

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 1987

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

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: JOHN K. VAN DE KAMP
STATE ATTORNEY GENERAL
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FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 91 OF 101
(PAGES 13668A TO 13851, INCLUSIVE)

COPY

ROSEMARIE GOODBODY, CSR NO. 932
SALLY YERGER, CSR NO. 2008
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT WEST C

HON. LAURENCE J. RITTENBAND, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

PLAINTIFF,)

VS.)

NO. A-090435

JOSEPH HUNT,)

DEFENDANT.)

REPORTERS' DAILY TRANSCRIPT

WEDNESDAY, MAY 13, 1987

VOLUME 91

(PAGES 13668A TO 13851, INCLUSIVE)

APPEARANCES:

FOR THE PEOPLE:

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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; WEDNESDAY, MAY 13, 1987; 10:40 A.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS HERETOFORE NOTED.)
4

5 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.
6

7 BRUCE SWARTOUT,
8 HAVING BEEN PREVIOUSLY SWORN, RESUMED THE STAND AND TESTIFIED
9 FURTHER AS FOLLOWS:

10 THE COURT: ALL RIGHT, YOU MAY EXAMINE.
11

12 CROSS-EXAMINATION

13 BY MR. CHIER:

14 Q GOOD MORNING, MR. SWARTOUT.

15 A GOOD MORNING, SIR.

16 Q I BELIEVE THAT YESTERDAY ON DIRECT EXAMINATION
17 YOU TESTIFIED THAT IN NOVEMBER OF 1983 YOU RESIGNED FROM
18 THE BOARD OF DIRECTORS OF COGENCO AND UNITED STATES FLYWHEEL?

19 A NOVEMBER 1ST, YES, SIR.

20 Q THAT IS ACTUALLY NOT CORRECT, IS IT?

21 A IT IS CORRECT AND I HAVE A COPY OF THE RESIGNATION,
22 IF YOU WISH TO SEE IT.

23 Q ISN'T IT CORRECT, SIR, THAT YOU WERE REMOVED
24 AS CHAIRMAN OF THE BOARD OF COGENCO BY THE STOCKHOLDERS?

25 A THAT IS NOT CORRECT.

26 Q DID YOU TELL THAT TO OFFICER GIBBS, WHO INVESTI-
27 GATED THIS ASSAULT AGAINST YOU WITH UNKNOWN LIQUID?

28 A NO.

1 Q YOU NEVER SAID THAT, SIR?

2 A NO.

3 Q OKAY. AS A MATTER OF FACT, DID THE ARRANGEMENT
4 YOU HAD BETWEEN CYCLATRONICS AND BBC AND YOUR COMPANIES
5 INVOLVE A BAILOUT PROVISION THAT IF CERTAIN REPRESENTATIONS
6 MADE BY YOU TURNED OUT TO BE INCORRECT, THAT THEY COULD
7 RESCIND THE CONTRACT?

8 A THERE WAS NO SUCH, TO MY UNDERSTANDING, IN
9 THE WRITTEN DOCUMENTS.

10 Q WAS THERE A DISCLOSURE BY YOU, SIR, OF ALL
11 ASSETS AND LIABILITIES THAT WERE EITHER OWNED BY OR OWED
12 TO CREDITORS BY COGENCO AND U.S. FLYWHEEL?

13 A IT WAS HANDLED DIFFERENTLY.

14 Q WELL, SIR --

15 MR. WAPNER: YOUR HONOR, MAY I --

16 Q BY MR. CHIER: WAS THERE A DISCLOSURE BY YOU,
17 SIR?

18 MR. WAPNER: MAY WE APPROACH THE BENCH BRIEFLY AS
19 TO THE CAMERAS?

20 THE COURT: AS TO WHAT?

21 MR. WAPNER: IT HAS TO DO WITH THE CAMERAS THAT
22 ARE IN THE COURTROOM.

23 THE COURT: ONLY THE PRESS WILL BE ENTITLED TO HAVE
24 THEM.

25 MR. CHIER: YOUR HONOR, I WOULD JOIN WITH MR. WAPNER
26 ABOUT THE CLICKING OF THE CAMERAS.

27 THE COURT: NOBODY ASKED YOU.

28 MR. WAPNER: I AM CONCERNED ABOUT THE PHOTOGRAPHS

1 OF THIS WITNESS, YOUR HONOR, HE ASKED ME.

2 THE COURT: YOU DON'T WANT TO HAVE ANY PHOTOGRAPHS
3 TAKEN OF YOU?

4 THE WITNESS: I PREFER NOT, SIR.

5 THE COURT: ALL RIGHT.

6 THE BAILIFF: I HAVE REMOVED THEM FROM THE COURTROOM,
7 YOUR HONOR.

8 THE COURT: ALL RIGHT.

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1 Q WELL, FIRST, WAS THERE A --

2 MR. WAPNER: I APOLOGIZE TO COUNSEL FOR THE INTERRUPTION.

3 Q BY MR. CHIER: LET ME BACK UP FOR A MINUTE
4 THEN AND ASK YOU IN A DIFFERENT WAY, MR. SWARTOUT. YOU
5 KNEW MR. ELGIN AS AN INVESTOR IN YOUR ENTERPRISES AMONG
6 OTHER THINGS?

7 A HE WAS NOT AN INVESTOR. HE LOANED MONEY TO
8 THE COMPANY WITH THE BELIEF THAT THE BBC WOULD PAY IT
9 BACK.

10 Q WELL, HE WAS THEN A CREDITOR OF THE COMPANY?

11 A HE WAS. YES, AFTER THAT, HE WAS A CREDITOR.

12 Q WAS HE A CREDITOR OF YOU PERSONALLY, SIR?

13 A NO.

14 Q AND AT THE TIME THAT HE LOANED YOUR COMPANY
15 MONEY, THE MERGER DISCUSSIONS BETWEEN YOUR COMPANIES AND
16 THE BBC BOYS HAD NOT EVEN REALLY MATURED, HAD THEY?

17 A HAD NOT FINALIZED, YES.

18 Q OKAY. NOW, SO MR. ELGIN, AS I UNDERSTAND
19 IT, BROUGHT TO YOU -- MR. ELGIN KNEW MR. BROWNING, CORRECT?

20 A YES. HE DID.

21 Q MR. ELGIN BELIEVED THAT BY ARRANGING A MARRIAGE,
22 SO TO SPEAK, BETWEEN MR. BROWNING'S TECHNOLOGY THROUGH
23 THE BBC PEOPLE AND YOUR COMPANIES AND YOUR ALLEGED TECHNOLOGY,
24 THAT THERE COULD BE SOME FINANCIAL BENEFIT TO ALL PARTIES
25 CONCERNED? IS THAT IT, ESSENTIALLY?

26 A I DON'T KNOW WHAT MR. ELGIN'S THOUGHTS WERE.

27 Q ALL RIGHT. WELL, DID YOU DISCUSS THIS WITH
28 HIM ABOUT WHY HE BROUGHT THOSE PEOPLE TO YOU?

1 A WELL, IT WAS BECAUSE HE HAD HEARD WE NEEDED
2 MONEY.

3 Q OKAY. YOU NEEDED MONEY, SIR, BECAUSE THERE
4 WAS A \$400,000 FRANCHISE TAX LIEN AGAINST THE COMPANIES,
5 AMONG OTHER THINGS, WAS THERE NOT?

6 A NO.

7 Q WAS NOT YOUR COMPANY CLOSED DOWN BY THE FRANCHISE
8 TAX BOARD, PADLOCKED?

9 A IT WAS CLOSED DOWN BECAUSE THE BBC BOYS FAILED
10 TO MAKE PAYROLL, PAY THE OBLIGATIONS OR PAY THE RENT.

11 Q WAS IT NOT CLOSED DOWN BY REASON OF OBLIGATIONS
12 INCURRED BY YOUR COMPANIES PRIOR TO THE BBC BECOMING MERGED
13 WITH YOUR COMPANIES?

14 A IN THE ABSENCE OF CASH FLOW, YES.

15 Q WELL, SIR, WAS IT NOT CLOSED DOWN AS A RESULT
16 OF FAILURE TO MAKE F.I.C.A. PAYMENTS, AMONG OTHER THINGS,
17 WITHHOLDING PAYMENTS?

18 A NO. IT WAS CLOSED DOWN BECAUSE THE RENT PAYMENTS
19 WERE NOT PAID AS PROMISED BY THE BBC.

20 Q BUT THE FRANCHISE TAX BOARD DID NOT PADLOCK
21 YOUR BUSINESS AS A RESULT OF FAILURE TO PAY RENT, DID
22 THEY, SIR?

23 A NOT TO MY KNOWLEDGE.

24 Q ALL RIGHT. WAS IT DISCLOSED IN THE COURSE
25 OF THESE MERGER DISCUSSIONS THAT THERE WERE OUTSTANDING
26 OBLIGATIONS TO GOVERNMENTAL BODIES, OBLIGATIONS OWED BY
27 YOUR COMPANIES?

28 A IT WAS KNOWN BY ALL PARTIES.

1 Q WAS IT DISCLOSED IN ANY FORM OF WRITTEN DISCLOSURE,
2 SIR?

3 A YES.

4 Q AND DID YOU PROVIDE THOSE DOCUMENTS TO MR.
5 WAPNER, INCLUDED IN THE DOCUMENTS THAT YOU GAVE HIM LAST
6 MAY 9TH?

7 A NO. I DID NOT.

8 Q ALL RIGHT, SIR. WAS IT DISCLOSED THAT THERE
9 WERE SOME 70 LAWSUITS PENDING AGAINST YOUR COMPANY BY
10 A NUMBER OF STOCKHOLDERS AND OTHER INVESTORS AGAINST THE
11 COMPANIES, U.S. FLYWHEEL AND COGENCO?

12 A WELL, THAT IS A NUMBER I HAVE NEVER HEARD.
13 EVEN AFTER THE BBC.

14 Q WELL, I AM TALKING ABOUT PRIOR TO MERGER DISCUSSIONS
15 WITH THE BBC. WERE THERE NOT --

16 A THERE MAY HAVE BEEN THREE TO FIVE, IN THAT
17 AREA. YES.

18 Q AND WAS THERE NOT AN ARTICLE IN THE ORANGE
19 COUNTY NEWSPAPER CONCERNING ACTIVITIES ALLEGEDLY ENGAGED
20 IN BY YOUR COMPANY, SIR, AND YOURSELF?

21 A I DON'T KNOW WHAT YOU ARE REFERRING TO, SIR.

22 Q WERE YOU EVER FEATURED IN AN ARTICLE IN THE
23 ORANGE COUNTY NEWSPAPER, SIR, IN THE 1983/1984 PERIOD?

24 A I DON'T RECALL.

25 Q OKAY, SIR. AND THE MERGER TOOK PLACE IN OCTOBER
26 OF 1985, SIR?

27 A THE DOCUMENTS WERE EXECUTED, I BELIEVE, IN
28 SEPTEMBER.

1 Q AND IT WAS IN APPROXIMATELY A MONTH OR SO
2 FOLLOWING THE DISCUSSION OF THE DOCUMENTS, OR LESS THAN
3 A MONTH, THAT THE BBC PEOPLE WERE GIVEN ACCESS TO THE
4 BOOKS AND RECORDS OF COGENCO AND U.S. FLYWHEELS?

5 A THAT IS NOT TRUE.

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1 Q WERE THE BBC PEOPLE GIVEN ACCESS TO THE BOOKS
2 AND RECORDS OF EITHER OF YOUR COMPANIES SUBSEQUENT TO
3 THE MERGER?

4 A THEY HAD SEVERAL PEOPLE COME IN FROM AUGUST
5 UNTIL NOVEMBER, EXAMINING AND INTERVIEWING EMPLOYEES.

6 Q AND DID THEY CONTINUE TO EXAMINE THE BOOKS
7 AND RECORDS OF THE COMPANY SUBSEQUENT TO OCTOBER OF 1983?

8 A UNTIL DECEMBER, I BELIEVE, MR. RAGAN WAS
9 STILL EMPLOYED, NOT PAID, AND THEY WERE USING HIM TO FURTHER
10 EXAMINE, YES.

11 Q HOW LONG DID HE NOT BE PAID, SIR, WAS IT FROM
12 A DATE PRIOR TO AUGUST OF 1983?

13 A I BEG PARDON?

14 Q WAS MR. RAGAN NOT PAID FOR SERVICES RENDERED
15 PRIOR TO AUGUST OF 1983 OR OCTOBER OF 1983?

16 A NO.

17 I MADE THE FIVE HUNDREDTH PAYROLL CONSISTENTLY
18 FOR THAT COMPANY AND ANNOUNCED AT THE SHAREHOLDERS MEETING ON MY
19 RESIGNATION THAT MR. HUNT WOULD MAKE THE FIVE HUNDREDTH FIRST.
20 THEY WERE ALL PAID WHEN I LEFT.

21 Q AND YOU LEFT WHEN, SIR?

22 A I RESIGNED ON NOVEMBER THE 1ST, 1983.

23 Q NOW, YOU SAY THAT IT IS YOUR RECOLLECTION
24 THAT THERE WERE ONLY SOME THREE TO FIVE LAWSUITS THAT
25 WERE PENDING AGAINST THE COMPANIES, RATHER THAN SOME 70?

26 A THAT'S CORRECT.

27 Q AND WERE THEY DISCLOSED TO THE BBC PEOPLE
28 IN THE COURSE OF MERGER DISCUSSIONS?

1 A THEY HAD THOROUGH EXAMINATION OF OUR TECHNOLOGY
2 AND OUR PEOPLE, INCLUDING MYSELF.

3 Q DID YOU DISCLOSE OR DID ANYBODY ON BEHALF
4 OF THE COMPANIES, DISCLOSE THE EXISTENCE OF THOSE LAWSUITS,
5 SIR?

6 A IT WAS WELL-KNOWN BY MR. ELGIN, WHO DISCUSSED
7 IT, I AM SURE, WITH THE BBC BOYS.

8 Q SO YOU ARE ASSUMING THAT THEY WERE DISCLOSED
9 TO THE BBC PEOPLE; IS THAT CORRECT?

10 A THERE WERE NO SECRETS. IT IS A PUBLIC RECORD.

11 Q BUT, SIR, IT IS AN ASSUMPTION ON YOUR PART
12 THAT THAT WAS DISCLOSED TO THEM?

13 A I AM NOT SURE WHETHER IT WAS OR WAS NOT.

14 Q ALL RIGHT. BUT IT WAS NOT BY YOURSELF, IS
15 MY QUESTION, REALLY?

16 A IT COULD HAVE BEEN. I WAS NOT -- I WAS NOT
17 HIDING ANYTHING FROM THEM.

18 Q DID YOU IN APPROXIMATELY JANUARY OF 1984 RECEIVE
19 A NOTICE OF RESCISSION FROM MR. HUNT OR FROM THE BBC PEOPLE?

20 A YES, AND WE ACCEPTED IT, RIGHT.

21 Q AND THE NOTICE OF RESCISSION ALLEGED, AMONG
22 OTHER THINGS, FRAUD AND DECEIT, DID IT NOT?

23 A IT DID.

24 Q CONCEALMENT?

25 A IT DID, YES.

26 Q AND CONCEALMENT OF MATERIAL FACTS FROM THEM,
27 THAT INFLUENCED THEIR JUDGMENT?

28 A YES. IN FACT, MICROGENESIS WROTE A LETTER

1 ON JULY 30TH WARNING US TO BACK AWAY FROM OUR OWN TECHNOLOGY.

2 QW WITH RESPECT TO YOUR OWN TECHNOLOGY, SIR,
3 HAD U.S. FLYWHEEL OR COGENCO EVER ACTUALLY ENGAGED IN
4 THE MANUFACTURE OF THESE MACHINES THAT WERE SOLD TO END
5 USERS OR PROVIDERS?

6 A WE HAD THREE PRIME CONTRACTS WITH THE FRENCH
7 GOVERNMENT, TWO WITH THE UNITED STATES GOVERNMENT, AND
8 PROVIDED A PRODUCT IN SATISFACTION OF ALL PRIME CONTRACTS
9 AND WE DID DELIVER MATERIAL.

10 Q ALL RIGHT. WHEN YOU SAY "WE," YOU ARE TALKING
11 ABOUT COGENCO AND U.S. FLYWHEEL?

12 A YES, SIR.

13 Q THE MATERIALS YOU TALKED ABOUT DELIVERING
14 TO OTHER USERS ARE MATERIALS THAT WERE NOT INCLUDED IN
15 AND THE SUBJECT OF THE AGREEMENT BETWEEN YOU AND THE BBC
16 PEOPLE, CORRECT? THESE ARE DIFFERENT TECHNOLOGIES WE
17 ARE TALKING ABOUT?

18 A WELL, THEY WERE INTERESTED IN ALL OF OUR TECHNOLOGY.
19 THEY TOOK CONTROL OF BOTH COMPANIES.

20 Q BUT THE SPECIFIC TECHNOLOGY BEING TECHNOLOGY
21 THEY WERE INTERESTED IN AS SOMEHOW BEING SUITABLE TO BE
22 WEDDED WITH THE BROWNING TECHNOLOGY WAS NOT ANYTHING YOU
23 HAD PREVIOUSLY PRODUCED BEFORE, CORRECT?

24 A I DON'T UNDERSTAND YOUR QUESTION.

25 Q THERE IS A PICTURE OF THIS COGENERATION MACHINE:
26 HAD YOUR COMPANIES EVER PRODUCED IN COMMERCIAL PRODUCTION
27 THESE MACHINES AND DID YOU EVER SELL THESE TO ANY USERS?

28 A NO.

1 Q ALL RIGHT. THE TECHNOLOGY THAT WAS INCLUDED
2 IN THE MERGER -- LET ME RESTATE THAT --

3 THE COGENESIS AND U.S. FLYWHEEL TECHNOLOGY
4 WHICH WAS INCLUDED IN THE MERGER CONSISTED OF, IN LARGE
5 PART, A NUMBER OF PATENTS WHICH WERE ON PAPER AND HAD
6 NEVER ACTUALLY BEEN PRODUCED; ISN'T THAT CORRECT?

7 A WE HAD PATENTS, PATENTS PENDING AND PATENT
8 DISCLOSURES.

9 Q PATENT PENDING, THOUGH, IS A MATTER IN WHICH
10 THERE WERE -- THEY WERE PAPER DESIGNS WHICH HAD NOT EVER
11 GONE INTO COMMERCIAL PRODUCTION; ISN'T THAT CORRECT?

12 A RELATED TO WHAT?

13 Q THE PATENTS THAT WERE PENDING?

14 A YOU ARE SPEAKING NOW OF JUST COGENERATION?

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1 Q AND U.S. FLYWHEEL, YES, THE ONES THAT YOU HAD
2 ACQUIRED AND THAT WERE PART OF THE SO-CALLED PACKAGE OF
3 ASSETS THAT YOU WERE GOING TO TRANSFER TO BBC, WERE IN LARGE
4 PART PAPER PATENTS, WERE THEY NOT?

5 A NO.

6 THEY WERE REDUCED TO, AS FAR AS COGENERATION IS
7 CONCERNED, AND THE BROWNING TECHNOLOGY INVOLVING OUR BURNER,
8 THEY WERE AT ENGINEERING PROTOTYPE, READY TO GO INTO
9 MANUFACTURING, THAT IS A MANUFACTURING PROTOTYPE DONE AFTER
10 BBC.

11 (WITNESS INDICATING.)

12 MR. WAPNER: "THAT" WAS REFERRING TO THE PHOTOGRAPH,
13 YOUR HONOR, AND MAY THAT BE MARKED?

14 THE CLERK: 8.

15 MR. WAPNER: PEOPLE'S 8 FOR IDENTIFICATION?

16 THE COURT: SO MARKED.

17 Q BY MR. CHIER: NOW, THERE WERE REPRESENTATIONS MADE BY
18 MR. HUNT -- MADE BY YOURSELF TO MR. HUNT, WERE THERE NOT,
19 SIR, THAT THE TECHNOLOGY THAT WAS BEING TRANSFERRED FROM
20 COGENCO AND U.S. FLYWHEEL AS PART OF THE MERGER WAS ON THE
21 CUTTING EDGE OF THE PARTICULAR TECHNOLOGY THAT WAS AVAILABLE
22 IN THIS AREA; IS THAT CORRECT?

23 A IT WAS ON THE CUTTING EDGE, YES, SIR.

24 Q YES, SIR.

25 AND WHEN IN JANUARY MR. HUNT SERVED NOTICE OF
26 RESCISSION ON YOU, WASN'T ONE OF THE GROUNDS OF RESCISSION
27 THAT THE TECHNOLOGY WHICH YOU HAD CLAIMED WAS ON THE CUTTING
28 EDGE WAS IN FACT OBSOLETE; WASN'T THAT ONE OF THE COMPLAINTS?

A WELL, IT CERTAINLY WAS SATISFACTORY TO THE
CUSTOMER, MR. KILPATRICK, WHO WANTED TO PUT UP 220 MILLION
AND DID SO SIGN THE CONTRACT.

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1 Q AT WHAT POINT, SIR?

2 A AT TWO POINTS, ONE WITH MICROGENESIS WHICH
3 WAS THE SWINDLE AND THE SECOND TIME WITH COGENCO SYSTEMS,
4 AFTER I CAME BACK IN AT THE REQUEST OF THE BOARD TO NEGOTIATE
5 IT DIRECTLY WITH KILPATRICK.

6 THE COURT: WHAT DO YOU MEAN BY "THE SWINDLE"? YOU
7 USED THE WORD "SWINDLE."

8 THE WITNESS: MAY I EXPLAIN IT, SIR?

9 THE COURT: YES.

10 THE WITNESS: WE GAVE ALL OF THE UNISSUED STOCK
11 OF COGENCO SYSTEMS, AFTER SPENDING SOME \$12 MILLION AND
12 ALL OF THE UNISSUED STOCK OF U.S. FLYWHEELS IN EXCHANGE
13 FOR ALL OF THE SHARES OF A CORPORATE SHELL THAT HAD NOTHING
14 MORE THAN GENE BROWNING'S SO-CALLED MICRONIZING EQUIPMENT,
15 WHICH WAS CALLED A CYCLATRON WHICH BILL KILPATRICK WANTED
16 JOINED WITH OUR BURNER, IN ORDER TO PLACE THE ORDER FOR
17 44 SYSTEMS OF \$5 MILLION APIECE.

18 IN ADDITION TO GETTING ALL OF THE STOCK IN
19 THIS TRANSACTION, WHICH WAS TO ACQUIRE THE BROWNING GRINDING
20 EQUIPMENT, IF YOU UNDERSTAND MICRONIZATION OR AN ATTRITION
21 MACHINE, WE RECEIVED A LETTER OF COMMITMENT FOR \$50,000
22 IMMEDIATELY, \$800,000 IN TEN DAYS AND \$10 MILLION FOR
23 THE COMPANY IN SIX MONTHS.

24 THE COURT: WHO DID YOU GET THAT FROM?

25 THE WITNESS: FROM JOE HUNT.

26 THE COURT: UH-HUH.

27 THE WITNESS: COMMITTING THE BBC. NOW, MR. ELGIN,
28 WHO WAS LIKE A GODFATHER TO THE BBC, BECAME A DIRECTOR

1 OF A COMPANY WE HAD NEVER HEARD OF, CALLED MICROGENESIS,
2 IN WHICH MR. HUNT WAS CHAIRMAN AND PRESIDENT. THEY HAD
3 A BOARD.

4 AND THEY TOOK THIS TECHNOLOGY FROM MICROGENESIS
5 THAT WE NEEDED IN ORDER TO COMPLY WITH THE CONTRACT FOR
6 COGENCO SYSTEMS WITH THE DENVER AND CANADIAN GROUP --
7 THEY TOOK ALSO OUR TECHNOLOGY AND PUT IT IN MICROGENESIS
8 AND TOOK THE CONTRACT THAT I HAD NEGOTIATED BEFORE MY
9 RESIGNATION ON NOVEMBER THE 1ST, TOOK THAT CONTRACT THAT
10 CLEARLY SAID IT WAS BETWEEN COGENCO SYSTEMS AND THOSE
11 OTHER TWO FIRMS COMMITTING THE \$200 MILLION ORDER AND
12 JOE HUNT CROSSED OFF THE NAME OF COGENCO SYSTEMS, INC.
13 AND AT THE SIGNATURE LINE -- AND INFORMED MR. KILPATRICK
14 THAT IT WAS AN AFFILIATE OR SUBSIDIARY OF COGENCO SYSTEMS
15 AND INFLUENCED HIM TO SIGN THAT CONTRACT WITH OUR TECHNOLOGY
16 AND WERE TRYING TO SWINDLE OUR STOCKHOLDERS.

17 THERE ARE 200 PEOPLE THAT INVESTED THEIR MONEY
18 AND THEY HAD THE GALL TO HAVE MICROGENESIS WRITE A LETTER
19 ON JULY 30TH, THREATENING ME WITH LEGAL ACTION IF I DIDN'T
20 BACK AWAY FROM THE CONTRACT BETWEEN MICROGENESIS AND BILL
21 KILPATRICK WHICH WAS THE ACME OF SELECTIVITY.

22 THE COURT: ALL RIGHT. GO AHEAD.

23 Q BY MR. CHIER: IS IT FAIR TO SAY, MR. SWARTOUT,
24 THAT THERE WAS A DISAGREEMENT BETWEEN YOUR COMPANY AND
25 MR. HUNT --

26 A THAT IS AN UNDERSTATEMENT OF FACT.

27 Q OKAY. AND THAT THERE WERE ACCUSATIONS AND
28 ALLEGATIONS MADE BY BOTH SIDES?

1 A YES, BOTH SIDES.

2 Q IS THAT CORRECT?

3 A THAT'S CORRECT, SIR.

4 Q AND AS A MATTER OF FACT, CAN YOU TELL US HOW
5 MUCH OF THE CORPORATE CHECKING ACCOUNTS -- HOW MUCH THEY
6 HAD IN THEIR BALANCE ON THE DAY OF THE MERGER?

7 A WE NEEDED THAT \$50,000. THEY KNEW THAT AND
8 SO DID ELGIN, TO MEET THE PAYROLL THAT VERY DAY IT WAS TO
9 COME UP. IT NEVER CAME UP.

10 Q DID YOU HAVE ANY MONEY IN YOUR CHECKING ACCOUNT?

11 A WE HAD NOT ENOUGH FOR THE PAYROLL WHEN I RESIGNED.

12 Q DID YOU HAVE LESS THAN \$10,000 IN THE CORPORATE
13 CHECKING ACCOUNT?

14 A I WOULD IMAGINE IT WOULD BE IN THAT AREA,
15 YES.

16 Q AND WHAT WAS THE TOTAL AMOUNT OF ACCOUNTS
17 RECEIVABLES OR CUSTOMER RECEIVABLES OF EITHER COGENCO
18 OR U.S. FLYWHEELS ON THE DATE OF THE MERGER?

19 A I DON'T RECALL. BUT WE URGENTLY NEEDED CAPITAL.
20 THAT IS WHY WE SIGNED THE DEAL WITH THEM.

21 Q WHAT REPRESENTATIONS WERE MADE TO THE BBC
22 PEOPLE WITH RESPECT TO THE AMOUNT OF CUSTOMER OR ACCOUNTS
23 RECEIVABLES ON THE DATE OF THE MERGER?

24 A THE BBC AND OURSELVES WERE WELL AWARE THAT
25 \$400,000 WOULD COVER THE URGENCY AND GET US BACK INTO
26 THE TRACK AND GET EVERYTHING GOING FORWARD WITH THE CONTRACT.

27 Q I THINK YOU ARE SPEAKING OF DEBTS AND ACCOUNTS
28 PAYABLE. I AM TALKING ABOUT ACCOUNTS RECEIVABLES, ASSETS,

1 MONEY OWED EITHER TO YOUR COMPANY, U.S. FLYWHEELS, OR
2 COGENCO.

3 WHAT WAS THE AMOUNT OF ACCOUNTS OR CUSTOMER
4 RECEIVABLES?

5 A WELL, WE WERE TO GET -- WE HAD A \$4 MILLION
6 CONTRACT THAT THE BBC SAID WAS FOR THE SALE OF 20 MACHINES
7 OF DR. BROWNING.

8 Q I AM TALKING ABOUT ON THE MERGER DATE, SIR,
9 PRIOR TO THE MERGER, WHAT YOUR RECEIVABLES OF U.S. FLYWHEELS
10 AND COGENCO WERE, WITHOUT REFERENCE TO ANYTHING THAT THEY
11 MAY HAVE DONE WITH IT.

12 A I DON'T RECALL AT THIS TIME.

13 Q ALL RIGHT. DO YOU KNOW WHAT AMOUNT OF RECEIVABLES
14 WERE REPRESENTED TO BE OWED THE COMPANIES PRIOR TO THE
15 MERGER?

16 A THEY HAD THEIR OWN C.P.A.'S IN FOR A WEEK
17 BEFORE THEY SIGNED, EXAMINING ALL OF THE RECORDS. THEY
18 KNEW MORE ABOUT THAT COMPANY THAN EVEN I DID.

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1 Q SO IN ANSWER TO MY QUESTION, YOU DON'T KNOW WHAT
2 REPRESENTATIONS WERE MADE?

3 A I DON'T RECALL. I DON'T KNOW.

4 Q OKAY. AND DO YOU KNOW -- WELL, IT IS A FACT THEN,
5 SINCE I THINK YOU ANSWERED THIS QUESTION EARLIER, THAT THE
6 ACCOUNTS PAYABLE OF YOUR TWO COMPANIES, U.S. FLYWHEELS AND
7 COGENCO, AS OF THE MERGER DATE, WERE IN EXCESS OF \$400,000,
8 THE MONEYS OWED?

9 A IT IS POSSIBLE.

10 Q OKAY. AND COULD YOU TELL US WHEN THE DATE OF
11 DELIVERY BY U.S. FLYWHEELS OR COGENCO OF THE FLYWHEELS TO
12 THE FRENCH GOVERNMENT WAS? WHEN DID YOU DELIVER THOSE
13 FLYWHEELS?

14 A IT WAS OVER PRIOR YEARS. WE DELIVERED ON THREE
15 DIFFERENT PRIME CONTRACTS.

16 THE COURT: EXCUSE ME FOR INTERRUPTING. WE ARE NOT
17 NOW IN A LAWSUIT INVOLVING MONEY DAMAGES OR WHO WAS
18 RESPONSIBLE FOR WHAT. WE ARE DEALING WITH AN ASSAULT.

19 LET'S GET TO THOSE FACTS, IF YOU WILL, PLEASE.

20 MR. CHIER: I WILL. HE HAS ALLEGED THERE IS A SWINDLE.
21 I AM TRYING TO SHOW WHICH WAY THE SWINDLE WAS GOING.

22 THE COURT: GO AHEAD. FINISH THAT UP.

23 MR. CHIER: THANK YOU, YOUR HONOR.

24 Q LET ME ASK YOU THIS, MR. SWARTOUT, DURING THE
25 PERIOD OF THE 1980'S, DID COGENCO OR U.S. FLYWHEELS EVER
26 DELIVER A SINGLE PRODUCT, A MANUFACTURED PRODUCT, TO ANY END
27 USER?

28 A YES, TO AEROSPATIAL AND I DON'T KNOW THE DATE

1 OF THE CONTRACT. WE DELIVERED ON A UNITED STATES CONTRACT.

2 Q BETWEEN 1980 AND 1984? IS THAT YOUR TESTIMONY?

3 A I DON'T RECALL. WE HAD LOTS OF ACCOUNTS
4 RECEIVABLES AND LOTS OF ACCOUNTS PAYABLE. WE WERE A RESEARCH
5 AND DEVELOPMENT FIRM, PRIMARILY.

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1 Q BY MR. CHIER: BUT SPECIFICALLY, SIR, CAN YOU
2 THINK OF ANY PRODUCT MADE AND MANUFACTURED BY YOU THAT WAS
3 ACTUALLY SOLD TO A CUSTOMER BETWEEN 1980 AND 1984?

4 A I AM SURE THERE WAS BUT I DON'T RECALL.

5 Q OKAY. DID YOU EVER DELIVER ANY PRODUCT,
6 TECHNOLOGICAL OR OTHERWISE, TO MR. KILPATRICK, SIR, AT ANY
7 TIME?

8 A SIR, WE WERE REALLY A RESEARCH AND DEVELOPMENT
9 ORGANIZATION. THAT MEANS YOU DEVELOP TECHNOLOGY INTO HARDWARE.
10 WE HAD DEVELOPED HARDWARE ACCEPTABLE TO
11 MR. KILPATRICK. HE HAD NOT YET BOUGHT ANY EQUIPMENT BUT HAD
12 SIGNED A CONTRACT WITH BBC.

13 Q DID YOU EVER RECEIVE ANY MONEY FROM MR. KILPATRICK?

14 A NO.

15 Q HOW DID YOU MEET MR. KILPATRICK?

16 A I DON'T RECALL. PROBABLY WE SAW HIM ON 60 MINUTES.

17 Q NOW DIRECTING YOUR ATTENTION -- IN APRIL OF 1984,
18 YOU WERE IN THE PARKING LOT OF YOUR OFFICES WHEN THIS INCIDENT
19 OCCURRED?

20 A YES.

21 Q AND THE OFFICES THAT WERE DEPICTED IN THE CHART
22 YESTERDAY WERE OF A COUPLE OF BUILDINGS?

23 A TWO BUILDINGS, YES.

24 Q AND YOU HAD OFFICES ON THOSE PREMISES?

25 A IN ONE OF THE BUILDINGS, YES.

26 Q HOW MANY SQUARE FEET OF BUILDING WERE THERE, SIR?

27 A I CAN ONLY REMEMBER THERE WERE 19,000 SQUARE FEET
28 IN ONE BUILDING AND THE OTHER WAS SMALLER.

1 Q WHAT WAS IN THOSE BUILDINGS, MR. SWARTOUT, ANYTHING?

2 A ONE OF THEM -- WELL, THEY WERE LEASED OUT TO

3 TENANTS.

4 Q NOTHING INVOLVING COGENESIS OR U.S. FLYWHEEL,

5 CORRECT?

6 A NO.

7 Q OKAY, NOW YOU HAD BEEN, PRIOR TO APRIL 13, 1984,

8 TO THE OFFICES OF BBC ON WEST THIRD STREET IN LOS ANGELES,

9 HAD YOU NOT?

10 A I HAD.

11 Q AND YOU HAD SEEN, PRIOR TO APRIL 13TH, 1984, A

12 BLACK MAN BY THE NAME OF GRAHAM OR PITTMAN, CORRECT?

13 A I DON'T RECALL.

14 Q AND MR. GRAHAM OR PITTMAN HAD, PRIOR TO APRIL 13,

15 1984, BEEN TO THE OFFICES ON MC GAW STREET, CORRECT?

16 A PRIOR TO WHEN?

17 Q PRIOR TO THIS INCIDENT IN THE PARKING LOT IN

18 APRIL OF 1984.

19 A I WASN'T AWARE THAT HE HAD, NO.

20 Q YOU DON'T DENY IT, THOUGH, SIR, DO YOU?

21 MR. WAPNER: OBJECTION. ARGUMENTATIVE.

22 THE WITNESS: I JUST DON'T RECALL IT.

23 Q BY MR. CHIER: NOW YOU WERE WEARING A WHITE DRESS

24 SHIRT, SUCH AS THE ONE YOU ARE WEARING TODAY?

25 A YES, SIR.

26 Q AND YOU WERE IN THE PROCESS OF RETRIEVING YOUR

27 COAT AND BRIEFCASE WHEN THIS ATTACK OCCURRED ON YOU, RIGHT?

28 A YES.

1 Q AND YOU HAD NOTICED THE PERSON, WHO YOU DESCRIBE
2 AS YOUR ASSAILANT, KIND OF LURKING OR LOITERING ABOUT AS YOU
3 PULLED IN, CORRECT?

4 A HE WAS LEANING UP AGAINST ONE OF OUR BUILDINGS
5 WITH A WHITE CUP IN HIS HAND.

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5A 1 Q AND HE DIDN'T APPEAR TO BE ANYBODY YOU RECOGNIZED
2 FROM THE PAST?

3 A I DIDN'T RECOGNIZE HIM, NO.

4 Q AND HE HAD A WHITE CUP, STYROFOAM CUP, SIR?

5 A I BELIEVE SO.

6 Q AND DID THE STYROFOAM CUP HAVE ANY KIND OF LEGEND
7 OR MARKINGS ON IT?

8 A IT SEEMED LIKE IT DID BUT I DON'T KNOW WHICH
9 LEGEND NOW THAT IT WAS.

10 Q DID HE APPEAR TO BE DRINKING FROM THE CUP?

11 A HE WAS HOLDING IT UP AS IF HE HAD BEEN DRINKING,
12 YES.

13 Q DID IT LOOK LIKE A COFFEE CUP?

14 A YES, IT DID.

15 Q THE TYPE OF TAKE-OUT OF A COFFEE --

16 A WELL, IT WAS A LARGER ONE.

17 Q A LARGE COFFEE CUP?

18 A YES.

19 Q BUT A STYROFOAM CUP?

20 A I BELIEVE IT WAS.

21 Q YOU ACTUALLY SAW THE CUP?

22 A I DID AFTERWARDS, YES.

23 Q NOW YOU SAY THAT THERE WAS AN ATTEMPT, IT IS YOUR
24 OPINION OR YOUR BELIEF, THERE WAS AN ATTEMPT TO STAB YOU WITH
25 A POCKETKNIFE?

26 A IT WAS ONLY MY IMPRESSION AT THE TIME.

27 Q YOU SAW SOMETHING FLASH; IS THAT RIGHT?

28 A YES.

1 Q DID ANYTHING EVER TOUCH YOU OR STRIKE YOU?

2 A A LIQUID.

3 Q DID ANY METALLIC OR ANY KIND OF OBJECT EVER STRIKE
4 YOU?

5 A NO.

6 Q WERE YOU EVER CUT?

7 A NO.

8 I THOUGHT --

9 Q WERE YOU BLEEDING?

10 A I THOUGHT THE LIQUID RUNNING DOWN MY BACK WAS
11 BLOOD BUT IT WAS NOT. IT WAS SOME OTHER LIQUID.

12 Q AND DID THE LIQUID GET ON YOUR HAIR AND THE BACK
13 OF YOUR NECK AS WELL?

14 A IT IS POSSIBLE SOME OF IT MIGHT HAVE SPLASHED
15 THERE, YES.

16 Q DID YOU TELL THE OFFICER THAT CAME TO INVESTIGATE,
17 MR. MONTGOMERY, THAT THE LIQUID WAS ACTUALLY THROWN ON THE
18 BACK OF YOUR HEAD AND NECK AND IT LEAKED DOWN ON YOUR BACK?

19 A I DON'T RECALL.

20 Q YOU DON'T RECALL SAYING THAT?

21 A I KNOW MY SHIRT WAS SOAKED WITH IT.

22 Q ALL RIGHT. DID YOU EVER GET THE SHIRT BACK, SIR?

23 A NO, I NEVER DID.

24 Q DID YOU KNOW THAT THE SUBSTANCE, SOME OF THE SUBSTANCE
25 WHICH WAS SUPPOSEDLY THROWN ON YOU WAS RECOVERED AND ANALYZED?

26 A I NEVER SAW THE ANALYSIS. I HEARD THAT THEY WERE
27 GOING TO.

28 Q DID YOU EVER FOLLOW UP BY INQUIRING OF THE IRVINE

1 POLICE DEPARTMENT?

2 A YES, I DID. I CALLED SEVERAL TIMES.

3 Q DID YOU EVER FIND OUT WHAT THE ANALYSIS OF THE
4 SUBSTANCE WAS, SIR?

5 A I NEVER DID.

6 Q DID YOU EVER SEEK MEDICAL ATTENTION FOR THE BURNS
7 THAT YOU RECEIVED AS A RESULT OF THIS?

8 A I DID NOT. THEY WERE NOT THAT SEVERE.

9 Q DID YOU RECEIVE ANY BURNS?

10 A WELL, IT WAS RATHER WARM BUT DID NOT BREAK ANY
11 SKIN AND IT DID NOT REQUIRE ANY MEDICAL ATTENTION.

12 Q DID YOU EVER TESTIFY IN ANY CRIMINAL PROCEEDING
13 BROUGHT AGAINST ANY PERSON FOR THE ATTACK THAT YOU DESCRIBED?

14 A NO, I DID NOT.

15 I CAME HERE OVER MY OBJECTION AND THE OBJECTION
16 OF MY WIFE.

17 Q YOU MEAN HERE TODAY?

18 A YES.

19 Q AND YESTERDAY?

20 A UH-HUH.

21 Q NOW, SIR, DID YOU DESCRIBE YOUR ASSAILANT TO THE
22 OFFICERS IMMEDIATELY AFTER THIS INCIDENT HAPPENED?

23 A I BEG YOUR PARDON, SIR?

24 Q ON THE 13TH OF APRIL OR WAS IT THE 12TH OF APRIL?

25 A I BELIEVE IT WAS FRIDAY, THE 13TH.

26 Q FRIDAY, THE 13TH; DID YOU HAVE OCCASION TO
27 DESCRIBE THE PERSON THAT WAS YOUR ASSAILANT TO THE POLICE?

28 A I TRIED BUT I DID A POOR JOB.

1 Q BASED UPON YOUR OBSERVATION OF THE PERSON AS YOU
2 SAW HIM WHEN YOU PULLED INTO THE LOT AND AS YOU LATER CHASED
3 HIM, DID YOU GIVE A DESCRIPTION OF THAT PERSON?

4 A I TRIED TO, YES.

5 Q WHEN YOU SAY THAT YOU TRIED TO, DID YOU TELL THE
6 POLICE WHAT YOU RECALLED SEEING AND WHAT YOU PERCEIVED ON
7 THAT DAY?

8 A YES.

9 Q DID YOU TELL THE POLICE THAT YOU ESTIMATED THE
10 AGE OF THIS PERSON BETWEEN 38 AND 40 YEARS OLD?

11 A I THOUGHT SO, YES.

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1 Q AND DID YOU ESTIMATE THE HEIGHT OF THE ASSAILANT
2 BETWEEN SIX FEET AND SIX FEET FOUR?

3 A I WAS LOOKING UPWARDS WHEN I HAD THE BEST
4 LOOK AT HIM. AND I MADE A POOR GUESS AT THAT, TOO.

5 Q HOW DO YOU KNOW YOU MADE A POOR GUESS?

6 A I HEARD LATER THAT MY GUESS WAS HAYWIRE. I
7 COULDN'T EVEN IDENTIFY HIM LATER.

8 Q DO YOU REMEMBER HOW YOU ESTIMATED THE WEIGHT?

9 A I HAVE FORGOTTEN. PROBABLY I MISSED THAT,
10 ALSO.

11 Q WERE YOU LATER PRESENTED A PHOTOGRAPHIC LINEUP
12 CONTAINING A NUMBER OF --

13 A THERE WERE SIX ON THE PHOTOGRAPH AND I COULD
14 NOT IDENTIFY THEM. IN FACT, I THOUGHT THAT IT MIGHT HAVE
15 BEEN A DIFFERENT ONE, WHICH RATHER FRIGHTENED ME THAT
16 I WOULD IDENTIFY SOMETHING THAT WAS NOT INVOLVED.

17 Q AND AS YOU WERE GIVING CHASE TO THIS ASSAILANT,
18 WHAT WAS THE CLOSEST THAT YOU EVER GOT TO THIS PERSON?

19 A PROBABLY 40 OR 50 FEET.

20 Q OKAY. AND HOW FAR AHEAD OF YOU WOULD YOU
21 ESTIMATE THIS PERSON WAS WHEN YOU BEGAN GIVING CHASE,
22 SIR?

23 A WELL, HE WAS A LITTLE QUICKER THAN I. I WOULDN'T
24 KNOW. HE GAINED ON ME AFTER I STARTED. I KNOW THAT.

25 Q WERE YOU STILL IN A CROUCHED OR BENT-OVER
26 POSITION WHEN YOU BEGAN TO GIVE CHASE TO THIS PERSON?

27 A I DON'T RECALL THAT.

28 Q WERE YOU UPRIGHT?

6A-2

1 A I THINK I SWUNG IN A CROUCHED POSITION AND
2 I BELIEVE WE SCUFFLED AND THEN I BECAME UPRIGHT.

3 AND HE TOOK OFF AND I RAN AFTER HIM.

4 Q AND DID YOU HAVE A BETTER OPPORTUNITY TO ASSESS
5 THE HEIGHT OF THIS INDIVIDUAL AS YOU CHASED HIM --

6 A MY MIND WAS NOT ON THAT. I COULDN'T ESTIMATE
7 IT.

8 Q IN THE COURSE OF YOUR BUSINESS OF INVENTING
9 AND TECHNOLOGY, HAVE YOU HAD OCCASION TO USE OR PURCHASE
10 CORROSIVE CHEMICALS OF ANY KIND?

11 A YES.

12 Q AND WERE THE CHEMICALS TYPICALLY STORED IN
13 STYROFOAM CONTAINERS WHEN YOU USED THEM, SIR?

14 A SOME. SOME IN PLASTIC.

15 Q NOW, ISN'T IT A FACT, MR. SWARTOUT, THAT AS
16 A RESULT OF THE FAILED MERGER BETWEEN YOU AND YOUR COMPANIES
17 AND THE BBC COMPANIES, THAT MR. ELGIN FILED SUIT AGAINST
18 YOU?

19 A YES. HE DID.

20 Q AND ISN'T IT A FACT, MR. SWARTOUT, THAT THE
21 LAWSUIT DID NOT NAME AS A CULPABLE PARTY, HUNT OR THE
22 BBC PEOPLE? ISN'T THAT A FACT?

23 MR. WAPNER: OBJECTION, RELEVANCE.

24 THE COURT: SUSTAINED.

25 Q BY MR. CHIER: COULD YOU TELL US, MR. SWARTOUT,
26 WHAT HAPPENED TO THE 512 MILLION THAT YOU HAVE MENTIONED
27 WAS INVESTED IN YOUR COMPANY?

28 A IN THE RESEARCH AND DEVELOPMENT. IT IS IN

6A-3

1 THAT PICTURE, SOME OF IT.

2 Q THE \$12 MILLION?

3 A YES.

4 Q AND --

5 MR. WAPNER: INDICATING FOR THE RECORD, PEOPLE'S
6 8 FOR IDENTIFICATION.

7 THE COURT: YES.

8 Q BY MR. CHIER: THAT PHOTOGRAPH REPRESENTS
9 \$12 MILLION?

10 A NO, SOME OF IT.

11 Q WHAT PORTION OF IT?

12 A THE COGENERATION --

13 THE COURT: I THOUGHT WE WERE GOING TO STOP ON THAT.
14 LET'S NOT GO ANY FURTHER ON THE QUESTION OF HIS INVESTMENTS.

15 I AM JUST INTERESTED AND I AM SURE THE JURY
16 IS, JUST ABOUT THE ASSAULT.

17 MR. CHIER: I WAS JUST GOING TO GO BACK OVER THE
18 BACKGROUND THE PEOPLE COVERED YESTERDAY. I AM ALMOST
19 THROUGH WITH IT.

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1 THE COURT: I THINK WE HAVE HAD ENOUGH. THE JURY
2 UNDERSTANDS FULLY WHAT THE BACKGROUND IS.

3 MR. CHIER: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

4 THE COURT: ALL RIGHT. ANY REDIRECT?

5 MR. WAPNER: BRIEFLY.

6
7 REDIRECT EXAMINATION

8 BY MR. WAPNER:

9 Q CAN YOU EXPLAIN TO US WHY THERE WAS NOTHING
10 ABOUT COGENCO OR U.S. FLYWHEELS IN THE OFFICES ON MC GAW
11 STREET?

12 A SORRY. I DIDN'T UNDERSTAND YOUR QUESTION.

13 Q LET ME ASK YOU ANOTHER QUESTION. AT THE TIME
14 THAT YOU WERE HAVING THE DEALINGS WITH MR. HUNT ABOUT
15 THE MERGER AND ALL OF THAT, WERE YOUR OFFICES ON MC GAW
16 STREET?

17 A I HAD TAKEN EMPLOYMENT WITH BROCK GLASS COMPANY.
18 THEY ARE ON MC GAW.

19 I WAS TRYING TO STILL -- SEE, I HAD RESIGNED
20 AND NEEDED INCOME, SINCE WE WERE NOT GOING TO GET IT FROM
21 COGENCO.

22 Q SO THIS BUSINESS THAT YOU WERE WORKING AT
23 ON MC GAW STREET AT THE TIME OF THE ASSAULT, WAS A SEPARATE
24 BUSINESS ENTIRELY?

25 A A SEPARATE BUSINESS, YES.

26 Q ALL OF THE THINGS FROM YOUR BUSINESS WITH
27 COGENCO AND U.S. FLYWHEELS, ALL OF THE MACHINES AND EVERYTHING
28 HAD BEEN STORED FOR USE?

6B-2

1 A WE STORED THOSE THERE, YES. RIGHT.

2 Q WHEN YOU MADE YOUR INITIAL AGREEMENT WITH
3 THE BBC FOR THE MERGER, PART OF THE AGREEMENT WAS THAT
4 THEY WERE GOING TO PAY THIS \$400,000 IMMEDIATELY AND THAT
5 WAS GOING TO TAKE CARE OF SOME OF THE OUTSTANDING DEBTS,
6 IS THAT CORRECT?

7 A IN TEN DAYS, YES, SIR.

8 Q DO YOU REMEMBER WHAT THE ESTIMATE OF THE WEIGHT
9 WAS OF THE PERSON THAT YOU SAY ASSAULTED YOU?

10 A I DON'T REMEMBER WHAT I TOLD THE POLICE. IT
11 COULD HAVE BEEN 180 OR 200 POUNDS. HE LOOKED LARGER THAN
12 I.

13 Q IF YOU SAW THE REPORT OF WHAT THE POLICE WROTE,
14 WOULD THAT REFRESH YOUR RECOLLECTION?.

15 A THE REPORT OF THE POLICE?

16 Q RIGHT. AS TO THE ESTIMATE THAT YOU GAVE OF
17 THE WEIGHT OF THE PERSON?

18 A IT MAY.

19 Q SHOWING YOU WHAT PURPORTS TO BE A REPORT OF
20 THE IRVINE POLICE DEPARTMENT AND REFERRING TO THE SECOND
21 PAGE WHERE APPARENTLY IT HAS A DESCRIPTION, WOULD YOU
22 TAKE A LOOK AT THAT AND JUST UNDER THE SECTION WHERE IT
23 SAYS "WEIGHT" LOOK AT IT AND TELL ME IF IT REFRESHES YOUR
24 RECOLLECTION AS TO THE WEIGHT THAT YOU GAVE OF THE PERSON?

25 A IT SAYS IT IS BETWEEN 180 AND 210. THAT WAS,
26 I GUESS, MY GUESS. THAT'S WHAT I FELT AT THE TIME. BUT
27 IT LOOKS LIKE I SAID HE WAS SIX FOOT TO SIX FOOT FOUR.
28 BUT I UNDERSTAND THAT HE IS LESS THAN THAT OR WHOEVER IT WAS.

7-1

1 Q THE BURNING SENSATION THAT YOU FELT FROM THIS
2 LIQUID, CAN YOU DESCRIBE THAT AT ALL?

3 A WELL, AFTER I GAVE UP THE CHASE, I RAN INTO
4 OUR MEN'S ROOM AT THE PLANT, REMOVED MY SHIRT AND WITH
5 A TOWEL, ATTEMPTED TO WIPE IT OFF MY BACK AND THEN ALSO
6 TO WIPE IT OFF THE SHIRT, THINKING THAT WAS THE ONLY SHIRT
7 I HAD BUT I SUBSEQUENTLY REMEMBERED THAT I HAD A SUITCASE
8 IN THE CAR WITH ANOTHER SHIRT.

9 Q DID YOU RINSE THE SHIRT OFF IN ANY WAY OR
10 JUST WIPE IT?

11 A I Poured water on it and then wiped it, yes.

12 Q THE SENSATION THAT YOU FELT ON YOUR BACK AT
13 THAT TIME, COULD YOU DISTINGUISH WHETHER IT WAS A BURNING
14 SENSATION CAUSED BY SOME TYPE OF CAUSTIC SUBSTANCE AS
15 OPPOSED TO JUST SOMETHING THAT WAS HOT?

16 MR. CHIER: NO FOUNDATION FOR THAT. NO QUALIFICATION.

17 THE COURT: OVERRULED.

18 THE WITNESS: WELL, IT WAS COLDER THAN ICEWATER
19 AT FIRST AND THAT IS WHY I THOUGHT I WAS STABBED.

20 BUT THEN AFTER THE CHASE, IT BEGAN TO BURN,
21 NOT SEVERELY BUT ENOUGH TO BE DISCOMFORTING AND I FELT
22 I HAD TO GET IT OFF MY BACK, SO THAT IS THE BEST I CAN
23 TELL YOU.

24 THE COURT: ANYTHING FURTHER, MR. WAPNER?

25 MR. WAPNER: NO.

26 MR. CHIER: I HAVE JUST A FEW QUESTIONS.

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REXCROSS-EXAMINATION

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BY MR. CHIER:

Q AS I UNDERSTAND IT, MR. SWARTOUT, YOU DID NOT SEEK MEDICAL ATTENTION FOR THIS.

THE COURT: THAT IS WHAT HE SAID.

THE WITNESS: I DID NOT, NO.

Q BY MR. CHIER: DID YOU GET ANY FIRST AID, AS OPPOSED TO --

A ONLY FROM THE ASSISTANT PLANT MANAGER THAT HELPED ME CLEAN OFF MY BACK.

Q WHAT DID THE FIRST AID CONSIST OF, JUST A CLEANING UP?

A YES, RIGHT.

Q AND YOU WERE PLANNING TO WEAR THE SHIRT LATER?

A YES.

Q BECAUSE YOU HAD FORGOTTEN THAT YOU HAD AN EXTRA SHIRT?

A I WOULD HAVE. I CLEANED IT ENOUGH SO I THOUGHT I COULD, YES.

Q BY THE TIME YOU FINISHED CLEANING UP THE SHIRT, IT WAS SUCH THAT YOU COULD WEAR IT AGAIN? THERE WERE NO --

A WELL, I WASN'T SURE. IT WAS PRETTY WET.

A-1 1 Q BUT THERE WERE NO HOLES IN IT?

2 A THERE WERE NO HOLES.

3 Q THE CLOTH HAD NOT BEEN ERODED BY ANY CORROSIVE
4 CHEMICAL?

5 A RIGHT, NO HOLES, NO CORROSION.

6 Q ANY HOLES OR ANYTHING --

7 A I COULDN'T SEE IT BUT IF IT DID SO, I DON'T KNOW.

8 Q WERE THE PARAMEDICS SUMMONED, SIR?

9 A NO.

10 Q YOU SAY YOU UNDERSTAND THAT YOU GUESSED WRONG
11 WHEN YOU SAW AND DESCRIBED THE PERSON THAT ATTACKED YOU FOR
12 THE POLICE, RIGHT?

13 A WELL, I SAW HIM, YES.

14 Q AND YOU DESCRIBED HIM, RIGHT?

15 A I TRIED TO.

16 Q AND THEN YOU MENTIONED THAT YOU UNDERSTOOD THAT
17 YOU GUESSED WRONG.

18 DID SOMEBODY TELL YOU THAT THE PERSON THAT YOU
19 SAW WAS NOT SIX FOOT TO SIX FEET FOUR?

20 A YES, THE DETECTIVE THAT WAS INVESTIGATING CAME
21 IN WITH THOSE PICTURES AND I GUESSED WRONG. I WOULD NOT HAVE
22 KNOWN THAT IT WAS THE SAME MAN.

23 Q WELL, DID YOU EVER CONCLUDE AS A RESULT OF THAT,
24 SIR, THAT THE PERSON THAT YOU SAW MIGHT NOT HAVE BEEN THE
25 SAME PERSON THEY WERE SUGGESTING COMMITTED THIS ATTACK UPON
26 YOU?

27 A IT IS ENTIRELY POSSIBLE.

28 MR. CHIER: THANK YOU VERY MUCH.

1 MR. WAPNER: I HAVE NOTHING FURTHER.

2 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. YOU MAY
3 BE EXCUSED.

4 THE WITNESS: YES, SIR.

5 MR. WAPNER: BEFORE WE CALL OUR NEXT WITNESS, MAY WE
6 APPROACH THE BENCH BRIEFLY?

7 THE COURT: YES.

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

10 THE COURT: ALL RIGHT.

11 MR. WAPNER: NOW, AT THIS TIME I INTEND TO CALL OUT
12 OF ORDER DR. BRONZINI, WHO IS RELEVANT TO THE HOMICIDE IN
13 NORTHERN CALIFORNIA.

14 THE COURT: PARDON ME. HAVE YOU GOT ANY OTHER TESTIMONY
15 IN CONNECTION WITH THIS PARTICULAR INCIDENT?

16 MR. WAPNER: I DO, BUT I HAVE TO --

17 THE COURT: WHO DO YOU INTEND TO CALL?

18 MR. WAPNER: I INTEND TO CALL --

19 THE COURT: SO FAR, YOU HAVEN'T TIED IN THE DEFENDANT
20 WITH THIS THING AT ALL.

21 MR. WAPNER: I UNDERSTAND THAT. AND THAT IS WHY THIS
22 TESTIMONY THAT IS COMING IN NOW IS OUT OF ORDER. BUT THE
23 REASON I CAME TO THE BENCH WAS NOT SO MUCH TO TELL YOU THAT
24 IT IS OUT OF ORDER BUT --

25 THE COURT: PARDON ME. WHO ELSE DO YOU INTEND TO CALL
26 IN CONNECTION WITH THIS INCIDENT?

27 MR. WAPNER: A MAN NAMED -- I HAVE DRAWN A BLANK ON
28 HIS NAME RIGHT NOW.

1 THE COURT: WELL, DIDN'T YOU MENTION SOMETHING ABOUT
2 TAGLIANETTI OR SOMETHING LIKE THAT?

3 MR. WAPNER: WE ARE GOING TO CALL TAGLIANETTI ALSO BUT
4 THERE IS ANOTHER PERSON WHO WAS A PERCIPIENT WITNESS TO, NOT
5 NECESSARILY THE ATTACK, BUT SEEING THIS BLACK MAN LEANING
6 AGAINST THE WALL AND THEY SHOWED HIM A PHOTOGRAPHIC LINEUP.

7 MR. CHIER: FRED RICH?

8 MR. WAPNER: GERALD RICH IS HIS NAME.

9 THE COURT: AND HE IDENTIFIED PITTMAN?

10 MR. WAPNER: HE IDENTIFIED MR. PITTMAN AS THE PERSON
11 STANDING AGAINST THE WALL.

12 THE COURT: ALL RIGHT.

13 MR. WAPNER: I INTEND TO CALL --

14 THE COURT: WHY HAVEN'T YOU GOT THESE PEOPLE TESTIFYING
15 NOW? WHAT DO YOU WANT TO BREAK IT UP FOR?

16 MR. WAPNER: I DIDN'T WANT TO BREAK IT UP.

17 MY FEAR WAS IF I DIDN'T GET THIS DENTIST OFF AND
18 ON, HE CANCELED MOST OF HIS PRACTICE IN NORTHERN CALIFORNIA
19 FOR THE WHOLE DAY AND I WANTED TO MAKE SURE I GOT HIM ON AND
20 OFF TODAY.

21 THE COURT: WELL, WHAT IS HE GOING TO TESTIFY TO?

22 MR. WAPNER: HE IS GOING TO TESTIFY HE WAS HADAYET
23 ESLAMINIA'S DENTIST.

24 THE COURT: YES.

25 MR. WAPNER: AND THAT HE TOOK SOME X-RAYS OF MR. ESLAMINIA'S
26 MOUTH WHILE HE WAS ALIVE AND THAT THEY WERE SUBSEQUENTLY USED
27 TO COMPARE TO THE X-RAYS THAT WERE TAKEN OF HIS MOUTH POST-
28 MORTEM.

1 THE COURT: ALL RIGHT, I WILL TELL THE JURY THAT THIS
2 WITNESS IS BEING CALLED OUT OF ORDER, THAT WE HAVE OTHER
3 WITNESSES --

4 YOU SAY YOU HAVE OTHER WITNESSES ON THIS
5 PARTICULAR INCIDENT WHO WILL BE HERE?

6 MR. WAPNER: THEY WILL BE HERE AT 1:30 THIS AFTERNOON.

7 THE OTHER THING I WANTED TO ASK, AND THE REASON
8 I ASKED TO COME TO THE BENCH WAS THAT I WAS REQUEST THAT OSCAR
9 BREILING, B-R-E-I-L-I-N-G, FROM THE ATTORNEY GENERAL'S OFFICE
10 BE ALLOWED TO SIT AT COUNSEL TABLE AS THE INVESTIGATING OFFICER
11 DURING THIS PORTION OF THE CASE, SINCE HE IS IN FACT THE
12 INVESTIGATING OFFICER FOR THE ATTORNEY GENERAL'S OFFICE AND
13 HE WILL BE TESTIFYING IN THE CASE.

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1 THE COURT: I WILL PERMIT THAT.

2 MR. BARENS: WE WOULD --

3 THE COURT: YES, YOU WOULD OBJECT TO IT, IT HAS
4 BEEN NOTED.

5 HE NEEDS AN INVESTGATING OFFICER TO BE WITH
6 HIM AT THIS TIME.

7 MR. BARENS: IF I MIGHT BE JUST HEARD FOR THE PURPOSES
8 OF THE RECORD, IT WILL ASSIST THE PEOPLE IN THAT REQUEST,
9 FOR THE DEFENSE' POSITION IS THAT THIS IS A MATERIAL WITNESS,
10 THAT THE PROSECUTION WILL MAKE USE OUT OF BOTH IN THIS
11 CASE AND IN THE NORTHERN CALIFORNIA CASE. HE IS NOT AN
12 INVESTIGATOR, HE HAS NEVER ACTED AS AN INVESTIGATOR FOR
13 THE DISTRICT ATTORNEY'S OFFICE IN THIS CASE AT ANY TIME
14 AND AS A MATERIAL WITNESS, HE IS GOING TO HAVE AN OPPORTUNITY
15 TO --

16 THE COURT: HE IS NEEDED BY THE DISTRICT ATTORNEY
17 IN THIS CASE IN CONNECTION WITH THE ESLAMINIA KILLING,
18 HE KNOWS ALL ABOUT IT AND IN THE EXERCISE OF THE COURT'S
19 DISCRETION, I AM GOING TO PERMIT HIM TO DO IT.

20 MR. BARENS: I UNDERSTAND THAT.

21 THE COURT: ALL RIGHT. CALL YOUR NEXT WITNESS.
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(THE FOLLOWING PROCEEDINGS WERE HELD
IN OPEN COURT IN THE PRESENCE OF THE JURY:)

THE COURT: LADIES AND GENTLEMEN, I UNDERSTAND THAT
THERE WILL BE OTHER WITNESSES IN CONNECTION WITH THIS
INCIDENT INVOLVED WITH THE LAST WITNESS.

BUT THERE IS IN CONNECTION WITH THE THIRD
AGGRAVATING CIRCUMSTANCE INVOLVED IN THE ESLAMINIA MATTER,
THERE IS A WITNESS WHO IS A PROFESSIONAL MAN AND WE HAVE
TO TAKE HIS TESTIMONY OUT OF TURN BECAUSE HE WON'T BE
ABLE TO COME AND WAIT AROUND UNTIL WE REACH THAT PHASE
OF THE TRIAL.

YOU MAY DO SO.

MR. WAPNER: THANK YOU.

MR. BARENS: IF WE MIGHT SAY ALLEGED AGGRAVATING
CIRCUMSTANCES?

THE COURT: GO AHEAD.

MR. WAPNER: THANK YOU. WE CALL DR. BRONZINI.

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

THE CLERK: 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 STATE AND SPELL YOUR NAME FOR

1 THE RECORD.

2 THE WITNESS: JOSEPH BRONZINI, B-R-O-N-Z-I-N-I.

3

4

DIRECT EXAMINATION

5

BY MR. WAPNER:

6

Q DR. BRONZINI, WHAT IS YOUR OCCUPATION?

7

A I AM A DENTIST.

8

Q ARE YOU LICENSED TO PRACTICE IN THE STATE

9

OF CALIFORNIA?

10

A YES.

11

Q HOW LONG HAVE YOU BEEN A DENTIST?

12

A SINCE 1966.

13

Q WHERE IS YOUR PRACTICE LOCATED?

14

A MILLBRAE.

15

Q WAS IT LOCATED THERE IN 1982?

16

A YES.

17

Q AND IN 1982, DID YOU HAVE A PATIENT BY THE

18

NAME OF HADAYET ESLAMINIA?

19

A YES, I DID.

20

MR. WAPNER: YOUR HONOR, I HAVE A PHOTOGRAPH OF

21

A MALE INDIVIDUAL THAT I WOULD LIKE TO HAVE MARKED AS

22

PEOPLE'S 9 FOR IDENTIFICATION.

23

THE COURT: ALL RIGHT. THAT WILL BE P-9.

24

Q BY MR. WAPNER: SHOWING YOU PEOPLE'S 9, DR.

25

BRONZINI, DO YOU RECOGNIZE THIS INDIVIDUAL?

26

A YES.

27

Q WHO IS THAT?

28

A MR. ESLAMINIA.

1 THE COURT: ESLAMINIA.

2 THE WITNESS: WELL, I DON'T KNOW EXACTLY HOW YOU
3 PRONOUNCE THE NAME. BUT HE WAS MY PATIENT, YEAH.

4 THE COURT: ALL RIGHT.

5 Q BY MR. WAPNER: AND IN THE COURSE OF YOUR
6 TREATMENT OF MR. ESLAMINIA, DID YOU TAKE SOME X-RAYS OF
7 HIM?

8 A YES, WE DID.

9 Q DID YOU ALSO KEEP A CHART OF THE CARE THAT
10 YOU GAVE TO MR. ESLAMINIA?

11 A YES, I DID.

12 Q DID YOU BRING YOUR ORIGINAL RECORDS WITH YOU
13 TODAY?

14 A I DID, UH-HUH.

15 MR. WAPNER: YOUR HONOR, I HAVE A COPY OF WHAT APPEARS
16 TO BE A RECORD OF THIS DOCTOR. MAY THAT BE MARKED AS
17 PEOPLE'S 10 FOR IDENTIFICATION?

18 THE COURT: SO MARKED.

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8B-1

1 MR. WAPNER: AND ALSO, COPIES OF DENTAL X-RAYS. I GUESS
2 I WILL DO THAT IN A MINUTE.

3 Q DR. BRONZINI, SHOWING YOU PEOPLE'S 10 FOR
4 IDENTIFICATION, DO YOU RECOGNIZE THAT?

5 A YES.

6 Q WHAT IS IT?

7 A THAT IS A COPY OF PART OF MY CHART.

8 Q THAT IS A XEROX COPY, IS THAT CORRECT?

9 A THAT'S RIGHT.

10 Q THERE IS SOME WRITING IN PEN ON THERE.

11 A YES.

12 Q WHAT IS THAT?

13 A THAT IS MY WRITING. IT HAS THE DATES THAT HE
14 WAS IN MY OFFICE AND THE TREATMENT.

15 Q THERE ARE SOME INITIALS ON THAT CHART.

16 A THOSE ARE MY INITIALS.

17 Q WHEN DID YOU PLACE THOSE ON THERE?

18 A I THINK IT WAS LAST WEEK.

19 Q AND WHY WAS IT THAT YOU PUT YOUR INITIALS ON THERE?

20 A JUST TO INDICATE THAT IT WAS A COPY OF MY ORIGINAL
21 OR OF MY CHART.

22 Q AT THE TIME THAT YOU MADE YOUR INITIALS ON THERE,
23 DID YOU HAVE THE ORIGINAL CHART WITH YOU?

24 A YES.

25 Q AND DID YOU COMPARE THAT CHART TO THE XEROX COPY?

26 A YES.

27 Q AND IN FACT, IS THIS A TRUE AND EXACT COPY OF
28 THE ORIGINAL RECORD?

B-2

1 A YES IT IS.

2 Q DID YOU ALSO TESTIFY AT A PRELIMINARY HEARING
3 IN A MATTER IN SAN MATEO COUNTY REGARDING THIS INCIDENT?

4 A I DID.

5 Q AND DID YOU AT THAT TIME, LOOK AT SOME X-RAYS
6 THAT YOU HAD TAKEN OF MR. ESLAMINIA'S MOUTH?

7 A YES I DID.

8 Q AND WHEN WAS THAT OCCASION THE X-RAYS WERE TAKEN?

9 A LET'S SEE -- I HAVE TO LOOK AT THIS DATE, HERE,
10 IT WAS FEBRUARY 1982.

11 Q I WANT TO SHOW YOU FIRST OF ALL, A SET OF X-RAYS
12 THAT HAS APPARENTLY, YOUR NAME ON IT AND THE DATE OF
13 FEBRUARY 4TH, 1982. DO YOU RECOGNIZE THOSE?

14 A YES.

15 Q WHAT ARE THEY?

16 A IT IS AN ORTHOPAN X-RAY.

17 Q WHAT IS AN ORTHOPAN X-RAY?

18 A IT IS AN X-RAY THAT SHOWS ALL OF THE MOUTH AND
19 ALL OF THE TEETH.

20 Q HOW IS THAT TAKEN?

21 A IT WAS TAKEN WITH AN ORTHOPAN X-RAY MACHINE WE
22 HAVE IN OUR OFFICE.

23 Q AND HOW DOES THAT MACHINE WORK?

24 A THE PATIENT STANDS UP TO IT AND PUTS HIS CHIN
25 ON A LITTLE POSITIONER AND THE MACHINE JUST MOVES AROUND AND
26 TAKES IT.

27 Q SO THE X-RAY THAT YOU ARE LOOKING AT IS AN X-RAY
28 OF THE ENTIRE MOUTH, UPPER AND LOWER AND ALL OF THE TEETH,

1 IS THAT RIGHT?

2 A THAT'S RIGHT.

3 Q AND DID YOU AT SOME TIME LAST WEEK HAVE COPIES
4 MADE OF THAT X-RAY THAT WAS TAKEN IN 1982?

5 A YES.

6 Q I WANT TO SHOW YOU ANOTHER X-RAY AND ASK YOU TO
7 LOOK AT THAT AND SEE IF YOU CAN TELL ME WHAT THAT IS.

8 A THAT IS A COPY OF THIS X-RAY.

9 Q A COPY OF THE X-RAY THAT WAS TAKEN OF
10 MR. ESLAMINIA'S MOUTH IN FEBRUARY OF 1982?

11 A THAT'S RIGHT.

12 Q AND HAVE YOU EXAMINED BOTH THE ONE THAT HAS YOUR
13 STICKER WITH YOUR NAME ON IT AND THE DATE AND THE COPY?

14 A YES.

15 Q AND THEY ARE EXACTLY THE SAME?

16 A YES.

17 MR. WAPNER: YOUR HONOR, MAY THE COPY BE MARKED AS
18 PEOPLE'S 11 FOR IDENTIFICATION?

19 THE COURT: SO MARKED.

20 Q BY MR. WAPNER: AND IS THE ONE THAT YOU ARE --
21 STRIKE THAT.

22 THE ONE THAT HAS THE STICKER ON IT THAT SAYS
23 "JOSEPH W. BRONZINI, D.D.S.," DOES IT HAVE A NAME ON THERE
24 IN TERMS OF THE NAME OF A PATIENT?

25 A IT SAYS "HADAYET ESLAMINIA."

26 Q AND DOES IT HAVE ALSO A LITTLE, RED STICKER ON
27 THERE ON THE BOTTOM THAT WAS PLACED ON THERE IN COURT AT SOME
28 OTHER TIME?

1 A IT DOES. IT SAYS "PEOPLE'S EXHIBIT NO. 3."

2 Q IS THAT IN FACT, THE SAME X-RAY THAT YOU LOOKED
3 AT IN COURT WHEN YOU TESTIFIED IN COURT IN REDWOOD CITY,
4 SAN MATEO COUNTY?

5 A YES.

6 Q HOW DO YOU KNOW THAT THE X-RAY, THE TWO X-RAYS
7 ARE IDENTICAL THAT YOU HAVE IN FRONT OF YOU AND ARE IN FACT,
8 OF MR. ESLAMINIA?

9 A I REMEMBER HIM AS A PATIENT AND CHATTING WITH
10 HIM AND I REMEMBER WHAT HE HAD AS FAR AS DENTAL WORK IN HIS
11 MOUTH AND I JUST REMEMBER THE CASE.

12 Q ALL RIGHT. DID YOU EVER EXAMINE THE X-RAYS THAT
13 YOU HAVE IN FRONT OF YOU AT A TIME WHEN MR. ESLAMINIA WAS
14 IN YOUR OFFICE AND YOU WERE IN HIS PRESENCE AND HAD THE
15 X-RAYS AT THE SAME TIME?

16 A YES.

17 Q SO THERE IS NO QUESTION IN YOUR MIND THAT THESE
18 X-RAYS, INCLUDING THE X-RAY WE HAVE MARKED AS PEOPLE'S 11,
19 IS IN FACT AN X-RAY OF THE MOUTH OF HADAYET ESLAMINIA?

20 A NO. THERE IS NO QUESTION IN MY MIND ABOUT THAT.

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1 MR. WAPNER: NOW, MAY PEOPLE'S 11 BE RECEIVED SUBJECT
2 TO CROSS-EXAMINATION?

3 THE COURT: YES.

4 MR. WAPNER: I HAVE NOTHING FURTHER AT THIS TIME.

5 THE COURT: ANY QUESTIONS?

6 MR. BARENS: YES.

7 THE COURT: GO AHEAD.
8

9 CROSS-EXAMINATION

10 BY MR. BARENS:

11 Q GOOD MORNING, DR. BONZINI.

12 A GOOD MORNING.

13 Q HOW ARE YOU, DR. BRONZINI?

14 THE NOTES WHICH YOU HAVE IN PEOPLE'S 10, WHICH
15 I WILL GENERALLY DESCRIBE AS YOUR DENTAL RECORDS, YOU
16 DON'T PREPARE THOSE, DO YOU, OR DOES A NURSE PREPARE THOSE?

17 A WHICH ONE IS PEOPLE'S 10?

18 MR. BARENS: I THINK IT IS THE WHITE SHEET IN FRONT
19 OF YOU.

20 THE WITNESS: YES, I PREPARE THOSE.

21 Q BY MR. WAPNER: SO ALL THE HANDWRITING ON
22 THOSE WOULD BE YOURS?

23 A 90 PERCENT OF IT, YOU KNOW. MOST OF IT IS MINE.

24 Q ON THE X-RAYS OF THE DENTITION BEFORE YOU HERE, AS
25 I UNDERSTAND IT, YOU ARE IDENTIFYING THIS AS ESLAMINIA'S X-RAYS
26 BASED ON SOME DEAD RECKONING YOU HAVE RECALLING THAT THIS IS HIM?

27 A I REMEMBER HIM.

28 Q IS THERE SOMETHING UNIQUE IN THAT DENTITION

1 THAT HELPS YOU CONCLUDE THAT THAT IS WHO IT IS?

2 A YES.

3 Q WHAT IS THAT, SIR?

4 A THE FILLINGS, THE TEETH AND THE BONE.

5 Q COULD YOU BE ANY MORE SPECIFIC THAN THAT FOR
6 ME, SIR?

7 A THE NUMBER OF TEETH THAT ARE PRESENT ON THE
8 X-RAY.

9 Q IS THERE SOMETHING UNIQUE ABOUT THE NUMBER
10 OF TEETH YOU SEE THERE?

11 A AS FAR AS BEING HIS? YES, IT IS THE SAME
12 NUMBER OF TEETH AND IT IS -- I REMEMBER HIM AND THE X-RAYS
13 MATCH HIS TEETH.

14 I HAD HIM IN THE CHAIR AND I LOOKED AT THE X-RAYS
15 AND THOSE X-RAYS MATCHED HIS MOUTH, SO I KNOW THEY ARE
16 HIS X-RAYS.

17 Q HOW MANY TEETH DOES HE HAVE THERE?

18 A LET'S SEE, ONE, TWO, THREE -- THE OTHER PART
19 OF HIS CHART THERE, IT IS ON HIS CHART.

20 Q I DON'T HAVE ANYTHING ACTUALLY, EXCEPT MY
21 OWN TEETH HERE.

22 A THAT IS WHAT I HAVE, TOO.

23 WELL, LET'S SEE.

24 MR. WAPNER: CAN THAT BE MARKED ALSO AS PART OF
25 10?

26 MR. BARENS: MR. WAPNER HAS HANDED ME ANOTHER SHEET
27 WHICH MIGHT BE HELPFUL FOR US HERE, WHICH WE CAN CALL
28 10-B HERE, YOUR HONOR?

1 THE COURT: ALL RIGHT.

2 Q BY MR. BARENS: WHICH APPEARS TO BE A SHEET
3 LIKE DENTISTS HAVE; WILL THAT TELL YOU HOW MANY TEETH
4 WE HAVE?

5 A OH, OKAY.

6 Q I HOPE THIS WILL HELP, DOCTOR.

7 A SURE, WE COULD JUST COUNT THE TEETH HERE AND
8 THEN WE WILL KNOW PRETTY MUCH.

9 SO YOU WANT TO KNOW HOW MANY X-RAYS -- I MEAN
10 HOW MANY TEETH HE HAS ON THE X-RAYS, IS THAT THE QUESTION?

11 Q YES, HOW MANY TEETH DOES HE HAVE?

12 A HOW MANY ARE THERE ON THE X-RAY?

13 Q HOW MANY ARE THERE ON THE X-RAY?

14 A OKAY, I CAN TELL YOU HOW MANY THERE ARE ON
15 THE X-RAYS. 27.

16 Q 27?

17 A UH-HUH.

18 Q THERE IS NOTHING PARTICULARLY UNIQUE ABOUT
19 THAT, OTHER THAN THE FACT THAT YOU SEEM TO RECALL MR.
20 ESLAMINIA HAD 27 TEETH?

21 A WELL, I RECALL HIM AND WHAT HIS MOUTH LOOKED
22 LIKE AND HOW MANY TEETH HE HAD AND --

23 Q DO YOU RECALL THAT HE HAD 27 TEETH, INDEPENDENTLY,
24 SIR?

25 A WELL, I KNOW THAT HE HAD THE NUMBER OF TEETH
26 THAT ARE ON THE X-RAY.

27 Q ANYTHING ELSE PECULIAR OR UNIQUE ABOUT THE
28 DENTITION SEEN ON THE X-RAY?

1 A HE HAS A PERMANENT BRIDGE ON THE FRONT TEETH
2 AND THAT WAS --

3 Q HOW MANY TEETH DOES THAT ENCOMPASS, THAT BRIDGE,
4 SIR?

5 A IT IS A THREE-TOOTH BRIDGE.

6 Q WOULD YOU JUST IDENTIFY FOR THE JURY WHICH
7 THOSE TEETH ARE, SIR?

8 A THEY ARE NO. 7, NO. 8 AND NO. 9.

9 (LAUGHTER IN COURTROOM.)

10 Q BY MR. BARENS: WE WILL GET BACK TO THIS LATER
11 ON AT A TIME THAT MIGHT BE --

12 A OH, ALL RIGHT.

13 Q ALL RIGHT. IS THERE ANYTHING ELSE UNIQUE
14 ABOUT MR. ESLAMINIA'S DENTITION OR BONE STRUCTURE ASSOCIATED
15 WITH THAT DENTITION?

16 A THE FILLINGS ON THE X-RAY COULD BE MATCHED
17 UP WITH A PATIENT. YOU KNOW WHERE THE FILLINGS ARE AND
18 THE TEETH THAT THEY ARE ON.

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9A- 1 Q YOU MEAN THE LOCATION OF THE FILLINGS?

2 A THAT'S RIGHT.

3 Q IS THERE ANYTHING ABOUT THE TECHNIQUE IN THE
4 APPLICATION OF THE FILLINGS THAT MIGHT GIVE IT SOME SORT OF
5 A SIGNATURE, PER SE? FOR INSTANCE, A FILLING YOU MIGHT DO
6 MIGHT HAVE SOME DIFFERENCE IN APPEARANCE AS FAR AS THE FILLING
7 OF ANOTHER DENTIST PERHAPS FROM A DIFFERENT AREA OR COUNTRY
8 MIGHT DO?

9 A SOMETIMES THAT IS AN IDENTIFIABLE THING.

10 Q SOMETIMES?

11 A SOMETIMES, YES.

12 Q I SEE.

13 Q IS THERE ANYTHING ABOUT THE BONE STRUCTURE THAT
14 WAS UNIQUE OR SUGGESTIVE TO YOU, SIR?

15 A YES, ON THE CHART, THE CHART SAYS THERE WAS SOME
16 BONE LOSS AROUND 19 AND NUMBER 30 AND IF YOU LOOK AT THE
17 X-RAY, YOU CAN SEE THAT THERE IS SOME BONE LOSS AROUND THOSE
18 TWO TEETH.

19 Q DID YOU EVER ASCRIBE A CAUSE TO THAT BONE LOSS?

20 A A CAUSE?

21 WELL, THERE ARE LOTS OF CAUSES. IT COULD BE,
22 YOU KNOW, PLAQUE BUILDING UP ON THE TEETH. CALCULOUS, SMOKING,
23 HEREDITARY FACTORS.

24 IT IS JUST A PARODENTAL PROBLEM.

25 Q WOULD THAT TYPE OF A BONE LOSS OR BONE EROSION
26 IN THAT AREA BE COMMON FOR ONE OF MIDDLE EASTERN EXTRACTION?

27 A IT COULD BE COMMON FOR ANYONE, EVEN YOU OR I.

28 Q ALL RIGHT. WOULD THAT TYPE OF BONE LOSS HAVE
29 ANY SIGNIFICANCE IF I WERE TO TELL YOU THAT THE PATIENT WAS

9A ? 1 A DRUG USER, WOULD THAT CAUSE BONE LOSS OR EROSION?

2 MR. WAPNER: OBJECTION. ASSUMING FACTS NOT IN EVIDENCE.

3 MR. BARENS: IT IS A HYPOTHETICAL.

4 THE COURT: SUSTAINED.

5 MR. BARENS: I CAN'T ASK A HYPOTHETICAL?

6 THE COURT: I AM SUSTAINING THE OBJECTION.

7 YOU ARE ASKING THE QUESTION TO GET BEFORE THE
8 JURY THAT HE MIGHT HAVE BEEN A DRUG USER, IS THAT THE IDEA?

9 MR. BARENS: QUITE SO.

10 THE COURT: QUITE SO?

11 MR. BARENS: YES.

12 THE COURT: I AM SUSTAINING THE OBJECTION.

13 MR. BARENS: CAN I ASK IT AS A HYPOTHETICAL?

14 THE COURT: NO.

15 MR. BARENS: WELL, THANK YOU BOTH.

16 THE WITNESS: YOU ARE WELCOME.

17

18 REDIRECT EXAMINATION

19 BY MR. WAPNER:

20 Q FIRST OF ALL, TELL US, WHERE THE TEETH ARE,
21 NUMBERS 7, 8 AND 9, IN TERMS OF THE BOTTOM OR THE TOP AND
22 WHICH TEETH THEY ARE.

23 A WELL, 7, 8 AND 9 ARE THE UPPER RIGHT LATERAL,
24 THAT IS RIGHT NEXT TO YOUR FRONT TEETH, THAT IS 7, AND 8 IS
25 THE RIGHT FRONT TOOTH AND 9 IS THE LEFT FRONT TOOTH.

26 Q WHAT IS A PERMANENT BRIDGE?

27 A A PERMANENT BRIDGE IS A BRIDGE THAT IS CEMENTED
28 INTO PLACE. IT IS NOT REMOVABLE. IT CAN'T BE REMOVED.

Q AND WHEN YOU MAKE A PERMANENT BRIDGE, IS IT ONE TOOTH THAT IS EXTRACTED AND PORTIONS OF THE TEETH ON EACH SIDE ARE USED TO ANCHOR THE BRIDGE?

A THERE IS ONE TOOTH MISSING, TOOTH NUMBER 8, THE RIGHT FRONT TOOTH WAS MISSING SO THAT WAS A FALSE TOOTH. IT WAS ATTACHED TO THE OTHER TEETH ADJACENT TO THAT SPACE.

Q IN ORDER TO MAKE THE BRIDGE AND ATTACH IT TO THE TEETH ADJACENT TO THE SPACE, DO YOU HAVE TO DO SOMETHING TO THE TEETH ON EITHER SIDE?

A YES. YOU HAVE TO PREPARE THE ANCHOR TEETH TO THE ADJACENT TEETH AND YOU DO THAT BY DRILLING THE TEETH SMALLER AND THEN PUTTING CAPS ON THOSE TEETH.

10A-1

1 Q SO IN ESSENCE, HE HAS GOT TWO CAPS OVER TEETH
2 THAT HAVE BEEN REDUCED IN SIZE AND THEN ONE FALSE TOOTH?

3 A RIGHT.

4 Q COULD YOU TELL US HOW THE RECORDS THAT YOU HAVE
5 IN FRONT OF YOU AS PEOPLE'S 10 AND 10-B ARE PREPARED?

6 A LET'S SEE. THIS IS 10. HOW IS THIS ONE PREPARED
7 HERE?

8 Q CORRECT. THAT'S YOUR CHART.

9 A EVERY TIME THE PATIENT COMES IN FOR AN APPOINTMENT,
10 I WRITE DOWN THE DATE AND PUT DOWN THE TREATMENT THAT WAS
11 RENDERED.

12 AND ON THIS CHART, USUALLY ON THE EXAMINATION
13 APPOINTMENT WE CHART THE MISSING TEETH AND PERMANENT
14 BRIDGES THAT MIGHT BE PRESENT AND THINGS LIKE BONE LOSS OR
15 FILLINGS.

16 Q THE FIRST DOCUMENT THAT YOU HAD BEFORE YOU THAT
17 IS PEOPLE'S 10, IS THAT DONE IN THE ORDINARY COURSE OF
18 BUSINESS?

19 A YES.

20 Q ARE THE ENTRIES ON THE DOCUMENT MADE AT OR NEAR
21 THE TIME THAT THE TREATMENT IS GIVEN?

22 A YES.

23 Q AND ARE THEY MADE FOR THE PURPOSE OF KEEPING A
24 RECORD OF THE TREATMENT THAT WAS GIVEN?

25 A THAT'S RIGHT.

26 Q AND ARE MOST OF THOSE ENTRIES MADE BY YOU?

27 A MOST OF THOSE ENTRIES ARE MADE BY ME.

28 Q THE ONES THAT ARE NOT MADE BY YOU, WHO MAKES THOSE

10A-2

1 ENTRIES?

2 A THE HYGIENIST MADE SOME ENTRIES WHEN SHE CLEANED
3 HIS TEETH.

4 Q IS THERE AN ENTRY ON THERE FOR FEBRUARY THE 4TH
5 OF 1983?

6 A FEBRUARY THE 4TH?

7 Q RIGHT.

8 A OF 1983?

9 Q '82? 1982?

10 A YES. ACTUALLY, IT SAYS THAT IT IS FEBRUARY 3RD,
11 1982.

12 Q AND THE DATE ON THE X-RAY THAT YOU USED IN COURT
13 IN NORTHERN CALIFORNIA IS FEBRUARY THE 4TH, IS THAT RIGHT?

14 A THAT'S RIGHT?

15 Q CAN YOU EXPLAIN THE DISCREPANCY IN THOSE DATES?

16 A EITHER I WROTE DOWN THE 3RD INSTEAD OF THE 4TH
17 OR WE TOOK THE X-RAY ON THE 3RD AND MY ASSISTANT PROCESSED
18 THE X-RAY AND HAD IT READY ON THE 4TH AND SHE PUT DOWN THE
19 4TH ON THE X-RAY.

20 MR. BARENS: OBJECTION. MOVE TO STRIKE AS SPECULATION.

21 THE COURT: OVERRULED.

22 MR. BARENS: THANK YOU.

23 Q BY MR. WAPNER: DID YOU TREAT MR. ESLAMINIA IN
24 1982 AFTER FEBRUARY THE 3RD OR 4TH?

25 A YES I DID.

26 Q WHEN WAS THE NEXT TIME YOU TREATED HIM?

27 A ON FEBRUARY THE 19TH I PREPARED THE UPPER RIGHT
28 SIDE FOR ANOTHER PERMANENT BRIDGE.

1 Q AND IN DOING THAT, DID YOU USE THE X-RAYS YOU
2 HAD TAKEN ON FEBRUARY THE 3RD OR 4TH?

3 A YES. I USED THE X-RAYS TO MAKE THE DIAGNOSIS
4 AND TREATMENT PLAN.

5 Q SO AT THAT TIME, YOU HAD BOTH MR. ESLAMINIA AND
6 THE X-RAYS IN THE OFFICE AT THE SAME TIME?

7 A THAT'S RIGHT.

8 Q AND LIKEWISE WITH 10-B, THE CHART THAT HAS THE
9 PICTURE OF THE TEETH ON IT, THAT WAS PREPARED IN THE
10 ORDINARY COURSE OF BUSINESS?

11 A YES IT WAS.

12 Q WHEN YOU TAKE THE X-RAY, IS IT YOUR NORMAL
13 PROCEDURE TO PLACE A STICKER ON THE X-RAY, SUCH AS THE ONE
14 THAT IS ON THE EXHIBIT THAT WAS INTRODUCED IN COURT IN
15 SAN MATEO COUNTY?

16 A YES IT IS.

17 Q WHO DOES THAT?

18 A MY ASSISTANT DOES THAT.

19 Q AND WHO PLACES THE NAME AND THE DATE ON THERE?

20 A MY ASSISTANT DOES THAT.

21 Q AND ARE YOUR INITIALS ON THERE?

22 A NO. NO, SIR, THOSE AREN'T MY INITIALS. I NEVER
23 INITIAL X-RAYS.

24 MR. WAPNER: YOUR HONOR, ALTHOUGH THIS IS NOT GOING
25 TO BE INTRODUCED, MAY I JUST WALK THAT PORTION IN FRONT OF
26 THE JURY THAT HAS THE DOCTOR'S NAME AND THE PATIENT'S NAME
27 ON IT?

28 THE COURT: ALL RIGHT.

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(PAUSE.)

MR. WAPNER: AND MAY PEOPLE'S 10 AND 11 BE RECEIVED
AT THIS TIME?

THE COURT: THEY WILL BE RECEIVED UNLESS THERE IS AN
OBJECTION. ALL RIGHT?

MR. BARENS: MAY WE APPROACH THE BENCH, YOUR HONOR?

THE COURT: ANYTHING FURTHER?

MR. WAPNER: MAY I HAVE A MOMENT?

(PAUSE.)

MR. WAPNER: I HAVE NOTHING FURTHER.

LOBF

10B-1

1 (MR. CHIER EXITS THE COURTROOM.)

2 (THE FOLLOWING PROCEEDINGS WERE HELD
3 AT THE BENCH:)

4 THE COURT: YES?

5 MR. BARENS: YOUR HONOR, ON THE ISSUE OF DRUG UTILIZATION
6 BY MR. ESLAMINIA, OBVIOUSLY, THE PEOPLE ARE GOING TO GIVE
7 US A MINITRIAL OF THE ESLAMINIA HOMICIDE.

8 THE COURT: PARDON ME?

9 MR. BARENS: THE PEOPLE ARE GOING TO GIVE US A MINITRIAL
10 OF THE ESLAMINIA HOMICIDE. AMONG THE DEFENSES THAT HAVE
11 BEEN ALLEGED BY BOTH MYSELF AND OTHER DEFENSE COUNSEL --
12 THERE ARE FOUR DEFENDANTS UP THERE AND AT LEAST FOUR,
13 IF NOT MORE, LAWYERS ON THIS DEAL.

14 THE COURT: UH-HUH.

15 MR. BARENS: AS A BACKGROUND SHOWING -- WELL, ALLEGING
16 THAT MR. ESLAMINIA WAS A HEAVY NARCOTICS TRAFFICKER FROM
17 THE MIDDLE EAST AND --

18 THE COURT: TRAFFICKER?

19 MR. BARENS: TRAFFICKER, SIR. HE WAS AN IMPORTER
20 AND DISTRIBUTOR AND WHOLESALER OF OPIUM AND OTHER PRODUCTS --

21 MR. WAPNER: PLEASE KEEP YOUR VOICE DOWN.

22 THE COURT: YES.

23 MR. BARENS: -- WAS A TRAFFICKER, SIR, AND THAT --

24 THE COURT: WHAT HAS THAT GOT TO DO WITH THE EXECUTION?

25 MR. WAPNER: LET'S CUT THROUGH THIS. YOU CAN ONLY
26 ASK HYPOTHETICAL QUESTIONS BASED ON EITHER THINGS THAT
27 ARE IN EVIDENCE OR THINGS THAT --

28 MR. BARENS: HOW COME I DON'T GET TO FINISH WHAT

1 I AM TALKING ABOUT?

2 MR. WAPNER: LET ME JUST SAY --

3 THE COURT: LET HIM FINISH.

4 MR. WAPNER: I AM TRYING TO NARROW THE ISSUE.

5 MR. BARENS: YOUR HONOR, YOU KNOW, WITHOUT PREJUDGING
6 THIS CASE, THAT WHEN YOU SAY THERE IS AN EXECUTION THAT --

7 THE COURT: WELL, I AM NOT SAYING ANYTHING ABOUT
8 AN EXECUTION. I ASSUME THAT THE EVIDENCE IS GOING TO
9 SHOW THAT HE DIED. HE GOT KILLED.

10 MR. BARENS: HE DIES AT A POINT IN TIME.

11 THE COURT: ALL RIGHT. SO HIS DEATH INSTEAD OF
12 HIS EXECUTION.

13 MR. BARENS: THANK YOU, YOUR HONOR.

14 AMONG THE VARIOUS DEFENSE THEORIES I HAVE
15 HEARD WAS THE POSSIBILITY THAT MR. ESLAMINIA MET HIS DEATH
16 AS A RESULT OF HIS TRAFFICKING IN NARCOTICS AND THAT HE
17 WAS ALSO A HEAVY NARCOTICS USER HIMSELF.

18 THE COURT: YOU MEAN HE WAS NEVER -- THERE WAS NEVER
19 ANYTHING TO DO WITH THE BBC?

20 MR. BARENS: THAT'S CORRECT. I KNOW YOUR HONOR MIGHT
21 FIND IT INCREDIBLE THAT --

22 THE COURT: THAT IS INCREDIBLE.

23 MR. BARENS: BUT YOUR HONOR HAS NOT HEARD A TRIAL
24 ON THOSE FACTS YET. ALL YOU HAVE HEARD IS PERHAPS SOME
25 SCUTTLEBUTT. YOUR HONOR HAS NEVER HEARD ONE --

26 THE COURT: I AM AMAZED. I NEVER THOUGHT THAT THERE
27 WOULD BE SUCH A CONTENTION EVER MADE. ALL OF THE WHOLE
28 TIME, THIS IS THE FIRST THING I HAVE EVER HEARD ABOUT

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1 IT. I NEVER HEARD ANYTHING ABOUT AN EXECUTION STYLE MURDER
2 BY SOMEBODY UNIDENTIFIED.

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1 MR. BARENS: LET ME ASSURE YOUR HONOR THAT THERE
2 ARE AT LEAST THREE DIFFERENT DEFENSES THAT I HAVE HAD
3 EXPLAINED TO ME BY COUNSEL IN THE NORTHERN CALIFORNIA
4 CASE -- MR. WAPNER IS LAUGHING, FOR THE RECORD -- BUT
5 I WOULD LIKE TO SAY THAT LEARNED COUNSEL WITH MANY YEARS
6 OF EXPERIENCE, THAT ARE QUITE SENIOR TO MYSELF, HAVE DISCUSSED
7 WITH ME DEFENSE THEORIES AND THESE COUNSEL WOULD INCLUDE
8 ANTHONY SERRA, WHO IS ONE OF THE LEADING LIGHTS AMONG
9 CALIFORNIA DEFENSE COUNSEL, WHO HAS DISCUSSED, AND I HAVE
10 HAD MEETINGS WITH HIM AND DISCUSSED HIS THEORY OF THE
11 CASE.

12 I WANT TO ADVISE THE COURT THAT THERE ARE
13 VARIOUS THEORIES THAT MR. ESLAMINIA MET HIS FATE AT OTHER
14 THAN THE HANDS OF BBC PARTICIPANTS.

15 IN ANY EVENT, I FEEL I SHOULD BE ABLE TO,
16 CONSISTENT WITH THE FACT THAT THERE ARE OTHER THEORIES
17 OF DEATH AVAILABLE, THE DEFENSE SHOULD BE ABLE TO EXPLORE
18 ANY AND ALL OF THOSE THEORIES.

19 THE COURT: YES.

20 MR. BARENS: MY CLIENT'S LIFE IS ON THE LINE AT
21 THIS VERY INSTANT.

22 THE COURT: YES, I UNDERSTAND. BUT YOU INJECTED --
23 ARE YOU SERIOUSLY ASKING A QUESTION THAT BECAUSE HE HAS
24 SOME BONE LOSS, IT RESULTS FROM DRUG USE, IS THAT WHAT
25 YOU ARE TRYING TO TELL HIM?

26 MR. BARENS: SIR, I UNDERSTAND THAT LONG-TERM DRUG
27 USAGE, PARTICULARLY OPIUM, WHICH IS A CHEWED TYPE SUBSTANCE
28 AS OPPOSED -- ALTHOUGH IT CAN BE INHALED AS WELL.

1 THE COURT: IS THERE ANY QUESTION INVOLVED OF THAT
2 AT THIS PARTICULAR STAGE?

3 THE ONLY QUESTION INVOLVED AT THIS PARTICULAR
4 POINT IS WHETHER OR NOT THOSE X-RAYS ARE OF ESLAMINIA.
5 HOWEVER THESE THINGS CAME ABOUT, WHAT DIFFERENCE DOES
6 IT MAKE? WHAT CONCEIVABLE DIFFERENCE WOULD THESE EROSIONS
7 OF THE TEETH, OR WHATEVER MIGHT HAVE HAPPENED, OR IT CAME
8 FROM DRUG USE?

9 MR. BARENS: BECAUSE IT IS THE DEFENSE THEORY THAT
10 IF HE WAS IN FACT A HEAVY DRUG USER AND WAS A HEAVY DRUG
11 TRAFFICKER, IT IS SUGGESTIVE OF ONE OF THE DEFENSE THEORIES
12 THAT HIS DEMISE MAY HAVE RESULTED FROM THE FACT THAT HE
13 WAS IMPORTING --

14 THE COURT: YOU CAN PROVE THAT LATER ON IF IT BECOMES
15 MATERIAL.

16 SO FAR AS THIS IS CONCERNED, LET'S NOT GO
17 INTO IT AT THIS TIME.

18 MR. BARENS: THE ONLY WAY AT THIS JUNCTURE THAT
19 I COULD PROVE HE WAS A DRUG USER, SIR, WOULD BE THROUGH
20 HIS DENTIST.

21 THE COURT: NO.

22 MR. BARENS: NO?

23 THE COURT: NO. YOU PROVE IT, IF YOU CAN, SOME
24 OTHER WAY.

25 YOU ARE INTRODUCING IT ONLY FOR THE PURPOSE
26 OF BRINGING TO THE ATTENTION OF THE JURY THAT HE WAS A
27 DRUG USER SOMEHOW OR OTHER. I KNOW WHY YOU ARE DOING
28 IT.

1 MR. BARENS: I WAS INDICATING THAT IS ONE OF THE
2 PURPOSES. I TRUST THAT DURING THE DEFENSE OF THIS ESLAMINIA
3 THING, WE ARE GOING TO PROCEED WITH ALL POSSIBILITIES
4 AVAILABLE.

5 THE COURT: ABSOLUTELY. I AM NOT GOING TO FORECLOSE
6 YOU FROM ANYTHING. BUT AT THIS PARTICULAR STAGE, I DON'T
7 WANT YOU TO GO INTO THIS QUESTION OF DRUG USE UNLESS YOU
8 ESTABLISH THAT HE WAS A DRUG USER.

9 HE MIGHT HAVE TRAFFICKED IN IT, I DON'T KNOW
10 WHETHER HE DID OR NOT.

11 MR. WAPNER: FOR THE RECORD, HYPOTHETICALS HAVE
12 TO BE BASED EITHER ON FACTS THAT ARE IN EVIDENCE OR FACTS
13 THAT ARE EXPECTED TO BE IN EVIDENCE.

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11^ ' 1 MR. BARENS: THAT IS WHY I AM --

2 MR. WAPNER: SO IF THERE IS SOME OFFER OF PROOF THAT
3 THERE IS A WITNESS WHO IS GOING TO COME IN HERE AND SAY THAT,
4 AND COUNSEL CAN REPRESENT IN GOOD FAITH THAT THE WITNESS WILL
5 GET ON THE STAND AND SAY THAT, THEN I THINK HE IS ENTITLED
6 TO ASK SUCH A QUESTION BUT UNTIL HE MAKES SUCH AN OFFER OF
7 PROOF, HE IS NOT.

8 THE COURT: I THINK AT THIS PARTICULAR POINT -- IF YOU
9 WANT TO SHOW LATER ON ANYTHING ABOUT IT, YOU GO AHEAD AND
10 DO IT.

11 MR. BARENS: YES, YOUR HONOR.

12 THE COURT: YOU STILL DON'T UNDERSTAND WHAT I AM TALKING
13 ABOUT. WHAT I AM SAYING IS THAT THIS TESTIMONY HAS BEEN
14 INTRODUCED FOR THE PURPOSE OF SHOWING LATER ON THAT THE
15 REMAINS OF ESLAMINIA, THE X-RAYS OF HIS MOUTH SHOW HE WAS THE
16 GUY THAT IS ESLAMINIA, THE REMAINS THAT WERE FOUND WERE
17 ESLAMINIA'S AND THAT IS ALL HE IS DOING THIS FOR.

18 MR. BARENS: OH, NO, I REALIZE THAT.

19 BUT I THINK THE DEFENSE, AS WITH ALL WITNESSES,
20 HAS THE OPPORTUNITY TO CONVERT A WITNESS FOR THE DEFENSE
21 PURPOSE WHEN THE OPPORTUNITY ARISES.

22 THE COURT: THEN TAKE HIM AS YOUR OWN WITNESS, IS THAT
23 WHAT YOU MEAN?

24 MR. BARENS: THAT IS WHAT I WAS DOING WITHOUT MAKING
25 A MOTION.

26 THE COURT: I WON'T PERMIT YOU TO DO THAT AT THIS
27 PARTICULAR STAGE.

28 DO YOU WANT TO SUBPOENA HIM LATER ON AS PART OF

11A-2
1 YOUR CASE?

2 MR. BARENS: I WILL NEVER GET HIM OFF THE GOLF COURSE.

3 THE COURT: YES, YOU CAN.

4 MR. BARENS: I UNDERSTAND YOUR POINT OF VIEW AND RULING.

5 THE COURT: YES.

6 MR. BARENS: BUT I AM OBLIGED TO SAY --

7 THE COURT: HIS TESTIMONY IS OFFERED ONLY FOR THE PURPOSE
8 OF TESTIFYING THAT THESE X-RAYS ARE THE X-RAYS OF A MAN NAMED
9 HADAYET ESLAMINIA, THAT IS ALL THIS IS INTENDED TO DO.

10 MR. BARENS: YOUR HONOR, I AM SURE --

11 THE COURT: IF YOU WANT TO PUT AN EXPERT ON THE STAND
12 AND SHOW HIM THESE X-RAYS AND SHOW THIS IS THE RESULT OF THE
13 USE OF DRUGS --

14 MR. BARENS: I JUST WANT TO BE SURE YOUR HONOR DOES
15 NOT THINK I AM A FOOL IN THIS AREA. THERE IS A VOLUME, WEALTH
16 OF EVIDENCE THAT SUGGESTS, AND TESTIMONY AVAILABLE, THAT
17 SUGGESTS THAT LONG-TERM DRUG ADDICTION AND UTILIZATION DOES
18 CAUSE PREMATURE DENTITION PROBLEMS.

19 THE COURT: YOU ARE GOING TO HAVE WITNESSES TO TESTIFY
20 AS TO HOW LONG ESLAMINIA HAD BEEN ON DRUGS, IS THAT WHAT YOU
21 ARE GOING TO SHOW?

22 MR. BARENS: YOUR HONOR, I WILL, I BELIEVE, SUBJECT
23 TO WHAT ASSISTANCE I CAN GET FROM NORTHERN CALIFORNIA, THAT
24 WILL BE A DEFENSE THEORY, BUT I AM NOT PREPARED TO TRY THE
25 ESLAMINIA CASE HERE, OTHER THAN THE PENALTY PHASE SETTING.

26 THE COURT: ALL RIGHT, AT THIS PARTICULAR STAGE LEAVE
27 IT REST THE WAY IT IS, UNLESS THERE IS SOME OTHER TESTIMONY
28 YOU WANT TO HAVE.

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1 MR. BARENS: YOUR HONOR, OUT OF CONCERN, I WISH THE
2 COURT TO REASSURE ME THAT YOUR HONOR DOES NOT NECESSARILY
3 BELIEVE THAT THE BBC CAUSED THIS.

4 THE COURT: NO, I HAVE NO EVIDENCE ON THAT.

5 MR. BARENS: ALL RIGHT.

6 THE COURT: BUT MY IMPRESSION FROM EVERYTHING I HAVE
7 HEARD UNTIL NOW IS -- AND I NEVER HEARD ANY OTHER DEFENSE
8 THAT SOMEBODY ELSE KILLED HIM.

9 MR. BARENS: IT IS ABSOLUTELY DENIED THAT THE BBC HAD
10 ANYTHING TO DO WITH IT.

11 THE COURT: FINE, YOU GO AHEAD AND PRESENT THAT. I
12 AM NOT GOING TO FORECLOSE YOU FROM DOING THAT.

13 MR. BARENS: THANK YOU, YOUR HONOR.

14 THE COURT: IS THAT ALL WE NEED FROM HIM?

15 MR. BARENS: JUST A MOMENT BEFORE WE LET THE WITNESS
16 GO.

17 (THE FOLLOWING PROCEEDINGS WERE HELD
18 IN OPEN COURT:)

19 (UNREPORTED COLLOQUY BETWEEN MR. BARENS
20 AND THE DEFENDANT.)

21

22

RECROSS-EXAMINATION

23 BY MR. BARENS:

24 Q I JUST HAVE ONE OR TWO QUESTIONS.

25 WHEN WAS THE LAST TIME YOU SAW MR. ESLAMINIA?

26 A MAY 17, 1983.

27 Q '82?

28 A '83.

1 THE COURT: '83.

2 Q BY MR. BARENS: THAT WAS THE LAST APPOINTMENT
3 YOU HAD WITH HIM?

4 A YES.

5 Q WHAT DID YOU DO ON THAT APPOINTMENT?

6 A I CEMENTED IN A NEW BRIDGE ON THOSE NUMBERS 7,
7 8 AND 9, THOSE THREE TEETH.

8 Q AND THAT WAS THE ONLY BRIDGE HE ENDED UP HAVING?

9 A NO.

10 Q HE HAD MORE THAN ONE BRIDGE, SIR?

11 A YES.

12 Q WHERE WAS THE OTHER BRIDGE?

13 A NUMBERS 2, 3 AND 4.

14 Q COULD YOU, IF THIS IS POSSIBLE, KIND OF SHOW THE
15 JURY WHERE 2, 3 AND 4 AND 7, 8 AND 9 ARE, JUST BY KIND OF
16 POINTING AT YOUR OWN TEETH.

17 A WELL, NUMBERS 2, 3 AND 4 ARE ON THE UPPER RIGHT
18 SIDE ON THE BACK AND 7, 8 AND 9 ARE THE FRONT TEETH.

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1 Q SO ALL OF WHAT WE ARE TALKING ABOUT WOULD
2 GO AROUND LIKE THIS ON MY MOUTH, SO TO SPEAK?

3 A NO. THERE WERE TWO SEPARATE BRIDGES. THERE
4 WAS NO. 2, 3 AND 4 THAT WAS ONE BRIDGE.

5 AND THEN YOU SKIP 5. AND ALSO SKIP 6. AND
6 THEN 7, 8 AND 9 WAS THE OTHER BRIDGE.

7 Q AND THEN WHEN YOU REPLACED THAT, WHEN YOU
8 HAVE A BRIDGE, YOU PUT IN ARTIFICIAL TEETH THAT ARE ASSOCIATED
9 WITH THAT?

10 A THERE WAS ONE ARTIFICIAL TOOTH ON THE FRONT.

11 MR. BARENS: THANK YOU, SIR.

12 THE COURT: ALL RIGHT.

13

14 FURTHER REDIRECT EXAMINATION

15 BY MR. WAPNER:

16 Q VERY BRIEFLY, WAS THE BRIDGE ON THE BACK,
17 2, 3 AND 4 ALSO A PERMANENT BRIDGE?

18 A YES.

19 Q AND THAT MEANS IT IS CEMENTED IN, ALSO?

20 A YES. THERE IS AN ARTIFICIAL TOOTH THERE,
21 TOO, TOOTH NO. 3.

22 MR. WAPNER: THANK YOU.

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

25 LADIES AND GENTLEMEN OF THE JURY, WE'LL TAKE
26 OUR RECESS NOW UNTIL 1:30 THIS AFTERNOON. THE SAME ADMONITION
27 THAT I HAVE PREVIOUSLY GIVEN YOU STILL APPLIES.

28 (AT 12:03 P.M. A RECESS WAS TAKEN UNTIL
1:30 P.M. OF THE SAME DAY.)

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1 SANTA MONICA, CALIFORNIA; WEDNESDAY, MAY 13, 1987; 1:45 P.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS HERETOFORE NOTED.)
4

5 MR. WAPNER: THERE IS ONE OTHER MATTER I WOULD LIKE
6 TO TAKE UP OUTSIDE OF THE PRESENCE OF THE JURY BUT IT CAN
7 BE AFTER THE SESSION IS OVER, AT THE END OF THE SESSION TODAY.

8 THE COURT: ALL RIGHT, YOU CAN CALL YOUR NEXT WITNESS.

9 MR. WAPNER: JERALD RICH.

10
11 JERALD LEE RICH,
12 CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND TESTIFIED
13 AS FOLLOWS:

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

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

19 THE WITNESS: I DO.

20 THE CLERK: PLEASE BE SEATED.

21 WOULD YOU PLEASE STATE AND SPELL YOUR NAME FOR
22 THE RECORD?

23 THE WITNESS: MY NAME IS JERALD LEE RICH, J-E-R-A-L-D
24 L-E-E R-I-C-H.

25
26 DIRECT EXAMINATION

27 BY MR. WAPNER:

28 Q MR. RICH, ON APRIL 13 OF 1984, WERE YOU WORKING?

1 A YES, I WAS.

2 Q AND WHERE DID YOU WORK?

3 A DO ALL PACIFIC.

4 Q CAN YOU SPELL THAT?

5 A D-O A-L-L P-A-C-I-F-I-C -- OR I-C.

6 Q AND WHAT KIND OF A COMPANY WAS THAT?

7 A THEY MANUFACTURE CUTOFF SAWS.

8 Q WHERE WAS IT LOCATED IN 1984?

9 A 1392 MC GAW.

10 Q WHAT DID YOU DO FOR THAT COMPANY?

11 A MAINTENANCE MECHANIC.

12 Q IS THAT 1392 MC GAW STREET IN THE CITY OF IRVINE?

13 A YES, IT IS.

14 Q WHAT TIME DID YOU COME TO WORK ON THE MORNING
15 OF APRIL 13, 1984?

16 A 7 O'CLOCK.

17 Q WHEN YOU GOT TO WORK, WHAT DID YOU DO?

18 A THE FIRST THING I DID WAS OPEN UP THE BACK DOORS
19 AND START PULLING EQUIPMENT OUT OF THE SHOP INTO THE BACK
20 PARKING LOT.

21 Q DO YOU SEE THE DIAGRAM ON THE BOARD TO YOUR RIGHT?

22 A YES.

23 Q DO YOU RECOGNIZE ROUGHLY WHAT THAT IS TRYING TO
24 SHOW US?

25 A YES, I DO.

26 Q WHAT IS THAT?

27 A DO ALL PACIFIC IS RIGHT THERE ON THE CORNER AND
28 THE BUSINESS RIGHT BEHIND THE SHOP IS THERE AND THE PARKING

1 LOT IS IN THE MIDDLE IN THE BACK OF THE SHOP.

2 Q IS DO ALL PACIFIC LOCATED WHERE IT SAYS AT
3 1392 ON THE DIAGRAM?

4 A YES, IT IS.

5 Q WILL YOU GO TO THE DIAGRAM AND TAKE THE PENCIL
6 THAT IS UP THERE AND SHOW US WHERE THE BACK DOORS ARE ON YOUR
7 BUSINESS.

8 A OKAY. THE BACK DOORS, THERE IS ONLY ONE AND IT
9 IS LOCATED RIGHT HERE (WITNESS INDICATING).

10 Q CAN YOU JUST PUT TWO SLASH MARKS TO INDICATE ON
11 EITHER SIDE OF THE DOORS?

12 A (WITNESS COMPLIES.)

13 Q WHAT TYPE OF DOOR IS IT?

14 A IT IS A ROLL-UP DOOR.

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1 Q METAL ROLL-UP DOOR?

2 A YES.

3 Q YOU CAN RESUME YOUR SEAT FOR THE TIME BEING.

4 (THE WITNESS COMPLIES.)

5 Q ONCE YOU OPENED THAT DOOR, WHAT DID YOU DO?

6 A STARTED PULLING THE EQUIPMENT OUT.

7 Q WHY DID YOU DO THAT?

8 A TO MAKE MORE ROOM IN THE SHOP TO WORK ON OTHER
9 EQUIPMENT.

10 Q WHEN YOU PULLED THE EQUIPMENT OUT, WHERE WERE
11 YOU PUTTING IT?

12 A RIGHT UP AGAINST THE OTHER BUILDING, 1372.
13 THERE. (INDICATING.)

14 Q SO YOU WERE WALKING, BASICALLY, ACROSS THAT
15 DRIVEWAY, THE LARGE OPEN DRIVEWAY?

16 A YES. I WAS DRIVING A FORKLIFT.

17 Q AND AT THE TIME THAT YOU WERE DOING THIS,
18 DID YOU NOTICE ANYONE IN THAT PARTICULAR AREA?

19 A YES, I DID.

20 Q CAN YOU DESCRIBE THE PERSON THAT YOU NOTICED?

21 A IT WAS A BLACK MAN.

22 Q WHERE WAS THAT PERSON?

23 A CROUCHED BEHIND A CAR.

24 Q COULD YOU GO TO THE DIAGRAM AND SHOW US APPROXIMATELY
25 WHERE IT WAS THAT THAT PERSON WAS CROUCHED BEHIND THE
26 CAR AND JUST MAKE A LITTLE CIRCLE THERE WITH YOUR INITIALS?

27 A OKAY. RIGHT ABOUT IN THIS AREA HERE (INDICATING).

28 MR. WERNER: PLEASE STEP BACK A LITTLE BIT SO THE JURORS

1 CAN SEE. MAKE A ROUND CIRCLE THERE AND PUT YOUR INITIALS
2 THERE.

3 (THE WITNESS COMPLIES.)

4 Q AND YOU CAN RESUME YOUR SEAT. THANK YOU.
5 WHEN YOU SAY HE WAS CROUCHED BEHIND THE CAR,
6 CAN YOU DESCRIBE THE POSITION HE WAS IN?

7 A THE CAR WAS PARKED UP AGAINST THE BUILDING,
8 THE FRONT OF THE CAR.

9 Q SO THE CAR WOULD BE FACING THE BUILDING?

10 A THE BUILDING.

11 Q THE BUILDING IS IN THIS DIRECTION. SO IF
12 THE CAR WAS A RECTANGLE AND HE WOULD HAVE PARKED IT HERE,
13 IT WOULD BE POINTED TOWARD WHERE IT SAYS 1372?

14 A RIGHT.

15 Q WHERE WAS THIS MAN CROUCHED IN RELATION TO
16 THAT?

17 A BETWEEN THE FRONT OF THE CAR AND THE BUILDING,
18 KIND OF LEANING UP AGAINST THE BUILDING, CROUCHED.

19 Q CAN YOU MAYBE STEP DOWN FROM THE WITNESS STAND
20 AND SHOW US HOW THIS PERSON WAS CROUCHED DOWN WHEN YOU
21 FIRST SAW HIM?

22 A THIS IS THE BACK OF THE BUILDING AND THIS
23 IS THE FRONT OF THE CAR. HE WAS LIKE THAT (DEMONSTRATING).

24 MR. WAPNER: INDICATING THAT THE WITNESS HAS BENT
25 HIS KNEES ALMOST IN THE POSITION THAT A BASEBALL CATCHER
26 WOULD BE IN.

27 THE COURT: YES.

28 Q BY MR. WAPNER: YOU CAN RESUME YOUR SEAT,

1 THANK YOU. WHEN YOU SAW THIS PERSON CROUCHED THERE, DID
2 YOU LOOK AT HIM?

3 A JUST BRIEFLY.

4 Q DID HE APPEAR TO LOOK AT YOU?

5 A YES, HE DID.

6 Q WHAT HAPPENED WHEN HE APPEARED TO LOOK AT
7 YOU?

8 A HE STOOD UP FOR A MINUTE.

9 Q AFTER HE STOOD UP, WHAT HAPPENED?

10 A I REALLY DIDN'T NOTICE BECAUSE I WAS NOT PAYING
11 TOO MUCH ATTENTION TO HIM.

12 Q FOR HOW LONG A PERIOD OF TIME WERE YOU MOVING
13 EQUIPMENT BACK AND FORTH INTO THE BUILDING?

14 A ABOUT 15 MINUTES.

15 Q AND OF THAT 15 MINUTES, HOW MUCH TIME DO YOU
16 THINK YOU ACTUALLY SPENT OR YOU ACTUALLY LOOKED AT THIS
17 PERSON OR THE FACE OF THIS PERSON WHO WAS CROUCHED THERE?

18 A ABOUT ONE OR TWO MINUTES.

19 Q WHEN AFTER HE STOOD UP -- WHEN YOU NEXT SAW
20 HIM, WAS HE STILL STANDING OR WAS HE CROUCHED AGAIN OR
21 DO YOU REMEMBER?

22 A I REALLY DON'T REMEMBER.

23 Q AFTER YOU FINISHED, APPROXIMATELY WHAT TIME
24 WAS IT WHEN YOU FIRST SAW THIS PERSON THEN?

25 A I WOULD SAY BETWEEN TEN AFTER 7:00 AND 7:20.

26 Q WHICH IS WHEN YOU FIRST SAW HIM?

27 A YEAH.

28 Q AND YOU CONTINUED TO MOVE EQUIPMENT FOR ABOUT

1 15 MINUTES?

2 A UH-HUH.

3 Q IS THAT YES?

4 A YES.

5 Q HE WAS THERE THE ENTIRE 15 MINUTES?

6 A YES, HE WAS.

7 Q AFTER YOU FINISHED MOVING THE EQUIPMENT, DID
8 YOU GO BACK INSIDE YOUR PLANT?

9 A YES, I DID.

10 Q AND WHAT DID YOU DO? DID YOU BEGIN WORK WHEN
11 YOU WERE IN THERE?

12 A YES, I DID.

13 Q DURING THE TIME THAT YOU WERE OUTSIDE AND
14 DRIVING THE FORKLIFT BACK AND FORTH, DID YOU SEE ANY KIND
15 OF INCIDENT OR SCUFFLING TAKE PLACE IN THE PARKING LOT?

16 A NO, I DIDN'T.

17 Q AT SOME POINT LATER THAT MORNING, DID YOU
18 SEE SOME POLICE CARS COME TO THE BUSINESS NEXT DOOR?

19 A YES, I DID.

20 Q AND IN OCTOBER OF 1984, WERE YOU SHOWN A SERIES
21 OF PHOTOGRAPHS BY A DETECTIVE FROM THE IRVINE POLICE DEPARTMENT?

22 A YES, I WAS.

23 Q AND AT THE TIME THAT YOU WERE SHOWN THE PHOTOGRAPHS,
24 WERE YOU TOLD WHAT THE PURPOSE OF YOUR BEING SHOWN THE
25 PHOTOGRAPHS WAS?

26 A YES.

27 Q WHAT WAS THAT?

28 A THAT THEY HAD CAUGHT A SUSPECT AND THEY WANTED

1 TO KNOW IF I COULD IDENTIFY THE PERSON THAT WAS SITTING
2 BEHIND THE BUILDING THAT MORNING.

3 Q THEY SHOWED YOU A SERIES OF PHOTOGRAPHS. DID
4 YOU SELECT SOMEONE?

5 A YES, I DID.

6 Q WHEN YOU PICKED THAT PERSON OUT, WHAT DID
7 YOU TELL THEM AS FAR AS WHETHER IT WAS THE PERSON OR NOT?

8 A THAT I WAS SURE THAT IT WAS THE PERSON.

9 Q FIRST OF ALL, I WANT TO SHOW YOU A PHOTOGRAPH
10 WE HAVE MARKED AS 175 FOR IDENTIFICATION. DO YOU RECOGNIZE
11 THE PERSON IN THE PHOTOGRAPH?

12 A YES, I DO.

13 Q WHO IS THE PERSON IN THAT PHOTOGRAPH?

14 A THE PERSON THAT I PICKED OUT.

15 Q AND IS THE PERSON IN THE PICTURE THE PERSON
16 YOU SAW APRIL 13?

17 A YES.

18 MR. WAPNER: NOTHING FURTHER.

19

20 CROSS-EXAMINATION

21 BY MR. BARENS:

22 Q GOOD AFTERNOON, SIR. YOU SAY YOU SAW THIS
23 PERSON INITIALLY AND YOU WERE ON YOUR SIDE OVER AT 1392.
24 WERE YOU DRIVING THE FORKLIFT OR WHAT WERE YOU DOING WHEN
25 YOU FIRST OBSERVED THE PERSON?

26 A EVERY MORNING WHEN I COME INTO THE SHOP,
27 I PULL ALL OF THE EQUIPMENT OUT SO I HAVE MORE ROOM TO
28 WORK IN THERE.

1 ALL OF THE EQUIPMENT I PULLED OUT, I ALWAYS
2 PUT ALL OF THE EQUIPMENT UP AGAINST THIS WALL HERE. AND
3 HE WAS IN PLAIN SIGHT WHEN I SAW HIM.

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1 Q HOW CLOSE DID YOU GET TO HIM?

2 A OH, PROBABLY ABOUT AS FAR AS YOU ARE, MAYBE A
3 LITTLE CLOSER.

4 MR. WAPNER: INDICATING?

5 THE COURT: 14 FEET.

6 THE WITNESS: ABOUT 10, 14 FEET.

7 MR. BARENS: ABOUT THIRTEEN AND A HALF -- WELL, ALL
8 RIGHT, 14.

9 (LAUGHTER IN COURTROOM.)

10 Q BY MR. BARENS: IN ANY EVENT, WHEN YOU SAW THE
11 INDIVIDUAL CROUCHING, THEN YOU SAW HIM STAND UP?

12 A YES.

13 Q DID HE ATTEMPT TO HIDE WHEN YOU SAW HIM?

14 A NOT REALLY.

15 HE JUST KIND OF GOT A LITTLE NERVOUS.

16 Q HE GOT A LITTLE NERVOUS?

17 A YES, THAT IS WHEN HE STOOD UP.

18 Q WHAT DID HE DO THAT WAS A LITTLE NERVOUS?

19 A WELL, WHEN HE SAW ME, HE STOOD UP.

20 Q THAT LOOKED LIKE HE WAS NERVOUS?

21 A YES.

22 Q DID HE DO ANYTHING THAT LOOKED NERVOUS, ASIDE
23 FROM STANDING?

24 A NO.

25 Q AND AFTER THAT, YOU SAW HIM A SECOND OCCASION,
26 DID YOU, WHEN YOU CAME BACK OVER WITH THE FORKLIFT?

27 A YES, I DID. I SAW HIM A FEW TIMES.

28 Q WHAT WAS HE DOING ON THOSE FEW OCCASIONS?

5-^
1 A JUST HANGING AROUND IN THAT AREA, RIGHT THERE.

2 Q DID YOU MENTION IT TO ANYONE?

3 A AS FAR AS WHAT?

4 Q OH, MAYBE SAYING TO ONE OF THE GUYS YOU WORK WITH,
5 "THERE IS A NERVOUS GUY STANDING OVER THERE" OR "A SUSPICIOUS
6 GUY STANDING OVER THERE" OR ANY OF THAT STUFF?

7 THE WITNESS: I DON'T REALLY REMEMBER BECAUSE AT THE
8 TIME, IT DIDN'T REALLY, YOU KNOW, BOTHER ME OR ANYTHING, YOU
9 KNOW.

10 HE COULDN'T TAKE THE EQUIPMENT OUT OF THERE BECAUSE
11 IT WAS TOO HEAVY TO CARRY AWAY.

12 Q SURE.

13 LATER ON IN THE DAY, DID YOU HEAR SOMETHING ABOUT
14 THAT FELLOW THAT YOU HAD SEEN THERE?

15 A ALL I REMEMBER IS A BUNCH OF POLICE CARS OUT BACK
16 AND THEY WERE ASKING QUESTIONS.

17 Q DID THEY ASK YOU QUESTIONS?

18 A I DON'T REMEMBER.

19 I THINK THEY DID THAT DAY.

20 Q AND WHAT DID YOU TELL THEM THAT DAY?

21 A THAT I SAW A BLACK PERSON OUT BACK.

22 Q DID THEY TELL YOU ANYTHING ABOUT THAT PERSON?

23 A I REALLY DON'T REMEMBER.

24 Q OKAY. DID YOU TALK TO ANYBODY ELSE, OTHER THAN
25 POLICE OFFICERS, ABOUT THAT INCIDENT THAT DAY?

26 A NO, I DIDN'T.

27 Q YOU DIDN'T TALK TO ANY OF YOUR NEIGHBORS THERE,
28 OR ANY OF THE GUYS AT WORK, ANY OF YOUR NEIGHBORS THERE?

15-3

1 A I JUST SAID SOMETHING ABOUT SEEING A GUY OUT BACK
2 AND THE POLICE CAME, MAYBE SOMETHING LIKE THAT.

3 Q THE DAY THAT THE INCIDENT OCCURRED, IF THERE WAS
4 AN INCIDENT, DID YOU GIVE A DESCRIPTION TO THE POLICE OF THE
5 PERSON YOU SAW?

6 A I THINK SO.

7 Q WHAT DID YOU TELL THEM?

8 A THAT THERE WAS A BLACK MAN SITTING OUT BACK.

9 I WASN'T REALLY PAYING ATTENTION TO WHAT HE WAS
10 WEARING. I JUST REMEMBERED THAT HE WAS WEARING A JACKET AND
11 THAT WAS ABOUT IT.

12 Q DID YOU TELL THEM HOW TALL HE WAS?

13 A YEAH, I THINK I DID.

14 Q WHAT DID YOU TELL THEM?

15 A HE WAS ABOUT SIX FEET TALL, AROUND THERE.
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15- ' 1 Q DID YOU TELL HIM HOW OLD HE WAS?

2 A EARLY THIRTIES, LATE THIRTIES.

3 Q EARLY OR LATE THIRTIES?

4 A YES.

5 Q DID YOU TELL THEM HOW MUCH HE WEIGHED?

6 A PROBABLY AROUND 180, 200 POUNDS.

7 Q AFTER THAT DAY, DID YOU EVER, BETWEEN THAT DATE
8 AND A DATE IN OCTOBER OF 1984, DISCUSS THIS MATTER WITH
9 ANYBODY?

10 A NOT THAT -- NOT THAT I CAN RECOLLECT, NO.

11 Q HOW WAS IT THE POLICE SPOKE TO YOU IN OCTOBER
12 OF '84?

13 A THEY CONTACTED ME BY PHONE AND THEN CAME TO MY
14 APARTMENT.

15 Q YOUR APARTMENT?

16 A (THE WITNESS NODS HIS HEAD UP AND DOWN.)

17 Q DID YOU GIVE THEM YOUR PERSONAL INFORMATION BACK
18 IN APRIL?

19 A YES, I DID.

20 Q AND WHO CAME TO YOUR APARTMENT, WHO CAME OVER?

21 A TWO DETECTIVES.

22 Q AND WHEN THE DETECTIVES CAME OVER, THEY TOLD YOU
23 THEY HAD A SUBJECT IN CUSTODY CONCERNING THAT MATTER.

24 A (WITNESS NODS HIS HEAD UP AND DOWN.)

25 THE COURT REPORTER: WILL YOU ANSWER OUT LOUD, PLEASE?

26 THE WITNESS: YES, YES.

27 Q BY MR. BARENS: DID THEY TELL YOU WHAT HAPPENED
28 THAT DAY?

15- 1 A I REALLY DON'T REMEMBER.

2 THEY JUST SAID THEY HAD A SUSPECT IN CUSTODY AND
3 THAT THEY HAD SOME PHOTOGRAPHS THAT THEY WOULD LIKE ME TO
4 LOOK AT.

5 Q WERE YOU EVER TOLD WHAT THE PERSON WAS IN CUSTODY
6 FOR?

7 A I THINK SO, YES.

8 Q WHAT WAS THAT?

9 A FOR THROWING SOME LIQUID ON THE PERSON OR ASSAULTING
10 A PERSON.

11 Q WHO TOLD YOU THAT?

12 A I REALLY DON'T -- IT HAS BEEN SO LONG, YOU KNOW,
13 IT IS HARD TO REMEMBER.

14 Q AND WHEN THEY CAME OVER AND SHOWED YOU THE
15 PHOTOGRAPHS, HOW MANY PHOTOGRAPHS DID YOU SEE?

16 A SIX, I BELIEVE.

17 Q UH-HUH. AND YOU PICKED OUT ONE OF THE PHOTOGRAPHS?

18 A YES, I DID.

19 Q WAS THERE ANYTHING DIFFERENT ABOUT THE PHOTOGRAPH
20 THAT MR. WAPNER JUST SHOWED YOU AND THE PHOTOGRAPH YOU PICKED
21 OUT?

22 A I AM PRETTY SURE THAT IS THE SAME PHOTOGRAPH RIGHT
23 THERE.

24 Q THAT YOU SAW IN THIS PHOTOGRAPHIC LINEUP?

25 A RIGHT.

26 Q OKAY. AND WHEN YOU PICKED THAT PERSON OUT OF
27 THE PHOTOGRAPH, YOU SAID YOU WERE SURE --

28 THE COURT: "PHOTOGRAPHS," HE SAID.

1 MR. BARENS: OF THE PHOTOGRAPHS. I MISSPOKE MYSELF,
2 YOUR HONOR. I BELIEVE HE DESCRIBED SIX PHOTOGRAPHS.

3 THE COURT: ALL RIGHT.

4 Q BY MR. BARENS: WHEN YOU PICKED THAT PERSON OUT
5 OF THE PHOTOGRAPHS, YOU SAID YOU WERE SURE THAT WAS THE
6 PERSON YOU SAW?

7 A YES.

8 Q COULD YOU DESCRIBE A MATHEMATICAL PERCENTAGE OF
9 CERTAINTY TO YOUR IDENTIFICATION OF THAT PHOTOGRAPH?

10 A WHAT DO YOU MEAN MATHEMATICAL?

11 Q WELL, IN OTHER WORDS, ASSUMING WE HAVE A PERCENTAGE
12 OF CERTAINTY RUNNING FROM ZERO TO A HUNDRED PERCENT, COULD
13 YOU TELL ME IN TERMS OF PERCENTAGES HOW CERTAIN YOU ARE THAT
14 THE PERSON YOU SAW, THAT YOU SEE IN THIS PHOTOGRAPH IS THE
15 PERSON YOU SAW?

16 A 90 PERCENT.

17 Q 90 PERCENT?

18 AND SO DID ANYBODY ASK YOU ON THAT DAY WHAT
19 PERCENTAGE OF CERTAINTY YOU WERE THAT THAT WAS THE PERSON
20 YOU SAW?

21 A NO.

22 Q ALL RIGHT. DID YOU EVER SEE THAT PERSON AGAIN?

23 A NO, I DIDN'T.

24 Q HAD YOU EVER SEEN HIM IN THAT LOCATION PRIOR TO
25 THAT DATE?

26 A NO, I HAVEN'T.

27 Q DID YOU TELL THE POLICE ANY OTHER PHYSICAL
28 CHARACTERISTICS ABOUT THAT INDIVIDUAL?

1 A I REALLY DON'T REMEMBER.

2 Q DID YOU EVER TELL THEM WHETHER HE HAD A MUSTACHE
3 OR NOT?

4 A NO.

5 Q DID YOU EVER DESCRIBE THE HAIRSTYLE THAT THE
6 INDIVIDUAL HAD HAD?

7 A I DON'T REMEMBER.

8 Q YOU DON'T REMEMBER WHETHER YOU DID OR NOT?

9 A NO, I DON'T.

10 Q ALL RIGHT. DID YOU DESCRIBE THE CLOTHING THE
11 PERSON WAS WEARING?

12 A ALL I REMEMBER, LIKE I SAID BEFORE, IS THAT THE
13 ONE THING I REMEMBER WAS HIM WEARING A JACKET.

14 Q WHAT KIND OF JACKET?

15 A I REALLY DON'T REMEMBER THAT ONE.

16 Q YOU DON'T REMEMBER THE JACKET EITHER?

17 A NO.

18 I JUST REMEMBER HIM WEARING A JACKET BECAUSE IT
19 WAS A LITTLE CHILLY THAT MORNING.

20 Q DO YOU KNOW MR. SWARTOUT?

21 A NO, I DON'T.

22 Q YOU DON'T KNOW THE FELLOW WHO WAS RUNNING, OR
23 AT LEAST PARTIALLY RUNNING THE BUSINESS NEXT DOOR TO YOU THERE?

24 A NO.

25 JUST THE MAINTENANCE MECHANIC THAT WAS WORKING
26 THERE AND I WOULD GO OVER THERE AND BORROW THINGS FROM HIM
27 SOMETIMES.

28

5A-1 1 Q DID THE PERSON YOU SAW HAVE A HAT ON?

2 A I REALLY DON'T REMEMBER. WHEN I THINK ABOUT IT,
3 I KIND OF THINK HE WAS WEARING A BEANIE OR SOMETHING LIKE
4 THAT. I DON'T REMEMBER.

5 Q SOME SORT OF HEAD COVERING, IN ANY EVENT?

6 A YEAH.

7 Q YOU CAN'T REALLY REMEMBER THAT, EITHER?

8 A NO.

9 Q ABOUT WHAT TIME OF THE DAY WAS IT WHEN YOU LAST
10 SAW THAT MAN?

11 A ANYWHERE BETWEEN 7:30 AND 8 O'CLOCK IN THE MORNING,
12 WHEN I LAST PUT THE LAST OF THE LOAD OUT BACK, THE LAST OF
13 THE MACHINES.

14 Q WHAT DIRECTION WOULD EASTMAN STREET BE FROM WHERE
15 YOU WERE STANDING?

16 A FROM WHERE I WAS STANDING? IT WOULD BE RIGHT,
17 DIRECTLY BEHIND ME. FROM WHERE I WAS STANDING WHEN I SAW
18 HIM?

19 Q UH-HUH.

20 A WELL --

21 Q WHAT DIRECTION WOULD EASTMAN STREET BE TO THE
22 PARKING LOT SIDE OF 1392 MC GAW?

23 A EAST.

24 Q SO IT WOULD BE EAST OF YOU, WHERE THE SUN RISES?

25 A RIGHT.

26 Q AND WAS THE SUN UP THAT MORNING?

27 A YES IT WAS.

28 Q AND WAS THE AREA WELL ILLUMINATED WHERE YOU OBSERVED

1 THIS INDIVIDUAL AT THAT TIME?

2 A YOU MEAN WELL LIT?

3 Q YES.

4 A YES IT WAS.

5 Q DID YOU HEAR THE MAN SAY ANYTHING?

6 A NO I DIDN'T.

7 Q YOU DIDN'T SAY ANYTHING YOU KNOW WHEN YOU SAW
8 EACH OTHER, LIKE "GOOD MORNING"?

9 A NO.

10 Q ANYTHING OF THAT NATURE?

11 A NO.

12 Q DID HE SAY ANYTHING TO YOU?

13 A NO.

14 Q DID HE CHANGE ANY FACIAL EXPRESSIONS WHEN YOU
15 LOOKED AT HIM?

16 A JUST WHEN HE SAW ME, HE STOOD UP. YOU KNOW, I
17 DON'T KNOW AS FAR AS FACIAL EXPRESSIONS.

18 Q BUT AFTER SEEING YOU, HE DIDN'T LEAVE THE
19 LOCATION?

20 A NO HE DIDN'T.

21 MR. BARENS: THANK YOU.

22 THE COURT: ANY REDIRECT?

23 MR. WAPNER: NO. NO REDIRECT.

24 THE COURT: ALL RIGHT. YOU MAY BE EXCUSED.

25 MR. WAPNER: WE CALL DETECTIVE MONTGOMERY.

26

27

28

1 LAURENCE MONTGOMERY,
2 CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND TESTIFIED
3 AS FOLLOWS:

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

8 THE WITNESS: I DO.

9 THE CLERK: PLEASE BE SEATED. STATE AND SPELL YOUR
10 NAME FOR THE RECORD.

11 THE WITNESS: LAURENCE MONTGOMERY, M-O-N-T-G-O-M-E-R-Y.

12
13 DIRECT EXAMINATION

14 BY MR. WAPNER:

15 Q MR. MONTGOMERY, BY WHOM ARE YOU EMPLOYED?

16 A THE CITY OF IRVINE.

17 Q WHAT DO YOU DO FOR THEM?

18 A POLICE DETECTIVE.

19 Q WERE YOU EMPLOYED BY THE CITY OF IRVINE AS A POLICE
20 DETECTIVE IN 1984?

21 A YES. I WAS.

22 Q ARE YOU THE INVESTIGATING OFFICER IN A MATTER
23 THAT INVOLVES THROWING OF SOME LIQUID ON MR. SWARTOUT?

24 A YES.

25 Q IN THAT CONNECTION, DID YOU DO THE CRIME SCENE
26 INVESTIGATION?

27 A I DID NOT DO THE ACTUAL CRIME SCENE INVESTIGATION.
28 I DIRECTED THE INDIVIDUAL TO DO IT, HOWEVER.

1 Q AND DID YOU BRING WITH YOU TO COURT TODAY, SOME
2 OF THE EVIDENCE THAT WAS RECOVERED AT THE TIME OF THE CRIME
3 SCENE?

4 A YES.

5 Q WAS THERE A STYROFOAM CUP RECOVERED AT THE
6 LOCATION AT OR NEAR 1372 MC GAW STREET?

7 A YES.

8 Q DO YOU KNOW APPROXIMATELY WHERE IT WAS RECOVERED
9 FROM?

10 A IF I RECALL, IT WAS ON THE GROUND IN THE PARKING
11 LOT AREA.

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1 Q AND DID YOU CAUSE THAT CUP TO BE FINGERPRINTED?

2 A YES.

3 Q AND WERE YOU ABLE TO GET ANY FINGERPRINTS OFF
4 OF IT?

5 A THERE WERE SOME MINOR STRIATIONS ON ONE SIDE.
6 HOWEVER, THEY WERE NOT USABLE IN TERMS OF IDENTIFICATION.

7 Q AND YOU BROUGHT THAT CUP WITH YOU TODAY?

8 A YES.

9 Q CAN YOU JUST SHOW IT TO US, PLEASE?

10 A (THE WITNESS COMPLIES.)

11 Q WAS THAT BLACK SUBSTANCE ON THE OUTSIDE OF THE
12 CUP?

13 A NO. IT IS FINGERPRINT DUSTING POWDER.

14 Q SO IT WAS NOT THERE WHEN THE ITEM WAS ORIGINALLY
15 SEIZED?

16 A THAT'S CORRECT.

17 Q WHEN THE ITEM WAS TAKEN FROM THE CRIME SCENE,
18 WAS THERE ANYTHING IN IT THAT YOU KNOW OF?

19 A THERE WAS A VERY SMALL AMOUNT OF LIQUID IN THE
20 CUP.

21 Q IF YOU CAN, DESCRIBE WHAT A VERY SMALL AMOUNT
22 OF THE LIQUID MEANS.

23 A A FEW DROPS, AT MOST.

24 Q WHEN DID YOU FIRST BECOME THE INVESTIGATING
25 OFFICER ON THIS CASE?

26 A THAT DAY IS WHEN I WOULD BE ASSIGNED, THE 13TH
27 OF APRIL.

28 Q AND AT THAT TIME OR SOME TIME SHORTLY THEREAFTER,

1 DID YOU ATTEMPT TO HAVE THAT LIQUID ANALYZED?

2 A YES I DID.

3 Q WHEN YOU FIRST MADE THAT ATTEMPT, WHAT HAPPENED?

4 A I GAVE THE INFORMATION TO THE ORANGE COUNTY
5 CRIME LAB, ALONG WITH THE CUP WITH THE LIQUID AND REQUESTED
6 THAT IF THEY COULD, THEY DETERMINE WHAT THE LIQUID WAS IN
7 THE CUP.

8 Q AND WERE THEY ABLE TO MAKE A DETERMINATION AT
9 THAT TIME?

10 A AT THAT TIME, THEY TOLD ME THAT THEY WOULD NOT
11 BE ABLE TO DETERMINE WITHOUT SOME IDEA OF WHAT IT WAS THEY
12 SHOULD BE LOOKING FOR, DUE TO THE VERY SMALL AMOUNT OF THE
13 LIQUID THAT WAS THERE.

14 Q AT SOME POINT LATER, DID YOU WITHOUT TELLING US
15 WHAT IT WAS, RECEIVE SOME INFORMATION ABOUT WHAT THE
16 SUBSTANCE MIGHT BE IN THE CUP?

17 A YES.

18 Q WHEN WAS THAT, THAT YOU GOT THAT INFORMATION?

19 A I CAN GIVE YOU AN EXACT DATE IF I LOOK THROUGH
20 MY FILES.

21 Q WOULD YOU DO THAT?

22 A YES. IT WAS APPROXIMATELY THE 16TH OF AUGUST,
23 1984.

24 Q AFTER GETTING SOME INFORMATION ABOUT WHAT THE
25 SUBSTANCE IN THE CUP MIGHT HAVE BEEN, DID YOU MAKE A FURTHER
26 REQUEST OF THE CRIME LAB TO ANALYZE IT?

27 A YES.

28 Q WHAT HAPPENED AFTER YOU MADE THAT REQUEST?

1 A THEY CAME BACK AND SAID THAT THERE WAS JUST TOO
2 LITTLE AMOUNT OF THE LIQUID TO EVEN MAKE A TEST TO DETERMINE,
3 EVEN WITH THE INFORMATION THAT I GAVE THEM. THEY WERE NOT
4 ABLE TO DO A TEST IN ORDER TO DETERMINE IF IT WAS IN FACT,
5 THE LIQUID WHICH I SAID IT MIGHT BE.

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5BF

16B-1

1 Q DID YOU HAVE MR. SWARTOUT'S SHIRT AVAILABLE?

2 A YES.

3 Q WAS THAT TESTED OR DID YOU MAKE ANY REQUEST
4 TO HAVE THAT TESTED?

5 A IT WAS TOO DRY. THERE WAS NO LIQUID PRESENT
6 ON IT. IT ALL EVAPORATED.

7 Q IN OCTOBER OF 1984, DID YOU SHOW A SERIES
8 OF PHOTOGRAPHS TO JERALD RICH, THE WITNESS WHO JUST TESTIFIED
9 BEFORE?

10 A YES, I DID.

11 Q AND WHAT WAS THE PURPOSE OF SHOWING HIM THESE
12 PHOTOGRAPHS?

13 A TO SEE IF HE WOULD RECOGNIZE AN INDIVIDUAL
14 THAT HE SAW ON THE 13TH OF APRIL, 1984 IN THE PARKING
15 LOT OF 1372 MC GAW.

16 Q AND AFTER SHOWING HIM THE PHOTOGRAPHS, DID
17 HE PICK OUT AN INDIVIDUAL?

18 A YES, HE DID.

19 (UNREPORTED COLLOQUY BETWEEN COUNSEL.)

20 MR. WAPNER: MAY I HAVE A MOMENT, PLEASE?

21 THE COURT: YES.

22 (PAUSE.)

17 FO.

23

24

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17-1

1 (PAUSE IN PROCEEDINGS.)

2 (UNREPORTED COLLOQUY BETWEEN DEFENSE

3 COUNSEL AND DEFENDANT.)

4 MR. BARENS: THAT IS OKAY.

5 MR. WAPNER: I NEED ANOTHER SECOND.

6 (FURTHER PAUSE IN PROCEEDINGS.)

7 MR. WAPNER: YOUR HONOR, I HAVE A PHOTOGRAPHIC LINEUP
8 AND BECAUSE I WANT TO RETURN IT TO DETECTIVE MONTGOMERY,
9 MAY IT BE MARKED BY REFERENCE WITH THE STIPULATION THAT
10 IT WOULD BE TAKEN BY DETECTIVE ZOELLER AND A PHOTOGRAPHIC
11 REPRODUCTION OF THE LINEUP MADE AND THEN THE PHOTOGRAPHIC
12 REPRODUCTION SUBSTITUTED FOR THE ORIGINAL AND THE ORIGINAL
13 RETURNED TO DETECTIVE MONTGOMERY?

14 THE COURT: YES.

15 MR. WAPNER: COUNSEL, MAY IT BE SO STIPULATED?

16 MR. BARENS: YES.

17 MR. WAPNER: MAY THIS PHOTOGRAPHIC LINEUP BE MARKED --

18 THE CLERK: 12.

19 THE COURT: 12.

20 MR. WAPNER: 12 BY REFERENCE?

21 THE COURT: YES.

22 Q BY MR. WAPNER: DETECTIVE MONTGOMERY, SHOWING
23 YOU PEOPLE'S 12 BY REFERENCE, DO YOU RECOGNIZE THAT?

24 A YES, I DO.

25 Q WHAT IS IT?

26 A IT IS A PHOTOGRAPHIC LINEUP.

27 Q DID YOU PREPARE THAT PHOTOGRAPHIC LINEUP?

28 A YES, I DID.

1 Q IS THAT THE PHOTOGRAPHIC LINEUP YOU SHOWED
2 TO JERALD RICH?

3 A YES, IT IS.

4 Q AND DID HE SELECT SOMEONE FROM THAT PHOTOGRAPHIC
5 LINEUP?

6 A YES, HE DID.

7 Q WHO DID HE SELECT?

8 A HE SELECTED THE PHOTOGRAPH IN POSITION NO. 3.

9 Q AND WOULD YOU JUST HOLD THAT UP AND POINT FOR
10 US TO THE ONE THAT IS IN POSITION NO. 3, THAT IS, THE UPPER
11 RIGHT-HAND CORNER?

12 A THAT'S CORRECT.

13 MR. WAPNER: MAY WE JUST PASS THAT BY THE JURY BRIEFLY?

14 THE COURT: YES.

15 (WHEREUPON, THE EXHIBIT WAS PASSED IN
16 FRONT OF THE JURY.)

17 Q BY MR. WAPNER: AND WHO IS THE PERSON THAT IS
18 DEPICTED IN THE PHOTOGRAPH THAT IS IN POSITION NO. 3?

19 A SAY THAT AGAIN?

20 Q WHO WAS THE PERSON IN THERE?

21 A IN THE PHOTOGRAPH THERE?

22 IT WAS A MR. PITTMAN.

23 Q WHEN YOU TALKED TO MR. MONTGOMERY -- I MEAN
24 MR. RICH AND HE IDENTIFIED THE PHOTOGRAPH, DID HE MAKE
25 A STATEMENT IN TERMS OF HIS IDENTIFICATION, WHETHER HE
26 WAS CERTAIN OR NOT CERTAIN OR --

27 A YES, HE DID.

28 Q WHAT DID HE SAY?

7-3

1 A HE ACTUALLY WROTE OUT A STATEMENT IN WHICH
2 HE STATED, "THE MAN IN PHOTOGRAPH NO. 3 IS THE MAN I SAW
3 STANDING IN THE PARKING LOT FOR ABOUT 10 MINUTES."

4 MR. WAPNER: THANK YOU. I HAVE NOTHING FURTHER.
5

6 CROSS-EXAMINATION

7 BY MR. BARENS:

8 Q DETECTIVE MONTGOMERY, HOW DO WE KNOW THAT
9 IS THE CUP THAT THE LIQUID WHICH ENDED UP, A PORTION OF
10 IT, ON MR. SWARTOUT?

11 A THE CUP WAS COLLECTED BY THE S.C.I., BY THE
12 INVESTIGATING OFFICER MALIK AND THIS IS ACTUALLY THE PAPER
13 HERE HE PLACED IT IN AND SIGNED THE OUTSIDE OF THE TAG
14 AND PLACED IT IN OUR PROPERTY EVIDENCE LOCKER NO. 3 ON
15 THAT DATE AND THEN ON THE BACK OF IT, WE CAN SEE HOW IT
16 IS CHECKED OUT TO ME TO BE PRESENT HERE.

17 Q HOW DO WE KNOW THAT IS THE CUP THAT THE LIQUID
18 WAS IN, A PORTION OF WHICH ENDED UP ON MR. SWARTOUT?

19 A I SEE WHAT YOU ARE SAYING. I AM SORRY.

20 MR. SWARTOUT ADVISED THEM THAT THE SUBJECT
21 THREW A CUP OF SOMETHING ON HIM AND HE ADVISED THAT
22 THAT WAS THE CUP IN THE PARKING LOT THAT CAME FROM THE
23 SUBJECT WHO THREW THE LIQUID ON HIM.

24 Q HE TOLD YOU THAT?

25 A HE DID NOT TELL ME.

26 HE TOLD IT TO THE INVESTIGATORS, THE PEOPLE
27 AT THE SCENE AT THE TIME OF THE INCIDENT.

28 Q DID YOU HEAR HIM SAY THAT?

17-4
1 A I DID NOT HEAR HIM SAY THAT.

2 Q SO TO YOUR PERSONAL KNOWLEDGE, WE SIMPLY HAVE
3 A CUP HERE THAT WAS RECOVERED AT THE SCENE BASED ON THE
4 EVIDENCE THAT YOU HAVE BEFORE YOU IN TERMS OF THE LABELING
5 AND NOTE-TAKING THAT YOUR FOLKS DO WHEN THEY COLLECT EVIDENCE?

6 A THAT IS CORRECT.

7 Q DID YOU FINGERPRINT THAT CUP?

8 A YES.

9 Q AND WHAT DID YOU FIND WHEN YOU FINGERPRINTED
10 THAT CUP?

11 A WHAT WAS FOUND ARE SMALL MARKS, WHICH CAN
12 BE SEEN RIGHT THERE, WHICH ARE SMALL STRIATIONS THAT APPEAR
13 TO BE FROM FINGERPRINTS.

14 Q WERE WE LATER ABLE TO IDENTIFY THOSE FINGERPRINTS
15 AS BEING SOMEONE'S FINGERPRINTS IN BEING?

16 A THEY ARE TOO SMUDGED AND TOO SMALL TO BE ABLE
17 TO POSITIVELY IDENTIFY THEM.

18 FO.
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18A- 1
1 MR. WAPNER: EXCUSE ME, COUNSEL.

2 (UNREPORTED COLLOQUY BETWEEN COUNSEL.)

3 MR. BARENS: OKAY. WE ARE GOING TO PICK IT UP THE RIGHT
4 WAY NOW.

5 Q IN PICKING UP THE CUP, I NOTICE -- PERHAPS YOU
6 COULD ASSIST ME WITH THIS. THERE DOESN'T APPEAR TO BE
7 ANYTHING -- THERE DOESN'T APPEAR THAT THERE IS ANYTHING WRONG
8 WITH THE BOTTOM OF THE CUP, DOES THERE, ON THE INSIDE?

9 A WHAT DO YOU MEAN BY "WRONG"?

10 Q WELL, IN OTHER WORDS, THE TEXTURE APPARENT ON
11 THE BOTTOM OF THE CUP SEEMS CONSISTENT WITH THE TEXTURE ON
12 THE OUTSIDE OF THE CUP OR ON THE LIP OF THE CUP? IT ALL SEEMS
13 THE SAME, DOES IT NOT, SIR?

14 A YES.

15 Q FOR INSTANCE, WE -- IF WE HAD ACID IN THAT CUP,
16 I BET IT WOULD LOOK DIFFERENT THAN THAT?

17 A I HAVE NO KNOWLEDGE WHETHER IT WOULD OR NOT.

18 Q WELL, I SUPPOSE IT IS A REASONABLE ASSUMPTION
19 TO MAKE, PROBABLY, WOULDN'T --

20 MR. WAPNER: OBJECTION.

21 THE COURT: I WILL SUSTAIN THE OBJECTION. IT IS YOUR
22 SUPPOSITION, NOT HIS. LET'S GET ON TO SOMETHING ELSE.

23 MR. BARENS: WELL, I THINK THIS IS A BIG SOMETHING.

24 THE COURT: YES. IT IS. GET SOME EXPERT TO COME IN
25 AND TESTIFY THAT THERE WAS NO ACID PUT IN IT OR IT WOULD
26 CORRODE IT.

27 MR. BARENS: I WOULD LIKE TO JUST SHOW THE JURY THE
28 BOTTOM OF THE CUP AND LET THEM TAKE A LOOK AT IT.

1 THE COURT: YOU MAY DO THAT.

2 MR. BARENS: IT IS GOING TO BE HARD FOR ME TO DO IT
3 HOLDING IT LIKE THIS.

4 MR. WAPNER: MAY I HAVE A MOMENT?

5 MR. BARENS: I WILL HOLD IT FROM THE BOTTOM. I WILL
6 NOW SHOW EVERYONE THE BOTTOM OF THE CUP.

7 (DEMONSTRATING FOR THE JURY.)

8 Q BY MR. BARENS: NOW, YOU SAY YOU MOVED SOME DROPS
9 FROM THIS?

10 A I DID NOT, NO.

11 Q SOMEONE ELSE DID?

12 A YES.

13 Q YOU SAY THERE WEREN'T ENOUGH DROPS TO UTILIZE
14 FOR A TEST OF ANY KIND?

15 A THAT IS WHAT I WAS TOLD BY THE ORANGE COUNTY CRIME
16 LAB.

17 Q WELL, WAS A REPORT WRITTEN SAYING THAT SOME OF
18 THE MATERIAL THAT HAD BEEN FOUND IN THE CUP WAS PUT IN A VIAL?

19 A I DON'T KNOW.

20 Q WAS A POLICE REPORT NARRATIVE MADE OF THIS?
21 AND I WILL SHOW YOU AND INDICATE WHAT I AM REFERRING TO BY --
22 DID YOU EVER READ A REPORT DONE BY OFFICER MALIK?

23 A YES I DID.

24 Q WOULD IT REFRESH YOUR RECOLLECTION ABOUT WHETHER
25 OR NOT PART OF IT WAS PUT IN A VIAL?

26 A I THINK IT WOULD.

27 Q ALL RIGHT. SIR, WHAT DOES THE REPORT SAY IN THAT
28 REGARD, DETECTIVE?

1 A THE CUP HAD A SMALL AMOUNT OF BROWNISH LIQUID
2 WHICH I BELIEVED TO BE CAUSTIC, SO IT WAS SECURED IN A GLASS
3 VIAL AS EVIDENCE FOR ANALYSIS.

4 Q ALL RIGHT. DID YOU EVER FIND OUT WHETHER THE
5 LIQUID WAS IN FACT, CAUSTIC, SIR?

6 A NO.

7 Q DID ANYONE EVER TELL YOU LATER ON THAT THEY HAD
8 DISCOVERED A CAUSTIC SUBSTANCE IN THE VIAL OR ANYWHERE ELSE?

9 A NO.

10 Q DID YOU EVER SEE THE SHIRT THAT WAS TAKEN FROM
11 THE ALLEGED VICTIM?

12 A I DID NOT SEE IT.

13 Q DID ANYBODY EVER TELL YOU THAT THE SHIRT WAS IN
14 ANY WAY, DAMAGED?

15 A NO.

16 Q WERE THERE ANY HOLES IN THE SHIRT AS A RESULT
17 OF THIS INCIDENT?

18 A NOT THAT I AM AWARE OF.

19 Q NOW, YOU SAY THAT THE LIQUID SUCH AS IT WAS,
20 EVAPORATED FROM THE SHIRT, SIR?

21 A YES.

22 Q DID IT LEAVE ANY SORT OF IDENTIFIABLE RESIDUE
23 ON THE SHIRT?

24 A NOT THAT I AM AWARE OF.

25 Q DID THE LIQUID LEAVE ANY IDENTIFIABLE RESIDUE
26 IN THE CUP?

27 A THERE IS SOMETHING BROWN ON THE EDGE OF THE CUP
28 ON THE INSIDE. I DON'T KNOW IF THAT WAS FROM THAT LIQUID

1 OR NOT.

2 Q LET'S SEE WHAT THAT IS. WE DON'T KNOW WHAT IT
3 IS FROM, THOUGH?

4 A I CAN'T SAY IT WAS FROM THAT LIQUID.

5 Q WE DON'T KNOW WHAT THAT IS?

6 MR. WAPNER: IS THAT A QUESTION?

7 Q BY MR. BARENS: DID YOU EVER TEST THAT?

8 A THE LAB DOES NOT HAVE ENOUGH TO DETERMINE WHAT
9 IT IS.

10 Q I SEE. AND DID THEY EVER TEST THE SHIRT?

11 A TEST FOR WHAT? TO SEE WHAT IS ON IT?

12 Q WELL, THAT IS THE QUESTION. WAS THE SHIRT EVER
13 TESTED, YOU KNOW, LIKE TAKING THE FIBERS OUT AND PUTTING THEM
14 UNDER A MICROSCOPE AND TESTING THEM?

15 A AS FAR AS I KNOW, THEY WERE NOT.

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18B1

1 Q ALL RIGHT. DO YOU GUYS STILL HAVE THE SHIRT?

2 A YES.

3 Q AND WHAT HAPPENED TO THE GLASS VIAL WITH LIQUID
4 IN IT?

5 A IT WAS TAKEN TO THE ORANGE COUNTY CRIME LAB
6 TO BE ANALYZED. AND I ASSUME THAT IT IS EITHER AT THE
7 ORANGE COUNTY CRIME LAB BOOKED IN OR IN MOST CASES, IT
8 WOULD BE BACK BOOKED IN AT THE IRVINE POLICE DEPARTMENT.

9 Q DID YOU EVER GET A WRITTEN REPORT FROM THOSE
10 FOLKS?

11 A I DON'T RECALL.

12 Q DID YOU EVER READ A REPORT FROM THOSE PEOPLE?

13 A I DON'T RECALL.

14 Q DID YOU EVER REMEMBER THE CONTENTS OF ANY
15 REPORT THEY EVER ISSUED?

16 A I DON'T RECALL IF I READ IT IN A REPORT OR
17 IF I GOT IT FROM A TELEPHONE CALL. HOWEVER, I RECEIVED
18 INFORMATION ABOUT THE RESULTS.

19 Q DID THE RESULTS IDENTIFY A SPECIFIC ASCERTAINABLE
20 CHEMICAL SUBSTANCE?

21 A NO.

22 Q DID YOU EVER LEARN THAT THE SUBSTANCE WAS
23 TEA?

24 A NO.

25 Q DID YOU EVER HEAR THAT?

26 A YES.

27 Q DID ANY PERSON, TO YOUR KNOWLEDGE, EVER PHYSICALLY
28 TOUCH THE SUBSTANCE IN THE VIAL OR IN THE CUP?

8B2

1 A TO MY KNOWLEDGE, THE ONLY ONE THAT I AM AWARE
2 OF WOULD BE MR. SWARTOUT.

3 Q I MEAN IN TERMS OF THE TESTING PROCEDURES
4 THAT WERE ADOPTED OR FOLLOWED, DID ANYONE EVER HAVE HUMAN
5 CONTACT WITH IT?

6 A NOT TO MY KNOWLEDGE.

7 Q DID YOU EVER SEE THE SUBSTANCE IN THE CUP?

8 A NO.

9 Q WERE YOU EVER TOLD BY ANYONE THAT THE SUBSTANCE
10 IN THE CUP WAS ACTIVE?

11 A ACTIVE?

12 Q YES, SIR, AS OPPOSED TO INERT, SIR?

13 A NO.

19 RQ.

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1 Q HAVE YOU EVER COMPARED THE FINGERPRINTS OF
2 JAMES PITTMAN, A.K.A. JAMES GRAHAM, TO THE FINGERPRINTS
3 ON THAT CUP?

4 A NO.

5 Q IS THERE A CARL'S JR. IN THE VICINITY OF WHERE
6 THIS CUP WAS ALLEGEDLY RECOVERED?

7 A WITHIN A FEW MILES.

8 Q DID YOU EVER SPEAK WITH A BRUCE SWARTOUT?

9 A YES.

10 Q WHEN DID YOU FIRST SPEAK TO HIM FOR THE FIRST
11 TIME?

12 A I BELIEVE IT WAS ON APRIL 13TH OF 1984.

13 Q WERE YOU ACCOMPANIED BY OFFICER GIBBS?

14 A THERE WAS AN OFFICER GIBBS AT THE SCENE.

15 Q DID BOTH YOU GENTLEMEN SPEAK WITH MR. SWARTOUT?

16 A I REMEMBER SPEAKING WITH HIM.

17 I DON'T HAVE A DIRECT RECOLLECTION OF OFFICER
18 GIBBS DOING IT.

19 Q DID MR. GIBBS PREPARE A REPORT?

20 A YES, HE DID.

21 Q DID YOU READ HIS REPORT?

22 A YES.

23 Q DID MR. SWARTOUT EVER REPRESENT TO YOU GENTLEMEN
24 THAT HE HAD BEEN REMOVED AS CHAIRMAN OF THE BOARD OF THE
25 COGENCO SYSTEMS, INC. BY THE STOCKHOLDERS?

26 A I REMEMBER HIM SPEAKING OF INCIDENTS INVOLVING
27 THAT COMPANY.

28 I AM NOT ACTUALLY AWARE OF THE CIRCUMSTANCES

1 INVOLVED WITH HIS -- WITH THE COMPANY.

2 Q IN ORDER TO REFRESH YOUR RECOLLECTION, I WILL
3 SHOW YOU THAT REPORT OF DETECTIVE GIBBS THAT YOU SAID
4 YOU READ.

5 AND WITH REFERENCE TO MY QUESTION CONCERNING
6 THE STATEMENTS OF MR. SWARTOUT WITH COGENCO, I WOULD ADDRESS
7 YOU TO THIS SECTION OF MR. GIBBS' REPORT AND ASK YOU IF
8 THAT REFRESHES YOUR RECOLLECTION.

9 A YES.

10 Q AND WHAT DOES IT INDICATE IN THAT REGARD,
11 SIR?

12 A ACCORDING TO OFFICER GIBBS, HE WROTE THAT
13 IN NOVEMBER OF 1983, ACCORDING TO MR. SWARTOUT, MR. SWARTOUT
14 WAS REMOVED AS THE CHAIRMAN OF THE BOARD OF COGENCO SYSTEMS,
15 INCORPORATED, LOCATED IN SANTA ANA AND HE WAS --

16 Q DOES IT FURTHER SAY "BY THE STOCKHOLDERS"?

17 A "BY THE STOCKHOLDERS."

18 Q DID YOU EVER SHOW A PHOTOGRAPHIC LINEUP TO
19 MR. SWARTOUT?

20 A YES, I DID.

21 Q WAS IT THE SAME PHOTOGRAPHIC LINEUP THAT YOU
22 JUST MADE REFERENCE TO IN YOUR DIRECT EXAMINATION?

23 A YES, IT IS.

24 Q AND DID MR. SWARTOUT PICK A PERSON OUT OF
25 THE PHOTOGRAPHIC LINEUP?

26 A NO, HE DID NOT.

27 Q DID HE MAKE ANY TENTATIVE OR INITIAL IMPRESSION
28 I.D.'S?

1 A NO.

2 Q HE DIDN'T DO ANYTHING, DID HE, WITH REFERENCE
3 TO THE LINEUP CARD AS FAR AS POINTING OUT OR SUGGESTING
4 ANY IDENTIFICATION?

5 A HE SAID HE COULD NOT IDENTIFY ANYBODY IN THERE
6 AS BEING THE SUSPECT.

7 Q AND DID HE LATER MAKE A WRITING IN THAT REGARD?

8 A I BELIEVE HE DID, YES.

9 THE COURT: HE TESTIFIED HE COULDN'T IDENTIFY HIM.
10 WHY MAKE SUCH A BIG PRODUCTION OUT OF THIS? SWARTOUT
11 TESTIFIED HE COULDN'T IDENTIFY HIM. WHY GO ON WITH THIS?

12 MR. BARENS: I WOULD LIKE TO RECAPTURE HIS TESTIMONY
13 AT AN EARLIER DATE, YOUR HONOR.

14 THE COURT: THAT IS ALL RIGHT. YOU ARE JUST WASTING
15 TIME, THAT IS ALL YOU ARE DOING. HE CATEGORICALLY SAID
16 HE COULDN'T IDENTIFY THE MAN.

17 MR. BARENS: I KNOW.

18 THE COURT: HE SAID HE COULDN'T IDENTIFY HIM FROM
19 ANY SOURCE. WHY GO ON WITH THIS?

20 MR. BARENS: WELL, WE WOULD JUST LIKE TO MAKE OUR
21 RECORD.

22 THE COURT: YOU DON'T HAVE TO MAKE A RECORD. YOU
23 CAN INTRODUCE IT AS AN EXHIBIT LATER ON AND HAVE IT MARKED
24 FOR IDENTIFICATION.

25 MR. BARENS: HE IS THE BEST GUY TO DO IT WITH BECAUSE
26 HE IS THE GUY THAT WAS DOING IT. I WOULD JUST LIKE TO
27 PUT INTO EVIDENCE A LITTLE SOMETHING, FOR THE RECORD.

28 THE COURT: ALL RIGHT. GO AHEAD.

9-4

1 Q BY MR. BARENS: MR. SWARTOUT MADE A WRITING,
2 YOU SAY, CONCERNING HIS IDENTIFICATION, YOU SAY, OR LACK
3 THEREOF?

4 A YES.

5 Q IS THIS THE WRITING HE MADE, SIR?

6 A IT LOOKS LIKE A COPY OF IT.

7 Q AND THIS IS UNDER THE DATE OF SEPTEMBER 20,
8 1984, SIR?

9 A YES, SIR.

10 Q COULD YOU PLEASE READ WHAT IT SAYS?

11 A IT SAYS, "I CANNOT POSITIVELY IDENTIFY ANY
12 OF THESE SIX MEN SHOWING ON THE PHOTOS SHOWN ME."

13 MR. BARENS: WE WOULD JUST LIKE THIS AS A DEFENSE
14 EXHIBIT, CALL THIS --

15 THE COURT: ALL RIGHT, CALL IT DEFENDANT'S P-A,
16 ALL RIGHT?

17 MR. BARENS: THANK YOU, SIR.
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1 Q BY MR. BARENS: NOW, THERE WAS ANOTHER PERSON
2 PRESENT, TOO, WASN'T THERE, THAT ALLEGEDLY SAID THAT HE
3 HAD SEEN WHAT HAPPENED OR HAD SEEN THE PERSON IN THE PARKING
4 LOT?

5 A YES.

6 Q AND WHAT IS HIS NAME?

7 A DANIEL PRATO.

8 THE COURT REPORTER: HOW DO YOU SPELL THAT?

9 THE WITNESS: P-R-A-T-O, I BELIEVE.

10 Q BY MR. BARENS: WHAT DID MR. PRATO TELL YOU
11 ABOUT WHAT HE SAW?

12 MR. WAPNER: OBJECTION. CALLS FOR HEARSAY.

13 MR. BARENS: WHAT ELSE HAVE WE GOT?

14 THE COURT: I WILL PERMIT IT. OVERRULED.

15 MR. BARENS: THANK YOU.

16 THE WITNESS: IN REGARD TO LOOKING AT THE PHOTO
17 LINEUP?

18 Q BY MR. BARENS: NO, SIR.

19 WHEN DID YOU FIRST INTERVIEW MR. PRATO?

20 A IF I CAN REFER TO MY NOTES HERE, I CAN TELL
21 YOU THE EXACT TIME.

22 (PAUSE IN PROCEEDINGS.)

23 THE WITNESS: THE FIRST TIME I SPOKE WITH MR. PRATO
24 WAS ON OCTOBER 3, 1984 AT 1:00 IN THE AFTERNOON.

25 Q BY MR. BARENS: HOW DID MR. PRATO COME TO
26 YOUR ATTENTION, DETECTIVE?

27 A ORIGINALLY, HE WAS LISTED IN THE CRIME REPORT
28 WRITTEN BY OFFICER GIBBS AS BEING A WITNESS TO A PORTION

1 OF THE INCIDENT.

2 Q AND HAD YOU BEEN TOLD BY DETECTIVE GIBBS THAT
3 PRATO HAD SEEN THE PERSON IN QUESTION?

4 A I READ IN THE REPORT ABOUT THAT.

5 Q AND HAD PRATO IN FACT GIVEN A DESCRIPTION
6 TO GIBBS OF THE PERSON HE HAD SEEN?

7 A YES.

8 Q LATER ON, WAS PRATO ABLE TO IDENTIFY THE PERSON
9 HE HAD ALLEGEDLY SEEN FROM A PHOTOGRAPHIC LINEUP?

10 A YOU WILL HAVE TO REPHRASE THAT QUESTION.
11 HE NEVER SAW A PHOTOGRAPHIC LINEUP.

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1 Q ALL RIGHT. BECAUSE WHY?

2 A HE TOLD ME THAT THE PERSON WAS SO FAR AWAY FROM
3 HIM THAT HE WOULD NOT BE ABLE TO EVER RECOGNIZE HIS FACE.

4 Q ALL RIGHT. DID SOMEONE GIVE YOU FOLKS A LICENSE
5 NUMBER OF A VEHICLE ASSOCIATED WITH THIS BLACK MAN?

6 A ASSOCIATED WITH HIM IN WHAT WAY?

7 Q WELL, LIKE MAYBE USED BY HIM?

8 THE COURT: HOW COULD HE TELL THAT?

9 MR. WAPNER: MAY I HAVE A MOMENT?

10 MR. BARENS: WELL, THEY HAVE GOT A REPORT.

11 (UNREPORTED COLLOQUY BETWEEN COUNSEL.)

12 MR. BARENS: THANK YOU, SIR.

13 THE COURT: ANYTHING FURTHER?

14

15

REDIRECT EXAMINATION

16 BY MR. WAPNER:

17 Q MR. BARENS ASKED YOU IF YOU WERE EVER TOLD THAT
18 THE SUBSTANCE IN THE CUP WAS TEA. WHO TOLD YOU THAT?

19 A MR. PITTMAN.

20 Q IS THAT WHEN YOU INTERVIEWED HIM IN CONNECTION
21 WITH THIS CASE?

22 A THAT'S CORRECT.

23 Q AND DID HE TELL YOU WHERE HE HAD GOTTEN THIS FROM?

24 MR. CHIER: OBJECTION, HEARSAY.

25 THE COURT: OVERRULED.

26 THE WITNESS: YES HE DID.

27 Q BY MR. WAPNER: WHERE DID HE SAY HE GOT IT FROM?

28 A HE SAID HE OBTAINED IT FROM ONE OF THE TRUCKS

20A-2
1 IN THE AREA THAT SOLD FOOD, ONE OF THE FOOD TRUCKS.

2 Q DID YOU ASK HIM, LIKE A CATERING TRUCK?

3 A RIGHT.

4 Q DID YOU ASK HIM HOW IT WAS THAT HE ENDED UP GETTING
5 TEA IN A CARL'S JUNIOR CUP FROM THE CATERING TRUCK?

6 A YES I DID.

7 Q WHAT DID HE SAY?

8 A HE SAID HE GOT IT FROM A CATERING TRUCK.

9 Q AND WHEN YOU TALKED TO MR. PITTMAN, WAS HE IN
10 CUSTODY AT THAT TIME?

11 A YES HE WAS.

12 Q WAS IT AT THAT TIME THAT YOU ALSO TOOK A PHOTOGRAPH
13 OF MR. PITTMAN THAT YOU INCLUDED IN THE PHOTO LINEUP?

14 A YES.

15 MR. WAPNER: THANK YOU. NOTHING FURTHER.

16 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. YOU MAY
17 STEP DOWN. THE WITNESS MAY BE EXCUSED.

18 MR. WAPNER: WE WILL CALL STEVE TAGLIANETTI. YOUR HONOR,
19 WE WILL TAKE THIS FROM THE DETECTIVE NOW AND GIVE IT TO
20 DETECTIVE ZOELLER AND HAVE COPIES MADE. WE WILL HAVE THE
21 COPY BROUGHT BACK TO COURT AND THEN SUBSTITUTED FOR THE
22 ORIGINAL AND THEN WE WILL CONTACT THE DETECTIVE.

23 MR. BARENS: COULD WE APPROACH THE BENCH?

24 THE COURT: YES.

25 (THE FOLLOWING PROCEEDINGS WERE HELD
26 AT THE BENCH OUT OF THE PRESENCE AND
27 HEARING OF THE JURY:)

28 THE COURT: YES?

20A-7

1 MR. CHIER: YOUR HONOR, WE HAVE A SITUATION THAT IS
2 ABOUT TO OCCUR HERE WHERE I THINK WE SHOULD HAVE A HEARING
3 OUT OF THE PRESENCE OF THE JURY RESPECTING THE ADMISSIBILITY
4 OF TESTIMONY THAT I EXPECT TO BE FORTHCOMING.

5 MY UNDERSTANDING IS THAT MR. TAGLIANETTI IS GOING
6 TO TESTIFY AMONG OTHER THINGS, THAT MR. HUNT HAD A HIT LIST.

7 THIS TYPE OF TESTIMONY WOULD SEEM TO BE A DIRECT
8 CONTRAVENTION OR VIOLATION OF THE HOLDING OF PEOPLE V. BOYD
9 AND PHILLIPS, OF THIS TYPE OF THREAT --

10 THE COURT: I DON'T THINK BOYD SAID ANYTHING ABOUT THAT.

11 MR. CHIER: WE DISCUSSED THIS IN CHAMBERS. WE CAME
12 TO THE CONCLUSION THAT THE TYPE OF EVIDENCE PERMITTED IN THESE
13 PENALTY PHASE HEARINGS IN AGGRAVATION, WAS ACTS OF VIOLENCE
14 COMMITTED UPON PERSONS AS OPPOSED TO PROPERTY AND AS OPPOSED
15 TO MERE WORDS, NOT --

16 THE COURT: WELL, THE POSITION OF THE PEOPLE IS THAT
17 WHAT HAD BEEN DONE ALLEGEDLY BY MR. PITTMAN WAS TO ASSAULT
18 THE WITNESS WHO TESTIFIED ABOUT THINGS BEING THROWN AT HIM
19 WHICH HE THOUGHT MAY HAVE BEEN ACID.

20 HE HAD A BURNING SENSATION. THAT IS NOT DAMAGE
21 TO PROPERTY. IT IS DAMAGE TO A PERSON, ISN'T IT?

22 MR. CHIER: I DON'T THINK THAT THIS RISES TO THE LEVEL
23 OF CONDUCT THAT --

24 THE COURT: WELL, WHY DON'T YOU WAIT UNTIL HE COMPLETES
25 THE TESTIMONY ON THIS PHASE? I WILL THEN ENTERTAIN A MOTION
26 TO STRIKE ON THE GROUNDS THAT IT IS DE MINIMIS AND THAT IT
27 DOESN'T AMOUNT TO A CRIME, AS SUCH. WE WILL HEAR ABOUT IT
28 LATER.

OB-1

1 MR. CHIER: THERE IS ANOTHER ASPECT OF THIS, YOUR HONOR,
2 THE MEANS BY WHICH THIS ALL IS ASCRIBED TO MR. HUNT. THIS
3 CONDUCT HAS BEEN ASCRIBED SO FAR OF MR. PITTMAN'S -- IT IS
4 NOT ASCRIBABLE TO MR. HUNT. UNLESS THERE IS GOING TO BE
5 TESTIMONY FROM THIS WITNESS CONCERNING STATEMENTS TO HIM BY
6 MR. PITTMAN, WHICH IMPLICATES MR. HUNT, THEN BEFORE WE HAVE
7 A CONFRONTATION PROBLEM AND WE HAVE A HEARSAY PROBLEM, IT
8 OUGHT TO BE DEALT WITH BEFORE THIS WITNESS TESTIFIES IN FRONT
9 OF THE JURY.

10 THE COURT: WE DON'T HAVE TO HAVE A HEARING. WHAT IS
11 YOUR ANSWER TO THAT?

12 MR. WAPNER: THE TESTIMONY OF MR. TAGLIANETTI ABOUT
13 SEEING THIS LIST OF PEOPLE IS THAT HE SAW IN APPROXIMATELY
14 JANUARY OR FEBRUARY OF 1984 A LIST AND MR. SWARTOUT'S NAME
15 WAS ON IT AT THAT TIME AND THAT MR. HUNT DID NOT REFER TO
16 IT AS A HIT LIST.

17 THAT WAS TAGLIANETTI'S SHORTHAND VERSION IN
18 TELLING THE POLICE ABOUT IT. BUT MR. HUNT DID MAKE A
19 STATEMENT, SOMETHING TO THE EFFECT THAT HE WOULD BE A LOT
20 BETTER OFF AND HIS BUSINESSES WOULD BE A LOT BETTER OFF WITH
21 THESE PEOPLE OUT OF THE WAY SO HE DIDN'T HAVE TO CONTEND WITH
22 THEM ANY MORE.

23 THE COURT: DON'T CALL IT A HIT LIST, WILL YOU?

24 MR. WAPNER: I WON'T.

25 MR. BARENS: YOUR HONOR, IF YOU COULD JUST INDULGE ME --

26 MR. WAPNER: THE CONTENTION IS THAT MR. HUNT HAD
27 MR. SWARTOUT TICKETED FOR THIS AS EARLY AS JANUARY OR FEBRUARY
28 AND THIS IS SOME INDICATION ON HIS PART OF A PARTICIPATION

1 OR INTENTION TO PARTICIPATE IN THIS ASSAULT, WHICH LATER
2 OCCURS.

3 IT IS BASED ON ALL OF THE FACTS THAT HAVE BEEN
4 ADDUCED AT THE GUILT PHASE AND THE ADDITIONAL FACTS THAT HAVE
5 BEEN ADDUCED AT THE PENALTY PHASE.

6 IT IS LUDICROUS TO ASSERT THAT MR. PITTMAN JUST
7 ACTS ON HIS OWN AND DOESN'T HAVE ANY CONNECTION WITH
8 MR. HUNT. AND THIS WAS THE REASON FOR PUTTING IN THIS
9 EVIDENCE ABOUT THE CONNECTION BETWEEN MR. HUNT AND MR. SWARTOUT.

10 MR. BARENS: YOUR HONOR, THERE IS A WAY FOR THE PEOPLE
11 TO GO IN AN ATTEMPT TO GET THIS IN. THE PROBLEM IS --

12 THE COURT: WELL, HE IS NOT GOING TO MENTION A HIT LIST.

13 MR. BARENS: BUT, ASSUME THAT HE SAYS HE SAW THE NAME
14 ON A LIST, IT IS SUGGESTING SECONDARILY THAT THERE ARE OTHER --

15 THE COURT: WELL, HE HAS A RIGHT TO DO THAT WITHOUT
16 CHARACTERIZING THE LIST.

17 MR. BARENS: WELL YOUR HONOR, LET ME SUGGEST THIS TO
18 THE COURT. I DON'T KNOW WHY THE WITNESS HAS TO SAY ANYTHING
19 ABOUT THIS LIST WITH OTHERS ON IT. ALL HE HAS TO DO IS
20 TESTIFY THAT HE WAS TOLD THAT PITTMAN WENT TO DO SOME DAMAGE.
21 AND THAT WAY, I THINK THE JURY IS PROVIDED WITH ALL OF THE
22 FACTS.

1 MR. BARENS: THE PROBLEM WE HAVE WITH ALL OF THE
2 FACTS, YOUR HONOR, IS THAT IT WOULD NECESSARILY INVOLVE
3 THE JURY HEARING TESTIMONY THAT HUNT HAD PREPARED A LIST
4 THAT COULD HAVE INVOLVED OTHER BEINGS, OTHER PEOPLE.

5 THE COURT: WHO?

6 MR. WAPNER: LET ME SUGGEST A WAY TO DEAL WITH THIS.

7 FIRST OF ALL, TO SUGGEST THAT THE WITNESS
8 SHOULD BE TOLD WHAT TO TESTIFY TO --

9 MR. BARENS: I AM NOT SAYING THAT.

10 MR. WAPNER: -- IS IMPROPER BECAUSE I HAVE ASKED
11 HIM WHAT HE SAID AND HE SAYS MR. HUNT DID NOT TELL HIM
12 POINT BLANK, "I SENT PITTMAN DOWN THERE TO DO THIS."

13 THE WITNESS, IF ASKED, WILL TELL YOU THAT
14 MR. HUNT NEVER MADE THE STATEMENT TO HIM, "I SENT PITTMAN
15 DOWN THERE TO DO IT."

16 THE COURT: HE WOULD TESTIFY THERE IS A LIST OF
17 PEOPLE TO BE TAKEN CARE OF, IS THAT THE IDEA?

18 MR. WAPNER: RIGHT.

19 I DON'T SEE ANY OTHER WAY TO ELICIT THE TESTIMONY,
20 OTHER THAN TO SAY MR. SWARTOUT'S NAME WAS ONE OF THE PEOPLE,
21 BECAUSE IT WASN'T JUST A PAPER WITH ONE NAME ON IT.

22 AND THE WAY TO DEAL WITH THIS IS TO HAVE THE
23 COURT MAKE A CAUTIONARY INSTRUCTION.

24 THE COURT: IT IS EXACTLY THE CONVERSATION THAT
25 TOOK PLACE BETWEEN TAGLIANETTI AND THE DEFENDANT.

26 MR. WAPNER: I AGREE.

27 THE COURT: WHATEVER IT MAY BE.

28 MR. WAPNER: I AGREE WITH THAT.

1 AND THEN TO SAY THAT THE PROSECUTION IS NOT
2 PERMITTED IN ARGUMENT TO MAKE REFERENCE THAT THE EVIDENCE
3 IS BEING ADMITTED TO SHOW THAT IT CONNECTS UP MR. HUNT
4 TO THIS PARTICULAR EVENT IN ORANGE COUNTY THAT HAPPENED
5 TO MR. SWARTOUT, CLEARLY, THAT IS THE REASON IT IS BEING
6 ADMITTED AND, THEREFORE, THAT NO INFERENCE SHOULD BE DRAWN
7 OR ARGUMENT PERMITTED THAT HE WAS INTENDING OR THREATENING
8 TO KILL OTHER PEOPLE IN TERMS OF THE ARGUMENT, I --

9 MR. BARENS: YOU SEE, THE IMPLICATION IS -- HERE
10 IS WHAT I AM WORRIED ABOUT --

11 THE COURT: LET HIM TESTIFY TO PRECISELY WHAT IT
12 IS THAT HAPPENED, ALL RIGHT?

13 MR. WAPNER: I AGREE.

14 THE COURT: NOW THE CONVERSATION HE HAD WITH HUNT,
15 IF HUNT HAD SOMETHING, IF HE HAD A LIST TO TAKE CARE OF
16 PEOPLE, LET HIM TESTIFY TO THAT. LET THE JURY GET ALL
17 THE FACTS. I AM NOT GOING TO SANITIZE IT FOR HIM OR ANYONE
18 ELSE.

19 MR. BARENS: BUT, JUDGE, I DON'T BELIEVE THE LAW
20 PERMITS HIM TO BE ACCUSED OF CRIMES, EXCEPT FOR CRIMES
21 THAT ARE ACTUALLY BEING ASSERTED HERE.

22 MR. WAPNER: HE IS NOT BEING.

23 THE COURT: HE IS NOT BEING SPECIFICALLY ACCUSED
24 OF ANY CRIME. HE IS ONLY SAYING THAT SWARTOUT'S NAME
25 WAS ON SOME PIECE OF PAPER OF A LIST OF PEOPLE TO BE TAKEN
26 CARE OF.

27 DON'T HAVE HIM MENTION ANYBODY ELSE EXCEPT
28 SWARTOUT.

1 MR. CHIER: WHAT ABOUT THE TESTIMONY, THE STATEMENT
2 BY PITTMAN TO THIS WITNESS, YOUR HONOR?

3 THAT IS A HORSE OF AN ENTIRELY DIFFERENT STRIPE.

4 THE COURT: WELL, ANY STATEMENT MADE BY PITTMAN,
5 HE WAS THE ONE THAT DID THE EXECUTION, APPARENTLY, THEY
6 SAY, AT THE REQUEST OF MR. HUNT, HE WAS DOING HIS INSTRUCTIONS.

7 MR. BARENS: IS THAT THE TESTIMONY?

8 MR. WAPNER: STATEMENTS BY PITTMAN AFTER THE FACT
9 THAT "I DID IT," I DON'T INTEND TO ELICIT.

10 THERE ARE CERTAIN -- MR. TAGLIANETTI WAS IN
11 A CAR WITH MR. PITTMAN AT A TIME WHEN THERE WAS A VIAL
12 WITH SOME LIQUID THAT HE ATTEMPTED TO TOUCH AND MR. PITTMAN
13 SAID, "DON'T TOUCH THAT."

14 MR. BARENS: HOW DO YOU LET THAT IN, JUDGE?

15 THE COURT: WHICH ONE WAS THAT?

16 MR. BARENS: JUDGE, WE DON'T KNOW WHETHER THE VIAL
17 HE IS REFERRING TO IS THE SAME SUBSTANCE THAT WAS IN THIS
18 CUP.

19 THE COURT: LET THE JURY DRAW THE CONCLUSION.

20 MR. CHIER: THAT IS WHY WE ARE HERE, JUDGE. WE
21 DON'T WANT THE JURY TO HEAR THIS. THEY SHOULDN'T HEAR
22 THIS.

23 MR. BARENS: JUDGE, THIS IS LIKE -- THERE COULD
24 HAVE BEEN ANYTHING IN THE VIAL AT ANY POINT IN TIME.

25 THE COURT: IT IS TO EXPLAIN WHAT MIGHT CONCEIVABLY
26 HAVE BEEN IN THAT CUP, TESTIMONY OF THIS KIND IS ENTIRELY
27 RELEVANT.

28 MR. CHIER: YES, BUT THE JURY HAS TO SPECULATE.

1 IT NECESSARILY REQUIRES THE JURY TO SPECULATE AND THERE
2 IS A HUGE GAP BETWEEN THE SO-CALLED LIST OF MR. HUNT'S
3 AND THE ACTIVITY OF MR. PITTMAN. THERE IS NO CONNECTIVE
4 TISSUE HERE.

5 THE COURT: GO AHEAD THE WAY YOU WERE GOING TO.
6 GO AHEAD, ALL RIGHT?

7 MR. BARENS: OKAY.

8 (THE FOLLOWING PROCEEDINGS WERE HELD IN
9 OPEN COURT IN THE PRESENCE OF THE JURY:)

10

11 STEPHEN TAGLIANETTI,
12 CALLED AS A WITNESS BY THE PEOPLE, HAVING BEEN PREVIOUSLY
13 SWORN, RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

14 THE COURT: HE HAS PREVIOUSLY BEEN SWORN ON THE
15 GUILT PHASE.

16 YOU HAVE BEEN PREVIOUSLY SWORN IN THE GUILT
17 PHASE. JUST STATE YOUR NAME FOR THE RECORD, PLEASE.

18 THE WITNESS: MY NAME IS STEPHEN TAGLIANETTI.

19 THE CLERK: SPELLING?

20 THE WITNESS: IT IS T-A-G-L-I-A-N-E-T-T-I.

21 THE COURT REPORTER: STEPHEN WITH A P-H?

22 THE WITNESS: WITH A P-H.

23

24 DIRECT EXAMINATION

25 BY MR. WAPNER:

26 Q MR. TAGLIANETTI, YOU WORKED FOR MR. HUNT OR
27 WERE A MEMBER OF THE BBC, RIGHT?

28 A THAT'S CORRECT.

21A-1

1 Q DID YOU HAVE -- STRIKE THAT --
2 WERE THERE CARS AT WESTCARS THAT WERE TAKEN DOWN TO
3 MR. COKER'S ESTABLISHMENT IN SANTA ANA TO BE TESTED?

4 A THAT'S CORRECT.

5 Q AND DID ANY OF THE CARS THAT YOU TOOK DOWN THERE
6 PASS ON THE FIRST OCCASION?

7 A NO, THEY DID NOT.

8 Q WAS THERE SOME COMPLAINT BY PEOPLE IN YOUR
9 ORGANIZATION ABOUT THE FACT THAT THE CARS WEREN'T PASSING?

10 A YES, THERE WAS.

11 Q WHO WAS THE ONE PERSON OR MORE THAN ONE WHO WAS
12 CONCERNED ABOUT THAT?

13 A JOE HIMSELF, ALONG WITH --

14 THE COURT: JOE AND WHO?

15 THE WITNESS: JOE HUNT AND DEAN KARNY AND A FEW OTHERS,
16 AMONGST THE BBC, SEEMED TO BE FRUSTRATED BY THE FACT THAT
17 THE CARS WERE NOT PASSING ON THE FIRST ATTEMPT.

18 Q BY MR. WAPNER: DID ANY OF THE HEAT FILTER DOWN
19 TO YOU, SINCE YOU WERE PARTLY IN CHARGE OF WESTCARS?

20 A YES, IT DID.

21 Q AND DO YOU HAVE A RECOLLECTION OF GOING TO
22 MR. COKER'S ESTABLISHMENT AT SOME TIME IN MARCH OF 1984?

23 A YES, I DID.

24 Q AND DID YOU SEE SOMETHING --
25 HAD YOU BEEN TO HIS ESTABLISHMENT ON OTHER
26 OCCASIONS?

27 A YES, I HAD.

28 Q THAT WAS LOCATED ON WEST ADAMS IN SANTA ANA?

21A-2
1 A I DON'T RECALL THE EXACT STREET BUT IT WAS IN
2 SANTA ANA.

3 Q AND WHEN YOU WENT THERE IN MARCH OF 1984, DID
4 YOU NOTICE SOMETHING UNUSUAL ABOUT THE PLACE?

5 A YES, I DID.

6 Q WHAT DID YOU NOTICE?

7 A I NOTICED THAT ON THAT PARTICULAR DAY, THE
8 WINDOWS OF THE FACILITY WERE SHOT UP.

9 Q WHO WENT THERE ON THAT DATE, BESIDES YOURSELF,
10 FROM THE BBC?

11 A IT WAS JOE HUNT, JIM PITTMAN AND BEN DOSTI.

12 Q AND DO YOU REMEMBER WHO YOU SPOKE WITH AT THAT
13 TIME?

14 A AT THAT TIME, WE SPOKE TO TWO INDIVIDUALS, ONE
15 OF WHOM WAS JERRY COKER AND THE OTHER BEING MR. FRANCE.

16 Q WAS HE THE OTHER OWNER OF THE PLACE?

17 A YES.

18 Q WAS THAT RAY FRANCE, PERHAPS?

19 A YES.

20 THE COURT: FRANCE?

21 THE WITNESS: FRANCE.

22 Q BY MR. WAPNER: AT THAT TIME, WAS THERE ANYTHING
23 SAID ABOUT BEING ABLE TO FIND OUT WHAT HAD HAPPENED TO THE
24 PLACE OR WHO DID IT?

25 A YES, THERE WAS.

26 Q DO YOU REMEMBER WHO SAID THAT?

27 A YES.

28 Q WHO WAS THAT?

21 ^ 7
1 A THAT WAS JOE HUNT.

2 Q WHAT DID HE SAY, IF YOU RECALL?

3 A FROM WHAT I RECALL, HE WAS TELLING MR. COKER THAT
4 THIS IS A TERRIBLE TRAGEDY, WHAT HAPPENED HERE, AND THAT WITH
5 THE AID OF JIM PITTMAN, HE COULD FIND OUT WHOM DID THIS AND
6 PUT AN END TO IT.

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22A-1

1 Q WERE YOU THERE WHEN THAT HAPPENED?

2 A PARDON ME?

3 Q WERE YOU THERE AT THAT TIME?

4 A YES, I WAS.

5 Q WAS THERE ANYTHING SAID ABOUT MR. PITTMAN
6 BEING A PRIVATE INVESTIGATOR OR ANYTHING LIKE THAT?

7 A NOT BEING A PRIVATE INVESTIGATOR BUT SOMETHING
8 WAS SAID ABOUT THE FACT THAT JIM TOLD MR. COKER AND OTHERS
9 IN THE ROOM THAT JIM HAD HELPED HIS FATHER IN SOME TYPE
10 OF MILITARY OPERATION.

11 Q WHOSE FATHER?

12 A JOE'S FATHER.

13 Q REGARDING SOMETHING ELSE THAT HAPPENED AT
14 SOME POINT LATER, I WANT TO TAKE YOU TO A POINT IN TIME
15 IN EARLY 1984, PERHAPS JANUARY OR FEBRUARY.

16 DO YOU RECALL BEING AT THE OFFICES OF THE
17 BBC ON THIRD STREET?

18 A YES.

19 Q AND AT THAT TIME, DID YOU HAVE A CONVERSATION
20 WITH JOE HUNT?

21 A YES, I DID.

22 Q DO YOU REMEMBER EXACTLY WHEN THIS WAS OR APPROXIMATELY
23 WHEN THIS WAS?

24 A APPROXIMATELY FEBRUARY, JANUARY OR FEBRUARY.

25 Q WHO WAS PRESENT AT THAT CONVERSATION?

26 A JUST MYSELF AND JOE.

27 Q AND WHERE AT THE OFFICES DID THE CONVERSATION
28 TAKE PLACE?

1 A IT TOOK PLACE INSIDE OF JOE'S OFFICE.

2 Q WHAT WAS THE GENERAL NATURE OF THE CONVERSATION,
3 IF YOU REMEMBER?

4 A I DON'T RECALL THE EXACT NATURE OF THE CONVERSATION
5 INITIALLY.

6 Q DID SOMETHING HAPPEN DURING THAT CONVERSATION
7 THAT STUCK OUT IN YOUR MIND?

8 A YES.

9 Q WHAT WAS THAT?

10 A MIDSTREAM IN THAT CONVERSATION, JOE WAS TALKING
11 ABOUT BUSINESS. AND AT ONE TIME, HE SWIVELED HIS CHAIR
12 BEHIND HIM AND GRABBED A PIECE OF PAPER.

13 ON THAT PIECE OF PAPER, THERE WAS A LIST OF
14 NAMES OF INDIVIDUALS.

15 Q WHAT DID HE DO WITH THE PAPER?

16 A I BELIEVE HE RESTED IT ON HIS DESK FACING
17 FORWARD TO MY SIDE.

18 Q WHAT HAPPENED THEN?

19 A HE SAID THAT -- I DON'T RECALL HIS EXACT
20 WORDS. BUT HE SAID THAT THROUGH THE EITHER ELIMINATION
21 OR WITH THESE PEOPLE OUT OF THE WAY, HE WOULD AVAIL HIMSELF
22 OF BETTER OPPORTUNITIES OF BUSINESS IN THE FUTURE.

23 Q WERE YOU ABLE TO SEE THE PEOPLE, THE NAMES
24 OF THE PEOPLE ON THE LIST?

25 A AT THE TIME I DID SEE THE LIST, YES.

26 Q AND IS THERE ANY NAME OUT OF THAT LIST THAT
27 YOU RECALL IN PARTICULAR?

28 A YES, SIR. THERE IS ONE.

1 MR. CHIER: OBJECTION, THE BEST EVIDENCE.

2 THE COURT: GO AHEAD.

3 Q BY MR. WAPNER: DID YOU TAKE THAT LIST WITH
4 YOU --

5 THE COURT: OBJECTION IS OVERRULED.

6 Q BY MR. WAPNER: DID YOU TAKE THAT LIST WITH
7 YOU WHEN YOU LEFT THE OFFICE?

8 A NO, I DID NOT.

9 Q DO YOU HAVE ANY IDEA WHERE IT IS TODAY?

10 A NO.

11 Q DO YOU HAVE ANY IDEA HOW TO GET AHOLD OF IT?

12 A NO, I DO NOT.

13 Q IS THERE ANY NAME ON THAT LIST THAT YOU RECALL
14 IN PARTICULAR?

15 A YES, THERE IS.

16 Q WHAT IS THAT NAME?

17 A THAT IS BRUCE SWARTOUT.

18 THE COURT: DID HE EXPLAIN WHAT HE MEANT WHEN HE
19 SAID THAT HE WOULD BE BETTER OFF IF -- DID HE EXPLAIN
20 THAT TO YOU?

21 THE WITNESS: THE THRUST OF THE CONVERSATION WAS
22 SUCH THAT THE EXPLANATION WAS THAT THROUGH THE EITHER
23 ELIMINATION OR THE PEOPLE BEING TAKEN CARE OF IN SOME
24 WAY, THAT THOSE PEOPLE WOULD NOT BE A HINDRANCE TO ANY
25 TYPE OF BUSINESS ENDEAVOR HE MIGHT DEAL WITH. HE COULD
26 FURTHER HIMSELF, YOUR HONOR.

27 THE COURT: ALL RIGHT.

28 Q BY MR. WAPNER: IS THERE SOME REASON THAT

1 THAT NAME STUCK OUT IN YOUR MIND OR STICKS OUT IN YOUR
2 MIND?

3 A YES, THERE IS.

4 Q WHY IS THAT? AND LET ME CAUTION YOU IN YOUR
5 ANSWER -- I DON'T WANT ANY STATEMENTS OTHER PEOPLE MADE.
6 DON'T TELL ME ANY STATEMENTS OTHER PEOPLE MADE ABOUT AN
7 INCIDENT.

8 BUT IF YOU CAN TELL US WHY THAT STICKS OUT
9 IN YOUR MIND.

10 A OKAY. THE REASON WHY THAT NAME STUCK OUT
11 IN MY MIND IS THAT AFTER SEEING THAT NAME -- WELL, THERE
12 WAS AN EVENT THAT HAPPENED A FEW MONTHS THEREAFTER WHICH
13 I WAS TOLD ABOUT BY MR. PITTMAN.

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22R-1
1 Q ALL RIGHT. I DON'T WANT TO KNOW WHAT YOU WERE
2 TOLD.

3 A OKAY.

4 Q DID YOU TALK TO MR. PITTMAN ABOUT SOMETHING THAT
5 INVOLVED MR. SWARTOUT?

6 A YES I DID.

7 Q AND AT SOME POINT LATER IN 1984, THAT IS AFTER
8 THE CONVERSATION WITH MR. HUNT IN HIS OFFICE, WERE YOU EVER
9 DRIVING IN A CAR WITH MR. PITTMAN?

10 A YES I WAS.

11 Q WHAT TYPE OF A CAR WAS IT?

12 A IT WAS A BMW.

13 Q WHO WAS DRIVING THE CAR?

14 A JIM WAS DRIVING THE VEHICLE.

15 Q WHO WAS IN THE -- THAT IS JIM PITTMAN?

16 A CORRECT.

17 Q WHO WAS IN THE CAR BESIDES YOU AND MR. PITTMAN?

18 A NOBODY ELSE WAS IN THE CAR.

19 Q AND DID YOU NOTICE SOMETHING IN THE CAR AT THAT
20 TIME?

21 A YES I DID.

22 Q WHAT WAS IT THAT YOU NOTICED?

23 A RESTING ADJACENT TO THE HAND BRAKE OF THE VEHICLE --

24 Q HOLD ON A SECOND. WHAT IS A HAND BRAKE OF A
25 VEHICLE?

26 A A HAND BRAKE.

27 Q HAND BRAKE? THANK YOU. I THOUGHT IT WAS SOME
28 FANCY GERMAN THING. I DIDN'T UNDERSTAND. IT WAS RESTING

22-R? 1 AGAINST THE HAND BRAKE?

2 A AGAINST THE HAND BRAKE THERE WAS A SMALL VIAL,
3 AN AMBER VIAL.

4 Q AND DO YOU KNOW WHAT WAS IN IT?

5 A NO I DO NOT.

6 Q DID YOU ATTEMPT TO TOUCH THAT OR TO LOOK AT IT
7 IN SOME WAY?

8 A YES.

9 Q WHAT HAPPENED? I JUST WANT TO KNOW PHYSICALLY
10 WHAT MR. PITTMAN DID AT THAT TIME, NOT WHAT HE SAID, BUT WHAT
11 HE DID AT THAT TIME WHEN YOU ATTEMPTED TO TAKE IT.

12 A IMMEDIATELY AS MY LEFT HAND WENT TO REACH FOR
13 IT, MR. PITTMAN GRABBED MY HAND AND TOLD ME, "DON'T TOUCH
14 IT."

15 Q AND WHEN HE GRABBED YOUR HAND AND SAID, "DON'T
16 TOUCH IT," WHAT DID YOU DO?

17 A I IMMEDIATELY CEASED THE MOTION OF MY ARM.

18 Q DO YOU REMEMBER WHAT APPROXIMATE DATE IT WAS WHEN
19 YOU WERE RIDING WITH MR. PITTMAN IN THE CAR THAT HAPPENED?

20 A NO I DO NOT.

21 Q DO YOU KNOW EVEN A MONTH OR PERHAPS A YEAR?

22 A IT WOULD HAVE BEEN MARCH, MID-MARCH OR APRIL.

23 Q OF 1984?

24 A THAT'S CORRECT.

25 MR. WAPNER: THANK YOU. NOTHING FURTHER.

26 MR. BARENS: COULD WE DO THIS AFTER THE RECESS?

27 THE COURT: SURE. LADIES AND GENTLEMEN OF THE JURY,
28 WE WILL TAKE OUR CUSTOMARY RECESS AT THIS TIME OF 15 MINUTES.

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THE SAME ADMONITION APPLIES.

(RECESS.)

23F

1 THE COURT: ALL RIGHT, THE JURY IS ALL PRESENT.

2 YOU MAY EXAMINE.

3 MR. BARENS: NO QUESTIONS, YOUR HONOR.

4 THE COURT: THANK YOU VERY MUCH. ANYTHING FURTHER?

5 MR. WAPNER: ON REDIRECT -- NO.

6 THE COURT: ANYTHING ELSE YOU WANT TO ASK? NOTHING?

7 MR. WAPNER: MAYBE JUST ONE THING, AS A MATTER OF FACT.

8

9 DIRECT EXAMINATION (RESUMED)

10 BY MR. WAPNER:

11 Q DO YOU RECOGNIZE THE PERSON DEPICTED IN THIS
12 PHOTOGRAPH?

13 A IT LOOKS LIKE ARBEN DOSTI WITH A BEARD.

14 MR. WAPNER: YOUR HONOR, MAY THIS BE MARKED AS PEOPLE'S
15 NEXT IN ORDER, WHICH I BELIEVE IS --

16 MR. CHIER: 13.

17 THE COURT: 13, YES.

18 Q BY MR. WAPNER: WOULD YOU JUST TAKE A LITTLE CLOSER
19 LOOK AT IT? DOES THAT GIVE YOU A BETTER VIEW OF WHO THAT
20 IS.

21 A YES. THAT IS BEN DOSTI.

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

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

24 MR. BARENS: MAY WE APPROACH AT THIS POINT, YOUR HONOR?

25 THE COURT: VERY WELL.

26 MR. BARENS: THANK YOU, YOUR HONOR.

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(THE FOLLOWING PROCEEDINGS WERE HELD
AT THE BENCH:)

MR. CHIER: WE HAVE A MOTION TO STRIKE ALL OF THE
TESTIMONY CONCERNING THE SWARTOUT INCIDENT AND THE COKER
INCIDENT.

THE COURT: AND COKER, TOO?

MR. CHIER: YES, YOUR HONOR. IF I COULD JUST BEGIN
WITH THE COKER INCIDENT, THERE IS ABSOLUTELY NO TESTIMONY
IN THIS RECORD FROM WHICH THERE IS EVEN PROBABLE CAUSE
TO BELIEVE THAT THE DEFENDANT -- AND I AM READING NOW
FROM THE NOTICE, THE PEOPLE'S NOTICE, YOUR HONOR. HERE
IS WHAT THEY SAID THEY WOULD PROVE: "THAT THE DEFENDANT
PARTICIPATED IN THE SHOOTING OF AUTOMATIC WEAPONS INTO
THE BUSINESS OF F.C.I. COMPANY IN SANTA ANA, CALIFORNIA,
MARCH 14, 1984."

THERE WAS NO EVIDENCE THAT THE DEFENDANT DID
THAT. THERE IS NO CIRCUMSTANTIAL EVIDENCE FROM WHICH
THE JURY COULD EVEN FIND THAT.

IF THERE WERE A PRELIMINARY HEARING AND YOU
WERE THE MAGISTRATE, YOU COULD NOT EVEN BIND THE DEFENDANT
OVER ON THE ELEMENTS THAT HAVE BEEN PRESENTED ON THIS
ISSUE.

AND CLEARLY, YOUR HONOR, THIS IS NOT THE TYPE
OF EVIDENCE OR THE TYPE OF PROOF THAT OUGHT TO BE ALLOWED
TO SEND A MAN TO HIS DEATH IN A DEATH PENALTY CASE. IT
IS NOT.

IT WAS NOT WHAT WAS INTENDED BY THE LEGISLATURE
IN FRAMING THE STATUTORY SCHEME FOR THE AGGRAVATION.

1 THERE MAY HAVE BEEN A CRIME COMMITTED BY MR.
2 PITTMAN AND THE CRIME WAS COMMITTED ON MR. PITTMAN'S INITIATIVE,
3 IF AT ALL.

4 AND THERE IS NO EVIDENCE OTHER THAN THIS GUILT
5 BY ASSOCIATION TYPE OF THING, WHICH SORT OF IS A THEME
6 THAT HAS WOVEN ITSELF THROUGH THE CASE.

7 BUT WITH RESPECT TO THIS INCIDENT, THIS ALLEGATION,
8 THERE IS NOTHING.

9 NOW, IF YOU WANT ME TO GO ON TO THE OTHER
10 ONE OR JUST STOP HERE AND LET MR. WAPNER ADDRESS THIS
11 ASPECT OF IT --

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1 MR. WAPNER: WELL, I ASSUME THIS IS KIND OF IN THE NATURE
2 OF AN 1118 MOTION.

3 MR. CHIER: YES.

4 MR. WAPNER: AND IT SEEMS TO ME THAT THERE IS CERTAINLY
5 SUFFICIENT EVIDENCE TO ALLOW IT TO GO TO THE JURY.

6 THE PARTICIPATION OF MR. HUNT IN THE RUNNING OF
7 ALL OF THE COMPANIES, THE FACT THAT WESTCARS WAS IN ESSENCE
8 HIS COMPANY, UNDER THE RUBRIC OF THE BBC, THE FACT THAT HE
9 WAS LARGELY IN CONTROL OF THIS, PLUS ALL OF THE EVIDENCE IN
10 THE GUILT PHASE LINKING MR. HUNT UP TO MR. PITTMAN, I THINK
11 IS SUFFICIENT TO ALLOW THIS TO GO TO THE JURY.

12 ALSO, THERE MAY BE TESTIMONY FROM MR. KARNY,
13 ALTHOUGH I HAVEN'T HAD A CHANCE TO TALK TO HIM AT LENGTH IN
14 THIS REGARD MORE, CONCERNING THE COKER INCIDENT AND MR. HUNT'S
15 STATEMENTS ABOUT IT. BUT I HAD ONE BRIEF TELEPHONE
16 CONVERSATION AND I DID NOT TAKE ANY NOTES ON THAT. I AM GOING
17 TO TALK TO HIM AGAIN.

18 BUT I THINK THAT THE EVIDENCE IS SUFFICIENT TO
19 ALLOW THAT TO GO TO THE JURY AND I WOULD SUBMIT IT.

20 THE COURT: YOU SAY YOU HAVE ADDITIONAL TESTIMONY FROM
21 HIM?

22 MR. WAPNER: I MAY. I AM GOING TO HAVE TO TALK TO HIM
23 EITHER ON THE TELEPHONE OR PERSONALLY.

24 THE COURT: WHY DON'T I TAKE IT UNDER SUBMISSION UNTIL
25 I HEAR ALL OF THE EVIDENCE, UNTIL ALL OF THE EVIDENCE HAS
26 BEEN COMPLETED? THEN WE CAN ARGUE THE 1118 ON ALL OF THE
27 ALLEGED AGGRAVATING CIRCUMSTANCES.

28 MR. CHIER: ON SWARTOUT, THE PEOPLE HAVE CONCLUDED THEIR

1 TESTIMONY WITH RESPECT TO THAT MATTER, YOUR HONOR, AND I THINK
2 THIS IS A GOOD TIME TO ARGUE THE 1118.1 ON THAT.

3 MR. WAPNER: WELL, LIKEWISE, I BELIEVE THERE WERE SOME
4 STATEMENTS MADE IN MR. KARNY'S STATEMENT ON THAT BUT IN ANY
5 EVENT, I AM WILLING TO ARGUE THAT BECAUSE I THINK IT IS A
6 MUCH DIFFERENT CASE.

7 THE COURT: WE WILL WAIT UNTIL AFTER THE EVIDENCE IS
8 IN AND THEN YOU CAN ARGUE EACH ONE OF THE SPECIAL CIRCUMSTANCES
9 AND YOU CAN TALK ABOUT IT THEN.

10 I WILL TAKE IT UNDER SUBMISSION IN THE MEANTIME.

11 (THE FOLLOWING PROCEEDINGS WERE HELD
12 IN OPEN COURT:)

13
14 OLGA IRIS VASQUEZ,
15 CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND TESTIFIED
16 AS FOLLOWS:

17 THE CLERK: PLEASE RAISE YOUR RIGHT HAND TO BE SWORN.
18 YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY YOU MAY
19 GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL BE THE
20 TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP
21 YOU GOD?

22 THE WITNESS: YES.

23 THE CLERK: PLEASE BE SEATED.

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

26 THE WITNESS: OLGA IRIS VASQUEZ, V-A-S-Q-U-E-Z.
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DIRECT EXAMINATION

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BY MR. WAPNER:

Q MRS. VASQUEZ, DID YOU KNOW THE PERSON DEPICTED
IN THE PHOTOGRAPH THAT IS PEOPLE'S 9 FOR THE PENALTY PHASE?

A YES.

Q WHO IS THAT PERSON?

A HADAYET ESLAMINIA.

26F

26-1

1 Q AND HOW DID YOU KNOW HIM?

2 A HE WAS MY BOYFRIEND.

3 Q WHEN DID YOU FIRST MEET MR. ESLAMINIA?

4 A I MET HIM APPROXIMATELY A YEAR BEFORE HIS
5 DISAPPEARANCE.

6 Q AND THAT WAS -- HIS DISAPPEARANCE WAS ON JULY
7 THE 31ST, 1984?

8 A THAT'S CORRECT.

9 Q AND AT THAT TIME, WHERE WAS MR. ESLAMINIA
10 LIVING?

11 A HE WAS LIVING IN A HOUSE ON RALSTON AVENUE.

12 Q WHAT CITY?

13 A BELMONT.

14 Q WAS THE HOUSE ON RALSTON AVENUE IN BELMONT
15 OR IN HILLSBOROUGH?

16 A SORRY, HILLSBOROUGH.

17 Q DID MR. ESLAMINIA LATER MOVE TO A CONDOMINIUM?

18 A YES.

19 Q WHERE WAS THE CONDO LOCATED?

20 A IN BELMONT.

21 Q WAS HE BUYING OR RENTING A CONDO?

22 A RENTING.

23 Q DO YOU KNOW AT WHAT TIME IT WAS -- WHEN WAS
24 IT THAT HE MOVED INTO THE CONDOMINIUM?

25 A I BELIEVE SOMETIME APPROXIMATELY IN DECEMBER
26 OF JANUARY.

27 Q DECEMBER OF 1983 OR JANUARY OF 1984?

28 A EXACTLY, YES.

26-2

1 Q DURING THE TIME THAT HE WAS LIVING IN HIS HOUSE
2 IN HILLSBOROUGH, DID YOU HAVE OCCASION TO BE THERE
3 WHEN TWO OF HIS SONS CAME HOME?

4 A (NO AUDIBLE RESPONSE.)

5 Q LET ME BACK UP. DID MR. ESLAMINIA HAVE ANY
6 CHILDREN?

7 A YES.

8 Q HOW MANY?

9 A FOUR.

10 Q AND WHAT WERE THEIR NAMES?

11 A STARTING FROM THE ELDEST ONE, REZA --

12 THE COURT: HOW DO YOU SPELL THAT?

13 THE WITNESS: R-E-Z-A. ALI, A-L-I, ADMIR --

14 THE COURT: HOW DO YOU SPELL THAT?

15 THE WITNESS: I THINK IT IS A-D-M-I-R AND MAHMOOD,
16 M-A-H-M-O-O-D.

17 Q BY MR. WAPNER: CAN YOU GIVE US THEIR APPROXIMATE
18 AGES?

19 THE COURT: AS OF WHEN?

20 Q BY MR. WAPNER: AS OF 1984?

21 A MAHMOOD, I BELIEVE, 9, ADMIR, GOING ON 13,
22 ALI, 17 OR 18, AND REZA, 23 -- 22 OR 23.

23 Q WAS MR. ESLAMINIA DIVORCED AS OF 1983 WHEN
24 YOU MET HIM?

25 A NO.

26 Q WAS HE SEPARATED?

27 A YES.

28 Q AND WHERE WAS HIS WIFE LIVING, IF YOU KNOW?

1 A I DON'T KNOW.

2 Q WERE THE CHILDREN LIVING WITH HIM?

3 A NO.

4 Q DURING THE SUMMER OF 1983, AT SOME POINT,
5 DID SOME OF HIS CHILDREN COME TO STAY WITH HIM?

6 A YES.

7 Q AND WHICH CHILDREN WAS THAT, THAT CAME TO
8 STAY WITH HIM?

9 A THE TWO YOUNGER ONES, MAHMOOD AND ADMIR.

10 Q AND WERE YOU AT MR. ESLAMINIA'S HOUSE SOMETIME
11 IN 1983 WHEN MAHMOOD AND ADMIR WERE GONE FROM THE HOUSE
12 AND THEN RETURNED?

13 A YES.

14 Q AND WERE YOU TOLD THAT REZA WAS BRINGING THEM
15 HOME?

16 A YES.

17 Q DID YOU SEE THEM WHEN THEY RETURNED?

18 A YES.

19 Q DID YOU SEE REZA AT THAT TIME?

20 A NOT HIS FACE, NO.

21 Q WHAT DID YOU SEE, IF ANYTHING?

22 A HIS GOLD PORSCHE.

23 Q THAT IS AN AUTOMOBILE?

24 A YES.

25 Q AT SOME POINT AFTER THAT -- WELL, AT THAT
26 TIME, WHAT WAS THE NATURE OF YOUR RELATIONSHIP WITH MR.
27 ESLAMINIA?

28 A AT THAT TIME, IT WAS PLATONIC.

1 Q AND WERE YOU DATING AT THAT TIME?

2 A I DATED HIM ONCE AND WAS THERE ON A SATURDAY
3 FOR A BARBECUE.

4 Q THAT IS WHERE YOU SAW THE TWO CHILDREN RETURN
5 AND SAW THE GOLD PORSCHE?

6 A YES.

7 Q HOW DO YOU KNOW IT WAS REZA'S CAR?

8 A I DON'T REMEMBER EXACTLY IF HADAYET TOLD ME
9 IT WAS HIS SON REZA'S CAR OR IF HIS SON TOLD ME. SO I
10 DON'T REMEMBER.

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1 Q DID YOU LATER BEGIN TO DATE MR. ESLAMINIA?

2 A YES.

3 Q AT SOME POINT AFTER HE MOVED INTO THE CONDOMINIUM,
4 DID YOU MOVE IN WITH HIM?

5 A APPROXIMATELY THREE WEEKS.

6 Q AFTER HE MOVED INTO THE CONDOMINIUM?

7 A AFTER HE MOVED IN.

8 Q AND THE TWO OF YOU WERE THEN LIVING TOGETHER?

9 A YES.

10 Q AT THE TIME THAT YOU SAW THE TWO YOUNGER CHILDREN
11 COME BACK TO THE HOME IN HILLSBOROUGH AND THE CAR LEAVE, DID
12 YOU TALK TO MR. ELSAMINIA ABOUT HIS SON, REZA; DID YOU SAY
13 ANYTHING ABOUT HIM AT THAT TIME?

14 A I ASKED HIM WHY HE DIDN'T COME INTO THE HOUSE.

15 Q WHAT DID HE SAY?

16 MR. CHIER: OBJECTION. HEARSAY, YOUR HONOR.

17 THE COURT: OVERRULED.

18 THE WITNESS: HE SAID BECAUSE HE DIDN'T ALLOW HIM TO.

19 Q BY MR. WAPNER: DID HE SAY WHY?

20 A NOT AT THAT TIME.

21 Q AT SOME POINT AFTER YOU MOVED INTO THE CONDOMINIUM
22 WITH MR. ESLAMINIA, DID YOU EVER SEE THE GOLD PORSCHE AGAIN?

23 A YES.

24 Q WHERE WAS IT?

25 A IT WAS OUTSIDE. IT WAS IN THE PARKING LOT OF
26 THE CONDO ON 400 DAVEY GLEN ROAD.

27 Q CAN YOU SPELL THAT?

28 A DAVEY, D-A-V-E-Y-- E-Y, RATHER, AND ROAD, R-O-A-D.

7-2
1 Q THE SECOND ONE BEING G-L-E-N?

2 A DAVEY GLEN ROAD. I AM SORRY.

3 MR. WAPNER: YOUR HONOR, I HAVE A DIAGRAM I WOULD LIKE
4 TO PUT ON THE BOARD AND HAVE MARKED AS PEOPLE'S 14 FOR
5 IDENTIFICATION.

6 THE COURT: 14.

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

8 (PAUSE IN PROCEEDINGS.)

9 MR. WAPNER: THE WRITING IS GOING TO END UP BEING UPSIDE
10 DOWN BUT I AM GOING TO TRY TO PUT THIS UP SO THAT THE NORTH
11 IS AT THE TOP.

12 Q DO YOU RECOGNIZE GENERALLY WHAT IS DEPICTED IN
13 THIS DIAGRAM? ASSUMING THAT THIS IS UPSIDE DOWN WRITING
14 WHERE IT SAYS "DAVEY GLEN ROAD."

15 A YES.

16 Q WHAT IS THIS?

17 A OKAY. I AM SORRY. ONE MINUTE.

18 IS THIS EL CAMINO RIGHT HERE?

19 (WITNESS INDICATING.)

20 Q DO YOU RECOGNIZE WHERE IT SAYS "DAVEY GLEN ROAD"?

21 A RIGHT, YES.

22 Q AND DOES THIS APPEAR TO YOU TO DEPICT THE
23 CONDOMINIUM COMPLEX THAT YOU LIVED IN?

24 A YES.

25 Q DO YOU SEE WHERE IT SAYS ENTRANCE AND LOBBY HERE?

26 A YES.

27 Q DO YOU RECOGNIZE WHAT THAT IS?

28 A YES.

27-3

1 Q WHAT IS THAT?

2 A THAT IS THE ENTRANCE TO 400 DAVEY GLEN ROAD.

3 Q IS THAT A COMPLEX OF CONDOMINIUMS?

4 A YES.

5 Q APPROXIMATELY HOW MANY UNITS WERE THERE, IF YOU
6 KNOW? WERE THERE SEVERAL?

7 A QUITE A FEW.

8 Q IT IS A PRETTY LARGE BUILDING?

9 A YES.

10 Q ALL RIGHT. ON THE DAY THAT YOU SAW THIS GOLD
11 PORSCHE AGAIN, WHERE WAS IT?

12 A IT WAS -- IT WAS ABOUT WHERE "A" IS ON THE SIDE
13 THERE (WITNESS INDICATING).

14 THE COURT: DO YOU WANT TO GO OVER TO THE DIAGRAM AND
15 TAKE A LOOK?

16 THE WITNESS: THANK YOU.

17 (WITNESS STEPS TO DIAGRAM.)

18 THE WITNESS: IT WAS PARKED THIS WAY (INDICATING).

19 Q BY MR. WAPNER: YOU HAVE TO KEEP YOUR VOICE UP
20 SO ALL OF THE JURORS CAN HEAR YOU.

21 WAS IT IN THIS PARKING LOT THAT IS DEPICTED BY
22 THE WORD "GUEST PARKING" HERE?

23 A YES.

24 Q WAS IT PARKED IN ONE OF THE STALLS FACING THE
25 BUILDING HERE?

26 A NO.

27 IT WAS PARKED CROSSING.

28 Q CROSSING THE STALLS?

1 A IT WAS PARKED, I MEAN LIKE THIS, FACING -- THE
2 FRONT WAS FACING THIS WAY (INDICATING).

3 Q SO IT WOULD BE PARKED KIND OF ACROSS THE STALLS?

4 A ACROSS THE STALLS.

5 Q AND IN THE AREA OF THE LOBBY AND ENTRANCE TO THE
6 BUILDING?

7 A RIGHT, YES.

8 Q OKAY, THANK YOU. YOU CAN RESUME YOUR SEAT.

9 (WITNESS COMPLIES.)

10 Q WHEN YOU SAW THE CAR THERE, WAS THERE ANYBODY
11 IN IT?

12 A YES.

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1 Q HOW MANY PEOPLE?

2 A ONE.

3 Q WHEN YOU SAW THAT PERSON IN THE CAR, WHAT
4 DID YOU DO?

5 A WELL, I APPROACHED THE CAR.

6 Q WHY?

7 A BECAUSE I KNEW IT TO BE REZA'S.

8 Q WHY DID YOU THINK IT COULD BE?

9 A BECAUSE OF THE CAR AND WHILE I WAS APPROACHING,
10 I JUST REALIZED IT WAS HIM.

11 Q HAD YOU SEEN PICTURES OF HIM BEFORE?

12 A I HAD SEEN SOME PICTURES OF HIM WHEN HE WAS
13 YOUNGER, PROBABLY 15 OR 16 YEARS OLD.

14 Q WHAT WAS IT BESIDES THE CAR THAT MADE YOU
15 THINK THAT THIS WAS HIM?

16 A HE LOOKS A LOT LIKE HIS FATHER, PARTICULARLY
17 HIS EYES.

18 Q WHEN YOU APPROACHED THE CAR, WHAT DID YOU
19 DO?

20 A I ASKED HIM IF HE WAS REZA.

21 Q WHAT DID HE SAY?

22 A HE DIDN'T RESPOND RIGHT AWAY.

23 Q WHAT DID YOU DO?

24 A I EXPLAINED TO HIM THAT I WAS OLGA AND THEN
25 HE WAS --

26 Q WHAT DID HE SAY AT THAT PARTICULAR TIME?

27 A HE SAID, "HOW DO YOU DO. I HEARD A LOT ABOUT
28 YOU. I HEARD YOU ARE A VERY NICE GIRL. I AM JUST WAITING

8-2
1 FOR MY FATHER TO FINISH SOME WORK THAT HE IS DOING IN
2 HIS APARTMENT SO I CAN TALK TO HIM AFTER."

3 Q DID HE SAY THAT HE HAD MADE ANY CONTACT WITH
4 HIS FATHER BEFORE THAT?

5 A HE SAID THAT HE SPOKE WITH HIM ON THE TELEPHONE.

6 Q DID HE SAY WHEN HE HAD SPOKEN WITH HIM ON
7 THE TELEPHONE?

8 A HE DIDN'T SAY EXACTLY.

9 Q DID HE IMPLY THAT IT WAS THAT DAY OR SOMETIME
10 BEFORE?

11 A HE IMPLIED IT WAS -- THAT HE JUST SPOKE WITH
12 HIM. HE SAID THAT HE HAD JUST SPOKE WITH HIS FATHER ON
13 THE TELEPHONE.

14 Q AND DID HE SAY ANYTHING ABOUT THE FACT THAT
15 HIS FATHER SUPPOSEDLY KNEW THAT HE WAS OUT THERE WAITING
16 FOR HIM?

17 A HE SAID HE WAS WAITING FOR HIS FATHER TO FINISH
18 WHAT HE WAS DOING IN THE APARTMENT SO HE COULD TALK TO
19 HIM AFTER.

20 Q AFTER YOU TALKED TO REZA IN THE PARKING LOT
21 OF THE BUILDING, DID YOU GO -- WHAT DID YOU DO?

22 A I DON'T RECALL. EITHER I WAS COMING BACK
23 FROM THE STORE OR I WAS GOING TO THE STORE. SO AFTER
24 I HAD COME BACK -- OKAY.

25 NOW I RECALL. I WENT TO THE STORE. AND THEN
26 I CAME BACK. AND REZA'S CAR WAS GOINE.

27 THEN I WENT INTO THE APARTMENT AND HADAYET
28 WAS COOKING. AND I TOLD HIM I SAW HIS SON OUTSIDE, REZA.

1 Q NOW, HOW LONG WERE YOU GONE FROM THE TIME
2 THAT YOU SAW REZA UNTIL THE TIME THAT YOU GOT BACK?

3 A PROBABLY 15 MINUTES.

4 Q WHEN YOU SAID TO HADAYET THAT YOU HAD SEEN
5 REZA, WHAT HAPPENED?

6 A HE LOOKED AT ME LIKE -- WHAT?

7 Q DID HE SEEM STARTLED TO YOU?

8 A YES.

9 Q WHAT HAPPENED AFTER YOU TOLD HIM THAT YOU
10 HAD SEEN REZA AND HE GAVE YOU THAT LOOK?

11 A I TOLD HIM, YOU KNOW, THAT HIS SON WAS HERE
12 AND TO SEE HIM, "WHY DON'T YOU SEE HIM?"

13 Q WHAT DID HE SAY?

14 A HE SAID, "DON'T ASK ME THAT." HE TOLD ME
15 NOT TO OPEN THE DOOR.

16 NO -- FIRST, HE ASKED ME IF I GAVE HIM THE
17 TELEPHONE NUMBER. I SAID NO. "DID YOU TELL HIM WHERE
18 WE LIVED?" I SAID NO. HE SAID, "DON'T EVER OPEN THE
19 DOOR FOR HIM."

20 Q DID HE TELL YOU WHY -- MAKE ANY ELABORATION
21 AT THAT POINT?

22 A THAT WAS THE TIME THAT HE REALLY MADE IT FIRM
23 AND JUST DON'T EVER ASK ME AGAIN.

24 Q AND APPROXIMATELY WHEN WAS IT THAT YOU SAW
25 REZA OUTSIDE IN THE CAR?

26 A APPROXIMATELY TWO MONTHS --

27 Q BEFORE?

28 A BEFORE HIS FATHER WAS MISSING.

1 Q AND DID YOU SEE HIM AT ANY TIME AGAIN BEFORE
2 MR. ESLAMINIA DISAPPEARED.?

3 A NO.

4 Q DID YOU HAVE A JOB AT THAT TIME?

5 A YES.

6 Q WHERE WERE YOU EMPLOYED?

7 A IN SAN FRANCISCO FOR A FOOD COMPANY CALLED
8 SPECIALTY BRANDS.

9 Q WERE YOU WORKING THERE EIGHT HOURS A DAY,
10 FIVE DAYS A WEEK?

11 A FIVE DAYS A WEEK.

12 Q OKAY. DURING THE MONTH OF JULY OF 1984, WERE
13 YOU WORKING?

14 A YES.

15 Q DID YOU GO TO WORK ON JULY THE 30TH OF 1984?

16 A WAS THAT A MONDAY?

17 Q YES.

18 A YES.

19 MR. WAPNER: IF THE COURT CAN TAKE JUDICIAL NOTICE
20 THAT IN FACT, JULY 30 OF 1984 WAS A MONDAY.

21 THE COURT: JULY 30? YES. THAT IS A MONDAY.

22 MR. WAPNER: THANK YOU.

23 THE COURT: THE JURY WILL BE SO INSTRUCTED.

24 Q BY MR. WAPNER: DID YOU GO TO WORK ON THAT
25 DAY?

26 A YES.

27 Q WHAT TIME DID YOU LEAVE FOR WORK ON THAT DAY?

28 A APPROXIMATELY A QUARTER TO 8:00.

1 Q DID YOU LEAVE FROM THE CONDOMINIUM THAT YOU
2 SHARED WITH MR. ESLAMINIA?

3 A YES.

4 Q WHERE WAS HE WHEN YOU LEFT FOR WORK? WAS
5 HE IN THE CONDO?

6 A YES. SORRY.

29 FO.

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9-1
1 THE COURT: HOW FAR IS BELMONT FROM SAN FRANCISCO?

2 THE WITNESS: ABOUT 20 MINUTES.

3 THE COURT: 20 MINUTES?

4 THE WITNESS: WITHOUT TRAFFIC.

5 THE COURT: BY CAR?

6 THE WITNESS: BY CAR.

7 Q BY MR. WAPNER: AND SOUTH OF SAN FRANCISCO?

8 A YES, GOING SOUTH.

9 Q IN SAN MATEO COUNTY?

10 A YES.

11 Q THE NIGHT BEFORE, WHICH WAS A SUNDAY NIGHT, THE
12 NIGHT BEFORE YOU LEFT FOR WORK ON JULY 30TH, DID YOU HAVE
13 ANY DISAGREEMENT OR ANYTHING WITH MR. ESLAMINIA?

14 A YES.

15 Q WHAT WAS THAT ALL ABOUT?

16 A WELL, HE WAS DRINKING. WE WERE ALL A LITTLE BIT
17 DRINKING, BUT HE WAS DRINKING A LITTLE BIT MORE AND --

18 Q WITHOUT NECESSARILY GOING INTO THE FACTS OF IT,
19 DID THE TWO OF YOU HAVE SOMEWHAT OF A DISAGREEMENT?

20 A YES.

21 Q AND HAD HE BEEN DRINKING A LOT THE NIGHT BEFORE?

22 A SUNDAY, HE WAS.

23 Q WHAT CONDITION WAS HE IN WHEN YOU LEFT HIM ON
24 THE MORNING OF JULY THE 30TH, THAT MONDAY?

25 A NOT FEELING TOO WELL.

26 Q AND WHERE WAS HE IN THE CONDOMINIUM WHEN YOU LEFT
27 FOR WORK, IF YOU KNOW?

28 A IN THE BEDROOM.

9-2
1 Q AND AFTER YOU LEFT FOR WORK, DID YOU SPEAK TO
2 HIM AGAIN?

3 A YES.

4 Q WHAT TIME OF THE DAY WAS IT THAT YOU SPOKE TO
5 HIM?

6 A APPROXIMATELY 11 O'CLOCK.

7 Q AND WHAT HAPPENED WHEN YOU SPOKE TO HIM AT
8 11 O'CLOCK?

9 A I CALLED HIM BECAUSE THE ITALIAN EMBASSY CALLED
10 ME AND TOLD ME THAT HIS VISA WAS READY.

11 THE COURT: HIS WHAT WAS READY?

12 THE WITNESS: VISA.

13 THE COURT: VISA?

14 THE WITNESS: VISA.

15 Q BY MR. WAPNER: AND DID YOU TELL HIM WHAT THE
16 ITALIAN EMBASSY HAD TOLD YOU?

17 A YES.

18 Q DID HE TELL YOU WHAT HE WAS PLANNING TO DO, IF
19 ANYTHING, WHAT HE WAS DOING AND WHAT HE WAS PLANNING TO DO
20 FOR THE REST OF THE DAY?

21 MR. CHIER: OBJECTION. HEARSAY.

22 THE COURT: OVERRULED.

23 THE WITNESS: HE SAID HE WAS GOING TO BE HOME.

24 Q BY MR. WAPNER: WAS MR. ESLAMINIA EMPLOYED AT
25 THAT TIME?

26 A NO.

27 Q AND WHAT TIME DID YOU RETURN TO THE CONDOMINIUM
28 THAT EVENING?

29-7
1 A APPROXIMATELY 3:45, 4:00.

2 Q WHEN YOU RETURNED TO THE CONDOMINIUM, WHAT DID
3 YOU NOTICE?

4 A WHEN I WALKED IN, IT WAS DARK, THE KITCHEN LIGHT
5 WAS OFF. HE WAS --

6 HE WASN'T COOKING LIKE HE USUALLY DOES.

7 Q WAS IT UNUSUAL FOR IT TO BE DARK?

8 A VERY.

9 Q WHY?

10 A IT WAS A SUNNY DAY.

11 THE CURTAINS WERE DRAWN. THE HALL LIGHT WAS ON
12 AND THE WINDOWS WERE OPEN.

13 Q WERE ANY OF THESE THINGS UNUSUAL?

14 A ALL OF THEM.

15 Q WHY?

16 A BECAUSE HE WASN'T HOME. NUMBER ONE, THE HALLWAY
17 LIGHT WAS ON. HE WASN'T IN THE KITCHEN AND IT WAS -- ALL
18 OF THE CURTAINS WERE DRAWN. ALL OF THESE THINGS WERE VERY
19 UNUSUAL.

20 Q WHAT WAS HIS NORMAL, MR. ESLAMINIA'S NORMAL
21 CUSTOM DURING WORKING -- THE WEEKDAYS.

22 A HE ALWAYS BUYS FRESH MEAT AT THE MARKET EVERY
23 DAY AND HE WOULD COOK DINNER BECAUSE HE PREFERRED TO COOK
24 DINNER, SO EVERY TIME I CAME HOME FROM WORK, HE WAS ALWAYS
25 IN THE KITCHEN, COOKING.

26 Q WHEN HE WAS HOME, DID HE HAVE A HABIT, AS FAR
27 AS WHETHER THE CURTAINS WERE OPEN OR NOT?

28 A THEY WERE ALWAYS OPEN WHEN HE WAS HOME.

1 Q WHAT ABOUT IF HE WAS GOING TO GO SOMEWHERE, WHAT
2 DID HE DO?

3 A HE WOULD KEEP THE CURTAINS OPEN BUT THE WINDOWS
4 WOULD BE CLOSED.

5 Q DID HE HAVE A SPECIFIC HABIT THAT YOU RECALL ABOUT
6 CLOSING THE WINDOWS WHEN HE LEFT?

7 A YES.

8 AND HE, THE FEW TIMES I HAVE LEFT THE WINDOWS
9 OPEN AND HE SAID, "KEEP THESE WINDOWS CLOSED IF YOU ARE GOING
10 TO LEAVE."

11 Q WHAT FLOOR OF THE CONDOMINIUM COMPLEX WAS THE
12 APARTMENT ON?

13 A THE GROUND FLOOR.

14 Q WHEN YOU WALKED INTO THE CONDOMINIUM ON JULY THE
15 30TH, DID YOU EXPECT HIM TO BE THERE?

16 A YES.

17 Q WAS HE THERE?

18 A NO.

19 Q DID YOU EXPECT HIM TO BE IN THE KITCHEN, COOKING?

20 A YES.

21 Q AND THE WINDOWS AT THE APARTMENT, WHEN YOU WALKED
22 IN ON JULY 30TH, WERE THE WINDOWS THEMSELVES OPEN OR CLOSED?

23 A ON THE 30TH WHEN I WALKED IN AND I OPENED THE
24 DRAPES, THE WINDOWS WERE OPEN.

25 Q FIRST, LET'S TALK ABOUT THE WINDOWS, NOT THE DRAPES,
26 BUT JUST THE WINDOWS.

27 WERE THE WINDOWS OPENED OR CLOSED?

28 A OPEN.

1 Q HOW ABOUT THE DRAPES?

2 A CLOSED.

3 Q AND THE HALLWAY LIGHT WAS NOT NORMALLY ON?

4 A NO, NOT DURING THE DAY.

5 Q WHAT ELSE DID YOU NOTICE THAT WAS UNUSUAL?

6 A JUST THAT HE WASN'T THERE AND --

7 Q WELL, WOULD YOU GO TO THE DIAGRAM AND SEE IF YOU
8 CAN, BY STARTING AT THE ENTRANCE, LOCATE THE CONDOMINIUM THAT
9 YOU AND MR. ESLAMINIA SHARED.

10 A OKAY.

11 (WITNESS STEPS TO DIAGRAM.)

12 Q ASSUMING THAT THIS IS THE LOBBY, THIS IS
13 THE SWIMMING POOL AREA AND THIS IS THE HALLWAY IN THIS AREA
14 AND IN HERE IS PERHAPS A MANAGER'S OFFICE (COUNSEL INDICATING).

15 A OKAY.

16 Q IF YOU ARE WALKING IN THE FRONT ENTRANCE OF THE
17 BUILDING, THERE ARE SOME GLASS DOORS HERE IN THIS AREA?

18 A RIGHT.

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30-1

1 MR. WAPNER: YOU ARE GOING TO HAVE TO GO A LITTLE
2 BIT TO THE SIDE SO THE JURORS CAN SEE.

3 Q SO THIS BLACK LINE IN BETWEEN WHERE IT SAYS
4 "ENTRANCE" AND WHERE IT SAYS "LOBBY" IS THE OFFICE WITH
5 THE GLASS DOORS?

6 A RIGHT.

7 Q AND IF YOU WERE TO COME THROUGH THOSE GLASS
8 DOORS AND IN THE LOBBY, WAS IT ON HERE WHERE IT IS INDICATED
9 BY ALL OF THE LITTLE RECTANGLES THAT THERE WAS A PATIO
10 OF SOME SORT?

11 A YES, SOME SORT OF A PATIO.

12 Q AND THERE APPEARS TO BE A SMALL OPENING OR
13 HALLWAY HERE. DO YOU KNOW WHAT THAT IS?

14 A YES.

15 Q WHAT IS THAT?

16 A IT IS A HALLWAY.

17 Q OKAY. WHAT IS NEXT TO THE HALLWAY?

18 A THE OFFICE.

19 Q SO THAT WOULD BE THE MANAGER'S OFFICE?

20 A THE MANAGER'S OFFICE.

21 Q ALL RIGHT. IF I WRITE "OFFICE" IN THERE,
22 WOULD THAT BE ACCURATE?

23 A YES.

24 Q AND THEN FROM THE MANAGER'S OFFICE, WHERE
25 IS THE APARTMENT THAT YOU HAD?

26 A OKAY. I WOULD HAVE TO -- I GUESS IT IS THIS
27 ONE.

28 Q INDICATING WHERE IT SAYS "C"?

30-2
1 A "C."

2 Q ON THE DIAGRAM?

3 A YES.

4 Q IF I JUST PUT AN "X" IN THIS, WOULD THAT BE
5 CORRECT TO INDICATE WHERE YOUR APARTMENT WAS?

6 A YES.

7 Q AND IS THIS SMALL INDENTATION HERE, INDICATING
8 THE FRONT DOOR OF YOUR APARTMENT?

9 A YES.

10 Q AND ARE THERE -- I ASSUME THAT THIS LONG AREA
11 HERE IS AN INSIDE HALLWAY?

12 A RIGHT.

13 MR. WAPNER: INDICATING JUST ABOVE WHERE THE APARTMENT
14 IS LOCATED, YOUR HONOR, ON THE DIAGRAM?

15 THE COURT: YES.

16 Q BY MR. WAPNER: AND THE WINDOWS THAT YOU REFERRED
17 TO, WHERE ARE THEY LOCATED?

18 A THEY ARE LOCATED HERE (INDICATING).

19 Q THAT WOULD BE ALONG THE SOUTH WALL OF THE
20 APARTMENT FACING THE PATIO?

21 A FACING THE PATIO.

22 Q WHAT DID YOU DO AFTER YOU CAME HOME AND YOU
23 NOTICED THAT MR. ESLAMINIA WAS NOT THERE?

24 A I OPENED UP THE DRAPES AND I TURNED OFF THE
25 LIGHT. I TURNED ON THE T.V. AND HAD A GLASS OF WINE.

26 Q IS THERE A SLIDING GLASS DOOR AT SOME POINT
27 ON THAT WALL WHERE THE WINDOWS ARE, FACING THE PATIO?

28

30-3

1 A YES.

2 Q WAS THAT OPENED OR CLOSED?

3 A IT WAS CLOSED.

4 Q FROM THE TIME -- SINCE THE TIME THAT YOU SPOKE
5 TO MR. ESLAMINIA ON THE PHONE SOMETIME IN THE MORNING
6 OF JULY 30, HAVE YOU EVER SEEN OR HEARD FROM HIM AGAIN?

7 A SEEN HIM, NO. HEARD, YES.

8 Q WHAT DID YOU HEAR?

9 A I CALLED HIM TWO OR THREE TIMES THAT DAY.
10 THE FIRST CALL WAS AT 11:00.

11 Q WHEN ELSE DID YOU TALK TO HIM THAT DAY?

12 A I JUST WANTED TO KNOW HOW HE WAS FEELING.

13 HE TOLD ME THAT HE WAS LAYING DOWN IN THE BEDROOM WHICH
14 WOULD BE THE THIRD BEDROOM, RIGHT NEXT TO THE LIVING ROOM
15 AND THAT HE WOULD BE HOME.

16 WE DID SPEAK A LITTLE BIT ABOUT IS EVERYTHING
17 OKAY BECAUSE OF OUR DISAGREEMENT THE DAY BEFORE.

18 Q AND DID YOU SPEAK TO HIM AGAIN LATER THAT
19 DAY?

20 A YES.

21 Q WHEN WAS THAT?

22 A I BELIEVE AFTER LUNCH.

23 Q ABOUT WHAT TIME WAS IT?

24 A 1:30 OR 2:00.

25 Q WAS THAT THE LAST TIME YOU EVER TALKED TO
26 HIM?

27 A I AM NOT SURE IF I TALKED TO HIM TWO TIMES
28 OR THREE TIMES.

1 SO, MY MEMORY -- I WILL SAY -- I MEAN, I REMEMBER
2 THAT SECOND TELEPHONE CALL ONLY.

3 Q DID YOU EVER SPEAK TO HIM AGAIN AT ANY POINT
4 AFTER TALKING TO HIM FROM WORK ON THE AFTERNOON OF JULY
5 30TH?

6 A NO.

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1 Q HE SAID WHEN YOU SPOKE TO HIM IN THE AFTERNOON
2 THAT HE WAS LYING DOWN IN THE SECOND BEDROOM ON A BED?

3 A THAT WOULD BE THE THIRD BEDROOM ON THE BED.

4 Q DID YOU NOTICE SOMETHING ABOUT THAT ROOM WHEN
5 YOU CAME HOME?

6 A YES.

7 Q WHAT DID YOU NOTICE?

8 A WELL, HADAYET WAS A VERY NEAT MAN AND --

9 THE COURT: WHAT?

10 THE WITNESS: TIDY.

11 THE COURT: TIDY.

12 THE WITNESS: AND THE BED STILL HAD HIS BODY --

13 THE COURT: IMPRINT?

14 THE WITNESS: IMPRINT, YES.

15 Q BY MR. WAPNER: DID HE HAVE A HABIT NORMALLY
16 THAT HE WOULD GET UP OUT OF BED AND --

17 A HE WOULD ALWAYS STRAIGHTEN UP AFTER HIMSELF.

18 Q DID YOU AT SOME POINT LOOK TO SEE WHETHER
19 ANY OF HIS CLOTHES WERE MISSING?

20 A I DID AT SOME POINT. BUT I DON'T REMEMBER
21 EXACTLY WHEN.

22 Q WHAT DID YOU NOTICE WAS MISSING, IF ANYTHING?

23 A JUST THE CLOTHES HE WEARS EVERY DAY, LIKE
24 HIS BLACK SLACKS AND HIS SHOES.

25 Q WHAT TYPE OF SHOES DID HE NORMALLY WEAR?

26 A HE NORMALLY WORE BLACK SHOES.

27 Q LEATHER SHOES?

28 A YES.

1 Q AND DID HE HAVE A PARTICULAR SHIRT HE NORMALLY
2 WORE?

3 A HE WOULD CHANGE SHIRTS. BUT AT THAT PARTICULAR
4 TIME, I REALLY BELIEVED HE WAS WEARING A BROWN SHIRT.

5 Q OTHER THAN THE BLACK PANTS AND THE BLACK SHOES,
6 WERE THERE ANY CLOTHES MISSING THAT YOU COULD TELL?

7 A NO.

8 Q WERE THERE ANY SUITCASES MISSING?

9 A NO.

10 Q DID MR. ESLAMINIA HAVE A HABIT THAT HE WOULD
11 FOLLOW IF HE HAD GONE OUT OF TOWN AS FAR AS GETTING IN
12 TOUCH WITH YOU?

13 A USUALLY, I MAKE THE ARRANGEMENTS.

14 Q BUT IN TERMS OF HIS CONTACTING YOU WHILE HE
15 WAS GONE, WHAT WAS HIS HABIT?

16 A HE CALLED ME ALL OF THE TIME.

17 Q HOW OFTEN?

18 A ONCE A DAY OR TWICE A DAY, DEPENDING.

19 Q AND AFTER THAT DAY ON JULY 30TH, YOU NEVER
20 HEARD FROM HIM AGAIN, CORRECT?

21 A NO. CORRECT.

22 Q AT SOME POINT, WHAT DID YOU DO LATER THAT
23 DAY AFTER YOU HAD THE GLASS OF WINE?

24 A I CALLED HIS FRIEND ALI BANI.

25 Q THAT WAS ONE OF HIS FRIENDS?

26 A VERY CLOSEST.

27 THE COURT REPORTER: HOW DO YOU SPELL THAT?

28 THE WITNESS: B-A-N-I.

1 Q BY MR. WAPNER: AND WHAT DID YOU DO AFTER
2 THAT?

3 A I CALLED HIM, I THINK, EVERY HALF HOUR.

4 Q THAT IS ALI BANI?

5 A ALI BANI.

6 Q HAD MR. ESLAMINIA CONTACTED HIM?

7 A NO. HADAYET DID NOT TELL HIM THAT HE WAS
8 GOING OUT.

9 Q WHAT NATIONALITY WAS MR. ESLAMINIA?

10 A IRANIAN.

11 Q AND WHAT WAS HIS COMMAND OF THE ENGLISH LANGUAGE?

12 A VERY BROKEN ENGLISH.

13 Q DID MR. BANI EVER ACT LIKE AN INTERPRETER
14 FOR HIM?

15 A YES.

16 Q DID YOU NOTIFY ANY OF MR. ESLAMINIA'S FAMILY
17 WHO WERE ALSO LIVING IN THE BELMONT AREA?

18 A YES.

31 FO.

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1-1 1 Q WHO WAS THAT?

2 A HIS NIECE.

3 Q WHERE DID SHE LIVE?

4 A SHE LIVED IN THE COMPLEX.

5 Q IN THE SAME APARTMENT-CONDOMINIUM?

6 A APARTMENT COMPLEX, YES.

7 Q HAD SHE HEARD FROM HIM?

8 A NO.

9 Q DID YOU AT SOME POINT MAKE A REPORT TO THE BELMONT
10 POLICE DEPARTMENT?

11 A I CALLED THE BELMONT POLICE DEPARTMENT THAT
12 EVENING AT APPROXIMATELY 10:30 AND ASKED THEM HOW LONG WOULD
13 IT -- WOULD IT TAKE TO FILE -- I MEAN, HOW LONG DO I HAVE
14 TO FILE A MISSING PERSON'S REPORT.

15 Q WHAT DID THEY TELL YOU?

16 A THEY TOLD ME 48 HOURS.

17 Q FASTER THAN BEVERLY HILLS.

18 AND WHAT DID YOU DO AFTER YOU TALKED TO THEM?

19 A SO THEY COULDN'T TAKE MY REPORT, SO I EXPLAINED
20 TO THEM THE SITUATION, THAT HADAYET ESLAMINIA WAS NOT HOME
21 AND IT WAS -- IT WAS UNUSUAL THAT HE WASN'T HOME AND I AM
22 WORRIED AND DO THEY HAVE ANY -- THEY SUGGESTED TO CALL THE
23 HOSPITALS.

24 I TOLD THEM I DIDN'T KNOW ANY HOSPITALS IN THAT
25 AREA AND THEY GAVE ME A HOSPITAL LIST.

26 Q DID YOU CALL SOME OF THE HOSPITALS?

27 A I CALLED ALL OF THE HOSPITALS.

28 Q WERE YOU ABLE TO FIND MR. ESLAMINIA?

51-
1 A NO.

2 Q DID YOU MAKE A MISSING PERSON'S REPORT TO THE
3 BELMONT POLICE DEPARTMENT?

4 A YES.

5 Q WHEN WAS THAT DONE?

6 A APPROXIMATELY 5:30 THE NEXT MORNING.

7 Q 5:30 A.M.?

8 A 5:30 A.M.

9 Q AFTER DOING THAT, DID YOU AT SOME POINT AFTER
10 THAT SEE -- WELL, DID YOU HAVE CONTACT OR TRY TO CONTACT
11 REZA?

12 A YES, I CALLED HIS MOTHER, MINI, I CAN'T REMEMBER
13 EXACTLY WHAT DAY. I WOULD SAY APPROXIMATELY ONE DAY LATER.

14 Q DID YOU TELL HER WHAT HAD HAPPENED?

15 A NO, NOT IMMEDIATELY.

16 I TOLD HER I WAS LOOKING FOR REZA, I HAVE SOMETHING
17 TO TALK TO HIM ABOUT, TO TELL HIM.

18 Q WHAT DID SHE SAY?

19 A SHE SAID, "HE DOESN'T LIVE HERE. HE HAS HIS OWN
20 PLACE."

21 AND I ASKED IF I COULD TALK TO HER OTHER SON,
22 ADMIR, BUT BEFORE --

23 THEN SHE ASKED ME WHY AND I TOLD HER WHY.

24 Q DID YOU HEAR FROM REZA AT SOME POINT AFTER THAT?

25 A APPROXIMATELY THREE DAYS, HE CALLED ME.

26 Q WHERE WAS HE CALLING YOU FROM, IF YOU KNOW?

27 A I DON'T KNOW EXACTLY. I GUESS, LOS ANGELES.

28 Q AND AT SOME POINT AFTER HE CALLED YOU, DID YOU

31 - 1 HEAR FROM HIM AGAIN?

2 A YES.

3 Q WHEN WAS THAT?

4 A AUGUST 5TH.

5 Q OF 1984?

6 A YES.

7 Q AND WHAT HAPPENED WHEN YOU HEARD FROM HIM ON
8 AUGUST 5TH?

9 A HE CALLED ME AND ASKED ME WHAT THE ACCESS CODE
10 WAS TO THE APARTMENT AND I TOLD HIM THAT --

11 HE WAS CALLING FROM THE 7-ELEVEN DOWN THE STREET
12 AND I TOLD HIM TO WAIT FOR ME DOWN THERE AND HE SAID "WHAT
13 IS WRONG?" YOU KNOW.

14 Q WHAT DID YOU SAY?

15 A "WHY ARE YOU ACTING LIKE THAT?"

16 BECAUSE I WAS KIND OF ACTING -- WELL, I HAVE TO
17 HAVE A POLICE OFFICER WITH ME.

18 Q AND DID YOU IN FACT CALL SOMEBODY FROM THE BELMONT
19 POLICE DEPARTMENT?

20 A YES.

21 Q DID THEY SEND AN OFFICER TO GO WITH YOU?

22 A YES, THEY SENT AN OFFICER.

23 Q THAT IS A 7-ELEVEN LIKE A CONVENIENCE STORE?

24 A YES.

25 Q WHERE IS THAT LOCATED IN RELATION TO THE
26 CONDOMINIUM COMPLEX ON DAVEY GLEN ROAD?

27 A IT IS RIGHT DOWN THE STREET ON DAVEY GLEN ROAD,
28 THE CORNER OF DAVEY GLEN ROAD AND EL CAMINO.

1 Q AND IS THAT EL CAMINO BOULEVARD?

2 A RIGHT.

3 Q IS THAT THE MAIN THOROUGHFARE IN THE CITY OF
4 BELMONT?

5 A YES.

6 Q IS THAT ABOUT A QUARTER OF A MILE DOWN THE ROAD,
7 AN EIGHTH TO A QUARTER OF A MILE DOWN THE ROAD FROM THE
8 APARTMENT COMPLEX TO EL CAMINO REAL?

9 A A QUARTER OF A MILE FROM --
10 NO. IT IS ONE BLOCK.

11 Q DID AN OFFICER FROM THE BELMONT POLICE DEPARTMENT
12 COME AND ESCORT YOU DOWN TO THE 7-ELEVEN?

13 A YES.

14 Q WHAT HAPPENED WHEN YOU GOT THERE?

15 A WE WAITED IN THE CAR -- NO.

16 WE DROVE THERE AND REZA AND JOE HUNT WERE IN THE
17 GOLD PORSCHE.

18 Q FOR THE PURPOSES OF IDENTIFICATION, DO YOU SEE
19 JOE HUNT IN THE COURTROOM RIGHT NOW?

20 A YES.

21 Q COULD YOU POINT HIM OUT, PLEASE?

22 A HE IS THAT GUY THERE (WITNESS INDICATING).

23 MR. WAPNER: INDICATING THE DEFENDANT FOR THE RECORD?

24 THE COURT: YES.

25 MR. WAPNER: WAS THAT THE GOLD PORSCHE YOU HAD SEEN
26 AT THE HILLSBOROUGH HOUSE AND THEN SEEN REZA IN ONCE BEFORE
27 AT THE DAVEY GLEN APARTMENT?

28 A YES.

1 Q WHAT HAPPENED WHEN YOU GOT TO THE 7-ELEVEN?

2 A REZA CAME OUT OF THE CAR. HE WAS WEARING A BEIGE
3 SUIT, AND HE SAID, "WHAT IS GOING ON?"

4 Q AND WHAT HAPPENED THEN?

5 A I -- I EXPLAINED TO HIM THAT I NEEDED A POLICE
6 OFFICER PRESENT. AT THIS POINT, I DIDN'T KNOW WHAT HAPPENED
7 TO HIS FATHER, AND I HAD TO TAKE -- I HAD TO BE CAREFUL.

8 Q AND WHAT HAPPENED AFTER YOU TOLD HIM THAT?

9 A "FINE." HE SAID, "FINE."

10 Q DID THE POLICE OFFICER ACCOMPANY YOU AND REZA
11 BACK UP TO THE APARTMENTS ON DAVEY GLEN ROAD?

12 A YES.

13 Q DID MR. HUNT GO WITH YOU?

14 A YES.

15 Q WHAT HAPPENED WHEN YOU GOT UP TO THE CONDOMINIUM
16 COMPLEX?

17 A REZA AND JOE HUNT WANTED TO TALK TO ME AND I --

18 Q WERE YOU INSIDE YOUR CONDOMINIUM UNIT AT THAT
19 TIME?

20 A WE WERE INSIDE -- I DON'T BELIEVE -- YES, INSIDE
21 THE APARTMENT.

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31A-1

1 Q AND WHO OF THE TWO OF THEM SPOKE? WAS IT
2 REZA OR WAS IT JOE HUNT?

3 A REZA WAS PRETTY MUCH DOING ALL OF THE TALKING.

4 Q WHAT DID HE SAY?

5 HE SAID THAT HE WANTED TO TALK ABOUT HIS FATHER'S
6 ASSETS.

7 Q IS THAT THE FIRST THING THAT HE SAID, THAT
8 HE WANTED TO TALK ABOUT HIS FATHER'S ASSETS?

9 THE COURT: WHAT DOES THAT MEAN? YES?

10 THE WITNESS: I AM TRYING TO REMEMBER.

11 THE COURT: ALL RIGHT.

12 (PAUSE.)

13 THE WITNESS: NO. NO, IT WASN'T. IT WASN'T THE
14 FIRST THING HE SAID. IT JUST STICKS IN MY MIND.

15 Q BY MR. WAPNER: HOW LONG AFTER HE BEGAN TALKING
16 DID HE SAY HE WANTED TO TALK ABOUT HIS FATHER'S ASSETS?

17 A AFTER I EXPLAINED TO HIM THE SITUATION THAT
18 HIS FATHER HAS BEEN MISSING, HE BROUGHT IT UP.

19 Q HAD YOU HEARD FROM HADAYET ESLAMINIA BETWEEN
20 JULY 30TH AND AUGUST THE 5TH, WHEN THIS CONVERSATION TOOK
21 PLACE?

22 A HADAYET?

23 Q YES.

24 A NO.

25 Q AND YOU EXPLAINED THAT TO REZA?

26 A HE REALLY DIDN'T ASK. BUT, YES, I EXPLAINED
27 TO HIM THAT HIS FATHER WAS MISSING AND I AM TRYING TO
28 FIND HIM.

32 FO.

1 Q DID HE SAY HE KNEW WHERE HIS FATHER WAS?

2 A NO. HE TOLD ME -- HE ASKED ME FIRST. HE
3 WAS ASKING ME ABOUT HIS FATHER'S ASSETS, BANK ACCOUNTS,
4 BANK DEPOSIT BOX KEY.

5 Q WHAT DID YOU TELL HIM WHEN HE ASKED YOU ABOUT
6 ALL THIS STUFF?

7 A I ASKED HIM, "WHY ARE YOU ASKING THIS?" AND
8 HE SAID, "WELL, I BELIEVE THIS IS A GOOD WAY TO FIND WHERE
9 MY FATHER IS." AND THEN --

10 Q WHERE WAS JOE HUNT WHEN THIS WAS GOING ON?

11 A OKAY. REZA, BEFORE OUR CONVERSATION, BEFORE
12 WE GOT INTO IT, HE SAID -- SHOULD I CONTINUE?

13 Q WELL, WHAT DID HE SAY ABOUT JOE HUNT? DID
14 HE SAY SOMETHING ABOUT HAVING JOE HUNT PRESENT?

15 A YES. AS A MATTER OF FACT -- YES.

16 Q WHAT DID HE SAY?

17 A OKAY. HE DIDN'T -- AT THE BEGINNING, BEFORE
18 I EXPLAINED TO HIM WHAT HAPPENED TO HIS FATHER --

19 MR. CHIER: OBJECTION, HEARSAY.

20 THE COURT: WELL, WE WILL ASSUME THAT YOU ARE OBJECTING
21 TO ALL OF THIS CONVERSATION, EVERYTHING THAT HAPPENED,
22 ON THE GROUNDS OF HEARSAY. SO YOU DON'T HAVE TO MAKE
23 ANY FURTHER OBJECTIONS ANYMORE. YOU WILL HAVE A CONTINUING
24 OBJECTION. DON'T INTERRUPT ANYMORE. GO AHEAD.

25 THE WITNESS: THANK YOU.

26 Q BY MR. WAPNER: WHAT DID HE SAY?

27 A HE SAID THAT HE COULDN'T TALK WITHOUT HIS
28 ASSOCIATE BEING THERE PRESENT.

1 Q AND DID HE SAY WHO HIS ASSOCIATE WAS?

2 A JOE HUNT.

3 Q AND WHAT DID YOU SAY?

4 A I SAID, "NO. THIS IS A FAMILY MATTER."

5 Q WHAT DID HE SAY?

6 A HE TOTALLY INSISTED. HE INSISTED THAT JOE
7 HUNT BE THERE. IT WAS A BACK-AND-FORTH ARGUMENT FOR AT
8 LEAST A MINUTE OR TWO.

9 Q AND WHERE IN THE APARTMENT WAS THIS ARGUMENT
10 TAKING PLACE?

11 A IN THE DINING ROOM AREA.

12 Q AND WHERE WAS JOE HUNT AT THE TIME IT WAS
13 GOING ON?

14 A STANDING RIGHT NEXT TO HIM.

15 Q AND FOR THIS MINUTE OR TWO THIS WAS GOING
16 ON, THIS WAS BETWEEN YOU AND REZA?

17 A YES.

18 Q AND WHAT HAPPENED AFTER THAT MINUTE OR TWO?

19 A FINALLY, JOE HUNT SAID, "THAT'S OKAY, REZA.
20 I WILL -- YOU KNOW, I UNDERSTAND. THIS IS A FAMILY MATTER.
21 SHE JUST WANTS TO DISCUSS IT WITH YOU." IT WAS SOMETHING
22 IN THAT MANNER.

23 THEN HE WENT AND STEPPED INTO THE LIVING ROOM.

24 Q AND AFTER JOE HUNT STEPPED INTO THE LIVING
25 ROOM, DID YOU CONTINUE -- DID YOU HAVE DISCUSSION WITH
26 REZA ABOUT HIS FATHER?

27 A YES.

28 Q AND IS THAT WHEN HE WAS ASKING ABOUT ALL OF

1 HIS ASSETS?

2 A YES.

3 Q AND HOW LONG DID YOU CONTINUE TO TALK TO HIM
4 ABOUT THAT?

5 A I MEAN, THAT WAS THE WHOLE -- THAT IS ALL
6 HE ASKED.

7 Q THAT WAS ALL THAT HE APPEARED TO WANT TO KNOW
8 ABOUT?

9 A THAT IS ALL HE APPEARED TO WANT TO KNOW ABOUT.

10 Q BANK ACCOUNTS, BANK DEPOSITS, SAFE DEPOSIT
11 BOXES?

12 A RIGHT.

13 Q WHAT ELSE?

14 A THEN HE SAID THAT HE WANTED -- HE KNEW THAT --
15 HE USED THE PAST TENSE. HE SAID THAT HE KNEW THAT HIS
16 FATHER LOVED ME.

17 Q WHEN HE SAID THAT, WHAT DID YOU DO?

18 A I PICKED IT UP RIGHT AWAY. AND I REACTED.
19 I SAID, "WHAT DO YOU MEAN PAST?" I SAID, "WHAT DO YOU
20 KNOW THAT YOU ARE NOT TELLING ME? YOU KNOW WHERE YOUR
21 FATHER IS?"

22 Q AND WHAT HAPPENED? WHAT DID HE SAY?

23 A (THERE WAS NO AUDIBLE RESPONSE.)

24 THE COURT: ARE YOU ALL RIGHT NOW?

25 THE WITNESS: YES.

26 THE COURT: YOU WERE TALKING ABOUT THE PAST TENSE.
27 YOU WERE TALKING ABOUT WHAT HE SAID. TELL US MORE ABOUT
28 THAT.

1 THE WITNESS: AT THAT TIME, HE LEANED BACK IN HIS
2 CHAIR AND HE SAID, "WELL, I MADE A MISTAKE. I MEAN, HE
3 LOVES YOU."

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1 Q BY MR. WAPNER: WAS THERE ANYTHING FURTHER
2 SAID ABOUT THAT SUBJECT AT THAT TIME?

3 A NO.

4 Q AND HOW LONG WERE THE TWO OF THEM THERE THAT
5 NIGHT, THAT DAY?

6 A APPROXIMATELY HALF AN HOUR OR 45 MINUTES.

7 Q WAS THERE ANYTHING SAID BY EITHER ONE OF THEM
8 ABOUT ANY LEGAL DEVICES TO ATTEMPT TO GET AHOLD OF MR.
9 ESLAMINIA'S ASSETS?

10 A AT THAT PARTICULAR TIME, HE WAS NOT TALKING
11 ABOUT LEGAL ANYTHING.

12 HE ASSUMED THAT BECAUSE -- HE ASSUMED BECAUSE
13 HE SAID HE WAS THERE TO TAKE CARE OF ME AND THAT HE KNOWS
14 THAT HIS FATHER LOVED ME -- BUT HE USED LOVE ME NOW --
15 HE SAID "LOVED YOU" AND THEN HE SAID, "I AM HERE TO TAKE
16 CARE OF YOU," YOU KNOW. "DON'T WORRY. CAN I STAY HERE
17 TONIGHT?"

18 Q WHAT DID YOU TELL HIM?

19 A NO.

20 Q AND DID HE AND MR. HUNT LEAVE?

21 A THEY LEFT, YES.

22 Q AND DID YOU SEE REZA AGAIN AT SOME POINT AFTER
23 THAT?

24 A YES. I SAW REZA QUITE A FEW TIMES AFTER THAT.

25 Q DO YOU RECALL WHEN WAS THE NEXT TIME THAT
26 YOU SAW HIM?

27 A AT THE 7-ELEVEN.

28 Q THAT IS THE SAME 7-ELEVEN CONVENIENCE STORE

1 YOU TOLD US ABOUT THAT IS AT THE CORNER OF DAVEY GLEN
2 ROAD AND EL CAMINO REAL BOULEVARD?

3 A YES.

4 Q WHEN YOU SAW HIM THERE, WAS HE BY HIMSELF
5 OR WITH SOME OTHER PEOPLE?

6 A HE DROVE UP. HE WAS DRIVING HIS FATHER'S
7 CAR.

8 THE COURT: WAS HIS FATHER'S CAR THE GOLD PORSCHE?

9 THE WITNESS: NO. AT THIS TIME HE WAS DRIVING A
10 BLUE CADILLAC.

11 THE COURT: THAT WAS HIS FATHER'S CAR?

12 THE WITNESS: YES.

13 Q BY MR. WAPNER: AT THE TIME ON JULY THE 30TH
14 WHEN YOU CAME BACK FROM WORK, DID YOU CHECK TO SEE WHETHER
15 HADAYET ESLAMINIA'S CAR WAS WHERE IT NORMALLY WAS KEPT?

16 A OKAY. HIS CAR WAS PARKED IN HIS SPOT IN THE
17 GARAGE. I FORGOT TO MENTION THAT HIS KEYS WERE MISSING.
18 BUT HIS WALLET WITH HIS MONEY WAS IN HIS DRAWER.

19 Q THE CAR KEYS WERE MISSING?

20 A THE HOUSE KEYS, THE CAR KEYS AND EVERYTHING
21 THAT WAS TOGETHER WAS MISSING.

3-1
1 Q WHERE DID HE NORMALLY KEEP THE HOUSE AND CAR KEYS?

2 A ON TOP OF THE DRESSER IN HIS LITTLE KIND OF
3 ASHTRAY.

4 Q WAS THERE ANY SIGN OF FORCED ENTRY, BROKEN WINDOWS
5 OR BROKEN DOORS OR LOCKS, WHEN YOU RETURNED HOME ON JULY 30TH?

6 A NO.

7 Q DO YOU KNOW HOW REZA GOT HOLD OF THE CAR, HOW
8 HE GOT HOLD OF HIS FATHER'S CAR?

9 A NOW I RECALL.

10 AT THAT POINT, HE CAME TO THE APARTMENT WITH HIS
11 LAWYER, ADELMAN, AND A FEW OTHER GUYS.

12 THE COURT: WHAT IS HIS NAME?

13 THE WITNESS: ADELMAN.

14 Q BY MR. WAPNER: NEIL ADELMAN?

15 A NEIL ADELMAN.

16 Q HOW DO YOU KNOW THEY HAD COME TO THE APARTMENT?

17 A THEY WERE RIGHT -- I WAS COMING HOME.

18 Q COMING HOME FROM WORK?

19 A NO.

20 MY BOSS GAVE ME THREE WEEKS VACATION BECAUSE OF
21 WHAT WAS GOING ON AND I CAME HOME AND REZA AND HIS ATTORNEY
22 AT THAT TIME AND THE SHERIFF -- I MEAN THE POLICE OFFICER,
23 AND THESE OTHER GUYS I CAN'T IDENTIFY, I STILL CANNOT. I
24 STILL DON'T KNOW WHO THEY ARE.

25 Q WAS THIS IN THE -- STRIKE THAT.

26 THE ATTORNEY WAS NEIL ADELMAN WHO WAS THERE?

27 A YES.

28 Q AND WHEN YOU SAY YOU CAME HOME, WHAT TIME OF DAY

3-7
1 WAS IT?

2 A IT WAS SOMETIME IN THE AFTERNOON.

3 Q WHERE WERE THESE PEOPLE WHEN YOU SAW THEM?

4 A THEY WERE RIGHT AT MY DOOR.

5 I COULDN'T BELIEVE IT.

6 THEY HAD THE LOCKSMITH THERE. THEY WERE GOING
7 INSIDE MY APARTMENT, NEIL ADELMAN.

8 I SAID, "YOU CAN'T DO THIS."

9 HE SAYS, "I HAVE GOT THE PAPERS RIGHT HERE. YOU
10 IGNORED MY REQUEST TO TALK TO YOU ABOUT HADAYET ESLAMINIA'S
11 ASSETS SO WE ARE HERE TO FIND OUT WHAT IS -- WHAT BELONGS
12 TO HIM."

13 Q DID HE SHOW YOU SOME PAPERS?

14 A YES.

15 Q WHAT TYPE?

16 A YES, AND HE ASKED ME AND I READ THEM.

17 Q WHAT TYPE OF PAPERS DID HE HAVE?

18 A I DON'T REMEMBER BUT THEY WERE SOME SORT OF LEGAL
19 DOCUMENTS, STATING THAT WAS EXACTLY, HE HAD THE RIGHT TO DO
20 WHAT HE WAS DOING.

21 Q DID IT HAVE TO DO WITH THE CONSERVATORSHIP THAT
22 HAD BEEN OBTAINED WHERE REZA HAD BEEN MADE THE CONSERVATOR?

23 A YES.

24 Q WELL, WHAT HAPPENED WHEN YOU GOT THERE? DID YOU
25 LET THEM IN OR DID THEY GET IN THROUGH THE LOCKSMITH, WHAT
26 HAPPENED?

27 A I -- I DIDN'T BUDGE. I JUST --

28 THEY JUST GOT THE LOCKSMITH TO OPEN THE DOOR.

3-7
1 Q AND AFTER THE LOCKSMITH OPENED THE DOOR, WHAT
2 HAPPENED?

3 A THEY -- AT THAT TIME, THE POLICEMEN, THE POLICE
4 OFFICERS WERE NOT PRESENT AND I -- I INSISTED THAT POLICE
5 OFFICERS BE PRESENT, SO THEY WAITED UNTIL THE POLICE OFFICERS
6 ARRIVED, A COUPLE OF THEM.

7 AND THEN THEY WENT DIRECTLY INTO HADAYET'S AND
8 MY ROOM.

9 Q WHO WENT INTO THE ROOM?

10 A ALL OF THEM.

11 Q BESIDES REZA AND THE ATTORNEY, DO YOU KNOW WHO
12 ANY OF THOSE PEOPLE WERE?

13 A NO.

14 Q DID YOU SUBSEQUENTLY FIND OUT WHO JIM PITTMAN
15 OR JIM GRAHAM WAS AND WHO ARBEN DOSTI WAS?

16 A YES.
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1 Q WERE ANY OF THE PEOPLE THAT WERE WITH REZA EITHER
2 ARBEN DOSTI OR JIM GRAHAM?

3 A NO.

4 Q HOW MANY PEOPLE WERE WITH HIM?

5 A I ONLY REMEMBER ONE THAT LOOKED AS IF HE WAS IN
6 BETWEEN IRANIAN AND INDIAN AND HE INTRODUCED HIMSELF AS HIS
7 ASSOCIATE, A LAWYER, SORT OF AN ATTORNEY ASSISTANT, AN
8 ASSISTANT TO NEIL ADELMAN, I BELIEVE, SOMETHING LIKE THAT.

9 Q WAS HE DARK-COMPLECTED?

10 A YES.

11 Q AND WHEN THEY CAME INTO THE APARTMENT, WHAT DID
12 THEY DO?

13 A WELL, REZA WAS -- HAD PERMISSION TO LOOK FOR WHAT--
14 EVER HE WANTED TO LOOK FOR AND HE WAS LOOKING FOR MONEY AND
15 STUFF LIKE THAT.

16 Q HOW DO YOU KNOW THAT?

17 A BECAUSE HE WAS GOING BEHIND THE DRESSERS AND
18 PULLING OUT THE PANEL, AND I MEAN HE WAS REALLY ACTING LIKE
19 A PRO. HE WAS LOOKING IN CORNERS AND I MEAN HE FOUND THINGS
20 THAT I WOULD NEVER THINK THEY WOULD BE HIDDEN THERE.

21 Q WHAT TYPES OF THINGS DID YOU SEE HIM FIND?

22 A TRAVELER'S CHECKS, \$2,000 ABOUT. THAT IS ALL
23 HE FOUND. THAT IS ALL.

24 HADAYET DIDN'T HAVE ANYTHING.

25 Q HOW LONG DID THEY SPEND IN THE APARTMENT AT THAT
26 TIME?

27 A THAT TOOK A LITTLE TIME BECAUSE THEY -- I THINK
28 BECAUSE ADELMAN WAS WRITING A LIST OF THE THINGS THAT HE WAS

33-5
1 REMOVING FROM THE APARTMENT. THE POLICE OFFICERS WERE THERE
2 TRYING TO CALM EVERYBODY DOWN. APPROXIMATELY HALF AN HOUR,
3 45 MINUTES, AN HOUR.

4 Q DO YOU REMEMBER APPROXIMATELY WHEN THAT WAS IN
5 RELATION TO THE AUGUST THE 5TH TIME WHEN YOU FIRST SAW REZA
6 AND JOE HUNT?

7 A NEIL ADELMAN CALLED ME, MAYBE FOR TWO DAYS, AND
8 THEN BOOM, HE WAS THERE, ADELMAN WAS THERE WITH REZA.

9 Q AND ONE OF THE REASONS THAT YOU WERE ABLE TO RECALL
10 THIS IN THE SEQUENCE OF TIME HAD TO DO WITH THE CAR; DID
11 ANYTHING HAPPEN WITH THE CAR AT THAT TIME?

12 A THAT'S RIGHT, BECAUSE AT THAT TIME REZA WAS
13 DRIVING HADAYET'S CAR AND HE COULDN'T TOUCH THAT CAR UNTIL
14 HE HAD THE PAPERS SAYING THAT.

15 THAT WAS THE TIME THAT HE STARTED TO REMOVE THINGS
16 FROM THE PLACE.

17 Q OKAY, LET'S BACK UP BECAUSE YOU SAID AT THAT TIME
18 HE WAS DRIVING THE CAR AND I DON'T KNOW IF THAT IS REALLY
19 CLEAR.

20 A THE TIME AT THE 7-ELEVEN.

21 Q AT THE TIME AT THE 7-ELEVEN, HE WAS DRIVING THE
22 CAR?

23 A YES.

24 Q THAT IS HIS FATHER'S CADILLAC?

25 A THAT IS HIS FATHER'S, YES.

26 Q HAD HE BEEN DRIVING HIS FATHER'S CADILLAC BEFORE
27 YOU SAW REZA AND NEIL ADELMAN AND THESE OTHER PEOPLE IN THE
28 HALLWAY OF THE APARTMENT BUILDING?

33-6
1 A NO.

2 Q DID REZA DO SOMETHING WITH REGARD TO HIS FATHER'S
3 CAR AT THAT TIME, THAT DAY WHEN YOU SAW THEM IN THE HALLWAY?

4 A YES.

5 WELL, ARBEN DOSTI DROVE THE CAR OUT, BECAUSE
6 REZA, HE DIDN'T HAVE A LICENSE.

7 Q DROVE THE CAR OUT OF WHERE?

8 A OUT OF THE GARAGE.

9 Q THAT SAME DAY?

10 A THAT SAME DAY, WHERE THEY REMOVED THE TRAVELER'S
11 CHECKS AND THE CAR AND --

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34A-1

1 Q OKAY. MAYBE I AM A LITTLE CONFUSED. DID MR.
2 DOSTI SHOW UP AT SOME POINT LATER OR WAS HE THERE --

3 A I --

4 THE COURT: I THOUGHT YOU TOLD US THAT THE GOLD
5 PORSCHE WAS BEING DRIVEN BY REZA. DID HE HAVE A LICENSE
6 AT THAT TIME?

7 THE WITNESS: FROM WHAT I UNDERSTAND, THE POLICE
8 OFFICER TOLD ME THAT HE DID NOT HAVE A LICENSE TO DRIVE
9 A CAR. AND THAT IS WHY I CALLED THE POLICE OFFICER AT
10 THE 7-ELEVEN AND TOLD THEM, WELL, COULD THEY SEND SOMEBODY
11 BECAUSE HE WAS DRIVING HIS FATHER'S CAR AND HE IS NOT
12 SUPPOSED TO. I MEAN, I WAS JUST --

13 Q BY MR. WAPNER: BUT DID YOU SEE SOMEONE --

14 A I WAS TRYING TO GET A POLICE OFFICER THERE
15 AND --

16 Q DID YOU SEE SOMEONE DRIVE THE CADILLAC OUT
17 OF THE CONDOMINIUM GARAGE THE SAME DAY THAT THEY WERE
18 THERE WITH NEIL ADELMAN?

19 A YES.

20 THE COURT: BUT YOU SAID BEN DOSTI --

21 THE WITNESS: HE WAS THERE. HE WAS THERE.

22 Q BY MR. WAPNER: DO YOU RECOGNIZE THE PERSON
23 DEPICTED IN THE PHOTOGRAPH AS PEOPLE'S 13?

24 A YES.

25 Q WHO IS THAT?

26 A MR. DOSTI.

27 Q HOW LONG AFTER THIS TIME WHEN THEY WERE ALL
28 IN THE APARTMENT WAS IT THAT YOU SAW THEM AGAIN AT THE

1 7-ELEVEN?

2 A I SAW THEM THE DAY THAT THE -- THE DAY BEFORE
3 DOSTI, MR. DOSTI HANDED OVER A DEPOSITION -- SERVED ME
4 TO SHOW UP FOR A DEPOSITION THE FOLLOWING DAY, WHICH WAS,
5 I BELIEVE, ON A THURSDAY.

6 Q LET'S BACK UP FOR A SECOND. DID MR. DOSTI
7 GIVE YOU A SUBPOENA TO APPEAR AT A DEPOSITION?

8 A YES.

9 Q AND DID HE DO THAT AT THE 7-ELEVEN?

10 A YES.

11 Q DID HE GIVE YOU THAT SUBPOENA FOR THE DEPOSITION
12 THE DAY YOU WERE SUPPOSED TO APPEAR?

13 A YES.

14 Q SO HE GAVE YOU A SUBPOENA AND SAID, "HERE'S
15 THE SUBPOENA. YOU HAVE TO APPEAR TOMORROW"?

16 A HE SAID, "HERE, PRINCESS."

17 Q AND THAT WAS DONE AT THE 7-ELEVEN?

18 A AT THAT TIME, I HAD -- I MEAN, I WAS TALKING
19 TO AN ATTORNEY. AND SHE MADE A FEW PHONE CALLS. AND
20 SHE TOLD ME THAT IT WAS GOING TO HAPPEN ON FRIDAY.

21 Q THAT THE DEPOSITION WAS GOING TO HAPPEN?

22 A THE DEPOSITION WAS GOING TO HAPPEN ON FRIDAY,
23 TO EXPECT THE PAPERS TO BE SERVED ON ME.

24 Q HOW WAS IT THAT YOU HAPPENED TO SEE MR. --
25 WELL, STRIKE THAT.

26 WHO DID YOU SEE AT THE 7-ELEVEN BESIDES MR.
27 DOSTI?

28 A REZA.

1 Q HOW WAS IT THAT YOU HAPPENED TO SEE THEM THERE?

2 A REZA WAS DRIVING HIS FATHER'S CAR, A BLUE
3 CADILLAC. DOSTI WAS ON THE PASSENGER SIDE. I HAD GONE
4 TO 7-ELEVEN BECAUSE I WAS FRIGHTENED BECAUSE I WALKED
5 INTO MY APARTMENT AND MY GIRLFRIEND'S BIRD WAS FLYING
6 AROUND IN THERE.

7 AND I DIDN'T THINK SHE WOULD LEAVE THE APARTMENT
8 WITHOUT PUTTING THE BIRD IN THE CAGE. AND SO I WENT DOWN
9 TO THE 7-ELEVEN TO CALL THE POLICE BECAUSE I WAS SCARED.

10 AND AT THAT TIME, I SAW REZA DRIVING HIS FATHER'S
11 BLUE CADILLAC WITH MR. DOSTI SITTING IN THE PASSENGER
12 SIDE.

13 Q WHAT HAPPENED WHEN YOU --

14 A I WAS SPEAKING WITH LIEUTENANT GULART.

15 THE COURT REPORTER: HOW DO YOU SPELL THAT?

16 MR. WAPNER: G-U-L-A-R-T.

17 Q NOW, YOU HAD LEFT THE APARTMENT TO GO CALL
18 THE POLICE, CORRECT?

19 A YES.

20 Q AND WERE YOU ON THE PHONE -- LET ME FINISH
21 MY QUESTION BEFORE YOU GIVE THE ANSWER BECAUSE THIS LADY
22 CAN'T WRITE US BOTH AT THE SAME TIME.

23 WERE YOU ON THE PHONE TALKING TO THE PERSON
24 FROM THE POLICE DEPARTMENT AT THE TIME THAT YOU SAW REZA
25 AND BEN DOSTI IN THE BLUE CADILLAC?

26 A EXACTLY.

34B 27

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4P-1
1 Q AND WHAT HAPPENED IS YOU WERE ON THE PHONE AND
2 THE CADILLAC CAME BACK?

3 A I TOLD THE SERGEANT THAT REZA WAS DRIVING HIS
4 FATHER'S CAR AND THAT HE DIDN'T HAVE A LICENSE. AND THEY
5 SAID THAT BY THE TIME THEY GOT DOWN THERE, REZA WOULDN'T BE
6 DRIVING THE CAR, SO THERE WAS NO SENSE IN THEM COMING DOWN
7 THERE.

8 SO AT THAT TIME, I WAS NOT LOOKING AT THEM ANY
9 MORE. ALL OF A SUDDEN, THEY SWITCHED. DOSTI, MR. DOSTI
10 WAS DRIVING THE CADILLAC AND DROVE THE CADILLAC RIGHT INSIDE
11 THE PARKING LOT OF THE 7-ELEVEN WHILE I WAS STILL ON THE
12 TELEPHONE.

13 Q DID YOU HAVE SOME WORDS WITH REZA AND BEN DOSTI
14 AT THE TIME?

15 A YES. AT THAT TIME, WHEN I WAS ON THE PHONE WITH
16 SERGEANT GULART, MR. DOSTI CAME UP TO ME AND SAID, "HERE,
17 PRINCESS."

18 AND I TURNED AROUND AND I WAS PREPARED FOR IT.
19 I SAID, "I ALREADY KNOW WHAT THESE PAPERS ARE FOR. I WILL
20 BE THERE TOMORROW."

21 HE LOOKED SORT OF STARTLED.

22 Q AND DID YOU HAVE SOME WORDS WITH REZA?

23 A I DID.

24 Q WHAT WAS THAT ABOUT?

25 A I DON'T KNOW AT WHICH POINT, BUT HE STARTED TO
26 ACCUSE HIS FATHER OF DRUG SMUGGLING -- DRUG SMUGGLING, PRETTY
27 MUCH DOING THAT.

28 Q WHAT DID YOU SAY?

34P-2
1 A I WAS ARGUING WITH HIM AT THE 7-ELEVEN. I WAS
2 TELLING HIM THAT IF I HAVE ANYTHING TO DO WITH IT, HE IS NOT
3 GOING TO HAVE CONSERVATORSHIP.

4 AND THEN HE STARTED TO SAY THINGS LIKE, "YEAH,
5 YOU AND MY FATHER WERE SMUGGLING DRUGS. WHAT ABOUT THE TIME
6 IN LOS ANGELES WHEN YOU WERE CAUGHT?" AND HE WAS SAYING THINGS
7 LIKE THAT.

8 I SAID, "HOW CAN YOU SAY THAT ABOUT YOUR OWN
9 FATHER?" AND HE SAID THAT IT WAS TRUE. THAT HE HAD NO HEART
10 WHATSOEVER.

11 Q SO AFTER YOU HAD THIS DISCUSSION WITH HIM, DID
12 YOU LEAVE FOR A SHORT PERIOD OF TIME?

13 A YES. I DID LEAVE. AND I WAS SO UPSET. I WENT
14 JUST --

15 Q HOW FAR DID YOU GET?

16 A JUST UP THE BLOCK.

17 Q WHAT DID YOU DO AFTER THAT?

18 A I TURNED BACK AROUND AND I DROVE BACK TO THE
19 7-ELEVEN TO GIVE HIM SOME MORE.

20 Q WHEN YOU GOT BACK THERE, WHAT HAPPENED? DID YOU
21 CONTINUE TO DISCUSS THIS WITH HIM?

22 A YEAH. AND AT THAT TIME, WE WERE REALLY YELLING
23 AT EACH OTHER.

24 Q DID SOMEONE INTERVENE AT THAT POINT?

25 A YEAH. THIS GUY AT THAT TIME, I DIDN'T KNOW HIM.
26 BUT NOW I KNOW HIM BY PITTMAN.

27 HE ASKED ME IF THESE GUYS WERE BOTHERING ME.

28 Q WHERE DID HE COME FROM?

54-3
1 A HE JUST CAME OUT OF THE BLUE. HE HAD A DRINK
2 FROM THE 7-ELEVEN.

3 Q DID HE COME OUT OF THE STORE OR SOMEWHERE IN THE
4 PARKING LOT?

5 A HE WAS JUST THERE. I DON'T REMEMBER IF HE CAME
6 OUT OF THE DOOR OR HE WAS JUST THERE IN FRONT.

7 Q WHAT DID HE DO OR SAY?

8 A HE ASKED ME IF THESE GUYS WERE BOTHERING ME.

9 Q WHAT DID YOU SAY?

10 A WELL, I SAID YES.

11 Q WHAT DID HE DO?

12 A WELL, YOU KNOW, HE SAID, "ARE YOU BOTHERING THIS
13 LADY? ARE YOU BOTHERING THIS LADY?"

14 Q HE SAID THAT TO THEM?

15 A YEAH.

16 Q THAT IS TO BEN DOSTI AND TO REZA?

17 A AND REZA.

18 Q WHAT HAPPENED AFTER HE SAID THAT TO THEM?

19 A I JUST REMEMBER THAT I WAS JUST TOTALLY PLEASED
20 THAT I HAD SOMEBODY THERE PROTECTING ME.

21 HE TOOK REZA BY THE SHOULDERS AND THREW HIM ON
22 TOP OF THE CAR, OF HIS FATHER'S CAR.

23 Q WHAT DID HE SAY WHEN HE THREW HIM ON TOP OF THE
24 CAR?

25 A REZA STUCK HIS FINGER OUT, YOU KNOW.

26 Q THE MIDDLE FINGER OF ONE HAND EXTENDED?

27 A YES.

28 Q ALL RIGHT. AND WHAT DID MR. PITTMAN DO AFTER

34B-4

1 HE PUT REZA ON THE CAR?

2 A DOSTI, MR. DOSTI WAS TALKING IN A VERY LEGAL MANNER
3 LIKE, "I AM GOING TO GET MY LAWYER. I AM AN ATTORNEY" OR
4 "I AM GOING TO GET MY LAWYER AFTER YOU."

5 AND THEN PITTMAN, MR. PITTMAN TURNED AROUND AND
6 HE GOES, "IS THAT TRUE? DO THEY HAVE A LAWYER?"

7 I SAID, "NO. DON'T LISTEN TO THEM."

8 SO, I WENT INSIDE MY CAR AND MR. PITTMAN FOLLOWED
9 ME.

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35 1 Q LET ME STOP YOU FOR ONE SECOND.

2 WHAT HAPPENED TO MR. DOSTI AND REZA ESLAMINIA?

3 A THEY DROVE OFF RIGHT THEN AND THERE.

4 Q AND THEN IS THAT WHEN YOU WENT TO YOUR CAR?

5 A YES.

6 Q AND MR. PITTMAN FOLLOWED YOU?

7 A I THANKED HIM. I SAID "THANK YOU SO MUCH, YOU
8 KNOW. THANK YOU. THANK YOU." YOU KNOW, AND THEN I WENT
9 INSIDE MY CAR.

10 Q WHAT HAPPENED WHEN YOU GOT INTO YOUR CAR?

11 A IT WAS A VERY WARM DAY SO MY WINDOWS WERE DOWN
12 AND HE CAME UP TO MY CAR AND LEANED ON IT.

13 Q WHO DID?

14 A MR. PITTMAN.

15 AND HE SAID, YOU KNOW, "WHAT IS YOUR NAME?"

16 Q LET ME STOP YOU FOR ONE SECOND.

17 DO YOU RECOGNIZE THE PERSON DEPICTED IN 175 FOR
18 IDENTIFICATION?

19 A YES.

20 Q WHO IS THAT?

21 A PITTMAN.

22 Q WHEN HE CAME UP TO YOUR CAR, DID HE HAVE HIS ARMS
23 ON THE --

24 A ON MY DOOR.

25 Q -- THE WINDOW LEDGE OF THE DOOR?

26 A RIGHT.

27 Q AND WHAT HAPPENED?

28 A HE -- HE ASKED ME WHAT MY NAME WAS AND WAS VERY

1 SMOOTH, YOU KNOW, ASKING ME IF I WANTED TO GO OUT TO LUNCH,
2 WHERE DO I LIVE. NOT IN THAT ORDER. BUT THOSE TYPES OF
3 QUESTIONS.

4 Q WHAT DID YOU DO OR SAY?

5 A I ALMOST SAID YES. I ALMOST DID BECAUSE I WAS
6 THANKFUL FOR WHAT HE DID.

7 BUT I SAID NO -- I DIDN'T SAY NO. I JUST SAID
8 "NO THANKS. I REALLY APPRECIATE IT" AND TRIED TO SNEAK OUT
9 OF IT.

10 Q DID YOU EVER GIVE HIM YOUR NAME OR YOUR PHONE
11 NUMBER OR YOUR ADDRESS OR ANYTHING?

12 A NO. THANK GOD.

13 Q DID YOU EVER HAVE ANY CONTACT WITH MR. PITTMAN
14 AFTER THAT?

15 A NO.

16 THE COURT: WELL, I THINK IT IS THE ADJOURNMENT HOUR.
17 LADIES AND GENTLEMEN OF THE JURY, WE WILL TAKE AN ADJOURNMENT
18 AT THIS TIME UNTIL TOMORROW MORNING AS USUAL AT 10:30.

19 AND GOOD NIGHT.

20 (AT 4:30 P.M. AN ADJOURNMENT WAS TAKEN
21 UNTIL THURSDAY, MAY 14, 1987, AT 10:30 A.M.)
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