



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

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

COURT OF APPEAL - SECOND DIST.

FILED

DEC 01 1997

JOSEPH A. LAMAS
HERALDEZ
Deputy Clerk

NO. A 090435

IN RE

JOSEPH HUNT

ON HABEAS CORPUS

REPORTERS' DAILY TRANSCRIPT

VOLUME 5

TUESDAY, APRIL 30, 1996

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APPEARANCES:

FOR THE PETITIONER
JOSEPH HUNT:

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ATTORNEY AT LAW
3201 WILSHIRE BOULEVARD
SUITE 312
SANTA MONICA, CALIFORNIA 90403
AND

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

FOR THE RESPONDENT
THE PEOPLE OF THE
STATE OF CALIFORNIA:

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

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

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

2. HUNT EVIDENTIARY HEARING FILE

e. TRANSCRIPTS

Volume II

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| 3 | Reporter's Transcript of Proceedings, 04/29/96, Vol. 4, Evidentiary Hearing, Testimony of N. Ghaleb, R. Robinson, I. Werner | Rcv'd 04-30-96 |
| 4 | Reporter's Transcript of Proceedings, 04/30/96, Vol. 5, Evidentiary Hearing, Testimony of G. Gerrard, N. Adelman, J. Melczer | Rcv'd 05-02-96 |



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WITNESSES DIRECT CROSS REDIRECT RE CROSS VOIR
DIRE VOL

(NONE)

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ALPHABETICAL INDEX OF WITNESSES

| <u>PETITIONER'S WITNESSES</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> | <u>VOIR DIRE</u> | <u>VOL</u> |
|-------------------------------|---------------|--------------|-----------------|----------------|------------------|------------|
| ADELMAN, NEIL | 728 | 750 | | | | 5 |
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| (NONE) | | | | | | |

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1 LOS ANGELES, CALIFORNIA; TUESDAY, APRIL 30, 1996

2 9:20 A.M.

3 DEPARTMENT NO. 101

HON. J. STEPHEN CZULEGER, JUDGE

4
5 APPEARANCES:

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

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

15
16 THE BAILIFF: REMAIN SEATED, DEPARTMENT 101 IS NOW
17 IN SESSION.

18 THE COURT: IN THE MATTER OF IN RE JOSEPH HUNT, THE
19 RECORD WILL REFLECT MR. MC MULLEN AND MS. KATAYAMA AND
20 MR. CRAIN ARE PRESENT, MR. KLEIN IS NOT. IT IS FIVE AFTER
21 9:00.

22 MR. CRAIN: HE IS IN THE BATHROOM.

23 THE COURT: WHY WEREN'T YOU GUYS HERE ON TIME? WHY
24 WEREN'T YOU HERE ON TIME?

25 MR. CRAIN: I THOUGHT I WAS HERE ON TIME.

26 THE COURT: AT 9 O'CLOCK I WALKED IN HERE AND
27 NEITHER COUNSEL WERE HERE FOR THE PETITIONER.

28 MR. CRAIN: WELL, I THOUGHT I WAS HERE AT

1 9 O'CLOCK, AND I GOT HERE.

2 THE COURT: LET ME ASK THE CLERK WERE EITHER
3 PETITIONER'S COUNSEL HERE AT 9 O'CLOCK?

4 THE CLERK: NO, I DIDN'T NOTICE THEM, YOUR HONOR.

5 THE COURT: I WALKED OUT AND ASKED. NO ONE HAD
6 SEEN YOU.

7 MR. CRAIN: I KNOW IT WAS 9 O'CLOCK. I HAVE BEEN
8 HERE FOR SEVERAL MINUTES. I WAS OUT IN THE HALLWAY
9 TALKING TO MR. HUNT'S WIFE.

10 THE COURT: YESTERDAY I LET YOU SLIDE. YOU WERE
11 HERE 15 MINUTES LATE. I START ON TIME. YOU ARE ORDERED
12 TO BE HERE ON TIME, TO CHECK IN WITH THE CLERK WHEN YOU
13 GET HERE.

14 MR. KLEIN IS OBVIOUSLY IN THE BATHROOM, WHICH
15 MEANS HE WAS NOT HERE ON TIME, THAT YOU GUYS WERE RUNNING
16 LATE.

17 MR. CRAIN: MY APOLOGIES.

18 THE COURT: WHERE IS YOUR WITNESS?

19 MR. CRAIN: HE IS SUPPOSED TO BE HERE AT 9 O'CLOCK.
20 I WASN'T IN THE HALLWAY. I WAS LOOKING FOR HIM. IT IS
21 MR. GERRARD. I ASSUME HE IS ON THE WAY. MR. ADELMAN SAID
22 HE COULDN'T BE HERE UNTIL 10 O'CLOCK. HE TALKED TO ME,
23 SAID HE WOULD BE HERE AT 10:00. MR. BRODEY IS SUPPOSED TO
24 BE HERE AT 10:30.

25 THE COURT: COUNSEL, I HAVE BEEN VERY PATIENT WITH
26 PETITIONER'S COUNSEL IN THIS CASE. YESTERDAY YOU HAD A
27 WITNESS LATE -- EXCUSE ME.

28 GET THE CHILD OUT OF THE COURTROOM.

1 YOU DON'T KNOW WHERE YOUR WITNESS IS?

2 MR. CRAIN: I DON'T KNOW WHERE HE IS AT THIS
3 MOMENT. HE TALKED TO MR. KLEIN YESTERDAY. ACCORDING TO
4 WHAT I WAS TOLD, HE SAID HE WOULD BE HERE AT 9 O'CLOCK. I
5 AM DOING THE BEST I CAN, YOUR HONOR. I HAVE GOT ONE
6 INVESTIGATOR --

7 THE COURT: COUNSEL --

8 MR. CRAIN: I HAVEN'T GOT A LAW CLERK --

9 THE COURT: EXCUSE ME, COUNSEL. DO NOT SPEAK OVER
10 ME.

11 I DO NOT WANT TO HEAR YOUR PROBLEMS.

12 MR. CRAIN: OKAY, IF THE COURT DOESN'T WANT TO HEAR
13 IT, BUT THEY ARE PROBLEMS.

14 THE COURT: I WANT YOU TO BE PREPARED TO GO ON TIME
15 IN A PROFESSIONAL MANNER.

16 DO YOU HAVE YOUR EXHIBIT LIST YET?

17 MR. CRAIN: I DON'T HAVE THE EXHIBIT LIST, ANY NEW
18 EXHIBIT LIST. WE HAVE THE EXHIBIT LIST THAT'S BEEN
19 SUBMITTED TO THE COURT.

20 THE COURT: GO SEE IF YOU CAN FIND MR. KLEIN.

21 MR. CRAIN: YOUR HONOR, HE IS IN THE RESTROOM.

22 THE COURT: SO ONCE AGAIN, YOU DON'T HAVE THE
23 EXHIBIT LIST THAT I ORDERED LAST WEEK?

24 MR. CRAIN: NO, I DON'T HAVE THE EXHIBIT LIST YOU
25 ORDERED LAST WEEK. I WORKED UNTIL 9:00, 9:30 ON THIS CASE
26 AND THEN I WENT HOME TO EAT DINNER AND SEE MY FAMILY.
27 THIS COURT DIDN'T WANT TO GIVE ASSISTANCE THAT WE
28 REPEATEDLY REQUESTED, SUCH AS LAW CLERK. WE HAVE ONE

1 INVESTIGATOR --

2 THE COURT: MR. KLEIN, YOUR WHINING --

3 MR. CRAIN: I AM NOT MR. KLEIN I AM MR. CRAIN.

4 THE COURT: MR. CRAIN, YOUR WHINING IS NOT
5 APPROPRIATE.

6 MR. CRAIN: I AM NOT WHINING. I REALLY DON'T CARE
7 FOR THAT KIND OF PERSONAL CHARACTERIZATION TO PUT -- I AM
8 TELLING YOU WHAT THE --

9 THE COURT: I AM SIMPLY MAKING THE COMMENT, SIR --

10 MR. CRAIN: I AM TELLING YOU WHAT THE PROBLEMS --

11 THE COURT: SIR, DO NOT SPEAK OVER ME.

12 MR. CRAIN: DO YOU --

13 THE COURT: LET'S WAIT UNTIL MR. KLEIN GETS OUT
14 HERE.

15 MR. CRAIN: DO YOU WANT TO HEAR ANYTHING MORE?

16 THE COURT: LET'S HEAR FROM MR. KLEIN.

17 WHY WEREN'T YOU HERE AT 9 O'CLOCK?

18 MR. KLEIN: I GUESS IT TOOK ME TEN MINUTES TO GET
19 AN ELEVATOR UP TO THE COURT. I ARRIVED AT THE SAME TIME
20 MR. CRAIN DID.

21 THE COURT: WELL, I WAS OUT HERE, NEITHER OF YOU
22 WERE IN THE COURTROOM AT 9 O'CLOCK.

23 MR. KLEIN: JUDGE, I HAVE TO TAKE MY WIFE TO
24 INGLEWOOD. I LEAVE AT 7:00 IN THE MORNING.

25 THE COURT: YOU KNOW, EVERYONE HAS PROBLEMS.
26 EVERYONE DEALS WITH THOSE PROBLEMS. I TRY A LOT OF CASES.
27 I UNDERSTAND ATTORNEY'S NEEDS, BUT IT SEEMS TO ME THAT YOU
28 AND MR. CRAIN SEEM TO HAVE MORE NEEDS THAN MOST ATTORNEYS.

1 MR. CRAIN: NO, YOUR HONOR, I DON'T THINK THAT'S
2 TRUE, AND I REALLY RESENT THE COURT'S PERSONAL ASSAULT ON
3 US. AND, YOU KNOW, WE DON'T HAVE THE STAFF THAT YOU DO.
4 WE DON'T HAVE THE POWER OF THE COURT. I CAN'T SNAP MY
5 FINGERS AND MAKE THINGS HAPPEN. I CAN'T HOLD PEOPLE IN
6 CONTEMPT FOR NOT SHOWING UP ON TIME TO COURT. I CAN'T DO
7 ANY OF THE THESE THINGS. I DON'T HAVE A LAW CLERK THAT
8 YOU HAVE. YOU WOULDN'T GIVE ME A LAW CLERK. I DON'T HAVE
9 A SECRETARY. I DON'T HAVE A CLERK LIKE YOU HAVE. I DON'T
10 HAVE ANY OF THESE THINGS. NOW, I AM DOING THE BEST I CAN.
11 ALL RIGHT.

12 I DON'T HAVE A JUDGE 'S ELEVATOR TO RIDE UP
13 ON. I DON'T HAVE A PARKING THING UNDERNEATH THE BUILDING.
14 I DO NOT HAVE ANY OF THESE THINGS.

15 THE COURT: MR. CRAIN, PLEASE, ALL I AM EXPECTING
16 YOU TO DO IS BE HERE ON TIME, TO BE PREPARED AND BE
17 PROFESSIONAL. THAT'S ALL I AM ASKING YOU TO DO. YOU
18 WEREN'T HERE ON TIME TO DAY. YOU WEREN'T HERE ON TIME
19 YESTERDAY.

20 MR. CRAIN: WHAT TIME DOES THE COURT --

21 THE COURT: YOU ARE NOT PREPARED. I HAVE ASKED
22 AGAIN NOW, I THINK THIS IS THE THIRD TIME, IF NOT THE
23 FOURTH TIME. I HAVE ASKED FOR YOUR EXHIBIT LIST. AND I
24 HAVE ASKED YOU TO BE PROFESSIONAL.

25 MR. CRAIN: I WAS HERE AT 9 O'CLOCK. I ARRIVED, I
26 LOOKED FOR THE WITNESS IN THE HALLWAY, I LOOKED UP AND
27 DOWN THE HALLWAY. HE WASN'T HERE. I HAD A BRIEF
28 MOMENT -- YOU WEREN'T ON THE BENCH. I WAS TALKING TO

1 MR. HUNT'S WIFE, WHO HAS SOME MATERIALS THAT I NEEDED TO
2 REVIEW FOR TODAY'S WITNESSES. I WORKED UNTIL 9:30 LAST
3 NIGHT. WHAT MORE DO YOU WANT FROM ME?

4 THE COURT: I WANT YOU HERE ON TIME AND PREPARED.
5 DO YOU HAVE YOUR WITNESS?

6 MR. CRAIN: I WILL HAVE TO LOOK IN THE HALLWAY
7 AGAIN.

8 THE COURT: DO YOU HAVE YOUR WITNESS LIST?

9 MR. CRAIN: I THINK I HAVE ALREADY ANSWERED THAT
10 QUESTION. WE HAVE SUBMITTED A WITNESS LIST TO THE COURT.
11 WITNESS LIST OR EXHIBIT LIST?

12 THE COURT: I AM SORRY, EXHIBIT LIST.

13 DO YOU HAVE THE EXHIBIT LIST?

14 MR. CRAIN: WE DON'T HAVE ANY ADDITIONAL EXHIBIT
15 LISTS.

16 THE COURT: WE SENT YOU SOMETHING MONTHS AGO. WE
17 ASKED YOU TO FILL IT IN.

18 MR. CRAIN: WE SUBMITTED AN EXHIBIT LIST TO THE
19 COURT. I DON'T UNDERSTAND WHAT THIS IS ALL ABOUT. WE GO
20 THROUGH THIS, IT APPEARS, DAY AFTER DAY.

21 THE COURT: MR. CRAIN, I WILL SAY IT ONE MORE TIME.

22 MR. KLEIN, DO YOU UNDERSTAND THE WITNESS LIST
23 I AM, OR THE EXHIBIT LIST I AM TALKING ABOUT? I BELIEVE
24 THE CLERK SPOKE TO YOU PERSONALLY ABOUT THIS.

25 MR. KLEIN: I THINK WHAT THE COURT WANTS TO DO IS
26 TAKE OUR LIST OF EXHIBITS, WHICH WE HAVE GIVEN TO THE
27 COURT, AND PUT THEM IN A CHRONOLOGICAL ORDER. IS THAT
28 WHAT THE COURT WANTS?

1 THE COURT: WE PREPARED A FORMAT. THE FORMAT IS
2 RIGHT HERE. IT WAS SENT TO YOU. WE TALKED ABOUT THIS
3 YESTERDAY, AND I ORDERED IT TO BE FILED TODAY.

4 MR. KLEIN: WE BOTH WORKED UNTIL LONG AFTER 9:30
5 TRYING TO BE PREPARED FOR THE COURT TODAY. WE WORKED
6 SOLELY ON THIS CASE. WE DIDN'T HAVE ONE FREE MINUTE TO DO
7 WHAT THE COURT WANTS US TO DO.

8 THE COURT: SO YOU DO NOT HAVE THE EXHIBIT LIST
9 THAT I ORDERED YESTERDAY AND ORDERED LAST WEEK?

10 MR. KLEIN: IN THE FORMAT THAT YOU WANT, WE DON'T
11 HAVE IT NOW. BECAUSE WE HAVEN'T HAD TIME TO DO IT. WE
12 ARE TRYING TO HAVE WITNESSES HERE ON TIME. WE ARE TRYING
13 TO HAVE WITNESSES PREPARED, AND WE DON'T HAVE ANY EXTRA
14 TIME AT THIS POINT.

15 THE COURT: I WILL GET OFF THE BENCH FOR FIVE
16 MINUTES. PLEASE LOCATE YOUR WITNESS. YOU ARE ORDERED TO
17 HAVE YOUR EXHIBIT LIST -- I WILL MAKE IT REAL CLEAR NOW --
18 THE EXHIBIT LIST IN THE FORMAT THAT WE PROVIDED MONTHS AGO
19 FILED WITH THIS COURT NO LATER THAN THURSDAY. IF YOU DO
20 NOT HAVE IT FILED ON THURSDAY I WILL IMPOSE SANCTIONS.

21 ALL RIGHT.

22 YOU HAVE GOT FIVE MINUTES TO LOCATE YOUR
23 WITNESS.

24
25 (RECESS.)

26
27 THE BAILIFF: REMAIN SEATED, COME TO ORDER,
28 DEPARTMENT 101 IS AGAIN IN SESSION.

1 THE COURT: IN THE MATTER OF JOSEPH HUNT, THE
2 RECORD WILL REFLECT ALL COUNSEL ARE PRESENT, PETITIONER IS
3 PRESENT. THE RECORD WILL REFLECT IT IS 9:21.

4 CALL YOUR NEXT WITNESS.

5 MR. CRAIN: MR. GERRARD.

6 DO YOU WANT TO COME UP HERE?
7

8 GEORGE JOHN GERRARD, +
9 CALLED AS A WITNESS BY THE PETITIONER, WAS SWORN AND
10 TESTIFIED AS FOLLOWS:
11

12 THE CLERK: STAND BEHIND THE REPORTER, PLEASE, AND
13 RAISE YOUR RIGHT HAND.

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

18 THE WITNESS: I DO.

19 THE CLERK: HAVE A SEAT, PLEASE, IN THE WITNESS
20 STAND.

21 STATE YOUR FULL NAME, PLEASE, AND SPELL THE
22 LAST NAME.

23 THE WITNESS: GEORGE JOHN GERRARD, G-E-R-R-A-R-D.

24 THE CLERK: THANK YOU.
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DIRECT EXAMINATION +

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BY MR. CRAIN:

Q GOOD MORNING, MR. GERRARD, DO YOU HAVE AN
NICKNAME YOU GO BY?

A YES. JERRY.

Q AND ARE YOU MARRIED, SIR?

A MARRIED, YES.

Q AND IS YOUR WIFE CORNELIA P. GERRARD KNOWN AS
CONNIE?

A (NO AUDIBLE RESPONSE.)

Q AND IS SHE THE LADY WHO PREVIOUSLY TESTIFIED
IN THIS CASE, AS FAR AS YOU KNOW?

A YES.

Q YOU WANT TO PULL THE MICROPHONE RIGHT UP TO
WHERE YOU ARE? YOU CAN SIT BACK AND RELAX IN THE CHAIR.

NOW, IN 19- -- WELL, LET ME ASK YOU THIS:
HAVE YOU BEEN TO GREECE ON A NUMBER OF OCCASIONS?

A YES, I HAVE.

Q AND ARE YOU OF GREEK ANCESTRY?

A YES, I AM.

Q DO YOU SPEAK GREEK?

A YES.

Q DOES YOUR WIFE?

A YES.

THE COURT: WHY DON'T YOU TURN THE MICROPHONE SO
THE OPENING FACES YOUR MOUTH. PULL IT RIGHT UP UNDERNEATH
YOU CHIN. THAT'S GOOD.

1 BY MR. CRAIN:

2 Q IN DECEMBER OF -- YOU GOT IT?

3 A I AM SORRY?

4 MR. CRAIN: CAN HE TURN AROUND IN THE CHAIR, YOUR
5 HONOR?

6 THE COURT: WHY DON'T YOU FACE FORWARD, IT MIGHT
7 MAKE IT EASIER.

8 THE WITNESS: I WANTED TO FACE YOU.

9 THE COURT: THAT IS A LITTLE BIT BETTER.

10 IS THAT MICROPHONE ON, MR. CRAIN?

11 MR. CRAIN: IT IS.

12 THE COURT: ALL RIGHT.

13 MR. CRAIN: YOUR HONOR, BEFORE I RESUME, WHAT DID
14 WE DECIDE TO DO ABOUT THE CAMERAS IN HERE? I THOUGHT WE
15 TOOK THAT --

16 THE COURT: I ALLOWED THE STILL CAMERA ON THE FIRST
17 DAY. I HAVE NOT ALLOWED VIDEO OR AUDIO. THE STILL
18 CAMERA, REMEMBER, WAS HERE THE VERY FIRST DAY. I ASSUME
19 YOU HAVE NO OBJECTION.

20 MR. CRAIN: OKAY.

21 THE COURT: YOU ARE NODDING.

22 BY MR. CRAIN:

23 Q MR. GERRARD, IN DECEMBER OF 1987 DID YOU GO
24 TO GREECE?

25 A YES, I DID.

26 Q WERE YOU LIVING IN LOS ANGELES AT THAT TIME?

27 A YES, I WAS.

28 Q DO YOU LIVE IN LOS ANGELES NOW?

1 A YES, I DO.

2 Q AND WHERE -- DID YOU FLY TO GREECE?

3 A YES.

4 Q AND WHERE DID YOU FLY INTO?

5 A INTO ATHENS.

6 Q OKAY.

7 NOW, AT SOME POINT DID YOU -- WHILE YOU WERE
8 THERE DID YOU GO TO THE GREEK ISLAND OF MYKONOS?

9 A YES, I DID.

10 Q THAT'S -- IS THAT OFF THE COAST OF THE AEGEAN
11 SEA SOME PLACE?

12 A AEGEAN SEA, RIGHT.

13 Q HAVE YOU EVER PERSONALLY BEEN THERE BEFORE?

14 A NO, I NEVER HAD.

15 Q HAVE YOU BEEN THERE SINCE?

16 A NO.

17 Q OKAY.

18 SO THAT WAS THE ONLY TIME YOU HAVE EVER BEEN
19 THERE, DECEMBER, 1987; IS THAT CORRECT?

20 A CHRISTMAS DAY, YES.

21 Q CHRISTMAS DAY?

22 A YES.

23 Q OKAY.

24 NOW, CHRISTMAS DAY, 1987, WHEN YOU WENT TO
25 MYKONOS DID YOU GO WITH ANYONE?

26 A I WENT WITH MY WIFE.

27 Q ANYONE ELSE?

28 A NO ONE ELSE.

1 Q THAT'S CONNIE GERRARD; IS THAT CORRECT?

2 A CONNIE GERRARD.

3 Q WHAT WAS THE -- DID YOU FLY FROM ATHENS TO
4 MYKONOS?

5 A YES, WE DID.

6 Q WHAT WAS THE WEATHER LIKE?

7 A VERY CLOUDY AND RAINY.

8 Q AND WHAT DID YOU DO, AFTER YOU GOT TO
9 MYKONOS?

10 A WE LANDED ON THE ISLE OF MYKONOS, WENT
11 THROUGH THE TERMINAL. WE WERE INFORMED THAT THE TERMINAL
12 WAS GOING TO BE CLOSED UNTIL THAT EVENING OR AT 4 O'CLOCK.
13 SO WE ON OUR OWN FOR THE REST OF THE DAY. WE JUST WENT
14 FROM THE TERMINAL INTO THE TOWN.

15 Q NOW, THE TOWN THERE IS THAT LIKE A LITTLE
16 PORT?

17 A IT IS A PORT.

18 Q IT IS LIKE A HARBOR?

19 A IT HAS A HARBOR, YES.

20 Q AND --

21 A AND A VILLAGE BEHIND THE WATERFRONT.

22 Q IS IT MORE OR LESS IN THE NATURE OF A VILLAGE
23 AS OPPOSED -- IT IS NOT A CITY; IS THAT RIGHT?

24 A IT IS NOT A CITY, MORE OF A VILLAGE.

25 Q OKAY.

26 AND AFTER YOU WALKED INTO THE VILLAGE AREA
27 WHAT HAPPENED?

28 A WELL, WE COULDN'T FIND, AND IT WAS VERY COLD

1 AND MISERABLE, A DAMP, DREARY DAY, AND WE WERE JUST LIKE A
2 COUPLE OF WAIFS WALKING THE STREETS. WE HAD NO IDEA THAT
3 THERE WOULD BE NOTHING OPEN ON THAT DAY. WE WERE NOT
4 INFORMED OF THAT FACT WHEN WE LEFT ATHENS. AND SO WE JUST
5 AIMLESSLY WALKED AROUND TRYING TO FIND SOME PLACE OPEN
6 THAT WE MIGHT BE ABLE TO HOLE UP IN TO GET OUT OF THE COLD
7 AND THE RAIN.

8 Q THIS IS YOU AND MRS. GERRARD?

9 A BOTH OF US, YES.

10 Q AND DID YOU SUCCEED IN THAT?

11 A YES. I FORTUNATELY SAW THIS OLD GENTLEMAN
12 WALKING THE STREETS, AND WE CONFRONTED HIM AND ASKED HIM
13 IF THERE WAS, IF HE KNEW OF ANYPLACE THAT WOULD BE OPENED.
14 HE INFORMED US, "GEE, THIS IS CHRISTMAS DAY. IT IS A
15 HOLIDAY, AND EVERYONE IS IN THEIR HOMES AND NOTHING IS
16 OPEN."

17 HE SAYS, "BUT I DO KNOW THAT THERE IS A
18 LITTLE PLACE THAT HAS JUST OPENED, MAYBE IT IS OPEN. I AM
19 NOT SURE." HE SAID, "THIS LADY HAS COME FROM ATHENS AND
20 OPENED UP THIS LITTLE RESTAURANT. I WILL SHOW YOU WHERE
21 IT IS, BUT YOU WANT TO COME INTO MY STORE FIRST AND SEE MY
22 MERCHANDISE?" SO WE WERE FORCED TO BUY A T-SHIRT FROM
23 HIM. I REMEMBER THAT.

24 Q OKAY.

25 A THEN HE TOLD US, THIS LITTLE PLACE WAS
26 POINTED OUT TO US, AND WE WALKED TO IT.

27 Q HE WAS MORE OR LESS EXPECTING YOU TO BUY THE
28 SHIRT FROM HIM IN EXCHANGE FOR THE INFORMATION THAT YOU

1 HAD?

2 A YES. THAT'S THE IMPRESSION WE GOT.

3 Q SO HE TOLD YOU ABOUT A PLACE THAT WAS OPEN;
4 IS THAT RIGHT?

5 A YES.

6 Q WHAT DID YOU DO?

7 A WE WALKED UP TO THE PLACE AND TRIED THE DOOR,
8 IT OPENED AND WE WALKED IN.

9 Q AND WHAT HAPPENED ONCE YOU GOT INSIDE?

10 A WE WERE SEATED BY THE LADY WHO OBVIOUSLY
11 OWNED THE PLACE AND ORDERED OUR MEAL.

12 Q OKAY.

13 AND WHAT WAS THIS, A LARGE ESTABLISHMENT OR A
14 SMALL PLACE?

15 A IT WAS A VERY SMALL PLACE, JUST THREE OR FOUR
16 TABLES IN THE RESTAURANT. THAT'S ALL.

17 Q LET ME ASK YOU TO MAKE SURE I FINISH THE
18 QUESTION BEFORE YOU START THE ANSWER, THAT WAY THE COURT
19 REPORTER DOESN'T HEAR ANY OVERLAP AND CAN GET ALL THE
20 WORDS DOWN; OKAY?

21 A RIGHT.

22 Q OKAY.

23 SO WHAT HAPPENED AFTER THAT?

24 A AS I SAID, WE ORDERED OUR MEAL AND WAITED FOR
25 IT TO BE DELIVERED TO US. MAYBE FIVE MINUTES OR SO HAD
26 PASSED AND THE DOOR OPENED AGAIN AND A BLUSTERING WIND
27 CAME IN. AND WE LOOKED UP TOWARDS THE DOOR, BOTH OF US,
28 AND WE SAW THESE TWO GENTLEMEN WALK IN.

1 Q NOW, HAD YOU EVER -- LET ME ASK YOU A COUPLE
2 OF OTHER QUESTIONS BEFORE WE GET BACK TO THIS.

3 FIRST OF ALL, WHAT IS YOUR OCCUPATION?

4 A I WAS A SWIMMING POOL CONTRACTOR.

5 Q NOW, DID YOU EVER MEET OR HAVE ANYTHING TO DO
6 WITH A MAN NAMED BOBBY ROBERTS?

7 A YES, I DID.

8 Q CAN YOU TELL US IN WHAT CONNECTION YOU KNEW
9 OR MET BOBBY ROBERTS?

10 A I WAS RECOMMENDED TO HIM BY A LANDSCAPE
11 ARCHITECT THAT I BUILT HIS SWIMMING POOL IN HIS HOUSE FOR
12 IN BELLAIRE.

13 Q DO YOU KNOW WHAT YEAR THAT WAS?

14 A YES, 1973.

15 Q NOW, APART FROM BUILDING -- WELL, IN TERMS OF
16 BUILDING THIS SWIMMING POOL DID YOU HAVE A CONNECTION OR
17 RELATIONSHIP WITH HIM OTHER THAN AS A BUSINESS
18 RELATIONSHIP TO BUILD SWIMMING POOLS?

19 A NOT AT ALL.

20 Q DO YOU HAVE ANY KIND OF SOCIAL RELATIONSHIP
21 WITH MR. ROBERTS,

22 A NOT AT ALL.

23 Q HAVE YOU EVER?

24 A SORRY?

25 Q HAVE YOU EVER BEEN A FRIEND OF HIS OR
26 ACQUAINTANCE OF HIS OR HAS YOUR RELATIONSHIP TO HIM BEEN
27 BUSINESS ONLY?

28 A JUST BUSINESS ONLY.

1 Q NOW, AFTER 1973 DID YOU EVER HAVE ANY
2 ENCOUNTERS WITH MR. ROBERTS?

3 A YES, I DID. I AM SORRY. YES, I DID.

4 Q WHERE WAS THAT, IN WHAT CONNECTION?

5 A WELL, HE OWED ME SOME MONEY. HE GOT INTO
6 SOME DIFFICULTIES WITH HIS PARTNERS, AND HE WAS FILING
7 BANKRUPTCY. HE INFORMED ME THAT HE WOULD PUT ME AS ONE OF
8 THE CREDITORS THAT I WOULD BE GETTING MY MONEY, AT LEAST
9 HALF OF IT ANYWAY, SO I DID MEET HIM AT THE BANKRUPTCY
10 HEARING.

11 Q THAT WAS AT A COURT SOMEWHERE IN LOS ANGELES?

12 A YES.

13 Q AND DID YOU -- SO YOU WERE THERE AS A
14 BANKRUPTCY CREDITOR AS TO MR. ROBERTS?

15 A YES.

16 Q WAS THERE A COURT PROCEEDING HELD?

17 A YES.

18 Q AND SUBSEQUENT TO THAT, AFTER THAT DID YOU
19 OBTAIN ANY PART OF THE MONEY THAT HE OWED YOU?

20 A YES, I DID. I GOT 50 PERCENT OF IT.

21 Q THAT WAS PURSUANT TO THE BANKRUPTCY DECREE OF
22 SOME SORT?

23 A YES.

24 Q AFTER THAT DID YOU EVER MEET MR. ROBERTS
25 AGAIN?

26 A JUST A COUPLE OF YEARS AGO IN ENCINO IN A
27 RESTAURANT.

28 Q NOW, IN THE MEANTIME -- WELL, LET ME BACK UP.

1 HAVE YOU EVER TESTIFIED IN SAN MATEO IN
2 CONNECTION WITH A TRIAL INVOLVING MR. JOE HUNT, THE
3 GENTLEMAN AT THE END OF THE TABLE HERE?

4 A YES, I HAVE.

5 Q AND WAS THAT IN 1992?

6 A YES, IT WAS.

7 Q AND WERE YOU ASKED THE QUESTIONS ABOUT YOUR
8 TRIP TO MYKONOS AND WHAT HAPPENED THERE?

9 A YES.

10 Q YOU TESTIFIED BEFORE A JURY?

11 A YES.

12 Q NOW, WAS IT AFTER THE TRIAL THAT YOU SAW
13 MR. ROBERTS FOR THE THIRD TIME?

14 A YES.

15 Q AND WHERE WAS THAT?

16 A IN THE JERRY'S RESTAURANT ON THE CORNER OF
17 PETIT AND VENTURA IN ENCINO.

18 Q WAS THAT SOME PREARRANGED MEETING OR CHANCE
19 MEETING?

20 A IT WAS A CHANCE MEETING.

21 Q WERE YOU DINING THERE AT THE TIME?

22 A I WAS. AND I WAS IN THE WAITING ROOM WAITING
23 FOR SOMEONE TO MEET ME THERE WHEN HE APPROACHED. I DIDN'T
24 RECOGNIZE HIM.

25 Q AND OTHER THAN SMALL TALK OR JUST SAYING A
26 HELLO WAS THERE ANY FURTHER CONVERSATION?

27 A YES. HE THANKED ME FOR TESTIFYING AT THE
28 REDWOOD CITY HEARING FOR JOE HUNT AND HIS DAUGHTER.

1 Q DID YOU TESTIFY TRUTHFULLY AT THE REDWOOD
2 CITY HEARING?

3 A YES, I DID.

4 Q WHEN YOU SAY REDWOOD CITY HEARING, ARE YOU
5 REFERRING TO SAN MATEO COUNTY?

6 A YES.

7 Q THE 1992 TESTIMONY?

8 A YES.

9 Q ALL RIGHT.

10 DO YOU HAVE ANY -- ARE YOU ACQUAINTED
11 PERSONALLY WITH MR. HUNT?

12 A NO. NOT AT ALL.

13 Q DID YOU TALK TO MR. HUNT AND AN ATTORNEY
14 BEFORE YOU TESTIFIED IN SAN MATEO?

15 A YES, I DID.

16 Q WHERE DID THAT TAKE PLACE?

17 A IN THE ANTEROOM AT THE COURTROOM.

18 Q WAS THAT JUST MOMENTS BEFORE YOU TOOK THE
19 WITNESS STAND AND TESTIFIED BEFORE THE JURY?

20 A SHORT WHILE BEFORE.

21 Q AND HAVE YOU EVER MET MR. HUNT BEFORE THAT
22 TIME?

23 A NO, I HADN'T.

24 Q ALL RIGHT.

25 NOW, HAVE YOU EVER MET HIM SINCE THAT TIME OR
26 ANY OTHER TIME?

27 A NO, I HAVEN'T.

28 Q OKAY.

1 SO YOU WERE JUST THERE AS A WITNESS AND WERE
2 QUESTIONED BRIEFLY BEFORE YOUR TESTIMONY RIGHT OUTSIDE THE
3 COURTROOM; CORRECT?

4 A YES.

5 Q OKAY.

6 NOW, ARE YOU RELATED TO A GENTLEMAN, HIS LAST
7 NAME IS TUR?

8 A YES, I AM.

9 Q WHAT IS HIS NAME?

10 A ROBERT TUR.

11 Q OKAY.

12 WHAT IS HIS OCCUPATION?

13 A HE IS A TELEVISION NEWS REPORTER. HE HAS HIS
14 OWN TELEVISION NEWS SERVICE.

15 Q DO YOU KNOW A PERSON BY THE NAME OF ROBERT
16 ROBINSON OR NOT?

17 A NO, I DON'T.

18 Q AND WHAT IS MR. TUR'S RELATIONSHIP TO YOU?

19 A HE IS MARRIED TO MY DAUGHTER.

20 Q WHAT IS YOUR DAUGHTER'S NAME?

21 A MARIE KAY GERRARD TUR.

22 Q AND IS SHE IN THIS SAME BUSINESS WITH
23 MR. TUR?

24 A YES. THEY OWN THE BUSINESS TOGETHER.

25 Q IS HE A GENTLEMAN WHO IS OFTEN HEARD ON, I
26 BELIEVE IT IS K.N.X. RADIO, GIVING REPORTS FROM HIS
27 HELICOPTER ABOUT VARIOUS EVENTS?

28 A YES, THAT'S HIM.

1 Q AND IS ONE OF THE EVENTS THAT HE GAVE A
2 NUMBER OF DESCRIPTIONS ABOUT THE LOS ANGELES RIOTS?

3 MR. MC MULLEN: OBJECTION. RELEVANCY.

4 THE COURT: SUSTAINED.

5 THE WITNESS: YES.

6 THE COURT: THE LAST ANSWER WILL GO OUT.

7 BY MR. CRAIN:

8 Q NOW, DID YOU EVER MEET A MAN BY THE NAME,
9 BEFORE YOUR TRIP TO MYKONOS 1987, DID YOU EVER MEET A MAN
10 BY THE NAME OF RONALD LEVIN?

11 A JUST ONCE.

12 MR. CRAIN: EXCUSE ME, YOUR HONOR.

13 I NEED TO GET AN EXHIBIT HERE.

14 THE WITNESS: YES.

15 BY MR. CRAIN:

16 Q WHERE DID THAT TAKE PLACE, MR. GERRARD?

17 A IN MY HOME.

18 Q WAS MR. TUR THERE AT THAT TIME?

19 A NO.

20 Q AND DO YOU KNOW WHAT MR. LEVIN WAS DOING AT
21 YOUR HOME OR NOT?

22 A YES. HE WAS THERE TO MEET MY WIFE, AND THEY
23 WERE DISCUSSING A SITUATION THAT MY YOUNGER DAUGHTER HAD
24 GOTTEN INTO. AND MR. LEVIN OSTENSIBLY WAS AN ATTORNEY, SO
25 HE STATED HE WAS THERE TO DISCUSS SUING THE PEOPLE WHO MY
26 DAUGHTER HAD GOTTEN INTO THIS SITUATION WITH.

27 Q ALL RIGHT.

28 WHEN YOU SAY YOUR DAUGHTER WAS IN A

1 SITUATION, WAS IT SOMETHING WHERE YOUR DAUGHTER SUSTAINED
2 SOME INJURIES IN SOME SORT OF ACCIDENT OR SOMETHING LIKE
3 THAT?

4 A YES.

5 Q OKAY.

6 SO WHAT -- THIS PARTICULAR OCCASION WHERE
7 MR. LEVIN WAS AT YOUR HOUSE DID YOU SPEAK WITH HIM? DID
8 YOU HAVE A CONVERSATION WITH HIM? WHAT HAPPENED? WHAT
9 WERE YOU DOING? WHAT HAPPENED?

10 A NO, NOT AT ALL.

11 Q WHAT WERE YOU DOING DURING THAT TIME?

12 A I WAS ON THE PHONE DOING MY EXPEDITED WHEN HE
13 WALKED IN THE DOOR. MY WIFE SAID, "THIS IS MR. LEVIN." I
14 JUST WAVED MY HANDS AT HIM, LOOKED AT HIM VERY QUICKLY.
15 THAT WAS ALL.

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

17 THE COURT: YES.

18 BY MR. CRAIN:

19 Q I HAVE PETITIONER'S 1 HERE. IS THAT THE
20 GENTLEMAN THAT YOU SAW AT YOUR HOUSE THAT YOU WAVED TO AND
21 SAID HELLO TO WHEN YOU WERE TALKING ON THE TELEPHONE?

22 A I RECOGNIZE HIM AS THE GENTLEMAN AT MY HOUSE
23 BECAUSE OF THE MEETING THAT I HAD WITH HIM IN MYKONOS,
24 OTHERWISE I WOULD NOT HAVE RECOGNIZED HIM.

25 Q LET'S RETURN TO THE TIME YOU WERE IN THE
26 RESTAURANT IN MYKONOS WITH YOUR WIFE. AND YOU TOLD US A
27 FEW MOMENTS AGO THAT THE DOOR OPENED AND TWO PEOPLE CAME
28 IN; IS THAT RIGHT?

1 A YES.

2 Q WAS THE PERSON IN THAT PICTURE THERE,
3 PETITIONER'S 1, WHICH IS IN FRONT OF YOU, WAS HE ONE OF
4 THEM OR NOT?

5 A YES. HE WAS IN THE LED, AND THE OTHER
6 GENTLEMAN WAS BEHIND HIM AS THEY WALKED IN THE DOOR.

7 Q AND DID YOU RECOGNIZE MR. LEVIN AS A PERSON
8 YOU HAD BRIEFLY ENCOUNTERED AT SOME PREVIOUS OCCASION?

9 A NOT AT ALL.

10 Q OKAY.

11 NOW, HOW LONG WAS MR. LEVIN IN YOUR SIGHT AT
12 YOUR HOUSE THE TIME YOU WERE TALKING ON YOUR PHONE?

13 A JUST A FEW MINUTES. I WAS VERY PREOCCUPIED
14 WITH WHAT I WAS DOING. I PAID NO ATTENTION TO WHAT MY
15 WIFE WAS DISCUSSING WITH HIM.

16 Q DO YOU REMEMBER APPROXIMATELY WHEN THAT WAS?

17 A NO, I DON'T.

18 Q THAT WAS THE ONLY OTHER OCCASION BEFORE
19 MYKONOS THAT YOU HAD SEEN THIS PERSON; RIGHT?

20 A YES.

21 Q SO WHAT HAPPENED AFTER THAT IN MYKONOS?

22 A WELL, THE DOOR OPENED, WE BOTH LOOKED UP. I
23 COULD SEE MY WIFE, THE ASTONISHED LOOK ON MY WIFE'S FACE.
24 THE TWO GENTLEMEN CAME IN AND THE LADY SAT THEM DIRECTLY
25 BEHIND US. AND MR. LEVIN'S BACK WAS TO MY WIFE'S BACK AT
26 THE TABLE ALONGSIDE OF OURS. AND MY WIFE LEANED OVER TO
27 ME AND IN GREEK TOLD ME, "JERRY, YOU ARE NOT GOING TO
28 BELIEVE WHO THAT GENTLEMAN IS SITTING BEHIND ME, WHO

1 WALKED IN THAT DOOR." AND SHE TOLD ME IT WAS RON LEVIN.

2 Q HAVE YOU EVER HEARD ANYTHING ABOUT RON LEVIN
3 AT THIS POINT IN 1987 BEING THE ALLEGED VICTIM OF A CRIME?

4 A NO. ALL I KNEW WAS THAT HE WAS INVOLVED WITH
5 MY DAUGHTER, THAT WAS ALL, AND BILLIONAIRE BOYS CLUB. I
6 DON'T REMEMBER IF THAT WAS IN ISSUE AT THAT TIME OR NOT.
7 I DON'T.

8 Q SO YOUR MEMORY AT THIS TIME YOU DON'T RECALL
9 WHETHER OR NOT YOU KNEW ANYTHING ABOUT A TRIAL INVOLVING
10 THE BILLIONAIRE BOYS CLUB OR MR. LEVIN OR MR. HUNT? YOU
11 DON'T REMEMBER ONE WAY OR THE OTHER?

12 A AT THE MEETING IN MYKONOS?

13 Q AT THE TIME OF THE MEETING IN MYKONOS WHETHER
14 OR NOT -- I AM ASKING YOU WHETHER TODAY YOU CAN TELL US
15 WHETHER YOU HAD ANY KNOWLEDGE OF ANY OF THESE MATTERS
16 INVOLVING THE B.B.C. OR MR. HUNT OR MR. LEVIN HAVING BEEN
17 THE REPORTED VICTIM OF A CRIME?

18 A JUST WHAT I HEARD IN THE NEWS AND READ IN THE
19 PAPERS.

20 Q ARE YOU TELLING THE JUDGE HERE THAT AT THE
21 TIME OF THE ENCOUNTER IN MYKONOS YOU HAD SOME KNOWLEDGE
22 ABOUT MR. LEVIN'S DISAPPEARANCE OR NOT?

23 A YES.

24 Q OKAY.

25 SO YOUR WIFE SAID, "YOU WON'T BELIEVE THIS.
26 RON LEVIN JUST WALKED IN," OR WORDS TO THAT EFFECT?

27 A YES.

28 Q THEN WHAT HAPPENED?

1 A THEY CALLED, THE LADY CAME OVER AND TOOK
2 THEIR ORDER, AND MY WIFE TOLD ME THAT WE WERE NOT TO
3 SPEAK, SHE WAS TRYING TO LISTEN TO WHAT THEY WERE SAYING.
4 AND SHE TOLD ME THAT THEY HAD -- THAT MR. LEVIN WAS JUST
5 THRILLED WITH THE FACT THAT HE HAD FOUND THIS CAIKUE, THIS
6 FISHING BOAT THAT TOOK THEM TO MYKONOS, AND THEY WERE
7 THRILLED THAT THEY FOUND THIS RESTAURANT OPEN AND TO SPEND
8 THE DAY. THESE -- THESE WERE THE FACTS MY WIFE TOLD ME IN
9 GREEK, WHISPERED TO ME WHILE THEY WERE SITTING DOWN THERE.

10 Q AND WHAT OCCURRED AFTER THAT, SIR?

11 A MR. LEVIN GOT UP TO GO TO THE BATHROOM. THE
12 BATHROOM WAS DIRECTLY BEHIND US. HE WALKED PAST THE TABLE
13 AND WENT TO THE BATHROOM.

14 Q YOU SAY MR. LEVIN. YOU ARE TALKING ABOUT THE
15 MAN IN THE PHOTOGRAPH IN FRONT OF YOU, PETITIONER'S 1?

16 A THAT GENTLEMAN, YES.

17 Q THEN WHAT HAPPENED?

18 A HE CAME OUT. HE WAS ALONGSIDE OF ME. HE
19 STOPPED, AND I LOOKED UP AT HIM. HE LOOKED DOWN AT MY
20 WIFE, SHE LOOKED UP AT HIM, LIKE I COULD SEE THIS VERY
21 PALE EXPRESSION ON HIS FACE. HE QUICKLY SAT DOWN, LEANED
22 OVER, WHISPERED SOMETHING TO HIS FRIEND. THEY CALLED THE
23 LADY OF THE HOUSE OVER AND ASKED FOR THEIR CHECK, TOOK
24 THEIR BOTTLE OF WINE, WHICH THEY HAD BROUGHT WITH THEM,
25 AND JUST RUSHED OUT THE DOOR.

26 Q AND DID YOU SEE HIM AGAIN ON MYKONOS?

27 A NO.

28 Q HAVE YOU SEEN HIM AGAIN ANYTIME AFTER THAT?

1 A NO.

2 Q DID YOU AT SOME POINT THAT DAY LEAVE MYKONOS
3 AND GO TO ATHENS?

4 A THAT EVENING? YES.

5 Q AND EVENTUALLY DID YOU RETURN TO LOS ANGELES?

6 A YES, WE DID.

7 Q NOW, WHEN YOU GOT TO LOS ANGELES WERE YOU
8 PRESENT WHEN YOUR WIFE, AT ANY TIME WHEN SHE MAY HAVE
9 RELATED HAVING SEEN MR. LEVIN TO ANYBODY IN YOUR FAMILY?

10 A YES. WHEN MY DAUGHTER AND SON-IN-LAW PICKED
11 US UP AT THE AIRPORT.

12 Q WHAT DO YOU RECALL BEING SAID?

13 A SHE TOLD THEM THE STORY THAT I RELATED, THAT
14 I JUST RELATED TO YOU ABOUT SEEING RON LEVIN ON THE ISLAND
15 OF MYKONOS, WHICH WAS REALLY AN ASTOUNDING SITUATION.

16 Q THIS WAS YOUR DAUGHTER MARIKA?

17 A YES.

18 Q AND DID MARIKA IN YOUR PRESENCE GIVE ANY
19 STATEMENT OR RESPONSE, REPLY TO YOUR WIFE?

20 A NOT THAT I CAN RECALL.

21 MR. CRAIN: OKAY.

22 I DON'T HAVE ANYTHING FURTHER.

23 THANK YOU.

24 THE COURT: CROSS EXAMINATION?

25 MR. MC MULLEN: YES, YOUR HONOR.

26 MAY I JUST HAVE A MOMENT, YOUR HONOR.

27 THE COURT: YES.

28 (PAUSE.)

CROSS-EXAMINATION @

1
2
3
4 BY MR. MC MULLEN:

5 Q SIR, PRIOR TO COMING IN TO TESTIFY TODAY DID
6 YOU TALK TO YOUR WIFE, CONNIE, ABOUT YOUR TESTIMONY?

7 A JUST BRIEFLY.

8 Q WHEN DID THAT CONVERSATION TAKE PLACE?

9 A LAST EVENING.

10 Q DID SHE TALK ABOUT WHAT SHE HAD TESTIFIED TO?

11 A IN GENERALITY.

12 Q WHAT DID SHE SAY TO YOU?

13 A JUST WHAT I RELATED TO THE COURT.

14 Q COULD YOU TELL US WHAT IT IS SHE TOLD YOU?

15 A SHE TOLD ME THE STORY ABOUT, JUST REITERATED
16 THE FACTS ABOUT RON LEVIN AND THE MEETING AT THE
17 RESTAURANT AND HOW IT OCCURRED.

18 Q SIR, DO YOU REMEMBER SIGNING A DECLARATION
19 RELATING TO WHAT HAPPENED IN MYKONOS?

20 A I BELIEVE I DID WITH THE POLICE OF BEVERLY
21 HILLS.

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

23 THE COURT: YES.

24 MR. CRAIN: YOUR HONOR --

25 MR. MC MULLEN: BEFORE I DO THAT, WITH THE COURT'S
26 PERMISSION WE WOULD LIKE TO HAVE MARKED AS RESPONDENT'S
27 EXHIBIT K FOR IDENTIFICATION DECLARATION OF MR. GERRARD.

28 IF I MAY I APPROACH THE WITNESS.

1 THE COURT: IT WILL BE MARKED AS K.

2

3 (MARKED FOR ID ^ RESPONDENT'S. K, DOCUMENT.)

4

5 BY MR. MC MULLEN:

6 Q TURNING TO THE SECOND PAGE OF THAT EXHIBIT,
7 IS THAT YOUR SIGNATURE THERE?

8 A YES. IT IS, YES.

9 Q AND YOU SIGNED THIS DECLARATION UNDER PENALTY
10 OF PERJURY; IS THAT CORRECT?

11 A YES.

12 Q SO EVERYTHING IN THIS DECLARATION IS
13 ACCURATE?

14 A YES.

15 Q NOW, THE SIGNATURE ON THAT DECLARATION IS
16 DATED DECEMBER 27, 1990?

17 A YES.

18 Q IS IT FAIR TO SAY, SIR, THAT YOUR
19 RECOLLECTION OF THE EVENTS THAT OCCURRED IN MYKONOS WERE
20 FRESHER IN YOUR MIND AT THAT TIME THAN THEY ARE NOW?

21 A I WOULD SAY THEY ARE THE SAME.

22 Q I WOULD LIKE TO DRAW YOUR ATTENTION TO THE
23 SECOND PARAGRAPH FROM THE BOTTOM ON THE FIRST PAGE. THE
24 SECOND SENTENCE STARTS WITH THE WORDS (READING):

25 "I AM NOT THAT FAMILIAR WITH
26 MR. LEVIN'S APPEARANCE, NOR DID I
27 GET A GOOD LOOK AT THE FACE OF THE
28 BEARDED MAN ANYTIME WHILE HE WAS IN

1 THE RESTAURANT."

2 A YES.

3 Q YOU HAVE JUST TESTIFIED THAT YOU ACTUALLY
4 IDENTIFIED THE MAN IN THE RESTAURANT AS THE PERSON WHO IS
5 IN PETITIONER'S EXHIBIT 1; IS THAT CORRECT?

6 A I SAID THAT I DID NOT RECOGNIZE HIM AT THE
7 TIME, BUT I DO NOW.

8 Q ABOUT WHAT TIME WAS IT WHEN YOU WENT INTO THE
9 RESTAURANT? WHAT TIME OF DAY?

10 A 2 O'CLOCK. 3 O'CLOCK IN THE AFTERNOON,
11 SOMEWHERE IN THERE.

12 Q WHEN YOU WENT INTO THE RESTAURANT, WAS
13 ANYBODY PRESENT IN THE RESTAURANT?

14 A A LADY WHO OWNED THE RESTAURANT.

15 Q WAS THERE ANYBODY ELSE PRESENT IN THE
16 RESTAURANT?

17 A NO.

18 Q COULD YOU DESCRIBE WHAT THE RESTAURANT
19 APPEARED LIKE? WHAT THE INTERIOR OF IT WAS LIKE?

20 A YES. IT WAS VERY SMALL. IT HAD THREE OR
21 FOUR TABLES. THERE WAS A SMALL BAR IN ONE AREA OF IT, AND
22 THAT'S ALL I REMEMBER ABOUT IT. IT WAS VERY SMALL.

23 Q AND WHAT WAS THE LIGHTING -- WHAT WERE THE
24 LIGHTING CONDITIONS LIKE?

25 A NORMAL FOR A DAY OF THAT NATURE. I DON'T
26 REMEMBER WHAT THE LIGHTING, WHETHER THEY HAD FLUORESCENT
27 LIGHTING OR REGULAR LIGHTING. I DON'T REMEMBER THAT AT
28 ALL. BUT THERE WAS ENOUGH LIGHT.

1 Q AND WHERE DID YOU SIT WHEN YOU WENT AFTER YOU
2 GOT INSIDE THE RESTAURANT?

3 A AT ONE OF THE THREE OR FOUR TABLES WHICH THE
4 LADY SAT US AT.

5 Q AND WHERE IN THE RESTAURANT DID YOU SIT? WAS
6 IT TOWARDS THE FRONT OR THE BACK?

7 A I GUESS IT WAS TOWARDS THE BACK. IT IS HARD
8 TO REMEMBER. IT WAS VERY SMALL.

9 Q HOW MANY TABLES WERE THERE?

10 A THREE OR FOUR.

11 Q DID YOU SIT -- CAN YOU DESCRIBE WHICH TABLE
12 YOU SAT AT? WAS IT THE VERY LAST ONE?

13 A IT WAS THE LAST ONE, AND THE TABLES WERE
14 OPPOSITE THE DOOR.

15 Q SO DID YOU AND YOUR WIFE ORDER FOOD THERE?

16 A YES.

17 Q HOW DID YOU ORDER THE FOOD?

18 A WE ORDERED IN GREEK.

19 Q DID THE OWNER COME TO YOUR TABLE?

20 A YES.

21 Q DO YOU REMEMBER WHAT YOU ORDERED?

22 A YES.

23 Q WHAT DID YOU ORDER?

24 A LAMB.

25 Q AND DID YOU RECEIVE FOOD BEFORE OR -- THE MEN
26 CAME IN?

27 A NO.

28 Q HOW LONG WERE YOU THERE BEFORE YOU NOTICED

1 THE DOOR OPEN?

2 A ABOUT FIVE MINUTES.

3 Q SIR, AT THAT PARTICULAR TIME DID YOU HAVE ANY
4 KIND OF PROBLEMS WITH YOUR EYESIGHT?

5 A I DO HAVE GLAUCOMA.

6 Q DID YOU HAVE THAT PROBLEM AT THAT PARTICULAR
7 TIME WHEN YOU WERE IN MYKONOS?

8 A YES. I HAD AN OPERATION THAT YEAR IN '87.

9 Q WAS THAT PRIOR TO YOU GOING THERE?

10 A YES.

11 Q AND WHAT WAS THE CONDITION OF YOUR EYESIGHT
12 WHEN YOU WERE IN THE RESTAURANT THAT DAY?

13 A JUST WHAT IT IS TODAY.

14 Q WAS IT GOOD? DO YOU HAVE PROBLEMS WITH YOUR
15 EYESIGHT AT THAT TIME?

16 A NO PROBLEM. I AM ABLE TO DRIVE. I HAVE MY
17 DRIVER'S LICENSE. I HAVE NO PROBLEM.

18 Q SIR, I AM SORRY, HOW LONG BEFORE YOU NOTICED
19 THE DOOR OPEN?

20 A ABOUT FIVE MINUTES.

21 Q AND WHAT -- WHERE WERE YOU IN RELATIONSHIP TO
22 THE FRONT DOOR OF THE PLACE?

23 A OPPOSITE THE FRONT DOOR.

24 Q WERE YOU FACING IT, OR WAS YOUR BACK TO IT?

25 A NO. MY RIGHT SIDE WAS TO THE, FACING THE
26 DOOR.

27 Q SO -- AND WHERE WAS YOUR WIFE IN RELATION TO
28 THE DOOR?

1 A DIRECTLY IN FRONT OF ME. AT -- HER LEFT SIDE
2 WAS FACING THE DOOR.

3 Q SO WHAT DIRECTION -- WELL, WHEN THE DOOR
4 OPENED, DID YOU LOOK TO SEE WHO WAS COMING IN?

5 A WE LOOKED UP WHEN THE DOOR OPENED, YES.

6 Q AND SO WHAT DIRECTION WOULD YOU HAVE HAD TO
7 HAVE TURNED TO SEE THE DOOR FROM WHERE YOU WERE SITTING?

8 A TO MY RIGHT.

9 Q AND YOUR WIFE, WHICH WAY WOULD SHE HAVE HAD
10 TO TURN TO SEE THE DOOR WHEN IT OPENED?

11 A TO HER LEFT.

12 Q DID SHE DO THAT?

13 A YES.

14 Q AND WHAT HAPPENED AFTER THE MEN CAME IN?

15 A THEY WERE SEATED BY THE LADY, AND MY WIFE
16 LEANED OVER, AND I HAVE JUST TESTIFIED, WHISPERED TO ME,
17 AND THE GENTLEMAN, ONE OF THE GENTLEMEN CAME IN AND IT WAS
18 RON LEVIN.

19 Q HAD THEY SAT DOWN BEFORE SHE SAID THAT?

20 A YES.

21 Q WHERE DID THEY SIT?

22 A DIRECTLY BEHIND US. MR. LEVIN'S BACK WAS TO
23 MY WIFE'S BACK.

24 Q SO CLOSER TO THE DOOR THAN YOU WERE, THE
25 FRONT DOOR?

26 A NO. THE TABLES WERE PARALLEL TO THE DOOR,
27 PERPENDICULAR TO THE DOOR.

28 Q SO BEFORE THE MAN SAT DOWN, YOUR WIFE SAID

1 SOMETHING TO YOU?

2 A JUST AT THE TIME THEY SAT DOWN SHE LEANED
3 OVER AND WHISPERED TO ME.

4 Q AND WHAT DID SHE SAY?

5 A SHE SAID, "THE GENTLEMAN WHO JUST CAME IN,
6 JERRY, YOU ARE NOT GOING TO BELIEVE IS RON LEVIN."

7 Q DID YOU HAVE ANY KIND OF REACTION?

8 A IT WAS DISBELIEF, BUT I WAS REALLY SURPRISED.

9 Q WHY WERE YOU SURPRISED?

10 A BECAUSE I THOUGHT THAT I READ THAT HE HAD
11 BEEN DEAD.

12 Q AND WHERE DID YOU READ THAT?

13 A IN THE NEWSPAPER, HEARD IT ON THE RADIO.

14 Q DID YOU KNOW AT THE TIME THAT YOU WERE IN
15 MYKONOS THAT THERE HAD BEEN A MURDER TRIAL IN RELATION TO
16 THE DEATH OF RON LEVIN?

17 A YES.

18 Q AND THAT A MAN HAD BEEN CONVICTED?

19 A YES.

20 Q AT SOME POINT DID YOUR FOOD COME?

21 A YES.

22 Q AND WAS THAT BEFORE OR AFTER THE MAN LEFT THE
23 RESTAURANT?

24 A I BELIEVE IT WAS AFTER THEY LEFT.

25 Q WHAT HAPPENED AFTER YOUR WIFE WHISPERED THIS
26 TO YOU THAT SHE HAD SEEN RON LEVIN?

27 A SHE INDICATED TO ME THAT WE WERE NOT TO TALK,
28 SHE WANTED TO LISTEN TO THE CONVERSATION THAT THE

1 GENTLEMEN WERE HAVING.

2 Q NOW, DID -- PRIOR TO YOUR WIFE COMMENTING TO
3 YOU THAT SHE CLAIMED SHE SAW RON LEVIN, DID YOU NOTICE THE
4 TWO MEN? I MEAN, DID YOU PAY ATTENTION TO THESE TWO MEN
5 THAT CAME IN?

6 A NO, I JUST NOTICED THAT ONE WAS TALL, THE
7 OTHER WAS SHORT. THAT WAS ALL.

8 Q THE SHORTER OF THE TWO ABOUT WHAT WAS HIS
9 HEIGHT?

10 A ABOUT MY HEIGHT, 5'8".

11 Q AND THE TALLER MAN, HOW TALL WAS HE?

12 A ABOUT SIX FEET.

13 Q SIR, DO YOU REMEMBER TESTIFYING IN SAN MATEO
14 ABOUT THIS CASE; IS THAT CORRECT?

15 A YES.

16 MR. MC MULLEN: COUNSEL, I WOULD DRAW YOUR
17 ATTENTION TO THE TRANSCRIPT OF THE PROCEEDINGS IN THE SAN
18 MATEO COUNTY SEPTEMBER 29, 1992, PAGE 672 STARTING AT LINE
19 22.

20 BY MR. MC MULLEN:

21 Q (READING):

22 "Q WHEN YOU SAY THAT THE SHORTER
23 PERSON WAS SOME SIX TO EIGHT TO A
24 FOOT SHORTER THAN THE TALLER PERSON,
25 IS THERE ANYWAY THAT YOU CAN GIVE US
26 AN ESTIMATE OF HOW TALL, THEN, OF
27 THAT TALLER PERSON?

28 A I WOULD SAY HE WAS ABOUT

1 5'10", I MEAN THE SHORTER ONE."

2 GOING OVER TO PAGE 673 (READING):

3 "Q THE SHORTER PERSON WAS 5'10"?

4 A YES.

5 Q AND THEN THE TALLER PERSON
6 WAS SOME SIX TO EIGHT INCHES OR A
7 FOOT TALLER?

8 A YES."

9 DO YOU REMEMBER TESTIFYING TO THAT IN SAN
10 MATEO, SIR?

11 A NO, I DON'T REMEMBER.

12 THE COURT: I AM SORRY, YOUR ANSWER IS?

13 THE WITNESS: NO.

14 BY MR. MC MULLEN:

15 Q DO YOU REMEMBER ANYTHING ABOUT THE MANNER,
16 THE WAY THEY WERE DRESSED? LET'S START WITH THE TALLER
17 MAN.

18 A JUST VERY WELL.

19 Q COULD YOU DESCRIBE HOW THE TALLER MAN WAS
20 DRESSED?

21 A NO, I CAN'T. I DIDN'T PAY THAT MUCH
22 ATTENTION TO HIM.

23 Q CAN YOU DESCRIBE THE FACIAL APPEARANCE OF THE
24 TALLER MAN?

25 A YES. HE WAS BEARDED. STUBBY BEARDS, LIKE A
26 VANDYKE AND GRAYISH HAIR.

27 Q HOW WAS THE HAIR COMBED?

28 A STRAIGHT BACK. I DON'T REMEMBER. I JUST

1 DON'T.

2 Q SHORTER MAN, WHAT DO YOU REMEMBER ABOUT HIM?

3 A NOTHING.

4 Q WHEN YOUR WIFE WHISPERED TO YOU THAT SHE HAD
5 SEEN RON LEVIN DID SHE INDICATE WHICH MAN SHE WAS
6 REFERRING TO?

7 A THE MAN WHO WAS SITTING DIRECTLY BEHIND HER.

8 Q WOULD THAT HAVE BEEN THE TALLER OR SHORTER
9 MAN?

10 A THE TALLER.

11 Q ONCE SHE SAID THAT, I TAKE IT, YOU HADN'T
12 REALLY PAID CLOSE ATTENTION TO EITHER MAN IN TERMS OF THE
13 WAY THEY LOOKED?

14 A NO, I HAVEN'T.

15 Q AFTER SHE SAID THAT TO YOU, DID YOU GET AN
16 OPPORTUNITY TO GET A CLOSER LOOK AT EITHER MAN?

17 A I TOLD YOU WHEN HE PASSED OUR TABLE TO GO TO
18 THE BATHROOM, I LOOKED AT RON LEVIN MORE CLOSELY.

19 Q NOW, HOW LONG WERE THE MEN THERE BEFORE YOU
20 SAY ONE OF THEM GOT UP AND WENT TO THE RESTROOM?

21 A THERE WAS RON LEVIN WHO GOT UP AND WENT TO
22 THE RESTROOM, YES.

23 Q AND HOW LONG WERE THEY THERE BEFORE THAT
24 HAPPENED?

25 A FIVE MINUTES OR SO. TEN MINUTES AT THE MOST.

26 Q PLEASE DESCRIBE WHAT HAPPENED WHEN THIS MAN
27 GOT UP AND WENT TO THE RESTROOM.

28 A QUICKLY PASSED US INTO THE RESTROOM. WHEN HE

1 CAME OUT, HE STOPPED ALONGSIDE OF ME SUDDENLY. I GLANCED
2 UP AT HIM, AND HE WAS LOOKING DOWN AT MY WIFE AS SHE
3 LOOKED UP AT HIM, AND I NOTICED A VERY PALE EXPRESSION ON
4 HIS FACE. HE JUST QUICKLY, INSTANTLY MOVED FORWARDS,
5 AGAIN SAT DOWN, LEANED FORWARD, TALKED TO HIS FRIEND, AND
6 THEY LOOKED UP, ORDERED THE LADY TO COME OVER AND ASKED
7 FOR THEIR CHECK.

8 Q NOW, YOU HAVE DESCRIBED THAT HE LOOKED DOWN
9 AND HE APPEARED TO LOOK AT YOUR WIFE?

10 A YES.

11 Q WAS THAT ON THE WAY TO THE RESTROOM?

12 A ON THE WAY BACK.

13 Q IF YOU COULD, TAKE ANOTHER LOOK AT
14 RESPONDENT'S EXHIBIT K, WHICH IS YOUR DECLARATION RIGHT IN
15 FRONT OF YOU. BEFORE I HAVE YOU REFER TO A PARTICULAR
16 SECTION, DID YOUR WIFE REMAIN SEATED AT THE TABLE WHEN THE
17 MAN WENT BACK TO THE RESTROOM?

18 A YES.

19 Q IF YOU COULD LOOK, AT THE THIRD PARAGRAPH
20 FROM THE BOTTOM OF PAGE ONE ON THAT EXHIBIT K. YOU STATE
21 THERE (READING):

22 "A FEW MINUTES LATER MY WIFE
23 GOT UP TO USE THE RESTROOM. AS SHE
24 DID THIS, THE BEARDED MAN APPARENTLY
25 RETURNED FROM THE RESTROOM, WALKED
26 PAST MY WIFE. HE THEN PICKED UP THE
27 BOTTLE OF WINE AT HIS TABLE AND LEFT
28 THE RESTAURANT WITH HIS COMPANION."

1 DO YOU REMEMBER THAT IN YOUR DECLARATION?

2 A WELL, IT IS WRITTEN HERE. I REMEMBER IT. I
3 DON'T REMEMBER MY WIFE AT THIS TIME GOING TO THE RESTROOM,
4 THAT I DON'T REMEMBER.

5 Q AND IT MENTIONS NOTHING IN THERE -- IN FACT,
6 WHY DON'T YOU GO AHEAD AND LOOK THROUGH YOUR WHOLE
7 DECLARATION THERE AND SEE IF YOU CAN POINT OUT ANYWHERE
8 WHERE IT STATES YOU SAW THE MAN'S FACE PALE.

9

10 (WITNESS COMPLIES.)

11

12 A NO, I DON'T. BUT I DID TESTIFY TO THAT FACT
13 AT THE TRIAL.

14 BY MR. MC MULLEN:

15 Q WHY DID YOU CHANGE YOUR MIND ON THAT?

16 MR. CRAIN: THAT'S AN IMPROPER QUESTION. IT
17 ASSUMES FACT NOT IN EVIDENCE.

18 THE COURT: SUSTAINED.

19 MR. CRAIN: THANK YOU.

20 BY MR. MC MULLEN:

21 Q WHEN YOU SIGNED THAT DECLARATION WITH RESPECT
22 TO THE EVENTS DESCRIBING, IN DESCRIBING THE EVENTS OF WHAT
23 HAPPENED IN MYKONOS THAT IN YOUR MIND IS WHAT HAPPENED THE
24 WAY YOU DESCRIBED IT THERE?

25 A YES.

26 Q AND THEN LATER YOU TESTIFIED, YOU TESTIFIED
27 TWO YEARS LATER; IS THAT CORRECT?

28 A YES.

1 Q IN 1992?

2 A YES.

3 Q AND YOUR STORY OF WHAT HAPPENED INSOFAR AS
4 YOUR WIFE REMAINING AT THE TABLE WHEN THE MAN WENT TO THE
5 RESTROOM WAS DIFFERENT THAN WHAT'S IN YOUR DECLARATION; IS
6 THAT CORRECT?

7 A ESSENTIALLY, NO. IT DOESN'T MATTER WHETHER
8 MY WIFE WENT TO THE RESTROOM OR SHE DIDN'T. THE FACT
9 REMAINS THAT WHEN HE WENT TO THE RESTROOM THOSE ARE THE
10 PERTINENT FACTS, THOSE ARE THE ONES THAT I REMEMBER. WHEN
11 MY WIFE WENT TO THE RESTROOM IS TOTALLY INSIGNIFICANT.

12 Q AT WHAT POINT IN TIME WHEN YOU WERE IN THE
13 RESTAURANT DID YOU RECOGNIZE RON LEVIN?

14 A I NEVER RECOGNIZED HIM.

15 Q AT WHAT POINT IN TIME DID YOU DECIDE THAT THE
16 MAN AT THE RESTAURANT WAS RON LEVIN?

17 A I DIDN'T DECIDE. MY WIFE DID.

18 Q SO YOUR TESTIFYING TODAY WHEN YOU IDENTIFIED
19 THE MAN IN PETITIONER'S EXHIBIT 1 AS BEING RON LEVIN, THE
20 MAN THAT WAS AT THE RESTAURANT, THAT'S BASED UPON WHAT
21 YOUR WIFE HAS TOLD YOU AND NOT WHAT YOU HAVE INDEPENDENTLY
22 OBSERVED; IS THAT RIGHT?

23 A ALSO, THE FACT THAT AT THE TIME THAT I LOOKED
24 UP AND SAW HIS FACE STANDING WHEN HE WAS STANDING RIGHT
25 BESIDE ME.

26 Q NOW, AT WHAT POINT IN TIME WAS THAT?

27 A WHEN HE CAME BACK FROM THE RESTROOM.

28 Q SO YOU ARE SAYING NOW THAT WHEN HE CAME BACK

1 FROM THE RESTROOM YOU LOOKED AT HIS FACE AND YOU
2 RECOGNIZED THAT IT WAS RON LEVIN?

3 A NO, I DID NOT SAY THAT.

4 Q OKAY.

5 WHAT IS IT YOU SAID?

6 A I JUST DESCRIBED WHAT HE LOOKED LIKE AND WHAT
7 HAPPENED TO HIM WHEN HE LOOKED DOWN AT MY WIFE. I DID NOT
8 RECOGNIZE HIM AS RON LEVIN AT THAT TIME.

9 Q AT WHAT POINT IN TIME DID YOU RECOGNIZE HIM
10 AS BEING RON LEVIN?

11 A AFTER I SAW THESE PICTURES.

12 Q JUST NOW TODAY IN COURT?

13 A YES.

14 Q SO THIS IS 1996, HAVE YOU EVER BEEN SHOWN A
15 PICTURE OF RON LEVIN?

16 A I DID SEE THE PICTURES AT THE ATTORNEY'S
17 OFFICE.

18 Q WHEN WAS THAT?

19 A ABOUT A WEEK AGO.

20 Q AND DID YOU RECOGNIZE -- WELL, WAS IT A
21 PICTURE OF RON LEVIN THAT YOU WERE SHOWN?

22 A YES, IT WAS RON LEVIN.

23 Q WAS IT THAT ACTUAL PICTURE THAT YOU HAVE IN
24 FRONT OF YOU?

25 A YES.

26 THE COURT: INDICATING EXHIBIT 1.

27 MR. MC MULLEN: THANK YOU

28

1 BY MR. MC MULLEN:

2 Q AND IS IT -- AT THAT POINT IN TIME THAT WAS
3 THE FIRST TIME THAT YOU THOUGHT THAT THE PERSON YOU SAW IN
4 MYKONOS WAS RON LEVIN?

5 A YES.

6 Q BUT YOU WERE UNABLE TO RECOGNIZE HIM WHEN YOU
7 WERE IN THE RESTAURANT?

8 A YES. NO, I WAS NOT.

9 THE COURT: I AM SORRY. I AM NOT CLEAR. YOU SAID,
10 "YES, I WAS NOT"?

11 THE WITNESS: NO, I WAS NOT ABLE TO RECOGNIZE HIM.

12 THE COURT: ALL RIGHT.

13 BY MR. MC MULLEN:

14 Q WHEN YOU TESTIFIED THAT AT THE TIME YOU WERE
15 IN MYKONOS YOU WERE AWARE THAT RON LEVIN -- WELL, YOU WERE
16 AWARE THAT RON LEVIN WAS A SUBJECT OF A MURDER TRIAL WHERE
17 SOMEONE HAD BEEN CONVICTED; IS THAT CORRECT?

18 A YES.

19 Q DID YOU SAY ANYTHING TO THIS MAN WHO YOUR
20 WIFE CLAIMED WAS RON LEVIN AT THE TIME WHEN YOU WERE AT
21 THE RESTAURANT?

22 A NO.

23 Q WHY NOT?

24 A I DIDN'T KNOW THE MAN, AS I TOLD YOU, OR
25 DIDN'T GET INVOLVED IN ANYTHING LIKE THAT WITH THE
26 SUPPOSED PERSON OF THE NATURE OF HIS CHARACTER. I DIDN'T
27 WANT TO GET INVOLVED AND CONFRONT HIM AT ALL.

28 Q NOW, WHAT DID YOU KNOW ABOUT THIS MAN'S

1 CHARACTER AT THAT TIME?

2 A THAT HE WAS A CON MAN, THAT HE DIDN'T WORK,
3 THAT HE SAID HE WAS AN ATTORNEY, THAT HE SAID HE WAS VERY
4 WEALTHY, WAS THE SON OF VERY WEALTHY PARENTS, AND THAT HE,
5 FROM TALKING TO MY DAUGHTER AND MY SON-IN-LAW I HEARD THAT
6 HE WAS A CON MAN.

7 Q SO THAT IS WHY YOU DIDN'T APPROACH HIM?

8 A YES.

9 Q DID YOUR WIFE MENTION WHILE YOU WERE AT THE
10 RESTAURANT AT SOME TIME THAT SHE WAS AWARE THAT RON LEVIN
11 WAS SUPPOSED TO BE DEAD?

12 A NOT AT THE RESTAURANT.

13 Q AFTER YOU CAME BACK FROM YOUR TRIP TO GREECE
14 YOU DIDN'T MAKE ANY EFFORT TO CONTACT THE POLICE OR THE
15 DISTRICT ATTORNEY WITH RESPECT TO WHAT HAD OCCURRED IN
16 MYKONOS; IS THAT CORRECT?

17 A NO, I DIDN'T.

18 Q WHY NOT?

19 A I DIDN'T WANT TO GET INVOLVED. I DIDN'T KNOW
20 THE MAN THAT WELL. I DIDN'T FEEL THAT I HAD SUCH DIRECT
21 KNOWLEDGE ABOUT HIM, OR THAT I COULD IDENTIFY HIM. I JUST
22 LEFT IT UP TO MY WIFE.

23 Q BUT YOU WERE AWARE, YOU WERE AWARE THAT A MAN
24 HAD BEEN CONVICTED FOR THE MURDER OF THIS MAN THAT YOUR
25 WIFE CLAIMS TO HAVE SEEN IN MYKONOS; IS THAT CORRECT?

26 A YES.

27 Q BY THE WAY, BEFORE YOU WENT TO THE RESTAURANT
28 YOU SAID THAT DAY IT WAS RAINING. DID YOU GET WET WHEN

1 YOU WERE WALKING AROUND?

2 A WE CERTAINLY DID.

3 Q DID YOU HAVE ANY KIND OF RAINCOATS OR
4 ANYTHING LIKE THAT?

5 A WE HAD UMBRELLAS. I BELIEVE THAT WAS ALL.
6 AND AN OVERCOAT.

7 MR. MC MULLEN: YOUR HONOR, BY ANY CHANCE DO YOU
8 HAVE ANY DIAGRAM PAPER?

9 THE COURT: PROBABLY.

10 MR. MC MULLEN: I WAS WONDERING, IT MIGHT BE
11 HELPFUL, I WOULD THINK, UNDER THE CIRCUMSTANCES TO HAVE
12 THIS WITNESS DRAW A DIAGRAM OF THE RESTAURANT, IF THAT
13 WOULD BE --

14 THE COURT: CHRISTINA HAS SOME PAPER SOMEWHERE. I
15 DON'T KNOW WHERE SHE KEEPS IT.

16 HELEN, DO YOU KNOW WHERE SHE KEEPS THE
17 DIAGRAM PAPER?

18 THE COURT REPORTER: SHE USUALLY KEEPS SOME BEFORE
19 THE DESK AND THE WALL THERE.

20 THE COURT: MR. MC MULLEN, WHY DON'T YOU CHECK
21 BEHIND THE DOOR AND SEE IF THERE IS ANY UP THERE, WHILE
22 THE CLERK IS LOOKING FOR SOME DIAGRAM PAPER.

23 THERE YOU GO.

24 BY MR. MC MULLEN:

25 Q THE MEN THAT CAME IN THE RESTAURANT WERE THEY
26 WEARING ANY -- WERE THEY WEARING ANY RAIN GEAR?

27 A NOT THAT I RECALL.

28 Q SIR --

1 MR. MC MULLEN: WITH THE COURT'S PERMISSION.

2 THE COURT: YOU WANT HIM TO DRAW A DIAGRAM?

3 MR. MC MULLEN: YES.

4 THE COURT: WE ARE GOING TO MARK THAT AS NEXT IN
5 ORDER, WHICH WOULD BE QQ.

6 MR. MC MULLEN: THANK YOU

7

8 (MARKED FOR ID ^ DEF. QQ, DIAGRAM.)

9

10 BY MR. MC MULLEN:

11 Q MAYBE YOU CAN GRAB THAT BIG BLACK MARKER.

12 MR. MC MULLEN: I WILL PUT A QQ UP IN THE UPPER
13 RIGHT PART OF THE PAPER.

14 BY MR. MC MULLEN:

15 Q SIR, CAN YOU JUST DRAW THE RESTAURANT OUT
16 FROM THE BIRD'S-EYE VIEW?

17

18 (WITNESS COMPLIES.)

19

20 Q COULD YOU INDICATE WHERE THE FRONT DOOR WAS?

21

22 (WITNESS COMPLIES.)

23

24 Q COULD YOU PUT -- YOU HAVE INDICATED, YOU
25 SPELLED OUT "DOOR"; IS THAT CORRECT?

26 A UH-HUH.

27 Q NOW, WHERE WAS THE BAR LOCATED? YOU
28 TESTIFIED THERE WAS SOME KIND OF A BAR?

1 A I BELIEVE IT WAS OVER HERE (INDICATING).

2 THE COURT: SIR, YOU HAVE TO SPEAK UP SO EVERYONE
3 CAN HEAR.

4 THE WITNESS: I BELIEVE THE BAR WAS HERE
5 (INDICATING).

6 BY MR. MC MULLEN:

7 Q WRITE IN BAR THERE.

8 AND PLEASE GO AHEAD AND DRAW IN THE TABLES IN
9 THE RESTAURANT.

10

11 (WITNESS COMPLIES.)

12

13 A THERE WERE FOUR. THEY WERE LINED UP LIKE
14 THIS (INDICATING).

15 MR. MC MULLEN: AND YOU HAVE INDICATED FOUR, FOR
16 THE RECORD, FOUR CIRCLES ON THE LEFT PART OF THE DRAWING.

17 BY MR. MC MULLEN:

18 Q NOW, WHERE -- COULD YOU INDICATE WHERE THE
19 RESTROOM WAS?

20 A DOWN HERE (INDICATING).

21 Q COULD YOU PUT AN "R" THERE.

22

23 (WITNESS COMPLIES.)

24

25 Q NOW, WHICH TABLE WERE YOU AND YOUR WIFE AT?
26 CAN YOU PUT AN "X" WHERE THE TABLE WAS WHERE YOU AND YOUR
27 WIFE WERE AT?

28

1 (WITNESS COMPLIES.)

2

3 A YES.

4 Q COULD YOU PUT A "C" WHERE YOUR WIFE WAS
5 SITTING.

6

7 (WITNESS COMPLIES.)

8

9 Q AND COULD YOU PUT A "J" WHERE YOU WERE
10 SITTING.

11

12 (WITNESS COMPLIES.)

13

14 Q AND THEN, WHERE WERE THE MEN SITTING?

15 A AT THIS TABLE (INDICATING).

16 Q AND COULD YOU PUT A "T" WHERE THE TALLER MAN
17 WAS SITTING AND A "S" WHERE THE SMALLER MAN WAS SITTING?

18

19 (WITNESS COMPLIES.)

20

21 A THE TABLES WERE CLOSE TOGETHER.

22 Q NOW -- PARDON ME?

23 A THE TABLES WERE CLOSE TOGETHER. I AM SORRY
24 ABOUT THAT.

25 Q SO WHEN -- YOU SAY THE TALLER MAN AT SOME
26 POINT IN TIME WENT TO THE RESTROOM. COULD YOU JUST DRAW A
27 DOTTED LINE FOR THE ROUTE THAT HE TOOK, AND HOW LONG WAS
28 HE IN THE RESTROOM BEFORE HE CAME BACK?

1 (WITNESS COMPLIES.)

2

3 A JUST A COUPLE OF MINUTES.

4 Q DO YOU KNOW WHETHER THE MAN HAD BEEN SERVED
5 ANY FOOD BEFORE THE MAN, THE TALLER OF THE TWO WENT TO THE
6 RESTROOM?

7 A I DON'T BELIEVE SO. I DON'T REMEMBER. I
8 DON'T BELIEVE SO.

9 Q DO YOU KNOW IF THEY HAD ANYTHING TO DRINK?

10 A THEY BROUGHT A BOTTLE OF WINE WITH THEM.

11 Q WERE THEY DRINKING BEFORE THE TALLER OF THE
12 TWO MEN WENT TO THE RESTROOM?

13 A I DON'T KNOW. I COULDN'T SEE.

14 THE COURT: I AM SORRY. I COULD NOT HEAR YOU.
15 WHAT DID YOU SAY?

16 THE WITNESS: I AM SORRY. I COULDN'T SEE WHETHER
17 THEY WERE DRINKING OR NOT.

18 BY MR. MC MULLEN:

19 Q DID THE TALLER MAN TAKE THE SAME ROUTE BACK,
20 OR DID HE WALK IN A DIFFERENT ROUTE?

21 A HE TOOK THE EXACT SAME ROUTE BACK.

22 Q DID HE PAUSE WHEN HE GOT TO YOUR TABLE?

23 A PAUSED RIGHT HERE (INDICATING).

24 Q COULD YOU PUT -- YOU HAVE INDICATED A "P"?

25 A YES.

26 Q AND HOW LONG WAS HE THERE WHERE YOU HAVE PUT
27 THE "P"?

28 A THREE OR FOUR SECONDS.

1 Q WHAT HAPPENED DURING THAT -- YOU CAN RESUME
2 YOUR SEAT, SIR, PLEASE, IF YOU COULD, IT WOULD BE MORE
3 COMFORTABLE FOR YOU.

4 MR. MC MULLEN: YOUR HONOR, JUST SO THE RECORD IS
5 CLEAR, THERE IS ALREADY AN EXHIBIT QQ, WHICH IS -- WHICH
6 ARE TWO PHOTOGRAPHS OF MR. LEVIN'S OFFICE. THIS DIAGRAM
7 SHOULD BE RR.

8 THE COURT: I AM LOOKING AT YOUR EXHIBIT LIST.
9 LAST ONE THAT WAS TYPED IN WAS PP.

10 IS THE CLERK AWARE OF A QQ?

11 THE CLERK: LET ME CHECK.

12

13 (PAUSE.)

14

15 THE CLERK: IT SHOWS AN 8-BY-10 PHOTO ON 4/22.

16 THE COURT: ALL RIGHT.

17 WHAT'S THE NEXT IN ORDER? IS THERE ANYTHING
18 AFTER QQ?

19 THE CLERK: NO.

20 THE COURT: THIS WILL BE RR.

21 THE CLERK: RR.

22 THE COURT: THEN WE WILL REMARK THIS EXHIBIT RR. I
23 WILL ASK YOU TO DESIGNATE IT ON THERE.

24 MR. MC MULLEN: THANK YOU.

25

26 (WITHDRAWN = RESPONDENT'S QQ, DIAGRAM.)

27

28 (MARKED FOR ID = RESPONDENT'S RR, DIAGRAM.)

1

2 BY MR. MC MULLEN:

3 Q YOU SAY THE MAN PAUSED WHERE YOU PUT THE "P"
4 IN THE PICTURE FOR HOW LONG?

5 A A FEW SECONDS.

6 Q AND THEN WHAT HAPPENED DURING THOSE FEW
7 SECONDS?8 A I LOOKED UP AT HIM, AND I SAW HIM LOOKING
9 DOWN AT MY WIFE, AND SHE WAS LOOKING UP AT HIM.10 Q SO YOU FIRST LOOKED AT HIM AND THEN YOU MOVED
11 YOUR GAZE TO YOUR WIFE?

12 A YES.

13 Q AND NOTICED THAT SHE WAS LOOKING AT HIM?

14 A YES.

15 Q AND THEN WHAT HAPPENED?

16 A I TOLD YOU HIS FACE PALED AND HE WALKED BACK
17 TO HIS TABLE.18 Q SO YOU FIRST LOOKED AT HIM, YOU NOTICED HE
19 WAS LOOKING IN THE DIRECTION OF YOUR WIFE, SO YOU MOVED
20 YOUR GAZE TOWARDS YOUR WIFE. DID YOU NOTICE THAT YOUR
21 WIFE WAS LOOKING IN HIS DIRECTION?

22 A YES.

23 Q SO THEN, DID YOU TURN BACK TO LOOK AT HIM?

24 A NO.

25 Q SO WHEN DID YOU SEE HIS FACE PALE?

26 A WHEN I LOOKED AT HIM THE FIRST TIME.

27 Q THE FIRST TIME?

28 A YES.

1 Q DID YOU HAVE A CONVERSATION WITH YOUR WIFE
2 AFTER THESE TWO MEN LEFT ABOUT THE TWO MEN AND IN
3 PARTICULAR THE ONE THAT SHE IDENTIFIED?

4 A I DON'T REMEMBER EXACTLY, BUT I AM SURE WE
5 DID.

6 Q DID SHE SAY SHE WAS ASTOUNDED THAT SHE HAD
7 SEEN LEVIN?

8 A YES.

9 Q DID YOUR WIFE EVER SAY ANYTHING TO EITHER OF
10 THE TWO MEN WHILE YOU WERE ALL IN THE RESTAURANT?

11 A NO.

12 Q YOU TESTIFIED EARLIER ABOUT SOME BANKRUPTCY
13 PROCEEDING INVOLVING BOBBY ROBERTS. WHEN DID THAT OCCUR?

14 A I DON'T REMEMBER EXACTLY. SOMETIME AFTER
15 1973. IT WAS TOWARDS THE END OF THAT YEAR, THAT DECADE, I
16 WOULD SAY.

17 Q AND YOU WERE A CREDITOR?

18 A YES.

19 Q AND WHAT WAS THE DEBT INVOLVING?

20 A \$5000.

21 Q BUT WAS IT A PERSONAL LOAN, OR WHAT DID IT
22 INVOLVE?

23 A NO. IT WAS MONIES THAT HE OWED ME ON THE
24 CONSTRUCTION OF HIS POOL.

25 Q WHEN DID YOU HAPPEN TO RUN INTO HIM IN A
26 RESTAURANT IN ENCINO, AT WHAT POINT IN TIME WAS THAT?

27 A AFTER WE HAD COME BACK FROM SAN MATEO. I
28 DON'T REMEMBER EXACTLY WHEN, BUT A YEAR OR SO AGO.

1 Q I AM A LITTLE UNCLEAR ON THIS. DID YOU GO TO
2 THE RESTAURANT WITH HIM, OR DID YOU JUST HAPPEN TO SEE HIM
3 THERE?

4 A I WAS AT THE RESTAURANT BY MYSELF. I HAD
5 FINISHED EATING WAS WAITING IN A LITTLE ANTI ROOM THERE
6 FOR SOMEONE TO COME, WHO I WAS TO MEET, WHEN HE APPROACHED
7 ME.

8 Q YOU SAID HE THANKED YOU FOR YOUR TESTIMONY IN
9 THE TRIAL?

10 A YES.

11 Q WHY DO YOU THINK -- DID IT -- WELL, LET ME
12 WITHDRAW THAT.

13 WERE YOU SURPRISED THAT HE WOULD THANK YOU
14 FOR TESTIFYING IN THE TRIAL IN SAN MATEO?

15 A NO.

16 Q WHY?

17 A BECAUSE I KNEW THAT HIS DAUGHTER WAS GOING
18 WITH MR. HUNT.

19 Q AT THAT PARTICULAR TIME?

20 A I DON'T KNOW. I DON'T FOLLOW THAT THAT
21 CLOSELY.

22 Q WELL, DID YOU HAVE A PERCEPTION THAT HE WAS
23 APPRECIATIVE OF THE WAY YOU TESTIFIED IN SAN MATEO BECAUSE
24 OF THE RELATIONSHIP THAT MR. HUNT HAD WITH HIS DAUGHTER?

25 A NO, NOT AT ALL.

26 MR. CRAIN: WELL, THIS IS CALLING -- I THINK THIS
27 AREA CALLS FOR MIND READING AND SPECULATION.

28 THE COURT: I WILL ALLOW THE ANSWER TO STAND.

1 BY MR. MC MULLEN:

2 Q DID YOU KNOW THAT THE PERSON WHO WAS
3 CONVICTED FOR LEVIN'S MURDER COULD GET THE DEATH PENALTY?

4 A NO, I DID NOT KNOW THAT.

5 MR. CRAIN: WELL, THAT ALSO IS A MISSTATEMENT OF
6 HISTORICAL FACT. I MOVE TO STRIKE THE ANSWER. THE
7 QUESTION IS ALSO AMBIGUOUS. I MEAN TO TIME.

8 THE COURT: OVERRULED.

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

10 THE COURT: NO.

11 BY MR. MC MULLEN:

12 Q WHEN YOU WERE AT THE RESTAURANT DID YOU HEAR
13 THE TALLER MAN SPEAK?

14 A NO.

15 Q DID YOU HEAR EITHER OF THEM SPEAK?

16 A NO.

17 Q YOU TESTIFIED EARLIER THAT WHEN YOU CAME BACK
18 TO CALIFORNIA, I PRESUME, YOU HAD SOME SORT OF
19 CONVERSATION WHERE YOUR WIFE WAS INVOLVED AND YOUR
20 DAUGHTER AND BOB TUR REGARDING YOUR EXPERIENCE THAT
21 OCCURRED IN MYKONOS?

22 A YES.

23 Q WHEN DID THAT HAPPEN?

24 A AT THE AIRPORT WHEN WE LANDED.

25 Q SO VERY CLOSE IN TIME TO YOUR RETURN TRIP?

26 A YES.

27 Q DID IT OCCUR AT THE AIRPORT, OR WHERE DID IT
28 OCCUR?

1 A AT THE AIRPORT, MAYBE IN THE HELICOPTER AS
2 WELL BECAUSE THEY PICKED US UP IN THEIR HELICOPTER.

3 Q WHAT AIRPORT DID YOU LAND AT?

4 A L.A.X..

5 Q AND I AM A LITTLE CONFUSED ON THIS. DID YOU
6 JUST COME INTO THE REGULAR TERMINAL?

7 A YES.

8 Q AND THEN WHO MET YOU AND WHERE?

9 A MY DAUGHTER AND SON-IN-LAW MET US.

10 Q AND WHERE DID THEY MEET YOU?

11 A WHERE WE CAME OUT OF THE PLANE.

12 Q AND THEN WHERE DID YOU GO?

13 A WE WALKED UP TO THEIR HELICOPTER, WE GOT OUR
14 BAGS AND WALKED UP TO THE HELICOPTER.

15 Q SOMEWHERE THERE IN L.A.X. WHERE THERE WAS A
16 HELICOPTER?

17 A YES.

18 Q WHERE DID THE CONVERSATION FIRST OCCUR WITH
19 RESPECT TO WHAT HAD HAPPENED IN THE RESTAURANT IN MYKONOS?

20 A AFTER WE EXCHANGED OUR GREETINGS, WE ON OUR
21 WENT TO PICK UP OUR BAGGAGE.

22 Q SO AS YOU WERE WALKING?

23 A PROBABLY, YES.

24 Q AND WHAT WAS SAID -- HOW DID THE SUBJECT COME
25 UP ABOUT THIS?

26 A WELL, THE SUBJECT DIDN'T COME -- MY WIFE JUST
27 BROUGHT IT UP.

28 Q SO YOUR WIFE BROUGHT IT UP. WHAT DID SHE

1 SAY?

2 A SHE TOLD THEM THE STORY THAT WE JUST RELATED
3 TO YOU ABOUT MEETING RON LEVIN IN THE RESTAURANT ON
4 CHRISTMAS DAY ON THE ISLAND OF MYKONOS.

5 Q AND WHAT REACTION DID YOUR DAUGHTER HAVE?

6 A THEY WERE SURPRISED.

7 Q HOW DID SHE EXPRESS HER SURPRISE?

8 A WELL, SHE JUST LOOKED AND SAID IT IS
9 SURPRISING, BUT THEN AGAIN, IT MAY NOT BE BECAUSE
10 MR. LEVIN -- I REMEMBER SAYING, "HE PROBABLY JUST
11 COMMITTED THE ULTIMATE CON."

12 Q AND DID MR. TUR SAY ANYTHING?

13 A I DON'T REMEMBER.

14 Q DID YOUR DAUGHTER SUGGEST THAT YOUR WIFE OR
15 YOU OR BOTH OF YOU SHOULD GO TO THE POLICE OR THE DISTRICT
16 ATTORNEY'S?

17 A NO.

18 Q DID YOU EVER -- DID THE CONVERSATION CARRY ON
19 ANYWHERE ELSE OTHER THAN BETWEEN THE TIME THAT YOU WALKED
20 FROM WHERE YOU GOT OFF THE AIRPLANE TO GET YOUR BAGGAGE?

21 A NOT -- MY WIFE MAY HAVE, BUT NOT I.

22 Q DID YOU EVER HEAR ANY OTHER, OVERHEAR ANY
23 OTHER CONVERSATION WITH RESPECT TO WHAT HAPPENED IN
24 MYKONOS WHERE YOUR WIFE WAS PRESENT AND SOMEONE ELSE
25 BESIDES YOURSELF?

26 A I CAN'T RECALL SPECIFIC INCIDENTS, BUT I AM
27 SURE THAT THERE WERE TIMES WHEN I WAS PRESENT WHEN SHE WAS
28 RELATING THE STORY.

1 Q AND DO YOU REMEMBER WHO SHE WAS RELATING THE
2 STORY TO?

3 A PROBABLY I THINK I HEARD ON THE PHONE TELLING
4 MY DAUGHTER-IN-LAW.

5 Q WHO WOULD YOUR DAUGHTER BE? WHO IS THAT?

6 A SHE IS MARRIED TO MY SON.

7 Q WHAT'S HER NAME?

8 A KIMBERLY GERRARD.

9 Q AND DO YOU REMEMBER WHEN THAT TELEPHONE
10 CONVERSATION TOOK PLACE?

11 A NO, I DON'T.

12 Q DO YOU REMEMBER WHAT -- WELL, LET ME BACK UP.
13 COULD YOU HEAR WHAT YOUR WIFE WAS SAYING TO KIMBERLY?

14 A NO, I DON'T LISTEN ON MY WIFE'S CONVERSATION.
15 I JUST HEARD HER MENTION THE NAME RON LEVIN. I KNOW SHE
16 WAS TALKING ABOUT HIM. I JUST WENT ABOUT MY BUSINESS.

17 Q DO YOU KNOW WHEN THAT HAPPENED,
18 APPROXIMATELY, IN RELATIONSHIP TO WHEN YOU CAME BACK?

19 A TWO DAYS AFTERWARDS, I WOULD SAY.

20 Q DID YOU EVER OVERHEAR YOUR WIFE TELL ANYBODY
21 ELSE ABOUT WHAT HAPPENED IN MYKONOS?

22 A NOT THAT I CAN RECALL?

23 MR. MC MULLEN: IF I MIGHT JUST HAVE ONE MOMENT,
24 YOUR HONOR.

25

26 (PAUSE.)

27

28 MR. KLEIN: CAN I MAKE A PHONE CALL, YOUR HONOR?

1 THE COURT: YES.

2

3 (PAUSE.)

4

5 BY MR. MC MULLEN:

6 Q HOW DOES GLAUCOMA AFFECT YOUR EYESIGHT? DOES
7 IT HAVE ANY AFFECT?

8 A I HAVE GLAUCOMA IN BOTH MY EYES, BUT ONLY MY
9 LEFT EYE IS AFFECTED BY IT.

10 Q WHAT HAPPENS? HOW DOES THAT AFFECT YOUR
11 VISION?

12 A IT AFFECTS THE VISION OF MY LEFT EYE.

13 Q DOESN'T IT DIMINISH YOUR VISION, ESPECIALLY
14 AT NIGHT OR IN LOW-LIGHTING CONDITIONS?

15 A SOMEWHAT, BUT NOT TOO MUCH. I AM STILL ABLE
16 TO DRIVE.

17 Q YOU WERE NOT RESTRICTED FROM DRIVING AT NIGHT
18 ON YOUR LICENSE?

19 A NO, I AM NOT.

20 Q AND YOU HAD THAT GLAUCOMA CONDITION IN
21 DECEMBER OF 1987?

22 A YES, I DID.

23 Q DID YOU EVER TELL ANYBODY ABOUT THE STORY OR
24 WHAT HAPPENED TO YOU IN MYKONOS TO ANYBODY?

25 A YES, I TOLD THE STORY MANY TIMES.

26 Q WHO DID YOU TELL IT TO?

27 A TO MY SUBCONTRACTORS, TO A LOT OF PEOPLE.

28 Q DID YOU EVER TELL IT TO YOUR BANKER?

1 A I THINK I MENTIONED IT TO MARY WEIGHTMAN.

2 THE COURT: I AM SORRY, TO WHO?

3 THE WITNESS: YES. TO MY BANKER.

4 THE COURT: I AM SORRY, I DIDN'T HEAR WHAT YOU
5 SAID.

6 THE WITNESS: YES, I DID MENTION TO MY BANKER.

7 THE COURT: DID YOU SAY A NAME?

8 THE WITNESS: MARY WEIGHTMAN.

9 THE COURT: WEIGHTMAN?

10 THE WITNESS: W-E-I-G-H-T-M-A-N.

11 BY MR. MC MULLEN:

12 Q WHEN DID YOU MENTION IT TO THAT PERSON?

13 A I DON'T KNOW.

14 Q SO YOU MENTIONED IT TO NUMEROUS PEOPLE?

15 A YES.

16 Q DID ANY OF THEM EVER SUGGEST THAT YOU SHOULD
17 GO TO THE POLICE?

18 A NO.

19 Q DID ANY OF THEM TELL YOU THAT YOU SHOULDN'T
20 GET INVOLVED?

21 A NO.

22 MR. MC MULLEN: NOTHING FURTHER.

23 THE COURT: HOW DID YOU KNOW THAT MR. ROBERTS'
24 DAUGHTER WAS GOING OUT WITH MR. HUNT?

25 THE WITNESS: I AM SORRY?

26 THE COURT: HOW DO YOU KNOW THAT MR. ROBERTS'
27 DAUGHTER WAS GOING OUT WITH MR. HUNT?

28 THE WITNESS: MY WIFE TOLD ME.

1 THE COURT: DID SHE TELL YOU HOW SHE KNEW?

2 THE WITNESS: NO.

3 THE COURT: WHY DIDN'T YOU FILE A MECHANICS LIENS
4 AGAINST MR. ROBERTS' PROPERTY OVER THE POOL COMPLETION?

5 THE WITNESS: DID I?

6 THE COURT: DID YOU?

7 THE WITNESS: NO, I DIDN'T.

8 THE COURT: WHY DIDN'T YOU?

9 THE WITNESS: BECAUSE I TOOK HIM AT HIS WORD THAT
10 HE WAS GOING TO PUT ME IN THE BANKRUPTCY, AND THEN I WOULD
11 AT LEAST GET HALF THE MONEY.

12 THE COURT: THAT MONEY WAS OWED FOR SOME PERIOD OF
13 TIME?

14 THE WITNESS: CONSTRUCTION.

15 THE COURT: HOW LONG WAS THAT MONEY OWED BEFORE YOU
16 FILED BANKRUPTCY?

17 THE WITNESS: FOUR. FIVE YEARS. I WOULD SAY IT
18 WAS QUITE SOME TIME.

19 THE COURT: YOU NEVER FILED A LIEN AGAINST THE
20 PROPERTY?

21 THE WITNESS: NO, I DIDN'T.

22 THE COURT: WHY NOT?

23 THE WITNESS: I DON'T FILE LIENS. IT IS JUST THE
24 WAY THAT I DO BUSINESS.

25 THE COURT: ALL RIGHT.

26 ARE YOU SAYING NOW THAT YOU NEVER RECOGNIZED
27 THE MAN IN THE RESTAURANT WAS RON LEVIN WHILE YOU WERE IN
28 THE RESTAURANT?

1 THE WITNESS: I DID NOT RECOGNIZE HIM, NO.

2 THE COURT: MR. CRAIN?

3 MR. CRAIN: THANK YOU.

4

5

REDIRECT EXAMINATION +

6

7 BY MR. CRAIN:

8 Q MR. GERRARD, HOW TALL ARE YOU?

9 A ALMOST 5'8".

10 Q SO YOU ARE 5'7" AND SOME CHANGE?

11 A AND A HALF, YES.

12 Q HOW OLD ARE YOU?

13 A I AM SORRY?

14 Q HOW OLD ARE YOU?

15 A I AM 74.

16 Q AND DO YOU CONSIDER YOURSELF --

17 MR. CRAIN: IS THIS ON? IT IS NOT ON.

18 THE COURT: THERE SHOULD BE A SWITCH ON.

19 MR. MC MULLEN DID SOMETHING TO THAT.

20 BY MR. CRAIN:

21 Q CAN YOU HEAR ME OKAY?

22 A YES.

23 Q OKAY.

24 DID YOU CONSIDER YOURSELF TO BE A GOOD JUDGE
25 OF HEIGHT OR NOT?

26 A NOT TOO MUCH.

27 Q ALL RIGHT.

28 NOW, WHEN YOU WERE IN THE RESTAURANT AND SAW

1 THESE TWO PEOPLE THERE, IS IT YOUR TESTIMONY THAT YOU WERE
2 SEATED THE WHOLE TIME?

3 A YES, I WAS.

4 Q SO YOU NEVER STOOD UP TO COMPARE YOUR HEIGHT
5 TO EITHER OF THE TWO PEOPLE IN THE RESTAURANT; IS THAT
6 RIGHT?

7 A NO, I DID NOT.

8 Q AND IS IT FAIR TO STATE THAT IT IS YOUR
9 ESTIMATION REGARDING THE HEIGHT OR JUST THAT --

10 A THEY ARE ESTIMATES, YES.

11 Q AND YOU ARE TELLING US YOUR ABILITY TO GIVE
12 ESTIMATIONS IS NOT THE GREATEST?

13 A IT ISN'T THE GREATEST.

14 Q WAS ONE PERSON TALLER THAN THE OTHER?

15 A YES.

16 Q AND THE PERSON WHO WAS THE TALLER -- WAS ONE
17 OLDER THAN THE OTHER THAN IN APPEARANCE?

18 A YES.

19 Q AND WAS THE OLDER ONE THE TALLER ONE?

20 A YES.

21 Q NOW, YOU HAVE TOLD US THAT, FIRST OF ALL, YOU
22 BRIEFLY ENCOUNTERED MR. LEVIN OR WERE TOLD THAT,
23 INTRODUCED TO RON LEVIN AT YOUR HOME, YOU WERE ENGAGED IN
24 SOME TELEPHONE CONVERSATION; IS THAT RIGHT?

25 A YES, I WAS.

26 Q AND I KNOW IT HAS BEEN A LONG TIME. WAS THIS
27 A BUSINESS CONVERSATION?

28 A YES, IT WAS.

1 Q SO WAS YOUR ATTENTION FOCUSED ON THIS PERSON
2 THAT YOU WERE BEING INTRODUCED TO OR ON YOUR BUSINESS THAT
3 YOU TRANSACTED OVER THE TELEPHONE?

4 A STRICTLY ON MY CONVERSATION ON THE PHONE.

5 Q AND IN THE RESTAURANT YOUR WIFE TOLD YOU THAT
6 THE PERSON THAT, OR ONE OF THE TWO PEOPLE THAT ENTERED THE
7 RESTAURANT AND SEATED THEMSELVES AT THE NEXT TABLE WAS RON
8 LEVIN; CORRECT?

9 A YES.

10 Q AND DO YOU REMEMBER PRIOR TO OUR MEETING A
11 WEEK OR SO AGO, DO YOU REMEMBER EVER BEING SHOWN
12 PHOTOGRAPHS BY ANYONE?

13 A PRIOR TO?

14 Q CONCERNING THIS CASE, YES.

15 A NO, I NEVER WAS.

16 Q WHEN YOU WERE A WITNESS IN SAN MATEO WERE YOU
17 SHOWN ANY PHOTOGRAPHS OF ANY PEOPLE AND ASKED IF THEY WERE
18 RON LEVIN?

19 A I DON'T REMEMBER THAT I WAS SHOWN PICTURES.

20 Q OKAY.

21 NOW, THE PERSON IN THE PHOTOGRAPHS, I THINK
22 YOU STILL HAVE IT UP THERE, PETITIONER'S 1, FOR THE
23 RECORD, DOES THAT PERSON LOOK ANY DIFFERENT THAN THE ONE
24 YOU SAW IN THE RESTAURANT?

25 A IT LOOKS LIKE HIM.

26 Q AND YOU SAID WHEN YOU WERE IN THE RESTAURANT
27 YOU DIDN'T RECOGNIZE THE OLDER, TALLER PERSON AS HAVING
28 BEEN THE SAME PERSON INTRODUCED TO YOU WHILE YOU WERE ON

1 THE TELEPHONE?

2 A YES. I DID NOT RECOGNIZE HIM.

3 Q WAS THAT SOME YEARS BEFORE?

4 A YES, IT WAS.

5 Q WHAT WAS THE APPROXIMATE TIME PERIOD OF THE
6 TELEPHONE CONVERSATION WHEN HE WAS THERE POSING AS AN
7 ATTORNEY, AS BEST YOU CAN RECALL, IF YOU CAN?

8 A MIDDLE 80'S. EARLY 80'S, MIDDLE 80'S.

9 Q AND IS IT YOUR BELIEF AFTER HAVING BEEN SHOWN
10 THE PHOTOGRAPHS, WHICH IS PETITIONER'S 1, THAT THAT IS THE
11 MAN YOU SAW IN THE RESTAURANT; IS THAT WHAT YOU ARE
12 TELLING US?

13 A AFTER SEEING THE PICTURE I AM SURE THAT THAT
14 WAS THE MAN THAT I SAW IN THE RESTAURANT.

15 MR. CRAIN: OKAY.

16 THANK YOU.

17 I HAVE NOTHING FURTHER.

18 THE COURT: WHEN YOUR WIFE TURNED TO YOU AND SAID,
19 "THAT'S RON LEVIN," DID YOU KNOW WHO SHE WAS TALKING
20 ABOUT?

21 THE WITNESS: YES, I DID.

22 THE COURT: HOW DID YOU KNOW?

23 THE WITNESS: FROM ALL THE NEWS REPORTS AND THE
24 BILLIONAIRE BOYS CLUB. INFORMATION I HAD GATHERED ON THE
25 RADIO AND THEN NEWSPAPER.

26 THE COURT: ALL RIGHT.

27 MR. MC MULLEN, ANYTHING FURTHER?

28 MR. MC MULLEN: JUST A COUPLE OF QUESTIONS.

1 RE-CROSS-EXAMINATION @

2

3 BY MR. MC MULLEN:

4 Q WHEN YOU SAW THOSE NEWS REPORTS, YOU
5 MENTIONED THE NEWSPAPER, YOU READ THE NEWSPAPER ARTICLES
6 ABOUT THE BILLIONAIRES BOYS CLUB TRIAL?

7 A SOMEWHAT, YEAH.

8 Q DID YOU NOTICE IN ANY OF THOSE NEWS REPORTS
9 PHOTOGRAPHS OF RON LEVIN?

10 A I DON'T REMEMBER.

11 MR. MC MULLEN: ONE MOMENT.

12 THE COURT: YES.

13

14 (PAUSE.)

15

16 MR. MC MULLEN: NOTHING FURTHER.

17 THE COURT: MAY THE WITNESS BE EXCUSED?

18 MR. CRAIN: I WOULD LIKE A FURTHER QUESTION OR TWO.

19

20 FURTHER REDIRECT EXAMINATION +

21

22 BY MR. CRAIN:

23 Q WOULD HEIGHT 6'1", 6'2", WOULD THAT BE
24 CONSISTENT WITH THE OLDER, TALLER PERSON THAT YOU SAW?
25 WERE YOU ABLE TO TELL?

26 A I WOULD SAY THAT WOULD BE ABOUT RIGHT.

27 MR. CRAIN: OKAY.

28 NOTHING FURTHER.

1 THE COURT: MAY THE WITNESS BE EXCUSED?

2 MR. CRAIN: NO OBJECTION.

3 THE COURT: ANY OBJECTION?

4 MR. MC MULLEN: NO, JUST SUBJECT TO RECALL FOR
5 IMPEACHMENT.

6 THE COURT: UPON SUFFICIENT SHOWING.

7 ALL RIGHT.

8 THANK YOU, SIR. YOU ARE EXCUSED.

9 CALL YOUR NEXT WITNESS.

10 MR. CRAIN: I AM TOLD MR. ADELMAN IS HERE. I
11 WONDER IF THE COURT WILL GIVE ME FIVE MINUTES.
12 MR. ADELMAN ON THE TELEPHONE TOLD ME THAT HE IS A VERY
13 BUSY MAN, THAT HE WOULDN'T HAVE TIME TO HAVE ANY
14 DISCUSSION PRIOR TO TAKING THE WITNESS STAND, AND I WOULD
15 LIKE TO ASK HIM A COUPLE OF THINGS TO SEE IF HE WOULD TAKE
16 THE TIME NOW. I WONDER IF WE COULD HAVE --

17 THE COURT: I WILL GIVE YOU A 15-MINUTE RECESS.

18 MR. CRAIN: THANK YOU.

19 THE COURT: PETITIONER AND COUNSEL WILL BE ORDERED
20 TO RETURN IN 15 MINUTES.

21

22 (RECESS.)

23

24 THE COURT: IN THE CASE OF IN RE JOSEPH HUNT, THE
25 RECORD WILL REFLECT ALL COUNSEL AND PETITIONER ARE
26 PRESENT.

27 CALL YOUR NEXT WITNESS.

28 MR. CRAIN: NEIL ADELMAN.

1 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

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

6 THE WITNESS: YES.

7 THE CLERK: PLEASE BE SEATED.

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

10

11 NEIL ADELMAN, +
12 CALLED AS A WITNESS BY THE PETITIONER, WAS SWORN AND
13 TESTIFIED AS FOLLOWS:

14

15 THE WITNESS: NEIL ADELMAN, N-E-I-L, A-D-E-L-M-A-N.

16 THE CLERK: THANK YOU.

17 THE COURT: WHICH NUMBERED ISSUE IS THIS GOING TO?

18 MR. CRAIN: IT'S ISSUE 2 SUBPARAGRAPH (C).

19 THE COURT: ALL RIGHT.

20

21 DIRECT EXAMINATION +

22

23 BY MR. CRAIN:

24 Q GOOD MORNING, MR. ADELMAN.

25 WHAT IS YOUR PRESENT OCCUPATION?

26 A ADVERTISING EXECUTIVE.

27 Q AND BY WHOM ARE YOU EMPLOYED, OR FOR WHOM DO
28 YOU WORK?

1 A A COMPANY CALLED EAGLE AD CORPORATION, INC.

2 Q OKAY.

3 WHY DON'T YOU JUST PULL THE MICROPHONE UP AND
4 WE'LL BE ABLE TO HEAR YOU BETTER.

5 THANK YOU.

6 IN 1987 WERE YOU AN ATTORNEY LICENSED TO
7 PRACTICE LAW IN THE STATE OF CALIFORNIA?

8 A YES.

9 Q AND WHERE WERE YOU -- WERE YOU PRACTICING LAW
10 IN CALIFORNIA AT THAT TIME?

11 A YES.

12 Q WAS THAT IN LOS ANGELES?

13 A YES.

14 Q AND THAT WAS UNDER THE NAME OF NEIL ADELMAN?

15 A YES.

16 Q DO YOU HAVE A MIDDLE NAME, SIR?

17 A YES.

18 Q WHAT WAS THAT?

19 A IRA.

20 Q AND WHERE WERE YOU PRACTICING IN 1987, IF YOU
21 RECALL?

22 A IN 1987 IT WAS PROBABLY -- BEVERLY HILLS,
23 CALIFORNIA.

24 Q AND WAS YOUR NAME LISTED IN THE TELEPHONE
25 BOOK INSOFAR AS YOUR BUSINESS TELEPHONE WENT?

26 A YES.

27 Q AND WERE YOU REGISTERED WITH THE STATE BAR
28 DURING 1987 BOTH INSOFAR AS YOUR BUSINESS ADDRESS AND

1 TELEPHONE NUMBER?

2 A YES.

3 Q NOW, GOING BACK TO THE YEAR 1984, DID YOU GO
4 TO WORK FOR EITHER MR. -- JOE HUNT, THE GENTLEMAN HERE AT
5 THE END OF COUNSEL TABLE?

6 BY THE WAY, DO YOU RECOGNIZE MR. HUNT WHO IS
7 SITTING HERE?

8 A YES.

9 Q DO YOU RECOGNIZE HIM FROM KNOWING HIM
10 PERSONALLY?

11 A YES.

12 Q DID YOU KNOW HIM DURING 1984 OR PORTIONS OF
13 1984?

14 A YES.

15 Q AND AROUND THE BEGINNING OF JUNE, 1984, DID
16 YOU GO TO WORK FOR MR. HUNT AND/OR ONE OF HIS BUSINESSES?

17 A YES.

18 Q AND WAS THAT IN THE ROLE OF AN ATTORNEY?

19 A YES.

20 Q AND IN 1984 WERE YOU ALSO AN ATTORNEY
21 LICENSED TO PRACTICE LAW IN THE STATE OF CALIFORNIA?

22 A THAT'S CORRECT.

23 Q AND DURING THE SUMMER OF 1984 WERE YOU
24 WORKING IN THAT ROLE AS AN ATTORNEY FOR MR. HUNT?

25 A FOR THE COMPANY, YES.

26 Q OKAY.

27 THE COMPANY AFFILIATED WITH MR. HUNT?

28 A YES.

1 Q WERE YOU WORKING WITH ANY OTHER ATTORNEYS ON
2 A CLOSE BASIS IN THAT REGARD?

3 A YES.

4 Q WHO WOULD THAT BE, IF YOU REMEMBER?

5 A I CAN'T RECALL HIS NAME.

6 Q APPROXIMATELY HOW LONG DID THAT RELATIONSHIP
7 LAST WHERE YOU WORKED FOR MR. HUNT'S COMPANY?

8 A FOUR MONTHS.

9 Q ALL RIGHT.

10 NOW, DURING THE -- DOES THE NAME EISENBERG
11 RING A BELL OR REFRESH YOUR RECOLLECTION AS TO THE NAME OF
12 AN ATTORNEY THAT YOU WORKED WITH?

13 A THAT SOUNDS FAMILIAR. JOSEPH --

14 Q JERRY EISENBERG?

15 A YES.

16 Q IS THAT THE NAME OF THE PERSON THAT YOU
17 WORKED WITH?

18 A YES.

19 Q AND IN YOUR WORK DURING THAT SUMMER OF 1984
20 DO YOU HAVE A RECOLLECTION OF WHAT YOUR DUTIES WERE AS AN
21 ATTORNEY? JUST IN A GENERAL WAY THAT YOU CAN TELL US
22 ABOUT?

23 A TO ADDRESS THE LEGAL MATTERS THAT THE
24 OFFICERS OF THE CORPORATION PUT BEFORE ME.

25 Q AND DURING THAT PERIOD OF TIME DID YOU -- LET
26 ME JUST JUMP AHEAD FOR ONE SECOND.

27 HAVE YOU TESTIFIED IN OTHER LEGAL PROCEEDINGS
28 IN NORTHERN CALIFORNIA, SPECIFICALLY IN THE SAN MATEO AREA

1 IN CONNECTION WITH THIS CASE?

2 A YES.

3 Q AND HAS YOUR TESTIMONY ALWAYS BEEN TRUTHFUL?

4 A YES.

5 Q AND YOUR -- EXCUSE ME ONE SECOND.

6

7 (PAUSE.)

8

9 Q DURING THE --

10

11 (A CONFERENCE WAS HELD BETWEEN COUNSEL
12 AND THE DEFENDANT, NOT REPORTED.)

13

14 BY MR. CRAIN:

15 Q DURING THE YEAR, 1990, DID YOU SIGN TWO
16 DECLARATIONS UNDER PENALTY OF PERJURY THAT HAD TO DO WITH
17 CERTAIN ASPECTS OF YOUR LEGAL WORK FOR MR. HUNT'S COMPANY
18 DURING THE SUMMER OF 1984?

19 A I BELIEVE SO.

20 Q AND HAVE YOU HAD THE OPPORTUNITY TO LOOK AT
21 THESE DECLARATIONS RECENTLY?

22 A YES.

23 Q AND --

24 MR. CRAIN: YOUR HONOR, I BELIEVE THESE ARE ON OUR
25 CURRENT EXHIBIT LIST. I WOULD LIKE THEM MARKED AS NEXT IN
26 ORDER. THEY'RE DECLARATIONS.

27 THE COURT: LET ME ASK YOU, ARE THEY ON THE
28 RESPONDENT'S LIST?

1 MR. MC MULLEN: YES, RESPONDENT'S EXHIBIT V AS IN
2 VICTOR.

3 THE COURT: WHY DON'T WE USE IT AS V BECAUSE WE
4 DON'T HAVE AN EXHIBIT LIST YET FROM PETITIONER.

5 MR. CRAIN: YES, YOUR HONOR.

6 THERE ARE TWO SEPARATE DECLARATIONS. SHOULD
7 WE HAVE V-1 AND -2?

8 THE COURT: I SEE V IS MARKED AS DECLARATIONS
9 PLURAL. DOES THAT MEAN THAT YOU HAVE MARKED BOTH?

10 MR. MC MULLEN: YES.

11 THE COURT: IF THAT IS THE CASE, THEN LET'S MAKE IT
12 V-1 AND V-2.

13 DO YOU HAVE TWO DATES THERE, MR. CRAIN?

14 MR. CRAIN: YES, YOUR HONOR. ONE IS DATED MARCH
15 15, 1990, AND THE OTHER IS DATED JUNE 7, 1990. I WONDER
16 IF THE COURT WOULD ALLOW A MOMENT WHILE THE WITNESS SIMPLY
17 LOOKS OVER THESE ONCE AGAIN BEFORE ANY FURTHER
18 QUESTIONING.

19 THE COURT: ONE OF THESE IS A DECLARATION OF MARCH
20 15TH. THAT WOULD BE V-1.

21 THE OTHER ONE IS A SUPPLEMENTAL DECLARATION
22 OF NEIL ADELMAN. THAT WILL BE V-2.

23

24 (MARKED FOR ID = RESPONDENT'S V-1 AND V-2,
25 DOCUMENTS.)

26

27 MR. CRAIN: ALL RIGHT.

28 I BELIEVE HE IS STILL LOOKING AT THEM HERE.

1 (WITNESS REVIEWING EXHIBITS.)

2

3 BY MR. CRAIN:

4 Q HAVE YOU HAD A CHANCE TO LOOK AT THEM, SIR?

5 A YES.

6 Q AND ON EACH, V-1 AND V-2 --

7 MR. CRAIN: YOUR HONOR, IS THAT WHAT YOU HAVE
8 DESIGNATED THEM?

9 THE COURT: YES.

10 BY MR. CRAIN:

11 Q SO THE FIRST ONE, CALLING YOUR ATTENTION
12 TO --

13 MR. CRAIN: SHOULD I JUST MARK THEM ON THE BACK?
14 THESE ARE MINE. THE COURT HAS A COPY; RIGHT?

15 MR. MC MULLEN: HERE ARE THE OFFICIAL COURT CLERK'S
16 COPIES.

17 MR. CRAIN: THANK YOU.

18 CAN I JUST GIVE THESE TO THE COURT?

19 THE COURT: I HAVE A COPY.

20 MR. CRAIN: OH, ALL RIGHT.

21 THE COURT: I NEED WORKING COPIES UP HERE SO I CAN
22 LOOK AT THEM AS THE WITNESS IS LOOKING AT THEM.

23 MR. CRAIN: V-1 IS THE FIRST ONE, MARCH 15TH, AND
24 V-2 THE SECOND?

25 THE COURT: YES.

26 BY MR. CRAIN:

27 Q I'M GOING TO MARK V-1 ON THE BACK,

28 MR. ADELMAN, AND V-2 ON THE BACK OF THE TWO-PAGE

1 DECLARATION.

2 IS THAT YOUR SIGNATURE, CALLING YOUR
3 ATTENTION TO V-1, WHERE IT SAYS MARCH 15TH, IN
4 HANDWRITING, 1990? THERE IS A SIGNATURE THAT APPEARS TO
5 SAY NEIL I. ADELMAN.

6 A YES.

7 Q DID YOU SIGN THAT DECLARATION ON MARCH 15,
8 1990?

9 A YES.

10 Q AND WAS IT TRUE AND ACCURATE, THE CONTENTS OF
11 IT, AT THE TIME YOU SIGNED IT?

12 A YES.

13 Q I'M CALLING YOUR ATTENTION NOW TO V-2, THIS
14 DOCUMENT ENTITLED "SUPPLEMENTAL DECLARATION OF NEIL
15 ADELMAN." HAVE YOU HAD A CHANCE TO LOOK AT THAT HERE
16 TODAY?

17 A YES.

18 Q IT'S DATED JUNE 7, 1991; IS THAT RIGHT?

19 A YES.

20 Q IS THAT ALSO YOUR SIGNATURE ON PAGE 2 OF THIS
21 DOCUMENT?

22 A YES.

23 Q PRIOR TO PLACING YOUR SIGNATURE THERE DID YOU
24 READ THIS DOCUMENT OVER?

25 A YES.

26 Q AND WAS IT -- WERE THE CONTENTS OF IT TRUE
27 AND ACCURATE?

28 A YES.

1 Q ALL RIGHT.

2 NOW, GOING BACK TO THE -- IF YOU NEED TO
3 REFRESH YOUR RECOLLECTION FROM LOOKING AT YOUR DECLARATION
4 OR ANYTHING BE SURE TO TELL US.

5 GOING BACK TO THE SUMMER OF 1984 IN YOUR WORK
6 AS AN ATTORNEY IN CONNECTION WITH MR. HUNT'S BUSINESS, DID
7 YOU HAVE THE OCCASION TO PARTICIPATE IN ANY NEGOTIATIONS
8 ON BEHALF OF ONE OF HIS COMPANIES, NEGOTIATIONS WHICH
9 INVOLVED THE SALE OF ATTRITION MILLS TO COMPANIES OWNED OR
10 CONTROLLED BY MR. WILLIAM KILPATRICK?

11 A YES.

12 Q AND DURING THAT PERIOD OF TIME DID YOU MEET
13 WITH MR. KILPATRICK IN REGARD TO THESE NEGOTIATIONS?

14 A YES.

15 Q AND WAS YOUR CONNECTION WITH THESE
16 NEGOTIATIONS STRICTLY AS AN ATTORNEY GIVING -- BEING
17 CALLED UPON TO GIVE LEGAL ADVICE?

18 A YES.

19 Q AND THE LEGAL ADVICE THAT YOU WERE CALLED
20 UPON TO GIVE WOULD BE TO MR. HUNT OVER HERE, THE
21 PETITIONER IN THE CASE; CORRECT?

22 A YES.

23 Q AND DURING THE NEGOTIATIONS THAT YOU HAD WITH
24 MR. KILPATRICK DID THESE NEGOTIATIONS INVOLVE OR
25 CONTEMPLATE, RATHER, THAT HIS COMPANY WOULD PURCHASE FROM
26 MR. HUNT'S COMPANY MICROGENESIS ATTRITION MILLS WITH A
27 TOTAL FIGURE OF APPROXIMATELY 200 MILLION?

28 A YES.

1 Q AND IS IT CORRECT THAT THE PROPOSED DEAL
2 BETWEEN MR. HUNT'S COMPANY AND MR. KILPATRICK'S COMPANY
3 WAS IN FACT NEVER CONSUMMATED?

4 A YES.

5 Q HOWEVER, DURING THE PERIOD OF THE
6 NEGOTIATIONS DID YOU AS AN ATTORNEY BELIEVE -- LET ME BACK
7 UP.

8 MR. CRAIN: LET ME WITHDRAW THAT QUESTION, YOUR
9 HONOR.

10 BY MR. CRAIN:

11 Q AS AN ATTORNEY INVOLVED IN THESE NEGOTIATIONS
12 DID YOU -- IF YOU RECALL AT THIS TIME YEARS LATER, DID YOU
13 REVIEW DOCUMENTS AND TALK TO VARIOUS INDIVIDUALS CONNECTED
14 WITH THE COMPANIES INVOLVED IN THE NEGOTIATION OF THE SALE
15 OF THESE ATTRITION MILLS?

16 A YES.

17 Q AND WAS IT YOUR ATTEMPT TO GATHER CORRECT
18 INFORMATION SO AS TO ADVISE YOUR CLIENT, MR. HUNT, AS TO
19 WHETHER OR NOT HE SHOULD GO FORWARD OR NOT GO FORWARD WITH
20 A PROPOSED BUSINESS COURSE OF ACTION?

21 A YES.

22 Q AND SO AS A PRACTICING ATTORNEY AT THAT TIME
23 WOULD IT HAVE BEEN YOUR DESIRE TO GIVE GOOD LEGAL ADVICE
24 TO MR. HUNT OR ANY OTHER CLIENT THAT YOU MIGHT BE
25 REPRESENTING?

26 A YES.

27 Q AND SO WOULD IT BE FAIR TO STATE THAT AS AN
28 ATTORNEY YOU WOULD WANT TO, AS BEST YOU COULD, OBTAIN WHAT

1 YOU BELIEVED TO BE ACCURATE INFORMATION IN ORDER TO PASS
2 THAT ON TO YOUR CLIENT AND THEN GIVE HIM THE ADVICE THAT
3 YOU THOUGHT HE SHOULD FOLLOW; RIGHT?

4 MR. MC MULLEN: OBJECTION. LEADING.

5 THE COURT: SUSTAINED.

6 BY MR. CRAIN:

7 Q AS AN ATTORNEY WOULD YOU CARE TO -- WOULD YOU
8 WANT TO GET ACCURATE INFORMATION TO GIVE TO YOUR CLIENT OR
9 NOT?

10 A ACCURATE INFORMATION.

11 Q NOW, DURING THE COURSE OF YOUR NEGOTIATIONS
12 WITH MR. KILPATRICK AS AN ATTORNEY DID YOU FORM ANY BELIEF
13 AS TO WHETHER OR NOT MR. KILPATRICK WAS READY AND WILLING
14 TO BUY 200 MILLION WORTH OF ATTRITION MILLS FROM THE
15 MICROGENESIS COMPANY THAT MR. HUNT WAS INVOLVED WITH?

16 A YES.

17 MR. MC MULLEN: OBJECTION. LEADING. AND NO
18 FOUNDATION.

19 THE COURT: THAT ANSWER WILL STAND.

20 MR. CRAIN: THANK YOU, YOUR HONOR.

21 BY MR. CRAIN:

22 Q AND DID YOU BELIEVE THAT -- WAS IT YOUR
23 OPINION AS AN ATTORNEY THAT BASED ON YOUR INVOLVEMENT IN
24 THESE BUSINESS TRANSACTIONS BETWEEN KILPATRICK, HIS
25 COMPANY, AND MR. HUNT'S COMPANY THAT MR. KILPATRICK HAD
26 THE FINANCIAL MEANS OR WHEREWITHAL TO CARRY OUT SUCH A
27 TRANSACTION?

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

1 LEADING. NO FOUNDATION.

2 THE COURT: SUSTAINED ON SPECULATION GROUNDS.

3 MR. CRAIN: WELL, IT'S ACTUALLY A MATTER OF EXPERT
4 OPINION. I'M NOT -- THIS IS NOT BEING OFFERED TO PROVE
5 THAT IN FACT KILPATRICK IN FACT HAD THE WHEREWITHAL TO DO
6 IT. IT HAS TO DO WITH TWO THINGS. WHETHER OR NOT THIS
7 WITNESS AS AN EXPERT WITNESS, AN ATTORNEY, INVOLVED IN
8 BUSINESS NEGOTIATIONS DID IN FACT FORM THE OPINION ON THE
9 BASIS OF THE INFORMATION THAT HE WAS GIVEN THAT THIS
10 TRANSACTION WAS A VIABLE ONE. THEN I'M GOING TO ASK HIM
11 WHAT INFORMATION HE IMPARTED TO HIS CLIENT.

12 THE COURT: HE IS NOT TESTIFYING AS AN EXPERT
13 WITNESS. HE IS TESTIFYING AS A FACT WITNESS. THAT IS,
14 THAT HE'S A PERSON ENGAGED IN NEGOTIATIONS.

15 I'LL SUSTAIN THE OBJECTION.

16 YOU CAN ASK THIS WITNESS WHAT IS IT THAT HE
17 TOLD HIS CLIENT, BUT THIS WITNESS WOULD BE SPECULATING AS
18 TO WHETHER OR NOT THIS IS A GOOD DEAL OR NOT IN TERMS OF
19 WHETHER OR NOT THE OTHER SIDE WAS ABLE TO PERFORM OR NOT
20 PERFORM.

21

22 (COUNSEL CONFER.)

23

24 BY MR. CRAIN:

25 Q BASED ON THE -- YOUR INVOLVEMENT IN THE
26 NEGOTIATIONS WITH MR. KILPATRICK DID YOU GIVE LEGAL ADVICE
27 TO MR. HUNT CONCERNING WHETHER OR NOT IN YOUR OPINION AS
28 AN ATTORNEY THAT MR. KILPATRICK COULD IN FACT CARRY OUT

1 THE CONTRACT FOR THE PURCHASE OF APPROXIMATELY 200 MILLION
2 WORTH OF ATTRITION MILLS?

3 MR. MC MULLEN: OBJECTION. VAGUE AS TO TIME, AND
4 AGAIN CALLS FOR SPECULATION.

5 THE COURT: OVERRULED.

6 YOU MAY ANSWER.

7 BY MR. CRAIN:

8 Q I'M DIRECTING YOUR ATTENTION TO THE TIME
9 PERIOD THAT YOU WORKED FOR MR. HUNT AND/OR HIS COMPANY.

10 A I BELIEVED SO.

11 Q AND THAT ADVICE -- FIRST OF ALL, WOULD IT
12 HAVE BEEN YOUR CUSTOM TO GIVE ADVICE TO A CLIENT SUCH AS
13 MR. HUNT BASED ON YOUR BEST OPINION AS AN ATTORNEY AS TO
14 THE ACCURACY OF THE INFORMATION THAT YOU HAD OBTAINED AND
15 THE ACCURACY OF THE INFORMATION THAT YOU WERE IMPARTING TO
16 THE CLIENT?

17 MR. MC MULLEN: OBJECTION. IRRELEVANT.

18 THE COURT: UNLOAD THE QUESTION. JUST ASK HIM WHAT
19 HE TOLD HIM.

20 BY MR. CRAIN:

21 Q DID YOU TELL HUNT THAT BASED ON YOUR WORK ON
22 THE NEGOTIATIONS THAT KILPATRICK COULD IN FACT CARRY OUT A
23 PURCHASE OF APPROXIMATELY 200 --

24 MR. MC MULLEN: YOUR HONOR --

25 MR. CRAIN: PARDON ME. CAN I FINISH THE QUESTION?

26 THE COURT: FINISH THE QUESTION.

27 BY MR. CRAIN:

28 Q -- CARRY OUT THE PURCHASE OF APPROXIMATELY

1 200 MILLION WORTH OF ATTRITION MILLS?

2 MR. MC MULLEN: OBJECTION. LEADING.

3 THE COURT: SUSTAINED.

4 MR. CRAIN: I'M SORRY, YOUR HONOR, I THOUGHT THE
5 COURT ASKED ME TO --

6 THE COURT: ASK THE WITNESS TO TESTIFY TO WHAT HE
7 TOLD HUNT ABOUT THIS PERIOD.

8 BY MR. CRAIN:

9 Q WHAT DID YOU TELL MR. HUNT ABOUT WHETHER OR
10 NOT KILPATRICK COULD CARRY OUT THE DEAL, IF YOU TOLD
11 MR. HUNT ANYTHING?

12 A I'M NOT SURE IF IT WAS I TOLD HIM OR HE TOLD
13 ME, BUT THERE WAS CONVERSATIONS CONCERNING THE FACT THAT I
14 BELIEVE HE WAS ON T.V. --

15 THE COURT: "HE" WHO?

16 THE WITNESS: KILPATRICK WAS ON T.V. BEING
17 INTERVIEWED. I BELIEVE IT WAS "60 MINUTES" HAD
18 INTERVIEWED HIM CONCERNING A HUGE TAX PROGRAM THAT HE WAS
19 INVOLVED IN THAT HAD COMPILED MILLIONS AND MILLIONS OF
20 DOLLARS THAT THEY WERE LOOKING FOR A SOURCE TO SPEND ON,
21 AND BASED ON THAT INFORMATION I RECALL CONVERSATIONS THAT
22 THE MONEY WAS THERE TO PERFORM THE PURCHASE.

23 THE COURT: WELL, YOU SAY YOU RECALL CONVERSATIONS.
24 IS THIS WHAT YOU TOLD HIM, MR. HUNT, OR WHAT HUNT TOLD
25 YOU?

26 THE WITNESS: I BELIEVE I WOULD HAVE TOLD JOE HUNT.

27 BY MR. CRAIN:

28 Q NOW, YOU STATED IN YOUR DECLARATION THAT IT

1 WAS YOUR BELIEF THAT BASED ON YOUR FREQUENT CONTACTS WITH
2 MR. HUNT, AS YOU STATED (READING), "I WOULD CHARACTERIZE
3 HIS STATE OF MIND AS BEING A BUSINESS MAN NEGOTIATING A
4 CONTRACT IN GOOD FAITH WITH ALL EXPECTATIONS OF
5 CONSUMMATING A DEAL."

6 IS THAT A CORRECT STATEMENT OF YOUR VIEWS OF
7 THE EVENTS OF THE SUMMER OF 1984 INVOLVING THE PROPOSED
8 KILPATRICK TRANSACTION?

9 MR. MC MULLEN: OBJECTION. LEADING.

10 THE COURT: SUSTAINED.

11 BY MR. CRAIN:

12 Q WAS IT YOUR BELIEF THAT MR. HUNT SHARED YOUR
13 VIEW THAT KILPATRICK WAS ABLE TO CARRY OUT THE DEAL AS
14 INDICATED IN YOUR DECLARATION HERE?

15 MR. MC MULLEN: OBJECTION. LEADING AND HEARSAY AND
16 SPECULATION.

17 THE COURT: SUSTAINED ON SPECULATION GROUNDS.

18 BY MR. CRAIN:

19 Q YOU HAD PERSONAL CONTACT WITH MR. HUNT ON A
20 FREQUENT BASIS CONCERNING THE NEGOTIATIONS WITH
21 MR. KILPATRICK; IS THAT RIGHT?

22 A YES.

23 MR. CRAIN: COULD I HAVE JUST A MOMENT, YOUR HONOR?

24 THE COURT: YES.

25

26 (A CONFERENCE WAS HELD BETWEEN COUNSEL
27 AND THE DEFENDANT, NOT REPORTED.)

28

1 MR. CRAIN: YOUR HONOR, I HAVE A COUPLE OF
2 DOCUMENTS HERE. I THINK WE ARE GOING TO REVISIT A
3 POTENTIAL PROBLEM, UNFORTUNATELY. WHAT I WANT TO DO IS TO
4 SIMPLY SHOW THEM TO THE WITNESS. ONE IS A CONTRACT AND
5 THE OTHER IS A LICENSE AGREEMENT. THEY WERE EXHIBITS IN
6 THE SAN MATEO TRIAL --

7 MR. KLEIN: THEY ARE ON OUR EXHIBIT LIST.

8 MR. CRAIN: THEY ARE ON OUR EXISTING EXHIBIT LIST.
9 AND I WOULD LIKE TO ASK HIM IF HE CAN IDENTIFY THEM. THEY
10 RELATE TO --

11 THE COURT: TO -- YOU KEEP REFERRING TO YOUR
12 EXHIBIT LIST, WHICH IS, I ASSUME, THE PLEADING HERE OF
13 SEVERAL HUNDRED PAGES, WHICH HAS -- IS NOT AN EXHIBIT
14 LIST, NOT SOMETHING WE CAN USE.

15 MR. KLEIN: RIGHT.

16 THE COURT: IS THERE SOMETHING THAT THE
17 RESPONDENT --

18 MR. KLEIN: THEY HAVE A COPY OF THESE DOCUMENTS
19 BECAUSE --

20 THE COURT: IS IT ON THE RESPONDENT'S EXHIBIT LIST?

21 MR. KLEIN: I DON'T KNOW.

22 MR. MC MULLEN: NO, NO.

23 THE COURT: WE NEED TO MARK THEM ON YOURS.

24 WHERE ARE WE NOW ON PETITIONER'S EXHIBITS?

25 MR. KLEIN: I THINK THIS IS 4.

26 THE CLERK: NUMBER 4. THERE IS A NUMBER 3 HERE.

27 MR. KLEIN: THIS IS 4 AND 5, THEN.

28 THE COURT: ALL RIGHT.

1 WHAT IS EXHIBIT 4?

2 MR. CRAIN: YOUR HONOR, EXHIBIT 4 IS AN OPTION
3 AGREEMENT BETWEEN MICROGENESIS AND SATURN ENERGY.

4 THE COURT: WHAT IS 5?

5 MR. CRAIN: 5 IS A LICENSE AGREEMENT BETWEEN
6 MICROGENESIS, SATURN ENERGY, AND HAS REFERENCES TO UNITED
7 FINANCIAL OPERATIONS, WHICH THE COURT WILL -- IF YOU DON'T
8 ALREADY KNOW, WAS MR. KILPATRICK'S COMPANY.

9 THE COURT: THOSE WILL BE MARKED AS 4 AND 5.

10

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

12

13 (MARKED FOR ID = PETITIONER'S 5, DOCUMENT.)

14

15 MR. MC MULLEN: YOUR HONOR, I HAVE A CONCERN AT
16 THIS POINT IN TIME. THEY'VE PROVIDED US WITH A NUMBER OF
17 EXHIBITS THAT COULD FILL A FILE CABINET, AND IT'S A LITTLE
18 DIFFICULT TO BRING THOSE ALL DOWN HERE EVERY DAY. THIS IS
19 THE FIRST WE HAVE HEARD OF THESE PARTICULAR DOCUMENTS
20 BEING RAISED. WE DON'T HAVE COPIES OF THEM WITH US.

21 MR. KLEIN: WE HAVE EXTRA COPIES FOR THEM AND FOR
22 THE COURT, YOUR HONOR.

23 THE COURT: ALL RIGHT.

24 I'LL JUST REMIND YOU OF THE HEARING OF LAST
25 WEEK ON THE 23RD AT PAGE 366 WHERE I SAID, "YOU GUYS ARE
26 GOING TO -- IN THE NEXT COUPLE OF DAYS GET TOGETHER ON THE
27 EXHIBIT LISTS, GO THROUGH IT, LOOK AT EVERY EXHIBIT. I
28 WANT EVERYONE TO KNOW EXACTLY WHAT IS -- EACH EXHIBIT

1 NUMBER THAT IS MARKED. NO SURPRISES, EVERYTHING IS ON THE
2 EXHIBIT LIST."

3 OBVIOUSLY, YOU GUYS DIDN'T DO THAT, EITHER.

4 MR. MC MULLEN: YOUR HONOR, JUST TO REITERATE
5 SOMETHING I SAID ON THURSDAY. I MADE AN EFFORT TO TALK TO
6 COUNSEL ABOUT THEIR EXHIBIT LIST AND THE EXHIBITS THEY
7 WOULD BE USING. THEY SAID THEY DID NOT HAVE THEIR EXHIBIT
8 LIST AVAILABLE. I HAVE MADE WHAT I BELIEVE IS A GOOD
9 FAITH EFFORT.

10 THE COURT: YOU ARE NOT A POTTED PLANT. IF YOU GOT
11 A PROBLEM, TELL ME ABOUT IT. DON'T LET ME FIND OUT ABOUT
12 IT IN THE MIDDLE OF THE HEARING AS WE SEEM TO BE DOING DAY
13 AFTER DAY. SOLVE YOUR PROBLEMS.

14 I WILL, AGAIN, ORDER AN EXHIBIT LIST AS I
15 DESCRIBED BE FILED.

16 MR. KLEIN: I HAVE AN EXTRA COPY OF EACH OF THESE
17 FOR THE COURT AND COUNSEL.

18 THE COURT: ALL RIGHT.

19 MR. CRAIN: SHOULD I GO AHEAD WHILE THEY'RE --

20

21 (PAUSE.)

22

23 MR. CRAIN: COULD I HAVE THE NUMBERS AGAIN, YOUR
24 HONOR? I'LL JUST PUT THEM ON THE BACK.

25 THE COURT: 4 AND 5.

26 MR. CRAIN: SO THE OPTION AGREEMENT IS 4 AND THE
27 LICENSE AGREEMENT IS 5?

28 THE COURT: CORRECT.

1 MR. CRAIN: APPROACH THE WITNESS?

2 THE COURT: YES.

3 BY MR. CRAIN:

4 Q MR. ADELMAN, SHOWING YOU THIS OPTION
5 AGREEMENT, WHICH HAS BEEN MARKED AS EXHIBIT 4. DOES THAT
6 LOOK FAMILIAR TO YOU, AND IF SO, TO WHAT EXTENT?

7 LET ME ASK YOU THIS. DOES IT LOOK FAMILIAR
8 TO YOU AS A DOCUMENT THAT YOU WERE INVOLVED WITH IN SOME
9 WAY AS AN ATTORNEY IN THE SUMMER OF 1984?

10 A YES.

11 Q AND DOES THAT APPEAR TO RELATE TO CERTAIN
12 NEGOTIATIONS THAT YOU HAD A PART IN THAT INVOLVED
13 MR. KILPATRICK, HIS COMPANY AND MR. HUNT'S COMPANY?

14 A YES.

15 Q CALLING YOUR ATTENTION TO PAGE 2 OF THE
16 DOCUMENT, DOES THAT HAVE A REFERENCE TO THE PAYMENT TO
17 MICRO OR MICROGENESIS, A NONREFUNDABLE SUM OF SIX MILLION
18 IN CONSIDERATION FOR CERTAIN OPTION RIGHTS BEING GRANTED
19 PURSUANT TO THE AGREEMENT; IS THAT RIGHT?

20 A YES.

21 Q AND DOES IT NOTE THAT THESE PAYMENTS ARE TO
22 BE COMMENCED WITHIN THE NEXT 30 DAYS FOLLOWING THE
23 EFFECTIVE DATE OF THE LICENSING AGREEMENT?

24 A YES.

25 Q AND THAT -- AND AT THE RATE OF \$333,333.33
26 PER MONTH OVER THE 18 MONTH PERIOD BEGINNING WITH THE
27 EFFECTIVE DATE OF THE LICENSING AGREEMENT; IS THAT WHAT IT
28 SAYS THERE?

1 A YES.

2 Q AND SHOWING YOU EXHIBIT 5, WHICH IS A LICENSE
3 AGREEMENT, DOES THIS APPEAR TO PERTAIN TO THE SAME
4 NEGOTIATIONS THAT YOU WERE INVOLVED IN ON BEHALF OF
5 MR. HUNT'S COMPANY AND MR. KILPATRICK?

6 A YES.

7 Q AND DO YOU SEE -- THAT IS A COPY, A XEROX
8 COPY. DO YOU SEE HANDWRITING ON VARIOUS PORTIONS OF
9 EXHIBIT 5?

10 A YES.

11 Q CAN YOU TELL US WHETHER OR NOT THAT IS YOUR
12 HANDWRITING?

13 THE COURT: I DON'T SEE ANY HANDWRITING. I SEE
14 JUST SOME SCRATCHES OUT.

15 ARE YOU SURE YOUR REFERRING TO 5 AND NOT 4?

16 MR. CRAIN: YOUR HONOR, I'M GOING TO HAVE A MOMENT
17 OVER HERE, IF THE COURT WILL BEAR WITH ME.

18 THE COURT: ALL RIGHT.

19

20 (COUNSEL CONFER.)

21

22 MR. CRAIN: YOUR HONOR, I THINK WHAT THE COURT WAS
23 PROVIDED IS A COPY. I HAVE A DIFFERENT DRAFT. AND I'M
24 SORRY. I'M GOING TO HAVE TO GET THIS COPIED FOR THE
25 COURT.

26 THE COURT: IN OTHER WORDS, THE EXHIBIT 5 THAT I
27 HAVE IS NOT EXHIBIT 5.

28 MR. CRAIN: IT'S NOT EXHIBIT 5. I APOLOGIZE TO THE

1 COURT AND APOLOGIZE TO MR. MC MULLEN. I'M NOW GOING TO
2 SHOW MR. MC MULLEN. IT IS BASICALLY THE SAME THING. IT'S
3 JUST THAT IT HAS HANDWRITING ON IT.

4 THE COURT: IN THE TOP RIGHT-HAND CORNER DOES IT
5 SAY, "DRAFT 6."

6 MR. CRAIN: NO.

7 THE COURT: ALL RIGHT.

8 I'LL RETURN THIS TO MR. KLEIN, WHAT WAS GIVEN
9 TO ME AS 5.

10 MR. CRAIN: OKAY.

11 BY MR. CRAIN:

12 Q NOW, CALLING YOUR ATTENTION TO PEOPLE'S 5,
13 THE ONE THAT HAS THE HANDWRITING ON IT THAT I BELIEVE --
14 THAT I AM NOW GETTING BACK. DID YOU HAVE A CHANCE TO LOOK
15 AT THE HANDWRITING ON THIS DOCUMENT?

16 A YES.

17 Q CAN YOU TELL US WHETHER OR NOT THAT IS YOUR
18 HANDWRITING ON THAT DOCUMENT?

19 A IT LOOKS LIKE IT MIGHT BE MY HANDWRITING.

20 Q NOW, FINALLY, I HAVE ONE MORE EXHIBIT AND
21 THEN WE'LL CONCLUDE THE EXAMINATION.

22 MR. CRAIN: IF WE COULD MARK THIS AS EXHIBIT 6,
23 YOUR HONOR, WITH THE COURT'S PERMISSION.

24 THE COURT: YES.

25 MR. CRAIN: IT'S A ONE-PAGE DOCUMENT. IT APPEARS
26 TO BE AN UNSIGNED LETTER.

27

28 (MARKED FOR ID = PETITIONER'S 6, DOCUMENT.)

1 BY MR. CRAIN:

2 Q SHOWING YOU PEOPLE'S -- PETITIONER'S 6,
3 EXCUSE ME.

4 THE COURT: IS IT DATED?

5 MR. CRAIN: IT IS DATED, YOUR HONOR. FOR THE
6 RECORD, IT'S ON MICROGENESIS OF NORTH AMERICAN STATIONARY.
7 IT'S DATED JULY 25TH, 1984, ADDRESSED TO KILPATRICK UNITED
8 FINANCIAL OPERATIONS, INC., IN LITTLETON, COLORADO.

9 THE COURT: I WANTED TO BE ABLE TO IDENTIFY IT ON
10 MY EXHIBIT LIST.

11 MR. CRAIN: IT APPEARS TO HAVE MR. ADELMAN'S NAME
12 ON IT.

13 BY MR. CRAIN:

14 Q DOES THAT APPEAR TO BE A COPY OF A LETTER
15 THAT YOU HAD SOME INVOLVEMENT WITH?

16 A IT APPEARS TO BE.

17 Q WITHOUT READING THE WHOLE THING, EVEN THOUGH
18 IT'S VERY SHORT, DOES THIS APPEAR TO RELATE TO THE
19 NEGOTIATIONS THAT YOU HAVE TOLD US ABOUT THAT INVOLVED
20 MR. KILPATRICK, HIS COMPANY AND MR. HUNT'S COMPANY?

21 A YES.

22 MR. CRAIN: NOTHING FURTHER.

23 THANK YOU.

24 THE COURT: CROSS EXAMINATION?

25 MR. MC MULLEN: YES, YOUR HONOR.
26
27
28

CROSS-EXAMINATION @

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BY MR. MC MULLEN:

Q SIR, YOU HAVE TESTIFIED THAT YOU STARTED TO WORK FOR SOME OF MR. HUNT'S ORGANIZATIONS OR AN ORGANIZATION. WHAT WAS THE NAME OF THAT ORGANIZATION?

A ONE OF THE ORGANIZATIONS WAS BBC.

Q WAS THAT THE ONLY ORGANIZATION THAT MR. HUNT WAS AFFILIATED WITH FOR WHICH YOU PROVIDED LEGAL SERVICES DURING THE TIME PERIOD THAT YOU HAVE TESTIFIED TO?

A THERE WAS ALSO AN ORGANIZATION CALLED MICROGENESIS NORTH AMERICAN.

Q ANY OTHER ORGANIZATION?

A THOSE ARE THE ONLY TWO THAT I RECALL.

Q WHEN DID YOU START WORKING FOR THE BBC, OR EXCUSE ME, FOR MR. HUNT AND THESE ORGANIZATIONS YOU HAVE MENTIONED?

A SOME TIME AROUND JUNE, 1984, I BELIEVE IT WAS.

Q WHEN YOU STARTED OR SHORTLY AFTER THE TIME IN WHICH YOU STARTED WAS THERE SOME SIGNIFICANT EVENT THAT OCCURRED IN WHICH YOU HELPED THE ORGANIZATION RELATING TO A CHECK FOR ONE AND A HALF MILLION?

A YES.

Q WAS THAT A CHECK FROM RON LEVIN TO MICROGENESIS?

A AS I RECALL, THAT'S WHAT IT WAS.

Q WAS THERE SOME -- WHAT WERE THE CIRCUMSTANCES

1 SURROUNDING THAT CHECK WHEN YOU FIRST STARTED WORKING FOR
2 THE ORGANIZATIONS YOU HAVE REFERRED TO?

3 MR. CRAIN: YOUR HONOR, I THINK THAT'S OVERBROAD
4 AND UNINTELLIGIBLE.

5 THE COURT: REFRAME IT.

6 MR. MC MULLEN: OKAY.

7 BY MR. MC MULLEN:

8 Q WHAT DO YOU REMEMBER ABOUT THAT CHECK WHEN
9 YOU FIRST STARTED --

10 MR. CRAIN: I'M NOT SURE THAT HAS -- I WILL HAVE TO
11 OBJECT ON THE GROUNDS OF RELEVANCE.

12 THE COURT: WHERE ARE YOU GOING?

13 MR. MC MULLEN: YOUR HONOR, THE WHOLE REASON FOR
14 THIS PARTICULAR ISSUE BEING BEFORE THIS COURT IS THAT
15 THERE IS AN ALLEGATION THAT MR. BARENS DID NOT PUT ON
16 EVIDENCE REGARDING WHAT MR. ADELMAN HAS TESTIFIED ABOUT,
17 THAT IS THE PURCHASE OR NEGOTIATIONS REGARDING THE
18 CYCLOTRON. THAT -- THAT INURED TO THE DETRIMENT OF
19 MR. HUNT BECAUSE THAT WAS EVIDENCE THAT WOULD HAVE --

20 THE COURT: HE DIDN'T HAVE ANY REASON TO KILL
21 HUNT --

22 MR. MC MULLEN: MOTIVE. IT WOULD HAVE SUPPLANTED
23 THE MOTIVE.

24 MY OFFER OF PROOF IS THAT WHEN MR. ADELMAN
25 FIRST STARTED THEY HAD A CHECK FOR ONE AND A HALF MILLION
26 DOLLARS. THEY WERE SCRAMBLING AROUND TO, TRYING TO CASH
27 IT SHOWING FINANCIAL PROBLEMS AT THAT TIME.

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

1 BY MR. MC MULLEN:

2 Q WAS THERE AN ATTEMPT WHEN YOU FIRST STARTED
3 TO CASH THAT MILLION AND A HALF DOLLAR CHECK?

4 A YES.

5 MR. CRAIN: THAT IS OVERBROAD. THE WITNESS SHOULD
6 BE ALLOWED TO TESTIFY AS TO KNOWLEDGE BASED ON HIS
7 PERSONAL OBSERVATION.

8 THE COURT: OVERRULED.

9 PUT ANOTHER QUESTION.

10 THE ANSWER WAS "YES."

11 BY MR. MC MULLEN:

12 Q WHAT HAPPENED TO THE CHECK INSOFAR AS YOUR
13 PARTICIPATION WAS INVOLVED? DID YOU TRY TO GET THE CHECK
14 CASHED?

15 A I TRIED TO ASSIST JOE HUNT AND THE OTHER
16 OFFICERS OF THE CORPORATION TO GET THE CHECK CASHED.

17 Q HOW DID YOU TRY AND ASSIST IN THAT ENDEAVOR?

18 A I INTRODUCED THEM TO A BANK, THE WORLD TRADE
19 BANK THAT WAS IN BEVERLY HILLS, A BRANCH IN BEVERLY HILLS,
20 TO TRY TO SET UP AN ACCOUNT AND EXPEDITE THE NEGOTIATION
21 OF THE DRAFT.

22 Q WAS IT YOUR SENSE THAT THERE WAS CONCERN
23 ABOUT GETTING THE CHECK CASHED AND PEOPLE WANTED TO GET IT
24 CASHED?

25 MR. KLEIN: OBJECTION. CALLS FOR A CONCLUSION.

26 MR. CRAIN: YES.

27 THE COURT: CALLS FOR CONCLUSION.

28

1 BY MR. MC MULLEN:

2 Q WAS THE CHECK EVER CASHED?

3 MR. CRAIN: I'LL HAVE TO OBJECT TO THAT.

4 BY MR. MC MULLEN:

5 Q IF YOU KNOW.

6 MR. CRAIN: I DON'T MEAN TO BE ARGUMENTATIVE AND
7 CONSTANTLY INTERRUPT --

8 THE COURT: JUST STATE THE GROUND.

9 IT ASSUMES FACTS NOT IN EVIDENCE.

10 MR. CRAIN: IT ASSUMES FACTS NOT IN EVIDENCE AND --

11 BY MR. MC MULLEN:

12 Q WHAT HAPPENED TO THE CHECK IN QUESTION?

13 MR. KLEIN: I DON'T THINK HE HAS PERSONAL
14 KNOWLEDGE.

15 THE COURT: LAY A FOUNDATION.

16 BY MR. MC MULLEN:

17 Q AFTER THEY MADE A SUGGESTION THAT THEY
18 APPROACH A CERTAIN BANK, WHAT HAPPENED TO THE BANK?

19 MR. KLEIN: ONLY IF IT HAD SOMETHING TO DO WITH
20 HIM. IF IT WAS SOMEBODY ELSE --

21 THE COURT: JUST STATE THE GROUND OF THE OBJECTION.

22 LAY THE FOUNDATION.

23 BY MR. MC MULLEN:

24 Q DID YOU MAKE ANY EFFORTS -- LET ME BACKUP.

25 YOU SUGGESTED THAT THEY GO TO A PARTICULAR
26 BANK TO GET THE CHECK CASHED; IS THAT CORRECT?

27 A YES.

28 Q AND DID YOU HAVE ANY MORE INVOLVEMENT WITH

1 RESPECT TO THE CHECK AFTER YOU MADE THAT SUGGESTION?

2 A NO.

3 Q WHEN DID YOU LEAVE MR. HUNT'S ORGANIZATIONS
4 OR THE ORGANIZATIONS THAT HE WAS AFFILIATED WITH?

5 A I BELIEVE IT WAS SOME TIME AROUND THE END OF
6 SEPTEMBER OR THE BEGINNING OF OCTOBER OF 1984.

7 Q AND WHY DID YOU LEAVE?

8 A I WAS NOT PAID.

9 Q AND FOR HOW LONG OF A PERIOD WERE YOU NOT
10 PAID?

11 MR. CRAIN: OBJECTION. IRRELEVANT.

12 THE COURT: OVERRULED.

13 THE WITNESS: I DON'T RECALL.

14 BY MR. MC MULLEN:

15 Q ARE YOU A PRACTICING LAWYER NOW?

16 A YES.

17 Q SINCE THE TIME THAT YOU WORKED FOR MR. HUNT
18 WHAT KIND OF, GENERALLY SPEAKING, WHAT KIND OF A LAW
19 PRACTICE HAVE YOU HAD?

20 A GENERAL BUSINESS PRACTICE.

21 Q PRIOR TO WORKING FOR MR. HUNT'S ORGANIZATIONS
22 HOW LONG HAD YOU BEEN PRACTICING LAW?

23 A SINCE 1978.

24 Q YOU HAVE TESTIFIED A LITTLE WHILE AGO THAT
25 YOU HAD SOME KIND OF A CONVERSATION WITH MR. HUNT WITH
26 RESPECT TO A "60 MINUTES" PROGRAM THAT TALKED ABOUT
27 MR. KILPATRICK AND VARIOUS TAX SHELTERS OR SOME KINDS OF
28 INVESTMENT MONEY THAT HE HAD; IS THAT CORRECT?

1 A YES.

2 Q WAS THAT A PROGRAM THAT YOU SAW?

3 A I BELIEVE I SAW A TAPE OF IT. I DID NOT SEE
4 IT LIVE -- BUT I BELIEVE AT THE TIME I SAW A TAPE THAT
5 THEY HAD PLAYED.

6 Q DO YOU KNOW WHEN YOU SAW THE TAPE?

7 A SOMETIME DURING THAT PERIOD WHILE I WAS
8 EMPLOYED BY THE BBC OR MICROGENESIS.

9 Q DO YOU KNOW WHEN THE PROGRAM WAS ORIGINALLY
10 AIRED?

11 A NO.

12 Q SO DURING THE FOUR-MONTH PERIOD OF TIME THAT
13 YOU WORKED THERE PART OF YOUR DUTIES INVOLVED THESE
14 NEGOTIATIONS BETWEEN MR. KILPATRICK AND MR. HUNT AND HIS
15 ORGANIZATION; IS THAT CORRECT?

16 A YES.

17 Q AND IT INVOLVED THIS MACHINE CALLED THE
18 CYCLOTRON; IS THAT CORRECT?

19 A YES.

20 Q HAVE YOU EVER SEEN THE CYCLOTRON DURING THAT
21 PERIOD OF TIME?

22 A I BELIEVE I SAW PHOTOGRAPHS OF THEM, OF IT.

23 Q I TAKE IT FROM YOUR ANSWER YOU NEVER SAW THE
24 CYCLOTRON IN OPERATION?

25 A NO.

26 Q IS IT TRUE THAT YOU REALLY HAVE NO
27 RECOLLECTION OF THE FACTS SURROUNDING THE DECLARATIONS
28 THAT ARE IN FRONT OF YOU WHICH ARE RESPONDENT'S EXHIBITS

1 V-1 AND V-2?

2

3

(PAUSE.)

4

5

6

A YES, OTHER THAN WHAT I HAVE TESTIFIED TODAY
BY HAVING IT REFRESHED.

7

8

9

Q DURING THE FOUR-MONTH PERIOD OF TIME DID YOU
MEET WITH WILLIAM KILPATRICK AND HIS LAWYER, D-E-C-L-A-N,
O, APOSTROPHE, D-O-N-N-E-L?

10

11

A I DON'T BELIEVE I MET WITH THE ATTORNEY. I
RECALL MEETING WITH MR. KILPATRICK.

12

13

Q DO YOU REMEMBER HOW MANY TIMES YOU MET WITH
MR. KILPATRICK?

14

15

16

17

A NO.

Q DO YOU REMEMBER ATTENDING A NEGOTIATING -- A
NEGOTIATIONS MEETING WITH DECLAN O'DONNELL ON JULY 13,
1984?

18

19

20

A NO.

Q SIR, PRIOR TO THIS POINT IN TIME -- WELL, LET
ME WITHDRAW THAT.

21

22

23

YOU SAID YOU WERE A PRACTICING LAWYER FOR
APPROXIMATELY TEN YEARS BEFORE YOU STARTED WORKING WITH
MR. HUNT'S ORGANIZATION.

24

25

MR. KLEIN: I THINK HE SAID ABOUT SIX YEARS.
BY MR. MC MULLEN:

26

27

28

Q WELL, SIX YEARS.

A SINCE 1978.

Q WHAT KIND OF PRACTICE HAD YOU ENGAGED IN

1 PRIOR TO WORKING FOR MR. HUNT'S ORGANIZATIONS?

2 A GENERAL CIVIL LITIGATION AND BUSINESS
3 PRACTICE.

4 Q PRIOR TO THAT POINT IN TIME HAVE YOU EVER
5 HELPED NEGOTIATE ANY KIND OF A BUSINESS DEAL THAT INVOLVED
6 200 MILLION?

7 A NO, NOT THAT I RECALL.

8 Q ANYTHING CLOSE TO 200 MILLION? ANY KIND OF A
9 BUSINESS TRANSACTION?

10 A YES.

11 Q APPROXIMATELY IN WHAT AMOUNT?

12 A APPROXIMATELY 100 MILLION.

13 Q AND SINCE THAT PERIOD IN TIME WHEN YOU HAVE
14 WORKED FOR MR. HUNT'S ORGANIZATIONS HAVE YOU EVER
15 NEGOTIATED ANY KIND OF BUSINESS DEALINGS INVOLVING AROUND
16 200 MILLION?

17 MR. KLEIN: OBJECTION. IRRELEVANT.

18 THE COURT: SUSTAINED.

19 BY MR. MC MULLEN:

20 Q IF I COULD DRAW YOUR ATTENTION TO
21 RESPONDENT'S EXHIBIT V, AS IN VICTOR, AND IN PARTICULAR
22 V-1. THE LAST SENTENCE OF THE THIRD PARAGRAPH ON THE
23 FIRST PAGE. COULD YOU READ THAT TO YOURSELF, PLEASE.
24 DATED -- IT'S SIGNED MARCH 15TH. YOUR SIGNATURE IS ON THE
25 FIRST PAGE.

26 A I'M SORRY, WHICH SENTENCE DID YOU WANT ME TO
27 READ?

28 Q LAST SENTENCE STARTING WITH, "DURING THIS

1 TIME."

2
3 (WITNESS REVIEWING DOCUMENT.)
4

5 Q WHAT DID YOU MEAN WHEN YOU SAID (READING), "I
6 ALSO BELIEVED IN GOOD FAITH THAT MR. KILPATRICK HAD
7 SUFFICIENT FINANCIAL MEANS TO PURCHASE A LARGE QUANTITY OF
8 ATTRITION MILLS"?

9 A LIKE I TESTIFIED, I SAW -- OR RECALL HAVING
10 SEEN THE TAPE THAT INVOLVED A TAX PROGRAM THAT
11 MR. KILPATRICK WAS INVOLVED IN THAT RAISED SUBSTANTIAL
12 SUMS OF MONEY THAT HAD -- HAD PROBLEMS THAT -- AS I
13 RECALL, THE PROBLEMS WERE NOW RESOLVED, AND NOW HE WAS
14 LOOKING TO SPEND THAT MONEY IN ENERGY RELATED AREAS
15 PERHAPS TO MAINTAIN THE TAX STATUS. AND THE FACT THAT
16 THERE WERE REGULAR ONGOING NEGOTIATIONS WOULD INDICATE TO
17 ME THAT THIS WAS AN EXERCISE THAT PEOPLE LOOKED TO
18 CONSUMMATE.

19 Q IN YOUR DECLARATION ARE THOSE YOUR WORDS THAT
20 YOU BELIEVED IN GOOD FAITH?

21 A YES.

22 Q WERE YOU AWARE THROUGHOUT THE NEGOTIATIONS
23 THAT THERE WAS SOME KIND OF A PROBLEM ASSOCIATED WITH
24 CONSUMMATING THE DEAL THAT WAS BEING NEGOTIATED?

25 A I DON'T UNDERSTAND YOUR QUESTION.

26 Q WELL, WERE THERE PROBLEMS IN CONSUMMATING THE
27 ATTRITION DEAL WITH MR. KILPATRICK AND MR. HUNT'S
28 ORGANIZATION?

1 A DO YOU MEAN PROBLEMS IN THE SENSE THAT THEY
2 WOULDND'T AGREE TO THE TERMS OR -- I'M NOT --

3 Q WELL, DID THERE SEEM TO BE SOMETHING THAT
4 PREVENTED THE PARTIES FROM CONSUMMATING THE DEAL?

5 A THERE WERE, I RECALL, PROBLEMS IN COMING TO
6 TERMS, AND ALSO I RECALL THERE WERE PROBLEMS OVER OTHER
7 ASPECTS, BUT I DON'T SPECIFICALLY RECALL WHAT THEY WERE
8 RIGHT NOW.

9 Q DRAWING YOUR ATTENTION TO PETITIONER'S
10 EXHIBIT 4. IF YOU WOULD TAKE THAT EXHIBIT, IT'S ENTITLED
11 "OPTION AGREEMENT," AT THE TOP. IF YOU WOULD LOOK UNDER
12 PARAGRAPH A. COULD YOU READ THAT FIRST PARAGRAPH?

13

14 (WITNESS REVIEWING DOCUMENT.)

15

16 A OKAY.

17 Q THIS AGREEMENT WAS NOT FOR THE SALE OF
18 CYCLOTRON WAS IT? ACCORDING TO THE RECITAL THERE IT IS
19 CONFERRING UPON SATURN THE LICENSE TO MARKET CERTAIN
20 PROCESSES AND ITEMS; IS THAT CORRECT?

21 A THAT'S CORRECT.

22 Q SO THERE WAS NEVER ANY SALE OF THESE
23 CYCLOTRONS ENVISIONED?

24 A THAT'S CORRECT.

25 Q AND IN FACT -- AND IN FACT WERE YOU AWARE
26 THAT AS -- IN TERMS OF THE OWNERSHIP INTERESTS OF THE
27 CYCLOTRON MILL, THAT MR. O'DONNELL AND MR. KILPATRICK
28 CLAIMED THAT THEY OWNED THE OWNERSHIP RIGHTS TO THE

1 ATTRITION MILL --

2 MR. CRAIN: OBJECTION. THAT'S ASSUMING FACTS NOT
3 IN EVIDENCE.

4 MR. KLEIN: IT'S ALSO HEARSAY.

5 THE COURT: OVERRULED. IT GOES TO HIS -- YOU WENT
6 INTO HIS STATE OF MIND IN TERMS OF WHETHER HE THOUGHT
7 THERE WAS A LEGITIMATE INTEREST.

8 MR. CRAIN: HE IS ASKING THE WITNESS TO ASSUME IT'S
9 TRUE WHEN HE IS --

10 THE COURT: IF I WANT YOUR ARGUMENT, COUNSEL, I'LL
11 ASK FOR IT. I HAVE RULED.

12 YOU MY ANSWER.

13 THE WITNESS: COULD YOU READ BACK THE QUESTION?

14 THE COURT: RESTATE THE QUESTION.

15 THE WITNESS: OR RESTATE THE QUESTION.

16 BY MR. MC MULLEN:

17 Q YES.

18 WERE YOU AWARE THAT DURING THE NEGOTIATION
19 PERIOD OF TIME THAT IT WAS THE POSITION OF MR. KILPATRICK
20 AND MR. O'DONNELL THAT MR. KILPATRICK OWNED THE RIGHTS TO
21 THE ATTRITION MILL?

22 A I DO RECALL AT SOME POINT THERE BECAME AN
23 ISSUE OVER OWNERSHIP OF THE ATTRITION MILLS. I DON'T
24 SPECIFICALLY RECALL WHAT THE ISSUES WERE AT THIS TIME.

25 Q DID YOU KNOW DURING THE TIME OF THE
26 NEGOTIATIONS WITH MR. KILPATRICK THAT MR. KILPATRICK'S
27 ORGANIZATION WAS IN RECEIVERSHIP?

28 MR. CRAIN: WELL, THAT ASSUMES FACTS NOT IN

1 EVIDENCE.

2 THE COURT: OVERRULED.

3 THE WITNESS: NO.

4 BY MR. MC MULLEN:

5 Q WERE YOU AWARE DURING THE TIME THAT YOU
6 NEGOTIATED WITH MR. KILPATRICK THAT HE HAD A FEDERAL
7 INDICTMENT HANGING OVER HIS HEAD?

8 MR. CRAIN: WELL, ANYTHING THAT MR. MC MULLEN ASKS
9 SAYING, "DID YOU KNOW THIS, DID YOU KNOW THAT," YOUR
10 HONOR, ASSUMES FACTS NOT IN EVIDENCE. IT'S ONE THING TO
11 ASK THE WITNESSES IF HE HAD HEARD SOMETHING. THAT IS A
12 DIFFERENT QUESTION.

13 THE COURT: WHETHER HE KNEW IT VERSUS WHETHER HE
14 HEARD IT.

15 MR. CRAIN: WELL, HE IS ASKING -- EITHER WAY HE IS
16 ASSUMING FACTS.

17 THE COURT: OVERRULED.

18 MR. CRAIN: IF HE THINKS HE CAN PROVE UP THESE
19 THINGS, THAT'S ANOTHER QUESTION.

20 MR. KLEIN: IT'S ALSO HEARSAY.

21 THE COURT: OVERRULED.

22 THE WITNESS: NO.

23 MR. MC MULLEN: THANK YOU.

24 LET ME JUST HAVE A MOMENT.

25

26 (PAUSE.)

27

28

1 BY MR. MC MULLEN:

2 Q JUST SO I'M CLEAR, TO YOUR KNOWLEDGE THERE
3 WAS NEVER ANY KIND OF DEAL CONSUMMATED BETWEEN KILPATRICK
4 AND HIS ORGANIZATIONS AND MR. HUNT AND HIS AFFILIATED
5 ORGANIZATIONS; IS THAT CORRECT?

6 A YES.

7 MR. MC MULLEN: IF I COULD JUST HAVE A MOMENT.

8

9 (COUNSEL CONFER.)

10

11 BY MR. MC MULLEN:

12 Q DRAWING YOUR ATTENTION TO PETITIONER'S
13 EXHIBIT 4, THE OPTION AGREEMENT, WHAT IS YOUR
14 UNDERSTANDING OF WHAT THIS AGREEMENT DOES? WHAT DOES IT
15 MEAN?

16 A WELL, I HAVEN'T SPECIFICALLY LOOKED AT THIS
17 AGREEMENT IN DETAIL FOR A LONG TIME, BUT BASICALLY IT
18 PROVIDES AN OPTION WITH REGARDS TO LICENSING.

19 Q LICENSING OF THE ATTRITION MILLS?

20 MR. KLEIN: I MEAN, THE DOCUMENT SPEAKS FOR ITSELF,
21 YOUR HONOR.

22 THE COURT: IT IS HIS UNDERSTANDING.

23 THE WITNESS: AT THIS TIME I DON'T HAVE ANY
24 UNDERSTANDING OF WHAT IT SAYS. IF YOU WANT ME TO TAKE THE
25 TIME TO GO THROUGH IT --

26 THE COURT: ANY PROBLEM, MR. KLEIN?

27 MR. KLEIN: NO, YOUR HONOR.

28 THE COURT: PLEASE BE SEATED.

1 BY MR. MC MULLEN:

2 Q WITH RESPECT TO PETITIONER'S EXHIBIT 5, WHAT
3 IS YOUR UNDERSTANDING OF WHAT THIS LICENSE AGREEMENT
4 MEANS?

5 A AGAIN, I DON'T HAVE ANY SPECIFIC -- I HAVE
6 NOT READ THIS DOCUMENT FOR A SUBSTANTIAL AMOUNT OF TIME.
7 I DON'T SPECIFICALLY RECALL THE TERMS.

8 MR. MC MULLEN: IF I MIGHT HAVE A MOMENT.

9 THE COURT: YES.

10 MR. MC MULLEN: I THINK I MIGHT HAVE A QUESTION
11 WITH RESPECT TO EXHIBIT 5.

12

13 (PAUSE.)

14

15 MR. KLEIN: CAN THE RECORD REFLECT THAT COUNSEL
16 APPEARS TO BE LOOKING AT THE SAME DOCUMENT IN HIS
17 NOTEBOOK, SO HE DID HAVE THE DOCUMENT.

18 THE COURT: I CAN'T TELL YOU WHAT HE'S LOOKING AT.
19 HE SAID HE WANTED TO LOOK AT SOMETHING TO DO WITH EXHIBIT
20 5, SO I ASSUME IT HAS SOMETHING TO DO WITH IT.

21

22 (PAUSE.)

23

24 MR. MC MULLEN: NOTHING FURTHER.

25 THE COURT: WAS ANY LICENSING AGREEMENTS BETWEEN
26 THOSE PARTIES EVER SIGNED?

27 THE WITNESS: I DON'T BELIEVE SO.

28 THE COURT: WAS ANY OPTION AGREEMENT BETWEEN THESE

1 PARTIES EVER SIGNED?

2 THE WITNESS: I DON'T BELIEVE SO.

3 THE COURT: WAS ANY MONEY EVER EXCHANGED BETWEEN
4 THESE PARTIES CONCERNING THEIR POTENTIAL VENTURE?

5 THE WITNESS: I DON'T RECALL.

6 THE COURT: ANY REDIRECT?

7 MR. CRAIN: YES.

8 COULD I HAVE -- I HAVE ANOTHER VERSION OF THE
9 LICENSING AGREEMENT THAT I'D LIKE TO HAVE MARKED. IT'S A
10 7.

11 THE COURT: ANOTHER VERSION DIFFERENT FROM --

12 MR. CRAIN: IT HAS OTHER HANDWRITING ON IT. I WANT
13 TO ASK HIM ABOUT IT.

14 THE COURT: IT WILL BE MARKED AS 7.

15 MR. CRAIN: THANK YOU.

16

17 (MARKED FOR ID = PETITIONER'S 7, DOCUMENT.)

18

19 REDIRECT EXAMINATION +

20

21 BY MR. CRAIN:

22 Q MR. ADELMAN, WHILE THE D.A. IS EXAMINING THE
23 DOCUMENT, IS IT YOUR TESTIMONY THAT IT WAS YOUR BELIEF
24 THAT MICROGENESIS OWNED THESE ATTRITION MILLS AND THAT
25 MR. KILPATRICK WAS INTERESTED IN OBTAINING THEM OR THE USE
26 OF THEM IN SOME WAY, AND THAT THAT'S WHAT THESE
27 NEGOTIATIONS WERE ALL ABOUT INSOFAR AS YOUR PARTICIPATION
28 GOES?

1 A YES.

2 Q AND I TAKE IT FROM YOUR TESTIMONY THAT THE
3 OPTION AGREEMENT AND THE LICENSE AGREEMENT THAT YOU WERE
4 SHOWN, SPECIFICALLY 4 AND 5, ARE DOCUMENTS THAT YOU
5 HAVEN'T HAD THE OPPORTUNITY TO LOOK AT FOR SEVERAL YEARS
6 NOW; IS THAT RIGHT?

7 A YES.

8 Q AND AS I ASKED YOU EARLIER AND AS
9 MR. MC MULLEN ASKED YOU SOMETHING ABOUT, REFERRING TO THE
10 OPTION AGREEMENT HERE, PETITIONER'S 4, ON PAGE 2, I KNOW
11 YOU WERE JUST SHOWN IT HERE THIS MORNING FOR THE FIRST
12 TIME IN A LONG TIME. IT DOES STATE THAT MICROGENESSIS WAS
13 TO RECEIVE 18 MONTHLY PAYMENTS OF 333,333,000, -- STRIKE
14 THAT -- ONE-THIRD OF A MILLION DOLLARS TOTALING SIX
15 MILLION OVER A CONSECUTIVE 18-MONTH PERIOD; IS THAT RIGHT?

16 A YES.

17 Q AND SHOWING YOU NOW WHAT HAS BEEN MARKED AS
18 EXHIBIT 7. DOES -- IS IT CORRECT THAT THERE WERE A NUMBER
19 OF DRAFTS THAT WENT BACK AND FORTH, AS YOU RECALL ALL
20 THESE YEARS LATER, INVOLVING MICROGENESIS AND KILPATRICK?

21 A YES.

22 Q AND SHOWING YOU EXHIBIT 7, DOES THAT APPEAR
23 TO BE ANOTHER DRAFT OF THE LICENSE AGREEMENT THAT YOU
24 WORKED ON?

25 A YES.

26 Q AND YOU SEE HANDWRITING ON THAT DOCUMENT?

27 A YES.

28 Q AND DOES THAT APPEAR TO BE YOUR HANDWRITING

1 AS WELL?

2 A YES.

3 Q AND ARE THOSE HANDWRITTEN NOTES THAT YOU MADE
4 CONCERNING MODIFICATIONS IN THAT DRAFT OF THE LICENSING
5 AGREEMENT BETWEEN MR. KILPATRICK, HIS ASSOCIATED
6 BUSINESSES AND MR. HUNT'S BUSINESS?

7 A YES.

8 MR. CRAIN: MAY I HAVE JUST A MOMENT, YOUR HONOR.

9 THE COURT: YES.

10

11 (A CONFERENCE WAS HELD BETWEEN COUNSEL
12 AND THE DEFENDANT, NOT REPORTED.)

13

14 BY MR. CRAIN:

15 Q NOW, ISN'T IT -- YOU HAVE ALREADY TOLD US
16 WHAT YOUR VIEWS OF THE VIABILITY OF KILPATRICK AND HIS
17 BUSINESS WAS DURING THAT TIME PERIOD; CORRECT?

18 A YES.

19 Q WHEN I ASKED YOU THOSE QUESTIONS EARLIER WHEN
20 YOU FIRST TOOK THE WITNESS STAND --

21 A YES.

22 Q SO ISN'T IT TRUE THAT MR. KILPATRICK DURING
23 THESE NEGOTIATIONS NEVER SAID TO YOU, "OH, BY THE WAY,
24 THESE ATTRITION MILLS, I'M INTERESTED IN WORKING OUT A
25 DEAL WITH, FOR THEIR USE WITH MR. HUNT'S COMPANY. IN
26 FACT, MR. ADELMAN, I MERELY OWN THEM." HE NEVER TOLD YOU
27 ANYTHING LIKE THAT, DID HE?

28 MR. MC MULLEN: OBJECTION. LEADING AND

1 ARGUMENTATIVE.

2 THE COURT: IT'S LEADING. BUT I'LL ALLOW YOU TO
3 ANSWER THE QUESTION.

4 THE WITNESS: NO. AS I RECALL THE ISSUE CAME UP
5 LATER BECAUSE HE HAD ACQUIRED THE RIGHTS THROUGH SOME
6 OTHER SOURCE.

7 BY MR. CRAIN:

8 Q OKAY.

9 SO DURING THE TIME, DURING THE TIME THAT YOU
10 BELIEVED, AS YOU SAID IN YOUR DECLARATION, YOU THOUGHT HE
11 WAS A VIABLE PURCHASER, YOU THOUGHT HE WAS A PURCHASER AND
12 NOT SOMEBODY CLAIMING TO BE THE OWNER; IS THAT RIGHT?

13 A YES.

14 Q WAS THAT OTHER SOURCE THAT YOU MENTIONED A
15 MR. SWARTOUT, IF YOU RECALL AT THIS TIME?

16 A YES.

17 Q FINALLY, GOING BACK TO 1987, WHEN YOU TOLD US
18 YOU WERE AN ATTORNEY PRACTICING IN LOS ANGELES AND
19 REGISTERED WITH THE STATE BAR AND LISTED IN THE PHONE BOOK
20 AS TO WHERE YOUR OFFICE WAS, WERE YOU EVER CONTACTED BY
21 MR. ARTHUR BARENS OR ANYONE CONNECTED WITH MR. HUNT'S
22 LEGAL DEFENSE DURING HIS TRIAL OF THAT YEAR ABOUT BEING A
23 WITNESS IN THE CASE?

24 A YES.

25 Q YOU WERE?

26 A (NO AUDIBLE RESPONSE.)

27 THE COURT: YOU ARE NODDING. WOULD YOU PLEASE
28 ANSWER OUT LOUD.

1 THE WITNESS: YES. SORRY.

2 BY MR. CRAIN:

3 Q DO YOU REMEMBER WHO CONTACTED YOU?

4 A YES.

5 Q WHO?

6 A JOSEPH HUNT.

7 Q WERE YOU EVER CONTACTED BY MR. BARENS?

8 A NO.

9 Q WERE YOU EVER CONTACTED BY MR. CHER?

10 A NO.

11 Q WERE YOU EVER CONTACTED BY ANY INVESTIGATOR
12 FOR MR. BARENS?

13 A NOT THAT I RECALL.

14 Q AND IN YOUR DECLARATION YOU STATE THAT YOU
15 DIDN'T RECALL EVER HAVING BEEN CONTACTED BY MR. HUNT'S
16 TRIAL ATTORNEYS IN CONNECTION WITH THE SANTA MONICA CASE?

17 A YES.

18 MR. CRAIN: OKAY.

19 NOTHING FURTHER.

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

21 MR. MC MULLEN: YES.

22 THE COURT: QUICKLY.

23

24 RE-CROSS-EXAMINATION @

25

26 BY MR. MC MULLEN:

27 Q WITH RESPECT TO EXHIBIT 7 THAT'S JUST BEEN
28 MARKED, DID THAT PRECEDE EXHIBIT 5 IN TERMS OF WHEN IT WAS

1 ALTERED OR CHANGED?

2 A I DON'T RECALL.

3 Q WITH RESPECT TO ALL OF THESE AGREEMENTS THAT
4 ARE IN FRONT OF YOU, 4, 5 AND 7, DID YOU PREPARE ALL OF
5 THOSE?

6 A I ASSISTED IN THE REVISIONS. I DON'T RECALL
7 WHO DID -- WHO THE INITIAL PARTY WAS THAT DRAFTED THE
8 FIRST DRAFT, IF THAT'S WHAT YOU MEAN.

9 Q YOU TESTIFIED THAT MR. KILPATRICK ACQUIRED
10 THE RIGHTS TO THE MILL THROUGH ANOTHER SOURCE. WHEN DID
11 THAT HAPPEN IN RELATION TO YOUR NEGOTIATIONS WITH HIM?

12 A AS I RECALL IT WAS TOWARDS THE END OF THE
13 SUMMER SOMETIME, AUGUST, SEPTEMBER, CLOSE TO WHEN I LEFT
14 THAT ISSUE HAD COME UP.

15 Q WITH RESPECT TO EXHIBIT 4, PAGE 2 WHERE IT
16 TALKS ABOUT THE CONSIDERATIONS, TO YOUR KNOWLEDGE, DID ANY
17 MONEY EVER CHANGE HANDS? WAS ANY MONEY GIVEN TO
18 MR. HUNT'S ORGANIZATION PURSUANT TO THAT PROVISION?

19 A I HAVE NO KNOWLEDGE OF MONEY BEING EXCHANGED.

20 Q THIS AGREEMENT, OPTION AGREEMENT, TO YOUR
21 KNOWLEDGE, WAS NEVER SIGNED BY THE PARTIES?

22 THE COURT: I THINK I ALREADY WENT THROUGH THAT
23 DURING MY QUESTIONING. THE ANSWER WAS NO, NO AND NO.

24 MR. CRAIN: I THINK IT WAS ALSO ASKED ON DIRECT
25 EXAMINATION, YOUR HONOR, AND ANSWERED THE SAME WAY.

26 MR. MC MULLEN: COULD I HAVE A SECOND?
27

28 (PAUSE.)

1 MR. MC MULLEN: NOTHING FURTHER.

2 THE COURT: ANYTHING FURTHER?

3 MR. CRAIN: JUST TO CLARIFY A COUPLE OF THINGS.

4

5 FURTHER REDIRECT EXAMINATION +

6

7 BY MR. CRAIN:

8 Q FROM -- DURING THE PERIOD OF TIME IN WHICH
9 YOU WERE INVOLVED IN THE NEGOTIATIONS BETWEEN MICROGENESIS
10 AND MR. KILPATRICK'S COMPANY, DURING THAT PERIOD OF TIME
11 DID MR. KILPATRICK ALSO ALWAYS APPEAR TO BE DESIROUS OF?

12 A YES.

13 Q AND THE MATTER WITH SWARTOUT CAME UP AT SOME
14 LATER PERIOD OF TIME; IS THAT RIGHT?

15 A YES.

16 MR. CRAIN: NOTHING FURTHER.

17 THE COURT: MAY THE WITNESS BE EXCUSED?

18 MR. CRAIN: NO OBJECTION.

19 THE COURT: ANY OBJECTION?

20 MR. MC MULLEN: I WOULD LIKE TO HAVE HIM REMAIN ON
21 CALL FOR IMPEACHMENT PURPOSES.

22 THE COURT: UPON A SUBSTANTIAL SHOWING.

23 MR. MC MULLEN: YES, YOUR HONOR.

24 THE COURT: THANK YOU, SIR.

25 WE'RE GOING TO TAKE OUR RECESS NOW, LADIES
26 AND GENTLEMEN. WE'LL START UP AGAIN AT 2 O'CLOCK.

27 MR. CRAIN: COULD THE COURT ORDER A WITNESS BACK?

28 MR. KLEIN: THE WITNESS THAT I HAD AVAILABLE TOLD

1 ME HE CAN'T COME BACK.

2 THE COURT: WELL, THE WITNESS IS ORDERED BACK AT 2
3 O'CLOCK.

4 MR. KLEIN: I THINK YOU BETTER DISCUSS IT WITH
5 BRODEY.

6 MR. CRAIN: PERHAPS THE COURT COULD DIRECTLY SPEAK
7 WITH MR. BRODEY.

8 THE COURT: ALL RIGHT.

9

10 (PAUSE.)

11

12 MR. CRAIN: DID YOUR HONOR SAY 2 O'CLOCK?

13

14 (PAUSE.)

15

16 THE COURT: HELLO, MR. BRODEY. YOU NEED TO BE BACK
17 AT 2 O'CLOCK.

18 MR. BRODEY: YOUR HONOR, I DON'T KNOW WHETHER YOU
19 ARE INTERESTED IN MY OWN PERSONAL PROBLEMS, BUT --

20 THE COURT: PROBABLY NOT. I DON'T LISTEN TO MANY
21 LAWYERS PERSONAL PROBLEMS.

22 MR. BRODEY: I WAS NOT SUBPOENAED. I CAME DOWN AS
23 AN ACCOMMODATION. THEY NEEDED ME. I CAME DOWN. I DROVE
24 BACK FROM VENTURA AND I GOT SOMEBODY ELSE TO MAKE AN
25 APPEARANCE FOR ME TO BE HERE. I RESCHEDULED SOME THINGS,
26 AND I HAVE A DOCTOR'S APPOINTMENT AT 1 O'CLOCK THAT IS --
27 THAT'S BEEN SCHEDULED --

28

THE COURT: WHEREABOUTS IS THAT?

1 MR. BRODEY: IT'S IN WEST LOS ANGELES. IT'S SOME
2 TESTS. IT WILL TAKE ABOUT TWO HOURS.

3 THE COURT: GOT ANYBODY ELSE YOU CAN PUT ON THIS
4 AFTERNOON?

5 MR. KLEIN: I HAVE A WITNESS I CAN PUT ON AT 2
6 O'CLOCK. I DON'T THINK THE WITNESS WILL TAKE A LONG TIME,
7 BUT I HAVE A WITNESS I CAN PUT ON AT 2:00.

8 MR. MC MULLEN: IS THAT CASEY COHEN?

9 MR. KLEIN: YES.

10 MR. MC MULLEN: JUST SO THE COURT IS AWARE, WE
11 WOULD BE OBJECTING TO THE RELEVANCY OF THAT PARTICULAR
12 WITNESS.

13 THE COURT: WE'LL TAKE THAT UP AT 2:00.

14 ANYBODY ELSE THAT YOU COULD PUT ON?

15 MR. KLEIN: I HAVE BEEN TRYING TO GET MR. GUTTER
16 AND HIS WIFE. THEY HAVEN'T RETURNED PHONE CALLS FOR TWO
17 DAYS. I BELIEVE HE IS IN THE SUBPOENA.

18 THE COURT: SHOW ME THE SUBPOENA AND WE'LL ISSUE A
19 WARRANT.

20 MR. KLEIN: I BELIEVE HE IS IN THE AIR FIGHTING THE
21 FIRES.

22 THE COURT: WE'LL SEND THE SHERIFF'S.

23 HOW ABOUT MR. BRODEY THURSDAY MORNING?

24 MR. KLEIN: THAT'S FINE, YOUR HONOR.

25 MR. BRODEY: I AM OUT OF TOWN ON THURSDAY MORNING.
26 MR. BARENS IS SCHEDULED TO COME BACK, SIR, NEXT WEEK, AND
27 I'M GOING TO BE WITH HIM. I THOUGHT MAYBE I COULD TESTIFY
28 WHEN I CAME BACK WITH MR. BARENS.

1 MR. KLEIN: THAT'S OKAY WITH ME.

2 THE COURT: I JUST WANT MY TIME FILLED.

3 HOW ARE WE GOING TO FILL MY TIME?

4

5 (COUNSEL CONFER.)

6

7 MR. KLEIN: WELL, MAYBE -- I MEAN, I'LL HAVE SOME
8 WITNESSES FOR THURSDAY. I DON'T THINK I CAN FILL UP THE
9 DAY. MAYBE THE PEOPLE WOULD WANT TO PUT ON SOME OF THEIR
10 WITNESSES OUT OF ORDER.

11 THE COURT: WELL, WHY CAN'T WE FILL UP OUR DAY. I
12 MEAN, I HAVE GIVEN YOU WEDNESDAY OFF SO THERE SHOULD HAVE
13 BEEN PEOPLE FROM WEDNESDAY THAT COULD HAVE EASILY FILLED
14 THURSDAY.

15 MR. KLEIN: MR. BARENS IS GOING TO BE A LENGTHY
16 WITNESS NEXT WEEK, AND THEN MR. HUNT IS GOING TO BE THE --
17 GOING TO BE THE LAST WITNESS AND MR. CHER AND MR. DOBINS,
18 WHO WAS THE APPELLATE COUNSEL. WE HAVE A SERIES OF
19 WITNESSES THAT WE HAVE DISCUSSED WITH THE COURT, BUT I
20 THINK THAT IS GOING TO BE --

21 THE COURT: ALL RIGHT.

22 WHEN ARE YOU COMING BACK, MR. BRODEY?

23 MR. BRODEY: I'LL BE BACK SUNDAY EVENING.

24 THE COURT: WHY -- WANT TO DO IT MONDAY? WANT TO
25 MR. BRODEY BACK ON MONDAY AND ALSO MR. BARENS?

26 MR. KLEIN: I'LL TRY TO. I THINK WE CAN DO JUDGE
27 WAPNER ON THURSDAY. I THINK WITH ENOUGH NOTICE HE CAN
28 COME.

1 THE COURT: WHERE IS HE SITTING NOW?

2 MR. KLEIN: ACROSS THE STREET IN CIVIL. HE'S DOING
3 A CRIMINAL CASE RIGHT NOW, THOUGH.

4 MR. MC MULLEN: I HAVE BEEN IN CONTACT -- IN
5 CONTACT WITH JUDGE WAPNER, AND HE WOULD LIKE A DAYS NOTICE
6 SO HE CAN ADVISE THE JURY AND THE LAWYERS.

7 THE COURT: YOU HAVE GOT TO 2 O'CLOCK TO ROUND UP
8 THESE WITNESSES.

9 MR. KLEIN: I'M WORKING ON IT TODAY AND YESTERDAY
10 AND ALL NIGHT LAST NIGHT.

11 THE COURT: MR. BRODEY, MONDAY. 2 O'CLOCK.

12 COUNSEL AND DEFENDANT ARE ORDERED TO RETURN
13 AT 2:00.

14

15

16 (AT 11:50 P.M. A RECESS WAS TAKEN

17 UNTIL 2:00 P.M. OF THE SAME DAY.)

18

19

20

21

22

23

24

25

26

27

28

1 LOS ANGELES, CALIFORNIA; TUESDAY, APRIL 30, 1996

2 2:00 P.M.

3 DEPARTMENT NO. 101

HON. J. STEPHEN CZULEGER, JUDGE

4
5 (APPEARANCES AS HERETOFORE NOTED.)

6
7 THE BAILIFF: COME TO ORDER, DEPARTMENT 101 IS
8 AGAIN IN SESSION.

9 THE COURT: IN THE MATTER OF JOSEPH HUNT, THE
10 RECORD WILL REFLECT ALL COUNSEL AND PETITIONER ARE
11 PRESENT.

12 ALL RIGHT.

13 YOU MAY CALL IN YOUR NEXT WITNESS.

14 MR. KLEIN: CASEY COHEN.

15 MR. MC MULLEN: WE ARE OBJECTING ON RELEVANCY
16 GROUNDS AS TO THIS ISSUE. BASED UPON THE OFFER OF PROOF
17 THAT'S BEEN GIVEN TO US SO FAR AND FILED WITH THE COURT WE
18 THINK THAT THIS WITNESS WILL BE CALLED UPON TO EXPRESS
19 INADMISSIBLE OPINION THAT REALLY BORDERS REALLY IN THE
20 ARENA OF BEING AN EXPERT.

21 FURTHER, THERE IS NO SPECIFIC OFFER OF PROOF
22 JUST A BROAD GENERAL OFFER OF PROOF THAT HIS TESTIMONY
23 WILL GO TO ISSUES 2 AND 3.

24 AND, OF COURSE, THE COURT HAS LIMITED THOSE
25 ISSUES, SIGNIFICANTLY ELIMINATED ISSUE 3 AS FAR AS THIS
26 EVIDENTIARY HEARING GOES.

27 MR. KLEIN: HE IS NOT GOING TO TESTIFY --

28 THE COURT: LET HIM FINISH.

1 MR. KLEIN: EXCUSE ME. I THOUGHT HE WAS DONE.

2 MR. MC MULLEN: THAT'S PRETTY MUCH OUR OBJECTION.

3 THE COURT: GO AHEAD.

4 MR. KLEIN: YOUR HONOR, HE IS ONLY GOING TO TESTIFY
5 ABOUT ISSUE 2, WHICH IS MR. BARENS' COMPETENCY. I THINK
6 SOMEBODY WHO WORKED ON THE CASE WITH MR. BARENS IS BEST
7 EQUIPPED TO PROVIDE FACTUAL INFORMATION RELATIVE TO THE
8 JOB THAT MR. BARENS DID IN THE CASE.

9 MR. COHEN IS A LONG-TIME EXPERT IN THE
10 PENALTY PHASE PREPARATION OF CASES, AND HE WORKED WITH
11 MR. BARENS AND MR. CHIER ON THE CASE, AND ABRUPTLY IN
12 MARCH OF 1987 QUIT BECAUSE HE WAS GETTING NO HELP FROM
13 MR. BARENS AND MR. CHIER, AND IT IS THE ONLY TIME THAT HE
14 HAS EVER QUIT WORKING ON A DEATH PENALTY CASE. AND I
15 THINK IT IS FACTUAL INFORMATION THAT WILL HAVE A BEARING
16 ON THE COURT'S DETERMINATION UNDER ISSUE 2.

17 THE COURT: WHICH ONE OF 2?

18 MR. KLEIN: THE OVERALL ISSUE OF WHETHER OR NOT
19 MR. BARENS RENDERED EFFECTIVE ASSISTANCE TO MR. HUNT. IT
20 IS JUST GOING TO BE GENERAL INFORMATION ABOUT PREPARATION
21 ON THE CASE, AND THAT HE QUIT THE CASE AND WHAT, WHY HE
22 QUIT THE CASE.

23 AND THE COURT WILL TAKE THE FACTUAL
24 INFORMATION AND IT WILL ASSIST HIS UNDERSTANDING AS IT
25 HEARS THE TESTIMONY ON THE TWO ISSUES THAT THE COURT IS
26 ALLOWING UNDER 2, BUT THE BROADER ISSUE UNDER 2, WHICH IS
27 WHETHER OR NOT MR. BARENS RENDERED EFFECTIVE ASSISTANCE
28 AND WHETHER IT PREJUDICED MR. HUNT.

1 THE COURT: WELL, I HAVE LIMITED 2 TO JUST, IS IT
2 "A" AND "C"?

3 MR. KLEIN: AS TO THE FACTS, YES, YOUR HONOR, BUT
4 GENERALLY THE COURT IS THEN GOING TO HAVE TO DECIDE THE
5 OVERALL PICTURE OF WHETHER OR NOT MR. BARENS RENDERED
6 EFFECTIVE ASSISTANCE, AND WHO BUT SOMEBODY WHO WAS WORKING
7 ON THE CASE WITH THEM COULD BEST PROVIDE FACTUAL
8 INFORMATION IN A GENERAL SENSE ABOUT WHAT WAS HAPPENING ON
9 THE CASE.

10 SO THAT AFTER THE COURT HEARS EVIDENCE ON 2-A
11 AND -C, THE COURT IS THEN GOING TO HAVE TO DECIDE UNDER
12 THE STRICKLAND TEST WHETHER OR NOT MR. HUNT RECEIVED
13 EFFECTIVE ASSISTANCE.

14 THE COURT: DON'T WE HAVE A STATEMENT IN THE
15 PETITION FROM THIS WITNESS?

16 MR. KLEIN: IN THE SUPPLEMENTAL TO OR THE NEW
17 PETITION, YOUR HONOR, THERE IS A DECLARATION FROM
18 MR. COHEN, AND BASICALLY THAT IS THE OFFER OF PROOF. HE
19 IS GOING TO TESTIFY VERY GENERALLY AS SET FORTH IN HIS
20 DECLARATION TO THAT DOCUMENT.

21 THE COURT: BUT HOW DOES THAT RELATE TO THE O.S.C.
22 ISSUE 2-A, 2-C, 2-E, 2-F?

23 MR. KLEIN: WELL, YOUR HONOR, AFTER YOUR HONOR
24 HEARS THE FACTS RELATIVE TO THOSE FOUR ISSUES, THE COURT
25 THEN HAS TO GO TO THE TEST UNDER STRICKLAND, WHICH IS
26 WHETHER OR NOT MR. BARENS RENDERED REASONABLY EFFECTIVE
27 ASSISTANCE, AND IF HE DIDN'T, DID IT PREJUDICE MR. HUNT.

28 AND IN TERMS OF DECIDING WHETHER OR NOT

1 MR. BARENS RENDERED EFFECTIVE ASSISTANCE, THE COURT IS
2 GOING TO HAVE TO LOOK AT EVERYTHING THAT MR. BARENS DID.
3 THE COURT HAS READ THE TRANSCRIPT. THE COURT IS GOING TO
4 HEAR FROM MR. BARENS. THE COURT IS GOING TO HEAR FROM
5 MR. CHIER. THE COURT IS GOING TO HEAR FROM SEVERAL OTHER
6 INVESTIGATORS THAT WORKED ON THE GUILT PHASE. AND
7 MR. COHEN WORKED ON THE PENALTY PHASE, AND HIS INFORMATION
8 ABOUT WHAT WAS GOING ON ON THE CASE IS PART OF THE COURT'S
9 DECIDING WHETHER OR NOT WHAT MR. BARENS DID WAS REASONABLY
10 COMPETENT COUNSEL.

11 THE COURT: GIVE ME YOUR PROFFER.

12 MR. KLEIN: IT IS THE DECLARATION THAT'S ATTACHED
13 TO THE EXHIBIT -- LET ME.

14 THE COURT: BUT THE PROBLEM IS THAT IS NOT A PART
15 OF THIS PETITION NOR THIS O.S.C..

16 MR. KLEIN: I UNDERSTAND, YOUR HONOR. I AM
17 OFFERING MR. COHEN'S TESTIMONY ON THE QUESTION THAT THE
18 COURT HAS TO DECIDE -- AFTER IT HEARS THE FACTUAL EVIDENCE
19 ABOUT THE ISSUE UNDER 2, THE COURT IS THEN GOING TO HAVE
20 TO TAKE TWO OTHER STEPS, ONE IS: DID MR. BARENS'
21 PERFORMANCE FALL BELOW REASONABLE STANDARDS? AND PART OF
22 THAT IS WHAT HE DID DURING THE CASE, THE OVERALL PICTURE.
23 AND MR. COHEN PARTICIPATED IN THAT.

24 AND I THINK THE COURT NEEDS TO HEAR THIS
25 GENERAL BACKGROUND OF WHAT DIDN'T HAPPEN SO THAT THE COURT
26 WHEN IT GETS TO THAT STEP AFTER IT HEARS THE FACTS UNDER
27 THE DIFFERENT ISSUES THAT THE COURT IS GOING TO ALLOW
28 TESTIMONY ON WHETHER OR NOT MR. BARENS' PERFORMANCE FELL

1 BELOW WHAT IS REASONABLY COMPETENT COUNSEL. IT IS NOT
2 LENGTHY TESTIMONY. IT IS LIKE TEN MINUTES OF TESTIMONY
3 ABOUT WHAT WAS GOING ON, WHAT WASN'T GOING ON IN TERMS OF
4 PREPARATION IN THE CASE.

5 THE COURT: 2-A DEALS WITH WHETHER A DEFENSE
6 COUNSEL'S REPRESENTATION OF THE DEFENDANT FELL BELOW THE
7 OBJECTIVE STANDARDS OF REASONABLE PROFESSIONAL COMPETENCE
8 AND THAT COUNSEL FAILED TO DISCOVER, FAILED TO UTILIZE
9 CERTAIN INFORMATION, AND I HAVE SAID THAT I WOULD TAKE
10 TESTIMONY ON 2-A, WHICH DEALS WITH KARNY'S DEPOSITION,
11 CANTOR-FITZGERALD.

12 2-C, THAT'S THE TESTIMONY OF MR. ADELMAN
13 REGARDING NEGOTIATIONS WITH MR. KILPATRICK THAT WE HEARD
14 THIS MORNING.

15 2-E IN A LIMITED FASHION THE F.B.I.
16 INVESTIGATION CONCERNING PROGRESSIVE SAVINGS AND LOAN.

17 2-G -- STRIKE THAT.

18 2-F, THE TESTIMONY CONCERNING OLIVER WENDELL
19 HOLMES THAT MR. LEVIN WAS GOING TO FLEE TO BRAZIL.

20 2-H, CONCERNING KAREN SUE MARMOR. AND THAT'S
21 IT.

22 HOW DOES THIS WITNESS RELATE TO ANY OF THOSE
23 PARTICULAR ISSUES?

24 MR. KLEIN: HE IS NOT GOING TO TESTIFY ABOUT ANY OF
25 THE ISSUES "A" THROUGH WHATEVER, YOUR HONOR, BUT THE
26 BROADER ASPECT OF 2 IS WHETHER OR NOT DEFENSE COUNSEL'S
27 REPRESENTATION FELL BELOW AN OBJECTIVE STANDARD OF
28 REASONABLE COMPETENCE.

1 AND THE COURT CAN'T JUST LOOK TO WHAT
2 MR. BARENS DID ON THESE FOUR ISSUES IN A VACUUM BECAUSE
3 THE COURT HAS READ THE TRANSCRIPT. THE COURT HAS TO ALSO
4 LOOK AT WHAT ELSE WAS HAPPENING IN THE CASE, AND THIS IS A
5 SMALL PART OF IT FOR THE COURT TO THEN DECIDE WHETHER OR
6 NOT MR. BARENS' REPRESENTATION FELL BELOW AN OBJECTIVE
7 STANDARD OF REASONABLE PROFESSIONAL COMPETENCE.

8 THE COURT: SO THIS WITNESS WOULD TAKE THE STAND
9 AND SAY THAT HE AND BARENS DID NOT GET ALONG, HE DIDN'T
10 FEEL THAT BARENS WAS DOING A SUFFICIENT ENOUGH JOB UNDER
11 THE CIRCUMSTANCES, AND HE QUIT THE CASE BECAUSE OF IT;
12 RIGHT.

13 MR. KLEIN: THAT HE WAS GETTING NO GUIDANCE FROM
14 MR. BARENS, THAT HE ASKED FOR GUIDANCE FROM MR. BARENS, HE
15 GOT NO GUIDANCE FROM MR. BARENS, THAT HE HAS DONE MANY,
16 MANY, MANY CASES WHERE HE HAS NEVER HAD A PROBLEM WHERE HE
17 HAS GOTTEN DIRECTION, AND IN THIS CASE, THIS IS THE ONE
18 AND ONLY CASE THAT HE QUIT BECAUSE HE WAS GETTING NO
19 DIRECTION.

20 I THINK THAT'S CLEARLY HIGHLY RELEVANT TO
21 WHETHER OR NOT THE REPRESENTATION FELL BELOW AN OBJECTIVE
22 STANDARD OF REASONABLE PROFESSIONAL COMPETENCE BECAUSE IT
23 IS THIS PARTICULAR CASE.

24 THE COURT: MR. MC MULLEN?

25 MR. MC MULLEN: TWO POINTS. MANY OF THE ARGUMENTS
26 THAT COUNSEL HAS PRESENTED TO YOUR HONOR ARE REMINISCENT
27 OF PRIOR MOTIONS WE HAVE HAD WITH RESPECT TO ATTORNEY
28 EXPERTS WHO WOULD TESTIFY WITH RESPECT TO THE STRICKLAND

1 STANDARDS, AND ALSO SOME POLICE REQUEST FOR SOME POLICE
2 OFFICER TYPE EXPERTS THAT WOULD TESTIFY IN A SIMILAR
3 FASHION.

4 SECONDLY, QUICKLY LOOKING OVER MR. COHEN'S
5 DECLARATION NOTHING TOUCHES, TO REPEAT WHAT COUNSEL SAID,
6 REALLY TOUCHES ABOUT ANY OF THE ISSUES THAT YOUR HONOR HAS
7 JUST OUTLINED. AND SO, THEREFORE, BECAUSE IT IS OPINION
8 EVIDENCE, EXPERT OPINION EVIDENCE IT SHOULD NOT BE
9 ALLOWED, AND IT IS NOT TOUCHING UPON ANY OF THE SPECIFIC
10 ISSUES THAT YOUR HONOR HAS ORDERED THAT WE CONDUCT THE
11 EVIDENTIARY HEARING ON.

12 THE COURT: GIVE YOU ONE LAST WORD, MR. KLEIN.

13 THE PETITIONER: YOUR HONOR, I NEED TO SPEAK TO
14 COUNSEL.

15 MR. KLEIN: EXCUSE ME, COULD I JUST FINISH?

16 THE DIFFERENCE BETWEEN WHAT MR. MC MULLEN IS
17 SUGGESTING AS TO THE OTHER EXPERTS IS THAT THAT WOULD HAVE
18 BEEN EXPERT TESTIMONY ABOUT SPECIFIC ISSUES IN THIS CASE,
19 THIS IS NOT EXPERT TESTIMONY ABOUT WHAT IS REASONABLE
20 COMPETENCE WITH RESPECT TO MR. BARENS. THIS IS ACTUALLY
21 EVIDENCE FROM SOMEBODY WHO PARTICIPATED IN THE CASE THAT
22 THE COURT WILL EVALUATE AS CIRCUMSTANTIAL EVIDENCE OF
23 WHETHER OR NOT MR. BARENS' PERFORMANCE FELL BELOW THAT OF
24 A REASONABLY COMPETENCE COUNSEL, AND IT WILL BE
25 CIRCUMSTANTIAL EVIDENCE AS TO THE SPECIFIC ISSUE THAT THE
26 COURT WILL HEAR TESTIMONY ABOUT.

27 THIS IS NOT SOME EXPERT COMING IN AND
28 RENDERING OPINION THAT THE COURT IS CAPABLE OF MAKING.

1 THIS IS SOMEBODY SAYING WHAT HAPPENED IN THIS CASE.

2 THE COURT: BUT HOW DOES IT RELATE SPECIFICALLY TO
3 ANY OF THOSE THREE OR FOUR THAT I HAVE LIMITED IT TO, OR
4 REALLY ANY OF THE OTHER ISSUES THAT THE COURT OF APPEALS
5 IN THEIR O.S.C. --

6 MR. KLEIN: FOR EXAMPLE, YOUR HONOR, MR. HUNT IS
7 GOING TO TESTIFY THAT HE TOLD MR. BARENS TO FIND NEIL
8 ADELMAN. NEIL ADELMAN WILL COME BACK AND SAY, "MR. HUNT
9 SAID THAT MR. BARENS WOULD GET IN TOUCH WITH HIM." THE
10 FACT THAT MR. COHEN WAS ACTUALLY WORKING ON THE CASE
11 TRYING TO GET GUIDANCE FROM MR. BARENS IS CIRCUMSTANTIAL
12 AND CORROBORATIVE OF WHAT WILL HAPPEN AS TO EACH OF THE
13 ISSUES THAT THE COURT WILL ALLOW EVIDENCE ON.

14 THIS IS MR. COHEN WORKING ON THIS CASE AND
15 NOT GETTING THAT KIND OF GUIDANCE. SO IT WILL CORROBORATE
16 THE TESTIMONY THAT IS GOING TO OCCUR ABOUT BARENS SHOULD
17 HAVE DONE THIS AND BARENS SHOULD HAVE DONE THAT. THIS IS
18 REAL EVIDENCE IN THIS CASE ABOUT WHAT SOMEBODY DID.

19 THE COURT: I THINK MR. HUNT WANTS TO TALK TO YOU.

20

21 (PAUSE.)

22

23 MR. KLEIN: IN ADDITION TO WHAT I HAVE SAID, YOUR
24 HONOR, I DON'T KNOW IF THE COURT HAS READ MR. BARENS'
25 DEPOSITION YET.

26 THE COURT: NO ONE HAS EVER GIVEN IT TO ME.

27 MR. KLEIN: IT IS ATTACHED AS AN EXHIBIT TO THE NEW
28 PETITION SUPPLEMENTAL 2. I THINK I INFORMED THE COURT OF

1 THAT WHEN THE ISSUE CAME UP SOME TIME AGO. IN ANY EVENT,
2 IT IS ATTACHED AS AN EXHIBIT.

3 MR. BARENS IS GOING TO TESTIFY THAT HE DID A
4 GOOD JOB, THAT HE WAS ORGANIZED, THAT HE FOLLOWED UP ALL
5 LEADS. MR. COHEN IS GOING TO DISPUTE THAT BECAUSE HIS
6 TESTIMONY IS GOING TO BE THAT THERE WAS NO GUIDANCE, THAT
7 THERE WERE NO ASSISTANCE FROM THE ATTORNEYS. SO IT IS
8 GOING TO IMPEACH MR. BARENS. UNFORTUNATELY, WE ARE TAKING
9 HIM OUT OF ORDER BECAUSE MR. BARENS CAN'T TESTIFY UNTIL
10 NEXT WEEK.

11 IN ADDITION, IN OUR HEARING MEMORANDUM AND IN
12 A SECOND HEARING MEMORANDUM THAT WE FILED WITH THE COURT
13 WE ARGUED TO THE COURT THAT THE PRESUMPTION OF REASONABLE
14 COMPETENCE THAT IS SET FORTH IN STRICKLAND SHOULD NOT BE
15 APPLICABLE TO THIS CASE BECAUSE OF MULTIPLE CONFLICTS OF
16 INTEREST THAT MR. BARENS HAD.

17 WITH RESPECT TO MR. COHEN'S TESTIMONY, ONE OF
18 THE SMALL PIECES OF HIS TESTIMONY IS, IN HIS DECLARATION
19 IS THAT AT ONE POINT DURING THE CASE WHILE THEY WERE
20 TRYING TO PREPARE THE CASE MR. BARENS TOLD MR. COHEN THAT
21 THE JUDGE SAID THAT HE WANTED TO MAKE SURE THAT MR. HUNT
22 GOT THE DEATH PENALTY.

23 AND WE WILL THEN ARGUE THAT BECAUSE
24 MR. BARENS HAD A CONFLICT OF INTEREST IN THAT HE DID NOT
25 PRESENT THAT ISSUE TO THE JUDGE AS A DEMONSTRATION OF BIAS
26 OR PREJUDICE AGAINST MR. HUNT FOR WHATEVER REASON THAT
27 THIS WAS A CONFLICT OF INTEREST THAT MR. BARENS HAD AND
28 CONSEQUENTLY WHEN THE COURT LOOKS TO STRICKLAND THAT IT

1 SHOULD'N'T BLINDLY FOLLOW THE PRESUMPTION OF REASONABLE
2 COMPETENCE, BUT SHOULD WEIGH INTO THAT EQUATION THE FACT
3 THAT MR. BARENS HAD MULTIPLE CONFLICTS OF INTEREST, ONE OF
4 WHICH MR. COHEN CAN TESTIFY TO.

5 THE COURT: BUT THOSE ISSUES ARE OUTSIDE OF THE
6 SCOPE OF THIS O.S.C..

7 MR. KLEIN: NO, YOUR HONOR, BECAUSE THE O.S.C. SAYS
8 IN THE FIRST TWO SENTENCES OF PARAGRAPH TWO, "DEFENSE
9 COUNSEL'S REPRESENTATION OF DEFENDANT FELL BELOW OBJECTIVE
10 STANDARDS OF REASONABLE COMPETENCE," AND THEN IT CITES TOO
11 IN RE FIELDS.

12 AND BOTH THE DISTRICT ATTORNEY AND COUNSEL
13 FOR PETITIONER, AND I THINK THE COURT, HAVE AGREED THAT
14 WHAT THE COURT HAS TO DO IS CONSIDER THE ENTIRE RECORD IN
15 THIS CASE IN ORDER TO DECIDE WHETHER THE TRIAL THAT WAS
16 COMPARED TO THE TRIAL THAT SHOULD HAVE BEEN MEETS THE
17 STRICKLAND STANDARD.

18 AND THE COURT WILL HEAR FROM MR. COHEN
19 CIRCUMSTANTIAL EVIDENCE THAT CORROBORATES THE FACT THAT
20 MR. BARENS DIDN'T DO WHAT HE SHOULD HAVE DONE WITH RESPECT
21 TO THE FOUR ISSUES. AND THAT CONSEQUENTLY THE COURT
22 SHOULD DECIDE THAT HE DIDN'T RENDER EFFECTIVE ASSISTANCE.

23 THIS IS FACTUAL INFORMATION ABOUT WHAT
24 HAPPENED ON THIS CASE WHICH WILL REFUTE MR. BARENS'
25 TESTIMONY IN THIS COURT THAT, YOU KNOW, HE IS THE WORLD'S
26 GREATEST ATTORNEY, HE WAS ORGANIZED, HE HAD ALL THE
27 WITNESSES ORGANIZED, HE WAS READY TO CROSS-EXAMINE
28 EVERYBODY, HE DID A GOOD JOB.

1 AND MR. COHEN IS GOING TO SAY THAT THIS
2 DIDN'T HAPPEN IN THIS CASE AS TO HIS ASPECTS OF IT, AND
3 THAT I BELIEVE IS CIRCUMSTANTIAL EVIDENCE THAT SHOWS THAT
4 HE DIDN'T DO WHAT HE SHOULD HAVE DONE ON THE FOUR ISSUES
5 THAT THE COURT IS GOING TO CONSIDER.

6 I WOULD TEND TO AGREE WITH MR. MC MULLEN IF
7 THIS WERE SOME EXPERT COMING IN. THE COURT HAS MADE A
8 RULE, WHICH WE DISAGREED WITH, CONCERNING THE STRICKLAND
9 EXPERT. BUT THIS IS NOT SOME EXPERT COMING IN RENDERING
10 EXPERT OPINION. IT IS A WITNESS THAT PARTICIPATED IN THE
11 CASE, AND WILL SHOW FACTUALLY THAT THE GENERAL MANNER IN
12 WHICH MR. BARENS CONDUCTED HIMSELF DID NOT MEET THE
13 STANDARD THAT IT SAYS IN THE O.S.C., "DEFENSE COUNSEL'S
14 REPRESENTATIONS FELL BELOW AN OBJECTIVE STANDARD OF
15 REASONABLE COMPETENCE." AND IT IS THE ENTIRE RECORD THAT
16 THE COURT HAS TO CONSIDER IN ADDITION TO THOSE FOUR ISSUES
17 THAT THE COURT IS GOING TO HEAR EVIDENCE ON.

18 THE COURT: WELL, THE PROBLEM IS YOU HAVE READ IT
19 EXPANSIVELY. THE ENTIRE PARAGRAPH 2 SAYS (READING):

20 "DEFENSE COUNSEL'S REPRESENTATION OF
21 DEFENDANT FELL BELOW OBJECTIVE STANDARDS OF REASONABLE
22 PROFESSIONAL COMPETENCE, AND THERE IS A REASONABLE
23 PROBABILITY THAT THE RESULT OF THE TRIAL WOULD HAVE BEEN
24 DIFFERENT BECAUSE COUNSEL FAILED TO DISCOVER AND/OR FAILED
25 TO UTILIZE THE FOLLOWING ALLEGED INFORMATION," THEN THE
26 COURT OF APPEAL SPECIFICALLY IDENTIFIES A CERTAIN NUMBER
27 OF THEM.

28 MR. KLEIN: RIGHT.

1 THE COURT: THOSE HAVE ALL BEEN DEALT WITH, AND I
2 HAVE AGREED TO TAKE ADDITIONAL TESTIMONY ON THE SUBJECT
3 LETTERS THAT I EARLIER INDICATED. THIS IS NOT AS BROAD AS
4 YOU WOULD HAVE IT BE READ.

5 MR. KLEIN: NO. BUT, YOUR HONOR, IF MR. BARENS
6 COMES AND HE IS GOING TO COME IN AND SAY THAT HE WAS AN
7 ORGANIZED ATTORNEY, THAT HE FOLLOWED UP ALL THE LEADS, WE
8 ARE GOING TO HAVE TESTIMONY THAT'S UNTRUE. THIS IS
9 FURTHER EVIDENCE THAT HE DIDN'T DO IT IN THE MOST CRITICAL
10 AREA IN THE CASE. THE COURT CAN'T JUST ISOLATE, SAY THE
11 ISSUES "A," KARNY'S DEPOSITION TESTIMONY IN THE
12 CANTOR-FITZGERALD LAWSUIT, AND SAY IN THAT ISSUE ALONE DID
13 HE RENDER COMPETENCE COUNSEL.

14 THE COURT HAS TO LOOK AT THE ENTIRE RECORD
15 THAT'S WHAT IN RE FIELDS REQUIRES THE COURT TO DO, AND IF
16 WE HAVE EVIDENCE THAT CONTROVERTS WHAT MR. BARENS IS GOING
17 TO SAY ABOUT HOW HE HANDLED THE CASE, I THINK THE COURT
18 NEEDS TO HEAR IT FROM SOMEBODY WHO WAS INTIMATELY INVOLVED
19 IN THE CASE AND QUIT.

20 THE COURT: BUT THE PROBLEM WITH THAT IS, IF THAT
21 WERE SO, THE COURT OF APPEALS WOULD NOT HAVE IDENTIFIED
22 PARTICULAR ISSUES. THEY ARE NOT LOOKING AT EVERYTHING.
23 THEY ARE LOOKING AT CERTAIN ISSUES AND DECIDING WHETHER
24 THESE ISSUES EITHER SINGULARLY OR TOGETHER AMOUNT TO
25 INCOMPETENCE OF COUNSEL.

26 THE PROFFER THAT YOU MAKE DOES NOT RELATE TO
27 ANY OF THOSE INDIVIDUAL ISSUES. WHAT YOU ARE ARGUING, I
28 SUPPOSE, OR THE STRONGEST POINT THAT YOU HAVE IN ARGUMENT

1 IS THAT THIS TESTIMONY MIGHT, MIGHT BE REBUTTAL TESTIMONY,
2 BUT I CAN SEE IT BASED ON YOUR PROFFER IS NOT EVIDENCE
3 THAT IS PROBATIVE OF ANY ISSUE THAT IS IN THE O.S.C., AND
4 CERTAINLY NOT PROBATIVE ON ANY ISSUES THAT WOULD BE
5 RESPONSIVE TO MY ORDER OF MARCH 29TH.

6 I WILL EXCLUDE THE TESTIMONY ON PETITIONER'S
7 CASE IN CHIEF.

8 I WILL LET YOU ARGUE THAT AT SOME POINT IF IT
9 BECOMES RELEVANT BECAUSE OF MR. BARENS' TESTIMONY.

10 THE PETITIONER: YOUR HONOR, MAY I SPEAK TO HIM FOR
11 JUST A MINUTE BEFORE WE CONTINUE?

12 THE COURT: GO AHEAD.

13

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

16

17 MR. KLEIN: YOUR HONOR, MR. HUNT IS CONCERNED THAT
18 THE RECORD IS NOT CLEAR, WHICH I THINK IS THAT WE FILED A
19 HEARING MEMORANDUM, AND I FILED AN ADDITIONAL DOCUMENT ON
20 APRIL 22ND, IN WHICH WE ARGUED THAT THE STRICKLAND
21 PRESUMPTION SHOULD NOT BE BLINDLY FOLLOWED BECAUSE OF
22 POTENTIAL CONFLICTS OF INTEREST, AND I BELIEVE THAT I MADE
23 AN OFFER OF PROOF --

24 THE COURT: YOU HAVE.

25 MR. KLEIN: -- THAT MR. COHEN WOULD TESTIFY TO A
26 CONFLICT OF INTEREST THAT MR. BARENS HAD THAT HE DIDN'T
27 DISCLOSE, THAT HE WAS APPARENTLY AFRAID TO DISCLOSE, AND
28 THAT, THEREFORE, THAT PRESUMPTION OF COMPETENCE SHOULD NOT

1 BE APPLIED.

2 THE COURT: I DON'T THINK YOU COULD HAVE MADE IT
3 ANY CLEARER EARLIER.

4 THE PETITIONER: THERE WERE SPECIFIC --

5 THE COURT: I HAVE RULED ON THIS ISSUE.

6 CALL IN YOUR NEXT WITNESS.

7 THE PETITIONER: YOUR HONOR, I WILL MAKE A MARS DEN
8 MOTION, THEN, SO I CAN EXPLAIN MY POSITION. I HAVE BEEN
9 COOPERATING WITH THE COURT TOO.

10 THE COURT: STATE YOUR MOTION.

11 THE PETITIONER: I AM WRITING --

12 THE COURT: STATE YOUR MOTION.

13 THE PETITIONER: MY MOTION IS THAT I DON'T FEEL
14 THAT I AM GETTING ADEQUATE REPRESENTATION AND THAT OFFER
15 OF PROOF WAS INCOMPLETE.

16 AND I ALSO FEEL THAT, YOU KNOW, I AM BEING
17 SUBJECTED TO A THOUSAND RAZOR CUTS BECAUSE OF THE PACE
18 THAT COUNSEL IS BEING MADE TO PROCEED UPON. THEY ARE NOT
19 READY. IT IS NOT JUST YOU THAT SEES IT, BECAUSE YOU DON'T
20 GET EXHIBIT LISTS. I SEE IT. AND THE THOUSAND LITTLE
21 DETAILS DON'T GET HANDLED AS EFFECTIVE AS I COULD HAVE
22 MYSELF, WHICH IS WHY I ASKED TO GO PRO PER A LONG TIME --

23 MR. CRAIN: IT IS A MARS DEN MOTION. I THINK IT
24 SHOULD BE HANDLED AT ONCE OUTSIDE THE PRESENCE OF --

25 THE COURT: HE HASN'T TOLD ME ANYTHING THAT WOULD
26 CAUSE ME TO BELIEVE THIS IS CONFIDENTIAL INFORMATION. HE
27 IS TALKING ABOUT WHAT HAS HAPPENED HERE IN COURT.

28 MR. CRAIN: IF IT IS A MARS DEN MOTION I DON'T THINK

1 THE PROSECUTION --

2 THE COURT: MARSDEN DOES NOT MANDATE THE
3 PROSECUTION BE EXCLUDED UNLESS THERE IS GOING TO BE
4 CONFIDENTIAL INFORMATION THAT WILL BE PROVIDED. SOUNDS
5 LIKE MR. HUNT IS SIMPLY COMPLAINING ABOUT WHAT'S HAPPENED
6 HERE IN COURT.

7 IS THAT ABOUT RIGHT, MR. HUNT?

8 THE PETITIONER: WELL, THERE IS THAT CASE PEOPLE
9 VERSUS MADRID THAT SAYS ON A REQUEST YOU SHOULD EXCLUDE,
10 BUT THE SITUATION --

11 THE COURT: IF YOU ARE GOING TO RELATE ANY
12 CONFIDENTIAL INFORMATION, I WILL EXCLUDE THEM.

13 THE PETITIONER: I DON'T PLAN TO, NOT OFF THE BAT.

14 THE COURT: OKAY.

15 THE PETITIONER: THE PROBLEM IS I AM GETTING
16 SQUEEZED FROM BOTH SIDES, YOUR HONOR, AND IT IS NOT LIKE I
17 CAN COMMUNICATE WITH THEM AFTER HOURS. I GO BACK TO THE
18 JAIL. I DON'T NECESSARILY HAVE ACCESS TO THE PHONE DURING
19 THIS TYPE OF PROCEEDING BECAUSE OF THE SCHEDULE IN COURT
20 VERSUS THE SCHEDULE OF TELEPHONE ACCESS, YOU KNOW.

21 THEY HAVE NOTIFIED THE COURT ON A ZILLION
22 DIFFERENT OCCASIONS THAT THEY ARE NOT PREPARED FOR A
23 VARIETY OF DIFFERENT REASONS, NOT ALL OF THE REASONS END
24 UP GETTING EXPRESSED BECAUSE THE COURT HAS LIMITED TIME,
25 YOU KNOW, IN ALLOWING ORAL REPRESENTATION AS WELL AS
26 OTHER --

27 THE COURT: I THINK I HAVE SEEN FOUR MOTIONS TO
28 CONTINUE SO FAR FILED IN WRITING.

1 THE PETITIONER: YEAH. AND YOU COULDN'T BEGIN TO
2 LIST, UNLESS THEY HAD A LOT MORE TIME TO FILE A MOTION FOR
3 CONTINUANCE, ALL THE REASONS WHY THEY NEED A CONTINUANCE.
4 THE FACT OF THE MATTER IS THAT THEY CAN'T EVEN WRITE A
5 MOTION FOR CONTINUANCE THAT'S COMPREHENSIVE.

6 THE COURT: IF YOU ARE COMPLAINING THAT THEY DON'T
7 HAVE ENOUGH TIME, THAT'S NOT GOING TO GET YOU A MARSDEN
8 MOTION.

9 ANYTHING ELSE YOU WANT TO ADD TO YOUR MARSDEN
10 MOTION?

11 THE PETITIONER: WITH RESPECT TO THE PARTICULAR
12 OFFER OF PROFFER, I FEEL IT WAS INADEQUATE, THAT THE
13 RECORD SHOULD MORE FULLY STATE THAT I THINK WE SHOULD GET
14 A GENERAL RULING.

15 ALSO, AT THIS TIME WE MAKE PLANS AS TO WHAT
16 WE SHOULD DO WITH THE OTHER WITNESSES AND SEQUENCE OF
17 WITNESSES. AND THERE WERE SPECIFIC REQUESTS FOR RULINGS
18 IN THE APRIL 22, 1996, DOCUMENT SUBPARAGRAPH -- IT WAS C
19 PAGE 6, WHICH I THINK THE COURT SHOULD REVIEW AND MAKE
20 SPECIFIC RULINGS ON THIS AT THIS TIME. IT WOULD CERTAINLY
21 APPLY TO MR. COHEN'S TESTIMONY.

22 IN THIS PARTICULAR MOTION WE ARE SAYING THAT
23 THE COURT CAN'T POSSIBLY MAKE THE SECOND DETERMINATION ON,
24 UNDER STRICKLAND AS TO WHETHER PREJUDICE HAS OCCURRED
25 UNDER STRICKLAND PROPERLY BECAUSE STRICKLAND SAYS YOU HAVE
26 TO GIVE GREAT DEFERENCE --

27 THE COURT: IS THIS REALLY A MARSDEN MOTION?

28 THE PETITIONER: YES, IT IS.

1 THE COURT: IT DON'T SEE IT.

2 THE PETITIONER: DIDN'T MAKE IT INTO THE RECORD. I
3 THINK THIS IS CRUCIAL.

4 THE COURT: MR. KLEIN GAVE A PRESENTATION. YOU
5 SAID YOU WANTED TO TALK TO HIM. HE WENT OVER AND HE SPOKE
6 TO YOU AND THEN HE GOT UP AND SAID, "IF I HAVEN'T MADE IT
7 CLEAR, I WANT TO MAKE THIS CLEAR," AND HE MADE CLEAR THE
8 SECOND TIME WHAT HE MADE CLEAR THE FIRST TIME. I
9 UNDERSTOOD THAT.

10 ANYTHING ELSE YOU WANT TO ADD TO YOUR MARSDEN
11 MOTION?

12 THE PETITIONER: AS I UNDERSTAND IT, A LAWYER HAS A
13 RESPONSIBILITY TO ASK FOR SPECIFIC RULINGS AND MAKE SURE
14 THAT THE COURT RULES SPECIFICALLY ON EACH REQUEST THAT IT
15 HAS, OTHERWISE YOU DON'T PRESERVE YOUR RECORD.

16 WE HAVE SPECIFIC REQUESTS ON PAGE SIX SECTION
17 C OF THIS MOTION DATED APRIL 22ND ASKING FOR US TO BE, TO
18 HAVE THE RIGHT TO ADMIT EVIDENCE SHOWING THAT COUNSEL'S,
19 ARTHUR BARENS, IMPROPER ORIENTATION TO HIS CLIENT -- HE
20 WAS NOT ACTING IN THE BEST INTERESTS OF HIS CLIENTS, THAT
21 HE WASN'T FUNCTIONING AS AN ADVOCATE IN ANY SENSE OF THE
22 WORD, HE WASN'T FORMULATING AN ACTUAL STRATEGIC OPINION AS
23 TO WHAT BENEFITS HIS CLIENT HAS, AS AN ATTORNEY NORMALLY
24 WOULD. MR. COHEN HAS DIRECT TESTIMONY ON THAT POINT.
25 MR. BARENS WILL PROBABLY SAY --

26 THE COURT: MR. HUNT THIS IS NOT A MARSDEN MOTION.
27 YOU ARE SIMPLY REARGUING WHAT HAS ALREADY BEEN SAID.

28 ANYTHING YOU WANT TO ADD TO YOUR MARSDEN

1 MOTION?

2 THE PETITIONER: WELL, AT THIS POINT IN TIME, YOUR
3 HONOR, IT APPEARS TO ME VERY LIKELY BY THE END OF THIS
4 HEARING ALL SORTS OF THINGS WILL NOT HAVE BEEN DONE AT
5 THIS POINT, THAT SHOULD HAVE BEEN AT THIS POINT IN TIME.
6 I CAN'T SAY ABSOLUTELY THAT'S GOING TO OCCUR BECAUSE THE
7 TIME HASN'T PASSED. BUT I WILL NOTE FOR THE RECORD THAT
8 THE PACE YOU ARE DRIVING MY ATTORNEYS AT SEEMS INEVITABLE
9 THAT THERE ARE GOING TO BE A HUGE BUNCH OF SHALE AT THE
10 BOTTOM OF THE MOUNTAIN WHICH THAT RUBBER WILL CONSIST OF
11 EVIDENCE THAT SHOULD HAVE MADE IT IN THE RECORD THAT --

12 THE COURT: IT GOT TO TELL YOU THIS IS NOT PUSHING,
13 A DAY AND HALF TESTIMONY LAST WEEK, WE WILL HAVE TWO DAYS,
14 MAYBE THREE DAYS THIS WEEK. NEXT WEEK I DON'T KNOW YET.
15 WE ARE NOT TALKING A REAL PUSH HERE. YOUR ATTORNEYS WILL
16 HAVE TOMORROW OFF. THEY WILL FRIDAY OFF. SO I JUST DON'T
17 SEE IT.

18 THE PETITIONER: I DON'T HAVE A XEROX MACHINE
19 HANDY, IF I DID I COULD SHOW YOU THIS DOCUMENT RIGHT HERE,
20 WHICH IS ABOUT A 400-PAGE OUTLINE, MOST OF IT TYPEWRITTEN,
21 OF ARTHUR BARENS' TOPICS. WHAT IT DOES IT TRIES TO --
22 THIS IS SOMETHING I PREPARED. IT TRIES TO INDEX ALL OF
23 THE TRIAL.

24 MR. KLEIN: THIS IS PRIVILEGED INFORMATION.

25 THE COURT: THIS IS ALSO --

26 MR. KLEIN: THIS IS WORK BETWEEN US, YOUR HONOR. I
27 DON'T THINK THAT THE PROSECUTION SHOULD BE --

28 THE COURT: I AGREE. BUT IF YOU ARE TALKING ABOUT

1 THE FACT THAT YOU THINK THEY SHOULD BE SPENDING MORE TIME,
2 I AM GOING TO LEAVE THAT TO YOU AND YOUR LAWYERS TO
3 DISCUSS. I SEE NO LACK OF PREPARATION THUS FAR WITH THE
4 EXCEPTION OF NOT HAVING THEIR EXHIBIT LIST AS ORDERED ON A
5 COUPLE OF OCCASIONS.

6 THE PETITIONER: THAT EXHIBIT LIST -- EXCUSE ME --
7 I PREPARED --

8 THE COURT: DON'T SPEAK OVER ME.

9 THEY HAVE MORE THAN ADEQUATELY EXAMINED THE
10 WITNESSES, GOT THE POINT ACROSS. I THINK THAT THEY --

11 THE PETITIONER: IT IS EASY TO DO DIRECT, IT IS
12 MUCH MORE DIFFICULT TO DO ADVERSE DIRECT.

13 THE COURT: WHY DON'T YOU GIVE THEM A CHANCE TO
14 RESPOND.

15 THE PETITIONER: THEY HAVEN'T SEEN THE FILES OF
16 SOME OF THESE ADVERSE WITNESSES SOME --

17 THE COURT: I WILL GIVE YOU TOMORROW OFF. I AM
18 GIVING YOU FRIDAY OFF. YOU GOT THE WEEKEND. YOU CAN DO
19 IT.

20 THE PETITIONER: I WOULD LIKE THE RECORD TO REFLECT
21 THAT EXHIBIT LIST TURNED IN BY MY COUNSEL WAS PREPARED BY
22 ME, NOT THEM. IT REFLECTS MY PREPARATION, NOT THEIR'S.
23 THAT'S THE SAME THING WITH ALL THE WITNESS LISTS. I AM
24 DOING THE STUFF, YOUR HONOR.

25 THE RECORD SHOULDN'T SUGGEST THAT BECAUSE
26 THESE THINGS HAVE BEEN TURNED IN THAT SOMEHOW OR ANOTHER
27 MY ATTORNEYS HAVE ENOUGH TIME TO GET WORK DONE. THAT'S
28 NOT WHAT'S HAPPENING.

1 THE COURT: I ASSUME THAT YOU WANT TO WORK CLOSELY.
2 YOU DON'T WANT THEM TO HAVE --

3 THE PETITIONER: YOU WOULD BE SURPRISED HOW HARD I
4 HAVE BEEN WORKING TO --

5 THE COURT: I PROBABLY WOULDN'T BE SURPRISED.

6 THE PETITIONER: -- TO ACCOMMODATE THE COURT'S
7 DESIRED INSTRUCTIONS.

8 THE COURT: ALL RIGHT.

9 THE MARSDEN MOTION, IT IS NOT REALLY A
10 MARSDEN MOTION, IT IS DENIED, THOUGH.

11 ALL RIGHT.

12 NEXT WITNESS.

13 MR. CRAIN: YOUR, HONOR, THE NEXT WITNESS IS AN
14 ATTORNEY, MR. MELCZER. HE WAS IN A TRIAL. HE WANTED TO
15 GET HIM HERE. THE TRIAL ENDED IN --

16 MR. MELCZER: YOUR HONOR, I AM HERE.

17 MR. CRAIN: COULD WE HAVE FIVE MINUTES SO I CAN
18 TALK TO HIM?

19 THE COURT: FIVE MINUTES.

20

21 (RECESS.)

22

23 THE BAILIFF: COME TO ORDER, DEPARTMENT 101 IS
24 AGAIN IN SESSION.

25 THE COURT: IN THE MATTER OF JOSEPH HUNT, THE
26 RECORD WILL REFLECT ALL COUNSEL AND PETITIONER ARE
27 PRESENT.

28

CALL YOUR NEXT WITNESS.

1 MR. CRAIN: YES, YOUR HONOR.

2 JEFFREY MELCZER.

3

4 JEFFREY LEWIS MELCZER, +
5 CALLED AS A WITNESS BY THE PETITIONER, WAS SWORN AND
6 TESTIFIED AS FOLLOWS:

7

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

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

14 THE WITNESS: I DO.

15 THE CLERK: PLEASE BE SEATED.

16 PLEASE STATE AND SPELL YOUR FULL NAME
17 FOR THE RECORD.

18 THE WITNESS: JEFFREY LEWIS MELCZER. LAST NAME,
19 M-E-L-C-Z-E-R.

20 THE COURT: COULD YOU SPELL JEFFREY FOR THE COURT
21 REPORTER.

22 THE WITNESS: J-E-F-F-R-E-Y.

23 THE COURT: YOU MAY INQUIRE.

24 MR. CRAIN: COULD YOU PULL THE MICROPHONE UP JUST A
25 BIT?

26 THE WITNESS: OKAY.

27 MR. CRAIN: THANK YOU

28

DIRECT EXAMINATION +

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BY MR. CRAIN:

Q OKAY.

GOOD AFTERNOON, SIR.

WHAT IS YOUR OCCUPATION?

A I AM AN ATTORNEY.

Q AND ARE YOU LICENSED TO PRACTICE LAW HERE IN
THE STATE OF CALIFORNIA?

A YES, I AM.

Q HOW LONG HAVE YOU BEEN SO LICENSED?

A I HAVE BEEN LICENSED SINCE 1972.

Q AND WHERE DID YOU GO TO LAW SCHOOL?

A I WENT TO HARVARD LAW SCHOOL.

Q AND WHAT IS YOUR, GENERALLY SPEAKING, YOUR
FIELD AS A LAWYER?

A COMMERCIAL LITIGATION.

Q AND --

A CIVIL LITIGATION.

Q HAVE YOU PRACTICED CRIMINAL DEFENSE LAW AT
ANY TIME?

A ACTUALLY, I DID HAVE EIGHT MONTHS AS A
PROSECUTOR IN THE RIVERSIDE DISTRICT ATTORNEY'S OFFICE
BACK IN 1977.

Q AND SINCE THAT TIME HAS YOUR PRACTICE BEEN
DEVOTED TO CIVIL MATTERS?

A I HAVE A VERY RARE OCCASIONAL CRIMINAL
DEFENSE CASE, BUT THE LAST ONE I HAD WAS ABOUT SEVEN OR

1 EIGHT YEARS AGO THAT WAS FOR THE MAH JONG CASE OUT OF THE
2 ALHAMBRA AREA.

3 Q OKAY.

4 WE WILL HAVE TO HEAR ABOUT THAT ON ANOTHER
5 OCCASION.

6 LET ME GO RIGHT TO THE HEART OF THINGS. DID
7 YOU EVER MEET AN INDIVIDUAL BY THE NAME OF RON LEVIN?

8 A YES, I DID.

9 Q AND IN WHAT CAPACITY, SO TO SPEAK, DID YOU
10 GET TO KNOW MR. LEVIN?

11 A I REPRESENTED MR. LEVIN IN A NUMBER OF CASES.

12 Q THOSE WERE --

13 MR. CRAIN: I AM LOOKING FOR PETITIONER'S 1 HERE.

14 PETITIONER'S 1, PICTURE OF LEVIN.

15 BY MR. CRAIN:

16 Q THOSE WERE AS AN ATTORNEY AND CLIENT; IS THAT
17 RIGHT?

18 A YES. I WAS AN ATTORNEY; HE WAS MY CLIENT,
19 YES.

20 Q HE WAS YOUR CLIENT?

21 A YES.

22 Q THESE WERE CIVIL CASES, WERE THEY?

23 A YES.

24 Q OKAY.

25 MR. CRAIN: I FOUND IT.

26 MAY I APPROACH THE WITNESS?

27 THE COURT: YES.

28 BY MR. CRAIN:

1 Q SHOWING YOU WHAT'S BEEN MARKED AS
2 PETITIONER'S 1 FOR IDENTIFICATION. DO YOU RECOGNIZE THE
3 GENTLEMAN SHOWN IN THAT PICTURE?

4 A YES. THAT'S RON LEVIN.

5 Q THAT'S RON LEVIN YOU REPRESENTED AS AN
6 ATTORNEY; IS THAT RIGHT?

7 A YES.

8 Q AND DID YOU EVER REPRESENT RON LEVIN IN
9 CONNECTION WITH AN OPTION ON A PIECE OF RESIDENTIAL
10 PROPERTY?

11 MR. MC MULLEN: OBJECTION. IRRELEVANT.

12 THE COURT: I WILL SEE WHERE IT IS GOING.

13 MR. CRAIN: JUST A FEW BRIEF QUESTIONS.

14 THE WITNESS: YES, I DID.

15 BY MR. CRAIN:

16 Q DID THAT HAVE TO DO WITH AN OPTION ON THE
17 PROPERTY OF A LADY BY THE NAME OF LILLIAN WARNER?

18 A YES, IT DID.

19 Q AND IS THIS IN A NUTSHELL A CASE WHERE
20 MR. LEVIN WAS ATTEMPTING TO OBTAIN TITLE TO THIS
21 PARTICULAR PIECE OF PROPERTY AFTER HER DEATH ON THE BASIS
22 OF SOME OPTION HE HAD ALLEGED OBTAINED FROM HER?

23 MR. MC MULLEN: THE PEOPLE WOULD RENEW THEIR
24 OBJECTION.

25 THE COURT: HOLD ON.

26 WHERE ARE YOU GOING?

27 MR. CRAIN: I JUST WANT THE COURT TO HAVE SOME
28 FULLER PICTURE OF THE WITNESS' ACQUAINTANCE WITH MR. LEVIN

1 THAT'S ALL. THERE ARE ABOUT TWO TO THREE MORE QUESTIONS
2 IN THIS AREA.

3 MR. MC MULLEN: OUR OBJECTION IS BASED UPON THE
4 FACT THAT ON MARCH 29TH YOU EXCLUDED THIS PARTICULAR ISSUE
5 FROM THE EVIDENTIARY HEARING. IT IS ONE OF THE ISSUES
6 UNDER 2, THAT IS THE FAMILY TIES MR. LEVIN HAD WITH HIS
7 FATHER.

8 MR. CRAIN: IT IS REALLY FOUNDATIONAL, YOUR HONOR.
9 I THINK WE GET OFF THIS SUBJECT IF WE CAN MOVE ON.

10 THE COURT: LET'S MOVE ON, THEN.

11 MR. CRAIN: OKAY.

12 BY MR. CRAIN:

13 Q DID YOU REPRESENT HIM IN CONNECTION WITH HIS
14 LEGAL ATTEMPT IN THE COURT SYSTEM TO OBTAIN TITLE TO
15 MRS. WARNER'S PROPERTY PURSUANT TO AN OPTION THAT HE
16 CLAIMED HE HAD?

17 MR. MC MULLEN: OBJECTION. LEADING.

18 THE COURT: OVERRULED.

19 YOU CAN ANSWER THAT.

20 THE WITNESS: I FILED A SUIT ON HIS BEHALF ON THAT
21 MATTER.

22 BY MR. CRAIN:

23 Q AND AT THAT TIME DID YOU HAVE ANY KNOWLEDGE
24 OR INFORMATION OR BELIEF THAT RON LEVIN HAD ACTUALLY
25 EITHER HAD NO RIGHT TO THAT OPTION OR HAD ASSIGNED IT TO
26 HIS FATHER OR SOLD IT TO HIS FATHER IN SOME WAY?

27 MR. MC MULLEN: OBJECTION. IRRELEVANT. CALLS FOR
28 HEARSAY.

1 THE COURT: SUSTAINED.

2 DOESN'T THIS GO TO 2-J? I THINK I HAVE
3 ALLOWED TESTIMONY ON 2-E DEALING WITH MR. -- LET ME JUST
4 CHECK MY NOTES.

5

6 (PAUSE.)

7

8 THE COURT: YES.

9 MR. CRAIN: I AM TRYING --

10 THE COURT: DEALING WITH THE KNOWLEDGE THAT
11 MR. LEVIN MIGHT HAVE WITH PROGRESSIVE SAVINGS & LOAN.

12 MR. CRAIN: I PLAN TO GET TO THAT. I WANTED THE
13 COURT TO HAVE SOME BACKGROUND BECAUSE THIS WITNESS KNEW
14 MR. LEVIN PRETTY WELL AS AN ATTORNEY.

15 THE COURT: I BELIEVE THAT --

16 MR. CRAIN: ALL WE ARE TRYING TO FIND OUT ABOUT
17 SPECIFIC INCIDENTS IN A VERY BRIEF WAY --

18 THE COURT: LET'S MOVE TO THE ISSUE INVOLVED IN
19 2-E. IF THE PROSECUTION IN CROSS-EXAMINATION RAISES
20 DOUBTS AS TO THAT I WILL ALLOW YOU TO REOPEN.

21

22 BY MR. CRAIN:

23 Q NOW, DID YOU ALSO KNOW MR. HUNT HERE, THE
24 PERSON SEATED AT THE END OF THE COUNSEL TABLE?

25 A YES.

26 Q AND IN WHAT CONNECTION DID YOU KNOW MR. HUNT?

27 A I REPRESENTED HIM IN SOME CIVIL MATTERS.

28 Q AND WERE YOU AN ACQUAINTANCE OR FRIEND OF

1 MR. HUNT, OR WHAT WAS YOUR RELATIONSHIP THEN, STRICTLY
2 THAT OF ATTORNEY AND CLIENT?

3 A IT WAS AN ATTORNEY-CLIENT RELATIONSHIP.

4 Q AND DID YOU MEET MR. HUNT THROUGH MR. LEVIN?

5 A YES. I WAS INTRODUCED TO MR. HUNT BY
6 MR. LEVIN.

7 Q DID YOU REPRESENT MR. HUNT IN CONNECTION WITH
8 SOME PROCEEDINGS THAT INVOLVED THE FIRM KNOWN AS
9 CANTOR-FITZGERALD?

10 A I BELIEVE I DID, YES.

11 Q AND IN THE COURSE OF YOUR REPRESENTATION OF
12 MR. HUNT WAS THERE SCHEDULED ON OR ABOUT JUNE 20, 1984, A
13 DEPOSITION AT WHICH TIME RON LEVIN'S DEPOSITION WAS TO BE
14 TAKEN?

15 MR. MC MULLEN: OBJECTION. IRRELEVANT.

16 THE COURT: OVERRULED. I WILL SEE WHERE IT IS
17 GOING.

18 MR. CRAIN: THANK YOU.

19 BY MR. CRAIN:

20 Q DID YOU HEAR THE QUESTION?

21 A COULD I HAVE IT AGAIN, PLEASE?

22 Q ON OR ABOUT JUNE 20TH WAS THERE A DEPOSITION
23 SCHEDULED IN CONNECTION WITH A CANTOR -- 1984 -- IN
24 CONNECTION WITH THE CANTOR-FITZGERALD PROCEEDING WHEREIN
25 MR. LEVIN WAS TO HAVE HIS DEPOSITION TAKEN?

26 A YES, THERE WAS. AND THAT, I BELIEVE, WAS A
27 COURT ORDERED DEPOSITION, AND THERE WAS GOING TO BE A
28 REFEREE THERE. AND THERE WAS A REFEREE THERE AS WELL,

1 RETIRED JUDGE -- I FORGET WHO THAT WAS.

2 Q WHERE WAS THIS DEPOSITION TO TAKE PLACE?

3 A AT THE OFFICE OF CANTOR-FITZGERALD IN BEVERLY
4 HILLS.

5 Q DID YOU GO THERE FOR PURPOSES OF HAVING
6 MR. LEVIN'S DEPOSITION TAKEN?

7 A YES, I DID.

8 Q DID MR. LEVIN APPEAR?

9 A NO, HE DID NOT.

10 Q NOW, AFTER THAT DID YOU HAVE A TELEPHONE
11 CONVERSATION WITH MARTIN LEVIN, THE FATHER OF RONALD
12 LEVIN?

13 A YES. I BELIEVE THE FOLLOWING WEEK I RECEIVED
14 A TELEPHONE CALL FROM A GENTLEMAN WHO IDENTIFIED HIMSELF
15 AS MARTIN LEVIN.

16 Q AND DID YOU SPEAK TO HIM ON THAT CALL, OR DID
17 YOU RETURN THE CALL?

18 A I AM NOT SURE IF I CALLED HIM BACK OR WHAT IT
19 WAS, THE SEQUENCE WAS, I DON'T RECALL, BUT WE DID HAVE A
20 CONVERSATION AT ONE POINT IN TIME TOWARDS THE END OF JUNE.

21 Q WAS PART OF THE CONVERSATION RELATED TO THE
22 LEGAL PROCEEDING WHEREIN HE FAILED TO APPEAR AT THE
23 DEPOSITION?

24 MR. MC MULLEN: OBJECTION. IRRELEVANT.

25 THE COURT: I WILL SEE WHERE IT IS GOING.

26 THE WITNESS: HE DIDN'T MENTION ANYTHING ABOUT NOT
27 APPEARING AT THE DEPOSITION. I DON'T KNOW THAT
28 MR. MARTIN LEVIN KNEW ABOUT THE DEPOSITION.

1 BY MR. CRAIN:

2 Q OKAY.

3 IN THE COURSE OF THE CONVERSATION THAT YOU
4 HAD DID MARTIN LEVIN DISCUSS WITH YOU HAVING GONE INTO AND
5 LOOKED AROUND AND SEARCHED HIS SON'S RESIDENCE IN BEVERLY
6 HILLS?

7 A YES, HE TOLD ME.

8 MR. MC MULLEN: OBJECTION. IRRELEVANT.

9 MR. CRAIN: YOUR HONOR, THIS GOES TO THE ISSUE THAT
10 THE COURT CLEARLY IS PERMITTING TESTIMONY ON REGARDING THE
11 SEVEN-PAGE LIST, AND I THINK THE PEOPLE --

12 THE COURT: I AGREE WITH YOU. THE QUESTION I HAVE
13 IS, IS THIS GOING TO BE HEARSAY?

14 MR. CRAIN: WELL, BECAUSE IN A SENSE WE ARE TAKING
15 THINGS OUT OF ORDER HERE, BUT THIS IS GOING TO BE A
16 STATEMENT BY MARTIN LEVIN REGARDING THE SEVEN-PAGE LIST, I
17 THINK. AND THE WITNESS, YOU KNOW, GAVE TESTIMONY,
18 MR. LEVIN GAVE TESTIMONY AT THE FIRST TRIAL, WHICH
19 MR. WAPNER, THE PROSECUTOR, ARGUED WAS CONVINCING
20 TESTIMONY, CONCERNING THE FINDING, THE SO-CALLED FINDING
21 OF THE LIST, AND THIS TESTIMONY GOES TO REBUT --

22 THE COURT: SO YOU ARE OFFERING IT AS PRIOR
23 CONSISTENT TESTIMONY?

24 MR. CRAIN: INCONSISTENT STATEMENT AND ALSO --

25 THE COURT: NO. NO. BUT YOU ARE OFFERING THE
26 TESTIMONY BY THIS WITNESS OF THINGS THAT THE SENIOR
27 MR. LEVIN SAID AS TO A PRIOR CONSISTENT STATEMENT?

28 MR. CRAIN: I WILL MAKE AN OFFER PROOF, IF THE

1 COURT WANTS TO HEAR IT, EVEN IN THE PRESENCE OF THE
2 WITNESS. I REALLY THINK IT DOESN'T MATTER.

3 THE WITNESS, I BELIEVE, WILL TESTIFY THAT HE
4 HAD A CONVERSATION WITH MR. LEVIN, SR., THAT MR. LEVIN,
5 SR. TOLD HIM THAT AT SOME POINT AFTER THE PURPORTED DATE
6 OF THE ALLEGED MURDER IN THIS CASE THAT -- THE
7 DISAPPEARANCE OF HIS SON THAT HE WENT INTO HIS SON'S
8 RESIDENCE AND DURING THE COURSE OF IT SAW VARIOUS PAPERS
9 AND SO FORTH THAT HE WAS CONCERNED AND EXPRESSED A CONCERN
10 TO THE WITNESS ABOUT THE POLICE GETTING IN THERE AND
11 FINDING INCRIMINATING EVIDENCE THAT COULD BE USED AGAINST
12 RON LEVIN.

13 AND IN THE COURSE OF IT SAID NOTHING
14 WHATSOEVER ABOUT HIS PURPORTED DISCOVERY OF THE SEVEN-PAGE
15 LIST. HE IS THE MAN WHO GAVE EVIDENCE AGAINST MR. HUNT
16 THAT HE WENT IN AND FOUND THIS HIGHLY INCRIMINATING PIECE
17 OF EVIDENCE IN A PARTICULAR MANNER IN MR. LEVIN'S
18 APARTMENT.

19 THIS WITNESS HAD A CONVERSATION WITH
20 MR. LEVIN ABOUT HIS SEARCH OF THE RESIDENCE IN WHICH THE
21 MAN, YOU WOULD THINK, WOULD HAVE SAID, "GUESS WHAT. I
22 FOUND THIS TO-DO LIST. THIS MUST HAVE SOMETHING DO WITH
23 FOUL PLAY," SOMETHING OF THAT NATURE. HE SAID NOTHING OF
24 KIND.

25 THE COURT: I WILL ALLOW THE TESTIMONY SUBJECT TO A
26 MOTION TO STRIKE IF IT IS NOT TIED UP.

27 MR. CRAIN: THANK YOU.

28 BY MR. CRAIN:

1 Q SO YOU ARE TELLING US MR. MELCZER THAT YOU
2 HAD THIS CONVERSATION WITH LEVIN, SR., MARTIN LEVIN;
3 CORRECT?

4 A CORRECT.

5 Q DURING THE COURSE OF THE CONVERSATION DID HE
6 RELATE TO YOU THAT HE HAD GONE INTO HIS SON'S RESIDENCE?

7 A YES. HE TOLD ME THAT HE GONE INTO --
8 MR. MC MULLEN: EXCUSE ME, SIR.

9 I WOULD OBJECT AS LEADING THE WITNESS.

10 THE COURT: I WILL ALLOW HIM TO FINISH HIS ANSWER.

11 FINISH YOUR ANSWER.

12 THE WITNESS: MR. MARTIN LEVIN TOLD ME THAT HE HAD
13 GONE INTO RON'S RESIDENCE, WHICH WAS ALSO HIS OFFICE, AND
14 THAT MR. MARTIN LEVIN HAD FOUND A LOT OF PAPERS THERE AND
15 WAS CONCERNED WITH WHAT HE SHOULD DO. HE WAS AFRAID TO
16 CALL THE POLICE BECAUSE -- THAT IS WHAT HE TOLD ME BECAUSE
17 HE WAS AFRAID THAT THE POLICE WOULD SOMEHOW USE THIS
18 EVIDENCE AGAINST RON LEVIN FOR FURTHER PROSECUTIONS. I
19 THEN RESPONDED TO HIM BY SAYING, "I DON'T KNOW WHAT'S
20 GOING ON, OR WHAT TO DO," BUT I KNEW THAT RON HAD A
21 CRIMINAL ATTORNEY AT THAT POINT IN TIME.

22 THE COURT: WAS THAT MR. FURSTMAN?

23 THE WITNESS: I THINK IT WAS WITH HOWARD'S
24 WEITZMAN'S OFFICE, IF THAT'S MR. FURSTMAN.

25 MR. CRAIN: I WILL STIPULATE.

26 THE COURT: MR. FURSTMAN, SCOTT --

27 MR. CRAIN: FOR THE COURT'S INFORMATION,
28 MR. FURSTMAN WORKED WITH WEITZMAN IN THOSE DAYS?

1 THE COURT: DID HE?

2 MR. CRAIN: YES.

3 THE WITNESS: AND I SUGGESTED TO MR. MARTIN LEVIN
4 THAT HE CALL RON'S CRIMINAL COUNSEL AND DISCUSS THAT WITH
5 HIM BECAUSE THAT SEEMED TO BE UP A CRIMINAL ATTORNEY'S
6 ALLEY NOT MINE IN THE CIVIL AREA.

7 BY MR. CRAIN:

8 Q DURING THE COURSE OF THIS CONVERSATION DID
9 MR. MARTIN LEVIN TELL YOU THAT HE HAD FOUND SOMETHING THAT
10 APPEARED TO BE SOME SINISTER PIECE OF EVIDENCE?

11 A NO, HE DIDN'T MENTION ANYTHING OF THAT
12 NATURE.

13 Q DID HE TELL YOU HE FOUND A LIST OF THINGS TO
14 DO AT LEVIN'S THAT INCLUDED SUCH THINGS AS "KILL THE DOG"
15 AND "JIM DIGS PIT," THINGS OF THAT NATURE?

16 A NO. HE DIDN'T MENTION ANYTHING OF THAT
17 NATURE.

18 Q DID HE TELL YOU THAT HE FOUND A DOCUMENT
19 THAT, IN SOMEONE ELSE'S HANDWRITING, THAT LOOKED STRANGE
20 OR UNUSUAL OR PERHAPS RELATED TO HIS SON'S DISAPPEARANCE?

21 A NO. HE DIDN'T MENTION OF THAT NATURE.

22 Q DID HE SAY ANYTHING TO YOU IN ANY WAY, SHAPE
23 OR FORM THAT HE HAD FOUND ANY DOCUMENTS OR PAPERS THAT IN
24 ANY WAY SEEMED TO RELATE TO HIS SON'S DISAPPEARANCE?

25 A NO. HE SEEMED TO BE CONCERNED THAT IF THE
26 POLICE RIFLED THROUGH THE PAPERS, IF THE POLICE REVIEWED
27 THESE PAPERS, THEY WOULD FIND OTHER SCAMS OF SOME NATURE
28 THAT RON HAD DONE, THAT SEEMS TO BE HIS PRIMARY CONCERN,

1 NOT THAT THERE WAS ANYTHING IMPLICATING ANYBODY ELSE IN
2 RON'S DISAPPEARANCE OR ANYTHING CONNECTED TO RON'S
3 DISAPPEARANCE.

4 Q SO YOUR TESTIMONY IS HE NEVER -- WELL, I AM
5 NOT ASKING IN A LEADING WAY.

6 DID HE TELL YOU ANYTHING ABOUT FINDING SEVEN
7 PAGES OF A LIST OF THINGS TO DO OR OTHER THINGS THAT
8 APPEARED TO RELATE TO SOME PERHAPS FOUL PLAY THAT RON
9 LEVIN MIGHT HAVE SUFFERED?

10 A NO.

11 MR. MC MULLEN: AGAIN, I WILL OBJECT AS LEADING.
12 IT IS NOT ASKED AND ANSWERED. IT IS CUMULATIVE.

13 THE COURT: I WILL ALLOW THE ANSWER NOW TO STAND.

14 MR. CRAIN: THANK YOU.

15 BY MR. CRAIN:

16 Q NOW, WITH REGARDS TO ANOTHER SUBJECT, DID YOU
17 REPRESENT RON LEVIN IN CONNECTION WITH A MATTER INVOLVING
18 PROGRESSIVE SAVINGS?

19 A I REPRESENTED HIM ALONG WITH CRIMINAL
20 ATTORNEY COUNSEL IN THAT MATTER, A GENTLEMEN BY THE NAME
21 OF DON STEIER.

22 Q AND DID THAT INVOLVE SOME ALLEGATION THAT RON
23 LEVIN WAS INVOLVED IN DEFRAUDING PROGRESSIVE SAVINGS IN
24 THE AMOUNT OF APPROXIMATELY \$150,000.

25 MR. MC MULLEN: OBJECTION. LEADING.

26 MR. CRAIN: I DON'T NOW HOW ELSE TO ASK THESE
27 QUESTIONS.

28 THE COURT: IF I NEED HELP, I WILL LET YOU KNOW.

1 OVERRULED.

2 MR. CRAIN: THANK YOU. I APPRECIATE IT.

3 THE WITNESS: YES.

4 BY MR. CRAIN:

5 Q AND HOW DID MR. STEIER GET INVOLVED IN THE
6 CASE, IF YOU KNOW?

7 A I RECOMMENDED THAT MR. LEVIN HIRE MR. STEIER.

8 Q AND YOU KNEW MR. STEIER TO BE A CRIMINAL
9 DEFENSE ATTORNEY PRIMARILY AT THAT TIME?

10 A CORRECT.

11 Q AND WAS THERE SOME REASON WHY YOU FELT
12 MR. LEVIN SHOULD ALSO HAVE THE SERVICES OF A CRIMINAL
13 DEFENSE ATTORNEY?

14 A WELL, IT WAS A CRIMINAL MATTER. I WAS NOT
15 PREPARED TO HANDLE CRIMINAL MATTERS OF THAT NATURE.

16 Q AND DURING THE COURSE OF YOUR -- LET ME ASK
17 IT LIKE THIS. DID YOU CONTINUE, HOWEVER, WHILE MR. STEIER
18 WAS IN THE CASE TO ALSO ASSIST MR. LEVIN WITH REGARDS TO
19 THIS DEFRAUDING OF PROGRESSIVE SAVINGS?

20 A THERE WAS A CIVIL CASE IN WHICH, I BELIEVE,
21 THERE WAS A CIVIL CASE IN WHICH PROGRESSIVE WAS SUING
22 LEVIN FOR THE MONEY. I AM NOT 100 PERCENT SURE ON THAT AT
23 THIS POINT IN TIME, BUT I DID ATTEND ONE MEETING WITH
24 MR. STEIER AND A REPRESENTATIVE OF THE F.B.I. I BELIEVE
25 HER NAME WAS UNDERWOOD.

26 Q WAS THAT A NANCY UNDERWOOD?

27 A I BELIEVE THAT'S CORRECT.

28 Q AND THE MEETING WITH THE F.B.I. AGENT WAS

1 THAT AGENT, AS FAR AS YOU COULD TELL, WAS THE CONTEXT OF
2 THE MEETING RELATING TO THE F.B.I. INVESTIGATION INTO
3 LEVIN AND THE PROGRESSIVE SAVINGS FRAUD?

4 A YES, ABSOLUTELY.

5 Q AND FOLLOWING THE MEETING DID YOU HAVE
6 FURTHER CONTACT WITH MR. LEVIN CONCERNING PROGRESSIVE
7 SAVINGS?

8 A I DON'T SPECIFICALLY RECALL IF I DID, BUT
9 PROBABLY I WOULD HAVE.

10 Q AND DO YOU RECALL --

11 MR. CRAIN: YOUR HONOR, I HAVE A ONE-PAGE DOCUMENT.
12 IT APPEARS TO BE A BILL WITH THE NAME JEFFREY MELCZER. I
13 AM WONDERING IF THAT COULD BE, I BELIEVE THAT'S NO. 8.

14 THE COURT: WHERE ARE WE ON PETITIONER'S?

15 THE CLERK: 8?

16 THE COURT: IT WILL BE MARKED AS 8.

17 IT AM SORRY -- IT IS A BILLING FROM THIS
18 WITNESS?

19 MR. CRAIN: YES, YOUR HONOR.

20

21 (MARKED FOR ID = PETITIONER'S 8, DOCUMENT.)

22

23 MR. CRAIN: MAY I APPROACH THE WITNESS?

24 THE COURT: YES.

25 BY MR. CRAIN:

26 Q LET ME SHOW YOU, SIR, THIS DOCUMENT. IT SAYS
27 "JEFFREY L. MELCZER ATTORNEY AT LAW." THAT'S SOMETHING
28 THAT YOU HAVE SEEN BEFORE OR AN ORIGINAL YOU HAVE SEEN

1 BEFORE?

2 A YES. THAT WAS PREPARED BY MY OFFICE.

3 THE COURT: WAS PREPARED BY?

4 THE WITNESS: MY OFFICE.

5 BY MR. CRAIN:

6 Q IS THAT YOUR SIGNATURE ON THE BOTTOM OR WHERE
7 IT SAYS, "SINCERELY, JEFFREY L. MELCZER"?

8 A YES, IT IS.

9 Q AND CALLING YOUR ATTENTION TO ABOUT
10 TWO-THIRDS OF THE WAY DOWN TO THE PAGE UNDER -- STRIKE
11 THAT.

12 IS THIS A BILL FOR SERVICES THAT YOU SENT TO
13 RON LEVIN?

14 A YES, IT IS.

15 Q DATED JANUARY 5, 1984?

16 A YES, THAT'S CORRECT.

17 THE COURT: I AM SORRY.

18 WHAT WAS THE DATE AGAIN?

19 MR. CRAIN: JANUARY 5, 1984.

20 THE WITNESS: THIS WOULD REFLECTED CHARGES IN
21 DECEMBER, OF CHARGES IN DECEMBER OF 1983.

22 BY MR. CRAIN:

23 Q I NOTICE FROM DECEMBER -- ON DECEMBER 16TH
24 THAT YOU NOTE IN YOUR BILL A MEETING WITH STEIER AND
25 UNDERWOOD AND TRAVEL; IS THAT RIGHT?

26 A CORRECT.

27 Q AND IS THAT A MEETING THAT YOU HAD WITH DON
28 STEIER AND AGENT UNDERWOOD RELATIVE TO THE PROGRESSIVE

1 SAVINGS HAVING BEEN DEFRAUDED?

2 A YES.

3 MR. CRAIN: YOUR HONOR, I HAVE GOT ANOTHER BILL
4 HERE. IF IT COULD BE MARKED AS 9.

5 THE COURT: ALSO, FROM MR. MELCZER?

6 MR. CRAIN: YES, YOUR HONOR.

7 THE COURT: WHAT WAS THE DATE OF THAT BILL?

8 MR. CRAIN: DECEMBER 5TH, 1983.

9

10 (MARKED FOR ID = PETITIONER'S 9, DOCUMENT.)

11

12 BY MR. CRAIN:

13 Q SHOWING YOU THIS ONE, DOES IT ALSO APPEAR TO
14 BE A BILL THAT HAS YOUR SIGNATURE THAT YOUR OFFICE SENT
15 OUT TO MR. LEVIN?

16 A YES.

17 Q AND DOES THAT ALSO RELATE TO SERVICES THAT
18 YOU RENDERED FOR HIM IN CONNECTION WITH THE PROGRESSIVE
19 INVESTIGATION?

20 A WELL, AS I SAID BEFORE, THERE IS THE CRIMINAL
21 MATTER AND THERE IS THE CIVIL MATTER. AS I RECALL
22 MR. VERPLANCK, WHOSE NAME IS ON HERE, REPRESENTED THE
23 BANK, AND THAT WOULD HAVE BEEN A DISCUSSION DIRECTLY WITH
24 THE BANK OR THEIR REPRESENTATIVE RATHER THAN A CRIMINAL,
25 AS I RECALL.

26 Q OKAY.

27 DOES IT NOTE A TELEPHONE CALL THAT INVOLVED
28 F.B.I. AGENT UNDERWOOD ON NOVEMBER 22ND?

1 A YES, THAT IS CORRECT. AND THERE IS ALSO
2 REFERENCE TO A CRIMINAL DEFENSE ATTORNEY AROUND HERE, AND
3 ALSO MR. STEIER AROUND HERE.

4 THE COURT: HAD A LAWSUIT BEEN FILED AT THIS POINT?

5 THE WITNESS: MY RECOLLECTION IS THAT THE LAWSUIT
6 WAS FILED. I DON'T HAVE A NUMBER, BUT BY THE NOTATION IT
7 SAYS, **"LAW ADB PROGRESSIVE S," AND SO I BELIEVE
8 PROGRESSIVE DID FILE A CIVIL SUIT.

9 MR. CRAIN: MAY I HAVE A MOMENT, HERE?

10 THE COURT: YES.

11
12 (PAUSE.)

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

16
17 MR. CRAIN: FINALLY, I THINK WE HAVE ANOTHER
18 DOCUMENT. IT IS A LETTER FROM MR. MELCZER DATED FEBRUARY
19 27, '84. I WOULD LIKE IT MARKED AS PETITIONER'S 10 WITH
20 THE COURT'S PERMISSION.

21 THE COURT: IT WILL BE MARKED AS 10.

22 (MARKED FOR ID = PETITIONER'S 10, DOCUMENT.)

23
24 BY MR. CRAIN:

25 Q MR. MELCZER, I AM SHOWING YOU A LETTER THAT
26 WAS JUST REFERRED TO. A LETTER -- ALTHOUGH IT DOESN'T
27 HAVE A SIGNATURE ON IT, DOES THAT APPEAR TO BE A COPY OF A
28 LETTER THAT ORIGINATED WITH YOU TO AN ATTORNEY BY THE NAME

1 OF MONA D. MILLER?

2 A YES, IT DOES.

3 Q AND IS THAT RELATIVE TO THE PROGRESSIVE
4 SAVINGS AND LOAN MATTER WE HAVE BEEN TALKING ABOUT HERE?

5 A YES, IT IS. BUT AGAIN, I THINK THIS IS TOO
6 MC KENNA, CONNER AND CUNEO. THAT WOULD HAVE BEEN THE
7 CIVIL CASE, NOT THE CRIMINAL MATTER.

8 Q THEY WERE REPRESENTING WHOM IN CONNECTION
9 WITH THE PROGRESSIVE CASE?

10 A THE BANK.

11 Q YOU MEAN PROGRESSIVE?

12 A YES.

13 Q OKAY.

14 AND IN THIS LETTER ARE YOU ATTEMPTING TO WORK
15 OUT SOME RESOLUTION OF MR. LEVIN'S CRIMINAL AND CIVIL
16 PROBLEMS?

17 A YES. WE ARE TRYING TO ARRIVE AT A COMPROMISE
18 WHICH WOULD HAVE PROGRESSIVE DROPPING ANY CIVIL
19 COMPLAINTS.

20 Q DO YOU HAVE AN INDEPENDENT RECOLLECTION AT
21 THIS TIME AS TO WHETHER OR NOT THAT LETTER WAS IN FACT
22 SENT UNDER YOUR SIGNATURE TO ATTORNEY MONA MILLER?

23 A I BELIEVE IT WAS SENT.

24 Q AND SO IN THE COURSE OF THIS LETTER YOU NOTE
25 AS ONE OF YOUR PROPOSALS THAT PROGRESSIVE WOULD DROP ANY
26 AND ALL CRIMINAL COMPLAINTS THAT THEY HAVE INSTIGATED
27 AGAINST MR. LEVIN AND PROGRESSIVE WOULD AGREE NOT TO
28 FURTHER PROCEED AGAINST HIM IN A CRIMINAL WAY?

1 A YES.

2 MR. CRAIN: EXCUSE ME, YOUR HONOR.

3

4 (A CONFERENCE WAS HELD BETWEEN COUNSEL
5 THE PETITIONER, NOT REPORTED.)

6

7 BY MR. CRAIN:

8 Q WAS MR. LEVIN SOMEONE THAT WAS CONCERNED
9 ABOUT CIVIL JUDGMENTS AGAINST HIM IN YOUR OPINION?

10 A I AM NOT SURE.

11 Q AND, FINALLY, YOU TOLD US THAT YOU HAD THIS
12 MEETING WITH DON STEIER, A CRIMINAL DEFENSE ATTORNEY, AND
13 THE F.B.I., AGENT UNDERWOOD, AND YOU SENT MR. LEVIN A BILL
14 FOR YOUR SERVICES HAVING MET WITH UNDERWOOD AND HAVING A
15 TELEPHONE CONVERSATION WITH HER THE PREVIOUS MONTH;
16 CORRECT?

17 A IF THAT'S WHAT THE BILL REFLECTS, YES. I
18 REMEMBER THE MEETING. I DON'T REMEMBER THE TELEPHONE
19 CONVERSATION, EXCEPT MAYBE TO SET UP THE MEETING.

20 Q OKAY.

21 BUT ANYWAY, DURING THE COURSE OF THE MEETING
22 YOU LEARNED THAT THE F.B.I. WAS INTERESTED IN IT, HAD AN
23 INTEREST IN THE CASE; RIGHT?

24 A WELL, THAT'S WHY WE HAD THE MEETING THEY HAD
25 AN INTEREST IN THE CASE, YES.

26 Q IT WOULD HAVE BEEN YOUR CUSTOM, WOULD IT NOT,
27 AS ATTORNEY TO CONVEY TO YOUR CLIENT WHAT WAS DISCUSSED AT
28 THE MEETING WITH THE F.B.I. AGENT; RIGHT?

1 A THAT WOULD HAVE BEEN MY CUSTOM, YES.

2 Q AS FAR AS YOU KNOW, YOU EXPRESSED IN THE
3 HALLWAY A CONCERN ABOUT THE ATTORNEY-CLIENT PRIVILEGE.

4 MR. CRAIN: YOUR HONOR, I WAS GOING TO ASK THE
5 WITNESS IF HE IN FACT COULD TELL US WHETHER HE
6 SPECIFICALLY TOLD THAT TO MR. LEVIN IN ACCORDANCE WITH HIS
7 TESTIMONY, IF HE RECALLS, BECAUSE THE LIMITATION OF TIME I
8 WOULD ASK HIM THAT HE MAY WANT SOME ORDER FROM THE COURT.

9 THE COURT: WELL, LET'S ASK HIM. LET'S SEE WHAT HE
10 SAYS.

11 BY MR. CRAIN:

12 Q DO YOU RECALL AT THIS TIME TELLING MR. LEVIN
13 IN ACCORDANCE WITH HIS CUSTOM JUST DESCRIBED THAT YOU HAD
14 A MEETING WITH THE F.B.I.?

15 A I DON'T RECALL ANY CONVERSATION LIKE THAT AT
16 THIS POINT IN TIME.

17 Q BECAUSE OF THE PASSAGE OF TIME?

18 A THAT'S CORRECT.

19 Q BUT IT WOULD HAVE BEEN YOUR CUSTOM AND HABIT?

20 A WOULD HAVE BEEN MY CUSTOM TO GET IN TOUCH
21 WITH MY CLIENT, LET THEM KNOW WHAT HAD HAPPENED AT ANY
22 MEETING WITH A THIRD PARTY, YES.

23 Q IN THE COURSE OF YOUR WORK AS A CIVIL
24 ATTORNEY WOULD IT BE SOMETHING OF IMPORTANCE THAT THE
25 F.B.I. WAS INTERESTED IN THE CLIENT AS WELL AS A RESULT OF
26 MATTERS RELATED TO THE MATTERS THAT YOU WERE HANDLING?

27 A I AM SORRY. I DON'T UNDERSTAND WHAT YOU ARE
28 SAYING.

1 Q OKAY.

2 YOU HAD A CLIENT HERE WHO WAS ALLEGEDLY
3 INVOLVED IN A FRAUD OF A SAVINGS & LOAN; RIGHT?

4 A THE F.B.I. WAS INTERESTED IN THIS CASE, YES.

5 Q SO IT WAS MORE THAN JUST A CIVIL CASE. AS
6 YOU HAVE TOLD US SEVERAL TIMES, IT HAD CRIMINAL
7 RAMIFICATIONS; IS THAT RIGHT?

8 A YES. THAT IS WHY I REFERRED HIM TO A
9 CRIMINAL ATTORNEY TO HANDLE IT.

10 Q SO AS A CIVIL ATTORNEY YOU FELT, "THIS IS
11 SOMETHING IMPORTANT THAT I SHOULD MAKE SURE THAT HE IS
12 PROPERLY REPRESENTED BY A CRIMINAL ATTORNEY," SOMETHING
13 OUT OF THE ORDINARY, IN OTHER WORDS?

14 A YES. YES. WHENEVER SOMETHING LIKE THAT
15 HAPPENS I REFER THEM TO A CRIMINAL ATTORNEY.

16 MR. CRAIN: NOTHING FURTHER AT THIS POINT.

17 THE COURT: CROSS-EXAMINATION?

18 MR. MC MULLEN: YOUR HONOR, AT THIS POINT THE
19 PEOPLE WOULD MOVE TO STRIKE ALL THAT TESTIMONY WITH
20 RESPECT TO THE CONVERSATION THAT THIS WITNESS HAD WITH
21 MARTIN LEVIN REGARDING PAPERS THAT WERE FOUND AT MR. RON
22 LEVIN'S APARTMENT.

23 THE COURT: I WILL DENY IT AT THIS TIME SUBJECT TO
24 IT BEING BROUGHT UP AT THE CLOSE OF THE TESTIMONY IN THIS
25 CASE.

26 MR. MC MULLEN: THANK YOU

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28

CROSS-EXAMINATION @

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BY MR. MC MULLEN:

Q SIR, YOU REPRESENTED MR. RONALD LEVIN IN A CIVIL PROCEEDING WITH RESPECT TO A COMPLAINT THAT WAS FILED BY PROGRESSIVE SAVINGS & LOAN; IS THAT CORRECT?

A I BELIEVE SO, YES.

Q AND DURING THE COURSE OF THAT REPRESENTATION YOU ADVISED MR. LEVIN TO SEEK CRIMINAL COUNSEL WITH RESPECT TO A POSSIBLE CRIMINAL CASE THAT COULD BE FILED AGAINST HIM?

A YES.

Q AND THAT WAS MR. DON STEIER; CORRECT?

A CORRECT.

Q AND THEN DON STEIER BECAME INVOLVED IN THE CASE INsofar AS IT RELATED TO THE CRIMINAL INVESTIGATION BEING CONDUCTED BY THE F.B.I.; IS THAT CORRECT?

A YES.

Q AND IN THE COURSE OF THE REPRESENTATION THAT YOU PROVIDED MR. LEVIN AND MR. STEIER PROVIDED TO MR. LEVIN YOU MET WITH A SPECIAL AGENT OF THE F.B.I. BY THE NAME OF NANCY UNDERWOOD; IS THAT CORRECT?

A YES.

Q NOW, YOU DIDN'T THINK THAT A CRIMINAL CASE WOULD BE FILED AGAINST RON LEVIN WITH RESPECT TO THE PROGRESSIVE SAVINGS & LOAN CASE; IS THAT CORRECT?

A I DIDN'T KNOW WHAT THE F.B.I. WAS GOING TO DO. THEY MIGHT HAVE; THEY MIGHT NOT HAVE. THAT'S UP TO

1 THEM. MS. UNDERWOOD SEEMED CONVINCED AT THE END OF OUR
2 MEETING THAT IT WAS TOO DIFFICULT A CASE TO PROVE, BUT
3 THAT DOESN'T STOP ANYBODY FROM FILING CASES.

4 Q SO SHE EXPRESSED TO YOU THAT THE CASE WAS TOO
5 DIFFICULT TO PROVE?

6 A THAT SEEMED TO BE WHAT SHE EXPRESSED AT THAT
7 MEETING. THAT DOESN'T MEAN THAT THEY WEREN'T GOING TO
8 FILE. THAT SEEMED TO BE WHAT SHE EXPRESSED. IT WAS A
9 VERY, VERY COMPLICATED CASE, AS I RECALL, IN TERMS OF WHEN
10 THE CHECKS WERE DEPOSITED, WHEN MONEY WAS WITHDRAWN. IT
11 IS NOT A TYPICAL TRANSACTION, BUT VERY, VERY COMPLEX
12 MATTER.

13 Q DO YOU REMEMBER --

14 THE COURT: WHAT WAS THE GENERAL NATURE OF THE
15 ALLEGATION? WAS IT SOMEBODY OPENED AN ACCOUNT AND
16 SUPPOSEDLY DEPOSITED A CHECK THAT --

17 THE WITNESS: THERE WERE A NUMBER OF CHECKS THAT
18 WERE DEPOSITED AND CHECKS THAT WENT IN AND CHECKS THAT
19 WENT OUT OVER A PERIOD OF TIME. WHAT APPEARS TO HAVE
20 HAPPENED, AS I RECALL IT, WAS LIKE ON -- THIS WAS WHEN YOU
21 HAD A TEN-DAY HOLD. ON THE TENTH DAY MR. LEVIN WAS ABLE
22 TO GO TO PROGRESSIVE AND TO MAKE A WITHDRAWAL AND SHORTLY
23 AFTER THAT SOME OF THE CHECKS WHICH HAD BEEN DEPOSITED
24 CAME BACK INSUFFICIENT FUNDS. AND THERE WAS APPROXIMATELY
25 \$100,000 DEFICIT AT THAT POINT IN TIME.

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

27 THE COURT: YES.

28

1 BY MR. MC MULLEN:

2 Q WAS MR. HUNT ALSO A PARTY TO THE
3 INVESTIGATION THAT WAS BEING CONDUCTED BY THE F.B.I.
4 REGARDING PROGRESSIVE SAVINGS & LOAN?

5 MR. CRAIN: OBJECTION. NOT RELEVANT TO THE ISSUE
6 HERE BEFORE THE COURT.

7 THE COURT: OVERRULED.

8 THE WITNESS: NOT TO MY KNOWLEDGE.

9 BY MR. MC MULLEN:

10 Q WERE ANY OTHER PARTIES BESIDES RON LEVIN
11 INVOLVED WITH THE INVESTIGATION BY THE F.B.I. REGARDING
12 THIS CASE?

13 A I DON'T KNOW IF THE F.B.I. CONTACTED SOME OF
14 THE PEOPLE WHO HAD WRITTEN THE CHECKS. I DON'T KNOW ABOUT
15 THAT ONE WAY OR THE OTHER.

16 Q DO YOU REMEMBER TELLING OUR INVESTIGATOR THAT
17 YOU HAD ADDITIONAL INFORMATION WITH RESPECT TO THE
18 COMMUNICATIONS THAT YOU HAD WITH YOUR CLIENT RON LEVIN
19 REGARDING THE PROGRESSIVE SAVINGS & LOAN CASE, BUT YOU
20 COULD NOT CONVEY THAT BECAUSE OF THE ATTORNEY-CLIENT
21 PRIVILEGE?

22 A I HAD INDICATED THAT I WAS NOT GOING TO
23 REVEAL CONVERSATIONS THAT I HAD WITH MR. LEVIN WITHOUT A
24 COURT'S ORDER FOR THE -- IN EFFECT ORDERING ME TO. IF THE
25 COURT WANTS TO ORDER, THEN I WILL REVEAL WHATEVER I CAN
26 RECALL. BUT I AM NOT SAYING I CAN REMEMBER ANYTHING AT
27 THIS POINT IN TIME. BUT THERE WERE ATTORNEY-CLIENT
28 COMMUNICATIONS THAT SEEMED TO ME TO BE TOTALLY

1 INAPPROPRIATE TO REVEAL TO AN INVESTIGATOR OF ANY TYPE BE
2 IT FROM THE PEOPLE OR FROM DEFENSE COUNSEL WITHOUT A COURT
3 ORDER.

4 Q I UNDERSTAND.

5 DID YOU HAVE CONVERSATIONS WITH MR. RON LEVIN
6 REGARDING THE PROGRESSIVE SAVINGS & LOAN CASE INSOFAR AS IT
7 RELATED TO THE F.B.I. INVESTIGATION?

8 A YES. I WOULD HAVE SUCH CONVERSATION WITH
9 HIM.

10 Q AND DO YOU REMEMBER WHAT THE CONTENTS OF
11 THOSE COMMUNICATIONS WERE?

12 A I DO NOT RECALL AT THIS POINT IN TIME.

13 Q YOU TESTIFIED ON DIRECT THAT YOU KNEW
14 MR. HUNT. HOW IS IT THAT YOU KNEW MR. JOE HUNT?

15 A MR. RON LEVIN SAID THAT HE HAD SOME PEOPLE
16 THAT HE KNEW WHO NEEDED AN ATTORNEY, AND THAT'S HOW I MET
17 HIM. I WAS REFERRED TO HIM BY RON, OR HE WAS REFERRED TO
18 ME BY RON.

19 Q SO YOU REPRESENTED MR. HUNT ON SOME DIFFERENT
20 CIVIL LITIGATION MATTERS?

21 A CORRECT.

22 MR. MC MULLEN: MAY I JUST HAVE A MOMENT, YOUR
23 HONOR?

24 THE COURT: YES.

25

26 (PAUSE.)

27

28

1 BY MR. MC MULLEN:

2 Q WAS ONE OF THOSE CIVIL MATTERS THAT YOU
3 REPRESENTED MR. HUNT ON THE PROGRESSIVE SAVINGS & LOAN
4 MATTER?

5 A I DON'T RECALL REPRESENTING HIM IN THE CIVIL
6 MATTER FOR PROGRESSIVE. HOWEVER, IF THAT'S WHAT THE FILE
7 INDICATES, THEN I DID, BUT I DON'T THINK I DID. I DON'T
8 RECALL THAT.

9 MR. MC MULLEN: NOTHING FURTHER.

10 THE COURT: DID YOU EVER DISCUSS WITH MR. HUNT THE
11 PROGRESSIVE SAVINGS & LOAN INVESTIGATION AT ANY TIME?

12 MR. CRAIN: MR. HUNT OR MR. LEVIN?

13 THE COURT: MR. HUNT.

14 THE WITNESS: I DON'T RECALL THAT I DISCUSSED THAT
15 WITH MR. HUNT.

16 THE COURT: I WAS -- YOU SAID YOU REPRESENTED BOTH
17 OF THE THEM. I WAS WONDERING IF YOU HAD AN OCCASION WHEN
18 MR. LEVIN'S INVOLVEMENT IN PROGRESSIVE SAVINGS & LOAN AND
19 THE INVESTIGATION WAS UNDERWAY IT CAN COME UP IN YOUR
20 CONVERSATION WITH MR. HUNT.

21 THE WITNESS: I DON'T RECALL THAT. IT IS POSSIBLE
22 BECAUSE THERE WAS ONE CHECK, I THINK, THAT MR. HUNT MAY
23 HAVE WRITTEN IN THAT CASE. I JUST DON'T REMEMBER.

24 THE COURT: MR. HUNT WAS THE SIGNER?

25 THE WITNESS: I AM NOT SURE IF HE WAS SIGNER OR
26 SOMEBODY ELSE OVER AT HIS OFFICE WAS THE SIGNER. I JUST
27 DON'T RECALL AT THIS POINT IN TIME. BUT I DON'T REMEMBER
28 DISCUSSING THAT WITH HIM.

1 THE COURT: ALL RIGHT.

2 MR. CRAIN?

3 MR. CRAIN: MAY I HAVE A MOMENT, YOUR HONOR?

4 THE COURT: YES.

5

6 (PAUSE.)

7

8

REDIRECT EXAMINATION +

9

10 BY MR. CRAIN:

11 Q NOW, DID YOU -- DO YOU KNOW THE PERSON BY THE
12 NAME OF ARTHUR BARENS, AN ATTORNEY?

13 A YES, I HAVE MET MR. BARENS.

14 Q AND DID YOU EVER -- WERE YOU EVER CONTACTED
15 BY MR. BARENS IN CONNECTION WITH HIS REPRESENTATION OF
16 MR. HUNT IN MR. HUNT'S TRIAL THAT WAS HELD IN SANTA MONICA
17 IN 1987?

18 A I HAD CONTACT WITH MR. BARENS DURING THAT
19 PERIOD OF TIME, YES.

20 Q AND DID YOU PROVIDE MR. BARENS WITH ANY OF
21 THE INFORMATION THAT YOU PROVIDED TO THE COURT HERE TODAY?

22 A YES. I TOLD MR. BARENS ABOUT THE
23 CONVERSATION THAT I HAD WITH MR. MARTIN LEVIN.

24 Q DID YOU TELL HIM ESSENTIALLY THE SAME THINGS
25 THAT YOU TOLD THE COURT HERE THIS AFTERNOON?

26 A YES.

27 Q AND WITH REGARD TO THE OTHER AREA THAT YOU
28 WERE ASKED ABOUT HERE, THE MATTER INVOLVING PROGRESSIVE

1 SAVINGS, THE F.B.I. INVESTIGATION, THE CONSULTATION WITH
2 THE F.B.I., THOSE THINGS, DID YOU RELATE THOSE MATTERS TO
3 MR. BARENS?

4 A I DON'T RECALL DISCUSSING THOSE. ALL I
5 RECALL DISCUSSING WITH HIM WAS CONVERSATIONS I HAD WITH
6 MR. MARTIN LEVIN.

7 Q AND WERE YOU EVER CALLED AS A WITNESS TO
8 TESTIFY IN SANTA MONICA AT MR. HUNT'S TRIAL THERE?

9 A NO, I WAS NOT.

10 Q AND DID YOU TESTIFY IN SAN MATEO AT HIS TRIAL
11 THERE?

12 A YES, I DID.

13 Q WERE YOU CALLED AS A WITNESS ON BEHALF OF THE
14 DEFENSE AT THAT TIME?

15 A YES, I WAS.

16 Q YOU GAVE TESTIMONY BEFORE THE JURY?

17 A YES, I DID.

18 MR. CRAIN: NOTHING FURTHER.

19 THE COURT: ANY RECROSS?

20 MR. MC MULLEN: JUST ONE MOMENT.

21

22 (PAUSE.)

23

24 MR. MC MULLEN: NOTHING FURTHER.

25 THE COURT: MAY THIS WITNESS BE EXCUSED?

26 MR. CRAIN: YES.

27 THE COURT: ANY OBJECTION?

28 MR. MC MULLEN: NO OBJECTION.

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

2 THE WITNESS: THANK YOU

3 THE COURT: ALL RIGHT.

4 CALL YOUR NEXT WITNESS.

5 MR. CRAIN: IN VIEW OF MR. BRODEY'S INABILITY TO
6 TESTIFY WE DON'T HAVE ANY WITNESSES.

7 THE COURT: WHAT HAPPENED TO MR. TUR AND THE
8 OTHERS, I THINK IT WAS HIS WIFE?

9 MR. KLEIN: THEY HAVEN'T RETURNED CALLS. WE HAVE
10 BEEN IN CONSTANT EFFORTS TO CONTACT THEM THE LAST TWO
11 DAYS.

12 MR. CRAIN: I THOUGHT WE WOULD FILL THE TIME WITH
13 COHEN AND JEFF BRODEY. WHY BRODEY IS WRIGGLING AWAY I
14 HAVE NO EXPLANATION.

15 MR. KLEIN: WE HAVE BEEN TRYING TO GET MR. TUR AND
16 HIS WIFE IN. I HAVE LEFT AT LEAST TEN MESSAGES. MY
17 INVESTIGATOR HAS LEFT TEN MESSAGES.

18 THE COURT: DO YOU KNOW IF THEY WERE SERVED?

19 MR. KLEIN: MY INVESTIGATOR SAID THAT MR. TUR
20 HASN'T BEEN SERVED. I HAVE A FEELING THAT THE PEOPLE HAVE
21 HIM UNDER SUBPOENA.

22 THE COURT: DO YOU GUYS HAVE HIM UNDER SUBPOENA?

23 MR. MC MULLEN: I AM NOT SURE. I DON'T THINK SO.

24 NO, WE DON'T.

25 MR. KLEIN: HE SAID -- I TALKED TO HIM TWO DAYS
26 AGO. HE SAID HE'D COOPERATE AND COME IN WITHOUT A
27 SUBPOENA. ACCORDING TO THE GERRARDS HE WAS WORKING IN THE
28 AIR UNTIL 11 O'CLOCK AT NIGHT LAST NIGHT.

1 MR. CRAIN: I AM CONFIDENT WE WILL HAVE HIM HERE
2 THURSDAY.

3 THE COURT: SO WE HAVE NO MORE WITNESSES FOR TODAY?

4 MR. CRAIN: REGRETFULLY, NO.

5 THE COURT: ALL RIGHT.

6 WHY DON'T YOU -- WE WILL BREAK THEN FOR
7 THE -- WE WILL PICK UP AGAIN ON THURSDAY MORNING. TAKE
8 THIS TIME AND USE IT TO GET THAT EXHIBIT LIST.

9 MR. KLEIN, I ASSUME YOU ARE GOING TO BE
10 RESPONSIBLE FOR MAKING THAT, NOT WITNESS, EXHIBIT LIST.
11 YOU MAKE SURE THAT YOU PUT IN THE 1 THROUGH 10 WE HAVE
12 ALREADY IDENTIFIED.

13 MR. KLEIN: MAYBE I WILL GET A XEROX COPY.

14 THE COURT: MAKE SURE YOU GET THAT.

15 ANYTHING ELSE WE CAN TAKE CARE OF NOW?

16 MR. CRAIN: CAN WE HAVE JUST A MOMENT BEFORE THE
17 COURT --

18 THE COURT: YES.

19

20 (PAUSE.)

21

22 THE COURT: COUNSEL, BEFORE YOU LEAVE TODAY MAKE
23 SURE ALL OF THE EXHIBITS HAVE BEEN MARKED.

24 MR. KLEIN: THAT'S WHAT I AM DOING RIGHT NOW, THEN.

25 THE COURT: PEOPLE'S EXHIBITS TOO BECAUSE WE MARKED
26 SOME OF THEM.

27 MR. KLEIN: I ASSUME THEY WILL BRING THEM OVER. IF
28 WE COULD MAKE COPIES OF THESE FOR THE COURT AND FOR THE

1 DISTRICT ATTORNEY, WE WILL DO IT RIGHT AT THE END WHEN WE
2 ARE DONE.

3 THE COURT: YOU CAN USE THE LAW CLERK'S XEROX
4 MACHINE.

5 MR. KLEIN: RIGHT.

6 MR. CRAIN: IF I COULD HAVE JUST A MINUTE WITH
7 COUNSEL HERE PERHAPS WE CAN TAKE UP THIS MATTER WITH THE
8 COURT.

9

10 (PAUSE.)

11

12 MR. CRAIN: I WOULD LIKE TO TAKE UP TWO RELATED
13 THINGS AT THIS TIME BRIEFLY, IF THE COURT WANTS TO DO IT.

14 I THINK THE PEOPLE, IF I AM NOT MISTAKEN, HAD
15 ORIGINALLY AGREED TO A STIPULATION THAT MR. HUNT'S
16 TESTIMONY RELATIVE TO THE EXHIBIT, THE SEVEN-PAGE LIST,
17 THE TESTIMONY THAT HE GAVE ON THAT SUBJECT IN SAN MATEO,
18 THAT THEY WOULD STIPULATE THAT THAT TESTIMONY COULD BE
19 PART OF THE RECORD IN THIS PROCEEDING. WE ARE WILLING TO
20 DO THAT.

21

SECOND --

22 THE COURT: ARE THEY?

23 MR. CRAIN: WELL --

24 MR. MC MULLEN: YOUR HONOR, IN RESPONSE TO THAT WE
25 HAD ASKED THE COURT IN OUR HEARING MEMORANDUM TO TAKE
26 JUDICIAL NOTICE OF MR. HUNT'S TESTIMONY WITH RESPECT TO
27 THAT ISSUE AND CERTAIN PAGES THAT ARE REFERENCED IN THAT
28 TESTIMONY.

1 IT IS THE PEOPLE'S POSITION AT THIS POINT IN
2 TIME THAT MR. HUNT IS GOING TO TAKE THE WITNESS STAND,
3 PERHAPS THE COURT -- AND WE WOULD LIKE TO HAVE DIRECT
4 EVIDENCE ON THAT ISSUE FROM HIM.

5 THE COURT: IS MR. HUNT GOING TO TESTIFY?

6 MR. CRAIN: I ANTICIPATE MR. HUNT WILL TESTIFY
7 ABOUT MR. BARENS' INCOMPETENCE. BUT IN VIEW -- THIS
8 WASN'T OFFERED BY THE PEOPLE. MR. HUNT WAS ON THE WITNESS
9 STAND FOR APPROXIMATELY THREE WEEKS IN SAN MATEO. AND I
10 WOULD THINK THAT THE PEOPLE WOULD WANT TO ACCOMMODATE THE
11 COURT AND THE COURT'S DESIRE TO MOVE THE MATTER ALONG, AND
12 SO WE ARE TAKING THEM -- WE ARE ACCEPTING THEIR OFFER HERE
13 ON THAT PART OF HIS TESTIMONY.

14 MR. MC MULLEN: WE NEVER MADE THAT OFFER. WHAT IS
15 BEFORE THE COURT IS WHAT I HAVE JUST STATED, THAT IS, THAT
16 WE REQUESTED THAT THE COURT TAKE JUDICIAL NOTICE AS SET
17 FORTH IN OUR MEMORANDUM. THERE WAS NEVER AN OFFER
18 DISCUSSION.

19 THE COURT: IF YOU WANT ME TO TAKE JUDICIAL NOTICE
20 OF SOMETHING, I MEANT TO MENTION THAT LAST WEEK, YOU NEED
21 TO PREPARE A COPY AND FILE IT WITH ME, AND IT BECOMES AN
22 EXHIBIT.

23 MR. MC MULLEN: I BELIEVE IT IS, IF I AM NOT
24 MISTAKEN.

25 MR. CRAIN: IT DOESN'T TAKE CARE OF THE HEARSAY
26 PROBLEMS. IT IS STILL HEARSAY SUBJECT TO --

27 THE COURT: SINCE MR. HUNT IS GOING TO TESTIFY WHY
28 DON'T YOU -- I CAN'T MAKE THEM STIPULATE TO SOMETHING IF

1 THEY DON'T WANT TO STIPULATE.

2 MR. CRAIN: THAT'S TRUE.

3 THE SECOND MATTER.

4 THE COURT: BUT ANYTHING THAT YOU AGREE TO, MAKE A
5 COPY IN CONTEXT AND GIVE ME A COPY OF THAT, AND WE WILL
6 MARK IT AS AN EXHIBIT.

7 MR. CRAIN: I BELIEVE IT WAS LATE YESTERDAY
8 AFTERNOON WHEN MR. MC MULLEN ADDRESSED THE COURT ABOUT MR.
9 KARNY, AT LEAST HE DID AT SOME POINT RECENTLY.

10 THE COURT: YESTERDAY.

11 MR. CRAIN: MR. KARNY BEING IN THE WITNESS
12 PROTECTION PROGRAM AND SO FORTH.

13 I WANT -- FROM WHAT MR. MC MULLEN WAS SAYING
14 YESTERDAY IS THAT THEY PLAN TO OFFER KARNY'S TESTIMONY
15 RELATIVE TO TWO ASPECTS OF O.S.C. ISSUE 2.

16 IS THAT RIGHT, MR. MC MULLEN? DO I
17 UNDERSTAND YOU CORRECTLY?

18 MR. MC MULLEN: WHAT WAS THAT?

19 THE COURT: WHAT'S THE ISSUE ON THE O.S.C. THAT
20 KARNY GOING TO TESTIFY ABOUT?

21 MR. MC MULLEN: PRIMARILY ISSUE 1-B WITH RESPECT TO
22 THE SEVEN-PAGE LIST FOUND AT RON LEVIN'S HOUSE, AND THAT
23 IS IN REBUTTAL TO KAREN SUE MARMOR'S TESTIMONY WITH
24 RESPECT TO HER SEEING THAT LIST.

25 SECONDARILY, MR. KARNY CAN TESTIFY AS TO THE
26 CONSPIRATOR ISSUE 2-A, THE CANTOR-FITZGERALD LAWSUIT.

27 MR. CRAIN: I DON'T BELIEVE MR. KARNY'S TESTIMONY
28 SHOULD BE ADMISSIBLE ON EITHER POINT. MR. KARNY GAVE

1 TESTIMONY WITH REGARD TO THE SEVEN-PAGE LIST AT MR. HUNT'S
2 TRIAL.

3 THE COURT: WHICH ONE, SANTA MONICA OR SAN MATEO?

4 MR. CRAIN: WELL, AT BOTH.

5 THE COURT: OKAY.

6 MR. CRAIN: HIS TESTIMONY IS SUCH THAT SUBJECT TO
7 WORKING OUT -- I DON'T THINK IT IS ADMISSIBLE, AND I DON'T
8 THINK IT IS ADMISSIBLE BECAUSE THE RECOMMENDATION ISSUE
9 HERE IS THE COURT HAS READ AND CONSIDERED THE TESTIMONY
10 GIVEN AT THE FIRST TRIAL, PARTICULARLY IN VIEW OF IT'S
11 EVALUATION OF ISSUE 2, BECAUSE YOU HAD TO READ THE WHOLE
12 THING TO DETERMINE WHAT THE REAL TRIAL CONSISTED OF.
13 KARNY IS SOMEONE'S WHOSE CREDIBILITY, AS I STARTED TO SAY
14 YESTERDAY, IF WE HAVE A FEW MOMENTS, MAYBE WE CAN GET THIS
15 BEFORE THE COURT AND THE COURT CAN TAKE IT UNDER
16 SUBMISSION.

17 THE COURT: I UNDERSTAND YOUR POSITION. IF KARNY
18 IS GOING TO TESTIFY THAT OPENS THE DOOR TO EVERYTHING THAT
19 COULD POSSIBLY BE USED AGAINST HIM. BUT CLEARLY KARNY'S
20 TESTIMONY, ASSUMING HE IS GOING TO SAY SOMETHING
21 DIFFERENT, IT WILL BE IMPEACHMENT OF MS. MARMOR, IT WOULD
22 BE IN RESPONSE TO THIS HEARING, AND THE SPECIFIC ISSUE OF
23 CANTOR-FITZGERALD.

24 I MAY REQUIRE AN OFFER OF PROOF ON THAT. I
25 AM NOT SURE WHAT HE COULD ADD BECAUSE THE
26 CANTOR-FITZGERALD ISSUE IS WHETHER OR NOT MR. BARENS KNEW
27 OR SHOULD HAVE KNOWN OF THAT, SHOULD HAVE OUTLINED THAT IN
28 SOME FASHION AND HIS DECISION NOT TO OR LACK OF KNOWLEDGE

1 THEREOF WAS EVIDENCE OF HIS INCOMPETENCE OF COUNSEL.

2 MR. CRAIN: YES, WITH REGARDS TO THAT, YOUR HONOR,
3 I AGREE. FOR THE LIFE OF ME HOW IN ANY WAY KARNY'S
4 TESTIMONY COULD BE --

5 THE COURT: YOU MAY BE RIGHT.

6 MR. CRAIN: THIS IS WHY I AM BRINGING IT UP AT THIS
7 TIME SINCE WE HAVE A MOMENT OR TWO. HE GAVE THE TESTIMONY
8 IN HIS DEPOSITION, HIS ANSWERS ARE THERE, THEY SPEAK FOR
9 THEMSELVES. AND THE ONLY QUESTION IS WHY DIDN'T BARENS
10 USE IT. AND THAT'S SOMETHING FOR BARENS TO EXPLAIN, NOT
11 FOR KARNY TO EXPLAIN.

12 KARNY ANSWERED QUESTIONS. HE MADE VARIOUS
13 ADMISSIONS. HE ATTRIBUTED REASONS FOR EVERYTHING, GAVE
14 PARTICULAR ANSWERS TO PARTICULAR SOURCES AND CAUSES, BUT
15 IT WAS ALL THERE. I MEAN, IT IS A DEPOSITION, IT IS IN A
16 TRANSCRIPT. THE ONLY QUESTION IS: WHY DIDN'T BARENS USE
17 IT? THAT'S SOMETHING FOR OTHER WITNESSES PARTICULARLY
18 BARENS TO TALK ABOUT.

19 WITH REGARDS TO THE SEVEN-PAGE LIST,
20 MR. KARNY GAVE EXTENSIVE TESTIMONY CONCERNING WHEN HE
21 ALLEGEDLY SAW THE SEVEN-PAGE LIST, WHAT IT WAS ALL ABOUT,
22 THINGS OF THAT NATURE. HOWEVER, WE GET BACK TO THE
23 PROBLEM OF MR. KARNY'S CREDIBILITY. I MEAN, YOU KNOW,
24 THIS IS NOT -- HIS CLAIM IS OUT THERE BUT HIS CREDIBILITY
25 IS SOMETHING ELSE. AND I REALLY QUESTION --

26 THE COURT: KEEP SOMETHING ELSE IN MIND. I KNOW
27 ALL OF THE ALLEGATIONS THAT YOU HAVE MADE AGAINST
28 MR. KARNY. SOME OF THOSE ARE THE SUBJECT OF THE EVIDENCE

1 WE ARE GOING TO TAKE IN THIS CASE, SOME OF THOSE I HAVE
2 FOUND NOT TO BE SUFFICIENT SHOWING THAT THEY REQUIRE ANY
3 ADDITIONAL EVIDENCE BE TAKEN. BUT I AM THE TRIER OF FACT.
4 I KNOW ALL OF THOSE ALLEGATIONS.

5 I KNOW THE ALLEGATION THAT YOU HAVE OF --
6 PETITIONER HAS THAT MR. KARNY IS INVOLVED IN THE HOLLYWOOD
7 HOMICIDES. I KNOW THE NATURE OF THE ALLEGATION ON THE
8 CANTOR-FITZGERALD. IN FACT, IT IS THE SUBJECT OF
9 ADDITIONAL EVIDENCE THAT WE ARE GOING TO BE TAKING. I
10 KNOW THE RELATIONSHIP THAT WAS DESCRIBED IN THIS LAWSUIT
11 CONCERNING KARNY AND HUNT.

12 SO THINGS LIKE THAT ARE THINGS THAT I ALREADY
13 KNOW. AS IT RELATES, IF THIS IS IMPEACHMENT EVIDENCE, I
14 ASSUME IT IS IMPEACHMENT EVIDENCE, AS TO MS. MARMOR
15 TESTIMONY ON THE SEVEN-PAGE TO-DO LIST. THAT'S WHY KARNY
16 IS BEING CALLED.

17 MR. MC MULLEN: YES, YOUR HONOR.

18 THE COURT: THAT SOUNDS LIKE EVIDENCE THAT I WILL
19 ALLOW.

20 TELL ME WHY HE WOULD TESTIFY IN THE
21 CANTOR-FITZGERALD ISSUE.

22 MR. MC MULLEN: OUR OFFER OF PROOF IN SUMMARY
23 FASHION IS AS FOLLOWS: THAT IS THAT DEAN KARNY WILL
24 TESTIFY THAT HE WAS COACHED BY PETITIONER TO LIE DURING
25 THAT DEPOSITION. AND IN FACT THAT IS --

26 THE COURT: THAT'S WHAT MR. BARENS SAID DURING THE
27 DEPOSITION; RIGHT?

28 MR. MC MULLEN: THAT'S CORROBORATIVE.

1 THE COURT: I APOLOGIZE, COUNSEL. I DID READ
2 BARENS' DEPOSITION. I JUST REMEMBERED.

3 MR. CRAIN: OKAY.

4 MR. MC MULLEN: IT CORROBORATIVE OF MR. BARENS.

5 THE COURT: I WILL RESERVE RULING ON THAT. BUT
6 KARNY IS GOING TO TESTIFY TO THE SEVEN-PAGE TO-DO LIST. I
7 WANT TO GO BACK AND LOOK AT -- BARENS IS GOING TO TESTIFY
8 BEFORE KARNY ANYWAY.

9 MR. KLEIN: MAYBE WE CAN HAVE SOME INFORMATION
10 ABOUT WHEN KARNY.

11 THE COURT: I THINK THEY ARE TALKING ABOUT SOMETIME
12 MIDDLE OF NEXT WEEK.

13 MR. MC MULLEN: ACTUALLY, EARLY NEXT WEEK, AS EARLY
14 AS MONDAY MORNING.

15 THE COURT: WELL, LET'S GIVE KARNY -- LET'S GET
16 BARENS -- HOW LONG IS BARENS GOING TO BE ON DIRECT?

17 MR. CRAIN: IN VIEW OF THE PERFORMANCE AT HIS
18 DEPOSITION, IT IS LIKE PULLING TEETH, I THINK IT WILL TAKE
19 A WHILE. WHATEVER THAT MAY MEAN.

20 THE COURT: DEFINE "A WHILE."

21 MR. KLEIN: THREE HOURS WITHOUT THE TIP OF THE
22 ICEBERG, WITHOUT ANY ATTEMPT TO IMPEACH HIM. SO MY
23 FEELING IS SEVERAL DAYS AT LEAST.

24 MR. CRAIN: WITH REGARDS --

25 THE COURT: I DON'T KNOW ABOUT SEVERAL DAYS, BUT
26 LET'S GET BARENS' TESTIMONY ON BEFORE KARNY.

27 MR. CRAIN: WITH REGARD TO KARNY BEING ALLOWED TO
28 TESTIFY ABOUT THE SEVEN-PAGE LIST, INSOFAR AS -- CLEARLY

1 INsofar AS, YOU KNOW, BECAUSE I DON'T KNOW, I THOUGHT
2 YESTERDAY THEY WERE SAYING THAT THEY WERE OFFERING IT AS
3 SOME SORT OF REBUTTAL TESTIMONY WITH REGARD TO ISSUE 2-H.
4 WAS THERE AN OVERLAP THERE? BECAUSE KAREN MARMOR IN 2-H,
5 HER TESTIMONY, OF COURSE, ABOUT SEEING THE SEVEN-PAGE LIST
6 BEFORE MR. LEVIN'S DISAPPEARANCE, THE QUESTION IS, YOU
7 KNOW: WHY DIDN'T BARENS USE THIS IMPORTANT TESTIMONY IN
8 THE DEFENSE OF MR. HUNT? IT ALSO --

9 THE COURT: WHAT IF MS. MARMOR IS WRONG? I ASSUME
10 THAT'S WHY THEY ARE OFFERING IT, THAT MS. MARMOR DOES NOT
11 HAVE SUBSTANTIAL CREDIBILITY. THAT WOULD IMPACT WHETHER
12 OR NOT THE DEFENDANT WAS PROPERLY CONVICTED.

13 MR. CRAIN: I THINK THE QUESTION IS FOR THE COURT
14 TO DECIDE WHETHER MR. BARENS UNDER THE APPLICATION OF THE
15 LEGAL STANDARDS SHOULD HAVE CALLED MS. MARMOR. JUST AS HE
16 SHOULD HAVE CALLED EACH ONE OF THESE TO PRESENT THEM TO
17 THE JURY, SO THAT THE JURY COULD HEAR ALL THE EVIDENCE,
18 PARTICULARLY SUBSTANTIAL AND IMPORTANT EXCULPATORY
19 EVIDENCE.

20 BUT GOING BACK TO 1-B, I MEAN, THE PROBLEM IS
21 THE COURT KNOWS FROM HAVING READ THE TRANSCRIPT AND FROM
22 HAVING LITIGATED QUESTIONS THAT WE HAVE HAD, OR WE HAVE
23 TRIED TO EXPLORE AT LENGTH, MR. KARNY'S INVOLVEMENT IN THE
24 HOLLYWOOD MURDER, THE FACT -- AND ALL THE FACTS AND
25 CIRCUMSTANCES SURROUNDING IT. THE COURT KNOWS IT. BUT IT
26 IS NOT IN EVIDENCE. AND I DON'T THINK THE COURT CAN
27 PROPERLY AS THE TRIER OF FACT PRESIDE --

28 THE COURT: ACTUALLY THAT'S NOT TRUE BECAUSE IT IS

1 PART OF THE PETITION, AND I HAVE MADE RULINGS BASED ON THE
2 EVIDENCE CONTAINED IN THE PETITION AND RESPONSE TO THAT.

3 MR. CRAIN: YOU HAVE MADE RULINGS, WITH ALL DUE
4 RESPECT TO THE COURT, I THINK WE HAVE SAID TIME AND TIME
5 AGAIN THE CALIFORNIA SUPREME COURT HAS SAID THAT
6 EVIDENTIARY HEARINGS THE RULES OF EVIDENCE GOVERN THAT'S
7 ABSENT IF THERE IS AN OBJECTION. THE RULE, THE HEARSAY
8 RULES AND SO FORTH APPLY.

9 SO I DON'T THINK THAT THE COURT CAN CONSIDER
10 AS PART OF THE EVIDENTIARY HEARING -- YOU ARE WEARING MANY
11 HATS HERE. YOU HAVE TO RULE ON THIS SUFFICIENCY OF
12 PLEADINGS AND MOTIONS TO CONTINUE AND THINGS LIKE THAT.

13 BUT IN TERMS OF DECIDING THE EVIDENCE AND
14 MAKING CREDIBILITY FINDINGS AND FINDING WHAT THE FACTS
15 ARE, YOU CAN ONLY GO BY THE RULES OF EVIDENCE. I DON'T
16 THINK THE COURT CAN PROPERLY CONSIDER IT, AND I WOULD
17 OBJECT AND DO OBJECT TO THE COURT CONSIDERING MATTERS
18 RELATING TO MR. KARNY, SUCH AS THE HOLLYWOOD HOMICIDE
19 CASE, THE IMMUNITY THAT HE WAS GIVEN, THE EXTENT OF IT,
20 THE FACT THAT HE WASN'T CIVILLY PROSECUTED FOR OTHER
21 MISDEEDS THAT HE WAS ENGAGED IN.

22 THE COURT: YOU ARE WITHDRAWING THOSE ISSUES?

23 MR. CRAIN: NO, YOUR HONOR. I AM SAYING WITH THE
24 COURT'S PERMISSION IF MR. KARNY TO TESTIFY AS A WITNESS ON
25 ANY ISSUE THAT THE PETITIONER HERE, MR. HUNT, AND
26 MR. KLEIN AND I LEGALLY HAVE THE RIGHT TO EXPLORE
27 MR. KARNY'S BIAS, MOTIVE AND WILLINGNESS TO COMMIT PERJURY
28 ON HIS OWN BEHALF.

1 I MEAN, AS THE COURT DOES KNOW FROM MATTERS
2 OUTSIDE THE EVIDENCE IN THE CASE, MR. KARNY IS SOMEONE WHO
3 WAS GIVEN IMMUNITY IN A MURDER. WHO WAS, I BELIEVE,
4 CONSIDERED A SUSPECT IN A SECOND MURDER. WHO WAS UP TO
5 HIS EYEBALLS IN TERMS OF ALL SORT OF CRIMINAL ACTIVITY,
6 CIVILLY DEFRAUDED PEOPLE RIGHT AND LEFT, WAS GIVEN ALL
7 KINDS OF FAVORS BY THE PROSECUTION.

8 THIS IS NOT MOTHER TERESA COMING BEFORE THE
9 COURT TO GIVE TESTIMONY. THIS IS A VERY DESPICABLE
10 INDIVIDUAL, AND I DON'T THINK IT COMPORTS WITH DUE
11 PROCESS, NOR DO I THINK THE COURT WOULD PERMIT THE PEOPLE
12 TO MERELY PUT ON MR. KARNY TO REGURGITATE HIS CLAIM THAT
13 HE SAW MR. HUNT MAKING OUT A SEVEN-PAGE LIST AT A
14 PARTICULAR TIME AND MAKING CERTAIN STATEMENTS TO MR. KARNY
15 ABOUT IT WITHOUT GIVING MR. HUNT THE OPPORTUNITY TO
16 ATTEMPT TO IN EVERY WAY, SHAPE OR FORM, SUBJECT TO THE
17 RULES OF EVIDENCE, UNDERMINE THE CREDIBILITY OF MR. KARNY.

18 THAT'S WHAT I SUGGEST WE ARE OPENING UP THE
19 DOOR TO. THAT'S WHY, FIRST OF ALL, I DON'T BELIEVE HIS
20 TESTIMONY IS RELEVANT. BUT IF IT IS, I THINK THAT THE
21 COURT OUGHT TO DO NO MORE THAN IT WOULD -- I THINK THAT IT
22 IS IRRELEVANT AT THIS POINT.

23 THE COURT: I THINK THERE IS RELEVANCE TO THE
24 TESTIMONY. I WILL ALLOW IT IN THE AREA OF THE SEVEN-PAGE
25 TO-DO LIST. I WILL RESERVE RULING ON CANTOR-FITZGERALD
26 FOLLOWING THE TESTIMONY OF MR. BARENS. I WILL HAVE A
27 BETTER UNDERSTANDING OF THAT.

28 MR. CRAIN: ALL RIGHT.

1 I ASSUME, IF I CAN BE SO BOLD, THAT THE COURT
2 IS GOING TO ALLOW FULL CROSS-EXAMINATION OF MR. KARNY, IF
3 WE CHOSE TO DO, SO WITH REGARD TO HIS BIAS, MOTIVE AND
4 OVERALL LACK OF CREDIBILITY.

5 THE COURT: WE ARE NOT GOING TO GO THROUGH EVERY
6 ONE OF THOSE ISSUES. I -- LIKE I SAID, I AM AWARE OF
7 THEM. IF YOU ARE TALKING ABOUT BUILDING RECORDS, YOU HAVE
8 ALREADY GOT WHAT YOU NEED IN THE RECORD. IF YOU ARE
9 TALKING ABOUT CONVINCING ME THAT THE TRIER OF FACT WHETHER
10 HE IS BELIEVABLE OR NONBELIEVABLE PERSON, LET'S DO IT
11 BASED ON TESTIMONY HERE IN COURT. WHAT HE SAYS ABOUT THE
12 RELEVANT ISSUES.

13 ALL RIGHT.

14 MR. KLEIN: YOUR HONOR, CAN I ADD ONE THING. THE
15 PROBLEM WITH THAT IS, FIRST OF ALL, YOU ALREADY HAVE THE
16 RECORD OF WHAT MR. KARNY SAYS ABOUT THE SEVEN-PAGE LIST SO
17 YOU DON'T NEED TO HEAR IT AGAIN.

18 THE COURT: MS. MARMOR HAS TESTIFIED AND SAID THAT
19 SHE WENT INTO THE OFFICE, SHE PICKED UP THE LIST, SHE HAS
20 SOME TYPE OF INTERACTION WITH MR. LEVIN. IF THEY CAN
21 BRING MR. KARNY IN TO OFFER SOMETHING THAT IMPEACHES MS.
22 MARMOR'S TESTIMONY, IT IS GOING TO BE RELEVANT.

23 MR. CRAIN: THAT'S RIGHT. I AGREE. MR. KARNY IS
24 GOING TO COME IN, HE IS GOING TO SAY, I AM SURE, EXACTLY
25 WHAT HE SAID AT THE TRIAL BEFORE, THAT HE SAW MR. HUNT
26 MAKING OUT THE SEVEN-PAGE LIST AT A TIME IT IS GOING TO BE
27 IN CONTRADICTION TO MRS. MARMOR, BUT I WOULD ASSUME --

28 THE COURT: SHOULD BE SHORT TESTIMONY.

1 MR. CRAIN: NO, YOUR HONOR. THAT'S WHAT I AM
2 TRYING TO TELL THE COURT. I THINK IT WILL BE LONG
3 TESTIMONY BECAUSE IN THE EXAMINATION, CROSS-EXAMINATION OF
4 MR. KARNY I AM TELLING THE COURT THAT I INTEND TO GO INTO
5 ALL OF MR. KARNY'S BIAS AND MOTIVE, HIS INVOLVEMENT IN THE
6 HOLLYWOOD HOMICIDE. IT INCLUDES HIS ARRANGEMENT AND
7 IMMUNITY DEALS HE GOT WITH THE DISTRICT ATTORNEY, IT
8 INVOLVES HIS LYING UNDER OATH, IT INVOLVES HIS GETTING
9 FAVORS OF A CIVIL NATURE AND ALL SORTS OF THINGS.

10 I THINK -- HOW CAN THE COURT OTHERWISE
11 DETERMINE WHETHER OR NOT MR. KARNY IS A CREDIBLE WITNESS
12 IF THE COURT IS MERELY GOING TO PUT IT IN A POSITION OF
13 SAYING, "WELL, YOU KNOW, KAREN SUE MARMOR CAME IN. SHE
14 SAID ONE THING. KARNY SAID THE OTHER. SO, YOU KNOW, HER
15 TESTIMONY IS WORTHLESS. I DON'T BELIEVE WHAT SHE HAS TO
16 SAY ABOUT THE SEVEN-PAGE LIST." I DON'T THINK THAT WOULD
17 BE A FAIR HEARING. I THINK --

18 THE COURT: I HAVE LOOKED AT MS. MARMOR. I WILL
19 LOOK AT MR. KARNY. I WILL DECIDE WHO IS LYING, IF ANYONE
20 IS LYING. I WILL TELL HOW MORE CREDIBLE, IF ANYONE IS
21 MORE CREDIBLE. I DON'T NEED ANY OF THE OTHER MATERIAL
22 TOO.

23 LET'S -- LET'S WRAP IT UP.

24 PETITIONER AND COUNSEL ORDERED TO BE BACK 9
25 O'CLOCK THURSDAY MORNING.

26 BOTH COUNSEL ARE ORDERED, BOTH SIDES ORDERED
27 TO CHECK IN WITH THE CLERK BY 9 O'CLOCK AND HAVE THE
28 WRITTEN PETITIONER'S EXHIBIT LIST BY THEN.

1 MR. KLEIN: YOUR HONOR, IN TERMS OF WITNESSES FOR
2 THURSDAY, I KNOW WE HAVE JUDGE WAPNER, AND HOPEFULLY WE
3 WILL HAVE MR. TUR. BUT THERE IS NO ASSURANCE --

4 THE COURT: LOOK, I HAVE BEEN VERY PATIENT.

5 MR. KLEIN: I UNDERSTAND.

6 THE COURT: YOU HAVE GOT TO GET YOUR WITNESSES IN.

7 MR. KLEIN: WHAT I AM SUGGESTING, MAYBE THE PEOPLE
8 COULD PUT ON SOME OF THEIR WITNESSES, SHORT WITNESSES.

9 THE COURT: WHY DON'T YOU TALK TO THEM ABOUT IT.

10 MR. KLEIN: OKAY.

11 MR. MC MULLEN: YOU SAID WE COULD START AT 9:30.

12 THE COURT: IS THAT THE DAY YOU HAVE THE MALIBU?

13 MR. CRAIN: SANTA MONICA.

14 THE COURT: 9:30 THEN.

15 MR. CRAIN: COULD I ASK THE COURT, I DON'T WANT TO
16 HAVE PROBLEMS WITH THIS COURT ANYMORE. THEN JUST IN THE
17 NATURE OF THINGS --

18 THE COURT: DON'T BE LATE TO MY COURT TWO DAYS IN A
19 ROW. MR. CRAIN, IT IS NOT JUST YOU, I DON'T LET ANYONE
20 COME TO MY COURT LATE, ANYONE. IF THE CUSTODY IS HERE
21 LATE I JUMP ALL OVER THE SHERIFF'S DEPARTMENT. YOU CAN
22 TALK TO THE SHERIFF'S ABOUT THAT. THEY DON'T LIKE GETTING
23 CALLS FROM ME. IF THE PEOPLE ARE LATE I JUMP ALL OVER
24 THEM. I DON'T BELIEVE IN STARTING LATE. SO I UNDERSTAND
25 WHAT YOU ARE SAYING, IF SOME JUDGE HANGS YOU UP, I WILL
26 HEAR WHAT YOU HAVE TO SAY. BUT LET'S ASSUME --

27 MR. CRAIN: I JUST WANT TO ASK THE COURT FOR SOME
28 GUIDANCE HERE. I AM GOING TO ASK FOR A PRIORITY. I AM

1 GOING TO HOPE I GET ONE. I CAN'T JUST WALK OFF AND LEAVE
2 THE CLIENT THERE WAITING TO HAVE --

3 THE COURT: IF I WERE YOU I WOULD CALL MY REGULAR
4 CLERK, WHO WILL BE BACK TOMORROW, AND REMIND THE CLERK,
5 ASK THE CLERK TO CALL JUDGE KAMINS' CLERK TO IMPOSE UPON
6 THEM, IF NECESSARY, TO ALLOW YOU TO BE HEARD. THAT'S WHAT
7 I WILL DO. DON'T, DON'T LET ME GIVE LEGAL ADVICE ANYMORE.

8 MR. CRAIN: WHAT I PREFER THE POSSIBILITY AT 9
9 O'CLOCK THE COURT IS JUST CALLING THE CASE, THE DISTRICT
10 ATTORNEY IN THAT CASE HAS A CUSTOM OF ARRIVING LATE IN AN
11 TIZZY, SO TO SPEAK, AND TAKING A GREAT DEAL OF THE COURT'S
12 TIME ON RELEVANT MATTERS.

13 THE COURT: GOOD THING THEY DON'T APPEAR IN FRONT
14 OF ME.

15 MR. CRAIN: IT IS NOT ANY OF OUR COUNSEL HERE. I
16 NOW *CONCERNING I AM NOW TEN AFTER 9:00. I AM JUST
17 LEAVING. I WILL BE LATE FOR HERE.

18 THE COURT: IF THEY HAVE GOT A PHONE THAT YOU CALL
19 HERE.

20 MR. CRAIN: I WILL CALL YOUR HONOR, AND I HOPE -- I
21 REMEMBER THE COURT HAD A FLAT TIRE COMING INTO THIS COURT
22 AND WERE DELAYED, THAT WAS ABOUT A YEAR AGO, PROBABLY OUR
23 FIRST APPEARANCE IN HERE. SO I AM SURE THE COURT
24 RECOGNIZES WE ARE ALL HUMAN BEINGS, AND WE ARE ALL SUBJECT
25 TO OUTSIDE FORCES, AND WE DO THE BEST WE CAN.

26 THE COURT: AS LONG AS I HAVE BEEN ON THE BENCH NO
27 ONE HAS EVER ACCUSED ME OF BEING A HUMAN BEING BEFORE.

28 MR. CRAIN: THERE IS A FIRST TIME FOR EVERYTHING.

1 MR. MC MULLEN: CAN YOU GIVE US AN IDEA FOR NEXT
2 WEEK FOR WITNESS SCHEDULING PURPOSES?

3 THE COURT: I HAVEN'T LOOKED THAT FAR IN ADVANCE,
4 BUT LET ME LOOK AT THE RED BOOK.

5 MR. MC MULLEN: I APPRECIATE THAT.

6 THE COURT: I THINK WE HAVE A FULL, COMPLETE
7 UNINTERRUPTED WEEK.

8 MR. MC MULLEN: FIVE FULL DAYS?

9 THE COURT: YEAH.

10 THE COURT: RIGHT NOW IT LOOKS LIKE NOTHING I HAVE
11 IS LONG. THE LATEST WOULD BE STARTING IS 9:30. PROBABLY
12 9:00 EVERY DAY NEXT WEEK.

13 MR. MC MULLEN: THANK YOU

14

15 (AT 3:40 P.M. AN ADJOURNMENT WAS
16 TAKEN UNTIL THURSDAY,
17 MAY 2, 1996 AT 9:30 A.M.)

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