YOU  
16 THOUGHT THIS MAN COULD HAVE BEEN SIX-FOOT-FIVE, DO YOU HAVE  
17 ANY EXPLANATION AS TO HOW YOU COULD HAVE VARIED THOSE  
18 IDENTIFICATIONS?

19 A BASICALLY BECAUSE I SAID AT THE TIME -- I ALSO  
20 SAID THAT THE GUY WE SAW WAS FIVE-FOOT-TEN. SO I WAS GOING  
21 BY THAT HE WAS TALLER THAN THE MAN WE SAW. THAT IS BASICALLY  
22 WHAT I WAS SAYING. SO --

23 Q DID YOU PAY ANY PARTICULAR ATTENTION TO HIS HEIGHT?  
24 DID YOU TRY TO ESTIMATE HIS HEIGHT WHEN YOU LOOKED AT HIM?

25 A NO.

26 Q DID YOU PAY ANY PARTICULAR ATTENTION TO THE BUILD  
27 OF THE OTHER MAN?

28 A NOT REALLY, JUST KIND OF LIKE A QUICK GLANCE OR

1 SOMETHING.

2 Q DID YOU PAY ANY ATTENTION TO WHETHER HE HAD A PAUNCH  
3 OR NOT?

4 A NO.

5 Q IS THAT BECAUSE YOU WERE PRIMARILY PAYING ATTENTION  
6 TO THE SILVER-HAIRED MAN?

7 MR. WAPNER: OBJECTION, LEADING.

8 THE WITNESS: YES.

9 THE COURT: I WILL LET IT STAND.

10 Q BY MR. BARENS: DOES THE FACT THAT YOU SEEM UNABLE  
11 TO REMEMBER SOME OF THE DETAILS THAT YOU HAVE BEEN ASKED ABOUT,  
12 MAKE YOU ANY LESS CERTAIN OF THE IDENTIFICATION YOU MADE TO  
13 THE POLICE FROM THE PHOTOS YOU WERE SHOWN?

14 A NO.

15 Q YOU MENTIONED THAT WHEN YOU SAW THE POLICE PHOTO  
16 IN CONJUNCTION WITH -- A MOMENT, YOUR HONOR.

17 (PAUSE.)

18 Q BY MR. BARENS: I BELIEVE THAT YOU MENTIONED WHEN  
19 YOU SAW THE POLICE PHOTO OF WHICH PEOPLE'S 6 IS AN ENLARGEMENT,  
20 WE HAVE AGREED, IN CONJUNCTION WITH THE COLOR PHOTOGRAPH  
21 REPRESENTING PEOPLE'S 154, THAT YOU BECAME 95 PERCENT SURE  
22 THAT THIS IS THE MAN THAT YOU SAW IN THE GAS STATION?

23 A YES.

24 Q DOES THE FACT THAT YOU CAN'T REMEMBER EVERY DETAIL  
25 OF THE ENVIRONMENT IN THE GAS STATION IN ANY WAY, MAKE YOU  
26 LESS CERTAIN THAT THIS IS 95 PERCENT MOST LIKELY THE MAN THAT  
27 YOU SAW IN THE GAS STATION?

28 A NO.

1 Q WHEN YOU WERE INTERVIEWED BY MR. WAPNER AND THE  
2 OTHER PEOPLE ASSOCIATED WITH MR. WAPNER ON THAT OCCASION, DID  
3 YOU MENTION TO ANYONE THAT YOU HAD SEEN THE MAN STOPPED AT  
4 THE SODA MACHINE ON THE WAY BACK TO HIS VEHICLE?

5 A NO. I BELIEVE NOT.

6 Q WHY IS THAT?

7 A BECAUSE I DIDN'T RECOLLECT IT UNTIL AFTER I STARTED  
8 GOING OVER IT. THEN I REMEMBERED CERTAIN DETAILS THAT HAD  
9 SLIPPED MY MIND THAT DAY.

10 Q ALL RIGHT. YOU HAVE THOUGHT ABOUT THIS INCIDENT  
11 MORE EXTENSIVELY SINCE THEN UNTIL NOW THAN YOU DID IN THE  
12 ONE DAY BETWEEN THE TIME THAT YOU SAW THE MAN AND WENT TO THE  
13 POLICE?

14 A YES.

15 Q AND YOU HAVE THOUGHT MUCH MORE ABOUT TRYING TO  
16 RECALL ALL OF THE DETAILS BETWEEN NOW AND THE TIME THAT YOU  
17 WERE INTERVIEWED BY THE POLICE?

18 A YES.

19 Q WHEN YOU ESTIMATE THAT YOU WERE IN THE GAS STATION  
20 A TOTAL OF 20 MINUTES, IS THAT THE SAME ESTIMATE YOU GAVE WHEN  
21 YOU WERE INTERVIEWED BY THE POLICE AND MR. WAPNER?

22 A YES. I BELIEVE SO.  
23  
24  
25  
26  
27  
28

1 Q WHEN YOU MADE YOUR IDENTIFICATION OUT OF THE  
2 POLICE PHOTO LINEUP CARD, DID YOU DO THAT TOTALLY INDEPENDENT  
3 FROM CARMEN?

4 A YES.

5 Q WAS SHE AT ALL PRESENT AT ANY TIME IN THE ROOM  
6 WITH YOU WHEN YOU MADE THAT PHOTO IDENTIFICATION?

7 A NO, SHE WAS NOT.

8 Q WHEN YOU WERE AT MY OFFICE, IT WAS A WEEK AGO  
9 YESTERDAY; IS THAT CORRECT?

10 A YES.

11 Q AND THAT IS THE FIRST TIME YOU AND I HAD EVER  
12 SPOKEN?

13 A YES.

14 Q WHEN I COMMENCED TO SHOW YOU THE PHOTOGRAPH,  
15 DID I TELL YOU THAT I WAS NOT SUGGESTING ANYTHING TO YOU  
16 BY THE FACT THAT I WAS SHOWING YOU ANY PHOTOGRAPHS?

17 A YES.

18 Q DID I TELL YOU THAT THERE WAS NO REASON TO BELIEVE  
19 THAT ONE PHOTOGRAPH WAS THE SAME AS ANY OF THE OTHER PHOTO-  
20 GRAPHS AS FAR AS THE PERSON IN THE PHOTOGRAPHS?

21 A YES.

22 Q WHEN CARMEN SAW THIS PHOTOGRAPH, WAS IT FIRST  
23 LAYING ON MY DESK?

24 A YES, IT WAS.

25 MR. WAPNER: THAT IS 153 FOR IDENTIFICATION?

26 THE COURT: YES.

27 Q BY MR. BARENS: DID SHE START TO CRY?

28 A EXCUSE ME?

-2

1 Q DID SHE START TO CRY?

2 A DID I START TO CRY?

3 Q NO, NO.

4 DID CARMEN START TO CRY WHEN SHE SAW THIS PHOTO-  
5 GRAPH LAYING ON THE TABLE, ACTUALLY?

6 A I CAN'T REMEMBER.

7 Q DID YOU EVER MEET A DISTRICT ATTORNEY OR SOMEONE  
8 FROM THE DISTRICT ATTORNEY'S OFFICE BY THE NAME OF LISA HART?

9 A YEAH, I BELIEVE SHE WAS THE ONE THAT CAME TO  
10 RIO RICO.

11 Q WHERE DID YOU MEET HER?

12 A AT RIO RICO.

13 Q THAT IS WHERE CARMEN'S PARENTS LIVE?

14 A YES.

15 Q WAS THAT THE SAME DAY YOU MET WITH THE MAN WITH  
16 THE IDENTI KIT?

17 A YES.

18 Q DO YOU REMEMBER THE DATE THAT THIS WAS OF THE  
19 MONTH?

20 A THE 26TH, NOVEMBER 26.

21 Q WHY IS IT YOU REMEMBER THAT DAY?

22 A THAT IS CARMEN'S BROTHER'S BIRTHDAY.

23 Q NOW, WHEN YOU MET LISA HART, WAS SHE CONDUCTING  
24 THE IDENTI KIT PORTION OF THE DISCUSSION?

25 A NO.

26 Q DID SHE HAVE ANYTHING TO DO WITH THE IDENTI KIT?

27 A NO.

28 Q DID SHE SEEM FAMILIAR WITH HOW TO DO AN IDENTI



1 KIT?

2 A NO, NOT AT ALL.

3 SHE WASN'T EVEN PRESENT IN THE ROOM.

4 Q WITH THE IDENTI KIT?

5 A WITH THE IDENTI KIT.

6 Q DID SHE EVER TELL YOU WHY SHE WAS THERE?

7 A NO.

8 Q DID SHE TELL YOU SHE WAS NOT SUPPOSED TO TALK  
9 TO YOU?

10 A YES.

11 Q DID SHE TALK TO YOU?

12 A YES.

13 Q DID YOU TELL HER YOU WANTED TO TALK TO HER?

14 A NO.

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Q WAS THERE ANY THIRD PERSON PRESENT IN THE ROOM  
2 WHILE SHE SPOKE TO YOU?

3 A YES, THERE WAS A -- YES, THERE WAS A TONY BRUIN.

4 Q WHO IS TONY BRUIN?

5 A ROGER'S FRIEND, OR ROGER'S ROOMMATE RIGHT NOW.

6 Q ROGER IS THE BROTHER OF CARMEN CANCHOLA?

7 A YES, HE WAS HAVING A BIRTHDAY.

8 Q DO YOU KNOW WHAT MR. BRUIN DOES FOR A LIVING?

9 A YES. HE IS GOING TO BECOME A POLICE OFFICER  
10 SO HE IS WORKING WITH THE DPS.

11 Q WHAT DID LISA HART TELL YOU?

12 A BASICALLY, SHE SAID THAT SHE FELT WE WERE WASTING  
13 HER TIME. THAT WE WERE WASTING THE DISTRICT ATTORNEY'S TIME  
14 BY DOING THIS AND THAT WE -- BASICALLY, WE SHOULDN'T DO IT.

15 I MEAN THAT WAS THE GIST THAT I GOT FROM HER  
16 WHEN SHE WAS TALKING.

17 SHE SAID A LOT OF STUFF. I MEAN SHE JUST RAMBLED  
18 ON.

19 Q DO YOU REMEMBER ANY SPECIFIC WORDS THAT SHE SPOKE  
20 OR PHRASES?

21 A THAT -- SHE SAID SOMETHING LIKE THE FACT THAT  
22 WE IDENTIFIED THIS PERSON WAS LIKE A ONE IN A MILLION SHOT  
23 SO THEY REALLY, YOU KNOW, WEREN'T PAYING THAT MUCH ATTENTION.  
24 THAT THEY WERE JUST DOING THIS BECAUSE IF SOMEBODY CALLS  
25 UP, THEY JUST HAVE TO CHECK OUT THE STORY. THAT IS WHAT  
26 SHE SAID.

27 Q DID SHE SAY ANYTHING ELSE THAT YOU RECALL?

28 A NOT THAT I RECALL RIGHT NOW.

1 Q DID SHE CONTINUE SPEAKING TO YOU?

2 A THE WHOLE TIME THAT WE WERE SITTING BY HER, SHE  
3 WAS TALKING.

4 Q HOW LONG DID THAT GO ON FOR, SIR?

5 A BASICALLY THE LENGTH OF CARMEN'S INTERVIEW, I  
6 THINK ABOUT AN HOUR AND A HALF OR SO OR AN HOUR.

7 Q WERE YOU SAYING THINGS TO HER?

8 A NO.

9 SHE WAS DOING ALL THE TALKING.

10 Q AFTER A WHILE, WERE YOU PAYING ATTENTION TO WHAT  
11 SHE WAS SAYING?

12 A NO. THAT IS --

13 I JUST KIND OF TUNED HER OUT.

14 Q YOU MENTIONED THIS MORNING THAT YOU ARE NOT  
15 PARTICULARLY GOOD AT ESTIMATING TIME.

16 IS THE ESTIMATE THAT YOU GAVE THAT YOU WERE 20  
17 MINUTES IN THE GAS STATION, YOUR BEST ESTIMATE?

18 A YES, THAT IS THE BEST ESTIMATE.

19 Q BY THE WAY, ARE YOU A PHOTOGRAPHY STUDENT?

20 A YES, I AM RIGHT NOW.

21 Q IS THERE LIKE A TYPE OF PHOTOGRAPHY YOU ARE  
22 INTERESTED IN?

23 A I AM JUST BASICALLY RIGHT -- WE ARE JUST LEARNING  
24 HOW TO DEVELOP AND HOW TO TAKE PICTURES.

25 Q YOU SAID YOU WERE PAYING PARTICULAR ATTENTION  
26 TO THE SILVER-HAIRED MAN BECAUSE HE STOOD OUT PARTICULARLY  
27 IN THAT AREA AND THEN YOU SAID SOME DIALOGUE "BECAUSE HE  
28 WAS OLDER."

1 MY QUESTION IS: DID YOU ONLY NOTICE HIM BECAUSE  
2 HE WAS AN OLDER PERSON IN THAT LOCATION OR WAS THERE SOME-  
3 THING ELSE DISTINCTIVE ABOUT HIM?

4 A NO, HE JUST STOOD OUT. I MEAN HIS WHOLE -- HIS  
5 WHOLE PERSON STOOD OUT. HE WAS A VERY DISTINCTIVE PERSON.  
6 I MEAN, HE JUST STOOD OUT IN FRONT OF THE CROWD. I GUESS  
7 IF HE WAS IN A CROWD, HE WOULD PROBABLY STAND OUT, TOO.

8 Q DID THE TWO OR THREE GLASSES OF WINE AFFECT YOUR  
9 PERCEPTION?

10 A NO, NOT AT ALL.  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

-1  
1 Q HAS DRINKING TWO OR THREE GLASSES OF WINE EVER  
2 AFFECTED YOUR PERCEPTION?

3 A NO.

4 Q HOW MUCH DO YOU WEIGH, SIR?

5 A ABOUT 210 NOW.

6 Q COULD YOU ESTIMATE FOR ME, THE TOTAL TIME THAT  
7 ELAPSED FROM THE TIME THAT YOU SAW CARMEN'S PARENTS WALK INTO  
8 THE RESTAURANT AND PROCEED TO HAVE COFFEE WITH THEM AND THE  
9 TIME THAT YOU EVENTUALLY GOT TO THE GAS STATION, WHERE YOU  
10 SAW THE SILVER-HAIRED MAN? WHAT WOULD BE YOUR ESTIMATE?

11 A ABOUT AN HOUR AND A HALF TO TWO HOURS.

12 Q DO YOU KNOW A LOT ABOUT CARS?

13 A NO.

14 Q DID YOU TELL THE POLICE THAT IN NOVEMBER, THAT  
15 YOU DIDN'T KNOW A LOT ABOUT CARS WHEN YOU WERE ASKED TO  
16 IDENTIFY THE CAR THAT YOU SAW IN THE GAS STATION?

17 A YES.

18 Q DID YOU EVER SEE A PICTURE FROM THE POLICE OF THE  
19 CAR THAT YOU SAW IN THE GAS STATION?

20 A NO.

21 Q NOW, WHEN IT CAME TIME FOR THE IDENTI KIT, WERE  
22 YOU AND CARMEN IN A HURRY?

23 A YES WE WERE.

24 Q WHY?

25 A BECAUSE THERE WERE GUESTS. THERE WERE GUESTS  
26 WAITING THERE FOR THE PARTY TO BEGIN.

27 WE WERE GOING TO HAVE A LITTLE BIRTHDAY  
28 CELEBRATION. THERE WERE THESE TWO DETECTIVES THERE WAITING

-2  
1 FOR US. SO UNTIL WE GOT THROUGH WITH THEM, THE PARTY  
2 COULDN'T GET GOING.

3 Q SO, YOU WERE ACTUALLY INVOLVED IN THE IDENTI KIT  
4 ACTIVITY AND YOU WERE TRYING TO RUSH THE MAN ALONG WHO WAS  
5 DOING THAT WITH YOU?

6 A YES I WAS.

7 Q WERE YOU TRYING TO GET RID OF HIM?

8 A YES, DEFINITELY.

9 Q WHEN YOU GOT TO THE COMPOSITE THAT WAS SHOWN TO  
10 YOU EARLIER TODAY, DID YOU EVER SAY THAT IT WAS A PICTURE OF  
11 THE MAN YOU SAW IN THE GAS STATION?

12 A NO.

13 Q WOULD YOU, HAD YOU BEEN SHOWN THAT PHOTOGRAPH --  
14 STRIKE THAT.

15 MR. WAPNER: OBJECTION, CALLING FOR SPECULATION WHAT  
16 HE WOULD HAVE DONE.

17 THE COURT: YOU MEAN THE COMPOSITE? YOU DON'T MEAN THE  
18 PHOTOGRAPH.

19 MR. BARENS: I STARTED TO CORRECT MYSELF. I THOUGHT  
20 MR. WAPNER WAS GOING TO CORRECT ME, TOO.

21 MR. WAPNER: WELL, SAME OBJECTION, CALLING FOR  
22 SPECULATION AS TO WHAT HE WOULD HAVE DONE HAD SOMETHING  
23 HAPPENED.

24 MR. BARENS: YES. I CAN BRING IT MORE CURRENT, JUDGE.

25 THE COURT: FINE.

26 MR. BARENS: JUST A MOMENT.

27 (PAUSE.)

28 Q BY MR. BARENS: LET ME BACK UP FOR JUST A MOMENT.

- 3  
1 WHEN YOU WERE IN THE GAS STATION WITH CARMEN, WERE YOU UNDER  
2 ANY STRESS WHEN YOU SAW THIS SILVER-HAIRED MAN?

3 A NO I WAS NOT.

4 Q WHEN YOU SAW THE SILVER-HAIRED MAN, DID YOU KNOW  
5 THAT YOU WOULD EVER HAVE TO COME TO COURT TO IDENTIFY HIM?

6 A NO, NOT AT ALL.

7 Q DID YOU INDICATE TO THE OFFICER AT THE TIME, THAT  
8 THE IDENTI KIT HAD FAILED TO PRODUCE A REPRESENTATION OF THE  
9 PERSON THAT YOU SAW IN THE GAS STATION?

10 A YES. AND I BELIEVE HE SAID, "YEAH. THESE THINGS  
11 ARE VERY LIMITED TO WHAT YOU CAN DO WITH THEM." SO --

12 Q WAS IT THE DISCUSSION THAT YOU HAD WITH CARMEN,  
13 THAT MADE YOU FEEL THE SILVER-HAIRED MAN WAS GAY OR OBSERVATIONS  
14 YOU MADE INDEPENDENT OF YOUR DISCUSSION WITH CARMEN?

15 A YES. IT WAS -- I HAD THE GIST OF IT BEFORE I  
16 TALKED TO HER, THAT THE MAN WAS GAY.

17 Q YOU MEAN YOU HAD THE SENSE, WHEN YOU SAY THE GIST?

18 A THE SENSE, YES.

19 Q HOW FAR IS TUCSON FROM THE MEXICAN BORDER?

20 A SIXTY MILES.

21 Q IT TAKES ABOUT AN HOUR TO DRIVE THERE?

22 A YES.

23 Q WHEN YOU SPOKE TO CARMEN AFTER YOU LEFT THE POLICE  
24 STATION ON NOVEMBER 22, YOU HAD BOTH MADE YOUR PICKS AS FAR  
25 AS WHO YOU SELECTED IN THE PHOTOGRAPHIC LINEUPS BEFORE YOU  
26 LEFT THE STATION? IS THAT TRUE?

27 A YES.

28 Q YOU DIDN'T KNOW WHO SHE PICKED, DID YOU?

1 A NO.

2 Q SHE DIDN'T KNOW WHO YOU PICKED, DID SHE?

3 A NO.

4 Q BEFORE YOU LEFT THE STATION, DID YOU KNOW WHETHER  
5 OR NOT SHE HAD EVEN PICKED ANYONE?

6 A NO.

7 Q DID SHE KNOW WHETHER IN FACT, YOU HAD PICKED ANYONE?

8 A NO.

9 Q BEFORE YOU WENT TO THE STATION, DID YOU GUYS  
10 DISCUSS THE IDENTIFYING FEATURES OF THE MAN ON THE WAY TO THE  
11 STATION?

12 A NO.

13 Q DID YOU BELIEVE THAT THE PERSON YOU PICKED FROM  
14 THE POLICE PHOTOGRAPHIC LINEUP, WAS THE PERSON THAT YOU SAW  
15 IN THE GAS STATION, IRRESPECTIVE OF WHO CARMEN PICKED?

16 A COULD YOU REPEAT THAT? SORRY.

17 Q DID YOU BELIEVE THAT THE PERSON YOU SAW AT THE  
18 GAS STATION, WAS THE PERSON THAT YOU SAW AT THE GAS STATION,  
19 NO MATTER WHO CARMEN PICKED OUT OF THE PHOTOGRAPHIC LINEUP?

20 A YES.

21 Q SO, YOUR BELIEF THAT YOU ARE CORRECT, DOESN'T  
22 DEPEND UPON WHO SHE PICKED OUT OR DIDN'T PICK?

23 A RIGHT.

24 MR. WAPNER: OBJECTION, ARGUMENTATIVE.

25 THE COURT: SUSTAINED. YOU CAN ARGUE THAT.

26 MR. WAPNER: MOTION TO STRIKE THE ANSWER.

27 THE COURT: SUSTAINED.

28 Q BY MR. BARENS: WHEN YOU FIRST LEFT FOR THE GAS



1 STATION -- STRIKE THAT.

2 WHEN YOU FIRST LEFT FOR THE POLICE STATION WITH  
3 CARMEN ON NOVEMBER 22, DID SHE TELL YOU WHY YOU WERE GOING  
4 TO THE POLICE STATION?

5 A YES.

6 Q DID SHE TELL YOU, "LET'S TRY TO PICK SOMEBODY OUT  
7 WHEN WE GET THERE"?

8 A NO.

9 MR. BARENS: THANK YOU, SIR.

10

11

RE-CROSS-EXAMINATION

12

BY MR. WAPNER:

13

14

Q MR. LOPEZ, DIDN'T YOU SPEND ALMOST 45 MINUTES WITH  
15 DETECTIVE EDHOLM DOING THE IDENTI KIT COMPOSITES?

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Q AND DIDN'T CARMEN SPEND ALMOST ANOTHER HOUR WITH  
2 HIM?

3 A YES.

4 Q AT THE TIME --  
5 WELL, WHEN LISA HART FIRST SPOKE TO YOU, DID  
6 SHE GIVE YOU HER BUSINESS CARD?

7 A I DON'T REMEMBER.

8 Q DID YOU UNDERSTAND THAT SHE WAS A DEPUTY DISTRICT  
9 ATTORNEY, THAT SHE WAS A LAWYER?

10 A YES.

11 Q SHE NEVER TOLD YOU SHE WAS ANYTHING OTHER THAN  
12 A LAWYER, DID SHE?

13 A SHE SAID SHE WAS WORKING FOR YOU.

14 Q WORKED IN THE DISTRICT ATTORNEY'S OFFICE?

15 A RIGHT.

16 Q AND YOU KNEW WHEN I TALKED TO YOU THAT I WAS  
17 A LAWYER, RIGHT?

18 A YES.

19 Q WELL, WHEN SHE FIRST WAS AT YOUR HOUSE -- EXCUSE  
20 ME -- AT CARMEN'S PARENTS' HOUSE IN RIO RICO, SHE TOLD YOU  
21 THAT SHE COULDN'T TALK TO YOU ABOUT THE CASE, RIGHT?

22 A RIGHT.

23 Q AND AT THE TIME THAT SHE TOLD YOU THAT, WAS TONY  
24 BRUIN IN THE ROOM?

25 A NO.

26 THAT IS WHEN THEY MET US AT THE DOOR, SHE TOLD  
27 US THAT SHE COULDN'T TALK ABOUT THE CASE.

28 Q AND THAT THE ONLY PURPOSE OF BEING THERE WAS

-2

1 TO HAVE THE IDENTI KIT DONE?

2 A RIGHT.

3 Q WHEN SHE WAS IN THE ROOM TALKING TO YOU, THAT  
4 IS BECAUSE MR. EDHOLM WAS TRYING TO DO THE IDENTI KIT WITH  
5 CARMEN?

6 A RIGHT.

7 Q WAS MR. BRUIN THERE FOR THE PARTY OR DID HE COME  
8 WITH SOME OF THE TUCSON POLICE OFFICERS?

9 A NO.

10 HE WAS THERE WITH -- HE WAS THERE FOR THE PARTY.

11 Q WASN'T HE IN FACT AN EXPLORER SCOUT WITH THE  
12 TUCSON POLICE DEPARTMENT?

13 A HE IS WORKING FOR DPS, I BELIEVE.

14 Q WHICH IS THE DEPARTMENT OF PUBLIC --

15 A DEPARTMENT OF PUBLIC SAFETY.

16 Q IS THAT A PART OF THE POLICE DEPARTMENT?

17 A YES.

18 Q SO HE IS PRETTY INTERESTED IN BECOMING A POLICE  
19 OFFICER?

20 A RIGHT.

21 Q IN FACT, WASN'T MISS HART TALKING -- WASN'T HE  
22 ASKING MISS HART ABOUT HER EXPERIENCES IN LAW ENFORCEMENT?

23 A I GUESS. I DON'T KNOW.

24 Q AND DIDN'T SHE SPEND MOST OF THE TIME THAT YOU  
25 AND MR. BRUIN AND SHE WERE IN THE ROOM TOGETHER, TALKING  
26 ABOUT CASES SHE HAD HANDLED AND ANSWERING QUESTIONS HE WAS  
27 ASKING HER?

28 A NO, ACTUALLY SHE STARTED TALKING ABOUT THIS CASE

1 FIRST AND THEN SHE STARTED TALKING ABOUT SOMETHING ELSE.

2 I DON'T KNOW. I TUNED HER OUT AFTER A WHILE.

3 Q WHEN YOU TUNED HER OUT, WASN'T SHE TALKING TO  
4 MR. BRUIN?

5 A YES.

6 MR. BARENS: OBJECTION. HOW WOULD HE KNOW, IF HE TUNED  
7 HER OUT?

8 THE COURT: HE ANSWERED. OVERRULED.

9 Q BY MR. WAPNER: WAS SHE TALKING TO MR. BRUIN?

10 A I GUESS. I DON'T KNOW.

11 Q DID THAT COMPRISE MOST OF THE TIME THAT SHE SPENT  
12 WHILE CARMEN WAS DOING THE IDENTI KIT WITH MR. EDHOLM?

13 A I' GUESS.

14 I TUNED HER OUT AFTER A WHILE, I DON'T KNOW WHAT  
15 SHE SAID AFTER THAT. SHE WAS JUST RAMBLING ON.

16 Q WHAT DID SHE SAY TO YOU SPECIFICALLY THAT YOU  
17 CAN REMEMBER?

18 A JUST WHAT I GOT FROM IT WAS THAT SHE -- SHE JUST  
19 BASICALLY DIDN'T BELIEVE US REALLY, THAT WE SAW THIS GUY  
20 OR THAT THIS WAS JUST KIND OF LIKE A WASTE OF HER TIME OR  
21 A WASTE OF YOUR TIME OR WHOSEVER'S TIME IT WAS, TO GO UP  
22 THERE TO TUCSON TO DO THIS.

23 Q DID YOU FEEL INTIMIDATED?

24 A I WAS MORE MAD AT THE FACT THAT SHE WAS SAYING  
25 THIS STUFF.

26 Q WHAT WAS IT THAT MADE YOU MAD?

27 A THE FACT THAT SHE WAS SAYING SHE DIDN'T BELIEVE  
28 US, THAT REALLY ANNOYED ME.

1 Q WHAT DID SHE SAY SPECIFICALLY?

2 A I CAN'T REMEMBER. I JUST KIND OF LIKE GOT A  
3 GENERAL IDEA OF WHAT SHE SAID.

4 Q BY THE WAY, DID CARMEN -- WAS CARMEN ATTENDING  
5 THE UNIVERSITY OF ARIZONA AT THAT TIME?

6 A I AM NOT -- NO, I DON'T THINK SO.

7 I THINK SHE WAS GOING TO PIMA COLLEGE.

8 THE COURT REPORTER: IS THAT P-I-M-A?

9 THE WITNESS: I GUESS.

10 YES, SHE HAS.

11 Q BY MR. WAPNER: WHEN YOU GOT SODAS OUT OF THIS  
12 MACHINE AT THE GAS STATION, WHERE DID YOU STAND?

13 A I DON'T KNOW. I DON'T KNOW. YOU SEE RIGHT ABOVE  
14 IT, I GUESS IT OPENS THIS WAY SO I GUESS IT IS ONE OF THOSE  
15 THAT JUST SLIDES OPEN AND YOU STICK YOUR HAND IN THERE AND  
16 YOU GRAB THE SODA.

17 Q TAKE A LOOK AT THIS PICTURE THAT IS 233 FOR  
18 IDENTIFICATION; DOES THAT ACCURATELY DEPICT THE SODA MACHINE  
19 THE WAY IT LOOKED THAT DAY?

20 A I GUESS. IT IS HARD TO SEE WITH THAT SHADOW  
21 ON THERE.

22 MR. BARENS: I AM NOT SURE THE ANSWER IS RESPONSIVE.  
23 HE SAID "I GUESS, IT IS HARD TO SEE".

24 THE WITNESS: I AM NOT -- THERE IS A SHADOW ON THE  
25 MACHINE, YOU CAN'T TELL.

26 Q BY MR. WAPNER: CAN YOU SEE THE MACHINE IN THAT  
27 PICTURE?

28 A YES, YOU CAN MAKE IT OUT.

-1

1 Q WHAT I AM INTERESTED IN, IS THE CURBING AROUND  
2 THE MACHINE. AS FAR AS THE WIDTH OF THE MACHINE AND THE WIDTH  
3 OF THE ISLAND, DOESN'T THE MACHINE TAKE UP THE WHOLE WIDTH  
4 OF THE ISLAND? LOOK AT THAT PICTURE. SEE IF IT DOESN'T APPEAR  
5 THAT IT TAKES UP THE WHOLE WIDTH OF THE ISLAND.

6 A YOU CAN'T TELL FROM LOOKING AT THIS.

7 Q YOU CAN'T TELL FROM LOOKING AT THE PICTURE?

8 A YOU CAN SEE THAT THE CURB IS BLACK AND THE SHADOW  
9 IS BLACK, SO YOU CAN'T REALLY TELL.

10 Q AND DOES IT APPEAR THAT YOU GET THE SODAS BY GOING  
11 IN ON THE EASTSIDE OR CAN YOU GET THEM FROM BOTH SIDES?

12 A I THINK YOU CAN GET THEM FROM BOTH SIDES.

13 Q WHEN YOU TALKED TO DETECTIVE EDMONDS AT THE HIGH  
14 SCHOOL GYM PARKING LOT, DO YOU REMEMBER COMPARING HIS  
15 PHYSIQUE TO THE -- BEING ASKED TO COMPARE SERGEANT EDMONDS'  
16 PHYSIQUE TO THE PERSON YOU SAW IN THE GAS STATION?

17 MR. BARENS: ASKED AND ANSWERED.

18 THE WITNESS: NO. I DON'T REMEMBER.

19 Q BY MR. WAPNER: DO YOU REMEMBER COMPARING SERGEANT  
20 EDMONDS' PHYSIQUE TO THE PERSON YOU SAW IN THE GAS STATION?

21 A NO. THE ONLY THING I REMEMBER IS WHEN THEY ASKED  
22 ME ABOUT THEIR AGE.

23 Q WHAT ABOUT ASKING YOU ABOUT WHETHER THE PERSON  
24 WORKED OUT?

25 A NO. I DON'T REMEMBER. THEY ASKED ME WHAT I THOUGHT  
26 THEIR AGE WAS. THAT IS WHAT THEY ASKED ME.

27 Q I WANT TO SHOW YOU WHAT APPEARS TO BE A TRANSCRIPT  
28 OF A PORTION OF A TAPE RECORDING OF AN INTERVIEW THAT THEY

1 DID WITH YOU. IT STARTS OVER ON THE PREVIOUS PAGE. WOULD  
2 YOU JUST TAKE A LOOK AT THAT AND THE NEXT PAGE?

3 A (THE WITNESS COMPLIES.)

4 Q DOES THAT REFRESH YOUR RECOLLECTION AS TO WHETHER  
5 YOU TALKED TO DETECTIVE EDMONDS ABOUT WHETHER THE PERSON YOU  
6 SAW IN THE GAS STATION -- HOW THE PERSON WAS BUILT?

7 A NOT REALLY.

8 Q YOU DON'T REMEMBER SAYING TO HIM ABOUT HOW THE  
9 PERSON WAS BUILT?

10 A NO. ACTUALLY, I WAS KIND OF PISSED OFF BECAUSE  
11 THEY CAME AND TOOK ME OUT OF A WRESTLING CLASS.

12 Q SO YOU DON'T RECALL MAKING ANY STATEMENTS ON THE  
13 APPARENT TRANSCRIPTION?

14 A I MIGHT HAVE SAID IT. I DON'T KNOW. I DON'T  
15 REMEMBER.

16 THE COURT: EVEN AFTER READING IT, YOU DON'T REMEMBER?

17 THE WITNESS: YES.

18 THE COURT: READ IT TO HIM.

19 MR. BARENS: EXCUSE ME, YOUR HONOR. IF HE SAID THAT  
20 IT DOESN'T REFRESH HIS RECOLLECTION, HOW DOES IT GET IN OTHER  
21 THAN BY JUDICIAL FIAT?

22 THE COURT: HE HAS A RIGHT TO ASK HIM WHETHER OR NOT  
23 HE DIDN'T MAKE THE FOLLOWING STATEMENTS.

24 MR. BARENS: NOT IF HE DOESN'T REMEMBER.

25 THE COURT: YOU GO AHEAD AND ASK HIM THAT, WILL YOU?

26 MR. BARENS: WE OBJECT TO THAT AND --

27 THE COURT: THE OBJECTION IS OVERRULED. THAT IS THE  
28 PROPER WAY OF DOING IT.

1 DO YOU WANT TO ASK HIM?

2 MR. WAPNER: YES.

3 Q MR. LOPEZ, DO YOU REMEMBER TELLING DETECTIVE  
4 EDMONDS THAT THE PERSON THAT YOU SAW IN THE GAS STATION WAS  
5 WELL BUILT?

6 A NO. I DON'T REMEMBER.

7 Q DO YOU REMEMBER TELLING HIM THAT HE WORKED OUT?

8 A WHO WORKED OUT?

9 Q THAT THE PERSON YOU SAW IN THE GAS STATION WORKED  
10 OUT, LOOKED LIKE HE WORKED OUT?

11 A I DON'T REMEMBER.

12 Q AND DO YOU REMEMBER DETECTIVE EDMONDS ASKING YOU  
13 WHETHER THE PERSON WAS BUILT LIKE HE WAS AND YOU SAYING THAT  
14 HE HAD MORE DEFINITION, THAT IS, MORE DEFINITION THAN  
15 DETECTIVE EDMONDS?

16 A NO. I DON'T REMEMBER THAT EITHER.

17 MR. WAPNER: THANK YOU. NOTHING FURTHER.

18 THE COURT: I THINK WE WILL TAKE A RECESS AT THIS TIME.

19 MR. BARENS: YOUR HONOR -- ALL RIGHT.

20 THE COURT: LADIES AND GENTLEMEN OF THE JURY, WE'LL TAKE  
21 A RECESS AT THIS TIME UNTIL 1:45 THIS AFTERNOON.

22 THAT IS 1:45 THIS AFTERNOON. THE SAME ADMONITION  
23 THAT I GAVE YOU STILL APPLIES. THANK YOU.

24 (AT 12:02 P.M. A RECESS WAS TAKEN UNTIL  
25 1:30 P.M. OF THE SAME DAY.)  
26  
27  
28



1 SANTA MONICA, CALIFORNIA; MONDAY, APRIL 6, 1987; 1:50 P.M.  
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE  
3 (APPEARANCES AS NOTED ON TITLE PAGE.)  
4

5 THE COURT: ARE YOU FINISHED WITH HIM?

6 MR. WAPNER: I JUST HAVE ONE OTHER QUESTION, MAYBE  
7 TWO.

8  
9 JESUS ADELBERTO LOPEZ,  
10 THE WITNESS ON THE STAND AT THE TIME OF ADJOURNMENT, RESUMED  
11 THE STAND AND TESTIFIED FURTHER AS FOLLOWS:  
12

13 REDIRECT EXAMINATION (RESUMED)

14 BY MR. WAPNER:

15 Q DO YOU KNOW WHERE CARMEN WENT TO HIGH SCHOOL  
16 WHEN SHE WAS IN ARIZONA?

17 A SAHUARITA.

18 Q WHICH IS WHERE?

19 A A COUPLE OF MILES OUT OF TUCSON.

20 Q WHAT IS THE NAME OF THE TOWN THAT IT IS IN?

21 A SAHUARITA.

22 THE COURT REPORTER: HOW DO YOU SPELL IT?

23 THE WITNESS: I DON'T KNOW. I DIDN'T GO TO SCHOOL  
24 THERE.

25 MR. WAPNER: I HAVE NOTHING FURTHER.

26 MR. BARENS: I HAVE NO QUESTIONS, YOUR HONOR.

27 THE COURT: I HAVE JUST ONE.

28 BEFORE CARMEN AND YOU WENT TO THE TUCSON POLICE

1 DID YOU KNOW WHY YOU WERE GOING THERE?

2 THE WITNESS: I -- I DIDN'T.

3 SHE DID.

4 THE COURT: DIDN'T SHE TELL YOU WHY SHE WANTED TO GO?

5 THE WITNESS: SHE JUST TOLD ME SHE WAS -- WE WERE  
6 SUPPOSED TO MEET WITH SOME.

7 THE COURT: DID SHE TELL YOU ANYTHING MORE THAN THAT?

8 THE WITNESS: WELL, NOT REALLY, BECAUSE ALL SHE TOLD  
9 ME WAS THAT -- THAT NIGHT, WE HAD A DATE AND REAL BRIEFLY,  
10 SHE MENTIONED THAT SHE HAD GONE TO SEE THE POLICEMEN.

11 THE COURT: THAT SHE HAD ALREADY GONE TO SEE THEM?

12 THE WITNESS: YES.

13 AND THEN THE NEXT DAY --

14 THE COURT: DID SHE TELL YOU WHY SHE WENT TO THE POLICE?

15 THE WITNESS: VERY BRIEFLY, PROBABLY.

16 I WASN'T LISTENING TO HER BECAUSE I DIDN'T KNOW  
17 WE WERE GOING TO BE IN THIS AT ALL.

18 THE COURT: DID SHE TELL YOU SHE HAD READ THIS ARTICLE  
19 IN ESQUIRE MAGAZINE AND SHE WAS VERY EXCITED ABOUT IT?

20 THE WITNESS: NO.

21 SHE JUST TOLD ME SHE HAD GONE TO THE POLICE.

22 THE COURT: DID SHE TELL YOU WHY?

23 THE WITNESS: AND THEY HAD TOLD HER THEY WANTED TO  
24 TALK TO US LATER ON.

25

26

27

28

1 THE COURT: DID SHE TELL YOU WHY?

2 THE WITNESS: SHE MIGHT HAVE PROBABLY.

3 THE COURT: DID SHE TELL YOU ABOUT READING AN ARTICLE  
4 IN ESQUIRE MAGAZINE?

5 THE WITNESS: THE NEXT DAY.

6 THE COURT: AND DID SHE SHOW YOU THE MAGAZINE?

7 THE WITNESS: NO. SHE DIDN'T HAVE IT WITH HER.

8 THE COURT: ALL RIGHT. OKAY. THANK YOU VERY MUCH.  
9 ANYTHING FURTHER?

10 MR. BARENS: NOTHING.

11 THE COURT: ANYTHING FURTHER?

12 MR. WAPNER: JUST A COUPLE OF QUESTIONS IN THAT SAME  
13 VEIN.

14

15 FURTHER RECROSS-EXAMINATION

16 BY MR. WAPNER:

17 Q WAS IT THURSDAY NIGHT THAT YOU SAY YOU HAD A DATE  
18 WITH HER?

19 A RIGHT.

20 Q THAT WAS THURSDAY OR FRIDAY?

21 A NO. IT WAS A FRIDAY NIGHT.

22 Q ALL RIGHT. SHE SAID THAT SHE HAD ALREADY GONE  
23 TO THE POLICE?

24 A YES. SHE HAD BEEN TO THE POLICE.

25 Q NOW, DID SHE SAY SHE HAD GONE TO THE POLICE THAT  
26 DAY?

27 A YES. SHE GOES, "I WENT TO THE POLICE TODAY."

28 AND THAT SHE PROBABLY -- WE'LL PROBABLY GET A CALL

1 FROM DETECTIVE MEYERS TOMORROW.

2 Q BUT SHE DIDN'T SAY ANYTHING MORE THAN, "I JUST  
3 WENT TO THE POLICE"?

4 A BASICALLY, YES.

5 Q DIDN'T YOU SAY, "WELL, WHAT WERE YOU DOING AT THE  
6 POLICE STATION?"

7 MR. BARENS: ARGUMENTATIVE.

8 THE COURT: OVERRULED. GO AHEAD.

9 Q BY MR. WAPNER: DID YOU SAY, "WHY DID YOU GO TO  
10 THE POLICE? WHAT DID YOU DO THERE?"

11 A YES I DID.

12 Q WHAT DID SHE SAY?

13 A SHE JUST SAID, "I WENT TO THE POLICE BECAUSE I  
14 READ THIS ARTICLE. THAT'S IT."

15 I MEAN, WE DIDN'T GET INTO IT VERY INVOLVED BECAUSE  
16 WE WERE ON A DATE. I LIKE TO DO MORE THINGS WITH MY TIME THAN  
17 TALK ABOUT COURT.

18 Q I AM SURE YOU DO. BUT THE QUESTION IS, WHEN SHE  
19 TOLD YOU --

20 A I JUST TOLD HER BASICALLY WHAT I SAID AND --

21 Q LET ME FINISH MY QUESTION --

22 A BASICALLY WHAT I SAID WAS THAT WE WOULD TALK ABOUT  
23 IT TOMORROW IF THEY CALL YOU, REALLY.

24 Q DID SHE SAY SHE HAD READ THE ARTICLE IN THE  
25 MAGAZINE AND DID SHE SAY ANYTHING ABOUT THE GUY THE TWO OF  
26 YOU HAD SEEN AT THE GAS STATION?

27 A SHE MIGHT HAVE, I GUESS. I DON'T REMEMBER. I  
28 WAS PREOCCUPIED WITH SOMETHING ELSE, REALLY.

1 Q AND WHEN YOU WENT TO THE POLICE ON THE NEXT DAY,  
2 ON SATURDAY, DID YOU KNOW WHAT IT WAS ABOUT THAT YOU WERE  
3 BEING ASKED TO COME TO THE POLICE FOR?

4 A YES. ON THE WAY OVER THERE, YEAH.

5 Q AND THAT YOU KNEW IT WAS ABOUT SEEING THIS PERSON  
6 IN THE GAS STATION?

7 A YES.

8 MR. WAPNER: OKAY. THANK YOU. NOTHING FURTHER.

9 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. YOU MAY  
10 STEP DOWN.

11 MAY THE WITNESS BE EXCUSED?

12 MR. BARENS: YES, YOUR HONOR.

13 THE COURT: ALL RIGHT.

14 MR. BARENS: MAY WE HAVE A MOMENT WITH THE PEOPLE?

15 THE COURT: YES.

16 (PAUSE.)

17 MR. BARENS: COULD WE APPROACH BRIEFLY, YOUR HONOR?

18 THE COURT: ALL RIGHT.

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

21 MR. BARENS: YOUR HONOR, I AM LOOKING TO HAVE MR. WAPNER  
22 ENTER A STIPULATION WITH THE DEFENSE THAT AMONG THE PHONE  
23 RECORDS WHICH ARE PEOPLE'S 68-A -- WELL, IT IS 68 AND A  
24 VARIETY OF SUBLETTERS TO 68, THAT ARE TELEPHONE CALLS FROM  
25 THE ROOM AT THE PLAZA HOTEL THAT MR. PITTMAN/GRAHAM HAD.

26 THERE ARE THREE PHONE CALLS TO HIS HOME PHONE  
27 NUMBER AND TWO PHONE CALLS TO JOE HUNT'S HOME PHONE NUMBER.  
28 AND I WOULD LIKE TO ENTER THEM. I HAVE THE PAGES CLIPPED.

1 IT IS KIND OF IMPORTANT TO -- MAY I JUST HAVE A M'NUTE?  
2 BECAUSE MR. WAPNER HAS RIGHTFULLY SAID THAT HE DOESN'T WANT  
3 TO DO IT UNTIL HE CAN SEE IT WITH HIS OWN EYES AND VERIFY IT.

4 I HAVE A LITTLE SUMMARY WITH THE PAGES CLIPPED  
5 AND I WOULD LIKE TO GO INTO THAT AT THIS JUNCTURE.

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

-1

1 MR. WAPNER: I AM NOT WILLING TO DO THAT NOW.

2 THE COURT: WHY PARTICULARLY NOW? YOU CAN ALWAYS POINT  
3 OUT TO THE JURY WHEN YOU TALK ABOUT THESE TELEPHONE CALLS,  
4 YOU CAN SUBSTANTIATE IT BY REFERENCE TO THE EXHIBIT.

5 MR. BARENS: COULD WE RESERVE THAT FOR MR. WAPNER TO  
6 HAVE AN OPPORTUNITY TO DO THAT MAYBE THIS AFTERNOON OR  
7 TOMORROW OR SOMETHING AND ENTER THE STIPULATION LATER?

8 THE COURT: I DON'T KNOW. WHAT IS THE SENSE OF IT?  
9 WHY AT THIS PARTICULAR TIME?

10 MR. BARENS: IT WAS A DECISION I MADE, YOUR HONOR.

11 THE COURT: HE DOESN'T WANT TO STIPULATE. I CAN'T  
12 FORCE HIM TO.

13 MR. BARENS: NO, I WOULD NOT SUGGEST THAT.

14 WHAT I AM SUGGESTING, YOUR HONOR, IS I WOULD  
15 LIKE TO RESERVE TO ENTER THE STIPULATION AT A TIME PRIOR  
16 TO DELIBERATION.

17 MR. WAPNER: I AM NOT EVEN TELLING HIM I AM GOING TO  
18 DO IT UNTIL I SEE THE RECORDS AND SEE SOME VERIFICATION OF  
19 IT.

20 MR. BARENS: WELL, IF HE WOULD JUST LOOK AT THE CLIPPED  
21 PAGES NOW, THE PHONE NUMBERS ARE RIGHT ON THE RECORDS. I  
22 AM NOT MAKING THIS UP.

23 MR. WAPNER: I AM NOT GOING TO DO THAT NOW. I AM NOT  
24 GOING TO BE PUT IN THAT POSITION, YOUR HONOR.

25 THE COURT: IF HE DOESN'T WANT TO ENTER THE STIPULATION,  
26 I AM NOT GOING TO FORCE HIM.

27 MR. BARENS: ALL RIGHT, YOUR HONOR. THANK YOU.

28 (THE FOLLOWING PROCEEDINGS WERE HELD IN

1 OPEN COURT IN THE PRESENCE AND HEARING  
2 OF THE JURY:)

3 MR. BARENS: THE DEFENSE RESTS.

4 MR. WAPNER: I WILL HAVE REBUTTAL WITNESSES.

5 I WAS CAUGHT A LITTLE BIT SHORT, TO SAY THE LEAST.

6 THE COURT: ALL RIGHT. WHEN CAN YOU GET THEM IN?

7 MR. WAPNER: PROBABLY TOMORROW.

8 THE COURT: ALL RIGHT, I DON'T THINK THERE IS ANY  
9 ALTERNATIVE BUT TO TAKE AN ADJOURNMENT. WHAT WE COULD DO  
10 IS THIS AFTERNOON GO OVER THE PROPOSED INSTRUCTIONS WHICH  
11 THE COURT WILL GIVE TO THE JURY AT THE CONCLUSION OF THE  
12 CASE.

13 MR. BARENS: I HAVE NOT PREPARED THE INSTRUCTIONS, YOUR  
14 HONOR, AS I DID NOT CONTEMPLATE THE NEED TO DO THAT UNTIL  
15 WE HAD FINISHED THE TESTIMONY.

16 MR. WAPNER: I DIDN'T EITHER. AT THIS POINT, COUNSEL  
17 IS IN A LOT BETTER POSITION TO CONTEMPLATE THAN I AM.

18 THE COURT: HAD YOU ADVISED COUNSEL OR THE COURT OF  
19 THE FACT YOU WERE GOING TO REST WITHOUT ADDITIONAL TESTIMONY,  
20 WE MIGHT HAVE MADE SOME ADDITIONAL ARRANGEMENTS. HOWEVER,  
21 COUNSEL IS SURPRISED AT THIS PARTICULAR POINT. I THINK IF  
22 HE WANTS ADDITIONAL TIME TO GET TESTIMONY, I THINK HE IS  
23 ENTITLED TO THAT.

24 MR. BARENS: I HAVE NO DISAGREEMENT WITH THAT, YOUR  
25 HONOR.

26 THE COURT: HOW LONG WILL IT TAKE YOU TO GET THAT?

27 MR. WAPNER: I THINK PROBABLY, ACTUALLY I THINK I CAN  
28 HAVE SOME BY TOMORROW.



1 THE COURT: ALL RIGHT. THEN LADIES AND GENTLEMEN,  
2 WE HAVE NO ALTERNATIVE BUT TO TAKE AN ADJOURNMENT AT THIS  
3 TIME UNTIL TOMORROW MORNING AT THE CUSTOMARY TIME OF 10:30.

4 THE SAME ADMONITION WOULD STILL APPLY.

5 WILL YOU APPROACH THE BENCH? WE MIGHT BE ABLE  
6 TO UTILIZE THE BALANCE OF TIME ON SOME OTHER MATTERS.

7 MR. WAPNER: THANK YOU.

8 (THE FOLLOWING PROCEEDINGS WERE HELD AT  
9 THE BENCH OUTSIDE THE PRESENCE AND HEARING  
10 OF THE JURY:)

11 MR. WAPNER: I HAVE A LIST OF INSTRUCTIONS, THERE IS  
12 ONE INSTRUCTION I WOULD LIKE TO DRAFT. IT HAS TO DO WITH  
13 EYEWITNESS IDENTIFICATION AND I WOULD LIKE TO HAVE --

14 THE COURT: ARE YOU GOING TO HAVE ANY IDENTIFICATION  
15 EXPERT TESTIFY?

16 MR. WAPNER: NO, I DON'T THINK SO.

17 MR. BARENS: I AM SORRY?

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE COURT: I THINK WE HAVE GOT A LOT OF NEW INSTRUCTIONS,  
2 HAVEN'T WE, ON EYEWITNESS IDENTIFICATION AND TESTIMONY.

3 MR. WAPNER: YES.

4 THE COURT: WHAT IS IT YOU WANT TO ADDRESS?

5 MR. WAPNER: WELL, JUST INSTRUCTIONS ON EYEWITNESS  
6 TESTIMONY, THAT HAS MOSTLY TO DO WITH THAT.

7 THE COURT: DEFENSE?

8 MR. WAPNER: RIGHT, DEFENSE WITNESSES AND THE PEOPLE'S  
9 BURDEN OF PROOF AND PROVING IDENTITY BEYOND A REASONABLE  
10 DOUBT.

11 THE COURT: THERE IS NOTHING ELSE WE CAN DO AT THIS  
12 TIME, IS THERE?

13 MR. BARENS: WE ALSO HAVE SOME INSTRUCTIONS WE PROPOSE  
14 TO DRAFT.

15 THE COURT: ALL RIGHT, FINE.

16 MR. WAPNER: YOUR HONOR, THE OTHER THING IS I CAN HAVE  
17 REBUTTAL WITNESSES, THEY PROBABLY AREN'T GOING TO EVEN TAKE  
18 THE WHOLE DAY TOMORROW.

19 THE COURT: DO YOU WANT ANY TIME TO PREPARE YOUR  
20 ARGUMENT?

21 MR. WAPNER: YES.

22 MR. BARENS: QUITE SO, YOUR HONOR.

23 I HAVE TRIED TO, AS MR. WAPNER HAS, TO CONTEMPLATE  
24 WHAT I HAVE AHEAD OF ME HERE. I HAVE FORGOTTEN HOW MANY  
25 WITNESSES I NEED TO REVIEW TO DO ARGUMENT. I WOULD NOT  
26 REQUIRE LESS THAN THREE WORKING DAYS TO GET BACK THROUGH  
27 FIVE MONTHS OF TESTIMONY.

28 THE COURT: YOU NEED UNTIL NEXT MONDAY?

1 MR. BARENS: I WOULD CERTAINLY PREFER THAT, YOUR HONOR.

2 I DO NOT THINK MR. WAPNER WOULD DISAGREE ON  
3 THAT, ALTHOUGH I HAVE NOT DISCUSSED IT WITH HIM.

4 THE COURT: I WILL TELL YOU WHAT, IF THIS IS WHAT YOU  
5 WANT, IF YOU WANT TO CONTINUE IT UNTIL NEXT MONDAY FOR  
6 ARGUMENT TO THE JURY, I WANT IN BETWEEN THAT TIME TO GO OVER  
7 THE JURY INSTRUCTIONS WITH BOTH OF YOU SO THAT YOU WILL BE  
8 PREPARED FOR THE ARGUMENT ON MONDAY.

9 MR. BARENS: YOUR HONOR, COULD WE DO THE INSTRUCTIONS  
10 ON THURSDAY?

11 THE COURT: ANY TIME YOU WANT.

12 MR. BARENS: COULD I HAVE A MOMENT WITH MR. CHIER?

13 THE COURT: SURE.

14 MR. BARENS: WHO WOULD HAVE SOME RESPONSIBILITY HERE.

15 (UNREPORTED COLLOQUY BETWEEN MR. CHIER  
16 AND MR. BARENS.)

17

18

19

20

21

22

23

24

25

26

27

28

1 MR. BARENS: EXCUSE ME, YOUR HONOR. IF WE COULD HAVE  
2 JURY INSTRUCTIONS THURSDAY AT 10:30 --

3 MR. CHIER: THE LATER THE BETTER.

4 THE COURT: THURSDAY WHAT?

5 MR. BARENS: THURSDAY AT 10:30 IF WE MIGHT, YOUR HONOR.

6 THE COURT: THURSDAY WHAT?

7 MR. BARENS: AT 10:30, YOUR HONOR.

8 THE COURT: SURE. YOU WILL HAVE YOURS, TOO?

9 MR. WAPNER: YES.

10 MR. BARENS: COULD WE SPEAK FOR A MOMENT ABOUT SEQUENCING  
11 IN CLOSING ARGUMENT?

12 THE COURT: SURE.

13 MR. BARENS: COULD MR. CHIER PARTICIPATE?

14 THE COURT: HE CAN TAKE THE WHOLE CONCLUDING ARGUMENT  
15 IF YOU WANT TO. I WILL JUST HAVE ONE LAWYER, EITHER ONE OF  
16 YOU, TAKE IT.

17 MR. BARENS: I UNDERSTAND YOUR HONOR --

18 THE COURT: NOT TWO.

19 MR. BARENS: YOUR HONOR, I WANT TO TRY TO UNDERSTAND  
20 A QUESTION I HAVE ABOUT THE LAW, SIR, ON CLOSING ARGUMENT IN  
21 A DEATH PENALTY CASE WHICH I BELIEVE --

22 THE COURT: I TOLD YOU HOW I FELT ABOUT IT, DIDN'T I?

23 I FELT THAT MY INTERPRETATION OF THE LAW IS THAT  
24 WHEN IT TALKS ABOUT HAVING TWO COUNSEL, IT REFERS TO COUNSEL  
25 DURING THE TRIAL, THE ENTIRE TRIAL. IT DOESN'T REFER TO THE  
26 CONCLUDING ARGUMENTS BEFORE THE JURY.

27 MR. BARENS: THE ISSUE I WAS APPROACHING YOUR HONOR,  
28 IS JUST HAVING MR. CHIER PARTICIPATE IN THE DISCUSSION THAT

1 WE ARE HAVING AT THIS MOMENT.

2 THE COURT: WHAT DO YOU WANT TO DO? DIVIDE UP THE FINAL  
3 ARGUMENT?

4 MR. BARENS: NO.

5 THE COURT: WHAT IS IT YOU WANT TO DO?

6 MR. BARENS: YOUR HONOR, I UNDERSTAND THAT THE PEOPLE  
7 PROCEED AND THEN THE DEFENSE PROCEEDS AND THEN THE PEOPLE WOULD  
8 CONCLUDE?

9 THE COURT: RIGHT.

10 MR. BARENS: IF I MIGHT ASK MR. CHIER TO JOIN US? DID  
11 YOU TELL ME THAT THERE WAS SOME QUESTION ABOUT THE FORMATING?

12 MR. CHIER: WHEN THERE ARE TWO ATTORNEYS ARGUING, THE  
13 SECOND DEFENSE ATTORNEYS GETS THE LAST ARGUMENT. THEREFORE --

14 THE COURT: I DON'T KNOW WHERE HE GETS THAT IDEA FROM?  
15 DID YOU EVER HEAR OF IT?

16 MR. WAPNER: WHAT DO YOU MEAN "LAST ARGUMENT"?

17 THE COURT: HE WANTS YOU TO OPEN AND HE GOES AND THEN  
18 YOU GO AND THEN HE GOES.

19 MR. WAPNER: NO.

20 MR. BARENS: ALL RIGHT. YOUR HONOR, NOT BEING CERTAIN  
21 OF THAT --

22 THE COURT: HAVE YOU GOT ANY AUTHORITY FOR THAT?  
23 I WOULD LIKE TO SEE IT. MAYBE THERE MIGHT BE SOME QUESTION  
24 WHEN THE BURDEN OF PROOF IS INVOLVED SOMETIMES ON A PENALTY  
25 PHASE AND SO FORTH.

26 BUT I HAVE NEVER YET HEARD THAT IN A DEATH PENALTY  
27 CASE.

28 THE PEOPLE OPEN THEIR FINAL ARGUMENT AND THEN THE

A-3  
1 DEFENSE GOES AND THEN THE PEOPLE CLOSE AND THEN THE DEFENDANT  
2 GOES AGAIN? WHERE DID YOU HEAR THAT FROM? WHAT AUTHORITY  
3 IS THERE?

4 MR. BARENS: YOUR HONOR, I HAD NOT HEARD THAT, YOUR HONOR.  
5 THAT IS WHY I WAS ASKING YOUR HONOR.

6 THE COURT: WHAT IS YOUR AUTHORITY?

7 MR. CHIER: IT IS JUST HALLWAY GOSSIP, SIR.

8 MR. BARENS: SOME LAWYERS WERE DISCUSSING IT, YOUR HONOR.  
9 SOME LAWYERS WERE DISCUSSING IT. HAVE YOU HEARD OF IT?

10 THE COURT: WELL, I HAVE ONLY BEEN ON THE BENCH ABOUT  
11 26 YEARS. I HAVE NEVER HEARD OF IT, EVER.

12 MR. BARENS: THAT IS WHY I AM ASKING.

13 MR. CHIER: I WILL TRY TO GET AUTHORITY.

14 THE COURT: OUT IN THE HALLWAY OR IN THE COURTROOM?

15 MR. BARENS: I ASKED THE COURT BECAUSE I DIDN'T KNOW  
16 MYSELF, YOUR HONOR. I WOULD RELY ON YOUR HONOR'S EXPERIENCE.

17 THE COURT: ARE YOU ASKING THAT YOU GO AND THEN THE  
18 PEOPLE GO AND THEN YOU GO AND THEN THE PEOPLE GO AGAIN?  
19 YOU WANT TO HAVE FINAL ARGUMENT HEARD AND HAVE IT DONE BY  
20 MR. CHIER?

21 MR. BARENS: NOT IF THAT IS YOUR HONOR'S PROPOSAL. IF  
22 I SAY YES TO THAT, WHAT YOU ARE SAYING, I CAN'T ARGUE, AS WELL.

23 I BELIEVED THAT THE CODE CLEARLY SAID THAT TWO  
24 COUNSEL COULD PARTICIPATE IN CLOSING ARGUMENT. I STILL BELIEVE  
25 THAT.

26 THE COURT: YOU STILL BELIEVE THAT? WELL, YOU AND I  
27 DIFFER ABOUT IT.

28 MR. BARENS: YOUR HONOR HAS RULED?

^ - 4  
1 THE COURT: YES.

2 MR. BARENS: I PROPOSE TO MAKE CLOSING ARGUMENT.

3 THE COURT: AND THAT IS NOT IN ACCORDANCE WITH THE WAY  
4 HE WAS ENGAGED AND IS BEING PAID BY THE COURT, FOR BEING  
5 ASSOCIATE COUNSEL WITH YOU.

6 MR. BARENS: SIR, ANY ARRANGEMENT WE MADE COULD NOT  
7 NULLIFY THAT SECTION, IN MY OPINION.

8 THE COURT: WELL, OF COURSE NOT. BUT I DON'T INTERPRET  
9 IT THE WAY YOU THINK IT SHOULD BE INTERPRETED.

10 MR. BARENS: I UNDERSTAND THAT.  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

A-5  
1 THE COURT: YOU CAN DO YOUR COMPLETE ARGUMENT. HE GOES  
2 AHEAD AND THEN HE MAKES A COMPLETE ARGUMENT? IS THAT IT?

3 MR. BARENS: I WOULD IMAGINE YOUR HONOR, SINCE THE COURT  
4 DOESN'T SPECIFICALLY ADDRESS THAT ISSUE, THAT EACH -- SINCE  
5 THERE IS NO LIMITATION, THAT EACH COUNSEL COULD MAKE A  
6 COMPLETE ARGUMENT, INCLUDING --

7 THE COURT: THAT MEANS THE PEOPLE GO FIRST AND THEN YOU  
8 GO AND THEN MR. CHIER GOES AND THEN THE PEOPLE GO?

9 MR. BARENS: YES, YOUR HONOR.

10 THE COURT: THEN THE PEOPLE CONCLUDE ARGUMENT?

11 MR. BARENS: YES, YOUR HONOR.

12 THE COURT: I DON'T INTERPRET IT THAT WAY.

13 MR. WAPNER: EVEN IF THE SECTION IS READ TO PERMIT TWO  
14 COUNSEL TO ARGUE, THAT CERTAINLY DOESN'T ABROGATE A JUDGE'S  
15 RESPONSIBILITY TO CONTROL THE COURTROOM AND SET GUIDELINES  
16 OF WHAT CAN BE ARGUED AND WHAT CAN'T.

17 SO THE COURT CAN DELINEATE SO THAT THERE ARE  
18 PORTIONS OF THE CASE THAT CAN BE ARGUED BY ONE AND THE OTHER.

19 BUT TO PERMIT TWO COMPLETE, SEPARATE ARGUMENTS,  
20 I DON'T THINK THAT THAT IS NECESSARILY WHAT THE CODE  
21 CONTEMPLATES.

22 MR. BARENS: I DID NOT MEAN TO SUGGEST THAT MR. CHIER  
23 WOULD BE PERMITTED TO ARGUE AND THEN WE WOULD BOTH ARGUE THE  
24 SAME PORTIONS OF THE CASE.

25 THE COURT: THERE IS NO WAY OF CONTROLLING THAT.

26 MR. BARENS: YOUR HONOR, I DID WANT TO -- IF I AM  
27 UNDERSTANDING YOUR HONOR CORRECTLY, IF THERE WERE A TIME  
28 ALLOTMENT GIVEN TO THE PEOPLE AND THE DEFENDANT THAT WAS



1 ROUGHLY EQUIVALENT WHICH I ANTICIPATE IT WILL BE, THAT IF WE  
2 WERE TO DIVIDE THE TIME WHERE I SAID I WOULD ARGUE TWO-THIRDS  
3 OF THE TIME AND MR. CHIER WOULD ARGUE ONE-THIRD OF THE TIME,  
4 YOUR HONOR WOULD NOT FIND THAT ACCEPTABLE?

5 THE COURT: NO. I WILL NOT PERMIT YOU TO HAVE TWO  
6 ARGUMENTS.

7 MR. BARENS: LET US ADDRESS THE ISSUE OF TIME. AGAIN,  
8 I DON'T KNOW WHAT MR. WAPNER -- I HAVE NOT DISCUSSED IT.

9 MR. CHIER: LET'S DO IT TOMORROW.

10 MR. BARENS: MAYBE WE COULD DISCUSS IT WITH MR. WAPNER  
11 AND WE COULD COME TO SOME --

12 THE COURT: VERY GOOD. YOU CAN DO THAT.

13 MR. CHIER: THERE ARE TWO MATTERS PENDING.

14 MR. BARENS: THERE ARE TWO MATTERS STILL BEFORE THE  
15 COURT, HOWEVER.

16 THE COURT: BOTH SIDES HAVE NOT RESTED YET, HAVE THEY?

17 MR. BARENS: WELL, MR. --

18 THE COURT: THE PEOPLE HAVE NOT RESTED?

19 MR. BARENS: NO. MR. WAPNER SAID HE WAS GOING TO DO  
20 SOME REBUTTAL.

21 THE COURT: WHAT IS IT THAT YOU ANTICIPATE?

22 MR. BARENS: WELL, WE HAVE TWO MOTIONS STILL PENDING  
23 BEFORE THE COURT.

24 THE COURT: WHAT ARE THEY?

25 MR. BARENS: ONE WAS A MOTION IN LIMINE FOR AN  
26 INSTRUCTION THAT WE WERE SEEKING RELATIVE TO THAT ISSUE ABOUT  
27 MR. ESLAMINIA'S FATHER THAT CAME UP.

28 MR. CHIER: 2.50.

1 MR. BARENS: FOR SOME REASON, THAT 2.50 ISSUE WAS  
2 DISCUSSED BOTH AT THE BENCH AND IN CHAMBERS.

3 THE COURT: I DON'T KNOW WHAT YOU MEAN. THE TESTIMONY  
4 IS ALREADY IN. WHAT DO YOU WANT TO DO? WHY DON'T YOU  
5 SUBMIT THE PROPOSED INSTRUCTION AND I WILL --

6 MR. CHIER: THERE IS NONE.

7 MR. BARENS: WELL, THE PROBLEM IS, I DON'T KNOW WHAT  
8 TO SUBMIT.

9 THE COURT: SUBMIT WHATEVER YOU THINK SHOULD BE SUBMITTED.

10 MR. BARENS: ALL RIGHT. A MOMENT.

11 (UNREPORTED COLLOQUY BETWEEN COUNSEL.)

12 MR. BARENS: YOUR HONOR, I WISH TO REMIND YOUR HONOR  
13 THAT YOUR HONOR ADVISED COUNSEL WHEN WE HAD A COLLOQUY  
14 CONCERNING THAT NEWSPAPER REFERENCE THAT YOUR HONOR DID NOT  
15 MAKE -- BUT THAT YOUR HONOR HAD READ FROM BUT DID NOT TELL  
16 THE JURY YOU WERE READING FROM, WHEN MRS. LYNNE ROBERTS WAS  
17 ON THE STAND, YOUR HONOR SAID THAT YOU WOULD TAKE CARE OF THAT  
18 SOMEHOW.

19 YOU SAID THAT YOU WOULD CONSIDER THAT AND TAKE  
20 CARE OF IT SOMEHOW APPROPRIATELY, SIR.

21 THE COURT: WELL, I DON'T KNOW. WHAT IS IT THAT YOU  
22 WANT TO DO?

23 MR. CHIER: WELL, I WANT YOUR HONOR TO MAKE A STATEMENT  
24 TO THE JURY THAT YOUR HONOR HAD NOT READ AN ARTICLE THAT SAID  
25 THAT BOBBY ROBERTS WAS RECEIVING CONSIDERATION IN THIS CASE.

26  
27  
28

-1

1 THE COURT: I THOUGHT WE HAD READ THE RECORD AND THE  
2 RECORD DIDN'T INDICATE THERE WAS ANYTHING AT ALL TO DO WITH  
3 THE NEWSPAPER ARTICLE.

4 MR. WAPNER: THAT IS CORRECT.

5 MR. BARENS: WHAT THE DEFENSE WAS CONCERNED ABOUT,  
6 YOUR HONOR, WAS WHAT APPEARED TO ME TO BE THE OBVIOUS  
7 OPPORTUNITY THE JURY HAD TO LOOK OVER HERE TO SEE THAT AS  
8 YOUR HONOR TURNED TO SPEAK TO US, YOUR HONOR PICKED UP A  
9 PIECE OF PAPER THAT LOOKED LIKE A NEWSPAPER ARTICLE AND IT  
10 WAS OBVIOUS TO THE JURY, I SUBMIT MOST RESPECTFULLY, YOUR  
11 HONOR, THAT YOUR HONOR HAD MADE REFERENCE TO SOMETHING IN  
12 ASKING THE QUESTIONS.

13 MR. WAPNER: WELL, NUMBER 1, I DIDN'T SEE THAT.

14 BUT NUMBER 2, ASSUMING THAT THE JURY SHOULD SEE  
15 THAT THE JUDGE HAD A PIECE OF PAPER IN HIS HAND, IT WASN'T  
16 ANY DIFFERENT THAN ANYTHING HE HAS DONE MANY TIMES DURING  
17 THE COURSE OF THIS TRIAL AND TO ASSUME THAT IT WAS A NEWSPAPER  
18 ARTICLE, WHEN THERE IS NOTHING ABOUT THAT IN THE TESTIMONY,  
19 AND THEN TO HAVE THE JUDGE SAY THAT "I DIDN'T READ AN ARTICLE,"  
20 IS PUTTING SOMETHING INTO THE MINDS OF THE JURY THAT ISN'T  
21 THERE IN THE FIRST PLACE AND THE CURE IS WORSE THAN THE  
22 SOLUTION.

23 THE COURT: YOU MEAN THE CURE IS WORSE THAN THE DISEASE.

24 MR. WAPNER: RIGHT.

25 MR. BARENS: I MEAN I OBVIOUSLY HAVE CONCERNS ABOUT  
26 THIS OR I WOULDN'T BE AT THE BENCH ON THIS.

27 I FEEL THERE WAS NO QUESTION IN MY MIND, JUDGE,  
28 THAT I PERCEIVED FROM WHERE I WAS STANDING IN THE COURTROOM

1 THAT YOUR HONOR WAS -- I MEAN FROM WHERE I WAS SEATED IN  
2 THE COURTROOM, I PERCEIVED YOU WERE READING FROM A NEWSPAPER  
3 ARTICLE BECAUSE THE FIRST THING I DID WAS TO TURN TO MR.  
4 CHIER AND ASK HIM, "IS THAT FROM SOME NEWSPAPER HE IS  
5 READING?" AND I THOUGHT YOU WERE READING FROM A NEWSPAPER.

6 THE COURT: THE ONLY TIME I MADE REFERENCE TO A  
7 NEWSPAPER WAS AT THE TIME THE CLERK HAD PICKED UP AN ARTICLE  
8 ABOUT THE CASE FROM THE DAILY NEWS AND WHEN WE TALKED ABOUT  
9 THE JUROR AND SHE HAVING READ ARTICLES.

10 I AM GOING TO LEAVE IT THE WAY IT IS.

11 MR. BARENS: ALL RIGHT, YOUR HONOR. THE ONLY CONTINUING  
12 CONCERN I HAVE IS THAT THE THING TROUBLING ME MOST ON THAT,  
13 JUDGE, WAS IT WAS OBVIOUS TO THE JURY AND EVERYONE IN THE  
14 COURTROOM THAT YOU WERE READING FROM SOMETHING. YOU WEREN'T  
15 DOING IT FROM MEMORY, JUDGE. IT DIDN'T SEEM LIKE YOU WERE  
16 JUST TAKING THE NAMES AND THOSE REFERENCES OUT OF THIN AIR  
17 AND WHEN YOU TURNED TO ADDRESS COUNSEL AND PICKED UP THE  
18 PIECE OF PAPER TO SHOW IT TO ME, I SUBMIT THAT THE JURY MOST  
19 PROBABLY SAW IT.

20 THE COURT: WHAT OF IT?  
21  
22  
23  
24  
25  
26  
27  
28

1 MR. BARENS: IT WOULD MEAN THAT YOUR HONOR WAS READING  
2 FROM A NEWSPAPER ARTICLE THAT IMPLIED, AT LEAST TO YOUR HONOR  
3 THAT CONSIDERATION WAS PAID TO BOBBY ROBERTS.

4 THE COURT: THERE WAS WHAT?

5 MR. BARENS: THERE WAS CONSIDERATION PAID TO BOBBY  
6 ROBERTS, BECAUSE THAT WAS THE THRUST OF YOUR QUESTIONING,  
7 SIR.

8 MR. WAPNER: I HAVE NO OBJECTION --

9 THE COURT: I POINTED OUT THE OTHER DAY THAT YOU YOUR-  
10 SELF, I DON'T KNOW WHY YOU DID IT, BUT YOU YOURSELF HAVE  
11 SAID "ARE YOU PROFITING FROM THIS PARTICULAR MATTER IN ANY  
12 WAY?"

13 MR. BARENS: YES, YOUR HONOR.

14 THE COURT: THEN HAVING OPENED THE DOOR THAT WAY, THERE  
15 WAS AN ARTICLE WHICH INDICATED THAT ROBERTS WAS SOMEHOW  
16 INVOLVED WITH THESE THEATRICAL AGENTS WHO WERE REPRESENTING  
17 HIM AND TALKING ABOUT MILLIONS OF DOLLARS OR MORE FOR RIGHTS  
18 OF THE BOOK. ALL I ASKED ABOUT WAS WHETHER OR NOT THEY  
19 WERE PROFITING IN ANY WAY, NOT WHETHER OR NOT THEY KNEW  
20 ANYTHING ABOUT THAT OR WHETHER THEY PARTICIPATED IN ANY RIGHTS  
21 THAT THE THEATRICAL AGENTS WERE GETTING, IF ANYTHING, FROM  
22 THE BOOK. AND SHE SAID "NO, IT COSTS US MONEY."

23 WHY DON'T YOU LET IT LIE THAT WAY?

24 MR. BARENS: I JUST, AGAIN, BEING AS PROPHYLACTIC AS  
25 I CAN BE HERE, YOUR HONOR, THE IMPLICATION TO THE JURY REMAINS  
26 THAT YOUR HONOR WAS READING FROM THE NEWSPAPER ARTICLE THAT  
27 CONTRADICTED THE WITNESS.

28 THE COURT: IT WASN'T LIKE THE BIBLE THAT IS SACROSANCT

1 AND EVERYTHING IN THE BIBLE IS TRUE, ASSUMING THERE IS SOME-  
2 THING IN THE NEWSPAPER.

3 MR. BARENS: I THINK IF THEY INTERPRET YOUR HONOR  
4 SIGNIFYING WHAT YOUR HONOR WAS READING, ENOUGH TO ASK THE  
5 WITNESS A QUESTION ABOUT IT, OBVIOUSLY IT HAD AN IMPACT ON  
6 YOUR HONOR OR YOUR HONOR WOULD NOT HAVE INQUIRED.

7 THE COURT: I WILL LET IT STAND THE WAY IT IS. I AM  
8 NOT GOING TO DO ANYTHING FURTHER ABOUT IT.

9 MR. BARENS: YOU HAVE MARKED IT AS A COURT EXHIBIT?

10 THE COURT: DID I? I THINK I DID, DIDN'T I?

11 THE CLERK: YES.

12 THE COURT: YES, IT IS A COURT EXHIBIT.

13 MR. BARENS: ALL RIGHT, THANK YOU VERY MUCH.

14 THE COURT: NOW YOU HAVE GOT A RECORD MADE FOR IT.

15 MR. BARENS: THANK YOU, YOUR HONOR.

16 DID YOU HAVE A COMMENT?

17 MR. WAPNER: NO. I HAVE NO OBJECTION IF THE COURT WANTS  
18 TO GIVE SOME INSTRUCTION ABOUT THE IDEA, WHAT I WAS SAYING  
19 BEFORE, I DON'T WANT IT TO BE CONSTRUED IN ANY OTHER WAY,  
20 OTHER THAN THE FACT THAT TO MAKE MENTION OF AN ARTICLE THAT  
21 WAS NOT ACTUALLY MENTIONED.

22 THE COURT: TELL ME WHAT KIND OF INSTRUCTION WOULD  
23 I BE ABLE TO GIVE?

24 MR. WAPNER: I HAVE NO IDEA.

25 MR. BARENS: WELL, YOU KNOW, SOMETIMES WE CAN TALK  
26 IN JUST PLAIN LANGUAGE TO PEOPLE WHERE WE JUST SAY, "I DID  
27 NOT MEAN TO IMPLY TO YOU THAT I READ ANYTHING IN THE NEWS-  
28 PAPERS."

1 THE COURT: I WILL THINK ABOUT IT.

2 MR. WAPNER: THE COURT GIVES A GENERAL INSTRUCTION  
3 TO THAT EFFECT AT THE END OF THE CASE.

4 MR. BARENS: WHAT INSTRUCTION IS THAT?

5 THE COURT: THE INSTRUCTION IS THAT THEY ARE NOT TO  
6 CONSIDER ANYTHING EXCEPT WHAT IS IN EVIDENCE AND NOT SPECULATE.

7 MR. BARENS: YOU HAVE TO TELL THEM YOU WON'T EITHER.

8 MR. WAPNER: THE COURT GIVES AN INSTRUCTION THAT "NOTHING  
9 I HAVE SAID OR DONE IS MEANT TO IMPLY THAT I BELIEVE OR  
10 DISBELIEVE ANY WITNESS."

11 THE COURT: I AM GOING TO GO FURTHER THAN THAT. ALL  
12 OF THESE DIFFERENCES WHICH HAVE ARISEN AMOUNG COUNSEL, BETWEEN  
13 COUNSEL AND THE COURT, I INTEND TO TELL THE JURY THAT THEY  
14 ARE COMPLETELY TO DISREGARD ANYTHING, ANY IMPRESSION THEY  
15 MIGHT HAVE.

16 MR. BARENS: THANK YOU, YOUR HONOR. I APPRECIATE THAT.

17 THE COURT: THAT IS WHAT I AM GOING TO DO IN NO  
18 UNCERTAIN TERMS.

19 MR. BARENS: THANK YOU, YOUR HONOR.

20 THE COURT: TO BE SURE THERE IS NO ERROR.

21 MR. BARENS: THANK YOU, YOUR HONOR.

22 (AT 2:15 P.M. AN ADJOURNMENT WAS TAKEN,  
23 TO RESUME AT 10:30 A.M., TUESDAY, APRIL  
24 7, 1987.)

25

26

27

28