

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DOCKET
No. *88DA0269*
Entered by _____
Date _____

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

SUPERIOR COURT
NO. A-090435

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 *89* OF 101
(PAGES *13360* TO *13508* , 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.)

JOSEPH HUNT,)

DEFENDANT.)

NO. A-090435

REPORTERS' DAILY TRANSCRIPT

MONDAY, MAY 11, 1987

VOLUME 89

PAGES 13360 TO, 13508 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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MONDAY, MAY 11, 1987 VOLUME 89 PAGES 13360 TO 13508

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(PROCEEDINGS)

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SANTA MONICA, CALIFORNIA; MONDAY, MAY 11, 1987; 9:50 A.M.
DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE

(PAGES 13360 THROUGH 13365 AND
PAGES 13377 THROUGH 13380 WERE ORDERED
SEALED BY THE COURT AND THEREFORE ARE
NOT INCLUDED IN THIS TRANSCRIPT.)

3-1

1 (PAUSE IN PROCEEDINGS.)

2 MR. BARENS: I HAD TALKED TO THE ROBERTS LAST WEEK
3 ABOUT BRINGING CLOTHES FOR HIM.

4 (FURTHER UNREPORTED COLLOQUY BETWEEN
5 DEFENSE COUNSEL.)

6 MR. BARENS: IF HE WANTS TO PRESENT HIMSELF IN THAT
7 MODE OF ATTIRE, THAT IS IN THE JAIL BLUES, THAT IS HIS
8 PREROGATIVE.

9 THE COURT: YOU MEAN IN THE JAIL BLUES?

10 MR. BARENS: YES, YOUR HONOR.

11 THE COURT: NO. THE COURT HAS HELD THAT IT IS PREJUDICIAL
12 FOR THE DEFENDANT TO BE SEEN IN JAIL BLUES.

13 MR. CHIER: IT WOULD PROBABLY BE WORSE TO BE SEEN
14 LOOKING LIKE A GEEK IN CLOTHES THAT DIDN'T FIT HIM. HE
15 IS QUITE TALL.

16 THE COURT: YOU SHOULD HAVE MADE ARRANGEMENTS.

17 MR. CHIER: I DIDN'T KNOW THAT YOUR HONOR WOULD
18 INSIST.

19 THE COURT: I INSIST ON HIS WEARING NON-BLUES,
20 ALL RIGHT?

21 MR. CHIER: I AM NOT ARGUING WITH YOUR HONOR. I
22 AM JUST TELLING YOUR HONOR I DIDN'T KNOW THIS WAS GOING
23 TO HAPPEN.

24 MR. BARENS: I DIDN'T KNOW THAT, YOUR HONOR.

25 I HAD ANOTHER COUPLE OF CASES WHERE THE DEFENDANTS
26 WERE DRESSED THAT WAY DURING THE PROCEEDINGS.

27 THE COURT: THERE IS A CASE WHICH HOLDS HE SHOULDN'T
28 BE SEEN IN BLUES, THAT WE SHOULD CLOTHE HIM IN CIVILIAN CLOTHES.

3-2
1 MR. BARENS: I WILL CALL IMMEDIATELY AND TRY TO MAKE
2 ARRANGEMENTS SUMMARILY.

3 (FURTHER UNREPORTED COLLOQUY BETWEEN
4 DEFENSE COUNSEL.)

5 THE COURT: DO YOU HAVE ANY CLOTHES FOR HIM?

6 THE BAILIFF: I CALLED THE LOCKUP AND I ASKED THEM
7 TO ASK MR. HUNT IF HE WANTED TO BE IN CIVILIAN CLOTHES
8 OR JAIL BLUES AND HE SAID "BLUES." THAT IS MR. HUNT'S
9 WORD.

10 I HAVE CLOTHES THAT WERE FOR MR. LIVADITIS
11 THAT HE WAS USING. I DON'T KNOW IF THEY WILL FIT MR.
12 HUNT. BUT THAT IS THE ONLY CLOTHES I HAVE.

13 THE COURT: PARDON ME. THEY WON'T BE HERE WITH
14 ANY CLOTHES, IS THAT RIGHT, IS THAT PART OF THE STRATEGY,
15 IS TO HAVE HIM IN BLUES, IS THAT WHAT YOU ARE TELLING
16 ME?

17 MR. BARENS: IT IS NOT MY STRATEGY. I DON'T LIKE
18 YOUR HONOR'S CHOICE OF WORDS.

19 THE COURT: I DON'T CARE WHAT YOU LIKE OR DON'T
20 LIKE. YOU JUST TOLD ME YOU ADVISED THESE PEOPLE TO COME
21 WITH CLOTHES, DID YOU?

22 MR. BARENS: THAT IS RIGHT.

23 THE COURT: THERE IS NOBODY HERE FROM THESE PEOPLE
24 HE HAS BEEN LIVING WITH -- WHAT IS THEIR NAME AGAIN?

25 MR. WAPNER: ROBERTS.

26 THE COURT: SEE IF THEY ARE OUT THERE.

27 MR. BARENS: I JUST SAID, YOUR HONOR, I WOULD CALL
28 THEM UP TO RECONFIRM THAT.

1 THE COURT: DIDN'T YOU TELL ME YOU HAD CALLED THEM
2 TO RECONFIRM IT?

3 MR. BARENS: YES, YOUR HONOR, SINCE THE DAY WE LEFT
4 HERE, I MADE ARRANGEMENTS TO HAVE HIS CLOTHES CLEANED,
5 I MADE ARRANGEMENTS TO HAVE TOILETRIES HERE AND I ASKED
6 MR. QUINN IF WE COULD ARRANGE FOR THE DEFENDANT TO HAVE
7 THAT.

8 THE COURT: WHEN WAS THE LAST TIME YOU ARRANGED --
9 TOLD THEM TO HAVE CLOTHES FOR HIM HERE?

10 MR. BARENS: LAST WEEK AFTER WE HAD BEEN HERE AND
11 CONFIRMED THE DATE.

12 THE COURT: I HAVE AN IDEA THEY WON'T BE COMING
13 WITH ANY CLOTHES.

14 MR. BARENS: BUT YOUR HONOR, BUT TO IMPUTE TO ME --

15 THE COURT: I AM IMPUTING IT TO YOU, ALL RIGHT?

16 MR. BARENS: -- THAT IT IS A STRATEGEM LIKE THAT,
17 IT IS NOT APPROPRIATE.

18 THE COURT: APPARENTLY HE KNOWS AND HE WANTS TO
19 BE IN JAIL CLOTHES.

20 MR. BARENS: I DISAGREED WITH HIM LAST WEEK WHEN
21 HE MENTIONED THAT TO ME AND I TOLD HIM I DIDN'T LIKE THAT
22 TYPE OF THING.

23 I WASN'T EVEN AWARE HE COULD BE COMPELLED
24 NOT TO WEAR THEM.

25 THE COURT: DID YOU HEAR THE LAW OF THE CASE WHICH
26 SAYS THAT IT IS A DISADVANTAGE TO THE DEFENDANT TO BE
27 IN JAILHOUSE BLUES AND THAT THE COURT MUST FURNISH HIM,
28 OR HE HAS TO BE FURNISHED WITH CIVILIAN CLOTHES?

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MR. CHIER: TO BE FRANK WITH YOUR HONOR, I AM NOT
AWARE OF THAT.

THE BAILIFF: THERE IS NOBODY AT THEIR HOUSE THAT
ANSWERS, YOUR HONOR.

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1 MR. BARENS: I KNOW OF NO CASES WHO OVERRIDE THE
2 DEFENDANT'S PREFERENCE IN THAT REGARD, I KNOW OF NO CASES
3 WHERE THE DEFENDANT HAS EXPRESSED A PREFERENCE.

4 THE COURT: WHAT ARE YOUR THOUGHTS ON IT?

5 MR. WAPNER: MY THOUGHTS ARE IF MR. HUNT IS BROUGHT
6 INTO COURT AND ON THE RECORD SAYS HE WISHES TO BE SEEN
7 IN COURT IN HIS JAIL OUTFIT, THEN NO ONE COULD BE HEARD
8 TO COMPLAIN LATER, AND THE COURT MAKES IT CLEAR TO HIM
9 THAT HE HAS THE OPPORTUNITY TO WEAR CIVILIAN CLOTHES.

10 THE COURT: IS HE HERE?

11 THE BAILIFF: MR. HUNT IS DOWNSTAIRS IN LOCKUP.

12 THE COURT: ALL RIGHT, I WILL ASK HIM.

13 MR. BARENS: AGAIN, JUST FOR THE RECORD, I TRUST
14 YOUR HONOR WILL NOT IMPUTE TO ME THESE ASSUMED STRATEGIES
15 OR TACTICS.

16 THE COURT: LISTEN, YOU ARE A VERY CLEVER, VERY
17 RESOURCEFUL LAWYER.

18 MR. BARENS: NOT THAT WAY, YOUR HONOR.

19 THE COURT: YOU ARE A VERY RESOURCEFUL LAWYER AND
20 I AM SURE THAT YOU WANT TO PORTRAY HIM IN A LIGHT WHICH
21 WOULD BE MOST HELPFUL FOR HIM.

22 MR. BARENS: YES, I DO, YOUR HONOR.

23 THE COURT: AND TO BE SEEN IN JAIL CLOTHES, THE
24 POOR FELLOW IN JAILHOUSE BLUES, THE WAY HE LOOKS NOW IS
25 INTENDED TO ATTRACT SYMPATHY FROM THE JURY.

26 MR. BARENS: I WANT TO REPRESENT TO THE COURT, TO
27 THE JUDGE THAT --

28 THE COURT: THAT IS A STRATEGY WHICH I CAN UNDERSTAND

1 A LAWYER WOULD RESORT TO BECAUSE IF YOU THOUGHT IT WOULD
2 BE IN HIS BEST INTERESTS TO BE SEEN IN THE KIND OF CLOTHES
3 THAT HE HAD BEFORE AND HE WAS WEARING ALL THROUGHOUT THE
4 TRIAL, WHICH APPARENTLY DID NO GOOD, THEN YOU MAY THINK
5 THE BETTER THING IS TO HAVE HIM IN JAILHOUSE BLUES.

6 MR. BARENS: I JUST WANT TO REPRESENT TO THE COURT --

7 THE COURT: I HAVE BEEN AROUND A LONG TIME.

8 MR. BARENS: I UNDERSTAND, YOUR HONOR.

9 THE COURT: I KNOW HOW PEOPLE OPERATE.

10 MR. BARENS: I HAD DISCUSSED THAT LAST WEEK AND
11 I EVEN ASKED MR. QUINN IF HE COULD MAKE ARRANGEMENTS SO
12 THE DEFENDANT COULD USE THE BATHROOM HERE WITH HIS TOILETRY
13 KIT SO THAT HE COULD MAKE HIMSELF MORE PRESENTABLE, AS
14 HE WAS DURING THE TRIAL, RATHER THAN COMING FROM THE JAIL.
15 I TRIED TO MAKE EVERY ARRANGEMENT I COULD TO MAKE IT A
16 CONSISTENT APPEARANCE, PHYSICALLY OR SATORICALLY.

17 BUT I HAD REPRESENTED TO THE COURT DURING
18 THE MARSDEN MATTER THAT THERE ARE CERTAIN DISAGREEMENTS
19 BETWEEN COUNSEL AND THE DEFENDANT AND THIS CERTAINLY IS
20 ONE OF THEM, NOT THAT I THINK IT IS A MAJOR ONE, BUT IT
21 IS ONE OF THEM.

22 THE COURT: BUT AS COUNSEL ACTING FOR HIS BEST INTERESTS,
23 DO YOU THINK HE OUGHT TO BE DRESSED IN CIVILIAN CLOTHES
24 OR IN JAIL CLOTHES?

25 MR. BARENS: I AM GOING TO DEFER TO WHAT HE WANTS,
26 IF THAT IS WHAT HE WANTS TO DO.

27 THE COURT: YOU ARE THE LAWYER IN THE CASE.

28 MR. BARENS: MAY I HAVE A MOMENT?

1 (UNREPORTED COLLOQUY BETWEEN DEFENSE
2 COUNSEL.)

3 MR. BARENS: WELL, WE WILL LEAVE IT UP TO THE DEFENDANT.
4 I THINK MY CONSCIENCE CAN REST BETTER ALL THE WAY THROUGH
5 THIS MATTER IF WE DO THE PENALTY PHASE THE WAY THE DEFENDANT
6 WANTS IT.

7 (DEFENDANT ENTERS CHAMBERS.)

8 THE DEFENDANT: GOOD MORNING, YOUR HONOR.

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4A
1 MR. BARENS: YOUR HONOR --

2 THE COURT: IS THERE ANY WAY HE CAN BE DRESSED A LITTLE
3 MORE APPROPRIATELY INSTEAD OF DOWN TO HIS BELLY BUTTON ON
4 THE SHIRT?

5 THE DEFENDANT: THAT IS WHAT THEY GIVE US AT THE COUNTY,
6 SIR.

7 THE BAILIFF: WE DON'T CARRY JAIL BLUES HERE IN THE
8 COURTHOUSE, JUDGE. THEY DRESS THEM DOWNTOWN. IT IS ONLY
9 JAIL CLOTHES UNLESS HE WANTS TO GET CIVILIAN CLOTHES. I WILL
10 DO THE BEST I CAN.

11 MR. BARENS: YOUR HONOR, THE DEFENDANT HAS JUST MENTIONED
12 TO ME TWO THINGS. ONE, THAT HE WOULD PREFER TO BE DRESSED
13 AS HE IS. TWO, THAT HE HAS A VARIETY OF PREHEARING MOTIONS
14 HE WANTS TO DISCUSS WITH COUNSEL, THAT COUNSEL MAY OR MAY
15 NOT WISH TO PRESENT THIS MORNING.

16 THE COURT: YOU HAVE GOT UNTIL 10:30. WHY DON'T YOU
17 DISCUSS IT NOW?

18 MR. BARENS: I WOULD LIKE TO SAY THAT WE WOULD LIKE
19 TO RESERVE NOW. COUNSEL HAS MOTIONS --

20 THE COURT: I WILL TELL THE JURY THAT HE PREFERS TO
21 BE DRESSED THE WAY HE IS. SO THAT IT IS AT HIS CHOICE THAT
22 HE IS DRESSED THE WAY HE IS. THE REASON FOR THAT IS BECAUSE
23 THEY MIGHT THINK THAT WE ARE FORCING HIM TO BE DRESSED THE
24 WAY HE IS. THAT MIGHT BE ONE ASPECT OF --

25 MR. BARENS: DOES THE LAW -- I AM NOT SURE. I WOULD
26 OBJECT TO THE PROPRIETY --

27 THE COURT: WELL, YOU CAN OBJECT TO IT AS MUCH AS YOU
28 LIKE. BUT I WANT TO SEE THE PROPER IMPRESSION LEFT WITH THE

4A. ?
1 JURY, THAT HE AT HIS OWN ELECTION, PREFERS TO BE DRESSED THE
2 WAY HE IS RATHER THAN IN STREET CLOTHES.

3 MR. CHIER: COULD WE GIVE THE REASONS --

4 THE COURT: I DON'T HAVE TO GIVE YOU MY REASONS.

5 MR. CHIER: PLEASE, YOUR HONOR --

6 THE COURT: I DO NOT HAVE TO TELL YOU WHAT MY REASONS
7 ARE. I SAID THAT I --

8 MR. CHIER: I AM NOT TALKING ABOUT YOUR REASONS --

9 THE COURT: I SAID THAT IT MAY GIVE AN UNFAVORABLE
10 IMPRESSION TO THE JURY THAT HE IS BEING FORCED TO COME IN
11 THE WAY HE IS. HE HAS A CHOICE AS TO WHETHER HE WILL COME
12 IN ONE WAY OR THE OTHER.

13 MR. CHIER: EXCUSE ME, YOUR HONOR. YOU MISUNDERSTOOD
14 ME. I WAS TALKING ABOUT THE DEFENDANT'S REASON FOR CHOOSING
15 TO WEAR THIS --

16 THE COURT: IT IS HIS CHOICE. I DON'T CARE WHAT HIS
17 REASONS ARE.

18 MR. CHIER: THERE ARE MORE REASONS --

19 THE COURT: GO AHEAD. PUT IT ON THE RECORD.

20 THE DEFENDANT: I THINK THAT YOUR HONOR IS MAKING AN
21 ASSUMPTION THAT SOMEONE HAS BROUGHT ME CIVILIAN CLOTHES WHICH
22 I AM REFUSING TO WEAR AND IT IS AN UNWARRANTED ASSUMPTION.

23 THE COURT: WELL, YOUR LAWYER TOLD ME THAT HE TOLD YOUR
24 GIRLFRIEND OR THE FAMILY --

25 MR. BARENS: THE FAMILY --

26 THE COURT: TO BRING CLOTHES FOR YOU SO YOU COULD BE
27 DRESSED TODAY.

28 THE DEFENDANT: BUT WHETHER THEY HAVE OR NOT AT THIS

4A -
1 POINT, IS AN OPEN QUESTION.

2 THE COURT: WELL, I WILL GET YOU OTHER CLOTHES.

3 THE DEFENDANT: I SAW THE CLOTHES THAT YOU DRESSED
4 MR. PITTMAN IN. I THINK THAT THAT WAS A CLOWN'S OUTFIT.

5 THE COURT: YOU ARE NOT PITTMAN.

6 THE DEFENDANT: THOSE CLOTHES FOR ME AT THIS TIME WOULD
7 BE --

8 THE COURT: DO YOU WANT TO HAVE OTHER CLOTHES,
9 CIVILIAN CLOTHES?

10 THE DEFENDANT: I WOULD JUST AS SOON WEAR THESE.

11 THE COURT: YOU PREFER TO WEAR THESE? YOU DON'T WANT
12 ANY OTHER CLOTHES?

13 THE DEFENDANT: TOMORROW I MAY WEAR A SUIT. IT JUST
14 DEPENDS ON --

15 THE COURT: I AM TALKING ABOUT NOW. WHAT DO YOU WANT
16 TO WEAR NOW?

17 THE DEFENDANT: RIGHT NOW, THIS IS FINE UNLESS I AM
18 BROUGHT SOME CLOTHES FROM MY FAMILY.

19 THE COURT: IF YOU WANT TO --

20 THE DEFENDANT: IF I AM BROUGHT SOME CLOTHES, I WOULD
21 BE HAPPY TO WEAR THEM.

22 THE COURT: IF THEY DO NOT, WE HAVE GOT --

23 THE DEFENDANT: I SAW WHAT YOU GAVE MR. PITTMAN AND --

24 THE COURT: I AM NOT TALKING ABOUT PITTMAN --

25 THE DEFENDANT: I THINK THAT IT WOULD BE -- I AM SIX-FEET-
26 FOUR INCHES TALL. I THINK THAT ANYTHING THAT YOU HAVE WOULD
27 BE VERY UNLIKELY TO FIT ME ANYTHING BETTER THAN THIS. THIS
28 IS PANTS AND THIS IS A SHIRT.

1 IF YOU WOULD LIKE, I CAN WEAR THIS AROUND REVERSE,
2 SO THAT THIS V NECK DOESN'T SHOW ALL --

3 THE COURT: YOU WON'T WEAR ANY CLOTHES WHICH I GIVE
4 YOU? IS THAT THE IDEA? YOU PREFER TO BE WEARING THOSE
5 CLOTHES?

6 THE DEFENDANT: THESE ARE FINE, YOUR HONOR.

7 THE COURT: ALL RIGHT. IF YOUR FRIEND OR FAMILY BRINGS
8 OTHER CLOTHES, YOU WILL WEAR THEM? IS THAT WHAT YOU WANT
9 TO DO?

10 THE DEFENDANT: ABSOLUTELY. IF I AM BROUGHT SOME
11 ADDITIONAL CLOTHES, I WILL BE HAPPY TO WEAR THEM. BUT, THIS
12 IS --

13 MR. BARENS: I TOLD HIM AND WE MADE A REPRESENTATION
14 THAT WE WOULD HAVE HIM DRESSED IN WHATEVER THEY BROUGHT. I
15 TOLD THEM --

16 THE COURT: DO YOU WANT TO CALL THEM?

17 MR. BARENS: I AM GOING TO. I NEED A FEW MINUTES.

18 THE COURT: WHY DON'T YOU TALK TO THEM?

19 CAN THEY CONFER IN PRIVATE?

20 MR. BARENS: THE DEFENSE --

21 THE COURT: THEY NEED TO DISCUSS WITH HIM. YOU ARE
22 TALKING ABOUT THE MOTIONS AND NOT THE DEFENDANT'S --

23 MR. BARENS: I UNDERSTAND. WHAT I AM SAYING, YOUR HONOR,
24 IS THAT THE DEFENDANT PER SE, HAS SOME MOTIONS FOR YOUR HONOR
25 THIS MORNING.

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5-1
1 (AT 10:45 A.M. THE FOLLOWING PROCEEDINGS
2 WERE HELD IN CHAMBERS WITH ALL COUNSEL
3 AND THE DEFENDANT PRESENT:)

4 THE COURT: THE RECORD WILL INDICATE WE ARE PRESENTLY
5 IN CHAMBERS.

6 MR. BARENS: YOUR HONOR, AS THE DEFENSE MENTIONED, THERE
7 ARE TWO MATTERS I WANT TO ADDRESS GENERALLY AND THOSE ARE
8 THE ONES THAT I WANT TO ADDRESS NOW. THERE ARE SOME 402(B)
9 TYPE MOTIONS THE DEFENSE HAS COME PREPARED TO MAKE ORALLY
10 AT THIS POINT TO YOUR HONOR.

11 ADDITIONALLY, MR. HUNT ADVISES US THAT HE HAS
12 A SERIES OF MOTIONS THIS MORNING TO EXPRESS TO THE COURT.

13 THE COURT: YOU OUGHT TO MAKE ALL OF THE MOTIONS. I
14 CAN'T HEAR FROM HIM. YOU ARE THE LAWYER IN THE CASE.

15 MR. BARENS: OKAY, YOUR HONOR. I HAD, AS A PRACTICAL
16 MATTER, A SUGGESTION TO MAKE TO THIS EXTENT, BECAUSE THEY
17 DON'T HAVE VISITING HOURS AT THE JAIL OVER THE WEEKEND, WE
18 HAVEN'T BEEN ABLE TO ACCESS THE DEFENDANT FOR THE PRODUCT
19 OF WHAT HE HAS PUT TOGETHER.

20 I WAS EITHER GOING TO ASK YOUR HONOR IF YOUR HONOR
21 WOULD LET THE DEFENDANT RECITE TO YOUR HONOR THE MATERIALS
22 HE HAS PUT TOGETHER OR I WOULD NEED, ACCORDING TO WHAT HE
23 TELLS ME, ABOUT 30 MINUTES TO GET HIM TO GIVE IT TO ME SO
24 I COULD GIVE IT TO THE COURT. SATURDAYS AND SUNDAYS NOW
25 BECAUSE OF THEIR BUDGETARY PROBLEMS, THEY DON'T HAVE A WAY
26 FOR US --

27 THE COURT: DIDN'T YOU HAVE A CHANCE TO TALK TO HIM
28 FOR THE LAST HALF HOUR?

5-2
1 MR. BARENS: WE HAD 12 MINUTES, YOUR HONOR, BETWEEN
2 10:10.

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3 NO, I AM NOT, YOUR HONOR. TO BE VERY CANDID WITH
4 YOUR HONOR --

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1 THE COURT: WHAT MOTIONS DO YOU WANT TO MAKE?

2 MR. BARENS: WELL, I WILL DEFER TO MR. CHIER. WE
3 MENTIONED TO THE COURT ON FRIDAY THAT WE HAD SOME MOTIONS
4 THAT TIME DID NOT PERMIT US TO PREPARE IN A WRITTEN FORMAT.

5 WE ARE BRINGING THEM ORALLY.

6 MR. CHIER: YOUR HONOR, I WOULD JUST LIKE TO SAY
7 PRELIMINARILY THAT I FEEL IT INCUMBENT UPON ME TO MAKE THESE
8 MOTIONS. I HOPE THAT YOUR HONOR WON'T TAKE THIS PERSONALLY.
9 I WANT TO --

10 THE COURT: DON'T GIVE ME THE -- DON'T SOFT-SOAP ME.
11 JUST GIVE ME THE MOTION.

12 MR. CHIER: WE WANTED TO MAKE A MOTION FOR MISTRIAL,
13 BASED ON THE JUROR THING.

14 THE COURT: ALL RIGHT. MOTION DENIED. GET ON TO
15 SOMETHING ELSE.

16 MR. CHIER: WE WOULD ALSO LIKE TO MAKE A MOTION FOR
17 ADDITIONAL VOIR DIRE OF THIS GUILT PHASE JURY WITH RESPECT
18 TO THE MATTERS WHICH THE PEOPLE ARE GOING TO ATTEMPT TO OFFER
19 IN AGGRAVATION.

20 THE GROUNDS FOR THE ADDITIONAL VOIR DIRE CAN BE
21 BRIEFLY STATED AS FIRST, TO DETERMINE WHAT THEIR MIND SETS
22 ARE WITH RESPECT TO THIS NEW EVIDENCE CONCERNING WHICH THEY
23 HAVE NEVER BEEN VOIR DIRED.

24 THE COURT: WHAT IS THAT NEW EVIDENCE?

25 MR. CHIER: WELL, EVIDENCE CONCERNING THE ESLAMINIA
26 PATRICIDE. THE BUSINESS CONCERNING SWARTOUT, THE MATTER
27 CONCERNING THE -- JUST THE THREE MAIN ITEMS OF AGGRAVATING
28 EVIDENCE THAT MR. WAPNER INTENDS TO INTRODUCE.

6-
1 SECOND OF ALL YOUR HONOR, IT HAS BEEN SEEN IN
2 THE PAST, THAT WITH RESPECT TO SOME JURIES AND JURORS, THAT
3 RETURNING A GUILT VERDICT IN THE GUILT PHASE, THAT THEY
4 DEVELOP A MIND SET AND THEY BECOME KIND OF HARDENED CONCERNING
5 THE GUILT VERDICT SO THAT THEY ARE NOT -- THEY ARE NO LONGER
6 NEUTRAL AND OPEN INSOFAR AS BEING RECEPTIVE TO --

7 THE COURT: DO YOU WANT TO MOVE TO DISCHARGE THIS JURY
8 AND TO HAVE ANOTHER JURY? IS THAT WHAT YOU ARE ASKING FOR?

9 MR. CHIER: I WOULD LIKE TO DO ADDITIONAL VOIR DIRE
10 OF THIS JURY, YOUR HONOR. THERE ARE CASES --

11 THE COURT: ANYTHING ELSE? THERE ARE CASES THAT WHAT?

12 MR. CHIER: THERE IS CASE AUTHORITY FOR THIS TYPE OF --

13 THE COURT: WHAT CASE HAVE YOU GOT THAT SAYS THAT YOU
14 CAN HAVE A SECOND VOIR DIRE?

15 MR. BARENS: COULD MR. HUNT JUST SAY THE NAMES OF THE
16 CASES? HE IS THE ONE THAT HAS THEM.

17 THE COURT: I THOUGHT YOU WERE THE ONE DOING THE
18 RESEARCHING.

19 MR. CHIER: I WOULD LIKE FOR THE COURT TO REALLY
20 UNDERSTAND THAT I HAVE NOT BEEN ABLE TO DO ADDITIONAL RESEARCH
21 SINCE I WAS HERE ON FRIDAY. I WILL TELL THE COURT SPECIFICALLY
22 WHY I HAVE NOT DONE IT, IF YOU WISH TO KNOW. I AM JUST AS
23 UNPREPARED TODAY AS I WAS ON FRIDAY, YOUR HONOR.

24 I MUST NECESSARILY DEPEND UPON MR. HUNT FOR SOME
25 OF THIS.

26 MR. BARENS: AS WE HAVE THROUGHOUT THE TRIAL, NOT JUST
27 NOW.

28 THE COURT: HAVE YOU FINISHED YOUR MOTION IN THE MEANTIME?

1 MR. BARENS: NO.

2 THE COURT: SHALL I HEAR FROM HIM?

3 MR. BARENS: WELL, WE STILL HAVE OUR MOTIONS ON THE --

4 MR. CHIER: YES. THERE ARE THE 402 MOTIONS.

5 THE COURT: WHAT 402 MOTIONS?

6 MR. CHIER: 402 MOTIONS, LIKE PRELIMINARY HEARINGS TO
7 DETERMINE THE ADMISSIBILITY OF THIS AGGRAVATING TYPE OF
8 EVIDENCE, THIS UNCHARGED MISCONDUCT WHICH IS BEING --

9 THE COURT: BUT THE LAW IS CLEAR THAT THEY HAVE A RIGHT
10 TO SHOW ANY OTHER CONDUCT OF THE DEFENDANT WHICH INVOLVES
11 FORCE AND VIOLENCE, EVEN THOUGH THE MATTER HAS NOT BEEN TRIED
12 AND EVEN THOUGH HE HAS NEVER BEEN TRIED OR CONVICTED OR
13 ACQUITTED OF IT.

14 MR. CHIER: I DON'T DISAGREE WITH THAT, YOUR HONOR.
15 BUT THERE IS A NEXUS WHICH MUST BE ESTABLISHED AND THAT IS,
16 OF PROBABLE CAUSE TO BELIEVE THAT HE IS THE PERSON WHO HAS
17 BEEN INVOLVED IN THIS.

18 IF IT DOESN'T RESULT IN AN ARREST OR A FILING
19 OF A CRIMINAL COMPLAINT AT THE VERY MINIMUM, HE WOULD BE
20 ENTITLED TO REQUIRE THE PEOPLE TO ESTABLISH --

21 THE COURT: YOU ARE TALKING ABOUT ESLAMINIA?

22 MR. CHIER: THE OTHER INCIDENTS, YOUR HONOR WHERE THERE
23 IS NO INDICATION OF THE EXISTENCE OF A PROBABLE CAUSE WITHOUT
24 A HEARING.

25 THE COURT: ALL RIGHT, MR. WAPNER?

26 MR. WAPNER: AS FAR AS THE ADDITIONAL VOIR DIRE, FIRST
27 OF ALL, I AM NOT AWARE OF CASE AUTHORITY. BUT SECOND OF ALL,
28 THE REQUEST IS MADE, BASED ON THE ASSUMPTION THAT THERE IS SOME
29 MATERIAL, NEW MATERIAL THAT HAS COME TO LIGHT.

7-1

1 AS I POINTED OUT TO THE COURT ON FRIDAY, TWO
2 YEARS AGO, TWO YEARS AGO TO THE DAY, AS OF LAST FRIDAY,
3 MAY 8, 1985, I SENT A LETTER TO MR. BARENS INDICATING
4 WHAT THE FACTORS IN AGGRAVATION WERE AND WHAT WE WERE
5 SEEKING TO INTRODUCE AND SENDING HIM COPIES OF THE POLICE
6 REPORTS, SO FOR TWO YEARS NOW THEY HAVE BEEN AWARE OF
7 WHAT IT IS THAT WE INTENDED TO INTRODUCE BY WAY OF AGGRAVATION
8 AND IF THEY WANTED TO VOIR DIRE THE JURY ON THAT DURING
9 THE GENERAL VOIR DIRE OR THE HOVEY VOIR DIRE, THEY HAD
10 AN ADEQUATE OPPORTUNITY TO DO THAT AND DID NOT AVAIL THEMSELVES
11 OF IT.

12 TO NOW PERMIT VOIR DIRE OF JURORS WHO ARE
13 ESSENTIALLY IN THE MIDDLE OF THE CASE, IS SOMETHING --
14 UNLESS I AM SHOWN TO THE CONTRARY -- THAT IS UNPRECEDENTED
15 AS FAR AS I AM CONCERNED AND WHOLLY IMPROPER.

16 BASICALLY WHAT THEY ARE GOING TO DO, IS TO
17 ASK "WHY DID YOU DECIDE THE WAY YOU DID? AND 'DON'T HOLD
18 IT AGAINST MY CLIENT THAT YOU FOUND HIM GUILTY." TO ME,
19 IT IS COMPLETELY IMPROPER.

20 AND SECOND OF ALL, THE NOTION THAT IT IS NEWLY
21 DISCOVERED MATERIAL IS INCORRECT, IT IS COMPLETELY INCORRECT.

22 MR. CHIER: IF I MIGHT RESPOND, YOUR HONOR.

23 THE COURT: SURELY.

24 MR. CHIER: THE DEFENSE' POSITION ABOUT THIS NOTICE
25 IS THAT THE NOTICE WAS INADEQUATE. MR. WAPNER SAID THAT
26 HE WAS ENTITLED TO INTRODUCE EVIDENCE IN AGGRAVATION CONSISTING
27 OF INCIDENTS INVOLVING MR. SWARTOUT, THIS DRIVE-BY BUSINESS
28 AND ESLAMINIA AND THE ATTACHED POLICE REPORTS.

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1 I BELIEVE THAT THE PEOPLE ARE REQUIRED TO
2 PROVIDE THE DEFENDANT WITH A STATEMENT OF SPECIFIC WITNESSES,
3 THE SPECIFIC THEORY ON WHICH IT IS BEING OFFERED AND BASICALLY,
4 A BILL OF PARTICULARS.

5 THE COURT: WHAT AUTHORITY DO YOU HAVE FOR THAT?
6 GIVE ME THE CASE THAT YOU HAVE GOT THAT YOU HAVE TO BE
7 TOLD SPECIFICALLY WHO THE WITNESSES ARE AND THAT HE GIVES
8 YOU NOTICE AS TO THE AGGRAVATING CIRCUMSTANCES THAT HE
9 INTENDS TO ADDUCE, LET ME HAVE THE CASE.

10 MR. BARENS: WE ARE, YOUR HONOR. I JUST HAVE TO
11 GET IT FROM MR. HUNT. HE IS LOOKING FOR IT. GIVE ME
12 THE CITE.

13 THE DEFENDANT: I KNOW. I AM LOOKING IN MY NOTES.

14 MR. CHIER: WHILE HE IS LOOKING THROUGH HIS NOTES,
15 MAY I CONTINUE, YOUR HONOR?

16 THE COURT: WAIT A MINUTE. I WANT TO GET THE CASE.

17 (PAUSE IN PROCEEDINGS.)

18 THE COURT: WHILE HE IS LOOKING AT THEM, HAS THERE
19 BEEN ANY REQUEST MADE OF YOU FOR ANY OF THESE SO-CALLED
20 WITNESSES, WHO THEY ARE AND WEREN'T THEY FURNISHED A TRANSCRIPT
21 OF THAT ESLAMINIA PRELIMINARY HEARING?

22 MR. WAPNER: A TRANSCRIPT? THEY WERE AT THE ESLAMINIA
23 PRELIMINARY HEARING, EXAMINING THE WITNESSES, AND THEY
24 HAD ALL OF THE DISCOVERY IN THAT CASE.

25 MR. BARENS: YOUR HONOR, I WANT TO INDICATE FOR
26 THE RECORD THAT --

27 THE COURT: GIVE ME THE CASE.

28 THE DEFENDANT: HOLMAN V. SUPERIOR COURT, IT IS

1 A 1981 CASE AT 29 CAL.3D, 480.

2 THE COURT REPORTER: HOW DO YOU SPELL IT?

3 THE DEFENDANT: H-O-L-M-A-N.

4 THE COURT: THAT IS 29 CAL.3D, WHAT PAGE?

5 THE DEFENDANT: 483 AND 484. THE CASE STARTS AT
6 PAGE 480.

7 THE COURT: THAT IS AFTER PAGE 480?

8 THE DEFENDANT: UH-HUH, AND THE SPECIFIC ISSUE IS
9 ADDRESSED ON PAGE 483 TO 484.

10 THE COURT: IT HAS NOTHING TO DO WITH THIS CASE.

11 I WILL READ IT TO YOU:

12 "THE SUPERIOR COURT HAD DENIED
13 A MOTION FOR WRIT OF MANDATE BY WHICH THE
14 DEFENDANT IN A CRIMINAL PROCEEDINGS SOUGHT
15 TO COMPEL A MAGISTRATE TO GRANT THEIR MOTION
16 FILED IN MUNICIPAL COURT PRIOR TO THEIR PRE-
17 LIMINARY HEARING SEEKING DISCLOSURE AND
18 INSPECTION OF VARIOUS MATERIALS OR INFORMATION
19 IN THE POSSESSION OF THE PEOPLE OR ITS AGENTS.

20 "THE PROSECUTOR HAD SUCCESSFULLY
21 RESISTED A MOTION ON THE BASIS THAT THE
22 MAGISTRATE DIDN'T HAVE JURISDICTION OVER ANY
23 PRETRIAL DISCOVERY."

24 THAT WAS REVERSED. WHAT HAS THAT GOT TO DO
25 WITH THE QUESTION WE HAVE NOW?

26 THE DEFENDANT: IT WAS A BRIEF ON A WRIT OF MANDATE.

27 THE COURT: WHAT PAGE IS THAT?

28 THE DEFENDANT: THIS IS THE CONTEXT OF THE ARGUMENT.

1 I AM JUST READING --

2 MR. CHIER: HE IS READING FROM THE APPELLANT'S OPENING
3 BRIEF.

4 THE COURT: I AM NOT INTERESTED IN THE APPELLANT'S
5 OPENING BRIEF. I AM INTERESTED IN WHAT THE COURT SAID.

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77 1 THE DEFENDANT: IT SAYS "IT IS CLEAR UNDER THE
2 STATUTORY LANGUAGE --"

3 THE COURT: WHAT PAGE IS THAT?

4 THE DEFENDANT: THIS IS A PARAPHRASATION OF HOLMAN V.
5 SUPERIOR COURT.

6 THE COURT: WHAT PAGE IS THAT, 483?

7 THE DEFENDANT: IT SAYS THAT UNDER THE STATUTORY LANGUAGE,
8 NOTICE IS REQUIRED.

9 THE COURT: I DON'T FIND IT IN HERE.

10 MR. WAPNER: HE IS NOT QUOTING FROM THE CASE ITSELF.

11 MR. BARENS: MAY WE HAVE THE BOOK? WE WILL TRY TO FIND
12 THE PASSAGE HE IS CITING.

13 THE COURT: LOOK AT IT. IT REFERS TO COMPELLING A
14 MAGISTRATE TO FURNISH INFORMATION AND IT HAS NOTHING TO DO
15 WITH THE ISSUES HE IS TALKING ABOUT.

16 MR. BARENS: LET ME SEE IF I CAN LOCATE THE LANGUAGE
17 WE ARE TALKING ABOUT.

18 THE DEFENDANT: AND THE OTHER CASE THAT IS CITED IS
19 KEENAN V. SUPERIOR COURT AND THE COURT OF APPEAL ISSUED A
20 WRIT OF MANDATE REQUIRING THAT NOTICE BE GIVEN PRIOR TO THE
21 TRIAL OF HOLMAN.

22 THE COURT: WHAT IS THAT CASE?

23 THE DEFENDANT: IT IS KEENAN V. SUPERIOR COURT, 126
24 CAL.APP.3D.

25 THE COURT: WHAT PAGE?

26 THE DEFENDANT: AT 581.

27 IT TALKS ABOUT THE FACT THAT WHERE A DEFENDANT
28 IS CHARGED WITH SPECIAL CIRCUMSTANCES JUSTIFYING THE

1 IMPOSITION OF THE DEATH PENALTY, THE DEFENDANT SHALL BE
2 INFORMED OF THE EVIDENCE TO BE USED IN AGGRAVATION WITHIN
3 A REASONABLE PERIOD BEFORE THE TRIAL COMMENCES IN ORDER TO
4 PROPERLY PREPARE FOR THE PENALTY PHASE.

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1 WHAT WE USE HOLMAN V. SUPERIOR COURT TO SHOW
2 IS THAT CLEAR STATUTORY LANGUAGE. THE FUNCTION OF THE
3 NOTICE APPEARS TO BE NOT SIMPLY THAT OF INFORMATION OR
4 INDICTMENT RECITING THE ALLEGED OFFENSE BUT MORE IN THE
5 NATURE OF A WITNESS LIST OR PROFFER OF SPECIFIC TESTIMONY
6 WHICH IS TO BE PRESENTED.

7 THE COURT: (READING)

8 "THE DEFENDANT CHARGED WITH
9 MURDER AND AGAINST WHOM SPECIAL CIRCUM-
10 STANCES JUSTIFYING THE DEATH PENALTY WERE
11 ALLEGED, PETITIONED THE COURT OF APPEAL FOR
12 A WRIT OF MANDATE AFTER THE TRIAL COURT DENIED
13 THE DEFENSE MOTION, SEEKING DISCOVERY OF
14 PROSECUTORIAL STANDARDS FOR CHARGING SPECIAL
15 CIRCUMSTANCES.

16 "THE COURT OF APPEAL ISSUED
17 A WRIT DIRECTING THE TRIAL COURT TO VACATE
18 THE ORDER DENYING THE REQUEST FOR NOTICE OF
19 EVIDENCE TO BE USED IN SUPPORT OF THE CHARGE
20 OF AGGRAVATING CIRCUMSTANCES AND DENIED THE
21 PETITION IN ALL OTHER RESPECTS.

22 "THE COURT HELD THAT THE
23 DEFENDANT'S DISCOVERY MOTION WAS PROPERLY
24 DENIED AND THAT THE EXERCISE OF PROSECUTORIAL
25 DISCRETION IN DECIDING WHETHER OR NOT TO
26 CHARGE SPECIAL CIRCUMSTANCES DOES NOT DEPRIVE
27 THE DEFENDANT ACCUSED OF A CAPITAL OFFENSE
28 OF CONSTITUTIONAL RIGHTS.

1 "THE COURT ALSO NOTED THE
2 RESTRICTIONS PLACED ON DEFENSE TESTING OF
3 PHYSICAL EVIDENCE AGAINST HIM WERE PROPER."

4 WHAT HAS THAT GOT TO DO WITH THE ISSUE?

5 THE DEFENDANT: WELL, IT SAYS AFTER THAT OCCURRED,
6 THE COURT OF APPEALS LATER ISSUED A WRIT OF MANDATE REQUIRING
7 NOTICE BE --

8 THE COURT: ALL RIGHT. ANYTHING FURTHER THAT YOU
9 WANT TO TELL ME?

10 MR. BARENS: WELL, YOUR HONOR, LET'S TRY NOT TO
11 GET OUT OF SEQUENCE HERE WITH WHAT WE ARE DOING.

12 MR. CHIER: I WANTED TO JUST RESPOND TO MR. WAPNER.

13 THE OTHER ASPECT OF THE RESPONSE IS TO SAY
14 THAT DURING THE HOVEY VOIR DIRE, PARTICULARLY IT IS MY
15 RECOLLECTION THAT YOUR HONOR DID NOT WISH US TO DELVE
16 INTO THE ESLAMINIA MATTER. THERE WERE A COUPLE OF TIMES
17 WHEN IT WAS BROACHED AND YOUR HONOR PREFERRED THAT WE
18 NOT GO INTO IT.

19 SO THAT WITH RESPECT TO THE ESLAMINIA MATTER,
20 WHILE IT IS TRUE THAT WE DO HAVE A PRELIMINARY HEARING
21 TRANSCRIPT AND WHILE IT MIGHT BE TRUE THAT WE WERE THERE
22 IN PERSON AT THE PRELIMINARY HEARING, WITH RESPECT TO
23 THE OTHER MATTERS WHICH THE PEOPLE INTEND TO OFFER IN
24 AGGRAVATION WHICH ARE NOT CHARGED, HAVE NEVER BEEN CHARGED
25 AND NEVER BEEN THE SUBJECT OF AN ARREST, WE ARE ENTITLED
26 TO HAVE THE PEOPLE, THROUGH A HEARING OUTSIDE THE PRESENCE
27 OF THE JURY, ESTABLISH A PROBABLE CAUSE TO BELIEVE THAT
28 MR. HUNT -- THAT ANY OF THIS CONDUCT IS ASCRIBABLE TO

1 MR. HUNT AND THAT THE EVIDENCE IS OTHERWISE ADMISSIBLE
2 FOR THE PURPOSE WHICH THE PEOPLE SEEK TO HAVE IT RECEIVED.

3 MR. WAPNER: THE MOTION IS IN THE NATURE OF SAYING
4 THAT WE ARE ENTITLED TO A PRELIMINARY HEARING FOR EACH
5 CRIME THAT IS ALLEGED IN THE AGGRAVATING CIRCUMSTANCES
6 IN THE PENALTY PHASE. THERE IS NO LAW TO THAT EFFECT
7 THAT I KNOW OF.

8 AND IN ESSENCE, WHAT THEY ARE SAYING IS, LET'S
9 PUT THE WITNESSES UP ONCE OUTSIDE THE PRESENCE OF THE
10 JURY AND THEN WE'LL PUT THEM UP AGAIN IN THE PRESENCE
11 OF THE JURY. THERE IS NO AUTHORITY FOR THAT.

12 THE COURT: ALL OF THE MOTIONS WILL BE DENIED. WE'LL
13 PROCEED NOW WITH TRYING THE CASE. WHERE ARE THE JURORS?

14 MR. BARENS: NOW, YOUR HONOR --

15 THE BAILIFF: IN THE JURY ROOM.

16 MR. BARENS: WE HAVE THE OTHER MATTER THAT MR. HUNT
17 HAS COME UP WITH.

18 THE COURT: I THOUGHT HE GAVE ME EVERYTHING THAT
19 HE WANTED --

20 MR. BARENS: NO, YOUR HONOR. HE ONLY RESPONDED
21 TO YOUR INQUIRY.

22 THE COURT: WELL, WHAT IS IT THAT YOU WANT TO SAY?

23 MR. BARENS: WOULD YOU LET HIM PROCEED?

24 THE COURT: GO AHEAD.

25 MR. BARENS: THANK YOU, YOUR HONOR.

26 THE DEFENDANT: THESE ARE THE FOLLOWING ISSUES WHICH
27 ARE IN THE NATURE OF A MOTION TO EXCLUDE THE UNADJUDICATED
28 CRIMES OR EVIDENCE OF THAT. THE UNADJUDICATED CRIMES WOULD

1 INCLUDE ALL OF THE THREE THINGS THAT MR. WAPNER HAS CITED.
2 WE WOULD ASK FIRST THAT IT BE EXCLUDED BASED
3 ON A VIOLATION OF DUE PROCESS. THE EVIDENCE IS NOT EITHER
4 RELEVANT OR RELIABLE.

5 WE ASK THE COURT TO LOOK AT STATE V. MC CORMACK
6 AN INDIANA CASE, 1979 AND STATE V. BARTHOLOMEW.

7 WE ALSO ASK THE COURT THAT THE SUPREME COURT
8 OF THE UNITED STATES HAS NOT SPECIFICALLY ADDRESSED THE
9 QUESTION OF WHETHER THE INTRODUCTION OF SUCH EVIDENCE
10 IN AGGRAVATION VIOLATES THE FEDERAL CONSTITUTION.

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1 IF YOU DON'T WANT TO EXCLUDE IT, WE WOULD ASK
2 IN THE ALTERNATIVE THAT A DIFFERENT JURY BE IMPANELED OR AN
3 ADVISORY JURY TO DETERMINE WHETHER THE COMMISSION OF
4 UNADJUDICATED OFFENSES HAS BEEN PROVEN BEYOND A REASONABLE
5 DOUBT.

6 THE COURT: ALL RIGHT. THAT MOTION IS DENIED.

7 THE DEFENDANT: THANK YOU. THE NEXT ISSUE IS THAT WE
8 WOULD ALSO ASK TO EXCLUDE THE SAN FRANCISCO CASE, WHICH IS
9 THE ESLAMINIA MATTER, THE SWARTOUT MATTER AND THE FCA
10 DRIVE-BY SHOOTING ON A CONFLICT BETWEEN THE FIFTH AND EIGHTH
11 AMENDMENTS THAT IT PUTS THE DEFENDANT IN. SPECIFICALLY TO
12 THAT END -- WOULD IT BE POSSIBLE TO FREE MY OTHER HAND?

13 MR. BARENS: I DON'T THINK HE IS GOING ANYWHERE.

14 THE COURT: I HAVE NO OBJECTION.

15 THE DEFENDANT: THANK YOU. IF THE STATUTE OF LIMITATIONS
16 ON THE UNADJUDICATED OFFENSES DOES NOT EXPIRE, WHICH IN THIS
17 CASE IT HAS NOT AND THE DEFENDANT IS THEREFORE STILL SUBJECT
18 TO PROSECUTION FOR OTHER CRIMES, THE STATE AND FEDERAL
19 CONSTITUTIONAL PRIVILEGE AGAINST SELF-INCRIMINATION MAY
20 PROVIDE ADDITIONAL ARGUMENTS. I THINK IT DOES IN THIS CASE,
21 FOR THE EXCLUSION OF THE EVIDENCE. THERE IS A DEFENSE TO
22 THE OTHER CRIME OR CRIMES WHICH IS UNIQUELY WITHIN THE
23 KNOWLEDGE OF THE DEFENDANT BUT THAT IN ORDER TO TESTIFY
24 REGARDING THE OTHER CRIMES, I WOULD HAVE TO WAIVE MY
25 PRIVILEGE AGAINST SELF-INCRIMINATION WITH RESPECT TO THOSE
26 CRIMES.

27 EFFECTIVELY, I BELIEVE I AM BEING FORCED TO WAIVE
28 MY PRIVILEGE AGAINST SELF-INCRIMINATION OR THE EIGHTH

8P ?
1 AMENDMENT RIGHT TO PRESENT MITIGATING EVIDENCE, IN OTHER
2 WORDS, EVIDENCE WHICH NEGATES THE PRESENCE OF OTHER CRIMES,
3 REQUIRING ME TO MAKE A CHOICE WHICH IS CONSTITUTIONALLY
4 IMPERMISSIBLE OR INTOLERABLE, OF ONE CONSTITUTIONAL RIGHT
5 BEING SURRENDERED IN ORDER TO ASSERT ANOTHER. AND I WOULD
6 CITE SIMMONS V. U.S. 309 U.S. 377 AT 394.

7 MR. BARENS: WELL YOUR HONOR --

8 THE DEFENDANT: UNDER THE CIRCUMSTANCES, I WOULD ARGUE
9 THAT THE OTHER CRIMES MUST BE EXCLUDED UNLESS THE DEFENDANT
10 IS GIVEN SOME SORT OF USE IMMUNITY REGARDING UNADJUDICATED
11 OFFENSES.

12 IF THE DEFENDANT IS GOING TO BE GIVEN USE
13 IMMUNITY REGARDING THE OTHER OFFENSES, I WOULD LIKE TO HAVE
14 AN OPPORTUNITY TO LITIGATE IN LIMINE, THE PERMISSIBLE SCOPE
15 OF CROSS-EXAMINATION OF THE DEFENDANT.

16 AND I WOULD CITE PEOPLE V. TEALER --

17 THE COURT REPORTER: PLEASE SPELL THAT.

18 THE DEFENDANT: T-E-A-L-E-R, AT 48 CAL.APP.3D 598 AT
19 604 TO 606. YOUR HONOR --

20 MR. BARENS: I WOULD LIKE TO ADD TO THAT MOTION, YOUR
21 HONOR, THAT IT IS A PARTICULARLY ONEROUS POSITION FOR COUNSEL
22 TO BE IN, WHEN, KNOWING THAT HE HAS A TRIAL TO DO IN
23 SAN FRANCISCO IN THE ESLAMINIA CASE YET, THEY SEEK TO
24 ASSERT IT DOWN HERE.

25 IN TERMS OF FAIRNESS AND PROPORTIONALITY, IN TERMS
26 OF THE UTILIZATION OF HIS CONSTITUTIONAL RIGHTS, THE
27 DEFENSE IS IN AN INEXTRICABLE TRICK BAG --

28 THE COURT REPORTER: A WHAT?

8B-7
1 MR. BARENS: A TRICK BAG.

2 MR. CHIER: A CONUNDRUM.

3 MR. BARENS: A CONUNDRUM OF SORTS, IF HE TAKES THE STAND
4 IN HIS OWN --

5 THE COURT: CATCH 22?

6 MR. BARENS: CATCH 22 INDEED, YOUR HONOR. THANK YOU,
7 YOUR HONOR.

8 IF HE TAKES THE STAND IN HIS OWN DEFENSE DURING
9 THE PENALTY PHASE HERE, HE IS VIRTUALLY SUBJECT TO CROSS-
10 EXAMINATION ON THE ESLAMINIA CASE.

11 YET, THE ESLAMINIA CASE IN SAN FRANCISCO HAS YET
12 TO UNFOLD AND THE DEFENSE UP THERE WILL BE A PRODUCT BETWEEN
13 THE FOUR AT LEAST, COUNSEL THAT ARE INVOLVED IN THAT CASE
14 AND WHICH MR. HUNT HAS NOT HAD AN OPPORTUNITY TO PREPARE FOR
15 THAT TRIAL BECAUSE HE HAS BEEN DOING THIS TRIAL DOWN HERE.

16 AND THIS IS A VERY UNFAIR SETTING TO BE IN,
17 YOUR HONOR. THAT MATTER HAS TO STAND OR FALL ON ITS OWN.

18 BUT NOW, FOR THE DEFENDANT TO PROTECT HIMSELF
19 DOWN HERE, HE WOULD HAVE TO WAIVE ALL OF HIS CONSTITUTIONAL
20 RIGHTS UP THERE.

21 MR. CHIER: COULD I ADD SOMETHING TO THAT?

22 THE COURT: WELL, ONE OF YOU IS ENOUGH. I DON'T THINK
23 WE NEED ANYTHING FURTHER.

24 MR. CHIER: JUST A SLIGHT GLOSS, I WOULD LIKE TO ADD.
25 THE WAY OUT, THE SOLUTION TO THIS CATCH 22 SITUATION IS I
26 SUBMIT YOUR HONOR AND THE WAY OUT OF THE PROBLEM WITH RESPECT
27 TO COUNSEL'S PREPAREDNESS WOULD BE TO DISCHARGE THIS JURY
28 AND IMPANEL A SEPARATE PENALTY PHASE JURY, THEREBY GIVING
29 THE DEFENDANT THE RIGHT TO A DEFENSE IN THE CASE.

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1 THE COURT: I KNOW THAT YOU HAVE BEEN WANTING THAT
2 SINCE YOU STARTED THIS MATTER AFTER THE CONVICTION. I
3 AM NOT GOING TO DISCHARGE THE JURY AND GET ANOTHER JURY.

4 DO YOU HAVE ANYTHING TO REPLY TO THE SUGGESTION
5 ABOUT HIS INCRIMINATING HIMSELF IF HE IS GOING TO TESTIFY
6 IN THIS CASE BECAUSE HE HAS THIS OTHER CHARGE AGAINST
7 HIM, THE SAME CHARGE AGAINST HIM IN ANOTHER COUNTY?

8 ARE YOU WILLING TO GIVE HIM USE IMMUNITY?

9 MR. WAPNER: I AM NOT WILLING TO GIVE HIM ANY KIND
10 OF^P IMMUNITY.

11 THE COURT: YOU MEAN THE LAW GIVES YOU THE RIGHT
12 TO ~~AD~~DUCE THIS TESTIMONY, IS THAT RIGHT, TO PRESENT THIS
13 TESTIMONY TO THIS JURY?

14 MR. WAPNER: RIGHT. HE CAN DO BASICALLY AS HE SEES
15 FIT.

16 THE COURT: HE CAN TESTIFY BASICALLY THE SAME AS
17 HE TESTIFIES UP THERE, HE CAN INTRODUCE THE SAME KIND
18 OF EVIDENCE.

19 MR. CHIER: HE HAS A DIFFERENT LAWYER REPRESENTING
20 HIM UP THERE. HE HASN'T HAD A CHANCE TO PREPARE HIS TESTIMONY
21 WITH THAT LAWYER IN THAT CASE.

22 THE COURT: WELL, WE HAVEN'T REACHED THAT STAGE
23 YET. LET ME RESEARCH IT AND SEE WHETHER OR NOT WE CAN
24 WORK OUT SOME FORMULA BY WHICH HE CAN TESTIFY HERE AND
25 NOT HAVE ANYTHING HE SAYS HERE PREJUDICE THAT CASE UPSTATE.

26 MR. BARENS: THAT WOULD BE APPRECIATED.

27 THE COURT: YES, I UNDERSTAND YOUR PROBLEM.

28 MR. BARENS: IT IS A TERRIBLE PROBLEM.

1 THE COURT: WELL, WE WILL HAVE THE DISTRICT ATTORNEY
2 EXPLORE THAT POSSIBILITY. YOU DON'T HAVE TO BE FACED
3 WITH IT RIGHT THIS MINUTE.

4 MR. BARENS: CAN WE CROSS THIS BRIDGE TOGETHER,
5 YOUR HONOR, BEFORE HE DOES SO?

6 THE COURT: ABSOLUTELY.

7 MR. CHIER: WHAT ABOUT THE OPENING STATEMENT?

8 MR. BARENS: NOW WE GET TO THE OPENING STATEMENT.

9 THE COURT: WELL, YOU MADE A MISTAKE THE FIRST TIME
10 YOU MADE AN OPENING STATEMENT. I SUPPOSE YOU DON'T WANT
11 TO MAKE IT AGAIN.

12 MR. BARENS: I DON'T PROPOSE TO MAKE ANY MORE THAN
13 I HAVE TO. BUT WILL MR. WAPNER? IS HE GOING TO TALK ABOUT
14 ESLAMINIA IN HIS OPENING STATEMENT?

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1 THE COURT: OF COURSE, HE WILL.

2 DO YOU WANT TO MAKE AN OPENING STATEMENT RIGHT
3 AFTER THAT, IS THAT WHAT YOU INTEND TO DO?

4 MR. BARENS: YES, YOUR HONOR, I PLAN TO RESPOND BRIEFLY.

5 THE COURT: YOU INTEND TO TALK ABOUT ESLAMINIA AND HIS
6 TESTIFYING IN THAT CASE?

7 MR. BARENS: IF HE DOES.

8 THE COURT: HE IS GOING TO TALK ABOUT ESLAMINIA,
9 OBVIOUSLY.

10 MR. BARENS: I HAVE TO THEN AS WELL.

11 THE COURT: YOU ARE GOING TO SAY THE DEFENDANT IS GOING
12 TO TAKE THE STAND AND DENY IT?

13 MR. BARENS: I DON'T KNOW WHAT I AM GOING TO SAY, YOUR
14 HONOR.

15 THE COURT: WELL, IT IS ENTIRELY UP TO YOU.

16 GIVE ME A CHANCE TO EXPLORE THIS BEFORE, HOWEVER.

17 MR. BARENS: I DON'T KNOW WHAT TO SAY BECAUSE I DON'T
18 KNOW.

19 THE COURT: WELL, I AM TELLING YOU NOT TO MAKE ANY
20 OPENING STATEMENT NOW. BUT IF YOU WANT TO MAKE AN OPENING
21 STATEMENT, IT IS ENTIRELY UP TO YOU.

22 MR. BARENS: WELL, I WILL MAKE SOME INNOCUOUS OPENING
23 STATEMENT.

24 MR. HUNT HAS A COUPLE OF MORE OBSERVATIONS.

25 THE COURT: YES?

26 THE DEFENDANT: ON THE REQUEST FOR THE IN LIMINE
27 EVIDENCE, TO DETERMINE WHETHER THE EVIDENCE IS SUFFICIENT TO
28 PERMIT ITS INTRODUCTION --

1 THE COURT REPORTER: WOULD YOU SLOW DOWN, PLEASE?

2 THE DEFENDANT: THE EVIDENCE ON THE REQUEST FOR THE
3 IN LIMINE HEARING, TO DETERMINE WHETHER THE EVIDENCE IS
4 SUFFICIENT TO PERMIT ITS INTRODUCTION BEFORE THE JURY, THAT
5 IS WHETHER THERE IS "SUBSTANTIAL EVIDENCE FOR WHICH THE JURY
6 COULD REASONABLY FIND THAT THE DEFENDANT COMMITTED THE
7 UNCHARGED OFFENSE," I WOULD CITE PEOPLE V. DURHAM, 70 CAL.2D,
8 171.

9 THE COURT: WAIT A MINUTE NOW. 70 CAL.2D?

10 THE DEFENDANT: YES.

11 THERE ARE ACTUALLY THREE CASES HERE.

12 MR. BARENS: PULL THAT FOR THE JUDGE, RICHARD.

13 THE COURT: 70 CAL.2D.

14 MR. CHIER: THAT IS CAL.APP. YOU HAVE, YOUR HONOR.

15 MR. BARENS: WELL, HELP HIS HONOR.

16 MR. WAPNER: RICHARD, IT IS THE TOP SHELF.

17 THE DEFENDANT: THE MAIN CASE ON THAT IS PEOPLE V.
18 PHILLIPS, AT 431 CAL.3D.

19 THE COURT: GIVE ME THE MAIN CASE.

20 THE DEFENDANT: I AM SORRY, YOUR HONOR?

21 MR. BARENS: WHAT WAS THE OTHER CITE NOW?

22 THE DEFENDANT: 70 CAL.2D 171 AND 41 CAL.3D IS AT PAGE
23 29.

24 THE COURT: WHAT PAGE IS 70 CAL.2D?

25 THE DEFENDANT: IT IS PAGE 190, FOOTNOTE 16.

26 THE COURT: 190?

27 THE DEFENDANT: YES. THE FOOTNOTE REFERS TO THIS ISSUE.

28 THE COURT: FOOTNOTE 16?

1 THE DEFENDANT: FOOTNOTE 16.

2 MR. CHIER: THE 41 CAL.3D VOLUME IS MISSING.

3 THE DEFENDANT: THAT IS THE MAIN ONE.

4 MR. CHIER: 41 CAL.3D WOULD BE VOLUME 8 OF THESE ADVANCE
5 SHEETS, YOUR HONOR.

6 THE COURT: YES, IT IS IN THERE.

7 IT SAYS "OUR FUNCTION ON APPEAL BEGINS AND ENDS
8 WITH THE DETERMINATION AS TO WHETHER SUBSTANTIAL EVIDENCE
9 WAS PRESENTED FROM WHICH THE JURY COULD REASONABLY HAVE FOUND
10 THE DEFENDANT COMMITTED THE UNCHARGED OFFENSES."

11 THE DEFENDANT: RIGHT, THAT IS WHAT I WAS CITING THAT
12 FOR. THE ISSUE OF THE IN LIMINE INQUIRY INTO THE SUFFICIENCY
13 OF THE EVIDENCE IN SUPPORT OF THE UNADJUDICATED VIOLENT
14 CRIMES WAS DISCUSSED IN PEOPLE V. PHILLIPS, WHICH IS WHAT
15 RICHARD IS TRYING TO GET.

16 I CITED PEOPLE V. DURHAM AS THE LOCATION WHERE
17 I GOT THE QUOTES, "SUBSTANTIAL EVIDENCE FROM WHICH THE JURY
18 COULD REASONABLY FIND THE DEFENDANT COMMITTED THE UNCHARGED
19 OFFENSES," AND I WAS JUST PARAPHRASING THE PURPOSE OF WHAT
20 THE GENERAL INQUIRY WAS BEFORE I GOT INTO THAT.

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1 THE COURT: WHAT IS IT YOU WANT TO KNOW FROM THE
2 PEOPLE AT THIS PARTICULAR TIME? IS IT WHAT EVIDENCE THEY
3 HAVE WITH RESPECT TO THESE OTHER CHARGED OFFENSES?

4 THE DEFENDANT: YES, I WOULD LIKE TO KNOW.

5 THE COURT: OTHER THAN ESLAMINIA?

6 DID YOU PREPARE TO GIVE THEM THE SUBSTANCE
7 OF IT?

8 MR. WAPNER: THEY HAVE THE SUBSTANCE OF IT. THEY
9 HAVE HAD ALL OF THOSE REPORTS FOR TWO YEARS NOW.

10 THE COURT: THE REPORTS, THEY ALREADY HAVE.

11 THOSE MOTIONS WILL BE DENIED. LET'S GET ON
12 WITH THE TRIAL OF THIS CASE, WILL YOU?

13 THE DEFENDANT: YOUR HONOR, THE ISSUES PERHAPS AREN'T
14 TOO CLEAR UNLESS YOU HAVE SOME IDEA OF WHAT THIS
15 SWARTOUT-F.C.A. INCIDENT INVOLVED.

16 THE COURT: YOU GAVE THEM THE POLICE REPORTS ON
17 THEM, DID YOU?

18 MR. WAPNER: ON BOTH OF THOSE INCIDENTS, THEY HAVE
19 HAD POLICE REPORTS FOR TWO YEARS NOW.

20 THE DEFENDANT: THERE IS AN ISSUE, AT LEAST WITH
21 THE F.C.A., THERE IS THE RIGHT OF CONFRONTATION WITH WITNESSES,
22 BECAUSE AS I UNDERSTAND IT, ONE OF THE KEY WITNESSES WAS
23 TO SOME STATEMENT MADE BY MY CO-DEFENDANT AND IT WAS DURING
24 OR IN FURTHERANCE OF A CONSPIRACY THAT WAS SUBSEQUENTLY
25 TO INVOLVE SOME OF THOSE ISSUES. INSTEAD OF HAVING IT
26 APPEAR IN A PREJUDICIAL MANNER IN FRONT OF THE JURY AND
27 THEN HAVE SOME SORT OF A RESOLUTION AT THE BENCH, WE THOUGHT
28 IT WOULD BE APPROPRIATE TO HAVE AN IN LIMINE HEARING WHERE

9B-2

1 WE COULD DECIDE WHETHER THERE WERE SOME HEARSAY PROBLEMS
2 AND SOME CONFRONTATION PROBLEMS.

3 THE COURT: DO YOU INTEND TO HAVE ESLAMINIA FIRST,
4 IS THAT IT?

5 MR. WAPNER: NO.

6 THE FIRST THING IS THE SHOOTING IN SANTA ANA,
7 WHICH IS THE INCIDENT TO WHICH MR. HUNT REFERS.

8 THE NEXT THING IS DEALING WITH MR. SWARTOUT
9 IN IRVINE.

10 AND THEN WE WILL BEGIN WITH THE ESLAMINIA
11 THING, HOPEFULLY, WEDNESDAY OR LATE TOMORROW AFTERNOON,
12 DEPENDING ON HOW LONG ALL OF THIS OTHER STUFF TAKES.

13 MR. BARENS: I THINK WHAT THE DEFENDANT IS RAISING,
14 YOUR HONOR, IS WHAT I CALL THIS DRIVE-BY SHOOTING BUSINESS,
15 THAT HAS ITS GENESIS IN A HEARSAY STATEMENT WELL AFTER
16 THE COMMISSION OF IT, WHERE THE DEFENDANT IS BROUGHT INTO
17 THAT NEXUS THROUGH A STATEMENT MADE ALLEGEDLY BY MR. PITTMAN
18 TO ANOTHER PARTY, ATTRIBUTING CONDUCT TO MR. HUNT.

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1 THAT HEARSAY STATEMENT IS WELL AFTER THE INCIDENT
2 IN QUESTION AND IS NOT IN FURTHERANCE OF THAT INCIDENT
3 WHATSOEVER.

4 THE COURT: WHY DON'T WE WAIT UNTIL THAT PART OF
5 THE TRIAL? THEN YOU CAN COME UP AND MAKE YOUR MOTIONS
6 AT THE BENCH.

7 MR. BARNES: WELL, THIS IS COMING RIGHT AWAY, JUDGE.

8 THE COURT: WELL, THEN, IT WILL BE RIGHT AWAY.

9 MR. WAPNER: MR. TAGLIANETTI IS THE WITNESS THAT
10 TESTIFIES ABOUT THOSE STATEMENTS. HE WON'T BE HERE UNTIL
11 TOMORROW.

12 THE DEFENDANT: WELL, IF MR. TAGLIANETTI'S TESTIMONY -- WE
13 DON'T KNOW RIGHT NOW, IF IT IS FOUNDATIONAL TO THE WHOLE
14 ISSUE, THEN HAVING AN IN LIMINE HEARING WOULD SERVE.

15 IN PEOPLE V. PHILLIPS, IT SAYS THAT IN MANY
16 CASES IT MAY BE ADVISABLE FOR THE TRIAL COURT TO CONDUCT
17 A PRELIMINARY INQUIRY BEFORE THE PENALTY PHASE, TO DETERMINE
18 WHETHER THERE IS SUBSTANTIAL EVIDENCE TO PROVE EACH ELEMENT
19 OF THE OTHER CRIMINAL ACTIVITY. SO THERE IS SOME AUTHORITY
20 FOR THAT, YOUR HONOR.

21 THE COURT: WELL, WE CAN CROSS THAT BRIDGE WHEN
22 WE COME TO IT.

23 THE DEFENDANT: I HAVE ANOTHER ISSUE WHICH I THINK
24 IS VERY IMPORTANT. YOUR HONOR MIGHT LOOK MORE FAVORABLY
25 ON IT.

26 THE F.C.A. CASE SHOULD BE -- THAT IS THE DRIVE-BY
27 SHOOTING -- SHOULD BE EXCLUDED BECAUSE IT IS A NONVIOLENT
28 CRIME. THERE IS NO SHOWING THAT EVEN THOUGH A GUN IS

1 INVOLVED, OF ANYTHING OTHER THAN VANDALISM ATTEMPTED.

2 THE TIME OF THE ALLEGED CRIME IS AFTER BUSINESS
3 HOURS, IF I AM NOT MISTAKEN FROM MY READING OF THE POLICE
4 REPORT. THE PENAL CODE 190.3, PARAGRAPH 2, CONFIRMS THAT
5 "FORCE OR VIOLENCE IS A REQUIREMENT."

6 THE COURT: I KNOW THAT. DO YOU INTEND TO SHOW
7 FORCE OR VIOLENCE IN CONNECTION WITH THE UNCHARGED OFFENSES?

8 MR. WAPNER: I THINK IF YOU ARE SHOOTING OFF 11
9 ROUNDS FROM A .30 CALIBER CARBINE INTO A BUSINESS OCCUPIED
10 BY TWO PEOPLE, IF YOU CONSIDER THAT TO BE NONVIOLENT,
11 YOU MIGHT EXCLUDE IT.

12 THE COURT: IS THAT WHAT YOU ARE CLAIMING?

13 THE DEFENDANT: YES.

14 MR. WAPNER: BY MY DEFINITION, IT IS VIOLENCE.

15 THE DEFENDANT: THERE IS NO EVIDENCE THAT THE DEFENDANT
16 WAS EVER CONVICTED ON THE F.C.A. MATTER. PEOPLE V. BOYD
17 SPECIFICALLY SAYS THAT USE OF FORCE OR VIOLENCE AGAINST
18 PROPERTY IS EXCLUDED.

19 THE COURT: WELL, HOW ABOUT PEOPLE BEING INSIDE
20 THE PROPERTY?

21 THE DEFENDANT: THE ONLY DAMAGE WAS DONE TO THE
22 BUILDING. I AM NOT --

23 THE COURT: YOU MEAN SHOOTING AT AN OCCUPIED BUILDING
24 IS NOT A CRIME BUT A MISDEMEANOR?

25 MR. BARENS: I THINK WHAT MR. HUNT GOES TO, YOUR
26 HONOR, IF ONE ASSUMES, WHICH YOU MUST, THAT THE F.C.A.
27 MATTER WAS CALCULATED, ACCORDING TO MR. WAPNER, TO INTIMIDATE
28 A HUMAN BEING AND IF THE ACTIVITY OCCURRED AT A TIME WHEN

1 THAT HUMAN BEING COULD NOT BE ANTICIPATED TO BE IN THOSE
2 PREMISES, THEN THERE WOULD BE NO -- THE REQUIRED CRIMINAL
3 INTENT FOR AN ASSAULT OF THAT NATURE WOULD NOT BE PROVABLE.

4 THERE IS NO SCIANTER. THAT ELEMENT OF THE
5 CRIME IS NOT THERE UNLESS THE PEOPLE COULD DEMONSTRATE
6 THAT THERE WAS A LIKELIHOOD THAT THE ALLEGED OR INTENDED
7 VICTIM WOULD BE PRESENT.

8 MR. WAPNER: FIRST OF ALL, SECTION 246 OF THE PENAL
9 CODE DEFINES SHOOTING INTO AN INHABITED DWELLING.

10 SECOND OF ALL, BUSINESS HOURS ARE NOT THAT --
11 IT WAS ABOUT 7:00, IT IS MY UNDERSTANDING. THE LIGHTS
12 WERE ON. THERE WERE DOORS OF THIS BUSINESS THAT WERE
13 OPEN, IF ANYBODY HAD TAKEN THE TIME TO CHECK.

14 THEY WOULD KNOW THAT THE PEOPLE WERE LIKELY
15 TO BE INSIDE OF THERE. AND IN ANY EVENT, ANY TIME YOU
16 SHOOT INTO A BUILDING, YOU TAKE THE CHANCE THAT THERE
17 ARE PEOPLE THAT ARE INSIDE. AND BY ANYBODY'S DEFINITION,
18 SHOOTING OFF A .30 CALIBER CARBINE RIFLE INTO A BUILDING
19 IS A VIOLENT CRIME. I DON'T CARE HOW YOU CUT IT.

20 MR. BARENS: THERE WAS NEVER PROBABLE CAUSE TO CHARGE
21 OR ARREST MR. HUNT WITH THIS CRIME.

22 THE COURT: I HAVE GOT TO HEAR THE TESTIMONY BEFORE
23 I MAKE A RULING. LET'S GET STARTED. THAT IS ALL I WANT
24 TO HEAR.

25 THE DEFENDANT: YOUR HONOR, PLEASE. COULD I JUST --

26 THE COURT: I DON'T WANT TO BE HERE ALL DAY. IF
27 THERE IS ANYTHING FURTHER ON YOUR MOTIONS, YOU CAN TELL
28 YOUR LAWYER TO MAKE THEM.

1 MR. BARENS: WE NEVER HAD ACCESS TO THE DEFENDANT --

2 THE DEFENDANT: PLEASE, YOUR HONOR. I WILL TRY

3 TO DO IT AS EXPEDITIOUSLY AS POSSIBLE.

4 THE COURT: GO AHEAD.

5 THE DEFENDANT: I ALSO ASK THAT THE ESLAMINIA CASE

6 BE EXCLUDED FROM THE PENALTY PHASE HEARING ON THE GROUNDS

7 THAT IT OCCURRED AFTER JUNE 6, 1984 AND THAT THE STATUTE

8 IS MEANT TO EXCLUDE CRIMES THAT ARE COMMITTED AFTER.

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1 AND FOR THAT, ALTHOUGH SECTION 190.3 SAID THAT
2 HE REFERS SIMPLY TO THE PRESENCE OR ABSENCE OF CRIMINAL
3 ACTIVITY, THE INTRODUCTORY PARAGRAPHS OF THAT SECTION REFER
4 TO THE PRESENCE OR ABSENCE OF OTHER CRIMINAL ACTIVITY.

5 PARAGRAPHS 1 AND 2 EMPHASIS ADDED AND "PRIOR
6 CRIMINAL ACTIVITY" IS IN PARAGRAPH 3. THIS RAISES A QUESTION
7 OF WHETHER THERE MUST BE A SPECIFIC TEMPORAL RELATIONSHIP
8 BETWEEN THE CAPITAL MURDER IN ISSUE AND THE OTHER CRIMINAL
9 ACTIVITY. AND IF SO, WHERE THE CRIMINAL ACTIVITY OCCURRING
10 AFTER THE CAPITAL HOMICIDE, IS ADMISSIBLE UNDER SECTION 190.3.

11 NOW, IF YOUR HONOR CONSIDERS TRADITIONAL
12 PRINCIPLES OF STATUTORY INTERPRETATION, A STRONG ARGUMENT
13 COULD BE MADE TO SUPPORT THE CONCLUSION THAT OTHER CRIMES
14 EVIDENCE ADMISSIBLE UNDER SUBSECTION B IS LIMITED TO VIOLENT
15 CRIMES OCCURRING BEFORE THE COMMISSION OF THE CAPITAL HOMICIDE.

16 THE WORD "PRIOR" IN PARAGRAPH 3 SHOULD NOT BE
17 IGNORED OR TREATED AS SURPLUSAGE. IF POSSIBLE, SIGNIFICANCE
18 SHOULD BE GIVEN TO EVERY WORD IN PURSUANCE OF LEGISLATIVE
19 PURPOSE. THAT IS FROM PEOPLE V. BLACK, 32 CAL.3D, PAGE 1
20 AT PAGE 5.

21 MOREOVER, IN THE ABSENCE OF ANYTHING IN THE
22 STATUTE TO THE CONTRARY, A REPEATED WORD OR PHRASE IN THE
23 STATUTE IS USED IN THE SAME SENSE THROUGHOUT. THAT IS
24 PEOPLE V. HERNANDEZ, PEOPLE V. BALDARES AND PEOPLE V. CROWSON.

25 THE COURT REPORTER: PLEASE SPELL THAT.

26 THE DEFENDANT: C-R-O-W-S-O-N. THAT IS BECAUSE "PRIOR"
27 AS USED IN SECTION 190.3 CAN BE CONSTRUED AS IN ACCORDANCE
28 WITH ITS TRADITIONAL MEANING.

1 PRIOR CRIMINAL ACTIVITY MUST BE GIVEN THE SAME
2 CONSTRUCTION, YOUR HONOR, LIMITING THE INTRODUCTION OF VIOLENT
3 CRIMES TO THOSE WHICH OCCURRED PRIOR TO THE CAPITAL HOMICIDE.

4 IT WOULD BE CONSISTENT WITH THE APPARENT INTENT
5 OF THE DRAFTERS, EXPRESSED IN SECTIONS A, C AND J. SO I WOULD
6 ASK FOR THE ESLAMINIA HOMICIDE TO BE EXCLUDED ON THAT BASIS.

7 MR. CHIER: WE WOULD JOIN, YOUR HONOR. VIS-A-VIS --

8 THE COURT: WELL, IT IS THE DEFENDANT'S MOTION. WHAT
9 DO YOU MEAN THAT YOU JOIN IN THE DEFENDANT'S MOTION?

10 MR. BARENS: WE CONCUR.

11 MR. CHIER: THESE ARE THE MATTERS WE WISHED TO BRIEF
12 FOR THE COURT.

13 THE COURT: WELL, YOU BRIEF IT FOR ME THEN, IN THE
14 MEANTIME. LET'S GET ON WITH THE TRIAL.

15 THE DEFENDANT: THERE ARE STILL A FEW MORE, SIR. THESE
16 ARE VERY IMPORTANT AND --

17 THE COURT: WELL, YOU CONFER WITH THE LAWYERS. I WILL
18 GIVE YOU PLENTY OF TIME TO DO THAT. LET THEM MAKE THE MOTIONS.
19 I AM NOT LISTENING TO YOU ANY MORE.

20 I AM THROUGH LISTENING TO YOU.

21 THE DEFENDANT: I AM QUITE SURE THAT I WOULD BE WAIVING --

22 THE COURT: YOU WON'T WAIVE ANYTHING. I WILL TELL YOUR
23 COUNSEL THAT.

24 MR. BARENS: LET ME ASK YOU THIS, YOUR HONOR, JUST TO
25 MAKE IT CLEAR FOR THE RECORD WHAT WE ARE DOING.

26 THE DEFENDANT HAS EXPRESSED THAT HE HAS ADDITIONAL
27 MOTIONS HE WISHES TO COMMUNICATE TO THE COURT THAT LIE IN
28 THE NATURE OF PREHEARING MOTIONS FOR THE DEFENDANT AND

1 IN LIMINE MOTIONS.

2 WE ARE ASKING FOR YOUR HONOR TO RESERVE. WE ARE
3 NOT WAIVING ANY MOTIONS THAT WE WOULD LIKE TO ADDRESS TO
4 YOUR HONOR. WE WOULD LIKE TO ADDRESS YOU AFTER THE NOON
5 BREAK.

6 AND THEN YOUR HONOR, PLEASE CONFIRM THAT THE
7 MATTERS WE BRING UP AFTER THE NOON BREAK ARE NOT DEEMED WAIVED
8 BECAUSE WE HAVE NOT BEEN ABLE TO ARTICULATE THEM AT THIS
9 JUNCTURE.

10 THE COURT: YOU ARE NOT WAIVING ANYTHING. ALL RIGHT?

11 THE DEFENDANT: FURTHERMORE, YOUR HONOR, IT MIGHT BE
12 IRREPARABLE HARM BECAUSE SOME OF THE THINGS MIGHT BE DEALING
13 WITH SOMETHING THAT COMES UP IN THE NEXT HOUR OR TWO OF
14 TESTIMONY. THEN, THEY ARE PREJUDICIAL AND --

15 MR. BARENS: I THINK THAT WE SHOULD BE CAUTIOUS IN ORDER
16 TO PROTECT THE RECORD AGAINST AN ERROR OF A FUNDAMENTAL
17 NATURE. WE ARE INTO SOME HEAVY CONSTITUTIONAL CONSIDERATIONS.
18 WE ARE AT THE DEATH PHASE OF THIS CASE.

19 THE COURT: LET HIM APPRISE YOU IN THE MEANTIME. THIS
20 IS THE FIRST TIME YOU HAVE HEARD ANY OF THIS?

21 MR. BARENS: YES, YOUR HONOR.

22 THE COURT: WELL, IT SEEMS THAT HE HAS BEEN WORKING
23 ON THIS A LONG TIME PRIOR TO THIS TIME.

24 MR. BARENS: YOUR HONOR, PLEASE UNDERSTAND THAT THEY
25 DON'T LET US TALK TO HIM OVER THE WEEKENDS. AND I DIDN'T
26 SEE HIM UNTIL HE WALKED IN HERE THIS MORNING, NOR DID I HAVE
27 AN OPPORTUNITY TO DO SO.

28 I AM TRYING TO MAKE SURE THAT WHAT WE DO, WHAT

1 WE ARE SUPPOSED TO DO AT THIS JUNCTURE IS --

2 THE COURT: YOU READ ALL OF HIS NOTES. YOU READ
3 EVERYTHING AND DISCUSS IT WITH HIM. THEN YOU MAKE THE MOTIONS.
4 ALL RIGHT?

5 MR. BARENS: WHAT HE IS SAYING I BELIEVE YOUR HONOR,
6 IS THAT IF WE DON'T DO THEM BEFORE THE STATEMENTS ARE MADE
7 TO THE JURY, AND THE FIRST WITNESS IS IMPANELED, WE RUN A
8 SUBSTANTIAL RISK OF IRREPARABLE HARM AND ERROR.

9 I DON'T THINK WE OUGHT TO TAKE THE RISK. I THINK
10 WE OUGHT TO TAKE THE TIME RIGHT NOW AND DO THIS.

11 THE COURT: HOW MUCH LONGER HAVE YOU GOT?

12 THE DEENDANT: PROBABLY ANOTHER HALF HOUR. BUT, I MEAN,
13 LIKE THERE ARE 15 SUBSTANTIVE ISSUES.

14 MR. BARENS: I THINK THAT WE BEST BE CAUTIOUS YOUR HONOR.

15 THE COURT: WHAT DO YOU MEAN BE CAUTIOUS? I HAVE
16 LISTENED TO THIS WHEN THIS IS SOMETHING THAT YOU SHOULD HAVE
17 PROPERLY PREPARED. YOU NEVER THOUGHT ABOUT ALL THESE POINTS?
18 IS THAT WHAT YOU ARE TRYING TO TELL ME? HE IS THE ONLY ONE
19 THAT KNEW ANYTHING ABOUT ALL OF THAT?

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1 MR. CHIER: YOUR HONOR, MAY I SAY SOMETHING?

2 THE COURT: YOU KNEW NOTHING ABOUT THIS?

3 MR. BARENS: YOUR HONOR --

4 THE COURT: YOU DIDN'T PREPARE FOR IT IN ADVANCE?

5 MR. BARENS: YOUR HONOR, THE WAY WE HAVE DONE THIS
6 THROUGHOUT THE TRIAL, SINCE WE STARTED TWO YEARS AGO --

7 (UNREPORTED COLLOQUY BETWEEN THE DEFENDANT
8 AND MR. BARENS.)

9 MR. BARENS: YOUR HONOR, I CAN ONLY SUBMIT THAT I BELIEVE
10 MR. HUNT SHOULD BE ABLE TO ADDRESS THE COURT ON THE MATTERS
11 THAT HE HAS THAT ARE OF A SUBSTANTIAL NATURE.

12 MR. WAPNER: CAN I JUST ADDRESS ONE THING? MAYBE WE
13 CAN, JUST AS A SUGGESTION, PUT IT INTO THE WORKS FOR NEXT
14 WEEKEND, THE COURT MIGHT WANT TO ASK MR. QUINN TO CALL TO
15 THE JAIL AND MAYBE SOME SPECIAL ARRANGEMENTS CAN BE MADE TO
16 HAVE COUNSEL SEE THE DEFENDANT ON THE WEEKEND AT THE JAIL.
17 I DON'T KNOW IF IT CAN BE DONE.

18 MR. BARENS: WE WOULD APPRECIATE THAT.

19 THE DEFENDANT: THE PROBLEM ALSO, YOUR HONOR --

20 THE COURT: I WILL DO THAT.

21 THE DEFENDANT: I GET TO THE PHONE MAYBE ONCE EVERY
22 THREE DAYS AND THEN VERY RARELY AT A TIME WHEN I CAN REACH
23 MY ATTORNEYS.

24 MR. BARENS: WHICH IS ANOTHER BIG PROBLEM I NEVER KNEW
25 WE HAD AT THIS POINT IN THE DEAL THAT HE CAN'T USE THE PHONE.

26 I CAN'T GET MY COMMUNICATIONS BACK AND FORTH WITH
27 THE DEFENDANT BECAUSE EVERY THIRD DAY, HE GETS A PHONE CALL
28 AT 6 O'CLOCK IN THE MORNING OR SOMETHING.

1 MR. WAPNER: WE CAN GET COURT ORDERED PHONE CALLS, TOO,
2 I AM SURE.

3 THE BAILIFF: PART OF A PROBLEM IS THE OVERCROWDING
4 OF THE JAIL. THEIR CAPACITY IS LIKE TEN OR ELEVEN THOUSAND
5 AND WE HAVE LIKE TWENTY-ONE OR TWENTY-TWO THOUSAND IN L.A.

6 THE COURT: THEY ALL WANT TO USE THE PHONES.

7 THE DEFENDANT: ABSOLUTELY, DOWN TO THE LAST MAN, THEY
8 WANT TO USE THE PHONE.

9 MR. BARENS: IT IS REAL AWKWARD.

10 MR. CHIER: JUDGE, HE ALSO DOESN'T GET BACK TO THE
11 COUNTY JAIL UNTIL --

12 THE COURT: I TELL YOU WHAT WE WILL DO TODAY, WHY DON'T
13 WE GO IN NOW? WHAT I INTEND TO DO IS TO PREINSTRUCT THE JURY
14 SO THEY KNOW SOMETHING ABOUT WHAT IS TO BE EXPECTED OF THEM
15 ON A DEATH PENALTY PHASE, THE SAME INSTRUCTIONS THAT I WILL
16 GIVE THEM AT THE CONCLUSION OF THE CASE AND THEY ARE
17 STANDARD INSTRUCTIONS, I WILL INSTRUCT THEM ABOUT THAT.

18 AND YOUR OPENING STATEMENT TO THE JURY -- THE
19 JURY WILL KNOW THAT OPENING STATEMENT IS NOT EVIDENCE IN THE
20 CASE AND THEN WHAT WE WILL DO THEN IS TO GO UNTIL ABOUT 3:30,
21 OR 3 O'CLOCK, SO YOU CAN HAVE THE BALANCE OF THE AFTERNOON
22 TO TALK TO HIM ABOUT ANY FURTHER MATTERS YOU WANT TO BRING
23 UP, WILL THAT BE ALL RIGHT?

24 MR. BARENS: OKAY.

25 THE COURT: HE WILL BE KEPT HERE FOR THAT PURPOSE UNTIL
26 4:30.

27 I SAW THE FORMER GIRLFRIEND OUT THERE AND THEY
28 DIDN'T BRING ANY CLOTHES ALONG SO, CONSEQUENTLY, THEY DIDN'T

1 LISTEN TO YOU.

2 MR. BARENS: THAT SEEMS TO BE THE CASE.

3 THE COURT: YES, THAT SEEMS TO BE THE CASE.

4 MR. BARENS: BY THE WAY, FOR THE RECORD, I WANT YOUR
5 HONOR TO KNOW THAT I WENT OUT THERE AFTER OUR LAST SESSION
6 AND I ASKED THEM IF THEY BROUGHT ANY CLOTHES AND THEY SAID
7 THEY DIDN'T. I SAID "DIDN'T I TELL YOU TO BRING CLOTHES FOR
8 THE DEFENDANT, HE WOULD BE PERMITTED TO PUT THEM ON?"

9 AND THEY TOLD ME, YES, THEY DID NOT DO IT THIS
10 MORNING. I ASKED THEM TO PLEASE DO SO.

11 I CAN'T ORDER THEM TO DO ANYTHING. I ASKED THEM.

12 THE COURT: DO YOU KNOW IF THEY WILL BRING THAT
13 TOMORROW?

14 MR. BARENS: I DON'T KNOW, YOUR HONOR.

15 I ASKED THEM THE SAME WAY I HAD.

16 THE COURT: YOU DON'T WANT THEM TO BRING THEM, DO YOU?

17 THE DEFENDANT: I WOULD JUST AS SOON BE TRIED IN THE
18 PENALTY PHASE IN THESE CLOTHES.

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1 THE COURT: ALL RIGHT, THEN I WILL STATE THAT TO
2 THE JURY.

3 MR. CHIER: YOUR HONOR, HE WAIVES HIS RIGHT TO DO
4 THAT.

5 MR. BARENS: HE HAS CHOSEN, HE ELECTS TO BE IN
6 THE ATTIRE THAT HE HAS NOW.

7 MR. CHIER: HE HAS TO GET UP A LOT EARLIER. IT
8 IS A BURDEN FOR THE DEFENDANT TO GET DRESSED IN CIVILIAN
9 CLOTHES DOWN THERE.

10 THE COURT: THE CLOTHES ARE HERE. WE TAKE CARE
11 OF DRESSING HIM HERE, DON'T WE?

12 THE BAILIFF: THE CLOTHES STAY HERE. IT TAKES FIVE
13 MINUTES.

14 THE COURT: THERE IS NO PROBLEM ABOUT IT. IT ONLY
15 TAKES FIVE MINUTES.

16 THE DEFENDANT: CAN I GET THE POINTS AND AUTHORITIES
17 AS TO WHY YOUR HONOR SHOULDN'T MAKE THAT STATEMENT TO
18 THE JURY?

19 THE COURT: I DON'T INTEND TO DO ANYTHING LIKE THAT.

20 MR. BARENS: HE IS SUGGESTING THAT IF THE DEFENSE
21 COULD HAVE AN OPPORTUNITY TO RESEARCH THAT, IF THERE ARE
22 SOME POSSIBLE POINTS AND AUTHORITIES TO SUPPORT THAT YOUR
23 HONOR SHOULD NOT MAKE SUCH A STATEMENT.

24 THE COURT: THE LAW IS THAT THE DEFENDANT SHOULD
25 NOT BE BROUGHT INTO COURT IN JAIL CLOTHES; IS THAT RIGHT?

26 MR. CHIER: AGAINST HIS WILL.

27 THE DEFENDANT: AGAINST HIS WILL.

28 THE COURT: SO THEREFORE, THERE IS AUTHORITY FOR

11A-2

1 THE SUGGESTION THAT HE WEAR THEM. HOWEVER, IF HE EXPRESSES
2 HIMSELF THAT HE DOESN'T WANT IT, AS HE HAS ON THE RECORD,
3 HE CAN WEAR JAIL CLOTHES. I WILL TELL THE JURY THIS IS
4 AT HIS OWN ELECTION.

5 MR. BARENS: ALL WE ARE SAYING IS THAT THE DEFENSE
6 FEELS PERHAPS THAT IT MIGHT NOT BE THE APPROPRIATE THING
7 TO SAY THAT, BUT I DON'T KNOW IF IT CAN BE RESTRICTED
8 OR IF THERE IS A CASE THAT MIGHT SUGGEST TO YOUR HONOR
9 THAT YOUR HONOR MIGHT NOT SAY THAT TO THE JURY.

10 THE COURT: I TOLD YOU THERE IS A CASE WHICH HOLDS
11 THE DEFENDANT SHOULD NOT BE BROUGHT INTO COURT IN JAIL
12 CLOTHES, THAT HE MUST BE FURNISHED WITH CIVILIAN CLOTHES.

13 MR. BARENS: I THINK THAT CASE SAYS "AGAINST HIS
14 WILL."

15 THE COURT: NO, NO, NO, NOT AGAINST HIS WILL.

16 THE DEFENDANT: IT CERTAINLY DOESN'T SAY ANYTHING
17 ABOUT MAKING AN INSTRUCTION.

18 WHAT I WOULD LIKE NOW IS AN OPPORTUNITY TO
19 CHECK THE LAW ON IT, BECAUSE IF THAT IS THE CASE, THEN
20 I MAY CHANGE.

21 THE COURT: YOU DON'T NEED TO CHECK THE LAW ON IT.
22 THAT IS WHAT I AM GOING TO DO.

23 THE DEFENDANT: IF I AM IN A DILEMMA LIKE THAT,
24 I WOULD LIKE THE OPPORTUNITY OF CHECKING UP.

25 THE COURT: I WILL TELL YOU WHAT THE LAW IS, SO
26 FAR AS THAT IS CONCERNED. IF YOU WANT TO LOOK IT UP,
27 DO IT.

28 THE DEFENDANT: I WANT AN OPPORTUNITY. I DON'T

11A-3

1 WANT THE JURY TO HEAR THAT I AM BEING OBSTRUCTIVE. THEY
2 ARE GOING TO KNOW I HAVE COME IN HERE IN A DIFFERENT SUIT
3 EVERY DAY.

4 THE COURT: DO YOU WANT TO HAVE NON-JAIL CLOTHES ON
5 OR DON'T YOU?

6 THE DEFENDANT: EITHER HAVE MY SUIT OR THESE CLOTHES.

7 THE COURT: YOU HAVE HAD PLENTY OF TIME TO GET THEM
8 DOWN HERE. YOU REFUSED TO DO THAT.

9 THE DEFENDANT: PERHAPS YOUR HONOR COULD WITHHOLD
10 THE STATEMENT SO I COULD HAVE A CHANCE TO RESEARCH IT
11 AND BRING MY CLOTHES TOMORROW.

12 MR. BARENS: COULD WE HAVE UNTIL 1:30?

13 THE COURT: IN THE MEANTIME, LET HIM WEAR HIS JAIL
14 CLOTHES, IS THAT WHAT YOU WANT?

15 MR. BARENS: WHAT I UNDERSTAND, IN THE 30 MINUTES
16 BEFORE THAT WE HAVE, WHERE I ANTICIPATED YOUR HONOR MIGHT
17 TAKE A BREAK, YOU ARE GOING TO PRE-INSTRUCT AND COULD
18 WE HOLD DOING THE STATEMENT, OPENING STATEMENT EITHER
19 BY THE PROSECUTION OR DEFENSE UNTIL AFTER 1:30?

20 THE COURT: YES, I WILL DO THAT.

21 MR. BARENS: SO WE WILL BE CAUTIOUS IN WHAT WE ARE
22 DOING.

23 THE COURT: I WILL DO THAT. LET'S GET THE JURY
24 IN, PLEASE.

25 MR. CHIER: COULD WE MAYBE GET SOME CLOTHES FOR
26 HIM?

27 THE DEFENDANT: NO.

28 THE BAILIFF: THEY WON'T FIT.

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THE DEFENDANT: THEY WON'T FIT.

THE COURT: WILL YOU MAKE A COPY OF THE LIST?

THE COURT REPORTER: DO YOU WANT THAT AS A COURT
EXHIBIT, YOUR HONOR?

THE COURT: YES.

AND ALL OF THE DISCUSSION ABOUT THE JUROR
SHOULD BE MARKED SECRET AND CONFIDENTIAL.

(RECESS.)

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

4 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN. I AM
5 SORRY TO KEEP YOU. WE HAD SOME MATTERS TO DISCUSS FOR A MOMENT
6 IN CHAMBERS. THAT IS THE REASON FOR THE DELAY. THE RECORD
7 WILL INDICATE THE PRESENCE OF THE DEFENDANT AND THE JURORS.

8 LADIES AND GENTLEMEN, YOU WILL NOTICE THAT THE
9 DEFENDANT IS DRESSED IN JAIL BLUES. THAT IS AT HIS OWN
10 ELECTION AND DESIRE.

11 HE WAS OFFERED OTHER CLOTHES. MAYBE IN THE FUTURE
12 HE MIGHT BE WEARING HIS ORDINARY CIVILIAN CLOTHES.

13 I THINK BEFORE WE BEGIN THIS TRIAL, I WANT TO
14 TELL YOU SOMETHING ABOUT THE PENALTY PHASE OF THE CASE. THESE
15 INSTRUCTIONS WILL BE GIVEN TO YOU AT THE CONCLUSION OF THE
16 CASE BUT I THOUGHT I WOULD OUTLINE FOR YOU WHAT IT IS THAT
17 YOU WILL BE HEARING AND THE FACTS OF WHAT YOU ARE SUPPOSED
18 TO PAY ATTENTION TO.

19 THESE ARE THE INSTRUCTIONS:

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21 JURY INSTRUCTIONS
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23 THE DEFENDANT IN THIS CASE HAS BEEN
24 FOUND GUILTY OF MURDER IN THE FIRST DEGREE. THE
25 CHARGE THAT THE MURDER WAS COMMITTED UNDER SPECIAL
26 CIRCUMSTANCES HAS BEEN ESPECIALLY FOUND TO BE
27 TRUE. IT IS THE LAW OF THIS STATE THAT THE PENALTY
28 FOR A DEFENDANT FOUND GUILTY OF MURDER IN THE FIRST

1 DEGREE, SHALL BE DEATH OR CONFINEMENT IN THE STATE
2 PRISON OR LIFE WITHOUT POSSIBILITY OF PAROLE IN ANY
3 CASE IN WHICH THE SPECIAL CIRCUMSTANCE CHARGE
4 INDICATED HAS BEEN FOUND TO BE TRUE.

5 UNDER THE LAW OF THIS STATE, YOU MUST
6 DETERMINE WHICH OF SAID PENALTIES SHALL BE IMPOSED ON
7 THE DEFENDANT. IN DETERMINING WHICH PENALTY IS TO
8 BE IMPOSED ON THE DEFENDANT, YOU SHALL CONSIDER
9 ALL OF THE EVIDENCE WHICH HAS BEEN RECEIVED DURING
10 ANY PART OF THE TRIAL OF THIS CASE. YOU SHALL
11 CONSIDER, TAKE INTO ACCOUNT AND BE GUIDED BY THE
12 FOLLOWING FACTORS, IF THESE FACTORS ARE
13 APPLICABLE: A, THE CIRCUMSTANCES OF THE CRIME
14 OF WHICH THE DEFENDANT WAS CONVICTED IN THE PRESENT
15 PROCEEDINGS AND THE EXISTENCE OF ANY SPECIAL
16 CIRCUMSTANCE FOUND TO BE TRUE.

17
18 IN OTHER WORDS, FACTORS YOU ARE TO CONSIDER IS
19 EVERYTHING YOU HEARD IN THE CASE UP TO THIS POINT IN THE GUILT
20 PHASE.

21
22 B, THE PRESENCE OR ABSENCE OF CRIMINAL
23 ACTIVITY BY THE DEFENDANT WHICH INVOLVE THE USE OR
24 ATTEMPTED USE OF FORCE OR VIOLENCE OR THE EXPRESS
25 OR IMPLIED THREAT TO USE FORCE OR VIOLENCE.

26
27 I DON'T THINK C WOULD BE APPLICABLE. WELL, I
28 WILL GIVE IT TO YOU, ANYWAY.

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

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TO THE OFFENSE FOR WHICH HE IS ON TRIAL. YOU MUST
DISREGARD ANY JURY INSTRUCTION GIVEN TO YOU ON THE
GUILT OR INNOCENCE PHASE OF THE TRIAL WHICH
CONFLICTS WITH THIS PRINCIPLE.

13 F

13-1

1 EVIDENCE WILL BE INTRODUCED,
2 I ASSUME, FOR THE PURPOSE OF SHOWING THE
3 DEFENDANT HAS COMMITTED OTHER CRIMINAL ACTS
4 OR ACTIVITY WHICH INVOLVES THE EXPRESS OR
5 IMPLIED USE OF FORCE OR VIOLENCE OR THREAT
6 OF FORCE OR VIOLENCE.

7 AND BEFORE THE JURY MAY CONSIDER
8 ANY OF SUCH CRIMINAL ACTS OR ACTIVITY AS AN
9 AGGRAVATING CIRCUMSTANCE IN THIS CASE, YOU
10 WILL HAVE TO BE SATISFIED BEYOND A REASONABLE
11 DOUBT THAT THE DEFENDANT DID IN FACT COMMIT
12 SUCH ACTS OR ACTIVITY.

13 AND YOU MAY CONSIDER ANY EVIDENCE
14 OF ANY OTHER CRIMINAL ACTS OR ACTIVITY AS
15 AGGRAVATING CIRCUMSTANCES.

16 AND THEN AT THE CONCLUSION IT
17 WILL BE YOUR DUTY TO DETERMINE WHICH OF THE
18 TWO PENALTIES, DEATH OR CONFINEMENT IN STATE
19 PRISON FOR LIFE WITHOUT POSSIBILITY OF PAROLE
20 SHALL BE IMPOSED ON THE DEFENDANT.

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

28 THE WEIGHING OF AGGRAVATING AND

13-2

1 MITIGATING CIRCUMSTANCES DOES NOT MEAN A
2 MERE MECHANICAL COUNTING OF FACTORS ON EACH
3 SIDE OF AN IMAGINARY SCALE OR THE ARBITRARY
4 ASSIGNMENT OF WEIGHTS TO ANY OF THEM. YOU
5 WILL BE FREE TO ASSIGN WHATEVER MORAL OR
6 SYMPATHETIC VALUE TO THEM APPROPRIATE TO
7 EACH AND ALL OF THE VARIOUS FACTORS YOU ARE
8 PERMITTED TO CONSIDER.

9 IN WEIGHING THE VARIOUS CIRCUM-
10 STANCES YOU SIMPLY DETERMINE UNDER THE RELEVANT
11 EVIDENCE WHICH PENALTY IS JUSTIFIED AND
12 APPROPRIATE, BY CONSIDERING THE TOTALITY OF
13 THE AGGRAVATING CIRCUMSTANCES WITH THE TOTALITY
14 OF THE MITIGATING CIRCUMSTANCES.

15 TO RETURN A JUDGMENT OF DEATH,
16 EACH OF YOU MUST BE PERSUADED THAT THE AGGRA-
17 VATING EVIDENCE OR CIRCUMSTANCES IS OR ARE
18 SUBSTANTIAL IN COMPARISON WITH THE MITIGATING
19 CIRCUMSTANCES AND THEY WARRANT DEATH INSTEAD
20 OF LIFE WITHOUT PAROLE.

21 THOSE ARE SUBSTANTIALLY -- THERE MAY BE OTHER
22 INSTRUCTIONS WHICH WILL BE GIVEN TO YOU AT THE CONCLUSION
23 OF THE PENALTY PHASE.

24 I THINK IN VIEW OF THE FACT THAT THE COURT
25 STILL HAS SOME UNFINISHED BUSINESS BEFORE WE ACTUALLY
26 START THE TRIAL, I WILL ASK YOU TO COME BACK AT 1:30 --
27 1:30 OR 1:45 -- 1:45 THIS AFTERNOON AND WE WILL START
28 WITH THE OPENING STATEMENT OF COUNSEL. YOU WILL BE EXCUSED

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UNTIL THAT TIME.

THANK YOU VERY MUCH AND SORRY AGAIN FOR THE
DELAY.

(WHEREUPON, THE FOLLOWING PROCEEDINGS
WERE HELD OUT OF THE PRESENCE OF THE JURY:)

THE COURT: MR. BARENS, WHAT ABOUT THE MATTER OF
THE CLOTHES, DO YOU WANT TO FIND OUT FROM HIM WHETHER
HE WANTS THEM TOMORROW?

MR. BARENS: WELL, I WILL TAKE CARE OF THAT, YOUR
HONOR.

THE COURT: IS THERE ANYTHING FURTHER YOU WANT BEFORE
WE TAKE A RECESS?

MR. BARENS: YOUR HONOR, WE WILL SEE YOU IN CHAMBERS
AT 1:30, SIR.

THE COURT: YES, ALL RIGHT.

13A FO.

13A-1

1 THE COURT: WE WON'T BE GOING ON FRIDAY, WILL WE?

2 MR. BARENS: NO, YOUR HONOR.

3 (WHEREUPON THE FOLLOWING PROCEEDINGS
4 WERE HELD AT THE BENCH:)

5 THE COURT: ASK HIM IF IT WAS A BOY OR GIRL.

6 MR. BARENS: IT WAS A GIRL.

7 THE COURT: FINE.

8 MR. WAPNER: I HAVE A REQUEST FROM ONE OF MY WITNESSES,
9 BRUCE SWARTOUT, S-W-A-R-T-O-U-T, TO HAVE THE T.V. CAMERAS
10 USE THE SAME PROCEDURE FOR HIM THAT THEY DID FOR MR. KARNY
11 AND THAT IS BLACK OUT HIS FACE AND HIS REASON IS BECAUSE,
12 ACCORDING TO HIM, HE HAS BEEN CAUSED FINANCIAL RUIN AS
13 A RESULT OF THIS AND IS NOW ATTEMPTING TO GET BACK ON
14 HIS FEET AND HE IS AFRAID THAT THE BUSINESS THAT HE IS
15 INVOLVED IN NOW WILL BE DONE IRREPARABLE HARM IF HIS PICTURE
16 IS SHOWN ON THE T.V.

17 AND THE REASON I AM MAKING THAT REQUEST NOW
18 IS TO THE EXTENT THAT THE COURT CONSIDERS IT, IF ANY OF
19 THE MEDIA PEOPLE WANT THEIR LAWYERS HERE, WE MIGHT BE
20 ABLE TO DO THAT EITHER TOMORROW -- MAYBE TOMORROW MORNING.
21 I TOLD HIM THAT I WOULD MAKE THE REQUEST TO THE COURT.
22 I MEAN I FEEL BADLY FOR HIM. HE IS OBVIOUSLY IN A DIFFERENT
23 POSITION THAN MR. KARNY IN THE SENSE HE IS NOT A PROTECTED
24 WITNESS.

25 THE COURT: I CAN'T UNDERSTAND WHY ANYBODY, BECAUSE
26 THEY SEE HIM ON TELEVISION, IS NOT GOING TO DO BUSINESS
27 WITH HIM.

28 MR. BARENS: NO. WE HAD THE SAME REQUEST THAT

1 CARMEN CANCHOLA LADY WANTED TO HAVE HER FACE OBSCURED,
2 TOO, AND WE MET NO SUCCESS WITH THAT AND I DARE SAY WE
3 SHOULD HAVE SOME SYMMETRY HERE.

4 THE COURT: I WILL TELL YOU WHAT I WILL DO. I WILL
5 MAKE THE REQUEST THAT THEY DON'T DO IT. I HAVE NO CONTROL.
6 I AM NOT GOING TO ORDER THEM TO DO IT.

7 MR. CHIER: YOUR HONOR, THERE IS A LADY IN THE AUDIENCE
8 THAT IS A MEMBER OF THE AUDIENCE THAT IS TAKING PHOTOGRAPHS.

9 THE COURT: WHO IS IT?

10 MR. CHIER: THAT IS MISS WHITMORE.

11 THE COURT: THERE WON'T BE ANY PHOTOGRAPHS.

12 MR. CHIER: THE LADY IN THE ORANGE SWEATER IS TAKING
13 PHOTOGRAPHS AND HAS BEEN TAKING PHOTOGRAPHS. I DON'T
14 BELIEVE SHE IS A PRESS PERSON. I WOULD OBJECT.

15 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE
16 HELD IN OPEN COURT:)

17 THE COURT: THERE WON'T BE ANY PHOTOGRAPHS TAKEN
18 BY ANYBODY.

19 MR. BARENS: IT IS DISTRACTING.

20 THE COURT: IF THERE ARE ANY MEMBERS OF THE AUDIENCE
21 THAT HAVE ANY CAMERAS, AND SO FORTH, THERE WILL BE NO
22 SNAPPING OF PICTURES OR PICTURES TAKEN IN THE COURTROOM
23 AND THAT GOES FOR EVERYBODY.

24 (AT 11:30 A.M. A RECESS WAS TAKEN UNTIL
25 1:30 P.M. OF THE SAME DAY.)
26
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28

1 SANTA MONICA, CALIFORNIA; MONDAY, MAY 11, 1987; 1:40 P.M.

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

3 (APPEARANCES AS HERETOFORE NOTED EXCEPT

4 MR. CHIER AND THE DEFENDANT ARE NOT

5 PRESENT.)

6
7 (THE FOLLOWING PROCEEDINGS WERE HELD

8 IN CHAMBERS:)

9 MR. WAPNER: THE CLERK HAS INFORMED ME THAT THE
10 CLERK'S OFFICE WON'T RELEASE THE TRIAL EXHIBITS TO COME
11 UP TO THE COURTROOM UNLESS THE COURT ORDERS IT. THEY
12 CLAIM THAT --

13 THE COURT: DO YOU WANT THEM?

14 MR. WAPNER: YES.

15 THE CLERK: ALL OF THEM?

16 THE COURT: ALL RIGHT. WOULD YOU PLEASE GET THE
17 EXHIBITS?

18 THE CLERK: I MEAN, IT IS KIND OF RIDICULOUS TO
19 RUN THAT WHOLE SHOPPING CART BACK AND FORTH IF YOU ARE
20 ONLY GOING TO --

21 THE COURT: WELL, HE DOESN'T KNOW.

22 MR. WAPNER: I JUST WANT TO HAVE ACCESS TO IT, IN
23 CASE THERE IS SOMETHING IN THERE THAT I NEED.

24 THE CLERK: WELL, WHEN PAT GETS UP HERE, I WILL --

25 THE COURT: TELL THE PRESS THAT COUNSEL WOULD PREFER
26 NOT TO HAVE ANYBODY PRESENT. THAT IS WHY WE WANTED TO
27 HAVE THIS IN CHAMBERS.

28 THE CLERK: OKAY.

(THE CLERK EXITS CHAMBERS.)

MR. WAPNER: ARE WE WAITING FOR THE DEFENDANT?

MR. BARENS: YES.

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1 (WHEREUPON, MR. CHIER ENTERS
2 CHAMBERS:)

3 (FURTHER PAUSE IN PROCEEDINGS.)

4 (WHEREUPON, DEFENDANT ENTERS CHAMBERS.)

5 THE COURT: ALL RIGHT. THE RECORD WILL SHOW THE
6 PRESENCE OF THE DEFENDANT AND COUNSEL.

7 MR. CHIER: CAN I PROCEED?

8 I HAVE KIND OF A LONG LIST OF MOTIONS AND MATTERS TO
9 TAKE UP WITH THE COURT HERE, YOUR HONOR, AND IF WE COULD
10 GO THROUGH THESE.

11 THE FIRST THING I WOULD LIKE TO DO IS BRIEFLY
12 TOUCH UPON THAT IN YOUR PREINSTRUCTION TO THE JURY, YOU
13 OMITTED SUBSECTION C OF THE --

14 THE COURT: NO PRIOR FELONY.

15 MR. CHIER: -- THE ABSENCE OF ANY PRIOR FELONY CONVICTION
16 OF THE DEFENDANT.

17 THE COURT: I SAID THAT.

18 MR. CHIER: NO, YOU SKIPPED OVER IT OR I MISUNDERSTOOD
19 YOU THEN.

20 ALL RIGHT. BEFORE WE GET UNDER WAY WITH THE
21 OPENING STATEMENT OF MR. WAPNER, I THINK THAT WE SHOULD
22 HAVE A HEARING CONCERNING THE SUPPRESSION OF MR. KARNY'S
23 TESTIMONY, BASED UPON THE FAILURE OF THE PEOPLE TO RETURN
24 AN EXHIBIT, NO. 37 TO THE DEFENSE. THAT HAS A DIRECT
25 TENDENCY TO IMPEACH MR. KARNY.

26 THE COURT: DIDN'T I RULE ON THAT IN THE GUILT PHASE
27 OF THE TRIAL, 37?

28 MR. CHIER: WE DIDN'T HAVE A FULL HEARING.

1 THE COURT: I RULED ON IT AT THAT TIME. MY RULING
2 WILL BE THE SAME.

3 MR. CHIER: I AM MAKING ANOTHER MOTION AT THIS TIME.

4 THE COURT: THAT WILL BE DENIED.

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1 MR. CHIER: ALL RIGHT. WE DO HAVE PHYSICAL AND ORAL
2 TESTIMONY TOGETHER WITH CIRCUMSTANTIAL EVIDENCE TO SUPPORT
3 THE EXISTENCE OF THIS DOCUMENT AND THE NEED --

4 THE COURT: DESCRIBE THAT DOCUMENT.

5 MR. CHIER: IT IS A LETTER UNDER DATE OF JULY SOMETHING,
6 1980 --

7 THE DEFENDANT: EXCUSE ME. COULD I JUST COUNSEL WITH
8 HIM FOR JUST A SECOND?

9 (OFF THE RECORD DISCUSSION BETWEEN THE
10 DEFENDANT AND HIS COUNSEL.)

11 MR. CHIER: DO YOU REMEMBER THAT YOUR HONOR TOOK A
12 PROFFER FROM THE DEFENDANT AT THE SIDE BAR OUT OF THE HEARING
13 AND PRESENCE OF MR. WAPNER? THAT MATTER IS UNDER SEAL AT
14 THIS TIME. AND I HAD NEGLECTED TO RECALL THAT. BUT IT IS --
15 THE ENTIRE PROFFER WAS TAKEN BY YOUR HONOR UNDER SEAL, NOT
16 IN MR. WAPNER'S PRESENCE. AND I WOULD LIKE TO KEEP THE
17 STRUCTURE THAT WAY FOR THE TIME BEING.

18 MR. WAPNER: AS I RECALL, THE COURT'S RULING WAS THAT
19 HE COULD BE EXAMINED ABOUT THE CONTENTS OF THIS LETTER. THAT
20 IS MY RECOLLECTION.

21 MR. CHIER: YES. THAT IS WHAT I AM TALKING ABOUT, THE
22 PROFFER. THE JUDGE WAS ASKING ME TO GO INTO IT.

23 THE COURT: YOU MEAN YOU WANT TO OFFER THAT LETTER?

24 MR. CHIER: NO. I WANT TO HAVE A HEARING ON WHETHER
25 OR NOT THERE SHOULD BE A SANCTION EITHER OF A COURT MANDATORY
26 LWOP IN THIS CASE OR THE PROHIBITION OF MR. KARNY FROM
27 TESTIFYING AS A SANCTION FOR THE PEOPLE, THE GOVERNMENT NOT
28 RETURNING THIS DOCUMENT.

16-2
1 MR. WAPNER: WELL, MAY I JUST INTERJECT BRIEFLY BECAUSE
2 I THINK THAT THAT IS FACTUALLY INACCURATE. THE GOVERNMENT
3 IS NOT RETURNING THIS DOCUMENT BECAUSE THERE IS NO EVIDENCE
4 THAT WE EVER TOOK IT.

5 MR. CHIER: WELL, THAT IS WHAT THE HEARING WOULD BE
6 FOR.

7 THE COURT: YES. I REMEMBER THE TIME THAT WE HAD THE
8 MOTION TO SUPPRESS THE SEARCH WARRANT, ISN'T THAT RIGHT? WE
9 TALKED ABOUT IT AT THAT TIME, DIDN'T WE?

10 MR. WAPNER: THAT'S RIGHT.

11 THE COURT: LET'S GO ON TO THE NEXT ONE.

12 MR. CHIER: NOW YOUR HONOR, WHAT WE WOULD LIKE TO DO
13 IS RENEW OR REOPEN THE MOTION FOR DISCOVERY OF THE KARNY/
14 HOMICIDE, HOLLYWOOD MOTEL CASE AND THAT IS ON THE FOLLOWING
15 GROUNDS OR FOR THE FOLLOWING REASONS: FIRST, NOW BEAR IN
16 MIND THAT I AM NOT SEEKING ADMISSION OF THIS EVIDENCE AT THIS
17 JUNCTURE. WE ARE SEEKING ONLY TO LOOK AT IT. IT IS DISCOVERY,
18 IF YOU WILL.

19 IT IS FIRST, THE GROUNDS THAT IT WILL IMPEACH
20 THE CONTENTS OF THIS FILE. IT WILL HAVE A TENDENCY TO IMPEACH
21 MR. KARNY FOR BIAS, MOTIVE OR INTEREST. IT WILL IMPEACH HIS
22 TESTIMONY IN PARTICULAR RESPECT TO HIS CLAIM --

23 THE COURT: THIS IS A REPETITION OF THE SAME MOTION
24 THAT YOU MADE IN CONNECTION WITH HIS TESTIMONY.

25 MR. CHIER: ACTUALLY, WHAT HAPPENED --

26 THE COURT: YOU ARE REPEATING YOURSELF.

27 MR. CHIER: NOT REALLY BECAUSE WHAT HAPPENED IN THE
28 GUILT PHASE WITH RESPECT TO THE KARNY MOTION IS THAT SOMEHOW,

1 OUR MOTION GOT JOINED IN THE PITTMAN MOTION AND IT WAS NEVER
2 REALLY CLEARLY RESOLVED VIS-A-VIS MR. HUNT IN THIS CASE.

3 AND WE THINK THAT AT THIS PARTICULAR JUNCTURE,
4 HAVING NOW SEEN MR. KARNY TESTIFY AS A TYPE OF BORN AGAIN
5 PERSON IN THE GUILT PHASE --

6 THE COURT: DIDN'T WE HAVE A FULL HEARING? DIDN'T THE
7 PEOPLE IDENTIFIED WITH THAT PARTICULAR INVESTIGATION SAY THERE
8 WAS ABSOLUTELY NOTHING THAT THEY HAVE AGAINST MR. KARNY AND
9 THEREFORE, THERE WAS NOTHING TO GIVE YOU? DIDN'T THEY SAY
10 THAT?

11 MR. WAPNER: THEY FILED AN AFFIDAVIT TO THAT EFFECT.
12 AND THE STATUS OF THE MOTION BY THE DEFENSE IN THIS CASE,
13 WAS THAT IT WAS WITHDRAWN.

14 AND THEN LATER, MR. BRODEY AND MR. GREENHALGH
15 MADE A MOTION BEFORE WHEN MR. PITTMAN WAS KIND OF SUMMARILY
16 JOINED IN WITHOUT ARGUMENT BY COUNSEL AND THE MOTION WAS DENIED.

17 THE COURT: DENIED? RIGHT.

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THE COURT: I DENIED IT, DIDN'T I?

MR. WAPNER: THAT MOTION WAS DENIED.

MR. CHIER: COULD I JUST SAY WHY WE WANT TO HAVE A HEARING ON THAT, YOUR HONOR, FOR THE RECORD, PLEASE?

THE COURT: GO AHEAD.

MR. CHIER: THE CASE OF PEOPLE V. GREEN SUPPORTS THE THEORY AT A PENALTY PHASE OF GOING INTO THE IDEA OF THIRD PARTY CULPABILITY. WE ARE ENTITLED, AS A MATTER OF LAW, TO SHOW THAT IF LEVIN IS DEAD, THAT IF THERE IS A CULPABLE PERSON, VIS-A-VIS LEVIN AND ESLAMINIA, IT IS NOT MR. HUNT BUT MR. KARNY.

NOW ON THIS HOLLYWOOD FILE, WE SHOULD NOT BE BOUND BY THE DETERMINATION OF THE LOS ANGELES POLICE DEPARTMENT HOMICIDE PEOPLE FROM WORKING IN CONCERT WITH THE DISTRICT ATTORNEY'S OFFICE, THAT IN THEIR OPINION MR. KARNY IS NO LONGER A SUSPECT, ALTHOUGH HE WAS AT ONE TIME.

IT IS NOT REALLY FAIR TO SADDLE US AND TO BIND US BY THEIR DETERMINATION.

THE COURT: SPECIFICALLY, WHAT IS IT YOU WANT TO SHOW WITH RESPECT TO KARNY? THAT HE PERPETRATED THIS MURDER, IS THAT WHAT YOU ARE TRYING TO SHOW, SO AS TO ATTACK HIS CREDIBILITY; IS THAT WHAT YOU WANT TO DO?

MR. CHIER: YES, YOUR HONOR.

THE COURT: WHAT EVIDENCE DO YOU HAVE OF THAT?

MR. CHIER: WE DON'T HAVE ANY EVIDENCE.

THE COURT: IF YOU DON'T HAVE ANY EVIDENCE, HOW CAN YOU ATTACK HIM?

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1 MR. CHIER: BECAUSE WE HAVEN'T BEEN PERMITTED TO
2 DISCOVER IT.

3 THE DEFENDANT: COULD I JUST --

4 THE COURT: LET HIM DO THE TALKING. YOU CAN TALK
5 TO HIM.

6 (UNREPORTED COLLOQUY BETWEEN THE
7 DEFENDANT AND MR. CHIER.)

8 MR. CHIER: MR. HUNT REMINDS ME THAT THERE HAS BEEN
9 A LOT OF INFORMATION OUT THERE. WE ARE NOT SURE OF THE
10 SOURCE OF THE INFORMATION BUT THERE ARE ALLEGED INFORMED
11 SOURCES, SUCH AS NEWSPAPER REPORTERS, AND I SAY THAT WITH
12 A GRAIN OF SALT, AND OTHER PERSONS HAVE TALKED ABOUT SOME
13 DETAILS OF THE HOMICIDE THING.

14 WE HAVE GLEANED, FOR EXAMPLE, THAT THERE WAS
15 CERTAIN PHYSICAL EVIDENCE THAT LINKED MR. KARNY THAT WAS
16 FOUND AT THE SCENE. FOR THOSE REASONS, WE WOULD SEEK,
17 NOT THE ADMISSION OF THIS STUFF AND NOT A RULING FROM
18 YOUR HONOR THAT WE ACTUALLY ASK MR. KARNY IN FRONT OF
19 THE JURY THESE QUESTIONS, BUT THAT WE BE GIVEN AN OPPORTUNITY
20 TO LOOK AT IT AND TO THEN SAY TO THE COURT THAT WE FEEL
21 THAT THIS OR THAT ASPECT OF IT IS SUBJECT TO BEING ASKED
22 MR. KARNY ON HIS CROSS-EXAMINATION.

23 THE COURT: ON CROSS-EXAMINATION, YOU CAN ASK HIM
24 WHETHER HE HAS EVER BEEN CONVICTED OF ANY FELONY.

25 ARE YOU TRYING TO CONVICT HIM OF THIS FELONY --

26 MR. CHIER: NO.

27 THE COURT: -- BY THIS QUESTION YOU ARE GOING TO
28 ASK HIM?

1 MR. CHIER: YOUR HONOR, IF YOU WILL RECALL, HE TESTIFIED
2 IN SUBSTANCE THAT HE IS NOW A BORN-AGAIN PERSON.

3 THE COURT: HE DIDN'T TALK ABOUT ANYTHING INVOLVING
4 THE HOLLYWOOD MATTER.

5 MR. CHIER: NO, BUT HE SAID THAT EVER SINCE HE LOOKED
6 AT THE PICTURE OF MR. ESLAMINIA, HE BECAME SICKENED AND
7 REALIZED THE FOLLY OF HIS WAYS AND IF IN FACT SUBSEQUENT
8 TO THAT, IT TURNS OUT THAT HE WAS OUT DOING SOMETHING --

9 THE COURT: DOING WHAT?

10 MR. CHIER: DOING HOMICIDES.

11 THE COURT: HOW DO YOU KNOW HE DID IT?

12 MR. CHIER: WE DON'T KNOW, OTHER THAN WHAT EVIDENCE
13 WE HAVE HEARD.

14 THE COURT: DO YOU MEAN YOU WANT TO ASK HIM, "DID
15 YOU DO THIS HOLLYWOOD MOTEL HOMICIDE?" IS THAT WHAT YOU
16 WANT TO ASK HIM?

17 MR. CHIER: IF THERE ARE ANY FILES CONCERNING THE
18 INVESTIGATION OF THIS CASE, THERE MAY BE EVIDENCE LINKING
19 MR. KARNY TO THAT HOMICIDE.

20 THE COURT: I WILL DENY THAT MOTION. I WON'T PERMIT
21 YOU TO ASK ANYTHING ABOUT THE HOLLYWOOD THING, ANY MORE
22 THAN I WOULD PERMIT THE DISTRICT ATTORNEY TO CROSS-EXAMINE
23 THE DEFENDANT AND ASK HIM ABOUT THE HOLLYWOOD THING.

24 ISN'T THERE SOME SUGGESTION THAT THE GUY IN
25 HOLLYWOOD WAS SOMEBODY WHO WAS A CELLMATE OF HIS?

26 MR. BARENS: THAT HAS NEVER BEEN A CONTENTION, TO
27 MY KNOWLEDGE.

28 THE COURT: THAT HE WAS IN THE JAIL AT THE SAME

1 TIME?

2 MR. BARENS: HAS THAT BEEN CONTENDED, MR. WAPNER?

3 MR. WAPNER: IF WE ARE GOING TO HAVE DISCOVERY ON
4 THE CASE, THEN I WILL BE HAPPY TO PROVIDE ANYTHING. BUT
5 IF WE ARE NOT, I AM NOT GOING TO MAKE ANY COMMENTS ON
6 THAT ONE WAY OR THE OTHER.

7 MR. BARENS: YOUR HONOR, I CAN ONLY SAY I NEVER
8 HEARD THAT ONE BEFORE, YOUR HONOR.

9 THE COURT: GO AHEAD.

10 MR. WAPNER: YOUR HONOR, I AM HAPPY TO SUBMIT THE
11 MATTER OF THE DISCOVERY ON THIS CASE TO THE CITY ATTORNEY
12 AND LET THEM DO WHATEVER IT IS THAT THEY WANT TO DO AS
13 FAR AS THAT IS CONCERNED.

14 THE COURT: YOU MEAN, THEM GIVE ANY EVIDENCE, YOU
15 MEAN?

16 MR. WAPNER: WELL, I DON'T KNOW, YOU KNOW, WHAT
17 THE POLICE OR THE CITY ATTORNEY'S OFFICE -- I DON'T KNOW
18 WHAT THEIR POSITION IS.

19 THE DEFENDANT: COULD I HAVE --

20 THE COURT: WHAT DOES THAT MEAN?

21 MR. WAPNER: IN TERMS OF TURNING ANYTHING OVER,
22 I WOULDN'T WANT TO JUST MAKE THIS FILE AVAILABLE JUST
23 FOR THE PURPOSE OF HAVING THEM LOOK AT IT. IF THEY ARE
24 SAYING, "WE JUST WANT TO SEE IT BUT WE ARE NOT GOING TO
25 USE IT." IF THEY ARE NOT GOING TO USE IT --

26 THE DEFENDANT: CAN I ADUMBRATE FROM WHAT I HAVE
27 SEEN IN THE NEWSPAPERS?

28 THE COURT: YES, YOU MAY.

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I AM GLAD YOU PRONOUNCED THE WORD CORRECTLY.
THE DEFENDANT: SO AM I.

I READ IN THE NEWSPAPERS -- THIS IS WITHOUT
MAKING ANY STATEMENT OUT OF MY OWN PERSONAL KNOWLEDGE
OR ANYTHING --

17A FO.

17A-1

1 I READ IN THE NEWSPAPER THAT -- WELL, FIRST
2 I WAS TOLD BY MR. WAPNER THAT HE WAS A SUSPECT. THEN
3 HE TOLD MY ATTORNEY THE PERSON INVOLVED WAS A HOMOSEXUAL,
4 WITHOUT MAKING ANY SORT OF STATEMENT ABOUT WHAT SIGNIFICANCE
5 IT MIGHT POSSIBLY BE, CONSIDERING THAT MR. LEVIN IS A
6 HOMOSEXUAL AND THAT THIS GUY IS A HOMOSEXUAL AND HADAYET
7 ESLAMINIA, I HAVE BEEN TOLD THROUGH OR SEEN IN REPORTS
8 IN THIRD-PARTY HANDS, WAS ALLEGEDLY BISEXUAL. FURTHERMORE,
9 THEY FOUND THIS MAN, MR. MEYER, ALLEGED FROM THE NEWSPAPER,
10 STUCK IN A TRUNK, WHICH SEEMS, TO ME PRELIMINARY TO KIDNAPPING.
11 WE HAVE A NO-BODY MURDER CASE HERE I HAVE BEEN CHARGED
12 WITH. THEN THE NEWSPAPER SAYS THAT SOME SORT OF RECEIPT
13 WAS FOUND, WHICH SOMEHOW TIES IN TO MR. KARNY, WAS FOUND
14 AT THE SCENE OF THIS LOCATION. AND THEN FINALLY, AND
15 I THINK THE MOST PERSUASIVE EVIDENCE, THEY HAVE SOME AFFIDAVIT
16 HERE IN RELATIONSHIP TO THE FACT THAT MR. KARNY'S FACE
17 AND VOICE SHOULD NOT BE REPRODUCED ON THE ELECTRONIC MEDIA,
18 FROM OSCAR BREILING, WHERE IT IS ALLEGED THAT EVIDENCE
19 WAS PLANTED. NOW IF THERE IS EVIDENCE PLANTED, THE LOGICAL
20 EXTENSION IS THAT IT IS INCRIMINATING. IF THERE IS INCRIMINATING
21 EVIDENCE, I THINK WE SHOULD HAVE A DISCOVERY MOTION, ESPECIALLY
22 SINCE MR. KARNY TELLS US ALL ON THE STAND THAT IN THIS
23 LARGE SECTION OF THIS WHOLE EXPLANATION FOR HIS CONDUCT
24 AND STATE OF MIND AND EVERYTHING ELSE, THAT HE WAS UNDER
25 SOME SORT OF PSYCHOLOGICAL DURESS, THAT HE RECOVERED FROM
26 IT THROUGH A JUDEO-CHRISTIAN OUTLOOK, HE IS NOW FREE FROM
27 THAT. THAT WAS THE UNDERCURRENT RUNNING THROUGH HIS ENTIRE
28 TESTIMONY AND WAS THE **BUI**LWARK OF HIS CREDIBILITY.

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1 SO IN THAT SORT OF FRAMEWORK --

2 THE COURT: THERE IS NOTHING THAT IS NEW. IT IS NOTHING
3 OTHER THAN WHAT WAS PRESENTED TO ME AT THE GUILT PHASE OF
4 IT. AND WE DISCUSSED THE ENTIRE MATTER. THERE ISN'T ANY
5 NEW MATTER.

6 UNTIL SOMETHING SPECIFIC COMES UP AS TO HIS
7 CONNECTION WITH THIS HOLLYWOOD MOTEL MURDER, I AM NOT GOING
8 TO ADMIT ANY CROSS-EXAMINATION UNTIL YOU TELL ME WHAT IT IS
9 THAT YOU HAVE.

10 MR. BARENS: WELL, THE PROBLEM IS THAT THE DEFENSE
11 CONTENDS YOUR HONOR, THAT WITHOUT THEM GIVING US ACCESS TO
12 THE DISCOVERY, HOW DO WE KNOW WHAT THEY HAVE GOT?

13 THE COURT: WHAT MAKES YOU SUSPECT THAT HE HAD ANYTHING
14 TO DO WITH IT?

15 MR. BARENS: WELL, THE FIRST THING WE WERE TOLD WAS
16 THAT HE WAS A SUSPECT IN THE MURDER.

17 THE COURT: THAT IS BECAUSE SOMEBODY PLANTED SOME STUFF,
18 SUPPOSEDLY.

19 MR. BARENS: HOW DO WE KNOW IT?

20 THE COURT: I DON'T KNOW IT EITHER.

21 MR. BARENS: THEY CAME TO US WITH THIS DEAL SAYING THAT
22 HE WAS A SUSPECT IN A MURDER IN HOLLYWOOD.

23 THE COURT: YOU WERE TOLD CATEGORICALLY IN THIS ROOM
24 THAT THERE WAS NO BASIS OF ANY KIND OF COMPLAINT AGAINST
25 KARNY IN CONNECTION WITH THAT.

26 MR. BARENS: THAT IS WHAT THE POLICE NOW SAY. WHAT
27 THE DEFENSE IS SAYING, IS WHY SHOULD WE BE BOUND BY WHAT THEY
28 ARE SAYING ABOUT A GUY WHO HAS BEEN COOPERATING WITH THEM?

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1 THE COURT: YES. BUT IT IS ONLY IN ASSUMING WHAT YOU
2 SAY IS CORRECT, ASSUMING THAT THEY HAVE A HOMICIDE AGAINST
3 HIM. ASSUMING EVERYTHING YOU SAY IS CORRECT, YOU CAN'T ATTACK
4 HIS CREDIBILITY BY SHOWING HIM SOMETHING LIKE THAT. YOU CANNOT.
5 YOU CAN ONLY SHOW CRIMES THAT HE COMMITTED.

6 YOU CAN ONLY SHOW A CRIME THAT HE COMMITTED, WHERE
7 HE HAS BEEN CONVICTED OF A FELONY.

8 MR. BARENS: BUT WE ARE DOING THE SAME THING TO
9 MR. HUNT IN THE PENALTY PHASE TO SHOW A CRIME THAT HE HAS
10 NOT COMMITTED AND --

11 THE COURT: THAT IS BECAUSE THE STATUTE SAYS THEY CAN
12 DO IT. HE DOESN'T HAVE TO BE CONVICTED OF A CRIME IN ORDER
13 TO DO IT. DO YOU WANT ME TO READ YOU THE SECTION?

14 MR. BARENS: NO. I UNDERSTAND THE SECTION AND THE
15 INSTRUCTIONS WE HAVE BEEN AVAILED OF.

16 THE COURT: IT IS A CRIME OF VIOLENCE AND HE DOESN'T
17 HAVE TO BE CONVICTED. THE CONVICTION IS ONLY RELEVANT WHERE
18 IT IS A NONVIOLENT CRIME.

19 THE DEFENDANT: WE ALLEGE TWO OTHER BASES FOR ITS
20 ADMISSION. ONE IS THIRD PARTY CULPABILITY WHICH IS ADMISSIBLE
21 IN THE PENALTY PHASE AND TWO, THE FACT THAT IT GOES TO HIS
22 WHOLE PATTERN OF TESTIMONY CONCERNING HIMSELF.

23 THE COURT: WELL AT ANY RATE, I WILL DENY THAT MOTION
24 FOR THE TIME BEING. WHAT ELSE HAVE YOU GOT?

25 MR. CHIER: ALL RIGHT. I WOULD LIKE TO URGE THE COURT
26 AS A MATTER OF EQUITY, BASED UPON THE SEARCH AND SEIZURE OF
27 THE DEFENDANT'S PAPERS DURING -- JUST IMMEDIATELY PRIOR TO
28 THE COMMENCEMENT OF THE TRIAL, BECAUSE OF THE CHILLING EFFECT

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1 THAT IT HAS HAD ON THE DEFENDANT'S ABILITY TO TESTIFY IN THIS
2 CASE, THAT YOUR HONOR AS A SANCTION FOR THIS RATHER
3 UNORTHODOX MOVE BY THE PEOPLE, THE COURT IMPOSE A JUDICIAL
4 OR DIRECTED VERDICT OF LWOP IN THIS CASE.

5 THE COURT: WHAT?

6 MR. CHIER: LIFE WITHOUT POSSIBILITY OF PAROLE. I AM
7 SORRY. I USED ATTORNEY SLANG.

8 I WOULD ASK -- I WOULD MOVE THAT THE COURT DO
9 THAT AS A SANCTION FOR THE UNORTHODOX --

10 THE COURT: THE COURT RULED THAT THE SEARCH AND SEIZURE
11 WAS PROPER AND LEGAL AND EVERYTHING THEY GOT THERE, THEY HAD
12 A RIGHT TO TAKE. WHY ARE YOU GOING INTO IT AGAIN?

13 MR. CHIER: BECAUSE THEY HAD ACCESS TO PAPERS AND
14 COMMUNICATIONS --

15 THE COURT: I UNDERSTAND. THAT WENT ALSO TO THE MOTION
16 TO DISMISS BECAUSE OF THE FACT THAT HE HAD BEEN PREJUDICED.
17 I ALREADY RULED ON IT. WHAT DO YOU WANT ME TO DO? RULE AGAIN?

18 MR. CHIER: I AM SAYING THAT IN THE LIMITED CONTEXT,
19 IT IS HAVING AN EFFECT UPON THE DEFENDANT'S ABILITY TO TESTIFY.

20 THE COURT: I WILL MAKE THE SAME RULING THAT I MADE
21 LAST TIME. THERE IS NOTHING NEW THAT YOU ARE ADDING.

22 MR. CHIER: NOW YOUR HONOR, WE GET INTO SOME OTHER
23 PRACTICAL, HOUSEKEEPING MATTERS. THESE ARE MATTERS IN LIMINE
24 WITH RESPECT TO SPECIFIC ITEMS OF EVIDENCE THAT WE EXPECT
25 WILL BE OFFERED.

26 WE MOVE FOR AN ORDER IN LIMINE PROHIBITING THE
27 INTRODUCTION BY THE PROSECUTION OF ANY EVIDENCE TENDING TO
28 SHOW THE EXTENT, NATURE OR DEGREE OF FAMILY BEREAVEMENT OF

18A-4
1 THE FAMILY OF MR. LEVIN. THIS KIND OF EVIDENCE IS PROHIBITED
2 IN A PENALTY PHASE HEARING BY THE CASE OF ZANT V. STEPHEN.
3 THAT IS Z-A-N-T V. S-T-E-P-H-E-N, A U.S. SUPREME COURT CASE,
4 462, U.S., 862 AT 865.

5 THE COURT: WHAT? 462 WHAT?

6 MR. CHIER: 862 AT 865. THERE IS ALSO A CALIFORNIA
7 APPELLATE COURT CASE, PEOPLE V. LEVITT, L-E-V-I-T-T,
8 166 CAL.APP.3D, 500 AT 516.

9 MR. BARENS: 516, YOUR HONOR.

10 THE COURT: YES. SEPARATE ACTS OF VIOLENCE? WHAT IS
11 IT? 516, IS THAT IT?

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1 MR. BARENS: YES, YOUR HONOR.

2 THE COURT: WELL, THAT SAYS -- HAVE YOU SEEN THAT CASE?

3 MR. WAPNER: I HAD NOT SEEN IT. FRANKLY, I HAD NOT
4 PLANNED TO CALL ANYBODY FROM THE VICTIM'S FAMILY.

5 MR. CHIER: OUT OF AN ABUNDANCE OF CAUTION, YOUR HONOR --

6 THE COURT: ALL RIGHT. IT IS ACADEMIC, THEN.

7 MR. CHIER: WE WOULD ALSO MAKE A MOTION IN LIMINE
8 PROHIBITING THE PROSECUTION FROM ELICITING FROM WITNESS KARNY
9 AGAIN, THE DETAILS SUPPOSEDLY COMMUNICATED TO HIM BY MR. HUNT
10 IN THIS WALK AROUND THE BLOCK. THAT IS TO SAY --

11 MR. WAPNER: WAIT A SECOND --

12 THE COURT: WHAT WOULD BE THE NECESSITY?

13 MR. WAPNER: ARE YOU TALKING ABOUT HAVING HIM REITERATE
14 WHAT HE ALREADY TESTIFIED TO IN THE GUILT PHASE?

15 MR. CHIER: YES.

16 MR. WAPNER: NO. HE WON'T DO IT.

17 MR. CHIER: NOT ABOUT THE GUN OR SHOOTING THE CORPSE
18 OR ANYTHING LIKE THAT?

19 MR. WAPNER: IN ARGUMENT BUT NOT IN TESTIMONY.

20 MR. BARENS: MAKE THE MOTION AS TO ARGUMENT.

21 MR. CHIER: I MAKE IT AS TO ARGUMENT.

22 THE COURT: ONE OF THE FACTORS TO BE CONSIDERED BY THE
23 JURY, IS EVERYTHING THAT TOOK PLACE IN THE COMMISSION OF THE
24 CRIME ITSELF.

25 EVERY, SINGLE FACT MAY BE COMMENTED UPON AND MAY
26 BE CONSIDERED BY THEM. IF HE WANTS TO REPEAT SOME OF THOSE
27 FACTS, HE IS ENTITLED TO DO THAT. BY "HE" I MEAN THE D.A.

28 MR. BARENS: I UNDERSTAND.

18B-2
1 MR. CHIER: THE CASE OF PEOPLE V. LOVE HOLDS WHEN THERE
2 IS NO SHOWING OF PURPOSEFUL TORTURE OR PROLONGATION OF THE
3 ALLEGED VICTIM'S PAIN OR SUFFERING, THAT THIS TYPE OF EVIDENCE
4 IS REALLY INADMISSIBLE.

5 THE COURT: THE EVIDENCE WAS ADMITTED. IT IS IN THE
6 RECORD. THE JURY MUST CONSIDER EVERYTHING IN CONNECTION WITH
7 THE CRIME ITSELF.

8 MR. CHIER: BUT THERE IS A PENALTY PHASE --

9 THE COURT: SURE. THEY HAVE THE RIGHT TO CONSIDER IT
10 IN THE PENALTY PHASE.

11 MR. CHIER: WELL, I THINK THE D.A. SHOULD NOT BE
12 PERMITTED TO ARGUE THIS. IF THEY CAN'T HEAR THE EVIDENCE,
13 THE D.A. SHOULDN'T BE ABLE TO --

14 THE COURT: THE D.A. HAS THE RIGHT TO COMMENT ON THAT
15 FACTOR OF THE CASE, ANY FACTOR IN CONNECTION WITH THE CRIME
16 ITSELF. IT IS THE LAW. THE LAW SAYS SO.

17 MR. WAPNER: THE FIRST THING THAT --

18 THE COURT: GO AHEAD. ANYTHING FURTHER?

19 MR. CHIER: SOMETIMES THERE IS LIKE A TRAFFIC JAM WITH
20 YOU KNOW, DIFFERENT ASPECTS OF THE LAW. AND I THINK THAT
21 HERE, WE HAVE A SLIGHT TRAFFIC JAM. IN ANY EVENT --

22 THE COURT: WELL, I DON'T THINK THERE IS ANY TRAFFIC
23 JAM BECAUSE THE LAW IS EXPLICIT ON THIS POINT. IT SAYS THAT
24 THE JURY MUST CONSIDER EVERYTHING IN CONNECTION WITH THE FACTS
25 OF THE CRIME ITSELF, EVERYTHING.

26 ALSO, THEY HAVE A RIGHT TO CONSIDER WHATEVER TALK
27 THEY MIGHT HAVE HAD.

28 MR. CHIER: I DON'T KNOW WHETHER THE D.A. IS INTENDING

1 TO OFFER LIFESTYLE EVIDENCE OF MR. HUNT AT THE PENALTY PHASE
2 HEARING, SUCH EVIDENCE CONCERNING WHERE HE GOT HIS FUNDS TO
3 LIVE OR THE MANNER IN WHICH HE LIVED. BUT THIS IS --

4 THE COURT: THERE IS EVIDENCE ALREADY IN THE RECORD.
5 HE HAS THE RIGHT TO COMMENT ON IT.

6 MR. CHIER: BUT THERE WOULD BE NO NEW EVIDENCE
7 INTRODUCED?

8 MR. WAPNER: THAT'S CORRECT, OTHER THAN WHAT BEARS ON
9 THE FACTS OF THE ESLAMINIA CASE. BUT THERE SHOULDN'T BE ANY
10 NEW EVIDENCE.

11 THE EVIDENCE OF MOTIVE THAT WENT TO THE GUILT
12 PHASE OF THE TRIAL IS GOING TO BE THE SAME. THERE IS NOT
13 GOING TO BE ANY EVIDENCE, ANY NEW EVIDENCE IN THE PENALTY
14 PHASE.

15 THE COURT: ALL RIGHT. ANYTHING FURTHER?

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1 MR. CHIER: BEFORE I MAKE THE MOTION, IS THERE GOING
2 TO BE NEW EVIDENCE ON THE STATEMENT OR ALLEGED STATEMENT
3 BY THE DEFENDANT THAT HE COMMITTED THE PERFECT CRIME,
4 THAT NO JURY WOULD EVER GIVE HIM THE DEATH PENALTY, THAT
5 TYPE OF THING?

6 THE COURT: THESE ARE THE SAME TYPE OF CATEGORIES
7 AS THESE OTHER THINGS.

8 MR. CHIER: YES. I DON'T KNOW IF THERE WAS TO BE
9 ANY NEW EVIDENCE TO THAT EFFECT.

10 MR. WAPNER: NO.

11 THE COURT: ON THE SUMMATION, IF HE WANTS TO, HE
12 HAS A RIGHT TO DO SO.

13 (COLLOQUY BETWEEN MR. CHIER AND THE
14 DEFENDANT.)

15 THE COURT: ALL RIGHT?

16 MR. CHIER: ALL RIGHT, THANK YOU, YOUR HONOR. THIS
17 MAY BE PREMATURE, I DON'T KNOW IF THERE ARE GOING TO BE
18 ANY ASSERTIONS EITHER THROUGH A WITNESS OR THE PROSECUTION
19 ABOUT FUTURE DANGEROUSNESS OF THE DEFENDANT. THIS TYPE
20 OF ASSERTION OR EVIDENCE OF SUCH ASSERTIONS IS PROHIBITED
21 BY PEOPLE V. RAMOS IN 30 CAL.3D, 553.

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THE COURT: YES, I KNOW THAT CASE.

YOU MEAN THE BRIGGS CASE:

"THE 'BRIGGS INSTRUCTION' SET FORTH IN PENAL CODE SECTION 190.3 REQUIRED THE TRIAL COURT TO INSTRUCT THE JURY THAT A SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE COULD BE MODIFIED OR COMMUTED BY THE GOVERNOR TO A SENTENCE THAT INCLUDES THE POSSIBILITY OF PAROLE. THE CALIFORNIA SUPREME COURT FOUND THAT THIS INSTRUCTION VIOLATED FEDERAL CONSTITUTIONAL STANDARDS IN PEOPLE V. RAMOS, 1983, 463 U.S. 992. HOWEVER, IN PEOPLE V. RAMOS, 1984, 37 CAL.3D 136, THE CALIFORNIA SUPREME COURT HELD THAT THE INSTRUCTION VIOLATES THE DUE PROCESS CLAUSE OF THE CALIFORNIA CONSTITUTION, ET CETERA, BECAUSE IT IS MISLEADING, IN THAT THE GOVERNOR CAN COMMUTE DEATH SENTENCES AS WELL AS LIFE SENTENCES, AND BECAUSE IT INVITES THE JURY TO CONSIDER SPECULATIVE AND IMPERMISSIBLE FACTORS IN REACHING ITS DECISION. THEREFORE, THE TRIAL COURT SHOULD EXCISE THE SECOND PARAGRAPH OF CALJIC 8.84.2 WHICH EMBODIES THE 'BRIGGS INSTRUCTION,' WHEN INSTRUCTING THE JURY."

IS THAT WHAT YOU MEAN BY RAMOS?

MR. CHIER: YES, YOUR HONOR.

THE COURT: (READING)

"THE COURT ALSO STATED IN

1 RAMOS II THAT WHEN THE JURY RAISES THE
2 COMMUTATION ISSUE ITSELF, EITHER DURING VOIR
3 DIRE OR DELIBERATIONS, THE TRIAL COURT
4 SHOULD GIVE A CAUTIONARY INSTRUCTION INDICATING
5 THAT THE GOVERNOR'S COMMUTATION POWER APPLIES
6 TO BOTH DEATH AND LIFE SENTENCES, BUT
7 EMPHASIZING THAT IT WOULD BE A VIOLATION
8 OF THE JURORS' DUTY TO CONSIDER THE POSSIBILITY
9 OF COMMUTATION IN DETERMINING THE APPROPRIATE
10 SENTENCE. WHEN THE ISSUE IS NOT EXPRESSLY
11 RAISED BY THE JURY, THE COURT SHOULD NOT GIVE
12 SUCH A CAUTIONARY INSTRUCTION SUA SPONTE, BUT
13 SHOULD GIVE IT IF REQUESTED BY THE DEFENDANT."

14 THAT IS RAMOS, IS THAT WHAT YOU WANTED? I
15 WILL CONFORM TO THAT.

16 MR. CHIER: APROPOS OF THE THING WE HAVE BEEN DISCUSSING,
17 IS THERE GOING TO BE ANY NEW EVIDENCE OF ALLEGED THREATS
18 MADE BY THE DEFENDANT AGAINST THE MAY BROTHERS OR RENEE
19 MARTIN, ANY THREATS?

20 MR. WAPNER: I DON'T ANTICIPATE ANY NEW EVIDENCE.
21 ALL I CAN TELL YOU RIGHT NOW IS THAT I DON'T ANTICIPATE
22 ANY NEW EVIDENCE OF THREATS AGAINST PEOPLE, OTHER THAN
23 WHAT WE HAVE HAD IN THE GUILT PHASE. IF THAT CHANGES,
24 I WILL LET YOU KNOW.

25 BUT MY THINKING ABOUT THE WITNESSES WHO I
26 ANTICIPATE WILL TESTIFY, I DON'T THINK THAT I AM GOING
27 TO GO OVER THAT PART OF IT AGAIN AND I CAN'T THINK OF
28 ANY PART THAT APPLIES JUST TO THIS CASE AND NOT TO THE OTHER.

1 MR. CHIER: WE WOULD THEN MAKE A MOTION IN LIMINE
2 PROHIBITING THE PEOPLE FROM INTRODUCING ANY EVIDENCE OF
3 THREATS OR ANY STATEMENTS.

4 MR. WAPNER: COUNSEL, I APOLOGIZE FOR INTERRUPTING
5 YOU.

6 I DON'T KNOW AT THIS POINT WHETHER THIS WILL
7 COME OUT, BUT SOMETHING DID COME TO MY MIND AND IT HAS
8 TO DO WITH THE POSSIBILITY OF INTRODUCING A KIND OF VEILED
9 THREAT TO LAUREN RABB, WHO AT ONE TIME WAS COUNSEL FOR
10 THE DEFENDANT. WHEN SHE WENT TO THE COUNTY JAIL TO TELL
11 HIM THAT SHE WAS GOING TO WITHDRAW FROM THE CASE, THERE
12 WAS A STATEMENT IN GENERAL THAT PEOPLE IN THE JAIL HAVE
13 FRIENDS WHO HAVE CONTACTS OUTSIDE OF JAIL AND PEOPLE CAN
14 GET RAPED AND SODOMIZED, THINGS LIKE THAT. I DON'T KNOW
15 WHETHER I INTEND TO INTRODUCE THAT OR NOT.

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1 BUT I REMEMBER THAT COMING OUT IN AN INTERVIEW
2 I HAD WITH THE WITNESS, SO I WILL JUST PUT YOU ON NOTICE
3 OF THAT RIGHT NOW.

4 MR. CHIER: THE REASON IS THAT UNDER THE HOLDING
5 IN PEOPLE V. PHILLIPS AT 41 CAL.3D, 29, EVIDENCE OF MERE
6 INTENT TO COMMIT A CRIME IS INADMISSIBLE IN A PENALTY
7 PHASE HEARING.

8 THE COURT: HOW ABOUT THREATS?

9 MR. CHIER: PARDON ME, YOUR HONOR?

10 THE COURT: HOW ABOUT THREATS? THAT IS WHAT WE
11 HAVE BEEN TALKING ABOUT.

12 MR. CHIER: THREATS, YES, THAT WOULD BE THE SAME
13 THING.

14 WHAT THEY ARE TALKING ABOUT IS ACTS OF VIOLENCE,
15 NOT ABOUT TALK, YOUR HONOR.

16 THE PHILLIPS CASE WOULD SEEM TO SUBSUME ANY
17 TYPE OF FACTUAL PATTERN WHICH INVOLVES MERE TALK, AS OPPOSED
18 TO ACTION.

19 THE COURT: ALL RIGHT. AT ANY RATE, BEFORE YOU
20 DECIDE TO PUT ANYBODY ON, YOU APPROACH THE BENCH, ALL
21 RIGHT?

22 MR. WAPNER: ALL RIGHT.

23 THE COURT: ANYTHING ELSE?

24 MR. CHIER: THE PHILLIPS HOLDING WOULD ALSO BE SUPPORTED
25 BY 352 OF THE EVIDENCE CODE.

26 THE COURT: IF HE INTENDS TO DO THAT, YOU CAN REPEAT
27 THAT TO ME AGAIN.

28 MR. CHIER: NOW, IN PROCEEDING WITH THE EVIDENCE

1 ABOUT THE SWARTOUT CASE, THE SWARTOUT SITUATION, WHICH
2 IS THE INCIDENT WHERE THERE WAS LIQUID, SOME TEPID LIQUID
3 THROWN AT SWARTOUT.

4 THE COURT: TEPID? WHAT DOES THAT MEAN, WARM LIQUID?

5 MR. CHIER: SOME SORT OF INERT, LUKEWARM LIQUID.

6 MR. BARENS: IT WAS TEA.

7 MR. CHIER: TEA. THAT IS WHAT YOU ARE GOING TO
8 HEAR ABOUT, YOUR HONOR.

9 THE NOTICE THAT WE HAVE RECEIVED CONCERNING
10 THE SWARTOUT INCIDENT, AND THE SO-CALLED DRIVE-BY SHOOTING,
11 IS EITHER INFIRM OR THAT THIS EVIDENCE IS NOT ADMISSIBLE
12 FOR THE REASON, YOUR HONOR, THAT WITH RESPECT TO THE SWARTOUT
13 INCIDENT, THAT IS A GLASS OF TEA -- AND I THINK THE STATUTE
14 AND THE CASES REQUIRE THAT THERE BE SPECIFIC ACTS OF VIOLENCE
15 BY A DEFENDANT, OFFERED AGAINST HIM AT A PENALTY PHASE.

16 NOW, THIS INCIDENT WAS NEITHER THE SUBJECT
17 OF AN ARREST, NEITHER THE SUBJECT OF A COMPLAINT BEING
18 FILED AND NOT THE SUBJECT OF ANY KIND OF A SANCTION EVER
19 BEING IMPOSED.

20 FURTHERMORE, IT IS A MATTER IN WHICH THE STATUTE
21 OF LIMITATIONS HAS RUN. IT IS A MISDEMEANOR AT BEST,
22 IF IT IS ANYTHING.

23 THE COURT: LET ME ASK YOU. IN PEOPLE V. BOYD,
24 AT 28 CAL.3D, 762, THE BOYD CASE HELD THAT EVIDENCE CANNOT
25 BE ADMITTED BY THE PROSECUTION IN AGGRAVATION, EVIDENCE
26 OF THREATS OF VIOLENCE THAT WERE NOT SHOWN TO AMOUNT TO
27 CRIMES, SO I WILL DIRECT YOU THAT YOU ARE NOT TO SHOW
28 ANY EVIDENCE OF VIOLENCE OR THREATS OF VIOLENCE WHICH

1 DO NOT AMOUNT TO CRIMES. THAT IS SPECIFICALLY EXCLUDED
2 BY THE BOYD CASE.

3 MR. CHIER: ALSO BY PHILLIPS, YOUR HONOR.

4 THE COURT: I DON'T CARE ABOUT PHILLIPS.

5 I HAVE GOT BOYD AT 58 CAL.3D. IT IS A 1985
6 CASE.

7 (FURTHER UNREPORTED COLLOQUY BETWEEN
8 THE DEFENDANT AND MR. CHIER.)

9 THE COURT: IS THERE ANYTHING ELSE?

10 MR. CHIER: SO WITH RESPECT TO THE SWARTOUT MATTER,
11 WE HAVE NOT REALLY --

12 THE COURT: IF THERE IS ANY ACTUAL THROWING OF SOMETHING
13 AT SOMEBODY, THAT CONSTITUTES A CRIME OF VIOLENCE, EVEN
14 IF IT WAS A FEATHER.

15 MR. BARENS: A FEATHER?

16 THE COURT: YOU KNOW, IF THERE IS A PIN IN IT AND
17 HE THROWS IT AT SOMEBODY IT CAN TAKE HIS EYE OUT.

18 MR. CHIER: A DART, YOU MEAN?

19 MR. BARENS: YES, A DART, BUT THAT IS A DIFFERENT
20 DEAL.

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1 MR. BARENS: HERE WE HAVE GOT --

2 THE COURT: I DON'T UNDERSTAND.

3 MR. WAPNER: THE EVIDENCE REGARDING MR. SWARTOUT
4 IS NOT ONLY THAT THERE WAS THIS OBJECT THROWN ON HIM AND
5 THE REFERENCE TO TEA IS BECAUSE THAT IS WHAT MR. PITTMAN
6 TOLD THE IRVINE POLICE DEPARTMENT. THEY ANALYZED IT AND
7 WERE UNABLE TO DETERMINE WHAT IT WAS.

8 BUT I DON'T EXPECT THAT THERE WILL BE ANY
9 EVIDENCE THAT IT WAS TEA UNLESS THEY TRY TO GET OUT HEARSAY
10 STATEMENTS BY MR. PITTMAN TO THE INVESTIGATOR FROM THE
11 IRVINE POLICE DEPARTMENT.

12 THE POINT IS, THAT MR. PITTMAN WENT DOWN TO
13 IRVINE AND WAS LYING IN WAIT FOR THIS PERSON TO ARRIVE.
14 HE DID ARRIVE. AND THIS ITEM WAS THROWN ON HIM, WHICH
15 HAD A BURNING SENSATION.

16 NOW, NO TEA THAT I HAVE EVER SPILLED ON MYSELF
17 HAD ANY BURNING SENSATION ENOUGH SO THAT IT CAUSED THIS
18 MAN TO TAKE OFF HIS SHIRT AND HAVE HIS SKIN RINSED DOWN.

19 ALSO, AT THE TIME THAT IT WAS REPORTED, HE
20 REPORTED THAT A KNIFE WAS SWUNG AT HIM. NOW HE IS NOT
21 SURE WHETHER THAT IS TRUE OR NOT, BASED ON LOOKING BACK
22 INTO THE SUN.

23 BUT THE REPORT THAT COUNSEL WAS FURNISHED
24 SAYS THAT THERE WAS A DOWNWARD MOTION WITH THE HAND AND
25 THAT A KNIFE WAS BEING THRUST AT HIM. FURTHER, THE EVIDENCE
26 WILL SHOW --

27 THE COURT: WHAT IS THE RELATIONSHIP OF SWARTOUT
28 TO THE DEFENDANT?

20
1 MR. WAPNER: I WAS GETTING TO THAT. FURTHER, THE
2 EVIDENCE WILL SHOW THAT MR. SWARTOUT WAS ON A HIT LIST THAT
3 MR. HUNT HAD AND THE RELATIONSHIP BETWEEN MR. SWARTOUT AND
4 THE DEFENDANT WAS A BUSINESS RELATIONSHIP WHERE THE DEFENDANT
5 HAD IN ESSENCE, SWAPPED ONE OF HIS COMPANIES FOR MR. SWARTOUT'S
6 COMPANY AND THEY WERE SUPPOSEDLY GOING INTO A JOINT VENTURE
7 WITH THIS GUY, KILPATRICK IN COLORADO THAT HAD TO DO WITH
8 THE MICROGENESIS MACHINE AND TWO DEVICES MR. SWARTOUT HAD
9 BUILT AND PATENTED.

10 AND THEY WERE ALL SUPPOSED TO MAKE A LOT OF MONEY
11 OUT OF THAT. AND EACH IS NOW CLAIMING THAT THE OTHER ONE
12 SCREWED THEM AND IS TRYING TO MAKE THEIR OWN, INDEPENDENT
13 DEAL WITH KILPATRICK. AND SWARTOUT'S COMPANY ENDED UP GOING
14 INTO RUIN AS A RESULT OF THIS.

15 AND HE EVENTUALLY WENT TO MR. KILPATRICK AND SAID
16 THAT HUNT IS SELLING YOU, SUPPOSEDLY SELLING YOU THIS BROWNING
17 TECHNOLOGY BUT HE DOESN'T OWN IT. IT IS IN THE COMPANY THAT
18 I GOT FROM HUNT. SO THAT WAS THE NATURE OF IT.

19 MR. CHIER: THERE IS NO EVIDENCE THAT YOU WOULD WANT
20 TO SERVE UP TO A JURY TO ASK THEM TO TAKE A MAN'S LIFE ON
21 THE BASIS OF, YOUR HONOR. AND THE CASES DO NOT AUTHORIZE
22 MR. WAPNER TO PUT ON THIS KIND OF A CASE.

23 THE COURT: WELL, SUPPOSE THE DEFENDANT, HIMSELF, HAD
24 DONE IT? WOULD YOU SAY THAT THAT WOULD BE AN AGGRAVATING
25 CIRCUMSTANCE?

26 MR. CHIER: I WOULD SAY NOT EVEN IF THE DEFENDANT, HIMSELF
27 HAD DONE IT, WOULD THIS BE THE TYPE OF EVIDENCE THAT IS
28 CONTEMPLATED BY THAT SECTION, ACTS OF VIOLENCE.

200 ?
1 THIS IS LIKE THE POLICE HYPOTHESIS ABOUT THIS.
2 IT IS IRRELEVANT.

3 THE COURT: I THOUGHT THAT SWARTOUT WAS GOING TO TESTIFY
4 THAT HE GOT A BURNING SENSATION AND HAD TO TAKE HIS CLOTHES
5 OFF?

6 MR. CHIER: HE NEVER SOUGHT MEDICAL ATTENTION. HE NEVER
7 HAD AN EXAMINATION --

8 THE COURT: WELL, YOU CAN ASK HIM THAT, TO MINIMIZE
9 THE AMOUNT OF HARM.

10 HAVE YOU GOT ANYTHING ELSE?

11 MR. CHIER: YES, YOUR HONOR. THE SAME WOULD BE TRUE --
12 WHAT IS THE SPECIFIC CODE SECTION THAT IS CLAIMED TO HAVE
13 BEEN VIOLATED BY THIS ACT OF MR. HUNT?

14 MR. WAPNER: ACTUALLY --

15 THE COURT: YOU ARE TALKING ABOUT THROWING SOMETHING
16 AT SOMEBODY?

17 MR. BARENS: MR. HUNT ISN'T ALLEGED TO HAVE DONE IT.

18 THE COURT: WELL, IT DOESN'T MAKE ANY DIFFERENCE IF
19 HE HAD AN ACCOMPLICE DO IT FOR HIM.

20 LIKE A NUMBER OF THINGS THAT CAME UP IN THE GUILT
21 PHASE, PITTMAN WAS SUPPOSED TO HAVE DONE THINGS --

22 MR. CHIER: WELL, WE HAVE NEVER BEEN PROVIDED WITH ANY
23 KIND OF EVIDENCE THAT THE PEOPLE RELY UPON THAT --

24 THE COURT: WELL, YOU WILL BE GIVEN THE EVIDENCE AT
25 THE TIME OF THE TRIAL? IS THAT WHAT YOU EXPECT TO DO?

26 MR. CHIER: MR. HUNT --

27 THE COURT: WE ARE ARGUING SOMETHING AS TO THE
28 ADMISSIBILITY OF EVIDENCE AND I DON'T KNOW WHAT THE EVIDENCE

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1 IS.

2 MR. CHIER: IF IT IS INADMISSIBLE AND WE DETERMINE AT
3 THIS JUNCTURE THAT IT IS INADMISSIBLE, HE SHOULD NOT BE ABLE
4 TO GIVE IT IN HIS OPENING STATEMENT.

5 THE COURT: WHAT IS YOUR OFFER OF PROOF?

6 MR. WAPNER: THE OFFER OF PROOF FIRST OF ALL, ABOUT
7 THE CONNECTION BETWEEN MR. HUNT AND MR. SWARTOUT IS THAT AS
8 FAR AS THE DISCOVERY THAT COUNSEL HAS BEEN PROVIDED, I TOLD
9 THEM AND THE COURT LAST WEEK ON THE MOTION TO CONTINUE --
10 I PROVIDED THEM WITH A COPY OF THE REPORT THAT STEVE
11 TAGLIANETTI -- OR THE STATEMENTS THAT STEVE TAGLIANETTI MADE
12 TO DETECTIVE ZOELLER IN OCTOBER OF 1984.

13 THAT WAS INCLUDED IN THE ORIGINAL PACKAGE OF
14 DISCOVERY THAT WAS GIVEN TO THE DEFENSE IN THIS CASE PRIOR
15 TO THE PRELIMINARY HEARING AT THE END OF 1984.

16 IN THERE, IT INCLUDES A STATEMENT BASICALLY SAYING
17 THAT MR. HUNT AND MR. PITTMAN BOTH HAD TOLD MR. TAGLIANETTI
18 THAT MR. PITTMAN HAD GONE DOWN TO ORANGE COUNTY TO KILL
19 MR. SWARTOUT, BASED ON THE BUSINESS DEALINGS.

20 THIS IS EVIDENCE THAT TENDS TO CONNECT IT UP.
21 AS FAR AS THE SECTION OF THE PENAL CODE THAT WE ARE RELYING
22 ON, IT IS PRIMARILY SECTION 245 OF THE EVIDENCE CODE, ASSAULT
23 BY MEANS OF FORCE LIKELY TO PRODUCE GREAT BODILY INJURY OR
24 WITH A DEADLY WEAPON.

25 MR. CHIER: THE EVIDENCE THAT I QUESTION THE EXISTENCE
26 OF YOUR HONOR, IS THE EVIDENCE, THE ADMISSIBLE EVIDENCE LINKING
27 MR. HUNT TO MR. PITTMAN AND THEREBY, MAKING MR. HUNT LIABLE --

28 THE COURT: PARDON ME. YOU JUST HEARD THAT TAGLIANETTI

207
1 IS GOING TO TESTIFY THAT THE DEFENDANT --

2 MR. WAPNER: I EXPECT HIM TO TESTIFY THAT THE DEFENDANT
3 TALKED TO HIM ABOUT A HIT LIST THAT HE HAD THAT HAD
4 MR. SWARTOUT'S NAME ON IT.

5 THE COURT: WELL, LET'S GET ON TO THE NEXT ONE.

6 THE DEFENDANT: IF I COULD JUST MAKE ONE --

7 THE COURT: WE HAVE GOT TO GET THIS TRIAL IN THE WORKS
8 SOMETIME. I RULED FAVORABLY ON A COUPLE OF THESE ITEMS.

9 WHAT ELSE HAVE YOU GOT LEFT?

10 MR. CHIER: MAY I HAVE A MOMENT?

11 THE COURT: YES.

12 (PAUSE.)

13 MR. CHIER: YOUR HONOR, MR. HUNT MAKES A TELLING POINT
14 HERE, THAT IF THE COURT IS GOING TO GIVE THE BRIGGS/RAMOS
15 INSTRUCTION -- THE BOYD INSTRUCTION THAT --

16 THE COURT: WELL, I AM NOT GOING TO GIVE ANY INSTRUCTION
17 WITH RESPECT TO COMMUTATION OF SENTENCES.

18 MR. CHIER: I DIDN'T MEAN THAT. I MEANT BOYD. ISN'T
19 IT BOYD?

20 THE COURT: YES. I AM NOT GOING TO GIVE AN INSTRUCTION.
21 I JUST WON'T PERMIT ANY TESTIMONY OF MERE THREATS.

22 MR. CHIER: WHAT WE ARE TALKING ABOUT -- ON THE ONE
23 HAND, A HIT LIST IS AT BEST, AN IMPLIED THREAT.

24 THAT IS WHAT IT IS. SECOND OF ALL, WE ARE TALKING
25 ABOUT STATEMENTS WITHOUT A CORPUS, YOUR HONOR.

26 THE COURT: DIDN'T YOU LISTEN TO MR. WAPNER? HE SAID
27 THAT HE INTENDED TO SHOW BY THAT TESTIMONY -- TESTIMONY TYING
28 HIM IN WITH SOMETHING THAT WAS DONE BY PITTMAN AND THAT HE

20 1 KNEW ABOUT IT AND AUTHORIZED IT AND THAT HE HAD THIS HIT LIST.

2 SO, THAT ACT THEREAFTER BORE OUT WHAT HE SAID
3 HE WAS GOING TO DO TO HIM.

4 MR. CHIER: BUT THE INTENT TO COMMIT GREAT BODILY INJURY
5 IS NOT BORN OUT OF BY ANY OF THE EVIDENCE IN THE CASE OTHER
6 THAN STATEMENTS, ALLEGED STATEMENTS OF MR. HUNT AND
7 MR. PITTMAN.

8 THE COURT: WELL, DON'T BELABOR IT, WILL YOU? I THINK
9 WE HAVE GONE THOROUGH IT ENOUGH.

10 MR. CHIER: ALL RIGHT, YOUR HONOR.

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1 MR. CHIER: ALL RIGHT, YOUR HONOR. NOW WITH THE
2 COURT'S INDULGENCE, I WOULD LIKE TO RENEW MY MOTION FOR A
3 SEPARATE PENALTY PHASE JURY.

4 THE COURT: DON'T WASTE YOUR TIME MAKING THE MOTION,
5 IT IS GOING TO BE DENIED.

6 MR. CHIER: IT IS IN THE INTERESTS OF JUDICIAL
7 ECONOMY, YOUR HONOR.

8 THE COURT: DON'T WASTE YOUR TIME. I AM NOT GOING
9 TO GRANT IT.

10 MR. CHIER: I WILL JUST GIVE YOU THE TWO GROUNDS. I
11 WILL DO IT FOR THE RECORD.

12 THE COURT: GO AHEAD.

13 MR. CHIER: IF MR. HUNT IS CONVICTED IN SAN FRANCISCO,
14 THEY COULD THEN HAVE A PENALTY PHASE HEARING IN THIS CASE
15 WITHOUT FEAR OF PUTTING THE DEFENDENT IN THE DILEMMA OF
16 CHOOSING BETWEEN HIS FIFTH AMENDMENT RIGHT AND HIS RIGHT TO
17 TESTIFY IN A PENALTY PHASE HEARING.

18 SECOND OF ALL, IF HE IS ACQUITTED, IT IS POSSIBLE
19 THAT THE -- IF HE IS ACQUITTED IN SAN FRANCISCO, IN THE
20 SAN MATEO CASE, IT WOULD BE POSSIBLE THEN THAT THE JURY IN
21 THAT CASE WOULD HAVE BEEN GIVEN -- AND IF IT GIVES THE DEATH
22 PENALTY IN THIS CASE, IT IS POSSIBLE THAT MR. HUNT WOULD HAVE
23 RECEIVED THE DEATH PENALTY BASED UPON AN INCREMENT OF PROOF
24 WHICH DOESN'T STAND UP BASED UPON THE ACQUITTAL IN
25 SAN FRANCISCO. SO FOR THOSE REASONS, IN THE INTERESTS OF
26 JUSTICE AND ITS ADMINISTRATION, THERE IS MORE TO LOSE.

27 THE COURT: WHAT DOES HE WANT TO DO, WAIT UNTIL THERE
28 HAS BEEN THIS TRIAL UP THERE BEFORE WE GO INTO THE PENALTY

1 PHASE OF THIS CASE?

2 MR. CHIER: I THINK IT WOULD BE THE MOST JUDICIOUS
3 THING TO DO, YOUR HONOR, IN ORDER TO DEAL WITH THIS PROBLEM
4 THAT WE HAVE WITH THIS UNCHARGED OFFENSE THAT IS PENDING TRIAL
5 UP THERE.

6 THE COURT: UNCHARGED OFFENSE?

7 MR. WAPNER: THAT CASE HAS GOT TO BE AT LEAST SIX MONTHS,
8 AND MY GUESS IS A YEAR FROM GOING TO TRIAL. I CAN'T POSSIBLY
9 FATHOM HOW COUNSEL COULD EVEN SUGGEST THAT IT IS IN THE
10 INTERESTS OF JUDICIAL ECONOMY, SINCE WE WOULD HAVE TO, IN
11 THE PENALTY PHASE OF THE TRIAL WITH A SEPARATE JURY, RETRY
12 THE ENTIRE GUILT PHASE OF THIS CASE, WHICH CONSISTED OF SOME
13 TEN WEEKS OF TESTIMONY. IT IS ALMOST ABSURD TO SAY THAT IT
14 IS IN THE INTEREST OF JUDICIAL ECONOMY.

15 THE COURT: THAT MOTION TO DELAY IS GOING TO BE DENIED.

16 ARE YOU ALL FINISHED NOW?

17 MR. WAPNER: FURTHERMORE, YOUR HONOR, SINCE THE LAW
18 IS THAT IN ORDER FOR THE JURY TO CONSIDER THE EVIDENCE OF
19 THIS MURDER, IT HAS TO BE PROVED BEYOND A REASONABLE DOUBT
20 HERE, IF COUNSEL IS ARGUING THAT HE IS GOING TO GET ACQUITTED
21 UP THERE AND THE CASES ARE DECIDED ON THEIR FACTS, THEN IF
22 THE FACTS DON'T STAND UP, THEY WON'T STAND UP HERE EITHER.

23 THE COURT: I WILL INSTRUCT THE JURY, OF COURSE, BEFORE
24 THEY CAN EVEN CONSIDER EVIDENCE OF ANY OTHER CRIMES OR ACTS
25 OF VIOLENCE COMMITTED BY THE DEFENDANT THAT THEY HAVE TO PROVE
26 IT AND THEY HAVE TO BELIEVE IT BEYOND A REASONABLE DOUBT AND
27 I WILL SO INSTRUCT THE JURY, SO THE REASONABLE DOUBT THING
28 IS TAKEN CARE OF.

1 MR. CHIER: IS THAT A PREINSTRUCTION OR CONCLUDING
2 INSTRUCTION?

3 THE COURT: NO, I WILL DO IT AT THE CONCLUSION OF THE
4 CASE. I HAVE NO IDEA WHETHER THEY ARE GOING TO SHOW IT AT
5 THIS TIME.

6 I THINK YOU HAVE FORGOTTEN ONE OF THE MOST
7 IMPORTANT THINGS IN THIS CASE YOU HAVEN'T MENTIONED. YOU
8 TALKED ABOUT THE TESTIMONY OF DEAN KARNY. WHY DON'T YOU POINT
9 OUT THAT THE TESTIMONY OF AN ACCOMPLICE IN THE PENALTY PHASE
10 OF THE CASE CANNOT -- IT HAS TO BE CORROBORATED?

11 MR. BARENS: YES, WE WERE JUST ABOUT TO SAY THAT
12 ACTUALLY.

13 THE COURT: OH, INDEED, YES.

14 MR. BARENS: YES.

15 THE COURT: YOU ARE AWARE OF THAT, ARE YOU NOT? YOU
16 ARE AWARE OF THAT, AREN'T YOU?

17 MR. WAPNER: YES, YOUR HONOR, I AM.

18 THE COURT: DO YOU INTEND TO CORROBORATE HIS TESTIMONY?

19 MR. WAPNER: I DO.

20 THE COURT: ALL RIGHT, WATCH FOR IT. SEE THAT HE
21 CORROBORATES IT PROPERLY.

22 MR. CHIER: I SAW IT DONE ONCE, YOUR HONOR. I SAW THIS
23 DONE ONCE.

24 THE COURT: WELL, THE MOST IMPORTANT POINT YOU HAVEN'T
25 BROUGHT UP. THE TESTIMONY BY KARNY IS EXTREMELY IMPORTANT
26 AND HIS TESTIMONY IS NO GOOD BECAUSE IT IS THE TESTIMONY OF
27 AN ACCOMPLICE UNLESS IT HAS BEEN CORROBORATED AND IF IT HASN'T
28 BEEN CORROBORATED, THEN YOU ARE HOME FREE.

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

THE COURT: DID YOU SAY SOMETHING?

MR. BARENS: NOTHING. BUT THANK YOU.

THE COURT: PART OF MY DUTIES IN THE CASE IS TO INDICATE
THINGS IN THE CASE WHICH SHOULD BE POINTED OUT.

MR. BARENS: THANK YOU, YOUR HONOR.

MR. CHIER: ONE THING I WANTED TO POINT OUT TO MR. WAPNER,
WHAT IS THE SPECIFIC CODE SECTION ALLEGED TO HAVE BEEN
VIOLATED BY THE DRIVE-BY ACT THAT HAS BEEN ALLEGED?

THE COURT: THE SHOOTING AT AN INHABITED DWELLING.

MR. WAPNER: I BELIEVE IT IS 246 OF THE PENAL CODE.

MR. BARENS: I HAD A GUY GET 90 DAYS FOR THAT ONCE.

THE COURT: ALL RIGHT, GET IN THE JURORS.

(PROCEEDINGS WERE ADJOURNED TO THE
COURTROOM.)

2

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

4 THE COURT: ALL RIGHT, THE JURORS ARE PRESENT AND THE
5 DEFENDANT AND COUNSEL ARE PRESENT.

6 AGAIN, I AM SORRY FOR THE DELAY BUT I ASSURE YOU
7 THERE WON'T BE TOO MANY MORE OF THEM SO WE WILL START PROMPTLY
8 EVERY TIME WE GET TOGETHER.

9 ALL RIGHT, AT THIS TIME --

10 MR. BARENS: MR. BAILIFF, I MIGHT NEED THAT PODIUM.

11 THE COURT: THEY MAKE THEIR OPENING STATEMENTS THERE.

12 THE BAILIFF: OH, OKAY.

13 MR. BARENS: I AM SORRY, SIR.

14 THE BAILIFF: SOMETIMES YOU NEED IT AND SOMETIMES YOU
15 DON'T NEED IT.

16 THE COURT: YOU NEED THE EXERCISE ANYWAY, PAT.

17 AT THIS TIME, LADIES AND GENTLEMEN, EACH SIDE
18 AGAIN WILL HAVE THE OPPORTUNITY, THEY HAVE THE RIGHT TO MAKE
19 AN OPENING STATEMENT TO YOU, THE SAME AS THEY DID ON THE GUILT
20 PHASE OF THE TRIAL.

21 AND YOU UNDERSTAND, OF COURSE, THAT OPENING
22 STATEMENTS ARE NOT EVIDENCE. ONLY THAT IS EVIDENCE WHICH
23 WILL COME BEFORE YOU AGAIN IN THE FORM OF SWORN TESTIMONY.

24 THE PEOPLE HAVE A RIGHT TO MAKE THE OPENING
25 STATEMENT. BY STIPULATION, YOU OPEN THE CASE.
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OPENING STATEMENT

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BY MR. WAPNER:

GOOD AFTERNOON. IT WAS GOING TO BE THIS MORNING
BUT WE GOT A LITTLE BIT OF A LATE START, TO SAY THE LEAST.
BELIEVE IT OR NOT, THIS IS GOING TO BE VERY BRIEF.

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1 THIS PART OF THE CASE SHOULD TAKE LESS TIME
2 THAN THE GUILT PHASE DID. ROUGHLY -- DON'T HOLD ME TO
3 THIS, BUT I THINK IT MAY BE THREE WEEKS. AND I AM HOPING
4 THAT THIS IS GOING TO INCLUDE THE DEFENSE PART OF IT,
5 TOO, ALTHOUGH I AM NOT A MINDREADER, SO I DON'T KNOW EXACTLY
6 WHAT IS COMING.

7 THE COURT GAVE YOU A LITTLE BIT OF INDICATION
8 THIS MORNING, BY WAY OF INSTRUCTIONS, WHAT THE GUILT PHASE
9 OF THE TRIAL -- EXCUSE ME, THE PENALTY PHASE OF THE TRIAL
10 IS ALL ABOUT.

11 AND WHAT IT AMOUNTS TO IS THE INTRODUCTION
12 OF EVIDENCE IN AGGRAVATION BY THE PROSECUTION AND EVIDENCE
13 IN MITIGATION BY THE DEFENSE IN THIS CASE. AGGRAVATION
14 OF THE OFFENSES YOU HAVE ALREADY HEARD ABOUT, WILL BE
15 PROFFERED.

16 AND IN THAT REGARD, THE LAW PERMITS AND THE
17 PEOPLE INTEND TO SHOW YOU EVIDENCE OF THREE OTHER CRIMINAL
18 ACTS ENGAGED IN BY THE DEFENDANT AND MR. PITTMAN. AND
19 I AM NOT GOING TO GO INTO ALL OF THOSE IN DETAIL, SINCE
20 THIS PHASE IS GOING TO BE A LOT SHORTER THAN THE OTHER
21 ONE.

22 FOR THE MOST PART, I AM JUST GOING TO ALLOW
23 YOU TO HEAR EVIDENCE OF THOSE, AS IT COMES UP.

24 BUT I JUST WANT TO LET YOU KNOW THAT THERE
25 ARE GOING TO BE THREE INCIDENTS, EVENTS REALLY NOT RELATED
26 TO EACH OTHER, OTHER THAN THE FACT THAT THEY ALL INVOLVE
27 THE DEFENDANT IN THIS CASE.

28 THE FIRST ONE INVOLVES AN INCIDENT THAT HAPPENED IN

22A-2

1 CALIFORNIA, THAT HAD TO DO WITH SHOOTING INTO A BUILDING
2 OWNED BY MR. COKER, WHO OWNED A TESTING LAB THAT TESTED
3 GRAY MARKET CARS TO SEE THAT THEY MET CALIFORNIA EMISSIONS
4 STANDARDS.

5 HE HAD SOME DEALINGS WITH MR. HUNT AND MR.
6 GRAHAM, A.K.A. PITTMAN, MR. TAGLIANETTI AND SOME OF THE
7 CARS THEY HAD, THE GRAY MARKET CARS THAT THEY HAD WERE
8 BEING TESTED.

9 YOU ARE GOING TO HEAR EVIDENCE PROBABLY TOMORROW
10 ABOUT THAT. THE SECOND ONE INVOLVES -- THIS HAPPENED
11 IN MARCH OF 1984, ABOUT THE 14TH OF MARCH. THE SECOND
12 ONE INVOLVED A MAN NAMED MR. SWARTOUT, WHO LIKEWISE HAD
13 SOME BUSINESS DEALINGS WITH MR. HUNT AND HIS COMPANY.

14 MR. SWARTOUT OWNED A COMPANY CALLED COGENCO
15 AND ANOTHER COMPANY CALLED U.S. FLYWHEELS AND HE HAD SOME
16 DEALING WITH MR. HUNT IN CYCLATRONICS, WHICH YOU WILL
17 REMEMBER WAS THE PREDECESSOR COMPANY TO MICROGENESIS.

18 THIS HAD TO DO WITH THE GRINDING MACHINE AND
19 SOME CONTRACTS THAT THEY WERE SUPPOSED TO HAVE WITH A
20 MR. KILPATRICK IN DENVER.

21 AND AS A RESULT OF A KIND OF BUSINESS FALLING
22 OUT, YOU WILL HEAR SOME EVIDENCE ABOUT WHAT HAPPENED TO
23 MR. SWARTOUT IN IRVINE.

24 AND THE LAST ONE HAS BEEN ALLUDED TO DURING
25 THE GUILT PHASE. IT IS GOING TO TAKE THE BULK OF THE
26 TIME OF THE PROSECUTION'S EVIDENCE IN THE PENALTY PHASE.
27 AND IT HAS TO DO WITH THE KIDNAPPING AND MURDER OF A MAN
28 NAMED HADAYET ESLAMINIA.

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YOU ARE GOING TO HEAR HOW MR. ESLAMINIA WAS
KIDNAPPED FROM HIS APARTMENT IN BELMONT, CALIFORNIA AND
WHAT HAPPENED TO HIM. WE HAVE SEVERAL WITNESSES THAT
WE ARE GOING TO PRESENT TO YOU, STARTING, AS I MENTIONED,
WITH THE INCIDENT THAT HAPPENED IN SANTA ANA AND WHAT
HAPPENED TO MR. COKER'S LAB, FOLLOWED BY WHAT HAPPENED
TO MR. SWARTOUT AND THEN WHAT HAPPENED WITH MR. ESLAMINIA.

SO, WITHOUT GIVING YOU A WHOLE, DETAILED EXPLANATION
OF WHAT IS COMING, THIS WOULD BE SLIGHTLY DIFFERENT. I
AM JUST GOING TO LET YOU HEAR THIS ONE FOR YOURSELF AND YOU
WILL BE SOMEWHAT SURPRISED AS THE EVIDENCE COMES IN. SO
YOU WON'T KNOW EXACTLY WHAT IS COMING.

I DON'T EXPECT IT TO COME IN TOO MUCH OUT
OF ORDER. IF YOU HEAR PEOPLE TESTIFYING ABOUT MOTEL REGISTRATIONS
AND THE RENTAL OF U-HAUL TRUCKS OR THE RENTAL OF HOUSES
AND YOU DON'T UNDERSTAND WHAT IS HAPPENING, ALL OF THAT
IS GOING TO BE TIED UP TO THE ESLAMINIA MURDER.

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1 SO, THANK YOU AGAIN FOR ALL OF YOUR PATIENCE
2 DURING THE GUILT PHASE. HOPEFULLY, AS THE COURT SAID,
3 WE WON'T HAVE TOO MANY MORE OF THESE DELAYS DURING THE
4 PENALTY PHASE.

5 I JUST THANK YOU AHEAD OF TIME FOR YOUR PATIENCE
6 AND YOUR ATTENTION.

7 THE COURT: DO YOU DESIRE TO MAKE AN OPENING STATEMENT?

8 MR. BARENS: YES, I DO.

9 THE COURT: ALL RIGHT.

10
11 OPENING STATEMENT

12 BY MR. BARENS:

13 GOOD AFTERNOON. I WOULD BE LESS THAN CANDID
14 IF I DIDN'T TELL YOU HOW DIFFICULT IT IS FOR ME TO COME
15 AND SPEAK TO YOU AGAIN AFTER A LENGTHY TRIAL AND A VERDICT,
16 TO COME NOW BEFORE YOU AND HAVE YOU CONSIDERING WHETHER
17 MY CLIENT IS TO LIVE OR DIE, KNOWING THAT YOU HAVE CONVICTED
18 HIM IN THE FIRST INSTANCE. I DON'T EXPECT A LOT.

19 I WOULD BE FOOLING MYSELF IF I DIDN'T IN SOME
20 REGARD WORRY THAT YOUR MINDS WERE MADE UP. I TELL YOU
21 THAT TRUTHFULLY. I PRESUME THEM TO BE, AT THIS STAGE.

22 I REGRET THE NECESSITY TO HAVE TO DEAL WITH
23 YOU AS A GROUP OR ANY OTHER GROUP TO DISCUSS THE DEATH
24 PENALTY. I CAN REMEMBER BACK AS FAR AS WHEN I WENT TO
25 HIGH SCHOOL, WRITING PAPERS DECRYING THE DEATH PENALTY.
26 IT IS A STRANGE IRONY THAT IN FRANCE TODAY, A MAN WENT
27 ON TRIAL FOR THE FIRST DAY OF HIS TRIAL WHO IS CLAIMED
28 TO BE KLAUS BARBIE.

1 IT IS ESTIMATED THE TRIAL IS GOING TO TAKE
2 ABOUT SEVEN WEEKS. THERE WILL BE ABOUT 90 WITNESSES.
3 KLAUS BARBIE HAS TWICE BEEN TRIED IN ABSENTIA FOR THE
4 MATTER WHICH BRINGS HIM BEFORE THE BENCH IN FRANCE TODAY.

5 THAT MATTER INVOLVES -- HE IS ACCUSED OF KILLING,
6 SENDING TO THEIR DEATHS, 4,000 PEOPLE DURING WORLD WAR II,
7 4,000 CIVILIANS THAT ALL DIED.

8 AND THE GREAT LIKELIHOOD IS THAT THERE IS
9 ALMOST A STIPULATION FOR CONVICTION IN THAT MATTER NOW.
10 BUT THERE WILL NEVER BE A DISCUSSION OF THE DEATH PENALTY.
11 THE DEATH PENALTY WILL NEVER BE SOUGHT. IT WILL NEVER
12 BE BROUGHT UP.

13 THE SAME FACTORS THAT WILL BE CONSIDERED IN
14 THIS COURTROOM FOR THE NEXT FEW WEEKS WILL NEVER COME UP
15 IN THAT CASE. BECAUSE THE DEATH PENALTY IN AND OF ITSELF
16 IS ARBITRARY, IS UNFAIR, IS NOT APPLIED FAIRLY IN MY OPINION
17 AND WILL NOT BE IN THIS INSTANCE EITHER.

18 THE PROSECUTION WILL TRY TO GET YOU TO FIND
19 SOME SOLACE FOR INSTITUTIONALIZING THE ACCEPTANCE OF DEATH
20 BY SHOWING SOME FACTORS IN AGGRAVATION.

21 ALTHOUGH YOU WILL HEAR THE WORDS AGAIN DURING
22 THIS CASE, NEVER FOR AN INSTANT LOSE SIGHT OF WHAT IS
23 REALLY BEING DISCUSSED HERE. WHAT IS REALLY BEING DISCUSSED
24 HERE IS WHETHER THE STATE IS GOING TO KILL JOE HUNT. DON'T
25 LOSE SIGHT OF WHAT REALLY HAPPENS AFTER THIS PART OF YOUR
26 VERDICT. THE MAN REALLY, IN THE REAL WORLD, IS EXECUTED.

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1 HE DIES IF THE PROSECUTION IS SUCCESSFUL, YOU
2 GET THE SATISFACTION, OR LACK THEREOF, OF PARTICIPATING IN
3 THAT AND YOU GET TO SHARE, ALONG WITH THE PROSECUTION, THE
4 RESPONSIBILITY FOR THAT DEATH.

5 NEVER IN THE HISTORY OF THIS STATE HAS A MAN BEEN
6 PUT TO DEATH IN A CASE WHERE NO BODY WAS FOUND. YOU GET THE
7 UNENVIABLE OPPORTUNITY TO PARTICIPATE IN THAT PRECEDENT.

8 THE PROSECUTION SOLICITS YOUR COOPERATION IN MAKING
9 LAW IN THAT REGARD. I MUST ACCEPT YOUR VERDICT.

10 THE COURT: PARDON ME. MAY I INTERRUPT YOU? THIS IS
11 OPENING STATEMENT. YOU CAN MAKE THIS AS A CONCLUDING ARGUMENT
12 WHEN YOU GET THROUGH WITH THE CASE. JUST TELL US WHAT IT
13 IS THAT YOU EXPECT TO PROVE ON THE PENALTY PHASE AND LIMIT
14 YOURSELF TO THAT.

15 YOU WILL HAVE EVERY OPPORTUNITY LATER ON TO ARGUE,
16 AS YOU ARE DOING NOW. THIS IS NOT AN OPENING STATEMENT.

17 JUST TELL US WHAT IT IS YOU INTEND TO PROVE, IF
18 YOU WILL, PLEASE, ON THE PENALTY PHASE AND THEN SAVE EVERYTHING
19 ELSE FOR THE ARGUMENT AT THE CONCLUSION OF THE CASE, WHICH
20 IS MORE APPROPRIATE AT THAT TIME.

21 MR. BARENS: WE WILL SEE IF WE CAN CONFORM WITH THAT,
22 YOUR HONOR.

23 THE COURT: I WISH YOU WOULD, PLEASE.

24 I AM NOT GOING TO CUT YOU SHORT ON THE FINAL
25 ARGUMENT. YOU CAN GO AS LONG AS YOU LIKE.

26 MR. BARENS: PERMIT ME TO FINISH JUST ONE THING I WANT
27 TO DO RIGHT NOW, YOUR HONOR.

28 THE COURT: GO AHEAD.

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1 MR. BARENS: IT IS INESCAPABLE THAT THE ONLY TWO ASPECTS
2 OF YOUR PERSONALITIES THAT CAN BE APPEALED TO IN THE NEXT
3 THREE WEEKS ARE EITHER PUNISHMENT OR REVENGE. THE BASEST
4 MOTIVES I CAN SEE ARE ALL WE ARE GOING TO BE DEALING WITH.

5 AND I ASK YOU IF YOU ARE GOING TO BE SATISFIED
6 BASED ON THE PROOF THAT YOU ARE GOING TO SEE, THAT PUNISHMENT
7 OR REVENGE FOR THE CRIME YOU BELIEVE OCCURRED, WHICH THE
8 DEFENSE DISPUTES EVEN NOW, WARRANTS THE DEATH PENALTY. IT
9 IS NOT A LEGAL EXCUSE FROM THE EVIDENCE YOU HAVE SEEN THAT
10 LEVIN TORMENTED AND DECEIVED HUNT.

11 AND THE EVIDENCE YOU WILL FURTHER SEE IN THAT REGARD
12 THAT LEVIN ACTED MALICIOUSLY TOWARDS HUNT IN DASHING, PERHAPS
13 UNREALISTIC AND IMMATURE AND MISDIRECTED DREAMS THAT HUNT
14 HAD. BUT AT THIS POINT, YOU MUST CONSIDER THAT EVIDENCE IN
15 TERMS OF EXTENUATING THIS CRIME, IF YOU BELIEVE THIS CRIME
16 TOOK PLACE.

17 THE GRAVITY OF THE CRIME AND WHAT SHOULD BE DONE
18 BY YOU HAS TO BE VIEWED IN TERMS OF ALL OF THOSE CIRCUMSTANCES.
19 ONE HAS TO CONSIDER, WHAT YOU WILL HEAR ABOUT, THE HISTORY
20 OF JOE HUNT AS HE COMES BEFORE YOU, FACING ECONOMIC
21 COMPULSION. YOU ALL HEARD THE EVIDENCE ABOUT, YOU KNOW, HOW
22 HE WAS BEHIND THE EIGHT BALL IN TERMS OF WHEN HE LEFT CHICAGO
23 AND THE SITUATION AND THE NEED TO MAKE UP AND REPLACE FUNDS
24 AND YOU WILL HEAR MORE EVIDENCE ABOUT THAT.

25 YOU WILL HEAR THAT HE WAS CONSTANTLY OPERATING
26 UNDER PRESSURE AND TENSION ECONOMICALLY AS HE PROCEEDS.

27 YOU WILL HEAR EVIDENCE ABOUT THE RELATIONSHIP
28 WITH THESE YOUNG MEN WHO YOU HEARD TESTIFY IN THIS COURTROOM

1 BEFORE, WHETHER WE HAVE YOUNG MEN WHO WERE IRRESOLUTE OR LED
2 BY SOME PHILOSOPHY FOR FINANCIAL GAIN.

3 WE MUST CONSIDER WHETHER THOSE ACTIONS, TAKEN
4 TOGETHER, WARRANT THE DEATH PENALTY. IF YOU ARE GIVEN
5 SUFFICIENT EVIDENCE TO IRRECONCILABLY DRIVE YOU TO KILL HIM,
6 THAT WILL BE THE ULTIMATE DECISION YOU WILL MAKE.

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THAT WILL BE THE ULTIMATE DECISION YOU WILL
MAKE.

YOUR PRIMARY WITNESS, AGAIN, ON THIS PHASE
WILL GET TO BE MR. KARNY AND THINK ABOUT WHETHER OR NOT
THE DEATH PENALTY VIS-A-VIS MR. KARNY AND MR. HUNT IS
FAIR OR APPROPRIATE AT THIS STAGE.

WE WILL HEAR EVIDENCE, ONCE AGAIN, THAT KARNY
GOES FIRST TO THE POLICE AND MAKES HIS DEAL. AND WHAT
DO YOU FIND HERE? DO YOU MAKE A DECISION THAT THE GUY
WHO HAS THE FASTEST CAR OR THE LAWYER WHO CALLS THE POLICE
FIRST IS THE GUY WHO LIVES AND GETS TO BE AN ATTORNEY,
EVEN THOUGH YOU ARE GOING TO HEAR KARNY TESTIFY THAT IF
YOU BELIEVE HIM -- AND IF YOU BELIEVE A MURDER OF ESLAMINIA
TOOK PLACE, YOU ARE GOING TO HEAR HIM TESTIFY THAT HE
IS EQUALLY CULPABLE WITH WHAT HE SAID HUNT DID. YET,
HE IS GOING TO GO FREE HERE AND WE ARE TO APPLY THE DEATH
PENALTY TO JOE HUNT.

YOU ARE GOING TO HAVE TO ASK YOURSELVES IF
A FURTHER APPROPRIATE REWARD FOR KARNY IS HUNT'S DEATH.
IS IT FAIR?

AND YOU HAVE TO CONSIDER, AS YOU LISTEN TO
THIS TESTIMONY, THE ISSUE OF FAIRNESS OR THE ISSUE OF
LEGAL HYPOCRISY. WHEN YOU LISTEN TO KARNY TESTIFY ABOUT
WHAT HE SAYS HAPPENED WITH MR. ESLAMINIA, LISTEN CAREFULLY
TO WHAT HE SAYS HIS ROLE IS IN THAT SETTING. LISTEN CAREFULLY
TO WHAT HE SAYS HE DID, KNOWING EVERY WORD HE SPEAKS,
THAT THE WAY THE SYSTEM IS, THAT ALTHOUGH HE IS PERCIPIENT
IN THAT CONDUCT, HE IS PHYSICALLY HANDS-ON INVOLVED

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1 IN THAT CONDUCT OR, AS HE DESCRIBES IT -- AND IF YOU WANT
2 TO BELIEVE HIM, BELIEVE HIM THEN AND ASK YOURSELF IF IT
3 IS FAIR THAT HE LIVES AND HUNT DIES? AND SEE IF YOU CAN
4 RECONCILE YOURSELVES WITH THAT.

...
5 REMEMBER THAT THE PROSECUTION ASKS YOU TO ACCEPT
6 THE FACTS CONTENDED IN THE ESLAMINIA CASE, EVEN THOUGH
7 ANOTHER JURY MUST ACCEPT OR REJECT THOSE FACTS IN ANOTHER
8 FORUM BEFORE THEY CAN DECIDE WHETHER HUNT IS GUILTY IN
9 ANY ASPECT TO ANY DEGREE IN THAT CASE.

10 YOU WILL BE ASKED HERE, GIVEN A MINI VIEW
11 OF THAT, TO KILL HIM.

12 THE OTHER TWO CASES YOU ARE GOING TO HEAR
13 EVIDENCE ABOUT, AND I ASK YOU TO BEAR IN MIND, THAT THESE
14 TWO AGGRAVATING FACTORS YOU HEARD ABOUT SWARTOUT, THIS
15 ALLEGED SHOOTING OF A BUILDING, NEITHER ONE OF THESE EVER
16 RESULTED IN THE FILING OF A CRIMINAL COMPLAINT AGAINST JOE
17 HUNT. NEITHER OF THEM SO MUCH SAW THE INSIDE OF A COURTROOM
18 AND NEVER RESULTED IN A COMPLAINT BEING FILED EITHER BY
19 A DISTRICT ATTORNEY OR A CITY ATTORNEY, NO COMPLAINT IN
20 THE SUPERIOR OR MUNICIPAL COURT, NOTHING. YET, THEY WILL
21 APPEAR HERE AT THIS PHASE OF THESE PROCEEDINGS AND YOU
22 WILL BE ASKED TO END HIS LIFE BASED UPON CONSIDERATIONS
23 OF THOSE MATTERS, WHICH NEVER SUCCESSFULLY GOT PAST THE
24 FILING FOR A CRIMINAL CASE.

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24A 1
1 NOW FURTHER, WE GET TO THE ISSUE WHICH THE DEFENDANT
2 IS ENTITLED TO PRESENT TO YOU, OF LINGERING DOUBT. LINGERING
3 DOUBT IT IS CONTENDED BY THE DEFENSE IN THIS CASE IS PLACED
4 BEFORE YOU CONCERNING RON LEVIN.

5 YOU MUST REMEMBER THAT THE DEFENDANT CONTINUES
6 TO CONTEND THAT HE IS INNOCENT. I CAN'T COME BEFORE YOU DURING
7 THE PROCEEDINGS AND SAY TO GIVE ME SYMPATHY AND MEA CULPA
8 BECAUSE WE ARE NOT GOING TO PUT ON THAT KIND OF EVIDENCE.

9 BECAUSE THE DEFENSE DOESN'T ACCEPT THAT. WE WILL
10 PUT ON A FURTHER WITNESS WHO KNEW RON LEVIN, A WITNESS WHO
11 HAD CONSIDERABLE CONTACT ON A DAILY BASIS WITH RON LEVIN,
12 A WITNESS WITH NO AX TO GRIND OR THEATRICAL AMBITIONS OR
13 UNSATISFIED APPETITE FOR PUBLICITY, WHO WILL SAY THAT SHE
14 SAW RON LEVIN IN THE RECENT PAST. WE SUBMIT THAT IT COMPELS
15 A LINGERING DOUBT.

16 THERE IS NO GUARANTEE OF THE RECTITUDE OF THE
17 JUDGMENT MADE SIMPLY BECAUSE FOR REASONS DURING THE GUILT
18 PHASE, A GUILTY VERDICT WAS MADE. I ASK YOU TO ATTEND THIS
19 PART OF THE PROCEEDINGS WITH AN OPEN MIND AND WITH NO
20 PREJUDGMENT OR NEED TO VALIDATE AND FURTHER SATISFY THE
21 VERDICT ALREADY RENDERED BUT TO CONSIDER THE TRAGEDY THAT
22 HAS ALREADY OCCURRED IN JOE HUNT'S LIFE AND NOT TO ADD TO
23 THAT TRAGEDY BY THE STATE SANCTIONED MURDER.

24 THANK YOU.

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24B-1

1 THE COURT: ALL RIGHT. CALL YOUR FIRST WITNESS.

2 MR. WAPNER: WE CALL JERRY COKER.

3

4 JERRY COKER,

5 CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND TESTIFIED
6 AS FOLLOWS:

7 THE CLERK: RAISE YOUR RIGHT HAND TO BE SWORN.

8 YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY YOU
9 MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL
10 BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH,
11 SO HELP YOU GOD?

12 THE WITNESS: I DO.

13 THE CLERK: PLEASE BE SEATED. STATE AND SPELL YOUR
14 NAME FOR THE RECORD.

15 THE WITNESS: COKER, C-O-K-E-R.

16 THE COURT REPORTER: PLEASE SPELL YOUR FIRST NAME.

17 THE WITNESS: JERRY, J-E-R-R-Y.

18

19 DIRECT EXAMINATION

20 BY MR. WAPNER:

21 Q IN 1985, DID YOU OWN A BUSINESS?

22 A YES.

23 Q WHAT WAS THE NAME OF THE BUSINESS?

24 A FRANCE-COKER, INC.

25 Q TWO WORDS, HYPHENATED?

26 A YES.

27 Q WAS MR. FRANCE THE NAME OF YOUR PARTNER?

28 A YES, IT WAS.

1 Q WHERE WAS THAT BUSINESS LOCATED?

2 A AT 3132 WEST ADAMS, SANTA ANA.

3 Q WHAT TYPE OF A BUSINESS WAS IT?

4 A AUTOMOTIVE TESTING LAB.

5 Q WHAT TYPE OF TESTING DID YOU DO THERE?

6 A AIR POLLUTION TESTING.

7 Q AND WHAT DID YOU TEST FOR AIR POLLUTION? WERE
8 YOU TESTING AUTOMOBILES?

9 A TESTING AUTOMOBILES, MOSTLY LUXURY IMPORT
10 AUTOMOBILES.

11 Q AND WHAT WAS THE PURPOSE OF DOING THE AIR
12 POLLUTION TESTING ON THESE CARS?

13 A IT WAS TO CONFIRM TO THE FEDERAL GOVERNMENT
14 THAT THE CARS WERE U.S. LEGAL AS FAR AS THEIR POLLUTION.

15 Q THAT THE MET U.S. SMOG STANDARDS?

16 A CORRECT.

17 Q AND IN THAT REGARD, AT SOME POINT, WERE YOU
18 APPROACHED BY SOME PEOPLE WHO WORKED FOR A COMPANY CALLED
19 WEST CARS OF NORTH AMERICA?

20 A YES, I WAS.

21 Q WHO WERE THOSE PEOPLE WHO APPROACHED YOU?

22 A THE INITIAL APPROACH WAS BY MR. TAGLIANETTI.

23 Q HOW WAS THAT DONE?

24 A IT WAS DONE BY TELEPHONE.

25 Q WHEN WAS IT THAT YOU TALKED TO MR. TAGLIANETTI
26 ON THE PHONE?

27 A THIS WAS IN LATE 1983.

28 Q WAS THAT STEPHEN TAGLIANETTI?

1 A YES, IT WAS.

2 Q AFTER YOU TALKED TO MR. TAGLIANETTI ON THE
3 TELEPHONE, DID YOU MAKE SOME ARRANGEMENT WITH HIM TO MEET
4 WITH HIM?

5 A THERE WAS A MEETING SET UP A FEW DAYS LATER.

6 Q WHERE DID THAT MEETING HAPPEN?

7 A AT MY OFFICE IN SANTA ANA.

8 Q AT THE SAME LOCATION YOU TOLD US ABOUT?

9 A CORRECT.

10 Q WHO WAS PRESENT AT THAT MEETING?

11 A THERE WERE SIX OR EIGHT PEOPLE FROM WEST CARS,
12 MYSELF AND MY PARTNER, RENEE FRANCE.

13 Q DO YOU SEE ANY OF THOSE PEOPLE WHO WERE PRESENT
14 AT THE MEETING IN THE COURTROOM BY NOW?

15 A YES, I DO.

16 Q WOULD YOU POINT THAT PERSON OUT?

17 A (INDICATING). MR. HUNT.

18 MR. WAPNER: INDICATING THE DEFENDANT, FOR THE RECORD,
19 YOUR HONOR.

20 Q BY MR. WAPNER: DO YOU KNOW WHO THE OTHER
21 PEOPLE WHO WERE AT THE MEETING?

22 A IT WAS MR. TAGLIANETTI, MR. JIM GRAHAM AND
23 I DO NOT KNOW THE NAMES OF THE OTHER PEOPLE.

24 Q AND WHAT WAS DISCUSSED AT THAT MEETING?

25 A IT WAS THE PRICING OF THE TESTING, THE PROCEDURES
26 OF THE TESTING AND SOME DISCOUNT PRICING ALSO AND POINTERS
27 FOR GETTING TESTING DONE IN A NORMAL MANNER.

28 Q WAS THAT TO BE TESTING OF LUXURY IMPORTED

1 CARS?

2 A YES, IT WAS.

3 Q WHAT WAS DISCUSSED REGARDING THE PRICING,
4 THE PROCEDURES AND DISCOUNTS?

5 A THE DISCUSSION WAS THE RETAIL PRICES AND ALSO
6 FURTHER DISCUSSION OF DISCOUNT PRICES WHICH REQUIRED A
7 \$5,000 ADVANCE AND A MINIMUM NUMBER OF VEHICLES TO OBTAIN
8 A 25 PERCENT DISCOUNT.

9 Q WAS THAT A MINIMUM NUMBER OF VEHICLES TO BE
10 TESTED EACH MONTH?

11 A THAT'S CORRECT, TEN VEHICLES PER MONTH.

12 Q WHAT WAS THE DISCUSSION IN TERMS OF THE PROCEDURES
13 THAT YOU SUGGESTED?

14 A I OUTLINED THAT TO KEEP THE COST OF THE TESTING
15 DOWN, THAT THE VEHICLES SHOULD BE WELL-PREPARED AND READY
16 FOR TEST, PRIOR TO THE OFFICIAL TESTING.

17 Q DID YOU TELL THEM WHY THAT WOULD KEEP THE
18 COST OF THE TESTING DOWN?

19 A YES, I DID.

20 Q WHAT DID YOU SAY?

21 A I TOLD THEM OTHERWISE WE WOULD CHARGE FOR
22 EACH AND EVERY TEST AND THE BILL MIGHT BE IN THE THOUSANDS
23 OF DOLLARS, RATHER THAN IN THE HUNDREDS OF DOLLARS.

24 Q WHAT DID YOU TELL THEM IT WOULD COST FOR ONE
25 TEST?

26 A I BELIEVE THE TEST COST AT THAT TIME \$750.

25 1 Q WHAT WAS MR. HUNT'S PARTICIPATION IN THE MEETING?

2 A I AM SORRY. I DIDN'T HEAR THE QUESTION.

3 Q WHAT WAS MR. HUNT'S PARTICIPATION AT THAT MEETING?

4 A GATHERING INFORMATION AS TO THE PROCEDURES AND
5 THE PRICING, IS ALL I KNEW.

6 Q AFTER THAT MEETING AT THE END OF 1983 WAS OVER,
7 DID THESE PEOPLE FROM WESTCARS PRESENT ANY OF THEIR CARS FOR
8 TESTING?

9 A YES, THEY DID.

10 Q WHEN DID THAT START?

11 A PARDON ME?

12 Q WHEN DID THEY FIRST START DOING THAT?

13 Q IT WAS EITHER LATE 1983 OR EARLY 1984.

14 Q WHAT HAPPENED WHEN THE WESTCARS CARS WERE BROUGHT
15 TO YOU TO BE TESTED?

16 A THEY GENERALLY WERE NOT PREPARED FOR TESTING AND,
17 CONSEQUENTLY, THEY FAILED QUITE A FEW TESTS.

18 Q MEANING THAT EACH CAR HAD TO GO UNDER AT LEAST
19 ONE ADDITIONAL TEST?

20 A ONE OR MORE, CORRECT.

21 Q WHAT HAPPENED, IF ANYTHING, WHEN THE CARS FAILED
22 THE TEST?

23 A I WOULD NORMALLY TELEPHONE MR. TAGLIANETTI AND
24 TELL HIM THE RESULT AND GIVE HIM SOME INPUT ON HOW TO MAKE
25 THE NECESSARY REPAIRS.

26 AND THEN THEY WOULD COME PICK UP THE VEHICLES
27 OR WORK ON THE VEHICLES IN MY SHOP.

28 Q AFTER THE WORK HAD BEEN DONE, WHAT HAPPENED WITH

25 ?
1 THE CARS?

2 A THEY WERE BROUGHT BACK AND RETESTED.

3 Q DID ALL OF THEM PASS THE SECOND TIME AROUND?

4 A NO.

5 Q SO SOME OF THEM HAD TO BE PASSED MORE THAN TWICE?

6 A THAT'S CORRECT.

7 Q DID YOU GET ANY COMPLAINT FROM PEOPLE FROM WESTCARS
8 ABOUT THAT?

9 A THERE WAS SOME CONCERN SO IF A CAR DID PASS, WHAT
10 IS THE OVERALL COST. THERE WAS CONCERN HOW THEY COULD REDUCE
11 THAT COST.

12 Q WHO EXPRESSED THAT CONCERN?

13 A MR. GRAHAM AND MR. TAGLIANETTI, AT ONE OR TWO
14 CONVERSATIONS.

15 Q AND WHO ELSE?

16 A THERE WAS A MEETING WHERE THERE WERE TWO OR THREE
17 OTHER PEOPLE INVOLVED IN ADDITION TO MR. TAGLIANETTI AND
18 MR. GRAHAM.

19 Q WHEN WAS THAT?

20 A THEY EXPRESSED THE SAME CONCERN.

21 Q WHEN WAS THAT?

22 A THAT WAS, AS I RECALL, PROBABLY FEBRUARY OF 1984.

23 Q AND WHO, BESIDES MR. GRAHAM AND MR. TAGLIANETTI,
24 WERE PRESENT AT THAT MEETING?

25 A I AM NOT SURE OF THEIR NAMES.

26 Q WERE THEY ALSO FROM WESTCARS?

27 A THEY IDENTIFIED THEMSELVES AS BEING FROM WESTCARS,
28 YES.

25 7 1 Q DO YOU REMEMBER WHAT THEY LOOKED LIKE?

2 A VERY YOUNG, WELL DRESSED.

3 Q WHAT WAS THE CONCERN EXPRESSED AT THAT MEETING?

4 A AS TO WHY EACH CAR WAS COSTING SO MUCH TO COMPLETE
5 THE TEST SERIES AND TO PASS. THEY WANTED TO KNOW HOW THEY
6 COULD KEEP THE COST DOWN.

7 Q WHAT DID YOU TELL THEM?

8 A I TOLD THEM THE CARS HAD TO BE PREPARED PROPERLY
9 AND TO GET A DISCOUNT, IT REQUIRED THE FIVE THOUSAND ADVANCE
10 AND THE MINIMUM NUMBER OF TESTS PER MONTH.

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1 Q HOW MANY TESTS PER MONTH DID YOU TELL THEM?

2 A TEN OR MORE.

3 Q AND AFTER THAT MEETING, DID THEY CONTINUE TO BRING
4 IN CARS?

5 A I CONTINUED TO TEST CARS.

6 I AM NOT SURE IF THEY BROUGHT ANY MORE CARS IN.

7 Q OR IF YOU WERE JUST TESTING THE ONES ALREADY THERE?

8 A CORRECT.

9 Q WHAT HAPPENED AS YOU CONTINUED TO TEST THE CARS
10 THAT WERE ALREADY THERE?

11 A I BECAME CONCERNED THAT THE CARS WEREN'T PASSING
12 AND IT WAS BUILDING UP QUITE AN AMOUNT, SO I WENT AHEAD AND
13 INVOICED THOSE CARS THAT HAD TESTS IN PROGRESS.

14 Q WHAT DID YOU DO WITH THE INVOICE THAT YOU PREPARED?

15 A I SENT IT TO WESTCARS AND I ALSO MADE SEVERAL
16 TELEPHONE CALLS.

17 Q WHOM DID YOU HAVE TELEPHONE CALLS WITH?

18 A GENERALLY, MR. TAGLIANETTI OR MR. GRAHAM.

19 Q AND WHEN YOU SENT THAT INVOICE, DO YOU REMEMBER
20 WHEN THAT WAS EXACTLY?

21 A PROBABLY EITHER JANUARY OR FEBRUARY OF 1984.

22 Q WAS THAT INVOICE PAID?

23 A THAT INVOICE IS STILL OWING, I BELIEVE. IT IS
24 SEVERAL THOUSAND DOLLARS.

25 Q DO YOU KNOW WHETHER THAT INVOICE WAS BEFORE OR
26 AFTER THE MEETING YOU HAD WITH MR. GRAHAM, TAGLIANETTI AND
27 THE FEW OTHER PEOPLE WHOM YOU DON'T KNOW?

28 A I BELIEVE THAT GENERATED THAT MEETING, YES.

1 I BELIEVE THE INVOICE WAS BEFORE THE MEETING.

2 Q AND THE CARS THAT YOU HAD TESTED AFTER THE MEETING,
3 DID THEY PASS OR DO YOU REMEMBER?

4 A PERHAPS ONE OUT OF THREE PASSED, AS I RECALL.

5 Q AND DID YOU GO TO WORK AT YOUR OFFICE ON MARCH
6 THE 14TH OF 1984?

7 A YES, I DID.

8 Q WHAT TIME DID YOU LEAVE WORK ON THAT DAY?

9 A APPROXIMATELY 5 P.M.

10 Q CAN YOU DESCRIBE THE LOCATION WHERE YOUR OFFICE
11 AND PLANT WERE LOCATED.

12 A THE PLANT WAS LOCATED IN, I GUESS, THE WESTERN
13 PART OF SANTA ANA.

14 Q WAS IT IN LIKE AN INDUSTRIAL PARK?

15 A IN AN INDUSTRIAL PARK, YES.

16 Q WAS THE BUILDING ESSENTIALLY LIKE A HIGH ONE-STORY
17 BUILDING?

18 A COMMONLY REFERRED TO AS A TILT-UP BUILDING, YES.

19 Q WERE YOU ACTUALLY ABLE TO DO THE TESTING OF THE
20 CARS IN THAT BUILDING?

21 A YES.

22 WE HAD ABOUT THREE-QUARTERS OF A MILLION DOLLARS
23 IN TEST EQUIPMENT.

24 Q DID YOU HAVE SOME OFFICES IN THE FRONT OF THAT
25 BUILDING?

26 A ABOUT 2,000 SQUARE FEET OF OFFICE SPACE.

27 Q WHEN YOU LEFT THE OFFICES, YOUR OFFICE IN THE
28 LATE AFTERNOON ON MARCH 14, WAS EVERYTHING IN GOOD ORDER?

1 A YES, IT WAS.

2 Q ALL OF THE WINDOWS AND DOORS WERE INTACT?

3 A YES, THEY WERE.

4 Q DID YOU RECEIVE A CALL FROM ONE OF YOUR EMPLOYEES
5 AT SOME POINT THAT EVENING?

6 MR. CHIER: OBJECTION. HEARSAY.

7 THE COURT: OVERRULED.

8 Q BY MR. WAPNER: DID YOU RECEIVE A CALL?

9 A YES, I DID.

10 I AM NOT SURE OF THE TIME PERIOD. IT WAS LATE
11 IN THE EVENING.

12 Q WAS THAT A MR. REDMOND?

13 A YES, IT WAS.

14 Q DID YOU GO BACK TO THE BUSINESS THAT NIGHT OR
15 DID YOU WAIT UNTIL NEXT MORNING TO GO BACK?

16 A I BELIEVE I WAITED UNTIL THE NEXT MORNING BUT
17 I AM NOT REALLY SURE.

18 Q WHEN YOU WENT BACK THE NEXT MORNING, WHAT DID
19 YOU SEE?

20 A IT LOOKED LIKE VIETNAM.

21 Q IN WHAT RESPECT?

22 A THERE WERE BULLET HOLES IN ALL OF THE GLASS, QUITE
23 A BIT OF GLASS IN THE BUILDING. THERE WERE BULLET HOLES IN
24 TWO MERCEDES THAT WERE PARKED OUTSIDE.

25 Q WERE THOSE CARS THAT WERE TO BE TESTED BY YOUR
26 BUSINESS?

27 A TO BE TESTED OR HAD ALREADY BEEN TESTED, I AM
28 NOT SURE.

1 Q WHERE ELSE WERE THERE BULLET HOLES?

2 A BULLET HOLES THROUGH MY PARTNER'S OFFICE. BULLET
3 HOLES THROUGH MY OFFICE. BULLET HOLES THROUGH THE RECEPTION
4 OFFICE. BULLET HOLES THAT ENTERED SEVERAL WALLS INTO THE
5 AREAS WHERE TWO EMPLOYEES WERE WORKING.

6 MR. CHIER: OBJECTION AND MOVE TO STRIKE THAT AS
7 HEARSAY, YOUR HONOR.

8 THE COURT: OVERRULED.

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1 THE COURT: OF YOUR OWN KNOWLEDGE, IF YOU KNOW WHEN
2 YOU WERE WORKING THERE.

3 THE WITNESS: YES, SIR.

4 Q BY MR. WAPNER: HAD YOU HAD SOME EXPERIENCE
5 BEFORE THAT IN RECOGNIZING HOLES THAT ARE MADE BY BULLETS?

6 A YES.

7 JUST NORMAL EXPERIENCE. I HAVE BEEN IN VIETNAM. I
8 HAVE SEEN BULLET HOLES BEFORE, YES.

9 Q WHEN YOU LOOKED AT THOSE HOLES, THEY APPEARED
10 TO BE BULLET HOLES TO YOU?

11 A YES, THEY DID.

12 Q ALL RIGHT. DO YOU RECOGNIZE THIS DIAGRAM?
13 IT IS KIND OF A CRUDE DRAWING THAT IS ON THE BOARD TO
14 YOUR RIGHT.

15 A YES, I DO.

16 Q DO YOU KNOW WHAT THAT IS SUPPOSED TO DEPICT?

17 A THAT LOOKS LIKE THE BUILDING THAT I WAS LEASING
18 AT THE TIME, YES.

19 MR. WAPNER: MAY THAT BE MARKED AS --

20 THE COURT: WE'LL START WITH PENALTY 1, P-1, FOR
21 SHORT. THAT IS THE BETTER WAY OF DOING IT.

22 MR. WAPNER: I WILL DO WHATEVER THE CLERK'S OFFICE
23 TELLS ME TO DO.

24 THE COURT: MAKE IT P-1.

25 MR. WAPNER: FINE.

26 THE COURT: OTHERWISE WE WILL BE GETTING INTO ASTRONOMICAL
27 FIGURES.

28 MR. WAPNER: ALL RIGHT.

Q AND DIRECTING YOUR ATTENTION TO THAT DIAGRAM,

26A-2

1 CAN YOU EXPLAIN TO US BRIEFLY WHAT THAT INTENDS TO SHOW
2 US?

3 A SHALL I GET UP?

4 Q IF YOU WOULD, YES.

5 A THIS IS ALL OFFICE SPACE HERE.

6 MR. WAPNER: INDICATING, YOUR HONOR, THE TOP PORTION
7 OF THE RECTANGLE DEPICTED IN THE DIAGRAM.

8 THE COURT: YES.

9 Q BY MR. WAPNER: ALL RIGHT.

10 A THIS IS THE COMPUTER AND EQUIPMENT ROOM. THIS
11 IS THE TESTING AREA. THIS IS THE AREA FOR THE VEHICLES
12 WHERE THEY ARE STORED PRIOR TO TESTING.

13 Q AND IS THIS AREA KIND OF IN THE MIDDLE BETWEEN
14 THE OFFICE AND THE TESTING AREA AND THE VEHICLE STORAGE
15 AREA, A DOORWAY?

16 A YES. THIS IS A DOORWAY RIGHT HERE.

17 Q WHAT ARE INDICATED BY THE SLASH MARKS AT THE
18 TOP OF THE DIAGRAM?

19 A THESE ARE WINDOWS TO THE INDIVIDUAL OFFICES
20 AND THE CONFERENCE AREA.

21 Q WHERE WAS YOUR OFFICE LOCATED?

22 A RIGHT HERE.

23 Q ARE THERE WINDOWS TO YOUR OFFICE?

24 A YES, THERE WAS.

25 MR. WAPNER: YOUR HONOR, WHEN HE SAID "RIGHT HERE"
26 IT IS IN THE UPPER RIGHT-HAND CORNER OF THE DIAGRAM.

27 THE COURT: YES. WHY DON'T YOU INDICATE IT? THAT
28 WILL BE "C" FOR MR. COKER.

1 MR. WAPNER: I JUST WROTE HIS WHOLE NAME IN THERE.

2 THE COURT: ALL RIGHT.

3 Q BY MR. WAPNER: AND WHERE WAS THE FRONT DOOR
4 OF THE BUSINESS?

5 A THE FRONT DOOR WAS RIGHT HERE (INDICATING).

6 Q WHEN YOU CAME TO THE BUSINESS ON THE NEXT
7 MORNING, MARCH THE 15TH, WHERE WERE THE BULLET HOLES THAT
8 YOU NOTICED?

9 A I NOTICED BULLET HOLES AS I WAS DRIVING DOWN
10 ADAMS TO PARK. I EITHER PARK HERE OR HERE (INDICATING).

11 SO I NOTICED THEM ON THIS WINDOW AS I WAS
12 COMING DOWN. AND AS I ENTERED THROUGH THE FRONT DOOR.

13 Q WERE THERE ACTUAL BULLET HOLES IN ALL THE
14 WINDOWS OF THE BUSINESS?

15 A ESSENTIALLY ALL OF THE WINDOWS, YES.

16 Q AND THE TWO MERCEDES THAT YOU REFERRED TO
17 THAT HAD BULLET DAMAGE TO THEM, WHERE WERE THEY PARKED?

18 A THEY WERE PARKED RIGHT HERE, ALONGSIDE ONE
19 ANOTHER.

20 Q NOW, WOULD YOU PUT TWO RECTANGLES WITH A RED
21 PEN TO INDICATE WHERE THEY WERE?

22 (THE WITNESS COMPLIES.)

23 Q WERE THEY THERE ON THE NIGHT OF THE 14TH WHEN
24 YOU LEFT?

25 A NO, THEY WERE NOT.

26 Q WHERE WERE THEY WHEN YOU LEFT?

27 A THEY WERE PROBABLY IN LINE TO BE TESTED WHEN
28 I LEFT AND TESTED IMMEDIATELY AFTER I LEFT.

1 Q HAD YOU SEEN ANY DAMAGE TO THOSE THE LAST
2 TIME YOU SAW THEM?

3 A NO.

4 Q SO THEY WERE IN GOOD SHAPE WHEN YOU LAST SAW
5 THEM?

6 A YES, THEY WERE.

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1 Q NOW, AFTER THIS HAPPENED -- WELL, AT THE TIME
2 IT HAPPENED, WAS THERE A REPORT MADE TO THE SANTA ANA POLICE
3 DEPARTMENT.

4 A AT THE TIME THAT IT HAPPENED, YES. THERE WAS
5 A REPORT MADE.

6 Q AND AFTERWARDS, DID ANYONE FROM WESTCARS COME
7 IN AND TALK TO YOU?

8 A A FEW DAYS LATER. I AM NOT SURE IF IT WAS TWO
9 OR FOUR DAYS. BUT SOME TIME LATER AFTER IT HAPPENED,
10 MR. GRAHAM AND SOME OTHER GENTLEMAN CAME IN.

11 Q DO YOU KNOW WHO THE OTHER GENTLEMAN WAS?

12 A I AM REALLY NOT SURE. IT COULD HAVE BEEN A
13 MR. DOSTI OR MR. TAGLIANETTI. I AM REALLY NOT SURE.

14 MR. CHIER: MOVE TO STRIKE AS SPECULATION.

15 THE COURT: WELL, HE HAS GIVEN US HIS BEST ESTIMATE.
16 THAT IS ENOUGH. DENIED.

17 Q BY MR. WAPNER: ON WHAT DO YOU BASE THIS STATEMENT
18 THAT IT COULD HAVE BEEN MR. DOSTI?

19 A HE WAS PRESENT AT TWO MEETINGS SHORTLY THEREAFTER.
20 SO I AM NOT REALLY SURE AT THAT PARTICULAR MEETING.

21 Q WHEN THOSE TWO PEOPLE CAME, WERE THERE STILL
22 BULLET HOLES IN THE BUSINESS?

23 A YES.

24 Q WHAT HAPPENED WHEN THE PEOPLE CAME IN?

25 A THEY ACTED SURPRISED, LIKE EVERYBODY ELSE WHEN
26 THEY CAME IN THROUGH THE DOOR.

27 Q WHAT HAPPENED AFTER THEY CAME IN?

28 A THEY SAID, "WHAT HAPPENED?"

200 2 1 AND I SAID, "EVIDENTLY SOMEONE IS MAD AT US."

2 Q WHAT HAPPENED AFTER THAT?

3 A THEY SAID THAT THEY WERE ALSO PROFESSIONAL
4 INVESTIGATORS. DO YOU WISH US TO FIND OUT WHO DID IT?

5 Q WHAT DID YOU SAY?

6 A I SAID THAT CERTAINLY WE WOULD LIKE TO KNOW WHO
7 DID IT.

8 Q WHAT HAPPENED THEN?

9 A THEY ASKED US A FEW QUESTIONS. I FORGET WHAT
10 THEY WERE.

11 THEN THEY SAID IT WOULD COST US \$5,000 TO FIND
12 OUT WHO DID IT.

13 Q WHAT DID YOU SAY?

14 A I SAID THAT WOULD BE FINE. \$5,000 IS NOT A LOT
15 TO PAY FOR FINDING OUT WHO DID THIS.

16 Q AND WHAT DID THEY SAY AT THAT PARTICULAR TIME?

17 A THEY MENTIONED THAT PERHAPS THEY COULD PUT SOMEONE
18 IN THE BUSINESS OFFICE BEHIND US. THEY SAID THERE WERE WAYS
19 OF FINDING OUT. I SAID IT WAS FINE, JUST FIND OUT, GET ME
20 THE EVIDENCE AND I WILL PAY YOU.

21 Q WHAT HAPPENED AFTER YOU SAID THAT?

22 A THEY SAID OKAY, WE WILL GET BACK TO YOU.

23 Q AND DID THEY GET BACK TO YOU?

24 A THEY CAME BACK A WEEK OR SO LATER.

25 Q WAS IT THE SAME TWO PEOPLE?

26 A I BELIEVE IT WAS THE SAME TWO PEOPLE. IT WAS
27 MR. GRAHAM AND MR. DOSTI THIS TIME.

28 Q WHAT HAPPENED WHEN THEY CAME BACK?

1 A THEY SAID --

2 MR. CHIER: OBJECTION, HEARSAY.

3 THE COURT: OVERRULED.

4 THE WITNESS: THEY SAID THAT THEY KNEW WHO DID IT.

5 I SAID FINE, BRING ME THE EVIDENCE AND I WILL PAY YOU THE
6 MONEY HOWEVER YOU WANT IT, CASH, CHECK OR MONEY ORDER.

7 Q BY MR. WAPNER: DID THEY SUGGEST WHAT COULD BE
8 DONE IN LIEU OF PAYING THEM IN CASH OR CHECK OR MONEY ORDER?

9 A THEY SUGGESTED THAT THE \$5,000 COULD BE USED AS
10 THE ADVANCE TO LOWER OR TO QUALIFY FOR THE DISCOUNT IN THE
11 TEST PRICES.

12 Q WHAT DID YOU SAY TO THAT?

13 A I SAID IT WAS FINE, HOWEVER YOU WANT.

14 Q AND DID THEY THEN PURPORT TO TELL YOU WHO IT WAS
15 THAT DID THIS?

16 A YES. THEY DID.

17 Q WHAT WAS SAID?

18 MR. CHIER: OBJECTION, HEARSAY.

19 MR. WAPNER: IT IS NOT OFFERED TO PROVE THE TRUTH, ONLY
20 THAT THIS WHAT THEY CLAIMED.

21 THE COURT: OVERRULED.

22 THE WITNESS: THEY TOLD ME THAT IT WAS MY EX-EMPLOYER.

23 THE COURT: YOUR EX-EMPLOYER?

24 THE WITNESS: YES.

25 Q BY MR. WAPNER: DID THEY GIVE THE PERSON'S NAME?

26 A MR. DONALD OLSON.

27 Q WHAT DID YOU DO WHEN THEY SAID THAT?

28 A I SAID THAT IT WAS DIFFICULT TO BELIEVE BECAUSE

1 I HAD KNOWN THE MAN FOR A LONG TIME. I WOULDN'T THINK THAT
2 HE WOULD DO THAT.

3 Q WHEN YOU SAID THAT, WHAT HAPPENED?

4 A WELL, THEY SAID -- MR. GRAHAM SAID, "WE'LL TAKE
5 CARE OF IT FOR YOU. WE'LL KILL HIM. WE'LL THROW HIM IN A
6 BARREL OF ACID ..."

7 MR. CHIER: OBJECTION. CAN WE APPROACH THE BENCH?

8 THE COURT: NO. THE OBJECTION IS OVERRULED. GO AHEAD.

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1 MR. CHIER: OBJECTION.

2 THE WITNESS: THERE WILL BE NO TRACE.

3 Q BY MR. WAPNER: I TAKE IT, YOU DIDN'T AGREE
4 TO THAT?

5 A NO.

6 I LOOKED AT MY PARTNER WITH SOME DISBELIEF
7 AS TO WHAT I WAS HEARING AND HE LOOKED AT ME THE SAME
8 WAY. WE SAID "NO. JUST SIMPLY BRING US THE EVIDENCE
9 AND WE WILL EITHER TURN IT OVER TO THE LOCAL P.D. OR WE
10 WILL RUIN THAT PERSON PROFESSIONALLY. WE WILL MAKE THE
11 CHOICE."

12 Q WERE YOU TOLD THAT THERE WAS SOME EVIDENCE?

13 A WE WERE TOLD THAT THEY HAD TAPE RECORDINGS
14 AND OTHER EVIDENCE THAT THEY WOULD BRING BACK TOMORROW.

15 Q AND DID THEY EVER COME BACK THE NEXT DAY?

16 A NEVER DID SHOW UP AGAIN.

17 Q WERE YOU EVER PROVIDED WITH A TAPE RECORDING
18 OR ANY TYPE OF EVIDENCE THAT IT WAS MR. OLSON?

19 A IT NEVER WAS.

20 Q AND WERE THERE ANY CARS AFTER THAT, WEST CARS
21 CARS REMAINING THERE.

22 A I BELIEVE THEY PICKED UP THE LAST CAR ON THE
23 NEXT TO THE LAST MEETING, AS I RECALL.

24 THE COURT: THAT IS BEFORE THE SHOOTING TOOK PLACE?

25 THE WITNESS: THAT WAS AFTER THE SHOOTING TOOK PLACE.

26 MR. CHIER: MAY WE APPROACH?

27 THE COURT: WERE THERE ANY HOLES IN THOSE CARS?

28 THE WITNESS: NO, SIR.

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1 THOSE WERE PARKED INSIDE THE BUILDING.

2 MR. CHIER: YOUR HONOR, WE RESPECTFULLY REQUEST
3 TO APPROACH THE SIDE BAR ON THIS.

4 THE COURT: ALL RIGHT.

5 (WHEREUPON, THE FOLLOWING PROCEEDINGS
6 WERE HELD AT THE BENCH:)

7 MR. CHIER: YOUR HONOR, THE MOTION IS TO STRIKE
8 ALL OF THIS TESTIMONY CONCERNING THE STATEMENTS ABOUT
9 MR. PITTMAN AND TO ASK THE JURY TO DISREGARD THEM. THE
10 REASON FOR IT --

11 THE COURT: FROM MR. PITTMAN?

12 MR. CHIER: YES.

13 THE COURT: THE STATEMENTS THAT HE MADE?

14 MR. CHIER: YES, YOUR HONOR.

15 THE COURT: WELL, HE WAS PART OF THIS GROUP, OF
16 THIS BBC, WASN'T HE?

17 MR. CHIER: YOUR HONOR, THE PENALTY PHASE --

18 THE COURT: WELL, ON THE PENALTY PHASE, WE HAVE
19 TO CONSIDER THE EVIDENCE WE HEARD BEFORE AND HE IS PART
20 OF THE BBC.

21 MR. CHIER: THERE IS NO EVIDENCE, AND THE PEOPLE
22 ARE NOT PREPARED TO OFFER ANY EVIDENCE THAT WOULD IMPUTE
23 THE STATEMENTS OF MR. PITTMAN TO MR. HUNT, FIRST OF ALL.

24 SECOND OF ALL, WE HAVEN'T HEARD THESE THREATS
25 BEFORE. I DON'T RECALL SEEING THIS ASPECT OF THIS MAN'S
26 EXPERIENCE IN ANY REPORT THAT I READ.

27 THE COURT: TELL HIM, MR. WAPNER, WILL YOU?

28 MR. WAPNER: THOSE PARTICULAR STATEMENTS, I DON'T

1 THINK WERE IN ANY REPORT.

2 IN ANY EVENT, IF THE COURT WANTS TO STRIKE
3 THOSE PARTICULAR STATEMENTS, I HAVE NO OBJECTION TO IT.

4 MR. BARENS: AND TO INSTRUCT THE JURY TO DISREGARD
5 THAT?

6 THE COURT: YOU MEAN STRIKE THE STATEMENTS ABOUT
7 PUTTING HIM IN ACID, AND SO FORTH?

8 MR. WAPNER: RIGHT, I HAVE NO OBJECTION.

9 MR. CHIER: HOW ABOUT THE PART "WE WILL KILL HIM"?

10 MR. WAPNER: STRIKE THAT.

11 THE COURT: ALL RIGHT, I WILL STRIKE THE STATEMENT
12 ABOUT KILLING HIM AND PUTTING HIS BODY IN ACID, ALL RIGHT.

13 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE
14 HELD IN OPEN COURT:)

15 THE COURT: ALL RIGHT, THE LAST PART OF THE TESTIMONY
16 ABOUT THE KILLING OF MR. OLSON AND PUTTING HIS BODY IN
17 ACID, THAT WILL BE DISREGARDED.

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27. 1 Q MR. COKER, WERE YOU PAID FOR SOME OF THE WORK
2 THAT YOU DID IN TESTING THE CARS THAT WERE TESTED BY YOUR
3 LABORATORY FOR WESTCARS?

4 A WE WERE PAID FOR MOST OF IT, YES.

5 Q HOW WERE YOU PAID?

6 A BY CHECK, AS I RECALL, FROM WESTCARS.

7 Q DO YOU RECALL, WITHOUT HAVING THE CHECKS IN FRONT
8 OF YOU, WHO SIGNED THEM?

9 A I HAVE NO RECOLLECTION.

10 MR. WAPNER: ALL RIGHT, THANK YOU. I HAVE NOTHING FURTHER.

11 THE COURT: NO FURTHER QUESTIONS?

12 MR. WAPNER: NO, I HAVE NO FURTHER QUESTIONS.

13 THE COURT: ALL RIGHT.

14 (UNREPORTED COLLOQUY BETWEEN MR. CHIER
15 AND THE DEFENDANT.)

16 MR. WAPNER: MAY I HAVE A MOMENT WITH THE WITNESS?

17 THE COURT: YES.

18 (UNREPORTED COLLOQUY BETWEEN MR. WAPNER
19 AND THE WITNESS.)

20 MR. BARENS: WHAT WE WOULD LIKE TO DO, BECAUSE OF THE
21 ANTICIPATED TIME THAT WE ARE GOING TO BREAK, IS TO BREAK NOW
22 AND CROSS-EXAMINE THE WITNESS IN THE MORNING.

23 MR. WAPNER: MAY WE APPROACH BRIEFLY?

24 THE COURT: ALL RIGHT.

25 (THE FOLLOWING PROCEEDINGS WERE HELD
26 AT THE BENCH:)

27 THE COURT: YES?

28 MR. WAPNER: THE REASON I PUT THIS WITNESS ON NOW IS

1 THAT HE IS TRYING TO -- HE IS SUPPOSED TO LEAVE TOWN TOMORROW
2 MORNING. I DON'T KNOW WHERE HE IS GOING OR EXACTLY WHAT HIS
3 PLANS ARE. BUT I DON'T KNOW HOW LONG THE CROSS-EXAMINATION
4 WILL BE BUT IF THERE IS ANY WAY IT CAN BE DONE TODAY AND
5 EXTRA TIME TAKEN TOMORROW MORNING FOR THEM.

6 MR. BARENS: I DON'T FEEL -- I MEAN I AM SHOCKED AT
7 WHAT HAS COME OUT OF THIS WITNESS SO FAR, TO BE HONEST WITH
8 YOU. IT IS NOT IN THE POLICE REPORTS AND I NEED THE TIME.
9 I HAVEN'T EVEN HEARD OF THIS STUFF. I WOULD LIKE TO TALK
10 TO THE DEFENDANT AND TO HAVE THE DEFENDANT'S PARTICIPATION
11 IN HELPING ME CROSS-EXAMINE THIS WITNESS.

12 WE DIDN'T GET ANY ROUGH NOTES ON THIS WITNESS'S
13 INTERVIEW.

14 THE COURT: YOU DIDN'T GET ANY WHAT?

15 MR. BARENS: ANY ROUGH NOTES ABOUT THIS ALLEGED
16 INCIDENT, YOUR HONOR.

17 YOUR HONOR, I HAVE REALLY GOT TO SAY --

18 THE COURT: WHAT DID YOU TELL THEM ABOUT THIS PARTICULAR
19 WITNESS?

20 MR. WAPNER: I HAVE GIVEN THEM THE ORIGINAL POLICE REPORTS.

21 WE TALKED TO HIM FOR THE FIRST TIME LAST WEEK,
22 I THINK, ON TUESDAY.

23 MR. BARENS: YOU KNOW, YOUR HONOR JUST GOT THROUGH GOING
24 THROUGH THAT BOYD STUFF IN CHAMBERS. THE DISTRICT ATTORNEY
25 KNOWS THIS GUY IS GOING TO COME ON THE STAND AND SAY "THESE
26 GUYS THREATENED TO KILL OLSON AND PUT HIM IN ACID".

27 THE COURT: IS THERE ANYTHING ELSE YOU HAVE TO TELL
28 HIM ABOUT THIS PARTICULAR INCIDENT SO HE WILL BE PREPARED?

1 MR. WAPNER: I WILL GIVE HIM THE NOTES, WHICH ARE PRETTY
2 SKETCHY.

3 MR. BARENS: WHAT I GOT IN THE POLICE REPORT WAS A ONE
4 PARAGRAPH WHICH FILLS HALF A PAGE, SAYING HE OWNED A BUSINESS
5 AT SUCH AND SUCH LOCATION WHERE THE SHOOTING OCCURRED.

6 THE COURT: DID IT TELL ABOUT THE SHOOTING?

7 MR. BARENS: THAT IS ALL I GOT.

8 MR. WAPNER: WAIT A SECOND. IT DID TELL ALL OF THE
9 SHOOTING.

10 SECOND OF ALL --

11 MR. BARENS: IN ANOTHER POLICE REPORT, WHICH HAS A WRONG
12 DATE THAT THEY ARE EVEN TALKING ABOUT, THEY TALK ABOUT A
13 SHOOTING.

14 SOME OF THE CONFUSION WE HAVE GOT NOW GOES INTO
15 THE DATES THESE THINGS ALLEGEDLY OCCURRED.

16 THE COURT: I THINK WE OUGHT TO CONTINUE IT UNTIL
17 TOMORROW TO GIVE HIM AN OPPORTUNITY OF PREPARING IT.

18 MR. WAPNER: OKAY, THEN YOU WILL HAVE TO EXPLAIN TO
19 THE WITNESS.

20 THE COURT: YES.

21 MR. BARENS: AND ONE OF THE THINGS I WOULD APPRECIATE
22 THAT YOU WOULD CAUTION THE PEOPLE AT THIS POINT, IF THEY HAVE
23 GOT A WITNESS WHO IS GOING TO TAKE THE WITNESS STAND AND SAY --
24 AND HE DID IT ON SOME OF THESE THINGS -- IF THEY ARE ONE OF
25 THE THREE ELEMENTS THEY PUT BEFORE US, HOW CAN YOU COUNTENANCE
26 THAT UNDER WHAT IT SAID IN BOYD? AND WE GET THAT COMING OUT
27 OF THE GATE.

28 THE COURT: THAT IS HIS COMPANY?

1 MR. WAPNER: YES.

2 THE COURT: ALL IT SAYS THE DEFENDANT PARTICIPATED IN
3 THE SHOOTING OF THE AUTOMATIC WEAPONS INTO THE BUSINESS OF
4 **FCIA** COMPANY IN SANTA ANA, CALIFORNIA, THAT IS ALL YOU GAVE
5 HIM?

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1 MR. WAPNER: WELL, THE COURT IS READING FROM THE
2 THINGS I INTEND TO INTRODUCE IN EVIDENCE IN AGGRAVATION
3 THAT I FILED, WHICH I SERVED ON THE DEFENSE.

4 BUT ALSO IN THE LETTER THAT I SENT TO THEM,
5 I SENT THEM THE POLICE REPORTS.

6 THE COURT: WHAT WAS IN THE POLICE REPORT? YOU
7 HAVE GOT THE POLICE REPORTS?

8 MR. WAPNER: YES, AND --

9 MR. BARENS: YOUR HONOR, THERE IS NOTHING IN THE
10 POLICE REPORT ABOUT THIS BUSINESS ABOUT MR. OLSON. THERE
11 IS NO REFERENCE ABOUT THIS BUSINESS AT ALL.

12 MR. WAPNER: THERE IS NO REFERENCE TO --

13 MR. BARENS: OR I WOULD HAVE MADE A MOTION IN LIMINE.
14 THE VERY FIRST WITNESS WE GET POISONS THE JURY ABOUT --
15 YOU KNOW, WE TALKED ABOUT THIS ACID AND WE TALKED ABOUT
16 KILLING AND --

17 THE COURT: WELL, THAT HAS BEEN STRICKEN.

18 THE STATEMENTS THAT PITTMAN WAS SUPPOSED TO
19 HAVE MADE TO HIM IN CONNECTION WITH FINDING A WITNESS
20 AND SO FORTH, THAT IS PERFECTLY PROPER AND PERTINENT.

21 WELL, AT ANY RATE, I WILL TAKE THE ADJOURNMENT
22 AT THIS PARTICULAR TIME. ALL RIGHT?

23 MR. BARENS: YOUR HONOR, I CAN ASSURE YOUR HONOR
24 THAT WE ARE GOING TO HAVE A FURTHER MOTION ON THIS IN
25 THE MORNING. I WOULD LIKE TO SEE YOUR HONOR ABOUT IT
26 BECAUSE I AM JUST DISTURBED.

27 I MEAN I AM SINCERELY DISTURBED THAT AFTER
28 ALL THIS DIALOGUE IN CHAMBERS, THE VERY FIRST GUY COMES

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1 OUT HERE AND TALKS ABOUT MURDER AND ACID.

2 THE COURT SHOULD HAVE BEEN TOLD ABOUT THAT
3 WHILE WE WERE IN CHAMBERS. THEY COULD HAVE MADE A MOTION
4 IN LIMINE.

5 BUT INSTEAD, WE ARE LEFT WITH THE SOLE REMEDY
6 BEING -- YOU KNOW THAT I HAVE TOLD THE JURY --

7 THE COURT: WELL, AS LONG AS HE GIVES SUBSTANTIAL
8 EVIDENCE AS TO WHAT WAS INTENDED TO BE ADDUCED INSOFAR
9 AS -- THE CRITICAL THING, I THINK IT IS THE SHOOTING.

10 THE SHOOTING INTO THE BUILDING WITH THE PEOPLE
11 WHO WERE IN THE BUILDING AT THE TIME --

12 MR. BARENS: THE MORE CRITICAL THING IS TALKING
13 ABOUT ANOTHER MURDER AND THEY WERE PRESENT AND PREPARED
14 TO COMMIT --

15 MR. WAPNER: YOUR HONOR, THE OTHER THING THAT IS
16 SIGNIFICANT IS THAT TWO YEARS AGO WHEN THE DEFENSE GOT
17 THE POLICE REPORT, THEY HAD THIS MAN'S NAME. HE IS LISTED
18 THERE AND THEY COULD HAVE TALKED TO THIS MAN.

19 MR. BARENS: THAT DOESN'T MAKE IT ADMISSIBLE.

20 THE COURT: WELL, I WILL CONTINUE THE MATTER. ALL
21 RIGHT?

22 (THE FOLLOWING PROCEEDINGS WERE HELD IN
23 OPEN COURT IN THE PRESENCE OF THE JURY?)

24 THE COURT: LADIES AND GENTLEMEN OF THE JURY, WE'LL
25 TAKE AN ADJOURNMENT AT THIS TIME. THERE IS CERTAIN EVIDENCE
26 AND SO FORTH TO BE GOTTEN THAT CAN'T BE GOTTEN UNTIL TOMORROW
27 MORNING.

28 I WILL ASK YOU TO PLEASE COME BACK TOMORROW

1 MORNING AT 10:30. WE'LL RESUME THIS PARTICULAR MATTER
2 AGAIN.

3 THE SAME ADMONITION THAT I GAVE YOU PREVIOUSLY
4 APPLIES. GOOD NIGHT.

5 (AT 3:30 P.M. PROCEEDINGS WERE ADJOURNED
6 UNTIL TUESDAY, MAY 12, 1987 AT 10:30 A.M.)
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