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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 101 HON. J. STEPHEN CZULEGER, JUDGE

IN RE)
JOSEPH HUNT)
ON HABEAS CORPUS.) NO. A 090435

REPORTERS' DAILY TRANSCRIPT
VOLUME 12
TUESDAY, MAY 14, 1996
PAGE 2010 THROUGH 2192, INCL.

APPEARANCES:

FOR THE PETITIONER
JOSEPH HUNT:

ROWAN KLEIN
ATTORNEY AT LAW
3201 WILSHIRE BOULEVARD
SUITE 312
SANTA MONICA, CALIFORNIA 90403
AND
MICHAEL CRAIN
ATTORNEY AT LAW
3201 WILSHIRE BOULEVARD
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SANTA MONICA, CALIFORNIA 90403

FOR THE RESPONDENT
THE PEOPLE OF THE
STATE OF CALIFORNIA:

GIL GARCETTI
DISTRICT ATTORNEY
BY: ANDREW MC MULLEN, DEPUTY
AND
IMOGENE KATAYANA, DEPUTY
18000 CRIMINAL COURTS BUILDING
210 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

COPY

M. HELEN THEISS, CSR, #2264
PAUL RUNYON, CSR, #8797
OFFICIAL COURT REPORTER



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2
1 LOS ANGELES, CALIFORNIA, TUESDAY, MAY 14, 1996

2 9:15 A. M.

3 DEPARTMENT NO. 101 HON. J. STEPHEN CZULEGER, JUDGE

4
5 APPEARANCES:

6 THE PETITIONER, JOSEPH HUNT, WITH HIS COUNSEL,
7 MICHAEL CRAIN, BAR PANEL APPOINTMENT; AND ROWAN
8 KLEIN, BAR PANEL APPOINTMENT; ANDREW MC MULLEN,
9 DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY;
10 IMOGENE KATAYAMA, DEPUTY DISTRICT ATTORNEY OF LOS
11 ANGELES COUNTY, REPRESENTING THE PEOPLE OF THE
12 STATE OF CALIFORNIA.

13
14 (M. HELEN THEISS, CSR #2264, OFFICIAL REPORTER.)

15
16 (PAUL RUNYON, CSR #8797, OFFICIAL REPORTER.)

17
18 THE COURT: ALL RIGHT.

19 IN THE MATTER OF JOSEPH HUNT, THE RECORD WILL
20 REFLECT ALL COUNSEL ARE PRESENT. PETITIONER IS PRESENT.

21 BEFORE WE BEGIN THERE HAS BEEN A MOTION FILED
22 ON BEHALF OF WITNESS ARTHUR BARENS TO QUASH PETITIONER'S
23 SUBPOENA DUCES TECUM.

24 COUNSEL, PLEASE MAKE YOUR APPEARANCES FOR THE
25 RECORD.

26 MR. BRODEY: GOOD MORNING, YOUR HONOR. I'M
27 APPEARING ON BEHALF OF ARTHUR BARENS AND ALSO JASON ROSS
28 IN A MOTION TO QUASH THE SUBPOENA. MR. ROSS WAS THE PARTY

2

1 WHO WAS SERVED WITH THE S.D.T..

2 THE COURT: I HAVE READ AND CONSIDERED THE MOTION.
3 I HAVE LOOKED AT THE SUBPOENA. DID I RETURN IT TO YOU?

4 MR. BRODEY: NO, YOU DIDN'T.

5 THE COURT: SORRY, I MUST HAVE LEFT IT ON MY DESK.
6 I FOUND IT. IT IS HERE.

7 YOUR MOTION.

8 MR. BRODEY: THANK YOU, YOUR HONOR.

9 YOUR HONOR, THIS IS A SUBPOENA THAT WAS
10 ISSUED IN AN EFFORT TO LOCATE SOME MATERIAL TO FURTHER
11 THROW MUD ON MR. BARENS. IT'S A FISHING EXPEDITION. THEY
12 HAVE NO IDEA WHAT IS CONTAINED IN ANY OF THESE DOCUMENTS.
13 THEIR DECLARATION REALLY REFLECTS THAT THEY DON'T HAVE ANY
14 IDEA. THEY'RE JUST HOPING THAT MAY BE SOMETHING WILL COME
15 OUT TO HELP THEM.

16 THERE IS NOTHING SPECIFIC OR CONCRETE IN IT.
17 I BELIEVE THAT UNDER -- UNDER JOHNSON, WHICH WE CITED HERE
18 AND ALSO THE 7-UP BOTTLING CASE, THAT CAUSES THE SUBPOENA
19 TO FAIL BECAUSE IT IS NOT SPECIFIC ENOUGH IN WHAT IT IS
20 REQUESTING.

21 THE 19TH -- SECTION 1985 REQUIRES THAT THE
22 AFFIDAVIT SHALL SET FORTH IN FULL DETAIL THE MATERIALITY
23 OF THE ISSUES INVOLVED IN THE CASE.

24 AND THAT IT ALSO FAILS BECAUSE THE -- IF THEY
25 DON'T KNOW WHAT IS IN THE DOCUMENTS THAT THEY'RE SEEKING,
26 HOW CAN THEY REALLY SHOW HOW IT'S MATERIAL?

27 THEY FAIL ON TWO LEVELS HERE.

28 WE HAVE ALSO SUPPLIED YOU WITH A COPY OF AN

2

1 ORDER, WHICH HAS SEALED THE CASE, AND I DIDN'T FIND ANY
2 AUTHORITY FOR THIS, BUT IT'S -- IT'S MY BELIEF AND
3 UNDERSTANDING THAT IN ORDER FOR THEM, WHO ARE TOTALLY NOT
4 INVOLVED IN THIS CASE IN ANY WAY, SHAPE OR FORM, TO BE
5 ABLE TO USE THESE DOCUMENTS FOR THEIR PURPOSES THEY WOULD
6 HAVE TO APPLY BACK TO THE COURT WHERE THE -- WHERE THE
7 CASE WAS SEALED AND MAKE APPLICATION THERE TO SHOW GOOD
8 CAUSE THERE --

9 THE COURT: OR TO ANY SUPERIOR COURT.

10 MR. BRODEY: -- WHY THE CASE SHOULD BE UNSEALED AND
11 THEY SHOULD HAVE THESE DOCUMENTS.

12 THEY HAVE NOT DONE SO. THEY HAVE NOT
13 SUPPORTED THEIR BURDEN IN ANY WAY, SHAPE OR FORM.

14 FINALLY, THIS IS A CASE THAT WAS A CIVIL CASE
15 INVOLVING MR. BARENS, MR. ROSS AND MR. FLIER. THE CASE
16 ORIGINATED AS A RESULT OF THE BREAK UP OF THE PARTNERSHIP
17 IN 1982. ANYTHING THAT OCCURRED IN THIS CASE OCCURRED
18 PRIOR TO 1982. WHAT POSSIBLE RELEVANCE COULD THIS HAVE TO
19 WHATEVER IS GOING ON BETWEEN MR. BARENS AND MR. HUNT
20 OCCURRING AFTER -- LONG AFTER THE CASE IN 1986, 1987? I
21 DON'T SEE THE RELEVANCE.

22 AND THE ACCUSATION THAT THEY WANT TO SHOW
23 THAT BARENS IS A DISHONEST PERSON IS TOTALLY WITHOUT
24 MERIT. THEY HAVEN'T SHOWN ANYTHING THAT -- ANYTHING --
25 THAT ANYTHING IN THESE FILES WOULD SHOW THAT.

26 EVEN IF THEY DID, I BELIEVE UNDER THE CASE
27 LAW IT'S CERTAINLY NOT RELEVANT IN THIS COURT FOR THE
28 HEARING BEFORE THIS COURT, AND IT IS A -- THEY'RE TRYING

2
1 TO INTRODUCE WHAT WOULD BE REALLY INADMISSIBLE CHARACTER
2 EVIDENCE TO SUPPORT MR. HUNT'S ARGUMENT THAT HE IS -- THAT
3 HE HAS RECEIVED INCOMPETENT REPRESENTATION BY MR. BARENS.

4 THE COURT: ALL RIGHT.

5 MR. KLEIN, MR. CRAIN, WHO'S GOT IT?

6 MR. KLEIN: COULD I JUST HAVE A MINUTE, YOUR HONOR?

7 THE COURT: YES.

8
9 (PAUSE.)

10
11 MR. KLEIN: YES, YOUR HONOR. IN THE SUBPOENA WE
12 REQUEST INFORMATION TO CORROBORATE MATTERS THAT THE COURT
13 AND COUNSEL QUESTIONED MR. HUNT -- MR. HUNT ABOUT RELATING
14 TO MR. BARENS' CHARACTER. IT IS AT ISSUE BECAUSE
15 MR. BARENS TOLD THE COURT THAT HE WAS AN HONEST,
16 FORTHRIGHT ATTORNEY WHO ONLY DID EVERYTHING IN THE BEST
17 EFFORTS OF MR. HUNT.

18 ACCORDING TO MR. HUNT'S TESTIMONY, THERE WAS
19 AN AGREEMENT, A TACIT AGREEMENT AT ONE TIME THAT
20 MR. BARENS WOULD TELL THE TRUTH ABOUT WHAT HE DID AND WHAT
21 HE DIDN'T DO, AND IN RETURN MR. HUNT WOULD NOT REVEAL ANY
22 PERSONAL MATTERS. AS THE COURT IS AWARE --

23 THE COURT: HAS MR. BARENS DENIED ANY OF THOSE
24 PERSONAL ACCUSATIONS LEVELED BY MR. HUNT DEALING WITH
25 WOMEN --

26 MR. KLEIN: NOBODY QUESTIONED --

27 THE COURT: HOLD ON.

28 MR. KLEIN: I'M SORRY.

2

1 THE COURT: DEALING WITH THE WOMEN AND THE PERSONAL
2 PROBLEMS THAT SUPPOSEDLY MR. BARENS HAD. THOSE HAVE NOT
3 BEEN DENIED AT THIS POINT. THERE IS A CONFLICT OVER WHAT
4 WAS SAID.

5 MR. KLEIN: YES.

6 THE COURT: BUT THE PERSONAL ACCUSATIONS, ARE THEY
7 REALLY SOMETHING THAT IS AT ISSUE IN THIS CASE?

8 MR. KLEIN: WELL, EXCUSE ME.

9 WHAT IS IN DISPUTE IS WHAT MR. BARENS
10 CONSIDERS THE ETHICAL OBLIGATION THAT HE HAS TO HIS
11 ATTORNEY -- TO HIS CLIENT, AND IN THAT BROAD CONTEXT, THAT
12 IS WHAT IS AT DISPUTE.

13 MR. BARENS CONTENDS THAT ONLY AT THE LAST
14 MINUTE BEING FORCED BY THIS COURT WOULD HE REVEAL, YOU
15 KNOW, A SUPPOSED STATEMENT MADE BY MR. HUNT TO HIM.
16 NOBODY HAS QUESTIONED MR. BARENS ABOUT THE PERSONAL
17 MATTERS.

18 THERE IS EVIDENCE IN THE DEPOSITION THAT
19 MR. BARENS TOOK THAT WOULD CORROBORATE SOME OF THE
20 PERSONAL ALLEGATIONS THAT WERE TOUCHED ON BY THE COURT
21 WHEN THE COURT QUESTIONED HIM.

22 THE BROADER -- THE OTHER -- ANOTHER ISSUE
23 THAT IT GOES TO IS IT CORROBORATES MR. -- THE EVIDENCE MAY
24 CORROBORATE MR. HUNT'S TESTIMONY THAT MR. BARENS PLACED
25 MORE IMPORTANCE ON ATTENDING TO HIS PERSONAL MATTERS
26 RATHER THAN WORKING ON MR. HUNT'S CASE.

27 THE COURT: WHAT IS YOUR BASIS FOR THAT STATEMENT?

28 MR. KLEIN: MR. HUNT TESTIFIED --

3
1 THE COURT: NO, NO. WHAT IS YOUR BASIS FOR
2 BELIEVING THERE IS SOMETHING IN THESE FILES THAT WOULD
3 SUPPORT THAT STATEMENT?

4 MR. KLEIN: YOUR HONOR, I RECEIVED AN ANONYMOUS
5 CALL THAT TOLD ME THAT THERE WERE THREE ASPECTS THAT COULD
6 BE PROVED IN THIS -- IN THE MATERIALS THAT ARE BEFORE THE
7 COURT. MARITAL INFIDELITIES, USE OF DRUGS AND THEFT OF
8 MONEY, AND IT'S MY BELIEF --

9 THE COURT: THESE ALL AROSE FROM THE LAWSUIT IN
10 1982?

11 MR. KLEIN: YES, YOUR HONOR.

12 IT'S MY UNDERSTANDING THAT MR. BARENS
13 ADMITTED SOME OF THESE ALLEGATIONS OR ALL OF THESE
14 ALLEGATIONS IN THE MATERIALS THAT WERE SEALED BY THE
15 COURT.

16 THE COURT: LET'S ASSUME THAT'S TRUE.

17 MR. KLEIN: OKAY.

18 THE COURT: WHAT DOES THAT GET YOU?

19 MR. KLEIN: WE RECALL MR. BARENS AND WE ASK HIM THE
20 QUESTIONS THAT --

21 THE COURT: DID HE SLEEP AROUND IN 1982?

22 MR. KLEIN: AND IN 1985 AND 1986.

23 THE COURT: DID HE USE DRUGS --

24 MR. KLEIN: AND NOT WORK ON MR. HUNT'S CASE.

25 IS HE A DISHONEST MAN BECAUSE HE STOLE MONEY
26 AND, YOU KNOW, DID HE HAVE OTHER PROBLEMS THAT DIDN'T
27 PERMIT HIM TO WORK ON THIS CASE.

28 ALSO, IT GOES TO THIS ETHICAL QUESTION OF

3
1 WHETHER MR. BARENS REALLY IS TELLING THE COURT THE TRUTH
2 WHEN PUSH COMES TO SHOVE. I WILL TELL THE COURT THAT
3 MR. HUNT MADE THIS PURPORTED STATEMENT WHEN, YOU KNOW,
4 MR. BARENS MAY HAVE NO VERACITY IN FRONT OF THE COURT
5 AFTER THE COURT REVIEWS ALL THESE MATERIALS.

6 THE COURT: YEAH, YOU KNOW, I'M LOOKING AT
7 MR. HUNT'S TESTIMONY. I'M LOOKING AT MR. BARENS'
8 TESTIMONY. BOTH ARE BEING DIRECTED, BOTH ARE BEING
9 CROSS-EXAMINED. I'M THE TRIER OF FACT. I THINK I HAVE A
10 PRETTY GOOD IDEA OF HOW THIS IS GOING TO COME DOWN IN
11 TERMS OF CREDIBILITY.

12 YOU LAID OUT A LOT OF INFORMATION CONCERNING
13 MR. BARENS. THERE'S BEEN SOME ALLEGATIONS AGAINST
14 MR. HUNT. I HAVE ALL THOSE THINGS. LET'S MOVE ASIDE,
15 THOUGH.

16 DO YOU THINK YOU HAVE MADE YOUR SHOWING HERE
17 THAT IS REQUIRED?

18 AND SECOND ISSUE, A SUBPOENA CANNOT BE,
19 OVERCOME A COURT ORDER TO SEAL. OTHERWISE YOU'D NEVER
20 HAVE A COURT ORDER TO SEAL THAT WOULD EVER BE VALID.

21 MR. KLEIN: NO. BUT WHAT THE COURT ORDER SAYS IS
22 NO ONE SHOULD HAVE ACCESS TO THE FILES WITHOUT PRIOR ORDER
23 OF A COURT.

24 THE COURT: YOU DIDN'T MAKE AN APPLICATION FOR THE
25 ORDER?

26 MR. KLEIN: MR. HUNT HAS A DUE PROCESS RIGHT THAT
27 ALLOWS HIM TO PRESENT ANY EVIDENCE THAT IS GOING TO ASSIST
28 HIM IN MEETING HIS BURDEN BEFORE THE COURT. THEY'RE

3
1 MOVING TO QUASH THE SUBPOENA. I'M ASKING THE COURT FOR AN
2 ORDER TO COMPEL THE PRODUCTION OF THE DOCUMENTS THAT WILL
3 ASSIST US IN CORROBORATING MR. HUNT'S TESTIMONY AND
4 PROVING THAT MR. BARENS REALLY IS A MORALLY BANKRUPT
5 PERSON, THAT THE COURT SHOULD PLACE NO WEIGHT ON HIS
6 STATEMENTS. THAT, YOU KNOW, WHEN PUSH COMES TO SHOVE HE
7 IS GOING TO TELL YOU THAT MR. HUNT MADE SOME STATEMENT,
8 WHICH MR. HUNT CLAIMS HE NEVER MADE.

9 THE COURT: YOUR SHOWING FOR ME TO OVERCOME JUDGE
10 FLYNN'S ORDER SEALING IT IS BASED ON AN ANONYMOUS PHONE
11 CALL THAT YOU GOT LAST FRIDAY THAT SAYS YOU'LL FIND SOME
12 HELPFUL STUFF IN THIS STUFF IN THIS FILE. THAT'S
13 BASICALLY --

4
14 MR. KLEIN: WE HAVE SOME STUFF THAT IS SEALED, AND
15 IT DIRECTS THE PARTNERS NOT TO REVEAL IT. THE ONLY WAY WE
16 CAN FIND OUT WHAT IS IN THERE IS -- A SUGGESTION WOULD BE
17 THAT YOUR HONOR REVIEW THE MATERIALS IN CAMERA AND SEE IF
18 THEY HAVE THE MATERIALS THAT WE CLAIM THAT ARE THERE. IF
19 IT'S THERE, THEN IT'S -- IT'S RIGHT TO THE HEART OF MR.
20 BARENS' CREDIBILITY, AND IT WOULD DESTROY
21 MR. BARENS' CREDIBILITY IF WE PROVE THAT HE WAS A THIEF --

22 THE COURT: DON'T YOU HAVE TO HAVE SOME SHOWING
23 BEYOND WHAT YOU HAVE MADE HERE?

24 MR. KLEIN: HOW DO WE HAVE ANY MORE THAN A SHOWING
25 OTHER THAN ALLEGATIONS THAT THESE DOCUMENTS HAVE THIS
26 MATERIAL AND THE FACT THAT THERE IS A COURT ORDER --

27 THE COURT: THAT IS ALL IT IS IS AN ALLEGATION.

28 MR. KLEIN: I UNDERSTAND THAT BUT -- THE DOCUMENTS

4
1 ARE AVAILABLE. THEY MUST HAVE SOMETHING IN THEM THAT
2 SOMEBODY IS CONCERNED ABOUT OR MR. BRODEY WOULDN'T BE HERE
3 ARGUING THAT THE MATERIAL SHOULDN'T BE UNSEALED.

4 THE COURT: ANYTIME SOMEONE OPPOSES A MOTION THAT
5 MUST MEAN THAT THERE IS AN INTEREST AND THE BURDEN OF THE
6 PROPONENT IS AUTOMATICALLY MADE BY THE -- OPPONENT
7 OPPOSING IT.

8 MR. KLEIN: WHAT I SAID IN HERE IS THAT IT WOULD
9 CORROBORATE THE PERSONAL MATTERS THAT MR. HUNT TESTIFIED
10 TO, AND IT WOULD SHOW THAT MR. BARENS IS A DISHONEST MAN.
11 THE ALLEGATIONS ARE THAT HE STOLE MONEY FROM HIS PARTNERS
12 AND THAT HE HAD MARITAL INFIDELITIES AND THAT THERE WAS
13 DRUG USE. THAT IS WHAT I WAS TOLD. RATHER THAN TRYING TO
14 SPELL IT OUT IN THE DECLARATION --

15 THE COURT: DO YOU HAVE ANY IDEA WHO TOLD YOU THAT?

16 MR. KLEIN: NO, YOUR HONOR, THE PERSON REFUSED TO
17 GIVE ME THE NAME. WHAT THE PERSON DID WAS GIVE ME A
18 TELEPHONE NUMBER THAT LED ME TO THE FIRM THAT MR. BARENS
19 USED TO BE A PARTNER IN, AND THAT'S WHERE I ISSUED THE
20 SUBPOENA FOR THE DOCUMENTS. AND I THINK THAT ON THIS
21 SHOWING, AT A MINIMUM, THIS COURT HAS TO LOOK AND SEE IF
22 IT'S THERE.

23 IF IT'S THERE, IT GOES TO THE HEART OF
24 MR. BARENS' CREDIBILITY IN THIS CASE. WE CAN RECALL HIM,
25 ASK HIM IF HE DID THIS, THIS AND THIS, AND THEN ASK HIM
26 THE SAME QUESTIONS CONCERNING 1986 AND '87 DURING THE TIME
27 THAT HE REPRESENTED MR. HUNT, AND THE COURT WILL THEN BE
28 ABLE TO HAVE THE FULL PICTURE OF MR. BARENS' CREDIBILITY.

4

1 THE COURT: PEOPLE WISH TO BE HEARD, TO RESPOND?

2 MR. MC MULLEN: JUST BRIEFLY, YOUR HONOR.

3 WE WOULD JOIN IN MR. BRODEY'S MOTION TO
4 QUASH. WE DEFER TO HIM IN LARGE PART, TO HIS ARGUMENTS.
5 WE JUST LEARNED ABOUT THIS YESTERDAY. JUST LISTENING TO
6 WHAT PEOPLE HAVE BEEN SAYING TODAY IT SEEMS TO ME THAT
7 THIS IS MATERIAL THAT PREDATES THE REPRESENTATION BY
8 MR. BARENS OF MR. HUNT.

9 AND THE WHOLE AREA THAT COUNSEL HAS BEEN
10 REFERRING TO, IT HAS BEEN OUR POSITION THAT -- AS FAR AS
11 THE AMOUNT OF TIME THAT MR. BARENS WAS ABLE TO SPEND ON
12 THE CASE IS REALLY NOT RELEVANT AND NOT RELEVANT TO THE
13 ACTUAL ISSUES THAT YOUR HONOR HAS DESIRED TO HEAR EVIDENCE
14 ON WITH RESPECT TO INEFFECTIVE ASSISTANCE OF COUNSEL.

15 THE COURT: MR. BRODEY, ANY FURTHER COMMENT?

16 MR. BRODEY: YOUR HONOR, THIS IS A -- A PLOY JUST
17 TO EMBARRASS AND HUMILIATE MR. BARENS. THAT'S WHAT THIS
18 IS ABOUT. THIS HAS BEEN MR. HUNT'S DIRECTION DURING
19 THE -- DURING THIS WHOLE HEARING.

20 I THOUGHT THE ISSUES IN THE CASE REALLY DEALT
21 WITH WHY HE DIDN'T CALL CERTAIN WITNESSES AND HIS REASONS
22 FOR NOT CALLING THEM APART FROM HIS PERSONAL LIFE. ALL OF
23 A SUDDEN IT'S BEEN BROADENED OUT INTO HIS PERSONAL LIVE,
24 WHICH I UNDERSTOOD THE COURT HAD ALREADY RULED WAS
25 IRRELEVANT. THIS WOULD --

26 THE COURT: WELL, YOU WEREN'T HERE, BUT THE REASON
27 WAS MR. HUNT'S BELIEF THAT THIS IS THE MOTIVATION FOR
28 MR. BARENS TO MAKE THE STATEMENTS THAT HE DID, THAT IS

4

1 THAT MR. HUNT HAD CONFESSED TO HIM.

2 MR. HUNT -- WHEN ASKED WAS THAT TRUE,
3 MR. HUNT SAID, "NO, THAT CONVERSATION NEVER TOOK PLACE,"
4 AND MR. HUNT THROUGH HIS TESTIMONY WAS ATTEMPTING TO
5 ESTABLISH THAT THERE WAS MOTIVATION FOR MR. BARENS TO LIE
6 BASED ON MR. HUNT'S KNOWLEDGE CONCERNING SOME PERSONAL
7 THINGS AGAINST MR. BARENS. THAT'S HOW THAT CAME IN.

8 MR. BRODEY: IT DOESN'T MAKE ANY -- THAT'S HOW IT
9 CAME IN, BUT IT DOESN'T MAKE ANY SENSE THAT MR. HUNT WOULD
10 LIE -- OR MR. BARENS WOULD LIE BECAUSE MR. HUNT KNEW ABOUT
11 SOME -- SOME OF HIS HISTORY THAT OCCURRED PRIOR TO 1982.
12 THAT MAKES NO SENSE ON WHY MR. BARENS WOULD LIE ABOUT IT.

13 HE WOULD MORE LIKELY BE -- BE BLACKMAILED BY
14 MR. HUNT, AS MR. HUNT WANTS TO DO, AND NOT SAY ANY OF
15 THESE THINGS. THE FACT THAT HE'S TELLING THE TRUTH IS
16 CONFIRMED BY THE STATEMENT THAT MR. HUNT MADE IN FRONT OF
17 20 PEOPLE ON JUNE 24, 1984, WHERE HE ADMITTED THAT HE AND
18 JIM PITTMAN KILLED RON LEVIN. IT'S ALSO CONFIRMED BY MR.
19 PITTMAN HIMSELF WHO ON TELEVISION --

20 THE COURT: WE'RE GETTING INTO THE MERITS OF THINGS
21 NOW.

22 MR. BRODEY: -- MADE THE SAME STATEMENT.

23 NOW, ALL OF A SUDDEN, MR. BARENS IS NOT
24 TELLING THE TRUTH BECAUSE MR. HUNT HAS SOME DIRT ON HIM.
25 I THINK THAT'S UNBELIEVABLE. IT WOULD BE JUST THE
26 OPPOSITE.

27 THIS IS SO FAR AFIELD, AND IT'S SUCH A GREAT
28 INVASION INTO THE PERSONAL LIFE OF MR. BARENS, MR. ROSS

5
1 AND MR. FLIER, THAT IT IS OVERLY BURDENSOME. I DON'T SEE
2 THAT THERE IS ANY CONNECTION BETWEEN WHAT HAPPENED PRIOR
3 TO 1982 AND WHAT HAPPENED IN HUNT'S CASE.

4 I WILL REMIND THE COURT OF THIS, THAT
5 MR. BARENS HAS -- WELL, HAS SAID THAT HE WAS IN ALCOHOLICS
6 ANONYMOUS AND A DRUG PROGRAM FOR REHABILITATION FOR YEARS,
7 AND HE SAID IT TO MR. KLEIN.

8 HE SAYS THAT AT THE TIME OF THE CASE HE
9 WAS -- HE WAS IN THAT, AND IT REALLY WOULD -- SO THERE IS
10 NO ISSUE THAT HE WAS USING DRUGS IN 1986 AND 1987. THAT
11 IS NOT WHAT THE ISSUE IS HERE.

12 THE ISSUE THAT THEY'RE TRYING TO RAISE IS
13 SOME GHOST THAT MAY OCCUR IN HIS PAST AND TRYING TO
14 FURTHER BLEMISH HIS REPETITION, WHICH IS BY ALL STANDARDS
15 REALLY NOT ADMISSIBLE UNDER CIVIL LAW, SPECIFIC ACTS ARE
16 NOT ADMISSIBLE.

17 UNDER CRIMINAL LAW, UNDER 1201 THESE PRIOR
18 STATEMENTS, IF THEY EXIST, OR PRIOR OPINIONS OF ANYBODY
19 WOULDN'T BE ADMISSIBLE EITHER.

20 SO I WOULD ASK THE COURT TO FIND THAT IT'S --
21 THAT WE HAVE ON ALL THREE GROUNDS, THE -- THE GROUND THAT
22 THE ORDER PREVENTS IT, THE GROUND THAT THE -- THE SUBPOENA
23 DOESN'T COMPLY WITH WHAT IS NECESSARY TO SHOW DISCLOSURE
24 AND ALSO ON THE GROUND THAT IT'S NOT RELEVANT BECAUSE IT
25 HAPPENED SO LONG PRIOR TO THE -- THE RELATIONSHIP BETWEEN
26 HUNT AND BARENS, THAT IT'S NOT ADMISSIBLE.

27 IT REALLY IS BEING DONE JUST TO ATTACK
28 MR. BARENS NEEDLESSLY AND UNREASONABLY.

5
1 THE COURT: MR. KLEIN, ANY LAST THOUGHTS?

2 MR. KLEIN: IN CASE THE RECORD IS NOT CLEAR, WE'RE
3 ASKING THIS COURT AS A SUPERIOR COURT TO UNSEAL THESE
4 RECORDS, TO CONDUCT AN IN CAMERA HEARING TO SEE IF THERE
5 IS ANY EVIDENCE THAT WILL SUPPORT ANY OF MR. HUNT'S
6 STATEMENTS THAT MR. BARENS ALLEGEDLY MADE TO HIM.

7 THE BOTTOM LINE IS THIS, YOUR HONOR,
8 MR. BARENS WHEN HE WAS ON THE WITNESS STAND GAVE THIS
9 EXPLANATION LIKE, "OH, YOUR HONOR, I REALLY DON'T WANT TO
10 HAVE TO TELL YOU ABOUT WHAT MR. HUNT SUPPOSEDLY SAID TO
11 ME."

12 THEN IN FURTHER CROSS EXAMINATION ATTEMPTING
13 TO GIVE EXPLANATIONS OF WHY HE DIDN'T -- HE WOULD NOT HAVE
14 PUT ON ANY EVIDENCE OF WHAT KAREN SUE MARMOR TESTIFIED TO,
15 I MEAN, UNDER THE LAW HIS ETHICAL OBLIGATION AT THAT
16 POINT, THERE WOULD HAVE BEEN NO PROBLEM PUTTING ON THAT
17 EVIDENCE, BUT HE IS CREATING A TORTURED EXPLANATION TO TRY
18 AND HARM MR. HUNT.

19 HIS CREDIBILITY, HIS OVERALL CREDIBILITY IS
20 AT THE HEART OF THE ISSUES BEFORE THE COURT VERSUS
21 MR. HUNT'S CREDIBILITY. IF THERE IS EVIDENCE IN THERE
22 THAT MR. BARENS IS A DISHONEST MAN BECAUSE HE STOLE MONEY
23 AND IF THERE IS EVIDENCE TO CORROBORATE THAT -- I MIGHT
24 POINT OUT THAT MY INFORMATION IS THAT THIS CASE WENT ON
25 UNTIL 1987, SO THAT THE STATEMENTS FROM MR. BARENS WOULD
26 BE AS RECENT AS THE TIME THAT THIS CASE WAS GOING ON,
27 AND --

28 THE COURT: THE LAWSUIT AROSE IN 1982; RIGHT?

5 1 MR. KLEIN: THE LAW SUIT AROSE IN 1982.

2 THE COURT: THE CAUSE OF ACTION AND ANY EVIDENCE
3 WOULD EXIST FROM THAT POINT BACKWARDS.

4 MR. KLEIN: YES, YOUR HONOR, BUT THE STATEMENTS MAY
5 HAVE BEEN MADE BY MR. BARENS AS LATE AS 1987, THAT IS WHAT
6 I AM TOLD WHEN HIS DEPOSITION WAS TAKEN. I DON'T -- IT
7 WAS TAKEN IN 1987, WHICH APPARENTLY LED TO THE SETTLEMENT
8 OF THE CASE.

9
10 (A CONFERENCE WAS HELD BETWEEN COUNSEL
11 AND THE PETITIONER, NOT REPORTED.)

12
13 MR. KLEIN: I MEAN, WHAT WE ARE TALKING ABOUT HERE
14 IS THE MANNER IN WHICH MR. BARENS CONDUCTED HIS BUSINESS
15 AS AN ATTORNEY. THE SAME WAY THAT MR. HUNT TOLD THIS
16 COURT HE WAS CONDUCTING IT IN 1985, 1986 AND 1987. IF
17 THERE IS EVIDENCE THAT HE WAS BEHAVING IN THE SAME MANNER
18 IN 1981, 1982 -- 1982 AND THAT, YOU KNOW, THAT HE'S A
19 DISHONEST PERSON, THE COURT NEEDS TO HEAR THIS, AND REVIEW
20 THIS MATERIAL.

21 THE COURT: ALL RIGHT.

22 THE MOTION TO QUASH IS GRANTED. THERE'S BEEN
23 A THOROUGHLY INADEQUATE SHOWING TO SUPPORT THE SUBPOENA
24 THAT'S BEEN ISSUED. IN ANY CASE, A SUBPOENA WOULD NOT BE
25 SUFFICIENT TO OVERCOME A COURT ORDER TO SEAL.

26 IN THE ALTERNATIVE, THE PETITIONER'S -- WHAT
27 I VIEW AS ORAL MOTION AT THIS POINT TO UNSEAL IS
28 THOROUGHLY WITHOUT ANY SUFFICIENT SHOWING. IT IS WILD

6
1 SPECULATION. PUTTING ASIDE THE FACT THAT IT IS
2 SPECULATION AND NOT ANY TYPE OF A SHOWING, EVEN IF A
3 SHOWING WERE MADE, THIS MATTER WOULD APPEAR TO BE
4 COLLATERAL MATTERS THAT ARE NOT OF SUFFICIENT WEIGHT TO
5 WARRANT ANY FURTHER INQUIRY BY THIS COURT.

6 THE MOTION TO QUASH IS DENIED.

7 THE MOTION TO UNSEAL THE FILE IS DENIED -- I
8 MEAN, MOTION TO QUASH IS GRANTED.

9 I MEAN, MOTION TO UNSEAL THE FILE IS DENIED.

10 MR. KLEIN: I AM GOING FILE THE ORIGINAL SUBPOENAS
11 WITH THE COURT.

12 THE COURT: ALL RIGHT.

13 MR. BRODEY: YOUR HONOR, THERE IS SERVICE OF A
14 SUBPOENA TO MR. ROSS FOR APPEARANCE TOMORROW MORNING. IN
15 LIGHT OF THE COURT'S RULING, THERE'S NO --

16 THE COURT: SUBPOENA IS QUASHED.

17 MR. BRODEY: THANK YOU.

18 MR. CRAIN: YOUR HONOR, COULD I ADDRESS THE COURT
19 WITH REGARD TO ONE HOUSEKEEPING MATTER. SINCE THE
20 SUBPOENA WAS SERVED THE MATTERS ARE HERE. I THINK THEY
21 SHOULD BE MAINTAINED BY THE SUPERIOR COURT AS PART OF THE
22 RECORD IN THIS CASE.

23 THE COURT: WHAT?

24 MR. CRAIN: PARDON ME.

25 THE COURT: I DON'T UNDERSTAND. THE FILES YOU
26 MEAN?

27 MR. KLEIN: YES.

28 MR. CRAIN: THE FILES AND ANYTHING THAT SHOULD HAVE

6

1 BEEN DELIVERED PURSUANT TO THE SUBPOENA DUCES TECUM.

2 THE COURT: I HAVE QUASHED THE SUBPOENA.

3 MR. CRAIN: I KNOW THAT, BUT FOR REVIEW BY OTHER
4 COURTS THE MATTERS THAT WERE SUBPOENAED SHOULD BE IN
5 CUSTODY AND REMAIN UNDER SEAL, BUT IN THE CUSTODY OF THE
6 SUPERIOR COURT.

7 THE COURT: I DISAGREE. THE MATTER IS TOTALLY
8 COLLATERAL.

9 MR. CRAIN: I WOULD LIKE TO BRING UP ONE OTHER
10 MATTER.

11 THE COURT: YEAH.

12 MR. CRAIN: WITH THE COURT'S PERMISSION WE'D LIKE
13 TO CALL AS WITNESSES MR. FLIER AND MR. ROSS TO TESTIFY
14 THAT MR. BARENS -- AS CHARACTER WITNESSES TO TESTIFY THAT
15 MR. BARENS, IN THEIR OPINION, AND AS TO REPUTATION IN THE
16 LEGAL COMMUNITY IS KNOWN FOR DISHONESTY AND INCOMPETENCE.

17 THE COURT: MY -- PREVIOUS RULING AS TO DISALLOWING
18 THAT STANDS.

19

20 (PAUSE.)

21

22 THE COURT: IS THIS YOUR WITNESS, MR. MC MULLEN?

23 MR. MC MULLEN: YES, YOUR HONOR.

24

25 IF YOU COULD STEP FORWARD AND WALK TOWARDS
26 THE WITNESS STAND. FACE THE COURT CLERK TO BE SWORN IN,
27 SIR.

27

28

6
1 MICHAEL RAY GAMMON, @
2 CALLED AS A WITNESS BY THE RESPONDENT, WAS SWORN AND
3 TESTIFIED AS FOLLOWS:
4

5 THE WITNESS: MICHAEL RAY GAMMON, G-A-M-M-O-N.

6 THE COURT: YOU MAY INQUIRE.

7 MR. MC MULLEN: THANK YOU.
8

9 DIRECT EXAMINATION @
10

11 BY MR. MC MULLEN:

12 Q SIR, IF YOU COULD JUST SIT BACK AND PULL THE
13 MICROPHONE UNDER YOUR CHIN. PERHAPS YOU'LL BE MORE
14 COMFORTABLE.

15 MR. MC MULLEN: AT THIS TIME WITH THE COURT'S
16 PERMISSION WE'D REQUEST THAT RESPONDENT'S EXHIBIT L BE
17 MARKED FOR IDENTIFICATION. DECLARATION OF MICHAEL RAY.

18 THE COURT: L?

19 MR. MC MULLEN: YES, YOUR HONOR.

20 THE COURT: I WAS TRYING FIND THE WITNESS' NAME.
21 IT'S ALSO UNDER MICHAEL RAY.

22 MR. MC MULLEN: MICHAEL RAY GAMMON.
23

24 (MARKED FOR ID = RESPONDENT'S L,
25 DECLARATION OF MICHAEL RAY GAMMON.)
26

27 THE WITNESS: IT IS MICHAEL RAY GAMMON, BUT BETTER
28 KNOWN TO THE MEDIA AND FRIENDS AS MICHAEL RAY.

6

1 BY MR. MC MULLEN:

2 Q SHOWING YOU WHAT'S BEEN MARKED AS EXHIBIT L
3 FOR IDENTIFICATION. DO YOU RECOGNIZE THAT DECLARATION?

4 A YES, I DO.

5 Q IS THAT YOUR DECLARATION?

6 A YES, IT IS.

7 Q AND IS EVERYTHING THERE IN THAT DECLARATION
8 TRUE AND ACCURATE, SIR?

9 A YES, SIR.

10 Q WHAT IS YOUR OCCUPATION?

11 A I AM AN ASSIGNMENT EDITOR FOR A.B.C. NEWS ON
12 THE WEST COAST.

13 Q HOW LONG HAVE YOU BEEN SO EMPLOYED?

14 A I HAVE BEEN EMPLOYED WITH A.B.C. SINCE 1984.

15 Q DO YOU KNOW CONNIE GERRARD?

16 A YES, I DO.

17 Q WHEN DID YOU FIRST MEET CONNIE GERRARD?

18 A MID '80S. I WAS DATING ONE OF HER DAUGHTERS.

19 Q HAVE YOU EVER ENCOUNTERED CONNIE GERRARD IN
20 CONJUNCTION WITH YOUR EMPLOYMENT?

21 A YES.

22 Q AND HOW IS THAT?

23 A SHE DELIVERED THE VIDEOTAPES FOR HER
24 SON-IN-LAW, WHO HAD A FREELANCE STRINGER SERVICE AT THE
25 TIME.

26 Q SO SHE WOULD BRING IN VIDEOTAPES TO YOU?

27 A CORRECT.

28 Q DO YOU REMEMBER THE BILLIONAIRE BOYS CLUB

6
1 WHEN IT WAS IN TRIAL BACK IN THE MID '80S?

2 A YES, SIR.

3 Q AND DO YOU RECALL THAT WITH RESPECT TO THAT
4 CASE THAT JOE HUNT WAS CONVICTED OF THE MURDER OF RON
5 LEVIN?

6 A YES, SIR.

7 Q SOMETIME AFTER HUNT'S CONVICTION DID CONNIE
8 GERRARD COME IN TO YOUR TELEVISION STATION AND TALK TO
9 YOU?

10 A YES, SIR.

11 Q AND WHAT DID SHE SAY?

12 A SHE HAD JUST RETURNED FROM AN OVERSEAS
13 VACATION, GREECE, I BELIEVE, AND STATED THAT WHILE EATING
14 AT A RESTAURANT ON A RATHER SLOW DAY THAT SHE HAD SEEN
15 SOMEONE THAT LOOKED LIKE RON LEVIN TO HER WALK IN TO THAT
16 RESTAURANT.

17 BY MR. MC MULLEN:

18 Q DO YOU REMEMBER APPROXIMATELY WHEN THIS
19 CONVERSATION OCCURRED?

20 A AFTER THE HOLIDAYS, 1987. THAT IS THE BEST I
21 CAN DO.

22 Q WHAT DID YOU SAY, IF ANYTHING, IN RESPONSE TO
23 HER SAYING THAT SHE THOUGHT SHE SAW RON LEVIN?

24 A I ASKED HER IF SHE CALLED THE COPS.

25 Q WHAT DID SHE SAY?

26 A SHE SAID, NO, SHE WAS RELUCTANT TO GET
27 INVOLVED.

28 Q DID YOU EVER TELL HER NOT TO GET INVOLVED?

7
1 A NO.

2 MR. MC MULLEN: COULD I HAVE A MOMENT?

3 THE COURT: YES.

4 MR. MC CULLEN: NOTHING FURTHER.

5 THE COURT: CROSS EXAMINATION.

6 MR. CRAIN: YES.

7

8 CROSS-EXAMINATION +

9

10 BY MR. CRAIN:

11 Q GOOD MORNING.

12 AT ONE TIME YOU DATED ONE OF MRS. GERRARD'S
13 DAUGHTERS; IS THAT RIGHT?

14 A THAT'S CORRECT.

15 Q WHICH DAUGHTER IS THAT?

16 A NICOLE.

17 Q AND -- YOU BROKE UP, THE TWO OF YOU?

18 A YES, WE WENT OUR SEPARATE WAYS, PEACEFULLY.

19 Q WERE YOU ENGAGED AT ONE POINT?

20 A NO.

21 MR. MC MULLEN: OBJECTION. RELEVANCE.

22 THE COURT: I'LL LET THE ANSWER STAND.

23 BY MR. CRAIN:

24 Q ALL DURING THE PERIOD OF TIME FROM '84 YOU
25 HAVE HAD THE SAME JOB FROM A.B.C.?

26 A I WENT FROM K.A.B.C., WHICH IS LOCAL NEWS, TO
27 THE NETWORK IN 1987.

28 Q SO IN YOUR ADULT YEARS YOU HAVE BEEN IN THE

7
1 NEWS BUSINESS BASICALLY THE WHOLE TIME?

2 A SINCE THE AGE OF 19.

3 Q AND YOUR AGE NOW?

4 A 44.

5 Q OKAY.

6 AND THIS CONVERSATION WITH MRS. GERRARD, YOU
7 ARE PARAPHRASING IT; IS THAT RIGHT?

8 A AS BEST I CAN.

9 Q YEAH. I MEAN, YOU DON'T HAVE SOME WRITTEN
10 RECORDATION OF IT; IS THAT RIGHT?

11 A NO, SIR.

12 Q YOU WEREN'T TAKING IT DOWN WORD FOR WORD AT
13 THE TIME?

14 A NO, SIR.

15 Q AND THIS TOOK PLACE AT YOUR STUDIO, A.B.C.
16 STUDIO?

17 A AT K.A.B.C. CHANNEL 7, EYEWITNESS NEWS, AT
18 THEIR ASSIGNMENT DESK.

19 Q WAS ANYBODY ELSE PRESENT DURING THAT TIME?

20 A NOT TO MY KNOWLEDGE.

21 Q AND AFTER YOU RECEIVED THIS INFORMATION FROM
22 MRS. GERRARD ABOUT HAVING SEEN RON LEVIN IN GREECE, DID
23 YOU REPORT THAT TO THE AUTHORITIES YOURSELF?

24 A NO, SIR, BECAUSE SHE ASKED ME TO PLEASE BE
25 QUIET AND TREAT IT CONFIDENTIALLY.

26 Q SAID SHE DIDN'T WANT TO BE INVOLVED IN THE
27 MEDIA SPOTLIGHT, SO TO SPEAK?

28 A SHE REALLY WAS VERY -- I WOULD TERM IT UPSET

7 1 ABOUT THE WHOLE THING.

2 Q SO THE ANSWER TO THE PREVIOUS QUESTION IS:
3 YOU DID NOT CALL THE POLICE YOURSELF; IS THAT RIGHT?

4 A NO, SIR, A CONFIDENTIAL MATTER IS A
5 CONFIDENTIAL MATTER.

6 Q CONFIDENTIAL IN WHAT SENSE AS FAR AS YOU WERE
7 CONCERNED?

8 A WELL, WHEN SOMEONE TURNS TO YOU, BEING A
9 JOURNALIST, SOMEBODY TURNS TO YOU IN A SITUATION LIKE THIS
10 AND SAYS, YOU KNOW, THEY'RE VERY RELUCTANT TO GET INVOLVED
11 AND I WAS LITTLE TAKEN BACK, AND SHE SAID, "I WANT TO
12 TREAT THIS CONFIDENTIALLY." I AGREED THAT I WOULD TREAT
13 IT CONFIDENTIALLY AND BE QUIET.

14 Q SO YOU WERE LOOKING AT IT IN THAT SENSE OF
15 CONFIDENTIALITY FROM YOUR ROLE AS A JOURNALIST?

16 A AS A JOURNALIST.

17 Q THAT IS IF SOMEONE COMES TO YOU AND GIVES YOU
18 INFORMATION, YOU AS A JOURNALIST DON'T PASS IT ALONG TO
19 THE AUTHORITIES IF THAT PERSON TELLS YOU THEY ARE SPEAKING
20 CONFIDENTIALLY?

21 MR. MC MULLEN: OBJECTION. CALLS FOR SPECULATION.
22 VAGUE.

23 THE COURT: I'M NOT SURE I UNDERSTAND THE QUESTION.
24 BY MR. CRAIN:

25 Q IN OTHER WORDS, IF SOMEONE SPEAKS TO YOU AS A
26 JOURNALIST ABOUT HAVING INFORMATION YOU SAW YOUR ROLE AS
27 KEEPING IT CONFIDENTIAL BECAUSE INFORMATION WAS GIVEN TO
28 YOU AS A JOURNALIST; IS THAT RIGHT?

7
1 MR. MC CULLEN: OBJECTION. VAGUE. CALLS FOR
2 SPECULATION.

3 THE COURT: IT'S IRRELEVANT.

4 BY MR. CRAIN:

5 Q SO YOU DID NOT GO TO THE POLICE WITH THIS
6 INFORMATION; RIGHT?

7 MR. MC MULLEN: ASKED AND ANSWERED. OBJECTION.

8 THE COURT: OVERRULED.

9 BY MR. CRAIN:

10 Q IS THAT RIGHT?

11 A NO, SIR.

12 Q YOU DID NOT GO TO THE AUTHORITIES WITH IT; IS
13 THAT RIGHT?

14 A NO, SIR.

15 Q DID NOT CALL UP THE DISTRICT ATTORNEY AND
16 SAY, "I HAVE GOT INFORMATION ABOUT THE RON LEVIN CASE"; IS
17 THAT RIGHT?

18 A NO, SIR.

19 Q IT IS RIGHT OR NOT? I ASKED A DOUBLE
20 NEGATIVE.

21 A NO, I DID NOT CONTACT OR INFORM ANYBODY.

22 Q YOU DIDN'T REPORT IT TO ANYONE; IS THAT
23 RIGHT?

24 A NO, SIR.

25 Q YOU DID OR DIDN'T?

26 A I DID NOT.

27 Q BUT YOU DID REPORT IT TO THE DISTRICT
28 ATTORNEY WHEN THEY CONTACTED YOU IN 1995; IS THAT RIGHT?

7
(
)
1 A CONNIE GERRARD HAD ALREADY BEEN A MATTER OF
2 PUBLIC RECORD, SIR. CONFIDENTIALITY NO LONGER EXISTED.

3 MR. CRAIN: COULD I HAVE JUST A MOMENT WITH
4 MR. HUNT?

5 THE COURT: YES.

6
7 (A CONFERENCE WAS HELD BETWEEN COUNSEL
8 AND THE PETITIONER, NOT REPORTED.)
9

10 BY MR. CRAIN:

11 Q THIS WAS A REAL SHORT CONVERSATION THAT YOU
12 HAD WITH MRS. GERRARD?

13 A WHAT DO YOU TERM "SHORT"?

14 Q I'M ASKING HOW LONG DID THE CONVERSATION
15 LAST?

16 A 60 SECONDS.

17 Q AND YOU WERE ON GOOD TERMS WITH HER AT THAT
18 TIME?

19 A OH, YES.

20 Q SO YOU WERE LENDING A SYMPATHETIC EAR, SO TO
21 SPEAK?

22 A I HAVE TO CONFESS THAT I WAS INTRIGUED BY
23 WHAT SHE HAD TO SAY.

24 Q DID YOU CONVEY SOME FORM OF SYMPATHY TO HER
25 FOR HER VIEW AS TO SHE WAS TELLING YOU THAT SHE DIDN'T
26 REALLY WANT TO GET INVOLVED IN THIS SORT OF THING?

27 MR. MC MULLEN: OBJECTION. RELEVANCY.

28 THE COURT: SUSTAINED.

7
1 BY MR. CRAIN:

2 Q WHAT DID YOU SAY TO HER WHEN SHE TOLD YOU?

3 A I BEG YOUR PARDON?

4 Q WHAT DID YOU SAY BACK TO MS. GERRARD WHEN SHE
5 SAID THIS TO YOU?

6 A I ASKED HER IF SHE'D CALLED THE COPS.

7 Q SHE SAID NO?

8 A SHE SAID SHE WAS VERY RELUCTANT TO GET
9 INVOLVED.

10 Q WHAT DID YOU SAY?

11 A I THEN SAID, "MAYBE YOU WANT TO TALK TO YOUR
12 SON-IN-LAW, BOB TUR."

13 Q THAT'S ALL YOU SAID?

14 A I SAID, "PERHAPS HE KNOWS SOMEBODY IN A LEGAL
15 CAPACITY THAT COULD ADVISE YOU."

16 Q AND WAS YOUR KEEPING -- NOT GOING TO THE
17 POLICE -- LET'S PUT IT THIS WAY, HAD YOU GONE TO THE
18 POLICE WOULD YOU HAVE IN SOME WAY JEOPARDIZED YOUR JOB OR
19 YOUR WORK SITUATION?

20 MR. MC MULLEN: OBJECTION. SPECULATION.

21 THE COURT: OVERRULED.

22 MR. MC MULLEN: RELEVANCE.

23 THE COURT: YOU CAN ANSWER.

24 THE WITNESS: NO.

25 BY MR. CRAIN:

26 Q SO YOU COULD HAVE DONE IT, BUT YOU MADE A
27 PERSONAL DECISION NOT TO YOURSELF AFTER GETTING THIS
28 INFORMATION; IS THAT RIGHT?

8

1 A WHEN CONNIE TURNED TO ME AND ASKED ME TO
2 BE -- TO KEEP IT CONFIDENTIAL, I HONORED THAT REQUEST.
3 NOT OUT OF PERSONAL BUT A PROFESSIONAL BASIS.

4 Q HOW LONG HAD YOU KNOWN HER AT THAT TIME?

5 A YEAR OR SO.

6 Q AND YOU WERE CLOSE TO HER DURING THAT PERIOD
7 OF TIME?

8 A I WOULDN'T SAY TERRIBLY CLOSE, BUT I KNEW
9 THEM.

10 Q YOU WERE ON GOOD TERMS WITH HER?

11 A I BELIEVE SO.

12 Q RESPECTED HER?

13 A LIKED HER.

14 Q THOUGHT SHE WAS A GOOD PERSON?

15 A YES.

16 MR. MC MULLEN: OBJECTION. RELEVANCY.

17 THE COURT: I'LL LET THE ANSWER STAND.

18 MR. CRAIN: NOTHING FURTHER.

19 THE COURT: WHY DID SHE COME DOWN TO SEE YOU THAT
20 DAY?

21 THE WITNESS: SHE WAS DELIVERING A TAPE ON BEHALF
22 OF HER SON-IN-LAW.

23 THE COURT: WAS THIS THE FIRST TOPIC THAT SHE
24 BROUGHT UP WHEN YOU FIRST SAW HER, OR WAS IT PART OF THE
25 CONVERSATION?

26 THE WITNESS: HERE'S THE TAPE AND SHE WANTED TO SIT
27 DOWN AND REST BECAUSE SHE HAD TO COME UP SEVERAL STAIRS.
28 SHE WAS A LITTLE OUT OF BREATH.

8
1 THE COURT: DID YOU KNOW WHO SHE WAS REFERRING TO
2 WHEN SHE SAID SHE SAW RON LEVIN?

3 THE WITNESS: YES, SIR.

4 THE COURT: YOU SAID THAT SHE SEEMED UPSET. WHAT
5 DO YOU MEAN BY THAT.

6 THE WITNESS: I THINK IN HER HEART SHE BELIEVED
7 THAT SHE HAD SEEN SOMEBODY THAT SHE THOUGHT WAS RON LEVIN.

8 THE COURT: ANY REDIRECT?

9 MR. MC MULLEN: NOTHING FURTHER.

10 MR. CRAIN: I HAVE A FURTHER QUESTION.
11

12 RE-CROSS-EXAMINATION +
13

14 BY MR. CRAIN:

15 Q YOU JUST MENTIONED A MINUTE AGO THAT YOU
16 SUGGESTED TO HER THAT SHE CONTACT MR. TUR FOR FURTHER
17 ADVICE; RIGHT?

18 A JUST A SUGGESTION.

19 Q WHEN YOU WERE INTERVIEWED -- YOU WERE
20 INTERVIEWED BY THE DISTRICT ATTORNEY INVESTIGATOR OVER THE
21 TELEPHONE ON MARCH 29, 1995?

22 A (NO AUDIBLE RESPONSE.)

23 THE COURT: IS THAT "YES"?

24 THE WITNESS: I RECALL A CONVERSATION.

25 BY MR. CRAIN:

26 Q THAT WOULD HAVE BEEN INVESTIGATOR CHARTIER?

27 A I ONLY REMEMBER TALKING TO INVESTIGATOR TOM
28 SIMPSON. I DON'T REMEMBER THE OTHER GENTLEMAN'S NAME.

8
1 Q BUT YOU DO REMEMBER HAVING A TELEPHONE
2 CONVERSATION AT ABOUT THAT TIME WITH A DISTRICT ATTORNEY
3 INVESTIGATOR IN CONNECTION WITH THIS CASE?

4 A I REMEMBER BEING CONTACTED ABOUT IT, YES.

5 Q AND THEY ASKED YOU QUESTIONS ABOUT THIS
6 CONVERSATION YOU HAD WITH MRS. GERRARD?

7 A CORRECT.

8 Q DID YOU TELL THE DISTRICT ATTORNEY
9 INVESTIGATOR THAT YOU DID NOT GIVE HER ANY ADVICE, YOU
10 ONLY ASKED HER IF SHE CALLED THE POLICE?

11 A WHAT I TOLD THEM WAS --

12 Q THE QUESTION, SIR, IS: DID YOU TELL THEM
13 THAT YOU DID NOT GIVE MRS. GERRARD ANY ADVICE, YOU ONLY
14 ASKED IF SHE HAD CALLED THE POLICE?

15 A I REMEMBER TWO POINTS TO THE CONVERSATION AND
16 THE INTERVIEW, AND MY RESPONSE IN THAT IS: "HAVE YOU
17 CALLED THE COPS," NUMBER ONE.

18 AND SECOND: "MAYBE YOU SHOULD TALK TO YOUR
19 SON-IN-LAW."

20 Q SO YOU DENY THAT YOU TOLD THE DISTRICT
21 ATTORNEY INVESTIGATOR THAT YOU DID NOT GIVE HER ANY
22 ADVICE; IS THAT TRUE? YOU DENY THAT?

23 A I DON'T -- I REALLY DON'T KNOW IF YOU CAN
24 TERM TELLING SOMEBODY TO TALK TO THEIR SON-IN-LAW AS
25 ADVICE.

26 Q SO YOU ARE TELLING THE COURT THAT YOU TOLD
27 THE DISTRICT ATTORNEY -- DISTRICT ATTORNEY INVESTIGATOR
28 DURING THAT CONVERSATION THAT YOU DID GIVE ADVICE TO

8

1 MRS. GERRARD; IS THAT RIGHT?

2 THE COURT: LET'S MOVE ON.

3 MR. CRAIN: I'M JUST --

4 THE COURT: THIS IS A BIG SO WHAT.

5 MR. CRAIN: WELL, I'M SORRY THE COURT FEELS THAT
6 WAY. WE HAVE A PRIOR INCONSISTENT STATEMENT.

7 THE COURT: COUNSEL, MOVE ON.

8 BY MR. CRAIN:

9 Q SO YOU TOLD THE DISTRICT ATTORNEY
10 INVESTIGATOR YOU DID GIVE HER ADVICE; IS THAT RIGHT?

11 THE COURT: COUNSEL, MOVE ON. WHY ARE WE WASTING
12 TIME ON SOMETHING AS SILLY AS THIS? DO YOU HAVE ANYTHING
13 RELEVANT?

14 MR. CRAIN: I THINK THIS IS RELEVANT, YOUR HONOR.

15 THE COURT: I DISAGREE. DO YOU HAVE ANYTHING
16 RELEVANT?

17 MR. CRAIN: I HAVE THIS. I DON'T HAVE ANYTHING
18 ELSE.

19 THE COURT: MAY THE WITNESS BE EXCUSED?

20 MR. MC CULLEN: YES, YOUR HONOR.

21 THE COURT: ANY OBJECTION?

22 MR. CRAIN: NO.

23 THE COURT: THANK YOU, SIR. YOU ARE EXCUSED.

24 CALL YOUR NEXT WITNESS.

25 MR. MC MULLEN: MR. MARTIN LEVIN.

26

27 (PAUSE.)

28

8 1 MR. MC MULLEN: MR. LEVIN, IF YOU WOULD JUST STEP
2 FORWARD HERE, SIR. IF YOU CAN JUST STAND RIGHT HERE
3 BEHIND THE COURT REPORTER AND FACE THE CLERK AND BE SWORN
4 IN.

5 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

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

10 THE WITNESS: YES.

11 THE CLERK: PLEASE BE SEATED.

12 STATE YOUR NAME FOR THE RECORD AND SPELL YOUR
13 FIRST AND LAST NAME, PLEASE.

14
15 MARTIN LEVIN, @
16 CALLED AS A WITNESS BY THE RESPONDENT, WAS SWORN AND
17 TESTIFIED AS FOLLOWS:

18
19 THE WITNESS: MARTIN LEVIN, L-E-V-I-N.

20 THE COURT: YOU MAY INQUIRE.

21 MR. MC CULLEN: THANK YOU.

22
23 DIRECT EXAMINATION @

24
25 BY MR. MC MULLEN:

26 Q SIR, ARE YOU RELATED TO RON LEVIN?

27 A YES.

28 Q HOW WERE YOU -- HOW ARE YOU RELATED TO RON

9
1 LEVIN?

2 A HE WAS MY STEPSON.

3 Q ARE YOU FAMILIAR WITH THE LOCATION WHERE RON
4 LEVIN LIVED PRIOR TO JUNE 6, 1984?

5 A YES.

6 Q AND DID YOU GO -- IS THAT ON PECK DRIVE IN
7 BEVERLY HILLS, SIR?

8 A YES.

9 Q AND DID YOU GO TO THAT LOCATION, RON LEVIN'S
10 APARTMENT, ON JUNE 7, 1984?

11 A YES.

12 Q SHORTLY AFTER JUNE -- SHORTLY AFTER JUNE 7,
13 1984 DID YOU TAKE CONTROL OF RON LEVIN'S APARTMENT?

14 A YES.

15 Q HOW DID YOU DO THAT?

16 A I TOOK THE KEYS FROM THE HOUSEKEEPER AND TOLD
17 HER I WOULD TAKE CARE OF THE HOUSE FROM THAT TIME ON SO
18 THAT SHE WOULDN'T HAVE TO COME DOWN TO GET THE MAIL AND GO
19 TO THE POST OFFICE AND DIFFERENT THINGS LIKE THAT.

20 Q AFTER JUNE 7, 1984, DID YOU GO BACK TO RON
21 LEVIN'S APARTMENT?

22 A YES.

23 Q HOW OFTEN DID YOU GO BACK IN THE FIRST WEEK
24 AFTER --

25 A EVERY DAY.

26 Q AT SOME POINT IN TIME DID YOU CHANGE THE
27 LOCKS ON RON LEVIN'S APARTMENT?

28 A YES.

9 1 Q WHEN WAS THAT?

2 A APPROXIMATELY -- MAYBE A WEEK, MAYBE MORE. I
3 DON'T RECALL EXACTLY.

4 Q AT SOME POINT AFTER YOU HAD TAKEN CONTROL OF
5 RON LEVIN'S APARTMENT AFTER JUNE 7, 1984, DID DETECTIVE
6 ZOELLER COME TO RON LEVIN'S APARTMENT?

7 A YES.

8 Q AND WERE YOU THERE WHEN HE DID THAT?

9 A YES.

10 Q HAD ANYTHING CHANGED FROM YOUR OBSERVATIONS
11 OF RON LEVIN'S APARTMENT, HAD ANYTHING CHANGED IN THE
12 APARTMENT FROM JUNE 7TH TO THE TIME THAT DETECTIVE ZOELLER
13 EXAMINED THE APARTMENT?

14 A I DON'T THINK SO.

15 Q ON JUNE 7, 1984, YOU TESTIFIED YOU WENT TO
16 RON LEVIN'S APARTMENT; IS THAT CORRECT?

17 A YES.

18 Q ABOUT WHAT TIME WAS THAT?

19 A ABOUT 9:00 A.M.

20 Q AND DID YOU -- WHEN YOU WENT INSIDE THE
21 APARTMENT, DID YOU LOOK AROUND THE APARTMENT?

22 A YES.

23 Q DID YOU NOTICE ANY -- ANY LUGGAGE WITH
24 RESPECT TO THE APARTMENT?

25 A YES.

26 Q WHERE DID YOU SEE LUGGAGE?

27 A I SAW SOME LUGGAGE IN THE FRONT, AND THEN I
28 SAW -- FRONT CORRIDOR, AND THEN I SAW SOME IN THE CLOSET

9
1 OF THE HOME, OF THE APARTMENT.

2 Q WOULD THAT BE THE BEDROOM CLOSET?

3 A IT'S A WALK-IN CLOSET THERE, YES, I WOULD SAY
4 IT'S ATTACHED TO A BEDROOM.

5 Q ON JUNE 7, 1984, DID YOU LOOK INSIDE OF THAT
6 LUGGAGE THAT WAS IN THE CLOSET?

7 A YES.

8 Q AND WAS THERE ANYTHING IN THE LUGGAGE IN THE
9 CLOSET?

10 A THERE WAS NOT.

11 MR. MC CULLEN: MAY I APPROACH THE WITNESS, YOUR
12 HONOR?

13 THE COURT: YES.

14 BY MR. MC MULLEN:

15 Q SHOWING YOU WHAT'S BEEN PREVIOUSLY MARKED AS
16 RESPONDENT'S EXHIBIT R FOR IDENTIFICATION. SHOWING YOU
17 R-1. DO YOU RECOGNIZE THAT PHOTOGRAPH?

18 A YES.

19 Q WHAT IS IT?

20 A THAT HIS CLOTHES HANGING THERE.

21 Q WHEN YOU SAY "HIS CLOTHES" --

22 A RONNIE'S CLOTHES.

23 Q AND WHERE IS THIS CLOSET LOCATED IN THE
24 APARTMENT, IF YOU REMEMBER?

25 A IT'S OFF THE BEDROOM. I THINK IT'S OFF THE
26 BEDROOM.

27 Q IS THIS THE WAY THE CLOSET APPEARED ON JUNE
28 7, 1984, WHEN YOU WERE THERE?

9
1 A YES, AS FAR AS I CAN TELL.

2 Q SHOWING YOU WHAT'S BEEN MARKED AS R-2. DO
3 YOU RECOGNIZE THAT PHOTOGRAPH, SIR?

4 A YES, I DO.

5 Q WHAT IS THAT PHOTOGRAPH?

6 A THAT IS HIS SHOES AND ANOTHER ROOM. THIS WAS
7 NOT IN THE SAME ROOM AS THE CLOSET, BUT ANOTHER ROOM AND
8 THE SHOES WERE THERE.

9 Q WHEN YOU SAY "HIS SHOES," YOU ARE REFERRING
10 TO RON LEVIN'S SHOES?

11 A YES.

12 Q SHOWING YOU R-3. DO YOU RECOGNIZE THAT
13 PHOTOGRAPH?

14 A YES, SOME MORE OF HIS CLOTHES.

15 Q WHEN YOU SAY "HIS CLOTHES" --

16 A RON LEVIN'S CLOTHES.

17 Q WHERE IS THIS CLOSET LOCATED, IF YOU CAN
18 REMEMBER?

19 A I CAN'T RECALL EXACTLY WHERE IT IS. THEY
20 WERE ALL PRETTY CLOSE TO ONE ANOTHER.

21 Q SIR, WITH RESPECT TO -- WELL, LET ME ASK
22 ANOTHER QUESTION.

23 ON JUNE 7, 1984, YOU LOOKED AT RON LEVIN'S
24 CLOSETS?

25 A YES.

26 Q AND WITH RESPECT TO CLOSETS THAT CONTAINED
27 CLOTHES, DID YOU NOTICE -- WERE THE CLOTHES TIGHTLY PACKED
28 OR WAS THERE GAPS IN THE WAY THAT THEY WERE HANGING IN THE

9
1 CLOSET?

2 A AS FAR AS I CAN TELL, IT WAS PRETTY PACKED.

3 Q PRIOR TO JUNE OF 1984 AND IN THE EARLIER
4 MONTHS OF 1984 DID YOU SEE RON LEVIN FROM TIME TO TIME?

5 A YES.

6 Q ABOUT HOW OFTEN DURING THAT --

7 MR. CRAIN: OBJECTION. IRRELEVANT.

8 THE COURT: WHERE ARE YOU GOING?

9 MR. MC MULLEN: BASICALLY IT'S TO ADDRESS KAREN SUE
10 MARMOR'S TESTIMONY WITH RESPECT TO STYLE OF CLOTHING.

11 JUST A FEW QUESTIONS IN THIS AREA.

12 THE COURT: DEALING WITH HER TESTIMONY THAT HE
13 CHANGED THE STYLE A WEEK OR TWO OR A MONTH BEFORE?

14 MR. MC CULLEN: CORRECT.

15 THE COURT: I'LL ALLOW IT.

16 BY MR. MC CULLEN:

10
17 Q DID YOU SEE RON IN THE FIRST MONTHS OF 1984
18 BEFORE JUNE?

19 A YES, YES.

20 Q HOW OFTEN WOULD YOU SEE HIM?

21 A ONCE OR TWICE A MONTH.

22 Q HOW WOULD YOU DESCRIBE THE STYLE OF RON'S
23 CLOTHING WHEN YOU SAW HIM?

24 A CLASSIC. HE WAS ALWAYS DRESSED VERY NICELY.

25 Q WOULD YOU SAY THAT HE WAS A CONSERVATIVE
26 DRESSER?

27 A YES.

28 Q DID YOU NOTICE IN THE MONTHS PRIOR TO JUNE 6,

10

1 1984, THAT RON LEVIN CHANGED HIS MANNER OR STYLE OF DRESS
2 AT ALL?

3 MR. CRAIN: WELL, YOU MEAN AS FAR AS HE SAW.

4 BY MR. MC MULLEN:

5 Q AS FAR AS YOU SAW, SIR.

6 A NOT AT ALL.

7 MR. MC MULLEN: MAY I HAVE A MOMENT?

8 THE COURT: YES.

9

10 (PAUSE.)

11

12 MR. MC MULLEN: JUST ONE MORE QUESTION.

13

14 (PAUSE.)

15

16 MR. MC MULLEN: MAY I APPROACH THE WITNESS?

17 THE COURT: YES.

18 BY MR. MC MULLEN:

19 Q SHOWING YOU WHAT'S BEEN MARKED AS

20 PETITIONER'S 1. IS THIS A PHOTOGRAPH OF YOUR STEPSON RON
21 LEVIN?

22 A YES.

23 MR. MC MULLEN: THANK YOU. NOTHING FURTHER.

24 THE COURT: ANY CROSS EXAMINATION?

25 MR. CRAIN: COULD I HAVE A MINUTE WITH MR. HUNT?

26

27 (A CONFERENCE WAS HELD BETWEEN COUNSEL
28 AND THE PETITIONER, NOT REPORTED.)

CROSS-EXAMINATION +

10 1
2
3 BY MR. CRAIN:

4 Q DID YOU REVIEW, AFTER JUNE 7 --

5 A I'M SORRY, ARE YOU TALKING TO ME?

6 Q YEAH.

7 A I'M SORRY, I DON'T HEAR YOU.

8 Q DID YOU MAKE A DETERMINATION AFTER JUNE 7TH
9 THAT YOUR SON DURING THE PREVIOUS MONTH HAD SPENT OVER
10 \$20,000 ON CLOTHING?

11 MR. MC MULLEN: OBJECTION. RELEVANCY.

12 THE COURT: LAY A FOUNDATION.

13 BY MR. CRAIN:

14 Q YOU REVIEWED CERTAIN FINANCIAL DOCUMENTS
15 RELATING TO YOUR SON AFTER JUNE 6TH; IS THAT RIGHT?

16 A YES.

17 Q AFTER JUNE 7TH?

18 A YES.

19 Q IN YOUR REVIEW OF THOSE DOCUMENTS, DID YOU
20 FIND CREDIT CARD CHARGES SHOWING THAT IN THE LAST MONTH
21 PRIOR TO JUNE 7TH THAT HE HAD SPENT OVER \$20,000 ON
22 CLOTHING?

23 MR. MC MULLEN: OBJECTION. RELEVANCY.

24 THE COURT: YOU MAY ANSWER.

25 THE WITNESS: I'M SORRY, ONCE MORE.

26 THE COURT: WHY DON'T YOU USE THE MICROPHONE,
27 MR. CRAIN.

28 MR. CRAIN: THANK YOU, YOUR HONOR.

10

1 BY MR. CRAIN:

2 Q IN REVIEWING THESE FINANCIAL DOCUMENTS -- CAN
3 YOU HEAR ME OKAY?

4 A YES, THANK YOU.

5 Q IN REVIEWING THESE FINANCIAL DOCUMENTS AFTER
6 JUNE 7TH, DID YOU SEE DOCUMENTS OR CREDIT CARD CHARGES
7 THAT SHOWED THAT DURING THE MONTH BEFORE JUNE 7TH HE HAD
8 CHARGED OVER \$20,000 ON NEW CLOTHING?

9 MR. MC MULLEN: OBJECTION. BEYOND THE SCOPE --

10 THE WITNESS: I DON'T RECALL THAT.

11 THE COURT: OVERRULED. THE ANSWER WILL STAND.

12 MR. CRAIN: I HAVE NO FURTHER QUESTIONS.

13 THE COURT: ANYTHING FURTHER, MR. MC MULLEN?

14 MR. MC MULLEN: NOTHING FURTHER.

15 THE COURT: MAY THE WITNESS BE EXCUSED?

16 MR. MC MULLEN: YES.

17 THE COURT: ANY OBJECTION?

18 MR. CRAIN: NO, YOUR HONOR.

19 THE COURT: THANK YOU, SIR. YOU ARE EXCUSED.

20 CALL YOUR NEXT WITNESS.

21 MR. MC MULLEN: BEFORE WE DO, YOUR HONOR, WE WOULD
22 MOVE THE COURT TO ALLOW AN ADDITIONAL WITNESS TO TESTIFY
23 THAT WE JUST LEARNED ABOUT THIS MORNING. IT'S BOB LEVIN,
24 RON LEVIN'S HALF BROTHER. IN INTERVIEWING
25 MR. MARTIN LEVIN THIS MORNING, BOB LEVIN ACCOMPANIED HIM,
26 AND IN TALKING TO BOB LEVIN WE LEARNED TODAY FOR THE FIRST
27 TIME THAT HE WAS AT RON LEVIN'S APARTMENT ON JUNE 7TH, AND
28 HIS RECOLLECTION IS A LITTLE BETTER WITH RESPECT TO

10 1 LUGGAGE THAT WAS OBSERVED THERE, AND SO -- I INFORMED
2 COUNSEL OF THIS, AND WE WOULD ASK LEAVE OF THE COURT TO BE
3 ABLE TO CALL MR. BOB LEVIN.

4 MR. CRAIN: I OBJECT TO THAT. THEY HAVE BEEN AWARE
5 OF THE EXISTENCE OF THIS WITNESS FOR AT LEAST TWO YEARS.
6 I WAS ASKED IF I WOULD OBJECT THIS MORNING, AND I SAID I
7 WOULD. WE HAVE NEVER HAD AN OPPORTUNITY TO DEAL WITH
8 THIS.

9 IN ANY EVENT, IT'S CUMULATIVE.

10 THE COURT: ANYBODY EVER INTERVIEWED THIS GUY PRIOR
11 TO TODAY?

12 MR. MC MULLEN: NO, NONE OF US HAVE.

13 THE COURT: EVERYBODY KNEW ABOUT HIM; RIGHT?

14 MR. MC MULLEN: WELL, WE WERE AWARE OF HIM. WE
15 WEREN'T AWARE OF WHAT HE HAD TO OFFER IN TERMS OF WHAT HE
16 HAD SEEN OR ANYTHING LIKE THAT.

17 THE COURT: NO. YOU MAY NOT CALL THE WITNESS.

18 MR. MC MULLEN: VERY WELL.

19 WE WOULD CALL MR. LES ZOELLER.

20 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

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

25 THE WITNESS: YES.

26 THE CLERK: PLEASE BE SEATED.

27 STATE YOUR NAME FOR THE RECORD AND SPELL YOUR
28 FIRST AND LAST NAME, PLEASE.

10
1 LESLIE L. ZOELLER, +
2 CALLED AS A WITNESS BY THE RESPONDENT, WAS SWORN AND
3 TESTIFIED AS FOLLOWS:
4

5 THE WITNESS: LESLIE L. ZOELLER, Z-O-E-L-L-E-R.

6 MR. MC MULLEN: MAY I PROCEED?

7 THE COURT: YOU MAY INQUIRE.

8 MR. MC MULLEN: THANK YOU.
9

10 DIRECT EXAMINATION @
11

12 BY MR. MC MULLEN:

13 Q SIR, WHAT IS YOUR OCCUPATION AND CURRENT
14 ASSIGNMENT?

15 A I'M A POLICE OFFICER FOR THE CITY OF BEVERLY
16 HILLS ASSIGNED TO THE DETECTIVE DIVISION.

17 Q AND HOW LONG HAVE YOU BEEN A POLICE OFFICER
18 WITH THE BEVERLY HILLS POLICE DEPARTMENT?

19 A WITH THE BEVERLY HILLS POLICE DEPARTMENT, 20
20 YEARS.

21 Q AND, SIR, WERE YOU THE INVESTIGATOR WHO WAS
22 ASSIGNED TO INVESTIGATE THE RON LEVIN HOMICIDE?

23 A YES.

24 Q WHEN WAS THAT?

25 A I FIRST BECAME AWARE OF THE MISSING PERSON OF
26 RON LEVIN ON JUNE 21ST OF 1984.

27 Q WITH RESPECT TO YOUR INVESTIGATION OF THE RON
28 LEVIN CASE, DID YOU AT SOME POINT IN TIME INTERVIEW CONNIE

10 1 GERRARD?

2 A YES.

3 Q WHEN WAS THAT?

4 A IT WAS IN APRIL OF 1992, I BELIEVE.

5 Q AND HOW DID YOU LEARN ABOUT CONNIE GERRARD?

11 6 A I RECEIVED INFORMATION FROM DEPUTY ATTORNEY
7 GENERAL JOHN VANCE, AND HE STATED THAT HE HAD RECEIVED
8 INFORMATION THAT SHE HAD COME FORWARD WITH A SIGHTING OF
9 RON LEVIN.

10 Q DURING THE COURSE OF YOUR INVESTIGATION OF
11 RON LEVIN'S APARTMENT DID YOU ENTER RON LEVIN'S APARTMENT?

12 A YES.

13 Q WHERE WAS RON LEVIN'S APARTMENT LOCATED?

14 A IT'S A DUPLEX. THE GROUND FLOOR AT 144 SOUTH
15 PECK DRIVE IN BEVERLY HILLS.

16 Q AND WHEN DID YOU ENTER RON LEVIN'S APARTMENT?

17 A I MADE AN APPOINTMENT TO GO INTO THE
18 APARTMENT OR TO MEET HIS FATHER THERE AT 9 O'CLOCK ON
19 AUGUST 16TH OF 1984.

20 THE COURT: I'M SORRY, AUGUST 16, 1984?

21 THE WITNESS: THAT'S CORRECT.

22 MR. MC CULLEN: COULD I JUST HAVE A MOMENT?

23
24 (PAUSE.)

25
26 BY MR. MC MULLEN:

27 Q WAS MARTIN LEVIN THERE WHEN YOU WENT ON
28 AUGUST 16, 1984?

11

1 A HE WAS THERE ALREADY, AND HE LET ME INTO THE
2 HOUSE AT 9 O'CLOCK, THAT'S CORRECT.

3 Q DID YOU CAUSE TO HAVE PHOTOGRAPHS TAKEN OF
4 THE INTERIOR OF RON LEVIN'S APARTMENT ON THAT DAY?

5 A YES.

6 MR. MC CULLEN: MAY I APPROACH THE WITNESS?

7 THE COURT: YES.

8 BY MR. MC MULLEN:

9 Q SHOWING YOU WHAT'S BEEN PREVIOUSLY MARKED AS
10 RESPONDENT'S EXHIBIT R, R-1 AND -2 AND -3. SHOWING YOU
11 R-1. DO YOU RECOGNIZE THIS PHOTOGRAPH?

12 A YES.

13 Q WHAT IS IT A PHOTOGRAPHER OF?

14 A IT'S A CLOSET THAT WAS PART OF THE DRESSING
15 ROOM BETWEEN THE MASTER BEDROOM AND THE MASTER BATHROOM.

16 Q SHOWING YOU WHAT'S BEEN MARKED AS R-2. DO
17 YOU RECOGNIZE THAT PHOTOGRAPH?

18 A YES, THIS IS A CLOSET THAT WAS ACTUALLY IN
19 THE MASTER BEDROOM ITSELF. I BELIEVE IT WAS ON THE -- THE
20 NORTH WALL OF THAT MASTER BEDROOM.

21 Q AND SHOWING YOU WHAT'S BEEN MARKED AS R-3 FOR
22 IDENTIFICATION. DO YOU RECOGNIZE THAT PHOTOGRAPH?

23 A YES.

24 Q WHAT IS THAT?

25 A IT'S JUST ANOTHER ANGLE OF THAT SAME CLOSET
26 AS R-1.

27 Q WERE THESE THREE PHOTOGRAPHS, R-1, R-2 AND
28 R-3 TAKEN ON AUGUST 16, 1984, WHEN YOU WERE IN RON LEVIN'S

11

1 APARTMENT?

2 A YES, THEY WERE.

3 Q SHOWING YOU WHAT'S BEEN MARKED AS QQ FOR
4 IDENTIFICATION. DO YOU RECOGNIZE THAT PHOTOGRAPH?

5 A YES, I DO.

6 Q AND WHAT IS THAT A PHOTOGRAPH OF?

7 A IT'S A PHOTOGRAPH OF THE BEDROOM OR A BEDROOM
8 IN THE LEVIN RESIDENCE. IT WAS LOCATED ON THE -- OR IN
9 THE SOUTHWEST CORNER OF THE HOUSE, AND OBVIOUSLY IT WAS
10 CHANGED INTO AN OFFICE BY RON LEVIN.

11 Q WAS THIS PHOTOGRAPH AS WELL TAKEN ON AUGUST
12 16, 1984?

13 A YES.

14 MR. MC MULLEN: WITH THE COURT'S PERMISSION, WE'D
15 LIKE TO HAVE MARKED AS RESPONDENT'S EXHIBIT A, DECLARATION
16 OF LESS ZOELLER.

17 THE COURT: IT MAYBE MARKED AS A.

18

19 (MARKED FOR ID = RESPONDENT'S A,
20 DOCUMENT.)

21

22 MR. MC MULLEN: MAY I APPROACH THE WITNESS?

23 THE COURT: YES.

24 BY MR. MC MULLEN:

25 Q SHOWING YOU WHAT'S BEEN MARKED AS EXHIBIT A.
26 DO YOU RECOGNIZE THAT AS BEING YOUR DECLARATION?

27

28 (WITNESS REVIEWING EXHIBIT.)

11

1 A YES, I DO.

2 Q IS EVERYTHING TRUE AND ACCURATE IN THAT
3 DECLARATION, SIR?

4 A IT IS.

5 Q WHEN YOU WERE IN RON LEVIN'S APARTMENT ON
6 AUGUST 16, 1984, DID YOU NOTICE ANY SUITCASES?

7 A YES, I DID.

8 Q AND WHERE DID YOU SEE SUITCASES?

9 A THEY WERE ON THE TOP SHELF OF A -- I BELIEVE
10 IT WAS A LINEN CLOSET IN THE HALLWAY OF THE RESIDENCE.

11 Q AND I TAKE IT THAT -- WELL, LET ME ASK
12 ANOTHER QUESTION.

13 R-1, -2 AND -3 DO NOT SHOW ANY -- ANY
14 SUITCASES; IS THAT CORRECT?

15 A THAT'S CORRECT. THAT'S NOT THE CLOSET I'M
16 REFERRING TO.

17 Q SO IT'S A CLOSET OTHER THAN WHAT IS DEPICTED
18 IN EITHER R-1, R-2 OR R-3?

19 A THAT'S CORRECT.

20 Q WHAT DO YOU REMEMBER ABOUT THE LUGGAGE THAT
21 YOU SAW, HOW MANY PIECES, OR IF YOU COULD DESCRIBE IT AS
22 BEST YOU CAN?

23 A I JUST RECALL SEEING LUGGAGE. I DON'T RECALL
24 ANY OTHER SPECIFICS OTHER THAN THAT.

25 Q WHEN WAS -- AT SOME POINT IN TIME DID YOU
26 ARREST JOE HUNT AS A SUSPECT IN THIS CASE?

27 A I ARRESTED HIM TWICE IN THIS CASE, THAT'S
28 CORRECT.

11

1 Q WHEN DID YOU FIRST ARREST HIM?

2 A FIRST TIME WAS SEPTEMBER 28, 1984.

3 Q YOU ARRESTED HIM A SECOND TIME. WHEN WAS
4 THAT?

5 A OCTOBER 22ND OF 1984.

6 Q DURING YOUR CAREER WITH BEVERLY HILLS POLICE
7 DEPARTMENT HAD YOU EVER COME IN CONTACT WITH RON LEVIN
8 PRIOR TO JUNE 6, 1984?

9 A YES, I HAD.

10 Q AND DO YOU REMEMBER WHEN THE FIRST TIME YOU
11 CAME IN CONTACT WITH RON LEVIN WAS?

12 A I REMEMBER IT QUITE WELL.

13 Q WHEN WAS IT?

14 A I REMEMBER THAT IT WAS IN '76. I DON'T
15 RECALL WHAT MONTH. I BELIEVE IT WAS IN THE SUMMER MONTHS.
16 I WAS WORKING A BLACK-AND-WHITE POLICE VEHICLE ON PATROL,
17 AND I SAW BLUE ROLLS ROYCE CONVERTIBLE, AND I DON'T
18 REMEMBER WHAT THE VIOLATION WAS, BUT I STOPPED THE
19 INDIVIDUAL DRIVING, OBTAINED A DRIVER'S LICENSE AND
20 LEARNED IT TO BE RON LEVIN.

21 Q THAT WAS YOUR FIRST INTRODUCTION TO RON
22 LEVIN?

23 A THAT WAS IT.

24 Q FROM THAT POINT IN TIME ON DID YOU COME IN
25 CONTACT WITH RON LEVIN ON OTHER OCCASIONS?

26 A YES.

27 Q APPROXIMATELY HOW MANY TIMES DID YOU COME IN
28 CONTACT WITH RON LEVIN AS PART OF YOUR DUTIES AS A POLICE

12

12

1 OFFICER?

2 A APPROXIMATELY 25 TO 50 TIMES.

3 Q AND I TAKE IT DURING THOSE CONTACTS WITH
4 MR. LEVIN YOU HAD -- YOU WOULD HAVE CONVERSATIONS WITH
5 HIM?

6 A THAT'S CORRECT. THESE WERE CONTACTS WITH HIM
7 OVER THE PHONE AND IN PERSON.

8 Q HOW WOULD YOU DESCRIBE HIS MANNER -- WELL,
9 BASED UPON YOUR CONTACTS WITH MR. LEVIN AND YOUR
10 CONVERSATIONS WITH HIM, DID YOU BECOME FAMILIAR WITH HIS
11 MANNER OF SPEECH?

12 A YES.

13 Q AND HOW WOULD YOU DESCRIBE HIS MANNER OF
14 SPEECH?

15 A HE HAD A RASPY VOICE AND HE WAS -- IT
16 ALWAYS -- HE WAS ALWAYS SPEAKING VERY FAST.

17 Q DID YOU EVER IN ANY OF THE CONTACTS WITH HIM
18 OBSERVE HIM TO SPEAK REALLY VERY SLOW?

19 A NEVER.

20 MR. MC MULLEN: MAY I APPROACH?

21 THE COURT: YES.

22 BY MR. MC MULLEN:

23 Q SHOWING YOU WHAT'S BEEN MARKED AS EXHIBIT 1.
24 DO YOU RECOGNIZE WHO THAT IS IN THAT PHOTOGRAPH?

25 A I DO.

26 Q AND WHO IS THAT?

27 A THAT IS RONALD GEORGE LEVIN.

28 Q ON AUGUST 16, 1984, DID YOU TAKE SOME

12

1 PROPERTY FROM RON LEVIN'S APARTMENT?

2 A YES, I DID.

3 Q AND DID YOU TAKE SOME -- SOME AUDIOTAPES?

4 A I DID.

5 Q AND DID YOU EVER LISTEN TO THOSE AUDIOTAPES?

6 A I LISTENED TO ALL THE AUDIOTAPES.

7 Q AND WITH RESPECT TO THOSE AUDIOTAPES, WERE
8 THERE ANY AUDIOTAPES THAT YOU RECOGNIZED -- LET ME ASK
9 ANOTHER QUESTION.

10 IN LISTENING TO THE AUDIOTAPES, DID YOU
11 RECOGNIZE RON LEVIN'S VOICE IN ANY OF THOSE AUDIOTAPES?

12 A THE MAJORITY OF THE TAPES I RECOGNIZED AS
13 BEING RON LEVIN'S VOICE.

14 Q DID YOU BRING ANY OF THOSE TAPES WITH YOU
15 TODAY?

16 A I BROUGHT TWO TAPES WITH ME TODAY.

17 Q WHAT TWO TAPES DID YOU BRING WITH YOU TODAY?

18 A I BROUGHT A TAPE THAT WAS IN THE TAPE MACHINE
19 WHEN I SEARCHED THE RESIDENCE ON AUGUST 16, 1984, AND I
20 BROUGHT A MINI CASSETTE TAPE THAT I FOUND INSIDE THE
21 LOCATION.

22 Q IS ONE OF THOSE TAPES -- IS THERE MENTION OF
23 MR. STEIER IN ONE OF THOSE TAPES?

24 A NOT -- YES, IN THE SMALL MICRO MINI CASSETTE,
25 YES.

26 MR. MC MULLEN: WITH THE COURT'S PERMISSION, WE'D
27 LIKE TO HAVE THE SMALL TAPE THAT HE HAS REFERRED TO MARKED
28 AS RESPONDENT'S NEXT IN ORDER, WHICH I BELIEVE -- IS IT

12 1 VV, DOUBLE V.

2 THE COURT: YES, VV. VICTOR, VICTOR.

3
4 (MARKED FOR ID = RESPONDENT'S VV,
5 DOCUMENT.)
6

7 BY MR. MC MULLEN:

8 Q DID YOU BRING TO COURT WITH YOU TODAY A TAPE
9 RECORDER THAT WILL PLAY WHAT HAS NOW BE MARKED AS EXHIBIT
10 VV?

11 A I DID.

12 MR. MC CULLEN: WITH THE COURT'S PERMISSION, COULD
13 WE HAVE MR. ZOELLER PLAY THAT TAPE FOR YOUR HONOR?

14 THE COURT: WHAT IS THE PURPOSE?

15 MR. MC MULLEN: WELL, IT WOULD GIVE YOU AN
16 OPPORTUNITY TO HEAR MR. LEVIN'S VOICE. THIS IS -- THIS IS
17 REBUTTING OR ANSWERING IVAN WERNER'S TESTIFY THAT WHEN HE
18 OVERHEARD THE MAN WHO HE CLAIMS TO BE RON LEVIN HIS VOICE
19 WAS VERY SLOW AND RELAXED I THINK WAS THE WAY HE DESCRIBED
20 IT.

21 THE COURT: PETITIONER'S POSITION?
22

23 (A CONFERENCE WAS HELD BETWEEN COUNSEL
24 AND THE PETITIONER, NOT REPORTED.)
25

26 MR. MC MULLEN: ALSO, YOUR HONOR, WITH RESPECT TO
27 THIS PARTICULAR TAPE, THERE IS REFERENCE TO A LETTER THAT
28 MR. LEVIN IS GOING TO ASK MR. -- A LETTER THAT WAS GOING

12 1 TO GO TO MR. STEIER THAT SEEMS TO INDICATE THAT HE WOULD
2 BE WILLING TO SURRENDER IF THE F.B.I. OR IF AN INDICTMENT
3 CAME DOWN ON THE PROGRESSIVE SAVINGS & LOAN CASE.

4 SO IT ALSO SPEAKS TO -- IT ALSO GOES TO
5 REALLY NO MOTIVE TO FLEE. HE WAS WILLING TO SURRENDER ON
6 THAT CASE.

7 THE COURT: PETITIONER HAVE A POSITION?

8 MR. CRAIN: WITH REGARD TO THE PLAYING OF THE TAPE
9 ABOUT STEIER?

10 THE COURT: THE TAPE THAT'S BEEN MARKED AS VV?

11 MR. CRAIN: GIVE ME JUST A MINUTE.
12

13 (A CONFERENCE WAS HELD BETWEEN COUNSEL
14 AND THE PETITIONER, NOT REPORTED.)
15

16 MR. CRAIN: I DON'T HAVE A PROBLEM WITH THE STEIER
17 TAPE INSOFAR AS IT SHOWS MR. LEVIN'S -- WHAT HE WAS SAYING
18 ABOUT THE -- THE F.B.I. INVESTIGATION OR HIS CONTACT WITH
19 MR. STEIER.

20 WITH REGARD TO -- I'M NOT SURE WHAT COUNSEL'S
21 POINT WAS WITH REGARD TO WHAT OTHER EVIDENTIARY VALUE IT
22 MIGHT HAVE. I WOULD LIKE HIM TO READDRESS THAT IF I MAY.

23 THE COURT: HE WAS JUST SAYING THAT THE VOICE, I
24 ASSUME, THAT WILL BE ON HERE WILL BE QUICK PACED, AND
25 MR. WERNER'S TESTIMONY WAS THAT THE PERSON HE SPOKE TO HAD
26 A SLOW PACED VOICE.

27 MR. CRAIN: WELL, THE COURT -- WELL, OTHER WITNESS'
28 TESTIFIED, INCLUDING MRS. GERRARD, HE SPOKE FAST. I'M

12 1 SURE THE COURT WILL RECALL.

2 THE COURT: THERE BEING NO OBJECTION, YOU MAY PLAY
3 VV.

4 THE COURT REPORTER NEED NOT TAKE DOWN THE
5 SOUNDS COMING FROM VV.

6
7 (THE AUDIOTAPE, EXHIBIT NO. VV,
8 WAS PLAYED, BUT NOT REPORTED.)
9

10 MR. MC MULLEN: THANK YOU.

11 BY MR. MC MULLEN:

12 Q YOU SAY YOU BROUGHT ANOTHER TAPE WITH YOU?

13 A YES, I DID.

14 Q AND WHERE DID YOU FIND THAT TAPE, THE SECOND
15 TAPE YOU BROUGHT WITH YOU?

16 A THE SECOND TAPE IS THE TAPE THAT I FOUND IN
17 THE TAPE PLAYER, THE ANSWER MACHINE AT HIS DESK AT THE
18 TIME OF MY SEARCH.

19 Q AND HAVE YOU IN THE PAST LISTENED TO THAT
20 TAPE --

21 A YES.

22 Q -- THAT YOU JUST DESCRIBED?

23 A YES.

24 Q AND IS RON -- IS RON LEVIN'S VOICE ON THAT
25 TAPE?

26 A YES.

27 Q IS THERE ANY OTHER VOICES ON THAT TAPE THAT
28 YOU RECALL?

13 1 A NOT THAT I RECALL. I DIDN'T LISTEN TO --
2 WHEN I RECENTLY REVIEWED THE TAPE, I DIDN'T LISTEN TO THE
3 WHOLE TAPE.

4 Q SO YOU REVIEWED JUST THE FIRST PART OF THE
5 TAPE?

6 A THAT'S CORRECT.

7 Q AND THE FIRST PART OF THE TAPE IN YOUR
8 OPINION CONTAINS RON LEVIN'S VOICE?

9 A THAT'S CORRECT.

10 MR. MC CULLEN: WITH THE COURT'S PERMISSION WE'D
11 LIKE TO HAVE THAT TAPE MARKED AS RESPONDENT'S --

12 THE COURT: XX.

13 MR. MC MULLEN: OR WOULD IT BE WW?

14 THE COURT: I'M SORRY, DID WE MISS ONE. I'M SORRY,
15 I MISSED ONE, WW.

16
17 (MARKED FOR ID = RESPONDENT'S WW,
18 DOCUMENT.)

19
20 THE WITNESS: TO CLARIFY THE TAPE, IT HAS RON
21 LEVIN'S VOICE ON IT, BUT IT'S CONVERSATIONS WITH OTHER
22 INDIVIDUALS. IT HAS HIS VOICE IN CONJUNCTION WITH OTHER
23 INDIVIDUALS VOICES.

24 BY MR. MC CULLEN:

25 Q WHAT IS THE CONTENT OF THE CONVERSATION?

26 MR. CRAIN: OBJECTION. CALLS FOR CONJECTURE, AND
27 OBJECTION.

28 THE COURT: ARE YOU GOING TO OBJECT TO THE PLAYING

13

1 OF THE TAPE?

2 MR. CRAIN: YES.

3 THE COURT: IN THAT CASE WHAT IS ON THE TAPE?

4 MR. CRAIN: LET ME HAVE A MOMENT WITH

5 MR. MC MULLEN SINCE THERE IS A LOT OF TAPES.

6 THE COURT: YES.

7

8 (COUNSEL CONFER.)

9

10 MR. CRAIN: I THINK FROM THE DISCUSSION WITH
11 MR. MC MULLEN IT'S BASICALLY TO ATTEMPT TO PROVE WHAT HIS
12 VOICE SOUNDED LIKE, WHICH THE COURT JUST HEARD WITH REGARD
13 TO VV. I DON'T THINK IT HAS ANY RELEVANCE.

14 THE COURT: MR. MC MULLEN?

15 MR. MC MULLEN: AGAIN, WE WOULD -- WANT TO PLAY THE
16 TAPE SO YOUR HONOR COULD HEAR RON LEVIN'S VOICE AGAIN.
17 IT'S MY UNDERSTANDING, AS AN OFFER OF PROOF, THAT THIS
18 TAPE IS A TELEPHONE CONVERSATION. IT'S MORE OF A
19 CONVERSATIONAL PACE THAT HE'S TALKING IN.

20 THE COURT: I HAVE NEVER HEARD LEVIN'S VOICE OTHER
21 THAN THIS VV SO THERE IS NOTHING FOR ME TO COMPARE IT TO.
22 I HAVE TO MAKE A DECISION BASED ON WHAT THE WITNESSES TELL
23 ME OF THEIR PERCEPTIONS. WHETHER SOMEONE HAS A FAST PACED
24 OR SLOW PACED VOICE, DIFFERS FROM ONE'S OWN PERCEPTION OF
25 THAT.

26 MY INDEPENDENT EVALUATION OF THE PACING OF A
27 VOICE ON A TAPE DOESN'T ADD ANYTHING TO MY ABILITY TO
28 DETERMINE WHETHER SOMEONE IS CREDIBLE IN IDENTIFYING A

13

1 PERSON.

2 MR. MC MULLEN: VERY WELL, YOUR HONOR.

3 THE COURT: SO THERE IS A PETITIONER'S OBJECTION?

4 MR. CRAIN: YES.

5 THE COURT: I WILL NOT PLAY WW.

6 MR. MC MULLEN: THANK YOU, YOUR HONOR.

7 BY MR. MC MULLEN:

8 Q DURING THE COURSE OF YOUR INVESTIGATION OF
9 THE MURDER OF RON LEVIN --

10 MR. KLEIN: OBJECTION. THAT QUESTION ASSUMES A
11 FACT NOT IN EVIDENCE, "THE MURDER OF RON LEVIN."

12 THE COURT: I ASSUME HE WAS CONDUCTING A MURDER
13 INVESTIGATION BECAUSE HE IS A HOMICIDE DETECTIVE.

14 MR. CRAIN: THIS IS A DIFFERENT STORY. THIS WAS
15 SOMETHING THAT WAS REVISITED AGAIN AND AGAIN IN FRONT OF
16 JUDGE RITTENBAND. I KNOW THE COURT DOES NOT WISH TO PUT
17 ITSELF IN THE SHOES OF JUDGE RITTENBAND AFTER HAVING READ
18 THE TRANSCRIPT OF MR. HUNT'S TRIAL.

19 THE COURT: I HAVE NO PROBLEM WITH THE FORM OF THE
20 QUESTION.

21 BY MR. MC MULLEN:

22 Q AFTER MR. HUNT'S ARREST AS A SUSPECT AND
23 AFTER YOUR INVESTIGATION OF THE MURDER OF RON LEVIN, DID
24 YOU EVER RUN ACROSS OR SEE ANYBODY WHO YOU THOUGHT WAS RON
25 LEVIN?

26 A YOU MEAN AS FAR AS LOOK A LIKES WHERE I TOO
27 TAKE SECOND LOOKS TO MAKE SURE --

28 MR. CRAIN: THAT'S IRRELEVANT.

13 1 THE COURT: WHAT IS THE RELEVANCE.

2 MR. MC MULLEN: WELL, YOUR HONOR, THE OFFER OF
3 PROOF WOULD BE THAT OVER A PERIOD OF TIME -- WELL, FIRST
4 OF ALL, DETECTIVE ZOELLER IS FAMILIAR WITH RON LEVIN, WHAT
5 HE LOOKED LIKE. AND DURING THE COURSE OF HIS
6 INVESTIGATION FROM TIME TO TIME OR AT DIFFERENT TIMES HE
7 WOULD SEE PEOPLE THAT HE THOUGHT MIGHT BE RON LEVIN AND
8 UPON CLOSER INSPECTION THEY WERE NOT RON LEVIN. THIS --
9 THAT REALLY IS A COMMON PHENOMENA --

10 THE COURT: SO IF IT'S A COMMON PHENOMENA WE DON'T
11 NEED A WITNESS DO TELL US THAT.

12 MR. MC CULLEN: VERY WELL, YOUR HONOR.

13 THE COURT: SUSTAIN THE OBJECTION.

14 MR. MC MULLEN: NOTHING FURTHER.

15 THE COURT: ANY CROSS EXAMINATION?
16

17 CROSS-EXAMINATION +
18

19 BY MR. CRAIN:

20 Q HOW MANY TAPES CONTAINING RON LEVIN'S VOICE
21 DID YOU LISTEN TO?

22 A AT WHAT POINT?

23 Q AT ANY POINT PRIOR TO JUST NOW.

24 A ALL THE TAPES THAT I TOOK OUT OF THE
25 APARTMENT, AND I BELIEVE THERE WERE APPROXIMATELY 38.

26 Q AND IN ALL OF THEM WOULD YOU SAY THAT THERE
27 WAS VARIETY OF THE SPEED AT WHICH HE SPOKE?

28 A IT VARIED A LITTLE BIT, YES.

14

14

1 Q NOW, YOU TOLD MR. MC MULLEN YOU HAD
2 APPROXIMATELY 25 TO 50 CONTACTS WITH LEVIN BETWEEN '76 AND
3 '84; THAT IS RIGHT?

4 A APPROXIMATELY, THAT'S CORRECT.

5 Q IN SOME HE REPORTED THAT HE WAS SOME SORT OF
6 A VICTIM OF A CRIME?

7 A THAT'S CORRECT.

8 Q INCLUDING HE CLAIMED HE WAS A ROBBERY VICTIM
9 ON A NUMBER OF OCCASION?

10 MR. MC MULLEN: OBJECTION. RELEVANCY.

11 THE COURT: OVERRULED.

12 THE WITNESS: THAT'S CORRECT.

13

14 (A CONFERENCE WAS HELD BETWEEN COUNSEL
15 AND THE PETITIONER, NOT REPORTED.)

16

17 BY MR. CRAIN:

18 Q SOME WERE BURGLARY WHERE HE CLAIMED TO BE A
19 BURGLARY VICTIM.

20 A I DON'T HANDLE BURGLARIES. I DON'T THINK I
21 SPOKE TO HIM IN REFERENCE TO HIM BEING A BURGLARY VICTIM.

22 Q HE WAS ALSO A SUSPECT A NUMBER OF TIMES IN
23 YOUR CONTACTS WITH HIM IN CRIMINAL ACTIVITY?

24 A THAT'S CORRECT.

25 Q AND YOU HAVE BEEN FOR THE BEVERLY HILLS
26 POLICE DEPARTMENT THE MAIN INVESTIGATOR ON THIS CASE SINCE
27 1984; IS THAT RIGHT?

28 A THAT'S CORRECT.

1 (A CONFERENCE WAS HELD BETWEEN COUNSEL
2 AND THE PETITIONER, NOT REPORTED.)
3

4 BY MR. CRAIN:

5 Q IN YOUR INVESTIGATION, DID YOU EVER FIND
6 ANYTHING THAT MR. -- AT MR. LEVIN'S RELATING TO SOME
7 JOURNALISTIC INVESTIGATION INTO A CRIME OCCURRING IN LAS
8 VEGAS?

9 MR. MC CULLEN: OBJECTION. BEYOND THE SCOPE.

10 THE COURT: IT IS.

11 DO YOU WANT TO CALL HIM AS YOUR OWN WITNESS
12 FOR THE QUESTION?

13 MR. CRAIN: YES.

14 THE COURT: I'LL ALLOW IT.
15

16 PETITIONER
17

18 DIRECT EXAMINATION +
19

20 THE WITNESS: I DON'T RECALL THAT NOW.

21 BY MR. CRAIN:

22 Q IF YOU HAD FOUND SOMETHING LIKE THAT, WOULD
23 IT BE FAIR TO STATE THAT BASED ON YOUR TRAINING AND
24 EXPERIENCE YOU WOULD HAVE INCLUDED THAT IN A POLICE REPORT
25 SOMEWHERE?

26 MR. MC MULLEN: OBJECTION. CALLS FOR SPECULATION.

27 THE COURT: OVERRULED.

28 THE WITNESS: GIVE ME THE CIRCUMSTANCES THAT YOU

14

1 ARE REFERRING TO AGAIN, PLEASE.

2 BY MR. CRAIN:

3 Q IF YOU HAD FOUND SUCH A -- A DOCUMENT OR
4 OTHER FORM OF WRITTEN MATERIAL RELATING TO AN
5 INVESTIGATION INTO A LAS VEGAS CRIME IN MR. LEVIN'S
6 APARTMENT, YOU WOULD HAVE INCLUDED THAT IN A POLICE
7 REPORT?

8 A AN INVESTIGATION AS FAR AS RON LEVIN BEING A
9 SUSPECT OR A VICTIM? IS THAT WHAT YOU ARE REFERRING TO?

10 Q NO, IN TERMS OF A LAS VEGAS CRIME AND
11 MR. LEVIN HAVING SOME JOURNALISTIC INTEREST IN IT.

12 A I DON'T KNOW WHETHER I WOULD HAVE LISTED THAT
13 OR NOT, NO.

14

15 (A CONFERENCE WAS HELD BETWEEN COUNSEL
16 AND THE PETITIONER, NOT REPORTED.)

17

18 BY MR. CRAIN:

19 Q IF IT HAD REFERENCES TO -- IF YOU HAD FOUND
20 SUCH A FILE, AND IT HAD REFERENCES TO SOMEONE FLEEING TO
21 BRAZIL TO EVADE THE LAW, IS THAT SOMETHING YOU WOULD HAVE
22 INCLUDED IN YOUR REPORT?

23 A I DON'T RECALL SEEING SOMETHING LIKE THAT,
24 SO --

25 Q IN YOUR INVESTIGATION, YOU LOOKED INTO
26 MR. LEVIN'S ACTIVITY VIS-A-VIS CLAYTON BROKERAGE AND
27 MR. JACK FRIEDMAN; IS THAT RIGHT?

28 A THAT'S CORRECT.

14

1 Q YOU HAD DISCUSSIONS WITH MR. FREIDMAN;
2 CORRECT.

3 MR. MC CULLEN: OBJECTION. RELEVANCY.

4 THE COURT: SUSTAINED.

5 BY MR. CRAIN:

6 Q AND WITH REGARD TO THAT ASPECT OF YOUR
7 INVESTIGATION, YOU DETERMINED THAT MR. LEVIN HAD CREATED
8 FOR CLAYTON BROKERAGE A PHONY MEDIA DEAL OF SOME SORT,
9 RIGHT, MISREPRESENTING HIMSELF IN TERMS OF WANTING TO DO
10 SOME SORT OF A MEDIA PRODUCTION OR T.V. DOCUMENTARY;
11 RIGHT?

12 MR. MC MULLEN: OBJECTION. RELEVANCY AND LEADING.

13 THE COURT: SUSTAINED ON RELEVANCY GROUNDS.

14 MR. CRAIN: COULD I BE HEARD ON THAT?

15 THE COURT: YES.

16 MR. CRAIN: WELL, ONE OF THE O.S.C. ISSUES WITH
17 REGARD TO INCOMPETENCE OF COUNSEL RELATES TO CLAYTON --
18 PERHAPS -- I'M SORRY, I MISSTATED THAT. I'M SORRY. I
19 MISSTATED THAT. LET ME JUST -- I DREW A BLANK.

20 LET ME PUT IT LIKE THIS, THE PROSECUTION --
21 THE PROSECUTION PUT IN EVIDENCE THAT SUGGESTED AT LEAST
22 FROM THEIR POINT OF VIEW -- LET ME GO BACK.

23 IT GOES TO THE OLIVER WENDELL HOLMES.
24 I'M NOW RECAPITULATING HERE. LET ME REGROUP.

25 THE COURT: GO AHEAD.

26 MR. CRAIN: OLIVER WENDELL HOLMES WAS ASKED
27 QUESTIONS ABOUT CONVERSATIONS THAT HE HAD WITH MR. LEVIN
28 WHERE MR. LEVIN SOUGHT ADVICE AS TO EXTRADITION OR

14
1 DISCUSSIONS ABOUT BRAZIL AND PAYING OFF THE AUTHORITIES
2 THERE AND SO FORTH.

3 THE COURT: RIGHT.

4 MR. CRAIN: THE PEOPLE INTERJECTED SOME EVIDENCE
5 FROM -- SUGGESTING THAT, WELL, PERHAPS HE WAS REALLY
6 INTERESTED IN SOME SORT OF A CRIME THAT SOMEBODY ELSE HAD
7 PERPETRATED IN LAS VEGAS, AND HE WAS REALLY CONDUCTING
8 SOME SORT OF JOURNALISTIC INVESTIGATION.

9 THE COURT: RIGHT.

10 MR. CRAIN: WHAT I AM GOING -- ATTEMPTING TO SHOW
11 THROUGH DETECTIVE ZOELLER IS THAT MR. LEVIN -- THE COURT
12 HAS HEARD TESTIMONY THAT MR. LEVIN POSED AS A LAWYER,
13 POSED AS A DOCTOR, HAD OTHER SCAMS AND SO FORTH. AS AN
14 OFFER OF PROOF, ONE OF THE THINGS THAT MR. LEVIN DID WAS
15 TO TRICK THE BROKERAGE FIRM IN TERMS OF PORTRAYING HIMSELF
16 AS SOME SORT OF A MEDIA MAN WHO WAS --

17 THE COURT: WHO WAS DOING A STORY ON FUTURES.

18 MR. CRAIN: RIGHT.

19 THE COURT: THAT WAS ALL IN THE EVIDENCE FROM THE
20 SANTA MONICA TRIAL. I READ ALL THAT.

21 MR. CRAIN: I JUST WANTED IT AS RECORD BEFORE THIS
22 COURT THAT LEVIN HAD, IN FACT, PORTRAYED HIMSELF IN A
23 PHONY WAY AS A NEWS JOURNALIST OR CREATOR OF NEWS
24 INFORMATION --

25 THE COURT: THAT WAS ABUNDANTLY CLEAR FROM SANTA
26 MONICA. THAT'S HOW HE ATTEMPTED TO RIP OFF MR. HUNT.

27 MR. CRAIN: ONLY BECAUSE THE PEOPLE ATTEMPTED TO
28 INJECT THIS THING WITH HOLMES THAT MADE IT LOOK LIKE IT

15
1 WAS A REAL STORY IN LAS VEGAS THAT HE WAS INVESTIGATING
2 RATHER THAN HIS INTEREST IN BRAZIL BEING SO HE COULD FLEE
3 THE COUNTRY OR NOT --

4 THE COURT: IT WAS CLEAR DURING THE TRIAL, THE
5 WHOLE SCHEME THAT WAS DEVELOPED I GATHER BY MR. HUNT TO
6 HAVE A BROKER PRETEND TO BE TRADING --

7 MR. CRAIN: NOT BY -- BY MR. LEVIN.

8 THE COURT: TO HAVE MR. HUNT PRETEND TO BE -- OR
9 MR. HUNT WAS TRADING AND MR. LEVIN WAS SUPPOSEDLY DOING A
10 STORY JUST TO SHOW HOW MUCH MONEY ONE COULD MAKE. I'M
11 AWARE OF THAT TESTIMONY FROM THE TRIAL.

12 MR. CRAIN: YEAH, THE TESTIMONY WAS THIS WAS A
13 CONCOCTION OF MR. LEVIN'S IN WHICH HE COOKED IT UP ON HIS
14 OWN AND WENT TO CLAYTON BROKERAGE AND USED MR. HUNT IN
15 SOME MANNER AS PART OF THIS PHONY JOURNALISTIC SCHEME TO
16 CREATE A NONEXISTENT DOCUMENTARY, SO HE COULD GET
17 INFORMATION FROM THE BROKERAGE FIRM TO TRICK OTHER
18 BROKERAGE FIRMS INTO GIVING HIM MONEY.

19 THE COURT: ALL RIGHT.

20 MR. CRAIN: THAT'S IT.

21 THE COURT: ANYTHING FURTHER?

22 MR. MC MULLEN: NOTHING FURTHER.

23 THE COURT: MAY THE WITNESS BE EXCUSED?

24 MR. MC CULLEN: YES.

25 THE COURT: ANY OBJECTION?

26 MR. CRAIN: NO, YOUR HONOR.

27 THE COURT: THANK YOU, SIR. YOU ARE EXCUSED.

28 LET'S TAKE OUR MORNING RECESS.

15

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HOW MANY MORE WITNESSES DO YOU HAVE LEFT?

MR. MC CULLEN: TWO MORE.

THE COURT: WHO IS NEXT?

MR. MC MULLEN: CHARTIER.

THE COURT: ALL RIGHT.

15 MINUTES.

(RECESS.)

2
1 THE COURT: IN THE MATTER OF JOSEPH HUNT, THE
2 RECORD WILL REFLECT ALL COUNSEL ARE PRESENT. PETITIONER
3 IS PRESENT.

4 YOU MAY CALL YOUR NEXT WITNESS.

5 MR. MC MULLEN: YES. BARRY CHARTIER.

6
7 RESPONDENT

8
9 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

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

14 THE WITNESS: YES.

15 THE CLERK: PLEASE BE SEATED.

16 STATE YOUR NAME FOR THE RECORD AND SPELL YOUR
17 FIRST AND LAST NAME, PLEASE.

18
19 BARRY CHARTIER, @

20 CALLED AS A WITNESS BY THE RESPONDENT, WAS SWORN AND
21 TESTIFIED AS FOLLOWS:

22
23 THE COURT: BARRY CHARTIER, B-A-R-R-Y,
24 C-H-A-R-T-I-E-R.

25 THE COURT: YOU MAY INQUIRE.

26 MR. MC MULLEN: THANK YOU.
27
28

1 DIRECT EXAMINATION @

2
3 BY MR. MC MULLEN:4 Q SIR, YOU TESTIFIED EARLIER THAT YOU ARE ONE
5 OF THE INVESTIGATORS THAT HAVE BEEN ASSIGNED TO WORK ON
6 THE HABEAS LITIGATION ON THE JOE HUNT CASE.

7 A THAT'S CORRECT.

8 MR. MC MULLEN: YOUR HONOR, WITH THE COURT'S
9 PERMISSION, WE WOULD ASK THAT RESPONDENT'S EXHIBIT O BE
10 MARKED FOR IDENTIFICATION, DECLARATION OF BARRY CHARTIER.

11 THE COURT: O WILL BE MARKED

12
13 (MARKED FOR ID = RESPONDENT'S O,
14 DECLARATION OF BARRY CHARTIER.)

15 MR. MC MULLEN: MAY I APPROACH THE WITNESS?

16 THE COURT: YES.

17 BY MR. MC MULLEN:

18 Q SHOWING YOU WHAT'S BEEN MARKED AS EXHIBIT O
19 FOR IDENTIFICATION. DO YOU RECOGNIZE THAT EXHIBIT AS YOUR
20 DECLARATION?

21 A YES, SIR.

22 Q AND IS EVERYTHING IN THAT DECLARATION TRUE
23 AND ACCURATE?

24 A YES, SIR.

25 Q AND WHILE YOU WERE WORKING ON THIS CASE AT
26 SOME POINT IN TIME WERE YOU ASSIGNED THE TASK OF SEEING
27 ABOUT INTERVIEWING KAREN SUE MARMOR?

28 A YES.

2
1 Q AND WHAT DID YOU DO IN THAT -- WITH RESPECT
2 TO TRYING TO INTERVIEW KAREN SUE MARMOR?

3 A I PLACED PHONE CALLS TO HER RESIDENCE.

4 Q WHEN WAS THE FIRST TIME THAT YOU TRIED TO
5 CONTACT KAREN SUE MARMOR?

6 A I FIRST CONTACTED HER BY TELEPHONE ON MARCH
7 THE 27TH, 1995.

8 Q AND WHAT HAPPENED WHEN YOU PLACED THAT
9 TELEPHONE CALL?

10 A I IDENTIFIED MYSELF, TOLD HER THAT WE WOULD
11 LIKE TO INTERVIEW HER. SHE WAS COOPERATIVE AND WILLING
12 TO. SHE SAID HER HUSBAND WAS OUT OF TOWN. SHE WOULD LIKE
13 TO SPEAK TO HIM FIRST, AND SHE WAS EXPECTING A CALL FROM
14 HIM THAT DAY, AND SHE WOULD RECONTACT ME.

15 Q AND WHAT HAPPENED AFTER THAT INITIAL CONTACT
16 WITH RESPECT TO YOUR EFFORTS TO INTERVIEW HER?

17 MR. CRAIN: OBJECTION. RELEVANCE.

18 THE COURT: THIS GOING TO SOME KIND OF BIAS ON HER
19 PART?

20 MR. MC MULLEN: YES.

21 THE COURT: I'LL ALLOW IT.

22 THE WITNESS: SINCE I DIDN'T RECEIVE A PHONE CALL,
23 THE NEXT DAY ON MARCH THE 29TH I THEN PLACED ANOTHER PHONE
24 CALL TO HER RESIDENCE.

25 BY MR. MC MULLEN:

26 Q AND WHAT HAPPENED AT THAT -- DURING THAT
27 PHONE CONVERSATION?

28 A SHE INDICATED THAT HER HUSBAND WOULD BE OUT

2
1 OF TOWN FOR TWO WEEKS, AND THAT SHE WAS GOING TO JOIN HIM
2 AT HIS LOCATION. THEY WOULD CONTACT US WHEN THEY
3 RETURNED.

4 Q AND WERE YOU CONTACTED LATER ON BY EITHER
5 KAREN SUE OR LEN MARMOR?

6 A NO, SIR.

7 Q WHAT DID YOU DO WITH RESPECT TO TRYING TO
8 INTERVIEW KAREN SUE MARMOR AT THAT POINT IN TIME?

9 A I PLACED ANOTHER PHONE CALL TO THE RESIDENCE
10 ON APRIL THE 12TH, 1995.

11 Q AND WHAT HAPPENED DURING THAT CONVERSATION?

12 A AT THIS CONVERSATION I SPOKE WITH LEN MARMOR,
13 KAREN SUE MARMOR'S HUSBAND.

14 Q WHAT HAPPENED DURING THAT CONVERSATION?

15 A WE AGREED FOR AN INTERVIEW THE NEXT DAY,
16 APRIL THE 13TH, 1995.

17 Q AND THAT WAS AN INTERVIEW WITH LEN MARMOR?

18 A WITH BOTH LEN MARMOR AND KAREN SUE MARMOR.

19 Q DID YOU GO OUT THE NEXT DAY FOR THAT
20 INTERVIEW?

21 A NO, SIR.

22 Q DID YOU GO OUT FOR AN INTERVIEW WITH LEN
23 MARMOR?

24 A YES, WE DID.

25 Q WHEN DID YOU GO?

26 A ON APRIL THE 20TH, 1995.

27 Q AND WHAT HAPPENED -- WELL, DID YOU -- ON
28 APRIL 20TH DID YOU TRY TO INTERVIEW KAREN SUE MARMOR ON

2
1 THAT PARTICULAR DATE?

2 A WE ASKED TO INTERVIEW HER, YES.

3 Q AND WHAT HAPPENED?

4 A HER HUSBAND INDICATED THAT SHE WAS ILL, AND
5 HE DIDN'T WANT TO DISTURB HER. AND WE DID INTERVIEW
6 MR. MARMOR. HOWEVER, SHE WAS NOT AVAILABLE.

7 Q OKAY.

8 WAS THERE SOME KIND OF A CONVERSATION ABOUT
9 WHEN YOU MIGHT TRY TO GET BACK TO INTERVIEW KAREN SUE
10 MARMOR WHEN YOU WERE THERE INTERVIEWING LEN?

11 A MR. MARMOR SAID HE WOULD HAVE KAREN SUE
12 MARMOR CALL WHEN SHE WAS AVAILABLE.

13 Q DID SHE CALL?

14 A NO, SIR.

15 Q DID YOU TRY TO CALL HER?

16 A YES, SIR.

17 Q WHEN DID YOU DO THAT?

18 A ON MAY THE 2ND, 1995.

19 Q AND DID YOU MAKE A CALL TO THE MARMOR
20 RESIDENCE?

21 A YES, SIR.

22 Q WHO DID YOU TALK TO?

23 A LEN MARMOR.

24 Q WHAT HAPPENED DURING THAT CONVERSATION?

25 A HE ANSWERED THE PHONE. HE CALLED HER. I
26 COULD HER HEAR HIM CALL HER TO THE TELEPHONE. HE SAID,
27 "IT'S DETECTIVE CHARTIER FROM THE DISTRICT ATTORNEY'S
28 OFFICE," AND THEN HE CAME BACK ON THE PHONE AND SAID, "SHE

2
1 DOESN'T WANT TO TALK TO YOU."

2 AND I SAID, "WELL, CAN SHE TELL ME THAT" --

3 MR. CRAIN: I'LL MOVE TO STRIKE WHAT MR. MARMOR
4 SAID. IT'S HEARSAY. IF THEY'RE OFFERING IT AS TO -- TO
5 PROVE THE TRUTH OF HER STATE OF MIND, IT'S A HEARSAY
6 STATEMENT.

7 THE COURT: I'LL ALLOW IT.

8 BY MR. MC MULLEN:

9 Q I'M SORRY, WHAT DID MR. LEN MARMOR SAY?

10 A HE SAID, "SHE DOESN'T WANT TO TALK TO YOU."

11 I ASKED HIM IF SHE WOULD COME TO THE PHONE
12 AND TELL ME THAT, SO I COULD HEAR IT FROM HER DIRECTLY.

13 Q WHAT HAPPENED THEN?

14 A I COULD HEAR HER YELLING OR SCREAMING IN THE
15 BACKGROUND, "TELL HIM I DO NOT WANT TO TALK TO HIM," OR
16 WORDS TO THAT EFFECT.

17 MR. CRAIN: MOVE TO STRIKE THAT AS HEARSAY.

18 THE COURT: DID IT APPEAR TO BE THE -- DID YOU
19 RECOGNIZE HER VOICE?

20 THE WITNESS: IT APPEARED TO BE THE SAME VOICE AS
21 LADY WHO TESTIFIED HERE EARLIER IN THE TRIAL.

22 THE COURT: OVERRULED.

23 MR. MC MULLEN: I HAVE NOTHING FURTHER.

24 THE COURT: CROSS EXAMINATION?

25 MR. CRAIN: MAY I APPROACH THE WITNESS, YOUR HONOR.

26 THE COURT: YEAH.

27
28 (PAUSE.)

CROSS-EXAMINATION +

3
1
2
3 BY MR. CRAIN:

4 Q DURING ONE OF YOUR CONVERSATIONS WITH
5 MR. MARMOR, DID MR. MARMOR SAY THAT HIS PREFERENCE WAS
6 THAT EITHER MR. KLEIN OR MYSELF BE PRESENT WHEN SUCH
7 INTERVIEWS WERE CONDUCTED?

8 MR. MC MULLEN: OBJECTION. RELEVANCE.

9 THE COURT: OVERRULED.

10 THE WITNESS: NO, SIR.

11 BY MR. CRAIN:

12 Q DID HE SAY THAT HE HAD TALKED TO MR. ROWAN
13 KLEIN ABOUT WHETHER OR NOT ANYONE COULD BE PRESENT TO
14 WITNESS YOUR INTERVIEW?

15 A YES, SIR.

16 Q AND HE SAID THAT IN THE PAST HE HAD AGREED TO
17 ATTEMPT TO MAKE ARRANGEMENTS TO HAVE MR. HUNT'S ATTORNEY
18 PRESENT TO WITNESS ANY INTERVIEW?

19 A THAT'S CORRECT.

20 Q AND YOU TOLD HIM THAT YOU -- YOU AND
21 MR. SIMPSON, YOUR PARTNER FROM THE DISTRICT ATTORNEY'S
22 OFFICE, WOULD REFUSE TO CONDUCT ANY INTERVIEWS IF MR.
23 HUNT'S COUNSEL, LEGAL COUNSEL, WERE PRESENT; IS THAT
24 RIGHT?

25 A THAT'S RIGHT.

26 Q SO, IN OTHER WORDS, YOU CONVEYED TO THE
27 MARMORS THAT YOU WERE NOT WILLING TO HAVE LEGAL COUNSEL
28 FOR MR. HUNT PRESENT TO WITNESS YOUR INTERVIEW WITH EITHER

3
1 OF THE MARMORS; IS THAT RIGHT?

2 A THAT'S RIGHT.

3 MR. CRAIN: I DON'T HAVE ANYTHING FURTHER.

4 THE COURT: ANYTHING FURTHER?

5 MR. MC MULLEN: JUST A QUESTION.

6
7 REDIRECT EXAMINATION @

8
9 BY MR. MC MULLEN:

10 Q AT SOME POINT IN TIME, THEN, DID MR. MARMOR
11 AGREE TO BE INTERVIEWED BY YOU AND MR. SIMPSON WITHOUT MR.
12 KLEIN OR MR. CRAIN BEING PRESENT?

13 A YES, SIR.

14 MR. MC MULLEN: NOTHING FURTHER.

15 THE COURT: ANY RECROSS?

16
17 (A CONFERENCE WAS HELD BETWEEN COUNSEL
18 AND THE PETITIONER, NOT REPORTED.)

19
20 RECROSS-EXAMINATION +

21
22 BY MR. CRAIN:

23 Q DID YOU SURREPTITIOUSLY TAPE RECORD YOUR
24 INTERVIEW WITH MR. MARMOR AFTER HE SAID HE WANTED A
25 WITNESS TO YOUR INTERVIEW WITH HIM?

26 A I BELIEVE WE DID. I'M NOT SURE THAT THAT ONE
27 WAS OPEN OR NOT, BUT WE DID RECORD IT, YES.

28 Q WELL, AS YOU DO RECALL SURREPTITIOUSLY

3
1 RECORDING MR. MARMOR AFTER HIS CONVERSATIONS THAT YOU HAD
2 WITH HIM WHERE HE SAID HE WANTED A WITNESS TO THE
3 INTERVIEWS, DIDN'T YOU?

4 A I DON'T BELIEVE HE SAID HE WANTED A WITNESS
5 TO THE INTERVIEWS, AND IT'S QUITE POSSIBLE WE DID
6 SURREPTITIOUSLY RECORD THAT INTERVIEW.

7 Q SHOWING YOU PAGE ONE OF A REPORT DATED
8 5-1-95. DOES THIS APPEAR TO BE A REPORT YOU HAVE SEEN
9 BEFORE?

10 A YES, SIR.

11 Q DOES PAGE ONE REFRESH YOUR MEMORY AS TO
12 WHETHER OR NOT THE DISTRICT ATTORNEY'S OFFICE
13 SURREPTITIOUSLY RECORDED MR. MARMOR WITHOUT HIS KNOWLEDGE?

14 A IT DOES REFRESH MY MEMORY. AND, YES, WE DID.

15 Q AND THAT WAS ON APRIL 20TH, 1995 --

16 A THAT'S CORRECT.

17 Q -- WHEN THAT EVENT TOOK PLACE, SIR?

18 A YES, SIR.

19 MR. CRAIN: NOTHING FURTHER.

20 THE COURT: ANYTHING FURTHER?

21 MR. MC MULLEN: NOTHING FURTHER.

22 THE COURT: MAY THE WITNESS BE EXCUSED?

23 MR. CRAIN: YES, YOUR HONOR.

24 MR. MC MULLEN: YES.

25 THE COURT: THANK YOU, SIR. CALL YOUR NEXT
26 WITNESS.

27 MR. MC MULLEN: YES, MR. TOM SIMPSON.

28 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

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

5 THE WITNESS: YES.

6 THE CLERK: PLEASE BE SEATED.

7 STATE YOUR NAME FOR THE RECORD AND SPELL YOUR
8 FIRST AND LAST NAME, PLEASE.

9
10 TOMMY C. SIMPSON, @
11 CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND TESTIFIED
12 AS FOLLOWS:

13
14 THE WITNESS: MY NAME IS TOMMY C. SIMPSON,
15 S-I-M-P-S-O-N.

16 THE COURT: YOU MAY INQUIRE.

17 MR. MC MULLEN: THANK YOU,
18

19 DIRECT EXAMINATION @
20

21 BY MR. MC MULLEN:

22 Q SIR, WHAT IS YOUR OCCUPATION AND YOUR CURRENT
23 ASSIGNMENT?

24 A I'M THE SUPERVISING INVESTIGATOR OF THE LOS
25 ANGELES DISTRICT ATTORNEY'S OFFICE BUREAU OF
26 INVESTIGATION.

27 Q HAVE YOU BEEN ASSIGNED AS ONE OF THE
28 INVESTIGATORS WITH RESPECT TO THE HABEAS CORPUS LITIGATION

3
1 IN THE JOE HUNT CASE?

2 A YES.

3 Q AND WHEN DID YOU START?

4 A I BELIEVE THAT WAS APRIL THE 11TH OF 1994.

5 Q ON MARCH 1ST OF 1995 DID YOU CONDUCT AN
6 EXAMINATION OF THE PARKING LOT LOCATED AT THE TOWN AND
7 COUNTRY CENTER ON 11640 SAN VINCENTE BOULEVARD IN
8 BRENTWOOD.

9 MR. CRAIN: YOUR HONOR, I WOULD LIKE TO BE HEARD ON
10 THIS, IF I MAY, BEFORE HE ANSWERS. I THINK AN OFFER OF
11 PROOF, IF REQUIRED BY THE COURT, WOULD FAIL. THIS IS NOT
12 AN EXPERT THAT COULD QUALIFY UNDER THE LAW. THIS IS
13 SOMETHING THAT WAS -- IN OTHER WORDS, THIS IS LIKE GOING
14 OUT TO CONDUCT AN EXPERIMENT WHEN THE CONDITIONS AREN'T
15 THE SAME. THEY CAN'T SHOW THAT THEY WERE. IT'S SOME
16 DECADE LATER, AND THEY JUST CAN'T DO IT. HE IS GOING TO
17 SAY HE WENT TO THE SCENE AND DROVE BY, AND THAT'S ABOUT --
18 THAT'S ABOUT THE SCOPE OF IT. I THINK THERE OUGHT TO BE
19 AN OFFER OF PROOF.

20 THE COURT: LET ME HEAR THE TESTIMONY. IT MAY BE
21 OF VERY LITTLE VALUE. LET ME HEAR THE TESTIMONY SUBJECT
22 TO A MOTION TO STRIKE.

23 MR. MC MULLEN: THANK YOU.

24 THE COURT: WHAT DATE ARE YOU TALKING ABOUT, AGAIN?

25 MR. MC MULLEN: MARCH 1, 1995.

26 BY MR. MC MULLEN:

27 Q DID YOU GO TO THE TOWN AND COUNTRY CENTER ON
28 1164 SAN VINCENTE BOULEVARD IN BRENTWOOD?

4
1 A YES, I DID.

2 Q PRIOR TO GOING TO THAT LOCATION DID YOU
3 REVIEW ANY MATERIALS?

4 A YES, I DID.

5 Q WHAT DID YOU REVIEW?

6 A I REVIEWED THE TESTIMONY OF NADIA GHALIEB
7 CONDUCTED AT THE TRIAL IN SAN MATEO. I ALSO REVIEWED THE
8 EXHIBITS WHICH WERE PETITIONERS WHICH WERE FILED IN THE
9 O.S.C..

10 Q THOSE EXHIBITS, DID THEY PERTAIN TO NADIA
11 GHALIEB?

12 A YES, THEY DID.

13 MR. MC MULLEN: MAY I APPROACH THE WITNESS?

14 THE COURT: YES.

15 BY MR. MC MULLEN:

16 Q SHOWING YOU WHAT'S BEEN MARKED AS EXHIBIT
17 DOUBLE M. DO YOU RECOGNIZE THAT PHOTOGRAPH?

18 A YES, I DO.

19 Q AND DO YOU KNOW -- WERE YOU PRESENT WHEN THAT
20 PHOTOGRAPH WAS TAKEN?

21 A YES, I WAS.

22 MR. CRAIN: WOULD THE COURT PERMIT US TO TAKE HIM
23 ON VOIR DIRE?

24 THE COURT: NO. YOU CAN CROSS-EXAMINE HIM ON IT.

25 BY MR. MC MULLEN:

26 Q WHEN WAS THAT PHOTOGRAPH TAKEN?

27 A RECENTLY. MAY I REFER TO MY NOTES? I DON'T
28 HAVE THE EXACT DATE IN MY MIND.

4
1 Q IF YOU REFER TO YOUR NOTES, WOULD IT REFRESH
2 YOUR RECOLLECTION?

3 A YES, IT WOULD.

4 THE COURT: GO AHEAD.

5
6 (WITNESS REVIEWING DOCUMENTS.)
7

8 THE WITNESS: THAT PHOTOGRAPH WAS TAKEN ON APRIL
9 THE 17TH, 1996.

10 BY MR. MC MULLEN:

11 Q WERE YOU IN A HELICOPTER WHEN THAT PHOTOGRAPH
12 WAS TAKEN?

13 A YES, I WAS.

14 MR. MC MULLEN: WITH THE COURT'S PERMISSION, WE'D
15 ASK TO BE MARKED AS RESPONDENT'S I FOR IDENTIFICATION --
16 EXCUSE ME, H FOR IDENTIFICATION --

17 THE COURT: H IS THE DECLARATION OF MS. GHALIEB.

18 MR. MC MULLEN: I'M SORRY, I.

19 THE COURT: I IS THE LOS ANGELES COUNTY 1988 THOMAS
20 GUIDE PAGE 41.

21 MR. MC MULLEN: THIS IS SEVERAL BLOWUPS OF THAT
22 PAGE ON A BOARD.

23 THE COURT: BE MARKED AS I.
24

25 (MARKED FOR ID = RESPONDENT'S I,
26 BLOWUP OF MAPS.)
27
28

4
1 BY MR. MC MULLEN:

2 Q SIR, LOOKING AT EXHIBIT 1 FOR IDENTIFICATION
3 AND THE PHOTOGRAPH THAT'S UP ON THE TOP THAT IS CENTERED,
4 CAN YOU SEE APPROXIMATELY ON THAT MAP WHERE THE TOWN AND
5 COUNTRY CENTER IS?

6 A YES.

7 THE COURT: LET'S DO THIS. YOU COULD PUT THE
8 MARKINGS ON THEM LATER, BUT IT WILL BE I-1, -2, -3, -4
9 AND -5. -1 WILL BE THE ONE ON TOP, AND -2 THROUGH -5
10 BEING ON THE BOTTOM.

11 MR. MC MULLEN: I'LL MARK THAT NOW ON EACH OF THE
12 MAPS.

13
14 (MARKED FOR ID = RESPONDENT'S I-1
15 THROUGH I-5, BLOWUP OF MAPS.)
16

17 BY MR. MC MULLEN:

18 Q DRAWING YOUR ATTENTION TO I-1, COULD YOU
19 POINT OUT FOR THE COURT WHERE APPROXIMATELY THE TOWN AND
20 COUNTRY CENTER IS LOCATED ON THAT MAP?

21 A NOW, IT WOULD BE THIS AREA THAT'S HIGHLIGHTED
22 IN RED NEAR THE CENTER OF THE PHOTOGRAPH.

23 Q NOT -- IT ISN'T THE ENTIRE AREA THAT IS IN
24 RED, IS IT?

25 A NO, IT'S NOT. IT WOULD BE IN THE UPPER MOST
26 PORTION THAT I AM POINTING TO NOW OF THIS HIGHLIGHTED RED
27 AREA.

28 Q COULD YOU GO AHEAD AND TAKE MY PEN AND SORT

4 1 OF CIRCLE GENERALLY WHERE THE TOWN AND COUNTRY CENTER IS?

2

3

(WITNESS COMPLIES.)

4

5

A IT'S ON THE SOUTH SIDE OF SAN VINCENTE IN
6 THIS AREA RIGHT HERE (INDICATING).

7

THE COURT: ALL RIGHT.

8

HE PLACED A CIRCLE IN THE RED AREA OF I-1.

9

BY MR. MC MULLEN:

10

Q WHEN YOU WENT TO THE TOWN AND COUNTRY CENTER

11

ON MARCH 1, 1995, DID YOU DRIVE BY THE PARKING LOT THERE

12

AT THE CENTER AT CERTAIN SPEEDS IN AN EFFORT TO DETERMINE

13

HOW LONG YOU COULD SAFELY LOOK TOWARDS THE PARKING LOT AS

14

YOU DROVE BY?

15

A YES, I DID.

16

Q AND WHEN YOU DID THAT, DID YOU FOCUS ON A

17

PARTICULAR SPOT WITHIN THE PARKING LOT?

18

A GENERALLY SPEAKING, YES.

19

Q WHERE IS IT THAT YOU FOCUSED?

20

A IN THE PARKING AREA THAT STRETCHES BETWEEN

21

THE WESTERN DRIVEWAY AND THE EASTERN DRIVEWAY ON THE SOUTH

22

SIDE OF SAN VINCENTE.

23

Q AND BASED UPON THE MATERIALS YOU HAD REVIEWED

24

PRIOR TO THAT, TO GOING OUT TO THAT LOCATION, WERE YOU

25

ABLE TO DETERMINE WHERE NADIA GHALIEB HAD CLAIMED TO HAVE

26

SEEN THIS PERSON SHE TESTIFIED TO IN SAN MATEO?

27

A NO, I WAS NOT.

28

Q HOW MANY DIFFERENT TIMES -- WELL, DID YOU

4 1 DRIVE BY THAT LOCATION MORE THAN ONCE IN AN EFFORT TO
2 DETERMINE HOW LONG YOU COULD SAFELY LOOK AT THE PARKING
3 LOT?

4 A YES.

5 Q AND HOW MANY TIMES DID YOU DRIVE BY?

6 A APPROXIMATELY FOUR OR FIVE.

7 Q AND DID YOU DRIVE BY AT DIFFERENT SPEEDS?

8 A YES.

9 Q WHAT DIFFERENT SPEEDS DID YOU DRIVE BY AT?

10 A BETWEEN 20 AND 30 MILES AN HOUR.

11 Q AND WITH RESPECT TO DRIVING BY AT 20 MILES AN
12 HOUR, WHAT WAS THE LENGTH OF TIME YOU COULD SAFELY LOOK
13 TOWARDS THE PARKING LOT AS YOU DROVE BY.

14 MR. CRAIN: YOUR HONOR, THIS IS IRRELEVANT. THERE
15 IS NO FOUNDATION. THERE IS NO FOUNDATION AS TO -- IN
16 OTHER WORDS, THE LAW REQUIRES, AS THE COURT KNOWS --

17 THE COURT: IS THE OBJECTION FOUNDATION?

18 MR. CRAIN: PARDON ME?

19 THE COURT: IS THE OBJECTION FOUNDATION?

20 MR. CRAIN: THE OBJECTION IS NO FOUNDATION.

21 THE COURT: SUSTAINED.

22 MR. CRAIN: THANK YOU.

23 BY MR. MC MULLEN:

24 Q WHEN YOU DROVE BY AT THESE VARIOUS TIMES,
25 WHAT LANE WERE YOU IN?

26 A I WAS IN THE NUMBER TWO LANE.

27 Q AND --

28 THE COURT: MEANING THE LANE TWO FROM -- TO THE

5
1 RIGHT OF THE CENTER.

2 THE WITNESS: YES, YOUR HONOR, THAT'S CORRECT.
3 BY MR. MC MULLEN:

4 Q HOW MANY LANES WERE THERE IN THE DIRECTION
5 THAT YOU WERE TRAVELING?

6 A THERE IS A -- WHAT I WILL CALL A NUMBER ONE
7 LANE, WHICH IS CLOSEST TO THE CENTER. THERE'S THE NUMBER
8 TWO LANE I WAS TRAVELING IN, AND THEN TO THE RIGHT OF THAT
9 LANE IS A PARKING LANE THAT IS ADJACENT TO THE CURB.

10 Q WHY DID YOU DRIVE IN THE NUMBER TWO LANE WHEN
11 YOU DROVE BY?

12 A I DROVE IN THE NUMBER TWO LANE BECAUSE I HAD
13 DETERMINED FROM A REVIEW OF THE TESTIMONY OF NADIA
14 GHALIEB, THE REPORT TAKEN OF HER INTERVIEWS, THAT THAT WAS
15 THE LANE WHICH SHE INDICATED SHE HAD DRIVEN IN.

16 Q AND WHAT TIME OF DAY WAS IT THAT YOU DROVE BY
17 THIS LOCATION?

18 A APPROXIMATELY 8:30 IN THE MORNING.

19 Q AND WHY DID YOU DRIVE BY AT 8:30 IN THE
20 MORNING?

21 A THAT WAS THE TIME THAT NADIA GHALIEB HAD
22 INDICATED IN THE REPORTS THAT I REVIEWED AND THE TESTIMONY
23 THAT I REVIEWED, THE TIME THAT SHE HAD TRAVELED THAT AREA.

24 Q NOW, YOU SAY YOU DROVE BY THAT LOCATION, WAS
25 IT FOUR TIMES?

26 A FOUR OR FIVE.

27 Q AND WHAT SPEEDS DID YOU DRIVE -- DID YOU
28 DRIVE BY AT DIFFERENT SPEEDS?

5
1 A YES.

2 Q WHAT SPEEDS DID YOU DRIVE BY AT?

3 A I DROVE BY AT 20, I BELIEVE 22 OR 23, 25 AND
4 I BELIEVE I DROVE BY AT 30.

5 Q WHY DID YOU DRIVE BY THAT LOCATION AT THOSE
6 DIFFERENT SPEEDS?

7 A I DROVE BY AT THE 20, 23 AND 25 BECAUSE OF
8 THE APPROXIMATION OF NADIA GHALIEB'S SPEED. I DROVE BY AT
9 30 BECAUSE IT WAS MORE REFLECTIVE OF THE TRAFFIC PATTERN
10 AT THE TIME THAT I WAS THERE.

11 Q IN YOUR REVIEW OF HER TESTIMONY FROM SAN
12 MATEO AND SOME EXHIBITS YOU REVIEWED, YOU WERE UNDER THE
13 IMPRESSION THAT --

14 MR. CRAIN: OBJECTION. LEADING THE WITNESS.

15 THE COURT: LET ME HEAR THE WHOLE QUESTION.

16 BY MR. MC MULLEN:

17 Q FROM REVIEWING THE MATERIALS PRIOR TO GOING
18 OUT THERE, YOU GAINED AN UNDERSTANDING OF WHAT SPEED SHE
19 DROVE BY THAT LOCATION WHEN SHE CLAIMS TO HAVE SEEN WHAT
20 SHE SAW?

21 A YES.

22 Q OKAY.

23 WITH RESPECT TO YOUR DRIVE BY THAT LOCATION
24 AT 20 MILES PER HOUR, HOW LONG WERE YOU ABLE TO SAFELY
25 LOOK TOWARDS THE PARKING LOT WHILE YOU WERE DRIVING IN THE
26 NUMBER TWO LANE AT 20 MILES AN HOUR.

27 MR. CRAIN: OBJECTION. NO FOUNDATION, THEREFORE,
28 IRRELEVANT.

5
1 THE COURT: SUSTAINED.

2 I DON'T THINK YOU CAN GET THERE FROM HERE.
3 GOT AN EIGHT-YEAR DIFFERENCE TO BEGIN WITH, AND THE
4 DEFINITION OF "SAFELY" IS AS WIDE AS THE NUMBER OF DRIVERS
5 THERE ARE IN LOS ANGELES.

6 MR. MC MULLEN: YES, YOUR HONOR. IF I MIGHT JUST
7 PROCEED. ONE OTHER THING, WITH THE COURT'S PERMISSION, WE
8 WOULD LIKE TO HAVE MARKED AS EXHIBIT DOUBLE H A
9 DECLARATION OF TOM SIMPSON.

10 THE COURT: IT WILL BE MARKED AS HH.

11
12 (MARKED FOR ID = RESPONDENT'S HH,
13 DECLARATION OF TOM SIMPSON.)
14

15 MR. MC MULLEN: MAY I APPROACH THE WITNESS?

16 THE COURT: YES.

17 BY MR. MC MULLEN:

18 Q SHOWING YOU EXHIBIT HH. DO YOU RECOGNIZE
19 THAT AS YOUR DECLARATION?

20 A YES, I DO. PAGE TWO BEARS MY SIGNATURE AT
21 THE BOTTOM OF THE PAGE.

22 Q IS EVERYTHING IN THAT DECLARATION TRUE AND
23 ACCURATE OR TRUE AND CORRECT?

24 A YES.

25 Q ON MONDAY, MAY 6TH, 1996, DID YOU RETURN TO
26 THE TOWN AND COUNTRY CENTER?

27 THE COURT: I'M SORRY, WHAT DATE?

28 MR. MC MULLEN: MAY 6, 1996.

5
1 MR. CRAIN: YOUR HONOR --

2 THE WITNESS: MAY I REVIEW MY NOTES?

3 MR. CRAIN: I THINK WHERE WERE HEADING IS RIGHT
4 DOWN THE SAME ROAD THAT THE COURT SAID THEY COULDN'T
5 CONTINUE DOWN. THIS IS ANOTHER VISIT TO THE TOWN AND
6 COUNTRY CENTER FOR EXACTLY THE SAME THING.

7 THE COURT: LET ME HEAR WHERE THEY'RE GOING.

8 MR. MC MULLEN: IT WON'T TAKE LONG.

9 THE COURT: "NOT LONG" DOES NOT MEAN RELEVANT.

10 MR. MC MULLEN: YES, YOUR HONOR.

11 BY MR. MC MULLEN:

12 Q DID YOU GO BACK TO THE SAME TOWN AND COUNTRY
13 CENTER ON MY 6, 1996?

14 A YES, I DID.

15 Q WHY DID YOU GO BACK?

16 A I WENT BACK TO MAKE A MORE PRECISE EVALUATION
17 OF THE SHOPPING CENTER.

18 Q AND PRIOR TO GOING BACK TO THE CENTER DID YOU
19 REVIEW ANY MATERIALS?

20 A YES.

21 Q WHAT DID YOU REVIEW?

22 A I REVIEWED THE TESTIMONY OF NADIA GHALIEB AS
23 IT WAS TAKEN IN THIS HEARING. I ALSO REVIEWED THE
24 PHOTOGRAPH WHEREUPON SHE HAD PLACED MARKINGS INDICATING
25 WHERE SHE OBSERVED RON LEVIN'S VEHICLE AND ALSO THE
26 LOCATION HER VEHICLE WAS IN WHEN SHE MADE THAT
27 OBSERVATION.

28 Q AND -- WHEN YOU WERE AT THE TOWN AND COUNTRY

6
1 CENTER ON MAY 6TH DID YOU OBSERVE THE PARKING SPACE THAT
2 NADIA GHALIEB IDENTIFIED WITH AN 'L' ON EXHIBIT DOUBLE M
3 THAT IS IN FRONT OF YOU?

4 A I BELIEVE I DID.

5 Q PLEASE DESCRIBE THE WAY THE PARKING LOT
6 APPEARED ON MAY 6, 1996?

7 A IT APPEARS AS IT APPEARS IN THIS PHOTOGRAPH.
8 IT'S A PARKING LOT ON THE SOUTH SIDE OF SAN VINCENTE AT
9 THE ADDRESS THAT YOU HAD PREVIOUSLY INDICATED, I BELIEVE
10 IT'S 11640 SAN VINCENTE ROAD.

11 Q WHEN YOU WENT BACK TO THE TOWN AND COUNTRY
12 CENTER, WERE YOU ABLE TO -- OR DID YOU OBSERVE THE
13 LOCATION THAT NADIA GHALIEB IDENTIFIED AS THE PLACE SHE
14 WAS AT WHEN SHE MADE THE OBSERVATION SHE DID AND SHE
15 INDICATED THAT BY PLACING AN "X" ON EXHIBIT DOUBLE M?

16 A I BELIEVE I DID.

17 Q DID YOU DRIVE BY -- DID YOU MAKE VARIOUS --
18 WELL, DID YOU DRIVE BY THE TOWN AD COUNTRY CENTER ON MAY
19 6, 1996, AT A SPEED OF 20 MILES AN HOUR?

20 A YES, I DID.

21 Q WHEN YOU DID THAT, WHAT LANE WERE YOU IN?

22 A I WAS IN THE NUMBER TWO LANE.

23 Q AND DID YOU LOOK -- WHEN YOU DID THAT -- DID
24 YOU LOOK AT THE LOCATION THAT NADIA GHALIEB INDICATED ON
25 EXHIBIT MM AS A LOCATION IN WHICH SHE CLAIMS TO HAVE SEEN
26 WHAT SHE SAW IN THE TOWN AND COUNTRY CENTER MARKED WITH AN
27 "X" AS YOU DROVE BY?

28 A YES.

6
1 Q AND HOW LONG WERE YOU ABLE TO LOOK AT THAT
2 LOCATION FROM THE LOCATION YOU LOOKED AT IT?

3 MR. CRAIN: OBJECTION. NO FOUNDATION AND,
4 THEREFORE, IRRELEVANT.

5 THE COURT: HOW LONG WAS HE ABLE TO LOOK AT A
6 LOCATION?

7 BY MR. MC MULLEN:

8 Q HOW LONG WERE YOU ABLE TO LOOK AT WHAT IS
9 DESIGNATED IN MM WITH AN "L" FROM THE LOCATION THAT IS
10 DESIGNATED ON EXHIBIT MM AS "X" AS YOU DROVE BY?

11 THE COURT: THE PROBLEM AS I SEE IT IS YOU HAVE GOT
12 AN EIGHT YEAR DIFFERENCE. WE DON'T KNOW WHAT EXACTLY THE
13 TRAFFIC WAS LIKE. TO RECREATE THIS IS VIRTUALLY
14 IMPOSSIBLE UNDER THESE CIRCUMSTANCES.

15 I'LL SUSTAIN THE OBJECTION.

16 MR. CRAIN: THANK YOU.

17 MR. MC MULLEN: VERY WELL. JUST ONE LAST INQUIRY,
18 YOUR HONOR.

19 WITH THE COURT'S PERMISSION, WE'D LIKE TO
20 HAVE MARKED AS RESPONDENT'S NEXT IN ORDER, WHICH I BELIEVE
21 IS DOUBLE X.

22 THE COURT: YES.

23 MR. MC MULLEN: THIS HAS BEEN PREVIOUSLY SHOWN TO
24 COUNSEL. THERE ARE 14 PHOTOGRAPHS.

25 MAY I APPROACH?

26 I HAVE A COPY FOR THE COURT.

27 THE COURT: YES.

28 MR. MC MULLEN: THEY ARE NUMBERED 1 THROUGH 14.

6
1 THE COURT: ALL RIGHT.

2 IT WILL BE X-1 THROUGH -14.

3
4 (MARKED FOR ID = RESPONDENT'S XX-1
5 THROUGH XX-14 PHOTOGRAPHS.)

6
7 BY MR. MC MULLEN:

8 Q SIR, WOULD YOU JUST LOOK AT EXHIBITS -1
9 THROUGH -14, PLEASE.

10
11 (WITNESS REVIEWING EXHIBITS.)

12
13 A I HAVE LOOKED AT THEM.

14 Q DO YOU RECOGNIZE THOSE PHOTOGRAPHS?

15 A YES, I DO.

16 Q WERE YOU PRESENT WHEN THOSE PHOTOGRAPHS WERE
17 TAKEN?

18 A YES, I WAS.

19 Q WHEN WERE THOSE PHOTOGRAPHS TAKEN?

20 A I BELIEVE THOSE PHOTOGRAPHS WERE TAKEN MAY 6
21 OF 1996.

22 MR. CRAIN: GIVEN THE COURT'S SUSTAINING THE
23 OBJECTION TO THIS LINE OF TESTIMONY, WHY COUNSEL PERSISTS
24 IN TAKING US TO THE TOWN AND COUNTRY CENTER --

25 THE COURT: THESE ARE PHOTOS OF THE AREA. YOU HAVE
26 GOT TO REMEMBER MS. GHALIEB IDENTIFIED A PHOTOGRAPH THAT
27 WAS TAKEN SOMEWHAT CONTEMPORANEOUS WITH THIS HEARING. IT
28 WAS A PHOTOGRAPH TAKEN EARLIER THIS YEAR, THE OTHER AERIAL

6
1 PHOTOGRAPH.

2 MR. MC MULLEN: THE AERIAL PHOTOGRAPH WAS TAKEN --
3 BY MR. MC MULLEN:

4 Q DO YOU REMEMBER MR. SIMPSON?

5 A I BELIEVE IT WAS APRIL -- IT WOULD BE APRIL
6 THE 17TH, 1996, YOUR HONOR.

7 THE COURT: ALL RIGHT.

8 THESE ARE JUST ADDITIONAL PHOTOGRAPHS OF THE
9 AREA.

10 I'LL ALLOW IT.

11 BY MR. MC MULLEN:

12 Q COULD YOU JUST DESCRIBE GENERALLY WHAT THOSE
13 PHOTOGRAPHS DEPICT, -1 THROUGH -14, EXHIBIT XX?

14 A BEFORE WE GO ON, I WOULD LIKE TO CORRECT
15 MYSELF. I BELIEVE I MISSPOKE WITH REGARD TO WHEN THESE
16 PHOTOGRAPHS WERE TAKEN. I BELIEVE I PREVIOUSLY INDICATED
17 THEY WERE TAKEN ON MAY 6TH. THAT IS INCORRECT. THEY WERE
18 TAKEN ON APRIL THE 17TH, YOUR HONOR.

19 . THE COURT: OF THIS YEAR?

20 THE WITNESS: YES, YOUR HONOR.

21 BY MR. MC MULLEN:

22 Q COULD YOU PLEASE DESCRIBE GENERALLY WHAT
23 EXHIBIT XX-1 THROUGH -14, WHAT THEY DEPICT?

24 A THESE PHOTOGRAPHS DEPICT THE ROADWAY
25 TRAVELING WEST TO EAST, THE ROADWAY IS SAN VINCENTE
26 BOULEVARD AT APPROXIMATELY 11640 IN BRENTWOOD.

27 Q AND IS IT A SEQUENCE OF PHOTOGRAPHS TAKEN AS
28 YOU DROVE BY THE TOWN AND COUNTRY CENTER?

6
1 A YES, THEY ARE.

2 MR. MC MULLEN: COULD I JUST HAVE A MOMENT?

3 THE COURT: YES.

4

5 (PAUSE.)

6

7 THE COURT: NOTHING FURTHER.

8 THE COURT: CROSS EXAMINATION?

9 MR. CRAIN: NO QUESTIONS.

10 THE COURT: MAY THE WITNESS BE EXCUSED?

11 MR. MC MULLEN: YES.

12 THE COURT: ANY OBJECTION?

13 MR. CRAIN: I ASSUME HE'LL BE HERE IN CASE WE

14 WANTED TO RECALL HIM FOR ANYTHING.

15 THE COURT: UPON SUFFICIENT SHOWING.

16 YOU MAY STEP DOWN.

17 MR. KLEIN: WE MAY WANT TO CALL HIM.

18 THE COURT: WHY DON'T YOU CALL HIM RIGHT NOW.

19 MR. CRAIN: I DON'T INTEND TO.

20

21 (A CONFERENCE WAS HELD BETWEEN COUNSEL

22 AND THE PETITIONER, NOT REPORTED.)

23

24 MR. CRAIN: I JUST WANTED TO VERIFY HE IS NOT ABOUT

25 TO EMBARK UPON A TRIP TO NAPAL OR SOMETHING OR KATMANDU.

26 THE COURT: ANYTHING ELSE YOU ARE PLANNING TO DO

27 THIS WEEK?

28 THE WITNESS: NO IMMEDIATE PLANS TO TRAVEL, EXCEPT

7
1 FOR THE WEEKENDS.

2 THE COURT: MAYBE WE SHOULD PLAN TO HAVE THIS ON
3 WEEKENDS ALSO.

4 MR. CRAIN: IN A WAY WE ARE.

5 THE COURT: ANY FURTHER WITNESSES?

6 MR. MC MULLEN: NO FURTHER WITNESSES. THE --
7 NOTWITHSTANDING A FURTHER -- A DISCUSSION OF EXHIBITS,
8 PEOPLE REST.

9 THE COURT: ANY REBUTTAL?

10 MR. CRAIN: I'M GOING TO CALL MR. HUNT.

11 THE COURT: ALL RIGHT.

12 MR. HUNT.

13 MR. CRAIN: GIVE ME JUST A MOMENT TO -- TO DISCUSS
14 THINGS HERE.

15 THE COURT: ALL RIGHT.

16 (A CONFERENCE WAS HELD BETWEEN COUNSEL
17 AND THE PETITIONER, NOT REPORTED.)

18

19

REBUTTAL

20

21 MR. CRAIN: I'LL CALL MR. HUNT AT THIS TIME.

22 THE COURT: ALL RIGHT. ALL RIGHT.

23 MR. HUNT HAS NOT BEEN EXCUSED.

24 SO, SIR, YOU ARE REMINDED THAT YOU ARE STILL
25 UNDER OATH.

26 COULD YOU STATE YOUR NAME, AGAIN, FOR THE
27 RECORD.

28 THE WITNESS: JOE HUNT.

7
1 THE COURT: YOU MAY INQUIRE.

2
3 JOSEPH HUNT, @
4 THE PETITIONER HEREIN, CALLED AS A WITNESS IN HIS OWN
5 BEHALF, HAVING BEEN PREVIOUSLY SWORN, RESUMED THE STAND
6 AND TESTIFIED FURTHER AS FOLLOWS:

7
8 DIRECT EXAMINATION +

9
10 BY MR. CRAIN:

11 Q MR. HUNT, DID YOU HEAR ALL THE TESTIMONY OF
12 DECLAN O'DONNELL AND WILLIAM KILPATRICK IN THIS HEARING?

13 A YES, I DID.

14 Q YOU ALSO HEARD TESTIMONY OF MR. BARENS;
15 CORRECT?

16 A YES.

17 Q ALL RIGHT.

18 NOW, AS YOU TESTIFIED, YOU HAD DISCUSSIONS
19 WITH MR. BARENS CONCERNING THE FINANCIAL EXPECTATIONS THAT
20 YOU HAD RELATIVE TO THE B.B.C. IN THE SPRING AND SUMMER OF
21 1984; IS THAT RIGHT?

22 A YES.

23 Q ALL RIGHT.

24 AND DID YOU HAVE --

25 MR. CRAIN: YOUR HONOR, I HAVE SOME EXHIBITS. SOME
26 HAVE BEEN PREVIOUSLY MARKED, AND I'LL BE REFERRING TO
27 THEM. I HAVE AT THIS TIME, I WOULD LIKE NEXT IN ORDER, I
28 THINK IT'S 303.

7
1 THE COURT: NO, 304.

2 MR. CRAIN: 304.

3 MR. CRAIN: THIS WOULD BE 7131, 7134, 7133 AND
4 1714, I BELIEVE.

5 THE COURT: WHAT IS 304?

6 MR. CRAIN: I WOULD LIKE THIS AS ONE EXHIBIT. IT'S
7 GOING TO CONTAIN, I BELIEVE, SEVERAL PAGES.

8 THE WITNESS: THREE PAGES.

9 THE COURT: WHAT DO YOU HAVE FOR A DESCRIPTION FOR
10 THE EXHIBIT LIST?

11 THE WITNESS: IS IT ALL RIGHT IF I GIVE YOU A
12 DESCRIPTION, YOUR HONOR?

13 THE COURT: SURE.

14 MR. CRAIN: THAT'S PROBABLY BEST, YOUR HONOR, IF HE
15 COULD DESCRIBE IT FOR THE RECORD.

16 THE WITNESS: THIS IS AN OPTION AGREEMENT, ONE
17 PAGE, SIGNED BY MICHAEL DOW, GENERAL PARTNER GOLD SUN
18 UNLIMITED, DATED AUGUST 9, 1993.

19 A LETTER ON BROWNING, BARNARD CORE AND
20 TRUDEAU STATIONERY INDICATING A CHECK FOR \$62,500 WAS SENT
21 TO JOE HUNT.

22 ANOTHER XEROX COPY OF A NOVEMBER 7, 1983,
23 CHECK FOR \$87,500.

24 THE COURT: ALL RIGHT.

25 YOU MAY INQUIRE.

26

27 (MARKED FOR ID = PETITIONER'S 304,

28 DOCUMENT.)

7
1 BY MR. CRAIN:

2 Q ALL RIGHT.

3 MR. HUNT, CALLING YOUR ATTENTION TO WHAT'S
4 BEEN MARKED COLLECTIVELY AS EXHIBIT 304. ARE THESE
5 DOCUMENTS YOU HAVE SEEN BEFORE?

6 A YES, THEY ARE.

7 Q AND DO THOSE IN SOME WAY RELATE TO THE
8 BUSINESSES YOU WERE OPERATING IN LATE 1983 RELATIVE TO THE
9 B.B.C. AND ANY OF IT'S SUBSIDIARIES?

10 MR. MC MULLEN: OBJECTION. RELEVANCY. THIS LINE
11 OF QUESTIONING WITH RESPECT TO THESE DOCUMENTS GOES BEYOND
12 THE PARAMETERS OF THE ORDER TO SHOW CAUSE AND --

13 THE COURT: LET ME SEE WHERE IT'S GOING.

14 MR. MC MULLEN: YES, YOUR HONOR.

15 BY MR. CRAIN:

16 Q DID YOU HEAR THE QUESTION?

17 A YES.

18 Q AND ARE YOU FAMILIAR WITH THE GOLD SUN,
19 LIMITED OPTION?

20 A THIS IS THE PAPERWORK RELATED TO THE \$150,000
21 THAT I REFERRED TO IN MY TESTIMONY EARLIER IN THIS
22 PROCEEDING.

23 Q NOW, EARLIER IN THE PROCEEDING YOU TESTIFIED
24 THAT IN THE FALL OF 19-- -- SOMETIME IN THE FALL OF 1983
25 ONE OF YOUR BUSINESSES UNDER THE B.B.C. UMBRELLA HAD
26 ENTERED INTO A TRANSACTION WITH A MR. DOW; IS THAT RIGHT?

27 A CORRECT.

28 Q THAT WAS FOR AN OPTION RELATIVE TO THE

7
1 ATTRITION MILLS; IS THAT CORRECT?

2 A YES, IT WAS FOR AN OPTION TO PURCHASE 20
3 ATTRITION MILLS AT A PRICE OF \$200,000 EACH. IT WAS A
4 NONREFUNDABLE PAYMENT OF 150 GRAND.

5 Q WAS MR. DOW CONNECTED WITH A COMPANY CALLED
6 GOLD SUN?

7 A YES.

8 Q AND WAS THIS -- WAS THIS \$150,000 PAID BY
9 MR. DOW TO MR. -- B.B.C..

10 A YES.

11 Q DO THOSE DOCUMENTS, EXHIBIT 304, REFLECT THIS
12 TRANSACTION AND THAT PAYMENT?

13 A YES.

14 Q NOW, WAS THIS TRANSACTION AND THAT PAYMENT
15 DISCUSSED IN YOUR CONFERENCES WITH ARTHUR BARENS PRIOR TO
16 THE COMMENCEMENT OF YOUR TRIAL IN SANTA MONICA?

17 A YES.

18 MR. MC MULLEN: AGAIN, YOUR HONOR, OBJECTION.
19 IRRELEVANT, AND GOES -- INAPPROPRIATE REBUTTAL.

20 THE COURT: I'LL ALLOW SOME LIMITED INQUIRY.

21 WE'RE NOT GOING TO GO BACK AND REDO ALL THE
22 NEGOTIATIONS AGAIN, ARE WE, MR. CRAIN?

23 MR. CRAIN: NO, YOUR HONOR, BUT I THINK THE COURT
24 WILL SEE HOW THIS GOES TO THE KILPATRICK ISSUE.

25 THE COURT: LET'S SEE WHERE IT GOES.

26 BY MR. CRAIN:

27 Q DO YOU REMBER THE QUESTION I ASKED BEFORE THE
28 OBJECTION?

1 A YES, I DID SHOW THIS TO MR. BARENS OR DISCUSS
2 IT WITH HIM.

3 Q AND WHAT SIGNIFICANCE DID THESE DOCUMENTS AND
4 THIS DEAL AND PAYMENT HAVE TO YOU RELATIVE TO YOUR BELIEF
5 AS TO B.B.C.'S FINANCIAL SITUATION?

6 MR. MC MULLEN: OBJECTION. RELEVANCE.

7 THE COURT: SUSTAINED.

8 BY MR. DODD:

9 Q WHAT DID YOU TELL MR. BARENS ABOUT THE
10 SIGNIFICANCE OF THESE DOCUMENTS?

11 A I EXPLAINED TO HIM THAT THIS WAS ONE OF ABOUT
12 FIVE DEALS THAT SHOWED ME THAT BUSINESSMEN OUT IN THE
13 WORLD TOOK SERIOUSLY THE B.B.C.'S TECHNOLOGY AND WERE
14 WILLING TO PAY SUBSTANTIAL SUMS OF MONEY I TOLD HIM
15 INDEPENDANTLY. I WASN'T A SCIENTIST, I COULDN'T SAY THAT
16 THE ATTRITION MILL WAS REVOLUTIONIZING ANYTHING FROM THE
17 GRINDING INDUSTRY, BUT IT HAD BEEN MY EXPECTATION FROM
18 EVERYTHING THAT I HAD HEARD THERE THAT IT MIGHT BE.

19 BUT I TOLD HIM THAT THERE IS -- WAS AT LEAST
20 FIVE ARMS LENGTH TRANSACTIONS THAT PEOPLE SIGNED WHICH
21 REFLECTED THAT SERIOUS BUSINESS PEOPLE THAT SEEMED TO HAVE
22 KNOWLEDGE OF WHAT THEY WANTED WANTED THE ATTRITION MILLS.

23 Q AND DID YOU SUGGEST TO MR. BARENS THAT THIS
24 WOULD BE -- SHOULD BE PART OF THE EVIDENCE THAT HE SHOULD
25 PRESENT TO REPUTE THE PROSECUTIONS FINANCIAL MOTIVE THEORY
26 THAT WE HAVE PREVIOUSLY DISCUSSED?

27 MR. MC MULLEN: AGAIN, OBJECTION; RELEVANCY.

28 THE COURT: OVERRULED.

1 THE WITNESS: YES, I TOLD HIM THE ATTRITION MILLS,
2 THE WHOLE MICROGENESIS OPERATION WAS NOT A SCAM, IT WAS A
3 LEGITIMATE BUSINESS.

4 BY MR. CRAIN:

5 Q AND THOSE DOCUMENTS YOU HAVE SAID REFLECT
6 THAT A \$150,000 WAS PAID INITIALLY BY MICHAEL DOW OF GOLD
7 SUN; CORRECT?

8 A CORRECT.

9 Q AND THE OTHER DOCUMENTS AS PART OF EXHIBIT
10 304 REFLECT A FOUR MILLION DOLLAR OPTION TO PURCHASE 20
11 MORE ATTRITION MILLS; IS THAT RIGHT?

12 A THAT'S WHAT THEY GOT IN EXCHANGE FOR THEIR
13 \$150,000.

14 Q AND DID MR. BARENS INDICATE WHAT HE INTENDED
15 TO DO WITH THIS INFORMATION THAT YOU GAVE HIM ABOUT THE
16 VIABILITY OF THE ATTRITION MILLS AND THE FINANCIAL ASPECTS
17 OF THIS INFORMATION?

18 MR. MC MULLEN: OBJECTION. VAGUE AS TO TIME AND
19 RELEVANCY.

20 MR. CRAIN: THIS IS ALL PRIOR TO TRIAL. RATHER
21 THAN GO WEEK BY WEEK.

22 THE COURT: JUST REFOCUS AND MAKE SURE YOUR
23 QUESTIONS ARE CLEAR.

24 BY MR. CRAIN:

25 Q MR. HUNT, ALL THESE QUESTIONS ARE DIRECTED TO
26 PRIOR TO TRIAL UNLESS I INDICATE OTHERWISE OR UNLESS YOU
27 BELIEVE THE ANSWER REQUIRES SOME EXPLANATION ON THAT
28 SUBJECT.

1 PRIOR TO TRIAL DID YOU -- I HAVE FORGOTTEN
2 THE QUESTION.

3 THE COURT: WHAT DID MR. --
4 BY MR. CRAIN:

5 Q THAT'S RIGHT.

6 PRIOR TO TRIAL AFTER YOU SHOWED MR. BARENS
7 THESE GOLD SUN, MICHAEL DOW DOCUMENTS IN EXHIBIT 304 DID
8 HE INDICATE TO YOU IN SOME WAY WHAT, IF ANYTHING, HE
9 INTENDED TO DO WITH IT IN YOUR DEFENSE?

10 A PRIOR TO THE TAKING OF THE EVIDENCE I RECALL
11 HIM SPECIFICALLY ORDERING THE JENSENS TO FIND ADELMAN. HE
12 WAS VERY KEEN ON THE IDEA OF DEVELOPING THE MICROGENESIS
13 MATTER BOTH IN TERMS OF CORROBORATING BROOK ROBERTS AND
14 ASPECTS OF HER TESTIMONY AND IN TERMS OF ESTABLISHING THAT
15 THEIR MOTIVE THEORY WAS FALSE, THAT IN MAY AND JUNE OF
16 1984 I WAS NOT DESPERATE FINANCIALLY AND DIDN'T HAVE THAT
17 STATE OF MIND.

18 Q DO YOU HAVE 7215 THERE?

19 MR. CRAIN: I WOULD LIKE THIS MARKED AS 305, 7215.

20 THE WITNESS: THAT'S ALREADY AN EXHIBIT. THAT IS
21 THE SEEKING SHELTER ARTICLE.

22 BY MR. CRAIN:

23 Q I SEE. OKAY.

24 I DON'T REMEMBER WHAT EXHIBIT THAT WAS.
25 WAS THERE AN ARTICLE ENTITLED "SEEKING
26 SHELTER" THAT YOU HAD DISCUSSED WITH MR. BARREN?

27 THE COURT: WE NEED AN EXHIBIT NUMBER IF IT'S A
28 MARKED EXHIBIT.

1 THE WITNESS: YOU KNOW WHAT, I DO HAVE IT.

2 MR. CRAIN: I DIDN'T THINK IT WAS MARKED.

3 MR. MC MULLEN: I THINK IT WAS.

4 MR. CRAIN: YOU DO?

5 MR. MC MULLEN: YEAH.

6 THE WITNESS: YEAH, IT WAS SHOWN TO MR. KILPATRICK.

7 BY MR. CRAIN:

8 Q THAT WAS THE ARTICLE FROM THE DENVER
9 BUSINESS --

10 THE WITNESS: HERE'S --

11 MR. CRAIN: IT WAS SHOWN TO MR. KILPATRICK. IT WAS
12 MARKED AS AN EXHIBIT IN THE -- IN THE LATE 200'S.

13 MR. MC MULLEN: 298 WE THINK.

14 THE COURT: THAT'S A NEWSPAPER ARTICLE.

15 MAGAZINE ARTICLE, LOOK AT 288.

16 IS THAT NOVEMBER, '88?

17 MR. MC MULLEN: NOVEMBER, '83.

18 THE COURT: I'M SORRY, '83. YOU'RE RIGHT. THAT IS
19 EXHIBIT 288.

20

21 (A CONFERENCE WAS HELD BETWEEN COUNSEL
22 AND THE DEFENDANT, NOT REPORTED.)

23

24 MR. CRAIN: 288.

25 MR. KLEIN: LET ME DOUBLE CHECK RIGHT NOW.

26 BY MR. CRAIN:

27 Q I WANT TO ASK YOU NOW ABOUT THE MAGAZINE
28 ARTICLE THAT MR. KILPATRICK WAS ASKED ABOUT.

1 MR. KLEIN: YEAH, IT'S 288, YOUR HONOR.

2 THE COURT: YOU DIDN'T BELIEVE ME?

3 MR. KLEIN: NO, I DIDN'T -- I JUST WANTED TO --

4 BY MR. CRAIN:

5 Q YOU HAVE A MAGAZINE IN FRONT OF YOU,

6 MR. HUNT; IS THAT CORRECT?

7 A YEAH, I HAVE THE ORIGINAL.

8 Q AND YOU HAVE HAD A CHANCE TO SEE 288 WHICH
9 I'M HOLDING IN MY HAND NOW ENTITLED "SEEKING SHELTER" FROM
10 THE DENVER BUSINESS MAGAZINE OF NOVEMBER, 1983?

11 A YES, I HAVE.

12 Q ALL RIGHT.

13 IS THAT SOMETHING YOU HAVE SEEN BEFORE?

14 A YES.

15 Q WHERE DID YOU GET THAT ORIGINALLY?

16 A MR. KILPATRICK GAVE ME THIS COPY WHEN I WAS
17 OUT IN DENVER.

18 THE COURT: INDICATING THE ORIGINAL MAGAZINE.

19 THE WITNESS: YEAH, HE SAID IT WAS A -- A GOOD WAY
20 FOR ME TO LEARN ABOUT HIS SITUATION AND --

21 BY MR. CRAIN:

22 Q DID YOU READ THE ARTICLE?

23 A YES, I DID. HE SAID HE WORKED WITH THE
24 AUTHOR OF THE ARTICLE AND THAT IT WAS PRETTY ACCURATE.

25 Q WAS THIS AN ARTICLE YOU DISCUSSED WITH
26 MR. BARENS PRIOR TO TRIAL?

27 A YES. I OFFERED HIM A COPY OF THIS AS A MEANS
28 OF FAMILIATIZING HIMSELF WITH MR. KILPATRICK.

2
1 Q AND DID YOU POINT TO ANY SPECIFIC PORTIONS OF
2 THE ARTICLE ABOUT MR. KILPATRICK THAT YOU ARE NOW SURE
3 THAT YOU DISCUSSED WITH MR. BARENS?

4 MR. MC MULLEN: OBJECTION, RELEVANCY.

5 THE COURT: OVERRULED.

6 THE WITNESS: I REMEMBER WHEN I GAVE IT TO HIM
7 TELLING HIM THAT -- IT DESCRIBED HOW MR. KILPATRICK HAD
8 COME OUT ON TOP IN HIS PROBLEMS WITH THE FEDERAL
9 GOVERNMENT. I WASN'T AWARE OF ANYTHING THAT HAPPENED TO
10 MR. KILPATRICK AFTER JULY OR EARLY AUGUST, 1984.

11 BY MR. CRAIN:

12 Q WHEN YOU SAY HIS PROBLEMS WITH THE FEDERAL
13 GOVERNMENT YOU MEAN HIS BANKRUPTCY AND CRIMINAL INDICTMENT
14 PROBLEMS THAT INVOLVED --

15 A I WAS UNDER THE IMPRESSION THAT, AT LEAST
16 WITH RESPECT TO ANY LIMITATION THAT THE THE BANKRUPTCY
17 PROCEEDINGS ON U.F.O.I. AND HAD ON THE MERGER THAT THAT
18 HAD BEEN RESOLVED. I DIDN'T HAVE ANY INQUIRY ABOUT
19 WHETHER THERE WAS SOME SORT OF ONGOING PROBLEMS WITH
20 U.F.O.I. IN OTHER RESPECTS THAT KEPT THE JURISDICTION IN
21 THE BANKRUPTCY COURT FOR U.F.O.I..

22 I DID TELL MR. BARENS THAT IT WAS MY
23 UNDERSTANDING THAT THE ONLY IMPEDIMENT TO THE RELEASE OF
24 MONIES RELATING TO THE SATURN, U.F.O.I. MERGER WAS THE
25 APPROVAL BY THE B.C. REGULATORY COMMISSION AS OF LATE MAY,
26 1984.

27 Q NOW, IN --

28 MR. CRAIN: I WOULD LIKE TO MARK ANOTHER EXHIBIT

2
1 HERE. IT'S 7359 AS PETITIONER'S --

2 THE COURT: 305.

3
4 (MARKED FOR ID = PETITIONER'S 305, DOCUMENT.)

5
6 MR. MC MULLEN: MAY I APPROACH, YOUR HONOR?

7 THE COURT: YES.

8 BY MR. CRAIN:

9 Q CALLING YOUR ATTENTION TO PETITIONER'S 305.

10 THE COURT: JUST FOR THE RECORD, WHAT IS IT?

11 THE WITNESS: IT IS A NINE PAGE AGREEMENT BETWEEN
12 WILLIAM MORTON AND MICROGENESIS OF NORTH AMERICA.

13 THE COURT: ALL RIGHT.

14 BY MR. CRAIN:

15 Q AND WHAT DOES THAT DOCUMENT RELATE TO?

16 MR. MC MULLEN: OBJECTION, RELEVANCE.

17 BY MR. CRAIN:

18 Q IS THIS A DOCUMENT YOU DISCUSSED WITH ARTHUR
19 BARENS?

20 A YES.

21 Q PRIOR TO TRIAL?

22 A YES.

23 Q WHAT DID YOU TELL ARTHUR BARENS ABOUT THIS
24 DOCUMENT AND ANY SIGNIFICANCE IT MIGHT HAVE RELATIVE TO
25 YOUR DEFENSE IN THE CASE?

26 A THIS WAS ANOTHER OF THE FIVE ARMS LENGTH
27 TRANSACTIONS RELATING TO MICROGENESIS AND IT WAS
28 NEGOTIATED BETWEEN MR. MORTON AND MYSELF, EXECUTED IN

2
1 JANUARY OF 1984 AND IT DESCRIBES A TWO MILLION DOLLAR
2 LEASE PAYMENT WHICH MR. MORTON WAS WILLING TO PAY OUT OVER
3 ABOUT A YEAR AND A HALF PERIOD OF TIME TO GET THE USE OF
4 ONE ATTRITION MILL AT A MINE SITE IN ARIZONA.

5 IT ALSO CALLS FOR A 2.4 MILLION DOLLAR OPTION
6 INVOLVING 12 ADDITIONAL MACHINES ALSO SUBJECT IN EACH CASE
7 TO A \$200,000 LEASE PAYMENT.

8 THERE ARE ADDITIONAL FEES THAT WOULD BE OWED
9 MICROGENESIS BECAUSE OF THE EXECUTION OF THIS AGREEMENT
10 WITH RESPECT TO OUR SUPPORT OF THOSE ATTRITION MILLS AT
11 THE MINE SITE.

12 Q AND THE INFORMATION THAT YOU JUST GAVE TO THE
13 COURT ABOUT THAT DOCUMENT, IS THAT INFORMATION THAT YOU
14 DISCUSSED IN YOUR PRETRIAL DISCUSSIONS WITH YOUR THEN
15 ATTORNEY MR. BARREN?

16 A YES, I TOLD HIM A LOT ABOUT MR. MORTON AS
17 WELL.

18 Q WHAT INFORMATION DID YOU GIVE HIM ABOUT
19 MR. MORTON THAT YOU TOLD HIM MIGHT BE USEFUL IN YOUR
20 DEFENSE?

21 MR. MC MULLEN: OBJECTION, RELEVANCY.

22 THE COURT: I THINK WE ARE GETTING INTO DETAILS
23 THAT ARE UNNECESSARY.

24 BY MR. CRAIN:

25 Q NOW, EXHIBIT 2878.

26 MR. CRAIN: THIS IS THE NOVEMBER -- NOVEMBER 19,
27 1983 CONTRACT, YOUR HONOR.

28 THE COURT: YES.

2
1 BY MR. CRAIN:

2 Q MR. HUNT --

3
4 (PAUSE.)

5
6 MR. CRAIN: YOUR HONOR, COULD I TAKE A MOMENT? WE
7 ARE TRYING TO CO-ORDINATE THINGS AND YOU HAVE SEEN ME WITH
8 EXHIBITS BEFORE.

9 THE COURT: YES.

10 MR. CRAIN: APPRECIATE THE COURT'S INDULGENCE. LET
11 ME JUST GIVE MR. KLEIN A FEW NUMBERS.

12
13 (PETITIONER'S COUNSEL CONFER.)

14
15 BY MR. CRAIN:

16 Q ALL RIGHT.

17 SHOWING YOU NOW, MR. HUNT, WHAT'S BEEN MARKED
18 AS EXHIBIT 287. IS THIS A DOCUMENT THAT YOU HAVE SEEN
19 BEFORE?

20 A YES, IT IS.

21 Q AND WHAT DOES THAT DOCUMENT RELATE TO?

22 LET ME ASK YOU THIS SO WE DON'T HAVE AN
23 OBJECTION. IS THAT A DOCUMENT THAT YOU DISCUSSED WITH
24 ARTHUR BARENS PRIOR TO TRIAL?

25 A YES.

26 Q WHAT DOES THAT DOCUMENT RELATE TO?

27 A THIS WAS THE AGREEMENT I SIGNED WITH
28 MR. KILPATRICK IN NOVEMBER OF 1983 WHEN I VISITED HIS

3
1 OFFICES IN DENVER.

2 Q AND WHAT DID YOU TELL MR. BARENS ABOUT THIS
3 PARTICULAR DOCUMENT?

4 A WELL, --

5 Q OR ABOUT THE --

6 A ONE --

7 Q -- THE PROCEEDINGS THAT LED UP TO IT?

8 A ONE OF THE THINGS THAT I FOCUSED ON WITH
9 MR. BARENS WAS THE PERIOD OF TIME IN LATE JULY WHEN THE
10 SITUATION WITH MR. KILPATRICK AND I BECAME CONTENTIOUS AND
11 THERE WAS A -- THERE WAS A -- I SENT HIM A LETTER --

12 THE COURT: IN LATE JULY, '84?

13 THE WITNESS: JULY, '84. I SENT MR. KILPATRICK A
14 LETTER THROUGH MY ATTORNEY MR. ADELMAN SAYING AS FAR AS I
15 WAS CONCERNED THE DEAL WAS OFF AND THAT PROMPTED DECLAN
16 O'DONNELL'S LETTER WHICH BECAME AN EXHIBIT THAT THE COURT
17 SAW YESTERDAY.

18 I SAID ONE OF THE THINGS THAT I FOUND SO
19 UNBELIEVABLE IN MR. KILPATRICK'S POSITION AT THAT POINT
20 WAS THE EXCLUSIVE MARKETING AGREEMENT IN PARAGRAPH TWO.

21 Q THAT'S THE DOCUMENT YOU HAVE THERE NOW.

22 THE COURT: 287.

23 THE WITNESS: WHICH MR. KILPATRICK SIGNED WITH ME
24 PROVIDED THAT U.F.O.I AGREES FOR ITSELF AND IT'S
25 AFFILIATES AND CONTROLLED BUSINESSES THAT IT WILL MARKET
26 ONLY PRODUCTS SUPPLIED BY MICROGENESIS OR APPROVED FOR
27 SALE BY IT. FURTHERMORE, U.F.O.I. COVENANTS TO
28 AFFIRMATIVELY CHANNEL PRODUCT AND TECHNOLOGICAL

3
1 OPPORTUNITIES THAT IT FINDS ELSEWHERE OVER TO
2 MICROGENESIS."

3 WHAT I SAID TO MR. BARENS WAS THAT UNDER THIS
4 CLAUSE OF THE CONTRACT ANYTHING THAT CAME UP, ANY OTHER
5 RIGHTS THAT HE MIGHT HAVE ACQUIRED IN THE PAST RELATING TO
6 THE ATTRITION MILLS, ANY OTHER -- ANY OTHER RIGHTS OR
7 OPPORTUNITIES WITH RESPECT TO THE ATTRITION MILLS THAT
8 MIGHT HAVE DEVELOPED ALL HAD TO BE TURNED OVER OR
9 CHANNELED TO MICROGENESIS. THIS PREVENTED HIM FROM GOING
10 AROUND US, AND THAT'S WHAT I TOLD MR. KILPATRICK LATE IN
11 JULY IN THE PHONE CONVERSATION I HAD WITH HIM; I BELIEVE
12 ON THE 27TH OF JULY, 1984.

13 I -- YOU KNOW, I TOLD MR. KILPATRICK THAT
14 THIS -- THIS PEARL HARBOR, BECAUSE THIS WAS NEWS TO ME
15 THAT HE WAS GOING TO TAKE THIS POSITION. WE HAD GONE BACK
16 AND FORTH ON SEVEN DIFFERENT DRAFTS, NEGOTIATED DOWN TO
17 THE FINE POINTS, GOTTEN WHAT I -- COMPLETELY AWAY FROM THE
18 LARGE ISSUES OF CONSIDERATION TO JUST SMALL TECHNICALITIES
19 IN THE LANGUAGE OF THE DEAL, AND ALL OF A SUDDEN HE POPS
20 OUT WITH, "WELL, BROWNING HAS SOLD THIS BEFORE, WE ARE
21 GOING TO HAVE TO THROW THIS BACK OPEN AND RENEGOTIATE FROM
22 GROUND ZERO INVOLVING A LOT OF DIFFERENT PARTIES."

23 I TOLD MR. KILPATRICK, AND I TOLD MR. BARENS
24 THAT I HAD TOLD MR. KILPATRICK AT THAT TIME THAT THIS WAS
25 JUST A NEGOTIATING TACTIC ON KILPATRICK'S PART. HE WAS
26 TRYING TO STALL THINGS SO HE COULD GET THE MERGER
27 COMPLETED, AT WHICH POINT THERE WOULD BE DIFFERENT
28 LEVERAGE IN THE RELATIONSHIP BETWEEN US.

3
1 Q YOU TOLD MR. BARENS ABOUT THIS?

2 A IN MUCH GREATER DETAIL THAN THIS.

3 Q YOU TOLD HIM YOU HAD THE CONTRACT --

4 A WHETHER HE HAD A PREEXISTING CONTRACT OR NOT,
5 AS HE FIRST ALLEGED IN LATE JULY, '84, TO ME WAS TOTALLY
6 IRRELEVANT TO THE TERMS AND CONDITIONS OF THE AGREEMENT
7 BETWEEN US.

8 Q THAT DOCUMENT, THAT IS SOMETHING THAT YOU
9 SIGNED, 287?

10 A YES.

11 Q MR. KILPATRICK SIGNED IT?

12 A YES.

13 Q AND MR. ROBINSON OF SATURN CORPORATION IN
14 CANADA SIGNED IT?

15 A HE SIGNED THE LICENSE AGREEMENT. THE
16 EXCLUSSIVE MARKETING AGREEMENT WAS JUST BETWEEN KILPATRICK
17 AND I. THERE IS ONLY TWO SIGNATURE BLANKS.

18 Q DID YOU DISCUSS WITH MR. BARENS ANY RELATION
19 THAT MR. BROWNING, THE INVENTOR OF THE ATTRITION MILLS,
20 HAD WITH MR. SWARTOUT, WHOSE NAME MR. KILPATRICK TOLD US?

21 MR. MC MULLEN: OBJECTION --

22 THE COURT: YOU LOST ME.

23 BY MR. CRAIN:

24 Q THIS IS SWARTOUT. S-W-A-R-T-O-U-T IS THE
25 SPELLING OF THE PERSON'S NAME.

26 DID YOU HEAR MR. KILPATRICK TALK ABOUT HERE
27 IN HIS TESTIMONY MR. SWARTOUT?

28 A YES.

3
1 Q AND MR. KILPATRICK TOLD US ABOUT MR. SWARTOUT
2 AND HIS CONNECTION, AS HE PUT IT, WITH MR. BROWNING?

3 A RIGHT.

4 Q SOME SUPPOSITION ABOUT THAT.

5 DID YOU HAVE ANY DISCUSSIONS WITH ARTHUR
6 BARENS PRIOR TO TRIAL CONCERNING MR. SWARTOUT'S
7 RELATIONSHIP, IF ANY, TO MR. BROWNING?

8 MR. MC MULLEN: OBJECTION, RELEVANCY.

9 THE COURT: OVERRULED.

10 THE WITNESS: YES.

11 BY MR. CRAIN:

12 Q WHAT DID YOU TELL MR. BARENS DURING THESE
13 DISCUSSIONS?

14 A I DISCUSSED SOME CONVOLUTED DEALINGS THAT I
15 HAD WITH COGENCO BUT SPECIFICALLY --

16 Q WHAT WAS COGENCO?

17 A COGENCO WAS A COMPANY DOWN IN SAN JUAN
18 CAPISTRANO THAT WAS RUN BY A GUY NAMED BRUCE SWARTOUT.
19 B.B.C. GOT INTO A CUL-DE-SAC TYPE BUSINESS TRANSACTION
20 WITH MR. COGENCO -- WITH MR. SWARTOUT WHICH WE ENDED UP
21 RESCINDING AT LEAST FROM OUR POINT OF VIEW. THERE WAS A
22 BUSINESS DISPUTE THERE BETWEEN SWARTOUT AND US.

23 I TOLD MR. BARENS THAT MR. BROWNING NEVER HAD
24 ACKNOWLEDGED -- NEVER SIGNED A CONTRACT TRANSFERRING
25 TECHNOLOGY TO MR. SWARTOUT. THERE WAS NO SUCH DOCUMENT IN
26 EXISTENCE. THERE WAS A TRANSACTION BETWEEN A COMPANY
27 CALLED CYCLOTRONICS AND MR. SWARTOUT'S GROUP OF COMPANIES
28 BUT MR. BROWNING, NEVER, EVER, GAVE ANY SORT OF RIGHTS TO

4
1 MR. SWARTOUT.

2 Q LET ME SHOW YOU EXHIBIT 300.

3 THIS IS THE WOLF AND COMPANY DOCUMENT, YOUR
4 HONOR.

5 NOW, IS THAT SOMETHING YOU HAVE SEEN BEFORE,
6 MR. HUNT?

7 A YES, MR. KILPATRICK GAVE ME THIS WHEN I WAS
8 IN DENVER.

9 Q WHEN APPROXIMATELY WAS THAT?

10 A I BELIEVE I RECEIVED THIS AT THE TIME OF MY
11 NEGOTIATIONS WITH HIM OVER THAT WEEKEND. I WAS THERE FOR
12 SEVERAL DAYS AND I MAY HAVE EVEN BEEN THERE ON THE 20TH,
13 AND --

14 Q 20TH OF WHAT?

15 A OF NOVEMBER, 1983. THIS IS DATED NOVEMBER 18
16 OF 1983.

17 Q DID YOU EVER SHOW THAT DOCUMENT PRIOR TO
18 TRIAL TO ARTHUR BARENS AND HAVE DISCUSSIONS WITH HIM ABOUT
19 IT?

20 A I SHOWED HIM -- NOT THIS SPECIFIC ONE. I
21 SHOWED HIM A COPY OF IT AND THERE WERE I BELIEVE COPIES OF
22 THIS IN SOME MATERIALS THAT MR. ZOELLER COLLECTED OR THAT
23 THE DEPARTMENT OF JUSTICE DID AT SOME POINT IN
24 RELATIONSHIP TO THEIR SEARCHES IN THIS CASE.

25 Q JUST IN BRIEF, WHAT WERE THE CIRCUMSTANCES
26 THAT YOU OBTAINED IT FROM MR. KILPATRICK UNDER?

27 A OH, MR. KILPATRICK AND I WERE -- WERE TALKING
28 ABOUT SIGNING THESE DEALS THAT HE HAD ALREADY PREPARED

4
1 WHEN I CAME TO HIS OFFICES ON THE 19TH. I WAS MAKING, OF
2 COURSE, INQUIRIES ABOUT HIS FINANCIAL CAPACITY AND THE
3 FINANCIAL CIRCUMSTANCES WHICH WOULD PREVAIL SHOULD THE
4 MERGER HAVE OCCURRED.

5 HE BROUGHT THIS OUT AND PRESENTED IT TO ME IN
6 THE CONTEXT OF HIS REPRESENTATION OF WHAT CAPITAL WOULD
7 EXIST TO SATURN ENERGY SHOULD THE MERGER PROCEED.

8 Q WERE THERE SPECIFICALLY ANY PARTICULAR
9 ASPECTS OF THE FINANCIAL STATEMENT THAT IS CONTAINED
10 WITHIN EXHIBIT 300 THAT MR. KILPATRICK REFERRED TO THAT --
11 WAS OF SIGNIFICANCE TO YOU IN YOUR NEGOTIATIONS WITH --
12 BETWEEN KILPATRICK AND MICROGENESIS?

13 MR. MC MULLEN: OBJECTION, RELEVANCY.

14 THE COURT: I'LL ALLOW IT.

15 THE WITNESS: THE MOST IMPORTANT THING TO ME WAS
16 WHEN THE MONEY WAS GOING TO ARRIVE THAT WOULD ALLOW FOR
17 FURTHER DEVELOPMENT OF THE ATTRITION MILLS AND INURE TO
18 THE BENEFIT OF B.B.C.. I SPENT TIME TALKING TO HIM ABOUT
19 THE 1984 AND 1985 COLUMNS IN THE SECOND PAGE OF THE
20 PROJECTION ASKING HIM WHAT WERE THE CONDITIONS PRECEDENT
21 FOR THE RELEASE OF THAT MONEY.

22 SPENT A LOT OF TIME -- I THINK THIS WENT ON
23 FOR OVER AN HOUR WITH MR. KILPATRICK, TALKING, ASKING HIM
24 QUESTIONS ABOUT WHAT HIS ASSUMPTIONS WERE AS TO THE TIMING
25 OF RELEASE OF MONIES TO SATURN PURSUANT TO THE MERGER AND
26 WHAT OTHER, YOU KNOW, DIFFICULTIES COULD ARISE, AND HE
27 SPENT A LOT OF TIME TELLING ME THAT HE WAS REALLY SURE OF
28 THESE PROJECTIONS AND THIS MONEY WOULD COME THROUGH AND HE

4
1 KNEW THIS WAS GOING OUT TO INVESTORS. HE WOULDN'T HAVE
2 MADE THESE REPRESENTATIONS IN THIS FORMAT IF HE WASN'T
3 SECURE IN THIS PROJECTION.

4 Q DURING THIS CONVERSATION YOU SAID KILPATRICK
5 MADE CERTAIN REPRESENTATIONS TO YOU. DID YOU DISCUSS THE
6 CONTENTS OF THIS CONVERSATION WITH ARTHUR BARENS PRIOR TO
7 TRIAL?

8 A I DISCUSSED THIS CONVERSATION BECAUSE IT'S A
9 CRUCIAL ONE, BUT MY ENTIRE DEALINGS WITH MR. KILPATRICK
10 BECAUSE I FELT NOT JUST FOR THE O.S.C. ISSUES BUT FOR A
11 LOT OF OTHER CONTEXTURAL ISSUES THAT IT WAS IMPORTANT
12 FRAME WORK FOR THE TRIAL.

13 Q WHAT SIGNIFICANT INFORMATION RELATING TO THIS
14 CONVERSATION THAT YOU HAD WITH KILPATRICK DID YOU REPORT
15 TO BARENS THAT YOU BELIEVED WENT TO YOUR EXPECTATION ABOUT
16 MONEY COMING IN PURSUANT TO A DEAL WITH KILPATRICK?

17 A IN ESSENCE, JUST WHAT I HAVE TESTIFIED TO A
18 MOMENT AGO.

19 Q DID BARENS INDICATE WHAT HE WOULD DO IN
20 RESPONSE TO YOUR BRINGING THIS TO HIS ATTENTION?

21 A IT WAS MY UNDERSTANDING ALL THE WAY THROUGH,
22 YOU KNOW, THE -- THE BEGINNING OF THE DEFENSE CASE AND
23 ALTHOUGH IT -- IT WAS DISINTEGRATING AS TIME WENT BY, THAT
24 MR. BARENS WAS GOING TO BE BRINGING IN SUBSTANTIAL
25 EVIDENCE, INCLUDING THROUGH MY OWN TESTIMONY, BUT ALSO
26 THROUGH OTHER WITNESSES, WHAT THESE FINANCIAL TRANSACTIONS
27 WERE AS IT BORE ON MY STATE OF MIND AND AS IT BORE ON THE
28 JUNE 24TH MEETING AND ON RELATED EFFORTS TO KEEP THE RIVAL

5 1 FACTIONS IN THE B.B.C. AT BAY THROUGH VARIOUS PLOYS.

2 Q ALL RIGHT.

3 LET ME SHOW YOU EXHIBIT 25.

4 A OKAY.

5
6 (A CONFERENCE WAS HELD BETWEEN COUNSEL
7 AND THE DEFENDANT, NOT REPORTED.)
8

9 Q YOU HAVE EXHIBIT 25 BEFORE YOU?

10 A YES, I DO.

11 Q IS THAT A DOCUMENT YOU HAVE SEEN BEFORE?

12 A YES, THIS WAS THE APPRAISAL OF DR. CHEUNG.

13 Q AND DID YOU DISCUSS THIS DOCUMENT AND
14 DR. CHEUNG WITH MR. BARENS PRIOR TO TRIAL?

15 A YES.

16 Q AND WHAT DID YOU TELL HIM?

17 A I TOLD HIM THAT I HAD PAID \$5,000 AT
18 MR. KILPATRICK'S BEHEST SO HE COULD GET AN INDEPENDENT
19 APPRAISAL. THAT THIS PERSON THAT APPRAISED THE TECHNOLOGY
20 WAS SOMEONE SELECTED BY MR. KILPATRICK UNKNOWN TO ME, THAT
21 I HAD NOT MET WITH THIS PERSON PRIOR TO THE MAKING OF THIS
22 APPRAISAL.

23 Q JUST A MINUTE NOW. WHO PICKED -- WHEN YOU
24 SAY "THIS PERSON," YOU MEAN DR. CHEUNG?

25 A YES.

26 Q WHO SELECTED DR. CHEUNG TO MAKE THE
27 APPRAISAL?

28 A MR. KILPATRICK.

5
1 Q SO HE PICKED HIM BUT YOU PAID THE \$5,000 AS
2 HIS CONSULTING FEE OR HIS APPRAISAL FEE?

3 A CORRECT.

4 Q AND DID MR. KILPATRICK GIVE YOU INFORMATION
5 ABOUT DR. CHEUNG OR DID YOU GATHER OTHER INFORMATION ABOUT
6 HIM?

7 MR. MC MULLEN: OBJECTION, RELEVANCE.

8 THE COURT: SUSTAINED.

9 BY MR. CRAIN:

10 Q IN THE REPORT BY DR. CHEUNG HE IS APPRAISING
11 THE ATTRITION MILL; IS THAT RIGHT?

12 A SPECIFICALLY THE COAL APPLICATION OF THE
13 BROWNING ATTRITION MILL AND OTHER RELATED TECHNOLOGIES.

14 THE COURT: IS THAT THE 114 MILLION DOLLAR
15 APPRAISAL?

16 THE WITNESS: RIGHT.

17 THE COURT: WE ALREADY COVERED IT.

18 MR. CRAIN: NOT WITH MR. HUNT I DON'T BELIEVE, YOUR
19 HONOR. WE COVERED IT WITH MR. KILPATRICK.

20 THE COURT: I THINK WE DISCUSSED THIS WITH
21 MR. HUNT AS WELL.

22 BY MR. CRAIN:

23 Q DR. CHEUNG'S APPRAISAL OF 114 MILLION DOLLARS
24 AS BEING THE VALUE OF THE TECHNOLOGY DESCRIBED IN HIS
25 REPORT, PRIOR TO TRIAL DID YOU FULLY DISCUSS THIS WITH
26 ARTHUR BARENS?

27 A BOTH THAT THERE WAS SUCH AN APPRAISAL AND THE
28 FOUNDATION OR THE STRUCTURAL ROLE IT PLAYED IN THE ENTIRE

5
1 SERIES OF EVENTS BETWEEN MR. KILPATRICK, SATURN,
2 MICROGENESIS, U.F.O.I..

3 Q DID YOU DISCUSS THAT WITH MR. BARENS, THE
4 SIGNIFICANCE THAT THIS HAD RELATIVE TO THE DEALINGS WITH
5 MR. KILPATRICK AND THE FINANCIAL POSTURE OF THE B.B.C. IF
6 THE KILPATRICK DEAL WORKED OUT?

7 A YES.

8 Q WHAT DID YOU TELL HIM?

9 A THAT THE -- THIS APPRAISAL WAS AN INTEGRAL
10 PART OF THE MERGER DOCUMENTATION AND THAT IT WAS ONE OF
11 THE BASES ON WHICH I FELT THAT THE PROSPECT -- PROSPECTS
12 RELATED TO THE ATTRITION MILL AND TECHNOLOGY WERE
13 SUBSTANTIAL AND MERITORIOUS.

14 Q NOW, AT SOME POINT DID MICROGENESIS OR ITS --
15 OR THE B.B.C. OBTAIN A WAREHOUSE THAT WAS USED IN SOME WAY
16 FOR THE ATTRITION MILL?

17 MR. MC MULLEN: OBJECTION, RELEVANCY.

18 THE COURT: READ BACK THE QUESTION.

19 MR. KLEIN: MR. KILPATRICK TESTIFIED ABOUT THAT.

20 THE COURT: IF I NEED SOME HELP I'LL LET YOU KNOW,
21 MR. KLEIN.

22 MR. KLEIN: SORRY, YOUR HONOR.

23
24 (RECORD READ.)

25
26 THE COURT: OVERRULED.

27 THE WITNESS: YES.
28

5
1 BY MR. CRAIN:

2 Q WHEN DID THAT HAPPEN, APPROXIMATELY?

3 A IT HAPPENED AT ABOUT THE SIGNING OF THE
4 MORTON AGREEMENT BECAUSE -- I RECALL THE TWO BEING RELATED
5 BECAUSE I HAD TO DELIVER A MACHINE AT SOME POINT UNDER THE
6 MORTON AGREEMENT AND ALSO I HAD THE NECESSITY TO COME UP
7 WITH A PROTOTYPE FOR MR. KILPATRICK. WE GOT BUSY, WE GOT
8 A WAREHOUSE.

9 Q THE MORTON AGREEMENT YOU ARE REFERRING TO,
10 305 I BELIEVE.

11 A CORRECT.

12 Q THAT WAS LATE DECEMBER -- I MEAN DECEMBER,
13 '83, JANUARY, '84 SOMEWHERE IN THERE?

14 A JANUARY, '84 I THINK WE GOT THE WAREHOUSE.

15 Q DID YOU DISCUSS WITH ARTHUR BARENS THE
16 GETTING OF THE WAREHOUSE AND WHAT SIGNIFICANCE IT HAD?

17 A YES.

18 Q AND IF SO, WHAT DID YOU TELL HIM?

19 A I TALKED ABOUT THE GARDENA LOCATION AS BEING
20 THE PLACE OF FABRICATION FOR THE ATTRITION MILLS AND I
21 TALKED ABOUT THE GARDENA LOCATION IN RELATIONSHIP TO A
22 NUMBER OF EVENTS THAT RELATED TO MY TESTIMONY AS WELL.

23 Q SHOWING YOU WHAT'S BEEN MARKED AS EXHIBIT
24 295, IS THIS A DOCUMENT YOU HAVE SEEN BEFORE?

25 A YES, IT IS.

26 Q IS THAT A DOCUMENT YOU DISCUSSED PRIOR TO
27 TRIAL WITH MR. BARENS?

28 A I CAN'T SAY FOR SURE ON THIS ONE. THERE

5
1 IS -- THIS IS A DOCUMENT THAT I WAS AWARE OF. I DID
2 CONVEY TO MR. BARENS THAT I -- THAT I WAS SURE THAT
3 KILPATRICK'S AGENTS, OUTFIT WAS OUT OF BANKRUPTCY COURT.
4 I GUESS I WAS SPEAKING KIND OF LOOSELY --

5 Q LET ME GET -- ASK IT THIS THIS WAY, PRIOR TO
6 TRIAL DID YOU DISCUSS -- YOU HEARD MR. KILPATRICK TALK
7 ABOUT HIS BANKRUPTCY PROBLEMS?

8 A UH HUH.

6
9 Q AND THAT THAT WAS A FACTOR THAT WAS INVOLVED
10 IN SOME WAY IN THESE NEGOTIATIONS?

11 A CORRECT.

12 Q DID YOU DISCUSS THE SUBJECT OF
13 MR. KILPATRICK'S BANKRUPTCY WITH MR. BARENS?

14 A YES.

15 Q DID YOU DISCUSS WITH MR. BARENS WHAT
16 SIGNIFICANCE, IF ANY, MR. KILPATRICK'S BANKRUPTCY HAD
17 RELATIVE TO THE ONGOING NEGOTIATIONS WITH KILPATRICK?

18 A THE EVOLUTION OF EVENTS TOWARDS THE MERGER.
19 IN THAT CONTEXT THE BANKRUPTCY RELEASE THAT HAD BEEN
20 GRANTED MR. KILPATRICK WAS DISCLOSED TO MR. BARENS.

21 Q DID YOU HAVE -- DID YOU EXPRESS TO MR. BARENS
22 ANY BELIEFS THAT YOU HAD RELATIVE TO WHETHER OR NOT
23 MR. KILPATRICK REALLY HAD A -- A BANKRUPTCY PROBLEM THAT
24 IN SOME WAY STOOD IN THE WAY OF YOUR NEGOTIATIONS WITH
25 HIM?

26 MR. MC MULLEN: OBJECTION, LEADING, RELEVANCE.

27 THE COURT: OVERRULED.

28 THE WITNESS: YES, I DID.

6
1 BY MR. CRAIN:

2 Q WHAT DID YOU TELL MR. BARREN?

3 A I TOLD HIM THAT BECAUSE OF REPRESENTATIONS
4 MADE TO ME BY MR. KILPATRICK IT'S MY UNDERSTANDING THAT
5 BANKRUPTCY WAS NOT AN ISSUE, THE BANKRUPTCY REORGANIZATION
6 OF U.F.O.I. WAS NOT AN ISSUE STANDING IN THE WAY OF THE
7 MERGER -- MERGER IN MAY OF 1984.

8 Q IN ADDITION TO THE REPRESENTATIONS THAT YOU
9 JUST DESCRIBED THAT KILPATRICK MADE TO YOU WERE THERE
10 OTHER ITEMS THAT YOU RELIED ON IN DETERMINING THAT -- WHAT
11 KILPATRICK WAS TELLING YOU, THE BANKRUPTCY REALLY WASN'T A
12 PROBLEM, WAS TRUE?

13 A I RECEIVED SATURNS NEWS RELEASE ON THE SAME
14 SUBJECT DATED APRIL 2, 1984. THE DATE I'M AWARE OF
15 BECAUSE I REFRESHED MY RECOLLECTION RECENTLY BY LOOKING AT
16 IT.

17 Q DOES EXHIBIT 295 HAVE ANYTHING TO DO WITH
18 YOUR BELIEF AS TO SATURN GETTING OUT OF BANKRUPTCY IN THE
19 SPRING OF 1984?

20 A YES. THIS WAS SOMETHING THAT MR. KILPATRICK
21 GAVE ME. I DON'T KNOW WHETHER HE AUTHORED IT BUT HE GAVE
22 IT TO ME. I GOT MOST OF MY PAPER WORK, OTHER THAN THE
23 NEWS RELEASES AND THE ANNUAL REPORTS AND STUFF RELATED TO
24 SATURN, I GOT MOST OF MY PAPER WORK FROM MR. KILPATRICK
25 RELATED TO THOSE AFFAIRS.

26 Q I WANT TO SHOW YOU 296.

27 IS THIS A DOCUMENT --

28 THE COURT: THERE IS NO 296.

6
1 MR. CRAIN: I NEVER USED THAT. THIS WOULD BE
2 NUMBER 7226. IT WAS GOING TO BE -- GOING TO BE 296.

3 THE COURT: 296 WAS NOT MARKED.

4 MR. CRAIN: RIGHT. HOW DOES THE COURT CHOOSE TO
5 RECTIFY THIS? I WAS GOING TO MARK IT 296.

6 THE COURT: IF YOU HAVE GOT SOMETHING TO MARK AS
7 296, WE CAN USE THAT NUMBER.

8 MR. CRAIN: THANK YOU.

9
10 (A CONFERENCE WAS HELD BETWEEN COUNSEL
11 AND THE DEFENDANT, NOT REPORTED.)

12
13 MR. MC MULLEN: MAY I APPROACH, YOUR HONOR?

14 THE COURT: YES.

15 MR. MC MULLEN: THIS IS NUMBER 7266, I BELIEVE.

16
17 (A CONFERENCE WAS HELD BETWEEN COUNSEL
18 AND THE DEFENDANT, NOT REPORTED.)

19
20 MR. MC MULLEN: JUST FOR THE RECORD, THE DOCUMENT
21 THAT COUNSEL HAS BEEN REFERRING TO WE HAVE NEVER SEEN
22 BEFORE.

23 MR. CRAIN: I BELIEVE YOU HAVE.

24 THE COURT: WHICH DOCUMENT DO YOU WANT TO MARK AS
25 296? THEN WE'LL ALL SEE WHAT IT IS.

26 MR. CRAIN: THIS IS 7226.

27 THE WITNESS: LET'S JUST GET THAT ONE RIGHT.

28 THE COURT: WE DON'T SEEM TO HAVE ANYTHING TO MARK

6
1 AS 296.

2 THE WITNESS: OKAY.

3 I DO HAVE -- I DO HAVE IT HERE.

4 MR. CRAIN: I HAD IT YESTERDAY. I JUST SKIPPED BY
5 IT IN DEFERENCE TO THE COURT'S WISHES.

6 BY MR. CRAIN:

7 Q HAS --

8 THE COURT: WHAT IS IT AND WE WILL MARK IT AS 296.

9 MR. CRAIN: IT SAYS SATURN ENERGY AND IT'S A NEWS
10 RELEASE, 4-2-84.

11 MR. MC MULLEN: AGAIN, YOUR HONOR, THIS IS THE
12 FIRST TIME WE HAVE SEEN THIS DOCUMENT. WE DON'T HAVE A
13 COPY OF IT.

14 THE COURT: ALL RIGHT.

15

16 (MARKED FOR ID = PETITIONER'S 296, DOCUMENT.)

17

18 BY MR. CRAIN:

19 Q IS THAT A DOCUMENT YOU HAVE SEEN BEFORE,
20 MR. HUNT?

21 A YES.

22 Q AND DO YOU REMEMBER WHERE YOU GOT THAT?

23 A YES, THOSE WOULD COME IN THE MAIL REGULARLY
24 FROM SATURN TO US.

25 Q WERE YOU RECEIVING PRESS RELEASES FROM BOTH
26 U.F.O.I. AND SATURN DURING 1984?

27 A YES.

28 Q AND DID THAT DOCUMENT IN SOME WAY RELATE TO

6
1 ANY BELIEFS THAT YOU TOLD MR. BARENS THAT YOU HAD ABOUT
2 MR. KILPATRICK'S LACK OF HAVING A BANKRUPTCY IMPEDIMENT
3 STANDING IN THE WAY OF YOUR CONTRACT NEGOTIATIONS?

4 A YES. THESE WERE DOCUMENTS I WAS DRAWING
5 UPON, HAVING SEEN THEM BACK IN 1984, IN BEING ABLE TO
6 STATE WITH SOME CONFIDENCE TO MR. BARENS THAT THE
7 REMAINING IMPEDIMENT TO THE MERGER AS I UNDERSTOOD IT HAD
8 BEEN RESOLVED AND THE PRESS RELEASE INDICATES ONCE IT HAD
9 BEEN RESOLVED THEY IMMEDIATELY FILED WITH THE B. C.
10 REGULATORY COMMISSION HOPING TO GET APPROVAL.

11 Q YOU TOLD US THAT YOU SHOWED TO MR. BARENS
12 VARIOUS DOCUMENTS IN CONNECTION WITH YOUR NEGOTIATIONS ON
13 THIS KILPATRICK ISSUE; RIGHT?

14 A YES.

15 Q DID YOU ALSO INFORM MR. BARENS AS TO THE
16 AVAILABILITY OF ANY DOCUMENTS THAT YOU DIDN'T SHOW HIM?

17 A RIGHT. I MEAN, OFTENTIMES MR. BARENS WOULD
18 REMARK THAT HE DIDN'T WANT TO GET IN TO NITTY GRITTY NOW
19 AND -- "JUST KEEP THE STUFF OVER AT YOUR HOUSE, WE'LL GET
20 TO IT."

21 THAT TYPE OF THING.

22 Q WAS THERE EVER A TIME WHERE HE SAID, "OKAY, I
23 WOULD LIKE TO GET INTO THE NITTY GRITTY, LET'S GET DOWN TO
24 BUSINESS ON THIS KILPATRICK MATTER SO I CAN REALLY FIND
25 OUT WHAT IT'S ALL ABOUT" PRIOR TO THE END OF YOUR TRIAL?

26 A I HAD A LONG -- A YEARNING TO HAVE -- YOU
27 KNOW, A PERIOD OF TIME WHERE WE WOULD DISCUSS THIS STUFF
28 IN SEQUENCE FRONT TO BACK AND GET A WHOLE CONTEXTURAL

7
1 UNDERSTANDING CONVEYED TO MR. BARENS INSTEAD OF THESE
2 SPORADIC HIT AND RUN TYPE CONVERSATIONS THAT I'D HAVE WITH
3 HIM AND HE COULD LOOK THROUGH ALL THIS STUFF AND BE
4 FAMILIAR WITH IT.

5 Q AT SOME POINT WAS A PROTOTYPE OF THE
6 ATTRITION MILLS CONSTRUCTED?

7 A YES.

8 Q WHEN DID THAT TAKE PLACE?

9 A I BELIEVE IT WAS FUNCTIONAL IN APRIL OF 1984.

10 Q WERE THERE -- ARE THERE ANY DOCUMENTS THAT
11 YOU HAVE WITH YOU THAT REFLECT OR REFER TO THAT?

12 A YEAH -- YES, THERE ARE.

13 Q COULD YOU TAKE THEM OUT AND -- THOSE WOULD BE
14 7233 AND 7332, I BELIEVE, AND IF THEY COULD BE MARKED AS
15 NEXT IN ORDER.

16
17 (PAUSE.)

18
19 BY MR. CRAIN:

20 Q DO YOU HAVE THOSE THERE, MR. HUNT?

21 A YES, I DO.

22 Q COULD YOU TELL US WHAT THOSE DOCUMENTS ARE?

23 THE COURT: HOLD ON.

24 DO YOU WANT TO MARK SOMETHING?

25 MR. CRAIN: YES, YOUR HONOR. 306.

26 THE COURT: THERE IS TWO PAGES. DO YOU WANT TO
27 MARK THEM AS ONE EXHIBIT.

28 THE WITNESS: YES, ONE EXHIBIT.

7
1 THE COURT: IT WOULD BE 306, TWO PAGES, ONE IS
2 MICROGENESIS -- BOTH OF THEM ARE MICROGENESIS MEMOS.

3 MR. MC MULLEN: JUST FOR THE RECORD, YOUR HONOR,
4 THIS IS THE FIRST TIME WE HAVE SEEN THESE DOCUMENTS.

5
6 (MARKED FOR ID = PETITIONER'S 306,
7 DOCUMENTS.)

8
9 BY MR. CRAIN:

10 Q WHAT ARE THESE DOCUMENTS THAT HAVE NOW BEEN
11 MARKED 306, MR. HUNT?

12 A WELL, ONE OF THEM IS A MEMORANDUM TO BILL
13 KILPATRICK OF APRIL 20TH, 1984 SAYING THAT WE HAVE
14 COMPLETED A FULL BATTERY OF TESTS ON THE CYCLATRON, IT'S
15 FUNCTIONING FLAWLESSLY, WE HAD IT RUNNING TODAY AT 3,700
16 REVOLUTIONS PER MINUTE. WE'LL SEND YOU A VIDEOTAPE AND
17 SOME GROUND MATERIAL NEXT WEEK.

18 WE DID IN FACT SEND HIM A SAMPLE.

19 Q DID YOU DISCUSS THAT WITH MR. BARENS PRIOR TO
20 TRIAL?

21 A I DISCUSSED THE FACT THAT THERE WAS PROOF
22 AVAILABLE TO MR. BARENS FOR USE IN THE TRIAL THAT WE
23 ACTUALLY HAD A FUNCTIONING ATTRITION MILLION AT ONE POINT
24 AND I DON'T RECALL SHOWING HIM THE SPECIFIC MEMOS BUT I
25 DID TELL HIM THERE WAS PROOF.

26 DO YOU WANT TO KNOW THE OTHER THING THAT WAS
27 IN THAT --

28 Q WHEN YOU SAY THERE WAS PROOF, WAS THERE

7
1 SOMETHING THAT WAS READILY AVAILABLE TO GIVE TO MR. BARENS
2 BY YOU IF HE WOULD LOOK AT THEM?

3 A OH, YES, I ALWAYS WAS READY. I WAS OUT ON
4 BAIL AND I HAD BEEN ORDERED BY MR. BARENS AND FRIENDS THAT
5 THOUGHT IT WOULD BE ILL ADVISED FOR ME TO BE GAINFULLY
6 EMPLOYED BECAUSE OF THE CIRCUMSTANCES DURING THAT TIME.
7 SO THIS WAS MY FOCUS. I WAS ALWAYS ON CALL FOR
8 MR. BARENS.

9 Q YOU HAD THESE DOCUMENTS THAT YOU JUST
10 REFERRED TO THAT HE MAY HAVE SEEN IF HE HAD CHOSEN TO SEE
11 THEM?

12 A CORRECT.

13 Q NOW, DID YOU RELATE TO MR. BARENS BOTH THE --
14 BOTH THAT THE PROTOTYPE HAD BEEN CONSTRUCTED AND THIS
15 INFORMATION ABOUT THE FUNCTIONING OF THE ATTRITION MILL
16 HAD BEEN SENT TO MR. KILPATRICK IN THE SPRING OF 1984?

17 A SPECIFICALLY WHAT I RELATED OF THE
18 INFORMATION CONTAINED IN THESE DOCUMENTS I CAN'T RECALL.

19 MR. CRAIN: YOUR HONOR, I HAVE GOT TO REACH FOR
20 ANOTHER EXHIBIT, IT'S 292.

21 THE COURT: HOW MUCH MORE DO YOU HAVE ON DIRECT?

22 MR. CRAIN: A WAYS TO GO IN VIEW OF KILPATRICK'S
23 VARIOUS ASSERTIONS.

24 THE COURT: DEFINE "WAYS."

25 MR. CRAIN: COUPLE OF HOURS.

26 THE COURT: COUPLE OF HOURS?

27 MR. CRAIN: YEAH.

28 THE COURT: NO. WE'RE NOT GOING TO GO THROUGH THIS

7
1 STEP BY STEP. YOU ARE REACHING A POINT OF SATURATION THAT
2 IS OF VERY LITTLE VALUE.

3 MR. CRAIN: I CAN'T READ THE COURT'S MIND. I DON'T
4 KNOW WHAT KIND OF FINDING THE COURT MIGHT MAKE WITH REGARD
5 TO THIS.

6 I'LL TRY TO PARE IT DOWN OVER THE NOON HOUR.

7 THE COURT: KILPATRICK SAYS, "NOW I REALIZE I DID
8 SIGN AN AGREEMENT BACK IN '83. KILPATRICK SAYS THAT THERE
9 WAS A DEAL THAT HE WAS GOING TO GO FORWARD WITH, THAT HE
10 HAD INTEREST IN.

11 KILPATRICK SAYS THAT THERE WAS SOME THINGS
12 THAT HE HAD TO GO TAKE CARE OF IN TERMS OF HIS BANKRUPTCY
13 AND HIS CRIMINAL CASE AND GETTING SATURN TO GO ALONG WITH
14 IT.

15 THESE WERE ALL THINGS THAT ARE BETWEEN HUNT
16 AND KILPATRICK. THE ISSUE HERE IS WHAT FACTS WERE MADE
17 KNOWN TO MR. BARENS AND WOULD IT HAVE BEEN FACTS THAT HE,
18 AS A COMPETENT LAWYER, SHOULD HAVE RELIED ON IN
19 INTRODUCING THIS EVIDENCE.

20 WE'RE NOT GOING TO TRY THE VALIDITY OR LACK
21 OF VALIDITY OF THIS TECHNOLOGY. THAT IS WHAT YOU ARE
22 REALLY DOING.

23 SO, MY SUGGESTION --

24 MR. CRAIN: I THINK I CAN DO IT IN AN HOUR UPON
25 REFLECTION. I --

26 THE COURT: SHOULD BE ABLE TO DO IT IN LESS THAN
27 THAT.

28 MR. CRAIN: I'LL GIVE IT MY BEST BUT I APPRECIATE

8
1 THE COURT'S CONSIDERATION BECAUSE I THINK IT IS IMPORTANT
2 FOR US TO BE ABLE TO DEMONSTRATE TO THE COURT THE POINTS
3 WE WISH TO MAKE. THAT IS WITH REGARD TO THE EXPECTATIONS
4 OF MR. HUNT AND THAT THIS WAS CRITICAL EVIDENCE.

5 THE COURT: HIS EXPECTATIONS ARE NOT RELEVANT. THE
6 IMPORTANT QUESTION HAS BEEN ASKED THE WITNESS AND HE SAID
7 HE DID DISCUSS -- HE WAS ASKED DID YOU DISCUSS THIS WITH
8 BARENS AND HE SAID YES. THAT IS THE ISSUE.

9 WE ARE NOT GOING TO TRY THE VALIDITY OF THIS
10 TECHNOLOGY.

11 MR. CRAIN: I KNOW YOU READ THE TRANSCRIPTS AND I
12 KNOW IF YOU READ MR. WAPNER'S CLOSING ARGUMENT TO THE JURY
13 HE PLACED A GREAT DEAL OF EMPHASISON THE PROSECUTION'S
14 THEORY THAT THE B.B.C. AND SPECIFICALLY MR. HUNT WERE IN
15 DIRE STRAITS AND BARENS HAS COME IN HERE AND UTTERLY
16 PREVARICATED AND CLAIMS, YOU KNOW, IF I HAD KNOWN ALL THIS
17 STUFF, EVEN IF I DID --

18 THE COURT: HIS VIEW WAS --

19 MR. CRAIN: I WOULDN'T HAVE USED IT BECAUSE --
20 BECAUSE THE ATTRITION MILLS WOULD HAVE BEEN SHOWN TO BE
21 BOGUS AND WHAT HAVE YOU.

22 HIS EXPLANATION MAKES NO SENSE. THE FACT OF
23 THE MATTER IS THAT -- THE MACHINE WAS -- WAS VIABLE.
24 MR. HUNT HAD ENGAGED IN BUSINESS NEGOTIATIONS WITH OTHER
25 INVESTORS, A COUPLE OF WHOM THE COURT HAS HEARD ABOUT HERE
26 TODAY.

27 IN FACT, MR. KILPATRICK HAS JUMPED AROUND ALL
28 OVER THE BLAZE AND WAS REPUDIATED BY HIS ATTORNEY WHO SAID

8

1 THAT THE BANKRUPTCY AND THE ORGANIZATIONAL CRIMINAL
2 INDICTMENTS WERE NOT IMPEDIMENTS IN ANY WAY TO THE
3 CONCLUSION OF THE CONTRACT --

4 THE COURT: LET ME JUST --

5 MR. CRAIN: THERE WAS POWERFUL EVIDENCE THAT MONEY
6 WAS GOING TO BE COMING IN TO THE B.B.C. PURSUANT TO THIS
7 CONTRACT BETWEEN KILPATRICK AND -- AND SATURN. SO --

8 THE COURT: THE MORE YOU DO THE MORE COMPLICATED IT
9 BECOMES AND THE LESS LIKELY A REASONABLE ATTORNEY WOULD
10 HAVE USED ALL THIS STUFF. I MAKE THAT SUGGESTION TO YOU.

11 1:30.

12

13

(AT 12:05 P.M. A RECESS WAS TAKEN

14

UNTIL 1:30 P.M. OF THE SAME DAY.)

15

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1 LOS ANGELES, CALIFORNIA; TUESDAY, MAY 14, 1996

2 1:30 P.M.

3 DEPARTMENT NO. 101 HON. J. STEPHEN CZULEGER, JUDGE

4
5 (APPEARANCES AS HERETOFORE NOTED.)

6
7 THE BAILIFF: REMAIN SEATED, COME TO ORDER,
8 DEPARTMENT 101 IS AGAIN IN SESSION.

9 THE COURT: IN THE CASE OF IN RE JOSEPH HUNT, THE
10 RECORD WILL REFLECT ALL COUNSEL AND PETITIONER ARE
11 PRESENT, AND MR. HUNT IS ON THE STAND.

12 YOU MAY CONCLUDE YOUR DIRECT EXAMINATION,
13 MR. CRAIN.

14 MR. CRAIN: THANK YOU

15
16 JOSEPH HUNT, +
17 THE PETITIONER HEREIN, CALLED AS A WITNESS IN HIS OWN
18 BEHALF, HAVING BEEN PREVIOUSLY SWORN, RESUMED THE STAND
19 AND TESTIFIED FURTHER AS FOLLOWS:

20
21 DIRECT EXAMINATION RESUMED +

22
23 BY MR. CRAIN:

24 Q REGARDING YOUR CONVERSATIONS WITH ARTHUR
25 BARENS, MR. HUNT, PRIOR TO TRIAL, WHAT EVENTS OR EVIDENCE
26 OF EVENTS IN MAY OF 1984 DID YOU TELL BARENS WAS AVAILABLE
27 TO HIM?

28 THE COURT: WHAT WAS AVAILABLE?

1 BY MR. CRAIN:

2 Q EVENTS, EVIDENCE OF EVENTS IN MAY, 1984, DID
3 YOU TELL BARENS THAT YOU BELIEVED LED TO A BELIEF THAT
4 MONEY WOULD SOON FLOW FROM YOUR DEALINGS WITH KILPATRICK?

5 A IN MAY OF 1984 I TOLD MR. BARENS THERE WAS A
6 WHOLE SERIES OF POSITIVE DEVELOPMENTS WITH RESPECT TO
7 MICROGENESIS AND KILPATRICK NEGOTIATIONS WHICH WERE
8 TOUCHED OFF BY MY BELIEF THAT THE CLOSING OF THE
9 KILPATRICK NEGOTIATIONS WOULD OCCUR AND THAT THE MERGER
10 WOULD OCCUR. AND THOSE WERE THE FACTS THAT --

11 Q COULD YOU SUMMARIZE THEM FOR THE COURT HERE?

12 A BECAUSE THE CLOSING OF THE MERGER WAS
13 IMMINENT BECAUSE MR. KILPATRICK HAD FIRMED UP VERBALLY HIS
14 ARRANGEMENTS WITH ME I DID A NUMBER OF THINGS. I HIRED AN
15 ENGINEER NAMED MOSHE KREINBERG IN ADDITION TO
16 DR. BROWNING. MOSHE WAS PUT ON RETAINER AND GIVEN AN
17 INCENTIVE PLAN. MOSHE WAS A CHIEF ENGINEER OF A COAL FIRE
18 PLANT FOR THE FOUR CORNERS PLANT FOR SOME TIME AND HAD AN
19 EXTENSIVE RESUME. IN ADDITION, I HIRED A METALLURGY FIRM.

20 Q DO YOU HAVE DOCUMENTS, WITHOUT GOING INTO
21 THEM, UNLESS THE COURT ASKS SPECIFICALLY, DO YOU HAVE
22 DOCUMENTS THAT RELATE TO THOSE MATTERS I JUST ASKED YOU
23 ABOUT?

24 A YES.

25 Q WERE THOSE AVAILABLE TO MR. BARENS? DID YOU
26 INDICATE THAT, TELL HIM THAT DURING THE CONVERSATION?

27 A YES.

28 THE COURT: WHAT EXACTLY WERE THESE EXPERTS

1 SUPPOSED TO EVALUATE?

2 THE WITNESS: HE WAS GOING TO EVALUATE THESE,
3 ACTUALLY TO TAKE US INTO THE SECOND PHASE.

4 THE COURT: THE DEVELOPMENT AND MANUFACTURING OF
5 THE MACHINERY?

6 THE WITNESS: YEAH. SEE, THERE WERE MONIES DUE AND
7 PAYABLE AT THE CLOSING OF THE MERGER OR THAT THE PAYMENT
8 OF THEM WAS TRIGGERED BY THE MERGER, BUT TO GET TO THE
9 SECOND TRENCHER OF MONEY, WE WOULD HAVE TO ACTUALLY START
10 TO DELIVER THINGS, AND TO DELIVER EQUIPMENT THAT COULD BE
11 SNAPPED ONTO POWER PLANTS, WAS COMPATIBLE WITH POWER
12 PLANTS. TO THAT END I WAS HIRING PEOPLE LIKE MOSHE
13 KREINBERG AND INVOLVED A FIRM CALL METITECH, WHICH WAS A
14 METALLURGIC SPECIALIST. THERE WAS STRESS TESTING ISSUES
15 HAVING TO DO WITH THE IMPELLERS INSIDE THE ATTRITION
16 MILLS.

17 MR. CRAIN: I WAS GOING TO MARK LETTERS TO THIS
18 INDIVIDUAL, HIS RESUME, THINGS OF THAT NATURE, AND IF THE
19 COURT DOESN'T WANT DO SEE THEM I WILL MOVE ALONG.

20 THE COURT: I ASSUME THAT YOU DIDN'T ACTUALLY SHOW
21 THESE DOCUMENTS TO MR. BARENS, BUT YOU TOLD HIM THE
22 SUBSTANCE OF WHAT WAS INVOLVED?

23 THE WITNESS: RIGHT. I WAS TELLING HIM OF THE
24 DEVELOPMENTS IN MAY OF '84.

25 THE COURT: BUT YOU TOLD HIM YOU DID HAVE THESE
26 DOCUMENTS AVAILABLE.

27 THE WITNESS: YES.

28

1 BY MR. CRAIN:

2 Q WHAT OTHER EVENTS DID YOU RELATE TO BARENS
3 RELATIVE TO THESE EVENTS IN MAY OF '84?

4 A I TOLD HIM WE WERE SO BULLISH IN MAY OF 1984
5 ON THE B.B.C. PROSPECTS WITH RESPECT TO THESE DEALS
6 INVOLVING KILPATRICK AND ATTRITION MILLS THAT WE HAD EVEN
7 BROUGHT IN THIS GROUP CALLED KAISER PETERSEN, WHICH WAS A
8 PROFESSIONAL COUNSELING AGENCY WITH A VERY DIVERSE MIX OF
9 SPECIALISTS THAT COULD DRAW UPON NOT ONLY FOR MERGERS AND
10 ACQUISITION TYPE WORK, BUT IT HAD PEOPLE THAT WERE EXPERTS
11 IN THE ENERGY INDUSTRY AND THEY WERE BROUGHT IN AS
12 FACILITATORS MUCH THE WAY YOU MIGHT BRING IN A BIG
13 CONSTRUCTION COMPANY WHEN YOU HAD A MAJOR PROJECT. THESE
14 GUYS WOULD BE EXPERIENCED 50 AND 60 YEAR OLD GRAY HAIRE
15 MEN THAT HAD, YOU KNOW, BEEN AROUND THE WORLD.

16 MR. CRAIN: MOTION TO STRIKE THE COLOR OF THEIR
17 HAIR.

18 THE WITNESS: I DIDN'T HAVE ANY GRAY IN THOSE DAYS
19 EITHER. THESE WERE THE TYPE OF THINGS THAT THEY, OTHER
20 THINGS I TOLD MR. BARENS AT ABOUT THE SAME TIME. THERE
21 WAS A TREMENDOUS AMOUNT THAT HAPPENED IN MAY OF 1984.

22 BY MR. CRAIN:

23 Q DO YOU HAVE DOCUMENTS, WITHOUT GETTING INTO
24 THEM, UNLESS THE JUDGE ASKS, THAT RELATE WHAT YOU JUST
25 TOLD US ABOUT KAISER PETERSEN?

26 A YES.

27 Q ALL RIGHT.

28 AND YOU HAD THEM AT THAT TIME SO THEY WERE

1 AVAILABLE TO MR. BARENS?

2 A RIGHT.

3 Q ALL RIGHT.

4 SO IN SUMMARY FORM, ANY EVENTS THAT WERE
5 HAPPENING IN MAY THAT YOU DISCUSSED WITH BARENS THAT LED
6 TO YOUR BELIEF IN THE OUTCOME OF THE KILPATRICK
7 NEGOTIATIONS?

8 A ONE OF THE THINGS THAT WE WERE DOING AS A
9 RESULT OF OUR EXPECTATIONS OF NEAR TERM CASH FLOW FROM THE
10 KILPATRICK DEAL WAS WE WERE TRYING TO LOCATE A CEMENT
11 PLANT. BEN DOSTI CONTACTED A NUMBER OF MAJOR CEMENT
12 COMPANIES IN THE SOUTH WESTERN UNITED STATES TO TRY TO SET
13 UP A JOINT VENTURE WITH THEM AS WOULD APPLY TO ATTRITION
14 MILLS, USE OF THE CEMENT APPLICATION OF THE ATTRITION
15 MILLS, AND HE HAD GOTTEN A NUMBER OF POSITIVE RESPONSES.
16 THEY WANTED TO MEET WITH US AND DISCUSS SUCH A JOINT
17 VENTURE CENTERED AROUND THE ATTRITION MILLS, A NEW WAY TO
18 GRIND CEMENT.

19 BUT IN ADDITION, GENE BROWNING AND BEN DOSTI
20 MET WITH SOME OTHER INDIVIDUALS, I DIDN'T GO ALONG, DOWN
21 TO A LOCAL CEMENT PLANT THAT BEEN SHUTTERED, BUT WAS
22 CAPABLE. IT WAS CAPABLE OF BEING REVIVED, AND THEY WERE
23 LOOKING AT PURCHASING IT BECAUSE WE FIGURED WE WOULD HAVE
24 A COUPLE OF EXTRA MILLION DOLLARS AFTER GETTING THIS SIX
25 MILLION DOLLARS FROM KILPATRICK, WE WOULD BE ABLE TO DO A
26 LEVERAGE BUY OUT OF A DISTRESS PROPERTY, AND THEN BRING IN
27 THE ATTRITION MILLS USING ONE OF THESE MAJOR CEMENTS
28 COMPANIES LIKE KAISER TO COME IN AND BE THE OPERATOR.

1 Q WAS THIS DISCUSSED WITH BARENS AS WELL?

2 A YES.

3 Q HE HAD DOCUMENTS RELATED TO THAT THAT WERE IN
4 YOUR POSSESSION THAT WE CAN SHOW TO THE COURT?

5 A YES. I HAVE THEM NOW, AND THERE ARE, REALLY
6 AREN'T ANY DOCUMENTS RELATING TO THESE MATTERS WHICH I DO
7 HAVE NOW, WHICH I DIDN'T HAVE THEN. I MEAN, THE BODY OF
8 INFORMATION HASN'T CHANGED.

9 Q DO YOU HAVE ANY OTHER MATTERS THAT YOU
10 DISCUSSED WITH BARENS CONCERNING THESE EVENTS IN MAY OF
11 '84?

12 A WELL, WE WENT UP TO VANCOUVER AND HAD THAT
13 MEETING, THERE WAS PAPERWORK TO DEMONSTRATE THAT I WAS
14 THERE TOO DURING THE MEETING.

15 THE COURT: WHEN WAS THAT MEETING?

16 THE WITNESS: THE 22ND OF MAY, 1984, IN VANCOUVER.
17 I HAVE SOME HOTEL RECEIPTS WHERE I CHECKED IN UP THERE ON
18 THE 21ST AT THE FOUR SEASONS, I BELIEVE, AND I WAS PRESENT
19 DURING THAT MEETING.

20 AND THERE IS -- ALSO I TOLD MR. BARENS I WAS
21 SO BULLISH ABOUT SATURN AND THE IMMINENCE OF THIS MERGER,
22 AND I HAD SEEN SOME BULLETS IN SOME BROKERAGE HOUSES THAT
23 WERE TOUTING THE STOCK AS POTENTIALLY GOING FROM \$2
24 CANADIAN TO \$20 CANADIAN, THAT I ACTUALLY BOUGHT 31,000
25 SHARES, YOUR HONOR, OF SATURN STOCK DURING MAY, I BELIEVE
26 ON MAY 24, 1984, MY RECORDS INDICATE.

27 THE COURT: I AM SORRY, WHEN WAS THAT?

28 THE WITNESS: MAY 24, 1984.

1 THE COURT: DO YOU HAVE RECORDS THERE TO
2 SUBSTANTIATE THOSE CONVERSATIONS WITH BARENS?

3 THE WITNESS: YES.

4 THE COURT: HOW MANY SHARES DID YOU BUY?

5 THE WITNESS: 31,000, YOUR HONOR.

6 MR. CRAIN: AGAIN, YOUR HONOR, I MAKE A
7 REPRESENTATION THAT WE HAVE THESE DOCUMENTS IN VIEW OF THE
8 COURT'S STATEMENT BEFORE NOON I HAVE TRIED TO TIGHTEN THIS
9 DOWN, AND THEY ARE AVAILABLE, IF YOU ASK.

10 THE COURT: GOOD.

11 BY MR. CRAIN:

12 Q SO DID YOUR CORRESPONDENCE DURING MAY TELL
13 BARENS -- DID YOU CORRESPOND IN ANY WAY TO KILPATRICK IN
14 MAY ABOUT THE MILL WORKING, BEING IN WORKING ORDER, BEING
15 VIABLE, IN OTHER WORDS?

16 A THERE WAS, I BELIEVE, ANOTHER PIECE OF
17 CORRESPONDENCE THAT WENT OUT, I WILL CHECK MY NOTES, IN
18 MAY OF 1984 TO MR. KILPATRICK CONCERNING RECENT RUNS ON
19 THE ATTRITION MILLS.

20 Q WOULD THAT BE --

21 A IT WAS MAY 16, 1984.

22 Q WOULD THAT BE YOUR NUMBER 7267?

23 A CORRECT?

24 Q THAT'S HERE IN THE COURT.

25 A WE JUST BASICALLY SAY THE MILL WAS EXCEEDING
26 OUR EXPECTATIONS AS FAR AS ITS OPERATING CHARACTERISTICS.

27 Q AND DURING THE -- DID YOU DESCRIBE TO BARENS
28 DURING THE MONTH OF MAY THE B.B.C. CASH RECEIPTS?

1 A YES, I DID. THIS WOULD COME UP -- CAME UP
2 DURING THE TRIAL. THIS WAS IN THE -- THE SPECIFIC
3 RECOLLECTION OF THIS I AM HAVING, I WAS DISCUSSING THIS
4 WITH MR. BARENS DURING THE TRIAL. I TOLD HIM THAT THERE
5 WAS NEVER -- THE TWO RECORD SETTING MONTHS, AS FAR AS THE
6 IN FLOW OF FUNDS INTO B.B.C., CONTRARY TO THE
7 PROSECUTION'S POSITION, WAS MAY AND JUNE, 1984. I BROUGHT
8 IN \$300,000 THROUGH FINANCIAL FUTURES TRADING CORPORATION
9 IN BOTH MONTHS. PLUS WE GOT \$25,000 ON JUNE 5TH, WHICH WE
10 DEPOSITED AT THE WORLD TRADE BANK ON JUNE 7TH AS A RESULT
11 OF A LEASE PAYMENT FROM MR. MORTON. SO THESE WERE --
12 THERE WAS NEVER A TIME WHEN THE B.B.C. LOOKED SUCH
13 EXCELLENT FINANCIAL PROSPECTS AS MAY AND JUNE OF '84.

14 Q DID YOU TELL MR. BARENS THROUGH DOCUMENTS
15 THAT COULD ESTABLISH THIS AND REFUTE THE PROSECUTION'S
16 SUPPOSED THEORY THAT THE B.B.C. NEEDED MONEY AT THAT
17 PARTICULAR TIME?

18 MR. MC MULLEN: OBJECTION. RELEVANCY.

19 THE COURT: OVERRULED.

20 THE WITNESS: REPEATEDLY. IF HE WOULD ONLY LOOK AT
21 IT HE COULD SATISFY HIMSELF TO THAT POINT.

22 BY MR. CRAIN:

23 Q I WANT TO CALL YOUR ATTENTION BRIEFLY TO
24 EXHIBIT 292. WHEN MR. KILPATRICK WAS ASKED A FEW
25 QUESTIONS ABOUT IT THE OTHER DAY -- I WOULD LIKE TO
26 BRIEFLY APPROACH WITH 292.

27 THE COURT: ALL RIGHT.

28 MR. CRAIN: APPROACHING MR. HUNT WITH THE EXHIBIT

1 292.

2 BY MR. CRAIN:

3 Q DO YOU RECOGNIZE THAT DOCUMENT AS SOMETHING
4 YOU HAVE SEEN BEFORE?

5 A YES, I DO.

6 Q AND WHAT IS THAT?

7 A THIS IS A DOCUMENT GIVEN TO ME BY
8 MR. KILPATRICK, WHICH HE HAD PREPARED, ACCORDING TO HIS
9 REPRESENTATION TO ME.

10 Q WHAT SIGNIFICANCE DID THAT DOCUMENT HAVE, IF
11 ANY, IN YOUR NEGOTIATIONS WITH MR. WILLIAM KILPATRICK?

12 A WELL, THIS WAS --

13 MR. MC MULLEN: OBJECTION. RELEVANCY.

14 THE COURT: MR. KILPATRICK SAID HE DID NOT
15 RECOGNIZE THIS DOCUMENT?

16 THE WITNESS: RIGHT.

17 THE COURT: LAY A FOUNDATION IN TERMS OF HOW, WHEN,
18 WHERE HE SAW IT.

19 BY MR. CRAIN:

20 Q YOU SAY KILPATRICK GAVE THAT TO YOU?

21 A YES, HE DID.

22 Q AND WHEN WAS THAT?

23 A I BELIEVE I RECEIVED THIS ON MY TRIP TO
24 VANCOUVER -- EXCUSE ME -- ON MY TRIP TO DENVER ON THE 7TH
25 OF MAY, 1984.

26 Q AND WHAT WERE THE CIRCUMSTANCES UPON WHICH HE
27 GAVE YOU THAT DOCUMENT?

28 A WE WERE DISCUSSING HOW THE MERGER, HOW THINGS

1 WOULD END UP AFTER THE MERGER OCCURRED AND HOW THE STOCKS
2 SWAP WORKED, WHAT THE MECHANICS OF IT WERE, AND HE
3 SUPPLIED THIS AS WELL AS SOME OTHER DOCUMENTATION AT THAT
4 TIME, AND WE DISCUSSED SOME OF THE REPRESENTATIONS THAT HE
5 MADE IN IT.

6 Q AND WERE THERE ITEMS THAT YOU RELIED ON IN
7 CONDUCTING YOURSELF TOWARDS KILPATRICK AND YOUR
8 NEGOTIATIONS WITH HIM AS A RESULT OF RECEIVING THAT
9 DOCUMENT?

10 MR. MC MULLEN: OBJECTION. RELEVANCY.

11 THE COURT: OVERRULED.

12 THE WITNESS: WELL --

13 THE COURT: LET ME ASK YOU, THIS DOCUMENT, THIS IS
14 THE ONE THAT MR. KILPATRICK BECAME -- ONE OF THE ONES HE
15 SAID HE HAD NO RECOLLECTION OF. IT APPEARS THIS IS THE
16 ONE, I THINK, THAT HAD SOME MATERIAL THAT WAS MISSING AT
17 THE TOP.

18 MR. CRAIN: THEN WE HAD A COPY THAT HAD --

19 MR. MC MULLEN: THE TITLE WAS OFF.

20 THE COURT: ALL RIGHT.

21 WAS THIS THE FIRST PAGE OF THIS DOCUMENT?

22 THE WITNESS: YES, YOUR HONOR. IT WAS JUST LIKE
23 THAT. MR. KILPATRICK WOULD TURN OUT A NUMBER OF DOCUMENTS
24 IN THAT FORMAT, NOT ON HIS LETTERHEAD FOR WHATEVER REASONS
25 BEST KNOWN TO HIM.

26 THE COURT: ALL RIGHT.

27 BY MR. CRAIN:

28 Q WERE THERE MATTERS IN THAT DOCUMENT THAT

1 CAUSED YOU TO TAKE CERTAIN ACTION?

2 A HE ASKED ME WHETHER OR NOT I WAS COMFORTABLE
3 WITH THE REPRESENTATIONS IN HERE, AND I TOLD HIM THAT MOST
4 OF THE STUFF THAT WAS DISCUSSED IN HERE WAS NOT WITHIN MY
5 REALM OF PERSONAL KNOWLEDGE.

6 I ASKED HIM WHETHER HE WAS COMFORTABLE WITH
7 ALL THE INFORMATION IN HERE, AND WE HAD A CONVERSATION
8 ABOUT THINGS THAT ARE DISCUSSED ON PAGE THREE THE SECOND
9 TO THE LAST PARAGRAPH.

10 Q WHAT DOES THAT RELATE TO?

11 A WELL, IT WAS, HE HAD A LOT MORE KNOWLEDGE
12 THAN I DID ABOUT, AT LEAST I FELT, AND I WAS KIND OF BEING
13 LED BY HIM IN THIS REGARD, ABOUT HOW QUICKLY WE COULD
14 ACTUALLY GET TO THE POINT WHERE WE INSTALLING THESE THINGS
15 WITH POWER PLANTS. AND, YOU KNOW, HE REPRESENTED TO ME
16 THAT HE HAD TALKED EXTENSIVELY WITH EXPERTS IN THE AREA IN
17 THE INDUSTRY, AND SO WE HAD A DISCUSSION ABOUT THESE
18 MATTERS ON PAGE THREE, THAT I REFERRED TO, SECOND TO LAST
19 PARAGRAPH.

20 Q AND AS A RESULT OF ANYTHING IN THAT DOCUMENT,
21 DID THAT INFLUENCE YOU, I SHOULD SAY -- LET ME RESTATE
22 THAT.

23 DID THAT DOCUMENT INFLUENCE YOU IN ANY WAY IN
24 THE PURCHASE OF SATURN STOCK?

25 A YEAH.

26 MR. MC MULLEN: OBJECTION. RELEVANCY.

27 THE COURT: SUSTAINED.

28

1 BY MR. MC MULLEN:

2 Q DID YOU DISCUSS THE MATTER SET FORTH IN THAT
3 DOCUMENT WITH MR. BARENS?

4 A I DON'T KNOW IF I DISCUSSED THIS PARTICULAR
5 PARAGRAPH. I MEAN, I DEFINITELY DISCUSSED THE HEADLINE
6 CONCEPTS THAT I DIDN'T THINK IN 1984 THAT IT WOULD BE
7 TERRIBLY LONG BEFORE WE WERE ACTUALLY INSTALLING
8 EQUIPMENT. I FELT THE INSTALLATION WOULD BEGIN SOMETIME
9 IN 1985, YOU KNOW. I GOT THAT BELIEVE FROM COMMUNICATIONS
10 LIKE THIS FROM MR. KILPATRICK AND FROM DISCUSSIONS WITH
11 MR. BROWNING, WHO WAS A PERENNIAL OPTIMIST.

12 Q I NOTICE IT SAYS (READING): "ATTRITION
13 MACHINE COAL APPLICATION APPRAISED BY DR. CHEUNG \$156,000
14 TECHNOLOGY EVALUATION, AND COAL APPLICATION 114 MILLION."
15 IS THAT A REPRESENTATION OF KILPATRICK THAT YOU WERE
16 RELYING ON.

17 MR. MC MULLEN: OBJECTION. RELEVANCY.

18 THE COURT: SUSTAINED.

19 HOLD ON. ONE SECOND.

20 I AM SORRY. YES. GO AHEAD.

21 MR. CRAIN: I HAVE A PHOTOGRAPH. COULD IT BE
22 MARKED NEXT IN ORDER?

23 THE COURT: 307?

24 MR. CRAIN: YES.

25 THE COURT: IT WILL BE MARKED AS PETITIONER'S 307.

26

27 (MARKED FOR ID = PETITIONER'S ³⁰⁷ 197,
28 DOCUMENT.)

1 MR. CRAIN: I TAKE IT, IT IS IN MR. HUNT'S
2 POSSESSION --

3 THE COURT: I HAVE GOT IT.

4 MR. CRAIN: -- GIVEN TO THE COURT.

5 SORRY FOR THE CONDITION, YOUR HONOR, IT IS
6 THE ONLY ONE THAT I COULD -- NOT THE ONLY ONE I COULD, BUT
7 THE ONLY ONE I DID BRING WITH ME TODAY. SO I WILL PUT 307
8 ON THE BACK.

9 BY MR. CRAIN:

10 Q SHOWING YOU THAT PHOTOGRAPH, MR. HUNT, DOES
11 THAT DEPICT AN ATTRITION MILL?

12 A YES. THERE IS THE ONE WE INSTALLED AT
13 SUPERSTITION MOUNTAIN, ARIZONA, IN EARLY JUNE OF 1984.

14 Q AND --

15 A THIS IS THE ONLY ONE THAT EVER OPERATED, THE
16 OTHER TWO WERE NEVER COMPLETED.

17 THE COURT: IS THIS THE ONE THAT WAS ALSO IN THE
18 WAREHOUSE IN GARDENA?

19 THE WITNESS: YES. AFTER IT WAS TESTED THERE IT
20 WAS UNHOOKED AND TAKEN ON A FLIGHT TO ARIZONA. THE IDEA
21 WAS WE WERE GOING TO SET ANOTHER ONE UP. WE HAD TWO MORE
22 THAT WERE IN VARIOUS STAGES OF COMPLETION.

23 BY MR. CRAIN:

24 Q YOU HEARD MR. BROWNING AT ONE POINT OR
25 SEVERAL POINTS SAY THAT, SOMETHING TO THE EFFECT THAT
26 THERE WAS GOING TO BE NO MONEY FOR TWO YEARS IF THIS
27 CONTRACT WAS CARRIED OUT AND --

28 THE COURT: I AM SORRY, DID YOU SAY MR. BROWNING?

1 MR. CRAIN: KILPATRICK. I HAD BROWNING ON MY MIND,
2 THE INVENTOR.

3 BY MR. CRAIN:

4 Q YOU HEARD MR. KILPATRICK TESTIFY THAT THERE
5 WAS -- THE EVENTS OR SOME OF THE EVENTS THAT HE PORTRAYED
6 AS OBSTACLES TO THE CONTRACT COMING INTO FRUITION MIGHT
7 CAUSE MONEY TO BE QUITE SOME TIME AWAY, TWO YEARS AWAY OR
8 SOMETHING LIKE THAT. WAS THAT TESTIMONY TRUTHFUL?

9 A NO. I MEAN, THAT'S NOT WHAT HE WAS TELLING
10 ME.

11 Q WHAT WAS HE TELLING YOU IN THAT REGARDS
12 DURING THIS TIME FRAME OF THE SPRING AND INTO THE SUMMER
13 OF 1984?

14 A WELL, ORAL REPRESENTATIONS WERE CONSISTENT
15 WITH THE PAPER REPRESENTATIONS, THE DOCUMENTS HE GAVE ME.
16 AND THAT REPRESENTATION WAS THAT THIS MERGER PROCESS IN
17 VANCOUVER WAS NOT A VERY COMPLICATED PROCESS, THAT THEY
18 WERE NOT ANYWAY NEAR AS TIGHT AT S.C.C., THAT THESE THINGS
19 TYPICALLY WERE HANDLED IN TWO TO THREE MONTHS AFTER THE --
20 AFTER THE MERGER WAS APPROVED BY THE FEDERAL JUDGE IN
21 MARCH, AND THE PAPERS WERE FILED IN EARLY MAY THAT THE
22 CLOCK WAS RUNNING. BY THE TIME WE GOT ON OUR SEVENTH
23 DRAFT I WAS THINKING THAT THEY COULD COME DOWN WITH THIS
24 DECISION ON THE MERGER AT ANY WEEK, ANY DAY AT THAT POINT,
25 AND I EVEN HAVE SOMETHING THAT WE WILL -- GO AHEAD.

26 Q DO YOU HAVE DOCUMENTS TO CORROBORATE WHAT YOU
27 HAVE JUST TOLD US?

28 A WHEN HE DID THE PEARL HARBOR ROUTINE AT THE

1 END OF JULY, MR. ADELMAN SAT DOWN AND I DRAFTED A LETTER
2 TO MR. KILPATRICK'S COUNSEL.

3 MR. MC MULLEN: OBJECTION. RELEVANCY.

4 THE COURT: I WILL HEAR IT OUT.

5 THE WITNESS: IN THE TEXT OF THAT LETTER I NOTED
6 (READING): "AS I WAS REVIEWING DOCUMENTS OVER THE LAST
7 WEEKEND," THERE IS A LINE THAT SAYS, "AT THIS LATE DATE IN
8 THE APPROVAL PROCESS," THERE IS THAT PHRASE IN THIS AUGUST
9 3RD LETTER, AND THAT IS CONSISTENT WITH MY UNAIDED
10 RECOLLECTION AS WELL THAT WE THOUGHT IT WAS TICKED DOWN TO
11 A MATTER OF DAYS.

12 BY MR. CRAIN:

13 Q IS THAT LETTER PRESENT IN COURT?

14 A YES, IT IS.

15 Q DOES THE COURT WANT TO SEE IT?

16 THE COURT: DIDN'T WE HAVE A LETTER LIKE THAT?

17 THE WITNESS: WE HAD DECLAN'S REPLY TO THIS.

18 THE COURT: WE HAD MR. O'DONNELL'S -- WAS THAT 294?

19 MR. CRAIN: WHICH HE REFERS TO THE VERY EXISTENCE

20 OF A CONTRACT BETWEEN THE TWO PARTIES.

21 THE COURT: ALL RIGHT.

22 I AM FAMILIAR WITH THAT.

23 HOLD ON. LET ME JUST LOOK AT 294 AGAIN.

24

25 (THE COURT REVIEWING DOCUMENTS.)

26

27 THE COURT: ALL RIGHT.

28

GO AHEAD.

1 BY MR. CRAIN:

2 Q YOU HAD THE LETTER YOU JUST REFERRED TO THAT
3 WAS SENT TO MR. KILPATRICK?

4 A RIGHT. THE AUGUST 3RD.

5 Q MR. --

6 A IT ACTUALLY SAYS (READING): "AT THE VERY
7 LAST DATE IN THE APPROVAL PROCESS."

8 MR. CRAIN: CAN THAT BE MARKED A 308, YOUR HONOR?

9 THE COURT: YES.

10

11 (MARKED FOR ID = PETITIONER'S 308,
12 DOCUMENT.)

13

14 BY MR. CRAIN:

15 Q I THINK THE CONTROL NUMBER IS, I THINK 7326;
16 IS THAT CORRECT?

17 A YES. HERE IS A COPY OF IT. I AM REFERRING
18 TO THE LINE AT THE BOTTOM OF THE THIRD PARAGRAPH.

19 THE COURT: NOW --

20 BY MR. CRAIN:

21 Q IN THE TESTIMONY OF MR. KILPATRICK SOME
22 REFERENCE IS MADE TO EXHIBIT 298.

23 A RIGHT.

24 YOU MIGHT WANT TO ASK ME WHY I SIGNED THIS
25 LETTER.

26 Q GOING BACK TO 307 FOR JUST A MINUTE. THIS
27 LETTER THAT WAS SENT BY MICROGENESIS TO MR. KILPATRICK, IN
28 A NUTSHELL, WHY WAS IT SENT?

1 A I FELT THAT -- I WANT TO GIVE THE JUDGE AN
2 OPPORTUNITY TO READ.

3 THE COURT: GO HEAD.

4 THE WITNESS: OKAY.

5 THE COURT: BELIEVE IT OR NOT I CAN DO TWO THINGS
6 AT ONCE.

7 THE WITNESS: THIS IS -- THE SITUATION GOT
8 COMPLICATED AT THE END OF JULY WITH MR. KILPATRICK. WE
9 HAD GONE THROUGH SEVEN DRAFTS. THE COURT HAD SEEN A FEW
10 OF THEM.

11 THE COURT: END OF JULY?

12 THE WITNESS: YES.

13 THE COURT: THIS LETTER IS AUGUST 3RD.

14 MR. MC MULLEN: FOR THE RECORD, THIS IS FIRST TIME
15 WE HAVE SEEN THIS DOCUMENT.

16 THE COURT: ALL RIGHT.

17 THE WITNESS: WE HAD GONE THROUGH -- WELL, IT
18 STARTED IN MAY WITH SOME ORAL REPRESENTATIONS ABOUT THE
19 FACTS THAT WE HAVE A DEAL. IN JUNE WE STARTED PUTTING
20 DOWN ON PAPER. I HAD SEVERAL PEOPLE IN THE B.B.C. STAFF
21 WORKING WITH MR. KILPATRICK AND I TO REDUCE THIS TO PAPER.

22 WE WENT THROUGH UP TO, I THINK, THE SEVENTH
23 DRAFT, SIXTH OR SEVENTH DRAFT, AND WE HAD GOTTEN DOWN TO
24 MINUTIA ON THE CONTRACTS, ALL THE MAJOR TERMS HAD BEEN
25 AGREED TO.

26 THEN ON JULY 27TH I GET A COMMUNICATION FROM
27 MR. KILPATRICK. I SPEAK TO HIM ON THE PHONE, AND HE SAID,
28 YOU KNOW, "WE GOT TO RENEGOTIATE THIS. THERE IS A BUNCH

1 OF OTHER PEOPLE THAT HAVE SOME RIGHT TO THE TECHNOLOGY."
2 THIS WAS OUT OF THE BLUE.

3 AND MR. KILPATRICK AND I DISCUSSED A FEW
4 THINGS OTHER THINGS ON THIS TELEPHONE CONVERSATION. THERE
5 WAS A LOT GOING ON THE B.B.C. AT THE TIME, BUT THE UPSHOT
6 WAS I DECIDED THAT I WOULD TEST HIS HAND. I FELT THAT HE
7 WAS TRYING TO DO WAS SOMETHING ON THE ORDER OF
8 BRINKMANSHIP, HE WANTED THE APPROVAL TO OCCUR, I BELIEVED
9 MIGHT OCCUR.

10 MR. MC MULLEN: AT THIS POINT I AM GOING TO OBJECT
11 AS NARRATIVE AND IRRELEVANT.

12 THE COURT: AS TO WHAT HE THOUGHT, THAT WILL GO
13 OUT.

14 WHY DON'T YOU JUST TELL US WHAT YOU WERE
15 DOING IN JULY OF '84 IN REFERENCE TO THIS.

16 THE WITNESS: WHAT I WAS DOING WAS --

17 THE COURT: HE WAS BALKING, YOU WERE COMING BACK
18 AND CALLING HIS BLUFF, IN OTHER WORDS; RIGHT?

19 THE WITNESS: YEAH. AND I FELT THE BEST WAY TO DO
20 IT WAS TO SEND NOTICE TO THE VANCOUVER AUTHORITIES AND ALL
21 OTHER PARTIES THAT THE DEAL WAS OFF, WHICH I DID. I SENT
22 THEM TELEGRAMS ON AUGUST 2ND. I SENT THAT LETTER. I FELT
23 THAT I WOULD FIND OUT WITHIN A FEW MINUTES WHETHER
24 MR. KILPATRICK HAD BEEN LYING TO ME ABOUT ALL THIS ALL
25 ALONG OR WHETHER HE REALLY INTENDED A DEAL OF ECONOMIC
26 SUBSTANCE.

27 I FELT THAT SINCE HE STATED ON HIS JULY 27TH
28 CONVERSATION WITH ME THINGS THAT MADE ME BELIEVE THAT HE

1 HAD KNOWN ABOUT THESE OTHER PARTIES FOR A LONG TIME BUT
2 HADN'T EXPRESSED IT TO ME, AND, THEREFORE, I BEGAN TO LOOK
3 AT THE LONG SERIES OF BACK AND FORTH EXCHANGES OF THESE
4 CONTRACTS AS BEING DONE NOTHING OTHER THAN A DELAYING
5 TACTIC THAT HE WAS EXPECTING A MERGER TO GO DOWN WHILE THE
6 NEGOTIATIONS WERE ONGOING TO SEEK ANY ARTIFICE TO EXTEND
7 THEM. SO MY STATE OF MIND WITH RESPECT TO MR. KILPATRICK
8 CHANGED.

9 MR. MC MULLEN: OBJECTION. NONRESPONSIVE.

10 THE COURT: THAT PORTION "STATE OF MIND" WILL GO
11 OUT.

12 LET ME ASK YOU -- I AM SORRY, I LOST MY
13 THOUGHT.

14 GO AHEAD. I WILL PICK IT UP AGAIN.

15 MR. CRAIN: MUST BE GETTING WHAT I GOT.
16 CONTAGIOUS.

17 THE COURT: I WILL STOP EATING IN THE BUILDING, I
18 GUESS.

19 GO AHEAD.

20 BY MR. CRAIN:

21 Q SO WAS THERE ANYTHING FURTHER IN RESPONSE TO
22 THE COURT'S QUESTION ABOUT WHY THIS LETTER WAS SENT FROM
23 MICROGENESIS TO KILPATRICK TERMINATING THE DEAL?

24 MR. MC MULLEN: OBJECTION. RELEVANCY.

25 THIS IS THE AUGUST 3RD LETTER YOU ARE
26 REFERRING TO, COUNSEL?

27 MR. CRAIN: YES.

28 THE COURT: I WILL ALLOW IT.

1 THE WITNESS: BASED ON MY EXPERIENCE, I DECIDED
2 THAT IN ALL PROBABILITY MR. KILPATRICK WAS JUST TRYING TO
3 PLAY FOR TIME ONCE THE MERGER WOULD CLOSE HE WOULD HAVE
4 DIFFERENT LEVERAGE, SO THAT IF THERE WAS ANY HOPE OF
5 HAVING THAT DEAL SIGNED THAT WE HAD BEEN WORKING ON, THAT
6 HE HAD AGREED TO, I HAD TO JUST FORCE HIS HAND.

7 THE COURT: I JUST GOT MY THOUGHT AGAIN.

8 THE DEAL WAS NEVER GOING TO GO THROUGH IF YOU
9 ADVISED SATURN THAT YOU ARE OUT OF THE DEAL BECAUSE THE
10 GREAT PART OF THE ASSETS OF MR. KILPATRICK'S, WHAT HE WAS
11 BRINGING TO THE TABLE, WAS THE 114 MILLION ESTIMATED VALUE
12 OF THE MACHINE; RIGHT?

13 THE WITNESS: RIGHT. SO --

14 THE COURT: SO IF YOU HAD SENT THAT LETTER, IT
15 WOULD HAVE KILLED THE DEAL?

16 THE WITNESS: UNTIL I RESCINDED THE LETTER, WHICH I
17 FELT HE WOULD HAVE TO COME BACK, SIGN THE AGREEMENT, THEN
18 I WOULD SEND ANOTHER NOTICE TO THE REGULATION AUTHORITIES
19 THAT THE PROBLEM, THE CONTRACT DISPUTE HAS BEEN RESOLVED,
20 AT WHICH POINT THEN THE MERGER COULD CONCLUDE. THAT
21 WAS --

22 BY MR. CRAIN:

23 Q UP TO THAT TIME THERE WERE MEETINGS,
24 CORRESPONDENCE WITH KILPATRICK BACK AND FORTH AND VARIOUS
25 DRAFTS OF THE DOCUMENTS WERE BEING SENT BACK AND FORTH?

26 A RIGHT. UP TO THAT JULY 27TH PHONE CALL THE
27 SKY WAS CLEAR, AND I THOUGHT WE WERE, THE VERY NEXT TIME
28 WE MET THERE WOULD BE INK ON THOSE PAGES.

1 Q LET ME SHOW YOU EXHIBIT 287 AND ASK YOU A
2 COUPLE OF QUESTIONS HERE.

3 MR. KILPATRICK WAS ASKED ABOUT THIS, THE
4 NEWSPAPER ARTICLE. IS THAT SOMETHING YOU HAVE SEEN
5 BEFORE?

6 A YES.

7 Q WHEN DID YOU COME IN CONTACT WITH THAT
8 NEWSPAPER ARTICLE FOR THE FIRST TIME?

9 MR. MC MULLEN: OBJECTION. RELEVANCY.

10 MR. CRAIN: FOUNDATIONAL.

11 THE COURT: I WILL ALLOW THE QUESTION.

12 THE WITNESS: BEN DOSTI GAVE THAT TO ME.

13 BY MR. CRAIN:

14 Q DO YOU REMEMBER WHEN RELATIVE TO THE DATE ON
15 THE ARTICLE JUNE 4, 1984?

16 A IT WAS SOMETHING THAT HE BROUGHT BACK WITH
17 HIM. HE WAS ON THIS TRIP, AND HE BROUGHT IT BACK FROM
18 KAMLOOPS. WE HAD A NUMBER OF JOKES ABOUT WHAT KAMLOOPS
19 WAS ABOUT.

20 Q THAT WOULD HAVE BEEN PROBABLY THE DAY AFTER
21 THAT ARTICLE CAME OUT, PROBABLY LIKE THAT?

22 A I THINK BEN GOT BACK THE 7TH OR 8TH OF JUNE.

23 Q WAS THERE ANYTHING IN THAT ARTICLE THAT YOU
24 RELIED ON IN YOUR NEXT MEETING WITH KILPATRICK?

25 A IT WAS CONSISTENT WITH --

26 MR. MC MULLEN: OBJECTION. RELEVANCE.

27 THE COURT: SUSTAINED.

28 THE WITNESS: OKAY.

1 BY MR. CRAIN:

2 Q WAS THERE ANYTHING IN THAT ARTICLE THAT
3 CAUSED YOU TO CHANGE YOUR MIND ABOUT KILPATRICK'S ABILITY
4 TO PERFORM PURSUANT TO THE PROPOSED AGREEMENT?

5 A NOTHING AT ALL.

6 MR. MC MULLEN: OBJECTION. RELEVANCE.

7 THE COURT: SUSTAINED.

8 THE LAST ANSWER WILL GO OUT.

9 BY MR. CRAIN:

10 Q NOW, SHOWING YOU EXHIBIT 291.

11 MR. CRAIN: THESE ARE THE HANDWRITTEN NOTES, YOUR
12 HONOR. IT IS NINE PAGES.

13 BY MR. CRAIN:

14 Q HAVE YOU SEEN THIS BEFORE, MR. HUNT?

15 A YES, I HAVE.

16 Q WHERE DID YOU FIRST SEE THEM?

17 A WELL, BILL WAS WRITING THIS STUFF ON A DESK
18 IN AN OFFICE.

19 Q BILL KILPATRICK YOU MEAN?

20 A YES. IN AN OFFICE SUPPLIED TO HIM BY B.B.C,
21 IT WAS BACK OFFICES.

22 Q AND DID HE LEAVE THEM BEHIND?

23 A YEAH. HE LEFT THEM BEHIND AT THE B.B.C.
24 OFFICE, SO THEY GOT COLLECTED WITH ALL THE OTHER
25 PAPERWORK.

26 Q AND --

27 A I SHOULD SAY, HE WAS WORKING ON -- THIS IS
28 SOMETHING THAT I BELIEVE -- IF MY RECOLLECTION SERVES ME

1 PROPERLY, THIS IS SOMETHING THAT WAS WRITTEN ON THIS JUNE
2 19, 1984, TRIP OUT. I WAS SITTING IN THE OFFICE TALKING
3 TO HIM DURING SOME OF IT.

4 MR. MC MULLEN: OBJECTION. NO FOUNDATION.

5 THE COURT: SUSTAINED.

6 MR. MC MULLEN: MOVE TO STRIKE.

7 THE COURT: THE LAST ANSWER WILL GO OUT.

8 BY MR. CRAIN:

9 Q WAS THERE SOME DOCUMENT THAT WAS PREPARED ON
10 JUNE 19, 1984, A SECOND DRAFT THAT HAD ANY SIGNIFICANCE TO
11 THESE NEGOTIATIONS?

12 A YES.

13 Q DO YOU HAVE THAT WITH YOU?

14 A THE SECOND DRAFT. IS THAT 4048, 4084?

15 WE HAVE -- YES. YES, THERE IS. AND --

16 Q WHAT IS THAT DOCUMENT?

17 MR. MC MULLEN: MAY I APPROACH, YOUR HONOR?

18 THE COURT: YES.

19 THE WITNESS: THIS IS -- THESE ARE ORIGINAL
20 DOCUMENTS FROM BACK IN THE DAYS WHEN WE'RE WORKING ON
21 THESE CONTRACTS. ON ONE OF THEM THERE IS A NOTE IN DEAN
22 KARNY'S HANDWRITING. IT SAYS (READING): "COPIES, SEVENTH
23 DRAFT, KILPATRICK LICENSE AGREEMENT."

24 THEN THERE WAS A WHOLE BUNCH OF HANDWRITTEN
25 NOTES BY DEAN KARNY. SOME OF THEM -- THIS IS JOHN ALLEN'S
26 HANDWRITING. HE WAS ALSO HELPING US. AND THESE REFLECT
27 NOTES THAT WERE TAKEN IN MEETINGS AS WE SAT THERE WITH
28 MR. KILPATRICK AND PAINSTAKINGLY IRONED OUT ALL THE

1 REMAINING CONFLICTS.

2 MR. MC MULLEN: OBJECTION. NARRATIVE.

3 AND FOR THE RECORD, THIS IS FIRST TIME WE
4 HAVE SEEN THESE DOCUMENTS.

5 MR. CRAIN: I AM GOING TO OFFER THIS IN EVIDENCE.
6 I DON'T THINK THE COURT WANTS TO TAKE THIS TIME TO READ
7 IT. IT IS MERELY CORROBORATIVE OF THE ONGOING
8 NEGOTIATIONS, UNLESS THE COURT WANTS TO.

9 THE COURT: LET'S NOT REFER TO THIS IN COURT ON THE
10 RECORD THEN. MANY OF THESE ARE SIMPLY SAYING -- THEY ARE
11 ADDITIONAL HANDWRITTEN NOTES FROM THESE MEETINGS; RIGHT?

12 MR. CRAIN: YES.

13 THE COURT: OKAY.

14 BY MR. CRAIN:

15 Q WHERE THERE PLANS ON BEHALF OF THE B.B.C. OR
16 WHO WAS REPRESENTED TO MEET WITH A REPRESENTATIVE OF THE
17 E.P.R.I. SOMETIME IN THIS PERIOD?

18 MR. MC MULLEN: VAGUE AS TO TIME. RELEVANCY.

19 THE COURT: OVERRULED.

20 THE WITNESS: E P.R.I. BEN ACTUALLY SET UP AN
21 APPOINTMENT JULY, 1984, WITH THE E.P.R.I.

22 THE COURT: DOSTI?

23 THE WITNESS: BEN DOSTI, YES.

24 MR. CRAIN: WE WOULD YOU HAVE A DOCUMENT, IF THE
25 COURT WOULD LIKE TO SEE IT, THAT WOULD ADDRESS ITSELF TO
26 THAT?

27 MR. CRAIN: I DON'T KNOW IF --

28 THE COURT: WE ARE PROBABLY GETTING REALLY AWAY

1 FROM THE FOCUS ON -- THIS INFORMATION WAS BROUGHT TO
2 MR. BARENS' ATTENTION, THAT AS A QUALIFIED ATTORNEY HE
3 SHOULD HAVE RELIED ON.

4 BY MR. CRAIN:

5 Q IN GENERAL, THE MATTERS WE HAVE BEEN COVERING
6 THE LAST TEN MINUTES OR SO WERE THESE MATTERS THAT YOU
7 DISCUSSED WITH MR. BARENS PRIOR TO TRIAL RELATIVE TO THE
8 KILPATRICK CONTRACT?

9 MR. MC MULLEN: OBJECTION. VAGUE.

10 THE COURT: OVERRULED.

11 THE WITNESS: I TOLD HIM THERE WAS A WEALTH OF
12 SUPPORTING DOCUMENTATION FOR THE ASSERTION I HAD MADE
13 ABOUT THE GOOD FAITH THE B.B.C. WAS OPERATING AND POSTURE
14 IT WAS IN WITH RESPECT TO KILPATRICK. I DESCRIBED SOME OF
15 THE MOST IMPORTANT DOCUMENTS. I TOLD HIM THERE WAS A LOT
16 MORE, AND I URGED HIM TO SPEND TIME WITH THEM, SO THAT HE
17 UNDERSTOOD THE CONTEXT OF THE B.B.C. WAS ACTING IN DURING
18 ALL THE RELEVANT TIME FRAMES.

19 BY MR. CRAIN:

20 Q DID YOU DISCUSS OR TELL HIM THERE WERE
21 DOCUMENTS THAT RELATED TO THESE POINTS THAT YOU TOLD JUDGE
22 CZULEGER ABOUT IN THE LAST TEN MINUTES OR SO THAT HE
23 SHOULD LOOK AT IN ORDER TO HELP DEFEND AGAINST THIS
24 FINANCIAL MOTIVE THEORY THAT THE PROSECUTION WAS GOING TO
25 BE OFFERING?

26 A YES. BUT NOT ONLY JUST THE FINANCIAL MOTIVE
27 ASPECTS OF IT, THERE WAS ALSO DISCUSSIONS ABOUT HOW
28 THEMATICALLY THE FINANCES OF THE AFFAIRS OF THE B.B.C.,

1 THE WAY THEY WAXED AND WANED PLAYED A ROLE IN --

2 MR. MC MULLEN: OBJECTION. NONRESPONSIVE.

3 THE COURT: YOU CAN FINISH YOUR THOUGHT.

4 THE WITNESS: PLAYED A ROLE IN THE REPRESENTATIONS
5 I MADE, THE VARIOUS GAMES, HOAXES THAT WERE PERPETRATED ON
6 OTHER MEMBERS OF THE B.B.C. IN JUNE, JULY AND AUGUST OF
7 1984 AND STATEMENTS, SOME OF WHICH HAS BEEN TAKEN AS
8 ADMISSIONS AGAINST ME.

9 BY MR. CRAIN:

10 Q DID YOU EVER HAVE ANY DISCUSSION -- LET ME
11 ASK YOU THIS FIRST.

12 YOUR TRIAL IN SANTA MONICA LASTED FOR WHAT,
13 SIX MONTHS OR SO?

14 MR. MC MULLEN: OBJECTION. RELEVANCY.

15 THE COURT: I ASSUME IT IS FOUNDATIONAL. I ASSUME
16 IT IS PRELIMINARY.

17 MR. CRAIN: YES, YOUR HONOR.

18 THE WITNESS: THE GUILT PHASE FROM OCTOBER TO
19 APRIL, 1984, I MEAN OCTOBER '86, APRIL '87.

20 BY MR. CRAIN:

21 Q AND THE PROSECUTION CALLED A LARGE NUMBER OF
22 WITNESSES?

23 A 66.

24 Q SEVERAL WITNESSES OVER THE COURSE OF THIS
25 TIME FRAME?

26 A YES.

27 Q AND MOST OF THEM WERE CALLED DURING THE GUILT
28 PHASE; CORRECT?

1 A CORRECT. 66.

2 Q DID YOU DISCUSS WITH MR. BARENS THAT THE
3 SUBJECT OF MICROGENESIS NEGOTIATIONS WITH KILPATRICK AND
4 THE KILPATRICK DEAL AND ALL THE THINGS THAT WE HAVE BEEN
5 TALKING ABOUT IN YOUR TESTIMONY AND O'DONNELL AND
6 KILPATRICK'S TESTIMONY HAD SOME DEGREE OF COMPLICITY THAT
7 MIGHT ENTER INTO WHETHER OR NOT IT COULD BE USED TO YOUR
8 DEFENSE?

9 A HE MADE STATEMENTS ABOUT COMPLEXITY, AND I
10 RESPONDED TO THAT.

11 Q WHAT RESPONSE DID YOU GIVE HIM?

12 A I SAID, "WE CAN EITHER CONCEDE THE
13 PROSECUTION'S CASE, OR WE CAN DEAL WITH THE COMPLICITY
14 THAT EXISTED AT THE TIME IT WAS -- I AM NOT A SIMPLE
15 PERSON, MY MOTIVES, MY ACTIONS WERE NOT SIMPLE. AND THERE
16 WE WERE OPERATING IN AN ENVIRONMENT," I TOLD MR. BARENS,
17 "WHERE WE HAVE THREE OR FOUR DIFFERENT PEOPLE THAT
18 PROBABLY COULD BE CALLED CONFIDENCE MEN OUTSIDE OF THE
19 B.B.C."

20 WE HAD VARIOUS FACTIONS WITHIN THE B.B.C.
21 PEOPLE OF CORRUPT CHARACTER AND THE INTERACTION OF ALL OF
22 US, IT WAS EXTREMELY CHAOTIC, AND UNLESS THAT WAS
23 UNDERSTOOD BY THE JURY THEY WOULD NEVER HAVE A HOPE OR
24 PRAYER OF UNDERSTANDING WHY I WOULD SAY CERTAIN THINGS
25 THAT I DID, WHICH WERE NOT TRUE, AND WHY I WOULD, WHY
26 EVERYBODY ELSE WAS LYING TO EACH OTHER.

27 Q DID YOU ASK MR. BARENS TO LEARN THE
28 MICROGENESIS KILPATRICK SITUATION, THE NEGOTIATIONS, ALL

1 OF THE SURROUNDING EVENTS THAT WE HAVE BEEN TALKING ABOUT
2 SO THAT HE COULD USE IT IN YOUR DEFENSE?

3 MR. MC MULLEN: OBJECTION. CUMULATIVE.

4 THE COURT: OVERRULED.

5 THE WITNESS: YES.

6 BY MR. CRAIN:

7 Q DID MR. BARENS EVER TELL YOU THAT, THAT THERE
8 WAS ANY REASON WHY THE FACT THAT THE KILPATRICK
9 MICROGENESIS NEGOTIATIONS HAD COMPLICITY THAT IT COULDN'T
10 BE EXPLAINED IN A WAY FOR THE JURY TO SHOW THAT YOUR
11 BUSINESS EXPECTED MONEY IN A SHORT PERIOD OF TIME?

12 MR. MC MULLEN: OBJECTION. LEADING.

13 THE COURT: OVERRULED.

14 BUT REFRAME THE QUESTION. IT IS VERY VAGUE.

15 DID BARENS EVER TELL YOU THIS IS JUST TOO
16 COMPLEX TO PUT IN AS PART OF THE DEFENSE.

17 THE WITNESS: HE SAID IT WAS TOO COMPLEX. AT ONE
18 POINT DURING THE TRIAL I REMEMBER GETTING INTO A SPAT WITH
19 HIM OUT IN THE HALLWAY, AND HE SAID IT WAS TOO COMPLEX FOR
20 HIM AT THAT MOMENT GIVEN ALL THE PRESSURES ON HIM AND THE
21 DEMANDS ON HIM TO DEAL WITH, TO EVEN TALK TO ME ABOUT IN
22 THE HALLWAY BECAUSE THE TRIAL WAS SLIPPING AWAY. IT
23 WASN'T BEING CLEARLY COMMUNICATED IN ANY WAY, SHAPE OR
24 FORM.

25 AND I WAS PUTTING HIM UNDER INCREASING
26 PRESSURE TO DO SOMETHING ABOUT PUTTING IT INTO EVIDENCE.
27 I DIDN'T UNDERSTAND HOW ALL THAT WOULD WORK AT THE TIME
28 BECAUSE I DIDN'T KNOW ABOUT THE EVIDENCE CODE AT THAT

1 TIME, BUT HE SAID, "I CAN'T DEAL WITH IT NOW. I GOT TO
2 DEAL WITH TOMORROW'S WITNESSES." IT WAS ALWAYS TOMORROW'S
3 WITNESSES. "WHAT DO YOU HAVE ON THOSE?" THAT WAS A ROW
4 WE HAD IN THE HALLWAY OUTSIDE THE COURTROOM.

5 BY MR. CRAIN:

6 Q IN SUMMARY, IS IT FAIR TO SAY THAT BARENS
7 NEVER REALLY TOOK THE TIME TO LEARN ABOUT THE KILPATRICK
8 NEGOTIATIONS SO THAT HE COULD USE IT IN YOUR DEFENSE BY
9 SHOWING THE JURY THAT IN FACT THERE WAS AN EXPECTATION
10 THAT MONEY WOULD BE COMING IN FROM THE KILPATRICK
11 MICROGENESIS DEAL?

12 MR. MC MULLEN: OBJECTION. CALLS FOR SPECULATION.

13 THE COURT: SUSTAINED.

14 BY MR. CRAIN:

15 Q DID YOU FEEL THAT YOU HAD TO BILL -- LET ME
16 ASK YOU A FEW QUESTIONS, SINCE I THINK WE HAVE ALREADY
17 COVERED THE DOCUMENTS HERE.

18 DID YOU FEEL THAT YOU HAD TO BUILD A WORKING
19 COAL MICROGENESIS FACILITY IN ORDER TO BE ABLE TO GET PAID
20 BY KILPATRICK?

21 A NO.

22 Q WHY IS THAT?

23 A WELL, WHETHER IT WAS THE ORIGINAL AGREEMENT
24 OR WHETHER IT WAS MODIFIED, THE DEAL DELIVERY
25 SPECIFICATION REQUIREMENTS, CASH FLOW WERE ASSOCIATED WITH
26 THE 114 MILLION DOLLAR ORDER, WHICH HE FORMALIZED WITH
27 THAT TELEX. IN EITHER ARRANGEMENT THERE WERE CERTAIN
28 FUNDS THAT WOULD BE PROVIDED MERELY ON THE OCCURRENCE OF

1 THE MERGER. SO THERE WAS A SUBSTANTIAL SUM, ESPECIALLY
2 SUBSTANTIAL IN RELATIONSHIP TO MICROGENESIS FINANCIAL
3 FUTURES TRADING OBLIGATIONS.

4 Q AND BASED ON YOUR NEGOTIATIONS WITH
5 KILPATRICK, WHAT HAD YOU BEEN TOLD WOULD BE THE FUNDING ON
6 THE COMPLETION OF THE MERGER?

7 A WELL, THEY ACTUALLY HAD TO GIVE US --
8 MR. MC MULLEN: OBJECTION. VAGUE WHAT HE HAD BEEN
9 TOLD.

10 THE COURT: REFRAME IT.

11 BY MR. CRAIN:

12 Q WELL, KILPATRICK GIVE YOU INFORMATION THAT
13 CAUSED YOU TO BELIEVE THAT AT THE CONCLUSION OF THE MERGER
14 MICROGENESIS AND THE B.B.C. WOULD BE COMING INTO SOME
15 FINANCIAL BENEFITS?

16 A BOTH AT THE TIME WE FIRST SIGNED THE DEAL IN
17 NOVEMBER OF 1983 AND LATER AS WE WERE WORKING ON THE
18 DETAILS OF THESE, THESE OPTION LICENSE AGREEMENTS, THE MAY
19 THROUGH JULY PERIOD, THE UNDERSTANDING I ALWAYS HAD WITH
20 MR. KILPATRICK WAS THAT THE B.B.C. WOULD NEVER BE IN A
21 POSITION TO DELIVER A MULTI MILLION DOLLAR PIECE OF
22 EQUIPMENT UNLESS THERE WERE ADVANCE PAYMENTS AGAINST
23 BUDGETED COSTS.

24 HE SAID IN NOVEMBER OF 1983, "LOOK, JOE, WE
25 DON'T HAVE TO GO INTO ALL THAT IN THESE AGREEMENTS. THESE
26 ARE BASICALLY LETTERS OF INTENT. HOWEVER, WE ARE IN BED
27 TOGETHER," A VERY POPULAR PHRASE AMONG BUSINESS MEN IN THE
28 EARLY '80S. "WE ARE IN BED TOGETHER ON THIS. WE HAVE

1 EXCLUSIVE MARKETING AGREEMENT, THE CASH FLOW WILL BE
2 THERE, AND WE WILL WORK IT OUT, YOUR BUDGET COSTS WILL BE
3 SUPPLIED IN ADVANCE." AND THOSE REPRESENTATIONS WERE
4 LATER FORMALIZED IN THESE DRAFTS, AS CAN BE SEEN BY A
5 REVIEW OF EXHIBITS 4, 5 AND 7.

6 Q WHEN WAS THE FIRST TIME THAT YOU HEARD FROM
7 KILPATRICK THAT HE THOUGHT THERE WAS SOME CLOUD ON YOUR
8 TITLE TO THE ATTRITION MILLS?

9 MR. MC MULLEN: OBJECTION. ASKED AND ANSWERED.

10 THE COURT: WE DID COVER THIS.

11 MR. CRAIN: PERHAPS YOU ARE RIGHT.

12 BY MR. CRAIN:

13 Q I THINK IT IS CLEAR FROM THE RECORDS, BUT
14 WHAT YOU JUST EXPLAINED IN YOUR PREVIOUS ANSWER ABOUT
15 EXPECTATIONS FROM THE KILPATRICK NEGOTIATIONS, WAS THAT
16 ALL RELAYED TO BARENS?

17 A ON THOSE PARTICULAR POINTS ABOUT THE FACT
18 THAT MR. KILPATRICK SAID THAT HE WOULD TAKE CARE OF BUDGET
19 COSTS, NO, I DIDN'T SAY THAT TO MR. BARENS, BUT I DID
20 REFER TO DOCUMENTS LIKE THE LICENSING AND OPTION AGREEMENT
21 IN COMMUNICATIONS THAT HAVE ALREADY BEEN DISCUSSED ON THE
22 RECORD THAT I GAVE MR. BARENS. SO HE COULD HAVE SEEN THEM
23 IF HE WANTED TO.

24 Q DID YOU TELL BARENS BASICALLY IF KILPATRICK
25 WERE TO COME IN HERE AND MAKE SOME CLAIM THAT IT WAS GOING
26 TO BE TWO YEARS DOWN THE ROAD BEFORE ANY MONEY OR ASSETS
27 OR FINANCIAL BENEFITS CAME ABOUT, THAT THERE ARE OTHER
28 PURPORTED OBSTACLES SUCH AS AN INDICTMENT AND

1 BANKRUPTCY -- DID YOU EXPLAIN TO BARENS THAT THIS CLAIM OF
2 KILPATRICK SHOULD HE MAKE IT, SHOULD THERE BE THAT
3 EVIDENCE, COULD BE TOTALLY REFUTED?

4 A NO.

5 MR. MC MULLEN: OBJECTION. COMPLEX, VAGUE.

6 THE COURT: DO YOU UNDERSTAND THE QUESTION?

7 THE WITNESS: YES.

8 THE COURT: I WILL ALLOW HIM TO ANSWER IT.

9 THE WITNESS: NO. I HAD NO IDEA MR. KILPATRICK
10 WOULD TAKE THAT POSITION UNTIL I SAW HIS DECLARATION. I,
11 YOU KNOW, I WOULD HAVE ABSOLUTELY BELIEVED HE WOULD WALKED
12 IN, CORROBORATED ME ON EVERY POINT THAT WAS COVERED, YOU
13 KNOW, MY TESTIMONY OR HERE TODAY WOULD HAVE BEEN COVERED
14 BACK IN 1987.

15 BY MR. CRAIN:

16 Q HE WASN'T CALLED AS A PROSECUTION'S WITNESS?

17 A NO.

18 MR. MC MULLEN: OBJECTION. RELEVANCY.

19 THE COURT: SUSTAINED.

20 BY MR. CRAIN:

21 Q THE ONLY THING THE PROSECUTOR DID PUT ON
22 OTHER EVIDENCE, ATTEMPTED TO SHOW THAT YOU NEEDED MONEY.
23 IT WAS NEVER REFUTED BY BARENS IN ANY WAY IS THE BOTTOM
24 LINE OF ALL OF THIS SHEET, YES?

25 MR. MC MULLEN: OBJECTION. RELEVANCY.

26 THE COURT: SUSTAINED.

27 THE RECORDS SPEAKS FOR ITSELF.

28

1 BY MR. CRAIN:

2 Q OKAY.

3 NOW, JUST FOR CLARIFICATION, THE DEAL WAS
4 REFINED AND CHANGES WERE MADE IN THESE VARIOUS DRAFTS AND
5 SO FORTH. APPROXIMATELY WHEN WAS THE BASIC STRUCTURE OF
6 THE DEAL PUT INTO BEING?

7 A THAT WAS IN MAY.

8 MR. MC MULLEN: OBJECTION. CALLS FOR SPECULATION.

9 THE COURT: SUSTAINED.

10 AND ALSO I DON'T UNDERSTAND WE ARE GETTING
11 INTO --

12 MR. CRAIN: I GUESS WHAT I WILL TRYING TO SAY A
13 NUMBER OF DRAFTS BACK AND FORTH, YOU KNOW, LOOSE ENDS.

14 THE COURT: THE TESTIMONY IS A LOT OF DRAFTS, NONE
15 OF THEM WERE SIGNED, THE ONLY THING THAT HAS BEEN SIGNED
16 WAS THE NOVEMBER '83 AGREEMENT?

17 MR. CRAIN: RIGHT.

18 THE COURT: WE HAVE GOT THAT ON THE RECORD.

19 BY MR. CRAIN:

20 Q IN THE ESSENCE OF THE SECOND GROUP OF
21 DOCUMENTS, EXHIBITS 4 THROUGH 7, OR SO FORTH, WHEN WAS THE
22 ESSENCE OF THAT PROPOSED DEAL WORKED OUT?

23 MR. MC MULLEN: OBJECTION. RELEVANCE. CALLS FOR
24 SPECULATION.

25 MR. CRAIN: OFFER OF PROOF. I AM MERELY TRYING TO
26 SHOW, I GUESS -- IS IT THE COURT'S INTENT TO READ ALL THE
27 DRAFTS? WE DON'T HAVE -- OFFER THEM, THE FIRST DRAFTS OR
28 THE DRAFTS SHOWING IN MAY OF 1984 THE BASIC STRUCTURE OF

1 THE DEAL WAS THERE, FOR WHAT IT IS WORTH.

2 THE COURT: WE HAVE A COUPLE OF DRAFTS HERE. THE
3 PROBLEM IS YOU ONLY HAVE A DEAL WHEN BOTH SIDES AGREE THAT
4 THERE IS A DEAL.

5 MR. CRAIN: RIGHT.

6 THE COURT: HE CAN TESTIFY THAT THEY PREPARED A
7 NUMBER OF DRAFTS DURING A PARTICULAR PERIOD OF TIME. WE
8 DON'T HAVE A DEAL UNTIL SOMEONE ELSE SAYS THEY GOT A DEAL.
9 BY MR. CRAIN:

10 Q THE DRAFTS THAT WERE PREPARED AFTER THE MAY
11 DRAFTS, DID THEY CHANGE THE BASIC STRUCTURE OF THE
12 AGREEMENT THAT YOU AND KILPATRICK WERE TRYING TO WORK OUT
13 IN ANY SIGNIFICANT WAY?

14 MR. MC MULLEN: OBJECTION. RELEVANCE.

15 THE COURT: OVERRULED.

16 THE WITNESS: I FEEL UNCOMFORTABLE ANSWERING THAT
17 QUESTION BECAUSE OF JUST THE TERM WHAT'S BASIC, WHAT'S
18 NOT, BUT A LOT OF CONSIDERATION, PROVISIONS REMAINED THE
19 SAME PROBABLY IF WE ARE LOOKING AT IT FROM THAT POINT OF
20 VIEW.

21 BY MR. CRAIN:

22 Q WAS THERE SOME NEED TO REVISE THE 1983,
23 NOVEMBER, 1983, DRAFT OR CONTRACT, RATHER?

24 MR. MC MULLEN: OBJECTION. ASKED AND ANSWERED.

25 THE COURT: YES. SUSTAINED.

26 BY MR. CRAIN:

27 Q ALL RIGHT.

28 NOW, DID KILPATRICK EVER TELL YOU THAT YOU

1 WERE TRYING TO SELL HALF OF A BROWNING'S TECHNICAL RIGHTS
2 THAT KILPATRICK ALREADY OWNED OR ANYTHING LIKE THAT?

3 A NO.

4 Q DOES THAT STATEMENT MAKE ANY SENSE TO YOU IN
5 THE CONTEXT OF NEGOTIATIONS YOU WERE HAVING WITH
6 KILPATRICK, AND WHY NOT OR WHY?

7 MR. MC MULLEN: OBJECTION. RELEVANCY.

8 THE COURT: SUSTAINED.

9 BY MR. CRAIN:

10 Q DID YOU -- DID YOU EVER SHOW KILPATRICK ANY
11 DOCUMENTS THAT WERE SHOWN IN COURT EARLIER, THE LEVIN
12 MICROGENESIS CONTRACT? DID YOU EVER SHOW THAT TO
13 KILPATRICK?

14 A I BELIEVE THAT WAS SHOWN TO HIM. I DON'T
15 THINK I SHOWED IT TO HIM. I THINK BEN DID.

16 Q AND DID YOU IN SOME WAY USE THAT LEVIN
17 CONTRACT TO SUGGEST TO KILPATRICK THAT HE HAD CHEATED YOU
18 ON THE NOVEMBER, 1983, DEAL?

19 A NO.

20 Q DID KILPATRICK EVER SAY TO YOU BEFORE JULY,
21 1983, THAT THE MERGER -- 1984 -- THANK YOU -- THAT THE
22 MERGER CAN'T GO FORWARD UNTIL THE OWNERSHIP CLAIMS OF
23 CERTAIN OTHER PEOPLE TO THE ATTRITION MILLS ARE CLEARED
24 UP?

25 MR. MC MULLEN: OBJECTION. ASKED AND ANSWERED.

26 THE COURT: SUSTAINED.

27 MR. CRAIN: WAS IT --

28 THE COURT: I THINK WE HAVE COVERED THAT.

1 MR. CRAIN: WELL, I DON'T RECALL THAT.

2 THE COURT: THEY TALKED ABOUT THEY ARE -- THEY ARE
3 JUST IN FINAL NEGOTIATIONS, THAT WORKING ALL THESE DETAILS
4 WAS ALL THAT WAS REALLY INVOLVED. MR. HUNT FELT THEY HAD
5 AN OWNERSHIP INTERESTS, KILPATRICK WAS GOING ALONG WITH
6 THAT.

7 BY MR. CRAIN:

8 Q CAN YOU JUST SUMMARIZE, MR. HUNT, SO WE CAN
9 PUT AN END TO THIS REFERENCE TO DOCUMENTS AND ALL THE BACK
10 AND FORTH NEGOTIATIONS, CAN YOU JUST SUMMARIZE FOR THE
11 COURT WHAT YOU REPRESENTED TO BARENS IN ORDER FOR HIM TO
12 REPRESENT YOU IN THE CASE AND TO UNDERSTAND THIS EVIDENCE
13 AND USE IT IN YOUR DEFENSE, WHAT YOUR FEELINGS OR VIEWS
14 ABOUT MICROGENESIS AND THE B.B.C. FINANCIAL PROSPECTS WERE
15 IN THE PERIOD OF MAY THROUGH, LET'S SAY, EARLY JUNE, 1984?
16 CAN YOU JUST PUT THAT IN A SUMMARY FORM FOR US, WHAT YOU
17 TOLD BARENS ABOUT THIS SO THAT IT IS VERY CLEAR HERE?

18 MR. MC MULLEN: OBJECTION. RELEVANCY. CALLS FOR
19 NARRATIVE. VAGUE.

20 THE COURT: SUSTAINED.

21 I UNDERSTAND.

22 THE WITNESS: OKAY.

23 MR. CRAIN: ALL RIGHT.

24 BY MR. CRAIN:

25 Q WERE THERE TWO AND A HALF MONTHS DURING THE
26 TRIAL WHERE YOU DIDN'T HAVE AN INVESTIGATOR?

27 MR. MC MULLEN: OBJECTION. RELEVANCY.

28 THE COURT: WHAT'S THE RELEVANCE?

1 MR. CRAIN: IT IS CIRCUMSTANTIAL EVIDENCE OF BARENS
2 INCOMPETENCE THAT HE WENT TWO AND A HALF MONTHS WITH NO
3 INVESTIGATOR, NO ATTEMPT TO GET AN INVESTIGATOR, NO
4 INVESTIGATION BEING DONE. IN A DEATH PENALTY CASE, IT IS,
5 IT HAS SOME VALUE FOR THE COURT TO UNDERSTAND WHAT THIS
6 PERSON REALLY DIDN'T DO AT ALL.

7 THE COURT: IT IS NOT PROPER REBUTTAL. IT IS
8 OUTSIDE THE SCOPE OF THE O.S.C..

9 I WILL SUSTAIN THE OBJECTION.

10 BY MR. CRAIN:

11 Q DID EISENBERG HAVE A LIMITED PARTNERSHIP DEAL
12 INVOLVING KILPATRICK?

13 A NO. THERE NEVER WAS A LIMITED PARTNERSHIP
14 DEAL INVOLVING KILPATRICK, SO I DON'T KNOW WHAT HE IS
15 TALKING ABOUT.

16 Q SO IT WAS ADELMAN WHO DID THE LEGAL WORK WITH
17 REGARD TO KILPATRICK, NOT EISENBERG; IS THAT RIGHT?

18 A I DIDN'T WANT KILPATRICK ANYWHERE NEAR
19 EISENBERG AT THAT TIME. LIKE APRIL OF 1984.

20 Q SO DURING MARCH OR APRIL 1984 DID EISENBERG
21 DRAFT ANY DOCUMENT RELATING TO KILPATRICK?

22 A NO.

23 Q WHAT WAS YOUR RELATIONSHIP WITH EISENBERG
24 DURING THIS PERIOD OF TIME?

25 MR. MC MULLEN: OBJECTION. RELEVANCE.

26 THE COURT: I WILL -- WHERE ARE YOU GOING?

27 MR. CRAIN: I THINK THE COURT MIGHT BE INTERESTED
28 IN EISENBERG. HE ACTUALLY PRETTY MUCH, I GUESS, ADMITTED

1 THAT HE DIDN'T HAVE ANYTHING TO DO WITH THE KILPATRICK
2 DEAL.

3 THE COURT: THAT'S ABOUT RIGHT. HE SAID HE DID
4 SOME VERY EARLY THINGS AND TURNED IT OVER TO ADELMAN.

5 MR. CRAIN: I THINK PROBABLY HIS ANIMUS TOWARDS
6 MR. HUNT IS AS RELEVANT AS TO HIS DESIRE TO GET OUT FROM
7 UNDER HIS CURRENT MONEY LAUNDERING AND GRAND THEFT
8 PROBLEMS. JUST WANTED TO BRIEFLY EXPLORE THAT, BUT I WILL
9 MOVE ON, IF YOU WANT.

10 THE COURT: MOVE ON.

11 MR. CRAIN: I WAS GOING TO ASK FOR THE REASONS WHY
12 MR. ADELMAN WAS HIRED SO THAT HE COULD HANDLE THE
13 KILPATRICK DEAL. WOULD THE COURT LIKE TO HEAR THAT?

14 THE COURT: MR. EISENBERG HAD VERY LITTLE TO SAY.
15 BY MR. CRAIN:

16 Q ALL RIGHT.

17 ONE POINT I THINK, MR. O'DONNELL SAID HE
18 BELIEVED THAT YOU WERE TOLD THAT THEY WEREN'T PUTTING OUT
19 ANY MONEY OR SOMETHING TO THAT EFFECT. DO YOU RECALL HIM
20 TESTIFYING SOMETHING TO THAT EFFECT?

21 A YES.

22 Q AND IS THAT AN ACCURATE CHARACTERIZATION OF
23 DISCUSSIONS THAT INVOLVED THE MICROGENESIS AND KILPATRICK
24 ORGANIZATION?

25 A NO. I MEAN, SATURN WAS ULTIMATELY THE PERSON
26 THAT HAD TO PROVIDE CASH. AFTER THE MERGER SATURN WAS THE
27 SURVIVING COMPANY IN THE NARROW SENSE. IN THAT NARROW
28 SENSE, OF COURSE, THEY, KILPATRICK, U.F.O.I., WOULD NEVER

1 BE WRITING A CHECK TO MICROGENESIS IN NORTH AMERICA.

2 BUT SATURN DEFINITELY WAS REPRESENTED AS A
3 PARTY THAT WAS GOING TO HAVE TO COME ACROSS WITH STOCK AND
4 MONEY, WHETHER YOU WENT UNDER THE NOVEMBER, 1983,
5 AGREEMENT OR THE LATER AGREEMENT THAT WE WERE ATTEMPTING
6 TO FINALIZE IN THE MAY THROUGH JULY PERIOD.

7 THE COURT: SO IF SATURN DIDN'T MERGE THERE WAS NO
8 WAY THIS DEAL WAS EVER GOING TO HAPPEN; IS THAT RIGHT?

9 THE WITNESS: IF IT DIDN'T MERGE?

10 THE COURT: RIGHT.

11 THE WITNESS: CORRECT. I HAD NO CONTRACTUAL HOLD
12 ON MR. KILPATRICK OR SATURN IF THERE WAS NO MERGER. THE
13 ONLY THING I WOULD HAVE ON KILPATRICK AND U.F.O.I. WAS AN
14 EXCLUSIVE MARKETING ARRANGEMENT, BUT THAT WOULD HAVE BEEN
15 MORE OF AN ALBATROSS THEN AN EGG AT THAT POINT.

16 BY MR. CRAIN:

17 Q YOU HEARD MR. KILPATRICK TESTIFY AT ONE POINT
18 YESTERDAY THAT HE IN FACT DID HAVE A BELIEF THAT THE
19 MERGER WAS, TO PARAPHRASE, RIGHT AROUND THE CORNER?

20 MR. MC MULLEN: OBJECTION. RELEVANCE.

21 THE COURT: OVERRULED.

22 THE WITNESS: YES.

23 BY MR. CRAIN:

24 Q WAS THAT YOUR BELIEF TOO DURING THIS TIME
25 PERIOD?

26 A YES.

27 Q I WANT TO ASK YOU JUST A FEW CLOSING
28 QUESTIONS HERE ABOUT A COUPLE OF OTHER AREAS, THE

1 CANTOR-FITZGERALD SITUATION, THAT ASPECT OF THE O.S.C..

2 A RIGHT.

3 Q DID YOU DISCUSS WITH BARENS HOW THE
4 CANTOR-FITZGERALD DEPOSITION FIT INTO THE CASE, AND WHAT
5 AFFECT IT MIGHT HAVE ON THE DEFENSE?

6 MR. MC MULLEN: OBJECTION. ASKED AND ANSWERED.

7 THE COURT: YES. HE WAS ASKED THIS, AND HE SAID HE
8 DID DISCUSS IT IN DETAIL.

9 BY MR. CRAIN:

10 Q DID YOU DISCUSS WITH BARENS THE POSSIBILITY
11 THAT IF HE USED THE DEPOSITION, KARNY'S DEPOSITION TO
12 ESTABLISH THAT KARNY HAD COMMITTED PERJURY UNDER OATH IN
13 THAT PROCEEDING, THAT KARNY MIGHT CLAIM THAT YOU PUT HIM
14 UP TO IT?

15 MR. MC MULLEN: OBJECTION. ASKED AND ANSWERED.

16 MR. CRAIN: I DON'T THINK WE WENT THAT FAR.

17 MR. KLEIN: THIS IS REBUTTAL TO MR. BARENS.

18 THE COURT: IT IS MORE REBUTTAL, I ASSUME, TO
19 MR. KARNY.

20 MR. KLEIN: BOTH.

21 THE COURT: WE DID DISCUSS THAT.

22 MR. CRAIN: I WILL DEFER TO THE COURT. I THOUGHT
23 THAT THAT PART OF IT -- I DON'T THINK I -- MAYBE I DID
24 SPECIFICALLY GET INTO WHETHER THEY DISCUSSED THE DOWNSIDE
25 AND HAD A DEAL WITH IT. I JUST WANTED -- I WANTED TO ASK
26 HIM ABOUT THREE OR FOUR QUESTIONS HERE.

27 THE COURT: I HAVE A RECOLLECTION OF MR. HUNT
28 DISCUSSING THAT THIS WAS GOING TO COME OUT AND MR. HUNT

1 DESCRIBING IN DETAIL THE NATURE OF HIS TESTIMONY AND WHY
2 IT WASN'T THAT CRITICAL VERSUS WHAT MR. KARNY HAD SAID,
3 HOW MR. KARNY'S TESTIMONY COULD BE DEALT WITH.

4 MR. CRAIN: I CAN'T SAY THAT THAT'S WRONG. I
5 JUST --

6 THE COURT: I THINK THAT'S RIGHT.

7 MR. CRAIN: IN CASE IT IS WRONG, I THOUGHT I WOULD
8 ASK IT AGAIN.

9 THE COURT: NO. I GOT IT HERE IN THE NOTES
10 SOMEWHERE.

11 BY MR. CRAIN:

12 Q NOW, YOU, ON ANOTHER SUBJECT VERY BRIEFLY,
13 DID YOU AND BARENS DISCUSS USE OF EVIDENCE THAT LEVIN WAS
14 FACING NUMEROUS COUNTS OF GRAND THEFT OF THESE \$100,000 OR
15 SO WORTH OF CAMERAS?

16 MR. MC MULLEN: OBJECTION. RELEVANCY. NOT PART OF
17 THE O.S.C..

18 THE COURT: WHAT'S THE RELEVANCE?

19 MR. CRAIN: GOES TO DISCUSS ABOUT OTHER CRIMES.

20 THE COURT: SUSTAINED.

21 MR. CRAIN: IT IS APPROPRIATE ON THE GROUND THAT WE
22 HAVE OFFERED COVERED --

23 THE COURT: IT IS IRRELEVANT. IT IS OUTSIDE THE
24 SCOPE OF O.S.C..

25 MR. CRAIN: HOW ABOUT THE F.B.I. PART?

26 THE COURT: YOU ARE GOING -- THAT YOU HAVEN'T
27 ALREADY COVERED ON PROGRESSIVE SAVINGS?

28 MR. CRAIN: I GUESS WE HAVE COVERED IT.

1 THE COURT: YES.

2 MR. CRAIN: ONE OTHER AREA.

3 MAY I APPROACH THE WITNESS?

4 THE COURT: YES.

5 MR. CRAIN: YOUR HONOR, I GUESS IN VIEW OF THE WAY
6 THINGS HAVE GONE IN LAST MINUTE OR TWO MAYBE I SHOULD MAKE
7 THE OFFER OF PROOF AS TO THE NEXT -- I HAVE SOME FINANCIAL
8 DOCUMENTS, YOUR HONOR, RELATING TO MR. BARENS, AND THESE
9 DOCUMENTS WOULD ESTABLISH THE FACT THAT MR. BARENS LIED TO
10 THE COURT WHEN HE SECURED HIS APPOINTMENT AT TAXPAYERS
11 EXPENSE REGARDING HIS FINANCIAL ARRANGEMENTS WITH MR. HUNT
12 WITH REGARDS TO HOW MUCH MONEY HE HAD BEEN PAID. HE
13 FALSELY REPRESENTED TO THE COURT THAT HE HAD NOT PAID A
14 CERTAIN AMOUNT OF MONEY, WHICH IN FACT HE HAD BEEN PAID
15 AND GUARANTEED A SUBSTANTIAL GREATER SUM.

16 AND ALSO IT APPEARS FROM THESE DOCUMENTS THAT
17 MR. BARENS DOUBLE BILLED THE COURT IN HIS FINAL 1989
18 ACCOUNTING AFTER BILLING MR. HUNT AND MR. ROBERTS FOR THE
19 SAME AMOUNT.

20 AND WE WOULD LIKE THE COURT TO CONSIDER THIS
21 AS PART OF THE OVERALL PRESENTATION OF THE CASE, SO THAT I
22 WOULD AT LEAST LIKE TO MARK AS DEFENDANT'S -- IT ALSO GOES
23 TO BARENS DISHONESTY. I BELIEVE, EVIDENCE OF DISHONESTY
24 IS ADMISSIBLE UNDER BOTH CHARACTER EVIDENCE AND WHEELER
25 AND HARRIS AS SPECIFIC INSTANCES OF PRIOR MISCONDUCT
26 INVOLVING MORAL TURPITUDE.

27 SO WE WOULD LIKE THESE AT LEAST MARKED, YOUR
28 HONOR, SO THEY ARE IN THE RECORD AS NEXT IN ORDER

1 COLLECTIVELY, AND THERE ARE FOUR DOCUMENTS, APPEARS TO BE
2 SOME SORT OF A BALANCE SHEET OR ACCOUNTING SHEET.

3 THE COURT: THEY REALLY HAVE NO RELEVANCE TO THE
4 O.S.C. HERE; RIGHT?

5 MR. CRAIN: I THINK THEY DO FOR THE REASONS THAT I
6 JUST STATED. I THINK THEY ARE EVIDENCE THAT BARENS IS A
7 PERSON WHO MAKES REPRESENTATIONS THAT ARE TOTALLY FALSE TO
8 THE COURT IN ORDER TO SECURE HIS APPOINTMENT. WHETHER HE
9 DOUBLE BILLS THE COURT IN ORDER TO GET TWICE THE MONEY
10 FROM.

11 THE COURT: YOU CAN MARK THE PACKAGE 309, BUT IT IS
12 IRRELEVANT, OUTSIDE THE SCOPE OF THE O.S.C. AND REALLY
13 COLLATERAL.

14
15 (MARKED FOR ID = PETITIONER'S 309,
16 DOCUMENT.)

17
18 MR. MC MULLEN: YOUR HONOR, JUST FOR THE RECORD, AT
19 A QUICK GLANCE OF THOSE DOCUMENTS THIS IS FIRST TIME WE
20 HAVE SEEN THEM TODAY. WE WOULD APPRECIATE A COPY OF
21 THOSE.

22 THE COURT: MAKE COPIES OF THEM.

23 MR. KLEIN: HALF THE DOCUMENTS ARE COURT'S RECORDS.

24 THE COURT: STILL PROVIDES COPIES.

25 MR. CRAIN: I THINK THEY ALSO INVOLVE, THEY ARE
26 CORROBORATION OF MR. BARENS ANIMUS TOWARD MR. HUNT IN HIS
27 WILLINGNESS TO MAKE THE FALSE STATEMENT THAT HE DID TO
28 THIS COURT, THAT MR. HUNT INITIALLY MADE AN INCRIMINATING

1 STATEMENT TO HIM. MR. HUNT, OF COURSE, NOT ONLY HAD
2 EVIDENCE OF MR. BARENS' PRIVATE --

3 THE COURT: WE ARE REALLY STRETCHING OUT HERE.

4 MR. CRAIN: WELL, I WOULD LIKE THE COURT TO AT
5 LEAST LOOK AT THEM AND SEE. I WILL BE HAPPY TO SHOW THE
6 COURT THE DOUBLE BILL, IF THE COURT --

7 THE COURT: IT IS OUTSIDE THE SCOPE OF O.S.C. IT
8 IS IRRELEVANT. IT IS REALLY COLLATERAL. I WILL LET YOU
9 MARK IT AS 309 COLLECTIVELY, BUT THAT'S IT.

10 ALL RIGHT.

11 ANYTHING FURTHER?

12 MR. CRAIN: I THINK NOT. THANK YOU.

13 THE COURT: CROSS-EXAMINATION?

14 MR. MC MULLEN: MAY I JUST HAVE A MOMENT.

15

16 (PAUSE.)

17

18 MR. MC MULLEN: NOTHING FURTHER.

19 THE COURT: YOU SAID THAT OTHER PEOPLE PAID MONEY
20 FOR THE OPTION, I THINK, FIVE OTHERS THAT PAID OPTIONS,
21 MORTON --

22 THE WITNESS: WE HAD MORTON; WE HAD GOLD SUN,
23 LIMITED, WE HAD KILPATRICK, AND STEIN.

24 THE COURT: KILPATRICK PAID FOR AN OPTION?

25 THE WITNESS: WHEN I WAS REFERRING TO FIVE ARMS.

26 THE COURT: WHO PAID? HOW MUCH WAS PAID FOR
27 OPTIONS?

28 THE WITNESS: GOLDSON LIMITED PAID --

1 THE COURT: HOW MUCH DID THEY PAY?

2 THE WITNESS: \$150,000.

3 THE COURT: AND MORTON?

4 THE WITNESS: MORTON?

5 THE COURT: HOW MUCH DID THEY, MORTON PAY?

6 THE WITNESS: HE PAID, I BELIEVE, \$75,000 AT THE
7 TIME THAT WE REPOSSESSED THE MACHINE.

8 THE COURT: WERE ANY ATTRITION MILLS EVER DELIVERED
9 ON ANY OF THESE OPTIONS OTHER THAN THE ONE TO ARIZONA?

10 THE WITNESS: NO. WE JUST STARTED BUILDING --

11 THE COURT: HOW DID YOU PAY THESE EXPERTS THAT WERE
12 SUPPOSED TO ASSIST YOU IN THE SECOND PHASE?

13 THE WITNESS: OUT OF -- THE MONEY WAS ALL BEING
14 COMMINGLED AT THAT TIME, SO IT IS IMPOSSIBLE FOR ME TO
15 SAY.

16 THE COURT: FINANCIAL FUTURES MONEY WAS BEING USED
17 FOR MICROGENESIS?

18 THE WITNESS: EXACTLY. ONE OF THE PROBLEMS --

19 THE COURT: HOW MUCH WAS PAID FOR, TO THESE EXPERTS
20 TO ASSIST IN THE SECOND PHASE?

21 THE WITNESS: WE PAID \$15,000 TO MEDITECH ON JUNE
22 5, 1984, THE CHECK WAS WRITTEN. I HAVE IT IN COURT HERE
23 TODAY. WE HAD PAID, I REMEMBER, \$3000 TO MOSHE KREINBERG
24 IN MAY. THERE'S AN INITIAL CONSULTING FEE, AND SENT HIM
25 TO VANCOUVER. THERE WAS A FELLOW NAMED MC GEE WHO CAME
26 DOWN FROM SATURN ENERGY, AND ALSO DID AN APPRAISAL OF THE
27 ATTRITION MILL AT THE TIME. THEY PAID HIM.

28 THE COURT: SO ABOUT \$18,000 TOTAL WAS PAID BY

1 FINANCIAL FUTURES?

2 THE WITNESS: IN MAY AND JUNE TO OUTSIDE PEOPLE
3 CONSULTING ON THE FURTHER BLUEPRINTING AND STUFF LIKE THAT
4 OF THE ATTRITION MILLS.

5 THE COURT: DID YOU ASK FOR ANY GOOD FAITH MONEY
6 FROM KILPATRICK?

7 THE WITNESS: NO, SIR, I DIDN'T.

8 THE COURT: YOU UNDERSTOOD HE HAD VERY LITTLE MONEY
9 IN THE BANK?

10 THE WITNESS: NO. ACTUALLY, WHEN HE TESTIFIED IN
11 COURT THAT HE HAD ONLY \$50-, \$75,000 IN HIS U.F.O.I.
12 ACCOUNT, THAT WAS NEWS TO ME. I NEVER ASKED HIM HOW MUCH
13 IT WAS. I ALWAYS, MY UNDERSTANDING WAS THAT THE DEAL
14 WOULD BE FUNDED BY PAYMENTS THAT WOULD BEGIN ONCE THE
15 MERGER WAS COMPLETE FROM THE TAX SHELTER PARTICIPANTS. I
16 DIDN'T REALLY THINK THAT HE HAD MILLIONS OR SOMETHING
17 FROZEN IN AN ACCOUNT. I THOUGHT THAT THERE WAS THE LEGAL
18 OBLIGATION BETWEEN HIM AND TAX SHELTER PARTICIPANTS THAT
19 WERE FROZEN AND MONEY WOULD BE FLOWING AFTER THE MERGER
20 OCCURRED.

21 THE COURT: WHEN YOU SAW EXHIBIT 300 YOU SAID YOU
22 DISCUSSED THAT WITH HIM?

23 THE WITNESS: THAT'S THE WOLF AND COMPANY
24 APPRAISAL?

25 THE COURT: YES, SIR.

26 THAT'S SHOWED HE ONLY HAD \$55,000 IN THE
27 BANK, BUT APPRAISED TOTAL VALUES OF 280 MILLION DOLLARS?

28 THE WITNESS: THAT'S TRUE THAT DOES, AND WHAT I AM

1 SAYING --

2 THE COURT: PRETTY MUCH ALL PAPER; RIGHT?

3 THE WITNESS: THE \$30,000, 30 MILLION PROMISSORY
4 NOTES, THAT OPENING THING I WAS FOCUSING ON IT, DIDN'T
5 TROUBLE ME AT ALL. THAT WASN'T A LOT IN THE BANK SINCE
6 EVERYTHING HAD BEEN HELD IN ABEYANCE BY THE BANKRUPTCY
7 COURT. THAT WAS MY UNDERSTANDING.

8 THE COURT: HE ONLY HAD \$5,000 IN CASH, \$1,000
9 ROYALTY RECEIVABLES, THEN A NOT OF OIL AND GAS INTERESTS
10 SOME DEFERRED EXPENSES OF \$590,000, THE REST OF IT WAS --

11 THE WITNESS: PAPER.

12 THE COURT: -- APPRAISALS INCLUDING THE 114,000.
13 THE BIGGEST HUNK WAS THE 114,000, WHICH WAS THE BROWNING
14 ATTRITION MACHINE.

15 THE WITNESS: DO YOU SEE IN THAT DOCUMENT -- MAYBE
16 IT DOESN'T SAY IN THAT DOCUMENT, BUT THERE IS ANOTHER ONE
17 THAT I HAVE WHERE I THINK -- 292. WE TALK ABOUT APPRAISED
18 VALUE OF 30 MILLION DOLLARS OF PROMISSORY NOTES.

19 THE COURT: THE NOTES RECEIVABLE?

20 THE WITNESS: THAT IS WHAT I WAS REALLY LOOKING TO.
21 IT WAS ALWAYS HIS REPRESENTATION THAT THIS MONEY WAS
22 EASILY COLLECTIVE. IN FACT, 292 HE TALKS ABOUT A
23 COLLECTIBILITY OF THE PROMISSORY NOTES AS BEING ASSURED.

24 THE COURT: BUT YOU KNEW HE WAS BANKRUPT AT THIS
25 POINT?

26 THE WITNESS: AT THE TIME HE GAVE ME THAT, YES, I
27 DID, SIR.

28 THE COURT: SO YOU KNEW THERE WOULD BE NO ACCESS TO

1 THAT MONEY OR ANY OTHER MONEY?

2 THE WITNESS: UNTIL HE GOT OUT OF BANKRUPTCY.

3 THE COURT: HE DIDN'T GET OUT OF BANKRUPTCY COURT
4 UNLESS THE MERGER WITH SATURN WAS APPROVED; RIGHT?

5 THE WITNESS: ACTUALLY, HE GOT OUT OF THE
6 BANKRUPTCY COURT MARCH 30TH. REASON WHY -- 1984, WHICH I
7 THINK IS 295. AND THEN WE -- SO IT WAS MY BELIEF THAT
8 WHEN THOSE NOTICES INDICATE THAT THE JUDGE HAD APPROVED
9 THE MERGER PLAN THAT THAT MEANT THE JUDGE WAS UNFREEZING
10 THE PROMISSORY NOTES.

11 THE COURT: THE MERGED PLAN WOULD BE APPROVED ONLY
12 IF SATURN AGREED THERE WAS SUFFICIENT ASSETS IN U.F.O.I.
13 AND THE LARGER ASSETS WAS 114 MILLION, WHICH WAS THE
14 MACHINE; RIGHT?

15 THE WITNESS: CORRECT?

16 THE COURT: SO YOU WERE INTEGRAL, THE ONLY REASON
17 THAT THERE WAS REALLY GOING TO BE A MERGER AT SATURN --

18 THE WITNESS: THAT'S BASICALLY WHY I FIGURED THAT
19 TOWARDS THE END OF JULY WHEN HE TRIED TO EXTEND THE
20 NEGOTIATIONS THAT I WAS IN A POSITION TO FORCE HIS HAND.
21 THE MERGER, THAT I COULD SCUDDLE THE WHOLE MERGE AT THAT
22 POINT, SO THAT'S WHY I HAD ADELMAN SEND THAT AUGUST 3RD,
23 1984, LETTER, OR ONE REASON WHY.

24 THE COURT: YOU USED THE TERM YOU ARE IN BED
25 TOGETHER, WEREN'T YOU -- DIDN'T KILPATRICK NEED TO BE IN
26 BED WITH YOU TO GET HIMSELF OUT OF BANKRUPTCY?

27 THE WITNESS: HE SUBMITTED PAPERS AFTER MAKING THE
28 DEAL WITH ME. MY UNDERSTANDING WAS THAT THE AGREEMENT

1 WITH ME WAS SUBMITTED TO THE BANKRUPTCY COURT AS PART OF
2 HIS REORGANIZATION PLAN.

3 THE COURT: SO HE NEEDED YOU TO GET OUT OF
4 BANKRUPTCY?

5 THE WITNESS: RIGHT.

6 THE COURT: ANY REDIRECT?

7 MR. CRAIN: I DON'T THINK SO.

8 THE COURT: ALL RIGHT.

9 THANK YOU, MR. HUNT. YOU CAN STEP DOWN.

10 THE WITNESS: THANK YOU, YOUR HONOR.

11 THE COURT: ANY OTHER WITNESSES IN REBUTTAL?

12 MR. CRAIN: CAN I JUST CHECK WITH MR. HUNT TO SEE
13 IF THERE IS SOME FOLLOW-UP I SHOULD GO ON WITH?

14 THE WITNESS: NO.

15 MR. KLEIN: THERE ARE TWO OTHER WITNESSES THAT WE
16 WANT TO CALL. WE DON'T HAVE THEM AVAILABLE NOW. WE
17 WEREN'T ABLE TO DO IT ON THIS KIND OF NOTICE.

18 ONE WITNESS IS THE INVESTIGATOR AT THE END OF
19 THE CASE FOR MR. HUNT, WHO WOULD TESTIFY THAT MR. BARENS
20 NEVER ASKED HIM TO LOOK FOR IVAN WERNER. THERE IS A
21 DECLARATION BY MR. LEE ATTACHED TO THE NEW PLEADING.

22 I HAVE ASKED THE PEOPLE TO STIPULATE TO THIS.
23 THEY WON'T DO IT. MR. LEE IS LIKE EIGHT HOURS AWAY FROM
24 HERE BY CAR. AND I TRIED TO GET HIM HERE LAST NIGHT. I
25 COULDN'T ARRANGE IT. WE WANT TO OFFER THAT TO REBUT
26 MR. BARENS' TESTIMONY THAT MAYBE HE DID SOMETHING ABOUT
27 MR. WERNER.

28 THE COURT: THAT MR. LEE WOULD TESTIFY THAT HE WAS

1 NEVER ASKED TO FIND MR. WERNER?

2 MR. KLEIN: YES. BY BARENS.

3 THE COURT: BY BARENS?

4 MR. KLEIN: THERE IS A DECLARATION TO THAT EFFECT
5 IN THE NEW PLEADING BY MR. LEE.

6 MR. CRAIN: I MAY HAVE, WHO KNOWS, SOMETHING LIKE
7 THAT. WE JUST WANTED THE FACT ESTABLISHED THAT IN FACT
8 BARENS NEVER DID ANYTHING RELATIVE TO WERNER.

9 MR. MC MULLEN: YOUR HONOR, THE IVAN WERNER
10 SIGHTING UNDER ISSUE NO. 1, NEWLY DISCOVERED EVIDENCE, IS
11 NOT A PART OF ISSUE 2, INEFFECTIVE ASSISTANCE OF COUNSEL.
12 THEREFORE, WE WOULD OBJECT TO THIS PROPOSED TESTIMONY AS
13 BEING IRRELEVANT AND NOT OUTSIDE, OUTSIDE THE SCOPE.

14 MR. CRAIN: THAT'S FINE. I AM GLAD MR. MC MULLEN
15 HAS FINALLY COME AROUND TO OUR POINT OF VIEW. BECAUSE
16 INITIALLY HE WAS ALLOWED OVER OBJECTION TO ELICIT FROM
17 MR. BARENS THAT, MR. BARENS' VARIED EXCUSES FOR WHY HE DID
18 OR DIDN'T PUT ON SIGHTING WITNESSES. AND WE CONTEND THAT
19 WAS OUTSIDE THE SCOPE OF ISSUE 2, AND WHETHER OR NOT
20 MR. BARENS DID OR DIDN'T SEEK OUT THE SIGHTINGS WITNESSES
21 WAS IRRELEVANT TO ISSUE 1, SO THE PEOPLE WERE ALLOWED TO
22 GO INTO IT. AND SO WE WANT TO REBUT IT, UNLESS THE COURT
23 WANTS TO STRIKE THAT TESTIMONY.

24 REALLY I BELIEVE THE ORDER TO SHOW CAUSE SENT
25 DOWN BY THE COURT OF APPEAL OR SENT OVER BY THE COURT OF
26 APPEAL WAS TO HAVE THIS COURT EVALUATE ISSUE 1, CLEARLY,
27 SEPARATELY FROM ISSUE 2.

28 ALTHOUGH, I BELIEVE BARENS WAS IN FACT

1 INCOMPETENT FOR REASONS OUTSIDE THE SCOPE OF THIS HEARING,
2 MANY REASONS INCLUDING HIS FAILURE TO CALL CERTAIN
3 SIGHTINGS WITNESSES, THAT THE PEOPLE SHOULD NOT HAVE BEEN
4 ALLOWED TO EXTRACT FROM MR. BARENS HIS SELF-SERVING AND
5 INCONSISTENT EXPLANATIONS AS TO WHY HE DIDN'T PRODUCE
6 CERTAIN SIGHTINGS EVIDENCE. IT HAD NOTHING TO DO WITH
7 ISSUE 1.

8 SO NOW WE ARE ATTEMPTING TO SHOW THAT
9 MR. BARENS ONCE AGAIN GAVE FALSE TESTIMONY TO THIS COURT
10 IN HIS CLAIM THAT HE MAY HAVE DONE SOMETHING RELATIVE TO
11 WERNER, ALTHOUGH HE COULDN'T PUT HIS FINGER ON IT PERHAPS
12 BECAUSE HE NEVER MAINTAINED ANY FILES.

13 THE COURT: WOULD MR. LEE ACTUALLY OFFER ANYTHING,
14 THOUGH?

15 MR. CRAIN: HE WOULD TESTIFY THAT MR. --

16 MR. KLEIN: HE WAS THE INVESTIGATOR AND THAT
17 MR. BARENS NEVER ASKED HIM TO LOOK FOR IVAN WERNER. WE
18 OFFERED TO THE COURT MR. WAPNER'S LETTER DATED MAY 4, 1986
19 NOTIFYING MR. BARENS OF THE EXISTENCE OF MR. WERNER, AND
20 MR. WAPNER'S NOTES OF APPARENTLY AN INTERVIEW THAT
21 SOMEBODY CONDUCTED WITH MR. WERNER WHERE HE STATED THAT HE
22 SAW RON LEVIN IN AUGUST OF 1986, AND WE WANT TO SHOW THAT
23 MR. BARENS NEVER ASKED HIS INVESTIGATOR TO DO ANYTHING
24 ABOUT THAT.

25 MR. MC MULLEN: YOUR HONOR, THE EVIDENCE THAT THEY
26 ARE REFERRING TO, WAS ELICITED FROM BARENS TO DEMONSTRATE
27 HIS CREDIBILITY ASSESSMENT OF THOSE SIGHTING WITNESSES AS
28 IT RELATES TO ISSUE NO. 1. IT WAS NOT ELICITED FOR

1 ANYTHING HAVING TO DO WITH ISSUE 2.

2 THE COURT: IS THAT THE ONE THAT I ASKED THE
3 QUESTION, "IS THIS BEING OFFERED ON THE ISSUE NEWLY
4 DISCOVERED EVIDENCE?"

5 MR. KLEIN: THAT'S EXACTLY WHAT THE COURT SAID. WE
6 ARE TRYING TO SHOW THAT MR. BARENS WHEN HE SAID, "I MAY
7 HAVE DONE SOMETHING," OR, "I THOUGHT I DID," WAS
8 UNTRUTHFUL.

9 THE COURT: BUT IT IS CLEAR THAT MR. BARENS KNEW
10 THE NAME WERNER.

11 MR. KLEIN: IT IS NOT CLEAR, YOUR HONOR, BECAUSE HE
12 IS VERY, VERY AMBIGUOUS ABOUT IT IN HIS TESTIMONY. THERE
13 IS EVIDENCE THAT A LETTER EXISTED WHICH WE DISCOVERED IN
14 THE DISTRICT ATTORNEY'S FILE THAT'S WHAT WE OFFERED INTO
15 EVIDENCE.

16 THE COURT: AND MR. WAPNER TESTIFIED THAT HE WOULD
17 HAVE SENT THAT TO MR. BARENS.

18 MR. KLEIN: HE HAS NO MEMORY OF THE NOTE THAT WAS
19 ATTACHED TO IT. THAT'S WHAT MR. WAPNER TESTIFIED TO. AND
20 THE NOTE --

21 THE COURT: MY RECOLLECTION IS THAT BARENS
22 TESTIFIED THAT HE DID NOT FEEL HE HAD SUFFICIENT EVIDENCE
23 ON WERNER TO CALL HIM, SOMETHING LIKE THAT IS WHAT HE
24 SAID.

25 MR. KLEIN: HE WAS ALL OVER THE PLACE. BUT THE
26 POINT WE ARE TRYING TO MAKE IS THAT WERNER WAS NEVER
27 INTERVIEWED. WERNER SAID HE WAS NEVER INTERVIEWED. AND
28 HAP LEE WOULD TESTIFY THAT NOBODY ASKED HIM TO GO

1 INTERVIEW WERNER, SO BARENS IS MAKING THE BALD ASSERTION
2 THAT YOU -- *THAT HE WOULDN'T USE WERNER BASED ON NO
3 PREPARATION.

4 THE COURT: ALL RIGHT.

5 WHY DON'T YOU STIPULATE THAT NOBODY ASKED LEE
6 TO GO FIND HIM? ISN'T THAT WHAT HE IS GOING TO SAY? DOES
7 EVERYONE AGREE?

8 MR. KLEIN: THAT'S -- THAT'S THE DECLARATION.

9 MR. MC MULLEN: WE WILL STIPULATE TO THAT.

10 THE COURT: ALL RIGHT.

11 MR. LEE IF CALLED WOULD TESTIFY THAT
12 MR. BARENS NEVER ASKED HIM TO ATTEMPT TO LOCATE
13 MR. WERNER.

14 MR. MC MULLEN: YES, WITH OUR OBJECTIONS NOTED TOO,
15 YOUR HONOR.

16 THE COURT: I UNDERSTAND.

17 MR. KLEIN: SO STIPULATED.

18 THE COURT: I WILL ACCEPT THE STIPULATION.

19 MR. KLEIN: THE OTHER PIECE OF EVIDENCE THAT WE
20 WOULD WANT TO OFFER WOULD BE MR. RON LEVIN'S DENTAL
21 RECORDS. WE HAVE X-RAYS, RECORDS, WHICH WE SHOWED TO THE
22 PEOPLE, AND THERE WAS TESTIMONY IN SAN MATEO THAT HE HAD
23 GOLD FILLINGS IN HIS TEETH, 20 OF HIS 30 TEETH.

24 WE SHOWED -- EXCUSE ME. THERE WAS TESTIMONY
25 IN THE 1987 TRIAL, SO THE COURT -- OR PAUL PAYNE'S
26 TESTIMONY FROM THE 1987 TRIAL ABOUT THE FACT THAT LEVIN
27 HAD GOLD FILLINGS IN HIS TEETH THAT WOULD CORROBORATE
28 MR. WERNER'S OBSERVATIONS OF --

1 THE PETITIONER: I THINK IT IS PAGE 7920.

2 THE COURT: PAYNE WAS THE GUY FROM THE DOJ, THE
3 MISSING PERSONS SECTION. NO ONE WAS EVER -- HE NEVER
4 FOUND A MISSING PERSON?

5 THE PETITIONER: YES, THAT'S CORRECT, YOUR HONOR.
6 LET ME FIND THE PAGE NUMBER.

7 THE COURT: THE ONLY PERSON WE HAD TESTIFY IS
8 MR. WERNER SAYING HE SAW SOME GOLD FILLINGS; RIGHT?

9 MR. KLEIN: RIGHT.

10 THE COURT: WHAT'S THE PEOPLE'S RESPONSE TO THAT?

11 MR. MC MULLEN: WELL, WE JUST, WE ARE NOT
12 INTERESTED IN STIPULATING TO THE X-RAYS THAT THEY BE
13 ENTERED INTO EVIDENCE. THAT'S OUR POSITION.

14 THE COURT: THE X-RAYS DON'T HELP ME AT ALL. THEY
15 DON'T DO ANY -- WERNER IS THE ONLY ONE THAT SAYS GOLD
16 FILLING.

17 MR. KLEIN: WE WOULD GET THE DENTIST WHO TOOK THE
18 X-RAY OF RON LEVIN. WE WEREN'T ABLE TO DO IT ON THIS
19 SHORT NOTICE. IT HAS JUST BEEN GOING TOO FAST.

20 THE COURT: WE HAVEN'T BEEN GOING FAST AT ALL.

21 MR. KLEIN: 7560, I BELIEVE, THE REFERENCE TO
22 MR. PAYNE'S TESTIMONY.

23 THE COURT: I REMEMBER THE TESTIMONY. I DO
24 REMEMBER THERE BEING, I THINK THAT WAS ON
25 CROSS-EXAMINATION, ABOUT WHAT INFORMATION WAS MADE
26 AVAILABLE TO THE DEPARTMENT OF JUSTICE REPRESENTATIVE
27 CONCERNING IDENTITY OF MR. LEVIN. I THINK THAT WAS
28 SOMETHING LIKE GOLD FILLINGS AND SOMETHING ELSE.

1 MR. KLEIN: I DON'T KNOW WHAT THE COURT'S IDEA
2 ABOUT SCHEDULING, BUT THERE IS ONE OTHER --

3 MR. CRAIN: LET ME JUST ADDRESS THE COURT ON ONE
4 BRIEF THING. MR. DEAN KARNY TESTIFIED, I ASKED HIM ABOUT
5 PRIOR CONSISTENT STATEMENT THAT HE MADE TO MR. ZOELLER
6 THAT WERE TAPE RECORDED. I WOULD JUST LIKE TO GET THE
7 COURT'S VIEW ON THIS. MY BELIEF IS THAT THE WITNESS WAS
8 IMPEACHED FOR THOSE STATEMENTS, THAT THEY ARE AS A MATTER
9 OF FACT PRIOR INCONSISTENT STATEMENTS. IF NOT, I WOULD
10 HAVE TO RECALL ZOELLER IF THERE IS ANY DISPUTE ABOUT THAT.
11 I THINK HE ACKNOWLEDGED THEM.

12 THE COURT: I THINK HE SAID HE HAS GIVEN LOTS OF
13 STATEMENTS OVER TIME, AND HE COULDN'T REMEMBER EVERY ONE,
14 BUT SOUNDS SOMETHING --

15 MR. CRAIN: BASICALLY THERE WERE TWO STATEMENTS.
16 ONE I BELIEVE I IMPEACHED WITH A PRIOR INCONSISTENT
17 STATEMENT WITH, FROM THE SAN MATEO TRIAL, WHICH HAD TO DO
18 WITH -- WELL, THERE WERE TWO AREAS THAT I WANT TO MAKE
19 SURE THAT THE COURT HAS ACCEPTED AS PRIOR INCONSISTENT
20 STATEMENTS. ONE HAS TO DO WITH WHO LEFT THE MANNING
21 FIRST, WHETHER IT WAS MR. HUNT WHO LEFT OR MR. KARNY
22 WHO --

23 THE COURT: THIS IS ABOUT WHO WENT TO THE THEATER
24 AND WHEN --

25 MR. CRAIN: RIGHT. MR. KARNY TOLD THE COURT WHEN
26 HE LEFT FOR THE MOVIE MR. HUNT WAS THERE WITH THE LIST,
27 AND MR. KARNY MADE THE EXACT OPPOSITE STATEMENTS ON
28 PREVIOUS OCCASIONS. IF THE COURT IS TAKING THAT PRIOR

1 INCONSISTENT --

2 THE COURT: THAT'S WHY IT CAME IN. THAT'S WHY IT
3 CAME IN.

4 MR. CRAIN: SECOND, HE SAID THAT HE HAS GIVEN A
5 PRIOR INCONSISTENT STATEMENT WITH REGARDS TO SOME
6 UNCERTAINTY AS TO WHETHER EXHIBIT M, I GUESS IT IS THE
7 SEVEN-PAGE LIST, WAS IN FACT THE ONE HE SAW MR. HUNT WITH
8 ON JUNE 6TH IN THE EVENING OR SOME OTHER VERSION OF IT.
9 AND IF NOT, I HAVE TO CALL MR. ZOELLER, WHO WOULD IN FACT
10 NAIL THAT DOWN. I THINK IT IS NAILED DOWN. IF IT IS, I
11 HAD A QUESTION FOR THE COURT IN THAT REGARDS.

12 THE COURT: THINK IT IS ONLY TWO PAGES HE
13 RECOGNIZED. IF NOT THOSE TWO PAGES THEN PAGES THAT ARE
14 VERY CLOSE TO THEM, AND THEN HE GAVE A SLIGHTLY DIFFERENT
15 STATEMENT TO OFFICER ZOELLER ABOUT THE NATURE OF WHAT HE
16 SAW.

17 MR. CRAIN: BUT I THINK BEYOND THAT, THIS IS
18 IMPORTANT, IS THAT HE HAS ACKNOWLEDGED IN THE PREVIOUS
19 TESTIMONY THAT WAS PRESENTED TO HIM, PREVIOUS STATEMENT
20 THAT WAS PRESENTED TO HIM, TO ZOELLER, THAT HE COULD NOT,
21 AS HE SAID TO ZOELLER IN THAT NOVEMBER, 1985, INTERVIEW,
22 HE COULD NOT SAY WHEN SHOWN THE EXHIBIT THAT WAS IN COURT
23 HERE AS TO WHETHER THAT WAS THE LIST THAT HE ACTUALLY SAW
24 WITH MR. HUNT ON THE NIGHT OF JUNE 6TH OR SOME EARLIER
25 VERSION OF THE LIST OR SOME LATER VERSION OF LIST.

26 AND THAT IS A CRITICAL PIECE OF EVIDENCE
27 BECAUSE IT DOES, AS THE COURT, I AM SURE, CAN SEE, KAREN
28 MARMOR HAS SAID SHE SAW THE LIST PRIOR TO JUNE 6TH. IF IN

1 FACT MR. KARNY IS TELLING DETECTIVE ZOELLER THAT WHAT HE
2 SAW OR CLAIMS HE SAW MR. HUNT WITH ON THE EVENING OF JUNE
3 6TH BEING PERHAPS A LATER VERSION OF THE LIST, THEN THERE
4 ARE NO NECESSARY INCONSISTENT OR CONTRADICTIONS BETWEEN
5 KARNY'S TESTIMONY AND KAREN MARMOR'S TESTIMONY.

6 MR. MC MULLEN: YOUR HONOR, IT SEEMS LIKE THESE
7 MATTERS --

8 THE COURT: IT IS NOT GOING TO RISE OR FALL ON THAT
9 ISSUE.

10 MR. CRAIN: AS LONG AS THE COURT IS SAYING KARNY
11 HAS MADE A PRIOR INCONSISTENT STATEMENT.

12 THE COURT: THERE WAS SOME INCONSISTENCIES IN
13 MR. KARNY STATEMENTS.

14 OKAY.

15 MR. KLEIN: ANOTHER MATTER, YOUR HONOR, I DON'T
16 KNOW WHEN YOU WANT TO GO OVER EXHIBITS, BUT WE LIKE SOME
17 TIME TO --

18 THE COURT: WHAT I AM ABOUT TO DO IS ORDER BOTH
19 SIDES TO SIT DOWN AND SPEND THE REST OF THE AFTERNOON
20 GOING THROUGH AND LOOKING AT EVERY SINGLE EXHIBIT, GOING
21 THROUGH EACH AND EVERY EXHIBIT LIST.

22 TOMORROW MORNING I WILL TAKE ANY STIPULATIONS
23 TO ADD ANYTHING OF -- ANYTHING THAT YOU CAN STIPULATE TO,
24 AND THEN I CAN TAKE ANY OBJECTION AS I RULE ON THE
25 ADMISSION OF EXHIBITS TOMORROW MORNING.

26 MR. KLEIN: COULDN'T WE HAVE SOME TIME AMONG
27 OURSELVES FIRST BEFORE WE MEET WITH THEM? IT IS JUST --

28 THE COURT: YOU CAN DO IT ANYTIME BETWEEN NOW AND

1 4:30.

2 MR. KLEIN: IT IS JUST GOING TOO FAST.

3 THE COURT: IT IS NOT.

4 MR. KLEIN: ANOTHER THING WE WANTED TO -- GO AHEAD.

5 MR. CRAIN: I WANTED TO OFFER FROM THE SAN MATEO
6 TRIAL STATEMENTS OF MARTIN LEVIN BECAUSE THIS COURT, THIS
7 COURT RELATIVE TO ISSUE 2 HAS READ THE TRANSCRIPT OF THE
8 FIRST TRIAL IN ORDER TO SEE WHAT AFFECT THIS, THAT BARENS
9 DID OR DIDN'T DO OR AFFECT THEY MIGHT HAVE HAD. IN OTHER
10 WORDS, THE COMPARISON OF TRIALS AS IT WEIGHS WITH THE
11 TRIAL, AS IT SHOULD HAVE BEEN.

12 AND IN THAT CONTEXT MARTIN LEVIN GAVE CERTAIN
13 TESTIMONY, AND PERHAPS THIS HAS NO SIGNIFICANCE OR
14 RELEVANCE, BUT I WOULD MAKE AN OFFER OF PROOF AND ASK THE
15 COURT TO CONSIDER AS EVIDENCE PRIOR INCONSISTENT
16 STATEMENTS TO THE EXTENT THAT THE COURT HAS CONSIDERED THE
17 TESTIMONY OF MARTIN LEVIN AT THE FIRST TRIAL, MARTIN
18 LEVIN'S TESTIMONY ON MAY 5, 1992, IN THE SAN MATEO TRIAL.

19 THAT'S THE TRIAL VOLUME 14 IN PARTICULAR ON
20 CROSS-EXAMINATION -- WELL, ON DIRECT EXAMINATION PAGE 2366
21 AND THEN ON CROSS-EXAMINATION BEGINNING ON 2394 TO THE END
22 IN WHICH HE TESTIFIED THAT CONTRARY TO HIS TESTIMONY AT
23 THE SANTA MONICA TRIAL THE SEVEN-PAGE LIST THAT HE CLAIMS
24 HE SAW FOR THE FIRST TIME ON JUNE 7, 1984, AND DIDN'T TURN
25 OVER TO DETECTIVE ZOELLER UNTIL AUGUST OF 1984 WAS IN FACT
26 STREWN ABOUT ON THE FLOOR OF THE OFFICE OF MR. LEVIN'S
27 RESIDENCE.

28 NOW, THE COURT MAY THINK THIS HAS NO

1 SIGNIFICANCE. I DON'T KNOW. BUT TO THE EXTENT THAT YOU
2 CONSIDER MARTIN LEVIN'S TESTIMONY AT THE FIRST TRIAL FOR
3 ANY PURPOSE, I BELIEVE THE COURT SHOULD HAVE THE BENEFIT
4 OF HIS TESTIMONY, PARTICULARLY AT PAGE 24 -- 2403 AND
5 2415, WHICH HE SAYS THE LIST WHEN HE WALKED IN WAS
6 SCATTERED ABOUT THE FLOOR, AND HE PICKED IT UP AND
7 EXAMINED IT.

8 I WILL BE HAPPY TO ELABORATE ON THIS POINT,
9 IF THE COURT WISHES.

10 THE COURT: YOU ARE RIGHT IT HAS NO SIGNIFICANCE.

11 MR. CRAIN: ALSO 8394 AND 8395.

12 THE COURT: IT HAS NO SIGNIFICANCE.

13 ALL RIGHT.

14 IT IS ABOUT 3 O'CLOCK NOW. YOU GOT ABOUT
15 FIVE MINUTES TO DO WHAT YOU WANT TO DO, BUT THEN YOU ARE
16 ORDERED TO GO THROUGH EVERY SINGLE EXHIBIT THAT HAS BEEN
17 MARKED, EACH OTHER EXHIBIT LISTS, GET A LIST TOGETHER. WE
18 ARE GOING THROUGH THEM TOMORROW. AND I WILL TAKE ANY
19 OBJECTIONS TO EXHIBITS TOMORROW MORNING.

20 I WILL THEN GIVE YOU SOME TIMES TO -- I WILL
21 SET A BRIEFING SCHEDULE FOR PETITIONER'S BRIEF. THAT'S
22 GOING TO BE DUE IN TWO TO THREE WEEKS. AND RESPONDENT'S
23 BRIEF WILL BE DUE IN ABOUT TEN DAYS THEREAFTER. THEN I
24 CAN TAKE A REPLY BRIEF ABOUT FIVE DAYS THEREAFTER. AND
25 THEN SOME CLOSING ARGUMENT AROUND, PROBABLY BE THE END OF
26 JUNE. SO THAT I CAN GET YOU A RULING DURING JULY.

27 ALL RIGHT.

28 I JUST HAVE ONE THING ON 8:30 TOMORROW

1 MORNING.

2 PETITIONER AND COUNSEL WILL BE ORDERED TO
3 RETURN AT 9:00 A.M. TOMORROW MORNING.

4 COUNSEL ARE ORDERED TO GO OVER EVERY SINGLE
5 EXHIBIT TO CHECK OFF EACH EXHIBIT AND IDENTIFY ONLY THOSE
6 EXHIBITS TO WHICH EITHER SIDE HAS AN OBJECTION.

7 I WOULD ENCOURAGE YOU TO -- IF IT IS OF NO
8 GREAT CONSEQUENCE, NOT OBJECT, AND THEN I WILL ONLY RULE
9 ON THOSE ISSUES THAT THERE IS AN OBJECTION TOMORROW
10 MORNING, THEN I WILL GIVE YOU SOME INSIGHT IN TERMS OF
11 SOME OF MY THOUGHT PROCESS ON THIS CASE TO ASSIST YOU IN
12 DRAFTING YOUR CLOSING BRIEFS.

13 MR. KLEIN: ONE LAST THING, YOUR HONOR.

14 THE COURT: YES.

15 MR. KLEIN: CAN WE MARK THE KARNY CANTOR-FITZGERALD
16 DEPOSITION AS 310?

17 MR. CRAIN: I FORGOT DO THAT THE OTHER DAY.

18 MR. KLEIN: WE REFERRED TO IT DURING THE RECORD.
19 KARNY TALKED ABOUT THE LIES THAT HE MADE.

20 MR. CRAIN: HE IDENTIFIED IT. IT WAS JUST NEVER
21 MARKED.

22 THE COURT: DO WE NEED IT?

23 I AM NOT GOING TO READ IT, AND I AM THE TRIER
24 OF FACT. WHAT DIFFERENCE DOES IT MAKE?

25 NO, IT WON'T BE MARKED.

26 ALL RIGHT.

27 COUNSEL, PLEASE FOLLOW MY DIRECTIONS BE READY
28 TO GO AT 9 O'CLOCK TOMORROW MORNING WITH ANY OBJECTIONS TO

1 EXHIBITS.

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(AT 3:00 P.M. AN ADJOURNMENT WAS

4

TAKEN UNTIL WEDNESDAY,

5

MAY 15, 1996 AT 9:00 A.M.)

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