

DOCKET  
No. 88DA0269  
Entered by \_\_\_\_\_  
Date \_\_\_\_\_

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT

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

SUPERIOR COURT  
NO. A-090435

OCT 09 1987

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

APPEARANCES:

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

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 83 OF 101  
(PAGES 13081 TO 13233 , INCLUSIVE)

COPY

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

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

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. )

NO. A-090435 )

JOSEPH HUNT, )

DEFENDANT. )

REPORTERS' DAILY TRANSCRIPT

THURSDAY, APRIL 16, 1987

VOLUME 83

(PAGES 13081 TO 13233, INCLUSIVE)

APPEARANCES:

FOR THE PEOPLE:

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

FOR THE DEFENDANT:

ARTHUR H. BARENS, ESQ.  
10209 SANTA MONICA BOULEVARD  
LOS ANGELES, CALIFORNIA 90067

AND

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

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

COPY

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

THURSDAY, APRIL 16, 1987      VOLUME 83      PAGES 13081 - 13233

A.M.      13081

P.M.      13139

-----

PROCEEDINGS

CLOSING ARGUMENT BY MR. WAPNER (CONTINUED)      13081

JURY INSTRUCTIONS      13194

1 SANTA MONICA, CALIFORNIA; THURSDAY, APRIL 16, 1987; 10:35 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 YOU MAY CONCLUDE YOUR ARGUMENT.  
7

8 CLOSING ARGUMENT (RESUMED)

9 BY MR. WAPNER:

10 THIS IS VERY EGO-DEFLATING, WE STARTED MONDAY  
11 AND WE HAD A PACKED COURTROOM, WE HAD PEOPLE STANDING IN  
12 THE BACK AND NOW I AM IN MY MOMENT OF GLORY AND WHERE ARE  
13 THEY? MAYBE THEY THINK I WILL BE DONE SOON BUT YOU PROBABLY  
14 KNOW BETTER.

15 LET ME START OFF WITH A FEW INTRODUCTORY  
16 THINGS.

17 (NOISE IN COURTROOM.)

18 THE COURT: GO AHEAD.

19 MR. WAPNER: FIRST OF ALL, YOU HEARD MANY REFERENCES  
20 DURING MR. BARENS' ARGUMENT TO THE GOVERNMENT THIS AND THE  
21 GOVERNMENT THAT. WELL, THIS ISN'T RUSSIA OR SOME DICTATORSHIP  
22 OR ANYTHING LIKE THAT. THE GOVERNMENT -- IT IS NOT THE  
23 GOVERNMENT BRINGING THE CHARGES. IT IS THE PEOPLE OF THE  
24 STATE OF CALIFORNIA.

25 THE PEOPLE OF THE STATE OF CALIFORNIA ARE YOU  
26 AND ME AND MR. BARENS AND EVEN JOE HUNT, THE PEOPLE OF THE  
27 STATE OF CALIFORNIA.

28 SO LET'S KEEP THAT IN MIND, THAT IS JUST AN

1 ATTEMPT -- MR. BARENS WAS THE ONE WHO SAID THAT THE PEOPLE  
2 ARE DOING ALL OF THIS BY INNUENDO AND THE IDEA IS TO JUST  
3 GIVE THESE LITTLE THINGS AND SAY, "WELL, THIS IS THE BIG  
4 BAD GOVERNMENT COMING DOWN ON POOR LITTLE JOE HUNT, JOE HUNT  
5 WITH THE BIG HEART," AND WE WILL TALK ABOUT THAT IN A LITTLE  
6 BIT.

7 MR. BARENS ALSO WAS FOND OF REFERRING TO THIS  
8 AS THE "HE SAID CASE" AS IF THERE IS SOMETHING WRONG WITH  
9 THAT. BUT THERE ARE CASES FOR SO MANY YEARS ABOUT PROVING  
10 THE CORPUS DELICTI OF A CRIME ON STATEMENTS OF SOMEBODY.  
11 THERE IS NOTHING WRONG WITH A "HE SAID" CASE. IF YOU SAY  
12 IT OFTEN ENOUGH, IT IS LIKE A BAD WORD BUT WHAT DOES IT MEAN?  
13 IT JUST MEANS YOU CAN PROVE A CRIME BY USING SOMEBODY'S  
14 STATEMENT.

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

2-1  
1 IF YOU CONTINUE, WHAT IS THE POINT OF THE POLICE  
2 TAKING CONFESSIONS FROM PEOPLE? SO THEY CAN USE THEM IN COURT.  
3 THAT IS THE WHOLE POINT IN TAKING STATEMENTS FROM PEOPLE.

4 ALSO, MR. BARENS TRIED TO AT THE BEGINNING OF HIS  
5 ARGUMENT, QUANTIFY REASONABLE DOUBT IN TERMS OF PERCENTAGES.  
6 I SUBMIT THAT YOU CAN'T DO THAT.

7 YOU ARE GOING TO GET THE JURY INSTRUCTION WHICH  
8 WILL TELL YOU WHAT REASONABLE DOUBT IS. IT DOESN'T HAVE ANY  
9 PERCENTAGES IN THERE. YOU DON'T DO IT BY PERCENTAGES. YOU  
10 HAVE TO DO IT BY USING YOUR OWN COMMON SENSE.

11 AND BY WAY OF STARTING IN THIS PART OF IT, LET  
12 ME START OFF WITH WHERE I LEFT OFF YESTERDAY WITH ONE OF THE  
13 THEMES. THAT IS, THAT THE WHOLE THRUST OF THE DEFENSE IN THIS  
14 CASE AND THE ARGUMENT ESPECIALLY THAT WAS MADE, IS THIS NOTION  
15 OF PARADOX PHILOSOPHY, OF TURNING THINGS AROUND.

16 AND DO YOU REMEMBER WHAT ONE OF THE REAL KEYSTONES  
17 OF THE PARADOX PHILOSOPHY CAME DOWN TO? IT CAME DOWN TO  
18 MANIPULATION. IT COULDN'T BE WRITTEN DOWN.

19 MR. BARENS SAYS IT IS IN THE BBC HANDBOOK. BUT  
20 IT IS NOT. IT JUST REFERS IN THERE TO A GROUP RUN BY PARADOX  
21 PHILOSOPHY.

22 BUT IT COULDN'T BE WRITTEN DOWN. WHY? BECAUSE  
23 IT EXISTED IN JOE HUNT'S MIND.

24 WHAT IT WAS, WAS A TOOL THAT HE USED TO MANIPULATE  
25 PEOPLE. THAT IS EXACTLY WHAT HE HAS BEEN TRYING TO DO IN THIS  
26 COURTROOM TO YOU, THE FOURTEEN OF YOU, TO MANIPULATE YOU, TO  
27 TURN YOUR FOCUS AROUND.

28 BECAUSE WHAT HE REALLY WANTS TO DO -- WHAT HE

1 REALLY, REALLY WANTS TO DO IN THE MOST LITERAL SENSE OF THE  
2 WORD, IS TO GET AWAY WITH MURDER AND THEN COME IN HERE TO LAUGH  
3 AT YOU, TO MAKE YOU LOOK LIKE FOOLS.

4 I AM GOING TO KILL THIS MAN, HIDE HIS BODY AND  
5 GET REWARDED FOR HIDING HIS BODY AND THIS JURY IS GOING TO  
6 ACQUIT.

7 HE IS SAYING THAT FROM THE VERY BEGINNING. REMEMBER  
8 WHAT JOE HUNT SAID? JOE HUNT SAID SEVERAL TIMES THAT NO  
9 JURY IN THE LAND WOULD EVER CONVICT ME. NO JURY IN THE LAND.  
10 THAT IS WHAT HE IS COUNTING ON. NO JURY IN THE LAND AND NO  
11 JURY IN THIS COURTROOM.

12 IT IS A MANIPULATION TECHNIQUE FROM THE VERY,  
13 VERY BEGINNING. LET ME TALK A LITTLE BIT ABOUT SOME LAW AND  
14 IN PARTICULAR, SOMETHING THAT NOTHING HAS BEEN SAID YET ABOUT,  
15 THE IDEA THAT AS WE KNOW FROM THE EVIDENCE IN THIS CASE,  
16 MR. PITTMAN IS THE ONE WHO PULLED THE TRIGGER, WHO FIRED THE  
17 SHOT THAT KILLED MR. LEVIN.

18 AND SO, MAYBE YOU ARE SAYING TO YOURSELVES, WELL,  
19 IF THAT IS TRUE, WHY ARE WE GOING TO TRY JOE HUNT FOR MURDER?  
20 AND YOU ARE PROBABLY SAYING TO YOURSELVES WELL, MR. WAPNER  
21 MUST HAVE OVERLOOKED THAT. I GUESS WE SHOULD ALL GO HOME NOW.

22 THE POINT IS, THAT THE LAW WILL TELL YOU THAT  
23 ANYONE WHO AIDS AND ABETS IN THE COMMISSION OF A CRIMINAL  
24 OFFENSE IS GUILTY OF THAT OFFENSE.

25 AND IT IS SOMEWHAT MISLEADING IN THIS CASE, ONLY  
26 TO THE EXTENT THAT JOE HUNT WAS NOT REALLY THE AIDER AND  
27 ABETTOR -- HE REALLY DID EVERYTHING. THE ONLY THING HE DIDN'T  
28 DO WAS PULL THE TRIGGER.

1                   BUT TO THE EXTENT THAT HE DIDN'T FIRE THE SHOT  
2 THAT CAUSED THE DEATH, THE LAW WOULD CONSIDER HIM AN AIDER  
3 AND ABETTOR. THIS IS WHAT THE COURT IS GOING TO TELL YOU ABOUT  
4 PEOPLE WHO ARE CONCERNED IN THE COMMISSION OF CRIMES.

5                   IT SAYS:

6                   "THE PERSONS CONCERNED IN THE COMMISSION  
7 OF A CRIME, WHO ARE REGARDED BY LAW AS PRINCIPALS  
8 IN THE CRIME THUS COMMITTED, AND EQUALLY GUILTY  
9 THEREOF, INCLUDE THOSE WHO DIRECTLY AND ACTIVELY  
10 COMMIT THE ACT CONSTITUTING THE CRIME OR THOSE WHO  
11 AID AND ABET IN THE COMMISSION OR ATTEMPTED  
12 COMMISSION OF THE CRIME."

13                   KEEP IN MIND THAT THERE ARE TWO CRIMES HERE, ROBBERY  
14 AND MURDER. CLEARLY, MR. HUNT USING THE FORCE SUPPLIED BY  
15 MR. PITTMAN, WAS ACTIVELY INVOLVED IN COMMITTING THE ROBBERY  
16 AND TAKING THE PROPERTY. AND HE WAS ACTIVELY INVOLVED IN THE  
17 KILLING.

18                   HE JUST DIDN'T PULL THE TRIGGER. AND THEN IT SAYS  
19 THAT ONE WHO AIDS AND ABETS IS NOT ONLY GUILTY OF THE  
20 PARTICULAR CRIME THAT THEY ARE CONTEMPLATING BUT ANY CRIMES  
21 THAT ARE COMMITTED WHILE THEY ARE DOING THAT, WHICH DOESN'T  
22 APPLY IN THIS CASE.

23  
24  
25  
26  
27  
28



3-1  
(  
1 THE POINT IS THAT THE PERSON WHO MAKES OR  
2 CONCOCTS THE PLAN, WHO DOES EVERYTHING IS THERE, IS  
3 PARTICIPATING IN THE ROBBERY AND IS IN FACT PARTICIPATING  
4 IN THE MURDER, AND IS AS GUILTY AS THE PERSON WHO PULLS THE  
5 TRIGGER, EVEN THOUGH HE DOESN'T HIMSELF PULL THE TRIGGER.

6 AND THEN IT TELLS YOU -- THE COURT WILL GO ON  
7 TO TELL YOU WHAT AIDING AND ABETTING REALLY MEANS AND HE  
8 WILL TELL YOU THAT A PERSON AIDS AND ABETS IN THE COMMISSION  
9 OF A CRIME WHEN HE OR SHE, WITH KNOWLEDGE OF THE UNLAWFUL  
10 PURPOSE OF THE PERPETRATOR AND WITH THE INTENT OR PURPOSE  
11 OF COMMITTING, ENCOURAGING OR FACILITATING THE COMMISSION  
12 OF THE OFFENSE BY ACT OR ADVICE, AIDS, PROMOTES AND ENCOURAGES  
13 OR INSTIGATES THE COMMISSION OF THE CRIME.

14 AND IT WILL ALSO TELL YOU THAT THE PERSON DOESN'T  
15 ACTUALLY EVEN HAVE TO BE PRESENT AT THE SCENE OF A CRIME  
16 TO BE AN AIDER AND ABETTOR.

17 THAT DOESN'T APPLY TO MR. HUNT IN THIS CASE BUT  
18 IT IS IMPORTANT IN A LITTLE WHILE, BECAUSE WE ARE GOING TO  
19 TALK ABOUT MR. KARNY.

20 SO THE BEING THERE AND THE ENCOURAGING,  
21 FACILITATING BY ACT OR ADVICE, MR. HUNT WAS -- BASICALLY,  
22 THE ONLY THING HE DIDN'T DO WAS PULL THE TRIGGER. THE LAW  
23 TELLS YOU THAT FOR THAT, HE IS AS GUILTY OF A MURDER AS THE  
24 PERSON WHO ACTUALLY PULLS THE TRIGGER.

25 AND WHEN YOU GET TO THAT PART ABOUT -- WELL,  
26 ABOUT THE SPECIAL CIRCUMSTANCES, THE COURT WILL TELL YOU  
27 THAT IF THE DEFENDANT WAS AN AIDER AND ABETTOR AND NOT  
28 ACTUALLY THE KILLER, IT MUST BE PROVED BEYOND A REASONABLE

3-2  
1 DOUBT THAT HE INTENDED TO KILL, AND IN THE KILLING OF A HUMAN  
2 BEING. WELL, THERE IS NOT MUCH QUESTION ABOUT THAT, ABOUT  
3 WHAT WAS ON THAT LIST.

4 BUT I JUST WANT TO GIVE YOU THAT LAW SO IT IS  
5 CLEAR TO ALL OF YOU THAT JUST BECAUSE A PERSON DOESN'T PULL  
6 THE TRIGGER ON THE GUN THAT CAUSES DEATH HE IS, NONETHELESS,  
7 AS GUILTY AS THE PERSON WHO DOES.

8 THE ONLY OTHER BIT OF LAW THAT I WANT TO TALK  
9 TO YOU ABOUT IS WHAT WE TALKED ABOUT DURING JURY SELECTION  
10 IN THIS CASE AND THAT IS THAT IN THIS PART OF THE CASE, YOU  
11 ARE NOT TO CONSIDER WHAT PENALTY, IF ANY, MIGHT BE IMPOSED.  
12 YOU HAVE TO MAKE YOUR DECISION IN THIS PART OF THE CASE BASED  
13 ON THE FACTS, BASED ON THE LAW, WITHOUT CONSIDERING WHAT  
14 THE PENALTY MIGHT BE IF WE GET TO ANOTHER PART OF THE CASE.

15 KEEPING ALL OF THOSE THINGS IN MIND, LET ME TALK  
16 A LITTLE BIT ABOUT SOME OF THE THINGS THAT MR. BARENS MENTIONED  
17 IN HIS ARGUMENT AND THEN I WANT TO GO BACK AND TALK AGAIN  
18 ABOUT SOME OF THE THINGS THAT I THINK HE DIDN'T MENTION,  
19 A LOT OF THINGS THAT HE DIDN'T MENTION.

20 JUST A BRIEF ASIDE AND THIS IS ALMOST BY WAY OF  
21 PUTTING TOGETHER ALL OF THE EVIDENCE THAT YOU HAVE HEARD,  
22 MR. BARENS SAYS, "WELL, WHY DIDN'T MR. LEVIN GO TO THE MEETING  
23 WITH SCOTT FURSTMAN ON JUNE THE 6TH?" IF YOU CAREFULLY REVIEW  
24 ALL OF THE EVIDENCE, YOU CAN ALMOST RECONSTRUCT RON LEVIN'S  
25 LIFE ON THE DAY OF JUNE 6. IN PARTICULAR, THOUGH, GO OVER  
26 THE CALLS WITH THE BANK PEOPLE TO PAT TOWERS AT OLYMPIC --  
27 EXCUSE ME -- AT SECURITY BANK, THERE WERE SEVERAL CALLS,  
28 YELLING AND SCREAMING. HE HAD TO GO TO OLYMPIC BANK TO PUT

1 THE \$5,000 IN AND THAT WAS SOMETIME IN THE AFTERNOON BECAUSE,  
2 YOU KNOW, THAT CHECK WAS ONLY SENT IN THE MAIL THE NIGHT  
3 BEFORE.

4 AND THEN HE WAS ARRANGING WITH DJANE JAMES AT  
5 PRUDENTIAL-BACHE TO START THAT ACCOUNT, SO THAT HE WILL TELL  
6 YOU WHAT HE WAS DOING ON THE DAY OF JUNE THE 6TH.

7 ALSO, AS I TOLD YOU YESTERDAY, INSIST ON FACTS  
8 BEFORE YOU DRAW CONCLUSIONS. MR. BARENS SAID SO MANY TIMES  
9 THAT RON LEVIN BOUGHT A COMPLETE WARDROBE IN MAY, AS IF YOU  
10 HAD PEOPLE IN HERE FROM CLOTHING STORES SAYING THAT LEVIN  
11 WAS THERE AND HE BOUGHT THIS STUFF. IT IS EASY TO SAY  
12 IT BUT YOU HAVE TO HAVE FACTS ON WHICH TO BASE IT AND HE  
13 HAS GOT SOME RECEIPTS FROM SOME CLOTHING STORES AND SOME  
14 OF THEM SAY, "UNDERWEAR" ON IT AND, THEREFORE, YOU HAVE GOT  
15 TO MAKE THIS LEAP OF FAITH THAT HE BOUGHT A COMPLETE WARDROBE  
16 AND I SUBMIT TO YOU THAT THERE IS NO EVIDENCE OF THAT.

17 THE TRAVELER'S CHECKS WITH MICHAEL BRODER, HE  
18 SAYS, WELL, MICHAEL BRODER SAYS THAT THERE WERE -- WHAT  
19 DID HE SAY TWENTY OR TWENTY-FIVE THOUSAND DOLLARS, TWENTY-FIVE  
20 THOUSAND DOLLARS WORTH OF TRAVELER'S CHECKS? AND YET, HE  
21 SAID THEY ARE ALL THE SAME.

22 AND IN THE VEIN OF HIS SAYING APPROXIMATELY WHAT  
23 TIME THE PHONE CALL WAS, IF ALL OF THESE TRAVELER'S CHECKS  
24 WERE ALL THE SAME, WE KNOW HE IS MISTAKEN BECAUSE ALL OF  
25 THE SAME TRAVELER'S CHECKS WERE THE \$15,000 THAT WERE  
26 PURCHASED AT THE OLYMPIC BANK.

27 THE STATEMENT IS MADE TO YOU "WELL, CAROLYN AND  
28 MARTIN LEVIN MUST NOT BELIEVE THAT RON LEVIN IS DEAD BECAUSE

3-4

1 ACTUALLY THEY HAD SOME HESITATION ABOUT LETTING DETECTIVE  
2 ZOELLER IN THE APARTMENT IN AUGUST." WELL, IF YOU RECALL  
3 THE TESTIMONY IN PARTICULAR, FIRST OF ALL, IT IS AN INCREDIBLE  
4 LEAP OF FAITH TO MAKE THAT INFERENCE FROM THAT FACT.

5 BUT SECOND OF ALL, IT IS NOT EVEN A FACT BECAUSE  
6 THE FACT IS MARTIN LEVIN SAID, "WELL, LET ME CALL SCOTT  
7 FURSTMAN AND HE WILL TELL ME WHAT I SHOULD DO," SO THAT WAS  
8 THE REASON AND NO OTHER REASON.

9 HERE IS ANOTHER GREAT EXAMPLE OF SAYING SOMETHING  
10 AND NOT HAVING THE FACTS TO BACK IT UP. REMEMBER THE  
11 \$1.5 MILLION OPTION CONTRACT AND IT SAID "ONE POINT FIVE  
12 MILLION" AND THEN WHEN EISENBERG HAD IT, THEN IT WAS TAKEN  
13 OUT AND MR. BARENS SAYS, "WELL, THEY MUST HAVE LEFT THE  
14 BLANK SPACES THERE BECAUSE THAT IS WHAT -- WHERE IT IS  
15 SUPPOSED TO REFLECT THE MANNER OF THE PAYMENT."

16

17

18

19

20

21

22

23

24

25

26

27

28

4

A-  
1 WELL, WHERE DOES HE GET IT FROM IN THE FIRST PLACE?  
2 AFTER ALL, WHEN IT IS WRITTEN IN THERE IT DOESN'T SAY THE  
3 MANNER OF PAYMENT.

4 SECOND OF ALL, IF THE LINES WERE FOR THE MANNER  
5 OF PAYMENT, THEN THERE IS NOTHING ELSE IN THERE TO INDICATE  
6 WHAT THE PRICE OF THE OPTION WAS SUPPOSED TO BE. HERE IS A  
7 GREAT EXAMPLE OF PARADOX PHILOSOPHY IN ACTION.

8 LEVIN WAS LIKE A CURSE ON JOE HUNT'S LIFE. WHY WAS  
9 HE A CURSE ON JOE HUNT'S LIFE? BECAUSE HE DID THESE SCAMS  
10 ON HIM AND HUNT WAS COUNTING ON THIS MONEY TO PAY BACK THE  
11 INVESTORS. IT IS ALL LEVIN'S FAULT.

12 WELL, THAT IS A GREAT EXAMPLE OF WHAT I TALKED  
13 ABOUT, SHIFTING YOUR PERSPECTIVE AND YOUR FOCUS. IT IS LEVIN'S  
14 FAULT THAT HUNT STOLE EITHER A MILLION AND A HALF FROM ALL  
15 OF THE INVESTORS OR CLOSE TO A MILLION FROM THE PEOPLE THAT  
16 STEVE LOPEZ BROUGHT IN. THAT IS LEVIN'S FAULT.

17 I MEAN, THAT IS JUST AN INCREDIBLE WAY OF TRYING  
18 TO MANIPULATE THINGS AND TURN THINGS AROUND AND MAKE THEM  
19 LOOK THE WAY THAT YOU WANT THEM TO LOOK.

20 JOE HUNT WITH THE BIG HEART. THE BIG HEART?  
21 THE GREAT EXAMPLE OF THE BIG HEART IS DOLING OUT THE SHARES  
22 OF THE SHOPPING CENTER, FOR WHICH HE DIDN'T INVEST ONE DIME.

23 HE SUPPOSEDLY TRADED LEVIN'S PHONY MONEY. HUNT  
24 DIDN'T PUT IN ONE THING. HE IS DOLING IT OUT LIKE IT IS  
25 MONOPOLY PLAY MONEY. HE DOESN'T HAVE ANYTHING. THIS IS  
26 SUPPOSED TO BE AN EXAMPLE OF HIS BIG HEART.

27 SECOND OF ALL, HE IS THE ONE WHO ALLOCATES ALL  
28 OF THE MONEY IN THE BBC BASED ON HOW MUCH EVERYONE DOES. YET,

4A  
1 THE PEOPLE WHO WERE SLUGGING IT OUT DOWN IN THE PITS, JEFF  
2 RAYMOND AND DAVE MAY, THEY DIDN'T GET ANY MONEY. WHAT DO  
3 THEY GET? THEY GET THE PRIVILEGE OF GETTING DUPED OUT OF  
4 \$20,000, LIKE HAPPENED TO JEFF RAYMOND.

5 HERE IS ANOTHER GREAT ONE. WE ARE SUPPOSED TO  
6 BELIEVE BASED ON BROOKE ROBERTS OVERHEARING THAT CONVERSATION,  
7 THAT HUNT AND KARNY HAD SAID THAT THEY WOULD MAKE UP THE  
8 DETAILS.

9 FROM THAT, YOU ARE ASKED TO BELIEVE THAT THEY  
10 CONCOCTED ALL THESE DETAILS OF THE PLAN. WHAT WAS THE REASON  
11 FOR CONCOCTING THE DETAILS? SO THAT THEY COULD GO AND SELL  
12 THIS ELABORATE THING TO A MEETING.

13 THE PEOPLE AT THE MEETING ARE TO BE SOLD? THERE  
14 IS ONE BIG PROBLEM WITH THAT. REMEMBER WHAT THE PEOPLE WHO  
15 WERE AT THE MEETING SAID? HE SAID HE KNOCKED OFF RON LEVIN.  
16 YOU DON'T NEED TO KNOW ANY MORE ABOUT IT. YOU DON'T NEED TO  
17 KNOW THE DETAILS.

18 IF THEY MADE THIS ELABORATE THING WITH ALL OF THE  
19 DETAILS, WHERE WERE THEY? THEY NEVER HEARD ANYTHING ABOUT  
20 IT. HERE IS ANOTHER GREAT EXAMPLE OF TALKING OUT OF BOTH SIDES  
21 OF YOUR MOUTH AT THE SAME TIME.

22 MR. PITTMAN IS NOT A BODYGUARD. HUNT DOESN'T  
23 NEED A BODYGUARD. WHY WOULD PITTMAN BE A BODYGUARD? BUT THEN  
24 WHEN IT IS CONVENIENT, THESE HIT MAN BOOKS, NOTHING UNUSUAL  
25 ABOUT THE HIT MAN BOOKS. A PERSON WHO IS A BODYGUARD, OF  
26 COURSE, WOULD HAVE HIT MAN BOOKS IN HIS HOUSE.

27 WELL, WHICH IS IT? IS HE A BODYGUARD OR NOT A  
28 BODYGUARD?

A-7  
1 AND ANOTHER CLASSIC EXAMPLE OF TRYING TO HAVE IT  
2 BOTH WAYS, MR. BARENS KEPT TALKING ABOUT THE ANTISEPTIC  
3 MURDER SCENE AT LEVIN'S HOUSE AND HE KEPT SAYING WELL, THIS  
4 DOESN'T LOOK LIKE A MURDER SCENE.

5 OF COURSE, HE DOESN'T STOP TO THINK THAT THIS IS  
6 COMPLETELY INCONSISTENT WITH THIS WHOLE THEORY OF THE DEFENSE,  
7 WHICH IS IF THIS IS THE ULTIMATE CON BY LEVIN, THEN LEVIN IS  
8 GOING TO TRY TO MAKE IT LOOK LIKE A MURDER SCENE.

9 WELL, IS IT THE ULTIMATE CON OR DOES IT LOOK LIKE  
10 A MURDER SCENE? YOU CAN'T HAVE IT BOTH WAYS.

11 REGARDING THE STATEMENT AT THE MEETING, YOU KNOW,  
12 THAT THIS WAS ALL A HOAX OR SOMETHING, ASK YOURSELVES IF JIM  
13 PITTMAN THOUGHT IT WAS A HOAX WHEN HE SAID TO DEAN KARNY, BEN  
14 DOSTI AND JOE HUNT, "WE CAN'T SAY THIS TO THESE PEOPLE. NO  
15 ONE CAN BE TRUSTED WITH INFORMATION LIKE THAT."  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1                   ASK YOURSELVES WHAT PITTMAN THOUGHT OF THAT.  
2           ALSO, WITH REGARD TO BROOK ROBERTS AND HER STATEMENT,  
3           MR. BARENS' STATEMENT IS THAT SHE MUST BE IN THE BEST POSITION  
4           OF ANYONE TO KNOW WHAT GOES ON AT THE BBC.

5                   FROM BROOKE ROBERTS' OWN TESTIMONY, PAGE 11627:

6                   "Q       DID YOU EVER ASK HIM ABOUT THE BUSINESSES  
7           AND HOW THEY WERE GOING?

8                   "A       NO.

9                   "Q       DID YOU EVER ASK HIM WHERE HE GOT ALL  
10          OF HIS MONEY FROM?

11                  "A       NO."

12                  A FEW LINES LATER:

13                  "Q       WOULD IT BE PRETTY FAIR TO SAY THAT HE  
14          KEPT HIS BUSINESSES AND FINANCIAL AFFAIRS AWAY FROM  
15          YOU, KEPT YOU SEPARATED FROM THEM?

16                  "A       YEAH.   EXCEPT WHEN HE WAS HAVING  
17          PROBLEMS, HE WOULD TALK, YOU KNOW.   HE WOULD COME  
18          HOME AND TALK ABOUT IT.   I ALSO WORKED IN THE  
19          OFFICE FOR ABOUT A MONTH AND A HALF, SO I LEARNED  
20          ABOUT A FEW OF THE BUSINESSES.

21                  "Q       BUT YOU REALLY DIDN'T KNOW MUCH ABOUT  
22          THE BUSINESSES?

23                  "A       BUT I WAS NOT ACTUALLY INVOLVED, NO."

24                  THAT IS OUT OF HER OWN MOUTH.   YOU TELL ME, SHE  
25          IS THE ONE IN THE BEST POSITION TO KNOW WHAT WAS GOING ON IN  
26          THE BBC AND WHO WAS ACTUALLY IN CHARGE?

27                  THERE WAS MENTION MADE OF THE FACT THAT IT IS A  
28          BIG DEAL AND IT WAS IN OPENING STATEMENT -- ABOUT THE FACT



1 THAT RON LEVIN GOT A BAIL REDUCTION, RIGHT? AND THIS IS  
2 OFFERED TO YOU AS EVIDENCE TO SAY SEE, HE GOT THIS BAIL  
3 REDUCTION AND SO IT IS OBVIOUS, SHOULD BE OBVIOUS TO YOU,  
4 FROM THE FACT THAT HE GOT THIS BAIL REDUCTION, THAT HE WAS  
5 PLANNING TO TAKE OFF.

6 WELL, I TOLD YOU YESTERDAY THAT I DIDN'T THINK  
7 FROM THE BEGINNING, THERE WAS A UNIFIED THEORY OF THE DEFENSE  
8 IN THIS CASE. AND I THINK THAT THIS IS A PRETTY GOOD EXAMPLE  
9 OF IT. THIS IS SOMETHING THAT YOU JUST WANT TO USE TO THROW  
10 MUD ON RON LEVIN.

11 BUT WHEN YOU LOOK AT IT, IT IS COMPLETELY  
12 INCONSISTENT WITH THE THEORY OF THE DEFENSE. THE THEORY OF  
13 THE DEFENSE IS THAT THIS IS THE ULTIMATE CON. IT IS SUPPOSED  
14 TO LOOK LIKE A MURDER. IT IS NOT SUPPOSED TO LOOK LIKE RON  
15 LEVIN TOOK OFF.

16 SO, IF THAT IS TRUE, WHY ON JUNE 5 IS HE GETTING  
17 A BAIL REDUCTION AND LEAVING ON JUNE 6? IS THAT TO MAKE IT  
18 OBVIOUS TO YOU AND THEREFORE TO THE REST OF THE WORLD, THAT  
19 HE IS PLANNING TO LEAVE? IT DOESN'T MAKE ANY SENSE.

20 YOU HEARD ABOUT DEAN KARNY AND HIS IMMUNITY  
21 AGREEMENT. NOW, WHAT IS AN IMMUNITY AGREEMENT? IT IS AN  
22 AGREEMENT BETWEEN A PERSON, IN THIS CASE MR. KARNY AND THE  
23 PEOPLE OF THE STATE OF CALIFORNIA.

24 IN THIS CASE, THE ATTORNEY GENERAL'S OFFICE IN  
25 SAN MATEO AND OUR OFFICE HERE, IN EXCHANGE FOR HIS TESTIMONY,  
26 HE IS NOT GOING TO BE PROSECUTED.

27 PROSECUTED FOR WHAT? FOR CRIMES FOR WHICH HE WAS  
28 INVOLVED. AGAIN, THIS IS A GREAT EXAMPLE OF MR. BARENS

1 TALKING OUT OF BOTH SIDES OF HIS MOUTH.

2 BECAUSE HE SAYS TO YOU ON THE ONE HAND, MR. KARNY  
3 KNOWS THAT NO MURDER HAPPENED. HE KNOWS THAT NO MURDER  
4 HAPPENED BECAUSE OF COURSE, HE DIDN'T GET UPSET WHEN HE SAW  
5 THE POLICE REPORTS IN THIS CASE. THAT IS BECAUSE HE SAW THE  
6 THINGS ABOUT RON LEVIN. THAT IS BECAUSE AT THE TIME THAT  
7 RON LEVIN WAS KILLED, HE WAS NOT THERE.

8 BUT WHEN HE SAW THE PICTURE OF MR. ESLAMINIA, IT  
9 MADE HIS STOMACH TURN. NOT ONLY THAT, YOU SAW HOW HE REACTED  
10 WHEN HE WAS TELLING YOU ABOUT JOE HUNT TELLING HIM THE DETAILS  
11 OF THE KILLING OF RON LEVIN.

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

5F

1           BUT HE SAYS MR. KARNY KNOWS THAT THERE WAS NO  
2 MURDER OF RON LEVIN AND THEN HE TURNS AROUND AND ALMOST IN  
3 THE SAME BREATH HE SAYS TO YOU "BUT YOU KNOW DEAN KARNY WOULD  
4 NEVER BE HERE UNLESS HE HAD IMMUNITY." IMMUNITY FROM WHAT?  
5 FROM A CRIME THAT NEVER HAPPENED?

6           WHY DOES HE WANT IMMUNITY IN THE FIRST PLACE?  
7 IT GOES BACK TO WHAT WE WERE TALKING ABOUT BEFORE IN A  
8 DIFFERENT CONTEXT ABOUT AIDING AND ABETTING. MR. KARNY IS  
9 A LAW STUDENT AND HE KNEW ABOUT AIDING AND ABETTING AND HE  
10 KNOW THAT HE MIGHT HAVE, IN HIS WORDS "SOME EXPOSURE."

11           HE DIDN'T SAY "I KILLED RON LEVIN" BUT HE KNEW  
12 HE MIGHT HAVE SOME EXPOSURE. HE WAS THERE WHEN THE LIST  
13 WAS BEING PREPARED. HE GAVE SOME INPUT TO JOE HUNT ON THINGS  
14 TO DO ON THIS LIST AND HE HELPED TO TAKE THOSE LETTERS OUT  
15 OF THE MAIL AND HE HAD SOME EXPOSURE, ALBEIT AS AN AIDER  
16 AND ABETTOR, FOR THE CRIMES THAT HE KNEW JOE HUNT WAS  
17 CONTEMPLATING COMMITTING. THAT IS WHAT HE WANTED IMMUNITY  
18 FOR.

19           AND MR. BARENS INSISTS AND INSISTS HE WOULDN'T  
20 BE HERE UNLESS HE HAD IMMUNITY. IMMUNITY FROM WHAT? IMMUNITY  
21 FROM ANY LIABILITY THAT HE HAS IN CONNECTION WITH THIS MURDER?

22           IF THIS CRIME, THIS MURDER NEVER HAPPENED AND  
23 DEAN KARNY HAS THIS IMMUNITY IN SAN MATEO, WHAT DOES HE NEED  
24 IMMUNITY DOWN HERE FOR? AND WHY WOULD HE COME DOWN HERE  
25 AND TESTIFY AGAINST HIS BEST FRIEND IN A MURDER CASE, PUT  
26 HIS LIFE ON THE LINE? "WELL, SORRY, JOE, I WILL JUST THROW  
27 THIS IN GRATUITOUSLY," LIE ABOUT HIS BUDDY, PUT HIS LIFE ON  
28 THE LINE, ENDANGER HIS LIFE, THE LIVES OF HIS FAMILY MEMBERS,

5-2  
1 FOR WHAT? FOR A CRIME THAT NEVER HAPPENED?

2 AND WHEN HE CAME DOWN HERE AND HE TESTIFIED,  
3 ONE OF THE MAIN THINGS THAT YOU HAVE TO DO, AND IT IS GOING  
4 TO BE REAL IMPORTANT IN THIS CASE, IS TO EVALUATE THE  
5 CREDIBILITY OF EACH WITNESS WHO TESTIFIED AND THE DEMEANOR  
6 WITH WHICH THEY TESTIFIED. WAS THEIR DEMEANOR APPROPRIATE  
7 TO THE THINGS ABOUT WHICH THEY WERE TESTIFYING?

8 AND IN THAT REGARD, I CITE YOU, AS I DID BEFORE,  
9 TO CARMEN CONCHELA.

10 BUT LOOK AT THE TESTIMONY OF DEAN KARNY AND HOW  
11 HE TESTIFIED AND WHAT HE SAID AND HE WAS ASKED, DID HE READ  
12 THE POLICE REPORT? "YES, I READ THE POLICE REPORT." THERE  
13 IS NO ARGUMENT ABOUT THAT.

14 WELL, YOU CAN CONTRAST THAT TO THE TESTIMONY  
15 OF BROOKE ROBERTS ABOUT READING THE POLICE REPORTS. IT WAS  
16 ALMOST LIKE PULLING TEETH TO GET HER TO SAY "I READ IT."

17 DO YOU REMEMBER THAT TESTIMONY ABOUT, "DID YOU  
18 READ THE REPORT?"

19 "WELL, I DIDN'T REALLY READ IT. I  
20 KIND OF SKIMMED IT."

21 AND THEN WHEN YOU TRIED TO PIN HER DOWN,

22 "WELL, WASN'T IT KIND OF IMPORTANT FOR  
23 YOU TO KNOW THE DETAILS OF WHAT PEOPLE WERE SAYING  
24 ABOUT THE MAN YOU WERE IN LOVE WITH?"

25 YOU CAN ALMOST SEE THE WHEELS TURNING IN HER  
26 HEAD AND SHE IS FOLLOWING THE TRAIN OF THOUGHT AND THEN SHE  
27 SAYS,

28 "WELL, YEAH, I GUESS I READ IT."

1                   AND IT IS COMPLETELY IN CONTRAST TO SOMEBODY  
2     LIKE DEAN KARNY WHO SAYS, "YEAH, I READ THE POLICE REPORT.  
3     I READ THE POLICE REPORT."

4                   IF DEAN KARNY'S ONLY PROBLEM WITH THE LAW WAS  
5     IN SAN MATEO, WHY WOULD HE EVEN COME TO THE POLICE IN LOS  
6     ANGELES? WHY EVEN INSIST ON IMMUNITY IN THIS CASE?

7                   ALSO, THERE WAS A BIG DEAL MADE ABOUT MR. KARNY  
8     MUST HAVE LIED TO YOU BECAUSE HE SAYS HE ONLY TOLD THE STORY  
9     FIVE TIMES AND WHY DIDN'T THE PEOPLE INTRODUCE THE POLICE  
10    REPORTS?

11                  MR. BARENS HAS HAD A COPY OF EVERY REPORT THAT  
12    HAS EVER BEEN PRODUCED IN THIS CASE ALMOST FROM THE DAY THAT  
13    THEY WERE WRITTEN, THAT IS HOW THE LAW WORKS. THE OTHER  
14    WAY THE LAW WORKS IS THAT THE PEOPLE CAN'T PUT IN THE POLICE  
15    REPORT IN EVIDENCE. IF THE WITNESS IS EXAMINED AND THE  
16    DEFENSE WANTS TO PUT IN THE REPORTS, THEY HAVE GOT ALL OF  
17    THE COPIES, THEY CAN SHOW THEM ALL THE COPIES IF THEY WANT  
18    TO AND HAVE THEM INTRODUCED INTO EVIDENCE, THEY CAN IF THEY  
19    WANT TO.

20                  THE REASON FOR THAT IS YOU DON'T PROSECUTE A  
21    CASE BY SAYING, "HERE, JURY, JUST READ WHAT THE POLICE DID."  
22    YOU HAVE TO CALL THE WITNESSES AND PUT THE WITNESSES ON THE  
23    STAND.

24                  BUT IF THE REPORTS ARE TO COME IN, THEY CAN COME  
25    IN BY THE DEFENSE PUTTING THEM IN.

26                  MR. BARENS, IN TALKING ABOUT MR. KARNY, SAYS,  
27    "WELL, WHAT ABOUT THIS STUFF ABOUT PITTMAN IN WASHINGTON?"  
28    AND HE SAID THIS IS QUADRUPLE "HE SAID, HE SAID THIS AND

5-4  
7  
1 HE SAID IT TO HUNT." HE SAID THIS TO HUNT ABOUT SO AND SO.

2 HE FORGOT -- I DON'T KNOW, MAYBE HE DIDN'T LISTEN  
3 TO THE SAME CASE YOU AND I LISTENED TO -- REMEMBER THE PARK  
4 BENCH MEETING WHEN MR. PITTMAN AND MR. HUNT AND MR. KARNY,  
5 THE THREE OF THEM WERE DISCUSSING AT THE TIME MR. PITTMAN  
6 GOING TO WASHINGTON AND TAKING THE \$30,000 AND GETTING THE  
7 INFORMATION FROM JIM'S CONTACT IN WASHINGTON.

8 AND YOU ARE ASKED TO BELIEVE THAT DEAN KARNY  
9 IS A LIAR, HE KEEPS SAYING THAT WITHOUT ANY EVIDENCE TO BACK  
10 IT UP, AND THEN YOU HAVE GOT THE TWO BIG CRUNCHERS YESTERDAY  
11 IN THE ARGUMENT: WELL, HE IS A LIAR BECAUSE BROOKE ROBERTS  
12 SAYS SHE HEARD THROUGH THE WALL THAT HE AND JOE HUNT WERE  
13 TALKING ABOUT FABRICATING THIS CRIME. WELL, I AM GOING TO  
14 TALK TO YOU A LITTLE BIT LATER ABOUT WHY IT CAN'T BE THAT  
15 THAT WAS JUST "OH, WE JUST MADE THIS UP."

16 ALSO, SO THAT IS ONE THING WHY THEY SAID, "WELL,  
17 DEAN KARNY MUST BE LYING ABOUT THIS."

18 AND THEN THE OTHER THING THAT WAS PRESENTED TO  
19 YOU, THE BIG THING THAT WAS PRESENTED TO YOU YESTERDAY, TO  
20 SAY THAT DEAN KARNY IS LYING, THE PACKAGE THAT IS LEFT AT  
21 MR. LEVIN'S, KARNY SAID THERE WERE THREE LETTERS -- KARNY  
22 SAID THERE WERE ONLY THREE LETTERS IN THERE AND THERE WERE  
23 FOUR AND, THEREFORE, HE IS LYING. CAN YOU BELIEVE THAT?

24 HE IS LYING BECAUSE HE SAID THERE WERE THREE  
25 LETTERS AND THERE WERE ACTUALLY FOUR. TALK ABOUT SOMETHING  
26 SOMEBODY DOES THAT IS A MISTAKE. WHAT DOES HE GAIN BY SAYING  
27 THERE WERE THREE LETTERS AND THEY WERE HAND DELIVERED, AND  
28 NOT REMEMBERING THE FOURTH ONE, WHAT DOES THAT GET HIM?

1    NOTHING.  IT IS JUST A MISTAKE THAT SOMEBODY MADE.

2                    THERE IS ANOTHER PERSON WHO MADE A MISTAKE ABOUT  
3    THAT FOURTH LETTER, BY THE WAY, AND YOU CAN LOOK AT THAT  
4    AND THE REASON WHY IT IS EASY TO MAKE A MISTAKE ABOUT THE  
5    FOURTH LETTER IS BECAUSE IT WAS BURIED INSIDE THE PACKET  
6    AND SINCE IT IS BURIED INSIDE THE PACKET, THE OTHER PERSON  
7    WHO MADE THE MISTAKE WAS JOE HUNT, WHO WENT THERE THAT NIGHT  
8    AND DIDN'T PUT THE DATE STAMP ON THE LETTER.  ALL OF THE  
9    OTHER THREE LETTERS HAD GOT THIS DATE STAMPED ON THEM BUT  
10   THIS ONE THAT WAS BURIED IN THE PACKET, MR. KARNY AND EVERY-  
11   BODY ELSE FORGOT ABOUT, INCLUDING MR. HUNT, IT DIDN'T HAVE  
12   A DATE STAMP.

13                   YOU KNOW, THE METICULOUS MR. LEVIN, IF THAT  
14   WAS MAILED TO HIM AND HE ACTUALLY RECEIVED IT, HE WAS GOING  
15   TO PUT THE DATE STAMP ON IT.

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

6A-1  
1 AND AS AGAINST THESE TWO THINGS THAT ARE SUPPOSED  
2 TO LEAD YOU TO BELIEVE THAT MR. KARNY IS NOT TELLING THE TRUTH,  
3 LET'S GO BACK TO THE THINGS THAT HE SAID THAT WERE NOT ONLY  
4 CORROBORATED BY OTHER WITNESSES, BUT TRY TO KEEP TRACK OF THE  
5 THINGS THAT HE SAID THAT WERE IN FACT, NOT IN THE POLICE  
6 REPORTS.

7 YOU HAVE TO GO BACK TO HIS TESTIMONY AS TO WHAT  
8 WASN'T IN THE POLICE REPORTS BECAUSE HE WAS ASKED ABOUT SEVERAL  
9 OF THOSE THINGS. BUT WE KNOW ABOUT THE LETTERS THAT WERE  
10 HAND DELIVERED BECAUSE LORIE LEIS SAYS THAT IS IN FACT, THE  
11 CASE.

12 WE KNOW FROM THE WINGS TRAVEL RECEIPTS THAT  
13 MR. PITTMAN WAS IN WASHINGTON, D.C. THAT WAS NOT IN ANY OF  
14 THE POLICE REPORTS. IT WASN'T IN ANY OF THE POLICE REPORTS.  
15 THAT IS ONE OF THE THINGS NOT IN THE POLICE REPORTS.

16 THE MAJOR THING -- ONE OF THE MAJOR THINGS THAT  
17 WAS NOT IN THE POLICE REPORTS, WAS MR. PITTMAN GOING TO  
18 NEW YORK. YOU HAVE RECEIPTS FROM THE PLAZA AND YOU KNOW THAT  
19 IT WAS ONLY AFTER DEAN KARNY TOLD THE POLICE THAT ALL THOSE  
20 THINGS HAPPENED IN NEW YORK, THAT DENNIS DECUIR, ON ABOUT  
21 DECEMBER 3RD, WENT THERE AND GOT ALL OF THE RECORDS FROM THE  
22 PLAZA HOTEL.

23 THERE WASN'T ANYTHING IN THE POLICE REPORTS ABOUT  
24 THE DENT ON THE BMW. THERE WASN'T ANYTHING IN THE POLICE  
25 REPORTS THAT DEAN KARNY REMEMBERED BEFORE COMING TO THE  
26 POLICE, ABOUT A GUN WITH THE SILENCER.

27 YET, JERRY EISENBERG AND STEVE TAGLIANETTI BOTH  
28 SAID THAT THEY SAW MR. PITTMAN WITH A GUN WITH A SILENCER.



5A-  
1 MR. KARNY IS CORROBORATED AGAIN BY EVAN DICKER  
2 WHEN HE SAYS THAT HUNT DISCUSSED THE KILLING OF OTHER  
3 WITNESSES IN THE CASE. AND HE IS CORROBORATED BY TOM MAY ON  
4 THE ATTEMPT TO FORGE RON LEVIN'S SIGNATURE. THE AMERICAN  
5 EXPRESS BILLS THAT YOU HAVE WITH THE JUNE STATEMENT THAT IS  
6 MISSING, THAT CORROBORATES THE FACT THAT HE HAD THOSE  
7 AMERICAN EXPRESS RECEIPTS TO USE TO TRY TO ATTEMPT TO FORGE  
8 A SIGNATURE FROM.

9 THE USE OF THE WORD "MAC" TO COVER UP THE KILLING  
10 OF RON LEVIN SO NOBODY WITH A VOICE-ACTIVATED TAPE RECORDER,  
11 LIKE MR. HUNT HAD TO SPY ON HIS OWN PEOPLE, WOULD KNOW WHAT  
12 THEY WERE TALKING ABOUT. THAT IS NOT IN ANY OF THE POLICE  
13 REPORTS.

14 HUNT MADE A STATEMENT TO DEAN KARNY. HE WENT TO  
15 NEW YORK AND HE HIRED A LAWYER ON THE STEPS OF THE COURTHOUSE.  
16 MR. FERRARO CAME IN AND TOLD YOU ABOUT BEING ON THE STEPS OF  
17 THE COURTHOUSE. AND THAT IS NOT IN ANY OF THE POLICE  
18 REPORTS.

19 THE STATEMENT THAT IS MADE AT THE MEETING THAT  
20 DEAN KARNY TELLS YOU ABOUT. THAT'S CORROBORATED BY ALL OF  
21 THE OTHER PEOPLE AT THE MEETING.

22 THE MONEY BEING TIGHT AT THE BBC, THE SHOPPING  
23 CENTER AND ALL OF THOSE THINGS AND HUNT'S RELATIONSHIP WITH  
24 MR. PITTMAN. ALL OF THE PEOPLE IN THE BBC WILL TELL YOU THE  
25 SAME THING.

26 ON JUNE 7TH IN THE MORNING WITH THE CHECK, THAT  
27 IS INTERESTING BECAUSE DEAN KARNY SAYS, "I GOT UP. I WAS  
28 AWAKENED. IT WAS ABOUT 7 O'CLOCK IN THE MORNING. I WAS

6A  
1 AWAKENED BY JOE HUNT. AND HE HAD THAT CHECK. HE HAD THE  
2 CONTRACT."

3 AND JEFF RAYMOND SAYS THAT HE WAS AWAKENED VERY  
4 EARLY IN THE MORNING BY JOE HUNT AND HE HAD THE CHECK AND A  
5 CONTRACT. AND TOM MAY SAYS THAT JOE HUNT DROVE OVER TO HIS  
6 HOUSE VERY EARLY, LIKE ABOUT 8 O'CLOCK IN THE MORNING ON  
7 JUNE 7TH AND SHOWED HIM THE CHECK AND THE CONTRACT. THEY ALL  
8 SAY THAT.

9 WHAT ADVANTAGE DOES IT HAVE FOR THEM TO MENTION  
10 WHAT TIME THIS IS? AND YET, BROOKE ROBERTS SAYS THAT SHE  
11 THINKS JOE GOT UP AT 10 O'CLOCK IN THE MORNING ON THAT DATE.  
12 IT DOESN'T MAKE ANY SENSE.

13 THE TESTIMONY OF MR. KARNY IS CORROBORATED BY  
14 EVERY OTHER WITNESS WHO TELLS YOU ABOUT THAT MORNING, EXCEPT  
15 BROOKE ROBERTS.

16 THE CONTRACT BEING USED NOT AS A LEGITIMATE  
17 BUSINESS TOOL, BUT AS A MEANS OF TAKING SUSPICION AWAY FROM  
18 MR. HUNT. YOU HEARD EISENBERG WITH THE "SPICE UP" THIS THING  
19 WITH A LITTLE LEGAL LANGUAGE.

20 AND DEAN KARNY SAYS THAT TOM MAY KNEW OF THE  
21 MURDER BEFORE THE MEETING. THAT IS CORROBORATED BY THE  
22 TESTIMONY OF MR. MAY.

23 THERE ARE TWO ARGUMENTS, TWO MAIN THRUSTS OF THE  
24 DEFENSE IN THIS CASE. AND THE TWO MAIN THRUSTS OF THE DEFENSE  
25 IN THIS CASE ARE, THIS IS THE ULTIMATE CON BY LEVIN, SETTING  
26 UP HIS OWN DEATH AND THAT WHEN JOE HUNT SAID, "I KILLED RON  
27 LEVIN AND I KNOCKED HIM OFF," HE MUST HAVE BEEN -- HE WAS JUST  
28 POSTURING, JUST SAYING THAT FOR EFFECT.

6A-11  
1 WELL, FIRST OF ALL, EACH OF THOSE ON THEIR OWN,  
2 IS I THINK -- IT FALLS AND IT IS FALLACIOUS AND IT IS JUST  
3 A STUPID THING TO SAY OR EVEN SUGGEST. BUT ESPECIALLY, WHEN  
4 YOU PUT THEM TOGETHER. THEY ARE PRETTY RIDICULOUS. BUT, LET'S  
5 LOOK AT LEVIN CREATING HIS OWN DEATH. NOW, MR. BARENS IS VERY  
6 FOND OF TELLING YOU FROM THE VERY BEGINNING, RON LEVIN, THE  
7 MASTER ILLUSIONIST, HE IS GREAT AT IT, HE IS THE MASTER CON  
8 MAN, RIGHT?  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

7-1  
1 WELL, IF YOU SIT HERE, IF I GAVE YOU A MINUTE  
2 TO THINK OF WHAT YOU WOULD DO IF YOU WERE GOING TO SET UP  
3 YOUR OWN DEATH, IN A MINUTE YOU COULD COME UP WITH A BETTER  
4 PLAN THAN THIS.

5 MR. BARENS HIMSELF SAYS, "WELL, THIS DOESN'T  
6 LOOK LIKE A MURDER SCENE, TO ME, AT THE HOUSE."

7 IF YOU WERE GOING TO SET UP YOUR OWN DEATH AND  
8 MAKE IT LOOK LIKE A ROBBERY-MURDER, WOULDN'T THERE BE A LOT  
9 OF THINGS THAT YOU WOULD WANT TO DO?

10 IF YOU WANTED TO MAKE IT LOOK LIKE A MURDER,  
11 WHAT IS THE FIRST THING THAT YOU WOULD WANT TO HAVE AROUND?  
12 BLOOD. EASY ENOUGH, CUT YOURSELF AND THERE IS BLOOD. YOU  
13 CAN PUT BLOOD ANYWHERE YOU WANT.

14 WHAT IS THE NEXT THING THAT YOU WOULD WANT TO  
15 HAVE IF YOU WANTED TO MAKE IT LOOK LIKE A ROBBERY-MURDER?  
16 YOU WOULD WANT TO MAKE SURE THAT THE PEOPLE WHO FOUND THIS  
17 SCENE WOULD KNOW THAT THERE WAS SOME PROPERTY MISSING, RIGHT?

18 AND SO YOU TAKE PROPERTY WITH YOU, RIGHT? WATCHES,  
19 THREE WATCHES THAT BLANCHE STURKEY TELLS US ARE LEFT. THREE  
20 EXPENSIVE WATCHES ARE LEFT AT RON LEVIN'S. YOU WOULD LEAVE  
21 THOSE BEHIND IF YOU WERE GOING TO MAKE THIS LOOK LIKE A  
22 ROBBERY-MURDER? EXPENSIVE ART WORK AND OTHER EXPENSIVE  
23 OBJECTS IN RON LEVIN'S HOUSE, ALL LEFT BEHIND, IF YOU ARE  
24 GOING TO MAKE IT LOOK LIKE A ROBBERY-MURDER?

25 THE CAR LEFT BEHIND IF YOU WERE GOING TO MAKE  
26 IT LOOK LIKE A ROBBERY-MURDER?

27 IT IS JUST LUDICROUS ON ITS FACE THAT THIS IS  
28 WHAT LEVIN WAS TRYING TO DO.

1 IF -- NOW, THAT IS IN AND OF ITSELF -- NOW, HE  
2 SET THIS UP, OF COURSE, LEVIN, THE MASTER ILLUSIONIST, FOR  
3 THE NIGHT OF JUNE 6 AND JUST COINCIDENTALLY, HE HAS GOT JOE  
4 HUNT OVER HERE PREPARING THIS LIST THAT NIGHT AND SO SINCE  
5 HE IS GOING TO DO ALL OF THESE THINGS, HE CALLS UP HIS FRIEND  
6 JOE AND HE SAYS, "JOE, THAT LIST THAT YOU ARE PREPARING,  
7 COULD YOU BRING THAT OVER HERE? BECAUSE I NEED TO LEAVE  
8 IT HERE SO THAT IT IS GOING TO LOOK LIKE I WAS KILLED."

9 "SURE, RON, NO PROBLEM."

10 I MEAN, IT IS JUST, WHEN YOU THINK ABOUT IT,  
11 WHEN YOU PUT THESE TWO THINGS TOGETHER, IS THIS JUST AN  
12 AMAZING COINCIDENCE? I MEAN IT DOESN'T MAKE ANY SENSE. IT  
13 DOESN'T MAKE ANY SENSE AT ALL.

14 SO HE SAYS, "COME ON, JOE, BRING THE STUFF OVER  
15 HERE." AND THEN, OF COURSE, JOE DOES AND THEN RON SAYS,  
16 "OKAY, WELL, I'VE GOT THE LIST, I AM READY. LET ME JUST  
17 TAKE MY COMFORTER AND MY PILLOW AND MY SHEET AND MY TV  
18 CHANNEL CHANGER AND I WILL JUST HOOF IT OUT," BECAUSE THAT  
19 IS WHAT IS MISSING. NOT THE MONEY. NOT ANYTHING.

20 AND NOT ONLY THAT, IF YOU WERE GOING TO MAKE  
21 IT LOOK LIKE MONEY WAS MISSING AND YOU HAVE GOT THESE  
22 TRAVELER'S CHECKS, THE TRAVELER'S CHECKS ARE TAKEN, \$3,000,  
23 RIGHT, BUT LEVIN CAN'T USE THEM BECAUSE IF HE IS TRYING TO  
24 MAKE IT LOOK LIKE THEY WERE STOLEN, HE CAN'T USE THEM. RIGHT?  
25 SO THOSE ARE NO GOOD.

26 BUT IF YOU WERE TRYING TO SET UP A MURDER, YOU  
27 WOULD GET THE CASH FIRST, MAKE SURE PEOPLE SAW THERE WAS  
28 CASH AROUND AND YOU COULD TAKE THE CASH WITH YOU AND SPEND

1 THE \$3,000.

2 IT IS JUST AN ABSURDITY ON ITS FACE. LEVIN,  
3 THE MASTER ILLUSIONIST.

4 AND THEN HE CALLS UP HIS FRIEND JOE -- NOT ONLY  
5 DOES HE TELL JOE TO BRING THE LIST, HE SAYS, "JOE, YOU DON'T  
6 MIND IF I PIN THIS WHOLE MURDER ON YOU, I HAVE GOT THIS THEFT  
7 RAP AND I WANT TO GET OUT OF IT, SO I AM GOING TO PIN THIS  
8 MURDER ON YOU. DON'T WORRY, JOE, IT WILL BE OKAY. I WILL  
9 PIN THIS MURDER RAP ON YOU. I HAVE GOT THIS THEFT RAP."

10 IF WHAT YOU REALLY WANTED TO DO WAS TO PLAN A  
11 MURDER, YOU COULD DO ALL KINDS OF THINGS SO THAT SUSPICION  
12 WOULDN'T FALL ON ANYBODY.

13 AS FAR AS LEVIN WAS CONCERNED, HUNT WAS HIS FRIEND  
14 BECAUSE, REMEMBER, HUNT WAS THE ONE WITH THE GRUDGE. HUNT  
15 WAS THE ONE WHO WAS BUDDYING UP TO HIM, TRYING TO MAKE IT  
16 LOOK LIKE SOMETHING WAS GOING ON AND LEVIN, IN HIS MIND,  
17 WAS HUNT'S FRIEND.

18 SO WHY WOULD HE SET HUNT UP TO TAKE A RAP FOR  
19 LEVIN?

20 LEVIN WASN'T A VIOLENT MAN. ALL OF THE THINGS  
21 YOU HEARD ABOUT HIM, THEY ARE TRYING TO THROW DIRT ON HIM,  
22 LEVIN WAS THIS AND HE DID THIS. HE NEVER HURT ANYBODY. HE  
23 WAS A THIEF, MAYBE. A CON MAN, MAYBE. HE WASN'T VIOLENT.

24 SO WHY IS HE GOING TO SET A FRIEND OF HIS UP  
25 TO TAKE A MURDER RAP? IF HE WANTS TO MAKE IT LOOK LIKE HE  
26 WAS KILLED, HE COULD DRIVE HIS CAR OUT TO THE MIDDLE OF THE  
27 DESERT SOME PLACE SOMEWHERE AND LEAVE AND PUT BLOOD ON THERE,  
28 LEAVE SOME THINGS SCATTERED AROUND. HE COULD DO ANYTHING

1 WHERE SUSPICION WOULDN'T FALL ON ANYBODY.

2 BUT NO, NO, HE IS GOING TO SET HIS BUDDY, JOE  
3 HUNT, UP TO TAKE THIS.

4 AND HE DID SOME OTHER GREAT THINGS. I MEAN YOU  
5 TALK ABOUT A GUY WHO COULD REALLY PULL IT OFF. HE SAYS,  
6 NOT ONLY, "JOE, BRING THE LIST, BUT YOU DON'T MIND, A FEW  
7 DAYS AFTER THE 6TH, TAKE DEAN KARNY AROUND THE BLOCK AND  
8 JUST TELL HIM THIS STORY."

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

B

7B

1                   AND HE GETS JOE HUNT TO CONFESS TO THE MURDER  
2 TO DEAN KARNY. THEN HE GETS JOE HUNT TO CONFESS TO THE MURDER  
3 TO TOM MAY. THEN HE GETS JOE HUNT TO CONFESS THE MURDER  
4 TO TEN PEOPLE AT A MEETING ON JUNE 24.

5                   THIS IS INCREDIBLE, THESE COINCIDENCES ARE JUST  
6 ABSOLUTELY INCREDIBLE. IT DOESN'T MAKE ANY SENSE ON ITS  
7 FACE AND IT CERTAINLY DOESN'T MAKE ANY SENSE WHEN YOU PUT  
8 IT TOGETHER WITH EVERYTHING ELSE.

9                   OH, AND OF COURSE, HE HAD TO ARRANGE FOR MR.  
10 PITTMAN TO GET HIS CREDIT CARDS AND GO TO NEW YORK. THE  
11 MR. PITTMAN, THAT HE DIDN'T KNOW, BY THE TESTIMONY OF ALL  
12 OF THE WITNESSES THAT WE HAVE HAD.

13                   "JIM, COME ON OVER. HERE ARE THESE CARDS. CAN  
14 YOU GO TO THE PLAZA, PLEASE?"

15                   AND THEN AS IF ALL OF THESE THINGS WEREN'T ENOUGH,  
16 ASK YOURSELF WHY? WHY WOULD HE DO THIS?

17                   NOW IT IS SUGGESTED TO YOU THAT HE DID THIS BECAUSE  
18 HE, OF COURSE, HAS TO GET OUT FROM UNDER THIS GRAND THEFT  
19 CASE THAT HE HAS GOT.

20                   WELL, I TALKED TO YOU YESTERDAY ABOUT LEVIN  
21 KNOWING THAT THIS IS THE PRICE OF DOING BUSINESS AND YOU  
22 KNOW HOW SLOWLY JUSTICE GOES.

23                   BUT WHAT DOES HE GET OUT OF FAKING HIS OWN MURDER  
24 ON JUNE 6 OF 1984?

25                   IF THE THEORY IS THAT IN ORDER TO FAKE THE MURDER  
26 HE HAS GOT TO GO UNDERGROUND AND HE CAN'T BE DETECTED AT  
27 ALL, THEN THAT MEANS HE HAS GOT TO GO SOMEWHERE AND SIT AND  
28 SHUT HIS MOUTH AND NOT BE SEEN, NOT BE HEARD FROM, AND HE



1 CERTAINLY CAN'T GET ARRESTED OR HAVE ANY BRUSHES WITH THE  
2 LAW OR ANYTHING LIKE THAT. WELL, IF THAT IS WHAT HE IS GOING  
3 TO DO, IF THAT IS WHAT HE HAS TO DO ANYWAY, THEN WHY DOES  
4 HE HAVE TO DO IT BY SETTING UP A MURDER? WHY NOT JUST LEAVE?

5 THE OBVIOUS COMEBACK TO THAT, EVEN THOUGH MR.  
6 BARENS DOESN'T GET A CHANCE TO TALK, IS, WELL, BECAUSE HE  
7 HAS GOT THIS CASE PENDING AND THEY ISSUE A WARRANT FOR HIM.

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

A-1  
1 WELL, PEOPLE LEAVE ALL OF THE TIME. AND THE IDEA  
2 IS THAT IF THEY ISSUE A WARRANT FOR HIM, WHAT DOES THAT MEAN?  
3 IF HE GETS STOPPED OR PICKED UP ANY PLACE, THAT HE IS GOING  
4 TO GET ARRESTED.

5 ALL THAT MEANS IS THAT HE HAS TO GO UNDERGROUND,  
6 EXACTLY THE SAME WAY THAT HE WOULD IF HE FAKED HIS DEATH.  
7 HE HAS GOT A WARRANT OUT AND HE HAS GOT TO GO UNDERGROUND.  
8 HE HAS TO DO EXACTLY THE SAME THING.

9 BUT WHAT DOES HE GAIN BY JUST LEAVING INSTEAD OF  
10 FAKING THE MURDER? HE GAINS A YEAR OR TWO OF LIVING HIS  
11 LIFESTYLE IN BEVERLY HILLS. HE DOESN'T HAVE TO LEAVE UNTIL  
12 HE FINDS OUT WHAT IF ANYTHING, IS GOING TO HAPPEN WITH THE  
13 CRIMINAL CASE. PLUS, WHAT ELSE DOES HE GAIN? HE GAINS BEING  
14 ABLE TO CALL HIS FRIENDS, TALK TO HIS FRIENDS, TALK TO HIS  
15 MOTHER BECAUSE HE DOESN'T HAVE TO PRETEND HE IS DEAD.

16 HE DOESN'T NECESSARILY HAVE TO TELL THEM WHERE  
17 HE IS. BUT HE GAINS ALL OF THAT. SO IT DOESN'T MAKE ANY  
18 SENSE WHY HE WOULD EVEN DO IT.

19 IF HE HAS GOT TO DO SOME OF THE SAME THINGS  
20 TO FAKE THE MURDER THAT HE DOES IF HE JUST LEFT, BUT HE GETS  
21 THE BENEFITS BY LEAVING INSTEAD OF JUST FAKING HIS DEATH, IT  
22 JUST DOESN'T MAKE ANY SENSE. NONE OF IT MAKES ANY SENSE.

23 AND THEN, YOU HAVE TO DOVETAIL THAT WITH JOE HUNT  
24 SAYING WELL, I DIDN'T REALLY MEAN TO CONFESS THIS MURDER.  
25 I JUST WANTED TO SEE WHAT EFFECT IT WAS GOING TO HAVE. WHAT  
26 EFFECT IT WAS GOING TO HAVE ON DEAN KARNY WHEN I WALKED HIM  
27 AROUND THE BLOCK, TWO OR THREE DAYS AFTER JUNE THE 6TH, TO  
28 TELL HIM THESE GRUESOME DETAILS OF THIS.

8A 2  
1            THEN HE GOES TO NEW YORK.  WHAT HAPPENS IF LEVIN  
2 SHOWS UP THREE OR FOUR DAYS LATER, COMING BACK FROM NEW YORK.  
3 WHAT IS KARNY GOING TO THINK THEN?

4            THEN TOM MAY, A FEW DAYS AFTER THAT, WHAT DOES  
5 HE GAIN?

6            WHEN YOU THINK ABOUT IT, PUT YOURSELF IN  
7 MR. HUNT'S POSITION.  AND HE HAS TOLD ALL OF THESE PEOPLE AT  
8 THE MEETING.  AND NOW, THEY START GOING TO THE POLICE AND THE  
9 IDEA I THINK AT THE MEETING WAS THAT THEY WERE GOING TO BE  
10 ABLE TO CONTROL ALL OF THESE PEOPLE AND EVEN IF SOME PEOPLE  
11 DID GO TO THE POLICE, ENOUGH PEOPLE WOULD STICK TOGETHER THAT  
12 THEY COULD TOUGH IT ALL OUT.

13            IN FACT, WHEN YOU LOOKED AT EXHIBIT 210 WHICH ARE  
14 THE NOTES THAT WERE WRITTEN BY JOE HUNT FROM THE JAIL AND BY  
15 BROOKE TO JOE HUNT WHEN HE IS IN JAIL, SHE SAYS THAT EVERYBODY  
16 IS STICKING TOGETHER.

17            THAT OF COURSE, WASN'T ENTIRELY TRUE.  BUT IF  
18 EVERYBODY STUCK TOGETHER, THEN THEY COULD SAY AS WAS SUGGESTED  
19 BY BROOKE WHEN SHE TALKED TO DEAN KARNY THE FIRST TIME, WELL,  
20 THE MEETING NEVER HAPPENED.  HE NEVER SAID THOSE THINGS.

21            BUT THEN, WHEN TOO MANY PEOPLE CAME FORWARD AND  
22 SAID THAT HE MADE THOSE STATEMENTS, NOW IT IS NOT GOING TO  
23 BE PERSUASIVE TO SAY THAT HE DIDN'T SAY IT WHEN WE HAVE  
24 SEVEN OR EIGHT OR NINE PEOPLE SAYING THAT HE MADE THE  
25 STATEMENT.  SO, HE IS STUCK NOW, RIGHT?

26            WHAT DOES HE SAY?  SORRY, I CONFESSED BUT IT WAS  
27 A JOKE.  I WAS JUST KIDDING.  AND OF COURSE AS EVIDENCE OF  
28 THAT, WE ARE OFFERED THE STATEMENT THAT IS MADE BY JOE HUNT

1 TO STEVE LOPEZ WHICH WAS SOME TIME BACK AT THE END OF AUGUST  
2 OF 1984.

3 FIRST OF ALL, THAT WAS MR. HUNT'S SETTING THIS  
4 UP FROM THE BEGINNING. SECOND OF ALL, THE STATEMENT WAS MADE  
5 TO MR. LOPEZ AFTER MR. HUNT HAD BEEN IN THE MAYS' APARTMENT  
6 AND KNEW THEY WENT TO THE POLICE.

7 THIRD OF ALL, THE STATEMENT MADE -- SORRY, IN  
8 MIDSTREAM I FORGOT IT. THIRD OF ALL, I HAVE GOT TO FIND  
9 SOMETHING.

10 THIRD OF ALL, IS WHY SAY THIS TO STEVE LOPEZ? WHY  
11 SAY TO STEVE LOPEZ THAT IT WAS JUST A JOKE? WHAT DOES HE GET  
12 OUT OF SAYING IT TO STEVE LOPEZ? NOTHING EXCEPT MAYBE SETTING  
13 UP SOME KIND OF A DEFENSE.

14 IF HE REALLY SAID THAT FOR EFFECT, THEN WHAT DO  
15 YOU DO? GO TELL IT TO SOMEBODY WHO MATTERS. GO TELL TOM MAY  
16 AND JEFF RAYMOND AND STEVE TAGLIANETTI.

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 LOOK, I SAID THIS. IT WAS JUST ALL FOR EFFECT.  
2 I AM TRYING TO ACT LIKE A TOUGH GUY.

3 TELL IT TO SOMEBODY WHO MATTERS? NO. HE DIDN'T  
4 DO THAT. HE HAD THE OPPORTUNITY.

5 HE TOOK TOM AND DAVE MAY AND JEFF RAYMOND TO THE  
6 CHARTHOUSE FOR DINNER. DID HE SAY GUYS, GO TO THE POLICE AND  
7 TELL THEM LOOK, IT WAS JUST ALL FOR EFFECT? I WAS REALLY JUST  
8 JOKING. GIVE THEM THE EVIDENCE TO BACK IT UP. IT WAS FOR  
9 EFFECT.

10 HE DOESN'T TELL ANYBODY WHO COULD DO ANYTHING ABOUT  
11 IT. THAT IS BECAUSE NONE OF THOSE STATEMENTS WERE MADE FOR  
12 EFFECT. AND YOU ALSO HAVE TO CONSIDER THEM IN TERMS OF WHEN  
13 THEY ARE MADE, JUST COINCIDENTAL WITH THIS PLAN THAT RON HAS  
14 TO DISAPPEAR TO AVOID PROSECUTION.

15 THERE ARE THINGS THAT MR. BARENS DIDN'T SAY IN  
16 HIS ARGUMENT. WE TALKED A FEW DAYS AGO ABOUT THINGS MR. HUNT  
17 DID AS FAR AS HIS CONSCIOUSNESS OF GUILT.

18 AND THERE IS NO PLACE ON THERE LEFT TO WRITE IN  
19 BIG, BIG RED LETTERS, "NOT SENDING ANYONE TO ARIZONA TO FIND  
20 THE MAN WHO IS ALIVE" THAT HE IS CHARGED WITH KILLING.

21 WE SHOULD PUT IT IN BIG RED LETTERS ACROSS THE  
22 THING. BUT IT OFFENDS MY SENSE OF ORDER.

23 DID YOU ASK YOURSELF IF YOU HEARD ANY REASONABLE  
24 EXPLANATION? KEEP IN MIND WHEN WE TALK ABOUT CIRCUMSTANTIAL  
25 EVIDENCE, YOU ARE TALKING ABOUT TWO REASONABLE INTERPRETATIONS  
26 OF THINGS. WHAT IS THE REASONABLE INTERPRETATION THAT YOU  
27 HEARD FOR THE FACT THAT THEY WERE USING "MAC"?

28 WELL, WE JUST SAID THIS FOR EFFECT? IT WAS ALL

8-5  
1 A JOKE, SO LET'S HAVE A FEW DETAILS. IT DOESN'T MAKE ANY  
2 SENSE. DETAILS OF WHAT? A CODE NAME TO KEEP WHO FROM HEARING  
3 ABOUT IT? HE IS GOING TO TELL THE WHOLE WORLD, SO WHY HAVE  
4 A CODE NAME ABOUT IT?

5 DID YOU HEAR ANY EXPLANATION AT ALL? AT ALL BY  
6 MR. BARENS FOR WHY IT WAS THAT WHEN JOE HUNT GOT BACK ON  
7 JUNE 16 FROM LONDON, HE DIDN'T CALL RON LEVIN AND SAY, "LEVIN,  
8 THE CHECK IS NO GOOD?"

9 NO. YOU DIDN'T HEAR ANY EXPLANATION OF THAT AT  
10 ALL. LIKEWISE, I DIDN'T HEAR ANY EXPLANATION OF THE FACT THERE  
11 WEREN'T ANY LETTERS WRITTEN TO RON LEVIN TO TRY TO GET A NEW  
12 CHECK OR ANY ATTEMPT WHATSOEVER TO GET A NEW CHECK FROM RON  
13 LEVIN.

14 DID YOU HEAR ANY REASONABLE EXPLANATION FOR WHY  
15 IT WAS THAT THEY WERE THERE FORGING OR ATTEMPTING TO FORGE  
16 RON LEVIN'S SIGNATURE? DID YOU HEAR A WORD SAID ABOUT THAT?

17 THE SENDING OF PITTMAN TO WASHINGTON, D.C. TO  
18 SEE WHAT TO DO TO GET THE CHECK CASHED. WHAT IS THE REASONABLE  
19 EXPLANATION FOR THAT? THE ONLY REASONABLE EXPLANATION IS THAT  
20 IF YOU KNEW YOU COULDN'T GET ANOTHER CHECK FROM LEVIN, THEY  
21 WERE GOING TO TRY TO DO IT BY GETTING ONE FROM MR. PITTMAN.  
22 IT WAS REALLY A BARGAIN BY THE WAY. FOR \$30,000, WHAT DID  
23 THEY GET?

9F  
24  
25  
26  
27  
28

0-1

1           FOR \$30,000, THEY HAVE GOT THE INFORMATION. WELL, IT  
2 WASN'T SO MUCH THAT IT WAS NSF OR THAT THE SIGNATURE WAS  
3 MISSING, IT WAS SIGNED IN THE WRONG PLACE AND KEEP THAT IN  
4 MIND, BECAUSE THAT IS WHY IT WAS THAT THEY KEPT TRYING TO  
5 GET THE NEW CHECK, TO GO TO THE MAILBOX AND NOW THEY WERE  
6 GOING TO SIGN IT IN THE RIGHT PLACE AND SEE IF THEY COULD  
7 GET THE CHECK CASHED.

8           MR. BARENS SAYS, "WELL, WHY? WHY EVEN TRY AND  
9 GET A NEW CHECK? THIS PITTMAN TO WASHINGTON IS SILLY. WHY  
10 TRY TO GET A NEW CHECK IF YOU KNOW THE FIRST ONE IS BAD BECAUSE  
11 IT WAS NSF?"

12           WHAT WAS NSF? A MILLION FIVE CHECK? IF A MAN  
13 HAS A MILLION FOUR IN HIS ACCOUNT AND HE WRITES A CHECK FOR  
14 A MILLION FIVE, THE CHECK IS GOING TO BOUNCE. BUT IF HE  
15 HAS A MILLION FOUR AND YOU GET A NEW CHECK AND YOU WRITE  
16 IT FOR A MILLION TWO, IT IS NOT GOING TO BOUNCE. SO THAT  
17 IS THE POINT OF GETTING THE NEW CHECK.

18           THE POINT OF HAVING THAT ON THE LIST IS THAT  
19 THERE IS NO REASONABLE EXPLANATION FOR DOING THAT ON JUNE  
20 THE 19TH OR 20TH, UNLESS YOU KNOW BY THAT TIME THAT LEVIN  
21 IS ALREADY DEAD.

22           DID YOU HEAR ANY REASONABLE EXPLANATION FOR WHAT  
23 JOE HUNT WAS DOING, THREATENING TO KILL WITNESSES AND THE  
24 GIRLFRIEND OF A WITNESS AND PINNING THINGS ON PEOPLE, UNLESS  
25 HE HAD ACTUALLY KILLED RON LEVIN.

26           "WELL, I JUST SAID THIS FOR EFFECT BUT LET ME  
27 GO KILL A FEW PEOPLE SO THEY DON'T GO TO THE POLICE AND SAY  
28 THAT." IT DOESN'T MAKE ANY SENSE UNLESS HE IN FACT KILLED

1 RON LEVIN.

2           LIKewise, DID YOU HEAR ANY REASONABLE EXPLANATION  
3 FOR WHY JOE HUNT WOULD BREAK INTO THE MAYS' APARTMENT AND  
4 TRY AND SEE IF THEY WENT TO THE POLICE?

5           HERE IT IS, MAYBE THIS IS THE EXPLANATION: HE  
6 IS JUST TRYING TO SEE --

7           MR. BARENS: EXCUSE ME. I BELIEVE WE VERGE ON GRIFFIN  
8 ERROR STRAIGHT UP.

9           THE COURT: PARDON ME?

10          MR. BARENS: WE ARE ON A GRIFFIN ERROR AND I BELIEVE  
11 THE PROSECUTOR KNOWS IT.

12          THE COURT: WELL, YOU CAN MAKE YOUR OBJECTION ON THE  
13 RECORD LATER.

14          MR. BARENS: OH, I WOULD LIKE TO MAKE THE OBJECTION  
15 NOW. I WOULD LIKE TO REQUEST AN INSTRUCTION. I KNOW, I  
16 THINK WE ALL KNOW WHAT WE ARE TALKING ABOUT.

17          MR. WAPNER: I AM TALKING ABOUT AN EXPLANATION FROM  
18 COUNSEL, ALL OF THESE THINGS. SO THERE IS NO MISTAKE, I  
19 AM TALKING ABOUT, DID YOU HEAR ANY EXPLANATION FROM MR. BARENS  
20 WHEN HE WAS TALKING? DID HE REBUT ANY OF THESE CHARTS THAT  
21 I PUT UP THERE? THAT IS THE CLEAR REFERENCE FROM THE  
22 BEGINNING AND THAT IS THE REFERENCE NOW I AM TALKING ABOUT:  
23 DID YOU HEAR ANY EXPLANATION FROM MR. BARENS TO REBUT ANY  
24 OF THESE CHARTS, ANY OF THESE THINGS ON THESE CHARTS? HE  
25 HAD THEM HERE TO WORK WITH.

26                 I AM TELLING YOU THAT THE FACT THAT MR. BARENS  
27 DIDN'T USE THESE CHARTS ISN'T AN ACCIDENT AND IT IS NOT  
28 BECAUSE HE IS SO MODEST AND SAYS, "WELL, MR. WAPNER IS BETTER



1 WITH CHARTS THAN I AM AND I CAN'T FUMBLE WITH THESE THINGS.

2 IT IS BECAUSE HE CAN'T EXPLAIN THESE THINGS.

3 MR. BARENS CAN'T EXPLAIN THESE THINGS AND THAT IS WHY HE

4 DIDN'T USE ANY OF THESE CHARTS.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1                   DID YOU HEAR MR. BARENS EXPLAIN WHY IT WAS THAT  
2 THEY MADE THE PLANS TO KILL THE WITNESS' GIRLFRIEND AND  
3 PIN THE MURDER ON LEVIN? NO, HE DIDN'T.

4                   AND THE BOTTOM ONE HERE, WHICH IS UNDERLINED,  
5 AND I GUESS IT DOESN'T NEED TO BE CIRCLED OR STARRED OR  
6 ANYTHING, BUT IT JUST -- IT JUST GLARES OUT AT YOU. DID  
7 YOU HEAR MR. BARENS -- AND I UNDERLINED THAT TO GIVE HIM  
8 AN OPPORTUNITY TO SAY -- OKAY, OKAY, MR. BARENS, THIS IS  
9 IMPORTANT. COME UP HERE AND TELL THE JURY WHY IT IS THAT  
10 YOUR CLIENT STOOD THERE OR SAT THERE WITH THE LIST SEVEN  
11 TO TEN MINUTES GOING OVER AND OVER AND OVER IT IN A STUNNED  
12 SILENCE, WHY IT IS. TELL US, MR. BARENS, WHY IS IT THAT  
13 MR. HUNT WAS ASKED, "WHAT DO THESE THINGS ON THIS LIST MEAN,"  
14 AND HE COULDN'T EXPLAIN IT. AND YOU DIDN'T HEAR A WORD OR  
15 A SYLLABLE FROM MR. BARENS ABOUT THAT, NOT A PEEP AND THAT  
16 IS BECAUSE JOE HUNT, WHEN HE TALKED TO DETECTIVE ZOELLER,  
17 COULDN'T EXPLAIN THOSE TO DETECTIVE ZOELLER BECAUSE IF HE  
18 HAD TOLD HIM WHAT IT MEANT, HE WOULD HAVE TO SAY, "I KILLED  
19 RON LEVIN."

20                   IN LOOKING AT THE CIRCUMSTANTIAL EVIDENCE AND  
21 TALKING ABOUT TWO REASONABLE EXPLANATIONS FOR THINGS, THE  
22 OTHER THING THAT YOU HAVE TO ASK YOURSELF IS, WERE YOU OFFERED  
23 BY MR. BARENS IN HIS ARGUMENT ANY REASONABLE EXPLANATION  
24 FOR WHAT IT WAS THAT MR. PITTMAN WAS DOING AT THE PLAZA HOTEL  
25 REGISTERING IN THE NAME OF RON LEVIN, SIGNING THE RECEIPT  
26 WITH THE SIGNATURE THAT IS A FACSIMILE, FOR LACK OF A BETTER  
27 WORD, OF LEVIN'S SIGNATURE?

28                   AND DID YOU HEAR ANY REASONABLE EXPLANATION FROM

1 MR. BARENS IN HIS ARGUMENT ABOUT WHAT IT WAS THAT MR. PITTMAN  
2 WAS DOING WITH RON LEVIN'S CREDIT CARDS? NOT A WORD, NOT  
3 A SYLLABLE ABOUT WHY HE WAS THERE WITH THE CREDIT CARDS.  
4 A PERSON THAT RON LEVIN DIDN'T KNOW, THE NIGHT -- THE NEXT  
5 NIGHT AFTER RON LEVIN WAS KILLED, AFTER MR. PITTMAN HAD GOT  
6 BACK FROM SOLEDAD CANYON AND FLOWN TO NEW YORK. THERE IS  
7 ONLY ONE REASONABLE EXPLANATION FOR THAT, ONLY ONE, AND YOU  
8 DIDN'T HEAR ANYTHING ELSE AND THE ONLY REASONABLE EXPLANATION  
9 IS THE ONE YOU AND I ALREADY KNOW: THAT MR. PITTMAN  
10 PARTICIPATED IN THE MURDER, THAT THE CREDIT CARDS WERE TAKEN  
11 FROM MR. LEVIN'S HOUSE ON THE NIGHT OF JUNE THE 6TH AND THAT  
12 HE WENT TO NEW YORK TO MAKE IT LOOK LIKE LEVIN, IF ANYTHING  
13 HAPPENED, IT WOULD HAVE HAPPENED TO HIM IN NEW YORK.

14 THE SEVEN PAGES, I AM GOING TO COME BACK TO.  
15 OBVIOUSLY, IT IS VERY, VERY IMPORTANT. BUT IN TALKING ABOUT  
16 WERE YOU OFFERED ANY REASONABLE EXPLANATION FOR THAT, FOR  
17 THOSE, I AM GOING TO GO DO IT WITH THE CHART FOR THE LIST  
18 AND TALK TO YOU ABOUT LOOKING AT THOSE.

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 WERE YOU OFFERED BY MR. BARENS ANY REASONABLE  
2 EXPLANATION OR ANY EXPLANATION? DID HE SAY A WORD ABOUT THE  
3 CALL THAT JOE HUNT MADE TO MR. MARTIN LEVIN TO SAY, "I NEED  
4 TO GET INTO THE PLACE. I LEFT SOME IMPORTANT PAPERS THERE"?

5 YOU DIDN'T HEAR A WORD FROM MR. BARENS ABOUT THAT  
6 PHONE CALL BECAUSE THERE IS ONLY ONE REASONABLE EXPLANATION.  
7 THAT IS, THAT JOE HUNT KNEW THAT HE HAD LEFT THE SEVEN PAGES  
8 THERE AND HE WANTED TO GO BACK TO GET THEM.

9 DID YOU HEAR ANY REASONABLE EXPLANATION ABOUT WHAT  
10 MR. HUNT WAS DOING IN NEW YORK? WELL, YOU HEARD MR. BARENS  
11 TELL YOU THAT JIM WENT THERE TO -- JOE WENT THERE TO BAIL HIS  
12 FRIEND OUT OF JAIL, TO GET HIS BUDDY OUT OF A PICKLE. THEN,  
13 DID YOU HEAR WHAT MR. BARENS SAID? WELL, HE WAS NOT GOING  
14 TO GIVE HIM THE MONEY FOR THE DOOR BECAUSE THE DOOR WAS NOT  
15 HIS RESPONSIBILITY.

16 WHAT? IF THE DOOR WAS NOT HIS RESPONSIBILITY,  
17 PITTMAN GETTING ARRESTED IN NEW YORK WAS NOT HIS RESPONSIBILITY.  
18 KEEP IN MIND, MR. PITTMAN HAD ABOUT \$1200 IN HIS POCKET AT  
19 THE TIME THAT HE WAS ARRESTED. THE PLAN WAS NOT FOR HIM TO  
20 GET ARRESTED OR FOR HIM TO WELSH ON THE BILL.

21 HE WAS OBVIOUSLY GIVEN ENOUGH MONEY THAT IF HE  
22 HAD PLAYED IT RIGHT, HE COULD HAVE PAID THE BILL AND LEFT.  
23 BUT PITTMAN GOT BACK THERE AND HE HAS GOT ALL OF THIS CASH  
24 IN HIS POCKET AND HE IS GOING TO DECIDE TO HAVE A GOOD TIME.

25 IF HE HAD RENTED A CAR TO GO OFF TO WHERE IT WAS  
26 THAT HE TOOK THESE HUNDRED DOLLAR LIMOUSINE RIDES, HE WOULD  
27 HAVE SPENT MAYBE FIFTY OR SIXTY BUCKS PLUS GASOLINE, INSTEAD  
28 OF \$800 AND HE WOULDN'T HAVE BEEN IN THE PROBLEM THAT HE WAS

10/ 0  
1 IN.

2 BUT THAT IS NOT TO SAY THAT THE PLAN WAS NECESSARILY  
3 FLAWED. BUT THE EXECUTION WAS SURE PRETTY BAD. MR. PITTMAN  
4 GOT THE MONEY. HE WAS IN NEW YORK.

5 HE WAS IN THE PLAZA HOTEL. NOT ONLY THAT, TALK  
6 ABOUT SOMEBODY WHO WANTS AN UPGRADE, HE HAS GOT ALL THIS  
7 CASH AND HE GETS ONE ROOM.

8 HE SAYS, TO HECK WITH THIS \$100 ROOM. I WILL TAKE  
9 A ROOM AT \$275 A NIGHT. HE GETS A MORE EXPENSIVE ROOM THE  
10 NEXT DAY.

11 YOU DIDN'T HEAR ANY REASONABLE EXPLANATION FOR  
12 THE FACT THAT MR. HUNT COULDN'T STAY AT THE COURTHOUSE THAT  
13 DAY. WHERE IS HE GOING TO GO? HE IS ACTING LIKE A CAGED  
14 ANIMAL.

15 IF HE WAS NOT CONCERNED, WHY WAS HE PACING UP AND  
16 DOWN? YOU DIDN'T HEAR ANY REASONABLE EXPLANATION FOR HUNT'S  
17 CONDUCT IN NEW YORK IN DOING THE THINGS THAT HE DID, IN  
18 DESPERATION, TRYING TO GET PITTMAN OUT OF THIS.

19 DID MR. BARENS TALK TO YOU AT ALL ABOUT THE EVIDENCE  
20 OF MOTIVE IN THIS CASE? DID HE SAY A WORD ABOUT THE MONEY  
21 FROM THE INVESTORS? WELL, HE DID SAY SOMETHING THAT WAS  
22 INTERESTING. HE SAID IN TALKING ABOUT LEVIN, THE CURSE ON  
23 HUNT'S LIFE, IT WAS LEVIN WHO HUNT WAS COUNTING ON TO BAIL  
24 HIM OUT.

25 WELL, I SUBMIT THAT THAT IS PROBABLY A CORRECT  
26 STATEMENT. HE WAS COUNTING ON THIS 1.5 MILLION TO BAIL HIM  
27 OUT OF THIS PONZI SCHEME THAT HE HAD LOST AND STOLEN, BASICALLY,  
28 MONEY FROM THESE INVESTORS.

A-2  
1 BUT OF COURSE, MR. BARENS IN THE CLASSIC STYLE  
2 OF PARADOX PHILOSOPHY, JUST TURNS IT AROUND AND SAYS WELL,  
3 MR. HUNT, POOR MR. HUNT, IS THE VICTIM OF THIS.

4 POOR MR. HUNT IS THE VICTIM AND HE IS THE ONE THAT  
5 LEVIN IS A CURSE AROUND HIS NECK. LEVIN IS A CURSE AROUND  
6 HIS NECK AND LEVIN IS THE ONE WHO STOLE THE \$1.5 MILLION FROM  
7 THE INVESTORS.

8 DID YOU HEAR ANY REASONABLE EXPLANATION FOR THE  
9 FACT THAT HUNT WAS FURIOUS WITH LEVIN OR ANY EXPLANATION THAT  
10 HE WAS NOT FURIOUS WITH LEVIN? DID YOU, OTHER THAN THE THINGS  
11 WE HAVE TALKED ABOUT, ABOUT THE THREE LETTERS OR THE FOUR  
12 LETTERS INSTEAD OF THE THREE LETTERS -- DID YOU HEAR ANY  
13 REASON? WERE YOU GIVEN ANY REASONABLE EXPLANATION FOR WHY  
14 IT IS THAT DEAN KARNY IS NOT TELLING YOU THE TRUTH WHEN HE  
15 SAYS JOE HUNT WALKED ME AROUND THE BLOCK AND TOLD ME THE  
16 DETAILS OF THIS CRIME? WHAT IS THE REASONABLE EXPLANATION  
17 FOR THAT?

18 THE ONLY REASONABLE EXPLANATION IS THAT JOE HUNT  
19 IS CONFIDING IN HIS BEST FRIEND. YOU HEARD THE TESTIMONY OF  
20 KARNY THAT HUNT WAS BASICALLY BURSTING AT THE SEAMS. HE HAD  
21 TO TELL SOMEONE.

22 AND HE DID IN FACT, TELL SOMEONE. DID YOU HEAR  
23 ANY REASONABLE EXPLANATION FOR HIM CONFESSING TO TOM MAY OR  
24 MAKING THE STATEMENT AT THE MEETING? NO. THERE WAS NO  
25 REASONABLE EXPLANATION FOR WHY HE WOULD SAY TO TOM MAY, "I  
26 MURDERED RON LEVIN."

27 HE SUPPOSEDLY IS TRYING TO IMPRESS HIM. THIS IS  
28 ALL POSTURING. WELL, WE ALREADY TALKED ABOUT WHY THAT IS

10A 1 JUST, ABSOLUTELY LUDICROUS AND SO, THERE IS ONLY ONE  
2 REASONABLE EXPLANATION FOR WHY HE WOULD SAY TO TOM MAY, "I  
3 MURDERED RON LEVIN." THAT IS BECAUSE HE DID MURDER RON LEVIN.

4 THE STATEMENT TO EVAN DICKER -- ONE OF THEM, I  
5 DON'T THINK I TALKED MUCH ABOUT THIS THE LAST TIME. AND THAT  
6 IS, HE TELLS EVAN DICKER, YOU REMEMBER ABOUT THE FACT THAT  
7 RON LEVIN WAS DISPOSED OF IN ACID AND HIS BRAINS WERE  
8 SPLATTERED ALL OVER THE RAINCOAT.

9 BUT IN A LESS GRUESOME SENSE, HE TELLS EVAN DICKER  
10 AND HE SAYS THAT -- EVAN DICKER IS TALKING ABOUT JOE HUNT  
11 TALKING TO HIM. HE SAYS THAT THERE WAS A SHEET AND A REMOTE  
12 CONTROL DEVICE MISSING FROM MR. LEVIN'S APARTMENT AND ONLY  
13 HE AND THE POLICE -- HE AND THE POLICE WERE THE ONLY TWO THAT  
14 KNEW THAT THESE ITEMS WERE MISSING.

15 WELL, HOW WOULD JOE HUNT KNOW THAT THE REMOTE  
16 CONTROL DEVICE IS MISSING? THIS WAS WAY BEFORE HE WAS  
17 ARRESTED. IT WAS WAY BEFORE HE HAD ANY OF THE POLICE REPORTS.

18 NOW, HOW WOULD HE KNOW THE REMOTE CONTROL DEVICE  
19 WAS MISSING UNLESS HE TOOK IT, WRAPPED UP IN THAT COMFORTER  
20 AND A SHEET WITH RON LEVIN'S BODY. THERE IS NO WAY HE WOULD  
21 KNOW THAT UNLESS HE HAD BEEN THERE AND KILLED HIM THAT NIGHT.

22 HAVE YOU HEARD ANY REASONABLE EXPLANATION OR ANY EXPLANATION

23 BY MR. BARENS AS TO THAT?

1 THE STATEMENT THAT JOE HUNT MAKES AT THE MEETING.  
2 DID YOU HEAR MR. BARENS REFER TO THAT STATEMENT? NO, YOU  
3 DIDN'T HEAR MR. BARENS MAKE ANY REFERENCE TO THE PERFECT  
4 CRIME STATEMENT, UNLESS HE IS REFERRING TO IT BY REFERENCE  
5 WHEN HE SAYS "WELL, ALL OF THIS WAS JUST POSTURING."

6 WHAT REASONABLE EXPLANATION WAS GIVEN FOR WHY  
7 SOMEONE WOULD HAVE A SILENCER?

8 I THINK THE PHRASE WAS "KIDS WITH GUNS OR CHILDREN  
9 WITH GUNS". IT IS AN ABSURDITY TO EQUATE WHAT WAS GOING ON  
10 HERE TO CHILDREN WITH GUNS.

11 SOME PEOPLE SAY, "WELL, IF YOU GIVE KIDS TOY GUNS,  
12 IT LEADS TO PEOPLE BEING VIOLENT."

13 AND I CAN REMEMBER GROWING UP AND I HAD TOY GUNS.  
14 ALL OF THE KIDS MY AGE HAD TOY GUNS AND WE HAD ONE CARDINAL  
15 RULE, ONE CARDINAL RULE THAT "THESE TOY GUNS, THAT YOU COULDN'T  
16 EVEN SHOOT ANYTHING OUT OF IT." THE BARRELS WERE ALL BLOCKED  
17 UP. THEY WERE JUST TOYS AND THE CARDINAL RULE THAT WE HAD  
18 WAS -- AND I CAN REMEMBER MY MOTHER TELLING ME THIS OVER AND  
19 OVER AGAIN, "YOU DON'T POINT A GUN AT ANYBODY. IT IS A TOY  
20 GUN. YOU DON'T POINT IT AT ANYBODY," AND WE DIDN'T.

21 THESE ARE NOT TOY GUNS. THESE ARE NOT TOY  
22 SILENCERS. THEY MAY HAVE TREATED THEM -- PITTMAN MAY HAVE  
23 HAD ALL OF THESE THINGS, THIS ELECTRONIC STUFF, BUT THIS IS  
24 NOT A TOY AND, AS I TOLD YOU BEFORE, A SILENCER IS FOR KILLING  
25 PEOPLE. THAT IS THE ONLY REASON YOU HAVE A SILENCER.

26 AND THERE WAS SOME REFERENCE MADE BY MR. BARENS  
27 TO "THESE MISDEMEANORS OF HAVING GUNS." HAVING A SILENCER  
28 ISN'T A MISDEMEANOR, BUT THAT IS NOT THE POINT OF IT. THE



1 POINT IS NOT TO SAY IT IS A CRIME OR IT IS NOT A CRIME, THE  
2 POINT IS TO SAY THAT SILENCERS ARE FOR KILLING PEOPLE.

3 AND THE BOOKS, THE HIT MAN BOOKS. HERE IS THE  
4 EXPLANATION THAT YOU ARE GIVEN FOR THE HIT MAN BOOKS: "THEY  
5 ARE NEW AND NOBODY READ THEM."

6 WHY DO YOU GO OUT AND BUY BOOKS LIKE THAT IN THE  
7 FIRST PLACE? WHY DO YOU HAVE BOOKS THAT TELL YOU ABOUT  
8 KILLING PEOPLE AND DISPOSING OF BODIES?

9 SECOND OF ALL, THERE IS NO EVIDENCE AS TO WHEN  
10 THEY WERE PURCHASED.

11 AND THIRD OF ALL, MR. BARENS SAID, "WELL, THE  
12 BINDINGS ON ALL OF THOSE BOOKS AREN'T BROKEN." THAT IS A  
13 SPIRAL-BOUND BOOK. YOU DON'T BREAK A BINDING ON A SPIRAL-  
14 BOUND BOOK.

15 THOSE BOOKS WERE IN THE POSSESSION OF MR. PITTMAN  
16 AND YOU DIDN'T HEAR ANY REASONABLE, ANY OTHER EXPLANATION FOR  
17 THAT. MR. BARENS COULDN'T EXPLAIN TO YOU WHAT THAT PERSON  
18 WAS DOING WITH THE BOOK.

19 LET ME JUST LEAVE THIS HERE FOR ONE SECOND.

20 WHEN YOU PUT ALL OF THESE THINGS TOGETHER -- MAYBE  
21 I WON'T LEAVE IT HERE FOR ONE SECOND -- THERE ISN'T ANY OTHER  
22 REASONABLE EXPLANATION. THERE ISN'T ANY OTHER REASONABLE  
23 EXPLANATION FOR ALL OF THESE THINGS TOGETHER, THAN THAT JOE  
24 HUNT IN FACT MURDERED RON LEVIN.

25 EXCUSE ME FOR JUST ONE SECOND. I WANT TO GET THAT  
26 OTHER CHART.

27  
28

1                   LET'S TALK ABOUT THIS LIST FOR A WHILE AND THE  
2 EXPLANATION THAT YOU WERE GIVEN BY MR. BARENS FOR THE LIST.

3                   FIRST OF ALL, THERE IS ONE GLARING THING THAT  
4 HE DIDN'T SAY. DO YOU REMEMBER THAT MR. BARENS DIDN'T SAY  
5 A WORD TO YOU ABOUT JOE HUNT TALKING TO DETECTIVE ZOELLER  
6 AND THAT KIND OF JUST GLARES OUT AT YOU LIKE A BEACON.

7                   BUT THERE IS ANOTHER GLARING THING THAT HE DIDN'T  
8 SAY AND IT DOESN'T HAVE TO DO WITH THE WORDS ON THIS PAGE  
9 OR ANY OF THE OTHER PAGES. IT HAS TO DO WITH, HOW DID THE  
10 LIST GET AT LEVIN'S HOUSE? MR. BARENS DIDN'T GIVE YOU AN  
11 EXPLANATION IN HIS ARGUMENT FOR HOW THE LIST GOT TO LEVIN'S  
12 HOUSE. HERE IT IS, SITTING ON THE GROUND IN LEVIN'S HOUSE.

13                   AGAIN, DO WE GO BACK TO MR. LEVIN'S CALLING HUNT  
14 UP AND SAYING, "BY THE WAY, GREAT COINCIDENCE, YOU ARE MAKING  
15 THAT LIST, SEND IT OVER HERE."

16                   OR ON A LIGHTER NOTE, AS I WAS TALKING TO SOME  
17 OF MY COLLEAGUES AFTER COURT, AND YOU GET A LITTLE GIDDY,  
18 AND SHE SAID, "DO YOU SEE THIS PAPER? DOES IT HAVE ANY LITTLE  
19 FEET AND KNEES AND LEGS ON IT OR DID IT JUST WALK OVER THERE?"

20                   THERE IS ONLY ONE REASONABLE EXPLANATION FOR  
21 HOW THAT LIST GOT THERE AND THAT IS THAT JOE HUNT TOOK IT  
22 THERE THAT NIGHT WITH JIM PITTMAN AND KILLED RON LEVIN. THAT  
23 IS THE ONLY REASONABLE EXPLANATION.

24                   NOW, THIS DISCUSSION THAT YOU DID HEAR FROM MR.  
25 BARENS ABOUT THE LIST IS PARADOX PHILOSOPHY IN ITS MOST CLASSIC  
26 FORM, BECAUSE WHAT DID HE SAY? HE SAID, "LET'S NOT TALK  
27 ABOUT WHAT IS ON THE LIST.

28                   LET'S CHANGE OUR PERSPECTIVE COMPLETELY. DON'T

1 TALK ABOUT WHAT IS ON THE LIST. JUST TURN IT AROUND AND  
2 REORIENT YOUR FOCUS AND LET'S TALK ABOUT WHAT IS NOT ON THE  
3 LIST.

4 WHAT IS NOT ON THE LIST, IT DOESN'T SAY ON THERE  
5 "KILL ANYBODY," SO LET'S TALK ABOUT THAT. FORGET WHAT IS  
6 ON THE LIST.

7 BECAUSE IF YOU LOOK AT THAT, OF COURSE, IT IS  
8 GOING TO LEAD YOU TO THE INEVITABLE CONCLUSION THAT JOE HAD  
9 KILLED HIM, SO LET'S TALK ABOUT SOMETHING ELSE. LET'S TALK  
10 ABOUT WHAT IS NOT ON THE LIST. AND THAT IS RIGHT, I GIVE  
11 UP. THERE IS NO STATEMENT ON THERE THAT SAYS, "PUT GUN TO  
12 HIS HEAD. PULL TRIGGER. BULLET COMES OUT, GOES IN HEAD.  
13 RON LEVIN IS DEAD."

14 IT DOESN'T SAY THAT ON THERE. BUT THERE IS NO  
15 OTHER COMMON SENSE WAY TO LOOK AT THAT LIST OTHER THAN A  
16 PLAN TO KILL SOMEONE AND MR. BARENS IN HIS ARGUMENT DIDN'T  
17 OFFER FOR YOU ANY OTHER EXPLANATION.

18 WHAT DID HE DO? HE GOT INTO SOME KIND OF A  
19 NUMBERS GAME ABOUT COUNTING HOW MANY ITEMS ARE ON THIS LIST  
20 AND HOW MANY WERE ACTUALLY DONE. I DON'T KNOW WHERE HE GOT  
21 HIS NUMBERS THAT THERE WERE 40 ITEMS ON THERE AND 36 OF THEM  
22 WEREN'T DONE. IF YOU COUNT THEM ALL, I THINK THERE IS LIKE  
23 48 OR 49.

24  
25  
26  
27  
28

2-1

1           BUT THE NUMBERING IS KIND OF IRRELEVANT. SO  
2 WHAT OTHER REASONABLE EXPLANATION IS THERE FOR THIS?

3           WELL, YOU HEARD BROOKE SAY THAT JOE WAS GOING  
4 OVER TO HAVE HIS MEETING WITH RON LEVIN THAT NIGHT. SO,  
5 MAYBE HE TOOK THE LIST WITH HIM AND IT WAS JUST A LIST FOR  
6 HOW IT WAS THAT HE WAS GOING TO GET THE CONTRACT SIGNED.

7           LET'S SEE -- XEROX AUTHORIZATIONS, USE CORPORATE  
8 SEAL, HAVE LEVIN SIGN AGREEMENTS, XEROX EVERYTHING, PUT ON  
9 HANDCUFFS, TAPE MOUTH, KILL DOG. YOU KNOW ALL THOSE KINDS  
10 OF NORMAL THINGS THAT YOU DO WHEN YOU HAVE A CONTRACT SIGNED.

11           I MEAN, WHEN YOU LOOK AT THIS, YOU CAN'T LOOK  
12 AT IT ANY OTHER WAY THAN IN THE COMMON SENSE OF THE WAY THAT  
13 IT WAS WRITTEN.

14           AND THEN MR. BARENS SAYS WELL, IF IT IS A MURDER  
15 PLAN, THEN THERE IS NO OTHER WAY -- THERE IS NO WAY, NO  
16 EVIDENCE HE SAYS, TO SHOW THAT THE PLAN WAS IMPLEMENTED.

17           WHERE WAS HE FOR THE LAST TWO AND A HALF MONTHS?  
18 WHAT DOES HE MEAN, THERE IS NO EVIDENCE TO SHOW THE PLAN  
19 WAS IMPLEMENTED? WHERE WAS HE WHEN DEAN KARNY WAS TESTIFYING?

20           WHERE WAS HE WHEN TOM MAY WAS TESTIFYING?  
21 AND STEVE TAGLIANETTI? WHAT DOES HE MEAN, THERE IS NO  
22 EVIDENCE? WHAT ABOUT EVAN DICKER?

23           THE LETTERS THAT ARE IN THAT LIST, I AM ATTEMPTING  
24 TO GO BACK OVER THIS AND SHOW YOU ALL OF THE THINGS THAT  
25 WERE DONE. BUT I DID THAT ONCE BEFORE. YOU HAVE THE LETTERS.

26           THERE WERE AUTHORIZATIONS. THERE WERE DATE STAMPS  
27 AND ALL OF THAT STUFF.

28           THE OTHER THING THAT IS ALMOST JUST AS AN ASIDE,

2-2

1 WHICH IS THAT WHY, IF THESE LETTERS WERE ALL GOING TO BE  
2 HAND DELIVERED BY JOE HUNT, WHY DOES HE WRITE IN THERE, "THANK  
3 YOU RON, FOR THE WATCH. I GOT GREAT COMPLIMENTS."

4 IF HE IS GOING TO GO OVER THERE, HE DOESN'T EVEN  
5 WRITE THE LETTER. JUST LET HIM GO OVER AND TALK TO HIM ABOUT  
6 THAT STUFF AND THANK HIM IN PERSON FOR THE LOVELY WATCH AND  
7 THE UNDERSTATED ELEGANCE OF THE WATCH THAT HE GOT.

8 WHEN YOU LOOK AT THIS LIST, THERE IS NO OTHER  
9 REASONABLE CONCLUSION THAT YOU CAN DRAW. WHEN YOU LOOK AT  
10 ALL OF THE EVIDENCE IN THIS CASE, THERE IS NO OTHER REASONABLE  
11 CONCLUSION THAT YOU CAN DRAW.

12 YOU DON'T HAVE TO LOOK AT THE OTHER THING THAT  
13 IS CLASSIC ABOUT THE PARADOX PHILOSOPHY, WHICH IS NOT ONLY  
14 LET'S LOOK AT WHAT IS NOT ON THE LIST, BUT LET'S TAKE THINGS  
15 OUT, PIECE BY PIECE. AGAIN, IT IS NOT AN ACCIDENT THAT MR.  
16 BARENS DIDN'T USE THESE CHARTS. BECAUSE HE DOESN'T WANT  
17 YOU TO SEE THE WHOLE PICTURE.

18 I MEAN, HE IS TALKING ABOUT THIS ON THIS PAGE  
19 AND THEN YOU FUMBLE THROUGH AND BY THE TIME YOU GET TO THE  
20 PAGE HE IS ON, HE HAS GONE SOMEWHERE ELSE. IT IS NO ACCIDENT  
21 BECAUSE HE DOESN'T WANT YOU TO SEE THE WHOLE PICTURE.

22 BECAUSE WHEN YOU SEE THE WHOLE PICTURE, WHEN  
23 YOU LOOK AT THE WHOLE PICTURE OF THIS CASE AND ALL THE  
24 EVIDENCE THAT WE HAVE HEARD IN THIS CASE AND WHEN YOU LOOK  
25 AT THOSE SEVEN PAGES AND YOU STUDY THOSE SEVEN PAGES, THERE  
26 IS ONLY ONE REASONABLE CONCLUSION THAT YOU CAN DRAW. THERE  
27 IS ONLY ONE, ONLY ONE REASONABLE CONCLUSION. THAT IS, THAT  
28 THIS MAN IS GUILTY OF MURDER, THAT HE KILLED RON LEVIN IN

12-3

1 COLD BLOOD AND THAT HE ROBBED RON LEVIN AND THAT THE MURDER  
2 WAS DURING THE COURSE OF A ROBBERY AND THAT HE IS GUILTY  
3 OF MURDER WITH SPECIAL CIRCUMSTANCES.

4 AND THAT IS THE ONLY REASONABLE AND APPROPRIATE  
5 VERDICT IN THIS CASE. THANK YOU.

6 THE COURT: LADIES AND GENTLEMEN OF THE JURY, WE'LL  
7 TAKE A RECESS NOW UNTIL I WOULD SAY 2:30 THIS AFTERNOON BECAUSE  
8 BEFORE THAT TIME, WE HAVE TO TALK TO COUNSEL AND GO OVER  
9 JURY INSTRUCTIONS.

10 THOUGH ALL OF THE EVIDENCE IS COMPLETED AND  
11 ARGUMENT HAS BEEN CONCLUDED, YOU ARE STILL NOT TO TALK AMONG  
12 YOURSELVES UNTIL I INSTRUCT YOU IN THE LAW AND YOU RETIRE  
13 TO THE JURY ROOM.

12B

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

12B  
(  
1 J THINK -- WOULD YOU LADIES AND GENTLEMEN PREFER  
2 TO COME IN TOMORROW MORNING JUST FOR THE MORNING AND THEN  
3 OBSERVE GOOD FRIDAY IN THE AFTERNOON? OR WOULD YOU HAVE  
4 THE WHOLE DAY OFF?

5 (THE JURORS ANSWERED IN THE AFFIRMATIVE.)

6 THE COURT: ALL RIGHT. YOU COME IN. YOU WILL HAVE  
7 THE AFTERNOON OFF. I WILL SEE YOU LATER.

8 MR. BARENS: I WOULD LIKE TO APPROACH YOU NOW, SIR.

9 THE COURT: RIGHT THIS MINUTE?

10 MR. BARENS: I THINK WE ARE REQUIRED TO BY LAW, SIR.  
11 THE CASE IS --

12 THE COURT: JUST A MOMENT.

13 JUROR GRALINSKI: CAN WE DISCUSS THE TIME WE START  
14 TOMORROW? SOME OF US DON'T WANT TO --

15 THE COURT: I DIDN'T HEAR YOU.

16 JUROR JANIS: THERE IS DISAGREEMENT AS TO WHETHER WE  
17 START TOMORROW MORNING OR MONDAY.

18 THE COURT: YOU DISCUSS IT OVER THE INTERIM AND LET  
19 ME KNOW. WILL YOU PLEASE?

20 (THE JURY EXITS THE COURTROOM.)

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

24 MR. BARENS: WE ARE GOING TO DEFER TO MR. CHIER TO  
25 MAKE THE GRIFFIN ARGUMENT.

26 MR. CHIER: YOUR HONOR, UNFORTUNATELY, IT IS THE CONTENT  
27 AND NATURE OF MR. WAPNER'S REBUTTAL ARGUMENT THAT MAKES IT  
28 NECESSARY TO MOVE IN THE ALTERNATIVE, EITHER FOR A MISTRIAL

1 OR FOR AN INSTRUCTION TO THE JURY TO DISREGARD THE ENTIRE  
2 PART OF MR. WAPNER'S REBUTTAL ARGUMENT WHEREIN HE SAYS THAT  
3 WE DIDN'T EXPLAIN THIS AND DIDN'T EXPLAIN THAT.

4 MR. WAPNER TOOK ADVANTAGE OF THE DEFENDANT'S  
5 EXERCISE OF HIS CONSTITUTIONAL RIGHT NOT TO TESTIFY. AND  
6 BEGINNING WITH GRIFFIN V. CALIFORNIA AT 380 U.S. 609 AND  
7 CONTINUING WITH A LINE OF CALIFORNIA CASES, MOST APPROPRIATELY,  
8 PEOPLE V. VARGAS, YOUR HONOR, AT 9 CAL.3D 470.

9 THE COURT: I WILL TAKE THAT DOWN. WHAT IS THAT AGAIN?  
10 VARGES, YOU SAY?

11 MR. CHIER: YES, 9 CAL.3RD, 470. IT WAS HELD THAT  
12 IT WAS IMPROPER FOR THE PROSECUTOR TO ARGUE THAT THERE HAD  
13 BEEN NO DENIAL FROM THE DEFENSE.

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



13  
1 AND THEN IN PEOPLE V. BETHEA IN 18 CAL.APP.3D,  
2 AT 930, THE COURT HELD:

3 "ANY REMARKS SUSCEPTIBLE OF SUCH  
4 INFERENCE OR INNUENDO ARE IMPROPER."

5 IN PEOPLE V. MEDINA, YOUR HONOR, AT 41 CAL.APP.3D,  
6 438 --

7 THE COURT: 41 CAL.APP.3D?

8 MR. CHIER: YES.

9 THE COURT: WHAT PAGE?

10 MR. CHIER: 41 CAL.APP.3D, 438.

11 IT WAS HELD THAT THE PROSECUTOR ARGUING THAT HIS  
12 CASE WAS UNREFUTED, WAS IMPROPER AS BEING GRIFFIN ERROR.

13 AND IN PEOPLE V. NORTHERN, YOUR HONOR, 256  
14 CAL.APP.2D, 28, THE FOLLOWING COMMENT WAS HELD TO BE IMPROPER,  
15 AND I QUOTE FROM THAT CASE:

16 "LOOKING AT THE EVIDENCE, WHICH  
17 INCIDENTALLY HAS NOT BEEN REFUTED BY THE DEFENDANT,  
18 THERE IS NO CONTROVERTING EVIDENCE. THEN WHERE THE  
19 ONLY WITNESS WHO COULD POSSIBLY CONTRADICT THE  
20 PROSECUTION EVIDENCE IS THE DEFENDANT HIMSELF,  
21 THE MERE STATEMENT THAT THE PROSECUTION'S CASE  
22 IS UNCONTRADICTED AND IT IS OBVIOUSLY GRIFFIN  
23 ERROR AND A COMMENT ON THE DEFENDANT'S FAILURE TO  
24 TAKE THE STAND."

25 SO WHEN HE -- EXCUSE ME ONE MOMENT, YOUR HONOR.

26 (UNREPORTED COLLOQUY BETWEEN MR. CHIER

27 AND MR. BARENS.)

28 MR. CHIER: I MEAN IT IS RATHER A CHEAP CONTRIVANCE TO

13-2

1       SUBSTITUTE MR. BARENS NAME FOR THAT OF THE DEFENDANT AND  
2       SAYING, "WELL, MR. BARENS DIDN'T REFUTE THIS AND MR. BARENS  
3       DIDN'T REFUTE THAT," WHEN THE ONLY POSSIBLE SOURCE OF  
4       REFUTATION COULD COME FROM THE DEFENDANT.

5               NOW, AS EGREGIOUS AS THE WHOLE SERIES OF  
6       "UNREFUTED" TYPE COMMENTS BY MR. WAPNER, IS HIS DELIBERATE  
7       REFERENCE TO MR. HUNT'S EXERCISE OF HIS MIRANDA RIGHTS AND  
8       HIS RIGHT TO SILENCE AT THE TIME THAT MR. ZOELLER WAS ALLEGEDLY  
9       CONFRONTING HIM WITH THE SEVEN PAGES.

10               AS COUNSEL WELL KNOWS AND AS THE COURT KNOWS,  
11       YOUR HONOR, A DEFENDANT IN A CUSTODIAL SITUATION LIKE THAT  
12       CAN AT ANY TIME DURING THE INTERROGATION CUT OFF THE  
13       INTERROGATION AND EXERCISE HIS RIGHT TO AN ATTORNEY, HIS RIGHT  
14       TO REMAIN SILENT AND ALL OF THE ENTIRE PANOPLY OF RIGHTS THAT  
15       ARE GIVEN TO HIM IN THE SO-CALLED MIRANDA PACKAGE. THAT IS  
16       WHAT HAPPENED IN THIS CASE AND TO MAKE --

17               THE COURT: WAS THERE ANY OBJECTION MADE AT ANY TIME  
18       TO MR. ZOELLER'S TESTIMONY AS TO THE CONDUCT OF THIS DEFENDANT  
19       WHEN HE WAS INTERROGATING HIM AND THE MANNER IN WHICH HE  
20       LOOKED AT THESE SEVEN PAGES, DID ANYBODY MAKE ANY OBJECTION?

21  
22  
23  
24  
25  
26  
27  
28

135  
1 MR. CHIER: YOU MEAN DURING THE TRIAL?

2 THE COURT: YES.

3 MR. CHIER: YES, YOUR HONOR.

4 THE COURT: NOBODY DID. THERE WAS NOT ANY OBJECTION  
5 MADE TO THAT TESTIMONY OF MR. ZOELLER THAT I REMEMBER.

6 MR. CHIER: WELL, THIS IS, YOU KNOW DOUGLAS ERROR.

7 THE COURT: DOUGLAS ERROR, WHAT ARE YOU TALKING ABOUT?

8 HE WAS TESTIFYING AS -- HE WAIVED HIS RIGHTS AND  
9 HE SAID, "I WILL TALK TO YOU," DIDN'T HE SAY SOMETHING ABOUT  
10 "I WILL TALK TO YOU ABOUT CERTAIN THINGS" AND SO ON AND SO  
11 FORTH, AND THEN HE GAVE HIM THE SEVEN PAGES AND HE WENT OVER  
12 IT, NOT A WORD, NOT AN OBJECTION WAS MADE BY ANYBODY.

13 MR. CHIER: WITH ALL DUE RESPECT TO YOUR HONOR, I WOULD  
14 LIKE TO REMIND THE COURT.

15 THE COURT: DO YOU REMEMBER ANY?

16 MR. CHIER: WE MADE A MOTION UNDER 402 TO EXCLUDE THIS  
17 WHOLE SCENARIO.

18 THE COURT: DO YOU REMEMBER ANY?

19 MR. WAPNER: I DON'T RECALL THE OBJECTIONS, WHETHER THEY  
20 WERE MADE OR NOT, YOUR HONOR, BUT THERE WAS ABSOLUTELY NOTHING  
21 LEGALLY INFIRM ABOUT WHAT DETECTIVE ZOELLER DID OR THE WAY  
22 THAT INTERROGATION WAS CONDUCTED OR COMMENTED IN ARGUMENT ABOUT  
23 THE DEFENDANT'S, NOT HIS INVOCATION OF HIS RIGHTS, BUT HIS  
24 STATEMENT TO DETECTIVE ZOELLER, "I DON'T KNOW ANYTHING ABOUT  
25 THIS," AND THAT IS ALL.

26 THE COURT: ALL RIGHT, GO AHEAD.

27 MR. CHIER: SO THAT EITHER THE COURT SHOULD GRANT A  
28 MISTRIAL OR INSTRUCT THE JURY THAT THE DEFENDANT HAS ABSOLUTELY

1 NO BURDEN OF ANY KIND, THAT HE HAS NO BURDEN TO EXPLAIN  
2 THINGS. THAT YOU CANNOT -- THAT IT WAS -- THE REFERENCE TO  
3 MR. BARENS EXPLANATION INSOFAR AS THE EXPLANATION COULD ONLY  
4 ORIGINATE FROM THE DEFENDANT WAS IMPROPER AND THEY SHOULD  
5 DISREGARD THAT. THT IS CLEAR GRIFFIN ERROR, YOUR HONOR.

6 THE COURT: ALL RIGHT, I WILL HEAR FROM THE D.A.

7 MR. WAPNER: WELL, AS FAR AS THE MIRANDA ISSUE IS  
8 CONCERNED, I HAVE MADE MY FEELINGS VERY CLEAR. THERE WASN'T  
9 ANYTHING IMPROPER ABOUT THE INTERROGATION OR COMMENTING TO  
10 THE JURY ABOUT THE DEFENDANT'S STATEMENT TO HIM, "I DON'T KNOW  
11 ANYTHING ABOUT THESE LISTS."

12 AND I ALSO DON'T THINK, REGARDING THE ALLEGED  
13 GRIFFIN ERROR, THAT THERE IS ANYTHING IMPROPER ABOUT SAYING  
14 THERE WERE COMMENTS MADE IN OPEN ARGUMENT, HE WAS FREE TO  
15 REBUT THEM. HE DIDN'T DO IT. "DID HE GIVE YOU ANOTHER  
16 REASONABLE EXPLANATION?"

17 MR. BARENS: YOUR HONOR, IF I MAY BE HEARD.

18 THE COURT: OF COURSE.

19 MR. BARENS: SIR, OF COURSE, OBVIOUSLY THE WHOLE THRUST  
20 OF THIS IS, IT IS OBVIOUS, JUDGE, IT IS OBVIOUS TO THE  
21 PROSECUTOR, WE ARE NOT PLAYING A GAME HERE, THAT THE ONLY ONE  
22 WHO COULD REFUTE IT WAS THE DEFENDANT. NOW, WHETHER YOU DO  
23 IT IN MY NAME OR YOU DO IT IN INNUENDO, ALL OF THIS CHAIN OF  
24 CASES ADDRESSES THAT AND IS TELLING ALL OF US YOU CAN'T DO  
25 THAT.

26 NOW WE EITHER FOLLOW THE LAW OR WE DON'T FOLLOW  
27 THE LAW, THAT IS REAL SIMPLE. THIS IS NOT SOMETHING SUBTLE  
28 AND TRICKY WHERE WE HAVE GOT TO BE REAL ESOTERIC AND WELL

1 EDUCATED TO TRY TO FATHOM WHAT THE SUPREME COURT WAS TALKING  
2 ABOUT IN THESE CASES. IT IS IN BLACK AND WHITE. YOU CAN'T  
3 DIRECTLY, INDIRECTLY OR BY INNUENDO COMMENT ON A DEFENDANT  
4 NOT TESTIFYING AND THAT IS WHAT HE IS DOING.

5 THE COURT: WHEN YOU SAY -- WHEN YOU COMMENTED ON THESE  
6 SEVEN SHEETS OF PAPER AND YOU SAY IT IS MORE CONSISTENT WITH  
7 WHAT IT DIDN'T COVER, WHAT WAS DONE AND WHAT WAS NOT DONE.

8 MR. BARENS: THAT IS --

9 THE COURT: AND YOU SAY THE PROSECUTOR CANNOT COMMENT  
10 IN HIS FINAL ARGUMENT AS TO EXACTLY WHAT YOU DID SAY WITH  
11 RESPECT TO THE CONTENTS AND THE FACT THAT YOU HAD FAILED TO  
12 COMMENT ON THOSE THINGS, YOU MEAN TO SAY THAT IS GRIFFIN  
13 ERROR?

14 MR. BARENS: NOT ONLY THAT, IN MY OPINION, BUT FURTHER,  
15 EVERY TIME --

16 THE COURT: I AM TAKING THAT AS AN INSTANCE, YOU TELL  
17 ME, IS THAT GRIFFIN ERROR?

18 MR. BARENS: I AM TAKING THAT, ALONG WITH EVERYTHING  
19 ELSE, WHILE WE ARE AT IT, JUDGE.

20 THE COURT: I AM GOING TO DENY YOUR MOTION.

21 MR. BARENS: THANK YOU FOR READING THE AUTHORITIES.

22 THE COURT: I WILL SEE YOU ALL AT 1:30 AND WE WILL GO  
23 OVER THE INSTRUCTIONS.

24 (AT 12:05 P.M. A RECESS WAS TAKEN UNTIL  
25 1:30 P.M. OF THE SAME DAY.)  
26  
27  
28

14-1

1 SANTA MONICA, CALIFORNIA; THURSDAY, APRIL 16, 1987; 1:40 P.M.  
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE  
3 (APPEARANCES AS NOTED ON TITLE PAGE.)  
4

5 (THE FOLLOWING PROCEEDINGS WERE HELD  
6 IN CHAMBERS WITH ALL PARTIES AND  
7 MEMBERS OF THE PRESS BEING PRESENT.)

8 THE COURT: ALL RIGHT. I WAS FAMILIAR WITH THE VARGAS  
9 CASE WHICH YOU CITED ON THE GRIFFIN MOTION, BUT I DIDN'T  
10 GET THE CITATION. IT WAS 41 CAL3D.438?

11 MR. CHIER: JUST A MOMENT, YOUR HONOR.

12 MR. WAPNER: IT WAS 41 CAL.APP3D.

13 MR. BARENS: THE OTHER CASE THAT --

14 THE COURT: I HAVE A CITATION OF 41 CAL.3D.

15 MR. WAPNER: CAL.APP.3D IS WHAT HE SAID IN COURT.

16 THE COURT: ALL RIGHT. I WAS FAMILIAR WITH THE VARGAS  
17 CASE.

18 ANYWAY, I PULLED IT OUT AND FOR THE PURPOSES  
19 OF THE RECORD, SO AS TO SUPPORT THE RULING I MADE, I WANT  
20 TO QUOTE THE FOLLOWING AT PAGE 435, CAL.APP3D, 470, ON THE  
21 PROSECUTOR'S MISCONDUCT.

22 "UNDER THE RULE IN GRIFFIN V. CALIFORNIA,  
23 SUPRA, 380, U.S. 609, ERROR IS COMMITTED WHENEVER THE  
24 PROSECUTOR OR THE COURT COMMENTS UPON THE DEFENDANT'S  
25 FAILURE TO TESTIFY. HOWEVER, NOT EVERY COMMENT UPON  
26 DEFENDANT'S FAILURE TO PRESENT A DEFENSE CONSTITUTES  
27 GRIFFIN ERROR.

28 "IT IS WELL ESTABLISHED THAT ALTHOUGH

4-2

1 GRIFFIN PROHIBITS REFERENCE TO A DEFENDANT'S FAILURE TO  
2 TAKE THE STAND IN HIS OWN DEFENSE, THAT RULE DOES  
3 NOT EXTEND TO COMMENTS ON THE STATE OF THE EVIDENCE  
4 OR ON THE FAILURE OF THE DEFENSE TO INTRODUCE  
5 MATERIAL EVIDENCE OR TO CALL LOGICAL WITNESSES."

6 THAT IS CITING PEOPLE V. BETHEA.

15

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

1           IN, FOR EXAMPLE, BETHEA, THAT CASE THE PROSECUTOR  
2 MADE A CLOSING ARGUMENT WHICH SUMMARIZES THE EVIDENCE AGAINST  
3 THE DEFENDANT WHICH COMMENTED    THE STATE OF THE RECORD  
4 IS THAT THERE HAS BEEN NO EXPLANATION GIVEN FOR THIS, THE  
5 PEOPLE'S EVIDENCE, OF GUILT.

6           "THE COURT HELD THAT THERE IS ABSOLUTELY  
7 NO REFERENCE TO THE FACT THAT THE DEFENDANT DID NOT  
8 TAKE THE STAND OR HIS REMARKS WERE SUSCEPTIBLE OF  
9 SUCH INTERPRETATION BY INFERENCE OR INNUENDO."

10          NOW, WE GO TO THE INSTRUCTIONS.

11          MR. CHIER: DO YOU WANT --

12          THE COURT: NO, I DON'T WANT ANY COMMENT. IT IS JUST  
13 WASTING MY TIME.

14          MR. WAPNER: COULD I JUST PROVIDE THE COURT WITH SOME  
15 OF THE INSTRUCTIONS --

16          THE COURT: YES.

17          MR. WAPNER: -- THAT YOU REQUESTED WHEN WE WENT OVER  
18 THEM THE LAST TIME.

19          THE COURT: GIVE A COPY TO MR. BARENS.

20          MR. WAPNER: DID YOU TAKE A COPY?

21          MR. BARENS: I PASSED THEM BACK TO MR. ZOELLER.

22          THE COURT: ZOELLER?

23          MR. BARENS: I BEG YOUR PARDON, YOUR HONOR?

24          THE COURT: ZOELLER?

25          MR. BARENS: MR. ZOELLER WAS SITTING BETWEEN MYSELF  
26 AND MR. WAPNER AT THE TIME.

27          THE COURT: ALL RIGHT.

28          MR. WAPNER: DID YOU GET A COPY OF THAT?



15-2

1 MR. CHIER: WAIT A MINUTE. I AM JUST PULLING THEM  
2 OUT OF HERE.

3 MR. WAPNER: THAT IS THE PEOPLE'S SPECIAL INSTRUCTION.

4 MR. CHIER: OKAY, I HAVE THAT.

5 WE NEVER RESOLVED THE EYEWITNESS ONE THAT YOU  
6 SUBMITTED.

7 MR. WAPNER: I THOUGHT WE DID RESOLVE THAT. THAT THAT  
8 SENTENCE SHOULD BE TAKEN OUT.

9 MR. CHIER: OKAY.

10 THE COURT: THAT IS WHAT I DID, I TOOK IT OUT.

11 MR. CHIER: MY RECOLLECTION WAS IT WAS LEFT HANGING,  
12 JUDGE.

13 MR. WAPNER: DOES THE COURT HAVE A COPY OF THE PEOPLE'S  
14 SPECIAL INSTRUCTION NUMBER 1 WITH THAT SENTENCE REMOVED?

15 THE COURT: YES, I HAVE GOT THAT.

16 MR. WAPNER: 2.92 REVISED?

17 THE COURT: YES, YOU ARE TALKING ABOUT EYEWITNESS  
18 IDENTIFICATION?

19 MR. WAPNER: RIGHT.

20 THE COURT: YES, I GOT THAT.

21 MR. WAPNER: OKAY.

22 THE COURT: ALL RIGHT, WE WILL START FROM THE BEGINNING.

23 100, WITH RESPECT TO THE DUTY OF THE JUDGE AND  
24 JURY.

25 101, INSTRUCTIONS TO BE CONSIDERED AS A WHOLE.

26 IF AS I GO THROUGH THEM, IF THERE IS ANY COMMENT,  
27 PLEASE LET ME KNOW.

28 102, STATEMENTS OF COUNSEL, EVIDENCE STRICKEN

1 OUT.

2 110, THAT IS FOR THE MASCULINE FORM OF THE  
3 PRONOUN INCLUDES ALL PERSONS.

4 MR. CHIER: PARDON ME?

5 THE COURT: 110, THE MASCULINE FORM OF PRONOUN INCLUDES  
6 ALL PERSONS.

7 200, DIRECT AND CIRCUMSTANTIAL EVIDENCE.

8 201. SUFFICIENCY OF CIRCUMSTANTIAL EVIDENCE.

9 202, SUFFICIENCY OF CIRCUMSTANTIAL EVIDENCE TO  
10 PROVE SPECIFIC INTENT.

11 AND THE BLANKS ARE COUNTS I AND II, BECAUSE THAT  
12 APPLIES TO BOTH OF THEM.

13 203. CONSCIOUSNESS OF GUILT, FALSEHOOD.

14 THAT, I THINK THAT YOU MIGHT WANTED TO POSE AN  
15 OBJECTION TO; IS THAT RIGHT?

16 MR. BARENS: YES.

17 THE COURT: IN OTHER WORDS, IF BEFORE THIS TRIAL, THE  
18 DEFENDANT MADE FALSE OR DELIBERATE OR MISLEADING STATEMENTS  
19 CONCERNING THE CHARGES, IS THAT THE ONE YOU OBJECT TO?

20 MR. BARENS: I BELIEVE THAT IS THE ONE WE OBJECT TO.

21 THE COURT: ALL RIGHT, LET THE RECORD SHOW THE DEFENSE  
22 IS OBJECTING TO 203.

23 MR. BARENS: AND THAT IS OVERRULED, I BELIEVE, SIR?

24 THE COURT: YES.

25 MR. CHIER: HOW DID YOU KNOW THAT?

26 THE COURT: CALJIC 211 --

27 I CAN DISPENSE WITH YOUR REMARKS OR YOU KNOW  
28 YOU GO OUT THE DOOR AGAIN.

5-4

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

211, NEITHER SIDE IS REQUIRED TO PRODUCE ALL  
AVAILABLE EVIDENCE, NOT REQUIRED.

205, UNJOINED PERPETRATORS OF THE SAME CRIME.

6A- 1                    213, PRIOR CONSISTENT OR INCONSISTENT STATEMENTS  
2 AS EVIDENCE. ARE YOU FOLLOWING THAT?

3 MR. BARENS: YES.

4 THE COURT: ARE YOU FOLLOWING IT?

5 MR. BARENS: YES. I HAVE A SUMMARY HERE.

6 THE COURT: ALL RIGHT. 220. CREDIBILITY OF WITNESS.  
7 ON THE SECOND PAGE, THE COURT HAS XED OUT THE FOUR LAST LINES.  
8 YOU KNOW WHAT THEY ARE?

9 MR. CHIER: INCONSISTENT CHARACTER ADMISSIONS?

10 THE COURT: WHAT?

11 MR. CHIER: THE LAST FOUR LINES?

12 THE COURT: YES.

13 MR. CHIER: ALL RIGHT.

14 THE COURT: NO OBJECTION TO THAT.

15                    221, WITNESS WILLFULLY FALSE, DISCREPANCIES IN  
16 THE TESTIMONY.

17                    222, WEIGHING CONFLICTING TESTIMONY.

18                    227, SUFFICIENCY OF TESTIMONY OF ONE WITNESS.

19                    PEOPLE'S PROPOSED INSTRUCTION NUMBER 1, FACTORS  
20 TO CONSIDER IN PROVING IDENTITY OF EYEWITNESS. THE SECOND  
21 PART AND PART OF THE THIRD LINE HAS BEEN XED OUT.

22 MR. BARENS: COULD WE JUST SEE MR. WAPNER'S ON THAT AT  
23 THIS POINT, YOUR HONOR?

24 THE COURT: HAVE YOU GOT A COPY OF IT?

25 MR. WAPNER: I THOUGHT I PROVIDED IT.

26 MR. BARENS: I COULDN'T FIND IT AT THIS TIME.

27 MR. WAPNER: I ONLY HAVE ONE RIGHT NOW.

28 MR. BARENS: WELL, I WILL HAND IT RIGHT BACK.

16A  
1 THE COURT: ALL RIGHT. IT GOES, "EYEWITNESS TESTIMONY  
2 HAS BEEN RECEIVED IN THIS TRIAL." THE FOLLOWING LINE AND THE  
3 FIRST WORD OF THE THIRD LINE IS XED OUT. THAT IS WHAT YOU  
4 WANTED ME TO DO.

5 MR. BARENS: WITH THE LINE WITH THE WORD "BELIEVABILITY"?

6 MR. CHIER: COULD I READ THAT PART OF THE INSTRUCTION,  
7 JUDGE?

8 THE COURT: YES.

9 MR. CHIER: "IN DETERMINING THE WEIGHT TO BE GIVEN  
10 EYEWITNESS IDENTIFICATION TESTIMONY, YOU SHOULD CONSIDER THE  
11 BELIEVABILITY OF THE WITNESSES AS WELL AS OTHER ..."

12 THE COURT: NO, NO, NO, NO. "EYEWITNESS TESTIMONY HAS  
13 BEEN RECEIVED IN THIS TRIAL." THE NEXT SENTENCE, HOW DOES  
14 THAT READ?

15 MR. CHIER: IS THIS THE REVISED COPY, FRED?

16 MR. WAPNER: YES.

17 MR. BARENS: WE HAVE THE COPY THAT IS GOING TO BE READ  
18 NOW?

19 MR. WAPNER: COUNSEL ASKED TO HAVE THE SENTENCE THAT  
20 THE COURT HAS TAKEN OUT, STRICKEN. SO WHAT I DID WAS, I WENT  
21 AND HAD IT RETYPED AND I HAD THAT SENTENCE TAKEN OUT. AND  
22 I PROVIDED A COPY.

23 THE COURT: ALL RIGHT. RIGHT HERE, THE ONE YOU TOOK  
24 OUT WAS THE SENTENCE FOLLOWING THE STANDARD INSTRUCTION?

25 MR. CHIER: WOULD YOU READ IT?

26 THE COURT: I HAVE NOT GOT IT. I HAVE XED IT OUT.  
27 I CAN'T READ IT.

28 MR. CHIER: WOULD YOU READ THE INSTRUCTION?

16A-2

1 THE COURT: "EYEWITNESS TESTIMONY HAS BEEN RECEIVED IN  
2 THIS TRIAL. IN DETERMINING THE WEIGHT TO BE GIVEN EYEWITNESS  
3 TESTIMONY, YOU SHOULD CONSIDER THE BELIEVABILITY OF THE  
4 EYEWITNESS AS WELL AS ALL OTHER FACTORS WHICH BEAR UPON THE  
5 ACCURACY OF THE WITNESS'S IDENTIFICATION OF" AND THEN IT IS  
6 XED OUT AND THEN "RON LEVIN."

7 ALL RIGHT. THEN IT READS "THE WITNESS'S  
8 IDENTIFICATION OF RON LEVIN ..." AND THEN IT GOES ON,  
9 "INCLUDED BUT NOT LIMITED TO ANY OF THE FOLLOWING: OPPORTUNITY  
10 OF THE WITNESS TO OBSERVE THE PERSON, STRESS IF ANY TO WHICH  
11 THE WITNESS WAS SUBJECTED AT THE TIME OF THE OBSERVATION, THE  
12 WITNESS'S ABILITY FOLLOWING THE OBSERVATION TO PROVIDE A  
13 DESCRIPTION OF THE PERSON HE OR SHE ..." AND THE "HE OR SHE"  
14 IS AN INTERLINEATION. ARE YOU FOLLOWING THIS?

15 MR. CHIER: YES.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE COURT: "THE EXTENT TO WHICH THE PERSON EITHER FITS  
2 OR DOES NOT FIT THE DESCRIPTION OF THE PERSON PREVIOUSLY GIVEN  
3 BY THE WITNESS."

4 THE NEXT LINE, I HAVE XED OUT. I CAN'T READ IT.  
5 COULD YOU READ IT THERE?

6 MR. CHIER: IT SAYS -- THE ONE HERE SAYS, "CROSS RACIAL  
7 OR ETHNIC NATURE OF --"

8 THE COURT: THAT'S RIGHT.

9 MR. CHIER: THAT IS NOT BEING GIVEN?

10 THE COURT: THERE IS NO REASON FOR IT.

11 MR. WAPNER: WELL, WE WILL ASK THE COURT TO LEAVE THAT  
12 IN, TO THE EXTENT THAT CERTAINLY MR. LOPEZ, IS MEXICAN-AMERICAN.  
13 HE IS MEXICAN-AMERICAN/LATINO. I DON'T THINK IT IS GOING TO  
14 BE A BIG FACTOR IN THIS INSTRUCTION BECAUSE I THINK THAT --  
15 WELL, THE JURY IS ENTITLED TO CONSIDER IT.

16 MR. BARENS: WE AGREE TO THAT.

17 THE COURT: IT IS DONE. DO YOU WANT IT IN?

18 MR. BARENS: WE WILL LEAVE IT IN.

19 MR. WAPNER: ALSO, CAN THE COURT GO BACK TO THE BEGINNING  
20 WHERE IT SAYS "OTHER FACTORS" OR WHATEVER ABOUT THE ACCURACY  
21 OF THE WITNESS'S IDENTIFICATION.

22 I THINK THAT YOU DON'T HAVE TO PUT RON LEVIN OR  
23 ANYONE IN. IT SHOULD BE JUST IDENTIFICATION.

24 BECAUSE THE WAY THE COURT SAYS IT, BEARING ON THEIR  
25 IDENTIFICATION, IT DOESN'T NEED TO BE -- WHO ELSE COULD IT  
26 BE?

27 MR. CHIER: WELL, IT IS THE ONLY INSTANCE --

28 THE COURT: WHO ELSE COULD IT BE?

1 MR. WAPNER: I DON'T KNOW WHO IT WAS THAT THEY SAW. BUT  
2 IT WAS NOT RON LEVIN.

3 MR. BARENS: WE DISAGREE.

4 MR. WAPNER: THAT IS THE CONCERN I HAVE IN THE LANGUAGE  
5 THE WAY IT IS.

6 MR. BARENS: WELL, I THINK THE JUDGE WAS RIGHT THE FIRST  
7 TIME.

8 THE COURT: WELL, "UPON THE ACCURACY OF THE WITNESS'S  
9 ALLEGED IDENTIFICATION OF RON LEVIN"?

10 MR. CHIER: IT IS AN IDENTIFICATION. IT IS NOT ALLEGED.

11 MR. WAPNER: IT DOES NOT HAVE TO BE GIVEN.

12 IT CAN BE THE "ACCURACY OF THE WITNESS'S  
13 IDENTIFICATION." IT DOESN'T HAVE TO SAY OF ANYBODY.

14 MR. BARENS: BUT I THINK YOUR HONOR MAKES THE POINT THAT  
15 THEY ONLY IDENTIFIED THE PERSON THAT THEY SAW IN THE PHOTOGRAPH,  
16 WHO WE KNOW TO BE NAMED RON LEVIN.

17 THE COURT: WELL, IT MAY NOT. IF THE GUY IS DEAD, HE  
18 CAN'T MAKE AN IDENTIFICATION. THAT IMPLIES THAT THEY  
19 IDENTIFIED -- MAYBE THERE IS SOMETHING TO WHAT HE SAYS --

20 MR. CHIER: WELL, IT IS CERTAINLY NOT AN ALLEGED  
21 IDENTIFICATION AFTER TEN HOURS AND A POLYGRAPH AND --

22 MR. BARENS: THE ONLY THING THEY IDENTIFIED THAT THEY  
23 COULD MATCH UP, WAS THE BLACK AND WHITES AND THE PICTURE OF  
24 THE GUY WE KNOW TO BE CALLED RON LEVIN.

25 MR. WAPNER: WHAT I AM SAYING IS, I DON'T WANT THE COURT  
26 TO PUT THE LANGUAGE IN THERE THAT WOULD SUGGEST TO THEM BY  
27 THE LANGUAGE THAT THEY ARE IDENTIFYING ANYTHING.

28 THE COURT: WELL, LATER ON I HAVE GIVEN INSTRUCTIONS,



1 FORMULA INSTRUCTIONS ON THEIR THEORY OF THE CASE. I GAVE YOU  
2 A COPY OF IT.

3 MR. CHIER: THAT IS NOT THE ONE THAT WE ASKED FOR.

4 THE COURT: WELL, THAT IS THE ONE YOU ARE GOING TO GET.

5 MR. BARENS: WE WOULD LIKE TO GO BACK YOUR HONOR TO --

6 THE COURT: WE WILL COME TO THAT ONE.

7 MR. BARENS: BECAUSE YOUR HONOR, I THOUGHT THAT WE HAD  
8 AN UNDERSTANDING ON THIS LAST THURSDAY THAT --

9 THE COURT: WE HAVE AN UNDERSTANDING. I AM PUTTING IT  
10 IN. LET'S DISCUSS IT WHEN WE COME TO IT.

11 MR. BARENS: ALL RIGHT, YOUR HONOR.

12 THE COURT: ALL RIGHT. I WILL PUT IN THE WORD "ALLEGED".

13 MR. CHIER: YOUR HONOR, IT IS NOT ALLEGED. THE  
14 IDENTIFICATION --

15 THE COURT: "ALLEGED IDENTIFICATION OF RON LEVIN."  
16 OKAY?

17 MR. CHIER: IT IS NOT AN ALLEGED --

18 THE COURT: I AM SAYING IT IS ALLEGED. THEY ADMITTED --  
19 DO YOU ADMIT THAT THERE IS AN IDENTIFICATION?

20 MR. WAPNER: THEY IDENTIFIED SOMEBODY, SURE. IT WAS  
21 NOT RON LEVIN.

22

23

24

25

26

27

28

7-1  
1 MR. WAPNER: RIGHT. I DON'T THINK ANYBODY NEEDS TO  
2 BE IN THERE.

3 THE COURT: WELL, I AM GOING TO PUT IN THERE, "THE  
4 WITNESSES' ALLEGED IDENTIFICATION OF RON LEVIN -- THE OPPORTUNITY  
5 OF THE WITNESS TO OBSERVE THE PERSON."

6 WHAT ELSE?

7 "THE WITNESS' ABILITY FOLLOWING THE  
8 OBSERVATION TO DESCRIBE THE PERSON HE OR SHE SAW,  
9 THE EXTENT TO WHICH THE PERSON EITHER FITS OR  
10 DOES NOT FIT THE DESCRIPTION OF THE PERSON BY  
11 HIM."

12 DO YOU WANT THE NEXT ONE IN ABOUT THE CROSS-  
13 SECTION?

14 MR. BARENS: YES, YOUR HONOR.

15 THE COURT: ALL RIGHT, IF YOU WANT IT, I WILL PUT IT  
16 IN.

17 MR. WAPNER: THANK YOU, YOUR HONOR.

18 THE COURT: READ IT TO ME.

19 MR. WAPNER: (READING:)

20 "THE CROSS-RACIAL --"

21 THE COURT: WAIT A MINUTE. CROSS-RACIAL, YES.

22 MR. WAPNER: (READING:)

23 "OR ETHNIC NATURE OF THE IDENTIFICATION."

24 THE COURT: ETHNIC WHAT?

25 MR. WAPNER: "NATURE OF THE IDENTIFICATION."

26 THE COURT: ALL RIGHT, THE NEXT ONE, THE WITNESS'  
27 CAPACITY TO MAKE AN IDENTIFICATION.

28 MR. BARENS: WHAT NUMBER ARE YOU ON, YOUR HONOR?

7-2

1 THE COURT: THE NEXT PAGE, THE SECOND PAGE -- NO, WAIT  
2 A MINUTE NOW.

3 "THE WITNESS' CAPACITY TO MAKE AN  
4 IDENTIFICATION."

5 IS THERE A SECOND PAGE?

6 MR. WAPNER: YES. YOU HAVE IT?

7 THE COURT: YES, I HAVE GOT IT.

8 "EVIDENCE RELATED TO THE WITNESS'  
9 ABILITY TO IDENTIFY OTHER PEOPLE PRESENT AT THE  
10 TIME OF THE ALLEGED SIGHTING OF THE PERSON WHO  
11 WAS THE SUBJECT OF THE IDENTIFICATION. WHETHER  
12 THE WITNESS" --

13 WELL, THE REST OF THAT PAGE, EXCEPT THE THIRD  
14 FROM THE BOTTOM, "WHETHER THE WITNESS' IDENTIFICATION WAS  
15 THE PRODUCT OF HIS OR HER OWN RECOLLECTION" --

16 RECOLLECTION IS SPELLED WRONG HERE.

17 THE NEXT ONE IS 251, MOTIVE. AND THAT GOES IN,  
18 AS I RECALL, THE TIME WE TOOK IT UP, BOTH OF YOU AGREED UPON  
19 THE INSTRUCTION. I WILL GIVE IT AS HAVING BEEN AGREED UPON.

20 I MADE A CHECK ON THOSE AS REQUESTED IF BY THE  
21 DEFENDANT AND BY THE PEOPLE. IF THERE IS NO REQUEST BY THE  
22 DEFENDANT, YOU TELL ME.

23 NOW 260 IS "DEFENDANT NOT TESTIFYING, NO INFERENCE  
24 OF GUILT MAY BE DRAWN."

25 261, "DEFENDANT MAY RELY ON THE STATE OF THE  
26 EVIDENCE."

27 CONFESSION AND ADMISSION DEFINED.

28 271 ADMISSION DEFINED.

1 MR. CHIER: YOUR HONOR, THERE SHOULD BE AN INSTRUCTION  
2 IN HERE THAT AN ADMISSION CAN BE ORAL OR WRITTEN. I DON'T  
3 THINK --

4 THE COURT: NO, I AM NOT GOING TO GIVE IT. YOU HAVE  
5 GOT IT AND I HAVE MARKED IT REFUSED DOWN HERE.

6 MR. CHIER: WE ARE NOT ASKING FOR AN INSTRUCTION THAT  
7 WRITTEN ADMISSIONS BE VIEWED WITH THE SAME CAUTION AS AN ORAL  
8 ADMISSION, BUT THAT A WRITTEN ADMISSION IS THE SAME AS AN  
9 ORAL ADMISSION, AND I WANT TO BE REAL CLEAR THAT I AM SAYING  
10 THAT AN ADMISSION, WITHOUT DEALING WITH THE MATTER OF THE  
11 CAUTIONARY ASPECT, AN ADMISSION MAY BE ORAL OR WRITTEN, AND  
12 THAT THE JURY SHOULD -- THEY CANNOT CONSCIENTIOUSLY APPLY  
13 THE CORPUS DELICTI RULE.

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

7-4

1 THE COURT: DO YOU HAVE ANY OBJECTION TO THAT?

2 MR. WAPNER: WELL, I WANT TO KNOW WHAT IT IS THAT THEY  
3 ARE PROPOSING EXACTLY.

4 MR. CHIER: CLEARLY, THE SEVEN PAGES ARE.

5 MR. WAPNER: I KNOW WHAT YOU ARE REFERRING TO, COUNSEL.

6 THE COURT: WHAT DO YOU MEAN THE SEVEN --

7 I AM GIVING THE CALJIC INSTRUCTION, "ADMISSION  
8 DEFINED," IS THERE ANY OBJECTION TO THAT INSTRUCTION AS IT  
9 IS PRINTED?

10 MR. CHIER: 270?

11 THE COURT: 2.71.

12 MR. CHIER: I DON'T HAVE THAT ONE HERE.

13 THE COURT: ADMISSION DEFINED.

14 MR. WAPNER: YOU JUST WANTED TO ADD A SENTENCE IN THAT?

15 MR. CHIER: NO.

16 "AN ADMISSION IS A STATEMENT, ORAL OR  
17 WRITTEN, MADE BY THE DEFENDANT OTHER THAN AT HIS  
18 TRIAL."

19 MR. BARENS: JUST ADD THE TWO WORDS "ORAL OR WRITTEN".

20 MR. WAPNER: I DON'T HAVE ANY OBJECTION TO THAT.

21 MR. BARENS: COULD YOUR HONOR AMEND THAT, SIR? IT  
22 IS IN THE VERY TOP LINE.

23 THE COURT: PARDON ME?

24 MR. CHIER: AND THE CAVEAT IS LIMITED TO ORAL STATEMENTS,  
25 AS YOU WILL NOTICE AT THE BOTTOM LINE, YOUR HONOR.

26 MR. BARENS: JUST AT THE TOP LINE AFTER THE WORD  
27 "STATEMENT," IF YOU WOULD INSERT THE WORDS "ORAL OR WRITTEN."

28 THE COURT: ALL RIGHT.

1 MR. BARENS: THANK YOU, SIR.

2 THE COURT: AND YOU AGREE TO THAT BEING GIVEN?

3 MR. WAPNER: YES.

4 MR. BARENS: YES, YOUR HONOR.

5 THE COURT: ALL RIGHT, GIVEN AS MODIFIED.

6 ALL RIGHT. 272. CORPUS DELICTI MUST BE PROVED  
7 INDEPENDENT OF ADMISSION OR CONFESSION. ALL RIGHT?

8 MR. CHIER: JUST A MOMENT, YOUR HONOR. THIS SHOULD  
9 BE MODIFIED, YOUR HONOR.

10 THE COURT: IN WHAT RESPECT?

11 MR. CHIER: WHERE IT SAYS "NO PERSON," IT SHOULD BE  
12 MODIFIED TO REFLECT THAT IT CAN BE AN ORAL OR WRITTEN  
13 ADMISSION BECAUSE THE SEVEN PAGES ARE IN THE NATURE OF A  
14 WRITTEN ADMISSION, YOUR HONOR.

15 THE COURT: I PUT THAT IN THERE, "ORAL OR WRITTEN."

16 MR. CHIER: I KNOW, BUT THIS CORPUS THING SHOULD ALSO  
17 REFLECT IT, I BELIEVE.

18 THE COURT: WELL, ADMISSION OR CONFESSION, ADMISSION  
19 INCLUDES A WRITTEN OR ORAL STATEMENT.

20 MR. WAPNER: I THINK ONCE IS ENOUGH.

21 THE COURT: THAT IS ALL. IT WILL BE GIVEN THAT WAY  
22 AS I HAVE GOT IT.

23 MR. CHIER: JUST FOR CONSISTENCY, YOUR HONOR.

24 THE COURT: "EXPERT TESTIMONY," BOTH SIDES AGREE TO  
25 THAT.

26 I HAVE, HOWEVER, CROSSED OUT THE THIRD PARAGRAPH  
27 BECAUSE THAT IS NOT APPLICABLE. THERE HASN'T BEEN ANY  
28 CONFLICT.

1 ALL RIGHT, 281. OPINION TESTIMONY OF A LAY  
2 WITNESS. I CROSSED OUT THAT PART IN THE BRACKET.

3 ALLRIGHT, 282 IS HYPOTHETICAL QUESTIONS.

4 290, PRESUMPTION OF INNOCENCE.

5 THE DEFENDANT OBJECTS TO THAT, I SUPPOSE? THAT  
6 IS A JOKE.

7 THE NEXT IS YOUR CONTENTION, I GAVE YOU A COPY  
8 OF IT: "THE DEFENDANT CONTENDS THAT RON LEVIN WAS ALIVE,  
9 AT LEAST IN SEPTEMBER OF 1986 AND" --

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

7-7  
1 MR. CHIER: JUST A MOMENT, YOUR HONOR. I AM RETRIEVING  
2 THAT ONE. THAT IS THE SPECIAL INSTRUCTION YOUR HONOR REFUSED?

3 THE COURT: YES.

4 MR. CHIER: I WISH YOU WOULD NOT REFER TO IT AS OUR  
5 REQUEST. THIS IS NOT ANYTHING LIKE OUR REQUEST.

6 THE COURT: IF IT IS NOT YOUR REQUEST, THEN I WON'T  
7 GIVE IT THEN, ALL RIGHT?

8 MR. BARENS: NO, YOUR HONOR, PLEASE.

9 THE COURT: HE SAID HE DOESN'T WANT THAT INSTRUCTION.

10 MR. BARENS: YOUR HONOR IS NOT ACCURATELY, I BELIEVE,  
11 UNDERSTANDING WHAT MR. CHIER IS COMMUNICATING.

12 THE COURT: WHAT IS HE SAYING ABOUT THIS WHICH IS NOT  
13 CORRECT?

14 MR. BARENS: HE IS SAYING, SIR, THAT LAST THURSDAY  
15 WHEN WE MET ON THIS, WE HAD DISCUSSED THE LANGUAGE FOR THE  
16 INSTRUCTION WE ARE SEEKING AND WHAT YOU ARE NOW READING IS  
17 NOT WHAT WE DISCUSSED.

18 THE COURT: ALL RIGHT, I WILL GIVE IT AS MODIFIED.

19 MR. BARENS: SIR, IF YOU WILL RECALL, SIR, I THOUGHT  
20 WE HAD REACHED AN AGREEMENT LAST THURSDAY AS TO THE LANGUAGE  
21 OF THE SPECIAL INSTRUCTION.

22 THE COURT: THIS IS WHAT I AM GOING TO GIVE AND IF  
23 YOU DON'T WANT IT THAT WAY, I WON'T GIVE IT THEN.

24 MR. BARENS: SIR, I DON'T BELIEVE THOSE SHOULD BE THE  
25 ONLY TWO CHOICES.

26 THE COURT: I SAID: "THE DEFENDANT CONTENDS THAT RON  
27 LEVIN WAS ALIVE, AT LEAST IN SEPTEMBER, 1986 AND WAS ALLEGEDLY  
28 SEEN IN TUCSON, ARIZONA. IF YOU HAVE A REASONABLE DOUBT



17-8

1 THAT RON LEVIN IS DEAD, YOU MUST RESOLVE THAT DOUBT IN THE  
2 DEFENDANT'S FAVOR AND FIND HIM NOT GUILTY."

3 TELL ME WHAT IS WRONG WITH THAT.

4 MR. BARENS: SIR, IF I COULD JUST HAVE A MOMENT TO  
5 RETRIEVE THE PROPOSAL WE MADE, I COULD DISCUSS IT MORE  
6 INTELLIGENTLY.

7 THE COURT: GO AHEAD.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

18

18 1 MR. CHIER: THIS IS THE ONE THAT WE AGREED UPON AND THE  
2 JUDGE CONTRIBUTED A MODIFICATION.

3 MR. BARENS: YOUR HONOR, YOU RECALL THAT THE INSTRUCTION  
4 WE SUBMITTED, YOU GAVE US LANGUAGE FOR IT. WE HAD WRITTEN  
5 IT OUT AND --

6 THE COURT: WELL, I DON'T LIKE THE WAY YOU WROTE IT OUT.

7 MR. BARENS: I WROTE UP THE WORDS YOU GAVE ME, SIR.

8 THE COURT: DIDN'T YOU TELL ME THAT YOU WANTED THE  
9 INSTRUCTION, IF THEY HAVE A REASONABLE DOUBT THAT HE WAS DEAD  
10 AND HAD BEEN SEEN --

11 MR. CHIER: NOT JUST AN INSTRUCTION BUT --

12 MR. BARENS: THE SENTENCE -- I HAVE IT HERE AND THE RECORD  
13 WILL REFLECT FROM LAST WEEK THAT --

14 THE COURT: WELL, YOU READ IT INTO THE RECORD THE WAY  
15 YOU WANT IT.

16 MR. BARENS: THE LANGUAGE THAT I UNDERSTOOD WE HAD ALL  
17 AGREED UPON WAS AS FOLLOWS:

18 "THE DEFENDANT --"

19 AND THERE WERE TWO PARAGRAPHS PRECEDING IT, AS  
20 WELL THAT HAD BEEN AGREED UPON IN CHAMBERS.

21 THE COURT: LET'S SEE THAT.

22 MR. BARENS: YES, SIR.

23 THE COURT: WHAT ARE THE TWO PARAGRAPHS?

24 MR. BARENS: ACTUALLY, IT STARTED HERE, SIR (INDICATING).

25 MR. CHIER: I GAVE YOU THAT REVISED ONE, FRED.

26 THE COURT: ALL RIGHT. I WAS NOT GOING TO --

27 MR. BARENS: WE HAD DONE THIS ENTIRE PAGE. AND THESE  
28 WORDS STARTING WITH THIS, IF YOU LOOK AT THE TRANSCRIPT OF

18. 2  
1 THE LANGUAGE --

2 THE COURT: I DON'T HAVE TO MENTION THE NAMES OF  
3 WITNESSES.

4 MR. BARENS: BUT SIR, WE DISCUSSED THAT IN CHAMBERS AND --

5 THE COURT: I DON'T WANT TO GIVE IT THAT WAY. THE  
6 DEFENDANT CONTENDS THAT RON LEVIN WAS ALIVE AT LEAST IN  
7 SEPTEMBER OF 1986 AND WAS ALLEGEDLY SEEN IN TUCSON, ARIZONA?  
8 THAT IS THE TESTIMONY.

9 IF YOU HAVE A REASONABLE DOUBT THAT RON LEVIN IS  
10 DEAD, YOU MUST RESOLVE THAT DOUBT IN THE DEFENDANT'S FAVOR AND  
11 FIND HIM NOT GUILTY?

12 MR. BARENS: YOU RECALL THAT --

13 THE COURT: WHAT IS WRONG WITH THAT?

14 MR. BARENS: SIR, YOUR HONOR WILL RECALL THAT --

15 THE COURT: I AM ASKING YOU. WHAT IS WRONG WITH THAT  
16 INSTRUCTION?

17 MR. BARENS: I BELIEVE THE LANGUAGE THAT WE HAD AGREED  
18 UPON WAS --

19 THE COURT: I DIDN'T AGREE UPON ANYTHING.

20 MR. BARENS: IF YOU LOOK AT THE RECORD, WE HAD  
21 CAREFULLY --

22 THE COURT: ALL RIGHT. THEN I RECONSIDERED. I DON'T  
23 CARE. THIS IS THE INSTRUCTION THAT I HAVE.

24 MR. CHIER: BUT WE ARGUED THIS TO THE JURY.

25 MR. BARENS: I WILL TELL YOU THE PROBLEM I HAVE. IF  
26 YOU WOULD JUST LET ME PLEASE MAKE THE RECORD CLEAR, WHEN I  
27 PREPARED MY CLOSING ARGUMENT, YOU WILL RECALL THAT I READ TO  
28 THE JURY THE INSTRUCTION THAT WE HAD DONE HERE LAST THURSDAY.

1 THE COURT: WHAT DID YOU TELL THEM?

2 MR. BARENS: WHAT DID I READ THEM? I SAID TO THEM, THE  
3 EXACT LANGUAGE. THE LANGUAGE WAS THAT THE DEFENDANT WAS  
4 ENTITLED TO A VERDICT OF NOT GUILTY AFTER A CONSIDERATION OF  
5 ALL OF THE TESTIMONY OF CARMEN CANCHOLA AND CHINO LOPEZ, IF  
6 THERE ARISES IN YOUR MIND A REASONABLE DOUBT THAT THE ALLEGED  
7 VICTIM, RON LEVIN, IS IN FACT DEAD.

8 THE COURT: DO YOU HAVE ANY OBJECTION TO THE ONE THAT  
9 I HAVE DRAFTED?

10 MR. WAPNER: I DON'T HAVE ANY OBJECTION TO EITHER ONE  
11 OF THESE. NO, I DON'T HAVE ANY OBJECTION TO THE ONE YOU  
12 DRAFTED.

13 THE COURT: LET'S SEE THAT ONE.

14 MR. BARENS: I WANT TO SUBMIT FOR THE RECORD THAT --

15 THE COURT: NO. I WON'T GIVE IT THAT WAY. THAT IS WHAT  
16 YOU SAY. TWO DEFENSES WITNESSES.

17 YOU HAVE NOW GOT THEM AS TWO DEFENSE WITNESSES  
18 WHO HAVE TESTIFIED TO HAVING SEEN THE ALLEGED VICTIM, RON LEVIN  
19 ALIVE IN TUCSON, ARIZONA IN THE MONTH OF SEPTEMBER, 1986.

20 THE DEFENDANT IS NOT REQUIRED TO PROVE BEYOND A  
21 REASONABLE DOUBT -- I DON'T WANT YOU TO PUT THAT LANGUAGE THAT --

22 MR. CHIER: BUT THAT IS THE LAW THAT --

23 THE COURT: I WON'T GIVE IT THAT WAY.

24 MR. CHIER: BUT YOUR HONOR, WE ARE ENTITLED UNDER SEARS --

25 THE COURT: I WILL GIVE THE INSTRUCTION THE WAY I GIVE  
26 IT.

27 MR. BARENS: SIR, MAY I JUST --

28 THE COURT: LOOK, I WON'T GIVE THE INSTRUCTION THE WAY

1 YOU HAVE IT.

2 MR. BARENS: COULD I JUST MAKE ONE OTHER COMMENT, SIR?  
3 YOU WILL RECALL LAST THURSDAY WE HAD CONSIDERABLE DISCUSSION  
4 AND YOUR HONOR PULLED DOWN FROM THE SHELF THE CASES THAT --

5 THE COURT: LET'S TALK ABOUT WHAT WE ARE DOING NOW.

6 MR. BARENS: BUT, WE RELIED ON WHAT YOU SAID, SIR.

7 THE COURT: ALL RIGHT. I AM GIVING THE INSTRUCTION IN  
8 THE FORM THAT YOU WANT.

9 MR. BARENS: BUT, I RELIED ON WHAT YOU --

10 THE COURT: I AM GIVING IT SUBSTANTIALLY IN THAT FORM.  
11 I WILL READ IT TO YOU AGAIN.

12 "THE DEFENDANT CONTENDS THAT RON LEVIN  
13 WAS ALIVE, AT LEAST IN SEPTEMBER, 1986 AND WAS  
14 ALLEGEDLY SEEN IN TUCSON, ARIZONA. IF YOU HAVE A  
15 REASONABLE DOUBT THAT RON LEVIN IS DEAD, YOU MUST  
16 RESOLVE THAT DOUBT IN THE DEFENDANT'S FAVOR AND  
17 FIND HIM NOT GUILTY."

18

19

20

21

22

23

24

25

26

27

28

1 MR. BARENS: SIR, AT A CRITICAL POINT IN THE TRIAL, I  
2 SUBSTANTIALLY RELIED --

3 THE COURT: LET'S GET ON. 300. FINE, PRINCIPAL DEFINED.  
4 ALL RIGHT. I HAVE CROSSED OUT "OR ATTEMPTED TO" THAT IS,  
5 "ATTEMPTED TO COMMIT."

6 ANY OBJECTION TO 300?

7 MR. WAPNER: NO.

8 THE COURT: ALL RIGHT. 301, AIDING AND ABETTING.

9 310. ACCOMPLICE DEFINED AND --

10 MR. CHIER: NO. THIS WAS WITHDRAWN. WE HAD A LONG  
11 DISCUSSION ABOUT --

12 MR. WAPNER: WE ARE AGREEING NOT TO GIVE THOSE. BUT  
13 I SAID ON THURSDAY OR WHENEVER IT WAS WE DISCUSSED THE  
14 INSTRUCTIONS, THAT I WOULD ONLY AGREE TO DO THAT WITH THE  
15 WAIVER, THE PERSONAL WAIVER OF MR. HUNT. THOSE INSTRUCTIONS  
16 WHICH START AT 310 AND GO THROUGH 319 AND DEAL WITH  
17 ACCOMPLICE TESTIMONY. THAT IS, THAT IT WOULD NOT BE GIVEN --

18 THE COURT: WHO AM I REFERRING TO AS THE ACCOMPLICE?

19 MR. WAPNER: DEAN KARNY.

20 THE COURT: EXACTLY, DEAN KARNY. HE IS SUPPOSED TO HAVE  
21 BEEN AN ACCOMPLICE, WASN'T HE? WHY DO YOU OBJECT TO AN  
22 INSTRUCTION ON THAT?

23 MR. WAPNER: I DON'T OBJECT TO ANY OF IT. I REQUESTED  
24 THESE INSTRUCTIONS.

25 THE COURT: WHAT IS WRONG WITH THEM THEN?

26 MR. WAPNER: I DON'T THINK THERE IS ANYTHING WRONG WITH  
27 THE INSTRUCTIONS. THERE WAS A WHOLE BIG TO-DO ABOUT THE FACT  
28 THAT THEY DIDN'T WANT THE INSTRUCTION GIVEN. IF THEY DON'T

1 WANT THEM GIVEN, THEN I DON'T HAVE ANY OBJECTION IF THEY ARE  
2 NOT GIVEN.

3 THEY ARE GIVEN BASICALLY, TO PROTECT A DEFENDANT,  
4 SO THAT THERE IS A CAUTIONARY INSTRUCTION ON HOW YOU TREAT  
5 ACCOMPLICE TESTIMONY.

6 MR. BARENS: YOUR HONOR --

7 THE COURT: THE ACCOMPLICE DOESN'T REFER TO PITTMAN,  
8 DOES IT?

9 MR. WAPNER: SORRY?

10 THE COURT: THE ACCOMPLICE REFERS TO PITTMAN?

11 MR. WAPNER: NO.

12 THE COURT: THE ACCOMPLICE REFERS TO THE DEFENDANT?

13 MR. WAPNER: NO.

14 THE COURT: WHO DOES IT REFER TO?

15 MR. WAPNER: IT ONLY REFERS TO KARNY.

16 THE COURT: ALL RIGHT. KARNY SAID HE HAD PARTICIPATED.  
17 HE FELT GUILTY. HE PARTICIPATED IN THE OFFENSE. THAT MAKES  
18 HIM AN ACCOMPLICE, DOESN'T IT?

19 MR. WAPNER: RIGHT.

20 THE COURT: IT FITS THE DEFINITION OF ACCOMPLICE, DOESN'T  
21 IT?

22 MR. WAPNER: I THINK SO.

23 MR. BARENS: WE HAD THIS DISCUSSION LAST THURSDAY. YOUR  
24 HONOR SAID THAT HE WOULD NOT GIVE THESE INSTRUCTIONS LAST  
25 THURSDAY, SO LONG AS MR. HUNT GAVE A PERSONAL WAIVER. HE IS  
26 HERE TO GIVE THE WAIVER.

27 I DIDN'T ARGUE THESE INSTRUCTIONS IN MY ARGUMENT,  
28 IN RELIANCE UPON THE COURT'S ADVICE.

1 THE COURT: YOU DON'T WANT ANYTHING ON ACCOMPLICE?

2 MR. BARENS: NO. THAT IS THE SAME THING WE AGREED TO  
3 LAST THURSDAY.

4 THE COURT: ALL RIGHT. IT IS ALL RIGHT WITH ME. IS  
5 IT ALL RIGHT WITH THE PEOPLE?

6 MR. WAPNER: IT IS FINE WITH ME, PROVIDED THAT THERE  
7 IS A WAIVER BY THE DEFENDANT OF ANY OBJECTION.

8 MR. BARENS: MR. HUNT IS PREPARED TO EXECUTE THE WAIVER  
9 RIGHT NOW.

10 THE COURT: ALL RIGHT. ON THE RECORD?

11 THE DEFENDANT: I WAIVE THE ACCOMPLICE INSTRUCTIONS.

12 THE COURT: ALL RIGHT. NOW WE HAVE 310, 311, 312, 313,  
13 314, 318.

14 DO YOU WANT THAT FORMULA INSTRUCTION OUT, TOO,  
15 319? ABOUT KARNY? YOU SUBMITTED THAT. THAT IS, WHETHER OR  
16 NOT THE WITNESS DEAN KARNY WAS AN ACCOMPLICE AS DEFINED --

17 MR. WAPNER: NO. THAT HAS TO GO OUT TOO, IF THE  
18 PRECEDING ONES ARE GOING OUT.

19 THE COURT: OKAY. THAT IS OUT.

20 ACTUALLY, I DON'T SEE WHY YOU NEED THE DEFENDANT'S  
21 CONSENT IN ANY INSTRUCTION. IF IT IS THE LAW IN THIS CASE,  
22 WE DON'T NEED HIS CONSENT. BUT, SINCE YOU INSIST UPON IT,  
23 WE'LL HAVE IT DONE.

24 THE ONLY TIME I INSISTED UPON A PERSONAL WAIVER  
25 HAD TO DO WITH THE FAILURE TO TAKE THE STAND AND TESTIFY.

26 ALL RIGHT. 331 --

27 MR. BARENS: I DON'T THINK IT IS A FAILURE TO TAKE THE  
28 STAND, YOUR HONOR. IT IS A DECISION TO TAKE THE STAND.



19-1

1 THE COURT: LET'S NOT QUIBBLE OVER WORDS. THEY KNOW  
2 WHAT I MEAN.

3 331 DEFINES ACT WITH SPECIFIC INTENT.

4 ANY PROBLEM WITH THAT?

5 MR. WAPNER: YOU HAVE LEFT IT WHERE IT SAYS THE SPECIFIC  
6 INTENT WILL BE DEFINED IN THE --

7 THE COURT: YES, "THE SPECIFIC INTENT REQUIRED IS INCLUDED  
8 IN THE DEFINITION IN THE CRIMES CHARGED."

9 MR. WAPNER: THANK YOU.

10 THE COURT: ALL RIGHT, 450, ALIBI, GIVEN AS REQUESTED  
11 BY THE DEFENDANT.

12 ALL RIGHT, 810, MURDER DEFINED.

13 NOW, 1, 2 AND 3, THAT THE KILLING WAS DONE WITH  
14 MALICE AFORETHOUGHT, AND THE REST OF THAT HAS BEEN XED OUT.  
15 MALICE AFORETHOUGHT DEFINED.

16 AND THE THIRD PARAGRAPH GOES DOWN TO "AND WITH  
17 A WATCH DISREGARD FOR HUMAN LIFE" AND THE REST OF THAT  
18 PARAGRAPH IS XED OUT.

19 811. AND THE REST, THE SECOND PAGE IS OKAY THE  
20 WAY IT IS.

21 820, "DELIBERATE AND PREMEDITATED MURDER."

22 MR. CHYER: ANY CHANGES?

23 THE COURT: NO.

24 821. FIRST DEGREE FELONY MURDER.

25 UNLAWFUL KILLING OF A HUMAN BEING, WHETHER  
26 INTENTIONAL, UNINTENTIONAL OR ACCIDENTAL, WHICH OCCURS AS  
27 A RESULT OF THE COMMISSION OF OR ATTEMPT TO COMMIT THE CRIME  
28 OF ROBBERY, AND WHERE THERE WAS IN THE MIND OF THE PERPETRATOR  
29 THE SPECIFIC INTENT TO COMMIT SUCH CRIME, IS MURDER OF THE

9-2

1 FIRST DEGREE... THE SPECIFIC INTENT TO COMMIT ROBBERY AND THE  
2 COMMISSION OR ATTEMPT TO COMMIT SUCH CRIME NEED BE PROVED  
3 BEYOND A REASONABLE DOUBT.

4 FIRST DEGREE MURDER, FELONY MURDER, AIDER BAND  
5 ABETTOR, I AM GIVING THAT THE WAY IT IS.

6 MR. WAPNER: WHICH ONE IS THAT, 827?

7 THE COURT: 827.

8 THAT IS TO COVER THE ARGUMENT THAT YOU MADE THAT  
9 HE WASN'T THE ONE ACTUALLY THAT PULLED THE TRIGGER.

10 MR. WAPNER: THANK YOU.

11 THE COURT: AND THEN 880, SPECIAL CIRCUMSTANCES,  
12 INTRODUCTORY.

13 MR. WAPNER: YOUR HONOR, THERE WAS A REQUEST LAST TIME  
14 WE MET FOR INSTRUCTIONS ON SECOND DEGREE MURDER, WHICH WOULD  
15 BE 830 AND, I THINK, 870.

16 THERE WASN'T ANY ARGUMENT ABOUT IT. THE WHOLE  
17 THEORY IS THAT THERE WASN'T ANY MURDER AND I DIDN'T REQUEST  
18 IT, BUT THEY WERE REQUESTED BY THE DEFENSE.

19 MR. CHIER: ACTUALLY, WE REQUESTED VOLUNTARY BUT THE  
20 COURT SAID IT WOULDN'T DO VOLUNTARY. THE COURT WOULDN'T  
21 GIVE VOLUNTARY, IS THAT STILL YOUR HONOR'S POSITION?

22 THE COURT: WHAT EVIDENCE IS THERE TO SHOW A VOLUNTARY  
23 MURDER?

24 MR. CHIER: WE THOUGHT IF THE SCENARIO AS ALLEGED, AS  
25 DESCRIBED BY DEAN KARNY, THERE COULD BE A HEAT OF PASSION.

26 MR. BARENS: WE HAD THIS HEAT OF PASSION DISCUSSION  
27 LAST WEEK, YOUR HONOR. I BELIEVE YOUR HONOR WAS LESS THAN  
28 CONVINCED.

1 THE COURT: WHAT EVIDENCE IS THERE THAT IT WAS COMMITTED  
2 IN THE HEAT OF PASSION?

3 MR. BARENS: YOUR HONOR, WE TALKED ABOUT ONE MAN'S  
4 PASSION MIGHT NOT BE ANOTHER MAN'S PASSION. ABOUT \$4 MILLION, IT  
5 MIGHT ARISE SUDDENLY.

6 THE COURT: IT DOESN'T FIT IN WITH THE FACTS WHICH  
7 HAVE BEEN INTRODUCED, NOT EVEN REMOTELY.

8 MR. BARENS: DO YOU WANT TO GIVE A SECOND DEGREE  
9 INSTRUCTION, SIR?

10 THE COURT: YES, IF YOU WANT THAT, I WILL GIVE IT TO  
11 THEM.

12 MR. WAPNER: IT IS NOT A QUESTION OF WHAT THE COURT  
13 WANTS. IT IS A QUESTION OF WHETHER IT IS BEING REQUESTED  
14 BY THE DEFENSE AND THEY HAVEN'T MADE THEIR POSITION CLEAR.

15 MR. CHIER: A MOMENT IN THE CLOSET, YOUR HONOR.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE COURT: ALL RIGHT, GO IN THE BATHROOM, THAT IS  
2 APPROPRIATE FOR HIM.

3 (UNREPORTED COLLOQUY BETWEEN MR. CHIER  
4 AND THE DEFENDANT.)

5 MR. CHIER: DECLINE, YOUR HONOR.

6 THE COURT: WELL, LET THE RECORD SHOW --

7 MR. BARENS: WAIT A MINUTE, YOUR HONOR, BEFORE WE MAKE  
8 A FINDING ON THAT, YOUR HONOR. A MOMENT IN THE CLOSET MYSELF,  
9 YOUR HONOR.

10 MR. CHIER: OR THE CLOAKROOM.

11 (UNREPORTED COLLOQUY BETWEEN MR. BARENS  
12 AND MR. CHIER AND THE DEFENDANT.)

13 MR. BARENS: WE HAVE AGREED THAT WE DO WANT THE  
14 INSTRUCTION, SIR. I WILL TAKE RESPONSIBILITY FOR THAT  
15 DECISION, SIR.

16 THE COURT: MR. CHIER IS THE LAW EXPERT IN THIS CASE.  
17 WHY AREN'T YOU GUIDED BY HIM?

18 MR. BARENS: I WILL MAKE THE DECISION ON THAT.

19 MR. CHIER: I WILL LET HIM HAVE THE RESPONSIBILITY,  
20 TOO.

21 THE COURT: YOU WANT AN INSTRUCTION ON MURDER IN THE  
22 SECOND DEGREE?

23 THE DEFENDANT: I WILL RELY ON ARTHUR HERE.

24 MR. BARENS: I AM MAKING THE DECISION.

25 THE COURT: YOU ARE SPEAKING ON BEHALF OF THE DEFENDANT,  
26 WHO HAS HEARD THAT, IS THAT RIGHT?

27 MR. BARENS: I AM.

28 THE COURT: ALL RIGHT, I WILL GIVE THAT INSTRUCTION.

1 MR. WAPNER: THAT WILL BE 8.30?

2 MR. BARENS: COULD I SEE THAT? DO WE HAVE 8. --

3 MR. CHIER: NO.

4 MR. BARENS: MR. WAPNER, IF I COULD JUST SEE YOUR BOOK  
5 FOR A MINUTE.

6 (MR. WAPNER HANDS A BOOK TO MR. BARENS.)

7 MR. BARENS: THANK YOU.

8 MR. WAPNER: YOU WILL HAVE TO GIVE 8.70 ALSO, WHICH  
9 IS THE DUTY OF THE JURY.

10 THE COURT: WOULD YOU GET IT FROM THE CLERK.

11 MR. WAPNER: YES. EXCUSE ME JUST A MINUTE.

12 THE COURT: SHE WILL GIVE IT TO YOU.

13 (PAUSE IN PROCEEDINGS.)

14 THE COURT: YOU WANT 8.70, TOO, MR. BARENS?

15 MR. BARENS: I AM DECIDING THAT.

16 THE COURT: (READING:)

17 "MURDER IS INCLUDED UNDER TWO DEGREES.  
18 IF YOU SHOULD FIND THE DEFENDANT GUILTY OF MURDER,  
19 IT WILL BE YOUR DUTY TO DETERMINE THE DEGREE AND  
20 STATE IN YOUR VERDICT WHETHER OR NOT YOU FIND IT  
21 TO BE MURDER IN THE FIRST OR SECOND DEGREE."

22 MR. BARENS: I AM READING 8.70. I THINK IF YOU WILL  
23 JUST LET ME HAVE A MOMENT WITH THE DEFENDANT.

24 (UNREPORTED COLLOQUY BETWEEN MR. BARENS AND  
25 THE DEFENDANT.)

26 MR. WAPNER: CAN I SEE THE BOOK FOR A MINUTE, PLEASE?

27 MR. BARENS: WE WILL WITHDRAW THE REQUEST.

28 THE COURT: YOU DON'T WANT ANY INSTRUCTION ON SECOND

9-6

1 DEGREE MURDER?

2 MR. BARENS: THAT IS THE REQUEST.

3 THE COURT: I TAKE IT BY THAT, YOU DON'T WANT ANY  
4 INSTRUCTIONS ON MANSLAUGHTER EITHER?

5 MR. BARENS: NO, YOUR HONOR.

6 THE COURT: ALL RIGHT, I WILL HAVE TO TELL HER. GET  
7 THE CLERK.

8 (UNREPORTED COLLOQUY BETWEEN THE COURT  
9 AND THE COURT REPORTER.)

10 THE COURT: THE ONLY REASON I WANT HER IN IS BECAUSE  
11 I GAVE HER AN INSTRUCTION AND I WILL HAVE TO TELL HER TO  
12 CHANGE IT.

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

0

20A  
1 THE COURT: ALL RIGHT. NOW WE GO ON 880. SPECIAL  
2 CIRCUMSTANCES, INTRODUCTORY. SPECIAL CIRCUMSTANCES, ROBBERY,  
3 DEFENDANT HUNT.

4 IF HE WAS AN AIDER AND ABETTOR BUT NOT THE ACTUAL  
5 KILLER -- AND THEN WE COME TO THE SECOND PAGE. ALL OF IT IS  
6 CROSSED OUT EXCEPT THE FINAL SENTENCE.

7 THEN, WE HAVE THE THIRD -- WE ARE STILL ON 880.  
8 THE SECOND PAGE INCLUDING THE VERDICT ON A FORM SUPPLIED AND  
9 IT GOES ON TO TRUE OR NOT TRUE.

10 MR. CHIER: WE HAVE OMITTED SOME SPECIAL INSTRUCTIONS  
11 THAT WE --

12 THE COURT: WE'LL COME TO THAT AS SOON AS I FINISH THESE.  
13 THAT IS, UNLESS YOU HAVE GOT IT RIGHT AT THIS POINT. WHAT  
14 IS IT?

15 MR. CHIER: YES. IT IS THE INSTRUCTIONS WITH RESPECT  
16 TO MR. KARNY.

17 MR. BARENS: IT WAS A ONE-LINER, YOUR HONOR. IT IS RIGHT  
18 HERE.

19 MR. CHIER: I WAS NOT SURE THAT --

20 THE COURT: I HAVE IT HERE. THIS IS THE ONE-LINER.

21 MR. CHIER: I WAS NOT SURE EXACTLY HOW HE SUBMITTED IT.  
22 THERE WERE TWO VERSIONS.

23 MR. BARENS: IT IS THIS ONE, I BELIEVE.

24 MR. CHIER: YES. THAT IS THE SAME ONE.

25 THE COURT: THIS ONE?

26 MR. CHIER: I SUBMITTED THE TWO FORMS.

27 THE COURT: THE REASON I WAS GOING TO GIVE THIS IS  
28 BECAUSE YOU HAVE THE ACCOMPLICE INSTRUCTIONS. THE ACCOMPLICE

1 INSTRUCTIONS CATEGORICALLY SAY THAT IT SHOULD BE VIEWED WITH  
2 DISTRUST. BUT YOU DIDN'T WANT IT.

3 MR. CHIER: WE AGREED THE LAST TIME WE WERE HERE, LAST  
4 THURSDAY -- BECAUSE WE ARE NOT HAVING ACCOMPLICE INSTRUCTIONS,  
5 WE WOULD HAVE THIS SPECIAL CATEGORY OF WITNESS AND THIS IS  
6 IN LIEU OF THE ACCOMPLICE INSTRUCTIONS WHICH SAY --

7 THE COURT: ARE YOU SATISFIED WITH THAT INSTRUCTION?  
8 HERE IS THE WAY IT READS:

9 "THE TESTIMONY OF DEAN KARNY WHO HAS  
10 BEEN IMMUNIZED FROM PROSECUTION IN THIS CASE SHOULD  
11 BE VIEWED WITH GREATER CARE THAN THE TESTIMONY OF  
12 OTHER WITNESSES."

13 MR. WAPNER: FINE.

14 THE COURT: ALL RIGHT. I WILL GIVE IT.

15 ALL RIGHT. LET'S NOT TALK ABOUT IT ANY FURTHER.  
16 WE ARE GOING TO GIVE IT.

17 THEN, I HAD REFUSED IT AS OTHERWISE GIVEN BECAUSE  
18 THAT INSTRUCTION IS CONTAINED IN THE ACCOMPLICE INSTRUCTIONS.

19 MR. BARENS: WELL, LET'S LEAVE IT BE.

20 THE COURT: ALL RIGHT. I WILL LET IT BE.

21 MR. CHIER: I TAKE IT THAT IT IS BEING GIVEN, THEN?

22 THE COURT: YES. NOW, 881.17, MURDER COMMITTED WHILE  
23 DEFENDANT WAS ENGAGED IN THE COMMISSION OF A ROBBERY. THE  
24 DEFENDANT INTENDED TO KILL A HUMAN BEING OR INTENDED TO AID  
25 IN THE COMMISSION OF A FELONY.

26 THAT IS 881.17. HAVE YOU GOT THAT? I WILL GIVE  
27 IT.

28 THEN THE NEXT PAGE --



1 MR. CHIER: THAT IS TWO PAGES?

2 THE COURT: YES, TWO PAGES.

3 MR. WAPNER: THERE IS A PARAGRAPH 1B IN THERE THAT YOU  
4 CROSSED OUT.

5 THE COURT: YES. I CROSSED OUT 1B.

6 MR. WAPNER: ALL RIGHT.

7 THE COURT: ALL RIGHT. THEN THERE IS 801.

8 MR. CHIER: 9.10?

9 THE COURT: NO, NO.

10 MR. WAPNER: 881.17. CAN YOU GO BACK TO THAT FOR A  
11 SECOND?

12 (THE CLERK ENTERS CHAMBERS.)

13 THE COURT: PARDON ME. THERE WILL BE NO SECOND DEGREE  
14 MURDER VERDICT.

15 THE CLERK: ON THE VERDICTS?

16 THE COURT: YES, JOYCE. WE'LL HAVE A NEW ONE. MAYBE  
17 YOU BETTER HAVE A NEW ONE. THANK YOU.

18 (THE CLERK EXITS CHAMBERS.)

19 MR. WAPNER: 8.81.17 WHERE ON THE SECOND PARAGRAPH  
20 NUMBER 2, IT SAYS THAT THE DEFENDANT INTENDED TO KILL A HUMAN  
21 BEING OR INTENDED TO AID ANOTHER IN THE KILLING OF A HUMAN  
22 BEING. ARE YOU GOING TO GIVE BOTH OF THOSE?

23 THE COURT: YES. "OR INTENDED TO AID ANOTHER," AND IS  
24 THERE ANY OBJECTION?

25 MR. WAPNER: WELL, I THINK YOU PROBABLY SHOULD GIVE BOTH,  
26 THAT THE DEFENDANT INTENDED TO KILL OR INTENDED TO AID ANOTHER.

27 THE COURT: I AM GIVING BOTH.

28 MR. CHIER: IS YOUR HONOR SUBMITTING THE INSTRUCTIONS

20- .. 1 TO THE JURY WITH THE MARKS-A-LOT STRIKE-OUTS LIKE THAT?  
2 I CAN SEE THROUGH IT. YOU CAN SEE THROUGH IT IF YOU HOLD IT  
3 UP TO THE LIGHT, YOUR HONOR.

4 THE COURT: THEY WILL BE INSTRUCTED ANYWAY THAT THEY  
5 ARE NOT TO READ ANYTHING THAT --

6 MR. CHIER: BUT YOU CAN ACTUALLY READ THOSE.

7 THE COURT: WELL, THEY ARE NOT SUPPOSED TO READ IT.  
8 THEY WILL BE TOLD NOT TO READ IT. I ASSUME THAT THEY WILL  
9 OBEY MY INSTRUCTIONS.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 MR. BARENS: IS THERE A PROBLEM WITH HAVING IT RETYPED?

2 THE COURT: I CAN'T HAVE THIS WHOLE BUSINESS RETYPED.

3 MR. BARENS: WE COULD HAVE IT DONE.

4 THE COURT: NO. WE HAVE NOT GOT ANY TIME FOR IT NOW,  
5 ANYWAY.

6 MR. BARENS: WELL, THEY ARE NOT GOING TO GET IT PROBABLY  
7 UNTIL MONDAY. I COULD REPRESENT THAT WE COULD HAVE IT RETYPED  
8 FOR YOU.

9 THE COURT: I WILL LEAVE IT THE WAY IT IS. I DON'T MIND  
10 IT.

11 THEY ARE TO BE INSTRUCTED CATEGORICALLY NOT TO  
12 CONSIDER ANYTHING THAT HAS BEEN XED OUT OR RULED OUT.

13 CAN YOU READ THAT? READ FOR ME THE LAST LINE.

14 MS. HORTON: I CAN. "HERE GIVE DEFINITION OF CRIME  
15 AS NOT PREVIOUSLY DEFINED."

16 THE COURT: ALL RIGHT. I THINK MY ADMONITORY INSTRUCTIONS  
17 TO THEM TO DISREGARD ANYTHING THAT HAS BEEN XED OUT WILL BE  
18 SUFFICIENT.

19 MR. BARENS: THE RECORD WILL JUST REFLECT THE DEFENSE'S  
20 CONCERN IN THAT REGARD.

21 THE COURT: VERY GOOD. ALL RIGHT. WHAT IS THE NEXT  
22 THING? I CAN'T READ IT. IT HAS BEEN CUT OFF AT THE TOP.

23 MR. WAPNER: THAT IS 883.

24 THE COURT: YOU ARE NOT PERMITTED -- AND SO FORTH AND  
25 SO ON. IS THAT THE ONE? 883?

26 MR. WAPNER: YES.

27 MR. CHIER: WHAT IS THE TITLE OF IT?

28 MR. WAPNER: SPECIAL INSTRUCTIONS, SUFFICIENCY OF

1 CIRCUMSTANTIAL EVIDENCE GENERALLY.

2 MR. CHIER: IS THAT ONE PAGE OR TWO PAGES?

3 MR. WAPNER: ONE.

4 THE COURT: THERE IS NO OBJECTION. IT IS BEING GIVEN.

5 OKAY.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 THE COURT: THERE IS NO OBJECTION TO ROBBERY DEFINED,  
2 910. ROBBERY DEFINED, PAGE 2.

3 ALL RIGHT, NOW 1702: "EACH COUNT CHARGES A  
4 SEPARATE AND DISTINCT OFFENSE" AND SO FORTH AND SEVERAL COUNTS.

5 NOW, 1730: "JURY NOT TO TAKE A CUE FROM THE  
6 JUDGE."

7 AND THIS IS THE WAY I HAVE REVISED IT:

8 "I HAVE NOT INTENDED BY ANYTHING I HAVE  
9 SAID OR DONE OR BY ANY QUESTIONS THAT I MAY HAVE  
10 ASKED OR BY ANY RULINGS I HAVE MADE TO INTIMATE OR  
11 SUGGEST WHAT YOU SHOULD FIND TO BE THE FACTS ON  
12 ANY QUESTION SUBMITTED TO YOU OR THAT I BELIEVE  
13 OR DISBELIEVE ANY WITNESS.

14 "IF ANYTHING I HAVE DONE OR SAID HAS  
15 SEEMED TO SO INDICATE, YOU WILL DISREGARD IT AND  
16 FORM YOUR OWN OPINION.

17 "YOU ARE TO DISREGARD ANY VERBAL  
18 EXCHANGES BETWEEN COUNSEL AND THE COURT OR ANY  
19 DIFFERENCES AMONG US ON RULINGS MADE BY THE COURT.

20 "THE DECISION AS TO THE GUILT OR  
21 INNOCENCE OF THE DEFENDANT IS TO BE DECIDED SOLELY BY  
22 YOU ON THE EVIDENCE RECEIVED AND ON THE COURT'S  
23 INSTRUCTIONS."

24 ARE YOU HEARING ME?

25 MR. BARENS: QUITE SO. I AM READING WITH YOU.

26 THE COURT: ALL RIGHT:

27 "I EXPRESS NO OPINION AS TO THE GUILT  
28 OR INNOCENCE OF THE DEFENDANT.

1                   "THE PARTICIPATION BY THE COURT IN  
2                   THE QUESTIONING OF WITNESSES IS ENCOURAGED BY  
3                   OUR SUPREME COURT WHICH HAS STATED THAT THERE  
4                   SHOULD BE PLACED IN THE TRIAL JUDGE' HANDS MORE  
5                   POWER IN THE TRIAL OF JURY CASES AND MAKE HIM A  
6                   REAL FACTOR IN THE ADMINISTRATION OF JUSTICE IN  
7                   SUCH CASES, INSTEAD OF BEING IN A POSITION OF A  
8                   MERE REFEREE OR AN AUTOMATON, AS TO THE ASCERTAINMENT  
9                   OF THE FACTS.

10                   "ALTHOUGH I AM VESTED WITH THE POWER  
11                   TO COMMENT ON THE FACTS IN THE CASE AND TO EXPRESS  
12                   MY OPINION ON THE MERITS OF THE CASE, I HAVE,  
13                   NONETHELESS, REFRAINED AND DO REFRAIN FROM DOING  
14                   SO, LETTING YOU BE THE SOLE AND FINAL JUDGES OF  
15                   THE FACTS AND THE GUILT OR INNOCENCE OF THE  
16                   DEFENDANT."

17                   MR. BARENS: YOUR HONOR, WE WOULD OBJECT TO EVERYTHING  
18                   AFTER THE SENTENCE "I EXPRESS NO OPINION AS TO THE GUILT  
19                   OR INNOCENCE OF THE DEFENDANT."

20                   THE COURT: YOU ASKED ME TO DO THAT, DIDN'T YOU?  
21                   DIDN'T YOU ASK ME TO SAY IN THERE THAT I AM NOT EXPRESSING  
22                   AN OPINION AS TO THE GUILT OR INNOCENCE OF THIS DEFENDANT,  
23                   DIDN'T YOU ASK ME TO DO THAT?

24                   MR. BARENS: I ABSOLUTELY DO, SIR.

25                   I AM ASKING YOU TO STOP THE INSTRUCTION AT THAT  
26                   SENTENCE, THE REST OF THE LANGUAGE STARTING WITH THE WORDS  
27                   "THE PARTICIPATION BY THE COURT" AND THEREAFTER, WE ASK TO  
28                   HAVE ELIMINATED.

1 THE COURT: ALL RIGHT, IT WILL BE INDICATED I WANT  
2 THE JURY TO KNOW WHAT PART THE COURT PLAYS IN THE TRIAL OF  
3 A CASE.

21A

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

21  
1 MR. BARENS: WHY?

2 THE COURT: BECAUSE OF A LOT OF THINGS THAT YOU PEOPLE  
3 HAVE SAID IN PRINT, WHICH I WILL COME TO WHEN EVERYBODY ELSE  
4 IS GONE.

5 17.31, "YOU HAVE BEEN INSTRUCTED AS TO ALL OF THE  
6 LAW THAT MAY BE NECESSARY FOR YOU TO REACH A VERDICT."

7 17.40, "INDIVIDUAL OPINION REQUIRED. DUTY TO  
8 DELIBERATE."

9 17.41. "HOW JURORS SHOULD APPROACH THEIR TASK."

10 17.42, "JURY MUST NOT CONSIDER PENALTY IN A  
11 NON-CAPITAL CASE."

12 HERE IS WHAT I HAVE DONE:

13 "AS I ADVISED YOU AT THE TIME OF JURY  
14 SELECTION, IN YOUR DELIBERATIONS THE SUBJECT OF  
15 PENALTY OR PUNISHMENT IS NOT TO BE DISCUSSED OR  
16 CONSIDERED BY YOU. THAT IS A MATTER WHICH MUST  
17 NOT IN ANY WAY AFFECT YOUR VERDICT IN THE GUILT  
18 PHASE OF THE TRIAL."

19 IS THAT WHAT YOU WANT?

20 MR. CHIER: THAT DIFFERS FROM CALJIC.

21 THE COURT: I UNDERSTAND THAT. I AM MODIFYING IT.

22 MR. CHIER: I THOUGHT WE HAD AN UNDERSTANDING.

23 THE COURT: THAT IS THE CONCLUDING SENTENCE TO 17.42.

24 DO YOU HAVE ANY OBJECTION, MR. BARENS?

25 MR. BARENS: YOUR HONOR, AGAIN, A MOMENT, IF YOU WOULD,  
26 PLEASE SIR.

27 MR. WAPNER: ARE YOU GIVING 17.49 ON MULTIPLE VERDICT FORMS?

28 THE COURT: NO.



1 I TELL THEM WHAT THE FORMS ARE. I EXPLAIN THAT  
2 TO THEM.

3 I DON'T DO THAT.

4 MR. WAPNER: THANK YOU.

5 MR. BARENS: IF I COULD PLEASE HAVE A MOMENT TO CONSIDER  
6 WHAT WE HAVE HERE.

7 (UNREPORTED COLLOQUY BETWEEN MR. BARENS  
8 AND MR. CHIER.)

9 MR. CHIER: THE JUDGE HAS ADDED SOME STUFF HERE.

10 MR. BARENS: I HAVE AN INDICATION THAT 17.42 WAS GIVEN  
11 AS REQUESTED AND I AM TRYING -- I DON'T HAVE A COPY OF WHAT  
12 YOUR HONOR JUST INDICATED.

13 THE COURT: LET ME READ IT TO YOU AGAIN. IT IS EXACTLY  
14 THAT WAY IT IS EXCEPT I HAVE ADDED A PRELIMINARY:

15 "AS I ADVISED YOU AT THE TIME OF YOUR  
16 JURY SELECTION," THAT IS WHAT I PUT IN.

17 MR. WAPNER: JURY SELECTION?

18 THE COURT: "JURY SELECTION, YOUR DELIBERATION ON THE  
19 SUBJECT OF PENALTY OR PUNISHMENT IS NOT TO BE DISCUSSED OR  
20 CONSIDERED BY YOU. THAT IS A MATTER WHICH MUST NOT IN ANY  
21 WAY AFFECT YOUR VERDICT AT THE GUILT PHASE OF THE TRIAL."

22 MR. BARENS: OH, THAT IS FINE, YOUR HONOR. I AM SORRY.  
23 I MISUNDERSTOOD WHAT YOU WERE DOING.

24 THE COURT: THAT IS ALL I SAID.

25 MR. BARENS: I AM SORRY.

26 THE COURT: ALL RIGHT. NOW WHERE DO I PUT IN THE  
27 TESTIMONY OF DEAN KARNY?

28 MR. CHIER: RIGHT AFTER "ORAL ADMISSIONS" OR RIGHT AFTER

1 "ADMISSIONS."

2 THE COURT: ALL RIGHT, THAT IS AFTER 272, I AM PUTTING  
3 IN NOW:

4 "THE TESTIMONY OF DEAN KARNY, WHO HAS  
5 BEEN IMMUNIZED FROM PROSECUTION IN THIS CASE, SHOULD  
6 BE VIEWED WITH GREATER CARE THAN THE TESTIMONY OF  
7 OTHER WITNESSES."

8 IS THAT RIGHT?

9 MR. BARENS: THAT IS WHAT WE AGREED.

10 THE COURT: ALL RIGHT, I AM GIVING IT.

11 ARE THERE ANY OTHERS THAT YOU WANT ME TO GIVE?

12 MR. BARENS: WELL, THE ONLY OTHER ONE WE HAVE --

13 MR. WAPNER: YES, THERE IS.

14 THE COURT: I WANT TO ASK THE DEFENDANT FIRST.

15 I HAVE GOT YOUR SPECIAL INSTRUCTIONS BEFORE ME.

16 YES?

17 MR. CHIER: WE WOULD RENEW THE REQUEST TO GIVE THE  
18 INSTRUCTIONS THAT WERE REFUSED, BUT OTHER THAN THAT, WE HAVE  
19 NONE AT THIS TIME, YOUR HONOR.

20 THE COURT: ALL RIGHT.

21 MR. WAPNER: THERE IS A SECOND SPECIAL INSTRUCTION THAT  
22 I HAVE SUBMITTED REGARDING --

23 THE COURT: "EVIDENCE HAS BEEN INTRODUCED IN THIS TRIAL  
24 SHOWING THE DEFENDANT AND THREE OTHER PEOPLE ARE CHARGED WITH  
25 MURDER IN SAN MATEO COUNTY. THIS EVIDENCE WAS RECEIVED FOR  
26 THE LIMITED PURPOSE OF PROVIDING A COMPLETE RECORD OF THE  
27 IMMUNITY AGREEMENT BETWEEN DEAN KARNY AND THE STATE OF  
28 CALIFORNIA. YOU SHOULD CONSIDER THIS EVIDENCE ONLY FOR THIS

1 LIMITED PURPOSE AND FOR NO OTHER PURPOSE."

2 MR. CHIER: THAT IS AN INCORRECT EXEGESIS OF THE LAW,  
3 YOUR HONOR.

4 THE COURT: I DON'T CARE ABOUT THE LAW. I WANT TO KNOW  
5 WHAT IS WRONG WITH THIS PARTICULAR INSTRUCTION.

6 MR. CHIER: IT IS ILLEGAL.

7 THE COURT: WHY IS IT ILLEGAL?

8 MR. CHIER: IT IS ILLEGAL.

9 THE COURT: DO YOU UNDERSTAND YOU ARE DOING ILLEGAL  
10 THINGS, MR. WAPNER?

11 MR. WAPNER: NOT THAT I AM AWARE OF.

12 THE COURT: YOU HAVE NO BUSINESS TO GIVE AN INSTRUCTION  
13 LIKE THAT.

14 MR. CHIER: I DIDN'T SAY IT WAS CRIMINAL.

15 THE COURT: DIDN'T WE TALK ABOUT THIS SAN MATEO THING,  
16 ISN'T THE JURY ENTITLED TO A LIMITING INSTRUCTION AS TO WHY  
17 IT WAS CONSIDERED?

18 MR. CHIER: THE PROBLEM IS, IN A NUTSHELL, IS THAT 2.50  
19 LISTS THE VARIOUS CATEGORIES FOR WHICH THIS TYPE OF EVIDENCE  
20 CAN BE RECEIVED.

21

22 THE EVIDENCE THAT CAME WITHIN THIS CASE FALLS  
23 OUTSIDE OF ANY OF THOSE KNOWN CATEGORIES AND, THEREFORE, IT  
24 SHOULD NOT HAVE BEEN RECEIVED AND THERE IS, THEREFORE, NO  
25 INSTRUCTION THAT YOU CAN CONSTRUCT WHICH WILL THEN MAKE THE  
26 EVIDENCE ADMISSIBLE, SINCE IT DIDN'T FALL INTO ANY OF THE  
27 MATRICES THAT ARE SPELLED OUT IN 2.50.

28 MR. WAPNER: WELL, THAT IS ALL BASICALLY IRRELEVANT.

29 WE KNOW WHY THE EVIDENCE WAS RECEIVED IN THIS CASE.

1 THE COURT: BECAUSE YOU DIDN'T ARGUE THE MATTER OF  
2 SAN MATEO AT ALL, DID YOU?

3 MR. WAPNER: NO. NEITHER DID COUNSEL, OBVIOUSLY.  
4 SO THE POINT IS, THAT --

5 THE COURT: COUNSEL DID.

6 MR. BARENS: I DID.

7 THE COURT: IF YOU HEARD HIM.

8 MR. BARENS: I DID PERSONALLY, ACTUALLY. IN PERSON.

9 THE COURT: DIDN'T YOU?

10 MR. BARENS: IN PERSON I DID, ACTUALLY.

11 THE COURT: WELL, IT WAS NOT THE SAME CRIMINAL COURT,  
12 THAT IS WHAT HE WAS SAYING.

13 HE ARGUED THAT, DIDN'T YOU REMEMBER THAT?

14 MR. BARENS: PERHAPS WE BOTH MISSED THE CASE. THAT  
15 OTHER GUY THAT WAS HERE, WAS HE AS GOOD LOOKING AS I AM?

16 MR. WAPNER: OKAY. IN ANY EVENT --

17 THE COURT: HE WAS ACTUALLY RON LEVIN.

18 MR. WAPNER: I AM REQUESTING THAT THIS INSTRUCTION  
19 BE GIVEN, A CAUTIONARY INSTRUCTION, A LIMITING INSTRUCTION  
20 AND --

21 MR. CHIER: I WOULD ASK THAT IF THE INSTRUCTION BE  
22 GIVEN, THAT IT RADS AS FOLLOWS:

23 "EVIDENCE HAS BEEN INTRODUCED IN THIS  
24 TRIAL SHOWING THAT THE DEFENDANT AND THREE OTHER  
25 PEOPLE ARE CHARGED WITH MURDER IN SAN MATEO COUNTY.  
26 THIS EVIDENCE SHOULD NOT BE CONSIDERED BY YOU FOR  
27 ANY PURPOSE."

28 THAT IS THE CORRECT STATEMENT OF THE LAW.

1 THE COURT: WHY GIVE THE INSTRUCTION AT ALL, IF IT  
2 IS NOT TO BE CONSIDERED FOR ANY PURPOSE?

3 MR. BARENS: WELL, YOU SEE, YOUR HONOR, WE ARE IN THIS  
4 DILEMMA WHERE THROUGH INADVERTENCE OR SOME CIRCUMSTANCES  
5 THAT DEVELOPED, THIS CAME IN.

6 AND AS MR. CHIER HAS POINTED OUT, THIS WAS AN  
7 AWKWARDNESS THAT WE WOULD LIKE TO CORRECT NOW BY A SANITIZING  
8 INSTRUCTION.

9 WE HAD THAT CONFERENCE AT THE BENCH ABOUT THIS.  
10 WE HAVE HAD A CONFERENCE BEFORE. WE ARE HAVING A CONFERENCE  
11 NOW. THIS IS THE LAST CHANCE WE HAVE ON THE RECORD, YOUR  
12 HONOR, TO CORRECT AN ERROR.

13 AND I SUBMIT THAT THE INSTRUCTION MR. CHIER  
14 PROPOSES IS THE SOLE SANITIZING ACTIVITY THIS COURT CAN  
15 ENGAGE IN REFERABLE TO THIS.

16 THE COURT: WELL, THAT IS WHAT I AM DOING.

17 MR. BARENS: BUT YOUR HONOR, THIS ONLY COMPOUNDS IT.

18 THE INSTRUCTION SUGGESTED BY THE PEOPLE, IS  
19 SERVING TO COMPOUND THE EXISTING ERROR AND DRIVE THE MISTAKE  
20 DEEPER INTO THE RECORD.

21 MR. CHIER: THERE IS NO --

22 MR. WAPNER: WAIT A SECOND. THE COURT ADMITTED THE  
23 EVIDENCE. WE ARE NOW REARGUING THE ADMISSIBILITY OF THE  
24 EVIDENCE. AND BASED ON THE ARGUMENTS, I ASSUME THAT THE  
25 COURT IS NOT GOING TO CHANGE ITS RULING ON THE ADMISSIBILITY  
26 OF THE EVIDENCE.

27 SO, IF THAT IS NOT WHAT IS BEING ARGUED, THEN  
28 THE QUESTION IS VERY SIMPLY PUT. ARE THEY OBJECTING TO THIS

1 INSTRUCTION AND IF SO, WHAT INSTRUCTION DO THEY WANT TO PUT  
2 IN ITS PLACE.

3 MR. BARENS: I DON'T BELIEVE --

4 MR. CHIER: WELL, THE INSTRUCTION YOU WANT IS THE ONE  
5 THAT I DICTATED.

6 MR. BARENS: I WANT THE INSTRUCTION THAT MR. CHIER --

7 THE COURT: WAIT A MINUTE. THIS IS NOT AN INSTRUCTION.

8 MR. BARENS: IT IS.

9 THE COURT: THEN YOU WANT ME TO -- WHAT YOU WANT ME  
10 TO DO IS --

11 MR. BARENS: IT CANNOT BE CONSIDERED FOR ANY REASON.  
12 I WILL TELL YOU WHY, YOUR HONOR. AT THE TIME THIS HAPPENED  
13 ON THE RECORD, YOUR HONOR DIDN'T SO MUCH AS ADMIT THE PROFFERED  
14 TESTIMONY BUT AS TO INDICATE IT WAS ALREADY THERE.

15 YOU KNOW, IT WAS JUST ACCEPTING THE STATUS QVO  
16 AT THE MOMENT AND NOT HAVING A WAY OUT AT THAT PARTICULAR  
17 TIME BECAUSE YOUR HONOR DID NOT CHOOSE AT THAT TIME TO GIVE  
18 A LIMITING INSTRUCTION -- BUT, YOU ASKED COUNSEL TO PROPOSE  
19 A LIMITING INSTRUCTION. WE SAID THAT YOU COULDN'T PROPOSE  
20 A LIMITING INSTRUCTION BECAUSE IT IS OUTSIDE OF 2.50. ALL  
21 WE CAN DO IS GIVE A NEGATING INSTRUCTION.

22

23

24

25

26

27

28

22-4  
1 THE COURT: I WILL GIVE IT AS REQUESTED. THE OBJECTION  
2 OF THE DEFENDANT IS NOTED.

22B 3 MR. BARENS: IF YOU COULD MAKE A MODIFCATION --

4 MR. CHIER: COULD I MAKE A SECOND SUGGESTION AS A WAY  
5 TO POSSIBLY CURE THIS? THE INSTRUCTION WOULD READ AS  
6 FOLLOWS:

7 "EVIDENCE HAS BEEN INTRODUCED IN THIS  
8 TRIAL, SHOWING THAT THE DEFENDANT AND THREE OTHER  
9 PEOPLE ARE CHARGED WITH MURDER IN SAN MATEO  
10 COUNTY. YOU ARE NOT TO CONSIDER THIS EVIDENCE  
11 FOR THE PURPOSE OF DETERMINING THE DEFENDANT'S  
12 GUILT."

13 THE COURT: I AM SAYING THAT THEY WILL LIMIT IT.

14 "EVIDENCE" IS RECEIVED FOR THE LIMITED PURPOSE ..."

15 MR. CHIER: AS YOU CAN SEE, THERE IS NO AUTHORITY GIVEN  
16 FOR THIS. THIS NECESSARILY CANNOT BE GIVEN.

17 THIS IS NOT ANYTHING THAT HAS EVER BEEN HEARD  
18 OF. THERE IS NO GROUNDS --

19 THE COURT: "THIS EVIDENCE WAS RECEIVED FOR THE  
20 LIMITED PURPOSE OF PROVIDING A COMPLETE RECORD  
21 ON THE IMMUNITY AGREEMENT BETWEEN DEAN KARNY AND  
22 THE STATE OF CALIFORNIA. YOU SHOULD CONSIDER  
23 THIS EVIDENCE ONLY TO THIS LIMITED PURPOSE AND FOR  
24 NO OTHER."

25 MR. CHIER: IF YOU LOOK AT THE IMMUNITY AGREEMENT,  
26 THERE IS NO SUCH REFERENCE TO THIS. THIS DOES NOT PROVIDE  
27 A COMPLETE RECORD OF THE IMMUNITY.

28 THE COURT: I WILL GIVE IT AS PROPOSED. WHERE ARE WE

1 GOING TO PUT THIS?

2 MR. WAPNER: AT THE SAME POINT WHERE YOU PUT ALL OF  
3 THE CAUTIONARY INSTRUCTIONS ABOUT DEAN KARNY'S TESTIMONY  
4 BEING VIEWED WITH CARE.

5 THE COURT: OKAY. I WILL PUT IT THERE. WE HAVE GOT  
6 ON HERE THIS ONE.

7 MR. WAPNER: "EVIDENCE OF OTHER OFFENSES" -- AND THAT  
8 ONE.

9 MR. BARENS: WE ARE, YOUR HONOR --

10 THE COURT: 250.

11 MR. BARENS: THE DEFENSE TAKES VIGOROUS EXCEPTION TO  
12 THE TOTALITY OF THIS PROPOSED INSTRUCTION. IT IS --

13 MR. WAPNER: JUST FOR THE RECORD, THIS IS THE ONE WE  
14 DISCUSSED. IT WAS AGREED THE LAST TIME WE WERE HERE, THAT  
15 IT WOULD BE GIVEN. THIS IS 250.

16 IT IS EXACTLY OUT OF CALJIC EXCEPT THAT IT WAS  
17 JUST RETYPED BECAUSE WE WERE ONLY GOING TO GIVE ONE PORTION  
18 OF IT.

19 MR. BARENS: YOUR HONOR, I HAVE NEVER AGREED THIS  
20 INSTRUCTION SHOULD GO IN.

21 THE COURT: WHICH OTHER CRIMES DO YOU HAVE REFERENCE  
22 TO?

23 MR. WAPNER: I DIDN'T -- I WAS NOT THE ONE AS I RECALL,  
24 WHO -- NO. WAIT A SECOND. LET ME CHECK SOMETHING FIRST.

25 MR. BARENS: I HOPE THAT WE ARE NOT ABOUT TO SAY THAT  
26 THE DEFENSE WANTED THIS INSTRUCTION. THIS INSTRUCTION I  
27 TELL YOU, IS THE KISS OF DEATH TO THE RECORD, IF THIS GOES  
28 IN. THIS IS IT.



1                   THIS IS GOING TOO FAR TO SAY THAT --

2                   THE COURT:    THAT IS WHY I AM ASKING THE D.A. WHAT OTHER  
3                   CRIMES DOES HE HAVE REFERENCE TO THAT WERE COMMITTED THAT  
4                   CAME INTO EVIDENCE?

5                   MR. WAPNER:    WAIT A SECOND.    MAYBE MY RECORD-KEEPING  
6                   IS FAULTY.    BUT I HAVE A LIST OF ALL OF THE INSTRUCTIONS  
7                   THAT I REQUESTED.

8                   AND I D'DN'T HAVE 250 ON MY LIST.    AND MY NOTES --

9                   THE COURT:    DO YOU WANT IT, THEN?    BECAUSE THE DEFENDANT  
10                  SAYS HE DOESN'T WANT IT.

11                  MR. WAPNER:    LET ME JUST SEE WHICH ONE OF THESE WE  
12                  ARE TALKING ABOUT.

13                  MR. BARENS:    THIS ONE YOU GAVE ME THIS MORNING.    HERE  
14                  IT IS.    THAT IS THE ONLY COPY.

15                  MR. WAPNER:    THAT IS THE ONE I AM TALKING ABOUT.

16                  MR. CHIER:    WHAT WE REQUESTED IS DEFENDANT'S REQUEST  
17                  NUMBER 5.    WE REQUESTED THE COURT TO ACKNOWLEDGE IT RECEIVED  
18                  THIS IN ERROR.    REFERENCES TO THE CHICAGO MERCANTILE  
19                  EXCHANGE --

20                  THE COURT:    WHAT DO YOU MEAN?

21                  MR. CHIER:    WELL, MR. WAPNER'S INSTRUCTION IS BASICALLY  
22                  A RESPONSE TO THIS REQUEST NUMBER 5 OF THE DEFENDANT.

23                  THE COURT:    BUT I AM NOT GIVING IT.

24                  MR. CHIER:    I UNDERSTAND THAT.

25                  MR. BARENS:    WE DON'T WANT THAT INSTRUCTION PERMITTED,  
26                  YOUR HONOR.

27                  THE COURT:    ALL RIGHT.    THAT WILL BE REFUSED.

28                  MR. WAPNER:    FINE.

22-7

1 THE COURT: BY THE PEOPLE, REFUSED. OKAY? THAT IS,  
2 UNLESS THERE WERE SOME OTHER CRIMES THAT WERE ADMITTED THAT  
3 THE JURY KNOWS ABOUT.

4 MR. WAPNER: NO.

5 THE COURT: ALL RIGHT. THEN I WILL NOT USE THAT.  
6 THAT ABOUT COVERS IT, DOESN'T IT? YES?

7 MR. WAPNER: YOUR HONOR, IF THE JURY WANTS TO START  
8 DELIBERATING ON MONDAY, WOULD THE COURT CONSIDER INSTRUCTING  
9 ON MONDAY MORNING? BECAUSE --

10 THE COURT: NO. I WILL INSTRUCT NOW.

23  
11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 MR. WAPNER: IT DOESN'T SEEM TO MAKE MUCH SENSE TO  
2 GIVE THEM THE INSTRUCTIONS NOW AND THEN GIVE THEM THREE DAYS  
3 OFF.

4 THE COURT: WELL, THEY WILL TELL ME FIRST WHETHER THEY  
5 WANT TO COME IN ON MONDAY OR NOT.

6 MR. WAPNER: LET'S SEE IF THEY WANT TO COME IN ON MONDAY.

7 THE COURT: I AM GOING TO INSTRUCT THEM TODAY, NOT  
8 MONDAY, AND GET IT OVER WITH.

9 MR. BARENS: HOW ARE YOU GOING TO MAKE THAT DECISION  
10 ON THEIR VOTING ON WHETHER TO COME IN MONDAY?

11 THE COURT: ALL RIGHT, LET THEM DECIDE IT THEN.

12 (RECESS.)

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

4  
5 THE COURT: GOOD AFTERNOON, LADJES AND GENTLEMEN.

6 I HAVE BEEN INSTRUCTED, AND I WILL HONOR YOUR  
7 REQUEST, THAT WE DON'T HOLD ANY COURT TOMORROW MORNING OR  
8 ALL DAY TOMORROW, IS THAT WHAT YOU WANT? IS THAT RIGHT?

9 (THE JURORS ANSWERED AFFIRMATIVELY.)

10 THE COURT: NOW, WHEN DO YOU WANT TO BE INSTRUCTED,  
11 NOW OR MONDAY MORNING?

12 A JUROR: WE DIDN'T KNOW THAT WAS AN OPTION.

13 THE COURT: WE HAVE TIME NOW AND I WILL INSTRUCT YOU  
14 NOW IF YOU WISH.

15 JUROR DEEG: DO WE GET A COPY OF THE INSTRUCTIONS?

16 THE COURT: YES, THEY WILL BE GIVEN TO YOU, YOU CAN  
17 HAVE THEM IN THE JURY ROOM.

18 MR. BARENS: YOUR HONOR, COUNSEL WOULD LIKE TO JUST  
19 SPEAK TO YOU FOR A MOMENT AT THE BENCH.

20 THE COURT: YES, COME ON.

21 (THE FOLLOWING PROCEEDINGS WERE HELD  
22 AT THE BENCH OUTSIDE THE HEARING OF  
23 THE JURY:)

24 MR. WAPNER: ON THIS GUILTY OF MURDER VERDICT FORM,  
25 I THINK THAT PROBABLY WE SHOULD JUST PUT IN "FIRST DEGREE"  
26 IN THE BLANK THERE.

27 THE COURT: WHY NOT "GUILTY OF FIRST DEGREE MURDER  
28 IN VIOLATION" AND SO FORTH AND SO FORTH.

1 MR. WAPNER: I GUESS EITHER WAY IS FINE. IT DOESN'T  
2 MATTER.

3 THE COURT: IS THAT ALL RIGHT? PUT IT "GUILTY OF FIRST  
4 DEGREE MURDER" IN THERE?

5 OR YOU CAN PUT IT ANYWHERE YOU WANT.

6 MR. BARENS: IT LOOKS BETTER SCRIPT DOWN THERE.

7 MR. WAPNER: THEY DON'T HAVE TO MAKE A FINDING.

8 THE COURT: "WE FURTHER FIND IT TO BE MURDER IN THE  
9 FIRST DEGREE."

10 DO YOU WANT IT THAT WAY?

11 ANY WAY YOU WANT IT, I DON'T CARE.

12 MR. BARENS: I HAVE A REQUEST THEN. ANYTHING?

13 THE COURT: YOU DON'T WANT ANY VERDICT FORM AT ALL?

14 MR. BARENS: ANYTHING?

15 THE COURT: WHAT DO YOU WANT, JUST ADD THAT IN THERE  
16 FIRST?

17 MR. WAPNER: YES.

18 MR. BARENS: THAT IS FINE.

19 (THE FOLLOWING PROCEEDINGS WERE HELD IN  
20 OPEN COURT IN THE HEARING AND PRESENCE  
21 OF THE JURY:)

22

23 JURY INSTRUCTIONS

24 BY THE COURT:

25 LADIES AND GENTLEMEN OF THE JURY:  
26 NOW THAT YOU HAVE HEARD THE EVIDENCE,  
27 WE COME TO THAT PART OF THE TRIAL WHERE YOU ARE  
28 INSTRUCTED AS TO THE APPLICABLE LAW.

1 I AM REQUIRED TO READ THE INSTRUCTIONS  
2 TO YOU IN OPEN COURT AND, IN ADDITION, YOU WILL  
3 HAVE THESE INSTRUCTIONS IN THEIR WRITTEN FORM IN  
4 THE JURY ROOM FOR USE DURING YOUR DELIBERATIONS.

5 WHETHER THE DEFENDANT IS TO BE FOUND  
6 GUILTY OR NOT GUILTY DEPENDS UPON BOTH THE FACTS  
7 AND THE LAW.

8 AS JURORS, YOU HAVE TWO DUTIES TO PERFORM.  
9 ONE DUTY IS TO DETERMINE THE FACTS OF THE CASE FROM  
10 THE EVIDENCE RECEIVED IN THE TRIAL AND NOT FROM ANY  
11 OTHER SOURCE.

12 THE WORD "FACT" MEANS SOMETHING THAT IS  
13 PROVED DIRECTLY OR CIRCUMSTANTIALLY BY THE EVIDENCE  
14 OR BY AGREEMENT OF COUNSEL.

15 YOUR OTHER DUTY IS TO APPLY THE RULES  
16 OF LAW THAT I STATE TO YOU TO THE FACTS AS YOU  
17 DETERMINE THEM TO EXIST AND IN THIS WAY, TO ARRIVE  
18 AT YOUR VERDICT.

19 IT IS MY DUTY IN THESE INSTRUCTIONS  
20 TO EXPLAIN TO YOU THE RULES OF LAW THAT APPLY TO  
21 THIS CASE AND YOU MUST ACCEPT AND FOLLOW THE RULES  
22 OF LAW AS I STATE THEM TO YOU.

23 AS JURORS, YOU MUST NOT BE INFLUENCED  
24 BY PITY FOR THE DEFENDANT OR BY PREJUDICE AGAINST  
25 HIM.

26 YOU MUST NOT BE BIASED AGAINST A  
27 DEFENDANT BECAUSE HE HAS BEEN ARRESTED FOR THESE  
28 OFFENSES OR BECAUSE HE HAS BEEN CHARGED WITH CRIMES

1 OR BECAUSE HE HAS BEEN BROUGHT TO TRIAL. NONE OF  
2 THESE CIRCUMSTANCES IS EVIDENCE OF HIS GUILT AND  
3 YOU MUST NOT INFER OR ASSUME FROM ANY OR ALL OF  
4 THEM THAT HE IS MORE LIKELY TO BE GUILTY THAN  
5 INNOCENT.

6 YOU MUST NOT BE SWAYED BY MERE  
7 SENTIMENT, CONJECTURE, SYMPATHY, PASSION, PREJUDICE,  
8 PUBLIC OPINION OR PUBLIC FEELING.

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





1 WAS SUSTAINED, YOU MUST NOT GUESS WHAT THE ANSWER  
2 MIGHT HAVE BEEN OR AS TO THE REASON FOR THE  
3 OBJECTION.

4 YOU MUST NEVER ASSUME TO BE TRUE ANY  
5 INSINUATION SUGGESTED BY A QUESTION ASKED A WITNESS.

6 A QUESTION IS NOT EVIDENCE AND MAY BE  
7 CONSIDERED ONLY AS IT SUPPLIES MEANING TO THE  
8 ANSWER.

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

13 FOR THE SAKE OF CONVENIENCE, THE  
14 MASCULINE PRONOUN IS USED IN THESE INSTRUCTIONS AND  
15 APPLIES EQUALLY TO ALL PERSONS.

16 EVIDENCE CONSISTS OF TESTIMONY OF  
17 WITNESSES, WRITINGS, MATERIAL OBJECTS OR ANYTHING  
18 PRESENTED TO THE SENSES AND OFFERED TO PROVE THE  
19 EXISTENCE OR NON-EXISTENCE OF A FACT.

20  
21  
22  
23  
24  
25  
26  
27  
28

5A

25A 1 EVIDENCE IS EITHER DIRECT OR CIRCUMSTANTIAL.

2 DIRECT EVIDENCE IS EVIDENCE THAT DIRECTLY  
3 PROVES A FACT, WITHOUT THE NECESSITY OF AN INFERENCE,  
4 AND WHICH BY ITSELF, IF FOUND TO BE TRUE, ESTABLISHES  
5 THAT FACT.

6 CIRCUMSTANTIAL EVIDENCE IS EVIDENCE  
7 THAT, IF FOUND TO BE TRUE, PROVES A FACT FROM WHICH  
8 AN INFERENCE OF THE EXISTENCE OF ANOTHER FACT MAY  
9 BE DRAWN.

10 AN INFERENCE IS A DEDUCTION OF FACT  
11 THAT MAY LOGICALLY AND REASONABLY BE DRAWN FROM  
12 ANOTHER FACT OR GROUP OF FACTS ESTABLISHED BY THE  
13 EVIDENCE.

14 IT IS NOT NECESSARY THAT FACTS BE PROVED  
15 BY DIRECT EVIDENCE. THEY MAY BE PROVED ALSO BY  
16 CIRCUMSTANTIAL EVIDENCE OR BY A COMBINATION OF  
17 DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE. BOTH  
18 DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE ARE  
19 ACCEPTABLE AS A MEANS OF PROOF. NEITHER IS  
20 ENTITLED TO ANY GREATER WEIGHT THAN THE OTHER.

21 HOWEVER, A FINDING OF GUILT AS TO ANY  
22 CRIME MAY NOT BE BASED ON CIRCUMSTANTIAL EVIDENCE  
23 UNLESS THE PROVED CIRCUMSTANCES ARE NOT ONLY  
24 (1) CONSISTENT WITH THE THEORY THAT THE DEFENDANT  
25 IS GUILTY OF THE CRIME, BUT (2) CANNOT BE  
26 RECONCILED WITH ANY OTHER RATIONAL CONCLUSION.

27 FURTHER, EACH FACT WHICH IS ESSENTIAL  
28 TO COMPLETE A SET OF CIRCUMSTANCES NECESSARY TO

25A  
1 ESTABLISH THE DEFENDANT'S GUILT MUST BE PROVED  
2 BEYOND A REASONABLE DOUBT. IN OTHER WORDS, BEFORE  
3 AN INFERENCE ESSENTIAL TO ESTABLISH GUILT MAY BE  
4 FOUND TO HAVE BEEN PROVED BEYOND A REASONABLE  
5 DOUBT, EACH FACT OR CIRCUMSTANCE UPON WHICH SUCH  
6 INFERENCE NECESSARILY RESTS MUST BE PROVED BEYOND  
7 A REASONABLE DOUBT.

8 ALSO, IF THE CIRCUMSTANTIAL EVIDENCE  
9 AS TO ANY PARTICULAR COUNT IS SUSCEPTIBLE OF TWO  
10 REASONABLE INTERPRETATIONS, ONE OF WHICH POINTS  
11 TO THE DEFENDANT'S GUILT AND THE OTHER TO HIS  
12 INNOCENCE, IT WOULD BE YOUR DUTY TO ADOPT THAT  
13 INTERPRETATION WHICH POINTS TO THE DEFENDANT'S  
14 INNOCENCE AND REJECT THAT INTERPRETATION WHICH  
15 POINTS TO HIS GUILT.

16 IF, ON THE OTHER HAND, ONE INTERPRETATION  
17 OF SUCH EVIDENCE 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 THE SPECIFIC INTENT WITH WHICH AN ACT  
22 IS DONE MAY BE SHOWN BY THE CIRCUMSTANCES  
23 SURROUNDING THE COMMISSION OF THE ACT. BUT YOU  
24 MAY NOT FIND THE DEFENDANT GUILTY OF THE OFFENSES  
25 CHARGED IN COUNTS I AND II, COUNT I BEING MURDER  
26 AND COUNT II BEING ROBBERY, UNLESS THE PROVED  
27 CIRCUMSTANCES NOT ONLY ARE CONSISTENT WITH THE  
28 THEORY THAT HE HAD THE REQUIRED SPECIFIC INTENT

25  
1 BUT CANNOT BE RECONCILED WITH ANY OTHER RATIONAL  
2 CONCLUSION.

3 ALSO, IF THE EVIDENCE AS TO ANY SUCH  
4 SPECIFIC INTENT IS SUSCEPTIBLE OF TWO REASONABLE  
5 INTERPRETATIONS, ONE OF WHICH POINTS TO THE  
6 EXISTENCE OF THE SPECIFIC INTENT AND THE OTHER  
7 TO THE ABSENCE OF THE SPECIFIC INTENT, IT IS YOUR  
8 DUTY TO ADOPT THAT INTERPRETATION WHICH POINTS  
9 TO THE ABSENCE OF THE SPECIFIC INTENT. IF, ON  
10 THE OTHER HAND, ONE INTERPRETATION OF THE EVIDENCE  
11 AS TO SUCH SPECIFIC INTENT APPEARS TO YOU TO BE  
12 REASONABLE AND THE OTHER INTERPRETATION TO BE  
13 UNREASONABLE, IT WILL BE YOUR DUTY TO ADOPT THE  
14 REASONABLE INTERPRETATION AND TO REJECT THE  
15 UNREASONABLE.

16 IF YOU FIND THAT BEFORE THIS TRIAL  
17 THE DEFENDANT MADE WILLFULLY FALSE OR DELIBERATELY  
18 MISLEADING STATEMENTS CONCERNING THE CHARGES UPON  
19 WHICH HE IS NOW BEING TRIED, YOU MAY CONSIDER SUCH  
20 STATEMENTS AS A CIRCUMSTANCE TENDING TO PROVE A  
21 CONSCIOUSNESS OF GUILT BUT IT IS NOT SUFFICIENT  
22 OF ITSELF TO PROVE GUILT. THE WEIGHT TO BE GIVEN  
23 TO SUCH A CIRCUMSTANCE AND ITS SIGNIFICANCE, IF  
24 ANY, ARE MATTERS FOR YOUR DETERMINATION.

25 NEITHER SIDE IS REQUIRED TO CALL AS  
26 WITNESSES ALL PERSONS WHO MAY HAVE BEEN PRESENT  
27 AT ANY OF THE EVENTS DISCLOSED BY THE EVIDENCE  
28 OR MAY APPEAR TO HAVE SOME KNOWLEDGE OF THESE

A- 1           EVENTS, OR TO PRODUCE ALL OBJECTS OR DOCUMENTS  
2           MENTIONED OR SUGGESTED BY THE EVIDENCE.

3                   NOW, THERE HAS BEEN EVIDENCE IN THIS  
4           CASE INDICATING THAT A PERSON OTHER THAN THE  
5           DEFENDANT WAS OR MAY HAVE BEEN INVOLVED IN THE  
6           CRIMES FOR WHICH THE DEFENDANT IS ON TRIAL.

7                   YOU MUST NOT DISCUSS OR GIVE ANY  
8           CONSIDERATION AS TO WHY THE OTHER PERSON IS NOT  
9           BEING PROSECUTED IN THIS TRIAL OR WHETHER HE HAS  
10          BEEN OR WILL BE PROSECUTED.

11                   EVIDENCE THAT ON SOME FORMER OCCASION  
12          A WITNESS MADE A STATEMENT OR STATEMENTS THAT WERE  
13          INCONSISTENT OR CONSISTENT WITH HIS TESTIMONY IN  
14          THIS TRIAL MAY BE CONSIDERED BY YOU NOT ONLY FOR  
15          THE PURPOSE OF TESTING THE CREDIBILITY OF THE  
16          WITNESS, BUT ALSO AS EVIDENCE OF THE TRUTH OF THE  
17          FACTS AS STATED BY THE WITNESS ON SUCH FORMER  
18          OCCASION.

19                   IF YOU DISBELIEVE A WITNESS'S  
20          TESTIMONY THAT HE NO LONGER REMEMBERS A CERTAIN  
21          EVENT, SUCH TESTIMONY IS INCONSISTENT WITH A PRIOR  
22          STATEMENT OR STATEMENTS BY HIM DESCRIBING THAT  
23          EVENT.

24                   EVERY PERSON WHO TESTIFIES UNDER OATH  
25          IS A WITNESS. YOU ARE THE SOLE JUDGES OF THE  
26          BELIEVABILITY OF A WITNESS AND THE WEIGHT TO BE  
27          GIVEN THE TESTIMONY OF SUCH A WITNESS.

28                   IN DETERMINING THE BELIEVABILITY OF

25^--F  
1 A WITNESS YOU MAY CONSIDER ANYTHING THAT HAS A  
2 TENDENCY IN REASON TO PROVE OR DISPROVE THE  
3 TRUTHFULNESS OF THE TESTIMONY OF THE WITNESS,  
4 INCLUDING BUT NOT LIMITED TO ANY OF THE FOLLOWING:

5 THE EXTENT OF THE OPPORTUNITY OR ABILITY  
6 OF THE WITNESS TO SEE OR HEAR OR OTHERWISE BECOME  
7 AWARE OF ANY MATTER ABOUT WHICH THE WITNESS HAS  
8 TESTIFIED.

9 THE ABILITY OF THE WITNESS TO REMEMBER  
10 OR TO COMMUNICATE ANY MATTER ABOUT WHICH THE WITNESS  
11 HAS TESTIFIED.

12 THE CHARACTER AND QUALITY OF THAT  
13 TESTIMONY.

14 THE Demeanor AND MANNER OF THE WITNESS  
15 WHILE TESTIFYING.

16 THE EXISTENCE OR NONEXISTENCE OF A  
17 BIAS, INTEREST OR OTHER MOTIVE.

18 EVIDENCE OF THE EXISTENCE OR NON-  
19 EXISTENCE OF ANY FACT TESTIFIED TO BY THE WITNESS.

20 NOW, THE ATTITUDE OF THE WITNESS TOWARD  
21 THE ACTION IN WHICH TESTIMONY HAS BEEN GIVEN BY  
22 THE WITNESS OR TOWARD THE GIVING OF TESTIMONY.

23 A STATEMENT PREVIOUSLY MADE BY THE  
24 WITNESS THAT IS CONSISTENT OR INCONSISTENT WITH  
25 THE TESTIMONY OF THE WITNESS.

26  
27  
28

25B  
1 A WITNESS WILLFULLY FALSE IN ONE MATERIAL  
2 PART OF HIS TESTIMONY IS TO BE DISTRUSTED IN OTHERS.  
3 YOU MAY REJECT THE WHOLE TESTIMONY OF A WITNESS  
4 WHO WILLFULLY HAS TESTIFIED FALSELY AS TO A MATERIAL  
5 POINT, UNLESS, FROM ALL OF THE EVIDENCE, YOU SHALL  
6 BELIEVE THE PROBABILITY OF TRUTH FAVORS HIS TESTIMONY  
7 IN OTHER PARTICULARS.

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

19 YOU ARE NOT BOUND TO DECIDE IN  
20 CONFORMITY WITH THE TESTIMONY OF A NUMBER OF  
21 WITNESSES, WHICH DOES NOT PRODUCE CONVICTION IN  
22 YOUR MIND, AS AGAINST THE TESTIMONY OF A LESSE  
23 NUMBER OR OTHER EVIDENCE, WHICH APPEALS TO YOUR  
24 MIND WITH MORE CONVINCING FORCE. THIS DOES NOT  
25 MEAN THAT YOU ARE AT LIBERTY TO DISREGARD THE  
26 TESTIMONY OF THE GREATER NUMBER OF WITNESSES MERELY  
27 FROM CAPRICE OR PREJUDICE, OR FROM A DESIRE TO  
28 FAVOR ONE SIDE AS AGAINST THE OTHER. IT DOES MEAN

5R  
1 THAT YOU ARE NOT TO DECIDE AN ISSUE BY THE SIMPLE  
2 PROCESS OF COUNTING THE NUMBER OF WITNESSES WHO  
3 HAVE TESTIFIED ON THE OPPOSING SIDES. IT MEANS  
4 THAT THE FINAL TEST IS NOT IN THE RELATIVE NUMBER  
5 OF WITNESSES, BUT IN THE RELATIVE CONVINCING FORCE  
6 OF THE EVIDENCE.

7 TESTIMONY WHICH YOU BELIEVE GIVEN BY  
8 ONE WITNESS IS SUFFICIENT FOR THE PROOF OF ANY  
9 FACT. HOWEVER, BEFORE FINDING ANY FACT REQUIRED  
10 TO BE ESTABLISHED BY THE PROSECUTION TO BE PROVED  
11 SOLELY BY THE TESTIMONY OF SUCH A SINGLE WITNESS,  
12 YOU SHOULD CAREFULLY REVIEW ALL OF THE TESTIMONY  
13 UPON WHICH THE PROOF OF SUCH FACT DEPENDS.

14 EYEWITNESS TESTIMONY HAS BEEN RECEIVED  
15 IN THIS TRIAL.

16 IN DETERMINING THE WEIGHT TO BE GIVEN  
17 EYEWITNESS IDENTIFICATION TESTIMONY, YOU SHOULD  
18 CONSIDER THE BELIEVABILITY OF THE EYEWITNESS AS  
19 WELL AS OTHER FACTORS WHICH BEAR UPON THE ACCURACY  
20 OF THE WITNESS' ALLEGED IDENTIFICATION OF RON  
21 LEVIN INCLUDING, BUT NOT LIMITED TO, ANY OF THE  
22 FOLLOWING:

23 THE OPPORTUNITY OF THE WITNESS TO  
24 OBSERVE THE PERSON.

25 THE STRESS, IF ANY, TO WHICH THE  
26 WITNESS WAS SUBJECTED AT THE TIME OF THE OBSERVATION.

27 THE WITNESS' ABILITY, FOLLOWING THE  
28 OBSERVATION, TO PROVIDE A DESCRIPTION OF THE PERSON



25F 7  
1 HE OR SHE SAW.

2 THE EXTENT TO WHICH THE PERSON EITHER  
3 FITS OR DOES NOT FIT THE DESCRIPTION OF THE PERSON  
4 PREVIOUSLY GIVEN BY THE WITNESS.

5 THE CROSS-RACIAL OR ETHNIC NATURE OF  
6 THE IDENTIFICATION.

7 THE WITNESS' CAPACITY TO MAKE AN  
8 IDENTIFICATION.

9 EVIDENCE RELATING TO THE WITNESS'  
10 ABILITY TO IDENTIFY OTHER PEOPLE PRESENT AT THE  
11 TIME OF THE ALLEGED SIGHTING OF THE PERSON WHO  
12 IS THE SUBJECT OF THE IDENTIFICATION.

13 WHETHER THE WITNESS WAS ABLE TO IDENTIFY  
14 THE PERSON IN A PHOTOGRAPHIC OR PHYSICAL LINEUP.

15 THE PERIOD OF TIME BETWEEN THE ALLEGED  
16 SIGHTING AND THE WITNESS' IDENTIFICATION.

17 WHETHER THE WITNESS HAD PRIOR CONTACTS  
18 WITH THE PERSON ALLEGEDLY SIGHTED.

19 THE EXTENT TO WHICH THE WITNESS IS  
20 EITHER CERTAIN OR UNCERTAIN OF THE IDENTIFICATION.

21 WHETHER THE WITNESS' IDENTIFICATION  
22 IS IN FACT THE PRODUCT OF HIS OR HER OWN RECOLLECTION.

23 THE SUGGESTIVENESS OF ANY PROCEDURE  
24 USED TO OBTAIN AN IDENTIFICATION.

25 ANY OTHER EVIDENCE RELATING TO THE  
26 WITNESS' ABILITY TO MAKE ANY IDENTIFICATION.

27 MOTIVE IS NOT AN ELEMENT OF THE CRIMES  
28 CHARGED AND NEED NOT BE SHOWN. HOWEVER, YOU MAY

1           CONSIDER MOTIVE OR LACK OF MOTIVE AS A CIRCUMSTANCE  
2           IN THIS CASE.  ABSENCE OF MOTIVE MAY TEND TO  
3           ESTABLISH INNOCENCE.  YOU MAY, THEREFORE GIVE ITS --  
4           PRESENCE OF MOTIVE MAY TEND TO ESTABLISH GUILT.  
5           ABSENCE OF MOTIVE MAY TEND TO ESTABLISH INNOCENCE.  
6           YOU WILL THEREFORE GIVE ITS PRESENCE OR ABSENCE,  
7           AS THE CASE MAY BE, THE WEIGHT TO WHICH YOU FIND  
8           IT TO BE ENTITLED.

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

1                   IT IS A CONSTITUTIONAL RIGHT OF A  
2                   DEFENDANT IN A CRIMINAL TRIAL THAT HE MAY NOT BE  
3                   COMPELLED TO TESTIFY. YOU MUST NOT DRAW ANY  
4                   INFERENCE FROM THE FACT THAT HE DOES NOT TESTIFY.  
5                   FURTHER, YOU MUST NEITHER DISCUSS THIS MATTER NOR  
6                   PERMIT IT TO ENTER INTO YOUR DELIBERATIONS IN ANY  
7                   WAY.

8                   IN DECIDING WHETHER OR NOT TO TESTIFY,  
9                   THE DEFENDANT MAY CHOOSE TO RELY ON THE STATE OF THE  
10                  EVIDENCE AND UPON THE FAILURE, IF ANY, OF THE  
11                  PEOPLE TO PROVE BEYOND A REASONABLE DOUBT EVERY  
12                  ESSENTIAL ELEMENT OF THE CHARGES AGAINST HIM. AND  
13                  NO LACK OF TESTIMONY ON THE DEFENDANT'S PART WILL  
14                  SUPPLY A FAILURE OF PROOF OF THE PEOPLE SO AS TO  
15                  SUPPORT A FINDING AGAINST HIM IN ANY SUCH ESSENTIAL  
16                  ELEMENT.

17                  A CONFESSION IS A STATEMENT MADE BY A  
18                  DEFENDANT OTHER THAN AT HIS TRIAL IN WHICH HE HAS  
19                  ACKNOWLEDGED HIS GUILT OF THE CRIMES FOR WHICH HE  
20                  IS ON TRIAL. IN ORDER TO CONSTITUTE A CONFESSION,  
21                  SUCH A STATEMENT MUST ACKNOWLEDGE PARTICIPATION IN  
22                  THE CRIMES AS WELL AS THE REQUIRED CRIMINAL INTENT.  
23                  A STATEMENT MADE BY THE DEFENDANT OTHER THAN AT HIS  
24                  TRIAL IS NOT A CONFESSION BUT AN ADMISSION WHENEVER  
25                  THE STATEMENT DOES NOT BY ITSELF ACKNOWLEDGE HIS  
26                  GUILT OF THE CRIMES FOR WHICH HE IS ON TRIAL BUT  
27                  WHICH TENDS TO PROVE HIS GUILT WHEN CONSIDERED WITH  
28                  THE REST OF THE EVIDENCE.



1 OFFENSE UNLESS THERE IS SOME PROOF OF EACH ELEMENT OF  
2 THE CRIME INDEPENDENT OF ANY CONFESSION OR  
3 ADMISSION MADE BY HIM OUTSIDE OF THE TRIAL. THE  
4 IDENTITY OF THE PERSON WHO IS ALLEGED TO HAVE  
5 COMMITTED A CRIME IS NOT AN ELEMENT OF THE CRIME  
6 NOR IS THE DEGREE OF THE CRIME.

7 SUCH IDENTITY MAY BE ESTABLISHED BY AN  
8 ADMISSION OR CONFESSION.

9 THE TESTIMONY OF DEAN KARNY, WHO HAS  
10 BEEN IMMUNIZED FROM PROSECUTION IN THIS CASE, SHOULD  
11 BE VIEWED WITH GREATER CARE THAN THE TESTIMONY OF  
12 OTHER WITNESSES.

13 EVIDENCE HAS BEEN INTRODUCED IN THIS  
14 TRIAL SHOWING THE DEFENDANT AND THREE OTHER PEOPLE  
15 ARE CHARGED WITH MURDER IN SAN MATEO COUNTY. THIS  
16 EVIDENCE WAS RECEIVED FOR THE LIMITED PURPOSE OF  
17 PROVIDING A COMPLETE RECORD OF THE IMMUNITY AGREEMENT  
18 BETWEEN DEAN KARNY AND THE STATE OF CALIFORNIA.

19 YOU SHOULD CONSIDER THIS EVIDENCE ONLY  
20 FOR THIS LIMITED PURPOSE AND FOR NO OTHER PURPOSE.

21 A PERSON IS QUALIFIED TO TESTIFY AS AN  
22 EXPERT IF HE HAS SPECIAL KNOWLEDGE, SKILL, EXPERIENCE,  
23 TRAINING OR EDUCATION SUFFICIENT TO QUALIFY HIM AS  
24 AN EXPERT ON THE SUBJECT TO WHICH HIS TESTIMONY  
25 RELATES.

26 DULY QUALIFIED EXPERTS MAY GIVE THEIR  
27 OPINIONS ON QUESTIONS IN CONTROVERSY AT A TRIAL.  
28 TO ASSIST YOU IN DECIDING SUCH QUESTIONS, YOU

1 MAY CONSIDER THE OPINION WITH THE REASONS GIVEN FOR  
2 IT, IF ANY, BY THE EXPERT WHO GIVES THE OPINION.

3 YOU MAY ALSO CONSIDER THE QUALIFICATIONS  
4 AND CREDIBILITY OF THE EXPERT.

5 YOU ARE NOT BOUND TO ACCEPT AN EXPERT  
6 OPINION AS CONCLUSIVE, BUT SHOULD GIVE TO IT THE  
7 WEIGHT TO WHICH YOU FIND IT TO BE ENTITLED.

8 YOU MAY DISREGARD ANY SUCH OPINION IF YOU  
9 FIND IT TO BE UNREASONABLE.

10 IN DETERMINING THE WEIGHT TO BE GIVEN  
11 TO AN OPINION EXPRESSED BY ANY WITNESS, YOU SHOULD  
12 CONSIDER HIS CREDIBILITY, THE EXTENT OF HIS  
13 OPPORTUNITY TO PERCEIVE THE MATTER UPON WHICH HIS  
14 OPINIONS IS BASED AND THE REASONS, IF ANY, GIVEN FOR  
15 IT.

16 YOU ARE NOT REQUIRED TO ACCEPT SUCH AN  
17 OPINION, BUT SHOULD GIVE IT THE WEIGHT, IF ANY, TO  
18 WHICH YOU FIND IT TO BE ENTITLED.

19 IN EXAMINING AN EXPERT WITNESS, COUNSEL  
20 MAY PROPOUND TO HIM A TYPE OF QUESTION KNOWN IN THE  
21 LAW AS A HYPOTHETICAL QUESTION. BY SUCH A QUESTION,  
22 THE WITNESS IS ASKED TO ASSUME TO BE TRUE A SET OF  
23 FACTS AND TO GIVE AN OPINION BASED ON SUCH  
24 ASSUMPTION.

25 IN PERMITTING SUCH A QUESTION, THE  
26 COURT DOES NOT RULE, AND DOES NOT NECESSARILY FIND  
27 THAT ALL THE ASSUMED FACTS HAVE BEEN PROVED. IT  
28 ONLY DETERMINES THAT THOSE ASSUMED FACTS ARE WITHIN

1 THE PROBABLE OR POSSIBLE RANGE OF THE EVIDENCE. IT  
2 IS FOR YOU, THE JURY, TO FIND FROM ALL THE EVIDENCE,  
3 WHETHER OR NOT THE FACTS ASSUMED IN A HYPOTHETICAL  
4 QUESTION HAVE BEEN PROVED, AND IF YOU SHOULD FIND  
5 THAT ANY ASSUMPTION IN SUCH A QUESTION HAS NOT BEEN  
6 PROVED, YOU ARE TO DETERMINE THE EFFECT OF THAT  
7 FAILURE OF PROOF ON THE VALUE AND WEIGHT OF THE  
8 EXPERT OPINION BASED ON THE ASSUMED FACTS.

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

1                   A DEFENDANT IN A CRIMINAL ACTION IS  
2 PRESUMED TO BE INNOCENT UNTIL THE CONTRARY IS  
3 PROVED, AND IN CASE OF A REASONABLE DOUBT WHETHER  
4 HIS GUILT IS SATISFACTORILY SHOWN, HE IS ENTITLED TO  
5 A VERDICT OF NOT GUILTY. THE EFFECT OF THIS  
6 PRESUMPTION IS TO PLACE UPON THE STATE, THE  
7 BURDEN OF PROVING HIM GUILTY BEYOND A REASONABLE  
8 DOUBT.

9                   A REASONABLE DOUBT IS DEFINED AS  
10 FOLLOWS: IT IS NOT A MERE POSSIBLE DOUBT BECAUSE  
11 EVERYTHING RELATING TO HUMAN AFFAIRS AND DEPENDING  
12 UPON MORAL EVIDENCE IS OPEN TO SOME POSSIBLE OR  
13 IMAGINARY DOUBT. IT IS THAT STATE OF THE CASE WHICH,  
14 AFTER THE ENTIRE COMPARISON AND CONSIDERATION OF  
15 ALL OF THE EVIDENCE, LEAVES THE MINDS OF THE JURORS  
16 IN THAT CONDITION THAT THEY CANNOT SAY THEY FEEL AN  
17 ABIDING CONVICTION TO A MORAL CERTAINTY OF THE TRUTH  
18 OF THE CHARGE.

19                   THE DEFENDANT CONTENDS THAT RON LEVIN WAS  
20 ALIVE AT LEAST IN SEPTEMBER, 1985 AND WAS ALLEGEDLY  
21 SEEN IN TUCSON, ARIZONA. IF YOU HAVE A REASONABLE  
22 DOUBT THAT RON LEVIN IS DEAD, YOU MUST RESOLVE THAT  
23 DOUBT IN THE DEFENDANT'S FAVOR AND FIND HIM NOT  
24 GUILTY.

25                   THE PERSONS CONCERNED IN THE COMMISSION  
26 OF A CRIME WHO ARE REGARDED BY LAW AS PRINCIPALS  
27 IN THE CRIME THUS COMMITTED AND EQUALLY GUILTY  
28 THEREOF, INCLUDE THOSE WHO DIRECTLY AND ACTIVELY



1 COMMIT THE ACTS CONSTITUTING THE CRIME OR THOSE WHO  
2 AID AND ABET THE COMMISSION OF THE CRIME.

3 ONE WHO AIDS AND ABETS IS NOT ONLY  
4 GUILTY OF THE PARTICULAR CRIME THAT TO HIS KNOWLEDGE,  
5 HIS CONFEDERATES ARE CONTEMPLATING COMMITTING, BUT  
6 HE IS ALSO LIABLE FOR THE NATURAL AND PROBABLE AND REASONABLE  
7 CONSEQUENCES OF ANY ACT THAT HE KNOWINGLY AND  
8 INTENTIONALLY AIDED OR ENCOURAGED.

9 A PERSON AIDS AND ABETS THE COMMISSION OF A  
10 CRIME WHEN HE (1) WITH KNOWLEDGE OF THE UNLAWFUL  
11 PURPOSE OF THE PERPETRATOR AND (2) WITH THE INTENT  
12 OR PURPOSE OF COMMITTING, ENCOURAGING OR FACILITATING  
13 THE COMMISSION OF THE OFFENSE, BY ACT OR ADVICE, AIDS,  
14 PROMOTES, ENCOURAGES OR INSTIGATES THE COMMISSION  
15 OF THE CRIME.

16 A PERSON WHO AIDS AND ABETS THE  
17 COMMISSION OF A CRIME NEED NOT BE PERSONALLY PRESENT  
18 AT THE SCENE OF THE CRIME. MERE PRESENCE AT THE  
19 SCENE OF A CRIME WHICH DOES NOT ITSELF ASSIST IN  
20 THE COMMISSION OF THE CRIME, DOES NOT AMOUNT TO  
21 AIDING AND ABETTING.

22 MERE KNOWLEDGE OF THE CRIME THAT IS  
23 BEING COMMITTED AND THE FAILURE TO PREVENT IT, DOES  
24 NOT AMOUNT TO AIDING AND ABETTING.

25 IN EACH OF THE CRIMES CHARGED IN COUNTS  
26 I AND II OF THE INFORMATION, NAMELY MURDER AND  
27 ROBBERY, THERE MUST EXIST A UNION OR JOINT OPERATION  
28 OF ACT OR CONDUCT AND A CERTAIN SPECIFIC INTENT IN

1 THE MIND OF THE PERPETRATOR AND UNLESS SUCH SPECIFIC  
2 INTENT EXISTS, THE CRIME TO WHICH IT RELATES IS  
3 NOT COMMITTED.

4 THE SPECIFIC INTENT REQUIRED IS INCLUDED  
5 IN THE DEFINITIONS OF THE CRIMES WHICH I WILL GIVE  
6 YOU.

7 THE DEFENDANT IN THIS CASE, HAS  
8 INTRODUCED EVIDENCE FOR THE PURPOSE OF SHOWING THAT  
9 HE WAS NOT PRESENT AT THE TIME AND PLACE OF THE  
10 COMMISSION OF THE ALLEGED OFFENSES FOR WHICH HE IS  
11 ON TRIAL. IF AFTER A CONSIDERATION OF ALL OF THE  
12 EVIDENCE, YOU HAVE A REASONABLE DOUBT THAT THE  
13 DEFENDANT WAS PRESENT AT THE TIME THE CRIME WAS  
14 COMMITTED OR THE CRIMES WERE COMMITTED, HE IS ENTITLED  
15 TO AN ACQUITTAL.

16 THE DEFENDANT IS CHARGED IN COUNT 1 OF  
17 THE INFORMATION WITH THE COMMISSION OF THE CRIME OF  
18 MURDER IN VIOLATION OF SECTION 187 OF THE PENAL CODE.  
19 THE CRIME OF MURDER IS THE UNLAWFUL KILLING OF A  
20 HUMAN BEING WITH MALICE AFORETHOUGHT OR THE UNLAWFUL  
21 KILLING OF A HUMAN BEING WHICH OCCURS DURING THE  
22 COMMISSION OR ATTEMPTED -- THE ATTEMPT TO COMMIT  
23 A FELONY INHERENTLY DANGEROUS TO HUMAN LIFE.

24 IN ORDER TO PROVE THE COMMISSION OF  
25 THE CRIME OF MURDER, EACH OF THE FOLLOWING ELEMENTS  
26 MUST BE PROVED: ONE, THAT A HUMAN BEING WAS KILLED;  
27 TWO, THAT THE KILLING WAS UNLAWFUL; THREE, THAT THE  
28 KILLING WAS DONE WITH MALICE AFORETHOUGHT.

1 MALICE MAY BE EITHER EXPRESS OR  
2 IMPLIED. MALICE IS EXPRESS WHEN THERE IS  
3 MANIFESTED AN INTENTION UNLAWFULLY TO KILL A  
4 HUMAN BEING.

5 MALICE IS IMPLIED WHEN THE KILLING  
6 RESULTS FROM AN INTENTIONAL ACT INVOLVING A HIGH  
7 DEGREE OF PROBABILITY THAT IT WILL RESULT IN DEATH,  
8 WHICH ACT IS DONE FOR A BASE, ANTISOCIAL PURPOSE AND  
9 WITH A WANTON DISREGARD FOR HUMAN LIFE.

4B  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

24  
1 WHEN IT IS SHOWN A KILLING RESULTED  
2 FROM AN INTENTIONAL DOING OF AN ACT WITH EXPRESS  
3 OR IMPLIED MALICE, NO OTHER MENTAL STATE NEED BE  
4 SHOWN TO ESTABLISH THE MENTAL STATE OF MALICE  
5 AFORETHOUGHT.

6 THE MENTAL STATE CONSTITUTING MALICE  
7 AFORETHOUGHT DOES NOT NECESSARILY REQUIRE ANY  
8 ILL-WILL OR HATRED OF THE PERSON KILLED. AFORETHOUGHT  
9 DOES NOT IMPLY DELIBERATION OR THE LAPSE OF A  
10 CONSIDERABLE TIME. IT ONLY MEANS THAT THE REQUIRED  
11 MENTAL STATE MUST PRECEDE RATHER THAN FOLLOW THE  
12 ACT.

13 ALL MURDER WHICH IS PERPETRATED AND  
14 ANY KIND OF WILLFUL, DELIBERATE AND PREMEDITATED  
15 KILLING WITH MALICE AFORETHOUGHT, IS FIRST DEGREE  
16 MURDER. THE WORD "WILLFUL," AS USED IN THIS  
17 INSTRUCTION MEANS INTENTIONAL. THE WORD "DELIBERATE"  
18 MEANS FORMED OR ARRIVED AT OR DETERMINED UPON AS  
19 A RESULT OF CAREFUL THOUGHT AND THE WEIGHING OF  
20 CONSIDERATIONS FOR AND AGAINST THE PROPOSED COURSE  
21 OF ACTION.

22 THE WORD "PREMEDITATED" MEANS CONSIDERED  
23 BEFOREHAND. IF YOU FIND THAT THE KILLING WAS  
24 PRECEDED AND ACCOMPANIED BY A CLEAR, DELIBERATE  
25 INTENT ON THE PART OF THE DEFENDANT TO KILL, WHICH  
26 WAS THE RESULT OF DELIBERATION AND PREMEDITATION,  
27 SO THAT IT MUST HAVE BEEN FORMED UPON PRE-EXISTING  
28 REFLECTION, NOT UPON SUDDEN HEAT OF PASSION -- .

24R-2

1 NOT UNDER A SUDDEN HEAT OF PASSION OR OTHER CONDITION  
2 PRECLUDING THE IDEA OF DELIBERATION, IT IS MURDER  
3 OF THE FIRST DEGREE.

4 THE LAW DOES NOT UNDERTAKE TO MEASURE  
5 IN UNITS OF TIME, THE LENGTH OF THE PERIOD DURING  
6 WHICH THE THOUGHT MUST BE PONDERED BEFORE IT CAN  
7 RIPEN INTO AN INTENT TO KILL WHICH IS TRULY  
8 DELIBERATE AND PREMEDITATED. THE TIME WILL VARY  
9 WITH DIFFERENT INDIVIDUALS UNDER VARYING  
10 CIRCUMSTANCES.

11 THE TRUE TEST IS NOT THE DURATION OF  
12 TIME, BUT RATHER THE EXTENT OF THE REFLECTION.  
13 A COLD, CALCULATED JUDGMENT AND DECISION MAY BE  
14 ARRIVED AT IN A SHORT PERIOD OF TIME, BUT A MERE  
15 UNCONSIDERED AND RASH IMPULSE, EVEN THOUGH IT  
16 INCLUDE AN INTENT TO KILL, IS NOT SUCH DELIBERATION  
17 AND PREMEDITATION AS WILL FIX AN UNLAWFUL KILLING  
18 AS MURDER OF THE FIRST DEGREE.

19 TO CONSTITUTE A DELIBERATE AND  
20 PREMEDITATED KILLING, THE SLAYER MUST WEIGH AND  
21 CONSIDER THE QUESTION OF KILLING AND THE REASONS  
22 FOR IT AGAINST SUCH A CHOICE AND, HAVING IN MIND  
23 THE CONSEQUENCES, HE DECIDES TO AND DOES KILL.

24 THE UNLAWFUL KILLING OF A HUMAN BEING  
25 WHETHER INTENTIONAL, UNINTENTIONAL OR ACCIDENTAL,  
26 WHICH OCCURS AS A RESULT OF THE COMMISSION OR  
27 ATTEMPT TO COMMIT THE CRIME OF ROBBERY AND WHERE  
28 THERE WAS IN THE MIND OF THE PERPETRATOR THE

24F -

1 SPECIFIC INTENT TO COMMIT SUCH CRIME, IS MURDER  
2 OF THE FIRST DEGREE. THE SPECIFIC INTENT TO COMMIT  
3 ROBBERY AND THE COMMISSION OR ATTEMPT TO COMMIT  
4 SUCH CRIME MUST BE PROVED BEYOND A REASONABLE  
5 DOUBT.

6 IF A HUMAN BEING IS KILLED BY ANYONE  
7 OF SEVERAL PERSONS ENGAGED IN THE PERPETRATION  
8 OF OR ATTEMPT TO PERPETRATE THE CRIME OF ROBBERY,  
9 ALL PERSONS WHO EITHER DIRECTLY AND ACTIVELY COMMIT  
10 THE ACT CONSTITUTING SUCH CRIME OR WHO WITH KNOWLEDGE  
11 OF THE UNLAWFUL PURPOSE OF THE PERPETRATOR OF THE  
12 CRIME AND WITH THE INTENT OR PURPOSE OF COMMITTING,  
13 ENCOURAGING OR FACILITATING THE COMMISSION OF THE  
14 OFFENSE, AID, PROMOTE, ENCOURAGE OR INSTIGATE BY  
15 ACT OR ADVICE ITS COMMISSION ARE GUILTY OF MURDER  
16 IN THE FIRST DEGREE WHETHER THE KILLING IS  
17 INTENTIONAL, UNINTENTIONAL OR ACCIDENTAL.

18 IF YOU FIND THE DEFENDANT IN THIS  
19 CASE GUILTY OF MURDER IN THE FIRST DEGREE, YOU  
20 MUST THEN DETERMINE IF THE MURDER WAS COMMITTED  
21 UNDER THE FOLLOWING SPECIAL CIRCUMSTANCES:  
22 COMMITTED DURING THE COURSE OF A ROBBERY.

23 A SPECIAL CIRCUMSTANCE MUST BE PROVED  
24 BEYOND A REASONABLE DOUBT. IF YOU HAVE A REASONABLE  
25 DOUBT AS TO WHETHER A SPECIAL CIRCUMSTANCE IS TRUE,  
26 IT IS YOUR DUTY TO FIND THAT IT IS NOT TRUE.

27 IF THE DEFENDANT HUNT WAS AN AIDER  
28 AND ABETTOR BUT NOT THE ACTUAL KILLER, IT MUST

B-1  
1 BE PROVED BEYOND A REASONABLE DOUBT THAT HE INTENDED  
2 TO AID IN THE KILLING OF A HUMAN BEING BEFORE YOU  
3 ARE PERMITTED TO FIND THE ALLEGED SPECIAL  
4 CIRCUMSTANCE OF THAT FIRST DEGREE MURDER TO BE  
5 TRUE AS TO THE DEFENDANT HUNT.

6 IN ORDER TO FIND THE SPECIAL CIRCUMSTANCE  
7 CHARGED IN THIS CASE TO BE TRUE OR UNTRUE, YOU  
8 MUST AGREE UNANIMOUSLY.

9 YOU WILL INCLUDE IN YOUR VERDICT, ON  
10 A FORM THAT WILL BE SUPPLIED, YOUR FINDING AS TO  
11 WHETHER THE SPECIAL CIRCUMSTANCE IS TRUE OR NOT  
12 TRUE.

13 TO FIND THAT THE SPECIAL CIRCUMSTANCE  
14 REFERRED TO IN THESE INSTRUCTIONS AS MURDER IN  
15 THE COMMISSION OF A ROBBERY, IS TRUE, IT MUST BE  
16 PROVED: THAT THE MURDER WAS COMMITTED WHILE THE  
17 DEFENDANT WAS ENGAGED IN THE COMMISSION OF A  
18 ROBBERY.

19 (2) THAT THE DEFENDANT INTENDED TO  
20 KILL A HUMAN BEING OR INTENDED TO AID ANOTHER IN  
21 THE KILLING OF A HUMAN BEING.

22 (3) THAT THE MURDER WAS COMMITTED IN  
23 ORDER TO CARRY OUT OR ADVANCE THE COMMISSION OF  
24 THE CRIME OF ROBBERY OR TO FACILITATE THE ESCAPE  
25 THEREFROM OR TO AVOID DETECTION.

26 IN OTHER WORDS, THE SPECIAL CIRCUMSTANCE  
27 REFERRED TO IN THESE INSTRUCTIONS IS NOT ESTABLISHED  
28 IF THE ROBBERY WAS MERELY INCIDENTAL TO THE

24F  
1 COMMISSION OF THE MURDER.

2 YOU ARE NOT PERMITTED TO FIND THE SPECIAL  
3 CIRCUMSTANCES CHARGED IN THIS CASE TO BE TRUE BASED  
4 ON CIRCUMSTANTIAL EVIDENCE UNLESS THE PROVED FACTS  
5 ARE NOT ONLY: (1) CONSISTENT WITH THE THEORY THAT  
6 THE SPECIAL CIRCUMSTANCES ARE TRUE; BUT (2) CANNOT  
7 BE RECONCILED WITH ANY OTHER RATIONAL CONCLUSION.

8 EACH FACT WHICH IS ESSENTIAL TO COMPLETE  
9 A SET OF FACTS NECESSARY TO ESTABLISH THE TRUTH  
10 OF THE SPECIAL CIRCUMSTANCES MUST BE PROVED BEYOND  
11 A REASONABLE DOUBT. ALSO IF THE CIRCUMSTANTIAL  
12 EVIDENCE IS SUSCEPTIBLE OF TWO REASONABLE  
13 INTERPRETATIONS, ONE OF WHICH POINTS TO THE TRUTH  
14 OF THE SPECIAL CIRCUMSTANCES AND THE OTHER TO THEIR  
15 UNTRUTH, IT IS YOUR DUTY TO ADOPT THE INTERPRETATION  
16 WHICH POINTS TO THEIR UNTRUTH AND TO REJECT THAT  
17 INTERPRETATION WHICH POINTS TO THEIR TRUTH.

18 IF ON THE OTHER HAND, ONE INTERPRETATION  
19 OF SUCH EVIDENCE APPEARS TO BE REASONABLE AND THE  
20 OTHER TO BE UNREASONABLE, IT IS YOUR DUTY TO  
21 ACCEPT THE REASONABLE INTERPRETATION AND TO REJECT  
22 THE UNREASONABLE.

23 WE FORGOT 17.45, SO MAKE A NOTE OF IT, WILL YOU?

24 THE DEFENDANT IS CHARGED IN COUNT II  
25 OF THE INFORMATION --

26 SORRY FOR THE DELAY. BUT THERE IS ONE INSTRUCTION  
27 WHICH HAD NOT BEEN PULLED. PARDON ME.

28 THE DEFENDANT IS CHARGED IN COUNT II



4B.

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

OF THE INFORMATION WITH THE COMMISSION OF THE CRIME  
OF ROBBERY IN VIOLATION OF SECTION 211 OF THE PENAL  
CODE. THE CRIME OF ROBBERY IS THE TAKING OF  
PERSONAL PROPERTY IN THE POSSESSION OF ANOTHER  
FROM HIS PERSON OR IMMEDIATE PRESENCE AND AGAINST  
HIS WILL, ACCOMPLISHED BY MEANS OF FORCE OR FEAR  
AND WITH THE SPECIFIC INTENT PERMANENTLY TO  
DEPRIVE SUCH PERSON OF THE PROPERTY.

CF

24C  
1 IN ORDER TO PROVE THE COMMISSION OF  
2 THE CRIME OF ROBBERY, EACH OF THE FOLLOWING ELEMENTS  
3 MUST BE PROVED: (1) THAT A PERSON HAD POSSESSION  
4 OF PROPERTY OF SOME VALUE, HOWEVER SLIGHT.  
5 (2) THAT SUCH PROPERTY WAS TAKEN FROM SUCH PERSON  
6 OR HIS IMMEDIATE PRESENCE. (3) THAT SUCH PROPERTY  
7 WAS TAKEN AGAINST THE WILL OF SUCH PERSON. AND  
8 (4) THAT THE TAKING WAS ACCOMPLISHED EITHER BY  
9 FORCE OR VIOLENCE OR BY FEAR OR INTIMIDATION OR  
10 BOTH. (5) THAT SUCH PROPERTY WAS TAKEN WITH THE  
11 SPECIFIC INTENT PERMANENTLY TO DEPRIVE SUCH PERSON  
12 OF HIS PROPERTY.

13 EACH COUNT CHARGES A SEPARATE AND  
14 DISTINCT OFFENSE. YOU MUST DECIDE EACH COUNT  
15 SEPARATELY.

16 THE DEFENDANT MAY BE FOUND GUILTY OR  
17 NOT GUILTY OF EITHER OR BOTH OF THE OFFENSES  
18 CHARGED. YOUR FINDING AS TO EACH COUNT MUST BE  
19 STATED IN A SEPARATE VERDICT.

20 I HAVE NOT INTENDED BY ANYTHING I HAVE  
21 SAID OR DONE OR ANY QUESTIONS THAT I HAVE ASKED  
22 OR BY ANY RULING THAT I MAY HAVE MADE TO  
23 INTIMATE OR SUGGEST WHAT YOU SHOULD FIND TO BE  
24 THE FACTS ON ANY QUESTION SUBMITTED TO YOU OR THAT  
25 I BELIEVE OR DISBELIEVE ANY WITNESS.

26 IF ANYTHING I HAVE DONE OR SAID HAS  
27 SEEMED TO SO INDICATE, YOU WILL DISREGARD IT AND  
28 FORM YOUR OWN OPINION. YOU ARE TO DISREGARD ANY

40  
1 VERBAL EXCHANGE BETWEEN COUNSEL AND THE COURT OR  
2 ANY DIFFERENCES AMONG US ON RULINGS MADE BY THE  
3 COURT.

4 THE DECISION AS TO THE GUILT OR  
5 INNOCENCE OF THE DEFENDANT IS TO BE DECIDED SOLELY  
6 BY YOU ON THE EVIDENCE RECEIVED AND ON THE COURT'S  
7 INSTRUCTIONS. I EXPRESS NO OPINION AS TO THE GUILT  
8 OR INNOCENCE OF THE DEFENDANT.

9 THE PARTICIPATION BY THE COURT IN THE  
10 QUESTIONING OF WITNESSES IS ENCOURAGED BY OUR  
11 SUPREME COURT WHICH HAS STATED THAT THERE SHOULD  
12 BE PLACED IN THE TRIAL JUDGE'S HANDS MORE POWER  
13 IN THE TRIAL OF JURY CASES AND TO MAKE HIM A REAL  
14 FACTOR IN THE ADMINISTRATION OF JUSTICE IN SUCH  
15 CASES, INSTEAD OF BEING IN THE POSITION OF A MERE  
16 REFEREE OR AUTOMATON AS TO THE ASCERTAINMENT OF  
17 FACTS.

18 ALTHOUGH I AM VESTED WITH THE POWER  
19 TO COMMENT ON THE FACTS IN THE CASE AND TO EXPRESS  
20 MY OPINION ON THE MERITS OF THE CASE, I HAVE  
21 NONETHELESS REFRAINED AND DO REFRAIN FROM DOING  
22 SO, LETTING YOU BE THE FINAL AND SOLE JUDGES OF  
23 THE FACTS IN THE GUILT OR INNOCENCE OF THE  
24 DEFENDANT.

25 NOW, YOU HAVE BEEN INSTRUCTED AS TO  
26 ALL OF THE RULES OF LAW THAT MAY BE NECESSARY FOR  
27 YOU TO REACH A VERDICT. WHETHER SOME OF THE  
28 INSTRUCTIONS WILL APPLY WILL DEPEND UPON YOUR

1 DETERMINATION OF THE FACTS. YOU WILL DISREGARD  
2 ANY INSTRUCTION WHICH APPLIES TO A STATE OF FACTS  
3 WHICH YOU DETERMINE DOES NOT EXIST. YOU MUST NOT  
4 CONCLUDE FROM THE FACT THAT AN INSTRUCTION HAS  
5 BEEN GIVEN, THAT THE COURT IS EXPRESSING ANY OPINION  
6 AS TO THE FACTS.

7 BOTH THE PEOPLE AND THE DEFENDANT ARE  
8 ENTITLED TO THE INDIVIDUAL OPINION OF EACH JUROR.  
9 IT IS THE DUTY OF EACH OF YOU TO CONSIDER THE  
10 EVIDENCE FOR THE PURPOSE OF ARRIVING AT A VERDICT  
11 IF YOU CAN DO SO. EACH OF YOU MUST DECIDE THE  
12 CASE FOR YOURSELVES BUT SHOULD DO SO ONLY AFTER  
13 A DISCUSSION OF THE EVIDENCE AND THE INSTRUCTIONS  
14 WITH THE OTHER JURORS.

15 YOU SHOULD NOT HESITATE TO CHANGE AN  
16 OPINION IF YOU ARE CONVINCED THAT IT IS ERRONEOUS.  
17 HOWEVER, YOU SHOULD NOT BE INFLUENCED TO DECIDE  
18 ANY QUESTION IN ANY PARTICULAR WAY BECAUSE A MAJORITY  
19 OF THE JURORS OR ANY OF THEM FAVOR SUCH A DECISION.

20 THE ATTITUDE AND CONDUCT OF JURORS  
21 AT THE BEGINNING OF THEIR DELIBERATIONS ARE MATTERS  
22 OF CONSIDERABLE IMPORTANCE. IT IS RARELY PRODUCTIVE  
23 OF GOOD FOR A JUROR AT THE OUTSET, TO MAKE AN  
24 EMPHATIC EXPRESSION OF HIS OPINION ON THE CASE  
25 OR TO STATE HOW HE INTENDS TO VOTE. WHEN ONE DOES  
26 THAT AT THE BEGINNING, HIS SENSE OF PRIDE MAY BE  
27 AROUSED AND HE MAY HESITATE TO CHANGE HIS POSITION,  
28 EVEN IF SHOWN THAT IT IS WRONG.

1 REMEMBER, THAT YOU ARE NOT PARTISANS  
2 OR ADVOCATES IN THIS MATTER, BUT ARE JUDGES.

3 AS I ADVISED YOU AT THE TIME OF THE  
4 JURY SELECTION, IN YOUR DELIBERATIONS, THE SUBJECT  
5 OF PENALTY OR PUNISHMENT IS NOT TO BE DISCUSSED  
6 OR CONSIDERED BY YOU. THAT IS A MATTER WHICH MUST  
7 NOT IN ANY WAY AFFECT YOUR VERDICT IN THE GUILT  
8 PHASE OF THE TRIAL, WHICH WE ARE PRESENTLY IN.

9 AND SPEAKING OF VERDICTS, HAVE YOU  
10 GOT THEM? LET ME EXPLAIN THE VERDICT FORMS. YOU  
11 WILL REMEMBER THAT THERE ARE TWO COUNTS. THE FIRST  
12 COUNT IS MURDER. THE SECOND COUNT IS ROBBERY.

13 NOW, THERE ARE TWO VERDICT FORMS ON  
14 EACH COUNT. THE FIRST VERDICT FORM IS FOR EXAMPLE,  
15 A VERDICT OF GUILTY.

16 WE, THE JURY IN THE ABOVE-ENTITLED  
17 ACTION, FIND THE DEFENDANT, JOE HUNT, GUILTY OF  
18 MURDER IN VIOLATION OF PENAL CODE SECTION 187, A  
19 FELONY, AS CHARGED IN THE INFORMATION IN COUNT I.

20 AND WE FURTHER FIND THE ABOVE OFFENSE  
21 TO BE MURDER IN THE FIRST DEGREE. AND WE FURTHER  
22 FIND THAT AS TO THE SPECIAL CIRCUMSTANCES, WE FIND  
23 THAT THE ALLEGATION THAT THE MURDER OF RONALD  
24 GEORGE LEVIN WAS COMMITTED BY THE DEFENDANT WHILE  
25 HE WAS ENGAGED IN THE COMMISSION OF ROBBERY WITHIN  
26 THE MEANING OF PENAL CODE SECTION 190.2(A)(17)  
27 TO BE TRUE OR NOT TRUE.

28 YOU ARE TO STRIKE ONE OF THE TWO OF

1 THEM, THAT YOU FIND THE SPECIAL CIRCUMSTANCES TO  
2 BE TRUE THEN YOU STRIKE OUT NOT TRUE.

3 IF YOU FIND THE SPECIAL CIRCUMSTANCES  
4 OF ROBBERY IS TRUE, YOU STRIKE OUT NOT TRUE.

5 AND ON COUNT I, THE SECOND VERDICT  
6 FORM, IS THE VERDICT OF NOT GUILTY.

7 WE, THE JURY IN THE ABOVE-ENTITLED  
8 ACTION FIND THE DEFENDANT, JOE HUNT, NOT GUILTY  
9 OF MURDER IN VIOLATION OF SECTION 187 OF THE PENAL  
10 CODE, A FELONY AS CHARGED IN COUNT I OF THE  
11 INFORMATION.

12 COUNT II HAS TO DO WITH THE ROBBERY  
13 CHARGE. THERE ARE TWO FORMS FOR THAT, TOO. THE  
14 FIRST FORM IS THE VERDICT OF GUILTY.

15 WE, THE JURY IN THE ABOVE-ENTITLED  
16 ACTION FIND THE DEFENDANT, JOE HUNT, GUILTY OF  
17 ROBBERY IN VIOLATION OF SECTION 211 OF THE PENAL  
18 CODE, A FELONY, AS CHARGED IN COUNT II OF THE  
19 INFORMATION.

20 THE SECOND VERDICT FORM FOR THAT COUNT  
21 IS THE VERDICT OF NOT GUILTY.

22 WE, THE JURY IN THE ABOVE-ENTITLED  
23 ACTION FIND THE DEFENDANT, JOE HUNT, NOT GUILTY  
24 OF ROBBERY IN VIOLATION OF PENAL CODE SECTION 211  
25 A FELONY AS CHARGED IN COUNT II OF THE INFORMATION.

26 THE WRITTEN INSTRUCTIONS WHICH I HAVE  
27 BEEN GIVING YOU WILL BE MADE AVAILABLE IN THE  
28 JURY ROOM DURING YOUR DELIBERATIONS. THEY MUST

1 NOT BE DEFACED IN ANY WAY.

2 YOU WILL FIND THAT THE INSTRUCTIONS  
3 MAY BE EITHER PRINTED, TYPEWRITTEN OR HANDWRITTEN.  
4 SOME OF THE PRINTED OR TYPEWRITTEN INSTRUCTIONS  
5 MAY BE MODIFIED BY TYPING OR HANDWRITING. BLANKS  
6 IN THE WRITTEN INSTRUCTIONS MAY BE FILLED IN BY  
7 TYPING OR HANDWRITING.

8 ALSO, PORTIONS OF THE PRINTED OR  
9 TYPEWRITTEN INSTRUCTIONS MAY BE DELETED BY LINING  
10 OUT. DON'T TRY TO READ THE LINED OUT PORTIONS  
11 OF THE INSTRUCTIONS. THAT HAS NOTHING TO DO WITH  
12 THIS CASE. YOU SHOULDN'T DO IT.

13 YOU ARE NOT TO BE CONCERNED WITH THE  
14 REASONS FOR ANY MODIFICATIONS THAT HAVE BEEN MADE.  
15 ALSO, YOU MUST DISREGARD ANY DELETED PART OF AN  
16 INSTRUCTION AND NOT SPECULATE EITHER WHAT IT WAS  
17 OR WHAT WAS THE REASON FOR ITS DELETION.

18 EVERY PART OF AN INSTRUCTION, WHETHER  
19 IT IS PRINTED, TYPED OR HANDWRITTEN IS OF EQUAL  
20 IMPORTANCE. YOU ARE TO BE GOVERNED ONLY BY THE  
21 INSTRUCTION IN ITS FINAL WORDING, WHETHER PRINTED,  
22 TYPED OR HANDWRITTEN.

23  
24  
25  
26  
27  
28

4D

1                   YOU SHALL NOW RETIRE AND SELECT ONE  
2                   OF YOUR NUMBER TO ACT AS FOREMAN WHO WILL PRESIDE  
3                   OVER YOUR DELIBERATIONS -- OR FORELADY. IN ORDER  
4                   TO REACH A VERDICT, ALL 12 JURORS MUST AGREE TO THE  
5                   DECISION AND TO ANY FINDING THAT YOU HAVE BEEN  
6                   INSTRUCTED TO INCLUDE IN YOUR VERDICT.

7                   AS SOON AS ALL OF YOU HAVE AGREED UPON  
8                   A VERDICT, YOU SHALL HAVE IT DATED AND SIGNED BY  
9                   YOUR FOREMAN OR FOREPERSON AND THEN SHALL RETURN WITH  
10                  IT TO THIS COURTROOM.

11                  I WOULD SUGGEST LADIES AND GENTLEMEN,  
12                  THAT YOU MIGHT WANT TO SELECT YOUR FOREPERSON WHEN  
13                  YOU RETIRE TO THE JURY ROOM AND THEN YOU CAN GO HOME  
14                  AND COME BACK ON MONDAY DIRECTLY INTO THE COURTROOM.  
15                  GO DIRECTLY INTO THE JURY ROOM AND BEGIN YOUR  
16                  DELIBERATIONS. HAVE A WONDERFUL HOLIDAY.

17                  THANK YOU VERY, VERY MUCH FOR SERVING IN  
18                  THIS CASE. ALL RIGHT. YOU MAY RETIRE NOW.

19                  JUROR SHELBY: WHAT TIME DO WE COME BACK ON MONDAY?

20                  THE CLERK: YOU DO SOLEMNLY SWEAR TO TAKE CHARGE OF  
21                  THE JURY AND KEEP THEM TOGETHER UNLESS OTHERWISE DIRECTED  
22                  BY THE COURT. YOU WILL NOT SPEAK TO THEM YOURSELF NOR ALLOW  
23                  ANYONE ELSE TO SPEAK TO THEM ON ANY MATTER CONNECTED WITH  
24                  THIS CASE OR UNLESS OTHERWISE INSTRUCTED BY THE COURT.

25                  WHEN THEY HAVE ARRIVED UPON A VERDICT, YOU SHALL  
26                  RETURN THEM INTO THIS COURTROOM. FURTHER, YOU WILL TAKE  
27                  CHARGE OF THE ALTERNATE JURORS AND KEEP THEM APART FROM THE  
28                  JURY WHILE THEY ARE DELIBERATING ON THE CAUSE AND UNLESS



1 OTHERWISE INSTRUCTED BY THE COURT, SO HELP YOU GOD?

2 THE BAILIFF: I DO.

3 THE COURT: I WOULD SUGGEST THAT THE ALTERNATE JURORS  
4 COME BACK ON MONDAY MORNING AT 10:30. THERE IS NO SENSE  
5 COMING IN AT 9:30. YOU WILL HAVE NOTHING TO DO.

6 GOOD NIGHT. HAVE A NICE WEEKEND.

7 (AT 3:38 P.M. THE JURY RETIRES TO  
8 DELIBERATE.)

9 THE COURT: THE EXHIBITS ARE GOING TO BE WITH THE JURY.  
10 I THINK THEY ARE IN NUMERICAL AND ALPHABETICAL ORDER. THAT  
11 IS, THE PEOPLE'S EXHIBITS AND THE DEFENSE EXHIBITS. I THINK  
12 THEY OUGHT TO BE ADMONISHED TO KEEP THEM IN ORDER, OTHERWISE  
13 THEY ARE ALL GOING TO FALL APART AND EVERYTHING.

14 WHEN YOU TAKE THEM IN TO THE JURORS, TELL THEM  
15 TO KEEP THEM IN ORDER. WILL THAT BE ALL RIGHT?

16 MR. WAPNER: YES.

17 MR. BARENS: YES.

18 MR. WAPNER: I THINK THAT THEY CAN USE THEM DURING  
19 THE DAY BUT THEY SHOULD BE RETURNED IN ORDER TO THE CLERK  
20 AT NOON OR AT THE END OF THE DAY.

21 MR. BARENS: WHAT HOURS ARE THEY GOING TO WORK EVERY  
22 DAY, YOUR HONOR?

23 THE COURT: 9:30 TO 4:30. LUNCH IS FROM 12:00 TO  
24 1:30. THEY CAN TAKE A 15-MINUTE BREAK IN THE MORNING AND  
25 IN THE AFTERNOON.

26 MR. BARENS: WHAT IS REQUIRED OF COUNSEL IS ONE HOUR,  
27 SIR?

28 THE COURT: ONE HOUR.

D-3

1 MR. BARENS: THAT IS NOTICE, SIR?

2 THE COURT: YES, IN CASE THEY HAVE SOME QUESTIONS OR  
3 SOMETHING OR ARRIVE AT A VERDICT. THAT IS ONE HOUR.

4 YOU HAVE -- GIVE YOUR TELEPHONE NUMBER TO THE  
5 CLERK, WHERE YOU ARE GOING TO BE.

6 MR. BARENS: I WILL GIVE HER MY CARD, LIKE I GIVE EVERY  
7 WOMAN I MEET.

8 THE COURT: YOU HAVE AN AUTOMOBILE TELEPHONE, HAVE  
9 YOU NOT?

10 MR. BARENS: YES, QUITE SO.

11 THE COURT: ALL RIGHT. WELL, IT WILL BE EASY TO GET  
12 YOU, THEN.

13 MR. WAPNER: YOUR HONOR, I HAVE ONE OTHER MATTER I  
14 WOULD LIKE TO TAKE UP WITH THE COURT BUT I NEED THE BAILIFF  
15 HERE.

16 MR. BARENS: CAN'T WE DISCUSS IT WITHOUT THE BAILIFF?  
17 LET'S JUST PROCEED WITH IT.

18 MR. WAPNER: IT IS NO SECRET TO ANYBODY WHAT IS GOING  
19 ON.

20 MR. BARENS: YES, WE ARE TAKING --

21 MR. WAPNER: THERE IS A MOTION BY THE PEOPLE TO HAVE  
22 MR. HUNT REMANDED TO CUSTODY AT THIS TIME UNDER SECTION  
23 1129 OF THE PENAL CODE, PENDING THE OUTCOME OF THE  
24 DELIBERATIONS IN THIS CASE.

25

26

27

28

7-1  
1 MR. BARENS: YOUR HONOR, THE DEFENDANT --

2 THE COURT: THE DEFENDANT IS GOING TO ARGUE THAT HE HAS  
3 BEEN VERY PROMPT AT EVERY APPEARANCE HE MADE IN THIS COURT.  
4 I THINK --

5 MR. BARENS: HE HAS NEVER BEEN LATE AND HE SPENDS THE  
6 REST OF THE TIME IN MY OFFICE.

7 MR. WARNER: YOUR HONOR, THIS WAS -- I WOULD SUBMIT  
8 TO THE COURT THAT CIRCUMSTANCES HAVE NOW DRAMATICALLY CHANGED.  
9 THE JURY IS OUT AND IT IS IN THE NATURE OF -- WELL, THE MOTION  
10 TO REMAND HIM IS MADE BECAUSE THE CIRCUMSTANCES HAVE CHANGED  
11 AND, REALLY, HE HAS NOTHING TO LOSE AND EVERYTHING TO GAIN  
12 BY NOT COMING BACK.

13 MR. BARENS: YOUR HONOR, MIGHT I BE HEARD?

14 THE COURT: YES.

15 MR. BARENS: TWO THINGS, YOUR HONOR. NUMBER ONE, THERE  
16 IS A COMPOUND \$2 MILLION BOND SURROUNDING THE DEFENDANT.

17 THE COURT: \$2 MILLION, IS IT?

18 MR. BARENS: WELL, THERE IS A MILLION DOLLAR PROPERTY  
19 VALUE HERE, BECAUSE IT IS A TWO TO ONE BOND, JUDGE, THE WAY  
20 IT COMES DOWN THERE IS TWO TO ONE ENCOMPASSING ON THAT  
21 SAN FRANCISCO COURT MATTER, WHICH IS ALL KIND OF COUPLED  
22 TOGETHER SOMEHOW. WE HAVE THE SAN FRANCISCO MATTER PENDING,  
23 YOUR HONOR.

24 THE DEFENDANT HAS BEEN -- I HAVE NEVER IN, GOING  
25 ON 20 YEARS, HAD A FINER EXAMPLE OF COOPERATION FROM A  
26 DEFENDANT ON EVERY OCCASION AT ALL TIMES.

27 YOUR HONOR, TO BE PERFECTLY CANDID WITH THE COURT,  
28 AS TO HOW, LEGITIMATELY, I FEEL ABOUT THE DEFENDANT IN THIS

1 REGARD, I WOULD BE WILLING AS AN OFFICER OF THIS COURT TO  
2 TAKE THE DEFENDANT INTO MY PERSONAL RECOGNIZANCE AND HAVE HIM  
3 STAY WITH ME 24 HOURS A DAY, WHEREVER I GO, WHETHER IT BE  
4 TO MY OFFICE, LIVE AT MY HOME, WHEN I GO TO THE MARKET, TO  
5 THE CAR WASH, HAVE HIM IN MY PRESENCE 24 HOURS A DAY, I AM  
6 THAT CONFIDENT AND COMMITTED TO THIS DEFENDANT AND TO HIS  
7 SENSE OF RESPONSIBILITY TOWARD THIS COURT AND TOWARD THE  
8 JUSTICE SYSTEM.

9 HE HAS NEVER, AND I REPRESENT THIS IN ALL CANDOR  
10 TO THIS COURT, IN THE TWO AND A HALF YEARS THAT I HAVE BEEN  
11 INVOLVED WITH THIS DEFENDANT, THERE HAS NEVER BEEN A SINGLE  
12 DAY THAT I DIDN'T KNOW EXACTLY WHERE HE WAS.

13 AND NOT ONLY MR. HUNT, BUT THE ROBERTS AT ALL  
14 TIMES HAVE SHOWN AN EXEMPLARY CONCERN, AND YOU CAN SEE WHY,  
15 OF LETTING ME KNOW AT ALL TIMES WHERE HE WAS AND MAKING SURE  
16 THEY KNEW WHERE HE WAS.

17 AND HE HAS ALWAYS BEEN KIND OF VIGOROUS IN LETTING  
18 US KNOW WHERE HE WAS, EVEN IF WE DIDN'T WANT TO KNOW WHERE  
19 HE WAS. HE HAS SHOWN ALMOST A PARANOIA CONCERN TO LET US  
20 KNOW WHERE HE IS ALL OF THE TIME.

21 I CAN ONLY REPRESENT THAT THERE HAS NEVER BEEN  
22 A DAY AT THIS TRIAL THAT HE HASN'T BEEN AT MY OFFICE BEFORE  
23 THE TRIAL AND AFTER THE TRIAL AND ON EVERY SATURDAY AND  
24 SUNDAY, YOUR HONOR, BECAUSE I HAVE BEEN THERE, TOO.

25 I DON'T FEEL THIS IS NECESSARY OR APPROPRIATE.  
26 I HAVE ABSOLUTELY EVERY CONFIDENCE IN THIS DEFENDANT.

27 NOW YOUR HONOR, I HAVE NEVER MADE A STATEMENT  
28 LIKE THIS BEFORE A COURT BEFORE. EVERY TRANSCRIPT I HAVE

1 EVER APPEARED IN COULD BE PRODUCED AND NEVER, HAVE I EVER  
2 SAID THIS TO A JUDGE.

3 THE COURT: THE ONLY CONCERN THAT THE DISTRICT ATTORNEY  
4 HAS IS WITH RESPECT TO KARNY. I THINK SOMEHOW OR ANOTHER  
5 HE IS APPREHENSIVE ABOUT KARNY.

6 MR. BARENS: HE HAS TESTIFIED.

7 THE COURT: YES, I KNOW. I KNOW BUT HE HAS TO TESTIFY  
8 UPSTATE, TOO.

9 MR. BARENS: WELL, YOUR HONOR, HE IS IN THIS WITNESS  
10 PROTECTION PROGRAM. I MEAN GOOD GRIEF, YOUR HONOR, HIS  
11 TESTIMONY UP THERE COULD HARDLY BE MORE ASSERTIVE AGAINST  
12 THIS DEFENDANT THAN IT IS DOWN HERE.

13 YOUR HONOR, THERE IS NO DIFFERENCE IN HIS ROLE  
14 IN THAT TRIAL, EXCEPT THERE ARE THREE OTHER DEFENDANTS, THAN  
15 THERE IS DOWN IN THIS TRIAL. THE DEFENDANT SIMPLY HAS MET  
16 ALL OF HIS REQUIREMENTS, YOUR HONOR. I WILL KEEP HIM  
17 CLOISTERED WITH ME, IF NEED BE, I WILL TAKE THAT RESPONSIBILITY.

18 THE COURT: I DON'T WANT YOU TO DO THAT. I AM GOING  
19 TO DENY THE MOTION WITHOUT PREJUDICE, WITH THE RIGHT TO RENEW  
20 IT AT ANY APPROPRIATE TIME.

21 MR. BARENS: THANK YOU, YOUR HONOR.

22 THE COURT: I HAVE A PERSONAL MATTER TO DISCUSS WITH  
23 HIM.

24 MR. BARENS: ALL COUNSEL?

25 THE COURT: NO. IT HAS NOTHING TO DO WITH YOU. IT  
26 IS PERSONAL.

27 MR. BARENS: I SEE, YOUR HONOR. COUNSEL IS EXCUSED?

28 THE COURT: YES.

1 MR. BARENS: THANK YOU.

2 (AT 3:47 P.M. AN ADJOURNMENT WAS TAKEN  
3 UNTIL MONDAY, APRIL 20, 1987, AT 9:30 A.M.)  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28