

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

OCT 09 1997

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
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ROOM 800
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FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 9 OF 101
(PAGES 15509 TO 1668 , INCLUSIVE)

COPY

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT WEST C

HON. LAURENCE J. RITTENBAND, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

PLAINTIFF,)

VS.)

NO. A-090435

JOSEPH HUNT,)

DEFENDANT.)

REPORTERS' DAILY TRANSCRIPT

TUESDAY, MAY 12, 1987

VOLUME 90

PAGES 13509 TO 13668, INCL.

APPEARANCES:

FOR THE PLAINTIFF: IRA REINER, DISTRICT ATTORNEY
BY: FREDERICK N. WAPNER, DEPUTY
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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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1 SANTA MONICA, CALIFORNIA; TUESDAY, MAY 12, 1987; 10:35 A.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS HERETOFORE NOTED.)
4

5 (THE FOLLOWING PROCEEDINGS WERE HELD IN
6 OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

7 THE COURT: ALL RIGHT. IS THERE A MOTION OF SOME KIND?

8 MR. CHIER: YES, YOUR HONOR. WE FELT COMPELLED TO
9 BRING A MOTION FOR MISTRIAL BEFORE YOUR HONOR BASED UPON THE --

10 THE COURT: I HAVE READ ALL OF THE PAPERS. ANYTHING
11 ELSE? I HAVE READ YOUR MOTION PAPERS.

12 IS THERE ANYTHING FURTHER YOU WANT TO SAY?

13 MR. CHIER: NO. I MEAN IF YOU HAVE READ THE PAPERS,
14 YOUR HONOR, I HAVE NOTHING.

15 THE COURT: THEN I WILL HEAR FROM THE PEOPLE.

16 MR. WAPNER: WHATEVER HAPPENED YESTERDAY, I DON'T
17 THINK IS THE BASIS FOR A MOTION FOR MISTRIAL. THE COURT
18 HAS ALREADY APPLIED THE SANCTION OF STRIKING THE TESTIMONY
19 AND ADMONISHING THE JURY. I THINK THAT IS
20 SUFFICIENT.

21 AS FAR AS WHAT HAPPENED IN CHAMBERS, THERE
22 WAS NO INTENTIONAL DECEIT OF THE DEFENSE. WE HAVE HAD
23 A FULL DAY, ALMOST, OF MOTIONS IN CHAMBERS, THERE MUST
24 HAVE BEEN 15 OR 20 OF THEM MADE AND THEN THEY, OFF THE
25 CUFF, SAY, "WELL, TELL US ALL OF THE EVIDENCE YOU HAVE
26 OF THREATS BY DIFFERENT PEOPLE." AND FIRST OF ALL, THEY
27 DON'T EVEN REMEMBER THE SPECIFIC ITEM. SECOND OF ALL,
28 IT WASN'T SOMETHING -- I WAS TRYING TO THINK OF THINGS

1 MR. HUNT MAY HAVE SAID, SO THERE WAS NO INTENT TO WITHHOLD
2 THIS OR ANYTHING OF THAT NATURE.

3 AND AS FAR AS DISCOVERY OF CONVERSATIONS WITH
4 THIS WITNESS AND THE OTHER ONE, I TURNED THOSE MATTERS
5 OVER TO MR. BARENS LAST NIGHT IN HIS OFFICE.

6 AND THAT IS ALL I HAVE TO SAY.

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1 THE COURT: ON PAGE 4 YOU SAY THAT THE COURT SHOULD
2 NOT HESITATE TO SANCTION SUCH BEHAVIOR IN ORDER TO DETER
3 MR. WAPNER AND OTHERS OF HIS ILK FROM COMMITTING SUCH
4 MISCONDUCT IN THE FUTURE. WHO ARE OTHERS OF HIS ILK?

5 MR. CHIER: PERSONS THAT COMMIT THIS TYPE OF PROSECUTORIAL
6 MISCONDUCT.

7 THE COURT: ALL RIGHT. THE MOTION WILL BE DENIED. LET'S
8 GET THE JURY IN, PLEASE.

9
10 JERRY COKER,
11 THE WITNESS ON THE STAND AT THE TIME OF ADJOURNMENT, RESUMED
12 THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

13 THE COURT: YOU ARE STILL UNDER OATH AT THIS TIME,
14 MR. COKER. PLEASE STATE YOUR NAME AGAIN FOR THE RECORD.

15 THE WITNESS: JERRY COKER.

16 THE COURT: DO YOU WANT TO CORRECT YOUR MOTION ON PAGE 3,
17 LINE 20 TO SAY MR. JERRY COKER INSTEAD OF MR. JACK COKER?
18 THAT IS LINE 26.

19 MR. CHIER: SORRY, YOUR HONOR?

20 THE COURT: THAT IS HIS NAME.

21 THE WITNESS: YES, JERRY.

22 THE COURT: I WILL CORRECT IT.

23 MR. CHIER: NO CHARGE FOR THE NAME CHANGE, YOUR HONOR?

24 THE COURT: NO.

25 (THE JURY ENTERS THE COURTROOM.)

26 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN. ALL
27 RIGHT. YOU MAY PROCEED.

28

CROSS-EXAMINATION

1
2 BY MR. BARENS:

3 Q GOOD MORNING, MR. COKER. MR. COKER IN THE DIAGRAM
4 THERE, YOUR OFFICE PERSONALLY IS LOCATED IN THE UPPER RIGHT-HAND
5 CORNER?

6 A YES.

7 Q ARE THERE OFFICES OF PERSONS THAT OWN OTHER
8 BUSINESSES TO WHAT I GUESS WOULD BE THE WEST OF YOU THERE?

9 A YES. THERE IS.

10 Q AND DOES -- I ASSUME THAT THE PEOPLE THAT OFFICE
11 IN THIS AREA -- AND I PRESUME THAT WEST ON THE MAP IS THIS
12 WAY?

13 A SORRY? TO THE EAST.

14 Q THIS IS EAST THE WAY THIS IS SET UP?

15 A YOU WERE CORRECT BUT I WAS INCORRECT. I WAS
16 THINKING TO THE EAST.

17 Q OKAY. OVER HERE SIR, THERE ARE OFFICES BY OTHER
18 USERS?

19 A YES, SIR, MY PERSONNEL.

20 Q OKAY. IN OTHER WORDS, ALL OF THIS AREA HERE WOULD
21 BE OCCUPIED AS A PART OF THE LEASEHOLD INTEREST YOU HAVE?

22 A THAT'S CORRECT.

23 Q AND WHAT ABOUT OVER IN THIS AREA HERE, INDICATING
24 SOUTH OF YOUR OFFICE?

25 A THIS IS THE RECEPTION AREA HERE, WITH THE SECRETARY.
26
27
28

1 Q ALL RIGHT. SO THEN DOWN THIS LINE IS ALL
2 YOUR OFFICE FACILITY HERE (COUNSEL INDICATING)?

3 A YES.

4 Q I SEE.

5 AND THAT IS THE WAY IT EXISTED BACK IN MARCH
6 OF 1984?

7 A CORRECT.

8 Q WHAT HOURS DO YOU NORMALLY WORK, MR. COKER?

9 A PERSONAL OR THE COMPANY?

10 A YOU PERSONALLY, SIR.

11 A NORMALLY, 7:00 TO 5:00.

12 Q IS IT A FACT THAT YOU ONLY SAW JOE HUNT ON
13 ONE OCCASION?

14 A THAT'S CORRECT.

15 Q AND THAT WAS THE INITIAL OCCASION WHEN HE
16 CAME DOWN WITH A GROUP OF MAYBE SIX OR MORE ASSOCIATES
17 OF HIS?

18 A THAT IS CORRECT.

19 Q YOU NEVER SAW HIM AGAIN AFTER THAT UNTIL YOU
20 CAME TO THIS COURTROOM?

21 A THAT IS CORRECT.

22 Q DID YOU EVER SPEAK TO HIM AGAIN AFTER THAT?

23 A NOT TO MY KNOWLEDGE.

24 Q DID MR. HUNT EVER THREATEN YOU?

25 A NO.

26 Q AND DID YOU EVER SEE HIM THREATEN ANYBODY?

27 A NO, I DID NOT.

28 Q AND DID YOU EVER HEAR HE WAS SEEN ON YOUR

1 PREMISES AFTER THE FIRST OCCASION WHEN YOU SAW HIM IN
2 CONJUNCTION WITH THOSE OTHER GENTLEMEN?

3 A DID I EVER HEAR OF IT?

4 Q DID YOU EVER SEE -- STRIKE THAT.

5 DID YOU EVER SEE HIM ON THE PREMISES AFTER
6 THAT?

7 A NO, I DID NOT.

8 Q DID ANY OF YOUR EMPLOYEES SEE HIM ON THE PREMISES
9 AFTER THAT?

10 A NOT TO MY KNOWLEDGE.

11 Q ALL RIGHT, YOU MENTIONED YESTERDAY THAT AFTER
12 THIS SHOOTING AT THE BUILDING THAT YOU OCCUPY, AND I BELIEVE
13 YOU USED THE EXPRESSION THAT YOU THOUGHT SOMEBODY WAS
14 MAD, QUOTE, "AT US," CLOSE QUOTE, DO YOU REMEMBER SAYING
15 THAT YESTERDAY?

16 A YES, I DO.

17 Q WHAT DID YOU MEAN BY MAKING THAT STATEMENT?

18 A WELL, THE APPEARANCE OF SOMEONE SHOOTING IN
19 YOUR BUILDING, EVIDENTLY SOMEONE WAS MAD AT US.

20 Q AS OPPOSED TO A RANDOM ACT OF PERHAPS MALICIOUSNESS?

21 A THAT WAS MY OPINION, THAT I DID NOT THINK
22 IT WAS A RANDOM ACT.

23 Q DID YOU HAVE ANY BASIS IN FACT THAT CAME TO
24 YOUR MIND THAT INITIATED THAT STATEMENT?

25 A NOTHING OTHER THAN I DEAL WITH A LOT OF PEOPLE
26 THAT MIGHT HAVE A TENDENCY TO DO SOMETHING LIKE THAT.

27 Q WHAT DO YOU MEAN BY THAT, SIR, AND/OR WHOM
28 DO YOU MEAN BY THAT?

1 A IN THE PARTICULAR INDUSTRY I WAS IN, THERE
2 WAS -- I DEAL A LOT WITH MIDDLE EAST PEOPLE THAT DEAL
3 WITH EXPENSIVE AUTOMOBILES AND TEND TO GET MAD IF CARS
4 DON'T PASS OR IF WE REFUSE TO DO A SERVICE FOR THEM.

5 Q DID YOU HAVE CUSTOMERS IN THAT TIME FRAME
6 IN 1984 THAT HAD TOLD YOU THEY WERE MAD AT YOU?

7 A CUSTOMERS THAT WERE PERHAPS DISSATISFIED BUT
8 DID NOT SAY THEY WERE MAD AT ME.

9 Q DID YOU EVER HAVE ANY PRIOR EXPERIENCE WHERE
10 ANY CUSTOMER OR CUSTOMERS HAD THREATENED YOU OR YOUR BUSINESS
11 ESTABLISHMENT?

12 A NO, I DIDN'T.

13 Q ON THIS OCCASION, NO ONE THREATENED YOU, DID
14 THEY?

15 A NO, THEY DID NOT.

16 Q NO ONE FROM THE BBC OFFICES CALLED YOU UP
17 AND SAID, "WE ARE GOING TO COME DOWN AND SHOOT YOUR BUILDING"?

18 A NO, THEY DID NOT.

19 Q NOW, WHEN THE COMPLAINT ABOUT THE BILL AND
20 THE EXPENSE OF PASSING THE CARS WAS MADE, THAT WAS SOMEWHAT
21 TYPICAL WITH THE TYPES OF COMPLAINTS ONE IN YOUR INDUSTRY
22 WOULD RECEIVE?

23 A THAT WAS TYPICAL, YES.

24 Q IN OTHER WORDS, YOU TYPICALLY RECEIVE COMPLAINTS
25 ABOUT IT EITHER TAKING TOO LONG TO PASS THE CARS OR
26 IT IS COSTING TOO MUCH TO PASS THE CARS.

27 A THAT IS CORRECT.

28

-1
1 Q AND SO THE COMPLAINTS YOU HEARD IN THIS INSTANCE
2 WERE CONSISTENT WITH YOUR PRIOR AND PERHAPS SUBSEQUENT
3 EXPERIENCE IN THIS REGARD?

4 A WITH PEOPLE THAT ARE INEXPERIENCED IN THAT TYPE
5 OF BUSINESS, YES.

6 Q ARE A GOOD PERCENTAGE OF YOUR CUSTOMERS
7 INEXPERIENCED IN THIS AREA?

8 A I WOULD SAY 50 PERCENT.

9 Q ON THE DAY THAT YOU CAME INTO YOUR OFFICE AFTER
10 THE SHOOTING INCIDENT OCCURRED, DID YOU SEE ANYBODY FROM THE
11 BBC THERE?

12 A ON THE DAY?

13 Q YES.

14 A NO. I DID NOT.

15 Q ALL RIGHT. YOU HAD NOT SEEN ANYBODY FROM THE
16 BBC THE DAY BEFORE, HAD YOU?

17 A NOT TO MY KNOWLEDGE.

18 Q RIGHT. YOU NEVER SPOKE TO MR. HUNT AFTER THAT,
19 DID YOU?

20 A I NEVER SPOKE TO MR. HUNT EXCEPT THE ONE OCCASION.

21 Q THAT FIRST OCCASION?

22 A YES.

23 Q YOU HAVE HAD A VARIETY OF CONVERSATIONS WITH
24 MR. TAGLIANETTI OVER A TIME FRAME, IS THAT NOT TRUE?

25 A HE WAS THE PERSON THAT I SPOKE WITH MOST REGARDING
26 THE AUTOMOBILES.

27 Q DID YOU EVER SPEAK WITH HIM AFTER THE INCIDENT
28 YOU DESCRIBED YESTERDAY WITH THE SHOOTING?

-2
1 A NOT TO MY KNOWLEDGE.

2 Q YOU NEVER SPOKE TO HIM AFTER THAT DATE, SIR UNTIL
3 THIS DAY?

4 A MR. TAGLIANETTI MAY HAVE BEEN THE PERSON WITH
5 MR. GRAHAM SEVERAL DAYS AFTER THE SHOOTING. I AM NOT SURE
6 IF IT WAS MR. TAGLIANETTI OR MR. DOSTI.

7 Q ALL RIGHT. OTHER THAN THAT OCCASION THAT YOU
8 SPOKE TO SOMEONE, HAVE YOU EVER SPOKEN TO MR. TAGLIANETTI
9 SINCE THAT DATE TO THIS?

10 A NO. I HAVE NOT.

11 MR. BARENS: A MOMENT IF YOU WOULD, YOUR HONOR.

12 (PAUSE.)

13 Q BY MR. BARENS: DID YOU KNOW THAT NEITHER MR. HUNT
14 NOR MR. PITTMAN OR GRAHAM AS YOU KNEW HIM, HAD ANY INTEREST
15 IN WESTCARS AS PRINCIPALS?

16 A I DID NOT KNOW WHO THE PRINCIPALS WERE.

17 Q AND YOU STILL DON'T?

18 A I STILL DON'T.

19 Q DID YOU TELL ANYBODY AT THE BBC WHAT HOURS YOU
20 WORKED, SIR?

21 A NOT REALLY. MY HOURS WERE VARIED OR MY BUSINESS
22 HOURS WERE VARIED.

23 Q I SEE. I AM TALKING NOT YOUR BUSINESS SO MUCH
24 AS YOU, AS AN INDIVIDUAL, SIR.

25 A NO.

26 Q YOU NEVER DISCUSSED IT WITH ANYONE?

27 A NOT TO MY KNOWLEDGE.

28 Q THERE ARE NO SUB-TENANTS IN THE AREA THAT I

1 INDICATED WITH YOU, AS FAR AS WHAT YOU USE AS A LESSEE WHICH
2 WE WILL CALL GENERALLY THE WEST ADAMS FRONTAGE?

3 A NO SUB-TENANTS.

4 Q WHAT TIME DID THE SHOOTING TAKE PLACE?

5 A IT WAS LATER IN THE EVENING AFTER DARK, I UNDERSTAND,
6 7:00, 8:00, 9:00 O'CLOCK. I REALLY DON'T KNOW.

7 Q YOU DON'T KNOW? SO IT WAS 7:00, 8:00 OR 9:00,
8 THE BEST YOU KNOW?

9 A THE BEST I KNOW.

10 Q WHEN DID YOU FIRST HEAR ABOUT IT?

11 A LATER IN THE EVENING, 9:00 10:00 O'CLOCK.

12 Q ARE THERE ANY OTHER USERS OF THIS BUILDING AREA
13 SOUTH OF YOU?

14 A THERE IS ANOTHER BUILDING SOUTH OF THIS BUILDING,
15 YES.

16 Q IN OTHER WORDS, IN THE AREA REPRESENTED IN THE
17 TWO CONTIGUOUS RECTANGLES OUT OF THE AREA YOU INDICATED AS
18 YOUR LEASEHOLD, ARE THERE TENANTS IN THAT AREA?

19 A YES THERE ARE.

20 Q WHAT TYPE OF WORK DID THEY DO?

21 A IT IS A VERY LARGE WHOLESALE TORTILLA FACTORY.

22 Q AND DID YOU DISCUSS THIS INCIDENT WITH ANYBODY
23 THERE?

24 A AS I RECALL, I TALKED TO THE GUARD. THEY NORMALLY
25 HAVE A GUARD OVERNIGHT AND I TALKED TO THE GUARD IF HE HAD
26 SEEN ANYTHING AND HE SAID HE THOUGHT HE HAD SEEN A CAR OR
27 SOMETHING, AS I RECALL.

28 Q YOU DON'T HAVE A GUARD ON YOUR PREMISES AT NIGHT?

1 A NO. WE HAVE AN ALARM SYSTEM BUT NOT GUARD.

2 Q DO YOU KNOW WHY THEY HAVE A GUARD ON THE PROPERTY
3 SOUTH OF YOU?

4 A THEY HAVE QUITE A FEW EMPLOYEES AND THEY WORK
5 AROUND THE CLOCK. BUT I DON'T KNOW WHY THEY HAVE A GUARD.

6 MR. BARENS: THANK YOU, SIR.

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8

REDIRECT EXAMINATION

9

BY MR. WAPNER:

10 Q MR. COKER, FIRST OF ALL, THIS DIAGRAM, THAT ENTIRE
11 RECTANGLE REPRESENTS YOUR BUSINESS, IS THAT CORRECT?

12 A YES.

13 MR. BARENS: SORRY. WHICH TRIANGLE?

14 THE COURT: RIGHT THERE.

15 MR. BARENS: THE TOP ONE OR THE WHOLE THING?

16 Q BY MR. WAPNER: SO WE ARE CLEAR, STARTING FROM
17 THIS LINE ON THE TOP, GOING ALL OF THE WAY DOWN THE LINE ON
18 THE RIGHT-HAND SIDE OF THE DIAGRAM, ALL OF THE WAY ON THE
19 LINE ON THE BOTTOM OF THE DIAGRAM, ALL OF THE WAY ON THE LEFT
20 SIDE ON THIS LITTLE INDENTATION AND THEN BACK UP TO THE TOP,
21 THAT IS ALL YOUR BUSINESS, RIGHT?

22 A THAT'S RIGHT.

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1 Q AND THE TOP PORTION OF YOUR BUSINESS IS OFFICES?

2 A CORRECT.

3 Q WHERE THE OFFICE WORK AND THE PAPER WORK WAS
4 DONE, RIGHT?

5 A RIGHT.

6 Q THEN THE BOTTOM PORTION OF THE DIAGRAM IS
7 WHERE YOU CAN ACTUALLY DRIVE CARS INTO AND IN THIS FIRST
8 RECTANGLE YOU WOULD HAVE CARS WAITING TO BE TESTED, CORRECT?

9 A CORRECT.

10 Q AND THEN IN THIS UPPER RECTANGLE THERE WOULD
11 BE MACHINES FOR TESTING THE CARS, COMPUTER-OPERATED MACHINES?

12 A CORRECT.

13 Q AND THEN IN THE BOTTOM LEFT-HAND RECTANGLE
14 WOULD BE, LIKE, TWO SERVICE BAYS WHERE CARS WERE ACTUALLY
15 DRIVEN IN AND TESTED?

16 A CORRECT.

17 Q AND THE TORTILLA FACTORY WOULD THEN BE SOMEWHERE
18 OFF OF THIS BOARD TO THE BOTTOM; IS THAT RIGHT?

19 A CORRECT.

20 Q DID YOU SET THE POLICY FOR WHAT TIME THE OFFICE
21 WAS SUPPOSED TO CLOSE AT NIGHT, WHAT TIME THE EMPLOYEES
22 LEFT?

23 A I SET THE POLICY BY THE AMOUNT OF WORK THAT
24 NEEDED TO BE DONE, WHATEVER TIME IT TOOK, YES.

25 Q DO YOU HAVE ANY IDEA WHAT TIME MOST OF THE
26 OFFICE WORKERS LEFT?

27 A THE OFFICE WORKERS LEFT APPROXIMATELY AT 5:00.

28 Q HOW MANY PEOPLE WORKED IN THE OFFICE FOR YOU,

2
1 DOING THE OFFICE TYPE WORK, THE CLERICAL TYPE OF WORK?

2 A NORMALLY, THERE WERE THREE PLUS MYSELF.

3 Q AND DOES THAT INCLUDE MR. FRANCE AS YOUR PARTNER
4 OR THREE IN ADDITION TO MR. FRANCE?

5 A THAT INCLUDES MR. FRANCE.

6 Q AND WHEN THE PEOPLE IN THE OFFICE LEFT FOR
7 THE DAY, DID YOU NORMALLY -- DID THEY TURN THE LIGHTS
8 OUT OR LEAVE THE LIGHTS ON IN THE OFFICES, IN THE NORTH
9 PART OF THE OFFICE?

10 A IN THE OFFICE PART OF THE BUILDING?

11 Q RIGHT.

12 A THERE WAS ONE SINGLE LIGHT LEFT ON IN THE
13 RECEPTIONIST AREA. ALL OF THE OTHER LIGHTS WERE TURNED
14 OFF.

15 Q WHERE ON THAT DIAGRAM WOULD THE LIGHT BE LEFT
16 ON?

17 A IN A LAMP RIGHT IN THIS LOCATION HERE (WITNESS
18 INDICATING).

19 Q AND THE FRONT DOOR TO THE BUSINESS IS LOCATED
20 BETWEEN THESE TWO LITTLE SLASH MARKS HERE; IS THAT RIGHT?
21 (COUNSEL INDICATING.)

22 A THAT'S RIGHT.

23 Q WAS THE FRONT DOOR GLASS?

24 A YES.

25 Q WAS THE LIGHT THAT WAS LEFT ON BRIGHT ENOUGH
26 TO BE SEEN THROUGH THOSE GLASS DOORS?

27 A YES.

28 Q IS THIS AREA REPRESENTED BY KIND OF AN OPEN

1 SQUARE ON THE DIAGRAM, KIND OF AN OPEN CLERICAL-TYPE AREA
2 THAT HAD DESKS IN IT? (COUNSEL INDICATING.)

3 A YES.

4 Q WAS THE LIGHT THAT WAS LEFT ON IN THE AREA
5 THAT YOU REFERRED TO BRIGHT ENOUGH TO SHINE INTO THIS
6 OPEN CLERICAL AREA?

7 A SOMEWHAT.

8 Q DO YOU KNOW IF IT COULD BE SEEN THROUGH ADAMS
9 STREET THROUGH THE WINDOWS THAT FACED ON THE NORTH SIDE
10 OF THE BUILDING?

11 A PROBABLY SOME DIM -- DIM LIGHT COULD BE SEEN,
12 YES.

13 Q AND NORTH WOULD BE AT THE TOP OF THIS DIAGRAM?

14 A YES.

15 Q DO YOU RECOGNIZE THE PERSON DEPICTED IN THE
16 PHOTOGRAPH THAT IS PEOPLE'S -- 175 FOR IDENTIFICATION --
17 EXCUSE ME -- IN EVIDENCE?

18 A YES, I DO.

19 Q WHO IS THAT?

20 A THAT IS A PERSON KNOWN TO ME AS JIM GRAHAM.

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

22 THE COURT: ALL RIGHT, THANK YOU VERY MUCH. YOU
23 WILL BE EXCUSED.

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JOHN PAUL REDMOND,
CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND TESTIFIED
AS FOLLOWS:

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

1 YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY YOU
2 MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL
3 BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH,
4 SO HELP YOU GOD?

5 THE WITNESS: I DO.

6 THE CLERK: PLEASE BE SEATED.

7 WOULD YOU PLEASE STATE AND SPELL YOUR FULL
8 NAME FOR THE REOCD?

9 THE WITNESS: MY NAME IS JOHN PAUL REDMOND,
10 R-E-D-M-O-N-D.

11
12 DIRECT EXAMINATION

13 BY MR. WAPNER:

14 Q MR. REDMOND, ON MARCH THE 14TH OF 1984, WHERE
15 DID YOU WORK?

16 A AT F.C.I. INCORPORATED IN SANTA ANA.

17 Q AND DO YOU KNOW THE MAN, JERRY COKER, WHO
18 JUST LEFT THE COURTROOM?

19 A YES, I DO.

20 Q HOW DO YOU KNOW HIM?

21 A I WORKED FOR HIM. HE WAS MY BOSS.

22 Q WHAT DID F.C.I. STAND FOR?

23 A FRANCE-COKER INCORPORATED.

24 Q WHAT DID YOU DO FOR MR. COKER IN MARCH OF
25 1984?

26 A I WAS AN AIR POLLUTION TECHNICIAN INVOLVED
27 IN THE ANALYSIS OF EXHAUST EMISSIONS, AUTOMOBILE EXHAUST
28 EMISSIONS.

1 Q AND IN THAT CAPACITY AS AN AIR POLLUTION TECHNICIAN,
2 WHAT WAS YOUR JOB?

3 A IT WAS TO PERFORM TESTS ON AUTOMOBILES ACCORDING
4 TO THE FEDERAL REGISTER FOR IMPORT AUTOMOBILE CERTIFICATION
5 TESTING.

6 Q WERE YOU AT THE BUSINESS OF F.C.I. INCORPORATED
7 ON THE EVENING OF MARCH THE 14TH OF 1984?

8 A YES, I WAS.

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1 Q AND IN THE EVENING HOURS, WAS THERE ANYONE ELSE
2 THERE BESIDES YOURSELF?

3 A YES THERE WAS.

4 Q WHO WAS THAT?

5 A RANDY HATZL.

6 Q H-A-T-Z-L?

7 A YES.

8 Q AND IN THE EVENING HOURS, WHAT WERE YOU DOING
9 AT THE BUSINESS ON MARCH 14, 1984?

10 A WE WERE RUNNING SOME TESTS ON CARS.

11 Q WHAT PORTION OF THE BUSINESS WERE YOU WORKING
12 IN AT THAT TIME?

13 A IN THE BACK AREA WHERE THE ACTUAL EQUIPMENT IS
14 AND THEN IN THE SOAK AREA, WHAT THEY CALL THE SOAK AREA WHICH
15 IS A LARGE ROOM WITH A CONTROLLED ENVIRONMENT.

16 Q DO YOU SEE THE DIAGRAM ON YOUR RIGHT ON THE BOARD?

17 A YES.

18 Q DOES THAT INDICATE WHAT AREA OF THE -- DOES THAT
19 DIAGRAM GENERALLY, IN A ROUGH SENSE, DEPICT THE BUSINESS
20 LOCATED --

21 A YES.

22 Q -- AT 3132 WEST ADAMS?

23 A YES.

24 Q COULD YOU SHOW ME ON THE -- WELL, LET ME BACK
25 UP FOR A SECOND. AT SOME POINT, DID YOU HEAR SOME LOUD NOISES
26 THAT NIGHT?

27 A YES.

28 Q JUST BEFORE YOU HEARD THOSE NOISES, CAN YOU SHOW

1 ME WHERE IT WAS THAT YOU WERE, BY GOING TO THE DIAGRAM AND
2 POINTING TO IT?

3 A YES. RIGHT HERE.

4 Q WOULD YOU PUT YOUR INITIALS THERE AND A NUMBER 1
5 TO INDICATE WHERE IT WAS THAT YOU WERE AND WHERE MR. HATZL
6 WAS IF YOU KNOW?

7 A INSIDE A CAR RIGHT HERE.

8 Q WOULD YOU PUT "RH" FOR HIS INITIALS AND THE NUMBER
9 1 THERE?

10 A (THE WITNESS COMPLIES.)

11 Q THE WALL THAT SEPARATES THE WORKING AREA FROM
12 THE OFFICE AREA, WHAT IS THAT MADE OUT OF?

13 A PLASTERBOARD.

14 Q AT APPROXIMATELY 7:15 IN THE EVENING ON MARCH 14,
15 DID YOU HEAR --

16 MR. BARENS: OBJECTION, LEADING. I THINK THE WITNESS
17 OUGHT TO SET THE TIME.

18 THE COURT: ALL RIGHT.

19 Q BY MR. WAPNER: DID YOU HEAR SOME NOISES THAT
20 NIGHT?

21 A YES I DID.

22 Q CAN YOU TELL ME APPROXIMATELY WHAT TIME IT WAS?

23 A APPROXIMATELY 7 O'CLOCK.

24 Q CAN YOU DESCRIBE WHAT THE NOISES SOUNDED LIKE?

25 A IT SOUNDED LIKE A WHOLE BUNCH OF FIRECRACKERS
26 GOING OFF AT ONCE, A STRING OF FIRECRACKERS, VERY RAPIDLY.

27 Q DO YOU HAVE ANY IDEA HOW MANY OF THOSE POPS OR
28 NOISES THAT YOU HEARD?

1 A MORE THAN TEN, LESS THAN THIRTY.

2 Q AND WHEN YOU HEARD THOSE, YOU WERE STANDING IN
3 THE AREA THAT YOU HAVE MARKED WITH YOUR INITIALS AND THE
4 NUMBER 1?

5 A THAT'S RIGHT.

6 Q AT THE TIME THAT YOU HEARD THOSE, DID YOU SEE
7 ANYTHING?

8 A AT FIRST NOT. BUT AS I WHIRLED AROUND WHERE THE
9 NOISES WERE HAPPENING, I SAW A LITTLE PUFF OF DRYWALL COME
10 OUT OF ONE OF THE WALLS CLOSE TO WHERE RANDY WAS AND ONE OF
11 THE CARS.

12 Q WHEN YOU SAY YOU WHIRLED AROUND, WHICH DIRECTION
13 WERE YOU FACING WHEN YOU INITIALLY HEARD THE NOISE?

14 A I WAS FACING TOWARDS THE NOISE.

15 Q WHERE DID YOU HEAR THE NOISE COMING FROM?

16 A I COULDN'T TELL.

17 Q WHEN YOU WERE INITIALLY FACING TOWARD THE NORTH
18 AND YOU WHIRLED AROUND, WHERE DID YOU LOOK?

19 A I LOOKED PRETTY MUCH ALL AROUND. I ACTUALLY
20 WHIRLED AROUND.

21 Q CAN YOU GO TO THE DIAGRAM AND PUT A LITTLE "X"
22 WHERE YOU SAW THE PUFF OF DRYWALL COMING OUT?

23 A YES. ACTUALLY, I SHOULD MODIFY MY POSITION A
24 LITTLE BIT. I WAS ACTUALLY A LITTLE CLOSER TO HERE. BUT
25 THE DIAGRAM IS OFF.

26 SO I SAW THE PUFF OF DRYWALL COME OUT ABOUT THERE
27 (INDICATING).

28 Q PUT AN "X" WHERE YOU SAW THE DRYWALL.

1 A (THE WITNESS COMPLIES.)

2 Q WHEN YOU SAW THE DRYWALL COME OUT WHAT DID YOU
3 THINK?

4 A I THOUGHT THAT IT MUST HAVE BEEN A BULLET.

5 Q AND WHEN YOU REACHED THAT CONCLUSION, WHAT DID
6 YOU DO?

7 A I WALKED OVER TO HERE, FIRST.

8 Q WHAT IS OVER THERE?

9 A THIS IS A DOOR HERE THAT GOES INTO THE FRONT
10 OFFICE AREA.

11 Q WHEN YOU GOT TO THE DOOR, WHAT HAPPENED?

12 A I SAW THAT THESE WINDOWS -- THERE WAS GLASS AND
13 STUFF ON THE GROUND.

14 Q KEEP YOUR VOICE UP.

15 A I SAW THERE WAS GLASS ON THE GROUND AND THERE
16 WERE HOLES IN THE WINDOWS.

17 Q WHEN YOU HAD LAST SEEN THE WINDOWS, WERE THEY
18 INTACT?

19 A YES.

20 Q WHEN YOU NOTICED THAT THERE WERE HOLES IN THE
21 WINDOWS AND GLASS ON THE GROUND, WHAT DID YOU DO?

22 A I WENT INTO MR. COKER'S OFFICE AND I KNEW THAT
23 HE KEPT A GUN IN THAT AREA. I GOT THE GUN AND THEN FROM THERE,
24 I WALKED INTO THIS OFFICE AND CALLED THE EMERGENCY NUMBER
25 FOR THE POLICE.

26 Q THAT WOULD BE 911?

27 A 911.

28 Q AFTER YOU CALLED 911, DID YOU STAY IN THAT OFFICE

1 WHERE YOU HAD MADE THE PHONE CALL?

2 A NO. THEN I WENT OVER TO WHERE RANDY WAS TO MAKE
3 SURE HE WAS OKAY.

4 Q WHERE WAS MR. HATZL AT THAT TIME?

5 A HE WAS STILL IN THE CAR.

6 Q WAS HE ALL RIGHT?

7 A HE WAS OKAY.

8 Q WHAT DID YOU DO AFTER YOU WENT TO WHERE HE WAS?

9 A WE BOTH GOT OUT OF THAT AREA AND WE CLOSED --
10 THERE WAS A ROLL-UP DOOR ON THE EAST SIDE OF THE BUILDING
11 THAT WE CLOSED.

12 Q WOULD YOU TAKE THIS GREASE PENCIL AND MAKE TWO
13 SLASH MARKS ON THE EAST SIDE OF THE WALL WHERE THE ROLL-UP
14 DOOR WAS?

15 A (THE WITNESS COMPLIES.)

16 Q PLEASE STAND ON THE OTHER SIDE AND POINT TO IT
17 SO THE JURORS CAN SEE.

18 A THE DOOR WAS BETWEEN THOSE TWO POINTS.

19 Q CAN YOU EXPLAIN TO US WHAT A ROLL-UP DOOR IS?

20 A IT IS A FLEXIBLE METAL DOOR THAT ROLLS UP LIKE
21 A WINDOW SHADE.

22 Q BEFORE YOU HEARD THOSE NOISES, THE DOOR WAS UP?

23 A YES.

24 Q HOW HIGH IS THAT DOOR, DO YOU KNOW?

25 A IT GOES ALL OF THE WAY TO THE CEILING, WHICH IS
26 PROBABLY ABOUT 16 OR 20 FEET. BUT IT WAS ONLY OPEN ABOUT
27 EIGHT FEET.

28

1 Q WERE THERE LIGHTS ON INSIDE THE BACK AREA
2 OF --

3 A WHERE I WAS --

4 Q WHERE YOU WERE WORKING?

5 A YES.

6 (WITNESS RESUMES WITNESS STAND.)

7 Q AFTER YOU PUT DOWN THE METAL ROLL-UP DOOR,
8 WHAT DID YOU DO?

9 A WE JUST WENT INTO THE ROOM ABOVE WHERE THE
10 "X" IS, WHERE THE DRY WALL WAS, AND WAITED FOR THE POLICE
11 TO COME.

12 Q WHAT IS IN THAT ROOM?

13 A THE ANALYZER EQUIPMENT AND THE COMPUTERS.

14 Q DID YOU NOTICE ANY DAMAGE TO ANY OF THAT EQUIPMENT?

15 A NOT AT THE TIME.

16 Q DID YOU AT SOME POINT?

17 A MR. BARENS: OBJECTION ON RELEVANCY AS TO
18 DAMAGE TO EQUIPMENT, YOUR HONOR.

19 THE COURT: OVERRULED.

20 Q BY MR. WAPNER: AT SOME POINT, DID YOU LOOK
21 AT THAT TO SEE WHETHER THERE WAS ANY DAMAGE TO THE EQUIPMENT?

22 A YES.

23 Q WHEN DID YOU LOOK AT IT?

24 A WHEN THE POLICE WERE THERE.

25 Q WHAT DID YOU SEE?

26 A I SAW TWO DENTS IN TWO OF THE METAL CABINETS
27 OF EQUIPMENT AND A DENT IN THE METAL CABINET OF THE C.R.T.
28 FOR THE COMPUTER.

1 Q CAN YOU JUST GO AND PUT A TRIANGLE ALSO ON
2 THERE WHERE THOSE ITEMS WERE?

3 A UH-HUH, JUST A SMALL TRIANGLE HERE. (WITNESS
4 INDICATING.)

5 Q HAD YOU NOTICED ANY DAMAGE TO THOSE PIECES
6 OF EQUIPMENT BEFORE YOU HEARD THESE NOISES?

7 A NO.

8 Q HOW LONG DID IT TAKE FOR THE POLICE TO GET
9 THERE?

10 A PROBABLY FIVE, TEN MINUTES.

11 Q AFTER THE POLICE GOT THERE, WHAT DID YOU DO?

12 A I FELT VERY RELIEVED.

13 I WALKED AROUND WITH THEM A LITTLE BIT AND
14 SURVEYED THE OUTSIDE OF THE BUILDING AND, FURTHER, THE
15 INSIDE OF IT.

16 Q DID THE POLICE TAKE SOME PICTURES OF THE BUILDING?

17 A YES, THEY DID.

18 MR. WAPNER: YOUR HONOR, I HAVE A SERIES OF PICTURES
19 THAT I WOULD LIKE TO HAVE MARKED AS P-2-A THROUGH -L.
20 I HAVE SHOWN THEM TO COUNSEL.

21 THE COURT: P-2 THROUGH WHAT?

22 MR. WAPNER: -A THROUGH -L.

23 THE COURT: ALL RIGHT. THEY WILL BE MARKED 2-A,
24 -B, -C, -D THROUGH -L. IS THAT IT?

25 MR. WAPNER: CORRECT. THEY ARE PICTURES THAT DEPICT
26 VARIOUS PORTIONS OF THE BUILDING AT F.C.I. INCORPORATED.

27 Q BY MR. WAPNER: MR. REDMOND, SHOWING YOU PEOPLE'S
28 2, STARTING WITH 2-A, CAN YOU HOLD THAT UP AND TELL ME

1 WHAT THAT IS.

2 A THIS IS A PICTURE FROM ACROSS THE STREET OF
3 THE NORTH SIDE OF THE BUILDING. (WITNESS INDICATING.)

4 Q AND ARE THERE THREE, WHAT APPEAR TO BE, WINDOWS --

5 A YES, THEY ARE WINDOWS.

6 Q -- IN THAT PICTURE?

7 A YES.

8 Q DOES THAT ACCURATELY DEPICT THE BUILDING THE
9 WAY IT LOOKED THAT NIGHT AFTER THE SHOOTING?

10 A YES, IT DOES.

11 Q WOULD THAT PICTURE REFLECT THE NORTH SIDE
12 OF THE BUILDING HERE, INCLUDING THESE WINDOWS THAT ARE
13 INDICATED BY THE SLASH MARKS? (COUNSEL INDICATING.)

14 A YES, IT DOES.

15 Q WOULD YOU JUST HOLD THAT UP MAYBE A LITTLE
16 HIGHER SO THE JURORS CAN SEE IT?

17 A UH-HUH. (WITNESS COMPLIES.)

18 Q WHAT IS THE NEXT ONE?

19 A THE NEXT PICTURE IS A VIEW OF THE EAST SIDE
20 OF THE BUILDING WITH CARS IN THE PARKING LOT.

21 THE COURT: WHY DON'T YOU RUN THAT ALONG THE SIDE
22 THERE? SOME OF THEM CAN'T SEE FROM THERE.

23 Q BY MR. WAPNER: OKAY. WOULD THAT BE THIS
24 PORTION OF THE BUILDING HERE INDICATED BY THE LINE ON
25 THE RIGHT SIDE OF THE DIAGRAM? (COUNSEL INDICATING.)

26 A YES.

27 Q AND THE NEXT PICTURE, WHICH IS 2-C, WHAT DOES
28 THAT INDICATE?

1 A THESE ARE TWO OF THE WINDOWS ON THE NORTH
2 SIDE OF THE BUILDING, I BELIEVE THE TWO ON THE RIGHT TOP
3 OF THERE (WITNESS INDICATING).

4 Q THESE TWO? (COUNSEL INDICATING.)

5 A YES.

6 Q INDICATING THE TWO ON THE NORTH?

7 A ON THE NORTH SIDE OF THE BUILDING.

8 Q THE NORTH SIDE, THE TWO EASTERN --

9 A THE EASTERNMOST WINDOWS, YES.

10 Q EASTERNMOST, ALL RIGHT.

11 AND THERE APPEAR TO BE SOME HOLES IN THESE
12 WINDOWS; WERE THEY THERE BEFORE YOU HEARD THESE NOISES?

13 A NO.

14
15
16 Q AND DO 2-D, -E, -F AND -G APPEAR TO DEPICT
17 CLOSER-UP VIEWS OF THOSE SAME -- OF THE WINDOWS ON THE
18 NORTH SIDE OF THE BUILDING?

19 A YES, THEY DO.

20 Q AND THE DAMAGE THAT IS DEPICTED IN THOSE PHOTOGRAPHS
21 WAS NOT THERE BEFORE YOU HEARD THESE NOISES?

22 IT WAS NOT.

23 MR. WAPNER: MAY I PASS THOSE BRIEFLY IN FRONT OF
24 THE JURY, YOUR HONOR?

25 THE COURT: YES.

26 MR. WAPNER: MAYBE I COULD JUST PASS THEM AROUND.

27 THE COURT: ALL RIGHT.

28 (WHEREUPON, THE EXHIBITS WERE PASSED
 TO THE JURY.)

1 Q BY MR. WAPNER: AND DOES THE PHOTOGRAPH THAT IS
2 2-H DEPICT THE DRYWALL THAT IS OPPOSITE THESE WINDOWS ON THE
3 NORTH SIDE?

4 A YES IT DOES.

5 Q AND CAN YOU SEE WHAT APPEARS TO BE SOME HOLES
6 IN THE DRYWALL?

7 A YES.

8 Q WERE THEY THERE BEFORE YOU HEARD THOSE NOISES
9 THAT NIGHT?

10 A NO.

11 MR. WAPNER: MAY I JUST WALK THAT QUICKLY IN FRONT OF
12 THE JURY, YOUR HONOR?

13 THE COURT: YES.

14 (PAUSE.)

15 Q BY MR. WAPNER: MR. REDMOND, WHAT IS ON THE OTHER
16 SIDE OF THE WALL THAT IS DEPICTED IN THIS PHOTOGRAPH?

17 A THE INSTRUMENT ROOM WHERE THE TRIANGLES ARE.

18 Q THAT'S THE ROOM DEPICTED BY THE RECTANGLE I AM
19 POINTING TO NOW?

20 A YES.

21 Q WHAT IS DEPICTED IN THE TWO PHOTOGRAPHS THAT ARE
22 2-I AND -J?

23 A THOSE ARE VIEWS OF THE WINDOW ON THE ENTRY ON
24 THE EAST SIDE OF THE BUILDING.

25 Q BASICALLY THE FRONT DOOR OF THE BUILDING AND
26 WINDOW NEXT TO IT?

27 A YES, RIGHT.

28 Q THAT WOULD BE THE WINDOW TO THE SOUTH OF THE

-2
1 ENTRYWAY?

2 A YES.

3 Q AND THERE APPEARS TO BE SOME HOLES IN THESE WINDOWS.
4 WERE THEY THERE BEFORE YOU HEARD THOSE NOISES?

5 A NO. THEY WEREN'T.

6 Q WHAT ARE THE LAST PICTURES THAT ARE -K AND -L?

7 A THEY DEPICT DAMAGE DONE TO TWO OF THE VEHICLES
8 THAT WERE PARKED ON THE EAST SIDE OF THE BUILDING WHICH APPEAR
9 TO BE BULLET HOLES.

10 Q DO YOU SEE ON THE DIAGRAM WHERE IT IS THAT THESE
11 VEHICLES WERE PARKED?

12 A YES.

13 Q WHERE IS IT?

14 A THE TWO RED RECTANGLES ON THE EAST SIDE.

15 Q AND BEFORE YOU HEARD THOSE NOISES, WAS THERE ANY
16 DAMAGE TO THOSE TWO VEHICLES?

17 A NO, NONE OF THAT NATURE.

18 Q WHEN YOU SAY "NONE OF THAT NATURE," WHAT DO YOU
19 MEAN?

20 A I MEAN THEY MAY HAVE HAD MINOR DINGS BUT NO
21 BULLET HOLES.

22 Q AND THE WINDOWS WERE ALL INTACT?

23 A YES.

24 Q AFTER THE POLICE CAME, WHAT DID YOU DO?

25 A I GREETED THEM. I LET THEM INTO THE BUILDING
26 AND I WALKED AROUND WITH THEM TO SURVEY THE DAMAGE AND
27 ANSWERED THEIR QUESTIONS.

28 Q AND DID YOU STAY THERE UNTIL THE POLICE LEFT?

1 A YES.

2 Q HOW MUCH LATER AFTER THE POLICE LEFT, DID YOU
3 STAY?

4 A NOT VERY LONG, JUST LONG ENOUGH TO LOCK THE DOORS
5 AND LEAVE.

6 Q DID YOU CALL MR. COKER? AT SOME POINT THAT NIGHT?

7 A I DON'T HONESTLY REMEMBER. I REMEMBER CALLING
8 EITHER MR. FRANCE OR MR. COKER.

9 Q AND WAS THE DAMAGE TO THE OUTSIDE AND INSIDE OF
10 THE BUILDING REPAIRED?

11 A YES. IT WAS.

12 Q HOW LONG DID IT TAKE TO REPAIR THE DAMAGE, IF
13 YOU KNOW?

14 MR. BARENS: OBJECTION, RELEVANCY.

15 THE COURT: OVERRULED. WE MIGHT AS WELL GET THE WHOLE
16 PICTURE.

17 THE WITNESS: SOME OF IT WAS REPAIRED FAIRLY SOON, WITHIN
18 THE NEXT FEW DAYS. BUT SOME, I DON'T THINK WAS REPAIRED FOR
19 AT LEAST A COUPLE OF WEEKS.

20 Q BY MR. WAPNER: HOW LONG WERE THERE HOLES IN THE
21 DRYWALL, IF YOU KNOW?

22 A AS I RECALL, A COUPLE OF WEEKS.

23 Q THE WINDOWS WERE REPAIRED EARLIER?

24 A YES.

25 Q THE TELEPHONE THAT IS DEPICTED IN 2-F, WAS IT
26 IN THIS CONDITION BEFORE YOU HEARD THOSE NOISES ON THAT NIGHT?

27 A NOT IT WAS NOT.

28 Q AND DO ALL OF THOSE PHOTOGRAPHS THAT I HAVE SHOWN

1 YOU, 2-A THROUGH -L, ACCURATELY DEPICT THE CONDITION OF THE
2 BUILDING AFTER THE SHOOTING THAT NIGHT?

3 A YES THEY DO.

4 MR. WAPNER: THANK YOU. NOTHING FURTHER.

5 MR. BARENS: NO QUESTIONS.

6 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. YOU WILL
7 BE EXCUSED.

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1 MR. WAPNER: CALL OFFICER ALFARO.

2

3

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

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MR. WAPNER: CALL OFFICER ALFARO.

ROGER ALFARO,

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

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

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

THE WITNESS: I DO.

THE CLERK: PLEASE BE SEATED.

WOULD YOU PLEASE STATE AND SPELL YOUR FULL
NAME FOR THE RECORD.

THE WITNESS: ROGER ALFARO, A-L-F-A-R-O.

DIRECT EXAMINATION

BY MR. WAPNER:

Q MR. ALFARO, BY WHOM ARE YOU EMPLOYED?

A THE SANTA ANA POLICE DEPARTMENT.

Q WHAT DO YOU DO FOR THEM?

A NOW I AM ASSIGNED TO THE NARCOTICS DETAIL.

Q HOW LONG HAVE YOU WORKED FOR THE SANTA ANA
POLICE DEPARTMENT?

A APPROXIMATELY SIX YEARS.

Q IN 1984, WHAT WAS YOUR ASSIGNMENT?

A PATROL.

Q ON MARCH THE 14TH OF 1984, DID YOU GET A CALL

1 TO GO TO 3132 WEST ADAMS IN THE CITY OF SANTA ANA?

2 A YES, SIR.

3 Q AND AFTER RECEIVING THAT CALL, WHAT DID YOU
4 DO?

5 A MYSELF AND OFFICER CABRERA PROCEEDED TO THE
6 LOCATION AND WE MADE CONTACT WITH TWO SUBJECTS THERE.

7 Q WAS EITHER OF THOSE PEOPLE IN COURT TODAY?

8 A YES, SIR.

9 Q WHO WAS THAT?

10 A THE GENTLEMAN THAT JUST LEFT.

11 Q MR. REDMOND?

12 A YES, SIR.

13 Q AFTER YOU MADE CONTACT WITH MR. REDMOND, WHAT
14 HAPPENED?

15 A I CONDUCTED A C.S.I., CRIME SCENE INVESTIGATION.

16 Q DID THAT INCLUDE TAKING SOME PHOTOGRAPHS?

17 A YES, SIR.

18 Q AND WHEN YOU INVESTIGATED THE CRIME SCENE,
19 WHAT DID YOU SEE?

20 A SEVERAL BROKEN WINDOWS OR HOLES IN WINDOWS.

21 Q HAVE YOU SEEN HOLES IN GLASS BEFORE THAT HAD
22 BEEN MADE BY BULLETS?

23 A YES.

24 Q AND THE HOLES THAT YOU SAW THAT NIGHT, WHAT
25 DID THEY APPEAR TO BE TO YOU?

26 A BULLET HOLES.

27 Q AFTER YOU SAW THE HOLES IN THE WINDOWS, WHAT
28 DID YOU DO?

1 A WE THEN MADE AN AREA CHECK OF THE PARKING
2 LOT AND FOUND SOME EXPENDED CARTRIDGES.

3 Q WHICH PARKING LOT OR LOTS DID YOU CHECK?

4 A THE NORTH AND EAST SECTIONS OF THE LOT.

5 Q AND ARE THERE IN FACT PARKING SPACES ALONG
6 THE NORTH SIDE OF THE BUILDING?

7 A I AM NOT SURE.

8 Q SHOWING YOU A PICTURE THAT HAS BEEN MARKED
9 AS 2-A, DO YOU RECOGNIZE THAT?

10 A YES.

11 Q WHAT IS IT?

12 A A BUSINESS AT 33 -- I BELIEVE 3300 WEST ADAMS
13 STREET.

14 Q HOW ABOUT 3132 WEST ADAMS, DOES THAT SOUND
15 ABOUT RIGHT?

16 A OH, 3132, YES, SIR.

17 Q DOES THAT APPEAR TO DEPICT THE NORTH SIDE
18 OF THE BUSINESS?

19 A YES, SIR.

20 Q DO THERE APPEAR TO BE PARKING SPACES ALONG
21 THE SIDE OF THE WALL OF THE BUILDING THERE?

22 A YES, SIR.

23 Q AND DOES 2-B APPEAR TO BE THE EAST SIDE OF
24 THE BUSINESS?

25 A YES, SIR.

26 Q ARE THERE PARKING SPACES ALONG THERE ALSO?

27 A YES, SIR.

28 Q AND WHEN YOU WENT TO THE CRIME SCENE AND COLLECTED

1 THE EVIDENCE, WAS IT FROM BOTH OF THOSE PARKING LOTS?

2 A YES, SIR.

3 Q WHAT DID YOU DO WITH THE EVIDENCE THAT YOU
4 COLLECTED?

5 A PLACED IT INTO A BAG, LATER PLACED IT INTO
6 THE EVIDENCE LOCKER NO. 1 AT THE SANTA ANA POLICE DEPARTMENT.

7 Q WHAT WAS IT THAT YOU PICKED UP?

8 A THE EXPENDED CARTRIDGES.

9 MR. WAPNER: YOUR HONOR, I HAVE HERE A BROWN PAPER
10 BAG AND ATTACHED TO IT ARE TWO WHITE SHEETS, ONE ENTITLED
11 "PROPERTY AND EVIDENCE CARD" AND THE OTHER ONE THAT JUST
12 SAYS "EVIDENCE, SANTA ANA POLICE DEPARTMENT."

13 MAY THE BAG, ITS CONTENTS AND THE TWO CARDS,
14 AS WELL AS THE THIRD CARD THAT SAYS "B.H.P.D. PROPERTY
15 EVIDENCE TAG" BE MARKED AS --

16 THE COURT: P-3?

17 MR. WAPNER: -- 3 FOR IDENTIFICATION?

18 THE COURT: YES.

19 MR. WAPNER: SHOWING YOU PEOPLE'S 3 FOR IDENTIFICATION,
20 DO YOU RECOGNIZE THAT ITEM?

21 A YES.

22 Q WHAT IS IT?

23 A THE BAG WITH THE EVIDENCE TAGS.

24 Q WHERE HAVE YOU SEEN THAT ITEM BEFORE?

25 A WHEN I PLACED IT IN THE EVIDENCE LOCKER.

26 Q WOULD YOU OPEN IT, PLEASE, AND TELL ME IF
27 YOU RECOGNIZE THE CONTENTS THERE?

28 FIRST OF ALL, IS IT SEALED RIGHT NOW?

29 A YES, IT IS.

-1
1 Q OKAY. CAN YOU JUST TURN THAT AROUND AND HOLD
2 IT UP SO THE JURY CAN SEE IT. AND THE SEAL, WAS THAT SEAL
3 PLACED ON THERE BY YOU OR BY SOMEONE ELSE?

4 A SOMEONE ELSE.

5 Q BEFORE YOU OPEN IT -- MAY I HAVE JUST A MOMENT?

6 THE COURT: YES.

7 (PAUSE.)

8 MR. WAPNER: MAY I SEE THE BAG FOR JUST A MOMENT?

9 Q CAN YOU OPEN THIS BY JUST KIND OF CUTTING -- TRYING
10 TO CUT THROUGH IT SO WE CAN PERHAPS LEAVE THE SEAL INTACT?

11 A (THE WITNESS COMPLIES.)

12 Q WOULD YOU REMOVE THE CONTENTS, PLEASE?

13 A (THE WITNESS COMPLIES.)

14 Q DO YOU RECOGNIZE THOSE?

15 A YES I DO.

16 Q HOW DO YOU RECOGNIZE THEM?

17 A THEY HAVE MY INITIALS ON THEM.

18 Q ON EACH ONE?

19 A YES, SIR.

20 Q YOUR INITIALS ARE WHAT?

21 A RA.

22 Q AND CAN YOU SHOW US ONE OF THOSE WITH AN EXAMPLE
23 WHERE YOU PUT YOUR INITIALS?

24 A HERE (INDICATING).

25 Q AND YOU PUT IT ON WITH SOME KIND OF A PEN?

26 A YES, SIR.

27 Q HAVE YOU SEEN THESE TYPES OF EXPENDED SHELL CASINGS
28 BEFORE?

-2
1 A YES I HAVE.

2 Q OKAY. CAN YOU DESCRIBE WHAT TYPE OF SHELL
3 CASINGS THEY ARE?

4 A THEY BELONG TO A RIFLE, I BELIEVE A 30-30.

5 Q WHAT IS A 30-30?

6 A .30 CALIBER.

7 Q AND CAN YOU TELL US GENERALLY WHERE IN THE PARKING
8 LOT THESE WERE COLLECTED FROM?

9 A JUST LAYING ON THE PAVEMENT IN THE NORTH SIDE
10 OF THE LOT, NORTHWEST PORTION, I BELIEVE AND ON THE EAST
11 PARKING LOT.

12 Q DO YOU HAVE ANY RECOLLECTION AS TO WHETHER THEY
13 WERE ALTOGETHER IN A CLUMP OR WHETHER THEY WERE SPREAD OUT
14 OR HOW YOU FOUND THEM?

15 A THEY WERE SPREAD OUT BUT MAINLY IN THE SAME AREA.

16 Q AND THERE WERE TWO -- WHEN YOU SAY IN THE SAME
17 AREA, WHAT DO YOU MEAN?

18 A I DON'T RECALL EXACTLY HOW MANY THERE WERE IN
19 CERTAIN AREAS. BUT THERE WAS A CLUMP IN THE NORTH PART OF
20 THE LOT AND A CLUMP ON THE EAST SIDE.

21 Q AND ARE ALL THESE SHELL CASINGS THE SAME CALIBER?

22 A YES, SIR.

23 Q HOW MANY OF THEM DID YOU RECOVER?

24 A 11.

25 Q ARE ALL 11 THERE? DO THEY APPEAR TO BE?

26 A YES, SIR.

27 Q WHEN YOU TOOK THEM FROM THE LOCATION AND YOU PUT
28 THEM IN THE EVIDENCE LOCKER, DID YOU FILL OUT SOME KIND OF

1 A RECEIPT, PROPERTY RECEIPT?

2 A YES, SIR.

3 Q WHAT IS THAT?

4 A IT IS AN EVIDENCE TAG.

5 Q IS THAT THERE IN FRONT OF YOU?

6 A YES, SIR.

7 Q WHICH ONE IS THAT?

8 A IT WOULD BE THIS ONE, THE CHAIN OF CUSTODY FORM.

9 Q AND THE PROPERTY AND EVIDENCE TAG HAS YOUR INITIALS
10 ON IT AND YOUR NAME, "R. G. ALFARO"?

11 A YES, SIR.

12 Q AND THEN THE EVIDENCE, THE SANTA ANA POLICE
13 DEPARTMENT PAPER THAT SAYS "EVIDENCE, SANTA ANA POLICE
14 DEPARTMENT," YOU REFERRED TO THAT AS A CHAIN OF CUSTODY. CAN
15 YOU EXPLAIN THAT?

16 A IT HAS THE CRIME, THE VICTIM, THE CASE NUMBER
17 AND IT HAS MY NAME, COLLECTED IN THE PACKAGE BY ME, THE DATE,
18 THE TIME, RELINQUISHED TO THE LOCKER BY ME AND THE DATE AND
19 TIME IT WAS PLACED IN THE LOCKER.

20 Q WHAT IS THE PURPOSE OF KEEPING A PAPER LIKE THAT?

21 A IT IS MORE OF A CHAIN OF CUSTODY-TYPE THING.

22 Q IN OTHER WORDS, TO MAKE SURE THAT YOU KEEP TRACK
23 OF WHEN IT WENT INTO THE LOCKER AND WHEN IT GOES OUT AND THINGS
24 LIKE THAT?

25 A YES, SIR.

26 Q DID YOU EVER CHECK THE ITEMS OUT OF THE LOCKER
27 AFTER YOU PUT THEM IN THERE INITIALLY?

28 A NO, SIR.

1 Q AND THESE 11 CARTRIDGES THAT YOU HAVE IN FRONT
2 OF YOU, ARE THE ONES THAT YOU IN FACT, COLLECTED FROM THE
3 PARKING LOT OF THE BUSINESS ON THE NIGHT OF MARCH 14?

4 A YES, SIR.

5 MR. WAPNER: MAY I HAVE JUST A MOMENT?

6 (PAUSE.)

7 Q BY MR. WAPNER: DID YOU DO AN EXAMINATION OF THE
8 INSIDE OF THE BUSINESS, ALSO?

9 A YES, SIR.

10 Q DID YOU SEE ANY LOCATIONS WHERE THE BULLETS HAD
11 PENETRATED ACTUALLY INTO THE SOUTHERN PORTION, THROUGH THE
12 DRYWALL AND INTO THE SOUTHERN PORTION OF THE BUSINESS? DO
13 YOU RECALL? THAT WOULD BE INTO THE WORKING AREA AT THE BOTTOM
14 PORTION OF THE DIAGRAM.

15 A THE BOTTOM PORTION THERE?

16 Q DO YOU REMEMBER GOING INTO A ROOM THAT HAD SOME
17 TESTING, COMPUTER-TYPE TESTING EQUIPMENT IN IT?

18 A NO I DON'T.

19 Q NOW, HOW IS IT -- CAN YOU EXPLAIN TO US HOW IT
20 IS THAT THE CASES ARE EXPENDED FROM A RIFLE AND FALL ON THE
21 GROUND, IF YOU KNOW?

22 A THEY ARE EJECTED OUT OF THE RIFLE.

23 Q AND WOULD THAT INDICATE THAT IT IS AN AUTOMATIC
24 OR SEMI-AUTOMATIC RIFLE?

25 A YES.

26 Q AND HOW IS IT THAT THEY ARE EJECTED OUT OF THE
27 RIFLE, IF YOU KNOW?

28 A EACH TIME THE TRIGGER IS PULLED, IT IS
29 AUTOMATICALLY EJECTED OUT OF THE CHAMBER.

1 Q AND ANOTHER ROUND IS PUT IN?

2 A IN THE CHAMBER, YES.

3 Q DID YOU RECOVER ANY GUN THAT NIGHT?

4 A NO, SIR.

5 Q DID YOU FIGURE OUT HOW MANY SHOTS WERE SHOT
6 THROUGH THE WINDOWS ON THE NORTH SIDE AND HOW MANY SHOTS
7 WERE SHOT THROUGH THE WINDOWS ON THE WEST SIDE --

8 A NO.

9 Q EXCUSE ME. THE EAST SIDE.

10 A NO, I DIDN'T.

11 Q WAS THERE AN OFFICER CABRERA THERE ALSO?

12 A YES, SIR.

13 Q WHAT WAS HIS FUNCTION?

14 A HE WAS THE OFFICER THAT HANDLED THE CRIME
15 REPORT AND ALSO HE HELPED ME IN LOCATING THE DAMAGE TO
16 THE BUILDING.

17 Q DO YOU HAPPEN TO RECALL WHETHER OR NOT THERE
18 WERE ANY LIGHTS ON INSIDE THE OFFICE PORTION OF THE BUSINESS
19 AT THE TIME YOU GOT THERE?

20 A I BELIEVE THERE WERE.

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

22 THE COURT: ANY QUESTIONS?

23 MR. BARENS: NO QUESTIONS, YOUR HONOR.

24 THE COURT: ALL RIGHT, THANK YOU. YOU MAY STEP
25 DOWN. YOU WILL BE EXCUSED.

26 THE WITNESS: IS HE GOING TO TAKE THE EVIDENCE?

27 THE COURT: YOU JUST LEAVE IT THERE.

28 MR. WAPNER: YOUR HONOR, CAN I HAVE ABOUT FIVE MINUTES

1 OR LESS? I ANTICIPATED CROSS-EXAMINATION OF THESE WITNESSES
2 AND I HAVE ONE WITNESS I CAN PUT ON BRIEFLY BUT DETECTIVE
3 ZOELLER WENT TO GET A PIECE OF EVIDENCE.

4 THE COURT: ALL RIGHT.

5 MR. BARENS: YOUR HONOR, COULD WE APPROACH THE BENCH
6 WHILE WE ARE WAITING FOR THAT? WE HAD SOME MOTION TO
7 THE COURT.

8 THE COURT: YES.

9 (THE FOLLOWING PROCEEDINGS WERE HELD
10 AT THE BENCH:)

11 THE COURT: YES?

12 MR. BARENS: YOUR HONOR, AS A SIDE MATTER, THE BAILIFF,
13 MR. QUINN, CAME UP TO ME JUST AS WE WERE STARTING AND
14 SAID THAT A JUROR HAD REPORTED TO HIM THAT I HAD BEEN
15 SEEN TO HAND A PIECE OF PAPER THAT BROOKE ROBERTS HAD
16 WRITTEN A NOTE ON TO MR. HUNT, WHICH I DID YESTERDAY.
17 I DON'T KNOW WHAT PART OF THE DAY IT OCCURRED, BUT SOME
18 PART. THERE WAS A PIECE OF LINED NOTEBOOK PAPER THAT
19 I PUT ON THE COUNSEL TABLE AND HANDED TO MR. HUNT. I
20 AM SURPRISED AND POSSIBLY DISTRESSED THAT A JUROR WOULD
21 REPORT ME FOR THAT. I THINK THE JUROR OBVIOUSLY THINKS
22 I HAVE DONE SOMETHING WRONG. I THINK, LEST THERE BE SOME
23 PREJUDICE AGAINST THE DEFENSE COUNSEL AS A RESULT OF THAT,
24 I DON'T KNOW HOW EXACTLY TO PROCEED TO TELL THE JUROR.

25 THE COURT: MAYBE THEY THOUGHT THERE WAS SOMETHING.
26 I DON'T HAVE ANY IDEA AS TO WHY THAT REMARK WAS MADE.
27 I WILL ASK PAT QUINN ABOUT IT LATER ON AND FIND OUT A
28 LITTLE MORE ABOUT IT.

1 MR. BARENS: ONLY BECAUSE YOU MIGHT WANT TO COMMENT
2 TO THE JUROR THAT THERE IS NOTHING WRONG WITH DEFENSE
3 COUNSEL DOING THAT.

4 THE COURT: NO, THAT WILL POINT IT UP. I DON'T
5 THINK IT IS DESIRABLE DOING THAT.

6 MR. BARENS: I JUST DIDN'T WANT THE JUROR FLOATING
7 AROUND, THINKING I HAVE DONE SOME TRANSGRESSION TO THE
8 LEGAL SYSTEM.

9 THE COURT: I THINK IT WOULD REDOUND NOT TO THE
10 FAVOR OF THE DEFENDANT, THEY WOULD RESENT IT. JUST LET
11 IT LIE AND DON'T SAY ANYTHING ABOUT IT. I WILL ASK HIM
12 ABOUT IT.

13 MR. BARENS: PERHAPS YOUR HONOR COULD, IN AN IN
14 CAMERA SETTING, IN CASE IT IS RELEVANT LATER ON, ASK THE
15 BAILIFF TO TELL YOU. YOU DON'T NEED TO TELL EITHER COUNSEL
16 WHO IT WAS. BUT IF YOUR HONOR WOULD IN SOME SEALED FASHION
17 PUT THE JUROR'S NAME, MAYBE YOUR HONOR COULD WRITE A NOTE
18 TO THE COURT AND PUT IT IN A SEALED COURT EXHIBIT.

19 THE COURT: I WILL TALK TO HIM FIRST AND I WILL
20 DECIDE WHAT TO DO LATER.

21 MR. BARENS: THANK YOU, YOUR HONOR.

22 YOUR HONOR, WE DO HAVE ANOTHER HOUSEKEEPING
23 CHORE. IS DETECTIVE ZOELLER GOING TO GET THE RIFLE NOW?

24 MR. WAPNER: YES.

25 MR. BARENS: BEFORE THE RIFLE IS BROUGHT IN THE
26 COURTROOM, AS THERE HAS BEEN NO FOUNDATION LAID, WE WOULD
27 LIKE THE FOUNDATION LAID THROUGH THIS -- I THINK THEY
28 HAVE TO LAY THEIR FOUNDATION THROUGH THE GARDENA POLICE

1 DEPARTMENT.

2 HERE HE IS WITH THE GUN IN FRONT OF THE JURY.

3 THE COURT: THE GARDENA POLICE DEPARTMENT? I DON'T
4 UNDERSTAND.

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1 MR. BARENS: HERE IS THE WAY THEY PLAN TO GO ON
2 THIS. THEY ARE NOW GOING TO PUT INTO EVIDENCE THAT PITTMAN
3 WAS APPREHENDED BUT NOT ARRESTED -- I DON'T THINK HE WAS
4 ARRESTED -- IN ANY EVENT, PITTMAN WAS, ONE NIGHT, TAKING
5 TARGET PRACTICE IN THE GARDENA OFFICE, SHOOTING A GUN
6 AT A PIECE OF WOOD. THE NEIGHBORS COMPLAINED ABOUT THE
7 NOISE, OR SOMETHING LIKE THAT, AND THEY HAD A 415 TYPE
8 OF SITUATION GOING ON. SO THE POLICE CAME OVER AND INTERVIEWED
9 PITTMAN AND THEN TAKE THIS GUN AWAY FROM HIM THAT HE IS
10 SHOOTING AT THE PIECE OF WOOD WITH THAT NIGHT.

11 THE COURT: THEY WANT TO ESTABLISH THIS WAS THE
12 RIFLE FROM WHICH THESE BULLETS WERE EJECTED, THE CASINGS
13 OUT OF IT?

14 MR. WAPNER: CORRECT, YOUR HONOR.

15 MR. BARNES: EXCEPT, YOUR HONOR, I HAVE A LOT OF
16 PROBLEMS WITH THAT.

17 NUMBER ONE, IT IS AGAIN USING PITTMAN AS A
18 METHOD TO GET TO HUNT AND WE WILL NEVER HAVE -- I DON'T
19 SEE WHERE HE IS TIED IN, INsofar IN TERMS OF FOUNDATION
20 LAID OR CORPUS BEING ESTABLISHED FOR THIS ALLEGED CRIME.

21 I DON'T FIND ANY CORPUS SO FAR AND TO ALLOW
22 THE GUN IN, SIMPLY BECAUSE PITTMAN IS IN POSSESSION OF
23 A GUN AT THIS JUNCTURE, WITHOUT ANY OTHER TYING EVIDENCE,
24 I DON'T KNOW WHERE WE ARE GOING.

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1 THE COURT: I SUPPOSE THE PEOPLE ARE GOING TO SHOW A
2 CONNECTION IN THIS PARTICULAR CASE BETWEEN PITTMAN AND THE
3 DEFENDANT WITH RESPECT TO THIS PARTICULAR INCIDENT.

4 MR. BARENS: BUT THE ONLY THING WE ARE GOING TO END
5 UP WITH AGAIN, IS THERE IS GOING TO BE A STATEMENT BY
6 TAGLIANETTI ATTRIBUTED TO PITTMAN, NOT TO HUNT.

7 BUT WHAT YOUR HONOR IS GOING TO HAVE TO DO IS
8 TO ALLOW THE PEOPLE TO -- YOU ARE GOING TO VIOLATE HUNT'S
9 RIGHT TO CONFRONTATION BY ALLOWING A STATEMENT MADE TO PITTMAN
10 TO BE ATTRIBUTED TO HIM IN THIS SETTING.

11 I DON'T THINK THAT IS LEGALLY PERMISSIBLE.

12 THE COURT: PITTMAN WAS A CO-CONSPIRATOR. EVERYTHING
13 HE DID AND SAID IN CONNECTION WITH THIS PARTICULAR INCIDENT
14 IS ADMISSIBLE AGAINST THE DEFENDANT.

15 MR. BARENS: JUST A MOMENT, YOUR HONOR. I WOULD LIKE
16 TO DEFER TO MR. CHIER IN MAKING THE RESPONSE.

17 MR. CHIER: YOUR HONOR, THE CONSPIRACY UNDER WHICH THE
18 PEOPLE SOUGHT TO AND SUCCEEDED IN GETTING STATEMENTS ADMITTED
19 DURING THE GUILT PHASE, WAS A CONSPIRACY TO DO IN RON LEVIN.

20 THIS NEW EVIDENCE BEING OFFERED NOW CONCERNING
21 THE GUN, IS NOT IN FURTHERANCE OF THE CONSPIRACY WHICH THE
22 PEOPLE ALLEGED EXISTED DURING THE GUILT PHASE.

23 AND IN THESE DECLARATIONS -- WELL, THEY ARE NOT
24 IN FURTHERANCE OF THAT CONSPIRACY.

25 THE COURT: DO YOU UNDERSTAND THAT THESE ARE
26 AGGRAVATING CIRCUMSTANCES, INDEPENDENT CRIMES? AN INDEPENDENT
27 CRIME, YOU ESTABLISH THE FACT THAT THERE IS A CONSPIRACY TO
28 AN INDEPENDENT CRIME.

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1 THIS IS WHAT HE IS ATTEMPTING TO ESTABLISH.
2 PITTMAN WAS PART OF THAT CONSPIRACY WITH THE DEFENDANT. IS
3 THAT WHAT YOU ARE TRYING TO SHOW?

4 MR. WAPNER: THAT IS TRUE, ALTHOUGH I DON'T KNOW THAT
5 THE STATEMENTS OF MR. PITTMAN WILL COME IN.

6 BUT ALL OF THE EVIDENCE THAT HAS BEEN ADMITTED
7 ON THE GUILT PHASE CAN BE CONSIDERED BY THE JURY IN THIS PHASE
8 WHICH INCLUDES ALREADY THE CONNECTION THAT HAS BEEN ESTABLISHED
9 BY MR. HUNT TO MR. PITTMAN AND TO THE ENTIRE BBC.

10 THERE IS NO QUESTION THAT MR. HUNT CALLED ALL
11 OF THE SHOTS, THE THINGS THAT HAPPENED AT THE BBC.

12 THE COURT: I THINK THE JURY WOULD HAVE A RIGHT TO
13 CONSIDER ALL OF THAT.

14 MR. BARENS: ARE WE SAYING LITERALLY CALLED THE SHOTS?
15 THAT WAS A JOKE, FOR THE RECORD.

16 THE COURT: I UNDERSTAND.

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

20 MR. WAPNER: WE CALL DETECTIVE ZOELLER.

21

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23 LES ZOELLER,
24 CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND TESTIFIED
25 AS FOLLOWS:

26 THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY
27 YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL
28 BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH,
 SO HELP YOU GOD?

A-3

1 THE WITNESS: I DO.

2 THE COURT: I DON'T THINK THERE IS ANY NECESSITY FOR
3 HIS HAVING BEEN CALLED -- THAT IS, TO HAVE HIM SWORN AGAIN.
4 HE WAS PREVIOUSLY SWORN ON THE GUILT PHASE. BUT NONETHELESS --

5 MR. BARENS: THE DEFENSE WILL WAIVE IT.

6 THE COURT: ALL RIGHT.

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DIRECT EXAMINATION

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BY MR. WAPNER:

10 Q DETECTIVE ZOELLER, AS THE INVESTIGATING OFFICER
11 IN THIS CASE, DID YOU GO TO THE SANTA ANA POLICE DEPARTMENT
12 ON MAY 8TH, 1987?

13 A ON MAY 5 I WENT TO THE SANTA ANA POLICE DEPARTMENT.

14 Q OKAY. WERE YOU ACCOMPANIED BY ANYONE WHEN YOU
15 DID THAT?

16 A YES.

17 Q WHO WAS THAT?

18 A YOU, MR. WAPNER.

19 Q ALL RIGHT. I GOT THE DATE WRONG, RIGHT?

20 A RIGHT.

21 Q ALL RIGHT. AND AMONG OTHER THINGS, DID YOU PICK
22 UP SOME EVIDENCE FROM THE SANTA ANA POLICE DEPARTMENT?

23 A YES.

24 Q WHAT WAS IT THAT YOU PICKED UP?

25 A I PICKED UP THE BAG CONTAINING THE 11 SHELL
26 CASINGS, PLUS TWO LEAD FRAGMENTS.

27 Q AND WERE YOU REQUIRED TO SIGN SOME CHAIN OF CUSTODY
28 FORM BEFORE THAT EVIDENCE WAS RELEASED TO YOU?

A-4

1 A I SIGNED THE CHAIN OF CUSTODY FORM THAT IS
2 ATTACHED TO IT, PLUS I SIGNED A RECEIPT WHICH IS LAYING ON
3 THE COUNSEL TABLE, WHICH I OBTAINED ONE COPY AND THEY
4 RETAINED THE OTHER COPY.

5 THE COURT: THERE IS NO DISPUTE ABOUT THE CHAIN, IS
6 THERE, ABOUT THE BULLETS AND SO ON?

7 MR. BARENS: WELL, I DON'T WANT TO WAIVE ANYTHING, FOR
8 THE RECORD. LET HIM MAKE THE RECORD, JUDGE.

9 Q BY MR. WAPNER: SHOWING YOU THE BULLETS THAT HAVE
10 PREVIOUSLY BEEN MARKED AS PEOPLE'S 3 FOR IDENTIFICATION, DO
11 YOU RECOGNIZE THOSE?

12 A YES I DO.

13 Q WHAT ARE THEY?

14 A IT IS THE 11 SHELL CASINGS, .30 CALIBER SHELL
15 CASINGS PLUS THE ENVELOPE WITH THE TWO LEAD FRAGMENTS.

16 AND WHEN I BROUGHT THEM BACK TO THE BEVERLY HILLS
17 POLICE DEPARTMENT, I PUT ONE OF THE BEVERLY HILLS POLICE
18 EVIDENCE TAGS ON IT, WHICH JUST CAME OFF.

19 Q THAT WAS THE YELLOW EVIDENCE TAG THAT IS ON THERE
20 NOW?

21 A THAT'S CORRECT. PLUS WHEN I OBTAINED IT, I
22 SIGNED ON THE CHAIN OF CUSTODY FORM THAT IS ATTACHED TO IT.

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3--1
1 Q AND THE LEAD FRAGMENTS WERE IN THE BAG AT THE
2 TIME YOU PICKED THEM UP?

3 A YES.

4 Q AND DID YOU ALSO GO ON THAT SAME DAY TO THE
5 GARDENA POLICE DEPARTMENT?

6 A YES.

7 Q WHAT DID YOU DO AT THE GARDENA POLICE DEPARTMENT?

8 A I OBTAINED THE RIFLE THAT YOU HAVE ON THE COUNSEL
9 TABLE PLUS THE BAG WHICH CONTAINED SHELL CASINGS, A .30
10 CALIBER SHELL CASING AND A LIVE .30 CALIBER BULLET.

11 Q WAS THAT BAG ATTACHED TO THE RIFLE AT THAT TIME?

12 A IT WAS. AND IT IS DOWN THERE.

13 MR. WAPNER: YOUR HONOR, MAY THIS RIFLE WHICH BEARS
14 THE SERIAL NUMBER 58314 BE MARKED AS PEOPLE'S 4 FOR
15 IDENTIFICATION?

16 THE COURT: BE SO MARKED.

17 MR. BARENS: WE HAVE A FOUNDATIONAL OBJECTION, YOUR
18 HONOR.

19 THE COURT: IT IS ONLY MARKED FOR IDENTIFICATION, SO
20 FAR. HE HAS NOT OFFERED IT. FOUNDATION WILL BE ESTABLISHED,
21 WON'T IT? GO AHEAD.

22 Q BY MR. WAPNER: DETECTIVE ZOELLER, CALLING YOUR
23 ATTENTION TO THIS RIFLE WHICH HAS BEEN MARKED AS PEOPLE'S 4
24 FOR IDENTIFICATION, DO YOU RECOGNIZE IT?

25 A YES.

26 Q WHAT IS IT?

27 A IT IS A .30 CALIBER CARBINE RIFLE.

28 Q AND WHERE HAVE YOU SEEN IT BEFORE?

1 A THIS IS THE WEAPON THAT I RECEIVED OUT OF GARDENA'S
2 EVIDENCE ON THE 5TH OF MAY OF THIS YEAR.

3 Q WHEN YOU TOOK IT FROM THE GARDENA POLICE DEPARTMENT,
4 WHAT DID YOU DO WITH IT?

5 A AS FAR AS PHYSICALLY, WHEN IT TOOK IT?

6 Q CORRECT.

7 A I BROKE THE ADJUSTABLE STOCK DOWN. IT WAS IN
8 THAT FORM WHEN I RECEIVED IT.

9 Q AND AS IT APPEARS NOW, IS THAT THE METAL PORTION
10 THAT PROTRUDES FROM THE BACK? DOES THAT ACT AS A HANDLE?

11 A YES.

12 Q AND THE PIECE THAT IS AT THE END OF THAT METAL
13 PORTION, DOES THAT MOVE?

14 A IT MOVES TO BE A SHOULDER REST. THAT'S CORRECT.

15 Q ONCE YOU TOOK IT FROM THE GARDENA POLICE
16 DEPARTMENT, DID YOU TAKE IT AND BOOK IT INTO EVIDENCE IN
17 BEVERLY HILLS?

18 A YES.

19 Q DID YOU PUT A BEVERLY HILLS POLICE DEPARTMENT
20 TAG ON IT?

21 A I DID. IT IS STILL ATTACHED.

22 Q AFTER YOU DID THAT, AT SOME POINT, DID YOU TAKE
23 THE GUN AND THE SHELL CASINGS THAT YOU RECEIVED FROM SANTA
24 ANA, SOMEPLACE ELSE?

25 A YES. I TOOK IT TO THE LOS ANGELES COUNTY SHERIFF'S
26 CRIME LAB.

27 Q FOR WHAT PURPOSE?

28 A TO COMPARE THE GUN TO THE SANTA ANA METAL CASINGS

1 AND TO THE SHELL CASINGS THAT WERE FOUND LOCATED WITH THE
2 GUN.

3 MR. WAPNER: MAY I HAVE A MOMENT?

4 (PAUSE.)

5 MR. WAPNER: YOUR HONOR, I HAVE TWO OTHER ENVELOPES
6 PLUS AN LAPD EVIDENCE TAG AND A COUNTY OF LOS ANGELES
7 SHERIFF'S DEPARTMENT CRIMINALISTICS LAB RECEIPT.

8 MAY ALL OF THOSE COLLECTIVELY BE MARKED AS 5 FOR
9 IDENTIFICATION?

10 THE COURT: SO MARKED.

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1 Q BY MR. WAPNER: SHOWING YOU PEOPLE'S 5 FOR
2 IDENTIFICATION, DO YOU RECOGNIZE THAT?

3 A YES, I DO.

4 Q WHAT IS IT?

5 A IT'S A -- THE ONE LARGER MANILA ENVELOPE HAS
6 BEEN SEALED, SO I AM NOT OPENING IT AT THIS POINT, BUT
7 IT HAS THE MAGAZINE WHICH FITS IN HERE, WHICH CONTAINS
8 THE BULLETS FOR SHOOTING.

9 AND THE SMALLER ENVELOPE HAS A .30 CALIBER
10 BULLET AND A .30 CALIBER SHELL CASING INSIDE AND IT, TOO,
11 IS SEALED.

12 Q WHEN YOU SAY THE MAGAZINE THAT CONTAINS THE
13 BULLETS, CAN YOU EXPLAIN TO US HOW THAT WORKS?

14 A THE MAGAZINE IS A PORTION THAT CONTAINS, YOU
15 PUT THE LIVE ROUNDS OR BULLETS INSIDE OF IT, AND I BELIEVE
16 THIS PARTICULAR ONE HOLDS 30, AND THEN YOU FIT IT INSIDE
17 THE GUN THUSLY AND UPON CLOSING THE BREECH OR THE ACTION,
18 IT EJECTS ONE INTO A LIVE POSITION, ENABLING YOU TO PULL
19 THE TRIGGER AND FIRING THE BULLETS.

20 Q ONCE YOU PULL THE TRIGGER, DOES IT PUT ANOTHER
21 ROUND INTO THE CHAMBERS AUTOMATICALLY?

22 A YES, IT EJECTS THE EMPTY SHELL CASING AND
23 AUTOMATICALLY PUTS ANOTHER ONE INTO THE LIVE POSITION.

24 Q AFTER YOU TOOK THOSE ITEMS TO THE SHERIFF'S
25 CRIME LAB, DID YOU SEE THEM AGAIN?

26 A YES, I PICKED THEM UP BEFORE COURT YESTERDAY
27 MORNING FROM THE CRIME LAB.

28 Q AFTER YOU PICKED THEM UP FROM THE SHERIFF'S

1 CRIME LAB, WHAT DID YOU DO WITH THEM?

2 A I BROUGHT THEM TO COURT.

3 Q AND THAT WOULD INCLUDE THE RIFLE THAT IS PEOPLE'S
4 4, AS WELL AS THE SHELL CASINGS THAT ARE PEOPLE'S 3, AND
5 THE MAGAZINE AND SHELLS THAT ARE PEOPLE'S 5?

6 A THAT'S CORRECT.

7 MR. WAPNER: I HAVE NO FURTHER QUESTIONS.

8 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. YOU
9 MAY STEP DOWN.

10 MR. WAPNER: I HAVE NOTHING FURTHER AT THIS TIME,
11 YOUR HONOR.

12 THE COURT: WHAT DO YOU MEAN?

13 MR. WAPNER: I MEAN NOTHING FURTHER FOR THE REST
14 OF THE MORNING.

15 THE COURT: OH, I SEE.

16 MR. WAPNER: I AM NOT THROUGH.

17 MR. BARENS: GOD FORBID.

18 THE COURT: LADIES AND GENTLEMEN OF THE JURY, WE
19 WILL TAKE OUR CUSTOMARY RECESS UNTIL 1:30 THIS AFTERNOON.

20 THE SAME ADMONITION I HAVE BEEN GIVING YOU
21 THROUGHOUT THE TRIAL WILL BE STILL APPLICABLE. THANK
22 YOU.

23 (AT 11:50 A.M. A RECESS WAS TAKEN UNTIL
24 1:30 P.M. OF THE SAME DAY.)

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1 SANTA MONICA, CALIFORNIA; TUESDAY, MAY 12, 1987; 1:38 P.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS HERETOFORE NOTED.)
4

5 THE COURT: ARE YOU READY?

6 MR. WAPNER: YES. WE CALL DALE PIERCE.

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8 DALE R. PIERCE,
9 CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND TESTIFIED
10 AS FOLLOWS:

11 THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY
12 YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT
13 SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE
14 TRUTH, SO HELP YOU GOD?

15 THE WITNESS: I DO.

16 THE CLERK: PLEASE BE SEATED. PLEASE STATE AND
17 SPELL YOUR NAME FOR THE RECORD.

18 THE WITNESS: DALE, D-A-L-E, MIDDLE INITIAL R. LAST
19 NAME PIERCE, P-I-E-R-C-E.

20 THE CLERK: THANK YOU.

21
22 DIRECT EXAMINATION

23 BY MR. WAPNER:

24 Q MR. PIERCE, BY WHOM ARE YOU EMPLOYED?

25 A THE CITY OF BELL GARDENS.

26 Q WHAT DO YOU DO FOR THEM?

27 A POLICE LIEUTENANT. IN 1984, WHERE WERE YOU
28 WORKING?

1 A CITY OF GARDENA.

2 Q AND WHAT DID YOU DO FOR THE CITY OF GARDENA?

3 A I WAS A POLICE SERGEANT.

4 Q AND WERE YOU WORKING AS A POLICE SERGEANT
5 ON MAY THE 12TH OF 1984?

6 A YES.

7 THE COURT: 1980 WHEN?

8 MR. WAPNER: '4.

9 Q AND ON THAT DATE, WERE YOU WORKING -- WHAT
10 WAS YOUR ASSIGNMENT? WHAT DID YOU WORK THAT DAY?

11 A I WAS A WATCH SERGEANT FOR THE AFTERNOON SHIFT.

12 Q WHEN DID THE AFTERNOON SHIFT START?

13 A IT STARTED AT 3:00.

14 Q AND AS A WATCH SERGEANT, DID YOU STAY AT THE
15 STATION OR WERE YOU ACTUALLY OUT DRIVING A CAR IN THE
16 STREET?

17 A NO, IN THE FIELD, UNIFORMED PATROL.

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1 Q AND IN THAT CAPACITY, DID YOU MONITOR OR RECEIVE
2 A RADIO CALL REGARDING SHOTS FIRED?

3 A YES.

4 Q APPROXIMATELY WHAT TIME WAS THAT?

5 A APPROXIMATELY 23 MINUTES AFTER 8:00 IN THE EVENING
6 OR 8:23 P.M.

7 Q WHEN YOU HEARD THAT CALL, WERE YOU IN YOUR CAR?

8 A YES.

9 Q WHAT DID YOU DO?

10 A RESPONDED TO THE AREA.

11 Q WHAT AREA WAS IT?

12 A IT WAS THE AREA OF 132ND STREET AND HALLDALE
13 AVENUE WITHIN THE CITY OF GARDENA.

14 Q CAN YOU DESCRIBE THAT AREA, PLEASE.

15 A ALMOST EXCLUSIVELY COMMERCIAL-INDUSTRIAL AREA.

16 Q WHAT TYPE OF BUSINESSES ARE LOCATED THERE?

17 A LIGHT MANUFACTURING, WAREHOUSE-TYPE BUSINESSES.

18 Q WHEN YOU GOT TO THAT AREA, WHAT DID YOU NOTICE,
19 IF ANYTHING?

20 A I HEARD GUNSHOTS COMING FROM THE OUTSIDE OF
21 132ND STREET AND WEST OF HALLDALE.

22 Q I TAKE IT, IN YOUR CAPACITY AS A POLICE OFFICER,
23 YOU ARE FAMILIAR WITH THE SOUND OF GUNSHOTS?

24 A YES.

25 Q WHEN YOU HEARD THOSE GUNSHOTS, WHAT DID YOU DO?

26 A BEGAN CORDONING OFF THE AREA AND REQUESTING
27 ADDITIONAL UNITS, REQUESTING AIR SUPPORT AND BEGAN TO TRY
28 AND NARROW DOWN THE LOCATION FROM WHICH THE SHOTS WERE BEING

-2
1 FIRED.

2 Q HOW MANY GUNSHOTS DID YOU HEAR?

3 A SEVERAL BUT I DON'T RECALL MORE THAN THAT AS FAR
4 AS THE SPECIFIC NUMBERS.

5 Q AFTER YOU BEGAN CORDONING OFF THE AREA, WHAT DID
6 YOU DO?

7 A MY ATTENTION WAS DIRECTED TO A BUILDING AT
8 1518 WEST 132ND STREET WITHIN THE CITY OF GARDENA.

9 Q WHAT TYPE OF BUILDING WAS THAT?

10 A IT IS A LIGHT MANUFACTURING BUILDING WITH STUCCOED
11 WALLS ON THE FRONT AND AS I RECALL IT, WITH CORRUGATED
12 ALUMINUM WALLS TO THE REAR IN THE MANUFACTURING AREA OF IT.

13 Q WHAT WAS IT THAT DIRECTED YOUR ATTENTION TO THAT
14 PARTICULAR BUILDING?

15 A IT IS WHERE MYSELF AND ASSISTING OFFICERS HAD
16 NARROWED DOWN BEING THE LOCATION FROM WHICH THIS SOUND OF
17 GUNFIRE WAS COMING FROM.

18 Q HOW DID YOU DO THAT?

19 A THROUGH OUR SENSE OF HEARING.

20 Q JUST LISTENING TO WHERE THE SHOTS WERE COMING
21 FROM AND TRYING TO WALK CLOSER AND CLOSER TO IT.

22 A EXACTLY.

23 Q WHEN YOU NARROWED IT DOWN TO THAT LOCATION, WHAT
24 DID YOU DO?

25 A I WAS IN THE POSITION OF THE WEST DRIVEWAY OF
26 THE LOCATION, ILLUMINATING THE WEST SIDE OF THE BUILDING,
27 PROVIDING COVER FOR THE WEST AND NORTH SIDE.
28

1 Q IN THAT POSITION, WHAT DID YOU OBSERVE?

2 A I OBSERVED A MALE EXIT A DOORWAY ON THE WEST
3 SIDE OF THE BUILDING.

4 Q CAN YOU DESCRIBE THAT PERSON, PLEASE?

5 A HE WAS A BLACK MALE, STOCKY BUILD. HE WAS,
6 AS I RECALL, IN HIS LATE TWENTIES.

7 Q AND DID YOU SUBSEQUENTLY LEARN THAT PERSON'S
8 NAME?

9 A YES.

10 Q WHAT WAS HIS NAME?

11 A JAMES GRAHAM.

12 Q WHEN YOU SAW MR. GRAHAM COME OUT OF THE BUILDING,
13 WHAT HAPPENED WHEN HE CAME OUT OF THE BUILDING?

14 A HE WAS GIVEN CERTAIN DIRECTIONS TO FOLLOW,
15 WHICH HE FOLLOWED AND COMPLIED WITH AND SUBSEQUENTLY CONTACT
16 WAS MADE WITH HIM.

17 Q LET ME STOP YOU FOR A SECOND. WAS HE GIVEN
18 ANY DIRECTIONS IN ORDER TO GET HIM OUT OF THE BUILDING
19 OR DID HE JUST HAPPEN TO COME OUT?

20 A NO. HE WALKED OUT.

21 Q BUT HE WAS NOT ORDERED OUT BY BULLHORN OR
22 ANYTHING LIKE THAT?

23 A NO.

24 Q WHEN HE CAME OUT OF THE BUILDING, WHAT DIRECTIONS
25 WAS HE GIVEN?

26 A HE WAS GIVEN DIRECTIONS TO WALK TOWARD THE
27 POLICE CAR AND HE WAS SPECIFICALLY PLACED INTO WHAT, IN
28 MY OPINION, AT THAT TIME WAS A SAFER LOCATION TO MAKE

1 CONTACT WITH HIM.

2 Q WHICH WAS WHERE?

3 A WHICH WAS NORTH OF THE EXIT DOORWAY HE EXITED.

4 Q AND AFTER HE WAS PUT IN THAT LOCATION, WHAT
5 DID YOU DO?

6 A HE WAS SEARCHED AND CONTACTED.

7 Q DID YOU TALK TO HIM?

8 A YES.

9 Q DID YOU TRY TO FIND OUT WHAT IF ANYTHING HE
10 KNEW ABOUT THE SHOTS THAT WERE BEING FIRED?

11 A YES.

12 Q AND AFTER TALKING TO HIM, DID YOU GO SOME
13 PLACE?

14 A YES.

15 Q WHERE DID YOU GO?

16 A TO THE OFFICE AREA OF THAT BUILDING THAT HE
17 EXITED.

18 Q WHAT WAS IT THAT HE TOLD YOU WHEN YOU TALKED
19 TO HIM OUT THERE?

20 A THAT HE WAS FIRING THE GUN, THAT HE DIDN'T
21 KNOW IT WAS ILLEGAL TO SHOOT A GUN IN HIS OWN BUSINESS
22 AND THAT HE WAS JUST TAKING TARGET PRACTICE.

23 Q AND AFTER HE TOLD YOU THAT, WHAT DID YOU DO?

24 A I THEN ASKED HIM WHERE THE GUN WAS.

25 Q WHAT DID HE SAY?

26 A HE SAID, "IT IS ON TOP OF THE DESK IN THE
27 OFFICE."

28 Q WHAT DID YOU DO AFTER HE TOLD YOU THAT?

1 A I THEN ASKED HIM IF WE COULD GO IN AND OBTAIN
2 THAT WEAPON, WHICH HE SAID WE COULD.

3 AND THEN WE ENTERED -- I ENTERED THE BUILDING,
4 ENTERED THE OFFICE AREA AFTER SECURING THE REMAINDER OF
5 THE BUILDING.

6 I ENTERED THE OFFICE AREA AND RETRIEVED A
7 .30 CALIBER CARBINE.

8 Q WHAT DID YOU DO WITH IT AFTER YOU RETRIEVED
9 IT?

10 A I HANDED IT TO THE ASSIGNED OFFICER, WHICH
11 WAS OFFICER GERALD BRUCE AND TOLD HIM TO BOOK IT IN EVIDENCE.

12 Q SHOWING AN ITEM WE HAVE MARKED AS PEOPLE'S
13 4 FOR IDENTIFICATION, DO YOU RECOGNIZE THAT?

14 A IT APPEARS SIMILAR TO THE WEAPON THAT WAS
15 RECOVERED. WITHOUT REFERRING TO THE REPORT DOCUMENT,
16 DOCUMENTING THIS INCIDENT, I COULDN'T SAY POSITIVELY THAT
17 THIS IS THE SAME WEAPON.

18 Q DID YOU FILL OUT AN EVIDENCE -- OR DID SOMEONE
19 FILL OUT AN EVIDENCE TAG FOR IT?

20 A YES.

21 Q DID YOU, IN THE REPORT, MAKE NOTE OF THE SERIAL
22 NUMBER OF THE WEAPON?

23 A YES.

24 Q AND DO YOU HAVE A COPY OF THAT REPORT WITH
25 YOU?

26 A YES, I DO.

27 Q DO YOU HAVE THE SERIAL NUMBER MEMORIZED?

28 A NO, I DO NOT.

1 Q COULD YOU CHECK THAT TO CHECK YOUR REPORT?

2 A IT IS LISTED ON PAGE 2 OF THE FIVE-PAGE REPORT.
3 AND THE SERIAL NUMBER MATCHES. IT WOULD BE ONE AND THE
4 SAME AS ON THE WEAPON.

5 Q ALL RIGHT. HAVING CHECKED THE REPORT AND
6 THE SERIAL NUMBER, THAT WEAPON THAT YOU HAVE IN YOUR HAND
7 IS PEOPLE'S 4 IN THE PENALTY PHASE, IN FACT THE SAME WEAPON
8 THAT YOU RECOVERED THAT DAY?

9 A YES, IT IS.

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1 Q WERE THERE ANY ROUNDS OF AMMUNITION OR SPENT
2 CARTRIDGES THAT WERE RECOVERED AT THAT LOCATION?

3 A YES.

4 Q CAN YOU TELL US ABOUT THAT?

5 A THERE WERE A LIVE ROUND AND AN EXPENDED CASING
6 THAT WERE RECOVERED FROM A TRASH CAN THAT WAS LOCATED JUST
7 OUTSIDE THE ENTRANCE OR THE WEST DOOR OF THE BUILDING AND
8 IS THE SAME DOOR THAT I SAW THIS INDIVIDUAL EXIT.

9 Q WHAT WAS DONE WITH THOSE ITEMS?

10 A THEY WERE ALSO BOOKED INTO EVIDENCE.

11 Q AND DID THE GUN AT THE TIME THAT YOU RECOVERED
12 IT HAVE A MAGAZINE ATTACHED TO IT?

13 A YES.

14 Q WHAT WAS DONE WITH THAT?

15 A THAT WAS ALSO BOOKED INTO EVIDENCE.

16 Q SHOWING YOU ITEMS THAT COLLECTIVELY WE HAVE MARKED
17 AS PEOPLE'S 5 FOR IDENTIFICATION, DO YOU RECOGNIZE THOSE?

18 A NO, THERE ARE NO MARKINGS THAT WOULD SPECIFICALLY
19 IDENTIFY THOSE.

20 Q WERE THERE ANY INITIALS PLACED ON THEM AT THE
21 TIME THEY WERE BOOKED?

22 A AT THE TIME THEY WERE BOOKED, I AM SURE THEY WERE
23 BUT I DON'T SEE ANY INITIALS AT THIS TIME.

24 Q DID YOU OR OFFICER BRUCE SEAL THOSE ITEMS AT THE
25 TIME?

26 A OFFICER BRUCE SEALED THE ITEMS.

27 Q THERE ARE SOME RED SEALS ON THERE THAT SAY
28 "EVIDENCE" THAT ARE PLACED ON THERE AT GARDENA, OR WERE THOSE

-2
1 PLACED ON THERE BY SOMEONE ELSE?

2 A BY SOMEONE ELSE.

3 Q WAS THAT DONE, AS FAR AS YOU KNOW, AT THE CRIME
4 LAB AT THE TIME THE ANALYSIS IS DONE?

5 A IT IS ROUTINE FOR THEM TO DO THAT.

6 Q WHEN YOU SAY THAT OFFICER BRUCE SEALED THEM, WHAT
7 DOES THAT MEAN?

8 A HE TOOK THE FOLDING FLAP OF THE ENVELOPE AND
9 APPLIED MOISTURE AND SEALED IT IN THE SAME WAY YOU WOULD ANY
10 TYPE OF MAILING ENVELOPE.

11 Q WOULD YOU OPEN EACH OF THESE ENVELOPES BY JUST
12 CUTTING ACROSS THE TOP SO THAT THE SEALS THAT ARE THERE REMAIN
13 INTACT, OR ACROSS THE BOTTOM, IF IT IS EASIER TO DO THAT?

14 A I AM TAKING THE SMALLER OF THE TWO ENVELOPES,
15 CUTTING THE BOTTOM PORTION OF THE ENVELOPE, OPENING IT AND
16 REMOVING ONE LIVE ROUND THAT APPEARS TO BE .30 CALIBER CARBINE
17 AMMUNITION AND ONE EXPENDED ROUND, THAT ALSO WOULD APPEAR
18 TO BE OF THE SAME CALIBER, .30 CALIBER.

19 Q ARE THERE ANY MARKINGS ON EITHER ONE OF THOSE?

20 A THERE ARE MARKINGS ON BOTH.

21 Q AND WHAT DO THEY SAY?

22 A THEY ARE NOT RECOGNIZABLE BY MYSELF.

23 Q AND DO THEY APPEAR TO HAVE SOMEBODY'S INITIALS
24 ON THEM?

25 A IT APPEARS TO BE SOMEBODY'S INITIALS OR MARK.

26 Q CAN YOU PLACE THOSE ITEMS BACK INTO THE ENVELOPE?

27 A I AM PLACING BOTH THE LIVE AND EXPENDED SHELL
28 CASING IN A BROWN BAG BACK INTO THE ENVELOPE.

3
1 Q INCIDENTALLY, DOES THE BROWN BAG HAVE ANY MARKINGS
2 ON IT WHATSOEVER, A NAME OR ANYTHING LIKE THAT?

3 A IT DOESN'T APPEAR SO.

4 Q THANK YOU. YOU CAN PLACE THAT BACK IN THE ENVELOPE
5 WOULD YOU ALSO PLACE THAT BOTTOM PORTION THAT
6 YOU CUT OFF BACK INTO THE ENVELOPE.

7 (WITNESS COMPLIES.)

8 Q AND NOW CAN YOU OPEN THE LARGER ENVELOPE THAT
9 IS PART OF PEOPLE'S 5.

10 A ONCE AGAIN, I WILL CUT THE BOTTOM PORTION OR BOTTOM
11 SEAL OF THE ENVELOPE AND I AM REMOVING FROM IT ONE CLIP THAT
12 WOULD APPEAR TO FIT A .30 CALIBER CARBINE.

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1 Q AND ARE THERE ANY INITIALS ON THERE?

2 A THERE DO NOT APPEAR TO BE ANY INITIALS.

3 Q OKAY. DID YOU PLACE THAT BACK INTO THE ENVELOPE?

4 A TAKING THE PREVIOUSLY DESCRIBED CLIP AND PLACING
5 IT BACK IN THE ENVELOPE AND ALSO THE PORTION THAT WAS
6 CUT OFF AT THE BOTTOM OF THE ENVELOPE.

7 Q DID YOU RECOVER THE EXPENDED BULLET AND LIVE
8 ROUND FROM THE TRASH CAN OR DID SOMEBODY ELSE DO THAT?

9 A NO. OFFICER BRUCE DID THAT.

10 Q AND WAS THAT IN YOUR PRESENCE?

11 A YES.

12 Q AND WERE YOU AT THE STATION WHEN ALL OF THESE
13 ITEMS WERE BOOKED INTO EVIDENCE?

14 A I DON'T RECALL.

15 Q WHEN YOU WENT INSIDE THE BUSINESS AND RECOVERED
16 THE GUN, WHAT ELSE WAS INSIDE THAT BUSINESS?

17 A LARGE MACHINERY, SOME OFFICE FURNITURE, SOME
18 LARGE PIECES OF WOOD.

19 Q WERE THERE ANY CARS IN THERE THAT YOU WERE
20 ABLE TO SEE?

21 MR. BARENS: OBJECTION, RELEVANCY.

22 THE COURT: OVERRULED.

23 THE WITNESS: I DON'T RECALL.

24 Q BY MR. WAPNER: SHOWING YOU A PICTURE WE HAVE
25 MARKED AS 175 FOR IDENTIFICATION, ARE YOU ABLE TO RECOGNIZE
26 THE PERSON IN THAT PICTURE?

27 A NO.

28 MR. WAPNER: THANK YOU. NOTHING FURTHER.

1 THE COURT: ANY QUESTIONS?

2 MR. BARENS: YES, SIR.

3

4

CROSS-EXAMINATION

5

BY MR. BARENS:

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Q OFFICER PIERCE, WHEN YOU WENT INTO THE BUILDING
ON THAT OCCASION, APPROXIMATELY WHAT TIME WAS IT THAT
YOU ACTUALLY ENTERED THE PREMISES?

9

A PROBABLY VERY CLOSE TO 8:30.

10

Q JUST A FEW MOMENTS AFTER YOU ARRIVED?

11

A MINUTES, MINUTES AFTER.

12

13

Q MINUTES AFTER YOU ARRIVED? AND THIS IS AFTER
MR. GRAHAM HAD EXITED THE BUILDING?

14

A YES.

15

16

Q AND DID HE APPEAR TO BE GOING ANYWHERE IN
PARTICULAR WHEN HE EXITED THE BUILDING?

17

18

A HE APPEARED, AS I RECALL -- HE APPEARED TO
BE WALKING TOWARD THE STREET OR --

19

Q HE WASN'T RUNNING, WAS HE?

20

A VERY NONCHALANT.

21

Q CASUAL?

22

A CASUAL.

23

Q WAS HE ARMED?

24

A NO, SIR.

25

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Q DIDN'T HAVE ANY -- YOU GENTLEMEN, I SUPPOSE
AT SOME POINT OR ANOTHER, SEARCHED HIM OR FRISKED HIM
OR SOMETHING?

28

A YES.

1 Q AND HE WAS NOT ARMED AT ALL, WAS HE?

2 A NO.

3 Q ALL RIGHT. DID HE RESIST YOUR OVERTURE TO
4 SPEAK TO HIM?

5 A NOT AT ALL.

6 Q WAS HE COOPERATIVE WITH YOU?

7 A EXTREMELY.

8 Q HE TOLD YOU, AS I THINK YOU SAID, THAT HE
9 HAD BEEN IN THERE TARGET PRACTICING IN THE BUILDING?

10 A THAT'S WHAT HE STATED.

11 Q AND YOU ASKED HIM IF YOU COULD GO IN?

12 A YES.

13 Q HE COOPERATED WITH THAT REQUEST?

14 A YES.

15 Q NOW, ISN'T IT A FACT THAT BEFORE YOU WENT
16 IN, HE TOLD YOU RIGHT WHERE YOU COULD FIND THE GUN THAT
17 HE WAS SHOOTING?

18 A YES.

19 Q ALL RIGHT. WHEN YOU WENT IN, WAS THE GUN
20 IN PLAIN VIEW?

21 A YES.

22 Q HOW WAS IT LOCATED?

23 A I AM NOT SURE I UNDERSTAND YOUR QUESTION.

24 Q WAS IT LAYING ON A DESK OR WAS IT LYING AGAINST
25 THE WALL OR HOW WAS IT SITUATED, SIR?

26 A NO. IT WAS LYING ON TOP OF THE DESK, AS HE
27 DESCRIBED IT.

28 Q JUST AS HE TOLD YOU YOU WOULD FIND IT?

1 A YES.

2 Q WAS THE MAGAZINE AFFIXED TO IT?

3 A AS I RECALL, YES. IT WAS.

4 Q AND WERE THERE ANY SHELLS INSIDE THE MAGAZINE?

5 A AS I RECALL, NO, THERE WAS NOT.

6 Q IT LOOKED AS THOUGH WHOEVER HAD BEEN FIRING

7 THE GUN HAD EMPTIED THE MAGAZINE OF SHELLS AND THEN PLACED

8 THE GUN ON THE DESK?

9 A YOU COULD SURMISE THAT.

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1 Q NOW, YOU RETRIEVED SOME EXPENDED CARTRIDGES AT
2 SOME POINT, DID YOU NOT?

3 A I DID NOT.

4 Q SOMEONE ELSE DID?

5 A YES.

6 Q AND DID SOMEONE TELL THEM WHERE YOU COULD FIND
7 THOSE CARTRIDGES?

8 A THAT IS POSSIBLE BUT I DON'T -- I DON'T RECALL
9 SPECIFICALLY.

10 Q WERE THE CARTRIDGES ALL IN A TRASH CAN?

11 A YES.

12 Q AS THOUGH SOMEONE HAD GONE AROUND THE OFFICE
13 PREMISES, PICKED UP THE EXPENDED CARTRIDGES, ASSUMING THEY
14 DIDN'T SHOOT THEM OVER THE TRASH CAN SO THAT THEY CONVENIENTLY
15 DROPPED IN, SOMEONE HAD PICKED THEM UP AND PUT THEM IN THE
16 TRASH CAN?

17 A IT WOULD APPEAR SO.

18 Q THAT WAS DONE BEFORE YOU ARRIVED?

19 A APPARENTLY.

20 Q THEY WEREN'T HIDDEN? WERE THEY IN PLAIN VIEW
21 IN THE TRASH CAN?

22 A I DIDN'T SEE THEM. I --

23 Q OKAY, NOW DID YOU FIND ANYTHING IN THE BUILDING
24 SUGGESTIVE OF SOMEONE TAKING TARGET PRACTICE?

25 A A LARGE BLOCK OF WOOD.

26 Q COULD YOU DESCRIBE THE LARGE BLOCK OF WOOD, SIR.

27 A TO THE BEST OF MY RECOLLECTION, IT WAS A LARGE
28 PIECE OF MACHINED WOOD.

1 BY MACHINED, I MEAN THAT IT WAS NOT A TREMENDOUS
2 STUMP OR A LIMB BUT IT HAD BEEN CUT FROM A LARGE PIECE OF
3 WOOD.

4 Q COULD YOU GIVE ME AN APPROXIMATE DESCRIPTION OF
5 THE DIMENSIONS OF THAT PIECE OF WOOD, SIR.

6 A I WOULD SAY APPROXIMATELY 18 INCHES TO 2 FEET
7 IN HEIGHT AND I WOULD SAY 14 TO 18 INCHES IN DEPTH.

8 Q SO IT WOULD BE ROUGHLY RECTANGULAR SHAPED, TWO
9 FEET BY A FOOT AND A HALF, ROUGHLY?

10 A ROUGHLY.

11 Q ALL RIGHT. WAS THAT SITTING ON TOP OF SOMETHING
12 OR WAS IT, PER SE, ON THE FLOOR, SIR?

13 A MY RECOLLECTION IS THAT IT WAS ON THE FLOOR.

14 Q WAS IT SUPPORTED BY ANYTHING?

15 A I BELIEVE IT WAS AGAINST THE SOUTH WALL OF THE
16 BUILDING.

17 Q LAID UP AGAINST THE WALL LIKE WE MIGHT SEE AGAINST
18 THE WALL TO MY RIGHT, SO THAT IF I WERE TARGET PRACTICING
19 WITH IT, I GUESS I WOULD HAVE TO BE AIMING DOWN AT IT, I
20 SUPPOSE.

21 A I SUPPOSE YOU WOULD.

22 Q ALL RIGHT. DID YOU FIND ANY EVIDENCE THAT THERE
23 WERE ANY SHOTS THAT HAD BEEN FIRED AT THIS PIECE OF WOOD?

24 A THERE WERE INDENTATIONS IN THE WOOD THAT LED ME
25 TO BELIEVE THAT, YES, THAT THERE WERE SHOTS FIRED INTO THAT
26 PIECE OF WOOD.

27 Q DID YOUR OBSERVATION OF THE SCENE AND THE PIECE
28 OF WOOD AND WHERE IT WAS LOCATED SEEM TO VERIFY WHAT

1 MR. GRAHAM HAD TOLD YOU HE HAD BEEN DOING IN THERE?

2 A YES.

3 Q IT SEEMED LIKE HE TOLD YOU THE TRUTH?

4 A YES.

5 Q ALL RIGHT. DID YOU SEE ANY EVIDENCE OF ANY OTHER
6 BULLET HOLES IN THE VICINITY, IN THIS ROOM?

7 A NO.

8 Q OKAY. DID YOU OBSERVE HOW MANY MARKS SUGGESTED
9 TO YOU, IF IT DID, HOW MANY BULLET SHOTS IN THIS PIECE OF
10 WOOD THERE WERE?

11 A SEVERAL.

12 Q SEVERAL?

13 YOU HAD HEARD THE REPORTS OF SEVERAL SHOTS PRIOR
14 TO YOUR ENTRY INTO THE PREMISES, HAD YOU NOT?

15 A I HAD HEARD SEVERAL SHOTS.

16 Q IN FACT, YOU ENDED UP FINDING WHAT APPEARED TO
17 BE SEVERAL MARKS ON THIS PIECE OF WOOD THAT INDICATES SEVERAL
18 SHOTS.

19 A YES.

20 Q DID YOU SECURE THAT PIECE OF WOOD?

21 A NO, SIR.

22 Q YOU JUST LEFT IT AT THE SCENE?

23 A YES.

24 Q WAS THERE ANYONE ELSE IN THE BUILDING WHEN YOU
25 ARRIVED?

26 A NO.

27 Q HAVE YOU EVER SEEN JOE HUNT BEFORE?

28 A NO.

-4 1 Q ASSUMING THAT WE HAVE JOE HUNT TO MY RIGHT.

2 A ASSUMING THAT IS MR. HUNT, I HAVE NEVER SEEN HIM
3 BEFORE.

4 Q HE WAS DEFINITELY NOT THERE THAT NIGHT?

5 A DEFINITELY.

6 Q DID MR. GRAHAM EVER MENTION JOE HUNT TO YOU?

7 A NO.

IF 8

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1 Q HE DIDN'T SAY THAT JOE HUNT HAD ANYTHING TO DO
2 WITH HIM TAKING TARGET PRACTICE, DID HE?

3 A NO.

4 Q DID HE TELL YOU THAT JOE HUNT WORKED IN THAT
5 BUILDING?

6 A NO.

7 Q DID HE EVER TELL YOU JOE HUNT HAD EVER BEEN IN
8 THAT BUILDING?

9 A NO.

10 Q OKAY. DID JIM GRAHAM TELL YOU THIS WAS HIS GUN?

11 A I BELIEVE SO.

12 Q HE SAID, "THAT'S MY GUN"?

13 A YES.

14 Q OR WORDS TO THAT EFFECT?

15 A WORDS TO THAT EFFECT.

16 Q DID YOU EVER CHECK THE REGISTRATION ON THE GUN?

17 A IT WAS IN FACT, CHECKED. YES.

18 Q AND WHO WAS IT REGISTERED TO?

19 A THERE IS NO REGISTRATION.

20 Q OKAY. IT WAS JUST NOBODY'S GUN?

21 A IT IS NOT IN FILE WITHIN THE COMPUTER OR IT WAS
22 NOT AT THAT TIME.

23 Q OKAY. SO THE ANSWER IS THAT YOU JUST DON'T KNOW
24 IF IT IS REGISTERED TO ANYONE OR NOT?

25 A IT IS NOT REGISTERED WITHIN THE STATE OF
26 CALIFORNIA.

27 Q OKAY.

28 A AT THAT TIME.

1 Q OKAY. WAS THERE ANY EVIDENCE AT THE SCENE THAT
2 ANY OTHER PERSONS WERE USING THAT BUILDING PREMISES THAT YOU
3 WALKED INTO?

4 A FOR WHAT PURPOSE?

5 Q FOR ANY PURPOSE. COULD YOU SEE ANYBODY ELSE'S
6 DESK OR ANYTHING THAT INDICATED TO YOU THAT OTHER PERSONS
7 WERE UTILIZING THE PREMISES YOU WALKED INTO?

8 A IT WOULD HAVE BEEN CONSISTENT WITH MY OBSERVATIONS
9 THAT MORE THAN ONE INDIVIDUAL ACCESSED THAT BUILDING.

10 Q ALL RIGHT. WAS THERE A LIGHT ON IN THE BUILDING?

11 A YES.

12 Q WAS THE LIGHT ON ALREADY WHEN YOU WALKED IN THERE?

13 A YES.

14 Q WHEN YOU OBSERVED THE GENTLEMAN LEAVE THE BUILDING,
15 HE DIDN'T APPEAR TO SECURE THE BUILDING BEFORE HE EXITED?

16 A I DON'T BELIEVE SO.

17 Q OKAY. WHAT I AM LOOKING FOR, WHEN YOU WENT BACK
18 IN THERE, DID YOU NEED TO USE A KEY OR REQUIRE ASSISTANCE
19 TO GO THROUGH THE DOOR OR WAS THE DOOR JUST UNLOCKED AND YOU
20 WALKED IN?

21 A I RECALL IT WAS UNLOCKED.

22 Q WAS MR. GRAHAM ARRESTED FOR THIS?

23 A PHYSICALLY OR TECHNICALLY?

24 Q PHYSICALLY, SIR.

25 A NO.

26 Q HE WAS IN FACT, ISSUED A CITATION?

27 A THAT'S CORRECT.

28 Q WAS IT A MISDEMEANOR TYPE CITATION?

1 A INFRACTION TYPE.

2 Q NOT EVEN A MISDEMEANOR? AN INFRACTION. FOR THE
3 JURY'S REFERENCE, IF YOU KNOW, DO YOU KNOW THE DIFFERENCE
4 BETWEEN AN INFRACTION AND A MISDEMEANOR?

5 A YES.

6 Q COULD YOU EXPLAIN TO US WHAT THAT IS, SIR?

7 A AN INFRACTION CANNOT CARRY ANY TYPE OF JAIL
8 PENALTY.

9 Q I SEE. AND SO, WHAT YOU DO IS, WRITE HIM UP THIS
10 INFRACTION. IT APPEARS TO BE ON YOUR REPORT. IT LOOKS LIKE
11 BB-102MC?

12 A NO.

13 Q WHATEVER THAT IS?

14 A I THINK IF I MIGHT REVIEW THIS REPORT -- I CAN
15 PROBABLY GIVE YOU THE APPROPRIATE SECTION. I BELIEVE AS A
16 MATTER OF FACT, FROM RECALL, I CAN TELL YOU IT IS 3-5.102.
17 THAT IS THE MUNICIPAL CODE OF THE CITY OF GARDENA.

18 Q ALL RIGHT. WHAT WE HAVE JUST REFERRED TO, THESE
19 ARE INFRACTION TYPE SETTINGS WHERE YOU DON'T TAKE PEOPLE TO
20 JAIL TYPE OF THINGS?

21 A THAT'S CORRECT.

22 Q ALL RIGHT. AND AN INFRACTION I PRESUME SIR,
23 CARRIES ONLY SOME SORT OF A FINE?

24 A YES.

25 Q DO YOU KNOW WHAT THE FINE IS FOR THIS TYPE OF
26 THING?

27 A I HAVE NO IDEA.

28 Q ALL RIGHT. DO YOU KNOW WHAT THE MAXIMUM BAD THING

1 IS THAT COULD HAPPEN TO YOU FOR DOING THIS?

2 A THE MAXIMUM BAD THING I WOULD IMAGINE IS THE
3 RELEASE OF SOME MONETARY VALUE OF YOUR OWN. THE UPWARD
4 MAXIMUM, I HAVE NO IDEA.

5 Q PROBABLY NOT THE DEATH PENALTY? THANK YOU, SIR.

6 MR. WAPNER: NO FURTHER QUESTIONS.

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

8 MR. WAPNER: I WOULD LIKE TO CALL DETECTIVE ZOELLER,
9 JUST BRIEFLY.

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LESLIE H. ZOELLER,

RECALLED AS A WITNESS BY THE PEOPLE, HAVING BEEN PREVIOUSLY
SWORN, TESTIFIED FURTHER AS FOLLOWS:

FURTHER DIRECT EXAMINATION

BY MR. WAPNER:

Q DO YOU WANT TO STATE YOUR NAME FOR THE RECORD?

A LESLIE H. ZOELLER, Z-O-E-L-L-E-R.

Q DETECTIVE ZOELLER, IN THE COURSE OF YOUR WORK
AS THE INVESTIGATING OFFICER IN THIS CASE, DID YOU BECOME
FAMILIAR WITH A BUSINESS KNOWN AS WESTCARS OF NORTH AMERICA
AND MICROGENESIS OF NORTH AMERICA?

A YES.

Q DID YOU KNOW THAT THEY HAD A WAREHOUSE IN THE
CITY OF GARDENA?

A YES I DID.

Q DURING THE COURSE OF YOUR INVESTIGATION, DID YOU
EVER HAVE OCCASION TO GO DOWN THERE?

1 A I DID.

2 Q WHAT IS THE ADDRESS OF THE WAREHOUSE?

3 A 1518 WEST 132ND STREET, GARDENA.

4 MR. WAPNER: THANK YOU. NOTHING FURTHER.

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

6 DO YOU WANT TO FURNISH THE INFORMATION CONTAINED
7 IN THE NOTE FROM ONE OF THE JURORS?

8 MR. WAPNER: I WAS JUST ABOUT TO, YOUR HONOR.

9 THE COURT: ALL RIGHT.

10 MR. WAPNER: WE CALL ROBERT HAWKINS.

11

12

ROBERT HAWKINS,

13

CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND TESTIFIED

14

AS FOLLOWS:

15

THE CLERK: YOU DO SOLEMNLY SWEAR THE TESTIMONY YOU

16

MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL

17

BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO

18

HELP YOU GOD?

19

THE WITNESS: I DO.

20

THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND SPELL

21

YOUR NAME FOR THE RECORD.

22

THE WITNESS: ROBERT HAWKINS, H-A-W-K-I-N-S.

23

24

DIRECT EXAMINATION

25

BY MR. WAPNER:

26

Q MR. HAWKINS, BY WHOM ARE YOU EMPLOYED?

27

A I AM EMPLOYED BY THE LOS ANGELES COUNTY SHERIFF'S

28

DEPARTMENT.

1-1

1 Q AND WHAT DO YOU DO FOR THEM?

2 A I AM A DEPUTY SHERIFF, FIREARMS EXAMINER ASSIGNED
3 TO THE SCIENTIFIC SERVICE BUREAU.

4 Q HOW LONG HAVE YOU BEEN WORKING WITH THE FIREARMS
5 BUREAU?

6 A AS A FIREARMS AND TOOL MARKS EXAMINER, I HAVE
7 BEEN ASSIGNED A LITTLE OVER 11 YEARS TO THE CRIME LABORATORY.

8 Q WHAT IS A FIREARMS AND TOOL MARK EXAMINER?

9 A A FIREARMS AND TOOL MARK EXAMINER IS A PERSON
10 WHO EXAMINES FIREARMS AND TOOL MARK EVIDENCE AND RENDERS
11 OPINIONS ON THAT EVIDENCE AND THEN TESTIFIES AS TO HIS
12 OPINIONS.

13 Q AND YOU HAVE BEEN DOING THAT FOR SOME 11 YEARS?

14 A A LITTLE OVER 11 YEARS, YES.

15 Q CAN YOU RELATE TO THE JURY BRIEFLY YOUR QUALIFI-
16 CATIONS TO SERVE IN THAT CAPACITY?

17 A FROM 1968 TO 1971, I SERVED AS A FIREARMS
18 INSTRUCTOR WITH THE LOS ANGELES COUNTY SHERIFF'S TRAINING
19 ACADEMY.

20 FROM 1970 TO THE PRESENT DATE, I HAVE SERVED
21 AS A FIREARMS INSTRUCTOR WITH PASADENA CITY COLLEGE.

22 I DO HAVE A STATE OF CALIFORNIA TEACHING CREDENTIAL
23 AND THE SUBJECT I TEACH IS FIREARMS, TOOL MARKS AND TEAR
24 GAS.

25 I AM A MEMBER OF THE ASSOCIATION OF FIREARMS
26 AND TOOL MARK EXAMINERS, WHICH IS A WORLDWIDE ORGANIZATION.
27 I HOLD THE DISTINGUISHED MEMBERSHIP IN THAT ORGANIZATION.

28 I DO ATTEND SEMINARS AND I GIVE PAPERS AT

1 THE ORGANIZATION MEETINGS.

2 I HAVE ATTENDED THE F.B.I. ACADEMY ON TWO
3 SEPARATE OCCASIONS AND THE SUBJECTS TAUGHT AT THE ACADEMY
4 WHEN I ATTENDED WERE DISTANCE DETERMINATION, POWDER PATTERNING
5 AND CRIME SCENE INVESTIGATION.

6 I ALSO HAVE ATTENDED THE SMITH AND WESSON
7 ACADEMY IN SPRINGFIELD, MASSACHUSETTS, THE ARMORY SCHOOL
8 THERE. I HAVE TOURED THE SMITH AND WESSON FACTORY AND
9 OTHER FACTORIES THAT MANUFACTURE FIREARMS AND AMMUNITION
10 COMPONENTS.

11 I HAVE TESTIFIED AS A FIREARMS EXAMINER AS
12 AN EXPERT ON THE STAND 300 TIMES NOW AND I HAVE SERVED
13 AS A DEPUTY SHERIFF FOR 28 YEARS.

14 Q DO YOU HAVE ANY IDEA OF APPROXIMATELY HOW
15 MANY ITEMS YOU HAVE LOOKED AT TO EXAMINE THEM FOR TOOL
16 MARKS AND THINGS OF THAT NATURE?

17 A I BELIEVE I SPOKE WITH YOU A COUPLE OF HOURS
18 AGO, I DID CHECK AND AS OF LAST DECEMBER, THE ESTIMATED
19 AMOUNT OF EXAMINATIONS I PERFORMED WERE APPROXIMATELY
20 13,000 CARTRIDGE CASE EXAMINATIONS.

21 I BELIEVE THERE WERE A LITTLE OVER 20,000
22 FIREARMS I HAVE EXAMINED AND APPROXIMATELY 11,500 BULLET
23 EXAMINATIONS.

24 Q WHEN YOU DO THESE EXAMINATIONS, WHAT IS THE
25 PURPOSE OF DOING THESE EXAMINATIONS, FIREARM AND TOOL
26 MARK EXAMINATIONS?

27 A WELL, THE PURPOSE OF EXAMINING FIREARMS IS
28 FOR MANY REASONS: THE FUNCTION OF THE FIREARM, THE DETERMINATION

1-3

1 AS TO THE SAFE HANDLING OF THE FIREARM, THE SAFETIES,
2 AND THINGS LIKE THAT.

3 AS FAR AS BULLET AND CARTRIDGE CASE EXAMINATION,
4 NORMALLY, WHAT WE ARE CONCERNED WITH IS DETERMINING WHETHER
5 A PARTICULAR CARTRIDGE CASE OR A PARTICULAR BULLET WAS
6 FIRED IN A PARTICULAR FIREARM, THEN WE RENDER THE OPINION,
7 WAS IT FIRED IN THAT FIREARM, WAS IT NOT FIRED IN THAT
8 FIREARM OR CAN WE GIVE A POSITIVE OPINION.

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1 Q IN THIS CASE, DID YOU EXAMINE SOME EXPENDED
2 SHELL CASINGS AND A PARTICULAR FIREARM TO SEE IF THOSE
3 CASINGS HAD IN FACT BEEN FIRED FROM THE SAME FIREARM?

4 A YES, I DID.

5 Q WHEN DID YOU DO THAT?

6 A THE 8TH, WHICH WAS FRIDAY, THE 8TH OF MAY
7 OF THIS YEAR.

8 Q I WANT TO SHOW YOU THREE EXHIBITS THAT ARE
9 LABELED -- MAYBE I WILL AND MAYBE I WON'T -- THEY ARE
10 LABELED 3, 4 AND 5 FOR IDENTIFICATION, AND ASK IF YOU
11 RECOGNIZE THESE.

12 A I EXAMINED PEOPLE'S 4 AND PEOPLE'S 5, I AM
13 REMOVING THE TWO ITEMS FROM THE ENVELOPE. I DID EXAMINE
14 THEM.

15 AND PEOPLE'S, ALSO LABELED PEOPLE'S 5, THE
16 MAGAZINE WAS EXAMINED.

17 AND PEOPLE'S 3, THE ENVELOPE CONTAINING MY
18 WRITING, I DID EXAMINE AND I CAN OPEN UP THE PAPER BAG
19 AND EXPLAIN WHAT IS IN INSIDE.

20 Q OKAY.

21 A INSIDE THE BAG, PEOPLE'S 3, ARE 11 .30 CARBINE
22 CALIBER EXPENDED CARTRIDGES, WHICH I DID EXAMINE, AND
23 AN ENVELOPE WHICH STILL HAS MY SEAL, WHICH CONTAINS LEAD
24 FRAGMENTS, WHICH I DID EXAMINE.

25 Q FIRST OF ALL, THE TWO ENVELOPES THAT ARE PEOPLE'S 3,
26 AND I GUESS BOTH OF THE ENVELOPES THAT ARE PEOPLE'S 5,
27 HAVE RED SEALS ON THE BACK OF THEM.

28 A THAT IS CORRECT.

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1 Q DO YOU KNOW HOW THEY GOT THERE?

2 A I PUT THEM ON THERE.

3 Q WHEN DID YOU DO THAT?

4 A THE 8TH OF MAY, FRIDAY.

5 Q AND WHEN YOU RECEIVED EACH OF THOSE ENVELOPES,
6 DID THEY HAVE ANY TYPE OF RED SEAL ON THEM?

7 A NOT THIS EVIDENCE SEAL, NO.

8 Q WERE THEY SEALED IN SOME FASHION?

9 AS NOT WHEN I RECEIVED THEM, NO.

10 Q THERE ARE TWO ITEMS IN THE SMALLER ENVELOPE
11 THAT IS PART OF PEOPLE'S 5, ONE IS AN EXPENDED SHELL CASING
12 AND ONE IS A LIVE ROUND.

13 A I WILL REMOVE THEM FROM THE ENVELOPE, YES.
14 ONE IS A ROUND OF AMMUNITION AND ONE IS AN
15 EXPENDED CARTRIDGE CASE.

16 Q DO THEY HAVE SOME INITIALS ON THERE?

17 A YES.

18 Q DO YOU RECOGNIZE THEM?

19 A YES.

20 Q WHOSE INITIALS ARE THEY?

21 A THOSE ARE MINE.
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1 Q WHEN YOU RECEIVED ALL OF THESE ITEMS, WERE YOU
2 AT THE SHERIFF'S FIREARMS LAB?

3 A YES I WAS.

4 Q WHERE IS THAT LOCATED?

5 A IT IS LOCATED AT 2020 BEVERLY BOULEVARD IN
6 LOS ANGELES.

7 Q WHEN YOU GOT THOSE ITEMS, WHAT DID YOU DO?

8 A I RECEIVED THE ITEMS. I EXAMINED THE .30 CALIBER
9 CARBINE PLAINFIELD RIFLE. I EXAMINED THE ITEMS OF EVIDENCE
10 IN PEOPLE'S 5 AND PEOPLE'S 3.

11 I DETERMINED THE BRAND OR THE MAKER'S HEAD STAMP
12 ON THE EXPENDED CARTRIDGE CASES.

13 Q WHAT WAS THE BRAND OR HEAD STAMP?

14 A REMINGTON PETERS AND THERE WAS A P.S. BRAND WHICH
15 I BELIEVE IS P.S.82, WHICH IS AN ARSONAL LOCATED IN KOREA.

16 Q WHY DID YOU EXAMINE THE BULLETS TO DETERMINE WHAT
17 KIND OF BULLETS?

18 A I WANTED TO TEST FIRE THE CARBINE AND I WANTED
19 TO USE THE AMMUNITION, THE SAME BRAND OF AMMUNITION THAT WAS
20 IN THE EVIDENCE.

21 Q AFTER EXAMINING THE BULLETS, DID YOU SELECT SOME
22 TYPE OF AMMUNITION TO USE?

23 A I SELECTED REMINGTON PETERS AND WINCHESTER, SINCE
24 I HAD NO P.S.82 HEAD STAMP TO TEST FIRE.

25 Q WHERE DID YOU GET THE AMMUNITION TO TEST FIRE
26 WITH?

27 A IN THE LAB, WE HAVE AN INVENTORY OF AMMUNITION
28 FOR TEST FIRING. AND I USED THE AMMUNITION IN THE INVENTORY.

1 Q AND AFTER YOU GOT THIS INVENTORY OF AMMUNITION,
2 DID YOU TEST FIRE THE GUN?

3 A YES I DID.

4 Q HOW WAS THAT DONE?

5 A I USED LIKE I SAY, TWO ROUNDS OF AMMUNITION. ONE
6 WAS THE WINCHESTER. THE OTHER ONE WAS THE REMINGTON PETERS.

7 I TOOK THE RIFLE IN THE TEST FIRING ROOM. I FIRED
8 ONE ROUND INTO THE COLLECTOR TO RECOVER A CARTRIDGE CASE.

9 I THEN FIRED THE OTHER ROUND INTO THE WATER
10 RECOVERY TANK TO RECOVER A BULLET FROM THE FIREARM.

11 Q WHEN YOU SAY "RECOVER A BULLET," COULD YOU HOLD
12 UP THE LIVE ROUND AND JUST EXPLAIN TO US BRIEFLY WHAT THE
13 DIFFERENCE IS BETWEEN RECOVERING A CARTRIDGE CASE AND
14 RECOVERING THE BULLET?

15 A A ROUND OF AMMUNITION IS THE ENTIRE BULLET
16 CARTRIDGE CASE, POWDER AND PRIMER.

17 ONCE IT IS FIRED, THE BULLET PORTION WHICH IS
18 THE TOP PORTION HERE, LEAVES THE CARTRIDGE CASE AND OF COURSE,
19 EXITS THE GUN THROUGH THE MUZZLE.

20 THEN WHAT REMAINS IS THE EXPENDED CARTRIDGE CASE
21 AND WHEN I RECOVER A BULLET, I FIRED THE BULLET INTO THE WATER
22 TO RECOVER IT UNDAMAGED.

23 Q WERE YOU ABLE TO MAKE ANY COMPARISON BETWEEN THE
24 BULLET THAT YOU FIRED AND ANYTHING THAT YOU HAD IN FRONT OF
25 YOU IN PEOPLE'S 3 OR 5?

26 A THE BULLET, NO.

27 Q WHY NOT?

28 A THE ONLY THING THAT I COULD FIND THAT CLOSELY

1 RESEMBLED THE BULLET, WAS LEAD FRAGMENTS.

2 AND IT APPEARED TO ME TO BE JUST FRAGMENTS OF
3 A ROUND OF AMMUNITION, OF A BULLET. BUT THERE WAS NO OUTSIDE
4 MATERIAL OR JACKET MATERIAL TO BE COMPARED AT ALL.

5 Q AND THE TWO EXPENDED SHELL CASINGS THAT YOU
6 RECOVERED FROM TEST FIRING THE RIFLE, WHAT DID YOU DO WITH
7 THOSE?

8 A I PLACED THEM IN THE LAB ENVELOPE FOR TEST FIRES
9 AND KEPT THEM AT MY DESK AND USED THEM FOR COMPARISON.

10 Q WHAT DID YOU COMPARE THEM TO?

11 A I COMPARED THEM TO THE EXPENDED CARTRIDGE CASE
12 IN PEOPLE'S 5 AND THE 11 EXPENDED CARTRIDGE CASES IN PEOPLE'S 3.

13 Q AND DID YOU FORM AN OPINION AFTER MAKING THAT
14 COMPARISON?

15 A I DID.

16 Q WHAT WAS THAT OPINION?

17 A IN MY OPINION, THE 11 CARTRIDGE CASES FROM
18 PEOPLE'S 3, WERE FIRED IN THE .30 CALIBER CARBINE PLAINFIELD
19 RIFLE WHICH I LABELED ITEM 1 WHICH WAS SUBMITTED TO ME ON
20 THIS CASE.

21 ALSO MY OPINION IS THAT THE EXPENDED CARTRIDGE
22 CASE FROM PEOPLE'S 5 WAS FIRED IN THE .30 CARBINE CALIBER
23 PLAINFIELD RIFLE THAT I HAD LABELED PEOPLE'S 1, WHICH IS IN
24 FACT, PEOPLE'S 4 IN THIS MATTER. WHICH I HAD LABELED
25 PEOPLE'S 1, WHICH IS PEOPLE'S 4.

26 Q AND ON WHAT IS YOUR OPINION BASED?

27 A MY OPINION IS BASED ON THE FACT THAT ON THE TEST
28 FIRED EXPENDED CARTRIDGE CASE WHICH WERE THE KNOWN SAMPLES

1 FROM THE FIREARM, I COULD OBSERVE NUMEROUS MARKS ON BOTH THE
2 HEAD OF THE CARTRIDGE CASE AND THE RIM OF THE CARTRIDGE CASE
3 WHICH IN MY OPINION, WERE INDIVIDUAL TO THAT PARTICULAR
4 FIREARM.

5 THESE MARKS REPEATED ON BOTH TEST FIRES TO A GREAT
6 DEGREE, ALTHOUGH NOT EXACTLY. AND THESE MARKS WERE FOUND
7 ON EACH OF THE EXPENDED CARTRIDGE CASES, THE 11 FROM PEOPLE'S 3
8 AND THE ONE FROM PEOPLE'S 5.

9 AND THEY DID REPEAT TO A DEGREE THAT I FELT THEY
10 COULD HAVE BEEN FIRED IN THIS PARTICULAR FIREARM, PEOPLE'S 4
11 AND NO OTHER FIREARM.

12 Q AND NO OTHER FIREARM AT ALL?

13 A NO OTHER FIREARM AT ALL.

14 Q WOULD YOU EXPLAIN TO US HOW IT IS -- WELL, WHAT
15 IS ON THE EXPENDED SHELL CASINGS THAT YOU USED, AS A BASIS
16 FOR COMPARISON? ARE THERE MARKS OF SOME SORT ON THERE?

17 A YES.

18 Q CAN YOU EXPLAIN TO US HOW IT IS THAT THOSE MARKS
19 COME TO BE LEFT ON THOSE CASINGS?

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1 Q ALL RIGHT. WHEN A ROUND OF AMMUNITION IS
2 FIRED IN A FIREARM, THIS ROUND IS PLACED INTO THE CHAMBER
3 OF THE FIREARM. AND IT IS HELD INTO THE CHAMBER OF THE
4 FIREARM BY A BOLT AT THE BASE OF THIS CARTRIDGE CASE.
5 SO WHAT HAPPENS IS A FIRING PIN STRIKES THE IGNITER OR
6 THE PRIMER AT THE BASE OF THIS ROUND OF AMMUNITION LOCATED
7 AT THE BACK. NOW, THIS FIRING PIN STRIKES IT AND CRUSHES
8 THE MATERIAL IN IT AND CAUSES IT TO BURN. THE BURNING
9 THEN SENDS FLAME INTO THE POWDER INSIDE THE CARTRIDGE
10 CASE.

11 THIS POWDER BURNS AND CREATES TREMENDOUS PRESSURE.
12 THE PRESSURE BUILDS UP IN THIS CASE TO SOMEWHERE BETWEEN
13 25- TO 50,000 POUNDS PER SQUARE INCH, NOT QUITE 50,000
14 POUNDS BUT SOMEPLACE IN BETWEEN THERE.

15 THIS PRESSURE IS IN ALL DIRECTIONS INSIDE
16 THE CHAMBER. IN OTHER WORDS, THE PRESSURE IS PUSHING
17 BACK, SIDWAYS, FORWARD, EVERYWHERE.

18 IT CAUSES THE BULLET WHICH FOLLOWS THE PATH
19 OF LEAST RESISTANCE, DOWN THE BORE. SO IT SPEEDS THE
20 BULLET OUT BECAUSE THERE IS A WAY FOR THE PRESSURE TO
21 BE RELEASED DOWN THE BORE.

22 THE PRESSURE THROUGHOUT THE CHAMBER CAUSES
23 THE CARTRIDGE CASE TO BE FORMED AGAINST THE WALLS AND
24 AGAINST THE BOLT FACE THAT IS HOLDING IT IN.

25 NOW, WHAT HAPPENS IS SOMETHING LIKE CREATING
26 A COIN. WHEN YOU STAMP SOMETHING, YOU CREATE AN IMAGE
27 ONTO THE SURFACE YOU STAMP.

28 THIS PRESSURE CAUSES THE REVERSE IMAGE OF

22B-2

1 ANY IMPERFECTION IN THE CHAMBER OR ON THE BOLT FACE TO
2 BE PRESSED INTO THE CARTRIDGE CASE.

3 NOW, AT THE SAME TIME, AS THE BULLET LEAVES
4 THE CHAMBER AND GOES DOWN THE BARREL TOWARD THE MUZZLE,
5 THERE IS A LITTLE HOLE IN THE BOTTOM OF THE BARREL WHERE
6 THIS TREMENDOUS PRESSURE SQUIRTS DOWN INTO THE HOLE AND
7 DRIVES A PISTON BACKWARDS WHICH KNOCKS THIS BOLT BACK.

8 SIMPLY STATED, THERE IS A LITTLE MORE TO IT
9 THAN THAT BUT IT DRIVES THE BOLT BACKWARDS.

10 AND THIS ACTION THEN WORKS ON REMOVING THE
11 CARTRIDGE CASE FROM THE CHAMBER BECAUSE THERE IS A LITTLE
12 CLAW OR A LITTLE HOOK, AN EXTRACTOR AS IT IS CALLED, THAT
13 HOLDS ON TO THE RIM OF THIS CARTRIDGE CASE RIGHT AT THE
14 BASE. THERE IS A LITTLE RIM AT THE BASE. THIS EXTRACTOR
15 IS PART OF THE BOLT AND WHEN THE PISTON DRIVES THE BOLT
16 BACKWARDS, IT GRABS THIS CARTRIDGE CASE AND DRAGS IT OUT
17 OF THE CHAMBER.

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1 AS IT DRAGS IT OUT, IT STRIKES ANOTHER PIECE
2 OF THE FIREARM WHICH IS STATIONARY, WHICH IS CALLED AN
3 INJECTOR, AND IT STRIKES THE RIM OF THE CARTRIDGE CASE
4 AND THROWS IT OUT OF THE FIREARM.

5 NOW, ALL OF THESE ACTIONS MARK THE CARTRIDGE
6 CASE. THE EXTRACTOR MARKS IT. THE EJECTOR MARKS IT.
7 ANY IMPERFECTION IN THE BOLT FACE MARKS IT. ANY IMPERFECTION
8 INSIDE THE CHAMBER AS IT IS BEING DRAGGED OUT, MARKS IT,
9 PLUS AS IT IS COMING OUT, THE BOLT TURNS AND AS IT TURNS,
10 IF THERE IS ANY IMPERFECTION ON THE RIM WHERE THE EXTRACTOR
11 IS, IT CAUSES MARKS ON THE RIM OF THE CARTRIDGE CASE.

12 SO ALL OF THESE ACTIONS AND ALL OF THESE PRESSURES
13 CAUSE MARKS ON A CARTRIDGE CASE WHICH CAN BE REPEATED.

14 I SAY "CAN BE" BECAUSE NOTHING IS NECESSARILY
15 ALWAYS REPEATED.

16 BUT IN THIS CASE, THE REPETITION WAS SUCH
17 THAT I COULD FIND MARKS ON EACH EXPENDED CARTRIDGE CASE
18 THAT CORRESPONDED TO MARKS FOUND ON THE TEST FIRING.

19 Q IS EACH GUN AND EACH -- THE PART OF EACH GUN
20 IN TERMS OF THE MARKS IT MAY HAVE ON IT, UNIQUE?

21 A YES.

22 MR. CHIER: THERE IS NO FOUNDATION FOR THAT, YOUR
23 HONOR.

24 THE COURT: OBJECTION OVERRULED.

25 MR. CHIER: HE DIDN'T TESTIFY TO ANOTHER GUN LIKE
26 THIS. HE CAN'T SAY THAT.

27 THE COURT: OVERRULED. GO AHEAD.

28 Q BY MR. WAPNER: DID YOU WANT TO EXPLAIN THE

1 BASIS FOR THAT?

2 A YES.

3 IN THE MANUFACTURING PROCESS OF FIREARMS,
4 EACH PART IS MANUFACTURED AND EACH PART IS MANUFACTURED
5 BY A TOOL AND THIS TOOL, ALTHOUGH IT CREATES ONE PART
6 AFTER THE OTHER, THE TOOL ITSELF WEARS DOWN AND THE METAL
7 THAT IT IS WORKING ON RESISTS IN DIFFERENT WAYS SO YOU
8 GET SOME CHATTERING, YOU GET SOME INDIVIDUALITY IN THE
9 MARKS CAUSED BY THESE TOOLS UNDER MICROSCOPIC OBSERVATION,
10 NOT NECESSARILY SEEN BY THE NAKED EYE.

11 ALSO, SOME PARTS ARE FITTED AND SOME PARTS
12 ARE FILED AND SOME PARTS ARE DAMAGED AND SOME PARTS GET
13 WORN AND AS TIME GOES ON, SOME OF THE ORIGINAL MARKS ON
14 THE SURFACES WEAR AWAY BUT NEW MARKS ARE ADDED BY EITHER
15 WEAR OR ABUSE OR USE OR RUST OR WHATEVER WE HAVE.

16 SO THAT A FIREARM, IN ESSENCE, LOSES A LITTLE
17 INDIVIDUALITY AS THE YEARS GO ON AND USE GOES ON BUT IT
18 GAINS INDIVIDUALITY AND THESE INDIVIDUAL MARKS ARE WHAT
19 WE LOOK FOR.

20 ALSO, THE FIRING PIN RIDES IN A HOLE DOWN
21 THE CENTER OF THE BOLT AND THE BOLT IS DRILLED AND I FIND
22 THAT MANY TIMES IN DRILLING -- IN FACT, MOST TIMES IN
23 DRILLING, THE DRILLING BREAKS THROUGH AT THE END AND LEAVES
24 A LITTLE BIT OF A BROKEN AREA OR AN UNEVEN AREA RIGHT
25 AT THE FIRING PIN HOLE OPENING AND UNDER PRESSURE, THE
26 FLOW OF THE BRASS INTO THIS HOLE CREATES AN INDIVIDUAL
27 FACE, SO TO SPEAK, ON THE CARTRIDGE CASE HEAD.

28 Q WHEN YOU EXAMINED THE BULLET, THE EXPENDED

1 SHELL CASING IN THIS CASE, WHAT WERE THE MARKS OR POINTS
2 OF SIMILARITY THAT YOU USED TO FORM THE OPINION THEY CAME
3 FROM THIS GUN?

4 A FIRST OF ALL, I OBSERVED THE BREECH OR THE
5 BREECH FACE IMPRESSION, WHICH IS THE BOLT FACE, THE AREA
6 AROUND THE FIRING PIN ON THE PRIMER.

7 Q THE BREECH FACE IS WHAT YOU DESCRIBED BEFORE
8 AS HOLDING ACTUALLY THE BULLET IN?

9 A YES. THE BREECH FACE OR THE BOLT FACE, THAT
10 IS THE PART THAT IS HOLDING THE CARTRIDGE CASE IN.

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1 Q IS THAT PART OR PARTS WITH THIS STAMPING EFFECT
2 YOU DESCRIBED?

3 A YES.

4 Q WHEN YOU EXAMINED THAT, WHAT DID YOU FIND?

5 A I EXAMINED THAT AND I FOUND IRREGULARITIES AROUND
6 THE FIRING PIN IMPRESSION. THE FIRING PIN LEAVES GENERALLY
7 A ROUNDED IMPRESSION. AROUND THAT, I FOUND IRREGULARITIES
8 THAT FORMED INTO THE FIRING PIN HOLE. I FOUND THIS
9 IRREGULARITY OR THIS FACE, AS I CALL IT, REPEATED, ALTHOUGH
10 NOT EXACTLY BUT THE FORM REPEATED ON EACH CARTRIDGE CASE.

11 I FOUND SEVERAL --

12 THE COURT: MAY I INTERRUPT? I THINK WE HAVE A SMALL
13 EMERGENCY. WE WILL TAKE A 15-MINUTE RECESS AT THIS TIME.

14 THE WITNESS: YES, YOUR HONOR.

15 THE COURT: ALL RIGHT. WE WILL TAKE A 15-MINUTE RECESS,
16 LADIES AND GENTLEMEN.

17 MR. WAPNER: MAY WE APPROACH?

18 THE COURT: YES.

19 (THE FOLLOWING PROCEEDINGS WERE HELD

20 AT THE BENCH:)

21 THE COURT: THE JUROR HAS A BELLYACHE.

22 MR. BARENS: OH, IT IS THE MAN.

23 MR. WAPNER: THAT IS THE ONLY REASON I WANTED TO
24 APPROACH WAS TO SEE THAT NOTE.

25 MR. BARENS: YOU KNOW, I JUST DID NOT THINK. I DID
26 TEAR IT. I DIDN'T MEAN TO DO THAT.

27 THE COURT: WE DON'T NEED THAT, DO WE?

28 MR. WAPNER: IT IS UP TO THE COURT.

1 THE COURT: I DON'T THINK SO.

2 MR. WAPNER: I JUST WANTED TO KNOW THE REASON.

3 MR. CHIER: YOUR HONOR, I HAVE A MATTER.

4 THE COURT: YES.

5 MR. CHIER: I ANTICIPATE THE PEOPLE ARE GOING TO PUT
6 MR. SWARTOUT ON TODAY.

7 MR. WAPNER: YES.

8 MR. CHIER: I HAVE A MOTION IN THE NATURE OF A MOTION
9 IN LIMINE TO PROHIBIT THE TESTIMONY OF MR. SWARTOUT OR ANY
10 OF THE POLICE OFFICERS THAT INTERVIEWED MR. SWARTOUT, UNTIL
11 THERE HAS BEEN SOME PRIMA FACIE SHOWING BY INDEPENDENT
12 EVIDENCE OF THE EXISTENCE OF THE CONSPIRACY BETWEEN
13 MR. PITTMAN AND MR. HUNT, EITHER THE CONSPIRACY ALLEGED IN
14 THE INFORMATION CONCERNING MR. LEVIN, OR IF IT BE A DIFFERENT
15 CONSPIRACY THAT THE PEOPLE CLAIM, PRIMA FACIE EVIDENCE OF
16 THAT CONSPIRACY, WHICH I THINK WOULD BE A PRECURSOR TO THE
17 RECEIPT OF THIS EVIDENCE, YOUR HONOR.

18 IN GOING THROUGH THE MATERIALS PROVIDED US BY
19 MR. WAPNER, THERE APPEARS TO BE ABSOLUTELY NO EVIDENCE WHICH
20 WOULD SUGGEST -- NO ADMISSIBLE INDEPENDENT EVIDENCE WHICH
21 WOULD SUGGEST THAT ANYTHING MR. PITTMAN DID WITH RESPECT TO
22 MR. SWARTOUT WAS THE RESULT OF ANY JOINT ACTION, CONCERTED
23 ACTION BETWEEN HIM AND MR. HUNT.

24 SECOND OF ALL, THERE DOES NOT EVEN APPEAR TO BE
25 SATISFACTORY EVIDENCE THAT MR. PITTMAN WAS IN FACT THE
26 PERSON WHO THREW THIS INERT LIQUID ON MR. SWARTOUT, EXCEPT
27 FOR AN ALLEGED STATEMENT MADE BY MR. PITTMAN TO MR. GENE
28 BROWNING, WHO TESTIFIED EARLIER.

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1 SO WHAT WE HAVE HERE YOUR HONOR, WHAT WE HAVE
2 COMING THIS AFTERNOON, UNLESS THERE IS SOME JUDICIAL
3 INTERVENTION, IS THE TESTIMONY ABOUT DOUBLE OR TRIPLE
4 HEARSAY WHICH IS NOW GOING TO BE ASCRIBED TO MR. HUNT IN
5 A SITUATION WHERE THERE IS ABSOLUTELY NO EVIDENCE THAT I AM
6 AWARE OF, THAT MR. PITTMAN AND MR. HUNT CONSPIRED FOR A
7 PARTICULAR PURPOSE, EITHER TO EXTORT MR. SWARTOUT OR TO SCARE
8 HIM OR FOR SOME ILLEGAL PURPOSE AND THAT THERE WAS AN OVERT
9 ACT COMMITTED PURSUANT TO THIS CONSPIRACY BY MR. PITTMAN.

10 MR. BARENS: MR. HUNT.

11 MR. CHIER: NO. THAT MR. PITTMAN -- FIRST, THERE WAS
12 A CONSPIRACY AND THERE IS NO EVIDENCE AS TO WHAT THE
13 CONSPIRACY WAS, WHO THE MEMBERS WERE OR WHAT THE OVERT ACTS
14 WERE AND WHAT THE OBJECT WAS, YOUR HONOR. IT IS JUST
15 SOMETHING --

16 MR. BARENS: YOU HAVE TO SEQUENCE THAT FIRST.

17 THE COURT: WELL, LET'S HEAR WHAT THE D.A. SAYS.

18 MR. WAPNER: IT IS NOT THAT COMPLICATED. IT DOESN'T
19 HAVE TO BE A CONSPIRACY BECAUSE IN THIS CASE, THERE WAS A
20 STATEMENT BY MR. HUNT TO MR. TAGLIANETTI, ONE SAYING THAT
21 HE HAD SENT MR. PITTMAN DOWN THERE AND TWO, THAT --

22 THE COURT: TO SEE SWARTOUT, YOU MEAN?

23 MR. WAPNER: YES.

24 THE COURT: AND DO WHAT?

25 MR. WAPNER: THROW THIS STUFF ON HIM. I AM NOT SURE
26 WHETHER HE SAID TO KILL HIM BUT ALSO HE TOLD MR. TAGLIANETTI
27 THAT HE HAD A HIT LIST. HE SHOWED IT TO HIM. MR. SWARTOUT
28 WAS ON IT.

1 IT IS NOT A STATEMENT BY MR. PITTMAN. IT IS A
2 STATEMENT BY MR. HUNT TO MR. TAGLIANETTI.

3 THE COURT: YOU WILL HAVE MR. TAGLIANETTI TESTIFY FIRST?

4 MR. WAPNER: YES.

5 THE COURT: HE IS GOING TO TESTIFY WITH RESPECT TO THIS
6 PARTICULAR INCIDENT?

7 MR. WAPNER: YES. BUT HE IS NOT HERE TODAY. I MEAN,
8 IF YOU WANT TO HAVE A HEARING AND HAVE MR. TAGLIANETTI TESTIFY
9 FIRST, I CAN'T HAVE HIM HERE TODAY.

10 MR. CHIER: COULD I --

11 THE COURT: WELL, I DON'T THINK THAT -- YOU ARE TELLING
12 US WHAT HE IS GOING TO TESTIFY TO AND YOU WILL TIE IT UP?

13 MR. WAPNER: RIGHT.

14 MR. CHIER: I DON'T THINK IT TAKES CARE OF THE PROBLEM.
15 THE PROBLEM IS THAT THERE IS NOT EVEN SLIGHT INDEPENDENT
16 EVIDENCE, EXCEPT EXCLUSIVE OF THE DEFENDANT'S STATEMENTS OF
17 THE EXISTENCE OF A CONSPIRACY. ABSENT THAT, THERE HAS TO
18 BE --

19 THE COURT: IF WHAT THE D.A. SAYS HUNT TOLD TAGLIANETTI --
20 THAT HE WAS GOING TO SEND PITTMAN DOWN THERE AND HE HAD A
21 HIT LIST. ONE OF THE NAMES ON THE HIT LIST WAS MR. SWARTOUT.
22 HE IS SENDING PITTMAN DOWN TO DO HIM IN OR SOMETHING LIKE
23 THAT.

24 AND THEN HE ALSO FOLLOWS THAT UP. WHAT IS WRONG
25 WITH THAT?

26 MR. CHIER: BECAUSE THAT IS --

27 THE COURT: IT IS THE VERY DEFENDANT HIMSELF WHO SAID
28 THAT.

1 MR. CHIER: BEFORE YOU CAN ADMIT THE STATEMENTS YOUR
2 HONOR, THERE HAS TO BE SOME -- AS PART OF A CONSPIRACY, THERE
3 HAS TO BE SOME INDEPENDENT SHOWING THAT THERE IS A CONSPIRACY.
4 YOU CANNOT PROVE THE EXISTENCE OF A CONSPIRACY BY THE
5 STATEMENTS THEMSELVES.

6 MR. BARENS: IT IS HEARSAY AND --

7 MR. WAPNER: THE CONSPIRACY DOESN'T NECESSARILY HAVE
8 TO HAVE ANYTHING TO DO WITH THIS. IF A CRIME IS COMMITTED
9 AND THE WITNESS TESTIFIES THAT I AM THE VICTIM AND SOMEBODY
10 SHOT AT ME, I NEVER SAW THIS PERSON BUT SHOTS WERE FIRED.

11 THEN THE NEXT WITNESS COMES IN AND SAYS, "I FIRED
12 THE SHOTS," OR, "I TOLD SOMEONE TO FIRE THE SHOTS," IT IS
13 NOT ADMISSIBLE? IS THAT WHAT YOU ARE TELLING ME?

14 MR. CHIER: YOU CAN'T PROVE IT WITH --

15 THE COURT: ALL RIGHT. I THINK THERE WILL BE A
16 SUFFICIENT NEXUS BETWEEN THE --

17 MR. CHIER: EXCUSE ME. THERE IS NO CRIME HERE, JUDGE.

18 THE COURT: DO YOU MEAN IT IS NOT A CRIME TO THROW SOME
19 LIQUID OR SOME SUBSTANCE AT SOMEBODY WHICH CAUSES A BURNING
20 SENSATION? I THINK HE CAN GET THAT IN.

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1 THE COURT: MRS. MICKELL, MY STAFF AND I WANT TO
2 WISH YOU A HAPPY BIRTHDAY.

3 MS. MICKELL: THANK YOU. NO NUMBERS.

4 Q BY MR. WAPNER: MR. HAWKINS, CAN YOU EXPLAIN
5 TO US THE MARKS ON THE EXPENDED CASINGS AND THE TEST-
6 FIRED BULLETS THAT INDICATED TO YOU THAT THEY WERE FIRED
7 FROM THE SAME WEAPON AND NO OTHER?

8 MR. CHIER: I AM GOING TO OBJECT ON PERHAPS THE
9 BEST EVIDENCE, YOUR HONOR. WE ARE TALKING ABOUT THINGS
10 THAT ARE NOT LIKE WRITINGS BUT THEY ARE SYMBOLS BUT THEY
11 ARE SUBSTITUTES FOR WRITINGS AND WE ARE HAVING SECONDARY
12 EVIDENCE OF THESE THINGS.

13 MR. WAPNER: FIRST OF ALL, THE BEST EVIDENCE RULE
14 HAS TO DO WITH HAVING THE THINGS, THE ORIGINALS HERE,
15 AND THEY ARE HERE.

16 AND SECOND OF ALL, THE PURPOSE OF THAT IS
17 SO THAT THE JURY CAN LOOK AT THE DOCUMENT OR THE WRITING
18 AND THEY CAN KNOW. IN THIS CASE, SINCE IT IS ALL MICROSCOPIC,
19 THEY CAN LOOK AT THESE AND THEY WON'T HAVE A CLUE AS TO
20 WHAT IS GOING ON.

21 THIS WAY, YOU HAVE SOMEONE TO EXPLAIN IT.

22 THE COURT: OVERRULED. YOU MAY ANSWER THE QUESTION.

23 DO YOU WANT TO HAVE IT READ AGAIN?

24 THE WITNESS: NO, I KNOW THE QUESTION, YOUR HONOR.

25 I BELIEVE IT WAS EXPLAINING WHAT I SAW ON
26 THE CARTRIDGE CASE HEAD AREA AND I DESCRIBED IT AS A FACE,
27 THE BEST WAY TO DESCRIBE IT, AND THAT IS THE AREA AROUND
28 THE FIRING PIN IMPRESSION, THAT CONSISTED OF AN IRREGULAR

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1 SHAPE AND IN MY OPINION, THIS IRREGULAR SHAPE WAS CAUSED
2 BY THE IRREGULAR HOLE THAT THE FIRING PIN RODE IN WHEN
3 IT STRUCK THE PRIMER.

4 NOW, THIS IRREGULAR SHAPE HAD SEVERAL DISTINCT
5 FEATURES ABOUT IT, WHICH WERE REPEATED ON EACH CARTRIDGE
6 CASE, BOTH THE TEST FIRES AND THE EXPENDED CARTRIDGE CASES,
7 PEOPLE'S 3 AND 5. THEY WERE REPEATED, NOT IDENTICALLY,
8 NOT EXACTLY, BUT TO A DEGREE. SOME HEAVIER THAN OTHERS.
9 SOME MORE DISTINCT THAN OTHERS.

10 ALSO, ON THE HEAD OF THE CARTRIDGE CASE WERE
11 IMPRESSIONS THAT WERE NOT REALLY BOLD BUT REPEATED EACH
12 TIME, SUCH AS THE EJECTOR STRIKE, WHICH STRIKES THE BACK
13 OF THE CARTRIDGE CASE AND THROWS IT OUT OF THE FIREARM.
14 THERE WERE MARKS AT TWELVE O'CLOCK, WHICH I AM SPEAKING
15 AS YOU LOOK AT THE CLOCK, THERE WERE MARKS, PRESSURE MARKS
16 CAUSED POSSIBLY BY THE EXTRACTOR STRIKING THE CARTRIDGE
17 CASE AS IT FED IT INTO THE CHAMBER.

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1 MR. CHIER: I MOVE TO STRIKE THAT AS SPECULATION.

2 THE COURT: OVERRULED. GO AHEAD.

3 THE WITNESS: THERE WERE ALSO MARKS ON THE INSIDE
4 OF THE FIRING PIN IMPRESSION CAUSED BY THE SLIGHT IRREGULARITY
5 OR PITTED SHAPE OF THE LITTLE, ROUND FIRING PIN ITSELF.

6 AND THESE LITTLE POCKMARKS APPEARED TO FLOW
7 IN A DIRECTION TOWARD THE TOP OF THIS FACE THAT I OBSERVED
8 AROUND THE FIRING PIN HOLE.

9 ALSO, ON THE RIM OF THE CARTRIDGE CASE, IN
10 OTHER WORDS, IF WE NO LONGER LOOK AT THE HEAD BUT LOOK
11 AT THE RIM AROUND IT, WE THEN -- OR I FOUND CERTAIN REPEATED
12 MARKS. I FOUND ON EACH CARTRIDGE CASE THE REPEATED MARKS
13 GOING ACROSS THE RIM IN IRREGULAR LINES AND THESE IRREGULAR
14 LINES REPEATED ON EACH CARTRIDGE CASE.

15 I ALSO FOUND EXTRACTOR MARKS ON EACH CARTRIDGE
16 CASE AND I THEN FOUND A VERY PECULIAR MARK ON EACH OF
17 THE 12 CARTRIDGE CASES, THE 11 FROM PEOPLE'S 3 AND THE
18 ONE FROM PEOPLE'S 5 AND OF COURSE, ON THE TWO TEST FIRES.

19 THE BEST WAY I CAN DESCRIBE IT, IT LOOKED
20 LIKE A BAR CODE FROM THE GROCERY SHOPPING OR GROCERY ITEMS
21 WHERE IT CONSISTS OF THICK AND THIN LINES OF DIFFERENT
22 SPACES AND SPACES IN BETWEEN.

23 AND THIS MARK WAS CAUSED, IN MY OPINION, BY
24 AN IRREGULARITY I OBSERVED ON THE INSIDE OF THE BOLT AND
25 AS THE BOLT AND EXTRACTOR PULLS THE CARTRIDGE CASE OUT,
26 THE BOLT TURNS AND THIS LITTLE SCRATCHED AREA CREATING
27 THESE LINES AND SPACES WAS THEN FORMED ONTO THE RIM OF
28 THE CARTRIDGE CASE.

1 ALL OF THESE MARKS AND THE INDIVIDUALITY
2 OF THE MARKS AND THE REPETITION OF THE MARKS, IN MY RECOLLECTION
3 AND MY OBSERVING OTHER CARTRIDGE CASES IN MY CAREER AS
4 A FIREARMS EXAMINER, CAUSED ME TO FORM THE OPINION THAT
5 EACH AND EVERY CARTRIDGE CASE I OBSERVED WAS FIRED IN
6 THE SAME FIREARM AS THE TWO TEST FIRES THAT I HAD TEST
7 FIRED IN PEOPLE'S 4, THE SEMI-AUTOMATIC RIFLE.

8 Q BY MR. WAPNER: AND ARE THE JURORS GOING TO
9 BE ABLE TO SEE THESE MARKS YOU HAVE TALKED ABOUT IF THEY
10 TAKE THE BULLETS INTO THE JURY ROOM?

11 THE COURT: BULLETS OR CASINGS?

12 MR. WAPNER: EXPENDED CASINGS.

13 THE WITNESS: IT IS POSSIBLE THAT SOMETHING OF AN
14 IRREGULARITY CAN BE OBSERVED BUT AS FAR AS ACTUALLY BEING
15 ABLE TO SEE THE MARKS THAT I AM TALKING ABOUT, I REALLY
16 THINK A COMPARISON MICROSCOPE WOULD BE NECESSARY BECAUSE
17 THEY ARE VERY SMALL.

18 HOWEVER, IF IT WOULD PLEASE THE COURT, I WOULD
19 BE HAPPY TO ALLOW ANYONE TO LOOK AT THE CARTRIDGE CASES,
20 ALTHOUGH THE COMPARISON WOULD HAVE TO BE DONE UNDER A
21 MICROSCOPE.

22 Q BY MR. WAPNER: AND DID YOU BRING WITH YOU
23 THE TWO TEST FIRE CASINGS THAT YOU USED FOR COMPARISONS?

24 A YES, I DID.

25 Q ALL RIGHT. DO YOU HAVE THOSE?

26 A I DO.

27 MR. WAPNER: MAY I HAVE A MOMENT WITH THE WITNESS?

28 THE COURT: YES.

1 (PAUSE.)

2 MR. WAPNER: MAY THESE BE MARKED AS PEOPLE'S 6 FOR
3 IDENTIFICATION?

4 THE COURT: SO MARKED.

5 Q BY MR. WAPNER: WHEN YOU FINISHED DOING YOUR
6 COMPARISON, DID YOU PUT EACH OF THE ITEMS BACK INTO THE
7 ENVELOPE THAT THEY HAD COME FROM?

8 A YES.

9 Q WAS IT AT THAT TIME THAT YOU PLACED THE RED
10 SEALS ON THEM THAT SAY "EVIDENCE" ON THEM?

11 A THAT'S CORRECT.

12 Q AND AFTER YOU PLACED THE SEALS ON THEM, WHAT
13 DID YOU DO WITH THE ENVELOPES?

14 I THEN PUT THE ENVELOPES TOGETHER WITH A CLIP,
15 ALONG WITH THE FIREARM, AND KEPT THEM THERE AT MY DESK
16 UNTIL THEY WERE PICKED UP BY DETECTIVE ZOELLER.

17 MR. WAPNER: THANK YOU. NOTHING FURTHER.

18 (PAUSE.)

19

20 CROSS-EXAMINATION

21 BY MR. BARENS:

22 Q BEAR WITH ME, AS I DO NOT PROFESS ANY EXPERTISE
23 IN THIS AREA. I SUPPOSE IN PREPARATION FOR YOUR TESTIMONY
24 TO MAKE THIS TEST COMPLETE, DID YOU FIRE ANOTHER IDENTICAL
25 RIFLE TO THAT TO SEE WHAT SORT OF A SIGNATURE THAT WEAPON
26 WOULD LEAVE ON EXPENDED CARTRIDGES?

27 A NO, I DID NOT. NOT IN THIS PARTICULAR CASE,
28 NO.

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1 Q OKAY. HAVE YOU EVER DONE THAT IN OTHER CASES
2 YOU HAVE PREPARED FOR?

3 A I DON'T RECALL -- WELL, YES, WE HAVE TEST FIRED
4 FIREARMS THAT WERE MADE, MANUFACTURED ONE AFTER THE OTHER
5 WITH THE SAME TOOLS, JUST TO DETERMINE IF WHAT WE SAW REALLY
6 WAS INDIVIDUALITY.

7 Q RIGHT.

8 YOU DIDN'T DO THAT IN THIS CASE?

9 A NO, I DIDN'T.

10 THE COURT: YOU HAVE TO GET THE SAME KIND OF A RIFLE
11 MADE RIGHT AFTER THAT ONE, WOULDN'T YOU, IN ORDER TO MAKE
12 THAT SAME KIND OF TEST?

13 THE WITNESS: IF I WANTED TO DETERMINE THAT THE NEXT
14 MANUFACTURED RIFLE AFTER THIS ONE CONTAINED THE SAME, I WOULD
15 HAVE TO FIND THE NEXT RIFLE.

16 THE COURT: WOULD YOU BE ABLE TO FIND -- WHERE WOULD
17 YOU FIND IT?

18 THE WITNESS: I HAVEN'T THE VAGUEST IDEA, SINCE THE
19 SERIAL NUMBERS REALLY DON'T COUNT.

20 THE COURT: ALL RIGHT, GO AHEAD.

21 Q BY MR. BARENS: YOU WERE ABLE TO DO THAT IN OTHER
22 CASES, WERE YOU NOT, SIR?

23 A YES, WE WERE.

24 Q SO YOU WERE ABLE, IN SOME INSTANCES, TO DO IT
25 AND YOU ARE TELLING ME YOU WEREN'T ABLE TO DO THAT HERE?

26 A THAT'S CORRECT.

27 Q YOU WOULD HAVE BEEN ABLE TO FIND ANOTHER IDENTICAL
28 RIFLE TO THIS, WOULD YOU NOT, SIR?

1 A I COULD FIND ANOTHER PLAINFIELD, YES, MANUFACTURED
2 BY THE PLAINFIELD MACHINE COMPANY.

3 Q COULD YOU FIND ANOTHER ONE JUST LIKE THAT?

4 A NO.

5 I HAVE TEST FIRED NUMEROUS PLAINFIELD RIFLES BUT --

6 Q IS THIS THE ONLY ONE YOU HAVE SEEN IN YOUR LIFE
7 THAT LOOKED LIKE THIS?

8 A I DON'T KNOW WHAT YOU MEAN BY APPEARANCE. YOU
9 MEAN THE OUTWARD APPEARANCE OF THE RIFLE?

10 Q I PRESUME THAT THAT TYPE OF A WEAPON, SIR, HAS
11 A TYPE TO IT, IT IS A MODEL SO AND SO OR WHATEVER ONE WOULD
12 REFER TO THAT AS.

13 A I HAVE SEEN NUMEROUS PLAINFIELD RIFLES, YES, LIKE
14 THAT.

15 Q OKAY. I PRESUME THOSE ALL HAD, GENERALLY SPEAKING,
16 THE SAME CHARACTERISTICS OF THIS ONE?

17 A YES, THEY WOULD.

18 Q OKAY. AND I PRESUME THOSE WERE AVAILABLE TO YOU?

19 A WE HAVE SOME AVAILABLE TO US, YES.

20 Q THEY ARE MADE BY THE SAME FACTORY?

21 A YES.

22 Q AND PERHAPS BY THE SAME TOOLING?

23 A THAT I WOULDN'T KNOW.

24 THAT IS POSSIBLE, YES.

25 Q POSSIBLE, MAYBE NOT POSSIBLE.

26 IF YOU WERE TO OBTAIN ONE OF THOSE RIFLES, YOU
27 COULD THEN REPEAT ANALOGOUS TESTS ON ONE OF THOSE RIFLES,
28 COULD YOU NOT, SIR?

1 A I COULD REPEAT THE TEST, YES, ON ANOTHER RIFLE.

2 Q AND IS THERE ANY POSSIBILITY THAT TO SOME EXTENT,
3 YOU WOULD FIND A DUPLICATION OF THE SIGNATURE FACE ON A
4 CARTRIDGE CASE THAT YOU FOUND IN THIS INSTANCE?

5 A I DOUBT IT. I DON'T THINK SO, NO.

6 Q WHY IS THAT?

7 A BECAUSE THE MARKS THAT I OBSERVED WERE, ONE, CAUSED
8 BY DAMAGE.

9 TWO, CAUSED BY BREAKING OUT OF A HOLE IN THE
10 FIRING PIN AREA.

11 THREE, CAUSED BY WHAT APPEARED TO BE ABUSE OR
12 RUST ON THE FIRING PIN.

13 AND IN MY OPINION, IN MY RESEARCH, I HAVE NOT
14 BEEN ABLE TO FIND ANY REASON WHY THIS COULD POSSIBLY BE
15 REPEATED.

16 Q WELL, IT OCCURS TO ME, SIR, IF YOU BREAK DOWN
17 THE VARIOUS ELEMENTS, WHICH I WILL TRY TO DO WITH YOU AS
18 BRIEFLY AS I CAN, THERE WERE CERTAIN SIGNATURES THAT YOU FOUND
19 ON THE CARTRIDGES HERE. ARE YOU TELLING ME THAT NONE OF THOSE
20 COULD BE FOUND, FROM EXPERIENCE, WITH A SIMILAR OR IDENTICAL
21 WEAPON, THAT NONE OF THOSE COULD BE DUPLICATED?

22 A THAT IS EXACTLY WHAT I AM SAYING.

23 Q IN OTHER WORDS, FOR INSTANCE, THE PIVOTING THAT
24 OCCURRED FROM THE STRIKING OF THE CARTRIDGE THAT CAUSES THOSE
25 STRIATIONS THAT YOU SAID ARE SIMILAR TO WHAT YOU SEE, THAT
26 COULDN'T HAPPEN WITH ANOTHER GUN?

27 A NO. THERE WOULD BE MARKS BUT THEY WOULDN'T BE
28 THE SAME MARK. IN OTHER WORDS, THERE WOULD BE EXTRACTOR MARKS.

1 THERE WOULD BE EJECTOR MARKS. THERE WOULD BE FIRING PIN MARKS,
2 IMPRESSION AND BOLT MARKS AND BREECH FACE MARKS, YES. ALL
3 OF THOSE MARKS COULD BE FOUND IN ANY NUMBER OF GUNS, NOT
4 NECESSARILY .30 CARBINE.

5 WHAT I MEANT WAS THE PARTICULAR MARKS, IN OTHER
6 WORDS, THE INDIVIDUALITY IN THE MARKS WAS NOT REPEATED OR
7 WOULD NOT BE REPEATED ON ANOTHER GUN. BUT THE TYPE OF MARK,
8 YES, WOULD BE REPEATED.

9 Q YOU DESCRIBE THAT IN SOME OF THE MARKS THAT YOU
10 FOUND, THAT AS YOU WENT THROUGH THESE VARIOUS SAMPLES, THEY
11 WERE MORE OR LESS PRESENT IN DIFFERENCES OF THE SAMPLE; IS
12 THAT CORRECT?

13 A DIFFERENCE OF DEGREE OF ABILITY TO SEE, YES.

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1 Q HOW DO YOU EXPLAIN THAT, SIR?

2 A WELL, I WOULD EXPLAIN THAT BY SAYING THAT
3 EACH CARTRIDGE CASE, EACH ROUND OF AMMUNITION IS SLIGHTLY
4 DIFFERENT FROM THE OTHER.

5 IN MY EXAMINATION AND TOURS AND PAPERS GIVEN
6 ON THE MANUFACTURING PROCESS, FOR INSTANCE, AT SIERRA
7 BULLET MANUFACTURING, INSPECTORS CONSTANTLY EXAMINE THE
8 WALL THICKNESS. THEY WEIGH THE CARTRIDGE CASE. THEY
9 THROW OUT DAMAGED CARTRIDGE CASES. THEY FIND THAT EACH
10 CARTRIDGE CASE IS SLIGHTLY DIFFERENT IN THE MACHINING
11 PROCESS. THE AMOUNT OF POWDER IN EACH CARTRIDGE CASE,
12 IN EACH ROUND OF AMMUNITION VARIES SLIGHTLY.

13 EACH LOT OF POWDER VARIES SLIGHTLY, EVEN AS
14 TO THE TYPE OF POWDER.

15 EACH PRIMER MANUFACTURED IS SLIGHTLY DIFFERENT.
16 SOME PRIMERS END UP WITH A LITTLE HARDER METAL. SOME
17 HAVE MORE POWDER IN THEM.

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1 EACH BULLET IS SEATED DIFFERENTLY. EACH TIME,
2 THEREFORE, THIS RIFLE IS FIRED, THE ROUND MAY BE POSITIONED
3 IN A SLIGHTLY DIFFERENT WAY, HELD IN BY THE EXTRACTOR.
4 IT MIGHT HAVE SLIGHTLY DIFFERENT PRESSURES. IT MIGHT
5 STAY MOMENTARILY LONGER IN THE CHAMBER BEFORE BEING EXTRACTED.
6 IT MAY CAUSE MORE OR LESS PRESSURE.

7 THE FLOW FROM THE BRASS UNDER PRESSURE MAY
8 END UP DEEPER IN THE CAVITY THAN THE PRIOR CARTRIDGE CASE.
9 SO THERE ARE SO MANY FACTORS THAT ALL ADD UP TO THIS,
10 THAT YET, EACH CARTRIDGE CASE IS SLIGHTLY DIFFERENT THAN
11 THE OTHER.

12 Q WE GET INTO DEALING WITH THE PHYSICS PRESENT
13 IN THIS SETTING AND SOME INHERENT VARIATIONS BECAUSE OF
14 JUST THE PHYSICAL PROPERTIES OF WHAT WE ARE DEALING WITH?

15 A THAT'S CORRECT.

16 Q IF I SUPPOSE WE HAD AN ANALOGOUS WEAPON, WE
17 WOULD FIND SOME SIMILAR VARIATIONS AS A RESULT OF JUST
18 PURE PHYSICS, FOR WANT OF ANY OTHER EXPRESSION, IN THAT
19 RIFLE, AS WELL?

20 A IF I UNDERSTAND YOU CORRECTLY, ANOTHER RIFLE
21 WOULD HAVE THE SAME TYPE OF VARIATIONS IN EACH CARTRIDGE
22 CASE. YES.

23 Q AND INTERNAL VARIATIONS?

24 A YES.

25 Q WE GET INTO SOME MATTERS OF DEGREE, DO WE
26 NOT, AS FAR AS DIFFERENTIATION?

27 A DEGREE IN DIFFERENTIATION? IN OTHER WORDS,
28 IF YOU COULD EXPLAIN THAT.

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1 Q WELL, FOR INSTANCE, YOU DESCRIBED THAT THE
2 FIRING PIN IMPACTING THE PRIMER CREATES AN IMPRESSION
3 THAT YOU FIND UNIQUE TO THIS RIFLE. IS THAT CORRECT?

4 A YES.

5 Q AND IF I HAD AN IDENTICAL RIFLE OF THE SAME
6 VINTAGE, I PRESUME THAT THE FIRING PIN WOULD MAKE A FACE
7 IN THE PRIMER ON THAT ONE, AS WELL?

8 A IT COULD.

9 Q AND I PRESUME THAT THAT FACE IN SOME RESPECTS
10 INEVITABLY WOULD HAVE SOME SIMILARITIES?

11 A IT COULD HAVE SOME SIMILARITIES.

12 Q WITH THE FACE ON THIS ONE?

13 A YES, IT COULD.

14 Q THEN WE WOULD BE INTO A MATTER OF DEGREE OF
15 DIFFERENTIATION?

16 A THAT WOULD BE A GOOD WAY TO PUT IT, YES.

17 Q NOW, IN PREPARING FOR SOME OF THE 300 CASES
18 YOU TEST FIRED, HAVE YOU EVER MADE BLOWUPS OF PHOTOGRAPHS
19 TAKEN BY THE MICROSCOPIC TELESCOPE THAT YOU USE TO VISUALIZE
20 THESE IMPRESSIONS?

21 A YES.

22 Q AND YOU BRING THOSE INTO COURT, DO YOU NOT?

23 A I HAVE, YES.

24 Q THEN YOU DO THE SAME THING WITH THE COMPARISON
25 PHOTOGRAPHS THAT YOU TAKE OF THE TEST BULLETS?

26 A I HAVE DONE THAT, YES.

27 Q DID YOU DO THAT IN THIS CASE?

28 A NO.

1 Q WAS THERE A REASON WHY?

2 A I WAS NOT ASKED TO.

3 MR. BARENS: THANK YOU, SIR.

4

5 REDIRECT EXAMINATION

6 BY MR. WAPNER:

7 Q CAN YOU EXPLAIN WHAT HAPPENED IN THOSE SITUATIONS
8 WHERE YOU HAVE -- LET ME START AGAIN.

9 YOU SAID THAT YOU HAD TEST FIRED IDENTICAL
10 GUNS WITH THE SAME SERIAL OR SEQUENTIAL SERIAL NUMBERS?

11 A YES.

12 Q AND WHAT WAS THE PURPOSE OF DOING THAT?

13 A IN ONE CASE, WE WERE ABLE TO FIND FIVE WALTHER
14 PPK FIREARMS WITH CONSECUTIVE NUMBERS.

15 AND THIS OCCURRED IN SEARCHING THE ENTIRE
16 UNITED STATES AND FINDING ONE IN NEW YORK AND A COUPLE
17 IN A DEALER IN CALIFORNIA, AND SOME, SOMEWHERE ELSE. I
18 FORGET.

19 WE DID EXAMINE THEM. WE DID TEST FIRE THEM.
20 WE DID FIND THEM TO BE EXTREMELY DIFFERENT, EXTREMELY
21 DIFFERENT IN THE BREAKING OF THE FIRING PIN HOLE, BULLET
22 DIFFERENCES IN STRIAE.

23 THEY WERE, EACH ONE, UNIQUE TO THEMSELVES.
24 WE ALSO WENT TO THE FACTORY AND PURCHASED CONSECUTIVELY
25 MANUFACTURED BARRELS AND FIRED THEM IN A RECEIVER TO DETERMINE
26 IF CONSECUTIVELY MANUFACTURED BARRELS COULD BE DISTINGUISHED
27 ONE FROM THE OTHER.

28 Q WHAT DID YOU FIND?

1 A THE RESULT WAS POSITIVE. YES, WE COULD DISTINGUISH
2 THE BULLETS FIRED FROM EACH INDIVIDUAL BARREL, EVEN WHEN
3 THEY WERE CONSECUTIVELY MANUFACTURED.

4 WE HAVE ALSO PURCHASED LENGTHS OF BARRELS
5 SUCH AS FROM THE BARRELS FOR JENNINGS .22. AT ONE TIME,
6 THEY WERE CUT FROM LENGTHS OF BARRELS. WE TOOK ONE LENGTH
7 AND WE CUT IT IN SMALL LENGTHS AND FIRED EACH LENGTH AND
8 DETERMINED THAT THERE WERE DIFFERENCES EVEN WITHIN EACH
9 LENGTH OF BARREL.

10 I HAVE ALSO FIRED FIREARMS AND THEN FIRED
11 THAT SAME FIREARM WITH A CUT BARREL, IN OTHER WORDS, WITH
12 THE FRONT PORTION REMOVED, AND FOUND THAT THE FIRST PORTION
13 WAS INDIVIDUAL TO THE LAST PORTION.

14 SO, THOSE TESTS HAVE BEEN MADE, YES.

15 MR. WAPNER: THANK YOU. NOTHING FURTHER.

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

17 THE WITNESS: MAY I PUT THESE BACK IN THE ENVELOPES?

18 MR. WAPNER: PLEASE. WHILE HE IS DOING THAT, I
19 HAVE A DIAGRAM THAT I WOULD LIKE MARKED AS PEOPLE'S NEXT
20 IN ORDER, PEOPLE'S 7 FOR IDENTIFICATION. IT PURPORTS
21 TO DEPICT TWO BUILDINGS AND TWO DIFFERENT STREETS.

22 THE COURT: ALL RIGHT.

23 HOW ARE YOU FEELING, MR. RUTHERFORD?

24 MR. RUTHERFORD: I HAVE GOT A HEADACHE.

25 MR. WAPNER: WE CALL BRUCE SWARTOUT.

26
27 BRUCE SWARTOUT,
28 CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND TESTIFIED

1 AS FOLLOWS:

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

6 THE WITNESS: I DO.

7 THE CLERK: PLEASE BE SEATED. STATE AND SPELL YOUR
8 NAME FOR THE RECORD.

9 THE WITNESS: BRUCE SWARTOUT, S-W-A-R-T-O-U-T.

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DIRECT EXAMINATION

12

BY MR. WAPNER:

13

Q MR. SWARTOUT, IN 1983 AND 1984, DID YOU OWN
14 A COUPLE OF BUSINESSES?

15

A WELL, I WAS AN OWNER AND DIRECTOR OF TWO BUSINESSES,
16 YES.

17

Q WHAT WERE THE NAMES OF THE BUSINESSES?

18

A ONE WAS U.S. FLYWHEELS. THE OTHER WAS COGENCO
19 SYSTEMS, INC.

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1 Q WHAT WAS U.S. FLYWHEELS?

2 A IT WAS A HIGH TECHNOLOGY COMPANY WITH PATENTS
3 AND IT WAS AN ENERGY STORAGE DEVICE. THE PUBLIC MAY KNOW
4 IT BETTER BY THE FLYWHEEL POWERED CAR THAT BILL LEAR AND I
5 DESIGNED.

6 Q WHEN DID YOU DESIGN THAT?

7 A THAT WAS IN THE MID-'70'S.

8 Q AND FLYWHEEL IS SOMETHING THAT IS DESIGNED TO
9 STORE ENERGY?

10 A YES, SIR.

11 Q WHO HELD THE PATENT FOR THAT DEVICE?

12 A WELL, THEY WERE MY PATENTS AND I ASSIGNED THEM
13 TO U.S. FLYWHEELS AND LATER, TO COGENCO SYSTEMS.

14 Q WHAT IS COGENCO SYSTEMS?

15 A IT WAS ALSO A RESEARCH FIRM BUT IN SMOKE STACK
16 ENERGY, COGENERATION AS WE KNOW IT TODAY.

17 Q CAN YOU EXPLAIN THAT BRIEFLY.

18 A WELL, IT IS THE CONVERSION OF THERMAL ENERGY FROM
19 ANY SMOKE STACK IN THE COUNTRY TO ELECTRICITY AND THE USE
20 OF A MULTI-FUEL POWER, IT WOULD USE ANY KIND OF FUEL, INCLUDING
21 COAL, POWDERED COAL OR PETROLEUM COKE AND A SCRUBBING DEVICE
22 TO ELIMINATE ACID RAIN, WHICH INVOLVES NITROGEN-OXIDES AND
23 SULFUR-OXIDES AND REACTIVE OR ORGANIC GASES REMOVED FROM THE
24 EXHAUST.

25 Q THE TWO COMPANIES THAT WERE U.S. FLYWHEELS AND
26 COGENCO SYSTEMS, INCORPORATED, WHAT WERE THEY FOUNDED FOR
27 THE PURPOSE OF DOING?

28 A WELL, I GUESS IT GOES BACK, SINCE I WAS THE

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1 FOUNDER, I GOT MAD AT THE ARABS FOR SHUTTING OFF OUR OIL AND
2 I GOT OUT OF REAL ESTATE DEVELOPMENT TO DO SOMETHING ABOUT
3 IT.

4 Q HAD YOU ALREADY PATENTED THESE TWO DEVICES BEFORE
5 THE COMPANIES WERE FORMED?

6 A NO, SIR.

7 WE ACQUIRED PATENTS FROM A NUCLEAR PHYSICIST AT
8 THE LAWRENCE-LIVERMORE LAB AND WE THEN IMPROVED UPON THEM
9 IN OUR ESTABLISHMENT AND FILED OUR OWN PATENTS, IMPROVING
10 ON IT.

11 Q WERE THESE COMPANIES FORMED FOR THE PURPOSE OF
12 DEVELOPING THESE PRODUCTS TO THE POINT WHERE THEY COULD BE
13 MARKETED?

14 A YES, SIR.

15 Q AT SOME POINT IN 1983, HAD YOU GOTTEN TO THAT
16 POINT?

17 A ON THE COGENERATION WHICH INVOLVED BOILERS, YES.

18 MR. BARENS: OBJECTION. I DON'T SEE THE RELEVANCE,
19 ALTHOUGH IT IS INTERESTING.

20 THE COURT: HE IS GOING TO CONNECT IT, I ASSUME. HE
21 IS ASKING THESE QUESTIONS FOR THE PURPOSE OF SHOWING WHAT
22 THE BUSINESS WAS; IS THAT RIGHT?

23 MR. WAPNER: YES.

24 THE COURT: GO AHEAD.

25 YOU CAN MAKE A MOTION TO STRIKE IT LATER.

26 MR. BARENS: OPTIMISTIC ABOUT THAT.

27 Q BY MR. WAPNER: THE COGENERATION SYSTEMS HAD BEEN
28 DEVELOPED TO THE POINT WHERE YOU AT THAT POINT WERE ATTEMPTING

3
1 TO MARKET IT OR GOING TO ATTEMPT TO MARKET IT?

2 A YES.

3 WE HAD OUR WASTE HEAT BOILER FINISHED AND
4 DEMONSTRATED, THE BURNER FINISHED AND DEMONSTRATED AND WE
5 HAD NOT, HOWEVER, FINISHED THE SCRUBBER, THE REMOVAL OF THE
6 ACID RAIN VILLAINS.

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1 Q IN LATE 1983, WERE YOU LOOKING FOR A SOURCE OF
2 FUNDING FOR THE PURPOSE OF MARKETING THE DEVICES THAT
3 COGENCO HAD DEVELOPED?

4 A YES, WE WERE.

5 Q AND HOW DID YOU GO ABOUT LOOKING FOR THAT SOURCE
6 OF FUNDING?

7 A WELL, WE FIRST STARTED WITH OUR DIRECTORS. WE
8 HAD A NUMBER OF DIRECTORS IN THOSE DAYS AND ONE OF OUR
9 DIRECTORS HAD A BROTHER THAT WAS A VICE PRESIDENT OF A TITLE
10 COMPANY AND HE SENT A MAN TO US WHO HE HAD HEARD, WHO WOULD
11 BE ABLE TO FURNISH THE FINANCING.

12 Q FURNISH THE FINANCING?

13 A YES.

14 Q WHAT WAS THAT MAN'S NAME?

15 A NAME WAS ELGIN.

16 Q KENNETH ELGIN?

17 A KENNETH ELGIN, YES.

18 Q DID YOU MEET WITH MR. ELGIN?

19 A YES.

20 Q WHEN YOU MET WITH MR. ELGIN, WHAT DID HE TELL
21 YOU ABOUT THE SOURCE OF FINANCING?

22 A NONE IN THE FIRST MEETING. BUT LATER, HE BROUGHT
23 IN THE BBC BOYS, SEVERAL OF THEM.

24 Q WOULD YOU EXPLAIN HOW THAT CAME TO BE THAT
25 MR. ELGIN BROUGHT THESE PEOPLE TO YOU, WHAT DID HE SAY AND
26 HOW DID HE BRING THEM TO YOU?

27 A WELL, HE FIRST WROTE A LETTER IN AUGUST.

28 Q OF 1983?

1 A OF 1983, YES.

2 Q AND WHAT DID HE TELL YOU?

3 A HE SAID HE WANTED TO ARRANGE A MEETING AND BRING
4 IN -- I AM NOT SURE WHETHER HE MENTIONED THEIR NAME AT THAT
5 LETTER OR NOT BUT --

6 Q AFTER THE LETTER, WHAT WAS THE NEXT CONTACT THAT
7 YOU HAD WITH MR. ELGIN OR THE PEOPLE FROM THE BBC?

8 A WELL, HE SET UP A MEETING THEN WITH SOME OF THE
9 BBC BOYS.

10 Q AND THE MEETING WAS BETWEEN THEM AND WHO ELSE?

11 A WELL, OUR VICE PRESIDENTS, WITH MYSELF.

12 Q WHAT WAS YOUR VICE PRESIDENT'S NAME?

13 A ONE OF THEM WAS NAMED RANDELL RAGAN. WE CALLED
14 HIM PETE RAGAN. AND THE OTHER ONE WAS FRANK OXARART.

15 Q SO IT WAS YOU AND -- COULD YOU SPELL OXARART.

16 A O-X-A-- NO, I AM SORRY -- I STILL HAVE TROUBLE.
17 IT IS O-X-A-R-A-R-T.

18 HIS SON WAS WITH KFVB AND DID THE MORNING
19 TESTIMONIES TO THE PUBLIC.

20 Q HOW DOES MR. RAGAN SPELL HIS NAME?

21 A R-A-G-A-N.

22 Q AND FROM THE BBC, WHO WAS THERE?

23 A I BELIEVE JOE HUNT AND BEN DOSTI, PERHAPS ONE
24 OF THE MAY BOYS, I DON'T RECALL.

25 Q WAS THAT THE FIRST TIME THAT YOU HAD MET MR. HUNT
26 AND MR. DOSTI AND ANYBODY ELSE FROM THE BBC?

27 A YES.

28 Q AND WHAT HAPPENED AT THAT MEETING?

1 A IT HAS BEEN FOUR YEARS AND I DON'T REALLY RECALL
2 THE DETAILS, ALTHOUGH WE TALKED ENERGY AND MONEY.

3 Q WHAT KIND OF MONEY DID YOU TALK ABOUT AT THAT
4 TIME -- LET ME BACK UP AND ASK YOU ANOTHER QUESTION: WHAT
5 KIND OF FINANCING HAD YOU SAID YOU WERE LOOKING FOR IN ORDER
6 TO GET YOUR BUSINESS TO THE STAGE WHERE YOU WERE GOING TO
7 MARKET THESE DEVICES YOU HAD BEEN WORKING ON?

8 A WELL, I HAD INFORMED, AND SO DID OUR VICE PRESIDENT,
9 INFORMED MR. ELGIN THAT WE NEEDED ABOUT \$10 MILLION TO DO
10 THE PROPER JOB WITH COGENERATION.

11 Q WHEN MR. ELGIN INTRODUCED YOU TO THE MEMBERS OF
12 THE BBC, DID HE OR SOMEBODY IN THE BBC INDICATE THEY COULD
13 PROVIDE YOU WITH THAT KIND OF MONEY?

14 A WELL, MR. ELGIN SAID HE COULD PROVIDE IT THROUGH
15 THE BBC.

16 Q HE SAID THAT THERE WERE PEOPLE IN THE BBC WHO
17 COULD PROVIDE THAT KIND OF MONEY?

18 A YES.

19 MR. BARENS: YOUR HONOR, WE JUST HAVE A CONTINUING
20 HEARSAY OBJECTION?

21 THE COURT: ALL RIGHT.

22 MR. WAPNER: FOR THE RECORD, THAT IS NOT OFFERED TO
23 PROVE THAT THEY COULD IN FACT PROVIDE THE \$10 MILLION.

24 MR. BARENS: FOR THE RECORD, I PRESUME THAT WAS
25 OVERRULED?

26 THE COURT: LET'S PROCEED.

27 Q BY MR. WAPNER: THANK YOU.

28 AND WHEN YOU MET FIRST WITH MR. HUNT AND MR. DOSTI

1 AND THE OTHER PEOPLE THAT YOU DON'T RECALL PRECISELY AT THIS
2 POINT, DO YOU KNOW WHETHER THERE WERE ANY PRECISE FIGURES
3 DISCUSSED OR BALLPARK FIGURES DISCUSSED IN TERMS OF WHAT KIND
4 OF MONEY YOU NEEDED?

5 A I DON'T THINK AT THE FIRST MEETINGS THERE WERE
6 ANY DEFINITE FIGURES.

7 THERE WERE LATER, THE FOLLOWING MONTH.

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1 Q WHAT HAPPENED THAT FOLLOWING MONTH?

2 A CONTRACTS WERE DRAFTED BY PETE REAGAN AND
3 KENNETH ELGIN AND JOE HUNT BETWEEN OUR TWO COMPANIES AND
4 BBC.

5 Q YOUR TWO COMPANIES BEING U.S. FLYWHEELS AND
6 COGENCO SYSTEMS?

7 A YES. ACTUALLY, THERE WERE, AT THE TIME OF
8 THE DRAFTING OF THE CONTRACTS, TWO BBC COMPANIES AS WELL
9 AS TWO OF OURS.

10 Q WHAT WERE THE BBC COMPANIES?

11 A I BELIEVE THE BBC'S CORRECT NAME WAS BBC OF
12 NORTH AMERICA. THERE MAY BE --

13 Q BBC CONSOLIDATED OF NORTH AMERICA?

14 A YES. THEN THERE WAS A SECOND COMPANY CALLED
15 CYCLATRONICS OF NORTH AMERICA.

16 Q AND WHAT WAS THE PURPOSE OF DRAFTING THESE
17 CONTRACTS?

18 A WELL, THE BBC BOYS WANTED CONTROL OF OUR TWO
19 COMPANIES IN ORDER TO FURTHER A CONTRACT THAT WE HAD DRAFTED
20 WITH A COMPANY IN COLORADO.

21 Q DID YOU ALREADY HAVE A CONTRACT WITH THIS
22 COMPANY IN COLORADO OR WERE YOU ATTEMPTING TO GET ONE?

23 A WE WERE NEGOTIATING AND AT THE DRAFTING STAGE
24 OF IT.

25 Q WHAT COMPANY WAS THAT?

26 A THERE WERE TWO COMPANIES THERE. I AM SORRY
27 TO MAKE IT COMPLEX. BUT UNITED FINANCIAL OPERATIONS WAS
28 MR. BILL KILPATRICK'S COMPANY AND HE WAS FORMING A MERGER

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1 WITH THE COMPANY IN CANADA CALLED SATURN ENERGY AND RESOURCES.

2 Q AND MR. HUNT AND THE PEOPLE FROM THE BBC WANTED
3 TO MAKE AN AGREEMENT WITH MR. KILPATRICK?

4 MR. BARENS: YOUR HONOR, MAY WE APPROACH THE BENCH
5 AT THIS POINT ON THIS EVIDENCE?

6 THE COURT: YES.

7 (THE FOLLOWING PROCEEDINGS WERE HELD
8 AT THE BENCH:)

9 THE COURT: YES?

10 MR. CHIER: YOUR HONOR --

11 MR. BARENS: COULD I DEFER TO MR. CHIER ON THE MOTION,
12 SIR?

13 THE COURT: ALL RIGHT.

14 MR. CHIER: WE HAD A RATHER LENGTHY AND PROTRACTED
15 HEARING IN CHAMBERS BEFORE THE COMMENCEMENT OF THIS PENALTY
16 PHASE WHEREIN, I THOUGHT WE DELINEATED AND HAD AN UNDERSTANDING
17 ABOUT WHAT WAS AND WHAT WAS NOT ADMISSIBLE AT THIS TYPE
18 OF A HEARING.

19 WHAT IS NOT ADMISSIBLE AND IT IS CLEAR IS
20 NOT ADMISSIBLE, ARE MISCELLANEOUS ACTS OF BAD CHARACTER,
21 INTERFERENCE WITH PROSPECTIVE ADVANTAGE AND THINGS OF
22 THAT TYPE.

23 WHAT IS ADMISSIBLE ARE SPECIFIC ACTS OF VIOLENCE
24 AGAINST ANOTHER HUMAN BEING. THIS --

25 THE COURT: WHAT IS ALSO ADMISSIBLE IS MOTIVE.

26 MR. CHIER: MOTIVE IS NOT --

27 THE COURT: IT IS ADMISSIBLE TO EXPLAIN CERTAIN
28 ACTS WHICH WERE TAKEN LATER ON. THAT IS WHAT YOU ARE

1 LEADING UP TO?

2 MR. WAPNER: YES.

3 MR. CHIER: THE PROBLEM HERE IS THAT NOTHING WAS
4 DONE BY MR. HUNT HERE, NOR IS THERE ANY EVIDENCE IT WAS --

5 THE COURT: I HAVE NOT HEARD ANYTHING YET. LET'S
6 HEAR IT FIRST. IF THERE IS ANYTHING OBJECTIONABLE, THEN
7 YOU CAN MAKE A MOTION TO STRIKE AND I WILL GRANT IT IF
8 IT IS, AND TELL THE JURY TO DISREGARD IT.

9 MR. CHIER: I THINK WHAT IS OBJECTIONABLE IS THAT
10 THEY ARE NOW GETTING INTO A DISCUSSION WHERE THERE WAS
11 INTERFERENCE WITH PROSPECTIVE ADVANTAGE.

12 THAT IS THE LAST TESTIMONY, YOUR HONOR, THAT
13 HE HAD A CONTRACT IN COLORADO THAT HE WANTED TO TAKE OVER
14 AND I KNOW WHAT IS COMING AND --

15 THE COURT: I THINK WE OUGHT TO HEAR ALL OF THE
16 FACTS AND THE BACKGROUND FOR THE ACTS THAT THEY CLAIM
17 ARE AGGRAVATING.

18 MR. BARENS: YOUR HONOR, I WOULD LIKE YOUR HONOR,
19 THEN, TO ASK THE DISTRICT ATTORNEY TO CAUTION THE WITNESS
20 THAT WE ARE NOT GOING TO HAVE TESTIMONY ABOUT THIS POINT
21 CONCERNING MR. HUNT HAVING FLEECED THIS GUY OUT OF HIS
22 BUSINESS OR HAVING COST HIM A LOT OF MONEY AND CAUSED
23 HIS FINANCIAL RUIN. THAT IS EXACTLY WHERE WE ARE GOING,
24 WHAT WE ARE GOING TO HEAR AND --

25 THE COURT: ALL OF THE MOTIVATIONS AND ALL OF THE
26 BACKGROUND WHICH WOULD EXPLAIN A PARTICULAR FACT WHICH
27 THEY ARE LEADING UP TO, I THINK, SHOULD BE ALLOWED IN
28 IN THIS CASE. I WILL LET HIM GO AHEAD.

1 MR. BARENS: YOUR HONOR, IN OTHER WORDS --

2 THE COURT: I DON'T KNOW AT THIS PARTICULAR POINT
3 WHAT IT IS YOU ARE INQUIRING ABOUT. SO FAR, HE HAS DESCRIBED
4 HIS BUSINESS. HE HAS HAD CONTACT WITH THE DEFENDANT.
5 THAT IS ALL.

6 MR. BARENS: YOUR HONOR, THE GENTLEMAN IS GOING
7 TO START TALKING NOW ABOUT HOW HUNT HAS COST HIM A LOT
8 OF MONEY AND RUINED HIS --

9 THE COURT: WELL, WE HAD A LOT OF PEOPLE TALKING
10 ABOUT LOSING MONEY THROUGH HIM ON THE GUILT PHASE.

11 MR. BARENS: BUT THIS IS NOT RELEVANT FOR THE PENALTY
12 PHASE TO SHOW THAT FURTHER PEOPLE LACK MONEY AND --

13 MR. WAPNER: THE POINT IS THAT SOMEBODY WALKING
14 UP TO A MAN IN A PARKING LOT AND THROWING ACID ON HIM
15 OR SOMETHING OUT OF THE BLUE, MAKES NO SENSE UNLESS YOU
16 HAVE AN UNDERSTANDING OF EXACTLY WHAT THE MOTIVE WAS FOR
17 THIS.

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1 MR. BARENS: BEGGING TO DIFFER. IF THE OFFER OF
2 PROOF IS THAT THEY ARE GOING TO SAY TAGLIANETTI SAYS THAT
3 HUNT TOLD THIS GUY TO GO DOWN AND DO THIS, OKAY, IT IS
4 SUFFICIENT FOR THEM TO PUT TAGLIANETTI ON TO SAY THAT
5 HUNT TOLD ME TO GO AND DO THIS --

6 THE COURT: MOTIVATION IS VERY IMPORTANT. OUT OF
7 THE BLUE, A MAN DOESN'T SAY TO GO DOWN THERE AND PUT ACID
8 ON HIM. YOU HAVE GOT TO GET THE BACKGROUND FOR IT. THIS
9 IS WHAT HE IS LEADING UP TO.

10 MR. BARENS: THE FACT THAT WE ARE TRYING THE PENALTY
11 PHASE, WHETHER HUNT DID IT OR NOT --

12 THE COURT: I AM OVERRULING THE OBJECTION AT THIS
13 TIME. PROCEED.

14 (THE FOLLOWING PROCEEDINGS WERE HELD IN
15 OPEN COURT IN THE PRESENCE OF THE JURY:)

16 Q BY MR. WAPNER: MR. SWARTOUT, I THINK THAT
17 IT IS PROBABLY GOING TO GET A LITTLE CONVOLUTED. I WILL
18 TRY TO KEEP IT AS SIMPLE AS I CAN. BUT FIRST OF ALL,
19 YOU WERE IN THE PROCESS OF MAKING SOME AGREEMENTS WITH
20 MR. KILPATRICK, IS THAT RIGHT?

21 A YES, SIR.

22 Q AND WHAT WAS THE PURPOSE OF YOUR MAKING THOSE
23 AGREEMENTS BETWEEN YOUR COMPANY AND MR. KILPATRICK'S COMPANY?

24 A MR. KILPATRICK HAD FORMED 44 LIMITED PARTNERSHIPS
25 AND RAISED OVER \$200 MILLION FROM INVESTORS AND HAD COMMITTED
26 TO THESE INVESTORS THAT THEY WOULD BUY 44 SYSTEMS, BOTH
27 COGENERATION AND MICRONIZING EQUIPMENT AT \$5 MILLION APIECE
28 OR \$220 MILLION, WHICH WAS QUITE ATTRACTIVE. THAT, I

1 I HOPE, ANSWERS YOUR QUESTION.

2 Q YOU WERE TO PROVIDE TO MR. KILPATRICK THE
3 COGENERATION EQUIPMENT?

4 A WELL, THE MICRONIZING AND COGENERATION EQUIPMENT,
5 YES, SIR.

6 Q AND DID YOU HAVE THE MICRONIZING OR THE EQUIPMENT?
7 DID YOU HAVE TO PURCHASE THAT FROM SOMEBODY ELSE?

8 A WE HAD TO PURCHASE THAT FROM BBC.

9 Q ALL RIGHT. THE MICRONIZING IS THE GRINDING
10 EQUIPMENT OR THE EQUIPMENT NECESSARY TO MAKE THE PARTICLES
11 SMALL ENOUGH TO --

12 A YES. IT GRINDS COAL TO A POWDER OF OVER 325
13 MESH, SO IT CAN BE BURNED IN OUR BURNER.

14 Q AND IT IS THIS BURNER THAT IS THE BASIS FOR
15 THE COGENERATION SYSTEM?

16 A IT MAKES THE THERMAL ENERGY FOR IT, YES.

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1 Q AND WHEN YOU TALKED TO MR. HUNT ABOUT GETTING
2 MONEY TO DEVELOP YOUR PRODUCTS, WHAT WAS THE UPSHOT OF THAT?

3 A I DON'T UNDERSTAND HOW YOU MEAN THE UPSHOT?

4 Q OKAY, THEN MAYBE THAT WASN'T A GOOD QUESTION.
5 YOU WERE AT THE POINT OF NEEDING MONEY TO BUILD
6 THE PRODUCTS THAT YOU WERE GOING TO THEN SELL TO
7 MR. KILPATRICK, CORRECT?

8 A WE DID, YES.

9 Q AND YOU WERE ATTEMPTING TO GET THAT MONEY FROM
10 MR. HUNT?

11 A WELL, THROUGH MR. ELGIN.

12 Q AND WHEN YOU TALKED TO MR. HUNT, WHAT ARRANGEMENT
13 DID YOU MAKE WITH HIM BY WAY OF HIS DESIRING TO PROVIDE YOU
14 WITH THE MONEY?

15 MR. CHIER: ASSUMING FACTS NOT IN EVIDENCE, YOUR HONOR.

16 THE COURT: GO AHEAD. YOU MAY ANSWER.

17 Q BY MR. WAPNER: IF ANY?

18 THE COURT: OVERRULED.

19 THE WITNESS: SIR?

20 Q BY MR. WAPNER: WHAT ARRANGEMENTS DID YOU MAKE
21 WITH MR. HUNT OR ANY OF THE BBC COMPANIES IN THAT REGARD?

22 A WELL, THE CONTRACT PROVIDED, THAT WAS SIGNED BY
23 MR. HUNT AND WITH MR. ELGIN AS A WITNESS AND SIGNED BY
24 MR. RAGAN OF OUR COMPANY, WHO HAD MY POWER OF ATTORNEY, TOO,
25 AT THE TIME, THAT HE WOULD PUT UP \$50,000 IMMEDIATELY,
26 \$800,000 --

27 MR. CHIER: YOUR HONOR, I OBJECT, ON THE GROUND OF BEST
28 EVIDENCE. NOW HE IS - -

1 THE COURT: OVERRULED.

2 GO AHEAD. PLEASE TELL US ABOUT IT, WILL YOU?

3 THE WITNESS: \$800,000 IN TEN DAYS AND 10 MILLION IN
4 SIX MONTHS AND WOULD CONVEY ALL OF THE OUTSTANDING ISSUED
5 SHARES OF CYCLATRONICS, WHICH PURPORTEDLY HAD THE BROWNING --
6 DR. BROWNING'S MICRONIZING TECHNOLOGY.

7 Q BY MR. WAPNER: SO YOU WOULD GET \$10 MILLION,
8 IN ESSENCE, FOR COGENCO AND YOU WOULD ALSO TAKE CONTROL OF
9 CYCLATRONICS INCLUDING THE TECHNOLOGY THAT MR. BROWNING HAD;
10 IS THAT RIGHT?

11 A THE USE OF THAT FOR THE CONTRACT WITH
12 MR. KILPATRICK OF UNITED FINANCIAL.

13 Q WERE YOU TOLD BY SOMEBODY THAT MR. BROWNING'S
14 TECHNOLOGY, IN FACT, RESIDED IN THE COMPANY CALLED
15 CYCLATRONICS?

16 A YES.

17 Q AND AFTER, DID YOU IN FACT SIGN, OR YOUR COMPANY
18 SIGN A CONTRACT WITH MR. HUNT'S COMPANY THAT PROVIDED, AS
19 YOU JUST DESCRIBED?

20 A THERE WERE LOTS OF DOCUMENTS FINALIZED, YES, THAT
21 DID THOSE THINGS.

22 MR. CHIER: I MOVE TO STRIKE AS NONRESPONSIVE.

23 THE COURT: OVERRULED.

24 Q BY MR. WAPNER: AS A RESULT OF THAT, WHAT ACTIONS
25 DID YOU AND THE OTHERS CONNECTED WITH YOUR COMPANIES TAKE
26 WITH REGARD TO CYCLATRONICS, THE COMPANY THAT SUPPOSEDLY HAD
27 MR. BROWNING'S TECHNOLOGY IN IT?

28 A THREE OF OUR OLD DIRECTORS, WHO HAD GIVEN CONTROL

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1 TO BBC, MET AND WITH THE SHARES, ELECTED BOTH DIRECTORS AND
2 OFFICERS OF CYCLATRONICS, WHICH WOULD BE OWNED BY COGENCO.

3 Q WHO WERE THOSE THREE PEOPLE?

4 A IT WAS RANDELL RAGAN, FRANK OXARART AND MYSELF.

5 Q AT SOME POINT LATER, DID YOU FIND OUT SOMETHING
6 ABOUT WHETHER OR NOT MR. BROWNING'S TECHNOLOGY -- STRIKE THAT.

7 AT SOME POINT AFTER THAT, IT COULD BE AT ANY POINT
8 IN THE FUTURE, DID YOU FIND OUT THAT MR. HUNT HAD ATTEMPTED
9 TO DO SOMETHING ELSE WITH MR. BROWNING'S TECHNOLOGY?

10 A YES.

11 Q WHAT DID YOU FIND OUT ABOUT THAT?

12 MR. CHIER: OBJECTION. HEARSAY.

13 THE COURT: OVERRULED.

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1 Q BY MR. WAPNER: WHAT DID YOU FIND OUT ABOUT THAT?

2 A WE THOUGHT THAT THE CONTRACT HAD BEEN EXECUTED
3 BETWEEN COGENCO -- THIS WAS AFTER MY RESIGNATION ON
4 NOVEMBER THE 1ST OF '83 -- WE ASSUMED THE CONTRACT HAD BEEN
5 SIGNED. WE HAD BEEN TOLD IT HAD BEEN SIGNED.

6 Q WHICH CONTRACT IS THAT?

7 A BETWEEN COGENCO AND UNITED FINANCIAL AND SATURN
8 ENERGY FOR THE \$220 MILLION CONTRACT.

9 Q AND THAT CONTRACT WAS TO INCLUDE COGENCO OWNING
10 MR. BROWNING'S TECHNOLOGY THROUGH THE CYCLATRONICS BUSINESS?

11 A YES, IT DID.

12 Q WHY DID YOU MAKE THAT ASSUMPTION?

13 A WHAT ASSUMPTION?

14 Q THAT THE CONTRACTS HAD BEEN SIGNED WITH
15 MR. KILPATRICK?

16 A WELL, WE WERE INFORMED BY BOTH MR. KILPATRICK
17 AND MR. HUNT.

18 Q AT SOME POINT LATER, DID YOU FIND OUT THAT THAT
19 IN FACT WASN'T THE CASE?

20 A YES.

21 Q WHEN DID YOU FIND THAT OUT?

22 A IT WAS THE FOLLOWING YEAR IN THE SPRING, I HAVE
23 FORGOTTEN THE DATE, MARCH OR APRIL, IN A CONVERSATION WITH
24 MR. KILPATRICK IN DENVER.

25 Q AND WHAT WAS THE CONVERSATION ABOUT?

26 A I ASKED HIM --

27 YOU SEE, THERE HAD BEEN NO MONEY COMING IN SO
28 I INQUIRED.

1 Q NO MONEY COMING IN TO WHERE?

2 A INTO COGENCO TO PAY ANYONE OR THE RENT.

3 Q WHERE WAS THAT MONEY SUPPOSED TO COME FROM?

4 A FROM BBC.

5 Q THAT WAS PURSUANT TO THE CONTRACT THAT SAID THERE
6 WAS GOING TO BE \$50,000 RIGHT AWAY, THEN \$800,000 SHORTLY AFTER
7 THAT AND THEN \$10 MILLION WITHIN SIX MONTHS?

8 A YES, THE LETTER OF COMMITMENT, RIGHT.

9 Q AND WAS ANY OF THAT MONEY FORTHCOMING?

10 A NO.

11 Q AND WHAT WAS YOUR PURPOSE IN BEING IN DENVER IN
12 THE FIRST PLACE, IN THE SPRING OF 1984?

13 A WELL, THIS WAS A TELEPHONE CONVERSATION.

14 I WAS NOT IN DENVER.

15 Q ALL RIGHT. YOU TALKED TO MR. KILPATRICK?

16 A YES.

17 AND IN QUESTIONING MR. KILPATRICK, HE TOLD ME
18 THAT THE CONTRACT HAD NOT, AS HE THOUGHT, BEEN SIGNED WITH
19 COGENCO SYSTEMS BUT WITH A COMPANY CALLED MICROGENESIS, WHICH
20 I HAD NEVER HEARD OF THAT.

21 Q WAS THAT THE FIRST TIME, IN FACT, DURING THAT
22 TELEPHONE CONVERSATION THAT YOU HEARD OF MICROGENESIS?

23 A YES, THAT IS TRUE.

24 Q AND WHAT DID YOU DO WHEN YOU HEARD ABOUT THAT?

25 A WELL, I GOT RATHER MAD.

26 Q AND THIS WAS THE CONTRACT THAT COGENCO WAS
27 SUPPOSED TO HAVE WITH MR. KILPATRICK, THAT IS, COGENCO AND
28 CYCLATRONICS WERE SUPPOSED TO HAVE WITH MR. KILPATRICK AND

1 YOU FOUND OUT THAT IN FACT IT WAS NOT
2 CYCLATRONICS BUT IN FACT, MICROGENESIS?

3 A NO.

4 WE FOUND OUT THAT THE NAME OF COGENCO SYSTEMS,
5 IN THE CONTRACT, HAD BEEN CROSSED OUT AND THAT MICROGENESIS
6 HAD BEEN INSERTED ALL THROUGH THE CONTRACT AND IN THE SIGNATURE
7 LINE AND SIGNED WITH MR. KILPATRICK.

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1 Q AND WHEN YOU FOUND THAT OUT, WHAT DID YOU
2 DO?

3 A I CALLED A BOARD MEETING AND INFORMED OUR
4 DIRECTORS -- THOSE OF US THAT WERE STILL REMAINING AS
5 PART OF THE OLD BOARD. AND WE DECIDED TO GO DIRECTLY
6 WITH A NEW CONTRACT TO MR. KILPATRICK, WHO OFFERED THAT
7 TO US.

8 Q DID YOU DO THAT?

9 A YES.

10 Q WHEN WAS THAT DONE?

11 A WE IMMEDIATELY STARTED NEGOTIATIONS, WHICH
12 WERE DIFFICULT BECAUSE MICROGENESIS WOULD NOT BACK AWAY.

13 Q DID YOU ATTEMPT TO HAVE MICROGENESIS BACK
14 AWAY?

15 A YES.

16 Q HOW DID YOU DO THAT?

17 A THROUGH MR. KILPATRICK.

18 Q AND WHEN YOU STARTED THESE NEGOTIATIONS, WAS
19 THIS IN THE SPRING OF 1984?

20 A THE SPRING AND SUMMER.

21 Q AND AT SOME POINT WHILE YOU WERE ATTEMPTING
22 TO GET A NEW AGREEMENT WITH MR. KILPATRICK, DID SOMETHING
23 HAPPEN TO YOU OUTSIDE OF A BUSINESS, OUTSIDE OF YOUR OFFICES
24 IN IRVINE?

25 A YES.

26 Q CAN YOU PLACE THIS INCIDENT IN POINT OF TIME?
27 GIVE US A TIME FRAME IN TERMS OF WHAT WAS GOING ON WITH
28 THESE VARIOUS CONTRACTS AT THAT TIME.

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1 A WELL, I THINK IT WAS SOMEWHERE BETWEEN APRIL
2 10 AND APRIL 13 THAT WE LEARNED OF THE CONTRACT WITH MICROGENESIS
3 AND UNITED FINANCIAL AND SATURN ENERGY.

4 Q AND THEN WHEN YOU LEARNED OF THAT, WHEN YOU
5 FIRST LEARNED OF THAT CONTRACT, IS THAT WHEN YOU TOLD
6 MR. KILPATRICK -- DID YOU EVER MAKE A STATEMENT TO MR.
7 KILPATRICK ABOUT WHETHER OR NOT MICROGENESIS HAD THE TECHNOLOGY
8 THEY PURPORTED TO HAVE?

9 A WELL, MR. KILPATRICK INFORMED ME THAT THEY
10 HAD TAKEN OUR TECHNOLOGY AS WELL AS MICROGENESIS FROM
11 DR. BROWNING AND PUT IT -- SORRY -- AS WELL AS CYCLATRONICS
12 TECHNOLOGY OF DR. BROWNING AND PUT IT ALL INTO MICROGENESIS
13 IN ORDER TO MAKE THE CONTRACT THEN WITH MICROGENESIS AND
14 THE OTHER TWO KILPATRICK COMPANIES.

15 Q AND WHEN YOU WERE TOLD THAT, DID YOU TELL
16 MR. KILPATRICK ANYTHING ABOUT WHO IN FACT HAD THE TECHNOLOGY?

17 A YES, I DID.

18 Q WHAT DID YOU TELL HIM?

19 A I TOLD HIM THAT WE HAD 100 PERCENT OF THE
20 STOCK OF CYCLATRONICS. WE HAD GIVEN ALL OF THE CONTROLLING
21 SHARES OF BOTH COGENCO, THE UNISSUED SHARES OF COGENCO
22 AND U.S. FLYWHEELS TO THE BBC IN EXCHANGE FOR IT. AND
23 THEY HAD NO RIGHT TO IT.

24 WE WERE THE BOARD AND WE WERE THE OFFICERS
25 ON IT STILL, EVEN THOUGH IT WAS OWNED BY COGENCO SYSTEMS.
26 AND THAT WAS SUBSEQUENT TO THE BBC TAKING CONTROL OF THE
27 BOARD OF COGENCO.

28 Q DID YOU TELL THAT TO MR. KILPATRICK WHEN YOU

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1 FIRST MENTIONED IT?

2 A YES, I DID. I THINK IT WAS EITHER APRIL 11
3 OR 12, ALONG IN THAT WEEK.

4 Q AND ON APRIL 13 OF 1984, DID YOU GO TO WORK?

5 A YES, I DID.

6 Q WHERE WERE YOUR OFFICES AT THAT TIME?

7 A THE OFFICES WERE ON MC GAW STREET IN IRVINE.

8 Q WHAT WAS THE ADDRESS?

9 A I BELIEVE IT WAS 1372 MC GAW.

10 Q DO YOU SEE THE DIAGRAM THAT IS ON THE BOARD
11 TO YOUR RIGHT WHICH IS PEOPLE'S 7 FOR IDENTIFICATION?

12 THE COURT: 7.

13 THE WITNESS: YES.

14 Q BY MR. WAPNER: DOES THAT APPEAR TO YOU TO
15 BE A VERY ROUGH DEPICTION OF THE LOCATION WHERE YOUR BUSINESS
16 WAS IN APRIL OF 1984?

17 A YES.

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3-i 1 Q WHAT TYPE OF BUILDINGS ARE LOCATED ON MC GAW AT
2 1372 AND 1392?

3 A THERE WERE TWO TILT-UP BUILDINGS, NOT IN
4 PROPORTION BUT APPROXIMATELY LOCATED IN RELATION TO EASTMAN
5 AND MC GAW.

6 Q WHEN YOU SAY, "NOT IN PROPORTION," DOES THAT MEAN
7 THAT ONE IS BIGGER THAN THE OTHER?

8 A 1372 IS MUCH BIGGER THAN 1392, YES.

9 Q AND WHEN YOU WENT TO WORK ON THE MORNING OF
10 APRIL THE 13TH, 1984, WHAT TIME DID YOU ARRIVE?

11 A JUST BEFORE 8 O'CLOCK IN THE MORNING.

12 Q DID YOU DRIVE YOUR CAR?

13 A YES I DID.

14 Q WHERE DID YOU PARK IT?

15 A I PARKED -- MAY I POINT?

16 Q WHY DON'T YOU JUST TAKE THIS RED PEN AND DRAW
17 A RECTANGLE ON THE DIAGRAM.

18 A LET'S SEE. I CAME UP MC GAW AND TURNED IN HERE
19 AND PARKED APPROXIMATELY THERE. THERE ARE TWO OR THREE
20 PARKING SPOTS THERE.

21 Q CAN YOU DO THAT AGAIN? BUT, DO IT FROM THE OTHER
22 SIDE. YOU DON'T HAVE TO PUT A MARK THERE. BUT GO TO THE
23 OTHER SIDE SO THE JURY CAN SEE.

24 A I PARKED THERE. THERE ARE THREE STALLS AND I
25 THINK -- I THINK THERE ARE. I DIDN'T DO A VERY GOOD JOB.

26 I THINK I PARKED IN THE SECOND SPACE FACING THE
27 BUILDING BECAUSE I ALWAYS PARKED HERE. THIS IS THE DOORWAY
28 AT 1372. MY OFFICE WAS IN THIS BUILDING.

1 Q SO, YOU PARKED AND THE FRONT OF YOUR CAR WAS FACING
2 THE SIDE OF THE BUILDING?

3 A YES. THE FRONT OF THE CAR WAS -- I DON'T BELIEVE
4 SO. I AM NOT SURE. IT WAS EITHER AGAINST THE BUILDING OR
5 OFF TO THE SIDE, HERE. I AM NOT TOO CERTAIN OF THAT. THIS
6 IS FOUR YEARS LATER.

7 Q ALL RIGHT. AND YOU COULD JUST RESUME YOUR SEAT
8 FOR THE TIME BEING. WHEN YOU DROVE UP --

9 THE COURT: THIS IS APRIL OF 1984?

10 THE WITNESS: '83 -- WAIT A MINUTE. '84 IS RIGHT, SIR.

11 THE COURT: SO IT IS ONLY THREE YEARS?

12 THE WITNESS: YES. THAT'S TRUE. SORRY, SIR.

13 THE COURT: ALL RIGHT.

14 Q BY MR. WAPNER: WHEN YOU DROVE UP TO THE PARKING
15 SPACE, DID YOU NOTICE ANYONE IN PARTICULAR LOCATED THERE?

16 A YES. IT WAS THE UNUSUAL. THERE WAS A BLACK MAN
17 LEANING UP AGAINST 1372, JUST ONE OR TWO STALLS AWAY FROM
18 WHERE I PARKED.

19 Q CAN YOU JUST GO BACK TO THE DIAGRAM AND TAKE
20 THIS OTHER GREASE PENCIL AND PUT AN "X" WHERE THIS PERSON
21 WAS?

22 A HE WAS APPROXIMATELY AT THIS SPOT (INDICATING).

23 Q OKAY.

24 A WHERE I COULD SEE HIM FROM THE DRIVER'S SIDE,
25 AS I PULLED IN.

26 Q AND THAT IS THE SPOT WHERE YOU PUT THE "X" ON
27 THE DIAGRAM?

28 A YES. HE WAS ACTUALLY LEANING WITH HIS BACK AGAINST

1 THE BUILDING. I THOUGHT HE WAS DRINKING SOMETHING FROM A
2 CUP.

3 Q CAN YOU DESCRIBE THIS PERSON?

4 A I DID A POOR JOB OF THAT FOR THE POLICE. HE
5 SEEMED TO BE --

6 MR. CHIER: YOUR HONOR, COULD WE APPROACH THE SIDE BAR?

7 THE COURT: NO. GO AHEAD. DESCRIBE THE PERSON.

8 MR. CHIER: YOUR HONOR, THIS IS EXTREMELY --

9 THE COURT: GO AHEAD.

10 THE WITNESS: THE QUESTION WAS?

11 THE COURT: DESCRIBE THE PERSON.

12 Q BY MR. WAPNER: WHETHER YOU ARE ABLE TO DESCRIBE
13 THE PERSON THAT YOU SAW AT ALL. DO YOU KNOW APPROXIMATELY
14 HOW TALL HE WAS?

15 A WELL, I THOUGHT HE WAS AT THE TIME, TALLER THAN
16 HE WAS. BUT HE WAS APPROXIMATELY SIX FEET I THOUGHT AT THE
17 TIME AND VERY MUSCULAR. NOT GOOD CLOTHES, LIKE WORK CLOTHES.
18 I COULDN'T EVEN REMEMBER IF HE HAD A HAT.

19 Q DO YOU KNOW WHETHER THE CLOTHES WERE TIGHT-FITTING
20 OR LOOSE-FITTING?

21 A THE UPPER, ABOVE HIS WAIST, SEEMED TO BE LOOSE.

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1 Q AFTER YOU PULLED IN TO THE LOCATION WHERE
2 YOU PARKED, WHAT DID YOU DO?

3 A WELL, I DID AS I ALWAYS DO, I HAD A FOUR-DOOR
4 BROWN CAR, AND I GOT OUT THE DRIVER'S SIDE AND I HAD MY
5 BRIEFCASE ALWAYS IN THE BACK SEAT ON MY -- ON MY SIDE
6 OF THE CAR, SO I OPENED THE BACK SEAT DOOR ON THE DRIVER'S
7 SIDE AND REACHED IN TO GET THE BRIEFCASE BY THE HANDLE.

8 Q WHAT HAPPENED WHEN YOU DID THAT?

9 A I SAW A FLASH AND BEFORE I COULD -- BEFORE
10 I COULD WHIRL AROUND, I FELT SOMETHING HIT MY BACK.

11 I THOUGHT I WAS STABBED.

12 Q WHY DID YOU THINK YOU WERE STABBED?

13 A WELL, IT WAS -- IT -- I SAW A FLASH OF, IT
14 MAY HAVE BEEN THROUGH THE GLASS OF THE DOOR THAT WAS OPEN
15 AND THE SUN WAS COMING UP FAIRLY HIGH IN THE EAST, WHICH
16 WAS RIGHT IN MY EYES, AS I LOOKED THROUGH THIS DOOR, THE
17 GLASS OF THE DOOR, AND AT THE TIME I THOUGHT I WAS STABBED,
18 YOU KNOW, AND I WAS VERY FRIGHTENED, VERY CONFUSED.

19 Q WHAT DID YOU FEEL AT THE TIME?

20 A WELL, IT WAS --

21 Q WHAT WAS THE PHYSICAL SENSATION THAT YOU FELT?

22 A WELL, AT FIRST IT WAS -- LIKE I SAY, I THOUGHT
23 I WAS STABBED AND THEN IT WAS VERY COLD AND I COULDN'T --

24 I -- AS I RAN AFTER HIM, AFTER WE SCUFFLED,
25 I RAN AFTER HIM AND CHASED HIM.

26 THERE WAS A BIG SEMI TRUCK BACKING IN TO OUR
27 PLANT THERE AND THE DRIVER --

28 Q HOLD ON A SECOND.

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1 A I AM SORRY.

2 Q BECAUSE WE ARE A LITTLE BIT AHEAD OF OURSELVES.

3 A OKAY. I AM SORRY.

4 Q AS YOU WERE GETTING YOUR BRIEFCASE OUT OF
5 THE CAR, YOU SAID YOU SAW A FLASH, WHICH DIRECTION WAS
6 IT COMING FROM, WHERE DID YOU SEE THAT?

7 A WELL, AS I SAY, AS I WHIRLED, I SAW A FLASH
8 OF LIGHT. I THOUGHT IT WAS A KNIFE. BUT I COULD NOT
9 BE CERTAIN OF THAT.

10 Q WERE YOU WHIRLING JUST AS IN THE COURSE OF
11 GETTING YOUR BRIEFCASE OUT OR FOR SOME OTHER REASON?

12 A NO, I HAD JUST TAKEN HOLD OF THE BRIEFCASE
13 WHEN THIS LIQUID, WHATEVER IT WAS, WAS THROWN ON MY BACK
14 AND I DIDN'T SEE HIM THROW IT.

15 Q WAS IT BEFORE THAT THAT YOU SAW THIS FLASH?

16 A NO.

17 AS I WHIRLED, I SAW IT.

18 Q SO DID YOU FEEL SOMETHING ON YOUR BACK BEFORE
19 YOU WHIRLED AROUND?

20 A YES.

21 Q WHAT WERE YOU WEARING?

22 A I HAD TAKEN OFF MY BUSINESS SUIT AND HAD PUT
23 IT IN THE BACK SEAT TO KEEP THE COAT FROM WRINKLING, AS
24 MY WIFE REQUIRES THAT, AND SO I WAS JUST IN A SHIRT AND
25 TIE.

26 Q SO BEFORE YOU SAW THAT FLASH, YOU FELT SOMETHING
27 ON YOUR BACK; IS THAT RIGHT?

28 A I BEG YOUR PARDON?

1 Q BEFORE YOU SAW THIS FLASH, YOU SAY YOU FELT
2 SOMETHING.

3 A WELL, IT WAS ALMOST CONCURRENT.

4 Q WHEN YOU FELT THIS, IS THAT WHEN YOU WHIRLED
5 AROUND?

6 A YES.

7 Q WAS THE DOOR TO THE CAR STILL OPEN?

8 A YES.

9 Q AND DO YOU KNOW WHICH WAY IS NORTH ON THIS
10 DIAGRAM?

11 A WELL, I AM NOT -- I AM NOT SURE OF IT.

12 BUT I KNOW THAT AS MY CAR WAS HERE --

13 Q WELL, LET ME DO IT THIS WAY, BECAUSE REALLY
14 WHAT I AM GETTING AT IS WHERE THE SUN WAS.

15 AT WHAT POINT WAS THE SUN, DID YOU FEEL LIKE
16 THE SUN WAS IN YOUR DIRECTION? WHICH DIRECTION WERE YOU
17 LOOKING, IF YOUR CAR WAS THERE (COUNSEL INDICATING).

18 A WELL, LIKE IT SEEMED LIKE IT WAS THROUGH THE
19 WINDOW OF THE DOOR AND IT WOULD BE EASTWARD, SO I GUESS
20 NORTH WOULD BE OUT THIS OTHER DIRECTION (WITNESS INDICATING).

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1 Q KIND OF TOWARD THE RIGHT TOP, THE TOP UPPER
2 RIGHT-HAND CORNER OF THE DIAGRAM?

3 A I DON'T THINK THE STREETS ARE REALLY NORTH
4 AND SOUTH IN IRVINE.

5 I AM NOT SURE OF THAT, THOUGH, EITHER.

6 Q OKAY. YOU FELT THIS LIQUID ON YOUR BACK,
7 YOU WHIRLED AROUND AND WHAT HAPPENED?

8 A WELL, WE SCUFFLED A BIT AND HE RAN AND I CHASED
9 HIM.

10 Q I TAKE IT THERE WAS A PERSON THERE?

11 A YES.

12 Q AND YOU SCUFFLED WITH THIS PERSON?

13 A YES.

14 Q THE PERSON THAT YOU SCUFFLED WITH, HAD YOU
15 SEEN THAT PERSON A FEW MOMENTS PRIOR TO THAT?

16 A YES.

17 Q ALL RIGHT. WHERE HAD YOU SEEN HIM?

18 A WELL, LIKE I SAID, I COULD SEE HE HAD A WHITE
19 CUP. I THOUGHT HE WAS DRINKING COFFEE, WAITING FOR SOMETHING
20 AT THE PLANT, AND HE SMILED. I RETURNED THE SMILE.

21 Q SO THE PERSON THAT YOU SCUFFLED WITH WAS THE
22 SAME PERSON WHO WAS STANDING LEANING UP AGAINST THE BUILDING?

23 A YES.

24 Q WHEN YOU SCUFFLED WITH HIM, WHAT DID YOU DO
25 EXACTLY? WAS IT PUSHING OR SHOIVING OR WHAT WAS GOING
26 ON?

27 A WELL, I THOUGHT I SWUNG THE BRIEFCASE, BUT
28 I KNOW I DIDN'T HAVE THE BRIEFCASE AS I CHASED HIM, SO

1 I DON'T KNOW FOR SURE.

2 I WAS VERY CONFUSED.

3 Q WHERE DID YOU CHASE THIS PERSON?

4 A WELL, I CHASED HIM RIGHT OUT. HE RAN OUT
5 IN THAT -- IN THAT INSTANT, WHERE THE CAR WAS PARKED
6 OUT BETWEEN THE BUILDINGS AND PAST THE TRUCK THAT WAS
7 BACKING IN THERE, AND I RAN TO THE DRIVER OF THAT TRUCK
8 AND SAID, "WHICH WAY DID HE GO?"

9 AND HE SAID, "THAT WAY." AND I RAN OUT TO
10 EASTMAN AND HE HAD DISAPPEARED.

11 Q HOW OLD DID THIS MAN APPEAR TO BE?

12 A I DIDN'T REALLY GET A GOOD LOOK AT HIM. I
13 WOULD THINK ABOUT 38 TO 40 WOULD BE A GOOD GUESS.

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1 Q HOW OLD WERE YOU AT THE TIME THAT THIS HAPPENED?

2 A 67.

3 Q AND CAN YOU GO TO THE DIAGRAM AND SHOW US
4 WHERE THE TRUCK WAS AND THE PATH THAT THIS MAN TOOK THAT
5 YOU CHASED?

6 (WHEREUPON, WITNESS APPROACHES DIAGRAM.)

7 THE WITNESS: THE CAB -- I MEAN THE TRACTOR OF THE
8 TRUCK WAS HERE AND HE HAD THE SEMI-TRAILER BACKED INTO
9 OUR DOCK AT THIS POINT --

10 I AM SORRY. I PROBABLY SHOULD DO IT FROM
11 THIS SIDE.

12 THE DRIVER, OF COURSE, WAS UP HIGH THERE AND
13 THE BLACK MAN RAN OUT IN THIS DIRECTION WITH ME CHASING
14 HIM AND WHEN I GOT TO THIS POINT, I DIDN'T KNOW WHETHER
15 HE HAD GONE IN HERE FOR SURE OR OUT THAT WAY (INDICATING).

16 Q AND WHICH DIRECTION DID YOU GO WHEN YOU GOT
17 UP TO THAT?

18 A I WENT RUNNING OUT TO EASTMAN AND LOOKED UP
19 BOTH SIDES OF THE STREET AND COULDN'T SEE ANYTHING.

20 BY THIS TIME, MY BACK WAS BURNING, SO I WENT
21 BACK AND WENT INTO THE MEN'S ROOM AT THE PLANT AND TOOK
22 OFF MY SHIRT AND WASHED IT, AS WELL AS MY BACK, FROM THE
23 BURNING SENSATION.

24 Q AND WHAT DID YOU WASH YOUR BACK WITH?

25 A JUST WATER.

26 Q DID THE BURNING SENSATION GO AWAY OR DID IT
27 REMAIN?

28 A IT WENT AWAY.

1 Q AFTER YOU WASHED OFF WHATEVER IT WAS THAT
2 WAS THROWN ON YOU --

3 A YES.

4 Q -- WHEN YOU TOOK OFF YOUR SHIRT, DID YOU EXAMINE
5 IT?

6 A I DID, YES.

7 Q WAS THERE SOME TYPE OF LIQUID ON THERE?

8 A WELL, IT WAS WET AND IT HAD A DIFFERENT COLOR
9 THAN WATER.

10 I WASHED THAT AS BEST I COULD, BECAUSE I THOUGHT
11 I WOULD HAVE TO PUT THE SHIRT BACK ON. BUT I REMEMBERED
12 I HAD A SUITCASE IN THE BACK OF THE CAR AND IT HAD ANOTHER
13 SHIRT.

14 THE POLICE WERE THERE BY THIS TIME AND TOOK
15 MY SHIRT.

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1 Q DID YOU EVER SEE THE POLICE TAKE THE CUP THAT
2 YOU HAD SEEN THIS BLACK MAN HAVE EARLIER?

3 A I DON'T REMEMBER THEM PICKING UP THE CUP, NO.
4 BUT I DO REMEMBER IT WAS ON THE GROUND.

5 Q WERE YOU IN APPROXIMATELY THE SAME PHYSICAL
6 CONDITION AT THAT TIME THAT YOU ARE NOW?

7 A WELL, I WAS NOT QUITE SO FAT.

8 Q AND DID YOU MAKE A REPORT OF THIS TO THE POLICE?

9 A THE PEOPLE IN OUR OFFICE CALLED THE POLICE. AND
10 THEY WERE THERE .BY THE TIME I FOUND A CLEAN SHIRT.

11 Q THE BLACK MAN THAT YOU SAW THAT DAY, HAD YOU EVER
12 SEEN HIM BEFORE?

13 A NO, SIR.

14 Q DID THE POLICE SHOW YOU SOME PHOTOGRAPHS AND ASK
15 YOU TO ATTEMPT TO IDENTIFY HIM?

16 A YES, SIR.

17 Q WERE YOU ABLE TO DO THAT?

18 A I COULD NOT IDENTIFY HIM.

19 Q AND THAT ATTACK HAPPENED WITH A DAY OR TWO OF
20 YOUR TALKING TO MR. KILPATRICK ON THE TELEPHONE?

21 A NOT MANY -- NOT MORE THAN A DAY OR TWO, IT WOULD
22 SEEM. YES.

23 MR. WAPNER: THANK YOU. NOTHING FURTHER.

24 MR. BARENS: JUST A MOMENT, PLEASE.

25 (THE FOLLOWING PROCEEDINGS WERE HELD
26 AT THE BENCH OUT OF THE PRESENCE AND
27 HEARING OF THE JURY:)

28 MR. CHIER: YOUR HONOR, THE DEFENSE IS REQUESTING THAT

1 THE COURT ADJOURN UNTIL TOMORROW, TO ALLOW US TO PREPARE
2 PROPERLY FOR --

3 THE COURT: NO. YOU GO AHEAD NOW.

4 MR. CHIER: COULD I PLEASE JUST FINISH, YOUR HONOR?

5 THE COURT: GO AHEAD.

6 MR. CHIER: FIRST OF ALL, THE NOTICE RECEIVED FROM
7 MR. WAPNER CONCERNING THE SWARTHOUT MATTER, SUCH AS IT IS,
8 SIMPLY SAYS IN PARAGRAPH 2, YOUR HONOR:

9 "THE DEFENDANT ORDERED JAMES PITTMAN
10 TO ASSAULT BRUCE SWARTOUT WITH A DEADLY WEAPON
11 BY MEANS OF FORCE LIKELY TO PRODUCE GREAT BODILY
12 INJURY IN IRVINE, CALIFORNIA, IN APRIL, 1984 AND
13 THIS ASSAULT WAS CARRIED OUT BY MR. PITTMAN."

14 WE HAD NO NOTICE THAT THEY WERE GOING TO PUT ON
15 THIS EVIDENCE ABOUT MOTIVE AND ALL OF THIS UNDERLYING REASON
16 AS A PART OF THIS.

17 ALSO, THIS INTERFERENCE WITH CONTRACTUAL ADVANTAGE,
18 MR. HUNT HAS AT HIS HOME, YOUR HONOR, NUMEROUS DOCUMENTS WHICH
19 HAVE A DIRECT TENDENCY TO IMPEACH THE WITNESS AND --

20 THE COURT: YOU MEAN TO SAY FOR THE FIRST TIME, AS TO
21 THIS INCIDENT WITH MR. SWARTOUT, THAT YOU DIDN'T KNOW THAT
22 IT HAD ANY RELATIONSHIP TO ALL OF THE DEALS THAT WERE GOING
23 ON? IS THAT WHAT YOU ARE TRYING TO TELL ME?

24 MR. CHIER: WE KNEW ABOUT THAT.

25 THE COURT: OF COURSE. YOU SHOULD HAVE BEEN PREPARED
26 FOR IT.

27 MR. CHIER: NO. THEY WERE NEVER IN ISSUE IN THIS CASE.
28 THE ONLY THING IN ISSUE WAS THE ALLEGED ASSAULT. MR. WAPNER --

1 THE COURT: I HEARD IT ON THE GUILT PHASE. THERE WAS
2 TONS AND TONS OF TESTIMONY RELATING TO THESE PARTICULAR
3 TRANSACTIONS WITH MR. SWARTOUT.

4 MR. CHIER: BUT NOW THE GUILT IS OVER AND --

5 THE COURT: NO. BUT YOU ARE AWARE OF THE FACT THAT
6 THE SWARTOUT MATTER WAS COMING UP.

7 MR. CHIER: MR. WAPNER GAVE US, LATE ON SATURDAY NIGHT --

8 THE COURT: THAT WAS BACK IN 1985 THAT --

9 MR. CHIER: PLEASE --

10 THE COURT: YOU GOT IT IN '85. THERE WAS THE REPORT
11 ABOUT SWARTOUT. YOU SHOULD HAVE PREPARED EVERYTHING ABOUT
12 SWARTOUT.

13 MR. CHIER: WE DIDN'T GET SOME OF THE STUFF UNTIL
14 SATURDAY NIGHT FROM MR. WAPNER.

15 THE COURT: WHAT?

16 MR. CHIER: THERE WAS A STACK LIKE THIS (INDICATING)
17 OF FINANCIAL DOCUMENTS THAT --

18 THE COURT: EVERYTHING WITH RESPECT TO THE TRANSACTIONS
19 BETWEEN THE BBC AND SWARTOUT WERE KNOWN TO YOU LONG, LONG,
20 LONG AGO.

21 MR. CHIER: WE DID NOT GET --

22 THE COURT: IT WAS BROUGHT UP AS A MATTER OF FACT, IN
23 THE GUILT PHASE.

24 MR. BARENS: COULD WE KEEP OUR VOICES DOWN, JUDGE?

25 MR. CHIER: WE DID NOT GET NOTICE THAT THE PEOPLE INTENDED
26 TO USE THESE UNTIL SATURDAY NIGHT. I HAD NOT BEEN ACQUAINTED
27 PRIOR TO --

28 THE COURT: WELL, YOU SHOULD BE PREPARED. DO THE BEST

1 YOU CAN.

2 (UNREPORTED COLLOQUY BETWEEN COUNSEL.)

3 THE COURT: DO YOU HAVE THE PARTICULAR INCIDENT AND
4 THE POLICE REPORT, FRED?

5 MR. WAPNER: I DO.

6 THE COURT: THAT IS WHAT YOU GAVE THEM?

7 MR. WAPNER: I GIVE THEM --

8 THE COURT: LET ME TAKE A LOOK AT IT. THEY KNEW ABOUT
9 IT, DIDN'T THEY?

10 MR. WAPNER: YOUR HONOR --

11 MR. BARENS: WHY DON'T YOU BRING TO HIM WHAT WE ARE
12 TALKING ABOUT HERE?

13 MR. WAPNER: YOUR HONOR, FIRST OF ALL, TWO THINGS. IF
14 THE COURT WANTS US TO BREAK NOW, I DON'T MIND.

15 THE COURT: WE HAVE HAD TOO MANY BREAKS HERE BECAUSE
16 OF THEM. I WANT TO GO AHEAD WITH THIS THING.

17 MR. BARENS: BUT, THERE HAVE BEEN BREAKS THAT THE PEOPLE
18 WERE PERMITTED AND --

19 THE COURT: NO. THERE WEREN'T ANY.

20 YOU HAVE HAD FULL KNOWLEDGE OF THIS. HERE IS
21 THE POLICE REPORT WHICH GIVES ALL OF THE DETAILS ABOUT IT
22 AS TO WHERE IT TOOK PLACE AND EVERYTHING ELSE.

23 MR. BARENS: SIR, THAT IS NOT WHAT I AM ADDRESSING,
24 SIR.

25 SATURDAY NIGHT, MR. WAPNER LEFT ALL OF THE
26 BACKGROUND FINANCIAL MATERIAL ON THIS THING IN MY OFFICE.

27 I DIDN'T RECEIVE IT UNTIL SUNDAY MORNING BECAUSE
28 I WAS NOT THERE ON SATURDAY NIGHT. SUNDAY MORNING BY THE

1 TIME I RECEIVED IT, I COULDN'T GET TO THE DEFENDANT. I DIDN'T
2 SEE HIM UNTIL YESTERDAY MORNING, AT WHICH TIME I WAS BUSY
3 WITH THE RAFT OF STUFF THAT --

4 THE COURT: DO THE BEST YOU CAN WITH WHAT YOU HAVE GOT.
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1 MR. CHIER: YOUR HONOR, CAN I JUST FINISH? I WENT
2 TO SEE MR. HUNT TOMORROW NIGHT --

3 MR. BARENS: WE WENT TO SEE HIM LAST NIGHT. WE
4 COULDN'T ACCESS HIM WITH THIS MATERIAL LAST NIGHT BECAUSE
5 THEY DIDN'T BRING HIM BACK. WE WERE THERE AT 8:30 AT
6 NIGHT. HE WAS NOT THERE.

7 MR. CHIER: HE WAS NOT THERE UNTIL 9:00 AT NIGHT.

8 MR. BARENS: THEY HAD NOT --

9 THE COURT: WHY?

10 MR. BARENS: THE JAIL CLOSES AT FIVE MINUTES TO
11 9:00, WHETHER YOU SEE THE GUY OR YOU DON'T. THEY DIDN'T
12 BRING HIM BACK.

13 MR. CHIER: THERE ARE DOCUMENTS ON FILE WITH THE
14 SHERIFF'S DEPARTMENT THAT --

15 THE COURT: BUT YOU HAD AN OPPORTUNITY TO TALK TO
16 HIM ABOUT THIS. YOU NEVER TALKED TO HIM ABOUT THE SWARTOUT
17 MATTER? YOU NEVER TALKED ABOUT THE SWARTOUT MATTER AND
18 THE FACTS ABOUT IT?

19 MR. BARENS: COULD I -- IF I CAN ANSWER, I WILL
20 JUST ANSWER.

21 THE COURT: GO AHEAD.

22 MR. BARENS: WE TALKED ABOUT JUST THE THINGS IN
23 THE CHARGING PARAGRAPH, SOLELY CONCERNING THE INCIDENT
24 THAT OCCURRED AT THE IRVINE PLANT.

25 WHAT WE SEEK TO DO IS, WE NEED TO -- THEY
26 ARE TRYING TO SHOW MOTIVE ON THE PART OF THE DEFENDANT
27 AND WE NEED TO SHOW MOTIVE ON THE PART OF THE DEFENDANT --
28 THE PART OF THE WITNESS TOWARD THE DEFENDANT, BASED ON

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1 ALL OF THE CONTRACTUAL STUFF THAT I DIDN'T GET UNTIL SATURDAY
2 NIGHT.

3 THE COURT: WELL, WE HAD IT DURING THE GUILT PHASE.
4 DIDN'T YOU GO INTO THIS SWARTOUT DEAL AND THE CONTACTS
5 AND SO FORTH AT THAT TIME?

6 MR. BARENS: ONLY BRIEFLY TO TOUCH ON THE FACT THAT
7 THERE WAS SOME -- ALMOST NOT AT ALL.

8 JEFF RAYMOND TESTIFIED THAT HE LIVED DOWN
9 IN BALBOA I THINK FOR TWO MONTHS WITH DAVE MAY TO CHECK
10 INTO THE COGENCO --

11 THE COURT: I WILL TELL THE JURY THAT YOU WANT AN
12 ADJOURNMENT AT THIS TIME FOR THE PURPOSE OF PREPARING
13 SOME CROSS-EXAMINATION. ALL RIGHT?

14 MR. BARENS: WE APPRECIATE IT.

15 MR. CHIER: WOULD YOUR HONOR INDICATE THAT THE MATERIALS
16 WERE LATE AND --

17 MR. BARENS: WE DIDN'T GET THEM UNTIL SUNDAY AND --

18 THE COURT: YOU MEAN TO SAY THAT YOU ARE NOT EVEN
19 PREPARED TO ASK HIM ANY QUESTIONS ABOUT WHAT HE HAS TESTIFIED
20 HERE SO FAR?

21 MR. BARENS: YOUR HONOR, THE THING IS --

22 THE COURT: YOU CAN TAKE THE REST OF THE --

23 MR. BARENS: I WOULD LIKE TO SEQUENCE IT FOUNDATIONALLY,
24 BASED ON WHERE HE STARTED FROM.

25 MR. WAPNER: PERHAPS WHAT WE CAN DO IS DO WHATEVER
26 EXAMINATION THEY ARE GOING TO DO ABOUT THE FACTS OF THE
27 ACTUAL ASSAULT NOW. THEN THEY CAN DO THE BACKGROUND STUFF
28 TOMORROW.

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1 THE COURT: THAT IS WHAT I SAID. WHY DON'T YOU
2 GO INTO THOSE FACTS FIRST AND THEN THE BACKGROUND STUFF
3 TOMORROW?

4 MR. CHIER: BECAUSE IN ORDER TO PROPERLY CROSS-EXAMINE
5 THIS MAN, YOUR HONOR, THE CROSS-EXAMINATION SHOULD FOLLOW,
6 GENERALLY, THE LINE OF THE DIRECT EXAMINATION. OTHERWISE --

7 MR. BARENS: WAIT A MINUTE. LET'S JUST DO WHAT
8 THE JUDGE SAID. IF HE WANTS TO TELL THEM WE REQUESTED
9 UNTIL TOMORROW MORNING, HE IS GOING TO SAY IT. THANK
10 YOU.

11 (THE FOLLOWING PROCEEDINGS WERE HELD IN
12 OPEN COURT IN THE PRESENCE OF THE JURY:)

13 THE COURT: LADIES AND GENTLEMEN, THE DEFENSE REQUESTS
14 AN ADJOURNMENT AT THIS TIME FOR THE PURPOSE OF FURTHER
15 PREPARATION. VERY RELUCTANTLY, I HAVE AGREED TO DO IT.

16 WE'LL TAKE AN ADJOURNMENT AT THIS TIME UNTIL
17 10:30 TOMORROW MORNING. THE SAME ADMONITION THAT I GAVE
18 YOU THROUGHOUT APPLIES. GOOD NIGHT.

19 (JURY LEAVES COURTROOM.)

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1 MR. BARENS: COULD WE APPROACH IN CHAMBERS? WE
2 COULD USE THIS TIME MEANINGFULLY, SINCE WE DO HAVE THIS
3 AFTERNOON.

4 THE COURT: ALL RIGHT, IN CHAMBERS.

5 (WHEREUPON THE PROCEEDINGS WERE ADJOURNED
6 TO CHAMBERS WITH APPEARANCES AS HERETOFORE
7 NOTED EXCEPT MR. CHIER IS NOT PRESENT:)

8 THE COURT: ALL RIGHT.

9 MR. BARENS: YOUR HONOR, I WAS ADVISED BY THE DEFENDANT,
10 HE WAS PRESENT WITH US ON THE RECORD AT THE END OF THE
11 SESSION, THAT HE WISHED TO ADDRESS YOUR HONOR ON SOME
12 MATTERS.

13 THE COURT: YOU MEAN ON MOTIONS, ON THINGS? I AM
14 NOT GOING TO HEAR FROM HIM ANY LONGER ON ANY MOTIONS.
15 HE IS REPRESENTED BY TWO LAWYERS.

16 MR. BARENS: NO. GIVE ME A MOMENT.

17 THE COURT: LET HIM TALK TO YOU AND TELL YOU WHAT
18 HE WANTS.

19 (UNREPORTED COLLOQUY BETWEEN MR. BARENS
20 AND THE DEFENDANT.)

21 THE COURT: PARDON ME. DON'T YOU WANT YOUR ASSOCIATE
22 IN HERE?

23 MR. BARENS: I WILL PROCEED AT THIS POINT.

24 THE COURT: IS HE RUNNING A WRIT OF SOME KIND?

25 MR. BARENS: NO. ACTUALLY, HE WENT TO THE CAR TO
26 GET THE DISCOVERY MATERIALS WE TALKED ABOUT AT BENCH,
27 FOR MR. HUNT.

28 (FURTHER UNREPORTED COLLOQUY BETWEEN

1 MR. BARENS AND THE DEFENDANT.)

2 MR. BARENS: YOUR HONOR, I WOULD LIKE TO SUBMIT
3 THAT THE DEFENSE WAS TAKEN ABACK, NOT HAVING RECEIVED
4 UNTIL THE WEEKEND, THIS BALLISTICS MATERIAL THAT I HAD
5 NO OPPORTUNITY TO PROPERLY PREPARE ON, YOUR HONOR.

6 THE PEOPLE MUST HAVE KNOWN FOR A GOOD DEAL
7 OF TIME THEY WERE GOING TO PRODUCE BALLISTICS MATERIALS,
8 WHICH WE WERE NEVER ACCESSED TO, UNTIL ACTUALLY -- AND
9 MR. WAPNER IS GOING TO HAVE TO REFRESH MY RECOLLECTION
10 WHETHER I GOT IT SUNDAY OR MONDAY AND HEARD IT TODAY.

11 I HAVE NO BACKGROUND AT ALL IN BALLISTICS.

12 THE COURT: YOU DID PRETTY WELL ON YOUR CROSS-EXAMINATION.

13 MR. BARENS: THANK YOU, YOUR HONOR.

14 THE COURT: IT SOUNDS LIKE YOU KNOW A LOT ABOUT IT.

15 MR. BARENS: IT SOUNDED LIKE IT, DIDN'T IT?

16 THE COURT: IT CERTAINLY DID.

17 MR. BARENS: I CERTAINLY DON'T.

18 WE ARE CITING FOR THIS RELIEF, WHICH WOULD
19 BE A MOTION TO STRIKE THAT TESTIMONY, PEOPLE V. GRANT,
20 WHICH CLEARLY SAYS, AND I AM QUOTING IT: "THAT EXCEPT
21 FOR EVIDENCE" --

22 (FURTHER UNREPORTED COLLOQUY BETWEEN

23 MR. BARENS AND THE DEFENDANT.)

24 MR. BARENS: WHICH REFERENCES TO SECTION 193 OF
25 THE PENAL CODE AT PARAGRAPH 4 THEREOF, WHICH IS RECITED
26 IN THE STATEMENT OF THE CASE: "THAT NO EVIDENCE MAY BE
27 PRESENTED BY THE PROSECUTION IN AGGRAVATION UNLESS NOTICE
28 OF THE EVIDENCE TO BE INTRODUCED HAS BEEN GIVEN TO THE

1 DEFENDANT WITHIN A REASONABLE PERIOD OF TIME AS DETERMINED
2 BY THE COURT PRIOR TO THE TIME" --

3 THE COURT: THEY GAVE IT TO YOU TWO YEARS AGO.
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1 MR. BARENS: NO, YOUR HONOR, NOT THE BALLISTICS
2 MATERIAL.

3 THE COURT: YOU MEAN EVERY SINGLE FACT, THEY ARE
4 REQUIRED TO GIVE THAT TO YOU?

5 MR. BARENS: IT IS A MAJOR KIND OF FACT, WHEN YOU
6 ARE GOING TO PUT TOGETHER BALLISTICS EVIDENCE THAT YOU
7 ARE GOING TO TIE IN WITH A WEAPON, WHICH YOU ARE GOING
8 TO PRODUCE, TYING IT IN TO THE ALLEGED ACTIVITY. IF THAT
9 WERE AVAILABLE, WE COULD HAVE --

10 THE COURT: AS PART OF AN ASSAULT, YOU HAVE TO HAVE
11 SOMEBODY WITH SOMETHING, SOME KIND OF A WEAPON. PART
12 OF THE ASSAULT WAS WITH A WEAPON.

13 MR. BARENS: YES, YOUR HONOR.

14 THE COURT: NOW, YOU KNEW ABOUT THE FACT THAT THERE
15 WAS A WEAPON.

16 MR. BARENS: YES, YOUR HONOR.

17 THE COURT: MERELY BECAUSE THEY DIDN'T GIVE YOU
18 THE BALLISTICS ON EVERYTHING, WHICH THEY THEMSELVES DIDN'T
19 DO UNTIL APRIL OR MAY, WAS IT?

20 MR. WAPNER: IT WAS DONE LAST WEEK.

21 THE COURT: THEY COULDN'T GIVE YOU THAT UNTIL THEY
22 ACTUALLY DID IT, WHICH WAS LAST WEEK, AND THEY GAVE IT
23 TO YOU THEN.

24 MR. BARENS: BUT THAT IS AT THEIR MOTIVATION.

25 THE DEFENDANT: AT THEIR LEAVE.

26 MR. BARENS: THAT IS AT THEIR LEAVE.

27 I WOULD NOT INTERVIEW A WITNESS UNTIL THE
28 NIGHT BEFORE, IF I WERE A PROSECUTOR, AND THEN I HAND

1 THE GUY'S STATEMENT TO THE DEFENSE THE NEXT DAY.

2 THE COURT: THEY DIDN'T HAVE THE EVIDENCE THEY NEEDED.
3 THEY WOULD HAVE DONE IT SOONER IF THEY HAD HAD THE EVIDENCE.

4 MR. WAPNER: WE DID NOT PICK UP THE GUNS OR BULLETS
5 FROM THE SANTA ANA POLICE DEPARTMENT AND THE GARDENA POLICE
6 DEPARTMENT UNTIL LAST TUESDAY. AND WEDNESDAY MORNING,
7 THEY WERE TAKEN TO THE CRIME LAB AND AS SOON AS WE GOT
8 THE RESULTS, I MADE THEM AVAILABLE TO MR. BARENS.

9 I AM HAPPY TO HAVE THE EXHIBITS, WHICH ARE
10 NOW IN THE CUSTODY OF THE COURT, TAKEN OUT, BY A SPECIFIC
11 ORDER OF THE COURT, AND GIVEN TO ANY BALLISTIC EXAMINER
12 THAT COUNSEL CHOOSES AT THE APPOINTMENT OF THE COURT,
13 TO HAVE AN INDEPENDENT EXAMINATION CONDUCTED. I AM SURE
14 THE SHERIFF'S PEOPLE DID IT AS A RUSH FOR US IN A FEW
15 DAYS.

16 BASICALLY, IF YOU CAN FIND A PERSON AVAILABLE
17 TO DO IT, IT TAKES SEVERAL HOURS FOR THE PERSON TO SIT
18 AND EXAMINE ALL OF THESE ITEMS, AND I AM HAPPY TO HAVE
19 THEM SUBMITTED TO ANY INDEPENDENT EXPERT.

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1 THE COURT: IS THERE ANY SERIOUS QUESTION IN YOUR MIND
2 ABOUT THE FACT THAT IT WAS THE SAME GUN?

3 MR. BARENS: TO BE CANDID YOUR HONOR, NO. I AM NOT
4 GOING TO LIE TO THE COURT THAT --

5 THE COURT: WHY DO YOU NEED ANOTHER BALLISTICS EXPERT?

6 MR. BARENS: I THINK THAT I AM PROTESTING THE MANNER
7 IN WHICH I GET HOISTED, WITH THIS KIND OF DRAMATIC EVIDENCE
8 THAT CHANGES THE COMPLEXION OF WHAT I AM DEALING WITH IN THIS
9 STAGE OF THE CASE, THAT NOW, ALL OF A SUDDEN, I HAVE BALLISTIC
10 PROBLEMS THAT I DIDN'T KNOW EXISTED UNTIL I GOT HERE.

11 THE COURT: IS THERE A PROBLEM ABOUT IT? YOU CONCEDED
12 THAT IT IS THE SAME GUN.

13 MR. BARENS: WELL, IT ADDED A MAJOR ARROW TO THE QUIVER
14 OF THE PROSECUTION WHEN YOU CAN MAKE A BALLISTICS ARGUMENT
15 AS WELL AS IN ADDITION TO THE MORE GENERALIZED CONTEXT.

16 ALL I AM SAYING IS THAT OUT OF SENSE OF FAIRNESS,
17 AS WE GO THROUGH THIS --

18 THE COURT: WHAT IS IT THAT YOU WANT ME TO DO AT THIS
19 PARTICULAR POINT? YOU DON'T WANT ANOTHER BALLISTICS EXPERT.
20 YOU DON'T WANT TO HIRE ANY. YOU ARE SATISFIED IT WAS THE
21 SAME GUN.

22 WHAT IS IT THAT YOU WANT?

23 MR. BARENS: A MOMENT, YOUR HONOR.

24 (UNREPORTED COLLOQUY BETWEEN COUNSEL
25 AND THE DEFENDANT.)

26 MR. BARENS: I THINK THE DEFENDANT'S CONTENTION IS THAT
27 IT LACKED FAIRNESS IN THE WAY THE EVIDENCE WAS PROPOUNDED
28 AND THE LACK OF NOTICE AS TO THE PROPOUNDING OF THAT EVIDENCE,

A-2
1 YOUR HONOR.

2 (MR. CHIER ENTERS CHAMBERS.)

3 MR. BARENS: BECAUSE OF THE LACK OF NOTICE AND BECAUSE
4 IT WAS REALLY A SIGNIFICANT TYPE OF EVIDENCE.

5 THE COURT: LAST WEEK THEY GOT THE GUN AND FOUND OUT
6 AND DID ALL OF THE TESTS.

7 MR. BARENS: AGAIN YOUR HONOR, THAT IS BY CHOICE OF
8 THE PEOPLE IN PREPARING THIS EVIDENCE AND THE ISSUES GOING
9 TO THAT TYPE OF PACING.

10 THE COURT: HAVE YOU ANY EXPLANATION AS TO THE DELAY,
11 MR. WAPNER?

12 MR. WAPNER: WELL, REALLY, I DON'T EXCEPT THAT I DIDN'T
13 REALLY BEGIN TO DEAL SERIOUSLY WITH THE PENALTY PHASE UNTIL
14 AFTER THE CONVICTION.

15 DURING THE GUILT PHASE, I WAS PREPARING THE GUILT
16 PHASE AND I BEGAN WORK IN ERNEST ON THIS AFTER -- WELL, THE
17 FIRST OPPORTUNITY --

18 THE COURT: YOU GAVE THEM THE INFORMATION AT THE FIRST
19 OPPORTUNITY, DID YOU?

20 MR. WAPNER: THE FIRST TIME THAT I HAD IT, IT WAS ALSO
21 AVAILABLE TO THEM. I DIDN'T DO IT BEFORE. AS FAR AS WHY,
22 THERE ISN'T ANY REASON OTHER THAN THE FACT THAT WE DIDN'T
23 START SERIOUS WORK ON THE GUILT PHASE UNTIL AFTER THE PENALTY
24 PHASE -- I MEAN, UNTIL AFTER THE GUILT PHASE WAS OVER.

25 THE COURT: WHY DON'T YOU USE THE BALANCE OF THE TIME
26 TO CONFER WITH YOUR CLIENT ABOUT OTHER MATTERS?

27 MR. BARENS: LET ME JUST SEE IF THERE IS ANY OTHER POINT
28 I NEED TO ADDRESS THE COURT ON BRIEFLY, YOUR HONOR?

A-3

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(UNREPORTED COLLOQUY BETWEEN COUNSEL AND
THE DEFENDANT.)

MR. BARENS: YOUR HONOR, I WOULD LIKE TO -- I AM ASKING
THE DEFENDANT NOW TO MAKE A STATEMENT THAT I WANT ON THE RECORD.

IT IS NOT BY WAY OF A MOTION OR SEEKING A REMEDY.
IT IS A DISCLOSURE STATEMENT THAT I WANT THE DEFENDANT TO
MAKE ON THE RECORD.

BF

6B-1

1 THE COURT: DO YOU HAVE ANY OBJECTION, MR. WAPNER?

2 MR. BARENS: I WOULD REPRESENT IN GOOD FAITH THAT IT
3 IS NOTHING THAT I THINK THE PEOPLE WOULD OBJECT TO AT ALL.
4 IT IS INNOCUOUS. I WOULD SAY THAT IN GOOD FAITH BEFORE IT
5 IS PUT ON THE RECORD.

6 MR. WAPNER: I HAVE NO OBJECTION.

7 THE COURT: ALL RIGHT. LET HIM MAKE IT.

8 THE DEFENDANT: YOUR HONOR, I AM IN SOMETHING CALLED
9 "HIGH POWER" IN THE JAIL. THEY HAVE A LOT OF K-9'S IN THE
10 AREA AS WELL AS K-10'S.

11 NOW, THE K-9'S ARE A GROUP OF PEOPLE THAT HAVE
12 A SPECIAL DESIGNATION BECAUSE THEY ARE TESTIFYING FOR OR AGAINST
13 SOMEBODY IN THE JAIL FACILITY.

14 AND I HAVE HEARD THROUGH ATTORNEYS THAT I HAVE
15 BEEN INTERVIEWING AND A LOT OF OTHER PEOPLE, THERE HAS BEEN
16 A LOT OF DISCUSSION IN THIS MODULE THAT I AM IN MY CASE
17 AND I HAVE SEEN FLOATING AROUND IN THERE, COPIES OF THE
18 ESQUIRE ARTICLE AND THE L.A. MAGAZINE ARTICLE AND SO, THEY
19 KEEP FLIPPING THROUGH ON MY CASE.

20 I AM EXTREMELY ANXIOUS ABOUT THE POSSIBILITY
21 THAT SOMEBODY MIGHT COME FORWARD WHO HAS A BUNCH OF
22 INFORMATION ABOUT MY CASE, SUGGESTING THAT I MADE SOME SORT
23 OF STATEMENTS TO HIM, GIVEN THE FACT THAT THERE IS SO MUCH
24 BACKGROUND INFORMATION IN THE JAIL.

25 I JUST WANTED TO MAKE A RECORD OF THE FACT THAT
26 I AM NOT DISCUSSING MY CASE WITH ANY INMATE IN THERE.
27 I HAVE BEEN ADVISED NOT TO.

28 THE YEAR THAT I SPENT IN JAIL BEFORE I WAS

R-2
1 ADMITTED TO BAIL BY YOUR HONOR, I ALSO DIDN'T HAVE ANY CONTACT
2 WITH ANYBODY.

3 I AM NOT MAKING ANY FRIENDS THERE. I AM JUST
4 HAVING A POLICY OF NOT DISCUSSING ANYTHING.

5 FURTHERMORE, I AM ALSO NOT MAKING ANY THREATS
6 OR ANYTHING OR WOULD NOT MAKE ANY THREATS ABOUT ANY WITNESSES
7 IN THIS CASE OR ANY ISSUES OF ANY SORT OF VENGEANCE OR
8 ANYTHING LIKE THAT, SINCE I JUST WANT TO MAKE A RECORD.
9 I APPRECIATE YOUR HONOR, THE OPPORTUNITY TO DO SO. IT IS
10 JUST THAT THERE ARE PROBLEMS.

11 THERE WAS AN ARTICLE IN A MAGAZINE CALLED THE
12 "EASY READER" WHICH IS A SOUTHWEST MAGAZINE THAT I READ
13 RECENTLY.

14 IT TALKS ABOUT PROBLEMS THAT PEOPLE HAVE WITH
15 THEIR CASES IN RELATIONSHIP TO PEOPLE COMING FROM THOSE
16 DORMITORIES AND TESTIFYING AGAINST THEM.

17 AND IN SOME CASES IT HAS BEEN ESTABLISHED THAT
18 THE ACCUSATIONS WERE COMPLETE FALLACIOUS AND THAT EXACERBATED
19 MY CONCERN.

20 MR. BARENS: ONE OF THE REASONS HE WANTED THIS DONE,
21 YOUR HONOR, IN THE NORTHERN CALIFORNIA CASE WHICH MR. CHIER
22 AND I DID THE PRELIMINARY HEARING ON, WE HAD AN INCIDENT WHERE
23 A JAILHOUSE SNITCH, TO USE THE -- IF YOU WILL ACCEPT THE
24 JAILHOUSE COLLOQUIALISM, RESPECTFULLY, BY THE NAME OF JEFFREY
25 STEEL, CAME FORWARD AND MADE THIS WILD STORY UP THAT SOME
26 THREATS WERE MADE BY HUNT AND SOME THREATS WERE MADE BY OTHER
27 GUYS.

28 WELL, HE NEVER MADE THEM. HE WAS TRYING TO MAKE

BR-3
1 A DEAL AND KIND OF INGRATIATE HIMSELF BECAUSE HE HAD A PENALTY
2 COMING UP. HE HAD READ AN ARTICLE IN THE NEWSPAPER. THEN
3 HE CAME UP WITH THIS STORY.

4 THANK GOD, THE JUDGE DIDN'T BELIEVE IT. BUT IT
5 WAS BIZARRE. WHAT I AM AFRAID OF --

6 THE COURT: YOU ARE ALL CONCERNED THAT SOMEBODY MIGHT
7 COME FORWARD AND SAY THAT HE MADE SOME STATEMENTS TO HIM?

8 MR. BARENS: WELL, HE SAID THAT HUNT WAS DOWN THERE
9 AND HUNT JUST SAID THAT HE WAS GOING TO KILL EVERYBODY THAT
10 TESTIFIED IN THE TRIAL AND --

11 THE COURT: DON'T BE CONCERNED ABOUT THAT. I WON'T
12 PAY ANY ATTENTION TO IT. ALL RIGHT?

13 MR. BARENS: I JUST WANTED --

14 THE COURT: DON'T BE CONCERNED. I WON'T TAKE ANY
15 STATEMENT FROM ANYBODY IN THE JAILHOUSE THAT HE SUPPOSEDLY
16 SAID TO THEM.

17 I CAN UNDERSTAND THEIR MOTIVATION. I CAN UNDER-
18 STAND WHY THEY WOULD WANT TO COME FORWARD AND SAY SOMETHING.

19 MR. BARENS: I HOPE THAT YOU WILL UNDERSTAND THAT MY
20 CONCERN IS BASED ON THE HISTORY WE HAD BEFORE.

21 THE COURT: DON'T BE CONCERNED ABOUT IT.

22 MR. BARENS: THANK YOU, YOUR HONOR.

23 THE COURT: OKAY.

24 MR. CHIER: MAY WE SEE HIM IN THE LOCKUP?

25 THE BAILIFF: YES.

26 (AT 4:20 P.M. AN ADJOURNMENT WAS TAKEN

27 UNTIL WEDNESDAY, MAY 13, 1987, AT 10:30 A.M.)

28