

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT

*JA*

88DA0269

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 87 OF 101  
(PAGES 13297 TO 13317, INCLUSIVE)

COPY

ROSEMARIE GOODBODY, CSR NO. 932  
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OFFICIAL REPORTERS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT WEST C

HON. LAURENCE J. RITTENBAND, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA, )

PLAINTIFF, )

VS. )

NO. A-090435

JOSEPH HUNT, )

DEFENDANT. )

REPORTERS' DAILY TRANSCRIPT  
WEDNESDAY, MAY 6, 1987

VOLUME 87

PAGES 13297 TO 13317, INCL.

APPEARANCES:

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

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

AND

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

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

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WEDNESDAY, MAY 6, 1987

VOLUME 87

PAGES 13297 - 13317

P.M.

13297

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PROCEEDINGS

MOTION FOR CONTINUANCE

13297

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

5  
6 (THE FOLLOWING PROCEEDINGS WERE HELD  
7 IN OPEN COURT OUTSIDE THE PRESENCE OF  
8 THE JURY AND THE DEFENDANT NOT BEING  
9 PRESENT:)

10 MR. BARENS: GOOD AFTERNOON, YOUR HONOR.

11 YOUR HONOR, I HAVE SPOKEN WITH MR. WAPNER AND  
12 ARRANGED TO MEET HERE IN THE COURTROOM TODAY, AS THE DEFENSE  
13 IS REQUESTING A TWO-WEEK CONTINUANCE AT A MINIMUM IN LIGHT  
14 OF SEVERAL DEVELOPMENTS THAT WE HAVE EXPERIENCED IN THE  
15 IMMEDIATE PAST.

16 THE MOST PRESSING OF WHICH, MR. CHIER'S WIFE HAD  
17 AN EMERGENCY SITUATION THAT DEVELOPED LAST FRIDAY AND WAS  
18 HOSPITALIZED, CONFINED AND FINALLY ON MONDAY DELIVERED A  
19 CHILD PURSUANT TO THE SURGICAL PROCEDURE. IT HAS BEEN AN  
20 EXTREMELY UNFORTUNATE TYPE SETTING WHERE MR. CHIER HAS NOT  
21 BEEN AVAILABLE TO ME SINCE LAST FRIDAY AND WILL NOT BE UNTIL  
22 THIS FRIDAY, AS HE IS ATTENDING HIS WIFE. THERE HAVE BEEN  
23 A LOT OF COMPLICATIONS.

24 THE COURT: YOU MEAN, DOES HE ALSO HAVE A MEDICAL DEGREE?

25 MR. BARENS: IF I MIGHT COMMENT, YOUR HONOR.

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1 MR. BARENS: THERE ARE NO GRANDPARENTS AVAILABLE TO  
2 BE WITH HIS WIFE DURING THIS DIFFICULT TIME, YOUR HONOR.  
3 MR. CHIER'S PARENTS ARE DECEASED AND HER PARENTS WILL NOT  
4 ARRIVE FROM THE EAST COAST UNTIL SATURDAY.

5 THE COURT: MR. CHIER'S PARENTS ARE DECEASED?

6 MR. BARENS: YES.

7 THE COURT: I THOUGHT HE HAD A FATHER.

8 MR. BARENS: MR. CHIER'S FATHER --

9 THE COURT: I BELIEVE HE IS A DOCTOR.

10 MR. BARENS: HE IS A DOCTOR.

11 THE COURT: IS HE REMARRIED?

12 MR. BARENS: NOT TO MY KNOWLEDGE, YOUR HONOR. I DON'T  
13 KNOW, YOUR HONOR, IF HIS FATHER IS REMARRIED. I WOULD NOT  
14 BE AWARE OF IT.

15 THE COURT: WELL, I KNOW HE IS GOING WITH SOMEBODY.

16 MR. BARENS: I WOULD NOT BE AWARE OF THAT, YOUR HONOR.  
17 I KNOW THAT HIS MOTHER PASSED AWAY PRIOR TO OUR TRIAL  
18 COMMENCING.

19 THE COURT: YES. I KNOW. I POSTPONED THE TRIAL FOR  
20 A WHILE WHEN SHE WAS SICK. I POSTPONED THE TRIAL FOR ANOTHER  
21 MONTH WHILE HE WAS RECUPERATING FROM THE GRIEF OF HIS MOTHER'S  
22 PASSING AWAY. AND I UNDERSTAND THAT.

23 THOSE ARE TWO MONTHS I HAVE GIVEN HIM IN THIS  
24 PARTICULAR CASE BECAUSE OF HIS MOTHER BEING SICK AND THEN  
25 AFTER SHE PASSED AWAY. HE WANTED ANOTHER MONTH TO RECUPERATE  
26 FROM HER DEATH.

27 MR. BARENS: WELL, I QUITE WELL APPRECIATE THAT, YOUR  
28 HONOR. YOUR HONOR, NONETHELESS, I SIMPLY MUST ADVISE THE

1 COURT THAT IN LIGHT OF THIS, I WOULD LIKE TO STATE MY OTHER  
2 REASONS AS WELL, AS TO WHY I AM SIMPLY NOT PREPARED TO  
3 PROCEED DURING THE PENALTY PHASE.

4 YOUR HONOR, OUR PENALTY PHASE SPECIALIST,  
5 CASEY COHEN HAS BEEN WORKING WITH US SINCE THE START OF  
6 THIS MATTER. HE IS AN EXPERT ON THE PREPARATION OF THESE  
7 MATTERS. HE RESIGNED FROM THE CASE THREE WEEKS AGO.

8 THE COURT: WHO IS CASEY COHEN?

9 MR. BARENS: HE IS A PH.D. WHO SPECIALIZES AND IS  
10 KNOWN THROUGHOUT CALIFORNIA AS A MAN OF CONSIDERABLE YEARS  
11 OF STANDING -- HE SPECIALIZES IN THE ANALYSIS AND PREPARATION  
12 OF PENALTY PHASE PROCEEDINGS.

13 YOUR HONOR SHOULD BE AWARE I HAVE NEVER DONE  
14 A PENALTY PHASE BEFORE IN A CAPITAL CASE.

15 THE COURT: WELL, YOU DID REMARKABLY WELL WHILE YOU  
16 WERE IN IT.

17 MR. BARENS: I HAVE DONE SOME TRIALS BEFORE.

18 THE COURT: FOR SOMEONE NOT BEING FAMILIAR WITH IT.  
19 YOU DID EXTREMELY WELL.

20 MR. BARENS: I MEAN I HAVE NEVER DONE A PENALTY PHASE.  
21 I HAVE DONE CAPITAL CASES BEFORE.

22 THE COURT: PENALTY PHASES ARE NO MORE THAN TRIALS  
23 OF THE CASE. YOU CAN ACQUAINT YOURSELF WITH THE LAW ON  
24 THAT SUBJECT IN 24 HOURS. I WILL GIVE YOU THE BOOK.

25 I HAVE FAMILIARIZED MYSELF WITH IT, TOO.

26 MR. BARENS: I HAVE BEEN BUSY WITH THAT, QUITE WELL  
27 AND --

28 THE COURT: I HAVE EVERY CONFIDENCE YOU CAN HANDLE

1 IT COMPETENTLY.

2 MR. BARENS: MR. COHEN WAS INVOLVED IN PREPARING THE  
3 DEFENSE WITNESSES IN VARIOUS FORMS OF EXPERT TESTIMONY.  
4 WE ARE IN THE PROCESS OF REPLACING HIS SERVICES AT THE PRESENT  
5 TIME.

6 ADDITIONALLY YOUR HONOR, WE HAVE BEEN RECEIVING  
7 A VARIETY OF NEW MATERIALS BOTH FROM MR. WAPNER OVER THE  
8 PAST FEW DAYS AND OF OUR OWN AS A RESULT OF OUR INVESTIGATION  
9 WHICH INVOLVES LINGERING DOUBT TYPE ISSUES THAT WE BELIEVE  
10 WILL BE EXTREMELY SIGNIFICANT IN THE PENALTY PHASE.

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1 THE COURT: LINGERING DOUBT, WHAT DO YOU MEAN?

2 MR. BARENS: THERE HAVE BEEN A VARIETY OF ADDITIONAL  
3 LEVIN SIGHTINGS, LET'S REFER TO THEM AS, WHICH WE HAVE TRIED  
4 TO PURSUE, BOTH IN CALIFORNIA, IN KENTUCKY, FLORIDA AND TEXAS,  
5 WHERE WE HAVE BEEN HAVING OUR INVESTIGATORS RUN AROUND IN  
6 EFFORTS -- AND I KNOW MR. WAPNER'S OFFICE HAS BEEN DOING THE  
7 SAME AND MR. WAPNER HAS BEEN KIND IN SHARING MATERIALS WITH  
8 US THAT HAVE RESULTED IN OUR OFFICE HAVING BEEN DOING THE  
9 SAME.

10 THE COURT: COULDN'T ALL OF THAT WAIT UNTIL AFTER THE  
11 PENALTY PHASE IS CONCLUDED AND THEN YOU CAN MAKE A MOTION  
12 FOR NEW TRIAL ON THE GROUND OF NEWLY DISCOVERED EVIDENCE?  
13 WE DON'T NEED THAT NOW, DO WE?

14 MR. BARENS: I BELIEVE, YOUR HONOR, IT IS MERITORIOUS  
15 DURING A PENALTY PHASE TO BRING FORWARD WHAT EVIDENCE THERE  
16 MIGHT BE, IF IT EXISTS, CONCERNING EVIDENCE OF LINGERING  
17 DOUBT. IT SEEMS TO BE SOMETHING WHICH ALL THE AUTHORITIES  
18 SEEM TO REFERENCE DURING PENALTY PHASE PREPARATION, WHICH  
19 WE SEEK TO INTRODUCE AND FEEL OBLIGED TO INTRODUCE UNDER THE  
20 CIRCUMSTANCES. THOSE ARE THE OTHER THINGS THAT WERE  
21 ATTENDING.

22 THERE IS ADDITIONALLY, WE NEVER RECEIVED, THROUGH  
23 NO FAULT OF MR. WAPNER'S, THE DEFINITION OF THE CIRCUMSTANCES  
24 IN AGGRAVATION THAT THE PEOPLE WILL BE PUTTING FORWARD.

25 THE COURT: I THOUGHT THEY GAVE THEM TO YOU.

26 MR. BARENS: YOUR HONOR, THERE HAS BEEN A BIT OF  
27 CONFUSION.

28 THE COURT: EVEN BEFORE THE OUTSET OF THIS TRIAL, YOU



1 KNEW THAT IF HE WAS CONVICTED THAT THEY ARE GOING TO BRING  
2 UP THE ESLAMINIA CASE, DIDN'T YOU?

3 MR. BARENS: THERE IS NO QUESTION.

4 THE COURT: YOU DIDN'T HAVE ANY DOUBTS OF THAT, DID  
5 YOU?

6 MR. BARENS: NO, YOUR HONOR. WE HAVE BEEN PREPARING.

7 HOWEVER, IN ADDITION TO THE ESLAMINIA CASE, I  
8 AM ADVISED THERE ARE TWO OTHER INCIDENTS AND DIFFERENT MATTERS  
9 THAT THE PEOPLE WILL BE PUTTING FORWARD AND LITIGATING AND  
10 POSSIBLY, NOW A THIRD MATTER THAT MR. WAPNER THIS AFTERNOON  
11 HAS BROUGHT TO MY ATTENTION THAT WILL BEAR LITIGATION.

12 SOME OF THESE OTHER MATTERS, I WAS NOT SPECIFICALLY  
13 AWARE UNTIL I RECEIVED THE ATTENDANT POLICE REPORTS, WHICH  
14 I AM NOW TRYING TO FIND WHAT WE CAN DO BY WAY OF DEFENSE.

15 THE COURT: WHICH IS THAT?

16 MR. BARENS: THERE ARE MATTERS INVOLVING A GENTLEMAN  
17 NAMED MR. SWARTOUT, WHO WAS GENERALLY REFERRED TO DURING THE  
18 TRIAL, IT INVOLVES AN ALLEGED ASSAULT ON THIS INDIVIDUAL BY  
19 MR. PITTMAN ALLEGEDLY, AGAIN AT THE REQUEST OR INSTRUCTION  
20 OF MR. HUNT, ALTHOUGH THE MAN WAS NOT INJURED IN ANY WAY.  
21 IT IS, I PRESUME, POSTURED AS SOME FURTHER NEFARIOUS CONDUCT  
22 ON THE PART OF THE DEFENDANT.

23 THE COURT: YOU MEAN AN AGGRAVATING CIRCUMSTANCE?

24 MR. BARENS: QUITE SO, YOUR HONOR.

25 THERE IS ANOTHER MATTER OF AN ALLEGED SHOOTING  
26 OF A BUILDING AND I CAN'T QUITE CONCLUDE WHO THE PEOPLE  
27 CONTEND SHOT INTO A BUILDING, BUT I PRESUME THEY ARE AGAIN  
28 GOING TO SAY MR. PITTMAN PROBABLY DID IT AT THE REQUEST OR

1 INSTRUCTION OF MR. HUNT. IT WAS A BUILDING. NOTHING HAPPENED  
2 TO ANYBODY EXCEPT WINDOWS WERE OUT ON A BUILDING.

3 AS I CAME INTO THE COURTROOM TODAY, I WAS HANDED  
4 A POLICE REPORT FROM GARDENA ABOUT SOMETHING I HAVE NOT READ  
5 IT YET, BUT EVIDENTLY IT INVOLVES MR. PITTMAN BEING IN  
6 POSSESSION OF SOME SORT OF A FIREARM, WHICH I AM NOT SURE  
7 WHAT THIS IS QUITE YET, YOUR HONOR.

8 THE COURT: WHAT HAS THAT GOT TO DO WITH HUNT?

9 MR. BARENS: NOT HAVING READ THIS YET, YOUR HONOR,  
10 I DON'T KNOW.

11 ALTHOUGH MR. WAPNER WAS KIND ENOUGH TO PROVIDE  
12 ME WITH IT.  
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1 MR. WAPNER: IN A NUTSHELL, WE BELIEVE THAT THE GUN  
2 SEIZED IN THAT INCIDENT IN GARDENA WAS PROBABLY THE ONE USED  
3 TO SHOOT THE BUILDING IN ORANGE COUNTY, THAT WAS AN OCCUPIED  
4 BUILDING.

5 THE COURT: THAT WAS DONE BY PITTMAN, HOW IS THAT  
6 REFERABLE TO HUNT?

7 MR. WAPNER: WELL, THE SHOOTING WAS DONE BY MR. HUNT  
8 AND MR. PITTMAN, ACCORDING TO STATEMENTS THAT WERE MADE TO  
9 STEVE TAGLIANETTI, WHICH WERE CONTAINED IN POLICE REPORTS  
10 THAT WERE MADE OF CONVERSATIONS WITH MR. TAGLIANETTI IN  
11 OCTOBER OF 1984 AND THOSE POLICE REPORTS WERE PART OF THE  
12 ORIGINAL DISCOVERY AT THE PRELIMINARY HEARING AND THE  
13 STATEMENTS ABOUT THE INCIDENTS THAT WE INTENDED TO  
14 INTRODUCE IN THE PENALTY PHASE ARE IN THAT POLICE REPORT,  
15 BOTH STATEMENTS ABOUT BOTH INCIDENTS.

16 IN ANY EVENT, I HAVE NOW INTERRUPTED MR. BARENS  
17 SO WHEN HE IS FINISHED, I WILL ADDRESS ALL OF THE ISSUES THAT  
18 HE IS TALKING ABOUT.

19 MR. BARENS: THE OTHER PROBLEM THAT THE DEFENSE HAS  
20 HAD, SOME OF THE WITNESSES WE SEEK TO BRING FORTH ON BEHALF  
21 OF MR. HUNT ARE OUTSIDE OF THE JURISDICTION AND WE HAVE HAD  
22 A PROBLEM, IN THE FIRST INSTANCE, LOCATING THEM, MOST OF WHICH  
23 WE HAVE LOCATED NOW.

24 AND SECONDARILY, IN SUBPOENAING THEIR ATTENDANCE  
25 OR GETTING THEIR VOLUNTARY COOPERATION.

26 THE COURT: WHO ARE THESE WITNESSES? WHAT ARE THEY  
27 GOING TO TESTIFY TO?

28 MR. BARENS: THESE WOULD BE CHARACTER WITNESSES, YOUR

1 HONOR.

2 THE COURT: OH.

3 MR. BARENS: PRIMARILY FROM CHICAGO, ILLINOIS, YOUR  
4 HONOR, AND A FURTHER WITNESS FROM TEXAS.

5 WE ARE TRYING TO PUT THIS TOGETHER AS BEST WE  
6 CAN, YOUR HONOR.

7 THE COURT: WELL, YOU HAVE GOT BETWEEN NOW AND A WEEK  
8 FROM IT, FOLLOWING, YOU HAVE GOT TWO WEEKS AT LEAST TO GET  
9 THESE PEOPLE IN.

10 MR. BARENS: YOUR HONOR, I HAVE FOUND AS A RESULT, WHAT  
11 I LEARNED FROM THE TRIAL WAS THAT IT IS IMPOSSIBLE TO DO MUCH  
12 MORE THAN PAY ATTENTION AND CROSS-EXAMINE WITNESSES AND DO  
13 OUR HOMEWORK ON A DAILY BASIS ON THAT END OF IT, WITHOUT THE  
14 NECESSITY OF TRYING TO PREPARE YOUR OWN CASE SIMULTANEOUSLY.  
15 I DO NOT THINK THAT IS EFFICACIOUS OR GOOD PRACTICE BY COUNSEL.

16 THE COURT: YOU HAVE AN INVESTIGATOR, DON'T YOU?

17 MR. BARENS: WE DO NOT HAVE AN INVESTIGATOR.

18 THE COURT: YOU HAD IT INVESTIGATED. WHY DON'T YOU  
19 HAVE THE INVESTIGATOR DO ALL OF THIS FOOTWORK FOR YOU?

20 MR. BARENS: ONE OF THE PROBLEMS WE HAVE IS THE  
21 DEFENDANT IS FINANCIALLY STRANGLERED. WE HAVE NO MONEY.

22 THE COURT: WE HAVE BEEN PAYING MONEY FOR THE INVESTIGATOR,  
23 HAVEN'T WE?

24 MR. BARENS: YOUR HONOR, A LONG TIME AGO, WE RAN OUT  
25 OF MONEY.

26 THE COURT: I AM TALKING ABOUT THE COUNTY PAYING FOR  
27 THE INVESTIGATORS.

28 MR. BARENS: I REALIZE THAT BUT --

1 THE COURT: DIDN'T YOU GET AUTHORIZATION -- IT NEVER  
2 CAME TO ME -- BUT DIDN'T YOU GO TO DEPARTMENT B AND ASK FOR  
3 AUTHORIZATION?

4 MR. BARENS: SEVERAL MONTHS AGO.

5 THE COURT: YOU ASKED FOR AUTHORIZATION TO HAVE THE  
6 INVESTIGATOR AND HAVEN'T YOU BEEN PAID?

7 MR. BARENS: SEVERAL MONTHS AGO, BACK IN WELL BEFORE  
8 THE TRIAL, WE HAD RECEIVED SOME FUNDS WHICH ARE PRESENTLY  
9 EXHAUSTED. I HAVE MYSELF --

10 THE COURT: WELL, YOU CAN RECEIVE SOME MORE FUNDS FOR  
11 HIM.

12 MR. BARENS: I HAVE MYSELF BEEN FUNDING THE INVESTIGATION  
13 AND TRANSPORTATION COSTS ON THIS MATTER AND WE WILL BE  
14 SUBMITTING TO THE COURT OUR EXPENSES.

15 BUT YOUR HONOR, SUFFICE IT, AS YOU KNOW, MR. CHDER  
16 HAS BEEN HERE SINCE NOVEMBER AND IT IS NOW MAY AND HE HAS  
17 NEVER RECEIVED A DIME.

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1 THE COURT: I AUTHORIZED SOME PAYMENT FOR HIM LAST  
2 WEEK, DIDN'T I?

3 THE CLERK: THAT WAS THE WEEK BEFORE.

4 MR. BARENS: WE THANK YOUR HONOR FOR THAT. IT WILL  
5 PROBABLY BE A COUPLE OF MONTHS BEFORE THAT PAYMENT IS  
6 RECEIVED. AND TO GO THOSE MANY, MANY MONTHS WITHOUT PAYMENT,  
7 YOUR HONOR, HAS BEEN DIFFICULT FOR THE DEFENSE, YOUR HONOR.  
8 IT IS DIFFICULT FOR MR. CHIER TO MAINTAIN HIMSELF AND  
9 DIFFICULT FOR ME TO MAINTAIN THE EXPENSES ATTENDENT WITH  
10 THE MATTER.

11 THE COURT: I COULD HAVE SAID TO YOU AT THE TIME THAT  
12 YOU FIRST APPROACHED ME, TELLING ME THAT YOU HAD BEEN PAID  
13 \$35,000 -- YOU TOLD ME THAT THE CONTRACT WAS FOR \$50,000  
14 PLUS EXPENSES. SO I TOLD YOU THAT I WOULD AUTHORIZE \$75  
15 AN HOUR FOR YOU. THAT WOULD BE A BALANCE OF \$15,000 AND  
16 UP TO THE TIME THAT I AUTHORIZED THAT, -- WELL, THE PAYMENT  
17 TO YOU HAS BEEN OVER \$22,000.

18 MR. BARENS: THAT'S CORRECT.

19 THE COURT: THERE IS A LIMIT ON HOW MUCH I CAN PAY.  
20 I COULD HAVE SAID TO YOU AND PROPERLY SO, THAT YOU MADE  
21 YOUR BED, NOW LIE IN IT. YOU MADE A CONTRACT AND THAT IS  
22 THE AMOUNT YOU WANTED TO RECEIVE AND ESTIMATED YOU WOULD  
23 GET AND YOU GOT IT AND THAT IS ALL.

24 IF YOU DIDN'T GET THE MONEY FROM HIM, THAT  
25 IS TOO BAD.

26 MR. BARENS: YOUR HONOR, THE AGREEMENT WITH THE  
27 CLIENT WAS THAT THE AMOUNT WOULD BE AUGMENTED IN LIGHT OF  
28 THE TIME EXPENDED --

4-2  
1 THE COURT: WELL, YOU NEVER MENTIONED A WORD ABOUT  
2 THAT. YOU HAD A DIFFERENT KIND OF A CONTRACT THAN THE ONE  
3 YOU TOLD ME ABOUT, THEN.

4 MR. BARENS: I TOLD YOUR HONOR --

5 THE COURT: WHEN YOU WROTE TO ME, YOU TOLD ME IT WAS  
6 A CONTRACT AND YOU SAID IT WAS FOR \$50,000, 35,000 OF WHICH  
7 HAD BEEN PAID AND THE BALANCE -- HE DIDN'T HAVE THE MONEY.  
8 I THOUGHT THAT AT THAT POINT, YOU COULD AT LEAST GET THAT  
9 AMOUNT OF MONEY FROM THE COUNTY.

10 I AM NOT GOING TO GIVE YOU A BLANK CHECK. IT  
11 IS OBVIOUS --

12 MR. BARENS: I NEVER ASKED FOR A BLANK CHECK, YOUR  
13 HONOR. YOUR HONOR UNDOUBTEDLY RECALLS THAT SUBSEQUENTLY,  
14 WE HAD A DISCUSSION WHERE I TOLD YOU THAT I WOULD MAKE  
15 THE ROBERTS AVAILABLE TO YOU, YOUR HONOR, AND WHAT THE  
16 DISCUSSIONS AND REPRESENTATIONS WERE.

17 THE COURT: I DON'T WANT TO TALK TO THE ROBERTS. I  
18 HEARD THE TESTIMONY OF THE ROBERTS IN THIS CASE AND SO DID  
19 THE JURY. I THOUGHT THE TWO OF THEM WERE LYING, OBVIOUSLY  
20 WHEN THEY GAVE HIM AN ALIBI. I DON'T KNOW, THEY MIGHT LIE  
21 TO ME, TOO.

22 I HAVE NO FAITH IN THEM.

23 MR. BARENS: I UNDERSTAND, YOUR HONOR. I UNDERSTAND  
24 YOUR HONOR'S POINT OF VIEW, WHICH I OBVIOUSLY CANNOT AGREE  
25 WITH. HOWEVER, BE THAT AS IT MAY, I DO NOT THINK YOUR HONOR  
26 WOULD CONTINUE WHAT WOULD BE AN ABSOLUTE INJUSTICE TO  
27 EXPECT THAT THE DEFENDANT WOULD GET PROPER REPRESENTATION  
28 AS TO THE MANY, MANY MONTHS THAT IT HAS BEEN SO FAR AND

1 IN THE LAST MONTH AND THE TIME THAT I ANTICIPATE IS AHEAD  
2 AND THE COSTS ATTENDANT THERETO, WITHOUT COMPENSATING COUNSEL  
3 WHO HAD DILIGENTLY PURSUED THIS MATTER AND --

4 THE COURT: COMPENSATION IS ANOTHER MATTER. THAT IS  
5 NOT AN ISSUE AT THIS PARTICULAR TIME.

6 BUT WHAT IS AT ISSUE AT THIS PARTICULAR TIME  
7 IS YOUR DESIRE TO CONTINUE THE PENALTY PHASE OF THIS CASE,  
8 WHICH WOULD SO SERIOUSLY PREJUDICE OTHER PEOPLE.

9 THERE IS THE CASE THAT WE ARE IN NOW, FOR  
10 EXAMPLE. THEY ARE ENTITLED TO THEIR PENALTY TRIAL. YOU  
11 ESTIMATED THAT AMOUNT OF TIME. SO WE PUT THIS CASE OVER  
12 THAT WE HAVE NOW FOR TWO WEEKS UNTIL MAY 26TH. HOPEFULLY  
13 BY THAT TIME, WE WILL HAVE FINISHED YOUR CASE. WHAT AM  
14 I GOING TO DO WITH THEM?

15 MR. BARENS: I DID NOT SEEK TO INCONVENIENCE OTHER  
16 MATTERS BEFORE THE COURT. HOWEVER, I --

17 THE COURT: WHAT DO YOU WANT TO DO?

18 MR. BARENS: I HAVE ASKED AND STRENUOUSLY REQUESTED  
19 A CONTINUANCE ON BEHALF OF THE DEFENDANT. WE ARE NOT  
20 PREPARED TO PROCEED ON THE 11TH. I DID NOT COME HERE TO  
21 WASTE THE COURT'S TIME FOR FRIVOLOUS REASONS.

22 IF THERE WERE A WAY TO PROCEED, WE WOULD HAVE  
23 EXERCISED A METHOD. THE CIRCUMSTANCES INVOLVING MR. CHIER'S  
24 WIFE WERE JUST INEVITABLE AND --

25 THE COURT: I DON'T RECOGNIZE THAT AS AN EXCUSE.

26 MR. BARENS: YOUR HONOR, I HAVE TO DEAL WITH THAT  
27 AND --

28 THE COURT: I DON'T RECOGNIZE THAT. I HAVE HEARD



1 ENOUGH ABOUT MR. CHIER AND HIS CONTINUANCE BECAUSE OF HIS  
2 MOTHER AND NOW IT IS HIS WIFE.

3 I DON'T THINK THAT HE HAS TO BE AT HER BEDSIDE  
4 EVERY MINUTE OF THE TIME BECAUSE OF HER CONFINEMENT OR  
5 ANYTHING. OTHER MEN HAVE WIVES WHO HAVE CHILDREN AND THEY  
6 ARE ABLE TO DO THEIR DUTY AS LAWYERS OR DOCTORS OR ANYTHING  
7 ELSE.

8 AND BECAUSE HE MIGHT FEEL VERY SENSITIVE ABOUT  
9 THOSE THINGS, ABOUT HIS MOTHER AND HIS WIFE, I DON'T  
10 RECOGNIZE THAT AS BEING A LEGAL EXCUSE. HE DOESN'T HAVE  
11 TO BE AROUND HER BEDSIDE EVERY MINUTE OF THE TIME.

12 MR. BARENS: YOUR HONOR, I APPRECIATE YOUR HONOR'S  
13 POINT OF VIEW. HOWEVER, I HAVE TO DEAL WITH THIS PROFESSIONALLY  
14 IN PREPARING FOR THE DEFENDANT'S REPRESENTATION, WHICH I  
15 TAKE IT EXTREMELY SERIOUSLY AT THIS JUNCTURE AND I DID  
16 THROUGHOUT --

17 THE COURT: I TOLD YOU TIME AND TIME AGAIN, I FEEL  
18 THAT YOU ARE MORE THAN CAPABLE OF HANDLING THIS CASE WITHOUT  
19 HAVING ANYBODY ASSIST YOU.

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1 BUT BECAUSE OF THE FACT THAT YOU STARTED WITH  
2 THIS LAWYER, SO-CALLED, I WILL GO ALONG WITH IT. BUT I  
3 WON'T DELAY THE CASE BECAUSE OF HIM. I AM TELLING YOU RIGHT  
4 NOW OR BECAUSE HIS WIFE IS HAVING A BABY OR HAVING SOME  
5 COMPLICATIONS.

6 MR. BARENS: I ASK YOUR HONOR TO RECOGNIZE THE FACT  
7 THAT HE IS AN INTEGRAL PART OF THE PREPARATION OF THE PENALTY  
8 PHASE. HE HAS CASE RESPONSIBILITY FOR --

9 THE COURT: TELL HIM TO COOPERATE WITH YOU THEN IN  
10 CONNECTION WITH THIS MATTER.

11 MR. BARENS: BUT YOUR HONOR, I HAVE LOST A SEVEN OR  
12 NINE-DAY PERIOD, DEPENDING ON WHEN HE IS FIRST AVAILABLE  
13 TO ME. I DO NOT ANTICIPATE THAT WILL BE BEFORE SATURDAY.  
14 I CANNOT MAKE UP THAT IN TERMS OF PREPARING WITNESSES.

15 THE COURT: I WILL HEAR FROM THE PEOPLE.

16 MR. WAPNER: WELL, LET ME ADDRESS SOME OF THE ISSUES  
17 THAT MR. BARENS RAISED. FIRST OF ALL AS FAR AS THE NOTICE  
18 IS CONCERNED, IN THE COURT FILE YOU WILL FIND A NOTICE OF  
19 INTENTION TO INTRODUCE EVIDENCE IN AGGRAVATION. IT WAS  
20 FILED IN JUNE OF 1985.

21 AND ALTHOUGH I DID NOT --

22 THE COURT: I HAVE GOT A COPY OF IT. IT WAS JUNE  
23 18, 1985.

24 MR. WAPNER: I HAVE NOT CHECKED WITH THE COURT REPORTER  
25 TODAY. BUT I BELIEVE THAT THE DAY IT WAS HANDED TO COUNSEL,  
26 A STATEMENT WAS MADE ON THE RECORD THAT IT WAS BEING PRESENTED  
27 TO COUNSEL. AND I KNOW THAT I WAS VERY SENSITIVE TO THE  
28 ISSUE OF GIVING THEM A NOTICE BECAUSE OUR OFFICE SENDS OFF

1 MEMORANDA IN DEATH PENALTY CASES SAYING TO BE AWARE OF THIS  
2 SECTION AND MAKE SURE YOU GIVE NOTICE SUFFICIENTLY AHEAD  
3 OF TRIAL SO THAT THERE CAN BE NO CLAIM THEY WEREN'T NOTIFIED  
4 IN TIME.

5 MR. BARENS WHEN I TALKED TO HIM, I THINK LAST  
6 WEEK, SAID THAT HE HAD NOT RECEIVED -- COULDN'T FIND OR  
7 HAD NOT RECEIVED THE NOTICE. AND I SAID THAT I WOULD SEND  
8 HIM ANOTHER COPY. AND I SENT THEM A COPY WITH THE COURT  
9 FILE STAMP ON IT FROM JUNE OF 1985.

10 HE SAYS THAT HE WAS AWARE OF THE ESLAMINIA  
11 CASE GOING TO BE INTRODUCED IN AGGRAVATION AND WHEN MR.  
12 LIVESAY TESTIFIED AT THE BEGINNING OF THE TRIAL, HE WAS  
13 CROSS-EXAMINED BY MR. BARENS ABOUT THE INCIDENT INVOLVING  
14 MR. SWARTOUT. THAT IS ONE OF THE THINGS THAT WE ALLEGE  
15 IN AGGRAVATING CIRCUMSTANCES. AND WE ASKED HIM WHETHER  
16 IT WOULD MAKE A DIFFERENCE FOR EXAMPLE, IF IT WAS ONLY TEA  
17 THAT WAS THROWN ON MR. SWARTOUT WHICH HE INDICATED TO ME  
18 AT THAT TIME WAS BEFORE WE STARTED SELECTING THE JURY IN  
19 THE CASE. MR. BARENS WAS AWARE OF THAT PARTICULAR INCIDENT.

20 THE REPORT THAT I GAVE HIM THAT DAY, IS NOT  
21 A NEW INCIDENT. IT IS ONLY PART OF IT, ALTHOUGH IT REFERS  
22 TO A DIFFERENT INCIDENT. IT IS GOING TO BE USED AS PART  
23 OF THIS SWARTOUT SHOOTING INCIDENT INVOLVING THE SAME GUN  
24 WE ARE TALKING ABOUT.

25 I SENT HIM THOSE TWO, THE REPORT OF THE SWARTOUT  
26 INCIDENT AND THE REPORT OF THE COKER INCIDENT WHICH ARE  
27 THE OTHER TWO AGGRAVATING INCIDENTS.

28 AGAIN LAST WEEK, JUST OUT OF AN ABUNDANCE OF

1 CAUTION -- I AM FAIRLY CERTAIN THAT I SENT THOSE TO HIM  
2 TWO YEARS AGO WHEN I GAVE HIM THIS NOTICE. BUT I DIDN'T  
3 WANT TO HAVE IT COMING UP AGAIN DURING THE PENALTY PHASE  
4 SAYING THAT THEY DIDN'T KNOW ANYTHING ABOUT IT.

5 AS FAR AS THE LINGERING DOUBT ISSUE AND  
6 INVESTIGATING THE OTHER THINGS, I DON'T KNOW ALL THE THINGS  
7 THAT THEY ARE DOING. BUT TO SAY THAT THERE ARE PEOPLE  
8 IN KENTUCKY AND PEOPLE IN FLORIDA -- FIRST OF ALL, THAT  
9 REFERS TO ONE INCIDENT. SECOND OF ALL, WE TOLD MR. BARENS  
10 THAT IT INVOLVED SOME JAILER IN A SMALL COUNTY IN THE STATE  
11 OF KENTUCKY WHO CLAIMS HE SAW LEVIN IN THE JAIL.

12 WE HAVE TRACED THAT PERSON TO FLORIDA AND THE  
13 PEOPLE IN FLORIDA ARE SENDING US A BOOKING PHOTO AND THE  
14 FINGERPRINTS AND IT IS VERY SIMPLE. IT IS EITHER HIM OR  
15 NOT HIM. AND SO, THAT DOES NOT TAKE INVESTIGATION.

16 THE COURT: WHEN DO YOU EXPECT TO GET THAT?

17 MR. WAPNER: WHAT?

18 THE COURT: WHEN?

19 MR. WAPNER: WITHIN THE NEXT DAY OR TWO. IT SHOULD  
20 HAVE BEEN SENT EARLIER THIS WEEK. I MEAN, THE INFORMATION  
21 THAT WE HAVE, THE EVIDENCE FROM THE PEOPLE IN FLORIDA  
22 INDICATES THAT THIS PERSON HAS A RECORD IN FLORIDA GOING  
23 BACK TO 1962 AND PROBABLY HAS NOT BEEN WEST OF ARKANSAS.  
24 BUT IN ANY EVENT --

25 THE COURT: YOU SAY THAT HE SAYS HE SAW LEVIN? IS  
26 THAT THE IDEA?

27 MR. WAPNER: THIS PERSON, THIS JAILER, CLAIMS THAT  
28 HE SAW THE 20/20 PROGRAM AND SAW THE PICTURE OF LEVIN AND

1 SAYS THAT HE SAW SOMEONE WHO LOOKED LIKE LEVIN AND HE THOUGHT  
2 ABOUT IT AND HE SAW HIM IN THE JAIL. THEN WE CALLED THERE  
3 AND HE SAYS, "WELL, IT WAS JUST A MISDEMEANOR AND WE DON'T  
4 KEEP RECORDS ON MISDEMEANORS."  
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5-1  
1 AND SO WE DON'T HAVE BOOKING RECORDS AND SO WE  
2 TRACED THIS PERSON DOWN TO FLORIDA AND WE ARE GETTING JAIL  
3 RECORDS. HE IS IN CUSTODY DOWN IN FLORIDA SO WE ARE GETTING  
4 THOSE RECORDS.

5 THE COURT: WELL, YOU WILL HAND THEM OVER, OF COURSE,  
6 TO MR. BARENS, WON'T YOU?

7 MR. WAPNER: WELL, WE WILL HAND THEM OVER TO MR. BARENS  
8 AND IF IT IS MR. LEVIN, WE WILL COME IN AND DISMISS THE CASE  
9 BUT I DON'T THINK THERE IS MUCH CHANCE OF THAT HAPPENING.  
10 ACTUALLY, I DON'T THINK THERE IS ANY CHANCE OF THAT HAPPENING.

11 AND AS FAR AS THE WITNESSES BEING OUTSIDE OF THE  
12 STATE, IF THESE ARE WITNESSES THAT ARE GOING TO BE CHARACTER  
13 WITNESSES, THEN I DON'T KNOW WHO THEY ARE BUT IT SEEMS TO  
14 ME THAT IF THEY ARE BEING CALLED AS CHARACTER WITNESSES, THEY  
15 ARE GOING TO BE COOPERATIVE AND YOU DON'T NEED TO SUBPOENA  
16 THEM THROUGH ANY INTERSTATE COMPACT.

17 I WOULDN'T THINK YOU WOULD WANT TO CALL A CHARACTER  
18 WITNESS WHO YOU HAD TO SUBPOENA TO COURT AND FORCE TO GET  
19 HERE.

20 I DON'T KNOW HOW LONG IT TAKES TO GET THEM BUT --

21 THE COURT: AREN'T THERE SUFFICIENT CHARACTER WITNESSES  
22 HERE IN THIS COMMUNITY WITHOUT HAVING PEOPLE COME FROM  
23 CHICAGO?

24 MR. BARENS: IT IS DIFFICULT IN THIS COMMUNITY, YOUR  
25 HONOR, TO FIND SYMPATHETIC WITNESSES AT THIS POINT BASED ON  
26 THE PUBLICITY THAT HAS ATTENDED THIS TRIAL.

27 THE COURT: DO YOU THINK IT WOULD BE DIFFERENT IF  
28 SOMEBODY COMES FROM CHICAGO?

5-2  
1 MR. BARENS: I HAVE DONE MY BEST, YOUR HONOR, TO  
2 SOLICIT WITNESSES THAT WOULD BE BENEFICIAL TO THE DEFENDANT.

3 MR. WAPNER: AND AS FAR AS THE INVESTIGATOR QUITTING  
4 GOES, I MEAN I ASSUME HE LEFT BEHIND ALL OF THE THINGS THAT  
5 HE DID.

6 HE IS NOT GOING TO TESTIFY, IN ANY EVENT, I ASSUME,  
7 SO HIS REPORTS AND EVERYTHING ARE THERE.

8 THE COURT: YOU MEAN THIS PSYCHOLOGIST, YOU MEAN OR  
9 SOMEBODY ELSE?

10 MR. WAPNER: NO. HE SAID THAT IT IS A --

11 MR. BARENS: HIS HONOR IS CORRECT.

12 THE COURT: PARDON ME?

13 MR. BARENS: HIS HONOR IS CORRECT IN THE REFERENCE.

14 THE COURT: A PSYCHOLOGIST THAT WOULD ASSIST PEOPLE  
15 IN THE PREPARATION OF MURDER CASES.

16 MR. WAPNER: IN ANY EVENT, I MEAN I HAVE DISCUSSED IT  
17 WITH PEOPLE IN MY OFFICE AND, AS THE COURT POINTS OUT, IT  
18 PRESENTS A GREAT INCONVENIENCE TO OTHER CASES THAT ARE IN  
19 PROGRESS AND I THINK THAT --

20 THE COURT: I THINK YOU HAVE TO DO THE BEST YOU CAN.  
21 LET'S SEE WHAT HAPPENS DURING THE TRIAL AND IF YOU NEED ANY  
22 FURTHER TIME, THEN I WILL CONSIDER IT AT THAT TIME. AT THIS  
23 MOMENT, I AM NOT INCLINED TO GRANT YOUR MOTION. I SET THE  
24 TIME THAT YOU NEEDED, I ACCEPTED THE TIME YOU WANTED.

25 MR. BARENS: I ASKED FOR MORE TIME, YOUR HONOR, BUT  
26 YOUR HONOR --

27 THE COURT: NO, NO. I GAVE YOU MORE THAN WHAT YOU WANTED.  
28 YOU SAID TWO WEEKS AND I GAVE YOU MORE THAN TWO WEEKS.

5-3  
1 MR. BARENS: I ASKED FOR THREE WEEKS, AS I APPROACHED  
2 THE BENCH, YOUR HONOR, THE RECORD WOULD REFLECT --

3 THE COURT: WHEN WAS THAT?

4 MR. BARENS: WEDNESDAY, TWO WEEKS AGO, YOUR HONOR.

5 THE COURT: TWO WEEKS AGO THAT THE VERDICT CAME DOWN?

6 MR. BARENS: TWO WEEKS TODAY, YOUR HONOR.

7 THE COURT: SO YOU HAVE HAD TWO WEEKS FROM THAT TIME  
8 AND ALL OF THE REST OF THIS WEEK, THAT IS TWO AND A HALF WEEKS.

9 MR. BARENS: YOUR HONOR, IF I FELT THAT I COULD  
10 ADEQUATELY REPRESENT THE DEFENDANT IN A DEATH PENALTY MODE,  
11 I WOULDN'T BE HERE TODAY IF THAT WAS NOT OF GRAVE CONCERN  
12 TO ME.

13 I AM NOT HERE ON SOME SUPERFLUOUS MOTION.

14 THE COURT: I AM SURE IN YOUR MIND IT ISN'T BUT I THINK  
15 YOU ARE CAPABLE OF HANDLING THIS CASE AND WE ARE BEGINNING  
16 THE TRIAL ON MONDAY.

17 IF IT DEVELOPS DURING THAT TIME THAT ADDITIONAL  
18 TIME IS NEEDED, WE WILL SEE WHAT WE CAN DO ABOUT IT. BUT  
19 I THINK YOU OUGHT TO BE PREPARED TO START THE TRIAL ON MONDAY.

20 MR. BARENS: THANK YOU, YOUR HONOR.

21 THE COURT: ALL RIGHT. AS I SAID, I REALLY MEAN THAT,  
22 YOU ARE FULLY CAPABLE OF HANDLING THIS CASE. YOU DON'T NEED  
23 ANYBODY ELSE.

24 MR. BARENS: THANK YOU.

25 THE COURT: YOU DID A REMARKABLE JOB ON THE GUILT PHASE  
26 OF THE TRIAL AND I THINK YOU CAN CONTINUE TO DO THAT.

27 MR. BARENS: THANK YOU, YOUR HONOR.

28 THE COURT: I REALLY MEAN THAT.

(AT 2 P.M. PROCEEDINGS WERE CONCLUDED.)