

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT

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Entered by \_\_\_\_\_  
Date \_\_\_\_\_

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
)  
PLAINTIFF-RESPONDENT, )  
)  
VS. )  
)  
JOE HUNT, AKA JOSEPH HUNT, )  
AKA JOSEPH HENRY GAMSKY, )  
)  
DEFENDANT-APPELLANT. )

SUPERIOR COURT  
NO. A-090435

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 78 OF 101  
(PAGES 12337 TO 12498, 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

TUESDAY, APRIL 7, 1987

VOLUME 78

PAGES 12337 TO 12498 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

COPY

2 A.M. 12337  
3 P.M. 12402

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1 SANTA MONICA, CALIFORNIA; TUESDAY, APRIL 7, 1987; 10:45 A.M.  
2 DEPARTMENT C HON. LAURENCE J. RITTENBAND, JUDGE  
3 (APPEARANCES AS NOTED ON TITLE PAGE.)  
4

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

7 R E B U T T A L

8 MR. WAPNER: CALL MARTIN LEVIN.  
9

10 MARTIN LEVIN,  
11 CALLED AS A WITNESS BY THE PEOPLE ON REBUTTAL, HAVING BEEN  
12 PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

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

15 IF YOU WOULD JUST TAKE A SEAT.

16 THE WITNESS: ALL RIGHT, THANK YOU.

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

18 THE WITNESS: MARTIN LEVIN.

19 MR. WAPNER: MAY I JUST HAVE A MOMENT? I AM TRYING  
20 TO LOCATE THE EXHIBITS, YOUR HONOR.  
21

22 DIRECT EXAMINATION

23 BY MR. WAPNER:

24 Q MR. LEVIN, YOU RECOGNIZE THE PICTURE THAT IS  
25 153 FOR IDENTIFICATION?

26 A YES.

27 Q AND WHO IS IN THAT PICTURE?

28 A MY SON, RON, MY WIFE, CAROL AND YVONNE BURKE.

1 Q IS THAT YVONNE BRATHWAITE BURKE, WHO WAS AT ONE  
2 POINT RUNNING FOR ATTORNEY GENERAL OF THE STATE OF  
3 CALIFORNIA?

4 A YES.

5 Q AND DID I ASK YOU TO TRY AND FIND OUT WHEN IT  
6 WAS THAT THAT PICTURE WAS TAKEN?

7 A YES.

8 Q DID YOU GO THROUGH SOME DOCUMENTS THAT YOU HAD  
9 AT HOME TO TRY AND FIND OUT WHEN THAT PICTURE MIGHT HAVE  
10 BEEN TAKEN?

11 A YES, IT WAS EITHER 1977 OR 1978.

12 Q ALL RIGHT, AND IN ORDER TO CLEAR UP WHETHER IT  
13 WAS '77 OR '78, DID YOU FIND A LETTER THAT WAS WRITTEN BY  
14 MISS BURKE TO YOUR SON?

15 A YES.

16 MR. WAPNER: YOUR HONOR, I HAVE A DOCUMENT THAT I WOULD  
17 LIKE TO HAVE MARKED AS 241 FOR IDENTIFICATION THAT APPEARS  
18 TO BE A LETTER FROM YVONNE BRATHWAITE BURKE TO RON LEVIN.

19 THE COURT: ALL RIGHT.

20 Q BY MR. WAPNER: MR. LEVIN, DO YOU RECOGNIZE  
21 EXHIBIT 241 FOR IDENTIFICATION?

22 A YES.

23

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2-1  
1 Q WHAT IS IT?

2 A IT IS A LETTER THANKING RON FOR HIS CONTRIBUTIONS  
3 TO HER CAMPAIGN FOR ATTORNEY GENERAL.

4 Q WHAT IS THE DATE OF THE LETTER?

5 A MAY 15, 1978.

6 MR. BARENS: YOUR HONOR, WE HAVE A HEARSAY OBJECTION  
7 TO THE STATEMENTS, THE AFFIRMATIVE STATEMENTS CONTAINED IN  
8 THE LETTER.

9 THE COURT:, OVERRULED.

10 Q BY MR. WAPNER: WAS THE PHOTOGRAPH THAT IS 153  
11 FOR IDENTIFICATION, TAKEN AT A FUND-RAISING AFFAIR DURING THAT  
12 CAMPAIGN IN 1978?

13 A YES IT WAS.

14 Q I WANT TO SHOW YOU AN EXHIBIT THAT WE HAVE  
15 PREVIOUSLY MARKED AS 106 FOR IDENTIFICATION. AND I WILL ASK  
16 YOU IF YOU RECOGNIZE THOSE.

17 A YES I DO.

18 Q WHAT ARE THEY?

19 A THESE ARE CREDIT CARDS OF RONNIE'S.

20 Q AND WHERE HAVE YOU SEEN THOSE BEFORE?

21 A THEY WERE IN HIS SMALL OFFICE AT HIS HOME.

22 Q WHAT DID YOU DO WITH THOSE?

23 A I GAVE THEM TO LES ZOELLER.

24 Q AND SHOWING YOU AN EXHIBIT WE HAVE MARKED AS  
25 51 FOR IDENTIFICATION, DO YOU RECOGNIZE WHAT THOSE ARE?

26 A YES. THESE WERE STATEMENTS I FOUND FROM AMERICAN  
27 EXPRESS.

28 Q AND WHAT DID YOU DO WITH THOSE?

2-2  
1 A I ALSO GAVE THEM TO LESS ZOELLER.

2 Q ARE SOME OF THOSE DATED AFTER JUNE OF 1984?

3 MR. BARENS: EXCUSE ME, YOUR HONOR. COULD WE APPROACH  
4 THE BENCH, PLEASE?

5 THE COURT: YES.

6 MR. BARENS: THANK YOU.

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

10 MR. BARENS: YOUR HONOR, I AM TRYING TO FATHOM WHAT WE  
11 ARE REBUTTING IN THIS TESTIMONY.

12 THE COURT: WELL, THE PHOTOGRAPH IS PROPER REBUTTAL.  
13 BUT WHAT IS THIS ONE?

14 MR. WAPNER: YOUR HONOR, THE COURT WILL RECALL AT THE  
15 END OF THE PEOPLE'S CASE, I SAID THAT I WAS GOING TO REST  
16 CONDITIONALLY AND THAT I WOULD CALL ANOTHER WITNESS BUT THAT  
17 IT WAS MY UNDERSTANDING HE WOULD BE CALLED BY THE DEFENSE.

18 AND THERE WAS AN AGREEMENT AT THAT TIME ON THE  
19 RECORD THAT THIS WITNESS WOULD EITHER BE CALLED BY THE DEFENSE  
20 OR THE FACTS WOULD BE PROVEN LATER ON OR STIPULATED TO.  
21 AND THAT IS WHAT I AM DOING.

22 THEY SAID THAT THEY WOULD CALL HIM. THEY SAID  
23 ABSOLUTELY, WE WILL CALL HIM AND --

24 THE COURT: I THINK YOU DID SAY THAT YOU WERE GOING TO.

25 MR. BARENS: YOUR HONOR, I WOULD LIKE TO MAKE SURE  
26 DURING TODAY'S PROCEEDINGS THAT REBUTTAL IS LIMITED -- OTHER  
27 THAN FOR THIS WITNESS OF COURSE -- TO MATTERS --

28 THE COURT: WELL, HE RESTED SUBJECT TO CALLING THE



1 WITNESS. YOU SAID YOU WERE GOING TO CALL HIM. NOW HE WANTS  
2 TO REOPEN AND --

3 MR. BARENS: NO. MY COMMENT IS NO LONGER GOING TO THAT  
4 SUBJECT.

5 MY COMMENT GOES TO AFTER THIS WITNESS, SIR.

6 THE COURT: WHAT DO YOU MEAN? AFTER THIS WITNESS?

7 MR. BARENS: SUBSEQUENT WITNESSES CALLED FOR THE PURPOSE  
8 OF REBUTTING THINGS THAT THE DEFENSE DID DURING THE DEFENSE  
9 CASE, RATHER THAN ADDING NEW SUBJECTS, THAT WE STAY WITHIN  
10 THE GUIDELINES AND --

11 THE COURT: I AM FACED WITH THIS AT THE MOMENT. SO YOU  
12 GO AHEAD. WHEN THAT TIME COMES I WILL LISTEN TO IT.

13 MR. BARENS: THANK YOU, YOUR HONOR.

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

4 Q BY MR. WAPNER: MR. LEVIN, ARE SOME OF THOSE  
5 AMERICAN EXPRESS RECEIPTS DATED AFTER JUNE OF 1984?

6 A YES.

7 Q AND WOULD THOSE BE ONES THAT YOU PICKED UP WHEN  
8 YOU WERE COLLECTING YOUR SON'S MAIL?

9 A YES.

10 Q IS THERE IN FACT ONE THERE FOR THE MONTH OF JUNE  
11 OF 1984?

12 A I DON'T SEE ONE HERE FOR JUNE.

13 Q ALL RIGHT. DIRECTING YOUR ATTENTION -- THAT  
14 IS FINE. THANK YOU.

15 DIRECTING YOUR ATTENTION TO AN EXHIBIT THAT WE  
16 HAVE MARKED AS PEOPLE'S 100, WOULD YOU JUST LOOK AT THAT  
17 BRIEFLY?

18 A YES.

19 Q AND HAD YOU SEEN AT YOUR SON'S APARTMENT IN THE  
20 YEAR 1984, OTHER FILE FOLDERS SIMILAR TO THAT?

21 A YES.

22 Q AND WHERE DID YOU SEE THOSE?

23 A IN THE SMALL OFFICE OF HIS HOME.

24 Q AND WERE THE FILE FOLDERS THAT YOU SAW NEW OR  
25 USED? IN OTHER WORDS, DID THEY HAVE THINGS IN THEM OR WERE  
26 THEY UNUSED AND IN BOXES, OR BOTH?

27 A I SAW BOTH. I SAW ONES THAT WERE USED AND SOME  
28 THAT WERE NOT USED.

3-2

1 Q AND THE ONES THAT WERE NOT USED, WHERE DID YOU  
2 SEE THOSE?

3 A SOME WERE ON THE SHELF AND SOME WERE IN THE  
4 GARAGE.

5 Q AND WHAT DID YOU FIND IN THE GARAGE?

6 A I FOUND THREE OR FOUR CASES OF THESE FOLDERS  
7 THAT WERE PACKED IN JUST REGULAR CASES.

8 Q AND WHEN YOU SAY "CASES," WHAT WAS IN THE CASES  
9 THAT YOU FOUND?

10 A FIVE OF THOSE PACKAGES WOULD BE IN THE CASE.

11 Q INDICATING THE BOX THAT I AM NOW HOLDING THAT  
12 IS ON THE TABLE (COUNSEL INDICATING)?

13 A YES, FIVE OF THOSE WOULD BE IN THE CASES.

14 Q AND WERE THERE THREE OR FOUR CASES?

15 A I DON'T REMEMBER, TWO, THREE OR FOUR, YES.

16 MR. WAPNER: YOUR HONOR, MAY THE RECORD REFLECT THAT  
17 I AM OPENING THIS BOX THAT IS MARKED ACCO ON THE TOP?

18 THE COURT: YES.

19 MR. WAPNER: AND REMOVING FROM IT ONE GREEN FILE, AND  
20 MAY THAT FILE, WHICH IS IN BLANK, BE MARKED AS 242 FOR  
21 IDENTIFICATION?

22 THE COURT: IT WILL BE SO MARKED.

23 Q BY MR. WAPNER: AND DID ALL OF THE BOXES THAT  
24 YOU SAW IN THE GARAGE CONTAIN FILES IDENTICAL TO 242 FOR  
25 IDENTIFICATION?

26 A YES.

27 Q AND YOU SAY SOME OF THOSE, THAT WERE UNUSED AND  
28 BLANK IN THE SMALL OFFICE?

1 A YES.

2 Q AND DID YOU FIND OTHERS IN THE SMALL OFFICE THAT  
3 ACTUALLY CONTAINED MATERIAL?

4 A YES.

5 Q AND WHAT DID YOU DO WITH THOSE?

6 A I TOOK A LOT OF THE MATERIAL OUT AND JUST KEPT  
7 THE FOLDERS.

8 Q HOW WERE THEY LABELED?

9 A THEY WERE PRINTED ON THE OUTSIDE OF THE -- ON  
10 THE BOTTOM OF THE FOLDERS.

11 Q AND DID YOU BRING -- AFTER YOU EMPTIED THOSE,  
12 DID YOU KEEP SOME OF THEM AT YOUR HOME?

13 A YES.

14 Q AND DID YOU BRING SEVERAL OF THOSE TO COURT TODAY?

15 A YES.

16 Q AND ARE THESE THE FILE FOLDERS THAT YOU BROUGHT  
17 (COUNSEL INDICATING)?

18 A YES.

19 Q AND WERE THEY ALL LABELED IN THE MANNER THAT  
20 THEY ARE NOW WITH WHITE LABELS ON THE BOTTOM AND THEN TYPED  
21 ON THEM?

22 A YES.

23 MR. WAPNER: MAY THOSE FILES AS A GROUP BE MARKED 243  
24 FOR IDENTIFICATION, YOUR HONOR?

25 THE COURT: SO MARKED.

26 Q BY MR. WAPNER: DID YOUR SON HAVE ANY SCARS ON  
27 HIS FACE THAT YOU KNEW OF?

28 A NONE.

1 Q DO YOU REMEMBER WHAT COLOR RON'S EYES WERE?

2 A THEY WERE BLUE.

3 MR. WAPNER: NOTHING FURTHER.

4

5 CROSS-EXAMINATION

6 BY MR. BARENS:

7 Q GOOD MORNING, MR. LEVIN. WAS RON LEVIN METICULOUS  
8 ABOUT HIS PAPERWORK IN HIS FILES?

9 A YES.

10 Q I PRESUME IF HE HAD A NEW MATTER -- YOU WOULD PRESUME  
11 THAT HE WOULD USE ONE OF THOSE FILES TO PUT THE NEW MATTER  
12 IN?

13 A I COULD PRESUME. I DON'T KNOW.

14 Q YOU COULDN'T TELL? HE HAD HUNDREDS OF THOSE FILES,  
15 DID HE NOT?

16 A HE HAD QUITE A FEW.

17 Q THOSE WERE UNUSED, WERE THEY NOT?

18 A THE NEW ONES WERE UNUSED.

19 Q AND THE NEW ONES LOOKED LIKE THE OLD ONES HE HAD  
20 BEEN USING?

21 A THEY WERE THE SAME TYPE OF FOLDERS.

22 Q YOU TOOK THE PAPERS OUT OF THOSE FILES THAT WERE  
23 IN THE DESK, DID YOU NOT?

24 A YES.

25 Q AND THOSE FILES THAT WERE ON THE DESK, LOOK TO  
26 YOU -- DO THEY NOT, LIKE THE NEW FILES THAT HAVE NOT BEEN USED,  
27 DON'T THEY?

28 A WOULD YOU REPEAT THAT?

1 Q THE FILES THAT ARE ON THE TABLE IN FRONT OF YOU  
2 SIR, THOSE LOOK TO YOU LIKE THE NEW FILES THAT HAVE NOT BEEN  
3 USED, DON'T THEY?

4 A YES. THEY ARE THE SAME FILES.

5 Q IT LOOKS LIKE WE HAVE KIND OF A CONSISTENT WORK  
6 PATTERN THAT HE USES THE SAME TYPES OF MATERIALS?

7 MR. WAPNER: OBJECTION, ARGUMENTATIVE.

8 THE COURT: SUSTAINED.

9 Q BY MR. BARENS: DID HE THROW HIS OLD FILES AWAY,  
10 TO YOUR KNOWLEDGE?

11 A I DON'T KNOW.

12 Q YOU FOUND A LOT OF HIS FILES, DID YOU NOT, SIR?

13 A YES.

14 Q DO YOU KNOW WHETHER HIS FINGERPRINTS ARE ON THOSE  
15 FILES IN FRONT OF YOU?

16 A DO I KNOW?

17 Q YES.

18 A I DON'T KNOW IF THERE ARE FINGERPRINTS. BUT I  
19 IMAGINE THEY WOULD BE.

20 MR. BARENS: THANK YOU, MR. LEVIN.

21 THE COURT: ALL RIGHT. ANY REDIRECT?

22 MR. WAPNER: YES.

23

24

REDIRECT EXAMINATION

25 BY MR. WAPNER:

26 Q JUST SO THE RECORD IS CLEAR, THE FILES THAT ARE  
27 243, THOSE ARE THE FILE JACKETS, CORRECT?

28 A YES.

1 Q WHEN YOU TOOK THEM FROM HIS HOUSE, THEY WERE FULL  
2 OF INFORMATION THAT WERE IN THOSE FILES?

3 A YES, SURE.

4 Q WHAT DID YOU DO WITH ALL OF THE INFORMATION?

5 A I TOOK THE INFORMATION, THEN I THREW THEM AWAY.  
6 I USED THE FILES -- I HAVE BEEN USING THE FILES FOR MY OWN,  
7 PERSONAL USE.

8 Q USING THE FILE JACKETS?

9 A YES, FILE JACKETS FOR MY OWN, PERSONAL USE.  
10 THAT'S RIGHT.

11 MR. WAPNER: THANK YOU. NOTHING FURTHER.

12 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

13 MR. WAPNER: MAY WE APPROACH FOR JUST A SECOND?

14 THE COURT: YES.

15 (THE FOLLOWING PROCEEDINGS WERE HELD  
16 AT THE BENCH:)

17 MR. WAPNER: I JUST WANTED TO TELL YOU THAT I AM GOING  
18 TO CALL LISA HART TO THE STAND. I AM NOT SURE EXACTLY WHERE  
19 SHE IS. SHE IS EITHER IN THE D.A.'S OFFICE RIGHT NOW --

20 THE COURT: WELL, DIDN'T YOU ARRANGE FOR IT BEFORE YOU  
21 CAME IN HERE?

22 MR. WAPNER: YES. BUT SHE IS IN JURY TRIAL IN JUDGE  
23 ALBRECHT'S COURT. SHE IS TALKING TO WITNESSES.

24 I DON'T KNOW WHETHER SHE IS IN HIS COURTROOM OR --

25 THE COURT: WHY DON'T YOU TAKE A LOOK AND SEE IF SHE  
26 IS IN THERE?

27 MR. WAPNER: I DIDN'T KNOW EXACTLY --

28 MR. BARENS: COULD MR. CHIER ADDRESS THE COURT FOR A

1 MOMENT, SIR?

2 THE COURT: WHAT DOES HE WANT?

3 MR. BARENS: I BELIEVE THAT WHEN I WAS NOT HERE YOUR HONOR,  
4 THE DAY THAT YOU DISCUSSED THE ISSUE OF THE ADMITTANCE OF  
5 DOCUMENTS INTO EVIDENCE -- I AM NOT SURE WHETHER IT WAS LAST  
6 THURSDAY OR FRIDAY --

7 THE COURT: YOU MEAN GOING OVER THE EXHIBITS?

8 MR. BARENS: YES, SIR. THERE WAS AN ISSUE WHERE  
9 MR. CHIER ADVISED ME THAT THE COURT SAID THAT THE DEFENSE COULD  
10 NOT CALL LISA HART.

11 MR. WAPNER: THE COURT NEVER MADE THAT RULING.

12 THE COURT: DON'T YOU BELIEVE HIM ABOUT THAT.

13 MR. BARENS: YOUR HONOR, I MAY HAVE A MISUNDERSTANDING.

14 THE COURT: YES. IT IS A MISUNDERSTANDING. I DON'T  
15 SAY YOU COULD OR COULD NOT CALL ANY WITNESS.

16 MR. BARENS: THAT'S RIGHT. AN OFFER OF PROOF FROM THE  
17 DEFENSE WAS REQUIRED.

18 THE COURT: WELL, AN OFFER OF PROOF IS ALTOGETHER  
19 DIFFERENT THAN CALLING THE WITNESS.

20 MR. BARENS: CAN WE HAVE AN OFFER OF PROOF NOW? IF THE  
21 PEOPLE PLAN TO CALL HER, I WOULD LIKE TO REQUEST THE SAME  
22 OFFER OF PROOF. WHEN WE WERE GOING TO CALL LISA HART, YOUR  
23 HONOR SAID THAT WE WERE FORBIDDEN TO DO SO WITHOUT MAKING AN  
24 OFFER OF PROOF.

25 THE COURT: I DIDN'T SAY THAT.

26 MR. BARENS: WELL, I DON'T THINK YOU USED THE WORD  
27 "FORBIDDEN" BUT YOUR HONOR MADE A DEMAND FOR AN OFFER OF  
28 PROOF.



1 THE COURT: SO WHAT DO YOU WANT?

2 MR. BARENS: AN OFFER OF PROOF.

3 THE COURT: HE WANTS TO REBUT THE TESTIMONY I ASSUME  
4 OF WHAT THE WITNESSES SAID THAT LISA HART WAS TELLING THIS  
5 GIRL THAT SHE SHOULDN'T TESTIFY TO THIS AND TO THAT.

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5-1  
1 MR. WAPNER: RIGHT.

2 THE COURT: THAT IS PROPER REBUTTAL.

3 MR. BARENS: ALL RIGHT. AND WE, OF COURSE, TODAY HAVE  
4 A CHANCE FOR SURREBUTTAL?

5 THE COURT: SURREBUTTAL AS TO WHAT?

6 MR. BARENS: ON HIS WITNESSES, SIR.

7 THE COURT: SURE, YOU HAVE A RIGHT TO CROSS-EXAMINE.

8 MR. BARENS: SURREBUTTAL.

9 THE COURT: SURREBUTTAL. WHAT SURREBUTTAL WITNESSES  
10 ARE YOU TALKING ABOUT?

11 MR. BARENS: TO REBUT HIS REBUTTAL.

12 THE COURT: WHO?

13 MR. BARENS: THE WITNESSES THAT WILL BE CALLED TO  
14 CONTRADICT WHAT MAY BE SAID BY THIS WITNESS.

15 THE COURT: WELL, IF YOU HAVE ANY SURREBUTTAL WITNESSES,  
16 YOU HAVE THE RIGHT TO PRESENT THEM.

17 MR. BARENS: THANK YOU, YOUR HONOR.

18 THE COURT: WE WILL TALK ABOUT IT AT THAT TIME.

19 MR. BARENS: THANK YOU, YOUR HONOR.

20 (THE FOLLOWING PROCEEDINGS WERE HELD

21 IN OPEN COURT IN THE PRESENCE AND

22 HEARING OF THE JURY:)

23 MR. WAPNER: CALL LISA HART.

24 THE CLERK: IF YOU WOULD RAISE YOUR RIGHT HAND TO BE  
25 SWORN.

26

27

28

1 LISA HART,  
2 CALLED AS A WITNESS BY THE PEOPLE ON REBUTTAL, WAS SWORN  
3 AND TESTIFIED AS FOLLOWS:

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

8 THE WITNESS: I DO.

9 THE CLERK: PLEASE STATE AND SPELL YOUR NAME FOR THE  
10 RECORD.

11 THE WITNESS: LISA HART, L-I-S-A, H-A-R-T.

12

13

DIRECT EXAMINATION

14

BY MR. WAPNER:

15

Q MISS HART, BY WHOM ARE YOU EMPLOYED?

16

A THE DISTRICT ATTORNEY'S OFFICE, COUNTY OF LOS  
17 ANGELES, ASSIGNED TO THE SANTA MONICA BRANCH OFFICE.

18

Q AND WHAT DO YOU DO FOR THE DISTRICT ATTORNEY'S  
19 OFFICE?

20

A I AM A DEPUTY DISTRICT ATTORNEY.

21

Q AND AS PART OF YOUR DUTIES AS A DEPUTY DISTRICT  
22 ATTORNEY, WERE YOU ASKED TO GO TO TUCSON, ARIZONA, AS PART  
23 OF THE INVESTIGATION OF THIS CASE?

24

A YES.

25

Q WHEN WAS IT THAT YOU WERE ASKED TO DO THAT?

26

A I WAS PROBABLY ASKED TO GO NOVEMBER 25TH, AND  
27 I DID GO ON NOVEMBER 26, 1986.

28

Q AND ON NOVEMBER 26 -- AND THE 26TH WAS A WEDNESDAY?

5-3

1 A YES, THE WEDNESDAY BEFORE THANKSGIVING.

2 Q WHOM DID YOU GO WITH?

3 A I WENT WITH SERGEANT EDMONDS FROM THE BEVERLY  
4 HILLS POLICE DEPARTMENT, DETECTIVE EDHOLM FROM THE BEVERLY  
5 HILLS POLICE DEPARTMENT, AND BILL SCHAEFER FROM THE DISTRICT  
6 ATTORNEY'S OFFICE, INVESTIGATIONS.

7 Q WHAT WAS THE PURPOSE OF YOUR GOING TO TUCSON?

8 A I WAS SUPPOSED TO BE A CONTACT FOR CARMEN AND  
9 CHINO, FROM THE DISTRICT ATTORNEY'S OFFICE, AND I WAS SUPPOSED  
10 TO BE TALKING TO THEM SO THAT IF THERE WERE -- IF THERE WAS  
11 A NEED FOR THEM TO CONTINUE TO DEAL WITH THE DA'S OFFICE,  
12 THEY WOULD HAVE SOMEBODY WHO WOULDN'T BE IN TRIAL, BECAUSE  
13 YOU WERE GOING TO BE IN TRIAL AND I WASN'T GOING TO BE IN  
14 TRIAL.

15 ALSO, IF THERE WERE ANY LEGAL QUESTIONS TO COME  
16 UP, THEN I WOULD BE AVAILABLE TO ANSWER THOSE QUESTIONS.

17 Q WHEN YOU WENT TO TUCSON, WHAT TIME DID YOU ARRIVE  
18 THERE?

19 A WE ARRIVED SHORTLY AFTER NOON.

20 Q AND DID YOU DIVIDE THE WORK IN TUCSON UP INTO  
21 TEAMS?

22 A YES.

23 Q WHOM DID YOU WORK WITH?

24 A I WORKED WITH DETECTIVE EDHOLM.

25 Q AND INVESTIGATOR SCHAEFER AND SERGEANT EDMONDS  
26 ALSO WORKED TOGETHER, THE TWO OF THEM?

27 A RIGHT.

28 Q AND WHAT WAS YOUR JOB TO BE WITH DETECTIVE EDHOLM?

1           A       WELL, WE WERE SUPPOSED TO TALK TO CARMEN WHEN  
2 WE ARRIVED, THAT WAS A PRESCHEDULED MEETING THAT WAS  
3 SUPPOSED TO TAKE PLACE AROUND 1:00, BUT ENDED UP NOT TAKING  
4 PLACE.

5           Q       WHAT HAPPENED WHEN YOU GOT THERE?

6           Q       WHEN WE ARRIVED THERE SHORTLY AFTER NOON, I WAS  
7 TOLD ABOUT A PREARRANGED SIGNAL THAT DETECTIVE MYERS FROM  
8 THE TUCSON POLICE DEPARTMENT WAS TO HAVE WITH CARMEN.

9                    APPARENTLY, SHE WAS NERVOUS ABOUT PHONE CALLS  
10 COMING IN, SO HE WAS TO PHONE HER, RING ONCE AND HANG UP  
11 AND THEN TO PHONE AGAIN AND SHE WOULD KNOW WHO IT WAS WHO  
12 WAS CALLING.

13          Q       DID HE DO THAT?

14          A       YES. HE WAS SUPPOSED TO DO THAT AT 1:00 O'CLOCK,  
15 THAT WAS THE PREARRANGED TIME.

16          Q       WHAT HAPPENED AT 1:00 O'CLOCK?

17          A       NO ONE ANSWERED THE PHONE.

18          Q       WHAT DID YOU DO AFTER THAT?

19          A       WHILE I WAS SITTING THERE, HE TRIED SEVERAL MORE  
20 TIMES AND WE WERE REALLY JUST SITTING THERE AND AT AROUND  
21 2:30, I DECIDED THAT I WOULD TRY TO CONTACT CARMEN'S FATHER,  
22 TO SEE IF THERE WAS A PROBLEM IN MEETING WITH CARMEN, SINCE  
23 SHE HAD AGREED TO MEET WITH US BEFORE.

24          Q       DID YOU CONTACT CARMEN'S FATHER?

25          A       YES, AT 2:30.

26          Q       WHAT HAPPENED WHEN YOU TALKED TO HIM?

27          A       I CALLED HIM AT HIS PLACE OF BUSINESS.

28          Q       DID YOU TELL HIM WHO YOU WERE?

1           A        YES.

2                    I TOLD HIM I WAS A DEPUTY DISTRICT ATTORNEY FROM  
3 THE COUNTY OF LOS ANGELES, SANTA MONICA BRANCH OFFICE, AND  
4 THAT I WAS DOWN TO TALK TO CARMEN AND CHINO ABOUT WHAT THEY  
5 HAD TOLD THE TUCSON POLICE OFFICERS AND ALSO TOLD YOU.

6           Q        WHAT HAPPENED WHEN YOU TALKED TO HIM?

7           A        HE SAID THAT HE HAD RETAINED A LAWYER, OR THAT  
8 THERE WAS A FAMILY LAWYER BY THE NAME OF LEE LARSEN AND THAT  
9 HE WOULD LIKE TO CONSULT WITH THAT LAWYER BEFORE HE MADE  
10 ANY PROMISES TO ME REGARDING AN INTERVIEW.

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1 Q AND AFTER HE SAID HE WANTED TO CONSULT WITH A  
2 LAWYER, WHAT DID YOU DO?

3 A I SAID, "OKAY" AND I GAVE HIM A NUMBER WHERE  
4 I COULD BE REACHED.

5 HE SAID, "NO. JUST PHONE ME BACK IN ABOUT 10  
6 OR 20 MINUTES."

7 Q DID YOU DO THAT?

8 A YES, I CALLED HIM BACK.

9 Q WHAT HAPPENED WHEN YOU CALLED HIM BACK?

10 A HE SAID THAT HE TALKED TO HIS LAWYER AND THAT  
11 IT WAS OKAY FOR AN INTERVIEW TO BE SET UP, BUT HE WOULD  
12 PREFER FOR US TO NOT ASK CARMEN ANY QUESTIONS AND, RATHER,  
13 THAT SHE COULD DO AN IDENTI KIT OF THE PERSON THAT SHE SAW.

14 AND THE PURPOSE, IN MY MIND, FOR THE IDENTI KIT  
15 WAS WE WERE GOING TO BE DIVIDING UP INTO TEAMS AND THAT ONE  
16 TEAM WAS GOING TO BE TAKING THE IDENTI KIT TO GAY BARS TO  
17 SEE IF THEY COULD FIND THAT PERSON AND ANOTHER PERSON WAS  
18 GOING TO BE TAKING IT TO CLASSIC CAR DEALERSHIPS FOR THE  
19 PURPOSE OF FINDING THE PERSON, BECAUSE SHE DESCRIBED THE  
20 CAR AS BEING A CLASSIC TYPE CAR.

21 Q AND WHEN HER FATHER SAID IT WAS OKAY FOR YOU  
22 TO TALK TO HER ABOUT THE IDENTI KIT, WHAT HAPPENED THEN?

23 A HE GAVE US THE DIRECTIONS TO A HOUSE IN RIO RICO,  
24 WHICH IS SOUTH OF TUCSON NEAR THE MEXICAN BORDER WHERE THE  
25 FAMILY HAD LIKE A VACATION HOUSE, AND THAT IS WHERE EVERYONE  
26 WOULD BE THERE.

27 Q AND AFTER HE GAVE YOU THE DIRECTIONS, WHAT  
28 HAPPENED?

1           A       HE GAVE US THE DIRECTIONS. HE TOLD ME TO BE  
2 THERE AROUND 7:00 O'CLOCK AND THEN WE JUST STAYED AT THE  
3 POLICE STATION WITH NOT TERRIBLY MUCH TO DO.

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6A  
1 Q DID YOU TALK TO HIM AGAIN BEFORE GOING OUT THERE?

2 A YES. HE PHONED -- I CAN'T REMEMBER EXACTLY HOW  
3 LONG, BUT IT WAS A SHORT TIME LATER, CALLED UP AND SAID THAT  
4 HE HAD CHANGED HIS MIND AND THAT HE DIDN'T WANT US TO GO DOWN  
5 THERE AT ALL. BUT IF I HAD QUESTIONS, THAT I SHOULD CALL HIS  
6 LAWYER, LEE LARSEN.

7 Q WHAT DID YOU DO IN THAT REGARD?

8 A I CALLED HIS LAWYER.

9 Q WHERE DID YOU CALL?

10 A HE WAS --

11 Q WELL, DID YOU FIRST CALL HIS OFFICE?

12 A I CALLED HIS OFFICE.

13 Q WHAT DID YOU FIND OUT?

14 A I CALLED HIS OFFICE. I WAS TOLD THAT HE WAS IN  
15 TRIAL.

16 Q DID THEY TELL YOU WHERE HE WAS IN TRIAL?

17 A YES.

18 Q WHAT DID YOU DO?

19 A I CALLED THE FEDERAL COURTHOUSE WHERE HE WAS IN  
20 TRIAL, JUDGE BROWNING'S CHAMBERS.

21 Q WHAT TIME WAS IT ABOUT WHEN YOU CALLED?

22 A PROBABLY AROUND -- I STARTED CALLING PROBABLY  
23 AROUND 3 O'CLOCK.

24 Q DID YOU FINALLY REACH SOMEBODY?

25 A AT 4 O'CLOCK OR 4:30, I REACHED JUDGE BROWNING.  
26 HE ANSWERED THE PHONE, HIMSELF.

27 Q WHAT DID YOU SAY?

28 A I SAID THAT I WAS A D.A. AND THAT I WAS FROM

6A ^  
1 LOS ANGELES AND I WAS TRYING TO GET IN TOUCH WITH LEE LARSEN.  
2 HE SAID THAT LEE WAS JUST LEAVING THE COURTROOM  
3 AND HE WOULD RUN AFTER HIM.

4 Q AND DID MR. LARSEN EVENTUALLY COME TO THE PHONE?

5 A YES.

6 Q WHEN YOU SPOKE TO HIM, WHAT HAPPENED?

7 A I TOLD HIM WHO I WAS AND WHAT I WAS DOWN IN TUCSON  
8 FOR AND HE SAID, "OH, I UNDERSTAND BECAUSE I USED TO BE A  
9 PROSECUTOR FOR TUCSON, ALSO."

10 AND HE SAID, "I UNDERSTAND WHAT YOU ARE TRYING  
11 TO DO. BUT THEY WOULD PREFER HER NOT TO BE INTERVIEWED."

12 BUT IT WAS OKAY FOR US TO GO DOWN THERE TO GET  
13 AN IDENTI KIT FROM CHINO AND CARMEN AND ALSO TO DISCUSS THE  
14 DATE ON WHICH THEY HAD SEEN THIS PERSON AT THE GAS STATION.

15 Q DID YOU TELL MR. LARSEN WHY IT WAS THAT YOU WANTED  
16 TO DISCUSS THE DATE, WHY THAT WAS IMPORTANT?

17 A YES.

18 Q WHAT DID YOU TELL HIM?

19 A WE THOUGHT THAT IF WE COULD GET A DATE, SHE HAD  
20 BELIEVED THAT THE PERSON WHO SHE HAD SEEN HAD PAID WITH A  
21 CREDIT CARD.

22 AND WE INTENDED TO GET THE CREDIT CARD RECEIPTS  
23 AND WE COULD FIND IT BY THE CREDIT CARD RECEIPTS.

24 Q AND WHEN YOU TALKED TO MR. LARSEN, HE SAID IT WAS  
25 OKAY TO GO DOWN AND TALK TO THEM ABOUT THE INDENTI KIT AND  
26 THE DATE, IS THAT CORRECT?

27 A CORRECT.

28 Q DID HE GIVE YOU ANY INSTRUCTIONS ABOUT TALKING

6A- 1 TO THEM ABOUT ANYTHING ELSE?

2 A HE ASKED ME NOT TO QUESTION HER REGARDING WHAT  
3 SHE HAD SEEN AND I AGREED.

4 Q AND AFTER TALKING TO MR. LARSEN, WHAT DID YOU DO?

5 A I WENT BACK TO THE HOTEL AND I GOT A JACKET AND  
6 WE DROVE DOWN TO RIO RICO.

7 Q HOW LONG DID IT TAKE YOU TO GET DOWN TO RIO RICO?

8 A I THINK IT WAS MORE THAN AN HOUR. IT IS FAR AWAY  
9 AND IT IS VERY DARK THERE AND WE ACTUALLY GOT LOST.

10 SO I CAN'T RECALL EXACTLY WHAT TIME. BUT I THINK  
11 WE GOT THERE AROUND 8 O'CLOCK.

12 Q WHEN YOU GOT THERE, WAS CARMEN CANCHOLA THERE?

13 A NO.

14 Q WAS MR. JESUS LOPEZ THERE?

15 A NO.

16 Q WAS MR. CANCHOLA THE FATHER, THERE?

17 A YES.

18 Q DID YOU SPEAK WITH HIM FOR A WHILE?

19 A YES.

20 Q AND DID HE SAY ANYTHING TO YOU ABOUT WHAT YOU  
21 COULD TALK TO HER ABOUT AND NOT TALK TO HER ABOUT?

22 A NO.

23 Q DID YOU TELL HIM THAT YOU HAD ALREADY SPOKEN WITH  
24 MR. LARSEN?

25 A YES. HE HAD, ALSO.

26 Q AND HOW LONG DID YOU WAIT THERE FOR CARMEN TO  
27 ARRIVE?

28 A A GOOD HOUR.

6A-4  
1 Q AND WHAT HAPPENED WHEN CARMEN GOT THERE?

2 WELL, FIRST OF ALL, LET ME ASK YOU, DID CARMEN AND CHINO COME  
3 TOGETHER?

4 A YES.

5 Q WHAT HAPPENED WHEN THEY GOT THERE?

6 A IT WAS SOME BIRTHDAY PARTY FOR A BROTHER OF HERS,  
7 I THINK.

8 AND SHE BROUGHT SOMETHING, SOME FOOD WITH HER AND  
9 SHE PUT THE FOOD DOWN.

10 I WOULD SAY WITHIN 45 SECONDS, SHE WAS IN WITH  
11 SERGEANT EDHOLM, DOING THE IDENTI KIT.

12 Q BEFORE SHE WENT IN WITH DETECTIVE EDHOLM TO DO  
13 THE IDENTI KIT, DID YOU INTRODUCE YOURSELF TO HER?

14 A I DID.  
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5A  
1 Q WHAT DID YOU SAY?

2 A I SAID THAT I WAS LISA HART. I WAS FROM THE  
3 D.A.'S OFFICE. I HAD TAKEN MY BADGE OUT OF MY PURSE.

4 I DIDN'T BRING MY PURSE INTO THE HOUSE WITH ME.  
5 I TOOK MY BADGE OUT OF MY PURSE. I USUALLY KEEP MY DRIVER'S  
6 LICENSE ACROSS FROM MY BADGE.

7 BUT WHEN -- I DID THIS IN THE CAR. I TOOK MY D.A.  
8 BADGE AND I PUT IT ON TOP OF MY DRIVER'S LICENSE BECAUSE  
9 MR. CANCHOLA, WHEN I SPOKE WITH HIM, SPECIFICALLY SAID THAT  
10 HE WANTED TO INSPECT MY I.D. WHEN I GOT THERE.

11 Q DID YOU SHOW IT TO MR. CANCHOLA WHEN YOU GOT THERE?

12 A I DID.

13 Q DOES THE I.D. CARD THAT YOU REFERRED TO HAVE A  
14 PICTURE ON IT?

15 A YES.

16 Q WHEN CARMEN GOT THERE, DID YOU SHOW HER THE I.D.  
17 CARD?

18 A I JUST OPENED UP MY BADGE LIKE THAT (INDICATING).

19 Q WHAT DOES THE BADGE SAY?

20 A IT IS A GOLD BADGE. AND IT SAYS -- I THINK IT  
21 SAYS, "DEPUTY DISTRICT ATTORNEY."

22 I AM NOT CERTAIN. BUT I ALSO INTRODUCED MYSELF  
23 AS A DEPUTY DISTRICT ATTORNEY.

24 MR. BARENS: BEST EVIDENCE.

25 THE COURT: HAVE YOU GOT IT WITH YOU?

26 THE WITNESS: IT IS IN MY PURSE.

27 THE COURT: HERE?

28 THE WITNESS: IN MY OFFICE.

1 MR. WAPNER: WE CAN PRODUCE IT LATER FOR COUNSEL, IF  
2 HE WANTS TO INSPECT IT.

3 MR. BARENS: I HAVE NEVER SEEN ONE.

4 THE COURT: GO AHEAD.

5 Q BY MR. WAPNER: AND WHEN YOU TOLD HER THAT YOU  
6 WERE A DEPUTY DISTRICT ATTORNEY, DID YOU SAY ANYTHING ELSE  
7 AT THAT TIME?

8 A SHE SEEMED TO KNOW WHO I WAS AND BE EXPECTING  
9 US. AND I WOULD SAY SHE LITERALLY STAYED IN THE ROOM 45 SECONDS  
10 BEFORE SHE WENT INTO THE ROOM WITH HER FATHER TO DO THE  
11 INDENTI KIT.

12 Q AND WHEN SHE DID THAT, WHAT DID YOU DO?

13 A I STAYED IN THE -- IT WAS A LIVING ROOM, WITH CHINO  
14 AND THERE WAS A FRIEND OF HIS WHOSE NAME I DON'T REMEMBER.  
15 BUT HE WAS HAWAIIAN. AND HE WAS AN EXPLORER SCOUT FOR THE  
16 TUCSON POLICE DEPARTMENT.

17 Q AND HOW LONG WERE YOU IN THAT ROOM WITH CHINO AND  
18 THIS PERSON WHO WAS THE EXPLORER SCOUT?

19 A ABOUT AN HOUR.

20 Q AND HOW MUCH OF THAT HOUR DID YOU SPEND TALKING  
21 TO THE EXPLORER SCOUT AND HOW MUCH DID YOU SPEND TALKING TO  
22 CHINO?

23 A CHINO DIDN'T WANT TO TALK TO ME. I HAD RECEIVED  
24 ORDERS NOT TO TALK TO HIM, ANYWAY. SO I SPENT THE MAJORITY  
25 OF THE TIME EITHER IN SILENCE OR TALKING WITH THE EXPLORER  
26 SCOUT.

27 Q DID YOU EVER TELL CHINO THAT YOU DIDN'T BELIEVE  
28 HIM?

5A-  
1 A BELIEVE HIM ABOUT WHAT?

2 Q ABOUT ANYTHING?

3 A NO.

4 Q DID YOU EVER TRY TO DISSUADE HIM FROM COMING HERE  
5 TO TESTIFY AS A WITNESS?

6 A I DIDN'T TALK ABOUT THAT AT ALL, NO.

7 THE COURT: DID YOU DISCUSS -- INDICATE WITH EITHER ONE  
8 OF THE PERSONS WHO TESTIFIED HERE AND MADE THE IDENTIFICATION,  
9 ABOUT THE CASE AT ALL, ABOUT THE PROSPECTS OF CONVICTION AND  
10 THINGS OF THAT KIND?

11 THE WITNESS: NO. NO, SHE ASKED ME WHY SUCH A FUSS WAS  
12 BEING MADE. CARMEN ASKED ME THAT.

13 Q BY MR. WAPNER: WAS THAT AT SOME POINT LATER?

14 A YES.

15 MR. WAPNER: CAN WE GET TO THAT IN SEQUENCE?

16 THE COURT: GO AHEAD. I THOUGHT IT WAS AT THIS CONFERENCE.

17 Q BY MR. WAPNER: DID YOU TELL CHING IF IN FACT YOU  
18 WERE WITH HIM AND THE EXPLORER SCOUT, THAT YOU HAD BEEN TOLD  
19 NOT TO TALK TO HIM ABOUT THE CASE?

20 A YES. IT WAS SLIGHTLY UNCOMFORTABLE BECAUSE HE  
21 WAS SITTING THERE. I COULDN'T AND DIDN'T WANT TO SAY ANYTHING.

22 AND THE EXPLORER SCOUT WAS THERE. SO THIS  
23 EXPLORER SCOUT AND I JUST STARTED CHATTING ABOUT RAPE VICTIMS.

24 Q WAS HE ASKING YOU QUESTIONS?

25 A YES. I HAD HAD A LOT OF EXPERIENCE WITH RAPE  
26 CASES AND HE HAD JUST HAD ONE. AND HE WAS ASKING ME ABOUT  
27 THE PROSECUTION OF RAPE CASES.

28 Q INCIDENTALLY, HOW LONG HAVE YOU WORKED IN THE D.A.'S

1 OFFICE?

2 A I HAVE BEEN A D.A. FOR ABOUT FOUR AND A HALF YEARS.

3 Q BEFORE THAT, WHERE DID YOU WORK?

4 A I WAS A CITY ATTORNEY FOR ABOUT A YEAR AND A HALF.

5 Q THAT IS THE LOS ANGELES CITY ATTORNEY'S OFFICE?

6 A YES.

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7-1

1 Q AND YOU SAID YOU HAD SOME EXPERIENCE WITH RAPE  
2 CASES.

3 DID YOU WORK IN SOME SPECIALIZED UNIT HANDLING  
4 THE PROSECUTION OF RAPE CASES?

5 A YES.

6 MR. BARENS: WHAT IS THE RELEVANCY ABOUT RAPE, UNLESS  
7 WE HAVE ONE?

8 THE COURT: ALL RIGHT, THAT IS THE LAST QUESTION ON  
9 THIS SUBJECT?

10 MR. WAPNER: YES, YOUR HONOR.

11 Q AND THE EXPLORER SCOUT HAD HAD THIS RAPE CASE  
12 SO HE WAS INTERESTED IN IT AND WANTED TO TALK TO YOU ABOUT  
13 IT?

14 A YES.

15 Q AND AFTER YOU FINISHED TALKING WITH THE EXPLORER  
16 SCOUT, AT SOME POINT DID CARMEN FINISH HER IDENTI KIT OR  
17 FINISH WITH DETECTIVE EDHOLM?

18 A YES.

19 Q AND WHAT HAPPENED -- WHEN DID YOU NEXT SEE HER?

20 A WHEN SHE CAME OUT OF THIS LITTLE ROOM IN WHICH  
21 SHE HAD BEEN WITH DETECTIVE EDHOLM AND HER FATHER, SHE CAME  
22 OUT.

23 Q AND HOW LONG WAS SHE IN THERE ALTOGETHER, IF  
24 YOU KNOW?

25 A I WOULD SAY ABOUT AN HOUR.

26 Q AND WHEN SHE CAME OUT, WHAT HAPPENED?

27 A SHE CAME OUT, SAYING THAT SHE COULDN'T DO  
28 IT, THAT IT WAS VERY DIFFICULT. AND SHE WAS UPSET AND

1 SEEMED TIRED. AND THAT WAS IT.

2 Q AND DID YOU TALK TO HER AT THAT POINT?

3 A SHE CAME OUT AND SHE ASKED ME SOME QUESTIONS.

4 Q WHAT DID SHE SAY?

5 A SHE -- WELL, FIRST SHE STARTED TALKING ABOUT  
6 WHAT SHE HAD SEEN AND WHAT HAD HAPPENED AT THAT GAS STATION.

7 Q WHAT DID YOU DO WHEN SHE SAID THAT?

8 A I TOLD HER THAT I HAD GIVEN HER LAWYER MY PROMISE  
9 AS A DA THAT SHE WASN'T GOING TO BE TALKING ABOUT THAT, I  
10 ASKED HER NOT TO TALK ABOUT THAT.

11 I DIDN'T EVEN BRING IN A NOTE PAD WITH ME TO  
12 MAKE ANY NOTES.

13 Q WHAT HAPPENED WHEN YOU TOLD HER THAT?

14 A SHE HAD A TENDENCY TO TALK AND SHE JUST TALKED  
15 A LOT, AND SO I WOULD SAY ABOUT THREE OR FOUR TIMES, SHE  
16 STARTED TALKING AND SHE WOULD TALK ABOUT THAT AND I ASKED  
17 HER, YOU KNOW, NOT TO TALK ABOUT THAT AND SHE --

18 Q AND --

19 A OH, I AM SORRY.

20 Q AND WHEN YOU WOULD ASK HER NOT TO TALK ABOUT  
21 THAT, DID SHE AGAIN HAVE A TENDENCY TO START TALKING ABOUT  
22 IT AGAIN?

23 A A FEW TIMES.

24 Q DURING THE COURSE OF HER TALKING TO YOU --

25 WELL, DID YOU EVER TELL HER THAT YOU WERE ANYTHING  
26 OTHER THAN A LAWYER?

27 A NO.

28 Q DID YOU TELL HER THAT SHE WAS MESSING UP ALL

1 OF THE INVESTIGATIVE WORK AND THAT SHE HAD BETTER BE SURE  
2 BECAUSE OF ALL OF THE WORK THAT HAD BEEN DONE?

3 A NO.

4 Q DID YOU EVER TRY TO DISSUADE HER FROM COMING  
5 HERE AND TESTIFYING AS A WITNESS?

6 A NOT AT ALL.

7 Q AND IN FACT, HADN'T ONE OF YOUR PURPOSES IN GOING  
8 DOWN THERE BEEN TO BECOME A LIAISON WITH HER AND MR. LOPEZ?

9 MR. BARENS: YOUR HONOR, "IN FACT," IS LEADING.

10 THE COURT: OVERRULED.

11 THE WITNESS: YES.

12 THAT IS KIND OF IRONIC.

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7-4

1 Q DID YOU EVER GIVE HER YOUR CARD?

2 A YES.

3 Q AND DID YOU SEE WHAT SHE DID WITH IT?

4 A WHEN I GAVE IT TO HER, SHE TOOK IT.

5 Q DID SHE EVER THROW IT DOWN ON THE FLOOR OR ANY-  
6 THING?

7 A THROW IT DOWN ON THE GROUND IN FRONT OF ME?

8 Q YES.

9 A NO.

10 Q DID YOU EVER ASK HER ANY QUESTIONS ABOUT THE  
11 CASE AT ALL OR WHAT SHE HAD SEEN IN THE GAS STATION?

12 A NO.

13 SHE ASKED ME QUESTIONS.

14 Q DID YOU ATTEMPT TO GET FROM HER AND HER FATHER  
15 THE DATE THAT SHE HAD BEEN AT THE GAS STATION?

16 A YES.

17 WHILE CHINO WAS DOING THE IDENTI KIT, SHE WAS  
18 OUTSIDE IN THE LIVING ROOM AND THE SEQUENCE OF EVENTS IS,  
19 SHE STARTED TALKING A FEW TIMES ABOUT THE CASE AND I ASKED  
20 HER NOT TO AND THEN SHE ASKED ME SOME QUESTIONS AND I ANSWERED  
21 THEM.

22 AND THEN CHINO CAME OUT OF THE ROOM AND HE HAD  
23 DONE ONE, SO SHE WANTED TO SEE WHAT HE HAD DONE, SO SHE AND  
24 I, AND I BELIEVE HER FATHER, WENT INTO THIS ROOM WHERE THEY  
25 WERE DOING THIS AND SHE LOOKED AT IT AND SHE SAID THAT THAT  
26 WASN'T IT AT ALL, THAT IT DIDN'T LOOK LIKE IT AT ALL.

27 AND THEN WE LEFT AND WENT OUT TO THE LIVING ROOM --  
28 AND WE WENT INTO THE BACK OF THE LIVING ROOM AREA WHERE HE

1 HAS A LITTLE OFFICE AND HE OPENED UP HIS DATE BOOK AND HE  
2 SAID HE COULD TELL BY LOOKING AT THE DATE BOOK WHAT DATE  
3 THEY HAD BEEN TO THAT CAFE NAPOLI, WHICH APPARENTLY THEY  
4 HAD BEEN THERE THAT NIGHT BECAUSE HE HAD BEEN OUT OF TOWN  
5 AND IT WAS WRITTEN ON HIS DATE BOOK.

6 Q DID YOU GET A DATE FROM HIM?

7 A YES.

8 Q AT SOME TIME, DID YOU TRY TO CHECK, DID YOU TALK  
9 TO PEOPLE IN TUCSON, INCLUDING THE POLICE DEPARTMENT, TRYING  
10 TO CONFIRM THE DATE THAT SHE SAID SHE HAD MISSED CLASS?

11 A I TALKED TO DETECTIVE MEYERS. HE SAID HE WAS  
12 DOING ALL OF THE COORDINATING WITH CARMEN.

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

14 THE COURT: ALL RIGHT, YOU MAY EXAMINE.

15 MR. BARENS: THANK YOU, YOUR HONOR.

16  
17 CROSS-EXAMINATION

18 BY MR. BARENS:

19 Q MS. HART, YOU WORK IN MR. WAPNER'S OFFICE, DO  
20 YOU?

21 A YES, MY OFFICE IS DOWN THE HALL FROM HIS.

22 Q AND I GUESS YOU HAVE WORKED TOGETHER EVER SINCE  
23 YOU CAME IN THE OFFICE?

24 A EVER SINCE I HAVE BEEN IN SANTA MONICA.

25 Q AND THAT IS FOUR AND A HALF YEARS?

26 A I HAVE BEEN IN SANTA MONICA FOR ABOUT A YEAR  
27 AND FOUR MONTHS.

28 Q WAS MR. WAPNER WORKING ON THE HUNT CASE WHEN

1 YOU CAME TO THE OFFICE?

2 A I DON'T REMEMBER.

3 Q WELL, WHEN WAS THE FIRST TIME YOU EVER BECAME  
4 AWARE THAT HE WAS WORKING ON A CASE INVOLVING JOE HUNT?

5 A I CAN'T SPECIFICALLY RECALL. IT WAS SOMETIME --  
6 SOMETIME BETWEEN THE TIME I CAME TO SANTA MONICA AND WENT  
7 TO TUCSON. I MEAN JUST IN PASSING, THERE MAY HAVE BEEN SOME  
8 TALK ABOUT HIM BEING INVOLVED IN THE CASE BUT I DIDN'T KNOW  
9 VERY MUCH ABOUT IT AT THAT TIME, I DIDN'T KNOW.

10 Q WAS HE INVOLVED IN THE PITTMAN CASE WHILE YOU  
11 WERE IN THAT OFFICE?

12 A HE WAS NOT DOING THE TRIAL WHEN I WAS IN THE  
13 OFFICE, TO MY KNOWLEDGE.

14 Q HE WASN'T?

15 A NO.

16 Q AND WHEN DID YOU COME TO THE OFFICE?

17 A I STARTED WORKING IN SANTA MONICA IN JANUARY  
18 OF 1986.

19 Q SO THAT TRIAL DIDN'T HAPPEN WHILE YOU WERE IN  
20 THE OFFICE?

21 A IT MAY HAVE. I JUST WASN'T AWARE OF IT.

22 Q YOU NEVER HEARD ANYTHING ABOUT THAT TRIAL?

23 A I HEARD A LITTLE ABOUT IT BUT I WASN'T INVOLVED  
24 IN IT IN ANY WAY.

25 Q WHO TOLD YOU ABOUT IT?

26 A WELL, I KNEW A LITTLE ABOUT IT BECAUSE I HAD  
27 TO PICK UP ONE OF FRED'S OTHER CASES WHILE HE WAS DOING THIS  
28 CASE.

1 Q WHO TOLD YOU ABOUT THE PITTMAN CASE?

2 A MAYBE FRED AND MAYBE SOMEBODY ELSE IN THE OFFICE.  
3 I DON'T SPECIFICALLY RECALL.

4 Q SOME OTHER D.A. IN THE OFFICE?

5 A POSSIBLY.

6 Q AND WHEN WAS IT THAT YOU FIRST FOUND OUT ABOUT  
7 THE JOE HUNT CASE?

8 A AS I SAID, I DON'T SPECIFICALLY RECALL THE EXACT  
9 DATE SOMEBODY MENTIONED THE CASE IN THE OFFICE.

10 Q DID ANYBODY EVER TELL YOU ABOUT THE JOE HUNT CASE?

11 A WHAT DO YOU MEAN?

12 Q WELL, DID ANYBODY EVER TELL YOU ANYTHING ABOUT  
13 THAT CASE THAT YOUR OFFICE WAS WORKING ON?

14 A SURE.

15 Q WHO WAS THAT?

16 A PROBABLY FRED.

17 Q AND WHEN WAS THAT?

18 A WELL, IT IS HARD TO ANSWER WHEN BECAUSE WE CHAT  
19 ABOUT OUR CASES ALL OF THE TIME.

20 Q SO, PICKING OUT A SPECIFIC DATE ABOUT SOMETHING  
21 IS A LITTLE DIFFICULT?

22 MR. WAPNER: OBJECTION, ARGUMENTATIVE.

23 THE COURT: SUSTAINED.

24 Q BY MR. BARENS: WELL IN ANY EVENT, OUT OF THE MANY  
25 TIMES -- DID YOU TALK ABOUT THE JOE HUNT CASE MANY TIMES?

26 A MORE SINCE THE TRIAL WAS COMING UP THAN BEFORE.

27 Q THE TRIAL WAS COMING UP IN NOVEMBER OF 1986?

28 A YES.

1 Q AND YOU HAD MORE DISCUSSIONS ABOUT IT THEN?

2 A YES.

3 Q I GUESS YOU CAN'T REMEMBER ANY OF THE DATES OF  
4 THOSE DISCUSSIONS EITHER?

5 MR. WAPNER: OBJECTION, ARGUMENTATIVE.

6 THE COURT: SUSTAINED.

7 Q BY MR. BARENS: AND DURING THOSE DISCUSSIONS, WERE  
8 YOU TOLD ABOUT WHAT THIS CASE WAS ABOUT FACT-WISE?

9 A A LITTLE BIT AND I READ THE ESQUIRE ARTICLE.

10 Q AND DID YOU READ ANYTHING ELSE?

11 A I HAVE READ ARTICLES IN THE PAPER ABOUT IT.

12 Q DID YOU READ ANY POLICE REPORTS?

13 A I DON'T THINK I EVER HAVE READ ANY POLICE REPORTS.

14 Q DID YOU READ ANYTHING ELSE? YOU READ NEWSPAPER  
15 ARTICLES AND THE ESQUIRE ARTICLE. WHAT ELSE DID YOU READ?

16 A I READ A TRANSCRIPT OF ONE PERSON'S TESTIMONY.

17 Q WHOSE TESTIMONY?

18 A DEAN KARNY'S TESTIMONY.

19 Q INDEED. AND AFTER YOU READ MR. KARNY'S TESTIMONY,  
20 I GUESS YOU HAD SOME FEEL FOR WHAT YOUR OFFICE'S THEORY OF  
21 THE CASE WAS, DID YOU NOT?

22 THE COURT: ON THE COURT'S OWN MOTION, I WILL SUSTAIN  
23 AN OBJECTION. LET'S PROCEED WITH WHAT SHE KNOWS ABOUT THE  
24 CASE THAT IS MATERIAL TO THE CASE.

25 LET'S GET ON, PLEASE. SHE HAS TESTIFIED  
26 SPECIFICALLY AS TO WHAT HAPPENED IN ARIZONA.

27 MR. BARENS: FINE, YOUR HONOR. I THINK THAT HER  
28 ORIENTATION --



8-7  
1 THE COURT: I MADE A RULING NOW. GO AHEAD.

2 Q BY MR. BARENS: WELL, CERTAINLY BY THE TIME --  
3 LET'S SEE. YOU WERE FIRST ASKED TO GO TO ARIZONA WHEN?

4 A I BELIEVE IT WAS AROUND NOVEMBER 25.

5 Q BEFORE YOU WENT TO ARIZONA, HAD YOU EVER READ A  
6 DESCRIPTION OF RON LEVIN?

7 A JUST THAT WHICH WAS IN THE ESQUIRE ARTICLE.

8 Q AND DID YOU EVER READ ANY OF THE DESCRIPTION OF  
9 RON LEVIN FROM ANY OF THE MATERIALS IN THE D.A.'S OFFICE OTHER  
10 THAN THE RON LEVIN ARTICLE?

11 A YOU MEAN THE ESQUIRE ARTICLE?

12 Q SORRY. THE ESQUIRE ARTICLE?

13 A NO.

14 Q DID YOU EVER TALK TO ANYBODY ABOUT A DESCRIPTION  
15 OF RON LEVIN BEFORE YOU WENT TO TUCSON?

16 A NO.

17 Q HAD YOU EVER SEEN HIM BEFORE YOU WENT TO TUCSON?

18 A NO.

19 Q DID YOU EVER SEE A PICTURE OF HIM BEFORE YOU WENT  
20 TO TUCSON?

21 A I DON'T BELIEVE SO.

22 Q YOU DIDN'T SEE ONE IN THE ESQUIRE ARTICLE, DID  
23 YOU?

24 A I SAW THE SKETCH IN THE ESQUIRE ARTICLE BUT I DIDN'T  
25 SEE ANY PICTURES.

26 Q I SEE. ASIDE FROM THAT, YOU DIDN'T SEE ANY  
27 PICTURE, RIGHT?

28 A RIGHT.

1 Q IS THAT CORRECT?

2 A YES.

3 Q OKAY. SO, WHO ASKED YOU TO GO TO TUCSON?

4 A MY SUPERVISOR, JIM BASQUE.

5 Q WHEN HE ASKED YOU TO GO, WHY DID HE TELL YOU HE  
6 WAS ASKING YOU TO GO?

7 A HE ASKED ME TO GO TO BE A LIAISON BETWEEN OUR OFFICE  
8 AND CARMEN AND CHINO, IN CASE THEIR COOPERATION WAS NECESSARY  
9 AND THEY NEEDED A CONTACT PERSON IN THE D.A.'S OFFICE.

10 I WAS SUPPOSED TO MAINTAIN A GOOD RELATIONSHIP  
11 WITH THEM SO THAT THEY COULD CALL SOMEBODY WHO WAS NOT GOING  
12 TO BE IN TRIAL EVERY DAY.

13 I WAS SUPPOSED TO GO IN CASE THE INVESTIGATORS  
14 HAD ANY QUESTIONS, LEGAL QUESTIONS THAT NEEDED THE ASSISTANCE  
15 OF A LAWYER AND YOU KNOW, JUST REPORT BACK TO THE D.A.'S  
16 OFFICE WHAT HAPPENED.

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1 Q DID YOU FEEL THAT MS. CANCHOLA OR MR. LOPEZ HAD  
2 INVITED YOU TO COME TO TUCSON TO SPEAK TO THEM, THEN?

3 A I WAS ASKED BY MY OFFICE TO GO. I DIDN'T GET THE  
4 FEELING THAT THEY INVITED ME. I NEVER MET THEM BEFORE.

5 Q DID YOU EVER TELL THEM ON THE PHONE THAT YOU WERE  
6 COMING DOWN?

7 A NO. JIM MEYERS WAS HANDLING THAT.

8 Q BEFORE YOU LEFT, WERE YOU GIVEN ANY SORT OF A  
9 BRIEFING ABOUT WHAT HAD OCCURRED WITH THESE PEOPLE?

10 A YES.

11 Q AND HOW GAVE YOU THAT BRIEFING?

12 A FRED WAPNER. AND I LISTENED TO TAPES.

13 Q YOU LISTENED TO A TAPE THAT THEY MADE WITH CERTAIN  
14 POLICE PEOPLE AND WITH MR. WAPNER?

15 A YES.

16 Q AND DID YOU LISTEN TO THAT MORE THAN ONCE OR JUST  
17 ONCE?

18 A JUST ONE TIME.

19 Q DID YOU READ ANY MATERIAL?

20 A I THINK I READ A REPORT FROM THE TUCSON POLICE  
21 DEPARTMENT BUT I DON'T BELIEVE I RECEIVED THAT UNTIL I GOT  
22 TO TUCSON.

23 Q DID YOU LISTEN TO ALL OF THE TAPES?

24 A I LISTENED TO MOST OF THE TAPES.

25 Q SOME YOU DID NOT LISTEN TO?

26 A I FAST-FORWARDED SOME PARTS.

27 Q I SEE. SO I GUESS WHEN YOU WENT TO TUCSON, YOU  
28 WERE PRETTY WELL FAMILIAR WITH WHAT THEY HAD TO SAY ABOUT AN

1 IDENTIFICATION THEY HAD MADE IN THE GAS STATION?

2 A YES.

3 Q AND DID YOU KNOW ABOUT THEM HAVING SELECTED A

4 CERTAIN PHOTOGRAPH OUT OF A POLICE LINEUP?

5 A YES.

6 Q AND YOU KNEW EACH ONE OF THEM HAD DONE THAT?

7 A NO.

8 Q YOU DIDN'T KNOW THEY BOTH HAD MADE A SELECTION?

9 A IT WAS MY UNDERSTANDING AT THE TIME THAT -- MAYBE  
10 I WAS WRONG -- THAT CARMEN HAD MADE A TENTATIVE SELECTION.

11 Q A TENTATIVE SELECTION? WHO TOLD YOU THE WORD  
12 "TENTATIVE"?

13 A I AM NOT SURE IT WAS THE EXACT WORD. BUT THAT  
14 WAS MY UNDERSTANDING.

15 Q THAT IS YOUR WORD, IS IT NOT?

16 A YES, MY WORD.

17 Q NO ONE USED THAT WORD?

18 A THAT IS JUST MY UNDERSTANDING OF WHAT WAS TOLD  
19 TO ME. THAT IS JUST MY STATE OF MIND.

20 Q I SEE. DID MR. WAPNER EVER TELL YOU THAT HER  
21 IDENTIFICATION WAS TENTATIVE?

22 A I DON'T REMEMBER PRECISELY THE WORDS HE USED.

23 Q DID HE EVER TELL YOU THAT SHE HAD SAID AT THAT  
24 TIME THAT SHE WAS 90 PERCENT SURE?

25 A I DON'T RECALL KNOWING IF THAT IS WHAT SHE SAID --  
26 THAT THAT IS WHAT SHE SAID, THAT SHE WAS 90 PERCENT SURE.

27 Q DIDN'T YOU HEAR ON THE TAPE THAT YOU PLAYED, HER  
28 SAY THAT SHE WAS --

1 MR. WAPNER: OBJECTION, MISSTATES THE EVIDENCE.

2 THE COURT: HE IS ASKING WHETHER SHE HEARD ANYTHING ON  
3 THE TAPE. WAS THERE ANYTHING ON THE TAPE ABOUT HER SAYING  
4 SHE WAS 90 PERCENT SURE?

5 THE WITNESS: I DON'T RECALL HEARING THAT ON THE TAPE.

6 THE COURT: ALL RIGHT.

7 Q BY MR. BARENS: YOU DON'T RECALL WHETHER SHE SAID  
8 THAT OR DID YOU HEAR ANYTHING -- DID YOU HEAR HER SAY ANYTHING  
9 ABOUT HOW SURE SHE WAS ON THE TAPE?

10 A I DON'T RECALL KNOWING AT THAT TIME, THAT THAT  
11 PORTION OF HER IDENTITY WAS ON THE TAPE.

12 Q DID YOU LISTEN TO THE TAPE OF CHINO LOPEZ?

13 A I AM TRYING TO REMEMBER. I WAS LISTENING TO THE  
14 TAPE WITH MY WALKMAN. I FAST-FORWARDED PORTIONS OF IT.

15 I BELIEVE I MAY HAVE HEARD PORTIONS OF CHINO.  
16 BUT I AM NOT CERTAIN.

17 Q WERE YOU BRIEFED BY ANYONE BESIDES MR. WAPNER  
18 BEFORE YOU WENT TO TUCSON?

19 A I BELIEVE MR. MACMAC, ALSO.

20 Q AND HE HAD BEEN PRESENT DURING THE INTERVIEW?

21 A RIGHT. HE HAD GONE DOWN TO TUCSON WITH FRED  
22 WAPNER.

23 Q HE TOLD YOU ABOUT STUFF YOU HEARD ABOUT ON THE  
24 TAPE THAT YOU LISTENED TO?

25 A THEY BRIEFED ME FIRST. I LISTENED TO THE TAPE  
26 ON THE PLANE ON THE WAY DOWN THERE. I HAPPENED IN A SHORT  
27 PERIOD OF TIME.

28 Q I SEE. YOU WERE GOING TO GO DOWN THERE TO MAKE

1 ARRANGEMENTS TO FACILITATE THEIR COMING TO LOS ANGELES?

2 A NO.

3 Q I SEE. YOU DIDN'T HAVE ANY ARRANGEMENTS FOR THEM  
4 TO TAKE A FLIGHT TO BE PRESENT AT THE TRIAL, DID YOU?

5 A THAT WAS NOT MY REASON FOR GOING AT THAT TIME.

6 Q I SEE. HOW MANY TIMES DID YOU GO?

7 A JUST ONE TIME.

8 Q I SEE. NOW --

9 THE COURT: I DON'T WANT YOU TO SAY "I SEE," EVERY TIME  
10 SHE ANSWERS. THIS IS GETTING A LITTLE MONOTONOUS.

11 MR. BARENS: I SEE, YOUR HONOR.

12 THE COURT: DO YOU SEE THAT, TOO?

13 MR. BARENS: ALL RIGHT.

14 Q WHEN YOU SAY THAT YOU WERE GOING TO ASK FOR SOME  
15 SORT OF -- GOING TO BE AVAILABLE TO ANSWER LEGAL QUESTIONS  
16 WHEN YOU GOT THERE, WHAT SORT OF LEGAL QUESTIONS?

17 A IF THEY HAD ANY. I AM NOT CERTAIN THAT THERE WERE  
18 ANY THAT WERE TO COME UP. BUT I WAS AVAILABLE IF SOMETHING  
19 SHOULD ARISE AND THEY NEEDED A D.A. TO BE THERE.

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1 Q DID ANYONE TELL YOU THERE WERE LEGAL QUESTIONS  
2 PENDING DOWN THERE?

3 A NO.

4 Q DID YOU REVIEW ANY LEGAL RESEARCH OR BRIEFING  
5 MATERIALS BEFORE YOU WENT, TO ENABLE YOU TO ANSWER ANTICIPATED  
6 QUESTIONS?

7 A NO. JUST MY EXPERIENCE.

8 Q NOW, BY THE WAY, HOW LONG DID IT TAKE TO DRIVE  
9 FROM TUCSON TO RIO RICO?

10 A I REMEMBER MR. CANCHOLA SAYING IT SHOULD ONLY  
11 TAKE ABOUT AN HOUR, BUT IT TOOK US LONGER BECAUSE WE OVERSHOT  
12 THE TURNOFF.

13 Q AND IT IS OFF A TRAIL, KIND OF UP IN THE HILLS  
14 THERE OR SOMETHING?

15 A YES, IT IS ON THE LEFT AND NOT ON THE RIGHT.  
16 WE WENT TO THE RIGHT FIRST.

17 Q RIGHT.

18 AND YOU MENTIONED THERE WAS --

19 BEFORE YOU GOT THERE, WERE YOU TOLD THERE WAS  
20 GOING TO BE A BIRTHDAY PARTY HAPPENING AT THAT LOCATION?

21 A NO.

22 Q YOU DISCOVERED THAT WHEN YOU GOT THERE?

23 A YES.

24 Q DID THOSE FOLKS SEEM TO HAVE ANY GUESTS PRESENT  
25 RELATIVE TO A BIRTHDAY PARTY?

26 A THEY STAYED -- EVERYONE STAYED IN ANOTHER ROOM.  
27 I COULD HEAR ACTIVITY BUT I COULDN'T SEE ANYBODY.

28 Q DID THEY SEEM TO HAVE GUESTS PRESENT AT THE HOUSE?

1           A        I DON' T KNOW WHO WAS A MEMBER OF THE FAMILY  
2 AND WHO WAS A GUEST.

3                    THIS TONY WASN'T A MEMBER OF THE FAMILY AND HE  
4 WAS THERE.

5           Q        DID THERE SEEM TO BE OTHER PERSONS PRESENT BESIDES  
6 TONY?

7           A        I DON'T KNOW.

8           Q        THAT WAS THE ONLY ONE YOU MET?

9           A        RIGHT, AND THE BROTHER.

10          Q        WHY DID YOU GO THERE AT 7:00 P.M.?

11          A        THAT WAS THE TIME MR. CANCHOLA WANTED US TO GO  
12 THERE.

13          Q        HAD YOU EVER CALLED CARMEN OR CHINO WHEN YOU  
14 GOT TO TUCSON?

15          A        WE CALLED CARMEN AND SHE WASN'T HOME, AND WE  
16 CALLED CHINO AND I DID SPEAK WITH CHINO.

17          Q        HAD YOU LOOKED AT ANY POLICE LINEUP PHOTOGRAPHS  
18 BEFORE YOU GOT THERE?

19          A        I DON'T BELIEVE SO.

20          Q        HAD YOU LOOKED AT THE LINEUP CARD THAT WAS  
21 SHOWN TO CHINO AND CARMEN?

22          A        I REMEMBER SEEING IT, BUT I DON'T BELIEVE I SAW  
23 IT BEFORE I WENT DOWN THERE.

24          Q        WHEN DID YOU SEE IT?

25          A        I BELIEVE I SAW IT WHEN I WAS DOWN THERE.

26          Q        WHILE YOU WERE THERE?

27          A        YES.

28          Q        AND WHERE WERE YOU WHEN YOU SAW IT?



1 A THE TUCSON POLICE DEPARTMENT.

2 Q AND WHY WERE YOU LOOKING AT IT?

3 A I WASN'T LOOKING AT IT.

4 ONE OF THE OFFICERS WAS REMOVING IT FROM HIS  
5 CASE AND GIVING IT TO ANOTHER OFFICER TO PUT IN HIS CASE  
6 AND I SAW IT AT THAT TIME.

7 Q SO IT WAS A COINCIDENCE YOU JUST HAPPENED TO  
8 SEE IT?

9 A WELL, WE WERE --

10 MR. WAPNER: OBJECTION. ARGUMENTATIVE.

11 THE COURT: I DON'T KNOW WHAT THE MATERIALITY OF ALL  
12 OF THIS IS. SHE TESTIFIED SPECIFICALLY TO CERTAIN THINGS  
13 THAT HAPPENED. WHY DON'T YOU GET TO THOSE THINGS?

14 MR. BARENS: I AM GETTING TO THEM.

15 THE COURT: WELL, PLEASE GET TO IT.

16 MR. BARENS: I AM GETTING THERE.

17 THE COURT: YOU ARE MAKING HASTESLOWLY.

18 MR. BARENS: WELL, NOT EVERYTHING IS QUICK, YOUR HONOR.

19 THE COURT: GO AHEAD.

20 MR. BARENS: THE WHEELS OF JUSTICE AND ALL, YOUR HONOR.

21 Q IN ANY EVENT, YOU HAPPENED TO SEE THESE PHOTOGRAPHS.  
22 WERE YOU BRIEFED BY ANYONE DOWN THERE BEFORE YOU SAW MR.  
23 LOPEZ AND MISS CANCHOLA?

24 A I TALKED TO MR. MEYERS, DETECTIVE MEYERS.

25 Q DETECTIVE MEYERS? AND WHAT DID YOU FOLKS TALK  
26 ABOUT?

27 A WE TALKED ABOUT THE FACT THAT FRED AND MACMAC  
28 HAD BEEN IN TUCSON AND WE TALKED ABOUT SOME OF THE THINGS

1 THAT CARMEN AND CHINO HAD SAID.

2 WE TALKED ABOUT THE PHONE SYSTEM THAT HE HAD  
3 ESTABLISHED WITH CARMEN AND WE TALKED ABOUT TRYING TO GET  
4 AHOLD OF HER.

5 Q AND YOU WERE TOLD ABOUT THE FACT THAT THEY HAD  
6 MADE SOME SORT OF AN IDENTIFICATION AGAIN, BY DETECTIVE MEYERS?

7 A I DO NOT SPECIFICALLY RECALL MEYERS SAYING THAT.

8 Q HE NEVER TOLD YOU THAT THEY HAD TAKEN A PICTURE  
9 OUT OF A POLICE LINEUP?

10 A NO.

11 Q YOU WERE NOT AWARE THAT THEY HAD MADE A POSITIVE  
12 IDENTIFICATION?

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1 MR. WAPNER: OBJECTION. MISSTATES THE EVIDENCE, YOUR  
2 HONOR.

3 THE COURT: SUSTAINED.

4 Q BY MR. BARENS: YOU WERE NOT AWARE THAT THEY  
5 BOTH PICKED THE SAME PHOTOGRAPH OUT OF A POLICE LINEUP, WERE  
6 YOU?

7 A I WAS AWARE THAT CARMEN HAD PICKED SOMEONE OUT  
8 AND, AS I SAID, I THOUGHT MY SENSE WAS, IT WAS A TENTATIVE  
9 IDENTIFICATION.

10 I WAS NOT AWARE THAT CHINO HAD SELECTED ANYONE.

11 Q WHY WAS YOUR SENSE THAT IT WAS TENTATIVE?

12 A THAT IS JUST MY SENSE OF THE WAY IT WAS SAID.

13 Q DID MR. WAPNER TELL YOU IT WAS TENTATIVE?

14 A NO.

15 AS I SAID, THAT WAS MY WORD.

16 THE COURT: THAT IS THE SAME QUESTION YOU ASKED BEFORE.  
17 YOU ARE GOING BACK AGAIN TO THE SAME THING. NOW PLEASE GET  
18 ON TO YOUR NEXT QUESTION.

19 MR. BARENS: IT IS LIKE ASKING WHY YOU THINK SOMEONE  
20 IS GAY, I SUPPOSE IT IS, IN A SENSE.

21 THE COURT: LET'S DON'T ARGUE WITH ME. WILL YOU GO  
22 ON, PLEASE?

23 Q BY MR. BARENS: WERE YOU INVOLVED WITH ANY  
24 COLLATERAL INVESTIGATION THAT WAS BEING DONE DOWN THERE  
25 CONCERNING LOCATING THE PERSON THAT WAS SEEN IN THE GAS  
26 STATION?

27 A I DON'T REALLY UNDERSTAND YOUR QUESTION.

28 Q WELL, DID DETECTIVE MEYERS TELL YOU SOMETHING

1 ABOUT GAY BARS AND PARKING LOTS?

2 A THERE WAS A DISCUSSION ABOUT WHERE THE GAY BARS  
3 WERE SO THAT WHEN WE GOT THIS IDENTI KIT FROM CARMEN, WHICH  
4 WAS SUPPOSED TO BE IN THE EARLY AFTERNOON, THE OFFICERS WHO  
5 WERE NOT FROM THAT TOWN WOULD KNOW WHERE TO GO.

6 Q AND AS FAR AS YOU KNEW UP UNTIL THAT POINT, DID  
7 ANYONE TELL YOU THAT ANYBODY HAD BEEN LOOKING FOR THE PERSON  
8 THAT WAS SEEN IN THE GAS STATION?

9 A NO ONE TOLD ME THAT.

10 Q OKAY. DO YOU KNOW IF ANYONE HAD GONE TO ANY  
11 CAR LOTS OR GAY BARS, LOOKING FOR A PERSON, BY THE TIME  
12 YOU GOT TO TUCSON?

13 A NO.

14 Q DID YOU KNOW WHETHER ANY SILVER-HAIRED MEN HAD  
15 BEEN ROUNDED UP BY THE TUCSON POLICE FOR INVESTIGATION BY  
16 THAT TIME?

17 A NOT AT THAT TIME.

18 Q HOW ABOUT LATER?

19 A LATER, SOMEBODY FROM OUR OFFICE DISCOVERED SOME-  
20 BODY WHO HAD A CLASSIC CAR THAT WAS SIMILAR IN COLOR AND  
21 THE PERSON WHO OWNED THAT CAR HAD A VERY SIMILAR DESCRIPTION  
22 WITH THE ONE WITH WHICH CARMEN HAD GIVEN.

23 Q DID CARMEN OR CHINO EVER SAY THAT WAS THE PERSON  
24 THEY SAW IN THE GAS STATION?

25 MR. WAPNER: OBJECTION. THAT CALLS FOR HEARSAY.

26 THE COURT: DID THEY EVER VIEW THIS MAN THAT WAS PICKED  
27 UP, AS A SUSPECT?

28 THE WITNESS: NOT IN MY PRESENCE.

1 THE COURT: ALL RIGHT, GO AHEAD.

2 Q BY MR. BARENS: NOW YOU SAY THAT WHEN YOU ARRIVED  
3 AT THE HOUSE, THEY SEEMED TO KNOW WHO YOU WERE?

4 A YES.

5 Q HOW WOULD THEY KNOW WHO YOU WERE?

6 A I WOULD ONLY BE GUESSING, BUT I ASSUME THAT MR.  
7 CANCHOLA HAD TOLD THEM THAT WE WERE COMING DOWN.

8 Q YOU DON'T KNOW THAT, DO YOU?

9 A NO.

10 Q AND YOU SAY THAT YOU THOUGHT THEY SEEMED TO BE  
11 EXPECTING YOU?

12 A YES.

13 Q AND WHEN THEY ARRIVED AT THE HOUSE, YOU HAD BEEN  
14 THERE FOR AN HOUR?

15 A YES.

16 Q WHY DO YOU SAY THEY SEEMED TO BE EXPECTING YOU?

17 A BECAUSE WHEN THEY WALKED IN, THEY DIDN'T SAY  
18 "WHO ARE THESE PEOPLE? WHAT IS GOING ON?"

19 THEY WALKED IN AND SAID, "HERE WE ARE. SORRY  
20 WE ARE LATE."

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1 Q THEY TOLD YOU THEY WERE SORRY THEY WERE LATE?

2 A IT WAS A BIG ROOM. THE FATHER WAS THERE. THEY  
3 WALKED IN.

4 THEY DIDN'T SPECIFICALLY SAY TO ME, "I AM SORRY  
5 WE ARE LATE."

6 BUT THEY CAME IN AND THEY SAID SOMETHING TO THAT  
7 EFFECT.

8 Q WHO WERE THEY TALKING TO WHEN THEY SAID THAT?

9 A I DON'T KNOW, ANYONE WHO WAS SITTING IN THE ROOM.

10 Q I SEE. DID THEY -- DO YOU KNOW WHAT TIME THEY  
11 WERE EXPECTED TO ARRIVE THERE IN THE FIRST INSTANCE?

12 A NO I DON'T.

13 Q HADN'T SOMEONE TOLD YOU THAT THEY WERE EXPECTED  
14 THERE AT 7 P.M.?

15 A MR. CANCHOLA ASKED US TO BE THERE AT 7 P.M. AND  
16 I ASSUMED BY HIM SAYING THAT, THAT THEY WOULD BE THERE. BUT  
17 I WAS WRONG.

18 Q IF THOSE ASSUMPTIONS WERE CORRECT, THEY WERE AN  
19 HOUR LATE?

20 A IT WAS LATER THAN THAT. THEY PROBABLY GOT THERE  
21 AROUND 9 O'CLOCK.

22 Q NOW, YOU MENTIONED THAT CARMEN SAID THAT SHE  
23 COULDN'T MAKE THE IDENTI KIT WORK?

24 A SHE SAID, "I CAN'T DO IT."

25 Q DID SHE SAY SHE WAS ABLE TO CREATE THE PERSON SHE  
26 HAD SEEN IN THE GAS STATION WITH THE USE OF THE IDENTI KIT  
27 OR WORDS TO THAT EFFECT?

28 A I DON'T REMEMBER HER USING WORDS TO THAT EFFECT.

0A-2  
1 I REMEMBER HER SAYING, "I CAN'T DO IT. IT IS TOO DIFFICULT."

2 Q YOU NEVER HEARD HER SAY ANYTHING LIKE WELL,  
3 THROUGH THE INDENTI KIT, I CREATED THE PERSON I SAW IN THE  
4 GAS STATION?

5 A NO. SHE NEVER SAID THAT. SHE JUST ASKED FOR A  
6 PICTURE.

7 Q SHE ASKED FOR A PICTURE?

8 A SHE SAID, "IF YOU JUST SHOW ME THE PICTURE OF THE  
9 PERSON --" AND I EXPLAINED TO HER THAT WE COULDN'T DO THAT.

10 Q SO YOU DIDN'T DO THAT?

11 A NO.

12 Q WHEN SHE STARTED TO SPEAK TO YOU, YOU SAY THREE  
13 OR FOUR TIMES YOU HAD TO TELL HER TO STOP ASKING YOU QUESTIONS?

14 A NO. I DIDN'T MIND HER ASKING ME QUESTIONS. I  
15 TOLD HER THAT SHE SHOULDN'T TALK ABOUT WHAT SHE HAD SEEN  
16 BECAUSE I PROMISED HER LAWYER THAT WE WOULDN'T BE TALKING ABOUT  
17 THAT.

18 Q YOU TOLD HER THAT THREE OR FOUR TIMES?

19 A YES.

20 Q YOU DIDN'T LEAVE THE ROOM, DID YOU?

21 A SORRY?

22 Q YOU DIDN'T LEAVE THE ROOM DID YOU, WHEN SHE WAS  
23 TALKING?

24 A NO.

25 Q WHEN SHE WAS SPEAKING TO YOU, WAS THERE ANYBODY  
26 ELSE PRESENT IN THE ROOM?

27 A YES.

28 Q WHO WAS THAT?

1 A THE EXPLORER SCOUT.

2 Q TONY BRUNO?

3 A YES.

4 Q WHO ELSE?

5 A I BELIEVE HER FATHER WAS ALSO THERE.

6 Q HOW ABOUT HER BROTHER?

7 A HER BROTHER CAME IN FOR A SHORT PERIOD OF TIME.

8 THEN HE STARTED CHATTING WITH ME ABOUT LOS ANGELES BECAUSE  
9 HE HAD WORKED IN A MC DONALDS IN LOS ANGELES.

10 AND HE STAYED MAYBE 10 MINUTES AND LEFT. BUT THAT  
11 WAS NOT WHEN SHE WAS THERE.

12 Q I SEE. NOW, YOU SAY THAT SHE ASKED YOU SOME  
13 QUESTIONS?

14 A YES.

15 Q WHAT QUESTIONS DID SHE ASK YOU?

16 A SHE ASKED ME WHY SUCH A FUSS WAS BEING MADE.

17 Q WHAT DID YOU ANSWER HER?

18 A I TOLD HER THAT THIS WAS A VERY SERIOUS CASE AND  
19 THAT OUR OFFICE BELIEVED MR. HUNT TO BE RESPONSIBLE FOR THE  
20 DEATH OF RON LEVIN.

21 Q YOU TOLD HER THAT IT WAS YOUR OFFICE POLICY OR  
22 YOUR OFFICE ORIENTATION?

23 A I TOLD HER OUR OFFICE BELIEVED THAT.

24 Q YOU TOLD HER THAT IN SO MANY WORDS, DID YOU NOT,  
25 THAT YOU THOUGHT THAT MR. HUNT HAD KILLED THE MAN THAT SHE  
26 MIGHT HAVE SEEN IN THE GAS STATION?

27 A I TOLD HER EXACTLY WHAT I TOLD YOU I SAID.

28 I MEAN, I DIDN'T USE ANY OTHER WORDS. THOSE ARE THE WORDS



10 " " 1 I USED.

2 Q I SEE. DID YOU TELL HER DIRECTLY OR INDIRECTLY  
3 THAT THE PERSON THAT SHE HAD THOUGHT SHE HAD SEEN WAS DEAD?  
4 OR THAT AT LEAST, YOUR OFFICE THOUGHT SO?

5 A I TOLD HER OUR OFFICE BELIEVED THAT MR. HUNT WAS  
6 RESPONSIBLE FOR THE DEATH OF RON LEVIN.

7 Q I GUESS BY TELLING HER THAT STATEMENT, YOU AT LEAST  
8 STRONGLY IMPLIED TO HER, THAT AT LEAST YOU BELIEVED SOMEONE  
9 WAS IN FACT, DEAD? IS THAT CORRECT?

10 A I DON'T KNOW WHAT SHE TOOK FROM WHAT I SAID. BUT  
11 THAT IS WHAT I SAID.

12 THIS WAS A DEATH PENALTY CASE AND YOU KNOW, OUR  
13 OFFICE WAS SEEKING THE DEATH PENALTY AND THAT IT WAS A SERIOUS  
14 CASE. AND WE WERE TAKING WHAT SHE SAID VERY SERIOUSLY, WHICH  
15 IS WHY WE HAD TO RESPOND QUICKLY AND COME DOWN ON A HOLIDAY  
16 WEEKEND.

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1 Q DID YOU EVER TELL HER THE QUESTION OF WHETHER OR  
2 NOT SOMEBODY WAS DEAD WAS A QUESTION FOR THE JURY TO DECIDE?

3 A I DIDN'T TALK TO HER ABOUT THAT.

4 Q SO ALL YOU TOLD HER WAS THAT YOUR OFFICE SAID HUNT  
5 WAS RESPONSIBLE FOR A DEAD MAN?

6 A WELL, I TOLD HER THAT OUR OFFICE BELIEVED MR. HUNT  
7 TO BE RESPONSIBLE FOR THE DEATH OF RON LEVIN. IT WAS A SERIOUS  
8 CASE AND WE WERE SEEKING THE DEATH PENALTY AND THAT WAS WHY  
9 WE WERE DOWN THERE. IT WAS A SERIOUS CASE.

10 Q DID YOU TELL HER THAT YOU KNEW RON LEVIN WAS DEAD?

11 A NO.

12 Q DID YOU TELL HER THAT ANYBODY DID?

13 A SORRY?

14 Q DID YOU TELL HER ANYBODY KNEW HE WAS DEAD?

15 MR. WAPNER: OBJECTION, ARGUMENTATIVE.

16 THE WITNESS: NO.

17 THE COURT: SUSTAINED.

18 HAVE YOU TOLD US EVERYTHING THAT YOU TOLD HER THAT  
19 YOU RECALL?

20 MR. BARENS: DO YOU MIND IF I INQUIRE?

21 THE COURT: HAVE YOU TOLD US EVERYTHING?

22 THE WITNESS: SHE ASKED ME IF WE COULD SHOW HER JUST  
23 ONE PICTURE. SHE SAID, "IF YOU SHOW ME THE PICTURE OF THE  
24 MAN, I WILL TELL YOU WHETHER OR NOT IT IS HIM." AND SHE  
25 COULDN'T UNDERSTAND WHY WE WOULDN'T SHOW HER ONE PICTURE.

26 AND SO I EXPLAINED THE LAW ENFORCEMENT POLICY ABOUT  
27 SHOWING SOMEBODY JUST ONE PICTURE AND WE DON'T DO THAT.

28 MR. BARENS: JUST A MOMENT.

1 (PAUSE.)

2 Q BY MR. BARENS: NOW, YOU HAD TOLD SOMEONE I SUPPOSE,  
3 THAT YOU WEREN'T GOING TO DISCUSS THE CASE WITH MS. CANCHOLA?

4 A I TOLD MR. LARSEN AND I ALSO TOLD MR. CANCHOLA  
5 THAT.

6 Q WELL, WHEN YOU TOLD CARMEN THIS BUSINESS ABOUT  
7 RON LEVIN AND JOE HUNT BEING RESPONSIBLE, ACCORDING TO YOUR  
8 OFFICE, DID YOU THINK THAT WAS CONSISTENT WITH THE PROMISE  
9 THAT YOU HAD MADE?

10 A YES.

11 Q IT WAS? HOW WAS THAT CONSISTENT? WASN'T THAT  
12 TALKING ABOUT THE CASE?

13 A NO. HER ATTORNEY ASKED ME NOT TO QUESTION HER  
14 ABOUT WHAT SHE HAD SEEN AT THE GAS STATION. I WAS RESPONDING  
15 TO HER QUESTIONS AS TO WHY WE WERE DOWN THERE ON A BIRTH-DAY  
16 AND ON A HOLIDAY WEEKEND AND WHY WE WERE MAKING SUCH A FUSS.

17 Q I GUESS YOU DIDN'T HAVE A CHOICE TO SAY TO HER,  
18 "I CAN'T DISCUSS WITH YOU WHY WE ARE HERE"?

19 MR. WAPNER: OBJECTION. ARGUMENTATIVE.

20 THE COURT: SUSTAINED.

21 Q BY MR. BARENS: DID YOU EVER TRY TO SAY TO HER,  
22 "LISTEN, I DON'T WANT TO BIAS YOU IN ANY WAY"? DID YOU EVER  
23 SAY THAT TO HER?

24 A NO.

25 Q UH-HUH. YOU NEVER SAID ANYTHING TO HER ABOUT WELL,  
26 YOU KNOW, EVEN THOUGH WE FEEL THAT JOE HUNT IS ENTITLED TO  
27 A FAIR TRIAL UNDER THE UNITED STATES CONSTITUTION --

28 MR. WAPNER: OBJECTION, ARGUMENTATIVE.

1 THE COURT: SUSTAINED. WILL YOU PLEASE ASK QUESTIONS  
2 WHICH TOUCH UPON WHAT HER TESTIMONY IS? DID SHE SAY THIS?  
3 DID SHE SAY THAT? THEN, DON'T BRING IN ALL THESE ARGUMENTS  
4 YOU HAVE AS TO WHY YOUR CLIENT SHOULD HAVE TO BE HERE.

5 LET'S GO ON, WILL YOU PLEASE?

6 MR. BARENS: THEY PUT HER ON, JUDGE.

7 THE COURT: ALL RIGHT. GO AHEAD.

8 MR. BARENS: THIS IS CROSS-EXAMINATION --

9 THE COURT: WELL, THAT IS NOT CROSS-EXAMINATION. THAT  
10 IS SUMMING UP YOUR CASE.

11 Q BY MR. BARENS: WELL, NOW WHEN YOU TOLD HER THIS  
12 BUSINESS ABOUT MR. HUNT, WHAT DID SHE SAY?

13 MR. WAPNER: OBJECTION, VAGUE. "BUSINESS ABOUT MR. HUNT"?

14 Q BY MR. BARENS: WELL, THE STATEMENT THAT I AM NOT  
15 SUPPOSED TO ASK YOU ABOUT ANY MORE.

16 MR. WAPNER: SAME OBJECTION.

17 THE COURT: WHAT DID SHE RESPOND AFTER YOU TOLD HER THE  
18 NATURE OF THE CASE?

19 THE WITNESS: ACTUALLY AFTER THAT, SHE STOPPED SAYING  
20 ANYTHING AT ALL.

21 Q BY MR. BARENS: SO ONCE YOU MADE THAT STATEMENT,  
22 SHE JUST STOPPED?

23 A YES.

24 Q OKAY. DID YOU MAKE THAT KIND OF A STATEMENT TO  
25 CHINO?

26 A NO.

27 Q DID SHE ASK YOU ANY OTHER QUESTIONS?

28 A NO.

1 Q THAT STATEMENT THAT YOU MADE TO HER THAT YOU MADE  
2 REFERENCE TO IN THE LAST TWO OR THREE MINUTES, DID YOU MAKE  
3 THAT STATEMENT TO MR. CANCHOLA?

4 A YES.

5 Q HER FATHER?

6 A YES.

7 Q YOU TOLD HIM THAT? WHEN DID YOU TELL HIM THAT  
8 STATEMENT?

9 A BEFORE SHE GOT THERE.

10 Q BEFORE SHE GOT THERE?

11 A YES.

12 Q AND DID YOU TELL THAT STATEMENT TO ANYBODY ELSE?

13 A NO. I TOLD IT TO MR. CANCHOLA BECAUSE HE WANTED  
14 TO KNOW WHY WE WERE DOWN THERE ON A HOLIDAY WEEKEND ON THE  
15 BROTHER'S BIRTHDAY, ALSO.

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1 Q HAD YOU HAD ANY DISCUSSION WITH ANYONE BEFORE  
2 YOU WENT TO TUCSON ABOUT WHETHER OR NOT IT IS PROPER TO TELL  
3 THESE PEOPLE ABOUT WHAT YOU BELIEVED THE FACT BASIS OF MR.  
4 WAPNER'S CASE WAS?

5 A NO. I DIDN'T BELIEVE I WAS TELLING HER SOMETHING  
6 THAT SHE HADN'T ALREADY READ IN THE ARTICLE.

7 Q I SEE.

8 DID IT SAY ANYTHING IN THE ARTICLE ABOUT THE  
9 SANTA MONICA D.A.'S OFFICE PROSECUTING THE CASE?

10 A I BELIEVE THAT IT DID.

11 Q IT DID? IT DID SAY THAT?

12 A I BELIEVE SO.

13 Q NOW, WHEN YOU GOT DOWN THERE, DID THESE FOLKS  
14 TELL YOU THEY KNEW ALL ABOUT THAT?

15 A NO.

16 Q I SEE.

17 HAD YOU HEARD ANYTHING ON THE TAPE THAT YOU  
18 LISTENED TO WHERE THESE REFERENCES TO MR. HUNT WERE MADE,  
19 TO EITHER MS. CANCHOLA OR MR. LOPEZ?

20 A WELL, SHE HAD SAID THAT SHE READ THIS ARTICLE,  
21 WHICH WAS A VERY DETAILED ARTICLE ABOUT, YOU KNOW, VARIOUS  
22 ASPECTS OF THE CASE AND SO IT WAS A REFERENCE TO ME THAT  
23 SHE KNEW WHAT WAS GOING ON IN THE CASE AT LEAST.

24 AND THEN SHE SAID SHE IDENTIFIED SOMEBODY, IN  
25 THE TAPE SHE SAID THAT, FROM THAT GAS STATION, SO I ASSUMED  
26 THAT SHE KNEW SOMETHING ABOUT THE CASE.

27 Q YOU ASSUMED.

28 MY ACTUAL QUESTION, MRS. HART, HAD BEEN WHETHER

1 YOU HEARD ANYTHING ON THE TAPE WHERE A STATEMENT WAS MADE  
2 BY ANYONE TO MS. CANCHOLA OR MR. LOPEZ, SIMILAR TO THE  
3 STATEMENT YOU MADE TO THEM ABOUT MR. HUNT, DID ANYBODY SAY  
4 THAT TO THEM ON THOSE TAPES?

5 A I DON'T SPECIFICALLY RECALL THAT.

6 Q THE FACT IS, YOU NEVER HEARD THAT, DID YOU?

7 A IF I DID, IF IT IS IN THE TAPE, I DON'T REMEMBER  
8 IT NOW.

9 MR. BARENS: ONE MOMENT, YOUR HONOR.

10 (PAUSE IN PROCEEDINGS.)

11 MR. BARENS: SIR?

12 THE COURT: I AM SORRY. GO AHEAD. ONE OF OUR TELEPHONES  
13 ISN'T WORKING SO I AM GETTING CALLS ON MY PRIVATE LINE AND  
14 THE CLERK HAS TO TAKE IT IN THERE.

15 MR. BARENS: ALL RIGHT, I AM NOT GOING TO ASK YOU ABOUT  
16 THE MARKET, JUDGE.

17 Q ALL RIGHT, YOU REALIZED, DID YOU NOT, WHEN YOU  
18 WENT THERE, THAT MS. CANCHOLA HAD IDENTIFIED SOMEONE SHE  
19 HAD SEEN ALIVE IN THE GAS STATION; IS THAT CORRECT?

20 A I AM SORRY. COULD YOU REPEAT THAT QUESTION?

21 Q YOU REALIZED, BEFORE YOU MET MS. CANCHOLA, THAT  
22 SHE HAD MADE AN IDENTIFICATION OF A PERSON IN BEING, A LIVE  
23 PERSON SHE OBSERVED IN THE GAS STATION?

24 A RIGHT, SHE SAID SHE SAW SOMEBODY AND SHE DESCRIBED  
25 THAT PERSON.

26 Q RIGHT.

27 DID YOU CONSIDER THAT YOUR TELLING HER ABOUT  
28 A DEAD PERSON COULD HAVE A BIAS ON HER SUBSEQUENT IDENTIFICATION?

1-3

1 THE COURT: SHE HAS ALREADY TESTIFIED THAT CANCHOLA  
2 HAD READ THE ARTICLE TALKING ABOUT A DEAD PERSON IN THERE. WE  
3 DON'T HAVE TO GO ANY FURTHER THAN THAT.

4 MR. BARENS: SIR, THERE IS A DIFFERENCE BETWEEN A D.A.  
5 SAYING SOMETHING AND SOME COMMERCIAL WRITER IN AN ESQUIRE  
6 MAGAZINE, SIR, IN TERMS OF THE IMPACT IT MIGHT HAVE. A PERSON  
7 SPEAKING TO YOU MIGHT BE MORE PERSUASIVE THAN SOMEONE WRITING  
8 IT.

9 THE COURT: ALL RIGHT, REPEAT THE QUESTION.  
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1 MR. BARENS: COULD WE HAVE IT READ BACK, SIR?

2 (WHEREUPON, THE PENDING QUESTION WAS

3 READ BY THE REPORTER.)

4 THE WITNESS: I DID NOT BELIEVE THAT WHAT I SAID WOULD  
5 BIAS HER.

6 Q BY MR. BARENS: DID YOU CONSIDER YOUR STATEMENT  
7 MIGHT HAVE A CHILLING EFFECT ON HER WILLINGNESS TO SUBSEQUENTLY  
8 COME FORWARD TO THIS COURTROOM?

9 A NO.

10 I TRIED TO ANSWER HER QUESTIONS. SHE WAS VERY  
11 CONCERNED.

12 Q DID YOU THINK YOUR TELLING HER THAT YOU FELT  
13 MR. HUNT WAS RESPONSIBLE FOR SOMEONE'S DEATH MIGHT HAVE A  
14 CHILLING EFFECT ON HER BECOMING A DEFENSE WITNESS FOR MR.  
15 HUNT?

16 A NO.

17 Q NEVER CROSSED YOUR MIND?

18 A I DIDN'T TELL HER THAT I BELIEVED THAT.

19 Q JUST THAT YOUR OFFICE DID, IS THAT IT?

20 A YES.

21 AND NO, I DIDN'T THINK THAT IT WOULD.

22 MR. BARENS: THANK YOU.

23 THE COURT: ANY REDIRECT?

24 MR. WAPNER: YES, I HAVE A FEW QUESTIONS.

25

26 REDIRECT EXAMINATION

27 BY MR. WAPNER:

28 Q WHEN YOU EXPLAINED TO HER ABOUT NOT SHOWING HER

1 ONE PICTURE, WHAT DID YOU SAY?

2 A I TOLD HER THAT IT WAS MY UNDERSTANDING OF LAW  
3 ENFORCEMENT WORK THAT WE DON'T SHOW SOMEBODY JUST ONE PICTURE  
4 BECAUSE IT IS VERY SUGGESTIVE, SO THAT WE COULDN'T DO THAT.

5 Q BECAUSE ONLY SHOWING HER ONE -- YOU HAVE ANSWERED  
6 THAT.

7 MR. WAPNER: YOUR HONOR, CAN THE COURT TAKE JUDICIAL  
8 NOTICE OF THE FACT THAT MR. PITTMAN'S TRIAL ENDED IN  
9 APPROXIMATELY JUNE --

10 THE COURT: NO.

11 MR. BARENS: GOOD GRIEF.

12 THE COURT: DO YOU WANT TO AGREE TO IT?

13 MR. BARENS: I SAID "GOOD GRIEF," ACTUALLY, YOUR HONOR.

14 THE COURT: NO. LET'S GET ON, WILL YOU, PLEASE?

15 Q BY MR. WAPNER: WHEN YOU READ MR. KARNY'S  
16 TESTIMONY, DID THAT HAVE ANYTHING AT ALL TO DO WITH YOUR  
17 GOING TO TUCSON?

18 A NO.

19 IT WAS SUBSTANTIALLY LATER.

20 Q AND COMPLETELY UNRELATED TO THAT?

21 A YES.

22 Q YOU HADN'T READ HIS TESTIMONY BEFORE YOU WENT  
23 THERE?

24 A NO, I HADN'T.

25 NO, IT WAS JUST A SHORT PERIOD OF TIME AGO THAT  
26 I READ IT.

27 Q BEFORE YOU WENT TO TUCSON, DID YOU MAKE CONTACT  
28 WITH DETECTIVE MEYERS FOR THE PURPOSE OF HIM SETTING UP A

1 MEETING WITH MISS CANCHOLA AND MR. LOPEZ?

2 A YES.

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1 Q WHAT DID YOU TALK TO MR. LOPEZ ABOUT BEFORE YOU  
2 WENT DOWN TO RIO RICO?

3 A I REACHED HIM AT I BELIEVE IT WAS A RANCH, WHERE  
4 HE WAS WORKING OR LIVING AT.

5 AND I ASKED HIM IF HE WOULD CONSENT TO BEING  
6 INTERVIEWED AND HE SAID NO, THAT HE WAS TOLD BY MR. CANCHOLA  
7 NOT TO SPEAK TO US WITHOUT THE PRESENCE OF THE LAWYER.

8 AND I TOLD HIM THAT I WOULD BE CALLING THE LAWYER  
9 AND I WOULD LET HIM KNOW WHAT THE LAWYER SAID AND THAT HE COULD  
10 CALL MR. CANCHOLA ALSO.

11 Q DID YOU EVER TALK TO HIM AGAIN BETWEEN THAT  
12 CONVERSATION AND WHEN YOU WENT DOWN TO RIO RICO?

13 A NO. I DID NOT.

14 Q WAS IT AFTER THAT CONVERSATION THAT YOU SPOKE WITH  
15 MR. CANCHOLA AGAIN AND WITH THE LAWYER?

16 A YES.

17 Q WHEN YOU LEFT THE HOUSE IN RIO RICO THAT NIGHT,  
18 DID YOU DO ANY FURTHER INVESTIGATION THAT NIGHT?

19 A NO. I JUST RETURNED A TELEPHONE CALL TO YOU,  
20 ASKING ME TO FIND SOMETHING OUT ABOUT THE CAFE NAPOLI AND THEN  
21 I WENT TO SLEEP.

22 Q WHAT TIME DID YOU LEAVE THE NEXT DAY?

23 A 6 O'CLOCK A.M.

24 Q HAVE YOU BEEN BACK TO TUCSON SINCE THEN?

25 A NO.

26 MR. WAPNER: THANK YOU. NOTHING FURTHER.

27 MR. BARENS: NO QUESTIONS.

28 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. THE

1 WITNESS MAY BE EXCUSED.

2 DO YOU HAVE FURTHER REBUTTAL?

3 MR. WAPNER: YES.

4 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF THE JURY,  
5 WE'LL TAKE OUR CUSTOMARY RECESS AT THIS TIME UNTIL 1:30 THIS  
6 AFTERNOON. THE SAME ADMONITION THAT I GAVE YOU STILL APPLIES.

7 (AT 12 NOON A RECESS WAS TAKEN UNTIL  
8 1:30 P.M. OF THE SAME DAY.)

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1 SANTA MONICA, CALIFORNIA; TUESDAY, APRIL 7, 1987; 1:40 P.M.

2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE

3 (APPEARANCES AS NOTED ON TITLE PAGE.)

4  
5 THE COURT: ALL RIGHT, GOOD AFTERNOON.

6 CALL YOUR NEXT WITNESS, PLEASE.

7 MR. WAPNER: YES, ROBERT PACILLIO.

8  
9 ROBERT PACILLIO,

10 CALLED AS A WITNESS BY THE PEOPLE IN REBUTTAL, WAS SWORN AND  
11 TESTIFIED AS FOLLOWS:

12 THE CLERK: IF YOU WOULD RAISE YOUR RIGHT HAND TO BE  
13 SWORN, PLEASE.

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

18 THE WITNESS: SO HELP ME GOD, I DO.

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

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

23 THE WITNESS: ROBERT PACILLIO, P-A-C-I-L-L-I-O.

24  
25 DIRECT EXAMINATION

26 BY MR. WAPNER:

27 Q MR. PACILLIO, WHERE DO YOU WORK?

28 A SHEARSON-LEHMAN BROTHERS.

1 Q WERE YOU THE STOCKBROKER FOR A PERSON NAMED  
2 RON LEVIN?

3 A YES.

4 Q AND DID YOU HANDLE ACCOUNTS FOR HIM IN THE LATTER  
5 PART OF '83 AND EARLY 1984?

6 A YES.

7 Q DURING THAT TIME, DID YOU GET A CALL FROM SOMEONE  
8 AT A LEASING COMPANY?

9 A YES.

10 Q AND DID THEY ASK YOU ABOUT HIS NET WORTH?

11 A YES.

12 Q DID YOU TELL THEM ABOUT THAT?

13 MR. BARENS: YOUR HONOR, MAY WE APPROACH THE BENCH?

14 I THINK YOUR HONOR KNOWS WHAT THE ISSUE IS.

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

4 MR. BARENS: SIR, MAY WE HAVE AN OFFER OF PROOF AS  
5 TO WHAT THIS HAS TO DO WITH REBUTTAL TO THE DEFENSE CASE?

6 MR. WAPNER: SURE. UNTIL THE DEFENSE CASE WAS PRESENTED,  
7 IT WAS COMPLETELY UNCLEAR AS TO WHETHER THE DEFENSE WAS GOING  
8 TO BE THAT THIS MAN IS NOT DEAD --

9 THE COURT: WHAT?

10 MR. WAPNER: IT WAS UNCLEAR AS TO WHETHER THE DEFENSE  
11 WOULD BE THAT THIS MAN IS NOT DEAD OR WHETHER THE DEFENSE  
12 IS GOING TO BE THAT SOMEBODY ELSE KILLED HIM.

13 AND ONCE IT BECAME CLEAR AFTER THE DEFENSE PRESENTED  
14 THEIR CASE, THAT THE THEORY OF THE DEFENSE IS THAT HE IS  
15 ALIVE AND LIVING IN TUCSON, THAT OBVIOUSLY, THE SUGGESTION  
16 IS THAT HE IS LIVING OFF OF ASSETS THAT HE HAD FROM BEFORE.

17 AND THERE IS SOME SUGGESTION THAT THIS WITNESS  
18 MADE A STATEMENT TO SOMEONE AT THE CAR LEASING COMPANY ABOUT  
19 HIS NET WORTH AND THIS WITNESS WILL TESTIFY THAT HE OBSERVED  
20 THE TWO CHECKS, ONE FOR \$980,000 AND ONE FOR \$500,000 AND  
21 IT WAS BASED ON HIS SEEING THE CHECKS THAT HE MADE THE STATE-  
22 MENT TO THE CAR LEASING COMPANY THAT THE PERSON HAD A NET  
23 WORTH OF ONE MILLION AND A HALF DOLLARS.

24 THE COURT: ALL RIGHT. I WILL SUBMIT IT.

25 DO YOU HAVE AN OBJECTION FOR THE RECORD?

26 MR. BARENS: I BETTER SAY SOMETHING.

27 THE COURT: GO AHEAD.

28 MR. BARENS: YOUR HONOR, I DON'T RECALL EVER DURING



4-2

1 THE DEFENSE CASE EVEN SPECULATING ABOUT HOW MR. LEVIN WAS  
2 FUNDING HIS PRESENT EXISTENCE, NOR DID I OFFER ANY TESTIMONY  
3 WHATEVER ON HOW HE WAS FUNDING HIS PRESENT EXISTENCE.

4 THAT WAS DONE STRICTLY DURING CROSS-EXAMINATION  
5 OF THE PEOPLE'S WITNESSES DURING THEIR CASE IN CHIEF. AT  
6 NO TIME WAS THERE ANY WITNESS FOR THE DEFENSE THAT EVER,  
7 EVER MENTIONED ANYTHING ABOUT LEVIN'S FINANCES, HOW HE SUPPORTS  
8 HIMSELF, HOW HE USED TO SUPPORT HIMSELF OR EVEN SPECULATING  
9 AS TO HOW HE COULD SUPPORT HIMSELF AT PRESENT.

10 THE COURT: ALL RIGHT. YOU HAVE GOT YOUR OBJECTION  
11 ON THE RECORD. THAT WILL BE OVERRULED.

12 (THE FOLLOWING PROCEEDINGS WERE HELD  
13 IN OPEN COURT IN THE PRESENCE AND HEARING  
14 OF THE JURY:)

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1 (THE FOLLOWING PROCEEDINGS WERE HELD  
2 IN OPEN COURT:)

3 Q BY MR. WAPNER: DO YOU EVER RECALL TALKING TO  
4 SOMEBODY FROM A CAR LEASING COMPANY ABOUT A CREDIT REFERENCE  
5 FOR MR. LEVIN?

6 A YES.

7 Q AND DO YOU REMEMBER WHAT THEY ASKED YOU?

8 A THEY ASKED ME --

9 MR. BARENS: OBJECTION AS TO HEARSAY. WE DON'T EVEN  
10 KNOW WHO HE IS TALKING TO.

11 THE COURT: OVERRULED.

12 THE WITNESS: THEY ASKED ME IF I WAS FAMILIAR WITH THE  
13 ACCOUNT OF GENERAL PRODUCERS CORP.

14 Q BY MR. WAPNER: AND DID YOU TELL THEM --  
15 DID YOU MAKE ANY STATEMENTS TO THEM ABOUT HIS NET  
16 WORTH-, IF YOU RECALL?

17 A YES.

18 Q WHAT DID YOU TELL THEM?

19 MR. CHIER: HEARSAY.

20 THE WITNESS: I TOLD THEM THAT HE HAD AN ACCOUNT WITH  
21 ME WORTH APPROXIMATELY \$200,000, BETWEEN A HUNDRED AND TWO  
22 HUNDRED THOUSAND, PLUS A COMMODITIES ACCOUNT, WHICH I AM NOT  
23 FAMILIAR WITH COMMODITIES, WORTH -- CONTROLLING ABOUT  
24 \$750,000 WORTH OF DEUTSCHE MARKS, I THINK DEUTSCHE MARKS BUT  
25 I AM NOT SURE ABOUT THAT, AND THAT I BELIEVE THAT HE HAS CASH  
26 OF ONE POINT FIVE MILLION.

27 Q BY MR. WAPNER: AND WHAT WAS YOUR BELIEF THAT HE  
28 HAD CASH OF ONE POINT FIVE MILLION BASED ON?

1           A       MR. LEVIN TOLD ME THAT HE WAS GOING TO DEPOSIT  
2 A COUPLE OF CASHIER'S CHECKS WITH ME.

3           Q       DID HE EVER SHOW YOU THOSE CHECKS?

4           A       YES.

5           Q       AND SHOWING YOU AN EXHIBIT THAT WE HAVE MARKED  
6 AS PEOPLE'S 4 FOR IDENTIFICATION, WOULD YOU LOOK AT THE TWO  
7 CHECKS.

8           THE COURT: THAT IS IN EVIDENCE, ISN'T IT?

9           MR. WAPNER: I AM SORRY. IN EVIDENCE. THANK YOU.

10          Q       WOULD YOU LOOK AT THOSE CHECKS AND TELL ME IF YOU  
11 RECOGNIZE THEM?

12          A       YES.

13          Q       WHERE HAVE YOU SEEN THOSE BEFORE?

14          A       MR. LEVIN'S HOME.

15          Q       AND ARE THOSE THE CHECKS THAT YOU WERE REFERRING  
16 TO?

17          A       YES, I THINK SO, I THINK.

18          Q       DO THEY APPEAR TO BE SIMILAR TO THE ONES HE SHOWED  
19 YOU?

20          A       YES.

21          Q       DO YOU RECALL THE COLOR OF THE ONES HE SHOWED YOU?

22          A       GRAY.

23          Q       AND DID HE TELL YOU THAT HE WAS GOING TO DEPOSIT  
24 THESE CHECKS IN HIS ACCOUNT?

25          A       YES.

26          Q       DID HE EVER DO THAT?

27          A       NO.

28          Q       AND DID THOSE CHECKS FORM THE BASIS FOR YOUR

1 STATEMENT TO THE PEOPLE AT THE LEASING COMPANY?

2 A YES.

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

4  
5 CROSS-EXAMINATION

6 BY MR. BARENS:

7 Q GOOD AFTERNOON, MR. PACILLIO.

8 MR. PACILLIO, DIDN'T MR. LEVIN WITHDRAW SOME  
9 \$75,000 FROM HIS ACCOUNT WITH YOU FOLKS ON MAY 11, 1984?

10 A NO, HE DIDN'T.

11 WE RETURNED A CHECK THAT WAS BAD THAT HE HAD  
12 WRITTEN TO US, I BELIEVE THAT IS THE CASE.

13 Q WHOM DID YOU RETURN IT TO?

14 A IT WAS RETURNED TO SHEARSON LEHMAN BROTHERS.

15 Q WHAT DID THAT LEAVE IN HIS ACCOUNT AS OF THAT DATE?

16 A I THINK THERE WAS A DEBIT OF ABOUT \$2200, I  
17 BELIEVE.

18 I AM NOT FAMILIAR WITH THE STATEMENTS.

19 THE COURT: YOU MEAN HE OWED SHEARSON LEHMAN THE \$2200?

20 THE WITNESS: \$3200, I BELIEVE.

21 Q BY MR BARENS: SO YOU HAD A NEGATIVE WHERE HE  
22 ENDED UP AFTER THAT TRANSACTION ACTUALLY INDEBTED TO YOU FOR  
23 AN OVERDRAFT?

24 A YES.

6-1

1 Q DID YOU EVER COLLECT THAT?

2 A NO.

3 Q NOW, HOW ABOUT MAY 1ST? HAD HE MADE A WITHDRAWAL  
4 THEN?

5 A I AM NOT FAMILIAR WITH THE ACTIVITY OF THE ACCOUNT.

6 Q YOU ARE NOT?

7 A NOT ON THE CHECKS. NOT ON THE CHECKS AND DEPOSITS,  
8 DAY-TO-DAY DEBITS AND CREDITS.

9 Q DO YOU KNOW HOW MUCH HE HAD IN HIS ACCOUNT ON  
10 MAY 1ST?

11 A NO. I DON'T.

12 Q DO YOU KNOW HOW MUCH THE ACCOUNT IS OPENED FOR?

13 A I BELIEVE \$100,000, SEVENTY-FIVE OR ONE HUNDRED.  
14 MAYBE IT WAS ONE HUNDRED TWENTY-FIVE.

15 Q WAS IT MAYBE \$125,000?

16 A MAYBE.

17 Q WHEN WAS THAT?

18 A I DON'T REMEMBER THAT DATE.

19 Q DO YOU KNOW WHERE THE \$125,000 WENT?

20 A YES.

21 Q WHERE DID IT GO?

22 A HE BOUGHT SOME SHEARSON AGGRESSIVE GROWTH FUNDS  
23 AND HE WROTE A CHECK FOR I THINK, FIFTY SOMETHING THOUSAND.  
24 THAT FIGURE RINGS A BELL. IT WAS A DEBIT AGAINST THE ACCOUNT.

25 Q AND WHO WAS THE CHECK FOR \$56,000 FOR?

26 A I HAVE NO IDEA.

27 MR. WAPNER: OBJECTION. THAT MISSTATES THE EVIDENCE.

28 I BELIEVE HE SAID FIFTY SOME THOUSAND. COUNSEL ASKED ABOUT

6-2

1 FIFTY-SIX.

2 MR. BARENS: I THOUGHT HE SAID FIFTY-SIX.

3 THE COURT: WELL, IT DOESN'T MAKE ANY DIFFERENCE. GO  
4 AHEAD.

5 Q BY MR. BARENS: WAS THAT LIKE A CASH WITHDRAWAL,  
6 THAT CHECK?

7 A YES. I WOULD SAY SO.

8 Q WHEN WAS THAT?

9 A I DON'T KNOW.

10 Q DID HE LATER SELL THE SHEARSON ASSETS THAT HE  
11 HAD?

12 A YES.

13 Q AND WHEN WAS THAT?

14 A DURING THE EXISTENCE OF THE ACCOUNT. HE KEPT  
15 ON BUYING AND SELLING. I DON'T KNOW EXACTLY.

16 Q ALL YOU KNOW IS THAT BY THE TIME MAY ROLLS AROUND,  
17 THAT HE IS NEGATIVE IN THAT ACCOUNT, NO MORE MONEY?

18 A THAT'S RIGHT.

19 Q NOW, YOU MENTIONED THAT HE HAD \$750,000 IN DEUTSCHE  
20 MARKS?

21 A THAT IS A FIGURE THAT IS IN MY MEMORY.

22 I DON'T KNOW THE COMMODITY MARKET AT ALL. I  
23 JUST THOUGHT THAT HE HAD ONE HUNDRED CONTRACTS AND EACH  
24 CONTRACT CONTROLLED \$75,000. THAT IS WHAT I THINK. I AM  
25 NOT SURE OF THAT.

26 Q DID YOU EVER VERIFY THAT, SIR?

27 A NO I DIDN'T. I DIDN'T HAVE CONTROL OF THAT  
28 ACCOUNT.

1 Q WHO DID?

2 A A GENTLEMAN IN MY OFFICE.

3 Q WHAT IS HIS NAME?

4 A ROBERT DUFFY.

5 Q DID MR. DUFFY EVER VERIFY THAT?

6 A NO.

7 Q DID HE EVER ATTEMPT TO?

8 A EXCUSE ME. REPEAT THE QUESTION, PLEASE.

9 Q DID HE EVER ATTEMPT TO, TO YOUR KNOWLEDGE, SIR?

10 A NOT TO MY KNOWLEDGE.

11 Q OKAY. NOW, LET ME ASK YOU THIS. THE CHECKS  
12 THAT YOU HAVE IN FRONT OF YOU THAT WERE SHOWN TO YOU AS BEING  
13 SWISS CASHIER'S CHECKS, THOSE AREN'T CASHIER'S CHECKS, ARE  
14 THEY?

15 A NO.

16 Q THEY ARE SOMEWHAT LOOKING LIKE PERSONAL CHECKS,  
17 SIR?

18 A I GUESS THEY ARE.

19 Q I SEE. LET ME JUST LOOK AT THOSE WITH YOU FOR  
20 A MOMENT. DO THESE CHECKS APPEAR TO BE SIGNED BY ANYBODY?

21 MR. WAPNER: YOUR HONOR, OBJECTION. THE DOCUMENTS  
22 SPEAK FOR THEMSELVES.

23 THE COURT: SUSTAINED.

24 THE WITNESS: I DO NOT KNOW. I DO NOT SEE A SIGNATURE  
25 EXCEPT THIS RIGHT HERE. I DON'T KNOW WHO --

26 Q BY MR. BARENS: IT CERTAINLY IS NOT A SINGLE  
27 R, DOES IT APPEAR TO BE?

28 A NO.

1 Q ON EITHER ONE, DOES IT, SIR?

2 MR. WAPNER: OBJECTION. AGAIN, THE DOCUMENTS SPEAK  
3 FOR THEMSELVES.

4 THE COURT: SUSTAINED.

5 Q BY MR. BARENS: NOW, HOW DO YOU KNOW THAT THESE  
6 ARE THE TWO CHECKS THAT MR. LEVIN SHOWED YOU AT HIS HOUSE?

7 A I AM NOT SURE THEY ARE THE SAME CHECKS.

8 Q YOU ARE NOT SURE THOSE ARE THE SAME CHECKS HE  
9 SHOWED YOU? HE JUST SHOWED YOU SOME CHECKS, SWISS CHECKS,  
10 IS THAT CORRECT?

11 A YES.

12 Q AND NOW I AM SHOWING YOU SOME SWISS CHECKS AGAIN  
13 OR MR. WAPNER IS. AND I WILL, TOO.

14 AND SO YOU ARE TELLING ME THAT YOU CAN'T BE SURE  
15 IF THOSE AT ALL ARE THE SAME AS THE OTHER SWISS CHECKS YOU  
16 SAW?

17 A NO. I CAN'T BE SURE.

18 MR. BARENS: A MOMENT?

19 (PAUSE.)

20 Q BY MR. BARENS: SIR, DOES IT REQUIRE \$150,000  
21 CASH TO BUY CONTRACTS FOR \$750,000 IN DEUTSCHE MARKS?

22 A I DON'T KNOW.

23 Q DO YOU HAVE ANYTHING TO DO WITH THAT KIND OF  
24 PROCEDURES?

25 A NO.

26 Q NOW, IN GIVING OUT CREDIT INFORMATION, DO YOU  
27 RELY SOLELY UPON WHAT THE CUSTOMER TELLS YOU?

28 A I RELY ON WHAT IS IN THE ACCOUNT.



17-1  
1 Q AND WHEN YOU PASS TO A CAR LEASING FACILITY THAT  
2 SOMEONE IS WORTH A MILLION FIVE HUNDRED THOUSAND DOLLARS, WHAT  
3 DO YOU RELY ON, SIR?

4 MR. WAPNER: OBJECTION. IT CALLS FOR SPECULATION.

5 IT IS ALSO IRRELEVANT. "WHAT DO YOU RELY ON  
6 GENERALLY?"

7 THE ONLY THING THAT IS RELEVANT IS WHAT HE DID  
8 IN THIS CASE.

9 THE COURT: I WILL SUSTAIN THE OBJECTION.

10 Q BY MR. BARENS: SIR, DID MR. LEVIN LOSE ANY MONEY  
11 IN THE ACCOUNT WITH YOU FOLKS?

12 A HE MADE MONEY AND HE LOST MONEY. I DON'T -- I  
13 HAVE NOT EXAMINED THE ACCOUNTS AND FIGURED THEM OUT.

14 Q ALL RIGHT. WHEN YOU WERE CALLED BY THE LEASING  
15 COMPANY TO GIVE A CREDIT REFERENCE, WHAT DID YOU LOOK AT TO  
16 ANSWER THEIR INQUIRY, SIR?

17 A THE ACCOUNT, THE DATE THE ACCOUNT WAS OPENED, HOW  
18 MUCH MONEY WAS IN THE ACCOUNT OR SECURITIES AND THAT IS  
19 BASICALLY IT, AND HOW LONG I HAVE KNOWN HIM.

20 Q SO IN MAKING YOUR RESPONSE, YOU HAD TO LOOK AT  
21 DATA PROVIDED YOU BY CERTAIN RECORDS THAT SHEARSON MAINTAINED  
22 ABOUT THE ACCOUNT?

23 A MY RECORDS.

24 Q AND YOUR RECORDS ARE MADE UP BY WHOM, SIR?

25 A BY SHEARSON.

26 Q AND ARE YOU BASICALLY PASSING ON UNVERIFIED  
27 INFORMATION TO OTHER PEOPLE?

28 A NO, NOT AT ALL.

1 Q HOW ABOUT IN THIS CASE?

2 A THIS WAS NOT VERIFIED, THESE CHECKS.

3 Q DIDN'T I ASK YOU ABOUT THOSE CHECKS, I MEAN ABOUT  
4 THE INFORMATION YOU GAVE THE PERSON FROM THE CAR LEASING  
5 COMPANY?

6 A WHAT IS IN THE ACCOUNT IS VERIFIED.

7 Q I SEE.

8 SO WHAT YOU TOLD THEM WAS IN THE ACCOUNT WAS  
9 VERIFIED, SIR?

10 A YES.

11 Q AND WHAT DID YOU TELL THEM WAS IN THE ACCOUNT?

12 THE COURT: HE HAS ALREADY TESTIFIED. REPETITION WON'T  
13 DO YOU ANY GOOD ANY WAY. OBJECTION SUSTAINED.

14 MR. BARENS: I DIDN'T HEAR ONE, YOUR HONOR.

15 THE COURT: I AM MAKING THE OBJECTION, TOO.

16 MR. BARENS: OH, I SEE. ALL RIGHT.

17 THE COURT: YOU DON'T HAVE TO REPEAT IT THREE OR FOUR  
18 TIMES. THE JURY IS VERY INTELLIGENT AND THEY CAN GET IT THE  
19 FIRST TIME.

20 MR. BARENS: I SEE. WELL, I THOUGHT MR. WAPNER WOULD  
21 MAKE AN OBJECTION.

22 Q IN ANY EVENT, WHY DID YOU HAPPEN TO BE AT  
23 MR. LEVIN'S HOUSE TO BE SHOWN THOSE CHECKS ON WHATEVER DAY  
24 THAT WAS?

25 A I DON'T REMEMBER.

26 Q DO YOU REMEMBER WHEN IT WAS?

27 A NO, I DON'T.

28 Q DO YOU REMEMBER WHAT YEAR IT WAS?

7- 1 A '83, 1983 OR '84.

2 Q 1983 OR --

3 A I DON'T KNOW THE EXACT MONTH.

4 Q OKAY, BY THE WAY, DURING MAY OF 1984, DID RON LEVIN  
5 EVER CALL YOU FROM NEW YORK CITY?

6 A HE SAID HE WAS CALLING ME -- HE WAS GOING TO  
7 NEW YORK BUT I AM NOT SURE WHERE HE CALLED ME FROM.

8 THE COURT: HE SAID HE WAS GOING TO NEW YORK?

9 THE WITNESS: YES.

10 Q BY MR. BARENS: DID HE EVER CALL YOU AND TELL YOU  
11 HE WAS CALLING YOU FROM NEW YORK?

12 A NO.

13 Q DID HE EVER CALL YOU AND TELL YOU HE WAS CALLING  
14 YOU LONG DISTANCE?

15 A NO.

16 Q DID YOU RECEIVE A PHONE CALL FROM HIM DURING MAY  
17 OF 1984?

18 A YES.

19 Q WHAT DID HE TELL YOU IN THAT PHONE CALL?

20 A HE SAID "IT'S ME." HE DID NOT IDENTIFY HIMSELF.  
21 HE SAID "I AM GETTING SOME MONEY AND I WILL CALL  
22 YOU SOON."

23 THAT WAS THE LAST CONVERSATION I HAD WITH HIM.

24 THE COURT: HE NEVER CALLED YOU AFTER THAT?

25 THE WITNESS: NO.

26 Q BY MR. BARENS: DID HE TELL YOU WHERE HE WAS GETTING  
27 THE MONEY FROM?

28 A I AM ASSUMING THAT HE WAS IN NEW YORK.

7-11  
1 Q YOU ARE ASSUMING HE WAS IN NEW YORK?

2 A THAT HE WENT TO NEW YORK, YES.

3 Q DID HE TELL YOU THAT IT WAS A BUSINESS DEAL HE  
4 WAS WORKING ON?

5 A NO.

6 Q DID HE TELL YOU ANYTHING ABOUT WHAT TYPE OF  
7 SITUATION WAS EXISTENT THAT WAS GOING TO PRODUCE THIS MONEY  
8 THAT WAS COMING IN?

9 A NO.

10 Q DID YOU ASK HIM?

11 A NO.

12 Q DO YOU KNOW WHY HE CALLED YOU?

13 A NO.

14 Q DID HE SAY WHY?

15 A NO.

16 Q JUST BECAUSE HE CALLED YOU, WAS ANYTHING ELSE SAID  
17 IN THAT CONVERSATION, ASIDE FROM "I AM GOING TO GET SOME MONEY  
18 TO DEPOSIT WITH YOU FOLKS"?

19 A NOT THAT I REMEMBER.

20 Q NOW, IS IT CORRECT THAT MR. LEVIN GOT HIS MONEY  
21 OUT OF THE SHEARSON ACCOUNT BEFORE YOUR COMPANY TRIED TO  
22 OFFSET HIS UNPAID CREDIT CARD BILL OF \$46,000?

23 A THAT IS A POSSIBILITY.

24 THE COURT: YOU MEAN DID HE TRY TO GET IT OUT, IS THAT  
25 IT?

26 THE WITNESS: HE TRIED TO GET THAT \$75,000 CHECK CLEARED,  
27 YES.

28 Q BY MR. SARENS: HE DID, DID HE NOT?

1 A YES, HE DID.

2 MR. BARENS: THANK YOU.

3 THE COURT: ANYTHING FURTHER OF THIS WITNESS?

4 MR. WAPNER: JUST A COUPLE OF QUESTIONS.

5

6

REDIRECT EXAMINATION

7

BY MR. WAPNER:

8

Q HE TRIED TWICE TO PUT THAT \$75,000 THROUGH AND  
9 IT WAS BOUNCED BOTH TIMES, RIGHT?

10

A IT WAS RETURNED, "UNCOLLECTED FUNDS" THE FIRST TIME  
11 AND THE SECOND TIME IT WAS A RETURN, NONSUFFICIENT FUNDS.

12

Q IT WASN'T PAID BY YOU ON EITHER OCCASION?

13

A NO.

14

15

Q DID YOU EVER TELL THE CAR LEASING PEOPLE THAT  
16 MR. LEVIN HAD IN EXCESS OF A MILLION DOLLARS IN COMMODITIES  
AND SECURITIES?

17

A NOT TO MY MEMORY.

18

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

19

MR. BARENS: JUST A MOMENT, YOUR HONOR.

20

THE COURT: GO AHEAD.

21

22

23

24

25

26

27

28

## 1 REDIRECT EXAMINATION

2 BY MR. WAPNER:

3 Q THE ORIGINAL \$125,000 WAS GONE, WASN'T IT, SIR?

4 A YES.

5 MR. WAPNER: NOTHING FURTHER.

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

7 MAY THE WITNESS BE EXCUSED?

8 MR. WAPNER: NO OBJECTION.

9 MR. BARENS: NO OBJECTION.

10 MR. WAPNER: WE NOW CALL TOM EDMONDS.

11

12

THOMAS WARREN EDMONDS,

13

CALLED AS A WITNESS BY THE PEOPLE IN REBUTTAL, HAVING BEEN

14

PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

15

THE CLERK: YOU HAVE BEEN SWORN BEFORE. HAVE A SEAT.

16

STATE YOUR NAME. YOU ARE STILL UNDER OATH.

17

THE WITNESS: THOMAS WARREN EDMONDS, E-D-M-O-N-D-S.

18

19

## DIRECT EXAMINATION

20

BY MR. WAPNER:

21

Q MR. EDMONDS, YOU ARE EMPLOYED BY THE BEVERLY

22

HILLS POLICE DEPARTMENT?

23

A YES.

24

Q DID YOU PARTICIPATE IN THE INVESTIGATION IN TUCSON,

25

ARIZONA AS A PART OF THIS CASE?

26

A YES, I DID.

27

Q HOW MANY TIMES DID YOU GO THERE?

28

A TWICE.

1 Q WHEN DID YOU GO THERE THE FIRST TIME?

2 A NOVEMBER 26, 1986.

3 Q WHO DID YOU GO WITH?

4 A DETECTIVE PAUL EDHOLM AND LISA HART FROM THE  
5 D.A.'S OFFICE AND MYSELF.

6 Q AND DID YOU GO ALSO WITH -- EXCUSE ME, AN  
7 INVESTIGATOR SCHAEFER?

8 A YES, BILL SCHAEFER FROM THE D.A.'S OFFICE.

9 Q HE IS AN INVESTIGATOR WITH THE D.A.'S OFFICE?

10 A YES, SIR.

11 Q WHEN YOU GOT TO TUCSON, DID THE FOUR OF YOU SPLIT  
12 UP INTO TWO TEAMS?

13 A YES, WE DID.

14 Q WHO DID YOU GO WITH?

15 A I WENT WITH BILL SCHAEFER. AND PAUL EDHOLM AND  
16 LISA HART WERE DETAILED TO HANDLE ANOTHER ASSIGNMENT.

17 Q DID YOU AND MR. SCHAEFER MEET UP WITH SOMEONE  
18 ELSE?

19 A YES. WE MET A MAN NAMED RALPH. I DON'T RECALL  
20 HIS LAST NAME.

21 BUT HE IS SOME FRIEND OF BILL SCHAEFER'S BUT  
22 IS A RETIRED POLICEMAN FROM TUCSON.

23 Q DID HE HELP YOU IN THE INVESTIGATION?

24 A YES, HE DID.

25 Q WHAT IS THE FIRST THING THAT YOU AND MR. SCHAEFER  
26 AND THIS PERSON NAMED RALPH DO?

27 A WE WENT TO A GASOLINE STATION, VICKERS IS THE  
28 BRAND, LOCATED AT SIXTH AND CAMPBELL IN TUCSON TO REVIEW

1 GASOLINE RECEIPTS SINCE WE HAD INFORMATION THAT THE PERSON  
2 THAT WAS SEEN BY THE TWO WITNESSES LIVING OVER IN TUCSON --  
3 THEY FELT THAT HE HAD USED A CREDIT CARD IN PURCHASING GAS,  
4 DUE TO THE LENGTH OF TIME HE WAS AT THE PAY WINDOW.

5 SO WE WENT THROUGH SOME GAS CHARGE SLIPS AT THE  
6 GASOLINE STATION.

7 Q WHAT HAPPENED WHEN YOU DID THAT?

8 A WELL, WE FOUND THAT WE DIDN'T KNOW THE CORRECT  
9 DATE AND THERE WERE TOO MANY, WITHOUT HAVING A CORRECT DATE,  
10 TO GO THROUGH. IT WOULD TAKE TOO LONG.

11 Q WHAT DID YOU DO AT THAT PARTICULAR TIME?

12 A WE CONSULTED WITH THIS MAN WHOSE FIRST NAME IS  
13 RALPH. I DON'T RECALL HIS LAST NAME.

14 Q LET ME ASK YOU SOMETHING. WHILE YOU WERE STILL  
15 AT THE GAS STATION, DID YOU TALK TO THE PERSON WHO RAN THE  
16 GAS STATION?

17 A WE TALKED TO A MANAGER AND ATTENDANT THERE, YES,  
18 SIR.

19 Q WERE YOU ABLE TO GET ANY HELP FROM THEM ABOUT  
20 PARTICULARLY SEEING ANYTHING ON THIS DAY?

21 A NO. IT TURNED OUT THAT BOTH OF THEM -- ONE OF  
22 THEM HAD NOT EVEN BEEN WORKING FOR THE COMPANY DURING THE  
23 TIME FRAME THAT WE EXPECTED THIS HAPPENED. AND THE OTHER  
24 ONE HAD NOT BEEN ON DUTY.

25 Q THEN AFTER YOU TALKED TO THEM, YOU SAY YOU TALKED  
26 TO THIS PERSON RALPH AGAIN?

27 A YES.

28 Q WHAT DID YOU TALK TO HIM ABOUT?



1           A       WE WANTED TO -- WE HAD INFORMATION THAT MR. LOPEZ  
2 HAD MENTIONED THE CAR POSSIBLY BEING A HORNET.

3                   AND I KNEW THAT A HUDSON HORNET WAS MANUFACTURED  
4 DURING THE '50'S AND EARLY '60'S, I BELIEVE.

5                   SO WE WERE GOING TO TRY TO LOCATE ANY HUDSON  
6 HORNETS THAT MIGHT BE IN THE TUCSON AREA. SO WE ASKED RALPH  
7 FOR THE NAME OF A CLASSIC AUTO DEALER OR SOMEBODY THAT HAD  
8 KNOWLEDGE OF CLASSIC CARS IN TUCSON.

9                   WE WENT TO A BUSINESS CALLED SUBURBAN MOTORS.  
10  
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1 Q WHAT DID YOU DO WHEN YOU GOT THERE?

2 A WE INTERVIEWED THE PROPRIETOR AND HIS ASSISTANT.

3 Q WHEN YOU TALKED TO THEM, WHAT INFORMATION DID  
4 YOU GET?

5 A WE GAVE THEM A DESCRIPTION OF -- A VAGUE DESCRIPTION  
6 OF A GENTLEMAN WE WERE TRYING TO LOCATE AND THE TYPE OF  
7 CAR, A HUDSON HORNET.

8 Q AND WHAT WERE YOU TOLD AT THAT POINT?

9 A HE SAID THAT HE RECALLED SEEING SOMEBODY THAT  
10 FITS THAT DESCRIPTION WITH A HUDSON THE PREVIOUS SATURDAY  
11 AT A CHURCH AUTO SHOW.

12 Q WHAT DID YOU DO WHEN YOU GOT THAT INFORMATION?

13 A AFTER WE --

14 MR. BARENS: FOR THE RECORD, WE MAKE A HEARSAY OBJECTION  
15 TO THOSE COMMENTS.

16 THE COURT: YES.

17 MR. BARENS: WE HAVE AN ONGOING HEARSAY OBJECTION.

18 THE COURT: ALL RIGHT.

19 MR. BARENS: THAT IS ONGOINGLY (SIC) OVERRULED, I ASSUME  
20 ABOUT THOSE CONVERSATIONS?

21 THE COURT: YOU READ MY MIND.

22 MR. BARENS: THANK YOU, SIR.

23 THE COURT: GO AHEAD.

24 Q BY MR. WAPNER: WHAT DID YOU DO AFTER THAT?

25 A WE WENT TO THE CATHOLIC CHURCH AND EVENTUALLY,  
26 AFTER WAITING SEVERAL HOURS, CONTACTED THE PRIEST.

27 Q IS THAT THE CHURCH WHERE HE HAD TOLD YOU THE  
28 AUTO SHOW HAD TAKEN PLACE?

1           A       YES.

2           Q       AND WHAT HAPPENED WHEN YOU TALKED TO THE PRIEST?

3           A       HE CONFIRMED THERE HAD BEEN AN AUTO SHOW AND  
4 HE GAVE US ACCESS TO THE RECORDS.

5                   AND THROUGH THE RECORDS, WE EVENTUALLY DETERMINED  
6 THAT A MAN NAMED RICHARD HERMAN DID IN FACT, HAVE GRAY HAIR  
7 AND DID OWN A HUDSON AND WAS AT THE SHOW.

8           Q       WHAT DID YOU DO WHEN YOU GOT THAT INFORMATION?

9           A       WE DIDN'T KNOW EXACTLY WHERE HE LIVED. WE HAD  
10 AN INTERSECTION OF 28TH STREET AND KOLB, WHICH IS K-O-L-B.

11          Q       LET ME INTERRUPT YOU FOR ONE SECOND. WAS IT  
12 RIGHT THEN AT THE CHURCH THAT YOU GOT THE INFORMATION THAT  
13 THIS PERSON, MR. HERMAN, HAD BEEN AT THE SHOW OR DID YOU  
14 HAVE TO DO SOMETHING FURTHER?

15          A       NO. WE FOUND OUT AT THE CHURCH. WE MADE A PHONE  
16 CALL TO ANOTHER GUY WHO WAS A POLICEMAN WHOSE NAME WAS ON  
17 THE LIST THAT HAD BEEN SHOWING A CAR.

18          Q       BY THE TIME YOU GOT THE INFORMATION -- WELL,  
19 WHAT INFORMATION DID YOU GET ABOUT THIS PERSON, MR. HERMAN?

20          A       WE HAD HIS NAME, RICHARD HERMAN. HE LIVED --  
21 THIS PERSON WE CALLED TOLD US THAT HE LIVED NEAR 28TH AND  
22 KOLB.

23          Q       DID THE PERSON YOU CALLED TELL YOU THAT MR. HERMAN  
24 HAD BEEN AT THE AUTO SHOW?

25          A       HE TOLD US THAT HE HAD BEEN AT THE AUTO SHOW  
26 AND HE LOOKS LIKE KENNY ROGERS, THE ENTERTAINER.

27          Q       DID HE TELL YOU WHAT KIND OF A CAR MR. HERMAN  
28 HAD?

1           A       HE SAID HE HAD A BEIGE OR GOLD COLORED HUDSON  
2 HORNET.

3           Q       AND HE TOLD YOU THE INTERSECTION WHERE HE LIVED?

4           A       YES.

5           Q       AND WHAT DID YOU DO WHEN YOU GOT THAT INFORMATION?

6           A       WE WENT THERE AND PATROLLED AROUND, TRYING TO  
7 SEE IF WE COULD SEE A CAR IN A CARPORT OR A DRIVEWAY.

8                   AND FAILING THAT, WE WENT TO THE POLICE DEPARTMENT  
9 AND RAN THE NAME THROUGH THE RECORDS THERE AND WE WERE ABLE  
10 TO FIND OUT THAT HIS WIFE HAD REPORTED AN INCIDENT.

11                   SO WE TELEPHONED THEM AND MADE AN APPOINTMENT  
12 TO SEE THEM.

13

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1 Q AND YOU GOT AN ADDRESS?

2 A YES.

3 Q WHAT TIME WAS IT WHEN YOU TELEPHONED HIM TO MAKE  
4 AN APPOINTMENT TO SEE HIM?

5 A APPROXIMATELY MIDNIGHT.

6 Q THIS IS MIDNIGHT BETWEEN THE 26TH AND THE 27TH  
7 OF NOVEMBER, 1986?

8 A THANKSGIVING EVENING, THE EVE OF THANKSGIVING.  
9 THE NEXT MORNING WOULD HAVE BEEN THANKSGIVING.

10 Q AND DID YOU GO OUT TO HIS HOUSE?

11 A YES, WE DID.

12 Q AND WHAT DID YOU DO WHEN YOU GOT THERE?

13 A WE TOOK TWO POLAROID PICTURES OF RICHARD HERMAN  
14 AND LOOKED AT HIS CAR, WHICH WAS COVERED, AND WE COULDN'T SEE  
15 IT AND HE DIDN'T WANT TO OPEN IT DUE TO THE LATE HOUR BECAUSE  
16 HE HAD TO OPEN HIS WHOLE GARAGE, SO WE MADE AN APPOINTMENT  
17 TO RE-INTERVIEW HIM AFTER THE HOLIDAY.

18 Q ONE OF THE PICTURES THAT YOU --

19 I HAVE TWO PICTURES, JUST LET ME SHOW THEM TO YOU.  
20 THEY DON'T APPEAR TO BE POLAROIDS. DO YOU RECOGNIZE THOSE  
21 PICTURES?

22 A YES, THESE ARE THE PICTURES.

23 I WAS WRONG. I FORGOT WE WENT TO A ONE-HOUR PLACE  
24 AND HAD THEM DEVELOPED.

25 Q ARE THOSE THE PICTURES THAT YOU TOOK OF MR. HERMAN  
26 APPROXIMATELY MIDNIGHT BETWEEN THE 26TH AND 27TH OF NOVEMBER?

27 A YES, THEY ARE.

28 MR. WAPNER: YOUR HONOR, MAY ONE OF THOSE BE MARKED

19-?  
1 AS -- MAYBE THEY CAN BE MARKED TOGETHER AS --

2 THE COURT: 244.

3 Q BY MR. WAPNER: DID YOU GET A PICTURE OF THE CAR  
4 THAT NIGHT OR NOT?

5 A NO, SIR.

6 Q AND DID YOU RETURN TO LOS ANGELES THE NEXT DAY,  
7 BEING THANKSGIVING DAY?

8 A YES, WE DID.

9 Q DID YOU GO BACK TO TUCSON AGAIN?

10 A YES, ON DECEMBER 3RD, 1986.

11 Q AND WHY DID YOU GO BACK THERE AT THAT TIME?

12 A TO TAKE SOME OFFICIAL PICTURES, BECAUSE WE WERE  
13 DISAPPOINTED IN THE QUALITY OF THE PICTURES WE HAD TAKEN AND  
14 DIDN'T THINK THEY WERE SUITABLE FOR A LINEUP.

15 Q WAS THERE ANOTHER REASON THEY WEREN'T SUITABLE  
16 FOR A LINEUP?

17 A YEAH, THEY WOULDN'T HAVE BEEN GOOD BECAUSE ON ONE  
18 PICTURE, HE HAD HIS EYES CLOSED AND THE OTHER ONE HE HAD THEM  
19 VERY WIDE OPEN AND IN COMPARISON TO THE DRIVER'S LICENSE  
20 PICTURE -- HE SHOWED ME THE PICTURE ON HIS DRIVER'S LICENSE  
21 AND I DIDN'T THINK THESE WERE THAT GOOD A LIKENESS.

22 Q ALSO, WAS IT YOUR INTENTION TO PUT MR. HERMAN --  
23 A PICTURE OF MR. HERMAN IN A PHOTOGRAPHIC SHOWUP?

24 A YES, AND THESE WERE --

25 Q WAS THERE ANY CONCERN ABOUT THE BACKGROUND THAT  
26 MIGHT APPEAR IN THOSE PICTURES?

27 A YES.

28 WE WANTED THEM ALL TO BE THE SAME BACKGROUNDS SO

1 IT WOULD BE A FAIR LINEUP.

2 Q ALL SIX PICTURES WERE TO HAVE THE SAME BACKGROUND?

3 A YES.

4 Q WHERE WERE YOU INTENDING TO GET THE OTHER FIVE  
5 PICTURES FROM?

6 A FROM THE TUCSON POLICE DEPARTMENT.

7 Q AND IN THAT CONNECTION, WHEN YOU WENT BACK ON  
8 DECEMBER THE 3RD, WHAT DID YOU DO?

9 A WE MADE AN APPOINTMENT WITH MR. HERMAN AND DROVE  
10 HIM OVER TO THE POLICE DEPARTMENT AND HAD HIM PHOTOGRAPHED.

11 Q WHAT TYPE OF A PHOTOGRAPH DID YOU TAKE?

12 A A REGULAR MUG BOOKING PHOTO.

13 Q THE SAME TYPE OF PICTURE THAT WOULD BE TAKEN --

14 A OF A CRIMINAL.

15 Q -- OF SOMEONE IF HE WAS ARRESTED AND BOOKED FOR  
16 A CRIMINAL CHARGE?

17 A YES, SIR.

18 Q AND WHAT DID YOU DO AFTER YOU HAD THAT PHOTOGRAPH  
19 TAKEN?

20 A WE PREPARED THE LINEUP FROM FIVE OTHER PHOTOS THAT  
21 WERE PROVIDED BY THE IDENTIFICATION BUREAU IN TUCSON.

22 Q DID YOU PREPARE THE LINEUP THAT SAME DAY?

23 A YES.

24 Q WHEN YOU TOOK THE BOOKING PHOTOGRAPH, DID YOU GET  
25 IT IMMEDIATELY DEVELOPED OR WAS IT IMMEDIATELY DEVELOPED?

26 A NO, WE HAD TO WAIT.

27 I AM NOT SURE ACTUALLY IF IT WAS -- IT MIGHT HAVE  
28 BEEN THE NEXT DAY THAT WE HAD TO WAIT FOR IT TO GET IT

9-  
1 DEVELOPED.

2 I AM NOT SURE WHAT THE TIME WAS. IT COULD HAVE  
3 BEEN THE NEXT DAY.

4 Q AND YOU PUT THAT PHOTOGRAPH AND FIVE OTHERS IN  
5 A PHOTOGRAPHIC LINEUP?

6 A YES, I DID.

7 Q SHOWING YOU 235 FOR IDENTIFICATION, DO YOU RECOGNIZE  
8 THAT?

9 A YES, SIR.

10 Q AND WHAT IS IT?

11 A IT IS A PHOTO LINEUP, NUMBER 5 OF WHICH IS  
12 MR. RICHARD HERMAN.

13

14

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9--  
1 Q AND WHAT, IF ANYTHING, DID YOU HAVE TO DO WITH  
2 THE SELECTION OF THE OTHER FIVE PHOTOGRAPHS?

3 A I SELECTED THEM FROM -- THEY HAD A LOOSE-LEAF  
4 NOTEBOOK WITH PLASTIC INSERTS THAT CONTAINED PHOTOS AND WE  
5 WENT THROUGH THEM UNTIL WE FOUND SOME INDIVIDUALS THAT HAD  
6 BEARDS AND THE GENERAL AGE AND SIMILAR FACES.

7 IT TOOK QUITE A LONG TIME TO FIND THAT TYPE OF  
8 AN INDIVIDUAL.

9 Q WHAT DID YOU DO AFTER YOU GOT THE PHOTOGRAPHIC  
10 LINEUP PREPARED?

11 A WE MADE AN APPOINTMENT WITH CARMEN CANCHOLA.

12 Q CANCHOLA?

13 A YEAH, AND JESUS LOPEZ.

14 WE COULDN'T MAKE AN APPOINTMENT WITH HIM AT THE  
15 TIME BECAUSE WE DIDN'T KNOW WHERE HE WAS BUT WE DID EVENTUALLY  
16 GET TO SEE -- HAVE MS. CARMEN CANCHOLA MEET US AT THE TUCSON  
17 POLICE DEPARTMENT, WHERE SHE WAS SHOWN THE PHOTO LINEUP.

18 Q AND DID SHE SELECT ANYBODY FROM THE LINEUP?

19 A NO.

20 Q HAD YOU TAKEN WITH YOU ANOTHER PHOTOGRAPHIC  
21 SPREAD CONTAINING SOME VEHICLES?

22 A YES, SIR.

23 Q WHERE HAD YOU GOTTEN THAT FROM?

24 A WE GOT ONE OF THE PICTURES FROM THE PRIEST.  
25 WE GOT A COUPLE OF THEM BEFORE WE LEFT FOR TUCSON FROM  
26 DETECTIVE ZOELLER, I BELIEVE, AND ONE OTHER ONE MIGHT HAVE  
27 BEEN FROM THE PRIEST.

28 Q SHOWING YOU 234 FOR IDENTIFICATION, DO YOU

1 RECOGNIZE THAT?

2 A YES.

3 Q WHAT IS IT?

4 A IT IS PHOTOGRAPHS OF SIX AUTOMOBILES.

5 THIS ONE IS MR. HERMAN'S CAR, THAT WE TOOK A PICTURE  
6 OF HIS CAR.

7 Q THAT IS IN THE LOWER LEFT-HAND CORNER?

8 A RIGHT.

9 Q DOES THAT PHOTOGRAPH IN THE LOWER LEFT-HAND CORNER  
10 ACCURATELY DEPICT MR. HERMAN'S CAR THE WAY THAT YOU SAW IT  
11 IN NOVEMBER AND DECEMBER OF 1986?

12 A EXCEPT FOR THE FACT THAT THE LICENSE PLATE IS  
13 COVERED WITH PAPER.

14 HE DIDN'T WANT HIS LICENSE PLATE SHOWN.

15 Q HOW ABOUT THE COLOR OF THE CAR, DOES THAT PHOTOGRAPH  
16 ACCURATELY REPRESENT THE COLOR OF THE CAR?

17 A IT IS SIMILAR.

18 IT LOOKS MORE BROWN HERE THAN IT ACTUALLY IS.  
19 IT HAS MORE OF A GOLD CAST TO IT BUT IT IS VERY SIMILAR.

20 Q WHY WAS IT THAT YOU PUT THAT CAR AND THE PICTURE  
21 OF MR. HERMAN IN THOSE TWO PHOTO SHOWUPS?

22 A BECAUSE WE BELIEVED THAT AT THE TIME THAT THIS  
23 MIGHT BE THE MAN THAT HAD BEEN SEEN BY THESE TWO POTENTIAL  
24 WITNESSES AT THE VICKERS STATION.

25 Q AND WHEN YOU SHOWED THE PHOTO LINEUP TO MS. CANCHOLA  
26 OF CARS, DID SHE SELECT ANY CARS LOOKING THE CLOSEST TO THE  
27 ONE SHE SAW?

28 A SHE PICKED THE CENTER CAR IN THE TOP AS HAVING

1 THE SAME GENERAL SHAPE. SHE SAID SHE DIDN'T BELIEVE IT WAS  
2 THE CAR BUT IT WAS THE SAME SIMILAR SHAPE.

3 Q DID YOU EVENTUALLY MAKE AN APPOINTMENT WITH  
4 MR. LOPEZ AND SHOW THOSE TO HIM?

5 A WE DIDN'T MAKE AN APPOINTMENT.

6 WE KNEW WHERE HE WAS AND WE WENT OVER THERE.  
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1 Q HOW DID YOU KNOW WHERE HE WAS?

2 A CARMEN TOLD US.

3 Q AND ONCE SHE TOLD YOU WHERE HE WAS, YOU WENT  
4 OVER TO THAT LOCATION?

5 A YES. SHE SAID THAT HE WAS AT THE HIGH SCHOOL  
6 ASSISTING THE COACH, TEACHING WRESTLING OR COACHING WRESTLING  
7 SO SHE GAVE US DIRECTIONS AND WE WENT TO THE  
8 HIGH SCHOOL.

9 Q WHEN YOU GOT TO THE HIGH SCHOOL, DID YOU GO TO  
10 THE GYM?

11 A YES, SIR.

12 Q WHAT WAS GOING ON THERE WHEN YOU GOT THERE?

13 A WRESTLING PRACTICE.

14 Q WHAT WAS MR. LOPEZ DOING WITH RESPECT TO THE  
15 WRESTLING PRACTICE?

16 A HE WAS SEATED, WATCHING IN A GROUP OF MEN. WE  
17 IDENTIFIED OURSELVES TO THE OBVIOUS COACH, WHO WAS STANDING  
18 AND YELLING COMMANDS. AND HE CALLED JESUS FOR US.

19 Q WHEN JESUS WAS CALLED OVER, WHAT DID YOU DO?

20 A WE ASKED HIM IF WE COULD SPEAK TO HIM OUTSIDE  
21 AND HE SAID YES. HE WENT OUT WITH US.

22 Q WHO WAS THERE AT THAT TIME BESIDES YOU?

23 A BILL SCHAEFER FROM THE DISTRICT ATTORNEY'S OFFICE.

24 Q AND WAS HIS FRIEND RALPH, STILL WITH YOU OR NOT?

25 A NO.

26 Q WHEN YOU WENT OUTSIDE, IT WAS JUST THE THREE  
27 OF YOU?

28 A YES.

1 Q WHAT DID YOU SAY TO MR. LOPEZ AT THAT TIME?

2 A I TOLD HIM THAT I WOULD LIKE TO SHOW HIM SOME  
3 PHOTOS OF AUTOMOBILES AND A SERVICE STATION.

4 WE ALSO SHOWED CARMEN THE SERVICE STATION PICTURES,  
5 OF SEVERAL VICKERS STATIONS.

6 Q WHERE DID YOU GET THE PHOTOGRAPHS OF THE VICKERS  
7 STATIONS?

8 A WE DROVE AROUND TUCSON AND EVERY VICKERS WE SAW,  
9 WE TOOK A PICTURE OF IT.

10 Q WHY DID YOU DO THAT?

11 A TO CONFIRM WHETHER SHE HAD THE EXACT LOCATION  
12 BECAUSE MR. HERMAN HAD TOLD US THAT HE TRADED AT A VICKERS  
13 STATION BUT NOT THE PARTICULAR ONE AT CAMPBELL AND SIXTH.

14 Q WAS THERE SOME CONCERN, BASED ON SOME STATEMENT  
15 SHE HAD MADE EARLIER ABOUT THE CONFIGURATION OF THE GAS  
16 STATION?

17 A YES.

18 Q THAT WAS THAT SHE HAD PUT -- WHAT WAS THAT CONCERN?

19 A THE SODA POP MACHINE AND THE CONFIGURATION OF  
20 THE OFFICE WAS IN A DIFFERENT PLACE ORIGINALLY THAN THE STATION  
21 AT SIXTH AND VICKERS (SIC) HAS.

22 IT IS MORE SIMILAR TO ANOTHER STATION THAT THEY  
23 DO IN FACT HAVE, WHERE THE OFFICE IS CLOSER TO THE REAR OF  
24 THE LOT AT VICKERS AND SIXTH (SIC).

25 THE PAY BOOTH IS LOCATED CLOSER TO THE ROAD AND  
26 THE POP MACHINE IS UP THERE. IT IS FOR THE SECURITY OF THE  
27 SODA POP.

28 Q AND WHEN YOU SHOWED CARMEN THE PHOTOGRAPHS OF

1 THE GAS STATION, DID SHE SELECT ONE?

2 A YES, SHE DID.

3 Q WHICH ONE DID SHE SELECT?

4 A SIXTH AND VICKERS.

5 Q SIXTH AND CAMPBELL?

6 A SIXTH AND CAMPBELL, SORRY.

7 Q WHEN YOU TALKED TO MR. LOPEZ, DID YOU SEEM TO  
8 GET ALONG WITH HIM?

9 A YEAH. I THOUGHT HE WAS A REAL NICE GUY.

10 Q DID YOU TALK TO HIM ABOUT ANYTHING OTHER THAN  
11 JUST STRICTLY THE FACTS OF THE CASE?

12 A YES. WE TALKED ABOUT CHEWING TOBACCO.

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1 Q WHAT DID YOU TALK ABOUT THEN? WHAT DID YOU SAY  
2 ABOUT THAT?

3 A WE TALKED ABOUT DIPPING. HE DIPS AND I DIP.  
4 WE BOTH CHEW TOBACCO.

5 Q FOR NON-DIPPERS, IS THAT A SLANG EXPRESSION FOR  
6 PEOPLE WHO USE CHEWING TOBACCO?

7 MR. BARENS: YOUR HONOR, THE ISSUE IS RELEVANCY.

8 THE COURT: WELL, WE ARE OVER IT NOW. THERE WON'T  
9 BE ANYTHING FURTHER ABOUT IT.

10 MR. BARENS: JUST IN CASE THERE ARE JURORS WHO ARE  
11 AGAINST CHEWING TOBACCO.

12 THE COURT: GO AHEAD.

13 Q BY MR. WAPNER: AND DID YOU ASK MR. LOPEZ ABOUT  
14 THE PHOTOGRAPHS FIRST OF ALL, OF THE GAS STATION?

15 A YES, I DID.

16 Q DID HE PICK ONE?

17 A I BELIEVE HE DID. HE PICKED THE SIXTH AND CAMPBELL  
18 STATION, AS WELL.

19 Q DID YOU ASK HIM ABOUT THE PHOTOGRAPHS OF THE  
20 CARS?

21 A YES.

22 Q WHAT DID HE SAY?

23 A HE INDICATED ALSO THAT THE SQUARE, LINCOLN CAR  
24 WAS THE RIGHT SHAPE AND THEN HE POINTED TO A VEHICLE THAT  
25 TURNED OUT TO BE A 1967 VALIANT CAR AND HE SAID IT WAS LIKE  
26 ALSO, THE SHAPE OF THE '67 VALIANT THAT WAS PARKED IN THE  
27 LOT OF THE SCHOOL WHERE WE WERE TALKING.

28 Q WHAT DID THAT '67 VALIANT LOOK LIKE?

1 A BOXY, KIND OF A SQUARE CAR.

2 Q WELL, WHEN YOU TALKED ABOUT THE '67 VALIANT,  
3 DID HE SAY THAT IT WAS SIMILAR IN SHAPE TO THAT CAR?

4 A YES.

5 Q AND DID YOU SHOW HIM THE PHOTOGRAPHS -- THE SIX  
6 PHOTOGRAPHS, ONE OF WHICH IS MR. RICHARD HERMAN?

7 A YES, I DID.

8 Q WHAT DID HE SAY AT THAT TIME?

9 A HE SAID THE HAIR ON NUMBER 5, WHICH IS MR. HERMAN,  
10 IS VERY CLOSE TO THE HAIR THAT HE SAW ON THE INDIVIDUAL AT  
11 THE SERVICE STATION.

12 Q DID HE SAY ANYTHING ABOUT THE -- DID HE IDENTIFY  
13 ANYBODY OTHER THAN THAT?

14 A NO.

15 Q DID YOU ASK HIM TO GIVE YOU A DESCRIPTION OF  
16 THE PERSON HE HAD SEEN WITH THE SILVER HAIR AT THE GAS STATION?

17 A YES, I DID.

18 Q DID HE GIVE YOU ONE?

19 A YES.

20 Q WHAT DID HE TELL YOU?

21 A HE TOLD ME THAT THE MAN WAS 45 TO 50 YEARS OLD,  
22 FIVE-TEN TO FIVE-ELEVEN, VERY STRIKING LOOKING GUY THAT WAS  
23 VERY WELL BUILT AND WORKED OUT IN A GYM REGULARLY.

24 I ASKED HIM TO COMPARE THE GUY HE SAW TO MY BUILD  
25 AND HE SAID THE GUY WAS MUCH BETTER BUILT THAN ME AND HE  
26 HAD MORE DEFINED, BIGGER ARMS AND A BIGGER CHEST THAN I HAVE.

27 Q DID YOU ASK HIM WHAT THE MAN HE SAW WAS WEARING?

28 A YES, I DID.



1 Q WHAT DID HE SAY?

2 A HE TOLD ME THAT THE MAN HAD A SHORT-SLEEVED  
3 POLO SHIRT ON AND TIGHT JEANS AND HE SAID EVERYTHING FIT  
4 HIM IMPECCABLY AND THAT IS WHAT HE MOST REMEMBERS ABOUT THE  
5 MAN, IS HOW EVERYTHING WAS JUST RIGHT ON HIM.

6 I BELEIVE BILL SCHAEFER ASKED HIM IF HE BELIEVED  
7 THE MAN WAS GAY AND JESUS SAID THAT HE FELT HE WAS.

8 Q DID HE ASK HIM ABOUT BEING ABLE TO SEE THE MUSCLE  
9 DEFINITION IN HIS BODY, BASED ON THE CLOTHES HE WAS WEARING?

10 A YES, HE DID.

11 Q WHAT DID HE SAY?

12 A HE SAID EVERYTHING JUST SHOWED JUST RIGHT. ALSO,  
13 I ASKED HIM ABOUT A SCAR BY HIS EYE THAT HAD BEEN DESCRIBED.

14 Q WHAT DID HE SAY?

15 A HE SAID HE DIDN'T SEE ANY SCAR BY HIS EYE.

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

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3 CROSS-EXAMINATION

4 BY MR. BARENS:

5 Q SIR, GOOD AFTERNOON, OFFICER.

6 SIR, WHEN YOU HAD THE PHOTOGRAPHIC LINEUP THAT  
7 YOU PREPARED, BEING PEOPLE'S 236, DO YOU REMEMBER ASKING  
8 CARMEN CANCHOLA, "DO YOU SEE ANY INDIVIDUALS IN THERE THAT  
9 RESEMBLE THE MAN," DID YOU ASK HER THAT QUESTION?

10 A I BELIEVE SO.

11 Q WHAT WAS HER ANSWER?

12 A NO.

13 Q DID DETECTIVE SCHAEFER -- STRIKE THAT.

14 WHEN YOU SHOWED THE SAME PHOTOGRAPHIC LINEUP TO  
15 CHINO LOPEZ, DO YOU REMEMBER ASKING HIM, "WE TOOK SOME  
16 PICTURES OF PEOPLE AT THE POLICE FACILITY BUT THEY WEREN'T  
17 NECESSARILY IN CUSTODY, DO YOU SEE ANYBODY IN THERE THAT  
18 RESEMBLES THE PERSON?"

19 A YES, SIR.

20 Q AND WHAT DID HE SAY TO YOU WHEN YOU ASKED HIM THAT  
21 QUESTION?

22 A HE SAID, "NO."

23 Q DID HE EVER TELL YOU WHEN HE LOOKED AT THE  
24 PHOTOGRAPHIC LINEUP OF THE VEHICLES THAT HE, IN FACT, SAW A  
25 PHOTO OF THE VEHICLE HE SAW THAT DAY?

26 A NO, HE DIDN'T.

27 Q DID CARMEN EVER TELL YOU THAT?

28 A NO.

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1 Q NO?

2 A NO.

3 Q DID EITHER ONE OF THEM EVER TELL YOU THAT RICHARD  
4 HERMAN WAS THE PERSON THEY SAW IN THE GAS STATION?

5 A NO.

6 Q DID YOU EVER FIND OUT THAT RICHARD HERMAN WAS NOT  
7 EVEN IN THE GAS STATION THAT NIGHT?

8 A I DON'T KNOW WHAT NIGHT IT WAS YET THAT THIS  
9 HAPPENED.

10 Q DID RICHARD HERMAN EVER TELL YOU THAT HE HAD BEEN  
11 IN THAT GAS STATION?

12 A NO.

13 Q DID YOU EVER WRITE A REPORT THAT SAID THAT RICHARD  
14 HERMAN WAS NOT THE PERSON THEY HAD SEEN IN THE GAS STATION?

15 A YES.

16 Q YOU WROTE THAT IN YOUR REPORT, DIDN'T YOU?

17 A YEAH.

18 Q SIR?

19 A YES, I DID.

20 Q YOU DON'T MEAN TO SUGGEST THAT THAT IS WHO THEY  
21 WERE IDENTIFYING, DO YOU, SIR?

22 A NO.

23 Q WHEN YOU WERE PREPARING THE PHOTOGRAPHIC LINEUP  
24 IN FRONT OF YOU THERE, YOU SAID THAT IT TOOK KIND OF LONG TO  
25 FIND THAT SORT OF INDIVIDUAL, DO YOU REMEMBER MAKING THAT  
26 STATEMENT?

27 A YES.

28 Q WHY WAS THAT?

1           A        BECAUSE THEY ARE NOT IN ANY SPECIFIC ORDER IN THERE  
2           AND IN THE BOOK, YOU HAVE TO GO THROUGH AND FIND PEOPLE THAT  
3           HAVE A GENERAL APPEARANCE.

4                    LIKE IF I WERE TRYING TO PUT A PICTURE TOGETHER  
5           OF YOU, SEVERAL PEOPLE THAT LOOK LIKE YOU, I MIGHT HAVE A HARD  
6           TIME FINDING SOMEBODY THAT LOOKED LIKE YOU.

7           THE COURT: YOU MEAN HE IS THAT DISTINCTIVE, IS HE?

8           THE WITNESS: HE IS SO HANDSOME.

9                    (LAUGHTER IN COURTROOM.)

10          Q        BY MR. BARENS: WELL, FOR ONE THING DIFFERENT FROM  
11          ME, IS I NOTICE THAT ALL OF THOSE FELLOWS HAVE BEARDS, DID  
12          THEY NOT, SIR?

13          A        YES, THEY DID.

14          Q        HAD YOU BEEN TOLD THAT THE PERSON THAT HAD BEEN  
15          SEEN IN THE GAS STATION HAD A BEARD?

16          A        NO.

17                    THE PICTURE I HAD OF MR. LEVIN, HE HAD A BEARD.

18          Q        I SEE.

19                    BUT NO ONE TOLD YOU THAT THE PERSON IN THE GAS  
20          STATION HAD A BEARD, DID THEY?

21          A        I AM NOT TOO SURE IF AT THAT POINT THAT I INITIALLY  
22          KNEW THAT HE WAS CLEAN SHAVEN.

23                    I AM NOT SURE AT WHAT POINT I GOT THAT INFORMATION,  
24          TO TELL YOU THE TRUTH.

25          MR. BARENS: JUST A MOMENT, IF WE MIGHT, SIR.

26                    (UNREPORTED COLLOQUY BETWEEN MR. BARENS  
27          AND MR. CHIER.)

28          Q        BY MR. BARENS: YOU SAY WHEN YOU WERE TALKING TO

1 MR. LOPEZ, YOU DISCUSSED THE CASE A BIT BEFORE YOU STARTED  
2 TALKING ABOUT CHEWING TOBACCO?

3 A YES, THAT WAS NEAR THE END.

4 Q INDEED.

5 WHAT DID YOU TALK ABOUT THE CASE, WHAT DID YOU  
6 TELL HIM ABOUT THE CASE?

7 A I TOLD HIM THAT IT WAS A HOMICIDE INVESTIGATION  
8 AND THAT -- LET ME THINK EXACTLY HOW IT WENT.

9 ACTUALLY, THE CONVERSATION, IT WAS VERY BRIEF.  
10 WE TALKED TO HIM, WALKING FROM THE GYM TO THE TRUNK LID OF  
11 THE CAR THAT WE USED TO SET A BRIEFCASE ON AND HE WANTED TO  
12 KNOW WHAT WAS HAPPENING AND I TOLD HIM IT WAS REGARDING A  
13 HOMICIDE CASE THAT HE HAD SUPPLIED INFORMATION TO TUCSON ON,  
14 AND HE ALREADY KNEW THAT WE HAD BEEN AROUND, YOU KNOW. IT  
15 WASN'T A NEWS FLASH.

16 I TOLD HIM THAT I HAD SOME PICTURES OF THE GASOLINE  
17 STATION, THAT WE WANTED TO CONFIRM WHAT STATION HE HAD SEEN  
18 AND THE PICTURES OF A CAR AND A MAN AND THAT WAS ABOUT IT.

19 Q WHEN YOU TOLD HIM IT WAS A HOMICIDE CASE, IS THAT  
20 ALL YOU SAID?

21 A I AM NOT TOO SURE.

22 Q DID YOU EVER TELL HIM ANYTHING ABOUT SOMEBODY BEING  
23 DEAD?

24 A WELL, THE WORD "HOMICIDE" IMPLIES THAT PRETTY  
25 STRONGLY.

26 (LAUGHTER IN COURTROOM.)

27 Q SIR, COULD YOU NOT HAVE A HOMICIDE CASE ABOUT  
28 SOMEONE THAT YOU PRESUMED DEAD BUT YOU COULDN'T FIND?

1 MR. WAPNER: OBJECTION. ARGUMENTATIVE.

2 THE COURT: SUSTAINED.

3 Q BY MR. BARENS: SIR, WHAT DID YOU KNOW ABOUT THE  
4 HUNT CASE? I MEAN LET ME BACK UP AND TRY TO MAKE THAT MORE  
5 SPECIFIC FOR YOU.

6 DID YOU EVER TELL MR. LOPEZ THAT MR. LEVIN HAD  
7 BEEN KILLED OR WAS DEAD?

8 A I DON'T THINK I TOLD HIM EXACTLY THE WAY YOU ARE  
9 TELLING IT.

10 BUT I THINK I TOLD HIM THAT WE HAD A VICTIM THAT  
11 WAS DEAD AND THAT WE WERE TRYING TO FIND OUT IF HE WASN'T DEAD,  
12 THAT IF HE WAS IN FACT ALIVE. I TOLD HIM ALONG THOSE LINES,  
13 YES.

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1 Q TOLD THEM THAT THAT WAS STILL AN ISSUE?

2 A YES. I THINK I DID.

3 Q I SEE. ALL RIGHT. AND WAS ANYBODY ELSE PRESENT  
4 WHEN YOU TOLD THEM THAT THAT WAS STILL A QUESTION AND THIS  
5 IS WHY YOU WERE DOWN IN TUCSON THERE, TO TRY TO FIGURE THAT  
6 OUT?

7 A I ACTUALLY THINK IT WAS CARMEN THAT I TOLD THIS  
8 TO AND NOT JESUS. I DON'T THINK I TOLD JESUS. I THINK I  
9 TOLD CARMEN THAT.

10 Q WHAT DID YOU TELL CARMEN?

11 A I TOLD HER WE HAD TO FIND OUT, TO TRY TO FIND  
12 OUT WHO SHE SAW.

13 Q ALL RIGHT. WHAT DID YOU TELL HER ABOUT A HOMICIDE  
14 CASE, SIR?

15 A I TOLD HER THAT WE HAD A HOMICIDE CASE OR A MAN  
16 WAS CHARGED WITH MURDERING SOMEBODY AND THAT WE HAD TO TRY  
17 TO FIND THE PERSON THAT SHE SAW.

18 Q DID YOU TELL HER ANYTHING ELSE ABOUT THE CASE?

19 A NOT THAT I RECALL. I DON'T REMEMBER SPECIFICALLY.

20 Q DID YOU HEAR ANYBODY ELSE TELLING HER ANYTHING  
21 ABOUT THE CASE?

22 A NO. BUT WHAT I TOLD HER WAS ON TAPE. SO IT  
23 WOULD BE EASILY VERIFIED WHAT I TOLD HER. I DON'T REMEMBER  
24 SPECIFICALLY WHAT I TOLD HER ABOUT THE CASE.

25 Q OKAY. DID YOU EVER AT ANY TIME TELL MR. LOPEZ  
26 ANYTHING ABOUT THE CASE IN ADDITION TO WHAT YOU TOLD MS.  
27 CANCHOLA?

28 A I DON'T ACTUALLY THINK THAT I DID TELL HIM THE

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1       FACTS.

2                       I JUST TOLD HIM THAT WE WERE THERE TO TRY TO  
3       FIND THE PERSON THAT THEY HAD SEEN. I WAS NOT SPECIFIC WITH  
4       HIM, I DON'T BELIEVE.

5               MR. BARENS: OKAY. A MOMENT, IF WE MIGHT, YOUR HONOR.

6                       (PAUSE.)

7               Q       BY MR. BARENS: NOW, LET ME JUST ASK YOU SOMETHING  
8       ABOUT WELL BUILT. DID YOU ASK HIM, "HE IS WELL BUILT?"  
9       REFERRING TO THE PERSON HE HAD SEEN IN THE GAS STATION?

10              A       DID I ASK HIM IF HE WAS WELL BUILT?

11              Q       UH-HUH.

12              A       NO. I BELIEVE HE BROUGHT IT UP FIRST THAT THE  
13       GUY WAS. AND I ASKED HIM YES, IF HE WAS WELL BUILT.

14                      I HAD HIM REEMPHASIZE WHAT HE SAID BECAUSE THAT  
15       DIDN'T RING TRUE OF RON LEVIN BECAUSE I KNEW RON LEVIN. HE  
16       WOULD NEVER WORK OUT.

17              Q       IN THE GYM?

18              A       ANYWHERE.

19              Q       DID MR. LOPEZ SAY TO YOU YEAH, HE LOOKED LIKE  
20       HE WORKED OUT IN THE GYM?

21              A       YES.

22              Q       OKAY. I AM GOING TO SHOW YOU A TRANSCRIPT HERE  
23       SIR, OF YOUR QUESTIONS AND HIS ANSWERS. SEE IF THAT REFRESHES  
24       YOUR RECOLLECTION.

25                      THE COURT: LOOK AT THE OTHER PARTS OF THAT TRANSCRIPT  
26       TO SEE WHAT IT SAYS EXACTLY, TOO.

27              MR. BARENS: LET'S SEE IF HE CAN FIND THAT INDEED,  
28       SIR.



1 THE COURT: WAIT A MINUTE. LET HIM LOOK AT IT, WILL  
2 YOU?

3 MR. BARENS: WELL, I THOUGHT I WOULD JUST ASK HIM IF  
4 IT SAYS THAT. I WILL TAKE HIM THROUGH IT PAGE BY PAGE, SIR.

5 THE WITNESS: THE PART I THINK YOU MIGHT POSSIBLY HAVE  
6 A QUESTION ABOUT IS WHERE IT IS UNINTELLIGIBLE --

7 MR. BARENS: (LAUGHTER.)

8 THE COURT: WHAT DOES THAT MEAN?

9 MR. BARENS: I THINK IT IS HUMOROUS.

10 THE COURT: IT IS?

11 MR. BARENS: I THINK IT IS HUMOROUS THAT THE PART THAT  
12 IS UNINTELLIGIBLE COMES TO THE RESCUE.

13 THE WITNESS: WELL, WILL YOU LET ME FINISH WHAT I AM  
14 SAYING?

15 THE COURT: HE DOESN'T WANT TO GIVE YOU A CHANCE TO  
16 DO THAT BECAUSE YOU MIGHT EXPLAIN SOMETHING THAT HE DOESN'T  
17 LIKE.

18 MR. BARENS: WE BOTH WILL --

19 THE COURT: ALL RIGHT. YOU EXPLAIN ANYTHING THAT YOU  
20 WANT.

21 THE WITNESS: RIGHT AFTER THERE, MY COMMENT IS, "WELL  
22 BUILT?" THERE IS A QUESTION MARK.

23 Q BY MR. BARENS: YES, SIR?

24 A IN RESPONSE TO SOMETHING UNINTELLIGIBLE THAT  
25 HE SAYS THAT I CAN'T FIGURE OUT.

26 Q WHAT DOES IT SAY ON THE NEXT LINE?

27 MR. CHIER: OR THE NEXT PAGE.

28 THE WITNESS: "YES, LIKE HE WORKS OUT."

1 Q BY MR. BARENS: DOES IT SAY ANYTHING ABOUT A  
2 GYM IN THAT LINE? DOES IT SAY WORKS OUT IN A GYM?

3 A NO. BUT IF YOU LISTEN TO THE TAPE, I THINK YOU  
4 GET THE IMPRESSION THAT THAT IS WHAT WE WERE TALKING ABOUT.  
5 AND THAT IS THE IMPRESSION THAT WHEN YOU WORK OUT, YOU WORK  
6 OUT IN THE GYM.

7 Q I SEE. DO YOU THINK THAT ALL PEOPLE THAT WORK  
8 OUT, WORK OUT IN A GYM?

9 MR. WAPNER: OBJECTION, ARGUMENTATIVE.

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1 THE WITNESS: EVERYONE I KNOW THAT DOES, WORKS OUT  
2 IN SOME SORT OF A GYM.

3 Q BY MR. BARENS: HOW ABOUT PEOPLE THAT RUN OR  
4 BIKE OR SWIM OR DO AEROBICS? WHAT ABOUT THOSE PEOPLE?

5 A WELL, THAT ISN'T MY CONNOTATION OF SOMEBODY THAT  
6 WORKS OUT. THEY GET LEAN BUT NOT BUFF.

7 Q RIGHT. THE CONNOTATION YOU HAVE WHEN SOMEONE  
8 SAYS "WORK OUT" TO YOU, YOU THINK GYM, DON'T YOU, BASED ON  
9 YOUR EXPERIENCE?

10 A YES. I GO FOUR TIMES A WEEK.

11 Q YOU BET. SO THAT TO YOU, IS PUMPING IRON, IS  
12 IT NOT, SIR?

13 A YES.

14 Q SIR?

15 A YES, SIR.

16 (PAUSE.)

17 Q BY MR. BARENS: WHEN I LOOK AT THIS, I SEE THAT  
18 THERE IS AN UNINTELLIGIBLE AFTER WHERE SCHAEFER IS TALKING,  
19 SIR? IT SAYS, DOES IT NOT, "SCHAEFER," AND THEN THE WORD  
20 "UNINTELLIGIBLE"?

21 A THIS IS WHAT I WAS REFERRING TO, SIR (INDICATING).

22 Q "LOPEZ (UNINTELLIGIBLE)"?

23 A YES.

24 MR. WAPNER: DO YOU HAVE THE PAGE AND LINE?

25 MR. BARENS: WELL, WE ARE ALL AT PAGE --

26 THE WITNESS: BECAUSE SEE, IT SAYS "WELL BUILT?" RIGHT  
27 AFTER THAT. I DIDN'T MEAN TO BE ARROGANT WHEN I SAID THAT.

28 Q BY MR. BARENS: YOU SAID THAT HE IS WELL BUILT,

1 SIR?

2 A YEAH, WITH A QUESTION MARK, WHICH MEANS I WAS  
3 RESPONDING TO WHAT HE HAD SAID BECAUSE I DIDN'T UNDERSTAND  
4 WHAT HE SAID.

5 Q OKAY. WELL, NOW WE WILL GO FORWARD A LITTLE  
6 BIT. WHEN YOU ASKED MR. LOPEZ, "SO YOU COULD SEE HIS GUNS,  
7 BIG GUNS?" WHAT DID YOU MEAN?

8 A BICEPS.

9 Q THAT IS WHAT WE CALL BIG GUNS AND WHEN YOU ASKED  
10 HIM, "DO YOU SEE HIS GUNS, BIG GUNS?" DID HE TELL YOU --

11 A HE SAID THAT HE WASN'T -- I DON'T RECALL THE  
12 EXACT VERBIAGE BUT NOT THAT HE HAD BIG GUNS, JUST WELL  
13 DEFINED.

14 HE IS NOT -- WHAT DID HE SAY? STOUT OR SOMETHING  
15 LIKE THAT.

16 Q WHAT WAS THE VERY FIRST -- WHEN YOU SAID TO HIM,  
17 "SO YOU COULD SEE HIS BIG GUNS" WHAT WAS THE VERY FIRST WORD  
18 SAID AFTER THAT QUESTION, SIR?

19 A WHERE IS IT? HE SAID, "NO."

20 Q WHAT DID HE SAY IN THE REST OF THE SENTENCE?

21 A "JUST -- YOU MEAN HE WAS NOT STOCKY, HE WAS WELL  
22 BUILT?"

23 MR. BARENS: THANK YOU, SIR. ONE MOMENT, YOUR HONOR.

24 (PAUSE.)

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

2 (UNREPORTED COLLOQUY BETWEEN MR. BARENS  
3 AND MR. CHIER.)

4 MR. BARENS: THANK YOU, SIR.

5 THE COURT: ALL RIGHT.

6  
7 REDIRECT EXAMINATION

8 BY MR. WAPNER:

9 Q MR. EDMONDS, DID YOU BRING A COPY OF THE TAPE WITH  
10 YOU TO COURT TODAY?

11 A YES, SIR.

12 Q AND DID YOU GET IT TO THAT -- PLAY IT SO THAT IT  
13 GOT TO THAT PORTION WHERE YOU ARE TALKING ABOUT HIS HEIGHT  
14 AND WEIGHT AND WHAT HE WAS BUILT LIKE?

15 A YES, IT IS REAL CLOSE --

16 MR. BARENS: YOUR HONOR, THE DEFENSE SAYS IF WE ARE GOING  
17 TO PLAY ANY TAPE, LET'S PLAY THE WHOLE THING.

18 THE COURT: GO AHEAD WITH YOUR QUESTION.

19 MR. BARENS: YOUR HONOR, IF WE ARE GOING TO PLAY THE  
20 TAPE --

21 MR. WAPNER: YOUR HONOR, COULD OBJECTIONS LIKE THIS BE  
22 MADE AT THE BENCH?

23 THE COURT: YOU MAY PROCEED. THAT OBJECTION IS  
24 OVERRULED.

25 YOU WANT TO PLAY THAT PORTION WHICH IS  
26 UNINTELLIGIBLE, IS THAT WHAT YOU WANT TO DO?

27 MR. WAPNER: JUST THE ENTIRE PORTION WHERE IT IS TALKING  
28 ABOUT THE DESCRIPTION OF THE PERSON.

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1 THE COURT: GO AHEAD.

2 MR. BARENS: THEN, YOUR HONOR, I ASSUME WE CAN PLAY  
3 PORTIONS, TOO?

4 MR. WAPNER: COUNSEL HAS HAD A COPY OF THE TAPE SINCE  
5 THE DETECTIVE RETURNED FROM ARIZONA.

6 THE COURT: APPROACH THE BENCH, WILL YOU, PLEASE?

7 (THE FOLLOWING PROCEEDINGS WERE HELD  
8 AT THE BENCH:)

9 THE COURT: UNFORTUNATELY, WE ARE REACHING THE NIT-PICKING  
10 STAGE OF THIS PROCEEDING. I DON'T THINK IT OUGHT TO BE  
11 PURSUED ANY FURTHER.

12 LET IT GO AT THAT, WILL YOU? THAT IS ENOUGH. YOU  
13 DON'T HAVE TO PLAY IT. WE HAVE GOT SUFFICIENT EVIDENCE IN  
14 THE CASE THAT YOU CAN ARGUE TO THE JURY.

15 MR. WAPNER: THANK YOU, YOUR HONOR.

16 (THE FOLLOWING PROCEEDINGS WERE HELD  
17 IN OPEN COURT:)

18 Q BY MR. WAPNER: MR. EDMONDS, RIGHT AFTER THE  
19 PORTION WHERE HE SAID "JUST I MEAN, HE WASN'T STOCKY, HE WAS  
20 BUILT," DID YOU ASK HIM A QUESTION AT THAT POINT?

21 A I SAID, "WAS HE BUILT LIKE I AM?"

22 Q AND WHAT DID HE SAY?

23 A HE SAID HE HAD MORE DEFINITION.

24 Q THANK YOU.

25 DID MR. LOPEZ TELL YOU THAT HE NEVER GOT THAT  
26 CLOSE TO THE PERSON SO THAT HE COULD SEE THE SCAR THAT HE HAD?

27 A YES.

28 Q BEFORE YOU SHOWED MR. LOPEZ AND MISS CANCHOLA

23-  
1 PHOTOGRAPHS, DID YOU GIVE THEM SOME INSTRUCTIONS ON VIEWING  
2 A PHOTOGRAPHIC LINEUP?

3 A YES, I DID.

4 Q AND DID YOU PROVIDE THEM EACH WITH XEROX COPIES  
5 OF THE INSTRUCTIONS AND ASK THEM TO SIGN IT?

6 A YES, I DID.

7 MR. WAPNER: YOUR HONOR, I HAVE TWO ITEMS THAT I WOULD  
8 LIKE TO HAVE MARKED AS 245 AND 246 FOR IDENTIFICATION.

9 245 WOULD BE A PHOTOGRAPHIC LINEUP ADMONITION  
10 SIGNED BY MISS CANCHOLA.

11 AND 246 WOULD BE A PHOTOGRAPHIC LINEUP ADMONITION  
12 SIGNED BY MR. LOPEZ.

13 THE COURT: ALL RIGHT. THERE IS NO DISPUTE THAT THESE  
14 ADMONITIONS WERE GIVEN TO THEM BEFORE THEY VIEWED THE  
15 PHOTOGRAPHS, IS THERE?

16 MR. WAPNER: I DON'T THINK SO, YOUR HONOR.

17 THE COURT: WELL, THEN WHY OFFER THEM?

18 MR. WAPNER: WELL, I THINK THAT IS IMPORTANT THAT ALL  
19 OF THE PROCEDURES SURROUNDING THE GIVING OF THESE -- THE  
20 SHOWING OF THE PHOTOGRAPHS ARE SHOWN.

21 THE COURT: ALL RIGHT.

22 Q BY MR. WAPNER: ARE THOSE THE ADMONITIONS THAT  
23 YOU GAVE TO BOTH MISS CANCHOLA AND MR. LOPEZ BEFORE THEY WERE  
24 SHOWN THE PHOTOGRAPHS?

25 A YES.

26 Q DID YOU READ THEM TO THEM OR DID YOU HAVE THEM  
27 READ THEM?

28 A I HAD THEM READ THEM.

3-1  
1 Q DID YOU HAVE THEM SIGN THEM?

2 A YES.

3 Q ON WHAT DATE WERE THEY SHOWN THESE PHOTOGRAPHS?

4 A ON THE 3RD OF DECEMBER, 1986.

5 Q ALL OF THE PICTURES THAT YOU HAD OF MR. HERMAN,  
6 HE HAD A BEARD, RIGHT?

7 A YES, SIR.

8 Q DID YOU THINK IT WOULD BE FAIR TO PUT HIM IN A  
9 PHOTOGRAPHIC LINEUP WITH FIVE OTHER PEOPLE THAT DIDN'T HAVE  
10 BEARDS?

11 MR. BARENS: OBJECTION. THE QUESTION "IS IT FAIR" IS  
12 IRRELEVANT.

13 THE COURT: I THINK IT IS SELF-EVIDENT. WE DON'T HAVE  
14 TO HAVE HIM TESTIFY TO THAT.

15 Q BY MR. WAPNER: THE OTHER FIVE PHOTOGRAPHS THAT  
16 YOU SELECTED, WERE THOSE ALL FROM POLICE MUG PHOTOGRAPHS?

17 A YES, SIR.

18 Q SO THOSE WERE ALL FROM PEOPLE WHO HAD BEEN ARRESTED  
19 AT LEAST ONCE?

20 MR. BARENS: OBJECTION. THERE IS NO KNOWLEDGE SHOWN.

21 THE COURT: DO YOU KNOW ANYTHING ABOUT THAT?

22 THE WITNESS: NO, I DON'T, NO.

23 THE COURT: THEY ARE JUST FROM POLICE PHOTOS?

24 THE WITNESS: THEY WERE MUG PHOTOS.

25 Q BY MR. WAPNER: WHEN YOU TALKED TO MISS CANCHOLA  
26 ABOUT THE PHOTOGRAPHS, DID YOU TELL HER THAT IT WAS IMPORTANT  
27 TO FIND THE PERSON SHE SAW TO PROVE THAT IT EITHER -- IT IS  
28 NOT OUR VICTIM OR IT IS?

A YES, THAT SOUNDS PRETTY SIMILAR TO WHAT I SAID.



24-  
1 Q SHOWING YOU A TRANSCRIPT OF THE TAPE ON PAGE 6,  
2 WOULD YOU JUST LOOK AT THAT AND TELL ME IF YOU SAID THAT TO  
3 HER?

4 A YES, SIR.

5 Q ALL RIGHT. WHAT WAS IT THAT YOU SAID AND WHAT  
6 WAS HER RESPONSE?

7 A "WE HAVE TO RESOLVE IT SOMEHOW, TRY TO. I DON'T  
8 KNOW HOW WE ARE GOING TO DO IT. WE APPRECIATE YOUR  
9 COOPERATION BECAUSE IT IS REALLY IMPORTANT TO THE CASE.  
10 I GUESS WITH PEOPLE ON TRIAL, I MEAN, WE HAVE GOT TO FIND THE  
11 PERSON THAT YOU SAW TO PROVE THAT IT IS NOT OUR VICTIM OR TO  
12 PROVE IT IS. AND THAT'S WHAT WE HAVE TO DO. IF YOU SEE THIS  
13 PERSON, TRY TO GET A LICENSE NUMBER, WOULD YOU, OF THE CAR?"

14 MR. WAPNER: THANK YOU. NOTHING FURTHER.

15 THE COURT: ANYTHING FURTHER?

16 MR. BARENS: YES, YOUR HONOR.

17  
18 RECROSS-EXAMINATION

19 BY MR. BARENS:

20 Q SIR, AFTER YOU READ THE ADMONITION TO  
21 MISS CANCHOLA THAT YOU MARKED IN THERE, DID SHE CHANGE HER  
22 IDENTIFICATION AT ALL?

23 A I DON'T BELIEVE I READ IT TO CANCHOLA. I BELIEVE  
24 MEYERS READ IT TO HER WITH ME PRESENT.

25 NO. THE ANSWER IS NO.

26 Q WHEN IT WAS READ TO MR. LOPEZ, BY WHOMEVER READ  
27 IT, DID HE CHANGE HIS IDENTIFICATION?

28 A NO. IT WAS PRIOR TO THEM SEEING THE PICTURES.

1 THE ANSWER IS NO.

2 MR. BARENS: THANK YOU, SIR.

3 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. YOU MAY  
4 BE EXCUSED.

5  
6 PAUL EDHOLM,

7 CALLED AS A WITNESS BY THE PEOPLE IN REBUTTAL, WAS SWORN AND  
8 TESTIFIED AS FOLLOWS:

9 THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY  
10 YOU ARE ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS  
11 COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT  
12 THE TRUTH, SO HELP YOU GOD?

13 THE WITNESS: I DO.

14 THE CLERK: PLEASE BE SEATED. STATE AND SPELL YOUR  
15 NAME FOR THE RECORD.

16 THE WITNESS: I APOLOGIZE FOR THE SUNGLASSES. I JUST  
17 BROKE MY OTHERS OUT IN THE HALL.

18 THE CLERK: STATE YOUR NAME.

19 THE WITNESS: PAUL EDHOLM.

20  
21 DIRECT EXAMINATION

22 BY MR. WAPNER:

23 Q BY WHOM ARE YOU EMPLOYED?

24 A THE CITY OF BEVERLY HILLS, DETECTIVE, BUNCO/  
25 FORGERY DETAIL.

26 Q WITH THE BEVERLY HILLS POLICE DEPARTMENT?

27 A YES, SIR.

28 Q AND DID YOU GO TO TUCSON, ARIZONA AS A PART OF

1 AN INVESTIGATION IN THIS CASE?

2 A YES, SIR. I DID.

3 Q AND WHY WAS IT THAT YOU WERE CHOSEN TO GO AS ONE  
4 OF THE PEOPLE TO GO TO TUCSON?

5 A IT WAS THANKSGIVING AND I WAS ONE OF THE DETECTIVES  
6 WHO WAS AVAILABLE TO GO.

7 Q DID YOU ALSO HAVE SOME FAMILIARITY WITH MR. LEVIN?

8 A THAT'S CORRECT.

9 Q WHEN YOU WENT TO TUCSON, THAT WAS WITH LISA HART,  
10 DETECTIVE EDMONDS AND INVESTIGATOR SCHAEFER FROM THE  
11 DISTRICT ATTORNEY'S OFFICE?

12 A THAT'S CORRECT.

13 Q AND WERE YOU WITH LISA HART WHEN YOU WENT DOWN  
14 TO SEE CARMEN CANCHOLA AND JESUS LOPEZ AT RIO RICO?

15 A YES, SIR. I WAS.

16 Q HAD YOU BEEN WITH LISA HART THE ENTIRE DAY FROM  
17 THE TIME YOU GOT TO TUCSON?

18 A YES.

19

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24  
1 Q WERE YOU WITH HER AT THE POLICE STATION?

2 A YES I WAS.

3 Q AS FAR AS THE CALLS THAT WERE MADE, THE CONTACTS  
4 THAT WERE MADE WITH MS. CANCHOLA'S FATHER AND THE LAWYER,  
5 WHAT, IF ANYTHING, DID YOU HAVE TO DO WITH THAT?

6 A NOTHING. I WAS NOT ON THE PHONE. THAT WAS HANDLED  
7 BY DETECTIVE JEFF MEYERS FROM THE TUCSON POLICE DEPARTMENT  
8 OR BY LISA HART. I WAS NOT ON THE PHONE AT ALL.

9 Q WHAT WAS YOUR PURPOSE IN GOING TO TUCSON AT THAT  
10 PARTICULAR TIME?

11 A TO SHOW THE WITNESSES AN IDENTI KIT TO SEE IF THEY  
12 COULD IDENTIFY ANYONE.

13 Q WHAT IS AN IDENTI KIT?

14 A AN IDENTI KIT IS A DEVICE. THEY ARE PLASTIC  
15 FILMS WITH VARIOUS SHAPES OF FACES AND OTHER FACIAL FEATURES  
16 AND HAIRSTYLES AND ET CETERA, THAT WHEN PUT TOGETHER, RESEMBLE  
17 A COMPOSITE OF AN INDIVIDUAL, WHICH ARE USED IN POLICE  
18 INVESTIGATIONS.

19 Q IS IT A MEANS OF GETTING A COMPOSITE OF THE PERSON  
20 WITHOUT ACTUALLY -- WITHOUT THE PERSON OBTAINING IT ACTUALLY  
21 BEING AN ARTIST?

22 A YES, THAT'S CORRECT.

23 Q DID YOU RECEIVE ANY TRAINING WITH RESPECT TO DOING  
24 IDENTI KIT COMPOSITES?

25 A YES I DID.

26 Q COULD YOU EXPLAIN THAT TO US, PLEASE?

27 A I HAD 16 HOURS OF TRAINING PUT ON BY THE IDENTI  
28 KITS SCHOOL IN SEPTEMBER OF 1983.

1 Q AND HAD YOU EVER DONE AN IDENTI KIT BEFORE YOU  
2 WENT TO TUCSON TO HAVE THAT ONE DONE?

3 A ONCE.

4 Q WHEN YOU WENT TO TUCSON, DID YOU ACTUALLY TAKE  
5 THE KIT WITH YOU?

6 A YES I DID.

7 Q SHOWING YOU THIS WOODEN BOX THAT SAYS "PROPERTY  
8 OF BEVERLY HILLS POLICE DEPARTMENT," ON IT, CAN YOU TELL ME  
9 WHAT THAT IS?

10 A THAT IS THE IDENTI KIT.

11 Q IS THAT THE ONE THAT YOU TOOK WITH YOU?

12 A YES, SIR. IT IS.

13 Q WHEN YOU WENT TO RIO RICO, WHAT TIME DID YOU GET  
14 DOWN THERE?

15 A I WOULD SAY APPROXIMATELY 8 P.M.

16 Q WAS IT YOUR UNDERSTANDING THAT YOU WERE TO MEET  
17 MS. CANCHOLA AND MR. LOPEZ THERE WHEN YOU GOT THERE?

18 A YES IT WAS.

19 Q WHEN YOU GOT THERE, WERE EITHER ONE OF THEM THERE?

20 A NO.

21 Q WHAT DID YOU DO WHEN YOU GOT THERE?

22 A I SPOKE WITH MS. CANCHOLA'S FATHER FOR  
23 APPROXIMATELY AN HOUR, WAITING FOR HER TO ARRIVE.

24 Q WAS LISA HART WITH YOU AT THAT TIME?

25 A YES.

26 Q DID YOU IDENTIFY YOURSELF TO MR. CANCHOLA WHEN  
27 YOU FIRST GOT THERE?

28 A YES I DID.

1 Q HOW DID YOU IDENTIFY YOURSELF?

2 A AS A POLICE OFFICE. I SHOWED HIM MY BADGE.

3 Q DID LISA HART IDENTIFY HERSELF, TOO?

4 A YES, SHE DID.

5 Q AND HOW DID SHE IDENTIFY HERSELF?

6 A AS A DEPUTY DISTRICT ATTORNEY.

7 Q AFTER APPROXIMATELY AN HOUR HAD PASSED, WHAT  
8 HAPPENED?

9 A BOTH MS. CANCHOLA AND MR. LOPEZ ENTERED THE  
10 RESIDENCE. THEY SAID SOMETHING ABOUT SORRY AND THEN WE MADE  
11 OUR INTRODUCTIONS AND IDENTIFIED OURSELVES AGAIN.

12 Q WHO MADE -- YOU MADE YOUR INTRODUCTION TO THEM?  
13 WHAT DO YOU MEAN WHEN YOU SAY "WE MADE OUR INTRODUCTIONS"?

14 A LISA AND I.

15 Q DO YOU REMEMBER WHAT WAS SAID AT THAT TIME BY  
16 LISA HART TO EITHER OR BOTH OF THOSE TWO PEOPLE?

17 A THAT SHE WAS A DEPUTY DISTRICT ATTORNEY WITH LOS  
18 ANGELES COUNTY.

19 Q DID YOU IDENTIFY YOURSELF TO BOTH OF THEM?

20 A YES.

21 Q AS A POLICE OFFICER FROM THE CITY OF BEVERLY HILLS?

22 A YES I DID.

23

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1 Q WELL, AT THE TIME THAT MS. CANCHOLA AND MR. LOPEZ  
2 GOT THERE, WHAT TIME OF THE DAY OR NIGHT WAS IT?

3 A ABOUT AN HOUR LATER. I WOULD ESTIMATE AROUND  
4 9:00 P.M.

5 Q AFTER YOU MADE THE INTRODUCTIONS, WHAT HAPPENED?

6 A I ESCORTED MR. CANCHOLA, THE FATHER, AND CARMEN  
7 INTO A BACK ROOM -- WELL, THEY INDICATED A ROOM THEY WANTED  
8 TO HAVE THE CONVERSATION IN.

9 I EXPLAINED THE PROCESS OF THE IDENTI KIT AND  
10 THEN I BEGAN ASKING QUESTIONS PERTAINING TO THE IDENTITY  
11 OF THE PERSON SHE HAD SEEN.

12 Q WHAT WAS THE EXPLANATION YOU GAVE HER OF THE  
13 IDENTI KIT?

14 A OH, TO BACK UP, PRIOR TO THAT, I WAS INSTRUCTED  
15 THAT THERE WOULD BE NO CONVERSATION REGARDING THE CASE,  
16 OTHER THAN IDENTIFICATION, SO MY ONLY QUESTIONS WERE TO BE  
17 ADDRESSED TO THE IDENTI KIT ONLY.

18 Q OKAY. AND DID YOU MAKE SOME STATEMENT EITHER  
19 TO HER OR TO HER FATHER ABOUT THE FACT THAT YOU UNDERSTOOD  
20 YOU WEREN'T TO TALK TO THEM ABOUT THE CASE?

21 A YES.

22 Q WAS THAT TO HER OR THE FATHER OR BOTH?

23 A BOTH.

24 Q AND THAT WAS BEFORE YOU GOT INTO THE ROOM IN  
25 THE BACK?

26 A YES.

27 Q WHEN YOU GOT INTO THE ROOM IN THE BACK, WHAT  
28 DID YOU TELL HER ABOUT THE IDENTI KIT?

1           A       I NEEDED TO GET INFORMATION FROM HER FIRST ABOUT  
2 A DESCRIPTION OF THE PERSON SHE HAD SEEN AND THEN BASED UPON  
3 THAT DESCRIPTION, I WOULD PUT TOGETHER A COMPOSITE OF WHAT  
4 THE SCHOOL INDICATES WOULD BE A STARTING PLACE, STARTING  
5 WITH THE BASIC FACE SHAPE, ET CETERA, ET CETERA, EYES, NOSE  
6 AND MOUTH, AND I INDICATED THAT TO HER.

7                   AND THEN FROM THERE, THEN SHE WOULD INDICATE  
8 TO ME WHAT CHANGES, IF ANY, THERE WOULD BE TO THIS COMPOSITE.

9           Q       DID YOU GET A DESCRIPTION FROM HER THAT YOU USED  
10 TO MAKE THIS FIRST BASIC STARTING POINT?

11          A       YES, I DID.

12          Q       AND DID YOU RECONSTRUCT THAT THIS MORNING? DID  
13 YOU TAKE PIECES OF THE IDENTI KIT THIS MORNING AND PIECE  
14 TOGETHER AGAIN WHAT THAT STARTING PLACE PICTURE WOULD LOOK  
15 LIKE?

16          A       YES, I DID.

17          Q       DID YOU MAKE A XEROX OF IT?

18          A       YES, I DID.

19          MR. BARENS: WE WOULD OBJECT, YOUR HONOR.

20                   MAY WE APPROACH?

21          THE COURT: ALL RIGHT.

22          MR. BARENS: DID IT THIS MORNING?

23          THE COURT: PARDON ME?

24          MR. BARENS: ABOUT THIS MORNING'S LITTLE ACTIVITY.

25          MR. WAPNER: MAYBE I CAN CLEAR THAT UP SO WE DON'T  
26 HAVE TO APPROACH, YOUR HONOR.

27          Q       WHEN YOU WERE THERE IN TUCSON, DID YOU GET FROM  
28 HER A DESCRIPTION OF THE PERSON THAT SHE SAW?



1           A       YES, I DID.

2           Q       AND BASED ON THAT, DID YOU TAKE SOME OF THE PIECES  
3 FROM THE IDENTI KIT AND MAKE A FACE?

4           A       YES, I DID.

5           Q       AND DID YOU MAKE SOME NOTATION OF WHAT THOSE  
6 PIECES WERE THAT YOU USED TO MAKE THAT INITIAL STARTING POINT  
7 FACE?

8           A       NO, I DID NOT.

9                   HOWEVER, WHAT I DID WAS USE THE SCHOOL'S FORM  
10 AND BASED UPON THE IDENTIFICATION LISTED, ACCORDING TO WHAT  
11 THE WITNESS STATED, THOSE ARE THE CELLS, INDIVIDUAL CELLS  
12 FOR THAT SHAPE OF FACE, NOSES, ET CETERA.

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1 MR. BARENS: YOUR HONOR, WE WOULD OBJECT NO THE BASIS  
2 OF RELEVANCY AND THERE IS A MOTION TO STRIKE ALL OF THAT.

3 THE COURT: I KNOW. WILL YOU APPROACH THE BENCH, PLEASE?

4 (THE FOLLOWING PROCEEDINGS WERE HELD

5 AT THE BENCH, OUTSIDE THE HEARING OF THE

6 JURY:)

7 THE COURT: WHAT IS THE POINT OF ALL OF THIS? WE HAVE  
8 THE IDENTI KIT PICTURE, HAVEN'T WE?

9 MR. WAPNER: WE DON'T HAVE ONE AND SHE CLAIMS SHE HAS  
10 BEEN BROWBEATEN BY ALL OF THESE PEOPLE FROM THE POLICE  
11 DEPARTMENT AND SHE FURTHER WAS NOT ABLE TO PRODUCE AN  
12 IDENTIFICATION, AND I THINK IT IS IMPORTANT TO EXPLAIN THE  
13 STEPS THAT WERE TAKEN WITH HER THAT WERE ATTEMPTED TO MAKE  
14 THIS IDENTIFICATION AND THE WITNESS ATTEMPTED TO MAKE THIS  
15 IDENTIFICATION AND SHE COULDN'T DO IT.

16 THE COURT: ALL RIGHT.

17 MR. WAPNER: FURTHER, IT EXPLAINS THE SUBSEQUENT CONDUCT.

18 THE COURT: SHE SAID THEY WEREN'T ALL COMPLETED PIECES,  
19 ISN'T THAT WHAT SHE SAID?

20 MR. WAPNER: RIGHT, RIGHT. THAT IS ANOTHER THING SHE  
21 SAID.

22 THE COURT: ALL RIGHT.

23 MR. WAPNER: AND ALSO, SHE CLAIMS IT WAS AFTER THIS  
24 THAT SHE WAS SUPPOSEDLY BROWBEATEN BY THE DEPUTY D.A. AND  
25 THIS GOES TO EXPLAIN HER STATE OF MIND WHEN SHE FINISHED  
26 THIS PROCESS OF SITTING THERE FOR AN HOUR AND TRYING TO DO  
27 THIS AND SHE SAYS "I CAN'T DO IT, I CAN'T DO IT." SHE IS  
28 ALL UPSET, SHE CLAIMS THE POLICE HARASSED HER.

1 THE QUESTION IS: HOW WAS IT SHE CAME TO BE THIS  
2 UPSET?

3 THE COURT: YES.

4 MR. BARENS: MR. WAPNER USED THE WORD "BROWBEATEN"  
5 FOUR TIMES, WHEN THE WITNESS WAS ON THE WITNESS STAND AND  
6 I SPECIFICALLY WENT OVER THAT AND SHE NEVER USED THE WORD  
7 "BROWBEATEN".

8 THE COURT: WELL, WORDS TO THAT EFFECT.

9 MR. BARENS: SHE STATED WHAT HER EXPERIENCES WERE AND  
10 SHE NEVER USED THAT WORD.

11 THE COURT: WELL, WORDS TO THAT EFFECT.

12 MR. BARENS: SHE MADE A SPECIFIC STATEMENT THAT WORDS  
13 WERE SPOKEN TO HER THAT SHE INTERPRETED AS DISSUADING HER  
14 FROM GOING ON WITH THIS MATTER. HOWEVER, YOUR HONOR --

15 THE COURT: WHAT IS THE POINT OF YOUR OBJECTION?

16 MR. BARENS: THE DRAWING THAT THE OFFICER MAKES FROM  
17 SCRATCH, ACCORDING TO THE MANUAL OR THE BOOK HE IS REFERRING  
18 TO, THE RELEVANCE OF THAT AS HIS STARTING POINT AND WHAT  
19 HE CONCLUDES AND RE-PUTTING TOGETHER THIS MORNING, I DON'T  
20 THINK IS RELEVANT.

21 I ALSO FEEL THAT SINCE THE WITNESS STATED THAT  
22 SHE WAS NOT ONLY NOT ABLE TO MAKE AN IDENTIFICATION FROM  
23 THE IDENTI KIT AND GAVE UP IN FRUSTRATION, WHICH IS CONFIRMED  
24 BY LISA HART, AND CONFIRMED BY --

25 THE COURT: LET HIM TESTIFY TO WHAT HE DID. HE IS  
26 AN EXPERT.

27 I WILL OVERRULE YOUR OBJECTION.

28 MR. BARENS: ALL RIGHT.

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THE COURT: THEN YOU CAN CROSS-EXAMINE HIM.

MR. BARENS: ALL RIGHT. DO YOU WANT TO DO IT NOW?

IT IS 3:00 O'CLOCK.

THE COURT: ALL RIGHT, WE WILL TAKE A RECESS.

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

THE COURT: LADIES AND GENTLEMEN OF THE JURY, WE WILL  
TAKE A 15-MINUTE RECESS AT THIS TIME.

THE SAME ADMONITION I GAVE YOU WILL STILL APPLY.

(RECESS.)

6-1  
1 THE COURT: ALL RIGHT. YOU MAY PROCEED.

2 MR. WAPNER: THANK YOU.

3 Q DETECTIVE EDHOLM, WHEN YOU FIRST WENT INTO THE  
4 ROOM WITH MISS CANCHOLA AND EXPLAINED TO HER WHAT THE IDENTI  
5 KIT WAS, DID YOU PUT TOGETHER A FACE USING CERTAIN CELLS IN  
6 THE IDENTI KIT AND DESCRIPTION SHE HAD GIVEN YOU?

7 A YES.

8 Q DID YOU JUST RECONSTRUCT THAT SAME FACE THAT YOU  
9 PUT TOGETHER DURING THE RECESS THAT WE JUST HAD?

10 A YES I DID.

11 Q CAN YOU FIRST OF ALL HOLD THAT UP SO THAT WE CAN  
12 SEE WHAT THAT ACTUALLY LOOKS LIKE?

13 A (THE WITNESS COMPLIES.)

14 Q AND WAS A XEROX OF THAT THEN MADE?

15 A YES.

16 MR. WAPNER: YOUR HONOR, MAY THE XEROX ON THIS PIECE OF  
17 PAPER WITH A PHOTOGRAPH ON IT THAT APPEARS TO BE A XEROX OF  
18 THE PHOTOGRAPH OR THE COMPOSITE THE WITNESS HAS JUST HELD UP,  
19 BE MARKED AS 247 FOR IDENTIFICATION?

20 THE COURT: SO MARKED.

21 Q BY MR. WAPNER: DETECTIVE EDHOLM, IS 247 FOR  
22 IDENTIFICATION, THE XEROX OF THE STARTING POINT FACE THAT YOU  
23 USED WITH MS. CANCHOLA?

24 A YES, SIR. IT WAS.

25

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7-1

1 Q COULD YOU HOLD THAT UP JUST SO THE JURORS CAN  
2 SEE IT.

3 (WITNESS COMPLIES.)

4 Q AND THAT IS BASED ON THE DESCRIPTION THAT SHE  
5 GAVE OF THE PERSON SHE SAW AT THE GAS STATION, CORRECT?

6 A YES.

7 Q THAT IS AGE, HEIGHT, WEIGHT AND THINGS LIKE THAT?

8 A PER THE GUIDELINES FROM THE IDENTI KIT, YES,  
9 AS A STARTING POINT.

10 Q SO THE IDENTI KIT, THE PEOPLE WHO MAKE THIS KIT  
11 PROVIDE CERTAIN GUIDELINES BASED ON THE DESCRIPTION?

12 A PURSUANT TO HEIGHT, AGE, WEIGHT, ET CETERA, YES.

13 Q AFTER YOU MADE THAT INITIAL PICTURE, WHAT WAS  
14 THE PROCEDURE THAT YOU USED IN ORDER TO ATTEMPT TO GET A  
15 COMPOSITE SKETCH OR DIAGRAM OF THIS PERSON'S FACE?

16 A I THEN SHOWED IT TO THE WITNESS AND ASKED HER  
17 IF THAT IS IN FACT WHAT THE PERSON LOOKED LIKE THAT SHE  
18 SAW.

19 Q WHAT DID SHE SAY?

20 A SHE SAID NO.

21 Q WHAT DID YOU DO THEN?

22 A I SAID, "STARTING WITH THE EYES, LET'S GO WITH  
23 THE EYES," AND WE STARTED GOING THROUGH THE VARIOUS CELLS  
24 AND SAYING, "OKAY, WHAT IS WRONG WITH THE EYES? ARE THEY  
25 MORE OPEN? ARE THEY MORE CLOSED? ARE THEY CLOSER TOGETHER?  
26 FURTHER APART?" WHATEVER.

27 AND I DID THAT WITH ALL OF THE FEATURES ON THIS  
28 PARTICULAR FACE.

1 Q WHAT HAPPENS WHEN SHE SAYS --  
2 FOR EXAMPLE, WHEN YOU DID THE EYES, WHAT WAS  
3 THE FIRST THING, DO YOU REMEMBER WHAT THE FIRST THING YOU  
4 DID WAS?

5 A I TOOK THE CELL THAT HAS THE EYES ON THEM OFF  
6 OF THIS FORM AND THEN I REPLACED IT WITH ANOTHER SET OF EYES.

7 Q AND WHEN YOU REPLACED IT WITH ANOTHER SET OF  
8 EYES, WHAT HAPPENED, DID YOU THEN SHOW THAT TO HER?

9 A YES, I DID.

10 Q WHAT DID SHE SAY AT THAT POINT?

11 A I KEPT ON DOING THAT FOR AN HOUR AND SHE COULDN'T  
12 COME UP WITH A COMPOSITE.

13 Q DID YOU CONTINUE TO ASK HER QUESTIONS ABOUT  
14 DIFFERENT FACIAL FEATURES?

15 A YES.

16 Q AND WHAT DO YOU MEAN WHEN YOU SAY THAT SHE COULDN'T  
17 COME UP WITH THE COMPOSITE?

18 A I SHOWED HER EYES. SHE CAME UP WITH ONE THAT  
19 SHE THOUGHT WAS CLOSE.

20 THEN I WENT TO THE NOSE, THE CHIN, ET CETERA,  
21 AGE LINES, HAIR STYLE, AND THEN WITH EACH OF THEM, I SHOWED  
22 HER THAT PARTICULAR COMPOSITE AND SHE SAYS "NO, THAT IS NOT  
23 RIGHT."

24 "WELL, WHAT IS NOT RIGHT ABOUT IT?

25 "WELL, NOW THE EYES ARE WRONG" OR

26 "NOW THE NOSE IS WRONG" OR "NOW THE CHIN IS WRONG."

27 AND THIS WENT ON, AS I SAID, FOR AN HOUR.

28

8-  
1 Q AT THE END OF THE HOUR, WHAT HAPPENED?

2 A SHE INDICATED TO ME THAT SHE WOULD NOT CONTINUE  
3 ANY LONGER WITH COMPOSITES.

4 SHE ASKED ME, "WHY DON'T YOU JUST SHOW ME THE  
5 PICTURE AND I WILL IDENTIFY THAT?" I SAID THAT THAT WAS NOT  
6 POSSIBLE.

7 Q DID YOU TELL HER WHY IT WAS NOT POSSIBLE?

8 A I ONLY HAD ONE PHOTOGRAPH AND THAT WAS A PHOTOGRAPH  
9 OF RON LEVIN. IT WAS NOT IN THE PHOTOGRAPHIC LINEUP.

10 AND SO IF I JUST SHOWED ONE PHOTOGRAPH, AS FAR  
11 AS I AM CONCERNED, THAT WOULD HAVE BEEN TAINTED.

12 Q SUGGESTING TO HER SOMETHING?

13 A CORRECT.

14 Q AND SO, YOU DID NOT SHOW HER THE ONE PHOTOGRAPH?

15 A THAT'S CORRECT.

16 Q AND WHEN YOU TOLD HER THAT YOU WOULDN'T SHOW HER  
17 THE PHOTOGRAPH, WHAT DID SHE SAY?

18 A SHE MADE A STATEMENT ABOUT THE PHOTOGRAPH THAT  
19 SHE HAD SEEN AT THE TUCSON POLICE DEPARTMENT, STATING THAT  
20 IT WAS NOT SO MUCH THAT THAT WAS THE MAN, HOWEVER IN THE  
21 PHOTOGRAPH THAT SHE HAD SEEN, THAT THE EYES WERE CORRECT.

22 Q THE PHOTOGRAPH SHE HAD SEEN AT THE TUCSON POLICE  
23 DEPARTMENT?

24 A CORRECT.

25 Q WAS THAT STATEMENT MADE TO YOU WHILE YOU WERE STILL  
26 WITH HER AND HER FATHER IN THE ROOM?

27 A YES IT WAS.

28 Q WHAT HAPPENED AFTER SHE MADE THAT STATEMENT?



1           A       MY INTERVIEW WITH HER CONCLUDED AND THEN I BROUGHT  
2 MR. LOPEZ INTO THE ROOM AND STARTED THE SAME PROCEDURE WITH  
3 HIM, SHOWING HIM THE SAME STARTING POINT.

4           Q       WHEN SHE MADE THAT STATEMENT TO YOU, DID YOU MAKE  
5 A NOTATION OF IT?

6           A       YES I DID.

7           Q       THAT WAS ON SOME ROUGH NOTES THAT YOU TOOK AT THE  
8 TIME?

9           A       YES, SIR. IT WAS.

10          Q       WHEN DID YOU MAKE THE NOTE OF THE STATEMENT IN  
11 RELATION TO WHEN SHE MADE IT?

12          A       IMMEDIATELY AFTER SHE MADE IT. I WROTE IT DOWN  
13 VERBATIM.

14          Q       DID YOU THEN PUT THAT STATEMENT VERBATIM IN  
15 QUOTATIONS IN THE REPORT THAT YOU LATER PREPARED OF THE  
16 INCIDENT?

17          A       YES, SIR. I DID.

18          Q       WHEN MR. LOPEZ CAME INTO THE ROOM TO DO THE IDENTI  
19 KIT, WAS HE BY HIMSELF OR WITH MS. CANCHOLA'S FATHER?

20          A       I DON'T RECALL. I JUST DON'T RECALL.

21          Q       DID YOU EVER LEAVE THE ROOM OR DID YOU STAY THERE  
22 AND SHE LEFT AND MR. LOPEZ CAME IN?

23          A       I REMAINED IN THE ROOM THE ENTIRE TIME.

24          Q       WHEN MR. LOPEZ FIRST CAME IN THE ROOM, WHAT DID  
25 HE DO?

26          A       I EXPLAINED THE SAME PROCESS.

27          Q       AND DID YOU START WITH A PHOTOGRAPH COMPOSITE AS  
28 A STARTING POINT FOR HIM?

1           A       YES I DID.

2           Q       WAS THAT THE SAME OR DIFFERENT AS THE ONE THAT  
3 YOU USED AS A STARTING POINT FOR HER?

4           A       I STARTED AT THE SAME STARTING POINT. I ASKED  
5 HIM PRELIMINARY QUESTIONS, AS WELL AND THE PHYSICAL DESCRIPTION  
6 WAS APPROXIMATELY THE SAME AS MISS CANCHOLA'S.

7                    SO BASED UPON THAT, I USED THE GUIDELINES IN THE  
8 IDENTI KIT, WHICH WAS THE SAME.

9           Q       AND ONCE YOU ASKED HIM, YOU STARTED WITH THE BASIC  
10 STARTING POINT AND STARTED ASKING HIM QUESTIONS. WHAT HAPPENED?

11          A       HE WAS ABLE TO MAKE AN IDENTIFICATION AFTER  
12 APPROXIMATELY 45 MINUTES.

13          Q       INCIDENTALLY, THE KIT THAT YOU TOOK WITH YOU TO  
14 TUCSON, WAS IT INCOMPLETE IN ANY WAY? WAS IT MISSING ANY  
15 PIECES?

16          A       NO.

17          Q       DID YOU TELL MISS CANCHOLA THAT IT WAS MISSING  
18 SOME PIECES?

19          A       NO. I DID NOT.

20          Q       AND WHAT DID YOU USE AS GUIDELINES IN TERMS OF  
21 WHEN YOU ASKED HIM ABOUT CERTAIN EYES FOR EXAMPLE AND HE GAVE  
22 YOU A RESPONSE, WHAT DID YOU USE AS A GUIDELINE TO KNOW WHICH  
23 CELL TO PULL OUT?

24          A       THERE WAS A BOOK THAT ACCOMPANIES THAT KIT AND  
25 THERE ARE VARIOUS SEGMENTS BROKEN DOWN BY HAIR, CHIN, AGE LINES,  
26 FACIAL TONES, EYES, LIPS, NOSES, BROWS, GLASSES, BEARDS,  
27 MUSTACHES, AND HEADGEAR. THAT IS HOW THE BOOK IS BROKEN DOWN  
28 INTO THOSE RESPECTIVE AREAS. AND SO, I THEN REFER TO THE BOOK

1 AND THEN I SAID, "WELL, WHAT IS DIFFERENT ABOUT IT?"

2 AND THEN BASED UPON HER DESCRIPTION TO ME, I THEN  
3 TRIED TO FIND WHAT WAS DIFFERENT IN THE BOOK AND THEN FIND  
4 THE APPROPRIATE CELL AND PLACE IT ON THE COMPOSITE.

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1 Q DID YOU SHOW THE BOOK TO HER?

2 A NO, I DID NOT.

3 Q WHY NOT?

4 A THIS IS WHAT WE WERE INSTRUCTED AT THE SCHOOL,  
5 THAT WE SHOULD NOT SHOW THE BOOK BECAUSE THAT TENDS TO CONFUSE  
6 PEOPLE RATHER THAN TO ELABORATE ON THE IDENTIFICATION.

7 Q CAN YOU JUST HOLD THAT BOOK UP AND SHOW THE JURY,  
8 FOR EXAMPLE, ONE OF THE PAGES OF EYES SO WE HAVE AN IDEA  
9 WHAT YOU ARE TALKING ABOUT?

10 MR. BARENS: COULD WE MARK THAT FOR IDENTIFICATION,  
11 SIR?

12 THE WITNESS: THIS IS THE ONLY KIT WE HAVE AT THE POLICE  
13 DEPARTMENT.

14 THE COURT: JUST SHOW IT UP, WILL YOU, PLEASE?

15 (WITNESS HOLDING BOOK UP FOR JURY.)

16 Q BY MR. WAPNER: AND THEN IT HAS SEVERAL DIFFERENT  
17 PAGES OF EYES AND NOSES AND THINGS LIKE THAT?

18 A CORRECT.

19 Q AND AFTER 45 MINUTES OF WORKING WITH HIM, HE  
20 PRODUCED A COMPOSITE FACE?

21 A YES, HE DID.

22 Q ALL RIGHT, SHOWING YOU 240 FOR IDENTIFICATION,  
23 DO YOU RECOGNIZE THAT?

24 A YES, SIR, I DO.

25 Q WHAT IS THAT?

26 A THAT IS THE COMPOSITE THAT HE CAME UP WITH.

27 Q AND AFTER HE CAME UP WITH THAT COMPOSITE, DID  
28 HE MAKE ANY STATEMENT TO YOU ABOUT IT?

1 A YES, HE DID.

2 Q WHAT DID HE SAY?

3 A HE SAID TWO THINGS: THAT THE CHIN SHOULD BE  
4 MORE SCULPTURED IN THIS COMPOSITE AND THE HAIR WAS COMBED  
5 STRAIGHT BACK, BUT OTHER THAN THAT, THIS WAS CORRECT.

6 Q DID YOU HAVE A MORE SCULPTURED CHIN THAT YOU  
7 COULD PUT IN THERE OR HAD YOU GONE THROUGH THOSE FEATURES  
8 BEFORE?

9 A I HAD GONE THROUGH THAT AND THIS WAS THE BEST  
10 I COULD COME UP WITH.

11 Q AFTER YOU CAME UP WITH THAT COMPOSITE WITH HIM,  
12 WHAT DID YOU DO?

13 A WENT WITH HIM BACK INTO THE LIVING ROOM WHERE  
14 MR. CANCHOLA WAS WITH HIS DAUGHTER.

15 Q AND HOW LONG DID YOU STAY THERE?

16 A JUST A MATTER OF MOMENTS.

17 Q WHAT DID YOU DO WHEN YOU WENT BACK INTO THE  
18 LIVING ROOM?

19 A I ASKED MISS CANCHOLA IF IN FACT THIS COMPOSITE  
20 THAT I WAS ABLE TO OBTAIN FROM MR. LOPEZ WAS CORRECT AND  
21 IF SHE COULD IDENTIFY THAT.

22 Q WHAT DID SHE SAY?

23 A SHE STATED "NO."

24 Q WHAT DID YOU DO AFTER THAT?

25 A LEFT.

26 Q DID YOU EVER GO BACK TO TUCSON?

27 A NO.

28 Q BY THE TIME YOU LEFT, WHAT TIME WAS IT?

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1 A APPROACHING 11:00 O'CLOCK.

2 Q AND DID YOU DO ANY FURTHER INVESTIGATION THAT  
3 NIGHT OR THE NEXT MORNING OTHER THAN YOU --

4 A INVESTIGATION BY MYSELF, NO.

5 Q YOU BASICALLY WENT BACK TO THE HOTEL AND THEN  
6 LEFT THE NEXT MORNING?

7 A CORRECT.

8 Q HOW MUCH TIME DID YOU SPEND THERE IN THE COMPANY  
9 OF LISA HART AND MISS CANCHOLA AND MR. LOPEZ, THE FOUR OF  
10 YOU?

11 A INITIALLY, UPON ARRIVAL IN RIO RICO, LISA HART  
12 AND I SPENT APPROXIMATELY ONE HOUR WITH MR. CANCHOLA AWAITING  
13 THE ARRIVAL OF HIS DAUGHTER AND MR. LOPEZ.

14 THEN UPON THEIR ARRIVAL, I SPENT APPROXIMATELY  
15 AN HOUR WITH MISS CANCHOLA AND APPROXIMATELY 45 MINUTES WITH  
16 MR. LOPEZ AND THEN A FEW MINUTES -- AGAIN SHOWING THE  
17 COMPOSITE TO MISS CANCHOLA AND THEN BASICALLY, MAKING OUR  
18 APOLOGIES, TO LEAVE.

19 Q APOLOGIES FOR WHAT?

20 A WE HAD INTERRUPTED A BIRTHDAY PARTY FOR A MEMBER  
21 OF THEIR FAMILY.

22 MR. WARNER: THANK YOU. I HAVE NOTHING FURTHER.

23 THE COURT: ALL RIGHT.

24

25 CROSS-EXAMINATION

26 BY MR. BARENS:

27 Q GOOD AFTERNOON.

28 DID YOU EVER MAKE A COMPOSITE USING YOUR IDENTI

1 KIT BASED ON ANY PHOTOGRAPHS YOU SAW OF RON LEVIN?

2 A NO, I DID NOT.

3 Q YOU NEVER MADE AN ATTEMPT TO DO THAT?

4 A NO.

5 Q DO YOU THINK YOU COULD MAKE A COMPOSITE UP WITH  
6 YOUR MACHINE THERE AND ALL OF YOUR DEVICES, OF A PHOTOGRAPH  
7 OF RON LEVIN?

8 MR. WAPNER: OBJECTION. RELEVANCE, YOUR HONOR.

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1 MR. BARENS: WELL, ISN'T THAT WHAT WE ARE TALKING ABOUT?

2 THE COURT: OVERRULED.

3 Q BY MR. BARENS: IF YOU COULD DO THAT FOR ME?

4 A POSSIBLY.

5 Q WOULD IT COME OUT LOOKING JUST LIKE THE PHOTOGRAPH?

6 A NOT NECESSARILY.

7 Q WELL, DID CARMEN CANCHOLA EVER TELL YOU THAT  
8 THE IDENTI KIT PICTURE WAS THE SAME AS THE PERSON SHE SAW  
9 IN THE GAS STATION?

10 A NO.

11 Q DID CHINO LOPEZ EVER TELL YOU THAT HE WAS CERTAIN  
12 THAT THE PHOTOGRAPH -- I AM SORRY -- THAT THE PERSON HE SAW  
13 IN THE GAS STATION WAS THE SAME PERSON HE SAW IN THE IDENTI  
14 KIT PICTURE?

15 THE COURT: CERTAIN, YOU SAID?

16 MR. BARENS: YES, SIR.

17 THE COURT: DID HE SAY CERTAINLY THAT WAS THE SAME  
18 PERSON, DID HE?

19 THE WITNESS: HE SAID THAT WAS THE PERSON THAT HE SAW,  
20 WITH THE EXCEPTION OF MORE SCULPTURED CHIN AND THE HAIR  
21 COMBED STRAIGHT BACK, THAT WAS THE PERSON.

22 Q BY MR. BARENS: ALL RIGHT, NOW, SIR, IS IT BETTER  
23 TO IDENTIFY SOMEONE BASED ON A PHOTOGRAPH YOU HAVE OF SOMEONE  
24 OR ON AN IDENTI KIT PICTURE?

25 MR. WAPNER: OBJECTION. ARGUMENTATIVE.

26 THE COURT: SUSTAINED.

27 MR. BARENS: WELL, BASED ON YOUR EXPERIENCE AS A POLICE  
28 OFFICER.



1 THE COURT: SUSTAINED.

2 THAT DOESN'T REQUIRE AN ANSWER FROM ANYBODY.  
3 OF COURSE, A PHOTOGRAPH WOULD BE MUCH BETTER THAN A PHOTO  
4 KIT.

5 MR. BARENS: THANK YOU, YOUR HONOR. THANK YOU, YOUR  
6 HONOR.

7 THE COURT: I CAN TAKE JUDICIAL NOTICE OF THAT.

8 MR. BARENS: THAT WAS A GOOD THING, YOUR HONOR. OKAY.

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(PAUSE.)

Q BY MR. BARENS: HOW MANY TYPES OF NOSES ARE THERE IN THE WORLD THAT YOU CAN DEPICT IN A DRAWING?

A I COULDN'T BEGIN TO TELL YOU.

Q DO YOU HAVE THEM ALL IN THAT BOX?

A I DOUBT IT.

Q HOW ABOUT EYES, CHINS, NOSES, EARS, EYEBROWS, MOUTHS, LIPS?

A NO.

Q NOW, HOW ABOUT COMPLEXIONS?

A NO.

Q YOU DON'T HAVE COMPLEXIONS IN THERE?

A YES. WE DO.

Q DID YOU USE ANY OF THOSE?

A NO.

Q NO COMPLEXIONS AT ALL?

A THE COMPLEXIONS THAT THEY HAVE IN THERE ARE BASICALLY FOR PERSONS WHO ARE BLACK COMPLETED. OTHER THAN THAT, IT IS JUST LEFT BLANK.

Q WELL, SO YOU WON'T SAY TO US, WOULD YOU, THAT ALL OF THE NOSES, MOUTHS, EYES, ET CETERA, FOUND IN THE HUMAN ANATOMY IN THE FACE ARE IN THAT BOX, ARE THEY?

A THAT'S CORRECT.

Q CORRECT THAT THEY ARE NOT?

A THAT THEY ARE NOT.

Q YOU KNEW PRECISELY WHAT RON LEVIN LOOKED LIKE WHEN YOU STARTED THIS IDENTI KIT ACTIVITY, DID YOU NOT?

A YES. I DID.

1 Q DID YOU TELL THAT TO THE PERSONS YOU WERE WORKING  
2 WITH, EITHER LOPEZ OR CANCHOLA?

3 A NO.

4 Q DO YOU KNOW WHETHER THE COMPOSITE THAT YOU ARRIVED  
5 AT WITH MR. LOPEZ WAS EVER USED ON ANY TELEVISION PROGRAM OR  
6 ADVERTISEMENTS OR BULLETINS TRYING TO LOCATE THE PERSON THAT  
7 IS DEPICTED IN THE IDENTI KIT DEPICTION?

8 A I HAVE NO KNOWLEDGE OF THAT, NO.

9 Q YOU NEVER ASKED ANYBODY TO DO THAT, DID YOU?

10 A NO I DIDN'T.

11 MR. BARENS: THANK YOU, SIR.

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REDIRECT EXAMINATION

14 BY MR. WAPNER:

15 Q WHEN YOU FINISHED WITH CARMEN AFTER THE HOUR OF  
16 TRYING TO MAKE THIS COMPOSITE, HOW DID SHE SEEM TO YOU IN TERMS  
17 OF WHETHER SHE WAS CALM, UPSET OR ONE WAY OR THE OTHER? WHAT  
18 WAS HER STATE OF MIND?

19 MR. BARENS: OBJECTION. HOW WOULD HE KNOW HER STATE  
20 OF MIND, SIR?

21 THE COURT: WELL, HOW DID SHE APPEAR TO YOU?

22 THE WITNESS: SHE --

23 THE COURT: UPSET OR CALM OR WHAT?

24 THE WITNESS: SHE WAS UPSET I WOULD NOT SHOW HER THE  
25 PHOTOGRAPH.

26 THE COURT: DID SHE CRY?

27 THE WITNESS: NO.

28 Q BY MR. WAPNER: DID SHE SEEM TO GET FRUSTRATED

1 DURING THE HOUR THAT SHE SPENT THERE?

2 A YES.

3 MR. WAPNER: THANK YOU. NOTHING FURTHER.

4 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. YOU ARE  
5 EXCUSED.

6 MR. WAPNER: YOUR HONOR, AT THIS TIME, I WOULD MOVE TO  
7 HAVE THOSE EXHIBITS NOT PREVIOUSLY RECEIVED, RECEIVED INTO  
8 EVIDENCE.

9 THE COURT: ANY OBJECTION?

10 MR. BARENS: A MOMENT, YOUR HONOR. COULD WE HAVE THE  
11 NUMBERS?

12 THE COURT: YES, SURE.

13 MR. BARENS: WHY DON'T WE DO IT AT THE END OF THE  
14 WITNESSES, YOUR HONOR? WE CAN DO IT ALL AT ONCE.

15 MR. WAPNER: FOR COUNSEL'S EDIFICATION, IT WOULD START  
16 WITH 230 AND GO THROUGH 247.

17 MR. BARENS: COULD WE ADDRESS THIS AFTER THE WITNESS,  
18 YOUR HONOR?

19 THE COURT: ARE THERE ANY FURTHER WITNESSES YOU HAVE?

20 MR. WAPNER: NO. THE PEOPLE REST.

21 THE COURT: THE PEOPLE REST?

22 MR. WAPNER: SUBJECT TO RECEIPT OF THE EVIDENCE.

23 THE COURT: ANYTHING FURTHER FROM YOU?

24 MR. BARENS: NO.

25 THE COURT: YOU REST, TOO?

26 MR. BARENS: YES.

27 THE COURT: THEN THERE IS NO REASON THAT WE SHOULD KEEP  
28 THE JURY ANY LONGER.

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1 MR. BARENS: YOUR HONOR, BEFORE WE EXCUSE THE JURY,  
2 WE'LL PROBABLY HAVE TO TELL THEM WHEN TO COME BACK. I WOULD  
3 LIKE TO APPROACH ON THAT.

4 THE COURT: ALL RIGHT. YOU MAY DO SO.  
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1 (THE FOLLOWING PROCEEDINGS WERE HELD AT  
2 THE BENCH:)

3 THE COURT: AFTER THE JURY LEAVES, I HAVE SOME  
4 OBSERVATIONS TO MAKE AND SOME QUESTIONS TO ASK. SO DON'T  
5 RUN AWAY WHEN THE JURY LEAVES.

6 MR. BARENS: I DO NOT PLAN TO RUN AWAY, SIR.

7 THE COURT: ALL RIGHT.

8 MR. BARENS: YOUR HONOR, ON THE ISSUE OF WHEN THE JURY  
9 SHOULD COME BACK, WE MIGHT TAKE A RECESS AND HAVE A BRIEF  
10 CONFERENCE IN CHAMBERS SO AS NOT TO HAVE TO STAND OUT HERE  
11 AND DO IT AND DISCUSS THE ORDER OF FINAL ARGUMENT.

12 I WANT TO HAVE SOME TIME, YOUR HONOR, TO DECIDE  
13 HOW LONG EACH SIDE WOULD ARGUE AND WHEN WE ARE GOING TO START.

14 THE COURT: WELL, NEXT MONDAY. ISN'T THAT WHAT WE  
15 DECIDED?

16 MR. BARENS: WELL, NUMBER ONE --

17 THE COURT: TODAY IS TUESDAY. YOU HAVE WEDNESDAY AND  
18 THURSDAY.

19 MR. BARENS: WELL, WHAT I WOULD LIKE YOUR HONOR, I WOULD  
20 LIKE -- WELL, TUESDAY, YOUR HONOR FOR A VARIETY OF REASONS  
21 NOT THE LEAST OF WHICH, I WANT TO CANDIDLY TELL THE COURT THAT  
22 I HAVE SOME RESERVATIONS ABOUT SOME -- SOME PERSONAL  
23 RESERVATIONS ABOUT PROCEEDING MONDAY AFTERNOON, WHICH IS THE  
24 EARLIEST I THINK COUNSEL -- WELL, IT WOULD GET TO ME AND --

25 THE COURT: BECAUSE OF THE HOLIDAY, YOU MEAN?

26 MR. BARENS: YES, YOUR HONOR.

27 THE COURT: THERE IS NO HOLIDAY MONDAY AFTERNOON. MONDAY  
28 NIGHT IS THE SEDER NIGHT.

1 MR. BARENS: MONDAY EVENING IS PASSOVER.

2 THE COURT: WELL, SUPPOSE WE LEAVE AT 4 O'CLOCK OR  
3 3 O'CLOCK OR SOMETHING LIKE THAT? DOES THAT GIVE YOU ENOUGH  
4 TIME?

5 MR. BARENS: BUT THAT WOULD NECESSARILY CUT SHORT MY --  
6 IF FOR INSTANCE, MR. WAPNER WENT FROM 9:00 TO 12:00, SIR, NOT  
7 SAYING THAT HE WOULD --

8 THE COURT: YOU MEAN ARGUMENT? IS THAT WHAT YOU MEAN?

9 MR. BARENS: I DO NOT WANT TO BE INTERRUPTED BETWEEN  
10 THE START AND FINISH OF MY ARGUMENT AND --

11 THE COURT: WELL, YOU WON'T HAVE TO ARGUE MONDAY.  
12 IS THAT WHAT YOU ARE CONCERNED ABOUT?

13 MR. BARENS: YES, YOUR HONOR.

14 THE COURT: ALL RIGHT. YOU WON'T HAVE TO ARGUE MONDAY.

15 MR. BARENS: BUT YOUR HONOR, I ALSO DON'T THINK THAT  
16 IT IS PSYCHOLOGICALLY FAIR. THE PROBLEM THAT I HAVE IS THAT  
17 I DON'T WANT THE JURY TO SLEEP ON HAVING HEARD JUST ONE SIDE  
18 ARGUE.

19 MR. WAPNER: WELL, MR. BARENS, MAYBE I CAN HELP YOU OUT  
20 A LITTLE BIT. ALTHOUGH I AM NEVER GOOD AT ESTIMATING THE  
21 LENGTH OF MY ARGUMENTS, I WILL TELL YOU THAT BASED ON THE  
22 EVIDENCE IN THIS CASE, I THINK THAT IT IS REASONABLE TO THINK  
23 THAT IT WOULD TAKE ME A FULL DAY TO DO MY OPENING ARGUMENT,  
24 NO MATTER HOW YOU CUT IT.

25 THE COURT: I WON'T HAVE YOU ARGUE IT ON MONDAY. YOUR  
26 ARGUMENT WON'T BEGIN ON MONDAY.

27 MR. WAPNER: I WOULD ANTICIPATE THAT WE WOULD -- BECAUSE  
28 THE COURT HAS A CALENDAR ON MONDAY, WE WOULD START AT 10:30,

1 AS WE HAVE BEEN DOING. AND MY ARGUMENT --

2 THE COURT: IT WILL TAKE THE REST OF THE DAY?

3 MR. WAPNER: I WOULD THINK THAT IT HAS GOT TO TAKE  
4 PRETTY CLOSE TO THE REST OF THE DAY.

5 THE COURT: ALL RIGHT. THEN YOU DON'T HAVE TO FIGURE  
6 ON ARGUING ON MONDAY.

7 MR. BARENS: I APPRECIATE THE COURTESY, YOUR HONOR.  
8 THEN YOUR HONOR, DURING ARGUMENT WE WILL START THE DAY AT  
9 10:30, SIR?

10 THE COURT: YES.

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1 MR. BARENS: AND BREAK THE DAY AT 4:30, SIR?

2 THE COURT: YES.

3 MR. BARENS: AND THAT THE NORMAL INTERVAL IN BETWEEN,  
4 AT LEAST FOR THE LUNCH HOUR INTERVAL, SIR?

5 THE COURT: THAT IS RIGHT.

6 MR. WAPNER: I HOPE WE CAN BREAK AT 3:00 O'CLOCK AS  
7 WE CAN ONLY STAND UP AND TALK FOR SO LONG.

8 MR. BARENS: YES, SIR. THANK YOU, SIR.

9 THE COURT: OKAY, I WILL EXCUSE THE JURY NOW AND TELL  
10 THEM TO COME BACK MONDAY MORNING AT 10:30.

11 MR. BARENS: SIR, JUST TO MAKE SURE FOR THE RECORD,  
12 THIS IS THE LAST TIME WE WILL EXCUSE THE JURY, AS I UNDER-  
13 STAND IT, PRIOR TO ARGUMENT, THE MOTIONS THAT HAD BEEN  
14 DISCUSSED AT THE BENCH YESTERDAY CONCERNING THOSE TWO LIMITING  
15 INSTRUCTION REQUESTS, THE COURT HAS DETERMINED THAT --

16 THE COURT: LET'S ASSUME THEY ARE DENIED.

17 MR. BARENS: THANK YOU, YOUR HONOR.

18 THE COURT: ALL RIGHT, FINE.

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

22 THE COURT: LADIES AND GENTLEMEN OF THE JURY, AS YOU  
23 KNOW, THE TESTIMONY HAS BEEN CONCLUDED IN THIS CASE. WHAT  
24 REMAINS IS FOR COUNSEL TO ARGUE THEIR SIDE OF THE CASE TO  
25 YOU AND AFTER THE ARGUMENT, THE COURT WILL INSTRUCT YOU AS  
26 TO THE APPLICABLE LAW.

27 COUNSEL WILL GO OVER THE JURY INSTRUCTIONS WHICH  
28 I WILL GIVE YOU, WITH THE COURT ON THURSDAY, SO THE REST

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1 OF THE WEEK YOU MAY BE EXCUSED AND YOU WILL COME BACK ON  
2 MONDAY MORNING, NEXT MONDAY MORNING AT 10:30 AND THEN WE  
3 WILL PROCEED WITH THE ARGUMENT AND THEN AFTER THE CONCLUSION  
4 OF THE ARGUMENT, THE INSTRUCTIONS, AND THEN YOU WILL BE ASKED  
5 TO DELIBERATE.

6 THE ADMONITION I GAVE YOU ABOUT TALKING AMONG  
7 YOURSELVES OR WITH THIRD PARTIES OR READING ANYTHING OR HEARING  
8 ANYTHING ABOUT THE CASE WILL STILL APPLY AND I AM SURE YOU  
9 WILL FAITHFULLY OBSERVE THAT ADMONITION.

10 GOOD NIGHT AND SEE YOU NEXT MONDAY. HAVE A NICE  
11 WEEKEND. GOOD NIGHT.

12 (THE FOLLOWING PROCEEDINGS WERE HELD  
13 OUTSIDE THE PRESENCE AND HEARING OF THE  
14 JURY:)

15 THE COURT: YOU WILL ALL BE SEATED, PLEASE. THE  
16 PROCEEDINGS HAVE NOT BEEN CONCLUDED.

17 THE RECORD WILL INDICATE THAT THE JURORS HAVE  
18 NOW LEFT THE COURTROOM.

19 THERE IS ONE OTHER MATTER THE COURT HAS TO TAKE  
20 UP WITH THE COUNSEL AND THE DEFENDANT.

21 MR. BARENS STATED TO THE COURT AT THE CONCLUSION  
22 OF THE TESTIMONY WHICH WAS ADDUCED BY THE DEFENDANT THAT  
23 "THE DEFENDANT RESTS," WHICH MEANT THAT HE INTENDED NOT TO  
24 CALL THE DEFENDANT HIMSELF TO THE WITNESS STAND.

25 I HAVE HAD AN EXPERIENCE WHICH CAUSES ME TO TAKE  
26 A PROCEDURE HERE WHICH NORMALLY I WOULD NOT TAKE AND THAT  
27 IS AS FOLLOWS: I HAD A PRIOR CASE WHERE COUNSEL FOR THE  
28 DEFENDANT HAD STATED TO THE COURT THAT THE DEFENDANT WOULD

1 REST AND THE DEFENDANT WOULD NOT TAKE THE STAND. THE DEFENDANT  
2 WAS PRESENT IN THE COURTROOM AT THE TIME AND SAID NOTHING.  
3 AND AFTER ARGUMENT TO THE JURY AND AFTER THE DISTRICT ATTORNEY  
4 HAD ALMOST FINISHED HIS CONCLUDING ARGUMENT TO THE JURY,  
5 THE DEFENDANT GOT UP AND SAID, "I WANT TO TESTIFY IN THE  
6 CASE. I HAVEN'T BEEN ASKED WHETHER OR NOT I SHOULD OR  
7 SHOULDN'T TESTIFY AND I WANT TO." THAT WAS RIGHT IN THE  
8 MIDDLE OF THE CASE.

9 SO I HAVE DECIDED IT IS A GOOD PROCEDURE, AND  
10 OTHER JUDGES HAVE FOLLOWED IT, THAT WHERE COUNSEL ANNOUNCES  
11 THE DEFENDANT WILL NOT TAKE THE STAND, ALTHOUGH THE DEFENDANT  
12 IS PRESENT, THERE HAS BEEN A PROCEDURE FOR THE DEFENDANT  
13 HIMSELF TO STATE ON THE RECORD THAT HE HIMSELF AGREES NOT  
14 TO TAKE THE STAND.

15 AND I WILL ASK MR. HUNT AT THIS TIME WHETHER  
16 HE AGREES NOT TO TAKE THE STAND IN THIS CASE, HE WAIVES HIS  
17 RIGHT TO DO SO.

18 THE DEFENDANT: YES, I DO, YOUR HONOR.

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

20 MR. BARENS: I WAS ALSO WILLING TO ENTER INTO ANY  
21 STIPULATION YOUR HONOR WANTS IN THAT REGARD.

22 THE COURT: YES. I JUST WANTED TO BE SURE THERE ISN'T  
23 ANY POSSIBILITY LATER.

24 THERE IS ONE CASE UP ON APPEAL WHERE EXACTLY  
25 THAT THING HAPPENED AND I WANTED TO BE SURE THERE WASN'T  
26 THAT POSSIBILITY.

27 MR. BARENS: I WASN'T AWARE OF THAT.

28 THE DEFENDANT: THANK YOU, YOUR HONOR.

1 THE COURT: ALL RIGHT.

2 MR. BARENS: YOUR HONOR, WE HAD AN ISSUE ON THE  
3 ADMITTING OF EXHIBITS 230 THROUGH 247.

4 THE COURT: YES.

5 MR. BARENS: THE DEFENSE WOULD -- A MOMENT, YOUR HONOR.

6 (UNREPORTED COLLOQUY BETWEEN MR. BARENS  
7 AND MR. CHIER.)

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1 MR. BARENS: YOUR HONOR, DEFENSE HAS AN ISSUE AS TO  
2 THE RELEVANCY ON THE IDENTI KIT DRAWINGS, BOTH OF THEM.  
3 ONE OF THEM IS 247 AND I HAVE FORGOTTEN THE NUMBER OF THE  
4 OTHER ONE, YOUR HONOR.

5 MR. WAPNER: IT IS 240.

6 MR. BARENS: 240 AND 247, AS THE WITNESS CANCHOLA WAS  
7 ABSOLUTELY UNABLE TO DO ANYTHING WITH IT AND AS WITNESS LOPEZ  
8 SAID THAT THE FIRST ONE, 247, WAS NOT THE PERSON HE SAW AND  
9 THAT 240 ITSELF WAS NOT THE PERSON HE SAW IN TERMS OF CHIN  
10 AND HAIR, ET CETERA, AND EYES AND "IS THERE NO COMPLEXION  
11 UTILIZED IN THE DEPICTION SHOWN?" AND I FIND THE RELEVANCY  
12 OF THESE DOCUMENTS IN TERMS OF ENABLING THE JURY TO MAKE  
13 A JUST AND WISE DECISION IS HIGHLY IRRELEVANT.

14 MR. WAPNER: YOUR HONOR, AS TO 247, WHICH IS THE ONE  
15 THAT IS THE STARTING POINT COMPOSITE, I HAVE NO OBJECTION  
16 IF THAT IS NOT RECEIVED.

17 THERE IS A MUCH DIFFERENT QUESTION, HOWEVER --  
18 THE COURT: THAT IS TWO WHAT, 247?

19 MR. WAPNER: 247, RIGHT. THAT IS THE ONE HE PUT  
20 TOGETHER AND SAID "THAT IS WHERE WE START".

21 THE COURT: YES, THAT IS THE ONE. ALL RIGHT, THAT  
22 WILL NOT BE RECEIVED.

23 MR. WAPNER: THAT IS FINE.

24 AS TO 240, THAT IS AN ENTIRELY DIFFERENT MATTER.  
25 THAT IS THE PICTURE THAT MR. LOPEZ SAID TO DETECTIVE EDHOLM  
26 "IS THE PERSON THAT I SAW EXCEPT THE HAIR IS PUSHED BACK  
27 AND THE CHIN IS MORE SCULPTURED."

28 NOW, I CAN'T THINK OF ANYTHING MORE RELEVANT

1 THAN TO ALLOW THE JURY TO LOOK AT THAT AND COMPARE IT TO  
2 PHOTOGRAPHS THAT HAVE BEEN INTRODUCED OF MR. LEVIN AND LET  
3 THEM MAKE A DECISION AS TO WHETHER THEY THINK THE PERSON  
4 THAT HE SAW WAS LEVIN OR SOMEBODY ELSE. IT IS CLEARLY  
5 RELEVANT.

6 THE COURT: ARE THOSE THE ONLY TWO THAT YOU HAD IN  
7 MIND?

8 WELL, THE MOTION WITH RESPECT TO 247 WILL BE  
9 GRANTED.

10 AND AS TO 240, I BELIEVE THAT THE OBSERVATIONS  
11 MADE BY THE DISTRICT ATTORNEY ARE PERTINENT AND I WILL ADMIT  
12 THAT.

13 NOW, ARE THERE ANY OTHER EXHIBITS TO WHICH YOU  
14 FIND EXCEPTION?

15 MR. BARENS: ONE MOMENT, YOUR HONOR.

16 MR. WAPNER: YOUR HONOR, I CAN GO THROUGH THEM FOR  
17 COUNSEL ONE AT A TIME, I HAVE GOT A LIST, IF THAT IS GOING  
18 TO MAKE THINGS MORE EXPEDITIOUS.

19 MR. BARENS: NO. WE WILL AGREE.

20 THE COURT: ALL RIGHT. HOW ABOUT, HAVE YOU GOT ALL  
21 THE DEFENSE EXHIBITS ALSO IN EVIDENCE NOW OTHER THAN THOSE  
22 WHICH HAVE BEEN OBJECTED TO?

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1 MR. BARENS: I WOULD MOVE TO HAVE ALL OF THE DEFENSE  
2 EXHIBITS MOVED INTO EVIDENCE AT THIS TIME, SPECIFICALLY  
3 INCLUDING OUR BLOWUP WHICH I THINK WAS PP OR SOMETHING OVER  
4 THERE.

5 THE COURT: YES. THAT IS QQ -- NO, THE BLOWUP IS PP.  
6 YES.

7 MR. BARENS: BUT WE MOVE TO HAVE ALL OF THE DEFENSE  
8 EXHIBITS ADMITTED.

9 THE COURT: ANY OBJECTION?

10 MR. WAPNER: THE ONLY ONE I OBJECT TO IS RR. THAT IS  
11 A PHOTOGRAPH AND THERE IS NO TIE-IN. IT WAS NEVER SHOWN TO  
12 ANYBODY.

13 IT WAS A PHOTOGRAPH TAKEN OF SOMEBODY IN TUCSON  
14 BUT IT WAS NEVER SHOWN TO ANY OF THE WITNESSES. IT IS OF A  
15 PERSON NAMED --

16 THE COURT: WELL, WHAT IS THAT? HAVE YOU GOT THAT?

17 MR. BARENS: COULD I JUST SEE THAT FOR A MOMENT?

18 THE COURT: YES. I WILL HAVE THE CLERK GET IT.

19 A PHOTOGRAPH OF BRIGHAM?

20 MR. WAPNER: IT WAS NEVER SHOWN TO ANYBODY AND I DON'T  
21 THINK THERE IS ANY TESTIMONY BY ANY WITNESSES --

22 MR. BARENS: YES. I HAD GOTTEN THAT FROM THE PROSECUTION  
23 SIDE. AND I DO NOT MIND THAT --

24 THE COURT: THAT WILL NOT BE RECEIVED.

25 MR. BARENS: ALL RIGHT, THEN.

26 THE COURT: ALL RIGHT. I HAVE A COUPLE OF OTHER MATTERS  
27 I WOULD LIKE TO TAKE UP WITH COUNSEL IN CHAMBERS WHICH HAVE  
28 NOTHING TO DO WITH THE PRESS, AS SUCH. WILL YOU COME TO

2-2  
1 CHAMBERS, PLEASE?

2 (THE FOLLOWING PROCEEDINGS WERE HELD  
3 IN CHAMBERS WITH ALL COUNSEL, THE  
4 DEFENDANT NOT BEING PRESENT:)

5 MR. BARENS: YOUR HONOR, JUST SO I GUESS ON OO --

6 THE COURT: YES?

7 MR. BARENS: ON EXHIBIT OO, WE WOULD LIKE IT ALL IN UP  
8 TO THE WORDS, "YOUNG MEN." THE TOP PORTION WHERE IT ONLY SAYS,  
9 "LEVIN, 42 ..." WELL, ACTUALLY, IT SHOULD GO IN AS IT IS.  
10 I THINK THAT YOU CAN MAKE IT OUT.

11 THE COURT: WITHOUT ANYTHING ERASED?

12 MR. BARENS: JUST LEAVE IT AS IT IS.

13 THE COURT: ALL RIGHT. THAT WILL BE RECEIVED THE WAY  
14 IT IS.

15 MR. BARENS: YOUR HONOR MIGHT RECALL THAT WE HAD THE  
16 WITNESS READ THE WORDS THAT WERE RELEVANT OR APPROPRIATE  
17 INTO THE RECORD.

18 SO THE RECORD SHOWS THE LITERAL WORDS.

19 THE COURT: WELL, I ASKED YOU TO COME IN AND I WANT TO  
20 CALL YOUR ATTENTION TO SOMETHING THAT APPEARED IN THE METRO  
21 SECTION OF THE TIMES TODAY, AN ARTICLE BY LOIS TIMNICK.

22 SHE REPORTS WHAT HAPPENED. SHE POINTS OUT THAT  
23 THE ATTORNEYS FOR BOTH SIDES -- I AM QUOTING NOW, "DECLINE  
24 TO COMMENT ABOUT THE ABRUPT CHANGE IN STRATEGY BECAUSE OF HAVING  
25 A GAG ORDER IMPOSED BY SANTA MONICA SUPERIOR COURT JUDGE  
26 LAURENCE RITTENBAND," BUT THEN IT QUOTES MR. BARENS AS "SAYING  
27 THAT HE HAD HARDLY SLEPT SINCE FRIDAY WHILE WRESTLING WITH  
28 THE DECISION OF WHETHER TO PUT HUNT ON THE STAND, BARENS



1 WOULD POINT ONLY TO HIS OPENING STATEMENT WHICH CONCLUDED WITH  
2 THE WORDS, 'NOT PROVEN, NOT GUILTY.'"

3 I THOUGHT I ASKED YOU NOT TO TALK TO THE PRESS  
4 ABOUT THIS CASE, ANYWAY?

5 MR. BARENS: YOUR HONOR, I DID NOT TALK ABOUT THE CASE  
6 TO THE PRESS.

7 THE COURT: WHAT THIS IS SAYING IS THAT ON THE FRIDAY  
8 YOU SAID THAT YOU HAD HARDLY SLEPT -- YOU SAID THAT YOU HAD  
9 HARDLY SLEPT SINCE FRIDAY WHILE WRESTLING WITH THE DECISION  
10 AS TO WHETHER TO PUT HUNT ON THE STAND.

11 "BARENS WOULD POINT ONLY TO HIS OPENING STATEMENT  
12 WHICH CONCLUDED WITH THE WORDS, 'NOT PROVEN, NOT GUILTY.'"

13 MR. BARENS: I CAN ONLY SURMISE YOUR HONOR THAT I SAID  
14 TO HER AND EVERYONE ELSE GATHERED -- PLEASE LET ME FINISH MY  
15 STATEMENT.

16 "I WON'T TALK TO YOU. I AM UNDER ORDER NOT TO  
17 DISCUSS ANYTHING THAT HAPPENS IN THIS COURTROOM WITH YOU OR  
18 ANY PART OF YOU ON THIS CASE OR ANY PREPARATION OR ANYTHING  
19 ELSE. I WILL NOT DISCUSS THIS DECISION WITH YOU."

20 LATER, I WAS SPEAKING WITH AN ATTORNEY BY THE NAME  
21 OF JOHN VANCE AND I COMMENTED TO MR. VANCE THAT I HAD HAD A  
22 DIFFICULT TIME MAKING MY DECISION. SHE WALKED OVER AND SAID  
23 THAT SHE HAD OVERHEARD ME SAY THAT TO JOHN VANCE.

24  
25  
26  
27  
28

1 THE COURT: DID SHE ALSO OVERHEAR YOUR ASSOCIATE COUNSEL  
2 SAY:

3 "ASSOCIATE DEFENSE COUNSEL RICHARD  
4 CHIER SAID THERE WAS NO NEED FOR HUNT TO TESTIFY  
5 BECAUSE 'THERE'S NO CASE.'"

6 DID YOU OVERHEAR HIM SAY THAT, TOO?

7 MR. BARENS: NO, YOUR HONOR.

8 MR. CHIER WAS NOT PRESENT WHEN I WAS SPEAKING  
9 TO MR. VANCE.

10 THE COURT: I WILL ASK MR. CHIER. DID YOU SAY THIS?

11 MR. CHIER: WHAT WAS THE PURPOSE OF THE INQUIRY, YOUR  
12 HONOR?

13 THE COURT: BECAUSE YOU ARE IN VIOLATION OF A COURT  
14 ORDER.

15 MR. CHIER: LET'S HAVE A HEARING.

16 THE COURT: PARDON ME?

17 MR. CHIER: LET'S HAVE A HEARING.

18 THE COURT: I WILL HAVE A HEARING ON IT. I WILL GET  
19 THE REPORTER IN HERE. SHE IS QUOTING YOU AS SAYING THIS.  
20 DID YOU SAY IT TO HER?

21 MR. CHIER: I WANT A HEARING.

22 THE COURT: DID YOU OR DIDN'T YOU?

23 MR. CHIER: I DECLINE TO ANSWER YOUR HONOR'S QUESTION.

24 THE COURT: THAT IS FINE. I AM GLAD YOU SAID THAT,  
25 BECAUSE I AM GOING TO MAKE A DISPOSITION OF THIS MATTER AFTER  
26 THE CASE IS OVER AND I AM GOING TO HOLD YOU IN CONTEMPT OF  
27 COURT FOR WILLFULLY DISOBEYING MY ORDER.

28 MR. CHIER: WHAT ORDER?

3-2

1 THE COURT: THE ORDER NOT TO TALK TO ANYBODY IN THE  
2 PRESS ABOUT THIS CASE IN ANY WAY, SHAPE OR FORM.

3 MR. CHIER: MAY I BE SERVED WITH A COPY OF THE ORDER  
4 YOU ARE REFERRING TO?

5 THE COURT: YOU WILL NOT BE SERVED WITH ANYTHING. YOU  
6 WERE GIVEN THE ORDER ON THE RECORD, YOU WERE TOLD ON THE  
7 RECORD.

8 MR. CHIER: WHEN?

9 THE COURT: SHUT UP, YOU MISERABLE -- (UNINTELLIGIBLE).

10 MR. BARENS: GENTLEMEN, PLEASE. THIS IS UPSETTING.

11 THE COURT: (READING:)

12 "THE DEFENSE CHOSE, INSTEAD, TO RELY  
13 ON THE STRENGTH OF TESTIMONY BY HUNT'S FORMER  
14 GIRLFRIEND AND HER MOTHER, WHO BOTH SAID HE WAS  
15 HOME GETTING READY FOR BED ABOUT THE TIME HE AND  
16 PITTMAN ARE ACCUSED OF SHOOTING LEVIN."

17 MR. BARENS: I DIDN'T SAY THAT TO LOIS TIMNICK  
18 YESTERDAY.

19 THE COURT: (READING:)

20 "THE LAWYERS ALSO ARE RELYING ON  
21 TESTIMONY BY AN ARIZONA COUPLE WHO REPORTED  
22 SEEING A MAN RESEMBLING LEVIN LATE LAST YEAR."

23 DID YOU DISCUSS THIS AT ALL?

24 MR. BARENS: NO, SIR, I DID NOT IN ANY WAY, SHAPE OR  
25 FORM.

26 THE COURT: WHERE DO YOU SUPPOSE THEY GOT THIS FROM?

27 MR. BARENS: IS THAT A QUOTE FROM ME, SIR?

28 THE COURT: IT IS NOT A QUOTE.

1 SHE SAID, "THE DEFENSE CHOSE, INSTEAD, TO  
2 RELY ON" --

3 ALL RIGHT, ASSUMING THAT THAT WAS NOT SAID --

4 MR. BARENS: I SWEAR TO GOD, I NEVER SAID THAT.

5 THE COURT: LET ME GIVE YOU ANOTHER QUOTE AND SEE WHETHER  
6 OR NOT YOU TOLD HER THIS.

7 MR. BARENS: YES, SIR.

8 THE COURT: (READING:)

9 "IF CONVICTED, HUNT COULD RECEIVE THE  
10 DEATH PENALTY. BUT HIS ATTORNEYS SAY THEY ARE  
11 CONFIDENT THAT ANY CONVICTION WOULD BE OVERTURNED  
12 ON APPEAL, BECAUSE OF WHAT THEY VIEW AS IMPROPER  
13 RULINGS BY RITTENBAND THROUGHOUT THE TWO-MONTH  
14 TRIAL."

15 MR. BARENS: I SWEAR TO GOD I NEVER SAID THAT TO HER,  
16 SIR.

17 THE COURT: DID YOU SAY THAT TO HER?

18 MR. BARENS: NOR DID I SAY THAT TO JOHN VANCE.

19 THE COURT: DID YOU SAY ANYTHING TO HER?

20 MR. CHIER: I HAVE NO COMMENT TO MAKE.

21 THE COURT: ALL RIGHT, I WILL TAKE IT FOR GRANTED YOU  
22 DID.

23 MR. CHIER: NO, YOU CAN'T TAKE IT FOR GRANTED.

24 THE COURT: I WILL ACT ACCORDINGLY, THAT IS ALL I HAVE  
25 TO SAY.

26 MR. CHIER: YOU TAKE A LOT OF THINGS FOR GRANTED.

27 THE COURT: YOU GET OUT OF HERE.

28 MR. CHIER: YES, SIR, CERTAINLY.

1 THE COURT: YOU GET OUT OF HERE. I DON'T LIKE LOOKING  
2 AT YOU.

3 (MR. CHIER EXITS CHAMBERS.)

4 MR. BARENS: SIR, SIR.

5 THE COURT: YES.

6 MR. BARENS: WE HAVE NOT MADE A DECISION ABOUT THE  
7 LENGTH OF TIME COUNSEL WILL BE PERMITTED FOR CLOSING ARGUMENT.

8 THE COURT: HE SAID HE WOULDN'T TAKE MORE THAN A DAY,  
9 ISN'T THAT WHAT YOU SAID?

10 MR. WAPNER: I SAID I THOUGHT IT WOULD PROBABLY TAKE  
11 A DAY. I DON'T LIKE THE IDEA THAT WE ARE GOING TO BE  
12 FORECLOSED --

13 THE COURT: NO, I COULDN'T FORECLOSE IT, WITH THE NUMBER  
14 OF WITNESSES AND THE TREMENDOUS NUMBER OF EXHIBITS AND EVERY-  
15 THING.

16 YOU WON'T BE FORECLOSED EITHER AS TO HOW LONG.

17 MR. BARENS: THAT IS ALL I WAS ASKING.

18 THE COURT: DO YOU WANT TO GIVE AN ESTIMATE?

19 MR. WAPNER: MY ESTIMATE IS APPROXIMATELY A DAY. BUT  
20 I MEAN I TOLD YOU BEFORE I AM NOT REALLY GOOD AT ESTIMATING,  
21 BUT THAT IS MY ESTIMATE.

22 MR. BARENS: THE ONLY REASON I ASKED, YOUR HONOR, WAS  
23 THAT IN MY PRIOR EXPERIENCE, BOTH IN FEDERAL AND STATE COURTS,  
24 I HAD JUDGES THAT OPPOSED CERTAIN LIMITATIONS ON CLOSING  
25 ARGUMENT AND NOT HAVING TRIED A CASE IN THIS COURT PREVIOUSLY,  
26 I DIDN'T KNOW.

27 THE COURT: ALMOST INVARIABLY, I DON'T FORECLOSE OR  
28 I DON'T USUALLY IMPOSE ANY RESTRICTION.

1 MR. BARENS: THANK YOU, YOUR HONOR.

2 THE COURT: I WANT YOU TO KNOW THAT THIS IS NO  
3 REFLECTION ON ANYTHING I HAVE DONE WITH JUNIOR MISS HERE  
4 THAT HAS NOTHING TO DO WITH YOU.

5 MR. BARENS: YES, SIR.

6 THE COURT: YOU UNDERSTAND THAT, DON'T YOU?

7 MR. BARENS: YES, SIR.

8 THE COURT: THANK YOU.

9 (AT 4:03 P.M. AN ADJOURNMENT WAS TAKEN,  
10 TO RESUME THURSDAY, APRIL 8, 1987, AT  
11 10:30 A.M.)

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