

IN RE JOE HUNT ON HABEAS CORPUS, B059613  
IN RE JOE HUNT ON HABEAS CORPUS, B059615  
LASC CASE NO. A090435

**2. HUNT EVIDENTIARY HEARING FILE**

**e. TRANSCRIPTS**

**Volume I**

<u>No.</u>	<u>Description of Document</u>	<u>Date Generated</u>
1	Reporter's Transcript of Proceedings, 04/22/96, Vol. 2, Evidentiary Hearing, Testimony of C. Gerrard, Holmes, Marmor	Rcv'd 04-23-96
2	Reporter's Transcript of Proceedings, 04/23/96, Vol. 3, Evidentiary Hearing, Testimony of Marmor, Robinson	Rcv'd 04-29-96

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

DEPARTMENT NO. 101

HON. J. STEPHEN CZULBEGER, JUDGE

COURT OF APPEALS  
FILED  
SECOND DIST.

DEC 01 1997

JOSEPH A. LANE  
Z. HERALDEZ  
NO. A090435  
AND  
NO. A392702  
Clerk  
Deputy Clerk

IN RE )  
JOSEPH HUNT AND KENNETH EARL GAY, )  
ON HABEAS CORPUS )

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
FRIDAY, SEPTEMBER 8, 1995

APPEARANCES:

FOR PETITIONER HUNT: KLEIN & CRAIN, A LAW CORPORATION  
ROWAN K. KLEIN  
AND  
MICHAEL M. CRAIN  
3201 WILSHIRE BOULEVARD  
SUITE 312  
SANTA MONICA, CALIFORNIA 90403

FOR PETITIONER GAY: RICHARD URDAN  
ONE MARITIME PLAZA  
SAN FRANCISCO, CALIFORNIA 94111  
AND  
MARTIN H. DODD  
601 CALIFORNIA STREET  
SAN FRANCISCO, CALIFORNIA 94111

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

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FOR THE RESPONDENT:

DANIEL LUNGRUN  
ATTORNEY GENERAL  
BY: DAVID GLASSMAN, DEPUTY  
AND  
LANCE WINTERS, DEPUTY  
300 SOUTH SPRING STREET  
SUITE 500  
LOS ANGELES, CALIFORNIA 90013

M. HELEN THEISS, CSR, #2264  
OFFICIAL COURT REPORTER



1 LOS ANGELES, CALIFORNIA, FRIDAY, SEPTEMBER 8, 1995

2 9:10 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 AND MICHAEL CRAIN, ATTORNEYS AT LAW;  
8 ANDREW MC MULLEN AND IMOGENE KATAYAMA, DEPUTY  
9 DISTRICT ATTORNEYS OF LOS ANGELES COUNTY,  
10 REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA;  
11 THE PETITIONER, KENNETH EARL GAY, APPEARING THROUGH  
12 HIS COUNSEL MARTIN H. DODD, ATTORNEY AT LAW; DAVID  
13 F. GLASSMAN AND LANCE WINTERS, DEPUTY ATTORNEYS  
14 GENERAL, REPRESENTING THE PEOPLE OF THE STATE OF  
15 CALIFORNIA; PATRICIA DANIELS, FROM THE CALIFORNIA  
16 APPELLATE PROJECT.

17  
18 (M. HELEN THEISS, CSR #2264, OFFICIAL REPORTER.)

19  
20 THE COURT: ALL RIGHT.

21 LET ME CALL THE CASE OF IN RE KENNETH EARL  
22 GAY.

23 FIRST, COUNSEL, PLEASE MAKE YOUR APPEARANCES  
24 FOR THE RECORD.

25 MR. GLASSMAN: GOOD MORNING, YOUR HONOR.

26 DAVID GLASSMAN, G-L-A-S-S-M-A-N, DEPUTY  
27 ATTORNEY GENERAL, FOR THE RESPONDENT.

28 MR. WINTERS: LANCE WINTERS, DEPUTY ATTORNEY

1 GENERAL, FOR THE RESPONDENT.

2 MR. DODD: GOOD MORNING.

3 MARTIN DODD FOR PETITIONER KENNETH EARL GAY.  
4 WITH ME IN THE COURTROOM IS PATRICIA DANIELS FROM THE  
5 CALIFORNIA APPELLATE PROJECT.

6 MR. URDAN WAS NOT ABLE TO MAKE IT THIS  
7 MORNING. HE IS ON A JAMS PANEL AND IT TURNS OUT HE HAD TO  
8 ARBITRATE A CASE IN CHICAGO THIS MORNING. THIS MATTER WAS  
9 SET, BUT HE WAS 99 PERCENT SURE IT WAS GOING TO SETTLE.

10 THE COURT: AT THIS TIME LET ME CALL THE CASE OF IN  
11 RE JOE HUNT.

12 COUNSEL, PLEASE MAKE YOUR APPEARANCES FOR THE  
13 RECORD.

14 MR. CRAIN: MICHAEL CRAIN, C-R-A-I-N, FOR MR. HUNT.

15 MR. KLEIN: ROWAN KLEIN, ALSO FOR MR. HUNT, YOUR  
16 HONOR.

17 MR. MC MULLEN: ANDREW MC MULLEN FOR THE PEOPLE.

18 MS. KATAYAMA: IMOGENE KATAYAMA FOR THE PEOPLE.

19 THE COURT: I AM CALLING BOTH CASES AT THIS TIME  
20 BECAUSE BOTH CASES INVOLVE VERY CLOSE OR IDENTICAL ISSUES  
21 THAT I WANTED TO HEAR ORAL ARGUMENT ON AT THE SAME TIME.

22 IN THE GAY CASE A MOTION HAS BEEN FILED BY  
23 THE PEOPLE TO PRECLUDE THE PETITIONER FROM INTRODUCING  
24 EVIDENCE, COMMONLY CALLED STRICKLAND EVIDENCE, BY THE WAY  
25 OF EXPERT TESTIMONY. I HAVE READ AND CONSIDERED THE  
26 MOTIONS, THE OPPOSITIONS AND THE REPLIES AND THE VARIOUS  
27 MATERIAL THAT HAS BEEN FILED IN THAT.

28 IN THE HUNT CASE A MOTION HAS BEEN FILED ON

1 BEHALF OF MR. HUNT TO HAVE THIS COURT APPOINT A STRICKLAND  
2 EXPERT. IN DECIDING WHETHER OR NOT TO DO THAT I DECIDED  
3 TO ATTEMPT TO REACH THE ISSUE WHETHER OR NOT A STRICKLAND  
4 EXPERT WOULD BE ALLOWED TO TESTIFY AT THE HEARING AND,  
5 THEREFORE, ASKED FOR BRIEFING ON THAT ISSUE, RECEIVED THAT  
6 BRIEFING BOTH FROM THE PETITIONER AND RESPONDENT AND SOME  
7 REPLY BRIEFS. I HAVE READ ALL OF THAT MATERIAL.

8 AFTER LOOKING AT ALL OF THE MATERIAL I  
9 THOUGHT IT APPROPRIATE, SINCE THE ISSUES ARE VIRTUALLY  
10 IDENTICAL, TO HEAR ORAL ARGUMENT AT THE SAME TIME AND  
11 PERHAPS GIVE YOU FOLKS THE BENEFIT OF EACH OTHER'S SIDE,  
12 SINCE AT THIS POINT THE RESPONDENTS ARE SEEKING A  
13 STRICKLAND EXPERT TO TESTIFY AND THE PETITIONERS ARE  
14 SAYING THERE IS NO SUCH THING VIRTUALLY AS A STRICKLAND  
15 EXPERT, IT SHOULD NOT BE ALLOWED AT THIS TIME.

16 LET ME HEAR FROM COUNSEL FOR THE RESPONDENT  
17 IN THE GAY CASE, THAT IS THE MOVING PARTY SEEKING TO  
18 PRECLUDE INTRODUCTION OF STRICKLAND EVIDENCE IN THE GAY  
19 CASE.

20 THE RECORD SHOULD REFLECT, I DON'T KNOW IF  
21 BOTH SIDES HAVE SPOKEN, THESE ARE HABEAS CORPUS PETITIONS  
22 ONE IN THE NATURE OF A REMAND FROM THE CALIFORNIA SUPREME  
23 COURT ASKING THIS COURT TO IDENTIFY OR TO ANSWER CERTAIN  
24 IDENTIFIABLE ISSUES, AND THE HUNT CASE IS A REMAND FROM  
25 THE CALIFORNIA COURT OF APPEALS ASKING THIS COURT TO  
26 RESOLVE CERTAIN ISSUES.

27 MR. GLASSMAN?

28 MR. GLASSMAN: THANK YOUR, HONOR.

1                   DAVID GLASSMAN FOR THE RESPONDENT.

2                   JUST SO THAT THE RECORD IS CLEAR, AS THE  
3 COURT HAS INDICATED THE GAY MATTER INVOLVED THE REMAND  
4 FROM THE SUPREME COURT REGARDING AN EVIDENTIARY HEARING  
5 INTO COUNSEL'S COMPETENCY IN A CAPITAL CASE.

6                   WHILE I WOULD IMAGINE THAT OUR POSITION WOULD  
7 BE COMPLIMENTARY TO THE POSITION TAKEN BY MR. MC MULLEN I  
8 AM ADDRESSING MYSELF TO WHAT WE VIEW AS THE PARTICULAR  
9 CRITERIA TO BE APPLIED IN CAPITAL CASES. BECAUSE ITS OUR  
10 VIEW THAT THE SUPREME COURT HAS BEEN QUITE CLEAR IN THE  
11 CORDERO CASE MOST RECENTLY OR RATHER IN THE ROSS CASE MOST  
12 RECENTLY AND ORIGINALLY IN THE CORDERO CASE THAT  
13 STRICKLAND EXPERTS ARE NOT WITHIN THE SCOPE OF THESE  
14 HEARINGS. THAT THIS COURT, THAT IS THIS TRIAL COURT HAS  
15 BEEN ASKED TO MAKE PARTICULAR FACTUAL AND ARGUABLY LEGAL  
16 DETERMINATIONS BUT THAT THESE ARE MATTERS WHICH THIS COURT  
17 IS QUALIFIED TO MAKE.

18                  THE COURT: DO YOU THINK -- DO YOU BELIEVE -- IS IT  
19 YOUR POSITION THAT NO STRICKLAND EXPERT IS NECESSARY  
20 BECAUSE OF THE SPECIFIC ORDER OF THE CALIFORNIA SUPREME  
21 COURT OR ARE YOU SAYING NO STRICKLAND EXPERT IS NECESSARY  
22 IN DEATH PENALTY CASES?

23                  MR. GLASSMAN: I WOULD BE PREPARED TO ARGUE THAT NO  
24 STRICKLAND EXPERT IS REQUIRED IN DEATH PENALTY CASES AS A  
25 MATTER OF LAW. AND THE REASON FOR THAT I THINK HAS BEEN  
26 EXPLAINED BY COURTS THAT HAVE REVIEWED THE SAME ISSUE,  
27 APPELLATE COURTS. BY THAT I AM REFERRING TO THE DISTRICT  
28 COURT'S OPINION, UNITED STATES DISTRICT ATTORNEY'S OPINION

1 IN BONIN AND THE COURT OF APPEAL'S OPINION MOST RECENTLY  
2 IN HENDRICKS, WHICH I SUBMITTED TO THE COURT.

3 SO IN OUR VIEW AS A MATTER OF LAW THAT WOULD  
4 APPLY IN GENERAL TO THE ATTEMPT TO ADD A STRICKLAND EXPERT  
5 INTO THE CASE. MOREOVER, AND THIS IS WHERE AGAIN I AM  
6 ADDRESSING MYSELF TO A CAPITAL CASE SPECIFICALLY WITH  
7 ISSUES THAT MAY OR MAY NOT APPLY TO REMANDS FROM A COURT  
8 OF APPEAL, BUT IN THE CONTEXT OF THESE CASES I DON'T THINK  
9 THE CALIFORNIA SUPREME COURT COULD HAVE BEEN MUCH MORE  
10 CLEAR THEN IT WAS IN CORDERO AND IN ROSS WHEN IT SAYS, "WE  
11 NO LONGER NEED STRICKLAND EXPERTS." THAT'S EXACTLY HOW I  
12 READ THOSE OPINIONS.

13 I THINK THAT THEIR RESPONSE, FOR EXAMPLE, IN  
14 THE GAY CASE, WELL THE SUPREME COURT HAS ALLOWED THIS IN  
15 THE PAST, AND GAY CITES THE FRIERSON CASE. FRIERSON, AS I  
16 RECALL, IS 25 CAL. 3RD. WE ARE A LONG WAYS A WAY FROM  
17 FRIERSON AT THIS POINT IN TERMS OF WHAT THE SUPREME COURT  
18 CONTEMPLATES IN THESE CASES. AND, MOREOVER, REGARDLESS OF  
19 WHAT THE SUPREME COURT HAS, I THINK, SPECIFICALLY SAID THE  
20 FACT OF THE MATTER IS THAT THE SCOPE OF THE GAY HEARING  
21 AND OSTENSIBLY THE OTHER HEARING I AM SURE IS CLEAR, THE  
22 COURT KNOWS WHAT ISSUES ARE TO BE ADDRESSED.

23 HABEAS COUNSEL FOR THESE PETITIONERS ARE  
24 ESSENTIALLY CRIMINAL LAW EXPERTS THE ONLY THING THAT IS  
25 BEING ADDED BY A STRICKLAND EXPERT IN THESE PROCEEDINGS,  
26 AS I SAID IN MY LAST SUBMITTED PAPER, THE COLOR COMMENTARY  
27 OF ANOTHER CRIMINAL COUNSEL TO PILE ONTO TRIAL COUNSEL.

28 THE COURT: LET ME ASK YOU THIS: LET'S ASSUME THAT

1 THE ISSUE WAS AN ISSUE OF PATENT LAW, SOMETHING THAT IS A  
2 LITTLE MORE REMOTE FROM CRIMINAL LAW. ONE COULD ARGUE  
3 THAT, OF COURSE, YOU WOULD NEED A STRICKLAND EXPERT  
4 BECAUSE SOME PRACTITIONERS OF LAW ARE NOT TO FAMILIAR WITH  
5 THE PRACTICE IN THAT PARTICULAR AREA. I GATHER FROM THE  
6 PEOPLE, FROM MR. GAY'S COUNSEL -- THAT'S ADMIRALTY LAW AND  
7 PATENT LAW -- ALTHOUGH YOU HAVEN'T SEEN THEM IT IS  
8 VIRTUALLY THE SAME WITH MR. HUNT'S ATTORNEYS ARGUING THAT  
9 THE DEATH PENALTY IS A PARTICULARIZED AREA AS WELL  
10 REQUIRING A PARTICULARIZED EXPERTISE THAT WOULD ASSIST THE  
11 TRIER OF FACT. GRANTED THE TRIER OF FACT HERE IS NOT A  
12 JURY, THE TRIER OF FACT IS A COURT AND HOPEFULLY HAS SOME  
13 UNDERSTANDING OF CRIMINAL PROCEDURES. BUT DO YOU THINK  
14 THAT MAKES A DIFFERENCE, THE FACT THAT IT IS A DEATH  
15 PENALTY? DOES THAT FALL UNDER THAT CATEGORY THAT I  
16 SUGGESTED OF THE PATENT LAW AND ADMIRALTY LAW?

17 MR. GLASSMAN: FIRST OF ALL, YOUR HONOR, AGAIN TO  
18 REITERATE, THE SUPREME COURT IS WELL AWARE OF THE CAPITAL  
19 CONTEXT OF THESE CASES AND IT IS THE SUPREME COURT IN OUR  
20 VIEW THAT IS REMINDING US THAT IT DOES NOT CONSIDER A  
21 LEGAL OPINION NECESSARY OR EVEN APPROPRIATE IN THESE  
22 CASES. SO THAT IS WHAT THE SUPREME COURT TELLS US ABOUT  
23 DEATH PENALTY HEARINGS.

24 SECOND OF ALL, THIS IS NOT A ESOTERIC AREA OF  
25 THE LAW THAT REQUIRES THE EXPERTISE OF A THIRD PARTY.  
26 THERE ARE SPECIFIC QUESTIONS BEING ASKED IN THESE CASES  
27 ABOUT MATTERS THAT WERE OR WERE NOT DONE AND IT IS NOT  
28 WITHIN THE PROVINCE OF A DEATH PENALTY LAWYER TO MAKE THE

1 ULTIMATE FACT DETERMINATION OF WHETHER THIS WAS A QUOTE  
2 UNQUOTE "COMPLETE INVESTIGATION." FOR EXAMPLE, THAT CAN  
3 BE DONE BY PRESENTING THE COURT WITH WHAT WAS DONE AND  
4 WHAT WASN'T DONE. AND THERE IS REALLY NO NEED FOR THE  
5 INTERPRETATION OF ANOTHER LAWYER. THAT'S OUR VIEW IN  
6 TERMS OF THE NEED FOR THIS COURT TO -- WE EXPECT A TRIAL  
7 BENCH OFFICER WAS A CRIMINAL LAWYER AND IS ACCUSTOMED TO  
8 DEALING WITH CRIMINAL LAWYERS.

9 THE COURT: NEVER TRIED DEATH CASES. DO YOU THINK  
10 THAT MAKES A DIFFERENCE? DO YOU THINK THAT THE STANDARD  
11 IS THAT THE BENCH OFFICER OR TRIER OF FACT HAS TO HAVE A  
12 CERTAIN QUANTUM OF INFORMATION OR DO YOU THINK THAT'S  
13 SOMETHING LEFT TO THE DISCRETION OF THE TRIER OF FACT TO  
14 DETERMINE IF IT WOULD BE HELPFUL TO THE TRIER OF FACT?

15 MR. GLASSMAN: WELL, AGAIN, I WOULD DISPUTE THE  
16 EXTENT FRANKLY OF DISCRETION, BUT THE FACT THAT PRIOR  
17 EXPERIENCE OF DEATH PENALTY LAW IS NOT SIGNIFICANT. IT IS  
18 NOT SIGNIFICANT, FOR EXAMPLE, IN THIS STRICKLAND VERSUS  
19 WASHINGTON ANALYSIS, THE LEVEL OF COUNSEL'S EXPERIENCE.  
20 THE FOCUS SHOULD BE ON WHAT WAS DONE AND WHAT WASN'T DONE  
21 AND WHETHER THAT WAS REASONABLE. AND THIS COURT IS  
22 PERFECTLY CAPABLE OF EVALUATING FACTUALLY WHAT WAS DONE  
23 AND WHAT WASN'T DONE, AND OBVIOUSLY THEN THE SUPREME COURT  
24 OR IN THE OTHER CASE THE COURT OF APPEAL ULTIMATELY  
25 REVIEWS THE REASONABLENESS OF THAT.

26 THE COURT: DOES TIME MATTER? FOR EXAMPLE, THIS  
27 CASE WAS TRIED IN -- THIS CASE WAS TRIED IN '82, '83.

28 MR. DODD: '84, '85.

1 MR. GLASSMAN: YOU ARE REFERRING TO THE GAY CASE,  
2 YOUR HONOR?

3 THE COURT: YES, THE GAY CASE.

4 IS THERE A DIFFERENT STANDARD? DOES THAT  
5 STANDARD CHANGE OVER TIME. OBVIOUSLY, IF WE ARE TALKING  
6 ABOUT MISSISSIPPI IN 1985 I ASSUME THE STANDARD WOULD BE  
7 MUCH DIFFERENT IN CALIFORNIA IN 1995. IS THAT SOMETHING  
8 THAT THE COURT NEEDS TO BE CONCERNED ABOUT, THE STANDARD  
9 CHANGES OVER TIME?

10 MR. GLASSMAN: YOUR HONOR --

11 THE COURT: NOT THE STANDARD SO MUCH AS WHAT IS  
12 COMPETENT COUNSEL AT A GIVEN POINT.

13 MR. GLASSMAN: WELL, INSOFAR AS TIMING IS CONCERNED  
14 ONE OF THE REASONS THAT I CITED THE HENDRICKS CASE WHICH  
15 IS IN TUESDAY'S, SEPTEMBER 5TH DAILY APPELLATE REPORT, IS  
16 THAT THE NINTH CIRCUIT THERE SPECIFICALLY SAYS, AND THEY  
17 ARE CERTAINLY NOT ADVERSE TO HENDRICKS BECAUSE THEY  
18 REVERSED THE PENALTY DETERMINATION IN THIS CASE, BUT THEY  
19 SAY, "WE DON'T APPLY 1995 EVALUATIONS TO A 1980 TRIAL."  
20 SO THE PROSPECTIVE, I THINK, FROM STRICKLAND VERSUS  
21 WASHINGTON AND THE CALIFORNIA SUPREME COURT REVIEW OF  
22 THESE CASES IS A DETERMINATION IS MADE BASED UPON THE  
23 FACTS AND CIRCUMSTANCES KNOWN AT THE TIME ULTIMATELY  
24 WHETHER OR NOT COUNSEL'S DECISIONS WERE REASONABLE.

25 AFTER ALL THE ISSUE IS WHETHER OR NOT AT THE  
26 TIME THE DEFENDANT OR THE PETITIONER RECEIVED A FAIR  
27 TRIAL. MANY THINGS HAVE CHANGED LEGALLY AND FACTUALLY IN  
28 ALL THESE CASES, THE LEGAL LANDSCAPE IS QUITE DIFFERENT.

1 THE ONLY ISSUE IN TERMS OF FAIRNESS OF THE PROCEEDING IS  
2 WHETHER OR NOT THE TRIAL WAS FAIR AT THE TIME NOT WHETHER  
3 OR NOT -- THERE ARE ALL SORTS OF VIEWS OF DIFFERENCE IN  
4 RETROSPECT, BUT CERTAINLY WE DON'T APPLY 1995 STANDARDS  
5 PER SE TO A 1985 TRIAL. MR. SHINN'S COMPETENCE ULTIMATELY  
6 WILL BE DETERMINED IN THE CONTEXT AND THE TIME FRAME OF  
7 MR. GAY'S CASE.

8 THE COURT: ALL RIGHT.

9 THANK YOU.

10 MR. DODD.

11 MR. DODD: GOOD MORNING. THANK YOU, YOUR HONOR.

12 I HAVE A NUMBER OF RESPONSES, I THINK, WHICH  
13 ARE SET FORTH IN OUR PAPERS, BUT I WOULD LIKE TO  
14 UNDERSCORE A NUMBER OF THOSE POINTS.

15 FIRST OF ALL, I THINK IT IS IMPORTANT FOR  
16 THIS COURT TO UNDERSTAND THAT NOT EVEN THE CALIFORNIA  
17 SUPREME COURT HAS HELD THAT IT IS INADMISSIBLE AS A MATTER  
18 OF LAW FOR A STRICKLAND EXPERT TO TESTIFY IN A HABEAS  
19 PROCEEDING. IN FACT --

20 THE COURT: DON'T YOU THINK IT IS PRETTY MUCH A  
21 DISCRETIONARY CALL?

22 MR. DODD: I DO BELIEVE IT IS DISCRETIONARY. I  
23 THINK THIS COURT CAN DECIDE ONE WAY OR THE OTHER. I WOULD  
24 LIKE TO PERSUADE YOUR HONOR THAT A STRICKLAND EXPERT OUGHT  
25 TO BE PERMITTED IN THIS CASE.

26 THE COURT: LET'S ASSUME I DO ALLOW STRICKLAND, I  
27 ASSUME HE IS OR SHE IS GOING TO COME IN AND SAY, "I HAVE  
28 REVIEWED THE MATERIAL SUBMITTED TO ME AND I HAVE COME TO

1 THE CONCLUSION THAT A REASONABLE COMPETENT ATTORNEY DURING  
2 THIS PERIOD OF TIME WOULD NOT HAVE DONE A, B AND C BUT  
3 WOULD HAVE DONE ONE, TWO AND THREE." THEN THE RESPONDENT  
4 CALLS AN EXPERT WHO SAYS, "I HAVE LOOKED AT THE STUFF AND  
5 A REASONABLE ATTORNEY WOULD NEVER HAVE DONE ONE, TWO AND  
6 THREE AND, OF COURSE, WOULD HAVE DONE A, B AND C."  
7 DOESN'T IT REALLY GET US BACK TO WHERE WE STARTED IN THE  
8 FIRST INSTANCE, AND THAT IS THAT I HAVE TO LOOK AT THAT  
9 KNOWING WHAT THE STANDARD OF LAW IS AND SAY, "HERE ARE THE  
10 SETS OF FACTS, I RESOLVED THEM, THERE MAY BE SOME  
11 CONFLICTS OF THOSE FACTS, I AM GOING TO RESOLVE THAT AN  
12 EXPERT I DON'T THINK IS OF ANY ASSISTANCE"? BUT ASSUMING  
13 WE OR I COME TO THE CONCLUSION AS TO A CERTAIN SET OF  
14 FACTS DON'T I THEN LOOK AT THE STANDARD THAT IS FAIRLY  
15 CLEAR, STRICKLAND ET. AL., AND DECIDE DOES THIS MEET THAT  
16 REGARDLESS OF WHAT THE EXPERT SAY?

17 MR. DODD: WELL, CERTAINLY, YOUR HONOR, YOU ARE  
18 ULTIMATELY THE DECISION MAKER HERE. THAT'S TRUE IN EVERY  
19 CASE WHERE EXPERTS HAVE BEEN CALLED THAT THE TRIER OF  
20 FACT, THE DECISION MAKER HAS GOT TO DECIDE WHETHER HE OR  
21 SHE BELIEVES THIS PARTICULAR EXPERT AS OPPOSED TO THAT  
22 PARTICULAR EXPERT GIVEN THE FACTS AND THE LAW AND THE  
23 CIRCUMSTANCES OF THE CASE. WE ARE NOT SUGGESTING THAT A  
24 STRICKLAND EXPERT IS GOING TO COME IN HERE AND TELL YOU  
25 HOW TO DECIDE. WE HOPE THAT OUR STRICKLAND EXPERT WILL  
26 CONVINCED YOU HOW YOU SHOULD DECIDE THIS CASE, BUT  
27 CERTAINLY WE ARE NOT SUGGESTING THAT YOUR ABILITY TO  
28 DECIDE THIS CASE HAS BEEN TAKEN AWAY.

1 THE COURT: I AM NOT SAYING THAT. I GUESS WHAT I  
2 AM SAYING IS WHAT IS THE EXPERTISE THAT THAT PERSON WOULD  
3 OFFER ME?

4 MR. DODD: AND I THINK THAT'S REALLY THE KEY HERE.  
5 WHAT THAT PERSON IS GOING TO BE ABLE TO SAY OR LIKE TO BE  
6 ABLE TO SAY THAT IN 1984, 1985 -- BY THE WAY, I DO BELIEVE  
7 THAT THE STANDARD AND TEST OUGHT TO BE WHAT WOULD A  
8 REASONABLE, COMPETENT LAWYER AT THAT TIME HAVE DONE IN  
9 THIS CASE, WHAT WOULD A REASONABLE, COMPETENT LAWYER HAVE  
10 UNDERTAKEN IN THE WAY OF INVESTIGATION AND FOR THE PENALTY  
11 PHASE INVESTIGATION, AND THAT EXPERT HOPEFULLY WILL BE  
12 ABLE TO COME IN AND EXPLAIN WHY HE OR SHE BELIEVES THAT A  
13 COMPETENT LAWYER WOULD HAVE UNDERTAKEN THINGS THAT  
14 MR. SHINN DID NOT DO, WOULD NOT HAVE DONE SOME OF THE  
15 THINGS THAT MR. SHINN DID DO. IF THEY CALLED -- AND THEN  
16 IT IS LEFT TO YOU TO DECIDE WHETHER GIVEN THOSE  
17 CIRCUMSTANCES WHETHER YOU BELIEVE THAT EXPERT OR NOT AND  
18 WHETHER YOU THINK THAT THAT EXPERT IS TESTIFYING AS TO  
19 WHAT THE STANDARD REALLY WAS AND OUGHT TO HAVE BEEN.

20 SO, I MEAN, YES ULTIMATELY WE COME BACK TO  
21 YOU, BUT THE PURPOSE IS TO HELP YOU MAKE THAT DECISION.  
22 JUST AS IN A LEGAL MALPRACTICE CASE IN A CIVIL CASE, THE  
23 ATTORNEYS AND THE JUDGE IN THE ROOM ALL HAVE THE SENSE  
24 PERHAPS, PROBABLY HAVE A SENSE OF WHAT THE MALPRACTICE IS  
25 ABOUT, BUT NONETHELESS IN A CIVIL CASE WE CALL LEGAL  
26 EXPERTS WHO TESTIFY AS TO WHAT THE STANDARD OF CARE IS.

27 THE COURT: BUT THEN YOU WOULD HAVE A JURY WHO  
28 WOULD NOT UNDERSTAND ARGUABLY THE STANDARDS THAT, AND THE

1       FACTS AND EVERYTHING THAT GOES INTO THE LAWYER MAKING THE  
2       DECISION.   HOPEFULLY I HAVE SOME UNDERSTANDING OF THAT.

3               MR. DODD:   TRUE.   CERTAINLY.

4               THE COURT:   IS IT THAT MUCH DIFFERENT THAT YOU OR  
5       MR. URDAN EVEN MAKE THOSE ARGUMENTS, PUT THOSE ARGUMENTS,  
6       PUT THOSE SAME FACTS BEFORE ME THEN IT IS TO HAVE A  
7       WITNESS ON THE STAND TO DO THAT?

8               MR. DODD:   I LIKE TO THINK THAT I WILL BE ABLE TO  
9       DO, I CERTAINLY HOPE AND I AM SURE THAT MR. URDAN AND I  
10      TOGETHER WOULD BE ABLE TO MAKE, DO OUR BEST TO MAKE THAT  
11      ARGUMENT TOGETHER, BUT I DON'T THINK THERE IS ANY  
12      SUBSTITUTE FOR HAVING A WITNESS WHO HAS FAR MORE  
13      EXPERIENCE IN THESE MATTERS THEN I CERTAINLY DO.   I  
14      PRACTICE CIVIL LAW, AS A GENERAL MATTER.   I HAVE BEEN  
15      DOING THIS UNDER APPOINTMENT FOR ABOUT 10 YEARS NOW.   I  
16      THINK I HAVE SOME EXPERIENCE IN THESE MATTERS, BUT I  
17      CERTAINLY DO NOT --

18              THE COURT:   YOU ARE HAVING A LOT MORE FUN THEN  
19      DOING CIVIL; AREN'T YOU?

20              MR. DODD:   PART OF THE TIME I HAVE MORE FUN, BUT I  
21      CERTAINLY DON'T PRACTICE DEATH PENALTY LAW ON A REGULAR  
22      BASIS NOR DOES MR. URDAN.   I THINK YOUR HONOR PROBABLY  
23      DOESN'T TRY DEATH PENALTY CASES ON A REGULAR BASIS AND TO  
24      HAVE SOMEBODY WHO DOES THAT WORK, WHO DOES THAT WORK A LOT  
25      AND CAN TESTIFY FROM HIS EXPERIENCE, HIS OR HER EXPERIENCE  
26      AS TO HOW THESE THINGS ARE HANDLED AND WHAT A COMPETENT  
27      LAWYER CAN DO AND TO BRING THAT BREADTH OF EXPERIENCE TO  
28      BEAR ON FACTS OF THIS CASE AND PUT TOGETHER IN A COHERENT

1 FORM THE TESTIMONY BEFORE THE COURT. CERTAINLY IT IS NO  
2 SUBSTITUTE HOPEFULLY FOR ME OR MR. URDAN, BUT I THINK IT  
3 CAN ADD A COHERENCE AND AN EMPHASIS THAT WE WOULD  
4 CERTAINLY LIKE TO PUT BEFORE THE COURT, AND WOULD ASSIST  
5 THE COURT IN MAKING THOSE DETERMINATIONS.

6 I WOULD LIKE TO -- I AM HAPPY TO CONTINUE  
7 ANSWERING THE COURT'S QUESTION. I WOULD LIKE TO ADDRESS  
8 SOME OF THE AUTHORITY THAT --

9 THE COURT: GO AHEAD.

10 MR. DODD: I HAVE ALREADY SPOKEN ABOUT THE ROSS  
11 CASE. I DON'T THINK THE ROSS CASE HOLDS THAT AS A MATTER  
12 OF LAW THAT STRICKLAND EXPERTS ARE NOT ADMISSIBLE.  
13 LIKEWISE, I THINK THE CASES CITED BY, THE NINTH CIRCUIT  
14 CASES CITED BY COUNSEL ARE THEMSELVES DISTINGUISHABLE AND  
15 I THINK DISTINGUISHABLE IN IMPORTANT WAYS.

16 THE HENDRICKS CASE, FOR EXAMPLE, THE ISSUE  
17 THERE WAS WHETHER COUNSEL WAS INEFFECTIVE AT THE GUILT  
18 PHASE FOR FAILING TO PUT ON A MENTAL HEALTH DEFENSE AFTER  
19 HAVING SENT HIS CLIENT TO TWO PSYCHIATRISTS WHO THEMSELVES  
20 CONCLUDED THAT THERE WASN'T A SUFFICIENT BASIS FOR A  
21 MENTAL HEALTH DEFENSE. BUT AT THE PENALTY PHASE, AT THE  
22 PENALTY PHASE WHERE THE COURT DID FIND INEFFECTIVE  
23 ASSISTANCE OF COUNSEL THE COURT CONCLUDED THAT THE SAME  
24 FAILURE TO INVESTIGATE SOCIAL HISTORY WAS IN FACT  
25 INEFFECTIVE ASSISTANCE OF COUNSEL. HERE WE ARE ON A  
26 REMAND AT PENALTY PHASE WHERE WE ARE TALKING ABOUT, WHAT  
27 SORT OF EVIDENCE WOULD HAVE COME BEFORE A EXPERT, AND SO  
28 IT ITS IMPORTANT TO KEEP THAT IN MIND. THE CASE IS

1 DIFFERENT.

2           BONIN LIKEWISE THE STRICKLAND EXPERT THERE  
3 WAS CALLED TO TALK ABOUT THE PREJUDICIAL PRONG OF THE  
4 STRICKLAND TEST. THE PETITIONERS WANTED TO HAVE A JURY  
5 EXPERT COME AND TALK NOT SO MUCH ABOUT THE STANDARDS OF  
6 CARE FOR THE LAWYER BUT RATHER WHAT MIGHT HAVE GONE ON IN  
7 THE JURORS' MINDS. THAT IS DIFFERENT, I THINK, THEN WHAT  
8 WE ARE ASKING TO COURT HERE TO DO, TO TALK ABOUT WHAT THE  
9 STANDARD OF CARE IS.

10           WE ARE FOCUSING ON THE FIRST PRONG BUT MORE  
11 SO THEN THE SECOND PRONG OF THE STRICKLAND TEST. I THINK  
12 THE CASES ARE NOT REALLY APPLICABLE TO WHAT'S BEFORE THE  
13 COURT HERE. BEYOND THAT I THINK THERE ARE OTHER ISSUES  
14 THAT WE NEED TO ADDRESS WITH THE COURT, BUT I THINK THAT  
15 THE IMPORTANT THING ON THIS ISSUE IS THAT, YES, IT IS  
16 DISCRETIONARY. WE SUGGEST THAT THE SPECIFIC QUESTIONS  
17 ASKED BY THE COURT IN THIS CASE DO INDEED CALL FOR AN  
18 EVALUATIVE INQUIRY THAT A STRICKLAND EXPERT WOULD ASSIST  
19 IN. THESE ARE NOT THE QUESTIONS, YOU HAVE NOT -- THESE  
20 ARE NOT SIMPLY YES AND NO QUESTIONS. THEY DO ASK YOU TO  
21 MAKE A DETERMINATION ABOUT WHETHER MR. SHINN WAS ACTING  
22 COMPETENTLY. THAT'S NECESSARILY A VALUE AND SOMEONE WITH  
23 THAT BREADTH OF EXPERIENCE COULD COME IN HERE AND ASSIST  
24 THE COURT IN MAKING THAT DETERMINATION WITH RESPECT TO  
25 THESE QUESTIONS ON THAT ISSUE.

26           THAT'S ALL I HAVE UNLESS THE COURT'S HAS  
27 OTHER QUESTIONS.

28           THE COURT: NO. YOU DID REMIND ME, THOUGH, IN THE

1 FIRST MOTION ABOUT PSYCHIATRIC TESTIMONY IN STATE BAR  
2 EVIDENCE. LET ME JUST TELL YOU AT THIS POINT MY  
3 INCLINATION, I WILL HEAR YOU, IS TO DENY WITHOUT  
4 PREJUDICE. I DON'T HAVE ENOUGH FACTS AT THIS TIME. THOSE  
5 DECISIONS I THINK ARE GOING TO BE MORE TRIAL, NOT TRIAL  
6 BUT HEARING DECISIONS I NEED TO MAKE. I UNDERSTAND YOUR  
7 POINT, ESPECIALLY ABOUT THE PSYCHIATRIC.

8 YOU MAY -- MR. GLASSMAN, YOU MAY HAVE SOME  
9 MERIT TO A LOT OF THIS NOT COMING IN BUT PART OF THIS ALSO  
10 GOES TO WHAT MR. SHINN WAS OR WAS NOT DOING, AND UNTIL, I  
11 THINK, WE RESOLVE WHAT MR. SHINN WAS OR WAS NOT DOING AT  
12 LEAST YOUR TESTIMONY OR SOMETHING I DON'T THINK I CAN RULE  
13 IN A VACUUM IN TERMS OF SAYING, "OH, YEAH, KEEP OUT THAT  
14 PSYCHIATRIC TESTIMONY." SO UNLESS YOU WANT TO BE HEARD I  
15 AM GOING TO DENY THAT ASPECT OF YOUR MOTION WITHOUT  
16 PREJUDICE.

17 MR. GLASSMAN: I WOULD SIMPLY LIKE TO RESPOND TO  
18 SOME OF MR. DODD'S COMMENTS.

19 THE COURT: ACTUALLY, IF YOU WANT I AM GOING TO  
20 HEAR FROM THE HUNT PEOPLE. I WILL LET YOU FOLKS RESPOND  
21 AFTERWARDS. THEY MAY SAY SOMETHING INCREDIBLY COGENT THAT  
22 YOU WANT TO MAKE OR THEY MAY SHOOT DOWN YOUR ENTIRE  
23 ARGUMENT, MR. GLASSMAN.

24 YOU WANT TO BE ABLE TO SAY SOMETHING.

25 MR. GLASSMAN: HOPEFULLY MR. CRAIN WILL NOT SHOOT  
26 DOWN MR. MC MULLEN.

27 THE COURT: WITH REFERENCE TO THE HUNT CASE THE  
28 PETITIONER'S MOTION FOR THE APPOINTMENT OF A STRICKLAND

1 EXPERT, AND I THOUGHT IT APPROPRIATE TO RESOLVE THE ISSUE  
2 ABOUT WHETHER WE ARE GOING TO HAVE STRICKLAND TESTIMONY  
3 BEFORE WE APPOINT SOMEONE, SPEND THE MONEY.

4 MR. KLEIN?

5 MR. KLEIN: YOUR HONOR, BASICALLY A COMMENT ABOUT  
6 OUR ABILITY TO PRESENT COGENT ARGUMENT, I FIND THAT TO BE  
7 COMPLIMENTARY --

8 THE COURT: I HAVE NEVER PAID A COMPLIMENT TO A  
9 LAWYER IN MY LIFE, I CAN'T IMAGINE WHY I WOULD START NOW.

10 GO AHEAD, MR. KLEIN. I AM LISTENING CLOSELY.

11 MR. KLEIN: FIRST OF ALL, WE ARE SORT OF ARGUING IN  
12 A VACUUM, SINCE WE HAVEN'T READ THE PLEADINGS IN THE OTHER  
13 CASE.

14 THE COURT: THEY ARE VERY GOOD.

15 MR. KLEIN: WE KIND OF --

16 THE COURT: I CAN GUARANTEE THAT THE RESPONDENT'S  
17 PAPERS HELP YOU A LOT, AND --

18 MR. DODD: YOU ARE WELCOME.

19 THE COURT: -- PETITIONER'S PAPERS HURT YOU.

20 GO AHEAD, MR. KLEIN. YOU ARE ALL TALKING  
21 ABOUT THE SAME CASES.

22 MR. KLEIN: FIRST OF ALL, I THINK THE LAW IS 100  
23 PERCENT CLEAR THAT A STRICKLAND EXPERT CANNOT TESTIFY AS  
24 TO THE SECOND PRONG.

25 THE COURT: THE PREJUDICE?

26 MR. KLEIN: YES, YOUR HONOR. THAT'S YOUR DECISION,  
27 THAT IS WHAT YOU HAVE TO DECIDE. HOWEVER, THERE IS NO  
28 CASE LAW THAT SAYS THAT A STRICKLAND EXPERT CANNOT TESTIFY

1 ON THE FIRST PRONG. SO, IF THAT'S THE RESPONDENT'S  
2 POSITION IN THE OTHER CASE THEY ARE WRONG.

3 THE COURT: I THINK AT LEAST BY MR. MC MULLEN  
4 PAPERS, I THINK HIS POSITION IS VERY CLEAR. THERE IS NO  
5 SUCH THING AS A STRICKLAND EXPERT. I THINK HE USED THOSE  
6 WORDS.

7 MR. MC MULLEN: I BELIEVE THAT'S OUR LANGUAGE, YES,  
8 OR CLOSE TO IT.

9 THE COURT: THAT'S THEIR POSITION. LET ME PUT THE  
10 SAME QUESTION TO YOU THAT I PUT TO MR. DODD. I THINK --  
11 ISN'T THIS REALLY -- MAYBE IT WAS BOTH OF THEM -- ISN'T  
12 THIS SOMETHING THAT REALLY IS IN THE DISCRETION OF THE  
13 COURT?

14 MR. KLEIN: WELL, LET ME ANSWER IT A NUMBER OF WAYS  
15 BASED ON THE COURT'S QUESTIONS. FIRST OF ALL, THE COURT  
16 HAS LOOKED AT OUR PAPERS, LOOKED AT THE CIVIL CASES THAT  
17 WE CITED. IN CIVIL CASES IN SOME CASES ITS ABSOLUTELY  
18 REQUIRED THAT YOU PRESENT EXPERT TESTIMONY.

19 THE COURT: BUT THOSE ARE ALL JURY CASES, THE TRIER  
20 OF FACT IS A JURY. LET'S GET BACK TO BASICALLY WHAT THE  
21 EVIDENCE CODE TALKS ABOUT. YOU APPOINT AN EXPERT TO  
22 ASSIST THE TRIER OF FACT, REALLY ALL THESE CASES, CORDERO  
23 AND ALL THESE CASES, ARE TALKING ABOUT THAT. YOU REALLY  
24 -- THIS IS NOT AN AREA THAT YOU NEED EXPERT TESTIMONY IN  
25 BECAUSE YOU ARE TALKING ABOUT A TRIER OF FACT WHO IS  
26 ALLEGEDLY SOMEWHAT KNOWLEDGEABLE ABOUT THE LAW. SO THAT'S  
27 THE BASIS HERE.

28 MR. KLEIN: OKAY.

1                   IN RESPONSE TO ONE OF THE COURT'S QUESTIONS  
2 EARLIER, THE COURT INDICATED THAT IT HAD NEVER TRIED A  
3 DEATH PENALTY CASE. THIS WAS A DEATH PENALTY CASE. THE  
4 DECLARATION THAT MR. MC MULLEN SUBMITTED IN HIS RETURN I  
5 DON'T KNOW IF THE COURT HAS READ IT, MR. BARENS'  
6 DECLARATION.

7                   THE COURT: I CANNOT REMEMBER. I HAVE READ SO MUCH  
8 LATELY. I CAN'T TELL YOU WHICH IS WHICH.

9                   MR. KLEIN: MR. BARENS STATED CERTAIN REASONS WHY  
10 HE DID THIS AND WHY HE DID THAT.

11                   THE COURT: YES. I READ THAT SOME NUMBERS OF  
12 MONTHS AGO.

13                   MR. KLEIN: WELL, ONE CANNOT LOOK AT THIS WITHOUT  
14 HAVING A PERSON WHO HAS EXPERTISE IN THIS AREA TO  
15 DETERMINE WHETHER OR NOT THOSE DECISIONS ARE REASONABLE  
16 DECISIONS THAT SOMEBODY WOULD HAVE MADE. IN OUR CASE, AND  
17 I THINK THIS IS THE BEST REASON AND I THINK IT SHOULD BE  
18 THE MOST PERSUASIVE REASON FOR THE COURT TO APPOINT AN  
19 EXPERT, THE RECORD, AS THE COURT IS AWARE, IS VOLUMINOUS.  
20 THE RECORDS OF LEVIN'S CASE, THE RECORDS OF ESLAMINIA'S  
21 CASE, THE RECORDS OF THE TWO PITTMAN TRIALS, PLUS THE  
22 DISCOVERY, PLUS THE INVESTIGATION IS IN EXCESS OF 100,000  
23 PAGES. AN EXPERT CAN READ THE MATERIAL, CAN ASSIST THE  
24 COURT IN ANALYZING THAT MATERIAL WITHOUT THE COURT HAVING  
25 TO READ ALL OF THAT MATERIAL. IF THE COURT DOESN'T  
26 APPOINT AN EXPERT THEN AS COUNSEL INDICATED THE ARGUMENT  
27 IS GOING TO BE MADE BY THE REPRESENTATIVE OF MR. HUNT THE  
28 COURT IS GOING TO HAVE TO READ EVERYTHING.

1 THE COURT: WHY CAN'T YOU DO WHAT YOUR EXPERT, WHAT  
2 YOU SEEK TO HAVE YOUR EXPECT DO?

3 MR. KLEIN: BECAUSE, YOUR HONOR --

4 THE COURT: YOU CAN PULL THE STUFF OUT, POINT IT  
5 OUT TO THE TRIER OF FACT AT THE SAME TIME. YOU WOULDN'T  
6 GIVE THE JURY THE \$100,000 PAGES, YOU WOULD GIVE THEM THE  
7 FACTS THAT THEY NEED.

8 MR. KLEIN: WELL, JUST SO THE COURT IS CLEAR THE  
9 COURT IS GOING TO HAVE TO READ THE ENTIRE TRANSCRIPT OF  
10 THE LEVIN TRIAL BECAUSE THE ONLY WAY, ACCORDING TO IN RE  
11 FIELDS, FOR THE COURT TO DECIDE WHETHER OR NOT THERE WAS  
12 INCOMPETENCE OF COUNSEL IS FOR THE COURT TO COMPARE THE  
13 TRIAL THAT OCCURRED WITH THE TRIAL THAT SHOULD HAVE  
14 OCCURRED, AND SO THE COURT WILL HAVE TO READ THE ENTIRE  
15 TRIAL BUT AN EXPERT WOULD ASSIST THE COURT BY NOT --

16 THE COURT: YOU REALLY THINK THAT'S NECESSARY THAT  
17 YOU MAKE THAT TYPE OF A COMPARISON? IS THAT THE STANDARD?

18 MR. KLEIN: NO. FIELDS SAYS THAT, YOUR HONOR.  
19 FIELDS SAYS THAT THE COURT MUST COMPARE THE TRIAL THAT  
20 OCCURRED WITH THE TRIAL THAT SHOULD OCCUR. SO YOUR HONOR  
21 WILL HAVE TO READ THE ENTIRE TRANSCRIPT OF THE TRIAL. NO  
22 QUESTION.

23 THE COURT: WHY I DO NEED AN EXPERT THEN, IF I HAVE  
24 TO READ IT?

25 MR. KLEIN: BECAUSE YOUR HONOR THERE ARE THREE  
26 OTHER TRIALS, AND THERE IS DISCOVERY THAT IS VOLUMINOUS  
27 THAT AN EXPERT CAN PROVIDE THE COURT WITH ASSISTANCE.  
28 THIS -- THE OTHER POINT THAT I WANTED TO MAKE, YOUR HONOR,

1 AN EXPERT THAT PROVIDES THE COURT WITH TESTIMONY ABOUT  
2 WHAT IS REASONABLE FOR AN ATTORNEY TO DO IS EVIDENCE THAT  
3 THE COURT WILL CONSIDER.

4 YOUR HONOR IS CORRECT, THAT THE PEOPLE COULD  
5 PROVIDE AN EXPERT TO THE CONTRARY. IN OUR CASE I DON'T  
6 THINK THEY ARE GOING TO BE ABLE TO BECAUSE THE RECORD IS  
7 GOING TO BE SO CLEAR AFTER THE COURT HEARS THE TESTIMONY  
8 OF AN EXPERT THAT I DON'T THINK THEY ARE GOING TO BE ABLE  
9 TO FIND SOMEBODY WHO IS GOING TO ABLE TO TAKE THE OATH AND  
10 SAY UNDER OATH THAT WHAT OCCURRED IN THIS CASE WAS NORMAL.  
11 BUT, FOR EXAMPLE, IF MR. HUNT WERE NOT INDIGENT I DON'T  
12 THINK IT WOULD BE WITHIN THE COURT'S DISCRETION TO SAY  
13 THAT WE COULD NOT CALL AN EXPERT TO TESTIFY ON THIS  
14 SUBJECT. I THINK --

15 THE COURT: SURE WOULD BE IF I DECIDED THAT A  
16 STRICKLAND EXPERT IS NOT NECESSARY, SURE.

17 MR. KLEIN: I THINK THE COURT WOULD BE ABUSING ITS  
18 DISCRETION TO SAY THAT WE COULDN'T OFFER THAT EVIDENCE,  
19 WHICH IS THEN GOING TO BE EVIDENCE IN THE RECORD THAT THE  
20 COURT WILL HAVE TO WEIGH, IT WOULD BE DEPRIVING US OF AN  
21 OPINION THAT THE COURT WOULD HAVE TO CONSIDER AND I  
22 THINK --

23 THE COURT: I DON'T HAVE TO ACCEPT EVIDENCE. LET'S  
24 GET BACK -- THIS IS WHY I DID REALLY THE HEARING. WHAT IS  
25 REALLY REQUIRED? DO YOU HAVE TO HAVE A STRICKLAND EXPERT?  
26 IS THE DISCOVERY -- I MEAN THE PEOPLE'S POSITION, AT LEAST  
27 THE HUNT PEOPLE'S POSITION IS THAT THERE IS NO SUCH THING  
28 AS STRICKLAND TESTIMONY, IT IS NOT ADMISSIBLE, YOU DON'T

1 DO IT. THE RESPONDENT IN THE GAY CASE IS NOT QUITE THAT  
2 FAR, ALTHOUGH THEY ARE PROBABLY WILLING TO MAKE THE  
3 ARGUMENT. I THINK THEY ARE WILLING TO SAY, "WELL, YOU  
4 KNOW, UNDER THE FACTS OF THIS CASE, THE GAY CASE, YOU  
5 KNOW, YOU DON'T NEED TO REACH IT." BUT CLEARLY THERE IS  
6 CASE LAW THAT SAYS THAT THIS IS NOT NECESSARILY A SUBJECT  
7 FOR EXPERT TESTIMONY. I COME BACK TO --

8 MR. KLEIN: I HAVEN'T --

9 THE COURT: DON'T YOU REALLY THINK IT IS  
10 DISCRETIONARY? DO I, AS A TRIER OF FACT, FEEL THAT I NEED  
11 IT?

12 MR. KLEIN: WELL, IF I WERE YOUR HONOR IN THIS CASE  
13 I WOULD WANT A STRICKLAND EXPERT BECAUSE IT WILL  
14 FACILITATE THE COURT'S ASSIMILATION OF THE MATERIAL, WHICH  
15 IS SO VOLUMINOUS THAT IT PROBABLY IS GOING TO BE  
16 IMPOSSIBLE FOR THE COURT TO DO MORE THEN READ THE  
17 TRANSCRIPT OF THE LEVIN TRIAL BECAUSE OTHERWISE THE COURT  
18 IS GOING TO READ THE TRANSCRIPT OF THE RELEVANT PORTIONS  
19 OF THE ESLAMINIA TRIAL THAT COMPARE TO THE TESTIMONY AND  
20 THE LEVIN TRIAL, AND THE COURT IS GOING TO HAVE TO READ  
21 THE EXHIBITS THAT WE SUBMIT TO THE COURT AND THAT WE ARGUE  
22 ARE RELEVANT TO THIS ISSUE, BUT WHAT THE COURT WILL BE  
23 DOING IS DEPRIVING US OF ADDITIONAL EVIDENCE, THAT BEING  
24 AN EXPERT SAYING THIS IS WHAT I BELIEVE IS APPROPRIATE  
25 UNDER THE CIRCUMSTANCES.

26 AND THERE IS NO CASE, COUNSEL NEVER CITED A  
27 CASE, THAT SAYS THAT YOU CANNOT HAVE A STRICKLAND EXPERT.  
28 AND THE CONTRARY IS THE FACT WHICH IS THAT THERE ARE ALL

1 THESE CALIFORNIA SUPREME COURT CASES WHICH DO RELY ON  
2 TESTIMONY OF AN EXPERT. NONE OF THEM SAYS THAT PER SE THE  
3 COURT MUST APPOINT AN EXPERT, I AGREE WITH YOUR HONOR,  
4 THERE IS NO SUCH CASE. IF I COULD HAVE FOUND IT I WOULD  
5 HAVE CITED IT TO THE COURT, BUT IN REALITY I DO BELIEVE  
6 THAT THE COURT WOULD BE ABUSING ITS DISCRETION IF THE  
7 COURT SAID YOU CANNOT PRESENT THAT TESTIMONY.

8 AND, SECONDLY, I THINK, YOUR HONOR --

9 THE COURT: IF THAT'S CORRECT, IF I AM ABUSING MY  
10 DISCRETION IN PRECLUDING THE TESTIMONY THEN I WOULD BE  
11 ABUSING MY DISCRETION IN NOT APPOINTING AN EXPERT IN THE  
12 FIRST PLACE TO AN INDIGENT DEFENDANT, SO THAT'S WHY WE ARE  
13 HAVING THIS HEARING.

14 IS THERE A NEED -- IS THERE A REQUIREMENT BY  
15 LAW FOR THE TESTIMONY OF A STRICKLAND EXPERT, IF NOT IS  
16 THERE DISCRETION FOR THE COURT TO HEAR STRICKLAND  
17 TESTIMONY?

18 MR. KLEIN: I CAN'T ANSWER THAT QUESTION ANYMORE  
19 THEN I HAVE. THE ONLY THING I WOULD ADD, YOUR HONOR, IS  
20 THAT I TRULY BELIEVE IT WILL FACILITATE YOUR HONOR'S  
21 PROMPT RESOLUTION OF THIS CASE BY HAVING SOMEBODY OTHER  
22 THAN YOUR HONOR READING THE ADDITIONAL RECORD, WHICH THE  
23 COURT IS REQUIRED BY IN IN RE FIELDS.

24 THE COURT IS REQUIRED TO READ THE LEVIN  
25 TRANSCRIPT, THE COURT IS NOT REQUIRED TO READ ANYTHING  
26 ELSE. AND IF AN EXPERT DOES THAT THAT WILL SAVE THE COURT  
27 A LOT OF TIME. OTHERWISE THIS COURT IS GOING TO HAVE TO  
28 SHUT DOWN FOR A GREAT DEAL OF TIME TO READ THE MATERIAL

1 THAT WE ARE GOING TO SUBMIT TO THE COURT, AND THEN THE  
2 COURT IS GOING TO HEAR ARGUMENTS ON THE SUBJECT, BUT THE  
3 COURT WILL BE DEPRIVING US OF THE OPINION THAT AN EXPERT  
4 COULD RENDER RELATIVE TO THAT INFORMATION.

5 THE COURT: ASSUMING THAT'S CORRECT, ASSUMING THAT  
6 THIS IS THE REQUIREMENT THAT I WOULD HAVE TO READ ALL OF  
7 THIS MATERIAL SHOULDN'T I READ IT RATHER THEN RELY ON  
8 EXPERT TESTIMONY?

9 MR. KLEIN: WELL, I THINK THAT THE ANSWER TO THAT  
10 IS THAT YOUR HONOR WILL READ THEN WHAT THE COURT THINKS IS  
11 NECESSARY, BUT AN EXPERT WILL HAVE PARED IT DOWN AND AN  
12 EXPERT WILL HAVE RENDERED TO THE COURT WHAT THE EXPERT  
13 THINKS IS IMPORTANT FOR THE COURT TO CONSIDER.

14 THE COURT: ISN'T THAT EXACTLY WHAT YOU WOULD DO  
15 FOR ME, YOU COULD PARE IT DOWN?

16 MR. KLEIN: YES, YOUR HONOR. BUT I WILL NOT BE  
17 ABLE TO TESTIFY AND AN EXPERT WILL BE ABLE TO TESTIFY, AND  
18 IN ALL THE CASES IN WHICH AN EXPERT DID TESTIFY THAT WAS  
19 EVIDENCE THAT THE COURT DID WEIGH AND THE COURT WOULD BE  
20 DEPRIVING US OF THAT EVIDENCE THAT WE COULD NOT PROFFER BY  
21 WAY OF ARGUMENT. SO IN THAT SENSE THE COURT WOULD BE  
22 DEPRIVING MR. HUNT OF EVIDENCE, THE OPINION THAT IS OF THE  
23 EXPERT RELATIVE TO THE INFORMATION. AND IT IS SOMETHING  
24 THAT THE COURT WOULD WEIGH AND THE COURT WON'T KNOW UNTIL  
25 THE COURT HEARS WHAT THE EXPERT SAYS. IN OUR CASE I DON'T  
26 THINK THEY ARE GOING TO BE ABLE TO PROVIDE SOMEBODY THAT  
27 IS GOING TO PROVIDE CONTRARY TESTIMONY.

28 THE COURT: ALL RIGHT.

1 MR. MC MULLEN?

2 MR. GLASSMAN: I WAS JUST GOING TO CONCLUDE BY  
3 RESPONDING TO MR. DODD.

4 THE COURT: HOLD ON. I WANT TO HEAR FROM THE  
5 RESPONDENT IN THE HUNT CASE?

6 MR. MC MULLEN: YOUR HONOR, THERE ARE A FEW THINGS  
7 I WISH TO ADD TO MR. GLASSMAN'S ARGUMENT AND I WILL TRY  
8 NOT TO REPEAT WHAT HE SAID.

9 FIRST OF ALL, REALLY BEFORE WE EVEN GET TO  
10 THE ATTORNEY EXPERT OR STRICKLAND EXPERT IT IS OUR  
11 POSITION THAT INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS CAN  
12 BE REALLY RESOLVED IN THIS CASE UNDER THE PREJUDICE PRONG  
13 OF THE STRICKLAND TEST.

14 THEN MOVING ALONG --

15 THE COURT: YOU MAY BE CORRECT. THE PROBLEM IS  
16 THAT WE ARE DOWN THE LINE IN THE GAY CASE AND  
17 UNFORTUNATELY WE ARE STILL A LITTLE TOO EARLY IN THE HUNT  
18 CASE.

19 MR. MC MULLEN: I UNDERSTAND. I JUST WANTED TO  
20 MENTION THAT.

21 I WANTED TO RESPOND TO ONE OF YOUR COMMENTS  
22 TO MR. GLASSMAN THAT INVOLVED THE ADMIRALTY, WHICH IS THE  
23 WRIGHT VERSUS WILLIAMS CASE AT 47 CAL. APP. 3D CITED IN  
24 PETITIONER'S RESPONSE TO OUR DOCUMENT. AND THAT CASE IS A  
25 MALPRACTICE CASE, I DON'T THINK A STRICKLAND EXPERT IS  
26 REALLY APPROPRIATE, AND IN MOST OF THOSE CASES, AS YOUR  
27 HONOR WENT ON TO COMMENT TO SOMEBODY THAT MIGHT BE THE  
28 WRIGHT CASE, I AM NOT SURE, MIGHT HAVE BEEN BEFORE THE

1 JURY BEING A MALPRACTICE CASE AND I CAN UNDERSTAND WHY AN  
2 EXPERT MIGHT BE NECESSARY IN A CASE LIKE THAT.

3 IT IS OUR POSITION THAT IN THE HUNT CASE  
4 THAT -- WE AGREE THAT UNDER 720 OF THE EVIDENCE CODE IT IS  
5 DISCRETIONARY FOR YOU TO APPOINT OR ALLOW AN EXPERT TO  
6 TESTIFY SHOULD YOU FEEL THE NEED FOR IT, AND IT IS OUR  
7 POSITION THAT THE ISSUES IN THE HUNT CASE REGARDING  
8 INEFFECTIVE ASSISTANCE OF COUNSEL ARE NOT BEYOND THE  
9 COMMON EXPERIENCE OF THIS COURT, AND I DISAGREE WITH  
10 MR. KLEIN ON THE POINT THAT I THINK --

11 THE COURT: IN OTHER WORDS, YOU AND MR. GLASSMAN  
12 ARE OF THE POSITION, ARE SAYING THAT THIS COURT IS EVERY  
13 BIT AS BRIGHT AND LEARNED WHERE AS THE OTHER SIDE IS  
14 ARGUING THE COURT IS AS DUMB AS A ROCK?

15 MR. KLEIN: EXCUSE ME.

16 BUT I NEVER SAID THAT, AND I JUST SAID THAT  
17 SOMEBODY WHO HAS DONE THIS OVER AND OVER, AND OVER AND  
18 OVER --

19 THE COURT: MR. KLEIN, I WAS MAKING A JOKE. IT IS  
20 OKAY.

21 MR. KLEIN: JUST LIKE YOU, I WAS MAKING A JOKE AT  
22 THE BEGINNING OF MY PRESENTATION.

23 THE COURT: I AM SURE IT WAS.

24 MR. KLEIN: I UNDERSTOOD.

25 THE COURT: OKAY.

26 MR. KLEIN: BOTH TIMES.

27 MR. MC MULLEN: THE ONLY THING I REALLY DO DISAGREE  
28 WITH MR. KLEIN ON AND THAT IS TO APPOINT AN EXPERT AND

1 HAVE THE EXPERT READ ALL THE RECORD I THINK IS REALLY  
2 INAPPROPRIATE, AND ESPECIALLY I THINK THAT REALLY IS  
3 TAKING THE COURT'S RESPONSIBILITY AND GIVING IT TO  
4 SOMEBODY ELSE.

5 AND I AGREE WITH YOUR HONOR COMMENTS WHEN YOU  
6 SAID THAT, "WELL, IF I NEED TO READ THE RECORD SHOULDN'T I  
7 READ THE RECORD?" I AGREE WITH YOU. IF YOU NEED TO READ  
8 THE RECORD YOU SHOULD BE THE ONE TO READ THE RECORD AND  
9 MAKE THE DECISION, AND NOT GIVE IT TO ANOTHER LAWYER TO  
10 MAKE THE DECISION.

11 THE COURT: THE QUESTION IS IS THERE SOMETHING THAT  
12 THIS EXPERT CAN OFFER ME? IS THERE SOMETHING THAT I MIGHT  
13 BE ABLE TO CONSIDER? I CAN DISREGARD THE ENTIRE  
14 TESTIMONY. I CAN TAKE PIECES OF IT. I COULD SAY, "THAT'S  
15 A GOOD THOUGHT THAT I NEVER HAD BEFORE." THE QUESTION IS  
16 THIS, WOULD THIS BE HELPFUL TO THE TRIER OF FACT, TO ME?

17 MR. MC MULLEN: THAT IS YOUR DECISION. IT IS OUR  
18 POSITION THAT IT WOULD NOT BE, THAT THE ISSUES ARE NOT SO  
19 COMPLEX OR INVOLVED IN AREAS OF SCIENTIFIC EVIDENCE OR  
20 PSYCHIATRIC EVIDENCE THAT IT WOULD REQUIRE SOME KIND OF AN  
21 EXPERT FROM ANOTHER DISCIPLINE TO COME IN AND GUIDE YOUR  
22 HONOR. THAT'S OUR POSITION.

23 THE COURT: ALL RIGHT.

24 MR. CRAIN: CAN I RESPOND BRIEFLY?

25 THE COURT: GO AHEAD, MR. CRAIN.

26 MR. CRAIN: JUST VERY BRIEFLY.

27 I AGREE WITH THE POSITION THAT'S BEEN TAKEN,  
28 THAT IT IS DISCRETIONARY WITH THE COURT. I THINK THAT THE

1 EVIDENCE IF OFFERED IS SOMETHING THAT THE COURT IN MY VIEW  
2 COULD NOT EXCLUDE, AND I THINK IF WHAT HAPPENED WITH THE  
3 FOLLOWING SCENARIO THAT THE COURT REFUSED TO APPOINT A  
4 STRICKLAND EXPERT FOR MR. HUNT AND THE PEOPLE WISH TO  
5 OFFER SUCH TESTIMONY FROM THEIR EXPERT TO THE EFFECT THAT  
6 MR. BARENS WAS COMPETENT, AND THEN MR. HUNT WOULD NOT BE  
7 IN A POSITION WHERE HE COULD REFUTE THIS. CLEARLY THE  
8 PEOPLE'S TESTIMONY WOULD BE SOMETHING THEY WOULD RELY ON  
9 HEAVILY IN THEIR ARGUMENT THAT MR. HUNT SHOULD NOT GET  
10 RELIEF ON THIS PARTICULAR GROUND.

11 THE COURT: I WOULDN'T LET THE PEOPLE OFFER IT.

12 MR. CRAIN: THAT MAY BE, BUT I CERTAINLY KNOW I  
13 HAVE A DEATH CASE IN THE CENTRAL DISTRICT RIGHT NOW ON  
14 HABEAS CORPUS WHERE THE PROCEEDINGS, THE CALIFORNIA  
15 SUPREME COURT -- THE PEOPLE DURING THE EVIDENTIARY HEARING  
16 CALLED AN EXPERT AND CERTAINLY RELIED HEAVILY ON THE  
17 TESTIMONY OF THAT EXPERT THAT THE PARTICULAR TRIAL  
18 ATTORNEY IN THAT CASE IS NOT INCOMPETENT.

19 IF MR. HUNT IS NOT ALLOWED TO PRESENT EXPERT  
20 TESTIMONY I THINK WHAT MR. KLEIN WAS SAYING WAS THAT HIS  
21 POSITION IS WEAKER THEN IF HE IS PERMITTED TO PRESENT  
22 EXPERT TESTIMONY, AND IF THAT EXPERT TESTIFIED THAT  
23 MR. BARENS RENDERED INCOMPETENT ASSISTANCE. CLEARLY THIS  
24 CASE IN TERMS OF THE ULTIMATE DECISION THAT THIS COURT OR  
25 ANY OTHER COURT REVIEWING THIS COURT'S DECISION WOULD HAVE  
26 TO MAKE, MR. HUNT'S CASE ON THE ISSUE OF INCOMPETENCE OF  
27 COUNSEL IS IN A MUCH STRONGER POSITION IF HE IS ABLE TO  
28 SAY, "I CALLED AS A WITNESS MR. OR MS. SO AND SO WHO IS A

1 LEARNED EXPERT IN THE FIELD, WHO WAS APPOINTED BY THE  
2 COURT, WHO REVIEWED THESE MATTERS AND RENDERED AN OPINION  
3 UNDER OATH THAT MR. BARENS WAS INCOMPETENT," HE IS IN A  
4 MUCH STRONGER CASE ON THE OSC ISSUE THEN ABSENCE OF THAT  
5 TESTIMONY. THAT'S ANOTHER FACTOR THAT THE COURT SHOULD  
6 CONSIDER IN MAKING THIS DETERMINATION.

7 THE COURT: THEN YOU ARE ASKING ME TO CONSIDER THAT  
8 I SHOULD HELP YOU BUILD THE RECORD SO IF YOU HAVE AN  
9 ADVERSE RULING YOU WILL HAVE A BETTER RECORD ON APPEAL, IS  
10 THAT WHAT YOU ARE SAYING?

11 MR. CRAIN: NO. I AM SAYING THAT MR. HUNT HAS A  
12 RIGHT AS AN INDIGENT TO THE SAME SORT OF ASSISTANCE THAT,  
13 AND THE RIGHT TO OFFER THE SAME TYPE OF TESTIMONY THAT A  
14 PERSON WITH MONEY WOULD BE ALLOWED TO DO. AND, AS  
15 MR. KLEIN SAID, I BELIEVE THAT A PERSON WHO COULD AFFORD  
16 TO HIRE SUCH AN EXPERT COULD AND THE COURT WOULD BE IN  
17 ERROR IN PRECLUDING THAT KIND OF TESTIMONY, HE COULD OFFER  
18 AN EXPERT TO SO TESTIFY. WE ARE NOT ASKING --

19 THE COURT: HOLD ON. HOLD ON.

20 THE ISSUE HERE IS NOT ABOUT INDIGENCY. THE  
21 ISSUE IS WHETHER THE TESTIMONY SHOULD BE ALLOWED. IF I  
22 BELIEVE IT SHOULD BE ALLOWED THEN HE SHOULD HAVE AN  
23 EXPERT. I AGREE. BUT YOU ARE MISSING THE POINT. THE  
24 POINT IS SHOULD THE TESTIMONY BE ALLOWED. YOU KEEP AND  
25 MR. KLEIN KEEP ARGUING, "WELL, IT WILL BE ERROR. YOU HAVE  
26 TO ALLOW IT."

27 I SUGGEST TO YOU THAT THERE IS CASE LAW THAT  
28 SAYS THAT IS NOT NECESSARILY SO. I SUGGEST TO YOU THAT

1 THE ISSUE IS ONE OF DISCRETION. I SUGGEST TO YOU THAT YOU  
2 SHOULD BE CONVINCING ME THAT IN EXERCISING MY DISCRETION I  
3 SHOULD ALLOW IT BECAUSE IT WILL BE OF ASSISTANCE TO ME AS  
4 THE TRIER OF FACT.

5 MR. CRAIN: WELL, I THINK ALL OF US HAVE AGREED  
6 THAT THERE IS A CERTAIN AMOUNT OF DISCRETION THAT'S  
7 INVOLVED CLEARLY.

8 THE COURT: THERE IS NO CASE THAT HAS BEEN POINTED  
9 OUT BY EACH OF THE PETITIONERS HERE, THERE IS NO CASE THAT  
10 SAYS THAT THE COURT CANNOT APPOINT AN EXPERT IN THE  
11 STRICKLAND AREA. THE ISSUE IS NOT APPOINTMENT, THE ISSUE  
12 IS WHAT TESTIMONY WILL BE ALLOWED.

13 MR. CRAIN: THAT'S RIGHT. AND I AM SAYING THAT  
14 IN MR. HUNT'S CASE, I AM NOT ASKING THE COURT TO REPRESENT  
15 MR. HUNT OR TO HELP MR. HUNT OR TO STEP OUT OF ITS ROLE AS  
16 IMPARTIAL ARBITRATOR, WHAT I AM SAYING IS THAT MR. HUNT'S  
17 POSITION AT THE END OF THE HABEAS PROCEEDING IN THIS COURT  
18 WILL BE BETTER IF HE IS ALLOWED TO HAVE AN EXPERT TESTIFY.

19 IF THE COURT IS MAKING THE DETERMINATION NOW  
20 THAT STRICKLAND TESTIMONY ON PRONG ONE IS ADMISSIBLE PER  
21 SE THAT'S ANOTHER STORY, BUT IF IT IS A MATTER THAT CAN BE  
22 OFFERED IN A HABEAS CORPUS PROCEEDING THEN I THINK  
23 MR. HUNT HAS A RIGHT TO BE ALLOWED TO PUT HIS CASE IN THE  
24 STRONGEST POSITION AND HIS CASE IS CERTAINLY GOING TO BE  
25 STRONGER IF SOME EXPERT IN THE FIELD OFFERS EXPERT  
26 TESTIMONY DURING THE HEARING IN THIS COURT THEN IF HE HAS  
27 TO REST WITHOUT OFFERING SUCH TESTIMONY THAT'S WHAT I AM  
28 SAYING.

1 THE COURT: LET ME PUT THE QUESTION TO YOU THEN,  
2 ARE YOU SAYING ITS MANDATORY THAT I ALLOW STRICKLAND  
3 TESTIMONY OR ARE YOU SAYING IT IS DISCRETIONARY?

4 MR. CRAIN: I THINK IT IS MANDATORY ON THAT PRONG.

5 THE COURT: ALL RIGHT.

6 MR. CRAIN: THAT'S OUR POSITION.

7 MR. KLEIN: TRULY, I THINK IF THE COURT REFUSED TO  
8 ALLOW THE TESTIMONY I THINK THE COURT -- THAT WOULD BE  
9 ERROR. I MEAN THERE IS NO CASE THAT SAYS THE COURT HAS TO  
10 DO IT, BUT IF THE COURT REFUSED TO JUST -- I MEAN THAT  
11 WOULD BE ERROR.

12 THE COURT: ALL RIGHT.

13 MR. DODD: MR. GLASSMAN AGREED THAT I CAN MAKE ONE  
14 FINAL POINT.

15 MR. GLASSMAN: I THINK I RESPONDED TO --

16 MR. DODD: HE SAID IF YOUR HONOR DOES NOT MIND.

17 THE COURT: GO AHEAD.

18 GO AHEAD, MR. DODD.

19 MR. DODD: ONE FINAL POINT, YOUR HONOR.

20 THERE APPEARS TO BE, AS I WAS LISTENING TO  
21 YOUR HONOR'S QUESTIONS TO OTHER COUNSEL ON THE ISSUE OF  
22 WHETHER THIS WAS GOING TO HELP YOU OR NOT, WHETHER THIS  
23 TESTIMONY WAS GOING TO HELP, I THINK CERTAINLY THAT, AT  
24 LEAST IN OUR CASE I AM CERTAIN THAT IT WILL, IT WILL HELP.  
25 FOR EXAMPLE, ONE ISSUE IS GOING TO BE WHAT -- WHAT  
26 INVESTIGATION WOULD A COMPETENT LAWYER HAVE DONE IN 1984  
27 AN '85 TO INVESTIGATE MITIGATING EVIDENCE OF SOMEONE LIKE  
28 MR. GAY. I THINK THAT'S AN ISSUE BEFORE THE COURT.

1 THE COURT: DON'T YOU PUT ON THOUGH THE EVIDENCE  
2 THAT THE FOLLOWING THREE THINGS EXISTED OUT THERE IN 1984  
3 AND '85, THAT MR. SHINN DID NOT DO THOSE THREE THINGS?

4 MR. DODD: YES.

5 THE COURT: AND THEN I AM LEFT WITH A STANDARD.  
6 GO AHEAD.

7 MR. DODD: TRUE AS FAR AS THAT GOES, YOUR HONOR.  
8 CERTAINLY WE ARE GOING TO PUT ON THAT EVIDENCE AND WE HOPE  
9 THAT IT WILL CONVINCEN YOU, BUT TO THE EXTENT THAT WE ARE  
10 TALKING ABOUT WHAT A REASONABLY COMPETENT LAWYER SHOULD  
11 HAVE DONE. I AM SURE WE COULD DRAG IN LOTS AND LOTS OF  
12 MATERIAL AND SAY HE DIDN'T FIND THIS, HE DIDN'T LOOK FOR  
13 THAT, HE DIDN'T FIND THIS, HE DIDN'T LOOK FOR THAT. THAT  
14 MAY OR MAY NOT BE WHAT A REASONABLE COMPETENT LAWYER IN  
15 THIS COMMUNITY WOULD HAVE DONE IN 1984 AND '85.

16 WE COULD, I SUPPOSE, DRAG IN LOTS OF DEFENSE  
17 COUNSEL TO SAY, "YES, IN 1984 I DID THAT, THIS KIND OF  
18 INVESTIGATION," AND WE COULD DRAG THIS HEARING ON. BUT  
19 THE VIRTUE OF AN EXPERT AND THE WAY IN WHICH THAT HELPS  
20 YOUR HONOR IN DECIDING THIS, THAT PERSON WITH THAT BREADTH  
21 OF EXPERIENCE CAN SAY, "YES, IN MY EXPERIENCE I KNOW WHAT  
22 PEOPLE IN THIS COMMUNITY WERE DOING AND SHOULD HAVE BEEN  
23 DOING AND CAN BRING IN THAT WEALTH AND BREADTH OF MATERIAL  
24 TO ASSIST YOU SO WE DON'T HAVE TO HAVE A LITANY OF PEOPLE  
25 COMING BEFORE YOU SO THEN YOU ARE LEFT WITH HEARING ABOUT  
26 THIS DEFENSE LAWYER AS OPPOSED TO THAT DEFENSE LAWYER.  
27 AND I GUESS THAT'S TRUE. I MEAN, AS WE ALL KNOW, EXPERTS  
28 CAN TESTIFY TO A LOT OF MATERIAL THAT OTHERWISE WOULD BE

1 INADMISSIBLE HEARSAY, ANY NUMBER OF THINGS.

2 THE COURT: WOULD YOU AGREE THAT BASICALLY IT WOULD  
3 BE EASIER FOR ME IF I ALLOWED EXPERTS IN THESE THINGS?  
4 MAKE MORE ABSTRACT, WOULD BE EASIER FOR THE TRIER OF FACT,  
5 JUST PLAIN EASIER?

6 MR. DODD: I THINK IT IS EASIER IN THE SENSE THAT  
7 IT HELPS ORGANIZE AND PRESENT THE MATERIAL IN A  
8 COMPREHENSIVE WAY THAT THE TRIER OF FACT CAN THEN TAKE,  
9 JUST AS YOUR HONOR DID, "THAT'S SOMETHING THAT I HADN'T  
10 THOUGHT OF. THAT'S ANOTHER WAY OF LOOKING AT THIS  
11 PROBLEM. IT IS NOT SIMPLY A SERIES OF DISCRETE FACTS BUT  
12 RATHER ORGANIZED IN A WAY THAT, YES, THAT DOES OR DOES NOT  
13 MAKE SENSE TO ME AS THE TRIER OF FACT WHEN APPLIED AGAINST  
14 THE STANDARD."

15 I THINK YOUR HONOR OUGHT TO CONCLUDE, I THINK  
16 YOU SHOULD CONCLUDE THAT THIS WILL ASSIST YOU. YOU MAY  
17 NOT BELIEVE OUR STRICKLAND EXPERT, YOU MAY DECIDE THAT  
18 PERSON IS OFF THE WALL, BUT THAT'S FOR YOU TO DETERMINE,  
19 BUT I DO BELIEVE THAT IN HEARING THAT TESTIMONY AND  
20 ORGANIZING THOSE FACTS AND WHAT LAWYERS SHOULD HAVE DONE  
21 AT THAT TIME WILL ASSIST YOU IN MAKING YOUR ULTIMATE  
22 DETERMINATION.

23 THANK YOU.

24 THE COURT: ALL RIGHT.

25 MR. GLASSMAN?

26 MR. GLASSMAN: THANK YOU, YOUR HONOR.

27 DAVID GLASSMAN.

28 FIRST OF ALL, AGAIN I WOULD LIKE TO CORRECT

1 WHAT I THINK HAS BEEN SOMETHING OF AN IMPRESSION LEFT AND  
2 THAT IS THAT CAPITAL TRIALS, AT LEAST INCLUDE NECESSARILY  
3 SOME COMPARISON WITH THE WAY A DEATH PENALTY LAWYER,  
4 WHATEVER THAT IS, TRIES A DEATH PENALTY CASE. THERE IS NO  
5 SUCH REQUIREMENT IN CAPITAL CASES OR ANY OTHER CASE. THE  
6 CASE IS TO BE EVALUATED ON ITS MERITS.

7 THE CASE DOWN THE HALL INCLUDES A NUMBER OF  
8 LAWYERS WHO, I BELIEVE, HAVE NEVER TRIED A MURDER CASE  
9 MUCH LESS A CAPITAL CASE. THAT IS NOT THE STANDARD USED  
10 IN EVALUATING WHETHER OR NOT THEY ARE COMPETENT.

11 SECOND OF ALL --

12 THE COURT: YOU DON'T THINK THERE IS A SPECIAL  
13 STANDARD FOR DEATH PENALTY CASES?

14 MR. GLASSMAN: ABSOLUTELY. THERE IS NOT AND  
15 CERTAINLY NO AUTHORITY THAT I AM AWARE OF INDICATING THAT,  
16 AND AGAIN THE SUPREME COURT RULING I THINK CLEARLY  
17 DISCOURAGES THAT IDEA.

18 THE COURT: I THINK YOU ARE PROBABLY RIGHT. IT IS  
19 JUST MOST OF THE CASES WE SEE THAT TEND TO BE A HABEAS  
20 TEND TO BE DEATH PENALTY CASES FOR OBVIOUS REASONS, AND  
21 THEY TEND TO GET PUBLISHED, THEY TEND TO EXPEND SOME  
22 PERIOD OF TIME. WE TALK ABOUT THAT STANDARD IN THE  
23 CONTEXT OF DEATH PENALTY SIMPLY BECAUSE MOST OF THE CASES  
24 COME UP IN THAT CONTEXT.

25 MR. GLASSMAN: ULTIMATELY THE STRICKLAND STANDARD  
26 THAT APPLIES WHETHER IT IS A DEATH PENALTY CASE OR A  
27 LESSER KIND OF A CASE, AND I THINK ALSO WHERE THIS MAY  
28 HAVE EVOLVED INTO KIND OF AN ADVISORY ISSUE BECAUSE,

1 ADDRESSING MYSELF TO THE GAY CASE AND ASSUMING FOR  
2 ARGUMENT SAKE THAT THE COURT WOULD HAVE DISCRETION, I  
3 DON'T VIEW THAT AS A DISCRETIONARY ISSUE IN THE GAY CASE.  
4 THERE ARE 13 QUESTIONS THAT THE SUPREME COURT HAS ASKED IN  
5 THE GAY CASE, AND MY READING OF THOSE QUESTIONS INDICATES  
6 THAT ONE OF THEM INCLUDES THE FOLLOWING PHRASE, "WHAT  
7 POTENTIALLY MITIGATING EVIDENCE WOULD A REASONABLY  
8 COMPLETE INVESTIGATION HAVE UNCOVERED." THAT'S QUESTION  
9 NO. 2.

10 NOW, AS THE COURT HAS INDICATED THE COURT IS  
11 GOING TO HEAR UNDOUBTEDLY WHAT MR. SHINN DID AND WHAT  
12 MR. SHINN DIDN'T DO. AND THE COURT HAS NOT BEEN ASKED TO  
13 EVALUATE THAT CONDUCT ON THE PART OF MR. SHINN IN THE FACE  
14 OF WHAT SOME OTHER LAWYER, SELF-PROCLAIMED DEATH PENALTY  
15 EXPERT WHO MAY HAVE A NUMBER OF CLIENTS ON DEATH ROW SAYS  
16 THAT HE NEVER WOULD HAVE DONE OR CERTAINLY WOULD HAVE DONE  
17 UNDER THE SAME CIRCUMSTANCES.

18 THE QUESTION IS CLEAR ON ITS FACE WHAT  
19 POTENTIALLY MITIGATING EVIDENCE WOULD A REASONABLY  
20 COMPLETE INVESTIGATION HAVE UNCOVERED, AND I SUBMIT  
21 REGARDLESS OF THE FACT THAT THERE ARE LAWYERS WHO HAVE  
22 TRIED MORE DEATH PENALTY CASES THAN THIS COURT THAT THEY  
23 ARE NOT IN A BETTER POSITION TO ANSWER THAT QUESTION THEN  
24 IS THE COURT. CERTAINLY NOT BECAUSE AS HAS BEEN SUGGESTED  
25 THEY CAN PARE DOWN AN EVIDENTIARY RECORD THAT IS CERTAINLY  
26 NOT A REASON WE DON'T USE AN EXPERT TO SHORTCUT THE DUTY  
27 THAT WE HAVE IN THIS CASE, WHICH IS SIMPLY TO ANSWER THAT  
28 QUESTION AND THE OTHER QUESTIONS. THERE IS NO UNIQUE

1 EXPERTISE INVOLVED IN THE ANSWER TO THAT QUESTION.

2 THE COURT: MR. HUNT'S COUNSEL SUGGESTS IT WOULD BE  
3 REVERSIBLE ERROR NOT TO ALLOW A STRICKLAND EXPERT TO  
4 TESTIFY. WHAT'S YOUR RESPONSE?

5 MR. GLASSMAN: WELL, AGAIN, OUR FOCUS HAS BEEN IN  
6 THE CONTEXT OF CAPITAL CASES, AND I DON'T THINK THAT  
7 ANYONE COULD READ THE SUPREME COURT DECISION IN CORDERO  
8 AND ROSS AND DECIDE THAT A STRICKLAND EXPERT IS COMPELLED  
9 UPON A TRIAL COURT.

10 DOES THE COURT HAVE ANY OTHER QUESTIONS IN  
11 TERMS OF OUR POSITION?

12 THE COURT: NO.

13 MR. GLASSMAN: THANK YOU, YOUR HONOR.

14 MR. KLEIN: CAN I ADD TWO THINGS ON STRICKLAND?

15 THE COURT: YOUR FINAL THING.

16 MR. KLEIN: YOUR HONOR, IN THE SUPREME COURT  
17 REPORTER, WHICH --

18 THE COURT: I HAVE GOT STRICKLAND UP HERE, OR I HAD  
19 STRICKLAND UP HERE.

20 MR. KLEIN: IN THE U.S. CITATION IT LOOKS LIKE THE  
21 PAGE --

22 THE COURT: ONE SECOND. I WAS LOOKING AT IT AGAIN  
23 THIS MORNING. I BROUGHT IT ON THE BENCH, AND I HAVE GOT  
24 IT. I HAVE THE COMPUTER, THE SUPREME COURT, 104 SUPREME  
25 COURT.

26 MR. KLEIN: ITS THE SAME ONE I HAVE AT PAGE 2064,  
27 YOUR HONOR, UNDER HEADNOTE FOUR.

28 THE COURT: HOLD ON ONE SECOND. THIS IS NOT

1 PAGINATED. HOLD ON. MAYBE IT IS NOT PAGINATED THAT WAY.  
2 THERE IS -- YES, THIS IS EXACTLY THE PAGE I WAS LOOKING  
3 AT.

4 MR. KLEIN: THE SUPREME COURT IN STRICKLAND DOES  
5 SAY THAT A DEATH PENALTY CASE IN THE SENTENCING PROCEEDING  
6 IS DIFFERENT THAN AN ORDINARY PROCEEDING. SO I THINK YOUR  
7 HONOR'S QUESTION ORIGINALLY ABOUT WHETHER A DEATH PENALTY  
8 CASE IS DIFFERENT THAN AN ORDINARY TRIAL THE SUPREME COURT  
9 RECOGNIZES IT BY SAYING THAT THE STANDARDS ARE DIFFERENT  
10 IN TERMS OF WHAT COUNSEL HAS TO DO IN A DEATH PENALTY CASE  
11 THAN IN A REGULAR CRIMINAL CASE.

12 THE COURT: OF COURSE, THAT DOESN'T REALLY HELP YOU  
13 BECAUSE MR. HUNT DIDN'T GET THE DEATH PENALTY.

14 MR. KLEIN: YOUR HONOR, ALL THE DECISIONS THAT WERE  
15 MAD WERE BASED UPON THE FACT THAT IT WAS A DEATH PENALTY  
16 CASE. IT WAS A DEATH PENALTY CASE, IT DID GO TO THE  
17 PENALTY PHASE AND MR. BARENS' OPINIONS ARE RENDERED BASED  
18 ON THE FACT THAT HE DID CERTAIN THINGS BECAUSE HE WANTED  
19 TO PRESENT IT AT PENALTY PHASE RATHER THAN THE GUILT  
20 PHASE, SO IT IS THE SAME THING. AND IF THE COURT COULD  
21 READ MR. BARENS' DECLARATION HE DOES SAY THAT HE MAKES  
22 DECISIONS BASED ON THE FACT THAT HE WANTS TO PRESENT.

23 THE COURT: WHICH EXHIBIT IS THAT ATTACHED TO?

24 MR. KLEIN: EXHIBIT 9.

25 THE COURT: ALL RIGHT.

26 MR. KLEIN: EXHIBIT 9 TO THE RETURN BY THE PEOPLE.

27 THE COURT: YEAH. OKAY. I KNOW I LOOKED AT  
28 SOMETHING.

1 MR. KLEIN: HE MAKES DECISIONS BASED ON THE FACT  
2 THAT HE WANTS TO PRESENT EVIDENCE AT THE PENALTY PHASE  
3 RATHER THAN THE GUILT PHASE, THEREFORE, ITS THE SAME  
4 BALLPARK. THE OTHER POINT IS, YOUR HONOR, THAT AT PAGE  
5 2069 HEADNOTE 2223, AGAIN IN STRICKLAND, THE UNITED STATES  
6 SUPREME COURT AS IN IN RE FIELDS MAKES IT CLEAR THAT AS A  
7 STARTING POINT THIS COURT HAS TO READ THE ENTIRE RECORD  
8 BECAUSE ITS THE ONLY WAY THAT IT CAN COMPARE WHAT SHOULD  
9 HAVE HAPPENED WITH THAT WHICH HAPPENED. SO AN EXPERT WILL  
10 FACILITATE THE COURT'S ABILITY TO DO THIS BY SYNTHESIZING  
11 THE MATERIAL THAT THE COURT WILL HAVE TO CONSIDER AND I  
12 TRULY THINK IT IS IN THE COURT'S BEST INTEREST TO DO THIS  
13 MATTER IN THAT MANNER.

14 THE COURT: IN OTHER WORDS, IT WOULD BE EASIER?

15 MR. KLEIN: YES, YOUR HONOR.

16 MR. MC MULLEN: MAY I HAVE A COUPLE OF WORDS?

17 THE COURT: GO AHEAD.

18 MR. MC MULLEN: I AM SORRY.

19 ONE THING I WOULD LIKE TO EMPHASIZE THAT  
20 MAYBE GOT PASSED OVER A LITTLE BIT, IT IS OUR POSITION  
21 ALSO THAT TO CONSIDER SUCH AN EXPERT AT THIS POINT IS  
22 PREMATURE. IT IS OUR POSITION THAT YOUR HONOR CAN REVIEW  
23 THE PETITION, THE RETURN AND THE DENIAL AND RESOLVE ALL  
24 THE ISSUES OR MANY OF THE INEFFECTIVE ASSISTANCE OF  
25 COUNSEL ISSUES.

26 ON THE SECOND PRONG OF STRICKLAND, THE  
27 PREJUDICE PRONG, IT IS OUR POSITION THAT CAN BE DONE NOW.  
28 AND ONCE YOU HAVE GONE THROUGH THAT EXERCISE THEN IF YOU

1 FEEL THERE ARE SOME ISSUES YOU WANT TO HEAR EVIDENCE ON  
2 THAT, YOU FEEL --

3 THE COURT: DO YOU THINK ALL OF THE ISSUES THAT ARE  
4 GOING TO BE WITH REFERENCE TO THE INCOMPETENCE OF COUNSEL  
5 CAN BE RESOLVED ON THAT BASIS?

6 MR. MC MULLEN: IF YOU LOOK AT OUR RETURN THAT'S  
7 OUR ARGUMENT.

8 THE COURT: DO YOU THINK THERE IS AN ARGUMENT -- DO  
9 YOU REALLY THINK THAT THOUGH?

10 MR. MC MULLEN: IT WOULDN'T BE IN THE RETURN UNLESS  
11 WE REALLY THOUGHT THAT.

12 THE COURT: OKAY.

13 MR. MC MULLEN: AND SO THAT'S OUR POSITION.

14 THE COURT: ALL RIGHT.

15 MR. MC MULLEN: AND THEN IF YOU DECIDE THAT SOME OF  
16 THOSE ISSUES CANNOT BE RESOLVED ON THAT PREJUDICE PRONG  
17 THEN THAT IS THE TIME TO CONSIDER DO I NEED HELP IN THIS,  
18 IN DECIDING THIS. AND IT IS OUR POSITION THAT IT IS NOT  
19 YOUR COMMON EXPERIENCE THAT YOU SHOULD BE ABLE TO DO THAT.

20 AS FAR AS THE VOLUME OF THE MATERIAL GOES IT  
21 IS ALSO OUR POSITION THAT THE MATERIAL HAS BEEN PARED  
22 DOWN. IF YOU READ THE RETURN, IF YOU READ ALL THOSE SUB  
23 CATEGORIES UNDER ISSUE NO. 2 THAT MATERIAL HAS BEEN PARED  
24 DOWN AND SYNTHESIZED FOR YOUR HONOR. THAT WAS THE PURPOSE  
25 OF THE RETURN.

26 THE COURT: ALL RIGHT.

27 MR. MC MULLEN: THANK YOU.

28 THE COURT: I BELIEVE -- IT IS MY BELIEF THAT THE

1 COURT HAS DISCRETION WHETHER OR NOT TO HEAR THIS TYPE OF  
2 EVIDENCE. I DO NOT BELIEVE IT WOULD BE REVERSIBLE ERROR  
3 TO EXCLUDE IT. I DO NOT BELIEVE IT WOULD BE REVERSIBLE  
4 ERROR TO ALWAYS ALLOW IT. I THINK THIS FALLS WITHIN THE  
5 CATEGORY OF DISCRETION, THAT'S WHY I SET THE MATTER DOWN  
6 FOR HEARING FOR BOTH OF YOU BASICALLY TO CONVINC ME THAT  
7 I SHOULD EXERCISE MY DISCRETION IN ITS FAVOR.

8 IT IS A VERY INTERESTING ISSUE. YOU ARE IN  
9 SLIGHTLY DIFFERENT POSITIONS, BUT IT COMES DOWN TO REALLY  
10 INDIVIDUAL EVALUATION OF EACH OF THE CASES.

11 I NEED TO GO BACK AND EVALUATE HUNT'S  
12 POSITION, WHICH I BELIEVE ARE DISTINCTIVELY DIFFERENT THAN  
13 GAY'S POSITION. AND SO TO DISAPPOINT ALL SIDES I AM GOING  
14 TO TAKE IT UNDER SUBMISSION. I DO WANT TO LOOK AT IT VERY  
15 CLOSELY, AND IT IS GOING TO COME DOWN TO, I BELIEVE, AS  
16 TRIER OF FACT THAT EXPERT TESTIMONY WOULD ASSIST ME IN  
17 COMING TO WHATEVER CONCLUSION I NEED TO CONCLUDE ON THE  
18 FIRST PORTION OF THE STRICKLAND TEST. AND TO DO THAT I  
19 NEED TO NOW LOOK PROSPECTIVELY AND FIGURE OUT WHAT IS  
20 GOING BE TO BE COMING DOWN THE PIKE SO I CAN DETERMINE  
21 WHEN I GET THERE I HAVE MADE THE CORRECT DECISION, AND I  
22 AM NOT SUDDENLY SAYING, "OH, MY GOODNESS I NEED HELP."

23 I AM VERY MINDFUL OF THE FACT THAT I HAVE  
24 MULTIPLE COUNSEL ON THIS, WHICH I THINK CAN DO MOST OF  
25 WHAT NEEDS TO BE DONE, BUT THERE MAY BE SOME AREAS THAT  
26 THE COURT MAY ASK ASSISTANCE ON. I AM GOING TO TRY TO  
27 IDENTIFY, IF THAT IS THE CASE. IF IT IS THE CASE I WILL  
28 APPOINT AN EXPERT FOR MR. HUNT AND PROBABLY ALLOW THE

1 TESTIMONY. IF IT IS THE CASE AS TO MR. GAY I WILL DENY  
2 THE PEOPLE'S MOTION IN LIMINE. SO THAT IS THE WORK I  
3 STILL NEED TO DO.

4 I AM ALSO MINDFUL OF THE FACT THAT I WILL  
5 STILL BE THE TRIER OF FACT AND CAN LIMIT, IF I DO ALLOW  
6 THE STRICKLAND TESTIMONY I CAN STRICTLY LIMIT THAT  
7 TESTIMONY TO ONLY THOSE ISSUES WHICH I AM NOW GOING TO  
8 DECIDE HOPEFULLY ARE WITHIN THE PURVIEW NOT ONLY OF THE  
9 PETITION BUT WHICH ARE IN THE PURVIEW OF MY NEEDS AS THE  
10 TRIER OF FACT FOR ASSISTANCE.

11 SO, I AM GOING TO TAKE THE MATTER UNDER  
12 SUBMISSION.

13 MR. KLEIN: TWO QUESTIONS, YOUR HONOR. FIRST OF  
14 ALL, DOES THE COURT AGREE THAT THE COURT SHOULD MAKE THIS  
15 DECISION NOW BECAUSE IF THE COURT WERE TO ADOPT  
16 MR. MULLEN'S VIEW IT WOULD JUST DELAY THE PROCEEDINGS.

17 THE COURT: HAVE YOU EVER KNOWN ME TO DO ANYTHING  
18 THAT WOULD DELAY THE PROCEEDING IN THE HUNT CASE SO FAR?

19 MR. KLEIN: NO.

20 THE COURT: I AM MINDFUL OF THAT. I UNDERSTAND  
21 MR. MC MULLEN MAY HAVE A VERY GOOD ARGUMENT. I NEED TO  
22 LOOK AT THE ISSUES, AND I HAVE CERTAIN ISSUES IN MIND. I  
23 WILL BE QUITE HONEST I HAVE CERTAIN ISSUES IN MIND.

24 MR. KLEIN: THE OTHER QUESTION IS, YOUR HONOR,  
25 WOULD IT ASSIST THE COURT IF WE FILED WITH THE COURT SOME  
26 EXAMPLES OF HOW IT MIGHT FACILITATE THE COURT'S ABILITY TO  
27 REVIEW THE MATERIAL WITH AN EXPERT?

28 THE COURT: WELL, YOU HAVE DONE THAT SOMEWHAT. IF

1 THERE WAS SOME PARTICULAR EXAMPLE --

2 MR. KLEIN: THE PROBLEM IS THAT --

3 THE COURT: IF YOU ARE ASKING ME IF I AM PRECLUDING  
4 YOU -- IF YOU WANT TO FILE SOMETHING GO AHEAD AND FILE  
5 SOMETHING.

6 MR. KLEIN: OKAY.

7 WOULD YOU GIVE US A WEEK?

8 THE COURT: WHAT I WAS GOING TO DO TODAY IS LOOK AT  
9 IT. THE EASY THING FOR ME TO DO IS TO APPOINT THE EXPERT  
10 AND TO DENY THE MOTION IN LIMINE. THAT'S THE EASY THING  
11 TO DO. I AM THE TRIER OF FACT. I DON'T HAVE TO WORRY  
12 ABOUT A JURY BEING KEPT TOO LONG AND WORRYING ABOUT THE  
13 CASE BEING TOO LONG. I CAN GO LONG DAYS AND I CAN GO  
14 SHORT DAYS, AND THAT'S THE NICE THING ABOUT BEING A TRIER  
15 OF FACT IN THIS THING, I CAN DECIDE I DO NOT WANT TO HEAR  
16 ANYMORE TESTIMONY OR I WANT TO HEAR IT. THAT'S THE EASY  
17 THING TO DO, JUST TO DO IT. THE QUESTION IS WHETHER I  
18 SHOULD DO IT.

19 MR. KLEIN: I UNDERSTAND.

20 OBVIOUSLY THE COURT HAS AN OPEN MIND AND  
21 HASN'T MADE A DECISION, AND I THINK THAT IF THE COURT --

22 THE COURT: LET'S PUT IT THIS WAY, I WOULD SAY THAT  
23 I HAVE TAKEN UNDER SUBMISSION, MAYBE, MY CLERK SAYS TWO,  
24 TWO OTHER THINGS IN THE LAST FIVE YEARS.

25 MR. GLASSMAN: HOW DID YOU RULE?

26 THE COURT: CORRECTLY.

27 SO I DON'T READILY TAKE THINGS UNDER  
28 SUBMISSION. I THINK THAT THE COURT SHOULD RULE. THE ONLY

1 OTHER TIME I HAVE TAKEN ANYTHING UNDER SUBMISSION WAS TO  
2 WRITE AN OPINION. I DO NOT -- UNFORTUNATELY I DO NOT HAVE  
3 THE TIME. I WOULD LOVE TO SPEND THE TIME AND WRITE AN  
4 OPINION.

5 MR. KLEIN: I THINK IF YOU GIVE US A LITTLE TIME, I  
6 THINK IF YOU GIVE US SOME --

7 THE COURT: GIVE ME SOMETHING IN A WEEK. ANYTHING  
8 THAT -- IF YOU WANT TO FILE SOMETHING IN A WEEK FILE IT.

9 MR. KLEIN: THE REASON THAT WE HAVEN'T DONE IT  
10 ALREADY IS BECAUSE OF THE TIME CONSTRAINTS THAT THE COURT  
11 PUT US UNDER IN FILING THE DENIAL.

12 THE COURT: WHICH ARE ALWAYS REASONABLE.

13 MR. KLEIN: APPARENTLY SO, YOUR HONOR.

14 THE COURT: ANYONE THAT WANTS TO FILE ANY  
15 ADDITIONAL PLEADING PLEASE DO SO WITHIN A WEEK. I WILL  
16 TELL YOU WHAT I WANTED TO DO, RESOLVE THIS. I WILL HAVE  
17 MUCH OF IT RESOLVED IN MY MIND BY TUESDAY. I AM STARTING  
18 A THREE TO FOUR WEEK TRIAL ON TUESDAY, BUT I TEND TO DO  
19 THINGS DURING TRIAL, SO ONCE I HAVE THAT JURY SELECTED BY  
20 THE END OF NEXT WEEK, THE FOLLOWING WEEK I WILL FINISH  
21 THAT UP AND I WILL PROBABLY ISSUE SOME SHORT ORDER.

22 ALL RIGHT.

23 ANYTHING FURTHER ON THIS STRICKLAND ISSUE ON  
24 THE HUNT OR THE GAY CASE?

25 MR. DODD: NO.

26 THE COURT: HEARING NOTHING -- ERNIE, I WILL LEAVE  
27 IT UP TO YOU, DO YOU WANT TO TAKE MR. HUNT BACK? I AM  
28 GOING TO NOW GO INTO THE GAY CASE.

1                   AND THEN STANDBY ON HUNT I WILL BE BACK WITH  
2 YOU. THIS SHOULD BE FAIRLY SHORT.

3                   RETURNING NOW SOLELY TO THE GAY CASE, THE  
4 RECORD WILL REFLECT ALL COUNSEL ARE PRESENT.

5                   MR. DODD: CAN I --

6                   MR. KLEIN: CAN I STEP AWAY FOR ABOUT FIVE OR TEN  
7 MINUTES?

8                   THE COURT: GO AHEAD. I AM GOING TO TAKE A SHORT  
9 RECESS. HOW ABOUT 10:30, 20 MINUTES?

10                  MR. CRAIN: GREAT.

11                  MR. KLEIN: THANK YOU.

12                  THE COURT: WE HAVE THE MOTIONS TO TAKE THE  
13 DEPOSITION OF MR. SHINN, MR. PAYNE, MR. MC BROOM AND  
14 MR. WEAVER FILED BY PETITIONER. THEN WE HAVE THE MOTION  
15 FILED BY THE RESPONDENT TO TAKE THE DEPOSITION OF MR. GAY.  
16 I HAVE READ THE MOTION. THERE WAS NO OPPOSITION FILED TO  
17 THE PEOPLE'S -- STRIKE THAT -- THE RESPONDENT'S MOTION TO  
18 TAKE THE DEPOSITION OF MR. GAY. I KNOW IT WAS ONLY FILED  
19 WITHIN, I THINK, THE LAST WEEK. SO --

20                  MR. DODD: UNDER THE CIRCUMSTANCES AND IN LIGHT OF  
21 YOUR HONOR'S PRIOR RULING WITH REGARD TO ATTORNEY-CLIENT  
22 PRIVILEGE ISSUES AND BECAUSE MR. GAY IS QUITE LIKELY TO  
23 TESTIFY I THINK THAT UNDER THOSE CIRCUMSTANCES WE WOULD  
24 NOT HAVE AN OBJECTION IN THE ABSTRACT TO HAVING MR. GAY'S  
25 DEPOSITION TAKEN.

26                  THE COURT: YOU DON'T WANT HIM TO BE ABUSED?

27                  MR. DODD: OF COURSE NOT. AND THERE MAY BE ISSUES  
28 AS TO WHICH WE PRECLUDE HIM FROM TESTIFYING, BUT WE

1 UNDERSTAND WHAT THE IMPLICATION OF THAT MIGHT BE, ETC.,  
2 BUT IN THE ABSTRACT IF WE THINK A DEPOSITION OUGHT TO BE  
3 PERMITTED IN THIS CASE WITH REGARD TO, YOU KNOW, THE  
4 WITNESS, AND MR. GAY IS GOING TO BE A WITNESS.

5 THE COURT: LET'S TALK ABOUT THE ONLY THING THAT  
6 THE RESPONDENT OBJECTED TO, AND THAT IS THE NOT THE TAKING  
7 OF THE DEPOSITION OF MR. SHINN. I LOOKED AT THE NOTE  
8 RELATING TO THE DEPOSITION, IT WAS MORE A STATEMENT UNDER  
9 OATH EXPARTE.

10 MR. DODD: IT WAS AN UNUSUAL PROCEDURE

11 THE COURT: I AM NOT SURE IT WAS TESTY. I COULDN'T  
12 TELL FROM READING THE TRANSCRIPT.

13 MR. DODD: IT WAS -- IT GOT A LITTLE TESTY.

14 THE COURT: ALL RIGHT.

15 MR. DODD: JUST SO YOUR HONOR UNDERSTANDS HOW THAT  
16 CAME ABOUT, WE WERE HAVING A GREAT DIFFICULTY GETTING  
17 MR. SHINN TO COOPERATE WITH US.

18 THE COURT: I THINK YOU SAID SOMETHING IN THE  
19 BEGINNING OF THAT.

20 MR. DODD: IN THE RECORD CORRECTION PROCESS THAT  
21 WAS REALLY RIGHT AT THE BEGINNING AS THE APPEAL WAS GOING  
22 FORWARD. WE WENT TO JUDGE HENRY AND ASKED HER IF SHE  
23 WOULD ORDER HIM TO SHOW UP IN OUR OFFICE AND GIVE US  
24 ANSWERS TO QUESTIONS ABOUT THE CASE UNDER OATH AND SHE DID  
25 THAT AND HE APPEARED THAT'S, AND SO WE TOOK THAT  
26 TESTIMONY. CLEARLY -- EXCUSE ME, YOUR HONOR -- BUT  
27 CLEARLY THERE WERE ISSUES THAT HAVE NOW APPEARED IN THE  
28 COURT'S 13 QUESTIONS THAT WE IN FACT ASKED MR. SHINN

1 QUESTIONS ABOUT. WE HAD NO IDEA IN 1988 WHEN WE TOOK THAT  
2 WHAT WE MIGHT BE FACING HERE IN 1995. THERE WAS A LOT, A  
3 LOT OF ISSUES PARTICULARLY PENALTY PHASE ISSUES.

4 THE COURT: HOW MUCH MORE? IT WAS A FAIRLY  
5 THOROUGH, FOR LACK OF A BETTER TERM, DEPOSITION.  
6 OBVIOUSLY, THERE WERE THINGS NOT KNOWN TO YOU AT THAT  
7 TIME, BUT YOU SEEM, AT LEAST IN MY MIND, TRYING TO SEE --  
8 DID YOU CROSS EVERY "T" AND PROBABLY EVERY "I," PROBABLY  
9 NOT, BUT YOU SEEMED TO HAVE HIT MOST OF THE ISSUES.

10 MR. DODD: I THINK WE HIT A LOT OF PENALTY PHASE  
11 ISSUES, CERTAINLY SO FAR AS MR. SHINN'S INVESTIGATION AND  
12 PENALTY MATTERS. IN RELATIONSHIP TO DR. WEAVER, ALL THOSE  
13 ISSUES, WE REALLY DIDN'T TOUCH ON, AND ALTHOUGH I HAVEN'T  
14 GIVEN IT A LOT OF THOUGHT I THINK WHAT WE WERE THINKING  
15 ABOUT WAS -- I MEAN THESE ARE THE QUESTIONS THAT THIS  
16 COURT IS GOING TO HAVE TO ANSWER, PRESUMABLY THESE ARE THE  
17 KIND OF THINGS THAT MR. SHINN IS GOING TO HAVE TO TESTIFY  
18 ABOUT, AND WE WORKED THROUGH, CERTAINLY WORKED THROUGH  
19 WITH THE QUESTIONS AND THE ISSUES RAISED BY THOSE  
20 QUESTIONS. I DON'T KNOW THAT IT IS GOING TO TAKE -- I  
21 LIKE TO THINK THAT MOST DEPOSITIONS OUGHT TO BE ABLE TO BE  
22 TAKEN EASILY IN A DAY, BUT I DON'T --

23 THE COURT: WELL, WHAT -- I DON'T KNOW. IF I WERE  
24 TO ALLOW IT, HOW MUCH CROSS EXAMINATION IS THERE GOING TO  
25 BE? THERE IS ONE MENTION, I DON'T RECALL WHO MENTIONED  
26 IT, ABOUT MR. SHINN GETTING ON IN AGE. HOW OLD IS HE NOW?

27 MR. GLASSMAN: I AM ESTIMATING THAT HE IS IN HIS  
28 70'S.

1 MR. DODD: I WASN'T SURE. LATE 60'S, EARLY 70'S.

2 THE COURT: NOT A YOUNG MAN. THE WITNESS MAY BE  
3 DEAD, SO WE OUGHT TO DO SOMETHING WITH HIM NOW.

4 MR. DODD: CERTAINLY THAT IS AN ISSUE. I DON'T  
5 KNOW -- I DON'T HAVE ANY INFORMATION TO WHAT HIS STATE OF  
6 HEALTH IS, BUT I CERTAINLY CAN SAY -- I DON'T THINK THAT  
7 MR. SHINN IS GOING TO BE A FLIGHT RISK, HE HASN'T BEEN  
8 VERY COOPERATIVE. I COULD IMAGINE THAT HE MIGHT BE  
9 DIFFICULT TO SUBPOENA FOR THAT HEARING, AND TO HAVE HIS  
10 TESTIMONY PRESERVED, IF HE DOESN'T SHOW UP, IT WOULD  
11 CERTAINLY BE A BENEFIT.

12 THE COURT: WHEN WOULD YOU WANT TO DO THIS?

13 MR. DODD: UNLESS I AM IN TRIAL IN OCTOBER THEN WE  
14 WERE THINKING ABOUT SOON. I HAVE GOT A CASE THAT IS  
15 SCHEDULED BEFORE A JUDGE, THAT IS SET BEFORE A PARTICULAR  
16 JUDGE THAT IS SCHEDULED NOW FOR OCTOBER 18TH. WE ARE ALL  
17 KEEPING OUR FINGERS CROSSED THAT IT WILL SETTLE. IF IT  
18 DOES THEN THAT TIME WILL BE FREED UP, THEN IT WOULD BE  
19 HOPEFULLY WITHIN THE NEXT MONTH OR SO. I ASSUME ALL OF  
20 THESE -- WE NEED TO GET IT UNDER WAY.

21 THE COURT: MR. GLASSMAN?

22 MR. GLASSMAN: THANK YOU, YOUR HONOR.

23 THE COURT: LET'S ASSUME SHINN DISAPPEARS -- I AM  
24 NOT SURE IF HE HURTS YOU OR HELPS YOU, AFTER READING SOME  
25 OF THE STUFF IN THERE.

26 MR. GLASSMAN: WELL, I CAN'T REPRESENT THAT I AM  
27 AWARE OF ANYTHING THAT MAKES MR. SHINN A SERIOUS FLIGHT  
28 RISK ONE WAY OR THE OTHER, BUT I THINK IT IS A BIT EXTREME

1 CHARACTERIZING HIM IN THAT WAY. HE MAY HAVE BEEN  
2 RELUCTANT.

3 THE COURT: I THINK THE MOST YOU CAN SAY PROBABLY  
4 IS THAT HE HAS BEEN RELUCTANT.

5 MR. GLASSMAN: THAT'S UNDERSTANDABLE, QUITE  
6 FRANKLY, HIS RELUCTANCE. HE IS BEING ATTACKED IN THIS  
7 PROCEEDING AND HE MIGHT WELL BE RELUCTANT TO WILLINGLY  
8 PARTICIPATE IN IT.

9 JUST BRIEFLY IN TERMS OF A NEED FOR A SECOND  
10 DEPOSITION, THIS PROCEEDING WAS INITIATED BY PRESENT  
11 COUNSEL, BOTH MR. URDAN AND MR. DODD HAVE PRESENTED MR.  
12 GAY THROUGHOUT, THEY HAD THE OPPORTUNITY TO TAKE MR.  
13 SHINN'S DEPOSITION. I MAY NEED THE STRICKLAND EXPERT IN  
14 TERMS OF WHAT'S PAR FOR THE COURSE FOR DEPOSITIONS, BUT AS  
15 I UNDERSTAND IT THIS WAS IN FACT A DEPOSITION TAKEN OF MR.  
16 SHINN RELATING TO THESE ISSUES AND --

17 THE COURT: I SAY IT IS NOT A DEPOSITION ONLY  
18 BECAUSE THERE REALLY WAS NO, IN A SENSE, CASE PENDING TO  
19 TAKE THE DEPOSITION. IT WAS, I ASSUME, INVESTIGATION DONE  
20 IN AID OF AN ISSUE THAT SOUGHT TO BE REACHED. MR. SHINN  
21 WAS NOT A PARTY OBVIOUSLY TO THE THING AND IT WAS EXPARTE,  
22 ONLY ONE SIDE WAS THERE.

23 MR. GLASSMAN: AND I THINK THAT SINCE COUNSEL IN  
24 PURSUIT OF CLAIMS REGARDING THE ADEQUACY OF MR. SHINN'S  
25 REPRESENTATION DID IN FACT TAKE HIS DEPOSITION, AND SINCE  
26 A HEARING IS TO BE HELD REGARDING THE ADEQUACY OF HIS  
27 REPRESENTATION I DON'T KNOW THAT SUFFICIENT CAUSE HAS BEEN  
28 STATED FOR WHAT IS IN FACT A SECOND DEPOSITION, AND WHAT

1 WILL BE OSTENSIBLY DONE IN ADDITION TO HIS TESTIMONY AT  
2 THE HEARING. SO, IT WOULD APPEAR TO ME THAT IN THE  
3 ABSENCE OF A DEMONSTRABLE REASON TO DOUBT THAT MR. SHINN  
4 HAD APPEARED AT THE HEARING, THE DEPOSITION, LARGELY  
5 BECOMES ANOTHER MEANS WITH WHICH TO IMPEACH HIM.

6 THE COURT: WELL, THIS IS A CIVIL PROCEEDING. IF  
7 THIS WERE A PURELY CIVIL CASE EVERYBODY WOULD BE TAKING  
8 EVERYBODY'S DEPOSITION AND SPENDING ALL OF THEIR CLIENTS  
9 MONEY, A GREAT DEAL OF TIME, WHY SHOULD WE TREAT IT ANY  
10 DIFFERENTLY?

11 MR. GLASSMAN: WELL, BECAUSE AGAIN IN MY VIEW HIS  
12 DEPOSITION HAS BEEN TAKEN.

13 THE COURT: ALL RIGHT.

14 ANY FINAL THOUGHTS THAT YOU HAVE?

15 MR. DODD: JUST, IF THIS IS PURELY A CIVIL CASE AND  
16 NEW A ISSUE AROSE IT IS STANDARD, I BELIEVE, FOR WITNESSES  
17 TO BE ABLE TO BE DEPOSED ON THOSE ISSUES, AND I THINK --

18 THE COURT: IF THEY CONVINCED THE JUDGE.

19 MR. DODD: OF COURSE, THAT'S ALWAYS THE CASE. BUT  
20 I THINK THE -- IT IS IMPORTANT, THE TIMING HERE. THIS WAS  
21 DONE DURING THE PENDENCY OF THE APPEAL. THE HABEAS  
22 PROCEEDING HAD NOT EVEN BEEN FILED YET, SO WE WEREN'T  
23 ANYWHERE NEAR WHERE WE HAVE COME TO NOW IN TERMS OF HOW  
24 THE SUPREME COURT RULED. AND AS WE ALL KNOW THE ISSUES  
25 BEFORE THE COURT ARE LARGELY, IF NOT EXCLUSIVELY BUT  
26 LARGELY AIMED AT THE PENALTY PHASE AND ONE NEED ONLY GO  
27 AND READ THE QUESTIONS WE ASKED MR. SHINN TO SEE THAT  
28 THOSE ISSUES ARE CERTAINLY THE ISSUES THAT WERE IMPORTANT

1 TO THE CALIFORNIA SUPREME COURT, WERE NOT ALL ADDRESSED  
2 DURING THAT TESTIMONY.

3 I MEAN THERE IS NO PREJUDICE TO THE STATE BY  
4 HAVING THIS DEPOSITION. I MEAN THEY GET TO HEAR WHAT MR.  
5 SHINN HAS TO SAY AND CAN ASK HIM QUESTIONS AS WELL. IT  
6 SEEMS TO ME INEFFICIENT FOR US NOT TO HAVE SOME SENSE OF  
7 WHAT HE IS LIKELY TO SAY WHEN HE COMES AND TESTIFIES.

8 THE COURT: I JUST HATE SPENDING MONEY, EVEN THOUGH  
9 IT IS NOT MY OWN MONEY. I AM GOING TO GRANT THE REQUEST  
10 TO DEPOSE ALL OF THE INDIVIDUALS INCLUDING MR. SHINN NOT  
11 BECAUSE I THINK HE IS A FLIGHT RISK OR UNAVAILABLE,  
12 ALTHOUGH I AM MINDFUL OF THE FACT HE HAS NOT PARTICULARLY  
13 BEEN COOPERATIVE, BUT THE STATEMENT GIVEN UNDER OATH IS  
14 NOT A BIT DATED, IT IS A LOT DATED. IT IS SEVEN YEARS OLD  
15 AND FACTS HAVE CHANGED.

16 JUST TO BE CAUTIONARY, I DON'T WANT THIS TO  
17 BE A COMPLETE HEARING. I MEAN MR. SHINN, I ASSUME, IS  
18 GOING TO BE THE PRINCIPAL WITNESS AT THE TIME OF THE  
19 HEARING IN THIS MATTER AND I WANT TO MAKE SURE THAT YOU  
20 GUYS DON'T GO OUT AND HAVE A MINI HEARING WITHOUT ME. I  
21 WOULDN'T WANT TO MISS ANYTHING. I WILL SIGN -- BOTH SIDES  
22 HAVE SUBMITTED THE ORDER. I WILL SIGN IT. I WILL LET  
23 COUNSEL WORK OUT THE DETAILS OF WHEN AND WHERE AND HOW AND  
24 ALL THOSE THINGS.

25 THANK YOU FOR NOT GETTING ME INVOLVED IN  
26 THAT.

27 MR. GLASSMAN: YOUR HONOR, IF I COULD MAKE ONE  
28 ADDITIONAL POINT WITH RESPECT TO THE TAKING OF THE

1 DEPOSITION, THAT IS BOTH SIDES OF THE ISSUE ARE OF THE  
2 VIEW THAT THIS CASE, DEPOSITION SHOULD BE ALLOWED UPON  
3 GOOD CAUSE AND THE RESPONDENT HAS NOT YET DESIGNATED OTHER  
4 INDIVIDUALS TO DEPOSE, LARGELY BECAUSE WE DON'T YET HAVE,  
5 IN MY MIND, A CLEAR INDICATION OF THE INDIVIDUALS THAT THE  
6 PETITIONER PLANS TO PRESENT AT THE HEARING. SO I SIMPLY  
7 WANTED TO APPRISE THE COURT THAT I MAY BE COMING BACK TO  
8 THE COURT AND ASKING TO TAKE ADDITIONAL DEPOSITIONS. IT  
9 IS NOT ONLY MR. GAY THAT I AM THINKING OF DEPOSING.

10 THE COURT: SURE. THAT WAS GOING TO BE THE NEXT  
11 QUESTION. WHEN WE ARE TALKING ABOUT -- COME UP TO SIDE  
12 BAR FOR JUST A MOMENT.

13  
14 (A CONFERENCE WAS HELD BETWEEN THE  
15 COURT AND COUNSEL, NOT REPORTED.)  
16

17 THE COURT: ALL RIGHT.

18 WE HAVE PLANNED OUT A FEW THINGS. WE ARE  
19 SETTING THE MATTER DOWN FOR THE COMMENCEMENT OF THE  
20 HEARING IN THIS MATTER ON -- I LOST MY JANUARY CALENDAR --  
21 JANUARY 2ND.

22 THE COURT: JANUARY 2ND AT 9:00 A.M..

23 I WILL SET THE MATTER DOWN FOR A STATUS  
24 CONFERENCE BY PHONE UNLESS THERE ARE PLEADINGS FILED,  
25 WHICH REQUIRE THE NECESSITY OF A HEARING ON NOVEMBER THE  
26 3RD. IF THERE IS A HEARING IT WILL BE NOVEMBER THE 3RD AT  
27 8:30. IF IT IS A STATUS CONFERENCE THEN I WILL ASK  
28 COUNSEL TO GET IT TOGETHER. SPEAK TO THE CLERK AND SET

1       WHATEVER TIME IS CONVENIENCE FOR EVERYONE ON THE 3RD. WE  
2       CAN DO THAT BY TELEPHONE.

3                       ON THAT DATE I WILL ALSO BE ORDERING THE  
4       FILING OF SOME TYPE OF PRE-TRIAL CONFERENCE ORDER OR  
5       HEARING MEMO, I AM NOT SURE WHAT WE ARE GOING TO CALL IT,  
6       THAT SETS FORTH THE ISSUE FROM EACH SIDE AND A DATE WILL  
7       BE SET ALSO FOR THE EXHIBIT LIST, A WITNESS LIST TO BE  
8       FILED THAT WILL PROBABLY BE A MID OR EARLY DECEMBER DATE,  
9       BUT WE WILL CROSS THAT BRIDGE ON NOVEMBER 3RD WHEN WE ALL  
10      SPEAK.

11                      AND WITHIN THE NEXT WEEK OR TWO, DEPENDING  
12      WHEN I GET TO IT, I WILL HAVE SOME TYPE OF A WRITTEN ORDER  
13      ON THE STRICKLAND ISSUE OUT TO YOU.

14                      ANYTHING ELSE WE NEED TO TAKE CARE OF ON THE  
15      GAY CASE?

16                      MR. GLASSMAN: I DON'T BELIEVE SO, YOUR HONOR.

17                      MR. DODD: THANK YOU.

18                      THE COURT: THANK YOU, COUNSEL.

19                      MR. KLEIN, WE ARE GOING TO TAKE A 15 MINUTE  
20      RECESS.

21                      MR. KLEIN: I WILL GO GET MR. CRAIN.

22                      THE COURT: WE ARE GOING TO TAKE A RECESS.

23

24                      (RECESS.)

25

26                      THE COURT: LET ME RECALL THE MATTER OF JOSEPH  
27      HUNT. THE RECORD WILL REFLECT ALL COUNSEL ARE PRESENT,  
28      MR. CRAIN IS ABOUT TO -- I JUST SAW HIM.

1 THE BAILIFF: HE IS IN THE LITTLE ATTORNEY ROOM.

2 THE COURT: ALL COUNSEL WILL BE PRESENT AS SOON AS  
3 MR. CRAIN GETS HERE.

4

5 (PAUSE.)

6

7 THE COURT: ALL COUNSEL ARE NOW PRESENT.

8 ALL RIGHT.

9 WE STILL HAVE TO RESOLVE IN THE HUNT MATTER A  
10 REQUEST BY MR. HUNT FOR THE APPOINTMENT OF A POLICE  
11 EXPERT.

12 MR. KLEIN: TWO POLICE EXPERTS.

13 THE COURT: YOU HAVE ASKED THAT I APPOINT DAVID  
14 DOTSON, RETIRED ASSISTANT CHIEF AND MR. DE LOACH, A  
15 RETIRED DETECTIVE. LET ME ASK TWO PREPARATORY QUESTIONS.  
16 ONE, THIS INCIDENT HAPPENED WHILE CHIEF DOTSON WAS  
17 ASSISTANT CHIEF OF L.A.P.D., HE IS NOT BEING CALLED TO BE  
18 A FACT WITNESS. DOESN'T HE HAVE A BIT OF A CONFLICT OF  
19 INTEREST IF HE WAS IN THE CHAIN OF COMMAND, MANAGEMENT  
20 AUTHORITY OVER OFFICERS THAT YOU ARE MAKING ALLEGATIONS  
21 ABOUT?

22 MR. KLEIN: I ASKED -- WELL MR. DE LOACH ALSO  
23 WORKED FOR L.A.P.D. AT THE SAME TIME.

24 THE COURT: BUT I ASSUME HE WAS NOT IN MANAGEMENT  
25 AUTHORITY OVER L.A.P.D. OFFICERS.

26 MR. KLEIN: NO. BOTH OFFICERS DO NOT BELIEVE THEY  
27 HAVE A CONFLICT OF INTEREST. BOTH OF THEM ARE SIMPLY  
28 LOOKING AT THE INFORMATION OR GOING TO RENDER AN OPINION.

1 NEITHER ONE HAD ANY PERSONAL KNOWLEDGE OF ANYTHING  
2 RELATING TO THE MATERIAL AT THE TIME THAT THEY WORKED FOR  
3 L.A.P.D. AND BOTH FEEL COMFORTABLE DOING THAT.

4 THE COURT: ASSISTANT CHIEF DOTSON WAS ASSISTANT  
5 CHIEF AT THE TIME OF THE HUNT CASE. AS I RECALL THERE WAS  
6 SOME PUBLICITY, THE CASE WOULD HAVE HAD SOME INTEREST AT  
7 LEAST AT THE MANAGEMENT LEVEL.

8 ALSO, ON A SIDE NOTE ON MR. DE LOACH, YOU MAY  
9 WANT TO REMIND HIM THAT HE IS ON THE INDIGENT PANEL AND AS  
10 PART OF THAT APPOINTMENT HE AGREED TO WORK FOR NO MORE  
11 THEN \$25 AN HOUR, AND THAT HE WOULD NOT CHARGE IN  
12 INDIGENTS MORE THEN THAT. THAT IS SUBJECT TO DISCIPLINE  
13 BEFORE THE PRIVATE INVESTIGATING COMMITTEE OF THE COURT,  
14 OF WHICH I AM A MEMBER.

15 BUT BE THAT AS IT MAY, PUTTING ASIDE THOSE  
16 TWO ISSUES, WHY DO WE REALLY NEED THEM? I READ THE  
17 PAPERS.

18 MR. KLEIN: WELL, THE COURT IS GOING TO HAVE TO  
19 DECIDE BASED ON THE INFORMATION -- IT IS VERY SIMILAR TO  
20 THE STRICKLAND TYPE ISSUE ABOUT WHETHER DETERMINATIONS BY  
21 POLICE OFFICERS WERE REASONABLE, AND THERE IS A MYRIAD OF  
22 INFORMATION. THE MURDER BOOK IS SIX NOTEBOOKS THICK,  
23 WHICH BOTH OF THEM HAVE REVIEWED AT NO EXPENSE TO THE  
24 COUNTY, AND ARE PREPARED TO RENDER AN OPINION CONTRARY TO  
25 THE OPINION THAT THE PEOPLE HAVE PROFFERED IN THEIR  
26 RETURN.

27 AGAIN, IT IS GOING TO BE INFORMATION THAT THE  
28 COURT IS GOING TO HAVE TO WEIGH AND EVALUATE, BUT I REALLY

1 DON'T THINK THAT THE COURT HAS THE EXPERIENCE TO REVIEW  
2 INVESTIGATORY MATERIAL AND THEN COME TO A CONCLUSION. THE  
3 COURT IS GOING TO HAVE TO RELY ON THE POLICE OFFICERS THAT  
4 ARE GOING TO COME IN AND TESTIFY.

5 THE COURT: IT IS REALLY THE THRUST OF YOUR  
6 ARGUMENT THAT THOSE OFFICERS PERJURED THEMSELVES OR THAT  
7 THEY LIED IN THESE HEARINGS, AND NOT WHAT A REASONABLE  
8 OFFICER WOULD HAVE DONE UNDER THE CIRCUMSTANCES. BECAUSE  
9 WE CAN BRING IN 10,000 OFFICERS AND WE PROBABLY HAVE 5000  
10 HAVING ONE OPINION AND 5000 HAVING ANOTHER OR ANY OTHER  
11 NUMERICAL BREAKDOWN.

12 MR. KLEIN: NO, YOUR HONOR.

13 THERE ARE TWO ISSUES THAT THE COURT OF APPEAL  
14 HAS IDENTIFIED RELATIVE TO THIS OTHER MURDER, THE  
15 HOLLYWOOD HOMICIDE. ONE ISSUE IS WHETHER OR NOT THE  
16 POLICE OFFICERS PERJURED IN A SENSE. THE OTHER ISSUE IS  
17 WHETHER OR NOT THE LAW ENFORCEMENT AND THE PROSECUTION  
18 COMMITTED BRADY ERROR IN NOT TURNING OVER THIS MATERIAL.

19 AND IT REALLY HINGES ON WHETHER OR NOT A  
20 REASONABLE POLICE OFFICER WOULD HAVE SAID CERTAIN THINGS.  
21 AND THE ONLY WAY THAT THE COURT IS GOING TO BE ABLE TO  
22 EVALUATE THE OPINION OF THE POLICE OFFICERS THAT TESTIFIED  
23 THAT DEAN KARNY WAS NOT A SUSPECT IN THE MAYER MURDER AND  
24 WAS ELIMINATED AS A SUSPECT IN THE MAYER MURDER, THE ONLY  
25 WAY THE COURT IS GOING TO BE ABLE TO DECIDE THAT AND THEN  
26 DETERMINE WHETHER OR NOT BRADY ERROR WAS COMMITTED IS TO  
27 EVALUATE THE OPINION OF THE POLICE OFFICERS.

28 WE BELIEVE THAT WE SHOULD HAVE THE

1 OPPORTUNITY TO HAVE AN INDIVIDUAL SUCH AS MR. DOTSON AND  
2 MR. DE LOACH COME IN HERE AND SAY THAT WHEN THEY SAID  
3 THAT, YOU KNOW, THEY ELIMINATED DEAN KARNY AS THE SUSPECT  
4 AND NO REASONABLE POLICE OFFICER COULD HAVE POSSIBLY DONE  
5 THAT. AND IT IS NOT -- SO THAT'S NOT A PERJURY QUESTION  
6 ALONE.

7 THE COURT: LET'S ASSUME THEY ARE INCOMPETENT  
8 OFFICERS, BAD OFFICERS, THAT KARNY SHOULD HAVE BEEN A  
9 SUSPECT IN THIS CASE, THEY WERE IDIOTS AND THEY COULDN'T  
10 FIGURE THAT OUT. THAT'S NOT GROUNDS, IS IT?

11 MR. KLEIN: YOUR HONOR, IF NOBODY COULD HAVE  
12 POSSIBLY ELIMINATED KARNY AS A SUSPECT IN THIS CASE WHICH  
13 IS, I THINK, GOING TO BE CLEAR WHEN WE PRESENT THE  
14 EVIDENCE, BRADY ERROR OCCURRED. AND WE ARE GOING TO BE  
15 ABLE TO ESTABLISH OUR POSITION, AND I THINK THAT IT IS  
16 ONLY FAIR THAT WE BE GIVEN THE OPPORTUNITY TO HAVE  
17 EXPERTS, AND THE TWO THAT WE PROPOSE, I THINK, ARE REALLY  
18 PERFECTLY QUALIFIED TO DO THIS.

19 I MEAN DE LOACH DID THE SAME KIND OF THINGS  
20 THAT THE TWO POLICE OFFICERS, DETECTIVES, WHO CLAIM THAT  
21 THEY ELIMINATED KARNY AS A SUSPECT IN THIS MURDER. I  
22 MEAN, HE HAS LOOKED AT THIS BOOK AND HE SAYS THERE IS NO  
23 WAY ANYBODY COULD HAVE DONE THAT.

24 MR. DOTSON, WHO IS AN ADMINISTRATOR AND, YOU  
25 KNOW, HIGHLY SKILLED AFTER MANY YEARS HAS DONE THE SAME  
26 THING AND IS PREPARED TO COME IN AND SAY THE SAME THING.

27 ALL WE ARE ASKING THE COURT TO DO IS REALLY  
28 ALLOW THEM TO LOOK AT IT AGAIN, SO THEY CAN TESTIFY. IT

1 IS NOT GOING TO BE AT GREAT EXPENSE TO THE COURT AND THEIR  
2 OPINION IS GOING TO BE CONTRARY TO THE TESTIMONY THAT THE  
3 PEOPLE ARE GOING TO OFFER THROUGH THE OFFICERS THAT  
4 SUPERVISED THIS INVESTIGATION.

5 THE COURT: MR. MC MULLEN, ARE YOU GOING TO CALL AN  
6 EXPERT POLICE WITNESS?

7 MR. MC MULLEN: YOUR HONOR, WE ARE A LIT BIT AT A  
8 DISADVANTAGE, IN SOMEWHAT OF A VACUUM BECAUSE WE HAVEN'T  
9 SEEN ANY OF THE REQUESTS OR ANYTHING LIKE THAT.

10 THE COURT: WHAT YOU HEARD IS WHAT THE REQUEST IS?

11 MR. MC MULLEN: OKAY.

12 AGAIN, I AM GOING TO SOUND SOMEWHAT  
13 REPETITIVE HERE, BUT I THINK WE ARE PREMATURE IN THIS  
14 REQUEST BECAUSE IT IS OUR POSITION THAT YOUR HONOR CAN  
15 REVIEW THE PETITION, THE RETURN AND THE DENIAL AND YOU  
16 MIGHT DECIDE, AND IT IS OUR POSITION THAT YOU SHOULD  
17 DECIDE, THAT THIS ISSUE CAN BE RESOLVED WITHOUT AN  
18 EVIDENTIARY HEARING.

19 THE COURT: I ASSUME -- I DON'T ASSUME THERE IS  
20 GOING TO BE A HEARING.

21 MR. MC MULLEN: ASSUMING THERE IS GOING TO BE A  
22 HEARING ON THIS ISSUE.

23 THE COURT: PROBABLY THERE WILL BE.

24 MR. MC MULLEN: WHAT WE ARE REALLY TALKING ABOUT IS  
25 EVALUATION OF POLICE OFFICERS CREDIBILITY AND THAT'S WHAT  
26 YOU ARE HERE TO RESOLVE.

27 THE COURT: BUT YOU ARE GOING TO BE SEEKING TO CALL  
28 A POLICE OFFICER THAT WILL SAY A REASONABLY WELL TRAINED

1 OFFICER WOULD HAVE COME TO THE SAME CONCLUSION.

2 MR. MC MULLEN: IT IS DIFFICULT.

3 MR. KLEIN: THEY PUT A DECLARATION IN THE RETURN  
4 SAYING THAT --

5 MR. MC MULLEN: WE BASICALLY ARE REFUTING  
6 ALLEGATIONS IN IT, THAT'S WHY THAT DECLARATION IS THERE.  
7 NOT KNOWING EXACTLY HOW THIS ISSUE IS GOING TO BE  
8 DEVELOPED IN THE HEARING I DON'T KNOW --

9 THE COURT: I ASSUME IT WILL BE DEVELOPED IN TERMS  
10 OF THE PEOPLE THAT ARE THE PARTICIPANTS AND THESE VARIOUS  
11 ISSUES PROBABLY HAVING TO TESTIFY IN OPEN COURT AS SOME  
12 PARTS OF THIS WERE COVERED IN THE IN CAMERAS HEARINGS THAT  
13 WERE EXPARTE, I WOULD ASSUME SOME OF THE SAME FOLKS ARE  
14 GOING TO SAY, "THIS IS WHAT WE KNEW, THIS IS WHAT WE DID,  
15 THIS IS WHY WE CAME TO THE CONCLUSIONS THAT WE DID."

16 MR. MC MULLEN: YOUR HONOR, ALL I CAN SAY NOW --

17 THE COURT: DOES THAT SOUND ABOUT RIGHT, MR. KLEIN?

18 MR. KLEIN: EXACTLY, YOUR HONOR.

19 MR. MC MULLEN: THE BEST ANSWER I CAN GIVE YOU,  
20 YOUR HONOR, AT THIS POINT IS PROBABLY NOT. I DON'T REALLY  
21 KNOW UNTIL I REALLY SEE AND GET A FEEL FOR THE EVIDENCE.

22 A LOT OF WHAT WE ARE GOING TO BE DOING, AND  
23 ASSUMING THERE IS A HEARING, AS YOU SAY, IS REBUTTING WHAT  
24 IS PRESENTED AND UNLESS AND UNTIL THAT TIME COMES AND I  
25 KNOW WHAT WE ARE FACED WITH DECISIONS WILL BE MADE. RIGHT  
26 NOW I CAN PROBABLY SAY PROBABLY NOT. I DON'T WANT TO BE  
27 HELD TO -- YOU KNOW, IF AN EXPERT IS CALLED TO GIVE SUCH  
28 AN OPINION I MIGHT -- WE MIGHT FEEL COMPELLED TO CALL AN

1 EXPERT, I DON'T KNOW, OR SOMEBODY TO REFUTE THAT.

2 MR. KLEIN: I CAN ASSURE THE COURT THAT IT IS GOING  
3 TO START BY WE ARE GOING TO CALL THE TWO POLICE OFFICERS  
4 THAT WERE THE DETECTIVES ON THE CASE, AND THEY ARE GOING  
5 TO COME IN AND SAY WHAT THEY SAID IN THE IN CAMERA  
6 HEARINGS, AND THEN THEY ARE GOING TO BE CONFRONTED WITH  
7 THE EVIDENCE AND THEY ARE NOT GOING TO CHANGE THEIR  
8 POSITION AND WE HAVE TO --

9 THE COURT: THEN I HAVE TO DECIDE ARE THEY  
10 CREDIBLE. THEY ARE SITTING HERE IN FRONT OF ME, I GOT TO  
11 DECIDE.

12 MR. KLEIN: AGAIN, YOUR HONOR IS NOT TRAINED TO  
13 REVIEW THE SIX VOLUMES OF THE MURDER BOOK AND DECIDE  
14 WHETHER OR NOT ANY POLICE OFFICER WOULD HAVE COME TO A  
15 CONTRARY CONCLUSION.

16 THE COURT: THAT'S WHY YOU ARE GOING TO CONDUCT  
17 COGENT CROSS EXAMINE THAT WILL RIP THESE PEOPLE TO SHREDS.

18 MR. KLEIN: NO PROBLEM WITH THAT, BUT AGAIN WE HAVE  
19 TWO HIGHLY TRAINED, HIGHLY COMPETENT OFFICERS WHO, YOU  
20 KNOW, WERE DOING THE SAME. ONE WAS DOING THE SAME THING  
21 AND ANOTHER IS AN ADMINISTRATOR WHO ARE PREPARED TO COME  
22 IN HERE AND SAY, "THERE IS NO WAY THEY COULD HAVE DONE  
23 THAT." THAT IS HIGHLY PROBATIVE EVIDENCE TO SHOW THAT  
24 THERE WAS BRADY ERROR HERE, AND ALSO THAT THESE OFFICERS  
25 ARE LYING, WHICH IS GOING TO BE ANOTHER PRONG OF IT.

26 THE COURT: BUT THEY HAVE NO FACTUAL KNOWLEDGE OF  
27 THE FACTS OF THIS CASE.

28 MR. KLEIN: THEY HAVE READ --

1 THE COURT: I AM TALKING ABOUT THEY DON'T KNOW WHAT  
2 WAS GOING ON AT THE TIME, THEY CAN TESTIFY PURELY AS  
3 EXPERTS; RIGHT?

4 MR. KLEIN: BUT THAT'S ALL THESE OTHER TWO OFFICERS  
5 ARE GOING TO BE. THEY WERE THE INVESTIGATING OFFICERS ON  
6 ANOTHER MURDER WHO CLAIM THAT DEAN KARNY WAS ELIMINATED AS  
7 A SUSPECT. THAT'S THE ISSUE THAT THE COURT IS GOING TO  
8 HAVE TO DECIDE, DECIDE WHETHER THERE WAS BRADY ERROR AND  
9 IF THE COURT DETERMINES THAT, YOU KNOW, THERE IS NO WAY  
10 THAT THAT COULD HAVE HAPPENED THEN THERE IS BRADY ERROR  
11 AND THEN THERE IS PROBLEM WITH MR. HUNT'S CONVICTION, AND  
12 TO HAVE TWO OTHER EXPERTS COME IN HERE AND SAY, "I HAVE  
13 READ THE SAME THING AND FOR THE FOLLOWING REASONS I  
14 BELIEVE THAT I COULDN'T HAVE ELIMINATED DEAN KARNY AS A  
15 SUSPECT," THAT'S THE MOST PROBATIVE INFORMATION THAT WE  
16 CAN PRESENT TO THIS COURT AND THIS COURT -- I MEAN IN THIS  
17 STRICKLAND AREA THE COURT HAS TRAINING AS A LAWYER AND THE  
18 COURT HAS SOME EXPERTISE, BUT NOT IN, YOU KNOW, THESE  
19 TYPES OF CASES, BUT THE COURT DOESN'T HAVE EXPERTISE IN  
20 READING A MURDER BOOK AND SAYING, YOU KNOW, "I WOULD HAVE  
21 COME TO THIS CONCLUSION SO -- "

22 MR. CRAIN: IT IS CERTAINLY STRONG CIRCUMSTANTIAL  
23 EVIDENCE ON THE QUESTION OF THE TRUTHFULNESS OF THEIR  
24 CLAIM THAT KARNY WAS ELIMINATED TO HAVE MR. DOTSON COME IN  
25 AND SAY, "I REVIEWED THESE MATERIALS AND BASED ON MY  
26 EXPERIENCE NO REASONABLE DETECTIVE WOULD HAVE ELIMINATED  
27 KARNY." THE INFERENCE TO BE DRAWN FROM THAT, WE WOULD  
28 SUBMIT, IS THAT THE POSTURE OF THE PEOPLE'S WITNESSES

1 ROZZI AND DIAZ IS PERJURIOUS.

2 THE COURT: IN TERMS OF THE EXPERIENCE OF THIS  
3 COURT, I HAVE A CONSIDERABLE AMOUNT OF EXPERIENCE PUTTING  
4 INVESTIGATIONS TOGETHER, CONDUCTING INVESTIGATIONS,  
5 KNOWING WHAT IS BRADY, HAVING HAD THAT BRADY KNOWLEDGE  
6 TESTED IN COURTS MANY, MANY TIMES PERSONALLY AS A LAWYER,  
7 THIS IS JUST NOT THE AREA OF EXPERTISE AND THE CASE, I  
8 APOLOGIZE I PUT AWAY THE GAY CASE, THERE IS A CASE, I  
9 BELIEVE IT IS THE BONIN CASE, ONE OF THEM TALKS ABOUT  
10 RE-LITIGATING AREAS THAT I THINK ARE IN THE PSYCHIATRIC  
11 AREA WHERE YOU HAVE SOMEBODY THAT COMES UP AND SAYS,  
12 "WELL, I HAD A PSYCHIATRIC PROBLEM 10 YEARS AGO," AND YOU  
13 BRING IN A PSYCHIATRIST WHO SAYS, "THAT'S ABSOLUTELY  
14 CORRECT. HE MUST HAVE HAD A PSYCHIATRIC PROBLEM." THE  
15 COURT TALKED ABOUT AND GOING AT GREAT LENGTH, "WE CANNOT  
16 RE-LITIGATE ALL OF THESE ISSUES. IF WE WERE TO  
17 RE-LITIGATE AN ISSUE LIKE THIS BY THE WAY OF EXPERT  
18 TESTIMONY WE WOULD HAVE THE COURTHOUSE HALLWAYS FILLED  
19 WITH POLICE OFFICERS: SOME THAT WOULD BE FORMER POLICE  
20 OFFICERS TESTIFYING, "THAT THAT'S GREAT INVESTIGATION,"  
21 AND SOME TESTIFYING, "NO, THAT IS A LOUSY INVESTIGATION,"  
22 BUT THAT DOESN'T GET US ANYWHERE TO ASSIST ME AS A TRIER  
23 OF FACT.

24 MR. KLEIN: YOUR HONOR, YOU ARE GOING TO BE THE  
25 TRIER OF FACT.

26 THE COURT: THE ISSUE I NEED TO DETERMINE IS  
27 WHETHER THESE, WHETHER OR NOT THESE LAWYERS -- WHETHER  
28 THESE OFFICERS WERE INCOMPETENT. THE QUESTION IS WERE

1 THEY, WITH KNOWLEDGE OF THESE FACTS, MISLEADING THE COURT,  
2 MISLEADING PERHAPS THE DISTRICT ATTORNEY AS A PART OF A  
3 CONSPIRACY PERHAPS WITH THE DISTRICT ATTORNEY TO MISLEAD  
4 THE COURT. THOSE ARE THE ISSUES, THOSE ARE CREDIBILITY  
5 CALLS, THOSE ARE JUDGMENT CALLS AS TO WHETHER I BELIEVE  
6 THEY ARE LYING OR NOT.

7 MR. KLEIN: BUT ITS PREMISED ON THE INFORMATION  
8 THAT IS CONTAINED IN THE MURDER BOOK AND THE OPINION THAT  
9 ROZZI AND DIAZ ARE GOING TO RENDER THAT DEAN KARNY WAS  
10 ELIMINATED AS A SUSPECT. AND SO WE HAVE TO START WITH THE  
11 INFORMATION IN THE MURDER BOOK AND SAY, "NO REASONABLE  
12 PERSON BASED ON ALL THIS INFORMATION COULD HAVE ELIMINATED  
13 DEAN KARNY AS A SUSPECT," AND THEN AFTER THAT THE TRIAL  
14 WILL FOLLOW ABOUT WHY AND WHAT, AND YOUR HONOR WILL THEN  
15 HAVE TO MAKE THAT KIND OF A CALL. BUT UNTIL WE ESTABLISH  
16 THAT, YOU KNOW, ROZZI AND DIAZ THERE IS NO WAY THEY COULD  
17 HAVE DONE THIS BASED ON READING THIS MURDER BOOK WE DON'T  
18 EVEN GET TO STEP ONE.

19 THE COURT: BUT HOW IS THAT DIFFERENT FROM NUMEROUS  
20 DECISIONS COURT'S HAVE TO MAKE ESPECIALLY -- TO GIVE YOU  
21 AN EXAMPLE, IN THE SEARCH WARRANT AREA WHERE THE STANDARD  
22 IN JUDGING GOOD FAITH BELIEF IS A REASONABLY WELL TRAINED  
23 OFFICER WOULD NOT COME TO THE CONCLUSION THAT THIS WAS A  
24 VALID WARRANT, WE MAKE THOSE CALLS ALL THE TIME WITHOUT  
25 EXPERT TESTIMONY. IN FACT THE CASES SAY THAT THE COURT  
26 MUST LOOK AT THE FACTS UNDER THE STATUTORY GROUNDS AND  
27 STANDARDS SET FORTH UNDER THE LAW, MAKE THAT DECISION, NO  
28 EXPERTS COME IN ON THAT.

1           MR. KLEIN: BUT A SEARCH WARRANT IS NORMALLY A  
2 DOCUMENT THAT IS A NUMBER OF PAGES WE ARE TALKING ABOUT  
3 SIX VOLUMES AND, YOU KNOW, THE THOUGHT PROCESSES OF AN  
4 INVESTIGATOR BASED ON ALL THAT INFORMATION AND --

5           THE COURT: THAT'S WHY THAT INVESTIGATOR IS GOING  
6 TO TESTIFY, THAT'S WHY I WOULD ASSUME THAT YOU ARE GOING  
7 TO VIGOROUSLY CROSS EXAMINE HIM.

8           MR. KLEIN: I WILL, YOUR HONOR, BUT AGAIN YOU ARE  
9 NOT GOING TO WANT TO READ THE SIX VOLUMES OF THE MURDER  
10 BOOK AND YOU ARE NOT OF THE FRAME OF MIND OF AN  
11 INVESTIGATOR TO READ THAT AND EVALUATE IT ABOUT WHETHER OR  
12 NOT DEAN KARNY SHOULD HAVE BEEN ELIMINATED AS A SUSPECT  
13 AND, SECONDLY, IT IS THE SAME POINT THAT WE MADE ON THE  
14 STRICKLAND POINT, WHICH IS THAT, YOU KNOW, THIS IS  
15 ADDITIONAL AND VERY, VERY SERIOUS AND HEAVY EVIDENCE THAT  
16 IS EXTREMELY PROBATIVE ON THE ISSUE OF WHETHER OR NOT DEAN  
17 KARNY SHOULD HAVE BEEN ELIMINATED, WHETHER OR NOT THE  
18 POLICE OFFICERS ARE TELLING THE TRUTH THAT WE WOULD BE  
19 DEPRIVED OF IF THE COURT DIDN'T APPOINT AN EXPERT. BUT I  
20 MEAN HERE WE ARE TALKING ABOUT A POLICE OFFICER EXPERT AND  
21 THIS IS NOT SOMETHING THAT, YOU KNOW, THE COURT IS TRAINED  
22 TO READ A MURDER BOOK.

23           MR. CRAIN: ALSO, ONE DIFFERENCE BETWEEN, I THINK,  
24 THE COURT'S COMPARISON, A SEARCH WARRANT HAS A CERTAIN  
25 APPEAL BUT ON FURTHER ANALYSIS A SEARCH WARRANT IS  
26 CERTAINLY A LEGAL DOCUMENT. THE POLICE REPORTS AND MURDER  
27 BOOK ARE SOMETHING ELSE.

28                               SECOND, THERE IS A BODY OF CASE LAW DEALING

1 WITH WHETHER OR NOT POLICE OFFICERS IN GOOD FAITH COULD  
2 HAVE BELIEVED THAT A VALID SEARCH WARRANT AND SO FORTH, SO  
3 THERE IS A BODY OF LAW THAT'S DEVELOPED TO GUIDE THE  
4 COURT'S IN DETERMINING WHETHER THIS LEGAL DOCUMENT IS  
5 SOMETHING THAT AN OFFICER IN GOOD FAITH COULD HAVE  
6 BELIEVED WAS A VALID SEARCH WARRANT.

7 THE COURT: THERE IS A BODY OF LAW IN THE BRADY  
8 LINE OF CASES AS WELL.

9 MR. CRAIN: I AM MORE INTERESTED -- MR. KLEIN HAS  
10 EMPHASIZED THE BRADY, I AM MORE WILLING TO EMPHASIZE THE  
11 QUESTION OF WHETHER OR NOT THEY COMMITTED PERJURY IN THEIR  
12 CONCEALMENT OF DEAN KARNY'S INVOLVEMENT IN THIS MURDER IN  
13 HOLLYWOOD FROM THE TRIER OF FACT AND FROM THE DEFENSE, AND  
14 PERHAPS ALSO FROM CERTAIN PARTS OF THE PROSECUTION TEAM.

15 THE COURT: BUT --

16 MR. CRAIN: IN ANY EVENT --

17 THE COURT: THE ONLY -- PERJURY ONLY GETS TO THE  
18 BRADY ISSUE BECAUSE THE PERJURER SAYS THAT THEY HAD  
19 INFORMATION OF BENEFICIAL ASSISTANCE TO MR. HUNT IN HIS  
20 TRIAL AND THAT THEY KEPT THAT FROM THE COURT AND FROM  
21 MR. HUNT, SO THAT MR. KARNY COULD NOT BE ADEQUATELY CROSS  
22 EXAMINED.

23 MR. CRAIN: THERE IS AN OVERLAP, BUT CLEARLY IN  
24 TERMS OF THE COURT'S MAKING THE DECISION ABOUT WHETHER OR  
25 NOT TO DRAW THE INFERENCE FAVORABLE TO THE PETITIONER OR  
26 FAVORABLE TO THE RESPONDENT IN THIS CASE THE COURT HAS  
27 CERTAINLY ASSISTED THE TESTIMONY OF POLICE EXPERTS WHO CAN  
28 SAY WE HAVE EVALUATED THIS BOOK, WE HAVE EVALUATED MANY

1 OTHER MURDERS AND DESPITE THE FACT THAT THESE OFFICERS  
2 JUST LIKE DETECTIVE FUHRMAN, A VERY POLISHED WITNESS, MADE  
3 REPRESENTATIONS UNDER OATH WE HAVE IN OUR EXPERT'S  
4 OPINION, WE ARE WILLING TO TELL YOU THAT THERE IS NO WAY  
5 THAT THESE OFFICERS COULD REALLY HAVE ELIMINATED DEAN  
6 KARNY. WHAT THEY DID, THEREFORE, THE COURT WOULD DRAW THE  
7 INFERENCE WHAT THEY DID IN COURT WAS TO SUPPRESS EVIDENCE.

8 AND, FINALLY, BECAUSE OF THE WILLINGNESS AND  
9 PERHAPS THE PUBLIC SERVICE CIVIC MINDEDNESS OF THESE TWO  
10 GENTLEMEN THEY HAVE ALREADY DONE A CERTAIN AMOUNT OF WORK  
11 AT NO COST TO THE TAXPAYERS AND I THINK THE COST WOULD BE  
12 RATHER LIMITED IN THIS, ON THIS PARTICULAR ISSUE.

13 THE COURT: ALL RIGHT.

14 I AM GOING TO DENY THE REQUEST FOR  
15 APPOINTMENT OF LAW ENFORCEMENT EXPERTS. I DO NOT BELIEVE  
16 THIS IS AN AREA THAT THE COURT NEEDS ANY ASSISTANCE IN THE  
17 WAY OF EXPERT TESTIMONY. THE REQUESTS ARE DENIED.

18 THE TRANSCRIPT COST YOU HAVE GOT A REQUEST  
19 FOR AN ADDITIONAL \$3750 TO FINISH THE PITTMAN AUDIO TAPES.  
20 DIDN'T WE THINK WE COULD GET THIS DONE FOR \$1000?

21 MR. KLEIN: THAT'S WHAT THE COURT AUTHORIZED, BUT  
22 IT GOT UP THAT FAR THROUGH THE TAPES.

23 THE COURT: DO WE REALLY NEED THEM?

24 MR. KLEIN: AT THIS POINT WE INTEND TO CALL PITTMAN  
25 AS A WITNESS, AND THERE IS ALL THIS ADDITIONAL MATERIAL TO  
26 IMPEACH HIM. WE ARE GOING TO CALL HIM TO SHOW THAT RON  
27 LEVIN IS ALIVE, BECAUSE MR. PITTMAN TOOK THE POLICE OUT TO  
28 SOLEDAD CANYON TO SHOW THEM WHERE HE BURIED RON LEVIN AND

1 HE IS NOT THERE. THERE IS NO WAY HE COULD HAVE BEEN  
2 THERE.

3 THE COURT: ALL RIGHT.

4 I WILL AUTHORIZE NO MORE THAN \$3750. IF YOU  
5 CAN DO IT FOR LESS WE WOULD APPRECIATE IT.

6 MR. KLEIN: WE WILL TRY.

7 THE COURT: THE LAST MOTION, THERE IS A MOTION FOR  
8 DISCOVERY THAT WAS FILED.

9 MR. KLEIN: I MIGHT ADD ON THAT, WE CAN FILE AN  
10 ADDITIONAL MOTION, BUT I REALLY THINK AFTER LISTENING TO  
11 THE COURT'S HANDLING OF THE OTHER PROCEEDING THAT WOULD  
12 REALLY FACILITATE MOVING FORWARD ON THIS CASE IF WE TOOK  
13 MR. BARENS' DEPOSITION BECAUSE WE HAS REFUSED TO TALK TO  
14 US, AND HE HAS ISSUED, YOU KNOW, HE HAS ISSUED A  
15 DECLARATION IN THE PEOPLE'S RETURN AND THERE IS A WHOLE  
16 AREA THERE THAT, YOU KNOW, COULD SHORTEN THE TESTIMONY IN  
17 COURT IF WE WERE ABLE TO TAKE HIS DEPOSITION. I WOULD BE  
18 HAPPY TO FILE A MOTION.

19 THE COURT: IN OTHER WORDS, IT WAS A BAD IDEA TO  
20 HEAR BOTH THESE CASES TO GIVE COUNSEL AN OPPORTUNITY TO  
21 EXCHANGE IDEAS?

22 MR. KLEIN: YOUR HONOR HAD SUGGESTED EARLIER TO  
23 BOTH OF US.

24 THE COURT: DIDN'T I SUGGEST SEVERAL MONTHS AGO THE  
25 POSSIBILITY OF TAKING A DEPOSITION?

26 MR. KLEIN: THAT'S WHAT I AM SAYING, YOU DID  
27 SUGGEST IT.

28 THE COURT: NOBODY WAS INTERESTED.

1 MR. KLEIN: WE WERE ALWAYS INTERESTED.

2 MR. MC MULLEN: YOUR HONOR, WE ARE OPPOSED TO THAT  
3 PROPOSITION.

4 MR. CRAIN: IT IS THE PEOPLE'S FAULT.

5 THE COURT: OKAY.

6 WE WILL BLAME IT ON THEM TODAY.

7 LET'S DEAL WITH THE MOTION THAT'S BEFORE ME,  
8 THAT'S THE MOTION FOR DISCOVERY. THERE IS NO OPPOSITION  
9 FILED. WHAT'S YOUR POSITION?

10 MR. MC MULLEN: OUR POSITION IS --

11 THE COURT: NEXT TIME FILE AN OPPOSITION.

12 MR. MC MULLEN: YES, YOUR HONOR.

13 OUR POSITION IS THE SAME AS OUR PREVIOUS  
14 POINTS AND AUTHORITIES THAT WERE FILED IN THIS ON THIS  
15 ISSUE. I CAN'T REMEMBER EXACTLY WHEN THAT WAS FILED  
16 SEVERAL MONTHS AGO, IT REALLY HAS NOT CHANGED AT ALL.  
17 AND, YOU KNOW, I WOULD INCORPORATE BY REFERENCE THAT  
18 DOCUMENT.

19 THE COURT: ALL RIGHT.

20 MR. MC MULLEN: BASICALLY OUR POSITION IS THAT IT  
21 IS PREMATURE UNLESS AND UNTIL WE KNOW WHETHER THERE IS  
22 GOING TO BE A HEARING AND WHETHER OR NOT -- AND WHAT THE  
23 ISSUES ON THE HEARING ARE GOING TO BE. IT SEEMS  
24 PREMATURE. IT IS ALL OVER THE FIELD AND OVERLY BROAD.

25 THE COURT: DO YOU HAVE STATEMENTS FROM THE  
26 WITNESS? THESE ARE THE WITNESSES THAT ARE IN YOUR RETURN.

27 MR. KLEIN: PLUS WE ARE ASKING FOR ANYBODY ELSE  
28 THAT THEY INTERVIEWED FOR STATEMENTS FROM THEM ALSO.

1 THE COURT: I UNDERSTAND THAT.

2 YOU UNDERSTAND YOUR BRADY OBLIGATIONS, I  
3 WOULD ASSUME.

4 MR. MC MULLEN: YES, YOUR HONOR, OF COURSE.  
5 YES, YOUR HONOR, WE DO UNDERSTAND OUR ETHICAL OBLIGATIONS  
6 UNDERSTAND BRADY VERSUS MARYLAND.

7 THE COURT: OBVIOUSLY SOME OF THESE YOU KNOW WHERE  
8 JUDGE WAPNER IS.

9 MR. KLEIN: YOU DON'T NEED HIS NAME AND ADDRESS, I  
10 ASSUME.

11 MR. MC MULLEN: IF I MIGHT ADD, YOUR HONOR, ALL OF  
12 THESE WITNESSES WHOSE DECLARATIONS ARE APPENDED TO THE  
13 RETURN ARE BASICALLY THE PETITIONER'S WITNESSES. WE  
14 MERELY WENT OUT AND TALKED TO THEM AND FOUND OUT WHAT THEY  
15 HAD TO SAY INDEPENDENTLY, AND SO THEY KNOW WHERE THEY ARE.

16 WE ALSO HAVE ANOTHER CONCERN AND WHICH HAS  
17 BEEN ADDRESSED APPROXIMATELY A YEAR AGO IN AN OPPOSITION  
18 TO A BAIL IN THIS CASE. THAT SOME OF THE WITNESSES ARE  
19 EXTREMELY FRIGHTENED OF PETITIONER IN THIS CASE AND SO I  
20 HAVE GREAT CONCERNS ABOUT REVEALING ANY KIND OF -- WE HAVE  
21 GREAT CONCERNS ABOUT REVEALING ANY ADDRESSES OF THESE  
22 PEOPLE, AND WE ARE WILLING TO ACCOMMODATE --

23 THE COURT: WHY DON'T YOU GUYS WORK THIS OUT. THIS  
24 IS A FAIRLY SIMPLE THING TO WORK OUT. IF YOU WANT ACCESS  
25 TO INTERVIEW THESE PEOPLE, WHY CAN'T YOU GUYS JUST SIT  
26 DOWN AND WORK THAT OUT BETWEEN YOURSELVES.

27 MR. KLEIN: THAT'S EASY. THE COURT UNDERSTANDS  
28 1054 COULD JUST TELL US NOT TO TELL ANYBODY THE

1 INFORMATION THAT THEY GIVE US SO THAT WE CAN INTERVIEW  
2 THEM. I MEAN THAT'S NOT A PROBLEM.

3 THE COURT: OKAY.

4 ANY REASON WHY YOU CAN'T SIT DOWN AND WORK  
5 THIS OUT? YOU KNOW WHERE MR. MC MULLEN IS AND YOU KNOW  
6 WHERE JUDGE WAPNER IS, I ASSUME.

7 MR. KLEIN: A LOT OF THEM WE KNOW WHERE THEY ARE,  
8 BUT WE DON'T HAVE THE FULL INTERVIEW OF ALL THESE  
9 WITNESSES OR ANYBODY ELSE THAT THEY INTERVIEWED.

10 THE COURT: ANY OBJECTION TO TURNING OVER THE  
11 INTERVIEW?

12 MR. MC MULLEN: THE ONLY THING I WOULD SAY IN  
13 RESPONSE TO THAT, YOUR HONOR, IS THE DECLARATIONS ARE THE  
14 FRUIT OF THE INTERVIEW AND IN FACT THEY ARE SIGNED UNDER  
15 PENALTY OF PERJURY AND, YOU KNOW, THE RELEVANT PORTIONS OF  
16 THEIR INTERVIEWS THAT PERTAIN TO THE ISSUES IN THIS CASE  
17 ARE CONTAINED IN THE DECLARATIONS, AND IT IS OUR POSITION  
18 THAT IS THE BEST EVIDENCE OF ANY INTERVIEW.

19 THE COURT: MAYBE SO. IF YOU HAVE GOT A STATEMENT  
20 OF A WITNESS LET'S TURN IT OVER. THIS IS A CIVIL CASE. I  
21 WILL ORDER YOU TO TURN OVER ANY STATEMENT OF ANY OF YOUR  
22 WITNESSES THAT ARE CONTAINED IN YOUR RETURN WHETHER  
23 THEY -- IN ADDITION TO THE THOSE THAT ARE APPENDED TO YOUR  
24 RETURN.

25 MR. MC MULLEN: ANY THAT --

26 THE COURT: IN OTHER WORDS, I ASSUME YOU WENT OUT  
27 AND INTERVIEWED PEOPLE, MADE A REPORT, REDUCED THAT TO  
28 WRITING AND THEN AT SOME POINT TOOK THAT REPORT TURNING IT

1 INTO A DECLARATION AND ATTACHED IT TO YOUR RETURN. IS  
2 THAT THE BASICALLY ABOUT RIGHT?

3 MR. MC MULLEN: YES, YOUR HONOR.

4 THE COURT: OKAY.

5 SO YOU GOT REPORTS FOR THESE THAT ARE BACKUP  
6 DOCUMENTS?

7 MR. MC MULLEN: JUST SO I AM CLEAR, IF YOU ARE  
8 MAKING AN ORDER AT THIS POINT, WHICH IT SOUNDS LIKE YOU  
9 ARE, IS IT LIMITED TO THOSE WITNESSES THAT HAVE MADE  
10 DECLARATIONS?

11 THE COURT: YES. OR THAT YOU INTEND TO CALL AT THE  
12 HEARING.

13 MR. KLEIN: EXCUSE ME.

14 THE COURT: HOLD ON. WAIT.

15 LET HIM FINISH.

16 MR. MC MULLEN: AT THIS POINT IN TIME, AS FAR AS  
17 WHO WE INTEND TO CALL AT THE HEARING, I WOULD JUST SAY  
18 THAT AT THIS POINT IN TIME I DON'T KNOW, WE DON'T KNOW WHO  
19 WE -- WHO WE WOULD CALL AT THE HEARING. IT IS THEIR  
20 BURDEN TO PUT ON THE EVIDENCE. WE DON'T KNOW HOW WE ARE  
21 GOING TO RESPOND TO WHAT THEY PUT ON. I JUST WANT TO MAKE  
22 THAT CLEAR.

23 THE COURT: I UNDERSTAND.

24 SO MY ORDER IS YOU ARE TO TURN OVER ALL  
25 STATEMENTS OF ALL WITNESSES THAT ARE APPENDED TO YOUR  
26 RETURN OR ANY STATEMENTS OF ANY WITNESSES WHICH YOU INTEND  
27 TO CALL AT THE HEARING.

28 MR. MC MULLEN: OKAY.

1                   WHEN WE COME TO KNOW THAT, I ASSUME THAT IS  
2 PART OF YOUR ORDER.

3                   THE COURT: IT IS ONGOING. I WOULD BE GRAVELY  
4 DISGRUNTLED IF IN THE MIDDLE OF THIS HEARING YOU SUDDENLY  
5 SAY, "BY THE WAY, I HAVE THIS WITNESS WHO WILL PROVE THAT  
6 MR. HUNT SPECIFICALLY DID X, Y OR Z." LOOK MY VIEW OF  
7 DISCOVERY IS, I DO NOT LIKE TO GET INTO DISCOVERY ISSUES,  
8 I ASSUME COUNSEL ACT IN A PROFESSIONAL FASHION. THIS IS A  
9 CIVIL CASE NOT A CRIMINAL CASE, ALTHOUGH IT IS CRIMINAL IN  
10 ITS ORIGINS, AND I EXPECT THERE WILL BE A LIBERAL EXCHANGE  
11 OF INFORMATION BETWEEN YOU FOLKS.

12                   MR. MC MULLEN: WE WILL ABIDE BY YOUR ORDER. I  
13 WANT TO MAKE SURE -- I DON'T WANT TO LET THE RECORD  
14 REFLECT THAT WE HAVE LET THIS GO BY. OUR POSITION IS THAT  
15 THIS IS AN EXTENSION OF A CRIMINAL CASE, THAT IN SOME  
16 FORMS I REFER TO THIS AS A QUASI CIVIL PROCEEDING IN  
17 NATURE BUT OUR POSITION IS THAT ITS A CRIMINAL CASE.

18                   THE COURT: UNDERSTOOD.

19                   THE CASES ARE ALL OVER THE PLACE AND WHEN I  
20 THINK IT BENEFITS THE MOVEMENT OF THIS CASE TO A QUICK  
21 CONCLUSION I WILL RELY HEAVILY ON THE CIVIL ASPECTS OF  
22 THIS CASE, AS I HAVE DONE IN ANOTHER CASE THAT YOU FOLKS  
23 WERE HERE ON.

24                   SO, IS THAT WHAT YOU ARE LOOKING FOR?

25                   MR. KLEIN: WELL, I STILL THINK THAT WE SHOULD BE  
26 GIVEN STATEMENTS OF ANYBODY THAT THEY INTERVIEWED WHETHER  
27 THEY INTEND TO CALL THEM OR NOT BECAUSE WE ARE THE MOVING  
28 PARTY AND WE SHOULD BE ABLE TO EVALUATE WHETHER WE WANT TO

1 CALL SOMEBODY THAT THEY INTERVIEWED, THEY MAY NOT WANT TO  
2 CALL THEM. IT MAY BE BRADY MATERIAL, BUT I MEAN I THINK  
3 UNDER THE COURT'S REASONING PROCESS I THINK THAT WE SHOULD  
4 BE GIVEN ALL THAT MATERIAL AND LET US EVALUATE IT.

5 THE COURT: I DON'T SEE ANY NEED FOR THAT AT THIS  
6 TIME.

7 ALL RIGHT.

8 THE ORDER IS -- AS TO ADDRESSES AND PHONE  
9 NUMBERS, I WILL ASK COUNSEL TO PROFESSIONALLY WORK IT OUT  
10 BETWEEN YOURSELVES.

11 MR. KLEIN: I MIGHT ADD WHEN MR. HUNT REPRESENTED  
12 HIMSELF IN ESLAMINIA IN SAN MATEO, MANY OF THESE  
13 WITNESSES, YOU KNOW, HE --

14 THE COURT: HE LOCATED AND SUBPOENAED THEM, THERE  
15 WAS NO PROBLEM. I UNDERSTAND. SO THERE IS NO PROBLEM,  
16 THAT'S WHY I THINK YOU -- I DON'T WANT JUDGE WAPNER'S HOME  
17 ADDRESS AND PHONE NUMBER AND THINGS LIKE THAT YOU HAVE  
18 GOT --

19 MR. KLEIN: JUDGE WAPNER IS NOT A PROBLEM.

20 THE COURT: I UNDERSTAND THAT.

21 MR. KLEIN: HE IS TOTALLY COOPERATIVE.

22 MR. MC MULLEN: ONE POTENTIAL PROBLEM, DEAN KARNY,  
23 FOR EXAMPLE, IS UNDER A FEDERAL WITNESS PROTECTION  
24 PROGRAM.

25 THE COURT: THAT'S WHY YOU GUYS CAN SIT DOWN AND  
26 WORK IT OUT TOGETHER.

27 ARE YOU IN CONTACT WITH THE FEDERAL WITNESS  
28 PROTECTION PROGRAM?

1 MR. MC MULLEN: YES.

2 THE COURT: ARE YOU IN CONTACT WITH THE MARSHAL IN  
3 THE WITNESS PROTECTION PROGRAM?

4 MR. MC MULLEN: THERE IS A CONTACT PERSON.

5 THE COURT: THERE ARE A WHOLE SET OF PROCEDURES FOR  
6 GETTING ACCESS TO WITNESSES. I WAS VERY FAMILIAR WITH  
7 THEM AT ONE TIME. IF YOU REFER TO THE C.F.R. REGULATIONS  
8 YOU CAN FIND SOME OF THOSE, BUT IT IS SOMETHING THAT CAN  
9 BE WORKED OUT.

10 MR. KLEIN: COULD THE COURT MAKE AN EXCEPTION AS TO  
11 THE WITNESSES THEY DON'T INTEND TO CALL IN THE CASE? IN  
12 THE CASE OF PITTMAN, IF THEY HAVE INTERVIEWED HIM -- WE  
13 ARE GOING TO, SO IF THEY INTERVIEWED HIM WOULD THE COURT  
14 MAKE AN EXCEPTION AND ORDER THAT THEY TURN OVER ANY --

15 THE COURT: I SEE.

16 ARE YOU SAYING IF THERE IS A PITTMAN  
17 INTERVIEW THAT THEY HAVE YOU WANT THE PITTMAN INTERVIEW?

18 MR. KLEIN: BECAUSE WE ARE GOING TO CALL HIM.

19 THE COURT: IS THERE A PITTMAN INTERVIEW THAT YOU  
20 HAVE?

21 MR. MC MULLEN: YES, YOUR HONOR.

22 THE COURT: ANY REASON WHY IT CAN'T BE TURNED OVER?

23 MR. KLEIN: NOT IF THE COURT ORDERS IT.

24 THE COURT: OTHER THAN YOU WOULDN'T LIKE TO DO IT?

25 MR. MC MULLEN: THAT'S CORRECT, YOUR HONOR.

26 THE COURT: THERE BEING NO SHOWING I WILL ORDER YOU  
27 TO TURN OVER THE PITTMAN INTERVIEW AS WELL.

28 MR. KLEIN: THANK YOU, YOUR HONOR.

1 THE COURT: AND COUNSEL ARE TO MEET AND CONFER AS  
2 TO THE INFORMATION AS TO ADDRESSES AND PHONE NUMBERS.

3 MR. KLEIN: ON TAKING BARENS DEPOSITION, YOU WANT  
4 ME TO FILE A FORMAL MOTION?

5 THE COURT: FOR SEVERAL MONTHS -- SEVERAL MONTHS  
6 AGO I THOUGHT ABOUT A DEPOSITION IN THIS CASE. THIS CASE  
7 IS IN SOME WAYS DIFFERENT THAN OTHERS. I DO NOT WISH THIS  
8 TO DELAY THE MATTER.

9 MR. KLEIN: SURE.

10 THE COURT: WHEN ARE WE GOING TO PUT THIS CASE TO  
11 HEARING? HOW LONG DO YOU THINK, DO YOU REALLY THINK IT  
12 WILL TAKE TO PUT IT TO HEARING, REALLY?

13 MR. KLEIN: OKAY.

14 FIRST OF ALL, I HAVE ONE OTHER CASE THAT I AM  
15 WORKING ON.

16 THE COURT: THAT'S THE ONE BEFORE JUDGE HORAN?

17 MR. KLEIN: YES.

18 THE COURT: I TOLD HIM I WOULD NOT INTERFERE WITH  
19 THAT. HE TALKED TO ME ABOUT THAT AND BECAUSE I TOLD HIM I  
20 WAS GOING TO PUT YOU TO HEARING THIS YEAR AND HE WAS  
21 CONCERNED ABOUT THAT, SO I SAID I WOULD NOT INTERFERE WITH  
22 THAT. THAT'S GOING TO GO IN OCTOBER?

23 MR. KLEIN: I THINK NOVEMBER.

24 THE COURT: IT IS A DEATH PENALTY CASE?

25 MR. KLEIN: YES, YOUR HONOR.

26 THE COURT: IT WILL BE DONE BY CHRISTMAS?

27 MR. KLEIN: YES, YOUR HONOR.

28 THE COURT: JANUARY HEARING DATE.

1 MR. KLEIN: THE COURT SET A JANUARY DATE FOR THIS  
2 OTHER CASE.

3 THE COURT: THAT ONE IS ONLY GOING TO GO, BECAUSE  
4 THEY HAVE WORKED SO WELL TOGETHER AND IN THEIR DISCOVERY  
5 THINGS, THAT IS ONLY GOING TO GO ABOUT AT THE MOST TWO  
6 WEEKS.

7 TELL YOU WHAT, LET'S DO THIS, I WANT YOU GUYS  
8 TO START THINKING ABOUT THE HEARING. I WOULD LIKE TO SAY  
9 THAT YOU ARE GOING TO GO TO HEARING IN LATE JANUARY. ONE  
10 OF THE THINGS THAT I NEED TO FACTOR IN IS THAT IT IS A  
11 PRETTY VOLUMINOUS RECORD IN THAT CASE AS WELL. I AM GOING  
12 TO DRAFT SOMETHING, I DO NOT WANT TO HAVE THIS CASE GOING  
13 AT THE SAME TIME. SO THIS IS WHAT I AM SHOOTING FOR, THE  
14 LAST WEEK OF JANUARY, FIRST WEEK OF FEBRUARY FOR A HEARING  
15 DATE. I WILL NOT SET THAT DATE AT THIS TIME. I WILL SET  
16 THAT DATE AT THE NEXT HEARING, WHICH WILL BE ABOUT A MONTH  
17 FROM NOW, BECAUSE I NEED TO FINISH GOING THROUGH WHAT WE  
18 HAVE AND THEN WHAT I WILL PROBABLY DO IS ASK YOU TO FILE  
19 POINTS -- WELL, POINTS AND AUTHORITIES, A HEARING MEMO,  
20 YOUR POSITIONS ON WHAT CAN BE RESOLVED WITH HEARING AND  
21 WITHOUT HEARING.

22 I ASSUME MR. MC MULLEN IS GOING TO TAKE THE  
23 POSITION, NO NEED FOR AN EVIDENTIARY HEARING WHATSOEVER.

24 MR. MC MULLEN: YOUR HONOR, I DON'T MEAN TO  
25 INTERRUPT YOU, BUT YOU KNOW THAT VERY ISSUE THAT YOU ARE  
26 TALKING ABOUT HAS BEEN FULLY COVERED IN OUR RETURN.

27 THE COURT: I UNDERSTAND. BUT YOU HAVE JUST SEEN  
28 THEIR TRAVERSE OR THEIR DENIAL.

1 MR. MC MULLEN: THAT'S CORRECT.

2 THE COURT: I ASSUME THAT NOW THAT YOU HAVE HAD A  
3 CHANCE TO LOOK AT THE BODY OF DOCUMENTS HERE THAT YOU ARE  
4 GOING TO WANT AN OPPORTUNITY TO IN A VERY SHORT, AND I AM  
5 TALKING SHORT, CONCISE, TEN PAGES OR LESS, TELL ME WHERE  
6 YOU THINK THIS THING COMES DOWN IN TERMS OF WHAT YOUR VIEW  
7 IS AND WHAT MR. KLEIN'S VIEW IS.

8 MR. KLEIN: CAN I MAKE ANOTHER SUGGESTION, YOUR  
9 HONOR.

10 THE COURT: I AM JUST THINKING OUT LOUD AT THIS  
11 TIME.

12 MR. KLEIN: COULD YOU ALSO ORDER TO MEET AND CONFER  
13 ABOUT WHAT WE CAN STIPULATE TO?

14 MR. KLEIN: YEAH. BECAUSE IT IS NOT HAPPENING. WE  
15 HAVE -- WE HAVE COMPILED A WITNESS LIST THAT IS 160  
16 WITNESSES OF WHICH I THINK THAT, YOU KNOW, WE SHOULD BE  
17 ABLE TO STIPULATE TO POLICE REPORTS AND DOCUMENTS AND  
18 THINGS LIKE THAT, BUT UNDER THE COMPULSION OF IN RE FIELDS  
19 AS THE PROPONENT OF THE EVIDENCE WE HAVE TO PRESENT IT BY  
20 WAY OF LIVE EVIDENCE TO THE COURT. WITH COOPERATION --

21 THE COURT: MR. MC MULLEN WILL BE HAPPY TO SIT DOWN  
22 WITH YOU, WON'T YOU, AND TRY TO GO THROUGH THEIR CASE.

23 MR. MC MULLEN: I HAVE NO PROBLEM WITH THAT, YOUR  
24 HONOR, BUT I DO HAVE A CONCERN AT THIS POINT IN TIME IN  
25 BRINGING IT UP, BRINGING THIS ISSUE UP. I DON'T KNOW WHAT  
26 YOUR HONOR'S INTENTION IS WITH REGARD TO THE PARAMETERS OF  
27 THE HEARING UNTIL WE KNOW WHAT YOU ARE SETTING AS THE  
28 PARAMETERS OF THE HEARING. I THINK A DISCUSSION BECOMES

1 DIFFICULT IN THAT AREA.

2 THE COURT: IF THERE IS A WHOLE SERIES OF THINGS  
3 THAT -- IF THERE IS A HEARING YOU ARE NOT GOING TO  
4 DISAGREE ABOUT INTENT AT THE TIME, AND SAY WE ARE GOING TO  
5 AGREE WITH THAT. IF THERE IS NO HEARING THEN YOU DON'T  
6 HAVE NOTHING TO WORRY ABOUT, I WILL HAVE WASTED YOUR TIME  
7 THAT'S ALL.

8 MR. KLEIN: I MEAN UNDERSTAND THAT IN OUR DENIAL WE  
9 DIDN'T PRESENT THE EVIDENCE THAT WE INTEND TO PRESENT TO  
10 THE COURT, AND THERE IS A LOT MORE BECAUSE WE JUST DIDN'T  
11 HAVE THE TIME TO DO IT. AND I MEAN THERE IS A WHOLE BODY  
12 OF EVIDENCE THAT WE THINK YOUR HONOR NEEDS TO SEE AND  
13 HEAR.

14 THE COURT: LET ME TELL YOU, YOU GUYS HAVE GOT TO  
15 START BRINGING THIS CASE INWARD.

16 MR. KLEIN: I AGREE. I AM ASKING AND YOU ARE  
17 HELPING ME, THAT'S ALL I AM ASKING FOR.

18 MR. MC MULLEN: I AM JUST CURIOUS.

19 THE COURT: HE WON'T TELL ANYBODY, MR. KLEIN.

20 MR. MC MULLEN: I WILL MEET AND CONFER WITH  
21 MR. KLEIN AND CONSIDER A PROPOSAL FOR STIPULATIONS,  
22 ALTHOUGH I HAVE AN INTEREST, WE HAVE AN INTEREST IN WHAT  
23 YOUR HONOR INTENDS TO DO ABOUT PARAMETERS OF THE HEARING.  
24 ARE YOU GOING TO MAKE A DECISION ON THAT OR ARE WE DOING  
25 IT ON THE WHOLE?

26 THE COURT: I GUESS I HAVE TO. THAT'S WHAT I AM  
27 LOOKING FOR. WHAT I AM LOOKING FOR IS THE NEXT HEARING IS  
28 FOR YOU GUYS TO COME IN HERE AND TAKE YOUR BEST SHOT

1 TELLING ME WHERE THIS HEARING SHOULD GO. AND BY THEN I  
2 WILL HAVE HOPEFULLY DIGESTED EVERYTHING I NEED TO HAVE  
3 DIGESTED, INCLUDING THE MOST RECENT STUFF.

4 YOU ARE PROBABLY GOING TO COME UP WITH A  
5 BUNCH OF BALONEY ON LEGAL GROUNDS SO YOU CAN AVOID ANY  
6 TYPE OF A HEARING AT ALL. I THINK YOU HAVE A ROUGH ROW TO  
7 HOE GIVEN THE ORDER FROM THE COURT OF APPEALS IN THAT  
8 REGARD. I AM MINDFUL OF THAT. I AM IN A SENSE NOT  
9 HEARING THIS HABEAS IN THE FIRST INSTANCE IN A SENSE IT  
10 HAS BEEN HEARD BY THE COURT OF APPEALS AND THEY HAVE  
11 DELINEATED, I HAVE FORGOTTEN IN THIS CASE HOW MANY  
12 QUESTIONS THERE ARE.

13 MR. KLEIN: 23.

14 THE COURT: 23 QUESTIONS. AND BASICALLY THEY SAID,  
15 "YOU," MEANING THE SUPERIOR COURT, "HOLD A HEARING,  
16 RESOLVE THESE." I UNDERSTAND YOU ARE SAYING THAT LEGALLY  
17 THESE ARE ISSUES THAT I DON'T NEED TO RAISE, BUT YOU HAVE  
18 A DIFFICULT TASK, I THINK THERE. THERE MAY BE SOME -- YOU  
19 MAY BE CORRECT ON SOME WHERE YOU CAN SIMPLY SAY, "BASED ON  
20 WHAT HAS BEEN HEARD, BECAUSE THERE WAS NO RETURN FILED AT  
21 THE TIME OF THE COURT OF APPEAL ORDER, AS WE ALL KNOW THE  
22 COURT OF APPEAL WASN'T AWARE OF THOSE THINGS, YOU MAY VERY  
23 WELL HAVE ANSWERED THOSE ISSUES IN THE CONTEXT OF YOUR  
24 RETURN. YOU MAY BE CORRECT THERE IS NO LONGER A NEED FOR  
25 A HEARING. I AM JUST SUGGESTING THAT IT IS A LITTLE BIT  
26 DIFFICULT SITUATION THAT YOU ARE FINDING YOURSELF IN, I  
27 THINK, TO SAY THAT THERE IS NO RIGHT TO ANY HEARING, BUT  
28 YOU MAY BE RIGHT.

1 MR. MC MULLEN: I THINK WHAT NEEDS TO BE DONE IS TO  
2 TAKE IT ON AN ISSUE BY ISSUE BASIS. IT IS OUR POSITION  
3 WHEN WE READ THE ORDER TO SHOW CAUSE THAT ITS OUR POSITION  
4 THAT THE COURT OF APPEAL HAS REMANDED THIS CASE TO YOU  
5 UNDER THE AUTHORITY OF RULE 260, WHICH GIVES YOU THE  
6 DISCRETION THAT WE ARE SUGGESTING.

7 THE COURT: I UNDERSTAND. AND THAT'S WHAT YOU  
8 FOLKS WILL TELL ME IN YOUR, I AM NOT SURE WHAT I AM GOING  
9 TO CALL IT, YOUR PRE-HEARING MEMORANDUM.

10 HOW ABOUT -- WHAT DO YOU NEED -- WHAT DO YOU  
11 GUYS NEED TO DO? WHAT'S LEFT OUT THERE IN TERMS OF  
12 HOUSEKEEPING THINGS THAT YOU FOLKS WANT TO DO? I KNOW  
13 THERE ARE A LOT OF THINGS THAT YOU WOULD LIKE TO DO.

14 MR. KLEIN: I WOULD LIKE TO TAKE BARENS' DEPOSITION  
15 AND THEN WHEN I GET THE DISCOVERY I CAN BETTER TELL YOU.

16 THE COURT: ALL RIGHT.

17 LET'S DO THIS. TODAY IS THE 8TH, HOW ABOUT  
18 OCTOBER 6TH FOR A CONFERENCE AND ANY HEARING ON ANY MOTION  
19 TO TAKE A DEPOSITION THAT WILL BE AT 8:30, AND IT WILL  
20 ALSO BE ON TO SET THE EVIDENTIARY HEARING DATE AND A  
21 PRE-EVIDENTIARY HEARING DATE, WHICH WILL ANSWER THE  
22 QUESTIONS THAT MR. MC MULLEN HAS RAISED AS TO WHAT ARE THE  
23 PARAMETERS. I WILL ANTICIPATE SETTING THAT HEARING  
24 PROBABLY LATE NOVEMBER.

25 MR. KLEIN: A COUPLE OF THINGS, YOUR HONOR. I  
26 THINK IN ORDER FOR THE COURT TO RULE ON THIS QUESTION OF  
27 WHAT ISSUES NEED TO BE CONSIDERED THE COURT IS GOING TO  
28 HAVE TO READ THE TRANSCRIPT. I KNOW THE COURT DOESN'T

1 WANT TO DO THAT BUT --

2 THE COURT: I DON'T THINK SO. I DISAGREE WITH YOU.  
3 MY READING OF THE RETURN AND THE TRAVERSE AT THIS TIME YOU  
4 MAY VERY WELL BE RIGHT, OF COURSE, THAT'S AN EVIDENTIARY  
5 HEARING.

6 MR. KLEIN: ON THE OSC ISSUE, AND THE INEFFECTIVE  
7 ASSISTANCE OF COUNSEL -- EXCUSE ME, YOUR HONOR -- THE LAW,  
8 AS I HAVE INDICATED, IS CLEAR YOU HAVE TO COMPARE WHAT WAS  
9 WITH WHAT IS.

10 THE COURT: BUT IF I REACH THAT ISSUE WHAT I AM  
11 SAYING IS THAT THAT IS PART OF THE EVIDENTIARY HEARING. I  
12 AM TALKING ABOUT --

13 MR. KLEIN: BUT TO SAY THAT ON CREDIBILITY GROUNDS  
14 THERE IS NO ISSUE THE ONLY WAY THE COURT CAN DO THAT IS TO  
15 HAVE THE RECORD BEFORE IT AND I MEAN I KNOW THAT.

16 THE COURT: IF I NEED TO HAVE THE RECORD I WILL  
17 READ IT.

18 MR. KLEIN: I HAVE GIVEN THE COURT THE AUTHORITY,  
19 THAT IS IN RE FIELDS AND STRICKLAND.

20 THE COURT: YOU ARE -- ON THIS ISSUE THOUGH WE  
21 DON'T NEED TO REACH THAT ISSUE.

22 MR. KLEIN: TWO OTHER THINGS.

23 THE COURT STILL HAS UNDER SUBMISSION THE IN  
24 CAMERA HEARING TRANSCRIPT.

25 THE COURT: THANK YOU FOR REMINDING ME. I WAS ON  
26 VACATION, AND THE TRANSCRIPT FROM JUDGE HAHN ARRIVED WHILE  
27 I WAS ON VACATION.

28 MR. KLEIN: GREAT.

1 THE COURT: I HAVE BEEN IN TRIAL ALL WEEK, IT HAS  
2 MOVED FROM THE CENTER OF MY DESK. I WILL HAVE THAT READ  
3 BY TUESDAY.

4 MR. KLEIN: OKAY. THANK YOU.

5 THE COURT: WE HAVE ONE REMAINING TRANSCRIPT. LET  
6 ME JUST CHECK WITH THE CLERK.

7 MR. KLEIN: THE ONE FROM JUDGE ALBRACHT.

8 THE COURT: WHEN I LEFT FOR VACATION -- I HAVE NOT  
9 VISITED THIS ISSUE SINCE I LEFT FOR VACATION -- IT HAD NOT  
10 YET BEEN LOCATED. EVERYONE HAD LOOKED EVERYWHERE AND IT  
11 IS NOWHERE TO BE FOUND.

12 MR. KLEIN: THE OTHER THINGS IN TERMS --

13 THE COURT: AND I ALSO, AT LEAST AS TO THE  
14 TRANSCRIPT --

15 MR. KLEIN: MAKE A RULING.

16 THE COURT: -- WILL MAKE A RULING HOPEFULLY BY NEXT  
17 WEEK, BUT AS I PROMISED THE CITY ATTORNEY IF IT IS GOING  
18 TO BE ADVERSE TO, I GUESS, THEIR POSITION THAT IS TO  
19 RELEASE IT, THEN WE WILL HAVE TO SET IT FOR HEARING. SO  
20 THERE MAY NEED TO BE A HEARING.

21 MR. KLEIN: JUST CALL US AND WE WILL BE AVAILABLE.

22 THE COURT: THE OTHER THING IN TERMS OF THE COURT  
23 THINKING WHEN THIS IS GOING TO GO TO A HEARING, I REALLY  
24 NEED MOST OF THE TIME BETWEEN NOW AND WHEN I TRY THE DEATH  
25 PENALTY CASE TO WORK ON THAT CASE, SO I WOULD APPRECIATE  
26 THE COURT GIVING ME AS MUCH AS POSSIBLE AFTER I FINISH  
27 THAT CASE.

28 THE COURT: OKAY.

1                   YOU CAN HAVE THE FIRST WEEK OF FEBRUARY  
2 RATHER THAN THE LAST WEEK OF FEBRUARY.

3                   MR. KLEIN: I UNDERSTAND.

4                   THE COURT: I AM MINDFUL OF THE POSITION.

5                   MR. KLEIN: I HAVE BASICALLY BEEN OUT OF COMMISSION  
6 FOUR MONTHS THIS YEAR.

7                   THE COURT: I WILL HAVE A MUCH BETTER IDEA OF WHAT  
8 I AM BASICALLY DOING. HONESTLY, WHAT DO YOU THINK, HOW  
9 LONG IS IT GOING TO RUN, THIS HEARING? I DO NOT HAVE A  
10 FEELING YET.

11                   MR. KLEIN: IF WE CAN WORK OUT STIPULATIONS.

12                   THE COURT: ASSUMING MR. MC MULLEN LOSES HIS  
13 POSITION, THAT BEING THAT THERE SHOULD BE NO HEARING.

14                   MR. MC MULLEN: OR AT LEAST SOME LIMITATION.

15                   THE COURT: YES. I AM REAL GOOD AT SOME  
16 LIMITATION.

17

18                   (A CONFERENCE WAS HELD BETWEEN COUNSEL  
19 AND THE DEFENDANT, NOT REPORTED.)

20

21                   MR. KLEIN: I AM HOPING TO KEEP IT DOWN TO THE BEAR  
22 MINIMUM. THE COURT IS GOING TO HAVE TO HEAR THE EVIDENCE  
23 ON THE HOLLYWOOD HOMICIDE, THE COURT IS GOING TO HEAR FROM  
24 BARENS AND CHIER.

25                   THE COURT: THAT'S WHY MR. CHIER WAS IN LAST WEEK  
26 ASKING WHEN THE HEARING WAS. I FORGOT ABOUT HIM. HE HAD  
27 A SENTENCING IN HERE THIS WEEK.

28                   MR. KLEIN: AND THE EVIDENCE THAT RON LEVIN IS

1 ALIVE AND -- I THINK A COUPLE OF MONTHS, IT IS GOING TO  
2 TAKE A COUPLE OF MONTHS TO DO ALL OF THAT, BECAUSE WE ARE  
3 TALKING ABOUT SIGNIFICANT MATERIAL.

4 THE COURT: ALL RIGHT.

5 MR. KLEIN: THAT WOULD BE HONING IT DOWN AND THAT  
6 IS --

7 THE COURT: HONING IS GOOD.

8 MR. KLEIN: THAT'S OUR THINKING. I ASSUME  
9 MR. MC MULLEN WILL COOPERATE.

10 THE COURT: I KNOW HE WILL BE COOPERATIVE.

11 MR. KLEIN: WE WILL TOO, YOUR HONOR.

12 THE COURT: ALL RIGHT.

13 OCTOBER 6TH FOR THE STATUS AND ANY MOTIONS  
14 THAT ARE FILED AND FOR SETTING OF THE HEARING DATE, THE  
15 PRE-HEARING DATE AS WELL.

16 MR. MC MULLEN: THE PRE-HEARING CONFERENCE.

17 THE COURT: AND I WILL SET IT ON THAT DATE FOR THE  
18 PRE-HEARING DATE. AND I THOUGHT YOU WERE STARTING EARLY  
19 OCTOBER IN YOUR MURDER TRIAL. AM I WRONG?

20 MR. KLEIN: IT IS PROBABLY NOVEMBER.

21 THE COURT: BECAUSE I DON'T WANT THE PRE-HEARING  
22 THAT I AM GOING TO SET TO INTERFERE WITH THAT SO --

23 MR. KLEIN: IT WON'T. THE NEXT COURT DATE ON THAT  
24 CASE IS OCTOBER 2ND AS 0 OF 30 AND WE ARE ENVISIONING  
25 TRYING IT IN NOVEMBER.

26 THE COURT: ALL RIGHT.

27 MR. KLEIN: CAN WE HAVE THE ORDER THAT THE  
28 DISCOVERY WILL BE TURNED OVER AS SOON AS POSSIBLE.

1 THE COURT: TURN IT OVER AS SOON AS POSSIBLE.

2 MR. MC MULLEN: THAT WAS MY INTENTION, YOUR HONOR.  
3 KEEP IN MIND THOUGH I NEED TO IDENTIFY ALL OF --

4 THE COURT: AS SOON AS POSSIBLE. IT IS MATERIAL  
5 YOU ARE ORDERED TO TURN THE OVER WITHIN THE NEXT SEVEN  
6 DAYS.

7 MR. MC MULLEN: THAT SHOULDN'T BE A PROBLEM.  
8 ONE QUESTION I HAD, THE PRE-HEARING MEMORANDUM WHEN WOULD  
9 YOU WANT THAT?

10 THE COURT: I WILL SET THAT AS WELL ON OCTOBER 6TH.

11 MR. MC MULLEN: SO RIGHT NOW THE ABEYANCE --

12 THE COURT: I AM STILL IN MY MIND TRYING TO  
13 FORMULATE WHAT I WILL BE LOOKING -- I WILL BE LOOKING ON  
14 OCTOBER 6TH FOR SOME SUGGESTION AS TO THE NATURE OF THAT.

15 MR. KLEIN: WE WILL SIT DOWN AND WE WILL TRY TO  
16 HONE THIS DOWN TOO. I KNOW THEIR POSITION, BUT I THINK  
17 YOUR HONOR HAS ALREADY INDICATED WE ARE GOING TO BE ABLE  
18 TO PRESENT EVIDENCE ON THE SIGNIFICANT ISSUES AND --

19 THE COURT: YOU NEVER KNOW, MAYBE I WILL CHANGE MY  
20 MIND.

21 MR. MC MULLEN: I HOPE YOU ARE OPEN, YOUR HONOR.

22 MR. KLEIN: YOU DON'T USUALLY DO THAT, YOUR HONOR.

23 THE COURT: I AM SURE I HAVE DONE IT ONCE OR TWICE.

24 DEFENDANT AND COUNSEL WILL BE ORDERED TO  
25 RETURN OCTOBER 6TH FOR HEARING TO BE SET, AND I WILL GIVE  
26 YOU A WRITTEN ORDER ON STRICKLAND.

27 AGAIN, YOU ARE GOING TO FILE SOMETHING WITHIN  
28 A WEEK.

1 MR. KLEIN: YES.

2 THE COURT: AS SOON AS YOU CAN GET IT IN BECAUSE I  
3 WILL DELAY WHAT I AM GOING TO DO PENDING WHATEVER YOU ARE  
4 GOING TO FILE, AND I HOPE TO AT THE SAME TIME ORDER THE IN  
5 CAMERA AND MAYBE WE WILL NOT BE ABLE TO FIND THAT JUDGE  
6 ALBRACHT IN CAMERA.

7 MR. KLEIN: YOU CAN ONLY DO WHAT YOU CAN DO.

8 THE COURT: OKAY.

9 HAVE A GOOD WEEKEND.

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

11 MR. KLEIN: THANK YOU, YOUR HONOR.

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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 AND KENNETH EARL GAY, )  
 ) NO. A090435  
 ) AND  
ON HABEAS CORPUS ) NO. 392702  
 )  
 ) REPORTER'S  
 ) CERTIFICATE

STATE OF CALIFORNIA )  
 ) SS  
COUNTY OF LOS ANGELES )

I, M. HELEN THEISS, CSR, #2264, OFFICIAL  
REPORTER OF THE SUPERIOR COURT OF THE STATE OF  
CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY  
CERTIFY THAT THE FOREGOING PAGES 1 THROUGH 84,  
COMPRISE A FULL, TRUE AND CORRECT TRANSCRIPT OF THE  
PROCEEDINGS HELD AND TESTIMONY TAKEN IN DEPARTMENT NO. 101  
IN THE MATTER OF THE ABOVE-ENTITLED CAUSE ON SEPTEMBER 8,  
1995.

DATED THIS 17TH DAY OF NOVEMBER, 1995.

  
\_\_\_\_\_, CSR #2264  
M. HELEN THEISS, OFFICIAL REPORTER

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