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COURT OF APPEAL
2nd Appellate District

IN RE

JOSEPH HUNT

ON

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

DEPARTMENT NO. 101

HON. J. STEPHEN CZULEGER, JUDGE

IN RE:

JOSEPH HUNT,
ON HABEAS CORPUS

)
) NO. A090435
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)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FRIDAY, MARCH 29, 1996

APPEARANCES:

FOR THE PLAINTIFF:

GIL GARCETTI
DISTRICT ATTORNEY
BY: ANDREW MC MULLEN, DEPUTY
AND
IMOGENE KATAYAMA, DEPUTY
849 SOUTH BROADWAY
SUITE 1100
LOS ANGELES, CALIFORNIA 90014

FOR THE DEFENDANT:

KLEIN & CRAIN, A LAW CORPORATION
ROWAN K. KLEIN
ATTORNEY AT LAW
3201 WILSHIRE BOULEVARD
SUITE 312
SANTA MONICA, CALIFORNIA 90403

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

COPY

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

1. HUNT HABLIT FILE

g. TRANSCRIPTS

Volume II

<u>No.</u>	<u>Description of Document</u>	<u>Date Generated</u>
11	Reporter's Transcript of Proceedings, 09/08/95; "Strickland Expert", Police Experts, Discovery	11-28-95
12	Reporter's Transcript of Proceedings, 03/29/96, re Motion to Rule on Pleadings	Rcv'd 04-05-96

1 LOS ANGELES, CALIFORNIA; FRIDAY, MARCH 29, 1996

2 10:30 A. M.

3 DEPARTMENT NO. 101

HON. J. STEPHEN CZULEGER, JUDGE

4
5 APPEARANCES:

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

12
13 (M. HELEN THEISS, CSR #2264, OFFICIAL REPORTER.)

14
15 THE BAILIFF: REMAIN SEATED, COME TO ORDER,
16 DEPARTMENT 101 IS NOW IN SESSION.

17 THE COURT: IN THE MATTER OF IN RE JOE HUNT ON
18 HABEAS CORPUS, COUNSEL, PLEASE MAKE YOUR APPEARANCES.

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

20 MS. KATAYAMA: IMOGENE KATAYAMA FOR THE PEOPLE.

21 MR. KLEIN: ROWAN KLEIN WITH MR. HUNT.

22 THE COURT: SORRY FOR KEEPING YOU WAITING. I HAD
23 SOMETHING THIS MORNING THAT TOOK LONGER THAN I
24 ANTICIPATED.

25 THE MATTER IS ON ON RESPONDENT'S MOTION FOR
26 THE COURT TO RULE ON THE PLEADINGS.

27 THE COURT HAS READ AND CONSIDERED THE MOTION,
28 THE OPPOSITION, THE REPLY, THE PETITION, THE RETURN, THE

1 TRAVERSE AND APPROXIMATELY 13,000 PAGES OF THE TRIAL
2 TRANSCRIPT IN THE HUNT CASE.

3 FIRST OF ALL, MR. KLEIN, WHY WAS YOUR
4 RESPONSE LATE?

5 MR. KLEIN: THE SOONEST THAT I COULD GET IT
6 TOGETHER, YOUR HONOR, AFTER FINISHING THE ALEXANDER TRIAL
7 THAT MONDAY OF THE WEEK THAT THE COURT ORDERED IT DUE. I
8 JUST WAS NOT PHYSICALLY ABLE TO DO IT ANY SOONER.

9 THE COURT: WHAT ABOUT MR. CRAIN?

10 LET ME TELL YOU I JUST SANCTIONED THE
11 DISTRICT ATTORNEY'S OFFICE \$500 THIS WEEK FOR NOT MEETING
12 ONE OF MY BRIEFING SCHEDULES. I DON'T CARE FOR LAWYERS
13 THAT JUST DECIDE TO FILE WHEN THEY WANT TO FILE.

14 MR. KLEIN: I UNDERSTAND THAT, YOUR HONOR. I DID
15 THE BEST I COULD. IF MR. CRAIN HAD UNDERTAKEN THE TASK IT
16 WOULD HAVE TAKEN, YOU KNOW, FIVE TIMES AS LONG TO DO IT.
17 I MEAN, THIS IS MY EXPERTISE, AND IT WAS THE BEST I COULD
18 DO.

19 WHEN THE COURT GRANTED THE MOTION TO EXTEND
20 TIME, I EXPECTED THE ALEXANDER TRIAL TO HAVE BEEN
21 COMPLETED A WEEK EARLIER THEN IT WAS, AND IT JUST KEPT
22 GOING ON AND ON AND ON.

23 THE COURT: I SEE THAT YOU FILED SOMETHING MORE
24 THIS MORNING.

25 MR. KLEIN: YES, YOUR HONOR.

26 THE COURT: A SUPPLEMENTAL PETITION.

27 MR. KLEIN: YES, YOUR HONOR.

28 I WANTED TO GET THAT IN TODAY BEFORE THE

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 101

HON. J. STEPHEN CZULEGER, JUDGE

IN RE:

JOSEPH HUNT,

ON HABEAS CORPUS

)
)
) NO. A090435
)
)
)

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS

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 86, 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 MARCH 29, 1996.

DATED THIS 3RD DAY OF APRIL, 1996.


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

1 COURT TO SET A DATE FOR THE EVIDENTIARY HEARING.

2 THE COURT: SO YOU DECIDED TO WORK ON THAT RATHER
3 THAN THE REPLY THAT I HAD ORDERED FILED.

4 MR. KLEIN: NO, YOUR HONOR. I DID NOT DO ANY WORK
5 ON THIS UNTIL AFTER I COMPLETED THE RESPONSE TO THE
6 DOCUMENT, UNTIL AFTER I FILED THE RESPONSE TO THE DISTRICT
7 ATTORNEY'S MOTION. I DID NOT SPEND ANY TIME WORKING ON
8 THAT PLEADING UNTIL AFTER THAT WAS COMPLETED. SO I
9 STARTED WORKING ON THIS AFTER THE ALEXANDER VERDICT CAME
10 IN, WHICH WAS LATE MONDAY, AND GOT IT IN AS QUICKLY AS I
11 COULD.

12 THE COURT: ALL RIGHT.

13 THIS IS THE ONLY WARNING I WILL GIVE YOU. DO
14 NOT VIOLATE MY ORDERS FOR FILING. I GIVE A PARTICULAR
15 REASON.

16 THE RESPONSE IS NOT PARTICULARLY HELPFUL,
17 THAT WAS FILED. ALSO, IN YOUR BILLINGS SET OUT EXACTLY
18 WHAT PROJECTS YOU ARE WORKING ON AT A PARTICULAR TIME,
19 WHETHER IT BE A REPLY OR ANY SUPPLEMENTAL PETITION, WHICH
20 YOU SEEM TO HAVE FILED THIS MORNING.

21 MR. KLEIN: I AM SORRY. CAN YOU JUST --

22 THE COURT: ANY HOURS THAT YOU WORKED ON THE
23 SUPPLEMENTAL TO PETITION FOR WRIT OF HABEAS CORPUS, WHICH
24 YOU FILED THIS MORNING, SET OUT SPECIFICALLY WHAT HOURS.
25 I HAVE A QUESTION ABOUT WHETHER YOU ARE GOING TO BE PAID
26 ON THOSE. THERE IS A NEW PETITION FOR HABEAS CORPUS. YOU
27 ARE NOT APPOINTED TO FILE A NEW PETITION FOR HABEAS
28 CORPUS.

1 MR. KLEIN: I CAN PROVIDE THE COURT WITH AUTHORITY
2 WHICH SAYS THAT AS PART OF AN ATTORNEY'S OBLIGATION IT IS
3 HIS OBLIGATION TO FILE ANY WRITS THAT HE DEEMS APPROPRIATE
4 ON BEHALF OF THE CLIENT. FOR EXAMPLE, WE HAVE FILED
5 NUMEROUS WRITS TO THE COURT OF APPEAL AND TO THE SUPREME
6 COURT, AND I THINK WE ARE ALSO GOING TO FILE A WRIT IN
7 FEDERAL COURT RELEVANT TO RULINGS THAT YOUR HONOR HAS
8 MADE.

9 THE COURT: I AM NOT GOING TO PAY YOU FOR ANY
10 FEDERAL LITIGATION.

11 MR. KLEIN: AND I THINK THE COURT WILL SEE THAT
12 WHEN IT READS THE PLEADING THAT SOME OF IT IS DIRECTLY
13 RELATED TO ISSUES THAT THE APPELLATE COURT HAS ORDERED
14 YOUR HONOR TO HEAR, AND SOME OF IT IS SIMPLY TOTALLY NEW
15 INFORMATION THAT WE HAVE UNCOVERED DURING THE COURSE OF
16 PREPARING FOR THE HEARING IN THIS CASE.

17 THE COURT: YOU SHOULD HAVE SPENT YOUR TIME WORKING
18 ON THE HEARING IN THIS CASE.

19 MR. KLEIN: I AM. AND THE FILING OF THIS DOCUMENT
20 DID NOT DETRACT FROM OUR PREPARING FOR THE HEARING AND IS
21 NOT A REASON THAT -- IT WILL EVER BE STATED BY US AS NOT
22 BEING READY TO GO FORWARD ON ANYTHING THAT YOUR HONOR
23 DIRECTS US TO GO FORWARD ON.

24 THE COURT: LET'S DEAL WITH THE PEOPLE'S MOTION.
25 IN THE FUTURE DON'T FILE THINGS BOUND LIKE THIS. IT IS
26 VERY DIFFICULT TO DO. FILE IT AS A PLEADING. AND I AM
27 NOT FILING ANYTHING UNDER SEAL. I KNOW YOU KEEP FILING
28 THINGS DEALING WITH THE HOLLYWOOD HOMICIDE. IT IS NOT

1 UNDER SEAL.

2 MR. MC MULLEN: THERE ARE A NUMBER REASONS WE HAVE
3 BEEN DOING THAT. THAT'S THE WAY IT WAS GIVEN TO US FROM
4 THE COURT OF APPEALS. SINCE IT IS A PENDING HOMICIDE
5 INVESTIGATION IT'S BEEN THE POSITION, I UNDERSTAND, OF THE
6 CITY ATTORNEY, AND THE LOS ANGELES POLICE DEPARTMENT IN
7 PARTICULAR, TO KEEP MATTERS WITH -- REGARDING THE ISSUE
8 SURROUNDING THAT HOMICIDE INVESTIGATION TO BE
9 CONFIDENTIAL.

10 THE COURT: THAT MAY BE THEIR POSITION, BUT IT IS
11 NOT MINE. IT IS VERY DIFFICULT TO GO BACK AND FORTH
12 BETWEEN PLEADINGS, SO DO NOT DIVIDE THINGS UP AGAIN.

13 LET'S GO THROUGH -- I INTEND TO JUST SIMPLY
14 GO THROUGH THE O.S.C. AND ADVISE WHAT AREAS I THINK WE ARE
15 STILL GOING TO HAVE EVIDENTIARY HEARINGS ON AND THOSE
16 AREAS THAT WE ARE NOT GOING TO HAVE AN EVIDENTIARY HEARING
17 ON.

18 TURNING TO PARAGRAPH ONE IN THE O.S.C. THESE
19 DEAL WITH NEWLY DISCOVERED EVIDENCE CONCERNING SIGHTINGS
20 OF MR. LEVIN. I ASSUME THIS WOULD DEAL WITH THE WITNESSES
21 NADIA GHALEB, ROBERT ROBINSON, CONNIE GERRARD AND IVAN
22 WERNER.

23 RESPONDENTS WANT TO BE HEARD?

24 ISN'T THIS NEW EVIDENCE THAT REALLY REQUIRES
25 SOME TYPE OF AN EVIDENTIARY HEARING TO SEE IF, IN FACT,
26 MR. LEVIN IS IN FACT STILL ALIVE?

27 MR. MC MULLEN: WELL, YOUR HONOR, IF I CAN JUST
28 HAVE A SECOND TO TURN TO THE BRIEF.

1 THE COURT: I HAVE READ THE BRIEFS.

2 MR. MC MULLEN: WITH REGARDS TO THE IVAN WERNER
3 SIGHTING, STARTING WITH THAT ONE, THE LAST ONE FIRST, AS
4 WE HAVE PRESENTED IN THE BRIEF, THAT IS NOT NEW EVIDENCE
5 THAT WAS GIVEN, THAT INFORMATION WAS GIVEN TO MR. BARENS
6 DURING THE PENDENCY OF THE -- PRIOR TO THE TRIAL OR DURING
7 THE PENDENCY OF THE TRIAL. SO THAT'S OUR POSITION THAT IT
8 IS NOT NEW EVIDENCE.

9 THE COURT: DO YOU THINK THAT RELATES TO -- ANY WAY
10 TO THE INEFFECTIVE ASSISTANCE OF COUNSEL, WHICH IS THE
11 SECOND -- NO -- I AM SORRY -- YES, THE SECOND ISSUE.

12 MR. MC MULLEN: WELL, THERE IS -- THE COURT OF
13 APPEALS HAS NOT DESIGNATED ANY OF THE SIGHTING WITNESSES
14 AS AN ISSUE UNDER INEFFECTIVE ASSISTANCE OF COUNSEL, SO IN
15 ANSWER TO YOUR QUESTION, I WOULD SAY NO.

16 THE COURT: ALL RIGHT.

17 TALK ABOUT THE OTHER THREE WITNESSES.

18 MR. MC MULLEN: OKAY.

19 THE NEXT ONE WAS THE GERRARD SIGHTING,
20 CONNIE --

21 THE COURT: I HAVE NADIA GHALEB, ROBERT ROBINSON
22 CONNIE GERRARD.

23 MR. MC MULLEN: BOTH -- WELL, I CAN TAKE THE NADIA
24 GHALEB -- LET'S TAKE THE ROBERT ROBINSON.

25 ROBERT ROBINSON IS ANOTHER ONE, IS ANOTHER
26 ONE, YOUR HONOR, THAT COUNSEL WAS AWARE OF DURING THE
27 TRIAL, AND ELECTED NOT TO PUT HIM ON. AND SO THAT IS OUR
28 POSITION ON THAT SIGHTING THAT IT IS NOT NEW EVIDENCE.

1 WITH RESPECT TO NADIA GHALEB THAT ALSO,
2 THAT'S OUR POSITION, THAT IT IS NOT NEW EVIDENCE. MY
3 UNDERSTANDING IS THAT IN OUR PLEADING THERE IS INFORMATION
4 THAT THE SIGHTING WAS -- THE TIMING OF THE SIGHTING AND
5 THE KNOWLEDGE OF THE SIGHTING WAS SUCH THAT MR. BARENS
6 SHOULD HAVE BECOME AWARE OF IT. MR. BRODEY WAS AWARE OF
7 IT, WHO REPRESENTED MR. PITTMAN AT THE TIME.

8 THE CONNIE GERRARD --

9 THE COURT: ISN'T THERE A FACTUAL ISSUE? THE COURT
10 OF APPEALS WANTS ME TO DETERMINE WHETHER THERE IS ANY
11 SUBSTANTIAL EVIDENCE THAT MR. LEVIN IS ALIVE. ISN'T THAT
12 REALLY WHAT THE O.S.C. ON -- UNDER PARAGRAPH ONE COMES
13 DOWN TO?

14 MR. MC MULLEN: TRUE. UNDER THE CATEGORY OF NEW
15 EVIDENCE. IT IS OUR POSITION THAT IT SHOULD QUALIFY UNDER
16 THE REQUIREMENTS OF NEW EVIDENCE, NEWLY DISCOVERED
17 EVIDENCE. AND OUR POSITION ON THE WITNESSES I HAVE GONE
18 THROUGH SO FAR IS THAT IT IS NOT NEW EVIDENCE.

19 WITH RESPECT TO CONNIE GERRARD THAT IS NEW
20 EVIDENCE. THE QUESTION IS, AS HAS BEEN NOTED IN OUR
21 BRIEF, THERE IS NOTHING ABOUT THE SIGHTING, THE RECORD OF
22 THE TESTIMONY OF CONNIE GERRARD AND HER HUSBAND IN
23 SAN MATEO, THERE IS NOTHING DISPUTED ABOUT THEIR
24 TESTIMONY, THE FACT THAT THEY TESTIFIED THAT THEY CLAIM TO
25 HAVE SEEN RON LEVIN.

26 SO THE REAL QUESTION IS: DOES YOUR HONOR
27 FEEL IT IS NECESSARY TO HEAR THAT TESTIMONY TO MAKE A
28 DECISION?

1 IT IS OUR POSITION THAT THE FACT THAT THEY
2 HAVE TESTIFIED THAT THEY CLAIM THEY HAVE SIGHTED RON LEVIN
3 IS NOT IN DISPUTE. ALSO, OUR POSITION IS, AND AS WRITTEN
4 IN OUR BRIEF, IS THAT IT IS CUMULATIVE EVIDENCE.

5 DURING THE TRIAL, AS YOUR HONOR IS AWARE,
6 THERE WAS SIGHTING EVIDENCE THAT WAS PUT ON IN TWO
7 INSTANCES.

8 THE COURT: ARIZONA.

9 MR. MC MULLEN: THE ARIZONA SIGHTING, AND ALSO THE
10 SIGHTING, THE CENTURY CITY SIGHTING THAT WAS PRESENTED.
11 SO IT IS OUR POSITION, ALSO, THAT IT IS CUMULATIVE
12 EVIDENCE.

13 THE COURT: MR. KLEIN?

14 MR. KLEIN: EXCUSE ME.

15

16 (PAUSE.)

17

18 MR. KLEIN: I THINK THAT THE MANNER IN WHICH THE
19 COURT OF APPEALS PHRASED ITS ORDER, I THINK, IS
20 PARTICULARLY IMPORTANT. AND WITH RESPECT TO THE MANNER IN
21 WHICH IT PHRASED IT CONCERNING THE ISSUE 1-A, IT SAYS,
22 "NEWLY DISCOVERED EVIDENCE THAT RON LEVIN IS STILL ALIVE,
23 SPECIFICALLY LIMITED TO," THEN IT SAYS "EVIDENCE OF
24 SIGHTINGS OF LEVIN." IT DOESN'T SPECIFY WHAT SIGHTING
25 SHOULD BE HEARD.

26

27 I THINK THE LANGUAGE IN IN RE HALL ABOUT
28 PRESENTING ADDITIONAL EVIDENCE ONCE AN ORDER TO SHOW CAUSE
HAS BEEN ISSUED RELATIVE TO AN ISSUE THAT IS PENDING

1 BEFORE THE COURT AND THE MANNER IN WHICH THIS ORDER IS
2 PHRASED WHERE IT DOESN'T TELL THIS COURT WHETHER OR NOT IT
3 SHOULD HEAR FROM ANY MEANS THAT ANY EVIDENCE RELATIVE TO
4 SIGHTINGS OF RON LEVIN SHOULD BE HEARD BY THE COURT.

5 THE COURT: WHAT EVIDENCE DO YOU HAVE BESIDES NADIA
6 GHALEB, ROBIN ROBINSON, CONNIE GERRARD AND IVAN WERNER?

7 MR. KLEIN: I THINK THAT THE EVIDENCE RELATING TO
8 LOUISE WALLER THAT WAS PRESENTED IN THE PENALTY PHASE.

9 THE COURT: BUT THAT'S ALREADY BEEN HEARD. I HAVE
10 READ THAT.

11 MR. KLEIN: I UNDERSTAND. BUT I ALSO BELIEVE THAT,
12 YOUR HONOR, IN ORDER TO EVALUATE ALL OF THIS EVIDENCE AND
13 MAKE A DETERMINATION IT IS REQUIRED BY THE CASE LAW AS TO
14 WHETHER WE HAVE MET OUR BURDEN ON AN ISSUE. I THINK
15 ESPECIALLY ON THE SIGHTINGS ISSUE, THAT THE COURT NEEDS TO
16 HEAR FROM THE LIVE WITNESS.

17 THE COURT: WELL, IN THE SAME ARGUMENT I SHOULD
18 HEAR FROM THE TWO WITNESSES FROM TUCSON AS WELL.

19 MR. KLEIN: I AM NOT ASKING THE COURT TO DO THAT
20 BUT --

21 THE COURT: I HOPE NOT. I AM NOT GOING TO REHEAR
22 ANYTHING DURING THE HUNT TRIAL, THE LOS ANGELES HUNT
23 TRIAL.

24 MR. KLEIN: OKAY.

25 THE COURT: I HAVE READ THE STUFF. BELIEVE ME I
26 HAVE READ THE STUFF. VERY INTERESTING TRIAL.

27 THE DEFENDANT: MAY I HAVE A MOMENT, YOUR HONOR,
28 WITH MY ATTORNEY?

1 THE COURT: YES.

2

3 (PAUSE.)

4

5 MR. KLEIN: MAY WE HAVE LEAVE -- WHAT IS THE
6 COURT'S RULING AS TO ROBINSON, GHALEB, GERRARD AND WERNER?

7 THE COURT: I WILL HEAR TESTIMONY FROM THOSE FOUR
8 WITNESSES.

9

ALL RIGHT

10

LET'S GO TO 1-B "EVIDENCE THAT THE 7-PAGE
11 LIST WAS LEFT AT LEVIN'S HOUSE PRIOR TO JUNE THE 6TH."
12 THIS IS NOT REALLY NEWLY DISCOVERED. IN ANY CASE,
13 MR. HUNT'S POSITION WAS HE TOOK THE LIST, HE PREPARED THE
14 LIST.

15

MR. KLEIN: THE EVIDENCE OF KAREN MARMOR, YOUR
16 HONOR, IS NEWLY DISCOVERED EVIDENCE. IT WAS DISCOVERED
17 AFTER MR. HUNT'S TRIAL HERE. IT WAS PRESENTED TO THE
18 COURT IN SAN MATEO. IT IS PARTICULARLY PERTINENT TO THE
19 ISSUE OF WHETHER OR NOT MR. LEVIN IS ALIVE.

20

THE COURT: BUT IT DIRECTLY CONFLICT WITH WHAT
21 MR. HUNT TESTIFIED TO, DOESN'T IT?

22

THE DEFENDANT: NO, YOUR HONOR. WE BOTH, KAREN
23 MARMOR AND I, TESTIFIED AT THE SAME TRIAL IN SAN METEO.
24 THE JURY FOUND THE TESTIMONY TO BE CONSISTENT.

25

IF YOU SAW THE COURT TRANSCRIPT FROM
26 SAN MATEO OF KAREN MARMOR, YOU WOULD SEE THAT IT IS
27 CONSISTENT. SHE TESTIFIED THAT SHORTLY BEFORE RON LEVIN
28 DISAPPEARED SHE SAW ONE OF THE PRINCIPAL TO-DO LIST PAGE

1 OF THE SEVEN PAGES ON RON LEVIN'S DESK.

2 AND MY TESTIMONY IN SAN MATEO WAS SHORTLY
3 BEFORE --

4 THE COURT: THIS IS THE WITNESS THAT ALSO SAID SHE
5 DIDN'T REMEMBER ANY OF THIS UNTIL TWO YEARS LATER?

6 MR. MC MULLEN: YES, YOUR HONOR.

7 MR. KLEIN: SHE DID NOT MAKE A STATEMENT ABOUT IT.

8 THE COURT: DIDN'T SHE SAY SOMETHING LIKE IT SORT
9 OF CAME TO HER IN A DREAM OR CAME TO HER --

10 MR. MC MULLEN: FLASHBACK.

11 THE COURT: -- AS A DIVINE REVELATION TO HER?

12 THE DEFENDANT: I THINK ACTUALLY, YOUR HONOR, THAT
13 THAT MISSTATES THE FEEL OF KAREN MARMOR'S TESTIMONY. THE
14 JURORS, AS YOU MIGHT SEE FROM SOME OF THE DECLARATIONS,
15 FOUND HER TO BE A CREDIBLE WITNESS.

16 THE COURT: I DON'T CARE ABOUT THE JURORS'
17 DECLARATION.

18 THE DEFENDANT: SUBSEQUENTLY, IF YOU LOOK, SHE WAS
19 USING THE EXPRESSION "FLASHBACK" IN A WAY OF EXPRESSING
20 THE FACT THAT SHE -- WHEN SHE WAS BEING ASKED QUESTIONS
21 ABOUT THE INCIDENTS SHE WOULD SEE PARTS OF THE INCIDENT
22 REPLAYED IN HER MIND. IT WAS STILL THAT VIVID TO HER.
23 SHE WAS NOT TALKING ABOUT THE SORT OF FLASHBACK WE
24 ASSOCIATE WITH A VIET NAM VETERAN, SOMEBODY THAT IS ON
25 PSYCHOTROPIC MEDICATION. SHE WAS JUST USING THAT TERM TO,
26 IN FACT, TO DEMONSTRATE THE FEELING. I THINK THAT'S THE
27 WAY, YOUR HONOR, WOULD SEE IT IF YOU HEARD THE WITNESS
28 TESTIFY.

1 MR. KLEIN: I MIGHT ADD THIS WAS ONE OF THE, IF NOT
2 THE MOST, KEY PIECES THAT THE PROSECUTION OFFERED IN THE
3 CASE, SO I THINK THAT THE COURT NEEDS TO HEAR ON THIS
4 ISSUE FROM KAREN MARMOR SO THAT YOU CAN EVALUATE HER
5 CREDIBILITY.

6 MR. MC MULLEN: THIS IS NOT NEW EVIDENCE, AS YOUR
7 HONOR HAS POINTED OUT, BECAUSE THE PETITIONER WAS WELL
8 AWARE OF THE TO-DO LIST AND WHEN IT WAS AT MR. LEVIN'S
9 PROPERTY. HE HAD THAT INFORMATION IN HIS MIND.

10 THE STATEMENTS BY PETITIONER AT VARIOUS TIMES
11 HAVE CHANGED REGARDING WHEN THAT LIST ARRIVED AT
12 MR. LEVIN'S APARTMENT. BUT, NEVERTHELESS, THE KNOWLEDGE
13 OF WHEN IT ARRIVED THERE WAS IN PETITIONER'S MIND, IT WAS
14 WITHIN HIS KNOWLEDGE. SO, THEREFORE, IT IS NOT NEW
15 EVIDENCE.

16 THE COURT: THE WAY IT CAME ABOUT CERTAINLY SHOOTS
17 DOWN 2, "THE INEFFECTIVE ASSISTANCE OF COUNSEL." BASED ON
18 THAT HE SHOULD HAVE KNOWN THIS, SINCE I AM NOT SURE HE
19 COULD HAVE, IF THE WITNESS DIDN'T REMEMBER IT TILL YEARS
20 LATER.

21 THE DEFENDANT: THE WITNESS SAYS THAT SHE DID NOT
22 SPEAK TO ANYBODY OUTSIDE -- SHE DID SPEAK TO ANYBODY AND
23 RELATE THIS EXPERIENCE TO ANYONE UNTIL SHE WAS
24 APPROACHED -- UNTIL HER HUSBAND WAS APPROACHED BY MY
25 INVESTIGATOR AND DISCUSSIONS WERE HELD IN THE HOUSEHOLD IN
26 THE EARLY 1990'S.

27 HOWEVER, SHE DID NOT SAY THAT SHE HAD
28 FORGOTTEN THE INCIDENT AT ALL. IT WASN'T SOMETHING OF

1 THAT NATURE AT ALL. SHE HADN'T COMMUNICATED BECAUSE SHE
2 ACCEPTED HER HUSBAND'S OPINION ABOUT THE DISPOSITION OF
3 MR. LEVIN, SINCE HE SEEMED TO FEEL VERY STRONGLY ABOUT
4 THAT.

5 THE COURT: I WILL HEAR FROM KAREN SUE MARMOR.

6 THE DEFENDANT: THE DEFENSE WOULD BE WILLING TO
7 STIPULATE TO HAVE THE MATTER OF KAREN MARMOR HEARD ON THE
8 TRANSCRIPT.

9 MR. KLEIN: THAT WAS SOMETHING I WAS GOING TO ASK
10 THE COURT. SOME OF THESE WITNESSES HAVE ALREADY BEEN
11 EXAMINED, AND IF THE PEOPLE AGREE, I MEAN, WE HAVE OFFERED
12 TO STIPULATE TO MUCH OF THAT TESTIMONY FROM --

13 THE COURT: DO YOU AGREE? DO YOU AGREE? DO YOU
14 WANT A SHOT AT HER?

15 MR. MC MULLEN: IF YOUR HONOR IS DECIDING THAT
16 BASED ON THE EXERCISE WE ARE GOING THROUGH NOW, THAT IF
17 THE EVIDENCE AS PETITIONER PRESENTS AT THE EVIDENTIARY
18 HEARING IS TRUE, THAT HE IS ENTITLED TO RELIEF, THEN WE
19 WANT A SHOT AT HER, YES.

20 THE COURT: ALL RIGHT.

21 SHE TESTIFIES.

22 1-C THE "DEAR DEAN LETTER." HOW IS IT
23 ADMISSIBLE? LET'S ASSUME IT IS NEWLY DISCOVERED EVIDENCE.
24 IT IS CERTAINLY INTERESTING EVIDENCE, BUT HOW IS IT
25 ADMISSIBLE? A LETTER FROM A DECEDENT THAT SUPPOSES TO
26 RELATE A CONVERSATION WITH A WITNESS FOUND YEARS LATER IN
27 A TENNIS SHOE.

28 MR. MC MULLEN: YOUR HONOR, MY POSITION IS THAT 1-C

1 THIS IS -- SHOULD BE DROPPED. I DON'T THINK THE HEARSAY
2 RULE DOES HAVE AN EXCEPTION FOR THE STATEMENTS ALLEGEDLY
3 MADE BY DEAN KARNY TO RICHARD MAYER. I HAVE LOOKED AT IT
4 VERY CLOSELY. I DON'T WANT TO WASTE THE COURT'S TIME,
5 JUST I WOULD LIKE TO FOCUS ON THE IMPORTANT ISSUE.

6 MR. KLEIN: I THINK --

7 THE COURT: THAT SOUNDS ABOUT RIGHT. THAT'S THE
8 CONCLUSION I CAME TO LAST NIGHT, LOOKING FOR A WAY TO SEE
9 HOW IT WOULD BE ADMISSIBLE.

10 MR. KLEIN: IT WOULD BE ADMISSIBLE. THEY ARE
11 POTENTIALLY STATEMENTS THAT DEAN KARNY MADE THAT MIGHT BE
12 AGAINST HIS INTEREST. IT MIGHT BE --

13 THE COURT: ASSUMING YOU PROVE THAT IT WAS DEAN
14 KARNY'S STATEMENT, YOU GET OVER THE FIRST ISSUE. BUT HOW
15 DO YOU GET OVER THE SECOND? IT IS STILL DOUBLE HEARSAY.

16 I WON'T TAKE ANY EVIDENCE ON 1-C.

17 MR. KLEIN: WELL, THE LAST THING IS IT MIGHT BE
18 ADMISSIBLE ALSO JUST TO PROVE THAT RICHARD MAYER AND DEAN
19 KARNY KNEW EACH OTHER.

20 THE COURT: IT IS STILL HEARSAY. YOU ARE
21 ATTEMPTING TO PROVE THE TRUTH OF THE MATTER, THE MATTER
22 BEING THAT THEY KNEW EACH OTHER, THAT THEY HAD A
23 CONVERSATION, THAT THEY HAD CONTACT, AND IT IS STILL
24 HEARSAY.

25 I WON'T TAKE ANY EVIDENCE ON 1-C.

26 LET'S TURN TO 2, "INEFFECTIVE ASSISTANCE OF
27 COUNSEL."

28 MR. MC MULLEN: JUST SO WE ARE CLEAR, TO THE EXTENT

1 THAT YOU ARE NOT GOING TO HEAR EVIDENCE ON THESE
2 PARTICULAR ISSUES, I ASSUME THAT YOU ARE DENYING THAT
3 THOSE ISSUES ARE IN THE PETITION?

4 THE COURT: I AM GOING TO LEAVE THAT TO YOUR FINAL
5 BRIEFING, BUT YOU CAN ASSUME THAT, THAT THE COURT HAS
6 QUESTIONS AS TO WHETHER ANY RELIEF SHOULD BE GRANTED ON
7 THAT ISSUE. BUT I WILL ALLOW YOU TO ARGUE IT IN A FINAL
8 BRIEFING. THE RESPONSE, AS I INDICATED, WAS NOT HELPFUL.

9 SO LET'S GO TO 2, "INEFFECTIVE ASSISTANCE OF
10 COUNSEL.

11 2-A IS A "KARNY DEPOSITIONS IN
12 CANTOR-FITZGERALD." THE ISSUE IS EFFECTIVE ASSISTANCE OF
13 COUNSEL. DO YOU THINK YOU REALLY MET YOUR BURDEN?
14 BARENS' SAYS HE WAS AWARE OF IT AND DIDN'T WANT TO
15 INTRODUCE IT BECAUSE IT OBVIOUSLY IMPLICATED HIS OWN
16 CLIENT IN SOMETHING. IT SEEMS LIKE A PERFECTLY LEGITIMATE
17 REASON NOT TO USE IT.

18 MR. KLEIN: YOUR HONOR, I THINK THAT AFTER THE
19 COURT READS MR. BARENS' DEPOSITION AND COMPARES IT TO
20 MR. BARENS' DECLARATION THAT HE GAVE TO MR. MC MULLEN THE
21 COURT WILL SEE THAT THE REASONING THAT MR. BARENS GAVE IN
22 HIS DECLARATION TO MR. MC MULLEN IS SPECIFICALLY CONTRARY
23 TO THE FACTUAL RECORD FROM THE TRIAL. AND CONSEQUENTLY
24 WHEN MR. BARENS IS CONFRONTED WITH CONFLICTING REASONING I
25 THINK THE COURT WILL THEN SEE THAT THE SUPPOSED REASONING
26 BY MR. BARENS WAS NOT BASED UPON ANY PREPARATION IN THE
27 CASE, AND THIS IS JUST ONE EXAMPLE OF THAT.

28 THE COURT: RESPONDENT?

1 MR. MC MULLEN: WELL, IT IS DIFFICULT TO RESPOND TO
2 HIS ARGUMENT BECAUSE HE IS REFERRING TO SOMETHING THAT I
3 DON'T HAVE IN FRONT OF ME, BUT --

4 THE COURT: I HAVE NEVER SEEN IT.

5 MR. KLEIN: THE DEPOSITION. HE DOES HAVE A COPY
6 BECAUSE THE EXHIBITS -- HE HAS THE DEPOSITION BECAUSE HE
7 HAS READ IT AND HE WAS PRESENT. I DO HAVE A COPY, IF THE
8 COURT WANTS TO SEE IT. THAT IS ONE OF THE EXHIBITS TO THE
9 SUPPLEMENTAL PLEADING THAT WE FILED TODAY.

10 BUT I DO REPRESENT TO THE COURT THAT THE
11 REASONS THAT MR. BARENS GAVE IN HIS DECLARATION THAT
12 MR. MC MULLEN FILED WITH THIS COURT CONFLICTS WITH THE
13 TRIAL RECORD AND THE REASONS -- AND/OR THE REASONS THAT HE
14 GAVE AT HIS DEPOSITION. I DID NOT CONFRONT HIM WITH THOSE
15 CONFLICTING STATEMENTS IN HIS DEPOSITION BECAUSE YOUR
16 HONOR IS GOING TO HAVE TO DECIDE IF THE MAN DID ANY
17 PREPARATION AND --

18 THE COURT: DON'T YOU THINK YOU SHOULD HAVE FILED
19 THE DEPOSITION FOR CONSIDERATION OF THIS MOTION, IF THAT'S
20 WHERE YOU WANTED TO GO?

21 THE DEFENDANT: I COULD BE MORE SPECIFIC FOR
22 SOMETHING THAT IS IN THE RECORD IF THE RESPONSE -- IF YOU
23 ARE LOOKING AT THE TRIAL RECORDS. THE MATTER OF
24 CANTOR-FITZGERALD, THE FACT THAT I WAS NAMED AS A
25 DEFENDANT IN THE LAWSUIT DID COME INTO EVIDENCE. IT WAS
26 SOMETHING THAT WAS TESTIFIED TO BY BBC WITNESSES AND THE
27 AMOUNT TOO. SO WHEN MR. BARENS SAYS THAT HE DIDN'T WANT
28 TO BRING UP KARNY'S PERJURY BECAUSE --

1 THE COURT: IT WASN'T REALLY -- AS I UNDERSTOOD
2 BARENS, HE WAS SAYING THAT YOU WERE A PART OF WHAT KARNY
3 WAS SUPPOSED TO DO OR DID DO IN THE SITUATION. THIS WOULD
4 CERTAINLY HURT, ESPECIALLY IN A DEATH PENALTY CASE.

5 THE DEFENDANT: ONE OF THE TACTICAL EXPLANATIONS HE
6 DIDN'T WANT TO BRING EVIDENCE OF THIS ADDITIONAL
7 OBLIGATION BEFORE THE JURY. THAT CANNOT BE ONE OF HIS
8 TACTICAL EXPLANATIONS BECAUSE THE RECORDS DISCLOSE THAT
9 THE JURY DID LEARN THAT I WAS POTENTIALLY OBLIGATED ON
10 THIS, THE CANTOR-FITZGERALD.

11 THE COURT: I DON'T THINK SO MUCH THE LAWSUIT. IT
12 IS HOW YOU WERE INVOLVED IN -- IF WE HAVE KARNY'S
13 TESTIMONY, "YES, I PERJURED MYSELF, BECAUSE THAT GUY
14 THERE, THE DEFENDANT, MADE ME DO IT."

15 THE DEFENDANT: THE SECOND THING ON THAT, I THINK,
16 IF YOU LOOK IN THE TRIAL CONTEXT ONCE AGAIN YOU WILL SEE
17 THAT MR. BARENS CONTINUED ASKING JEFF RAYMOND, FOR
18 EXAMPLE, HOW I WAS A LIAR, OTHERWISE BROUGHT OUT ALL SORTS
19 OF INSTANCES WHERE I WAS DOMINATED, EMPHASIZED MR.
20 DICKER'S TESTIMONY WHERE HE DRAFTED, PHRASED QUESTIONS
21 ASKING DICKER, ACCORDING TO RESPONSES FROM DICKER, THAT I
22 WAS EVEN ABLE -- THAT I WAS THE SPIRITUAL LEADER OF BBC.
23 HE EMPHASIZED MY DOMINATION OF PEOPLE THROUGHOUT THE
24 TRIAL.

25 I THINK THAT IF YOUR HONOR LOOKS AT THE TYPE
26 OF QUESTIONS HE WAS ASKING ON CROSS-EXAMINATION OF
27 WITNESSES WHICH DID EMPHASIS MY DOMINANCE --

28 THE COURT: YOU ARE TALKING ABOUT YOUR L.A. TRIAL?

1 THE DEFENDANT: MY L.A. TRIAL.

2 YOU WILL SEE THAT WITHIN THAT CONTEXT FOR HIM
3 TO HAVE BROUGHT UP THE CANTOR-FITZGERALD MATTER WOULD NOT
4 ALTER THE JURORS' VIEW OF ME. IT WOULD HAVE SHOWN THAT
5 KARNY WAS A TYPE OF PERSON WHO WAS WILLING TO PERJURE
6 HIMSELF, HE WOULD BE HAPPIER SHOWING THAT I WAS THE TYPE
7 OF PERSON THAT WOULD LIE ABOUT ANYTHING, THAT I RAN,
8 DOMINANTLY THE WHOLE BBC.

9 THE REAL QUESTION WAS MR. KARNY'S CHARACTER,
10 AND HE MISSED A VALUABLE OPPORTUNITY FOR DEFENSE. THAT
11 WAS SUFFICIENT TACTICAL EXCUSE TO EXPLORE MR. KARNY'S
12 WILLINGNESS TO --

13 THE COURT: I WILL TAKE TESTIMONY FROM BARENS ON
14 THAT ISSUE.

15 MR. MC MULLEN: CAN I JUST BE HEARD BRIEFLY?
16 THAT -- I DIDN'T GET MUCH OF A CHANCE TO SPEAK.

17 ONE, I THINK IT IS A REASONABLE TACTICAL
18 DECISION THAT ARTHUR BARENS WENT THROUGH IN DECIDING NOT
19 TO CROSS-EXAMINE KARNY ON THIS SECOND PRONG.

20 THE COURT: IT READ THAT WAY TO ME. THE PROBLEM IS
21 COUNSEL SAYS THERE IS A DEPOSITION WHERE HE SAID SOMETHING
22 DIFFERENT. COUNSEL SHOULD HAVE FILED THAT DEPOSITION WITH
23 ME. SINCE I DON'T HAVE -- I DON'T WANT TO WASTE ANY MORE
24 TIME LET'S JUST HEAR MR. BARENS. I WILL DECIDE FOR
25 MYSELF.

26 MR. MC MULLEN: JUST ONE OTHER POINT PLEASE, YOUR
27 HONOR. THAT IS, UNDER THE STRONG PRONG OF STRICKLAND WE
28 DON'T SEE ANY PREJUDICE. THIS IS CUMULATIVE EVIDENCE.

1 KARNY WAS A MEMBER OF THE BBC, AN ADVOCATE OF THE PARADOX
2 PHILOSOPHY. HE --

3 THE COURT: I COULDN'T AGREE WITH YOU MORE. THE
4 ONLY WAY THAT I SEE INEFFECTIVE ASSISTANCE OF COUNSEL
5 BEING SHOWN IN THIS CASE IS A COLLECTION OF INCIDENTS
6 WHICH ALL AMOUNT TO SOME TYPE OF INCOMPETENCE OF COUNSEL.
7 LIKE I SAID, BELIEVE ME, I READ THE ENTIRE TRIAL. I HAVE
8 A VERY GOOD SENSE OF, I THINK, OF HOW THIS TRIAL
9 PROGRESSED. I WILL ALLOW SOME INQUIRY OF MR. BARENS AS TO
10 SOME OF THESE ISSUES.

11 LET'S TALK ABOUT 2-B, THE "MAY CONTRACT." I
12 CAN'T SEE HOW THAT REALLY LEADS TO INEFFECTIVE ASSISTANCE
13 OF COUNSEL WHEN IT IS FAIRLY CLEAR THAT MR. BARENS
14 ATTEMPTED TO INTERVIEW THE MAYS. THEY WOULDN'T TALK TO --
15 BUT JUDGE RITTENBAND CUT OFF INQUIRY ON THAT CONTRACT?

16 THE DEFENDANT: MAY I PROPOUND TO THAT, YOUR HONOR?

17 THE COURT: SURE, MR. HUNT.

18 THE DEFENDANT: TOM MAY WAS TESTIFYING, I BELIEVE,
19 IN FEBRUARY OF 1987, AND THAT MEANT THAT THERE WAS OVER A
20 MONTH AND A HALF BEFORE THE VERDICTS OF APRIL 22ND WHEN
21 MR. BARENS HEARD FROM MR. MAY THAT THERE WAS IN FACT A
22 MOVIE CONTRACT. A REASONABLY EFFECTIVE ATTORNEY WOULD
23 HAVE SUBPOENAED THAT MATERIAL IMMEDIATELY, COME BACK
24 BEFORE THE JUDGE WITH AN ARGUMENT

25 THE COURT: JUDGE RITTENBAND WAS NOT GOING TO LET
26 IT --

27 MR. KLEIN: THEN IT WOULD HAVE BEEN ERROR ON HIS
28 PART.

1 THE COURT: HE ALREADY DIDN'T LET IT IN.

2 THE DEFENDANT: I AGREE THAT THE JUDGE PROBABLY
3 WOULD HAVE REFUSED IT, BUT I THINK THAT MORE RELATES TO
4 THE OVERALL ORIENTATION AND BIAS, BUT THERE WAS IMPORTANT
5 IMPEACHMENT MATERIAL WITHIN THE CONTRACT.

6 AND SINCE MR. BARENS FELT IT WAS IMPORTANT
7 ENOUGH TO ASK ABOUT WE ARE BASICALLY SAYING THAT IT SHOULD
8 HAVE BEEN IMPORTANT ENOUGH FOR HIM TO TAKE REASONABLE AND
9 AVAILABLE STEPS LIKE A SUBPOENA DUCES TECUM EITHER ON TOM
10 MAY, WHO IS NOW -- WHO NOW HAS A MOVIE DEAL, OR ICC.

11 WE CAN ALSO DEMONSTRATE THAT BARENS HAD
12 AVAILABLE TO HIM THE INFORMATION ABOUT TOM MAY'S'S DEAL
13 BEFORE THE TRIAL BECAUSE OF AN ARTICLE IN THE MAGAZINE IN
14 1985, WHICH SAID THAT SUCH DEAL WAS BREWING OR 1986
15 RATHER, AND MR. BARENS FAILED TO FOLLOW UP. AND TO SORT
16 OF SUBPOENA DUCES TECUM THAT WOULD HAVE REVEALED THE
17 INFORMATION, PUT HIM IN A BETTER POSITION TO MAKE AN OFFER
18 OF PROOF IN FRONT OF THE JUDGE WHEN THE TRIAL WAS
19 OCCURRING. THIS IS SOMETHING THAT -- AND HE MADE NO
20 ATTEMPT TO INTERVIEW TOM MAY OR DAVID MAY.

21 MR. KLEIN: HE TRIED TO TALK TO HIM IN THE HALLWAY
22 OUTSIDE OF THE COURTHOUSE AND MAY REFUSED TO TALK TO HIM,
23 BUT THE POINT IS TO --

24 THE COURT: BUT THE STATEMENTS OF THE MAY'S WERE
25 ALSO CONSISTENT WITH THE STATEMENT THAT THEY HAD GIVEN TO
26 THE POLICE, I CAN'T REMEMBER THE DATES NOW, BUT NOT LONG
27 AFTER THE MURDER.

28 MR. KLEIN: BUT THE POINT IS, IF BARENS HAD

1 FOLLOWED UP ON THE LEAD, HE WOULD HAVE UNCOVERED THE
2 INFORMATION, AND THEN HE COULD HAVE MADE THE OFFER OF
3 PROOF AND IT WOULD HAVE COME UP AT LEAST IN A DIFFERENT
4 LIGHT, THEN IT WOULD HAVE COME UP ON A DIRECT ISSUE ON
5 APPEAL WHERE JUDGE RITTENBAND WOULD HAVE REFUSED THE
6 IMPEACHING EVIDENCE.

7 BUT THIS IS ANOTHER EXAMPLE OF BARENS' NOT
8 DOING SOMETHING THAT WAS MINIMAL TO OBTAIN THE INFORMATION
9 AND, YOU KNOW, THERE IS NO REASONABLE EXPLANATION WHY HE
10 WOULDN'T HAVE DONE THAT SO --

11 THE COURT: WELL, I THINK THE RECORD IS CLEAR THAT
12 HE ATTEMPTED TO INTERVIEW, BUT THAT THE COURT CUT OFF
13 INQUIRY INTO THIS. I HAVE NO REASON TO BELIEVE THAT
14 ADDITIONAL PAPERWORK WOULD HAVE CHANGED THE COURT'S
15 BELIEF, BUT ALSO THE TESTIMONY AT TRIAL WAS CONSISTENT
16 WITH THE STATEMENTS GIVEN TO THE POLICE EARLIER.

17 I WILL NOT TAKE EVIDENCE ON THIS ISSUE.

18 THE DEFENDANT: ONE LAST POINT, YOUR HONOR.

19 THE COURT: I HAVE ALREADY RULED ON THIS ISSUE.

20 2-C.

21 MR. KLEIN: THAT DOESN'T PRECLUDE US THEN, BASED ON
22 WHAT YOU INDICATED EARLIER, FROM PRESENTING THE
23 DOCUMENTATION AS PART OF THE RECORD AND THEN MAKING AN
24 ARGUMENT ABOUT WHY THIS IS ANOTHER EXAMPLE OF MR. BARENS'
25 FOLLOWING BELOW --

26 THE COURT: IN YOUR CLOSING BRIEF YOU CAN REFERENCE
27 THIS, BUT I AM NOT -- WHAT I AM SAYING IS THAT WHEN WE
28 RESUME THE EVIDENTIARY HEARING IN A COUPLE OF WEEKS -- I

1 AM NOT TAKING ANY EVIDENCE ON THIS.

2 2-C, "TESTIMONY OF ADELMAN REGARDING
3 PURCHASE OF CYCLOTRON MILLS." WHAT DO YOU THINK? I KNOW
4 WHAT YOU THINK. BUT IT SEEMS TO ME THAT I NEED TO TAKE
5 SOME EVIDENCE ON THIS.

6 MR. MC MULLEN: WELL, WE DISAGREE, YOUR HONOR.

7 THE COURT: SURPRISING.

8 MR. MC MULLEN: FIRST OF ALL, IT IS MY
9 UNDERSTANDING THAT IT WAS A TACTICAL DECISION WITH REGARDS
10 TO MR. BARENS NOT TO BRING THIS EVIDENCE IN.

11 THE COURT: HE WAS NOT AWARE OF THE NEGOTIATIONS.

12 MR. MC MULLEN: THEN I HAVE IT CONFUSED WITH
13 SOMETHING ELSE. IF I MIGHT --

14 THE COURT: THE ARGUMENT IS: IF THERE IS WHAT, 200
15 MILLION DOLLARS COMING IN TO BBC, THERE SIMPLY ISN'T ANY
16 MOTIVATION FOR LEVIN TO BE KILLED. BARENS WASN'T AWARE OF
17 THE NEGOTIATIONS.

18 AN ARGUMENT COULD BE MADE THAT THE DEFENDANT
19 SHOULD HAVE SHARED THAT INFORMATION WITH MR. BARENS, AND
20 MR. BARENS CAN TESTIFY TO THAT.

21 MR. MC MULLEN: CORRECT. THAT'S TRUE.

22 MR. KLEIN: WE HAVE EVIDENCE THAT IT WAS SHARED
23 WITH HIM AND THAT --

24 THE COURT: THAT'S WHY I AM SAYING TO 2-C, I WILL
25 TAKE EVIDENCE ON THAT ISSUE.

26 MR. KLEIN: THANK YOU.

27 THE COURT: 2-D, "LAB TEST ON THE BMW SHOWED NO
28 BLOOD." I JUST SEE NO REASON TO TAKE EVIDENCE ON THIS.

1 IT WAS CLEAR BY READING THE TRANSCRIPT THAT THERE WAS A
2 PRETTY GOOD EXAMINATION DONE OF LEVIN'S BEDROOM. THERE
3 WAS NO BLOOD THERE, THERE IS NO BLOOD ON ANYTHING FOUND IN
4 THE APARTMENT. NO REASON TO BELIEVE THAT THERE WOULD BE
5 BLOOD FOUND IN THE BMW. I JUST DON'T SEE IT AS AN ISSUE.

6 MR. KLEIN: WELL, I MEAN, JUST BECAUSE BLOOD ISN'T
7 FOUND IN ONE PLACE DOESN'T MEAN THAT BLOOD WOULDN'T BE
8 FOUND IN ANOTHER PLACE. IF THE CRIMES HAPPENED THE WAY
9 THAT THE WITNESSES SAID IT HAPPENED, AND THIS WOULD HAVE
10 BEEN ANOTHER WAY TO PROVE THAT IT DIDN'T HAPPEN THE WAY
11 THAT THE WITNESS SAID IT HAPPENED.

12 THE COURT: I GOT TO TELL YOU I DON'T THINK, HAVING
13 READ THE TRANSCRIPT, I DON'T THINK IT WOULD HAVE MADE ONE
14 BIT OF DIFFERENCE.

15 MR. KLEIN: AGAIN, YOUR HONOR, EACH ONE OF THESE
16 INCIDENTS CAN'T BE LOOKED AT INDIVIDUALLY --

17 THE COURT: I WOULDN'T --

18 MR. KLEIN: -- AND SAID IT WOULDN'T HAVE MADE
19 DIFFERENCE.

20 THE COURT: AND YOU CAN ARGUE IN A CLOSING BRIEF.

21 I WILL NOT TAKE EVIDENCE ON 2-D.

22 THE DEFENDANT: YOUR HONOR, JUST A STATEMENT FOR
23 THE RECORD.

24 THE COURT: UH-HUH.

25 THE DEFENDANT: I WANTED A FAR MORE COMPLETE ANSWER
26 IN OUR ORIGINAL RESPONSE TO THEIR DENIAL. IT WAS NOT
27 SOMETHING THAT I WANTED TO SEE HAPPEN, WHICH WE HAD A
28 GENERAL DENIAL TO THEIR REASON. I WANTED A REAL LENGTHY

1 ONE. I BEGAN TO DRAFT ONE, BUT THERE WERE A LOT OF THINGS
2 GOING ON. AND ULTIMATELY MR. CRAIN AND MR. KLEIN DECIDED
3 TO FILE THESE ABBREVIATED DENIALS BECAUSE IT IS MY FEELING
4 THAT WE SHOULD SUBMIT A FACTUAL RESPONSE TO EACH ONE OF
5 THESE THINGS IN CONTEXT, AND THIS MORNING WE ARE ASKING
6 THE COURT TO CONSIDER A LOT OF THINGS WE DON'T HAVE BEFORE
7 THE COURT. I AM REALLY DISTURBED ABOUT THAT.

8 THE COURT: THE ONLY THING I DON'T HAVE IS THE
9 TRANSCRIPT. AND WHAT I DON'T HAVE IN TERMS OF REALLY
10 SUBSTANTIAL RESPONSE TO THE PEOPLE'S POSITION WAS CAUSE
11 ME -- ALL I DID WAS BASICALLY SPEND THE LAST COUPLE OF
12 DAYS GOING THROUGH ALL THE EXHIBITS OF THE PETITION, ALL
13 OF THE EXHIBITS TO THE RETURN, AND IT BASICALLY JUST MADE
14 MY WORK HARDER, BUT THAT'S WHAT THEY PAY ME THE BIG BUCKS
15 FOR.

16 THE DEFENDANT: WE HAVE A LOT OF IMPEACHING
17 MATERIAL TO MR. BARENS THAT WE HAVE GIVEN TO THE
18 PROSECUTOR, BUT THE COURT HAS NOT SEEN IT.

19 THE COURT: 2-E, "F.B.I. INVESTIGATION REGARDING
20 PROGRESSIVE SAVINGS AND LOAN." THIS SEEMS TO CONFLICT
21 WITH THE FIFTH PARAGRAPH OF THE O.S.C. IN THE FIFTH
22 PARAGRAPH OF THE O.S.C., THE ALLEGATION IS THAT THE
23 PROSECUTION FAILED TO DISCLOSE MATERIAL EVIDENCE THAT
24 LEVIN WAS UNDER INVESTIGATION.

25 THIS 2-E SAYS THAT THERE WAS INEFFECTIVE
26 ASSISTANCE OF COUNSEL FOR NOT BEING AWARE OF THE F.B.I.
27 INVESTIGATION.

28 SEEMS TO ME YOU HAVE A CONFLICT HERE.

1 MR. KLEIN: NO. ON ONE HAND THE PROSECUTION SHOULD
2 HAVE TURNED IT OVER. ON THE OTHER HAND, THERE WAS A LOT
3 OF WAYS THAT MR. BARENS COULD HAVE GOTTEN ACCESS TO THIS
4 MATERIAL, WHICH MR. HUNT DID FOR HIS SAN MATEO TRIAL.
5 THAT WOULD HAVE BEEN INDEPENDENT OF THE U.S. ATTORNEY'S
6 OFFICE. SO CONSEQUENTLY IT IS THESE OTHER WAYS THAT WERE
7 UTILIZED BY MR. HUNT TO OBTAIN THE INFORMATION THAT
8 MR. BARENS COULD HAVE DONE, AND HE WAS PROVIDED --

9 THE COURT: ASSUMING HE WOULD HAVE FOUND THIS.

10 THE DEFENDANT: YOUR HONOR, I BELIEVE THE
11 CONTENTION IS ERRONEOUS. I BELIEVE THE PROSECUTION DID
12 TURN OVER THIS DOCUMENT.

13 THE COURT: WE WILL GET TO THERE.

14 MR. KLEIN: THERE IS A DOCUMENT THAT WAS TURNED
15 OVER, A REPORT BY NANCY UNDERWOOD.

16 THE COURT: LET'S TALK ABOUT 2-E. LET'S ASSUME
17 THAT HE SHOULD HAVE BEEN AWARE OF THE INVESTIGATION.
18 WHERE DOES THAT GET US?

19 MR. KLEIN: THAT GETS US A MOTIVATION FOR RON LEVIN
20 LEAVING BECAUSE OF HIS FEAR OF GOING BACK TO JAIL.

21 THE COURT: DO WE NEED ANYMORE? WE HAVE TESTIMONY
22 FROM HIS DEFENSE COUNSEL THAT HE WAS FACING FELONY
23 CHARGES. WE HAVE MORE THAN ENOUGH EVIDENCE THAT HE WAS A
24 CON ARTIST, THAT PEOPLE WERE AFTER HIM ALL OVER THE PLACE
25 FOR A VARIETY OF THINGS. HE WAS NOT THE MOST DESIRABLE
26 HUMAN BEING TO HAVE A BUSINESS DEALING WITH. ISN'T THIS
27 SORT OF ICING?

28 THE DEFENDANT: THIS IS A CRUCIAL THING ACTUALLY

1 BECAUSE THE PEOPLE ARGUED -- IN THEIR CLOSING ARGUMENT
2 THEY ARGUED THROUGH THE WAY THEY EXAMINED MR. FURSTMAN.
3 HE -- ALL THIS TIME BEFORE HE WENT TO TRIAL, ABOUT HIS
4 BAIL WOULD HAVE BEEN REVOKED IF ADDITIONAL CHARGES WERE
5 FILED AGAINST HIM BY ANY ENTITY, WOULD THIS HAVE PUT HIM
6 IN CUSTODY IMMEDIATELY. HE MAY NOT HAVE SEEN THE STREETS
7 AGAIN.

8 THE COURT: I WOULD BE REALLY TALKING SPECULATION
9 AT THAT POINT WHERE THE CASE WOULD BE PRESENTED TO THE
10 U.S. ATTORNEYS WHERE THE F.B.I. WOULD WORK. IT IS WHETHER
11 IT MEETS FILING CRITERIA, IF THEY DECIDE TO FILE IT WHEN
12 THEY DECIDE TO FILE.

13 THE DEFENDANT: WE ARE TALKING ABOUT A HUMAN'S
14 TRIGGER MECHANISM. FROM HIS POINT OF VIEW HE DOESN'T KNOW
15 WHAT'S HAPPENING. HE DOES KNOW HE'S RIPPED OFF \$153,000,
16 WHICH WE HAVE PROVED BY HARD EVIDENCE, AND IT CAN COME
17 DOWN ON HIM AT ANY TIME.

18 SO WHEN HE IS MAKING A DECISION ON JUNE 6TH
19 ABOUT WHETHER HE STAYS OR WHETHER HE GOES, HE LOOKS AT
20 THAT EXPOSURE IN ANOTHER MATTER, THE FIDELITY MATTER,
21 WHICH COULD HAVE TURNED CRIMINAL. HE DECIDES TO FLEE, IS
22 OUR CONTENTION, AND THE COURT SHOULD RECOGNIZE THIS IS A
23 DIFFERENT TYPE OF CATEGORY, IT IS MOTIVATION TO FLEE THEN.

24 THE COURT: WHY IS IT SO DIFFERENT JUST IT IS
25 FERERAL?

26 THE DEFENDANT: BECAUSE A CRIMINAL CASE CAN TAKE
27 A -- MR. WAPNER, THE PROSECUTOR, ARGUED LIKE SIX MONTHS OR
28 SOMETHING TO GET TO A VERDICT. BY AN ARREST WHICH WOULD

1 CAUSE HIS BAIL TO BE REVOKED, PUT HIM IN CUSTODY, PERHAPS
2 UNTIL HE DOES TIME ON ALL THESE CHARGES, WOULD COMPLETELY
3 ELIMINATE AN OPTION OF FLEEING FOR PERHAPS EIGHT OR NINE
4 YEARS. HE WOULD BE IN CUSTODY. SO, YOU KNOW, IT IS A
5 DIFFERENT NATURE, IT IS A DIFFERENT TYPE.

6 THE COURT: DID YOU TELL BARENS THAT THIS
7 INVESTIGATION WAS ONGOING?

8 THE DEFENDANT: I HAVE SOME PROOF THAT WILL COME
9 BEFORE THE COURT.

10 THE COURT: ANSWER MY QUESTION.

11 THE DEFENDANT: YES, I DO. AND I HAVE HARD
12 DOCUMENTS TO PROVE THAT.

13 THE COURT: YOU TOLD HIM THAT DURING THE TRIAL?

14 MR. KLEIN: ABOUT --

15 THE DEFENDANT: I NO LONGER RECALL SPECIFIC
16 CONVERSATIONS CONCERNING THIS ISSUE, BUT I DO HAVE HARD
17 DOCUMENTS THAT CITE THE POLICE REPORTS ABOUT THE F.B.I.
18 INVESTIGATION AND STUFF LIKE THAT.

19 THE COURT: BUT IF YOU TOLD HIM BEFORE THE TRIAL OR
20 DURING THE TRIAL, HOW IS IT INEFFECTIVE ASSISTANCE OF
21 COUNSEL IF HE WAS AWARE --

22 THE DEFENDANT: THERE IS NO REASONABLE TACTICAL
23 EXPLANATION FOR NOT SHOWING ADDITIONAL MOTIVE, WHICH WOULD
24 BE CONSISTENT WITH THE DEFENSE THEORY AND INCONSISTENT
25 PIECE OF EVIDENCE. THIS IS BETTER THAN THE FURSTMAN
26 TESTIMONY ABOUT THE FACT THAT HE HAS A PENDING CASE. THIS
27 WOULD HAVE PUT LEVIN IN CUSTODY IMMEDIATELY. IT WOULD
28 HAVE BEEN ALLOWED AS REBUTTAL TO MR. WAPNER'S CLOSING

1 ARGUMENT.

2 THERE WAS NO REASON FOR LEVIN TO HAVE MOVED
3 BEFORE HE CAME -- HE STOOD THERE AND HE TOLD THE JURY, AND
4 THAT WAS THE PURPORT OF HIS DIRECT AND REDIRECT OF
5 MR. FURSTMAN. AND, SECONDLY, BECAUSE THE JUDGE WADED IN
6 AND SUPPORTED THE PROSECUTION'S POSITION THAT THERE WAS
7 REALLY NO EVIDENCE FOR MR. LEVIN TO BE CONCERNED IN JUNE,
8 EARLY JUNE ABOUT ANY OF THESE MATTERS SINCE THERE WAS NO
9 PRECIPITATING REASON FOR FLIGHT. WE ARE CONTENDING THAT
10 IT WAS HIS FEAR OF GETTING HIS BAIL REVOKED AND ALSO
11 ENHANCEMENT FOR COMMITTING FRESH CRIMES AND STUFF WHEN YOU
12 ARE OUT OF BAIL.

13 THE COURT: NOT ON THE FEDERAL SIDE.

14 THE DEFENDANT: THESE ARE AREAS THAT MR. BARENS
15 COULD HAVE EXPLORED. SO THERE IS SEVERAL ASPECTS OF THIS
16 CASE WHICH MIGHT HAVE LED TO STATE CHARGES AS WELL, YOUR
17 HONOR.

18 MR. KLEIN: PLUS, YOUR HONOR, I THINK THAT WHEN IT
19 COMES DOWN TO ADDING UP ALL THE THINGS THAT MR. BARENS DID
20 OR DIDN'T DO THAT DON'T MEET THE OBJECTIVE STANDARDS,
21 MR. BARENS' CREDIBILITY ABOUT HIS EXPLANATIONS FOR DOING
22 THIS, THE COURT IS GOING TO HAVE TO HEAR HIM.

23 THE COURT: BUT I AM NOT GOING TO SAY I AM GOING TO
24 HEAR AN ISSUE JUST BECAUSE WE ARE GOING TO BE DOING IT
25 ANYWAY.

26 MR. KLEIN: THE --

27 THE COURT: HOLD ON.

28 MR. KLEIN: EXCUSE ME.

1 THE COURT: I WILL TAKE EVIDENCE WHERE THE EVIDENCE
2 DIRECTLY RELATES TO AN ISSUE THAT NEEDS TO BE RESOLVED OF
3 A MATERIAL CONSEQUENCE. MY QUESTION ON THIS IS: IS IT
4 REALLY A MATERIAL CONSEQUENCE IF IT HAD COME OUT?

5 MR. KLEIN: THE STRONGEST --

6 THE COURT: IF HE WAS UNDER INVESTIGATION BY THE
7 F.B.I., DOES THAT REALLY ADD THAT MUCH MORE TO THE FACT
8 THAT HE WAS -- HAD BEEN CHARGED, HAD PEOPLE CHASING HIM
9 AND WAS GENERALLY A CON ARTIST THAT HAD TO LOOK BEHIND
10 EVERY CORNER BEFORE CROSSING BECAUSE SOMEONE IS PROBABLY
11 GOING TO SERVE HIM WITH SOMETHING? THAT'S THE QUESTION I
12 HAVE.

13 THE DEFENDANT: THE PEOPLE ARGUED PREPONDERANCE
14 TOO. THEY SAID THAT LEVIN WOULD NEVER LEAVE, BECAUSE HE
15 WAS WELL PREPARED TO TAKE A FEW CLIPS, BUT THE JURY COULD
16 VERY WELL HAVE FELT THAT IT WAS BEING DUBIOUS IF THEY SAW
17 SUCH A CULMINATION OF CHARGES THAT LEVIN MIGHT HAVE BEEN
18 FACING SOMETHING LIKE 10 YEARS IN PRISON.

19 SO GIVEN THE FACT THAT THE PEOPLE ARGUED
20 THOSE TYPES OF THINGS, THE REBUTTAL POSITION CERTAINLY A
21 STRONG ONE, AND I WOULD ALSO NOTE, YOUR HONOR, THAT DURING
22 THE CROSS EXAMINATION OF DETECTIVE ZOELLER BY ARTHUR
23 BARENS HE TRIED TO BRING UP THIS F.B.I. ISSUE THROUGH
24 QUESTIONS, BUT -- AND IF HE THOUGHT IT WAS WORTH TRYING TO
25 ESTABLISH THE QUESTIONS AND HE ULTIMATELY DIDN'T ESTABLISH
26 IT, THAT MR. LEVIN WAS UNDER INVESTIGATION AT THE TIME OF
27 HIS DISAPPEARANCE, THEN IT CERTAINLY WOULD HAVE BEEN
28 REASONABLE FOR HIM TO PUT EVIDENCE TO TRY TO SORT THE

1 INNUENDOES IN HIS QUESTIONS.

2 SO, YOU KNOW, THIS IS JUST ANOTHER EXAMPLE OF
3 HOW MR. BARENS TRIED TO WING EVERYTHING JUST LIKE HE TRIED
4 TO DO THAT ON 2-C WITH ADELMAN, RATHER THAN CALL -- OR
5 NEIL ADELMAN AND TESTIFY ABOUT THE VALUE OF THESE
6 CYCLOTRON MILLS. HE TRIED TO DO SO WITH QUESTIONS AT THE
7 TIME, BUT QUESTIONS AREN'T EVIDENCE.

8 THE COURT: I UNDERSTAND THAT ISSUE.

9 LET ME HEAR FROM THE PEOPLE ON PROGRESSIVE.

10 MR. MC MULLEN: BARENS CLAIMS HE WOULDN'T HAVE USED
11 IT, IT WOULD HAVE BEEN A TACTICAL DECISION, PETITIONER WAS
12 IMPLICATED IN PROGRESSIVE SAVINGS AND LOAN INVESTIGATION.
13 IT IS EXTREMELY CUMULATIVE. WOULDN'T HAVE MADE A --

14 THE COURT: WAS HE ASKED IN THE DEPOSITION WHY HE
15 WOULD NOT HAVE USED --

16 MR. MC MULLEN: MY RECOLLECTION, EITHER BETWEEN THE
17 DEPOSITION OR OUR INTERVIEW WITH BARENS, WAS THAT HE
18 WOULDN'T HAVE USED THE INFORMATION BECAUSE PETITIONER WAS
19 INVOLVED. THERE --

20 THE COURT: THERE WAS SOME MENTION OF THAT BUT --

21 THE DEFENDANT: YOUR HONOR, ACTUALLY --

22 THE COURT: HOLD ON.

23 DID THE -- ANY EXPANSION ON THAT AT ALL IN
24 HIS DEPOSITION?

25 MR. KLEIN: AGAIN, THIS WAS SOMETHING THAT --

26 MR. MC MULLEN: I DON'T RECALL. I DON'T BELIEVE
27 THERE WAS. I DON'T REALLY RECALL.

28 MR. KLEIN: THIS IS SOMETHING THAT HE BROUGHT UP

1 DURING THE EXAMINATION DURING THE TRIAL.

2 THE DEFENDANT: THIS IS THE SITUATION, BARENS'
3 DECLARATION THAT PEOPLE'S EXHIBIT 9 TO THEIR RETURN IS
4 FULL OF INCONSISTENCIES WHERE BARENS HE HAS TACTICALLY --

5 THE COURT: I AM GOING TO ALLOW BARENS TO TESTIFY.
6 I AM JUST TRYING TO ALLOW HIM -- THE QUESTION I HAVE ON
7 THIS ISSUE IS WHETHER THERE IS SOMETHING IN THIS MATERIAL
8 THAT IS REALLY GOING TO MAKE A DIFFERENCE.

9 I UNDERSTAND BARENS WAS SAYING THAT, "I KNEW
10 ABOUT IT," OR, "I WOULD HAVE NOT -- I WOULD NOT HAVE USED
11 IT HAD I KNOWN ABOUT IT." I UNDERSTAND THAT'S IN THE
12 RECORD.

13 ALL RIGHT.

14 IS IT MATERIAL? DOES IT MAKE A DIFFERENCE?
15 YOU KNOW, IN OTHER WORDS, COUNSEL CAN BE AWARE OF
16 SOMETHING OR NOT AWARE OF SOMETHING AND BE INCOMPETENT FOR
17 THAT REASON FOR EITHER BEING AWARE OR NOT AWARE, BUT IF
18 THEY HAD USED IT ULTIMATELY WOULD IT HAVE MADE ANY
19 DIFFERENCE? THAT'S THE QUESTION THAT I HAVE.

20 MR. MC MULLEN: IT WOULDN'T HAVE MADE A DIFFERENCE.
21 THERE WAS A TREMENDOUS AMOUNT OF EVIDENCE REGARDING LEVIN
22 AND MOTIVES TO FLEE, AS NAMED IN THE CIVIL LAWSUIT
23 INCLUDING PROGRESSIVE SAVINGS AND LOAN. YOU KNOW, HE HAD
24 A PENDING CRIMINAL CASE AGAINST HIM. I MEAN, HE HAD
25 ADDITIONAL -- THERE WAS PLENTY OF EVIDENCE PRESENTED THAT
26 HE HAD MOTIVE TO FLEE, AND THIS IS JUST CUMULATIVE, IT
27 WOULDN'T HAVE MADE A DIFFERENCE.

28 THE DEFENDANT: THAT WASN'T THE POSITION THE PEOPLE

1 TOOK IN THEIR CLOSING ARGUMENT. IN MY CASE THEY SPENT A
2 LOT OF INK AND LOT OF PAGES TRYING TO ARGUE THE OPPOSITE.
3 NOW HE IS SAYING, "WELL, IT IS OBVIOUS HE HAD A MOTIVE TO
4 FLEE." THIS IS MERELY AN ARGUMENT FOR THE COURT'S SAKE.

5 THE COURT: BUT IT WAS CLEAR THAT THERE WAS
6 EVIDENCE IN HERE THAT MR. LEVIN WAS NOT EXACTLY CITIZEN
7 NO. 1 OF BEVERLY HILLS.

8 MR. KLEIN: I HAVE A QUESTION ABOUT THE COURT'S
9 ANALYSIS, JUST THE OVERALL ANALYSIS AS WE ARE GOING
10 THROUGH THIS NOW, BECAUSE AS THE COURT IS AWARE, THE COURT
11 HAS CRITICIZED ME FOR NOT ANALYZING IT ISSUE BY ISSUE, BUT
12 MY CONCERN IS THAT THE COURT OF APPEALS FELT THAT, IF WE
13 COULD PROVE THIS ISSUE, IT WAS MATERIAL ENOUGH TO ISSUE
14 THE ORDER TO SHOW CAUSE AND ORDER THAT YOUR HONOR HEAR
15 ABOUT THIS.

16 THERE IS NO QUESTION THAT WE CAN PROVE WHAT
17 WE WANT TO PROVE ON THIS ISSUE. AND, ACTUALLY, IT IS
18 STRONGER NOW ON THE PREJUDICE PART BECAUSE I THINK IT IS
19 GOING TO BUTTRESS OUR ARGUMENT THAT MR. BARENS LIED TO THE
20 COURT.

21 THE COURT: IF YOU ARE SAYING, "DON'T I GET AN
22 EVIDENTIARY HEARING ON ALL THE ISSUE," THE ANSWER IS "NO".
23 I AM NOT GOING TO GIVE YOU EVIDENTIARY HEARINGS ON ALL THE
24 EVIDENCE. KEEPING IN MIND THAT THE PEOPLE, THE RESPONDENT
25 HAD NOT FILED ANYTHING OF AN EVIDENTIARY NATURE. THEY
26 HAVE -- NOW THE ISSUE HAS BEEN JOINED. IN FACT, THE
27 EVIDENTIARY HEARING HAS STARTED WITH THIS HEARING BECAUSE
28 I AM GOING THROUGH AND MAKING RULINGS AS TO WHETHER I WILL

1 TAKE AN EVIDENTIARY -- TAKE ANY ADDITIONAL EVIDENTIARY
2 MATTERS.

3 MR. KLEIN: EXCUSE ME. I DIDN'T MEAN TO INTERRUPT
4 YOU.

5 THE ONLY THING THAT HAS BEEN ADDED BY THE
6 PEOPLE'S RETURN ON THIS ISSUE IS THAT BARENS SAID HE
7 WOULDN'T HAVE DONE IT FOR THE TACTICAL REASONS, AND WE CAN
8 SHOW THAT, YOU KNOW, THERE IS NO -- THAT THERE IS NO
9 TACTICAL REASON FOR HIM NOT TO HAVE DONE IT, AND WE CAN
10 SHOW THAT, IN ESSENCE, HE LIED.

11 THE COURT: HOW ARE YOU GOING TO SHOW THAT?

12 MR. KLEIN: BECAUSE IT WAS BROUGHT UP DURING THE
13 TRIAL THIS SUBJECT OF PROGRESSIVE SAVINGS AND LOAN, AND
14 MR. HUNT'S POTENTIAL CONNECTION WITH IT ALONG WITH RON
15 LEVIN. SO HIS USING THAT AS A REASON, YOU KNOW, SOME FIVE
16 YEARS LATER IS SIMPLY NOT TRUE.

17 AND SO AGAIN, I THINK IT IS CRUCIAL ON THIS
18 OVERALL ISSUE THAT THE COURT EVALUATE MR. BARENS'
19 CREDIBILITY ABOUT HIS EXPLANATIONS, AND THIS IN TIME IS
20 GOING TO GIVE THE COURT GOOD INFORMATION ABOUT THE LACK OF
21 PREPAREDNESS BY MR. BARENS. I THINK THE COURT IS GOING TO
22 ISSUE -- TO SEE WHEN WE GET TO ISSUE 5 THAT AT LEAST ONE
23 REPORT BY AN F.B.I. AGENT WAS FOUND IN THE DISCOVERY, AND
24 MR. BARENS DID NOTHING WITH IT.

25 THE COURT: ALL RIGHT.

26 I WILL TAKE SOME LIMITED EVIDENCE ON WHAT
27 BARENS KNEW WHY HE DID WHAT HE DID.

28 MR. KLEIN: THANK YOU.

1 THE COURT: 2-F THE TESTIMONY OF MR. HOLMES ABOUT
2 FLEEING BRAZIL WITH LEVIN. MY INCLINATION IS TO ALLOW
3 THAT TESTIMONY.

4 DO THE PEOPLE WANT TO BE HEARD?

5 MR. MC MULLEN: YES, YOUR HONOR.

6 I THINK THAT WE BELIEVE, AND IT SEEMS PRETTY
7 CLEAR, THAT THE ORDER TO SHOW CAUSE IS IN ERROR IN THE WAY
8 THEY CATEGORIZE MR. HOLMES' STATEMENT. MR. HOLMES NEVER
9 SAID THAT LEVIN TOLD HIM HE WAS CONSIDERING FLEEING TO
10 BRAZIL.

11 THE COURT: THERE A LOT OF ERRORS IN THIS O.S.C..

12 MR. MC MULLEN: YES, YOUR HONOR. AND HE NEVER
13 WOULD HAVE TESTIFIED TO THAT, SO -- AND IT IS CLEAR
14 FROM --

15 THE COURT: SO I NEED TO TAKE TESTIMONY ON THAT TO
16 SAY THAT THAT'S NOT THE CASE; RIGHT?

17 MR. MC MULLEN: WELL, WE ARE NOT DISPUTING -- NO
18 ONE, APPARENTLY, IS DISPUTING WHAT IS BEFORE YOU IN OUR
19 BRIEF HERE WITH REGARD TO THE MATERIAL FACTS THAT WE HAVE
20 LAID OUT HERE. THERE IS NO DISPUTE.

21 THE COURT: LET ME ASK PETITIONER.

22 WHAT WOULD MR. HOLMES SAY?

23 MR. KLEIN: I THINK HE IS GOING TO SAY THAT THAT'S
24 THE CASE.

25 THE DEFENDANT: IT WAS HIS IMPRESSION THAT'S WHAT
26 LEVIN WAS DOING, TRYING TO DECIDE WHERE TO FLEE.

27 THE COURT: THE ONLY REAL QUESTION, THIS IS WHY I
28 NEED A HEARING, HOW WOULD BARENS HAVE KNOWN, WAS HE

1 DERELICT IN SOME FASHION THAT WOULD CAUSE THIS COURT TO
2 BELIEVE THAT HE SHOULD HAVE UPON REASONABLE INQUIRY BE
3 ABLE TO FIND THIS OUT. I AM NOT SURE HOW HE WOULD HAVE
4 FOUND.

5 THE DEFENDANT: IN MR. DOBRIN'S ORIGINAL PETITION
6 HE SET FORTH HOW EASILY HE WAS ABLE TO GET OLIVER WENDELL
7 HOLMES TO COME BEFORE THE COURT, THAT WOULD BE EVIDENCE
8 THAT THIS MATTER WAS DELEGATED IN A GENERAL SENSE TO FIND
9 MR. HOLMES, AND BECAUSE OF LACK OF FOLLOW-UP BY THE
10 ATTORNEYS ON THE ISSUE. MR. HOLMES WAS A L.A. RESIDENT,
11 HE COULD BE FOUND THROUGH A NUMBER OF MEANS, INCLUDING HIS
12 PAST ASSOCIATION WITH THE BAR. IT WAS NEVER FOLLOWED
13 THROUGH ON. THEY NEVER INTERVIEWED HIM. THIS WAS
14 SOMEBODY THAT WE CAN SHOW BY DOCUMENTS BARENS KNEW ABOUT,
15 AND HE JUST DROPPED THE BALL ON IT.

16 THE COURT: I WILL TAKE TESTIMONY ON 2-F.

17 MR. MC MULLEN: I WANT TO BE HEARD ON ONE LAST
18 POINT ON THIS ISSUE, EVEN IF FOUNDED IT WOULD HAVE
19 AMOUNTED TO NOTHING. IT WOULD HAVE HAD NO AFFECT ON THE
20 VERDICT TO THE EXTENT THAT LEVIN TOLD HOLMES WHAT
21 BASICALLY WAS IN CONNECTION WITH A STORY HE WAS WORKING
22 ON, NOT THAT HE WANTED TO FLEE THERE.

23 THE COURT: I WILL TAKE THE TESTIMONY.

24 IN YOUR MOTION YOU THEN CITE AS 2-G EVIDENCE
25 OF THE DYE JOB WITH A BARBER. BUT THAT'S NOT IN THE
26 O.S.C..

27 MR. MC MULLEN: THERE IS A MODIFICATION TO THE
28 O.S.C. THAT YOUR HONOR SHOULD HAVE THAT THE COURT OF

1 APPEAL ISSUED.

2 MR. KLEIN: THERE WERE TWO ORDERS.

3 THE COURT: I THOUGHT --

4 MR. KLEIN: THE ONE ON 11-23 AND THEN IT WAS
5 MODIFIED ABOUT --

6 THE COURT: I HAVE NOVEMBER 22ND OR 28TH, '93.

7 MR. KLEIN: THE 23RD. AND THEN THERE WAS A
8 MODIFICATION SOMETIME THEREAFTER.

9 MR. MC MULLEN: THE MODIFICATION WAS IN DECEMBER.
10 BUT IT MODIFIED, IT CHANGED THE CATEGORIZATION OF THE
11 ISSUE, BUT TO SUFFICE IT TO SAY THAT IT WAS --

12 THE COURT: WAS THE DYE JOB IN THE O.S.C., THE LAST
13 ONE?

14 MR. MC MULLEN: YES. THAT'S WHY WE HAVE IT HERE.
15 THIS IS CONSISTENT WITH THE ORDER TO SHOW CAUSE.

16 THE COURT: ALL RIGHT.

17 MR. MC MULLEN: OUR MOTION AND OUR REASON --

18 THE COURT: IN THAT CASE THE QUESTION IS: HOW IS
19 BARENS SUPPOSED TO KNOW ABOUT THE BARBER?

20 MR. KLEIN: THERE WAS COLORED MATERIAL IN
21 MR. LEVIN'S SINK OR BATHTUB THAT WOULD HAVE LED SOMEBODY
22 TO THINK, "WELL, WHAT'S GOING ON HERE," AND ONE OF THE
23 OBVIOUS THINGS IS SOMEBODY CHANGES HAIR COLORING.

24 THE DEFENDANT: YOUR HONOR, ALSO, THERE WILL BE
25 SOME PAPERS THAT WILL COME BEFORE THE COURT IN MY
26 HANDWRITING. THEY WERE COLLECTED BY DANIEL DOBRIN. IT
27 WAS TAKEN INTO CUSTODY FROM THE PLACE THAT I WAS WORKING
28 OUT OF DURING THE TRIAL. AND IN THOSE PAPERS ARE NOTES

1 WHICH REFER TO HAIR DYE, QUESTION MARK, AND OTHER
2 STATEMENTS ABOUT THAT WHICH WILL CORROBORATE MY TESTIMONY
3 TO THE EFFECT THAT THIS WAS AN AREA THAT WAS DISCUSSED IN
4 THE DEFENSE TEAM, AND IT IS JUST SOMETHING THAT HE DIDN'T
5 LOOK INTO.

6 THE COURT: I JUST DO NOT SEE IT AS A MAJOR ISSUE.
7 I DO HAVE THE MODIFICATION. I DIDN'T INCLUDE IT IN MY
8 FILE.

9 THE DEFENDANT: AS FAR AS MATERIALITY GOES, YOUR
10 HONOR, IT IS THE DEFENSE'S CONTENTION THAT WHEN LOOKED AT
11 WITH HIS RESEARCH AND EXTRADITION TO THESE AND EVERYTHING
12 ELSE IT CREATES A PATTERN THAT THEY ARE MUTUALLY
13 SUPPORTIVE INCIDENTS. THE FACT THAT HE CALLS THIS FELLOW
14 OUT OF THE BLUE SHORTLY BEFORE HE DISAPPEARS, BEGINS TO
15 INQUIRE ABOUT DYING HIS HAIR AND, THOUGH, HE IS PERSONALLY
16 RELYING UPON OTHERS FOR PERSONAL SERVICES, TELLS THE
17 BARBER THAT HE'LL TAKE CARE OF IT HIMSELF, THAT ALL THESE
18 THINGS CREATE A PATTERN THAT IS VERY SUSPICIOUS BEHAVIOR
19 IMMEDIATELY BEFORE A MAN DISAPPEARS, AND A MAN IS SEEN
20 SUBSEQUENTLY LATER IN VARIOUS LOCALS.

21 SO I THINK IT IS A STEPPINGSTONE THAT TAKES
22 ONE ACROSS THE RIVER OF THE PROSECUTION'S EVIDENCE AS PART
23 OF THE PATTERN.

24 THE COURT: LET ME HEAR FROM THE RESPONDENT.

25 MR. MC MULLEN: YOUR HONOR, THERE ARE A NUMBER OF
26 ISSUES ON THIS. FIRST OF ALL, RON LEVIN TALKED A LOT
27 ABOUT DYING HIS HAIR. THERE IS AN UNDISPUTED FACT THAT HE
28 WENT TO DAVE HORNICK, WHO WAS A HAIRSTYLIST, WHO CUT

1 LEVIN'S HAIR. HE MENTIONED -- LEVIN MENTIONED HIM DYING
2 HIS HAIR AND HE NEVER DID.

3 THERE IS NO EVIDENCE -- WELL, IT IS
4 UNDISPUTED THAT THERE WAS NOTHING EVER SEEN BY BLANCHE
5 STURKEY IN HIS APARTMENT THAT WOULD LEAD ONE TO BELIEVE
6 THAT HE DYED HIS HAIR.

7 SECONDLY, ALL -- NONE OF THE SIGHTINGS OF
8 WITNESSES -- ALL OF THE SIGHTING WITNESSES SEE HIM WITH
9 GRAY HAIR. IT IS -- AND FINALLY, THERE IS JUST NO
10 PREJUDICE HERE. THIS WOULDN'T HAVE CHANGED THE VERDICT.

11 THE COURT: YOU KNOW, I DO HAVE -- DO NOT HAVE THE
12 MODIFICATION TO THE ORDER TO SHOW CAUSE IN DECEMBER. I
13 HAVE A DECEMBER MODIFICATION OF THE OPINION.

14 MR. KLEIN: AT THE SAME TIME THEY MODIFIED --

15 THE COURT: WAS THAT THE ONLY CHANGE TO THE O.S.C.?

16 MR. KLEIN: YES.

17 THE COURT: LET ME ASK THE RESPONDENT TO GIVE ME A
18 COPY OF THE LATEST O.S.C..

19 MR. MC MULLEN: THERE WERE OTHER CHANGES IN THE
20 MODIFICATION. WE WILL SUPPLY YOU WITH A COPY.

21 THE DEFENDANT: THE DEFENSE HAS WORKED ON A
22 COMPOSITE WHERE WE MERGED THE DOCUMENT. IF IT WILL BE
23 HELPFUL TO THE COURT, WE WILL SUPPLY IT.

24 THE COURT: I AM NOT GOING TO TAKE ANY EVIDENCE ON
25 THAT. I THINK IT IS IMMATERIAL. I THINK IT IS
26 SPECULATIVE.

27 THE DEFENDANT: I DID HAVE A RESPONSE TO
28 MR. MC MULLEN'S POSITION.

1 THE COURT: THAT'S ALL RIGHT. I HAVE RULED.

2 THE DEFENDANT: ONCE AGAIN, JUST FOR THE RECORD, I
3 WOULD NOTE THERE IS A LOT MORE --

4 THE COURT: MR. HUNT, I AM LETTING YOU TALK. I
5 HAVE RULED.

6 THE DEFENDANT: ALL RIGHT.

7 MR. KLEIN: CAN I MAKE ANOTHER INQUIRY OF THE
8 COURT?

9 THE COURT: I AM LOOKING AT THE LAST O.S.C..
10 EVIDENTLY WE HAD A COPY FAXED TO US AT SOME POINT, BUT I
11 HAVE NOT SEEN IT.

12 MR. MC MULLEN: YOU HAVE IT NOW BEFORE YOU?

13 THE COURT: IT LOOKS LIKE I DO.

14 MR. KLEIN: CAN I JUST LOOK AT IT, AND I CAN TELL
15 YOU?

16 THE COURT: YES.

17 MR. KLEIN: YES. THAT'S IT. IT IS IN THE SECOND
18 PAGE IN THE MIDDLE.

19 THE COURT: ALL RIGHT.

20 SO THAT WOULD BE 2-G, AND THAT WOULD
21 CONSEQUENTLY CHANGE THE OTHERS ACCORDINGLY.

22 MR. KLEIN: MAY I TAKE ANOTHER INQUIRY? I MEAN,
23 AGAIN, THE COURT --

24 THE COURT: ON THE SAME ISSUE I JUST RULED ON.

25 MR. KLEIN: YES.

26 THE COURT: NO. I HAVE RULED.

27 OKAY. LET'S GO TO 2-H. THE TESTIMONY OF
28 LEONARD AND KAREN SUE MARMOR.

1 RESPONDENT?

2 MR. MC MULLEN: TAKING KAREN SUE MARMOR FIRST, IT
3 IS UNREASONABLE TO EXPECT ARTHUR BARENS TO KNOW ABOUT
4 SOMETHING THAT DIDN'T COME TO KAREN SUE MARMOR UNTIL AFTER
5 THE POINT IN TIME THAT SHE RECALLED IT. I DON'T THINK IT
6 IS REASONABLE, IT IS A REASONABLE EXPECTATION THAT HE
7 WOULD BE ABLE TO FIND THAT INFORMATION OUT.

8 SECONDLY, IT IS OUR POSITION THAT THERE IS NO
9 PREJUDICE HERE. IT REALLY WOULDN'T HAVE MADE A DIFFERENCE
10 WHEN THE TO-DO LIST WAS SUPPOSED TO BE AT THE --

11 THE COURT: WELL, YES AND NO, I SUPPOSE. WE KNOW
12 THAT MR. HUNT WROTE THE TO-DO LIST. MR. HUNT TESTIFIED
13 THAT HE WENT OVER TO LEVIN'S ON THE 4TH AND 5TH.

14 THE DEFENDANT: ON THE 5TH.

15 THE COURT: AND MARMOR SAYS THAT SHE SAW THE NOTE
16 WHAT DATE?

17 MR. MC MULLEN: WELL, IT IS VAGUE. SHE SAYS A
18 COUPLE OF DAYS, A COUPLE OF WEEKS, A COUPLE OF MONTHS
19 BEFORE HAND. THAT'S HER TESTIMONY IN SAN MATEO.

20 THE DEFENDANT: SHE NEVER SAID A COUPLE OF MONTHS.
21 HER TESTIMONY IN SAN MATEO --

22 THE COURT: HOW MUCH DO WE GET? I AM GOING TO TAKE
23 EVIDENCE ON MARMOR.

24 MR. MC MULLEN: ON NEWLY DISCOVERED EVIDENCE?

25 THE COURT: ON 1-B, BUT HOW IT -- SO SHE IS GOING
26 TO TESTIFY. BUT HOW IS IT REALLY GOING TO INEFFECTIVE
27 ASSISTANCE OF COUNSEL?

28 THE DEFENDANT: WE HAVE A DOCUMENT, YOUR HONOR,

1 THAT WAS TYPED UP BY BARENS' SECRETARY FROM NOTES I
2 PREPARED WHILE I WAS IN CUSTODY, EITHER DATED JULY OR
3 AUGUST OF 1985. I GAVE HIM A LIST OF WITNESSES THAT HE
4 SHOULD PURSUE. ONE OF THE WITNESSES ON THE LIST WAS, OF
5 COURSE, LEN MARMOR.

6 THE PARAGRAPH DISCUSSES MR. MARMOR -- THAT
7 KAREN SUE MARMOR WOULD BE A GREAT WITNESS TO TALK TO. SHE
8 KNOWS AND SHE HATES RON LEVIN. SHE KNOWS WHERE ALL THE
9 SKELETONS ARE IN HIS CLOSET.

10 IT IS OUR CONTENTION, LIKE THE FACT THAT LEN
11 MARMOR PRESENTED HIMSELF IN THE PRELIMINARY HEARING AND
12 MR. PITTMAN'S TRIAL AS RON LEVIN'S CLOSEST FRIEND. THAT
13 WAS INEFFECTIVE ASSISTANCE OF COUNSEL FOR MR. BARENS NOT
14 TO FOLLOW-UP. YOU KNOW, HE WAS THE OBVIOUS PERSON TO TALK
15 TO ABOUT WHAT WAS GOING ON IN RON LEVIN'S LIFE, AND HE WAS
16 PUT ON NOTICE THAT KAREN SUE MARMOR WOULD BE A GOOD
17 WITNESS TO INTERVIEW.

18 THE COURT: WHAT DID BARENS SAY IN HIS DEPOSITION?

19 MR. MC MULLEN: NOTHING. BUT HIS INTERROGATORIES
20 BEAR OUT THAT PETITIONER TOLD HIM THAT -- TOOK THE LIST
21 OVER ON JUNE 6TH. THE PETITIONER THEN INDICATED IN HIS
22 STORY LATER ON, IN LATER DISCUSSIONS, THAT HE HAD TAKEN IT
23 OVER AT ANOTHER TIME.

24 MR. KLEIN: THAT PERTAINS TO WHAT MR. HUNT WOULD
25 TESTIFY TO. BUT IT DOESN'T PERTAIN TO WHAT KAREN SUE
26 MARMOR WOULD TESTIFY TO ABOUT WHAT SHE SAW, AND WE DO
27 HAVE --

28 THE COURT: SHE IS GOING TO TESTIFY. THE QUESTION

1 IS WHETHER OR NOT THIS IS EVIDENCE OF INEFFECTIVE
2 ASSISTANCE OF COUNSEL. AND I GATHER FROM WHAT MR. HUNT IS
3 SAYING HE PROVIDED THIS INFORMATION TO MR. BARENS.
4 MR. BARENS, AS I UNDERSTAND, HAS STATED HE WAS NOT AWARE
5 OF MARMOR. SO DO WE HAVE A FACTUAL CONTEST THAT NEEDS TO
6 BE RESOLVED IN AN EVIDENTIARY HEARING.

7 MR. KLEIN: IF MR. HUNT'S --

8 THE COURT: HOLD ON.

9 MR. MC MULLEN: OUR POSITION IS THAT THERE ISN'T,
10 SHE DIDN'T EVEN, THE IMAGE OF THIS DIDN'T COME TO HER
11 UNTIL SOMETIME AFTERWARDS. SHE WAS WELL AWARE OF THE
12 TRIAL, HER HUSBAND --

13 THE COURT: FROM READING ALL THIS STUFF I GOT TO
14 TELL YOU THERE IS A REAL QUESTION AS TO CREDIBILITY. THE
15 QUESTION IS: DO I HAVE A CONFLICT HERE THAT NEEDS TO BE
16 RESOLVED BY WAY OF AN EVIDENTIARY HEARING?

17 MR. KLEIN: YOU HAVE MR. HUNT'S --

18 MR. MC MULLEN: I DON'T THINK SO, YOUR HONOR.

19 ALSO, THERE WOULD HAVE BEEN TACTICAL REASONS
20 FOR BARENS NOT TO PUT HER ON IF HE WAS CONSIDERING PUTTING
21 ON HIS CLIENT BASED UPON STATEMENTS THAT HIS CLIENT MADE.

22 THE COURT: HIS CLIENT DIDN'T TESTIFY, THOUGH.

23 MR. MC MULLEN: THAT'S TRUE. BUT DURING THE TRIAL
24 THERE WAS ALWAYS THAT POSSIBILITY.

25 THE COURT: IT WAS A GREAT SURPRISE WHEN I GOT TO
26 THE END OF THE TRANSCRIPT. I WAS GETTING READY FOR THAT.

27 THE DEFENDANT: I WAS TOO. I --

28 THE COURT: I WILL TAKE EVIDENCE ON KAREN SUE

1 MARMOR WHAT ABOUT LEONARD MARMOR -- HE SAW A BLACK MAN
2 ARRIVE AT LEVIN'S. ISN'T THAT BASICALLY WHAT IT COMES
3 DOWN TO?

4 ALL RIGHT.

5 I WON'T TAKE ANY EVIDENCE AS TO LEONARD
6 MARMOR.

7 THE DEFENDANT: WE JUST CONSIDER MR. MARMOR A
8 CORROBORATING WITNESS AGAINST MR. RILEY. HE COMES UP
9 LATER IN THE O.S.C..

10 THE COURT: ALL RIGHT.

11 2-I. THAT OSTROVE HAD EVIDENCE THAT LEVIN
12 HAD 1.2 MILLION.

13 WHAT SHOULD MR. BARENS HAVE DONE IF
14 MR. OSTROVE TESTIFIED?

15 MR. KLEIN: WHAT HE SHOULD HAVE DONE, HE SHOULD
16 HAVE LOOKED AT THE PROBATE FILE, ANALYZED IT AND PRESENTED
17 THE INFORMATION TO THE JURY TO DEFLECT THE PROSECUTION'S
18 THEORY. AND IF --

19 THE COURT: BUT IS IT TRUE THAT HE HAD 1.2 MILLION
20 DOLLARS?

21 MR. KLEIN: THERE IS A CONFLICT BECAUSE THEY HAD
22 SOMEBODY LOOK AT IT.

23 THE COURT: THEY MEANING WHO?

24 MR. KLEIN: THE PROSECUTION ATTACHED A DECLARATION
25 IN THEIR RETURN, WHICH COMES UP WITH A DIFFERENT NUMBER,
26 SO THERE IS A CONFLICT ABOUT WHAT THE DOCUMENTATION IS.
27 IF IT CAN BE SHOWN THAT IT IS BENEFICIARY TO MR. HUNT'S
28 POSITION, THERE IS NO QUESTION THAT IT SHOULD HAVE BEEN

1 PRESENTED, AND THAT, YOU KNOW, THIS IS ANOTHER PART OF THE
2 PATTERN TO SHOW LEVIN GOT ALL THIS MONEY TO FLEE THE
3 JURISDICTION.

4 THE COURT: BUT YOU ARE SAYING AT THIS POINT YEARS
5 LATER THERE IS STILL A CONFLICT ABOUT WHETHER THERE WAS
6 ANY EVIDENCE ABOUT THIS 1.2 MILLION.

7 CLEARLY, THERE IS A LOT OF EVIDENCE. I THINK
8 THERE WAS SOME EVIDENCE THAT HUNT HAD OPENED UP SOME
9 KIND -- NOT HUNT, I AM SORRY -- MR. LEVIN HAD OPENED UP
10 SOME TYPE OF ACCOUNT WITH SOME NUMBER OF THOUSANDS OF
11 DOLLARS. BUT THAT NUMBER OF THOUSANDS OF DOLLARS WENT
12 UNTAPPED.

13 MR. MC MULLEN: YOUR HONOR, THERE IS NO EVIDENCE IN
14 THE OSTROVE FILE THAT HE SOCKED AWAY 1.2 MILLION DOLLARS.
15 THERE ARE A LOT OF UNEXPLAINED TRANSFERS OF FUNDS THAT
16 LEAD NOWHERE, CANNOT ESTABLISH THAT HE SOCKED AWAY MONEY,
17 JUST LIKE ONE WOULD TRANSFER MONEY OR SPEND MONEY OUT OF A
18 CHECKING ACCOUNT. THERE IS NOTHING -- IT IS SPECULATION.
19 IT NEVER WOULD HAVE GOTTEN VERY FAR IN THE TRIAL BECAUSE
20 IT IS EXTREMELY SPECULATIVE. THERE IS NO TRACING OF FUNDS
21 ANYWHERE. THERE IS NOTHING THERE.

22 THE COURT: ANY LAST THOUGHTS?

23 MR. KLEIN: THEIR DECLARATION SAYS THERE IS
24 \$500,000 OF UNEXPLAINED TRANSFERS CONTAINED IN THE OSTROVE
25 FILES. I MEAN, THAT'S TOTALLY CONSISTENT WITH THE DEFENSE
26 THEORY OF WHAT MR. LEVIN WAS DOING, AND THERE CAN BE NO
27 REASON NOT TO PRESENT IT, AND IT IS VERY, VERY STRONG
28 EVIDENCE.

1 THE COURT: I GOT TO TELL YOU I JUST DON'T SEE IT.
2 NO, I AM NOT GOING TO GIVE ANY -- I AM NOT
3 GOING TO HAVE ANY EVIDENCE TAKEN ON 2-I.

4 2-J, "LEVIN'S LACK OF FAMILY TIES AND ABUSE
5 OF DRUGS." HOW THIS EVER GOT TO AN O.S.C. I DO NOT KNOW.
6 I DO NOT SEE THIS AS AN ISSUE SUBJECT.

7 THE DEFENDANT: YOUR HONOR, ON THIS, AS FAR AS THE
8 MATERIALITY OF RON LEVIN'S FAMILY TIES, THIS WAS AN ISSUE
9 THAT MR. WAPNER SPENT A TREMENDOUS AMOUNT OF TIME ON IN
10 CLOSING ARGUMENT.

11 THE COURT: ABOUT HIS MOTHER LOVED LEVIN?

12 THE DEFENDANT: THIS REBUTTAL WAS THIS IMPASSIONED
13 THING THAT HE WOULD HAVE CONTACTED HIS MOTHER REGARDLESS
14 OF ANYTHING ELSE. YOU KNOW, I PERSONALLY THINK THE
15 ARGUMENT THAT MR. WAPNER WAS MAKING WAS ABSURD. BUT
16 THAT'S NOT TO SAY THAT IT DIDN'T FIND A HOME IN THE HEARTS
17 OF SOME OF THOSE 12 PEOPLE IN THE BOX. HE CERTAINLY FELT
18 IT WAS HIS GOAL LINE POSITION ON THE WHOLE CASE. THE ONE
19 THING THAT --

20 THE COURT: HE HAD A NO-BODY MURDER CASE. HE HAD
21 TO FIND SOMEBODY THAT WOULD HAVE SEEN THE VICTIM ON
22 WEDNESDAY IF THE MURDER WAS ON TUESDAY. HE CALLED UPON
23 THE FAMILY. EVEN IF YOU HATED THE FAMILY, YOU MIGHT CALL
24 YOUR MOTHER. DOESN'T THIS REALLY COME DOWN TO EVIDENCE
25 THAT LEVIN HAD A BAD CHILDHOOD AND KICKED HIS DOG?

26 THE DEFENDANT: NO. ACTUALLY THAT'S NOT REALLY
27 WHAT IT AMASSES TO. WHAT IT AMASSES TO IT IS A TREMENDOUS
28 ATTACK ON THE CREDIBILITY OF CAROL LEVIN.

1 THE COURT: YOU ARE GOING TO ATTACK THE MOTHER OF A
2 VICTIM IN A MURDER CASE?

3 THE DEFENDANT: DID YOU READ MY CROSS-EXAMINATION
4 OF HER IN SAN MATEO. I MEAN, CAROL LEVIN CEASED TO BE A
5 FACTOR IN THE TRIAL AFTER THAT CROSS-EXAMINATION. THAT'S
6 WHAT THE JUROR DECLARATIONS SAY TOO, HOWEVER, SHE WAS NOT
7 AN EXTREMELY POWERFUL WITNESS THAT MITIGATED TOWARDS
8 CONVICTION IN MY CASE.

9 MR. WAPNER SPENT A TREMENDOUS AMOUNT OF TIME
10 WITH WITNESSES TRACKING LEVIN'S CONNECTION TO HIS MOTHER,
11 AS IF THE FELLOW HAD SOME NEUROTIC OBSESSION WITH HIS
12 MOTHER OR SOMETHING LIKE THAT.

13 THE COURT: I DIDN'T READ IT THAT WAY.

14 THE DEFENDANT: OR SOME TREMENDOUS WARM FEELING.
15 DEPENDS ON WHAT PROSPECTIVE YOU HAVE ON LEVIN. HE ASKED
16 EVERY PERSONAL, SOCIAL WITNESS THAT CAME BEFORE THE JURY
17 ABOUT HOW LEVIN FELT ABOUT HIS MOTHER, AND HOW HE TREATED
18 HER. HE SPENT A LOT OF TIME WITH THE HEARTS AND FLOWERS
19 WHEN CAROL LEVIN WAS ON THE STAND, AND IT TURNED OUT THAT
20 NOT ONLY WAS CAROL AND MARTIN LEVIN MISREPRESENTING THE
21 NATURE OF THE RELATIONSHIP THEY HAD WITH RON LEVIN, IT WAS
22 AN EXPLOITIVE ONE RATHER THAN A WARM FAMILIAL ONE, BUT A
23 LOT OF OTHER STATEMENTS --

24 THE COURT: BUT, ON THE OTHER HAND, THEY SAW EACH
25 OTHER TO EXPLOIT EACH OTHER. I MEAN, THEY DID GIVE HIM
26 MONEY. HE DID USE THEIR MONEY.

27 MR. MC MULLEN: YOU CAN'T GO USING MONEY WHEN THEY
28 GO TO PRISON, YOUR HONOR, THAT'S THE THING. THIS IS ONE

1 OF THE THINGS THAT ALLOWS US TO GET AT A CENTRAL FALLACY
2 IN THE PROSECUTION'S CASE IS THAT RON LEVIN KNEW HE WAS
3 GOING TO PRISON. HE COULDN'T TAKE ADVANTAGE, \$100 A MONTH
4 IS ALL YOU CAN SPEND IN JAIL. IT NO LONGER BECOMES
5 IMPORTANT THE FACT THAT HE CAN TWIST MOM AND DAD AROUND
6 HIS FINGER. NO MATTER -- IT NO LONGER BECOMES AS PART OF
7 THE BEVERLY HILLS APARTMENT.

8 THIS IS SOMETHING WHERE THE COURT, THE COURT
9 MAY BE ABLE TO PLUMB THE DEPTHS OF THIS MAN'S CHARACTER A
10 LOT MORE QUICKLY THAN THE PROSECUTION, BUT THAT DOESN'T
11 CHANGE THE STRUCTURE OF THE PEOPLE'S CASE, YOU KNOW.

12 THE COURT: I UNDERSTAND THAT. BASICALLY THE
13 PURPOSE OF CALLING THE MOTHER AND A COUPLE OF THESE
14 OTHERS, THE FATHER TESTIFIED TOO WAS, "IT IS LIKELY, IS IT
15 NOT, LADIES AND GENTLEMEN, THAT IF SOMEBODY HAS A MOTHER
16 OR FATHER THAT THEY WILL CONTACT THEM AT SOME POINT AND
17 HAVE -- 'HAS MR. LEVIN CONTACTED YOU IN THIS LAST WHATEVER
18 YEAR OR SO BETWEEN THE MURDER AND THE TRIAL?'"

19 "NO, HE HASN'T."

20 MR. MC MULLEN: THAT WASN'T THE ONLY EVIDENCE THAT
21 WAS PRESENTED --

22 THE COURT: WELL, I MEAN --

23 MR. MC MULLEN: -- OF THE CORPUS.

24 THE COURT: MR. WAPNER, JUDGE WAPNER CLEARLY WAS
25 PLAYING ON WHAT EMOTIONAL VALUE HE COULD GET OF HAVING THE
26 MOTHER OF THE VICTIM BECAUSE YOU DON'T HAVE A BODY --

27 MR. MC MULLEN: CERTAINLY.

28 THE COURT: -- TO BE TOO CONCERNED OVER.

1 MR. MC MULLEN: IT IS A REASONABLE TACTICAL
2 DECISION NOT TO CROSS-EXAMINATION THE MOTHER IN FRONT OF
3 THE JURY.

4 MR. KLEIN: THAT'S THE POINT, YOUR HONOR. THIS IS
5 ANOTHER EXAMPLE OF BARENS'S TOTALLY DROPPING THE BALL IN
6 TERMS OF INVESTIGATING SOMETHING, BECAUSE IF YOU HAVE ALL
7 THIS INFORMATION THAT THE RELATIONSHIP IS NOT WHAT IT WAS,
8 THEN YOUR TACTICAL THINKING BECOMES A DIFFERENT ONE, AND,
9 YOU KNOW, IN THE SAN MATEO CASE THAT'S WHAT HAPPENED AND
10 THAT ELIMINATED THAT.

11 THE COURT: BUT YOU DO NOT COMPARE THE WORK OF ONE
12 ATTORNEY VERSUS THE WORK OF ANOTHER ATTORNEY.

13 MR. KLEIN: I UNDERSTAND THAT.

14 THE COURT: ASSUMING MR. HUNT DID A FABULOUS JOB
15 TEARING THE MOTHER OF THE VICTIM TO SHREDS DOESN'T MAKE
16 THAT MUCH DIFFERENCE IF THE ACTIONS TAKEN BY MR. BARENS
17 AND THE CHOICES HE MADE WERE FAIR AND REASONABLE UNDER THE
18 CIRCUMSTANCES.

19 MR. KLEIN: BUT HE DIDN'T MAKE --

20 THE COURT: HOLD IT.

21 AND IN READING IT I WOULDN'T HAVE DONE IT, I
22 WOULDN'T HAVE GONE AFTER THAT MOTHER EVEN IF SHE -- HE HAD
23 A BAD CHILDHOOD AND KICKED HIS DOG.

24 MR. KLEIN: YOUR HONOR, HASN'T READ THE TESTIMONY
25 FROM SAN MATEO WHERE THE EVIDENCE WAS PRESENTED ABOUT THE
26 TYPE OF RELATIONSHIP THAT REALLY EXISTED, AND THAT DESTROYS
27 THIS MAJOR THEME IN THE CASE, AND IN THIS INSTANCE IT CAN
28 BE SHOWN WHAT BARENS DIDN'T DO TO MAKE THIS INFORMED

1 DECISION HE HAS TO MAKE, AND SO THIS IS FUNDAMENTAL TO
2 THAT PART OF IT.

3 THE COURT: I WILL NOT TAKE ANY EVIDENCE ON 2-J.

4 LET'S GO TO 2-K WHETHER LEVIN AND PITTMAN HAD
5 CONTACT.

6 THE ONLY EVIDENCE WE HAVE ON THIS IS KARNY.
7 I BELIEVED HE WAS ASKED WHETHER OR NOT PITTMAN AND LEVIN
8 KNEW EACH OTHER AND HE SAID HE DIDN'T THINK THEY DID.
9 THAT REMINDS ME, HAS THERE BEEN A KARNY DECLARATION OR
10 AFFIDAVIT SIGNED BY HIM FILED YET?

11 MR. MC MULLEN: YES.

12 THE COURT: THERE WAS -- THE ONE I HAD WAS NOT
13 SIGNED.

14 MR. MC MULLEN: THERE WERE A FEW, BECAUSE OF OUR
15 TIME FRAME AND FILING THE RETURN, THAT WERE NOT SIGNED
16 THAT WERE FILED LATER WHEN THEY CAME IN UNDER A SEPARATE
17 COVER.

18 THE COURT: I AM LOOKING AT THAT.

19 MR. MC MULLEN: I DON'T HAVE THE DATE THAT THAT WAS
20 FILED AT HAND.

21 THE COURT: I AM LOOKING AT EXHIBIT 18 THAT WERE
22 FILED UNDER SEAL, AND IT WAS NOT SIGNED.

23 WILL YOU GO THROUGH, MAKE SURE ALL OF THE
24 KARNY DECLARATIONS ARE SIGNED? THERE WAS SOMETHING ABOUT
25 SOME DIFFICULTY REACHING HIM.

26 MR. MC MULLEN: YES. THEY HAVE BEEN SIGNED. THEY
27 ARE WITH THE COURT. THEY HAVE BEEN FILED WITH THE COURT.

28 THE COURT: I WILL ACCEPT YOUR REPRESENTATION, THAT

1 WAS JUST A NOTE I HAD THAT I WANTED TO BRING UP EARLIER.

2 THE LEVIN AND PITTMAN CONTACT.

3 HOW IS MR. BARENS SUPPOSED TO KNOW THAT -- OF
4 THIS INFORMATION THAT LEVIN AND PITTMAN MAY HAVE HAD
5 CONTACT?

6 THE DEFENDANT: MR. RILEY'S NAME COULD HAVE BEEN
7 DISCOVERED BY MR. BARENS THROUGH REASONABLE INVESTIGATION
8 TECHNIQUES SUCH AS REVIEWING --

9 THE COURT: ASSUMING HE FOUND RILEY HOW IS IT
10 SUPPOSED TO -- AND RILEY SAYS -- ISN'T RILEY THE GUY THAT
11 SAID, "I SAW THE BLACK GUY"?

12 THE DEFENDANT: NO. "I SAW JIM PITTMAN."

13 THE COURT: HE DOES IDENTIFY PITTMAN?

14 MR. KLEIN: IT WAS HE WHO IS -- JUST THAT SAYS, "I
15 SAW A BLACK GUY."

16 THE DEFENDANT: THAT'S LEN MARMOR. "HE LOOKS LIKE
17 THE GUY."

18 THE COURT: ALL RIGHT.

19 TELL ME ABOUT RILEY. HOW WOULD -- WHY SHOULD
20 BARENS HAVE FOUND OUT ABOUT RILEY?

21 THE DEFENDANT: SEE, THIS IS -- THE COURT WOULD
22 HAVE -- I MEAN, IF WE HAD BEEN ALLOWED TO GO INTO ALL
23 THESE THINGS, THE COURT WOULD HAVE FOUND OUT THAT
24 MR. BARENS NEVER ATTEMPTED TO INTERVIEW A SINGLE PERSON IN
25 RON LEVIN'S SOCIAL CIRCLE DESPITE THE FACT THAT IT SEEMED
26 LIKE A SENSIBLE THING TO DO GIVEN THE STRUCTURE, THE
27 DEFENSE AND STRUCTURE OF MR. -- OF THE PEOPLE'S CASE.

28 MR. RILEY IS ONE OF THESE EASILY PICKED UP

1 GEMS LYING STREWN ON THE FLOOR IN RON LEVIN'S HOME IN THIS
2 SENSE. JOHN RILEY'S NAME, FOR EXAMPLE, APPEARS IN THE
3 ANSWERING -- IN THE PHONE MESSAGE. THERE IS EVIDENCE IN
4 THE TRIAL RECORD THAT MY ATTORNEYS NEVER OBTAINED THOSE
5 PHONE MESSAGE EVEN -- THEY WOULD HAVE BEEN OBVIOUS SORT OF
6 LEADS. IT IS THOUGHT THE PHONES -- THEY CAME INTO
7 EVIDENCE.

8 BUT AS MR. CHIER CONFESSED TO THE COURT, AND
9 IT IS CLEAR IN THE TITLE, MY ATTORNEYS NEVER GOT THE
10 RECORDS FROM THE PITTMAN TRIAL PRIOR TO THE COMMENCEMENT
11 OF MY TRIAL. SO THESE THINGS WOULD ARRIVE IN THEIR HANDS
12 WHEN MR. WAPNER WOULD HAVE PROVIDED THEM SPARE COPIES AS
13 THE WITNESS WAS TAKING THE STAND. THEY NEVER MADE AN
14 ATTEMPT TO TRY TO FIND OUT WHAT IS GOING ON IN RON LEVIN'S
15 LIFE, TO CALL MR. RILEY, WHO LEFT A MESSAGE, I BELIEVE, ON
16 JUNE 19TH IN THOSE --

17 THE COURT: AS I RECALL --

18 THE DEFENDANT: RILEY IS ALL --

19 THE COURT: -- THERE ARE A LOT OF PHONE MESSAGES
20 GOING TO LEVIN'S PHONE.

21 THE DEFENDANT: THERE WERE. BUT THERE WAS ALSO A
22 PHONE LOG THAT LEVIN KEPT. MR. RILEY IS IN THAT AS WELL.

23 THE WAY WE FOUND MR. RILEY WAS DOING WHAT WE
24 CONTEND MR. BARENS SHOULD HAVE DONE, WHICH IS TRY TO FIND,
25 TALK TO THE PEOPLE THAT WERE INVOLVED WITH LEVIN AT THE
26 TIME OF THE DISAPPEARANCE. AND THE FACT THAT MR. BARENS
27 DIDN'T EVEN BREAK THE SURFACE IN THIS AREA, DIDN'T EVEN
28 TRY TO INTERVIEW ONE PERSON SPEAKS OF, I THINK, GROSS

1 INEFFECTIVE ASSISTANCE OF COUNSEL.

2 MR. RILEY IS ONE THAT HE WOULD HAVE COME
3 ACROSS IN THE VERY EARLY STAGES OF SUCH AN INVESTIGATORY
4 EFFORT.

5 MR. KLEIN: THE POINT BEING, YOUR HONOR, THAT IF WE
6 CAN ESTABLISH THAT IT WAS EASY TO FIND MR. RILEY THEN WE
7 CAN SHOW THAT BARENS DIDN'T DO ANYTHING, AGAIN, WHICH IS
8 OUR BASIC CONTENTION IN TERMS OF TRYING TO PREPARE THIS,
9 AND THERE CERTAINLY ISN'T ANY TACTICAL REASON NOT TO
10 PRESENT EVIDENCE TO SHOW THAT PITTMAN AND LEVIN KNEW EACH
11 OTHER, BECAUSE THEN THAT DESTROYS THE THEORY THAT THEY
12 WOULD HAVE BEEN ABLE TO GO OVER TO HIS HOUSE AND DO WHAT
13 THEY SUPPOSEDLY DID.

14 THE DEFENDANT: YOUR HONOR, ALSO TO CONSIDER WHILE
15 YOU ARE LOOKING AT THESE CLAIMS IS THAT, IF MR. BARENS HAD
16 SOMETHING LIKE THE DYE EVIDENCE AND THE OTHER EVIDENCE
17 IMPEACHING MAY AND ALL THESE OTHER THINGS, HE MIGHT HAVE
18 MADE A DIFFERENT DECISION INSTEAD OF, YOU KNOW --

19 THE COURT: I AM AWARE OF ALL THOSE.

20 THE DEFENDANT: -- ABOUT ME TAKING THE STAND.

21 THE COURT: I AM AWARE OF ALL THOSE ALLEGATIONS.
22 THAT'S WHY I AM NOT RULING ON THEM TODAY. I AM ALLOWING
23 YOU TO ARGUE THEM IN CLOSING BRIEFS. BUT WHAT I AM SAYING
24 IS THAT THESE ARE THE THINGS I AM GOING TO TAKE ADDITIONAL
25 EVIDENCE ON AND DRAW MY OWN CONCLUSION.

26 ANY RESPONSE?

27 MR. MC MULLEN: YES, YOUR HONOR, FIRST OF ALL,
28 LEVIN LIVED ON THE PHONE. IT IS NOT REASONABLE. IT IS

1 UNREASONABLE THAT BARENS DIDN'T FIND JOHN RILEY.

2 SECOND OF ALL, BARENS CLAIMS THAT HE WOULDN'T
3 EVEN HAVE PUT IT ON IF HE DID, IT CONFLICTED WITH WHAT
4 PETITIONER TOLD HIM.

5 BUT MOST IMPORTANTLY, SO WHAT? IT IS -- IT
6 WOULDN'T HAVE AFFECTED THE VERDICT. SO LEVIN SAW --

7 THE COURT: THE ONLY THING I CAN SEE IS THAT
8 SOMEHOW IT WOULD BE OFFERED TO IMPEACH KARNY. BUT KARNY
9 WAS SIMPLY ASKED DID THEY KNOW EACH OTHER.

10 MR. MC MULLEN: KARNY BASED STATEMENTS ON WHAT
11 PETITIONER IS TELLING HIM, SO I AM NOT SURE -- I AM NOT
12 SURE THAT IT REALLY IMPEACHES.

13 MR. MC MULLEN: RIGHT.

14 MR. KLEIN: WHAT IT DOES, THOUGH, YOUR HONOR, THE
15 PROSECUTION'S THEORY IS THAT HUNT GOES OVER THERE WITH
16 SOMEBODY THAT HE DOESN'T -- THAT LEVIN DOESN'T KNOW, AND
17 SO THIS DESTROYS THE ENTIRE THEORY OF HOW THIS CRIME
18 SUPPOSEDLY HAPPENED. SO IT IS CRUCIAL TO THE THEORY OF
19 THE CASE TO DESTROY IT.

20 THE COURT: ALL RIGHT.

21 I AM NOT GOING TO TAKE ANY EVIDENCE ON 2-K.

22 2-L JOGADA SAW NOTHING UNUSUAL ON JUNE 6TH
23 AND SAW A COMFORTER IN THE TRASH. HASN'T SHE BEEN PRETTY
24 WELL --

25 MR. MC MULLEN: BARENS COULD NOT HAVE FOUND OUT
26 ABOUT HER BECAUSE SHE DIDN'T MAKE UP A STORY UNTIL LATER.

27 THE DEFENDANT: YOUR HONOR, I THINK THE COURT'S
28 CONCLUSION ON THIS IS ONE -- LET'S DROP IT. I THINK THE

1 DECLARATION MAKES IT --

2 THE COURT: I AM NOT SURE ANYONE WANTS TO HAVE HER
3 IN COURT FROM WHAT I CAN TELL.

4 MR. MC MULLEN: WISE MOVE ON PETITIONER'S PART.

5 THE COURT: I AM SORRY?

6 MR. MC MULLEN: I SAID WISE MOVE.

7 THE COURT: OKAY.

8 I WON'T TAKE ANY EVIDENCE ON 2-L.

9 THE DEFENDANT: WE ARE ACTUALLY FORMALLY DROPPING
10 THAT CONTENTION.

11 THE COURT: WELL, YOU CAN STATE THAT FORMALLY IN
12 ANY --

13 THE DEFENDANT: SOME OTHER TIME.

14 THE COURT: -- IN THE WRITTEN CLOSING DOCUMENTS.

15 THE DEFENDANT: ALL RIGHT.

16 THE COURT: LET'S SEE. LET'S GO TO 3. THE ACTUAL
17 CONFLICT. DO WE WANT TO DROP THIS ONE?

18 MR. KLEIN: NO, YOUR HONOR.

19 THE DEFENDANT: NO.

20 THE COURT: MR. BARENS DID APPLY TO THE HILLCREST
21 COUNTRY CLUB?

22 MR. KLEIN: HE NEVER APPLIED.

23 THE COURT: SO HOW IS THERE A CONFLICT?

24 MR. KLEIN: HE WANTED TO BECOME A MEMBER AND JUDGE
25 RITTENBAND HAD THE POWER TO TELL HIS FRIENDS TO NOT LET
26 HIM BECOME A MEMBER, AND CONSEQUENTLY HE NEVER APPLIED
27 AFTER WHAT WENT ON IN THIS CASE.

28 THE COURT: IS THAT WHAT MR. BARENS SAID?

1 MR. KLEIN: NO. MR. BARENS DENIES EVER SAYING THAT
2 HE WANTED TO BECOME A MEMBER OF HILLCREST, AND WE ARE
3 GOING TO PRESENT EVIDENCE THAT SHOWS THAT MR. BARENS LIED
4 ABOUT THAT.

5 THE DEFENDANT: WE HAVE FOUR WITNESSES, YOUR HONOR,
6 THAT DIRECTLY CONTRADICT MR. BARENS' STATEMENTS ABOUT
7 NEVER WANTING TO APPLY, NEVER SAYING THAT HE WANTED TO
8 APPLY.

9 THE COURT: DO WE HAVE THAT?

10 MR. KLEIN: WE HAVEN'T PRESENTED THE EVIDENCE YET,
11 YOUR HONOR.

12 THE COURT: WHY NOT?

13 MR. KLEIN: WE PRESENTED SOME OF IT IN THE
14 PETITION, AND THEN THERE WILL BE ADDITIONAL EVIDENCE THAT
15 WILL BE PRESENTED AT THE HEARING.

16 THE COURT: YOUR SHOT IS YOUR PETITION AND YOUR
17 RETURN. THEN I DECIDE BASED ON WHAT HAS BEEN FILED WHAT
18 TYPE OF EVIDENTIARY HEARING, IF ANY, WILL BE HAD.

19 THE DEFENDANT: SOME OF THESE STATEMENTS HAVE BEEN
20 TURNED OVER TO THE PEOPLE IN DISCOVERY. ALL OF THEM HAVE
21 EXCEPT -- WELL -- AND, YOUR HONOR --

22 THE COURT: I GOT TO TELL YOU I AM NOT SURE WHY
23 THIS WAS EVEN GRANTED IN THE O.S.C. WHERE IS THE EVIDENCE
24 THAT MR. BARENS ACTED IN A CERTAIN WAY BECAUSE OF THIS
25 HILLCREST COUNTRY CLUB?

26 MR. KLEIN: THERE IS THE DIFFERENCE BETWEEN THE
27 MANNER IN WHICH MR. CHIER BEHAVED IN FRONT OF THE COURT
28 AND THE MANNER IN WHICH MR. BARENS BEHAVED IN FRONT OF THE

1 COURT. THE COURT HAS THAT JUST FROM --

2 THE COURT: MR. BARENS WAS TRYING TO, I THINK, MAKE
3 THE BEST WITH A VERY DIFFICULT SITUATION.

4 THE DEFENDANT: THERE IS TWO DECLARATIONS. I THINK
5 YOUR HONOR WILL LEARN DIFFERENTLY AS YOU READ THE
6 SUPPLEMENTAL WRIT TOO. THERE ARE TWO DECLARATIONS.

7 THE COURT: THIS HEARING IS GOING FORWARD ON THIS
8 PETITION.

9 THE DEFENDANT: THAT CAME PACKAGED WITH THE
10 ORIGINAL WRIT PROVIDED BY MR. DOBRIN. ONE OF THEM.

11 THE COURT: THE CONVERSATION IS OVER DINNER OR
12 LUNCH ABOUT --

13 THE DEFENDANT: OVER AT BARENS' OFFICE.

14 THE COURT: THAT HE SAID HE WOULD LIKE ACT IN A
15 PARTICULAR WAY WITH JUDGE RITTENBAND?

16 THE DEFENDANT: HE WAS WORRIED ABOUT VIGOROUSLY --
17 WE CONTEND THAT HE WORRIED THAT THAT GUY WOULD BLACKBALL
18 HIM AT HILLCREST. THERE IS ONE FROM BOBBY ROBERTS, I
19 THINK, AND FROM ME ABOUT THAT INCIDENT. SO THERE IS A
20 FACTUAL DISPUTE WITH DOCUMENTS THAT ARE BEFORE THE COURT
21 AS TO MR. BARENS' STATEMENT.

22 I WILL POINT OUT TO THE COURT BY ANALOGY. I
23 WANTED TO BE A MEMBER OF THE NEW YORK STOCK EXCHANGE.
24 THIS WAS AN IMPORTANT FOCUS IN MY LIFE, MY LIFE'S GOAL.
25 THE FACT THAT I HAD GOTTEN TO THE POINT THAT I SUBMITTED
26 MY APPLICATION DOESN'T DETRACT FROM THE FACT THAT IT COULD
27 BE A TREMENDOUS BLOW TO ME PERSONALLY IF SOMETHING AROSE
28 THAT WOULD PREVENT ME FROM EVER DOING THAT SUCCESSFULLY.

1 THE COURT: THE BEST THAT COULD HAPPEN, AS I
2 UNDERSTAND THIS RECORD, IS THAT JUDGE RITTENBAND
3 BAD-MOUTHED BARENS AT THE CLUB.

4 THE DEFENDANT: BAD-MOUTHED --

5 MR. KLEIN: COULD STOP HIM.

6 THE COURT: HE WASN'T ON THE COMMITTEE, THOUGH,
7 THAT HAD THE RIGHT TO STOP HIM FROM BECOMING A MEMBER.
8 ALL HE COULD WOULD BE BAD-MOUTHED HIM AT THE CLUB.

9 THE DEFENDANT: IT IS BARENS' STATE OF MIND, WHICH
10 IS AT ISSUE. WHERE -- PRACTICALLY SPEAKING THE ISSUE OF
11 WHETHER RITTENBAND WOULD HAVE BEEN ABLE TO ACCOMPLISH THAT
12 IS A SEPARATE ISSUE.

13 BUT IN BARENS' STATEMENT TO BOBBY AND I, HE
14 BELIEVED THAT THAT MAN HAD THE POWER AND THAT IMPINGED
15 UPON HIS VIGOR IN PRESENTING LEGAL CHALLENGES TO THE
16 JUDGE'S BIAS AND OTHER THINGS ON MY BEHALF.

17 NOW, THE OTHER THING THAT IS GOING TO COME
18 BEFORE THE COURT IN THE SUPPLEMENTAL IS A DECLARATION.
19 THERE IS SOME INFORMATION THAT WE RECENTLY GOT THAT THE
20 JUDGE TOLD A THIRD PARTY, MR. WAGER, THAT HE WOULD SEE TO
21 IT THAT MR. BARENS, THE JUDGE -- WHO THE JUDGE UNDERSTOOD
22 WAS APPLYING TO HILLCREST, WOULD NEVER SURVIVE THE PROCESS
23 THAT WE COULD GIVE AND RITTENBAND WAS PERCEIVED BOTH BY
24 HIS -- AND MR. BARENS' WAS A PERSON OF CONSIDERABLE CLOUT
25 AND INFERENCE. YOU WILL FIND THAT IT ONLY TAKES TWO
26 PEOPLE TO PREVENT SOMEBODY FROM --

27 THE COURT: IF THEY ARE ON ONE OF THE APPROPRIATE
28 COMMITTEES.

1 MR. KLEIN: IF YOU HAVE INFLUENCE, YOU HAVE
2 INFLUENCE, AND MR. RITTENBAND BELIEVED HE DID. OTHERWISE
3 HE WOULDN'T HAVE MADE THAT STATEMENT TO MR. WAGER,
4 MR. BARENS OTHERWISE WOULDN'T HAVE MADE THAT STATEMENT TO
5 BOBBY ROBERTS.

6 MR. MC MULLEN: THERE IS NO EVIDENCE OF CONFLICT
7 PERIOD. THAT'S THE STATE OF EVIDENCE RIGHT NOW. AT BEST
8 THEY HAVE A SPECULATION SITUATION, WHICH WOULD REQUIRE
9 EXAMINING THE RECORDS. WHEN I LOOK AT THE RECORDS, WITH
10 ALL DUE RESPECT TO THE COURT, BARENS HAD HIS HANDS FULL
11 WITH RITTENBAND, AND HE FOUGHT THE GOOD FIGHT ALL THE WAY
12 THROUGH. HE DIDN'T BACK DOWN. HE COMMENTED ON
13 RITTENBAND'S BEHAVIOR DURING THE TRIAL, IT IS CLEAR FROM
14 READING THE RECORDS.

15 THE COURT: IT WAS VERY CLEAR IN THE RECORD THAT HE
16 HAD A DIFFICULT TIME AND DID THE BEST THING HE COULD.

17 I AM NOT GOING TO TAKE ANY EVIDENCE ON NO. 3.

18 LET'S GO TO NO. 4.

19 MR. KLEIN: AGAIN, IS THE COURT SAYING THAT THERE
20 ARE UNDISPUTED FACTS HERE ABOUT THIS?

21 THE COURT: I AM SAYING BASED ON THE RECORD BEFORE
22 ME THAT I AM NOT GOING TO TAKE ANY ADDITIONAL EVIDENCE.

23 MR. KLEIN: BUT I AM TRYING TO UNDERSTAND WHAT
24 STANDARD THE COURT IS USING TO SAY IT IS NOT TAKING
25 EVIDENCE ON THIS PARTICULAR ISSUE, SINCE IT IS CLEAR THAT
26 THERE IS A DISPUTED FACT ON THIS ISSUE, AND ACCORDING TO
27 THE CASE LAW THAT WAS SUBMITTED TO THE COURT. IF THERE IS
28 A DISPUTE ABOUT THE FACTS, THEN THE COURT IS REQUIRED TO

1 HOLD AN EVIDENTIARY HEARING.

2 THE COURT: RULE 260 C, "AN EVIDENTIARY HEARING IS
3 REQUIRED, IF AFTER CONSIDERATION THE VERIFIED POSITION,
4 THE RETURN, ANY DENIAL, ANY AFFIDAVIT OR DECLARATIONS OR
5 UNDER PENALTY OF PERJURY OF MATTERS OF JUDICIAL NOTICE THE
6 COURT FINDS THERE IS REASONABLE LIKELIHOOD THAT PETITIONER
7 MAY BE ENTITLED TO THE RELIEF ON INTERESTS OF JUSTICE
8 REQUIRE THE PETITIONER'S EVIDENTIARY HEARING."

9 BASED ON WHAT I HAVE HERE THERE IS NO NEED
10 FOR TAKING ANY ADDITIONAL EVIDENCE.

11 THE DEFENDANT: WE HAVE ADDITIONAL EVIDENCE OF
12 PREJUDICE, THE FACT THAT THIS DID IMPEDE --

13 THE COURT: THIS LITIGATION IS GOING TO COME TO AN
14 END. YOU GUYS HAVE BEEN PLAYING WITH THIS FOR ALMOST TWO
15 AND A HALF YEARS. THIS LITIGATION IS COMING TO AN END.
16 THE HEARING IS STARTING IN A COUPLE OF WEEKS. WE ARE
17 GOING FORWARD ON WHAT WE HAVE.

18 LET'S GO TO PARAGRAPH 4, FAILURE TO DISCLOSE
19 MATERIAL EVIDENCE ON THE CREDIBILITY OF PROSECUTION'S
20 WITNESSES.

21 4-A IS THE INTERCESSION WITH THE C.F.T.C. ON
22 BEHALF OF KARNY. AT THIS -- THIS A NO HARM, NO FOUL. IT
23 WAS CLEAR THAT THE S.E.C. WAS GOING TO BE SPOKEN TO ON
24 BEHALF OF KARNY. ADDING THE C.F.T.C. TO THAT SOMEONE ELSE
25 BE SPOKEN TO AND THAT MUCH MORE WHEN HE IS GETTING
26 IMMUNITY FOR AT LEAST TWO MURDERS. I MEAN, DOES IT REALLY
27 ADD THAT MUCH MORE?

28 MR. KLEIN: THIS IS WHAT I JUST DON'T UNDERSTAND

1 WHAT STANDARD THE COURT IS USING, AND WHAT THE COURT'S
2 THINKING IS WITH RESPECT TO THE ORDER TO SHOW CAUSE THAT
3 THE COURT OF APPEAL HAS ISSUED.

4 BECAUSE, FOR EXAMPLE, ON THIS ISSUE THAT
5 THINKING IS THE SAME THINKING THAT WOULD HAVE GONE THROUGH
6 THE COURT OF APPEALS' MIND WHEN THEY ISSUED THE ORDER TO
7 SHOW CAUSE AND SAID, "THERE SHOULD BE AN EVIDENTIARY
8 HEARING," WHEN THEY TAKE ALL THAT INFORMATION ADD IT UP
9 AND DECIDE. I MEAN, AGREE WITH WHAT THE COURT IS SAYING,
10 BUT -- AND WITH RESPECT TO ISSUE THREE ALL THAT HAS
11 HAPPENED NOW --

12 THE COURT: AT THE POINT THAT THE COURT OF APPEALS
13 DID WHAT THEY DID THEY HAD ONLY THE PETITION, THEY HAD NO
14 RESPONSE, THERE IS NOW A RESPONSE. I HAVE REVIEWED THAT.
15 I HAVE LOOKED AT THE RESPONSE. I HAVE READ THE
16 TRANSCRIPT. I AM DECIDING UNDER 260 WHETHER THERE IS A
17 NEED FOR ANY FURTHER ADDITIONAL EVIDENTIARY HEARING.

18 MR. KLEIN: WELL, FOR EXAMPLE, ON THIS ONE THE
19 COURT ANALYSIS IS PROBABLY CORRECT, AND I AGREE WITH IT,
20 MAYBE IT IS FROSTING ON THE CAKE, BUT THAT THINKING WENT
21 THROUGH THE COURT OF APPEALS' MIND WHEN THEY ORDERED THE
22 COURT TO DO WHAT THEY ORDERED THE COURT TO DO.

23 THE COURT: I CAN'T IMAGINE THE COURT OF APPEALS
24 ASKING ME TO DO A FRIVOLOUS ACT, CONDUCT A HEARING FOR THE
25 PURPOSE OF CONDUCTING A HEARING FOR DISCOVERY.

26 MR. KLEIN: BUT THEN WHY DID THEY WRITE THE ORDER
27 THE WAY THEY DID?

28 THE COURT: I HAVE NO IDEA.

1 MR. KLEIN: BUT YOU ARE BOUND BY WHAT THEY DID.

2 THE COURT: I ABSOLUTELY AGREE. I AM FOLLOWING THE
3 LAW, AS I UNDERSTAND THEIR O.S.C..

4 MR. KLEIN: BUT, FOR EXAMPLE, COMPARING 4-A, WHICH
5 AT THIS POINT I AM AGREEING WITH THE COURT'S ANALYSIS, TO
6 ISSUE 3, YOU GET A RETURN, YOU GET MORE INFORMATION, WHICH
7 IS IN CONFLICT, AND RULE 260 IS NOT THE ONLY BASIS THAT
8 THE COURT HAS TO GO ON.

9 AS I SET FORTH IN MY PLEADING, THE COURT HAS
10 TO GO ON THE CASE LAW THAT INTERPRETS WHY THE COURT OF
11 APPEAL DID WHAT THEY DID. AND WITH RESPECT TO ISSUE 3,
12 THE COURT GOT MORE INFORMATION ON THE RETURN, AND ALL IT
13 DOES IS CREATE A MUCH BIGGER FACTUAL DISPUTE ABOUT WHAT
14 WENT ON WITH RESPECT TO HILLCREST. SO THAT ONLY
15 STRENGTHENS THE COURT OF APPEALS' THINKING WHEN THEY ISSUE
16 THE ORDER TO SHOW CAUSE ON ISSUE 3, ON ISSUE 4-A. IF THE
17 COURT IS GOING THROUGH IT, THERE PROBABLY IS LITTLE TO
18 DISPUTE ABOUT THAT.

19 THE DEFENDANT: NOW, ON 3, ALSO, THERE IS A FEDERAL
20 CASE SAYING THAT WHERE AN ATTORNEY LIES IN RELATIONSHIP --

21 THE COURT: I AM NOT ABOUT TO ARGUE. I HAVE
22 ALREADY RULED ON 3. WE ARE TALKING ABOUT 4-A.

23 I DON'T SEE ANY NEED FOR ANY ADDITIONAL
24 HEARING ON 4-A.

25 4-B --

26 MR. MC MULLEN: YOUR HONOR, ALSO ON 4-A THERE IS
27 REFERENCE TO SOME NOTES OF SPECIAL AGENT BREILING. I DO
28 HAVE A SPECIAL NOTE ON THAT.

1 THE COURT: HOLD ON.

2

3 (PAUSE.)

4

5 MR. MC MULLEN: THEY REFER TO C.F.T.C..

6 THE COURT: THAT DID BRING UP AN ISSUE ABOUT THE

7 IMMUNITY REGARDING THE U.S. ATTORNEY'S OFFICE.

8 MR. KLEIN: RIGHT.

9 THE COURT: MY NOTE IS NOT CLEAR ON THAT. I AM
10 TRYING TO --

11 MR. MC MULLEN: IT IS BASICALLY THE SAME ARGUMENT,
12 YOUR HONOR, THAT IS, THAT IT IS CUMULATIVE.

13 THE COURT: I SEE. I SEE WHAT MY NOTE WAS. YEAH.
14 THEY SAID THAT THERE WAS A DISPUTE AS TO THE S.E.C. ON
15 KARNY'S BEHALF. THEY DIDN'T SAY ANYTHING ABOUT THE
16 C.F.T.C. OR THE U.S. ATTORNEY'S OFFICE. AND THE QUESTION
17 WAS KARNY INDICATED EVIDENTLY THAT HE WOULDN'T TESTIFY
18 WITHOUT IT.

19 ANYTHING FURTHER FROM PETITIONER ON THAT?

20 MR. KLEIN: NO.

21 THE COURT: I AM NOT GOING TO HEAR ANY EVIDENCE ON
22 4-A.

23 4-B THAT KARNY WAS INVOLVED IN THE MURDER OF
24 MAYER.

25 LET ME HEAR FROM THE RESPONDENT.

26 HOLD ON. ONE SECOND. I AM SORRY.

27 GO AHEAD.

28 MR. MC MULLEN: YOU ARE WAITING TO HEAR FROM US,

1 YOUR HONOR?

2 THE COURT: YES.

3 MR. MC MULLEN: YES, YOUR HONOR. FIRST OF ALL,
4 THERE WAS NO SUPPRESSION OF THIS BY THE PEOPLE. AND IN
5 FACT, THE FACT OF THE MURDER INVESTIGATION AND THAT KARNY
6 WAS IMPLICATED WAS TURNED OVER TO BARENS, A DISCOVERY
7 MOTION WAS MADE BY BARENS REGARDING THAT BARENS TRIED
8 TO -- EXCUSE ME -- I WILL WITHDRAW THAT LAST COMMENT.

9 THE COURT: I GUESS THE QUESTION IS WHETHER THIS
10 REALLY GETS US TO THE NEXT SEVERAL, ALL KINDS OF RELATED
11 ISSUES, WHETHER IN FACT KARNY WAS A SUSPECT IN THE
12 HOLLYWOOD HOMICIDES AND WHETHER THAT SHOULD HAVE BEEN
13 DISCLOSED.

14 MR. MC MULLEN: IT WAS DISCLOSED THAT HE WAS
15 IMPLICATED OR WAS A SUSPECT.

16 THE COURT: RIGHT.

17 MR. MC MULLEN: YES, IT WAS.

18 THE COURT: BUT I THOUGHT IT WAS THE POSITION OF
19 THE DISTRICT ATTORNEY OR THE POLICE THAT HE WASN'T A
20 SUSPECT.

21 MR. MC MULLEN: WELL, LATER --

22 THE COURT: HIS NAME CAME UP BUT --

23 MR. MC MULLEN: AT ONE TIME HE WAS A SUSPECT THAT
24 WAS DISCLOSED. IT LATER -- THEY LATER ELIMINATED HIM AS A
25 SUSPECT. BUT AT ONE TIME, YES, HE WAS, AND THAT WAS
26 DISCLOSED.

27 THE COURT: WHAT ABOUT 4-B. WHAT EVIDENCE DO YOU
28 ANTICIPATE ON 4-B, IF ANYTHING?

1 MR. KLEIN: WE ARE GOING TO SHOW THE MEETING THAT
2 OCCURRED ON NOVEMBER 7, 1976 IN SAN MATEO'S DISTRICT
3 ATTORNEY'S OFFICE. THERE WAS A MEETING WITH VANCE,
4 BRIELING, REPRESENTATIVES OF L.A.P.D., OTHER DEPUTY
5 DISTRICT ATTORNEYS INCLUDING DEPUTY DISTRICT ATTORNEY, NOW
6 COMMISSIONER BRACKE, WHO HAD NOTES OF THIS MEETING.

7 AND WHAT WAS DISCUSSED ABOUT KARNY'S
8 POTENTIAL INVOLVEMENT IN THIS THAT SETS THE FRAMEWORK FOR
9 THIS PLOT THAT OCCURRED WHERE THEY KEPT THE HOLLYWOOD
10 HOMICIDE MURDER BOOK NOT AVAILABLE TO THE DEFENSE UNTIL
11 MR. HUNT GOT IT IN SAN MATEO.

12 THE COURT: SO WHAT DOES THAT GIVE YOU, THOUGH?

13 MR. KLEIN: WELL, WE CAN SHOW --

14 THE COURT: AS I READ THE DOCUMENTS, THEY LOOKED AT
15 THIS HOLLYWOOD HOMICIDE, THEY SAW THAT KARNY'S NAME CAME
16 UP WITH A RECEIPT, AND THE LETTER WASN'T FOUND IN THE SHOE
17 UNTIL MUCH LATER. THERE WAS SOME OTHER INDICATION THAT
18 KARNY WAS INVOLVED. THEY LOOKED AT IT AND DECIDED HE IS
19 NOT A SUSPECT.

20 MR. MC MULLEN: EVEN RITTENBAND CLAIMS DURING
21 THE -- IF KARNY WERE A SUSPECT HE WASN'T GOING -- IT
22 WASN'T RELEVANT TO PETITIONER'S TRIAL, AND THE DISCOVERY
23 MOTION IS DENIED.

24 THE COURT: IT IS RELEVANT IF KARNY DOES THE MURDER
25 OR COULD HAVE DONE THE MURDER THAT THE PROSECUTION HAS
26 GIVEN HIM IMMUNITY FOR THAT, OR HE THINKS THAT HE HAS
27 IMMUNITY, THEN IT IS RELEVANT.

28 THAT GOES TO THE NEXT ONE, 4-C, WHETHER HE

1 WAS GIVEN IMMUNITY. HE WASN'T GIVEN IMMUNITY FOR IT. THE
2 QUESTION IS: WHAT IS THERE HERE TO DEVELOP IN AN
3 EVIDENTIARY HEARING?

4 MR. MC MULLEN: THERE WAS NOTHING IN THE -- I AM
5 SORRY. I THOUGHT YOU WERE TALKING TO THEM.

6 THE COURT: YES, I WAS.

7 TELL ME SERIOUSLY WHAT, YOU KNOW, THE COURT
8 OF APPEALS HAS AN O.S.C. THAT SAYS "FAILURE TO DISCLOSE
9 SUBSTANTIAL MATERIAL EVIDENCE BEARING ON THE CREDIBILITY
10 OF KEY PROSECUTION WITNESS," AND LISTS HIS INVOLVEMENT IN
11 THE HOLLYWOOD HOMICIDE. WHAT EVIDENCE DID THEY HAVE THAT
12 WASN'T DISCLOSED DURING THE HUNT L.A. TRIAL THAT BEARS ON
13 THE CREDIBILITY OF KARNY?

14 MR. KLEIN: HIS INVOLVEMENT IN THE HOLLYWOOD
15 HOMICIDE FROM THE MURDER BOOK THAT WE OBTAINED AND
16 MR. HUNT OBTAINED AT A LATER DATE SHOWING HIS CONNECTION
17 TO IT. THE DISCUSSIONS THAT WENT ON BETWEEN --

18 THE COURT: HOW WAS HE SHOWN TO BE INVOLVED IN THE
19 MURDER. YOU GOT THE RECEIPT, YOU GOT THE LETTER WHICH IS
20 NOT ADMISSIBLE.

21 MR. KLEIN: THE LETTER IS NOT ADMISSIBLE?

22 THE COURT: ALL RIGHT.

23 WHAT ELSE HAVE YOU GOT THAT SHOWS --

24 MR. KLEIN: THE LETTER WOULD BE POTENTIALLY
25 ADMISSIBLE TO SHOW HIS CONNECTION TO --

26 THE COURT: IT IS NOT ADMISSIBLE. THERE IS NO WAY
27 THAT THE LETTER COULD COME IN.

28 THE DEFENDANT: UNDER A NONHEARSAY.

1 THE COURT: THE ONLY WAY IT BECOMES RELEVANT, IS
2 THE STATE OF MIND OF THE PARTICIPANTS, THAT IS, THE LAW
3 ENFORCEMENT OFFICERS, DISTRICT ATTORNEY AND MR. KARNY.

4 MR. KLEIN: RIGHT.

5 THE COURT: THAT THEY BELIEVE THAT HE IS INVOLVED,
6 BUT IF THEY DON'T BELIEVE HE IS INVOLVED THEN IT IS NOT
7 RELEVANT.

8 MR. KLEIN: WHAT ABOUT IF THEY ARE TRYING TO SET IT
9 UP THAT HE WASN'T INVOLVED SO THEY DON'T HAVE TO TURN OVER
10 THE EVIDENCE THAT WOULD ALLOW HUNT TO SHOW THAT HE WAS
11 CONNECTED TO IT, THEN THAT'S THE BASIS FOR THE ORDER TO
12 SHOW CAUSE.

13 THE COURT: BUT WHERE IS THE EVIDENCE THAT THEY
14 BELIEVED THAT HE WAS INVOLVED? AS I READ IT EVERYTHING
15 SAYS THEY DIDN'T THINK HE DID IT. IN FACT, THEY SAID IT
16 WAS A SETUP. IF THEY ALL BELIEVED THAT HE DIDN'T DO IT,
17 IT WAS A SETUP, WHETHER THEY ARE RIGHT OR WRONG IS
18 IMMATERIAL, HOW COULD THEY BE ACCUSED OF NOT DISCLOSING
19 SOMETHING THAT THEY DIDN'T BELIEVE.

20 MR. KLEIN: THE COURT HAS EXTENSIVE PLEADINGS ON
21 THIS THAT WE SUBMITTED TO THE COURT PREVIOUSLY WHEN WE
22 ASKED FOR ADDITIONAL DISCOVERY, SO I WOULD ASK THE COURT
23 TO REREAD THOSE.

24 THE COURT: I HAVE. I AM FAMILIAR WITH IT.

25 NOW, THIS IS NOT A DISCOVERY MOTION. THIS IS
26 FISH OR CUT BAIT TIME. TELL ME WHAT IT IS YOU ARE GOING
27 TO DO ON 4-B.

28 MR. KLEIN: WE ARE GOING TO SHOW HOW KARNY WAS

1 CONCERNED ABOUT ANYTHING THAT MIGHT HAPPEN TO HIM BEFORE
2 HE TALKED TO THE POLICE. WE ARE GOING TO SHOW HOW, FOR
3 EXAMPLE, THAT -- DOES THE COURT REMEMBER THE PLEADING THAT
4 WAS FILED BY THE PROSECUTION IN RESPONSE TO THE DISCOVERY
5 MOTION IN THIS CASE?

6 THE COURT: THAT IT IS STILL UNDER INVESTIGATION?

7 MR. KLEIN: NO. THE PLEADING THAT WAS FILED WAS A
8 DECLARATION BY JOHN VANCE, THE DEPUTY ATTORNEY GENERAL,
9 TRYING TO DEFUSE ANY INVOLVEMENT OF KARNY IN THIS TO TURN
10 IT AWAY, AND THEY TOTALLY CUT JUDGE WAPNER OUT OF THE
11 PICTURE, BECAUSE JUDGE WAPNER WAS THE ONE THAT WAS TRYING
12 TO BE FORTHCOMING. SO IT APPEARS, AND I THINK --

13 THE COURT: SEEMS LIKE IT IS A HANDFUL. I AM NOT
14 SURE HE WANTED TO TAKE ON ANOTHER HOMICIDE CASE IN THE
15 MIDDLE OF A TRIAL.

16 MR. KLEIN: YES. NO. THAT'S NOT THE POINT. THE
17 POINT IS THAT JUDGE WAPNER WANTS TO DO THE CORRECT,
18 ETHICAL THING AND TURN OVER ANY EVIDENCE THAT MIGHT BE
19 USEFUL IN IMPEACHING THE PROSECUTION WITNESS IN THIS CASE,
20 AND SO WHAT HAPPENED AND VANCE --

21 THE COURT: LET'S GET BACK. LET'S ASSUME THEY
22 TURNED OVER THE HOLLYWOOD HOMICIDE BOOK. WHAT WOULD
23 BARENS HAVE DONE WITH THAT, WITH KARNY ON THE STAND ASKING
24 HIM, "DID YOU MURDER MAYER?"

25 ANSWER, "NO."

26 MR. KLEIN: "DID YOU KNOW MAYER?"

27 THE COURT: ANSWER, "NO."

28 MR. KLEIN: THEN HE CAN INTRODUCE EVIDENCE OF THE

1 CONNECTION OF MAYER AND --

2 THE COURT: WHAT, HIS FATHER'S GAS RECEIPT? THAT
3 DOESN'T PROVE ANYTHING. THE LETTER DOESN'T SHOW THAT,
4 THAT WASN'T EVEN FOUND AT THAT POINT.

5 MR. KLEIN: THE CANDY.

6 THE COURT: THAT HE HAD A CANDY? I MEAN, THERE IS
7 NO THERE THERE.

8 MR. KLEIN: NO. NO.

9 THAT CANDY HAD A NUMBER ON IT THAT CAME FROM
10 HIS PARENTS' HOUSE?

11 THE DEFENDANT: WELL --

12 THE COURT: IT IS REALLY A STRETCH.

13 THE DEFENDANT: THIS IS A RARE TYPE OF CANDY,
14 LA VOSGIENNE PASTILLIENS, AND THERE IS A BATCH NUMBER ON
15 THE SIDE OF THE CANDY. IT WOULD HAVE BEEN OUR INTENT TO
16 PRESENT EVIDENCE THAT THE BATCH NUMBER ON THE CANDY THAT
17 WAS COLLECTED IN THE SEARCH AT DEAN KARNY'S PARENTS' HOME.
18 IT IS NOT ONLY A RARE TYPE OF CANDY, BUT MRS. KARNY SAID
19 SHE BOUGHT A CASE OF THE STUFF. THERE IS A STRONG
20 INFERENCE THAT THERE IS AN INTERCHANGE THERE.

21 THERE IS ALSO A PIECE OF PAPER THAT WAS FOUND
22 AT THE SCENE, WHICH IS A PIECE OF -- IT WAS BLUE, HAD A
23 POSTMARK ON IT AND THE POSTMARK MATCHED UP TO A TIME WHEN
24 DEAN KARNY WAS IN BOSTON. IT WAS A BOSTON POSTMARK. THE
25 POSTMARK HAS MASSACHUSETTS WITH A U.S. POSTAL --

26 THE COURT: I TELL YOU I WOULDN'T HAVE LET THAT IN
27 UNDER 352, UNDER 402.

28 THE DEFENDANT: I WAS JUST ANSWERING THE QUESTION.

1 THE COURT: SURE. BUT WHAT I AM SAYING, WHEN YOU
2 GET THERE, THERE IS NO THERE THERE BECAUSE YOU CAN'T PROVE
3 ANYTHING THAT IS OF ASSISTANCE.

4 LET'S ASSUME THEY HAD GIVEN THE HOLLYWOOD
5 HOMICIDE BOOK. THAT'S WHY -- I CAN'T REMEMBER THE FACTS
6 NOW, I READ IT EARLIER, WAS IT THE DISCOVERY THEY DIDN'T
7 WANT TO TURN OVER TO YOU GUYS OR SOMETHING ELSE? THEY
8 DIDN'T WANT TO TURN IT OVER. THE CITY ATTORNEY CAME IN,
9 THEY WERE STILL OPPOSING --

10 MR. MC MULLEN: THERE WAS SOME IN CAMERA
11 PROCEEDINGS WITH RESPECT TO THIS WHOLE THING.

12 THE COURT: THAT'S RIGHT. I WENT THROUGH ALL OF
13 THAT STUFF AND SAID, "THERE IS PART OF THE ISSUE THAT IS
14 DISCOVERABLE," BUT ASSUMING IT ALL HAD BEEN TURNED OVER
15 AND ANYTHING CAN BEEN KNOWN, YOU DON'T GET ANYWHERE.

16 ALL RIGHT.

17 ANYTHING ELSE?

18 THE DEFENDANT: USUALLY I RACK MY BRAINS IN THIS
19 PARTICULAR ISSUE. I FEEL PRETTY MUCH LIKE THE COURT DOES,
20 I THINK.

21 THE COURT: I GOT TO TELL YOU MY INITIAL IMPRESSION
22 WHEN I WENT THROUGH THIS "YOU HAVE GOT THE HEARINGS," THEN
23 I STARTED TAKING IT APART. I SAID THERE IS NO THERE
24 THERE.

25 THE DEFENDANT: SOME OF THE ISSUES THAT WERE
26 BROUGHT UP BEFORE I DISAGREE WITH THE COURT ON, BUT ON
27 THIS ONE I AGREE WITH THE COURT. I DON'T THINK THERE IS A
28 NEED FOR AN EVIDENTIARY HEARING.

1 THE COURT: OKAY.

2 MR. KLEIN: I DON'T. I DISAGREE.

3 THE COURT: I UNDERSTAND.

4 MR. KLEIN: FOR EXAMPLE, LIKE UNDER F.

5 THE COURT: I AM AT 4-B RIGHT NOW.

6 MR. KLEIN: BUT THEY ARE ALL CONNECTED.

7 THE COURT: I KNOW.

8 MR. KLEIN: BECAUSE YOU ARE NOT GOING TO LET
9 ANYTHING ABOUT THE HOLLYWOOD HOMICIDE IN, YOU ARE GOING TO
10 SAY NOTHING IS GOING TO COME IN ABOUT IT.

11 THE COURT: LET'S GO MY ORDER.

12 4-C, KARNY WAS GIVEN IMMUNITY FOR HOLLYWOOD
13 HOMICIDE.

14 MR. KLEIN: OR BELIEVED HE WOULD BE GIVEN IMMUNITY.

15 THE COURT: YEAH.

16 MR. KLEIN: I MEAN, ALL WE CAN PRESENT IS KARNY'S
17 TESTIMONY ABOUT THIS, HIS ATTORNEY'S TESTIMONY ABOUT THIS,
18 AND --

19 THE COURT: BUT IN FACT, HE WASN'T GIVEN IMMUNITY.

20 MR. KLEIN: BELIEVED. THE OTHER WORDS, THE OTHER
21 WORDS IN THE O.S.C. ARE "AND IF HE BELIEVED THAT HE WAS
22 NOT GOING TO HAVE ANY PROBLEM WITH IT," THEN HE GOES
23 FORWARD AND GIVES HIS STATEMENTS TO THE PROSECUTION IN
24 NORTHERN CALIFORNIA RIGHT AFTER THE HOLLYWOOD HOMICIDE
25 CONNECTION WAS DISCOVERED IN DECEMBER.

26 THE COURT: WHAT WAS THE DATE OF THE HOLLYWOOD
27 HOMICIDE?

28 MR. KLEIN: IT WAS --

1 THE DEFENDANT: IT IS UNCLEAR.

2 MR. KLEIN: LIKE LATE OCTOBER, EARLY NOVEMBER.

3 THE COURT: WHEN DOES KARNY FIRST GIVE A STATEMENT
4 TO THE POLICE?

5 MR. KLEIN: AFTER --

6 MR. MC MULLEN: WELL, BEFORE --

7 MR. KLEIN: AFTER THE DISCOVERY MOTION.

8 THE DEFENDANT: DECEMBER 1ST, 1986.

9 MR. KLEIN: AND THE DISCOVERY MOTION WAS ON THE
10 WAY, AND IT HAD HIT THE NEWSPAPER AND THERE WAS
11 CONVERSATION BACK AND FORTH.

12 THE COURT: THE MURDER HAPPENED JUST ABOUT THE SAME
13 TIME AS THE TRIAL?

14 MR. MC MULLEN: RIGHT. RIGHT BEFORE.

15 MR. KLEIN: LATE OCTOBER, EARLY NOVEMBER.

16 THE COURT: BY THIS POINT --

17 MR. MC MULLEN: KARNY HAD TESTIFIED.

18 THE COURT: -- KARNY --

19 MR. MC MULLEN: HAD HE TESTIFIED?

20 THE DEFENDANT: NO. THAT'S RIDICULOUS. KARNY WAS
21 THE LAST WITNESS IN THE PEOPLE'S CASE. HE WAS A MARCH
22 WITNESS, MARCH 1987. HE WAS INTERVIEWED BY THE POLICE
23 1986.

24 MR. KLEIN: THIS IS WHEN THE CONVERSATION -- THIS
25 IS WHEN THE MEETINGS GO ON WITH THE D.A.'S OFFICE WHERE
26 VANCE IS TRYING TO DISTANCE KARNY FROM THIS SO THAT HE'LL
27 TALK TO HIM.

28 THE COURT: WHAT EVIDENCE WOULD YOU OFFER ON THAT,

1 THAT HE BELIEVED HE HAD IMMUNITY, OTHER THAN KARNY'S
2 TESTIMONY WHICH HE SAYS --

3 MR. KLEIN: HIS ATTORNEY'S DISCUSSIONS WITH THE
4 DEPUTY ATTORNEY GENERAL AND BRIELING ABOUT THIS.

5 THE COURT: SEE, ONE OF THE PROBLEMS WITH THIS
6 O.S.C. IS IT IS THE FAILURE BY THE PROSECUTION TO DISCLOSE
7 SUBSTANTIAL MATERIAL EVIDENCE BEARING ON CREDIBILITY OF
8 KEY PROSECUTION WITNESS MEANING KARNY, THAT "C," "KARNY
9 WAS GIVEN IMMUNITY OR BELIEVED HE WOULD BE GIVEN
10 IMMUNITY." THEY NEVER THOUGHT HE DID THE CRIME. HOW DO
11 THEY DISCLOSE SOMETHING TO THE DEFENSE THAT THEY DIDN'T
12 BELIEVE WAS EVEN NECESSARY?

13 THE DEFENDANT: OUR ARGUMENT WAS THAT HE UNDERSTOOD
14 HIMSELF AS HAVING RECEIVED A FACTUAL IMMUNITY WHERE THEY
15 CLEARED HIM FOR A CRIME HE KNEW HE AS GUILTY FOR, WHICH
16 THEY HAD SOME EVIDENCE CONNECTING HIM TO.

17 THE COURT: AT BEST -- I AM CONFIDENT THAT COUNSEL
18 BARENS NOT CROSS-EXAMINING IS NOT REALLY A FAILURE TO
19 DISCLOSE BECAUSE THE PROSECUTION NEVER WOULD HAVE --

20 MR. KLEIN: NO. BECAUSE I THINK WE CAN SHOW BY
21 CIRCUMSTANTIAL EVIDENCE THAT KARNY BELIEVED WHEN HE
22 FINALLY WENT THROUGH WITH HIS STATEMENT THAT THEY WERE NOT
23 GOING TO GO AFTER HIM ON THIS MURDER THAT HE COMMITTED.

24 THE COURT: I AM NOT GOING TO TAKE ANY TESTIMONY ON
25 4-C.

26 4-D, "KARNY LIED WHEN HE SAID HE DID NOT KNOW
27 MAYER."

28 AGAIN, FOR THE SAME REASONS, THERE IS NOTHING

1 MORE THAT COULD BE REALLY OFFERED. THERE IS NO WITNESS
2 THAT CAN SAY THAT MAYER KNEW DEAN KARNY. THERE IS NO WAY
3 OF PROVING IT AND --

4 MR. KLEIN: I MEAN, THERE ARE WITNESSES THAT WILL
5 SAY THAT THE NAME CAME UP.

6 THE COURT: THE NAME DEAN?

7 MR. KLEIN: RIGHT.

8 THE COURT: THERE A LOT OF DEANS.

9 I WON'T TAKE ANY EVIDENCE ON 4-D.

10 THE DEFENDANT: MRS. MAYER SAID SHE SAW A
11 PHOTOGRAPH OF DEAN, SAID, "I THINK THIS FELLOW CAME INTO
12 THE STORE WITH PHIL -- "

13 THE COURT: PRETTY REACHING TO PROVE THAT MR. KARNY
14 PERJURED HIM BY HIS MOTHER SAYING THAT MAYBE THIS GUY
15 LOOKED LIKE -- MAY HAVE COME INTO THE STORE.

16 THE DEFENDANT: WE ARE GOING TO USE THE TESTIMONY
17 OF DONNA CATTON, ANOTHER WOMAN THAT WAS A FRIEND OF
18 RICHARD MAYER'S, AND MRS. MAYER IN CONJUNCTION WITH
19 PHYSICAL EVIDENCE FOUND AT THE SCENE TO SUPPORT AN
20 INFERENCE THAT DEAN LIED WHEN HE SAID HE IT DIDN'T KNOW
21 MAYER.

22 THE COURT: ALL RIGHT.

23 4-E, KARNY TOLD MAYER THAT TESTIMONY WAS
24 PERJURED.

25 AGAIN THIS IS THE LETTER?

26 MR. KLEIN: SUBMITTED.

27 THE DEFENDANT: SUBMITTED.

28 THE COURT: THE QUESTION -- I AM SORRY?

1 THE DEFENDANT: SUBMITTED, I SAID.

2 THE COURT: OKAY.

3 I WON'T TAKE ANY TESTIMONY ON 4-E.

4 4-F, "LAW ENFORCEMENT OFFICERS COMMITTED
5 PERJURY IN SUPPRESSING THE KARNY CONNECTION."

6 I AM NOT SURE I UNDERSTOOD EXACTLY. YOU WERE
7 SAYING THAT DIAZ AND BREILING LIED WHEN THEY SAID THEY
8 WERE NOT TOLD ABOUT THE HOLLYWOOD HOMICIDE, AND THERE WAS
9 AN ARGUMENT OVER WHAT WAS MEANT BY "BRIEFED" VERSUS
10 "UNDERSTOOD"?

11 MR. KLEIN: THAT'S PART OF IT, YES, YOUR HONOR. I
12 MEAN, THIS IS A CONTINUATION OF THE BELIEF BY KARNY THAT
13 THEY WEREN'T GOING TO GO AFTER HIM ABOUT THIS, AND THIS
14 WAS THE CONTINUED EFFORTS BY THE PROSECUTION TO SUPPRESS
15 THE KARNY CONNECTION TO THE, THE POTENTIAL KARNY
16 CONNECTION TO THE HOLLYWOOD HOMICIDE AND, YOU KNOW, WHERE
17 THEY LIED UNDER OATH.

18 AND, AGAIN, I POINT OUT THAT VANCE RESPONDS
19 TO THE REQUEST FOR DISCOVERY, NOT WAPNER, BECAUSE I ASSUME
20 WAPNER WOULDN'T SIGN SOMETHING THAT IS PERJURIOUS. BUT
21 APPARENTLY VANCE, BRIELING AND DIAZ WERE WILLING TO DO
22 THAT BECAUSE THERE CLEARLY WAS A POTENTIAL CONNECTION TO
23 THE HOLLYWOOD HOMICIDES.

24 WHETHER THE COURT NOW IS MAKING THE STATEMENT
25 THAT IT WOULDN'T ALLOW ANY EVIDENCE -- I MEAN, THEY WERE
26 HIDING THE TOTAL BALL.

27 THE COURT: ASSUMING THAT'S TRUE, ASSUMING THEY
28 WERE ACTING IN BAD FAITH, DON'T WE GET BACK TO THE EARLIER

1 ARGUMENT, THEY WERE DOING SOMETHING WRONG FOR ALL THE
2 WRONG -- THEY WERE DOING SOMETHING WRONG THAT HAD NO
3 ULTIMATE IMPACT.

4 LET'S SAY THEY SAT AROUND L.A.P.D. AND THEY
5 SAID, "BOY, WE CAN'T LET HUNT OR HIS LAWYER FIND OUT ABOUT
6 THIS, BECAUSE THIS IS JUST GOING TO BLOW KARNY OUT OF THE
7 WATER, AND WE ARE GOING TO BE IN DEEP TROUBLE IN THE HUNT
8 TRIAL IN LOS ANGELES." IN FACT, THEY ARE REALLY
9 INCORRECT.

10 MR. KLEIN: THEY MAY NOT BE, YOUR HONOR, BECAUSE IF
11 THIS INFORMATION HAD ALL BEEN TURNED OVER TO THE DEFENSE,
12 THEN KARNY MIGHT NOT HAVE GONE FORWARD ON THIS. IT MAY
13 NOT HAVE BEEN POSSIBLE TO HAVE IMMUNITY ON TWO MURDERS.
14 HE WOULD HAVE SAID, "I AM NOT TALKING UNTIL YOU PUT IT IN
15 WRITING AND GIVE ME A PASS ON THE THIRD ONE."

16 THE COURT: WE ARE REALLY SPECULATING HERE.

17 I AM NOT GOING TO TAKE ANY TESTIMONY ON 4-F.

18 MR. KLEIN: EVEN WE CAN PROVE THAT LAW ENFORCEMENT
19 OFFICERS LIED ABOUT THIS --

20 THE COURT: ALL I SEE IS SOME ARGUMENT OVER THEIR
21 UNDERSTANDING OF WHAT WAS --

22 MR. KLEIN: I MEAN, WHAT WAS IN THE MURDER BOOK.

23 THE COURT: BUT DOESN'T -- ASSUMING THAT'S TRUE, IT
24 STILL COMES DOWN TO A BIG "SO WHAT"? ASSUMING YOU HAVE
25 THE WORST TYPE OF BAD FAITH, THEY ARE HIDING THE BALL,
26 PLANNING NEFARIOUSLY TO KEEP THIS STUFF FROM EVERYBODY,
27 INCLUDING THE PROSECUTOR, ASSUMING THAT IS WHAT HAPPENED,
28 IT ALL COMES OUT IN THE TRIAL, IT STILL DOESN'T GET YOU

1 ANYWHERE.

2 MR. MC MULLEN: YOUR HONOR, HAS ALREADY RULED THAT
3 AT LEAST FOR THE DISCOVERY THRESHOLD SHOWING WE MET --

4 THE COURT: I AM VERY LIBERAL IN DISCOVERY. THAT'S
5 TRUE.

6 MR. KLEIN: BUT -- SO DID JUDGE HAHN RULE THAT IT
7 WAS CLEARLY MET BY MR. HUNT UP THERE, AND WHAT WAS GOING
8 ON TO PREVENT THAT DISCOVERY WAS YOU HAVE LAW ENFORCEMENT
9 OFFICERS AND PROSECUTORS LYING, THEN THAT, I THINK, MEETS
10 THE MATERIALITY TEST UNDER THE CASE LAW ABOUT WHAT A
11 PROSECUTOR HAS A DUTY TO DISCLOSE.

12 THE DEFENDANT: ON MATERIALITY, YOUR HONOR, THAT
13 KARNY PARTICIPATED IN THE HOMICIDES, THAT JUDGE HAHN TOO
14 QUESTIONED OR HAD REASONABLE DOUBT ABOUT THAT, THEY MIGHT
15 HAVE LOOKED COMPLETELY DIFFERENTLY ON HIS TESTIMONY ABOUT
16 HOW HE HAS NOT A REFORMED PARADOX PHILOSOPHY BELIEVER, HE
17 IS NOW BEING HONEST. HE HAS COME CLEAN. HE HAS CHANGED
18 ORIENTATION WITH A POINT TO PROFOUND CORRUPTION OF HIS
19 PSYCHE.

20 THE COURT: ALL RIGHT.

21 THE DEFENDANT: JUST A POINT OF CLARIFICATION. I
22 WAS AGREEING WITH THE COURT THAT ALL THE EVIDENCE IS
23 BEFORE THE COURT ON THE ISSUE OF WHETHER KARNY WAS
24 IMPLICATED OR NOT IN THE MURDER. IT IS FACTUALLY NOT THAT
25 THERE MAY BE NO MERIT TO THE PLEADING.

26 THE COURT: I UNDERSTAND YOUR POSITION.

27 THE DEFENDANT: OKAY.

28 THE COURT: LET'S GO TO 5, "FAILURE OF PROSECUTION

1 TO DISCLOSE MATERIAL EVIDENCE."

2 MR. KLEIN: IS THE COURT RULING WE CAN'T PRESENT
3 ANY EVIDENCE ON --

4 THE COURT: I AM SORRY?

5 MR. KLEIN: YOU ARE RULING THAT WE CAN'T PRESENT
6 EVIDENCE UNDER 4?

7 THE COURT: NO.

8 NO. 5, "FAILURE OF PROSECUTION TO DISCLOSE
9 MATERIAL EVIDENCE THAT LEVIN WAS UNDER INVESTIGATION BY
10 THE F.B.I.."

11 THE DEFENDANT: I HAVE SAID MYSELF THE PROSECUTION
12 DID DISCLOSE THAT EVIDENCE. THAT'S WHAT IT LOOKS LIKE TO
13 ME. BUT LOOKING AT MY OWN RECORDS AND THINGS THAT I HAD
14 GIVEN BARENS JUST RIGHT THERE --

15 THE COURT: MR. KLEIN?

16 MR. KLEIN: I THINK HE DID. HE DID TURN OVER THE
17 UNDERWOOD REPORT.

18 THE COURT: NO EVIDENCE ON 5.

19 OKAY TO RECAP, AT THE HEARING WE WILL TAKE
20 EVIDENCE ON:

21 1-A, 1-B, NOT ON 1-C;

22 WE WILL TAKE EVIDENCE ON 2-A, NOT ON 2-B;

23 WE WILL TAKE EVIDENCE ON 2-C, NOT ON 2-D;

24 WE WILL TAKE EVIDENCE ON 2-E.

25 DID I SAY YES ON THAT?

26 MR. KLEIN: YES.

27 THE COURT: YES. I HAD SOME QUESTION.

28 ON 2-F I WILL TAKE EVIDENCE;

1 ON 2-G THERE IS A CONFUSION. I WILL MAKE
2 SURE WE ARE TALKING ABOUT THE EVIDENCE ON THE DYE JOB. I
3 WILL NOT TAKE EVIDENCE.

4 ON 2-H I WILL TAKE EVIDENCE AS TO KAREN SUE
5 MARMOR, BUT NOT TO LEONARD MARMOR;

6 2-I I WILL NOT TAKE;

7 2-J I WILL NOT TAKE EVIDENCE;

8 2-K I WILL NOT TAKE EVIDENCE;

9 2-L I WILL NOT TAKE EVIDENCE;

10 ALL OF 3 I WILL NOT TAKE EVIDENCE;

11 4-A I WILL NOT TAKE EVIDENCE;

12 4-B I WILL NOT TAKE EVIDENCE;

13 4-C I WILL NOT TAKE EVIDENCE;

14 4-D I WILL NOT TAKE EVIDENCE;

15 4-E I WILL NOT TAKE EVIDENCE;

16 4-F I WILL NOT TAKE EVIDENCE;

17 AND 5 I WILL NOT TAKE EVIDENCE.

18 THIS SHOULD SHORTEN THE HEARING
19 SUBSTANTIALLY.

20 I NEED A WITNESS LIST AND A HEARING MEMO
21 FILED IN TWO WEEKS. I PROPOSE STARTING THE HEARING EITHER
22 APRIL 15TH OR APRIL 22ND.

23 WHAT'S COUNSEL PREFERENCE?

24 MR. KLEIN: CAN I ASK A QUESTION OF THE COURT. WE
25 FILED THIS PLEADING BEFORE THE COURT SET A DATE FOR THE
26 HEARING. COULD THE COURT REVIEW THE PLEADING AND MAKE
27 WHAT DETERMINATION THE COURT IS REQUIRED TO DO? BECAUSE
28 IT MAY BE THAT THE COURT WOULD THEN PUT SOME OF WHAT WE

1 HAVE SET FORTH IN THE PLEADING TOGETHER WITH THE
2 EVIDENTIARY HEARING AND MIGHT EXPEDITE RESOLVING
3 EVERYTHING IF THE COURT DOES THAT ANYWAY. I THINK THE
4 COURT IS REQUIRED TO DO IT UNDER THE CONSTITUTION AND RULE
5 26.

6 THE COURT: RULE 26 ALLOWS ME TO EXTEND TIME, AND I
7 AM EXTENDING TIME.

8 MR. KLEIN: NO. NO.

9 RULE 260 -- SOME OF THIS IS SUPPLEMENTAL TO
10 WHAT IS PART OF THE --

11 THE COURT: IS PENAL CODE SECTION 1475 INVOLVED IN
12 THIS?

13 MR. MC MULLEN: NO, YOUR HONOR. I HAVE STUDIED
14 THAT. IT DOESN'T APPEAR TO APPLY IN THIS CASE AT ALL.

15 THE COURT: THERE WAS AN O.S.C., AGAIN, IN THE
16 COURT OF APPEALS.

17 MR. MC MULLEN: WELL --

18 THE COURT: THE QUESTION IS NOT IF THE O.S.C. WAS
19 GRANTED. IT WAS GRANTED OUT OF THE COURT OF APPEALS. A
20 SUPPLEMENTAL PETITION, SECONDARY PETITION WOULD HAVE TO
21 FILED IN THE SUPREME COURT OR COURT OF APPEAL.

22 MR. MC MULLEN: THE ONLY CAUTION I EXERCISE, I
23 DON'T HAVE THAT SECTION IN FRONT OF ME AT THE MOMENT, BUT
24 MY RECOLLECTION IS THE O.S.C. HAS TO BE RETURNABLE IN THE
25 COURT OF APPEAL FOR THAT TO OCCUR AS IN THE PRIOR CASE
26 THAT'S WHAT HAPPENED AND THAT WAS RAISED YESTERDAY IN
27 COURT.

28 THE COURT: I AM NOT TAKING ANY ACTION ON THIS

1 PETITION. I AM SETTING THIS MATTER DOWN FOR HEARING, THE
2 CURRENT MATTER.

3 MR. KLEIN: CAN I JUST INDICATE THAT I THINK THAT
4 BEFORE THE COURT SAYS IT IS NOT GOING TO DO ANYTHING, THE
5 COURT SHOULD STUDY WHAT IT SHOULD DO AND --

6 THE COURT: I HAVE PLENTY TO DO ON THIS PETITION,
7 AND I WILL DEAL WITH ANYTHING THAT'S FILED IN AN
8 APPROPRIATE FASHION.

9 MR. MC MULLEN: IT IS OUR POSITION THAT THIS
10 PETITION THAT HAS BEEN PRESENTED TO US TODAY IS SEPARATE
11 FROM THE CURRENT PROCEEDING THAT YOUR HONOR IS ENGAGED IN,
12 IT HAS NOT COME AS PART OF THE O.S.C. FROM THE COURT OF
13 APPEAL. IF COUNSEL IS FILING THIS WITH THIS COURT, I
14 THINK, YOU HAVE CERTAIN RESPONSIBILITIES UNDER 3260 TO
15 CONSIDER THE PETITION.

16 THE COURT: WITHIN 30 DAYS. BUT I CAN EXTEND FOR
17 GOOD CAUSE THE TIME LIMIT. AND I AM EXTENDING THE TIME
18 LIMIT FOR ANY ACTION ON THIS.

19 THE DEFENDANT: OKAY.

20 THE COURT: UNTIL THERE IS A RESOLUTION OF THE
21 CURRENT PETITION.

22 THE DEFENDANT: YOUR HONOR, I SEE CLAIMS IN BOTH,
23 THE COURT MIGHT WANT TO CONSIDER ALL OF THOSE.

24 THE COURT: I MIGHT. AND MAYBE I WILL LOOK AT SOME
25 POINTS, BUT OUR TASK NOW IS TO GET THIS HEARING ON THE
26 CURRENT PETITION UNDERWAY.

27 THE DEFENDANT: BUT IF YOU MAKE AN AGGREGATE
28 DETERMINATION ON BEHALF OF THE O.S.C. ISSUE MAYBE THAT

1 COMBINED THRESHOLD OF STRICKLAND WHEREAS SEPARATELY THEY
2 DON'T.

3 THE COURT: ONE OF THE THINGS I AM MINDFUL OF IS
4 THE O.S.C. ON THE CURRENT CASE, WHICH SAYS (READING):

5 "UPON RECEIPT OF PLEADINGS -- " MEANING THE
6 PETITION -- "THE LOS ANGELES COUNTY SUPERIOR COURT IS
7 DIRECTED TO CAUSE SAID PLEADINGS TO BE FILED. THE
8 PROCEEDING ON HABEAS CORPUS IS LIMITED TO THE ISSUE WHICH
9 DEFENDANT HAS ESTABLISHED THE PRIMA FACIE CASE AS SET
10 FORTH HERE AND ABOVE." THAT SETS A DATE, ETC..

11 MY MANDATE IS LIMITED TO THIS O.S.C..

12 MR. KLEIN: THE PLEADING THAT WAS FILED IN THE
13 COURT OF APPEAL IS AS TO ANYTHING THAT'S NEW AND
14 DIFFERENT, THEN THE COURT HAS TO DECIDE WHAT ORDER IT HAS
15 TO MAKE WITH RESPECT TO IT BASED ON THE CONSTITUTION AND
16 RULE 260 AS TO ANYTHING THAT SUPPLEMENTS OUR EVIDENCE ON
17 AN ISSUE THAT IS ALREADY BEFORE THE COURT, THEN I THINK
18 THE COURT IS GOING TO HAVE TO HEAR THAT EVIDENCE IN ONE
19 FORM OR ANOTHER AND TAKE IT INTO --

20 THE COURT: I SET A BRIEFING SCHEDULE. I HAVE
21 RULED ON THIS PETITION TODAY IN TERMS OF WHAT EVIDENCE I
22 WILL TAKE AND NOT TAKE. THE QUESTION NOW IS, IF YOU WANT
23 TO BEGIN THE EVIDENTIARY HEARING ON APRIL 15TH OR APRIL
24 22ND.

25 THE DEFENDANT: APRIL 22ND IS A BAD ANNIVERSARY.

26 THE COURT: ALL RIGHT.

27 I WILL SET THE MATTER DOWN FOR COMMENCEMENT
28 OF THE EVIDENTIARY HEARING ON APRIL 22ND AT 9:00 A.M.

1 BOTH PARTIES ARE TO FILE A HEARING BRIEF ONE
2 WEEK PRIOR TO APRIL 22ND, THAT WILL BE APRIL THE 15TH.

3 I AM NOT LOOKING FOR 600 PAGES. I AM LOOKING
4 FOR SOMETHING IN THE NATURE OF AROUND 20 PAGES. THE
5 ISSUES THAT SHOULD BE ADDRESSED, THE STANDARD OF PROOF,
6 THE BURDEN OF PROOF AND A SHORT DISCUSSION AS TO WHAT
7 EVIDENCE COUNSEL ANTICIPATES TO BE ADDUCED AT THE HEARING.

8 MR. MC MULLEN: SO --

9 THE COURT: AND HOW YOU WILL BE RESPONDING TO THAT.

10 MR. MC MULLEN: I AM SORRY, YOUR HONOR.

11 WE ARE BOTH TO FILE THAT SIMULTANEOUSLY ON
12 APRIL 15TH?

13 THE COURT: CORRECT.

14 ALSO, ON THE SAME DATE A RE-ADVISED WITNESS
15 LIST, TWO LISTS, ONE JUST SIMPLY A LIST WITH THE NAMES,
16 SECOND LIST WITH A SHORT STATEMENT ANTICIPATING WHAT THAT
17 WITNESS WILL TESTIFY TO, SO THAT THERE WON'T BE ANY
18 SURPRISES.

19 THE DEFENDANT: YOUR HONOR, CAN YOU GIVE US AS TO
20 WHEN YOU WILL NOTIFY US AS TO WHAT COURSE OF ACTION YOU
21 ARE GOING TO TAKE ON THE SUPPLEMENTAL WRIT, BECAUSE THERE
22 IS A POSSIBILITY WE WOULD LIKE TO PURSUE ACHIEVING A
23 JOINDER OF THESE ISSUES PRIOR TO THE HEARING BY TAKING A
24 WRIT.

25 THE COURT: I AM SIMPLY SAYING I AM STAYING ALL
26 PROCEEDINGS IN THAT PENDING THE RESOLUTION OF THIS CASE.
27 IF I DECIDE THAT IS NOT A WISE COURSE, I WILL NOTIFY --

28 MR. MC MULLEN: THERE IS ADDITIONAL PRACTICAL

1 CONSIDERATIONS, AND THAT IS COUNSEL HAS NOT LODGED OR
2 FILED AS PART OF THIS NEW PETITION THE EXHIBITS. HE HAS
3 THE ORIGINALS HERE, AND WE HAVE, CORRECT ME IF I AM WRONG,
4 WE HAVE AGREED THAT I WILL MAKE COPIES FOR MYSELF, THE
5 EXTRA COPIES FOR THE COURT, I GUESS.

6 THE COURT: THERE IS NO --

7 MR. KLEIN: I HAVEN'T BEEN ABLE -- I DIDN'T HAVE
8 TIME TO MAKE A COPY TO GET THIS.

9 THE COURT: WELL, IN THAT CASE WHY DON'T I RETURN
10 THIS TO YOU AND FILE -- IF YOU ARE GOING TO FILE
11 SOMETHING --

12 MR. KLEIN: I WILL GET YOU THE EXHIBITS, THEN I
13 WILL JUST HAVE THEM COPIED SOME PLACE WHO DOES THIS AND
14 GET THEM TO THE COURT.

15 THE COURT: YOU HAVE GOT SEVERAL INCHES THICK OF
16 PAPER. IF YOU ARE TALKING ABOUT FILING SOMETHING WITH
17 SEVERAL INCHES OF PAPER IT DOESN'T DO ANYONE ANY GOOD. I
18 WANT IT FILED PURSUANT TO THE RULES OF THE COURT. I DON'T
19 FEEL SOMETHING PARTIALLY -- TO BEGIN WITH THIS IS
20 UNTIMELY. IT IS VERY LATE.

21 THE DEFENDANT: ON THE TIMELINESS, JUST FOR THE
22 RECORD --

23 THE COURT: TWO AND A HALF YEARS, COUNSEL.

24 MR. KLEIN: I THINK --

25 THE COURT: IT IS BEEN IN THIS COURT FOR A YEAR AND
26 THREE MONTHS.

27 MR. KLEIN: I THINK THAT'S ALL ANSWERED IN THE
28 DOCUMENT, YOUR HONOR.

1 THE COURT: ALL RIGHT.

2 MR. KLEIN: I WILL GET YOU THE EXHIBITS THIS
3 AFTERNOON.

4 CAN WE HAVE A TRANSCRIPT OF TODAY'S
5 PROCEEDING SO WE CAN EVALUATE WHAT, IF ANYTHING, WE WANT
6 TO DO?

7 THE COURT: I WILL ORDER AN ORIGINAL AND TWO
8 COPIES.

9 MR. MC MULLEN: YOUR HONOR, ONE QUESTION WITH
10 RESPECT TO THE EVIDENTIARY HEARING, WHAT SCHEDULE WILL
11 YOUR HONOR, JUST SO WE KNOW FOR PLANNING PURPOSES, WHAT
12 SCHEDULE, WHAT ORDER?

13 THE COURT: 9:00 TO 4:30.

14 I CAN TELL YOU ONE THING. I DO HAVE A
15 CONFERENCE I NEED TO ATTEND BEGINNING ON THURSDAY OF THAT
16 WEEK. WHAT I WILL PROBABLY DO IS GOING TO DO MY SHORTEN
17 DAY SCHEDULE, WHICH IS 8:30 IN THE MORNING UNTIL
18 1 O'CLOCK.

19 MR. MC MULLEN: ARE YOU IN SESSION ON FRIDAYS?

20 THE COURT: YES. UNLESS I HAVE HEARINGS ON
21 MOTIONS, AND THE ONLY FRIDAY I SEE BLACKED OUT RIGHT NOW
22 IS THAT FRIDAY, THE 26TH, BECAUSE I WILL BE OUT OF COUNTY.

23 MR. MC MULLEN: SO THAT MEANS WILL BE IN SESSION
24 ON --

25 THE COURT: WE ARE IN SESSION ON THE 25TH AND ALL
26 DAY THE 26TH, AND MAY 3RD. I HAVE TO GO OUT OF COUNTY
27 AGAIN. I WILL BE IN HEARINGS ALL DAY IN ORANGE COUNTY.

28 MR. MC MULLEN: WE WOULD APPRECIATE IT IF --

1 THE COURT: HOW LONG IS THIS HEARING GOING TO TAKE?

2 MR. MC MULLEN: I DON'T KNOW.

3 THE COURT: MR. KLEIN, WHAT DO YOU THINK?

4 MR. KLEIN: I DON'T KNOW UNTIL I GO BACK AND
5 EVALUATE WHAT HAPPENED TODAY.

6 THE COURT: IT SHOULD BE SUBSTANTIALLY SHORTER. I
7 CAN'T SEE IT LASTING MORE THAN A WEEK, WEEK AND A HALF?

8 MR. KLEIN: I HAVE PRESENTLY SCHEDULED ALEXANDER ON
9 THE 23RD FOR FURTHER PROCEEDINGS.

10 THE COURT: I THOUGHT IT WAS THE 26TH.

11 MR. KLEIN: IT IS THE 23RD.

12 THE COURT: BECAUSE I TALKED TO JUDGE HORAN AND I
13 THOUGHT --

14 MR. KLEIN: I THINK IT IS PROBABLY GOING TO GET
15 CONTINUED, BUT I AM GOING TO HAVE TO DISCUSS THAT WITH
16 COUNSEL AND JUDGE HORAN.

17 THE COURT: ALL RIGHT.

18 DEFENDANT AND COUNSEL OR PETITIONER AND
19 COUNSEL WILL BE ORDERED TO APPEAR APRIL THE 22ND AT 9:00
20 A.M.

21 THE HEARING BRIEF TO BE FILED APRIL -- STRIKE
22 THAT -- APRIL THE 15TH BY EACH SIDE.

23 THE WITNESS LIST, AS INDICATED -- ALSO I
24 MEANT TO SAY AN EXHIBIT LIST AS WELL.

25 MR. MC MULLEN: REVISED EXHIBIT LIST?

26 THE COURT: YES.

27 MR. MC MULLEN: REVISED EXHIBIT LIST.

28 THE COURT: ALL RIGHT.

1 SEE YOU GUYS IN A COUPLE OF WEEKS.

2 MR. MC MULLEN: THANK YOU

3 THE COURT: I WILL ACCEPT A LETTER BRIEF FROM THE
4 PEOPLE AFTER THEY HAVE LOOKED AT THE PETITION TO SEE WHAT
5 THEIR POSITION ON THIS IS, ON THE NEW PETITION THAT'S
6 SUPPOSED TO BE FILED THIS MORNING.

7 MR. MC MULLEN: I MEAN, TECHNICALLY -- SO ARE YOU
8 ASKING FOR AN INFORMAL RESPONSE?

9 THE COURT: I AM NOT GOING TO ASK FOR AN INFORMAL
10 RESPONSE. I AM ASKING IF YOU HAVE A POSITION REGARDING
11 1475, REGARDING WHETHER THERE IS A SUPPLEMENTAL VERSUS
12 WHATEVER.

13 MR. KLEIN: COULD WE HAVE A DATE THAT THEY SHOULD
14 DO THAT?

15 THE COURT: NEXT WEEK, NEXT FRIDAY. IT IS NOTHING
16 THAT I AM GOING TO STAY UP ALL NIGHT WORRYING ABOUT.

17 MR. MC MULLEN: ALL RIGHT.

18 THE COURT: I AM JUST OFFERING IF THEY WANT TO FILE
19 SOMETHING THEY CAN.

20

21 (AT 12:25 P.M. AN ADJOURNMENT WAS

22 TAKEN UNTIL MONDAY, APRIL 22, 1996,

23 AT 9:00 A.M.)

24

25

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