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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
COURT OF APPEAL - SECOND DIST.

REPORTERS' DAILY TRANSCRIPT
VOLUME 13

WEDNESDAY, MAY 15, 1996

PAGE 2193 THROUGH 2247, INCL. Deputy Clerk

FILED
MAY 15 1996
JOSEPH BALANE
Z. HERRERA
Clerk

APPEARANCES:

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FOR THE RESPONDENT
THE PEOPLE OF THE
STATE OF CALIFORNIA:

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DISTRICT ATTORNEY
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AND
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COPY

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

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M A S T E R I N D E X

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(NONE)

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(NONE)

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RESPONDENT'S EXHIBITS	FOR IDENTIFICATION		IN EVIDENCE		WITHDRAWN OR REJECTED	
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1 LOS ANGELES, CALIFORNIA; WEDNESDAY, MAY 15, 1996

2 9:00 A. M.

3 DEPARTMENT NO. 101

HON. J. STEPHEN CZULEGER, JUDGE

4
5 APPEARANCES:

6 THE PETITIONER, JOSEPH HUNT, WITH HIS COUNSEL,
7 ROWAN KLEIN, BAR PANEL APPOINTMENT; AND MICHAEL
8 CRAIN, 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: IN THE MATTER OF JOSEPH HUNT, THE
19 RECORD WILL REFLECT ALL COUNSEL ARE PRESENT, PETITIONER IS
20 PRESENT.

21 ALL RIGHT.

22 LET'S GO THROUGH THE EXHIBIT LIST.
23 PETITIONER'S EXHIBIT LIST YOU HAVE MARKED 1 THROUGH 10;
24 CORRECT?

25 MR. KLEIN: I AM SORRY?

26 THE COURT: YOU HAVE MARKED 1 THROUGH 10?

27 MR. KLEIN: YES, YOUR HONOR.

28 THE COURT: ALL RIGHT.

1 ARE YOU MOVING THOSE IN?

2 MR. KLEIN: YES.

3 MR. MC MULLEN: WE HAVE OBJECTIONS TO NO. 2 AND NO.
4 3. NO. 2 IS AN ADVERTISEMENT OF THE CROCODILE DUNDEE AND
5 THERE IS A DATE ON THE SIDE THAT WE OBJECT TO. THERE IS
6 NO FOUNDATION TO THAT, AS TO WHEN IT WAS PUBLISHED.

7 THE COURT: NOS. 2 AND 3.

8 THE COURT: NO. 3 IS MERRILL LYNCH. I HAVE NOT
9 SEEN EITHER OF THESE.

10 DO YOU HAVE EXHIBITS 2 AND 3?

11 MR. KLEIN: NO. 2, IF THEY WON'T STIPULATE TO THE
12 COPY OF THE NEWSPAPER ADD WE WILL S.D.T. TO THE NEXT COURT
13 TODAY.

14 THE COURT: THE EVIDENCE IS OVER.

15 THE CLERK: NO. 2 AND 3.

16 MR. MC MULLEN: IT IS A HANDWRITTEN DATE ON THE
17 SIDE.

18 THE COURT: IT IS.

19 MR. CRAIN: IT IS CORROBORATIVE EVIDENCE OF HIS
20 TESTIMONY THAT SHORTLY AFTER THE MOVIE OPENED --

21 THE COURT: WHAT'S 3.

22 MR. MC MULLEN: NO. 3 IS A -- SOME KIND OF MERRILL
23 LYNCH RECORDS WITH A NOTATION OF SOME CHARGE TO MR. CHOW'S
24 RESTAURANT.

25 MR. KLEIN: WERE DOCUMENTS SEIZED. THERE WERE
26 MR. LEVIN'S DOCUMENTS WHICH SHOWED THAT HE ATE AT
27 MR. CHOW'S, WHICH CONFIRMED NADIA GHALIEB'S TESTIMONY.

28 MR. KLEIN: SHE IDENTIFIED THEM. SHE POINTED TO

1 THAT VERY DOCUMENT, I BELIEVE, AND IDENTIFIED THE M. CHOW
2 AS REFLECTING --

3 THE COURT: IT IS NOT REALLY CONTESTED, IS IT? IT
4 IS NOT REALLY CONTESTED THAT MR. LEVIN ATE AT MR. CHOW'S.

5 MR. CRAIN: I DON'T KNOW WHETHER THAT IS CONTESTED
6 OR NOT, THEY SEEM TO CONTEST EVERYTHING INCLUDING WHETHER
7 THE SUN COMES UP IN THE EAST.

8 THE COURT: THERE IS NO FOUNDATION FOR 2 TO 3.
9 OTHER THAN THAT NO -- ANY OBJECTION?

10 MR. MC MULLEN: NO.

11 THE COURT: NOS. 1 AND 4 THROUGH 10 WILL BE
12 RECEIVED INTO EVIDENCE.

13

14 (REJECTED = PETITIONER'S 2 AND 3.)

15

16 (REC. IN EVID. = PETITIONER'S 1, 4, 5,
17 6, 7, 8, 9, 10.)

18

19 THE COURT: THE NEXT ONE I HAVE MARKED IS 13 AND
20 14. ANY OBJECTION TO 13 AND 14?

21 MR. MC MULLEN: NO.

22 THE COURT: I ASSUME YOU ARE MOVING 13 AND 14?

23 MR. KLEIN: YES.

24 THE COURT: ALL RIGHT.

25 13 AND 14 ARE RECEIVED INTO EVIDENCE.

26

27 (REC. IN EVID. = PETITIONER'S 13, 14.)

28

1 THE COURT: THE NEXT ONE I HAVE IS 25, THE CHEUNG
2 REPORT. ANY OBJECTION TO THAT?

3 MR. MC MULLEN: NO.

4 THE COURT: NO. 25 WILL BE RECEIVED.

5
6 (REC. IN EVID. = PETITIONER'S 25.)

7
8 THE COURT: THE NEXT ONE I HAVE IS NO. 32,
9 MICROGENESIS TELEX. ANY OBJECTION TO THAT?

10 MR. MC MULLEN: NO OBJECTION.

11 THE COURT: 32 IT WILL BE RECEIVED.

12
13 (REC. IN EVID. = PETITIONER'S 32.)

14
15 THE COURT: IF I AM MISSING ANYTHING THAT EITHER
16 THE CLERK AND COUNSEL HAVE THAT HAVE BEEN MARKED, LET ME
17 KNOW.

18 THE NEXT ONE I HAVE IS QUITE A WAYS DOWN.

19 MR. MC MULLEN: 197, I THINK.

20 THE COURT: THE NEXT ONE I HAVE IS BARENS'
21 DECLARATION, 197. ARE YOU MOVING THAT IN?

22 MR. KLEIN: NO, YOUR HONOR.

23 MR. CRAIN: WE ARE WITHDRAWING THAT.

24 WITHDRAWN.

25 THE COURT: YOU WANT TO TAKE IT BACK, UNMARK IT?

26 MR. KLEIN: WELL --

27 MR. CRAIN: SURE.

28 MR. MC MULLEN: YOU ARE JUST NOT MOVING IT INTO

1 EVIDENCE.

2 THE COURT: THE PROBLEM IS, IT IS HARD TO MOVE. WE
3 HAVE HAD TESTIMONY. I THINK MR. BARENS PROBABLY
4 IDENTIFIED IT. I CAN'T TAKE AN EXHIBIT OUT, BUT YOU CAN
5 CERTAINLY NOT MOVE IT INTO EVIDENCE.

6 MR. KLEIN: WE ARE NOT MOVING IT INTO EVIDENCE.

7 THE COURT: ALL RIGHT.

8

9 (NOT OFFERED = PETITIONER'S 197.)

10

11 THE COURT: NEXT ONE I HAVE IS 198.

12 MR. KLEIN: WE ARE OFFERING IT.

13 MR. MC MULLEN: WE ARE OBJECTING TO THAT ON
14 RELEVANCY GROUNDS.

15 THE COURT: LET ME SEE 198.

16 MR. KLEIN: PEOPLE STIPULATED THAT IT WAS A COURT
17 RECORD WHEN IT WAS SHOWN TO MR. BARENS. THIS WAS THE
18 ORDER APPOINTING --

19 THE COURT: LET ME LOOK AT IT FIRST. I DON'T KNOW
20 WHAT IT IS.

21

22 (COURT REVIEWING EXHIBIT.)

23

24 THE COURT: OH, YEAH.

25 WHAT'S YOUR OBJECTION?

26 MR. MC MULLEN: RELEVANCY, YOUR HONOR. IT HAS TO
27 DO WITH THE APPOINTMENT OF A SECOND COUNSEL. I DON'T SEE
28 HOW --

1 THE COURT: I WILL OVERRULE THE OBJECTION.

2 198 IS RECEIVED.

3

4 (REC. IN EVID. = PETITIONER'S 198.)

5

6 THE COURT: THEN I HAVE 201 THROUGH 207.

7 MR. KLEIN: 201 AND 202 WE ARE NOT OFFERING INTO

8 EVIDENCE.

9 THE COURT: ALL RIGHT.

10

11 (WITHDRAWN = PETITIONER'S 201 AND 202.)

12

13 MR. MC MULLEN: 201, 202.

14 THE COURT: 203.

15 MR. MC MULLEN: WE ARE OBJECTING TO 203 THROUGH 207

16 ON RELEVANCY GROUNDS.

17 THE COURT: ARE YOU MOVING THOSE INTO EVIDENCE?

18 MR. KLEIN: YES, YOUR HONOR.

19 THE COURT: LET ME SEE 203 THROUGH 207.

20 WHY DON'T YOU MOVE THE WHOLE BUNCH OVER HERE.

21

22 (COURT REVIEWING EXHIBIT.)

23

24 THE COURT: WHAT'S YOUR OBJECTION TO 203?

25 MR. MC MULLEN: RELEVANCY, YOUR HONOR. THIS IS A
26 LETTER WITH QUESTIONS FROM DOBRIN. OUR REVIEW OF IT IS IT
27 DOESN'T REALLY TOUCH ON ANY OF THE ISSUES THAT WE WERE
28 LITIGATING IN THE EVIDENTIARY HEARING.

1 MR. KLEIN: TALKS ABOUT MANY OF THE ETHICAL
2 CONCERNS THAT MR. BARENS ADDRESSED IN THE O.S.C., YOUR
3 HONOR, DIRECTLY.

4 THE COURT: A LARGE PORTIONS OF IT ARE IRRELEVANT,
5 BUT THERE WAS TESTIMONY CONCERNING WHETHER OR NOT THERE
6 WAS COMMUNICATION AND THE NATURE OF THE COMMUNICATIONS
7 WITH MR. BARENS, WHICH MIGHT TOUCH ON HIS CREDIBILITY.

8 I SAW THIS WHEN I FIRST LOOKED AT IT, 206,
9 THERE IS AN AREA THAT'S BLACKED OUT. WHAT IS IT?

10 MR. MC MULLEN: WE HAVE NEVER SEEN THE UNREDACTED
11 COPY OF THAT, YOUR HONOR.

12 MR. KLEIN: I BELIEVE THAT'S HOW IT WAS SENT TO
13 MR. BARENS'. ACCORDING TO MR. DOBRIN WHEN HE IDENTIFIED
14 IT, HE IDENTIFIED IT AS, THAT'S THE LETTER THAT HE SENT TO
15 BARENS. I BELIEVE IT IS ALSO --

16 THE COURT: HE SAID HE SENT THIS LETTER?

17 MR. KLEIN: IT IS ATTACHED AS AN EXHIBIT TO THE
18 PETITION ALSO.

19 THE COURT: I AM NOT CONCERNED ABOUT THAT. I AM
20 CONCERNED ABOUT INTRODUCING SOMETHING INTO EVIDENCE THAT A
21 PORTION OF IT HAS BEEN BLACKED OUT, AND NO ONE KNOWS
22 WHAT'S THERE. WE DON'T KNOW THE TOTALITY OF THE DOCUMENT.

23 MR. KLEIN: THE EVIDENCE REFLECTS THAT'S HOW IT WAS
24 SENT TO MR. BARENS.

25 MR. MC MULLEN: I AM NOT SO -- WE ARE NOT SO
26 CONFIDENT OF THAT.

27 THE COURT: I HAVE A QUESTION ABOUT THAT AS WELL.

28 MR. KLEIN: ONE WAY WOULD BE TO LOOK AT THE

1 PETITION AND CHECK THE COPY OF THE SAME DOCUMENT.

2 MR. MC MULLEN: IT IS REDACTED, MY RECOLLECTION,
3 BECAUSE I NOTED THAT OVER THE YEARS.

4 MR. KLEIN: THEN I BELIEVE THAT'S HOW IT WAS SENT
5 TO MR. BARENS.

6 THE COURT: I FIND THAT DIFFICULT TO BELIEVE.

7 MR. KLEIN: THERE IS NO RECORD FOR THE COURT TO
8 MAKE THAT DETERMINATION. MR. DOBRIN --

9 THE COURT: THAT'S COMPLETELY UNTRUE. I COULD LOOK
10 AT A DOCUMENT AND DECIDE WHETHER THERE IS SOMETHING HIGHLY
11 SUSPICIOUS ABOUT SOMETHING THAT IS BLACKED OUT. THAT IS
12 SOMETHING YOU FOLKS SHOULD HAVE LOOKED AT PRIOR TO THIS.

13 MR. CRAIN: THE DISTRICT ATTORNEY NEVER RAISED ANY
14 OBJECTION OR QUESTION, I SHOULD SAY, ABOUT THIS PARTICULAR
15 DOCUMENT --

16 THE COURT: YOU ARE THE PROPONENTS OF THE EVIDENCE.

17 MR. CRAIN: -- IN THE SEVERAL YEARS SINCE THE
18 PETITION WAS FILED.

19 AND WE ARE THE PROPONENTS OF THE EVIDENCE,
20 BUT THERE IS NO EVIDENCE THAT THIS IS NOT THE WAY IT WAS
21 SENT. IN FACT, I THINK THE EVIDENCE REFLECTS THE
22 CONTRARY.

23 MR. KLEIN: MR. DOBRIN WAS ASKED IF THIS WAS THE
24 LETTER THAT HE SENT TO MR. BARENS DATED MAY 20, 1991, AND
25 HE SAID YES.

26 THE COURT: I WILL ADMIT 203 THROUGH 207 WITH SOME
27 GRAVE RESERVATIONS AS TO 206.

28

1 (REC. IN EVID. = PETITIONER'S 203
2 THROUGH 207.)

3
4 THE COURT: I AM NOT SURE WHAT ORDER YOU HAVE.

5 MR. MC MULLEN: THEY WERE IN --

6 THE COURT: I JUST WANT TO MAKE SURE THAT I DON'T
7 MESS THEM UP. WHAT WAS EXHIBIT 1? THAT WAS THE
8 PHOTOGRAPH.

9 MR. MC MULLEN: THE PHOTOGRAPH OF RON LEVIN.

10 THE COURT: I DON'T SEE IT -- HERE IT IS. I SEE
11 IT.

12 ALL RIGHT. I HAVE GOT THEM BACK IN ORDER.
13 209.

14 MR. KLEIN: WE ARE OFFERING IT.

15 MR. MC MULLEN: NO OBJECTION.

16 THE COURT: 209 IS RECEIVED.

17

18 (REC. IN EVID. = PETITIONER'S 209.)

19

20 THE COURT: 216?

21 MR. KLEIN: WE ARE OFFERING IT.

22 MR. MC MULLEN: NO OBJECTION.

23 THE COURT: 216 IS RECEIVED.

24

25 (REC. IN EVID. = PETITIONER'S 216.)

26

27 THE COURT: 230?

28 MR. KLEIN: WE ARE OFFERING IT.

1 MR. MC MULLEN: NO OBJECTION.

2 THE COURT: 230 IS RECEIVED.

3

4 (REC. IN EVID. = PETITIONER'S 230.)

5

6 THE COURT: 231?

7 MR. KLEIN: WE ARE OFFERING IT.

8 MR. MC MULLEN: NO OBJECTION.

9 THE COURT: 231 IS RECEIVED.

10

11 (REC. IN EVID. = PETITIONER'S 231.)

12

13 THE COURT: 235?

14 MR. KLEIN: WE ARE WITHDRAWING THAT.

15 THE COURT: YOU ARE?

16 MR. KLEIN: WE ARE NOT OFFERING IT.

17 THE COURT: YOU ARE NOT MOVING IT IN?

18 MR. KLEIN: WE ARE NOT OFFERING IT.

19 THE COURT: ALL RIGHT.

20 THAT WILL NOT BE RECEIVED.

21

22 (NOT OFFERED = PETITIONER'S 235.)

23

24 THE COURT: 239?

25 MR. KLEIN: WE ARE OFFERING THAT.

26 MR. MC MULLEN: NO OBJECTION.

27 THE COURT: 239 IS RECEIVED.

28

1 (REC. IN EVID. = PETITIONER'S 239.)

2

3 THE COURT: 240?

4 MR. KLEIN: OFFERING IT.

5 MR. MC MULLEN: WE ARE OBJECTING TO THAT ON
6 RELEVANCY GROUNDS.

7 THE COURT: LET ME LOOK AT IT AGAIN.

8 MR. MC MULLEN: THESE ARE ZOELLER HANDWRITTEN NOTES
9 REGARDING HOLMES' INTERVIEW. BARENS DIDN'T RECALL SEEING
10 THOSE NOTES, AND SO THEY --

11 MR. KLEIN: BARENS DOESN'T RECALL SEEING ANYTHING
12 ABOUT THE F.B.I. REPORT THAT JUDGE WAPNER TESTIFIED
13 THAT --

14 MR. MC MULLEN: THIS HAS TO DO WITH OLIVER WENDELL
15 HOLMES.

16 MR. KLEIN: EXCUSE ME.

17 JUDGE WAPNER TESTIFIED THAT HE HAD AN OPEN
18 BOOK POLICY. BRODEY SAID HE GOT THESE IN HIS CASE. THESE
19 ARE THE HANDWRITTEN NOTES OF EXHIBIT 216, WHICH IS THE
20 TYPED REPORT CONCERNING HOLMES.

21 THE COURT: I WILL ADMIT 240.

22

23 (REC. IN EVID. = PETITIONER'S 240.)

24

25 THE COURT: 241?

26 MR. KLEIN: WE ARE OFFERING THAT.

27 MR. MC MULLEN: NO OBJECTION.

28 THE COURT: 241 IS RECEIVED.

1 (REC. IN EVID. = PETITIONER'S 241.)

2

3 THE COURT: 243?

4 MR. KLEIN: WE ARE OFFERING THAT.

5 MR. MC MULLEN: NO OBJECTION.

6 THE COURT: 243 IS RECEIVED.

7

8 (REC. IN EVID. = PETITIONER'S 243.)

9

10 THE COURT: 244?

11 MR. KLEIN: WE ARE OFFERING THAT.

12 MR. MC MULLEN: NO OBJECTION.

13 THE COURT: 244 IS RECEIVED.

14

15 (REC. IN EVID. = PETITIONER'S 244.)

16

17 THE COURT: 245?

18 MR. KLEIN: OFFERING THAT.

19 MR. MC MULLEN: NO OBJECTION.

20 THE COURT: 245 IS RECEIVED.

21

22 (REC. IN EVID. = PETITIONER'S 245.)

23

24 THE COURT: 248?

25 MR. KLEIN: WE ARE OFFERING THAT.

26 MR. MC MULLEN: WE ARE OBJECTING TO IT. OUR

27 UNDERSTANDING OF THE TESTIMONY THAT HUNT TESTIFIED BARENS

28 GOT A DIFFERENT COPY THEN WHAT IS EXHIBIT 248.

1 MR. KLEIN: JUST BECAUSE IT WAS PRINTED OUT ON A
2 DIFFERENT DATE OF THE COMPUTER, YOUR HONOR.

3 THE COURT: I REMEMBER THIS. I WILL RECEIVE 248.

4
5 (REC. IN EVID. = PETITIONER'S 248.)

6
7 THE COURT: 252?

8 MR. KLEIN: WE ARE OFFERING THAT.

9 MR. MC MULLEN: NO OBJECTION.

10 THE COURT: 252 RECEIVED.

11
12 (REC. IN EVID. = PETITIONER'S 252.)

13
14 THE COURT: 253?

15 MR. MC MULLEN: WE ARE OBJECTING TO IT. MY
16 RECOLLECTION IS THAT BARENS DIDN'T RECALL THIS DOCUMENT.
17 IT IS UP, ON THAT BASIS THAT WE ARE OBJECTING.

18 THE COURT: I WILL ACCEPT 253. I REMEMBER IT.
19 MR. HUNT TESTIFIED ABOUT IT.

20
21 (REC. IN EVID. = PETITIONER'S 253.)

22
23 THE COURT: ALL RIGHT.

24 THE NEXT NUMBER I HAVE THEN STARTS AT 265.

25 MR. KLEIN: WE ARE OFFERING THAT.

26 MR. MC MULLEN: NO OBJECTION.

27 THE COURT: 265 IS RECEIVED.

28

1 (REC. IN EVID. = PETITIONER'S 265.)

2

3 THE COURT: 266?

4 MR. KLEIN: WE ARE OFFERING THAT.

5 MR. MC MULLEN: NO OBJECTION.

6 THE COURT: 266 IS RECEIVED.

7

8 (REC. IN EVID. = PETITIONER'S 266.)

9

10 THE COURT: 267?

11 MR. CRAIN: COULD WE POSSIBLY COME BACK TO THAT AT
12 THE END?

13 THE COURT: NO. IT IS TOO HARD. WE GOT TO
14 MAINTAIN SOME ORDER. I GAVE YOU GUYS SOME TIME YESTERDAY.

15 MR. CRAIN: WE WANT TO OFFER IT, BUT NOT FOR THE
16 TRUTH OF THE MATTER ASSERTED HEREIN. WE WANT TO OFFER IT
17 AS CIRCUMSTANTIAL EVIDENCE OF HIS STATE OF MIND AND
18 CREDIBILITY AND POOR RECOLLECTION.

19 MR. MC MULLEN: YOUR HONOR, WE HAVE NO OBJECTION TO
20 THIS. ALTHOUGH I THINK WHAT COUNSEL IS ARTICULATING TO
21 THE COURT IS AN ARGUMENT WHICH --

22 THE COURT: WELL, IF YOU ARE MOVING IT AND THEY ARE
23 NOT OBJECTING, IT COMES INTO EVIDENCE. IT COMES INTO
24 EVIDENCE.

25 MR. CRAIN: WE ARE OFFERING IT WITH THAT, AND ASK
26 THAT IT BE RECEIVED FOR THOSE LIMITED PURPOSES. IT IS
27 LIMITED EVIDENCE. IN OTHER WORDS, HE MAKES SELF-SERVING
28 STATEMENTS IN THERE ABOUT -- EXCUSE ME, JOE, PLEASE.

1 WE ARE NOT OFFERING THOSE FOR THE TRUTH OF
2 THE MATTER IN ORDER TO BOLSTER BARENS' POSITION. WE ARE
3 OFFERING IT TO THE EXTENT THAT IT REFLECTS ON HIS
4 CREDIBILITY, IT SHOWS INCONSISTENT STATEMENTS.

5 THE COURT: WELL, YOU CROSS-EXAMINED HIM SOMEWHAT
6 ON THIS.

7 MR. KLEIN: THE INCONSISTENT STATEMENTS RELATING TO
8 THE O.S.C. ISSUE THAT THE COURT ALLOWED EVIDENCE HE WAS
9 CROSS-EXAMINED ABOUT.

10 MR. CRAIN: HE ADMITTED THOSE.

11 MR. KLEIN: THOSE ARE IN.

12 MR. CRAIN: THEY ARE IN FOR THE TRUTH OF THE
13 MATTER. OTHER MATTERS WHICH ARE NOT SELF-SERVING WE ARE
14 NOT OFFERING THOSE TO PROVE THE TRUTH OF THEM. WE ARE
15 OFFERING IT TO SHOW THEY REFLECT BARENS' LACK OF
16 CREDIBILITY AND POOR MEMORY.

17 MR. MC MULLEN: WE WOULD, TO THE EXTENT THAT THEY
18 ARE LIMITING THE OFFER OF THIS PARTICULAR ITEM OF
19 EVIDENCE, WE ARE OFFERING IT FOR THAT. IT IS A DEPOSITION
20 OF ARTHUR BARENS.

21 MR. KLEIN: THEN IT IS HEARSAY UNLESS THERE IS A
22 HEARSAY EXCEPTION. WE ARE OFFERING IT FOR CERTAIN LIMITED
23 PURPOSES.

24 THE COURT: 267 IS RECEIVED IN EVIDENCE.

25

26 (REC. IN EVID. = PETITIONER'S 267.)

27

28 THE COURT: 268?

1 MR. KLEIN: WE ARE OFFERING THAT.

2 MR. MC MULLEN: WE ARE OBJECTION ON RELEVANCY
3 GROUNDS? BARENS SAID HE NEVER SAW THIS. HE TESTIFIED TO
4 THAT.

5 THE COURT: WHY ISN'T IT HEARSAY?

6 MR. MC MULLEN: 268. THAT'S CORRECT, AS WELL IT IS
7 HEARSAY.

8 MR. KLEIN: HE WAS ASKED ABOUT IT.

9 THE COURT: IT IS STILL HEARSAY.

10 I WILL NOT RECEIVE 268.

11 MR. KLEIN: WE WOULD OFFER IT FOR THE SAME LIMITED
12 PURPOSES THAT WE WOULD OFFER THE DEPOSITION.

13 THE COURT: I WILL NOT TAKE 268.

14

15 (REJECTED = PETITIONER'S 268.)

16

17 THE COURT: 269?

18 MR. KLEIN: WE ARE OFFERING THAT.

19 MR. MC MULLEN: WE ARE OBJECTING ON RELEVANCY
20 GROUNDS THAT IT IS HEARSAY.

21 MR. KLEIN: A PRIOR INCONSISTENT STATEMENT TO HIS
22 DEPOSITION, YOUR HONOR, ABOUT WHETHER OR NOT HE
23 PARTICIPATED IN A SECRET DEAL. HE DENIED IT IN HIS
24 DEPOSITION. HE ADMITTED HE MADE THIS DECLARATION IN HIS
25 TESTIMONY. SO SINCE THE COURT HAS RECEIVED THE
26 DEPOSITION, THE COURT HAS TO RECEIVE THIS AS A PRIOR
27 INCONSISTENT STATEMENT.

28 THE COURT: I DON'T HAVE TO RECEIVE IT.

1 MR. KLEIN: EXCUSE ME. I MEAN, TO SAY THAT LEGALLY
2 THE COURT SHOULD RECEIVE IT BECAUSE, IF THE COURT WILL
3 READ THE DEPOSITION, HE DENIED MAKING SUCH A SECRET DEAL,
4 AND AS THE COURT KNOWS THERE WAS SUCH A SECRET DEAL.

5 MR. MC MULLEN: THAT'S A COLLATERAL MATTER.

6 THE COURT: I WILL ACCEPT 269.

7 MR. KLEIN: THANK YOU, YOUR HONOR.

8

9 (REC. IN EVID. = PETITIONER'S 269.)

10

11 THE COURT: 270?

12 MR. MC MULLEN: SAME OBJECTION.

13

EXCUSE ME.

14 THE COURT: IS ANYBODY MOVING THAT?

15 MR. KLEIN: WE ARE OFFERING IT. IT IS ANOTHER
16 DECLARATION BY MR. BARENS.

17 MR. MC MULLEN: SAME OBJECTION. RELEVANCY AND
18 HEARSAY.

19 THE COURT: I WILL ACCEPT 270.

20

21 (REC. IN EVID. = PETITIONER'S 270.)

22

23 THE COURT: 271?

24 MR. CRAIN: OFFERED.

25 MR. MC MULLEN: NO OBJECTION.

26 THE COURT: 271 IS RECEIVED.

27

28 (REC. IN EVID. = PETITIONER'S 271.)

1 THE COURT: 272?

2 MR. CRAIN: OFFERED.

3 MR. MC MULLEN: NO OBJECTION.

4 THE COURT: 272 IS RECEIVED.

5

6 (REC. IN EVID. = PETITIONER'S 272.)

7

8 THE COURT: 273?

9 MR. CRAIN: OFFERED.

10 MR. MC MULLEN: NO OBJECTION.

11 THE COURT: 273 RECEIVED IS ACCEPTED.

12

13 (REC. IN EVID. = PETITIONER'S 273.)

14

15 THE COURT: 274?

16 MR. CRAIN: OFFERED.

17 MR. MC MULLEN: NO OBJECTION.

18 THE COURT: 274 IS RECEIVED.

19

20 (REC. IN EVID. = PETITIONER'S 274.)

21

22 THE COURT: 275?

23 MR. CRAIN: OFFERED.

24 MR. MC MULLEN: WE WOULD OBJECT TO THIS ON

25 RELEVANCY GROUNDS AND HEARSAY.

26 THE COURT: THIS IS A PRIVATE INVESTIGATOR'S

27 REPORT.

28 MR. MC MULLEN: RIGHT, WITH RESPECT TO LOUISE

1 WALLER.

2 THE COURT: YEAH. IT IS HEARSAY, AND OF MARGINAL
3 RELEVANCE.

4 MR. KLEIN: IT WAS SHOWN TO BARENS, AND IT WAS, I
5 BELIEVE, THAT'S HOW HE BASED HIS DECISION TO CALL HER AS A
6 WITNESS AT THE PENALTY PHASE.

7 THE COURT: I WILL NOT RECEIVE 275.

8

9 (REJECTED = PETITIONER'S 275.)

10

11 THE COURT: 276?

12 MR. KLEIN: WE ARE OFFERING THAT.

13 MR. MC MULLEN: WE WOULD OBJECT ON RELEVANCY
14 GROUNDS. BARENS HAD NO RECOLLECTION OF THIS. IT IS ALSO
15 HEARSAY.

16 MR. CRAIN: IT IS CIRCUMSTANTIAL EVIDENCE THAT
17 IMPEACHES BARENS' FALSE CLAIM THAT HE HAS NO RECOLLECTION,
18 BUT THAT'S -- MR. HUNT WAS ASKED QUESTIONS ABOUT THIS
19 PARTICULAR DOCUMENT.

20 MR. KLEIN: IT WAS MR. BRODEY, WHO SAID THIS WAS
21 HIS REPORT --

22 THE COURT: BARENS SAID HE DID NOT RECALL SEEING
23 IT; CORRECT?

24 MR. CRAIN: BUT THIS IS EVIDENCE TENDING TO REFUTE
25 THAT CLAIM OF HIS.

26 THE COURT: THAT HE DIDN'T SEE IT?

27 MR. CRAIN: RIGHT.

28 THE COURT: HOW COULD THE FACT THAT SOMETHING

1. EXISTS THAT HE DENIES SEEING --

2. MR. KLEIN: BRODEY TESTIFIED THAT HE AND BARENS
3. WERE SHARING THEIR INFORMATION. THIS IS HIS REPORT, WHICH
4. WAS DONE BEFORE BARENS' REPORT, AND THIS IS RIGHT ABOUT
5. THE TIME THAT THE GUILT PHASE JURY IS OUT, WHICH IS
6. CIRCUMSTANTIAL EVIDENCE THAT THIS WITNESS WAS AVAILABLE AT
7. THE GUILT PHASE RATHER THAN THE PENALTY PHASE.

8. THE COURT: I WILL NOT RECEIVE 276.

9.

10. (REJECTED = PETITIONER'S 276.)

11.

12. THE COURT: 277?

13. MR. CRAIN: OFFERED.

14. MR. MC MULLEN: NO OBJECTION.

15. THE COURT: 277 IS RECEIVED.

16.

17. (REC. IN EVID. = PETITIONER'S 277.)

18.

19. THE COURT: 278?

20. MR. CRAIN: OFFERED.

21. MR. MC MULLEN: NO OBJECTION.

22. THE COURT: 278 IS RECEIVED.

23.

24. (REC. IN EVID. = PETITIONER'S 278.)

25.

26. THE COURT: 279?

27. MR. CRAIN: ALSO OFFERED.

28. MR. MC MULLEN: NO OBJECTION.

1 THE COURT: 279 IS RECEIVED.

2

3 (REC. IN EVID. = PETITIONER'S 279.)

4

5 THE COURT: 280?

6 MR. CRAIN: OFFERED.

7 MR. MC MULLEN: OBJECTION ON THIS ONE. IT IS OUR

8 RECOLLECTION THAT HUNT SAID THAT THIS DOCUMENT WAS NOT

9 GIVEN TO ARTHUR BARENS.

10 MR. CRAIN: I THINK THIS IS A DOCUMENT THAT HE

11 TESTIFIED THAT IT WAS, THAT THE SUBSTANCE OF IT WAS

12 COMMUNICATED TO BARENS, AND IT IS CIRCUMSTANTIAL EVIDENCE

13 OF THOSE COMMUNICATIONS.

14 THE COURT: 280 WILL BE RECEIVED.

15

16 (REC. IN EVID. = PETITIONER'S 280.)

17

18 THE COURT: 281?

19 MR. CRAIN: OFFERED.

20 MR. MC MULLEN: NO OBJECTION.

21 THE COURT: 281 IS RECEIVED.

22

23 (REC. IN EVID. = PETITIONER'S 281.)

24

25 THE COURT: 282?

26 MR. CRAIN: OFFERED.

27 MR. MC MULLEN: NO OBJECTION.

28 THE COURT: 282 IS RECEIVED.

1 (REC. IN EVID. = PETITIONER'S 282.)

2

3 THE COURT: 283?

4 MR. CRAIN: OFFERED.

5 MR. MC MULLEN: NO OBJECTION.

6 THE COURT: 283 IS RECEIVED.

7

8 (REC. IN EVID. = PETITIONER'S 283.)

9

10 THE COURT: 284?

11 MR. CRAIN: OFFERED.

12 MR. MC MULLEN: NO OBJECTION.

13 THE COURT: 284 IS RECEIVED.

14

15 (REC. IN EVID. = PETITIONER'S 284.)

16

17 THE COURT: 285?

18 MR. CRAIN: OFFERED.

19 MR. MC MULLEN: NO OBJECTION.

20 THE COURT: 285 IS RECEIVED.

21

22 (REC. IN EVID. = PETITIONER'S 285.)

23

24 THE COURT: 286?

25 MR. MC MULLEN: NO OBJECTION.

26 THE COURT: 286 IS RECEIVED.

27

28 (REC. IN EVID. = PETITIONER'S 286.)

1 THE COURT: 287?

2 MR. CRAIN: IT IS THE NOVEMBER -- THAT'S OFFERED.

3 MR. MC MULLEN: NO OBJECTION.

4 THE COURT: 287 IS RECEIVED.

5

6 (REC. IN EVID. = PETITIONER'S 287.)

7

8 THE COURT: 288?

9 MR. CRAIN: OFFERED.

10 MR. MC MULLEN: WE HAVE AN OBJECTION ON THIS ONE ON
11 RELEVANCY GROUNDS, THAT THIS WAS NOT COMMUNICATED TO
12 ARTHUR BARENS.

13 THE COURT: OVERRULED.

14 MR. CRAIN: THANK YOU.

15 THE COURT: 288 IS RECEIVED.

16

17 (REC. IN EVID. = PETITIONER'S 288.)

18

19 THE COURT: 289?

20 MR. CRAIN: OFFERED.

21 MR. MC MULLEN: WE WOULD OBJECT TO THIS ONE. THERE
22 WAS NO EVIDENCE THAT ARTHUR BARENS --

23 THE COURT: THIS WASN'T WHAT?

24 MR. MC MULLEN: THERE WAS NO EVIDENCE PRESENTED
25 THAT ARTHUR BARENS RECEIVED THIS EXHIBIT.

26 MR. CRAIN: AGAIN, THERE WAS TESTIMONY BY MR. HUNT
27 ABOUT IT, AND THAT HE COMMUNICATED THE MATTER REFERRED TO
28 IN THE DOCUMENT TO MR. BARENS DURING THEIR APRIL

1 COMMUNICATION. AND HE TESTIFIED THAT THIS DOCUMENT ALONG
2 WITH MANY OTHERS WAS MADE AVAILABLE TO MR. BARENS, AND
3 THAT FACT WAS COMMUNICATED TO MR. BARENS, ALTHOUGH
4 MR. BARENS CHOSE NOT TO AVAIL HIMSELF OF THESE DOCUMENTS.

5 THE COURT: 289 IS RECEIVED.

6

7 (REC. IN EVID. = PETITIONER'S 289.)

8

9 THE COURT: 290?

10 MR. CRAIN: OFFERED.

11 MR. MC MULLEN: WE WOULD OBJECT TO THIS ONE. THERE
12 WAS NO QUESTIONING ON THIS EXHIBIT, AND SO IT IS
13 IRRELEVANT.

14 MR. CRAIN: I DON'T RECALL. I BELIEVE THAT'S NOT
15 CORRECT RECOLLECTION.

16 MR. MC MULLEN: IT WAS MARKED, BUT NEVER USED, IS
17 OUR RECOLLECTION.

18 MR. CRAIN: I BELIEVE MR. HUNT MADE REFERENCE
19 BECAUSE IT HAD THE 30 MILLION DOLLAR FIGURE IN IT.

20 MR. KLEIN: YESTERDAY WHEN THERE WAS REFERENCE TO
21 OTHER DOCUMENTS THAT ARE AVAILABLE --

22 THE COURT: WAIT A SECOND.

23 I WILL RECEIVE 290.

24

25 (REC. IN EVID. = PETITIONER'S 290.)

26

27 THE COURT: 291?

28 MR. CRAIN: OFFERED.

1 MR. MC MULLEN: OBJECTION. RELEVANCE.

2 MR. CRAIN: THESE ARE KILPATRICK'S NOTES. THERE
3 WAS MUCH TESTIMONY ABOUT THAT.

4 MR. MC MULLEN: THERE IS NO CONTEXT TO THE NOTES.
5 OTHER THAN THEY WERE LEFT IN AN OFFICE.

6 MR. CRAIN: MR. KILPATRICK TESTIFIED ABOUT THE
7 SUBJECT CONTAINED IN THE NOTES. MR. HUNT TESTIFIED ABOUT
8 THEM.

9 THE COURT: ONE OF THE PROBLEMS WITH THE TESTIMONY
10 WAS HE DID NOT KNOW WHEN THEY WERE CREATED, OR WHAT THEY
11 RELATED TO SPECIFICALLY.

12 MR. CRAIN: HE TESTIFIED IN A GENERAL SENSE THEY
13 RELATED TO THE ESSENCE OF THE NEGOTIATIONS. MR. HUNT
14 IDENTIFIED THEM, AND SAID WHEN THEY WERE LEFT AT THE
15 MICROGENESIS OFFICE.

16 THE COURT: HE DID. I WILL RECEIVE THEM.

17 291 WILL BE RECEIVED.

18

19 (REC. IN EVID. = PETITIONER'S 291.)

20

21 THE COURT: 292?

22 MR. MC MULLEN: WE WOULD OBJECT ON RELEVANCY
23 GROUNDS. KILPATRICK DIDN'T EVEN RECOGNIZE THIS DOCUMENT,
24 IS OUR RECOLLECTION.

25 MR. CRAIN: MR. HUNT TESTIFIED ABOUT THIS DOCUMENT.

26 THE COURT: THAT IS CORRECT. HE DIDN'T RECOGNIZE,
27 BUT MR. HUNT DID LAY A FOUNDATION. I WILL ACCEPT 292.

28

1 (REC. IN EVID. = PETITIONER'S 292.)

2

3 THE COURT: WE ACCEPTED 293.

4

WE GO TO 294.

5

MR. MC MULLEN: NO OBJECTION.

6

THE COURT: 294 IS RECEIVED.

7

8

(REC. IN EVID. = PETITIONER'S 294.)

9

10

THE COURT: 295?

11

MR. CRAIN: OFFERED.

12

MR. MC MULLEN: WE WOULD OBJECT. AGAIN,

13

MR. KILPATRICK DIDN'T REMEMBER THIS DOCUMENT.

14

MR. CRAIN: MR. HUNT TESTIFIED ABOUT THIS JUST AS

15

HE DID THE OTHER ONE.

16

MR. MC MULLEN: AND, ALSO, HUNT WAS NOT EVEN SURE

17

HE DISCUSSED THIS WITH ARTHUR BARENS.

18

MR. CRAIN: HE INDICATED HE DISCUSSED THE SUBSTANCE

19

OF THE FACTS SET FORTH IN THAT WITH BARENS AND TOLD BARENS

20

THERE WAS A DOCUMENT THAT WAS AVAILABLE TO BARENS HAD HE

21

CHOSEN TO.

22

THE COURT: I WILL NOT ACCEPT 295. THERE HAS BEEN

23

NO FOUNDATION LAID.

24

25

(REJECTED = PETITIONER'S 295.)

26

27

THE COURT: 296?

28

MR. CRAIN: OFFERED.

1 MR. MC MULLEN: OBJECTION ON RELEVANCY GROUNDS.
2 THIS WAS NOT GIVEN TO ARTHUR BARENS.

3 MR. CRAIN: AS THE COURT POINTED OUT EARLIER --
4 THE COURT: THERE WAS FOUNDATION LAID, I WILL
5 ACCEPT 296.

6

7 (REC. IN EVID. = PETITIONER'S 296.)

8

9 THE COURT: 297?

10 MR. CRAIN: OFFERED.

11 MR. MC MULLEN: SAME OBJECTION.

12 THE COURT: 297 WILL BE RECEIVED.

13

14 (REC. IN EVID. = PETITIONER'S 297.)

15

16 THE COURT: 298?

17 MR. CRAIN: OFFERED.

18 MR. MC MULLEN: SAME OBJECTION.

19 THE COURT: THERE WAS NO FOUNDATION FOR THIS. THIS
20 WAS EVERYBODY LOOKING AT IT TRYING TO DRAW SOME
21 CONCLUSIONS FROM IT.

22 MR. CRAIN: I WAS GOING TO SAY I BELIEVE MR. HUNT
23 TESTIFIED FOR SEVERAL MINUTES ABOUT THIS, ABOUT MATTERS
24 CONTAINED THEREIN THAT HE RELATED ON --

25 THE COURT: BUT HE SAID SOMEBODY ELSE, I CAN'T
26 REMEMBER, BUT SOMEBODY ELSE BROUGHT THIS BACK FROM CANADA,
27 AND HE WAS SHOWN THIS AND SAYING, "THIS SOUNDS ABOUT
28 RIGHT."

1 MR. CRAIN: BUT HE TESTIFIED THAT AS TO TWO THINGS,
2 YOUR HONOR, SOME OF THE MATERIALS CONTAINED IN THE ARTICLE
3 HE SAID HE CORROBORATED, HE COMMUNICATED THOSE MATTERS TO
4 BARENS AND REFERRED TO THIS ARTICLE AS SOMETHING THAT
5 BARENS COULD AND SHOULD LOOK AT IN ORDER TO FOLLOW UP ON
6 THE LEADS THAT MR. HUNT WAS GIVING HIM ABOUT THE MEETING
7 IN CANADA AND THE REPRESENTATIONS THAT HAD BEEN MADE THERE
8 BY KILPATRICK AND OTHERS. SO I THINK A VERY GOOD
9 FOUNDATION WAS LAID.

10 THE COURT: I WILL NOT ACCEPT 298.

11
12 (REJECTED = PETITIONER'S 298.)

13
14 THE COURT: WE DID NOT USE 299.

15 330?

16 MR. CRAIN: OFFERED.

17 MR. MC MULLEN: NO OBJECTION.

18 THE COURT: IT WILL BE RECEIVED.

19
20 (REC. IN EVID. = PETITIONER'S 300.)

21
22 THE COURT: 301?

23 MR. CRAIN: OFFERED.

24 MR. MC MULLEN: SAME OBJECTION AS 296, IT WAS NOT
25 GIVEN TO ARTHUR BARENS. RELEVANCY GROUNDS. ANOTHER NEWS
26 RELEASE.

27 MR. CRAIN: WE LAID A FOUNDATION, I THINK, CLEARLY
28 THROUGH MR. HUNT'S TESTIMONY.

1 MR. MC MULLEN: ALSO, KILPATRICK DIDN'T EVEN
2 REMEMBER THIS.

3 THE COURT: RIGHT.

4 THE PETITIONER: COULD WE HAVE JUST A SECOND, YOUR
5 HONOR?

6 THE COURT: YES.

7

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

10

11 MR. CRAIN: CAN I JUST MAKE ONE POINT. BARENS
12 CLAIMS THAT HE DIDN'T WANT TO USE THIS BECAUSE IT WOULD
13 HAVE REFLECTED, THAT IT WOULD HAVE SUGGESTED TO THE JURY
14 THAT SOMEHOW THERE WAS A SCAM GOING ON OR SOMETHING OF
15 THAT NATURE.

16 WHEREAS THESE DOCUMENTS WHICH MR. HUNT SAID
17 WERE AVAILABLE TO BARENS COULD HAVE BEEN USED BY HIM TO
18 UNDERSTAND THE KILPATRICK NEGOTIATIONS AND TO SHOW THE
19 JURY THAT IN FACT THESE ARE LEGITIMATE NEGOTIATIONS AND
20 THAT THERE WAS NO SCAM. AND THAT THE PROBLEM WAS IN
21 BARENS' MIND HE DIDN'T JUST UNDERSTAND WHAT IT WAS ALL
22 ABOUT. SO IT IS EASY FOR HIM TO SAY THAT.

23 WHAT WE DID, AND ATTEMPTED TO DO IN DEFERENCE
24 TO THE COURT'S DESIRE TO MOVE AHEAD ON THE PROCEEDINGS,
25 WAS TO MAKE AVAILABLE TO THE COURT A HOST OF DOCUMENTS
26 THAT MR. HUNT HAD PRESENT WITH HIM ON THE WITNESS STAND,
27 AND IN DEFERENCE TO THE COURT'S DESIRES, ATTEMPTED TO BE
28 VERY BE SELECTIVE WITH REGARD TO THESE, BUT THESE ARE

1 DOCUMENTS, ALL OF THESE THAT MR. HUNT TESTIFIED ABOUT AND
2 TESTIFIED THAT THE CONTENTS OF THEM WERE MATTERS THAT HE
3 DISCUSSED WITH ARTHUR BARENS, AND THAT THESE WERE
4 MATERIALS THAT WERE AVAILABLE TO ARTHUR BARENS IN ORDER
5 FOR BARENS TO LEARN WHAT IT WAS ALL ABOUT INVOLVING
6 KILPATRICK AND TO PRESENT THIS CRITICAL EVIDENCE TO THE
7 JURY TO REFUTE THE PROSECUTION'S FINANCIAL MOTIVE
8 EVIDENCE.

9 SO THAT'S WHY I HAD MR. HUNT TESTIFY AS TO
10 THESE, YOU KNOW, WE COULD HAVE GONE ON FOR DAYS WITH
11 DOCUMENTS THAT WERE AVAILABLE TO BARENS AND SHOWN THEM TO
12 THE COURT. I HAD AN EXTENSIVE LISTS OF THOSE DOCUMENTS,
13 BUT CLEARLY THESE MR. HUNT TESTIFIED ABOUT, HIS ENTIRE 300
14 SERIES.

15 IT REFUTES BARENS' CLAIMS THAT HE MADE SOME
16 SORT OF TACTICAL DECISION BECAUSE, AS THE COURT KNOWS, YOU
17 CAN'T MAKE A TACTICAL DECISION WITHOUT HAVING THE FACTS.
18 STRICKLAND MAKES THAT CLEAR. HE DIDN'T HAVE THE FACTS.
19 HE DIDN'T KNOW WHAT THE FACTS WERE, AND THESE WERE
20 DOCUMENTS THAT WOULD HELPED DEMONSTRATE TO HIM VERY
21 CLEARLY WHAT THE TRUE FACTS WERE, SO HE WOULD GO FORWARD
22 WITH MR. HUNT'S DEFENSE RATHER THAN JUST SIT ON HIS HANDS
23 AND DO NOTHING AND ALLOW MR. WAPNER TO HARP AGAIN AND
24 AGAIN ON THE FINANCIAL MOTIVE THEORY OF THE PROSECUTION.

25 MR. MC MULLEN: BECAUSE THEY WEREN'T GIVEN TO
26 MR. BARENS. THEY ARE NOT RELEVANT.

27 THE COURT: HOLD ON. HOLD ON.

28 I WILL RECEIVE 301. THERE WAS SUFFICIENT

1 FOUNDATION.

2

3

(REC. IN EVID. = PETITIONER'S 301.)

4

5

THE COURT: 302?

6

MR. CRAIN: OFFERED.

7

MR. MC MULLEN: OBJECTION. NO FOUNDATION AND

8

RELEVANCY.

9

MR. CRAIN: OBJECTION REASON. I AM SORRY. THIS IS

10

EISENBERG FALSE DRIVER'S LICENSE WHERE HE DEFRAUDED THE

11

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES.

12

THE COURT: I WON'T ACCEPT IT.

13

14

(REJECTED = PETITIONER'S 302.)

15

16

THE COURT: 303?

17

MR. CRAIN: WELL, THERE WAS TESTIMONY ABOUT THIS.

18

MR. EISENBERG WAS INVOLVED IN OPERATING A SIDELINE

19

BUSINESS OF BEING INVOLVED IN STOLEN CARS, AND THIS WAS A

20

TRANSCRIPT OF THE TAPE RECORDING THAT REFLECTED THAT HE

21

AND MR. TAGLANETTI, HIS PARTNER IN CRIME, WERE DOING THIS

22

BEHIND MR. HUNT'S BACK. IT DEMONSTRATES CHARACTER

23

EVIDENCE ADMISSIBLE UNDER HARRIS AND WHEELER IN THE SENSE

24

OF PRIOR MISDEEDS INVOLVING MORAL TURPITUDE.

25

MR. MC MULLEN: I ASSUME THEY ARE OFFERING IT. IF

26

THEY ARE, WE ARE OBJECTING ON RELEVANCY GROUNDS.

27

THE COURT: SUSTAINED.

28

I WILL NOT ACCEPT 303.

1 (REC. IN EVID. = PETITIONER'S 303.)

2

3 THE COURT: 304?

4 MR. CRAIN: OFFERED. THIS WAS SOMETHING MR. HUNT
5 TESTIFIED ABOUT. THE COURT ASKED HIM QUESTIONS ABOUT
6 THESE OTHER INVESTORS. THESE --

7 THE COURT: IS THERE AN OBJECTION?

8 MR. MC MULLEN: THERE IS AN OBJECTION TO THIS ON
9 RELEVANCY GROUNDS.

10 THE COURT: I WILL ACCEPT 304.

11

12 (REC. IN EVID. = PETITIONER'S 304.)

13

14 THE COURT: 305?

15 MR. CRAIN: OFFERED.

16 MR. MC MULLEN: NO OBJECTION.

17 THE COURT: 305 IS RECEIVED.

18

19 (REC. IN EVID. = PETITIONER'S 305.)

20

21 THE COURT: 306?

22 MR. CRAIN: OFFERED.

23 MR. MC MULLEN: OBJECTION. AGAIN, ON RELEVANCY
24 GROUNDS THIS WAS NOT GIVEN TO ARTHUR BARENS.

25 THE COURT: I WILL ACCEPT 306.

26

27 (REC. IN EVID. = PETITIONER'S 306.)

28

1 THE COURT: 307?

2 MR. CRAIN: OFFERED.

3 MR. MC MULLEN: NO OBJECTION.

4 THE COURT: 307 IS RECEIVED.

5

6 (REC. IN EVID. = PETITIONER'S 307.)

7

8 THE COURT: 308?

9 MR. CRAIN: THE ADELMAN LETTER. I DON'T HAVE THE
10 NUMBER.

11 THE COURT: THIS IS A LETTER TO O'DONNELL FROM
12 ADELMAN.

13 MR. CRAIN: YES, OFFERED.

14 MR. MC MULLEN: NO OBJECTION.

15 THE COURT: 308 IS RECEIVED.

16

17 (REC. IN EVID. = PETITIONER'S 308.)

18

19 THE COURT: 309?

20 MR. CRAIN: OFFERED.

21 MR. MC MULLEN: WE WOULD OBJECT ON RELEVANCY
22 GROUNDS. IT -- ALL THESE DOCUMENTS THAT WERE MARKED AT
23 THE VERY END OF THE HEARING --

24 MR. KLEIN: THE COURT HAS ALREADY REFUSED THIS.

25 THE COURT: I ALLOWED THEM TO MARK IT FOR
26 IDENTIFICATION.

27

309 IS NOT RECEIVED.

28

1 (REJECTED = PETITIONER'S 309.)

2

3 MR. KLEIN: I NOTE THAT WE FORGOT TO PUT ON THE
4 LIST THE INTERROGATORIES TO MR. BARENS AND THE ANSWERS TO
5 INTERROGATORIES. WE WOULD OFFER THOSE ALSO. THOSE WERE
6 THE RESPONSES TO THE QUESTIONS THAT HE WOULD NOT ANSWER IN
7 THE DEPOSITION FOR ETHICAL REASONS, HIS SWORN RESPONSES,
8 HIS FOLLOW-UP QUESTIONS THAT THE COURT PERMITTED AS PART
9 OF THE COURT RECORD.

10 THE COURT: ANY OBJECTION TO MARKING THOSE?

11 MR. MC MULLEN: NO OBJECTION.

12 THE COURT: ALL RIGHT.

13 YOU NEED TO GIVE US A COPY.

14 MR. KLEIN: I DIDN'T BRING A COPY TO COURT, I WILL
15 HAVE TO GET YOU A COPY.

16 THE COURT: I NEED A COPY OF THE INTERROGATORIES
17 AND NEED A COPY OF THE ANSWERS TO INTERROGATORIES. I NEED
18 THOSE THIS MORNING, AND THAT WILL BE MARKED AS 310

19 THE CLERK: THE INTERROGATORIES AND ANSWERS?

20 THE COURT: YES. WE WILL MARK BOTH DOCUMENTS AS
21 ONE EXHIBIT, AND THEY WILL BE RECEIVED INTO EVIDENCE.

22

23 (MARKED FOR ID = PETITIONER'S 310,
24 DOCUMENT.)

25

26 (REC. IN EVID. = PETITIONER'S 310.)

27

28 THE COURT: ALL RIGHT.

1 THAT WOULD APPEAR TO BE PETITIONER'S
2 EXHIBITS.

3 LET'S TURN TO RESPONDENT'S. I HAVE A MARKED.
4 MR. MC MULLEN: NOT OFFERED.

5
6 (NOT OFFERED = RESPONDENT'S A.)

7
8 THE COURT: D, AS IN DAVID?

9 MR. MC MULLEN: NOT OFFERED.

10
11 (NOT OFFERED = RESPONDENT'S D.)

12
13 THE COURT: G?

14 MR. MC MULLEN: NOT OFFERED.

15
16 (NOT OFFERED = RESPONDENT'S G.)

17
18 THE COURT: H?

19 MR. CRAIN: COULD I HAVE JUST A MOMENT?

20 MR. MC MULLEN: NOT OFFERED.

21 MR. CRAIN: HOLD ON. CAN I HAVE ONE MOMENT?

22 THE COURT: SURE.

23
24 (PAUSE.)

25
26 MR. CRAIN: IN VIEW OF THEIR POSITION THAT THEY
27 DON'T WISH TO OFFER G, WE WOULD OFFER IT.

28 THE COURT: YOU MEAN H?

1 MR. CRAIN: NO G, BARENS DECLARATION.

2 MR. MC MULLEN: WE WOULD OBJECT TO IT. HEARSAY.

3 MR. KLEIN: IN LIGHT OF THE COURT RECEIVING THE
4 DEPOSITION AND INTERROGATORIES, THIS WOULD CONTAIN PRIOR
5 INCONSISTENT AND CONSISTENT STATEMENTS TO HIS
6 EXPLANATIONS.

7 THE COURT: WELL, THIS IS THE PROBLEM OF ADMITTING
8 ONE PORTION OF THE MATTER HEARSAY. YOU BOTH AGREED TO PUT
9 IN THE DEPOSITION OF BARENS, AND THEN YOU AGREE TO --

10 MR. KLEIN: WE DIDN'T, BUT THE COURT OVERRULED OUR
11 OBJECTION.

12 THE COURT: YOU MOVED IT IN. YOU WANTED.

13 MR. CRAIN: FOR LIMITED REASONS.

14 MR. CRAIN: WE OFFERED IT FOR PARTIAL REASONS.

15 THE COURT: IT WAS STILL HERE.

16 MR. KLEIN: APPARENTLY IT IS NOW IN FOR ALL
17 PURPOSES, SO WE ARE NOW OFFERING G. WE ANTICIPATED THEY
18 WERE OFFERING IT, THAT'S WHY --

19 THE COURT: I WILL ACCEPT G TO GIVE CONTEXT TO THE
20 OTHER EXHIBITS NOTING PARENTHETICALLY IT IS HEARSAY.

21

22 (REC. IN EVID. = RESPONDENT'S G.)

23

24 THE COURT: H?

25 MR. MC MULLEN: NOT OFFERED.

26

27 (NOT OFFERED = RESPONDENT'S H.)

28

1 THE COURT: ALL RIGHT.

2 I?

3 MR. MC MULLEN: WE ARE OFFERING --

4 THE COURT: ANY OBJECTION?

5 MR. MC MULLEN: I DON'T HAVE THAT.

6 THE COURT: THOMAS GUIDE PAGE 41. I ASSUME THAT'S
7 THE BRENTWOOD --

8 MR. MC MULLEN: RIGHT, THE BOARD WITH THE MAPS.
9 WE ARE OFFERING THAT.

10 THE COURT: THAT WILL BE RECEIVED.

11

12 (REC. IN EVID. = RESPONDENT'S I.)

13

14 THE COURT: J?

15 MR. MC MULLEN: I THINK J WAS MARKED, BUT IT IS NOT
16 BEING OFFERED.

17 THE COURT: BUT YOU DO HAVE IT MARKED?

18 MR. MC MULLEN: YES. ON APRIL 22ND OUR RECORDS
19 REFLECT --

20 THE COURT: BUT YOU ARE NOT OFFERING IT; CORRECT?

21 MR. MC MULLEN: CORRECT.

22

23 (NOT OFFERED = RESPONDENT'S J.)

24

25 THE COURT: OKAY.

26 K?

27 MR. MC MULLEN: NOT OFFERED.

28

1 (NOT OFFERED = RESPONDENT'S K.)

2

3 THE COURT: L?

4 MR. MC MULLEN: NOT OFFERED.

5

6 (NOT OFFERED = RESPONDENT'S L.)

7

8 THE COURT: M?

9 MR. MC MULLEN: OFFERED.

10 THE COURT: ANY OBJECTION?

11 MR. CRAIN: NO.

12 THE COURT: IT WILL BE RECEIVED.

13

14 (REC. IN EVID. = RESPONDENT'S M.)

15

16 THE COURT: N?

17 MR. MC MULLEN: NOT OFFERED.

18

19 (NOT OFFERED = RESPONDENT'S N.)

20

21 THE COURT: O?

22 MR. MC MULLEN: NOT OFFERED.

23

24 (NOT OFFERED = RESPONDENT'S O.)

25

26 THE COURT: R --

27 MR. MC MULLEN: OFFERED,

28 THE COURT: -- -1, -2 AND -3?

1 MR. MC MULLEN: OFFERED.

2 THE COURT: ANY OBJECTION?

3 MR. CRAIN: NO.

4 THE COURT: R-1, -2 AND -3 ARE RECEIVED INTO
5 EVIDENCE.

6

7 (REC. IN EVID. = RESPONDENT'S R-1
8 THROUGH R-3.)

9

10 THE COURT: U?

11 MR. MC MULLEN: NOT OFFERED.

12

13 (NOT OFFERED = RESPONDENT'S U.)

14

15 THE COURT: DO YOU HAVE V MARKED?

16 V WAS MARKED; IS THAT RIGHT?

17 MR. CRAIN: V-1 AND V-2.

18 MR. MC MULLEN: RIGHT. APRIL 30TH.

19 THE COURT: I GOT A NOTE HERE, BUT I DON'T HAVE A
20 CHECK MARK.

21 DOES THE CLERK SHOW IT HAVING BEEN MARKED?

22 THE CLERK: V-1 AND V-2.

23 THE COURT: THAT EXPLAINS MY NOTE THEN.

24 MR. MC MULLEN: NOT OFFERED.

25 MR. CRAIN: THEN WE OFFER THEM.

26 MR. MC MULLEN: OBJECTION. HEARSAY.

27 THE COURT: IT IS HEARSAY.

28 MR. KLEIN: THERE ARE TWO OTHER DECLARATIONS, I

1 BELIEVE, THAT WERE RECEIVED.

2 THE COURT: V-1 AND -2 ARE HEARSAY.

3 MR. CRAIN: THEY ARE PRIOR CONSISTENT STATEMENTS BY
4 MR. ADELMAN IN CORROBORATION OF HIS TRUTHFUL TESTIMONY.

5 THE COURT: I UNDERSTAND.

6

7 (NOT OFFERED = RESPONDENT'S V-1 AND V-2.)

8

9 THE COURT: W?

10 MR. MC MULLEN: NOT OFFERED.

11

12 (NOT OFFERED = RESPONDENT'S W.)

13

14 THE COURT: X?

15 MR. MC MULLEN: NOT OFFERED.

16

17 (NOT OFFERED = RESPONDENT'S X.)

18

19 THE COURT: Y?

20 MR. MC MULLEN: NOT OFFERED.

21

22 (NOT OFFERED = RESPONDENT'S Y.)

23

24 THE COURT: THE NEXT ONE I HAVE IS G.

25 MR. CRAIN: CAN WE GO BACK TO W FOR JUST A MINUTE.
26 WE OFFERED THIS FOR THE LIMITED PURPOSE OF SHOWING LACK OF
27 CREDIBILITY OF MR. KILPATRICK -- OF COURSE, KILPATRICK WAS
28 ALL OVER THE PLACE BY THE END OF TESTIMONY. HE BASICALLY

1 CONFIRMED THE PETITIONER'S POSITION IN REGARD TO THE
2 NEGOTIATIONS, BUT TO THE EXTENT HE EARLIER GAVE
3 INCONSISTENT TESTIMONY, WE WOULD OFFER THIS FOR NONHEARSAY
4 PURPOSES, CIRCUMSTANTIAL EVIDENCE OF HIS LACK OF
5 CREDIBILITY.

6 THE COURT: I WILL NOT ACCEPT W.

7 GG IS THE NEXT ONE I HAVE.

8 MR. MC MULLEN: NOT OFFERED.

9

10 (NOT OFFERED = RESPONDENT'S GG.)

11

12 MR. CRAIN: WAS X AND Y NOT OFFERED?

13 MR. MC MULLEN: CORRECT.

14 MR. CRAIN: GG THAT'S NOT OFFERED?

15 MR. MC MULLEN: CORRECT.

16 THE COURT: HH?

17 MR. MC MULLEN: NOT OFFERED.

18

19 (NOT OFFERED = RESPONDENT'S HH.)

20

21 THE COURT: THE NEXT ONE I HAVE IS MM.

22 MR. MC MULLEN: WE OFFER THAT.

23 MR. CRAIN: I THINK IT IS REALLY IRRELEVANT.

24 THE COURT: I WILL ADMIT MM.

25

26 (REC. IN EVID. = RESPONDENT'S MM.)

27

28 MR. CRAIN: THAT'S AN, "OH, BY THE WAY," YOUR

1 HONOR.

2 THE COURT: I THOUGHT IT WAS.

3 NEXT ONE I HAVE IS QQ.

4 WHAT IS QQ?

5 MR. MC MULLEN: PHOTO OF LEVIN'S OFFICE.

6 THE COURT: PHOTO OF LEVIN'S OFFICE?

7 MR. MC MULLEN: YES.

8 MR. CRAIN: NO OBJECTION.

9 THE COURT: ALL RIGHT.

10 QQ IS RECEIVED.

11

12 (REC. IN EVID. = RESPONDENT'S QQ.)

13

14 THE COURT: RR?

15 MR. MC MULLEN: OFFERED.

16 MR. CRAIN: NO OBJECTION.

17 THE COURT: RR IS RECEIVED.

18

19 (REC. IN EVID. = RESPONDENT'S RR.)

20

21 THE COURT: SS?

22 MR. CRAIN: WE OFFERED THIS AMENDED -- I AM SORRY.

23 YOU ARE NOT OFFERING IT?

24 MR. MC MULLEN: YES, NOT OFFERED.

25 THE COURT: YOU ARE NOT OFFERING IT.

26 YOU ARE MOVING IT IN; IS THAT CORRECT?

27 MR. KLEIN: CAN WE CLARIFY R IS A DIAGRAM CONNIE

28 GERRARD DREW OF THE DIAGRAM?

1 MR. KLEIN: WE HAVE NO OBJECTION.

2 MR. CRAIN: KILPATRICK -- WE OFFER THIS AGAIN FOR
3 THE SAME REASONS THAT WE OFFERED EXHIBIT W. IT REFLECTS
4 PARTICULARLY WITH THE BELATED AMENDMENT THAT
5 MR. KILPATRICK THREW IN ON THE MIDNIGHT HOURS AS HE
6 ASCENDED THE WITNESS STAND. THIS REFLECTS HIS LACK OF
7 CREDIBILITY AS TO THE EXTENT THAT HE INITIALLY TOOK THE
8 POSITION CONTRARY TO PETITIONER'S POSITION, ALTHOUGH HE
9 LATER APPEARED TO COME AROUND ONCE HE REVIEWED THE
10 DOCUMENT.

11 THE COURT: I WILL NOT ACCEPT SS.

12

13 (REJECTED = RESPONDENT'S SS.)

14

15 THE COURT: TT?

16 MR. MC MULLEN: OFFERED.

17 THE COURT: ANY OBJECTION?

18 MR. KLEIN: CAN I MAKE A QUICK PHONE CALL, YOUR
19 HONOR?

20 THE COURT: WHY DON'T YOU JUST WAIT UNTIL WE FINISH
21 THESE LAST FEW EXHIBITS.

22 MR. CRAIN: WE OBJECT ON THE GROUNDS OF LACK OF
23 FOUNDATION AS TO WHERE THIS DOCUMENT CAME FROM AND WHETHER
24 OR NOT IT REALLY IS WHAT IT PURPORTS TO BE. THERE IS NO
25 TESTIMONY THAT LEVIN HAD ANYTHING TO DO WITH IT.

26 MR. KLEIN: WHICH ONE IS THIS?

27 MR. CRAIN: TT.

28 MR. MC MULLEN: THIS WAS THE DOCUMENT THAT

1 KILPATRICK TESTIFIED WAS SHOWN TO HIM DURING THE MEETING
2 AS PART OF THE NEGOTIATIONS?

3 THE COURT: RIGHT.

4 I WILL ACCEPT TT.

5

6 (REC. IN EVID. = RESPONDENT'S TT.)

7

8 THE CLERK: YOUR HONOR, I DIDN'T GET THE RULING ON
9 SS.

10 THE COURT: I WILL NOT ACCEPT IT.

11 UU?

12 MR. MC MULLEN: OFFERED.

13 MR. CRAIN: WE OBJECT TO THAT. IT IS HEARSAY, AND
14 IT IS IRRELEVANT.

15 THE COURT: I WILL ACCEPT UU.

16

17 (REC. IN EVID. = RESPONDENT'S UU.)

18

19 THE COURT: VV?

20 MR. MC MULLEN: OFFERED.

21 THE COURT: THAT WAS THE LITTLE CASSETTE TAPE, THE
22 MICROCASSETTE TAPE THAT WE HEARD LAST ABOUT 30 SECONDS.

23 MR. CRAIN: OBJECTION.

24 THE COURT: VV WILL BE RECEIVED.

25

26 (REC. IN EVID. = RESPONDENT'S VV.)

27

28 THE COURT: WW?

1 MR. MC MULLEN: NOT OFFERED.

2

3 (NOT OFFERED = RESPONDENT'S WW.)

4

5 THE COURT: AND XX, 14 PHOTOS.

6 MR. CRAIN: OBJECTION AS IRRELEVANT.

7 MR. MC MULLEN: OFFERED.

8 THE COURT: I WILL ACCEPT IT.

9

10 (REC. IN EVID. = RESPONDENT'S XX-1

11 THROUGH XX-14.)

12

13 THE COURT: ALL RIGHT.

14 ANY OTHER RESPONDENT'S EXHIBITS?

15 MR. MC MULLEN: THAT'S ALL.

16 MR. CRAIN: CAN I JUST ADD ONE OBJECTION TO UU?

17 MR. WERNER TESTIFIED THAT THERE WAS A SERVICE THAT RON
18 LEVIN ATTENDED. THE DOCUMENTATION THAT MR. PEARCE
19 PROVIDED THE COURT RELATIVE TO WHAT HE DID FOR THE REMAINS
20 OF ALAN SAXON INDICATES THAT ALL HE DID WAS BURIED IN THE
21 GROUND, AND THAT THERE WAS NO SERVICE.

22 SO IT IS IMPOSSIBLE FOR THAT TO HAVE BEEN THE
23 BODY OR, YOU KNOW, THAT MR. WERNER WAS TALKING ABOUT
24 BECAUSE THERE WAS NO SERVICE RELATIVE TO THE INTERNMENT OF
25 THAT BODY.

26 THE COURT: ALL RIGHT.

27 I WILL ACCEPT THE RECORD.

28 OKAY.

1 PETITIONER REST?

2 MR. KLEIN: WELL, YOUR HONOR, WE HAD SUBPOENAED
3 FROM THE "DAILY NEWS" AND THEY HAD SWORN THAT THEY HAD
4 MAILED --

5 MR. CRAIN: YOU HONOR, I SAW IT HERE ON THE
6 CLERK'S --

7 THE COURT: THE ADS OR NOT THE ADS, THE ARTICLES?

8 MR. CRAIN: ARTICLE SHOWING LEVIN'S PICTURE DID IN
9 FACT APPEAR IN THE DAILY NEWS IT CORROBORATES MR. WERNER'S
10 TESTIMONY THAT HE SAW AN ARTICLE IN THE LOCAL NEWSPAPER.

11 THE COURT: WHERE IS IT?

12 MR. CRAIN: WITH LEVIN'S PICTURES.

13 THE COURT: IT WAS DELIVERED HERE, AND I SAW IT. I
14 DON'T KNOW.

15 I SAW IT, AND I TOLD THE CLERK TO GIVE IT TO
16 COUNSEL.

17 MR. KLEIN: I NEVER SAW IT. I AM HAVING ANOTHER
18 COPY DELIVERED THIS MORNING BECAUSE I NEVER SAW IT.

19 THE COURT: ANY OBJECTION TO THAT WHEN IT ARRIVES?

20 MR. KLEIN: THEY HAVE SEEN A COPY OF IT.

21 MR. MC MULLEN: WHEN WE SEE A COPY, PROBABLY NO
22 OBJECTION.

23 THE COURT: ALL RIGHT.

24 WHEN WE GET A COPY.

25 DON'T FORGET THE INTERROGATORIES AND ANSWERS.

26 MR. KLEIN: I NEED TO MAKE THIS ONE PHONE CALL
27 BEFORE I REST. IT WILL TAKE ONE MINUTE.

28 THE COURT: WHY? WE ARE RESTING. THIS IS IT.

1 MR. KLEIN: WHAT I HAVE BEEN TRYING TO FIND OUT
2 SINCE MR. PEARCE TESTIFIED ABOUT THE DEATH OF MR. SAXON IS
3 WHETHER THERE WAS AN ARTICLE IN THE "L.A. TIMES" LIKE HE
4 SAID. AND SO IF THERE IS NO ARTICLE IN THE "L.A. TIMES,"
5 I AM TRYING TO OFFER EVIDENCE OF THAT, AND THIS IS WHAT
6 THE PHONE CALL IS ABOUT. AND I SHOULD HAVE AN ANSWER.

7 THE COURT: LET'S WRAP IT UP.

8 MR. CRAIN: THE ONLY PROBLEM, MR. PEARCE LAID THIS
9 ON US, YOU KNOW. WE HAD NO PRIOR WARNING OF THIS. HE
10 TOOK THE WITNESS STAND AS SOON AS HE -- I THINK
11 MR. KLEIN -- AS SOON AS MR. PEARCE LEFT THE WITNESS STAND
12 HE HAS BEEN ATTEMPTING TO GET THIS INFORMATION, AND WE ARE
13 GOING --

14 MR. KLEIN: IT IS GOING TO EXIST OR NOT EXIST. I
15 AM GOING TO KNOW WITH A PHONE CALL.

16 THE COURT: WHO DO YOU HAVE TO CALL?

17 MR. KLEIN: AN INVESTIGATOR, YOUR HONOR.

18 THE COURT: MAKE THE PHONE CALL.

19 MR. KLEIN: THANK YOU.

20 MR. CRAIN: THANK YOU VERY MUCH.

21

22 (PAUSE.)

23

24 THE COURT: ALL RIGHT.

25 ANYTHING ADDITIONAL?

26 MR. KLEIN: NOTHING ADDITIONAL.

27 MR. CRAIN: JUST ONE SECOND.

28

1 (PAUSE.)

2

3 MR. CRAIN: WE REST, YOUR HONOR.

4 THE COURT: RESPONDENT REST?

5 MR. MC MULLEN: YES.

6 THE COURT: ALL RIGHT.

7 I AM GOING TO SET A BRIEFING SCHEDULE FOR
8 FINAL BRIEFS. I WILL ASK YOU TO BE CONCISE AND TO THE
9 POINT, CITING TO HEARING RECORDS. YOU CAN REFER TO THE
10 TRIAL IN SANTA MONICA AS RT BECAUSE THAT'S WHAT WE HAVE
11 ALWAYS USED.

12 CITATION TO THE RECORD HERE SHOULD BE HT. SO
13 WE DO NOT CONFUSE WHICH EVIDENTIARY HEARING WE ARE TALKING
14 ABOUT WHETHER THE SANTA MONICA TRIAL OR THIS HEARING.

15 I WILL ASK YOU TO BE AS CONCISE AS POSSIBLE
16 AND -- HOW ABOUT TWO WEEKS FROM TODAY FOR PETITIONER'S
17 OPENING BRIEF.

18 MR. KLEIN: HOW ABOUT THREE WEEKS?

19 MR. CRAIN: YOU SAID TWO TO THREE.

20 THE COURT: I AM BACKING OFF. THE PROBLEM IS I AM
21 TRYING TO WORK ON SOME DATES. TELL YOU WHAT. HOW ABOUT I
22 WILL GIVE YOU TWO AND A HALF, TO THE 31ST OF MAY. GIVE
23 YOU TO THE END OF THE MONTH.

24 MR. CRAIN: ALL RIGHT.

25 THE COURT: AND THEN THE PEOPLE WILL HAVE TWO WEEKS
26 TO THE 14TH BECAUSE THEY CAN START WORKING ON THEIRS NOW,
27 AND THEN ANY REPLY THE 21TH, AND CLOSING ARGUMENT JUNE
28 28TH.

1 MR. KLEIN: I AM GOING TO BE OUT OF COUNTRY JUNE
2 28TH. I AM COMING BACK JULY 5TH, YOUR HONOR.

3 THE COURT: WHERE ARE YOU GOING? DEPENDS WHERE YOU
4 ARE GOING.

5 MR. MC MULLEN: I THINK HE IS GOING TO FRANCE. I
6 BET.

7 THE COURT: DO NOT GO TO MYKONOS.

8 MR. KLEIN: I AM GOING TO PARIS.

9 THE COURT: FOR PARIS YOU CAN GO.
10 WHEN ARE YOU GETTING BACK.

11 MR. KLEIN: I THINK I AM COMING BACK JULY 5TH.

12 THE COURT: DID YOU SAY --

13 MR. KLEIN: JULY 5TH. SO ANY DAY AFTER JULY 5TH.

14 THE COURT: WHEN DO YOU LEAVE?

15 MR. KLEIN: THE 23RD.

16 THE COURT: ALL RIGHT.

17 CLOSING ARGUMENT, THEN, JULY THE 8TH. SO IF
18 BRIEFS MAY 31ST, RESPONDENT'S BRIEF MAY THE 14TH --

19 MR. MC MULLEN: JUNE THE 14TH?

20 THE COURT: SORRY.

21 MR. KLEIN: JUNE THE 14TH.

22 THE COURT: ANY REPLY JUNE THE 21ST.

23 AND I AM LOOKING FOR CONCISE. I WAS THINKING
24 OF SETTING A PAGE LIMITATION. I WILL ASSUME THAT YOU WILL
25 TAKE MY ADVICE ABOUT CONCISE TO MEAN NOT LONG WINDED, I DO
26 NOT NEED 100 PAGE BRIEFS, I NEED YOU TO ADDRESS ISSUES.

27 IN TERMS OF -- AND I WILL ASK YOU TO CITE TO
28 THE REPORTER'S TRANSCRIPT OF THIS HEARING TO SUBSTANTIATE

1 YOUR POINT.

2 THE PEOPLE NEED TO ADDRESS THE NEW EVIDENCE,
3 SPECIFICALLY THE NADIA GHALIEB AND CONNIE GERRARD
4 TESTIMONY. IF I WERE TO FIND THAT TO BE CREDIBLE AND HOW
5 THAT SHOULD BE DEALT WITH.

6 THERE IS SOME OF THE WITNESSES I WILL ASK YOU
7 TO TRY TO ADDRESS, IF I DO NOT FIND WITNESSES CREDIBLE I
8 SIMPLY DO NOT BELIEVE THEM, HOW THAT SHOULD BE DEALT WITH.

9 THAT'S SOMETHING THAT THE PEOPLE NEED TO
10 FOCUS MOST OF THEIR ATTENTION ON.

11 RESPONDENT NEEDS TO FOCUS THEIR ATTENTION ON
12 IF I FIND MR. BARENS' CREDIBLE AS TO HIS STATEMENT THAT
13 MR. HUNT CONFESSED TO HIM, WHAT IMPACT THAT HAS NOT ONLY
14 ON ISSUE 1 BUT ISSUE 2, OR I SHOULD SAY NOT ONLY ON ISSUE
15 2 BUT ISSUE 1, IF AT ALL.

16 AND THE WHOLE ISSUE OF AN ATTORNEY MAKING A
17 DECISION THAT THIS EVIDENCE, THAT IS THE MICROGENESIS
18 NEGOTIATIONS WOULD EITHER BE SO COMPLEX AS TO CONFUSE THE
19 JURY OR WOULD CONVINCED THE JURY THAT IT WAS SNAKE OIL, AS
20 DESCRIBED BY MR. BARENS, AND, THEREFORE, HOW IT REFLECTS
21 ADVERSELY ON MR. HUNT. THOSE ARE THE TWO BIG ISSUES BOTH
22 SIDES NEED TO FOCUS ON.

23 ON THE REMAINING ISSUES, YOU CAN DEAL WITH
24 THEM. I WILL ASK YOU TO BE BRIEF ON THOSE. I DON'T FIND
25 A LOT OF MERIT IN ANY OF THEM. THAT'S PRETTY CLEAR FROM
26 THE WAY WE HAVE FOCUSED THIS HEARING DOWN TO CERTAIN
27 EVIDENTIARY ISSUES. YOU MAY ADDRESS THEM.

28 I WOULD ALSO -- I BELIEVE WHEN I RULED IN THE

1 LATTER HALF OF MARCH AS TO WHAT ISSUES I WOULD TAKE
2 ADDITIONAL TESTIMONY ON, MR. HUNT OFFERED TO WITHDRAW
3 CERTAIN ISSUES. I SAID I WOULD NOT TAKE THAT AT THIS TIME
4 BECAUSE HE MAY WANT TO THINK ABOUT THAT, HE MAY WANT TO
5 CONFER WITH COUNSEL.

6 ANY ISSUE THAT YOU WANT TO WITHDRAW SHOULD BE
7 SET FORTH CLEARLY IN YOUR BRIEF. I WOULD ENCOURAGE YOU TO
8 DO SO.

9 MR. MC MULLEN: WITH RESPECT TO THIS BRIEF, DID YOU
10 WANT US TO ADDRESS ALL OF THE ISSUES THAT ARE IN THE
11 O.S.C., OR ARE THEY ARE LIMITED TO WHAT HAS BEEN
12 LITIGATED?

13 THE COURT: YOU WANT TO FOCUS ON THE LITIGATION OF
14 THIS HEARING. I WOULD SUGGEST THAT YOU -- I, IN MY
15 WRITTEN ORDER I NEED TO ADDRESS ALL OF THE ISSUES, SO I
16 WOULD SUGGEST THAT YOU CAN BRIEFLY DESCRIBE YOUR POSITIONS
17 AND CITE TO THE RECORD ON EACH OF THOSE, BUT I THINK IT IS
18 FAIRLY CLEAR THAT I DON'T FIND A LOT OF MERIT OF THE OTHER
19 ISSUES THAT WE HAVEN'T DEALT WITH.

20 MR. KLEIN: WHAT ABOUT THE PLEADING THAT WE HAD
21 FILED ON MARCH 29TH. HAS THE COURT MADE ANY PROGRESS?

22 THE COURT: I AM AT PAGE 88. ONE OF THE THINGS I
23 WANT TO DO THIS WEEK -- IT IS GOING TO BE 1475, IT HAS GOT
24 TO. I DON'T SEE ANYWAY AROUND IT.

25 I HAVE READ -- FROM WHAT I HAVE READ HERE
26 THERE IS NOTHING ADDITIONAL THAT WOULD CAUSE ME TO EXPAND
27 THE SCOPE OF THIS HEARING. THAT HAS BEEN SHOWN, I HAVE
28 LOOKED AT IT IN TERMS OF WHAT WAS COMING IN IN TERMS OF

1 BARENS' TESTIMONY AND MR. HUNT'S TESTIMONY. I THINK YOU
2 HAVE GOT ONE ADDITIONAL ISSUE THAT IS FROM PAGE 90, 200 ON
3 OR PAGE 89 TO 95, SOMETHING LIKE THAT. I DON'T REMEMBER.

4 MR. KLEIN: THAT'S JUST CROSS-EXAMINATION.

5 THE COURT: I HAVEN'T LOOKED AT IT IN A FEW DAYS.

6 MR. KLEIN: THE LAST ISSUE IS LACK OF PROPER
7 CROSS-EXAMINATION BY MR. BARENS COMPARED TO THE
8 EXAMINATION THAT MR. HUNT DID.

9 MR. CRAIN: IT WASN'T JUST THAT IT WAS BARENS'
10 CROSS-EXAMINATION. IN FACT --

11 THE COURT: BROUGHT OUT THE ISSUE, THE VERY ISSUE
12 AND IN FACT REFUTES HIS CLAIMS HERE. I MIGHT POINT OUT WE
13 ARE GOING TO FOCUS THAT IN PART.

14 MR. KLEIN: WHICH WE DID IN OUR CROSS-EXAMINATION.

15 MR. CRAIN: WHAT HE DID WAS DIRECTLY CONTRARY TO
16 THE STATED REASONS FOR NOT DOING OTHER THINGS.

17 THE COURT: WELL --

18 MR. CRAIN: WE WILL --

19 THE COURT: YOU CAN DEAL WITH THAT. I SUGGEST YOU
20 REALLY FOCUS ON KEEPING IN MIND THE STANDARDS HERE, AND
21 COUNSEL SHOULD, YOU KNOW, STATE BRIEFLY AGAIN THE
22 STANDARDS. WE ARE NOT TO REJUDGE THE DECISION. WE ARE TO
23 DETERMINE WHETHER THIS IS, MEETS THE STANDARD OR WHETHER
24 THERE IS INEFFECTIVE ASSISTANCE OF COUNSEL. FOCUS ON
25 THOSE.

26 MR. CRAIN: IF IT DOES, I THINK WE HAVE REACHED IT.
27 WE WILL DETAIL THAT IN OUR PLEADING.

28 THE COURT: LOOK AT THOSE CASES, THEY HAVE LET A

1 WHOLE LOT SLIDE.

2 MR. MC MULLEN: JUST A POINT OF CLARIFICATION. YOU
3 HAVE OUTLINED A COUPLE OF ISSUES THAT PETITIONER SHOULD BE
4 CONCERNED WITH. DID YOU WANT US TO ADDRESS THOSE ISSUES
5 AS WELL?

6 THE COURT: SURE. I WANT TO YOU ADDRESS EVERYTHING
7 CONCISE, TO THE POINT, TIGHTLY DRAFTED.

8 MR. KLEIN: IN LESS THAN A THOUSAND PAGES.

9 THE COURT: WELL LESS THAN 1000 PAGES. I WILL BE
10 QUITE BLUNT IF IT IS TOO LONG, TOO WORDY IT WILL NOT BE OF
11 ANY ASSISTANCE. YOU WILL DO NEITHER OF YOUR SIDES ANY
12 GOOD.

13 I HAVE SOME IDEAS OF SOME CREDIBILITY ISSUES.
14 DESPITE STATEMENTS MADE IN PLEADINGS I HAVE NOT MADE UP MY
15 MIND, ESPECIALLY AS TO ISSUE 1. THAT IS THE PROBABLY THE
16 MOST COMPELLING ARGUMENT MADE BY PETITIONER MUCH AS I
17 THOUGHT A YEAR AND A HALF WHEN I FIRST LOOKED AT THIS
18 MATERIAL.

19 THE SECOND ISSUE THAT HAS POTENTIAL MERIT,
20 AND I SAY ONLY POTENTIAL, I HAVE NOT MADE UP MY MIND IS
21 THE BARENS' COMPETENCE OF COUNSEL.

22 MR. CRAIN: ALL WE ARE ASKING FOR, AS THE COURT
23 WELLS KNOWS, THE COURT'S DECISION WHATEVER IT MAY BE, IF
24 IT IS IN MR. HUNT'S FAVOR IS NOT A PASS TO GO HOME. IT IS
25 MERELY THAT HE GET A TRIAL BEFORE A JURY THAT HAS THE
26 OPPORTUNITY TO HEAR THIS SAME EVIDENCE AND MAKE ITS OWN
27 DECISION AS JURORS FROM THE COMMUNITY.

28 THE COURT: I UNDERSTAND.

1 ALL RIGHT.

2 WHAT DATE DID I SAY, JULY 8TH?

3 THE CLERK: YES.

4 THE COURT: DEFENDANT AND COUNSEL WILL BE ORDERED
5 TO RETURN, APPEAR JULY 8TH AT 9:00 A.M. FOR FINAL ARGUMENT
6 ON BRIEFS AND TO MEET THE BRIEFING SCHEDULED.

7 BE KIND TO EACH OTHER. MAKE SURE YOU GET
8 YOUR BRIEFS TO THE OTHER SIDE THE SAME DAY.

9 I WILL, WITHIN THE NEXT FEW DAYS, FINISH THAT
10 HABEAS CORPUS AND CUT AN ORDER. PROBABLY I CAN ALMOST
11 TELL YOU FOR SURE IT IS GOING TO BE A 1475 REFERRAL. SO
12 YOU KNOW THAT'S COMING.

13 SO IF YOU WANT, IF I DO DO IT A 1475, YOU
14 MIGHT SAVE YOURSELF TIME AND EFFORT, IF YOU WANT TO PURSUE
15 IT, TO FILE IT DIRECTLY WITH THE COURT OF APPEAL RATHER
16 THAN WAITING FOR THE CLERK'S OFFICE TO PACKAGE STUFF UP
17 AND SEND IT TO THE COURT OF APPEAL. BUT I WILL LET YOU
18 DECIDE WHATEVER YOU WANT TO DO.

19 MR. CRAIN: VERY WELL.

20 THE COURT: SEE YOU FOLKS ALL BACK JULY 8TH.

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

22 MR. CRAIN: THAT'S AT 9 O'CLOCK.

23 THE COURT: 9 O'CLOCK.

24 BEFORE I DO, LET ME JUST MAKE SURE THAT JULY
25 8TH WAS A GOOD DATE.

26 LET ME SEE THE RED BOOK.

27

28 (PAUSE.)

1 THE COURT: YES.

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(AT 10:05 A.M. AN ADJOURNMENT WAS

4

TAKEN UNTIL MONDAY,

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JULY 8TH, 1996 AT 9:00 A.M.)

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