

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

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

SUPERIOR COURT
NO. A-090435

OCT 0 5 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 ¹⁰⁰ OF 101
(PAGES 15272 TO 15390, 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

FRIDAY, MAY 29, 1987

VOLUME 100

PAGES 15272 TO 15390, 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

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PROCEEDINGS

CLOSING ARGUMENT BY MR. WAPNER 15272

CLOSING ARGUMENT BY MR. BARENS 15315

JURY INSTRUCTIONS 15359

1 SANTA MONICA, CALIFORNIA; FRIDAY, MAY 29, 1987; 10:15 A.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS NOTED ON TITLE PAGE.)
4

5 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.

6 BEFORE THE ARGUMENT BEGINS, I SHOULD TELL YOU
7 THAT THE COURT HAS WITHDRAWN THE SWARTOUT MATTER AS AN
8 AGGRAVATING CIRCUMSTANCE IN THIS CASE SO YOU WILL HEAR NO
9 ARGUMENT ABOUT THAT AND YOU WILL NOT CONSIDER THAT.

10 ALL RIGHT, YOU MAY PROCEED.

11 MR. WAPNER: YOUR HONOR, I THINK THERE WAS ONE MATTER
12 WE DISCUSSED YESTERDAY IN CHAMBERS THAT COUNSEL WANTED YOU
13 TO ADDRESS REGARDING SOME COMMENTS MADE DURING THE TRIAL.

14 THE COURT: WE DON'T HAVE TO GO INTO THAT AT THIS TIME.
15

16 CLOSING ARGUMENT

17 BY MR. WAPNER:

18 GOOD MORNING. WE HAVE HAD A LONG TIME IN THIS
19 COURT, WE HAVE HAD A LOT OF TIME TOGETHER AND WE HAVE HAD
20 OUR SHARE OF LEVITY DURING THE TIME THAT WE HAVE BEEN HERE
21 AND IT HAS BEEN A NECESSITY TO GET US THROUGH THE LAST, WHAT
22 WAS IT, TWO TO THREE MONTHS WE SAID THIS TRIAL WOULD TAKE --
23 AND THAT IS PROBABLY OVER, THE LEVITY PART. THE LEVITY PART
24 OF IT IS PROBABLY OVER NOW.

25 THIS IS THE PART OF THE TRIAL THAT I HAVE BEEN
26 DREADING FOR A LONG TIME. IT IS THE HARDEST THING THAT I
27 HAVE HAD TO DO IN MY PROFESSIONAL LIFE AND I THINK THAT
28 PROBABLY AFTER YOU FINISH HEARING THE ARGUMENTS AND YOU GO

1 BACK INTO THE JURY ROOM, WHAT YOU HAVE TO DO IS GOING TO
2 BE ONE OF THE HARDEST THINGS THAT ANY OF YOU HAVE HAD TO DO
3 IN YOUR LIFE SO I WANT YOU TO KNOW THAT I DON'T TAKE ANY OF
4 THIS LIGHTLY.

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1 ONE OF THE THINGS THAT IS SOMEWHAT HELPFUL,
2 IS THAT YOU ARE GOING TO HAVE SOME GUIDELINES FROM THE COURT.
3 HE IS NOT JUST GOING TO SEND YOU BACK INTO THE JURY ROOM
4 AND SAY, "OKAY, DO YOUR JOB."

5 YOU ARE GOING TO GET SOME OF THE SAME
6 INSTRUCTIONS YOU GOT BEFORE AND THEN YOU ARE GOING TO GET
7 SOME ADDITIONAL JURY INSTRUCTIONS.

8 BUT IN ESSENCE -- IN ESSENCE, THE JURY
9 INSTRUCTIONS ARE GOING TO LEAVE IT IN YOUR HANDS BECAUSE
10 YOU ARE GOING TO BE TOLD AMONG OTHER THINGS, TWO THINGS:
11 FIRST OF ALL, THAT YOU HAVE TO WEIGH THE AGGRAVATING AND
12 MITIGATING CIRCUMSTANCES; AND AFTER LOOKING AT THE TOTALITY
13 OF THE AGGRAVATING AND MITIGATING CIRCUMSTANCES, IF THE
14 AGGRAVATING CIRCUMSTANCES ARE SO SUBSTANTIAL IN COMPARISON
15 TO THE MITIGATING CIRCUMSTANCES, THEN IT WARRANTS A VERDICT
16 OF DEATH.

17 AND THE OTHER THING IS, IN DECIDING WHAT IS
18 AN AGGRAVATING CIRCUMSTANCE AND WHAT IS A MITIGATING
19 CIRCUMSTANCE, THE JUDGE IS GOING TO TELL YOU THAT YOU ARE
20 FREE TO ASSIGN WHATEVER MORAL OR SYMPATHETIC VALUE YOU DEEM
21 APPROPRIATE TO EACH AND ALL OF THE FACTORS YOU ARE PERMITTED
22 TO CONSIDER, SO THAT SOME OF THESE THINGS MAY BE MORE
23 SIGNIFICANT TO SOME OF YOU THAN OTHERS.

24 SOME FACTORS MAY BE VERY IMPORTANT TO ONE PERSON
25 AND NOT IMPORTANT TO OTHERS AND EACH OF YOU HAS TO DECIDE
26 IN YOUR OWN MIND, THE IMPORTANCE AND VALUE AND WEIGHT TO
27 GIVE TO THE FACTORS THAT YOU HAVE HEARD.

28 KEEP IN MIND THAT IT IS IN FACT, A WEIGHING

2-2

1 TEST. WHEN YOU GET TO THIS PART OF THE CASE, ONE OF THE
2 THINGS THAT YOU ARE GOING TO HAVE -- THE JUDGE WILL TELL
3 YOU THAT THERE ARE SEVERAL FACTORS YOU CAN CONSIDER. WE
4 ARE GETTING A LITTLE FEEDBACK FROM THIS. IS IT POSSIBLE
5 TO --

6 THE CAMERAMAN: IT IS NOT US. WE ARE AN INDEPENDENT
7 SYSTEM.

8 MR. WAPNER: ONE OF THE THINGS THE JUDGE WILL TELL
9 YOU IS THAT YOU CAN -- THERE ARE SEVERAL FACTORS IN
10 AGGRAVATION AND MITIGATION THAT YOU CONSIDER. THERE IS
11 GOING TO BE A WHOLE, LONG LIST OF THEM. BUT FOR PURPOSES
12 OF THIS CASE, I THINK THAT THERE ARE MAYBE FIVE THAT ARE
13 IMPORTANT OR RELEVANT.

14 ONE IS THE CIRCUMSTANCES OF THE PRESENT CRIME,
15 WHICH JUST MEANS THAT YOU DON'T JUST DECIDE THE PENALTY
16 BASED ON WHAT HAPPENED IN THE LAST TWO WEEKS BUT ALL OF
17 THE EVIDENCE THAT YOU HAVE HEARD FROM THE VERY BEGINNING
18 OF THE GUILT PHASE OF THE TRIAL.

19 SECOND, THE PRESENCE OR ABSENCE OF CRIMINAL
20 ACTIVITY BY THE DEFENDANT WHICH INVOLVES THE USE OR ATTEMPTED
21 USE OF FORCE OR VIOLENCE OR THE EXPRESS OR IMPLIED THREAT
22 TO USE FORCE OR VIOLENCE.

23 THAT OF COURSE, IS REFERRING TO THE TWO INCIDENTS
24 THAT WE INTRODUCED AS AGGRAVATION, THAT YOU CAN CONSIDER
25 AS AGGRAVATION AND WERE INTRODUCED IN THE PENALTY PHASE,
26 MAINLY, THE ONE INVOLVING MR. COKER'S BUSINESS IN SANTA
27 ANA AND THE KILLING OF MR. ESLAMINIA.

28

1 AND FURTHER, THE PRESENCE OR ABSENCE OF ANY FELONY
2 CONVICTION.

3 FOURTH, THE AGE OF THE DEFENDANT AT THE TIME OF
4 THE CRIME.

5 FIFTH, ANY OTHER CIRCUMSTANCE WHICH EXTENUATES
6 THE GRAVITY OF THE CRIME, EVEN THOUGH IT IS NOT A LEGAL EXCUSE
7 FOR THE CRIME.

8 AND ANY SYMPATHETIC OR OTHER ASPECT OF THE
9 DEFENDANT'S CHARACTER OR RECORD THAT THE DEFENDANT OFFERS
10 FOR A SENTENCE LESS THAN DEATH, WHETHER OR NOT RELATED TO THE
11 OFFENSE FOR WHICH HE IS ON TRIAL.

12 AND THE JUDGE WILL ALSO TELL YOU THAT YOU MUST
13 DISREGARD ANY INSTRUCTION GIVEN TO YOU IN THE GUILT OR
14 INNOCENCE PHASE OF THE TRIAL WHICH CONFLICTS WITH THIS
15 PRINCIPLE. IN ESSENCE, WHAT THAT MEANS IS THAT IF YOU WERE
16 GIVEN AN INSTRUCTION AT THE END OF THE GUILT PHASE OF THE
17 TRIAL THAT SAID THAT IN DETERMINING -- THAT SAID IN DECIDING
18 THE GUILT OR INNOCENCE, YOU WEREN'T TO CONSIDER SYMPATHY,
19 WELL, THAT INSTRUCTION DOESN'T APPLY TO THIS PHASE. YOU CAN
20 CONSIDER SYMPATHY IN THIS PHASE AND YOU HEARD SEVERAL
21 WITNESSES PUT ON BY THE DEFENSE FOR THAT SPECIFIC PURPOSE.

22 SO THOSE ARE THE BASIC FACTORS AND I WILL COME
23 BACK AND I AM GOING TO TALK ABOUT THINGS INVOLVED IN DEPTH
24 IN ONE OF THOSE IN A MINUTE.

25 AND I TOLD YOU WHAT THE STANDARD IS, THAT IT IS
26 A WEIGHING TEST.

27 THERE IS ONE THING I WANT TO TALK ABOUT, A LEGAL
28 MATTER, AND THAT IS, THAT YOU HAVE ALL HEARD A LOT OVER THE

1 PAST SEVERAL MONTHS ABOUT REASONABLE DOUBT AND YOU KNOW THAT
2 YOU HAVE HAD TO DETERMINE THE DEFENDANT'S GUILT OF THE CRIME
3 BEYOND A REASONABLE DOUBT. THAT IS NOT THE STANDARD THAT
4 APPLIES IN THIS PART OF THE CASE.

5 HOWEVER, IN DECIDING WHETHER OR NOT YOU CAN
6 CONSIDER EVIDENCE OF OTHER CRIMES AS CIRCUMSTANCES IN
7 AGGRAVATION, THAT IS, ARE YOU ALLOWED TO CONSIDER THE MATTER
8 OF SHOOTING AT MR. COKER'S BUILDING AND ARE YOU ALLOWED TO
9 CONSIDER THE MATTER OF THE DEATH OF MR. ESLAMINIA? YOU CAN
10 ONLY CONSIDER THOSE MATTERS AS CIRCUMSTANCES IN AGGRAVATION
11 IF AS TO THOSE MATTERS, YOU DECIDE FIRST THAT THEY HAVE BEEN
12 PROVEN BEYOND A REASONABLE DOUBT. SO THE REASONABLE DOUBT
13 STANDARD APPLIES TO DECIDING MR. HUNT WAS INVOLVED IN THE
14 MURDER OF ESLAMINIA AND IT APPLIES TO WHETHER OR NOT
15 MR. HUNT WAS RESPONSIBLE FOR THE SHOOTING OF THE GUNS INTO
16 MR. COKER'S BUSINESS.

17 BUT HAVING USED THAT STANDARD TO MAKE A
18 DETERMINATION THAT HE DID OR DID NOT PARTICIPATE IN THOSE
19 THINGS, YOU THEN GO INTO THE WEIGHING PROCESS AND YOU JUST
20 DECIDE WHETHER OR NOT THE AGGRAVATING FACTORS ARE SO
21 SUBSTANTIAL IN RELATION TO THE MITIGATING FACTORS THAT A VERDICT
22 OF DEATH IS WARRANTED. SO THAT IS NOW WHERE I WANT TO START,
23 WHICH IS LET'S SEE IF YOU CAN IN FACT CONSIDER THOSE TWO
24 INCIDENTS AS FACTORS IN AGGRAVATION, HAVE THEY BEEN PROVED
25 BEYOND A REASONABLE DOUBT?

26 LET'S START WITH MR. COKER'S BUSINESS. THE COURT
27 IS GOING TO TELL YOU THAT ANYBODY WHO SHOOTS A FIREARM INTO
28 AN OCCUPIED BUILDING IS GUILTY OF A FELONY. BASICALLY, IT

1 IS A VIOLATION OF PENAL CODE SECTION 246, WHICH IS CALLED
2 THE SHOOTING OF A FIREARM IN AN INHABITED OR OCCUPIED BUILDING.
3 IN THIS CASE, CLEARLY THE BUILDING WAS OCCUPIED. CLEARLY,
4 THE SHOTS WERE FIRED INTO IT.

5 YOU WILL GET THE DEFINITION OF A FIREARM AND THERE
6 IS NO QUESTION THAT THIS RIFLE THAT WE HAD HERE IS GOING TO
7 FIT THAT DEFINITION.

8 THE ONLY QUESTION -- THE ONLY QUESTION AS TO
9 WHETHER OR NOT THAT CRIME HAS BEEN PROVED BEYOND A REASONABLE
10 DOUBT IS, WAS JOE HUNT INVOLVED? AND YOU WILL HAVE THE SAME
11 INSTRUCTIONS IN THIS PART OF THE CASE THAT YOU HAD IN THE
12 LAST PART OF THE CASE, WHICH IS THAT YOU CAN HAVE THE CORPUS
13 OF THE CRIME WHICH IS SHOOTING THE GUN INTO THE BUILDING AND
14 A STATEMENT IN THIS CASE -- AGAIN, A STATEMENT MADE BY THE
15 DEFENDANT TO MR. KARNY WHEN THEY WENT DOWN THERE THAT "JOE
16 AND I ARE RESPONSIBLE FOR THIS."

17 AND NOT ONLY THAT, BUT YOU HAVE TO KEEP IN MIND
18 AGAIN ALL OF THE EVIDENCE THAT YOU HAVE HEARD THROUGHOUT THE
19 ENTIRE TRIAL AND KEEP IN MIND THE RELATIONSHIP BETWEEN
20 MR. PITTMAN AND MR. HUNT AND MR. HUNT AND THE BUSINESS OF
21 WESTCARS AND THE WHOLE BBC OPERATION. IT IS INCONCEIVABLE
22 TO ME THAT SUCH AN OPERATION SUCH AS THIS SHOOTING INTO THE
23 BUSINESS WOULD BE UNDERTAKEN BY MR. PITTMAN WITHOUT MR. HUNT
24 THERE, WITHOUT MR. HUNT'S EXPRESS PERMISSION AND CONSENT.
25 MR. PITTMAN DIDN'T JUST GO ACTING ON HIS OWN DOING THINGS
26 LIKE THIS. SO THAT I THINK THAT WHEN YOU EXAMINE THE
27 EVIDENCE, YOU ARE NOT GOING TO HAVE ANY QUESTION THAT THAT
28 CRIME HAS BEEN PROVED BEYOND A REASONABLE DOUBT AND, THEREFORE,
29 YOU CAN CONSIDER THAT CRIME AS AN AGGRAVATING CIRCUMSTANCE.

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1 SECOND OF ALL, THE MATTER OF THE KILLING OF
2 MR. ESLAMINIA. YOU KNOW A LITTLE BIT ABOUT MURDER AND WHAT
3 THE DEFINITION OF THE CRIME OF MURDER IS. AND YOU KNOW
4 FROM THE PREVIOUS INSTRUCTIONS YOU GOT, THAT MURDER IS THE
5 UNLAWFUL KILLING OF A HUMAN BEING WITH MALICE AFORETHOUGHT.

6 THE MALICE INSTRUCTIONS THAT YOU GOT IN THE
7 PREVIOUS PART OF THE CASE ARE GOING TO BE THERE NOW. THEY
8 ARE SLIGHTLY DIFFERENT BECAUSE THERE IS EXPRESS MALICE WHEN
9 THE PERSON, AS IN THE KILLING OF MR. LEVIN, EXPRESSLY SAYS,
10 "I INTEND TO KILL YOU," WHICH IN FACT, MR. HUNT DID IN THIS
11 CASE BUT MR. ESLAMINIA DIDN'T DIE IN THE WAY THAT IT WAS
12 INTENDED.

13 HE DIDN'T SAY, "I INTEND TO KILL YOU BY PUTTING
14 YOU IN A TRUNK AND SUFFOCATING YOU." SO THE LAW PROVIDES
15 FOR TWO OTHER WAYS THAT YOU CAN REACH A CONCLUSION THAT
16 IN FACT, THIS MURDER, THIS KILLING WAS DONE WITH MALICE
17 AFORETHOUGHT.

18 AND ONE IS, THAT WE CALL IT IMPLIED MALICE
19 AND THAT IS WHERE THERE IS EITHER AN INTENTIONAL ACT INVOLVING
20 A HIGH DEGREE OF PROBABILITY IT WILL RESULT IN DEATH, DONE
21 FOR A BASE, ANTISOCIAL PURPOSE AND WITH WANTON DISREGARD
22 FOR LIFE, AN INTENTIONAL ACT, THE NATURAL CONSEQUENCES
23 OF WHICH ARE DANGEROUS TO LIFE AND THAT IT WAS DELIBERATELY
24 PERFORMED KNOWING THAT IT ENDANGERS LIFE AND WITH CONSCIOUS
25 DISREGARD FOR LIFE.

26 THAT IS THE IMPLIED MALICE. AND UNDER ANOTHER
27 ONE OF THOSE IMPLIED MALICE STANDARDS, THE KIDNAPPING OF
28 MR. ESLAMINIA, THE PUTTING OF MR. ESLAMINIA INTO THE TRUNK,

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1 THE CLOSING OF THE TRUNK AND THE TAKING HIM DOWN TO LOS
2 ANGELES, IS AN ACT WITH SUCH A HIGH DEGREE OF PROBABILITY
3 THAT IT WILL RESULT IN DEATH AND ALSO THE NATURAL
4 CONSEQUENCES ARE DANGEROUS TO LIFE AND WITH A WANTON DISREGARD
5 FOR LIFE, THAT THAT IMPLIED MALICE STANDARD IS MET.

6 THE OTHER WAY THAT YOU CAN COME TO THE LEGAL
7 DEFINITION OF MALICE IS BY WHAT WE CALL THE FELONY MURDER
8 RULE, WHICH JUST MEANS THAT IT IS A KILLING DURING THE
9 COMMISSION OF A FELONY. IT IS SIMILAR TO WHAT WE HAD IN
10 THE GUILT PHASE, WHERE IT WAS A KILLING DURING A ROBBERY.

11 IN THIS CASE, IT WAS A KILLING DURING A
12 KIDNAPPING, WHICH IS WHAT THE LAW DEFINES AS A FELONY
13 INHERENTLY DANGEROUS TO LIFE. AND BECAUSE OF THAT, A KILLING
14 THAT OCCURS DURING THE COMMISSION OF A KIDNAPPING, IS A
15 SECOND DEGREE MURDER.

16 SO I THINK BY ANY OF THOSE DEFINITIONS, THERE
17 IS A MURDER AND THERE IS MALICE.

18 THERE IS REALLY ONLY GOING TO BE AGAIN IN THIS
19 AS TO THE CHARGE AGAINST MR. HUNT FOR THE KILLING OF MR.
20 ESLAMINIA -- THERE IS REALLY ONLY GOING TO BE ONE ISSUE.
21 THAT IS WHAT WE CALL EVIDENCE SUFFICIENT TO CORROBORATE
22 THE TESTIMONY OF AN ACCOMPLICE.

23 THE LAW PROVIDES WHEN YOU HAVE AN ACCOMPLICE
24 SUCH AS MR. KARNY TESTIFYING, THAT HIS TESTIMONY HAS TO
25 BE CORROBORATED. AND THE LEGAL DEFINITION OF CORROBORATION
26 IS DIFFERENT THAN -- REMEMBER THE LIST, THE TWO CHARTS THAT
27 WE HAD DURING THE ARGUMENT ON THE GUILT PHASE? THE LEGAL
28 DEFINITION IS SOMEWHAT DIFFERENT.

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THE LEGAL DEFINITION OF CORROBORATING AN ACCOMPLICE HAS TO DO WITH SOME EVIDENCE, INDEPENDENT EVIDENCE OF THE ACCOMPLICE WHICH LINKS THE DEFENDANT TO THE CRIME.

THE PURPOSE OF IT IS, THAT YOU JUST DON'T WANT TO HAVE SOMEBODY INVOLVED IN A CRIME SAYING, "WELL, JOE BLOW DID IT WITH ME" AND BE ABLE TO CONVICT JOE BLOW JUST ON THE STATEMENT OF THE ACCOMPLICE BECAUSE THEN, THE ACCOMPLICE COULD SAY ANYTHING, IF HE WANTED TO HELP HIMSELF, JUST TO IMPLICATE SOMEBODY ELSE. THERE WOULD BE NO WAY OF CHECKING IT OUT.

1 SO THE LEGAL DEFINITION OF CORROBORATING TESTIMONY
2 OF AN ACCOMPLICE, IS THAT THERE MUST BE EVIDENCE OF SOME
3 ACT OR FACT RELATED TO THE OFFENSE WHICH IT BELIEVED BY
4 ITSELF AND WITHOUT ANY INTERPRETATION OR DIRECTION FROM
5 THE TESTIMONY OF THE ACCOMPLICE, TENDS TO CONNECT THE
6 DEFENDANT TO THE COMMISSION OF THE CRIME.

7 AND THIS LEGAL DEFINITION IS THE REASON THAT
8 WE DID SOME THINGS IN THE PENALTY PHASE THAT YOU MIGHT HAVE
9 THOUGHT WERE UNNECESSARY OR WHY IS HE PUTTING ON ALL THIS
10 EVIDENCE? WHY DO WE NEED THE GUY FROM THE HOTEL? WHY DO
11 WE NEED SOMEBODY SAYING WHAT WE FOUND ON MR. HUNT WHEN HE
12 WAS ARRESTED? WHY DO WE NEED ANY EVIDENCE ABOUT THE SEARCHING
13 OF MR. HUNT'S ROOM AT THE ROBERTS' HOUSE?

14 WELL, ALL OF THAT WAS DONE TO PROVIDE FOR YOU
15 WHAT I THINK IS MORE THAN AMPLE CORROBORATION OF THE TESTIMONY
16 OF THE ACCOMPLICE.

17 AND THE TEST THAT THE JURY INSTRUCTION GIVES
18 TO YOU IS TO TAKE THE TESTIMONY OF THE ACCOMPLICE OUT OF
19 THE CASE AND THEN LOOK AT IT AND SAY, "IS THERE ANY EVIDENCE
20 INDEPENDENT OF THAT ACCOMPLICE THAT DOESN'T NEED HIS
21 EXPLANATION OR INTERPRETATION THAT POINTS TO THE DEFENDANT'S
22 PARTICIPATION IN THIS?"

23 AND I DON'T WANT TO TAKE TOO LONG ON THIS.
24 BUT THERE ARE SEVERAL THINGS THAT YOU CAN LOOK AT.

25 FIRST OF ALL, THE IDENTIFICATION OF MR. HUNT
26 AS BEING IN THE SKYROOM AT THE BELMONT APARTMENTS BY MR.
27 HICKSON, WHO WAS THE CARETAKER AT THE APARTMENTS. SECOND
28 OF ALL, TAKE A LOOK AT THE VILLA HOTEL RECEIPTS. THAT IS

1 WHY WE WENT TO THE TROUBLE OF PUTTING ON THE WITNESS FROM
2 THE VILLA HOTEL, MR. SWIERSTRA.

3 I AM NOT ABLE TO GET THIS TO STAY UP THERE.
4 BUT THIS IS THE ENLARGEMENT OF THE RECEIPT FROM THE HOTEL,
5 THE VILLA HOTEL.

6 YOU REMEMBER THAT THE PERSON GAVE THE NAME
7 OF BEN DAVIS. HE REGISTERED AND GAVE A DRIVER'S LICENSE
8 NUMBER AT THAT HOTEL.

9 IT IS N6969502. IF YOU WILL TAKE A LOOK AT
10 THE EXHIBIT 36 WHICH IS THE CERTIFIED COPY OF THE DRIVER'S
11 LICENSE FOR JOSEPH HENRY GAMSKY WITH THE DEFENDANT'S PICTURE
12 ON IT, IT HAS THAT SAME DRIVER'S LICENSE NUMBER ON IT.

13 SO THAT IS THE PURPOSE OF DOING THESE LITTLE
14 THINGS FOR CORROBORATION OF THE TESTIMONY OF MR. KARNY.

15 THAT IS THE SECOND ITEM OF CORROBORATION OF
16 MR. KARNY'S TESTIMONY.

17 THIRD IS THE FACT THAT ABOUT SEVEN OR EIGHT
18 DAYS AFTER THE KILLING, MR. HUNT SHOWS UP AT HADAYET
19 ESLAMINIA'S APARTMENT WITH REZA ESLAMINIA AND THEY ARE TRYING
20 TO TALK TO OLGA VASQUEZ.

21 WHAT DOES HE WANT TO KNOW, THE GRIEVING SON?
22 WHERE IS THE MONEY? WHERE IS THE MONEY? WHERE IS THE MONEY?
23 HE DOESN'T WANT TO TALK TO HER ALONE. NO, HE SAYS THAT
24 HE DOESN'T WANT TO TALK TO HER UNLESS MR. HUNT IS THERE.

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5 - ' 1 AND SHE SAYS NO AND HE SAYS "I DON'T WANT TO TALK
2 UNLESS MR. HUNT IS THERE." AND FINALLY MR. HUNT, ALWAYS THE
3 GENTLEMAN, SAYS, "OH, OKAY, YOU GO AHEAD AND TALK." AND HE
4 GOES INTO THE OTHER ROOM, WHICH TURNS OUT TO BE A CONNECTED
5 LIVING ROOM OFF OF THE DINING ROOM.

6 FOURTH OF ALL -- AND I DON'T HAVE THAT IN FRONT
7 OF ME RIGHT NOW BUT YOU WILL LOOK AT CERTIFIED COPIES OF THE
8 CONSERVATORSHIP PAPERS. JOE HUNT INCREDIBLY FILES A
9 DECLARATION IN PART OF THOSE CONSERVATORSHIP PAPERS AND SAYS
10 "I WAS IN BELMONT IN THE DAVEY GLEN APARTMENTS ON OR ABOUT
11 JULY THE 30TH OF 1984." IT IS A DECLARATION THAT MR. HUNT
12 SIGNED AS PART OF THE CONSERVATORSHIP PAPERS. SO TAKE A LOOK
13 AT THAT.

14 THE NEXT THING IS, WITHOUT AID OF ANY OF
15 MR. KARNY'S TESTIMONY, JOE HUNT'S PARTICIPATION IN OBTAINING
16 THIS WHOLE CONSERVATORSHIP, THERE WERE SEVERAL WITNESSES,
17 MR. DICKER, MR. EISENBERG WHO TESTIFIED ABOUT JOE HUNT BASICALLY
18 DIRECTING THIS CONSERVATORSHIP AND TRYING TO OBTAIN THE
19 CONSERVATORSHIP AND THEN THE SEARCH FOR HIS ASSETS, GOING
20 OUT IN TEAMS LOOKING FOR MR. ESLAMINIA'S ASSETS.

21 THEN AT THE TIME THAT JOE HUNT IS ARRESTED BY
22 LES ZOELLER HE HAS ON HIM A BANK STATEMENT. I THOUGHT I HAD
23 THAT HERE ALSO. HE HAS A BANK STATEMENT IN THE NAME OF
24 HADAYET ESLAMINIA FROM EITHER A SWISS OR GERMAN BANK. IT
25 IS WRITTEN IN GERMAN. AND THAT IS ON HIS PERSON IN HIS
26 WALLET AT THE TIME HE IS ARRESTED BY LES ZOELLER.

27 AND THEN WE HAVE THE TESTIMONY OF EVAN DICKER,
28 WHO SAYS THAT JOE HUNT CAME TO HIM WITH A PHONY POWER OF

5
1 ATTORNEY SAYING "THIS IS NOT REALLY HADAYET ESLAMINIA'S
2 SIGNATURE, I FORGED IT. WILL YOU NOTARIZE IT?"

3 AND THEN ON TOP OF ALL OF THAT, INCREDIBLE,
4 INCREDIBLE AS IT MAY SEEM, A COUPLE OF YEARS AFTER JOE HUNT
5 HAS BEEN ARRESTED AND HAD CASES PENDING HERE AND IN NORTHERN
6 CALIFORNIA, A SEARCH IS DONE OF HIS HOUSE WHEN HE WAS LIVING
7 AT THE ROBERTS AND WHAT DO THEY FIND? HADAYET ESLAMINIA'S
8 CHECKS. IT IS JUST INCREDIBLE.

9 THIS IS THE EVIDENCE THAT IS NECESSARY TO
10 CORROBORATE THE TESTIMONY OF DEAN KARNY. THE LAW SAYS YOU
11 DON'T HAVE TO CORROBORATE EACH AND EVERY STATEMENT. THE ONLY
12 LEGAL CORROBORATION YOU NEED IS EVIDENCE TO LINK THE DEFENDANT
13 TO THE COMMISSION OF THE CRIME. IT DOESN'T HAVE TO
14 CORROBORATE ALL PARTS OF HIS TESTIMONY OR EVEN EVERY ELEMENT
15 OF THE CASE. ONLY EVIDENCE TO INDICATE THAT THE DEFENDANT
16 IN FACT PARTICIPATED IN THE CRIME.

17 I WENT THROUGH ALL OF THAT STUFF FOR THE PURPOSE
18 OF SAYING THAT SINCE I BELIEVE THE TESTIMONY OF THE ACCOMPLICE
19 HAS BEEN CORROBORATED AND MOTIVE HAS BEEN CORROBORATED, YOU
20 CAN CONSIDER THE SHOOTING UP OF JERRY COKER'S BUILDING IN
21 SANTA ANA AND THE MURDER OF HADAYET ESLAMINIA AND CIRCUMSTANCES
22 IN AGGRAVATION. THEY GO INTO THE WHOLE POT, INTO THE WEIGHING
23 PROCESS.

24 NOW THAT WE KNOW THAT THOSE THINGS ARE IN THERE,
25 LET'S START WITH A LIST OF THINGS THE LAW SAYS YOU CAN
26 CONSIDER AND THE FIRST ONE IS THE CIRCUMSTANCES OF THE
27 PRESENT CRIME. AND THIS IS THE BEST PLACE TO START. THIS
28 IS PRETTY FAMILIAR TO ALL OF YOU BUT THIS IS THE PLACE TO

1 START, BECAUSE THIS LIST SETS THE TONE FOR EVERYTHING THAT
2 HAS GONE ON IN THIS CASE. THIS LIST, LIKE YOU AND I MIGHT
3 MAKE BEFORE WE GO TO THE MARKET, WAS MADE WITH THE SAME
4 FEELING THAT YOU AND I HAVE WHEN WE MAKE A LIST TO GO BUY
5 GROCERIES, THAT IS THE TONE FOR THE WHOLE CASE. THIS LIST
6 WAS WRITTEN BY A MAN WHO HAD AS MUCH FEELING FOR RON LEVIN
7 AS WE MIGHT HAVE FOR GOING TO THE GROCERY STORE AND PICKING
8 OUT CABBAGE. COLDLY, DISPASSIONATELY WRITING THINGS DOWN
9 TO DO, TO KILL SOMEBODY.

10 AND THEN IT IS NOT ENOUGH TO WRITE THE THINGS
11 DOWN AND PUT IN NUMBERS AND THEN YOU GO OVER IT AND YOU PUT
12 ON OTHER NUMBERS. IT SETS THE WHOLE TONE FOR EVERYTHING THAT
13 HAS GONE ON IN THIS CASE.

14 AND WHY? WHY THE KILLING OF RON LEVIN? WHAT
15 WAS IT FOR? IT WAS FOR TWO BASE REASONS: ONE WAS JUST FOR
16 GREED, JUST FOR MONEY.

17 AND YOU ARE GOING TO HEAR SOMETHING FROM MR. BARENS,
18 BECAUSE HE MENTIONED THIS IN HIS OPENING STATEMENT, ABOUT
19 HOW MR. HUNT WAS UNDER SO MUCH PRESSURE AND HE WAS UNDER STRESS
20 AND THAT IS WHY HE HAD TO DO THIS. PRESSURE AND STRESS FROM
21 WHAT?

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1 HE HAD STOLEN ALL OF THIS MONEY FROM HIS
2 INVESTORS AND THEN LOST IT AND THEN GAMBLED THE REST OF
3 IT AWAY AND THAT IS, THEREFORE, A JUSTIFICATION FOR KILLING
4 SOMEBODY.

5 NO, IT WAS DONE JUST PURELY FOR GREED. PURELY
6 FOR THE MONEY. THAT WAS ONE OF THE MOTIVES.

7 AND THE SECOND MOTIVE IS EVEN ALMOST MORE
8 INCREDIBLE BECAUSE WE ALL KNOW ABOUT THE SCHEME WITH MR.
9 LEVIN AND THE COMMODITIES THING. BUT WHAT HAPPENED? WHAT
10 DID MR. LEVIN TAKE FROM MR. HUNT IN THAT COMMODITIES SCHEME?
11 NOT ONE DIME, NOT ONE PENNY.

12 WHAT IT WAS WAS AN ELABORATE PRACTICAL JOKE,
13 THAT IS REALLY WHAT IT AMOUNTED TO. MAYBE IT WASN'T FUNNY.
14 MAYBE IT WAS CRUEL. BUT IT WAS A PRACTICAL JOKE AND IT
15 WAS PRETTY ELABORATE BUT MR. HUNT DIDN'T LOSE A DIME IN
16 THAT.

17 AND YET, BECAUSE OF THAT AND JUST FOR THE MONEY,
18 HE COLDLY, CALCULATEDLY, DISPASSIONATELY KILLED RON LEVIN.
19 AND THERE CAN BE NO QUESTION -- THERE CAN BE NO QUESTION
20 THAT WHAT HAPPENED TO RON LEVIN WAS AN EXECUTION IN THE
21 TRUEST SENSE OF THE WORD, IN HIS HOUSE.

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1 IN MY HOUSE LAST NIGHT, I WAS SITTING AT HOME
2 ALONE, TRYING TO PREPARE MY ARGUMENT. I THOUGHT I HEARD A
3 NOISE IN THE HOUSE. I THOUGHT SOMEBODY WAS COMING INTO THE
4 HOUSE.

5 I DIDN'T SEE ANYBODY THERE. I JUST THOUGHT
6 SOMEONE WAS THERE. I WAS PETRIFIED, ABSOLUTELY SCARED TO
7 DEATH.

8 CAN YOU IMAGINE RON LEVIN IN HIS HOUSE? HE IS
9 TAKEN FROM THE SMALL OFFICE. HE IS WIMPERING. HE IS PUT
10 ON THE BED.

11 THEY LAY HIM DOWN ON THE BED. THEY PUT A PILLOW
12 OVER HIS HEAD AND THEY SHOOT HIM IN THE BACK OF THE HEAD.

13 IT IS AS COLD AND CALCULATED AN EXECUTION AS YOU
14 COULD EVER WANT TO SEE. AS IF THAT WASN'T ENOUGH, THEY TAKE
15 HIM OUT TO SOLEDAD CANYON AND HE IS BURIED IN SOME KIND OF
16 A PIT AND ONCE THEY PUT HIM IN THE PIT, THEY START BLOWING
17 HIS BODY APART WITH A SHOTGUN.

18 AND ON TOP OF ALL OF THAT, TWO OR THREE DAYS LATER,
19 MR. HUNT BRAGS ABOUT THIS WITH SUCH RELISH. HE IS TALKING
20 ABOUT THIS TO DEAN KARNY. HE IS JUST SO PROUD OF IT.

21 THIS IS THE MAN WHOSE FATE IS IN YOUR HANDS
22 TODAY. THAT IS HOW MUCH HE FELT ABOUT RON LEVIN.

23 ONE OF THE THINGS THAT IS IMPORTANT ABOUT ALL
24 OF THIS, ONE OF THE THEMES FOR THIS ARGUMENT WAS SET OUT WHEN
25 TODD ROBERTS TESTIFIED.

26 DID JOE HUNT HAVE A PHILOSOPHY THAT THE ENDS
27 JUSTIFIED THE MEANS, HE WAS ASKED. NO, NO. THAT WASN'T HIS
28 PHILOSOPHY. HE BELIEVES THAT YOU REAP WHAT YOU SOW.

1 I HEARD THAT AND I COULDN'T BELIEVE IT. HE MUST
2 HAVE SAID THAT OVER AND OVER AGAIN, TWO OR THREE OR FOUR TIMES.

3 WELL, IF THAT IS JOE HUNT'S PHILOSOPHY, THEN HE
4 SHOULD REAP WHAT HE HAS SOWN. BECAUSE RON LEVIN WAS THE FIRST
5 THING THAT HE SOWED.

6 WHEN YOU THINK ABOUT THIS, THINK ABOUT CAROL LEVIN
7 WAITING AT HOME FOR THE PHONE CALL THAT NEVER CAME AND NEVER
8 IS GOING TO COME. THINK ABOUT HER CONTRASTED TO THIS LIST
9 AND AS TO HOW THE DEFENDANT COMMITTED THIS COLD-BLOODED
10 EXECUTION WITHOUT ANY FEELING AT ALL.

11 SO, THE FIRST SET OF THINGS THAT YOU CAN THINK
12 ABOUT, ARE THE CIRCUMSTANCES OF THE PRESENT CRIME. YOU KNOW
13 ALL ABOUT THAT. WE SPENT A LOT OF MONTHS ON IT. I DON'T
14 NEED TO GO OVER IT IN TOO MUCH MORE DETAIL.

15 THE OTHER AGGRAVATING THINGS THAT YOU CAN TAKE
16 INTO CONSIDERATION ARE THE EVIDENCE OF OTHER CRIMINAL
17 ACTIVITIES. SO, LET'S TALK ABOUT SHOOTING AT MR. COKER'S
18 BUILDING. MR. BARENS LIKES TO CALL THIS THE SHOOT 'EM UP
19 INCIDENT.

20 AFTER ALL, WHAT IS THE BIG DEAL? THEY SHOT AT
21 A BUILDING AND A BUNCH OF GUYS HAD SOME FUN. WHAT IS THE
22 BIG DEAL?

23 FIRST OF ALL, YOU SAW THE PICTURES OF THE PLACE.
24 THERE IS A PICTURE OF THE FRONT DOOR AND YOU CAN LOOK THROUGH
25 THE FRONT DOOR AND YOU CAN KIND OF SEE THE OFFICES. AND
26 THEN THERE IS THIS KIND OF PARTICLE BOARD THAT SEPARATES THE
27 OFFICES FROM THE BACK PART OF THE BUILDING WHERE TWO PEOPLE
28 WERE WORKING.

THEY WERE STANDING THERE WHEN ALL OF A SUDDEN,
THE PLACE IS RIDDLED WITH BULLETS FROM AN AUTOMATIC RIFLE.
AND YOU REMEMBER THE TESTIMONY OF THE MAN WHO WAS BACK THERE.
HE SAID HE FIRST THOUGHT IT WAS FIRECRACKERS AND THEN HE SEES
THE PARTICLE BOARD COME FLYING AND HE KNOWS IT'S BULLETS.

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1 BUT FOR THE FACT THAT THAT SHOT OR THOSE FEW SHOTS
2 WERE HIGH IN THE WALL AND CAME THROUGH THE PARTICLE BOARD,
3 TWO PEOPLE MIGHT HAVE BEEN KILLED.

4 NOW, THIS ACT WAS EITHER DONE BECAUSE MR. HUNT
5 AND MR. PITTMAN DIDN'T TAKE THE TIME TO GO BACK THERE AND
6 CHECK TO SEE THAT THE DOOR WAS OPEN IN THE BACK AND THE LIGHTS
7 WERE ON AND PEOPLE WERE THERE WORKING, OR THEY DIDN'T GIVE
8 A DAMN. I THINK THAT THAT IS THE MORE LIKELY ANSWER.

9 THIS IS WHERE IT STARTS AND THIS IS WHERE IT
10 CONTINUES. THEY DIDN'T GIVE A DAMN, PEOPLE OR NO PEOPLE.
11 THEY JUST STARTED SHOOTING UP THE PLACE.

12 FORTUITOUSLY, IF YOU CAN USE THAT WORD IN A
13 GROTESQUE AND TWISTED SENSE, FORTUITOUSLY FOR THEM, NOBODY
14 WAS HURT. BUT JUST AS EASILY, THEY COULD HAVE BEEN.

15 AND SO, THAT IS A CIRCUMSTANCE TO KEEP IN MIND,
16 THE CARELESS DISREGARD FOR HUMAN LIFE THAT THAT EXHIBITS.

17 I MEAN, LOOK AT THIS. THIS IS ONE OF THE WINDOWS
18 OF THE PLACE. BAM, BAM, BAM. HA HA. VERY FUNNY.

19 TWO PEOPLE STANDING IN THE BACK ARE LUCKY TO BE
20 ALIVE. SO KEEP THAT IN MIND.

21 AND AGAIN, KEEP IN MIND WHAT IT SAYS ABOUT
22 MR. HUNT. WHY MR. COKER? WHY MR. COKER'S BUSINESS? IT IS
23 THE SAME THEME AGAIN. YOU HAVE GOT A LITTLE BUSINESS
24 PROBLEM.

25 THIS IS MR. HUNT, THEN 24 YEARS OLD GOING ABOUT
26 HIS BUSINESS WITH THE BBC, WITH THIS BUNCH OF BOYS DRESSED
27 UP IN THEIR CLOTHES AND RENTING THIS OFFICE.

28 THEY ARE PLAYING AT THIS LIKE IT WAS TELEVISION.

1 AND THEY ARE DOING THIS AND IT IS LIKE COPS AND ROBBERS.
2 THESE ARE REAL PEOPLE AND REAL BULLETS THAT THEY ARE SHOOTING.

3 BUT, IT IS DONE WITH THE SAME DISPASSION AS IF
4 IT WERE ON TELEVISION. I MEAN, IF YOU WATCH TV OR YOU WATCH
5 A MOVIE AND YOU GET TO A HORRIBLE PART OR A SCARY PART, YOU
6 CAN EITHER TURN IT OFF OR SAY TO YOURSELF, WELL, LOOK, IT
7 IS NOT REALLY -- THE GUY IS NOT REALLY DEAD. THOSE REALLY
8 AREN'T BULLET HOLES. SO WHAT IS THE BIG DEAL?

9 THAT IS EXACTLY THE WAY MR. HUNT TREATED
10 EVERYONE. YOU HAVE GOT A BUSINESS PROBLEM? BAM, BAM, BAM.

11 YOU REAP WHAT YOU SOW, LADIES AND GENTLEMEN. HE
12 DID THIS WITH THE SAME CALM AND DISPASSIONATE MANNER THAT
13 HE DID EVERYTHING ELSE.

14 THEN, WHAT IS THE NEXT THING TO CONSIDER? THE
15 MURDER OF MR. ESLAMINIA. IT IS NO LESS GRUESOME BECAUSE
16 MR. ESLAMINIA HAPPENED TO DIE IN THE TRUNK RATHER THAN BEING
17 TORTURED IN THE TORTURE CHAMBER IN BEL AIR THAT THEY HAD
18 RENTED.

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7-1

1 GET THE SETTING IN YOUR MIND. REMEMBER THE
2 DATE JULY THE 31ST. REMEMBER THE PLANNING THAT WENT ON
3 FOR A MONTH. IT STARTED AT THE BEGINNING OF JULY.

4 GOING BACK TO OUR CASE, THE MEETING AT THE
5 WILSHIRE MANNING JUNE THE 24TH, THE KILLING OF RON LEVIN
6 WAS THE NIGHT OF JUNE 6, SO JUST TO KEEP IT IN CONTEXT,
7 RON LEVIN IS KILLED. THEY TRIED TO NEGOTIATE THE CHECK.
8 IT GOES TO THE BANK. JUNE 15, THEY FIND OUT THE CHECK IS
9 NO GOOD. THEY SENT PITTMAN TO WASHINGTON TO SEE WHAT HE
10 COULD DO ABOUT THE CHECK. THEY KEEP CHECKING THE MAILBOX
11 TO SEE IF THE NEW CHECKS ARE GOING TO COME IN. THEY HAVE
12 A MEETING ON JUNE 24TH.

13 BUT WHAT HAPPENS AT THE BEGINNING OF JULY,
14 "OKAY, MAYBE WE ARE NOT GOING TO GET THIS MONEY FROM LEVIN."
15 SO WHAT DID THEY SAY? "WELL, WE MADE A MISTAKE, WE SHOULDN'T
16 HAVE DONE THAT SO LET'S GO ON AND MAKE SOME MORE MONEY IN
17 THE COMMODITIES MARKET. LET'S WORK HARD."

18 BUT NO. "WE HAVE GOT ANOTHER GUY WE CAN KILL.
19 LET'S KILL ESLAMINIA."

20 SO AT THE BEGINNING OF JULY WHEN THEY KNOW
21 THAT THEY ARE PROBABLY NOT GOING TO GET THE MONEY FROM LEVIN,
22 WHAT DO THEY DO? WHAT DOES JOE HUNT DO? MORE LISTS. MORE
23 MEETINGS. MORE THINKING ABOUT "ALL RIGHT, WE CAN KILL SOME-
24 BODY ELSE." THIS IS DISGUSTING AND IT IS DONE WITH THE
25 SAME COLD DISPASSION THAT HE DID EVERYTHING ELSE WITH. SO
26 THEY START AT THE BEGINNING OF JULY TO PLAN TO KILL ANOTHER
27 PERSON.

28 AND GOD KNOWS WHERE IT WOULD HAVE ENDED BUT

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1 FOR THE FACT THAT SOME PEOPLE FORTUNATELY CAME TO THE POLICE
2 AND MR. HUNT GOT ARRESTED.

3 SO THEY BEGAN TO PLAN AND THEY BEGAN TO MAKE
4 LISTS AND THEY BOUGHT TRUNKS AND THEY BOUGHT HANDCUFFS IN
5 THE SAME PLACE THAT THEY BOUGHT THE HANDCUFFS THAT WERE
6 USED FOR RON LEVIN. AND THEY BOUGHT COSTUMES, POLICE
7 COSTUMES. AND THEY HAD MORE CONTINGENCIES WHERE THEY HAD
8 DELIVERY COSTUMES. THEY EVEN HAD A CONTINGENCY FOR OLGA
9 VASQUEZ: "IF SHE IS THERE, WE MIGHT HAVE TO KILL HER, TOO."
10 SO THEY BOUGHT TWO TRUNKS.

11 AND THEY EVEN LEFT REZA ESLAMINIA AND LATER
12 SENT JIM PITTMAN BACK TO BELMONT IN THE EVENT IT WAS GOING
13 TO BE NECESSARY TO KILL HER, TOO.

14 THEY WENT UP AND THEY RENTED -- FIRST, THEY
15 SCOUTED IT OUT, SENT PITTMAN UP THERE TO CHECK IT OUT AND
16 REZA TO CHECK OUT AND FIND OUT WHERE THE FATHER LIVED AND
17 THEY RENTED THE TRUCK. AND THEN THIS IS A MAN THAT MR. HUNT
18 DIDN'T EVEN KNOW, HADN'T EVEN MET, AND DIDN'T, LIKE ANYBODY
19 ELSE, GIVE A DAMN ABOUT HIM. IT WAS JUST ANOTHER WAY FOR
20 HIM TO GET MONEY.

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21 AND REMEMBER THE PLANNING. THE PLANNING WAS
22 "MAYBE ESLAMINIA WON'T GIVE US THE MONEY SO EASILY, MAYBE
23 WE WILL HAVE TO TORTURE HIM."

24 AND YOU REMEMBER HOW IT WAS THAT HE SAID THAT
25 HE WAS GOING TO GO ABOUT LEARNING HOW TO DO TORTURE. HE
26 WAS GOING TO GO TO THE LIBRARY AND GET A BOOK. CAN YOU
27 SEE JOE HUNT SITTING AT THE LIBRARY WITH A BOOK ON TORTURE,
28 TAKING NOTES? I CAN. AS IF HE WERE TAKING NOTES ON SOME

1 COURSE HE WAS STUDYING IN COLLEGE. KILLING PEOPLE. STUDYING
2 HISTORY. STUDYING WORD POWER. WHAT IS THE DIFFERENCE?
3 THAT IS EXACTLY THE WAY HE LOOKED AT IT.

4 AND AS YOU THINK ABOUT HIM AND THE WAY THAT
5 HE LOOKED AT THINGS AND YOU THINK ABOUT HIM MAKING THESE
6 LISTS AND HIS STATEMENT TO DEAN KARNY "I AM THE MASTER OF
7 TORTURE," JUST REMEMBER WHAT TODD ROBERTS SAID, "YOU REAP
8 WHAT YOU SOW."

9 WHAT ELSE DID THEY GET? I MEAN IT IS -- IT
10 GOT SICKER AND SICKER AND SICKER BY THE MOMENT: THE BUCKET
11 AND THE CAT LITTER SO THAT MR. ESLAMINIA WOULD HAVE A PLACE
12 TO GO TO THE BATHROOM BECAUSE THEY WERE GOING TO HAVE TO
13 KEEP HIM IN THIS BASEMENT FOR WEEKS.

14 AND THEY RENTED THE HOUSE, THIS IS WHERE MR.
15 ESLAMINIA WAS SUPPOSED TO DIE. THIS IS WHERE HE WAS SUPPOSED
16 TO BE TORTURED, THE BASEMENT OF A HOUSE IN BEL AIR AND HE
17 WAS DOWN THERE ALL RIGHT BUT BY THE TIME THEY GOT HIM THERE,
18 HE WAS ALREADY DEAD.

19 AND SO THEY WENT UP AND THEY GO INTO AN APARTMENT
20 AND TAKE MR. ESLAMINIA AND THEY CHLOROFORM HIM AND HE IS
21 IN THE TRUNK AND THEN BY THE TIME THE TRUNK IS TRANSFERRED
22 FROM THE PICKUP TRUCK TO THE U-HAUL, THEY ARE TAKING OUT
23 THE TRUNK AND IN JOE HUNT'S PRESENCE AND HE IS RIGHT THERE,
24 AND THERE IS THE BANGING AND THE SCRATCHING AND "PLEASE,
25 SIR, LET ME OUT. LET ME OUT. PLEASE, SIR, LET ME OUT."
26 DID JOE HUNT OPEN THE TRUNK AND LET HIM OUT? NO, "PUT THE
27 TRUNK IN THE CAR, LET'S GO." AND THEY DID.

28 AND THEN AS THEY DROVE THE TRUCK TO LOS ANGELES --

1 AND THIS SCENARIO WAS REPEATED OVER AND OVER AND OVER AGAIN
2 ABOUT "PLEASE, SIR, LET ME OUT." AND HOLES WERE PUT IN
3 THE TRUNK AND THE TAPE -- I MEAN ALL OF THAT IS SICK, TOO.
4 THE IDEA THAT MR. KARNY WOULD PUT THE TAPE BACK ON SO MAYBE
5 HE WOULDN'T GET AIR SO HE WILL BE QUIET. AND THEN DEAN
6 KARNY SAYS TO JOE HUNT, "I THINK HE IS DEAD AND I THINK
7 WE SCREWED UP."

8 AND AFTER BARELY A MOMENT OF THOUGHT, DO YOU
9 REMEMBER WHAT JOE HUNT'S THOUGHTS WERE? DO YOU REMEMBER
10 WHAT HIS THOUGHTS WERE? "WE CAN GET THE MONEY ANYWAY. WE
11 STILL HAVE REZA AND WE CAN GET THE MONEY ANYWAY."

12 THERE IS A MAN DEAD IN THE TRUNK NOT TWO OR
13 THREE FEET FROM WHERE HE IS SITTING, "WE CAN GET THE MONEY
14 ANYWAY."

15 AND LATER THAT NIGHT, THEY WENT AND THEY DUMPED
16 HIS BODY IN SOLEDAD CANYON, LIKE SO MUCH RUBBISH. NOW,
17 THAT WAS NO MISTAKE, SOLEDAD CANYON -- AND THERE IS AN ISSUE
18 THAT WE ARE GOING TO TALK ABOUT LATER CALLED LINGERING
19 DOUBT -- BUT THAT PROBABLY WAS NO SURPRISE TO ANY OF YOU
20 TO HEAR THAT IS WHERE THEY ENDED UP PUTTING HIS BODY.

21 AND MR. KARNY IN FACT DIRECTED THEM TO THE
22 SPOT WHERE THE BODY WAS AND THEY WENT AND RECOVERED THE
23 BODY.

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8A ' 1 BUT FOR THE FACT THAT MR. ESLAMINIA DIED IN THE
2 TRUNK, YOU CAN BE AS SURE AS ANYTHING THAT THE KILLING OF
3 MR. ESLAMINIA WOULD HAVE BEEN AN EXECUTION, AN EXECUTION IN
4 THE SAME SENSE THAT THE KILLING OF RON LEVIN WAS AN EXECUTION.

5 AND THEY WOULD THROW HIS BODY AWAY LIKE TRASH
6 IN SOLEDAD CANYON AND GET RID OF THE EVIDENCE, THE TRUNKS
7 AND ALL OF THAT OTHER STUFF, LIKE TRASH AND GO ABOUT YOUR
8 BUSINESS.

9 LET'S GET THE CONSERVATORSHIP. LET'S GET THE
10 MONEY. YOU REAP WHAT YOU SOW.

11 THE COURT TELLS YOU THAT IN WEIGHING THIS -- THE
12 WEIGHING TEST, YOU HAVE TO WEIGH THE AGGRAVATING FACTORS AGAINST
13 THE MITIGATING FACTORS. ONE OF THE FACTORS THAT YOU HAVE
14 TO CONSIDER IS THE DEFENDANT'S AGE. I DON'T KNOW IF THAT
15 IS AGGRAVATING OR MITIGATING.

16 I WILL TELL YOU ONE THING. IT ALL HAPPENED WHEN
17 HE WAS 24. THIS IS A MAN WHO BEFORE HE WAS 20, HAD IT ALL.
18 HE PASSED THE CPA TEST BEFORE HE WAS 20 YEARS OLD. HE WAS
19 WORKING FOR A CPA FIRM. HE HAD BEEN IN COLLEGE.

20 IF HE WORKED FOR THE CPA FIRM FOR TWO YEARS, HE
21 COULD HAVE BECOME A CPA BY THE TIME HE WAS 21 YEARS OLD.

22 HE HAD THE WORLD BY THE TAIL. AND HE THREW IT
23 ALL AWAY FOR THIS. SO I DON'T KNOW WHAT IF ANYTHING, YOU
24 CAN MAKE OUT OF THE FACT THAT HE WAS 24 YEARS OLD AT THE TIME.

25 HE HAD NO PRIOR CRIMINAL RECORD. YOU CAN TAKE
26 THAT INTO CONSIDERATION AND PUT THAT IN THE POT, FOR WHATEVER
27 IT IS WORTH TO YOU. I GUESS IT DEPENDS. YOU HAVE TO WEIGH
28 THAT AS A FACTOR AS AGAINST THE OTHER FACTORS THAT WE HAVE

1 TALKED ABOUT.

2 I WILL TALK ABOUT THAT WEIGHING IN A MINUTE. BUT,
3 DOES THAT MEAN THAT IF YOU HAVE NO PRIOR CRIMINAL RECORD AND
4 YOU KILL JUST ONE PERSON, MAYBE YOU DON'T GET THE DEATH PENALTY?
5 I DON'T KNOW. BUT IT JUST TO ME, IT DOESN'T AT ALL MITIGATE
6 THE GRAVITY OF WHAT JOE HUNT DID TO RON LEVIN, WHAT HE DID
7 TO HADAYET ESLAMINIA, WHAT HE DID AT THAT BUSINESS IN ORANGE
8 COUNTY.

9 AND THEN YOU HAVE THE BACKGROUND AND THE CHARACTER
10 OF MR. HUNT AS TESTIFIED TO BY HIS MOTHER, SISTER AND PEOPLE
11 IN THE ROBERTS' FAMILY AND A COUPLE OF FRIENDS. AND THESE
12 PEOPLE, THE MOTHER AND THE SISTER KNEW HIM BASICALLY BEFORE
13 HE WENT TO CHICAGO AND HAVE GOTTEN SOMEHOW REACQUAINTED WITH
14 HIM SINCE THIS TRIAL STARTED.

15 AND THE OTHER PEOPLE SOMEHOW KNEW HIM -- ONE KNEW
16 HIM IN CHICAGO. BUT REMEMBER MISS ETO? IT IS INCREDIBLE.
17 SHE IS ONE OF THOSE PEOPLE -- WHAT I WANT YOU TO KEEP IN
18 MIND ABOUT ALL OF THESE PEOPLE, I DON'T KNOW IF IT STRUCK
19 YOU THIS WAY, BUT JOE HUNT SEEMED TO MEET, KNOW AN AWFUL LOT
20 ABOUT THEM.

21 HE WOULD KIND OF WHEEDLE HIS WAY INTO THEIR LIVES.
22 HE WOULD KNOW ABOUT MISS ETO AND ABOUT THE PIANO THAT SHE
23 PLAYED AND HE WOULD TRY TO BE INTERESTED IN ALL OF THE THINGS
24 SHE WAS INTERESTED IN.

25 SHE DIDN'T KNOW ANYTHING ABOUT HIM. IT WAS TAKE,
26 TAKE, LIKE A SPONGE. AND USE BUT NOT GIVE ANYTHING. HE
27 DIDN'T GIVE ANYTHING OF HIMSELF. HE NEVER GAVE OUT ANY
28 INFORMATION.

1 DO YOU REMEMBER ONE OF THE THINGS WE HAD IN THE
2 TRIAL, WAS THE MANIPULATION JOE HUNT DID WITH ALL OF THE
3 PEOPLE IN THE BBC AND THE PEOPLE HE RAISED MONEY FROM? IT
4 IS THE SAME THING WITH ALL OF THE PEOPLE IN HIS PERSONAL
5 LIFE.

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1 AND WHAT IN FACT, WAS GOING ON WITH LESLIE ETO?
2 SHE DIDN'T KNOW ANYTHING ABOUT JOE HUNT'S LIFE OUTSIDE OF
3 THE EXCHANGE. AND INCREDIBLY, SHE HARDLY KNEW ANYTHING ABOUT
4 WHAT HE WAS DOING WHEN HE WAS TRADING. SHE DIDN'T KNOW WHERE
5 THE MONEY CAME FROM.

6 IT IS EASY TO SAY THAT HE IS GENEROUS. I CAN
7 THROW AROUND THIRTY, FORTY, FIFTY THOUSAND DOLLARS OF OTHER
8 PEOPLES' MONEY. WHAT IS THE BIG DEAL? AND OF COURSE, NONE
9 OF THOSE PEOPLES' OPINION WOULD BE AT ALL AFFECTED IF YOU
10 TELL THEM THINGS THAT YOU AND I MIGHT LOGICALLY USE TO CHANGE
11 OUR OPINIONS.

12 IF SOMEBODY -- IF YOU SEE A MAN WALKING AROUND
13 AND HE IS GIVING OUT MONEY TO EVERYBODY AND YOUR OPINION OF
14 HIM IS THAT HE IS GENEROUS AND THEN YOU ARE TOLD IT IS NOT
15 HIS MONEY, DON'T YOU THINK IT WOULD AFFECT YOUR OPINION OF
16 THE GUY?

17 NORMALLY, YOU WOULD THINK IT WOULD AFFECT YOUR
18 OPINION. NO, IT DOESN'T AFFECT YOUR OPINION IN THE
19 SLIGHTEST OF HIM.

20 THE POINT IS, THAT THEY ALL REALLY KNOW VERY LITTLE
21 ABOUT HIM. LIKewise WITH THE PEOPLE IN THE ROBERTS' FAMILY,
22 WHO KNEW VERY LITTLE, IF ANYTHING, ABOUT HIS LIFE DURING THE
23 TIME THAT HE WAS KILLING PEOPLE, WHILE HE WAS IN THE BBC.

24 LET'S TALK ABOUT HIS MOTHER, HIS SISTER AND HIS
25 BROTHER. IT IS HARD -- IT IS HARD TO LISTEN TO A MOTHER'S
26 PAIN WHEN SHE TALKS ABOUT HER SON. THERE ARE SOME THINGS
27 THAT ARE A LITTLE BIT CURIOUS. AND THAT IS THE FACT THAT
28 YOU THINK THAT SHE WOULD FEEL SOME RESENTMENT TOWARD HIM FOR

1 GOING WITH THE FATHER, WHO SHE OBVIOUSLY HAS GREAT DISLIKE
2 FOR. AND IT IS ALSO A LITTLE BIT HARD TO FATHOM THAT SHE
3 COULDN'T HAVE REALLY GOTTEN IN TOUCH WITH HIM, HAD SHE TRIED
4 HARD AND WANTED TO.

5 BUT PUTTING ALL THAT ASIDE, I FEEL FOR HER, FOR
6 HER PAIN. IT WAS A LOSS FOR HER. AND THERE IS SOME SYMPATHY
7 FOR HER. BUT THAT IS NOT TO SAY IT ABOUT THE DEFENDANT.

8 I DON'T THINK IT SAYS ANYTHING ABOUT SYMPATHY
9 FOR JOE HUNT. HE IS THE ONE WHO LEFT AND WENT TO CHICAGO.
10 HE IS THE ONE WHO CHOSE CONSCIOUSLY BY EVERYBODY'S DESCRIPTION,
11 THE MOTHER'S AND SISTER'S AND BROTHER'S, TO GO WITH THE
12 FATHER. THAT IS WHAT HE WANTED TO DO. HE LOVED THE FATHER.

13 AND HE MADE A DECISION THAT HE WANTED TO DO THAT.
14 I THINK THAT THAT ALSO SET A PATTERN VERY EARLY IN HIS LIFE.
15 THE FATHER FOR ALL OF THE POVERTY THAT THEY CLAIM IN THE
16 FAMILY, WAS BROUGHT UP IN -- WAS FROM MONEY. AND I DON'T
17 EXACTLY KNOW HOW BUT THAT HAS SOMEHOW RUBBED OFF ON JOE HUNT
18 BECAUSE THAT IS ALSO A THEME THAT HE WANTED THROUGHOUT HIS
19 LIFE IN CHICAGO.

20 HE HAD MONEY. HE WANTED MONEY HERE. HE WANTED
21 THE HIGH LIFE IN A CONDO ON WILSHIRE BOULEVARD WITH THE BBC
22 AND THE FAST CARS AND ALL OF THAT STUFF.

23 EVERYONE DENIES IT, THAT JOE HUNT WAS
24 MATERIALISTIC. MY FAVORITE COMMENT WAS FROM TODD ROBERTS,
25 WHO SAID THAT JOE WAS NOT MATERIALISTIC, HE DIDN'T HAVE A
26 ROLEX WATCH.

27 WHAT AN INCREDIBLE DEFINITION OF WHETHER YOU ARE
28 MATERIALISTIC OR NOT. BUT IN ANY EVENT, IT IS PRETTY CLEAR

1 WHEN YOU LOOK AT ALL OF THE TESTIMONY THROUGHOUT THE WHOLE
2 GUILT AND PENALTY PHASE, THAT JOE HUNT WANTED IT ALL. HE
3 MADE A CONSCIOUS DECISION NOT ONLY TO GO TO CHICAGO BUT HE
4 MADE A COLD, CONSCIOUS DECISION NOT TO KEEP IN TOUCH WITH
5 HIS MOTHER OR HIS SISTER. THERE IS NO OTHER WAY AROUND IT
6 BECAUSE YOU KNOW AND I KNOW THAT IF YOU WANT TO GET A HOLD
7 OF SOMEBODY BAD ENOUGH, YOU CAN FIND THEM.

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1 THERE IS JUST NO QUESTION ABOUT IT. IF YOU
2 WANT TO FIND THEM, YOU FIND THEM AND IN THIS CASE IT IS
3 EVEN EASIER BECAUSE IF HE WANTED TO STAY IN TOUCH, HE WOULD
4 NEVER HAVE LOST TOUCH WITH THEM.

5 BUT HE MADE A CONSCIOUS DECISION NOT TO STAY
6 IN TOUCH WITH THEM.

7 AND THEN THE SISTER SAID "BUT HE HIRED A PRIVATE
8 DETECTIVE TO FIND US." WELL, NOT EXACTLY BECAUSE AS IT
9 TURNS OUT, THE PRIVATE DETECTIVE, AS SHE TESTIFIED, IS
10 CONNECTED WITH THE LAWYERS. AND WHEN WAS THE PRIVATE
11 DETECTIVE HIRED IN CONNECTION WITH THIS CASE TO FIND THE
12 MOTHER? WHY? BECAUSE NOW JOE HUNT NEEDS THEM. HE DIDN'T
13 NEED THEM BEFORE BUT NOW HE NEEDS THEM FOR THE TRIAL.

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14 IT DOESN'T MAKE MRS. GAMSKY'S PAIN ANY LESS
15 AND IT DOESN'T MAKE THE SISTER'S PAIN ANY LESS BUT THE FACT
16 IS THAT JOE HUNT ONLY GOT IN TOUCH WITH THEM WHEN HE NEEDED
17 THEM FOR SOMETHING.

18 AND WHAT DID HE NEED THEM FOR? TO TESTIFY
19 IN THIS TRIAL.

20 FIRST OF ALL, FOUR OUT OF THOSE MISSING SIX
21 YEARS, JOE HUNT WAS IN LOS ANGELES. HE WASN'T EVEN IN
22 CHICAGO. HE WAS LIVING IN WESTWOOD AND HIS MOTHER WAS LIVING
23 IN THE VALLEY. HOW TOUGH IS IT TO FIND HER?

24 AND HE DIDN'T PICK UP THE PHONE. HE DIDN'T
25 DRIVE OVER THERE. HE DIDN'T MAKE ONE EFFORT TO STAY IN
26 TOUCH WITH HIS MOTHER IN THAT WHOLE TIME.

27 AND THEN AFTER HE HAS FOUND THEM, REMEMBER
28 THE SISTER SAID, "WELL, I JUST DON'T SPEND THAT MUCH TIME

1 WITH HIM BECAUSE JOE IS BUSY. HE HAS GOT TO SPEND A LOT
2 OF TIME ON HIS CASE AND HE IS WORKING VERY HARD." WELL,
3 THAT ALL SOUNDS VERY REASONABLE AND "THEREFORE, HE DOESN'T
4 CALL ME. WE DON'T SPEND MUCH TIME TOGETHER." RIGHT. EXCEPT
5 WHAT ABOUT STEVE SOLOMON, WHO SAID TWO OR THREE TIMES A
6 WEEK HE GOES AND PLAYS VIDEO GAMES WITH JOE HUNT IN WESTWOOD?
7 WHAT DOES THAT TELL YOU ABOUT JOE HUNT AND HOW HE FEELS ABOUT
8 HIS SISTER AND HIS MOTHER? HE CAN TAKE THE TIME AWAY FROM
9 HIS CASE TO GO PLAY VIDEO GAMES WITH A FRIEND OF HIS FROM
10 THE HEALTH CLUB BUT HE DOESN'T TAKE THE TIME TO GO SEE THE
11 SISTER OR THE MOTHER.

12 YOU WANT TO KNOW SOMEBODY WHO CARES ABOUT HIS
13 MOTHER? DO YOU WANT TO KNOW SOMEBODY WHO KEEPS IN TOUCH
14 WITH HIS MOTHER? THAT IS A PERSON WHO CARES ABOUT HIS MOTHER,
15 WHO LOVED HIS MOTHER, IF YOU HAVE ANY QUESTION ABOUT IT
16 (COUNSEL INDICATING).

17 JOE HUNT IN THE WILSHIRE MANNING, DO YOU THINK
18 THAT HIS TELEVISION HAD PICTURES ON THE TOP OF HIS WHOLE
19 FAMILY, HIS BROTHERS AND SISTERS, HIS PARENTS? YOU'RE DAMN
20 SURE IT DIDN'T.

21 DID YOU HEAR THE MOTHER TESTIFY THAT SHE GOT
22 ANY FLOWERS FROM HER SON ON MOTHER'S DAY?

23 AND NOT ONLY THAT -- NOT ONLY THAT, JOE HUNT
24 WAS LIVING AT THE ROBERTS' HOUSE AND DOES HE MENTION TO
25 ANY OF THESE PEOPLE HOW HE FEELS ABOUT HIS FAMILY? THIS
26 IS ANOTHER GREAT EXAMPLE OF TAKING FROM PEOPLE AND NOT GIVING
27 THEM ANYTHING, NOT TELLING THEM ANYTHING. HE DOESN'T SAY
28 WORD ONE ABOUT HIS MOTHER OR HIS BROTHER OR HIS SISTER TO

1 ANY OF THESE PEOPLE IN THE ROBERTS FAMILY.

2 DOES HE CARE ABOUT THE MOTHER? DOES HE CARE
3 ABOUT THE SISTER?

4 AND WHAT DOES HE SAY TO MICHELLE BERANEK ABOUT
5 THE ROBERTS FAMILY? THIS IS A COMMENT ON HOW JOE HUNT CHOSE
6 TO LIVE HIS LIFE, THE CONSCIOUS DECISIONS THAT HE MADE.
7 LOOK AT THE DECISION ABOUT THE WILSHIRE MANNING AND ALL
8 OF THE MONEY AND EVERYTHING. TO MICHELLE BERANEK HE SAYS,
9 "AREN'T WE LUCKY TO BE PART OF THIS FAMILY? AREN'T WE LUCKY
10 TO BE PART OF THIS FAMILY?" NOT ONE WORD ABOUT HIS MOTHER.

11 AND MR. BARENS ASKED ONE OF THE WITNESSES ON
12 CROSS-EXAMINE, "WELL, THIS WASN'T DYNASTY OR ANYTHING, WAS
13 IT?" WELL, IT SURE SOUNDED LIKE DYNASTY TO ME. THE BIG
14 HOUSE IN BEL AIR, ALL OF THE KIDS WHO HAVE THEIR BOYFRIENDS
15 AND GIRLFRIENDS LIVING WITH THEM IN THE HOUSE. I JUST DON'T
16 KNOW WHERE THAT HAPPENS TOO OFTEN EXCEPT ON TV AND MAYBE
17 AT THE ROBERTS' HOUSE. I AM SURE IT HAPPENS IN OTHER FAMILIES,
18 BUT HERE IS THIS BIG HOUSE IN BEL AIR, I JUST HAD THAT
19 PICTURE. BUT IT IS AN INDICATION HOW JOE HUNT REALLY FELT
20 ABOUT HIS FAMILY.

21 I FEEL THE PAIN FOR THE MOTHER AND THE SISTER,
22 BUT NOT FOR JOE HUNT, WHO JUST TROTTED THEM OUT HERE LIKE
23 SO MANY TRINKETS FOR THE TRIAL. WHERE WAS HE CALLING HIS
24 MOTHER WHEN HE WAS INVOLVED WITH THE BBC AND AT THE WILSHIRE
25 MANNING? HE IS AS WILLING TO BREAK THE HEART OF HIS FAMILY
26 AS HE WAS TO KILL RON LEVIN, KILL MR. ESLAMINIA AND DO ALL
27 OF THAT IN SUCH A COLD AND CALCULATED, DISPASSIONATE WAY.

28 SO WHAT YOU GET DOWN TO IS HAVING TO WEIGH

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1 ALL OF THESE FACTORS AND DETERMINE WHETHER THE AGGRAVATING
2 EVIDENCE IS SO SUBSTANTIAL IN RELATION TO THE MITIGATING
3 EVIDENCE THAT IT WARRANTS A VERDICT OF DEATH.

4 AND YOU KNOW WHAT THE AGGRAVATING EVIDENCE
5 IS: TWO MURDERS AND THE SHOOTING INTO THIS BUILDING THAT
6 HAD TWO PEOPLE INSIDE OF IT, TWO COLD-BLOODED EXECUTIONS.

7 AND WHAT DO YOU PUT UP AGAINST THAT? THE
8 TESTIMONY OF THE FAMILY MEMBERS THAT HE DECIDED HE DIDN'T
9 WANT TO HAVE ANYTHING TO DO WITH UNTIL THE TRIAL. THE
10 TESTIMONY OF OTHER PEOPLE WHO REALLY DON'T KNOW ANYTHING
11 ABOUT JOE, THE REAL JOE HUNT OR WHAT HE IS REALLY LIKE AND
12 ARE COMPLETELY UNWILLING TO ACCEPT WHAT HE IS REALLY LIKE.
13 AND THAT IS BASICALLY IT.

14 WE WERE TOLD THAT JOE HUNT HAD LIFELONG FRIENDS.
15 WHERE WERE THEY? WHERE WERE THESE LIFELONG FRIENDS?

16 IT WAS ALMOST PAINFUL TO SIT AND LISTEN TO
17 SOME OF THESE PEOPLE. THE EVIDENCE IN MITIGATION WAS BY
18 MICHELLE BERANEK, WHO WAS THE FIANCEE OF SOMEBODY WHO LIVES
19 AT THE ROBERTS' HOUSE. LESLIE ANN ETO, WHO WORKED FOR HIM
20 IN CHICAGO, WHO DOESN'T KNOW ANYTHING ABOUT HIM. THIS GUY
21 SOLOMON. IT WAS PAINFUL TO LISTEN TO THEM.

22 THIS IS MITIGATION? THIS IS WHY WE SHOULD
23 FEEL SORRY FOR JOE HUNT?

24 AND I THINK THAT WHEN YOU THINK ABOUT THE VERDICTS
25 AND YOU THINK ABOUT THE IDEA THAT YOUR VERDICT IS EITHER
26 DEATH OR LIFE IMPRISONMENT, IT IS AN INCREDIBLY TOUGH DECISION
27 TO MAKE WHEN YOU THINK ABOUT THE FACTS IN THE CASE AND
28 ESPECIALLY WHEN YOU THINK ABOUT THE FACT THAT JOE HUNT CHOSE

1 TO LIVE HIS LIFE IN THIS WAY, THAT IT WAS HIS DECISION TO
2 GO AROUND KILLING PEOPLE COLD BLOODLY AND EXECUTING THEM
3 THAT HE DESERVES TO BE TREATED BY YOU IN EXACTLY THE SAME
4 WAY THAT HE CHOSE TO TREAT EVERY OTHER PERSON IN HIS LIFE.

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1 HE DESERVES TO BE TREATED BY YOU THE WAY HE
2 TREATED RON LEVIN. AND HE DESERVES TO BE TREATED BY YOU THE
3 WAY HE TREATED HADAYET ESLAMINIA. THAT IS, THE WAY HE
4 TREATED RON LEVIN WHEN HE PUT HIM INTO THE PIT AND MUTILATED
5 HIS BODY WITH A SHOTGUN, THE WAY HE TREATED MR. ESLAMINIA
6 WHEN MR. ESLAMINIA WAS IN THE TRUNK YELLING, SCREAMING,
7 PLEADING FOR HIS LIFE. YOU REAP WHAT YOU SOW. THAT IS WHAT
8 HE DESERVES. HE HAS ASKED FOR IT. THAT IS WHAT HE SHOULD
9 GET.

10 THERE ARE A FEW OTHER THINGS I WANT TO TALK TO
11 YOU ABOUT. ONE, WE ARE GOING TO HEAR SOME TALK FROM
12 MR. BARENS ABOUT THIS ISSUE OF LINGERING DOUBT. AND THAT
13 IS I GUESS, HOW THE LAWYERS HAVE COME TO TERM IT. AND WHAT
14 IT REALLY COMES DOWN TO IS, EVEN THOUGH YOU FOUND JOE HUNT
15 GUILTY BEYOND A REASONABLE DOUBT, IF YOU HAVE ANY OF THE
16 SLIGHTEST DOUBT IN YOUR MIND AS TO WHETHER YOU WERE RIGHT
17 AND YOU EXECUTE JOE HUNT AND IT TURNS OUT THAT RON LEVIN WAS
18 REALLY ALIVE, WOULDN'T YOU FEEL TERRIBLE.

19 AND FOR THAT PURPOSE, THEY BRING THIS LOUISE
20 WALLER IN. INCREDIBLY TO ME, THE BRING THIS WOMAN IN TO
21 INSULT ALL OF US. THEY BRING IN THIS WOMAN, UNBEKNOWNST TO
22 THE PROSECUTION, WHO GETS UP THERE. WE DON'T EVEN KNOW WHO
23 SHE IS BEFORE SHE GETS UP THERE.

24 SHE TESTIFIES AND YOU KNOW WE HAVE HALF A DAY
25 IN ESSENCE, TO TRY TO CHECK OUT THIS WOMAN AND SEE WHAT WE
26 CAN FIND, HALF A DAY.

27 AND IN HALF A DAY, WHO DO WE FIND? A WITNESS
28 WHO SAYS THAT SHE IS OUT AND OUT LYING. I NEVER WORKED THERE.

1 I NEVER HAD THIS CONVERSATION.

2 REMEMBER THAT LOUISE SAYS, I DON'T READ THE PAPERS,
3 I DON'T WATCH TV AND SO I DON'T KNOW ANYTHING ABOUT RON LEVIN,
4 EXCEPT THAT I HAD THIS CONVERSATION WITH THIS KATHY HALL,
5 WHO SAYS "REMEMBER RON LEVIN?"

6 KATHY HALL DOESN'T EVEN KNOW RON LEVIN. WHERE
7 DO THEY GET THESE PEOPLE? I WILL TELL YOU, THEY ARE GOING
8 TO BE COMING OUT OF THE WOODWORK FOR YEARS.

9 THESE PEOPLE, I DON'T KNOW WHERE THEY FIND THEM.
10 COULD YOU BELIEVE YOUR EARS AGAIN? ANOTHER PERFECT WITNESS.
11 I THOUGHT WE WERE DONE WITH THAT, WITH CARMEN CANCHOLA. SHE
12 HAS NEVER MISIDENTIFIED ANYBODY. AMAZING TO ME. I DON'T
13 KNOW WHERE THEY FIND THEM.

14 THEY ARE GOING TO BE FINDING THEM FOR YEARS AND
15 YEARS AND YEARS TO COME. AND I DON'T KNOW THAT IT IS EVEN
16 WORTH SPENDING MUCH TIME TALKING ABOUT HER. BUT LET ME SAY
17 A VERY FEW THINGS VERY QUICKLY.

18 FIRST OF ALL, SHE SAYS THAT SHE KNEW RON LEVIN
19 IN THE MID-SEVENTIES AND HE HAD GRAY HAIR. HERE IS RON LEVIN
20 IN 1978. HE DIDN'T HAVE GRAY HAIR, THEN. IT WAS NOT GRAY
21 HAIR IN 1977, '76, '75 AND '74.

22 SHE SAID SOMETHING THAT ALMOST WENT RIGHT BY ME,
23 EXCEPT THAT LES ZOELLER KEEPS GIVING ME THE ELBOW, IF I FORGET
24 SOMETHING. RON LEVIN NEVER TALKED TO ME AT THE OFFICE
25 BECAUSE HE WAS QUIET AND RESERVED.

26 QUIET AND RESERVED? NOT RON LEVIN, NOT A CHANCE
27 IN THE WORLD. NEITHER QUIET NOR RESERVED.

28 AND THEN OF COURSE SHE SAYS WELL, WHEN I WAS

10A 2
1 FIRST TOLD ABOUT IT, I COULDN'T PLACE HIS FACE BUT THEN AFTER
2 12 YEARS SHE HAS NOT SEEN HIM AND SHE WALKS BY HIM AND GETS
3 TO SEE HIM IN FEBRUARY AT 6 O'CLOCK IN THE EVENING OUTSIDE
4 OF THIS BUILDING, PROBABLY SLIGHTLY DARK OUTSIDE AND SHE SEES
5 HIM FOR MAYBE TWO OR THREE SECONDS.

6 AND REMEMBER, I DID THE WALKING FROM ME TO HER
7 ON THE WITNESS STAND AND SHE DIDN'T RECOGNIZE -- COULDN'T
8 PLACE HIS FACE BEFORE AND THERE WAS INSTANT RECOGNITION. SO,
9 ALL OF THAT IS BY WAY OF SAYING THAT THERE IS NO -- THERE
10 WAS NO REASONABLE DOUBT. THERE IS NO LINGERING DOUBT.

11 BUT I DO THINK I WILL AGREE WITH MR. BARENS ON
12 ONE THING. RON LEVIN WILL BE FOUND SOME DAY. AND I WILL
13 TELL YOU LADIES AND GENTLEMEN, WHEN HE IS FOUND, I WILL TELL
14 YOU EXACTLY WHAT HE IS GOING TO LOOK LIKE. THIS IS WHAT HE
15 IS GOING TO LOOK LIKE, LADIES AND GENTLEMEN.

16 THAT IS WHAT RON LEVIN WILL LOOK LIKE WHEN THEY
17 FIND HIM, BURIED IN SOME PIT IN SOLEDAD CANYON. THAT IS WHAT
18 HE WILL LOOK LIKE WHEN THEY FIND HIM.

19 ONE DAY THEY WILL FIND HIM. KEEP THAT IMAGE IN
20 MIND WHEN YOU LISTEN TO MR. BARENS' ARGUMENT. YOU WON'T GET
21 TO HEAR FROM ME AGAIN. THE RULES ARE DIFFERENT IN THIS PART
22 OF THE CASE THAN THEY ARE IN THE GUILT PHASE.

23 AND YOU ARE GOING TO BE REMINDED, PROBABLY OVER
24 AND OVER AGAIN BY MR. BARENS, HOW HORRIBLE AND HOW FINAL
25 DEATH IS. THEREFORE, HOW CAN YOU DO THIS HORRIBLE THING TO
26 JOE HUNT? AND EACH TIME HE TELLS YOU HOW HORRIBLE AND HOW
27 FINAL DEATH IS, YOU THINK OF RON LEVIN IN THE PIT UP IN
28 SOLEDAD CANYON.

1 EACH TIME HE TELLS YOU HOW HORRIBLE AND HOW FINAL
2 DEATH IS, YOU THINK OF HADAYET ESLAMINIA IN THAT TRUNK PLEADING
3 FOR HIS LIFE. AND EACH TIME HE TELLS YOU ABOUT MRS. GAMSKY,
4 YOU THINK OF CAROL LEVIN AND THE FLOWERS ON MOTHER'S DAY AND
5 THE CALLS THAT SHE HAS WAITED FOR AND SHE IS WAITING FOR THAT
6 WILL NEVER, EVER COME.

7 YOU CONSIDER ALL OF THAT EVIDENCE IN THIS CASE.
8 KEEP IN MIND WHAT I HAVE BEEN TELLING YOU ALL ALONG. YOU
9 REAP WHAT YOU SOW.

10 JOE HUNT HAS CHOSEN TO CONDUCT HIS LIFE IN A WAY
11 THAT WAS COLD AND CALCULATED AND DISPASSIONATE AND HE
12 EXECUTED IN COLD BLOOD TWO PEOPLE. HE DESERVES TO BE TREATED
13 BY YOU IN EXACTLY THE SAME MANNER. THANK YOU.

14 THE COURT: ALL RIGHT.

15 MR. BARENS: YOUR HONOR, I MAY GO OVER.

16 THE COURT: SURE. YOU CAN START. IF IT GOES OVER,
17 THEN WE WILL RESUME LATER ON THIS AFTERNOON.

18 MR. BARENS: IF I AM PERMITTED UNTIL 12:15 TO FINISH,
19 I COULD FINISH BY 12:15 IF I AM PERMITTED.

20 THE COURT: ABOUT WHAT?

21 MR. BARENS: 12:15 TO 12:20, IF I AM PERMITTED. I WOULD
22 PREFER TO GO NOW.

23 THE COURT: ALL RIGHT. GO AHEAD. IF IT DOES NOT RUN
24 LATER THAN THAT -- OTHERWISE, YOU CAN CONTINUE THIS AFTERNOON.

25 MR. BARENS: I WOULD LIKE TO COMPLETE IN A SINGLE --

26 THE COURT: WELL, YOU CAN'T GO THROUGH 1 O'CLOCK.

27 MR. BARENS: I WON'T GO THROUGH 1 O'CLOCK.

28 THE COURT: YOU CAN CONTINUE UNTIL 12 O'CLOCK AND THEN

1 WE WILL CONTINUE TO THE AFTERNOON.

2 MR. BARENS: I WOULD LIKE TO APPROACH THE BENCH BRIEFLY,
3 YOUR HONOR.

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

4 MR. BARENS: ALL I MEANT TO INDICATE WAS THAT I NEED
5 FROM 12:00 TO 12:20 TO FINISH, I COULD FINISH IN A SINGLE
6 THRUST.

7 THE COURT: YOU THINK YOU CAN FINISH BY 12:20?

8 MR. BARENS: I WILL DO THIS, YOUR HONOR --

9 THE COURT: I WILL LET YOU GO UNTIL 12:00 AND SEE HOW
10 FAR YOU HAVE GOTTEN. IF YOU THINK YOU WILL TAKE MUCH LONGER,
11 WE WILL GO TO LUNCH AND THEN YOU CAN FINISH THIS AFTERNOON.

12 THE BAILIFF: EXCUSE ME. ONE OF THE JURORS HAS TO
13 GO TO THE RESTROOM.

14 THE COURT: ALL RIGHT.

15 MR. BARENS: WAS YOUR HONOR GOING TO MAKE ANY EXPRESSION
16 AS DISCUSSED IN CHAMBERS YESTERDAY?

17 THE COURT: NO, I AM NOT GOING TO SAY ANYTHING ABOUT
18 THAT. I THINK IF I BRING IT UP AGAIN IT WOULD BE REPEATING
19 IT AGAIN AND WOULDN'T ACCOMPLISH A PURPOSE.

20 MR. WAPNER: DO YOU WANT TO GIVE THE JURORS, LET THEM
21 GET UP AND STRETCH OR GIVE THEM FIVE MINUTES?

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

25 THE COURT: WOULD YOU LADIES AND GENTLEMEN LIKE ABOUT
26 A TEN-MINUTE RECESS OR DO YOU WANT TO GO ON?

27 (NO AUDIBLE RESPONSE.)

28 THE COURT: ALL RIGHT, WE WILL GO ON.

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

4 THE COURT: ALL RIGHT, TWO OF THE JURORS WENT TO THE
5 BATHROOM AND WHEN THEY COME BACK, WE WILL START.

6 MR. BARENS: THANK YOU.

7 THE COURT: I MIGHT SAY SOMETHING IN THE COURSE OF
8 MY INSTRUCTIONS TO THE JURY ON THE TOPIC THAT YOU MENTIONED.

9 MR. WAPNER: YOUR HONOR, BEFORE THE JURY IS INSTRUCTED,
10 WE AGAIN HAVE TO MEET BECAUSE OF THE DEFENSE NEW INSTRUCTION
11 THAT THEY WANTED TO DISCUSS AND ALSO IN REVIEWING THE
12 INSTRUCTIONS LAST NIGHT, I REALIZED THAT WE SHOULD PROBABLY
13 GIVE THE JURY A DEFINITION OF KIDNAPPING TO INSERT INTO
14 THAT INSTRUCTION ON 209.

15 THE COURT: WE HAVE A DEFINITION OF KIDNAPPING, HAVEN'T
16 WE?

17 MR. WAPNER: I DON'T THINK SO. WE SHOULD AT LEAST
18 DISCUSS IT.

19 AND ALSO I THINK THAT THE INSTRUCTION ON SECOND
20 DEGREE FELONY MURDER, ALTHOUGH IT IS THE LATEST ONE IN CALJIC,
21 I DON'T KNOW IF IT COMPORTS WITH PEOPLE V. BEEMON ABOUT
22 HAVING INTENT.

23 THE COURT: HAVING WHAT?

24 MR. WAPNER: AIDERS AND ABETTORS HAVING INTENT.

25 THE COURT: ALL RIGHT, BEFORE WE START AND AFTER WE
26 GET THROUGH WITH THE ARGUMENT, WE WILL GO OVER THE JURY
27 INSTRUCTIONS AGAIN.

28 (THE FOLLOWING PROCEEDINGS WERE HELD

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

3 THE COURT: YOU MAY PROCEED.

4 MR. BARENS: THANK YOU, YOUR HONOR.

5
6 CLOSING ARGUMENT

7 BY MR. BARENS:

8 GOOD MORNING, LADIES AND GENTLEMEN.

9 AS MR. WAPNER POINTED OUT, IT IS COMMON TO
10 ME ALSO, THAT THIS IS THE MOST DIFFICULT MOMENT I HAVE EVER
11 HAD EITHER PROFESSIONALLY AND PERSONALLY, IT IS THE MOST
12 DIFFICULT MOMENT I HAVE EVER HAD. I DARE SAY THERE ISN'T
13 ONE OF YOU WHO WOULD CHANGE PLACES WITH ME. TO COME BEFORE
14 YOU TO PLEAD FOR A MAN'S LIFE, THOUGH I HAVE BEEN DEMAANED
15 IN MR. WAPNER'S ARGUMENT, THOUGH I HAVE BEEN DEMAANED AS
16 A MOUTHPIECE, I COME TO YOU WHERE, FOR SOME REASON APPARENTLY
17 IN THIS COURTROOM TO BE DEFENSE COUNSEL HAS BECOME DISHONORABLE
18 AND I COME TO YOU, NONETHELESS, AFTER A LENGTHY CAREER AS
19 A PARENT LIKE YOURSELVES, AS A HUSBAND, AS A MEMBER OF THIS
20 SOCIETY, AND I HAVE SAT THROUGH THIS, MY STOMACH HAS TURNED,
21 I HAVE HEARD THIS TALK AND I HAVE FELT THE ANGUISH YOU HAVE.
22 I HAVE FELT THE REVULSION YOU HAVE. I HAVE FELT THE
23 DISGUST THAT YOU HAVE. BUT WE HAVE RESPONSIBILITIES AND
24 DECISIONS TO MAKE.

1 JOE HUNT WILL DIE IN PRISON. THAT IS NO LONGER
2 AN ISSUE. THE DECISION YOU HAVE ALREADY MADE REGARDING
3 GUILT OF MURDER IN THE FIRST DEGREE WITH SPECIAL CIRCUMSTANCES,
4 YOU HAVE FOUND, HAVE ASSURED THAT HE WILL DIE IN PRISON.

5 THE SOLE ISSUE REMAINING IS: WHO WILL DECIDE
6 WHEN HE DIES, YOURSELVES OR GOD? THAT IS ALL.

7 TO GO THROUGH THIS MORNING, I AM NOT GOING
8 TO DO A GUILT PHASE ARGUMENT ABOUT WHAT IS PROVEN AND WHAT
9 IS NOT PROVEN. I DON'T BELIEVE THAT IS THE ISSUE.

10 THE ISSUE FOR YOU IS LIFE OR DEATH. IS IT
11 JUSTIFIED? IS IT PROPER? IS IT NECESSARY?

12 TAKING SOMEONE'S LIFE IS NO MINOR MATTER. IT
13 IS NOT SOMETHING LIGHTLY UNDERTAKEN IN A CIVILIZED SOCIETY
14 WHERE IT HAS THE GRAVEST SOCIAL AND LEGAL CONSEQUENCES AND
15 IT SHOULD BE RESORTED TO ONLY WHEN IT IS ABSOLUTELY NECESSARY.

16 WE HAVE A CHOICE. THERE IS NO MANDATE FOR
17 DEATH. THERE IS A PRESUMPTION OF LIFE. IT IS NOT NECESSARY
18 HERE.

19 THIS IS NOT A CASE WHERE DEATH IS THE ONLY
20 APPROPRIATE PUNISHMENT. I WOULD LIKE TO THINK THAT THAT
21 IS ALREADY CLEAR TO YOU. IF IT ISN'T, I HOPE IT WILL BE
22 BY THE TIME I AM THROUGH DISCUSSING THE EVIDENCE AND THE
23 LAW WITH YOU.

24 BEFORE DOING THAT, I WANT TO SPEAK TO YOU FOR
25 A FEW MOMENTS ABOUT THE NATURE AND THE UNIQUENESS OF THESE
26 PROCEEDINGS. THE PENALTY PHASE OF A DEATH PENALTY TRIAL
27 IS UNLIKE ANY OTHER ASPECT OR PART OF THE LEGAL SYSTEM.
28 IT IS UNIQUE. IT IS TOTALLY UNLIKE THE GUILT PHASE YOU

1 HAVE JUST SAT THROUGH.

2 AT THE GUILT PHASE, THE PROSECUTION HAD TO
3 PROVE BEYOND A REASONABLE DOUBT THAT A FIRST DEGREE MURDER
4 WITH SPECIAL CIRCUMSTANCES HAD BEEN COMMITTED AND THAT THE
5 DEFENDANT COMMITTED IT.

6 IT IS THE GENIUS OF OUR SYSTEM OF LAWS THAT
7 WE DO NOT CONVICT PEOPLE, EVEN PEOPLE WHO WE THINK ARE
8 GUILTY, UNLESS THEIR GUILT HAS BEEN PROVEN BEYOND A REASONABLE
9 DOUBT IN A COURT OF LAW.

10 MY RESPONSIBILITY THROUGHOUT HAS BEEN TO INSIST
11 THAT THE PEOPLE NOT CONVICT MY CLIENT UNLESS YOU WERE SO
12 CONVINCED. I DID THAT AND I DID NOT SUCCEED IN CONVINCING
13 YOU. I CAN'T DENY MY DISAPPOINTMENT IN YOUR DECISION BUT
14 I MUST RESPECT AND ACCEPT THAT VERDICT. AND I KNOW THAT
15 VERDICT WAS REACHED AT WITH THE SAME LEVEL OF CONSCIENTIOUS-
16 NESS THAT I PROCEEDED WITH IN MY DEFENSE.

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12A-1

1 NOW, THE QUESTION BEFORE YOU IS TOTALLY DIFFERENT.
2 WHETHER JOE HUNT IS TO BE EXECUTED IN THE GAS CHAMBER AT
3 SAN QUENTIN OR TO LIVE FOR THE REST OF HIS LIFE IN JAIL --
4 AND THERE ARE NO THIRD CHOICES. THERE WILL BE NO SOFT
5 SENTENCE. THAT IS A QUESTION AS DIFFERENT FROM THE QUESTION
6 OF GUILT OR INNOCENCE AS WE DID IN THE FIRST PART OF THIS
7 TRIAL, AS NIGHT AND DAY.

8 WHAT IS YOUR ROLE NOW? AND THE ROLE THAT I HAVE
9 SEEN EACH OF YOU UNDERTAKE WITH THE GREATEST OF SERIOUSNESS
10 FROM THE START, FROM THE TIME WE VOIR DIERED YOU AS JURORS?
11 WHAT DOES THE LAW TELL YOU TO DO? WHAT WOULD THE INSTRUCTIONS
12 INDICATE AS YOUR GUIDELINES?

13 IT EMPHATICALLY TELLS YOU NOT TO VOTE FOR DEATH
14 JUST BECAUSE YOU HAVE FOUND THE DEFENDANT GUILTY OF FIRST
15 DEGREE MURDER AND SPECIAL CIRCUMSTANCES. IF THAT WERE TRUE,
16 THEN DEATH WOULD BE ALWAYS THE ONLY APPROPRIATE VERDICT AND
17 WE WOULD NOT HAVE HAD A PENALTY PHASE.

18 OUR SOCIETY INSISTS THAT A DEFENDANT NOT BE
19 KILLED UNLESS 12 MEMBERS OF THE COMMUNITY ARE VERY -- AND
20 UNANIMOUSLY CERTAIN THAT THE HEAVY PRESUMPTION FOR LIFE THAT
21 WE ALWAYS HAVE IN OUR SOCIETY, HAS BEEN FATALLY OVERCOME
22 FOR THIS DEFENDANT.

23 IT IS YOUR TASK TO DETERMINE IN THIS CASE,
24 WHETHER JOE HUNT IS ONE OF THOSE FEW CASES IN OUR SOCIETY,
25 INCLUDING MURDER CASES AND MURDERERS, THAT DESERVES THE
26 DEATH PENALTY.

27 CAN WE SAY AT THE CONCLUSION OF THIS PROCEEDINGS
28 WITH UNSHAKABLE CONFIDENCE AND FINALITY THAT THIS MAN MUST

12A -
1 DIE FOR WHAT YOU BELIEVE HE DID?

2 THE VERY SPECIAL NATURE OF THE DECISION YOU ARE
3 ABOUT TO MAKE HAS BEEN REFLECTED IN THE WAY THAT THIS TRIAL
4 HAS BEEN CONDUCTED. NO OTHER TRIAL HAS THE SPECIAL
5 PROCEDURES EVEN FOR VOIR DIRING THE JURY THAT WE HAVE
6 FOLLOWED IN THIS CASE. AS YOU WILL RECALL, YOU WERE
7 QUESTIONED ON TWO OCCASIONS.

8 ON ONE OCCASION, THE SOLE AREA INVOLVED YOUR VIEWS
9 AND RESPONSES TO THE CONCEPT OF THE DEATH PENALTY IN OUR
10 SOCIETY. IF YOU HAD RESPONDED THAT AFTER A CONVICTION FOR
11 MURDER IN THE FIRST DEGREE, THAT YOU WOULD VOTE ONLY AND
12 AUTOMATICALLY FOR THE DEATH PENALTY, YOU WOULD NOT HAVE
13 BEEN HERE AS JURORS.

14 YOU WERE TRUSTED, EACH ONE OF YOU AS A JUROR IN
15 THIS CASE, AFTER ADVISING HIS HONOR, MR. WAPNER AND MYSELF,
16 THAT YOU WOULD OPENLY AND CAREFULLY CONSIDER AND WEIGH
17 MITIGATING AND AGGRAVATING CIRCUMSTANCES, IRRESPECTIVE OF
18 YOUR VERDICT OF GUILTY, BEFORE RENDERING YOUR VERDICT OF LIFE
19 OR DEATH.

20 WE ARE AT THAT JUNCTURE, A JUNCTURE I HAVE RUED.
21 IT IS A JUNCTURE I CAN HARDLY RELATE TO, EVEN AT THIS POINT.

22 THE LAW INSISTS IN THE INSTRUCTIONS THAT WE NOT
23 VIEW LIFE LIGHTLY. ALL MURDER IS SERIOUS. ALL MURDER IS
24 UNACCEPTABLE. ALL MURDER IS REVOLTING. AND I AM NO DIFFERENT
25 THAN YOU WHEN IT COMES TO MURDER.

26 I AM NO DIFFERENT FROM MR. WAPNER WHEN IT COMES
27 TO MURDER. WE MAY DIFFER AS TO WHETHER OR NOT WE ARE GOING
28 TO HAVE MORE MURDER AND MORE VIOLENCE AND MORE LOSS.

2A -

1 IF MURDERS HAVE OCCURRED, THERE IS NOTHING WE
2 CAN DO ABOUT THAT. WE HAVE A CHOICE ABOUT MORE MURDER. EVEN
3 HERE, THE LAW REQUIRES THAT YOU DETERMINE WHETHER THE NATURE
4 OF BOTH THE OFFENSE COMMITTED AND OF THE DEFENDANT, ARE SUCH
5 THAT DEATH MUST BE IMPOSED.

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1 IF NOT, IT IS YOUR OBLIGATION TO RETURN A VERDICT
2 OF LIFE WITHOUT POSSIBILITY OF PAROLE RATHER THAN THE DEATH
3 SENTENCE. AND AFTER I CONCLUDE, HIS HONOR WILL BE INSTRUCTING
4 YOU ON THE FACTORS WHICH YOU ARE TO CONSIDER. I WOULD LIKE
5 TO REVIEW THE EVIDENCE WITH YOU, IN LIGHT OF THOSE FACTORS.
6 HOWEVER, YOU WILL NOTE THAT SEVERAL OF THE FACTORS SIMPLY
7 DO NOT APPLY IN THIS CASE AND YOU SHOULD DISREGARD THEM.

8 THERE IS A FACTOR FOR EXAMPLE, AS TO WHETHER OR
9 NOT THE VICTIM WAS A PARTICIPANT IN THE DEFENDANT'S HOMICIDAL
10 CONDUCT OR CONSENTED TO THE HOMICIDAL CONDUCT. YOU WILL HEAR
11 THAT INSTRUCTION READ AND HEAR THAT SPOKEN. WHAT I AM TRYING
12 TO POINT OUT, IS THAT IT DOESN'T APPLY.

13 PERHAPS IF WE WERE HERE ON SOME EUTHANASIA CASE
14 OR SOMETHING LIKE THAT, THAT MIGHT BE RELEVANT. AND WHEN
15 YOU SEE THOSE TYPES OF COMMENTS OR THOSE TYPES OF INSTRUCTIONS,
16 THAT ASPECT OF THE INSTRUCTION IS TO BE DISREGARDED. THEY
17 DON'T COUNT EITHER WAY.

18 ALSO, IT IS IMPORTANT TO REMEMBER THAT THE ORDER
19 IN WHICH YOU READ THE INSTRUCTIONS OR HEAR THE FACTORS YOU
20 ARE TO CONSIDER, DOES NOT SUGGEST THEIR LEVEL OF IMPORTANCE
21 OR THE NUMBER IN THE ASCENT OR DESCENT HAS NO SIGNIFICANCE.
22 THAT IS RANDOM.

23 BUT RATHER, IT IS SOLELY A WEIGHTING PROCESS THAT
24 YOU SHOULD UNDERTAKE AS INDIVIDUALS IN MAKING YOUR DECISION.
25 IT IS NOT AN ARITHMETIC QUESTION.

26 IT IS NOT A QUESTION WHERE THERE ARE 50
27 AGGRAVATING FACTORS AND FIVE MITIGATING FACTORS AND THEN
28 THE DEFENDANT DIES. IT SIMPLY WAS NEVER THE INTENT OF HUMAN

1 SOCIETY THAT THAT BE THE TEST.

2 THE TEST IN OUR SOCIETY IS WHEN YOU LOOK AT AND
3 WEIGH FOR YOURSELVES AS PEOPLE, BECAUSE YOU AS JURORS ARE
4 NONETHELESS, THE SAME FLESH AND BLOOD WE ALL ARE AS PEOPLE,
5 CONSIDERING LIFE AND DEATH, YOU MUST IF YOU FIND ANY OF THE
6 MITIGATING FACTORS SUFFICIENT TO SUSTAIN JOE HUNT'S LIFE,
7 BRING IN A VERDICT OF LIFE.

8 THE FIRST FACTOR WHICH THE DISTRICT ATTORNEY SPENT
9 MOST OF HIS TIME ON, WAS THE CIRCUMSTANCES OF THE CRIME FOR
10 WHICH YOU HAVE CONVICTED MR. HUNT, THE DEATH OF RON LEVIN
11 AFTER MR. HUNT, ACCORDING TO YOUR BELIEFS, EXTORTED FROM
12 HIM A CHECK FOR \$1.5 MILLION.

13 OUR QUESTION AT THIS STAGE IS WHETHER OR NOT THERE
14 IS SOMETHING ABOUT THIS KILLING IN PARTICULAR THAT MAKES IT
15 SO TERRIBLE THAT ANY OPINION, ANY JUDGMENT LESS THAN DEATH
16 WILL BE INSUFFICIENT AND UNSATISFACTORY. THE ANSWER IS NO.

17 NO, WE MUST CONSIDER THE DYNAMICS OF THE
18 RELATIONSHIP BETWEEN HUNT AND LEVIN. HUNT CAME TO LEVIN IN
19 GOOD FAITH AND PROPOSED IN GOOD FAITH A RATHER LEGITIMATE
20 BUSINESS ARRANGEMENT WHEREBY BOTH HE AND LEVIN COULD PROSPER.
21 IT WAS A CONVENTIONAL, ORDINARY BUSINESS DEAL.

22 ONE PUTS UP THE MONEY AND THE OTHER PUTS UP THE
23 BRAINS AND THE EFFORTS. NOTHING SOPHISTICATED.

24 TRUE TO HIS WORD, HUNT PUT UP THE BRAINS. LEVIN
25 OSTENSIBLY AT LEAST, PUT UP THE MONEY. IT EVENTUALLY
26 GENERATES A HUGE PROFIT OF SOME \$8 MILLION, OF WHICH
27 \$4 MILLION IS PROMISED BY LEVIN TO HUNT.

1 NOT UNEXPECTEDLY, MR. HUNT, IT APPEARS, BEGAN
2 TO RELY ON THIS AND ANTICIPATED RECEIVABLES OF STAGGERING
3 PROPORTION AND WENT ALONG MAKING PLANS TO REPAY EVERY SINGLE
4 PERSON TO WHOM HE WAS INDEBTED, EVERY SINGLE PERSON TO WHOM
5 HE EITHER OWED A DEBT OR FELT A DEBT, TO EVERY INVESTOR,
6 WITHOUT EXCEPTION. A LOFTY PURPOSE, OSTENSIBLY, BUT FROM
7 WHAT WE ARE HEARING IN THIS ROOM, TO BE ACHIEVED BY
8 LEGITIMATE PURPOSES.

9 IN RETURN, WHAT IS BROUGHT TO JOE HUNT?
10 HUMILIATION. DESPAIR. EXPLOITATION. VICTIMIZATION AND
11 AN ULTIMATE DEMORALIZATION.

12 DO I SAY TO YOU IF YOU BELIEVE JOE HUNT KILLED
13 RON LEVIN, EXCUSE HIM BECAUSE OF A PRACTICAL JOKE? DO YOU
14 THINK I AM GOING TO COME HERE -- DO YOU THINK I, AS A PERSON
15 LIKE YOURSELVES, WOULD SAY TO YOU, EXCUSE HIM? NO.

16 I OFFER THIS TO YOU BY WAY OF MITIGATION, TO
17 CONSIDER THE REALITY OF WHAT IS TRANSPILING BETWEEN THE
18 EXTREMELY PROVOCATIVE INDIVIDUAL, MR. LEVIN, AND MY CLIENT.

19 DON'T EXCUSE MY CLIENT. SPARE MY CLIENT BY
20 UNDERSTANDING WHAT IS GOING ON.

21 WHAT WE DON'T HAVE HERE IS THAT RANDOM,
22 HOMICIDAL KILLER WE ALL FEAR, THAT HILLSIDE STRANGLER, THAT
23 NIGHT STALKER, THAT ANONYMOUS KILLER WITH AN ANONYMOUS
24 VICTIM. WE DON'T HAVE EXCUSABLE HOMICIDE BUT WE DON'T HAVE
25 THAT HOMICIDE THAT RAISES THIS TO THE LEVEL OF KILLING THE
26 DEFENDANT AFTER THE TRIAL. THAT IS RESERVED IN OUR SOCIETY
27 FOR MURDERERS THAT REACH THAT LEVEL, I RESPECTFULLY SUBMIT
28 TO YOU.

1 THE OTHER FACTOR THAT YOU WILL RECEIVE IS
2 WHETHER OR NOT MR. HUNT HAD ANY PRIOR FELONY CONVICTIONS.
3 HE DOESN'T HAVE ANY. THIS FACTOR SHOULD BE ACCORDED GREAT
4 WEIGHT AS YOU CONSIDER YOUR DECISION. IT UNDERSCORES AND
5 CORROBORATES THE FACT THAT EXCEPT FOR TWO MONTHS DURING
6 1984, WHICH WE HAVE BEEN DISCUSSING FOR MONTHS AND MONTHS
7 HERE, THERE HAVE BEEN NO ALLEGATIONS OF ABERRANT BEHAVIOR
8 IN MR. HUNT'S LIFE, NO CRIMINAL OR VIOLENT BEHAVIOR ON HIS
9 PART BUT, ON THE CONTRARY, THE EVIDENCE IS UNCONTRADICTED
10 AND COMPELLING THAT JOE HUNT CAME TO YOU AS A PERSON FREE
11 FROM CRIME, A LIFE OF BRILLIANCE, ACHIEVEMENT IN GOALS,
12 AN EXCEPTIONAL PERSON. A TRAGEDY IN THIS COURTROOM. A
13 YOUNG MAN, I SHOULD HAVE HAD HIS BRAINS; IT CERTAINLY WOULD
14 HAVE BEEN A LOT EASIER IN SCHOOL. A TRAGEDY.

15 I FEEL THE TRAGEDY FOR MR. LEVIN, HIS PARENTS.
16 ESLAMINIA. YOU THINK I DON'T? IT HURTS THE SAME FOR ME.

17 IT HAS BEEN GOING ON FOR THREE YEARS WITH THAT
18 YOUNG MAN. DON'T YOU THINK I FEEL THAT TRAGEDY, TO SEE
19 A BOY WHO COULD HAVE BEEN A MEMBER OF MY LAW FIRM, TO SEE
20 A TALENT? I SEE THAT BRILLIANCE THAT WILL NEVER EVER COME
21 TO FRUITION. I SEE THAT EXCEPTION THAT WE WILL NEVER
22 EXPERIENCE. I SEE THAT POTENTIAL CONTRIBUTION TO OUR SOCIETY
23 THAT THIS MAN THAT GOD SINGLES OUT SOMEHOW AND SAYS, "I
24 WILL GIVE YOU BRILLIANCE AND ABILITY" AND THAT IS WASTED.
25 AND THAT, TOO, IS ACCEPTED BUT UNAVOIDABLE.

26 AS YOU KNOW, YOU WILL NOT BE CONSIDERING DURING
27 THESE DELIBERATIONS THE SWARTOUT MATTER. THE JUDGE IN HIS
28 OWN WISDOM AND DETERMINATION DECIDED THAT THE PROOF IN THAT

1 MATTER DID NOT WARRANT YOUR CONSIDERATION AND THUS, YOU
2 ARE NOT TO CONSIDER THAT FOR ANY PURPOSE. LEAVING SOLELY
3 THE COKER AND ESLAMINIA MATTERS FOR DELIBERATION.

4 WITH RESPECT TO COKER, IT IS SIGNIFICANT TO
5 KNOW THAT THERE IS ABSOLUTELY NO EVIDENCE TENDING TO CONNECT
6 MR. HUNT WITH THAT MATTER, SAVE THE TESTIMONY, ONCE AGAIN,
7 OF DEAN KARNY, WITH HIS AGENDA, WITH HIS IMMUNITY DEAL,
8 PERFORMING HERE AGAIN.

9 THE COURT WILL INSTRUCT YOU AGAIN ON THE LAW
10 OF CORPUS DELICTI ON PROOF, AND YOU HAVE TO REMEMBER KARNY'S
11 ORIENTATION, HIS DEAL, THAT MAN WITH THE TAPE IN HIS HAND,
12 MAKING HIS DEAL. NOTABLY, NEVER MAKING A STATEMENT TO CONNECT
13 MR. HUNT TO THE COKER SHOOTING UNTIL MAY 17TH, 12 DAYS AGO,
14 WHEN ASKED TO DO SO BY THE DISTRICT ATTORNEY'S OFFICE. HE
15 NEVER MADE THAT STATEMENT BEFORE IT WAS PUT TO HIM THAT
16 THERE WAS NO PROOF IN THIS TRIAL ASSOCIATING THE COKER
17 MATTER WITH MR. HUNT. SO WHAT DO WE HAVE? WE HAVE KARNY
18 WHEELED IN, ONCE AGAIN, TO BRIDGE THAT GAP IN THE PROSECUTION'S
19 CASE.

20 THE COURT WILL ALSO INSTRUCT YOU THAT THE
21 EVIDENCE ATTRIBUTED TO MR. HUNT BY WAY OF AN ALLEGED ORAL
22 ADMISSION ON HIS PART IS TO BE VIEWED WITH EXTREME CAUTION.

23 PLEASE NOTE THAT IN THE COKER MATTER, NO CRIMINAL
24 CHARGES WERE EVER FILED AGAINST MR. HUNT. NO COMPLAINT
25 WAS SOUGHT. NO INDICTMENT. NO ARREST. NO CHARGES. NO
26 TRIAL. YET, YOU ARE ASKED TO CONSIDER THAT MATTER TO TAKE
27 HIS LIFE.

28 WITH RESPECT TO THE ESLAMINIA MATTER, I CANNOT

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1 EMPHASIZE TO YOU STRONGLY ENOUGH THAT THAT IS A SUBJECT
2 IN LITIGATION BEFORE ANOTHER JURY IN ANOTHER COURT AT A
3 TIME WHEN A FULL TRIAL ON THAT MATTER WILL TAKE PLACE INVOLVING
4 MR. HUNT AND THE OTHER DEFENDANTS, WHEN THE DEFENSE WILL
5 PUT FORWARD ITS POSITION ON A COMPREHENSIVE LEVEL AND THAT
6 JURY WILL BE CALLED UPON TO DETERMINE MR. HUNT'S GUILT OR
7 INNOCENCE.

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1 IT WOULD BE A STRANGE IRONY AND PERVERSION OF
2 THIS SYSTEM ALMOST WITHOUT PRECEDENT IN MY MIND AND I COULD
3 NOT EVEN IMAGINE IT, UNTIL I STARTED THINKING ABOUT THIS CASE
4 THIS WEEK, THAT IT IS POSSIBLE THAT YOU AS A JURY COULD GIVE
5 JOE THE DEATH PENALTY WHILE THE JURY IN SAN MATEO COUNTY
6 FINDS HIM NOT GUILTY.

7 SUFFICE IT TO SAY, AT THIS JUNCTURE FOR TACTICAL
8 REASONS AND ON THE ADVICE OF COUNSEL, JOE HUNT HAS ELECTED
9 TO MOUNT HIS DEFENSE IN THIS MANNER TO THESE CHARGES IN THIS
10 FORUM.

11 JOE HUNT WAS 23/24 AT THE TIME OF THIS INCIDENT,
12 NOT A TEEN-AGER BUT A YOUNG MAN.

13 THAT IS AN AGE WHEN SOME OF US, MYSELF INCLUDED,
14 WERE STILL STUDENTS, HARDLY AN AGE OF SUCH MATURITY THAT ONE
15 HAS THE WISDOM AND JUDGMENT THAT COMES OF EXPERIENCE.

16 WHEN I THINK OF JOE HUNT'S PERSONAL DEVELOPMENT,
17 IT IS APPROPRIATE TO VIEW HIS AGE AS A MITIGATING FACTOR TO
18 BE TAKEN INTO ACCOUNT. IN ANY EVENT, IT CERTAINLY ISN'T AN
19 AGGRAVATING FACTOR, AS HAS BEEN PORTRAYED TO YOU.

20 FINALLY, AND TO MYSELF MOST IMPORTANT, YOU WILL
21 HEAR AN INSTRUCTION THAT READS:

22 "ANY OTHER CIRCUMSTANCE WHICH EXTENUATES
23 THE GRAVITY OF THE CRIME, EVEN THOUGH IT IS NOT A
24 LEGAL EXCUSE FOR THE CRIME ..."

25 THAT MEANS ANYTHING ELSE, ANYTHING ELSE THAT YOU
26 HAVE HEARD OR SEEN DURING THE COURSE OF THIS TRIAL THAT POINTS
27 TOWARDS A SENTENCE OF LIFE, AS OPPOSED TO A SENTENCE OF
28 DEATH. THAT INCLUDES MR. HUNT'S BACKGROUND, HOW HIS PARENTS

1 RAISED HIM, HIS CHARACTER AND HIS GOOD DEEDS.

2 CERTAINLY, YOU DID HEAR GOOD DEEDS. TO COME IN
3 HERE AND PAINT A PICTURE TO YOU DURING ARGUMENT THAT WE HAVE
4 SEEN, A ONE DIMENSIONAL MAN WITH NO PERSONALITY AND JUST A
5 COLD-BLOODED KILLER, AS THE MAN WRITING A LIST FOR MURDER,
6 IS SIMPLY NOT TRUE. IT IS SIMPLY NOT WHAT THE WITNESSES SAID
7 TO YOU.

8 THERE WERE DEFENSE WITNESSES THAT TALKED ABOUT
9 A HUMAN BEING. WHY DOES THE PROSECUTION DO THAT? BECAUSE
10 IN OUR SOCIETY, TO KILL PEOPLE, WE HAVE TO TAKE AWAY THEIR
11 HUMANITY. WE HAVE TO CALL HIM A MONSTER. WE HAVE TO CALL
12 HIM COLD-BLOODED. WE HAVE TO STRIP HIM OF HIS HUMANITY SO
13 THAT WE -- WHEN YOU READ IN THE NEWSPAPER ABOUT HIS
14 EXECUTION AND DEATH, YOU READ ABOUT A MURDERER EXECUTED, NOT
15 A HUMAN BEING EXECUTED.

16 BUT YOU KNOW IN YOUR HEARTS, AS YOU GO TO
17 DELIBERATE, YOU HAVE GOT A HUMAN BEING'S LIFE IN YOUR
18 HANDS.

19 YOU HEARD HIS MOTHER, SISTER AND BROTHER TESTIFY
20 ABOUT HOW HE WAS EXPLOITED AND WAS A FRUIT PLUCKED BEFORE
21 IT WAS RIPE BY THIS STRANGE, FAGIN-LIKE FATHER. THAT WAS
22 THE MOST BIZARRE ASPECT OF THE TESTIMONY THAT WE HEARD IN
23 THE TRIAL. NOTABLY, HIS FATHER WAS NOWHERE TO BE FOUND
24 DURING JOE'S GREATEST TIME OF NEED. THINK ABOUT THAT.
25 THINK ABOUT HOW IMPORTANT YOUR FATHERS WERE TO YOU. HE WAS
26 NOWHERE TO BE FOUND BY THE DEFENSE.

27 THE EVIDENCE SUGGESTS THAT LARRY GAMSKY, JOE'S
28 FATHER, NEVER ALLOWED HIM TO BECOME ANYTHING HE COULD HAVE

4A 7 1 BECOME BUT USED HIM IN AN IMPATIENT AND SELF-SEEKING AND
2 MANIPULATIVE MANNER FOR HIS OWN GOOD AND EXPLOITED THE TALENTS
3 AND ABILITIES AND GIFTS THAT JOE HUNT HAD DEMONSTRATED ALMOST
4 FROM HIS BIRTH.

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1 IT IS SIGNIFICANT TO NOTE THAT AT THE TIME WHEN
2 JOE HUNT WAS PARTICULARLY UNDER THE CONTROL OF AND HOUSED
3 BY HIS MOTHER, THE PORTRAIT WE HAVE OF JOE HUNT WAS THAT HE
4 EXCELLED IN SCHOOL, HAD A DOUBLE PAPER ROUTE, UP AT 4:30 OR
5 5 O'CLOCK IN THE MORNING AT EIGHT OR NINE YEARS OLD, IN THE
6 RAIN WITH THOSE PAPERS.

7 HE WAS SUPPORTIVE OF HIS SISTER. HE WAS
8 SUPPORTIVE OF HIS BROTHER. HE WAS WELL LIKED BY HIS TEACHERS.
9 HE WAS POPULAR WITH HIS FRIENDS AND STUDIOUS.

10 THE ACTIVITIES WE HEARD ABOUT, HE WAS STUDIOUS,
11 HONEST, THOUGHTFUL, INDUSTRIOUS, SELF-EFFACING. YOU HEARD
12 THAT. I DON'T THINK YOU DOUBTED THAT.

13 IT IS SAD TO NOTE BY CONTRAST, THE DESCRIPTION
14 OF JOE HUNT AFTER HE HAD BEEN UNDER THE EXCLUSIVE CONTROL
15 OF HIS FATHER ARE NOT SO CHEERY. WHAT A LOSS.

16 SUDDENLY, BY HIS FATHER'S HAND, AT 21, JOE IS
17 THRUST WITHOUT COUNSEL OR EXPERIENCE OR ALLY, WITH HIS
18 RAW TALENT, INTO THE MARKETPLACE OF THE MERCANTILE EXCHANGE
19 IN CHICAGO AT 21 IN THAT PIT.

20 AND THEY DO CALL IT A PIT, OF BROKERS. THEN WE
21 HAD LESLIE ETO'S TESTIMONY WHICH IS UNCONTRADICTED THAT
22 DESCRIBED HIM AS A SERIOUS TRADER, A PERSON OF INTELLECT,
23 NOT A DAY TRADER OR SCALPER WHOM SHE LIKENED TO A GAMBLER
24 BUT RATHER, A PERSON WITH AN INTELLECTUAL INTEREST IN THE
25 MARKET, TAKING LONG-TERM POSITIONS THAT WORKED WELL FOR HIM.

26 BUT TRUE TO HIS BROTHER GREG GAMSKY'S TESTIMONY,
27 RYAN GAMSKY -- YOU REMEMBER LARRY GAMSKY, WAS A MAN IN A HURRY.
28 HE IS SENDING LETTERS TO THE MOTHER, KATHLEEN GAMSKY ABOUT

1 HIS NEW BOAT, HIS NEW HOUSE AND HIS NEW CAR. YET, HE WAS
2 UNEMPLOYED.

3 WHERE DO YOU THINK THIS MONEY CAME FROM? HIS
4 SOLE JOB WAS TO EXPLOIT HIS SON. HIS SOLE JOB WAS TO PUSH
5 HIM FORWARD SO THAT HE COULD BENEFIT FROM THE FRUITS OF HIS
6 LABOR AND THAT IN FACT, WAS THE BEGINNING OF THE UNRAVELING
7 OF JOE HUNT, THE LOSS, THE FALL FROM GRACE.

8 JOE HUNT'S EARNINGS WERE SYPHONED OFF BY THIS
9 PARASITE AND HE ENDED UP BEHIND A FINANCIAL EIGHT BALL,
10 INDEBTED TO KARNY'S PARENTS AND INDEBTED TO INVESTORS FROM
11 OHIO AND HIS POSITIONS IN THE MARKET CHANGED AND HE CHANGES.

12 INSTEAD OF BEING IN LONG-TERM POSITIONS, HE HAS
13 NOW TO BECOME A GAMBLER AND GETS HIMSELF IN DEEPER AND DEEPER.
14 THE LOFTY OBJECTIVES HE HAD FOR THE BBC BY ANY ACCOUNT, NEVER
15 HAD A CHANCE.

16 JOE, IRRESPECTIVE, REMAINS WILLING AND INTERESTED
17 IN REPAYING EVERY INVESTOR.

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1 THIS SETTING THAT WE SEE HIM EMERGING OUT OF
2 IN HIS EARLY 20'S, COUPLED WITH THE INJECTION OF LEVIN IN
3 HIS PRESENCE, AND THAT CHEMISTRY AND HUNT'S NAIVETE, IN
4 BELIEVING HE CAN MAKE A COMMITMENT BASED ON A RECEIVABLE
5 FROM LEVIN THAT IS GOING TO RESCUE HIM, INEVITABLY GOT HIM
6 IN DEEPER AND DEEPER AND DEEPER AND THEN LOST TO US ALL.

7 BUT IN SPITE OF THIS, AS WE HAVE TO ADDRESS
8 HUNT'S FATE FOR US AT THIS JUNCTURE AND CONSIDER HIS
9 HUMANITY AND HIS REDEEMING CHARACTERISTICS, HE IS A LIFE
10 WORTH SAVING, PLAIN AND SIMPLE.

11 HE IS NOT SOMEONE SO BEYOND THE PALE THAT NO
12 ONE CAN BE FOUND TO SAY A SINGLE GOOD WORD ABOUT HIM. HE
13 IS NOT SOMEONE THAT WE CAN SAY THAT IT CAN BE SAID THERE
14 IS NO GOOD REASON TO LET HIM CONTINUE TO LIVE.

15 WHAT JOE HUNT DID, AS YOU BELIEVE IT, WAS VERY,
16 VERY WRONG AND REPULSIVE AND REPUGNANT TO ME, AS TO YOUR-
17 SELVES --

18 THE DEFENDANT: YOUR HONOR, I HOPE THIS IS NOT MIS-
19 INTERPRETED IN HIS ARGUMENT.

20 I AM NOT GOING TO MAKE A STATEMENT BUT I WOULD
21 JUST LIKE TIME FOR A RECESS. I THINK I HAVE TO DISCUSS
22 SOMETHING WITH DEFENSE COUNSEL. I HOPE IT IS NOT MIS-
23 INTERPRETED EITHER BY THE JUDGE OR THE JURY.

24 THE COURT: WE WILL TAKE A RECESS AT 12:00 O'CLOCK
25 AND IF COUNSEL WANTS TO HAVE --

26 THE DEFENDANT: I WOULD VERY MUCH LIKE TO HAVE ONE
27 NOW. IT IS SOMETHING I HAVE TO DISCUSS.

28 THE COURT: PLEASE BE QUIET, WILL YOU?

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1 GO AHEAD.

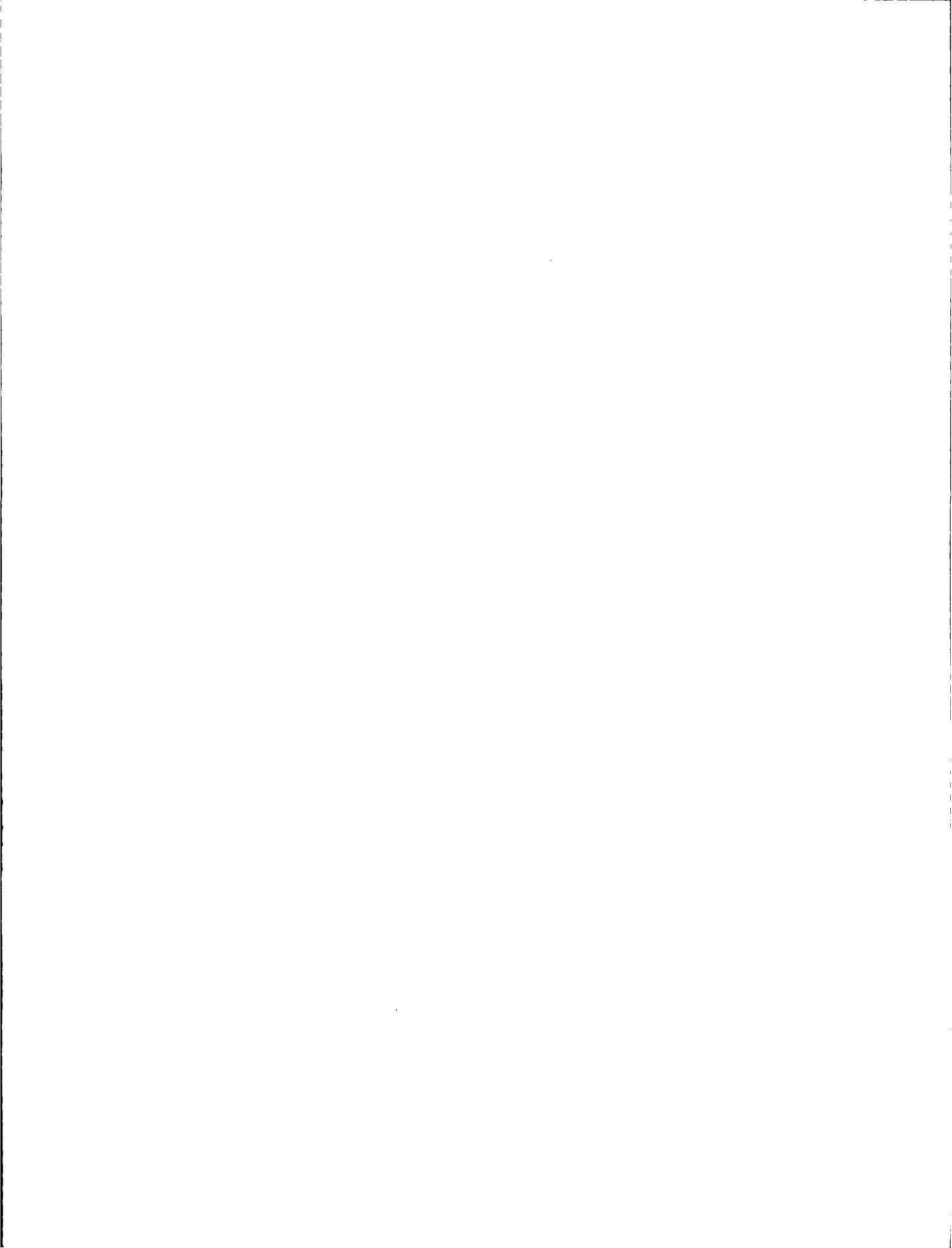
2 MR. BARENS: AS I POINTED OUT TO YOU IN MY ARGUMENT,
3 I MUST ADDRESS THIS MATTER IN TERMS OF WHAT YOU BELIEVE
4 HAS OCCURRED BY YOUR VERDICT. I MUST ADDRESS IT AS THOUGH
5 I BELIEVE IT OR WE CAN'T RELATE TOGETHER DURING THIS ARGUMENT.

6 AGAIN, I SEEK NOT EXCUSE BUT MITIGATION. I
7 PLEAD THAT YOU CONSIDER THE MITIGATING FACTORS TO PERMIT
8 LIFE.

9 WE HAVE SEEN THAT JOE HUNT CAN DO GOOD THINGS
10 AND USEFUL THINGS AND HAS ALWAYS BEEN A CONTRIBUTOR IN THIS
11 SOCIETY. WE HAVE HEARD THROUGHOUT THE DEFENSE WITNESSES
12 ABOUT JOE HUNT AS A TEACHER AND AS THE STUDENT, A YOUNG
13 MAN WHO IN HIS YOUTH, WAS TEACHING YOUNGER STUDENTS IN
14 GRAMMAR SCHOOL THEIR LESSONS, WHO TAUGHT HIS OLDER BROTHER
15 THE SKILLS IN DEBATE AND WHICH HIS CONCERNS AS A TEACHER
16 CONTINUED WITH HIM THROUGH THE PRESENT AND REACHING OUT
17 TO DARRON ROBERTS, THAT DYSLECTIC SON OF THE ROBERTS, WHO
18 HE HELPED TO BRING OUT OF HIS SHELL AND EXPERIENCE A FULLER
19 AND MORE COMPLETE LIFE.

20 THE JUDGE WILL INSTRUCT YOU THAT YOU ARE TO
21 CONSIDER THESE AGGRAVATING AND MITIGATING FACTORS. IT IS
22 VERY IMPORTANT THAT AT THIS STAGE OF THIS PROCEEDING THAT
23 YOU RECALL THAT YOU HAVE AN INDIVIDUAL WEIGHING RESPONSIBILITY
24 AS AN INDIVIDUAL. YOUR JUDGMENT IN AND OF ITSELF IS FINAL
25 UNTO YOURSELF.

26 IN MAKING A DECISION OF SUCH MAGNITUDE, WE
27 WANT TO INSURE AND YOU WILL WANT TO INSURE, EACH ONE OF
28 YOURSELVES, THAT YOUR DECISION IS CORRECT AND THAT IT IS



1 THE RIGHT SENTENCE BEFORE YOU SEND SOMEBODY TO THE GAS CHAMBER.

2 I KNOW AND I BELIEVE THIS: THAT NOT ONE OF
3 YOU WILL RETURN A VERDICT OF DEATH UNLESS YOU ARE ABSOLUTELY
4 CERTAIN YOU ARE DOING THE RIGHT THING.

5 IT DOESN'T MATTER AT THIS STAGE IF NONE OF
6 YOUR FELLOW JURORS -- AND I KNOW IT IS PROPERLY SO THAT
7 SOME OF YOU HAVE BECOME FRIENDS OVER THESE LONG MONTHS --
8 THE FACT THAT YOU MIGHT DISAGREE NOW, THE FACT THAT YOU
9 MIGHT BE THE SOLE JUROR VOTING FOR LIFE FOR MY CLIENT, SHOULD
10 NOT DISSUADE YOU. I ASK YOU TO HOLD YOUR POSITION, STICK
11 BY YOUR BELIEFS AND YOUR CONVICTIONS BECAUSE AT THIS STAGE,
12 THAT IS ALL WE HAVE GOT.

13 WHEN I SAY "WE," I JUST DON'T MEAN JOE HUNT,
14 THE DEFENDANT AND ME AS A LAWYER. I MEAN OUR SOCIETY AND
15 THAT FACT THAT WE CAN STILL VOTE FOR LIFE AND THAT IT IS
16 THE INDIVIDUAL DECISION YOU MUST MAKE, AS THERE IS NO POSSIBLE
17 WAY, WITHOUT EACH OF YOUR VOTES, ALL 12 AND TRUE, THAT HE
18 CAN BE KILLED BY OUR SYSTEM.

19 IN YOUR DELIBERATIONS, I BEG EACH OF YOU TO
20 MAKE AN ARGUMENT FOR LIFE BEFORE YOU VOTE FOR DEATH.

21 CONSIDER EACH MITIGATING FACTOR. CONSIDER
22 HIS HUMANITY, AS A HUMAN AS YOURSELVES BEFORE YOU VOTE.

23 I PRAY THAT ONE OF YOU WILL COME FORWARD AND
24 MAKE A STATEMENT ON BEHALF OF MY CLIENT. THAT ONE OF YOU
25 WILL FIND IT IN YOUR HEART TO SAY "THIS YOUNG MAN SHOULD
26 LIVE, THAT THIS CRIME DOES NOT NECESSITATE DEATH."

27 AS YOU SIT THERE, AND ALL OF YOU HAVE BEEN
28 IN THIS ROOM FOR MONTHS WITH ME AND SEE JOE HUNT AND LOOKED

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1 AT HIM, AND I PRAY YOU LOOK AT HIM AS A HUMAN BEING, NOT
2 AS A CONVICTED MURDERER, BECAUSE THAT ISN'T THE RELEVANT
3 QUESTION.

4 THE PEOPLE THAT LOOKED AT JOE HUNT DURING THOSE
5 MANY YEARS OF HIS LIFE BEFORE HE WAS CONVICTED IN THIS COURT-
6 ROOM, AND EVEN AFTER HE IS CONVICTED IN THIS COURTROOM,
7 CONTINUE TO VIEW HIM AS A LIFE WORTHWHILE. CERTAINLY NOT
8 ROTTEN TO THE CORE. NOT WITHOUT SAVING AND REDEEMING
9 CHARACTERISTICS AND VALUES. CERTAINLY NOT WHERE ANYONE
10 COULDN'T SAY, "SAVE THIS MAN."

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1 EACH ONE OF THEM THAT CAME HERE AS A DEFENSE
2 WITNESSES WAS SAYING, "DON'T KILL JOE HUNT. SAVE THIS MAN.
3 HE IS WORTHWHILE."

4 EACH ONE OF THEM KNEW OF YOUR VERDICT. BUT A
5 VERDICT ALONE, DOES NOT JUSTIFY DEATH. THAT IS WHAT I WANT
6 TO CONTINUE TO ADDRESS YOU UPON.

7 YOUR HONOR, I THINK THAT WE WILL BREAK. IT IS
8 INEVITABLE THAT I WON'T FINISH IN THAT TIME FRAME.

9 THE COURT: ALL RIGHT. THEN YOU CAN CONFER WITH YOUR
10 CLIENT.

11 LADIES AND GENTLEMEN OF THE JURY, WE WILL RESUME
12 AT 1:45. ALL RIGHT?

13 MR. BARENS: AS YOU WISH, YOUR HONOR.

14 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN OF THE JURY,
15 WE'LL TAKE OUR CUSTOMARY RECESS AT THIS TIME UNTIL 1:45 THIS
16 AFTERNOON. YOU ARE STILL UNDER THE SAME ADMONITION THAT I
17 GAVE YOU BEFORE. THANK YOU.

18 (AT 11:58 A.M. A RECESS WAS TAKEN UNTIL
19 1:45 P.M. OF THE SAME DAY.)
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1 SANTA MONICA, CALIFORNIA; FRIDAY, MAY 29, 1987; 1:53 P.M.
2 DEPARTMENT C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS NOTED ON TITLE PAGE.)
4

5 THE COURT: ALL RIGHT. YOU MAY CONCLUDE YOUR ARGUMENT.

6 MR. BARENS: THANK YOU, YOUR HONOR.

7 LADIES AND GENTLEMEN, I WISH TO TAKE AND
8 DIGRESS JUST FOR A MOMENT, UNLESS ANY OF MY REMARKS DURING
9 THIS ARGUMENT BE MISCONSTRUED BY YOURSELVES. THE DEFENDANT
10 HAS NEVER ADMITTED GUILT. I DO NOT BELIEVE THE DEFENDANT
11 KILLED HIM AND I DO NOT, BY ANY REMARK I MADE, WISH TO MAKE
12 YOU THINK THAT I OR MY CO-COUNSEL BELIEVE THE DEFENDANT
13 GUILTY. BUT I MUST ACCEPT YOUR VERDICT, WHICH I KNOW YOU
14 MADE IN A CONSCIENTIOUS EFFORT AND I MUST ADDRESS YOU IN
15 THESE TERMS.

16 YOU ARE IN THE UNIQUE POSITION AT THIS POINT
17 IN TIME, YOU CAN EXTEND MERCY TO JOE HUNT. IT IS JUSTICE,
18 THE SAME JUSTICE THAT WE ALL SEEK TO SHOW A HUMAN BEING,
19 MERCY. THE BIBLE TEACHES US THAT IT IS GOOD TO SHOW MERCY,
20 EVEN TO THOSE WHO HAVE NOT SHOWN MERCY THEMSELVES.

21 ALTHOUGH WE MAY HATE SIN, WE CAN STILL FIND
22 IT IN OUR HEARTS TO SHOW MERCY FOR THE SINNER. THESE ARE
23 BASIC PRINCIPLES OF WESTERN CIVILIZATION UPON WHICH OUR
24 LIVES ARE BASED.

25 THE BIBLE TELLS US THAT "BLESSED ARE THE MERCIFUL
26 FOR THEY SHALL OBTAIN MERCY." I AM NOT IN THE LEAST
27 EMBARRASSED TO STAND IN THIS COURTROOM TODAY ASKING YOU
28 FOR MERCY FOR JOE HUNT. MERCY, SIMPLE MERCY IS AND ALWAYS

1 HAS BEEN AN ESSENTIAL, FUNDAMENTAL PART OF OUR LEGAL SYSTEM
2 AND GOD WILLING, ALWAYS WILL BE.

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1 EVEN CONSIDERING THE POPE WHEN HE WAS SHOT, HIS
2 RESPONSE TO HIS ASSAILANT WAS TO PRAY FOR THAT ASSAILANT AND
3 NOT SEEK HIS DEATH, EVEN THOUGH THAT CRIME BE MONSTROUS.

4 THE BIBLE CERTAINLY PERMITS EXECUTION. WHY DO
5 I TALK TO YOU ABOUT THE BIBLE TODAY? BECAUSE TODAY, IN
6 ADDRESSING HUMAN LIFE, WE MUST ADDRESS THE FUNDAMENTAL VALUE
7 SYSTEM ALL OF US HAVE DEVELOPED OVER OUR LIVES AND THAT WE
8 ALL WILL HAVE TO WALK OUT OF THIS COURTROOM LIVING WITH.

9 OUR BIBLE THOUGH PERMITTING EXECUTION, NEVER
10 REQUIRED IT. THAT SAME BIBLE PERMITTED EXECUTION BY STONING
11 AND BURNING AND TORTURE WHICH IS ABHORRENT AND WHICH WOULD
12 NEVER BE TOLERATED IN CIVILIZED TIMES.

13 YET, I FIND THE THOUGHT OF SOMEONE CHOKING TO
14 DEATH ON CYANIDE IN A HORRIBLE LITTLE GREEN ROOM IS NO LESS
15 TERRIFYING AND REPUGNANT THAN STONING OR BURNING.

16 WHAT WE HAVE TO DECIDE AND I REMIND YOU AGAIN,
17 IS WHETHER OR NOT IN THIS CASE, WE HAVE A SITUATION WHERE
18 THE DEATH PENALTY IS NECESSARY, WHETHER THIS IS ONE OF THOSE
19 SMALL NUMBER OF CASES WITH THOSE SMALL NUMBER OF DEFENDANTS
20 WHERE THE DEATH PENALTY IS REQUIRED BY YOU AS JURORS.

21 IN MAKING THIS DECISION, I URGE YOU TO CONSIDER
22 THE RELUCTANCE OF OTHER CIVILIZATIONS AND COUNTRIES TO USE
23 EXECUTION AS A FORM OF PUNISHMENT. THINK ABOUT THAT. WHICH
24 COUNTRIES USE CAPITAL PUNISHMENT? RUSSIA DOES. SOUTH AFRICA
25 DOES, IRAN DOES WITH A VENGEANCE AND NOT A SINGLE EUROPEAN
26 COUNTRY WILL COUNTERANCE EXECUTION, NOT FOR THE CRIME OF MURDER,
27 NOT EVER.

28 NOT GREAT BRITAIN, NOT FRANCE, NOT WEST GERMANY,

18-2 1 NOT DENMARK, NORWAY, HOLLAND -- THEY HAVE ALL ABOLISHED IT.

2 I WANT TO SPEAK TO YOU SPECIFICALLY ABOUT THE
3 TWO CONCERNS THAT WE HAVE. THE FIRST IS PUNISHMENT AND THE
4 SECOND IS THE PROTECTION OF OUR SOCIETY AND OUR VALUE SYSTEM.
5 I WANT YOU TO KNOW AND TO BELIEVE THAT JOE HUNT WILL BE
6 PUNISHED FOR THE CRIME YOU BELIEVE OCCURRED.

7 I AGREE WITH YOU THAT IF YOU BELIEVE MURDER HAS
8 OCCURRED, THAT IT IS THE MOST SEVERE OF CRIMES. YET, LIFE
9 WITHOUT POSSIBILITY OF PAROLE IS AN UNBELIEVABLY SEVERE
10 PUNISHMENT. NO CONVICTED MURDERER IN THE FIRST DEGREE WILL
11 LEAVE THIS COURTROOM FREE.

12 THERE CAN BE NO LENIENT SENTENCE BUT ONLY A CHOICE
13 BETWEEN TWO. MR. HUNT IS ALREADY SOCIALLY DEAD. THE ONLY
14 QUESTION IS WHEN HE WILL PHYSICALLY DIE.

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1 LET US TALK FOR A MOMENT AND EXAMINE WHAT LIFE
2 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE REALLY MEANS.
3 IT HAS BEEN THROWN AROUND AS THOUGH IT WERE SOME PIECE OF
4 CAKE OR SOME BREAK THAT THE DEFENDANT IS GIVEN.

5 JOE HUNT HAS ALREADY, BY YOUR VERDICT, FOUND
6 OUT SOMETHING THAT NONE OF US EVER WANT TO KNOW. JOE HUNT
7 HAS FOUND OUT WHAT FOREVER MEANS. FOREVER IS SOMETHING
8 WE NEVER WANT TO DEAL WITH. FOREVER MEANS NO UNCERTAINTY
9 ABOUT THE FUTURE. NO HOPE. NO EXCITEMENT ABOUT THE UNKNOWN.
10 FOREVER MEANS KNOWING YOUR ENVIRONMENT IN A PREDICTABLE,
11 REGIMENTED WAY. IT IS A HORROR IN ITSELF.

12 THINK ABOUT HAVING TO SPEND THE REST OF YOUR
13 LIFE IN A PRISON CELL FIVE BY EIGHT WITH A TOILET IN THE
14 MIDDLE. IT IS LIKE SPENDING THE REST OF YOUR LIFE IN YOUR
15 BATHROOM, EXCEPT YOU SHARE IT WITH ANOTHER INDIVIDUAL. THERE
16 ARE NO CURTAINS. SOMEONE TELLS YOU WHEN TO GET UP AND WHEN
17 TO GO TO BED. WHAT TO EAT AND WHAT TO READ.

18 IMAGINE NEVER BEING ABLE TO EAT HOME-COOKED
19 FOOD. NEVER BEING ABLE TO GO OUT. NEVER GOING TO THE
20 THEATER. NEVER GOING TO A DODGER GAME. NEVER TO GO FOR
21 A DRIVE. NEVER TO GO ON A TRIP. NEVER TO GO TO THE BEACH.
22 NEVER TO LOOK UP AND SEE THE STARS. NEVER TO GET AN ICE
23 CREAM CONE. NEVER TO SEE YOUR LOVED ONES EXCEPT DURING
24 VISITING HOURS AND THEN UNDER CONSTANT SUPERVISION AND
25 SURVEILLANCE. NEVER TO BE A FREE MAN AGAIN, WHAT YOUR COUNTRY
26 IS ALL ABOUT AND WHAT THIS LEGAL SYSTEM IS REALLY ABOUT.

27 IS THIS NOT PUNISHMENT MOST SEVERE?

28 THIS IS 1987. JOE HUNT IS 27 YEARS OLD. I

1 AM 42. THINK OF HOW OLD YOU ARE. IN TEN YEARS, IN 1997,
2 I WILL BE 52. MY 14-YEAR-OLD DAUGHTER WILL, HOPEFULLY,
3 BE GETTING OUT OF LAW SCHOOL. WHERE WILL YOU BE?

4 JOE HUNT, IF HE IS ALIVE, WILL BE IN JAIL.
5 IN THE YEAR 2007 AT THE TURN OF THE CENTURY, I WILL BE 62
6 AND, HOPEFULLY, A GRANDFATHER. MR. HUNT WILL BE IN PRISON
7 IF HE IS ALIVE.

8 IN 2017, GOD WILLING, I WILL BE 72 AND, HOPEFULLY,
9 RETIRED IN FAVOR OF THAT DAUGHTER. JOE HUNT WILL BE IN
10 PRISON.

11 IN THE YEAR 2020, WHEN I WOULD BE 75 AND JOE
12 HUNT WOULD BE 60 -- AT 60, THINK OF WHAT YOU WILL BE DOING.
13 THINK OF WHAT YOUR FAMILY AND YOUR OFFSPRING WILL BE DOING.
14 I DON'T KNOW WHAT I WILL BE DOING.

15 THE ONLY THING I AM SURE OF IS THAT IF JOE
16 HUNT IS ALIVE, HE WILL BE IN PRISON. CAN ANYONE SAY THAT
17 THIS IS NOT PUNISHMENT IN ITS MOST SEVERE FORM?

18 IN FACT, IT IS SO SEVERE THAT YOU MAY WONDER
19 WHETHER MR. HUNT MAY BE BETTER OFF DEAD THAN ENDURING LIFE
20 WITHOUT THE POSSIBILITY OF PAROLE. BUT THE ANSWER IS MR.
21 HUNT WANTS TO LIVE.

22 LIFE IMPRISONMENT SIMPLY IS NOT GIVING THIS
23 DEFENDANT A BREAK BUT CHOOSING BETWEEN TWO ALTERNATIVES
24 AND FINDING WHICH IS APPROPRIATE.

25 NO ONE IS LETTING HIM GET AWAY WITH ANYTHING.
26 NO ONE IS GIVING HIM AN EASY WAY OUT, NO BREAK. IT IS A
27 SENTENCE THAT IS SO SEVERE THAT IT IS BEYOND HOPE BUT IT
28 IS A SENTENCE THAT JOE HUNT MUST SERVE.

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IMAGINE FOR A MOMENT, LIVING YOUR LIVES WITHOUT

HOPE.

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1 NOT THE HOPE THAT THINGS GET BETTER, NOT THE HOPE
2 FOR GOOD FORTUNE, NOT THE HOPE TO MATURE AND SEE YOUR CHILDREN
3 DEVELOP AND PROSPER, I MEAN NO HOPE OF ANYTHING, NOTHING.

4 IN TERMS OF OUR CONCERN THAT OUR SOCIETY BE
5 PROTECTED FROM SOMEONE BELIEVED TO HAVE COMMITTED A MURDER,
6 THERE IS NO QUESTION OF THAT ANY MORE UNDER THE LAW. THERE
7 IS NO THREAT FROM SOMEONE INCARCERATED FOREVER. I BEG YOU
8 NOT TO CONFUSE LIFE WITHOUT POSSIBILITY OF PAROLE WITH THE
9 PREVIOUS STATUS OF THE LAW THAT PROVIDED FOR PAROLE.

10 BEFORE 1977, A DEFENDANT CONVICTED UNDER SIMILAR
11 CIRCUMSTANCES COULD HAVE AN OPPORTUNITY FOR A PAROLE HEARING
12 AND GO BEFORE THAT PAROLE BOARD. WE HAVE ALL SEEN SIRHAN
13 SIRHAN AND OTHERS ON TV.

14 WELL, THAT WAS UNDER THE OLD LAW. JOE HUNT WILL
15 NEVER SEE A PAROLE BOARD. YOU HAVE THE CERTITUDE OF KNOWING
16 THAT JOE HUNT NEVER, EVER WILL BE RELEASED. IT CAN NEVER
17 BE DISCUSSED. IT IS NEVER AN OPTION, NOT SINCE YOUR VERDICT.

18 KILLING HIM IS NOT NECESSARY. IN OUR SOCIETY,
19 THE SACREDNESS OF HUMAN LIFE IS THE MOST PROTECTED FACET OF
20 OUR ACTION AND OUR THOUGHTS.

21 LET ME ILLUSTRATE THIS POINT WITH A LITTLE EXAMPLE.
22 LET'S IMAGINE THAT OVER THE NEXT PERIOD OF TIME, YOU HAVE
23 COMPLETED YOUR DELIBERATIONS AND RETURNED TO THIS COURTROOM
24 AND COME BACK WITH YOUR VERDICT AND HIS HONOR ASKS THE CLERK,
25 MADAM CLERK, WILL YOU READ YOUR VERDICT.

26 AND THE CLERK READS:

27 "WE THE JURY SENTENCE JOE HUNT TO
28 DEATH."

20- 2
1 AND AT THAT MOMENT, JOE HUNT IS SITTING THERE
2 AND HAS TO BE PRAYING THAT YOU LET HIM LIVE. HE HAS A HEART
3 ATTACK WHICH ISN'T VERY FAR-FETCHED WHEN YOU THINK ABOUT WHAT
4 WE ARE DOING HERE, JUST LIKE THAT.

5 AND HE SLUMPS OVER IN HIS CHAIR. WHAT WOULD HAPPEN
6 IN THIS COURTROOM? WE WOULD ALL BE STUNNED FOR A MOMENT.
7 THEN THE CLERK WOULD CALL FOR AN AMBULANCE AND DEPUTY QUINN
8 WOULD BE ADMINISTERING CPR, WHICH HE IS TRAINED TO DO.

9 IF ONE OF US BE A DOCTOR OR A NURSE, THEY WOULD
10 CERTAINLY RENDER AID TO THE BEST OF THEIR ABILITY, TO TRY
11 TO SAVE HIS LIFE.

12 WHY? WHY IN THIS COURTROOM AFTER THAT VERDICT
13 WOULD WE TRY TO SAVE THE LIFE OF THIS MAN THAT WE HAVE
14 CONDEMNED TO DEATH? THINK OF THE ABSURDITY OF IT. THINK
15 OF WHAT THAT EXAMPLE SAYS ABOUT THE WAY WE REALLY FEEL.

16 JOE HUNT IS A HUMAN BEING AND AS LIFE IS SACRED
17 TO US, WE BELIEVE IN SAVING LIFE, NOT TAKING LIFE.

18 YOU MUST, PAINFUL THOUGH IT BE, CONSIDER FOR A
19 MOMENT DEATH IN THE GAS CHAMBER. THE MAN IS TAKEN AND STRAPPED
20 IN A CHAIR. A CYANIDE PELLET IS DROPPED INTO THE SULPHURIC
21 ACID AND THE MAN CHOKES TO DEATH, GASPING FOR AIR, SLOWLY
22 AND PAINFULLY.

23 WITNESSES FAINT INVARIABLY. IT IS A HORRIBLE
24 SIGHT. DO WE ADD THAT TO THE PARADE OF HORRORS WE HAVE ALREADY
25 EXPERIENCED IN THIS COURTROOM? IS THAT JUSTICE IN AMERICA?

26 IS THAT JUSTICE? IS IT NECESSARY? THE DECISION
27 ON WHEN A HUMAN BEING SHOULD DIE IS BEST LEFT TO GOD. IF
28 I DID NOT CONSIDER WHAT I FEEL TO BE THE IMMORALITY OF THE

20-7
1 DEATH PENALTY, I WOULD TRIVIALIZE AND BETRAY THE AWESOMENESS
2 OF WHAT IS HAPPENING HERE. WE CANNOT TAKE JOE HUNT'S LIFE
3 WITHOUT PAYING A TERRIBLE PRICE FOR DOING SO.

4 FOR MY ENTIRE LIFE, I HAVE BEEN OPPOSED TO THE
5 DEATH PENALTY. I HAVE WRITTEN AGAINST AND ARGUED AGAINST
6 THE DEATH PENALTY. I HAVE STRUGGLED AGAINST THE DEATH PENALTY
7 LONG BEFORE I WAS EVER A LAWYER, LONG BEFORE I EVER HAD A
8 CLIENT, NOT SOLELY FOR WHAT IT SAYS FOR ANY DEFENDANT THAT
9 I COULD REPRESENT BUT FOR WHAT THE DEATH PENALTY SAYS ABOUT
10 THE REST OF US AS CITIZENS ON THIS PLANET AND MEMBERS OF THE
11 AMERICAN PUBLIC.

12 THE KILLING OF JOE HUNT OR ANY OTHER DEFENDANT
13 DEBASES US ALL AND I BELIEVE THAT IN MY HEART. THE SANCTITY
14 OF HUMAN LIFE IN OUR SOCIETY IS DEGRADED AND NOTHING -- LET
15 ME ASSURE YOU THAT NOTHING IS ACCOMPLISHED, NOTHING WE WOULD
16 WANT TO TEACH OUR CHILDREN IS ACCOMPLISHED AND NOTHING THAT
17 WE WANT TO PASS ALONG TO POSTERITY IS SAFEGUARDED, NOTHING
18 OF VALUE OR REDEMPTION.

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1 NOTHING OF VALUE OR REDEMPTION. WHEN THIS
2 TRIAL IS OVER, YOU WILL ALL WANT THIS EXPERIENCE OF THIS
3 TRIAL TO GO AWAY AND WHAT WE HAVE HAD TO LISTEN TO, TO GO AWAY
4 AND I SHARE THAT WITH YOU.

5 BUT IF YOU SENTENCE JOE HUNT TO DEATH, THAT
6 WILL NOT BE AN EASY MATTER. DECIDING TO TAKE SOMEONE'S
7 LIFE IS NOT AN ORDINARY DECISION. IT IS SOMETHING YOU WILL
8 HAVE TO LIVE WITH THE REST OF OUR LIVES.

9 ONE MUST ALWAYS THINK: DID I DO THE RIGHT
10 THING? AM I CERTAIN OF GUILT? AM I CERTAIN THAT THE
11 PUNISHMENT WAS WARRANTED? AM I CERTAIN THAT THE WHOLE
12 CONCEPT IS VALID?

13 ONE OF THE TERRIBLE COSTS OF EXECUTION IS THE
14 INEVITABLE POSSIBILITY OF MISTAKE, THE POSSIBILITY OF A
15 WRONG VERDICT.

16 IT IS NOT BY MERE CHANCE THAT THERE IS NOT
17 A SINGLE PRECEDENT IN THE HISTORY OF CALIFORNIA LAW FOR
18 EXECUTING A DEFENDANT WHERE NO BODY WAS FOUND. THAT HAS
19 NEVER HAPPENED. THAT HAS NEVER HAPPENED, I BELIEVE, BECAUSE
20 WEDGED SOMEWHERE BETWEEN THE CONCEPTS OF BEYOND A REASONABLE
21 DOUBT AND ABSOLUTE CERTAINTY IS LINGERING DOUBT.

22 EVERY TIME THERE IS A CARMEN CANCHOLA OR A
23 JESUS LOPEZ OR LOUISE WALLER THAT COMES FORWARD -- AND THERE
24 WILL INEVITABLY BE OTHERS -- I, YOU, WE, EACH ONE OF US
25 WILL BE CAUSED TO REEXAMINE JOE HUNT'S DEATH, IF DEATH BE
26 YOUR VERDICT BECAUSE DEATH IS SO IRREVERSIBLE.

27 BECAUSE THAT VERDICT IS SO IRRETRIEVABLE, I
28 SUBMIT TO YOU THAT THE STANDARD OF PROOF, WHEN YOU VOTE

1 DEATH, MUST BE BEYOND A REASONABLE DOUBT BUT ABSOLUTE BECAUSE
2 HERE, YOU DEAL WITH THE ABSOLUTE PENALTY.

3 I AM NOT GOING TO RECENT FOR YOU AND RECALL
4 FOR YOU ALL OF THE CASES THAT WE ARE ALL FAMILIAR WITH AND
5 ALL OF THE STORIES WE ARE ALL FAMILIAR WITH WHERE PEOPLE
6 GOT THE DEATH PENALTY AND IT WAS WRONG AND A MISTAKE.

7 RECENTLY, WE ALL SAW THAT ARTICLE IN THE NEWS-
8 PAPER WHERE A MAN IN FLORIDA, A BARE 15 MINUTES BEFORE HIS
9 DATE WITH THE EXECUTIONER, WAS SPARED BECAUSE THE TRUTH
10 HAD COME OUT.

11 DEAL CAREFULLY WITH DEATH BECAUSE IF THERE
12 BE A MISTAKE, IT CANNOT BE RECTIFIED.

13 THE VOTE FOR DEATH IS NOT ONLY TO KILL JOE
14 HUNT BUT YOU KILL A PART OF HIS FAMILY, HIS MOTHER, HIS
15 SISTER, HIS BROTHER, HIS LOVED ONES.

16 YOU HAVE A CHOICE ABOUT THIS. YOU CAN AVOID
17 THIS.

18 THE LEVINS, IN THEIR BELIEF THAT THEIR SON
19 IS DEAD, PAIN ME GREATLY TO SEE THEM HERE IN COURT. I KNOW
20 HOW YOU FELT, I KNOW HOW I FELT. I AM NOT TELLING YOU THAT
21 I ADMIT THAT MY CLIENT KILLED SOMEONE. I AM TELLING YOU
22 AS A HUMAN BEING HOW DO YOU THINK I FELT PASSOVER NIGHT
23 WHEN I PASSED HIS MOTHER AND FATHER IN THE HALL? HOW DO
24 YOU THINK I FELT SEEING THEM GO THROUGH THIS PAIN AND ANGUISH?
25 I DON'T WISH THAT FOR JOE'S MOTHER AND BROTHER.

26 I DIDN'T HAVE A CHOICE ABOUT THAT FOR THE LEVINS.
27 I HAVE GOT SOME OPPORTUNITY TO CONVINCING YOU FOR JOE'S FAMILY.

28 FRANKLY, I TOO, IN THE EVENT OF DEATH WOULD

1 SUFFER THINKING TO MYSELF, "DID I FAIL TO CONVINCING YOU?
2 WAS I LESS THAN ADEQUATE IN SAVING THIS MAN'S LIFE?"

3 IT IS UNBELIEVABLY HUMBLING, AND I HAVE NEVER
4 BEEN AT THIS STAGE IN MY CAREER BEFORE AND CHOOSE NEVER
5 TO BE AGAIN, IT IS SO HUMBLING TO BE HERE ASKING YOU TO
6 SPARE A LIFE.

7 A LAST CONCEPT BEFORE CLOSING THAT I MUST APPEAL
8 TO IS A SENSE OF FAIRNESS. IS IT FAIR TO KILL JOE HUNT
9 AND LET HIS ACCUSER, WHO ADMITS HIS CULPABILITY, GO FREE?
10 THINK OF FAIRNESS FOR A MOMENT HERE.

11 IF YOU BELIEVE THAT MR. ESLAMINIA DIED, AND
12 I SUBMIT AGAIN THAT IS A TRIAL YET TO OCCUR, THEN SURELY,
13 HE DIED AT THE HANDS OF DEAN KARNY MANIPULATING THAT TAPE.
14 DO YOU KILL MY CLIENT AND LET HIM GO FREE? IT IS SIMPLY
15 NOT FAIR.

16 I SHARE YOUR CONCERNS ABOUT CRIME IN OUR SOCIETY.
17 I HAVE A FAMILY AND CHILDREN WHO I DON'T WANT TO SEE
18 VICTIMS OF VIOLENT CRIME. BUT THE KILLING OF JOE HUNT WILL
19 ACCOMPLISH NOTHING. IT WILL NOT BRING RON LEVIN BACK, IF
20 HE BE DEAD.

21 IF OFFERING THE LIFE OF JOE HUNT, THOUGH GUILTY
22 OR NOT, WOULD ACCOMPLISH SOMETHING, THAT WOULD BE A DIFFERENT
23 MATTER BUT IT CAN'T. WE CANNOT, NO MATTER WHAT, UNDO WHAT
24 YOU AS JURORS SAY HAS BEEN DONE. BUT THERE IS NO REASON
25 TO COMPOUND KILLING AND ANGUISH AND VIOLENCE. MR. HUNT
26 WILL BE PUNISHED FOR THE REST OF HIS LIFE.

27 IN OUR SOCIETY, WE SHED LIFE ONLY OUT OF
28 ABSOLUTE NECESSITY UNDER SITUATIONS OF KILL OR BE KILLED,
29 WAR, SELF-DEFENSE.

22-1

1 YOU CAN HONOR AS REPRESENTATIVES OF OUR SOCIETY,
2 ALL THAT SOCIETY REQUIRES OF YOU IN YOUR VERDICT WITHOUT
3 TAKING JOE HUNT'S LIFE.

4 YOU ARE HERE TO SEE THAT JUSTICE IS DONE. JUSTICE
5 MUST BE DONE IN THIS COURTROOM, AS IN EVERY OTHER COURTROOM.
6 I KNOW YOU WANT TO DO JUSTICE.

7 DOING JUSTICE IN THIS CASE AND AT THIS MOMENT
8 IN TIME DICTATES A VERDICT OF LIFE WITHOUT POSSIBILITY OF
9 PAROLE. THAT IS THE ONLY JUSTICE THAT WILL COME OUT OF
10 THIS CASE. I THANK YOU.

11 THE COURT: LADIES AND GENTLEMEN OF THE JURY, WE WILL
12 TAKE A 15-MINUTE RECESS AT THIS TIME. THE COURT HAS TO
13 GO OVER SOME MINOR MATTERS WITH COUNSEL BEFORE I INSTRUCT
14 YOU.

15 THE SAME ADMONITION APPLIES.

16 COME INTO CHAMBERS, GENTLEMEN.

17 MR. BARENS: COULD I HAVE JUST A MOMENT?

18 THE COURT: YES.

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(THE FOLLOWING PROCEEDINGS WERE HELD
IN CHAMBERS:)

THE COURT: THE FIRST QUESTION IS ABOUT THE SELECTION
OF THE FOREMAN. DO WE KEEP WITH THE SAME FOREMAN THAT THEY
HAVE GOT OR DO THEY SELECT ANOTHER ONE?

MR. WAPNER: I THINK THE CONCLUDING INSTRUCTIONS SAY
THAT THEY SHOULD RETIRE AND SELECT A FOREMAN. AS A PRACTICAL
MATTER, I THINK THAT THEY WILL PROBABLY KEEP THE SAME ONE.

THE COURT: WELL, I JUST WONDERED IF IT WAS DRAFTED
FOR WHEN THEY HAVE A SEPARATE JURY. I WILL TELL THEM THAT
THEY CAN SELECT THE FOREMAN.

MR. BARENS: I HAD ASKED THE SAME QUESTIONS OF LAWYERS
THAT HAVE DONE THIS BEFORE, JUDGE. THEY POINTED ME TO THE
SAME THING MR. WAPNER JUST SAID.

I DON'T KNOW. I DEFER TO YOUR HONOR, OF COURSE.
I THOUGHT THE LANGUAGE OF THE CODE SAID THAT THEY WOULD SELECT
A FOREMAN, ALTHOUGH I HAVE BEEN TOLD THE SAME THING BY --

THE COURT: THE LANGUAGE OF THE CODE? GENERALLY SPEAKING
OF COURSE, THEY ELECT THEIR OWN FOREMAN. BUT THESE ARE TWO
PHASES OF THE SAME CASE.

HOWEVER, I AM PERFECTLY WILLING TO HAVE THEM --

MR. BARENS: I INDICATED THE CODE. I MEANT THE
INSTRUCTIONS, YOUR HONOR.

THE COURT: YES. THE INSTRUCTION SAYS SO BUT THESE
INSTRUCTIONS MIGHT HAVE BEEN FRAMED JUST FOR THE PENALTY PHASE.

AT ANY RATE, I WILL READ THE INSTRUCTION AS IT
IS GIVEN. OKAY?

NOW, YOU GENTLEMEN HAVE SEEN THE JURY VERDICTS?

2R - 1 MR. WAPNER: I HAVE ACTUALLY SEEN THE VERDICTS. DID
2 THE COURT GET THE 2.90 REVISION THAT I DRAFTED?

3 THE COURT: YES I DID. ALL RIGHT?

4 MR. BARENS: YES, YOUR HONOR.

5 THE COURT: ALL RIGHT. NO OBJECTION TO THE VERDICT
6 FORMS.

7 DID YOU HAVE SOME OTHER QUESTION ON JURY
8 INSTRUCTIONS?

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1 MR. WAPNER: JUST ONE, YOUR HONOR, AND THAT IS, THERE
2 IS AN INSTRUCTION THERE THAT IS 8.34 AND IT IS A 1984
3 REVISION AND I THINK IT SHOULD BE MODIFIED TO INCLUDE --

4 THE COURT: THE QUESTION OF INTENT, YOU MEAN?

5 MR. WAPNER: YES.

6 AND I WOULD CITE THE COURT TO THE FIRST DEGREE
7 FELONY MURDER INSTRUCTION WHICH IS 8.27, WHICH IS IN THE POCKET
8 PART AND I THINK WE COULD --

9 THE COURT: WHY HAVEN'T THEY TAKEN THIS OUT THEN IF
10 WHAT YOU SAY IS CORRECT?

11 MR. WAPNER: I DON'T KNOW, YOUR HONOR, BUT I WOULD SAY --

12 THE COURT: WELL, THE CALJIC COMMITTEE CONSTANTLY IS
13 ALERT ON EVERY ONE OF THOSE AND EVERY NEW CASE THAT COMES
14 UP.

15 MR. WAPNER: I AM SURE THEY ARE BUT I DON'T UNDERSTAND
16 WHY, IF THIS IS BASED ON PEOPLE V. BEEMON, THAT THE INTENT
17 REQUIREMENT DOESN'T APPLY TO SECOND DEGREE MURDER AS WELL
18 AS FIRST, AND SINCE IN THIS CASE THE EVIDENCE IS SUCH THAT
19 IF THEY BELIEVE THIS TO BE TRUE, THAT THEY ARE GOING TO FIND
20 THE INTENT, I WOULD ASK THE COURT TO MODIFY 8.34 BY ADDING
21 THE FOLLOWING LANGUAGE.

22 THE COURT: WELL, "KNOWLEDGE OF ANY LAWFUL PURPOSE OF
23 THE PERPETRATOR", WHAT DO YOU WANT TO PUT IN?

24 MR. WAPNER: WELL, PUT IN AFTER "KNOWLEDGE OF THE
25 UNLAWFUL PURPOSE OF THE PERPETRATOR," I WOULD LIKE TO
26 INSERT THE PHRASE "AND WITH THE INTENT OR PURPOSE OF
27 COMMITTING, ENCOURAGING OR FACILITATING THE COMMISSION OF
28 THE OFFENSE."

23-2

1 THE COURT: ALL RIGHT. "WHO, WITH KNOWLEDGE OF THE
2 UNLAWFUL PURPOSE OF THE PERPETRATOR OF THE CRIME."

3 MR. WAPNER: LET ME FIND IT AGAIN.

4 "WHO, WITH KNOWLEDGE OF THE UNLAWFUL PURPOSE OF
5 THE PERPETRATOR OF THE CRIME AND WITH THE INTENT OR PURPOSE" --

6 THE COURT: JUST A MINUTE.

7 MR. WAPNER: "-- THE KNOWLEDGE OF THE UNLAWFUL PURPOSE"
8 IS ALREADY IN THERE.

9 THE COURT: AND WITH WHAT?

10 MR. WAPNER: "WITH THE INTENT OR PURPOSE OF COMMITTING,
11 ENCOURAGING, OR FACILITATING THE COMMISSION."

12 THE COURT: WAIT A MINUTE. I CAN'T WRITE AS FAST AS
13 YOU CAN TALK.

14 WITH THE INTENT OR PURPOSE OF WHAT?

15 MR. WAPNER: OF COMMITTING --

16 THE COURT: YES?

17 MR. WAPNER: -- ENCOURAGING OR FACILITATING.

18 THE COURT: WAIT A MINUTE NOW. "ENCOURAGING OR
19 FACILITATING," YES.

20 MR. WAPNER: CORRECT. "THE COMMISSION OF THE OFFENSE."

21 THE COURT: WHAT ABOUT AID AND ABET IN ITS COMMISSION?

22 MR. WAPNER: I THINK IT IS ALREADY IN THIS INSTRUCTION,
23 ISN'T IT?

24 THE COURT: ALL RIGHT: "AND THE PERPETRATOR OF THE
25 CRIME WITH THE INTENT OR PURPOSE OF COMMITTING, ENCOURAGING
26 OR FACILITATING ITS COMMISSION," IS THAT RIGHT, "AIDS AND
27 ABETS IN ITS COMMISSION," IS THAT IT?

28 MR. WAPNER: LET ME SEE SOMETHING HERE. YES.

24
1 MR. WAPNER: YES, I THINK THAT IS OKAY. JUST INSERT
2 THAT LANGUAGE AND LEAVE THE OTHER LANGUAGE --

3 THE COURT: ALL RIGHT. NOW, YOU WANTED IT TO READ:

4 "WITH KNOWLEDGE OF THE UNLAWFUL
5 PURPOSE OF THE PERPETRATOR OF THE CRIME AND
6 WITH THE INTENT OR PURPOSE OF COMMITTING,
7 ENCOURAGING OR FACILITATING ..."

8 WELL, IF THEY ARE AIDERS AND ABETTORS, HOW CAN
9 THEY COMMIT IT?

10 MR. WAPNER: NO. IT IS THE INTENT TO COMMIT.

11 THE COURT: "WHO WITH THE INTENT ..." WHAT?

12 MR. WAPNER: THE INTENT OR PURPOSE --

13 THE COURT: OF COMMITTING?

14 MR. WAPNER: ENCOURAGING OR FACILITATING.

15 THE COURT: WHAT?

16 MR. WAPNER: THE COMMISSION OF THE OFFENSE.

17 THE COURT: AID AND ABET IN ITS COMMISSION?

18 MR. WAPNER: CORRECT.

19 THE COURT: KEEP ON GOING? ALL RIGHT.

20 MR. WAPNER: CORRECT.

21 THE COURT: OKAY. ANY OBJECTION?

22 MR. BARENS: NO OBJECTION.

23 MR. WAPNER: THAT IS ALL I HAVE.

24 THE COURT: ALL RIGHT, FINE.

25 MR. BARENS: YOUR HONOR, THE DEFENSE HAS SUBMITTED A
26 COUPLE OF INSTRUCTIONS --

27 THE COURT: YES. I HAVE GONE OVER THOSE.

28 MR. BARENS: THERE IS ONE THAT I WOULD LIKE TO ADVISE

24-7
1 THAT THERE IS A MAJOR TYPOGRAPHICAL WORD WRONG ON ONE OF THEM.
2 AND I DID NOT -- IT IS A WORD --

3 THE COURT: YES. IT SAYS DEATH AND IT WAS DEAD.

4 MR. BARENS: SORRY.

5 THE COURT: I HAVE INCORPORATED YOUR SUGGESTIONS IN
6 OTHER LANGUAGE IN THE INSTRUCTIONS.

7 MR. BARENS: THE MATTER IS SUBMITTED, YOUR HONOR. YOUR
8 HONOR, WAS THIS ALL YOUR HONOR HAD ON THE INSTRUCTIONS?

9 THE COURT: THAT IS ALL I HAVE.

10 MR. BARENS: COULD I ASK YOUR HONOR AN INQUIRY?

11 THE COURT: I HAVE NOT ADDED -- I AM ADDING THAT YOU
12 MAY ALSO CONSIDER THE DEFENDANT'S BACKGROUND, CHARACTER, HISTORY
13 AND GOOD DEEDS PERFORMED BY HIM --

14 MR. BARENS: THANK YOU, YOUR HONOR.

15 THE COURT: ALL RIGHT.

16 MR. BARENS: THANK YOU, YOUR HONOR.

17 THE COURT: AND IN DETERMINING ANY PENALTY TO BE
18 IMPOSED ON THE DEFENDANT, YOU SHOULD CONSIDER ALL OF THE
19 EVIDENCE WHICH HAS BEEN RECEIVED DURING ANY PART OF THE TRIAL
20 OF THIS CASE, INCLUDING THE GUILT PHASE AND EVIDENCE IN THE
21 PENALTY PHASE CONCERNING ANY DOUBT AS TO THE DEFENDANT'S
22 GUILT.

23 MR. BARENS: THANK YOU.

24 THE COURT: ALL RIGHT. I THINK THAT ABOUT COVERS
25 EVERYTHING.

26 ALL RIGHT. WE WILL HAVE THE JURY SELECT A NEW
27 FOREMAN, UH?

28 MR. BARENS: YOUR HONOR, MIGHT I ASK A QUESTION, SIR?

24-7
1 THE COURT: YES.

2 MR. BARENS: SIR, NOT HAVING BEEN HERE BEFORE, IF THE
3 JURY BRINGS BACK A VERDICT OF DEATH, I DON'T KNOW EXACTLY
4 WHAT HAPPENS.

5 MR. WAPNER: THERE IS A SENTENCING AFTER THIS.

6 THE COURT: YES.

7 MR. BARENS: AND IT HAPPENS THE SAME DAY?

8 MR. WAPNER: NO.

9 MR. BARENS: IS THERE A PROBATION REPORT OR --

10 THE COURT: I DON'T KNOW WHETHER THERE IS A PROBATION
11 REPORT. THERE ARE CERTAIN THINGS THAT HAVE GOT TO BE DONE,
12 LIKE CERTIFYING IT TO THE GOVERNOR AND SOMETHING LIKE THAT.

13 MR. WAPNER: THAT I AM NOT SURE ABOUT. BUT I THINK --

14 THE COURT: IT WON'T BE DEATH. YOU THINK SO, BUT I
15 DON'T.

16 AT ANY RATE, WE'LL COME TO THAT BRIDGE WHEN WE
17 CROSS IT.

18 MR. BARENS: I AM ONLY INQUIRING BECAUSE IF THEY COME
19 BACK FOR THAT VERDICT, I DON'T KNOW WHAT THE DEFENSE IS
20 SUPPOSED TO DO ON THAT DAY.

21 THE COURT: I WILL TELL YOU.

22 MR. BARENS: ALL RIGHT. OBVIOUSLY, I WILL UNDERTAKE
23 TO FIND OUT WHAT WOULD BE APPROPRIATE.

24 THE COURT: YOU CAN MAKE MOTIONS OF COURSE, MOTIONS TO
25 SET ASIDE THE VERDICT OF DEATH AND I THINK THAT THE JUDGE
26 HAS THE POWER TO DO THAT, TOO.

27 MR. BARENS: THANK YOU, YOUR HONOR.

28 THE COURT: ALL RIGHT. SO I THINK THAT YOU ARE JUMPING

1 THE GUN. THERE WON'T BE ANY VERDICT OF DEATH.

2 MR. BARENS: I WISH I COULD SAY I WAS AS OPTIMISTIC
3 AS YOU ARE, JUDGE.

4 THE COURT: I HAVE BEEN AROUND LONG ENOUGH TO GET A
5 FEELING ABOUT JURIES.

6 MR. BARENS: WELL, I WOULD CERTAINLY THINK THAT IF I
7 COULD TRUST ANYBODY'S JUDGMENT, IT WOULD BE YOURS, YOUR HONOR.

8 THE COURT: YES. DON'T BE CONCERNED ABOUT THAT.

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

4
5 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN OF THE
6 JURY, BEFORE I BEGIN THE READING OF MY INSTRUCTIONS, I WISH
7 TO THANK YOU DEEPLY FOR YOUR SERVICES IN THIS CASE AND YOUR
8 CONSCIENTIOUS ATTENTION THAT YOU GAVE TO THE EVIDENCE BOTH
9 AT THE GUILT PHASE AND AT THE PENALTY PHASE.

10 I BELIEVE THAT YOU ARE FORTUNATE IN SERVING
11 AS JURORS IN THIS CASE BECAUSE YOU HAVE HAD IT PRESENTED
12 TO YOU BY TWO HIGHLY COMPETENT, RESOURCEFUL, REPUTABLE AND
13 ETHICAL MEMBERS OF THE LEGAL PROFESSION, MR. FRED WAPNER,
14 THE DEPUTY DISTRICT ATTORNEY, AND MR. ARTHUR BARENS, THE
15 DEFENSE COUNSEL.

16
17 JURY INSTRUCTIONS

18 THE COURT: (READING:)

19 NOW, THE DEFENDANT IN THIS CASE
20 HAS BEEN FOUND GUILTY OF MURDER IN THE FIRST DEGREE.

21 THE CHARGE THAT THE MURDER WAS
22 COMMITTED UNDER A SPECIAL CIRCUMSTANCE HAS BEEN
23 SPECIALLY FOUND TO BE TRUE.

24 IT IS THE LAW OF THIS STATE THAT
25 THE PENALTY FOR A DEFENDANT FOUND GUILTY OF
26 MURDER IN THE FIRST DEGREE SHALL BE DEATH OR
27 CONFINEMENT IN THE STATE PRISON FOR LIFE WITHOUT
28 THE POSSIBILITY OF PAROLE IN ANY CASE IN WHICH

1 THE SPECIAL CIRCUMSTANCE CHARGED HAS BEEN
2 SPECIALLY FOUND TO BE TRUE.

3 UNDER THE LAW OF THIS STATE YOU MUST NOW
4 DETERMINE WHICH OF SAID PENALTIES SHALL BE IMPOSED
5 ON THE DEFENDANT.

6 IF ANY RULE, DIRECTION OR IDEA IN
7 THESE INSTRUCTIONS IS REPEATED OR STATED IN
8 VARYING WAYS, NO EMPHASIS IS INTENDED AND YOU
9 MUST NOT DRAW ANY INFERENCE BECAUSE OF THIS
10 REPETITION. YOU ARE NOT TO SINGLE OUT ANY CERTAIN
11 SENTENCE OR ANY INDIVIDUAL POINT OR INSTRUCTION
12 AND IGNORE THE OTHERS. YOU SHALL CONSIDER ALL
13 OF THE INSTRUCTIONS AS A WHOLE AND ARE TO REGARD
14 EACH IN THE LIGHT OF ALL THE OTHERS.

15 THE ORDER IN WHICH THE INSTRUCTIONS
16 IS GIVEN HAS NO SIGNIFICANCE AS TO THEIR RELATIVE
17 IMPORTANCE.

18 STATEMENTS MADE BY THE ATTORNEYS
19 DURING THE TRIAL ARE NOT EVIDENCE. HOWEVER, IF
20 COUNSEL FOR THE PARTIES HAVE STIPULATED TO ANY
21 FACT, YOU WILL REGARD THAT FACT AS BEING CONCLUSIVELY
22 PROVED AS TO THE PARTY OR PARTIES MAKING THE
23 STIPULATION.

24 A "STIPULATION" IS AN AGREEMENT
25 BETWEEN ATTORNEYS AS TO MATTERS RELATING TO THE
26 TRIAL.

27 AS TO ANY QUESTION TO WHICH AN
28 OBJECTION WAS SUSTAINED, YOU MUST NOT GUESS WHAT

1 THE ANSWER MIGHT HAVE BEEN OR AS TO THE REASON FOR
2 THE OBJECTION.

3 YOU MUST NEVER ASSUME TO BE TRUE
4 ANY INSINUATION SUGGESTED BY A QUESTION ASKED A
5 WITNESS. A QUESTION IS NOT EVIDENCE AND MAY BE
6 CONSIDERED ONLY AS IT SUPPLIES MEANING TO THE
7 ANSWER.

8 YOU MUST NOT CONSIDER FOR ANY
9 PURPOSE ANY OFFER OF EVIDENCE THAT WAS REJECTED,
10 OR ANY EVIDENCE THAT WAS STRICKEN OUT BY THE
11 COURT; SUCH MATTER IS TO BE TREATED AS THOUGH
12 YOU HAD NEVER HEARD OF IT.

13 EVIDENCE CONSISTS OF TESTIMONY OF
14 WITNESSES, WRITINGS, MATERIAL OBJECTS, OR ANYTHING
15 PRESENTED TO THE SENSES AND OFFERED TO PROVE THE
16 EXISTENCE OR NONEXISTENCE OF A FACT.

17 EVIDENCE IS EITHER DIRECT OR
18 CIRCUMSTANTIAL.

19 INCIDENTALLY, THIS IS A TWICE-TOLD TALE BECAUSE
20 I AM REPEATING NOW MANY OF THE INSTRUCTIONS WHICH I GAVE
21 ON THE GUILT PHASE, WHICH I AM REQUIRED TO DO IF THEY ARE
22 PERTINENT.

23 (READING:)

24 AS I SAY AGAIN, DIRECT EVIDENCE
25 IS EVIDENCE THAT DIRECTLY PROVES A FACT, WITHOUT
26 THE NECESSITY OF AN INFERENCE, AND WHICH BY
27 ITSELF, IF FOUND TO BE TRUE, ESTABLISHES THAT
28 FACT.

1 CIRCUMSTANTIAL EVIDENCE IS EVIDENCE
2 THAT, IF FOUND TO BE TRUE, PROVES A FACT FROM WHICH
3 AN INFERENCE OF THE EXISTENCE OF ANOTHER FACT MAY
4 BE DRAWN.

5 AN INFERENCE IS A DEDUCTION OF
6 FACT THAT MAY LOGICALLY AND REASONABLY BE DRAWN
7 FROM ANOTHER FACT OR GROUP OF FACTS ESTABLISHED BY
8 THE EVIDENCE.

9 IT IS NOT NECESSARY THAT FACTS BE
10 PROVED BY DIRECT EVIDENCE. THEY MAY BE PROVED
11 ALSO BY CIRCUMSTANTIAL EVIDENCE OR BY A COMBINATION
12 OF DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.
13 BOTH DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE
14 ARE ACCEPTABLE AS A MEANS OF PROOF. NEITHER IS
15 ENTITLED TO ANY GREAT WEIGHT THAN THE OTHER.

16 HOWEVER, A FINDING OF GUILT THAT THE
17 DEFENDANT COMMITTED ANY CRIME ALLEGED AS AGGRAVATING
18 CIRCUMSTANCES MAY NOT BE BASED ON CIRCUMSTANTIAL
19 EVIDENCE UNLESS THE PROVED CIRCUMSTANCES ARE NOT
20 ONLY (1) CONSISTENT WITH THE THEORY THAT THE
21 DEFENDANT COMMITTED SUCH CRIME, BUT (2) CANNOT
22 BE RECONCILED WITH ANY OTHER RATIONAL CONCLUSION.

23 FURTHER, EACH FACT WHICH IS
24 ESSENTIAL TO COMPLETE A SET OF CIRCUMSTANCES
25 NECESSARY TO ESTABLISH THE DEFENDANT'S COMMISSION
26 OF ANY SUCH CRIMES MUST BE PROVED BEYOND A REASON-
27 ABLE DOUBT. IN OTHER WORDS, BEFORE AN INFERENCE
28 ESSENTIAL TO ESTABLISH SUCH CRIME MAY BE FOUND

1 TO HAVE BEEN PROVED BEYOND A REASONABLE DOUBT,
2 EACH FACT OR CIRCUMSTANCE UPON WHICH SUCH
3 INFERENCE NECESSARILY RESTS MUST BE PROVED
4 BEYOND A REASONABLE DOUBT.

5 ALSO, IF THE CIRCUMSTANTIAL
6 EVIDENCE IS SUSCEPTIBLE OF TWO REASONABLE
7 INTERPRETATIONS, ONE OF WHICH POINTS TO THE
8 DEFENDANT'S COMMISSION OF SUCH CRIME AND THE OTHER
9 TO HIS INNOCENCE, IT IS YOUR DUTY TO ADOPT THAT
10 INTERPRETATION WHICH POINTS TO THE DEFENDANT'S
11 INNOCENCE AND REJECT THAT INTERPRETATION WHICH
12 POINTS TO HIS COMMISSION OF THAT CRIME.

13 IF, ON THE OTHER HAND, ONE
14 INTERPRETATION OF SUCH EVIDENCE APPEARS TO YOU
15 TO BE REASONABLE AND THE OTHER INTERPRETATION
16 TO BE UNREASONABLE, IT WOULD BE YOUR DUTY TO
17 ACCEPT THE REASONABLE INTERPRETATION AND TO
18 REJECT THE UNREASONABLE.

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1 THE SPECIFIC INTENT WITH WHICH AN ACT
2 IS DONE MAY BE SHOWN BY THE CIRCUMSTANCES SURROUNDING
3 THE COMMISSION OF THE ACT. BUT YOU MAY NOT FIND
4 THAT THE DEFENDANT COMMITTED SUCH CRIME UNLESS THE
5 PROVED CIRCUMSTANCES NOT ONLY ARE CONSISTENT WITH
6 THE THEORY THAT HE HAD THE REQUIRED SPECIFIC INTENT
7 BUT CANNOT BE RECONCILED WITH ANY OTHER RATIONAL
8 CONCLUSION.

9 ALSO, IF THE EVIDENCE AS TO ANY SUCH
10 SPECIFIC INTENT IS SUSCEPTIBLE OF TWO REASONABLE
11 INTERPRETATIONS, ONE OF WHICH POINTS TO THE
12 EXISTENCE OF THE SPECIFIC INTENT AND THE OTHER TO
13 THE ABSENCE OF THE SPECIFIC INTENT, IT IS YOUR DUTY
14 TO ADOPT THAT INTERPRETATION WHICH POINTS TO THE
15 ABSENCE OF THE SPECIFIC INTENT. IF, ON THE OTHER
16 HAND, ONE INTERPRETATION OF THE EVIDENCE AS TO SUCH
17 SPECIFIC INTENT APPEARS TO YOU TO BE REASONABLE
18 AND THE OTHER INTERPRETATION TO BE UNREASONABLE,
19 IT WILL BE YOUR DUTY TO ACCEPT THE REASONABLE
20 INTERPRETATION AND TO REJECT THE UNREASONABLE.

21 NEITHER SIDE IS REQUIRED TO CALL AS
22 WITNESSES ALL PERSONS WHO MAY HAVE BEEN PRESENT
23 AT ANY OF THE EVENTS DISCLOSED BY THE EVIDENCE OR WHO
24 MAY APPEAR TO HAVE KNOWLEDGE OF THESE EVENTS OR
25 TO PRODUCE ALL OBJECTS OR DOCUMENTS MENTIONED OR
26 SUGGESTED BY THE EVIDENCE.

27 NOW, EVERY PERSON WHO TESTIFIES UNDER
28 OATH IS A WITNESS.

25A-2

1 YOU ARE THE SOLE JUDGES OF THE
2 BELIEVABILITY OF A WITNESS AND THE WEIGHT TO BE
3 GIVEN THE TESTIMONY OF EACH WITNESS.

4 IN DETERMINING THE BELIEVABILITY OF
5 A WITNESS, YOU MAY CONSIDER ANYTHING THAT HAS A
6 TENDENCY IN REASON TO PROVE OR DISPROVE THE
7 TRUTHFULNESS OF THE TESTIMONY OF THE WITNESS,
8 INCLUDING BUT NOT LIMITED TO ANY OF THE FOLLOWING:

9 THE EXTENT OF THE OPPORTUNITY OR
10 ABILITY OF THE WITNESS TO SEE OR HEAR OR OTHERWISE
11 BECOME AWARE OF ANY MATTER ABOUT WHICH THE
12 WITNESS HAS TESTIFIED.

13 THE ABILITY OF THE WITNESS TO REMEMBER
14 OR TO COMMUNICATE ANY MATTER ABOUT WHICH THE
15 WITNESS HAS TESTIFIED.

16 THE CHARACTER AND QUALITY OF THAT
17 TESTIMONY.

18 THE Demeanor AND MANNER OF THE WITNESS
19 WHILE TESTIFYING.

20 THE EXISTENCE OR NONEXISTENCE OF A
21 BIAS, INTEREST OR OTHER MOTIVE.

22 EVIDENCE OF THE EXISTENCE OR NONEXISTENCE
23 OF A BIAS, INTEREST OR OTHER MOTIVE.

24 EVIDENCE OF THE EXISTENCE OR
25 NONEXISTENCE OF ANY FACT TESTIFIED TO BY THE
26 WITNESS.

27 THE ATTITUDE OF THE WITNESS TOWARD THE
28 ACTION IN WHICH TESTIMONY HAS BEEN GIVEN BY THE

25F - 1 WITNESS OR TOWARD THE GIVING OF TESTIMONY.

2 A STATEMENT PREVIOUSLY MADE BY THE
3 WITNESS THAT IS CONSISTENT OR INCONSISTENT WITH
4 THE TESTIMONY OF THE WITNESS.

5 A WITNESS WILLFULLY FALSE IN ONE
6 MATERIAL PART OF HIS TESTIMONY IS TO BE DISTRUSTED
7 IN OTHERS. YOU MAY REJECT THE WHOLE TESTIMONY OF
8 A WITNESS WHO WILLFULLY HAS TESTIFIED FALSELY AS
9 TO A MATERIAL POINT, UNLESS, FROM ALL OF THE
10 EVIDENCE, YOU SHALL BELIEVE THE PROBABILITY OF
11 TRUTH FAVORS HIS TESTIMONY IN OTHER PARTICULARS.

12 HOWEVER, DISCREPANCIES IN A WITNESSES'
13 TESTIMONY OR BETWEEN HIS TESTIMONY AND THAT OF
14 OTHERS, IF THERE WERE ANY, DO NOT NECESSARILY MEAN
15 THAT THE WITNESS SHOULD BE DISCREDITED. FAILURE
16 OF RECOLLECTION IS A COMMON EXPERIENCE AND
17 INNOCENT MISRECOLLECTION IS NOT UNCOMMON. IT IS
18 A FACT, ALSO, THAT TWO PERSONS WITNESSING AN
19 INCIDENT OR A TRANSACTION OFTEN WILL SEE OR HEAR
20 IT DIFFERENTLY. WHETHER A DISCREPANCY PERTAINS
21 TO A FACT OF IMPORTANCE OR ONLY TO A TRIVIAL
22 DETAIL SHOULD BE CONSIDERED IN WEIGHING ITS
23 SIGNIFICANCE.

24 YOU ARE NOT BOUND TO DECIDE IN
25 CONFORMITY WITH THE TESTIMONY OF A NUMBER OF
26 WITNESSES, WHICH DOES NOT PRODUCE CONVICTION IN
27 YOUR MIND, AS AGAINST THE TESTIMONY OF A LESSER
28 NUMBER OR OTHER EVIDENCE, WHICH APPEALS TO YOUR

5A

1 MIND WITH MORE CONVINCING FORCE. THIS DOES NOT
2 MEAN THAT YOU ARE AT LIBERTY TO DISREGARD THE
3 TESTIMONY OF THE GREATER NUMBER OF WITNESSES
4 MERELY FROM CAPRICE OR PREJUDICE, OR FROM A
5 DESIRE TO FAVOR ONE SIDE AS AGAINST THE OTHER.
6 IT DOES MEAN THAT YOU ARE NOT TO DECIDE AN ISSUE
7 BY THE SIMPLE PROCESS OF COUNTING THE NUMBER OF
8 WITNESSES WHO HAVE TESTIFIED ON THE OPPOSING SIDES.
9 IT MEANS THAT THE FINAL TEST IS NOT IN THE
10 RELATIVE NUMBER OF WITNESSES, BUT IN THE RELATIVE
11 CONVINCING FORCE OF THE EVIDENCE.

12 IT IS A CONSTITUTIONAL RIGHT OF THE
13 DEFENDANT IN A CRIMINAL TRIAL THAT HE MAY NOT BE
14 COMPELLED TO TESTIFY. YOU MUST NOT DRAW ANY
15 INFERENCE FROM THE FACT THAT HE DOES NOT TESTIFY.
16 FURTHER, YOU MUST NEITHER DISCUSS THE MATTER NOR
17 PERMIT IT TO ENTER INTO YOUR DELIBERATIONS IN ANY
18 WAY.

25F
1 IN DECIDING WHETHER OR NOT TO TESTIFY,
2 THE DEFENDANT MAY CHOOSE TO RELY ON THE STATE OF
3 THE EVIDENCE AND UPON THE FAILURE, IF ANY, OF THE
4 PEOPLE TO PROVE BEYOND A REASONABLE DOUBT EVERY
5 ESSENTIAL ELEMENT OF THE CHARGE HE IS CHARGED WITH,
6 AND NO LACK OF TESTIMONY ON THE DEFENDANT'S PART
7 WILL SUPPLY A PROOF -- WILL SUPPLY A FAILURE OF
8 PROOF BY THE PEOPLE SO AS TO SUPPORT A FINDING
9 AGAINST HIM ON ANY SUCH ESSENTIAL ELEMENT.

10 NOW, A CONFESSION IS A STATEMENT MADE
11 BY A DEFENDANT OTHER THAN AT HIS TRIAL IN WHICH
12 HE HAS ACKNOWLEDGED HIS GUILT OF THE CRIMES FOR
13 WHICH HE IS ON TRIAL. IN ORDER TO CONSTITUTE A
14 CONFESSION, SUCH A STATEMENT MUST ACKNOWLEDGE
15 PARTICIPATION IN THE CRIMES AS WELL AS THE REQUIRED
16 CRIMINAL INTENT OR KNOWLEDGE.

17 A STATEMENT MADE A DEFENDANT OTHER THAN
18 AT HIS TRIAL IS NOT A CONFESSION BUT AN ADMISSION
19 WHENEVER THIS STATEMENT DOES NOT BY ITSELF
20 ACKNOWLEDGE HIS GUILT OF THE CRIMES FOR WHICH HE
21 IS ON TRIAL, BUT WHICH TENDS TO PROVE HIS GUILT
22 WHEN CONSIDERED WITH THE REST OF THE EVIDENCE.

23 YOU ARE THE EXCLUSIVE JUDGES AS TO
24 WHETHER THE DEFENDANT MADE A CONFESSION OR AN
25 ADMISSION AND IF SO, WHETHER SUCH STATEMENT IS TRUE
26 IN WHOLE OR IN PART. IF YOU SHOULD FIND THAT THE
27 DEFENDANT DID NOT MAKE THE STATEMENT, YOU MUST
28 REJECT IT. IF YOU FIND THAT IT IS TRUE IN WHOLE

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1 OR IN PART, YOU MAY CONSIDER THAT PART WHICH YOU
2 FIND TO BE TRUE.

3 EVIDENCE OF AN ORAL CONFESSION OR ORAL
4 ADMISSION OF THE DEFENDANT SHOULD BE VIEWED WITH
5 CAUTION.

6 AN ADMISSION IS A STATEMENT MADE BY
7 THE DEFENDANT OTHER THAN AT HIS TRIAL WHICH DOES
8 NOT BY ITSELF ACKNOWLEDGE HIS GUILT OF THE CRIMES
9 FOR WHICH HE IS ON TRIAL, BUT WHICH STATEMENT
10 TENDS TO PROVE HIS GUILT WHEN CONSIDERED WITH THE
11 REST OF THE EVIDENCE.

12 YOU ARE THE EXCLUSIVE JUDGES, AGAIN,
13 AS TO WHETHER THE DEFENDANT MADE AN ADMISSION, AND
14 IF SO, WHETHER SUCH STATEMENT IS TRUE IN WHOLE OR
15 IN PART. IF YOU SHOULD FIND THAT THE DEFENDANT
16 DID NOT MAKE THE STATEMENT, YOU MUST REJECT IT.
17 IF YOU FIND THAT IT IS TRUE IN WHOLE OR IN PART,
18 YOU MAY CONSIDER THAT PART WHICH YOU FIND TO BE
19 TRUE.

20 EVIDENCE OF AN ORAL ADMISSION OF THE
21 DEFENDANT SHOULD BE VIEWED WITH CAUTION.

22 EVIDENCE HAS BEEN RECEIVED FROM WHICH
23 YOU MAY FIND THAT AN ORAL STATEMENT OF INTENT OR
24 PLAN WAS MADE BY THE DEFENDANT BEFORE THE TWO
25 OFFENSES WITH WHICH HE IS CHARGED INVOLVING ESLAMINIA
26 AND COKER, THE TWO AGGRAVATING CIRCUMSTANCES WHICH
27 YOU ARE TO CONSIDER. IT IS YOUR DUTY TO DECIDE
28 WHETHER SUCH STATEMENTS WERE MADE BY THE DEFENDANT.

25P -

1 EVIDENCE OF ORAL STATEMENTS, AS I TOLD
2 YOU BEFORE, ARE TO BE VIEWED WITH CAUTION.
3 NO PERSON MAY BE CONVICTED OF A CRIMINAL OFFENSE,
4 EVEN OF THOSE AGGRAVATING CIRCUMSTANCES, UNLESS
5 THERE IS SOME PROOF OF EACH ELEMENT OF THE CRIME
6 INDEPENDENT OF ANY CONFESSION OR ADMISSION MADE
7 BY HIM OUTSIDE OF THIS TRIAL.

8 THE IDENTITY OF THE PERSON WHO IS
9 ALLEGED TO HAVE COMMITTED THE CRIME IS NOT AN
10 ELEMENT OF THE CRIME NOR IS THE DEGREE OF THE
11 CRIME. SUCH IDENTITY OR DEGREE OF THE CRIME MAY
12 BE ESTABLISHED BY AN ADMISSION OR CONFESSION.

13 A PERSON IS QUALIFIED TO TESTIFY AS
14 AN EXPERT IF HE HAS SPECIAL KNOWLEDGE, SKILL,
15 EXPERIENCE, TRAINING OR EDUCATION SUFFICIENT TO
16 QUALIFY HIM AS AN EXPERT ON THE SUBJECT TO WHICH
17 HIS TESTIMONY RELATES.

18 DULY QUALIFIED EXPERTS MAY GIVE THEIR
19 OPINION ON QUESTIONS IN CONTROVERSY AT A TRIAL.
20 TO ASSIST YOU IN DECIDING SUCH QUESTIONS, YOU MAY
21 CONSIDER THE OPINION WITH THE REASONS GIVEN FOR
22 IT, IF ANY, BY THE EXPERT WHO GIVES THE OPINION.
23 YOU MAY ALSO CONSIDER THE QUALIFICATIONS AND
24 CREDIBILITY OF THE EXPERT.

25 YOU ARE NOT BOUND TO ACCEPT AN
26 EXPERT OPINION AS CONCLUSIVE, BUT SHOULD GIVE TO
27 IT THE WEIGHT TO WHICH YOU FIND IT TO BE ENTITLED.
28 YOU MAY DISREGARD ANY SUCH OPINION IF YOU FIND IT

1 TO BE UNREASONABLE.

2 REGARDING THE CRIMES ALLEGED AS FACTORS
3 IN AGGRAVATION, A DEFENDANT IS PRESUMED TO BE
4 INNOCENT UNTIL THE CONTRARY IS PROVED. IN CASE
5 OF A REASONABLE DOUBT, WHETHER HIS GUILT IS --
6 WHETHER HE COMMITTED ANY -- ANY OF SAID CRIMES,
7 YOU MAY NOT CONSIDER THEM AS FACTORS IN
8 AGGRAVATION. THIS PRESUMPTION PLACES UPON THE
9 STATE THE BURDEN OF PROVING THE DEFENDANT'S
10 COMMISSION OF THESE CRIMES BEYOND A REASONABLE
11 DOUBT.

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1 REASONABLE DOUBT IS DEFINED AS
2 FOLLOWS: IT IS NOT A MERE POSSIBLE DOUBT BECAUSE
3 EVERYTHING RELATING TO HUMAN AFFAIRS AND DEPENDING
4 UPON MORAL EVIDENCE, IS OPEN TO SOME POSSIBLE OR
5 IMAGINARY DOUBT. IT IS THAT STATE OF THE CASE
6 WHICH, AFTER THE ENTIRE COMPARISON OF ALL OF THE
7 EVIDENCE, LEAVES THE MINDS OF THE JURORS IN THAT
8 CONDITION THAT THEY CANNOT SAY THEY FEEL AN ABIDING
9 CONVICTION TO A MORAL CERTAINTY OF THE TRUTH OF
10 THE CHARGE.

11 THE PERSONS CONCERNED IN THE
12 COMMISSION OF THE CRIME WHO ARE REGARDED BY LAW AS
13 PRINCIPALS IN THE CRIME THUS COMMITTED AND EQUALLY
14 GUILTY THEREOF, INCLUDE ONE, THOSE WHO DIRECTLY
15 AND ACTIVELY COMMIT THE ACT CONSTITUTING THE
16 CRIME; OR TWO, THOSE WHO AID AND ABET IN THE
17 COMMISSION OF THE CRIME. ONE WHO AIDS AND ABETS
18 IS NOT ONLY GUILTY OF THE PARTICULAR CRIME THAT
19 TO HIS KNOWLEDGE, HIS CONFEDERATES ARE CONTEMPLATING
20 COMMITTING, BUT HE IS ALSO LIABLE FOR THE NATURAL
21 AND PROBABLE CONSEQUENCES OF ANY ACT THAT HE
22 KNOWINGLY AND INTENTIONALLY AIDED OR ENCOURAGED.

23 IT IS FOR YOU THE JURY, TO DETERMINE
24 WHETHER THE DEFENDANT IS GUILTY OF THE CRIMES
25 ALLEGEDLY CONTEMPLATED AND IF SO, WHETHER THE
26 CRIMES CHARGED WERE A NATURAL AND PROBABLE
27 CONSEQUENCE OF THE CRIMINAL ACT KNOWINGLY AND
28 INTENTIONALLY ENCOURAGED.

1 A PERSON AIDS AND ABETS THE
2 COMMISSION OF A CRIME WHEN HE: (1) WITH
3 KNOWLEDGE OF THE UNLAWFUL PURPOSE OF THE
4 PERPETRATOR; AND (2), WITH THE INTENT AND PURPOSE
5 OF COMMITTING, ENCOURAGING OR FACILITATING THE
6 COMMISSION OF THE OFFENSE BY ACT OR ADVICE, AIDS,
7 PROMOTES, ENCOURAGES OR INSTIGATES THE COMMISSION
8 OF THE CRIME.

9 A PERSON WHO AIDS AND ABETS THE
10 COMMISSION OF A CRIME NEED NOT BE PERSONALLY
11 PRESENT AT THE SCENE OF THE CRIME. HOWEVER, MERE
12 PRESENCE AT THE SCENE OF A CRIME WHICH DOES NOT
13 IN ITSELF ASSIST THE COMMISSION OF THE CRIME DOES
14 NOT AMOUNT TO AIDING AND ABETTING. MERE KNOWLEDGE
15 OF THE CRIME BEING COMMITTED AND FAILURE TO PREVENT
16 IT DOES NOT AMOUNT TO AIDING AND ABETTING.

17 AN ACCOMPLICE IS ONE WHO WAS
18 SUBJECT TO PROSECUTION FOR THE IDENTICAL OFFENSE
19 CHARGED AGAINST THE DEFENDANT ON TRIAL. TO BE
20 AN ACCOMPLICE, THE PERSON MUST HAVE AIDED, PROMOTED,
21 ENCOURAGED OR INSTIGATED BY ACT OR ADVICE THE
22 COMMISSION OF SUCH OFFENSE WITH KNOWLEDGE OF THE
23 UNLAWFUL PURPOSE OF THE PERSON WHO COMMITTED THE
24 OFFENSE AND WITH THE INTENT OR PURPOSE OF
25 COMMITTING, ENCOURAGING OR FACILITATING THE
26 COMMISSION OF THE OFFENSE.

27 A DEFENDANT CANNOT BE FOUND GUILTY,
28 BASED ON THE TESTIMONY OF AN ACCOMPLICE UNLESS

1 SUCH TESTIMONY IS CORROBORATED BY OTHER EVIDENCE
2 WHICH TENDS TO CONNECT SUCH DEFENDANT WITH THE
3 COMMISSION OF THE OFFENSE.

4 TO CORROBORATE THE TESTIMONY OF
5 AN ACCOMPLICE, THERE MUST BE EVIDENCE OF SOME ACT
6 OR FACT RELATED TO THE OFFENSE WHICH IS BELIEVED,
7 BY ITSELF AND WITHOUT ANY INTERPRETATION OR
8 DIRECTION FROM THE TESTIMONY OF THE ACCOMPLICE,
9 TENDS TO CONNECT THE DEFENDANT WITH THE COMMISSION
10 OF THE OFFENSE CHARGED.

11 HOWEVER, IT IS NOT NECESSARY THAT
12 THE EVIDENCE OF CORROBORATION BE SUFFICIENT IN
13 ITSELF, TO ESTABLISH EVERY ELEMENT OF THE OFFENSE.
14 ALL THAT IS NECESSARY IS THAT IT CORROBORATE EVERY
15 FACT TO WHICH THE ACCOMPLICE TESTIFIES.

16 IN DETERMINING WHETHER AN
17 ACCOMPLICE HAS BEEN CORROBORATED, YOU MUST FIRST
18 ASSUME THE TESTIMONY OF THE ACCOMPLICE HAS BEEN
19 REMOVED FROM THE CASE. YOU MUST THEN DETERMINE
20 WHETHER THERE IS ANY REMAINING EVIDENCE WHICH
21 TENDS TO CONNECT THE DEFENDANT WITH THE COMMISSION
22 OF THE OFFENSE. IF THERE IS NOT SUCH INDEPENDENT
23 EVIDENCE WHICH TENDS TO CONNECT THE DEFENDANT
24 WITH THE COMMISSION OF THE OFFENSE, THE TESTIMONY
25 OF THE ACCOMPLICE IS NOT TO BE CORROBORATED.

26 IF THERE IS SUCH INDEPENDENT
27 EVIDENCE WHICH YOU BELIEVE, THEN THE TESTIMONY OF
28 THE ACCOMPLICE IS CORROBORATED.

26A-4

1 IN THE CRIME OF MURDER WHICH
2 INVOLVES ESLAMINIA, IF THE CRIME WAS COMMITTED BY
3 ANYONE, THE WITNESS, DEAN KARNY WAS AN ACCOMPLICE
4 AS A MATTER OF LAW AND HIS TESTIMONY IS SUBJECT
5 TO THE RULE REQUIRING CORROBORATION.

6 THE TESTIMONY OF THE ACCOMPLICE
7 OUGHT TO BE VIEWED WITH DISTRUST. THIS DOES NOT
8 MEAN THAT YOU MAY ARBITRARILY DISREGARD SUCH
9 TESTIMONY. BUT YOU SHOULD GIVE IT THE WEIGHT TO
10 WHICH YOU FIND IT TO BE ENTITLED AFTER EXAMINING
11 IT WITH CARE AND CAUTION AND IN LIGHT OF ALL OF
12 THE EVIDENCE IN THE CASE.

13 EVIDENCE THAT A PERSON WAS IN THE
14 COMPANY OF OR ASSOCIATED WITH ONE OR MORE PERSONS
15 ALLEGED OR PROVED TO HAVE BEEN MEMBERS OF A
16 CONSPIRACY, IS NOT IN ITSELF, SUFFICIENT TO
17 PROVE THAT SUCH PERSON WAS A MEMBER OF THE ALLEGED
18 CONSPIRACY.

19 IN THE CRIME INVOLVING MR. COKER,
20 NAMELY, THE FIRING UPON AN INHABITED BUILDING,
21 THERE MUST FIRST EXIST A UNION OR JOINT OPERATION
22 OF ACT OR CONDUCT AND A GENERAL CRIMINAL INTENT.

23 TO CONSTITUTE GENERAL CRIMINAL
24 INTENT, IT IS NOT NECESSARY THAT THERE SHOULD
25 EXIST AN INTENT TO VIOLATE THE LAW. WHEN A PERSON
26 INTENTIONALLY DOES THAT WHICH THE LAW FINDS TO BE
27 A CRIME OR DECLARES TO BE A CRIME, HE IS ACTING
28 WITH GENERAL CRIMINAL INTENT, EVEN THOUGH HE MAY

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NOT KNOW THAT HIS ACT OR CONDUCT IS UNLAWFUL.

IN THE AGGRAVATING CIRCUMSTANCES
CHARGED AS TO ESLAMINIA, IN THE ESLAMINIA MATTER,
NAMELY MURDER, THERE MUST EXIST A UNION OR JOINT
OPERATION OF ACT OR CONDUCT AND A CERTAIN SPECIFIC
INTENT IN THE MIND OF THE PERPETRATOR.

UNLESS A SPECIFIC INTENT EXISTS,
THE CRIME TO WHICH IT RELATES IS NOT COMMITTED.
THE SPECIFIC INTENT REQUIRED IS INCLUDED IN THE
DEFINITION OF THE CRIME CHARGED.

26B

26 1 EVERY PERSON WHO MALICIOUSLY AND
2 WILLFULLY DISCHARGES A FIREARM AT AN OCCUPIED
3 BUILDING, IS GUILTY OF THE CRIME OF A VIOLATION
4 OF SECTION 246 OF THE PENAL CODE.

5 IN ORDER TO PROVE THE COMMISSION OF
6 SUCH CRIME, EACH OF THE FOLLOWING ELEMENTS MUST
7 BE PROVED: 1, THAT A PERSON WILLFULLY AND
8 MALICIOUSLY DISCHARGED A FIREARM; 2, THAT THE
9 FIREARM WAS DISCHARGED AT AN OCCUPIED BUILDING.

10 AS USED IN THESE INSTRUCTIONS, THE
11 WORD "FIREARM" INCLUDES ANY DEVICE DESIGNED TO BE
12 USED AS A WEAPON FROM WHICH A PROJECTILE MAY BE
13 EXPELLED BY THE FORCE OF AN EXPLOSION OR OTHER FORM
14 OF COMBUSTION.

15 THE WORD "WILLFUL" WHEN APPLIED TO THE
16 INTENT WITH WHICH AN ACT IS DONE OR OMITTED AND
17 AS USED IN MY INSTRUCTIONS, IMPLIES SIMPLY A
18 PURPOSE OR WILLINGNESS TO COMMIT THE ACT OR TO MAKE
19 THE OMISSION IN QUESTION. THE WORD DOES NOT REQUIRE
20 IN ITS MEANING ANY INTENT TO VIOLATE THE LAW OR
21 TO INJURE ANOTHER OR TO ACQUIRE ANY ADVANTAGE.

22 THE WORD "MALICIOUSLY" MEANS A WISH
23 TO VEX, ANNOY OR INJURE ANOTHER PERSON OR AN INTENT
24 TO DO A WRONGFUL ACT.

25 NOW, THE WORD "HOMICIDE" MEANS THE
26 KILLING OF ONE HUMAN BEING BY ANOTHER, LAWFULLY
27 OR UNLAWFULLY.

28 AS USED IN THESE INSTRUCTIONS, THE WORD

5B-
1 "HOMICIDE" INCLUDES MURDER AND MANSLAUGHTER WHICH
2 ARE UNLAWFUL AND THE ACTS OF EXCUSABLE AND
3 JUSTIFIABLE HOMICIDE WHICH ARE LAWFUL, WHICH DO
4 NOT APPLY IN THIS CASE, HOWEVER.

5 THE CRIME OF MURDER IS THE UNLAWFUL
6 KILLING OF A HUMAN BEING WITH MALICE AFORETHOUGHT
7 OR THE UNLAWFUL KILLING OF A HUMAN BEING WHICH
8 OCCURS DURING THE COMMISSION OR ATTEMPTED
9 COMMISSION OF A FELONY INHERENTLY DANGEROUS TO HUMAN
10 LIFE.

11 IN ORDER TO PROVE THE COMMISSION OF
12 THE CRIME OF MURDER, EACH OF THE FOLLOWING ELEMENTS
13 MUST BE PROVED: 1, THAT A HUMAN BEING WAS KILLED;
14 2, THAT THE KILLING WAS UNLAWFUL; 3, THAT THE
15 KILLING WAS DONE WITH MALICE AFORETHOUGHT OR
16 OCCURRED DURING THE COMMISSION OR ATTEMPT TO COMMIT
17 A CRIME INHERENTLY DANGEROUS TO HUMAN LIFE.

18 KIDNAPPING FOR PURPOSES OF EXTORTION
19 IS A FELONY INHERENTLY DANGEROUS TO HUMAN LIFE.

20 MALICE MAY BE EXPRESS OR IMPLIED.
21 MALICE IS EXPRESS WHEN THERE IS MANIFESTED AN
22 INTENTION UNLAWFULLY TO KILL A HUMAN BEING.
23 MALICE IS IMPLIED WHEN THE KILLING RESULTS FROM
24 AN INTENTIONAL ACT INVOLVING A HIGH DEGREE OF
25 PROBABILITY THAT IT WOULD RESULT IN DEATH, WHICH
26 ACT IS DONE FOR A BASE, ANTISOCIAL PURPOSE AND WITH
27 A WANTON DISREGARD FOR HUMAN LIFE OR WHERE THE
28 KILLING RESULTS FROM AN INTENTIONAL ACT, THE

26
1 NATURAL CONSEQUENCES OF WHICH ARE DANGEROUS TO LIFE,
2 WHICH ACT IS DELIBERATELY PERFORMED BY THE PERSON
3 WHO KNOWS THE CONDUCT ENDANGERS ANOTHER AND WHO
4 ACTS WITH CONSCIOUS DISREGARD FOR LIFE.

5 WHEN IT IS SHOWN A KILLING RESULTED
6 FROM THE INTENTIONAL DOING OF AN ACT WITH EXPRESS
7 OR IMPLIED MALICE, NO OTHER MENTAL STATE NEED BE
8 SHOWN TO ESTABLISH THE MENTAL STATE OF MALICE
9 AFORETHOUGHT.

10 THE MENTAL STATE CONSTITUTING MALICE
11 AFORETHOUGHT DOES NOT NECESSARILY REQUIRE ANY ILL
12 WILL OR HATRED OF THE PERSON KILLED. AFORETHOUGHT
13 DOES NOT IMPLY DELIBERATION OR THE LAPSE OF
14 CONSIDERABLE TIME. IT ONLY MEANS THAT THE
15 REQUIRED MENTAL STATE MUST PRECEDE RATHER THAN
16 FOLLOW THE ACT.

17 MURDER OF THE SECOND DEGREE IS THE
18 UNLAWFUL KILLING OF A HUMAN BEING AS A DIRECT
19 CAUSAL RESULT OF AN INTENTIONAL ACT INVOLVING A
20 HIGH DEGREE OF PROBABILITY THAT IT WILL RESULT IN
21 DEATH, WHICH ACT IS DONE FOR A BASE, ANTISOCIAL
22 PURPOSE AND WITH A WANTON DISREGARD FOR HUMAN LIFE
23 OR THE NATURAL CONSEQUENCES OF WHICH ARE DANGEROUS
24 TO LIFE, WHICH ACT WAS DELIBERATELY PERFORMED BY
25 A PERSON WHO KNOWS THAT HIS CONDUCT ENDANGERS THE
26 LIFE OF ANOTHER AND WHO ACTS WITH CONSCIOUS
27 DISREGARD FOR HUMAN LIFE.

28 WHEN THE KILLING IS THE DIRECT RESULT

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OF SUCH ACT, IT IS NOT NECESSARY TO ESTABLISH THAT THE DEFENDANT INTENDED THAT THE ACT WOULD RESULT IN THE DEATH OF A HUMAN BEING.

THE UNLAWFUL KILLING OF A HUMAN BEING, WHETHER INTENTIONAL, UNINTENTIONAL, OR ACCIDENTAL, WHICH OCCURS AS A DIRECT, CAUSAL RESULT OF THE COMMISSION OR ATTEMPT TO COMMIT A FELONY INHERENTLY DANGEROUS TO HUMAN LIFE, NAMELY, THE CRIME OF KIDNAPPING FOR PURPOSES OF EXTORTION AND WHERE THERE WAS IN THE MIND OF THE PERPETRATOR THE SPECIFIC INTENT TO COMMIT SUCH CRIME, IS MURDER IN THE SECOND DEGREE.

THE SPECIFIC INTENT TO COMMIT KIDNAPPING FOR PURPOSES OF EXTORTION AND THE COMMISSION OR ATTEMPT TO COMMIT SUCH CRIME MUST BE PROVED BEYOND A REASONABLE DOUBT.

IF A NUMBER OF PERSONS CONSPIRE TOGETHER TO COMMIT A FELONY INHERENTLY DANGEROUS TO HUMAN LIFE, NAMELY, KIDNAPPING FOR PURPOSES OF EXTORTION AND THE LIFE OF ANOTHER PERSON IS TAKEN BY ONE OR MORE OF THEM IN THE PROSECUTION OF THE COMMON DESIGN AND IF SUCH KILLING IS DONE TO FURTHER SUCH COMMON PURPOSE OR IS AN ORDINARY AND PROBABLE RESULT OF THE PURSUIT OF THIS PURPOSE, ALL OF THE COCONSPIRATORS ARE DEEMED IN LAW TO BE EQUALLY GUILTY OF MURDER OF THE SECOND DEGREE, WHETHER THE KILLING IS INTENTIONAL, UNINTENTIONAL OR ACCIDENTAL.

IF A HUMAN BEING IS KILLED BY ANY ONE

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OF SEVERAL PERSONS ENGAGED IN THE PERPETRATION OR ATTEMPT TO PERPETRATE A FELONY INHERENTLY DANGEROUS TO HUMAN LIFE, NAMELY, KIDNAPPING FOR PURPOSE OF EXTORTION, ALL PERSONS WHO DIRECTLY AND ACTIVELY COMMIT THE ACT CONSTITUTING SUCH CRIME OR WHO WITH KNOWLEDGE OF THE UNLAWFUL PURPOSE OF THE PERPETRATOR OF THE CRIME AND WITH THE INTENT OR PURPOSE OF COMMITTING, ENCOURAGING, FACILITATING THE COMMISSION OF THE OFFENSE AND WHO AID AND ABET IN ITS COMMISSION WHETHER PRESENT OR NOT, WHO ADVISE AND ENCOURAGE ITS COMMISSION, ARE GUILTY OF MURDER IN THE SECOND DEGREE, WHETHER THE KILLING IS INTENTIONAL, UNINTENTIONAL OR ACCIDENTAL.

6C F

260 1 SECTION 209 OF THE PENAL CODE PROVIDES
2 THAT EVERY PERSON WHO SEIZES, ABDUCTS OR KIDNAPS
3 OR CARRIES AWAY ANY INDIVIDUAL BY ANY MEANS
4 WHATSOEVER, WITH THE SPECIFIC INTENT TO HOLD
5 AND DETAIN SUCH PERSON FOR RANSOM, REWARD OR TO
6 COMMIT EXTORTION OR TO EXACT FROM ANOTHER ANY
7 MONEY OR VALUABLE THING, IS GUILTY OF THE CRIME
8 OF A VIOLATION OF SECTION 209 OF THE PENAL CODE.

9 IN ORDER TO PROVE THE COMMISSION OF
10 THE CRIME OF A VIOLATION OF SECTION 209 OF THE PENAL
11 CODE, EACH OF THE FOLLOWING ELEMENTS MUST BE PROVED
12 BEYOND A REASONABLE DOUBT: 1, THAT A PERSON WAS
13 KIDNAPPED AND CARRIED AWAY; AND 2, THAT THE
14 KIDNAPPING OR ABDUCTION OF SUCH PERSON WAS DONE
15 WITH THE SPECIFIC INTENT TO HOLD OR DETAIN SUCH
16 OTHER PERSON TO COMMIT EXTORTION OR TO OBTAIN
17 SOMETHING OF VALUE FROM ANOTHER.

18 IF YOU SHOULD FIND THAT THE DEFENDANT
19 WAS CHARGEABLE WITH SUCH OFFENSE, YOU ALSO MUST
20 FIND WHETHER THE PERSON KIDNAPPED SUFFERED BODILY
21 HARM IN CONNECTION WITH OR AS A RESULT OF AN ACT
22 DONE BY THE DEFENDANT IN THE COMMISSION OF THE
23 CRIME.

24 BODILY HARM, AS THAT TERM IS USED IN
25 THIS INSTRUCTION, MEANS SUBSTANTIAL INJURY TO THE
26 BODY OR DEATH OF THE PERSON WHO IS KIDNAPPED BY
27 THE APPLICATION OF PHYSICAL FORCE ABOVE AND IN
28 ADDITION TO THE FORCE WHICH IS NECESSARILY INVOLVED

260 2
1 IN THE COMMISSION OF SUCH KIDNAPPING.

2 WHERE A PERSON IS CHARGED WITH THE CRIME
3 OF KIDNAPPING FOR THE PURPOSE OF EXTORTION, IT IS
4 NOT NECESSARY TO ESTABLISH THAT SUCH PURPOSE WAS
5 ACCOMPLISHED, FOR A CRIME OF THAT NATURE IS
6 COMPLETE IF AND WHEN THE KIDNAPPING IS DONE FOR
7 SUCH PURPOSE.

8 IN DETERMINING WHICH PENALTY IS TO BE
9 IMPOSED ON THE DEFENDANT, YOU SHALL CONSIDER ALL
10 OF THE EVIDENCE WHICH HAS BEEN RECEIVED DURING ANY
11 PART OF THE TRIAL IN THIS CASE, INCLUDING THE GUILT
12 PHASE AND THE EVIDENCE IN THE PENALTY PHASE
13 CONCERNING ANY DOUBT OF THE DEFENDANT'S GUILT IN
14 THIS CASE.

15 YOU SHALL CONSIDER AND TAKE INTO ACCOUNT
16 AND BE GUIDED BY THE FOLLOWING FACTORS, IF APPLICABLE:
17 A, THE CIRCUMSTANCES OF THE CRIME OF WHICH THE
18 DEFENDANT WAS CONVICTED IN THE PRESENT PROCEEDINGS
19 AND THE EXISTENCE OF ANY SPECIAL CIRCUMSTANCES
20 FOUND TO BE TRUE; B, THE PRESENCE OR ABSENCE OF
21 CRIMINAL ACTIVITY BY THE DEFENDANT WHICH INVOLVE
22 THE USE OR ATTEMPTED USE OF FORCE OR VIOLENCE OR
23 THE EXPRESS OR IMPLIED THREAT TO USE FORCE OR
24 VIOLENCE; C, THE PRESENCE OR ABSENCE OF ANY PRIOR
25 FELONY CONVICTIONS; D, WHETHER OR NOT THE OFFENSE
26 WAS COMMITTED WHILE THE DEFENDANT WAS UNDER THE
27 INFLUENCE OF EXTREME MENTAL OR EMOTIONAL
28 DISTURBANCE; E, WHETHER OR NOT THE VICTIM WAS A

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1 PARTICIPANT IN THE DEFENDANT'S HOMICIDAL CONDUCT
2 OR CONSENTED TO THE HOMICIDAL ACT; F, WHETHER OR
3 NOT THE OFFENSE WAS COMMITTED UNDER CIRCUMSTANCES
4 WHICH THE DEFENDANT REASONABLY BELIEVED TO BE A
5 MORAL JUSTIFICATION OR EXTENUATION OF HIS CONDUCT;
6 G, WHETHER OR NOT THE DEFENDANT ACTED UNDER EXTREME
7 DURESS OR UNDER SUBSTANTIAL DOMINATION OF ANOTHER
8 PERSON; H, WHETHER OR NOT AT THE TIME OF THE OFFENSE,
9 THE CAPACITY OF THE DEFENDANT TO APPRECIATE THE
10 CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS CONDUCT
11 TO THE REQUIREMENTS OF LAW, WAS IMPAIRED AS A
12 RESULT OF MENTAL DISEASE OR DEFECT OR THE EFFECTS
13 OF INTOXICATION; I, THE AGE OF THE DEFENDANT AT
14 THE TIME OF THE CRIME; J, WHETHER OR NOT THE
15 DEFENDANT WAS AN ACCOMPLICE TO THE OFFENSE AND HIS
16 PARTICIPATION IN THE COMMISSION OF THE OFFENSE WAS
17 RELATIVELY MINOR; K, ANY OTHER CIRCUMSTANCES WHICH
18 EXTENUATE THE GRAVITY OF THE CRIME, EVEN THOUGH
19 IT IS NOT A LEGAL EXCUSE FOR THE CRIME AND ANY
20 SYMPATHETIC OR OTHER ASPECT OF THE DEFENDANT'S
21 CHARACTER OR RECORD OF THE DEFENDANT WHICH WOULD
22 SERVE AS A BASIS FOR A SENTENCE LESS THAN DEATH
23 WHETHER OR NOT RELATED TO THE OFFENSE FOR WHICH
24 HE IS ON TRIAL.

25 YOU MUST DISREGARD ANY JURY INSTRUCTION
26 GIVEN TO YOU IN THE GUILT OR INNOCENCE PHASE OF
27 THE TRIAL WHICH CONFLICTS WITH THIS PRINCIPLE.
28 ALSO, YOU MAY CONSIDER THE DEFENDANT'S BACKGROUND,

1 CHARACTER, HISTORY AND GOOD DEEDS PERFORMED BY HIM.

2 EVIDENCE HAS BEEN INTRODUCED FOR THE
3 PURPOSE OF SHOWING THE DEFENDANT HAS COMMITTED
4 CRIMINAL ACTS DESCRIBED TO YOU, TO WIT: SHOOTING
5 AT AN INHABITED DWELLING; AND KIDNAPPING FOR
6 EXTORTION, WHICH INVOLVE THE EXPRESS OR IMPLIED
7 USE OF FORCE OR VIOLENCE.

8 BEFORE YOU MAY CONSIDER ANY SUCH
9 CRIMINAL ACTS AS AN AGGRAVATING CIRCUMSTANCE --
10 AGGRAVATING CIRCUMSTANCES IN THIS CASE, YOU MUST
11 FIRST BE SATISFIED BEYOND A REASONABLE DOUBT THAT
12 THE DEFENDANT, HUNT, DID IN FACT, COMMIT SUCH ACTS.

13 YOU MAY NOT CONSIDER ANY EVIDENCE OF
14 ANY OTHER CRIMINAL ACTS AS AGGRAVATING CIRCUMSTANCES.

15 IT IS NOW YOUR DUTY TO DETERMINE WHICH
16 OF THE TWO PENALTIES, DEATH OR CONFINEMENT IN THE
17 STATE PRISON FOR LIFE WITHOUT POSSIBILITY OF PAROLE,
18 SHALL BE IMPOSED ON THE DEFENDANT.

19 AFTER HAVING HEARD ALL OF THE EVIDENCE
20 AND AFTER HAVING HEARD AND CONSIDERED THE ARGUMENTS
21 OF COUNSEL, YOU SHALL CONSIDER, TAKE INTO ACCOUNT
22 AND BE GUIDED BY APPLICABLE FACTORS OF AGGRAVATING
23 AND MITIGATING CIRCUMSTANCES UPON WHICH YOU HAVE
24 BEEN INSTRUCTED.

25 THE WEIGHING OF AGGRAVATING AND
26 MITIGATING CIRCUMSTANCES DOES NOT MEAN A MERE
27 MECHANICAL COUNTING OF THE FACTORS ON EACH SIDE
28 OF AN IMAGINARY SCALE OR THE ARBITRARY ASSIGNMENT

1 OF WEIGHTS TO ANY OF THEM.

2 YOU ARE FREE TO ASSIGN WHATEVER MORAL
3 OR SYMPATHETIC VALUE YOU DEEM APPROPRIATE TO EACH
4 AND ALL OF THE VARIOUS FACTORS YOU ARE PERMITTED
5 TO CONSIDER.

6 IN WEIGHING THE VARIOUS CIRCUMSTANCES,
7 YOU SIMPLY DETERMINE UNDER THE RELEVANT EVIDENCE,
8 WHICH PENALTY IS JUSTIFIED AND APPROPRIATE BY
9 CONSIDERING THE TOTALITY OF THE AGGRAVATING
10 CIRCUMSTANCES WITH THE TOTALITY OF THE MITIGATING
11 CIRCUMSTANCES.

12 TO RETURN A VERDICT OR JUDGMENT OF
13 DEATH, EACH OF YOU MUST BE PERSUADED THAT THE
14 AGGRAVATING CIRCUMSTANCES ARE SO SUBSTANTIAL IN
15 COMPARISON TO THE MITIGATING CIRCUMSTANCES, THAT
16 IT WARRANTS DEATH INSTEAD OF LIFE WITHOUT PAROLE.

17 YOU SHALL NOW RETIRE AND SELECT ONE
18 OF YOUR NUMBER TO ACT AS FOREMAN, WHO WILL PRESIDE
19 OVER YOUR DELIBERATIONS. IN ORDER TO MAKE A
20 DETERMINATION AS TO THE PENALTY, ALL 12 JURORS MUST
21 AGREE.

22 ANY VERDICT THAT YOU REACH MUST BE
23 DATED AND SIGNED BY YOUR FOREMAN ON THE FORM THAT
24 WILL BE PROVIDED AND THEN YOU SHALL RETURN WITH
25 IT TO THIS COURTROOM.

26 THERE ARE JUST TWO VERDICT FORMS AS
27 FOLLOWS:

28 WE THE JURY IN THE ABOVE-ENTITLED

1 ACTION, HAVING FOUND THE DEFENDANT, JOE HUNT, GUILTY
2 OF MURDER AND HAVING CONSIDERED ALL OF THE EVIDENCE
3 ON THE PENALTY PHASE OF THE TRIAL, HEREBY FIX THE
4 PENALTY TO BE IMPOSED ON THE DEFENDANT AS DEATH.

5 THE OTHER FORM WHICH YOU HAVE IS:

6 WE THE JURY IN THE ABOVE-ENTITLED
7 ACTION HAVING FOUND THE DEFENDANT, JOE HUNT,
8 GUILTY OF MURDER AND HAVING CONSIDERED ALL OF THE
9 EVIDENCE ON THE PENALTY PHASE OF THE TRIAL, HEREBY
10 FIX THE PENALTY TO BE IMPOSED ON THE DEFENDANT AS
11 LIFE WITHOUT POSSIBILITY OF PAROLE.

12 OBVIOUSLY, ONE OF THOSE TWO FORMS WILL
13 BE SIGNED BY THE FOREMAN OF THE JURY.

14 MR. WAPNER: YOUR HONOR, BEFORE THE JURY RETIRES --

15 THE COURT: YES?

16 MR. WAPNER: BEFORE THE JURY GOES OUT, CAN WE APPROACH
17 THE BENCH?

18 THE COURT: YES.

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

4 MR. WAPNER: I AM CONCERNED ABOUT A PORTION OF 9.22
5 THAT THE COURT READ.

6 THE COURT: YES?

7 MR. WAPNER: ON THE SECOND PAGE OF 9.22, YOU READ THE
8 SECTION:

9 "IF YOU FIND THE DEFENDANT GUILTY
10 OF THE CHARGE, YOU MUST ALSO FIND THE PERSON
11 KIDNAPPED ..."

12 THE COURT: WHERE IS THAT?

13 MR. WAPNER: THE SECOND PAGE OF --

14 THE COURT: "IF YOU SHOULD FIND THE DEFENDANT
15 CHARGEABLE WITH SUCH OFFENSE ..."

16 I DIDN'T SAY GUILTY --

17 MR. WAPNER: OKAY. THAT IS THE PART I AM CONCERNED
18 ABOUT.

19 THE COURT: ALL RIGHT.

20 MR. WAPNER: WHAT I AM REALLY CONCERNED ABOUT IS, DO
21 THEY IN FACT, HAVE TO MAKE A FINDING?

22 THE COURT: THEY DON'T HAVE TO MAKE A FINDING OF ANY-
23 THING.

24 MR. WAPNER: THAT IS THE WHOLE POINT.

25 THE COURT: THEY DON'T HAVE TO MAKE ANY FINDINGS,
26 WRITTEN FINDINGS AND --

27 MR. WAPNER: SINCE THEY DON'T HAVE TO MAKE A WRITTEN
28 FINDING --

1 THE COURT: NO.

2 MR. WAPNER: OKAY.

3 THE COURT: IF THEY CONCLUDE OR IF THEY FIND THE
4 DEFENDANT IS CHARGED WITH SUCH A CRIME -- YOU MUST ALSO --
5 AND IT GOES ON, SO ON AND SO FORTH.

6 MR. WAPNER: BUT I THINK THAT THE BODILY HARM
7 INSTRUCTION JUST INCREASES THE PUNISHMENT ON THE 209 --

8 THE COURT: THAT IS WHEN THEY JUST HAVE THE CHARGE
9 ITSELF WITHOUT THE SPECIAL CIRCUMSTANCES. IT IS ALTOGETHER
10 DIFFERENT.

11 MR. WAPNER: YOU ARE GOING TO LEAVE IT AS IT IS?

12

13 THE COURT: I WILL LEAVE IT AS IT IS.

14 MR. WAPNER: ALL RIGHT.

15 (THE FOLLOWING PROCEEDINGS WERE HELD
16 IN OPEN COURT IN THE HEARING AND
17 PRESENCE OF THE JURY:)

18 THE COURT: THE CLERK WONDERS IF THE BAILIFF HAS TO
19 BE SWORN AGAIN. I THINK SO.

20 THE CLERK: YOU DO SOLEMNLY SWEAR THAT YOU WILL TAKE
21 CHARGE OF THE JURY AND KEEP THEM TOGETHER, THAT YOU WILL
22 NOT SPEAK TO THEM YOURSELF NOR ALLOW ANYONE ELSE TO SPEAK
23 TO THEM ON MATTERS CONNECTED WITH THIS CASE, EXCEPT ON ORDER
24 OF THE COURT AND WHEN THEY HAVE ARRIVED UPON A VERDICT,
25 RETURN WITH THEM INTO COURT, SO HELP YOU GOD?

26 THE BAILIFF: I DO.

27 THE CLERK: DO YOU SOLEMNLY SWEAR THAT YOU WILL TAKE
28 CHARGE OF THE ALTERNATES AND KEEP THEM APART FROM THE JURY

6D-3
1 WHILE THEY ARE DELIBERATING ON THE CAUSE UNTIL OTHERWISE
2 DIRECTED BY THE COURT, SO HELP YOU GOD?

3 THE BAILIFF: I DO.

4 MR. WAPNER: AS FAR AS THE ADMONITION ABOUT TAKING
5 THE NOTES HOME --

6 THE COURT: LET ME JUST GIVE YOU THE CHOICE. DO YOU
7 WANT TO GO HOME NOW? OR, DO YOU WANT TO START YOUR
8 DELIBERATIONS AND GO HOME LATER? YOU CAN START DELIBERATING
9 MONDAY AT 9:30.

10 OR, IF YOU WANT TO HAVE THE DELIBERATIONS NOW,
11 YOU MAY AND THEN GO HOME. YOU CAN TALK AMONG YOURSELVES
12 IN THE JURY ROOM AND DECIDE.

13 MR. WAPNER: AS FAR AS TAKING THE NOTEBOOKS HOME --

14 THE COURT: YOU CAN TAKE YOUR NOTEBOOKS HOME, PROVIDED
15 AS I TOLD YOU, THAT THEY REMAIN CONFIDENTIAL, TO JUST YOURSELF
16 ALONE.

17 DON'T DISCUSS IT WITH ANYBODY. THEN YOU CAN
18 BRING IT BACK ON MONDAY AT 9:30.

19 MR. WAPNER: YOUR HONOR, SHOULD THE ADMONITION ALSO
20 INCLUDE THAT THEY CAN REVIEW THEIR NOTES BUT THEY ARE NOT
21 TO FORM ANY OPINION ON THE CASE UNTIL THEY ARE ALL TOGETHER
22 IN THE JURY ROOM?

23 THE COURT: ABSOLUTELY. OBVIOUSLY, YOU MUST CONSULT
24 WITH EACH OTHER IN THE JURY ROOM BEFORE YOU FORM ANY
25 CONCLUSIONS ABOUT ANYTHING. ALL RIGHT?

26 (AT 3:25 P.M. THE JURY RETIRED TO
27 COMMENCE DELIBERATION.)

28